TITLE: FEDERAL REGISTER

REEL NO: 6 OF 7

VOLUME: 49 ISSUES: 222-241

DATE: NOVEMBER 15 - DECEMBER 13, 1984

PUBLICATION NO: 2575

NOTES: THE PAPER AND INK USED IN THE ORIGINAL MATERIAL AFFECT THE QUALITY OF THE MICRO-EDITION. THIS REPRODUCTION IS MADE FROM THE BEST COPT AVAILABLE.

THIS PERIODICAL MAY BE COPYRIGHTED, IN WHICH CASE THE CONTENTS REMAIN THE PROPERTY OF THE COPYRIGHT OWNER. THE MICROFORM EDITION IS REPRODUCED BY AGREEMENT WITH THE PUBLISHER. DUPLICATION OR RESALE WITHOUT PERMISSION IS PROHIBITED.

UNIVERSITY MICROFILMS INTERNATIONAL, ANN ARBOR, MICHIGAN

VOL
49
NO
222
1984
MI

11-15-84
Vol. 49 No. 222

federal register

Thursday
November 15, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 84 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S.MAIL
Postage and Fees Paid
U.S. Government Printing Office
375
SECOND CLASS NEWSPAPER

11-15-84
Vol. 49 No. 222
Pages 45107-45408

federal register

Thursday
November 15, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency
Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Employee Benefit Plans
Pension Benefit Guaranty Corporation
Endangered and Threatened Species
Fish and Wildlife Service
Fisheries
National Oceanic and Atmospheric Administration
Flood Insurance
Federal Emergency Management Agency
Government Procurement
Indian Affairs Bureau
National Aeronautics and Space Administration
Maritime Carriers
Federal Maritime Commission
Marketing Agreements
Agricultural Marketing Service
Mortgage Insurance
Housing and Urban Development Department
Natural Gas
Federal Energy Regulatory Commission

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Postal Service
Postal Service
Quarantine
Animal and Plant Health Inspection Service
Radio Broadcasting
Federal Communications Commission
Recreation and Recreation Areas
Forest Service
Reporting and Recordkeeping Requirements
Securities and Exchange Commission
Securities
Securities and Exchange Commission
Trade Practices
Federal Trade Commission
Water Supply
Environmental Protection Agency

Contents

Federal Register
Vol. 49, No. 222
Thursday, November 15, 1984

The President
PROCLAMATIONS
45107 Women in Agriculture Week (Proc. 5278)

Executive Agencies

Agency for International Development
NOTICES
Authority delegations:
45270 Latin American and Caribbean Regions
Meetings:
45272 Research Advisory Committee

Agricultural Marketing Service
RULES
45109 Lemons grown in Arizona and California

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Food and Nutrition Service; Forest Service; Soil Conservation Service.
NOTICES
45199 Agency information collection activities under OMB review

Animal and Plant Health Inspection Service
RULES
Livestock and poultry quarantine:
45110 Brucellosis; State and area classifications; interim
45111 Lethal avian influenza; interim

Architectural and Transportation Barriers Compliance Board
NOTICES
45199 Aircraft boarding; chairs used for enplaning physically handicapped passengers, etc.; advisory standards; inquiry; extension of time

Bonneville Power Administration
NOTICES
Average system cost methodology:
45219 Exchange transmission credit program

Centers for Disease Control
NOTICES
Meetings:
45260 Scientific Counselors Board (NIOSH)

Civil Aeronautics Board
NOTICES
Complaints filed:
45200 Frontier Holdings, Inc., et al.
Hearings, etc.:
45200 Air New Jersey, Inc.
45200 Hawaii One Corp.
45200 Royalcoach Airline (2 documents)
45201 Tampa-Yucatan service case

Coast Guard
RULES
Drawbridge operations:
45130 Florida; correction

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration.
NOTICES
Meetings:
45201 President's Commission on Industrial Competitiveness
45205 Steel Advisory Committee

Commodity Credit Corporation
RULES
Loan and purchase programs:
45109 Peanuts; correction

Commodity Futures Trading Commission
NOTICES
45208, 45209 Agency information collection activities under OMB review (2 documents)
Contract market proposals:
45209 Chicago Board of Trade; long-term U.S. Treasury notes
45209 Chicago Mercantile Exchange; British pounds, etc.
45210 Philadelphia Board of Trade, Inc.; three-month Eurodollar time deposits

Conservation and Renewable Energy Office
NOTICES
Residential conservation service program:
45230 Utility waiver petition; United Illuminating Co.

Consumer Product Safety Commission
NOTICES
45290 Meetings; Sunshine Act (2 documents)

Customs Service
NOTICES
45289 Reimbursable services; excess cost of preclearance operations
Trade name recordation applications:
45288 Union Fork & Hoe Co.

Defense Department
NOTICES
Meetings:
45213 Defense Equal Opportunity Management Institute Board of Visitors
45213 DIA Scientific Advisory Committee (2 documents)
45213 DOD-University Forum
45212, 45213 Electron Devices Advisory Group (2 documents)
45211 Privacy Act; systems of records

Education Department
NOTICES
45215 Agency information collection activities under OMB review
Grants; availability, etc.:
45216 Educational opportunity centers program
45218 Endowment grant program
45219 Indian-controlled schools enrichment program; closing date extended
Meetings:
45214 Bilingual Education National Advisory Council
45216 Federal Education Data Acquisition Council
45214, 45215 International Education Programs National Advisory Board (2 documents)

Energy Department
See also Bonneville Power Administration; Conservation and Renewable Energy Office; Federal Energy Regulatory Commission.
NOTICES
Meetings:
45230 National Petroleum Council

Environmental Protection Agency
RULES
Air quality planning purposes; designation of areas:
45131 Alabama
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
45132 Ethylene dichloride (1,2-dichloroethane); correction
Pesticides; tolerances in animal feeds:
45124 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; correction
Pesticides; tolerances in foods:
45123 Ethephon; correction
Toxic substances:
45133 Chlorinated naphthalenes; reporting and recordkeeping requirements; correction
Water pollution control:
45292 State underground injection control program; federally administered programs
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
45178 Indiana
Pesticide programs:
45181 Agricultural worker protection standards; advance notice; correction
NOTICES
Toxic and hazardous substances control:
45249 Premanufacture exemption approvals

Farm Credit Administration
NOTICES
Meetings:
45250 Federal Farm Credit Board.

Federal Aviation Administration
PROPOSED RULES
45166 Jet routes and VOR Federal airways
45168, 45169 Restricted areas (2 documents)
45167 Transition areas
45171 VOR Federal airways

Federal Communications Commission
RULES
Radio broadcasting:
45155 Broadcast remote pickup service; frequency assignment procedures
45142 FM stations; blanketing interference
45146 Noncommercial, educational FM broadcast stations; reception protection for TV channel 6 broadcasts
Radio stations; table of assignments:
45139, 45140 Alabama (2 documents)
45140 Arkansas
45141 California
45142 Michigan
45141 West Virginia
PROPOSED RULES
Radio stations; table of assignments:
45186 Hawaii
NOTICES
Hearings, etc.:
45253 Area Christian Television, Inc., et al.
45254 Baytown Community Broadcasting, Ltd., et al.
45255 Contemporary Communications, Inc., et al.
45251 Martin, Marione Elaine, et al.
45255 Moore County Radio Co. et al.
45250 Morley, Frankie, et al.
45251 Oswego-Jefferson Broadcasting, Inc., et al.
45250 Saunders, Arthur Winburn, Jr., et al.
Meetings:
45251 Federal-State Joint Board
45251 Telecommunications Industry Advisory Group
45252 Travel reimbursement experiment; quarterly report

Federal Deposit Insurance Corporation
NOTICES
45256 Agency information collection activities under OMB review

Federal Election Commission
NOTICES
45290 Meetings; Sunshine Act

Federal Emergency Management Agency
RULES
Flood elevation determinations:
45135 Alaska et al.; interim
45136 Illinois et al.
45134 Louisiana et al.
Flood insurance; communities eligible for sale:
45133 Maine et al.
PROPOSED RULES
Flood elevation determinations:
45181 Arizona et al.
NOTICES
Disaster and emergency areas:
45257 Texas
45257 Privacy Act; systems of records

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act; ceiling prices for high cost natural gas produced from tight formations; various States:
45174, 45175 Texas (2 documents)
NOTICES
Hearings, etc.:
45235 Consolidated Gas Transmission Corp.

45241 Kentucky Utilities Co.
45243 Locust Ridge Gas Co.
45243 Louisiana-Nevada Transit Co.
45243 Mountain Fuel Resources, Inc.
45244 Natural Gas Pipeline Co. of America
45244 Northern Natural Gas Co.
45245 Northwest Central Pipeline Corp.
45245 Northwest Pipeline Corp.
45246 Odeco Oil & Gas Co.
45246 Panhandle Eastern Pipe Line Co.
45246 Stingray Pipeline Co.
45246 Texas Gas Pipe Line Corp.
45247 Transcontinental Gas Pipe Line Corp.
45247 Trunkline Gas Co.
45247 United Gas Pipe Line Co.
45248 West Texas Gas, Inc.
45249 Western Transmission Corp.
45235 Hydroelectric applications (Deep River Hydro et al.)
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
45231 Air Products & Chemicals, Inc., et al.
45231 Duval, Bennett
45231 General Electric Co.
45232 International Paper Co.
45232 Jacobson, David I.
45234 Larlarb, Somboon, et al.
45232 Louie, Louis
45233 Louis, Paul
45233 Martell Cogeneration Ltd. Partnership
45233 Pacific Lighting Energy Systems (2 documents)
45234 Parker, John E.
45234 Sir Travel Inc.
45234 Sobel, Donald W.
45234 Triad American Energy
45231 Wong, Fay

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
45115 Brokered deposits; limitations on institutions with low net worth; interim rule extended and request for comments; correction

Federal Maritime Commission
RULES
45320 Agreements by ocean common carriers, etc.
Tariffs filed by common carriers in foreign commerce of U.S.:
45364 Intermodal tariff filing amendments; loyalty (dual rate) contracts; and service and time/volume contracts; final
45397 U.S.-Flag vessels; access to ocean trade between foreign ports; actions to address unduly impairing conditions
NOTICES
45258 Agreements filed, etc.:
Freight forwarder licenses:
45258 Freight Systems International, Inc., et al.

Federal Reserve System
NOTICES
Bank holding company application, etc.:
45258 Citizens Bancshares, Inc., et al.
45258 First Bankshares, Inc., et al.
45259 Marine Corp.

Federal Trade Commission
RULES
Prohibited trade practices:
45116 Chevron Corp. et al.
45117 Hospital & Health Services Credit Union
45115 Sperry & Hutchinson Co.

Fish and Wildlife Service
RULES
Endangered and threatened species:
45160 Amargosa vole
NOTICES
Environmental statements; availability, etc.:
45269 Yukon Delta National Wildlife Refuge, AK

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
45124 Salts of volatile fatty acids
45123 Sodium hyaluronate injection

Food and Nutrition Service
RULES
Child nutrition programs:
45109 Child nutrition labeling program; correction

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
45201 Colorado

Forest Service
PROPOSED RULES
Recreation management:
45177 Occupancy and use of sites and areas of concentrated public use

General Services Administration
NOTICES
45259 Agency information collection activities under OMB review

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Public Health Service.

Housing and Urban Development Department
RULES
Government National Mortgage Association:
45128 Attorneys-in-fact list
Mortgage and loan insurance programs:
45125 Labor standards and wage requirements
NOTICES
45264, 45266 Agency information collection activities under OMB review (5 documents)

Indian Affairs Bureau
PROPOSED RULES
45187 Acquisition regulations; Buy Indian Act; contracting with Indians, procedures

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service.

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Antidumping:
45204 Calcium hypochlorite from Japan; postponement
45202 Potassium chloride from East Germany; postponement
45202 Potassium chloride from U.S.S.R.; postponement
45203 Export trade certificates of review
Meetings:
45205 Importers and Retailers' Textile Advisory Committee

International Trade Commission
NOTICES
Import investigations:
45275 Alkaline batteries
45273 Anodes for cathodic protection and components
45272 Apparatus for flow injection analysis and components
45244 Bag closure clips
45273 Carbon steel wire rod from Argentina and Spain
45274 Cellular mobile telephones and subassemblies from Japan
45272 Grand and upright pianos from Korea
45275 Live swine and fresh, chilled and frozen pork from Canada
45276 Rowing machines and components
45276 Titanium sponge from Japan and United Kingdom
45276 Vitamin K from Spain

Interstate Commerce Commission
NOTICES
45277 Agency information collection activities under OMB review.
Railroad operation, acquisition, construction, etc.:
45277 Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
Railroad services abandonment:
45278 Western Maryland Railway Co. et al.

Labor Department
NOTICES
Meetings:
45205 Steel Advisory Committee

Land Management Bureau
NOTICES
Alaska native claims selections:
45267 Wales Native Corp.
Exchange of public lands for private land:
45268 Nevada
Meetings:
45269 Vale District Advisory Council
45269 Vale District Grazing Advisory Board
Resource management plans, etc.:
45268 Cedar-Beaver-Garfield-Antimony Planning Area, Utah; correction
Sale of public lands:
45267, 45268 California; correction (2 documents)
45267 Idaho
45268 Utah

Management and Budget Office
NOTICES
45280 Hospital and medical care furnished by U.S., cost; rates regarding recovery from tortiously liable third persons

Minerals Management Service
NOTICES
Envronmental statements; availability, etc.:
45270 Middle Atlantic States OCS oil and gas lease sale
Meetings:
45269 Outer Continental Shelf Advisory Board

National Aeronautics and Space Administration
PROPOSED RULES
45194 Acquisition regulations

National Oceanic and Atmospheric Adminstration
RULES
Fishery conservation and management:
45164 Atlantic surf clam and ocean quahog

Nuclear Regulatory Commission
RULES
Production and utilization facilities, domestic licensing:
45114 Environmental qualifications of electric equipment; policy statement
45112 Integrated safety assessment program for operating reactors; policy statement
NOTICES
Abnormal occurrence reports:
45278 Quarterly reports to Congress
Nuclear Waste Policy Act:
45276, 45279 High-level waste program; technical positions; availability, etc. (2 documents)
Safety analysis and evaluation reports; availability, etc.:
45280 Public Service Electric & Gas Co.

Pension Benefit Guaranty Corporation
RULES
Plan benefits valuation:
45129 Non-multiemployer plans; interest rates and factors

Postal Service
RULES
International Mail Manual:
45130 Venezuela; Express Mail Service

Public Health Service
NOTICES
Organization, functions, and authority delegations:
45260 Food and Drug Administration

Railroad Retirement Board
NOTICES
45290 Meetings; Sunshine Act

Research and Special Programs Administration
NOTICES
Hazardous materials:
45284 Applications; exemptions, renewals, etc.

Securities and Exchange Commission
RULES
Securities:
45117 Quotations without specified information, initiation or resumption
PROPOSED RULES
Investment companies and securities:
45172 Expense-related disclosure requirements

NOTICES
45280 Agency information collection activities under OMB review
Hearings, etc.:
45280 Connecticut Light & Power Co.
45282 Middle South Utilities, Inc.
45290 Meetings; Sunshine Act
National market system securities:
45282 Institutional Networks Corp. et al.; reconsideration request denied

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
45199 Troublesome Creek Watershed, Missouri

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
45205 India
Textile consultation; review of trade:
45206, 45207, 45208 Indonesia (2 documents) / Mauritius

Transportation Department
See Coast Guard; Federal Aviation Administration; Research and Special Programs Administration.

Treasury Department
See also Customs Service.
NOTICES
Notes, Treasury:
45288 C–1994 series

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
45130 Pension rates and income limitations; cost-of-living adjustments; correction
NOTICES
Meetings:
45289 Health-Related Effects of Herbicides Advisory Committee

Separate Parts in This Issue

Part II
45291 Environmental Protection Agency

Part III
45319 Federal Maritime Commission

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5278 45107

7 CFR
210 45109
220 45109
225 45109
226 45109
910 45109
1446 45109

9 CFR
78 45110
81 45111

10 CFR
50 (2 documents) 45112, 45114

12 CFR
563 45115

14 CFR
Proposed Rules:
71 (5 documents) 45166–45171
73 (2 documents) 45168, 45169
75 45171

16 CFR
13 (3 documents) 45115–45117

17 CFR
240 45117
Proposed Rules:
239 45172
274 45172

18 CFR
Proposed Rules:
271 (2 documents) 45174, 45175

21 CFR
193 45123
510 45123
522 45123
561 45124
573 45124

24 CFR
205 45125
207 45125
213 45125
220 45125
221 45125
232 45125
238 45125,
250 45125
300 45128

29 CFR
2619 45129

33 CFR
117 45130

36 CFR
Proposed Rules:
291 45177

38 CFR
3 45130

39 CFR
10 45130

40 CFR
81 45131
124 45292
144 45292
146 45292
147 45292
180 45132
704 45133
Proposed Rules:
52 45178
170 45181

44 CFR
64 45133
65 (2 documents) 45134, 45135
67 45136
Proposed Rules:
67 45181

45 CFR
538 45364
572 45320
580 45364
585 45397
587 45397

47 CFR
73 (8 documents) 45139–45146
74 45155
Proposed Rules:
73 45186

48 CFR
Proposed Rules:
1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

50 CFR
17 45160
652 45164

Federal Register
Vol. 49, No. 222
Thursday, November 15, 1984

Presidential Documents

Title 3—

The President

Proclamation 5278 of November 13, 1984

Women in Agriculture Week, 1984

By the President of the United States of America

A Proclamation

Women have always played an equal role with men in the agriculture of the Nation. Early America was an agricultural society, and colonial women worked beside men to develop the new land. Together, they learned local agriculture from the Indians, erected log cabins, and cleared farmland. Pushing their clearings to the foothills of the Alleghenies, they passed through the mountain gaps and crossed the prairies together in covered wagons.

Women were partners in American life from the founding of our first settlements. Men and women together in family enterprises began to process food, weave fabrics, and market food and fiber. As the settlements became towns and then cities, and as agricultural jobs became more specialized, women remained partners in the maturing of the agriculture of our Nation.

Today, agriculture employs 22 million people who work with food and fiber in growing, harvesting, processing, transporting, and retailing. Women are active in farm management, finances, and community life and in establishing agricultural policy. They are also active in all phases of agribusiness and in agricultural processing and marketing. It is appropriate, therefore, that we set aside a week to recognize the role of women in this most basic of all industries.

The Congress, by House Joint Resolution 554, has designated the week of November 11 through 17, 1984, as "Women in Agriculture Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 11 through 17, 1984, as Women in Agriculture Week. I call on all Americans to participate in appropriate events to pay tribute to women in agriculture whose talents, hard work, and dedication significantly contribute to the production and marketing of the Nation's food supplies.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-30201
Filed 11-14-84; 11:03 am
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 222
Thursday, November 15, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225, and 226

Child Nutrition Labeling Program; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a citation contained in final regulations on the Child Nutrition Labeling Program that appeared on page 18458 in the **Federal Register** of Tuesday, May 1, 1984 (49 FR 85, page 18453). The action is necessary to correct a typographical error.

FOR FURTHER INFORMATION CONTRACT: Cynthia H. Ford, (703) 756–3556.

The following correction is made in FR Doc. 84–11052: On page 18458, column three, the closing citation is corrected to read "(National School Lunch Act Sections 9, 13, 17; 42 U.S.C. 1758, 1761, 1766, 7 CFR 210.10, 220.8, 225.21, 226.20)".

October 26, 1984.

Robert E. Leard,

Administrator.

[FR Doc. 84–29952 Filed 11–14–84; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 488, Amdt. 2]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to the fresh market to 255,000 cartons during the period November 4–10, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: Effective for the period November 4–10, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Service Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met by telephone on November 8, 1984, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. This amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.788 Lemon Regulation 488 is revised to read as follows:

§ 910.788 Lemon Regulation 488.

The quantity of lemons grown in California and Arizona which may be handled during the period November 4, 1984, through November 10, 1984, is established at 255,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 9, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–30009 Filed 11–14–84; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1446

General Regulations Governing 1982 Through 1985 Crops; Peanut Warehouse Storage Loans and Handler Operations (Amendment 2)

Correction

In FR Doc. 84–25457 beginning on page 37729 in the issue of Wednesday, September 26, 1984, make the following corrections:

1. On page 37730, first column, second paragraph, third line from the bottom, "1 inch" should have read "¾ inch".

§ 1446.58 [Corrected]

2. On page 37731, in § 1446.58(d)(4)(ii), second column, in the entry for "Runner type", second line, "$1\frac{5}{64}$" should have read "$1\frac{9}{64}$".

BILLING CODE 1505–01–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 84-100]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis. Prior to the effective date of this document, the following six Counties in Montana were included in the portion of Montana designated as Class A: Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. This document amends the regulations to include the six listed Counties in the portion of Montana designated as Class Free. This action is necessary because it has been determined that these Counties together with the previously designated Class Free area of Montana meet the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from certain Counties in Montana.

DATES: Effective Date: November 15, 1984. Written comments must be received on or before January 14, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Class Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing progam for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

The State of Montana is divided into a Class Free Area and a Class A Area. Prior to the effective date of this document, the Area of Montana designated as Class A included the Counties of Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. All other counties in Montana were included in the Area designated as Class Free. The State of Montana has requested that the boundary line separating the Class Free and Class A Counties be changed to include Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties within the Class Free Area.

To attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the preceding 12 month period and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). The listed counties were included in the portion of Montana designated as Class A rather than as Class Free because of the herd infection rate. A review of brucellosis program records establishes that the portion of Montana encompassing Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties meets the criteria for classification as Class Free. Therefore, it is necessary to include these counties in the portion of Montana designated as Class Free.

With this change, the portion of Montana designated as Class Free consists of all Counties in Montana other than Flathead County. Flathead County remains designated as Class A.

Emergency Action

Dr. John K. Atwell, Deputy Administrator, VS, APHIS, USDA, has determined that an emergency situation exists that warrants publication without prior opportunity for a public comment period. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from an area in Montana.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication in the **Federal Register.** Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Montana reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended by revising paragraphs (a) and (b) of § 78.20 to read as follows:

§ 78.20 State/area classifications.

(a) *Class Free.* Alaska; Connecticut; Delaware; Hawaii; Maine; Maryland; Massachusetts; Michigan; Montana (All Counties except Flathead County); New Hampshire; New York; North Carolina; North Dakota; Pennsylvania; Rhode Island; South Carolina; Utah; Vermont; Virgin Islands; Wisconsin; and Wyoming (Counties of Albany, Big Horn, Campbell, Carbon, Converse, Crook, Goshen, Johnson, Laramie, Natrona, Niobrara, Park, Platte, Sheridan, Sweetwater, Teton, Uinta, Weston, Fremont, Hot Springs, and Washakie, and that portion of Lincoln County south of a line beginning at the northwest quadrant of Sec. 1, T. 28 N., R. 121 W. extending east to the northeast quadrant of Sec. 1, T. 28 N., R. 116 W.).

(b) *Class A.* Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Minnesota, Montana, (Flathead County), Nebraska, New Jersey, New Mexico, Ohio, Oregon, Puerto Rico, South Dakota, Virginia, Washington, West Virginia and Wyoming (Sublette County and that portion of Lincoln County not included as Class Free).

* * * * *

Authority: Secs. 4, 5, and 6, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111-113, 114a-1, 115, 120, 121 125, 134b, 134f; 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C., this 8th day of November, 1984.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-29950 Filed 11-14-84; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 81

[Docket No. 84-109]

Lethal Avian Influenza; Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Lethal Avian Influenza" interim rule by establishing a mechanism to allow payments under certain conditions for economic losses growing out of the destruction of poultry pursuant to the extraordinary emergency provisions of the interim rule. This action is necessary to encourage cooperation by poultry producers in the effort to eradicate lethal avian influenza.

DATES: Effective date is November 8, 1984. Written comments must be received on or before January 14, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Buisch, Assistant Director, Emergency Programs, VS, APHIS, USDA, Room 752, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8097.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Lethal Avian Influenza" interim rule, which is set forth in 9 CFR Part 81. Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania.

Subpart D of the interim rule contains extraordinary emergency provisions (set forth in §§ 81.10 through 81.15 of the interim rule) which is applicable in Pennsylvania. The extraordinary emergency provisions in § 81.12 provide for payment for poultry, carcasses or parts thereof, eggs, products, or articles required to be destroyed in accordance with that section. It is further provided in § 81.14 that poultry, carcasses or parts thereof, eggs, products, or articles required to be destroyed in accordance with § 81.12 shall be appraised by a Veterinary Services employee and that the appraisal shall be the fair market value at the time of destruction as determined by such employee. These extraordinary emergency provisions were established under the provisions of 21 U.S.C. 134a, 134b, 134d, 134e, and 134f.

There is authority for additional payments to be made under the provisions of 21 U.S.C. 114a. In this connection, 21 U.S.C. 114a provides, in relevant part that:

> The Secretary of Agriculture, either independently or in cooperation with States or political subdivisions thereof, farmers' associations and similar organizations, and individuals, is authorized to control and eradicate any communicable diseases of livestock or poultry . . . including the payment of claims growing out of destruction of animals (including poultry), and of materials, affected by or exposed to any such disease, in accordance with such regulations as the Secretary may prescribe. As used in this section, the term "State" includes the District of Columbia, Puerto Rico, and the Territories and possessions of the United States.

The Secretary has determined that the outbreak of lethal avian influenza in Pennsylvania has created an emergency situation threatening the poultry industry of the United States (see 49 FR 3494). Further, it has been determined that there are limited circumstances in which the payment of claims, in addition to claims made under subpart D of the interim rule, should be made under the provisions of 21 U.S.C. 114a in order to encourage cooperation by poultry producers in the effort to eradicate lethal avian influenza. In this connection, a new § 81.16 is added to read as follows:

> (a) Whenever the Deputy Administrator finds that poultry on a premises had been destroyed under the provisions of subpart D of this part, finds that subsequently the premises had been repopulated with poultry that had been erroneously determined by the United States Department of Agriculture to be free of lethal avian influenza based on testing, and finds that such poultry used for repopulating the premises had been required to be destroyed under the provisions of subpart D of this Part; the Deputy Administrator, pursuant to the provisions of 21 U.S.C. 114a, may pay claims for economic losses growing out of the destruction of such poultry used for repopulating the premises.
>
> (b) A claim for payment for economic losses under this section must be made in

writing to the Deputy Administrator [4] and must include all of the information relied on by the claimant for payment. The Deputy Administrator may require any additional information from the claimant deemed to be necessary for making a determination on the claim. Whether any payment will be made, and, if so, the amount of payment shall be determined by the Deputy Administrator based on all information available to the Deputy Administrator.

[4] Claims should be submitted to the Deputy Administrator for APHIS, VS, USDA, Room 320–E, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to provide a mechanism to allow payments for economic losses under the circumstances referred to above, and thereby encourage cooperation by poultry producers in the effort to eradicate lethal avian influenza.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interests; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the Federal Register.

Executive Order and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant affect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The portion of the poulty industry affected by this document represents less than one percent of the poultry industry in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

Accordingly, 9 CFR Part 81 is amended by adding a new Subpart E to read as follows:

Subpart E—Additional Claims

§ 81.16 Certain claims arising out of destruction of poultry.

(a) Whenever the Deputy Administrator finds that poultry on a premises had been destroyed under the provisions of subpart D of this part, finds that subsequently the premises had been repopulated with poultry that had been erroneously determined by the United States Department of Agriculture to be free of lethal avian influenza based on testing, and finds that such poultry used for repopulating the premises had been required to be destroyed under the provisions of subpart D of this part; the Deputy Administrator, pursuant to the provisions of 21 U.S.C. 114a, may pay claims for economic losses growing out of the destruction of such poultry used for repopulating the premises.

(b) A claim for payment for economic losses under the section must be made in writing to the Deputy Administrator [4] and must include all of the information relied on by the claimant for payment. The Deputy Administrator may require any additional information from the claimant deemed to be necessary for making a determination on the claim. Whether any payment will be made, and, if so, the amount of payment shall be determined by the Deputy Administrator based on all information available to the Deputy Administrator.

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 699; sec. 101(a), 58 Stat. 734, as amended; sec. 2, 65 Stat. 693; secs. 2–3, 5–8, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 119–128, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 8th day of November, 1984.

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-29981 Filed 11-14-84; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Commission Policy Statement on the Systematic Safety Evaluation of Operating Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Commission Policy Statement.

SUMMARY: This Policy Statement describes a pilot program for which the Commission has developed the regulatory policies and practices to conduct integrated assessments for operating nuclear power reactors. This program is called the Integrated Safety Assessment Program (ISAP) and will address significant regulatory requirements which have evolved since the plant was originally licensed and pending licensing actions which have evolved from a variety of other sources. An integrated assessment will be conducted on a plant-specific basis, as part of a trial program, to evaluate all licensing issues on a given facility and to establish schedules for any necessary plant improvements. In addition, procedures have been established to allow for a periodic updating of the resulting implementation schedules for new licensing issues that arise in the future.

FOR FURTHER INFORMATION CONTACT: Dennis M. Crutchfield, Assistant Director for Safety Assessment, Division of Licensing, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492–7492.

SUPPLEMENTARY INFORMATION: In 1977, the Nuclear Regulatory Commission initiated the Systematic Evaluation Program (SEP). Phase I of SEP defined a specific set of safety issues (topics) to be reviewed for operating nuclear power plants. Phase II of SEP was a pilot review of those topics for eleven of the oldest domestic operating reactors. Results have evolved from SEP over the last two years and identified significant experience relative to the safety and evaluation techniques for operating plants.

In 1980, Congress enacted Pub. L. 96–295 (the NRC Authorization Bill for Fiscal Year 1980). Section 110 of Pub. L. 96–295 required that the NRC develop a program for the systematic safety evaluations of operating reactors. The program proposal would have extended SEP to an evaluation which required licensees to compare their plant design to the acceptance criteria in the

Standard Review Plan (NUREG–0800).[*] That program was not implemented for operating reactors; the Commission determined, and the Congress agreed, that the scope of the program was too broad to efficiently evaluate the safety of operating reactors. Congress subsequently specified in later Authorization Bills that funds should not be spent to implement that program. However, those activities were useful in that they focused attention on the needs and difficulties associated with the systematic safety evaluation of operating reactors as they relate to a constantly changing technology and increasing scope of regulatory requirements.

Following the TMI–2 accident, the NRC developed the TMI Action Plan (NUREG–0660)[*] from the safety lessons learned. Two aspects of the TMI Action Plan are particularly significant to the evaluation of the safety of operating plants: (1) it identified a large number of corrective actions to be implemented by operating plants and (2) it initiated the Interim Reliability Evaluation Program (IREP) in which plant-specific probabilistic risk assessment (PRA) studies were to be performed by the staff for several operating reactors to supplement the risk-reliability experience from the Reactor Safety Study (WASH–1400). The licensing actions resulting from TMI have increased the scope of outstanding licensing issues for all operating plants. Similarly, the experience thus far from IREP indicates that there are plant-specific strengths and weaknesses, from a reliability point of view, that warrant further consideration, beyond the deterministically-based issues.

One of the most significant conclusions drawn from SEP and IREP is that issues related to safety of operating nuclear power plants can be more effectively and efficiently implemented in an integrated, plant-specific review. In addition, the experience from SEP has served to focus on the set of current licensing criteria which should be evaluated for operating plants and experience from IREP has served to define the methods to conduct a plant-specific probabilistic safety analysis so that consistent, comparable results could be obtained which would enhance an integrated plant safety assessment.

[*] Copies may be purchased by calling (301) 492–9530 or by writing to the Publications Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Historically, licensing issues have been evaluated generically, and guidelines for any necessary corrective actions have been applied uniformly to all plants. While this approach has provided an effective means to ensure resolution of these issues, the generic implementation has not given sufficient attention to plant-specific characteristics which have a direct bearing on the appropriateness of the corrective action and the relative importance of the issue in relation to an overall plan for any necessary plant improvements. In some cases, consideration of plant-specific characteristics have identified alternative corrective actions which provide an equivalent or greater measure of safety, often at less cost to the licensee.

Consequently, the NRC had developed the regulatory procedures and attendant policies to conduct integrated assessments for operating power reactors. This approach is called the Integrated Safety Assessment Program (ISAP). In order to ensure the effectiveness of this program, it will be started on a trial basis and the plants to be reviewed have been selected by the NRC Staff from those licensees who indicated an interest to voluntarily participate in such a program.

Based on the results of this trial program, the NRC will decide, in about a year, whether or how this program should be extended to other operating reactors.

Implementation Schedules

To provide a stable environment to conduct ISAP, the Commission has authorized the staff to suspend specific existing implementation schedule requirements for the plants to be reviewed. Each affected licensee will be expected to propose and justify deferral for specific implementation requirements that warrant further evaluation. The associated implementation requirements and other safety issues will be evaluated collectively in an integrated assessment. The staff is only authorized to defer substantive regulatory and other requirements to the extent allowed by the Commission's procedural regulations. Thus, the staff will use the provisions in 10 CFR 50.12 to grant any exemptions.

In addition, any new implementation requirements which evolve late in the course of or following ISAP will be deferred for the plants involved and incorporated in an implementation schedule update, as described below.

The only exceptions will be issues for which the NRC Staff explicitly determines that prompt action is required to protect the health and safety of the public. Such actions include the short-term response to bulletins issued by the Office of Inspection and Enforcement.

Scope of Evaluation

The scope of ISAP is intended to be as comprehensive as practical. Consequently, it will consist of deterministic, probabilistic, and operating experience evaluations, which will serve to identify specific issues to be addressed in an integrated assessment.

The deterministic review areas, or ISAP topics, will be derived on a plant-specific basis during a screening review with the licensee at the beginning of the program. The issues to be considered are (1) a set of SEP Topics for which the NRC Staff has found significant differences between current licensing criteria and typical design criteria in existence when operating plants were licensed; (2) all pending licensing actions for the plant, including multi-plant actions, TMI Action Plan requirements and plant-specific licensing actions; (3) the unresolved generic issues for which resolution on a plant-specific basis might be expected, and (4) plant improvements proposed by the licensee.

The Commission's Safety Goal Policy published on March 14, 1983, (48 FR 10772), indicates that the quantitative goals and design objectives will not be used in the licensing process during the evaluation period, nor will the policy be interpreted as requiring that licensees or applicants perform a probabilistic analysis; however, the Commission continues to believe that probabilistic analyses provide a valuable adjunct to the deterministic regulatory requirements and enhance engineering judgments, if they are properly performed and applied. Consequently, the Commission believes that a plant-specific probabilistic safety assessment (PSA) should be performed in conjunction with ISAP. The plant-specific PSA will provide a basis for cost/benefit evaluations for the deterministically-based issues and will also identify potential strengths and weaknesses in the plant design and operation which should be considered in an integrated assessment.

An operating experience evaluation will be conducted in parallel with the topic evaluations and plant-specific PSA. This evaluation will be used to identify issues related to significant

trends, event precursors, plant management and operation, and maintenance practices. In addition, the operating experience evaluation will provide a diverse perspective for the integrated assessment. The evaluation will consist of an analysis and categorization of reportable events and forced plant shutdowns and an evaluation of overall licensee performance.

Evaluation Process

The ISAP Topic evaluations and plant-specific PSA will be conducted in parallel. The licensee will initially perform deterministic analyses for the plant-specific set of ISAP Topics by comparing the as-built design of the facility to the current licensing criteria, industry codes and standards, or other appropriate acceptance criteria and also provide risk perspectives for each issue based on the PSA. The staff will review the licensee's analyses and issue safety evaluation reports which identify specific differences from the acceptance criteria and any attendant safety issues which should be considered in the integrated assessment. Schedules for the licensee's analyses and staff evaluation will be established during the screening review to enhance an efficient use of resources.

A PSA would be conducted by the licensee in accordance with an NRC Procedures Guide (NUREG/CR–2815).* The Procedures Guide describes appropriate and consistent methods for (1) initiator definition, (2) application of data, (3) success/failure criteria, (4) analysis, (5) quality control, and (6) documentation and presentation of results. In addition, the NRC Staff will identify methods by which the PSA should address unresolved generic issues; i.e., safety issues for which acceptance criteria do not yet exist. During the screening review, milestones will be established to monitor the progress of the PSA and to ensure appropriate interaction between the NRC Staff and the licensee. The licensee will be expected to use the PSA to identify significant contributors to risk that should be specifically considered in the integrated assessment. For the trial program, the extent and nature of plant-specific probabilistic analyses will be established on a case-by-case basis.

The issues raised in the ISAP Topic evaluations and the PSA, and the operating experience evaluation will be considered collectively in an integrated assessment. Decisions on corrective actions will be based on qualitative assessments of the value and impact of each action. The NRC Staff will present its conclusions regarding the need for or appropriateness of corrective actions proposed by the licensee for each of the identified issues in a draft report. The draft report will be issued for public comment and peer review. Should the NRC Staff and licensee disagree on the corrective action for any issue, that matter will be resolved in accordance with the Commission's procedures for backfitting requirements.

Following resolution of any comments on the draft report, the NRC Staff will request that the licensee establish and justify implementation schedules for each of the corrective actions and any ongoing analyses that may be necessary to establish appropriate corrective actions. The NRC Staff will judge the adequacy of the proposed implementation schedules based on the technical evaluation of the issues presented in the draft report and issue an implementation plan in a final report.

Licensing Action and Schedule Updates

The final report will serve as the basis and documentation for a license amendment incorporating and formalizing the implementation schedules. The license amendment will also establish procedures to periodically update the implementation schedule.

Any new implementation requirements that arise during or following an ISAP review will be deferred, except for those issues for which the NRC Staff determines that prompt action is required to ensure the health and safety or common defense and security of the public.

The deferred implementation requirements will be evaluated collectively as part of an implementation schedule update. The update evaluations would be conducted periodically, but not more than at five-year intervals. The evaluation would follow the same general course as an ISAP review and would consider a revised PSA, which has been updated to reflect corrective actions and plant improvements as they are completed. The revised implementation schedule will similarly be incorporated and formalized by a new license amendment.

Dated at Washington, D.C., this 9th day of November 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. [illegible] Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 50

Environmental Qualification of Electrical Equipment; Status of June 30, 1982, Deadline; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: In July 1984, the Nuclear Regulatory Commission and the Union of Concerned Scientists entered into a stipulation in settlement of *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, U.S.C.A., D.C. Cir. No. 83–1242. This Statement of Policy is in compliance with the publication requirements of one provision of the stipulation. It is intended to advise the public on the status of the previously imposed June 30, 1982 deadline for licensee compliance. This is accomplished through the publication of the stipulation of the Commission's position on the effect of its final rule on Environmental Qualifications of Electric Equipment (48 FR 2729; January 21, 1983).

EFFECTIVE DATE: July 25, 1984.

FOR FURTHER INFORMATION CONTACT: C. Sebastian Aloot, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (202) 634–3224.

SUPPLEMENTARY INFORMATION: The Union of Concerned Scientists and the Nuclear Regulatory Commission agree as follows:

1. On June 30, 1982, the Commission issued an interim rule by which it sought to amend the operating licenses of certain plants to eliminate the June 30, 1982 deadline for compliance with environmental qualification requirements established in CLI–80–21 and later actually written into those reactor operating licenses.[1]

2. On January 30, 1982, the Commission proposed to codify environmental qualification requirements and to establish a compliance deadline. The Commission issued a final rule based upon that proposal on January 21, 1983 (48 FR 2729). In the preamble to the final rule, the Commission stated its intent that the compliance deadline embodied in the final rule would supersede all other compliance schedules.

[1] Pursuant to CLI–80–21, the deadline was incorporated into existing reactor operating licenses by a series of orders. With respect to operating licenses issued thereafter, the deadline was included as a license condition. This practice continued up through the time the Commission issued the June 30, 1982 interim rule.

3. In *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, 711 F.2d 370 (1983), the Court of Appeals for the District of Columbia Circuit ruled that the interim rule was based upon a Commission finding that continued reactor operation would not be inimical to the public health and safety pending full compliance with environmental qualification requirements. The Court also held that the interim rule was invalid because the Commission had failed to give notice and an opportunity for public comment on the safety finding.

4. Because the decision in *UCS* v. *NRC* came after promulgation of the final rule, the compliance schedule in that rule was set in the belief that the 1982 deadline had been deleted from all licenses into which it had been actually written. As a result of the Court's decision in *UCS* v. *NRC*, however, the Commission has concluded that the final rule should not be relied on as having amended licenses to eliminate the compliance deadline of June 30, 1982 from those licenses into which it was actually written. The Commission will not argue that the final rule has such an effect in this or any subsequent litigation or administrative proceedings involving environmental qualification for such plants.

5. Therefore, as a result of the Court's decision of June 30, 1983, the Commission regards the compliance deadline of June 30, 1982 as remaining in effect with respect to the environmental qualification requirements established in CLI–80–21, for those plants having a June 30, 1982 deadline actually written into their reactor operating licenses. Such plants not meeting those requirements as of June 30, 1982 were then in violation of their licenses and remain so until either the requirements are met or the licenses are lawfully amended to remove or modify the deadline. The Commission has proposed to eliminate the deadline by amending all licenses through a notice and comment rulemaking initiated in response to *UCS* v. *NRC*, 711 F.2d 370 (D.C. Cir. 1983), and now in progress. 49 FR 8445 (March 7, 1984). Any extension of the June 30, 1982 deadline depends at present upon the outcome of that rulemaking proceeding. The Commission will expedite the conclusion of the ongoing rulemaking and intends to reach a decision by August 15, 1984.[2]

[2] On September 5, 1984, subsequent to the execution of this stipulation, the Commission issued a final rule deleting the June 30, 1982 deadline from individual licenses.

6. In a Policy Statement (49 FR 8422), the Commission has stated the reasons why it believes that no enforcement action with regard to violation of the deadline is appropriate, pending conclusion of the rulemaking. However, enforcement action for demonstrated safety deficiencies may be taken at any time, regardless of the status of the June 30, 1982 rule.

7. The Commission will not interpret its Policy Statement of March 7, 1984 in any manner that violates the terms of this stipulation.

8. The Union of Concerned Scientists agrees to withdraw the Petition for Review that it filed in this case on March 7, 1983.

9. The Commission agrees to publish this stipulation in the Federal Register as a Policy Statement.

10. The parties agree that the Union of Concerned Scientists is entitled to pursue recovery of such attorneys' fees and costs as may be authorized by the Equal Access to Justice Act, 28 U.S.C. 2412(d)(1)(B). In entering into this stipulation, however, the Nuclear Regulatory Commission does not concede that the Union of Concerned Scientists is entitled to recover any attorneys' fees or other expenses and expressly reserves the right to oppose any application for such attorneys' fees or other expenses.

Sheldon L. Trubatch, Acting Solicitor
Juan L. Rodriquez, Attorney, United States Nuclear Regulatory Commission, Washington, DC 20555
Diane Curran, Attorney
William S. Jordan, III, Attorney
Ellyn R. Weiss, Attorney, Harmon, Weiss & Jordan, 2001 S Street, NW., Suite 430, Washington, DC 20009

Dated at Washington, DC, this 8th day of November 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission

[FR Doc. [illegible] Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 84-630]

Brokered Deposits, Limitations Applicable to Insured Institutions; Technical Correction

Dated: November 8, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Technical correction.

SUMMARY: On September 28, 1984, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), extended the effective date of its rule limiting the acceptance of brokered deposits by institutions with low net worth. The resolution, because of a typographical error, mislabelled the effective-date paragraph as paragraph "(c)." That provision should have been labelled as paragraph "(e)." This action corrects that error.

EFFECTIVE DATE: November 5, 1984.

FOR FURTHER INFORMATION CONTACT: Christopher P. Bolle, Attorney, Office of General Counsel (202–377–7057), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

List of Subjects in 12 CFR Part 563

Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, of Title 12 of the Code of Federal Regulations as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

Accordingly, FR Doc. 84–28088, published at 49 38924 is corrected as follows: In § 563.4, the paragraph now designated as paragraph (c), is corrected to be designated as paragraph (e). The correctly designated paragraph (e) reads as follows:

§ 562.4 Brokered deposits.

* * * * *

(e) This section expires February 1, 1985.

(12 U.S.C. 1724, 1725, 1728, 1728, 1730)

By the Federal Home Loan Bank Board

Norman H. Raiden,

General Counsel.

[FR Doc. 84-29879 Filed 11-14-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8871]

The Sperry & Hutchinson Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: After reviewing the "Request To Reopen And Modify Order" filed by The Sperry & Hutchinson Company ("S&H"), the Commission concluded that it was in the public interest to grant the

company's request to set aside Section I of the Consent Order issued on September 18, 1973, 38 FR 28656, which required the company to redeem its trading stamps for cash as well as for merchandise. The company had demonstrated that due to changed conditions, consumers can now readily avoid both S&H trading stamps and other trading stamps in virtually all markets, and thus avoid any injury that might result from a merchandise-only redemption policy. S&H had further demonstrated that the cash redemption requirement is also adversely affecting its ability to compete against other suppliers of promotional services that are not subject to comparable restraints. Finding that the cash redemption provision no longer served any legitimate remedial purpose, the Commission reopened the matter and set aside Section I of the 1973 Consent Order.

DATES: Consent Order issued September 18, 1973; Modifying Order issued October 3, 1984.

FOR FURTHER INFORMATION CONTACT: Selig S. Merber, L/301–18, Washington, D.C. 20580, (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of The Sperry & Hutchinson Company, a corporation. Codification appearing at 38 FR 28656 remains unchanged.

List of Subjects in 16 CFR Part 13

Trading stamps, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46, Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: James C. Miller III, Chairman, Michael Pertschuk, Patricia P. Bailey, George W. Douglas, Terry Calvani.

In the Matter of The Sperry & Hutchinson Company a corporation; Docket No. 8671.

Order Modifying Decision and Order Issued: September 18, 1973

On July 6, 1984, respondent The Sperry & Hutchinson Company ("S&H") filed a "Request To Reopen And Modify Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen and modify the consent order issued on September 18, 1973 ("the order") by setting aside Section I. Section I of the order requires S&H to redeem its trading stamps for cash at the option of the stamp saver, at a fixed cash redemption value, if the stamps are presented in minimum quantities of 300.

After reviewing respondent's request, the Commission has concluded that the public interest warrants reopening and modification of the order by setting aside Section I.

At the time of the original proceeding in this matter trading stamps were so pervasive in the marketplace that many consumers found them difficult if not impossible to aviod. In such a context, the cash redemption requirement of the order afforded stamp savers an alternative to respondent's traditional policy of redeeming its stamps only for merchandise. S&H has demonstrated that conditions have now changed to the extent that consumers can readily avoid both S&H stamps and trading stamps in general in virtually all markets and, as a consequence, can avoid any injury that might otherwise arguably result from a merchandise-only redemption policy. S&H has also shown that the continued existence of the cash redemption requirement is injuring its ability to compete against other suppliers of promotional services both inside and outside the trading stamp industry, which are not subject to comparable restraints. In view of these circumstances the cash redemption provision no longer serves any legitimate remedial purpose.

Accordingly, it is ordered that this matter be, and it hereby is, reopened, and that Section I of the Commission's order issued on September 18, 1973, shall be of no further force and effect as of the effective date of this order.

By the Commission.

Issued: October 3, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-28831 Filed 11-14-84; 8:45 am]

BILLING CODE 6750-01-M

---

16 CFR Part 13

[Docket No. C-3147]

Chevron Corporation and Gulf Corporation; Prohibited Trade Practices, and Affirmative Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires Chevron Corporation (formerly the Standard Oil Company of California) to divest within six months to a Commission-approved buyer(s) all of the Gulf Corporation assets listed in Schedule A, as well as any additional assets and businesses that the company wishes to include as part of the assets to be divested, or which the Commission determines is necessary to ensure that the divested properties remain ongoing, viable business enterprises. Chevron is also required to provide prospective acquirers of the Schedule A Properties with petroleum product exchanges and crude oil arrangements if necessary to ensure divestiture of the Properties as ongoing viable enterprises engaged in the same businesses in which they are presently employed; and to maintain the assets as a separate viable business in accordance with the terms of the attached Agreement to Hold Separate, until required divestiture has been completed. The companies are additionally prohibited from acquiring without prior Commission approval, certain types of business located in specified geographic areas for a period of ten years.

DATE: Complaint and Order issued October 24, 1984.*

FOR FURTHER INFORMATION CONTACT: Joan L. Heim, L/502–6, Washington, D.C. 20580, (202) 634–4781.

SUPPLEMENTARY INFORMATION: On Thursday, June 7, 1984, there was published in the **Federal Register**, 49 FR 23812, a proposed consent agreement with analysis In the Matter of Standard Oil Company of California, a corporation, and Gulf Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth below in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Gasoline, Mergers, Petroleum products, Trade practices.

* Copies of the Complaint and the Decision and Order filed with the original document.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 84-28832 Filed 11-14-84; 8:45 am]

BILLING CODE 6750-01-M

---

16 CFR Part 13

[Docket No. C-3146]

Hospital and Health Services Credit Union; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this Consent Order requires an Ann Arbor, Michigan credit union, among other things, to cease failing to disclose, when rejecting a credit application or increasing the cost of credit, that the action is based partially or wholly on information contained in a consumer credit report; and provide the rejected applicant with the name and address of the reporting agency together with the specific principal reason[s] for the adverse action based on this information. The Order also requires the credit union to send to consumers who were denied credit between January 1, 1983, and the effective date of the Order, a letter containing required disclosures.

DATE: Complaint and Order issued October 17, 1984.*

FOR FURTHER INFORMATION CONTACT: George T. O'Brien, FTC, B–424, Washington, D.C. 20580. (202) 376–3466.

SUPPLEMENTARY INFORMATION: On Thursday, August 9, 1984, there was published in the **Federal Register**, 49 FR 31901, a proposed consent agreement with analysis In the Matter of Hospital and Health Services Credit Union, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth below in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; § 13.382–1 Confidentiality, accuracy, relevancy and proper utilization; § 13.382–1(a) Fair Credit Reporting Act; § 13.382–5 Formal regulatory and/or statutory requirements; § 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–37 Formal regulatory and/or statutory requirements; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Credit, Credit bureau, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128–36; 15 U.S.C. 1681–1681T)

Emily H. Rock,

Secretary.

[FR Doc. 84-28833 Filed 11-14-84; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21476; File No. S7-967]

Initiation or Resumption of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to Rule 15c2–11 under the Securities Exchange Act of 1934. Rule 15c2–11 regulates the submission and publication of quotations by broker-dealers for certain over-the-counter securities. Under the rule, a broker-dealer must maintain specified information about the security and its issuer prior to initiating or resuming a quotation in an inter-dealer quotation system. The amendments make the rule applicable to publication of quotations without a specified price and to publication of quotations for certain foreign securities and depositary shares evidenced by American Depositary Receipts. However, exceptions to the rule are established for the publication of quotations for NASDAQ securities and for quotations that represent a customer's indication of interest. The amendments also revise the scope of the rule's piggyback exception. Finally, several technical and clarifying amendments are made to the rule. The amendments adapt the rule to developments in the over-the-counter securities market that have occured since the rule's adoption in 1971.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Larry E. Bergmann (202–272–2374) or Nancy J. Burke (202–272–2848), Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Amendments

The Securities and Exchange Commission today is adopting amendments to Rule 15c2–11 ("Rule 15c2–11" or the "Rule")[1] under the Securities Exchange Act of 1934 (the "Act").[2] The Commission solicited public comment concerning proposed amendments to the Rule on April 14, 1983.[3] The Commission intends to continue its review of the benefits and costs associated with the Rule and will shortly seek public comment on these matters, including whether there are alternative regulatory approaches that would better achieve the Rule's objectives.

Rule 15c2–11 regulates the initiation or resumption of quotations in a "quotation medium" by a broker or dealer for over-the-counter securities. Subject to certain exceptions, the Rule generally requires that, prior to entering the quotation, a broker or dealer have on hand specified information about the security and its issuer.

Adopted in 1971,[4] the Rule was designed to deter manipulative and fraudulent behavior that had been prevalent in connection with the distribution and trading of unregistered securities of corporations having little or no earnings, assets or operations ("shell corporations").[5] A broader purpose of

[1] 17 CFR 240.15c2–11. The amendments are effective sixty days from the date of their publication in the Federal Register.

[2] 15 U.S.C. 78o–(j).

[3] *See* Securities Exchange Act Release No. 19873 (April 14, 1983), 48 FR 17111 (April 21, 1983) (the "Proposing Release").

[4] Securities Exchange Act Release No. 9310 (September 18, 1971), 36 FR 18861 (September 23, 1971). Rule 15c2–11 was adopted under Section 15(c)(2) of the Act, among other sections. Section 15(c)(2) gives the Commission the broad authority to promulgate rules that define, and that prescribe means reasonably designed to prevent, fraudulent, deceptive or manipulative acts or practices in the over-the-counter securities market.

[5] Rule 15c2–11 was intended to address a variety of questionable practices involving a "spin-off" or other distribution to the public of the securities of a shell corporation and the subsequent active trading of those shares at increasingly higher prices that bore no relation to the securities' value. See Securities Act Release No. 4982 (July 2, 1969).

the Rule, however, is to prohibit broker-dealers from establishing arbitrary quotations for infrequently traded over-the-counter securities. The Rule's information retention requirement is intended to help ensure that quotations for those securities (and any upward movement in such quotations) are not clearly inconsistent with current financial and other information about the quoted security and its issuer.

While the Rule has helped somewhat to minimize the problem of manipulative trading in the securities of reactivated shell corporations, the Rule as presently structured does not adequately achieve its more general purpose of preventing arbitrary quotes for certain thinly traded securities. This is largely because of fundamental changes in the structure and practices in the over-the-counter securities market which have taken place since the Rule's adoption. For example, unlike the practice that existed in 1971, today most indications of interest for over-the-counter securities, other than those securities quoted on NASDAQ,[6] are published in quotation media without a specified price ("unpriced entries") and therefore have fallen within an exception to the Rule. Accordingly, the Commission proposed several amendments designed to increase the effectiveness of the Rule. The Commission also announced its determination to review the Rule in its entirety and sought comment as to whether the Rule has achieved, or could be amended to achieve, its intended purposes without the imposition of undue burdens.

Eight comment letters were received with respect to the proposed amendments to, and review of, Rule 15c2–11.[7] The majority of commentators endorsed the basic framework of the Rule. While some of these commentators suggested modifying or eliminating particular proposals, in the main they believed that the Rule continues to serve a valid regulatory purpose. One commentator, however, asserted that the Rule presently does not achieve its stated purpose and that the burdens imposed by a revised Rule would not be justified by "demonstrable benefits." In that commentator's view, the Rule should be rewritten. Another commentator, who principally addressed the foreign securities proposals, remarked that the Rule and the proposed amendments misperceive the over-the-counter market and the limited function performed by market makers. No commentator explicitly supported rescission of the Rule; in fact, some commentators noted their opposition to this alternative.

While there is no fail-safe mechanism to deter fraud and manipulation in the over-the-counter trading of securities of reactivated shell corporations or, more generally, of securities characterized by low levels of trading activity, the Commission believes that Rule 15c2–11 may play an important role in these areas. The Rule is intended to require a broker-dealer to give some measure of attention to financial and other information about the issuer of a security before it commences trading in that security. A by-product of the Rule is its usefulness as a surveillance tool, because under current practice the Commission in certain circumstances receives notification whenever a quotation for a covered security is to be published. In addition, the requirement that market makers maintain information regarding issuers enhances the Commission's investigative ability to determine whether employees of broker-dealers knowingly provided customers with false or misleading information regarding a particular security. The Commission has decided to amend the Rule to strengthen its provisions, while at the same time making it more responsive to changes in the over-the-counter market. The amendments adopted today: create an exception from the Rule for NASDAQ-quoted securities; subject unpriced entries to the Rule; establish an exception for quotations representing an unsolicited indication of interest of a customer (other than a person acting as or for a dealer); extend the Rule to cover certain foreign securities and depositary shares evidenced by American Depositary Receipts ("ADRs"); and amend the scope of the Rule's "piggyback" provision. Aside from the exception for NASDAQ securities and the modifications to the piggyback provision, which were not specifically proposed by the Commission, the amendments are substantially equivalent to the form in which they were proposed. The proposal which would restrict the information provisions of redesignated paragraph (a)(5) of the Rule to the quotation of the securities of nonreporting companies is adopted with modifications to meet objections raised by commentators.

II. Amendments to Rule 15c2–11

A. Amendment to Paragraph (f): New Exception for NASDAQ-Quoted Securities

In the Proposing Release, the Commission invited comment generally as to the advisability of amending the Rule to include an exception for certain NASDAQ-quoted securities. Because of the operation of paragraph (f)(3) of the Rule, commonly known as the "Piggyback" provision, a NASDAQ-quoted security generally qualified for an exception from the Rule shortly after publication of an initial quotation for that security.[8]

Two commentators favored the creation of an overall exception from the Rule for NASDAQ-quoted securities. Both commentators pointed to the qualification standards and continuing disclosure obligations that the NASD imposes on an issuer when it authorizes a security for NASDAQ trading. In their view, these requirements assure both the exclusion of shell corporations from NASDAQ and the public availability of adequate and current information about NASDAQ issuers, thus rendering the Rule's information maintenance requirement duplicative and unnecessary.

Since the Rule's adoption, the NASDAQ system has developed as the principal quotation medium for actively traded over-the-counter securities. The NASD requires that a NASDAQ security and its issuer satisfy certain qualification criteria. Generally, these standards specify that a security authorized for quotation on NASDAQ be subject to regular and continuous two-way priced quotations by at least two market makers; that there be a minimum number of shares of the security in the hands of a minimum number of public shareholders; and that the issuer meet minimum asset as well as captial and surplus requirements and comply with certain continuing filing and disclosure obligations.[9] The filing and disclosure requirements are intended to assure that information about a NASDAQ issuer is available to the marketplace and is updated on a timely and continuous basis. The finanical qualification standards tend to inhibit the quotation of shell corporation securities through the NASDAQ system. The NASD has recently committed to intensify its review of issuer filings to enforce compliance with NASDAQ qualifications standards, including disclosure obligations. This enhanced review process, coupled with the NASD's authority to suspend quotes based upon finding materially deficient corporate disclosures, should provide adequate safeguards to investors. The NASD has also committed to build a transaction audit trail for all NASDAQ securities to provide more effective market surveillance. In light of the foregoing considerations, an exception from the Rule has been established for the publication of quotations for securities authorized to be quoted in the NASDAQ system, so long as such authorization has not been suspended, terminated or prohibited.[10]

B. Amendment to Paragraph (e): Unpriced Entries Subject to the Rule

The Commission has determined to adopt without change the proposed revision to the Rule's definition of "quotation" to include any published indication of a broker's or dealer's willingness to receive bids or offers for, or to advertise its interest in, a particular security. Thus, the broker-dealer must comply with the Rule's information retention requirement whenever it submits or publishes an entry whether or not it provides the price at which it is willing to effect a transaction in the security.[11]

Three commentators supported extending the Rule to cover unpriced entries, while three others opposed the proposal. Factors cited in favor of the proposed amendment were coverage of a broader range of entries presenting the potential for fraudulent or manipulative abuse and removal of the apparent disincentive to the submission of priced quotes. Opponents observed that the absence of price information in the pink sheets has resulted from reasons other than a broker-dealer's desire to avoid the Rule. They cited the development of NASDAQ, in which priced quotations are entered on a real-time basis, and the delay between a broker-dealer's submission of a priced entry to the pink sheets and its subsequent publication. These factors were claimed to create a disincentive to the submission of priced entries for non-NASDAQ securities because of the costs involved and the potential for a priced entry, when published, to be at variance with the actual market for the quoted security. Opponents of the unpriced entry proposal also cited the administrative costs associated with a broker-dealer's collection and retention of the specified issuer-related information. One commentator remarked that these costs will impede many broker-dealer's from submitting quotations for certain over-the-counter issues, thereby interfering with the availability of a market for these securities and hindering capital formation for emerging companies. This commentator also remarked that priced entries, rather than unpriced entries, historically are used to facilitate a manipulation in shell company securities because they provide an appearance of price increases in the quoted security. The commentator suggested that, if the Commission is concerned that the pink sheets may be used for manipulative purposes, consideration should be given to a requirement of last sale, high sale and low sale information within a specified period of time for securities quoted in the sheets.

While it may be true that manipulation is facilitated by priced entries, the Commission believes nonetheless that a market for a security can develop and be influenced by a broker-dealer even though it submits an unpriced entry for that security in a quotation medium. For example, a market maker can display its trading interest in a security by regularly inserting an unpriced entry for that security in a quotation medium accepting such entries and then furnish priced quotations in private communications with interested parties. Any such priced quotation would tend to be the primary indication of trading activity and price levels in the security and, because of improved means of rapid communication, it may stimulate the development of an active market for that security. For that reason, and in view of the increased tendency of market makers to insert unpriced entries in quotation media allowing such entries,[12] the Commission has determined to extend the Rule to include such entries. This amendment does not mandate priced entries, but merely specifies that a broker-dealer submitting an unpriced entry maintain certain information about the security's issuer. The companion amendment adopted today, which excepts from the Rule quotations representing an unsolicited customer order, should confine the impact of the unpriced entry amendment principally to the publication of unpriced quotes by market makers. As for the recordkeeping burdens on broker-dealers, broker-dealers already may have the specified information in their files. If not, the expense involved in securing the information required by the Rules should not be substantial.

C. Amendment to Paragraph (f): Exception for Quotations Representing Unsolicited Customer Indications of Interest

The Commission is adopting with modification the proposal that excepts from the Rule the publication or submission of any quotation representing an unsolicited indication of interest or order submitted on behalf of a customer (other than a person acting as or for a dealer).[13] Three commentators favored the amendment as proposed, while one commentator suggested expanding the exception to include any one-sided offer, regardless of whether that offer was solicited or was submitted on behalf of another broker or dealer. One commentator expressed concern that the amendment would exclude from the Rule unsolicited entries submitted by a customer as part

---

[6] NASDAQ is the automated quotation system operated by the National Association of Securities Dealers, Inc. (the "NASD") and provides over-the-counter quotations on a real-time basis for approximately 4500 securities.

[7] Copies of these comment letters, as well as a Summary of Comments prepared by the staff of the Commission, are contained in File No. S7–987 and are available for inspection and copying at the Commission's Public Reference Room.

[8] Under the piggyback provision, a broker-dealer is exempt from the Rule's information maintenance requirement when it enters a quotation for a security that has been the subject of both bid and asked quotes at specified prices for at least twelve business days during the previous thirty calendar days, with no more than four consecutive business days without such two-way quotes.

[9] NASD By-laws, Schedule D, Art. XVI, Sec. 3, NASD Manual (CCH) ¶1653A.

[10] If NASDAQ authorization for a security is suspended or terminated, but the security remains eligible for quotation in another inter-dealer quotation medium, a broker or dealer will be required to have in its records the information required by the Rule in order to publish a quotation in such other system.

[11] Although NASDAQ requires that a broker-dealer submit two-sided priced quotations to indicate interest in a particular security through that system, other inter-dealer quotation media permit the publication of various expressions of trading interest. In certain systems, such as The National Daily Quotation Service (the "pink sheets"), a broker or dealer may enter a priced quotation on both the buy and sell sides or on one side only. Alternatively, a broker or dealer may advertise its interest in buying or selling a particular security by inserting (i) "OW" (offer wanted), indicating that the firm is interested in receiving an offer from persons who want to sell the security; (ii) "BW" (bid wanted), indicating its interest in receiving bids from persons who want to buy the security; or (iii) the broker-dealer's name only, advertising the firm's general interest in buying and selling the security.

[12] It is estimated that over 90% of today's pink sheet entries are unpriced. *See* letter to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, from David M. Burnett, President, National Quotation Bureau, Inc., dated June 14, 1983.

[13] The amendment has been modified to include within the meaning of "customer" a broker acting on behalf of anyone other than a dealer. For example, the exception would be available where a broker-dealer, such as a "discount" broker, receives a *bona fide* unsolicited indication of interest from a customer other than a dealer and submits that interest to another broker-dealer with which it has a correspondent relationship and which regularly enters quotations in a quotation medium. If the correspondent broker-dealer does not accept as principal an order resulting from the customer's interest, it may agree to publish a quotation in a quotation medium solely to reflect the originating broker's customer indication of interest. That quotation will be excepted from the Rule under paragraph (f)(2), since the originating broker did not solicit the customer's indication of interest and since no person in the series of relationships is a

of an unlawful plan to "paint the sheets" with quotations bearing no relationship to the security's value.

The provision excepting unsolicited customer indications of interest serves as an appropriate complement to the amendment, also adopted today, which subjects unpriced entries to the Rule. Since there is generally less likelihood of fraudulent or manipulative conduct on the part of the broker-dealer submitting a customer-initiated quotation, it is unnecessary in this case to subject such a quotation to the Rule's information maintenance requirement.

D. Rescission of Exception for Foreign Securities Contained in Former Paragraph (f)(2) of the Rule

The several amendments relating to the quotation of securities of a foreign private issuer and of ADRs that represent deposited shares of a foreign private issuer are adopted as proposed. In this regard, the Commission is rescinding paragraph (f)(2) of Rule 15c2–11, which excluded from the Rule the quotation of securities of foreign private issuers exempt from registration under section 12(g) of the Act by reason of Rule 12g3–2(b).[14]

New paragraph (a)(4) [15] has been added to the Rule, establishing an information maintenance requirement for brokers and dealers in certain foreign securities. Under new paragraph (a)(4), any broker or dealer who publishes a quotation for a security of a foreign private issuer qualifying for a registration exemption under Rule 12g3–2(b) must maintain in its records, and provide to any person upon request, the information furnished to the Commission since the beginning of the issuer's last fiscal year.[16]

The Commission also is adopting the proposals that require a broker or dealer inserting a quotation for ADRs to maintain information about the foreign private issuer of the underlying shares. Accordingly, paragraph (a)(1) of the Rule has been modified to disallow a broker's or dealer's reliance on any registration statement filed on Form F–6, since that form relates to the depositary and the ADR's terms and not to the issuer of the underlying foreign shares.[17] In addition, new paragraph (e)(4) has been added to the Rule, which provides that, in the case of a quotation for ADRs, the term "issuer" for purposes of the Rule means the issuer of the deposited shares. Consequently, before submitting a quotation for an ADR, a broker or dealer will have to obtain information about the foreign issuer which satisfies the information requirements of the Rule.[18]

The Commission remains concerned about continued publication of quotations for foreign securities or ADRs without sufficient information about the foreign issuer being available to the interdealer marketplace. Public demand for the securities of foreign issuers and for ADRs has grown in recent years and reinforces the need to assure that quotations for those securities, particularly in the case of infrequently traded securities of lesser known foreign companies, are not arbitrary. As a consequence of the Commission's decision to adapt Rule 15c2–11 to recent developments in securities markets, it is appropriate to extend the Rule to cover foreign securities and ADRs which are traded in the over-the-counter market.

Several commentators who addressed the foreign issuer proposals focused principally on perceived burdens associated with coverage of foreign securities and ADRs under the Rule. One commentator who supported the proposals noted that broker-dealers would not have any greater burden on obtaining the required information from foreign issuers than they would from domestic issuers. Three commentators contended that, as Rule 12g3–2(b) does not specify the particular documents to be furnished to the Commission or the date by which any such materials are to be received, broken-dealers would face problems in identifying materials submitted by the foreign issuer, in ascertaining whether the issuer is in compliance with Rule 12g3–2(b), and in being certain that any information received directly from the issuer corresponds to that furnished to the Commission.

Broker-dealers have a variety of sources from which to obtain the requisite information, at a reasonable cost and in a timely fashion. These sources include the Commission, commercial services, and the foreign issuer itself. It is important to note that the amendments do not require broker-dealers to guarantee the adequacy or currency of the information they maintain under the Rule nor do they require broker-dealers affirmatively to conduct an inquiry into the adequacy or currency of the information before submitting a quotation for a foreign security or ADR.[19]

---

securities firm acting in a dealer capacity. Also a revision has been made to exclude two-way priced entries based upon unsolicited customer indications of interest unless the quotation medium specifically identifies the quotation as representing such interests. The exclusion is designed to prevent the use of such two-way quotations to support the application of the piggyback provision. *See* Section II.E., *infra*. This exclusion would not unduly restrict the handling of customer-initiated orders because it would be rare that a broker-dealer initiating or resuming a quotation would have in hand at one time unexecuted, unsolicited priced customer orders both to buy and sell a security covered by the Rule. In the event that the broker-dealer wished to reflect such unsolicited customer orders without maintaining the information required by the Rule, it would be necessary for one or both sides of the entry to be unpriced.

[14] Under Rule 12g3–2(b), securities of a foreign private issuer that has not voluntarily pursued U.S. trading markets for its securities are exempt from the registration requirements of Section 12(g) of the Act. The Rule 12g3–2(b) exemption is conditioned upon, among other things, the issuer (or an appropriate government agency in its domicile) furnishing to the Commission copies of investment information which is disclosed under the law of its domicile, is filed with and made public by a stock exchange on which its securities trade, or is distributed to its shareholders.

[15] Former paragraph (a)(4) has been redesignated as paragraph (a)(5). *See* Section II.F., *infra*.

[16] The Commission has added the requirement that the broker-dealer obtain the information from sources which it has a reasonable basis for believing are reliable. The requirement is currently included in redesignated paragraph (a)(5) of the Rule.

[17] Form F–6 is the form available for the registration of ADRs under the Securities Act of 1933 ("Securities Act").

[18] Form F–6 supersedes on a prospective basis Forms C–3 and S–12 for the registration of American depositary shares under the Securities Act. *See* Securities Act Release No. 6439 (March 18, 1983), 48 FR 12346 (March 24, 1983). Accordingly, certain depositary shares that were registered on Form C–3 or S–12 at the time of adoption of Form F–6 may continue to be offered under those forms. In addition, the staff has permitted, subject to certain conditions, Form F–6 to be used to duplicate ADR facilities for those foreign securities which were registered on Form C–3 or S–12 and which are still being offered. Unlike Form F–6, Form S–12 did not require that the foreign private issuer of the security underlying the ADR be a reporting company or have perfected the information-supplying exemption under Rule 12g3–2(b). As such, a broker-dealer cannot automatically assume that the foreign private issuer of the deposited shares is a reporting company or has complied with the requirements of Rule 12g3–2(b). Irrespective of the form on which the foreign issuer's securities are registered, a broker-dealer must have in its files the information specified by the Rule before publishing a quotation for the ADR.

[19] A broker-dealer that obtains from the Commission, at or about the time of submission of the quotation to the quotation medium, the information supplied by the foreign issuer under Rule 12g3–2(b) can assume that such information is current and complete for purposes of the Rule, so long as the foreign issuer's name appears on the

One commentator, a market maker in foreign securities and ADRs, objected to the proposed amendments on the ground that a U.S. market maker's quotation for a foreign security or ADR is never an "initial" quotation or "resumption", because such quotes are a continuation of the price prevailing abroad for that security or for the foreign security underlying the ADR. According to this commentator, a U.S. market maker in foreign securities or ADRs thus has no need to collect or rely on Rule 15c2–11 information to establish a quotation for a foreign security. The commentator suggested that the Rule's information maintenance requirement should be directed instead to retail brokerage houses that offer investment advice, because the recommendation of those firms should be based on due diligence-type analysis and supported by adequate information contained in firm files. The Commission nonetheless believes that the amendments are necessary to assure that broker-dealers introducing a quotation for a foreign security or ADR which trades on an infrequent basis have on hand fundamental information about the foreign issuer as a constraint against the publication of an arbitrary quotation. As a significant number of foreign securities and ADRs are quoted on NASDAQ and therefore will qualify for the exemption from the Rule adopted today for NASDAQ securities, these amendments will affect only a limited category of foreign securities and ADRs, *i.e.*, those that are quoted exclusively in an inter-dealer quotation medium other than NASDAQ.[20]

E. Review of Paragraph (f)(3): The "Piggyback" Provision

Paragraph (f)(3), the so-called "piggyback" provision, excepts from the Rule the publication or submission of any quotation that has been the subject of both bid and asked quotations at specified prices for a minimum of twelve days during the prior thirty calendar days, so long as no more than four consecutive business days have elapsed without such two-way quotes. The piggyback provision presumes that the quotation of a security subject to regular and frequent two-sided market making will reflect independent supply and demand forces, thereby indicating that sufficient information about the issuer of the quoted security is reaching the marketplace.

In the Proposing Release, the Commission indicated its intention to evaluate the framework of, and compliance practices under, the piggyback provision to determine whether any revision of the terms of that provision would be appropriate. Commentators generally did not focus on the piggyback provision other than to express their lack of knowledge about significant compliance problems under the provision, although two commentators recommended that unpriced entries be permitted to be taken into account in determining the existence and number of quotations during the applicable period. Since unsolicited customer indications of interest may be represented by unpriced entries, extending the piggyback provision to include unpriced entries presumably would permit a broker-dealer to rely on an entry that was not supported by information about the security's issuer. In light of that possibility and in light of the historical basis for the piggyback provision, *i.e.*, that regular and continual priced quotations are an appropriate substitute for information about the issuer which would otherwise be relevant in establishing a quotation, the Commission does not believe it is appropriate in all circumstances to allow market makers to piggyback onto unpriced entries. The piggyback provision is amended, however, to permit market makers attempting to establish eligibility for the piggyback exception to take into account unpriced entries, other than those that represent an unsolicited customer indication of interest, if the inter-dealer quotation system specifically identifies unsolicited customer indications of interest.

The piggyback provision is also amended to accommodate the position of the market maker who, having commenced market making pursuant to the piggyback provision, would otherwise become subject to the Rule's information maintenance requirement if the firm inserting the priced quotation dropped out of the inter-dealer quotation system. The amendment permits a dealer who has begun publishing quotations in reliance on the piggyback provision to continue to rely on that exception for as long as it remains a market maker in the particular security. Of course, once the dealer ceases continuously to submit or publish a quotation for that security, it will become subject to the Rule's provisions if it reenters the inter-dealer quotation system.[21]

The Commission, however, continues to be interested in receiving the observations of those persons experienced with the operation of, and compliance practices under, the piggyback provision.

F. Information Requirement of Redesignated Paragraph (a)(5)

Redesignated paragraph (a)(5) [22] was designed principally to regulate the quotation of securities of small nonreporting companies that have not conducted recent public offerings. In the Proposing Release, the Commission noted that broker-dealers may have had the opportunity to rely on that paragraph for reporting and exempt insurance companies, including situations where the information requirement of paragraph (a)(3) [23] could

---

latest annual list published by the Commission of foreign issuers qualifying for the Rule 12g3–2(b) exemption or on any periodic update of such list. *See, e.g.*, Securities Exchange Act Release No. 20265 (October 6, 1983), 48 FR 46674 (October 13, 1983). If it is unclear whether a foreign private issuer has satisfied the Rule 12g3–2(b) exemptive conditions, the broker-dealer can contract the Commission's Office of International Corporate Finance, Division of Corporation Finance, for further information. In addition, a broker-dealer obtaining Rule 12g3–2(b) material from the Commission can assume that information is true and correct for purposes of the Rule, unless it knows or has reason to believe otherwise. Whenever a broker or dealer acquires the Rule 12g3–2(b) informations from non-Commission sources, the possibility exists that such information will not be current or will be materially different from the documentation furnished to the Commission by the foreign issuer. A broker-dealer that acquires the Rule 12g3–2(b) information from a source other than the Commission is not precluded, however, form assuming that the information is current as well as true and correct, unless it knows or has reason to believe to the contrary. *See* n.16, *supra*.

[20] Under recent revisions to Rule 12g3–2, securities of foreign issuers quoted on NASDAQ will no longer qualify for the exemption from the registration requirement of Section 12(g) of the Act that is available under paragraph (b) of that rule. Securities of non-Canadian foreign issuers which, as of October 5, 1983, are in compliance with Rule 12g3–2(b) and are quoted on NASDAQ may continue to qualify for the registration exemption indefinitely. After January 2, 1986, Canadian issuers whose securities are quoted on NASDAQ will have to comply with Section 12(g) registration requirements. *See* Securities Exchange Act Release No. 20284 (October 6, 1983), 48 FR 46736 (October 14, 1983).

[21] The staff of the Division of Market Regulation will interpret this amendment to permit market makers who have regularly published a priced or unpriced quotation respecting a security otherwise in compliance with the Rule as of the effective date of the amendments, to continue to publish such quotations without maintaining the specified information, until they stop and then seek to recommence quoting the security in an inter-dealer quotation system or making a market therein.

[22] As previously noted, paragraph (a)(4) was formerly designated as paragraph (a)(4). A few technical changes have been made in the Rule to reflect this redesignation. Paragraph (a)(5) specifies 16 fundamental items of information pertaining to the issuer and the quoted security, including recent balance sheet plus profit and loss and retained earnings statements, that a broker-dealer must have in its records before initiating or resuming a quotation.

[23] Under paragraph (a)(3), a broker-dealer submitting a quotation for a reporting company must have on hand the issuer's most recent annual report (or annual statement in the case of an exempt

not be satisfied because the issuer was delinquent in meeting its reporting obligations under the Act. Accordingly, the Commission proposed to limit the availability of the information provisions of paragraph (a)(5) to the quotation of a security whose issuer is not required to file periodic reports, or is not an exempt insurance company, under the Act. The proposal was published for public comment out of concern that the periodic information a reporting company or an exempt insurance company must disclose to shareholders or the public should be available to a broker-dealer as a predicate to the introduction of a quotation for a security of that issuer.

Commentators generally opposed the proposed amendment. Two commentators remarked that the proposal in effect could have imposed and indirect, indefinite trading suspension for the securities of any issuer that failed to comply with its statutory reporting obligations. Another commentator disapproved of the proposed amendment on the ground that the Commission's responsibility to assure an issuer's compliance with the Act's reporting requirements improperly would have been shifted to broker-dealers. Several commentators noted that the proposal disregarded those cases in which an issuer's failure to file required material on time was insubstantial in impact or technical in nature.

The Commission appreciates the very valid concerns raised by the commentators. [34] Nonetheless, it is appropriate to establish some limitation on the availability of paragraph (a)(5) consistent with the original, albeit unstated, objective of that paragraph. The Commission has attempted to strike a balance between these concerns and is adopting an amendment to paragraph (a)(5) stating that its provisions are not applicable to the quotation of securities of an issuer included in paragraph (a)(3), unless a statement or report of that issuer which is necessary under paragraph (a)(3) for the introduction of a quotation is not reasonably available to the broker or dealer. Any such statement or report is deemed to be "reasonably available" for purposes of paragraph (a)(5) when it is filed with the Commission.

Under the amendment, a broker-dealer initiating a quotation for a security of a reporting company or an exempt insurance company is expected to have in its files the information required under paragraph (a)(3). The amendment recognizes that in the case of reporting companies, which are subject to a Congressionally-mandated system of continuous disclosure, a broker-dealer ought to have in its possession certain comprehensive annual and periodic reports (or statements in the case of exempt insurance companies) in order to submit or publish a quotation. Only when the paragraph (a)(3) information is not reasonably available may a broker-dealer substitute the information required by paragraph (a)(5).

III. Regulatory Flexibility Act Considerations

The Commission has prepared an Initial Regulatory Flexibilitly Analysis and a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 and 604, respectively, regarding amendments to Rule 15c2–11. No comments were received on the Commission's Initial Regulatory Flexibility Analysis, although several commentators identified various benefits or burdens they believed were associated with the Rule and the proposed amendments. The Final Regulatory Flexibility Analysis states that the amendment subjecting unpriced entries to the Rule reduces the likelihood that brokers and dealers can engage in fraudulent and manipulative activity through the regular publication of unpriced entries free of the Rule's requirements. It further notes that any additional recordkeeping burden imposed by that amendment should be ameliorated somewhat by adoption of another amendment removing from the Rule quotations represented by unsolicited customer indications of interest. The Final Regulatory Analysis also indicates that extending the Rule to cover the publication of quotations for foreign securities and ADRs ensures that brokers and dealers have sufficient information upon which to evaluate initial quotations for those securities. Additionally, the Final Regulatory Flexibility Analysis points out that the amendment allowing a broker or dealer to look to the information retention requirement of paragraph (a)(5) in the case of a reporting company whose required reports are not reasonably available should alleviate concerns that the amendment, as proposed, might have resulted in an indirect, indefinite trading halt in the securities of certain issuers delinquent in their reporting obligations. Finally, it states that the exception for NASDAQ-quoted securities has a beneficial regulatory impact to the extent that broker-dealers quoting a NASDAQ stock will no longer have to maintain the information specified by the Rule from the time of initiation or resumption of the quotation until the piggyback exception becomes available.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Nancy J. Burke, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202–272–2848).

IV. Effects on Competition

Section 23(a)(2) of the Act [35] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments to Rule 15c2–11 in light of standards cited in section 23(a)(2) and believes for the reasons stated in this release that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis and Text of Rule Amendments

Pursuant to sections 3, 10, 15, 17 and 23, 15 U.S.C. 78(c), 78j, 78o, 78q, and 78w, the Commission hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

By amending § 240.15c2–11, by revising paragraphs (a)(1), (e)(3), (f)(2), and (f)(3); redesignating paragraph (a)(4) as (a)(5) and adding a new sentence at the end of paragraph (a)(5); in paragraph (d), redesignating each reference to paragraph (a)(4) as paragraph (a)(5); in the introductory text of paragraph (g), redesignating the reference to paragraph (a)(4) as paragraph (a)(5), and in paragraph (g)(2), redesignating the reference to paragraph (a)(4) as paragraph (a)(5); and adding new paragraphs (a)(4), (e)(4), and (f)(5) to read as follows:

§ 240.15c2–11 Initiation or resumption of quotations without specified information.

(a) * * *

(1) The issuer has filed a registration statement under the Securities Act of 1933, other than a registration statement on Form F–6, which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, *Provided* That such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of the prospectus specified by section 10(a) of the Securities Act of 1933;

* * * * * *

(4)(i) The issuer is exempt from section 12(g) of the Act by reason of compliance with the provisions of § 240.12g3–2(b), and

(ii) The broker or dealer wishing to submit for publication a quotation for such security has in his records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer, the information furnished to the Commission pursuant to § 240.12g3–2(b) since the beginning of the issuer's last fiscal year, which the broker or dealer has no reasonable basis for believing is not true and correct and which was obtained by him from sources that he has a reasonable basis for believing are reliable; or

(5) * * * This paragraph (a)(5) shall not apply to any security of an issuer included in paragraph (a)(3) of this section unless a report or statement of such issuer described in paragraph (a)(3) of this section is not reasonably available to the broker or dealer. A report or statement of an issuer described in paragraph (a)(3) of this section shall be "reasonably available" when such report or statement is filed with the Commission.

* * * * * *

(e) * * *

(3) Except as otherwise specified in this rule, "quotation" shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that he wishes to advertise his general interest in buying or selling a particular security.

(4) "Issuer," in the case of quotations for American Depositary Receipts, shall mean the issuer of the deposited shares represented by such American Depositary Receipts.

(f) * * *

(2) The publication or submission by a broker or dealer, solely on behalf of a customer (other than a person acting as or for a dealer), of a quotation that represents the customer's indication of interest and does not involve the solicitation of the customer's interest; *Provided, however,* That this paragraph (f)(2) shall not apply to a quotation consisting of both a bid and an offer, each of which is at a specified price, unless the quotation medium specifically identifies the quotation as representing such an unsolicited customer interest.

(3)(i) The publication or submission, in an interdealer quotation system that specifically identifies as such unsolicited customer indications of interest of the kind described in paragraph (f)(2) of this section, of a quotation respecting a security which has been the subject of quotations (exclusive of any identified customer interests) in such a system on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without a quotation; or

(ii) The publication or submission, in an interdealer quotation system that does not so identify any such unsolicited customer indications of interest, of a quotation respecting a security which has been the subject of both bid and ask quotations in an interdealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without such a two-way quotation;

(iii) A dealer acting in the capacity of market maker, as defined in section 3(a)(38) of the Act, that has published or submitted a quotation respecting a security in an interdealer quotation system and such quotation has qualified for an exception provided in this paragraph (f)(3), may continue to publish or submit quotations for such security in the interdealer quotation system without compliance with this section unless and until such dealer ceases to submit or publish a quotation or ceases to act in the capacity of market maker respecting such security.

* * * * * *

(5) The publication or submission of a quotation respecting a security that is authorized for quotation in an interdealer quotation system sponsored and governed by the rules of a registered securities association, and such authorization is not suspended, terminated or prohibited.

* * * * * *

By the Commission.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-30914 Filed 11-15-84; 8:45 am]
BILLING CODE 8010-01-M

insurance company), as well as any subsequent periodic reports file with the Commission.

[34] The proposed amendment was not intended to serve as a means to force delinquent issuers to meet their statutory reporting obligations. In fact, the Commission already has several enforcement remedies available to it in the event an issuer has failed to file with the Commission on a timely basis required reports under the Act. For example, under Section 12(j) of the Act, the Commission is empowered to revoke a security's registration, if the issuer is found to have failed to comply with any provision of the Act or rules thereunder. Section 21(d) of the Act authorizes the Commission to seek to enjoin acts or practices prohibited by the Act or rules thereunder and to refer evidence concerning such violations to the U.S. Department of Justice for possible criminal proceedings. Under Section 21(e) of the Act, the Commission has the authority to seek orders requiring compliance with the provisions of the Act and rules thereunder.

[35] 15 U.S.C. 78w(a)(2)

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP OH5263/R659; PH–FRL 2504–6]

Tolerances for Pesticides in Food; Ethephon

Correction

In FR Doc. 84–27234, beginning on page 40575, in the issue of Wednesday, October 17, 1984, make the following corrections:

On page 40576, column one, under "SUPPLEMENTARY INFORMATION", line 6, "choloroethyl) phosphomic" should read "chloroethyl) phosphonic".

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Sodium Hyaluronate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pharmacia Laboratories providing for safe and effective use of sodium hyaluronate injection in treating horses for joint dysfunction due to noninfectious synovitis associated with equine osteoarthritis. The regulations are further amended to add the firm to the list of sponsors of approved NADA's.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra Woods, Center for Veterinary Medicine (HFV–114), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Pharmacia Laboratories, Division of Pharmacia, Inc., Piscataway, NJ 08854, is sponsor of NADA 112–048 which provides for intra-articular injection of a 1 percent (10 milligrams per milliliter) solution of sodium hyaluronate for treating horses for joint dysfunction dute to noninfectious synovitis associated with equine osteoarthritis. The application is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary. The regulations are further amended to add Pharmacia Laboratories to the list of sponsors of approved NADA's in 21 CFR 510.600(c).

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*)) may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 522

Animal drugs—injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended in paragraph (c)(1) by adding a new sponsor alphabetically and in paragraph (c)(2) by adding a new sponsor numerically to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * *	
Pharmacia Laboratories, Division of Pharmacia, Inc., Piscataway NJ 08854	000016
* * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * *	
000016	Pharmacia Laboratories, Division of Pharmacia, Inc., Piscataway, NJ 08854.
* * * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FOR NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In Part 522, by adding new § 522.1145 to read as follows:

§ 522.1145 Sodium hyaluronate injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 10 milligrams of sodium hyaluronate.

(b) *Sponsor.* See No. 000016 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Small and medium-size joints (carpal, fetlock)—20 milligrams; larger joint (hock)—40 milligrams.

(2) *Indications for use.* Treatment of joint dysfunction in horses due to noninfectious synovitis associated with equine osteoarthritis.

(3) *Limitations.* For intra-articular injection in horses only. Treatment may be repeated at weekly intervals for a total of three treatments. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. November 15, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 7, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-29870 Filed 11-14-84; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 3H5413/R693; OPP–FRL–2650–5]

Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; 2-[1-(Ethoxyimino) Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

Correction

In FR Doc. 84–20985, appearing on page 31667, in the issue of Wednesday, August 8, 1984, make the following correction:

On the same page in column two, under "**SUPPLEMENTARY INFORMATION**", line four, "29543" should read "49543".

BILLING CODE 1505-01-M

HEALTH AND HUMAN SERVICES

21 CFR PART 573

[Docket No. 82F–0232]

Food Additives Permitted in Feed and Drinking Water of Animals; Salts of Volatile Fatty Acids

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for safe use of a blend of ammonium or calcium salts of certain mixed volatile fatty acids as a nutrient supplement in dairy cattle feed. This action responds to a petition filed by Eastman Kodak Co.

DATES: Effective November 15, 1984; objections by December 17, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 19, 1984 (49 FR 25042), FDA announced that Eastman Chemicals Division, Eastman Kodak Co., Kingsport, TN 37662, had amended its original food additive petition (FAP 2193) to propose that the food additive regulations be amended to provide for safe use of a blend of ammonium or calcium salts of certain mixed volatile fatty acids as a nutrient supplement in dairy cattle feed. The notice that announced the filing of

the firm's original petition published in the **Federal Register** of August 3, 1982 (47 FR 33556). Both notices designate new § 573.190 *Ammonium salts of mixed volatile fatty acids blend* to contain the provisions for the products' use. Upon further consideration, however, FDA decided that a more appropriate section number and title is § 573.914 *Salts of volatile fatty acids.* FDA has evaluated the data submitted in the petition, the amendment to the petition, and other relevant material and concluded that Part 573 should be amended to provide for safe use of ammonium or calcium salts of mixed volatile fatty acids as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine (address above) by appointment with the information contact person listed above. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(iv) and (g)) may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.61), Part 573 is amended by adding new § 573.914, to read as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

§ 573.914 Salts of volatile fatty acids.

(a) *Identity.* The food additive is a blend containing the ammonium or calcium salt of isobutyric acid and the ammonium or calcium salts of a mixture of 5-carbon acids—isovaleric, 2-methylbutyric, and *n*-valeric.

(b) *Specifications.* The additive contains ammonium or calcium salts of volatile fatty acids and shall conform to the following specifications:

(1) Ammonium salts:

Components	Amount
Ammonium salts of mixed 5-carbon acids (as identified in paragraph (a) of this section).	48 to 54 percent.
Ammonium salt of isobutyric acid	22 to 26 percent.
Water	28 percent maximum.
Ammonia	0.3 percent maximum.
Arsenic	<3 parts per million.
Heavy metals as lead	<10 parts per million.

(2) Calcium salts:

Components	Amount
Calcium salts of mixed 5-carbon acids (as identified in paragraph (a) of this section).	58 to 72 percent.
Calcium salt of isobutyric acid	28 to 36 percent.
Calcium hydroxide	3 percent maximum.
Water	14 percent maximum.
Arsenic	<3 parts per million.
Heavy metals as lead	<10 parts per million.

(c) *Use.* The additive is used or intended for use as a source of energy in dairy cattle feed.

(d) *Labeling.* The label and labeling of the additive in any feed, feed supplement, feed concentrate, feed premix, or liquid feed supplement prepared therefrom shall bear, in addition to other information required by the act, the following:

(1) The name of the additive.

(2) Adequate directions for use, including statements expressing maximum use levels. For ammonium salts of volatile fatty acids, the statements: "Not to exceed 120 grams per head per day thoroughly mixed in dairy cattle feed as a source of energy." For calcium salts of volatile fatty acids, the statement: "Not to exceed 135 grams per head per day thoroughly mixed in dairy cattle feed as a source of energy."

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 17, 1984 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be indentified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective November 15, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 5, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-29871 Filed 11-14-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 205, 207, 213, 220, 221, 232, 235 and 250

[Docket No. R–84–1213; FR–1698]

Revising References to Superseded Department of Labor Regulations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD regulations that refer to superseded Department of Labor regulations relating to labor standards and wage requirements.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication but not before further notice of the effective date is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stuart Davis, Executive Assistant to the Assistant Secretary for Housing, Room 9100, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–6606. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule revises several HUD regulations that reference Department of Labor (DOL) superseded regulations relating to labor standards and wage requirements (24 CFR Part 5).

Notice and public procedure are considered unnecessary because HUD's revising of its regulations to reflect updated DOL regulations is an internal administrative matter that will not affect any person's substantive rights. Accordingly, the Department has determined that notice and public procedure are unnecessary and this document is being published as a final rule.

HUD's revising of its regulations to reflect updated DOL regulations is the kind of internal administrative procedure that 24 CFR 50.20(k) excludes from the requirements in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 10, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was listed as Item Number 1 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (48 CFR 15903 and 15910) under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

24 CFR Part 205

Community facilities, Mortgage insurance, Land development.

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs; Health, Loan programs; Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 238

Insurance, Investments.

24 CFR Part 250

Intergovernmental relations, Low and moderate income housing, Mortgage insurance.

Accordingly, this rule amends 24 CFR Parts 205, 207, 213, 220, 221, 232, 238 and 250 as follows:

PART 205—[AMENDED]

1. Section 205.97 is revised to read as follows:

§ 205.97 Ineligible contractors.

No land development contract shall be entered into with a general contractor or subcontractor if such contractor or subcontractor (or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest) is on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

2. Section 205.100 is revised to read as follows:

§ 205.100 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor (or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest) was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

PART 207—[AMENDED]

3. Section 207.19 is amended by revising paragraphs (d)(1)–(3) to read as follows. The introductory text is shown for reader convenience.

§ 207.19 Required supervision of private mortgagors.

The following are the items which will be regulated or restricted, except in the case of mortgagors of the character described in § 207.17(b):

* * * * *

(d) Labor standards and prevailing wage requirements.

(1) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(3) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 213—[AMENDED]

4. In § 213.28, paragraphs (a), (b) and (c) are revised to read as follows:

§ 213.28 Labor standards and prevailing wage requirements.

(a) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations in 29 CFR Part 5.

(b) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(c) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such

contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 220—[AMENDED]

5. In § 220.614, paragraphs (a), (b), and (c) are revised to read as follows:

§ 220.614 Prevailing wage requirements.

* * * * *

(a) *Labor standards.* Any contract or subcontract executed for the performance of constructing the improvements to the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(b) *Ineligible contractors.* No contract shall be entered into with a general contractor or any subcontractor for the construction of improvements, if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

(c) *Ineligible advances.* Unless approved by the Commissioner, no advance under the loan shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 221—[AMENDED]

6. In § 221.538, paragraphs (a) (1), (2) and (3) are revised to read as follows:

§ 221.538 Applicability of prevailing wage requirements.

(a) * * *

(1) *Labor Standards.* Any contract, subcontract or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations in 29 CFR Part 5.

(2) *Ineligible contractors.* No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(3) *Ineligible advances.* No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 232—[AMENDED]

7. Section 232.70 is revised to read as follows:

§ 232.70 Labor standards.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable standards and provisions of the regulations under 29 CFR Part 5.

8. Section 232.71 is revised to read as follows:

§ 232.71 Ineligible contractors.

No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

9. Section 232.72 is revised to read as follows:

§ 232.72 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list, established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

PART 238—[AMENDED]

10. In § 238.8, paragraphs (h) (1) and (2) are revised to read as follows:

§ 238.8 Project eligibility requirements.

* * * * *

(h)(1) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of the contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 250—[AMENDED]

11. In § 250.132, paragraphs (a) (1) and (2) are revised to read as follows:

§ 250.132 Applicability of prevailing wage requirements.

(a) * * *

(1) *Labor standards.* Any contract, subcontract, or building loan agreement executed for the performance of construction or rehabilitation of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) *Ineligible contractors.* No construction or rehabilitation contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

* * * * *

Authority: Sec. 7(d), Department of HUD Act, 3535(d).

Dated: November 6, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-29875 Filed 11-14-84; 8:45 am]

BILLING CODE 4210-27-M

Government National Mortgage Association

24 CFR Part 300

[Docket No. N-84-1473; FR-2043]

List of GNMA Attorneys-in-Fact

AGENCY: Government National Mortgage Association, HUD.

ACTION: Rule-related notice.

SUMMARY: This document updates the current list of persons appointed attorneys-in-fact by the Government National Mortgage Association (GNMA). Attorneys-in-fact are authorized to act for GNMA by executing documents in its name in conjunction with servicing GMNA's mortgage purchase programs. These appointments assist GNMA in carrying out its responsibilities under the National Housing Act.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: John Maxim, Associate General Counsel, Insured Housing and Finance, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6274. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association (GNMA) periodically approves staff members of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to be delegated signatory authority to act in GNMA's behalf as attorneys-in-fact.

Until recently, lists of persons appointed to act have appeared in the Code of Federal Regulations (see 24 CFR 300.11 (c) and (d), 1983 edition). In related documents published on August 12, 1983 (see 48 FR 36572, 36573) GNMA announced that it was removing these lists from the CFR, changing the procedure of announcing appointments to a notice document, and publishing a complete list of persons currently appointed to act as attorneys-in-fact. The rule removing the lists from the CFR, as well as the complete list of attorneys-in-fact, was effective October 11, 1983. Additional changes to the list of persons appointed attorneys-in-fact were published on December 29, 1983 (see 48 FR 57371), May 29, 1984 (49 FR 22278) and on August 27, 1984 (49 FR 33872).

This notice today announces changes to the list of persons authorized to act as attorneys-in-fact. The changes include additions to and deletions from the Federal National Mortgage Association list. To enhance the usability of these notices, the Department has decided to republish the entire list of attorneys-in-fact each time changes are made.

Accordingly, the following lists represent all persons currently appointed as attorneys-in-fact delegated signatory authority to act in GNMA's behalf:

I. Staff members of the Federal National Mortgage Association, a government-sponsored private corporation, appointed attorneys-in-fact.

Name and Region

Leo E. Abueg, Los Angeles, CA
Robert E. Allen, Los Angeles, CA
Angelina P. Alleva, Philadelphia, PA
Ellen W. Allison, Atlanta, GA
Pam Andrus, Los Angeles, CA
Victoria L. Arrington, Chicago, IL
Glenn T. Austin, Jr., Atlanta, GA
J. J. Bacchus, Atlanta, GA
Irene S. Baggio, Philadelphia, PA
Darlene Bagley, Atlanta, GA
J. C. Bellinger, Atlanta, GA
J. M. Benavides, Dallas, TX
Frances E. Bennett, Atlanta, GA
James H. Benson, Los Angeles, CA
E. N. Biggerstaff, Atlanta, GA
James R. Blakley, Los Angeles, CA
Norman T. Bolas, Los Angeles, CA
W. R. Bowen, Los Angeles, CA
W. James Bradley, Washington, D.C.
Joseph E. Brody, Chicago, IL
Craig J. Bromann, Chicago, IL
Rosemary M. Brown, Washington, D.C.
Burleigh O. Burshem, Washington, D.C.
Rena L. Busby, Los Angeles, CA
Donna M. Cabrera, Los Angeles, CA
Dennis J. Campbell, Philadelphia, PA
E. P. Carr, Atlanta, GA
Loretta Casey, Philadelphia, PA
James S. Cash, Atlanta, GA
Robert A. Chambers, Atlanta, GA
Heinrich F. Charles, Los Angeles, CA
Russell B. Clifton, Washington, D.C.
John M. Coan, Washington, D.C.
Vincent Colletti, II, Philadelphia, PA
Bettye Cook, Los Angeles, CA
Diane E. Cozad, Los Angeles, CA
Jean V. Cunniff, Chicago, IL
Edward F. Czubernat, Chicago, IL
Nitin J. Dave, Atlanta, GA
John C. Diebel, Chicago, IL
James E. Domenico, Chicago, IL
Lawrence J. Dondero, Jr., Philadelphia, PA
Elizabeth A. Downing, Los Angeles, CA
Samuel A. Duca, Philadelphia, PA
J. Ellis Dykes, Atlanta, GA
Joseph R. Elred, Philadelphia, PA
Julieta England, Los Angeles, CA
David J. Evans, Atlanta, GA
R. Douglas Ezzell, Atlanta, GA
Leon Fine, Philadelphia, PA
Pamela K. Fite, Atlanta, GA
Carlton T. Foster, Jr., Atlanta, GA
Robert R. Foster, Philadelphia, PA
Jimmy L. Gallahar, Atlanta, GA
Hettye D. Gates, Atlanta, GA
Robert R. Glinski, Philadelphia, PA
James D. Grady, Jr., Philadelphia, RA
John J. Hagerty, Philadelphia, PA
Ann B. Hamilton, Philadelphia, PA
Mark S. Haney, Los Angeles, CA
Robert E. Haren, Chicago, IL
Charles W. Harvey, Jr., Philadelphia, PA
Ronald W. Harwig, Chicago, IL
John R. Hayes, Chicago, IL
B. J. Hendryk, Dallas, TX
C. W. Haptinstall, Los Angeles, CA
J. W. Haester, Jr., Atlanta, GA
JoAnne Holbert, Los Angeles, CA
R. R. Hoist, Los Angeles, CA
Violet L. Howser, Dallas, TX
George L. Huckabee, Dallas, TX
Carmen I. Huertas, Los Angeles, CA
Arnold L. Hufstetler, Atlanta, GA
Robert A. Hunter, Atlanta, GA
Louise E. Isabel, Chicago, IL
Stuart J. Jaffee, Philadelphia, PA
William S. Jones, Atlanta, GA
Ed G. Kendrick, Dallas, TX
Arthurine C. Kent, Los Angeles, CA
Carol King, Los Angeles, CA
Thomas L. Kinney, Washington, D.C.
John H. Kline, Jr., Philadelphia, PA
Michael S. Koch, Chicago, IL
Denise Lee, Philadelphia, PA
Alfredo S. Loyola, Chicago, IL
Robert J. Mahn, Washington, D.C.
Noel J. Mangan, Chicago, IL
P. Jack Maniscalco, Dallas, TX
Susan McMahon, Chicago, IL
Allen P. Miller, Los Angeles, CA
Doris A. Morrow, Chicago, IL
Frederich W. Mowatt, Washington, D.C.
Charleen N. Munson, Philadelphia, PA
Randolph C. Nail, Jr., Chicago, IL
Harbir S. Narang, Los Angeles, CA
Vincent H. Nelson, Atlanta, GA
Brenda J. Newbill, Chicago, IL
Philip R. Nichols, Jr., Philadelphia, PA
James W. Noack, Los Angeles, CA
B. J. Odom, Atlanta, GA
Zach Oppenheimer, Philadelphia, PA
Leslie A. Parsons, Los Angeles, CA
Dale L. Pea, Dallas, TX
Norman H. Peterson, Los Angeles, CA
Kathryn M. Phillips, Atlanta, GA
Robert G. Pike, Atlanta, GA
M. Kay Pollak, Los Angeles, CA
Douglass M. Porter, Washington, D.C.
Norman M. Reid, Los Angeles, CA
A. E. Rodenberger, Los Angeles, CA
Samuel D. Russell, Dallas, TX
Tim J. Ryan, Chicago, IL
E. L. Schreiber, Dallas, TX
Frank L. Scrivano, Dallas, TX
R. L. Shanteau, Atlanta, GA
Patricia L. Shaw, Chicago, IL
Mary Simpson, Dallas, TX
M. Faith Smith, Philadelphia, PA
Samuel M. Smith, III, Atlanta, GA
Susan T. Smith, Dallas, TX
Mary Lou Stellman, Dallas, TX
Roger Stewart, Washington, D.C.
Robert F. Sumbry, Atlanta, GA
T. J. Swanson, Jr., Atlanta, GA
Morton C. Swichkow, Dallas, TX
Robert N. Tanabe, Los Angeles, CA
Leta L. Terrell, Dallas, TX
Geri C. Thomas, Los Angeles, CA
Jimmie L. Thomas, Dallas, TX
Carmeleta Turner, Dallas, TX
Ruth C. Turner, Los Angeles, CA
J. H. Van House, Atlanta, GA
Mary E. Voight, Los Angeles, CA
Esther O. Walder, Philadelphia, PA
Erlinda C. Weaver, Los Angeles, CA
Nancy L. Webster, Chicago, IL
Edward W. Wendell, Chicago, IL
James H. Whitehead, Atlanta, GA
John Wilson, Philadelphia, PA
W. E. Yeager, Atlanta, GA
Dick A. Yockey, Los Angeles, CA

II. Staff members of the Federal Home Loan Mortgage Corporation, created under the laws of the United States, appointed attorneys-in-fact.

Name and Region

William T. Bings, Washington, D.C.
Philip R. Brinkerhoff, Washington, D.C.
Jerry Brooks, Atlanta, GA
Michael Coffey, Dallas, TX
Douglas R. Cottrell, Atlanta, GA
Kenneth Coulter, Los Angeles, CA
George E. Delgado, Arlington, VA
James L. Garrison, Arlington, VA
C. Gordon Gray, Chicago, IL
Ken Halterman, Dallas, TX
Philip N. Harrington, Washington, D.C.
Carl Hillis, Dallas, TX
John Horseman, Sr., Washington, D.C.
Victor H. Indiek, Washington, D.C.
David S. Latimore, Atlanta, GA
Leon L. Linkroum, Los Angeles, CA
John E. Lott, Chicago, IL
Peter R. McNulty, Arlington, VA
J. Michael Materle, Atlanta, GA
Walter P. Moenning, Jr., Chicago, IL
Ronald Morck, Atlanta, GA
Randall M. Nay, Dallas, TX
Jerry C. Nelson, Dallas, TX
Robert K. Ostengaard, Los Angeles, CA
Paul Quinn, Denver, CO
F. Michael Salb, Arlington, VA
Kenneth J. Sandin, Atlanta, GA
Fred Schwartz, Chicago, IL
Stu Strand, Los Angeles, CA
Ronald D. Struck, Washington, D.C.
Melvin L. Taylor, Seattle, WA
William R. Thomas, Jr., Dallas, TX
Glenn Vaupel, Los Angeles, CA
William J. Verant, Los Angeles, CA
Edward Voss, Chicago, IL
Clifford A. Walters, Chicago, IL

Dated: November 6, 1984.

Warren A. Lasko,

Executive Vice President.

[FR Doc. 84-29874 Filed 11-14-84; 8:45 am]

BILLING CODE 4210-33-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning December 1, 1984. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan adminstrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after December 1, 1984, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: December 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-6476 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. In July, August, and October of 1984, the PBGC published new rates and factors for plans terminating during the months of August through November of 1984 (49 FR 28551, 49 FR 32573, and 49 FR 40161).

At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after December 1, 1984, which set reflects a decrease of ¼ percent in the interest rate to 10 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after December 1, 1984, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of

Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 reads as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, and 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025, 1029 (1974) as amended by Secs. 403(1), 403(d), and 402(a)(7), Pub. L. 96-364, 94 Stat. 1302, 1301, and 1299 (1980) (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 51 of Appendix B is revised and Rate Set 52 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "C_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date			Immediate annuity rate (%)	Deferred annuities				
	On or after	and	before		k_1	k_2	k_3	n_1	n_2
51	Nov. 1, 1984		Dec. 1, 1984	10.25	1.0950	1.0825	1.0400	7	8
52	Dec. 1, 1984			10.00	1.0925	1.0800	1.0400	7	8

C.C. Tharp,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-29860 Filed 11-14-84; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-84-27]

Drawbridge Operation Regulations; New Pass FL

Correction

In FR Doc. 84-28801 beginning on page 43953 in the issue of Thursday, November 1, 1984, make the following correction: In the third column, **EFFECTIVE DATE**, second line, "December 3, 1984" should read "November 1, 1984".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Cost of Living Adjustments

AGENCY: Veterans Administration.

ACTION: Notice of Cost of Living Adjustments.

SUMMARY: This document corrects a reference to a proposed rulemaking which appeared in the preamble to the notice which was published October 31, 1984 at 49 FR 43940.

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Paperwork Management and Regulations Service, (202) 389-2340.

Dated: November 9, 1984.

Nancy C. McCoy,
Chief, Directives Management Division.

Accordingly, the Veterans Administration is correcting the "Summary" portion of the notice to read as follows:

SUMMARY: As required by law the VA is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1984. The benefit rates and income limitations affected by these COLAs are included in §§ 3.23 to 3.26 and 3.262 to title 38 CFR. An amendment to those sections is upcoming.

[FR Doc. 84-30000 Filed 11-14-84; 8:45 am]
BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to Venezuela

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to Venezuela.

SUMMARY: Pursuant to an agreement with the postal administration of Venezuela the Postal Service intends to begin Express Mail International Service with Venezuela at postage rates indicated in the table below. Service is scheduled to begin on December 14, 1984.

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 245-4414.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on October 8, 1984 (49 FR 39573), the Postal Service announced that it was proposing to begin Express Mail International Service to Venezuela. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin Express Mail International Service with Venezuela on December 14, 1984 at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Foreign relations, Postal Service.

VENEZUELA: EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service; [1] [2] up to and including		On demand service; [2] up to and including	
Pounds	Rate	Pounds	Rate
1	$27.00	1	$19.00
2	29.90	2	21.90
3	32.80	3	24.80
4	35.70	4	27.70
5	38.60	5	30.60
6	41.50	6	33.50
7	44.40	7	36.40
8	47.30	8	39.30
9	50.20	9	42.20
10	53.10	10	45.10
11	56.00	11	48.00
12	58.90	12	50.90
13	61.80	13	53.80
14	64.70	14	56.70
15	67.60	15	59.60
16	70.50	16	62.50
17	73.40	17	65.40
18	76.30	18	68.30
19	79.20	19	71.20
20	82.10	20	74.10
21	85.00	21	77.00
22	87.90	22	79.90
23	90.80	23	82.80
24	93.70	24	85.70
25	96.60	25	88.60
26	99.50	26	91.50
27	102.40	27	94.40
28	105.30	28	97.30
29	108.20	29	100.20
30	111.10	30	103.10
31	114.00	31	106.00
32	116.90	32	108.90
33	119.80	33	111.80
34	122.70	34	114.70
35	125.60	35	117.60
36	128.50	36	120.50
37	131.40	37	123.40
38	134.30	38	126.30
39	137.20	39	129.20
40	140.10	40	132.10
41	143.00	41	135.00
42	145.90	42	137.90
43	148.80	43	140.80
44	151.70	44	143.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

(39 U.S.C. 401, 404, 407)

W. Allen Sanders,
Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-29865 Filed 11-14-84; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AL-006; A-4-FRL-2718-6]

Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of TSP, SO_2 and Ozone Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving a request by Alabama to redesignate a portion of Mobile County for total suspended particulates (TSP) as was proposed in the October 13, 1983, **Federal Register** (48 FR 46549). EPA is withholding final action on an Alabama request to redesignate a portion of Jackson County from nonattainment to attainment for sulfur dioxide (SO_2) It is noted that EPA proposed to approve this request (48 FR 46549). Other requests made by the State to redesignate a number of counties for ozone (O_3). are not being approved at this time because: (1) They are not adequately supported by data or other demonstration required by EPA redesignation policy (8 counties) or (2), the data upon which the redesignations are based need to be validated by EPA (26 counties). A public comment period was announced in the October 13, 1983, proposed notice (48 FR 46549), and it is noted that comments were received.

EFFECTIVE DATE: This action is effective December 17, 1984 for all items.

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the appropriate location:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE., Atlanta, GA 30365

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, AL 36130

Also, a Technical Support Document in which the criteria upon which EPA evaluated the Alabama requests is set forth, may be examined at the Public Information Reference Unit (address given above).

FOR FURTHER INFORMATION CONTACT: Michael Cooper, EPA Region IV Air Management Branch, at the Atlanta address above, telephone 404/881-3286 [FTS 257-3286].

SUPPLEMENTARY INFORMATION: Section 107 of the Clean Air Act provides for changes in attainment status designation by the Administrator. Alabama has submitted several requests that EPA promulgate new air quality classifications for various areas in the State with respect to various pollutants. The criteria upon which EPA evaluated these requests is set forth in a Technical Support Document (TSD) that has been placed in the rulemaking record for this Agency action. The TSD explains the basis and the purpose behind the action taken today. It is available for public inspection at the Public Information Reference Unit.

Alabama requests. On January 3, 1983, the Alabama Department of Environmental Management (ADEM) asked EPA to change the attainment status of the following three areas from primary nonattainment to attainment: A portion of Mobile County surrounding downtown Mobile (TSP), a portion of Jackson County (SO_2), and Etowah County (O_3). On December 6, 1982, ADEM asked EPA to redesignate 29 counties in the southern part of the State from ozone unclassifiable to ozone attainment and 2 counties in the southern part of the state from ozone nonattainment to attainment. EPA reviewed all thirty-four (34) requests and proposed Agency action on October 13, 1983, at 48 FR 46550.

EPA's proposed action on Alabama requests. ADEM's submittal to redesignate a portion of Mobile County from TSP nonattainment to TSP attainment and to redesignate a portion of Jackson County from SO_2 nonattainment to SO_2 attainment consisted of 4 quarters of monitoring data and a demonstration of emission reduction. The demonstration of emission reduction consisted of EPA's previous approval of the State's 1979 SO_2 and TSP SIP revisions. EPA proposed to approve these requests.

ADEM's submittal to redesignate Etowah County from ozone nonattainment to attainment consisted of 4 quarters of monitoring data showing no violations of the NAAQS. EPA proposed to disapprove this request because the State's submittal did not adequately demonstrate commensurate emission reductions.

Alabama's request to redesignate Baldwin, Clarke, and Washington Counties from unclassifiable to attainment for ozone and Mobile and Russell Counties from nonattainment to attainment for ozone (all in south Alabama) was based on insufficient monitoring data to be considered representative of ambient concentrations of ozone, that is, less than 75% recovery for each ozone season. EPA proposed to disapprove the request on that basis.

With respect to the remaining 26 rural counties, the State's request was based on 4 quarters of monitoring data that EPA considered to be a valid representation of ambient ozone concentrations in those counties. On that basis EPA proposed to approve the request for the following 25 counties: Barbour, Bullock, Butler, Chambers, Chilton, Choctaw, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Geneva, Hale, Henry, Houston, Lee, Macon, Marengo, Perry, Pickens, Pike, Sumter, Tallapoosa, and Wilcox. (Inadvertently, Greene County was omitted from the **Federal Register** proposal.) ADEM submitted several comments regarding EPA's proposal notice of October 13, 1983 (48 FR 46549).

Comments

Greene County: Greene County was among those unclassifiable areas where the redesignation request was based on four (4) quarters of ozone data without a violation. Alabama wrote that Greene County was not listed in the proposal notice.

Response: EPA agrees with the comment. Greene County was inadvertently omitted from the list of areas proposed for approval. EPA is withholding final action on 26 south Alabama unclassifiable counties pending validation by EPA of the ozone data. Depending on the results of this validation, Greene County will be approved without prior proposal and the public will be given an opportunity to comment on the action.

Etowah County: ADEM submitted information which it asked EPA to consider as additional justification for redesignating Etowah County attainment for ozone. Included in the information was air quality data for the last two ozone seasons (through October of 1983) for Etowah County. It was projected that no violation would occur through November 1983 (end of ozone season beginning in 1983). Also included was a chart documenting reductions in VOC emissions for the county. Alabama requested that EPA at least postpone the

decision on Etowah County until the end of the 1983–84 ozone season.

Response: EPA's April 22, 1983, policy guidance which states that "two years of data with *no* exceedances is an acceptable surrogate" for three years of ambient data. Although Alabama has provided two ozone seasons of data, EPA has identified an exceedance in 1983. Therefore, the use of a three-year data base is appropriate.

Looking at three years, the three-year expected exceedance figure is above two. In addition, Alabama has not shown evidence that it has fully implemented the 1979 O_3 SIP; specifically, Group II VOC RACT regulations have not been implemented. Therefore, EPA is not redesignating Etowah County at this time, because this redesignation does not satisfy EPA redesignation criteria.

Mobile County: Alabama requested that the decision on the Mobile (and surrounding counties, namely, Baldwin, Clarke and Washington) ozone attainment status be delayed until the end of November, 1983. ADEM submitted ozone data from the two ozone monitors in Mobile County (monitors at Axis and one at Theodore/Chickasaw). In their argument, ADEM cites no violations in the past three years at Axis, even though 1982 had less than 75% data recovery and asserts that the expected exceedance for the Theodore/Chickasaw monitor over the past there years would be 1.04, provided thre were no exceedances of the standard in November and there was sufficient data recovery.

Response: It is known that site 01–062000003F01 (Chickasaw) has had two exceedances in 1983. The monitor at Chickasaw was previously located at the Big-Sniffer site (01–2400025). EPA determined that the monitor was improperly sited and requested that Alabama relocate it to the new site at Chickasaw in March of 1982. Using the new Chickasaw site, there are only two years of data (1982 and 1983). Since there are two exceedances in 1983, we cannot use two years of data. Therefore, one more year of monitoring data is needed. Additionally, EPA redesignation policy also requires evidence of an implemented EPA approved control strategy, which includes the adoption and implementation of Group I and Group II VOC regulations in the case of ozone nonattainment areas. Alabama has not shown evidence that it has fully implemented the 1979 O_3 SIP. Specifically, Group II VOC RACT regulations have not been implemented. It is noted that Baldwin, Clarke and Washington Counties are downwind contiguous counties of Mobile. These counties will be redesignated along with any redesignation of Mobile County.

Russell County: Alabama requested that the decision on Russell County's ozone attainment status be postponed until the end of November, 1983. Russell County was originally designated nonattainment for ozone because of its proximity to the Columbus, Georgia area. However, ADEM points out that according to Columbus air quality data no violations were monitored in 1981 and 1982 and Georgia air program officials report no violations in 1983 to date.

Response: Russell County is tied to Columbus, Georgia (Muscogee County) monitoring efforts. We have identified one exceedance in 1982, one in 1983, and one so far in 1984. Until a final determination is made on Muscogee County, EPA cannot redesignate Russell County for ozone. Russell County will be redesignated along with any redesignation of Muscogee County.

Actions: EPA is today redesignating a portion of Mobile County surrounding downtown Mobile (TSP) from primary nonattainment to attainment on the basis of eight quarters of monitoring data showing attainment. Since the time of Alabama's submittal, additional TSP monitoring data from the area has become available. EPA's review of the data shows there are no exceedances. Also, based on the information available EPA has determined that the attainment status of the area is not a result of emission reductions brought about by economic downturn. EPA feels the redesignation criteria have been met and is approving the redesignation of a portion of Mobile County for TSP.

EPA is taking no final action at this time on the redesignation of the following counties from unclassifiable to attainment for ozone: Barbour, Bullock, Butler, Chambers, Chilton, Choctaw, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Geneva, Greene, Hale, Henry, Houston, Lee, Macon, Marengo, Perry, Pickens, Pike, Sumter, Tallapoosa, and Wilcox. The redesignation appears approvable based on 4 quarters of monitoring data; however, EPA is withholding final approval until the data upon which the redesignation is based is validated by EPA.

EPA is taking no final action at this time on the redesignation of a portion of Jackson County for SO_2. The decision is withheld pending a resolution of issues involving EPA's stack height regulations (February 8, 1982, 47 FR 5864). These regulations were remanded to EPA by the U.S. Court of Appeals, District of Columbia Circuit, in the case of *Sierra Club and Natural Resources Defense Council, Inc., Petitioners* vs. *EPA* et al.

EPA is not redesignating the following: Etowah, Mobile and Russell Counties from primary nonattainment to attainment for ozone, and Baldwin, Clarke and Washington Counties from unclassifiable to attainment for ozone.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit [60 days from today]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: November 9, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—[AMENDED]

Part 81 of Chapter, Title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.301 [Amended]

In § 81.301, the Alabama—TSP table is amended by removing the entry for Mobile.

[FR Doc. 84–29838 Filed 11–14–84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 180

[00000/R680; OPP–FRL–2648–1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Ethylene Dichloride (1,2-Dichloroethane)

Correction

In FR Doc. 84–20836, beginning on page 31691, in the issue of Wednesday, August 8, 1984, make the following correction:

§ 180.1001 [Corrected]

On page 31692, in column one, in § 180.1001(d) table, under the table head "Insert ingredients" after "dichloride" add "(1.2-dichloroethane)".

BILLING CODE 1505-01-M

40 CFR Part 704

[OPTS—82012; FRL 2605–5]

Reporting and Recordkeeping Requirements Category of Chemical Substances Known as Chlorinated Naphthalenes; Submission of Notice of Manufacture or Import

Correction

In FR Doc. 84–22535, beginning on page 33649, in the issue of Friday, August 24, 1984, make the following correction:

§ 704.83 [Corrected]

On page 33653, in column three, in § 704.83 in the table of paragraph (b), under the table head "CAS registery number" the 12th entry should read "2198–77–8".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6032]

Suspension of Community Eligibility Under the National Flood Insurance Program; Maine et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 287–0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202 (a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in an of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date
		Region I			
Maine: Cumberland	Yarmouth, town of	230053B	Feb. 14, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Mar. 1, 1974 and Sept. 17, 1976	Nov. 15, 1984.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Region II					
New York: Rensselaer	Castle-on-Hudson, village of	360673B	Nov. 20, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, susp.	Mar. 1, 1974 and Aug. 6, 1976	Do.
Chenango	Norwich, town of	360162B	Aug. 7, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Sept. 20, 1974 and Sept. 12, 1975	Do.
Region V					
Wisconsin: Columbia	Lodi, city of	550061B	June 13, 1974, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Apr. 12, 1974 and Aug. 6, 1976	Do.
Minnesota: Nicollet	Unincorporated areas	270525B	Apr. 17, 1974, Emerg.; Oct. 18, 1984, Reg.; Nov. 30, 1984, Susp.	Aug. 26, 1977	Nov. 30, 1984.
Region III					
Texas: Tarrant	Kennedale, city of	480603	June 30, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Feb. 1, 1974 and Jan. 14, 1977	Nov. 15, 1984.
Region X					
Oregon: Coos	Unincorporated areas	410042B	July 7, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Nov. 1, 1974 and Sept. 6, 1977	Do.

[1] Date certain Federal assistance no longer available in Special Flood Hazard Areas.
[2] Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: October 9, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-30100 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Louisiana et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevation for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determination of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Maps (FIRM) for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448). 42 U.S.C. 4001–4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Louisiana	Orleans Parish (Docket No. FEMA-6602).	City of New Orleans and Orleans Parish.	The Times-Picayune	Honorable Ernest G. Williams, chief administrator, Room 9E 01, 1300 Perdido, New Orleans, LA 70112.	May 9, 1984	[illegible]
Maryland	Worcester (FEMA Docket No. 6612).	Town of Ocean City	Eastern Shore Times, June 13 1984, and June 20, 1984.	Honorable Harry W. Kelley, mayor of the town of Ocean City, P.O. Box 158, Ocean City, MD 21842.	May 31, 1984, letter of map revision.	245207E
Oklahoma	Tulsa and Wagoner Counties (FEMA Docket No. 6602).	City of Broken Arrow	Broken Arrow Daily Ledger, May 14, 1984 and May 21, 1984.	Honorable Nick Hood, mayor of the city of Broken Arrow, City Hall, P.O. Box 610, Broken Arrow, OK 74013.	May 9, 1984, letter of map revision.	[illegible]
Pennsylvania	Chester (FEMA Docket No. 6602).	Township of Caln	The Coatesville Record, May 23, 1984 and May 30, 1984.	Honorable Thomas Zalewski, township manager of Caln, P.O. Box 149, Caln, PA 19372.	May 15, 1984 letter of map revision.	422247B
Texas	Washington (FEMA Docket No. 6612).	City of Brenham	Brenham Banner-Press, May 29, 1984 and June 5, 1984.	Honorable Dorothy Fiesowski, mayor of the city of Brenham, P.O. Box 1059, Brenham, TX 77833-1059.	May 21, 1984, letter of map revision.	[illegible]

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; delegation of authority to Administrator)

Issued: November 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administrator.

[FR Doc. 84-29873 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

[Docket No. FEMA-6631]

44 CFR Part 65

Changes in Flood Elevation Determinations; Alaska, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65.

Flood insurance, flood plains.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska	Kenai-Cook Inlet Division.	Kenai Borough Peninsula	Oct. 17, 1984, Oct. 24, 1984, Peninsula Clarion.	Honorable S. Thompson, mayor, Box 850, Soldotna, AK 99669.	Sept. 21, 1984	020012
Illinois	DuPage	City of West Chicago	West Chicago Press, Nov. 1, 1984, Nov. 8, 1984.	Honorable A. Eugene Rennels, mayor, 475 Main St., West Chicago, IL 60185.	Oct. 25, 1984	170219
Iowa	Bremer	City of Waverly	Waverly Independent Democrat, Oct. 18, 1984, Oct. 23, 1984.	Honorable Michael Schneider, city manager, P.O. Box 618, Waverly, IA 50677.	Alg. 5, 1984	190029
Louisiana	Jefferson Parish	Unincorporated areas	Times-Picayune, Oct. 19, 1984, Oct. 26, 1984.	Honorable Joseph S. Yenni, parish president, New Court House, P.O. Box 9, Gretna, LA 70054.	Oct. 11, 1984	225196
Massachusetts	Plymouth	Town of Bridgewater	Bridgewater Independent, Nov. 1, 1984, Nov. 8, 1984.	Honorable David L. Flynn, chairman of the office of selectmen, Office of Selectmen, Bridgewater, MA [illegible]4.	Oct. 23, 1984	250259
Washington	Clark County	Unincorporated areas	Oct. 17, 1984, Oct. 24, 1984, Columbian.	Honorable John S. McKibbin, chairman, board of commissioners, P.O. Box 5000, Vancouver, WA 98668.	Sept. 27, 1984	530028
Washington	Cowlitz County	Unincorporated areas	Oct. 17, 1984, Oct. 24, 1984, Daily News.	Honorable Vas Youngquist, chairman, board of commissioners, 207 Fourth Ave., North Kelso, WA [illegible]	Sept. 27, 1984	530032
Washington	Cowlitz and Clark	Woodland (city of)	Oct. 17, 1984, Oct. 24, 1984, Lewis River News.	Honorable W.K. Mills, mayor, city of Woodland, P.O. Box 9, Woodland, WA 98674.	Sept. 27, 1984	530035

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: November 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-29874 Filed 11-14-84; 8:45 am]

BILLING CODE 4718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Illinois, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67.

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State	City/Town/County	Source of flooding	Location	# Depth in feet above ground. ^Elevation in feet (NGVD). Modified
Illinois	City of Harvey, Clay County (Docket No. FEMA–6605)	Dixie Creek	Just upstream of Dixie Highway	*606
			About 1,300 feet upstream of Rockwell Street	*607
		Calumet Union, Drainage Ditch	About 2,000 feet downstream of Halsted Street	*600
			About 1,600 feet upstream of Wood Street	*609
		Shallow Flooding (Ponding from Calumet Union Drainage Ditch).	At intersection of Wood Street and 147th Street	*[illegible]
			At intersection of Lincoln Avenue and 151st Street	*604
			At intersection of Halsted Avenue and 157th Street	*[illegible]
		Shallow Flooding (Overflow from Calumet Union Drainage Ditch).	At intersection of Vine Avenue and 153rd Street	*[illegible]
			At intersection of Ashland Avenue and 155th Street	*606
			At intersection of Honore Avenue and 156th Street	*607
			At intersection of Wood Street and 156th Street	*609
Maps available for inspection at the Building and Planning Department, 15320 Broadway Avenue, Harvey, Illinois.				
Louisiana	Baker, City, East Baton Rouge Parish (FEMA Docket No. 6180).	Baker Canal	At eastern corporate limits	*86
			Groom Road (upstream side)	*87
			At northern corporation limits	*77
		South Canal	Main Street (upstream side)	*81
		Lower White Bayou	Tristiac Avenue (extended)	*77
			North of Groom Road	*70
			South of Lavey Lane	*69
Maps available for inspection at the City Hall, 3325 Groom Road, Baker, Louisiana.				
Missouri	City of Liberty, Clay County (Docket No. FEMA 6605)	Cates Branch	Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*797
			Approximately 0.04 mile downstream of State Highway 291.	*806
			Just upstream of State Highway 291	*817
			Just upstream of Birmingham Road	*820
			Approximately .08 mile upstream of Birmingham Road	*826
			Just upstream of Burlington Northern Railroad	*[illegible]
		Little Shoal Creek (Trident No. 3)	Approximately 0.05 mile upstream of Mill Street	*[illegible]
			Approximately 0.09 mile downstream of High Drive	*790
			Approximately 0.28 Mile upstream of High Drive	*[illegible]
Maps available for inspection at the Community Development Office, 3rd Floor, 101 East Kansas Street, Liberty, Missouri 64068				
New Jersey	Boonton, Town, Morris County (FEMA Docket No. 6605)	Rockaway River	Downstream corporate limits	*[illegible]
			Upstream of weir located just upstream of Greenbank Road.	*200
			At foot of spillway on Boonton Reservoir Dam	*212
			Interstate 287 upstream side	*370
			Upstream side of Morris Avenue	*376
			Upstream side of West Main Street	*487
			Upstream corporate limits	*495
Maps available for inspection at the Town Hall, 100 Washington Street, Boonton, New Jersey.				
New Jersey	Boonton, Township, Morris County (FEMA Docket No. 6605).	Rockaway River	Downstream corporate limits	*[illegible]
			Upstream side of dam located upstream of North Main Street.	*[illegible]
			Upstream side of Powerville Road	*[illegible]
			Confluence of Beaver Brook	*[illegible]
			Upstream corporate limits	*[illegible]
		Beaver Brook	Confluence with Rockaway River	*502
		Unamed Creek	Confluence with Beaver Brook	*[illegible]
Maps available for inspection at the Municipal Building, R.D. 1, Tylerville Road, Boonton, New Jersey.				
New Jersey	Brigantine, City, Atlantic County (FEMA Docket No. 6619).	Atlantic Ocean	South side of Brigantine Boulevard from 3rd Street North to 18th Street North.	*10
			North of 12th Street North, east of intersection with Spaulding Place.	*13
			North of intersection of 14th Street and 13th Street	*10
Maps available for inspection at the City Hall, 1417 West Brigantine Avenue, Brigantine, New Jersey.				
New Mexico	Belen, City, Valencia County (FEMA Docket No. 6611)	Shallow Flooding from Belen Mesa Arroyos.	Annexed area between Bosque Drain and Garcia Ditch	*4,803
Maps available for inspection at the Belen City Hall, 503 Becker Avenue, Belen, New Mexico.				
New York	Southold, Town, Suffolk County (FEMA Docket No. 6611).	Long Island Sound	Shoreline from Southold/Riverhead corporate limits to Mulford Point.	*15
			Mattituck Creek south of Mill Road	*11
			Area near Sound View Avenue, near intersection with Mill Road.	*10
			Old Cove Road at Hashamomuck	*10
			Pond Inlet Pond	*11
		Fishers Island Sound	Shoreline of Fishers Island	*13
			Intersection of Fox Avenue and Central Avenue at West Harbor.	*11
			Mud Pond and Ice Pond	*11
		Block Island Sound	Shoreline of Fishers Island	*15
			Pond at Barleyfield Cove	*11
			Elizabeth Field	*11
		Gardiners Bay	Intersection of Main Road and State Parkway in Orient	*10
			A forested area, north of Main Road, 1,000 feet east of intersection of Narrow River Road.	*[illegible]
			A forested area, west of Narrow River Road, 2,500 feet south of intersection with Main Road.	*[illegible]

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
			Bay Avenue, between Main and King Streets	*[illegible]
			A forested area beside Spring Pond	*[illegible]
			Wiggins Court, near Gull Pond	*[illegible]
			Sandy Beach Road, near the Village of Greenport, New York.	*[illegible]
			Landing Lane, near the Village of Greenport, New York.	*8
			Shoreline of Stirling Basin, near Manhasset Avenue	*[illegible]
			A forested area between Main Road and Champlin Place, east of Bailey Avenue.	*[illegible]
Maps available for inspection at the Town Hall, Main Road, Southold, New York.				
North Carolina	Town of Cary Wake County (Docket No. FEMA 6605)	Black Creek Tributary A	About 1,200 feet downstream of Dynasty Drive	*[illegible]
			About 500 feet downstream of North Carolina State Road 1652.	*348
			About 50 feet upstream of North Carolina State Road 1652.	*356
Maps available for inspection at the Planning Department, 316 N. Academy, Cary, North Carolina 27511.				
North Carolina	City of Raleigh, Wake County (Docket No. FEMA [illegible])	Walnut Creek	Just upstream of State Road 2551	*176
			About 2.2 miles upstream of State Road 2551	*182
		Crabtree Creek	At confluence with Neuse River	*178
			About 200 feet downstream of U.S. Highway 64	*[illegible]
			About 700 feet upstream of Wake Forest Road	*214
		Neuse River	At confluence of Crabtree Creek	*178
			About 1,000 feet downstream of Milburn Dam	*180
			About 2.5 miles upstream of Milburn Dam	*188
		Perry Creek	At confluence of Perry Creek East Branch	*196
			About 0.6 mile downstream of U.S. Highway 1	*210
		Perry Creek East Branch	At confluence with Perry Creek	*196
			About 750 feet downstream of Fox Road	*203
		Walnut Creek	About 0.45 mile downstream of Rock Quarry Road	*214
			Just upstream of Rock Quarry Road	*223
			Just downstream of Wilmington Street	*237
			Just downstream of South Saunders Street	*[illegible]
			About 1,400 feet upstream of Lake Wheeler Road	*258
			Just downstream of Lake Raleigh Dam	*270
		Rocky Branch	At confluence with Walnut Creek	*236
			Just upstream of Fayetteville Street	*243
		Wildcat Branch	At confluence with Walnut Creek	*235
			Just downstream of Norfolk Southern Railway	*235
		Southwest Prong of Beaverdam Creek	Just upstream of Cambridge Road	*266
			Just downstream of Brooks Avenue	*280
Maps available for inspection at the Planning Department, 110 South McDowell Street, Raleigh, North Carolina.				
Ohio	City of Dayton, Montgomery County (Docket No. FEMA-6605).	Great Miami River	About 2.6 miles downstream of Conrail	*726
			About 1,000 feet upstream of Little York Road	*773
		Mad River	At mouth	*740
			Just downstream of State Route 444	*[illegible]
		Stillwater River	At mouth	*745
			About 300 feet upstream of Ridge Avenue	*747
		Wolf Creek	At mouth	*736
			About 8,500 feet upstream of Gettysburg Avenue	*790
Maps available for inspection at the Department of Planning, City Hall, 101 West Third Street, Dayton, Ohio.				
Ohio	City of Westerville, Franklin and Delaware Counties (Docket No. FEMA-6605).	Alum Creek	About 0.5 mile downstream of West Schrock Road	*[illegible]
			About 500 feet upstream of West Schrock Road	*801
			About 0.9 mile upstream of Park Road	*812
		Big Walnut Creek	Within community	*829
Maps available for inspection at the Building Department, City Hall, 21 South State Street, Westerville, Ohio.				
Oklahoma	Oklahoma City, City Canadian, Cleveland, McClain, Oklahoma, & Pottawatomie Counties (FEMA Docket No. 6605).	Spring Creek West Branch	NW 108th Street (downstream side)	*1,195
			NW 108th Street (upstream side)	*1,196
			Approximately 520 feet upstream NW 108th Street	*1,197
			Approximately 1,060 feet upstream NW 108th Street	*1,198
			Approximately 100 feet downstream of Council Road	*1,210
		Canadian River Tributary 1	Approximately 1,600 feet upstream of 119th Street SW	*1,210
			Downstream side of 126th Street SW	*1,214
			Upstream side of 112th Street SW	*1,217
			Upstream side of 111th Street SW	*1,218
			Approximately 100 feet upstream 111th Street SW	*1,219
		Tributary O of Canadian River Tributary 1.	Western Avenue (upstream side)	*1,209
Maps available for inspection at the City Hall, 200 North Walker Street, Suite 302, Oklahoma City, Oklahoma.				
Pennsylvania	Benton, Township, Columbia County (FEMA Docket No. 6605)	Fishing Creek	State Route 254 bridge (upstream side)	*734
			Approximately 1,500 feet upstream of State Route 254 bridge.	*736
			State Route 487 bridge (downstream bridge)	*813
			State Route 487 bridge (upstream side)	*813

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Maps available for inspection at the Benton Township Building, Benton, Pennsylvania.				
Texas	Carrollton, City, Collin, Dallas & Denton Counties (Docket No. FEMA-6605).	Furneaux Creek	Downstream of Dickerson Parkway	*454
			Downstream of corporate limits just downstream of Denton Road.	*461
Maps available for inspection at the City Hall, Carrollton, Texas.				
Texas	Richwood, City, Brazoria County (FEMA Docket No. 6605).	Bastrop Bayou	At State Route 288	*11
Maps available for inspection at 215 Halbert Street, Richwood, Texas.				
Texas	Robstown, City, Nueces County (FEMA Docket No. [illegible])	Ditch A	Approximately 4,200 feet downstream of Missouri Pacific Railroad.	*79
			Approximately 1,400 feet upstream of Bauer Road	*77
Maps available for inspection at Robstown City Hall, P.O. Box 872, Robstown, Texas.				
Texas	Victoria, City, Victoria County (FEMA Docket No. [illegible])	Lone Tree Creek	Upstream of Lone Tree Road	*87
			Approximately 350 feet downstream of Southern Pacific Railroad.	*90
Maps available for inspection at the City Hall, 105 West Juan Linn, Victoria, Texas.				
West Virginia	Charleston, City, Kanawha County (FEMA Docket No. 6611).	Elk River	CONRAIL (downstream)	*[illegible]
			Upstream corporate limits	*[illegible]
		Elk Twomile Creek	Upstream of Stack Street	*585
			Upstream of Airport Road	*609
			Upstream corporate limits	*[illegible]
		Twomile Creek	Upstream of 7th Avenue	*594
			At Schools Street	*594
			Scraggs Drive (upstream side)	*598
			Upstream corporate limits	*609
Maps available for inspection at the Planning Office, City Hall, Court and Virginia Streets, Charleston, West Virginia.				
West Virginia	Dunbar, City, Kanawha County (FEMA Docket No. 6611).	Tyler Creek	Upstream of Wilson Street	*589
			Upstream of Ruralana Road	*589
Maps available for inspection at the City Hall, 12th Street, Dunbar, West Virginia.				
West Virginia	Marmet, Town, Kanawha County (FEMA Docket No. [illegible])	Lens Creek	Approximately 600 feet downstream of Chesse System	*[illegible]
			Upstream of Clark Drive Access Road	*[illegible]
			Upstream corporate limits	*614
Maps available for inspection at the City Hall, Marmet, West Virginia.				
West Virginia	South Charleston, City, Kanawha County (FEMA Docket No. 6611).	Davis Creek	Downstream of Chesse System	*582
			Downstream of Kanawha Turnpike	*582
			Upstream of Kanawha Turnpike	*582
			Approximately .5 mile upstream of Kanawha Turnpike at limit of flooding effecting community.	*582
Maps available for inspection at the City Hall, 4th Avenue and D Street, South Charleston, West Virginia.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: November 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-29875 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-296; RM-4615]

FM Broadcast Station In Fort Mitchell, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 252A to Fort Mitchell, Alabama, as that community's first FM broadcast channel, in response to a petition filed by CLW Communications Group.

DATE: Effective January 14, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Fort Mitchell, Alabama); MM Docket No. 84–296, RM–4615.

Adopted: October 29, 1984.

Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 49 FR 15097, published April 17, 1984, proposing the assignment of FM Channel 252A to Fort Mitchell, Alabama, as that community's first FM

broadcast channel. The Notice was adopted in response to a petition filed by CLW Communications Group ("petitioner"). Petitioner filed supporting comments reaffirming its intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 252A to Fort Mitchell, Alabama, since it could provide a first local FM broadcast service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 14, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Fort Mitchell, Alabama	252A

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29918 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–269; RM–4572]

FM Broadcast Station in Humnoke, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 269A to Humnoke, Arkansas, as that community's first FM broadcast channel, in response to a petition filed by James M. Cope.

DATE: Effective January 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Humnoke, Arkansas); MM Docket No. 84–269, RM–4572.

Adopted: October 19, 1984.
Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 49 FR 11688, published March 27, 1984, proposing the assignment of FM Channel 269A to Humnoke, Arkansas, as that community's first FM broadcast channel. The Notice was adopted in response to a petition filed by James M. Cope ("petitioner"). Petitioner filed a statement of continuing interest reaffirming his intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 269A to Humnoke, Arkansas, since it could provide a first local FM broadcast service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules with a site restriction 1.1 miles north of Humnoke.

3. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Communication's Rules, it is ordered, That effective January 14, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city.

City	Channel No.
Humnoke, Arkansas	269A

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended. 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29918 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–35; RM–4638]

FM Broadcast Station in Citronelle, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Barbara Kay Turner, assigns channel 270A to Citronelle, Alabama, as that community's first FM service.

DATE: Effective January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Citronelle, Alabama); MM Docket No. 84–35, RM–4638.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 4521, published February 7, 1984, proposing the assignment of Channel 272A to Citronelle, Alabama, as that community's first FM assignment. The *Notice* was adopted in response to a petition submitted By Barbara Kay Turner ("petitioner"). Petitioner submitted a late-filed letter reaffirming her intention to apply for the channel, if assigned.[1] Late-filed comments were submitted by WXBM–FM, Inc. ("WXBM"),[2] licensee of Station WXBM–FM, Milton, Florida. No other comments in opposition to the proposal were received.

2. WXBM requests that Channel 270A be assigned to Citronelle instead of Channel 272A, thereby, enabling WXBM to upgrade its station in order to preserve full Class C status in compliance with the new rules implemented March 1, 1984, in MM Docket No. 84–231, 49 FR 11214, published March 26, 1984.

3. We believe the public interest would be served by the assignment of channel 270A to Citronelle, Alabama, since it could provide a first FM service to the community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, with a site restriction of 4.7 kilometers (2.9 miles) northeast of the community.

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Citronelle, Alabama	270A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29916 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

[1] Petitioner's late-filed comments were not accompanied by a request for their acceptance nor was a reason given for the untimely filing. However, they will be accepted herein to permit the statement of continuing interest in the Citronelle assignment.

[2] WXBM's comments and counterproposal were not timely submitted, but were accompanied by a petition for leave to file late comments requesting their acceptance. We believe these comments should be accepted since WXBM, Inc. recently acquired the station and was not the licensee as of the filing deadline.

Continued

47 CFR Part 73

[MM Docket No. 84–231; RM–4572]

FM Broadcast Station in Milton, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 270A to Milton, Florida, as that community's first FM allocation.

DATE: Effective: January 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Milton, Florida); MM Docket No. 84–231, 49 FR 11214, published March 26, 1984.

Adopted: October 19, 1984.
Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 47023, published October 17, 1983, proposing the assignment of FM Channel 257A to Ferndale, California, as that community's first FM allocation. The Notice was adopted in response to a petition filed by Leroy Demery ("petitioner"). Petitioner submitted late filed comments reaffirming his intention to apply for the channel, if assigned.[1] No other comments or oppositions to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 257A to Ferndale, California, in order to provide a first FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283, of the Commission's Rules, it is ordered, That effective January 14, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Ferndale, California	257A

4. It is further ordered, That this proceeding is terminated.

[1] Petitioner's comments were not timely filed, but will be accepted for the purpose of permitting the petitioner to reaffirm his interest in the proposed channel.

5. For further information concerning the above, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29914 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–948; RM–4498]

FM Broadcast Station in Keyser, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 296A as a second FM channel to Keyser, West Virginia, in response to a petition filed by Anna Louise Newman.

DATE: Effective January 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Assignments FM Broadcast Stations (Keyser, West Virginia); MM Docket 83–948, RM–4498.

Adopted: October 19, 1984.
Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making* 48 FR 41465, published September 15, 1983, proposing the assignment of Channel 296A to Keyser, West Virginia, as the community's second FM allocation. The *Notice* was adopted in response to a petition filed by Anna Louise Newman ("Petitioner"). Supporting comments were filed by the petitioner reaffirming her intention to apply for the channel, if assigned. No other comments were received.

2. The Commission believes that the public interest would be served by the assignment of Channel 296A to Keyser, West Virginia, in order to provide a second FM service to that community. The channel can be assigned in compliance with the minimum distance

separation requirements of Section 73.207 of the Rules.

3. Pursuant to the authority contained in sections 4(1), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 14, 1985, the FM Table of Assignments § 73.202(b) of the Commission's Rules is AMENDED with regard to the following community:

City	Channel No.
Keyser, West Virginia	221, 256A

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-28913 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-13; RM-4582]

FM Broadcast Station in Tuscola, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 269A to Tuscola, Michigan, as that community's first FM service. This action was taken in response to comments filed by James J. McCluskey.

DATE: Effective: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Tuscola, Michigan); MM Docket No. 84–13, RM–4582.

Adopted: October 19, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 3216, published January 26, 1984, proposing the assignment of Channel 269A to Tuscola, Michigan, as that community's first FM assignment. The *Notice* was adopted in response to a petition filed by Robert A. Sherman ("petitioner"). Petitioner advised the Commission on January 27, 1984 that he no longer intended to pursue the proposal. However, comments were filed by James J. McCluskey ("McCluskey"), in which he expressed an intention to apply for the channel, if assigned.

2. The Commission believes that the public interest would be served by the assignment of Channel 269A to Tuscola, Michigan, as that community's first FM service. The assignment can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules with a site restriction of 2.3 kilometers (1.4 miles) east of the city to avoid short-spacings to Stations WILS–FM (Channel 269A) in Lansing, Michigan, and Station WDBI–FM (Channel 269A) in Tawas City, Michigan.

3. Canadian concurrence has been obtained since the proposal is within 320 kilometers (200 miles) of the Canadian-U.S. border.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204 and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
Tuscola, Michigan	269A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-28915 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82–186; RM–3655; FCC 84–514]

FM Broadcast Station Blanketing Interference

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action amends the rules regarding FM broadcast station blanketing interference. The current rules are considered to be too ambiguous to permit proper enforcement when the need arises. The new rules define an area where blanketing interference can be assumed to exist and places full responsibility on permittees to remedy complaints of banketing interference within this area. Existing licensees are urged to cooperate with complainants and provide information regarding possible remedies to reduce the interference.

EFFECTIVE DATE: The effective date of this rule will be January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Michael A. Lewis, Mass Media Bureau, (202) 632–9660.

Lists of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order Termination of Proceeding

In the Matter of FM Broadcast Station Blanketing Interference (BC Docket No. 82–186, RM–3655).

Adopted: October 26, 1984.
Released: November 8, 1984.

By the Commission.

Introduction

1. The Commission has under consideration a *Notice of Proposed Rule Making* (*Notice*) adopted on April 1, 1982, and the comments and reply comments filed thereto, concerning a proposal to clarify the Commission's Rules regarding FM blanketing interference.[1]

2. Blanketing interference occurs when "an FM station's signal strength or signal power density is of such magnitude that if causes receivers near the transmitting antenna to be partially or completely blocked from receiving other broadcast stations." [2] Although

[1] *Notice of Proposed Rulemaking* in BC Docket No. 82–186 (47 FR 18936, May 3, 1982) adopted April 1, 1982.

[2] Blanketing occurs in both TV and FM receivers. Throughout this *Order*, use of the term "receiver" pertains to both.

the Commission's Rules presently recognize this phenomenon, they do not define an area in which an FM station could expect blanketing to occur, nor do they clearly define the responsibility of the FM station licensees to satisfy complaints.[3] It is the purpose of this *Report and Order* to present rules which clearly define FM blanketing areas and to define the licensee's responsibility for remedying interference complaints within this area. In accordance with Section 73.508(a) of the Commission's Rules, both commercial and noncommercial educational FM broadcast stations are subject to the provisions of this *Order*.

Background

3. This proceeding was initiated in 1980 in response to a petition by the Association of Federal Communications Consulting Engineers (AFCCE) which requested changes to Part 73 of the Commission's Rules to define a blanketing area for FM broadcasters and define specific responsibilities to remedy complaints within this area. AFCCE proposed that the 115 dBu contour be used to define the blanketing area. AFCCE further proposed that an applicant choosing an antenna site where the 115 dBu contour would encompass an area of population density greater than 1000 people per square mile, submit a showing demonstrating that no alternative site is available. Two parties submitted comments in response to the AFCCE petition, the American Broadcasting Company (ABC) and Minnesota Public Radio (MPR). Both parties supported the intent of the petition although ABC was opposed to the showing and MPR warned that the petition does not sufficiently account for the interference caused by spurious emissions generated by collocated stations.

4. After considering the available information, the Commission adopted the *Notice of Proposed Rulemaking* on April 1, 1982. The *Notice* proposed to adopt the 115 dBu contour as the definition of the blanketing area and placed full financial responsibility on licensees to remedy interference complaints within this contour caused by blanketing. The *Notice* declined, however, to propose the alternate site showing described in the AFCCE petition. In response to the *Notice*, approximately 20 parties filed comments, reply comments, and engineering studies.[4] It is on this record that this *Report and Order* is based.

[3] Section 73.315(c) of the Commission's Rules.

[4] See Appendix B for list of commenting parties.

Comments

5. The majority of commenters to the *Notice* accepted the need for rules to govern blanketing interference. Although the majority of licensees are satisfying complaints without regulation, most commenters, including many FM licensees, stated that clarifications of the current rules would be of benefit and are needed.

6. The major disagreement with the *Notice* dealt with the calculation of the 115 dBu contour. We proposed a method to determine the distance to the 115 dBu contour based on free space propagation. Thus, the method did not consider specific antenna heights nor specific antenna patterns. Commenters argued against such a method stating that by neglecting to incorporate the specific facilities into the calculation, the area of responsibility, as well as the burden, would be increased. Commenters also pointed out that deficient input selectivity and insufficient circuit shielding of receivers were primary contributors to susceptibility to blanketing interference. Some commenters urged the Commission to mandate receiver standards and thereby place the burden on manufacturers instead of broadcasters. Commenters also pointed out that the Commission has always set allocation standards by considering receivers of good design and urged the Commission to continue that practice within this proceeding.

7. Most commenters favored the Commission's proposal to assign shared responsibility to collocated stations. ABC, The Senior Road Tower Group, and the Joint Comments of FM Licensees (Joint Comments), however, proposed that if the offending station could be identified easily, that station should bear full responsibility. Minnesota Public Radio (MPR) submitted very detailed reports regarding the interference generated by collocated stations. The reports dealt with an interference known as third order intermodulation which is similar in its effects to blanketing but different in origin. MPR urged the Commission to consider third order intermodulation in this proceeding and to adopt appropriate rules.

Issue Analysis

8. The issues to be resolved in this proceeding are:

(1) The Need for a Change in the FM Blanketing Rules;

(2) The Extent of the Blanketing Area and the Method of Calculation;

(3) The Licensee's Responsibility Within the Blanketing Area;

(4) The Responsibility of Collocated Stations;

Each of these issues will be developed separately.

Issue 1: Need for a Change in the FM Blanketing Rules

9. As indicated in the *Notice*, the present rule is ambiguous as to the definition of blanketing and the licensee's responsibility to correct it. The Commision believes that the specificity contained in the proposed rule benefits both the applicant and the listening public. By defining a specific area of responsibility, the applicant can perform a cost-benefit analysis of the proposed antenna site before construction and before commencement of program tests and can then make an educated decision as to the appropriateness of that particular site. By counting the homes within the proposed 115 dBu contour, the applicant can find a reasonable estimate of the expected cost of eliminating the interference. The people within this area would also be assured of being able to continue receiving existing stations. Finally, elimination of the ambiguity contained within the current rule will reduce the likelihood of arguments and litigation.

10. The National Association of Broadcasters (NAB) points out that the proposed rule appears inconsistent with Section 73.315(b) which urges applicants to locate as near the center of the city of license as possible. Such areas have high population densities, and create a large number of possible blanketing interference cases. Section 73.315(b) of the Rules is not proscriptive. Rather, it sets forth various factors to be considered by an applicant in selecting a transmitter site. Consistent with our other actions herein, we believe it is appropriate to amend Section 73.315(b) to incorporate our concerns on blanketing interference. This is not to say the Commission will reject any application which specifies a downtown antenna site, but we will urge applicants to actively consider blanketing interference when choosing an antenna site and to design stations that minimize such interference.

Issue 2: Blanketing Area and Method of Calculation

11. The use of the 115 dBu contour as the definition for the blanketing area was first proposed in the AFCCE petition. Most commenters agreed with its use; however, some were critical of the method proposed to calculate the contour. As discussed earlier, the Commission proposed using the inverse

distance method, based on maximum permitted facilities, applied to the main radiation lobe in the horizontal direction only (see *Notice* for a complete discussion). This method ignores the vertical radiation pattern of the antenna and does not account for antenna height. The *Notice* stated, as did many commenters, that very high antenna heights normally tend to lessen blanketing interference and their use should be encouraged.

12. Notwithstanding the opposition found in the comments, the Commission continues to believe that the original inverse distance calculation proposed in the *Notice* will ensure that all valid complaints are satisfied. The simplicity and certainty contained within this equation renders it more advantageous than considering actual antenna vertical patterns. Thus, the question of who lies within the area of responsibility becomes a simple issue. Any other method of prediction fosters debates over actual versus theoretical antenna patterns, leading to ill-defined areas of responsibilities. Finally, the needs of the listening public must rank high in this decision. Even though the method being adopted to calculate the 115 dBu contour may extend the area of responsibility somewhat, it will assure that a minimum number of FM listeners are affected by new stations. Stations that are truly not causing interference will feet no impact by these actions.

13. The National Radio Broadcasters Association (NRBA) believes that when an antenna with horizontal directivity is used, it would be more appropriate to calculate the 115 dBu contour using the ERP "in the pertinent horizontal direction" and requested an appropriate modification of the proposed rule. This is a more realistic depiction of a directional antenna's contour and the rule will be amended accordingly. Also, we believe it appropriate to consider the effect of beam tilt on the calculation of the 115 dBu contour. By employing the formula given in the *Notice*, stations using beam tilt would calculate a 115 dBu contour with less area than that intended by the formula. Therefore, instead of calculating the contour using the ERP in the horizontal direction only, calculations will be made using the maximum ERP of the main radiated lobe regardless of orientation.

14. By continuing to use the inverse distance method to calculate the 115 dBu contour, the Commission creates an additional consideration for FM station applicants. Since the area of responsibility will probably be greater than if other predictive methods were used, it becomes even more essential for applicants to design stations which minimize the potential of blanketing interference. By accordingly amending § 73.315(b), the Commission urges applicants to consider the trade-offs involved in selecting sites that will minimize interference.

Issue 3: Licensee's Responsibilities

15. The *Notice* proposed that all licensees be required to satisfy all blanketing interference complaints without cost to the complainant. This requirement did not include those complaints outside the realm of reasonableness, such as, malfunctioning or mistuned receivers, improperly installed antenna systems, use of high gain antennas or antenna booster amplifiers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs).

16. New applicants should choose antenna sites which balance the need to provide the requisite signal to the city of license while minimizing blanketing interference. Ideally, the site will be sparsely populated. To encourage such site selection, the rule will place full financial responsibility for correcting complaints within the blanketing area on applicants who commence program test authority on or after January 1, 1985.

17. Although the majority of interference situations should occur within the defined area, some isolated interference may occur beyond the blanketing area perimeter. For such complaints, licensees and permittees are expected to cooperate with complainants by providing technical assistance in determining the cause of the problems and providing advice on corrective measures. Stations, however, have no financial obligation to resolve such problems.

18. One commenter, Maine Radio and Television Company, urged the Commission to adopt the alternative site showing, as proposed in the original AFCCE petition. It was the view of the Commission during the *Notice* that placing full financial obligation on applicants renders the showing unnecessary as applicants are in a better position to weigh their trade-off decisions than the Commission. This viewpoint has not been changed and, therefore, the showing shall not be required.

19. Comments received in response to the *Notice* urged the Commission to grandfather existing stations. This would leave existing stations subject to the present rule which places responsibility on stations to satisfy all complaints. As stated earlier, the Commission believes too much ambiguity exists in such a rule. Therefore, the rule will be amended to delete the ambiguity but leave the intent intact.

20. The new rule will require existing stations to provide technical assistance to complainants. This entails the providing of information on the cause of the interference and also providing information on proper corrective measures. Incorporating this provision into the Rules will provide existing stations protection from a continuing financial hardship while clearly stating their responsibilities.

21. In providing protection to existing licensees against continuing financial burdens, the Commission must address the issue of how to treat modified facilities of existing stations. Since modifications to a station's antenna can create new levels of blanketing interference, the Commission believes that the existing licensee should be held responsible for any complaints arising from the installation of a new antenna. Therefore, existing stations that replace their current antennas on or after January 1, 1985, will assume full financial responsibility for the satisfaction of blanketing interference complaints within their areas of responsibility for a period of one year beginning with commencement of operations with the new antenna. A corresponding provision dealing with a major change, such as a change of power, however, is unnecessary since a major change requires a new Construction Permit. At that point, an existing station would fall under the authority of the blanketing rules for permittees.

22. Commenters also suggested imposition of a time limit on the full financial obligation of stations to correct blanketing interference. Thus, a licensee that originally located in a sparsely populated area which later becomes urbanized, would not incur the same obligation as a new station in that area. The Commission agrees. New permittees, therefore, will assume full financial responsibility to satisfy blanketing interference complaints received by the station during a one year period following the commencement of program tests. After this period, the stations will fall under the rule for existing stations.

23. Many commenters urged the Commission to apply new rules to receivers and set receiver standards. Comments stated that Docket No. 14185, which implemented the FM allocations table, was based on "receivers of good quality." The Joint Comments stated that to stray from this decision would "diminish whatever incentive exists to develop better quality receivers." Many commenters shared this view, stating the Commission is making broadcasters responsible for deficient receivers.

24. It is not the Commission's intention to overly burden licensees by this proceeding. That is why existing stations merely have to provide assistance in resolving complaints to satisfy their obligations. Rather, it is our intent to have applicants place blanketing interference high on their priority lists when choosing antenna sites. We do not expect licensees to replace cheap, hand held radios with expensive FM tuners, but we decline to include a clause that would protect receivers of "good design only." We expect permittees and licensees to meet the intent of this rule and remedy interference. As commenters have pointed out, this is already being done by the majority of licensees today. As First Media states "Past experience has clearly demonstrated that FM licensees are fully capable of and willing to resolve those relatively few reasonable complaints of blanketing interference that are received." Likewise, the Commission declines to set receiver interference rejection standards. Government standards tend to be slow in development and inflexible in change. A more desirable situation would be voluntary standards developed by industry leaders.

25. ABC and the Joint Comments assumed in their comments that mobile receivers would be excluded from any new rules and sought verification on this assumption. The *Notice* did not discuss mobile receivers but past Commission policy has normally excluded them from consideration due to their inherent transient nature. This proceeding is no different and, thus, mobile receivers shall be excluded under the provisions of these rules.

Issue 4: Collocated FM Stations

26. As a result of Commission inquiries contained in the *Notice*, much debate was submitted within the comments concerning collocated FM stations. As a result of consideration of these comments, the following policies will be adopted.

27. A station choosing to collocate with existing FM stations shall assume full responsibility to remedy new interference complaints. This decision was widely supported in the comments and is consistent with the Commission's policy that the last station entering a market shall assume responsibility for any new interference created. Stations collocating and commencing operation concurrently shall assume joint responsibility for the rectification of blanketing complaints. This proposal was also widely supported in the comments.

28. In the *Notice*, the Commission asked whether the powers of collocated stations should be added to find the appropriate 115 dBu contour in determining the blanketing area. Many commenters opposed this position. The Commission agrees and thus decides that collocated stations shall assume financial responsibility, partially or wholly, for complaints received within their own 115 dBu contours.

29. MPR urged the Commission to include third-order intermodulation interference, which occurs within the receiver, under the scope of these rules. MPR submitted highly detailed and complex reports regarding this issue and how it relates to collocated stations. Opposing comments stated that the third-order intermodulation effect is largely a receiver problem and not manageable by broadcasters. Upon review of MPR's reports and the reply comments concerning them, the Commission has decided not to include the interference referred to by MPR as RITOIE (Receiver Induced-Third Order-Intermodulation Effect) under the scope of this Rule Making. This interference is not consistent with the definition of blanketing interference as offered in the *Notice* and will not be considered further.

30. *Regulatory Flexibility Act Final Analysis.*

I. *Reason for action.* Lack of specificity in the present Rules leaves the question of responsibility for resolution of interference ill-defined. The increasing number of FM stations and the practice of collocating higher powered stations within densely populated, center-city areas, contribute to the potential for blanketing interference. It is deasirable to have FM station applicants consider blanketing interference when designing their stations and the present Rules do not sufficiently accomplish this goal.

II. *Purpose of rules.* The new rules establish the area where blanketing can be assumed to exist and clearly define a station's responsibility for satisfying complaints of blanketing interference within this area. Also, they encourage more consideration of blanketing interference by applicants in selecting transmitter sites to minimize interference.

III. *Legal basis.* Section 303(f) and 303(r) of the Communications Act of 1934 as amended, in order that stations may operate free from harmful interference within their service areas.

IV. *Description, potential impact, and number of small entities affected.* This action would clarify the FM station licensee's responsibility for correcting blanketing interference in the area around the transmitter. The proposed rule would affect all new FM station applicants. Existing stations are not affected, they are merely being urged to follow the rule's intent. In the worst case, a permittee may have a large financial burden to rectify complaints. However, with good station design this burden could be reduced significantly.

V. *Recording, record keeping, and other compliance requirements.* Permittees commencing program test authority on or after 12/01/84, will be required to satisfy all complaints of blanketing interference within the defined blanketed area for a period of one year. After one year, they and all existing stations are urged to help in resolving complaints of blanketing interference. There are no specific record keeping requirements.

VI. *Federal rules which overlap, duplicate, or conflict with this rule.* None.

VII. *Significant alternatives not adopted.* None.

31. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

32. Accordingly, it is ordered, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, that Part 73 of the Commission's Rules is amended effective 01/01/1985, as set forth in the attached Appendix. It is further ordered, that the proceeding in MM Docket 82-186 is hereby terminated.

32. For further information on this matter, contact Michael A. Lewis, Mass Media Bureau, at (202) 632-9660.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. 47 CFR 73.310 is amended by adding a new definition for FM blanketing in alphabetical sequence in paragraph (a) to read as follows:

§ 73.310 Definitions.

(a) * * *

* * * * *

FM Blanketing. Blanketing is that form of interference to the reception of other broadcast stations which is caused by the presence of an FM broadcast signal of 115 dBu (562 mV/m) or greater signal strength in the area adjacent to the antenna of the transmitting station. The 115 dBu contour is referred to as the blanketing contour and the area within this contour is referred to as the blanketing area.

* * * * *

2. 47 CFR 73.315 is amended by revising the headnote and paragraph (b), by removing paragraph (e), and by redesignating current paragraph (f) as paragraph (e) as follows:

§ 73.315 FM transmitter location.

* * * * *

(b) The transmitter location should be chosen to maximize coverage to the city of license while minimizing interference. This is normally accomplished by locating in the least populated area available while maintaining the provisions of paragraph (a) of this section. In general, the transmitting antenna of a station should be located in the most sparsely populated area available at the highest elevation available. The location of the antenna should be so chosen that line-of-sight can be obtained from the antenna over the principle city or cities to be served; in no event should there be a major obstruction in this path.

* * * * *

3. New 47 CFR 73.318 is added to the Commission's Rules as follows:

§ 73.318 FM blanketing interference.

Areas adjacent to the transmitting antenna that receive a signal with a strength of 115 dBu (562 mV/m) or greater will be assumed to be blanketed. In determining the blanketed area, the 115 dBu contour is determined by calculating the inverse distance field using the effective radiated power of the maximum radiated lobe of the antenna without considering its vertical radiation pattern or height. For directional antennas, the effective radiated power in the pertinent bearing shall be used.

(a) The distance to the 115 dBu contour is determined using the following equation:

D (in kilometers) = $0.394\sqrt{P}$
D (in miles) = $0.245\sqrt{P}$

Where P is the maximum effective radiated power (ERP), measured in kilowatts, of the maximum radiated lobe.

(b) Permittees or licensees who commence program tests, replace their antennas, or request facilities modifications, and who are issued a new Construction Permit on or after January 1, 1985, must satisfy all complaints of blanketing interference which are received by the station during a one year period. The period begins with the commencement of program tests, or commencement of programming utilizing the new antenna. Resolution of complaints shall be at no cost to the complainant. These requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas or antenna booster amplifiers. Mobile receivers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs) are also excluded.

(c) A permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year. Two or more permittees that concurrently collocate on or after January 1, 1985, shall assume shared responsibility for remedying blanketing complaints within the blanketing area unless an offending station can be readily determined and then that station shall assume full financial responsibility.

(d) Following the one year period of full financial obligation to satisfy blanketing complaints, licensees shall provide technical information or assistance to complainants on remedies for blanketing interference.

Appendix B

Comments to Notice of Proposed Rulemaking—Docket No. 82-186

1. Joint Comments of FM Broadcast Station Licensees
2. Harte-Hanks Radio Inc.
3. Maine Radio and Television Company
4. Consumer Electronics Group of the Electronic Industries Association
5. National Radio Broadcasters Association
6. Association of Federal Communications Consulting Engineers
7. National Public Radio
8. Vir James P.C.
9. American Broadcasting Company Inc.
10. National Association of Broadcasters
11. Viacom International Inc.
12. Corporation of Public Broadcasting
13. WROK, Inc.
14. Senior Road Tower Group
15. WUOL Radio
16. Westinghouse Broadcasting and Cable, Inc.
17. William F. Ruck, Jr.
18. J.G. Roundtree, P.E.
19. First Media Corporation
20. Cox Communications, Inc.
21. Metromedia Inc.
22. Minnesota Public Radio, Inc.

Reply Comments to Docket No 82-186

1. National Radio Broadcasters Association
2. FM Broadcast Station Licensees
3. Maryland-District of Columbia-Delaware Broadcasters Association, Inc.
4. Minnesota Public Radio, Inc.
5. The Licensees of FM Radio Stations KEEY-FM, KDWB-FM, WLOL, and KQRS-FM.

[FR Doc. 84-29067 Filed 11-14-84; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[Docket No. 20735; RM-1301; RM-1974; RM-2655; FCC 84-515]

Changes in the Commission's Rules Relating to Noncommercial, Educational FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action resolves the final issues of a comprehensive review of the assignment and operation of FM stations located in that portion of the FM band (88–92 MHz, Channels 201–220) reserved for the use of noncommercial, educational FM service. Specifically, a Table of Assignments for this reserved spectrum will not be incorporated into the rules, but standards to minimize interference to TV Channel 6 stations from noncommercial educational FM stations will be adopted.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast, Television.

Third Report and Order (Proceeding Terminated)

In the Matter of Changes in the Rules Relating To Noncommercial, Educational FM Broadcast Stations (Docket No. 20735, RM-1301, RM-1974, RM-2655).

Adopted: October 26, 1984.
Released: November 6, 1984.

By the Commission: Commissioner Dawson concurring in the result.

Introduction

1. The Commission has before it a *Second Further Notice of Proposed Rule Making (Second Notice)* adopted on May 13, 1982, [47 FR 24144 on June 3, 1982] and the filings made in response thereto. The proceeding was initiated by a petition filed by the Corporation for Public Broadcasting (CPB) on May 12, 1972. The petition sought a comprehensive review of the assignment procedures and operational characteristics of noncommercial educational FM (NCE-FM) stations located within the reserved FM broadcast band (Channels 201-220).[1] The Commission has already, as part of this proceeding, adopted several rule changes to encourage more efficient use of the reserved spectrum.[2]

2. The *Second Notice* sought to resolve several technical issues regarding the potential for interference to TV Channel 6 (TV-6) stations caused by operation of NCE-FM stations. A high potential for interference to TV Channel 6 stations exists because the NCE-FM band and TV Channel 6 are immediately adjacent in frequency. TV receivers often lack sufficient selectivity to reject a strong NCE-FM signal, resulting in interference. Several parties submitted comments and reply comments in this matter. The information supplied was very useful in helping us to reach a decision in this proceeding.

3. The inquiry into this matter has included: studies to determine the abilities of television receivers to distinguish between desired and undesired signals of differing relative strengths; evaluations of various techniques to remedy the interference problems; and, development of methods to predict interference levels and locations. Numerous issues and options were considered to ameliorate the interference problem, including: development of an assignment table for NCE-FM allotments, improved TV receiver selectivity standards, collocation of FM and TV transmitters, the use of vertical antenna polarization for the NCE-FM stations, and the use of TV receiver interference filters. The Commission also developed a computer program to predict where interference is likely to occur.

4. The solution being adopted today rejects as impractical an NCE-FM assignment table and mandated improvements in TV receivers. However, the solution does permit wide latitude for NCE-FM applicants to "engineer in" their stations to take advantage of all available interference reducing methods. In this way, NCE-FM service can be provided without substantial interference to TV Channel 6 stations.

[1] Although noncommercial educational FM stations may operate on Channels 221-300, this proceeding is only concerned with those operating in that portion on the FM band reserved for their use, Channels 201-220.

[2] See *First Report and Order* (48 FR 25821 published on June 15, 1978) and *Second Report and Order* (43 FR 39704 published on September 6, 1978).

Issues

5. There are five basic issues to be resolved in this matter:

(1) Should there be a table of NCE-FM allotments and powers?
(2) How effective are the various interference remedies?
(3) What is the appropriate level of interference protection?
(4) How should interference be predicted?
(5) What solution should be adopted?

Each issue will be developed separately.

Issue 1: NCE-FM Table of Allotments

6. Among the issues raised in the *Second Notice* was the feasibility of an assignment table for the noncommercial educational FM band. The *Second Notice* indicated that the Commission questioned the benefits of such a table. Most comments also reflected this skepticism. For example CPB, the organization that originally requested a table, now believes that any benefits to be gained from a table have been lost with the passing of time. Many commenters noted that within the largest markets, little spectrum remains to be allotted, and that the area with available spectrum are better served by the demand system. Accordingly, we will not adopt an assignment table for NCE-FM stations.

7. Another aspect of this issue concerns the maximum power levels for stations within the reserved portion of FM band.[3] Currently, these stations have no specified power and antenna height limitations. The rules only state that facilities requested above the commercial limits "will not be necessarily granted." The *Second Notice* proposed to adopt the same power and antenna height limits as the commercial classifications. Comments regarding this proposal were supportive, and no other limits were suggested. Therefore, the commercial power and antenna height limitations will be adopted as the standard for NCE-FM stations also. [See BC Docket No. 80-90; 48 FR 29486 on June 27, 1983]. Any existing NCE-FM stations that are already at greater facilities than the commercial maximums will be grandfathered.

Issue 2: Interference Remedies

8. *TV Receiver Selectivity Standards.* In the *Second Notice*, we discussed at length the ability of television receivers, when tuned to Channel 6, to reject unwanted NCE-FM signals. The Commission noted that much of the interference resulted because of the inability of television receivers to reject adjacent channel interference adequately. Public radio interests agreed and argued that the problem could be solved by the use of more selective TV receivers. Others stated that although improved rejection capability would help, receiver standards would not "cure" the most severe cases of interference.

9. At the outset we would again point out that receiver improvements clearly do not represent a short-term solution to the problem. Therefore, in the first instance we are relying on the assignment standards outlined in Issue 5 and to the extent these solutions are satisfactory, as we predict, government mandated receiver standards will not be required. Nevertheless, it is clear that over the long term, better receiver selectivity would reduce problems. At present, the EIA/CEG (Electronic Industries Association/Consumer Electronics Group), with Commission participation, is involved with developing voluntary standards specifically addressing the TV Channel 6 interference problem. The Commission considers this work essential because insufficient information is now available to allow the drafting of such standards. The EIA Committee should fill that void by providing guidance for improved receivers. If the industry, for whatever reasons, is unable or unwilling to set its own receiver standards, it may be necessary for the Commission to step in. While we would be reluctant to do so, it is clear that we have the statutory ability, and we will exercise that authority if necessary. [Pub. L. No. 97-259, 96 Stat. 1087, 1091-92, September 13, 1982, 47 U.S.C. § 302(a)(2)]. The Commission may, upon review, determine that voluntary compliance by receiver manufacturers with the EIA guidelines is appropriate and we may be able to begin relaxing the assignment criteria as market penetration of the improved receivers expands. Ultimately, we could also decide, for example, to provide interference protection only to those receivers meeting minimum interference standards.

10. *Collocation.* Commenters agreed, for the most part, that collocation is the preferred means of reducing interference to TV Channel 6 reception while allowing NCE-FM stations the highest possible power levels. Noncommercial FM interests were concerned as to whether or not TV-6 stations would allow them access to the TV antenna sites.

11. The *Second Notice* defined collocation as an NCE-FM station

[3] A petition for rulemaking filed by the Lunde Corporation, RM-1301, requests that the commercial FM Power limits for Class C stations be incorporated into the noncommercial FM rules. This topic is addressed in this rulemaking and, therefore, this petition is being dismissed as moot.

locating its transmitting antenna within one mile of a TV Channel 6 transmitting antenna. Most commenting parties argued that the one mile limit for collocation was too great. A study conducted for the Joint Comments determined a distance of 0.4 kilometers (0.25 mile) to be more appropriate.[4] Locating beyond this point, the study noted, "causes FM field strengths up to 12 to 13 dB above the threshold to cause interference." Therefore, based on the data submitted, we shall adopt 0.25 mile as the definition for collocation.

12. Although some suggested lower power levels than proposed in the *Second Notice*, the proposed values for collocated NCE–FM stations will be used. We believe that the power levels proposed offer satisfactory protection given the undesired-to-desired (U/D) rejection ratios cited in the *Second Notice* for each of the lower channels. Also, if there is a problem with a particular channel not affording adequate protection, as some comments alleged, any resulting interference can be alleviated by the use of other remedies. Further, the FM station still has an obligation to assist in satisfying complaints or reducing power.[5]

13. *Vertical Polarization.* A question was raised in the *Second Notice* as to the interference reducing benefits of NCE–FM stations to operate with vertical polarization. The majority of commenters supported vertical polarization as a means of minimizing interference. A study, submitted in the Joint Comments, determined the advantage to be expected by vertical polarization of an FM transmitting antenna. The Joint Comments proposed a figure of 16 db power allowance for FM stations employing vertical polarization and locating in rural areas, and a 10 db allowance for urban areas.

14. Although data on the effects of vertical polarization on NCE–FM coverage are scanty, the record supports allowing it as a means of avoiding NCE–FM stations interfering with TV–6 stations. The Commission, therefore, will permit its use and allow the effectiveness of vertical polarization to be proven in actual situations.[6] This rule change will provide NCE–FM stations with additional flexibility for minimizing interference problems. However, the record failed to contain detailed information on the effects of vertical polarization on the coverage areas of NCE–FM stations. Additional experimentation is encouraged in this area.

15. *Receiver Filters.* The *Second Notice* proposed that external filters attached to the TV receiver could provide as much as 20 dB protection on the higher channels. All commenters rejected this figure. Interestingly, some claimed better results while others indicated worse. Proponents of filters submitted frequently response curves of several filters showing as much as 60 dB attenuation of the interfering signal. They submitted case studies claiming success in eliminating nearly all cases of interference with the installation of filters costing $10.00 or less. In short, proponents claimed that filters do work, have worked in the past, and should be considered in any rules the Commission adopts.

16. Opponents of filter use submitted similar comments but drew opposite conclusions. The National Association of Broadcasters (NAB) submitted a major study which showed not only substantial attenuation of the interfering FM signal when using filters, but also a degradation (3–10 dB) of the TV–6 aural carrier and the color subcarrier. Opponents also stated that effective filters are only available for TV receivers having 75 ohm coaxial cable inputs (currently comprising 15–20% of the market). They claimed that an effective filter program would be excessively costly to the NCE–FM stations and/or the public. Thus, the opponents of filters believed that the marginal improvements in TV signal quality do not outweigh their financial burdens.

17. As experienced throughout this proceeding, the information on filters was again contradictory. Thus, we cannot adopt, with any degree of confidence, the proposed 20 dB improvement for filters outside a laboratory environment. By adopting flexible standards, however, we could let actual field situations resolve this question. Thus, we will leave it to the judgment of the NCE–FM applicant whether filters provide a viable option.

18. *Miscellaneous Solutions.* The Commission also notes that the NCE–FM applicants have many options for minimizing the interference to TV–6 stations. For example, the NCE–FM station could locate its transmitter so that the area of interference is in unsettled, or sparsely settled, areas.[7] The NCE–FM permittee may replace a lost, or severely degraded, TV–6 signal by providing a TV translator in the affected area(s). They may also wish to take into account the direction of TV receiving antennas and locate the NCE–FM transmitter site so as to minimize interference. On this point, the Joint Comments were especially instructive in pointing out that there are a panoply of interference reduction techniques available. It is our intention to prepare an Office of Science and Technology (OST) Bulletin to provide guidance on those techniques. Finally cable penetration, or other factors that might lower the numbers of TV–6 viewers affected may be considered.

Issue 3: Level of Interference Protection

19. To adequately evaluate this issue, we examined the record to note whether the interference problem between the NCE–FM stations and TV–6 stations is sufficiently widespread to warrant new assignment standards for NCE–FM stations. The basic assertion that NCE–FM stations can cause interference to TV–6 stations is unquestioned. The extent of that interference, however, is not well defined. Several case studies were filed by TV broadcast stations, most notably KOIN–TV, Portland, Oregon, which detailed a large number of public complaints. At the same time, many NCE–FM stations indicated few complaints have been received, and they claimed that most cases were easily rectified with the use of filters at the television receivers. National Public Radio (NPR) conducted a survey of its member stations asking them to define the extent of their interference. The majority believed it to be either non-existent or very limited. However, a sample of the Commission's Field Operations Bureau's files indicated that the problem, while not universal, can be severe in isolated cases and thus result in large numbers of complaints.

20. Noting the relatively few cases of interference with over 1,100 NCE–FM stations on the air, the Commission finds that the restrictive facilities contemplated by the *Second Notice* are not justified. However, we cannot ignore the fact that NCE–FM stations have the potential to cause severe interference to TV–6 stations.

[4] Joint Comments submitted by a group of television industry representatives formed to study the impact of Docket 20735. This group, working with educational FM representatives, conducted technical studies and submitted their results as the "Ad Hoc Committee Report."

[5] The responsibilities of the FM permittee under program test authority will be discussed in detail later in this report.

[6] In addition to allowing vertical polarized NCE–FM antennas, we will also permit the vertical component of radiation of circular polarized FM antennas to exceed the horizontal component of radiation. Thus, the optimum mix of vertical to horizontal components can be selected to meet individual circumstances.

[7] In this regard, a companion proceeding which examined the interference experienced by TV and FM receivers in close proximity to transmitter sites ("FM blanketing") has made rule amendments to encourage this option. See *Report and Order* in BC Docket No. 82–196 also adopted this day.

21. The *Second Notice* proposed standards based on differing undesired-to-desired (U/D) rejection ratios for Channels 201–220. The ratios were chosen to provide "just perceptible" interference to a "passable" TV picture quality of −65 dBm signal strength.[8] The TV–6 interests, rejecting this figure, were concerned that more than "just perceptible" interference could be caused to "fine" or "excellent" pictures. No data was presented, however, to alter our view that "fine" or "excellent" pictures could tolerate somewhat more than "just perceptible" interference without serious picture degradation. Therefore, we will use the −65 dBm signal strength universally as the basis for our interference standards. We recognize that TV–6 viewers, depending on the strengths of their TV–6 and NCE–FM signals, will experience differing degrees of loss in picture quality.[9] However, the record shows that the NCE–FM stations should be able to remedy most of the viewer dissatisfaction through application of corrective techniques. In the extreme case, the NCE–FM station would have to reduce power or terminate operations.

Issue 4: Interference Prediction

22. Many commenters were critical of the "effective interference" approach proposed in the *Second Notice* and noted that the TVINT program did not include the necessary functions to compute the true impact of interference.[10] A report submitted by the Joint Comments notes that the user of the computer program is responsible for the assumptions necessary to predict service and interference in both the manual and automated process. Therefore, it claims the TVINT program does not offer any advantages to the traditional method. Furthermore, the report states that effective interference is undermined by several technical defects, such as, the assumption of a zero correlation coefficient for location and time based on path differences between the desired and undesired signals. Finally, it argues that the inability of TVINT and effective interference to denote what area will experience interference is a step backward from the traditional method which does.

23. Additional comments from TV–6 interests stated the effective interference model constitutes a distorted view of reality. The Joint Comments used the TVINT program to analyze existing situations. It showed marked differences in the square mileage of interference predicted using effective interference, traditional method, and field study. Noting these differences, commenters claimed that the facilities proposed would cause interference in excess of that predicted using the TVINT and effective interference model.

24. The NCE–FM commenters also discussed the deficiences of the TVINT program. CPB stated that the program lacks essential items such as: the population within TV Channel 6's Grade B contour, the availability of the TV Channel 6 programming from alternate sources, or whether the FM signal is vertically polarized. Some commenters argued that the model is only a good mathematical exercise, but does not describe areas with a high probability of interference.

25. The Commission recognizes that the TVINT program is not all encompassing (as with any model). However, the primary advantage of the TVINT program and the effective interference concept is that all locations susceptible to interference can be taken into account. The traditional method only considers an area wherein 50% or more locations are predicted to receive an interfering signal. Therefore, it does not account for the loss of service throughout the whole Grade B service area. Also, a location inside the traditional interference area may be receiving better TV–6 service than expected and would not lose service as predicted. Therefore, the traditional method only begins to state where interference may occur. In addition, it usually does not include items such as population, alternative services, etc.

26. The Commission finds the effective interference method offers a more accurate prediction of the total area that will receive interference for a specified probability of service. In this case, the TVINT program predicts a statistical probability of service and interference. It was not designed to judge the reasonableness, accuracy, or honesty of the data supplied by the user. Making the user responsible for these assumptions allows flexibility to look at the relative effects of different station facilities in a short period of time. Also, TVINT is capable of considering population if the user chooses to provide the data. Further, we expect any attempt to devise an acceptable correlation coefficient for location and time differences between the TV and FM signals would not only be unreliable but would tend to understate the amount of interference predicted. For these reasons, we continue to believe the effective interference model and the TVINT program to be the best method for predicting the total interference effect.

Issue 5: The Solution

27. The *Second Notice* proposed to minimize the interference to TV–6 stations by limiting the power of NCE–FM stations. Using the TVINT computer program, a value of effective interference was chosen which would limit interference but still allow authorization of some non-collocated NCE–FM stations.[11] The Commission proposed a figure of 0.3 square miles of effective interference as accomplishing this goal. Using the 0.3 square mile figure, maximum facilities for NCE–FM stations located at various distances from the TV–6 station were proposed.

28. CPB, NPR, and others argued that permitting only 0.3 square miles of allowable interference was unduly restrictive. These commenters cited the figures given in the *Second Notice* showing that 40% of all applications on file would be affected, not to mention the impact on future applications. Their positions were that two adjacent television channels (low band) located at the minimum distance separation of 60 miles and operating with maximum facilities would cause 1,098 square miles of mutual effective interference. They argued that the NCE–FM band should be considered an upper adjacent channel to TV–6; thereby, they claimed that the FM stations should be allowed more than 0.3 square miles of effective interference.

29. Because the attenuation for band-reject filters appeared excessive at 20 dB (see paragraph 17), further computer studies were made for various effective interference levels using a more conservative 5 dB general allowance for various remedies.[12] The three areas of

[8] Definitions for picture quality are found in *Engineering Aspects of Television Allocations* Report of the Television Allocations Study Organization (TASO) to the Federal Communications Commission, March 16, 1959. A "passable" picture is of acceptable quality with no objectionable interference.

[9] The aural signal of the TV–6 station may also experience some degradation. This was taken into account since the U/D ratios are based on interference to picture or sound, whichever occurred first. See FCC/OST Lab Report No. 79–01 (Tests of TV Receivers for *"Just Perceptible" Interference to TV Channel 6 from Educational FM Signals*). September, 1979.

[10] TVINT is a computer program developed for the prediction of interference. It is capable of predicting interference by the traditional method or by the effective interference method. See FCC/OST Report No. TM 82–2 titled *"A Program to Calculate Effective Interference"*, July, 1982, by Harry Wong.

[11] The studies of the *Second Notice* used the U/D ratios based on a signal strength of −65 dBm and allowed 20 dB attenuation for band reject filters.

[12] Using the TVINT program the following runs were made:

effective interference considered were 0.3, 1.0, and 3.0 square miles. Using the TVINT program, we determined where "Low Power" and small "Class A" NCE–FM stations would not be able to locate.[13] The results showed that if the 0.3 square mile of effective interference was adopted, not even a low power (100 W and 100 feet) NCE–FM station could locate within the Grade B service area of a TV–6 station (approximately 12,000 square miles for each of the 50 TV–6 stations now operating). Only marginal improvements in availability were found for an effective interference area of 1.0 square mile. Adoption of either of these figures would essentially prevent NCE–FM stations from locating east of the Mississippi River. Only the 3.0 square mile figure offered any potential of permitting additional NCE–FM stations to be established.

30. The Commission, in the *Second Notice*, recognized that "[i]t is necessary to strike a balance between the conflicting goals of limiting TV Channel 6 interference and providing for a viable educational FM service."[14] The 0.3 square mile of effective interference was chosen as satisfying this goal. However, we now know that adopting standards based on this amount of effective interference would effectively preclude any new NCE–FM service within most, if not all, populated areas. Given that most TV–6 stations' Grade B contours cover approximately 12,000 square miles, the Commission finds that 3.0 square mile of effective interference does not appear excessive. To base the new standards on less than 3.0 square miles of effective interference would curtail the NCE–FM service to a greater degree than can be justified by the record.

31. Conversely, permitting more than 3.0 square miles could result in interference to too many people. Several comments pointed out that the amount of permissible interference should be based on population rather than area. The Commission must reject this suggestion because it could lead to arguments on interference areas, population counts, and gain versus loss benefits. These are the very issues that make the AM processing so time consuming and cumbersome. However, we do agree that the analysis is not complete until the impact on TV–6 viewers is better defined. Wishing to translate 3.0 square miles into number of viewers, the Commission determined the number of TV households per square mile for the "Area of Dominant Influence" (ADI) of 48 TV–6 stations.[15] We found that the number of TV households per square mile ranged from a low of 1.5 TV households/square mile for Hayes Center, Nebraska to a high of 276 TV households/square mile for Philadelphia, Pennsylvania. Our examination yielded a median number of 63 TV households as losing service for 3.0 square miles of effective interference. Rather than adopting standards to account for the worst case, the median figure will be used as representative; although, unique instances may require case-by-case analysis of what may be considered excessive interferences. Further, this figure is substantially less than the population (between 1,000 and 3,000 persons) that was submitted as acceptable by the Joint Comments.

32. Having established the allowable interference level, we may now proceed with development of the solution. Because collocation of the NCE–FM and TV Channel 6 transmitters is highly desirable, the new rules provide an incentive for collocation. As stated earlier, stations will be considered collocated if their antennas are within 0.25 mile. NCE–FM stations that choose to collocate will be permitted relatively large facilities as compared to other locations within the TV Channel 6 Grade A or Grade B contours. The specific power levels authorized are shown in Appendix A, Table A. Interference to TV–6 stations should be minimal if the NCE–FM station operates at the recommended level. However, since we cannot be certain that a few serious cases could not occur, we reserve the right to deal with such instances on a case-by-case basis which may necessitate, as one option, a reduction in power below the Level 1 values.

33. Non-collocated NCE–FM stations will be restricted in power based on their frequencies (channels), distances from the TV Channel 6 stations, and TV–6 facilities. The extent of the power restriction zone will end at 140 miles from the nearest TV Channel 6 station.[16] Basically, two power levels will be permitted for each station, a recommended level (Level 1) and a maximum level (Level 2). For stations on Channels 201–206, the Level 1 and Level 2 powers will be equal due to the greater potential of these channels to cause interferences to TV Channel 6. Any NCE–FM station unable to resolve its interference problems may be required to significantly reduce power, even down to Level 1.

34. The permitted Level 1 powers may be determined from Appendix A, Table B. The value in Table B must then be adjusted for the frequency of the proposed station by the value shown in Appendix A, Table C. The final calculated effective radiated power is that power which should cause interference to no more than 3.0 square miles of the TV Channel 6 service area. Although NCE–FM applicants or permittees assume no financial responsibility at this level to correct interference problems, the power level assumes application of 5 dB of remedies which are left to the NCE–FM applicant's choice (e.g., prudent location of the FM transmitter).

35. NCE–FM stations requesting Channels 207–220 will also be permitted a higher power level (Level 2). These values also appear in Table B and must be adjusted by the values in Table C. It is expected that several of the available remedies can be employed at the Level 2 power to eliminate interference to the TV Channel 6 stations. NCE–FM stations choosing this higher power level will assume full financial responsibility for eliminating all cases of interference. This may be accomplished by application of remedies, such as, vertical polarization of the FM antenna, installation of a TV translator, etc.

36. No stations will be allowed to be constructed in areas in which the recommended power level would be less than 100 watts. This is an annular area about the TV Channel 6 transmitter, usually within the Grade B contour. Because stations applying for Level 2 powers may be required to reduce to Level 1 powers, Level 1 powers must be at least 100 watts. The 100 watt minimum is consistent with the Commission's belief that stations operating below this level are not spectrally efficient. Although the *Second Notice* requested comments on this, we have found no basis for reinstating these subminimum facilities.

37. All of the power levels calculated assume an antenna height of 100 feet above average terrain. If higher antennas are used, then appropriate reductions in effective radiated power (ERP) must be made so that the 1 mV/m contour of the NCE–FM station will not be extended beyond that for a 100 foot antenna. However, power reductions below 100 watts ERP will not be authorized to meet this requirement.

38. An NCE–FM applicant must include in its application for a construction permit (Form 340) an exhibit of where interference is likely to occur (using traditional standards or the effective interference model) and a discussion of what plans have been made to remedy this interference.[17] An applicant will be granted a conditional Construction Permit (CP) denoting that program testing can take place only in close cooperation with FCC Field Operations Bureau (FOB) offices, TV–6 stations, and local community groups. The NCE–FM station, including those operating collocated with a TV–6 station, must take corrective measures to alleviate any cases of interference before licensing. If operating above the recommended level (above Level 1), then *all* non-exempt interference within the TV–6 station's Grade B contour must be remedied. Outside the Grade B contour area, the NCE–FM stations must provide useful information on possible solutions and other services as appropriate. Under the new rules, permittees will be monitored closely by the Engineers In Charge (EIC) of FOB field offices. EICs will have the discretion to alleviate excessive interference problems by limiting Program Test Authority to a specific length of time (i.e., days, weeks, months, etc.). When the interference is within reasonable bounds the NCE–FM station must supplement its license application to indicate is compliance (noted by the EIC) with the interference reduction rules. Permittees will be exempt from resolving interference to malfunctioning or mistuned receivers, improperly installed antenna systems, use of antenna booster amplifiers, or to associated non-rf devices. (See FCC OPP Report *UHF Reception and Television Preamplifiers*, April, 1981.)

39. It must be emphasized that NCE–FM stations are being granted the ability to engineer individual situations to minimize potential interference and remedy actual problems. The options to minimize interference are left to the permittee but may, in the most severe cases, necessitate a reduction in power. Consequently, these rules should minimize interference to TV–6 stations while permitting the maximum freedom to expand the NCE–FM service. At the same time, this approach induces the educational station to minimize its total number of interference cases. The greater the interference potential caused by large facilities, the more responsibility is required by the rules. It is, therefore, in the NCE–FM applicant's interest to be very conservative in requesting facilities and to take all steps to insure minimal intererence.

40. The licensing policies for NCE–FM stations operating under the new rules will be as follows:

A Conditional Construction Permit will be issued which alerts the NCE–FM applicant to the interference reponsibilities.

Before program tests are authorized, the permittee must notify the Field Operations Bureau's field office of the steps taken to alert the local community of possible interference on TV Channel 6 reception.

Before the license is granted, the permittee must supplement the application for license with a discussion of its actions to supply information to all reasonable complaints and its attempts to remedy all cases of interference to TV Channel 6 stations, and

Before the license is granted, the permittee must submit an affidavit (noted by the EIC) that at least 2 months of program testing has occurred and all non-exempt complaints (as defined in the rules) have been satisfied. [This condition of satisfying all complaints would apply to those stations with greater than Level 1 facilities.]

Sample Calculation

41. Assume an applicant desires to construct a station on Channel 215 at a distance of 40 miles from a TV Channel 6 station. The first step in the calculation is to determine the field strength of the TV–6 station at the proposed site. A TV–6 station operating at 100 kW with an antenna height of 1000 feet above average terrain would have a predicted field strength of 63.6 dBu at 40 miles. Using that value, Table B indicates an ERP (Level 1) of −3.34 dBk (463 watts), at 100 feet antenna height. From Table C a +6 dB frequency factor may be applied. This yields a final Level 1 ERP of 2.66 dBk (1.85 kW) at 100 feet. Likewise, a Level 2 power of 17.66 dBk (58.34 kW) can be computed. If the applicant chose to use an antenna height of greater than 100 feet above average terrain (HAAT), Level 1 or Level 2 values would have to be appropriately reduced to assure that the 1mV/m contour was not extended beyond that for the 100 foot HAAT.

Grandfathering

42. The *Second Notice* proposed to grandfather all existing stations at their present facilities. It questioned whether a station should be allowed to modify its license if it did not increase the total interference, but shifted the interference to a different geographic location.

43. Most commenters generally accepted the grandfathering of existing stations. The notable exception was KOIN–TV, a TV Channel 6 station which is currently receiving interference from a noncommercial FM station. It urged the Commission to take no action which would either legitimize or perpetuate existing interference. KOIN–TV sought a policy of requiring interfering stations to make an honest engineering effort to rectify interference before receiving grandfathered status. Although we share this concern of allowing interference to continue, we decline to mandate additional burdens to existing FM licensees. We do expect, however, all NCE–FM stations to take steps (such as educating the public) to minimize excessive interference.

44. Commenters were generally opposed to the idea of shifting the interference burden from one group of people to another. TV Channel 6 interests believed it unfair to shift the interference from one geographic area to another, even if there was a reduction in the total number of people who received interference. They proposed that the affected TV–6 station be consulted whenever an educational FM station seeks to upgrade or change its facilities.

45. Upon reflection, we agree that it would be unfair to shift interference from one geographic area to another. Therefore, any upgrade or modification which will increase or shift the area receiving interference will be considered under the new rules. To permit some license modifications, however, we will permit those changes that would not aggravate the existing interference.

Miscellaneous Matters

46. In the *Second Notice*, we also proposed to eliminate an anomaly in the NCE–FM station rules. Currently, § 73.509 states that objectionable interference between two NCE–FM stations exists if the undesired signal exceeds the desired by certain undesired-to-desired (U/D) signal ratios at the desired station's 1 mV/m contour.

---

a. TV–6 facilities were set at 100 kW and 1000 feet HAAT, no vertical pattern was assumed, and average terrain roughness was used.

b. Two sets of NCE–FM facilities were set at: 1. a minimal sized station of 100 Watts and 100 feet HAAT, and 2. a small sized station of 3 kW and 328 feet HAAT; no vertical pattern assumed, and average terrain roughness.

c. Set 1 and Set 2 runs were made for Channels 203, 211, and 217.

d. Protection Ratios, R(Q), of −6.5, −28.0, and −34.0 for Channels 203, 211, and 217, respectively were chosen.

e. The separation distance was varied for all runs from 1 mile to 140 miles.

[13] For the studies, we selected the minimum power (100 W) and the smallest class (3 kW @ 100 meters) permitted commercial stations. The greater facilities of the larger commercial classifications would have less availability.

[14] See *Second Notice* at paragraph 19.

[15] *1983–1984 ADI Market Guide for Television*, Arbitron Ratings Company, 1984.

[16] Comments were submitted requesting reduction of the 140 mile separation distance. However, it is possible for a full powered FM station on Channel 201 to cause interference at distances slightly greater than 140 miles. Therefore, the 140 mile limit will be adopted.

[17] NCE–FM stations should try to minimize interference, for example, when selecting their tower location, to the reception of low power television (LPTV) and TV translator stations operating on Channel 6; however, protection will not be required. Any LPTV or TV translator station that has to move because of interference received from a new NCE–FM station may apply for a special temporary authorization (STA) until final disposition of their license modification.

In the case of second and third adjacent channels, where the undesired signal can be stronger than the desired signal, an adjacent channel station located within the desired station's 1 mV/m contour can appear to comply with the U/D ratios at the 1 mV/m contour. However, it may actually cause excessive interference inside the 1 mV/m contour. Further, the U/D ratio appears to improve as the undesired station moves closer to the desired station's transmitter and away from the 1 mV/m contour. The *Second Notice* proposed to resolve the anomaly by simply specifying prohibited contour overlaps. Comments were supportive. Therefore, we shall adopt that option.

Summary

47. The rules contained in Appendix A reflect the need for flexibility. The record shows that there exist varying degrees of interference to TV Channel 6 reception from NCE–FM stations, and a variety of solutions available to resolve the interference. To attempt to account for all of these situations in tightly formulated standards would be unreasonable. The approach chosen allows the assignment of noncommercial FM facilities where the applicant must "engineer in" facilities that will cause minimum interference. NCE–FM applicants can choose their levels of operation and financial responsibilities based on individual circumstances. Likewise, TV Channel 6 interests can be assured of a minimum interference impact.

48. The Commission stresses that the degree that any specific technique (*i.e.*, vertical polarization, etc.) will alleviate interference has not been determined. We have left that issue to be explored by the NCE–FM applicants. Also, we do not wish to imply that various situations will be reviewed by the Commission for specific power authorizations. The exact options that NCE–FM applicants may exercise are solely their decisions. The rules only reflect the Commission's desire to ensure minimal television interference while permitting the expansion of the NCE–FM service.

49. Finally, the Commission acknowledges that the assignment standards being adopted represent an attempt to allow the industry to explore interference reducing techniques and to encourage voluntary improvements to television receivers (see paragraph 9). The Commission will monitor the effects of the rules adopted today (with specific interest in the number of complaints generated, effectiveness of remedial techniques, and establishment of voluntary receiver standards). Further, the Mass Media Bureau is directed to prepare for the Commission's consideration, no later than three years from the date of release of this order, a staff report (Memorandum, Opinion and Order) containing a recommendation whether the new rules, and specifically Levels 1 and 2 power values, are appropriate as adopted.

50. *Regulatory Flexibility Final Analysis.*

I. *Reason for action.* To prevent exacerbation of the interference problem created when a new noncommercial educational FM station operates in a Television Channel 6 service area.

II. *Objective.* To further develop the noncommercial educational FM service with minimal loss of Television Channel 6 service.

III. *Legal basis.* Sections 303(r) and 4(i) of the Communications Act of 1934, as amended.

IV. *Description, potential impact and number of small entities affected.* The rules herein adopted will provide assignment standards for noncommercial educational FM stations. These rules are expected to allow for growth in educational broadcasting services, while maintaining present Television Channel 6 service.

There is no significant impact expected on present Television Channel 6 licensees or future applicants for Channel 6 stations. These rules limit future noncommercial FM facilities located within a Television Channel 6 service area; thereby, reducing their potential to cause interference. This reduced service area could adversely affect available financial support for noncommercial educational FM stations. These new rules also permit the use of filters, vertical polarization, or other remedies, which could permit increases in noncommercial educational FM service areas.

The positive impact of the new rules would be to help the noncommercial educational FM licensee to circumvent interference problems. In sum, the adoption of these rules will generally limit the size of new noncommercial educational FM stations and make upgrading of many existing stations in Channel 6 TV service areas more difficult. However, the new rules will permit many stations on the air that would otherwise have been forbidden.

V. *Recording, record-keeping and other compliance requirements.* None.

VI. *Federal rules which overlap, duplicate or conflict with this rule.* None.

VII. *Any significant alternative minimizing the impact on small entities and consistent with the stated objective.* None.

Actions

51. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

52. Accordingly, It is ordered, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 73 of the Commission's Rules and Regulations is amended effective as of January 1, 1985, as set forth in the attached Appendix A.

53. It is further ordered, that RM–1301 is denied as being rendered moot by this proceeding.

54. It is further ordered, that this proceeding is terminated.

55. For further information on this matter, contact Kathryn Hosford, Mass Media Bureau, at (202) 632–9660.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Title 47 CFR Part 73 is amended as follows:

1. 47 CFR § 73.509 is revised in its entirety to read as follows:

§ 73.509 Prohibited overlap.

(a) An application for a non-Class D (secondary) station, whether for a new station or an application for a change in a station, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station whose transmitter is located more than 320 kilometers (199 miles) from the U.S.-Mexican border and operating in the reserved band (Channels 200–220, inclusive) as set forth below:

Frequency separation	Contour of proposed station	Contour of other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu)
	1 mV/m (60 dBu)	0.1 mV/m (40 dBu)
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu)
	1 mV/m (60 dBu)	0.5 mV/m (54 dBu)
400 kHz	10 mV/m (80 dBu)	1 mV/m (60 dBu)
	1 mV/m (60 dBu)	10 mV/m (80 dBu)
600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu)
	1 mV/m (60 dBu)	100 mV/m (100 dBu)

(b) An application by a Class D (secondary) station, other than an application to change class, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station as set forth below:

Frequency separation	Contour of proposed station	Contour of other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu)
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu)
400 kHz	10 mV/m (80 dBu)	1 mV/m (60 dBu)
600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu)

(c) The following standards shall be used to compute the distances to the pertinent contours:

(1) The distance of the 60 dBu (1 mV/m) contours shall be computed using Figure 1 of § 73.333 [F(50, 50) curves] of this Part.

(2) The distance to the other contours shall be computed using Figure 1a of § 73.333 [F(50,10) curves] of this Chapter. In the event that the distance to the contour is below 16 kilometers (10 miles), and therefore not covered by Figure 1a, the curves in Figure 1 must be used.

(3) The effective radiated power (ERP) that is the maximum ERP for any plane on any bearing will be used.

(d) An application for a change (other than a change in channel) in the facilities of a noncommerical educational FM broadcast station will be accepted even though overlap of signal strength contours, as specified in paragraphs (a) and (b) of this Section, would occur with another station in an area where such overlap does not already exist, if:

(1) The total area of overlap with that station would not be increased;

(2) There would be no net increase in the area of overlap with any other station;

(3) The area of overlap does not move significantly closer to the station receiving the overlap; and,

(4) There would be created no area of overlap with any station with which the overlap does not now exist.

(e) The provisions of this Section concerning prohibited overlap will not apply where the area of such overlap lies entirely over water.

2. 47 CFR 73.511 is revised in its entirety to read as follows:

§ 73.511 Power and antenna height requirements.

(a) Except as provided in § 73.504 (b), on Channels 201 to 220, inclusive specified in § 73.501, no educational station will be authorized with effective radiated power less than specified in § 73.211(a)(1).

(b) On Channels 201 to 220, inclusive specified in § 73.501, no educational station will be authorized with effective radiated power greater than specified in § 73.211 (b)(2).

(c) Stations licensed before January 1, 1985, and operating above 50 kW in Zones I and I–A, and above 100 kW and in Zone II may continue to operate as authorized.

Note.—For educational stations authorized before January 1, 1985, the provisions of this Section [§ 73.511] become effective March 1, 1987.

3. A new 47 CFR 73.525 entitled "TV Channel 6 Protection" is added to read as follows:

§ 73.525 TV Channel 6 protection.

(a) Noncommercial, educational FM stations authorized as of January 1, 1985, may not make changes in operating facilities or location that result in any increase or shift in interference without considering the requirements of this section. Further, a FM station authorized as of January 1, 1985, which seeks to improve its operation may request to return to its previous, or lesser, facilities without considering the requirements of this section.

(b) An application for a FM station operating on Channels 201–220 and located at 0.4 kilometers (approximately 0.25 mile) or less from a TV Channel 6 station will not be accepted if the antenna height above average terrain (HAAT) exceeds the TV Channel 6 station's HAAT by more than 30 meters (approximately 100 feet) or the effective radiated power exceeds the following values:

TABLE A

Educational FM channel	Effective radiated power (kW)
201	0.5
202	3.7
203	4.9
204	7.0
205	8.2
206	11.4
207	13.5
208	15.7
209	17.9
210–220	20.0

(c) An application for a FM station operating on Channels 201–220 and located more than 0.4 kilometers but less than 225 kilometers (approximately 0.25 miles and 140 miles) from a TV Channel 6 transmitting antenna will not be accepted if it exceeds the maximum facilities allowed as determined in the following steps:

(1) Calculate the distance to the authorized TV Channel 6 station by use of the method set forth in § 73.208(c) of this part.

(2) Predict TV Channel 6 field strength at the proposed FM transmitter site by use of the distance determined in paragraph (c)(1), the authorized effective radiated power (without considering beam tilt), and the antenna height above average terrain of the TV Channel 6 station, and Figure 1 of § 73.333 [F(50,50) curves] of this Part. [To avoid difficulties due to the differences in units, the curves of § 73.333 will be used for TV Channel 6 stations also. The field strength curves for FM and TV Channel 6 are identical.]

(3) Obtain, for the TV Channel 6 field strength determined in subparagraph (2), the uncorrected allowed power from column denoted ERP_1 for Channels 201–220 or ERP_2 for Channels 207–220 in the following Table B. If the TV Channel 6 field strength determined in paragraph (c)(2) does not correspond exactly with a field strength in the table, linear interpolation shall be used. If the TV Channel 6 field strength in paragraph (c)(2) is greater than 90 dBu, then the initial power shall be the value corresponding to a TV Channel 6 field strength of 90 dBu.

TABLE B

TV channel 6 station F(50,50) field strength (dBu)	Permitted FM station ERP (dBk) @ 30 Meters (100 feet) HAAT for operation on channel 211	
	ERP_1 (recommended level) (channels 201–220)	ERP_2 (maximum level) (channels 207–220)
90.0	20.0	[illegible]
81.0	13.5	28.5
80.0	11.0	23.0
79.0	9.0	18.0
78.0	7.0	16.0
65.0	−2.0	13.0
60.0	−6.8	8.2
55.0	−11.5	3.5
50.0	−16.0	−1.0
49.0	−17.0	−2.0
48.0	−14.0	1.0
47.0	−9.5	5.5
46.0	−4.0	11.0
45.0	0.0	15.0
40.0	14.5	29.5
35.0	27.7	37.0
30.0	30.0	45.0
25.0	47.0	63.0
10.0	63.0	78.0

(4) Add the value from the following Table C, corresponding to the requested channel, to the value determined in paragraph (c)(3). This will provide the maximum allowable ERP_1 or ERP_2 at an antenna height of 30 meters HAAT.

TABLE C

FM channel	Frequency (MHz)	Power adjustment (dB)
201	88.1	−20.0
202	88.3	−17.2
203	88.5	−14.5
204	88.7	−11.7
205	88.9	−9.0
206	89.1	−4.5
207	89.3	0

TABLE C—Continued

FM channel	Frequency (MHz)	Power adjustment (dB)
[illegible]	90.5	0
[illegible]	90.7	0
210	90.9	0
211	91.1	0
212	91.3	+0.8
213	91.5	+1.5
214	91.7	+3.8
215	91.9	+6.0
216	91.1	+7.0
217	91.3	+8.0
218	91.5	+11.5
219	91.7	+15.0
220	91.9	+18.0

(5) If the antenna height above average terrain of the requested facility is greater than 30 meters (approximately 100 feet), reduce the maximum allowable power determined in paragraph (c)(4) by the amount necessary to result in an equivalent predicted field strength, pursuant to the following procedures:

(i) The effective radiated power is reduced so that the distance to the 1 mV/m (60 dBu) contour extends no farther than it would if the station were operating with the allowable power and an antenna HAAT of 30 meters.

(ii) The location of the 1mV/m (60 dBu) contour is determined using Figure 1 of § 73.333 [F(50,50) curves] of this Part.

(iii) The antenna HAAT is determined using the procedure contained in § 73.313.

(d) The maximum facilities cannot exceed 50 kW effective radiated power and 300 meters in Zones I and Ia or 100 kW effective radiated power and 600 meters height above average terrain in Zone II. [See § 73.511 of this part.]

(e) An application for a facility operating on Channels 201–220 and located more than 0.4 kilometers but less than 225 kilometers (approximately 0.25 miles and 140 miles) from a TV Channel 6 transmitting antenna will not be accepted if the recommended level is less than 100 watts (–10 dBk) at 30 meters.

(f) An application for a facility operating on Channels 201–220 and located less than 225 kilometers (approximately 140 miles) from a TV Channel 6 transmitting antenna must include an indication of any interference to the reception of the TV Channel 6 signals by the public. When the requested facilities exceed the recommended values (see paragraph (c)(3) of this Section), the application must also include a discussion of the techniques to minimize interference that are contemplated by the applicant.

(g) A permittee, before beginning program tests, must take steps to notify the residents of the area likely to be affected of the possibility of interference and what remedies will be available. Additionally, the Engineer in Charge of the responsible FCC field office must be advised of what alleviating steps have been taken and when program tests will commence.

(h) FM permittees operating at the recommended levels, or below, have no financial obligation to remedy interference complaints; however, within the television station's 47 dBu (Grade B) contour, the permittee must investigate all separately registered and documented complaints and make a good faith attempt to identify and help resolve all cases of interference to the direct reception of the TV Channel 6 station that results from the operation of the FM station operating on Channels 201–220. Exceptions to this provision are complaints of interference due to malfunctioning or mistuned receivers, improperly installed antenna systems, use of antenna booster amplifiers, or to associated non-RF devices (such as audio amplifiers, etc). If the complainant refuses to demonstrate the impaired reception or permit the application of remedial techniques, the permittee is absolved from further responsibility.

(i) If the effective radiated power of the facility exceeds the recommended level, a license will not be granted unless all non-exempt (See subparagraph h) interference complaints have been resolved at no cost to the TV Channel 6 viewers within the TV Channel 6, 47 dBu (Grade B) contour. The distance to the television station's 47 dBu (Grade B) contour is determined by using Figure 1 of § 73.333 [F(50,50) curves] of this Part.

(j) Outside of the television station's 47 dBu (Grade B) contour, a permittee is to provide information intended to remedy interference to TV Channel 6, at the request of the TV Channel 6 viewer. The permittee has no financial responsibility to resolve such complaints.

(k) If interference is excessive and it cannot be promptly eliminated by the application of suitable techniques, operation of the offending FM station will be suspended upon notification by the Engineer in Charge (EIC) of the Commission's local field office, and may not be resumed until satisfactory actions to eliminate the interference have been taken and authority to resume operation has been received from the FCC.

(l) To minimize interference to TV Channel 6 stations from FM stations operating on Channels 201–220, the vertical component of radiation of the FM station may exceed its horizontal component of radiation, or the FM station may use only vertical polarization. The maximum ERP on any bearing will be considered the maximum ERP for any plane for licensing purposes (including vertical or horizontal polarization, beam tilt, etc.).

(m) A permittee will not be granted a station license without a minimum of 2 months operation under Program Test Authority. The permittee shall supplement the application for station license, by submitting a statement indicating that appropriate action has been taken on all complaints of interference to TV Channel 6 reception. For operation above the recommended level, the statement shall indicate that all non-exempt complaints (see paragraph (h) have been resolved at no cost to the complainants. The application shall contain a concurring statement from the Engineer in Charge of the responsible FCC field office to indicate that he/she has no objections to the granting of a station license.

(n) No application for FM Channel 200 will be accepted if the requested facility would cause objectionable interference to Channel 6 operations. Such objectionable interference will be considered to exist whenever the 15 dBu contour based on the F(50,10) curves on § 73.333 Figure 1a of the proposal would overlap the 40 dBu contour based on the F(50,50) curves in § 73.333 Figure 1, of the televison station.

§ 73.4135 [Removed]

4. 47 CFR 73.4135 is removed in its entirety.

Appendix B

Summary of Commenting Parties

Comments in response to the *Second Notice* were filed by a number of parties. Detailed comments on all aspects of the *Second Notice* were submitted by: Jules Cohen & Associates ("Cohen"), Corporation for Public Broadcasting ("CPB"), Association of Maximum Service Telecasters, Inc. ("AMST"), National Public Radio ("NPR"), Mississippi Authority for Educational Television ("MAET"), KOIN–TV, Inc. ("KOIN"), Joint Comments filed on behalf of TV Channel 6 interests, National Associations of Broadcasters ("NAB"), Capital Cities Communications, Inc., Cosmos Broadcasting Corp., also McGraw-Hill Broadcasting Company ("McGraw-Hill").

Specific comments on isolated subjects were filed by: Intercolligiate Broadcasting System, Inc., KRMA–TV Channel 6, WCDR–FM, Earlam College, Storer Communications, Taft Broadcasting Company, Federation of Community Broadcasters, National Religious Broadcasters ("NRB"), Channel 6, Inc. ("Channel 6"), and Michigan State University ("MSU").

Various general comments were submitted by: Viewers of Central Virginia, University of Northern Colorado, Friends of Public Radio, Inc., Bux-Mont Educational Radio Association, Metropolitan Pittsburg Public Broadcasting (WQED–FM, WQEX–TV), and several existing educational and TV Channel 6 radio licensees.

Reply comments were filed by: CBS, Inc., Mohawk-Hudson, Taft, MAET, NPR, NRB, WTVR, EIA (CBC), Belo Broadcasting, KOIN, McGraw-Hill, Joint Comments, CPB, other existing radio licensees, and TV Channel 6 licensees.

[FR Doc. 84-29940 Filed 11-14-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 84-280; FCC 84-517]

Broadcast Remote Pickup Service; Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action changes the Broadcast Remote Pickup Service Rules to (1) authorize 5 kHz segments which can be combined to form a suitable bandwidths for different technologies: (2) revise authorized emission standards; (3) continue informal BRPS frequency coordination; (4) allow narrowband VHF repeaters; (5) remove usage restrictions on certain channels; and (6) eliminate requirements for guard receivers for BRPS repeaters.

This action is taken by the Commission in its efforts to relax restrictive regulations and policies and allow new spectrum efficient systems to be licensed.

The Rule changes are intended to provide broadcasters more flexibility in their choices of Remote Pickup communications systems. This action will also permit the use of new narrowband technology equipment as a means to relieve frequency congestion situations.

DATES: Effective—To be announced by separate Order.

FOR FURTHER INFORMATION CONTACT: Hank Van Deursen, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Communications equipment.

Report and Order

In the Matter of Amendment of frequency assignment procedures in the Broadcast Remote Pickup Service to facilitate more efficient use of the available spectrum; MM Docket No. 84–280.

Adopted: October 26, 1984.
Released: November 6, 1984.

By the Commission.

Introduction

1. The Commission has under consideration a *Notice of Proposed Rule Making (Notice)* [1] adopted on March 23, 1984, and the comments and reply comments filed in response thereto, concerning a proposal to permit optional use of narrow band technologies and the Broadcast Remote Pickup Service (BRPS). The *Notice* proposed amending the frequency assignment procedures and authorized emission standards. Although this *Order* allows immediate use of Amplitude Compandored Sideband (ACSB) equipment, it by no means limits licensees to that technology nor does it preclude the use of FM technologies. For example, 2.5 kHz deviation FM communications equipment is presently in use in Europe and could also be used in the BRPS with the rule changes adopted today. This *Order* is intended to be sufficiently flexible to allow broadcasters to choose any technology best suited to their needs without further Commission action.

Background

2. Remote pickup (RPU) stations are authorized frequencies in the 153, 161, and 450 MHz bands [2] for transmission of program audio from the scene of an event back to the studio. They may also be used for communications necessary to coordinate production of program material and support technical operation. The ever increasing demand for remote pickup stations has created a growing need for spectrum to support these additional stations. Because there is not any readily available spectrum to provide relief, more efficient use of the present spectrum must be pursued. In fact, several waivers have already been granted by the Commission to allow splitting of RPU channels to provide additional services.[3]

Issues

3. The primary issues proposed in the *Notice* included:

(1) Should the Commission amend the frequency authorization procedures to include 5 kHz segments which could be contiguously combined (stacked) to provide suitable channel bandwidths for existing and new technologies?

(2) Should the authorized emission standards be revised to accommodate new technologies as they may develop?

(3) Should the present BRPS informal frequency coodination procedures continue on a voluntary basis in lieu of formal procedures?

(4) Should VHF repeaters be authorized for narrow bandwidth technologies?

(5) Should usage restrictions on certain channels be removed?

Issue 1: Frequency Authorization Procedures

4. The *Notice* proposed dividing many existing channels into discrete 5 kHz segments to provide the BRPS flexibility to combine contiguous segments into a channel of suitable bandwidth. This action would permit continued use of all current wideband FM equipment in addition to allowing users to incorporate narrow bandwidth technologies. For example, a current VHF 30 kHz bandwidth RPU channel would become a channel of six contiguous 5 kHz segments. Alternatively, channels for narrow bandwidth technologies would be immediately available by combining the appropriate number of contiguous segments to form a channel with suitable bandwidth.

5. Several commenters in opposition to the issue apparently misinterpreted the *Notice* and believed that present wideband FM operation would no longer be permitted. This is not the case. Wideband FM operation may continue as circumstances warrant. Our action provides broadcasters *the option* of operating narrower bandwidth equipment, if they desire, to obtain partial relief from the crowded spectrum in congested areas. Comments submitted by the American Petroleum Institute (API), although concerned about increased BRPS operations on the 153 MHz shared channels, endorse the 5 kHz plan if expansion of the band is deemed necessary. The Association of Maximum Service Telecasters (MST), in its reply comments, suggest that API has overlooked the potential benefits that could accrue to land mobile users from the Commission's proposals. By providing more "room" for all current and future users in the shared bands, the creation of new narrowband channels could decrease interference problems.

6. Several comments were received emphasizing the need to retain some channels with bandwidths of 25, 50, and 100 kHz bandwidths for transmission of high-quality material for on-the-air use. Although these comments may have merit for a few channels, the record indicates that dividing the remaining channels into 5 kHz "stackable" segments as proposed in the *Notice* and eliminating the present "letter group" designations on channels would be beneficial. However, licensees are expected to make efficient use of the spectrum by stacking the minimum number of segments necessary to create

[1] MM Docket No. 84–280, 49 FR 14666 (April 13, 1984).

[2] Nominal frequency bands—see Part 74.402 for specific frequencies.

[3] See *Notice* at 4.

a channel bandwidth commensurate with the technology in use.

7. Although specific frequencies will not be mandated for narrowband technologies, frequency coordinators should be aware of the Office of Science and Technology findings which indicate that the mechanism for ACSB to FM interference was more dependent upon FM receiver characteristics then on the ACSB transmitter.[4] Coordinators should proceed cautiously and responsibly when integrating new technologies into the existing FM environment. On-the-air program channels must be afforded the necessary protection even if this requires frequency separation of narrowband technologies from the program channels. Prudent action on the part of the coordinators will eliminate need for the Commission to institute specific restrictions on the frequency assignment of new technologies at this time.

8. In the interest of providing broadcasters the maximum flexibility and choice in the selection of channels for operation of remote pickup stations:

A. The two existing 100 kHz channels at 450.925 and 455.925 MHz (previously referred to as the "S group" channels) will be divided into four 50 kHz segments. Stacking of these segments will be allowed to form 100 kHz channels, thus preserving the option of 100 kHz channels where required. This action is intended to satisfy the needs of users committed to transmitting high quality program material using wideband technologies requiring 50 or 100 kHz. Users committed to 100 kHz bandwidths and transmitting program material will have primary user of these channels since no other 100 kHz channels are available.

B. The ten existing 50 kHz channels at 450.65, 450.70, 450.75, 450.80, 450.85, 455.65, 455.70, 455.75, 455.80, and 455.85 MHz (previously referred to as the "R group" channels) will be divided into twenty 25 kHz segments. Stacking of these segments will be permitted to form 50 kHz channels. Users committed to 50 kHz bandwidths and transmitting program material will have primary use of these channels.

C. Most remaining VHF and UHF channels will be divided into 5 kHz segments which may be stacked to form various bandwidth channels up to the maximum channel bandwidth of 50 kHz. This division will enable implementation of Option 2 (Six channel VHF plan) and Option 3 (Five channel UHF plan) as proposed in the *Notice*. (The six channel UHF plan is unacceptable since it would require that no assignments be made at the edges of wideband channels resulting in possible unusable spectrum.)

D. All letter group designations for channels are being deleted permitting licensees to operate on any channel for which they are eligible. This action will eliminate the present requirement that the same station be licensed separately for each group of frequencies that it operates on. Subsequently, all RPU operations will be covered under one license.

Issue 2: Emission Limitations

9. Emission limitations control the amount of interference an adjacent channel user will experience. Two distinctly different forms of emissions are involved in this issue (emission measurement techniques will be addressed in a future OST bulletin):

A. Traditional frequency modulated signals with various maximum deviation limits.

$$\text{Attenuation} = 29 \text{ Log } \left[\frac{25}{11}\left(D + 2.5 - \frac{W}{2}\right)^2\right] \text{dB}$$

or 50 dB whichever is the lesser attenuation. Where: D is the displacement (kHz) from the center of the authorized bandwidth; and W is the channel bandwidth (kHz).

B. On any frequency removed from the channel edge by more than 2500 Hz: At least 43+10 Log (P) dB.

Issue 3: Frequency Coordination

12. API was concerned with the issue of frequency coordination and suggested that formal procedures be adopted which are similar to those for services in Part 90 of the Rules. Consistent with the decision in Docket 20189 not to impose formal frequency coordination procedures on the BRPS,[8] no formal procedures are being adopted in this *Order*. The channels between 152.855 and 153.365 MHz (previously referred to as the K1 channels) are shared with the Industrial Radio Service. BRPS licensees are secondary to Industrial Radio users on these frequencies and must correct any interference caused to Industrial Radio stations or cease operation. Furthermore, BRPS licensees must accept any interference caused by Industrial Radio stations. It is important that the Industrial Radio users be considered and be made aware of any BRPS activity on the shared channels.

13. All other comments addressing the issue of frequency coordination supported the present informal coordination procedures that have worked well for the BRPS in the past. Numerous references were made to the many voluntary Local Frequency Coordinating Committees (LFCC) and highly cooperative efforts of the broadcasters to make the fullest use of the scarce BRPS spectrum. These efforts include real-time frequency coordination during events when many channels are required to be shared, voluntary channel splitting in some congested areas,

B. Single sideband type signals with various bandwidth requirements (initial use is expected to be 5 kHz voice ACSB equipment).

10. Comments from Sideband Technology Inc. (STI) favored adopting the emission standards are proposed in the Private Radio item [5] for all RPU equipment. Changing the present emission standards for FM equipment was not proposed in the *Notice* and therefore is not appropriate at this time. To accommodate both FM and SSB type technologies, dual emission masks will be employed similar to those in the microwave bands.[6] The present emission standards for FM equipment will remain unchanged and new emission standards will be adopted for single sideband (SSB) equipment [7]

11. For other than FM technology equipment, a modified version of the above referenced emission mask is adopted. Emissions will be attenuated below the peak envelope power (P):

A. On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same channel edge, the following formula will apply:

[4] See FCC/OST TM-83-7, Amplitude Compandored Sideband Compared to Conventional Frequency Modulation for VHF Mobile Radio—Laboratory and Field Testing Results, Hank VanDeursen and Ralph Haller, October 1983. NTIS number PB84-116383, available from the National Technical Information Service, Springfield, Virginia.

[5] See *Comments of Sideband Technology*, para. 9; and also *Notice of Proposed Rule Making*, PR Docket No. 84-279, 49 FR 19074, (May 4, 1984).

[6] See, for example, Section 74.637.

[7] The emission standard proposed in the Private Radio item covered only 5 kHz bandwidth SSB equipment. Since it is contemplated that wider bandwidth SSB equipment may be required in the BRPS to provide program quality transmission, the formula for that emission standard was expanded to the general case, and is applicable for any bandwidth equipment.

[8] See *Report and Order* at 11.

request for waivers to operate narrowband technology equipment, and maintenance of local data bases for the coordination process. Another important argument presented by many parties is that local users are in the most advantageous position to determine the most efficient use of the spectrum with their knowledge of local terrain, general requirements, calendars of events, etc.

14. Support in favor of informal frequency coordination was overwhelming in the record. Broadcasters and LFCC's are to be commended for their appropriate efforts and the Commission will continue to rely on the present method of informal frequency coordination.

Issue 4: Narrow Bandwidth VHF Repeaters

15. Favorable comments were submitted concerning allowing the use of narrowband technology VHF repeaters. Although a repeater requires two channels, the total spectrum requirements for a 5 kHz bandwidth system will be only 10 kHz which is substantially less than the present 25 or 30 kHz present FM simplex channels. It is therefore appropriate to allow the operation of VHF repeaters which are capable of operating with a 5 kHz bandwidth technology. The repeaters may be installed in vehicles or at fixed sites.

Issue 5: Usage Restrictions on Certain Channels

16. Although many comments were received urging the removal of the "program only" usage restriction on the present R and S group channels, the record contains considerable concern for protection of on-the-air program material with an availability of channels having adequate bandwidth to provide acceptable transmission quality. Some comments indicated that the priority requirements of 74.403(b)[9] serve the same purpose, provided that the user with on-the-air material has immediate access to the channel when required. It appears that the present priority requirements should be sufficient to protect channels required for on-the-air program material. The restrictions which allow only program material and related cues on certain channels (the present R and S groups) will therefore be removed. Users will be expected to coordinate locally the use of channels in such a way that the appropriate protection is afforded to transmission of on-the-air material.

[9] Priority order: 1. Emergency communications; 2. Program material to be broadcast; 3. Cues and orders necessary for a broadcast; 4. Operational communications; and 5. Tests or drills.

Related Issue: Repeater Guard Receiver

17. Although the *Notice* did not specifically address this issue, the Society of Broadcast Engineers (SBE), in its comments, questioned the practicality of Section 74.436 which requires that a guard receiver "lock-out" the repeater if a signal is present on the repeater output frequency. Their comments indicate that: (1) Other services do not require guard receivers on repeaters; and (2) these receivers cause numerous operational problems at congested repeater sites where white noise, exceeding the 2 uV sensitivity level, spills over from adjacent channel transmitters. No opposition to the SBE's comments was noted in the reply comments. Therefore, the requirement for a guard receiver on BRPS repeaters will be deleted from § 74.436 of the *Rules*.

18. *Regulatory Flexibility Final Analysis.*

I. *Reason for action:* The current Rules restrict ways that broadcasters can implement new spectrum efficient technologies. Commission action such as a Developmental License or special waiver is now required for use of such equipment.

II. *The objective:* The Commission's proposals are designed to provide broadcast licensees more freedom to choose and implement new technologies in their efforts to make the most efficient use of the RPU spectrum.

III. *Legal basis:* Action is proposed in accordance with sections 303 (g) and (r) of the Communications Act of 1934, as amended, which charges the Commission to encourage the most effective use of radio in the public interest.

IV. *Description, potential impact, and number of small entities affected:* The proposed Rule changes should favorably affect broadcasters and spectrum efficient equipment manufacturers. No costs need be incurred by any broadcaster as a result of this action. The action provides opportunities for radio equipment manufacturers to sell new narrow band equipment.

V. *Recording, recordkeeping, and other compliance requirements:* None.

VI. *Federal Rules which overlap, duplicate, or conflict with this rule:* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:* The Commission's alternative is to maintain status quo. This alternative would not accomplish the beneficial objectives sought in this *Notice*.

Actions

19. The Secretary shall cause a copy of this *Report and Order*, including the initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*)

20. Accordingly, it is ordered, pursuant to the authority contained in Sections 4(i), 302, and 303 (g) and (r) of the Communications Act of 1934, as amended, that Part 74 of the Commission's Rules and Regulations are amended as set forth in the attached Appendix B, effective on the date specified in a future order to be issued by the Chief, Mass Media Bureau indicating that appropriate computer programs are available for implementing the new rules.

21. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Mass Media Bureau, (202) 632-0568.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments and/or reply comments were received from the following:

American Broadcasting Companies, Inc.
American Petroleum Institute
Association of Maximum Service Telecasters
CBS, Inc.
Mututal Broadcasting System (KDUZ)
National Association of Broadcasters
National Broadcasting Company, Inc.
National Radio Broadcasters Association
Sideband Technology, Inc.
Society of Broadcast Engineers
Special Industrial Radio Service Association, Inc.
Stephens Engineering Associates, Inc.
WFME Family Stations, Inc.
William F. Ruck, Jr. (KUSF-FM)
960 Radio, Inc.

Appendix B

PART 74—[AMENDED]

Part 74 of the Federal Communications Commission's Rules and Regulations are amended as follows:

1. Section 74.402 is amended by revising the section in its entirety to read as follows:

§ 74.402 Authorized frequencies.

Operation on all channels listed in this section (except: 26.07, 26.11, 26.45, 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, 455.99 MHz) shall be in accordance with the "priority of use" provisions in § 74.403(b). The channel will be assigned by its center frequency, channel bandwidth, and emission designator. The frequencies listed in this section represent the center of the channel or channel segment.

(a) The following channels (except 1606, 1622, and 1646 kHz) may be assigned for us by broadcast remote pickup stations using any emission (other than single sideband or pulse) that will be in accordance with the provisions of § 74.462. The channels 1606, 1622, and 1646 kHz are limited to A3E emission.

(1) MF Channels: 1606, 1622, and 1646 kHz; Maximum authorized channel bandwidth: 10 kHz; The channel 1606 kHz is subject to the condition listed in subparagraph (e)(1) of this Section.

(2) HF Channels: 25.87, 25.91, 25.95, 25.99, 26.03, 26.07, 26.09, 2.611, 26.13, 26.15, 26.17, 26.21, 26.23, 26.25, 26.27, 26.29, 26.31, 26.33, 26.35, 26.37, 26.39, 26.41, 26.43, 26.45, and 26.47 MHz; Maximum authorized channel bandwidth: 20 kHz, except the channels 25.87–26.03 MHz are 40 kHz; The channels 25.87–26.09 MHz are subject to the condition listed in subparagraph (e)(2) of this Section.

(3) VHF Channels: 166.25 and 170.15 MHz; Maximum authorized channel bandwidth: 25 kHz; These channels are subject to the condition listed in subparagraph (e)(8) of this Section.

(4) UHF Channels: 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, 455.99 MHz; Maximum authorized channel bandwidth: 10 kHz; These channels are subject to the condition listed in subparagraph (e)(9) of this Section.

(b) One or more of the following 5 kHz segments my be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462.

(1) VHF segments: 152.8575, 152.8625, 152.8675, 152.8725, 152.8775, 152.8825, 152.9175, 152.9225, 152.9275, 152.9325, 152.9375, 152.9425, 152.9775, 152.9825, 152.9875, 152.9925, 152.9975, 153.0025, 153.0375, 153.0425, 153.0475, 153.0525, 153.0575, 153.0625, 153.0975, 153.1025, 153.1075, 153.1125, 153.1175, 153.1225, 153.1575, 153.1625, 153.1675, 153.1725, 153.1775, 153.1825, 153.2175, 153.2225, 153.2275, 153.2325, 153.2375, 153.2425, 153.2775, 153.2825, 153.2875, 153.2925, 153.2975, 153.3025, 153.3375, 153.3425, 153.3475, 153.3525, 153.3575, and 153.362 MHz; Maximum authorized channel bandwidth: 30 kHz; These channels are subject to the conditions listed in paragraphs (e) (3), (4), and (5) of this section.

(2) VHF segments: 160.8625, 160.8675, 160.8725, 160.8775, 160.8825, 160.8875, 160.8925, 160.8975, 160.9025, 160.9075, 160.9125, 160.9175, 160.9225, 160.9275, 160.9325, 160.9375, 160.9425, 160.9475, 160.9525, 160.9575, 160.9625, 160.9675, 160.9725, 160.9775, 160.9825, 160.9875, 160.9925, 160.9975, 161.0025, 161.0075, 161.0125, 161.0175, 161.0225, 161.0275, 161.0325, 161.0375, 161.0425, 161.0475, 161.0525, 161.0575, 161.0625, 161.0675, 161.0725, 161.0775, 161.0825, 161.0875, 161.0925, 161.0975, 161.1025, 161.1075, 161.1125, 161.1175, 161.1225, 161.1275, 161.1325, 161.1375, 161.1425, 161.1475, 161.1525, 161.1575, 161.1625, 161.1675, 161.1725, 161.1775, 161.1825, 161.1875, 161.1925, 161.1975, 161.2025, 161.2075, 161.2125, 161.2175, 161.2225, 161.2275, 161.2325, 161.2375, 161.2425, 161.2475, 161.2525, 161.2575, 161.2625, 161.2675, 161.2725, 161.2775, 161.2825, 161.2875, 161.2925, 161.2975, 161.3025, 161.3075, 161.3125, 161.3175, 161.3225, 161.3275, 161.3325, 161.3375, 161.3425, 161.3475, 161.3525, 161.3575, 161.3625, 161.3675, 161.3725, 161.3775, 161.3825, 161.3875, 161.3925, and 161.3975 MHz; Maximum authorized channel bandwidth: 30 kHz; These channels are subject to the condition listed in paragraph (e)(6) of this section.

(3) VHS segments: 161.6275, 161.6325, 161.6375, 161.6425, 161.6475, 161.6525, 161.6575, 161.6625, 161.6675, 161.6725, 161.6775, 161.6825, 161.6875, 161.6925, 161.6975, 161.7025, 161.7075, 161.7125, 161.7175, 161.7225, 161.7275, 161.7325, 161.7375, 161.7425, 161.7475, 161.7525, 161.7575, 161.7625, 161.7675, and 161.7725 MHz; Maximum authorized channel bandwidth: 30 kHz; These channels are subject to the conditions listed in paragraphs (e) (4) and (7) of this section.

(4) UHF segments: 450.0275, 450.0325, 450.0375, 450.0425, 450.0475, 450.0525, 450.0575, 450.0625, 450.0675, 450.0725, 450.0775, 450.0825, 450.0875, 450.0925, 450.0975, 450.1025, 450.1075, 450.1125, 450.1175, 450.1225, 450.1275, 450.1325, 450.1375, 450.1425, 450.1475, 450.1525, 450.1575, 450.1625, 450.1675, 450.1725, 450.1775, 450.1825, 450.1875, 450.1925, 450.1975, 450.2025, 450.2075, 450.2125, 450.2175, 450.2225, 450.2275, 450.2325, 450.2375, 450.2425, 450.2475, 450.2525, 450.2575, 450.2625, 450.2675, 450.2725, 450.2775, 450.2825, 450.2875, 450.2925, 450.2975, 450.3025, 450.3075, 450.3125, 450.3175, 450.3225, 450.3275, 450.3325, 450.3375, 450.3425, 450.3475, 450.3525, 450.3575, 450.3625, 450.3675, 450.3725, 450.3775, 450.3825, 450.3875, 450.3925, 450.3975, 450.4025, 450.4075, 450.4125, 450.4175, 450.4225, 450.4275, 450.4325, 450.4375, 450.4425, 450.4475, 450.4525, 450.4575, 450.4625, 450.4675, 450.4725, 450.4775, 450.4825, 450.4875, 450.4925, 450.4975, 450.5025, 450.5075, 450.5125, 450.5175, 450.5225, 450.5275, 450.5325, 450.5375, 450.5425, 450.5475, 450.5525, 450.5575, 450.5625, 450.5675, 450.5725, 450.5775, 450.5825, 450.5875, 450.5925, 450.5975, 450.6025, 450.6075, 450.6125, 450.6175, 450.6225, 455.0275, 455.0325, 455.0375, 455.0425, 455.0475, 455.0525, 455.0575, 455.0625, 455.0675, 455.0725, 455.0775, 455.0825, 455.0875, 455.0925, 455.0975, 455.1025, 455.1075, 455.1125, 455.1175, 455.1225, 455.1275, 455.1325, 455.1375, 455.1425, 455.1475, 455.1525, 455.1575, 455.1625, 455.1675, 455.1725, 455.1775, 455.1825, 455.1875, 455.1925, 455.1975, 455.2025, 455.2075, 455.2125, 455.2175, 455.2225, 455.2275, 455.2325, 455.2375, 455.2425, 455.2475, 455.2525, 455.2575, 455.2625, 455.2675, 455.2725, 455.2775, 455.2825, 455.2875, 465.2925, 455.2975, 455.3025, 455.3075, 455.3125, 455.3175, 455.3225, 455.3275, 455.3325, 455.3375, 455.3425, 455.3475, 455.3525, 455.3575, 455.3625, 455.3675, 455.3725, 455.3775, 455.3825, 455.3875, 455.3925, 455.3975, 455.4025, 455.4075, 455.4125, 455.4175, 455.4225, 455.4275, 455.4325, 455.4375, 455.4425, 455.4475, 455.4525, 455.4575, 455.4625, 455.4675, 455.4725, 455.4775, 455.4825, 455.4875, 455.4925, 455.4975, 455.5025, 455.5075, 455.5125, 455.5175, 455.5225, 455.5275, 455.5325, 455.5375, 455.5425, 455.5475, 455.5525, 455.5575, 455.5625, 455.5675, 455.5725, 455.5775, 455.5825, 455.5875, 455.5925, 455.5975, 455.6025, 455.6075, 455.6125, 455.6175, 455.6225 MHz. Maximum authorized channel bandwidth: 50 kHz.

(c) One or two of the following 25 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462. Users committed to 50 kHz bandwidths and transmitting program material will have primary use of these channels.

(1) UHF segments: 450.6375, 450.6625, 450.6875, 450.7125, 450.7375, 450.7625, 450.7875, 450.8125, 450.8375, 450.8625, 455.6375, 455.6625, 455.6875, 455.7125, 455.7375, 455.7625, 455.7875, 455.8125, 455.8375, 455.8625 MHz. Maximum authorized channel bandwidth: 50 kHz.

(d) One or two of the following 50 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of Section 74.462. Users committed to 100 kHz bandwidths and transmitting program material will have primary use of these channels.

(1) UHF segments: 450.900, 450.950, 455.900, and 455.950 MHz; Maximum authorized channel bandwidth: 100 kHz.

(e) Conditions on Broadcast Remote Pickup Service channel usage as referred to in subparagraphs (a) through (d) above:

(1) Operation is subject to the condition that no harmful interference is caused to the reception of AM broadcast stations.

(2) Operation is subject to the condition that no harmful interference is caused to stations in the broadcast service.

(3) Operation is subject to the condition that no harmful interference is caused to stations operating in accordance with the Table of Frequency Allocations set forth in Part 2 of the Commission's Rules and Regulations. Applications for licenses to use frequencies in this band must include statements showing what procedures will be taken to ensure that interference will not be caused to stations in the Industrial Radio Services.

(4) These frequencies will not be licensed to network entities.

(5) These frequencies will not be authorized to new stations for use on board aircraft.

(6) These frequencies are allocated for assignment to broadcast remote pickup stations in Puerto Rico or the Virgin Islands only.

Note.—These frequencies are shared with Public Safety and Land Transportation Radio Services.

(7) These frequencies may not be used by broadcast remote pickup stations in Puerto Rico or the Virgin Islands. In other areas, certain existing stations in the Public Safety and Land Transportation Radio Services have been permitted to continue operation on these frequencies on condition that no harmful interference is caused to broadcast remote pickup stations.

(8) Operation on the frequencies 166.25 MHz and 170.15 MHz is not authorized: (i) Within the area bounded on the west by the Mississippi River, on the north by the parallel of latitude 37 degrees 30 minutes N., and radius equal to the air-line distance between Springfield, Ill., and Montgomery, Alabama, subtended between the foregoing west and north boundaries; (ii) Within 150 miles (241 KM) of New York City; and, (iii) In Alaska or outside the continental United States; and is subject to the condition that no harmful interference is caused radio stations in the band 162–174 MHz.

(9) The use of these frequencies is limited to operational communications, including tones for signaling and for remote control and automatic transmission system control and telemetry.

(f) License applicants shall request assignment of only those channels, both in number and bandwidth, necessary for satisfactory operation and for which the system is equipped to operate. However, it is not necessary that each transmitter within a system be equipped to operate on all frequencies authorized to that licensee.

(g) Remote pickup stations or systems will not be granted exclusive channel assignments. The same channel or channels may be assigned to other licensees in the same area. When such sharing is necessary, the provisions of § 74.403 shall apply.

(h) Each authorization for a new broadcast remote pickup station or system shall require the use of type accepted equipment.

2. Section 74.403 will be amended by revising paragraph (b) to read as follows:

§ 74.403 Frequency selection to avoid interference.

* * * * *

(b) The following order of priority of transmission shall be observed on all channels except: 26.07, 26.11, 26.45, 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, and 455.99 MHz:

* * * * *

3. Section 74.432 is amended by revising paragraphs (c) and (j) and subparagraphs (c)(1), (c)(2), and (c)(7) and (j) to read as follows:

§ 74.432 Licensing requirements and procedures.

* * * * *

(c) Remote pickup stations and systems will be licensed for use of a specified frequency as listed in § 74.402 as follows:

(1) Base stations may be licensed as automatic relay stations, and, as such, will be separately licensed. An automatic relay station will be licensed to operate only on frequencies within the UHF band. However, narrowband technology equipment with emissions contained within a 5 kHz channel may be authorized for use as a base or mobile automatic relay station on channels in the VHF band (except 166.25 and 170.15 MHz). Each automatic relay station shall be operated in accordance with the provisions of § 74.436. A licensee may be authorized to operate more than one automatic relay station; however, no more than two VHF and two UHF channels will be assigned a licensee for use by such stations in a single area. Automatic relay stations shall operate in accordance with the priorities prescribed in § 74.403(b).

(2) Base stations may be authorized to provide one-way or two-way voice communications between the studio and transmitter of a broadcast station, the licensee of which is also the licensee of any aural or television broadcast STL station used for program transmission between the same two points, or to provide such voice communications between the point of origin and the termination of an aural or television intercity relay system. Automatic relay systems will not be authorized for use with these systems. Operation of these systems shall be limited to the channels 26.07, 26.09, 26.11, 26.13, 26.45, and 26.47 MHz.

* * * * *

(7) One or more fixed stations operating on 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, and 455.99 MHz will be licensed as a system for control and telemetry signals between a remote control point and the broadcast site or between automatic transmission monitoring and alarm points and the broadcast site.

* * * * *

(j) A remote pickup station or system may be authorized solely for operational communications provided such operation is confined to the channels of 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, and 455.99 MHz.

* * * * *

4. Section 74.436 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 74.436 Special requirements for automatic relay stations.

An automatic relay station shall, in addition to the relay transmitter, include a control unit and one or more relay receivers.

(a) The licensee shall institute appropriate operating procedures to prevent interference to other stations operating on the automatic relay output channel.

* * * * *

5. Section 74.461 is amended by revising paragraph (a) to read as follows:

§74.461 Transmitter power.

(a) Transmitter power is the power at the transmitter output terminals and delivered to any impedance-matched, radio frequency load. For the purpose of this subpart, the transmitter power is the unmodulated carrier power except that

for SSB or pulse transmissions, peak envelope power shall be used.

* * * * *

6. Section 74.462 is amended by revising paragraph (c) introductory text, by deleting paragraph (e), by revising and redesignating the existing paragraph (d) as paragraph (e), and by adding a new paragraph (d) to read as follows:

§ 74.462 Authorized bandwidth and emissions.

* * * * *

(c) For all emissions except single sideband and pulse, the mean power of emissions shall be attenuated below the mean transmitter power in accordance with the following schedule:

* * * * *

(d) For single sideband and pulse signals, the peak power of emissions shall be attenuated below the transmitter power in accordance with the following schedule:

(1) On any frequency 502 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$$\text{Attenuation} = 29 \text{ Log } \left[\frac{25}{11} \left(D + 2.5 - \frac{W}{2} \right)^2 \right] \text{dB}$$

or 50 dB whichever is the lesser attenuation. Where: D is the displacement (kHz) from the center of the authorized bandwidth; and W is the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43 + 10 Log (P) dB.

(e) In the event a station's emissions outside its authorized channel cause harmful interference, the Commission may, at its discretion, require the licensee to take such further steps as may be necessary to eliminate the interference.

[FR Doc. 84-29921 Filed 11-14-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Critical Habitat for the Amargosa Vole

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and critical habitat for the Amargosa vole, a small mammal. This vole has been eliminated from portions of its range as a result of human encroachment and the burning and overgrazing of its habitat. It became so rare that it was once thought extinct, and is now known only from bulrush marshes near Tecopa and Tecopa Hot Springs in southeastern Inyo County, California. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for the Amargosa vole.

EFFECTIVE DATE: The effective date of this rule is December 17, 1984.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours, by appointment, at the Service's Regional Office, Lloyd 500 Building, Suite 1692, 500 Northeast Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The species *Microtus californicus*, commonly known as the California vole, is a small mammal occurring in western Oregon, California, and northern Baja California; 17 subspecies are currently recognized (Hall 1981). The apparently most geographically restricted subspecies is *M. c. scirpensis*, the Amargosa vole. It was described by Bailey (1900) from specimens collected at a spring near Shoshone on the Amargosa River, southeastern Inyo County, California. It is isolated from the rest of the species by a broad expanse of unsuitable, arid land. It differs from most other subspecies by its brighter coloration. The upper parts are pallid neutral gray, the underparts are smoky gray, the tail is brown above and grayish below, and the feet are brownish gray. In six adult specimens, total length averaged about 8 inches (203 millimeters) and tail length averaged about 2½ inches (65 millimeters).

Not long after its discovery, the Amargosa vole was extirpated from the Shoshone area; the marsh that it inhabited was burned over and made into a hog pasture (Kellogg 1918). The subspecies was considered extinct until additional specimens were collected in the 1930's, and then seemed to disappear again, but was rediscovered in the 1970's in marshes along the Amargosa River near Tecopa and Tecopa Hot Springs, southeastern Inyo County (Bleich 1979, 1980; Could and Bleich 1977). These marshes, the only currently known habitat of the Amargosa vole, are characterized by a dominance of bulrush (*Scirpus olneyi*) vegetation and have some open water nearby. In this otherwise arid part of California, bulrush marshes are restricted to the vicinity of springs or portions of the Amargosa River with permanent flow. This river is dry throughout most of its course. Human encroachment in the area, with consequent burning of marshes, overgrazing, and water diversion, is jeopardizing remnant habitat. Surviving colonies of voles are highly localized and contain small numbers of animals.

In the **Federal Register** of June 18, 1980 (45 FR 41172–41173), the Service published a notice accepting a petition to add the Amargosa vole to the U.S. List of Endangered and Threatened Wildlife, and announcing a status review of the animal. In the **Federal Register** of December 30, 1982 (47 FR 58454–58460), the Amargosa vole was included in category 1 of the Service's Review of Vertebrate Wildlife, meaning that there was substantial information on hand to support the biological appropriateness of a listing proposal. In the **Federal Register** of August 29, 1983 (48 FR 39090–39093), the Service published a proposed rule to determine endangered status and critical habitat for the Amargosa vole.

Summary of Comments and Recommendations

In the proposed rule of August 29, 1983, and associated notifications, all interested parties were requested to submit information that might contribute to development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other concerned parties were contacted and requested to comment. A newspaper notice, inviting public comment, was published in the *Los Angeles Times* on September 15, 1983.

Five comments were received. The California Department of Fish and Game, the California Department of Water Resources, and the Friends of Wildlife Organization (Monterey, California) supported the proposal. The California Department of Transportation observed that there are Federal-aid roadways within the overall boundaries of the proposed critical habitat, upon which repair work might become necessary, and requested to be informed of precautions that should be taken during such work. The Service greatly appreciates this concern, and has expressed its willingness to provide guidelines to the California Department of Transportation as specific cases develop.

The District Manager, California Desert District, Bureau of Land Management (BLM), questioned whether Federal listing of the Amargosa vole is necessary, considering that two detailed management plans have been developed for protection of wildlife and associated habitat in the involved area, and that the Bureau is cooperating with the Service and the California Department of Fish and Game to prevent adverse impacts to the vole from geothermal leasing activity. Should listing proceed, the District Manager recommended that the following components of the proposed overall critical habitat zone be excluded, because they do not contain wetland habitats necessary to support vole populations: T 20 N R 7 E NE¼ and N½SE¼ Sec. 4, W½W½ Sec. 5, SW¼ Sec. 9, SW¼ Sec. 10; T 21 N R 7 E Sec. 20, N½, N½S½, and S½SE¼ Sec. 28, NE¼, NE¼SE¼, and W½ Sec. 29, W½ Sec. 32, N½NE¼, SE¼NE¼, and SE¼ Sec. 33.

The Service appreciates the efforts that BLM is making to protect the Amargosa vole and its habitat. However, management work being done by an agency is related to only one of the five factors discussed below that must be considered in making the determination of whether to add a species to the List of Endangered and Threatened Wildlife. The Amargosa vole was brought to the brink of extinction by a variety of problems, mostly not related to geothermal leasing or other activities by BLM. Federal listing will insure that protection is permanent, and will provide the basis for a coordinated recovery effort by all involved agencies. With regard to the critical habitat, the Service has reviewed the situation and now agrees that the following areas do not contain significant vole habitat: T 20 N R 7 E SW¼ Sec. 9, SW¼ Sec. 10; T 21 N R 7 E Sec. 20, N½ Sec. 28, NE¼ Sec. 29. These areas are thus not being included in the overall critical habitat zone designated for the Amargosa vole. The other areas indicated by BLM, however, do contain springs, marshes, or other elements needed for the survival of the vole, and are thus being retained in the critical habitat designation.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Amargosa vole should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Amargosa vole (*Microtus californicus scirpensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Within the arid region in question, most human activity occurs near permanent water sources. Therefore, the marsh habitat of the Amargosa vole has been reduced and modified by human encroachment. Burning and livestock grazing is occurring in much of the habitat. The spring at Shoshone has been diverted and channelized to allow for construction of a high school swimming pool. The development of springs in the Tecopa Hot Springs area for mineral baths, and the spread of mobile home courts, have greatly modified or eliminated suitable habitat in that area. Such modification of springs and marshes has already caused the extinction of the Tecopa pupfish, a small fish endemic to the area (see **Federal Register** of January 15, 1982 (47 FR 2317–2319)).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a problem.

C. *Disease or predation.* Not known to be a problem.

D. *The inadequacy of existing regulatory mechanisms.* The California State Fish and Game Commission lists the Amargosa vole as endangered and, therefore, regulations are in effect that prohibit taking. The main problem of the vole, however, is not direct taking, but loss of habitat. Moreover, although the Bureau of Land Management is taking the vole's well-being into account in developing its management plans for the area, there is a considerable amount of vole habitat outside of Federal ownership that thus remains unaffected by BLM planning.

E. *Other natural or manmade factors affecting its continued existence.* Competition from introduced species may have been a contributing factor in the decline of the Amargosa vole at Shoshone. The house mouse (*Mus musculus*) was reported by Bleich (1980) as very common in marsh habitats around Shoshone.

The decision to determine endangered status for the Amargosa vole was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. Critical habitat is being determined because it would be prudent to do so and because the areas of habitat utilized by the species are generally well defined.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. Critical habitat, as defined by section 3 of the Act and at 50 CFR Part 424, means (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species.

The critical habitat of the Amargosa vole falls within an overall zone of 4,520 acres in southeastern Inyo County, California. Within this zone, the critical habitat consists of marshes and associated land and water along the Amargosa River, from just north of Tecopa Hot Springs to the Amargosa Canyon, just south of Tecopa.

In considering designation of critical habitat, 50 CFR 424.12(b) requires focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species involved. With respect to the Amargosa vole, the areas designated as critical habitat satisfy all known criteria for the ecological, behavioral, and physiological requirements of the species. The marsh vegetation (primarily bulrush) provides sufficient cover for escape from predators and also serves as a food source. Small populations of

the Amargosa vole are still able to survive and reproduce in the remaining suitable marsh habitat around Tecopa and Tecopa Hot Springs. These areas may not, however, include the entire habitat of the Amargosa vole, and modifications to the critical habitat designation may be proposed in the future.

Section 4(b)(8) of the Act requires that, to the maximum extent practicable, any determination of critical habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be affected by such designation. In the case of the Amargosa vole, such activities including burning or otherwise removing marsh vegetation, overgrazing of marsh or adjacent vegetation, pumping of ground water supplies, diverting or channelizing springs or the Amargosa River, road repair work, off-road vehicle use in or adjacent to marsh areas, use of herbicides or rodenticides, introduction of exotic plant or animal species, and exploration for and exploitation of geothermal resources.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as critical habitat. In conjunction with the proposal to determine endangered status and critical habitat for the Amargosa vole, the Service notified Federal agencies that may have jurisdiction over the involved areas. These agencies and other interested parties were requested to submit information on economic or other impacts of the proposed measure. In response, the District Manager, California District, Bureau of Land Management (BLM) indicated that determination of endangered status and critical habitat for the Amargosa vole would result in consultation between BLM and the Service regarding the effects of geothermal leasing activity.

Additional information obtained by the Service indicates that approximately 2,060 acres of the overall critical habitat zone are administered by BLM. Neither the critical habitat zone nor immediately surrounding lands are now known to contain geothermal resources. However, three leases for geothermal exploration in the area have been issued by BLM, and applications for four others are under consideration. The three current leases are not active and are not expected by BLM to become a threat to the critical habitat. The four lease applications have stipulations to avoid disturbance of the habitat of proposed or listed endangered or threatened species. In addition, BLM already has detailed management plans for the protection of wildlife and associated habitat in the involved area. For these reasons, designation of critical habitat is not expected to have significant economic or other impacts.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with States, and requires recovery actions. Such actions are initiated by the Service following listing. The protection required by Federal agencies, and taking and harm prohibitions, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29989). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that may be affected in this regard, with respect to the determination of endangered status for the Amargosa vole, are described above under "Critical Habitat."

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions that apply to all endangered wildlife. These prohibitions, in part, will make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any Amargosa vole in interstate or foreign commerce. It also will be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions will apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Endangered species can be taken for scientific purposes, to enhance the propagation or survival of the species, or for incidental take purposes. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Service will now review the Amargosa vole to determine whether it should be considered for placement upon the Annex of the Convention on Nature Protection in the Western Hemisphere, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that his designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on a Determination of Effects that is available at the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

References

Bailey, V. 1900. Revision of American voles of the genus *Microtus*. N. Amer. Fauna 17:1–88.

Bleich, V.C. 1979. *Microtus californicus scirpensis* not extinct. J. Mamm. 60:851–852

Bleich, V.C. 1980. Amargosa vole study. Final report to California Dept. Fish and Game, W–54–R–10, 8 pp.

California Department of Fish and Game. 1980. At the crossroads 1980—a report on California's endangered and rare fish and wildlife. 147 pp.

Gould, G.I., and V.C. Bleich. 1977. Amargosa vole study. Report to California Dept. Fish and Game, W–54–R–9, 4 pp.

Hall, E.R. 1981. The mammals of North America. John Wiley and Sons, New York, 2 Vols.

Kellogg, R. 1918. A review of the *Microtus californicus* group of meadow mice. Univ. California Publ. Zool. 21:1–42.

Author

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h) is amended by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened		Status	When listed	Critical habitat	Special rules
Common name	Scientific name							
Vole, Amargosa	*Microtus californicus scirpensis*	U.S.A. (CA)	Entire		E	166	17.95(a)	NA

3. Section 17.95(a), "Mammals," is amended by adding the critical habitat of the Amargosa vole after that of the Morro Bay kangaroo rat as follows:

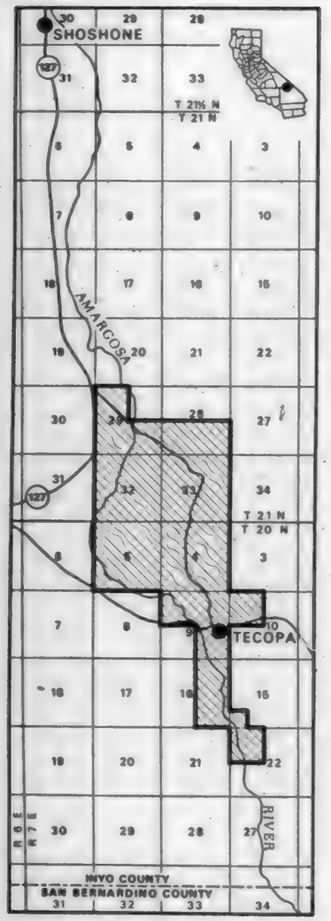
§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

Amargosa vole (*Microtus californicus scirpensis*).

California. Marshes and associated land and water in the following areas of Inyo County (San Bernardino Meridian): T20N R7E Sec. 4, 5, N½ and SE¼ Sec. 9, NW¼ Sec. 10, SW¼SW¼ Sec. 15, E½ Sec. 16, NW¼ Sec. 22; T21N R7E S½ Sec. 28, S½ and NW¼ Sec. 29, Sec. 32, 33.

Within these areas, the major constituent elements that are known to require special management considerations or protection are marsh vegetation (primarily bulrushes of the genus *Scirpus*), springs, and some open water along the Amargosa River, which provide escape cover and an adequate food supply.



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 41046-4149]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of emergency change in annual specification.

SUMMARY: NOAA issues a notice of emergency change in an annual specification for the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). This action increases the annually selected 1984 Mid-Atlantic surf clam quota by 200,000 bushels, from 2,350,000 to 2,550,000 bushels. This action is intended to prevent a lengthy closure in the Mid-Atlantic Area surf clam fishery during the last quarter of the 1984 fishing year.

EFFECTIVE DATE: November 9, 1984 until February 7, 1985 unless superseded by subsequent notice setting the 1985 annual specifications.

ADDRESS: Copies of the FMP are available from John C. Bryson, Executive Director, Mid-Atlantic Regional Fishery Management Council, 2112/2115 Federal Building, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde (Acting Surf Clam Management Coordinator), 617-281-3600, ext 273.

SUPPLEMENTARY INFORMATION: This notice of emergency change was prepared by NMFS at the request of the Mid-Atlantic Fishery Management Council. The purpose of this action is to increase the 1984 surf clam quota for the Mid-Atlantic Area from 2,350,000 bushels (48 FR 57303, Dec. 29, 1983) to 2,550,000 bushels. The additional 200,000 bushels will maintain the 1984 surf clam quota within the rule-specified annual range of 1,800,000 to 2,900,000 bushels. This emergency action should lessen the need for a closure during the last quarter of this fishing year.

* * * * *

Dated: September 25, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-28809 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-55-M

This action is being implemented using emergency authority provided to the Secretary under section 305(e) of the Magnuson Fishery Conservation and Management Act. At its September 1984 meeting, the Mid-Atlantic Fishery Management Council voted unanimously to increase the mid-Atlantic quota by up to 200,000 bushels.

Harvest of surf clams in the Mid-Atlantic Area has been much greater during this year than in previous years because of significant numbers of surf clams from the strong 1976 and 1977 year classes. Additionally, the recent reduction of the minimum legal size for surf clams, from 5⅛ inches to 5¼ inches, will elevate the catch per hour fished in the last quarter of the 1984 fishing year.

The total surf clam resource in the Mid-Atlantic Area within the fishery conservation zone has recovered to levels higher than those observed in the mid-1960's. An adequate resource currently exists to support the surf clam fishery for more than ten years, thereby approaching the achievement of Objective No. 1 of the FMP, which states, "Rebuild surf clam populations to allow eventual harvesting approaching the 50 million pound level, which is the present best estimate of the maximum sustainable yield over the range of the resource based on the average yearly catch from 1960-1976." The additional 200,000 bushels will allow harvest of a total of 2,550,000 bushels, 350,000 bushels below the upper limit of the annual range in the FMP.

For the reasons specified above, the Secretary issues this notice of emergency change for a period of 90 days unless superseded by a subsequent notice specifying the 1985 quota.

Classification

The Assistant Administrator, NOAA, has determined that this action is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that, due to the possibility of imminent closure of the fishery and the potential for economic dislocation, the reasons justifying promulgation of this action on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of this emergency action, under the provision of section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this action does not directly affect the coastal zone of any State with an approved coastal zone management program.

This emergency action is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This action is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

This action increases the quota within the scope of the optimum yield range set forth in the FMP. As such, the Assistant Administrator has determined that it is categorically excluded from the requirement to prepare an environmental document, as provided by NOAA Directive 02-10.

This action does not contain a collection of information requirement subject to the Paperwork Reduction Act.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because it is being issued without opportunity for prior public comment.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 84-28808 Filed 11-9-84; 12:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 222
Thursday, November 15, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-3]

Proposed Alteration and Revocation of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of several VOR Federal Airways located in the vicinity of Birmingham, AL, by deleting some alternate airway segments and renumbering other airway segments. This action supports our agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway designations from the National Airspace System.

DATE: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-3, Federal Aviation Administration, P.O. Box 20636, Atlanta GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Traffic Rules Branch (ATT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of Birmingham, AL, by deleting all alternate route designations, renumbering some airway segments and revoking airway segments that are not required. This action supports our agreement with ICAO to eliminate all alternate airway designations from the National Airspace System. This proposal was subdivided into three parts because of the number of actions required in the original request submitted by the Regional Office. (ASD 84-AWA-1 49 FR 33274 and ASD 84-AWA-2 49 FR 36869) Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V-159 [Amended]

By removing the words "Ocala, FL, including a S alternate from INT Vero Beach 319° and Melbourne, FL, 298° radials, to Ocala, via INT Melbourne 298° and Ocala 145° radials; Cross City, FL; Greenville, FL; including an east alternate from Ocala to Greenville via Gainesville, FL, excluding that airspace above 7,000 feet NSL between Gainesville and Greenville;" and substituting the words "Ocala, FL; Cross City, Fl; Greenville, FL;"

V-537 [New]

From Vero Beach, FL, via INT Vero Beach 319 °T (319 °M) and Melbourne, FL, 298 °T (300 °M) radials; INT Melbourne 298 °T (300 °M) and Ocala, FL 145 °T (145 °M) radials; Ocala; Gainesville, FL; to Greenville, FL.

V-225 [Amended]

By removing the words "Fort Myers, Fl, including an E alternate from Key West, 30 miles, 77 miles 17 AGL to Fort Myers;" and substituting the words "Fort Myers, FL;"

V-539 [New]

From Key West, FL, via INT Key West 013 °T (012 °M) and Fort Myers, FL, 163 °M) radials; to Fort Myers.

V-311 [Revised]

From Wiregrass, GA, via INT Wiregrass 002 °T (360 °M) and La Grange, GA, 191 °T (190 °M) radials; to La Grange. From INT Toccoa, GA, 222 °T (222 °M) and Electric City, SC, 274 °T (274 °M) radials; Electric City, Greenwood, SC; to Columbia, SC.

V-278 [Amended]

By removing the words "Vulcan, AL, including a S alternate from Bigbee to Vulcan via INT Bigbee 082° and Tuscaloosa, AL, 304° radials, and Tuscaloosa, excluding the airspace between the main and this alternate airway." and substituting the words "to Vulcan, AL."

V-245 [Amended]

By removing the words "Bigbee, MS, excluding the airspace at and above 8,000 feet MSL from Jackson to Bigbee." and substituting the words "Bigbee, MS; INT Bigbee 082 °T (076 °M) and Tuscaloosa, AL, 304 °T (301 °M) radials; to Tuscaloosa."

V-325 [Amended]

By removing the words "Muscle Shoals, AL, including an E alternate via INT Gadsden 318° and Decatur, AL, 130° radials, and Decatur." and substituting the words "to Muscle Shoals, AL."

V-541 [New]

From Gadsden, AL, via INT Gadsden 318 °T (316 °M) and Decatur, AL, 130 °T (127 °M) radials; Decatur; to Muscle Shoals, AL.

V-455 [Revised]

From New Orleans, LA, via Picayune, MS; Eaton, MS; to Meridian, MS.

V-114 [Amended]

By removing the words "to New Orleans, LA." under the pending amendment and substituting the words "New Orleans, LA; INT New Orleans 070 °T (064 °M) and Gulfport, MS, 247 °T (245 °M) radials; Gulfport; INT Gulfport 344 °T (342 °M) and Eaton, MS, 171 °T (166 °M) radials; to Eaton."

V-543 [New]

From New Orleans, LA, via INT New Orleans 357 °T (351 °M) and Eaton 221 °T (216 °M) radials; Eaton; INT Eaton 010 °T (005 °M) and Meridian, MS, 221 °T (216 °M) radials; Meridian.

V-54 [Revised]

From Waco, TX, Scurry, TX; Quitman, TX; Texarkana, AR; INT Texarkana 052 °T (045 °M) and Little Rock, AR, 235 °T (230 °M) radials; Little Rock; Holly Springs, MS; Muscle Shoals, AL; Rocket, AL; Chattanooga, TN; Harris, GA; Spartanburg, SC; to Fort Mill, SC.

V-56 [Amended]

By removing the words ", including a south alternate via INT of Augusta 103° and Columbia 236° radials"

V-115 [Amended]

By removing the words ", including a west alternate via INT Chattanooga 028° and Knoxville 243° radials"

V-140 [Amended]

By removing the words "Razorback, AR, including a N alternate via INT Tulsa 059° and Razorback 284° radials;" and substituting the words "Razorback, AR;"

V-185 [Amended]

By removing the words "Knoxville, including an E alternate from Sugarloaf Mountain to Knoxville via INT Sugarloaf Mountain 329° and Knoxville 069° radials." and substituting the words "to Knoxville."

V-241 [Amended]

By removing the words "; including a west alternate from Wiregrass via INT Wiregrass 002° and LaGrange 191° radials, and LaGrange"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 7, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-29886 Filed 11-14-84; 8:45 am]
BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-AAL-13]

Proposed Establishment of Transition Area; Kipnuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Kipnuk, AK. The intended effect of the proposed action is to provide controlled airspace from 700 feet above the surface for aircraft executing approach and departure procedures, missed approaches, and the prescribed holding procedure.

DATES: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-13, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AAL-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with

FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Kipnuk, AK, to provide controlled airspace from 700 feet above the surface for the benefit of aircraft conducting IFR activity. A VOR/DME has been installed at Kipnuk, AK, and is due to be commissioned in January, 1985. Two instrument approach procedures have been developed using these navigation aids. A transition area is needed to provide protected airspace for the approach and departure procedures, missed approaches, and the prescribed holding procedure. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Kipnuk, AK [New]

That airspace extending upward from 700 feet above the surface within 9.5 miles southwest and 4.5 miles northeast of the 337° radial from the Kipnuk VOR (lat. 59°56'36.95" N., long. 164°01'55.48" W.), extending from the VOR to 18.5 miles northwest of the VOR; and within 9.5 miles northeast and 4.5 miles southwest of the 154° radial and 337° radial from the Kipnuk VOR, extending from 1 mile north of the VOR to 18.5 miles southeast of the VOR.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C. on November 7, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-29888 Filed 11-14-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 73

[Airspace Docket No. 84–ANM–19]

Proposed Establishment of Restricted Area; Guernsey, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new Restricted area R–7001C directly above existing Restricted Areas R–70001A and R–7001B, to extend vertically from 23,500 feet MSL to 30,000 feet MSL. This proposal would accommodate the high angle fire of various weapons and permit maximum firing capability of the weapons. The proposed Restricted Area R–7001C would be used only when required which is approximately 25 percent of the total time Restricted Area R–7001B is used.

DATES: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84–ANM–19, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administation, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–19." the postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.151 of Part 71 and § 73.70 of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish new Restricted Area R–7001C Guernsey, WY. R–7001C will also be added to the Continental Control Area. The Wyoming Army National Guard has requested an increase of airspace to 30,000 feet MSL to accommodate the high angle fire of M110 8" Self Propelled Artillery Howitzers, with extended range modification. The maximum ordinate of the weapon is approximately 23,000 feet above ground level (AGL). The ceiling of existing Restricted Area R–7001B is 23,500 feet MSL. In order to achieve maximum firing capability of the weapon within existing Restricted Area R–7001B (ground elevation 5,000 feet MSL), and provide a 2,000 foot safety buffer zone, it will be necessary to restrict airspace to 30,000 feet MSL. The proposal also would correct § 71.151 by deleting R–7001 and adding R–7001B to the Continental Control Area. These actions were inadvertently omitted from a prior amendment (44 FR 34114). Section 71.151 of Part 71 and section 73.70 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Continental control area and restricted areas, aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.151 of Part 71 and § 73.70 of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

71.151

R–7001 Guernsey, WY [Revoked]
R–7001B Guernsey, WY [New]
R–7001C Guernsey, WY [New]

73.70

R–7001C Guernsey, WY [New]

Boundaries. Beginning at lat. 42°27'30" N., long. 104°52'30" W.; to lat. 42°27'30" N., long. 104°42'30" W.; to lat. 42°22'30" N., long. 104°42'30" W.; to lat. 42°20'30" N., long. 104°52'30" W.; to the point of beginning.
Designated altitudes. 23,500 feet MSL to 30,000 feet MSL.
Time of designation. Intermittent, 24 hours in advance by NOTAM.
Controlling agency. FAA, Denver ARTCC
Using agency. Adjutant general, State of Wyoming

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 7, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-29888 Filed 11-14-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Parts 71 and 73

[Airspace Docket No. 84–ASO–22]

Proposed Alteration of Restricted Area, Fort Campbell, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Restricted Areas R–3701 A and B and R–3702 A and B, to establish R–3702C, and to revoke R–3701C and R–3703 A, B and C located in the vicinity of Fort Campbell, KY. After reviewing their overall training and operational requirements, the Department of the Army has made a decision to reduce the size of the special use airspace. This action would return airspace to the National Airspace System (NAS).

DATE: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 84–ASO–22, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours

at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ASO–22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.151 of Part 71 and § 73.37 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the descriptions of Restricted Areas R–3701A and B and R–3702A and B, to establish R–3702C, and to revoke Restricted Areas R–3701C and R–3703A, B and C. The Department of the Army has performed a self-analysis of its overall training missions and operational requirements with respect to special use airspace. As a result, the Department of the Army has implemented several procedural changes which require less airspace. The airspace no longer required by the Army is being returned to the NAS for public use. This action reduces the burned on the public by returning airspace for public use. Section 71.151 of Part 71 and § 73.37 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation Safety Continental control area and restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.151 of Part 71 and § 73.37 of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

§ 71.151

R–3701C Fort Campbell, KY [Revoked]
R–3703C Fort Campbell, KY [Revoked]

§ 73.37

R–3701A Fort Campbell, KY [Amended]

Boundaries. Beginning at lat. 36°39'01" N., long. 87°34'15" W.; to lat. 36°39'01" N., long. 87°32'27" W.; to lat. 36°39'05" N., long. 87°31'18" W.; to lat. 36°39'20" N., long. 87°30'35" W.; to lat. 36°39'08" N., long. 87°28'57" W.; to lat. 36°39'18" N., long. 87°28'41" W.; to lat. 36°37'54" N., long. 87°28'38" W.; to lat. 36°37'09" N., long. 87°28'57" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°34'15" W.; to the point of beginning.

R–3701B Fort Campbell, KY [Amended]

Boundaries. Beginning at lat. 36°39'01" N., long. 87°34'15" W., to lat. 36°39'01" N., long. 87°32'27" W.; to lat. 36°39'05" N., long. 87°31'18" W.; to lat. 36°39'20" N., long. 87°30'35" W.; to lat. 36°39'08" N., long. 87°28'57" W.; to lat. 36°39'18" N., long. 87°28'41" W.; to lat. 36°37'54" N., long. 87°28'38" W.; to lat. 36°37'09" N., long. 87°28'57" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°34'15" W.; to the point of beginning.

R–3701C Fort Campbell, KY [Revoked]

R–3702A Fort Campbell, KY [Amended]

Boundaries. Beginning at lat. 36°32'00" N., long. 87°32'30" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°34'15" W.; to lat. 36°39'01" N., long. 87°34'15" W.; to lat. 36°39'00" N., long. 87°40'00" W.; to lat. 36°42'00" N., long. 87°40'30" W.; to lat. 36°43'30" N., long. 87°43'00" W.; to lat. 36°43'30" N., long. 87°48'15" W.; to lat. 36°37'30" N., long. 87°48'15" W.; to lat. 36°35'30" N., long. 87°45'00" W.; to lat. 36°33'30" N., long. 87°42'30" W.; to lat. 36°32'00" N., long. 87°35'00" W.; to the point of beginning.

Designated altitudes. Surface to and including 16,000 feet MSL.

R–3702B Fort Campbell, KY [Amended]

Boundaries. Beginning at lat. 36°32'00" N., long. 87°32'30" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°34'15" W.; to lat. 36°39'01" N., long. 87°34'15" W.; to lat. 36°39'00" N., long. 87°40'00" W.; to lat. 36°42'00" N., long. 87°40'30" W.; to lat. 36°43'30" N., long. 87°43'00" W.; to lat. 36°43'30" N., long. 87°48'15" W.; to lat. 36°37'30" N., long. 87°48'15" W.; to lat. 36°35'30" N., long. 87°45'00" W.; to lat. 36°33'30" N., long. 87°42'30" W.; to lat. 36°32'00" N., long. 87°35'00" W.; to the point of beginning.

Designated altitudes. Surface to and including 16,000 feet MSL.

R–3702C Fort Campbell, KY [New]

Boundaries. Beginning at lat. 36°32'00" N., long. 87°32'30" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°32'15" W.; to lat. 36°39'01" N., long. 87°34'15" W.; to lat. 36°39'00" N., long. 87°40'00" W.; to lat. 36°42'00" N., long. 87°40'30" W.; to lat. 36°43'30" N., long. 87°43'00" W.; to lat. 36°43'30" N., long. 87°48'15" W.; to lat. 36°37'30" N., long. 87°48'15" W.; to lat. 36°35'30" N., long. 87°45'00" W.; to lat. 36°33'30" N., long. 87°42'30" W.; to lat. 36°32'00" N., long. 87°35'00" W.; to the point of beginning.

Designated altitudes. FL 220 to FL 270.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Memphis ARTCC.

Using agency. Commanding General, Fort Campbell, KY.

R–3703A Fort Campbell, KY [Revoked]
R–3703B Fort Campbell, KY [Revoked]
R–3703C Fort Campbell, KY [Revoked]

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.651)

Issued in Washington, D.C., on November 7, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–29805 Filed 11–14–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 71 and 75

[Airspace Docket No. 84–AWA–24]

Proposed Alteration of Jet Route and VOR Federal Airways; Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign one jet route and five VOR federal airways, and to cancel one VOR federal airway. These airspace actions arise from the scheduled decommissioning of the Lewis, IN, very high frequency omnidirectional radio range and ultra high frequency tactical air navigation aid (VORTAC) in early 1985. At that time, the affected jet route and federal airways will be realigned using the upgraded Terre Haute, IN, VORTAC. These actions are proposed to help increase the utility and efficiency in the use of navigational aids (NAVAID) by users of the National Airspace System (NAS).

DATES: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 84–AWA–24, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AWA–24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Part 71 and 75) to realign Jet Route J–73; realign Federal Airways V–7, V–12, V–171, V–221, V–243; and cancel Federal Airway V–514. The realignment is proposed due to the scheduled decommissioning of the Lewis, IN, VORTAC in early 1985. The functions of the decommissioned Lewis VORTAC will be transferred to an upgraded Terre Haute, IN, VORTAC which lies a short distance to the north of Lewis, IN. The proposed actions will promote utility and efficiency in the use of NAVAIDS by users of the NAS. The actions are also consistent with FAA plans and objectives of obtaining maximum productivity and economy of the NAS ground-to-air subsystems. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under this criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways and jet routes, Aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §§ 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

§ 71.123

V–7 [Amended]
By removing the words "INT Pocket City 015° and Lewis, IN, 198° radials, Lewis;"
V–12 [Amended]
By removing the words "Lewis, IN;"
V–171 [Amended]
By removing the word "Lewis," and substituting the words "Terre Haute,"
V–221 [Amended]
By removing the words "via INT Bible Grove 087° and Bloomington, IN, 253° radials; Bloomington;" and substituting the words "via Bloomington, IN;"
V–243 [Amended]

By removing the words "Lewis, IN." and substituting the words "Terre Haute, IN." V–514 [Revoked]

§ 75.190

J–73 [Amended]

By removing the words "Lewis, IN;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 7, 1984.

John W. Baier

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-29897 Filed 11-14-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–6556; IC–14230; File No. S7–34–84]

Expense-Related Disclosure Requirements; Form Revision

AGENCY: Securities and Exchange Commission.

ACTION: Proposed form revision.

SUMMARY: The Commission is publishing for comment proposed revisions to the expense-related disclosure requirements of Form N–1A, the registration form used by open-end management investment companies under the Investment Company Act of 1940 and the Securities Act of 1933. The proposed revisions would consolidate all expense-related information contained in the prospectus and add a tabular presentation of the major expense data. The Commission is proposing these revisions in order to improve the quality of disclosure made to investors in mutual fund prospectuses.

DATE: Comments must be received on or before January 14, 1985.

ADDRESS: Comments should be submitted in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments letter should refer to File No. S7–34–84. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Margaret W. Hammond, Special Counsel (202) 272–3045, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment proposed revisions to Item 5, Management of the Fund, of form N–1A, (17 CFR 239.15A, 274.11A), the registration form under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (The "1933 Act") and the Investment Company Act of 1940 (15 U.S.C. 80a et seq.) ("the 1940 Act") used by open-end management investment companies other than registered separate accounts of insurance companies. The revised Item 5 would require a consolidation of all narrative information in the prospectus concerning significant expenses of the registrant and add a tabular presentation setting forth the major types of expenses, the names of the payees, and the amount of the expense, expressed as a percentage of average net assets.

Background

The Commission believes revisions in the disclosure requirements of Form N–1A as they relate to the expenses of mutual funds are needed because of changing patterns in the ways mutual funds distribute their shares and pay distribution expenses. In recent years mutual fund advisory, distribution and shareholder servicing arrangements have become more varied and more complex. Funds shares are sold today with a large variety of sales load and distribution fee arrangements. The number of no load and low load funds, relative to load funds, has increased. Some funds have adopted the use of "contingent deferred" sales loads, where the sales charge is paid at the time an investor redeems his shares. Many funds have adopted distribution plans under Rule 12b–1 of the 1940 Act (17 CFR 270.12b–1) which permits mutual funds to spend funds assets to cover expenses related to selling fund shares. A fund may pay distribution expenses under a Rule 12b–1 plan regardless of whether the fund is sold with or without a sales load. In addition, shares of money market and other mutual funds now are available to investors through banks and other financial institutions which receive fees for performing shareholder servicing functions. The complexity and variety of these distribution and service arrangements are sufficiently great that the Commission wishes to explore ways to improve the quality of prospectus disclosure so that investors may more easily and more clearly understand mutual fund fee and expense arrangements.

Discussion

Until the 1970's the traditional means by which most mutual fund shares were sold was through sales by securities dealers who received a "sales load" or sales charge paid by the investor. The sales load compensated the selling dealers and their salesmen and, in essence, funded the distribution system for the typical mutual fund. The comparatively rare no-load fund generally did not have the large dealer distribution systems characteristic of load funds, but relied instead on the fund's adviser to stimulate investor interest in the fund, in part, through newspaper advertisements and other sales literature paid for by the adviser.

Since the 1970's this comparatively simple pattern of distribution has changed significantly. The dramatic growth in the 1970's of money market funds, which are no-load funds, made investors more sensitive to load charges and likely contributed to the growth of other types of no-load and low-load mutual funds in the late 1970's. The increase in no-load funds stimulated debate over the permissible use of fund assets for distribution and in 1980, following an extensive rulemaking proceeding, the Commission adopted Rule 12b–1 to permit funds to use their assets directly or indirectly to pay expenses under certain circumstances.[1]

Initially Rule 12b–1 plans were adopted primarily by no-load funds and used to pay advertising and other promotional expenses. More recently, however, funds have adopted distribution plans under Rule 12b–1 whose operations are characteristic of the traditional load fund sales approach. That is, these fund plans provide for payments to broker-dealers of a percentage of the investor's purchase as compensation for selling fund shares. Because selling through a traditional dealer network typically is more costly than the promotional techniques used previously by no-load funds, the level of Rule 12b–1 payments has increased. Also, low-load funds and funds with contingent deferred sales loads may use Rule 12b–1 plans for certain distribution expenses.

Finally, an increasing number of banks and other financial institutions are making shares of various types of mutual funds available to their customers and receiving fees for services rendered to these new mutual fund shareholders. Previously, some banks had established so-called "sweep accounts" where the bank would sweep

[1] Securities Act Release No. 6254 (October 28, 1980) (45 FR 73898 (November 7, 1980)).

into a money market mutual fund available cash held in the customer's account. Although the introduction of bank money market deposit accounts diminished interest in these "sweep" arrangements, today some banks are making available to their customers the opportunity to buy share of other types of mutual funds and unit investment trusts under agreements between the bank and the mutual fund or its sponsor. Frequently the bank will agree to perform services such as establishing and maintaining accounts, processing purchase and redemption orders, sub-accounting and answering shareholder inquiries. For these services, the bank receives fees from the fund pursuant to either a Rule 12b–1 plan or an administrative services plan. The bank may also receive additional fees from its customers.

As indicated above, mutual funds today are using a variety of distribution techniques and fee arrangements. Given the variety and complexity of these arrangements, the Commission has reexamined the existing disclosure requirements. The Commission is proposing revisions to its rules so that required disclosure will be presented in the prospectus in a manner which makes it more easily understood and, therefore, more meaningful to investors.

Proposed Revisions to Item 5

At present, Items 5 and 7 of Form N–IA require expense-related discussions which may be set forth anywhere in the prospectus. Pursuant to Item 5 (b) and (c), the registrant must disclose information concerning the identity, services provided, and compensation paid to its investment adviser and administrator. Paragraph (d) requires the identification of the registrant's transfer agent and dividend paying agent. A statement as to total expenses must be set forth pursuant to paragraph (e). Paragraph (f) requires disclosure of any arrangements with affiliated brokers. In addition, Item 7(e) requires disclosure of distribution expenses paid pursuant to Rule 12b–1 plans. The registrant is given the option of dispersing these required disclosures throughout the prospectus, and most registrants do.

The Commission's proposal would bring these required disclosures together. Proposed paragraph (c) of Item 5 would require a discussion of all significant expenses of the registrant, as well as expenses paid pursuant to Rule 12b–1, in addition to the investment advisory expense required to be disclosed pursuant to paragraph (b).

Following this narrative description of the registrant's expenses, the Commission would require, pursuant to proposed paragraph (d), a tabular presentation of the major expense items. This table, when combined with the more detailed narrative description of expenses, should make clear the registrant's existing expense and fee arrangements. Because the Commission believes that combining the table with the narrative will give investors a complete and understandable picture of the various fee arrangements, it is proposing a general instruction to Item 5 requiring that all the Item 5 information be set forth together in one location of the registrant's choice in the prospectus.

The Commission believes that the changes proposed today would improve significantly the quality of prospectus disclosure without adding appreciably to the cost of burden of the disclosure. In order to further minimize the burden, if the amendments to the form are adopted, existing registrants would be required to make the necessary changes only when they file their annual updates by post-effective amendment. These post-effective amendments could become effective without saff review pursuant to Rule 485(b) (17 CFR 230.485(b)).

List of Subjects

17 CFR Part 239

Reporting and Recordkeeping Requirements, Securities.

17 CFR Part 274

Investment Companies, Reporting and Recordkeeping Requirements, Securities.

Text of Proposed Form Changes

PARTS 239 AND 274—[AMENDED]

The Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations by revising Form N–1A as set forth below:

Section 239.15A Form N–1A, registration statement of open-end management investment companies. [Form N–1A amended]

Section 274.11A Form N–1A, registration statement of open-end management investment companies. [Form N–1A amended]

1. By proposing to completely revise paragraphs (c) and (d) of Item 5 as follows:

ITEM 5. *Management of the Fund*

* * * * *

(c) a brief description of the registrant's expenses, other than investment advisory expenses discussed pursuant to paragraph (b) above.

Instruction to paragraph (c):

This description must include a discussion of all other significant expenses as well as those expenses paid pursuant to Rule 12b–1, identifying the services provided or to be provided, the persons providing the services, the basis on which payments are or will be made, and the amount of the expense, expressed as a percentage of net assets. Examples of types of expenses that might be discussed include: administrative or business affairs management services, transfer agent, and dividend paying agent fees. Significant administrative or business affairs management services include those services provided by banks or other persons performing shareholder servicing. Regardless of whether fees paid to transfer agents dividend paying agents are deemed significant, provide the name and principal business address of each.

(d) Furnish the following information in the tabular format illustrated below:

EXPENSES PAID BY THE REGISTRANT

Type of expense	Name of payee	Percent of average net assets
1. Investment Advisory Fees	Name	%
2. Distribution Expenses	Name	%
3. Shareholder Servicing Expenses	Name	%
4. Other Expenses	Leave blank	%
5. Total Expenses	Leave blank	%

Instructions to paragraph (d):

1. For purposes of paragraph (d),

(a) "investment advisory fees" means fees paid to each investment adviser of the registrant, including sub-advisers;

(b) "distributing expenses" means all fees or expenses paid pursuant to plans adopted under Rule 12b–1 of the Investment Company Act of 1940 (if these fees are paid as part of the investment adviser's fee, the advisory and distribution fees may be combined as a single line item captioned "Investment Advisory and Distribution Expenses");

(c) "shareholder servicing expenses" means expenses for administrative services such as shareholder servicing, transferring record ownership, sub-accounting, processing purchase and redemption transactions, answering inquiries and mailing shareholder communications, but does not include expenses paid pursuant to the registrant's investment advisory contract; (If any shareholder servicing expenses are paid pursuant to a Rule

12b–1 plan, they may be included in this line item with a footnote to the table indicating that they are paid pursuant to a Rule 12b–1 plan but are not included as a distribution expense in the table.)

(d) "other expenses" means all expenses paid by the registrant and not included in investment advisory, distribution, or shareholder servicing expenses.

2. If more than three payees are involved with respect to any fee or expense, set forth a generic description of the payees, such as "broker-dealers", "banks", or "financial institutions." The amount of the fees received by these payees should be set forth as an aggregate figure.

3. The percentage of average net assets should be set forth for the most current period shown in the per share table provided in response to Item 3(a). If the registrant is not required to provide a per share table pursuant to Item 3(a), briefly describe the basis on which payments will be made and delete the "other expenses" and "total expenses" lines of the table, but include a brief statement concerning other fees or expenses which the registrant expects to pay.

If the registrant does not have a Rule 12b–1 plan, briefly state in the table in response to the distribution expense item the primary method or methods used to pay distribution expenses, e.g., "paid by adviser", "paid through sales charges." Regardless of whether or not the registrant has a Rule 12b–1 plan, if there are sales charges or contingent deferred sales charges, provide cross references to where information concerning these charges may be found in the prospectus.

If someone other than the registrant pays for shareholder servicing, briefly state in the table the primary method used to pay these expenses.

If the registrant knows that the historical expense information is not indicative of future expenses, a footnote should describe the matters that would cause the reported fee information not to be necessarily indicative of future fees.

General Instruction to Item 5: All information required by Item 5 must be consolidated in one location in the prospectus.

2. By proposing to delete existing paragraph (e) of Item 5 and renumbering paragraph (f) so that it becomes paragraph (e) of Item 5.

3. By proposing to delete existing paragraph (e) from Item 7.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the form amendments proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paperwork Reduction Act

The information collection required by these proposed revisions to Form N–1A has been submitted to the Office of Management and Budget.

Statutory Authority

The Commission hereby publishes for comment proposed amendments to Form N–1A under the Securities Act of 1933, pursuant to the provisions of Sections 7, 10 and 19 of the Securities Act of 1933 (15 U.S.C. 77g, 77j and 77s).

By the Commission.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Form N–1A under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], to consolidate narrative information in mutual fund prospectuses concerning significant expenses and add a table of major expense items, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments would not have a significant economic impact on any registrant and, accordingly, would not have a significant economic impact on a substantial number of small entities. This is because the information required by the amendment already appears in the prospectus, or is readily available, and requiring its consolidation and presentation in a table will not impose a significant burden on any registant.

Dated: November 8, 1984.

John S.R. Shad,

Chairman.

[FR Doc. 84–30010 Filed 11–14–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–236 (Texas—9 Addition VI)]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that an additional area of the Travis Peak Formation in Nacogdoches and Rusk Counties, Texas, be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on December 24, 1984. *Public hearing:* No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 23, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NW., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

I. Background

On September 28, 1984, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that an additional area of the Travis Peak Formation located in Nacogdoches and Rusk Counties, Texas be designated as a tight formation.[1]

[1] The Commission previously adopted recommendations that portions of the Travis Peak Formation in the Sym-Jac, West (Hosston) Filed (Order No. 154 issue June 10, 1981, in Docket No. RM79–76 (Texas—9)), the Bear Grass Area of east Texas (Order No. 180 issued October 8, 1981, in Docket No. RM79–76 (Texas—9 Addition)), the Melrose, South (Travis Peak) Field (Order No. 384 issued June 28, 1984, in Docket No. RM79–171 (Texas—9 Addition III)) and the Martinsville (Travis Peak) Field (Order No. 330 issued September 27, 1983, in Docket No. RM79–190 (Texas—9 Addition IV) be designated as tight formations There are currently under consideration the following recommendations that additional areas of the Travis Peak Formation be designated as tight

Continued

Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that an additional area of the Travis Peak be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas' recommended addition to the Travis Peak Foundation is located in the eastern portion of the state, specifically northeastern Nacogdoches County, Texas. The well in which production from the Travis Peak Formation has been tested is the E.J. Edwards, et al, No. 1, located approximately one mile southwest of the town of Garrison, Texas, Francis Kellett Survey, Abstract 329. Production is from perforations 9,285' to 9,577' in the newly designated Toolan (Travis Peak) Field. Approval for tight formation designation for the Travis Peak is being requested for an area covering a 2.5 mile radius around the aforementioned well as will encompass all or part of the surveys located in the Toolan Field.

The Travis Peak Formation in this area consists of a series of silty to very fine grained sands, interbedded with shales deposited in shallow marine nearshore environment during the Cretaceous era. It is extremely difficult to correlate most of the sands from one well location to another. Also, due to the high quantity of silt deposited with the sands, there is little relationship between porosity and permeability of the sands. These Travis Peak sands are found in the interval ± 7,100 feet subsea to ± 9,200 feet subsea, or from the base of the Pettit to the top of the Cotton Valley intervals.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing on February 23, 1983, convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of the formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, under the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. § 30.180 (1980), the Director gives notice of the proposal submitted by Texas that the Travis Peak Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 24, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–236 (Texas—9 Addition VI), and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than November 23, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Texas' recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding a new paragraph (d)(36)(vi) to read as follows:

§ 271.703 Tight formations.

* * * * * * *

(d) *Designated tight formations.* * * *

(36) *Travis Peak Formation in Texas. RM79–76 (Texas—9)* * * *

(vi) *Toolan (Travis Peak) Field*—(A) *Delineation of formation.* The designated portion of the Travis Peak Formation consists of all or part of the surveys located in the Toolan Field, in portions of Nacogdoches and Rusk Counties, Texas, specifically the area encompassed by a 2.5 mile radius around Hill International Production Company's E. J. Edwards, et al, No. 1 well, located approximately one mile southwest of the town of Garrison, Texas, Francis Kellett Survey, Abstract 329.

(B) *Depth.* These Travis Peak sands are found in the interval ± 7,110 feet subsea to ± 9,200 feet subsea, or from the base of the Pettit to the top of the Cotton Valley intervals.

[FR Doc. 84–29827 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76–238 (Texas—22 Addition V)]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or

formations: all of Texas Railroad Commission Districts 5 and 6 Docket No. RM79–76 (Texas—9 Addition II) and the Pinehill, S.E. (Travis Peak) Field in Docket No. Rm79–76–198 (Texas—9 Addition V), Notices of Proposed Rulemaking issued December 15, 1981, and May 27, 1983, respectively.

costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Strawn-Detrital Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on December 24, 1984. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 23, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

I. Background

On October 9, 1984, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that additional areas of the Strawn-Detrital Formation in the University Block 31 (Strawn-Detrital Field in Crockett County, Texas, be designated as a tight formation.[1] Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the additional areas of the Strawn-Detrital Formation be added to the previously designated tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

[1] On August 28, 1982, the Commission issued Order No. 249 in Docket No. RM79–76–111 (Texas—22), on April 21, 1983, the Commission issued Order No. 286 in Docket Nos. RM79–76–150 (Texas—22 Addition) and RM79–76–157 (Texas 22 Addition II), and on July 12, 1983, the Commission issued Order No. 314 in Docket No. RM79–76–169 (Texas—22 Addition III) in which the Commission designated, as tight formations, portions of the Strawn-Detrital Formation in the University Block 31 (Strawn-Detrital) Field and Howards Creek (Penn) Field and portions of the Detrital Formation in the Perner Ranch area. Additionally, on September 27, 1983, the Commission issued Order No. 331 in Docket No. RM79–76–186 in which the Commission designated as a tight formation portions of the Strawn-Detrital Formation in the Ozona, SW. (Strawn) Field.

II. Description of Recommendation

Texas recommends that the Strawn-Detrital Formation in additional portions of the University Block 31 (Strawn-Detrital) Field in Crockett County, Railroad Commission District 7C, be designated as a tight formation. The recommended area consists of approximately 7,300 acres, located approximately 10 miles southwest of Ozona, Texas, and immediately to the south of the areas of the Strawn-Detrital Formation in the University Block 31 Field designated by the Commission as tight formations by Order Nos. 295 and 314. Specifically, the recommended area consists of Sections 20, 21, 22, 29, 37, 38, the western 75 acres of Section 34, the western half of Section 36 and the eastern half of Section 41, Block ST, T.C. RR Survey; Section 28, Block ST, H.E. & W.T. Survey; Section 8 and the northern 480 acres of Section 7 and 10, Block SL, T & S.T.L. Survey; and the northern 98 acres of Block Z, J.W. Henderson Survey.

The vertical extent of the Strawn-Detrital Formation in Texas' recommendation is defined as the interval from the base of the Canyon Formation (top of Strawn series) to the top of the Simpson Shale (base of the Devonian), which includes the Strawn, Strawn-Detrital and Devonian zones. In the recommended area the average depth to the top of the Strawn series is approximately 8,900 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), notice is hereby given of the proposal submitted by Texas that the additional area of the Strawn-Detrital Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 24, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–238 (Texas—22 Addition V) and shluld give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 23, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

PART 271—[AMENDED]

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Texas' recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(106)(i) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(106) *Strawn-Detrital Formation in Texas. RM79–76 (Texas—22)*

(i) *University Block 31 (Strawn-Detrital) and Howards Creek (Penn) Fields. (A) Delineation of formation.* The Strawn-Detrital Formation in the area of the University Block 31 and Howards Creek Fields is located in Crockett County, Texas, Railroad Commission District 7C. The designated area consists of Sections 7, 8, 9, the south half of Section 10, Section 16 through 20, the south half of Section 21, Section 29 through 32, Block 30, University Lands Survey; all Sections in Block 31, University Lands Survey; Sections 1, 2, 3, the south half of Section 4, Sections 5 through 8, the south half of Section 9, Sections 11 through 14 and the north half of Section 18, Block 32, University Lands Survey; Sections 6 through 20, Block 33, University Lands Survey; the southwest ¼ of Section 12, Sections 29, 30, 31, the south half of Section 32, Sections 50, 51 and the southeast ¼ of Section 53, Block UV, GC & SF RR Co. Survey; Section 2, Block ST–2, GC & SF RR Co. Survey; the north half of Hampton Survey; Section 1001 of W. G. Hall Survey; Section 1002 of J.M. Jean Survey; Section 1003 of M.F. Lopez Survey; Sections 1, 2, 14 through 18, Block St, GC & SF RR Co. Survey; the north half of Section 49, Sections 50 through 53, the south half of Section 54, Sections 66 through 70, the east half of Section 71, Sections 76 through 79, the south half of Section 90, Sections 91, 92, 93 and the north half of Section 94, Block OP, GC & SF RR Co. Survey; Sections 20, 21, 22, 29, 37, 38, the western 75 acres of section 34, the western half of Section 36 and the eastern half of Section 41, Block ST, T.C.R.R. Survey; Section 28, Block ST, H.E. & W.T. Survey; Section 8 and the northern 480 acres of Sections 7 and 10, Block SL, T. & S.T.L. Survey; and the northern 98 acres of Block Z, J.W. Henderson Survey.

(B) *Depth.* The vertical extent of the Strawn-Detrital Formation in the University Block 31 Field is defined as the interval from the base of the Canyon Formation (top of the Strawn series) to the top of the Simpson Shale (base of the Devonian), which includes the Strawn, Strawn-Detrital and Devonian zones. The average depth to the top of the Strawn series is approximately 7,900 feet in the north and 8,900 feet in the south.

[FR Doc. 84–29628 Filed 11–14–84; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 291

Occupancy and Use of Sites and Areas of Concentrated Public Use

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture proposes regulations to recover Federal costs associated with administration of user reservation systems on some National Forest System recreation areas. This action is necessary to continue protection of resources and protection of high quality recreation experience.

DATE: Comments must be received by January 14, 1985.

ADDRESS: Comments should be sent to: R. Max Peterson, Chief (2350), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lennon, Recreation Management, telephone (202) 447–2311.

SUPPLEMENTARY INFORMATION: Some National Forest System recreation areas, such as Wilderness Areas and Wild and Scenic Rivers, are highly popular and have reached their recreation use capacity. In such cases, the Forest Service has instituted reservation or permit systems to protect the resources, to provide prospective recreationists with the assurance that they will be able to use an area during a given period, and to maintain the opportunity for visitors to have a high quality recreation experience.

Forest Service costs for administration of reservation systems have risen sharply over the last several years. In one case, the costs on a Wild and Scenic River are $35,000 to $40,000 a year.

Because issuance of a reservation is a special service which primarily benefits the user, the Agency is proposing to revise its regulations to permit recovery of Federal costs associated with this service.

Examples of conditions which may warrant limitations of use and the collection of reservation fees are those where substantial numbers of people are using an area, the recreation use capacity of the area is being reached, or the costs of the permit reservation system are significant.

Under the proposed rule, fee levels will be based upon anticipated costs. Precise cost information for potential areas is not available at this time, but experience on a few sites would indicate a fee range of $2.00 to $8.00. Fees would be nonrefundable. Areas subject to a fee would be posted.

The rule on reservation fees would be coded as a new section 291.10.

This proposed rule has been reviewed under proposed USDA procedures and Executive Order 12291, and it has been determined that the regulation is not a major rule. It will result in an insignificant increase in costs to individual users of the recreation areas while permitting the Government to recoup administrative expenses. Because the regulation applies to individual recreation users in a limited situation, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

The Assistant Secretary of Agriculture for Natural Resources and the Environment has determined this action will not have a significant economic impact on a substantial number of small entities. The action involves a recovery cost for providing benefits to private individuals and will not affect small entities.

This rule is determined to be limited in context and intensity and to produce little or no environmental effects, individually or cumulatively, to either the biological or physical component of the human environment. Therefore, it is unnecessary to prepare an environmental assessment or an environmental impact statement.

Lists of Subjects in 36 CFR Part 291

Recreation and recreation area.

PART 291—[AMENDED]

Therefore, for the reasons set forth above, Part 291 of Chapter II of Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

1. Revise the authority citation to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 1, 33 Stat. 628 (16 U.S.C. 472); Sec. 4(b,c) Pub.L. 92–347, 86 Stat. 460 (16 U.S.C. 460 *l*-6a(b,c)); Sec. 10(d), Pub.L. 90–542, 82 Stat. 916 (16 U.S.C. 1281(d)); Sec. 7(i), Pub.L. 90–543, 82 Stat. 925, as amended (16 U.S.C. 1246(i)); Sec. 4(b), Pub.L. 86–577, 78 Stat. 893 (16 U.S.C. 1133(b)); Sec. 4(a), Pub.L. 95–495, 92 Stat. 1650.

2. Add a new § 291.10 to read as follows:

§ 291.10 Reservation fees.

(a) The Forest Service may charge fees to recover expenses incurred in providing reservation and other special services for the public use of recreation areas where limitations on use are deemed necessary or desirable to achieve the management purposes of an area of the National Forest System. The Chief of the Forest Service or his delegate shall establish the amount of such fees.

(b) Forest Service officials shall prominently post clear notice that a reservation fee has been established at each area and at appropriate locations therein. Publications distributed at such areas shall also include such notice.

Dated: September 25, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-29864 Filed 11-14-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2718-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In 1983 EPA disapproved Indiana's most recently submitted opacity regulation, 325 IAC 5-1 (hereinafter referred to as 1980 APC 3), on the grounds that it would relax the limits established by the existing regulation, known as SIP APC 3. On August 22, 1984, the United States Court of Appeals for the Seventh Circuit held SIP APC 3 invalid as applied to non-combustion sources. *Bethlehem Steel Corporation* v. *Gorsuch*, No. 82-2884. After reevaluating its prior disapproval of 1980 APC 3 in light of that decision, EPA now proposes to rescind the disapproval and approve 1980 APC 3.

DATE: Comments on this proposed rulemaking must be submitted by December 17, 1984.

ADDRESSES: Copies of this approved SIP revision and the file on EPA's previous actions on 325 IAC 5-1 are available at the following addresses for review. (It is recommended that you telephone Robert B. Miller, at (312) 886-6031, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Duplicate copies of the comments should be sent to: John Topping, Office of Air and Radiation, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Kendra Heymann, Office of General Counsel, Air and Radiation Division (LE-132A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. (202) 382-7730.

or

Robert B. Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice of Proposed Rulemaking concerns the opacity limits applicable to sources of particulate air pollution in the State of Indiana. Those limits have proved to be a source of controversy for many years between EPA and both the State of Indiana and its industries. On December 16, 1983 (48 FR 55852), EPA disapproved the most recent Indiana opacity regulation submitted for review, known as 1980 APC 3, principally on the grounds that it would relax the standard set by the existing regulation, known as SIP APC 3, and the State had failed to show that such a relaxation would not interfere with timely attainment and maintenance of the relevant air quality standards and secondarily on two grounds: (1) That the regulation does not meet the Part D requirement of reasonably available control technology (RACT) for some sources in nonattainment areas and (2) that the State had not corrected certain legal and technical deficiencies in the regulation which are discussed later in this notice. On August 22, 1984, however, the United States Court of Appeals for the Seventh Circuit declared SIP APC 3 invalid as applied to non-combustion sources. *Bethlehem Steel Corporation* v. *Gorsuch*, No. 82-2884.

As a result of this decision, EPA has re-examined its previous disapproval of 1980 APC 3 and has concluded that it should rescind that disapproval and approve 1980 APC 3. This Notice sets forth the reasons for this conclusion and proposes those actions.

II. Background

In 1972 Indiana adopted and EPA approved a state implementation plan (SIP) that included a regulation prohibiting the emission from "any combustion installation" of smoke darker than No. 2 of the Ringelmann Chart. This regulation was known as 1972 APC 3. The SIP also included other particulate control regulations, such as APC 5, which placed limits on the actual mass emissions of particulates from non-combustion sources; APC 4R, which placed limits on the actual mass emissions from combustion sources; and APC 6, which placed limits on actual mass emissions from foundries.

In 1974 the State of Indiana revised 1972 APC 3, and explicitly made it applicable as an independent control on both non-combustion and combustion sources. This revised regulation was known as 1974 APC 3. 1974 APC 3 imposed a 40 percent opacity limit,[1] subject to an exclusion of fifteen minutes per day during which opacity could exceed that amount. EPA approved the 40 percent limit but disapproved the 15-minute exemption. Accordingly, the federal codification of the Indiana SIP, 40 CFR 52.776(c), provided:

> APC 3 of Indiana's Air Pollution Control Regulations (visible emissions limitation) is disapproved insofar as the phrase "for more than a cumulative total of 15 minutes in a 24-hour period" will interfere with attainment and maintenance of particulate standards.

Until the recent court ruling, 1974 SIP APC 3 was the regulation on the books for opacity in Indiana. Its present formulation resulted from APA's partial approval of Indiana's submission. 40 FR 50032 (October 28, 1975). In that form, it limited opacity to no greater than 40 percent but did not provide the 15-minute period per day when that limit could be exceeded, nor did it specify a method for determining when the 40 percent limit was exceeded.

On December 16, 1983, EPA disapproved a subsequent Indiana regulation, which had been submitted as a revision to the SIP by Indiana on October 6, 1980 (1980 APC 3). The Notice of Disapproval interpreted SIP APC 3 to work in instantaneous terms—that is, to disallow any exceedances of 40 percent

[1] A 40 percent opacity limit is comparable to No. 2 on the Ringelmann Chart.

opacity.[2] The 1980 regulation, by allowing opacity to be determined on the basis of a 6-minute average, allowed some emissions that exceeded the 40 percent limit, as so interpreted; and EPA, therefore, disapproved it because it relaxed existing provisions and the State had failed to demonstrate that the relaxation would not interfere with timely attainment and maintenance of the relevant air quality standards. APC 3, as originally submitted by Indiana in 1974, however, provided a 15-minute exemption. EPA, by disapproving the time exemption and approving a bare 40 percent opacity limit, made the regulation susceptible to interpretation as disallowing any exceedances whatsoever. This possible reading, however, resulted from EPA's editing. Indiana never expressed an intent to have the 40 percent limit interpreted to apply this way; nor did it so enforce it.

III. Judicial Review of 1974 SIP APC-3

EPA's partial approval of 1974 APC 3 was never challenged within the deadline prescribed by the pre-1977 Clean Air Act (Section 307(b)(1), 42 U.S.C. 1857h-5(b)(1) (1976)). It has been subject, however, to a series of collateral attacks in enforcement related proceedings.

In *Public Service Co. of Indiana* v. *EPA*, 682 F.2d 626 (7th Cir. 1982), cert. denied, 103 S.Ct. 762 (1983), the court, though realizing the issue was not squarely before it, held that, in general, EPA had power to approve one part of a state submission and disapprove the rest. It based its decision both on textual grounds and on the argument that this power would advance the goals of the Clean Air Act by allowing EPA to effectuate state regulatory choices to the maximum degree possible. In *Bethlehem Steel Corp.* v. *Gorsuch*, 726 F.2d 356 (7th Cir. 1984) (*Bethlehem II*),[3] vacated and rehearing granted (Apr. 27, 1984), opinion on rehearing (Aug. 22, 1984) (*Bethlehem III*), the court particularized this analysis. In *Bethlehem II*, the majority upheld EPA's partial approval of 1974 APC 3. On rehearing, however, in *Bethlehem III*, the Court readdressed the question in more depth and invalidated EPA's partial approval of 1974 APC 3 as applied to non-combustion sources.

IV. The Bethlehem III Decision

Petitioners in *Bethlehem III* argued that 1974 APC 3 was defective because EPA,—

> Had improperly used the technique of 'partial approval' to make 1974 APC 3 a stricter regulation than the state had intended either in the state's own version of 1974 APC 3 or in the previous regulation, 1972 APC 3.

The court tested this assertion by its own comparison of 1974 APC 3 with its predecessor, 1972 APC 3. The court interpreted 1972 APC 3 as setting an opacity limitation of Number 2 on the Ringelmann Chart on emissions from combustion sources only. As to non-combustion sources, however, the court held that an exceedance of this opacity limitation would at most "violate the regulation prima facia [so that a company] can rebut the prima facie case by showing that the level of particulates in its non-combustion emissions is within the ceiling fixed by APC 5." Slip Op. at 4.

After setting forth its interpretation of 1972 APC 3, the *Bethlehem III* court compared that regulation both to 1974 APC 3 as enacted by Indiana and to 1974 SIP APC 3 as approved by EPA. As to combustion sources, the court held that the only significant difference between the 1972 and 1974 regulations enacted by Indiana was that 1974 APC 3 created a 15-minute per day exemption. Thus, when EPA approved APC 3's 40 percent opactiy limitation, but disapproved the 15-minute exemption, it merely—

> Disapproved the state's attempt to relax its regulation of those installations. As to them, the EPA's 'partial approval' . . . was snugly within the EPA's power. Slip Opinion at 10.

But, the court found,

> With regard to non-combustion emissions, 1974 APC 3, at least when stripped of its 15-minute blow-off provision, stiffened the preexisting regulation. It made the 40 percent opacity limitation mandatory for such sources for the first time. Before then, as we have seen, the limitation only put the source to its proof of compliance with APC 5, and maybe didn't even do that. Id.

The court determined that—

> By revising 1974 APC 3 as it did, the EPA converted 40 percent opacity from (at most) a trigger to a ceiling, thus making the state's control of non-combustion emissions more stringent on its face than the state had ever intended it to be. Id. at 10-11.

The *Bethlehem III* court held that this action by EPA was at odds with the Clean Air Act and, therefore, impermissible. While, as the *Public Service* case showed, EPA is empowered to disapprove an attempt by the state to weaken its existing plan with respect to combustion sources, it may not, by the mechanism of a "partial disapproval" significantly increase the stringency of a state regulation.

V. Current State of Indiana Opacity SIP Provisions

The effect of the Seventh Circuit's decision in *Bethlehem III* on the current opacity SIP provisions in Indiana appears to be as follows:

(1) With respect to combustion sources, 1974 SIP APC 3 is still in force. The Court found that, when EPA excised the time exemption from 1974 APC 3 insofar as it applied to combustion sources, it was merely preventing the state from weakening its previous regulation.

(2) With respect to non-combustion sources, the Court invalidated 1974 SIP APC 3. In accordance with EPA's "continuity policy", the valid SIP directly preceding 1974 APC 3 takes its place. This means that 1972 APC 3 is now the opacity regulation applicable to non-combustion emissions in Indiana.

VI. Effect of Bethlehem III on Proposed 1980 APRC-3

In December 1983, when EPA issued its Notice of Disapproval of Indiana's 1980 APC 3, the existing SIP provisions and the Agency's view of those provisions were quite different from those outlined above. Principally, EPA based its disapproval of 1980 APC 3 on the grounds that the revisions contained in that regulation would constitute a significant relaxation in relation to 1974 SIP APC 3 that the State had not justified by an attainment demonstration. Now, however, the Seventh Circuit's decision and its impact on 1974 APC 3 prompt EPA to reconsider that disapproval, and to propose to approve 1980 APC 3 for both non-combustion and combustion sources, for the following reasons:

1. Non-Combustion Sources

The *Bethlehem III* Court invalidated SIP APC 3 with respect to non-combustion emissions, and left 1972 APC 3 as the only opacity limitation applicable to these emissions. Thus, for non-combustion emissions, the Agency

[2] 48 FR 55852 et seq. (December 16, 1983). In 1979, Indiana had adopted a revised APC 3 ("1979 APC 3") (subsequently codified as 325 IAC 1-3.1), which it submitted to EPA as a proposed SIP revision. 1979 APC 3 provided for averaged opacity limitations, and repealed 1974 APC 3.

On March 27, 1980, EPA proposed to disapprove 1979 APC 3 with respect to all sources except iron and steel sources. 45 FR 20432. On July 3, 1980, EPA proposed to disapprove 1979 APC 3 with respect to iron and steel sources for the same reasons cited in its earlier Notice. 45 FR 45314. EPA never took final action on 1979 APC 3. In its December 16, 1983 Notice on 1980 APC 3, EPA announced that it had "discontinued rulemaking" on 1979 APC 3, since it regarded 1980 APC 3 as a "substitute for 1979 APC 3". 48 FR 55853.

[3] This opinion followed a prior opinion in the same case, *Bethlehem I* (*Bethlehem Steel Corp.* v. *EPA*, 638 F.2d 994 (7th Cir. 1980)), in which the court remanded the case to EPA to supplement the record, without deciding the issue of partial approval.

must no longer judge the relative strength or laxity of 1980 APC 3 in comparison to 1974 APC 3, but rather in relationship to 1972 APC 3.

The Court held that, at most, 1972 APC 3 imposed a prima facie opacity limitation on non-combustion emissions, rebuttable by evidence of compliance with mass emissions limitations. The Court was not precise in constructing the exact meaning of 1972 APC 3 as applied to noncombination sources. Any colorable interpretation of the Court's ruling, however, leads to the same conclusion—the provisions of 1980 APC 3 are stricter, not more lenient than those of 1972 APC 3.

1980 APC 3, in contrast to 1972 APC 3, provides specific, mandatory opacity limits for noncombustion sources. 1980 APC 3 sets a mandatory 40 percent opacity limit for "attainment areas" and a 30 percent limit for "nonattainment areas", both as classified by the State. These limits are to be determined as averages over a 6-minute period. The regulation further provides for a 60 percent opacity limit as an additional "cap" on the 40 and 30 percent opacity averaged limitations. This 60 percent limit is not to be exceeded for a cumulative total of more than 15 minutes in any six-hour period, and applies simultaneously with the general 40 and 30 percent average limits. Therefore, approval of 1980 APC 3 would strengthen controls on non-combustion sources.

2. Combustion Sources

The *Bethlehem III* Court followed the *Public Service* decision in upholding EPA's partial approval of 1974 APC 3 as applied to combustion sources. The Court found that, when EPA disapproved the 15-minute exemption in 1974 APC 3, the only effect on combustion sources was to maintain the standard set by 1972 APC 3.[4] Thus, *Bethlehem III* left 1974 APC 3 intact as it applies to combustion sources.

The Agency must, therefore, still compare 1980 APC 3 to 1974 SIP APC 3 to determine whether it sets an approvable standard for combustion sources.

In EPA's December 16, 1983, Notice of Disapproval, the Agency construed SIP APC 3 to apply in instantaneous terms, that is to bar any exceedance of a 40 percent opacity limit. For a number of reasons, however, the Agency now believes that, as a result of the Court's ruling in *Bethlehem III*, the better interpretation of that regulation is to apply an averaging approach as many commenters have contended. The Agency reaches this conclusion after considering, not just the impact of the decision, but the characteristics of emissions from combustion sources, expressions of State intent, and the desirability of consistency of regulation between combustion and non-combustion sources.

a. The Impact of the Bethlehem decision

As a result of the *Bethlehem III* decision, 1974 SIP APC 3 applied only to combustion sources. For the most part these sources generate continuous emissions, for which it is generally agreed that averaging methods, rather than instantaneous measurements, are appropriate. In any event, EPA's December 16, 1983, Notice of Disapproval, which adopted an instantaneous interpretation of 1974 SIP APC 3, observed that 1980 SIP APC 3—

> Would not be a significant relaxation of the SIP as it affects continuous sources whose opacity does not significantly vary over a 6-minute period.

48 FR 55855 (December 16, 1983).

b. Expressions of State Intent

By deleting 1974 APC 3's time exemption, EPA ran counter to Indiana's intent to temper (1) the stringency of the regulation and (2) the application of a fully instantaneous measurement method. Insofar as possible, EPA should interpret 1974 SIP APC 3 to respect this intent.

c. Enforcement Practice

EPA's partial disapproval of 1974 APC 3 has resulted in confusing and inconsistent enforcement policies. Using 6-minute averaging, as contained in 1980 APC 3, for enforcing opacity limits in relation to combustion sources resolves any such confusion.

d. Regulatory Consistency

Approving 1980 APC 3 for combustion sources would also be consistent with the Agency's proposal to approve 1980 APC 3's 6-minute averaging provisions with respect to non-combustion sources, because the same rule would apply to all sources.

Having thus interpreted 1974 SIP APC 3, the Agency must compare it to 1980 APC 3. EPA has determined that 1980 APC 3 is equal to or more stringent than 1974 APC 3 as applied to combustion sources. Like 1974 APC 3, 1980 APC 3 imposes a 40 percent opacity limit in attainment areas, and it is stricter than 1974 APC 3 in imposing a 30 percent limit in nonattainment areas. It, therefore, is approvable with respect to those sources.

VII. Indiana Supreme Court Decision

This proposal to approve 1980 APC 3 is subject to the resolution of a problem arising from a recent decision of the highest state court in Indiana. In December 1983, the Indiana Supreme Court held that the designation of Wayne County, Indiana, as a "nonattainment" area for sulfur dioxide constituted "adjudication" requiring a formal hearing under Indiana law. *Indiana Air Pollution Control Board et al.* v. *City of Richmond*, No. 1283 S 472 (December 30, 1983). Since 1980 APC 3 imposes stricter standards on "nonattainment" areas than on others, and since adjudication procedures concededly have not been followed for such decisions in the past, this decision raises a number of questions and could be construed to have either a great or a minimal effect on Indiana's designation scheme in general and 1980 APC 3 in particular. EPA believes the most likely outcome is that the *City of Richmond* decision will not affect any designations that have already been made and were not challenged, or that the regulation will simply be read as applying the 40 percent opacity limit that governs in attainment areas, to areas that have not been designated "nonattainment" by adjudicatory procedures. In either of these latter instances, 1980 APC 3 would retain substantial vitality and EPA would, therefore, be able to approve it.

To speed resolution of the uncertainties generated by the *City of Richmond* decision, EPA has requested the Office of the Attorney General for the State of Indiana for an Opinion regarding the impact of that decision.

Accordingly, EPA proposes to approve 1980 APC 3 for the reasons stated above, provided that the effect of the Indiana Supreme Court's decision can be satisfactorily resolved, and that certain technical defects in the proposed regulation be cured.[5]

[4] The Court noted that 1972 APC 3 spoke in terms of a limit set at No. 2 of the Ringlemann Chart, while 1974 SIP APC 3 is couched in terms of 40 percent opacity. It found, however, that "No. 2 on the Chart is a commonly used proxy for 40 percent opacity"; and thus saw no significant differences in the limits set by each regulation. Slip Opinion at 4.

[5] In its December 1983 Notice of Disapproval of 1980 APC 3, EPA noted that Indiana had agreed to correct six technical deficiencies in the proposed SIP revision if EPA conditionally approved (or approved) 1980 APC 3. EPA requests that Indiana make these already agreed-upon technical corrections, which are:

(1) Clarify that the 60 percent opacity limit (to be exceeded for a cumulative total of no more than 15 minutes in a 6-hour period) applies simultaneously with the general 40 percent (30 percent in nonattainment areas) opacity 6-minute average limit.

Continued

Conclusion

Since Indiana has non-attainment areas for particulates, Part D, as well as Section 110, of the Clean Air Act governs evaluation of this SIP revision.

1980 APC 3 is not as stringent as EPA normally requires for States which, like Indiana, have not attained the National Ambient Air Quality Standards. It does not represent "Reasonably Available Control Technology" for many source categories. In addition, the State of Indiana has failed to supply any quantitative analysis showing that the proposed rules, without tightening, are consistent with attainment and maintenance of the standards. The Indiana SIP, therefore, could not be regarded as meeting the full requirements of Part D of the Clean Air Act even if EPA were to make today's proposal final.

For these reasons, EPA will continue to evaluate the adequacy of this SIP and may require submission of supplementary information and control measures by Indiana; and, if necessary, EPA will take appropriate remedial action if deficiencies are not corrected.

1980 APC 3, however, does represent the current State position on the regulation of opacity of particulate sources in a situation where the existing regulatory system is plainly inadequate. It reflects the current State law and policy choices in an area substantially confused by a long history of litigation. It is in no way inconsistent with future adoption of additional rules to meet the full requirements of the Clean Air Act. EPA requests comment on this conclusion. In such exceptional circumstances, there is no reason for EPA not to propose approval of a State rule, which is both more clearly valid and generally stricter than the SIP provisions it replaces.

(2) Clarify that the rule applies to *all* sources of visible emissions. Therefore, both stack and non-stack sources are subject to the rule.

(3) Amend the regulation so that its internal references are consistent.

(4) Delete the term "intermittent source" from the regulation.

(5) Clarify Sections 3(a) and (b), which contain the term "continuous minutes". The intent of Section 3(a) is to allow one period per any 24-hour period during either a startup or shutdown where the opacity limits may be exceeded. This period cannot exceed 10 minutes in duration. Section 3(b) is intended to allow exceedances for boiler cleaning with such exceedances similarly limited to 3 occurrences in any 12-hour period, with no more than one occurrence in any 60 minutes, each occurrence being limited to a maximum of 5 minutes duration.

(6) Delete the provisions that in-stack monitors take precedence over observations by qualified personnel.

48 FR 55863–55854 (December 16, 1983).

VIII. Miscellaneous

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1982).

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Date September 17, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-29999 Filed 11-14-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 170

[OPP-250052; PH-FRL-2606-8]

Worker Protection Standards for Agricultural Pesticides

Correction

In FR Doc. 84–21117, beginning on page 32605, in the issue of Wednesday, August 15, 1984, make the following correction:

On page 32607, column one, in the table, sixth entry "Phosaline" should read "Phosalone".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6630]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Food Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal

standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	[illegible] Flood County	San Pedro River	Intersection of Main Street and Galluro Street	(1)	*2,348
Maps available for inspection at Town Hall, Mammoth, Arizona.					
Send comments to the Honorable Dwight Large, P.O. Box 30, Mammoth, Arizona 85618.					
Arkansas	Jacksonville, City, Pulaski County	Jack Bayou Main Stem	Downstream side of U.S. Highway 67 & 167	N/A	*258
		Bayou Meto Main Stem	Upstream side of Missouri Pacific Railroad	N/A	*247
			Approximately 1.3 miles upstream of U.S. highway 67 & 167	N/A	*251
		Rocky Branch	Confluence with Meto Bayou Main Stem	N/A	*249
Maps available for inspection at the Office of the City Engineer, City Hall, Jacksonville, Arkansas.					
Send comments to the Honorable James Reid, Mayor of the City of Jacksonville, P.O. Box 126, Jacksonville, Arkansas 72076.					
Arkansas	Little Rock, City, Pulaski County	Grassy Flat Creek	Downstream side of Converse Drive	*391	[illegible]
			Upstream side of Interstate 430	*[illegible]	*[illegible]
			Market Street	*421	*419
			Downstream side of Plainwood Drive	*425	*424
			Upstream side of Pleasant Valley Drive	*456	*455
		Rock Creek	Downstream side of Asher Avenue	*270	*[illegible]
			Upstream side of Asher Avenue	*272	*[illegible]
			Upstream side of 36th Street	*278	*277
		Taylor Loop Creek	Approximately 1,200 feet downstream of Taylor Loop Road	(2)	*311
			Upstream side of Grishman Road	(2)	*319
			Approximately .37 mile upstream of Grishman Road	(2)	*331
			Upstream of Pebble Beach Drive	(2)	*363
			Approximately .47 mile upstream of Pebble Beach Drive	(2)	*364
Maps available for inspection at the City Hall, Room 203, Markham and Broadway Streets, Little Rock, Arkansas.					
Send comments to Honorable J.W. Bensfield, Mayor of the City of Little Rock, City Hall, Room 203, Markham and Broadway Streets, Little Rock, Arkansas 72201.					
California	Ontario (City of) San Bernardino County.	Ponding Area	50 feet north of the San Bernardino Freeway Crossing Ontario Motor Speedway Drain.	*[illegible]	*[illegible]
Maps available at Building Department, 303 East B Street, Ontario, California 91764.					
Send comments to Honorable Robert Ellingwood, 303 East B Street, Ontario, California 91764.					
Delaware	Fenwick Island, Town, Sussex County.	Atlantic Ocean and Little Assawoman Bay.	Intersection of King Street and Bunting Avenue	*11	*10
			Intersection of Bay Street and James Street	*9	*5
			East side of intersection of Cannon Street and Ocean Highway.	*10	*[illegible]
			Intersection of Madison Avenue and Glen Avenue	*7	*4
Maps available for inspection at the Fenwick Island Town Hall, Fenwick Island, Delaware.					
Send comments to Honorable Paul L. Hagley, President of Fenwick Island Town Council, R.D. 1, Box 440, Selbyville, Delaware 19975.					
Delaware	South Bethany, Town Sussex County.	Atlantic Ocean & Assawoman Canal	West side of intersection of New Castle Drive and Ocean Highway.	*8	*7
			West side of intersection of Bayshore Drive and Ocean Highway.	*8	*7
			Victoria Canal	*6	*4
			6th Canal	*6	*4
Maps available for inspection at the Town Hall, South Bethany, Delaware.					
Send comments to Honorable Margaret Gaesinger, Mayor of the Town of South Bethany, 402 Evergreen Road, South Bethany, Delaware 19930.					
Georgia	Unincorporated Areas of Fulton County.	Autry Mill Creek	At mouth	*[illegible]	*891
			About 1,400 feet upstream of mouth	*[illegible]	*891
		Ball Mill Creek	At mouth	*[illegible]	*872
			About 900 feet upstream of mouth	*871	*872
		Boat Rock Creek	At mouth	*757	*759
			About 600 feet downstream of State Route 70	*759	*759
		Caney Creek	About 0.39 mile downstream of Shirley Bridge Extension	(2)	*[illegible]
			Just upstream of Shirley Bridge Extension	(2)	*1,007
		Chattahoochee River	About 200 feet upstream of the confluence of Camp Creek	*749	*749
			About 700 feet upstream of Interstate 20	*760	*765
			Just downstream of Powers Ferry Road	*790	*792
			Just downstream of Morgan Falls Dam	*813	*813
			Just upstream of Morgan Falls Dam	*[illegible]	*851
			About 1.2 miles upstream of State Route 141	*[illegible]	*[illegible]
		Colewood Creek	At mouth	*[illegible]	*[illegible]
			About 150 feet upstream of mouth	*[illegible]	*[illegible]
		Deep Creek	At mouth	*749	*748
			About 0.9 mile upstream of State Route 154	*749	*748
		Foe Killer Creek	At confluence with Big Creek	(2)	*[illegible]

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			About 0.15 mile upstream of the confluence with Big Creek	(2)	*962
			About 0.30 mile upstream of Rucker Road	(2)	*1,034
			About 0.36 mile upstream of Mid Broadwell Road	(2)	*1,055
		Long Island Creek	At mouth	*775	*778
			About 0.32 mile upstream of mouth	*778	*778
		Marsh Creek	At mouth	*809	*811
			About 1,200 feet upstream of mouth	*811	*811
		Riverside Creek	At mouth	*754	*755
			About 2000 feet upstream of Riverside Drive	*754	*755
		[illegible] Creek	Just upstream of Houze Road	(2)	*1,052
			About 0.14 mile upstream of Houze Road	(2)	*1,057
		Tributary 6	About 480 feet upstream of Academy Street	(2)	*1,022
			About 880 feet upstream of Academy Street	(2)	*1,022
		Utoy Creek	At mouth	*757	*761
			Just downstream of Great Southwest Parkway	*761	*761
Maps available for inspection at the Fulton County Courthouse, 185 Central Avenue SW., Atlanta, Georgia 30303.					
Send comments to Honorable Michael Lomax, Chairman, County Commissioners, Fulton County, Fulton County Courthouse, 185 Central Avenue SW., Room 206, Atlanta, Georgia [illegible]					
Illinois	Unincorporated Areas of St. Clair County.	Little Canteen Creek	About 5,700 feet downstream of Circle Drive	(2)	*[illegible]
			About 800 feet upstream of Circle Drive	(2)	*473
		Ash Creek	At mouth	*425	*425
			Just upstream of State Route 177	*425	*427
			About 2,300 feet upstream of Keck Road	*[illegible]	*427
			Just upstream of State Route 161	*431	*431
			Just downstream of State Route 158	*442	*[illegible]
		Engle Creek	About 3,000 feet upstream of County Road 43	(2)	*[illegible]
			About 4,400 feet upstream of County Road 43	*514	*514
Maps available for inspection at the Intergovernmental Grants Department, Community Development Division, St. Clair County Courthouse, Belleville, Illinois 62220.					
Send comments to Honorable Jerry Costello, Chairman of the Board, St. Clair County, St. Clair County Courthouse, 19 Public Square, Belleville, Illinois 62220.					
Indiana	Town of Bristol, Elkhart County	St. Joseph River	About 1.29 miles downstream of Division Street	*754	*752
			About 0.77 mile upstream of Division Street	*758	*756
		Little Elkhart River	At mouth	*757	*755
			About 0.59 mile upstream of State Route 15	*757	*757
Maps available for inspection at the Bristol Town Hall, P.O. Box 122, Bristol, Indiana.					
Send comments to Honorable Vivian Kane, Chairman of the Board, Bristol, P.O. Box 122, Bristol, Indiana 46507.					
Indiana	City of Elkhart, Elkhart County	St. Joseph River	About 0.63 mile downstream of Nappanee Street	*721	*721
			Just downstream of Indiana & Michigan Electric Co. Dam	*731	*730
			Just upstream of Indiana & Michigan Electric Co. Dam	*742	*742
			About 1.55 miles upstream of the confluence of Puterbaugh Creek	*746	*743
		Elkhart River	At mouth	*[illegible]	*729
			Just downstream of Elkhart Avenue	*730	*729
		Puterbaugh Creek	At mouth	*744	*742
			Just downstream of Greenleaf Boulevard	*744	*742
Maps available for inspection at the Planning Office, Municipal Building, Elkhart, Indiana 46516.					
Send comments to Honorable James P. Perron, Mayor, City of Elkhart, Municipal Building, Elkhart, Indiana 46516.					
Indiana	Unincorporated Areas, Elkhart County.	St. Joseph River	About 1.72 miles downstream of the confluence of Pine Creek	*745	*743
			About 2.05 miles upstream of the confluence of Washington Township Ditch	*755	*752
			About 1,100 feet downstream of the east bound lane of the Indiana East-West Toll Road	*758	*758
			About 1.73 miles upstream of the confluence of Trout Creek	*762	*760
		Pine Creek	At confluence with St. Joseph River	*747	*744
			Just upstream of State Route 120	*748	*748
Maps available for inspection at the Planning Department, Elkhart, Indiana.					
Send comments to Honorable Hal Doriot, County Commissioner, County Commissioner's Office, Elkhart County Courthouse, Goshen, Indiana 46526.					
Iowa	City of Evansdale; Black Hawk County	Cedar River	About 1.5 miles downstream of confluence of Elk Run Creek	*[illegible]	*[illegible]
			About 3.55 miles upstream of Illinois Central Gulf Railroad	*845	*843
		Elk Run Creek	At mouth at Cedar River	*[illegible]	*[illegible]
			Just upstream of U.S. Highway 20	*[illegible]	*[illegible]
Maps available for inspection at the Mayor's Office, 123 N. Evans Road, Evansdale, Iowa 50707.					
Send comments to Honorable Frederick M. Saul, Mayor, City of Evansdale, 123 N. Evans Road, Evansdale, Iowa 50707.					
Louisiana	Lafayette, City Lafayette Parish	Lateral F	Approximately 500 feet upstream of upstream corporate limits	(3)	*[illegible]
		Lateral No. 1 West Channel	Upstream of U.S. Route 90	(3)	*[illegible]
Maps available for inspection at the Lafayette City Hall, P.O. Box 4017-C, Lafayette, Louisiana.					
Send comments to Honorable Dud Lastrapes, Mayor of the City of Lafayette, P.O. Box 4017-C, Lafayette, Louisiana 70502.					
Louisiana	Lafayette Parish	Beau Basin	Approximately 1,050 feet upstream of corporate limits at limit of flooding affecting parish	(3)	*41

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
	Lateral F2	West Coulee Mine	Approximately 200 feet upstream of Interstate 10	(8)	*38
			At downstream side of Old Spanish Trail	(8)	*33
		Lateral F	At downstream corporate limits with Town of Scott	(8)	*36
			Approximately 3,750 feet downstream of Interstate 90	(8)	*32

Maps available for inspection at the Lafayette Parish Court P.O. Box 2009, Lafayette, Louisiana.

Send comments to Honorable Don Guillot, Clerk of the Court of Lafayette Parish, P.O. Box 2009, Lafayette Parish, Louisiana 70502.

Maryland	Anne Arundel County	Hall Creek	Downstream corporate limits	(8)	*44
			Most upstream corporate limits	(8)	*53
			Approximately 1,600' upstream of most upstream corporate limits.	(8)	*55

Maps available for inspection at the Office of Planning and Zoning, Arundel Center, Room 202, Calvert and Clay Streets, Annapolis, Maryland.

Send comments to Honorable O. James Lighthizer, Anne Arundel County Executive, Arundel Center, 44 Calvert Street Annapolis, Maryland 21401.

Maryland	Laurel, City Prince Georges County.	Patuxent River	Downstream corporate limits	(8)	*122
			Downstream side of State Route 198	*198	*134
		Crows Branch	Confluence with Patuxent River	(8)	*122
			Approximately 1,000 feet downstream of State Route 197.	(8) *126	

Maps available for inspection at the Laurel City Hall, Laurel, Maryland.

Send comments to Honorable Robert J. DiPiiro, Mayor of the City of Laurel, 350 Municipal Square, Laurel, Maryland 20707.

Massachusetts	Boylston, Town, Worcester County.		Approximately 1,400 feet downstream of Sewall Pond Outlet	(8)	402
			Sewall Pond Outlet	*400	*402
			Approximately 400 feet downstream of Access Road at YMCA culvert.	*401	*402

Maps available for inspection at the Municipal Office Building, 84 Main Street, Boylston, Massachusetts.

Send comments to Honorable Guy Fuller, Chairman of the Boylston Board of Selectmen, 84 Main Street, Boylston, Massachusetts 01505.

Michigan	City of Ann Arbor, Washtenaw County.	Huron River	Just upstream of Broadway Street	*767	*767
			Just downstream of Argo Dam	*774	*768
			Just upstream of Argo Dam	*774	*774
		Allen Creek Overland Flow	At mouth	*773	*768
			Just downstream of Conrail (downstream crossing)	*778	*768
			Just upstream of Conrail (downstream crossing)	*779	*777
			Just downstream of Hoover Avenue	*824	*825
			Just downstream of South Main Street	(8)	*874
		Ebenwhite Drain Overland Flow	At confluence with Allen Creek Overland Flow	(8)	*811
			Just downstream of Lutz Avenue	(8)	*855
		Murray-Washington Drain Overland Flow.	At confluence with Allen Creek Overland Flow	(8)	*902
			Just downstream of 7th Street	(8)	*820
			About 150 feet upstream of 7th Street	(8)	*830
			About 1,000 feet upstream of 8th Street	(8)	*832
		West Park-Miller Drain Overland Flow.	At confluence with Allen Creek Overland Flow	(8)	*900
			At confluence of West Park-Miller Drain South Branch Overland Flow.	(8)	*801
		West Park-Miller Drain North Branch Overland Flow.	At confluence with West Park-Miller Drain Overland Flow.	(8)	*801
			Just downstream of Wesley Street	(8)	*850
		West Park-Miller Drain South Branch Overland Flow.	At confluence with West Park-Miller Drain Overland Flow.	(8)	*801
			Just downstream of North Revena Boulevard	(8)	*850

Maps available for inspection at the City Hall, 100 North Fifth Street, Ann Arbor, Michigan 48107.

Send comments to Honorable Lewis D. Belcher, Mayor, City of Ann Arbor, P.O. Box 8647, Ann Arbor, Michigan 48107.

Michigan	City of Trenton, Wayne County	Frank and Poet Drain	Just upstream of Vreeland Road	*582	*582
			Just upstream of Conrail	*585	*584
			Just downstream of King Road	*586	*587
		Marsh Creek	About 800 feet upstream of West Road		*591
			Just downstream of King Road		*592

Maps available for inspection at the Engineering Department, 2800 Third Street, Trenton, Michigan.

Send comments to Honorable George W. Mans, Jr., Mayor City of Trenton, 2800 Third Street, Trenton, Michigan 48183.

Missouri	City of Old Monroe, Lincoln County.	Cuivre River	About 0.15 mile downstream of Burlington Northern Railroad.	*445	*445
			About 0.16 mile upstream of State Highway 79	*447	*445

Maps available for inspection at Second and Sycamore Streets, Old Monroe, Missouri.

Send comments to Honorable James Russell, Mayor, City of Old Monroe, Second and Sycamore Streets, P.O. Box 213, Old Monroe, Missouri 63369.

New Hampshire	Newport, Town, Sullivan County	Sugar River	At confluence of North Branch Sugar River	*774	*773
			Upstream side of Oak Street	*783	*780
			Upstream side of Belknap Avenue	*790	*786
			At confluence of South Branch Sugar River	*791	*788
			Upstream of side of Cross Street	*818	*814
			At upstream side of the Old Wooden Bridge located Approximately 1,430 feet upstream of the dam.	*846	*845
			At confluence of Long Pond Brook	*850	*848
			Approximately 150 feet downstream of Sand Hill Road		*852
		North Branch Sugar River	At confluence with Sugar River	*774	*773
			Approximately 0.98 mile upstream of confluence with Sugar River.	*774	*773

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		South Branch Sugar River	At confluence with Sugar River	*791	*791
			Approximately 0.43 mile upstream of confluence with Sugar River.	*791	*788

Maps available for inspection at the Municipal Building, 15 Sunapee Street, Newport, New Hampshire.

Send comments to Honorable Arnold Greenleaf, Chairman of the Board of Selectmen for the Town of Newport, 15 Sunapee Street, Newport, New Hampshire 03770.

New Jersey	Lawrence, Township, Mercer County.	Shabakunk Creek	Upstream side of U.S. Route 1	*54	*55
			Upstream side of U.S. Route 206	*61	*63
			At confluence of West Branch-Shabakunk Creek	*62	*64
			At upstream corporate limits	*72	*73
		West Branch-Shabakunk Creek	At confluence of Shabakunk Creek	*62	*64
			At upstream corporate limits	*84	*86
		Little Shabakunk Creek	Upstream side of U.S. Route 1	*51	*50
			Upstream side of Princeton Pike	*84	*85
			Upstream side of US 206	*79	*82
			At abandoned railroad bridge (Trenton-Lawrenceville)	*96	*98
			Approximately 475' Kupstream of abandoned railroad bridge (Trenton-Lawrenceville).	(8)	*101
		Tributary A	At confluence with Little Shabakunk Creek	*86	*86
			Approximately 350' upstream of confluence with Little Shabakunk Creek.	*87	*86

Maps available for inspection at the Township Manager's Office, 2207 Lawrenceville Road, Lawrenceville, New Jersey.

Send comments to Honorable Robert J. Albertson, Lawrence Township Manager, P.O. Box 6006, Lawrenceville, New Jersey 08648.

New Jersey	Montville, Township, Morris County.	Passaic River	Upstream Bloomfield Avenue	*173	*174
		Rockaway River	At confluence with Passaic River	*173	*174
			Upstream side of U.S. Route 46	*174	*175
			Upstream side of Vail Road	*176	*177
		Crooked Brook	Approximately 200 feet upstream Knoll Road	*182	*184
			Approximately 700 feet above River Road	*183	*184

Maps available for inspection at the Engineering Office, Sisco House, 132 Chain Bridge Road, Montville, New Jersey.

Send comments to Honorable Frederick E. Eckhardt, Mayor of the Township of Montville, 86 River Road, Montville, New Jersey 07045.

New Jersey	Stone Harbor, Borough, Cape May County.	Atlantic Ocean	Intersection of Third Avenue and 122nd Street	*12	*10

Maps available for inspection at the Stone Harbor Borough Hall, New Jersey.

Send comments to Honorable E. F. Pain, Administrative Assistant for the Borough of Stone Harbor, 9508 2nd Avenue, Stone Harbor, New Jersey 08247.

New York	Fayetteville, Village, Onondaga County.	Limestone Creek: Main Channel (Before Levee overtopping).	Upstream of dam	*436	*436
			Approximately 90' downstream of Limestone Plaza	*436	*437
			Upstream of East Genesee Street	*444	*441
			Approximately 1,400' downstream of corporate limits	*454	*445
			At upstream corporate limits	*457	*452
		Limestone Creek: Overbank	Upstream side of Kennedy Street (extended)	*436	*436
			Upstream of East Genesee Street	*444	*437
			Approximately 258' Upstream of Sweet Road Part 2	*445	*441

Maps available for inspection at the Municipal Building, Fayetteville, New York.

Send Comments to Honorable James H. Lannon, Mayor of the Village of Fayetteville, 425 East Genesee Street, Fayetteville, New York 13066.

New York	Manlius, Town, Onondaga County.	Chittenango Creek	Downstream corporate limits	(8)	*392
			Approximately 200' upstream of Interstate 90 eastbound lane.	(8)	*401
			Upstream of Kirkville Road	(8)	*404
			Approximately 780' upstream of upstream corporate limits.	(8)	*406
			At Confluence with Chittenango Creek	(8)	*396
		Limestone Creek	Approximately 200' upstream of confluence with Chittenango Creek.	*395	*396
			Upstream State Route 115/North	*397	*396
			At downstream corporate limits of Village of Fayetteville.	*431	*432
			At upstream corporate limits of Village of Fayetteville	*457	*452
			Approximately 2290' downstream of Dam	*466	*467
		Limestone Creek overbank	At downstream corporate limits of Village of Fayetteville.	*431	*432
			Approximately 275' upstream of East Genesee Street	*445	*438

Maps available for inspection at the Town Hall, 301 Brooklea Drive, Fayetteville, New York.

Send comments to honorable Richard Lowenberg, Town Supervisor of Manlius, 301 Brooklea Drive, Fayetteville, New York 13066

Ohio	Unincorporated Areas of Clermont County.	O'Bannon Creek	At County Boundary	(8)	*804
			About 0.8 mile upstream of State Route 132	(8)	*812
		Right Bank Tributary to O'Bannon Creek.	At mouth	(8)	*774
			Just upstream of County Road	(8)	*808
		East Fork Little Miami River	About 400 feet downstream of Round Bottom Road	*570	*527
			About 2.27 miles upstream of State Route 222	*806	*803
			About 250 feet downstream of State Route 133	*804	*804
			About 2.84 miles upstream of State Route 32	*831	*833

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Stonelick Creek	At confluence with East Fork Little Miami River	*541	*538
			About 1.9 miles upstream of State Route 132	*713	*714
Maps available for inspection at the County Planning Commission, 76 S. Riverside, Batavia, Ohio.					
Send comments to Honorable Dale S. Romohr, Chairman of the Board of Commissioners, 76 S. Riverside, Batavia, Ohio 45103.					
Rhode Island	Newport City, Newport County	Narragansett Bay	Newport Harbor shoreline	*15	*14
			Bridge Street	*15	*12
			Lucas Avenue	*15	*12
Maps available for inspection at Newport City Hall, 43 Broadway, Newport, Rhode Island.					
Send comments to the Honorable John E. Connors, Jr., City Manager of Newport, City Hall, 43 Broadway, Newport, Rhode Island 02840.					
Tennessee	City of Memphis, Shelby County	Fletcher Creek	Just upstream of New Macon Road	*252	*252
			Just downstream of Whitten Road	*264	*260
		Fletcher Creek Lateral B	At Mouth	*260	*257
			Just downstream of Raleigh LaGrange Road	*260	*260
		Tennile Creek	About 480 feet upstream of Winchester Road	*281	*281
			Just downstream of Raines Road	*305	*304
			About 0.87 miles upstream of Pilot Drive	*325	*324
Maps available for inspection at the Memphis and Shelby County Office of Planning and Development, City Hall, 125 North Main Street, Memphis, Tennessee 38103.					
Send comments to the Honorable Richard C. Hackett, Mayor, City of Memphis, City Hall, 125 North Main Street, Memphis, Tennessee 38103.					
Texas	Point Comfort, City, Calhoun County.	Lavaca Bay	Shoreline at Austin Street (extended)	*18	*12
			Shoreline at most southern corporate limits	*18	*15
Maps available for inspection at City Hall, 109 Jones, Point Comfort, Texas.					
Send comments to Honorable Trinidad Rocha, Mayor of the City of Point Comfort, P.O. Box 399, Point Comfort, Texas 77978.					
Vermont	Orleans, Village, Orleans County	Barton River	Approximately 200' upstream of Maple Street	*705	*704
			Approximately 400' downstream of State Route 58 bridge.	*720	*721
			Approximately 300' downstream of State Route 58	*731	*730
			Upstream of State Route 58 bridge	*739	*738
			Downstream of footbridge located downstream of 2 crossovers to Ethan Allen plant.	*741	*740
Maps available for inspection at the Orleans Village Office, Memorial Square, Orleans, Vermont.					
Send comments to Honorable Edwin Gage, Trustee for the Village of Orleans, Village Office, Memorial Square, Orleans, Vermont.					
Virgin Islands Commonwealth	Atlantic Ocean (St. Thomas)		Shoreline at Coki Point	(4)	*5
Maps available for inspection at the Disaster Program Office, 2nd Floor, 7A Crystal Gad, St. Thomas, Virgin Islands.					
Send comments to Honorable Julio Brady, Lieutenant Governor of St. Thomas, Government House, P.O. Box 450, St. Thomas, Virgin Islands 00801.					
Virginia	Accomack County	Chesapeake Bay	North end of Pintail and Canvasback Lanes	*10	*7
			Intersection of Canvasback Lane and Black Mallard Way.	*8	*7
Maps available for inspection at the Department of Public Works, County Administration Building, Route 764, Accomack, Virginia.					
Send comments to Honorable Joseph DeMarino, Country Director of Public Works, P.O. Box 388, Accomack, Virginia 23301.					
Wisconsin	Village of DeForest, Dane County.	Yahara River	Just downstream of South Road	*925	*925
			Just upstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad	*932	*933
			Just upstream of North Street	*933	*934
			About 4,100 feet upsteam of North Street	*935	*935
Maps available for inspection at 113 South Durkee Street, P.O. Box 515, DeForest, Wisconsin.					
Sent comments to Honorable Clifford A. Bass, Village Administrator, Village of DeForest, 113 South Durkee Street, P.O. Box 515, DeForest, Wisconsin 53532.					

[1] Not previously shown.
[2] None.
[3] Zone A.
[4] Zone B.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: November 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-29972 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-266; RM-4619]

FM Broadcast Station in Kahului and Wailuku, HI; Dismissal of Proposal

AGENCY: Federal Communications Commission.

ACTION: Proposed rule. Dismissal of proposal.

SUMMARY: Action taken herein dismisses the petition for rule making filed by Charles Joseph Thompson to assign FM Channel 294, to either Kahului or Wailuku, Hawaii, for failure to file comments reaffirming his intention to apply for the channel, if assigned. (MM Docket No. 84–266, RM–4619).

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) table of assignments, FM broadcast stations (Kahului and Wailuku, Hawaii); MM Docket No. 84–266, RM–4619.

Adopted: October 29, 1984.
Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 10313, published March 20, 1984, proposing the assignment of FM Channel 294 to either Kahului as that community's first FM allocation or to Wailuku, as that community's second FM allocation. The *Notice* was adopted in response to a petition filed by Charles Joseph Thompson ("petitioner"). Petitioner failed to file comments reaffirming his intention to apply for the channel, if assigned, and no other comments on the propósal were received.

2. As stated in the *Notice*, a showing of continuing interest is required before a channel will be assigned. Therefore, in accordance with Commission policy, no further consideration will be given to the assignment of FM Channel 294 to either Kahului or Wailuku, Hawaii.

3. It is ordered, That the petition of Charles Joseph Thompson is dismissed and this proceeding is hereby terminated.

4. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-29917 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

48 CFR Part 1480

Buy Indian Act; Procedures for Contracting With Indians Pursuant to the Act of June 25, 1910

November 8, 1984.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing proposed rules which govern the implementation of Pub. L. 61–313, often referred to as the Buy Indian Act. These rules support the policy, procedures, and processes of the Bureau of Indian Affairs in its procurement relationships with eligible and certified Indian/Alaska Native economic enterprises for the purchase of the products of Indian industry.

DATE: Written comments must be received no later than December 15, 1984.

ADDRESS: Written comments may be directed to U.S. Department of the Interior, Bureau of Indian Affairs, Chief, Contracting and Grants Administration Staff, 1951 Constitution Avenue, N.W., Washington, D.C. 20245. The envelope front should bear the legend, "Buy Indian Act Comments", in the lower left corner.

FOR FURTHER INFORMATION CONTACT: Dr. Peter A. Campanelli, Contracting and Grants Administration Staff, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, telephone number (202) 343–5125.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301. The authorizing statute is Pub. L. 61–313 (25 U.S.C. 47).

Beginning on page 44678 of the October 8, 1982, **Federal Register** (47 FR 44678), a notice of proposed rulemaking was published to add a new Part 14H–71 to Subchapter 14H of Title 41 of the Code of Federal Regulations.

The public was given until January 6, 1983, to submit written comments, suggestions, or objections regarding the proposed rule. All comments received with respect to the proposed rule were given due study and consideration.

I. Changes Made Due to Editorial Review

An analysis of the rules material by the writers subsequent to publication of the proposed rules raised concerns with the format, style, content and text position. Therefore, the writers decided to reposition the text to delineate better the roles of the Bureau and of the offerors under the Act. This approach seemed to lend itself to a logical presentation of policy and procedures, while clarifying the contributions of both parties to the Act contract.

In addition to repositioning the text, the writers made significant changes to the rule contents in an attempt to: (1) strengthen the certification process for protection of the legitimate Indian/Alaska Native economic enterprise; (2) curtail the opportunities for potential fraud and abuse by ineligible economic enterprises; and (3) define Bureau procedures more clearly in the award process.

Therefore, the writers reviewed and accepted/rejected public comments submitted to the Bureau for the proposed rules that initially appeared on October 8, 1982. These proposed rules are offered for public comment and incorporate the accepted public comments submitted in response to the earlier notice for proposed rulemaking, as well as the significant editorial changes cited above.

Finally, the Federal Acquisition Regulation (FAR) was published in the **Federal Register** (Vol. 48, No. 182) on September 19, 1983, becoming effective on April 1, 1984. The FAR establishes a single (and primary) regulation for use by all Executive agencies in their procurement of supplies and services with appropriated funds. Thus, the FAR replaces the Federal Procurement Regulations (FPR), the latter reflecting rules and regulations for civilian agencies. With this FAR enactment, the Department of the Interior assigned Part 1480 of the new Title 48 of the Code of Federal Regulations to the Bureau of Indian Affairs acquisition management system. Thus, 48 CFR Part 1480 presents the proposed Buy Indian Act regulations previously referenced under the proposed 41 CFR 14H–71.

II. Changes Made Due to Comments Received

As a result of comments received for the proposed rules published on October 8, 1982, the following changes in these proposed regulations are made in addition to language changes for clarification:

(1) One comment requested inclusion of the term "Pueblo lands" in the definition of "Reservation", the point being that the former were not "reserved" in the same legal sense as other Indian lands. This change was made in § 1480.102.

(2) One comment pointed out that proposed § 14H–71.202(a)(3) was not consistent with the practice of limiting solicitation responses to Indian offerors. If so, a comparison could not be made to "non-Indian offerors". This phrase was changed to maintain procedural consistency in § 1480.105.

(3) To establish uniform qualification requirements, these proposed rules include Bureauwide use of a Qualification Questionnaire for Certification by eligible offerors; the issuance of a National Roster of Certified Indian/Alaska Native Economic Enterprises by the Bureau Central Office; and, the Bureauwide acceptance of the certification approval that is provided by a Level IV warranted Contracting Officer.

(4) Several comments were received on the definition of "100% Indian/Alaska Native Owned-or-Controlled". These proposed rules have deleted the term and address the issue under the new terms "Indian/Alaska Native Economic Enterprise", and "Owned-and-Controlled", in § 1480.102.

(5) One comment requested an implementation clause of preferred award of subcontracts. This provision has been stated in § 1480.403 to require a plan for approval by the Contracting Officer as required by provisions of 48 CFR 1404.70 and § 1452.202–72.

(6) The term "Indian Tribes" has been included in the definition of "Indian/Alaska Native Economic Enterprise" to indicate that Tribal government enterprises may become certified offerors under the Act. This is found in § 1480.102.

(7) Additional language was included under § 1480.207 on "Subsequent Involvement of Certified Offeror" to clarify the procedure when an eligible offeror makes its presence known after an unrestricted solicitation has been issued.

(8) A suggestion was made to require an appropriate and responsive subcontracting plan when an award is made to a non-Indian firm. Indian preference requirements for employment, training, subcontracting and subgrants are addressed in other Bureau publications and are mandated by Section 7(b) of Pub. L. 93–638 (25 U.S.C. 450 *et seq.*). For purposes of awards under the Buy Indian Act, § 1480.403 has been added to these proposed rules.

III. Comments Not Adopted

Certain other comments have been considered but have not been accepted. The following suggestions were not adopted for the reasons given:

(1) Several comments recommended a less-than-100% Indian/Alaska Native ownership of the economic enterprise. A policy decision by the Assistant Secretary—Indian Affairs has maintained the Bureau's position that the economic enterprise shall be owned in its entirety by Indian/Alaska Native(s) person(s).

(2) Some confusion was expressed regarding the term "owned-and-controlled". Bureau policy is continued for ownership in its entirety of the economic enterprise. The authority for and exercise of policy-making implies ownership and control of the economic enterprise. This point is address in § 1480.102.

(3) One comment recommended that Bureau solicitations be sent to all known Indian/Alaska Native companies. Rather, notice of proposed Bureau acquisitions in excess of $10 thousand (with specified exceptions) will be published in the Commerce Business Daily and solicitations will also be sent to appropriate and certified economic enterprises comprising the National Roster of Certified Indian/Alaska Native Economic Enterprises.

(4) The Bureau includes language for an administrative complaint herein to guide the disapproved applicant for certification as well as the reviewing Bureau official. It is not considered appropriate to delete this item and it may be found in §§ 1480.203(f) and .205(c).

IV. Specific Comment Applying to All Parts

The proposed regulations of October 8, 1982 contained the restriction imposed on the Bureau of Indian Affairs by the U.S. Supreme Court decision in *Andrus* v. *Glover Construction co.* (Supreme Court No. 79–48, May 27, 1980). This restriction prohibited the use of the Act authority to contract with Indian/Alaska Native economic enterprises for any type of road construction, repair of buildings, roads, sidewalks, sewers, mains or similar items.

In addition, the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2097) enacted on January 6, 1983 allows the Secretary of the Interior to apply the provisions of the Buy Indian Act (Pub. L. 61–313) and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93–638, 88 Stat. 2205) to all funds administered by the Secretary which are appropriated for the construction and improvement of Indian reservation roads.

Subsequent to the publication of the proposed regulations in the **Federal Register** on October 8, 1982, and the enactment of the Surface Transportation Assistance Act, and prior to this proposed rule, a judicial amendment of injunction pursuant to § 114(b) of Pub. L. 97–424 of January 6, 1983, altered the substance of the rules with respect to the Supreme Court decision in *Andrus* v. *Glover Construction Company.* Essentially, the U.S. District Court for the Eastern District (U.S.D.C.E.D.) of Oklahoma decree of April 6, 1983, lifted the injunction of this court on May 12, 1978, and vacated the injunction on all Indian reservation road construction (as defined in 23 U.S.C. 101), exept within the State of Oklahoma. However, the restriction on the use of Act authority for other construction still remains in effect Bureauwide. This stipulation is found in § 1480.401.

The information collection requirements contained in Sections 1480.302 and .403 regarding compliance with section 7(b) of Pub. L. 93–638 (25 U.S.C. 452) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0019. Also, the information collection requirements contained in Section 1480.301 for the Solicitation Mailing List Application (SF–129) has the clearance number 3090–0009. The collection requirement covered by the Qualification Questionnaire is under review for approval by the Office of Management and Budget. Comments addressing these information collection requirements should be submitted to the Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20504, attention: Interior Desk Officer; and, to the Department of the Interior at the address given above.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. Currently, Indian/Alaska Native economic enterprises apply to the cognizant Bureau Contract Office to participate under the Act authority. If deemed eligible, said enterprise may respond to and be considered for Bureau solicitation and contracts. These proposed rules serve to formalize an application and certification proicedure for all Bureau procurement activities/locations to be applied uniformly to all economic enterprises seeking to participate under the Act authority. There is no change in the Bureau policy of assessing eligibility of Indian/Alaska Native economic enterprises. The authors of tis document are Donald F. Asbra and Dr. Peter A. Campanelli, Contracting and Grants Administration Staff, Bureau of Indian Affairs, United States Department of the Interior, Washington, D.C. 20245, telephone number (202) 343–5125.

List of Subjects in 48 CFR Part 1480

Indian/Alaska Native economic enterprises, Federal procurement.

A new Part 1480 is proposed to be added to Title 48 of the Code of Federal Regulations to read as follows:

PART 1480—BUY INDIAN ACT; PROCEDURES FOR CONTRACTING WITH INDIANS PURSUANT TO THE ACT OF JUNE 25, 1910

Subpart 1480.1—General Provisions

Sec.

1480.101 Purpose, Scope and Information Collection.
1480.102 Definitions.
1480.103 Statement of Policy.
1480.104 Conformity to Federal Acquisition Regulation.
1480.105 Exceptions by Assistant Secretary—Indian Affairs.

Subpart 1480.2—Bureau Procedures

1480.201 Use of Act Authority and Regulations.
1480.202 Small Purchase Procedures.
1480.203 General Requirements.
1480.204 Certification Process.
1480.205 Receipt of Application.
1480.206 Economic Enterprises Certified Prior to Adoption of These Rules.
1480.207 Subsequent Involvement of Certificate Offeror.
1480.208 Architect-Engineer Services.

Subpart 1480.3—Economic Enterprise Procedures

1480.301 Eligible Offerors/Contractors.
1480.302 Additional Information Required from Economic Enterprises for Response to Bureau Solicitation.
1480.303 Breach of Contract.

Subpart 1480.4—Limitations

1480.401 Constraction.
1480.402 Subcontracting.
1480.403 Indian/Alaska Native Preference.

Subpart 1480.5—Clauses and Notices

Sec.
1480.501 Notice of Restriction and Certified Offeror's Response.
1480.502 Subcontracting.

Authority: 25 U.S.C. 47, 36 Stat. 861.

Subpart 1480.1—General Provisions

§ 1480.101 Purpose, Scope and Information Collection.

(a) The regulations in this part provide the policies and procedures for entering into and awardings contracts and purchase orders to certified Indian/Alaska Native economic enterprises by the Bureau of Indian Affairs pursuant to the authority of the Act of June 25, 1910 (Pub. L. 61–313, and referred to as "the Act" or "the Buy Indian Act" throughout this part) and codified as 25 U.S.C. 47 and this part.

(b) The Act provides discretionary authority to the Secretary of the Interior to acquire by purchase the products of Indian industry. This authority is exercised by the Bureau of Indian Affairs on a preferential basis. The Bureau of Indian Affairs may negotiate contracts and purchase orders with certified Indian/Alaska Native economic enterprises to the exclusion of non-Indian offerors pursuant to the authority of section 302(c) (10) and (15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c) (10) and (15)). This latter authority provides that contracts may be negotiated without formal advertising "if otherwise authorized by law"; in this instance, the authorization to do so is provided under the Act of June 25, 1910. The Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2097), as interpreted by the U.S. District Court for the Eastern District of Oklahoma by decree of April 6, 1983, vacating an injunction against using the Buy Indian Act, is authority also for road construction procurements.

(c) The provisions of this part apply to all acquisitions (purchase orders or contracts) entered into by the Bureau of Indian Affairs with certified Indian/Alaska Native economic enterprises pursuant to the Act and its regulations. However, the Assistant Secretary may authorize exceptions, as noted in § 1480.105 of this part.

(d) Information Collection Requirement: (Reserved.)

§ 1480.102 Definitions.

As used in this part,

"Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior.

"Bureau" means the Bureau of Indian Affairs, Department of the Interior.

"Buy Indian Act" means the provisions and authority of the Act of June 25, 1910 (Pub. L. 61–313, 25 U.S.C. 47) and is also referred to as the Act in this part.

"Buy Indian Contract" means any Bureau acquisition (by contract or purchase order) of the product of Indian/Alaska Native industry from a certified Indian/Alaska Native economic enterprise pursuant to the authority of the Act and this part.

"Certified" means the Bureau designation of an Indian/Alaska Native economic enterprise to be included for preferential participation under the Act authority. The certification process includes the submitting of a Standard Form 129 (Solicitation Mailing List Application) and a completed Qualification Questionnaire for Certification to the Bureau by an eligible and interested economic enterprise; meeting the definition requirement for "Indian"; and, satisfying the criterion for ownership-and-control of the economic enterprise.

"Contracting Officer" means an official designated in accordance with 48 CFR Subpart 2.1 with the authority to enter into, administer and/or terminate contracts, and make related Determination and Findings.

"Day" means calendar day.

"Dealer (regular)" means a person who owns, operates or maintains a store, warehouse, or other establishment in which the commodities being supplied are bought, kept in stock, and sold to the public in the usual course of business.

"Indian" means any person or Indian descent who is an enrolled member of an Indian Tribe, as defined herein; or, who is a descendant of one-fourth degree or more Indian blood of an enrolled member of a tribe where rolls have been closed by Act of Congress; or, any Alaska Native of one-fourth degree or more Alaska, Indian, Eskimo, or Aleut blood; or, any member of a Federally recognized tribe; and all persons of one-half degree or more Indian blood.

"Indian/Alaska Native Economic Enterprise" means any profit or nonprofit, commercial, industrial, agricultural, or other lawful business activity that is owned and controlled in its entirety by Indian/Alaska Native(s) or an Indian Tribe.

"Indian Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or other organized group or community, including any Alaska Native village, which is recognized by the Secretary of the Interior as having special rights and is recognized as eligible for the services provided by the

United States to Indians because of their status as Indians.

"Owned-and-Controlled" means an Indian/Alaska Native economic enterprise (as defined in this section) which is 100% owned by (an) Indian/Alaska Native person(s). In the case of corporations, all capital stock must be owned by (an) Indian/Alaska Native person(s) and the capital stock issued must represent the substantive evidence of ownership, as determined by the Contracting Officer. In the case of partnerships, all partners must be (an) Indian/Alaska Native person(s). "Controlled" means that (an) Indian/Alaska Native person(s) direct(s) the policy, management and operation of the economic enterprise; hold(s) the key management position(s); and, participate(s) in the economic enterprise on substantially a full-time basis. Exceptions to the "control" requirement may be authorized for tribal government enterprises. To obtain and maintain Bureau certification, an applicant shall meet the "owned-and-controlled" requirement. This requirement shall exist during contract performance if an award is made to the certified economic enterprise.

"Products of Indian/Alaska Native Industry" means any products, goods, supplies or services that can be provided by a certified economic enterprise that either produces them through its own labor, skills or effort, or is a regular dealer in such goods or services.

"Reservation" means any bounded geographical area (including Pueblo lands, former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, and Indian allotments) established or created by treaty/statute, Executive Order, or as interpreted by court decision and over which an Indian Tribe may exercise jurisdiction.

"Secretary" means the Secretary of the Interior.

"Small Purchase" means an acquisition of supplies, nonpersonal services, and road construction (except in the State of Oklahoma) using the Act authority in the amount of $25,000 or less using the procedures prescribed in this part and as governed by Parts 13 and 15 of this title.

"Tribal Governing Body" means the recognized entity empowered to exercise the governmental authority of a tribe, as defined herein.

§ 1480.103 Statement of Policy.

(a) The Secretary exercises discretionary authority under the Act to acquire by purchase the products of Indian/Alaska Native industry.

(b) The Bureau uses the authority of this Act to the maximum extent practicable to acquire supplies, goods, and services solely from Indian offerors.

(c) The authority of this Act and this part apply to those Bureau acquisitions (small purchase orders or contracts) entered into with certified Indian/Alaska Native economic enterprises.

(d) The authority of this Act and its regulations shall not be used to award self-determination contracts to Tribal organizations (as the term is defined in 25 CFR Part 271) to plan, operate, administer, or manage those Bureau programs or parts thereof that are within the scope of the Indian Self-Determination and Education Assistance Act (25 CFR Parts 271, 272, and 274; and 48 CFR Part 1481), as now or hereafter determined by the Assistant Secretary. However, this Act may be used to cover parts of programs which a Tribe does not wish to contract for and are subject to the provisions of OMB Circular A–76.

(1) Current Buy Indian Act contracts with such Tribal organizations for self-determination activities shall be reviewed. When appropriate, renewal action shall be taken under the authority of Pub. L. 93–638 and its regulations.

(2) Short-term projects related to Tribal government and its business-related functions may continue to be carried out using the award authority of the Buy Indian Act, if so requested by the Tribal governing body.

(e) Bureau personnel shall exercise the authority of the Act and its regulations for all acquisitions governing the procurement of services, goods, and supplies from certified Indian/Alaska Native economic enterprises in meeting Bureau needs and requirements. This requirement applies to all Bureau acquisition actions, regardless of dollar amount, subject to the limitation expressed in § 1480.103(d) and the factors cited in § 1480.201(b).

§ 1480.104 Conformity to Federal Acquisition Regulation.

(a) Purchase orders and contracts entered into by the Bureau pursuant to the Act shall comply with all applicable requirements of the Federal Acquisition Regulation (48 CFR Chapter 1), all provisions of the Interior Acquisition Regulation System (48 CFR Parts 1400–1499), and the governing directives of the Bureau.

(b) After compliance with the provisions of Part 6 of 48 CFR regarding sources of procurement, Bureau Contracting Officers shall determine whether to exercise the authority either under the Act, or under section 8(a) of the Small Business Act, as amended. If it is determined that Act authority will not be used, the exercise of the Small Business 8(a) program authority shall be considered. In addition, the procedures for the purchase/lease of printing equipment and printing work are restricted and governed under Subpart 8.8 of 48 CFR.

(c) Bureau procurement under the Act authority, while limited to certified Indian/Alaska Native economic enterprises, are subject to the rules and related procedures that govern all Federal contracts. That is, once the Bureau decision is made to use the Act authority to purchase supplies or services, the acquisition process that follows shall not be substantively or procedurally different than when dealing with the business community at large. Bureau officials shall adhere to Federal, Interior, and Bureau acquisition regulations and guidelines governing contract planning, advertising, negotiating, pricing, awarding, administering, modifying, terminating, and closing components.

(d) Two basic principles shall be considered by the Contracting Officer:

(1) The Bureau procurement award shall benefit a responsible certified Indian/Alaska Native economic enterprise; and,

(2) A fair and reasonable price shall be assured.

(i) The thorough review of the Qualification Questionnaire for Certification form by a Level IV warranted Contracting Officer shall determine that an economic enterprise fulfills the criteria of these rules; and

(ii) With regard to assurance of a fair and reasonable price, the following steps (as a minimum) are required (as applicable) for contracts entered into under the Act:

(A) Written justification by the Contracting Officer when awarding a noncompetitive (single source) contract;

(B) Properly prepared Bureau cost estimates, including support documentation;

(C) Price analysis; and

(D) Price negotiations, including a written record of the negotiations for the contract file.

(e) When there is more than one certified Indian/Alaska Native economic enterprise interested in a procurement action, and if the requirement is such that the formally advertised method of procurement would be used were the procurement not under the Act, the Contracting Officer shall use the formally advertised method of procurement set forth in Part 14 of this title, restricting competition to certified offerors. The contract shall then be awarded to the responsible certified contractor submitting the lowest responsive, responsible offer, unless it is determined in accordance with § 14.407–2 and § 15.214 of 48 CFR that such an offer is not reasonable as to price. In such circumstances, the Contracting Officer will notify each responsible certified offeror (which submittted a responsive offer) of the Bureau's intent to negotiate, following the procedures outlined in § 15.214 of 48 CFR.

(f) If the requirement is such that the use of the formally advertised method of procurement is not feasible, the Contracting Officer shall follow the negotiated method of procurement set forth in Part 15 of this title. The competition shall be limited to certified offerors. However, when the proposals received are not technically acceptable and have no reasonable chance of being made so; or, if negotiations with those offerors in the competitive range fail to produce a proposal that is reasonable as to price, the Contracting Officer may terminate negotiations with the certified offerors. The Request for Proposal (RFP) may then be reissued on an unrestricted basis.

§ 1480.105 Exceptions by Assistant Secretary—Indian Affairs.

(a) The Assistant Secretary may authorize individual or class exceptions to the preference authorizations of the Act in meeting Bureau acquisition requirements. Exceptions to the use of the Act's authority include, but are not limited to, the following conditions:

(1) Reasonable quantity, delivery, or other performance schedules cannot be met by a certified economic enterprise; or

(2) The technical quality of the specific goods or services required to meet the end-use of the Bureau activity is not available from a certified economic enterprise; or

(3) The contract price to the Bureau from a certified economic enterprise is considered unreasonable when compared to bureau experience and judgment relative to current market prices; or

(4) Where trade-in considerations make prices from a certified economic enterprise unreasonable; or

(5) An eligible and certified Indian/Alaska Native economic enterprise is not interested, available, or responsible in fulfilling the Bureau's procurement need; or

(6) A management determination is made by the Assistance Secretary to adhere to normal procurement procedures when it is considered in the best interest of the Bureau to do so, regardless of the contract amount.

(b) Under the above circumstances, the Contracting Officer shall prepare a written Determination and Findings that:

(1) There are no interested, eligible, certified, and responsible Indian/Alaska Native economic enterprises available for meeting the acquisition requirements; or

(2) A fair and reasonable price or other acceptable contract terms/provisions cannot be negotiated under the Act; or

(3) A management determination has been exercised by the Assistant Secretary to adhere to normal procurement procedures.

(c) The written Determination and Findings by the Contracting Officer shall be made a part of the contract file. The Assistant Secretary—Indian Affairs shall review/approve each Determination and Findings for a decision on an exception basis for proposed procurement actions in excess of $100,000 except for actions under paragraph (a)(6) above. Normal procurement procedures with non-Indian offerors shall not be taken by the Contracting Officer pending issuance and receipt of a written exception from the Assistant Secretary for proposed action exceeding the threshold dollar amount.

Subpart 1480.2—Bureau Procedures

§ 1480.201 Use of Act Authority and Regulations.

(a) The Bureau shall exercise the authority of the Act and this part in meeting Bureau needs and requirements for the procurement of goods, services and supplies in support of its mission and program activities and as a means of promoting economic development and employment for Indian/Alaska Native persons.

(b) The regulations (under § 1480.102, Indian/Alaska Native Economic Enterprises) authorize Indian Tribes as eligible entities that may be certified under the Act to meet Bureau needs and procurement requirements for supplies, goods and services unrelated to contract awards made under Pub. L. 93–638. Contracting Officers shall exercise special care and attention to maintain this distinction between the intent and use of the two award authorities.

§ 1480.202 Small Purchase Procedures.

Whenever the conditions set forth in Part 13 and Part 15 of this title are met, the simplified method of procurement (small purchase) shall be used. The Contracting Officer shall follow the procedures described in Part 13 of this title.

§ 1480.203 General Requirements.

(a) All proposed Bureau acquisition actions [as excepted in Subpart 5.202 of this title and in § 1480.103(d) of this Part] in excess of $10,000 shall be published by the Contracting Officer as a Synopsis in the U.S. Department of Commerce publication, the Commerce Business Daily, in accordance with 48 CFR Part 5. In addition to the other requirements of a Synopsis, it shall contain the notice cited in § 1480.501(b). When appropriate, the Contracting Officer shall also publish a "Sources Sought" notice in the Commerce Business Daily (as outlined in 48 CFR 5.201 and 5.203).

(b) The Bureau Central Office shall develop, maintain, and periodically distribute a National Roster of Certified Indian/Alaska Native Economic Enterprises. The information for this Roster shall be compiled from applications by eligible offerors on the Solicitation Mailing List Application (SF–129) and on the Qualification Questionnaire for Certification form. The responses shall be reviewed by a Level IV Contracting Officer who shall approve/disapprove the economic enterprise as to certification to participate under the Act authority. When the enterprise is certified by one Bureau Contracting Officer, it shall be reported accordingly to the Bureau Central Office for inclusion in the National Roster, thereby denoting Bureauwide certification as a potential offeror under the Act.

(c) The Bureau shall give preference to Indian/Alaska Native economic enterprises that have submitted a completed SF–129 and Qualification Questionnaire for Certification form to a contracting activity/location and which have been certified by a Contracting Officer as such prior to award for consideration under the Act and this Part.

(d) Review and approval/disapproval of the SF–129 and the certification application is restricted to those personnel certified as a Level IV warranted Contracting Officer (48 CFR 1401.6).

(e) The SF–129 and the Qualification Questionnaire for Certification form shall be available from all Bureau contracting activities/locations. Indian/Alaska Native economic enterprises are encouraged to submit completed SF–129's and Qualification Questionnaires for Certification at any time to the cognizant Bureau facility serving their geographic locality. The Contracting Officer shall determine whether the

offeror is certifiable to contract under the Act. This determination shall be supported by the completed SF–129 and the Qualification Questionnaire for Certification form which shall be on file at the Bureau contracting activity or submitted with (or prior to) the offeror's response to any Bureau solicitation. the Certificate shall be renewed by the certified enterprise every three years on the anniversary of the original certification date in order to maintain a current certificate. If not so renewed, the listing for the economic enterprise shall be removed as a possible offeror from the National Roster by the Bureau Central Office.

(f) An economic enterprise applying for certification under the Act and this Part which is adversely affected by a decision of the cognizant reviewing Contracting Officer may submit an administrative complaint. The complaint procedure is set forth below and shall be made known in writing to the applicant economic enterprise by the reviewing Contracting Officer.

(1) If an economic enterprise is disapproved for certification under the Act by the Contracting Officer, it may submit a written complaint to the cognizant Contracting Officer with a request for review. This document shall be received ten (10) days following the date of delivery by certified mail (return receipt requested) of the Bureau's written notice of disapproval. The reviewing official shall be the Area Director for an Area Office and the Deputy Assistant Secretary—Indian Affairs (Operations) for a Central Office contracting activity. The reviewing official's decision shall be final for the Bureau.

(2) The reviewing official shall request and acquire all relevant documents and other materials necessary to reach and render an administrative decision within thirty (30) days of receipt of the complaint or its supporting documents, whichever is received last.

(g) Each Bureau contracting activity shall compile and maintain a file of current Solicitation Mailing List Applications of Indian/Alaska Native economic enterprises. The submission of a Solicitation Mailing List Application (or, Architect-Engineer and Related Services Questionnaire and Architect-Engineer and Related Services Questionnaire for Specific Projects) by such an economic enterprise does not remove the requirement for it to submit the completed Qualification Questionnaire for Certification form also required by this Part if it wishes to be reviewed for Bureau certification. The Solicitation Mailing List Application (or, Architect-Engineer and Related Serives Questionnaire and Architect-Engineer and Related Services Questionnaire for Specific Projects, when applicable) shall be included in every applicant request to the Bureau for certification.

(h) When a proposed acquistion (regardless of dollar amount) applies to services to be performed in whole or in part on an Indian reservation or Alaska Native village under a Bureau contract and this Act, written notification should be given to the governing body of that entity. Unless unfeasible, this notice should be provided by the Contracting Officer no less than thirty (30) days before the proposed issuance of a solicitation and state the following:

(1) The Bureau intent to contract under the Act authority if there are Indian/Alaska Native economic enterprises which are interested, certified, responsive and responsible;

(2) A synopsis of the proposed contract; and

(3) If there are not interested, certified, responsive and responsible Indian/Alaska Native economic enterprises available, the Bureau requirement will then be obtained by contract pursuant to normal procurement procedure.

§ 1480.204 Certification Process.

(a) The award and preference authority of the Act are used to meet Bureau organizational needs, assist and strengthen the development of Indian/Alaska Native economic enterprises, and enhance their economic self-sufficiency. To achieve these ends, Bureau policy requires certification of eligible offerors whereby adequate proof is provided by the applicant enterprise that it is a legitimate entity to receive awards under the Act.

(1) To be "eligible", the economic enterprise shall meet the definition of Indian/Alaska Native Economic Enterprise in § 1480.102.

(2) To be "qualified" means the eligible economic enterprise has submitted the completed SF–129 and the Qualification Questionnaire and Certification form with required documentation to the Bureau Contracting Officer for review; has received approval as a certified enterprise; is responsible and capable of performing; and, its designation as such appears [or shall appear within ten (10) days of award] on the Bureau's National Roster of Certified Indian/Alaska Native Economic Enterprises.

(b) Bureau approval for certification is provided by a Level IV warranted Contracting Officer (48 CFR 1401.6) or by a reviewing official on appeal; the designation is recognized Bureauwide; and, the certificate is in effect for a three year period unless: (1) Voluntarily surrendered; (2) revoked by the Bureau for cause; (3) the circumstances of the economic enterprise change so that it is no longer eligible or certified; or (4) the original Bureau certification was found to be in error. The option and actions to renew the certificate at the end of a three year period rest entirely with the certified economic enterprise.

(c) The purposes of the certification process are to bring about the use and support of eligible Indian/Alaska Native economic enterprises and to prevent circumvention or abuse of the Act which is detrimental to the legitimate Indian/Alaska Native economic enterprise and contrary to the intent of the Congress. The Bureau Contracting Officer who reviews an applicant's SF–129 and Qualification Questionnaire for Certification form (or, the reviewing official on appeal) shall carefully review and analyze the application to rule out the possibility of fraudulent practice by a non-eligible enterprise. Also, applications from economic enterprises that reflect complex organizational structures should be reviewed by the Office of the Solicitor.

§ 1480.205 Receipt of Application.

(a) The completed application shall be submitted to the reviewing Contracting Officer at the Bureau facility serving the geographic area of the applicant. The Contracting Officer shall formally log the application. Within five (5) days of receipts, the Contracting Officer shall notify the economic enterprise in writing that the application for certification was received, and is under review for certification. Subsequently, if additional information is required for the review, it shall be requested by the Contracting Officer in writing and the twenty (20) day period (see below) shall not take effect until all material has been received.

(b) Within twenty (20) days of receipt of all materials, the Contracting Officer shall notify the economic enterprise in writing that the application for certification has been approved/disapproved. If approved, the applicant's certificate status shall be forwarded to the Bureau Central Office for inclusion in the National Roster of Certified Indian/Alaska Native Economic Enterprise. The certification approval is to be honored by all Bureau contracting activities. A copy of this updated National Roster shall be provided periodically to all Bureau contracting activities by the Bureau Central Office.

(c) If the application for certification is disapproved by the Contracting Officer, the notification of this action shall also

make known the applicant's option of administrative complaint as set forth in § 1480.203(f).

§ 1480.206 Economic Enterprises Certified Prior to Adoption of These Rules.

(a) Indian/Alaska Native economic enterprises holding current Bureau certification on the effective date of this rule shall be notified in writing within thirty (30) days by the cognizant Contracting Officer to submit an updated application to the nearest Bureau Office if it wishes to continue as a certified enterprise. A copy of the pertinent sections of these regulations may be included as part of the Bureau's written notification.

(b) This updated submission by the economic enterprise shall be made to the Bureau within thirty (30) days of the notification date by the Contracting Officer. The certification procedure shall then proceed as stated in this Part. If no updated submission is made within the specified time period, the name of the economic enterprise shall be removed from the National Roster until just time as a new application is received and approved.

§ 1480.207 Subsequent Involvement of Certified Offeror.

(a) In the event an interested and certified Indian/Alaska Native economic enterprise is identified after an unrestricted or open-market solicitation has been issued but prior to date of an award, the Contracting Officer shall provide a copy of the solicitation to such enterprise even though bids, quotations or proposals have been solicited from non-Indian offerors. In such cases, preference under the Act will not be made available to the certified economic enterprise.

(b) Under the above conditions, the Contracting Officer shall determine whether the date for Bureau receipt of bids or proposals shall be extended.

§ 1480.208 Architect-Engineer Services.

When the Bureau procurement requirement for Architect-Engineer Service is restricted to certified offerors pursuant to the Act authority and this Part, all provisions of 48 CFR Part 36 shall apply.

Subpart 1480.3—Economic Enterprise Procedures

§ 1480.301 Eligible Offerors/Contractors.

(a) Any Indian/Alaska Native economic enterprise that meets the requirements of this Part is considered eligible to apply for certification by a Bureau contracting activity. Certification is based on information furnished by the applicant enterprise to the Bureau Contracting Officer on the SF–129 and the Qualification Questionnaire for Certification form prior to award of the contract. Interested applicants should submit their completed forms for review at any time to the Bureau contracting activity serving their geographic locale.

(b) The Bureau shall give preference to Indian/Alaska Native economic enterprises which have been certified by a warranted Level IV Contracting Officer for participation under the Act authority and the provisions of this part.

§ 1480.302 Additional Information Required from Economic Enterprises for Response to Bureau Solicitation.

(a) In response to a specific Bureau solicitation (bid or proposal) for an acquisition under this Part, the economic enterprise shall provide the information required in § 1480.501(c).

§ 1480.303 Breach of Contract.

(a) Failure on the part of the certified contractor to perform the percentage of the contract work its own forces as specified by the Contracting Officer shall be considered as a breach of the contract and grounds for contract termination for default.

(b) Failure on the part of the certified contractor to maintain the economic enterprise as 100% Indian/Alaska Native owned-and-controlled during the contract term under the Act authority and this Part shall be considered as a breach of the contract and grounds for contract termination for default.

(c) Failure on the part of the certified contractor to implement and maintain an approved preference plan under § 1480.403 shall be considered as a breach of the contract and grounds for contract termination for default.

Subpart 1480.4—Limitations

§ 1480.401 Construction.

The authority of this Act and this Part shall not be used to award construction contracts except for road construction contracts. In the State of Oklahoma, the contract authority may not be used for any type construction, including road construction. Road construction in the State of Oklahoma is not permitted unless and until the present injunction (*Glover Construction Co.* v. *Watt, et al., No. 77–178–C, E.D. Oklahoma, April 6, 1983)* is further modified to allow the award of such contracts under the Act.

§ 1480.402 Subcontracting.

(a) All solicitations as well as all legal instruments awarded for services under this Part shall contain the provision limiting the percentage of the contract work that can be subcontracted. Contracts shall not be awarded wherein the total dollar amount will be subcontracted.

(b) The minimum percentage of the work that a certified contractor shall be required to perform with its own employees is as follows:

(1) Architect-Engineer and Other Professional Services—30%.

(2) Road Construction—50%.

(3) Other Services—as determined by Contracting Officer prior to contract award, but never less than 30% unless the Contracting Officer requests and receives an exception from the Assistant Secretary—Indian Affairs to specify a lower percentage.

(c) The costs of supplies, materials, and administration to the prime contractor are not to be included in the above calculations.

(d) When determined by the Contracting Officer, Bureau solicitations for other than services may include a provision requiring the awardee to preform a percentage of the contract work with its own employees. With this requirement, consideration shall be given to the nature of the property or kind of supplies to be furnished under the contract.

§ 1480.403 Indian/Alaska Native Preference.

Any contract or subcontract pursuant to the Act and this Part shall require that all provisions of § 1404.70, § 1452.204–71 and § 1452.204–72 of this title shall be adhered to.

Subpart 1480.5—Clauses and Notices

§ 1480.501 Notice of Restriction and Certified Offeror's Response.

(a) Each solicitation issues under the Part shall contain a notice that the proposed acquisition is restricted to certified Indian/Alaska Native economic enterprises; and, solicitation responses received from other than Indian/Alaska Native economic enterprises shall be considered non-responsive and shall be rejected.

(b) The following clause shall be included with all Bureau solicitations to comply with § 1480.203(a) and this section:

(1) This (Invitation for Bid) (Request for Proposal) is issued under the authority of the Act of June 25, 1910 (The Buy Indian Act, 25 U.S.C. 47). Accordingly, to be considered responsive to this solicitation, the offeror must present written evidence in its (bid) (proposal) that its economic enterprise is 100% owned-and-controlled by Indian(s)/Alaska Native(s). Said enterprise shall have been established prior to (bid) (proposal) opening for this contract. The ownership-and-control

criterion shall be maintained for the contract term if award is made to said enterprise.

(2) (Bids) (Proposals) received from non-Indian offerors shall be considered non-responsive and shall be rejected.

(c) In response to a specific Bureau solicitation (bid or proposal) for an acquisition under this Part, the certified economic enterprise shall also provide the following details in its response document:

(1) Description of the part of the work contemplated being done by its own forces.

(2) Description of the source of human resources (other than management personnel covered above) for the work performed by the economic enterprise.

(3) Description of the method(s) of recruiting and training Indian/Alaska Native employes, indicating the extent of soliciting employment of Indian/Alaska Native persons, as required by Section 7(b) of Pub. L. 93-638 (25 U.S.C. 452 and implemented under 48 CFR 1404.70).

(4) Description of how subcontractors (if any) will be selected in compliance with Section 7(b) of Pub. L. 93-638 (25 U.S.C. 452), and implemented under 48 CFR 1404.70 and § 1480.403 of this Part. Offeror shall furnish the names of Indian/Alaska Native persons or firms being considered for subcontracts (if any); indicate what portion of the work they would be performing; and, provide qualifications of the key personnel that will be assigned to the contract.

§ 1480.502 Subcontracting.

The following clause shall be inserted in Act contracts when required by § 1480.402: The certified contractor shall perform work with its own forces amounting to not less than———* percent of the work, exclusive of the cost of materials, supplies, and administration to the prime contractor. Failure on the part of the certified contractor to submit a subcontracting plan and to perform the designated percentage of the work may be grounds for default termination.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-29880 Filed 11-14-84; 8:45 am]
BILLING CODE 4210-02-M

* Insert the appropriate percentage figure from § 1480.402(b) or as determined by the Contracting Officer based on an exception granted by the Assistant Secretary—Indian Affairs.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1804, 1805, 1812, 1813, 1814, 1815, 1816, 1817, 1825, 1827, 1831, 1832, 1835, 1842, 1844, 1845, and 1852

Acquisition Regulations; Promulgation of NASA FAR Supplement Directive 84-3

AGENCY: Procurement Policy Division, National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes miscellaneous amendments to the NASA acquisition regulations contained in NASA FAR Supplement Directive (NFSD) 84-3.

EFFECTIVE DATE: Comments are due no later than December 17, 1984.

ADDRESS: Comments should be addreassed to: Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, D.C. 20546, Telephone: (202) 453-2118.

SUPPLEMENTARY INFORMATION: NASA FAR Supplement (NFS) amendments incorporated in proposed NFSD 84-3 affect the following acquisition regulatory subjects: Identical Bid Report, Contract Execution, Purchase Order and Related Forms, Contract Clauses, Use and Disclosure of Proposal/Quotation Information, Unsolicited Proposals, Allowable Costs and Funding, Foreign Acquisition, Date of Incurrence of Costs, New Technology Reporting, NASA Participation in Contractors' Purchasing Systems Reviews (CPSR's), Records and Reports of Government Property, Solicitation Provisions and Contract Clauses, Procurement Request Overlay Method, Contract Order of Precedence, Late Submissions, Modifications, and Withdrawals of Proposals, Fixed-Price Incentive Contracts, approval of Option Quantities, Purchases Under the Trade Agreements Act.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. NASA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83-2.

List of Subjects in 48 CFR Ch. 18

Government procurement.

Accordingly, it is proposed to amend 48 CFR Ch. 18 as set forth below.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Ch. 18 reads as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 1803.303 is amended by adding paragraph (c) to read as follows:

1803.303 Reporting suspected antitrust violations.

* * * * *

(c) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters Code HP. The report shall include the reasons for suspecting collusion.

PART 1804—ADMINISTRATIVE MATTERS

3. Section 1804.103 is revised to read as follow:

1804.103 Contract clause.

See Subpart 1804.72, Review and Approval of Contractual Instruments. When the clause at FAR 52.204-1, Approval of Contract, is used, the Schedule shall provide that the Assistant Administrator for Procurement is the official referred to in the clause.

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303-70 [Amended]

4. Section 1805.303-70 is amended by revising the parenthetical material in paragraph (a)(1)(iii) to read "(but see 1815.413)".

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.102 [Amended]

5. The heading of section "1812.102 Contract clauses." is redesignated as "1812.104 Contract clauses." The text of section 1812.102, consisting of paragraphs (a) and (b), is given a new subsection heading reading "1812.104-70 Additional clauses."

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 1813.505-3 is added to read as follows:

1813.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

The $2,500 ceiling for use of the Standard Form 44 at FAR 13.505-3 is raised to $10,000 for purchases of aviation fuel and oil only.

7. Section 1813.7002 is amended by removing the word "or" after paragraph (e), inserting the word "or" after paragraph (f) and adding new paragraph (g) to read as follows:

1813.7002 Limitations on use

* * * * *

(g) The amount of the purchase is over $2,500 (unless the purchase is made under a BPA).

PART 1814—FORMAL ADVERTISING

8. Section 1814.201-3 is added to read as follows:

1814.201-3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall insert in invitations for bids and resulting contracts the clause at 1852.214-70, Contract Order of Precedence, except in those for construction or that do not follow the uniform contract format. The clause may, however, be revised as appropriate and used in contracts for construction or that do not follow the uniform contract format.

PART 1815—CONTRACTING BY NEGOTIATION

9. Section 1815.406-3 is added to read as follow:

1815.406-3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall insert the clause at 1852.215-73, Contract Order of Precedence-Negotiation, in requests for proposals, requests for quotations, and negotiated contracts to which the uniform contract format applies. The clause may, however, be revised as appropriate and used in contracts to which the uniform contract format does not apply.

10. Section 1815.407 is revised to read as follow:

1815.407 Solicitation provisions.

The clause prescribed at FAR 15.407(c)(B) shall not be used in NASA solicitations. See instead 1815.407-70.

11. Section 1815.407-70 is added to read as follow:

1815.407-70 NASA solicitation provisions.

The contracting officer shall insert in requests for proposals and requests for quotations other than for information or planning purposes the provision at 18-52.215-72, Restriction on Use and Disclosure of Proposal/Quotation Information (Data).

12. Section 1815.413 is revised, and 1815.413-2 is added to read as follows:

1815.413 Disclosure and use of information before award.

(a) The alternate procedures at FAR 15.413-2 shall be used for NASA procurements in lieu of those prescribed at FAR 15.413-1. The policies and procedures of FAR 15.413 and 1815.413-2 shall apply after as well as before award. The Notice at FAR 15.413-2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.303-70(a)(1)(iii) regarding release of the names of firms which submitted bids or proposals.)

(b) During evaluation proceedings, whether or not a Source Evaluation Board is used, NASA personnel participating in any way in evaluating proposals shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with the evaluation. When non-NASA personnel participate in evaluation proceedings, they shall be instructed to observe these restrictions. (Information will be provided to unsuccessful offerors in accordance with FAR 15.1002 and section 1815.1002 of this regulation.)

1815.413-2 Alternate II.

(a) *General.* The references in FAR 15.413-2 to the clause at FAR 52.215-12 shall be considered to be references to the clause at 1852.215-72.

(b) *Policy.* It is NASA policy to have proposals evaluated by the most competent technical and management sources available in NASA and JPL. Proposals may be disclosed to Jet Propulsion Laboratory (JPL) personnel for evaluation purposes; *however,* JPL personnel participating in evaluation proceedings shall be instructed to observe the restrictions in FAR 15.413 and 1815.413. In processing a proposal for evaluation by Board, Committee, or otherwise, NASA may find, in some instances, that it is necessary to disclose a proposal outside the Government to meet its evaluation needs. Such outside evaluation may be made, provided the requirements in paragraphs (c) and (d) below are met.

(c) *Approval.* Under FAR 15.413-2(f)(1), only the Assistant Administrator for Procurement, NASA Headquarters, or designee is authorized to make a decision to disclose a proposal outside the Government or JPL, except that (1) proposals submitted in response to "Announcements of Opportunity" may be disclosed in accordance with NHB 8030.6A and NMI 1156.4F and any amendments thereto and (2) unsolicited proposals may be disclosed with the concurrence of the NASA official one level higher than the NASA program official responsible for overall conduct of the evaluation.

(d) *Agreement with evaluator.* When, in accordance with paragraph (c) above, it is determined to disclose a proposal outside the Government or JPL, the following agreement, or similar appropriate arrangement for the treatment of the proposal, shall be obtained in writing from the evaluator prior to disclosure. Also, the releasing official shall review the proposal to ensure that the Notice at FAR 15.413-2(e) (see 1815.413) is affixed before it is disclosed to the evaluator.

Conditions for Evaluation of Proposals (December 1984)

(a) Whenever NASA furnishes a proposal for evaluation, the recipient agrees to use the information contained in the proposal only for NASA evaluation purposes.

(b) This requirement does not apply to information obtained from another source without restriction.

(c) The NASA Notice on the cover sheet, and any notice which may have been placed on the proposal by its originator shall be applied to any reproduction or abstract. Upon completion of the evaluation, the recipient shall return all copies of the proposal and abstracts, if any, to the NASA office which initially furnished the proposal for evaluation.

(d) Unless authorized by the NASA initiating office, the recipient shall not contact the originator of the proposal concerning any aspect of its contents.

(End of agreement)

13. Section 1815.505 is revised to read as follows:

1815.505 Content of unsolicited proposals.

Proposals for renewal of ongoing projects are generally simple to prepare. However, they should cover the identifying number of the basic contract or other agreement and the items listed at FAR 15.505(a) through (c), particularly as dictated by changes since the original award was made. Prior contact with the NASA technical officer is advisable to determine the optimum amount of technical information to include.

14. Sections 1815.506, 1815.508-70, 1815.509 and 1815.509-70 are added to read as follows:

1815.508 Prohibitions.

FAR 15.508(b) shall not apply to NASA. See instead 1815.508–70.

1815.508–70 NASA prohibitions.

Information (data) contained in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with the procedures set forth in, FAR 15.413–2 and 1815.413.

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509–70.

1815.509–70 Limited use of proposals.

(a) The Government's limited use of proposals does not require that the proposal bear a restrictive notice. Proposers should, however, in order to maximize protection of proposal information that constitutes trade secrets or other information that is commercial or financial and privileged or confidential, place the following notice on the title page and specify the information to be made subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, unsolicited proposal information will be protected to the extent permitted by law, but the Government assumes no liability for use or disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal Information

The information (data) contained in [——— insert page numbers or other identification] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract is awarded on this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(End of notice)

(b) If an unsolicited proposal is received with a more restrictive legend than that set forth in paragraph (a) above, the procedures of FAR 15.413–2(c) are to be followed.

(c) Upon receipt, the Government notice prescribed in FAR 15.413–2 (e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in FAR 15.413–2(f) and 1815.413.

(e) In the event of a request under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413–2(g) are to be followed.

PART 1816—TYPES OF CONTRACTS

15. Section 1816.307 is added to read as follows:

1816.307 Contract clauses.

In solicitations and contracts containing the clause at FAR 52.216–8, Fixed Fee, or FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

16. Section 1816.403 is added to read as follows:

1816.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) may be signed by the contracting officer for individual purchases and contracts.

PART 1817—SPECIAL CONTRACTING METHODS

17. Section 1817.203 is added to read as follows:

1817.203 Solicitations.

The "authorized person" mentioned in FAR 17.203(g)(2) is hereby designated as being the Procurement Officer.

PART 1825—FOREIGN ACQUISITION

18. Section 1825.102(c) is revised to read as follows:

1825.102 Policy.

* * * * *

(c) Determinations made under 1825.102(a) shall be approved by the Head of the Installation if the contract is estimated to exceed $1,000,000.

19. Section 1825.103(b) is revised to read as follows:

1825.103 Agreements with certain foreign governments.

* * * * *

(b) The procedures in paragraph (a) above do not apply to or affect items—

(1) Listed in FAR 25.108;

(2) Determined to be nonavailable under 1825.102; or

(3) Contracts for basic and applied research in Canada. (See NMI 1362.1.)

1825.401 [Removed]

20. Section 1825.401 is removed.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

21. Section 1827.375–2 is amended by adding before the beginning sentence of paragraph (a) the paragraph designator "(1)" and by adding paragraph (2) to read as follows:

1827.375–2 Follow-up by contractor.

(a) *Contractor procedures.* (1) * * *

(2) In order to ensure that there is adequate understanding of, and commitment to, the reporting requirements of the New Technology clause, prospective contractors under any NASA contract having an estimated cost of $2,500,000 or more (or a lesser dollar amount where deemed appropriate) that contains the clause may be required to submit for approval a detailed plan for New Technology Reporting. (See 1835.003–71.)

* * * * *

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

22. Section 1831.170 is added to read as follows:

1831.170 Contract clauses.

The contracting officer shall insert the clause at 1852.231–71, Date of Incurrence of Costs, in cost-reimbursement contracts for which specific coverage of precontract costs is authorized in accordance with FAR 31.205–32.

PART 1832—CONTRACT FINANCING

23. Section 1832.704 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

1832.704 Limitation of cost or funds.

* * * * *

(b)(1) In contracts that contain the clause at FAR 52.232–22, Limitation of Funds, add the following in the Schedule:

Contract Funding

(a) For purposes of payment of cost, exclusive of fee, pursuant to the Limitation of the Funds clause, the total amount allotted by the Government to this contract is $——— (insert amount of funds presently available for payment of the estimated cost exclusive of fee). The above allotment is for ——— (insert items covered) and covers the following period of performance: ——— (insert applicable period).

(b) An additional amount of $——— (insert amount of funding presently available for payment of fee only) is obligated under this contract for payment of fee.

(End of article)

(2) It is not necessary, although it is not prohibited, to have separate financial/accounting data for cost and fee. The breakdown is required only in the above schedule article.

(3) When amending the above to increase funding, installations may find it is helpful to show the old amounts, the amount(s) added, and the new totals.

(4) The amount of funds obligated for fee should always be at least sufficient to pay fee anticipated to be earned by the contractor for the work to which the amount allotted for the estimated cost applies.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

24. Section 1835.071 is added to read as follows:

1835.003–71 Plan for New technology reporting.

(a) in conformance with section 305(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(b)), as well as with said section 203(a), it is NASA policy to obtain the prompt reporting of any invention, discovery, improvement, or innovation (i.e., items of new technology, whether or not patentable) made in the performance of NASA contracts for the purpose of providing for the widest practical and appropriate dissemination of the results thereof. The NASA Technology Utilization Program has been established to help carry out this purpose, and the clause at 1852.227–70, New Technology, is included in certain NASA contracts to assure the prompt reporting of such inventions, discoveries, improvements and innovations.

(b) In order to ensure that there is adequate understanding of the requirements for new technology reporting in certain contracts containing the clause at 1852.227–70, New Technology, a contractor may be requested in response to a solicitation for any such contract to (1) provide estimates of cost and manpower requirements to perform new technology reporting, and (2) if selected for negotiation, provide a detailed plan as to how such reporting is to be carried out. (See 1852.235–72, Plan for New Technology Reporting.)

25. Section 1835.070 is amended by adding paragraph (c) to read as follows:

1835.070 NASA contract clauses.

* * * * *

(c) The contracting officer shall insert the provision at 1852.235–72, Plan for New Technology Reporting, in any solicitation for any contract estimated to cost $2,500,000 or more if such contract is also to contain the clause at 1852.227–70, New Technology, unless, in consultation with the installation New Technology Officer, the contracting officer determines that the provision is not appropriate. In addition, the contacting officer may insert the provision in a solicitation for any such contract of a lesser dollar amount if deemed appropriate after consultation with the installation New Technology Officer.

PART 1842—CONTRACT ADMINISTRATION

26. Section 1842.202–71 is amended by revising the last sentence of paragraph (a) to read as follows:

1842.202–71 Delegations to audit offices.

* * * * *

(a) * * * Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, review of accounting systems (see also 1815.871(b)), and appoval of vouchers for provisional payment.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

27. Section 1844.302–70 is amended by revising paragraph (b) to read as follows:

1844.302–70 Contractors' purchasing system reviews conducted by the Department of Defense.

* * * * *

(b) NASA installations desiring to provide full time participants for any DOD CPSR shall forward a request for such participation to the Assistant Administrator for Procurement, Code HP, for approval. Incidental assistance by NASA personnel to DOD personnel who are performing CPSR's for NASA does not require Headquarters approval.

PART 1845—GOVERNMENT PROPERTY

1845.505–6 [Amended]

28. The section heading is amended by removing the word "plant."

1845.505–670 [Amended]

29. Section 1845.505–670(b) is amended by removing the second sentence beginning with the word "Reporting" and ending with the word "change."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.212–71 [Amended]

30. Section 1852.212–71 is amended by revising the citation "1812.102(b)" to read "1812.104–70(b)."

31. Section 1852.214–70 is added to read as follows:

1852.214–70 Contract order of precedence.

As prescribed in 1814.201–3, insert the following clause:

Contract Order of Precedence (December 1984)

Any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) contract clauses; (c) other documents, exhibits, and attachments; and (d) the specifications.

(End of clause)

32. Section 1852.215–12 is added to read as follows:

1852.215–12 Restriction on disclosure and use of data.

As prescribed in 1815.407, this clause shall not be used in NASA solicitations. See instead 1852.215–72.

33. Sections 1852.215–72 and 1852.215–73 are added to read as follows:

1852.215–72 Restriction on use and disclosure of proposal/quotation information (data).

As prescribed in 1815.407–70, insert the following provision in all requests for proposals and requests for quotations other than those for information or planning purposes.

Restriction on Use and Disclosure of Proposal/Quotation Information (Data) (December 1984)

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in [——— *insert page numbers or other identification* ———] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; *provided,* however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this

information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(End of provision)

1852.215-73 Contract order of precedence—negotiation.

As prescribed in 1815.406-3, insert the following clause:

Contract Order of Precedence—Negotiation (December 1984)

Any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) contract clauses; (c) other documents, exhibits, and attachments; and (d) the specifications.

(End of clause)

34. Section 1852.216-7 is amended by adding the following sentence at the end of the paragraph:

1852.216-7 Allowable cost and payment.

* * * Paragraph (a) of the clause at FAR 52.216-7 shall be modified as specified in 1852.216-770. If the contract is with a non-profit organization, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.7".

35. Section 1852.216-770 is added to read as follows:

1852.216-770 Allowable cost and payment—NASA deviation.

When used in NASA solicitations and contracts, the first sentence of paragraph (a) of the clause at FAR 52.216-7, Allowable Cost and Payment, shall be modified to read: "The Government shall make payments to the Contractor when work progresses, approximately 30 days after receipt of each proper invoice or voucher, in amounts determined to be allowable . . .".

36. Section 1852.231-71 is added to read as follows:

1852.231-71 Date of incurrence of costs.

As prescribed in 1831.170, insert the following clause in cost-reimbursement contracts for which specific coverage of precontract cost is authorized in accordance with FAR 31.205-32.

Date of Incurrence of Costs (December 1984)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $——— on or after ——————— which, if incurred after this contract had been entered into, would have been reimbursable under the provisions of this contract.

(End of clause)

37. Section 1852.232-78 is amended by revising the clause date to read "**December 1984**" in place of "**April 1984**" and by adding to the clause paragraph (b)(2)(iv) to read as follows:

1852.232-78 Payment information.

* * * * *

(iv) Recipient Contractor's account number.

38. Section 1852.235-72 is added to read as follows:

1852.235-72 Plan for new technology reporting.

As prescribed in 1835.070(c), the contracting officer shall insert the following provision in any solicitation for any contract estimated to cost $2,500,000 or more if such contract is also to contain the clause at 1852.227-70, New Technology unless, in consultation with the installation New Technology Officer, the contracting officer determines that the provision is not appropriate. The contracting officer may insert the provision in solicitations for such contracts of a lesser dollar amount if deemed appropriate after consultation with the installation New Technology officer.

Plan for New Technology Reporting (December 1984)

The offeror shall, in the proposal in response to this solicitation provide estimates of the cost and manpower requirements to perform the new technology reporting required by the clause at 1852.277-70, New Technology, to be included in any resulting contract. In addition, if selected for negotiation, the Offeror will be required to submit for approval prior to contract execution a detailed plan for New Technology Reporting setting forth the manner in which the offeror will meet the new technology reporting requirements of the New Technology clause. Such plan shall, at a minimum—

(a) Identify the specific areas of technical effort which are considered likely to generate new technology;

(b) Describe the means by which project supervisory and technical personnel will be advised of the responsibilities, details and benefits of new technology reporting;

(c) Describe the procedures to be established, maintained and followed for review of the effort to be undertaken for the purposes of identification and reporting (disclosure) of new technology within the time periods and in the manner prescribed by the New Technology clause;

(d) Describe the procedure for timely submission of the interim and final new technology reports required by the New Technology clause;

(e) Describe the procedures for (1) selecting which of NASA's New Technology clause or other patent rights clause is to be included in each subcontract having as a purpose the conduct of experimental, developmental, research, design, or engineering work, and (2) for providing prompt notification of either the award of such subcontracts or a subcontractor's refusal to accept the clause; and

(f) Identify the individual(s) assigned substantial and specific responsibilities for ensuring compliance with the requirements of the New Technology clause, as well as their qualifications and organizational placement to discharge these responsibilities.

(End of provision)

[FR Doc. 84-29728 Filed 11-14-84; 8:45 am]
BILLING CODE 7510-01-M

Notices

Federal Register
Vol. 49, No. 222
Thursday, November 15, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 9, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for AUSDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMN Desk Officer of your intent as early as possible.

Extension

- Farmers Home Administration
7 CFR 1924-C, Planning and Performing Site Development Work
On occasion
FmHA 192-20
State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations; 4,500 responses; 17,244 hours; not applicable under 3504(h)
James Weibel (202) 382-1485

Jane A. Benoit,

Acting Departmental Clearance Officer.

[FR Doc. 84-29855 Filed 11-14-84; 8:45 am]
BILLING CODE 3410-01-M

Soil Conservation Service

Environmental Impact; Troublesome Creek Watershed, MO

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Troublesome Creek Watershed, Knox, Lewis, and Marion Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Paul F. Larson, State Conservationist, Soil Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri 65202, telephone 314/875-5214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul F. Larson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include 173 small reservoirs, and accelerated financial and technical assistance for land treatment.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contracting Paul F. Larson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects are applicable)

Dated: November 5, 1984.

Paul F. Larson,

State Conservationist.

[FR Doc. 84-29881 Filed 11-14-84; 8:45 am]
BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket Trans-1-84]

Advisory Standards for Chairs Used Primarily for Enplaning and Deplaning Physically Handicapped Passengers; Extension of Deadline for Comment

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of extension of deadline for comments.

SUMMARY: In order to provide ample time for comments from the public, the deadline for submission of comments on advisory standards for chairs used primarily for enplaning and deplaning physically handicapped passengers is extended for an additional 30 days.

DATE: To be assured of consideration, comments must be in writing and must be postmarked on or before December 13, 1984.

ADDRESS: Comments should be sent to: Docket Trans-1-84, 330 C Street, SW., Room 1010, Mail Stop 2101, Washington, D.C. 20202. Comments received will be

available for public inspection Monday through Friday, from 9:00 a.m. to 5:00 p.m., except for legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on technical issues concerning this proposal, contact Mr. Dennis Cannon, Office of Technical Services, (202) 472–2700 (voice or TDD). Information on legal questions should be addressed to Ms. Linda Potter, Office of the General Counsel (202) 245–1801 (voice or TDD). These are not toll free numbers.

For additional copies of the proposal, contact Ms. Michelle Henson, Office of Technical Services, Room 1010, Mail Stop 2101, 330 C Street, SW., Washington, D.C. 20202; (202 472–2700 (voice or TDD). Copies of proposal are also available on tape for those with visual impairments. Tapes may be obtained at the above address or by contacting Ms. Henson.

SUPPLEMENTARY INFORMATION: On September 14, 1984, the Board published an invitation to comment on the development of Advisory Standards for Chairs Used Primarily for Enplaning and Deplaning Handicapped Passengers (49 FR 36210). At its meeting of July 10, 1984, the Board authorized the Chairperson to extend the original comment period up to 30 days, if warranted. To date, the Board has received a number of requests for such an extension, primarily from organizations which wish to distribute the invitation to their members. Since the Board wishes to obtain the broadest input from all interested parties prior to the development of an advisory standard, I am hereby exercising the authority granted to me by vote of the Board.

Dated: November 1, 1984.

Mary Alice Ford,

Chairperson, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 84–30122 Filed 11–14–84; 8:45 am]

BILLING CODE 6820–BP–M

CIVIL AERONAUTICS BOARD

[Order 84–10–118]

Fitness Determination of Air New Jersey, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84–10–118, Order to Show Cause.

SUMMARY: The Board is proposing to find that Air New Jersey, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin J. McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1925 Connecticut Avenue NW., Washington, D.C. 20428 (202) 673–5105.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–10–118 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–10–118 to that address.

By the Civil Aeronautics Board: October 25, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–30089 Filed 11–14–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket Nos. 42224 and 42254]

Complaint of Frontier Holdings Inc. Against Continential Air Lines, Inc.; Complaint of Western Air Lines, Inc. Against Continential Air lines Inc.; Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled proceeding which had been scheduled to be held before the undersigned Chief Administrative Law Judge on November 16, 1984, is hereby postponed until November 23, 1984, in Room 1027 in the Universal Building, 1825 Connecticut Ave., NW., Washington, D.C. at 10:00 a.m. (local time).

Dated at Washington, D.C., November 8, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–30095 Filed 11–14–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 42321]

Hawaii One Corp.; Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 14, 1984, at 10:00 a.m. (local time), in Room 1012, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties and prospective parties shall, no later than November 13, 1984, submit four copies to the Judge and one copy to each party and prospective party at the office of their counsel in Washington of (1) proposed stipulations; (2) responses to pending requests for information and evidence; (3) proposed requests for additional information and evidence; (4) statements of position; and (5) proposed procedural dates.

Dated at Washington, D.C., November 6, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84–30088 Filed 11–14–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 42291]

Royalcoach Airline Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated Washington, D.C., November 9, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–30071 Filed 11–14–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–11–10; Docket No. 42291]

Application of Royalcoach Airline for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting Fitness Investigation, Order 84–11–10 Docket 42291.

SUMMARY: The Board is instituting the *Royal Airline Fitness Investigation* to determine if Royalcoach is fit to provide interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file requests for additional evidence and requests to intervene should do so in Docket 42291 by November 19, 1984.

ADDRESSES: Requests for additional evidence and requests to intervene should be filed in Docket 42291 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–11–10 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–11–10 to that address.

By the Bureau of Domestic Aviation: November 2, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–30070 Filed 11–14–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 42332]

Tampa-Yucatan Service Case; Postponement of Hearing

Notice is hereby given that the hearing scheduled in the above-entitled proceeding for November 9, 1984, is rescheduled for November 20, 1984, at 10:00 a.m. (local time), Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C. November 7, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84–30097 Filed 11–14–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

President's Commission on Industrial Competitiveness

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of Meetings.

SUMMARY: This notice announces the forthcoming meetings of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and Place

On December 6, 1984 from 9:00 to 10:30 a.m. the Commission subcommittees will meet at the Sheraton Carlton Hotel, 16th and K Streets, NW., Washington, D.C. for discussion and approval of final reports:

Research and Development—Sheraton Carlton Chesapeake Room
Human Resources—Sheraton Carlton Mount Vernon Room
International Trade—Sheraton Carlton Williamsburg Room
Capital Resources—Sheraton Carlton Williamsburg Room

On December 6, 1984 from 10:45 a.m. to 4:30 p.m. the full Commission will meet in the Sheraton Carlton Mount Vernon Room for discussion and approval of the final Commission report and implementation plan for the Commission recommendations.

On December 7, 1984 from 9:00 a.m. to 4:30 p.m. the full Commission will meet at the Sheraton Carlton Mount Vernon Room to continue discussion and approval of the final Commission report and implementation plan for the Commission recommendations.

Participation

The meetings will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, N.W., Washington, DC 20503; telephone: 202–395–4527.

Date: November 9, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84–30019 Filed 11–14–84; 8:45 am]

BILLING CODE 3510–18–M

Foreign-Trade Zones Board

[Docket No. 50–84]

Proposed Foreign-Trade Zone—Denver, CO; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Denver, Colorado, a home-rule municipality, requesting authority to establish a general-purpose foreign-trade zone in Denver, within the Denver customs port of entry. The application was submitted pursuant to the provisons of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 1, 1984. The applicant is authorized to make this proposal under Article 49.5, Title 7 of the Colorado Revised Statutes.

The proposed foreign-trade zone will cover 13 acres within the 280-acre Denver Business Center industrial park, adjacent to Stapleton International Airport, on its east. Development and operation of the zone facility will be handled by the Aspen Group.

The application contains evidence of the need for zone services in the Denver area. A number of firms have indicated an interest in using zone procedures for the warehousing and manipulation of products such as plasma coating equipment, agricultural chemicals, office equipment, pharmaceuticals, luggage, optical equipment, apparel and spices. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Myhra, District Director, U.S. Customs Service, North Central Region, 600 Central Ave., Great Falls, MT 59401; and Colonel William R. Andrews, Distict Engineer, U.S. Army Engineer District Omaha, USPO & Courthouse, Room 6012, Omaha, NE 68102.

As part of its investigation, the examiners committee will hold a public hearing on December 13, 1984, beginning at 9:00 a.m., in the City Council Chambers, Room 451, the City and County Building, Denver.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by December 4, 1984. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 11, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 119 U.S. Customshouse, 721 19th Street, Denver, CO 80202
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529,

14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: November 8, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-29992 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-429-402]

Postponement of Final Antidumping Duty Determination; Potassium Chloride From the German Democratic Republic

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of potassium chloride from the German Democratic Republic have occurred at less than fair value until not later than January 25, 1985.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On April 26, 1984, we published a notice in the **Federal Register** (49 FR 18004) that we were initiating, under section 723(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of potassium chloride from the German Democratic Republic were being, or were likely to be, sold at less than fair value. On May 14, 1984, the International Trade Commission determined that there is a reasonable indication that imports of potassium chloride from the German Democratic Republic are materially injuring a U.S. industry. On September 12, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 35845). The notice stated that if the investigation proceeded normally, we would make our final determination by November 20, 1984.

On October 17, 1984, counsel for Kali Bergbau, the respondent in this case, requested that we extend the period for the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if an exporter who accounts for a significant portion of the merchandise which is the subject of the investigation requests a postponement after an affirmative preliminary determination. Kali Bergbau is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final determination in this case not later than January 25, 1985.

This notice is published pursuant to section 735(d) of the Act.

Dated: November 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-29990 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-402]

Postponement of Final Antidumping Duty Determination; Potassium Chloride From the Union of Soviet Socialist Republics

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of potassium chloride from the Union of Soviet Socialist Republics have occurred at less than fair value until not later than January 25, 1985.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On April 26, 1984, we published a notice in the **Federal Register** (49 FR 18004) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of potassium chloride from the Union of Soviet Socialist Republics were being, or were likely to be, sold at less than fair value. On May 14, 1984, the International Trade Commission determined that there is a reasonable indication that imports of potassium chloride from the Union of Soviet Socialist Republics are materially injuring a U.S. industry. On September 12, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 35849). The notice stated that if the investigation proceeded normally, we would make our final determination by November 20, 1984.

On October 17, 1984, counsel for V/O Sojuzpromexport, the respondent in this case, requested that we extend the period for the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if an exporter who accounts for a significant portion of the merchandise which is the subject of the investigation requests a postponement after an affirmative preliminary determination. V/O Sojuzpromexport is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final determination in this case not later than January 25, 1985.

This notice is published pursuant to section 735(d) of the Act.

Dated: November 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-29987 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on these applications must be submitted on or before December 3, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce,Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00034."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-40 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Chlor/Alkali Producers International, c/o Dennis Unkovic of Meyer, Unkovic & Scott, 1300 Oliver Building, Pittsburgh PA 15222

Application No.: 84-00034

Date received: October 30, 1984

Date deemed submitted: November 1, 1984

Members in addition to applicant: The B. F. Goodrich Company, Cleveland, Ohio; Kaiser Aluminum and Chemical Corporation, Oakland, California; Occidental Chemical Corporation, Niagara Falls, New York, a subsidiary of Occidental Petroleum Corporation, Los Angeles, California; and Vulcan Materials Company, Birmingham, Alabama.

Summary of the Application

A. Export Markets and Export Trade

Chlor/Alkali and its members intend to export caustic soda and chlorine in their various forms on a worldwide basis.

B. Export Activities and Methods of Operations

Chlor/Alkali and its members seek certification whereby:

1. Chlor/Alkali may enter into agreements with its members wherein (i) Chlor/Alkali agrees to act as the members' exclusive export sales representative for the quantity of caustic soda and chlorine dedicated by each member for export trade in export markets, and (ii) the members may agree that they will export such quantity exclusively through Chlor/Alkali (including a prohibition from exporting independently of Chlor/Alkali either directly or through other export intermediaries) and that they may refuse to deal with other export intermediaries.

2. Chlor/Alkali may, for itself and on behalf of its members, whether by agreement with one or more members, with its distributors or agents in the export markets, with its members' distributors or agents in the export markets, or on the basis of its own determination:

a. Establish export prices at which caustic soda and chlorine will be sold in the export markets,

b. Establish quantities of caustic soda and chlorine to be sold in the export markets,

c. Allocate export markets or customers among the members and their distributors or agents, or among its distributors or agents, and

d. Refuse to quote prices or to market or sell caustic soda and chlorine to its competitors in the export markets or those of its members.

3. Chlor/Alkali may enter into nonexclusive agreements appointing distributors or sales agents in the export markets.

4. Chlor/Alkali and its members may meet from time to time to discuss the following types of information, provided that, in all such meetings of Chlor/Alkali and its members, legal counsel must be present and must maintain an accurate and complete record of all matters discussed at such meetings:

a. Information related to sales and marketing efforts and opportunities in export markets (including without limitation selling strategies, sales, contract and spot market pricing, projected demands for caustic soda and chlorine, customary terms of sale, costs and availability of caustic soda and chlorine of foreign competitors, and specifications for caustic soda and chlorine by customers in the export markets);

b. Information related to the quality and quantity of caustic soda and chlorine available for export by the members (including without limitation inventory levels and geographic availability);

c. Information related to terms and conditions of contracts for export trade to be considered and/to bid on by Chlor/Alkali and its members;

d. Information related to expenses specific to exporting to export markets (including without limitation transportation, insurance, inland freight to port, port storage, commissions, export sales documentation and financing);

e. Information related to U.S. and foreign legislation and regulations affecting sales to export markets; and

f. Information related to results of Chlor/Alkali's operations (including without limitation sales and distribution networks established in export markets).

5. Chlor/Alkali and the members may prescribe the following conditions for withdrawal of members from Chlor/Alkali and for admission of new members:

a. A member may withdraw from Chlor/Alkali as of the last day of any calendar quarter by giving 180 days' prior written notice to the remaining members. The remaining members shall then have the option to terminate the Chlor/Alkali or to pay the withdrawing member the value of its capital account, as adjusted, on the date of termination.

b. Additional members may be admitted to Chlor/Alkali from time to time upon receiving a majority vote of Chlor/Alkali's Management Board, executing a counterpart of the Chlor/Alkali's Joint Venture Agreement and making such capital contribution in cash as is directed by Chlor/Alkali's Management Board.

C. Expedited Review

Chlor/Alkali has requested an expedited review. The Commerce and Justice Departments have granted Chlor/Alkali's request.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting an application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: November 9, 1984.

Irving P. Margulies,
General Counsel.

[FR Doc. 84-30072 Filed 11-14-84; 8:45 am]
BILLING CODE 3510-DR-M

[A-588-401]

Calcium Hypochlorite From Japan; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for a respondent in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and, that we have determined to postpone our final determination as to whether sales of calcium hypochlorite from Japan have occurred at less than fair value until not later than February 21, 1985.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377-1766.

SUPPLEMENTARY INFORMATION: On May 21, 1984, the Department of Commerce published a notice in the **Federal Register** (49 FR 21390) that it was initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether calcium hypochlorite from Japan was being, or was likely to be, sold at less than fair value. On October 9, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 39590). The notice stated that if this investigation proceeded normally we would make our final determination by December 12, 1984.

On October 18, 1984, counsel for a respondent, Nippon Soda Co., Ltd., requested that we extend the period for the final determination until February 21, 1985, 135 days after the date of publication of the preliminary determinations, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination. Nippon Soda Co., Ltd. is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than February 21, 1985. The date of the public hearing has also been changed to November 29, 1984, at 10:00 AM in room 1851 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., 20230.

This notice is published pursuant to section 735(d) of the Act.

Dated: November 8, 1984.

Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30001 Filed 11-14-84; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

DEPARTMENT OF LABOR

Steel Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1976), as amended, notice is hereby given that the Steel Advisory Committee will hold a meeting on November 28, 1984 at 2:00 p.m.–3:00 p.m. The meeting will be held in Room 4830, U.S. Department of Commerce, Herbert Hoover Building, 14th Street & Constitution Avenue, NW., Washington, D.C. The Committee, consisting of 24 members appointed, jointly, by the Secretaries of Commerce and Labor from among management and organized labor of the domestic steel production industry as well as government was established [48 FR 51165 (1983)] as a co-departmental advisory committee on November 3, 1983 to address common problems affecting the domestic steel production industry and make consensus recommendations to the Cabinet Council on Commerce and Trade. The Secretaries of Commerce and Labor serve as Co-chair of the Committee.

The purpose of this meeting is to present consensus findings and recommendations developed by Subcommittees of the Steel Advisory Committee. The Committee will review, solicit public comment on, and if in concurrence, forward these findings and recommendations to the Cabinet Council on Commerce and Trade for action.

For further information regarding the Committee's agenda, meeting schedule, objectives or structure, please contact Dr. Timothy P. Roth, Executive Director, Steel Advisory Committee, whose mailing address is: Room 6324, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; or phone (202) 377-0703. With regard to general questions relating to the administration of this Committee as required by the Federal Advisory Committee Act, please contact Robert H. Brumley, II, Special Assistant to the General Counsel, U.S. Department of Commerce, (202) 377-4772.

The public is welcome to attend this meeting and will be admitted to the extent that seating is available. Persons wishing to make formal statements should nofity the Executive Director of the Committee in advance of this meeting. The Committee Chair retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Dated: November 9, 1984.

Timothy P. Roth,
Executive Director, Steel Advisory Committee.

[FR Doc. 84-30008 Filed 11-14-84; 8:45 am]
BILLING CODE 3510-DF-M; 4510-23-M

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on November 29, 1984, 10:00 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel aggrements.)

General Session: 10:00–10:45 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 10:45–11:30a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR 166 (1982)) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility Room 4104, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: November 14, 1984.

Walter C. Lenahan,
Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-30210 Filed 11-14-84; 12:08 pm]
BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraints Limit for Certain Cotton Apparel Exported From India

November 9, 1984.

On September 11, 1984 a notice was published in the **Federal Register** (49 FR 35681) announcing that, on July 31, 1984, the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, had requested the Government of India to enter into consultations concerning exports to the United States of cotton vests in Category 359pt. (only TSUSA numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4200 and 383.4320), produced or manufactured in India.

No agreement has been reached on a mutually satisfactory solution in consultations. The United States Government had decided, therefore, until such time as a different solution is agreed, to control imports of cotton vests in Category 359pt. at the prorated twelve-month limit of 306,489 dozen for Category 359pt., exported during the priod which began on July 31, 1984 and extends through December 31, 1984.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for comsumption, or withdrawal from warehouse for consumption, of cotton apparel products in Category 359pt., exported during the designated period.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton apparel products in Category 359pt., exported during the designated period.

Effective Date: November 21, 1984.

For Further Information Contact: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S.

Department of Commerce, Washington, DC (202/377–4212).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 9, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, between the Governments of the United States and India; and in accordance with the provisions of executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 21, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 359pt.,[1] produced or manufactured in India and exported during the indicated period, in excess of the following limits:

Category	Promised 12-Month Limit [2]	Period
359pt.[1]	305,488 pounds	July 31, 1984–Dec. 31, 1984.

[1] In Category 359, only TSUSA numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4290 and 383.4320.

[2] The limit has not been adjusted to reflect any imports exported after July 30, 1984.

Textile products in Category 359pt.[1] which have been exported to the United States during the ninety-day period which began on July 31, 1984 and extended through October 28, 1984, shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] In Category 359, only TSUSA numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4290 and 383.4320.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30002 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia To Review Trade in Category 640

November 9, 1984.

On October 31, 1984 the Government of the United States again requested consultations with the Government of the Republic of Indonesia with respect to woven shirts of man-made fibers in Category 640. This request was made on the basis of the agreement, as amended, between the Governments of the United States and Republic of Indonesia relating to trade in Cotton, Wool, and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982.

The purpose of this notice is to advise the public that the previous call for consultations concerning this category and the control limit established for it during the twelve-month period which began on July 1, 1984 (See 49 FR 34391) are being cancelled and a new request for consultations and a new 90-day control period are being established based on the more recent call date of October 31, 1984. If no solution is agreed upon in consultations between the governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit of 166,075 dozen for the entry and withdrawal from warehouse for consumption of textile products in Category 640, produced or manufactured in Indonesia and exported during the period which began on October 31, 1984 and extends through the end of the agreement year, June 30, 1985. The limit may be adjusted to include prorated swing and carryforward.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution, to control imports in this category during the 90-day consultation period (October 31-January 27, 1985) at 72,840 dozen. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the limit for the period which began on October 31, 1984 and extends through June 30, 1985. A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Anyone wishing to comment or provide data or information regarding the treatment of Category 640 under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Effective Date: November 21, 1984.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 640—Men's and Boys' Woven Man-made Fiber Shirts and Blouses

October 1984.

Category 640 imports from Indonesia nearly tripled in the year ending August to 258,646 dozen. Imports during January–August to 226,612 dozen, were two times greater that the total amount of Category 640 imported from Indonesia in 1983. August 1984 imports alone, at 63,755 dozen, equaled 54 percent of the 1983 total. This is a sharp and substantial increase in imports in a sector severely affected by imports.

Imports from all sources increased 11 percent during 1979–83 while U.S. production declined 24 percent. This resulted in a market share loss for U.S. producers and an increase in the import to production ratio. In 1983, U.S. production was 10,217,000 dozen; imports were 10,770,000 dozen; and the ratio reached 105.4 percent. Imports have continued to increase into 1984 with year ending August 1984 imports at 12,985,575 dozen, 30 percent higher than during the previous twelve months.

November 9, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive cancels and supersedes that portion of the directive of August 27, 1984, which established a limit of 182,898 dozen for man-made fiber textile products in Category 640, exported during the period which began on July 1, 1984 and extends through June 30, 1984.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 21, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 640, produced or manufactured in Indonesia and exported during the ninety-day period which began on October 31, 1984 and extends through January 27, 1985, in excess of 72,840 dozen.[1]

Merchandise in Category 640, which has been exported before October 31, 1984 shall not be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] The limit has not been adjusted to reflect any imports exported after October 31, 1984.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30005 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia To Review Trade in Category 369pt. (Shop Towels)

November 9, 1984.

On October 30, 1984 the Government of the United States requested consultations with the Government of the Republic of Indonesia with respect to shop towels in Category 369pt. (only TSUSA 366.2740). This request was made on the basis of the agreement, as amended, between the Governments of the United States and Republic of Indonesia relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit of 432,348 pounds for the entry and withdrawal from warehouse for consumption of textile products in Category 369pt., produced or manufactured in Indonesia and exported to the United States during the period which began on October 30, 1984 and extends through the end of the agreement year, June 30, 1985. The limit may be adjusted to include prorated swing and carryforward.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution, to control imports in this category during the 90-day consultation period (October 30-January 28, 1985) at a level of 188,775 pounds. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the level established during the period which began on Ocboter 30, 1984 and extends through June 30, 1985.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Anyone wishing to comment or provide data or information regarding the treatment of Category 369pt. under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof , or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is nto yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreeemnt or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Effective Date: November 21, 1984.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 369pt.—Cotton Shop Towels

October 1984.

Domestic consumption of shop towels has been severely depressed since 1981. Production plus imports of shop towels declined by 19 percent from 1981 to 1983. The number of production workers engaged in the production of shop towels declined by 19 percent from 1981 to 1983. The number of production workers engaged in the production of shop towels declined 29 percent from 1981 to 1983; man-hours worked declined 34 percent. Capacity utilization in the shop towel industry decreased from 40.8 percent in 1981 to 33.6 percent in 1983. In spite of domestic production increasing slightly at 2 percent in 1983, it is still 20 percent below the level of 1981.

Imports during the first eight months of 1984 reached 8,396,000 pounds, up 102 percent from the same period in 1983. Imports during

January-August 1984 were almost as high as the record set in all of 1981 when 8,511,000 pounds were imported. The import to production ratio reached 151.6 percent during the first two months of 1984; almost twice the ratio of 1981-1983.

U.S. imports of Category 369pt.—Cotton Shop Towels from Indonesia during the year ending August 1984 were 630,117 pounds, more than six times the 94,077 pounds imported a year earlier. Imports in 369 pt. the first eight months of 1984 were 422,675 pounds above the amount imported from Indonesia during the same period in 1983. This is a sharp and substantial increase of imports in a sector already adversely affected by imports.

November 9, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended [7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 21, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 369pt.,[1] produced or manufactured in Indonesia and exported during the ninety-day period which began on October 30, 1984 and extends through January 28, 1985, in excess of 188,775 pounds.[2]

Textile products in Category 369pt. which have been exported to the United States prior to October 30, 1984 shall not be subject to this directive.

Textile products in Category 369pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55807), December 30, 1983 (49 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30003 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 369, only TSUSA number 366.2740.

[2] The level has not been adjusted to reflect any imports exported after October 29, 1984.

Requesting Public Comments on Bilateral Textile Consultations With Mauritius on Men's and Boys' Woven Cotton Shirts in Category 340

November 9, 1984.

On October 31, 1984, the United States Government, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of Mauritius to enter into consultations concerning exports to the United States of men's and boys' woven cotton shirts in Category 340, produced or manufactured in Mauritius.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Mauritius, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 340, produced or manufactured in Mauritius and exported to the United States during the twelve-month period which began on October 31, 1984 and extends through October 30, 1985 at a level of 100,756 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of Category 340 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Mauritius—Market Statement

October 1984.

Category 340—Men's and Boys' Woven Cotton Shirts

The substantial growth in imports from Mauritius is disrupting the market for Category 340 in the United States.

U.S. production of Category 340 declined sharply from 1972 through 1982, dropping from 11.1 million dozen to 4.3 million dozen. Production in 1983 partially recovered from the depressed levels of 1981 and 1982 but remained below any other years on record.

Imports of Category 340 more than doubled from 1972 to 1983, increasing from 3.5 million dozen to 7.1 million dozen. The growth continued in 1984 when imports for the first eight months were 6.1 million dozen, up 32.6 percent from the same period in 1983.

The ratio of imports to domestic production increased from 32 percent in 1972 to 150 percent in 1983. The ratio will be higher in 1984 and will exceed the record level of 180 percent reached in 1982 if imports continue at the January-August 1984 levels.

U.S. imports in Category 340 from Mauritius totaled 115,199 dozen in the twelve months ending August 1984, a 9,207% increase over the same period of 1983.

[FR Doc. 84-30004 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395-7231. Copies of the submission are available from Joseph Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Futures Volume, Open Interest, Prices, Deliveries, and Exchanges of Futures for Physicals.

Form Number: Not applicable
Action: Extension
Respondents: Businesses (excluding small businesses)
Estimated Annual Burden: 605
Estimated Number of Respondents: 11

Issued in Washington, D.C., on November 8, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29985 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Kate Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395-7231. Copies of the submission are available from Joseph Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Hedging Exemptions
Form Number: Not applicable
Action: Extension
Respondents: Businesses (excluding small businesses)
Estimated Annual Burden: 60
Estimated Number of Respondents: 20

Issued in Washington, D.C., on November 8, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29986 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

Contract Market Proposals; Chicago Board of Trade, Exchange Proposal to Trade Commodity Options; Long-Term U.S. Treasury Notes

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for the application of the Chicago Board of Trade for trading commodity options on long-term U.S. Treasury note futures contracts.

SUMMARY: The Chicago Board of Trade ("CBT") has submitted an application to trade options on long-term U.S. Treasury note futures contracts under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 17, 1984.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CBT U.S. Treasury note option contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1981)). Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on certain futures contracts (49 FR 3364 (August 24, 1984)).[1] The CBT has been designated as a contract market in options on U.S. Treasury bond futures contracts. In addition, the CBT previously submitted to the Commission an application to trade commodity options on silver futures contracts (49 FR 39094 (October 3, 1984)).

CBT has applied for contract market designation, pursuant to Section 4c(c) of the Commodity Exchange Act, 7 U.S.C. 6c(c) (1982), ("Act") and Commission Regulation § 33.5, to trade options on long-term U.S. Treasury note futures contracts.

A copy of the terms and conditions of the proposed CBT option on long-term U.S. Teasury note futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies for such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by CBT in support of its application, should send such comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by December 17, 1984.

Issued in Washington, D.C. on November 8, 1984

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29988 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

[1] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to the five permissible option designations noted above (49 FR 2752 (January 23, 1984)). The Chicago Board of Trade has been designated as a contract market for options on soybean futures contracts. In addition, the CBT currently has pending before the Commission an application to trade commodity options on corn futures contracts (49 FR 26129 (June 26, 1984)).

Contract Market Proposals; Chicago Mercantile Exchange; Exchange Proposal to Trade Commodity Options; British Pound and Swiss Franc

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for the applications of the Chicago Mercantile Exchange for trading commodity options on the British pound futures contract, the Swiss franc futures contract and the three-month Eurodollar futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted applications to trade options on the British pound futures contract, the Swiss franc futures contract and the three-month Eurodollar futures contract under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public

comment on the proposals is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 17, 1984.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME British pound, Swiss franc and Eurodollar option contracts.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1981)). Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on certain futures contracts (49 FR 33641 (August 24, 1984)).[1] The CME has been designated by the Commission as a contract market for options on the Standard & Poor's 500 Stock Price Index futures contract and as a contract market for options on the Deutschemark futures contract.

CME has applied for contract market designation, pursuant to Section 4c(c) of the Commodity Exchange Act, 7 U.S.C. 6c(c) (1982), ("Act") and Commission Regulation § 33.5, to trade options on the British pound futures contract, the Swiss franc futures contract and the three-month Eurodollar futures contract.

A copy of the terms and conditions of the proposed CME option contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by CME in support of its applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contracts, or with respect to other materials submitted by CME in support of its applications, should send such comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by December 17, 1984.

Issued in Washington, D.C. on November 8, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29807 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

[1] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to the five permissible designations noted above (49 FR 2752 (January 23, 1984)). The Chicago Mercantile Exchange has been designated as a contract market for options on live cattle futures contracts. In addition, the CME currently has pending before the Commission an application to trade commodity options on live hog futures contracts (49 FR 26129 (June 26, 1984)).

Contract Market Proposals; Philadelphia Board of Trade; Exchange Proposal to Trade Commodity Options; Three-Month Eurodollar Time Deposits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions and trading procedures for the application of the Philadelphia Board of Trade, Inc. for trading and commodity options on three-month Eurodollar time deposits.

SUMMARY: The Philadelphia Board of Trade ("PHBT") has submitted an application to trade options on three-month Eurodollar time deposits under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 31, 1984.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the PHBT Eurodollar option contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: The Commission has previsously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1981)). Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as constract markets for up to five options on futures contracts or physical commodities, of which no more than two contracts may involve an option on a physical commodity (49 FR 33641 (August 24, 1984)).[1]

The PHBT has applied for contract market designation, pursuant to Section 4c(c) of the Commodity Exchange Act, 7 U.S.C. 6c(c) (1982), ("Act") and Commission Regulation § 33.5, to trade options on three-month Eurodollar time deposits. Under the rules of the proposed option contract, a Eurodollar option could be exercised only on its expiration date ("European" option) and would be settled in cash. The cash settlement of an option would be based on a final settlement price which represents 100 minus the rate for three-month Eurodollar time deposit funds on the last day of trading, as determined by the PHBT through surveys of major banks in the interbank Eurodollar market.

In addition, the Eurodollar option contract would be traded under proposed rules which provide for a registered board broker. Among other duties, the board broker would maintain a book of market orders and limit orders left with such broker and would be responsible for execution of those orders. The board broker also would have the responsibilities of "montoring the market" and "maintaining orderliness in the trading crowd." The proposed trading rules also provide that, at an opening, all market orders (whether left with the board broker or represented by a floor member in the trading crowd) shall be excuted at one price.

[1] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to the five permissible option designations noted above (49 FR 2752 (January 23, 1984)).

The Commission is seeking public comment on the terms and conditions of the proposed Eurodollar option contract, including the PHBT's proposed exercise and cash settlement provisions. The Commission also requests comment on the proposed trading rules for the Eurodollar option contract. In particular, comments on the proposed board broker system of trading and the one-price opening procedure would be useful to the Commission in evaluating the proposal.

A copy of the terms and conditions of the proposed PHBT Option on three-month Eurodollar time deposits will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by PHBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by PHBT in support of its application, should send such comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by December 31, 1984.

Issued in Washington, D.C. on November 8, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29809 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Record Notice

AGENCY: Office of the Secretary, Defense.

ACTION: Notice of an altered system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter an existing system of record subject to the Privacy Act of 1974. It is identified as DGC 04, entitled: "Industrial Personnel Security Clearance Case Files" last published on June 6, 1983 at 48 FR 25829. The major alteration is converting the system from a manual to a hybrid system, i.e., part manual and part automated. The record system notice, as altered, is set forth below.

DATES: This system shall be effective without further notice December 17, 1984, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C–315, Pentagon, Washington, DC 20301–1155, Telephone: 202/695–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems of records notices as prescribed by the Privacy Act of 1974, Title 5, United States Code Section 552a (Pub. L. 93–579; 44 Stat. 1896. *et seq.*) have been published in the **Federal Register** at:

FR Doc. 83–12048 (48 FR 25827) June 6, 1983
FR Doc. 84–4418 (49 FR 6145) February 17, 1984
FR Doc. 84–17736 (49 FR 27802) July 5, 1984
FR Doc. 84–20096 (49 FR 30560) July 31, 1984
FR Doc. 84–22569 (49 FR 33700) August 24, 1984
FR Doc. 24410 (49 FR 36133) September 14, 1984
FR Doc. 84–25835 (49 FR 38328) September 28, 1984
FR Doc. 84–26325 (49 FR 39185) October 4, 1984

This proposed altered system is within the purview of the provisions of 5 U.S.C. 552a(o) of the Privacy Act which requires the submission of an altered system report. A report was submitted on October 12, 1984.

Norma L. Cook,

Acting OSD Federal Register Liaison Officer, Department of Defense.

November 8, 1984.

DGC 04

SYSTEM NAME:

Industrial Personnel Security Clearance Case Files.

SYSTEM LOCATION:

Directorate for Industrial Security Clearance Review (DISCR), Defense Legal Service Agency (DLSA) Department of Defense (DoD), 4019 Wilson Blvd., Suite 101, Arlington, VA 22203–1995. Decentralized inactive segments at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, Maryland 20755. Automated records are maintained on a system V5–02, Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government contractor employees, and former employees whose industrial security clearance cases were referred to DISCR for adjudication under Executive Order 10865 as implemented by DoD Directive 5220.6 by the Defense Industrial Security Clearance Office (DISCO) or by the Director Defense Investigative Service (DIS).

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes, automated case status records for current cases and inactive case and an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system; individual case files which include requests for investigation and clearances, general correspondence relating to case, personnel security questionnaires, investigative reports prepared by various investigative agencies, medical and psychiatric records and evaluations DISCO referral recommendation, correspondence between the individual and DISCR elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, other DoD and Federal agencies, Screening Board, Examiners and the Appeal Board, attorneys, elements of the office of the Secretary of Defense and Defense Investigative Service, written interrogatories and Statement of Reasons (SOR) to individuals, with replies, recommendations, summaries.

records of adjudicative actions, transcript of hearings and exhibits. Supplementing the system's case files are redacted copies of DISCR administrative and adjudicative decisions form July 1961 to date. Names and identifying information of applicant's, witnesses, source of information, etc., are deleted from these redacted record's to protect the privacy of persons involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended by Executive Order 10909, dated January 17, 1961, DoD Directive 5220.6, "Industrial Personnel Security Clearance Program" dated December 20, 1976, DoD Regulation 5200–2R "DoD Personnel Security Program".

PURPOSE(S):

These records are collected and maintained to determine whether the granting or retention of security clearance to industrial contractor personnel is clearly consistent with the national interest, to record clearance adjudicative actions and determinations; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to assist authorized DoD Consulting Psychiatrist to compile evaluations and reports; to respond to inquires from Presidential Staff offices when the inquiry is made at the request of the individual; to monitor and control adjudicative actions and processes. Automated case status system and card files are used to record statistics, provide location and status and internal identification of cases, to prepare listings and statistical reports and summaries, and to monitor work flow and actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice in determining claims for reimbursement in preparation of hearings, appeals and Federal Court review. Also see DoD blanket routine uses at the beginning of DoD listing of system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, and on vertical file cards; automated records in electronic storage are maintained on magnetic tapes and discs at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

RETRIEVABILITY:

Filed alphabetically by name or by case number. Access to computer data may be made by Name and SSAN and a combination of name and other personnel identifying data.

SAFEGUARDS:

Files folders and cards are stored in safes or locked file containers locked in a limited access area, and are accessible only to DISCR authorized, personnel. All records are stored, processed, transmitted and protected as the equivalent of classified information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and cleared for need-to-know.

Computer hardware is located in locked areas controlled and guarded, with access limited to authorized personnel. Computer access is via dedicated data circuits which prevent access from standard dial-up telephones and is individually password controlled. Individual passwords are changed quarterly or are changed upon departure of personnel.

The automated system is operated by Defense Investigative Service, Personnel Investigations Center, Information Systems Division. Only DISCR personnel with an official need-to-know are given individual passwords and user identification information needed to access the computer system and amend, add, alter, change or delete DISCR records. Other authorized contributors and users of the Defense Central Index of Investigations are authorized read-only access to DISCR case status records in that system.

RETENTION AND DISPOSAL:

Completed case files are retained in office files for two years after annual cut-offs, then are retired to the Washington National Records Center, for an additional 20 years.

Inactive, completed case files prior to 1982 are maintained at the U.S. Army Investigative Records Repository, Fort Meade, MD 20755.

Automated electronic case status records and alphabetical card index files are retained as locator for both active and inactive records. Computer data and alphabetical card files are purged when the inactive case file is no longer retained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Directorate for Industrial Security Clearance Review (DISCR), 4019 Wilson Blvd., Suite 101, Arlington, Va. 22203–1995.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the System Manager.

Written requests from individuals must be notarized and should be sent to 4019 Wilson Blvd., Suite 101, Arlington, VA 22203–1995 and should include the individual's full name, any former names, date and place of birth, and Social Security Account Number (SSAN).

Request for copies of redacted, final determination should be sent to the System Manager, and should include the OSD Case Number of the records requested.

CONTESTING RECORDS PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is received from investigative reports from federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; correspondence from contractors, employers, organizations of assignment and Federal agencies DoD organizations, agencies and offices; from individual, their attorneys or authorized representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this record system may be exempt under 5 U.S.C. 522a(k)(5). For additional information, contact the System Manager.

[FR Doc. 84–29800 Filed 11–14–84; 8:45 am]
BILLING CODE 3810–01–M

Advisory Group on Electron Devices; Advisory Committee Meeting

AGENCY: DoD Advisory Group on Electron Devices.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 6 November 1984 at Palisades Institute for Research Services, Inc., 1215 Jefferson Davis Highway, Crystal Gateway #3, Suite 1203, Arlington, Virginia 22202.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. II 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 9, 1984.

[FR Doc. 84–29804 Filed 11–14–84; 8:45 am]
BILLING CODE 3810–01–M

DoD Advisory Group on Election Devices; Meeting

AGENCY: DoD Advisory Group on Electron Devices, DOD.

ACTION: Notice of Advisory Committee Meeting.

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 13 December 1984 at Naval Station, Treasure Island, Room 215, Building 1, San Francisco, CA 94130.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: November 9, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–29806 Filed 11–14–84; 8:45 am]
BILLING CODE 3810–01–M

Defense Equal Opportunity Management Institute Board of Visitors; Advisory Committee Meeting

The Defense Equal Opportunity Management Institute (DEOMI) Board of Visitors will meet at Patrick Air Force Base, Florida, 26–28 November 1984.

The purposes of the meeting will be to review the results of the Department of Defense Race Relations Education Board meeting and to examine DEOMI's overall capability to perform its stated mission requirements.

The meeting will convene at 3:00 p.m. on 26 November and adjourn on 28 November at 5:30 p.m. The meeting is open to the public. For further information, contact the DEOMI Public Affairs Office at (305) 494–6096.

Dated: November 8, 1984.

Norma L. Cook,

Acting OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–29807 Filed 11–14–84; 8:45 am]
BILLING CODE 3810–01–M

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DoD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: December 20, 1984, 8:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Dated: November 9, 1984.

Norma L. Cook,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–29808 Filed 11–14–84; 8:45 am]
BILLING CODE 3810–01–M

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: November 28, 1984, 9:00 a.m. to 3:00 p.m.

ADDRESS: The Pentagon, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Major Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930.).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Dated: November 8, 1984.

Norma L. Cook,

Acting OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–29809 Filed 11–14–84; 8:45 am]
BILLING CODE 3810–01–M

DoD University Forum Advisory Committee; Meeting

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: DoD-University Forum Advisory Committee Meeting.

SUMMARY: The DoD-University Forum will meet in open session on November 28, 1984, from 1:30 until 4:30 p.m. at the Hyatt Regency Crystal City Hotel, Arlington, Virginia.

The meeting is one of two formal meetings held annually as called for by the charter. Tentative agenda items will include export control issues, and foreign languages and area studies.

Public attendees are requested to telephone Edward Blake in the DoD Office of Research and Laboratory Management, (202) 694–0205, before COB November 21, 1984 to be advised of the meeting room and reserve a seat at the meeting.

Dated: November 9, 1984.

Norma L. Cook,

Acting OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-29890 Filed 11-14-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting

SUMMARY: This notice sets for the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Bilingual Education. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 3 and 4, 1984—9:00 a.m.–4:30 p.m., the Business Meeting will be held at: The U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, Conference Room, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I. Call to Order
II. Roll Call
III. Approval of Minutes from Previous Meeting
IV. Introduction of Vistors
V. Presentation of Information by Director of OBEMLA or designee
VI. Presentation of information by general public or organizations (limited to 5 minutes per person from any one group.)
VII. Committee Reports
VIII. Old Business
IX. New Business
X. Presentation of information by members of general public on items for possible future action by the Council.
XI. Meetings of Council Committees
XII. Council reconvenes
XIII. Adjournment

Records are kept of all Council proceedings and available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, D.C. 20202, Monday, through Friday, from the hours of 8:00 a.m.–4:30 p.m.

Dated: November 8, 1984.

George J. Rios,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 84-29861 Filed 11-14-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs, Education.

ACTION: Notice of Meetings.

SUMMARY: This notice sets forth the schedule of three forthcoming meetings of the Subcommittee on Reauthorization of the National Advisory Board on International Education Programs. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATES: December 11, 1984; January 9, 1985 and January 11, 1985.

ADDRESSES: December 11, 1984: FOB–6, Patterson Room, Horace Mann Learning Center, Room 1131, 400 Maryland Avenue, SW, Washington, D.C.

January 9, 1985: Federal Office Building, 50 United Nations Plaza, Room 406, San Francisco, California.

January 11, 1985: Federal Office Building, DHHS Conference Room, 35th Floor, 300 South Wacker Drive, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Postsecondary Relations Staff, ROB–3, Room 3907, 400 Maryland Avenue, SW, Washington, D.C. 20202 (202/245–9700).

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96–374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education.

These meetings of the Subcommittee on Reauthorization of the National Advisory Board on International Education Programs are open to the public. The agenda includes a discussion and review of Title VI of the Higher Education Act of 1965 (Pub. L. 89–329), as amended. Persons who wish to schedule personal presentations should contact Richard J. Rowe, Postsecondary Relations Staff, ROB–3 Room 3082, 400 Maryland Avenue, SW, Washington, D.C. 20202 (202/245–9700) by December 7, 1984.

Recommendations will be developed for the consideration of the National Advisory Board on International Education Programs during their meeting scheduled for March 4–5, 1985.

The meetings will be held from 9:00 a.m. to 4:00 p.m. the 11th of December; 9:00 a.m. to 4:00 p.m. the 9th of January; and, 9:00 a.m. to 2:00 p.m. the 11th of January.

Records are kept on the Committee proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th and D Streets, SW, Room 3907, Washington, D.C.

Signed at Washington, D.C., on November 9, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-29863 Filed 11-14-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs, Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATES: January 6, 7, 8, 1985.

ADDRESS: Holiday Inn, 2600 Sand Dunes Drive, Monterey, California.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Postsecondary Relations Staff, ROB–3, Room 3082, 400 Maryland Avenue, SW, Washington, D.C. 20202 (202/245–9700).

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96–374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education.

This meeting of the National Advisory Board on International Education Programs is open to the public. The agenda includes a report from the Subcommittee on Part B, Title VI, Higher Education Act and, a preliminary report from the Subcommittee on Recommendations for the Reauthorization of the Higher Education Act of 1965, as amended (Title VI). In addition, a report from the Director, Center for International Education and overviews of activities and operations of the Office of Postsecondary Education will be presented.

The meeting will be held from 7:00 p.m. to 11:00 p.m., the 6th of January. The Committee members will visit the Defense Language Institute, Monterey, California on the 7th of January; and, the Center for International Studies, Stanford, California on the 8th of January.

Records are kept on the Committee proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th & D Streets, SW, Room 3907, Washington, D.C.

Signed at Washington, D.C., on November 9, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-29864 Filed 11-14-84; 8:45 am]

BILLING CODE 4000-01-M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 17, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 9, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Application for grants under the Veterans Cost-of-Instruction Payments Program (VCIP).
Agency Form Number: ED–289
Frequency: Annually
Affected Public: Non-Profit Institutions
Reporting Burden
  Responses: 800
  Burden Hours: 800
Recordkeeping Burden
  Recordkeepers: 0
  Burden Hours: 0

Abstract: Section 420 of the Higher Education Act authorizes payments to postsecondary institutions based on veteran student enrollments. The Veterans' Cost-of-Instruction Payments application obtains the necessary data to verify eligibility and calculate awards.

Type of Review Requested: Revision
Title: Student Aid Report
Agency Form Number: ED 255–1
Frequency: Annually
Affected Public: Individual or Households, Business or Other For-Profit, Non-Profit Institutions, Small Businesses or Organizations
Reporting Burden
  Responses: 8,006,100
  Burden Hours: 1,537,171.2
Recordkeeping Burden
  Recordkeepers: 6100
  Burden Hours: 652,700

Abstract: This form contains parental and/or student income and asset information which is used to determine the amount of federal aid the student receives for educational purposes.

Office of Postsecondary Education

Type of Review Requested: Revision
Title: National Direct Student Loan Program Report of Defaulted Loans as of December 30.
Agency Form Number: ED 574
Frequency: Annually
Affected Public: Business or Other for-Profit
Reporting Burden
  Responses: 4,000
  Burden Hours: 2,000
Recordkeeping Burden
  Recordkeepers: 4,000
  Burden Hours: 320

Abstract: This report provides information regarding an institution's capability to establish an effective collection program. The data may be used to establish default trends and compare ratios of various institutions.

Office of Postsecondary Education

Type of Review Requested: Revision
Title: National Direct Student Loan Program Report of Defaulted Loans as of December 31.
Agency Form Number: E40–1P
Frequency: Annually
Affected Public: State or Local Governments; Businesses or other For-Profit Organizations; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden
Responses: 4,000
Burden Hours: 2,000
Recordkeeping Burden
Recordkeepers: 4000
Burden Hours: 320

Abstract: This report provides information regarding an institution's capability to establish an effective collection program. The data may be used to determine default trends and to compare the performance of various institutions.

Type of Review Requested: New
Title: Certification Form for the Endowment Grant Program
Agency Form Number: ED D40–1P
Frequency: Annually
Affected Public: State or Local Governments; Businesses or other For-Profit Organizations; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden
Responses: 50
Burden Hours: 25
Recordkeeping Burden
Recordkeepers: 50
Burden Hours: 100

Abstract: An institution of higher education that is selected to receive an endowment grant must, according to program regulations, certify certain items of information about matching funds and about its application. The Secretary needs this information to determine whether grant funds may be disbursed and in what amount.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Performance Report under the Minority Institutions Science Improvement Program (MISIP)
Agency Form Number: ED 0007
Frequency: Annually
Affected Public: State or Local Governments; Businesses or other For-Profit Organizations; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden
Responses: 150
Burden Hours: 450
Recordkeeping Burden
Recordkeepers: 150
Burden Hours: 450

Abstract: The program officials use information from the performance report to assess a project's accomplishment of goals and objectives and to aid in effective management of the program.

[FR Doc. 84-29979 Filed 11-14-84; 8:45 am]
BILLING CODE 4000-01-M

Federal Education Data Acquisition Council; Meeting

AGENCY: Department of Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Federal Education Data Acquisition Council. This notice also describes the functions of the council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: December 6 and 7, 1984.

ADDRESS: Federal Office Building No. 6, Room 3000, 400 Maryland Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, Executive Director, Federal Education Data Acquisition Council, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202 (202) 426–7304.

SUPPLEMENTARY INFORMATION: The Federal Education Data Acquisition Council is established under section 400A of the General Education Provisions Act (Pub. L. 95–561; 20 U.S.C. 1221–3). The Council is established to advise and assist the Secretary with respect to the improvement, development and coordination of Federal education information and data acquisition activities, and to review the policies, practices, and procedures established by the Secretary.

The meeting of the Council is open to the public. The agenda includes:

FEDAC Interim Review Procedures
Followup Discussion of the Food and Nutrition Service as a Major Data Collection Agency
Ongoing Activities Related to Education Terminology
Council Business

Records are kept of all Council proceedings, and are available for public inspection at the Division of Education Information Management, 330 C Street SW., Washington, D.C. 20202 from the hours of 8:00 A.M. to 5:00 P.M.

Dated: November 9, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

[FR Doc. 84-29980 Filed 11-14-84; 8:45 am]
BILLING CODE 4000-01-M

Talent Search Program; Educational Opportunity Centers Program

AGENCY: Department of Education.

ACTION: Application Notice for New Awards for Fiscal Year 1985.

Applications are invited for new awards under the Talent Search and Educational Opportunity Centers Programs.

Authority for these programs is contained in sections 417A, 417B, and 417E of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1, and 1070d–1c)

The Secretary is authorized to make grants under these programs to institutions of higher education, public and private agencies and organizations, and, in exceptional cases, secondary schools, if there are no other applicants capable of providing a Talent Search or Educational Opportunity Centers Program in the target areas to be served by the proposed projects (34 CFR 643.2 and 644.2, respectively). The purpose of the grant awards under both the Talent Search and Educational Opportunity Centers Programs is to permit applicants to carry out projects designed to identify qualified individuals from disadvantaged backgrounds and to assist them in preparing for programs in postsecondary education.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered by January 11, 1985.

Applications Delivered by Mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.044 for the Talent Search Program, or 84.066 for the Educational Opportunity Centers Program, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The Secretary is accepting applications for up to three years of funding under each program. However, the Secretary will not fund an applicant for a period of time longer than is requested by the applicant in its application. Applicants under each program requesting multi-year funding must, in accordance with 34 CFR 75.117, submit information that shows why a multi-year project is needed; a budget for the first year of the project; and an estimate of the Federal funds needed for each additional year requested.

The applications for new awards will be evaluated competitively under the selection criteria for new awards contained in 34 CFR 643.31 or 644.31 for Talent Search and Educational Opportunity Centers Programs, respectively. In addition, Talent Search applicants that have conducted a Talent Search project within the three previous years and Educational Opportunity Centers applicants that have conducted an Educational Opportunity Centers project within the three previous years may receive additional points on the basis of their prior experience. The prior experience section of the application will be evaluated on the basis of the priorities as specified in 34 CFR 643.32 and 644.32 for Talent Search and Educational Opportunity Centers Programs, respectively.

Suggestions for Fiscal Year 1985 Applicants for Talent Search and Educational Opportunity Centers Funds: Experience has shown that the most successful Talent Search and Educational Opportunity Centers projects have certain common characteristics. These can be summarized as follows:

(1) Projects that have a strong institutional, local, or private sector commitment to their objectives. This often takes the form of in-kind or cash contributions to enhance the opportunities made available to Talent Search and Educational Opportunity Centers participants.

(2) Projects that work closely with and are fully endorsed by the local community in the target area served by the project.

(3) Projects that provide mechanisms to monitor participants' progress.

(4) Projects that assess the effectiveness of accomplishing goals and objectives.

(5) Projects that make an effort to meet the needs of participants in the target area, and to place a specified number or percentage of students into postsecondary education programs.

(6) Projects that actively seek to improve educational opportunity and access for all students, particularly those who traditionally have not participated fully in higher education, including projects that address the special needs of racial or ethnic minority groups, women, and the handicapped.

In view of this experience, the Secretary encourages applicants to incorporate these characteristics into their applications. Applicants should note that these characteristics are included only to assist them in developing potentially successful projects. The characteristics themselves in no way amend the selection criteria in either 34 CFR 643.41 or 34 CFR 644.31, respectively.

Available Funds: The Department of Education Appropriation Act, 1985, appropriated $174,940,000 for the Special Programs for the Disadvantaged. Of that amount, it is anticipated that approximately $20,272,500 and $9,317,500 million will be available for the Talent Search and Educational Opportunity Centers Programs, respectively, in fiscal year 1985. With these amounts, the Secretary expects to fund 172 new Talent Search projects with average grant awards of $117,863, and 35 new Educational Opportunity Centers projects with awards averaging $266,205. These projections in no way, however, bind the Secretary to specific numbers of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by November 26, 1984. Application packages will not automatically be mailed to all institutions of higher education. However, they will be mailed to all currently funded grantees under the Talent Search and Educational Opportunity Centers Programs. Application packages may be obtained by contacting the Division of Student Services, Education Outreach Branch, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone number: (202) 245–2165.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. (Approved by Office of Management and Budget under control numbers 1840–0549 and 1840–0065 for Talent Search and Educational Opportunity Centers Programs, respectively.)

The Secretary suggests that the narrative portion of the application not exceed thirty (30) pages in length. The Secretary further suggests that only the information required by the application form be submitted.

Applicable Regulations: Regulations applicable to this program are:

(a) Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, and

(b) Regulations governing the Talent Search and Educational Opportunity Centers Programs (34 CFR Parts 643 and 644).

Further Information: For further information contact Walter Lewis, Chief, Education Outreach Branch, Division of Student Services, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone number: (202) 245–2165.

(20 U.S.C. 1070d, 1070d–1b, and 1070d–1c)

(Catalog of Federal Domestic Assistance Number: 84.044 and 84.066, Talent Search and Educational Opportunity Centers Programs, respectively)

Dated: November 9, 1984.

[FR Doc. 84-29800 Filed 11-14-84; 8:45 am]
BILLING CODE 4000-01-M

Office of Postsecondary Education

Endowment Grant Program; Application Notice for New Endowment Grants for Fiscal Year 1985

Applications are invited for new endowment grants for FY 1985 under the Endowment Grant Program.

Authority for this program is contained in section 333 of Title III of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. 1065a.

Under the Endowment Grant Program, the Secretary is authorized to make grants to eligible institutions of higher education funds at those institutions. The Federal grant funds must be matched dollar-for-dollar by the institution selected to receive a grant.

Closing date for transmittal of applications: An application for an endowment grant must be mailed or hand-delivered by January 25, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention 84.031G, Washington, D.C. 20202

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

General program information: Under the Endowment Grant Program, the Secretary awards grants to eligible institutions of higher education to establish or increase endowment funds. Grantees must match the Federal grant funds dollar-for-dollar. The Federal grant and the institutional match is called the "endowment fund corpus." Institutions must invest, and may not spend, the endowment fund corpus for the 20 year grant period. Afterwards, the institution may use the endowment fund corpus for any educational purpose.

In general, a grantee may spend up to 50 percent of endowment fund income earned prior to the date of each proposed expenditure. Endowment fund income is the value of the endowment fund minus the endowment fund corpus. A grantee may use that 50 percent portion of the endowment fund income to defray any expenses necessary to operate the institution. A grantee must invest the other 50 percent portion of endowment fund income for the 20 year grant period. Afterward, the grantee may use all endowment fund income for any educational purpose.

Eligible applicants: The Endowment Grant Program is one of four Institutional Aid Programs authorized by Title III of the Higher Education Act of 1965 (HEA), as amended. The other three programs are the Strengthening, Special Needs, and Challenge Grant Programs. Under section 333(b)(4) of the HEA, an institution is eligible to receive a grant under the Endowment Grant Program if it qualifies as an eligible institution under the Challenge Grant Program. An institution, in turn, qualifies as an eligible institution under the Challenge Grant Program if it qualifies (1) as an eligible institution under 34 CFR 627.2(b) or (d) of the Challenge Grant Program regulations, (2) as an eligible institution for the Strengthening Program under 34 CFR 625.2 and 625.3 of the Strengthening Program regulations or (3) as an eligible institution for the Special Needs Program under 34 CFR 628.2 and 628.3 of the Special Needs Program regulations.

Under each of the above program regulations, the Secretary determines an institution's eligibility based in part upon an institution's education and general (E&G) expenditures, and the amounts of Pell Grants and other Title IV HEA student financial assistance students attending that institution receive for a particular award year.

Potential applicants, including current grantees under one or more of the other Institutional Aid Programs mentioned above, are advised that a notice was published in the **Federal Register** on September 28, 1984 (49 FR 38331–38341) explaining how an institution becomes eligible for the Endowment Grant Program. Under that notice, institutions were required to submit eligibility requests by October 29, 1984. The Secretary will consider funding only those institutions determined eligible to apply for a grant under the Endowment Grant Program in FY 1985 pursuant to the September 28, 1984 notice.

Application information: Under § 628.20(b) of the Endowment Grant Program regulations, an applicant must submit a long range development plan (referred to in the application form as an "institutional narrative") as part of its application, unless the applicant is, at the closing date established by the Secretary for submission of an endowment grant application, (1) a recipient of a development grant under the Strengthening, Special Needs, or Challenge Grant Programs; (2) has applied in FY 1985 for a development grant under the Strengthening or Special Needs Programs; or (3) has applied in FY 1985 for a Strengthening Program planning grant solely to prepare an application for a development grant. The Secretary requests that the long-range development plan not exceed thirty double-spaced typewritten pages.

Available funds: Grants awarded under the Endowment Grant Program in FY 1985 will range from $50,000 to $500,000. Applicants are advised that a notice was published in the **Federal Register** on November 6, 1984 (49 FR 44320), establishing July 15, 1985 as the deadline for FY 1985 endowment grantees to raise their required matching funds. Applicants are urged, therefore, to request grants in an amount that they will realistically be able to match by the end of the fund-raising period, July 15, 1985. The Secretary anticipates awarding approximately 30 to 135 grants in FY 1985.

The Department of Education Appropriation Act, 1985, appropriated $141,208,000 for the Institutional Aid Programs in FY 1985. Of that amount, approximately $15,200,000 will be available for awarding grants under the Endowment Grant Program.

With funds transferred from the Special Needs Program to the Endowment Grant Program, the Secretary awards endowment grants so that the amounts required under 34 CFR 626.31 (a) and (b) of the Special Needs Program regulations to be awarded to junior or community colleges and to institutions with special needs that have historically served substantial numbers of black students will be so awarded. (20 U.S.C. 1065a, 1069c).

The Department of Education Appropriation Act, 1985, reserves $45,741,000 of the monies appropriated for the Institutional Aid Programs for awards to historically black colleges and universities. This reservation may limit funds available to institutions that are not historically black institutions under this competition.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by November 26, 1984. Interested parties may obtain a copy of the application form by writing to the Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza Station, Post Office Box 23668, Washington, D.C. 20024. The program information packages will include the final Endowment Grant Program regulations.

An application must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing this program.

The Secretary strongly urges that applicants not submit information that is not required. (Approved by the Office of Management and Budget under Control Number 1840–0531)

Applicable regulations: Regulations applicable to the Endowment Grant Program include:

(1) The regulations in 34 CFR 624.1 through 624.3, 624.6, 624.10, 624.20, 624.22 and 624.40.

(2) The regulations in 34 CFR 625.2, 626.2 and 627.2.

(3) The regulations in 34 CFR Part 628 published in the **Federal Register** on July 12, 1984 (49 FR 28520–28536) and amended on September 21, 1984 (49 FR 37325).

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 74.62(h); 34 CFR 74.80 through 74.85; 34 CFR 75.100 through 75.102 and 75.217; and 34 CFR Part 78.

Further information: For further information, contact Dr. Caroline Gillin, Director, Division of Institutional Development, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 426–8960.

(20 U.S.C. 1064–1069c)

(Catalog of Federal Domestic Assistance No. 84–031G—Endowment)

Dated: November 9, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-29879 Filed 11-14-84; 8:45 am]
BILLING CODE 4000-01-M

Indian-Controlled Schools Enrichment Program; Extension of Closing Date

AGENCY: Department of Education.

ACTION: Notice of Extension of Closing Date for Transmittal of New Applications for Fiscal Year 1985 Assistance under the Indian-Controlled Schools Enrichment Program.

SUMMARY: This notice extends the closing date of November 26, 1984 to March 4, 1985 for the transmittal of new applications under the Indian-Controlled Schools Enrichment Program (84.072A). This extension is necessary because section 513 of the Education Amendments of 1984, Pub. L. 98–511, enacted on October 19, 1984, amended section 303 of the Indian Elementary and Secondary School Assistance Act by changing certain eligibility requirements for applying for funds under the Indian-Controlled Schools Enrichment Program.

SUPPLEMENTARY INFORMATION: Section 513 of Pub. L. 98–511 amended section 303(b) of the Indian Education Act by exempting schools serving Indian children in California, Oklahoma, or Alaska from the requirement that schools for Indian children or local educational agencies eligible to receive funds under this program be located "on or near reservations." This requirement is found in 34 CFR 253.2 of the regulations for this program. Revised regulations incorporating the changes made by this legislation will be published in the **Federal Register** at a later date.

The application notice for this program, published in the **Federal Register** on August 20, 1984 (49 FR 33048), provides detailed information concerning the Indian-Controlled Schools Enrichment Program. This notice extends the closing date for transmittal of new applications to allow those schools not previously eligible for assistance under this program to have an opportunity to apply.

FOR FURTHER INFORMATION CONTACT: Inquiries concerning this extension date should be addressed to Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education, Room 2177, FOB–6, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 732–1918.

(Catalog of Federal Domestic Assistance No. 84.072, Indian Education Grants to Indian-Controlled Schools)

(20 U.S.C. 241bb(b))

Dated: November 9, 1984.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 84-29877 Filed 11-14-84; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Average System Cost Methodology for Use in the Bonneville Power Administration Exchange Transmission Credit Program

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Implementation of methodology for determining exchange transmission credit.

SUMMARY: Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839c(c), establishes the residential exchange program whereby each participating utility receives a BPA subsidy equal to the difference between BPA's priority firm wholesale power rate and the participating utility's average system cost of resources. The subsidy applies to each participating utility's residential and small farm loads. The Northwest Power Act makes it clear that only the BPA Administrator is authorized to determine the average system cost of participatring utilities' resources, subject to limited review by the Federal Energy Regulatory Commission (Commission).

On October 1, 1984, the Commission issued Order No. 400, 29 FERC ¶ 61,013,

approving and implementing the reformed Average System Cost (ASC) methodology adopted by the BPA Administrator in a record of decision dated June 5, 1984. The Administrator's decision was made following a statutory consultation proceeding, conducted pursuant to section 5(c)(7) of the Northwest Power Act. Effective October 1, 1984, the reformed ASC methodology, which is an administrative rule adopted by BPA and approved by the Commission, will determine the level of subsidy paid to each participant in the residential exchange program authorized by section 5(c) of the Northwest Power Act.

The methodology adopted in this rule pertains to BPA's Exchange Transmission Credit (ETC) program, which is patterned after the residential exchange program. The ETC program is designed to provide residential exchange benefits to Pacific Northwest utilities that own transmission plant, but no generation plant. The statutory authority for each program is found in section 5(c) of the Northwest Power Act.

Section IV of the current ETC methodology makes clear that: (1) The consultation proceeding just concluded under section 5(c)(7) of the Northwest Power Act relates to modifications of both the residential exchange ASC methodology and the ETC methodology, (2) subsidy payments received under the ETC methodology are to equal the payments that would be caluculated under the residential exchange ASC methodology except in instances where ETC payments are limited by Exhibit E to the Exchange Transmission Credit Agreement, and (3) modifications to the ETC methodology are to become effective as of the same date as modifications to the residential exchange ASC methodology.

This notice concludes the consultation proceeding, as it regards the ETC program, by adopting and implementing a revised ASC methodology for use in calculating subsidy payments to utility participants in the ETC program. The revised methodology is patterned after the residential exchange ASC Methodology approved by the Commission on October 1, 1984. This rule is effective as of October 1, 1984, to coincide with the effective date of Commission approval of the residential exchange ASC methodology rule.

Responsible Official

Stephen A. Ailshie, Assistant Administrator for Financial Management, is the official responsible for this methodology.

ADDRESSES:

For further information contact Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212; (503) 230–3478. Oregon callers outside the Portland area may use the toll-free number (800) 452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use (800) 547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene Oregon 97401, 503–687–6952.

Mr. Earl C. Schoer, Acting Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3860.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main St., Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provisions

Section 5(c)(1) of the Northwest Power Act, 16 U.S.C. 839 (c)(1), provides that BPA shall acquire certain amounts of power offered for sale by Pacific Northwest electric utilities. In exchange, BPA offers to sell "an equivalent amount of electric power to such utility for resale to that utility's residential users within the region." [1] *See, generally*, H.R. Rep. No. 976, Part I, 96th Cong., 2d Sess. at 60 (1980). Sales to the utility may not be restricted below the amount of power acquired from the utility. *See* section 5(c)(6).

The residential exchange is not a conventional power transaction. There is no power transferred either to or from BPA.[2] System schedulers do not dispatch the exchange; line losses are not incurred. "In practice, only dollars are exchanged, not electric power." *Public Utility Commissioner* v. *BPA*, 583 F. Supp. 752, 754 (D. Or. 1984). *See* Commission Order No. 400, 29 FERC ¶ 61,013 (1984).

The power sale concept was created by Congress for BPA ratemaking purposes. *E.g.*, section 7(b)(1).[3] Practically speaking, the purpose of the residential exchange is to provide a subsidy to exchanging utilities. Costs subsidized by BPA do not have to be recoverd in the retail rates charged to the residential customers of exchanging utilities. *See* Answer of Bonneville Power Administration to Substantive Comments on the Revised Average System Cost Methodology, at 6, Commission Docket No. RM84–16 (July 26, 1984).

BPA exchange power is priced at the same rate as that for general requirements sales to preference customers (the "priority firm rate"). *See*, section 7(b)(1) of the Northwest Power Act, 16 U.S.C. 839(b)(1). In contrast, the amount paid by BPA to the participating utility is not a coventional power rate. Section 5(c)(1) states that BPA is to pay "the average system cost of that utility's resources." 16 U.S.C. 839c(c)(1). Section 5(c)(7) of the Northwest Power Act gives BPA's Administrator the discretionary authority to determine average system cost (ASC) on the basis of the methodology to be established in consultation proceedings. 16 U.S.C. 839c(c)(7). The only express statutory limits on the Administration's authority are found in section 5(c)(7) (A), (B) and (C).

[1] The exchange was set equal to 50 percent of a participating utility's qualifying residential and small farm load as of July 1, 1980, and has been increasing in equal increments toward 100 percent of such load. *See*, section 5(c)(2).

[2] Section 5(c)(5) allows BPA to acquire an "equivalent amount of electric power from other sources to replace power sold to [a participating] utility," if the cost of such replacement acquisition is less than the applicable ASC. Once again, however, the key phrase is "equivalent amount." In any event, such alternative purchases, other than BPA resources, have been construed to require seven years advance notice. *See*, section 4(a), Residential Purchase and Sale Agreement, Contract No. DE–MS79–83BP9. BPA designated this contract as part of the record of this consultation proceeding. (R. 6800).

[3] The outcome of this consultation proceeding will not change the way in which BPA establishes rates under section 7 of the Northwest Power Act. The resource concept was devised by Congress to allocate the benefits and costs of the Federal Base System among competing classes of BPA customers. BPA has faithfully implemented Congress' ratemaking directives. However, the resource concept should not obfuscate the nature of the residential exchange as a subsidy from BPA to the participating utilities.

In section 5(c)(7), Congress provided an express mechanism for formulation of an electric utility's "average system cost" (ASC). Section 5(c)(7) states:

> The "average system cost" for electric power sold to the Administration under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average cost shall not include—
>
> (A) the cost of additional resources in an amount sufficient to serve any new large single load of the utility;
>
> (B) the cost of additional resources in an amount sufficient to met any additional load outside the region occurring after the effective date of this Act; and
>
> (C) any costs of any generating facility which is terminated prior to initial commercial operation.

Section 5(c)(7) requires that the ASC subsidy: (1) Be determined by the Administrator; (2) be based upon a rate formula methodology developed by the Administrator in consultation with the Northwest Power Planning Council, BPA customers, and state regulatory bodies, (3) be subject to review and approval by the Federal Energy Regulatory Commission (FERC), and (4) not include costs identified in section 5(c)(7)(A), (B), and (C).

The ASC methodology established by the BPA Administrator pursuant to section 5(c)(7) of the Northwest Power Act is a "rate formula." *Public Utility Commissioner* v. *BPA*, 583 F. Supp. 752, 754 (D. Or. 1984). The methodology is an administrative rule of both BPA and FERC. *See* 18 CFR 35.13a (1983 ed.).

Under the methodology, exchanging utilities make proposed ASC filings with BPA, which reviews the filings for conformity with the ASC methodology and the requirements of section 5 of the Northwest Power Act. The BPA Administrator then determines the appropriate ASC for the filing utility. The utility receives an exchange subsidy according to the ASC determined by the Administrator and approved by FERC.

Through June of 1985, BPA's rates for service to direct-service industrial (DSI) customers are to recover, *inter alia*, the "net costs incurred by the Administrator pursuant to section 5(c) of this Act . . . to the extent that such costs are not recovered through rates applicable to other customers." *See*, section 7(c)(1)(A). However, beginning in July of 1985, a new ratemaking methodology for recovering the net cost of the residential exchange is to be established. Then, residential exchange costs may have a greater effect on the rates of all customer classes.

The ASC methodology must be designed so that BPA does not become the "deep pocket" to which participating utilities may shift excessive or improper resource costs. The methodology should give participating utilities an incentive to minimize their costs. Otherwise, BPA could be faced with either of two statutorily impermissible alternatives. First, BPA may not be able to set reasonable rates for its customers, who must pay the cost of the subsidy through their rates. Second, if net exchange costs cause rates to rise to the level where loads decline, BPA may not be able to satisfy the requirement of section 7(a) of the Northwest Power Act that its rates recover total revenue requirement. BPA is a self-financing government agency, which must recover its costs through rates for sales of electric power and energy. *See* 16 U.S.C. §§ 832f, 838g and 839e(a). The residential exchange subsidy should not be borne by the Federal Treasury.

The Exchange Transmission Credit program is a variant of the residential exchange, designed specifically to provide residential exchange benfits to Pacific Northwest utilities that own transmission plant, but no generation plant. The statutory authority for each program is found in section 5(c) of the Northwest Power Act. The ETC methodology is patterned after the residential exchange ASC methodology. Accordingly, whenever the ASC methodology is modified by BPA, the ETC methodology must be modified as well.

B. The Reformed ASC Methodology

Following the statutory consultation proceeding commenced on October 7, 1983 (48 FR 4230), the Administrator adopted a reformed ASC methodology in a record of decision issued on June 5, 1984. That methodology was approved, in its entirety, by the Commission on October 1, 1984.

Significant features of the reformed ASC methodology adopted in this Record of Decision include:

1. Retention of the so-called jurisdictional approach under which retail rate orders of regulatory agencies are used as the primary source of data for computing the ASC for utilities participating in the residential exchange. However, BPA will carry out its statutory role through an independent determination of the validity of all data submitted in ASC filings recognizing the different purposes of ASC filing review and retail rate regulation. This independent determination will require greater involvement in retail rate cases of utilities participating in the residential exchange program.

2. Inclusion of transmission costs in the calculation of ASC, with a review of all future transmission plant additions to ensure that they are not redundant of the existing transmission grid.

3. Exclusion of all Construction Work In Progress from the calculation of ASC.

4. Use of a participating utility's weighted cost of debt securities to determine a return component of ASC. This is intended to eliminate the potential for utilities to recover terminated power plants costs indirectly through their jurisdictionally allowed equity returns and capital structures.

5. Exclusion of income taxes from ASC, meaning that BPA will no longer subsidize the income taxes of participating utilities. Income taxes are not a cost of resources within the meaning of Section 5(c) of the Northwest Power Act.

6. Simplification of procedures for functionalizing (separating) costs between subsidized generation and transmission accounts, and nonsubsidized distribution and "other" accounts.

7. Clarification of Section VI, *Change In Average System Cost Methodology*, of the current ASC Methodology to better reflect the purpose of the rule. Once an ASC Methodology is adopted in a record-billing proceeding, the Administrator may retain that methodology for at least one year after implementation so that experience may be gained thereunder before it is subject to further revision or change.

8. Changes in the timetable for BPA review of individual ASC filings to permit more thorough analysis.

9. "Phase-in" of the reformed ASC methodology in order to minimize the retail rate effects of the change in methodology. Under the phase-in, the new ASC methodology was implemented by the Commission on October 1, 1984. For the ensuing 9-month period, the actual ASC subsidy for each participating utility would be determined as the average of the ASC in effect on July 1, 1984, and the ASC calculated under the new methodology. On July 1, 1985, the new methodology would become the exclusive means of determining the ASC of each participating utility.

A full explanation of the reformed methodology is provided in the Administrator's Record of Decision and in Commission Order No. 400. Under the reformed methodology, BPA estimates that it will continue to pay a residential exchange subsidy of approximately $170

million per year through the residential exchange program.

II. The Reformed ETC Methodology

In accordance with Section IV of the ETC methodology, BPA is hereby revising that methodology to conform to the reformed ASC methodology. Each modification follows a corresponding modification to the residential exchange ASC methodology, which have been explained in detail in the BPA Administrator's Record of Decision of June 5, 1984, and in Commission Order No. 400, 29 FERC ¶ 61,013 (1984).

III. Effective Date

Consistent with Section IV of the current ETC methodology, this modification to that methodology is effective as of October 1, 1984, to coincide with the effective date of Commission approval of the residential exchange ASC methodology. BPA also relies on the reasons for immediate effectiveness given by the Commission in Order No. 400, slip order at 36–37.

Consistent with the filing requirements under the reformed ASC methodology, each participant in the ETC program will be required to make a filing in conformance with the new ETC methodology within 20 days after this document is published in the **Federal Register**.

In consideration of the foregoing discussion, and following the consultation proceeding prescribed by section 5(c)(7) of the Northwest Power Act, BPA is modifying the Exchange Transmission Credit methodology, as set forth below.

Issued in Portland, Oregon on November 7, 1984.

Peter T. Johnson,

Administrator.

Review Procedure—Bonneville Power Administration

The following rule sets forth the procedures by which an Average System Cost (ASC) filing is to be submitted to Bonneville Power Administration (BPA) and by which the BPA review process will be conducted. BPA's review is to determine the ASC for the purpose of the Exchange Transmission Credit program. This rule becomes Exhibit B incorporated by reference into the Exchange Transmission Credit Agreement.

I. Definitions

Definitions are included in this rule to conform to the format of the residential exchange ASC methodolgy. For purposes of BPA's review procedures for Appendix 1, *infra*, the following definitions apply:

A. "Average system Cost" or "ASC" means for each jurisdiction and each Reimbursement Period the quotient obtained by dividing Contract System Cost by Contract System Load.

C. "Contract System Costs" means the Utility's Costs for production and transmission resources, including power purchases and conservation measures, which Costs are includable in, jurisdictionally allocated by, and subject to the provisions of Appendix 1. Contract System Costs do not incude Costs excluded from ASC by section 5(c)(7) of the Northwest Power Act.

D. "Contract System Load" means the firm energy load used by the State Commission for the purpose of establishing retail rates, adjusted pursuant to Appendix 1.

E. "Costs" means the aggreate dollar amount or any portion of the amount allowed or relied upon by the State Commission to determine the Test Period revenue requirement for the Utility in a jursidiction.

F. "File" or "Filed" means that the Appendix 1 has been:

(1) hand delivered to the Division of Financial Requirements; Bonneville Power Administration; Portland, Oregon; or

(2) mailed to BPA by certified mail, return receipt requested, to the following address: Bonneville Power Administration, Division of Financial Requirements, Routing: DN, P.O. Box 3621, Portland, Oregon 97208

and has been received by BPA. An Appendix 1 shall be considered to be filed as of the date of the postmark on the certified mailing.

G. "Jurisdiction" means the service territory of the Utility within which a State Commission has authority to approve the retail rates.

H. "New Large Single Load" means that load defined in section 3(13) of the Nortwest Power Act, and as determined by BPA as specified in power sales contracts with its customers.

I. "Regional Power Sales Customer" means any entity that contracts directly with BPA for the purchase of power for delivery in the region as defined by section 3(14) of the Northwest Power Act.

J. "Reimbursement Period" means the period of time during which a Utility's jurisdictional retail rate schedules are in effect, commencing with the effective date of new retail rate schedules in the Jurisdiction; provided that no Reimbursement Period shall commence prior to or extend beyond the term of the utility's ETC agreement. For the purposes of any initial Appendix 1 filing, the Reimbursement Period shall commence on the date such Appendix 1 is filed and end with the effective date of the next retail rate change.

K. "Review Period" means that period of time during which a Utility's Appendix 1 is under reveiw by BPA. The review period begins when an Appendix 1 is Filed and ends two hundred and ten (210) days after the Utility Files its Appendix 1.

L. "State Commission" means a state regulatory body, prefernce utility governing body, or other entity authorized to establish retail electric rates in a Jurisdiction.

M. "Test Period" means the time period (not less than 12 months) used by the State Commission to determine Costs for retail ratemaking.

II. Filing Procedures

The procedures set forth in this section state the filing requirements for all Utilities which File an Appendix 1. The procedures are as follows:

A. Appendix 1 is a form that identifies Contract System Costs and Contract System Load and permits the calculation of ASC. B. For each Reimbursement Period and for each regional jurisdiction in which a utility provides service, the Utility shall complete and File three copies of Appendix 1 as follows:

1. Within twenty (20) working days after the date the Commission grants interim approval, or final approval in the event no interim approval is granted to any revised ASC Methodology, the Utility shall File an Appendix 1, which includes a loss study, reflecting its Costs for the test period for the rate schedule(s) then in effect for each Jurisdiction. Subject to the provisions of section III, the ASC determined from each Appendix 1 shall be the rate applicable to exchange power from that Jurisdiction during the initial Reimbursement Period. For purposes of this subsection, the initial Reimbursement Period shall commence on the date the Commission grants interim approval, or final approval in the event no interim approval is granted to any revised Methodology; provided that is a Utility Files an initial Appendix 1 after the twenty-day deadline, BPA make the new ASC payable only from the date the initial Appendix 1 was actually Filed. However, BPA shall not delay as a result of a late filing of an Appendix 1, the effective date of any change in the ASC if the late filing was the result of unavoidable delay or excusable neglect, and the Utility proceeded to File its initial Appendix 1 as soon as practicable. If a Utility fails to File its initial Appendix 1 within the twenty-day deadline, the ASC of the Utility for the initial Reimbursement Period shall be zero (0) until the Utility files its initial Appendix 1.

2. Thereafter, not later than five (5) working days after filing for a jurisdictional rate change or otherwise commencing a rate change proceeding, the Utility shall File a preliminary Appendix 1, setting forth the Costs proposed by the Utility and shall deliver to BPA all information initially provided to the State Commission.

3. Not later than twenty (20) days following the commencement date of a new Reimbursement Period, the Utility shall File a revised Appendix 1, which includes a loss study, reflecting its Costs as approved by the State Commission and a reconciliation of all Costs included on the revised Appendix 1 to the rate order issued by that Utility's State Commission. Subject to the provisions of section III of this rule, the ASC included in the revised Appendix 1 will be the ASC applicable to exchange power for that Jurisdiction during the Reimbursement Period, provided that if a Utility Files a revised Appendix 1 after the twenty day deadline, BPA may make the new ASC payable only from the date the revised Appendix 1 was actually Filed. However, BPA shall not delay as a result of a late filing of an Appendix 1, the effective date of any change in the ASC if the late filing was the result of unavoidable delay or excusable neglect, and the Utility proceeded to File its revised Appendix 1 as soon as practicable.

4. (a) A Utility filing a preliminary Appendix 1 shall mail written notice thereof to each of BPA's Regional Power Sales Customers or their designee.

(b) A Utility filing a revised Appendix 1 shall mail written notice thereof to each of BPA's Regional Power Sales Customers or their designates. This notice shall make reference to the right to comment thereon and shall state the date the Utility Filed its revised Appendix 1.

C. If BPA or any of its regional power sales customers have been denied the right to participate in a jurisdictional rate review proceeding or with rights equivalent to any retail customer of the Utility, no change in ASC based on a change of Costs authorized in that proceeding shall be affective until BPA has completed its review pursuant to section III of this rule.

III. BPA Review Process

A. BPA may intervene in each jurisdictional rate proceeding for each Utility participating in the ETC program.

B. Each Appendix 1, except those required by section II(B)(2) of this rule, shall be reviewed by BPA or its designee to determine whether the Costs are consistent with generally accepted accounting principles for electric utilities, whether Contract System Costs contains only allowed Costs, and whether the revised Appendix 1 complies with the requirements of the Methodology including applicable definitions and requirements incorporated from the Commission's Uniform System of Accounts. In addition, each Appendix 1 shall be reviewed by BPA or its designee to determine whether the Contract System Load used by the Utility is an appropriate load for purposes of the Utility's ASC computation.

BPA will make an independent determination for ASC computation of (1) the appropriateness of the inclusion of Costs; (2) the reasonableness of the Costs included in Contract Systems Cost; and (3) the appropriateness of Contract System Loads. BPA shall not be obligated to pay an ASC different than the ASC based on Contract System Costs and Contract System Load as determined by BPA: provided that if a final order of the Commission or a reviewing court rejects BPA's ASC determination, then the ASC payable by BPA shall be the ASC as revised by BPA on remand.

C. The review period for each Appendix 1 required by section II(B)(1) of this rule shall commence no later than one hundred (100) days from the date the Utility Files the Appendix 1 required by section II(B)(1). BPA shall mail written notice of the date BPA's review period commences to the Utility, and to each of BPA's Regional Power Sales Customers or their designee. The Appendix 1 required by section II(B)(1) of this rule shall then be subject to review as set forth in section III(D). For purposes of the review process, the Appendix 1 referred to in section II(B)(1) shall be deemed to be a "revised Appendix 1" as used in III(D) below and the date the review period commences shall be deemed be the date the Utility Filed its revised Appendix 1.

D. The revised Appendix 1 described in section 11(B)(3) of this rule shall be subject to review as follows:

1. Not later than 80 days following the date a Utility Files a revised Appendix 1, only Regional Power Sales Customers or their designee may submit written challenges to Costs included in the Utility's Contract System Costs. The challenge shall identify the specific Cost and state the nature of the challenge. Any of BPA's Regional Power Sales Customers who submit challenges will be accorded automatic party status for purposes of the review process on that Utility's filing. To be considered by BPA, challenges must be received by BPA no later than eighty (80) days following the date a Utility Files its revised Appendix 1. In addition to those of BPA's Regional Power Sales Customers who so request, others will be accorded party status for a specific filing if said request is received no later than eighty (80) days following the date a Utility Files its revised Appendix 1. For purposes of the review process, the Utility is a party to any review of any Appendix 1 which is submitted by the Utility.

2. (a) Not later than ninety (90) days following the date the Utility Files its revised Appendix 1, BPA shall mail to the Utility and all parties a notice: (1) Listing each challenged Cost and the nature of the challenge; (2) listing all parties for the review process for the revised Appendix 1; and (3) requesting comments by all parties on challenged Costs.

(b) Comments shall be submitted in writing to BPA and to all parties. Written comments, to be considered, must be *received* by BPA and must be mailed to all parties within thirty (30) days of the date of the notice.

(c) Parties may submit written cross comments in response to the previously submitted comments. Cross comments must be in writing and must be received by BPA and must be mailed to all parties not later than fifteen (15) days following the date the parties submit written comments.

3. Requests for oral arguments before the Administrator or his designate must be submitted in writing to BPA with a statement setting forth reasons by the party believes the review process will be enhanced thereby. The written requests for oral arguments must be submitted no later than one hundred and fifty (150) days following the date for the Utility Files its revised Appendix 1. BPA may, in its sole discretion, grant the request for oral argument. Requests for oral argument shall be served on all parties.

4. (a) Not later than one hundred and thirty-five (135) days following the date a Utility Files its revised Appendix 1, BPA may, in its sole discretion, issue a notice to all parties requesting comments on Costs that have not been challenged previously, on Contract System Loads, and on other issues that have not been raised previously. Any challenge to the Contract System Load used by the Utility in computing ASC may be raised at this time only, and only by BPA. All comments responding to this notice must be received in writing no later than one hundred and fifty (150) days following the date the Utility Files its revised Appendix 1. In addition to

providing the written comments to BPA, any party commenting shall provide all parties with a copy of the comment not later than one hundred and fifty (150) days following the date the Utility Files its revised Appendix 1.

(b) Parties may submit written cross comments in response to the comments submitted in response to the notice in section III(D)(4)(a) of this rule. Cross comments from all parties must be *received* in writing by BPA and must be mailed to all other parties not later than one hundred and sixty-five (165) days following the date the Utility Files its revised Appendix 1.

5. In the event a request for oral argument is granted, any party shall be permitted to present oral argument. The presentation of the Utility shall be last. Oral argument shall be presented no later than one hundred and eighty (180) days from the date a Utility Files its revised Appendix 1.

6. The Review Period will end two hundred and ten (210) days from the date the Utility Files its revised Appendix 1. BPA will issue its final determination not later than two hundred ten (210) days from the date the Utility Files its revised Appendix 1.

If the date of BPA's final determination or any other deadline contained in these review procedures falls on a Saturday, a Sunday, or a legal public holiday, then the deadline or BPA's final determination shall fall on the first day following that is not a Saturday, a Sunday or a legal public holiday. Legal public holiday means legal public holiday as defined in 5 U.S.C. 6103(a).

E. 1. BPA may request data from the Utility at any time during the Review Period. Each Utility shall respond to reasonable data requests for information relevant to Appendix 1 from BPA, provided that the furnishing of proprietary or confidential information to any party to the review proceedings may be made contingent on the granting of proper safeguards to prevent unauthorized use or disclosure. The Utility shall provide all the data requested no later than thirty (30) days from the date of BPA's data request. If the Utility objects to the data request, it shall state in writing to BPA the specific basis for its objection no later than twenty-five (25) days from the date of BPA's data request. BPA will issue a ruling as to whether the Utility's objection will be sustained or overruled. If BPA rules that the Utility must comply with the data request, the Utility has fifteen (15) days from the date of BPA's ruling to comply. If the Utility does not provide the data requested, BPA may, in its discretion, remove from Contract System Costs all Costs that are associated with the data not provided.

2. Data requests from persons or entities other than BPA shall be limited as follows. Each Utility shall respond to reasonable data requests for information relevant to Appendix 1 from any party in the review process for the Utility's Appendix 1, provided that the furnishing of proprietary or confidential information to any party to the review proceedings may be made contingent on the granting of proper safeguards to prevent unauthorized use or disclosure. A Utility which provides data to any party in response to a data request by that party shall also provide the same data to BPA. Data requests must be received by the Utility no later than forty (40) days from the date the Utility Filed its revised Appendix 1. The data request must identify the specific Cost(s) that is associated with the information requested. The Utility shall provide all the data requested no later than sixty-five (65) days from the date the Utility Filed its revised Appendix 1. If the Utility objects to the data request, it shall state with specificity in writing to BPA the basis for its objection. BPA will issue a ruling as to whether the Utility's objection will be sustained or overruled. The Utility must submit its objection no later than sixty (60) days from the date the Utility Filed its revised Appendix 1. If BPA rules that the Utility must comply with the data request, the Utility has fifteen (15) days from the date of BPA's ruling to comply. If the Utility does not provide the data requested, BPA may, in its discretion, remove from contract System Costs all Costs that are associated with the data not provided.

3. All written comments and written cross comments received by BPA by the deadlines set forth above will be included as part of the record supporting the ASC determined by BPA. In addition, all data provided by the Utility as part of its filing in response to data requests from BPA or from any party shall be included as part of the record supporting the ASC determined by BPA. For any jurisdictional rate proceeding in which BPA has intervened, all data received by BPA by virtue of its intervenor status shall also be included as part of the record supporting the ASC determined by BPA.

F. If BPA has not issued a report as of the last date of the review period, the ASC rate shown on the revised Appendix 1 described in section II(B) of this rule Filed by the Utility shall be the ASC from the commencement of the relevant Reimbursement Period until the date BPA issues its report. The ASC as determined by BPA shall then be the ASC rate from the date of BPA's determination until the commencement of the Utility's next Exchange Period.

IV. Change in the Average System Cost Methodology

This methodology is patterned after the ASC methodology adopted by the BPA Administrator for use in calculating the subsidy paid to participants in the residential exchange program authorized by section 5(c) of the Northwest Power Act. Whenever a consultation proceeding is initiated by BPA to modify the residential exchange ASC methodology, BPA will also initiate a consultation proceeding to modify this methodology. The consultation proceedings shall run concurrently and shall follow the same procedures. If the residential exchange ASC methodology is modified by order of the Federal Energy Regulatory Commission or a reviewing court, this methodology will also be modified to ensure that payments calculated under this methodology equal the payments that would be calculated under the residential exchange ASC methodology, except in the instances where payments under this methodology are limited by Exhibit E of the Exchange Transmission Credit Agreement to the benefits the utility would have received under the residential exchange program for its transmission system costs. Any necessary modification to this methodology shall become effective on the same day as the modification of the residential exchange ASC methodology. Should any modification to the residential exchange ASC methodology result in a refund or payment obligation under this methodology, by either BPA or a participating utility, such refund or payment obligation shall be implemented in the same manner as it is implemented under the residential exchange program.

Timeline Review Procedure—Bonneville Power Administration

Day and Event

−20—Commencement of new reimbursement period.
0—Utility files revised Appendix 1; utility mails notice of filing.
40—Deadline for data requests to utility from parties.
60—Deadline for utility to object to data request from parties.
65—Deadline to respond to data request from parties.
80—Deadline to raise issues in the utility's ASC filing (submit written challenges to costs included in the utility's appendix 1). Deadline to request party status for all persons or entities not submitting challenges to the costs included in the utility's Appendix 1.
90—BPA mails notice of issues, list of parties, and request for comments.
120—Deadline for submission of written comments on first round issues.
135—Deadline for submitting written cross comments on first round issues. BPA mails notice of second round issues.
150—Deadline for submission of written comments of second round issues.
150—Deadline for requesting oral argument.
165—Deadline for submission of written cross comments on second round issues.
180—Deadline for presentation of oral argument.
210—Review period ends. BPA issues final determination.

Instructions

Exhibit C—Appendix 1 is the form on which a Utility participating in the ETCA shall report its Contract System Costs and other necessary data for the calculation of ASC.

The form consists of four schedules that shall be completed by the Utility in accord with these instructions and the provisions of the footnotes following the schedules. Any items not applicable to the Utility shall be so identified.

The schedules are as follows:

Schedule 1—Plant Investment/Rate Base/Rate of Return
Schedule 2—Weighted Average Cost of Long Term Debt
Schedule 3—Expenses
Schedule 4—Average System Cost

The filing Utility shall reference and attach workpapers that support Costs, including details of allocation and functionalization.

All references to the Commission accounts are to the Commission Uniform System of Accounts as of July 1, 1984. The Costs includable in the attached schedules are those includable by reason of the definitions in the Commission accounts. If the Commission accounts are later revised or renumbered, any changes shall be incorporated into this form by reference, except to the extent that BPA determines that a particular change results in a change in the type of Costs allowable for exchange purposes. If the Utility does not follow the Commission accounts, its filing must include a reconciliation between its accounts and the items allowed as Contract System Costs.

BPA may require the Utility to account for purchased power transactions with affiliated entities as though the affiliated entities were owned in whole or in part by the Utility, if necessary to properly determined and/or functionalize the Utility's Costs.

A Utility operating in more than one jurisdiction shall allocate its total system Costs among jurisdictions in accord with the same allocation methods and procedures used by the State Commission to establish jurisdictional Costs and resulting revenue requirements. Appendix 1 shall include details of the allocation. This allocation also accomplishes the exclusion of the Costs of additional resources to meet loads outside the region, as required by section 5(c)(7) of the Northwest Power Act.

All schedule entries and supporting data shall be in accord with generally accepted accounting principles and practices as these principles and practices apply to the electric utility industry.

SCHEDULE 1—EXHIBIT B, APPENDIX 1

BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST MOTHODOLOGY TEST PERIOD: PLANT INVESTMENT/RATE BASE/RATE OF RETURN

[Thousands]

Functionalization	Line No. and Items			
	Total to be functionalized	Production	Transmission	Other
(1)	(2)	(3)	(4)	(5)
PRODUCTION PLANT				
1 Steam production 310–316				
2 Nuclear production 320–325				
3 Hydraulic production 330–336				
4 Other production plant 340–346				
5 Total production plant				
6 Transmission plant 350–359[a]				
7 Distribution plant 360–373[a]				
8 Intangible plant 301–303[a]				
9 General plant 389–399[a]				
10 Electric plant-in-service				
LESS				
11 Depreciation reserve 108				
12 Steam plant				
13 Nuclear plant				
14 Hydraulic plant				
15 Other plant				
16 Transmission plant[a]				
17 Distribution plant[a]				
18 General plant[a]				
19 Amortization reserve 111[a]				
20 Total Depreciation and amortization				
21 Total net plant				
22 Nuclear Fuel 120.2–120.4 Less 120.5				
23 Accumulated deferred debits 186[a]				
24 Cash working Capital[a]				
25 Material and Supplies 151–157, 163[a]				
LESS				
26 Accumulated deferred investment tax credits/255[a]				
27 Accumulated deferred income taxes/281–283[a][g]				
28 Other accumulated deferred credits/253, 256–257[a]				
29 Customer contributions and aid to construction/252[a]				
30 Other 108, 124, Various [a]				
31 Total rate base				

SCHEDULE 1—EXHIBIT B, APPENDIX 1—Continued

[Thousands]

Functionalization	Line No. and items			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
32 Times rate or return at—percent[6]				

Footnotes at end of Schedule 4.

SCHEDULE 2—EXHIBIT C, APPENDIX 1

BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD: WEIGHTED AVERAGE COST OF LONG TERM DEBT

Line No. and items	Date of issue	Date of maturity	Interest rate	Face amount	Premium	Discount	Issue expense	Net proceeds	Interest expense
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16 Weighted average; cost or long term debt									

Footnotes at end of Schedule 4.

SCHEDULE 3—EXHIBIT C, APPENDIX 1

BONNVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD: EXPENSES

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
Production				
1 Fuel 501, 518, 547				
2 Purchased power 555				
Operations and Maintenance				
3 Steam 500, 502–514				
4 Nuclear 517, 519–532				
5 Hydro 535–546				
6 Other 546, 548–554				
7 Total production expense				
8 Transmission 560–573[6]				
9 Distribution 580–598[6]				
10 Customer Accounting 901–905[7]				
11 Customer Assistance 907–910[7]				
Administrative and General[1]				
Account Number				
12 920				
13 921				
14 922				
15 923				
16 924				
17 925				
18 926				
19 927				
20 928				
21 929				
22 930.1				
23 930.2				
24 931				
25 932				
26 Total A & G				
27 Total operations and maintenance				
28 Depreciation and amortization 403–407				
29 Steam Production Plant				
30 Nuclear Production Plant				
31 Hydraulic Production Plant				

SCHEDULE 3—EXHIBIT C, APPENDIX 1—Continued

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
32 Other Production Plant				
33 Transmission Plant[6]				
34 Distribution Plant[6]				
35 General Plant[7]				
36 Amortization[7]				
37 Total depreciation and amortization				
38 Taxes other than Income Taxes 408, 409.1[8]				
39 Federal Income Tax[7]				
40 State Income Tax[7]				
41 Other Expenses[7]				
LESS				
42 Sales for Resale Rev. 447				
43 Other Operating Revenues 450–456[7]				
44 Billing Credits[6]				
45 Total operating expenses				
46 Return from Schedule 1				
47 Other Adjustments				
48 Total cost				

Footnotes at end of Schedule 4.

SCHEDULE 3A—EXHIBIT C, APPENDIX 1

BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY LAST PERIOD: TAXES OTHER THAN INCOME TAXES

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
1 Federal—Insurance Contributions				
2 .....do.....Unemployment				
State				
3 California—Property				
4 .....do.....Unemployment				
5 Oregon—Property				
6 .....do.....Tri-Met				
7 .....do.....Linn County				
8 .....do.....Unemployment				
9 .....do.....Regulatory Commission				
10 Washington—Property				
11 .....do.....Unemployment				
12 .....do.....Generating Tax				
13 .....do.....Pollution Control Credit				
13a .....do.....Revenue & Business				
14 Idaho—Property				
15 Montana—property				
16 .....do.....Unemployment				
17 Wyoming—Property				
18 .....do.....Unemployment				
19 Utah—Property				
20 Local—Occupation and franchise				
21 In-lieu taxes				
22 Other				
23 Total				

Note: 1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 3 will be relied upon in determining ASC.
Footnotes at end of Schedule 4.

SCHEDULE 3B—EXHIBIT C, APPENDIX 1

Bonneville Power Administration, Residential Purchase and Sale Agreement, Average System Cost Methodology Test Period: Other Included Items

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
Operating Revenues				
1 Sales for Resale 447				
2 1.				
3 2.				
4 Total				

SCHEDULE 3B—EXHIBIT C, APPENDIX 1—Continued

[Thousands]

Line No. and items	Functionalization as: Total to be functionalized	Production	Transmission	Other
(1)	(2)	(3)	(4)	(5)
OTHER OPERATING REVENUES 450–456[1]				
5 Acct. 450				
6 Acct. 451				
7 Acct. 452				
8 Acct. 453				
9 Acct. 454				
10 Acct. 455				
11 Acct. 456				
12 Total other revenues				

Note: 1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 3 will be relied upon in determining ASC.
Footnotes at end of Schedule 4.

SCHEDULE 4—EXHIBIT C, APPENDIX 1

Bonneville Power Administration, Residential Purchase and Sale Agreement, Average System Cost Methodology Last Period: Average System Cost

Line No. and items	Amounts
(1)	(2)
1 Contract System Costs	
2 Production Cost (from Schedule 3)	
3 Transmission Cost (from Schedule 3)	
4 Loss Excluded Load costs[f]	
5 Total Contract System Costs	
6 Contract System Load	
7 Total load (MWh)	
8 Less:	
9 Nonfirm Adjustment (MWh)	
10 Other Adjustments (MWh)	
11 Net load (MWh)	
12 Plus:	
13 Distribution Losses (MWh)[e]	
14 Total Net Load (MWh)	
15 Less:	
16 Excluded load (MWh)[f]	
17 Excluded load Dist. Losses (MWh)	
18 Total Contract System Load (MWh)	
19 Average System Cost (Mills/kWh) (line 5/line 18)	

Average System Cost Methodology Footnotes:

[a] Transmission plant and the associated cost to be used in the calculation of the average system cost (ASC) are limited to:

(1) For transmission plant in service as of July 1, 1984, transmission plant will be as defined by the Federal Energy Regulatory Commission Uniform System of Accounts and will include radial transmission lines.

(2) For transmission plant commencing service after July 1, 1984, transmission plant costs which can be exchanged are limited to transmission that is directly required to integrate resources to the transmission system grid. Specifically, transmission costs which can be exchanged are limited to the lesser of the costs of transmission facilities required to transmit power from the generating resource to the utility's system or the sum of the costs of the transmission facilities required to integrate the generating resource to the BPA system and the wheeling costs necessary to wheel the power to the exchanging utility's system. If the utility chooses to construct facilities which are more costly than the facilities required to interconnect to the BPA system, the total costs to be exchanged shall be no greater than the facility costs that would have been incurred to interconnect with the BPA system.

[b] Distribution plant means all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply (i.e., generating station, point of receipt in the case of purchased power) and of delivery to customers, which are not includable in transmission system, as defined in footnote a(1), whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system. Stations that change electricity from transmission to distribution voltage shall be classified as distribution stations.

Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights-of-way shall be classified as transmission facilities. The conductors shall be classified as transmission or distribution facilities according to the purpose for which they are used. Land (other than rights-of-way) and structures used jointly for transmission and distribution purposes shall be classified as transmission or distribution according to their major use.

[c] Contract System Costs shall reflect the costs and the revenues arising from conservation and/or retail rate schedules implemented to induce conservation, and for which the utility receives billing credits. These billing credit revenues shall be functionalized on the same basis as the cost of the related conservation measures.

[d] The overall rate of return to be applied to a utility's Reimbursement Period rate base as shown in Appendix 1 shall be equal to its weighted average cost of long term debt. The utility's overall rate of return times rate base will equal the utility's return provided that if depreciation is not used for jurisdictional ratesetting, then return will be equal to the lesser of: (1) interest expense plus depreciation, or (2) debt service and revenue financed capital expenditures. In no event will the sum of Contract System Cost and Distribution/Other costs be greater than the revenue requirement used to set rates.

[e] A tax-exempt utility may include in-lieu taxes up to an amount that is comparable, for each unit of government paid in-lieu taxes, with taxes that would have been paid by a nontax exempt utility to that unit of government. In no event shall the utility's regional total in column 2 be greater than the actual amount paid or the amount used to determine the total revenue requirement for the test period. In-lieu taxes shall be functionalized according to a direct analysis included with the Appendix 1 or to Distribution/Other.

[f] The cost of additional resources sufficient to serve any New Large Single Load that was not contracted for, or committed to, prior to September 1, 1979, is to be determined as follows:

(1) To the extent that any New Single Loads are served by dedicated resources, at the cost of those resources, including applicable transmission;

(2) In the amount that New Large Single Loads are not served by dedicated resources, at BPA's New Resources rates as established from time to time pursuant to section 7(f) of the Regional Act and as applicable to the utility, and applicable BPA transmission charges if transmission costs are excluded in the determination of BPA's New Resource rate, to the extent such costs are recovered by the utility's retail rates in the applicable jurisdiction; and

(3) To the extent that New Large Single Loads are not served by dedicated resources plus the utility's purchases at the New Resource rate, the costs of such excess load shall be determined by multiplying the kilowatthours not served under subsections (1) and (2) above by the cost (annual fixed plus variable cost, including an appropriate portion of general plant, administrative and general expense and other items not directly assignable) per kilowatthour of all baseload resources and long term power purchases (five years or more in duration), as allowed in the regulatory jurisdiction to establish retail rates during the Exchange Period, exclusive of the following resources and purchases: (a) purchases at the New Resources rate pursuant to section 7(f) of the Act; (b) purchases at the Federal Base System rate, pursuant to section 5(c) of the Act, (c) resources sold to BPA, pursuant to section 6(c)(1) of the Act; (d) dedicated resources specified in footnote k(1) of this methodology; (e) resources and purchases committed to the utility's load as of September 1, 1979, under a power requirements contract or that would have been so committed had the utility entered into such a contract; and (f) experimental or demonstration units or purchases therefrom. Transmission needed to carry power from such generation resources or power purchases shall be priced at the average cost of transmission during the Reimbursement Period.

(4) Any kilowatthours of New Large Single Loads not met under subsection (1), (2), or (3) above will be assumed to be supplied from the most recently completed or acquired baseload resource(s) or long term power purchase(s), exclusive of dedicated resources and experimental or demonstration resources or purchases therefrom, that are committed to the utility's load as of September 1, 1979, under a power requirements contract. The cost of these generation resources and long-term power purchases and the transmission cost associated with these resources or purchases will be calculated as specified in subsection (3) above.

(5) If the New Large Single Load is served on any energy or capacity interruptive basis, the utility shall prepare a calculation subject to review by BPA of the fixed (if any) and variable costs of providing such service, except that the amount excluded from ASC for the New Large Single Load shall not be less that the transmission and generation cost included in the retail rate charged the New Large Single Load.

[g] The losses shall be the distribution energy losses occurring between the transmission portion of the utility's system and the meters measuring firm energy load. Losses shall be established according to a study (engineering, statistical and other) that is submitted to BPA by the exchanging utility subject to review by BPA. This study shall be in sufficient detail so as to accurately identify average distribution losses associated with the utility's total load, excluded loads, and the residential load. Distribution losses shall include losses associated with distribution substations, primary distribution facilities, distribution transformers, secondary distribution facilities and service drops.

[h] Cash Working Capital greater than 1/4th Operations and Maintenance expenses less fuel and purchased power expenses is functionalized to Distribution/Other. The remainder of Cash Working Capital shall be functionalized on the basis of Operations and Maintenance expenses less fuel and purchased power.

[1] Conservation costs are costs of measures or resources for which power is (or is planned to be) saved by means of physical improvements, alterations, devices, or other installations which are measurable in units. A contract charge paid pursuant to BPA's long term conservation contract will be an allowable conservation cost in Average System Cost. Only conservation costs funded by the utility will be functionalized to Production in the Utility's Average System Cost. Conservation costs incurred to promote changes in consumer behavior including costs attributable to audits, brochures, advertising, pamphlets, leaflets, and similar items, or required by a government entity through building code provisions or programmatic conservation costs in lieu of building code provisions, will be functionalized to Distribution/Other. Conservation surcharges imposed pursuant to section 4(h)(2) of the Northwest Power Act, or other similar surcharges or penalties imposed on a Utility for failure to meet required conservation efforts will also be functionalized to Distribution/Other. Conservation and associated costs must be generally consistent with the Regional Council's resource plan as determined by the Administrator.

[f] Functionalization:

Except for those accounts that are required to be functionalized under subsection III(C) below, functionalization of each account included in the Utility's ASC shall be by either, but not both, of the following two methods:

(1) direct analysis, or (2) according to the specific functionalization ratios applied to the various Uniform System of Accounts. These two methods are described below in subsections III(A) and III(B), respectively.

I. Rules

(A) If a Utility has previously functionalized an account by direct analysis as set forth in subsection III(A) below, the utility is not allowed to use the specific functionalization ratio method without prior approval from BPA.

(B) The Utility must submit with its ASC filing any and all workpapers, documents, or other materials that demonstrate that the functionalization under its direct analysis assigns costs based upon the actual and/or intended functional use of those items. Failure to submit such documentation will result in the entire account being functionalized to Distribution/Other.

(C) For Accounts 389, 390, 391 and 392 and Accounts 920, 921, 922, 930.2 and 932, the Utility may functionalize these accounts using one, but not any combination, of the following functionalization methods, whichever assigns the highest cost to the Production and Transmission function:

1. Subsection III(A) described below;
2. Subsection III(B) described below; or
3. For publicly-owned and cooperative utilities that have neither generation facilities nor affiliated generation organizations over which the utility exercises over half of the voting rights, 10 percent of gross plant investment may be assigned directly to Production and 10 percent of labor costs assigned to Production. The remainder of Accounts 389, 390, 391, and 392 will be functionalized using Transmission and Distribution Gross Plant Ratios excluding General Plant.

The remainder of Accounts 920, 921, 922, 930.2 and 932 will be functionalized using the Labor Ratio for Transmission and Distribution, and the balance assigned to Distribution/Other.

II. Definitions

For purposes of subsections III(A) and III(B) *Labor Ratios* is defined as the ratios which assign costs on a pro rata basis using salary and wage data for production, transmission, and distribution/other functions included in the Test Period costs on which Appendix I is based. If, however, this information is unavailable, comparable data shall be used for the most recent calendar year as reported on the Federal Energy Regulatory Commission Form 1 (at page 355), or similar document for those utilities not required to file Federal Energy Regulatory Commission Form 1.

III. Functionalization Methods

(A) Be direct analysis which assigns costs to either the production, transmission, or distribution function of the utility. Such analysis is subject to BPA review and approval.

(B) According to the following specific functionalization methods:

Account	Functionalization method
1. Rate base accounts:	
310–373 (plant in service).	Functionalize directly according to the Federal Energy Regulatory Commission System of Accounts.
350 (land and land rights).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
390 (structures and improvements).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
391 (Office furniture and equipment).	Labor ratios.
392 (transportation equipment).	Functionalize on the ratios of transmission and distribution gross plant excluding general plant.
393 (stores equipment).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
394 (tools, shop and garage equipment).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
395 (laboratory equipment).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
396 (power operated equipment).	Functionalize on the ratios of transmission and distribution gross plant excluding general plant.
397 (communication equipment).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
398 (miscellaneous equipment).	Functionalize to distribution/other.
399 (other tangible property).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
301–303 (intangible plant).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
114 (acquisition adjustment).	Labor ratios.
105 (plant held for future use).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
120.2–120.4 less 120.5 (nuclear fuel).	Functionalize to production.
186 (miscellaneous debits).	Labor ratios.
252 (customer advances).	Functionalize to distribution/other.
253 (other deferred credits).	Functionalize to distribution/other.
256 (Accumulated deferred investment tax credit).	Functionalize to distribution/other.
257 (unamortized gain on reacquired debt).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
281–283 (accumulated deferred income taxes).	Functionalize to distribution/other.
151–152 (fuel stock).	Functionalize to production.
153–157, 163 (materials and supplies).	Functionalize on the ratios of transmission and distribution gross plant excluding general plant.
105 (completed construction not classified).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
124 (other investment).	Functionalize to distribution/other.
164 (cleaning accounts).	Labor ratios.
Other rate base accounts.	Functionalize to distribution/other.
2. Expense accounts:	
501–577 (fuel, purchased power and power production expenses).	Functionalize to production.
580–573 (transmission expenses).	Functionalize to transmission.
580–598 (distribution expenses).	Functionalize to distribution/other.
901–905 (customer accounts expenses).	Functionalize to distribution/other.
907 (customer service information expenses-supervision).	Functionalize to distribution/other.
908–910 (other customer service information expenses).	Functionalize to distribution/other.
911–916 (sales expenses).	Functionalize to distribution/other.
920 (administrative and general salaries).	Labor ratios.
921 (office supplies and expenses).	Labor ratios.
922 (administrative expenses transferred-Cr.).	Labor ratios.
923 (outside services employed).	Labor ratios.
924 (property insurance).	Functionalize on the ratio of production, transmission and distribution gross plant including general plant.

Account	Functionalization method
925 (Injuries and damages).	Labor ratios.
926 (employee pensions and benefits).	Labor ratios.
927 (franchise requirements).	Functionalize to distribution/other.
928 (regulatory comm. fees and expenses).	Functionalize to distribution/other.
929 (duplicate charges-cr.).	Labor ratios.
930.1 (general advertising).	Functionalize to distribution/other.
930.2 (miscellaneous general expenses).	Functionalize to distribution/other.
931 (rents).	Functionalize to distribution/other.
3. Revenue accounts:	
447 (sales for resale).	Functionalize to production.
450–455 (other operating revenues).	Functionalize to production.
456 (wheeling revenues).	Functionalize to transmission.

(C) The following accounts shall be functionalized as follows:

Account	Functionalization method
107, 120.1 (CWIP).	Functionalize to distribution/other.
108 (PIS depreciation reserve).	The same functionalization used for account 310–373, plant in service (PIS).
108 (general plant depreciation reserve).	Functionalize according to the general plant ratio.
111 (accumulated amortization).	The same Functionalization used for accounts 301–303, intangible plant.
256 (deferred gain from disposition of utility plant).	The same Functionalization used for account 105, electric plant held for future use.
403–407 (PIS depreciation expense).	The same Functionalization used for account 310–373, plant in service.
408.1 (other taxes).	With the exception of property taxes and labor related taxes, all taxes will be functionalized to distribution/other. Property taxes will be functionalized using the gross plant ratio including general plant. Labor related taxes will be functionalized using labor ratios.
409.1, 410.1, 411.1, 411.4 (income taxes).	Functionalize to distribution/other.
412 (maintenance of general plant).	Functionalize according to the ratio developed from the functionalized totals of accounts 390, 391, 397 and 398.
411.6, 411.7 (gain from disposition of utility plant).	The same functionalization used for account 105, plant held for future use.

[FR Doc. 84–30084 Filed 11–14–84; 8:45 am]
BILLING CODE 6450–01–M

[Docket No. CAS-RM-81-130]

Residential Conservation Service Program; Utility Waiver Petition

AGENCY: Department of Energy.

ACTION: Notice of Utility Waiver Petition.

SUMMARY: In accordance with the provisions of the National Energy Conservation Policy Act (NECPA), the Department of Energy (DOE) has received a petition from the United Illuminating Company for a waiver of the prohibitions against supplying or installing residential energy conservation measures. Granting the waiver would allow United Illuminating Company to install caulking, weatherstripping, duct and pipe insulation for its residential customers. DOE will consider written comments in reviewing the waiver petition.

DATE: Written comments must be received by December 17, 1984.

ADDRESS: Comments should be addressed to: Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets Branch, Room 6B–025, Docket No. CAS–RM–81–130, 1000 Independence Avenue, SW., Washington, D.C. 20585. (202) 252–9319.

FOR FURTHER INFORMATION CONTACT:

Gina Urso, CE–115, Office of Building Energy Research and Development, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–1650.

Daniel Ruge, GC–12, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9519.

SUPPLEMENTARY INFORMATION: As part of the Residential Conservation Service (RCS) Program, section 216(a) of the National Energy Conservation Policy Act (NECPA) (42 U.S.C. 8217(a)) prohibits public utilities from supplying or installing most residential energy conservation or renewable resource measures for their residential customers. In accordance with the provisions of section 216(e) of NECPA (42 U.S.C. 8217(e)), the Secretary of Energy may waive these prohibitions upon petition by a public utility.

The Department of Energy (DOE) has received a petition for a waiver from the United Illuminating Company (UI), of New Haven, Connecticut. UI is requesting a waiver to install caulking, weatherstripping, duct and pipe insulation for its residential customers. The company was previously granted a wavier by DOE, from the NECPA prohibition, to enable it to install water heater jackets for its residential customers.

DOE will review the UI petition in accordance with the requirements of section 216(e) of NECPA to determine if (1) the petition demonstrates that, in installing caulking, weatherstripping, duct and pipe insulation, fair and reasonable prices and rates of interest will be charged and (2) after consultation with the Federal Trade Commission (FTC), the UI program is not inconsistent with the prevention of unfair methods of competition and the prevention of unfair or deceptive acts or practices.

Accordingly, a copy of the UI petition is being sent to the FTC for review. In addition, DOE will receive public comments on the UI petition as indicated in the **"DATE"** and **"ADDRESS"** sections of this notice. Copies of the UI petition may be requested from Gina Urso at (202) 252–1650.

After reviewing the UI petition and consulting with FTC and after considering any comments received as indicated in the **"DATE"** section of this notice, the Secretary of Energy will make a final determination.

Issued in Washington, D.C., November 1, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84–29882 Filed 11–14–84; 8:45 am]
BILLING CODE 6450–01–M

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date and Time: Wednesday, December 12, 1984, starting at 9:30 a.m.

Place: Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, D.C.

Contact: Carolyn B. Klym, U.S. Department of Energy, Office of Oil, Gas, Shale and Coal Liquids, Mail Stop D–122, Gtn., Washington, D.C. 20545, Telephone: 301–353–2709.

Purpose of National Petroleum Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative Agenda

—Call to Order by Robert A. Mosbacher, Chairman, National Petroleum Council.
—Remarks by the Honorable Donald Paul Hodel, Secretary of Energy.
—Reports of Study Committees of the National Petroleum Council.
—Proposed Final Report of the Committee on the Strategic Petroleum Reserve, Wm. C. Douce, Chairman.
—Progress Report of the Committee on U.S. Petroleum Refining, John K. McKinley, Chairman.
—Consideration of Administrative Matters.
—Discussion of Any Other Business Brought Before the National Petroleum Council.
—Public Comment—10 minute rule.
—Adjournment.

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Carolyn B. Klym at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on November 8, 1984.

Howard Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–29891 Filed 11–14–84; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF85–14–000]

Air Products and Chemicals, Inc. and Browning-Ferris Industries, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 9, 1984, Air Products and Chemicals, Inc. and Browning-Ferris Industries, Inc. (Applicants) of P.O. Box 538, Allentown, Pennsylvania 18105, and P.O. Box 3151, Houston, Texas 77001, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Red Bluff Road and State Highway 225, Pasadena, Texas. The primary energy source will be biomass in the form of commercial and municipal-type solid waste. The electric power production capacity will be 48.1 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30025 Filed 11–14–84; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. QF85–32–000]

Bennett Duval; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Bennett Duval (Applicant), of 29641 Western #401 Rancho-San Pedro, California 90732 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30038 Filed 11–14–84; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. QF85–36–000]

Fay Wong; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 16, 1984 Fay Wong (Applicant), of 124–126 Russ Street, San Francisco, California 94103 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30039 Filed 11–14–84; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. QF85–29–000]

General Electric Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 8, 1984.

On October 15, 1984, General Electric Company (Applicant), care of 28A, Inc., 23 East Seventh Street, Cincinnati, Ohio 45202, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's

regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility is owned by and located at the General Electric Company facilities at Grove City, Pennsylvania 16531. The primary energy source for the facility will be No. 2 fuel oil. The facility will consist of four diesel engine generator sets in four test cells, waste heat recovery system will recover heat from diesel radiator jacket cooling water to heat water for space heating of the manufacturing areas. The electric power production capacity of the facility will be a full-load rating of 2.65 megawatts net of auxiliary load per diesel, totalling 10.6 megawatts and approximately 2,490,800 Btu of 160 °F hot water generated from the radiator cooling system.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30030 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-10-000]

International Paper Co.; Georgetown Mill; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 8, 1984.

On October 9, 1984, International Paper Company (Applicant), of 77 West 45 Street, New York, New York 10036, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's paper mill in Georgetown, South Carolina. The facility's primary energy sources are biomass in the forms of wood and spent pulping liquor, coal, and oil. The two new boilers are each rated at 400,000 pounds of 1,500 psig and 825 °F steam per hour and will drive two new turbine/generators rated at 65 megawatts. The existing recovery boilers each rated at 400,000 pounds of 1,000 psig and 825 °F steam drive one turbine/generator rated at 23 megawatts.

The applicant seeks to qualify as a new capacity the added 65 megawatts of installed cogeneration capacity (2 units) within the context of § 292.304(b)(1). In addition, the Applicant seeks to qualify the existing 23 MW cogeneration unit within the context of § 292.207.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30031 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-35-000]

David I. Jacobson; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 David I. Jacobson (Applicant), of 930 N. Meads Drive, Orange, California 92669 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30027 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-37-000]

Louis Louie; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Louis Louie (Applicant), of 124-126 Russ Street, San Francisco, California 94103 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30033 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-30-000]

Paul Louis; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Paul Louis (Applicant), of 124-126 Russ Street, San Francisco, California 94103 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission an are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30036 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-20-000]

Martell Cogeneration Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 8, 1984.

On October 12, 1984, Martell Cogeneration Limited Partnership (Applicant) of 11911 NE. First Street, Suite 305, Bellevue, Washington 98005 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed facility will be located in Martell, California and will consist of an 18 MW steam extraction turbine generator fueled by wood waste. The facility will be designed to extract low pressure steam from the turbine for use in a lumber drying kiln.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30034 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

Pacific Lighting Energy Systems; Notice of Application for Commission Certification of Qualifying Status of a Small Power Production Facility

[Docket No. QF85-39-000]

November 8, 1984.

On October 18, 1984, Pacific Lighting Energy Systems (Applicant), of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Los Angeles, California. The primary energy source will be biomass, in the form of landfill gas generated from the anaerobic digestion by methanogenic bacteria of refuse and other solid wastes. The power production capacity will be 11 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30038 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-40-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Pacific Lighting Energy Systems (Applicant), of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifiying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in East Windsor, Connecticut. The primary energy source will be biomass, in the form of landfill gas, generated from the anaerobic digestion by methanogenic bacteria of refuse and other solid wastes. The power production capacity will be 500 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Paractice and Procedure All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30037 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-34-000]

John E. Parker; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 John E. Parker (Applicant), of 2408 First Avenue, San Diego, California 92101 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30032 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-33-000]

Sir Travel Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Sir Travel Inc. (Applicant), of 1701 E. Edinger, Bldg. C-12, Santa Ana, California 92705 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30039 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-38-000]

Donald W. Sobel; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Donald W. Sobel (Applicant), of 9900 Shirley Avenue, Northridge, California 91324 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30028 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-31-000]

Somboon and Vachree Larlarb; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Samboon and Vachree Larlarb, of 291 Avocado Place, Camarillo, California 93010 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30040 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-8-000]

Triad American Energy; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 5, 1984, Triad American Energy (Applicant) of 170 Newport Center Driver, Suite 240, Newport Beach, California 92660, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Riverside County, California and consists of 63 wind turbine generators, each having a rated capacity of 80 kW. Thus, the electric power production capacity is 5,040 kW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30042 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-140-001]

Consolidated Gas Transmission Corp.; Proposed Changes In FERC Gas Tariff

November 8, 1984.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on October 29, 1984, filed a change to its FERC Gas Tariff, Original Volume No. 1. The change, shown on Substitute First Revised Sheet No. 51, is in compliance with an October 19, 1984 letter order in this proceeding and will become effective October 1, 1984.

The October 19, 1984, letter order accepted First Revised Sheet No. 51 subject to the condition that a substitute sheet be filed to specify the "beginning date of the twelve month period for which the ratchet provision of Rate Schedule RQ will be waived." To comply with the condition, the substitute sheet sets November 1 of each year as the beginning date of the twelve-month period.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30044 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-42-000, et al.]

Hydroelectric Applications (Deep River Hydro, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Declaration of Intention.

b. Project No: EL84-42-000.

c. Date Filed: June 1, 1984.

d. Applicant: Deep River Hydro.

e. Name of Project: Coleridge Hydro Project.

f. Location: On the Deep River near Coleridge, Randolph County, North Carolina.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: William H. Lee, P.O. Box 267, Saxaphaw, North Carolina 27340.

i. Comment Date: December 10, 1984.

j. Description of Project: The existing run-of-river project, which is operational, consists of: (1) A 12-foot-high and 660-foot-long concrete dam; (2) a reservoir with a surface area of 10 acres; (3) intake structures at the eastern side of the dam; (4) a 30-foot-wide and 325-foot-long concrete headrace canal; (5) a masonry powerhouse containing one 325 kW generator and two 125 kW generators totaling 575 kW; (6) a 40-foot-wide and 400-foot-long concrete tailrace canal; (7) a 12-kV transmission line; and (8) appurtenant facilities. Applicant estimates the average annual generation to be 2,500 MWh. All power will be sold to a local utility company.

The Applicant requests that the Commission investigate and determine if there is, pursuant to the Federal Power Act, section 23(b), federal jurisdiction for the project. The Applicant asserts that the Commission lacks jurisdiction for these reasons: (1) The project is not located on a navigable water of the United States; (2) does not occupy lands of the United States or utilize surplus water or water power from a government dam; and (3) has not involved any construction subsequent to 1935 that may have increased the project's head, generating capacity, or water storage capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: License (Over 5MW).

b. Project No.: 3865-003.

c. Date Filed: November 30, 1983.

d. Applicant: Guadalupe-Blanco River Authority.

e. Name of Project: Canyon Dam Hydroelectric Project.

f. Location: Guadalupe River, Comal County, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John H. Specht, General Manager, Guadalupe-Blanco River Authority, 933 E. Court St., P.O. Box 271, Sequin, Texas 78155.

i. Comment Date: December 27, 1984.

j. Description of Project: The project would utilize the existing U.S. Corps of Engineers Canyon Dam and Reservoir and would consist of: (1) A steel liner to be installed in the existing outlet conduit; (2) a slide gate to be located 11 feet uptstream of the end of the existing outlet conduit and diverting water into; (3) a new penstock 460 feet long and 7 feet in diameter leading to; (4) a new powerhouse 40 feet by 60 feet located approximately 500 feet downstream of the toe of the dam and containing two turbine/generators having a total installed capacity of 6070 kW operating at 144 feet of hydraulic head; (5) a new tailrace channel 55 feet long and 26 feet wide; (6) a new 12-mile-long 34.5-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy production to be 25.2 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the New Braunfels Utilities Company.

This notice also consists of the following standard paragraphs: A3, A9, B, and C.

3. a. Type of Application: Major License (5MW or less).

b. Project No: 5350-001.

c. Date Filed: November 30, 1983.
d. Applicant: Tehama County Flood Control & Water Conservation District.
e. Name of Project: South Fork Battle Creek Hydro Project.
f. Location: On South Fork Battle Creek, near town of Mineral, Tehama County, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Lawrence A. Coleman, County Director of Water Resources, 9380 San Benito Avenue, Gerber, California 96035.
i. Comment date: December 27, 1984.
j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 50-foot-long diversion dam at elevation 4,228 feet; (2) a 36-inch-diameter, 4,000-foot-long diversion pipeline; (3) a 36-inch-diameter, 14,000-foot-long steel penstock; (4) a powerhouse containing one generating unit with a rated capacity of 5,000 kW operating under a head of 1,220 feet; and (5) a 10.7-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 19.2 GWh to be sold to PG&E. The project cost has been estimated to be about $8.7 million. The applicant does not propose any recreational facilities as part of the project.
k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.
4 a. Type of Application: Preliminary Permit.
b. Project No.: 8312–000.
c. Date Filed: May 17, 1984.
d. Applicant: Trans Mountain Hydro Corp.
e. Name of Project: Boulder Creek Hydro Project.
f. Location: On Boulder Creek in Summit County, Colorado.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Herbert C. Young, 123 S. Paradise Rd., Golden, Colorado 80401.
i. Comment Date: December 31, 1984.
j. Description of Project: The proposed project would be located entirely on land managed by the U.S. Forest Service in Arapahoe National Forest and would consist of: (1) A small new diversion structure, about 3 feet high, constructed of boulders; (2) a new intake structure and 36-inch diameter penstock about 2,000 feet long; (3) a new powerhouse containing turbine-generator units having a total rated capacity of 400 kW; (4) a tailrace returning flow to the creek; (5) a new transmission line, about 500 feet long, connecting to an existing power grid; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,400,000 kWh. Project energy will be sold to the Public Service Company of Colorado.
k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.
l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $80,000.
5 a. Type of Application: Preliminary Permit.
b. Project No.: 8329–000.
c. Date Filed: June 1, 1984.
d. Applicant: Southwestern Water Conservation District of Colorado.
e. Name of Project: Dolores Pumped-Storage Project.
f. Location: On Plateau Creek in Montezuma County, Colorado.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Frank E. (Sam) Maynes, Attorney, P.O. Box 2717, Durango, Colorado 81301.
i. Comment Date: December 28, 1984.
j. Description of Project: The proposed pumped-storage project would be located in the San Juan National Forest and would consist of: (1) A 15,500 acre-foot forebay, at 8,018 feet m.s.l., formed by (2) a 6,200-foot long, 113-foot high dam and a 700-foot long, 20-foot high dike—both of earthfill construction with provision for a 15,500 cfs emergency spillway; (3) an intake structure and two penstocks, each 21 feet in diameter and 5,340 feet in length, with horizontal and vertical alignments leading to (4) an underground powerplant containing two 500 MW pump-turbines for a total rated capacity of 1,000 MW; (5) two tailrace tunnels, each 38 feet in diameter and 850 feet in length, connecting to (6) a 17,000 acre-foot afterbay, at 7,245 feet m.s.l., formed by (7) an 800-foot long, 240-foot high concrete arch dam with provision for a 22,000 cfs spillway; (8) two 345-kV transmission lines, each 6½ miles long; and (9) appurtenant facilities. The Applicant estimates that the average annual energy output would be 800 million kWh. Energy would be marketed through various public and private utilities. Feasibility studies will be conducted in cooperation with the U.S. Bureau of Reclamation.
k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.
l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $700,000.
6 a. Type of Application: Preliminary Permit.
b. Project No: 8361–000.
c. Date Filed: June 11, 1984.
d. Applicant: Olsen Power Project, Inc.
e. Name of Project: Olsen Power Project.
f. Location: On Old Cow Creek in Shasta County, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002–2319.
i. Comment Date: December 26, 1984.
j. Description of Project: The proposed project would consist of: (1) A 12-foot-high diversion dam at elevation 2,276 feet; (2) a 48-inch-diameter, 5,980-foot-long diversion conduit; (3) a 48-inch-diameter, 9,580-foot-long penstock; (4) a powerhouse with a total installed capacity of 4,400 kW; and (5) a 60-kV, 2-mile-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The proposed project would be located partially on United States lands administered by the U.S. Bureau of Land Management.
k. Purpose of Project: A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $227,000. No new roads would be constructed to conduct these studies.
The estimated 13 million KWh generated annually by the project would be sold to PG&E.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.
7 a. Type of Application: Preliminary Permit.

b. Project No: 8370–000.
c. Date Filed: June 18, 1984.
d. Applicant: Energy Gap, Inc.
e. Name of Project: Kootenai Creek Hydro Project.
f. Location: On Kootenai Creek in Ravalli County, Montana.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Tim Jones, Hydrodesign Ltd., P.O. Box 2465, Twin Falls, Idaho 83303.
i. Comment Date: December 26, 1984.
j. Description of Project: The proposed project would be located in the Bitterroot National Forest and would consist of: (1) A new intake structure in the left creek bank; (2) a new 4-foot-diameter penstock approximately 4,750 feet long; (3) a new powerhouse containing 3 turbine-generator units having a total rated capacity of 1,836 kW; (4) a tailrace returning flow to the creek; (5) a new transmission line, about 7,000 feet long, connecting to an existing Montana Power Company line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 6,860,000 kWh. Project energy would be sold to the Montana Power Company.
k. This notice also consists of the following standard paragraphs, A6, A7, A9, B, C and D2.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $35,000.
8 a. Type of Application: Preliminary Permit.
b. Project No: 8371–000.
c. Date Filed: June 18, 1984.
d. Applicant: Mr. Geoffrey Shadroui.
e. Name of Project: East Bethel.
f. Location: Near the Town of East Bethel, on the White River in Windsor County, Vermont.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Geoffrey Shadroui, 121 Maple Ave., Barre, Vermont 05641.
i. Comment Date: December 31, 1984.
j. Description of Project: The proposed project would consist of: (1) an existing 9-foot-high, 60-foot-long concrete dam owned by Mr. Robert Hyde of East Bethel, Vermont; (2) an existing reservoir having a storage capacity of 3 acre-feet and a normal maximum surface elevation of 530 feet m.s.l.; (3) a proposed 45-foot-long, 5-foot-diameter steel penstock; (4) a proposed powerhouse which will contain two generating units having a total rated capacity of 90 kW; (5) three proposed 300-foot-long, 480 volt, transmission lines which will interconnect with lines owned by Central Vermont Public Service Corporation; and (6) appurtenant facilities. The applicant estimates that the average annual energy output would be 330,000 kWh.
k. Purpose of Project: The most likely market for the energy derived from the proposed project would be Central Vermont Public Service Corporation.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.
m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,000.
9a. Type of Application: Preliminary Permit.
b. Project No: 8378–000.
c. Date Filed: June 21, 1984.
d. Applicant: Energy Gap, Inc.
e. Name of Project: Sweeney Creek Hydro Project.
f. Location: On Sweeney Creek in Ravalli County, Montana.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Tim Jones, Hydrodesign Ltd., P.O. Box 2465, Twin Falls, Idaho 83303.
i. Comment Date: December 26, 1984.
j. Description of Project: The proposed project would be located in the Bitterroot National Forest and would consist of: (1) A new intake structure in the left creek bank; (2) a new 3-foot-diameter penstock approximately 11,360 feet long; (3) a new powerhouse containing 1 turbine-generator unit rated at 3,150 kW; (4) a tailrace returning flow to the creek; (5) a new transmission line, about 11,000 feet long, connecting to an existing Montana Power Company line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 21,772,000 kWh. Project energy would be sold to the Montana Power Company.
k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $35,000.
10 a. Type of Application: Preliminary Permit.
b. Project No: 8407–000.
c. Date Filed: July 2, 1984.
d. Applicant: Frank O. Johnson.
e. Name of Project: Cascade Hydro.
f. Location: In Okanogan National Forest, on South Creek, a tributary of the Twisp River, near the Town of Twisp, in Okanogan County, Washington.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Contact Person: Frank O. Johnson, P.O. Box 66492, Seattle, Washington 98166.
i. Comment Date: December 31, 1984.
j. Description of Project: The proposed project would consist of: (1) A grated intake at elevation 3520 feet; (2) a 4000-foot-long, 42-inch-diameter penstock; (3) a powerhouse containing generating equipment with a capacity of 1000 kW and an average annual generation of 7,560 MWh; and (4) an 8.5-mile-long transmission line.
A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasibility study.
k. Purpose of Project: The project power would be sold to Okanogan County Electric Co-op.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.
11 a. Type of Application: Small Conduit Exemption.
b. Project No.: 8438–000.
c. Date Filed: July 16, 1984.
d. Applicant: Schaffner Power Company.

e. Name of Project: Schaffner Hydro.
f. Location: Irrigation Conduit on West Fork of Sandy Creek, near the Town of Salmon, in Lemhi County, Idaho.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 & 2708 as amended).
h. Contact Person: Mr. Henry E. Schaffner, Schaffner Power Company, Rt. 1 Box 33, Salmon, Idaho 83467.
i. Comment Date: December 31, 1984.
j. Description of Project: The proposed project would utilize an irrigation conduit that is presently under construction and would consist of a concrete powerhouse containing a single generating unit with a capacity of 250 kW and an average annual generation of 1,750 MWh.
k. Purpose of Project: The project power would be sold to Idaho Power Company.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.
12 a. Type of Application: Preliminary Permit.
b. Project No.: 8464–000.
c. Date Filed: July 25, 1984.
d. Applicant: Shawano Hydro Associates.
e. Name of Project: Hayman Falls Hydropower.
f. Location: On the Embarrass River in Shawano County, Wisconsin.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).
h. Contact Person: David M. Coombe, 410 Severn Ave., Suite 409, Annapolis, Maryland 21403.
i. Comment Date: December 28, 1984.
j. Description of Project: The proposed project would consist of: (1) An existing concrete dam, approximately 150-feet long and 13-feet high; (2) a reservoir with approximately 79.5 acres of water surface at normal water surface elevation of 881-feet, m.s.l.; (3) an existing intake structure; (4) a new steel penstock, 96-inches in diameter and about 1320-feet long; (5) an existing concrete and block powerhouse; approximately 40-feet by 25-feet, which will house one new turbine-generating unit with an installed capacity of 500 kW; (6) an existing tailrace approximately 800-feet long; (7) a proposed transmission line about ¾ mile long, rated at 12.4 kV; and (8) appurtenant facilities. Applicant estimates that the average annual energy generation would be 2,700,000 kWh. The owner of the dam is the County of Shawano, Wisconsin.
k. Purpose of Project: The applicant anticipates that project power will be sold to the Wisconsin Electric Power Company.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
m. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.
13 a. Type of Application: Preliminary Permit.
b. Project No.: 8524–000.
c. Date Filed: August 15, 1984.
d. Applicant: Larry J. Hellhake.
e. Name of Project: Fall Creek.
f. Location: In Payette National Forest, on Fall Creek, a tributary to Payette Lake, near the Town of McCall, in Valley County, Idaho.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).
h. Contact Person: Larry J. Hellhake, 809 No. Liberty Road, Boise, Idaho 83704.
i. Comment Date: December 28, 1984.
j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 6110 feet; (2) a 9,400-foot-long, 26-inch-diameter buried steel penstock; (3) a powerhouse containing a single generating unit with a capacity of 3,900 kW and an average annual generation of 7,000 MWh; and (4) a 0.25-mile-long transmission line.
A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $10,000. No new roads would be constructed or drilling conducted during the feasibility study.
k. Purpose of Project: The project power would be sold to the Idaho Power Company.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.
14 a. Type of Application: Preliminary Permit.
b. Project No: 8525–000.
c. Date Filed: August 15, 1984.
d. Applicant: Larry J. Hellhake.
e. Name of Project: Boulder Creek.
f. Location: In Payette National Forest, on Boulder Creek, a tributary of Lake Fork Creek, near the Town of McCall, in Valley County, Idaho.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Contact Person: Larry J. Hellhake, 809 No. Liberty Road, Boise, Idaho 83704.
i. Comment Date: December 28, 1984.
j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 6,240 feet; (2) a 16,000-foot-long, 28-inch-diameter buried steel penstock; (3) a powerhouse containing a single generating unit with a capacity of 4,500 kW and an average annual generation of 7,800 MWh; and (4) a 1-mile-long transmission line.
A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $10,000. No new roads would be constructed or drilling conducted during the feasibility study.
k. Purpose of Project: The project power would be sold to the Idaho Power Company.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.
15 a. Type of Application: Preliminary Permit.
b. Project No: 8531–000.
c. Date Filed: August 17, 1984.
d. Applicant: SHA Development Company.
e. Name of Project: Albion Project.
f. Location: On the Blackstone River in Providence County, Rhode Island.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severan Avenue, Suite 409, Annapolis, Maryland 21403.
i. Comment Date: December 27, 1984.
j. Description of Project: The proposed project would consist of: (1) An existing 300-foot-long, 25-foot-high concrete rollaway dam; (2) a reservoir with a surface area of 18 acres, a storage capacity of 235 acre-feet, and a normal water surface elevation of 87.7 feet m.s.l.; (3) an existing 1250-foot-long, 140-foot-wide headrace; (4) a proposed powerhouse containing two generating units with a total installed capacity of 900 kW; (5) an existing tailrace; (6) a new 13.2-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the annual generation would be 3,660,000 kWh. The dam and existing project facilities are owned by American Tourister Inc.
k. Purpose of Project: All project power generated would be sold to the Blackstone Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.
m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $30,000.
16 a. Type of Application: Conduit Exemption.
b. Project No.: 8533–000.
c. Date Filed: August 17, 1984.
d. Applicant: Rock Creek Water District.
e. Name of Project: Rock Creek.
f. Location: Rock Creek Ditch-Conduit, near Stockton, in Calaveras County, California.
g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).
h. Contact Person: Mr. Bruce Orvis, Rock Creek Water District, Star Route, Farmington, California 95230.
i. Comment Date: December 28, 1984.
j. Description of Project: The proposed project would utilize irrigation flows released at Rock Creek Water District's Salt Springs Valley Reservoir into the Rock Creek Ditch-Conduit and would consist of a powerhouse located at the mouth of the conduit at the southeast corner of R11E, T2N, S31, Bachelor Valley Quadrangle, containing a single impulse turbine-generator unit with an installed capacity of 700 kW and producing an estimated average annual generation of 3.0 GWh. A 3-mile-long transmission line would interconnect the project to an existing 17–kV line. Project power would be sold to a private or public utility. Reservoir waters would not be released solely for the generation of electricitiy.
k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.
17 a. Type of Application: Preliminary Permit.
b. Project No. 8586–000.
c. Date Filed: September 10, 1984.
d. Applicant: Golden Wheel Hydro, Ltd.
e. Name of Project: Golden Wheel Hydro.
f. Location: On Rock Creek within Klamath National Forest in Siskiyou County, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Dr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.
i. Comment Date: December 27, 1984.
j. Description of Project: The proposed project would consist of: (1) A 5-foot-high weir at elevation 1,068 feet; (2) a 2,800-foot-long pipeline; (3) a 48-inch-diameter, 450-foot-long penstock; (4) a powerhouse, containing generating units with a total installed capacity of 4,600 kW, operating under 288 feet of head; and (5) a 12.5-kV, 11-mile-long transmission line to an existing Pacific Gas and Electric Company (PG&E) line.
k. Purpose of Project: The estimated annual generation of 30.2 million kWh would be sold to PG&E.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.
18 a. Type of Application: Preliminary Permit.
b. Project No: 8590–000.
c. Date Filed: September 10, 1984.
d. Applicant: Buck Rock Hydro, Ltd.
e. Name of Project: Buck Rock Hydro.
f. Location: On Willow Creek within Mendocino National Forest in Tehama County, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Dr. Roy McDonald, 1121 L St., Suite 1000, Sacramento, California 95814.
i. Comment Date: December 28, 1984.
j. Description of Project: The proposed project would consist of: (1) A 5-foot-high weir at elevation 3,360 feet; (2) a 16,000-foot-long, 52-inch-diameter pipeline; (3) a 2,000-foot-long, 40-inch-diameter penstock; (4) a powerhouse, containing generating units with total installed capacity of 5,000 kW, operating under a head of 925 feet; and (5) a 12.5-kV, 13-mile-long transmission line to an existing Pacific Gas and Electric Company (PG&E) line.
k. Purpose of Project: The estimated annual generation of 20.6 million kWh would be sold to PG&E.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit

exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit application, on notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either: (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accorance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20425. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accorance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 8, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30054 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-15-000]

Kentucky Utilities Co.; Order Denying Request for Dismissal of Complaint, Establishing Hearing Procedures, and Denying Requests for Expedition and for Limitation of the Proceeding

Issued: November 7, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On May 24, 1984, the Cities of Barbourville, Bardstown, Benham, Corbin, Falmouth, Madisonville, and Providence, Kentucky, the Electric & Water Plant Board of Frankfort, Kentucky, and Berea College (Municipals) filed a complaint requesting that the Commission institute an expedited investigation of the coal fuel costs charged by Kentucky Utilities Company (KU) through its fuel adjustment clause. The Municipals suggest that the Commission either establish a second phase in the company's pending rate docket [1] or institute a separate proceeding to investigate and remedy the alleged fuel clause overcharges.

The Municipals state that they are full requirements customers of KU and represent approximately 9% of its load. The Municipals further state that approximately 99% of the company's electric generation is produced from coal-fired units. In alleging that some of the company's actions in procuring coal were imprudent, the Municipals specifically challenge KU's procurement activities related to long-term coal supply contracts for its Ghent generating station.[2] The Municipals request: (1) That the Commission institute an investigation and provide for an expedited hearing on KU's coal fuel costs; (2) that a portion of the company's costs incurred under its long-term supply agreements be found to be unjust, unreasonable, and imprudently incurred; and (3) that the company be ordered to reduce its fuel cost adjustment clause charges to eliminate all costs found not to be just, reasonable, and prudently incurred and to provide refunds (with interest) of unreasonably charged fuel costs.

Notice of the filing was published in the **Federal Register**, with comments due on or before July 5, 1984.[3] On July 3, 1984, the Kentucky Public Service Commission (KPSC) filed a notice of intervention, stating no position with respect to the issues raised by the complaint and raising no other substantive issues. On July 5, 1984, the City of Paris, Kentucky (Paris) filed a motion to intervene in support of the Municipals' request for an investigation.[4]

On July 13, 1984,[5] KU filed its answer to the complaint, which denies the Municipals' allegations, and alternatively requests dismissal of the complaint or limitation of the scope of the proceeding. The company disputes the complaint on three grounds. First, KU alleges that all of the challenged actions in procuring coal were prudent, in light of the circumstances, and that its fuel charges are just and reasonable. Second, the company alleges that its

[1] An uncontested settlement of the base rate levels in Docket No. ER83-656-000 was approved by the Commission by letter order issued on May 29, 1984. 27 FERC ¶ 61,395. According to the Municipals, although issues related to the impact of KU's coal costs on its wholesale base rates have been settled, the settlement expresaly reserved the fuel clause overcharge issues.

[2] A 1976 contract, superseded by a 1983 agreement, provided for River Processing, Inc. to supply low-sulfur coal for KU's Ghent Unit No. 2 for a 15-year period. In a 1978 contract, amended in 1982, South East Coal Company agreed to supply coal for the Ghent Unit No. 3 for 12½ years.

[3] 49 FR 24173 (June 12, 1984).

[4] Paris is a partial requirements customer of KU.

[5] By letter of the Secretary, KU's answer was due on July 6, 1984. However, on July 5, 1984, the company filed a motion for an extension of time until July 13, 1984, to file its answer. This motion was not opposed and we shall grant KU its requested extension.

coal costs have been fully investigated and impliedly approved: (1) By the Commission's accounting staff during audits; (2) by the Commission during an investigation of practices under automatic adjustment clauses in Docket No. IN79–8; (3) by the Commission during its general rate increase investigations of the company over the last six years in Docket Nos. ER78–417, *et al.*, ER81–341–000, *et al.*, ER82–673–000, *et al.*, and ER83–656–000, *et al.*, and (4) by the KPSC during its biannual investigations of the company's fuel adjustment clause charges. Third, in support of its alternative request that the Commission limit any investigation to post-January 1, 1982 events, KU asserts that the Municipals are guilty of laches, that the company has been harmed due to the fact that the quality of its evidence has deteriorated over time, and that typical statutes of limitations require that negligence claims be brought within two to four years.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notice and motion to intervene serve to make the KPSC and Paris parties to this proceeding.

In light of the issues raised in the complaint, we shall deny KU's request for dismissal and set for hearing the matter of KU's coal-related practices and charges under its fuel adjustment clause. As we have stated previously, in balancing the needs of consumer protection against the utility's need for protection from unpredictable fuel cost increases, any inequities resulting from fuel adjustment clauses "should be discovered through surveillance and can be remedied through complaint proceedings." *New England Power Company*, 48 FPC 899, 904 (1972). This approach was codified by the Congress when it added section 205(f)(3) to the Federal Power Act to provide a complaint procedure specifically directed at automatic fuel clauses. In this case, we believe that the complaint presents reasonable grounds for further investigation of KU's fuel adjustment clause charges.

The allegations in both the complaint and the company's answer raise numerous questions of fact best left to determination after an evidentiary record is fully developed. In this regard, we do not agree with KU's assertion that coal costs already passed through KU's fuel adjustment clause have been fully investigated and implicitly approved. We note that fuel adjustment clauses are not routinely examined in regulatory proceedings. *See Public Service Company of New Hampshire*, Opinion No. 37, 6 FERC ¶61,299 (1979); *New England Power Co., supra; Electric Cooperatives of Kansas*, 14 FERC ¶ 61,176 (1981). Furthermore, Commission staff audits do not preclude further examination of the justness and reasonableness of items included in Account No. 151 (Fuel Stock).[6] Regardless of whether the KPSC has ruled on the justness, reasonableness, or prudence of the company's coal costs, this Commission is not bound by such a decision, although it might be relevant to the company's case, depending on what the KPSC found.

In addition, we disagree with the company's contention that the Commission has found that there is no basis for revision of KU's charges under the fuel adjustment clause after the periodic investigations conducted pursuant to section 205(f)(2) of the Federal Power Act. Section 205(f)(2) requires the Commission to review the practices of individual public utilities under automatic adjustment clauses. Beginning in 1979, in Docket No. IN79–8, we instituted a general review of these practices. 7 FERC ¶ 61,090. The Commission's PURPA reviews of utility practices under automatic adjustment clauses were required to insure efficient use of resources. These biennial reviews of all jurisdictional electric utilities are conducted to determine if there are apparent problems in a utility's fuel procurement program which may justify further Commission action. To date no separate action has been instituted regarding KU's fuel practices as a result of these reviews. This cannot be construed as final Commission approval of KU's fuel practices, however. The existence of a biennial review does not preclude interested parties from bringing new information to light and requesting a formal investigation of these practices at any time. In fact, section 205(f)(3)(B) specifically provides that a hearing on automatic adjustment clauses may be instituted either by the Commission on its own motion or "upon complaint."

Finally, despite the span of time covered by the complaint, we are not persuaded to limit the scope of the investigation, as requested by the company. From a review of the pleadings, we cannot say that the Municipals' delay in prosecuting their complaint is clearly unreasonable or that a hearing which addresses the full time frame encompassed by KU's long-term supply contracts for its Ghent station would unduly prejudice the company. Although KU asserts that key witnesses and pertinent files are no longer available, that point is not dispositive here, since evidence of the events and management decisions relating to execution of the long-term contracts would evidently be relevant to this proceeding regardless of its scope. The proper reach of any remedy, if any is ultimately found to be appropriate, can be argued and decided if and when that question actually arises. At the same time, we perceive no extraordinary circumstances which would cause us to formally expedite this proceeding as requested by the Municipals. The disputed facts are numerous and cover a long period of time. Further, the Municipals have alleged no irreparable harm which might necessitate an expedited proceeding. However, while we shall leave to the discretion of the presiding administrative law judge designated in this proceeding the discretion to establish any procedural dates deemed appropriate, we hereby direct the law judge to report back to us on the status of this proceeding, no later than nine months from the date of this order, to ensure that the case is moving at a reasonably rapid pace.

The Commission orders: (A) KU's motion for an extension of time in which to file its answer is hereby granted.

(B) KU's request for dismissal of the Municipals' complaint is hereby denied.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of KU's coal fuel charges under its fuel cost adjustment clause.

(D) KU's request that the scope of the investigation and hearing ordered above be limited to events occuring after January 1, 1982, is hereby denied.

(E) The Municipals' request for formal expedition of this proceeding is hereby denied.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30020 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[6] Audit reports by the Commission staff clearly state that they constitute a "selective examination" of accounting policies and practices and that they are "without prejudice to the right to require hereafter such adjustments as may be considered proper from additional information which may come to the attention of the Commission."

[Docket No. RP84–85–003]

Locust Ridge Gas Co.; Compliance Filing

November 8, 1984.

Take notice that on November 2, 1984, Locust Ridge Gas Company (Locust Ridge) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3:

Submitted As Alternate Tariff Sheets "A":

To Original Volume No. 1:

Rate Schedule G–1: Twelfth Revised Sheet No. 1A effective September 1, 1984.

Rate Schedule T–1: Third Revised Sheet No. 27 effective October 25, 1984.

To Original Volume No. 3: Nineteenth Revised Sheet No. 1A effective September 1, 1984.

submitted As Alternate Tariff Sheets "B":

To Original Volume No. 1:

Rate Schedule G–1: Twelfth Revised Sheet No. 1A effective July 2, 1984.

Rate Schedule T–1: Third Revised Sheet No. 27 effective July 2, 1984.

To Original Volume No. 3: Nineteenth Revised Sheet No. 1A effective July 2, 1984.

Locust Ridge requests that the Federal Energy Regulatory Commission (Commission) accept the Alternate "B" tariff sheets as being in compliance with the Commission's order of October 15, 1984, with an effective date of July 2, 1984. Locust Ridge asserts that there is no issue of retroactive ratemaking involved with the acceptance of the Alternate "B" tariff sheets, since these tariff sheets reflect a reduction below the level originally filed. If the Alternate Tariff Sheets "B" are not accepted, Locust Ridge does not by this filing request, and it expressly disclaims any such request or motion, that the Alternate "A" Tariff Sheets be placed into effect.

Locust Ridge states that it has furnished copies of these tariff sheets to all its customers affected by such tariffs.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30045 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–1–54–000 and TA85–1–54–001]

Louisiana-Nevada Transit Co.; Proposed Changes in FERC Gas Tariff

November 8, 1984.

Take notice that on November 1, 1984, Louisiana-Nevada Transit Company (Louisiana-Nevada) tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1: Sixth Revised Sheet No. 4, superseding Fifth Revised Sheet No. 4.

The proposed changes reflect a purchased gas cost adjustment under Louisiana-Nevada's Rate Schedules G–1 and X–2. The changes provide for a total adjustment of 108.21 cents per Mcf including a deferred gas cost adjustment of 20.06 cents per Mcf, to amortize a deferrred balance, and a cumulative cost of gas adjustment of 88.15 cents per Mcf. An effective date of December 1, 1984, is requested.

Louisiana-Nevada states that copies of this filing were served on its jurisdictional customers and the Arkansas and Louisiana Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person whishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30046 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–1–55–000 and TA85–1–55–001]

Mountain Fuel Resources, Inc.; Rate Change

November 8, 1984.

Take notice that on November 1, 1984, Mountain Fuel Resources, Inc. (Resources) tendered for filing and acceptance First Revised Sheet Nos. 13, 14, 58 through 60 and 62 to its FERC Gas Tariff, First Revised Volume No. 1. Resources proposes that these sheets be effective December 1, 1984.

Sheet Nos. 13 and 14 were filed pursuant to Resources' Purchased Gas Cost Adjustment Provision (PGCA) and Part 154 of this Commission's Regulations. Sheet No. 13 adjusts the rates under Resources' Rate Schedule CD–1 for changes in the cost of purchased gas and for the amortization of the August 31, 1984, balance in Resources' 6-month deferral subaccount of its Account No. 191. Resources has proposed to decrease the Base Cost of Purchased Gas as Adjusted under Rate Schedule CD–1 in the amount of $.0536/Dth and to change its Unrecovered Purchased Gas Cost Adjustment from Rate Schedule CD–1 of $.08612/Dth. In accordance with Section 154.111(a)(3)(i) of the Commission's Regulations, Sheet No. 13 is modified so that the gas cost component of the commodity charge under Rate Schedule CD–1 is stated separately. Sheet No. 14 reflects $0.00 projected incremental pricing for the December 1984 through May 1985 PGA period. Resources states that its only current sale-for-resale customer, Mountain Fuel Supply Company, has reported $0.00 Maximum Surcharge Absorption Capability due to the implementation of incremental pricing at the state level.

Resources states that Sheet Nos. 59, 60, and 62 reflect revisions to the method of calculating unrecovered purchased gas costs in its PGCA. Resources asserts that these revisions

were necessary due to the restatement of Resources' Base Cost of Purchased Gas as Adjusted, which prior to this filing included both demand and commodity gas costs.

In its filing, Resources has proposed to change the Adjustment Base Period in its PGCA from *three* months prior to the effective date of the rate adjustment to *four* months prior to the effective date of the rate adjustment. Resources states that the proposed change would be implemented with its next PGA filing.

Resources has requested waiver of § 154.38(d)(4)(v) of the Commission's Regulations so that it may be permitted to submit actual data set forth in FERC Form No. 542–PGA by field total rather than by each producer within producing fields. Resources has also requested waiver of § 154.38(d)(4)(iv)(a) of the Commission's Regulations and § 12.3(b) of its PGCA if the Commission deems such waivers necessary to permit it to reflect its successful efforts in reducing its purchased gas costs. Further, Resources has requested waiver of § 282.602(d)(2)(i) of the Commission's Regulations so that it may be permitted to exclude a supplemental analysis of projected incremental acquisition costs from its PGA filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commisison in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30047 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-18-000]

Natural Gas Pipeline Company of America; Petition for Authority To Institute Special Billing Procedure and for Waiver of PGA Procedures

November 8, 1984.

Take notice that on November 5, 1984, Natural Gas Pipeline Company of America (Natural) transmitted for filing its Petition For Authority To Institute Special Billing Procedure And For Waiver Of PGA Procedures. Natural states that the purpose of the special billing procedure is to recover from its customers Order No. 94 "production-related costs" made to producers through December 31, 1984, under a special, one-time, lump sum billing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30048 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-20-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

November 8, 1984.

Take notice that on October 10, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–20–000, an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing (1) the delivery of natural gas to Cabot Corporation (Cabot) for processing in Lea County, New Mexico, and (2) the construction of minor facilities necessary to effectuate such deliveries of natural gas, all in Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that Northern and Cabot have entered into a gas processing agreement dated July 10, 1984, as amended, whereby Northern has agreed to deliver to Cabot up to 15,000 Mcf per day of its Eddy County gas reserves, up to 15,000 Mcf per day of its Buckeye gas reserves, and up to 40,000 Mcf per day of its Hobbs residue gas at the interconnection between Northern's mainline and Cabot's gathering system located in Section 28, T18S, R36E, Lea County, New Mexico. Northern states that Cabot would then process the gas at its processing plant and the residue gas volumes would be delivered to Northern at the discharge side of the Cabot plant located in Section 21, T18S, R36E, Lea County, New Mexico.

Northern states the following: During peak periods when the combined total volumes from the Eddy County and Buckeye Systems exceed 30,000 Mcf of gas per day, Cabot has agreed to use its best efforts to accept all volumes for processing during such peak periods. Further, Northern and Cabot agree that in the event, on a daily basis, volumes from the Eddy County and Buckeye Systems exceed 31.5 MMcf per day, Northern would pay Cabot a compression fee of 8.0 cents per Mcf on the volumes in excess of 31.5 MMcf per day.

Northern also states the following: As consideration for processing Nothern's Eddy County and Buckeye gas, Cabot would receive the following compensation:

(a) Cabot would be entitled to retain 100 percent of the extracted ethane provided that Cabot delivers, in the plant residue gas stream, additional Btu's to Northern at the discharge side of its processing plant in sufficient quantity to compensate Northern for all of the Btu's removed and retained by Cabot in the extracted ethane. In addition, Cabot would redeliver to Northern the total Btu's used as fuel and other miscellaneous plant losses associated with the processing, dehydration and compression service. Northern would own 100 percent of the propane and other heavier hydrocarbons extracted and would bear 100 percent of the Btu shrinkage associated therewith.

(b) Regarding liquid hydrocarbons extracted from Nothern's Hobbs residue stream, Cabot would be entitled to retain and own 75 percent of the total products extracted, provided that Cabot delivers, in the plant residue gas stream, additional Btu's to Northern in sufficient quantity to compensate Northern for the total Btu's removed and retained by Cabot attributable to such 75 percent share of the products extracted as well as the total Btu's used as fuel and other miscellaneous plant losses associated with the processing, dehydration and compression service. Northern would retain and own 25 percent of the total products extracted and would bear 100 percent of the Btu shrinkage associated with such 25 percent share.

(c) In the event that Northern is unable to process gas at Northern's Hobbs Plant, due to plant maintenance or inability to operate due to insufficient flows, Northern and Cabot may mutually agree and arrange to send the gas to Cabot's plant for processing. If such situation should occur, Northern would be entitled to receive 25 percent of all ethane extracted from this gas with Cabot receiving 75 percent of the extracted ethane. Northern would receive 25 percent of the extracted propane and heavier hydrocarbons up to a maximum of 0.5 gallons per Mcf (GPM) extracted and 100 percent of the extracted propane and heavier hydrocarbons when extraction exceeds 0.5 GPM. Cabot would receive 75 percent of the extracted propane and heavier hydrocarbons up to a maximum of 0.5 GPM extracted and 0 percent of the extracted propane and heavier hydrocarbons when extraction exceeds 0.5 GPM. Cabot would bear all fuel and miscellaneous plant losses and would redeliver additional Btu's sufficient to equal those retained by Cabot in Cabot's respective share of the liquids or consumed as fuel, plant losses, etc.

Northern states that the processing service provided by Cabot is a firm arrangement and would be for a four-year term commencing July 10, 1984, and year to year thereafter.

Also, Northern states that it would construct minor facilities, consisting of 800 feet of 10-inch plant line, one block valve, two side valve settings, and volume/pressure control equipment to tie Northern's facilities to Cabot, at an approximate cost of $148,210 in order to facilitate the processing arrangement. The proposed facilities would be financed by cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 28, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30035 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-7-000]

Northwest Central Pipeline Corp.; Request Under Blanket Authorization

November 8, 1984.

Take notice that on October 4, 1984, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85–7–000 a request pursuant to § 157.205) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim certain metering and appurtenant facilities in Jefferson County, Kansas, and abandon the transportation of gas through these facilities under the authorization issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central requests permission and approval to abandon approximately 0.1 mile of 2-inch pipeline, a 2-inch meter, regulator, and appurtenant facilities which it states were installed under budget-type authority to make a direct sale to Theracon, Inc., that such sale never commenced, and it now desires to reclaim these facilities. It is asserted that the estimated cost to reclaim these facilities is $1,480, with an estimated salvage value of $400.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30049 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

November 7, 1984.

Take notice that Northwest Pipeline Corporation (Northwest) on October 31, 1984 tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. The proposed changes would increase jurisdictional revenues by $57,797,602, inclusive of transportation services, annually based on the twelve-month period ending June 30, 1984, as adjusted. Northwest has proposed that the increased rates and tariff sheets filed herein be effective December 1, 1984.

Northwest states that the requested rate increase is to recover its juriadictional cost of service for the twelve months ended June 30, 1984, as adjusted for changes through March 31, 1984. Northwest states that the principal reasons for the requested increases are:

(1) Increases in gas plant and related cost of service items; (2) increased cost of capital; (3) increased rents, transportation of gas by others, and other operation and maintenance expenses; and (4) decreased sales volumes.

Northwest states that copies of this filing were served on the Company's jurisdictional customers and affected state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.21, 385.214). All such petitions or protests should be filed on or before November

14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30021 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-29-000]

Odeco Oil & Gas Co.; Application for a Certificate and for Partial Limited-Term Abandonment

November 7, 1984.

Take notice that on October 26, 1984, Odeco Oil & Gas Company (Applicant) of P.O. Box 61780, New Orleans, Louisiana 70161, filed an application pursuant to the provisions of the Natural Gas Act and the Commission's rules and regulations thereunder for a certificate of public convenience and necessity to (i) authorize sales of natural gas for resale in interstate commerce under a special marketing program, (ii) permit limited-term partial abandonment for the gas sold under the program, (iii) confer pre-granted abandonment for sales of gas actually sold under the certificate, (iv) allow transportation of the natural gas by interstate pipelines able and willing to participate, and (v) confer pre-granted abandonment for transportation services allowed under the certificate.

Sales will be made to those parties allowed to purchase under the Commission's Order issued September 26, 1984 in Docket No. CI83-269-000, *et al.*

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before November 19, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385. 214). All protests filed with the Commission will be considered by it in determining the appropirate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30022 Filed 11-14-84; 8:45 am]

BILLING CODE 6716-01-M

[Docket No. RP85-20-000]

Panhandle Eastern Pipe Line Co.; Change in FERC Gas Tariff

November 8, 1984.

Take notice that on November 1, 1984, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 3-D
Third Revised Sheet Nos. 32-S and 32-T (Constituting Rate Schedule OST)
Second Revised Sheet Nos. 32-W (Constituting Rate Schedule OST-E)

Panhandle states that these sheets are filed to incorporate certain revisions in Rate Schedule OST under which it provides transportation service into its market area and to cancel Rate Schedule OST-E. These revisions reflect changes which have been previously discussed in testimony filed by Panhandle in its acceptance of the PanMark certificate as required by the Commission Order of September 26, 1984.

The revisions include 1) a change in the transport rate to include recovery, when appropriate, of the deferred portion of the PGA Rate adjustment as included in the currently effective commodity rate, 2) an elimination of the excess rate and 3) cancellation of Rate Schedule OST-E.

Panhandle proposes an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30023 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-58-000 and TA85-1-58-001]

Texas Gas Pipe Line Corp.; Tariff Filing

November 8, 1984.

Take notice that on October 30, 1984, Texas Gas Pipe Line Corporation (Texas Gas) tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1: Thirteenth Revised Sheet No. 4a.

Texas Gas states that this sheet reflects a net increase of 17.76 cents per Mcf at 14.65 psia in the commodity charge of its Rate Schedule G-1 and a net increase of 18.23 cents per Mcf at 15.025 psia in the commodity charge of its Rate Schedule CD-1. The proposed efffective date for this sheet is December 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30051 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-1-000]

Transcontinental Gas Pipe Line Corp.; Complaint and Petition for Declaratory Order

Issued: November 8, 1984.

On October 23, 1984, Transcontinental Gas Pipe Line Corporation (Transco) filed a complaint with the Commission against Felmont Oil Corporation (Felmont) and Case-Pomeroy Oil Corporation (Case). Specifically Transco asks that the Commission enter an order declaring that payments by it to Felmont and Case pursuant to take or pay contract clauses would violate section 504(a)(1) of the Natural Gas Policy Act of 1978 (NGPA).[1]

Due to a decline in demand for natural gas by its customers, Transco has been unable to take delivery of the minimum amounts of gas it agreed to purchase from Felmont and Case. Under the take or pay clauses it must nevertheless pay for the deficiency. However, it is entitled to recoup take or pay deficiencies by taking gas in excess of the minimum contract amount over the succeeding five years and paying only the difference between the prepaid price and the price at the time of recoupment.

Transco alleges that the remaining recoverable gas reserves of Felmont and Case are insufficient to allow it to recoup its take or pay deficiencies. Accordingly, it contends, the take or pay payments for gas never received would mean that it had paid more than the maximum lawful price for the gas it did receive since it had already paid the maximum lawful price for that gas. Transco also contends that even if it could recoup the take or pay deficiencies, its payments pursuant to the take or pay clauses would still violate the applicable maximum lawful price. This allegedly is because take or pay payments are in essence interest free prepayments which effectively raise the price paid for the gas above the applicable price ceiling.

Any person who desires to be heard or to make any protest to the complaint should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30041 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-19-000]

Trunkline Gas Co.; Change in FERC Gas Tariff

November 8, 1984.

Take notice that on November 1, 1984, Trunkline Gas Company (Trunkline) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 3-A.2
Third Revised Sheet Nos. 9-BF and 9-BG
(Constituting Rate Schedule OST)
Second Revised Sheet Nos. 9-BH (Constituting Rate Schedule OST-E)

Trunkline states that these sheets are filed to incorporated certain revisions in Rate Schedule OST under which it provides transportation service into its market area and to cancel Rate Schedule OST-E. These revisions reflect changes which have been previously discussed in testimony filed by Trunkline in its acceptance of the PanMark certificate as required by the Commission Order of September 26, 1984.

The revisions include a change in the transport rate to include recovery, when appropriate, of the deferred portion of the PGA Rate Adjustment as included in the currently effective commodity rate and cancellation of Rate Schedule OST-E.

Trunkline proposes an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1985. Protests will be considered by the Commisson in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30052 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-67-000]

United Gas Pipe Line Co.; Application

November 8, 1984.

Take notice that on October 26, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-67-000, an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing it to implement new transportation rate schedules and related forms of service agreements to govern the terms of transportation through December 31, 1985, and for blanket authority to permit existing transportation customers, with whom United is able to negotiate a mutually beneficial agreement, to convert to the new transportation rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to add to Volume I of its FERC Gas Tariff, two transportation rate schedules and related forms of service agreements. It is stated that Rate Schedule T would apply to transportation provided on a firm basis

---

[1] 15 U.S.C. 3414(a)(1).

and Rate Schedule IT would apply to interruptible transportation.

United states that changes in operations, combined with the network of interspersed high and low pressure lines, makes it impossible to trace accurately the mileage involved in transporting all volumes of gas on United's system. As a result, it is stated, the proposed rates for transportation under these rate schedules equate the rate to be charged with the distance of the transportation service as determined on the basis of a straight line connecting the point at which gas is received by United (point of receipt) with the point at which the transported gas is delivered by United (point of delivery).

United states that the new rates reflect classifications of service on the basis of 75-mile increments, with each classification referred to as a "Type." It is stated that the rate for service within each 75-mile increment is the same. United states that Type I service, and the corresponding rate, apply to transportation distances equal to or less than 75 miles; Type II applies to distances in excess of 75 miles to 150 miles; Type III applies to distances in excess of 150 miles to 225 miles; Type IV applies to distances in excess of 225 miles to 300 miles; and Type V applies to distances in excess of 300 miles. It is stated that for any service agreement which contains multiple points of receipt and/or delivery, the classification would be based upon the maximum distance of any point of receipt to any point of delivery. United states that the use of the maximum distance reflects the benefits which such flexibility accords to the shipper. It is stated that service involving a mutually beneficial "back-haul" would be classified as Type I service.

In addition to providing rates based on distance of haul, it is stated that the new rate schedules also provide rates which distinguish between firm and interruptible service. United states that the rates for firm transportation, which are to be provided under Rate Schedule T, include separate demand and commodity components. It is stated that the rate for interruptible transportation, which is to be provided under Rate Schedule IT, is a one-part commodity rate determined at a 75 percent load factor.

United asserts that the initial transportation rates for each rate schedule have been developed on a systemwide basis using the full costs allocated to transportation services under the United rate settlement apporoved in Docket No. RP82–57–000 on March 1, 1984 (26 FERC ¶ 61,287). It is stated that the new rates reflect a redesign of the transportation rates but no change in the costs allocated to transportation services. As a result, United states, such rates continue to be based on the full costs allocated to such transportation under the RP82–57–000 settlement.

It is stated that the rates for service under these rate schedules, including the classification used to develop and apply the rates, are subject to change through rate filings made effective under Section 4 of the Natural Gas Act or orders issued under section 5 of that Act. United states that if its rates are determined in a manner which makes transportation eligible for an added incentive charge (AIC) under § 157.209(f) of the Commission's Regulations, and the service to the customers would otherwise qualify for such charge, the transportation rates may include an AIC up to but not in excess of the maximum AIC permitted under such section of the Commission's Regulations.

United states that it currently provides transportation services under individual contracts which, except in the case of transportation provided under Part 157 and Part 284 of the Commission Regulations, are filed as individual rate schedules in Volume 2 of United's FERC Gas Tariff. It is asserted that, in general, the rates for transportation under those rate schedules were determined through the settlement approved March 1, 1984, in Docket No. RP82–57–000, *et al.* (26 FERC ¶ 61,287. United states that its existing customers may, however, prefer service under the new rate schedules to service under their existing rate schedules. United is requesting such blanket authorization as may be required to permit any existing customer with which United is able to negotiate a mutually beneficial agreement to convert to the new rate schedule for service rendered through December 31, 1985. United explains that such blanket authorization would apply only of there is no change in the delivery or redelivery points, volume or classification of service.

United asserts that the settlement allocates costs to existing transportation and sales services and leaves United at risk for any failure to collect those costs. Under the settlement, United states, it is entitled to retain all revenues from new transportation revenues and thus any diminution or increase in those revenues is solely for United's account. Thus, United asserts that if United and an individual customer execute a new service agreement and that customer thereby obtains a lower rate, the result may be to reduce United's revenues, but it would not affect the rate of any other sales or transportation customer.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 28, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for United to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30043 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–1–35–000 and TA85–1–35–001]

West Texas Gas, Inc.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

November 7, 1984.

Take notice that on Nov. 7, 1984, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following tariff sheet:

First Revised Sheet No. 3a

First Revised Sheet No. 3a is being filed by WTG in order to effectuate its Annual Purchased Gas Adjustment to be effective on October 1, 1984. The implementation of this PGA will result in a rate reduction to the Volume No. 1 customers.

Copies of the filing were served upon the Gas Utility Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intevene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30024 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA85–1–57–000 and TA85–1–57–001]

Western Transmission Corp.; Proposed Changes

November 8, 1984.

Take notice that Western Transmission Corporation (Western), on October 31, 1984, tendered for filing as part of its FFC Gas Tariff, Original Volume No. 1, the following sheet:

Twenty Third Revised Sheet No. 3–A, superseding Twenty Second Revised Sheet No. 3–A.

The proposed changes would increase the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of section 18 of Western's FFC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is December 1, 1984.

Copies of this filing have been served upon Colorado Interstate Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before "November 15, 1984. Protests will be considered by the Commission in determing the apppropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30053 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59172A; TSH–FRL 2717–5]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–84–83 and TME–84–84. The test marketing conditions are described below.

EFFECTIVE DATE: November 7, 1984.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, RM. E–202, 401 M Street SW., Washington, D.C. 20460, (202–475–8992).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–84–83 and TME–84–84. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substances produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME 84–83

Date of Receipt: September 25, 1984.

Notice of Receipt: October 5, 1984 (49 FR 39378).

Applicant: Confidential.

Chemical: (G) Polymonocyclic urethane.

Use: (G) Industrial coating having a non-dispersive use.

Production Volume: 53,700 kg.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Three months.

Commencing on: November 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. EPA estimates worker exposure and environmental release of the test market substance will be insignificant. The test market substance will not pose an unreasonable risk of injury to health or the environment.

Public Comments: None.

TME 84–84

Date of Receipt: September 27, 1984.

Notice of Receipt: October 5, 1984 (49 FR 39378).

Applicant: Confidential.

Chemical: (G) Succinate ester.

Use: (G) Dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: One year.

Commencing on: November 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. EPA estimates worker exposure and environmental release of the test market substance will be

insignificant. The test market substance will not present an unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 7, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-29948 Filed 11-14-84; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Meeting

AGENCY: Farm Credit Administration.

ACTION: Notice of Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be on the first Monday of December 1984, as specified in 12 CFR 604.325(a).

DATES AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held in McLean, Virginia on December 3, 1984, 8:30 a.m. to 4:30 p.m.; and December 4, 1984, 8:30 a.m. to 3:00 p.m.; and to be continued at the offices of the Federal Farm Credit Banks Funding Corporation, 90 William Street, New York, New York on December 5, 1984, 8:30 to 4:30 p.m.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Portions Open to the Pubic:

Reports of Board Members
Governor's Report (except as noted below)
Regulation Changes
Progress Report on FCA Project 1995 Task Forces
Office of Administration Report
Session with the Board of Directors of the Federal Farm Credit Banks Funding Corporation (New York)
a. The Status of the Farm Credit System Banks as Federally Sponsored Private Agencies
b. Financial Reporting Requirements for Farm Credit System Institutions
c. Farm Credit System Executive Compensation Policy and Plans
Other Subjects to be Determined

Portions Closed to the Public:

Executive Session(s)
Governor's Report—Litigation Update
FCA Supervisory Reports
Office of Examination and Supervision Report.

Dated: November 9, 1984.

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 84-29901 Filed 11-14-84; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Arthur Winburn Saunders, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Arthur Winburn Saunders Jr.; Reno, NV.	BPH-831216CG	84-1036
B. Rita Lanciotti and Robert Gregory Ordonez d/b/a R & G Broadcasting; Reno, NV.	BPH-840404IB	84-1037
C. Carrillo Broadcasting Company, a limited Partnership; Reno, NV.	BPH-840423IL	84-1038
D. Bonnie Broadcasting Corporation; Reno, NV.	BPH-840423IN	84-1039
E. Joy Denese Hill; Reno, NV.	BPH-840423IQ	84-1040
F. Meryle Karloff Holmes; Reno, NV.	BPH-840423IR	84-1041
G. Reno Broadcasters, Inc.; Reno, NV.	BPH-840423IS	84-1042

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage, B
2. Air Hazard, C
3. Comparative, A, B, C, D, E, F, G
4. Ultimate, A, B, C, D, E, F, G

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, DC. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29902 Filed 11-14-84; 8:45 am]

BILLING CODE 6705-01-M

Applications for Consolidated Hearing; Frankie Morley, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Frankie Morley; Gonzales, TX.	BPH-830923AD	84-1017
B. Patrick J. Nugent and Betty Nugent; Gonzales, TX.	BPH-831021AJD	84-1018
C. Rodney G. Ellis et al d/b/a Rodney Ellis Interests; Gonzales, TX.	BPH-840104AI	84-1019

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW, Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29924 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Marlone Elaine Martin, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city and State	File No.	MM Docket No.
A. Marlone Elaine Martin; Alva, OK.	BPH-8401004AF	84-1027
B. Women, Handicapped Americans and Minorities For Better Broadcasting, Inc., Alva, OK.	BPH-840309CH	84-1028
C. Drain Broadcasting Co.; Alva, OK.	BPH-840309CI	84-1029

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), B
2. City Coverage, B
3. Air Hazard, A, B
4. Comparative, A, B, C
5. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW, Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If a final environmental impact statement is issued with respect to B (Better) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc 84-29923 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Oswego-Jefferson Broadcasting, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Oswego-Jefferson Broadcasting, Inc.; Pulaski, NY.	BPH-830827AF	84-1013
B. Peggy Nicholson and P. M. Shanley d.b.a. Pulaski Broadcasting; Pulaski, NY.	BPH-840119AA	84-1014

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A and B
2. Ultimate, A and B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29925 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group Automated Regulatory Information Reporting Systems Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is given that the Telecommunications Industry Advisory Group, Automated Regulatory Information Reporting Systems Subcommittee, has scheduled a meeting for November 19-20, 1984. The meeting will begin at 10:00 a.m. on the first day and at 9:00 a.m. on the second day. The meetings will be conducted at Bell Communications Research, Inc., 2101 L Street, NW. (6th Floor), Washington, D.C., and will be open to the public.

I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment

With prior approval of the chairperson, Eve Kimble, oral statements, while not favored or encouraged, may be allowed if time permits and if the chairperson determines that an oral presentation is conducive to the effective attainment of subcommittee objectives. Anyone not a member of the subcommittee and wishing to make an oral presentation should contact Eve Kimble (201) 699-6843) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communication Commissions.

[FR Doc. 84-29900 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

Federal-State Joint Board; Meeting

November 8, 1984.

The Federal-State Joint Board will hold a meeting on the subject of *MTS and WATS Market Structure, CC Docket No. 78-72 and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC*

Docket No. 80-286. The Joint Board will consider recommendations concerning the allocation and recovery of NTS local exchange costs as well as measures designed to preserve universal telephone service. This Meeting is Open to the public and will commence at 2:00 P.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Additional information concerning this meeting may be obtained from Claudia Pabo, of the Common Carrier Bureau, telephone number (202) 632-9342.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-29808 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

Travel Reimbursement Experiment; Quarterly Report

AGENCY: Federal Communications Commission.

ACTION: Publishing of Quarterly Report on Travel Reimbursement Experiment.

SUMMARY: In Pub. L. 97-259, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report each quarter of all reimbursements allowed and provide copies of each quarterly report to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. This must be done each quarter until September 30, 1985. In addition the Federal Communications Commission must publish each quarterly report in the **Federal Register** until September 30, 1985.

DATE: This report is for the period from July 1, 1984 through September 30, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Geoffrey Sherman, Office of the Managing Director, (202) 632-6900.

SUPPLEMENTARY INFORMATION: The report for the quarter ending September 30, 1984 is as follows:

Federal Communications Commission Travel Reimbursement Experiment

Summary Report

Total Number of Sponsored Events: 6.
Total Number of Sponsoring Organizations: 6.
Total Number of Commissioners/Employees Attending: 9.

Total Amount of Reimbursement:

Transportation	$2,292.40
Room	1,395.72
Board	218.02
Other Expenses	367.90
Total	4,274.04

Individual Event Reports Attached.

Sponsoring Organization (Name and Address): Association of American Railroads, 1920 L Street, N.W., Washington, D.C. 20036.

Date of the Event: August 19-22, 1984.

Description of the Event: To attend the annual meeting of the Association of American Railroads in Boston, Massachusetts.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Supervisory Attorney Adviser, Private Radio Bureau.

Amount of Reimbursement:

Transportation	$86.00
Room	180.75
Board	29.75
Other Expenses	66.15
Total	[1] $362.65

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): King Radio Corporation, P.O. Box 3347, Lawrence, Kansas 66044.

Date of Event: August 13-17, 1984.

Description of the Event: To participate in the Land Mobile Communications Showcase in Las Vegas, Nevada.

Number of Commissioner's Attending: 0.

Number and Title of Employees Attending: 1, Chief, Private Radio Bureau.

Amount of Reimbursement:

Transportation	$329.00
Room	289.97
Board	85.03
Other Expenses	84.51
Total	[1] 855.51

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): Special Industrial Radio Service, Association, Inc., 1700 N. Moore Street, Suite 910, Rosslyn, Virginia 22209.

Date of the Event: September 27-28, 1984.

Description of the Event: To participate in the Special Industrial Radio Service Association annual membership meeting in Boca Raton, Florida.

Number of Commissioners Attending: 1.

Number and Title of Employees Attending: 1, Commissioner Dawson.

Amount of Reimbursement:

Transportation	$418.00
Room	125.00
Board	25.00
Other Expenses	25.00
Total	[1] $593.00

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): Satellite Communications Magazine, 6530 South Yosemite Street, Englewood, Colorado 80111.

Date of the Event: August 27-28, 1984.

Description of the Event: To participate in the Satellite Users Conference in New Orleans, Louisiana.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Supervisory Electronics Engineer, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$254.00
Room	125.00
Board	25.00
Other Expenses	30.00
Total	[1] 434.00

[1] *Reimbursement Estimated*—Travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): West Virginia Broadcasters Association, 2120 Weberwood Drive, South Charleston, WV 25303.

Date of the Event: August 16-17, 1984.

Description of the Event: To address the West Virginia Broadcasters Association fall meeting in White Sulphur Springs, West Virginia.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$98.40
Room	75.00
Board	6.00
Other Expenses	0
Total	[1] 179.40

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): National Radio Broadcasters Association, 1705 De Sales Street, N.W., Washington, DC 20036.

Date of the Event: August 16-19, 1984.

Description of the Event: To participate in the National Radio Broadcasters Association Convention in Los Angeles.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Chief, Mass Media Bureau; 1, Supervisory Electronics Engineer; 1, Attorney Adviser, Mass Media Bureau; 1, Deputy General Counsel, Office of General Counsel.

Amount of Reimbursement:

Transportation	$1,040.00
Room	600.00
Board	47.24
Other Expenses	162.24
Total	[1] 1,849.48

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-29912 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-999, et al.; Files Nos. BBCT-840503KF, et al.]

Area Christian Television, Inc., et al; Hearing Designation Order

In re applications of:

Area Christian Television, Inc.,	MM Docket No. 84-999 File No. BPCT-840503KF.
Haynes Communications Co.	MM Docket No. 84-1000 File No. BPCT-840514KE.
Mississinewa Communications Corp.	MM Docket No. 84-1001 File No. BPCT-840705KG.

For Construction Permit Bloomington, Indiana.

Adopted: October 15, 1984.
Released: November 2, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Area Christian Television, Inc. (ACT), Haynes Communications Co. (Haynes), and Mississinewa Communications Corporation (Mississinewa) for authority to construct a new commerical television station on Channel 42, Bloomington, Indiana.

2. The effective radiated power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower heights and locations proposed by ACT and Mississinewa would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specificed.[1]

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so the 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Mississinewa has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after this Order is released.

5. The geographical coordinates in Section V-C differ from those given in Section V-G of Haynes' and Mississinewa's applications. Accordingly, each applicant will be required to submit an amendment specifying the correct geographical coordinates and any related technical exhibit which would be affected by the change in coordinates, to the presiding Administrative Law Judge within 20 days after the release of this Order.

6. Except as indicated by the issue specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessary. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before the Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Area Christian Television, Inc. and Mississinewa Communications Corporation would each constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

9. It is further ordered, that Mississinewa Communications Corporation shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

10. It is further ordered, that Haynes Communications Co. and Mississinewa Communications Corporations shall each submit an amendment correcting the geographical coordinates and any related technical exhibit affected by the changes in coordinates, to the presiding Administrative Law Judge within 20 days after the release of this Order.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of notice as requied by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[1] The Commission is not in receipt of FAA's determinations for the towers proposed by ACT and Mississinewa.

[FR Doc. 84-29929 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-1002, et al.; File Nos. BPCT-840530 KF, et al.]

Baytown Community Broadcasting; Ltd, et al.; Hearing Designation Order

In re applications of:

Baytown Community Broadcasting, Ltd.	MM Docket No. 84-1002 File No. BPCT-840530KF.
Leonora Reyes	MM Docket No. 84-1003 File No. BPCT-840702KE.
Neil I. Sanders	MM Docket No. 84-1004 File No. BPCT-840706KH.
Villa-Reeve, Ltd	MM Docket No. 84-1005 File No. BPCT-840710KK.
Josie Montgomery, Newton Hopkins and Neicy McCoy d.b.a. Pleasant Spring Broadcasting.	MM Docket No. 84-1006 File No. BPCT-840711KH.

For Construction Permit Baytown, Texas.

Adopted: October 15, 1984.
Released: November 2, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority has before it the above-captioned mutually exclusive applications of Baytown Community Broadcasting (BCB), Leonora Reyes (Reyes), Neil I. Sanders (Sanders), Villa-Reeve Ltd. (Villa Reeve), and Josie Montgomery, Newton Hopkins and Neicy McCoy d.b.a. Pleasant Spring Broadcasting (Pleasant Spring) for authority to construct a new commercial television station on Channel 57, Baytown, Texas.

2. Section V–C, Item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Pleasant Spring has stated 84 square miles as its Grade B coverage area. This is obviously wrong. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Pleasant Spring will be required to submit an amendment showing the correct information, within 20 days after this Order is released, to the presiding Administrative Law Judge. If it is determined that there is a significant disparity between the areas and populations, the presiding Administrative Law Judge will consider it under the standard comparative issue.

3. No determination has been made that the tower heights and locations proposed by Reyes, Sanders, Villa-Reeve and Pleasant Spring would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Since grant of Pleasant Spring's application would constitute a major environmental action as defined by § 1.1305(a) of the Commission's Rules, Pleasant Spring is required to submit the environmental impact information described in § 1.1311. Accordingly, Pleasant Spring will be required to file, within 20 days of the release of this Order, its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Video Services Division, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979) *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

5. Pleasant Spring failed to submit a complete contour map which is required by Question 10, Section V–C, FCC Form 301. Consequently, Pleasant Spring will be required to submit an appropriate map within 20 days of the mailing of this Order to the presiding Administrative Law Judge.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, It is Ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that the tower height and location proposed by Leonora Reyes, Neil I. Sanders, Villa-Reeve, Ltd., and Pleasant Broadcasting would each constitute a hazard to air navigation.

(2) If a final environmental impact statement is issued with respect to Pleasant Spring Broadcasting which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment;

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

(3) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(4) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that Pleasant Spring Broadcasting shall submit an amendment stating the correct area within its predicted Grade B contour within 20 days after this Order is released, to the presiding Administrative Law Judge.

9. It is further ordered, that the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

10. It is further ordered, that Pleasant Spring Broadcasting shall submit an appropriate contour map as required by question 10 of Section V–C, F.C.C. Form 301, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

11. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-29926 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-1009, et al.; File Nos. 840 511 KGr, et al.]

Contemporary Communications; Inc., et al.; Hearing Designation Order

In re applications:

Contemporary Communications, Inc.	MM Docket No. 84-1009 File No. BPCT-840511KG.
John R. Powley	MM Docket No. 84-1010 File No. BPCT-840709KE.
Grand Canyon Television Co., Inc.	MM Docket No. 84-1011 File No. BPCT-840711KP.
Canyon Communications Co.	MM Docket No. 84-1012 File No. BPCT-840711KR.

For construction permit for new television station, Kingman, Arizona.

Adopted: October 17, 1984.
Released: November 2, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above—captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 6, Kingman, Arizona.

2. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each purposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Grand Canyon Television Co., Inc. (Grand Canyon) proposes to use a directional antenna. Section 73.685(e) of the Commission's Rules limits the maximum-to-minimum ratio of a VHF directional antenna to 10dB. Grand Canyon's antenna would have a maximum-to-minimum ration of 15dB. A waiver has been requested. Accordingly, an appropriate issue will be specified to determine whether waiver of § 73.685(e) is warranted.

5. FCC Form 301, Section V–C, Item 16 asks if a grant of this application would be a major environmental action. Canyon Communications Company responded with a negative answer, explaining that the tower would not be over 300 feet above ground level. Its response to Section V–G, Item 5 and its vertical sketch show the overall tower height to be 323 feet. Since grant of Canyon Communications Company's application would constitute a major environmental action as defined by § 1.1305(a) of the Commission's Rules, Canyon Communications is required to submit the environmental impact information described in § 1.1311. Accordingly, Canyon Communications will be required to file, within 20 days of the release of this Order, its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Video Services Division, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is complete. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Grand Canyon whether circumstances exist which would warrant to waiver of § 73.685(e) of the Commission's Rules.

3. If a final environmental impact statement is issued with respect to Canyon Communications Company which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment.

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the data fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-29910 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-1015, et al.; File Nos. BP-831202AE, et al.]

Moore County Radio Co., et al.; Hearing Designation Order

In re Applications of:

Moore County Radio Co., Lynchburg, TN.	MM Docket No. 84-1015 File No. BP-831202AE.
Has: 1290 kHz, 1 kW, DA–D. Req: 870 kHz, 1 kW, D.	
Cook Communications, Inc., Valley Head, AL.	MM Docket No. 84-1016 File No. BP-840330AG.
Req: 870 kHz, 5 kW, D.	

For Construction Permit.

Adopted: October 16, 1984.
Released: November 2, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (a) The mutually exclusive applications of Moore County Radio Company ("Moore") and Cook Communications, Inc. ("Cook"); (b) a petition to deny the Cook application filed by DeKalb Broadcasting, Inc. ("DeKalb"); and (c) related pleadings.

2. In its petition, DeKalb, licensee of AM station WFPA, Fort Payne, Alabama, contends first that Cook chose Valley Head as its city of license in order to circumvent the requirements of Section 73.37(e), its real intention being to serve the larger, nearby community of Ft. Payne. DeKalb acknowledges that the Commission recently abolished the presumptions of the suburban community policy. *Suburban Community Policy*, 93 FCC 2d 436 (1983). Petitioner argues, however, that newspaper articles quoting a Cook director affirmatively demonstrate that Cook intends to serve Ft. Payne, while listing Valley Head as its city of license. The article, however, simply reports a statement to the effect that Valley Head was chosen because the Fort Payne market was full. Assuming the report to be accurate, no intentions can fairly be inferred from this statement, we believe. In any event, we do not recognize newspaper articles as sufficient support for a factual allegation. *Mississippi Authority for Educational Television*, 79 FCC 2d 577, 579 (1980).

3. Petitioner further alleges that Valley Head is not a community for licensing purposes. Valley Head, however, is listed in the 1980 U.S. Census and referred thereto as a "town", which designation is alone sufficient to qualify it as a community. *Revision of FM Assignment Policies and Procedures*, 51 RR 2d 807, 816 (1982). Additionally, Valley Head has a mayor, town council and local government agencies. Under these circumstances, DeKalb's argument is totally without merit.

4. As indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

5. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the petition to deny filed by DeKalb Broadcasting, Inc. is denied.

7. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order should be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street NW., Washington, D.C. 20554.

8. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29821 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application for Federal Deposit Insurance—Commercial Banks (OMB No. 3064-0001).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4446.

SUMMARY: The FDIC is requesting OMB to extend to November 30, 1987, the expiration date of the form FDIC 6200/05 (OMB No. 3064-0001) used by a state nonmember bank to apply for FDIC deposit insurance. The application form, which expires on November 30, 1984, contains information relating to the factors which the FDIC is required to consider under section 6 of the FDI Act (12 U.S.C. 1816) before acting on the application. It is estimated that it takes the average applicant 250 hours to prepare and submit the application.

Dated: November 8, 1984.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 84-29983 Filed 11-14-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-727-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-727-DR), dated October 30, 1984, and related determinations.

DATED: November 7, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: The notice of a major disaster for the State of Texas, dated October 30, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 30, 1984:

Precinct One in Nueces County as an adjacent area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-29876 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-02-M

Privacy Act of 1974; Proposed Revision to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: The purpose of this system is to include an ethnic/racial origin category on forms maintained in the systems of records entitled, "FEMA/NETC-1, Student Application and Registration Records, National Fire Academy" and "FEMA/NETC-3, Student Academic and Course Records."

SUMMARY: The Federal Emergency Management Agency (FEMA) is proposing to add an ethnic/racial origin category on forms maintained in the above two referenced systems of records in order to comply with statistical reporting to the Equal Employment Opportunity Commission annually of minorities and women who have received training. The information will be provided by the National Emergency Training Center in Emmitsburg, Maryland, to our Director, Office of Equal Opportunity in a statistical format.

EFFECTIVE DATE: The proposed revisions will become effective, without further notice on December 17, 1984, unless comments dictate otherwise.

ADDRESS: Written comments may be sent or delivered to Rules Docket Clerk, Federal Emergency Management Agency, (Room 835), 500 C Street, SW., Washington, D.C. 20472. Comments received will be available for public inspection at the above address during normal working hours.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 287-0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97-375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular A-108, Transmittal Memorandum No. 1 and 3. Thus, a change to the system notice that does not require such a report need only be described in the **Federal Register** notice, without the necessity of publishing the complete text of the notice. The new information is being printed in italics.

On November 26, 1982, (47 FR 53488), the Federal Emergency Management Agency published the complete text of the system of records entitled, "FEMA/NETC-1, Student Application and Registration Records, National Fire Academy." Revisions to this system of records were published on March 23, 1983 (48 FR 12133). The complete text of the system of records entitled, "FEMA/NETC-3, Student Academic and Course Records" was published on November 26, 1982 (47 FR 53489). Revisions to this system of records were published on March 23, 1983 (48 FR 12133) and October 25, 1983 (48 FR 49376).

Dated: November 8, 1984.

Russell B. Clanahan,

Acting Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/NETC-1

SYSTEM NAME:

Student Application and Registration Records, National Fire Academy.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include application forms and other information submitted by the applicants. Information collected includes, but is not limited to, name, sex, social security number, date of birth, *ethnic/racial origin*, educational level, home address and job title. Files concerning students registered for Academy courses include the above information in addition to the next of kin (in case of emergency), home and/or business address, name of course, number of course credits, and grade, if any, and medical information in case of student injury or illness.

* * * * *

FEMA/NETC-3

SYSTEM NAME:

Student Academic and Course Records.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain student application records-FEMA 95-2, containing name, address, educational level, social security number, *ethnic/racial origin*, emergency management courses taken and where, emergency management organization and program affiliation, emergency management title, emergency management telephone number and length of emergency management service, employer, business title and business telephone number, student travel authorization and voucher for partial expense and date and location of course; individual training records; individual and business file for National Emergency Training Center Catalogs, Information Bulletins, etc.; Career Development Individual files; photographs with identification; MOBDES training files; Career Development directory; Student Expense files, completed Grant-in-aid forms; State recommendations, attendance and progress reports, student locators, and related academic documents.

* * * * *

[FR Doc. 84-29877 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 121–010673.
Title: Seattle Terminal Agreement.
Parties:
Port of Seattle (Port)
North Star Forwarding Company (NSFC)

Synopsis: Agreement No. 121–010673 provides for a month-to-month lease between the Port and NSFC for a parking lot at Terminal No. 5, Seattle. The lease provides NSFC with space for parking chassis and containers used in their rail-barge activity at Pier No. 2.

Filing party: Frank H. Clark, Director of Real Estate, Port of Seattle, Post Office Box 1209, Seattle, Washington 98111.

By Order of the Federal Maritime Commission.

Dated: November 8, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-29888 Filed 11-14-84; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
2788	Freight Systems International, Inc., dba FSI, 2809 Cabover Drive, Hanover MD 21076.	Oct. 29, 1984.
2324–R	Murphy Shipping Co., Inc., First and Cedar Bldg., Suite 450, Seattle, WA 98119.	Oct. 29, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR DOC 84-29889 Filed 11-14-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 6, 1984.

A. **FEDERAL RESERVE BANK OF CLEVELAND** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Bancshares, Inc.*, Salineville, Ohio; to acquire 51 percent of the voting shares of The Miners and Mechanics Savings and Trust Company, Steubenville, Ohio.

B. **FEDERAL RESERVE BANK OF RICHMOND** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Old National Bancorp, Inc.*, Martinsburg, West Virginia; to acquire 100 percent of the voting shares of The Empire National Bank of Clarksburg, Clarksburg, West Virginia.

C. **FEDERAL RESERVE BANK OF ATLANTA** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens Corporation*, Eastman, Georgia; to become a bank holding company by acquiring 90 percent of the voting shares of Citizens Bank and Trust Company, Eastman, Georgia.

D. **FEDERAL RESERVE BANK OF CHICAGO** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Badger Bank Services, Inc.*, Cassville, Wisconsin; to become a bank holding company by acquiring 95 percent or more of the voting shares of Badger State Bank, Cassville, Wisconsin.

2. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to merge with Sagamon Banc Shares, Inc., Springfield, Illinois, thereby indirectly acquiring 100 percent of the voting shares of First State Bank of Danvers, Danvers, Illinois.

3. *Lone Rock Bancorporation*, Lone Rock, Iowa; to become a bank holding company by acquiring 99 percent of the voting shares of The Lone Rock Bank, N.A., Lone Rock, Iowa.

Board of Governors of the Federal Reserve System, November 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-29890 Filed 11-14-84; 8:45 am]

BILLING CODE 6210-01-M

First Bankshares, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Bankshares, Inc.*, Barboursville, West Virginia; to engage *de novo* in acting as agent in the sale of credit life insurance sold in connection with extensions of credit by its bank subsidiary, The First State Bank.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth National Corporation*, Tulsa, Oklahoma; to engage *de novo* through its subsidiary, Summit Money Managers, Tulsa, Oklahoma, in providing investment advisory and management services to employee benefit plans and their fiduciaries and individuals. Company will also offer investment advisory services in the area of stocks, bonds, options and cash equivalents.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard, Street, Dallas, Texas 75222:

1. *Swiss Avenue Bankshares, Inc.*, Dallas, Texas; to engage *de novo* in making and servicing loans and other extensions of credit, for its own account or for the account of others, to include origination purchase, or sale of industrial revenue bonds and other loans such as would be made by a mortgage or commercial finance company.

Board of Governors of the Federal Reserve System, November 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-29891 Filed 11-14-84; 8:45 am]

BILLING CODE 6210-01-M

The Marine Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 Federal Register 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Marine Corporation*, Milwaukee, Wisconsin; to acquire 100 of the voting shares of Independence Bank Group, Inc., Waukesha, Wisconsin, thereby indirectly acquiring Independence Bank Brookfield, Brookfield, Wisconsin; Independence Bank Elkhorn (N.A.), Elkhorn, Wisconsin; Independence Bank, Kenosha, N.A., Kenosha, Wisconsin; Independence Bank Madison (N.A.), Monona, Wisconsin; Independence Bank New Berlin, New Berlin, Wisconsin; Independence Bank Oconomowoc (N.A.), Oconomowoc, Wisconsin; Independence Bank, Waukesha (N.A.), Waukesha, Wisconsin; and Independence Bank Wauwatosa (N.A.), Wauwatosa, Wisconsin.

The Marine Corporation has also applied to acquire Independence Trust Company, Waukesha, Wisconsin, engaging in general trust company activities; and Independence Mortgage Company, Inc., New Berlin, Wisconsin, engaging in making and acquiring loans for placement of sale in a secondary mortgage market, and to service mortgage loans for affiliates and customers.

Board of Governors of the Federal Reserve System, November 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-29892 Filed 11-14-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) has requested the Office of Management and Budget (OMB) to review and approve the extension of four information collections.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and to William W. Hiebert, GSA Clearance Officer, General Services

Administration (ATRAI), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: See below.

1. *Purpose.*

a. *Description of Property for Possible Leasing, Lessor's Annual Cost Statement, Proposal to Lease Space.* This collection describes property for possible leasing to the Federal Government and is used by GSA to obtain offers in a standardized format for evaluation. Respondents and responses 2,075; hours 18,000. Contact: Hilary Peoples, Public Buildings Service (202–566–0638).

b. *U.S. Government Lease for Real Property.* This collection provides information concerning leasehold interests in real property from private ownership to the Government. Respondents and responses 2,400; hours 9,000. Contact: Audrey Harris, Office of Federal Supply and Services (703–557–1234).

c. *Transfer Order Surplus Personal Property/Continuation Sheet.* This requirement enables State and local organizations authorized by law to apply for the donation of Federal surplus personal property for use by eligible donees. Respondents and responses 63,000; hours 18,900. Contact: Jerome Jackson, Office of Finance (202–566–1260).

d. *Real Property Owned or Leased Inventory.* Information from this collection is used to maintain an inventory of all Federal real property holdings and to prepare a detailed and summary inventory report. Respondents 93, responses 186, hours 372.

2. *Obtaining copies of proposals.* Copies of these proposals may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Washington, D.C. 20405 (202–566–0666).

Dated: November 7, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84-29885 Filed 11-14-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

NIOSH Board of Scientific Counselors; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors.

Date: December 11–12, 1984.

Place: Auditorium B, Centers for Disease Control, 1600 Clifton Raod, NE., Atlanta, Georgia 30333.

Time and type of meeting: Closed 9:00 a.m. to 4:30 p.m.—December 11, 1984, Open 9:00 a.m. to 3:00 p.m.—December 12, 1984.

Contact person: Elliott S. Harris, Ph.D., Executive Secretary, NIOSH Board of Scientific Counselors, NIOSH, CDC, Building 1, Room 3007, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Phone: (404) 329–3773.

Purpose: The Board is charged with advising the Director of the National Institute for Occupational Safety and Health on the scientific quality and efficacy of the Institute's research as related to the Institute's goals.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, and future meeting dates. Beginning at 9:00 a.m. through 4:30 p.m., December 11, the site visit teams will discuss their review and evaluation of NIOSH intramural programs and projects conducted by NIOSH. This portion of the meeting will be closed to the public in accordance with the provisions set forth in Section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary and as time permits, appropriate questions will be asked of the speakers.

Agenda items are subject to change as priorities dictate.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: November 8, 1984.

Jeffrey P. Koplan,

Acting Director, Centers for Disease Control.

[FR Doc. 84-29879 Filed 11-14-84; 8:45 am]

BILLING CODE 4160-18-M

Public Health Service

Food and Drug Administration; Statement of Organizations, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services (as amended most recently in pertinent parts at 45 FR 76518, November 19, 1980, and 47 FR 3607, January 26, 1982) is amended to reflect the merging of the Executive Director of Regional Operations (EDRO) into the Office of Regulatory Affairs (ORA). This proposed reorganization will assist the Food and Drug Administration (FDA) in strengthening the accountability of the regulatory/compliance activities of the agency and achieve efficiencies in conducting these activities. Merging these regulatory and compliance functions will provide more efficient and effective overall coordination by combining similar functions and emphasizing FDA's commitment to regulatory and compliance activities. This merger will also facilitate the coordination and training of FDA field personnel to assure their activities are consistent with Headquarters policy as the field personnel interact with regulated industries in their respective scientific and technological fields. The structure of ORA will consist of: the Office of Enforcement, comprised of two divisions; the Office of Regional Operations, comprised of four divisions; and the Office of Regulatory Resources Management, comprised of two divisions.

Section HF–B, Organization and Functions is amended as follows:

1. Delete paragraph (f) *Office of Regulatory Affairs (HFA4)* and insert a new paragraph (f), *Office of Regulatory Affairs (HFA4)* reading as follows:

(f) *Office of Regulatory Affairs (HFA4).* Advises and assists the Commissioner and other key officials on regulations and compliance-oriented matters that have an impact on policy development and execution and long-range program goals.

Coordinates, interprets, and evaluates the agency's overall compliance efforts; as necessary, establishes compliance policy or recommends policy to the Commissioner.

Stimulates an awareness within the agency of the need for prompt and positive action to assure compliance by regulated industries; works to assure an effective and uniform balance between voluntary and regulatory compliance and agency responsiveness to consumer needs.

Directs and coordinates the rulemaking activities of the agency, including preparation of Federal Register material, in coordination with the regulations management unit of PHS, the Department's executive secretariat, and the Office of the General Counsel.

Evaluates and coordinates all proposed legal actions to ascertain compliance with regulatory policy and enforcement objectives.

Executes direct line authority over all agency field operations; develops, issues, approves, or clears proposals and instructions affecting field activities; serves as the central point within the agency through which Headquarters offices obtain field support services.

Provides direction and counsel to Regional Food and Drug Directors in the implementation of policies and operational guidelines that form the framework for management of agency field activities.

Develops and/or recommends to the Commissioner policy, programs, and plans for activities between the agency and State and local agencies; administers the agency's overall Federal-State program and policy; coordinates the program aspects of agency contracts with State and local counterpart agencies.

Evaluates the overall management and capabilities of the agency's field organization; initiates action to improve the management of field activities and coordinates the formulation and management of career development plans.

Directs and coordinates the agency's emergency preparedness and civil defense program.

Operates the Federal Medical Products Quality Assurance Program for the agency.

(f–1) *Office of Regulatory Resource Management (HFA4A).* Coordinates agencywide voluntary compliance and industry information activities.

Serves as the agency lead office in developing and maintaining international regulatory policy and activities to assure U.S. consumers the same degree of protection from imported products as from domestically produced products. Develops regulatory policies and goals for input into the agency international strategy plan.

Serves as the agency lead office, in cooperation with the Office of Health Affairs, in initiating, coordinating, and offering specific regulatory bilateral agreements and Memoranda of Understanding (MOU's) to foreign countries.

Provides policy direction to other agency components in the initiation, development, and recommendation of specific domestic regulatory bilateral agreements and MOU's with other governments.

Provides technical input for the Office of Regulatory Affairs quality assurance program as it pertains to assuring the consistency and adequacy of field investigational and inspectional operations.

Develops proposed overall field manpower allocations and long- and short-range operational program plans; identifies management data requirements for information systems; analyzes and evaluates field performance data and overall accomplishments.

Advises the Associate Commissioner and the Regional Food and Drug Directors on all areas of management, including financial management, management analysis, and administrative operations.

Designs, develops, and manages the equal employment opportunity program and a comprehensive career development and training program for Office of Regulatory Affairs Headquarters and field employees.

(f–1–i) *Division of Planning, Evaluation, and Management (HFA4A1).* Coordinates development of overall long- and short-range operational program plans and develops field manpower allocations for their accomplishment.

Acts as an advisor on matters of planning, budgeting, manpower management, and program evaluation.

Develops and coordinates the implementation of the annual field operational program plans. Has primary responsibility for implementing the agency's manpower utilization program.

Prepares estimates of compliance program costs and monitors programmatic expenditures throughout the year, recommending program changes to conserve resources.

Develops and maintains domestic and import workload information.

Analyzes field performance data, evaluates overall field accomplishments in terms of stated goals and resource utilization, and recommends changes in operational program plans and field manpower allocations.

Develops planning and evaluation policy and guidance materials, based on agency policy decisions and program evaluation data, for use by the field in program planning and budgeting. Guides the field in evaluating their own performance and coordinates field evaluation of programs.

Provides management analysis services to the Office of Regulatory Affairs Headquarters and field; designs, develops, and implements management programs, and provides in-house management consulting services.

Manages the Office of Regulatory Affairs personnel management program and maintains liaison with the servicing personnel offices in both Headquarters and the regions.

(f–1–ii) *Division of Regulatory Information Systems (HFA4A2).* Serves as focal point for the development, implementation, and direction of information systems for field operations; designs, implements, and manages systems required for the utilization of data originating in the field.

Acts as the principal advisor in data processing and data communications matters.

Maintains liaison with field users of the Office of Regulatory Affairs information systems and data processing services to improve understanding and usage.

Determines the feasibility, costs, and benefits of updating present field ADP equipment and develops, maintains, and implements modifications to the field information processing system.

Conducts feasibility studies, designs systems, and develops specifications and proposals for computer-assisted process control and automatic data acquisition and analysis in field laboratories.

Represents the Office of Regulatory Affairs in laboratory activities involving computer-assisted analysis.

Applies the specific scientific methods, tools, and techniques of operations research to provide Office of Regulatory Affairs management with decision alternatives in the form of analytically derived information and a measure of the impact each alternative will have on the particular area being studied.

Develops and maintains a field information system instruction manual for uniform data reporting.

Participates in the development and implementation of training programs for field personnel in the utilization of information systems and data processing facilities.

(f–2) *Office of Enforcement (HFA4B).* Advises and assists the Associate Commissioner and other key officials on regulations and compliance-oriented matters which have an impact on policy development and execution and long-range program goals.

Coordinates, interprets, and evaluates the agency's overall compliance efforts; as necessary, establishes compliance

policy or recommends policy to the Associate Commissioner.

Stimulates an awareness within the agency of the need for prompt and positive action to assure compliance by regulated industries; works to assure an effective and uniform balance between voluntary and regulatory compliance and agency responsiveness to consumer needs.

Acts as liaison with other Federal agencies on agency compliance matters and encourages an effective and appropriate balance between voluntary and regulatory compliance.

Directs and coordinates the rulemaking activities of the agency, including preparation of Federal Register material, in coordination with the regulations management unit of PHS, the Department's executive secretariat, and the Office of the General Counsel.

Evaluates and coordinates all proposed legal actions to ascertain compliance with regulatory policy and enforcement objectives.

Directs and coordinates with the Office of Regional Operations (ORO), other agency components, and Office of the General Counsel, new or novel cases which may be precedent-setting.

Resolves appeals when compliance actions are disapproved by the bureaus, centers, or the Office of the General Counsel.

Coordinates development of the agencywide bio-research monitoring activities; monitors compliance activities to assure uniform application of compliance policy; serves as liaison with other Federal agencies and outside organizations relating to such agencywide activities.

(f–2–i) *Division of Regulations Policy (HFA4B1).* Directs, manages, and coordinates the agency's rulemaking activities and regulations development system. Initiates new and more efficient systems or procedures to accomplish agency goals in the rulemaking process and plans "regulatory reform" steps. Advises the Director, Office of Enforcement, and other senior agency officials on formulation of broad agency regulatory policy and development of regulations reflecting that policy.

Reviews proposed regulations, final regulations, and other agency documents to be published in the **Federal Register**. Assures that they are necessary, consistent with established agency policy, clearly written, enforceable, coordianted with other agency organizational entities and Federal, State, and local government agencies, appropriately responsive to public participation requirements and executive orders, and that they have been assessed for economic and environmental effects.

Coordinates, with other agency components, the evaluation of existing regulations to determine whether they are efficiently and/or effectively accomplishing their intended purpose. Identifies regulations that require revision to correspond with current standards and those that should be revoked for obsolescence. Makes recommendations for disposition of these regulations.

Initiates and participants in interagency discussions on agency regulations, plans, and policies to improve coordination of Federal regulations. When appropriate, assumes the lead in working with other Federal, State, or local agencies on a specific regulation or in developing an effective alternative regulatory approach.

Arbitrates regulatory policy disagreements between agency components during the preparation of Federal Register documents.

Serves as liaison in the regulations development process with the Office of the General Counsel.

Reviews all material received for publication in the **Federal Register** for appropriateness as Federal Register documents. Determines the classification of documents as Rule, Proposal, or Notice.

Edits, processes, and prepares finished manuscript material for the issuance of agency proposal and final regulations and other documents published in the **Federal Register**.

Provides all Federal Register document development support functions (including cross-referencing, record retention, incorporation by reference, document tracking, and agency master print books of current CFR materials). Controls numbering and organization of agency codified material to assure proper structure of regulations being issued.

Provides guidance to assure timely processing of critical or sensitive Federal Register documents. Designs and implements systems to expedite new or unusual types of documents through the agency.

Provides advice to the field's small business representatives program concerning regulations and the Regulatory Flexibility Act. Coordinates with the Small Business Administration concerning the Regulatory Flexibility Act.

(f–2–ii) *Division of Enforcement (HFA4B2).* Establishes and/or recommends agency enforcement policy.

Provides coordinative direction for agency enforcement and compliance activities; serves as the focal point for agency operational relations on compliance problems and provides counsel to the field on compliance methods and to other countries concerned with the agency National Import Program.

Reviews proposed administrative and legal actions to ascertain compliance with enforcement policy and regulatory objectives and recommends appropriate agency action and forwards agency recommendations to the Office of the General Counsel.

Represents the field compliance activities in high level planning conferences and advises on the effects of altering compliance programs, objectives, procedures, or emphasis.

Reviews all compliance programs and assures that compliance programs are reviewed and cleared by all concerned organizational components; manages and monitors this clearance process.

Approves and coordinates input into field guidance materials including compliance programs, Compliance Policy Guides, Administrative Guidelines, and the Regulatory Procedures Manual, assuring compatibility of issuances and procedures in the agency.

Promotes and coordinates the development and implementation of agreements between the agency and foreign authorities which should enhance compliance with agency regulations by foreign groups exporting regulated products into this country.

Identifies with field managers the need for formal and informal compliance training programs for field personnel.

Provides regulatory guidance for and operational management of casework to insure timely, coordinated input from FDA Headquarters and the field.

Develops guidelines for the field and coordinates field implementation of provisions of the Privacy Act and the Freedom of Information Act.

Serves as the agency focal point for communications in the areas of nonclinical laboratory inspections, institutional review committees, clinical investigators, and sponsors.

Disseminates policy and program direction to the agency components carrying out the objectives of the Bio-research Monitoring Program.

Functions as an administrative and coordinating unit for Federal Government and international task groups developing and implementing bio-research monitoring programs.

Coordinates issuance of all inspectional assignments, monitors compliance activities after program implementation to assure uniform application of compliance policy, and monitors the agency's performance in meeting program accomplishment projections as they relate to the Bio-research Monitoring Program.

Serves as liaison with other Federal agencies and international authorities and negotiates MOU's and interagency agreements relating to the Bio-research Monitoring Program.

(f–3) *Office of Regional Operations (HFA4C).* Coordinates and manages all agency field operations on behalf of the Associate Commissioner; develops, issues, approves, or clears proposals and instructions affecting field activities; serves as the central point within the agency through which Headquarters offices obtain field support services.

Establishes field compliance and enforcement posture, based on agency policy.

Develops and/or recommends to the Associate Commissioner policy, programs, and plans for activities between the agency and State and local agencies; administers the agency's overall Federal-State program and policy; coordinates the program aspects of FDA contracts with State and local counterpart agencies.

Coordinates field consumer affairs and information programs; distributes timely information to the field; coordinates activities with agency counterpart organizations.

Serves as the agency focal point for activities relating to the Federal Medical Products Quality Assurance Program and maintains liaison with other Government agencies procuring medical supplies; issues final administrative approval for quality assurance of specific products/firms.

Evaluates the overall management and capabilities of the agency's field organization; initiates action to improve the management of field activities and coordinates the formulation and management of career development plans.

Implements nationwide information storage and retrieval systems for data originating in the field offices.

Develops and/or recommends to the Associate Commissioner policy, programs, and plans for applied research which relates to agency enforcement problems and which will be conducted by field installations; coordinates such research efforts with appropriate agency components.

Directs and coordinates the agency emergency preparedness and civil defense programs.

Provides other agency components with laboratory support in various highly specialized areas.

Recommends priorities for all field construction, repair, improvement, and renovation and recommends short- and long-range field facility utilization plans.

(f–3–i) *Division of Federal-State Relations (HFA4C1).* Provides an agency focal point for all programmatic and operational relationships with counterpart State and local officials to assure a cohesive and uniform agency policy.

Provides overall agency leadership and guidance in the development, coordination, and evaluation of the agency Federal-State program.

Makes recommendations to the Director, Office of Regional Operations, on matters regarding agency Federal-State program policy.

Serves as the day-to-day agency liaison with organizations of Federal, State, and local officials whose interests correspond to those of the agency.

Directs a program of State Management Conferences with key State officials and agency field components.

Develops and implements a wide range of training and educational activities and information systems for personnel in State and local counterpart agencies.

Serves as the agency focal point for coordination of the programmatic aspects of all agency contracts and grants with State and local counterpart agencies.

(f–3–ii) *Division of Field Science (HFA4C2).* Advises the Director, Office of Regional Operations, concerning the management of the agency's overall field scientific resources (including national experts) to assure their coordinated, efficient, and effective use; provides coordination between field and Headquarters scientific programs.

Represents the Director, Office of Regional Operations, on top level scientific policy and program matters.

Identifies goals and objectives for field scientific activities; develops policies and procedures as they relate to these activities; coordinates and develops manuals on field laboratory operating and technical procedures.

Develops and/or reviews procedures for investigating and evaluating industry compliance with laws and regulations administered by the agency; coordinates, develops, and maintains manuals on investigational and inspectional procedures.

Develops and, through onsite visits, implements programs to assure the consistency and adequacy of field investigational and inspectional practices.

Manages the agency foreign inspection program.

Participates in the design and implementation of investigational and inspectional training programs and career development programs for field inspectors and related personnel.

Manages and coordinates field acquistion and utilization of major investigational and inspectional equipment.

(f–3–iv) *Division of Emergency and Epidemiological Operations (HFA4C4).* Coordinates and provides facts regarding epidemiological investigations and other potential imminent dangers to public health on a 24-hour, 7-day-a-week basis to Headquarters, regional, and district personnel.

Coordinates the agency's epidemiological investigations program with other Federal agencies, private associations, State and local governments, and foreign governmental health agencies in conformance with policy of national and international scope.

Recommends and coordinates epidemiological investigational practices and procedures.

Serves as focal point within the agency for guidance on recall plans and procedures. Directs and coordinates field activities in support of all product recalls; maintains liaison with other agency components, industry, and other Government agencies to assure proper implementation and completion of recall plans and activities.

Directs and coordinates the emergency preparedness and civil defense programs; coordinates Headquarters and field efforts during periods of natural disaster or national emergency.

(f–4) *Regional Field Offices (HFRJ–HFRX).* An FDA Regional Field Office is the primary organizational component for each of ten regions and is organized into one or more district offices, divisions, and/or specialized centers. A Regional Field Office is under the direction of a Regional Food and Drug Director who is the primary executive of the agency within the region. The Regional Food and Drug Director is responsible for the effective implementation of all activities required to assure that regulated establishments within the region comply with laws and regulations enforced by FDA.

Within FDA Regional Field Offices, functions performed are as follows:

Provides managerial direction to the agency's field programs to achieve compliance with the laws and regulations for which the agency is responsible through appropriate voluntary correction or regulatory action.

Manages resource allocations, money, and people.

Manages a field management information system.

Coordinates agency activities with related operations of the PHS Regional Health Administrator and the Department's Regional Director.

Develops and maintains cooperative relationships with State, local, and other Federal agencies; serves on interagency councils; encourages improved State and local consumer protection programs pertinent to agency-enforced laws and regulations.

Assists State and local cooperative officials in the development of uniform legislation, codes, and regulations.

Represents the agency, or provides policy and direction for agency representation, in dealing with public and private organizations, such as governmental agencies, volunteer agencies, educational institutions, industry and professional associations, and the local media within the region.

Plans and evaluates program activities; measures accomplishments against annual field workplan objectives; initiates management and program analyses; manages a Quality Assurance Program; and advises Headquarters regarding strategy changes needed to reach existing or modified objectives.

Advises Headquarters on new or emerging problems and trends, future program needs and priorities; State legislative activities; manpower, equipment, financial needs, and long-range planning.

Coordinates emergency activities by maintaining liaison with Department components, and other Federal departments and agencies and by providing assistance to States and localities in the event of a national disaster or other emergency.

Advises, commissions, and certifies State personnel; and monitors and evaluates State programs in milk, shellfish, food service sanitation, and radiation safety.

Determines acceptability of items, subject to the agency's jurisdiction, for entry into this country through examination of available records, inspection of the product, or by sampling and laboratory examination of the product followed by release, detention, and/or rejection.

Conducts investigations and inspections, and analyzes samples of foods, drugs, and other commodities for which the agency has regulatory responsibility.

Conducts administrative hearings on alleged violations, and initiates appropriate enforcement action.

Recommends legal action to Headquarters, to the Office of the General Counsel, or to the responsible U.S. attorney (when such direct reference is authorized), and assists in implementing approved action.

Detains medical devices and meat, poultry, or egg products that may be violative.

Manages recalls and performs followup activities to assess recall effectiveness and prevent recurrences.

Conducts research to develop and refine analytical methodology and to explore new systems of analysis; maintains liaison with scientists and scientific bodies with interests pertinent to laboratory activities.

Manages, evaluates, and audits the program aspects of Federal-State contracts.

Manages an equal employment opportunity and career development and training program.

Conducts consumer affairs and information programs.

Provides formal mechanisms for receiving consumer input into agency planning and priority setting systems.

Directs a freedom of information program consistent with agency policy.

Maintains liaison with the medical community to share the agency's position on pertinent issues, and to obtain feedback regarding the concerns of physicians and other health-related scientists.

Conducts a small business representative program.

2. Delete paragraph (x) and all subparagraphs for the *Executive Director of Regional Operations (HFR).*

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs: all delegations of authority to the Executive Director of Regional Operations are vested in the Associate Commissioner for Regulatory Affairs; all delegations of authority to Associate Directors of the Office of the Executive Director of Regional Operations are vested in the Directors of Offices in the Office of Regulatory Affairs; and all delegations of authority to any other officer or employee of the merged organizations in effect prior to the date of this order shall continue in effect in them or their successors.

Dated: November 5, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-29839 Filed 11-14-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1476]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submissions of Proposed Information Collection to OMB

Proposal: Evaluation of Child Care Services in Facilities Furnished by PHAs/IHAs
Office: Policy Development and Research
Form No. None
Frequency of Submission: Single Time
Affected Public: Individuals or Households and State or Local Governments
Estimated Burden Hours: 389
Status: New
Contact: Garland Allen, HUD, (202) 755-5574; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 16, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-29971 Filed 11-14-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1475]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the propsals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) the title of the information collection proposals; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposals; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Informaton Collection to OMB

Proposal: Title I Monthly Statement—Reconcilement of Insurance Charges
Office: Administration
Form No.: HUD-646
Frequency of Submission: Monthly
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 2,085
Status: Reinstatement
Contact: Cynthia H. Palmer, HUD, (202) 755-5246, Robert Neal, OMB, (202) 395-7316

Proposal: Request for Financial Information (24 CFR 203.651)
Office: Housing
Form No.: HUD-92068 F
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees
Estimated Burden Hours: 19,000
Status: Extension
Contact: Art Orton, HUD, (202) 755-6672, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-29972 Filed 11-14-84; 8:45 am]

BILLING CODE 4210-01-M

Notice of Submission of Proposed Information Collection to OMB

Proposal: Indian Community Development Block Grant Program
Office: Community Planning and Development
Form No. SF-424, HUD-4011, 4121, 4122, 4123, 4125, and 4126
Frequency of Submission: Annually
Affected Public: State or Local Governments and Indian Tribes
Estimated Burden Hours: 20,200
Status: Extension
Contact: Marcia Brown, HUD (202) 755-6092, Robert Neal, OMB, (202) 395-7316.

Proposal: Mortgagee's Application for Partial Settlement (Multifamily Mortgage)
Office: Administration
Form No. HUD-2537
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 50
Status: Extension
Contact: Eugene Morroni, HUD, (202) 755-7523, Robert Neal, OMB, (202) 395-7316.

Proposal: New Horizons Fair Housing Strategy and Assessment
Office: Fair Housing and Equal Opportunity
Form No. HUD-960
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 2,400
Status: Extension
Contact: Arnold McNeill, HUD (202) 755-7007, Robert Neal, OMB, (202) 395-7316.

Proposal: Application for Homeownership Assistance under Section 235 of the National Housing Act
Office: Housing
Form No. HUD-93100
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 2,700
Status: Reinstatement
Contact: William A. Rolfe, HUD, (202) 755-3046, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 31, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-29973 Filed 11-14-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-84-1477]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Project Improvement Program, Budget Worksheet, and Review Report
Office: Housing.
Form number: HUD-9824, 9834, 9834 A&B, 9835, and 9835 A&B
Frequency of submission: Annually
Affected Public: Businesses or Other For-Profit
Estimated burden hours: 7,000
Status: Reinstatement
Contact: Joel Balsham, HUD, (202) 755-5654; Robert Neal, OMB, (202) 395-7316

Proposal: Requisition for Advance of Flexible Subsidy Funds
Office: Housing
Form number: HUD-9823A, 9823B, and 9824A
Frequency of submission: Quarterly
Affected public: Businesses or Other For-Profit
Estimated burden hours: 9,500
Status: Reinstatement
Contact: Joel Balsham, HUD, (202) 755-5654; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 7, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-29970 Filed 11-14-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-84-1478]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Mangement and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as requried by the Paperwork Reduction Act (44 U.S.C. Chaper 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or rein statement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: HUD Project/Building Name and Address Input Form
Office: Fair Housing and Equal Opportunity
Form number: HUD-951
Frequecy of submission: Single Time
Affected Public: Businesses or Other For-Profit and Non-Profit Institutions
Estimated burden hours: 6,200
Status: New
Contact: Mary George, HUD, (202) 755-5288; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 12, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-29969 Filed 11-14-84; 8:45 am]
BILLING CODE 4210-0-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

California; Realty Action Sale of Public Lands in Nevada County

Federal Register Document No. 83-26784 appearing on pages 44937 and 44938 of the September 30, 1983 issue did not segregrate the lands from appropriation under the public land laws, including the mining laws. The notice of the above document is amended to segregate the lands in T. 15 N., R. 8 E., Section 3, Lot 113 from location under the public land laws, including the mining laws.

D. K. Swickard,

Area Manager.

[FR Doc. 84-29962 Filed 11-14-84; 8:45 am]
BILLING CODE 4310-40-M

[I-20087]

Realty Action; Competitive Sale of Public Lands in Cassia County, ID; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I-20087, Competitive Sale of Public Lands in Cassia County, Idaho; Amendment.

SUMMARY: This document amends the original Notice of Realty Action that was published on May 12, 1983 (48 FR 21380) to allow for the re-offering of parcel I-20087 for sale under the updated sale regulations.

The following described land has been examined and through development of land use decisions based on public input, it has been determined that the sale of the tract is consistent with section 203(a)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA). The parcel is not presently available for livestock grazing; therefore, no cancellation of grazing preference is required under the regulations in 43 CFR 4110.4-2(a). Legal access to the parcel will not be provided by BLM. The land will be offered for sale using competitive bidding procedures (43 CFR 2711.3-1,2) for no less than the appraised fair market value. Any bids for less than such value will be rejected as required by FLPMA. The appraised fair market value will be available after November 30 from the Burley District Office. Only sealed bids will be accepted. A bid will also constitute an application for conveyance of the mineral rights, except geothermal, oil and gas. The mineral interests being offered for conveyance have no known monetary value. Each bidder must submit a fifty dollar ($50) non-returnable (for the successful bidder) filing fee for the mineral conveyance (43 CFR 2720.1-2(c)) and 30 percent of the full bid price (43 CFR 2711.3-1(d)), with the bid. Failure to deposit these sums will result in disqualification as the high bidder.

Should the land remain unsold after the January 9, 1985 offering, it will be reoffered for sale at the same time and place the first Wednesday of each month for three consecutive months until sold or the sale is otherwise suspended.

Legal Description	Acres
T. 15 S., R. 24 E., S.M., Sec. 22: SW¼NE¼	40

The lands are hereby segregated from appropriation under the public land laws, including the mining laws as provided by 43 CFR 2711.1-2(d). The segregative effect of the NORA shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the Federal Register of a termination of the segregation, or 270 days from the date of publication, whichever occurs first.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas rights (43 U.S.C. 1719).

DATES: All sealed bids must be received by 1:30 p.m. on January 9, 1985. At this time all bids will be opened at the Burley District Office.

Dated: November 6, 1984.

John S. Bevis,

District Manager.

[FR Doc. 84-29988 Filed 11-14-84; 8:45 am]
BILLING CODE 4310-GG-M

[F-14955-A]

Alaska Native Claims Selection; Wales Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance (DIC) under the provisions of sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611 (1976), will be issued to Wales Native Corporation, for approximately 0.45 acres. The lands involved are within the Kateel River Meridian, Alaska:

Sec. 5, T. 2 N., R. 45 W.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in the *Nome Nugget*. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until December 17, 1984 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Barbara Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-29000 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-JA-M

[CA 15850]

Realty Action; Direct Sale of Public Land in Trinity County, CA

Correction

In FR Doc. 84-28152 appearing on page 42989 in the issue of Thursday, October 25, 1984, make the following correction: In the second column, third paragraph, fifth line, "$250.000" should read "$250.00.".

BILLING CODE 1505-01-M

Proposed Resource Management Plan and Final Environmental Impact Statement; Cedar-Beaver-Garfield-Antimony Planning Area, UT

Correction

In the issue of Friday, November 9, 1984, in the document beginning on page 44814 in the third column, make the following correction: On page 44815, in the first column, in the file line at the end of the document, "FR Doc. 84-29926" should read "FR Doc. 84-29526".

BILLING CODE 1505-01-M

[U-53104]

Utah; Realty Action Sale of Public Lands in Uintah County

The Bureau of Land Management, based on land use plans, has determined that the following described land is suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value ($6,400):

T. 3 S., R. 19 E., SLM
Sec. 20: NE¼NE¼
Total 40 acres.

The above described land will be offered for sale on January 15, 1985, by sealed bids. All bids must be received by 12:00, January 15, 1985, at the Vernal District Office, 170 South 500 East, Vernal, Utah 84078. Bids will be opened and a high bidder declared at 1300 hours, January 15, 1985.

The land is being offered for sale in order to facilitate land-use planning in the area, enhance land-use compatibility with adjoining private lands, and to steamline administrative procedures. The land has potential for livestock grazing and limited wildlife use. The sale is consistent with the Bureau's planning for the land involved with notification to the Uintah County Commission, the Utah State Planning Office, and the Utah Division of Wildlife Resources.

The terms and conditions applicable to the sale are:

1. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

2. The sale will involve the surface estate only. The subsurface estate will be reserved to the United States.

3. The sale of this land will be subject to all existing rights.

4. No preference right will be given to the adjoining private land owner. No bids will be accepted for less than the appraised price and bids must include all land in the parcel. Federal law requires that bidders be U.S. citizens or, in the case of a corporation, be subject to the laws of the State of Utah. Proof of citizenship may be required.

5. The United States will reserve the right of ingress and egress for mineral development.

6. Upon disqualification of the apparent high bidder, the next high bid will be honored.

7. A right-of-way is reserved for ditches and canals constructed by the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

The highest bid will establish the sale price. Each bid must be accompanied by a deposit of one-fifth of the full bid price. The remainder of the full bid price shall be paid within 30 days of the sale. Failure to pay the full price within 30 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale.

All bids will be either returned, accepted, or rejected within 30 days of the sale date.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the Vernal District Manager, 170 South 500 East, Vernal, Utah 84078. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 84-29000 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-DQ-M

[N-39502]

Issuance of Conveyance Document; Issuance of Land Exchange Conveyance Document; Exchange of Public and Private Lands in Lyon and Douglas Counties; NV

November 5, 1984.

The United States issued an exchange conveyance document to John J. Ascuaga and Rose L. Ascuaga on October 31, 1984 for the following described lands under the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

Mount Diablo Meridian

T. 11 N., R. 23 E.,
Sec. 12, SE¼NE¼.
T. 11 N., R. 24 E.,
Sec. 7, lots 1, 2, NE¼, E½NW¼;
Comprising 362.06 acres of public land.

In the exchange for these lands, the United States acquired the following described lands:

Mount Diablo Meridian

T. 14 N., R. 19 E.,
Sec. 16, SE¼NW¼, E½SE¼;
Sec. 21, NE¼NW¼;
Sec. 22, SW¼;
Sec. 27, N½N½NW¼;
Comprising 360.00 acres of private lands.

The purpose of this exchange was to acquire the non-Federal lands within and adjacent to the boundary of the Toiyabe National Forest. The public interest was served through completion of this exchange.

The values of Federal public land and the non-Federal land in the exchange were apprised equally at $280,000 each.

William K. Stowers,

Acting Chief, Lands and Minerals Operations.

[FR Doc. 84-29004 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-HC-M

Vale District Grazing Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting, Vale District Grazing Advisory Board.

SUMMARY: Notice is given in accordance with Pub. L. 92-463 that the Vale District Grazing Advisory Board will meet December 10, 1984. The Advisory Board will discuss grazing increases in wilderness study areas, land tenure adjustment, and establishment of emergency forage reserves.

ADDRESS: The meeting will begin at 9:00 A.M. in the conference room of the District Office, 100 Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, Oregon 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 84-30123 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-33-M

Vale District Advisory Council, Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Vale District Advisory Council.

SUMMARY: Notice is given in accordance with Pub. L. 92-463 that the Vale District Advisory Council will meet December 11, 1984. The Advisory Council will discuss grazing increases in wilderness study areas, land tenure adjustments, subleasing of grazing permits, and establishment of emergency forage reserves.

ADDRESS: The meeting will begain at 9:00 A.M. in the conference room of the District Office, 100 Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, Oregon 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 84-30124 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement for the Comprehensive Conservation Plan and Wilderness Suitability Assessment for the Yukon Delta National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to prepare an Environmental Impact Statement (EIS) and a comprehensive conservation plan and wilderness suitability assessment for the Yukon Delta National Wildlife Refuge in Alaska. This notice is being furnished as required by the National Environmental Policy Act regulations to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Public meetings will also be held to solicit comments and participation in this scoping process.

DATES: Written comments should be received by June 30, 1985. A public meeting regarding the project will be held at:

Bethel, Alaska, Kuskokwim Valley Community College, December 13, 1984.

Additional public meetings will be held in several communities throughout the Yukon—Kuskokwin Delta region and in Anchorage during the period January–May 1985. Notice will be published locally in advance of these meetings.

ADDRESS: Comments should be addressed to: Regional Director; U.S. Fish and Wildlife Service; 1011 E. Tudor Road; Anchorage; Alaska 99503. Attention: Mike Evans.

FOR MORE INFORMATION CONTACT: Mike Evans, Public Affairs Specialist, Refuge Planning, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. (907) 786-3389.

SUPPLEMENTARY INFORMATION: This planning and assessment project is being carried out pursuant to sections 304(g) and 1317 and other provisions of the Alaska National Interest Lands Conservation Act of 1980. The environmental impacts of the project will be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), other appropriate federal regulations, and Fish and Wildlife Service procedures for complying with those regulations.

We estimate that the draft EIS, plan, and assessment will be available for public review by December 1986.

David L. Olsen,

Regional Director.

[FR Doc. 84-29987 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Mid-Atlantic Regional Technical Working Group; Meeting

November 9, 1984.

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463).

Name: Mid-Atlantic Regional Technical Working Group (RTWG).

Date: December 11, 1984.

Place: Tysons Corner Holiday Inn, Potomac Room, 1960 Chain Bridge Road, Vienna, Virginia.

Time: 9:00 AM to 5:00 PM.

Committee membership consists of representatives from Federal Agencies, the Coastal States of New York through North Carolina, the petroleum industry, and other private interests. The purpose of the meeting is to advise the Director, Minerals Management Service (MMS), on technical matters of Regional concern regarding prelease and postlease sale activities.

Agenda: OCS Sale No. 111 Draft Environmental Impact Statement; 5-Year OCS Leasing Schedule; Legislative Update; Shell Deep Water Drilling Update/Review; Port Access Routes Study; Delaware Geologic Survey Atlantic Basement Map; Fiscal Year 1986 Environmental Studies Update; National Pollutants Discharge Elimination System; Election of Next State RTWG Cochair; Discussion of Next Meeting; Summary of Action Items.

This meeting will be open to the public. Public attendance may be limited by the space available. Persons wishing to make oral presentations to the Committee regarding items on the agenda should contact Mr. Bruce G. Weetman of the Atlantic OCS Regional Office at (703) 285-2165 by December 4, 1984. Written statements should be submitted by December 18, to the

Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Minutes of the meeting will be available for public inspection and copying by March 11, 1985, at the above address.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 84-29894 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Offshore the Middle Atlantic States; Availability of Draft Environmental Impact Statement and Location and Dates of Public Hearings Regarding Proposed Oil and Gas Lease Sale No. 111

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a draft environmental impact statement relating to a proposed oil and gas lease sale offering tracts consisting of 20.3 million acres of submerged lands on the Outer Continental Shelf (OCS) offshore the Middle Atlantic States (OCS Sale No. 111).

Single copies of the draft environmental impact statement can be obtained from the Regional Director, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna Virginia 22180.

Copies of the draft environmental impact statement will also be available for review in the following public libraries:

East Albermarle Regional Library, 205 E. Main Street, P.O. Box 303, Elizabeth City, NC 28560
Olivia Raney Public Library, 104 Fayetteville Street, Raleigh, NC 27601
New York Public Library, 5th Avenue & 42nd Street, New York, NY 10018
New Berne-Craven County Public Library, 400 Johnson Street, New Bern, NC 27909
Wilmington Public Library, 409 Market Street, Wilmington, NC 28401
Nassau Library System, Reference Division, 900 Jerusalem Avenue, Uniondale, NY 11533
Suffolk Cooperative Library, 627 N. Sunrise Service Road, P.O. Box 1872, Bellport, NY 11713
Atlantic City Free Library, Illinois & Pacific Avenues, Atlantic City, NJ 08401
Newport Public Library, Aquidneck Park, Newport, RI 02840
Christian Science Monitor, 1 Norway Street, Boston, MA 02115
Rehoboth Beach Public Library, Municipal Center, Rehoboth Avenue, Rehoboth Beach, DE 19971
Atlantic County Library, Surrogate Building, Mays Landing, NJ 08330
Public Library, 639 Washington Street, Cape May, NJ 08204
Norfolk Public Library System, 301 S. City Hall Avenue, Norfolk, VA 23510
East Brunswick Public Library, 2 Jean Walling Civic Center, East Brunswick, NJ 08816
Eastern Shore Area Library, 122–126 South Division, Salisbury, MD 21801
Trenton Free Public Library, 120 Academy Street, Trenton, NJ 08608
Providence Public Library, 150 Empire Street, Providence, RI 02903
Boston Public Library, Copley Square, Boston, MA 02117
Free Library of Philadelphia, Logan Circle, Philadelphia, PA 19141
Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753
Public Library, 105 45th Street, Sea Isle City, NJ 08243
Enoch Pratt Free Library, 400 Cathedral Street, Baltimore, MD 21201
Monmouth County Library, 25 Broad Street, Freehold, NJ 07728
New Jersey State Library, P.O. Box 1898, Trenton, NJ 08625
Wilmington Institute Free Library and Newcastle County Free Library, 10th & Market Streets, Wilmington, DE 19801

In accordance with 30 CFR 256.26, public hearings will be held on December 12, 1984, at the Capitol Plaza Hotel, 240 W. State Street, Trenton, New Jersey, and on December 14, 1984, at the Holiday Inn of Annapolis, U.S. 301–50, Annapolis, Maryland, for the purpose of receiving comments regarding the Middle Atlantic OCS leasing proposal. The hearings will begin at 9:00 a.m. and will conclude after all testimony has been received.

The hearings will provide the Secretary of the interior with additional information from both public and private sectors to help evaluate fully the potential effects of leasing oil and gas tracts offshore the Middle Atlantic States. In addition, the proceedings will give the Secretary the opportunity to receive further comments and views of concerned Federal, State, and local agencies.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearing are requested to contact the Regional Director, Atlantic OCS Region, Minerals Management Service, at the above address by 4:30 p.m., December 5, 1984. Written comments from those unable to attend the hearing also should be addressed to the Regional Director, Atlantic OCS Region, Minerals Management Service, at the above address. The Minerals Management Service will accept written testimony and comments on the draft environmental impact statement until January 8, 1985. Time limitations may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented, however, by a more complete written statement which may be submitted to the hearing officer at the time of presentation of the oral statement.

Written statements presented in person at the hearing will be considered as part of the hearing record. To the extent that time is available after presentation of oral statements by those who have given advance notice, the hearing will be open to the presentation of statements by other members of the public present.

After testimony and comments have been received and analyzed, a final environmental impact statement will be prepared.

William D. Bettenberg,

Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 84-29894 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Redelegation of Authorities to the Field; Latin America and the Caribbean Region

Section I. Definition

AID Missions and Posts

AID Missions and Posts subject to this redelegation of authorities shall be the AID Missions to and Posts for Belize, Bolivia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Panama, Paraguay and Peru, and the Regional Office for Central American Programs (ROCAP) and the Regional Development Office for the Caribbean (RDO/C).

Section II. Authorities

A. Implementing Authorities

Authority to negotiate, execute, and implement, in accordance with the terms of the authorization thereof and in accordance with applicable statutes and regulations, loan, grant and guaranty (other than Housing Guaranty) agreements, and amendments thereto, to their respective countries or regions, whether heretofore or hereafter authorized, including, but not limited to, authority:

1. To sign project grant agreements with foreign governments, foreign government agencies, and international organizations having a membership consisting primarily of such foreign governments; and to sign all project loan and guaranty (other than Housing Guaranty) agreements and trust fund agreements;

2. To approve contractors, review and approve all borrower/guarantee contracts financed in whole or in part by an AID loan or grant and review and approve request for proposals and invitations for bids with respect to such contracts; *provided, however,* that any invitations for bids for construction activities which will be advertised in the United States and which are estimated to be $500,000 or more shall be first reviewed and approved by a Regional Legal Advisor or GC and by a U.s. direct hire engineer; and provided *further, however,* that any invitations for bids for fabricated or made-to-order equipment (e.g., turbines, transformers but not motor vehicles) which are estimated to $200,000 or more shall be first reviewed and approved by a Regional Legal Advisor or GC and by a U.S. direct hire engineer;

3. To prepare, negotiate, sign and deliver Project Implementation Letters; and

4. To review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent under such loan, grant or guaranty agreements.

(See Delegation Nos. 5, 38)

Please note that the Director, SER/CM, has redelegated to the principal AID officers at posts in the LAC Region the authority to (i) execute OPGs with U.S. PVOs, pursuant to Redelegation of Authority No. 99.1.202 and (ii) sign grants to foreign non-governmental non-profit organizations, pursuant to Redelegation of Authority No. 99.1.122).

B. Waiver Authorities for Source, Origin and Nationality

Authority to waive, in accordance with the applicable statutes and regulations, including the terms of Delegation of Authority No. 40 (AID Handbook 5) and the criteria prescribed by Supplement B of AID Handbook 1:

1. Selected Free World

U.S. source, origin and nationality requirements, to permit AID financing of the procurement of goods and services, other than transportation services in countries included in AID Geographic Code 941 (Selected Free World) and the cooperating country, when the cost of goods and services does not exceed $5.0 million (exclusive of transportation costs) of funds made available under the Foreign Assistance Act of 1961, as amended (the "Act"); provided, however, that any waiver of the United States source and origin requirements for motor vehicle procurement shall not exceed $50,000 for any one transaction; that each such motor vehicle waiver shall contain the required certification, as set forth in Delegation of Authority No. 40; and that a summary of each waiver shall be cabled to AA/LAC when the waiver is signed and that this waiver authority for the AID officers in Belize and Guyana shall be limited to $1 million.

2. Free World

U.S. or AID Geographic Code 941 source, origin and nationality requirements, to permit AID financing of the procurement of goods and services, other than transportation services, in any country included in AID Geographic Code 899 (Free World) or AID Geographic Code 935 (Special Free World), when the cost of goods and services does not exceed $5.0 million (exclusive of transportation costs) of funds made available under the Act; *provided, however,* that any waiver of the United States source and origin requirements for motor vehicle procurement shall not exceed $50,000 for any one transaction; and that each waiver hereunder shall contain the appropriate certification, as set forth in Delegation of Authority No. 40; and that a summary of each waiver shall be cabled to AA/LAC when the waiver is signed and that this waiver authority for the AID officers in Belize and Guyana shall be limited to $1 million.

(See Delegation No. 40).

C. Excess Property

In accordance with the provisions of Section 607 of the Act and of AID Handbook 16, and subsequent to my authorizing such assistance, authority to execute transfer or transfer/trust agreements and amendments thereto with friendly countries or with international organizations having a membership primarily of foreign governments.

(See Delegation No. 40).

D. Extension of Terminal Dates

In accordance with AID Handbook 3 and Delegation of Authority No. 133, and any amendments thereto, authority to extend:

1. The terminal date for meeting conditions precedent for a cumulative period of not to exceed one year;

2. The terminal date for requesting disbursement authorizations for a cumulative period of not to exceed two years; and

3. The terminal date for completion of performing services and furnishing goods (PACD) for a cumulative period of not to exceed two years;

Provided, however, that this authority shall be exercised in writing, including a justification therefor, and a copy shall be forwarded to the Director, LAC/DR; and *provided further, however,* that this authority shall not be exercised if the result of so doing will cause the total life of a project (e.g., from point of initial obligation to revised PACD) to be more than ten years.

E. Waiver Authorities for Competition Under Borrower/Grantee Contracts

Authority to waive, in accordance with the terms and provisions of chapter 12C4a of Supplement B of AID Handbook 1, competition in the procurement of goods and services and to authorize a single-source negotiated borrower/grantee contract; *provided* that the estimated procurement does not exceed, $1,000,000; that the USAID Noncompetitive Review Board finds the waiver justified; that summary of each waiver shall be cabled to AA/LAC when the waiver is signed; and that this authority for the AID officers in Belize and Guyana is limited to $100,000.

(Please note that the provisions for noncompetitive negotiations of AID direct contracts are set forth in the AIDPRs, Part 7–3.)

F. Waivers of Advertisement Requirements

Authority to waive the requirement that a notice of availability of an IFB, RFTP, TFQ, or prequalification questionnaie be publicized in the *Commerce Business Daily* or an AID Publication for contracts which are $500,000 or less in estimated value; *provided,* however, that this authority only shall be exercised to avoid serious delay in project implementation; and *provided further,* however, that efforts shall in any event be made to secure proposals, bids, or offers from a reasonable number of potential contractors or suppliers.

Section III. Redelegation of Authorities

Pursuant to the authorities delegated to me as Assistant Administrator for Latin America and the Caribbean, I hereby delegate all of the authorities set forth in Section II hereof, retaining for

my self concurrent authority to exercise any of the functions herein redelegated. to the principal AID officer of each Mission and Post included in Section 1.

A. The authorities redelegated pursuant to Section III hereof shall be exercised after consultation with a Regional Legal Advisor or GC/LAC, as appropriate, and any other appropriate support office (e.g., Contract Management, Commodity Management).

B. The authorities redelegated pursuant to Section III hereof (other than those set forth in Section II. E) may, in the discretion of the principal AID officer, be futher redelegated to his/her deputy or the individual acting in such capacity or may be exercised by the person acting in the capacity of the principal AID officer while the latter is out of the country (with my prior approval).

C. This redelegation of authorities shall become effective on the date of my execution of this document and shall supersede on that date all delegations of authority previously issued to the affected AID Missions and Posts by the Assistant Administrator for Latin America and the Caribbean and/or the Deputy U.S. Coordinator of the Alliance for Progress; provided, however, that all actions taken under the delegations of authority which are hereby superseded shall remain valid and are hereby reaffirmed.

Dated: November 2, 1984.

Victor Rivers,

Assistant Administrator, Bureau for Latin America and the Caribbean.

[FR Doc. 84-29802 Filed 11-14-84; 8:45 am]

BILLING CODE 8116-01-M

A.I.D. Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on December 11, 1984 at the State Department Building, 2201 C Street, NW., Washington, D.C., Conference Room 1105. The Committee will discuss recent developments in A.I.D. research policy.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Erven J. Long, Director, Office of Technical Review and Information, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Long, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235–8929.

Date: November 6, 1984.

Erven J. Long,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 84-29800 Filed 11-14-84; 8:45 am]

BILLING CODE 8116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-204 (Preliminary)]

Grand and Upright Pianos From the Republic of Korea; Determination

On the basis of the record [1] developed in investigation No. 731-TA-204 (Preliminary), the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from the Republic of Korea of grand and upright pianos, provided for in items 725.01 and 725.03 of the Tariff Schedules of the United States, which are allegedly being sold in the United States at less than fair value (LTFV).

Background

On September 21, 1984, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel on behalf of Aeolian Pianos, Inc., Memphis, TN; Baldwin Piano & Organ Co., Inc., Cincinnati, OH; Kohler & Campbell, Inc., Granite Falls, NC; and Sohmer & Co., Inc., Ivoryton, CT. The petitions allege that grand and upright pianos from the Republic of Korea are being, or are likely to be, sold in the United States at LTFV. Accordingly, effective September 21, 1984, the Commission instituted a preliminary antidumping investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the importation of such merchandise into the United States.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 3, 1984 (49 FR 39115). The conference was held in Washington, DC, on October 16, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission's determination in this investigation was made in an open "Government in the Sunshine" meeting held on October 29, 1984.

The Commission transmitted its report on this investigation to the Secretary of Commerce on November 5, 1984. A public version of the Commission's report, Grand and Upright Pianos from the Republic of Korea (investigation No. 731-TA-204 (Preliminary), USITC Publication 1599, November 1984), contains the views of the Commission and information developed during the investigation.

By Order of the Commission.

Issued: November 5, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30055 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-151]

Certain Apparatus for Flow Injection Analysis and Components Thereof; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: The U.S. International Trade Commission has terminated the above-captioned investigation as having abated and has vacated the presiding officer's initial determination of April 2, 1984

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

SUPPLEMENTARY INFORMATION: On April 2, 1984, the presiding officer filed an initial determination that there is a violation of section 337 in the importation and sale of certain apparatus for flow injection analysis and components thereof. The investigation was suspended on May 2, 1984, pending outcome of a reexamination proceeding in the U.S. Patent and Trademark Office, which was completed on August 28, 1984. On September 27, 1984, the Commission issued an order to show cause why this investigation should not be terminated as having abated as a result of the reexamination certificate. (49 FR 39117, October 3, 1984).

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure (47 F.R. 25134, June 10, 1982 and 48 FR 9242, March 4, 1983; codified at 19 CFR 210.53–210.56).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–5232–0161.

Issued: November 5, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30056 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-199]

Certain Anodes for Cathodic Protection and Components Thereof; Commission Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation To Join Four Respondents

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) amending the complaint and notice of investigation to add four respondents to the above-captioned investigation.

SUMMARY: The complaint filed with the Commission on June 11, 1984, by Duriron Co., Inc., and the notice of investigation published in the **Federal Register** of July 25, 1984 (49 FR 30023), have been amended to add the following parties as respondents in the investigation:

Jennings Winch & Foundry Co., Ltd., Tatham Street, Sunderland, U.K. SR1 2AG

Hugh Jennings & Co., Ltd., Meares House, 194/196 Finchley Road, London, England NW3 6B4

Richard's Foundries, Ltd., P.O. Box 78, Phoenix Iron Works, Martin Street, Leicester, England

Harco Corp., 1055 West Smith Road, Medina, OH 44256.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION:

The investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain anodes for the cathodic protection of metallic structures, and components thereof. *See* 49 FR 30023 (July 25, 1984).

On September 11, 1984, complainant Duriron Co., Inc. moved to amend the complaint and notice of investigation to add Jennings Winch, Hugh Jennings, and Richards as respondents (motion No. 199–1). The following unfair acts and unfair methods of competition were alleged with respect to the tubular anodes that these companies reportedly have manufactured abroad, exported to the United States, or sold to customers in the United States: (1) Common law trademark infringement; (2) direct, contributory, or induced infringement of at least claims 1, 4, 6, or 8 of U.S. Letters Patent 4,096,051; or (3) false designation of country of origin. The Commission investigative attorney supported the addition of Jennings Winch and Hugh Jennings but opposed the addition of Richards.

On September 20, 1984, the Commission investigative attorney moved to add Harco Corp. as a respondent, alleging that Harco is the consignee and exclusive distributor of Jennings Winch tubular anodes imported into the United States, and is responsible for the sale of such anodes in the United States (motion No. 199–2). The motion was unopposed.

On October 4, 1984, the presiding officer issued an ID granting both motions (Order No. 1). No comments on the ID were filed by other Federal agencies, and no petitions for review were filed by the parties. On November 5, 1984, the Commission determined that review of the ID on the Commission's own motion under 19 CFR 210.55 was not warranted.

Public Inspection. Copies of the ID, the motions to amend the complaint and notice of investigation, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471.

Issued: November 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30085 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-157 and 160 (Final)]

Carbon Steel Wire Rod From Argentina and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured by reason of imports from Argentina and Spain of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission also determines,[3] pursuant to section 735(b)(4)(A) of the Tariff Act of 1930, that there is not material injury by reason of massive imports of this product to an extent that it is necessary to impose the duties retroactively.

Background

The Commission instituted these investigations effective May 8, 1984, following preliminary determinations by the Department of Commerce that imports of carbon steel wire rod from Argentina and Spain were being sold in the United States at LTFV.

Notice of the institution of the Commission's investigations and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 31, 1984 (49 FR 22722), and on June 20, 1984 (49 FR 25317). The Commission's hearing was held in Washington, DC, on September 25, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on these investigations to the Secretary of Commerce on November 5, 1984. A public version of the Commission's report, Carbon Steel Wire Rod from

[1] The "record" is defined in § 207.2(i) of the Commission's *Rules of Practice and Procedure* (19 CFR 207.2(i)).

[2] Chairwoman Stern and Commissioner Lodwick find a reasonable indication of material injury or threat of material injury.

[1] The record is defined in section 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

[3] Commissioner Eckes dissenting.

Argentina and Spain (investigations Nos. 731–TA–157 and 160 (Final), USITC Publication 1598, 1984) contains the views of the Commission and information developed during the investigations.

Issued: November 5, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30084 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–170]

Certain Bag Closure Clips; Issuance of Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a general exclusion order in the above-captioned investigation.

SUMMARY: By virtue of the Commission's decision not to review the presiding officer's August 9, 1984, initial determination, the subject investigation resulted in a Commission determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain bag closure clips. The Commission found that respondent Hoan Housewares, Inc., had engaged in unfair acts in connection with the importation and sale of certain bag closure clips that would infringe the claims of U.S. Letters Patent Nos. 4,356,600 and 4,394,791. Such unfair acts were found to substantially injure an industry, efficiently and economically operated, in the United States.

A notice soliciting written comments on the issues of remedy, the public interest, and bonding was published in the **Federal Register** of September 12, 1984. Submissions were received from complainant and the Commission investigative attorney.

On November 9, 1984, the Commission determined that a general exclusion order pursuant to section 337(d) is the appropriate remedy; that the public interest considerations enumerated in section 337(d) do not preclude such relief; and that the amount of the bond during the Presidential review period under section 337(h) shall be 130 percent of the entered value of the imported articles.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1627.

SUPPLEMENTARY INFORMATION: Authority for this action is based upon 19 U.S.C. 1337. Copies of the Commission's Action and Order, its Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued November 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30085 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–207 (Preliminary)]

Cellular Mobile Telephones and Subassemblies Thereof From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–207 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of cellular mobile telephones and subassemblies thereof, provided for in items 685.23 and 685.29 of the Tariff Schedules of the United States (TSUS),[1] which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 20, 1984.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 5, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Schechter (202–523–0300) or Mr. Larry Reavis (523–0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on November 5, 1984, by Motorola, Inc., Schaumburg, IL.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR § 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on November 28, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Mr. Larry Reavis (202–523–0296) not later than November 26, 1984, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before December 3, 1984, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30086 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[1] Section 124 of Pub. L. 98–573 (October 30, 1984) redesignated these TSUS items (effective January 1, 1985) as follows (old item number/new item number): 685.2350/685.12, 685.2970/685.30, and 685.2976/685.28.

[Investigation No. 701–TA–224 (Preliminary)]

Live Swine and Fresh, Chilled and Frozen Pork From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–224 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of live swine and of fresh, chilled and frozen meat (except meat offal) of swine, provided for in items 100.65 and 106.40, respectively, of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by December 17, 1984.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 2, 1984.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202–523–0286), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on November 2, 1984 by counsel on behalf of members of The National Pork Producers Council, Des Moines, Iowa.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR § 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 26, 1984 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lawrence Rausch (202–523–0286) not later than November 21, 1984 to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before November 26, 1984 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30088 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–165]

Certain Alkaline Batteries; Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a general exclusion order in the above-captioned investigation.

Authority: 419 U.S.C. 1337.

SUPPLEMENTARY INFORMATION: The Commission determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain alkaline batteries. The Commission found that all respondents had engaged in unfair acts by reason of registered trademark infringement, misappropriation of trade dress, and false designation of origin in the unauthorized importation and sale of certain alkaline batteries with the DURACELL trademark and trade dress, and that all respondents, except for respondent Continent-Wide Enterprises,

Ltd., had committed unfair acts by reason of violation of the Fair Packaging and Labeling Act (15 U.S.C. 1452 and 1453.

The Commission determined that a general exclusion order pursuant to section 337(d) is the appropriate remedy for the violations of section 337 found to exist; that the public interest considerations enumerated in section 337(d) do not preclude such relief; and that the amount of the bond during the Presidential review period under section 337(g) shall be 75 percent of the entered value of the imported articles.

Copies of the Commission's Action and Order, the Opinions issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0499.

Issued: November 5, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30081 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation Nos. 731–TA–161 and 162 (Final)]

Titanium Sponge From Japan and the United Kingdom

Determinations

On the basis of the record [1] developed in investigation No. 731–TA–161 (Final), the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is threatened with material injury by reason of imports from Japan of titanium sponge,[3] which the Department of Commerce has found are being, or are likely to be, sold in the United States at less than fair value (LTFV). Pursuant to section 736 of the Tariff Act of 1930 (19 U.S.C. 1673e(b) (1980)), the Commission further determines that the threat of material injury would not have led to a finding of material injury but for the suspension of liquidation under section 1673b(d)(1).

On the basis of the record [1] developed in investigation No. 731–TA–162 (Final), the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930, that an industry in the United States is not materially injured or threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports from the United Kingdom of titanium sponge [3] which the Department of Commerce has found are being, or are likely to be, sold in the United States at LTFV.

Background

The Commission instituted these final antidumping investigations, effective May 11, 1984, following preliminary determinations by the Department of Commerce that imports of titanium sponge from Japan and the United Kingdom are being, or are likely to be, sold in the United States at LTFV (49 FR 20042). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 31, 1984 (49 FR 22724). Following a 60-day extension of its final determinations by the Department of Commerce, the Commission revised its hearing date (**Federal Register** of July 18, 1984, 49 FR 29167). The hearing was held in Washington, DC, on September 28, 1984, and all persons who requested the opportunity were permitted to appear in person or to be represented by counsel. Commerce published its affirmative final LTFV determinations in the **Federal Register** on October 1, 1984 (49 FR 38384). The Commission's determinations in these investigations were made in an open "Government in the Sunshine" meeting, held on October 29, 1984.

The Commission transmitted its report on these investigations to the Secretary of Commerce on November 7, 1984. A public version of the Commission's report, Titanium Sponge from Japan and the United Kingdom, (investigations Nos. 731–TA–161 and 162 (Final), USITC Publication 1600, November 1984) contains the views of the Commission and information gathered during the investigations.

Issued: November 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[Investigation No. 337–TA–193]

Certain Rowing Machines and Components Thereof; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on December 17, 1984, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th & Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: November 2, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-30083 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

Termination of Countervailing Duty Investigation Concerning Vitamin K From Spain

AGENCY: United States International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to Vitamin K from Spain.

EFFECTIVE DATE: November 8, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone number (202) 523–0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the outstanding countervailing duty order on Vitamin K from Spain. Notice of the countervailing duty order was published on November 16, 1976 in the **Federal Register** (41 FR 50419).

On September 11, 1984, the Commission was notified by letter that the Heterochemical Corp., the original petitioner for the countervailing duty order, wished to withdraw its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termniation authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On September 26, 1984, (49 FR 37861) the Commission published a notice in the **Federal Register** requesting public comment by October 26, 1984, on the proposed termination of the Commission investigation on Vitamin K from spain. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation on Vitamin K from Spain (T.D. 78–321). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

Issued: November 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30057 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35 is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell (202) 275–7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Small Carrier Transfer Application
OMB Form No.: 3120–0025
Agency Form No.: OP–FC–1
Frequency: Non-recurring
Respondents: Motor Carriers: Transferring or merging
No. of Respondents: 810
Total Burden Hrs.: 6,480

James H. Bayne,

Secretary.

[FR Doc. 84-30056 Filed 11-14-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28640 (Sub-9), et al.[1]

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.; Reorganization, Acquisition by Grand Trunk Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Schedule of proceedings on amended acquisition and reorganization proposal.

SUMMARY: The Commission sets a procedural schedule on the amended application filed under section 5(b) of the Milwaukee Railroad Restructuring Act, 45 U.S.C. 904(b)(MRR) and reorganization plan filed under section 77 of the Bankruptcy Act by the Chicago and North Western Transportation Company (CNW) to acquire and operate the core assets of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW). CNW's proposals were transmitted to the Commission by Order No. 782 issued November 1, 1984, by MILW's Reorganization Court.

DATES: Verified statements in support, opposition, or requesting conditions to CNW's amended proposals are due November 21, 1984. Verified reply statements are due November 28, 1984.

ADDRESSES: An original and 20 copies of all pleadings referring to Finance Docket No. 28640 (Sub-No. 9) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Copies must also be served on all parties of record in Finance Docket No. 28640 (Sub-No. 9). A current list of parties of record will be served on November 15, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245

or

Joseph C. Levin, (202) 275–7936.

SUPPLEMENTARY INFORMATION: The Commission's decision served September 26, 1984, returned to MILW's Reorganization Court without action CNW's reorganization and acquisition proposals and related exemption requests identified as Finance Docket No. 28640 (Sub-Nos. 9 C, D, E, Q, and S) and No. MC–F–15231 (Sub-No. 1).

On October 9, 1984, CNW submitted to MILW's Reorganization Court amendments to its MRR application to acquire and operate MILW's core assets. The principal amendment increased the consideration CNW offers for MILW's core assets. In Order No. 782, MILW's Reorganization Court referred the amended application for our consideration under section 5 of the MRR and section 77 of the Bankruptcy Act. The Court directed us to transmit to it our decision on CNW's amended MRR application and reorganization plan within 60 days of CNW's filing with us. This is January 7, 1985, assuming a November 7, 1984 filing, and our acceptance of the application.

CNW's amended MRR application and reorganization plan will be considered under section 77 of the Bankruptcy Act, section 5(b) of MRR, and 49 U.S.C. 11344(b). The statutory criteria are set forth on pages 43–48 of our September 26th decision.

In view of the limited time given us by the Court, we have established an expedited procedural schedule. No extensions will be granted and dilatory tactics will not be tolerated.

Parties are requested to use hand delivery, express mail, or overnight package delivery for service of pleadings on principal parties. Since a substantial record has already been developed, parties are strongly encouraged to incorporate previously filed material by reference and confine new evidence and argument to issues raised by CNW's amended MRR application.

The procedures prescribed in our April 29, 1983 decision for interlocutory appeals, discovery, and other matters will be followed in considering CNW's

---

[1] The "record" is defined in § 207.2(i) of the Commission's *Rules of Practice and Procedure* (19 CFR 207.2(i)).

[2] Chairwoman Stern and Vice Chairman Liebeler dissenting.

[3] Titanium sponge is provided for in items 629.14 and 633.00 of the Tariff Schedules of the United States.

[1] Embraces Finance Docket No. 28640 (Subs Nos. 9A–E, 9K–N, 9P–BB) and Nos. MC–F–15231 and MC–F–15231 (Sub-Nos. 1 and 2).

amended MRR application.
Administrative Law Judge Paul Cross will continue to handle procedural matters that might arise.

The following procedural schedule is adopted:

November 21, 1984—All verified statements in support, opposition or seeking protective conditions must be filed.
November 28, 1984—All verified statements must be filed in reply to the November 21st filing.
November 30, 1984—All requests for cross-examination must be filed.
December 5, 1984—Cross-examination, if any, begins.
December 11, 1984—Simultaneous briefs must be filed.
December 17, 1984—Oral argument before the Commission.
December 20, 1984—Open voting conference.
December 21, 1984—Issuance of summary decision reflecting voting conference.
January 7, 1985—Issuance of final decision with rationale.

This decision will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. All parties shall observe the procedural schedule prescribed in this decision.

2. The general protective order in Ordering paragraphs 4 and 5 of our April 29, 1983, decision will also apply to CNW's amended MRR application.

3. This decision is effective on November 13, 1984.

Decided: November 7, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

FR Doc. 84-29866 Filed 11-14-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-69 (Sub-14), AB-19 (Sub-59)]

Western Maryland; Railway Co. and the Baltimore and Ohio Railroad Co. Abandonment and Dicontinuance of Service in Tucker and Randolph Counties, WV; Findings

The Commission has found that the public convenience and necessity permit the abandonment by the Western Maryland Railway Company of that portion of the Thomas Subdivision between Valuation Station 4583+48 (milepost 86.81), at or near Hendrick, and Valuation Station 5881+00 (milepost 111.39), at or near Elkins, a distance of 24.58 miles in Tucker and Randolph Counties, WV, and the discontinuance of service over that line by the Baltimore and Ohio Railroad Company. A certificate will be issued authorizing this abandonment and discontinuance unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27

James H. Bayne,

Secretary.

[FR Doc. 84-29867 Filed 11-14-84; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report, Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reogranization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 7, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health and safety." The NRC has made a determination, based on critieria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the second calendar quarter of 1984. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there was one abnormal occurrence at the nuclear power plants licensed to operate; the event involved an inoperable containment spray system. There was one abnormal occurrence at the other NRC licensees; the event involved a therapeutic medical misadministration. There were no abnormal occurrences reported by the Agreement States.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW, Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG-0090, Vol 7, No. 2 (or any of the previous reports in this series), may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, MasterCard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC this 6th day of November 1984.

For the Nuclear Regulatory Commission

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-30008 Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

Availability of Draft Issue-Oriented Site Technical Positions in the High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of Issue-Oriented Site Technical Positions (ISTPs) for the following potential geologic repository sites:

- Basalt Waste Isolation Project (BWIP)
- Nevada Nuclear Waste Storage Investigations (NNWSI)
- Salt Repository Project (SRP)

Permian Basin Sites
Paradox Basin Sites
Gulf Coast Dome Sites

The ISTPs address site issues in the areas of geology/geophysics, waste package, geologic repository operations area design/rock mechanics, hydrology, and geochemistry.

DATE: The comment period expires January 14, 1985.

ADDRESSES: Send comments to Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail-Stop 623-SS, Washington, D.C. 20555. Copies of these documents may be obtained free of charge upon written request to Nancy Still, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail-Stop 623-SS, Washington, D.C. 20555, Telephone 1-800-368-5642, Ext. 74426 or 427-4426 for Washington area callers.

FOR FURTHER INFORMATION CONTACT: Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 427-4177.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982, Pub. L. 97-425, (NWPA) and Commission Regulation 10 CFR Part 60 promote consultation between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These pre-licensing consultations are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC. Guidance to DOE will be provided in NRC Site Characterization Analyses (SCAs) which document staff reviews of DOE Site Characterization Plans to be submitted according to the NWPA and 10 CFR Part 60. Supplementary guidance is presented in staff technical positions on both generic and site-specific issues.

The Issue-Oriented Site Technical Positions noticed in this announcement identify and present the rationales for the detailed technical questions (licensing issues) that must be addressed prior to licensing for each of several potentially acceptable sites that have been identified by DOE.

This will allow a determination of site and design suitability in terms of 10 CFR Part 60. They have been developed through a systematic and comprehensive assessment of the overall geological repository system and its components and, based on current knowledge, identify those site issues that the NRC staff considers will be needed as a minimum to address 10 CFR Part 60, Subpart E.

Although submission of a license application by DOE is not expected for several years, these ISTPs are being issued at this early stage of the prelicensing consultation and guidance process for several reasons:

(1) The issues presented will serve as a set of benchmarks against which the NRC staff can independently review the relevance and completeness of issues identified by DOE in the Site Characterization Plans (SCPs).

(2) The issues provide a systematic structure for staff guidance to DOE for tracking the progress toward addressing staff concerns about licensing throughout the site characterization process. The intent is to establish a tracking system which ties together all of the various documents that are pertinent to a given issue.

(3) Finally, the issues provide a systematic and logical framework for NRC staff to organize the ultimate task of assessing geologic repository performance and compliance with criteria of 10 CFR Part 60.

The ISTPs will be followed by more detailed Site Technical Positions (STPs) which address one or more specific licensing issues. Items to be addressed in STPs include specific data information needs, methods of data collection and analyses, and treatment of uncertainties.

This announcement provides notice of availability and solicits comments on the aforementioned draft Issue-Oriented Site Technical Positions.

Dated at Silver Spring, Maryland, this 2nd day of November 1984.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Chief, Repository Projects Branch, Division of Waste Management.

[FR Doc. 84-29992 Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

Availability of Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has completed a technical position on the "Determination of Radionuclide Solubility in Groundwater for Assessment of High-level Radionuclide Waste isolation."

ADDRESS: Copies of this document may be obtained free of charge upon written request to Nancy Still, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623-SS, Washington, DC 20555, Telephone 1 (800) 368-5642, Ext. 74426, or 427-4426 for Washington, DC callers.

FOR FURTHER INFORMATION CONTACT: John W. Bradbury, Project Manager, Geotechnical Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone No. (301) 427-4055.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982, Pub. L. 97-425, (NWPA) and Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC. Guidance to DOE is provided in NRC Site Characterization Analyses (SCA's) which document staff reviews of DOE Site Charaterization Plans submitted according to the NWPA and 10 CFR Part 60. On selected key issues important to repository performance, the staff will be addressing generic concerns in technical positions. The intent of the staff is to ensure that guidance is provided to DOE at an early time and thus ensure that the DOE gathers needed data in site characterization programs.

This technical position is one in a series of technical positions prepared by the NRC staff establishing what should be achieved by DOE in investigation programs at potential repository sites. The purpose of this technical position is to provide guidance concerning an acceptable strategy for obtaining data on radionuclide solubility. The NRC staff considers that the approach used for determining the solubility of radionuclides which will be present in a high level waste repository is key to providing the data needed for predicting long term repository performance.

Dated at Silver Spring, Maryland, this 2nd day of November 1984.

For the Nuclear Regulatory Commission.

R. John Starmer,

Acting Branch Chief, Geotechnical Branch, Division of Waste Management, NMSS.

[FR Doc. 84-29993 Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric and Gas Company; Availability of Safety Evaluation Report

Notice is hereby given that the Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of Hope Creek Generating Station located on the Delaware River Estuary in Lower Alloways Creek Township, Salem County, New Jersey. Notice of receipt of the application of Public Service Electric and Gas Company to operate Hope Creek Generating Station was published in the **Federal Register** on August 10, 1983 (48 FR 36357-36358).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070 for inspection and copying. The report (NUREG-1048) can also be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, DC.

Dated at Bethesda, Maryland this 8th day of November 1984.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 84-29869 Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States, Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962 (76 Stat. 583; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the following three sets of rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (part 43 of Chapter I of Title 28 of the Code of Federal Regulations) through three separate Federal agencies. These rates have been established in accordance with the requirements of OMB Circular A-25, requiring reimbursement for full cost of all services provided. This has been determined as follows:

(a) for the Department of Defense—historical costs and workload data provided through the Uniform Chart of Accounts (UCA) reporting system provides an operating cost base to which are added systemwide costs and allowances for actual inflation and pay raises to obtain the estimates for the fiscal year under review. The costs added are those items required by OMB circular A-25: (1) Retirement for military personnel—51% of the basic pay of the military personnel; (2) retirement for civilian personnel—22.5% of the pay of the civilian personnel; (3) an asset charge of 4% of the other costs in lieu of a specific depreciation cost on fixed assets; and (4) a 3% surcharge for the cost to DOD of administering the Medical care program.

(b) for the Veterans Administration—the actual costs and per diem rates by type of care for the previous year are added to the estimated costs for depreciation of buildings and equipment, administrative overhead, interest on capital investment, and Government employee retirement and disability charges. These computed rates are then adjusted by the budgeted percentage change to arrive at the estimated rates for the fiscal year under review.

(c) for the Department of Health and Human Services—using data collected for the first six months of fiscal year 1984, the sum of obligations for each cost center providing medical services is broken down into amounts attributable to inpatient care on the basis of the proportion of staff devoted to each. Total inpatient costs and outpatient costs thus determined are divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. These rates are then adjusted by the budgeted percentage change to arrive at the FY 1985 rate. In calculating the rates, the Department's unfunded retirement liability costs, and capital and equipment depreciation costs were incorporated to conform to requirements contained in OMB Circular A-25. In addition, for the first time, cost centers' obligations include all costs from all accounts. Previously, certain accounts—such as Medicare and Medicaid collections, and contract Health funds used to support direct operations—were not included in the base. Inclusion of these funds yields a more accurate indication of the cost of care in HHS facilities.

These rates represent the reasonable cost of hospital, nursing home, medical, surgical or dental care and treatment (including prostheses and medical applicances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals, nursing homes, and outpatient clinics, administered by any of the three Federal agencies—Department of Defense, Veterans Administration or Department of Health and Human Services.

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be amounts expended by the United States for such care and treatment.

	Effective Oct. 1, 1984		
	DOD	VA	HHS
Hospital care per inpatient day:			
General medical care	$452	$375	$696
Surgical care	452	405	596
Psychiatric care		318	280
Nursing home care		138	
Spinal cord injury care		307	
Burn Center, U.S. Army Institute of Surgical Research, Brooke Army Medical Center, Fort Sam Houston, TX	1,366		
Outpatient medical and dental treatment: Per outpatient visit	88	78	72

For the period beginning October 1, 1984, the rates prescribed herein supersede those established by the Director of the Office of management and budget on November 2, 1983 (48 FR 50642).

Dated: November 1, 1984.

David A. Stockman,

Director, Office of Management and Budget.

[FR Doc. 84-29883 Filed 11-14-84; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by OMB

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2412.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Service, Washington, D.C. 20549.

Revision

Proposed Amendments to Form N-1A No. 270-21

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance proposed amendments to form N-1A (17 CFR 239.15A, 274.11A) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) which would consolidate all narrative information in open-end management investment companies' prospectuses concerning significant expenses and add a tabular presentation of the major fees.

The potential respondents are approximately 810 registered open-end management investment companies.

Submit comments to OMB Desk Officer: Ms. Katie Lewin (202) 395-7231.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

FR Doc. 84-30011. Filed 11-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23474; 70-7040]

The Connecticut Light and Power Company; Proposal To Finance Pollution Control Facilities; Exception From Competitive Bidding

November 8, 1984.

The Connecticut Light and Power Company ("CL&P"), a subsidiary of Northeast Utilities ("NU"), Selden Street, Berlin, Connecticut 06037, a registered holding company, has proposed a transaction subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

CL&P proposes to finance its 4.06 percent portion of the cost of acquiring, constructing, and installing pollution control facilities ("Facilities") at the Seabrook Nuclear Power Station, Unit No. 1 in Seabrook, New Hampshire. The Industrial Development Authority of the State of New Hampshire, ("Issuer") will issue pollution control revenue demand bonds ("Bonds") in the principal amount of not more than $12,000,000, interest on which is intended to be exempt from federal and New Hampshire income taxation. The Bonds will be issued under an Indenture of Trust ("Indenture") between the Issuer and BayBank Middlesex, as trustee ("Trustee"), setting out the terms of the Bonds. Pursuant to a Financing Agreement between CL&P and the Issuer ("Financing Agreement"), the Issuer would loan to CL&P the proceeds of the Bonds. CL&P would agree to make payments corresponding to the amounts needed to pay the principal, interest, and premium, if any, on the Bonds as they become due. The obligation of CL&P to repay its loan will be evidenced by a promissory note ("Note").

The Financing Agreement and the Indenture would provide that the monies receivable from CL&P by the Issuer under the Financing Agreement are to be pledged and assigned to the Trustee. The Financing Agreement would also obligate CL&P to pay the fees and charges of the Issuer and Trustee. The proceeds of the Bonds would be deposited with the Trustee. From a fund established under the Indenture, CL&P would draw the proceeds of the Bonds to pay, or to reimburse itself for, its portion of the cost of acquiring, constructing, and installing the Facilities. The Bonds would not be general obligations of the Issuer or the State of New Hampshire; the principal, interest, and premium, if any, on the Bonds would be payable only from the revenue pledged for their payment under the Financing Agreement and the Indenture.

The Bonds will be issued with a variable interest rate as Floating Rate Demand Bonds ("FRDB"), with a maturity date not more than thirty years from the date of issuance. The interest rate on the Bonds, and the corresponding rate on CL&P's loan from the Issuer, will be determined by Citibank N.A. ("Agent") pursuant to a Remarketing Agreement between it, the Trustee, and CL&P. The Agent will determine the rate for each seven-day interest period at a rate which would result in the market value of the Bonds being 100 percent of principal, considering rates of comparable securities and general financial conditions. The rate may not exceed 20 percent annually, and similar CL&P issuances had a rate of 6.80 percent as of October 16, 1984.

On a one-time basis, at the option of CL&P, the variable interest rate may be converted to a fixed rate upon 40 days written notice. The Indenture also provides an automatic conversion to a fixed interest rate under certain circumstances on the interest payment date immediately preceding the expiration of the Letter of Credit described below. The fixed interest rate would be determined by the Agent not less than ten business days prior to the conversion date. It would be that rate which would result in the market value of the Bonds on such date being 100 percent of the principal. Prior to any such conversion, Bondholders have an option to tender Bonds to the Agent for payment of principal and accrued interest from the resale of the Bonds, or failing resale, from funds drawn by the Trustee on an irrevocable Letter of Credit. CL&P will fully reimburse the Agent pursuant to the terms of the Letter of Credit securing the Financing Agreement, and pursuant to a Reimbursement Agreement.

Pursuant to the Letter of Credit and Reimbursement Agreement, CL&P would agree to immediately repay all amounts that are drawn under the Letter of Credit except such drawings pursuant to tenders, or to certain redemptions of Bonds. If, in connection with a drawing due to the partial redemption or tender of Bonds, certain specified conditions are fulfilled, the amount drawn would be payable on the first to occur of the fifth anniversary of the date of the drawing or the termination of the Letter of Credit. Under such circumstances, interest on the drawing would be payable according to the following schedule: (A) for the first three years after such drawing is made, the interest rate would be, at CL&P's election with respect to each such drawing, either (i) the Bank's Alternate Base Rate (which is the higher of (a) the rate of interest announced publicly by the Bank as its base rate or (b) one-half of one percent above the latest three-week moving average of secondary market morning offering rates for three-month certificates of deposit of major U.S. money market banks, rounded up to the nearest one-quarter percent as in effect from time to time), (ii) five-eighths of one percent above the Domestic Money Market Bid Rate, and (B) for the fourth and fifth year after such drawing is made, the interest rate would be either one-eighth of one percent above the Bank's Alternate Base Rate, three-quarters of one percent above the Domestic Money Market Bid Rate, or the Reference Rate. If all but certain of the specified conditions have been fulfilled, amounts drawn on the Letter of Credit would be payable one year after the date of drawing. Interest on such drawings would be at the Bank's Alternate Base Rate plus one percent per annum. Delivery of the letter of Credit to the Trustee would obtain for the Bonds a rating equivalent to the credit rating of the Bank. The Letter of Credit will expire ten years from the date of issuance, but can be extended by the Bank.

The Issuer can redeem the Bonds, in whole or in part, prior to a conversion and on thirty days notice, in the amount of principle and accrued interest. Thereafter, redemption is at the election of the Issuer at redemption prices scheduled in the Indenture. The Bonds must be redeemed, in whole and not in part, at CL&P's option, with accrued interest but without premium, if certain

extraordinary events (such as damage or destruction to the Facilities or the plant at which the Facilities are located) shall have occurred. In addition, the Bonds must be redeemed, in whole or in part, with accrued interest but without premium, upon a determination that the interest on the Bonds is taxable for federal income tax purposes; the occurrence of certain specified changes in law that render performance of the Financing Agreement impossible; or the expiration of the Letter of Credit. If a default were declared under the Indenture, the principle of all outstanding Bonds could be declared due and payable as provided in the Indenture, plus accrued interest, but without premium.

CL&P requests an exception under Rule 50(a)(5) regarding borrowings made under the Financing Agreement because competitive bidding is inappropriate in these circumstances.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 3, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30013 Filed 11-14-84; 8:45 am]

BILLING CODE 6010-01-M

[Release No. 23473; 70-7039]

Middle South Services, Inc. et al.; Proposed Issuance and Sale of Note to Bank by Subsidiary Service Company and Guaranty by Holding Company

November 8, 1984.

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Middle South Services, Inc. ("Services"), 225 Baronne Street, New Orleans, Louisiana 70112, a subsidiary service company of Middle South, have filed a proposal with this Commission pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

Services proposes to borrow and reborrow, pursuant to a revolving credit agreement ("Credit Agreement") with Hibernia National Bank, New Orleans, Louisiana ("Bank") up to an aggregate principal amount at any one time outstanding not to exceed $30,000,000. The Termination Date of the Bank's Commitment is December 31, 1987. The borrowings will be evidenced by a single note of Services representing the obligation of Services to pay the amount of the Bank's commitment ($30,000,000) or, if less, the aggregate unpaid principal amount of all loans made by the Bank thereunder, plus accrued interest. As an inducement to the Bank to make loans to Services under the Credit Agreement, Middle South proposes to guarantee the payment by Services of the unpaid principal amount of, and interest on, the note and the performance by Services of its obligations under the Credit Agreement.

In general, loans under the Credit Agreement will bear interest on the unpaid principal amount thereof at a rate per annum equivalent to either one of two floating rates or a fixed rate, as specified by Services from time to time upon proper notice to the Bank. As used in the Credit Agreement, the two floating rate options are the federal funds rate ("Federal Funds Rate") and the prime rate ("Prime Rate"). The Federal Funds Rate is defined to mean the rate which is 1% above the daily federal funds effective rate from time to time as quoted by the Federal Reserve Bank of New York. The Prime Rate is defined to mean the rate of interest announced publicly by Citibank from time to time as its base rate. With respect to fixed rate loans, Services may select a rate per annum equivalent to ¾ of 1% above the consensus bid rate of New York Certificate of deposit dealers for the purchase at face value of certificates of deposit of Citibank in an amount approximately equal or comparable to the amount of any such loans and with a maturity equal to the selected interest period, adjusted for reserves and F.D.I.C. insurance ("CD Rate"). In advance of each loan to Services under the Credit Agreement, Services will give proper notice to the Bank specifying whether such loan will bear interest at the Federal Funds Rate, the Prime Rate, or the CD Rate and, as to a CD Rate loan, the selected interest period (30, 60, or 90 days, in each case as specified by Services) applicable to such loan. For the Bank's commitment under the Credit Agreement, Services will pay to the Bank a commitment fee for the period from the Effective Date to the Termination Date or earlier termination of the Commitment, computed at the rate of ⅜ of 1% per annum on the average daily unused portion of the Commitment. The terms of the Credit Agreement will not require that Services maintain compensating balances with the Bank. It is expected, however, that Services will maintain working balances with the Bank. Based on a Prime Rate of 12% and assuming full utilization of the line, the maximum effective cost of money would be 12%.

It is stated that the proceeds of the proposed note to the Bank will be used by Services to repay any outstanding borrowings from Citibank at maturity and to finance other expenditures in connection with the performance by Services of its functions as a subsidiary service company.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 5, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30012 Filed 11-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21471; File No. 4-256]

Institutional Networks Corp., and National Association of Securities Dealers, Inc.; Order Denying Request for Reconsideration

November 8, 1984.

I. Background

On April 17, 1984, the Commission issued an order ("April Order") announcing Commission findings with respect to a fee dispute between the National Association of Securities Dealers, Inc. ("NASD") and the Institutional Networks Corporation ("Instinet").[1] The proceeding, which was instituted on August 16, 1983,[2] consists of Commission review, pursuant to Section 11A(b)(5) of the Securities Exchange Act of 1934 ("Act"), of proposed fees of the NASD for full information on quotations disseminated through NASDAQ in securities designated as national market system ("NMS") Securities. The NASD collects and distributes this information both directly to retail subscribers and to competing vendors who resell the information to subscribers. The NASD denotes the service provided to vendors as the National Quotation Data Service ("NQDS").[3] Presently, Instinet is the only vendor that has sought access to NQDS.

In the April Order, the Commission determined that, because Instinet sought to distribute certain NASDAQ quotation information in competition with the NASD, which is an exclusive processor of that information, the proposed fees must be cost-based to ensure the neutrality and reasonableness of the NASD's charges to Instinet and its subscribers. Under this analysis, the Commission approved the NASD's NQDS vendor fee, but disapproved the NASD's proposed NQDS subscriber fee [4] because that fee was based in part on costs related to functions not used in supplying quotation data to Instinet.

The April Order also extended and modified interim relief to Instinet by dissolving an escrow arrangement [5] and providing that Instinet pay directly to the NASD subscriber fees based on the NASD's Level 1 service fee, which the Commission found to be functionally the most analogous service to NQDS. Finally, the April Order announced the commencement of a denial of access proceeding pursuant to Section 11A of the Act regarding the NASD's proposed NQDS subscriber fee for all NASDAQ securities.[6]

On June 11, 1984, the NASD filed a motion requesting Commission reconsideration [7] of one finding made in that Order. Instinet submitted a response to the NASD's Motion on August 3, 1984.[8]

II. NASD's Request for Reconsideration

A. NASD Motion

The NASD Motion indicates that the NASD plans on submitting to the Commission a rule change proposing subscriber fees that it deems consistent with the April Order. To assist the preparation of this fee filing, the NASD Motion specifically requests the Commission to reconsider its decision that costs related to the query function, which requires the maintenance of a database to store quotations, are not properly allocable to the NQDS subscriber fee. The NASD believes that certain costs of maintaining the NASDAQ database, including regulatory costs associated with validation of quotations and ensuring that quotations do not lock or cross the market, are properly allocable to Instinet and its subscribers. In support of its request, the NASD argues that Instinet's subscribers should bear the costs associated with quotation queries as well as updates because it views such queries as an essential part of the quotation update function. Specifically, the NASD argues that market makers necessarily query NASDAQ Level 2 information provided over their NASDAQ terminals in deciding whether to maintian or change their quotations. The NASD states that access to the full quotation stream is necessary when considering a quotation update and that NASDAQ provides the only realistic method for most market makers to access that information. Supporting affidavits from 12 market makers accompanied the NASD Motion.

B. Instinet's Response

Instinet responded to the NASD's motion by stating that maintenance of the NASDAQ database to a large degree, is irrelevant to the data feed sought by Instinet for several reasons. First, Instinet points out that the data base contains more than just NASDAQ quotations. For example, the database contains lists of valid stock symbols, correlations of market makers and their designated issues, trade reports, and trades pending in the NASD's Computer Assisted Execution System ("CAES"). Second, Instinet notes that the database is used to calculate the inside market for NASDAQ Level 1 service, price CAES executions, calculate NASDAQ indices, and produce back-up files. Instinet also notes that not all NASDAQ terminals are used by market makers nor do market makers always use their terminals for market making; it notes that many firms make markets in a few stocks, but desire and receive access to quotation information in all NASDAQ stocks. Instinet suggests that database costs associated with quotation updates are small, but concludes that a functional analysis of database usage is necessary to reveal the precise amount of attributable costs. In addition, Instinet argues that it will be at a competitive disadvantage with the NASD if its subscribers must pay for the maintenance of the NASDAQ database because Instinet must recover the costs of building its own database in order to respond to subscriber queries.

Instinet also argues for the denial of the NASD Motion because (1) the motion was not timely filed, (2) it did not raise any new substance, and (3) it did not otherwise present any clear basis of error in the April Order.

C. Commission Determination

After carefully reviewing the NASD Motion and Instinet's Response, the Commission believes that the NASD Motion does not advance any new data or arguments to warrant Commission reconsideration of issues resolved in the

---

[1] *See* Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17960. The Order also modified interim relief and instituted additional proceedings.

[2] *See* Securities Exchange Act Release No. 20688 (August 16, 1983), 48 FR 38124 ("Order Instituting Proceedings").

[3] In addition to NQDS, the NASD provides NASDAQ Levels 1, 2, and 3 services. NASDAQ Level 1 service provides the best bid and ask quotations in each NASDAQ stock. This service is provided exclusively to subscribers by vendors other than the NASD. NASDAQ Level 2 service provides full quotation data in each NASDAQ stock. NASDAQ Level 3 service is identical to Level 3 service, but includes the capability to input and update quotations in NASDAQ.

[4] The vendor fee was intended to recover direct computer and communication costs of transmitting quotation information from the NASD to Instinet. The subscriber fee was intended to recover from Instinet subscribers their allocable portion of the costs of operating the NASDAQ system.

[5] In the Order Instituting Proceedings, the Commission granted interim relief to Instinet by providing that Instinet pay into an escrow account amounts based on the NASD's proposed NQDS fees. Order Instituting Proceedings, *supra* note, 2 at [illegible]

[6] Prior to the April Order, Instinet requested expansion of NQDS to cover all NASDAQ securities. *See* Memorandum and Comments of Instinet, dated January 15, 1984.

[7] *See* Motion to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated June 11, 1984 ("NASD Motion"). On June 8, 1984, the NASD also filed a comment letter raising certain issues relating to the April Order. *See* Letter to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD. The Commission is responding separately to the matters discussed in the NASD's comment letter.

[8] *See* Response of Instinet to NASD's Request to Reconsider File Nos. 4-256 SR-NASD-83-13 submitted to SEC, from Daniel T. Brooks, Counsel to Instinet, dated August 3, 1984 ("Instinet Response"). On September 13, 1984, the NASD responded to procedural points raised in the Instinet Response. *See* Letter to Richard G. Ketchum, Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated September 13, 1984.

April Order.[9] In the April Order, the Commission specifically stated that "[t]he NASD, in effect, should recover only those costs it would incur if it operated a pure 'pass-through' system—a system that only collected information and passed it on to vendors. The NASD should not recover any costs related to its own competing vendor service." [10] In this regard, the Commission noted that:

> [t]here is no requirement that market makers recall NASDAQ quotation information through their NASDAQ terminals in connection with each quotation update. To the extent a market maker desires to recall quotation information before updating his quotation, he could choose to recall particular quotation information through Instinet terminals or inside quotation information through a variety of sources, without any reliance on the NASDAQ system's storage and recall functions.[11]

The Commission remains of this view. Specifically, the Commission continues to believe that costs related to the NASD's inquiry system, such as storing quotations for inquiry purposes and responding to actual inquiries, cannot be considered in developing the permanent NQDS subscriber charge.[12] While NASDAQ now may be the primary source for market makers to inquire as to the full quotation stream in a stock, there is no reason why that has to hold true for the future, especially after the NQDS is expanded to cover all NASDAQ securities and other vendors offer services in competition with Level 2. To allow the NASD to include quotation query costs would serve to perpetuate the *status quo* by increasing the cost of NQDS and discouraging competing services.[13]

Apart from the reasoning given in the April Order, the Commission further believes that even if market makers continue to use Level 3 service in connection with updating their quotations, inclusion of costs relating to the recall capabilities of the NASDAQ system would be inappropriate. NASDAQ market makers receive a unique benefit from the NASDAQ system, the ability to advertise their market on a national basis to professional and public investors. This ability is critical, not only to the liquidity of the OTC market, but also to the profitability of those market makers. Indeed, most large retail broker-dealers did not make markets in OTC securities prior to NASDAQ. While the commission has never objected to the NASD's decision to set Level 2 and 3 fees at the same level, notwithstanding the special benefits provided market makers by NASDAQ, there is simply no justification for a determination that NQDS subscribers should also subsidize NASDAQ market makers by paying for NASDAQ database costs necessary to provide a quotation recall service through NASDAQ, a service that Instinet must duplicate at its own expense and recover from its subscribers.

III. Order

On the basis of the above, pursuant to its authority under the Act, and particularly Sections 2, 3, 11, 11A, 15, 15A, 19, and 22 thereof, the Commission Hereby Orders that: the NASD's motion for Commission reconsideration of the April Order be, and hereby is, denied.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30015 Filed 11-14-84; 8:45 am]

BILLING CODE 8010-01-M

Renewal and Party to Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2567-P	DOT-E 2567	Connecticut Oxygen, Corporation, Stratford, CT.	49 CFR 173.315(a)(1)	To become a party to Exemption 2567. (Mode 1.)
3350-X	DOT-E 3350	General Electric Co., Schenectady, NY	49 CFR 173.214(d)	To authorize use of containers not presently prescribed in Hazardous Materials Regulations, for transportation of certain flammable solid material. (Modes 1, 2.)
3768-X	DOT-E 3768	Essex Industrial Chemicals, Inc., Baltimore, MD.	49 CFR 173.119, 173.245, 173.288	To authorize use of DOT Specification MC-304, MC-307 and MC-312 cargo tanks, for transportation of certain flammable and corrosive liquids. (Mode 1.)
4453-P	DOT-E 4453	Northern Ohio Explosives, Inc., Forest, OH.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	Wampum Supplies Co., New Galilee, PA	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)

[9] On April 27, 1984, the NASD requested permission to file a motion seeking reconsideration of the April Order by May 31, 1984. *See* Letter to George Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated April 27, 1984. On May 31, 1984, the NASD requested an extension until June 7, 1984 by which to file the motion. *See* Letter to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated May 31, 1984. The Commission neither has granted nor denied these NASD requests. The Commission, however, believes that it is appropriate, as a discretionary matter, to review the NASD's request for reconsideration. In undertaking this review, the Commission is not representing that it will entertain motions for rehearing or requests for extensions to file such motions in future proceedings instituted under Section 11A(b)(5) of the Act.

[10] April Order, *supra* note 1, 49 FR at 17649.

[11] *Id.*

[12] With respect to costs associated with quotation validation and checking quotations for excess spread and whether they lock or cross the market, the Commission stated in the April Order that these are costs generally attributable to quotation validation and that "validation of the quotation information within specified pre-existing parameters and in the correct format is a proper function of a marketplace, and thus may be considered part of the quotation collection system." April Order, *supra* note 1, 45 FR at 17649. This analysis must include an explanation of the percentage allocated to validation, where that function is only one of many uses of a particular capability of the NASDAQ system.

[13] In this regard, the Commission noted in the April Order that "[w]hile all NASDAQ and NQDS subscribers receive NASDAQ market maker quotation information, the fact remains that NASDAQ subscribers are provided a recall service, which Instinet must provide its subscribers at a separate cost." *Id.* Thus, to include data storage costs in the fee calculation for NQDS would place Instinet at a competitive disadvantage.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions:

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B, notice is hereby given of the exemptions granted in October 1984. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Renewal and Party to Exemptions—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4453-P	DOT-E 4453	Belmont Mine Supply Co., Inc., Flushing, OH.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	Armstrong Explosives Co., Kittanning, PA	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	Wampum Manufacturing Co., Senecaville, OH.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	Wampum Distributing Co., New Galilee, PA.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4631-X	DOT-E 4631	Nitrochem Energy, Corporation, Biwabik, MN.	49 CFR 173.114a, 173.304(a)	To authorize use of non-DOT specification hopper-type tank trucks and cargo tank trailers, for shipment of a blasting agent and a nonflammable compressed gas. (Mode 1.)
5403-X	DOT-E 5403	Halliburton Industrial, Services, Inc., Duncan, OK.	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249(a)(5), 173.263(a)(10), 173.264(a)(14), 173.268(b)(3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i).	To authorize use of a non-DOT specification cargo tank meeting the requirements of DOT Specification MC-312 with certain exceptions, in support of oil well soldizing and industrial cleaning operations. (Modes 1, 3.)
5403-X	DOT-E 5403	Halliburton Services, Duncan, OK	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249(a)(5), 173.263(a)(10), 173.264(a)(14), 173.268(b)(3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i).	To authorize use of a non-DOT specification cargo tank meeting the requirements of DOT Specification MC-312 with certain exceptions, in support of oil well soldizing and industrial cleaning operations. (Modes 1, 3.)
5520-X	DOT-E 5520	ICI Americas, Incorporated, Wilmington, DE.	49 CFR 173.315(a)	To authorize shipment of nonflammable gases in non-DOT specification IMCO Type 5 portable tanks. (Modes 1, 2, 3.)
5951-P	DOT-E 5951	Hill Brothers Chemical Co., Tucson, AZ	49 CFR 173.314(c)	To become a party to Exemption 5951. (Modes 1, 2.)
6126-P	DOT-E 6126	D & O Chemicals, Inc., Fort Lee, NJ	49 CFR 173.253(a)	To become a party to Exemption 6126. (Modes 1, 3.)
6126-P	DOT-E 6126	Aceto Chemical Co., Inc., Flushing, NY	49 CFR 173.253(a)	To become a party to Exemption 6126. (Modes 1, 3.)
6296-X	DOT-E 6296	American Cyanamid Co., Wayne, NJ	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specification 44D multi-wall paper bags (Modes 1, 2.)
6325-P	DOT-E 6325	Belmont Mine Supply Co., Inc., Flushing, NY.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Northern Ohio Explosives, Inc., Forest, OH.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Wampum Supplies Co., New Galilee, PA	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Wampum Manufacturing Co., Senecaville, OH.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Wampum Distributing Co., New Galilee, PA.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Armstrong Explosives Co., Kittanning, PA	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6566-X	DOT-E 6566	Castle & Cooke, Inc., San Francisco, CA	49 CFR 173.132	To authorize use of a non-DOT specification single compartment portable tank, for transportation of a flammable liquid. (Modes 1, 3.)
6614-P	DOT-E 6614	Abcana Chemical Co., El Cajon, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to Exemption 6614. (Mode 1.)
6614-P	DOT-E 6614	Keith's Pool Service, Inc., Covina, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to Exemption 6614. (Mode 1.)
6762-X	DOT-E 6762	Taylor Chemicals, Inc., Sparks, MD	49 CFR 173.266(b)(2), 175.3	Request modification to packaging dimension of overpack for chemical kits. (Modes 1, 2, 3, 4.)
6874-X	DOT-E 6874	Degussa Corporation, Teterboro, NJ	49 CFR 172.101, 173.370(a)(13)	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, 3.)
7024-X	DOT-E 7024	Avondale Mills, Sylacauga, AL	49 CFR 173.249(a)(7)	To authorize transport to an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealdtanks. (Mode 1.)
7041-X	DOT-E 7041	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.134(a)(6)	To authorize shipment of pyrophoric waste materials in non-DOT specification cargo tank of the MC-331 type. (Mode 1.)
7046-X	DOT-E 7046	J.T. Baker Chemical Co., Phillipsburg, NJ	49 CFR 173.269, 178.340-5(c)	To authorize use of modified DOT Specification MC-312 glass lined cargo tanks, for transportation of cetain corrosive liquids and a certain oxidizer. (Modes 1, 3.)
7208-X	DOT-E 7208	Ruan Transport Corporation, Des Moines, IA.	49 CFR 173.245(a)	To authorize shipment of certain corrosive materials in non-DOT specification stainless steel cargo tanks. (Mode 1.)
7227-X	DOT-E 7227	Richmond Lox Equipment Company, Livermore, CA.	49 CFR 172.101, 173.315	To authorize manufacture, marking and sale of vacuum insulated non-DOT specification portable tanks, for transportation of liquid nitrogen. (Mode 3.)
7235-X	DOT-E 7235	Luzier U.S.A., Ltd., Riverside, CA	49 CFR 173.302(a)(1), 173 304(a), 173.304(d), 175.3.	To authorize use of shrink fit neck rings on new hoop wrapped composite cylinders of 4500 psi design service pressure and to retrofit existing cylinders which were derated to 4000 psi. (Modes 1, 2, 3, 4, 5.)
7259-X	DOT-E 7259	Stauffer Chemical Company, Westport, CT.	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	FMC Corporation, Philadelphia, PA	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	Exxon Chemical Americas, Houston, TX	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	Occidental Chemical Corp., Niagara Falls, NY.	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7268-X	DOT-E 7268	Union Carbide Corporation, Banbury, CT	49 CFR 173.304(a)(1)	To authorize use of a DOT Specification 39 nonrefillable cylinder, for shipment of a nonflammable compressed gas. (Modes 1, 2, 3.)
7517-X	DOT-E 7517	Trinity Industries, Inc., Dallas, TX	49 CFR 173.314(c)	To authorize manufacture, marking and sale of non-DOT specification fusion welded tank car tanks, for transportation of nonflammable compressed gasses. (Modes 1, 2, 3.)
7574-X	DOT-E 7574	Remmers-Tomkins Flight Service, Inc., Burlington, IA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize transport of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
7648-X	DOT-E 7648	Sunwest Aviation, Roy, UT	49 CFR 172.204(c), 172.300(a), 172.400(a), 173.91(a), 173.91(i), 175.3, 175.35(a).	To renew and to increase number of cases containing flares from five to six per trip. (Mode 4.)
7840-X	DOT-E 7840	Weber Aircraft, Burbank, CA	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflammable compressed gas, in the same non-DOT specification fiberboard shipping container. (Modes 1, 2, 3, 4, 5.)
8003-X	DOT-E 8003	Pennwalt Corporation, Buffalo, NY	49 CFR 173.154(a)(14)	To authorize use of one-gallon, open-head polyethylene containers inside a DOT Specification 12B box, for transportation of organic peroxides. (Modes 1, 3.)

Renewal and Party to Exemptions—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8051-X	DOT-E 8051	Mauser-Werke GmbH, Brul, West Germany.	49 CFR 173.262, 173.266	To authorize not over 60% hydrogen peroxide solution in water, classed as an oxidizer, as an additional commodity. (Modes 1, 2, 3.)
8051-X	DOT-E 8051	Mauser Packaging, Ltd., New York, NY	49 CFR 173.262, 173.266	To authorize manufacture, marking and sale of DOT Specification 34 reusable, blowmolded, polyethylene container, for transportation of corrosive liquids and oxidizer. (Modes 1, 2, 3.)
8094-X	DOT-E 8094	Millport Chemical Company, Milwaukee, WI.	49 CFR 173.245, 173.249, 173.263, 173.268, 173.272.	To authorize shipment of corrosive materials in a DOT Specification 56 tank where a DOT Specification 60 tank is permitted in the regulations. (Mode 1.)
8129-P	DOT-E 8129	Coast Well Service, Emporium, PA	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Philips Roxane, Inc., Saint Joseph, MO	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	U.S. Environmental Protection Agency, Washington, DC.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Carboleba, Inc., Bethany, CT	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	University at Buffalo, Buffalo, NY	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	GTE Network Systems Incorporated, Albuquerque, NM.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8353-X	DOT-E 8353	Morton Thiokol, Inc., Huntsville, AL	49 CFR 178.252-2(b)	To authorize an alternate closure device in a DOT Specifiction 56 portable tank, for transportation of ammonium perchlorate. (Mode 2.)
8378-X	DOT-E 8378	Cooper Biomedical, Inc., Malvern, PA	49 CFR 173.266, 175.3	To authorize use of DOT Specification 12B fiberboard boxes with inside DOT Specification 2E polyethylene bottles, for transportation of a dilute solution of nitric acid. (Modes 1, 2, 4.)
8431-P	DOT-E 8431	American Hoechst Corporation, Somerville, NJ.	49 CFR 173.294(a)(2), 179.202-16	To become a party to Exemption 8431. (Mode 2.)
8431-X	DOT-E 8431	Dow Chemical Co., Midland, MI	49 CFR 173.294(a)(2), 179.202-16	To authorize shipment of monochloroacetic acid solution in DOT Specification 111A100W6 insulated tank cars. (Mode 2.)
8445-P	DOT-E 8445	GTE Network Systems Incorporated, Albuquerque, NM.	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Ashland Chemical, Dublin, OH	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	U.S. Environmental Protection Agency, Washington, DC.	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Borg-Warner Chemicals, Inc., Parkersburg, WV.	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8845. (Mode 1.)
8451-X	DOT-E 8451	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of certain Class C explosives, and pyrotechnics in 4 or 6 inch diameter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	Unidynamics-Phoenix, Inc., Phoenix, AZ	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of certain Class C explosives, and pyrotechnics in 4 or 6 inch diameter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	U.S. Department of Defense, Washington DC.	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of certain Class C explosives, and pyrotechnics in 4 or 6 inch diameter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of certain Class C explosives, and pyrotechnics in 4 or 6 inch diameter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4.)
8478-X	DOT-E 8478	West-Mark, Ceres, CA	49 CFR 173.119(a), (m), 173.245(a), 177.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of flammable and corroisve liquids. (Mode 1.)
8526-X	DOT-E 8526	Beech Aircraft Corporation, Boulder, Co	49 CFR 173.304(a)	To authorize use of DOT Specification 4L cylinders, for transportation of liquefied natural gases. (Mode 1.)
8536-X	DOT-E 8536	Hercules, Incorporated, Wilmington, DE	49 CFR 173.62, 178.177	To authorize transport of liquid high explosives in DOT Specification 15M containers in which the inner copper containers and the rubber boots have been replaced with polyethylene containers. (Mode 1.)
8545-X	DOT-E 8545	Hercules, Incorporated, Wilmington, DE	49 CFR 173.62	To authorize transport of limited quantities of liquid high explosives in polyethylene bottles packed in a DOT Specification 37A drum, overpacked in a DOT Specification 15A wooden box. (Mode 1.)
8547-X	DOT-E 8547	Nalco, Inc., Chicago, IL	49 CFR 178.116, Part 173 Subpart F	To authorize use of an optional steel drum incorporating a 2U liner, for shipment of cleaning compounds containing not over 14 percent hydrofluoric acid. (Modes 1, 2.)
8556-X	DOT-E 8556	Union Carbide Corporation, Danbury, CT	49 CFR 173.320, 176.76	To add an additional portable tank, and to provide for a stainless steel inner container for the presently authorized 9% nickel steel portable tanks. (Mode 3.)
8787-X	DOT-E 8787	Motorola Semiconductor Sector, Phoenix, AZ.	49 CFR 173.119(a)(7), 173.249(a)(13), 173.272(g), 173.299(a)(1).	To authorize transport of certain flammable and corosive liquids in DOT Specification 2E polyethylene bottles, packed in a DOT Specification 12B fiberboard box. (Mode 1.)
8861-X	DOT-E 8861	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119(m), 173.346, 173.349, 173.352.	To authorize manufacture, marking and sale of DOT Specification 57 portable tanks, for shipment of various flammable liquids which are also corrosive or poison and certain Class B poison liquids. (Modes 1, 2.)
8879-X	DOT-E 8879	Temco Engineering, Tulsa, OK	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To authorize components of cylinder to be made of type 301, 302, 303 and 316 stainless steel in addition to 304 and to increase length of cylinder from 24 inches to not over 29 inches. (Modes 1, 4.)
8879-X	DOT-E 8879	Temco Engineering, Tulsa, OK	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for transportation of compressed gases. (Modes 1, 4.)
8906-X	DOT-E 8906	Diamond Shamrock Corporation, Irving, TX.	49 CFR 173.164	To authorize shipment of dry chromic acid, in non-DOT specification collapsible polyethylene-lined, woven polypropylene bags. (Mode 1.)

Renewal and Party to Exemptions—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8911-X	DOT-E 8911	Olin Corp., East Alton, IL	49 CFR 173.101	To authorize shipment of scrap, guillotined small arms ammunition loosely packed in non-DOT specification, nonreusable, closed-top wooden crates or fiberboard boxes, in truck load lots to an incinerator for disposal. (Mode 1.)
8920-X	DOT-E 8920	Applied Environments Corporation, Woodland Hills, CA.	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure nonrefillable cylinders, for transportation of nonflammable, liquefied gases. (Modes 1, 2, 4.)
8921-X	DOT-E 8921	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119, 173.125, 173.266, Part 173, Subpart F.	To authorize manufacture, marking and sale of nonreuseable non-DOT specification steel jacketed polyethylene portable tanks, for transportation of corroeive liquids or an oxidizer. (Modes 1, 2, 3.)
8938-X	DOT-E 8938	Cryogenic Services Inc., Canton, GA	49 CFR 173.304(a), 175.3	To authorize two new models of cylinders identical to those authorized except for volume and material thickness, for shipment of carbon dioxide, liquefied and nitrous oxide. (Modes 1, 2, 3, 4.)
9144-X	DOT-E 9144	Cajun Bag & Supply Company, Crowley, LA.	49 CFR 173.154, 173.164, 173.182, 173.234, 173.245b.	To authorize chromic acid, classed as an oxidizer as an additional commodity, and to authorize option to use 3 mil or 6 mil polyethylene film to line bags. (Modes 1, 2.)
9157-P	DOT-E 9157	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.314(c), 179.300-7	To become a party to Exemption 9157. (Mode 1.)
9184-P	DOT-E 9184	Midwest Carbide Corporation, Keokuk, IA	49 CFR 173.178	To become a party to Exemption 9184. (Modes 1, 2.)
9229-P	DOT-E 9229	Capilano Plastics Co., Ltd., Westminster, BC.	49 CFR 178.19, Part 173, Subpart D, F	To become a party to Exemption 9229. (Modes 1, 2, 3.)
9256-P	DOT-E 9256	Societe Auxiliaire de Transports et d'Industries, Paris, France.	49 CFR 173.315, 178.245	To become a party to Exemption 9266. (Modes 1, 2, 3.)
9266-P	DOT-E 9266	Eurotainer S.A.R.L., Paris, France	49 CFR 173.315, 178.245	To become a party to Exemption 9266. (Modes 1, 2, 3.)

NEW EXEMPTIONS

Application	Exemption	Applicain	Regulation(s) affected	Nature of exemption thereof
7060-N	DOT-E 9302	Las Vegas Airlines, Incorporated, Las Vegas, NV.	49 CFR 175.701(a)	To authorize air transport of radioactive material without transport index and speeration distance controls provided operations are in accordance with safety instructions provided by DOE or DOE contractor radiological safety personnel. (Mode 4).
9182-N	DOT-E 9182	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 173.53, 175.30	To authorize transport of explosive pest repellant devices, in plastic boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 4.)
9193-N	DOT-E 9193	Schlumberger Well & Schlumberger Offshore Services, Houston, TX.	49 CFR Parts 100-199	To authorize shipment of a downhole logging tool (anode) that contains an accelerator hosing, one section of which is charged with sulfur hexafluoride to a pressure of 80 psig. (Modes 1, 2, 3, 4, 5.)
9197-N	DOT-E 79197	Greif Bros. Corp., Springfield, NJ.	49 CFR 173.119(a)	To authorize manufacture, marking and sale of DOT Specification 34 drums, for transportation of certain flammable liquids. (Modes 1, 2, 3.)
9210-N	DOT-E 9210	L.A. Paper & Packaging, Libertyville, IL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize shipment of hazardous materials, which are required to bear the POISON label, to be transported without the label when packaged, in tightly closed glass, plastic or metal containers not exceeding one quart capacity and sealed with tape or equivalent material. (Modes 1, 2, 4.)
9213-N	DOT-E 9213	Bulk-Pack, Inc., West Monroe, LA.	49 CFR 173.182, 173.217, 173.245b	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corroeive solids and nitrates. (Modes 1, 2, 3.)
9221-N	DOT-E 9221	Applied Environments Corporation, Woodland Hills, CA.	49 CFR 173.302(a)(4), 175.3, 178.44	To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for shipment of nonflammable gases. (Modes 1, 2, 4.)
9225-N	DOT-E 9225	Geosource Inc., Corpus Christi, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for Transportation of hydrocarbon products, classes as flammable liquids or flammable gases. (Mode 1.)
9226-N	DOT-E 9226	Stauffer Chemical Co., Westport, CT.	49 CFR 173.121	To authorize use of DOT Specification 51 portable tanks, for shipment of a flammable liquid. (Modes 2, 3.)
9241-N	DOT-E 9241	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 175.30	To authorize transport of explosives pest repellent devices, in fiberboard boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 3, 4.)
9244-N	DOT-E 9244	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 175.30	To authorize transport of explosive pest repellant devices, in fiberboard boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 3, 4.)
9262-N	DOT-E 9262	Pengo Industries, Inc., Fort Worth, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive. (Modes 1, 3, 4.)
9266	DOT-E 9266	ANF-Industries, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (Modes 1, 2, 3.)
9278-N	DOT-E 9278	DSI Transports, Inc., Houston, TX.	49 CFR 173.164	To authorize transport of solid chromic acid, in DOT Specification stainless steel MC-307 cargo tanks. (Mode 1.)
9279-N	DOT-E 9279	Keystone Steel & Wire Co., Peoria, IL.	49 CFR 173.154	To authorize transport of a flammable solid which is water reactive in open-top freight containers and open top trailers covered with tarpaulins. (Mode 1.)
9281-N	DOT-E 9281	Global High Energy Systems, Inc., Grand Prairie, TX.	49 CFR 172.101, 173.100	To authorize transport of cylindrical pellets of desensitized RDX, in DOT Specification 12B65 fiberboard boxes. (Modes 1, 2, 3, 4.)
9291-N	DOT-E 9291	Procor Limited, Oakville, Ontario, Canada.	49 CFR 179.102-2(a)(3)	To authorize use of a DOT Specifiacation 105A500W tank car tank with a modified insulation system, for transportation of chlorine, a nonflammable gas. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8621-P	DOT-E 8621	Atlantic & Gulf Stevedores of Alabama, Mobile, AL.	49 CFR 176.415 (c)(2)	To become a party to Exemption 8621. (Mode 3.)
EE 8673-X	DOT-E 8673	Stauffer Chemical Company, Westport, CT.	49 CFR 173.121	To authorize use of DOT Specification MC-312 cargo tanks, for transportation of carbon disulfide or carbon bisulfide. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8307-N	DOT-E 8307	Better Methods, Inc., Secaucus, NJ	49 CFR 173.119(b)(4)	To authorize shipments of methyl alcohol in inside metal containers of two-gallon capacity, overpacked three to a DOT Specification 12B fiberboard box. (Mode 1.)
EE 8325-N	DOT-E 8325	Petersburg Oil Co., Inc., Petersburg, WV	49 CFR 173.119, 177.814	To authorize use of non-DOT specification cargo tank motor vehicles, for transportation of a flammable liquid. (Mode 1.)
EE 8329-N	DOT-E 8329	MarkAir, Inc., Anchorage, AK	49 CFR 172.101, column 8, 173.110, 173.60, 175.30.	To authorize transport of charged well casing jet perforating guns, classed as explosive A or explosive C. (Mode 4.)
EE 8330-N	DOT-E 8330	MarkAir, Inc., Anchorage, AK	49 CFR 172.101 column 8, 173.315, 175.30.	To authorize use of non-DOT specification portable tank of 1,080 to 2,000 gallon capacity, for transportation of nitrogen refrigerated liquid. (Mode 4.)
EE 8333-N	DOT-E 8333	Monsanto Company, St. Louis, MO	49 CFR 173.8(b)	To authorize shipment of one steel cylinder with a leaky valve, for transportation of a corrosive material. (Mode 1.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8605-X	Union Carbide Corporation, Danbury, CT	49 CFR 173.315, 178.75(b)	To authorize use of non-DOT specification vacuum insulated cargo tanks, for transportation of certain nonflammable gases. (modes 1, 2.)

Denials

8365-P Request by Allied Cleaning Specialists, Inc., Los Angeles, CA to authorize the use of a modified DOT Specification MC-312 or MC-307 cargo tank for the transportation of certain flammable and corrosive liquids denied October 17, 1984.

9160-N Request by Carus Chemical Company, LaSalle, IL to authorize carriage on board passenger carrying aircraft monitors which contain a small amount of sulfuric acid solution denied October 9, 1984.

9238-N Request by Southern California Chemical Co., Inc., Santa Fe Springs, CA to authorize transport of solutions of aqua ammonia, copper sulfate, cupric chloride, ferric chloride and hydrochloric acid, in non-DOT specification cargo tanks denied October 3, 1984.

9255-N Request by Stauffer Chemical Company, Westport, CT to authorize use of a trade name on shipping papers in place of the specific constituent which identifies a hazardous substance in a mixture denied October 25, 1984.

9287-N Request by Colonial Oil Industries, Inc., Savannah, GA to authorize use of coded shipping papers in lieu of complying with the requirements of 49 CFR 172.201(a)(3) denied October 19, 1984.

Issued in Washington, DC, on November 8, 1984.

J.R. Geshke,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-30018 Filed 11-14-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circ. Public Debt Series—No. 34-84]

Treasury Notes; Series C-1994

November 8, 1984.

The Secretary announced on November 7, 1984, that the interest rate on the notes designated Series C-1994, described in Department Circular—Public Debt Series—No. 34-84 dated November 1, 1984, will be 11¾ percent. Interest on the notes will be payable at the rate of 11¾ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-29994 Filed 11-14-84; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Application for Recordation of Trade Name: "The Union Fork and Hoe Company"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "THE UNION FORK AND HOE COMPANY," used by the Union Fork and Hoe Company, a corporation organized under the laws of the State of Ohio, located at 500 Dublin Avenue, Columbus, Ohio 43216. The application states that the trade name is used in connection with hand-operated, farm, garden and lawn tools manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before January 14, 1985.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: November 9, 1984.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 84-29935 Filed 11-14-84; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 84-230]

Reimbursable Services—Excess Cost of Preclearance Operations

November 8, 1984.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 11, 1984.

Installation	Biweekly excess cost
Montreal, Canada	$18,967
Toronto, Canada	21,306
Kindley Field, Bermuda	14,566
Nassau, Bahama Islands	20,523
Vancouver, Canada	15,274
Winnipeg, Canada	3,327
Freeport, Bahama Islands	14,272
Calgary, Canada	8,806
Edmonton, Canada	7,670

D. Lynn Gordon,

Acting Comptroller.

[FR Doc. 84-29936 Filed 11-14-84; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATON

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC on December 11, 1984, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues for which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam Conflict.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may direct questions, in writing only, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Agent Orange Projects Office (10A7), Department of Medicine and Surgery, Veterans Adminstration Central Office, Washington, DC 20420. (Telephone: (202) 376-7528).

Dated: November 7, 1984.
By direction of the Administration.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-29985 Filed 11-14-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 222
Thursday, November 15, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Consumer Product Safety Commission	1, 2
Federal Election Commission	3
Railroad Retirement Board	4
Securities and Exchange Commission	5

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, November 15, 1984, 3:00 p.m.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Regional Directors Meeting

The Commission and the Regional Directors will discuss various matters.

For a recorded message containing the latest agenda information, call: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301—492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-30016 Filed 11-9-84; 5:01 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, November 15, 1984, 9:30 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Compliance Status Report
The staff will brief the Commission on a Compliance Status Report.
2. Enforcement Matter OS #3896
The Commission will consider Enforcement Matter OS #3896.
3. Enforcement Matter OS #3109
The Commission will consider Enforcement Matter OS #3109.

For a recorded message containing the latest agenda information call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-30017 Filed 11-9-84; 5:01 pm]

BILLING CODE 6355-01-M

3

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER No. 84–29656.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 15, 1984, 10:00 a.m.

The following items have been added to the agenda:

1. Draft Advisory Opinion #1954–52, Marty Russo, Member of Congress
2. Petition for rulemaking filed by the National Council of Farmer Cooperatives—11 CFR 114.1(e)

The following item previously sunshined should be corrected to read:

Draft Advisory Opinion #1984–33, Thomas F. Kelley, III, on behalf of National Restaurant Association PAC

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–523–4065

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-30146 Filed 11-13-84; 3:18 pm]

BILLING CODE 6715-01-M

4

RAILROAD RETIREMENT BOARD

Notice of Public Meeting.

Notice is hereby given the Railroad Retirement Board will hold a meeting on November, 21, 1984, 10:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago Illinois 60611. The agenda for this meeting follows:

(1) Bureau of Unemployment and Sickness Insurance (BUSI) Action Plan
(2) Proposed Disability Regulations (Part 220)
(3) Amendment of §§ 260.9(c) and 320.39 of the Board's Regulations
(4) Proposed Regulation for Lump-Sum Payments
(5) Proposed Changes in the RUIA Regulations (U&SI Quality Assurance and Program Integrity—Proposal for 14-Day Registration)
(6) Emons Industries Appeal
(7) Relinquishment of Rights in Cases Where a Discharge is Claimed to Have Been Wrongful

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 387–4920.

Dated: November 9, 1984.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 84-30121 Filed 11-13-84; 12:54 pm]

BILLING CODE 7905-01-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, November 1, 1984.

CHANGE IN THE MEETING: Additional items.

The following items were considered at a closed meeting held on Tuesday, November 6, 1984, at 10:00 a.m.

Institution of injunctive action.
Settlement of injunctive actions.
Report of investigation.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: William Fowler at (202) 272–3077.

Shirley E. Hollis,

Acting Secretary.

November 8, 1984.

[FR Doc. 84-30126 Filed 11-13-84; 12:54 pm]

BILLING CODE 8010-01-M

federal register

Thursday
November 15, 1984

Part II

Environmental Protection Agency

40 CFR Parts 124, 144, 146 and 147
Underground Injection Control Program: Federally-Administered Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 144, 146 and 147

[FRL-2687-2]

Underground Injection Control Program: Federally-Administered Programs

AGENCY: The Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Safe Drinking Water Act (SDWA) establishes the Underground Injection Control (UIC) program, which is designed to prevent underground injection through wells that may endanger drinking water sources.

The SDWA provides for States to apply for and receive approval from EPA to administer their own UIC programs, if they meet EPA's minimum requirements. If a State has not submitted an application or if the State program has been either disapproved or no longer meets the requirements of the Act, the SDWA requires EPA to prescribe a Federally-administered UIC program for the State. SDWA Sections 1422, 1425. On May 11, 1984, 49 *FR* 20138, *et seq.*, EPA published a final rule establishing EPA-administered programs in 22 jurisdictions; on the same day, the Agency proposed regulations establishing EPA-administered UIC programs in 13 additional States (including most Indian lands in these States). 49 FR 20238. In addition, the Agency proposed four programs for Indian lands in other jurisdictions.

Since the proposal, the Agency has granted primary enforcement authority to the States of Oregon, Washington, Rhode Island, Vermont, South Carolina, North Dakota, and for oil and gas related injections in South Dakota. Accordingly, EPA is not promulgating the programs proposed for these States. In the programs promulgated today, EPA will implement a program covering all classes of wells for some States; in others where an approved State program covers some classes of wells, the Federal program will cover only the remaining classes. The program promulgated today covers all States for which there is neither an approved State-administered program nor a promulgated EPA-administered program (see Table 1).

DATE: These regulations shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on November 29, 1984. These regulations shall become effective on December 30, 1984. In order to assist the EPA to correct typographical errors, comments of a non-substantive nature on the final regulations may be submitted until [December 17, 1984]. The effective date will not be delayed by consideration of such comments.

ADDRESS: Comments of a technical and non-substantive nature should be addressed to Judy A. Long, Comment Clerk, Ground Water Protection Branch, EPA, Office of Drinking Water (WH-550), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John B. Atcheson, Ground Water Protection Branch, EPA (202) 382-5530.

SUPPLEMENTARY INFORMATION:

Table 1—Jurisdictions for Which the Programs Are Promulgated

(The promulgated program covers all classes of wells unless otherwise noted)

The UIC Program

Florida (Class II only)
Hawaii
Kansas (Indian lands only)
Minnesota (Indian lands only)
Mississippi (Class II only)
Ohio (Class I, III, IV and V only)
Puerto Rico
South Dakota (Classes I, III, IV and V wells, and Class II wells on Indian lands)
Virgin Islands
Wisconsin (Indian lands only)
Osage Mineral Reserve, Oklahoma (Class II only)

Since the May 11, 1984, proposal, the Agency has approved applications for primacy from several of the States for which EPA, at that time, was proposing UIC programs. These recently approved programs are: North Dakota (Classes I, III, IV and V) Oregon (all classes of wells), Rhode Island (all classes of wells), Vermont (all classes of wells) and Washington (all classes of wells).

These approvals eliminate the need to promulgate EPA-administered programs for these classes of well in these States. Accordingly, EPA is not including them in this rulemaking.

I. Background

These regulations are being promulgated under the authority of Part C of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f to 300j-9) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6987.). The SDWA is designed to protect the quality of drinking water in the United States, and Part C of the SDWA specifically mandates regulation of underground injection of fluids through wells. A summary of the relevant sections of Part C was provided in earlier rulemakings (see 48 FR 40099, September 2, 1983). A detailed discussion of the relevant statutory provisions and regulatory development appeared in the first proposal of Federally-administered programs.

To briefly summarize what was explained in that proposal, EPA has promulgated minimum requirements for State UIC programs, as directed by the SDWA, in 40 CFR Parts 124, 144, 145 and 146. The SDWA provides for States, territories, and possessions (referred to below as "States") to apply to EPA for primary enforcement authority to administer the UIC program in their States, and for EPA to approve such programs if they meet the minimum requirements (SDWA Section 1422) or, for Class II (oil-and-gas related) wells, if they meet certain more flexible minimum statutory requirements (SDWA Section 1425).

If a State fails to submit a program application, if its application is denied, or if an approved program is changed such that it no longer meets the requirements of the SDWA and the applicable minimum requirements, the SDWA requires EPA to promulgate an EPA-administered program for the State (Section 1422(c)). In cases where a State has an approved State-administered program for only some classes of wells, EPA must administer the program for the remaining classes. In addition, where a State with an approved State-administered program has chosen not to assert authority over Indian lands in the State, or has failed to make an adequate demonstration of such authority, EPA will promulgate an EPA-administered program for such Indian lands.

In July 1983, the National Wildlife Federation filed suit challenging EPA's failure to have promulgated State UIC programs for States without approved UIC programs. The agency and the plaintiffs agreed in a Consent Decree, which was court approved, to promulgate (i.e., have signed by the Administrator) these programs by October 29, 1984. *National Wildlife Federation* v. *Ruckelshaus*, C.A. No. 83-JM-1333 (D. Colo, Dec. 22, 1983). These rules (the second package of "Direct Implementation" rules for States without approved UIC programs), therefore, are promulgated in response to the Court's ordered deadline.

On May 11, 1984, 49 *FR* 20138 *et seq.*, EPA promulgated EPA-administered programs for 22 states. In today's rulemaking action EPA is promulgating programs for seven additional States, which consist of all States for which there is neither an approved State-administered program nor a promulgated EPA-administered program.

In some cases, the promulgated programs cover only some classes of wells, because an approved State-administered program covers one or more other classes. EPA is also promulgating three EPA-administered programs on Indian Lands that lie within States with approved State-administered programs and one other Indian Lands program within a State which has an EPA-administered UIC program.

II. Structure of Direct Implementation

A. Contents of the Federally-administered programs

For the reasons outlined in an earlier proposal (48 *FR* 40100, September 2, 1983) the Agency has adopted the following scheme for regulations pertaining to Federally-prescribed State programs:

(1) Requirements, necessary to supplement or clarify all the EPA-administered programs, were promulgated as amendments to Part 144 in 49 *FR* 20138 *et seq.* (May 11, 1984);

(2) A subpart for each State program is contained in Part 147. In the cases where EPA administers the program each subpart: (a) makes applicable in each program the UIC minimum requirements of 40 CFR Parts 124, 144 and 146; and (b) prescribes additional State-specific requirements.

For State-administered programs, each subpart of Part 147 describes the approved program and incorporates by reference the appropriate requirements form State statutes and regulations. Such requirements are made a part of the UIC program under the SDWA. State procedural requirements, which are incorporated by reference as part of the applicable underground injection control program (*see also* 49 FR 20197-20220, May 11, 1984) and which differ from EPA procedural requirements, are not binding upon EPA. For example, a State's procedural requirements for enforcement which go beyond the procedural minimum requirements under the SDWA for enforcement will not be imposed by EPA in Federal enforcement actions.

B. Jurisdictions Covered

1. States

EPA is promulgating programs for every State which is not currently subject to an approved UIC program or a promulgated EPA-administered program. Several of the States included in this rulemaking have submitted applications for primary enforcement responsibility which the Agency is in the process of evaluating. It is possible that some of these programs may be approved, and therefore eventually administered by the States. Nevertheless, the Agency is promulgating programs in this rulemaking for all States.

The Agency is taking this action for two reasons. First, the SDWA mandates that EPA implement a program in States where no State-administered programs has been approved, and it specifies a deadline for this action. Second, the Agency was sued for failure to meet this deadline and has entered into a Consent Decree which dictates that EPA develop and implement programs in States which do not have programs by the Fall of 1984. To be assured of meeting the requirements of both the SDWA and the Consent Decree, EPA is promulgating programs for all States not covered by a program as of the date of this rulemaking. If a State-administered program is subsequently approved after promulgation, EPA will withdraw the corresponding EPA-administered program.

2. Indian Lands

Indian lands affected by this rulemaking are of two types: Indian lands within States that are administered by EPA, and Indian lands within States with approved State-administered programs.

Indian lands in EPA-administered States. Some of the States in which EPA is implementing Federally-administered UIC programs contain Indian lands within their boundaries. As stated in the proposal, EPA intends, unless stated otherwise in the rule that the program in a given State apply to Indian lands in that State as well as to non-Indian lands. EPA especially invited Indians on affected Indian lands to submit comments on the appropriateness of the proposed program for those lands. In addition, EPA made a special effort to contact all affected tribal and other Indian organizations to solicit their comments. There was no new comment provided on the specific proposals made for Indian lands within States having EPA-administered programs. The Department of Interior (DOI), however, did comment in general on the administration of UIC programs on Indian lands. Their concerns centered on how the Agency intended to administer the programs, relative to existing regulatory requirements that DOI has on such lands. The EPA is answering the DOI comment in a separate forum, as we believe that DOI and EPA should work together to coordinate the administration of our separate programs, while fullfilling our distinct statutory mandates. A letter summarizing our response is a part of the Administrative record of this rulemaking.

The Agency is promulgating these programs as proposed, but will continue to work with the Indians and DOI as they are implemented.

Indian Lands within States with approved State-administered programs. In the September 2, 1983 proposal (48 *FR* 40100 *et seq.*) EPA presented four alternative approaches to promulgating UIC programs on Indian lands in States with approved State-administered programs: (1) Implement a program consisting of current UIC minimum requirements; (2) implement a program consisting of requirements patterned after State requirements from the approved program applicable in the rest of the State; (3) adopt a combination of the minimum UIC requirements regulations and the approved State program requirements; or (4) develop unique requirements in response to Indian concerns or other special circumstances. After reviewing comments, EPA published its intent to use any of the four proposed options appropriate to the individual case when implementing programs for Indian lands in primacy States (49 *FR* 20140, May 11, 1984, *et seq.*).

The great majority of commenters preferred Option 2 for Indian lands in the State in which they were located. Others wanted programs specifically adapted to tribal policies. In such cases, EPA will develop a program similar to the surrounding State's program or a program adapted to other tribal preferences. Because an EPA-administered program based on either approach necessitates a thorough analysis to assure that it is consistent with EPA's authorities under the SDWA, it was not possible to develop many of these Indian lands programs. Therefore, EPA will not be promulgating such programs at this time. The Agency intends to do so at the earliest possible time.

For Indian lands in three such States, however, EPA has been able to develop programs, and these are included in today's promulgation. These programs cover Class II wells on the Osage Mineral Reserve in Oklahoma and all classes of wells on all Indian lands in the States of Kansas and Wisconsin. The Osage program has been designed according to a combination of Options (3) and (4), and consists of requirements drawn from the UIC minimum requirements regulations, the Oklahoma Corporation Commission regulations, the Bureau of Indian Affairs regulations, and unique requirements developed in response to Indian concerns. The

Kansas Indian lands program follows Option (1) and thus consists of the EPA minimum requirements regulations. The Wisconsin program follows Option (4), and consists of more stringent requirements in response to Indian preferences. Each of these programs is discussed in more detail in Part IV of this preamble.

Definition of Indian lands. In developing programs for Indian lands, it is necessary to specify as precisely as possible the particular lands intended to be covered by each program. To be ensured of comprehensive coverage, EPA intends in most cases to use a generic definition to identify those lands to be covered by Indian lands programs. The definition EPA intends to employ is that of "Indian country," defined by Federal statute at 18 U.S.C. § 1151.

EPA believes this definition is most consistent with the concept of Indian lands as the Agency has used it in regulations and UIC program approvals to date. The term accurately describes lands for which EPA will administer the UIC program in the absence of a specific demonstration of State authority based on a statute or treaty.

Therefore, EPA is adding this definition of "Indian lands" to § 144.3, which applies when that term is used in each Indian lands program in Part 147. The jurisdiction of each Indian lands program can be described simply by using the term Indian lands. This is done in each Indian lands program today with the exception of the program for the Osage Mineral Reserve, which is intended to apply only to that specifically identified reserve.

III. General Contents of EPA-administered Programs

Part 147, containing all specific State UIC programs, was established in EPA's first promulgation of EPA-administered programs. 49 *FR* 20197 (May 11, 1984). A separate subpart of Part 147 corresponds to each State. Today's action adds to Part 147 an EPA-administered program for each of the 7 States listed and for Indian lands in certain other States. For each of the State programs and one of the Indian lands programs, EPA is making directly applicable the minimum requirements in Parts 124, 144, and 146. In addition, where necessary, each program sets forth certain additional State-specific requirements. These include requirements which—due to geologic, historical or hydrologic conditions—differ from State to State and region to region. They also include regulations that state more specifically requirements that in the minimum standards are only general and afford a broad range of discretion to the Director.

For certain requirements the Agency is specifying numerical standards which are based on conditions present in a State or part of a State. To the extent that conditions vary from one State to another, these requirements will also vary. The SDWA provides for such variations in Section 1422(c) and 1421 (b)(3) which requires that Agency to consider the varying hydrologic, geologic, and historical conditions in a State and not to disrupt existing State programs unnecessarily. Indeed, it is for this reason that the Agency originally built flexibility into the UIC program. Thus, it is necessary to vary some of these more specific requirements from State to State.

For the most part it is such specific requirements, or mechanisms for establishing such standards, that EPA is applying in each EPA-administered program. Many of these standards pertain to wells authorized by rule, since the authorization by rule mechanism requires that specific requirements be imposed by regulations, rather than in permit conditions as can be done for wells authorized by permit. For programs in States with no existing wells, any new wells will be required to receive permits, and the state-specific requirements for wells authorized by rule are not necessary.

A discussion of permitting schedules, mechanical integrity testing schedules, and other administative considerations can be found in the program description for each of the State programs promulgated today. Program descriptions are available at the appropriate Regional Office.

IV. Response to Comments: General Program Elements

A. Aquifer Exemptions

In the first proposal (48 *FR* 40107–08 September 2, 1983) the Agency described in detail the criteria for exempting aquifers and the administrative mechanisms to be used in granting various kinds of exemptions. In the May 11, 1984 proposal (49 *FR* 20241) the Agency also solicited requests from operators who believed they were injecting into a USDW which qualified for exemption. These State specific issues are discussed in the preamble to the individual State programs.

The Agency received two comments on aquifer exemptions. One commenter expressed strong support for the Agency's administrative approach to aquifer exemptions, particularly the discretion afforded to Directors in EPA-implemented programs. The other commenter requested that a specific aquifer be exempted. That request is being evaluated and a determination will be made shortly.

B. Pressure Limitation

The current UIC minimum requirements obligate the Director to establish limits on injection pressure. For wells authorized by permit the Director may determine an appropriate pressure on a case-by-case basis. For wells authorized by rule, a general standard must be established.

In the proposal and in the promulgation of the Direct Implementation programs on May 11, 1984 (49 *FR* 20138 *et seq.*; 49 *FR* 20238 *et seq.*), the Agency outlined the approach it intended to use in specifying injection pressures for operators. In the case of Class I operators, Class II salt water disposal well operators, and Class III operators authorized by rule, the Agency proposed to set a conservative maximum statewide value. The owner/operator could inject at a pressure higher than the specified standard by applying for and receiving a permit and by demonstrating in the application that the higher pressure did not violate the existing performance standards in 40 CFR 146.13(a)(1); 146.23(a)(1); 146.33(a)(1), 144.28(f)(3) as applicable.

In the case of owners or operators of enhanced recovery or hydrocarbon storage wells, EPA proposed to require submission of formation-specific maximum injection pressure values on a field or project basis. The Agency would then establish appropriate limits for formations or units based on this and other data. The operator could receive authorization to inject at higher pressures merely by demonstrating to the satisfaction of the Director that such pressures would not fracture the confining zone. For more detailed discussion of the Agency's reasons for adopting this approach, *see* FR 20138 *et seq.* (May 11, 1984).

The Agency proposed (see § 147.2912(b) as proposed) a slightly different approach for Subpart GGG, the Osage reservation. The comments pertaining to this requirement and the Agency's response are discussed in detail in the preamble to the Osage program. The following discussion addresses comments on the proposed approaches for the remaining programs.

One commenter noted that injection pressures should be established on a case-by-case basis even where a general maximum value has been specified.

The Agency generally agrees, and would like to point out that operators of most classes of wells for which injection pressure limits are set will soon have to

be permitted. As noted in the preamble to the proposal, EPA will consider pressures higher than the general standard specified, when issuing permits. Thus, as these operators apply for and receive permits, injection pressure limits will be established on a permit-by-permit basis and should therefore reflect conditions present in a particular field or formation.

The Agency recognizes that applying the standards of 144.28(f)(3)(c) (A) and (B) to brine injection wells while they are authorized by rule is a conservative approach. This approach is merely an interim standard, and the Agency intends to apply the standards of § 144.28(f)(3)(ii) when setting pressure limits for brine disposal wells authorized by permit. The Agency believes it appropriate to be more conservative in specifying requirements for wells while they are authorized by rule since the statute and regulations are preventative. Thus, in order to fulfill this mandate EPA must assume the most protective values until data such as information submitted as part of a permit application, indicates otherwise.

The same commenter requested that EPA consider allowing Class I and III well operators to inject at pressures which might induce fracturing in the injection zone, so long as there are adequate safeguards against fracturing the confining zone, a standard the Agency applies to operators of Class II wells.

In response, the Agency would like to note several points. First, the existing rules already establish that operators of these classes of wells may inject at pressures which fracture the injection zone, but only during well stimulation. *See,* §§ 144.13(a), 144.33(a).

Second, the reasons for developing a different standard for Class II wells is clearly laid out in 49 *FR* 20152—20153, May 11, 1984. To summarize that discussion briefly, Class II wells inject fluids which usually are relatively less dangerous than those injected in Class I and III wells. In addition, the SDWA specifies that rules for Class II operations may not unnecessarily interfere with or impede the production of oil and gas, unless those requirements are necesary to assure that USDWs are not endangered. *See,* SDWA §§ 1421 (b)(2); 1422(c), a restriction not present for rules applicable to Class I and III wells. The Agency believes that the nature of injected fluids and the language of the statute justify different treatment for Class II operators.

Finally, the standard which the commenter questioned (i.e., the prohibition against fracturing the injection zone) was established in the June 24, 1980 promulgation of 40 CFR Part 146. *See,* 45 *FR* 42472. It is not a new requirement of this rulemaking and, while the Agency would be willing to consider any important technical data not available during the previous comment periods, EPA does not believe the comment raises new issues or includes new data that warrant a change in these longstanding rules at this time.

Another commenter suggested that particular sections specifying injection pressure limits for Class II wells be deleted from the regulations (e.g., §§ 147.504, 147.1254 and 147.2103). The same commenter, in supporting this request stated that he "* * * does not agree that arbitrarily set pressure limitations should be established for enhanced recovery wells." He noted further that enhanced recovery operators have an economic incentive to retain fluids in the injection zone and that propagation of fractures in the injection zone is in some cases desirable. The commentor further maintained that the requirement would prevent operators from fracturing the injection zone.

EPA has considered the comments carefully and has elected to retain the requirements as stated for several reasons. First, EPA will not, as asserted by the commenter, set pressure limits arbitrarily. For enhanced recovery wells the Agency will specify pressure limits on a field—or formation—specific basis and will make such determinations only after carefully reviewing available data, much of which will be supplied by the owner or operator. This approach will result in limits, which, far from being arbitrary, are site-specific and based upon sound technical data. Moreover, in establishing these limits, the Agency will go through the same public notice and comment requirements as those specified for permits in Subpart A of 40 CFR Part 124, that is, §§ 124.10, 124.11, 124.12, 124.13, and 124.14. Therefore, if the Agency's preliminary pressure limit does appear inappropriate, the owner or operator will have an opportunity to challenge EPA's specific determination in comments or at the hearing.

The Agency explained in the May 11, 1984, preamble to the first set of federally-administered UIC programs (49 FR at 20153):

> * * * even after EPA has established field-specific injection pressure limitations, the agency will consider allowing higher pressures case-by-case with the approval of the Regional Administrator. An owner or operator desiring such a variance, must request and obtain the written approval of the Regional Administrator. If the owner or operator is dissatisfied with the Regional Administrator's response to his request to operate at higher pressure, he may then apply for a permit and challenge the permit if he fails to receive permit conditions that he believes are appropriate.

Again, these owner-or operator-specific variances will be subject to the public notice and comment provisions of Subpart A of Part 124, that is, §§ 124.10, 124.11, 124.12, 124.13 and 124.14. Finally, as discussed in the above excerpt from the May 11, 1984, preamble, if the owner or operator still is dissatisfied with the Regional Administrator's decision regarding his variance request, he may apply for a permit (under § 144.25(c)), and ultimately appeal the permit conditions, if he believes they are not appropriate, under § 124.19. (Of course, no "appeal" of a field-specific injection pressure limitation, or of an operator-specific injection pressure variance lies under 124.19, as these pressure limitations are not appealable "permits" under that section; an application for a permit, pursuant to § 144.25(c), and a final permit decision in response to that request, are prerequisites to a § 124.19 appeal.)

Second, the Agency does recognize that in certain cases enhanced recovery operators may operate at pressures which exceed the fracture pressure of the injection zone. The proposed rule contained provisions that would allow an owner or operator of an enhanced recovery well to inject at such higher pressures (see §§ 147.504(a)(1)(ii), 147.1254(a)(1)(ii) and 147.2103(a)(1)(ii)) and the final rules retain these provisions. Thus, contrary to the commenter's assertions, the rules would not automatically prevent an enhanced recovery operator from injecting at pressures which exceed the injection zone fracture pressure. The requirement that the owner/operator demonstrate that such higher injection pressures will not fracture the confining zone or cause fluid movement into a USDW is consistent with, indeed, mandated by, the SDWA.

Third, the Agency accepts the premise that, in many cases, owners or operators of enhanced recovery wells and hydrocarbon storage wells have a vested interest in not fracturing confining zones, thus decreasing the risk that such fractures will result. However, in some cases lost injected fluid, not significant in commercial terms, may give rise to USDW contamination that is significant. Consequently, while a permit is the appropriate vehicle for

identifying and authorizing *increased* injection pressures for most owners or operators, the Agency believes that for the reasons outlined enhanced recovery operations and hydrocarbon storage wells should be established by rule, with procedures to establish more tailored maximum pressures on a field or unit basis.

Finally, the UIC minimum requirement regulations have always contained provisions which limit injection pressures. In specifying a numerical standard for units and formations, the Agency will merely be applying these general minimum standards to specific situations. The only other way to meaningfully apply a limit on maximum injection pressures consonant with the SDWA's protective mandate would be through a permit. In order to minimize the burden on owners or operators of enhanced recovery operations, the Agency decided in its original promulgation to allow owners and operators of enhanced recovery wells to be authorized by rule rather than permit.

The Agency recognizes that the general standard to be used in setting appropriate field pressures (e.g. the fracture pressure of the injection zone) is a conservative one. It is for this reason that EPA proposed and is promulgating a simplified procedure for allowing owners or operators to inject at higher pressures. Moreover, the majority of comments from oil and gas operators made on the September 2, 1983, proposal indicated that, in most instances, operators of enhanced recovery operations often do not wish to fracture the injection zone.

The Agency believes that the promulgated approach is a balanced one that meets three important objectives. First and foremost, consistent with the statutory mandate of the SDWA, it maintains the protective standard of the existing UIC program and provides for the establishment of specific values as necessary to implement that standard. Second, it allows for full consideration of relevant physical and geologic conditions that may vary across a State. This approach, therefore, avoids any potential unnecessary rigidity that could be imposed by a more conservative and less specifically tailored standard. Third, the adopted approach accomplishes these objectives in the least burdensome manner possible, without requiring permits from enhanced recovery and hydrocarbon storage wells and without requiring the great majority of facilities to undergo a well-by-well examination.

Commenters expressed concern that the Agency, in listing what it deemed appropriate data for defining injection pressures, intended that those examples listed in the proposal be the only data acceptable. The Agency, in the proposal, noted that the examples listed were among ". . . data in the category of reasonably establishing the injection zone fracture pressure." (49 *FR* 20240, May 11, 1984). The list was not intended to be all-inclusive and other appropriate data may serve to establish appropriate pressures.

C. Cementing and Casing Requirements

The Agency proposed casing and cementing requirements in Part 147 which the Regional Administrator could impose on operators of wells authorized by rule for life, when he determines the wells may not be in compliance with the existing minimum requirements in § 144.22(a)(8) (recodified at § 144.28(e)) and § 146.22. These sections essentially state a performance requirement that wells be cemented and cased to prevent the movement of fluids into or between strata.

Comments were received on this proposal, particularly regarding §§ 147.504 and 147.2103. Comments were also made on §§ 147.2104 and 147.1754, which proposed to apply these cementing requirements to all new wells. Finally, several commenters raised questions on the cementing requirements which the Agency proposed to apply to owners or operators of wells on the Osage Mineral Reserve. These latter comments are addressed in Subpart GGG, since the cementing requirements proposed for the Osage program were somewhat unique. This following section addresses the comments raised on the cementing and casing requirements specified in the other sections listed above.

One commenter strongly supported the Agency's proposed approach. The commenter noted existing rule-authorized wells would be allowed to continue to operate as constructed as long as they did not allow the movement of fluids into USDWs. The commenter went on to express support for the establishment of standards in the regulations which would be applied to owners or operators who did not comply with the performance standards in § 146.22 (*See also* § 144.28(e)).

Another commenter maintained that the economics of enhanced recovery and hydrocarbon storage dictate that owners or operators construct and maintain wells in a manner that assures that the injection zone is isolated. The commenter contended that because of this economic incentive the method of isolating injection zones could and should be left to the operator.

EPA does agree that the economics of enhanced recovery operations encourage operators to identify some leaks, and when they become sufficiently large, to fix them. However, such an incentive does not relieve the Agency from the need to assure proper construction of these wells in accordance with the requirements of the SDWA. Depending upon the characteristics of the reservoir and other specifics of the operation, there could be significant leaks that would not translate into significant economic losses. Moreover, improper cementing of the borehole through strata other than the injection zone could allow fluid to migrate from one formation to another, a situation that would have no effect on the enhanced recovery operation, but which could result in significant contamination of a USDW. Finally, the Agency does apply a performance standard to existing wells as the commenters urge. The more specific cementing requirements enumerated are applied only when the well may be causing fluid movement into or between USDW's. Even when this is the case, the Director may specify other requirements tailored to a specific well or wells. In view of the above, the Agency is retaining requirements as proposed. (*See* 49 FR 20153–20154, May 11, 1984, for a more detailed discussion of the Agency's reasons for adopting the above approach.)

Commenters objected to the level of specificity in §§ 147.1754 and 147.2104. These sections establish requirements for new wells and for existing wells which are being converted to injection wells. Commenters maintained that a single performance standard would be more appropriate. After consideration, the Agency is promulgating the requirements as proposed. The standards established in the sections are appropriate in most cases and are meant to apply to new injection wells. Thus, the burden to the operators for complying with the stated requirements would be minimal. The Agency does agree that, under some conditions, it may be desirable to establish other standards more suited to an individual well or set of wells. Again, the rules as proposed recognize this need and provide for it. The Regional Administrator may, under 147.2104, impose additional requirements or substitute alternative requirements when appropriate.

Accordingly, while the Agency does agree that these requirements are not universally applicable, we believe them to be generally appropriate and we have provided for alternative requirements when necessary or desirable.

D. Plugging and Abandonment

One commenter suggested that requiring the operator to submit a plan within one year of a program's effective date specifying how the well was to be plugged was an unnecessary burden. The commenter went on to point out that Class II wells typically have lifetimes of 30 years and that plans submitted in advance of actual closure would not reflect state-of-the-art technology. Finally, the commenter suggested that EPA require a single plugging plan 45 to 60 days before abandonment.

In response, EPA notes that the amendment in § 144.28(c)(2)(i) is not a part of this rulemaking. That requirement was proposed on September 2, 1983, and promulgated on May 11, 1984, after extensive public comment. (For a detailed discussion of Agency's reasoning, see the preamble discussion for the May 11, 1984 rulemaking at 40 FR 20128 et. seq.) Nevertheless, the Agency will briefly address the concerns raised by the commenter. The Agency does not agree with the commenter for several reasons. First, as explained in the promulgation of this requirement, we do not agree that the requirement to submit the plan in § 144.28(c)(2)(i) represents a significantly increased burden on operators. The requirement that operators develop and maintain a plan which is acceptable to the Director for plugging and abandoning wells is an existing requirement of the UIC minimum requirements regulations. The only additional requirement proposed in § 144.28(c)(2)(i) was that the plan be submitted to the Regional Administrator. Even in cases where the owner or operator has hundreds of wells this is not a significant burden, since, to the extent that the wells are similar, are in the same field, and penetrate to the same formation they will be plugged in the same manner and an operator need only submit a single "key" plan covering such wells.

Second, the Agency does provide for updated plans to be submitted, thus providing for changes in plugging methods. In fact, the Agency requests such changes 45 days before actual plugging, just as the commenter suggests (see § 144.28(c)(2)(ii)).

Finally, the plugging plan specified in § 144.28(c) cannot be viewed in a vacuum. The requirement is meant to complement financial responsibility requirements in § 144.28(d). That section requires the operator to maintain "financial resources * * * to close, plug, and abandon the underground injection operation in a manner prescribed by the Director." In order for the Director to make such a determination, he must have knowledge of how the operator contemplates plugging the well. Accordingly, the Agency believes that the minimal administrative burdens caused by this section are necessary and justified by the requirements of the Safe Drinking Water Act and previously promulgated regulations.

E. Area of Review

The Agency proposed, for several of the programs, to limit the options for establishing the area of review to the minimum fixed radius as described in § 146.6(b). In proposing this approach the EPA noted that the potentially large number of wells involved, together with the existence of many formulae, could slow implementation considerably.

One commenter agreed that reliable mathematical models might not be available for many areas, but suggested that the option to choose a model when one is available should be maintained since that would be the best method for determining "actual" area of review.

After considering the comment, EPA intends to promulgate the requirement as proposed. The area of review merely establishes the boundary of that area around a proposed injection facility within which the applicant for a permit must identify the location of wells which penetrate the injection zone, and (for certain Class II wells) the area within which he must identify any additional wells potentially affected by operating pressures. The Administrator will approve or disapprove each application based upon a review of information available for defining the proposed injection operation, the geology of the area, and other activities in the area.

The Agency noted when this requirement was initially proposed that the Director may solicit input from owners/operators on which methods might be appropriate, but the decision as to how to determine area of review has always rested with the Director. Accordingly, in selected jurisdictions the Agency is deciding to use only a fixed radius.

Comments Not Appropriate to This Rulemaking

Several commenters addressed issues which were not subjects of this rulemaking. For example, one such commenter suggested that any waste which is combustible be incinerated, rather than disposed of in injection wells. Another commenter suggested that the Agency prohibit well injection, and that industry should bear the burden of pollution-free disposal. Additionally, one commenter noted that current land use inhibited recharge and contaminated surface and ground waters.

The Agency is mindful of its responsibility to protect the environment and we appreciate the concerns raised. The issues discussed are important; however, the Agency, in this rulemaking, is attempting only to develop sound, balanced regulations for directly implementing UIC programs in States without approved UIC programs. This is not the proper forum for a reassessment of already promulgated rules establishing the minimum requirements for State UIC programs. *See* 40 CFR Parts 144, 145 and 146. Neither is this the appropriate place to discuss more general topics concerning the Agency's missions and responsibilities.

Coordination With States

One commenter urged EPA to approve the State-administered programs in Florida and Mississippi, noting that the benefits of a single program administered by the State were significant, and that the burden to industry of complying with dual programs was significant.

In response, the Agency notes that it has always been our goal to have the States administer the UIC program. EPA has worked diligently for several years to encourage States to identify or obtain such authorities and requirements and apply for program approval. In the above States, negotiations are continuing on necessary changes to the State's application. However, the Agency is precluded by law and regulation from granting primary enforcement authority until a State has demonstrated authority and statutory and regulatory provisions which meet the Federal requirements. Progress is being made towards that end. However, the Act requires that either approved State programs or Federal programs be established, and further delay is unwarranted. Moreover, the Agency has entered into a Court-approved Consent Decree to promulgate these Federally-administered UIC programs. As soon as either of these States qualifies for primacy the Agency will act. In the interim, we hope to minimize the effect of dual programs by working with the States whenever possible to match the federal regulations, within the bounds imposed by the minimum requirements.

IV. State-Specific Subparts

Subpart K—Florida

Subpart K requires all owners and operators of Class II wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations specific to Florida, where discretion is allowed, in order to make the Florida Class II UIC program appropriate and amenable to the combination of historic practices and geology unique to the State. EPA is also applying this program to Indian lands in the State.

Maximum Injection Pressure

As explained in Part IV.B. of this Preamble, EPA's approach to establishing pressure limits for existing operations is to set a conservative statewide value for Class II saltwater disposal wells, and to require submission of information that will enable the Agency to establish formation-specific values for Class II hydrocarbon storage and enhanced recovery wells. This is the approach being promulgated today for Florida.

Casing and Cementing

As explained in Part IV.C. of this preamble, EPA's approach for existing wells is to establish state-specific casing and cementing requirements that apply when the Regional Administrator determines that a well may not be in compliance with the standards in the minimum requirements that prohibits the movement of fluids. EPA is promulgating specific casing and cementing requirements for the Florida program according to this approach.

Area of Review

As discussed in Part IV.E. of this preamble, the Agency proposed to limit the options for establishing the area of review for Class II wells to the minimum fixed radius as described in § 146.6(b) for several programs. The Agency adopted this approach because of the potentially large number of wells involved, and the considerable delay in program implementation that could be caused by processing requests based on many formulae.

Subpart M—Hawaii

The State of Hawaii does not have an EPA-approved UIC program for any Class of wells within the State. EPA, therefore, must propose a program for all classes of wells. Because EPA was unaware of any existing Class I, II, III, or IV wells within the State, it did not promulgate any specific provisions for existing wells authorized by rule. Class V wells will be inventoried, but no permitting or other regulatory action beyond the requirements of 40 CFR Parts 144 and 146 are proposed at this time. EPA has determined that the minimum program requirements set forth in 40 CFR Parts 124, 144, and 146 were appropriate for this jurisdiction and will require all owners/operators to comply with these UIC regulations.

Applicants who seek a Federal UIC permit in this jurisdiction should be aware that the State of Hawaii has developed regulations which may prohibit construction and operation of Class I, II, III, and IV injection wells. Such State rules are not prohibited by the SDWA, because section 1423(c) provides that "nothing in this [Act] shall diminish any authority of a State . . . to adopt or enforce any law or regulation respecting underground injection".

Subpart R—Kansas-Indian Lands

Subpart R contains the UIC program for Kansas, which, for non-Indian lands, is administered by the State. EPA is adding to Subpart R requirements comprising the UIC program for Indian lands in Kansas, to be administered by EPA. The Kansas Indian lands program consists of the UIC minimum requirements regulations at 40 CFR Parts 124, 144 and 146.

Because EPA is not aware of any Class I, II, III or IV wells on Indian lands in Kansas, it is not proposing any specific provisions for existing wells authorized by rule. Class V wells will be inventoried within one year of promulgation of the program, but no permitting or other regulatory action beyond those in 40 CFR 124, 144, and 146 is proposed at this time.

The Agency has taken this approach, rather than adopt a program tailored to the state-administered program in effect in the rest of the State, primarily because EPA is not aware of any Class I, III, or IV wells in existence in the State. The Agency also is unaware of any significant level of injection activity anticipated for the future. Thus, development of a Federally-administered Indian lands program tailored after the state-administered requirements is not necessary to relieve owners and operators of any burden which could result from different approaches being applied to similar operations in the same State. The application of the UIC minimum requirements regulations is, therefore, the most straightforward and simple means of putting into effect the requirements necessary to cover any injection activity that may become a possibility in the future. Discussions with appropriate tribal organizations and with the Bureau of Indian Affairs indicated concurrence with the approach.

Subpart Y—Minnesota

Subpart Y contains the EPA-administered program for Minnesota. EPA is adding to Subpart Y provisions establishing a unique program for Indian lands within the State. The EPA-administered program in the rest of the State, promulgated May 11, 1984, contains provisions specifying requirements for receiving a Federal permit. State law and policy, however, prohibits most well injections, and as mentioned above, the Safe Drinking Water Act clearly provides that nothing in the SDWA "shall diminish any authority of a State . . . to adopt or enforce any law or regulation respecting underground injection". (see SDWA Section 1423(c)). In response to Indian wishes for a program at least as stringent as the State's, the Agency is banning injection into all classes of wells except Class V, and regulating Class V wells in accordance with the applicable provisions of 40 CFR Parts 124, 144, and 146. This action is being taken on the basis of comments received from representatives of the seven Chippewa Reservations in the State. These comments favored a ban on injection based on the geology and hydrology of the Reservations as well as on consistency with the State approach. Since these Reservations represent the majority of the tribal land in the State, their comments are viewed as being the preference of the majority of the Indians in the State.

Subpart Z—Mississippi

Subpart Z requires all owners or operators of Class II wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this program contains regulations specific to Mississippi, where discretion is allowed, in order to make the Mississippi Class II UIC progaram appropriate and amenable to the combination of historic practices and geology unique to the State. EPA is applying this program to Indian lands in the State.

Maximum injection Pressure

As explained in Part IV.B. of this Preamble, EPA's approach to establishing pressure limits for existing operations is to set a conservative statewide value for Class II saltwater disposal wells and to require submission of information that will enable the Agency to establish formation-specific values for Class II hydrocarbon storage and enhanced recovery wells. This is

the approach promulgated today for Mississippi.

Casing and Cementing

As explained in Part IV.C. of this preamble, EPA's approach for existing wells is to establish state-specific casing and cementing requirements that apply when the Regional Administrator determines that a well may not be in compliance with the standards in the minimum requirements that prohibits the movement of fluids. EPA is implementing specific casing and cementing requirements for the Mississippi program according to this approach.

Area of Review

As discussed in Part IV.E of this preamble, the Agency is limiting the options for establishing the area of review for Class II wells to the minimum fixed radius as described in § 146.6(b). The Agency is adopting this approach due in part to the potentially large number of wells involved, and the considerable delay in program implementation caused by processing requests based on many formulae.

Subpart KK—Ohio

Subpart KK requires all owners/operators of Class I, III, IV, and V wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this program contains regulations that supplement the UIC regulations, where discretion is allowed, in order to make the Ohio UIC program appropriate and amenable to the combination of historic practices and geology unique to Ohio. On September 22, 1983, EPA granted the State of Ohio primary enforcement authority to operate a UIC Class II well program. Ohio has not received primary enforceement authority for Class I, III, IV, and V wells. EPA will oprate the program for injection wells other than Class II wells, until such time as Ohio is granted primary enforcement authority over the remaining classes of wells.

Maximum Injection Pressure

EPA is applying to all Federally-implemented programs the use of a simple formula that EPA will use in each State program to establish maximum injection pressures, measured at the wellhead, for wells authorized by rule. The regulatory approach adopted here is discussed in detail in Part IV.B. of this preamble. An appropraite fracture gradient for Ohio is 0.75, psi/ft, according to the Ohio Department of Natural Resources and Ohio Environmental Protection Agency. This number is also within the range suggested by Warner and Lehr and is, therefore, being used in Ohio. EPA recognizes that this may be a conservative figure for some areas, but, as discussed above in this preamble and in the May 11, 1984 regulations (49 FR 20138 *et seq.*), operators may receive permission to operate at pressures greater than the pressure being proposed here by demonstrating that the injection does not cause the movement of fluids into or between USDWs. The Agency believes the figure is consistent with the SDWA, without being unduly restrictive to operators.

The State of Ohio has submitted an application for primary enforcement responsibility for Class I, III, IV and V wells. If this program is approved by EPA, the Federally-administered program will be rescinded.

Subpart QQ—South Dakota

Subpart QQ requires all owners or operators of Class I, III, IV and V wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations, where discretion is allowed, in order to make the South Dakota UIC program appropriate and amenable to the combination of historic practices and geology unique to South Dakota.

Since the May 11, 1984, proposal of an EPA-administered program for Class II wells in South Dakota, the State has submitted a final application for primary enforcement authority for a program to regulate the Class II wells. After careful review, EPA determined that the State's application was adequate and approved the State-administered program on October 10, 1984. This approval eliminates the need to promulgate an EPA-administered program for Class II wells except for those located in Indian Lands.

Maximum Injection Pressure

As exaplained in Part IV.B. of this preamble, EPA's approach to establishing pressure limits for existing operations is to set a conservative statewide value and to provide for injection at higher pressures under the circumstances discussed above in the preamble. This is the approach being promulgated today for South Dakota.

Casing and Cementing

As explained in Part IV.C. of this preamble, EPA's approach for existing wells is to establish state-specific casing and cementing requirements that apply when the Regional Administrator determines that a well may not be in compliance with the standards in the minimum requirements that prohibit the movement of fluids. EPA is applying specific casing and cementing requirements for the South Dakota program according to this approach. In response to comments, the Agency is deleting requirements listed in §147.2104, as explained in Part IV.C. of the preamble.

EPA-State Coordination

All Class I and Class III wells in South Dakota are required to apply for permits prior to initiation of construction. Such more stringent requirements are not prohibited by the SDWA, because § 1423(c) of the SDWA provides that nothing in the Act "shall diminish any authority of a State * * * to adopt or enforce any law or regulation respecting underground injection".

Subpart YY—Wisconsin

Subpart YY sets forth the UIC program for Wisconsin, which is administered by the State as approved by EPA. However, since Wisconsin did not assert jurisdiction over Indian lands in the State, EPA is promulgating a program applicable to those lands. EPA is therefore adding to subpart YY an EPA-administered Indian lands program.

This program consists of a prohibition of all underground injection. This approach is the one preferred by the majority of the tribal organizations in the State. The approach is taken because of the very high value the Indians place on ground water in their reservations. In addition, this approach is largely consistent with the approved state-administered program in effect in the rest of the State, which prohibits all injections other than certain Class V wells.

Subpart BBB—Puerto Rico

Subpart BBB requires all owners or operators in Puerto Rico to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146.

Because EPA is not aware of any existing Class I, II, or III wells in Puerto Rico, it is not proposing any specific new provisions for existing wells authorized by rule. Class V wells will be inventoried but no permitting on other regulatory action beyond the existing federal UIC regulations is proposed at this time.

All new Classes I, II, and III wells in Puerto Rico are required to apply for permits prior to initiation of construction.

One commenter requested that EPA exempt the aquifer beneath the Union Carbide Caribe facility located in Penuelas, Puerto Rico. If Union Carbide formally requests an aquifier exemption,

EPA will review the application and take appropriate action.

Subpart CCC—Virgin Islands

Subpart CCC requires all owners or operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146.

Because EPA is not aware of any existing Class I, II, III, or IV wells in the Virgin Islands, it is not specifiying new provisions for existing wells authorized by rule. Class V wells will be inventoried but no permitting or other regulatory action beyond the current federal UIC regulations is being developed at this time.

All new Classes I, II, and III wells in the Virgin Islands are required to apply for permits prior to initiation of construction.

Subpart GGG—Osage Mineral Reserve

A. Background

The Osage Mineral Reserve in Oklahoma was established by an Act of Congress in 1906, which allows the Osage Indian Tribe, through the Bureau of Indian Affairs (BIA), to establish leasing policies and obtain royalties from oil and gas production. Because of the nature of this grant of authority, the State of Oklahoma does not regulate mineral extraction activities on the Reserve, and the Oklahoma UIC program for Class II wells (those related to the production of oil and gas) approved by EPA on December 2, 1981, does not apply to injection activities on the Reserve. Consequently, EPA is developing a Class II UIC program for the Osage Mineral Reserve. This subpart establishes such a program. A program to regulate Class I, III, IV, and V wells will be developed and promulgated separately.

B. Criteria for Establishing the Osage UIC Program

EPA's national UIC program requirements at 40 CFR 144.2 clarify the authority of the Agency with respect to prescribing UIC programs for Class II wells on Indian lands. Section 144.2 provides that the Administrator may depart from the Agency's general UIC regulations as long as he considers tribal interest and preferences, consistency with the program of the State in which the Indian lands are located, and other factors as are necessary and appropriate to carry out the statutory requirements of the SDWA. With respect to Indian lands programs generally, EPA proposed on September 2, 1983, (48 FR 40068) four options for the contents of Indian lands programs to be implemented by EPA. These include: (1) A program consisting of current UIC minimum requirements; (2) a program consisting of the requirements of the State-administered program for the State in which Indian lands are located; (3) a program consisting of a combination of Federal and State requirements; and (4) a program different in some respects from both the Federal UIC program and the approved State program containing requirements that respond to concerns and wishes of the affected tribal government.

In consideration of the large number of wells in the Osage Mineral Reserve, and the fact that the Reserve already has a considerable history of regulation of Class II wells, EPA has decided that the most appropriate approach is to tailor a program specifically to the Reserve, combining the approaches of several of the proposed options. The program being promulgated today has been developed by drawing from existing BIA requirements, requirements from the approved Oklahoma UIC program in effect in the rest of the State, the EPA UIC minimum requirements, and the expressed preferences of the Osage Tribe. Following is a brief explanation of how three major sources (the existing BIA program regulating oil and gas production, the Oklahoma Corporation Commission Class II UIC program, and the EPA UIC minimum requirements at Parts 124, 144, and 146) were used in developing the Osage County requirements.

Bureau of Indian Affairs

The BIA is currently regulating all oil and gas production in Osage County and is responsible for the prevention of pollution by oil and gas producers under the authority of 25 CFR Part 226. As a part of this responsibility, BIA requires injection well operators to gain Osage Agency, BIA, approval before drilling, converting, or plugging an injection well. The Osage UIC program incorporates many requirements of the current BIA program but will expand upon these requirements. BIA and EPA will work together based upon the regulations administered by each Agency. A single permit, containing existing BIA conditions and the conditions applied by EPA as part of this rulemaking, will satisfy the requirements of both Agencies. Some of the specific aspects of the BIA program which EPA is adopting include the following: bonds required by 25 CFR Part 226; BIA forms; setting plugs in abandoned wells to protect currently used aquifers as well as at the base of the lowest USDW; and testing newly converted injection wells to at least 200 psi to insure that the casing, tubing and packer operate correctly.

Oklahoma Corporation Commission

The Oklahoma Corporation Commission received primacy for the Class II injection well program for non-Indian lands in Oklahoma on December 2, 1981. Since Osage County is located in Oklahoma and many well operators have facilities both in Osage County and in the rest of the State, the proposed program included several requirements similar to the State requirements. Some of the proposed provisions similar to Oklahoma's included: plugging requirements, the one-fourth inch female fitting to the tubing/casing annulus, and corrective action requirements. Based on comments received during the public comment period, however, changes were made to these program areas; therefore, the second and third requirements now differ somewhat from the State's.

EPA's UIC Minimum Requirements (Parts 124, 144, and 146). This program contains several provisions similar or identical to the EPA regulations, although in some cases they were modified to be more flexible. Some of the sections used are: area permits, emergency permits, permit modifications and terminations, and the appeals procedure.

The approach described above was considered superior to the several other options considered. Adoption of a program identical to the State program approved in Oklahoma would have ensured consistency of the Osage program with the adjoining jurisdiction, but would disrupt the existing regulatory program of the BIA and ignore the preferences of the Osage Tribe for matching certain of the standards and procedures of that BIA program. Another option was to adopt a program consisting of the precise minimum requirements of the national UIC regulations. This option was rejected as being inconsistent with both the BIA and the Oklahoma State programs, ignoring the advantages of coordination and cooperation between programs, the desirability of relative uniformity across jurisdictional lines, and the preferences of the Osage Tribe. At the same time, under the adopted approach, the substantive standards of the EPA minimum requirements have been retained with only few and limited exceptions.

These rules are presented in four parts. Sections 147.2901 to 147.2908 contain general provisions applying to all Class II injection wells in Osage County. These provisions include explanations of the area of review

concept, the plugging and abandonment requirements, and instructions for obtaining an emergency permit. Sections 147.2909 to 147.2915 contain the rules for authorization of existing Class II injection wells (defined as those wells the construction of which was approved by the Bureau of Indian Affairs (BIA), pursuant to 25 CFR 183, prior to the effective date of this UIC program). Since these wells will be authorized by rule for the life of the well, the operators will not automatically have to apply for an EPA permit (a well authorized by rule may be called in for a permit by the Regional Administrator, under certain circumstances, pursuant to § 147.2915). However, these rules do contain construction, operation, monitoring and reporting requirements with which the operators must comply. Sections 147.2916 to 147.2928 contain the instructions for submitting a permit application, as well as construction, operation, monitoring, and reporting requirements for injection wells to be drilled or converted after the effective date of the program. Also included are requirements for corrective action, area permits, and permit transfers, modifications, and terminations. Standard permit conditions are outlined in these sections, as well as procedures for the appeal of permit decisions. Section 147.2929 contains the administrative permitting procedures such as preparing draft permits, giving public notice of important actions and responding to comments.

C. Organization and Content

The Osage UIC program promulgated today is codified as Subpart GGG of Part 147 of 40 CFR. EPA established Part 147 to contain all Federally-administered UIC programs as well as notices of approval for State-administered programs. To help inform the public of all requirements applicable in each State, EPA adds to Subpart LL, which describes the approved programs administered by Oklahoma, a reference explaining that the requirements for the Indian lands program for the Osage Mineral Reserve in the State are set forth at Subpart GGG.

The four groups of standards just described are the same basic program elements contained in the Federal UIC minimum requirements: general program requirements, program requirements and technical standards for wells authorized by rule, program requirements and technical standards for wells authorized by permit, and procedural requirements (including public participation) for the permitting process. Although the format or means of administration of these standards varies from the minimum requirements, the substantive standards themselves are equivalent to the minimum requirements with only few and limited exceptions.

Some variations result from attempts to maintain consistency with the program of the Oklahoma Corporation Commission applicable in the rest of the State. Although that program has been approved by EPA, it does not in every case meet precisely the UIC minimum requirements regulations, because strict equivalence is not required of State Class II programs under Section 1425 of the SDWA. Other variations result from conforming the Osage program to the existing BIA program, or to tribal preferences. As mentioned above, § 144.2 of EPA's regulations provides the flexibility to promulgate programs on Indian lands that contain such variations. The major differences, and rationale for the differences, are outlined below.

§ 147.2902 Definitions (Minimum Requirements § 144.3)

One commenter questioned EPA's inclusion of "pulling of tubular goods" in the definition of a "well workover" noting that it was not included in BIA's requirement. Under BIA requirements, a permit is required for well workovers and the commenter apparently believed that EPA's inclusion pulling the tubular goods would require operators to get a BIA permit. However, BIA's definition of a workover does not include the pulling of tubular goods, and BIA permit requirements for workovers will continue to apply to only those activities that are described under the BIA definition. The Agency's action today will not change existing BIA requirements as to whether the Agency should concern itself with activities such as pulling of the tubular goods. The EPA under the SDWA has a different mandate than the BIA and, therefore, concerns itself with activities which the BIA does not. We believe it a legitimate activity, consistent with the goals of the Act and the minimum standards regulations, that EPA have knowledge of occasions when the tubular goods are pulled. On such occasions, EPA may desire to observe the condition of the pipe, or schedule tests in a manner less burdensome to the operator. We, therefore, left our proposed definition unchanged since it does not affect existing BIA permitting requirements.

In the proposal, Class II well definitions ("Class II wells, Existing Class II wells and New Class II wells") were incorrectly identified as Class III well definitions. Corrections to each definition to properly identify it as pertaining to Class II, have been made.

Prohibition of Unauthorized Injection (Minimum Requirements § 144.11); Osage § 147. 2903)

One commenter suggested that EPA add a provision to the Osage regulation similar to the Oklahoma Corporation Commission's (OCC's) provisions Rule 3–311 and 3–312. OCC's provision states that reserve pit fluids may be injected provided that OCC grants approval. OCC also has in place a provision for temporary emergency authorization of such injections.

Section 147.2903 requires that any underground injection must be authorized by permit or rule. In addition, § 147.2906 provides for the issuance of emergency permits. Therefore, we believe that the program requirements specified, if not identical to the OCC provisions, are at least substantially similar. The Agency can grant emergency authorizations when appropriate with minimal administrative procedures.

One commenter expressed concern that the proposed emergency authorization (§ 147.2906(a)(2)) was not adequate to protect correlative rights apparently because the standard in that section refers to loss of oil or gas, regardless of who the operator might be. In response, EPA would like to point out that a third provision at § 147.2906(a)(3) cites delay in production as justification for an emergency permit. For either of the above requirements, EPA intends that the owner or operator make the demonstration. Accordingly, it is obvious that the Agency is concerned about loss or delay of oil and gas production to an operator, and these correlative rights would be protected.

Area of Review (Minimum Requirements § 146.06); Osage § 147.2904)

For the Osage program, EPA defines the area of review as "a fixed radius of one-fourth mile from the well, field or project." However, the zone of endangering influence is an area around the well or project calculated by EPA, that may be greater, equal to or less than one-fourth mile. One commenter suggested that EPA define the zone of endangering influence as less than or equivalent to the area of review.

After carefully considering the comment, EPA is promulgating the one-quarter mile fixed radius as proposed and as promulgated previously in § 146.6. The area of review merely establishes the boundary of that area around a proposed injection facility within which the applicant for a permit must identify the location of wells which

penetrate the injection zone and for certain Class II wells, operating at high pressures, identifying any additional wells affected by the operating pressure. The Regional Administrator will approve or disapprove each permit application based upon a review of information available for defining the proposed injection operation, the geology of the area, and other activities in the area. Permits will be granted only when it is demonstrated that underground sources of drinking water will not be endangered. We have decided to retain the zone of endangering influence concept as proposed in 147.2904, because we believe that it is consistent with the Agency's mandate to protect USDWs.

Plugging and Abandonment Plan (Minimum Requirements): §§ 144.21(c)(5), 144.22(a)(5), and 144.52(a)(6)); Osage: § 147.2905

EPA minimum requirements require owners or operators to prepare and maintain a plugging and abandonment plan within the first year of the UIC program. The Osage regulations require such a plan to be developed at least five days before plugging, which must occur within one year of the termination of injection. This approach maintains the advantage of consistency with the adjoining jurisdiction, since the approved Oklahoma program does not require such plans to be prepared prior to actual plugging. In addition, the Agency believes that this difference is justified on the basis of the unique characteristics of the Osage program.

For several reasons, the details of plugging and abandoning wells on the Osage Reserve are likely to be uniform and, therefore, plans will be easier to process than for most other programs. First, the Osage program covers only Class II wells and the construction details of the wells are generally similar. Second, there are a limited number of producing formations within the Osage Reserve, the disposal operations are confined to a few discrete strata. The geology of these strata and overlying strata is well established. Since plugging and abandonment procedures are largely a function of the well construction and the geological and geohydrologic characteristics of the site, the task of developing and evaluating the plans should be relatively simple. Thus, equivalent protection for USDWs is provided in the Osage program without requiring early preparation of plugging and abandonment plans.

Notice of Plugging and Abandonment (Minimum Requirements: §§ 144.21(c)(4), 144.22(a)(4), 144.51(n), and § 144.28(j) and (c)(2)(iii) and 144.52(a)(6)); Osage § 147.2905

EPA's minimum requirement regulations currently require notice of plugging and abandonment but leave the minimum advance notice time to the discretion of the Director. For EPA-administered programs in general, EPA has established this time period at 45 days before plugging and abandonment, with the possibility of a shorter time if approved by the Regional Administrator. (See § 144.28(j)(2), 49 FR 20185, May 11, 1984). EPA is establishing this time period at five days before plugging and abandonment for Osage County.

The primary purpose of the 45 day notice was to allow EPA to review plans and make arrangements to observe the plugging operation if the Agency wished to do so. The same factors described above that demonstrate the lack of a need to require advance preparation of plugging and abandonment plans support the reasonableness of a short notice period. In view of these factors, i.e., that Osage county is relatively small, and the EPA is operating a field office in the county, the review of plans and observation of plugging can still be arranged within the five day time period.

One commenter objected to this five day notice requirement, noting that a minimum 24 hours prior notice was already required by the Osage Agency. The commenter suggested that EPA's requirement was redundant and should be reduced to 24 hours prior notice of plugging so that a single notice could be given. The EPA agrees that a single notice would be more practical and notes that the Osage Agency's 24 hour requirement is a minimum prior notice. Thus, the operator could notify the Osage Agency and EPA at the same time and still comply with both Agency requirements.

EPA's minimum requirements regulations require that wells be plugged when they are abandoned (§ 146.10), but provide that temporary and intermittent cessation shall not be considered abandonment (§§ 144.21(c)(5), 144.22(a)(5), and 144.52(a)(6)). For EPA-administered programs generally, EPA has provided that any cessation of injection that extends longer than two years will not be considered "temporary and intermittent," and that, therefore, the well must be plugged unless the owner or operator notifies the Regional Administrator and demonstrates maintenance procedures that will ensure no endangerment of USDWs during the period of abandonment (see § 144.28(c)(2)(ii), 49 FR 20183, May 11, 1984.) In the proposed Osage regulations, EPA specified a six-month plugging and abandonment period in Osage County. Most commenters expressed strong objection to this requirement. One landowner expressed agreement with the six-month period. Most commenters, however, felt that six months is not an adequate time period. They indicated that economic fluctuations within the industry often dictate that wells be temporarily abandoned and brought back into service when conditions warrant it. They, therefore, felt that six months would not be adequate time for a realistic assessment. Finally, one commenter objected to the specific requirements applied to wells which were temporarily abandoned (See § 147.2905(a)). As was stated in the proposal, one of the main reasons for the six-month requirement was to achieve consistency with OCC requirements that apply elsewhere in Oklahoma.

After considering comments opposed to and in support of the proposed six-month plugging and abandonment requirement, EPA has decided to modify § 147.2905 to require that a well be properly plugged within one year of ceasing the injection unless the owner or operator demonstrates that the well will be reactivated. This modification will reflect more accurately the conditions which dictate a well's future usefulness and at the same time, EPA maintains control over timely plugging and abandonment. During the lapsed period between when these regulations were being drafted and when they were proposed in the **Federal Register** OCC modified its plugging and abandonment requirement to one year. Therefore, EPA's one-year provision in Osage County is consistent with the State's, and is responsive to both public comments and to tribal preferences.

EPA still intends, however, to retain the requirements of § 144.2905(a) which require operators to perform mechanical integrity tests annually. The commenter who raised this issue proposed monitoring of fluid levels in lieu of the MIT tests. EPA would like to point out that the Agency has the authority to approve alternative tests and that under certain circumstances the commenter's proposal could serve as a basis for proving mechanical integrity.

Authorization of Underground Injection by Rule (Minimum Requirements: § 144.21 Osage: §§ 147.2909 to 147.2915)

Under 40 CFR §§ 144.21, and 144.31, owners or operators of existing salt water disposal wells are required to obtain a permit. For the Osage Class II program, existing salt water disposal wells which do not endanger USDWs are authorized by rule for the life of the well unless specifically identified by EPA as needing a permit. It is the preference of the Osage Tribe that owners or operators of existing wells not be routinely subjected to the permit application process, since they have already provided much of this information to the BIA. Furthermore, under Oklahoma's approved Class II program, owners or operators of existing wells are not routinely required to obtain a new permit. Therefore, the Osage provision is consistent with tribal preferences and with the program in effect in the adjoining jurisdiction.

Wells authorized by rule will receive the same technical scrutiny as those being permitted. Wells authorized by rule must meet the same operating, monitoring, mechanical integrity testing, and reporting requirements as wells under permit. EPA will perform an in-depth review of well construction and operation at the time of mechanical integrity testing. This alternative approach will reduce EPA's administrative paperwork burden of issuing permits for existing wells and will allow EPA to accelerate the mechanical integrity testing schedule for salt water disposal wells. The reduced administrative workload will also allow EPA to witness more of these mechanical integrity tests, with the goal of witnessing all mechanical integrity tests in Osage County.

Construction Requirements (Minimum Requirement § 146.22; Osage: 147.2911 and 147.2919)

One operator commented that EPA's proposal to require that wells be equipped with a one-fourth-inch female fitting would impose an additional economic burden on operators. The commenter further stated that an operator usually has a standard fitting within his operation. After considering these comments, we have changed this requirement. Rather than specifying a one-fourth-inch female fitting, the regulation now requires that the operator provide a standard female fitting.

§ 147.2912(a) and 147.2920 Operating Requirements (Minimum Requirements: § 146.8; Osage: §§ 147.2912(a) and 147.292(b)).

Mechanical Integrity Tests

The Agency proposed to allow operators to demonstrate there is no significant leak in the casing, tubing or packer by:

1. A pressure test of the casing/tubing annulus to the maximum injection pressure, but not less than 200 psi; or,
2. Monitoring the pressure in the casing/tubing annulus, following an initial pressure test.

The Agency received more comments on the proposed pressure testing of the casing/tubing annulus than any other provision in the proposed Osage regulations. Most commenters believed that the proposed pressure test was overly restrictive. Some believed that the test itself would cause a casing, tubing, or packer leak. Others stated that many old wells could not pass any pressure test and still other commenters pointed out that in some of their wells, oil is produced through the casing/tubing annulus (dual completions). Most commenters suggested alternative mechanical integrity testing procedures. These included:

1. Monitoring fluid level in annulus to insure that it is constantly lower than the base of any USDW,
2. Using radioactive tracer survey to assure that fluid is going into authorized injection zone,
3. Limiting maximum test pressure,
4. Decreasing minimum test pressure to 100 psig,
5. Using "Mule Tail" test to identify where injection fluid is going, and
6. Waiving the pressure test requirement for wells injecting in a vacuum.

There were several comments on modifying the optional annulus monitoring. Some urged EPA to consider the well to have integrity if there were no pressure on the annulus; another suggested that the annulus be left open and the well would be considered to have mechanical integrity as long as fluid was not observed at the surface; and others suggested the fluid level in the annulus be monitored and as long as the fluid level remained below the base of USDW, the well did not need mechanical integrity testing.

One commenter wanted the option to monitor the injection pressure/flow rate relationship.

Both the EPA general technical requirements for UIC programs (40 CFR Part 146) and the Osage regulations (40 CFR Part 147, Subpart GGG) require as a fundamental minimum that each well have mechanical integrity. The regulations state that all wells must demonstrate that there is no significant leak in the casing, tubing, and packer. Because of this fundamental regulatory requirement and because of the Agency's statutory mandate to protect USDW's, EPA decided to consider no options which would allow wells to operate if there are significant leaks in the casing. For the same reasons, EPA decided not to allow waivers of mechanical integrity testing.

After a thorough review of the comments and other technical data, however, EPA will consider the alternative proposed by the commenters, including:

1. Elimination of the requirement that pressures higher than 200 psi must be applied to the casing/tubing annulus—this should eliminate concern for the destructive nature of the higher pressures and still demonstrate the absence of significant leaks;
2. Elimination of the requirement of an initial pressure test when monitoring the casing/tubing annulus monthly—by requiring the annulus to be filled with a liquid and a positive gauge pressure maintained on the casing/tubing annulus, it can be effectively demonstrated that there are no significant leaks;
3. Addition of (for enhanced recovery wells only) records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate at the wellhead, following an initial pressure test—this is an option provided for in 40 CFR Part 146.08; and
4. Addition of radioactive tracer surveys for detecting leaks—this can be an effective tool in detecting leaks in the tubing and packer, and it can also be used to detect casing leaks if the tubing is pulled.

It is recognized that none of the above tests may provide a suitable test for demonstrating the absence of significant leaks in those wells producing oil through the casing/tubing annulus. The regulation still provides for alternate tests when approved by the Administrator/Regional Administrator on a case-by-case basis. EPA, in consultation with affected operators and other regulatory agencies (States of Oklahoma and Kansas and the BIA), will consider the above alternatives and develop a suitable alternative method which will meet the requirements of the MIT before the dual completion wells are required to demonstrate mechanical integrity.

§ 147.2912(b) Maximum Injection Pressure (Minimum Requirements: § 146.12(a); Osage: 147.2912(b)).

For wells authorized by rule, the Agency proposed to adopt a simple formula that would prescribe injection pressure measured at the wellhead. The formula uses a value of 0.75 psi/ft for the fracture gradient.

The agency received a substantial number of comments on this issue. In general, nearly all commenters believed the general maximum values proposed by the Agency were too low. One noted the formula did not consider friction loss due to small diameter tubing or down-hole devices. Another was concerned that the pressure limits would prevent fracturing during well stimulation.

The Agency agrees with many of these comments. In particular EPA agrees that factors which determine appropriate injection pressures are specific to the particular injection formation, rather than being uniform across the county. It is also recognized that the fracture gradient of 0.75 psi used in the formula is a conservative figure. This approach for Class II salt water disposal wells remains a valid alternative in that those operating at relatively high presgures who wish to continue at those pressures will be required to submit a permit application, with factual fracture gradient data, within the first year. Operators have one year from the effective date of this regulation to comply with the calculated pressure limits, thus allowing operators time to obtain a permit or to make adjustments in their injection pressures. An exception to the calculated limits has been provided for well stimulation. EPA has decided to promulgate a revised approach for specifying limits on injection pressure for enhanced recovery wells. The approach is:

1. Eliminate the proposed county-wide psi/ft fracture gradient value;

2. Require Class II enhanced recovery injection well operators to provide definitive field or formation-specific fracture-pressure data within one year of the effective date of this program; and

3. Develop and specify a field or formation-specific pressure gradient based on these and other related data (See part IV.B. of this preamble for a description of the procedure to be used by the Regional Administrator to establish this field or formation-specific gradient under 147.2912(b)(2)(ii)).

§§ 147.2913 and 147.2922 Monitoring and Reporting (Minimum Requirements: §§ 146.23(b) and 144.38; Osage: §§ 147.2913 and 147.2922).

The minimum requirements require monitoring of the injection pressure and flow rate at least weekly for produced fluid disposal operations and at least monthly for enhanced recovery operations. EPA is adopting the monthly frequency for enhanced recovery operations; however, the frequency for produced fluid operations is being set at monthly as well. EPA believes that the difference between weekly and monthly monitoring is justified by the advantage of consistency with the approved Oklahoma requirements and the preferences of the Osage Tribe and the BIA.

One commenter objected to EPA's proposal approach to monitoring the "nature" of injected fluid. Essentially, EPA specified that an initial analysis be performed, and that subsequent analyses be done only when changes are made in the source or nature of fluid injected (See § 147.2913(d)). The commenter noted that the nature of produced water changes with time, and apparently believed that such changes would have to be reported.

EPA would like to note that it was for this reason that the word "change" was introduced into the requirement. As long as there are no substantive changes or additions to the nature of the produced fluids, the gradual change of concentrations that may occur in brines from a single given formation (source) need not be reported as a change in the nature of injected fluid.

The UIC minimum regulations at § 144.26 require that specific information be submitted to the Director. The Osage program in § 147.2913(a) requires inventory information to be submitted only upon request, because comprehensive well information is already on file with the BIA and the Osage UIC office. Submittal of information already available to EPA would be an unnecessary administrative burden upon the operator.

Application for a Permit (Minimum Requirements: § 144.31; Osage: 147.2918)

EPA has decided that some of the information ordinarily required to be submitted as part of a permit application need not be required for applications under the Osage program. This information includes the following items in § 144.31: paragraph (e)(1) (the activities conducted by the applicant that require him to obtain a permit); paragraph (e)(3) (SIC codes reflecting the products or services of the facility); paragraph (e)(6) (lists of permits or approvals under other regulatory programs); paragraph (e)(7) (map of one mile radius around the facility; and paragraph (e)(8) (brief description of the nature of the business).

Most of these information items are unnecessary because they generally are known and uniform among all facilities regulated by the program, given that the program regulates only a single and well-defined class of wells and is contained within a relatively limited geographic area. With respect to notice of other permits received, the coordination that has already been incorporated into this program between EPA and BIA, the only other permitting authority for injection wells in this area, renders such notice unnecessary.

With respect to the mile radius map, the Osage program does require a map showing the area of reveiw (established in § 147.2905 of the program as one-fourth mile), which will show the main elements of the facility and surrounding area that are of concern. This requirement is consistent with the approved Oklahoma program and the BIA progam.

Two comments were received suggesting that both the area of review and the public notice area be one-fourth mile as opposed to one-half mile. Under the BIA program the notice requirement is limited to adjacent operators. Since that provision would ignore off-set lease operators, we are promulgating the half-mile public notice area. This is similar to OCC notice requirements and the Agency believes that the half mile area will more likely include all affected operators than the one-quarter mile.

The proposed regulations included requirements that plans for corrective action on wells within the area of review and the results of mechanical integrity testing, be submitted with the permit application. Commenters questioned the sequence of those requirements in the permitting process. They pointed out that since corrective actions will be prescribed by EPA and Mechanical Integrity tests will be witnessed by EPA, it is unreasonable to impose these requirements prior to EPA's review of the permit. After reevaluating our requirements based on these comments, we have decided to remove both corrective action plans and mechanical integrity testing from the list of permit application information at 147.2918b (9) and (11). These requirements must still be met prior to operation in accordance with § 147.2920(b) and § 147.2923. In making these adjustments, EPA is merely rescheduling the submission of

information required for permitting and well operation.

Monitoring and Reporting Requirements (Minimum Requirements: § 144.38; Osage: § 147.2922(e)).

An addition (item "e") has been made to this section to include transfer of ownership. This inclusion makes this section consistent with the requirement stated in § 147.2926(a)(1).

Signatories to Permit Applications and Reports (Minimum Requirements: § 144.32; Osage § 147.2925(j)).

For owners or operators that are not individuals, the minimum requirements specify who may sign permit applications and reports according to their position in the corporation, partnership or municipality. The Osage program requires only that the "owner or operator" sign such documents, a standard somewhat less specific than the minimum standards. The Agency is adopting this approach since it is the standard now employed by the BIA. Since the Agency will be using the BIA permit form with some additions, accepting BIA's signatory requirements will enable EPA to implement the program without unduly disrupting the existing program, while still assuring protection of USDWs.

§§ 147.2926, 147.2929(a), 147.2929(d)(2)(i)) Shortening of Certain Notice Periods (Minimum Requirements: §§ 124.10, 144.31(d), and 144.38)

In several instances, the Osage program proposes to use time periods for public notice or notification of the Regional Administrator by the owner/operator which are less than those specified in the minimum requirements regulations. For example, § 147.2929, Public Notice, specifies a public comment period of 15 days, while 40 CFR § 124.10 specifies 30 days. Similarly, § 147.2926, Permit Transfers and § 147.2929(a), Completeness Review, require only 10 day time periods while the minimum requirements at § 144.38 require 30 days of notice for permit transfers, and at § 144.26(d) impose no deadline on EPA for completing reviews. The Agency believes that these lesser time periods are appropriate for the Osage program. The Mineral Reserve is small, the fields well established, and both the Agency and the affected community are well acquainted with the activities occurring there. This allows the necessary review, comment, and action to be accomplished by all involved parties within a shorter time. In addition, the times specified are consistent with those in the Oklahoma Class II program and exceed current BIA requirements. Further, EPA's Osage UIC field office located in Osage County facilitates contact between the Agency and operators. Considering all these factors, EPA believes EPA the shorter time periods proposed in the Osage program to be justified.

The ten day period for completeness reviews of permit applications establishes a time limit where none exists in the minimum requirements. It should be made clear, however, that the Agency in no way intends that failure to perform the review in the specified time results in any type of automatic determination or approval. Failure would simply constitute a breach of the stated regulatory duty and impose the continued obligation to perform the duty as quickly as possible.

VI. Compliance with Regulatory Review Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of the Regulatory Impact Analysis. This regulation is not major because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, the impact of the proposed rule is not considered to be major.

These amendments were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any response by the Agency are available for public inspection at the EPA Office of Drinking Water, 401 M Street, S.W., Washington, D.C. 20460.

B. Regulatory Flexibility Act

Today's regulations apply these requirements to new jurisdictions. However, the Agency's analysis indicates that this will not have a significant economic impact on a substantial number of small entities. All of the programs promulgated today were contemplated in the original economic analysis of the UIC program, and there has been no major change in the estimates of the burden of the program.

C. Paperwork Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number *2040–0042.*

List of Subjects

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indian lands.

40 CFR Part 144

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply.

40 CFR Part 146

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply.

40 CFR Part 147

Administrative practice and procedure, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

Authority: Safe Drinking Water Act, 42 U.S.C. 300h.

William D. Ruckelshaus,

Administrator.

For the reasons set out in the preamble, Parts 144 and 147 of Chapter I, Title 40 of the Code of Federal Regulations are amended as set forth below.

PART 144—[AMENDED]

Section 144.3 is amended by adding a definition for "Indian Lands" to follow the definition of HWM facility:

§ 144.3 Definition. -

* * * * *

Indian lands means "Indian country" as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAM

Subpart K—Florida

Subpart K is amended by adding §§ 147.501, 147.502, 147.503, and 147.504 as follows:

* * * * *

§ 147.501 EPA-administered program—Class II wells.

(a) *Contents.* The UIC program for Class II wells in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Florida is: December 30, 1984.

§ 147.502 Aquifer Exemptions. [Reserved]

§ 147.503 Existing Class II (except enhanced recovery and hydrocarbon storage) wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3)(i) of this chapter, the owner or operator shall use an injection pressure at the well head no greater than the pressure calculated using the following formula:

$Pm = (0.733 - 0.433\ Sg)d$

where

Pm = injection pressure at the well head in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§147.504 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure. (1)* To meet the operating requirements of §144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressure greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of §144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of §144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) Comply with other requirements which the Regional Administrator may specify either in addition to or in lieu of the requirements set forth in paragraphs (b)(1)–(3) of this section as needed to protect USDWs.

(c) *Area of review.* Notwithstanding the alternatives presented in § 146.06 of this chapter, the area of review shall be a minimum fixed radius as described in § 146.06(b) of this chapter.

(The information collection requirements contained in paragraph (a)(2)(ii) were appoved by the Office of Management and Budget under control number 2040–0042)

Subpart M—Hawaii

2. Subpart M is amended by adding §§ 147.600 and 147.601.

§ 147.600 State-administered program. [Reserved]

§ 147.601 EPA-administered program.

(a) *Contents.* The UIC program for the State of Hawaii is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for the State of Hawaii is December 30, 1984.

Subpart R—Kansas

1. Subpart R is amended by revising § 147.850 to read as follows:

§ 147.850 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Kansas, except those on Indian lands as described in § 147.860, is the program administered by the Kansas Department of Health and Environment, approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the Federal Register on December 2, 1983 (48 FR 54350); the effective date of this program is December 2, 1983. This program consists of the following elements, as submitted to EPA in the State's program application.

2. Subpart R is amended by revising § 147.851 to read as follows:

§ 147.851 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Kansas, except those on Indian lands as described in § 147.860, is the program administered by the Kansas Corporation Commission and the Kansas Department of Health and Environment, approved by EPA pursuant to Section 1425 of the SDWA. Notice of this approval was published in the Federal Register on February 8, 1984 (49 FR 4735); the effective date of this program is February 8, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

3. Subpart R is amended by adding § 147.860.

§ 147.860 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Kansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Kansas is December 30, 1984.

Subpart Y—Minnesota

1. Subpart Y is amended by adding § 147.1210 as follows:

§ 147.1210 Requirements for Indian Lands.

(a) *Purpose and Scope.* This section sets forth additional requirements that apply to injection activities on Indian lands in Minnesota.

(b) *Requirements.* Notwithstanding the other requirements of this subpart, for Indian lands described in paragraph (a), no owner or operator shall construct, operate, maintain, or convert any Class I, II, III, or IV well. The UIC program for Class V wells on such Indian Lands is administered by EPA, and consists of the applicable requirements of 40 CFR Parts 124, 144, and 146. In addition, no owner or operator shall abandon a well without the approval of the Regional Administrator.

(c) *Effective date.* The effective date of the UIC program requirements for Indian lands in Minnesota is December 30, 1984.

Subpart Z—Mississippi

1. Subpart Z, is amended by adding §§ 147.1251, 147.1252, 147.1253, and 147.1254 as follows:

§ 147.1251 EPA-administered program—Class II wells.

(a) *Contents.* The UIC program for Class II wells in the State of Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Class II wells in Mississippi is December 30, 1984.

§ 147.1252 Aquifer Exemptions. [Reserved]

§ 147.1253 Existing Class II (except enhanced recovery and hydrocarbon storage) wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3)(i) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated using the following formula:

$Pm = (0.733 - 0.433\ Sg)d$

where

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§ 147.1254 Existing Class II wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comments and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of §§ 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) Comply with other requirements which the Regional Administrator may specify either in addition to or in lieu of the requirements set forth in paragraphs (b) (1)–(3) of this section as needed to protect USDWs.

(c) *Area of review.* Notwithstanding the alternatives presented in § 146.06 of this chapter, the area of review shall be a minimum fixed radius as described in § 146.06(b) of this chapter.

(The information collection requirements contained in paragraph (a)(2)(ii) were approved by the Office of Management and Budget under control number 2040–0042.)

Subpart KK—Ohio

1. Subpart KK is amended by adding §§ 147.1801, 147.1802 and 147.1803 as follows:

* * * * *

§ 147.1801 EPA-administered program—Class I, III, IV, and V wells.

(a) *Contents.* The UIC program for Class I, III, IV, and V wells in the State of Ohio is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Class I, III, IV and V wells in Ohio is December 30, 1984.

§ 147.1802 Aquifer Exemptions.

[Reserved]

§ 147.1803 Existing Class I and III wells authorized by rule. Maximum injection pressure.

The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3)(i); or

(b) A value for well head pressure calculated by using the following formula:

$$Pm = (0.8—0.433\ Sg)\ d$$

where

Pm = injection pressure at the well head in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet.

Subpart QQ—South Dakota

1. Subpart QQ is amended by adding §§ 147.2100, 147.2101, 147.2102, 147.2103, and 147.2104 as follows:

§ 147.2100 State-administered program.

Class II wells [Reserved]

§ 147.2101 EPA-administered program.

(a) *Contents.* The UIC program for Class I, III, IV and V wells and Class II wells on Indian lands in the State of South Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for South Dakota is: December 30, 1984.

§ 147.2102 Aquifer exemptions.

(a) This section identifies any aquifers or their portions exempted in accordance with §§144.7(b) and 146.4 of this chapter at the time of program promulgation. EPA may in the future exempt other aquifers or their portions, according to applicable procedures, without codifying such exemptions in this section. An updated list of exemptions will be maintained in the Regional office.

(b) Those portions of all aquifers located on Indian Lands, which meet the definition of USDW and into which existing Class II wells are injecting, are exempted within a ¼ mile radius of the well for the purpose of Class II injection activities only.

§ 147.2103 Existing Class II enhanced recover and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comments, and opportunity for a public hearings, according to the provisions of Part 124, Subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) may inject at a pressure greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii)(A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes field rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit to the Regional Administrator data acceptable to the Regional administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission.

(b) *Casing and Cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirement of §§ 144.28(e) and 146.22, the owner or operator shall when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operation pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone; and/or

(4) Comply with other requirements which the Regional Administrator may specify in addition to or in lieu of the requirements set forth in paragraph (b)(1)-(3) of this section as needed to protect USDWs.

(The information collection requirements contained in paragraph (a)(2)(ii) were approved by the Office of Management and Budget under control number 2040-0042)

§ 147.2104 Requirements for all Wells.

(a) The owner or operator converting an existing well to an injection well shall check the condition of the casing with one of the following logging tools;

(1) A pipe analysis log; or

(2) A caliper log.

(b) The owner or operator of a new injection well cased with plastic (PVC, ABS, or others) casings shall:

(1) Not construct a well deeper than 500 feet;

(2) Use cement and additives compatible with such casing material; and

(3) Cement the annular space above the injection intermal from the bottom of the blank casing to the surface.

(c) The owner or operator of a newly drilled well shall install centralizers as directed by the Regional Administrator.

(d) The owner or operator shall as required by the Regional Administrator:

(1) Protect USDWs by:

(i) Setting surface casing 50 feet below the lowermost USDW;

(ii) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(iii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; and

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may approve alternate casing and cementing practices provided that the owner or operator demonstrates that such practices will adequately protect USDWs.

(e) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.6(b) of this chapter.

(f) The applicant must give separate notice of intent to apply for a permit to each owner of record of the land within one-quarter mile of the site. The addresses of those to whom notice is given and the description of how notice was given shall be submitted with the permit application. The notice shall include:

(1) The name and address of applicant;

(2) A brief description of the planned injection activities, including well location, name and depth of the injection zone, maximum injection pressure and volume, and fluid to be injected;

(3) The EPA contact person; and

(4) A statement that opportunity to comment will be announced after EPA prepares a draft permit.

This requirement may be waived by the Regional Administrator if he determines that individual notice to all land owners of record would be impractical.

Subpart YY—Wisconsin

1. Subpart YY is amended by revising § 147.2500 to read as follows:

§ 147.2500 State-administered program.

The UIC program for Class I, II, III, IV, and V wells in the State of Wisconsin, other than those on Indian lands as described in § 147.2510, is the program administered by the Wisconsin Department of Natural Resources, approved by EPA pursuant to SDWA Section 1422. Notice of this approval was published in the Federal Register on September 30, 1983 [48 FR 44783]; the effective date of this program is November 30, 1983. This program consists of a prohibition of all injection wells except heat pump return flow injection wells and may be found in the following elements, as submitted to EPA in the State's program application.

2. Subpart YY is amended by adding § 147.2510.

§ 147.2510 EPA-administered program—Indian lands

(a) *Contents.* The UIC program for Indian lands in the State of Wisconsin is administered by EPA. This program consists of 40 CFR Parts 144 and 146 and additional requirements set forth in this section. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Requirements.* Notwithstanding the requirements of paragraph (a) of this section for Indian lands in Wisconsin no owner or operator shall construct, operate, maintain, or convert any Class I, II, III, IV or V injection well.

(c) *Effective date.* The effective date of the UIC program requirements for Indian lands in Wisconsin is December 30, 1984.

Subpart BBB—Puerto Rico

1. Subpart BBB is amended by adding §§ 147.2650 and 147.2651 as follows:

§ 147.2650 State-administered program. [Reserved]

§ 147.2651 EPA-administered program.

(a) *Contents.* The UIC program for Puerto Rico is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Puerto Rico is: December 30, 1984.

Subpart CCC—Virgin Islands

1. Subpart CCC is amended by adding §§ 147.2700 and 147.2701.

§ 147.2700 State-administered program. [Reserved]

§ 147.2701 EPA-administered program.

(a) *Contents.* The UIC program for the Virgin Islands is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for the Virgin Islands is: December 30, 1984.

Subpart LL—Oklahoma

1. Subpart LL is amended by adding § 147.1852 as follows:

§ 147.1852 EPA-administered program—Osage Mineral Reserve—Class II wells.

The UIC program for Class II wells located within the Indian lands consisting of the Osage Mineral Reserve, Osage County, Oklahoma, is administered by EPA. This program consists of the requirements set forth at Subpart GGG of this Part.

2. 40 CFR Part 147 is amended by adding Subpart GGG.

Subpart GGG—Osage Mineral Reserve—Class II Wells

Sec.

147.2901 Applicability and scope.
147.2902 Definitions.
147.2903 Prohibition of unauthorized injection.
147.2904 Area of Review.
147.2905 Plugging and abandonment.
147.2906 Emergency permits.
147.2907 Confidentiality of information.
147.2908 Aquifer Exemptions.
147.2909 Authorization of existing wells by rule.
147.2910 Duration of authorization by rule.
147.2911 Construction requirements for wells authorized by rule.
147.2912 Operating requirements for wells authorized by rule.
147.2913 Monitoring and reporting requirements for wells authorized by rule.
147.2914 Corrective action for wells authorized by rule.
147.2915 Requiring a permit for wells authorized by rule.
147.2916 Coverage of permitting requirements.
147.2917 Duration of permits.
147.2918 Permit application information.
147.2919 Construction requirements for wells authorized by permit.
147.2920 Operating requirements for wells authorized by permit.
147.2921 Schedule of compliance.
147.2922 Monitoring and reporting requirements for wells authorized by permit.
147.2923 Corrective action for wells authorized by permit.
147.2924 Area permits.

Sec.

147.2925 Standard permit conditions.
147.2926 Permit transfers.
147.2927 Permit modification.
147.2928 Permit termination.
147.2929 Administrative permitting procedures.

Authority: Safe Drinking Water Act, 42 U.S.C. 300h.

Subpart GGG—Osage Mineral Reserve—Class II Wells

§ 147.2901 Applicability and scope.

This subpart sets forth the rules and permitting requirements for the Osage Mineral Reserve, Osage County, Oklahoma, Underground Injection Control Program. The regulations apply to owners and operators of Class II injection wells located on the Reserve, and to EPA.

§ 147.2902 Definitions.

Most of the following terms are defined in § 144.3, and have simply been reproduced here for the convenience of the reader. This section also includes definitions of some terms unique to the Osage program. Terms used in this subpart are defined as follows:

Administrator—the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Aquifer—a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

BIA—The "Bureau of Indian Affairs," United States Department of Interior.

Casing—a pipe or tubing of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and, thus, prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering the hole.

Cementing—the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

Class II Wells—wells which inject fluids:

(a) which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters would be classified as a hazardous waste at the time of injection;

(b) for enhanced recovery of oil or natural gas; and

(c) for storage of hydrocarbons which are liquid at standard temperature and pressure.

Existing Class II Wells—wells that were authorized by BIA and constructed and completed before the effective date of this program.

New Class II Wells—wells constructed or converted after the effective date of this program, or which are under construction on the effective date of this program.

Confining bed—a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

Confining zone—a geologic formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

Contaminant—any physical, chemical, biological, or radiological substance or matter in water.

Disposal well—a well used for the disposal of waste into a subsurface stratum.

EPA—The United States Environmental Protection Agency.

Fault—a surface or zone of rock fracture along which there has been displacement.

Fluid—material or substance which moves or flows whether in a semisolid, liquid, sludge, gas or any other form or state.

Formation—a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Freshwater—"Underground source of drinking water."

Ground water—water below the land surface in a zone of saturation.

Injection well—a well into which fluids are being injected.

Injection zone—a geological formation, group of formations, or part of a formation receiving fluids through a well.

Lithology—the description of rocks on the basis of their physical and chemical characteristics.

Owner/operator—the owner or operator of any facility or activity subject to regulation under the Osage UIC program.

Packer—a device lowered into a well to produce a fluid-tight seal within the casing.

Permit—an authorization issued by EPA to implement UIC program requirements. Permit does not include the UIC authorization by rule or any permit which has not yet been the subject of final Agency action.

Plugging—the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

Pressure—the total load or force per unit area acting on a surface.

Regional Administrator—the Regional Administrator of Region 6 of the United States Environmental Protection Agency, or an authorized representative.

Subsidence—the lowering of the natural land surface in response to: earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution solids, either artificially or from natural causes; compaction due to wetting (hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

Underground Source of Drinking Water—an aquifer or its portion:

(a) (1) which supplies any public water system; or

(2) which contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 mg/1 total dissolved solids; and

(b) which is not an exempted aquifer.

USDW—Underground Source of Drinking Water.

Well—a bored, drilled, or driven shaft, or a dug hole whose depth is greater than the largest surface dimension.

Well Injection—the subsurfac emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

Well Workover—any reentry of an injection well; including, but not limited to, the pulling of tubular goods, cementing or casing repairs; and excluding any routine maintenance (e.g. re-seating the packer at the same depth, or repairs to surface equipment).

§ 147.2903 Prohibition of unauthorized injection.

(a) Any underground injection, except as authorized by permit or rule issued under the UIC program, is prohibited. The construction or operation of any well required to have a permit is prohibited until the permit has been issued.

(b) No owner or operator shall construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause the violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(c) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

§ 147.2904 Area of review.

(a) The area of review for an injection well or project will be a fixed radius of one-forth of a mile from the well, field or project.

(b) The zone of endangering influence is the lateral area around the injection well or project in which the injection zone pressures may cause movement of fluid into an underground source of drinking water (USDW) if there are improperly sealed, completed or abandoned wells present. A zone of endangering influence may be determined by EPA through the use of an appropriate formula that addresses the relevant geologic, hydrologic, engineering and operational features of the well, field, or project.

§ 147.2905 Plugging and abandonment.

The owner/operator shall notify the Osage UIC office within 30 days of the date injection has terminated. The well must be plugged within 1 year after termination of injection. The Regional Administrator may extend the time to plug, but only if no fluid movement into a USDW will occur, and the operator has presented a viable plan for utilizing the well within a reasonable time.

(a) Until an injection well has been properly plugged and abandoned, annual reports to the Regional Administrator on well status, and mechanical integrity tests as outlined in §§ 147.2912 and 147.2920 will be required, whether or not injection has ceased.

(b) All wells shall be plugged to prevent movement of fluid into an USDW.

(c) The owner/operator shall notify the Osage UIC office by certified mail at least 5 days prior to the commencement of plugging operations. The Osage UIC office may waive or reduce the 5-day notice requirement when a qualified EPA representative is available to witness the plugging operation. The following information must be submitted as part of the notification:

(1) Type and number of plugs to be used;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

(d) The well shall be kept full of mud as casing is removed. No surface casing shall be removed without written approval from the Regional Administrator.

(e)(1) If surface casing is adequately set and cemented through all freshwater zones (set to at least 50 feet below the base of freshwater), a plug shall be set at least 50 feet below the shoe of the casing and extending at least 50 feet above the shoe of the casing, or

(2) If the surface casing and cementing is inadequate, the well bore shall be filled with cement from a point 50 feet below the base of fresh water to a point 50 feet above the shoe of the surface casing, and any additional plugs as required by the Osage UIC office and/or the Osage Agency.

(3) In all cases, the top 20 feet of the well bore below 3 feet of ground surface shall be filled with cement. Surface casing shall be cut off 3 feet below ground surface and covered with a secure steel cap on top of the surface pipe. The remaining 3 feet shall be filled with dirt.

(f)(1) Except as provided in paragraph (f)(2) of this section, each producing or receiving formation shall be sealed off with a 50-foot cement plug placed at the base of the formation and a 50–foot cement plug placed at the top of the formation.

(2) The requirement in paragraph (f)(1) of this section does not apply if the producing/receiving formation is already sealed off from the well bore with adequate casing and cementing behind casing, and casing is not to be removed, or the only openings from the producing/receiving formation into the well bore are perforations in the casing, and the annulus between the casing and the outer walls of the well is filled with cement for a distance of 50 feet below the base of the formation and 50 feet above the top of the formation. When such conditions exist, a bridge plug capped with 10 feet of cement set at the top of the producing formation may be used.

(g) When specified by the Osage UIC office, any uncased hole below the shoe of any casing to be left in the well shall be filled with cement to a depth of at least 50 feet below the casing shoe, or the bottom of the hole, and the casing above the shoe shall be filled with cement to at least 50 feet above the shoe of the casing. If the well has a screen or liner which is not to be removed, the well bore shall be filled with cement from the base of the screen or liner to at least 50 feet above the top of the screen or liner.

(h) All intervals between cement plugs in the well bore shall be filled with mud.

(i) A report containing copies of the cementing tickets shall be submitted to BIA within 10 days of plugging completion.

(j) A surety bond must be on file with the Bureau of Indian Affairs (BIA), and shall not be released until the well has been properly plugged and the Regional Administrator has agreed to the release of the bond.

§ 147.2906 Emergency permits.

(a) An emergency permit may be issued if:

(1) There will be an imminent health hazard unless an emergency permit is issued; or

(2) There will be a substantial and irretrievable loss of oil and gas resources, timely application for a permit could not practicably have been made, and injection will not result in movement of fluid into an USDW; or

(3) There will be a substantial delay in oil or gas production, and injection will not result in movement of fluid into an USDW.

(b) *Requirements.*—(1) *Permit duration.* (i) Emergency permits issued to avoid an imminent health threat may last no longer than the time necessary to prevent the hazard.

(ii) Emergency permits issued to prevent a substantial and irretrievable loss of oil or gas resources shall be for no longer than 90 days, unless a complete permit application has been submitted during that time; in which case the emergency permit may be extended until a final decision on the permit application has been made.

(iii) Emergency permits to avoid a substantial delay in oil or gas production shall be issued only after a complete permit application has been submitted and shall be effective until a final decision on the permit applicaiton is made.

(2) Notice of the emergency permit will be given by the Regional Administrator according to the notice procedure for a draft permit within 10 days after issuance.

(3) An emergency permit may be oral or written. If oral, a written emergency permit must be issued within five calendar days.

§ 147.2907 Confidentiality of information.

(a) The following information cannot be claimed confidential by the submitter:

(1) Name and address of permit applicant or permittee.

(2) Information concerning the existence, absence or level of contaminants in drinking water.

(b) Other information claimed as confidential will be processed in accordance with 40 CFR Part 2.

§ 147.2908 Aquifer exemptions.

(a) After notice and opportunity for a public hearing, the Administrator may designate any aquifer or part of an aquifer as an exempted aquifer.

(b) An aquifer or its portion that meets the definition of a USDW may be exempted by EPA from USDW status if the following conditions are met:

(1) it does not currently serve as a source of drinking water, and

(2) it cannot now and will not in the future serve as a source of drinking water because:

(i) it is hydrocarbon producing, or can be demonstrated by a permit applicant as a part of a permit application for a Class II operation to contain hydrocarbons that are expected to be commercially producible (based on historical production or geologic information); or

(ii) it is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

(iii) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(3) the Total Dissolved Solids content of the groundwater is more than 3,000 and less than 10,000 mg/1 and it is not reasonably expected to supply a public water system.

§ 147.2909 Authorization of existing wells by rule.

All existing Class II injection wells (wells authorized by BIA and constructed or completed on or before the effective date of the Osage UIC program) are hereby authorized. Owners or operators of wells authorized by rule must comply with the provisions of §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

§ 147.2910 Duration of authorization by rule.

Existing Class II injuction wells are authorized for the life of the well, subject to the obligation to obtain a permit if specifically required by the Regional Administrator pursuant to §147.2915.

§ 147.2911 Construction requirements for wells authorized by rule.

All Class II wells shall be cased and cemented to prevent movement of fluids into USDWs. The Regional Administrator shall review inventory information, data submitted in permit applications, and other records, to determine the adequacy of construction (completion) or existing injection wells. At the Regional Administrator's discretion, well casing and cementing may be considered adequate if it meets the BIA requirements that were in effect at the time of construction (completion) and will not result in movement of fluid into an USDW. If the Regional Administrator determines that the construction of a well authorized by rule is inadequate, he shall require a permit, or he shall notify the owner/operator and the owner/operator shall correct the problem according to instructions from the Regional Administrator. All corrections must be completed within one year of owner/operator notification of inadequacies.

§ 147.2912 Operating requirements for wells authorized by rule.

(a) Each well authorized by rule must have mechanical integrity. Mechanical integrity must be demonstrated within five years of program adoption. The Regional Administrator will notify the well owner/operator three months before proof of mechanical integrity must be submitted to EPA. The owner/operator must contact the Osage UIC office at least five days prior to testing. The owner/operator may perform the mechanical integrity test prior to receiving notice from the Regional Administrator, provided the Osage UIC office is notified at least five days in advance. Conditions of both paragraphs (a)(1) and (a)(2) of this section must be met.

(1) There is no significant leak in the casing, tubing or packer. This may be shown by the following:

(i) Performance of a pressure test of the casing/tubing annulus to at least 200 psi, or the pressure specified by the Regional Administrator, to be repeated thereafter, at five year intervals, for the life of the well (pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 psi through the tubing length); or

(ii) Maintaining a positive gauge pressure on the casing/tubing annulus (filled with liquid) and monitoring the pressure monthly and reporting of the pressure information annually; or

(iii) Radioactive tracer survey; or

(iv) for enhanced recovery wells, records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate at the well head, following an initial pressure test as described by Paragraph (a)(1)(i) or (v) of this section; or

(v) Testing or monitoring programs approved by the Regional Administrator on a case-by-case basis, and

(2) There is no significant fluid movement into a USDW through vertical channels adjacent to the well bore. This may be shown by any of the following:

(i) Cementing records (need not be reviewed every five years);

(ii) Tracer survey (in appropriate hydrogeologic settings; must be used in conjunction with at least one of the other alternatives);

(iiii) Temperature log;

(iv) Noise log; or

(v) Other tests deemed acceptable by the Regional Administrator.

(b) Injection pressure at the wellhead shall be limited so that it does not initiate new fractures or propagate existing fractures in the confining zone adjacent to any UDSW.

(1) For existing Class II salt water disposal wells, The owner/operator shall, except during well stimulation, use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.75 - 0.433Sg)d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet

Owner/operator of wells shall comply with the above injection pressure limits no later than one year after the effective date of this regulation.

(2) For existing Class II enhanced recovery wells, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing according to the provisions of Part 124, Subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure.

(ii) Prior to such time as the Regional Administrator establishes rules for maximum injection pressures based on data provided pursuant to paragraph (b)(2)(ii)(B) of this section the owner/operator shall:

(A) Limit injection pressure at the wellhead to a value which will not initiate new fractures or propagate existing fractures in the confining zone adjacent to any USDW; and

(B) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within one year of the effective date of this program.

(c) Injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injection volume and pressure, or shut-down, until the failure has been identified and corrected.

(The information collection requirements contained in paragraphs (a)(i) (ii)–(v) and (a)(2) (i)–(v) were approved by the Office of Management and Budget under control number 2040.0042)

§ 147.2913 Monitoring and reporting requirements for wells authorized by rule.

(a) The owner/operator has the duty to submit inventory information to the Regional Administrator upon request. Such request may be a general request to all operators in the County (e.g., public notice, or mailout requesting verification of information).

(b) The operator shall monitor the injection pressure (psi) and rate (bb1/day) at least monthly, with the results reported annually. The annual report shall specify the types of methods used to generate the monitoring data.

(c) The owner/operator shall notify the Osage UIC office within 30 days of any mechanical failure or down-hole problems involving well integrity, well workovers, or any noncompliance. As required, operators must apply for and obtain a workover permit from the Bureau of Indian Affairs Osage Agency before reentering an injection well. If the condition may endanger an USDW, the owner/operator shall notify the Osage UIC office orally within 24 hours, with written notice including plans for testing and/or repair to be submitted within five days. If all the information is not available within five days, a followup report must be submitted with 30 days.

(d) The owner/operator shall determine the nature of injected fluids initially, when the nature of injected fluids is changed or when new constituents are added. The records should reflect the source of character of the new fluid and the date changes were made.

(e) The owner/operator shall retain all monitoring records for three years, unless an enforcement action is pending, and then until three years after the enforcement action has been resolved.

(Approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2914 Corrective action for wells authorized by rule.

Based on the Regional Administrator's discretion, corrective action to prevent movement of fluid into a USDW may be required for improperly sealed, completed or abandoned wells (i.e., wells or well bores which may provide and avenue for fluid migration into a USDW) within the zone of endangering influence (as defined in 147.2904, Area of Review) of an injection well authorized by rule.

(a) EPA will notify the operator when corrective action is required. Corrective action may include:

(1) Well modifications:

(i) Recementing;

(ii) Workover;

(iii) Reconditioning;

(iv) Plugging or replugging;

(2) Limitations on injection pressure to prevent movement of fluid into an USDW;

(3) A more stringent monitoring program; and/or

(4) Periodic testing of other wells to determine if significant movement of fluid has occurred.

(b) If the monitoring discussed in paragraphs (a)(3) or (a)(4) of this section indicate the potential endangerment of an USDW, then action as described in paragraphs (a)(1) or (a)(2) of this section must be taken.

§ 147.2915 Requiring a permit of wells authorized by rule.

(a) The Regional Administrator may require the owner or operator of any well authorized by rule to apply for an individual or area permit. The Regional Administrator shall notify the owner/operator in writing that a permit application is required. The notice shall contain:

(1) Explanation of need for application;

(2) Application form and, if appropriate, a list of additional information to be submitted; and

(3) Deadline for application submission.

(b) Cases in which the Regional Administrator may require a permit include:

(1) The owner or operator is not in compliance with provisions of the rule;

(2) Injection well is no longer within the category of wells authorized by rule;

(3) Protection of USDW's requires that the injection operation be regulated by requirements which are not contained in the rule; or

(4) Discretion of Regional Administrator.

(c) Injection is no longer authorized by rule upon the effective date of a permit or permit denial, or upon failure of the owner/operator to submit an application in a timely manner as specified in the notice described in paragraph (a) of this section.

(d) Any owner/operator authorized by rule may request to be excluded from the coverage of the rules by applying for an individual or area UIC permit.

§ 147.2916 Coverage of permitting requirements.

The owner or operator of a new Class II injection well or any other Class II well required to have a permit in the Osage Mineral Reserve shall comply with the requirements of §§ 147.2903, 147.2907, 147.2918, through 147.2928.

§ 147.2917 Duration of permits.

Unless otherwise specified in the permit, the permits will be in effect until the well is plugged and abandoned or the permit terminated. The Regional Administrator will review each issued permit at least once every five years to determine whether it should be modified or terminated.

§ 147.2918 Permit application information.

(a) The owner/operator must submit the original and three copies of the permit application, with two complete sets of attachments, to the Osage UIC office. The application should be signed by the owner/operator or a duly authorized representative. The application should also include appropriate forms (i.e., BIA's Application for Operation or Report on Wells and EPA's permit application). The applicant has the burden of proof to show that the proposed injection activities will not endanger USDWs.

(b) The application shall include the information listed below. Information required by paragraphs (b) (5), (7), or (9) of this section that is contained in EPA or BIA files may be included in the application by reference.

(1) Map using township-range sections showing the area of review and identifying all wells of public record penetrating the injection interval.

(2) Tabulation of data on the wells identified in paragraph (b)(1) of this section, including location, depth, date drilled, and record of plugging and/or completion.

(3) Operating data:

(i) maximum and average injection rate;

(ii) maximum and average injection pressure;

(iii) whether operation is on cyclic or continuous operation basis; and

(iv) source and appropriate analysis of injected fluids, including total dissolved solids, chlorides, and additives.

(4) Geologic data on the injection and confining zones, including faults, geological name, thickness permeability, depth and lithologic description.

(5) Depth to base of fresh water.

(6) Schematic drawings of the surface and subsurface details of the well, showing:

(i) Total depth or plug-back depth;

(ii) Depth to top and bottom of injection interval;

(iii) Depths to tops and bottoms of casing and cemented intervals, and amount of cement to be used;

(iv) Size of casing and tubing, and depth of packer; and

(v) Hole diameter.

(7) Proof that surety bond has been filed with the BIA Superintendent in accordance with 25 CFR § 226.6. A surety bond must be maintained until the well has been properly plugged.

(8) Verification of public notice, consisting of a list showing the names, addresses, and date that notice of permit application was given or sent to:

(i) the surface land owner;

(ii) tenants on land where injection well is located or proposed to be located; and

(iii) Each operator of a producing lease within one-half mile of the well location.

(9) All available logging and testing data on the well (for existing wells, i.e., wells to be converted or wells previously authorized by rule).

(Approved by the Office of Management and Budget under control number 2040-0042)

§ 147.2919 Construction requirements for wells authorized by permit.

(a) All Class II wells shall be sited so that they inject into a formation that is separated from any USDW by a confining zone free of known open faults or fractures within the area of review.

(b) All Class II wells shall be cased and cemented to prevent movement of fluids into or between USDWs. Requirements shall be based on the depth to base of fresh water, and the depth to the injection zone. Newly drilled Class II wells must have surface casing set and cemented to at least 50 feet below the base of fresh water, or the equivalent (e.g., long string cemented to surface). At the Regional Administrator's discretion, the casing and cementing of wells to be converted may be considered adequate if they meet the BIA requirements that were in effect at the time of construction (completion), and will not result in movement of fluid into a USDW.

(c) Owner/operators shall provide a standard female fitting with cut-off valves, connected to the tubing and the tubing/casing annulus so that the injection pressure and annulus pressure may be measured by an EPA representative by attaching a gauge having a standard male fitting.

(d) No owner or operator may begin construction of a new well until a permit authorizing such construction has been issued, unless such construction is otherwise authorized by an area permit.

§ 147.2920 Operating requirements for wells authorized by permit.

(a) For new Class II wells, injection shall be through adequate tubing and packer. Packer shall be run on the tubing and set inside the casing within 75 feet of the top of the injection interval. For existing Class II, wells, injection shall be through adequate tubing and packer, or according to alternative operating requirements approved by the Regional Administrator, as necessary to prevent the movement of fluid into a USDW.

(b) Each well must have mechanical integrity. Mechanical integrity of the injection well must be shown prior to operation. The owner/operator must notify the Osage UIC office at least five days prior to mechanical integrity testing. Conditions of both Paragraphs (b)(1) and (b)(2) of this Section must be met.

(1) There is no significant leak in the casing, tubing or packer. This may be shown by the following:

(i) Performance of a pressure test of the casing/tubing annulus to at least 200 psi, or the pressure specified by the Regional Administrator, to be repeated thereafter, at five year intervals, for the life of the well (Pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 psi throughout the tubing length); or

(ii) Maintaining a positive gauge pressure on the casing/tubing annulus (filled with liquid) and monitoring the pressure monthly and reporting of the pressure information annually; or

(iii) Radioactive tracer survey; or

(iv) For enhanced recovery wells, record of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate at the wellhead, following an initial pressure test as described by Paragraph (b)(1) (i) or (v) of this section; or

(v) Testing or monitoring programs approved by the Administrator on a case-by-case basis, and

(2) There is no significant fluid movement into a USDW through vertical channels adjacent to the well bore. This may be shown by any of the following:

(i) Cementing records (need not be reviewed every five years);

(ii) Tracer survey (in appropriate hydrogeologic settings; must be used in conjunction with at least one of the other alternatives);

(iii) Temperature log;

(iv) Noise log; or

(v) Other tests deemed acceptable by the Administrator.

(c) Injection pressure at the wellhead shall be limited so that it does not initiate new fractures or propagate existing fractures in the confining zone adjacent to any UDSW.

(d) Injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume and pressure or shut-in, until the failure has been identified and corrected.

(e) Operation shall not commence until proof has been submitted to the Regional Administrator, or an EPA representative has witnessed that any corrective action specified in the permit has been completed.

§ 147.2921 Schedule of compliance.

The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Safe Drinking Water Act and the Osage UIC regulations.

(a) Any schedule of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(b) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(1) The time between interim dates shall not exceed one year.

(2) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(c) The permit shall be written to require that if a schedule of compliance is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

§ 147.2922 Monitoring and reporting requirements for wells authorized by permit.

(a) The owner/operator shall notify the Osage UIC office within 30 days of the date on which injection commenced.

(b) The operator shall monitor the injection pressure (psi) and rate (bbl/day) at least monthly, with the results reported annually. The annual reports shall specify the types or methods used to generate the monitoring data.

(c) The owner/operator shall notify the Osage UIC office within 30 days of any mechanical failure or down-hole problems involving well integrity, well workovers, or any noncompliance. (Operators should note the obligation to apply for and obtain a workover permit from the Bureau of Indian Affairs Osage Agency before reentering an injection well.) If the condition may endanger an USDW, the owner/operator shall notify the Osage UIC officer orally within 24 hours, with written notice including plans for testing and/or repair to be submitted within five days. If all the information is not available within five days, a followup report must be submitted within 30 days.

(d) The owner/operator shall retain all monitoring records for three years, unless an enforcement action is pending, and then until three years after the enforcement action has been resolved.

(e) The owner/operator shall notify the Osage UIC office in writing of a transfer of ownership at least 10 days prior to such transfer.

(Approved by the Office of Management and Budget under Control Number 2040-0042)

§ 147.2923 Corrective action for wells authorized by permit.

All improperly sealed, completed or abandoned wells (i.e., wells or well bores which may provide an avenue for movement of fluid into an UDSW) within the zone of endangering influence (as defined in § 147.2904, Area of Review) that penetrate the injection zone of a Class II well, must have corrective action taken to prevent movement of fluid into a USDW.

(a) EPA will review completion and plugging records of wells within the zone of endangering influence that penetrate the injection zone and will notify the operator when corrective action is required. Corrective action may include:

(1) Well modifications, including:

(i) Recementing;

(ii) Workover;

(iii) Reconditioning; and/or

(iv) Plugging or replugging;

(2) Permit conditions to limit injection pressure so as to prevent movement of fluid into a USDW;

(3) A more stringent monitoring program; and/or

(4) Periodic testing of other wells within the area of review to determine if significant movement of fluid has occurred. If the monitoring discussed in paragraph (a)(3) or (a)(4) of this section indicates the potential endangerment of a USDW, then action as described in paragraphs (a)(1) or (a)(2) of this section must be taken.

(b) If the Regional Administrator has demonstrable knowledge that wells within the zone of endangering influence will not serve as conduits for fluid movement into a USDW, the permit may be approved without requiring corrective action. However, additional monitoring shall be required to confirm that no significant migration will occur.

§ 147.2924 Area permits.

(a) Area permits may be issued for more than one injection well if the following conditions are met:

(1) All existing wells are described and located in the permit application;

(2) All wells are within the same well field, project, reservoir or similar unit;

(3) All wells are of similar construction; and

(4) All wells are operated by the same owner/operator.

(b) Area permits shall specify:

(1) The area within which injection is authorized; and

(2) The requirements for construction, monitoring, reporting, operation and abandonment for all wells authorized by the permit.

(c) Area permits can authorize the construction and operation of new wells within the permit area, if:

(1) The permittee notifies the Regional Administrator in the annual report of when and where any new wells have or will be drilled;

(2) The new wells meet the criteria outlined in (a) and (b) above; and

(3) The effects of the new wells were addressed in the permit application and approved by the Regional Administrator.

(The information collection requirements contained in paragraphs (a)(1) and (c)(1) were approved by the Office of Management and Budget under control number 2040-0042)

§ 147.2925 Standard permit conditions.

(a) The permittee must comply with all permit conditions, except as authorized by an emergency permit (described in § 147.2906). Noncompliance is grounds for permit modification, permit termination or enforcement action.

(b) The permittee has a duty to halt or reduce activity in order to maintain compliance with permit conditions.

(c) The permittee shall take all reasonable steps to mitigate any adverse environmental impact resulting from noncompliance.

(d) The permittee shall properly operate and maintain all facilities installed or used to meet permit conditions. Proper operation and maintenance also includes adequate operator staffing and training, adequate funding, and adequate engineering capability available.

(e) This permit may be modified or terminated for cause (see §§ 147.2927 and 147.2928). The filing of a request by the permittee for a permit modification or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(f) This permit does not convey any property rights, or any exclusive privilege.

(g) The permittee shall furnish, within a reasonable time, information that the Regional Administrator requests, for determination of permit compliance, or if cause exists, for permit modification or termination.

(h) The permittee shall allow EPA representatives, upon presentation of appropriate credentials or other documentation, to:

(1) Enter permittee's premises where a regulated activity is conducted or located, or where records required by this permit are kept;

(2) Have access to and copy records required by this permit;

(3) Inspect any facilities, equipment, practices or operations regulated or required by this permit; and

(4) Sample or monitor any substances or parameters at any location for purpose of assuring compliance with this permit or the SDWA.

(i) Monitoring and records.

(1) Samples and monitoring data shall be representative of injection activity.

(2) Permittee shall retain monitoring records for three years.

(3) Monitoring records shall include:

(i) Date, exact place and time of sampling or measurement;

(ii) Individual(s) who preformed the measurements;

(iii) Date(s) analyses were performed;

(iv) Individual(s) who performed the analyses;

(v) Analytical techniques or methods used, including quality assurance techniques employed to insure the generation of reliable data; and

(vi) Results of analyses.

(j) *Signatory requirements.* All applications, reports or information submitted to the Regional Administrator or the Osage UIC office must be signed by the injection facility owner/operator or his duly authorized representative. The person signing these documents must make the following certification:

"I certify under penalty of law that I have personally examined and am

familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(k) *Reporting requirements.* (1) The permittee shall notify the Regional Administrator as soon as possible of any planned changes to the facility.

(2) The permittee shall give advance notice to the Regional Administrator of any planned changes which may result in noncompliance.

(3) This permit is not transferable to any person except after notice to the Regional Administrator in accordance with § 147.2926.

(l) A new injection well shall not commence injection until construction is complete and the Regional Administrator has been notified of completion of construction and has given his approval to commence injection.

(The information collection requirements contained in paragraphs (g) and (i) were approved by the Office of Management and Budget under control number 2040-0042)

§ 147.2926 Permit transfers.

(a) Permits may be transferred to another permittee:

(1) If the current permittee notifies the Regional Administrator at least 10 days before the proposed transfer date; and

(2) If the notice includes a written agreement between the existing and new permittees containing:

(i) A specific date for transfer of permit responsibility, coverage and liability; and

(ii) Assurance that the new permittee has a surety bond on file with BIA; and

(3) If the Regional Administrator does not respond with a notice to the existing permittee that the permit will be modified.

(b) If the conditions in paragraph (a) of this section are met, the transfer is effective on the date specified in paragraph (a)(2)(i).

(Approved by the Office of Management and Budget under control number 2040-0042)

§ 147.2927 Permit modification.

(a) Permits may be modified for the following causes only (with the exceptions listed in paragraph (b) of this section regarding minor modifications):

(1) There are substantial changes to the facility or activity which occurred after permit issuance that justify revised or additional permit conditions.

(2) The Regional Administrator has received information (e.g., from monitoring reports, inspections) which warrants a modified permit.

(3) The regulations or standards on which the permit was based have changed.

(4) The Regional Administrator has received notice of a proposed permit transfer.

(5) An interested person requests in writing that a permit be modified, and the Regional Administrator determines that cause for modification exists.

(6) Cause exists for termination under § 147.2928, but the Regional Administrator determines that permit modification is appropriate.

(b) *Minor modifications.*

(1) Minor modifications do not require that the procedures listed in paragraph (c) of this section be followed.

(2) Minor modifications consist of:

(i) correcting typographical errors;

(ii) requiring more frequent monitoring or reporting;

(iii) changing ownership or operational control (see § 147.2926, Permit Transfers); or

(iv) changing quantities or types of injected fluids, provided:

(A) The facility can operate within conditions of permit;

(B) The facility classification would not change.

(c) Modification procedures.

(1) A draft permit shall be prepared with proposed modifications.

(2) The draft permit shall follow the general permitting procedures (i.e., public comment period, etc.) before a final decision is made.

(3) Only the changed conditions shall be addressed in the draft permit or public review.

§ 147.2928 Permit termination.

(a) Permits may be terminated for the following causes only:

(1) Noncompliance with any permit condition.

(2) Misrepresentation or failure to fully disclose any relevant facts.

(3) Determination that the permitted activity endangers human health or the environment.

(4) Interested person requests in writing that a permit be terminated and the Regional Administrator determines that request is valid.

(b) *Termination procedures.* (1) The Regional Administrator shall issue notice of intent to terminate (which is a type of draft permit).

(2) Notice of intent to terminate shall follow the general permitting procedures (i.e., public comment period, etc.) before a final decision is made.

§ 147.2929 Administrative permitting procedures.

(a) *Completeness review.* (1) The Regional Administrator shall review each permit application for completeness with the application requirements in § 147.2918. The review will be completed in 10 days, and the Regional Administrator shall notify the applicant whether or not the application is complete.

(2) If the application is incomplete, the Regional Administrator shall:

(i) List the additional information needed;

(ii) Specify a date by which the information must be submitted; and

(iii) Notify the applicant when the application is complete.

(3) After an application is determined complete, the Regional Administrator may request additional information to clarify previously submitted information. The application will still be considered complete.

(4) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions taken.

(b) *Draft permits.* (1) After an application is deemed complete, the Regional Administrator shall either prepare a draft permit or notice of intent to deny the permit (which is a type of draft permit). If the Regional Administrator later decides the tentative decision to deny was wrong, he shall withdraw the notice of intent to deny and prepare a draft permit.

(2) A draft permit shall contain at least the following information:

(i) the standard permit conditions in § 147.2925;

(ii) any monitoring and reporting requirements;

(iii) the construction and operation requirements; and

(iv) plugging and abandonment requirements.

(c) *Statement of basis.* (1) The Regional Administrator shall prepare a statement of basis for every draft permit.

(2) The statement of basis shall briefly describe the draft permit conditions and the reasons for them. In the case of a notice of intent to deny or terminate, the statement of basis shall give reasons to support the tentative decision.

(3) The statement of basis shall be sent to the applicant, and to any other person who requests a copy.

(d) *Public notice.* (1)(i) The Regional Administrator shall give public notice when:

(A) a permit application has been tentatively denied;

(B) a draft permit has been prepared;

(C) a hearing has been scheduled; or

(D) an appeal has been granted.

(ii) The applicant shall give public notice that he is submitting a permit application.

(iii) Public notice is not required when a request for permit modification or termination is denied. However, written notice will be given to the permittee and the requester.

(iv) Public notices may include more than one permit or action.

(2)(i) Public notice of a draft permit (including notice of intent to deny) shall allow at least 15 days for public comment.

(ii) Public notice of a hearing shall be given at least 30 days before the hearing.

(3)(i) Public notice given by the Regional Administrator for the reasons listed in paragraph (d)(1)(i) of this section shall be mailed to the applicant, and published in a daily or weekly paper of general circulation in the affected area.

(ii) Notice of application submission required by paragraph (d)(1)(ii) of this section shall be given to the surface landowner, tenants on the land where an injection well is located or is proposed to be located, and to each operator of a producing lease within one-half mile of the well location prior to submitting the application to the Regional Administrator.

(4) The notice of application submission in paragraphs (d)(1)(ii) and (d)(3)(ii) of this section shall contain:

(i) the applicant's name and address;

(ii) the legal location of the injection well;

(iii) nature of activity;

(iv) a statement that EPA will be preparing a draft permit and that there will be an opportunity for public comment; and

(v) the name and phone number of EPA contact person.

(5) All other notices shall contain:

(i) the name, address, and phone number of the Osage UIC office and contact person for additional information and copies of the draft permit;

(ii) name and address of permit applicant or permittee;

(iii) brief description of nature of activity;

(iv) brief description of comment period and comment procedures;

(v) location of the information available for public review; and

(vi) in the case of a notice for a hearing the notice shall also include:

(A) date, time, and location of hearing;

(B) reference to date of previous notices of the same permit; and

(C) brief description of the purpose of the hearing, including rules and procedures.

(e) *Public comments.* (1) During the public comment period, any person may submit written comments on the draft permit, and may request a public hearing. A request for hearing shall be in writing and state the issues proposed to be raised in the hearing.

(2) The Regional Administrator shall consider all comments when making the final decision, and shall respond to comments after the decision is made. The response shall:

(i) specify if any changes were made from the draft permit to the final permit decision, and why;

(ii) briefly describe and respond to all significant comments on the draft permit made during the comment period, or hearing, if held; and

(iii) be made available to the public.

(f) *Public hearings.* (1) The Regional Administrator shall hold a public hearing whenever he finds a significant amount of public interest in a draft permit, based on the requests submitted, or at his discretion.

(2) Any person may submit oral or written statements and data concerning the draft permit. The public comment period shall be automatically extended to the close of any public hearing held, or may be extended by the hearing officer at the hearing.

(3) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Reopening of the comment period.*

(1) If any of the information submitted during the public comment period raises substantial new questions about a permit, the Regional Administrator may:

(i) prepare a new draft permit;

(ii) prepare a revised statement of basis; or

(iii) reopen the comment period.

(2) Comments submitted during a reopened comment period shall be limited to the substantial new questions that caused its reopening.

(3) Public notice about any of the above actions shall be given and shall define the scope of the new questions raised.

(h) *Issuance and effective date of a permit.* (1) After the close of the comment period on a draft permit, the Regional Administrator shall make a final permit decision. The Regional Administrator shall notify the applicant and each person who commented or requested to receive notice. The notice shall include reference to the procedures for appealing a permit decision.

(2) A final permit decision shall become effective 30 days after giving notice of the decision unless:

(i) a later date is specified in the notice;

(ii) review is requested under § 147.2929(j); or

(iii) no comments requested a change in the draft permit, in which case the permit is effective immediately upon issuance.

(i) *Stays of contested permit conditions.* If a request for review of a final UIC permit § 147.2929(j) is granted, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. If the permit involves a new injection well or project, the applicant shall be without a permit for the proposed well pending final agency action. Uncontested provisions which are not severable from those contested provisions shall be stayed with the contested provisions.

(j) *Appeal of permits.* (1) Any person who filed comments on the draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision. Any person who failed to file comments or participate in the hearing may petition for administrative review only to the extent of the changes from the preliminary permit to the final permit decision.

(2) A person may request review of a final permit decision within 30 days after a final permit decision has been issued. The 30-day period within which a person may request review begins with the service of notice of the Regional Administrator's final permit decision unless a later date is specified in that notice.

(3) The petition requesting review shall include:

(i) A demonstration that the petition is eligible under the requirements of paragraph (j)(1) of this section; and, when appropriate,

(ii) A showing that the condition in question is based on:

(A) a finding of fact or conclusion of law that is clearly erroneous; or

(B) an exercise of discretion or important policy consideration which the Administrator, in his discretion, should review.

(4) The Administrator may also decide, on his initiative, to review any condition of any UIC permit issued under these requirements. The Administrator must act under this paragraph within 30 days of the date notice was given of the Regional Administrator's action.

(5) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the request. To the

extent that review is denied, the conditions of the final permit decision become final agency action.

(6) Public notice shall be given by the Regional Administrator of any grant of a review petition by the Administrator. Notice shall be sent to the applicant, the person requesting the review, appropriate persons on the Osage County mailing list and to newspapers of general circulation in the county. Included in the notice shall be a briefing schedule for the appeal and a statement that any interested person may file an amicus brief. Notice of denial of the review petition will be sent only to the person(s) requesting the review.

(7) A petition to the Administrator, under paragraph (j)(1) and (j)(2) of this section is a prerequisite to the seeking of judicial review of the final agency action. For purposes of judicial review, final agency action occurs when a final UIC permit is issued or denied by the Regional Administrator and agency review procedures are exhausted. A final permit decision shall be issued by the Regional Administrator:

(i) When the Administrator issues notice to the parties involved that review has been denied;

(ii) When the Administrator issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of the remand proceedings if the proceedings are remanded, unless the Administrator's remand order specifically provides that the appeal of the remand decision will be required to exhaust the administrative remedies.

[The information collection requirements contained in paragraph (a)(3) were approved by the Office of Management and Budget under control number 2040-0042)

[FR Doc. 84-29612 Filed 11-14-84; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
November 15, 1984

Part III

Federal Maritime Commission

46 CFR Part 572
Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984; Final Rule

46 CFR Parts 538 and 580
Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States (Including Service Contracts, Time/Volume Rates and Loyalty Contracts); Final Rule

46 CFR Part 585
Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Commerce of the United States; Final Rule

46 CFR Part 587
Actions To Address Conditions Unduly Impairing Access of U.S. Flag Vessels to Ocean Trade Between Foreign Ports; Final Rule

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket Nos. 84-26 and 84-32]

Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Final Rule revises and supersedes the Interim Rule on agreements which implemented those provisions of the Shipping Act of 1984 governing agreements by or among ocean common carriers as well as certain marine terminal operator agreements. This Rule modified by addition, deletion, and revision the Interim Rule in the areas of definitions, exclusions and exemptions, agreement format, reporting and record keeping and the information requirements of the Information Form. In addition the transitional rules regarding mandatory provisions in agreements are deleted in their entirety. The Rule also makes various editorial, technical, and clarifying changes in the Interim Rule. As of this publication, all of the Commission's interim regulations to implement the 1984 Act are finalized.

DATE: This Rule is effective on December 15, 1984.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5787

Robert A. Ellsworth, Director, Office of Policy Planning and International Affairs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5870.

SUPPLEMENTARY INFORMATION:

I. Background

The Shipping Act of 1984, Pub. L. 98-237, 98 Stat. 67, 46 U.S.C. app. 1701-1720 (the Act or the 1984 Act) was signed into law on March 20, 1984 with an effective date of June 18, 1984. The 1984 Act superseded the Shipping Act, 1916 (1916 Act) (46 U.S.C. app. 801 *et seq.*) with respect to the regulation of agreements by or among ocean common carriers, and certain other subject persons, in the foreign oceanborn commerce of the United States. The Act makes significant changes with regard to the kinds of agreements that are within its scope, the mandatory content of certain kinds of agreements, the procedures for filing, processing, and reviewing agreements, and the parameters of the antitrust immunity which it confers on agreements. Other areas of significant change include new statutory definitions, and a somewhat modified exemption authority. The Act authorizes the requiring of periodical or special reports as well as the filing of conference minutes and provides for penalties for infringement of its provisions.

The Act and its legislative history set forth certain policies to guide regulation under the new statutory scheme. One fundamental purpose of the Act is to establish a nondiscriminatory regulatory process with a minimum of government intervention and regulatory costs. Another is to provide an efficient and economic ocean transportation system in harmony with international shipping practices. To these ends, agreements are to be reviewed and processed within a fixed period of time and generally will become effective after a short waiting period. Only those pending agreements which raise concern under the general standard or the conduct prohibited by section 10 of the Act are to be subjected to injunctive challenge in federal court where the Commission has the burden of proof. The Act thereby places greater emphasis on the subsequent monitoring of an agreement after it has become effective in order to ensure that agreement operations are conducted consistent with the requirements of the Act.

On May 29, 1984, pursuant to section 17(b) of the Act (46 U.S.C. app. 1716(b)) which authorizes the Commission to prescribe interim rules without adhering to the usual notice and comment procedures under the Administrative Procedure Act (5 U.S.C. 553), the Commission published an Interim Rule Implementing those provisions of the Act which govern agreements. *Rules Governing Agreements By Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984*, Docket No. 84-26 (49 FR 22296-22318). Interested persons were given 90 days to comment on the Interim Rule. In addition, interested persons were afforded an opportunity to submit emergency comments addressing any matters which might warrant modification prior to the June 18, 1984 effective date. A number of emergency comments were received and on June 14, 1984, the Commission published amendments to the Interim Rule (49 FR 24697).[1]

Subsequently, during the comment period, the Commission received petitions from a number of conferences to suspend certain record keeping and reporting requirements in Subpart G. On September 17, 1984 the Commission published a further amendment to the Interim Rule which deferred the implementation of certain of those requirements pending the issuance of a Final Rule (49 FR 36371).

Thirty-nine filings were received in Docket No. 84-26: 14 emergency comments filed prior to June 18, 1984; 23 final comments either timely filed or filed shortly after the deadline and granted an extension of time for filing; [2] and two petitions seeking relief from certain requirements of Subpart G. Because of the extensive number of parties that participated in this proceeding, comments are identified by number in the following discussion. A list of comments filed in Docket No. 84-26 is provided in the conclusion to the Supplementary Information.

On September 17, 1984, again pursuant to the section 17(b) rulemaking authority, the Commission published a third amendment to the Interim Rule. *Amendments to Rules Governing Agreements by Ocean Common Carriers and Other Persons*, Docket No. 84-32 (49 FR 36371). This amendment added a new § 572.103(g) to state Commission policy regarding the completeness and definiteness with which agreement authority must be described, and a new § 572.406 to establish guidelines regarding open-ended authority and interstitial authority. Interested persons were given 30 days to comment on this amendment. Ten timely comments were received in Docket No. 84-32. These comments are also listed in the conclusion to the Supplementary Information.

Many of the concerns raised in the emergency comments and in the Subpart G petitions filed in Docket No. 84-26 have been addressed through changes in the mandatory provisions of Subpart H and through the temporary suspension of certain requirements in Subpart G. Matters raised in the emergency comments and the petitions which were not addressed in the June amendments or the September Order have been considered in connection with the issuance of the Final Rule. Thus, all timely comments received in Docket Nos. 84-26 and 84-32 have been reviewed and considered. The Supplementary Information discusses significant matters raised in the comments. Any comments not expressly mentioned herein, have either been incorporated as a technical change without discussion or have been found to be without merit or irrelevant.

In the discussion which follows, the term Interim Rule (designated Part 572) refers to the rules issued in Docket No. 84-26, as subsequently amended and suspended, and the amendment to Part 572 issued in Docket No. 84-32. The rule which is now published is referred to as the Final Rule.

II. Discussion of Comments on Part 572 and Appendix A

A number of technical changes have been made throughout Part 572 and Appendix A. Some changes were prompted by comments and others are clarifying or technical changes made to improve this part. One change made throughout has been the substitution of the phrase "this part" for phrases such as "this rule" of "these rules".

Subpart A—General Provisions

Subpart A contains provisions which are of general applicability to Part 572. Specific sections state the authorities, purpose and policies of Part 572 and define certain terms.

Section 572.101 Authority.

Section 572.101 states the statutory authorities for Part 572. No comments were received on this section and no substantive changes have been made to it in the Final Rule.

Section 572.102 Purpose.

Section 572.102 states the purpose of Part 572, namely to implement those provisions of the Act which govern agreements among ocean common carriers and other subject entities. Comment 38 states that the words "other entities" should be changed to "marine terminal operators" because such operators are the only entities other than ocean common carriers which are required to file agreements under the Act. This point is well taken. Therefore, as a clarification, § 572.102 is amended to recite the language of section 4 of the Act which states that the Act applies to agreements by or among ocean common carriers and to agreements among marine terminal operators and among one or more ocean common carriers. Marine terminal operator agreements subject to Part 572 must have a nexus with foreign commerce.

Section 572.103 Policies.

Section 572.103 sets forth the general policies to be followed in administering the regulatory regime established by Part 572.

Section 572.103(b)—Section 572.103(b) states that in reviewing agreements under the general standard only that information which is relevant and necessary to a section 6(g) review shall accompany particular types of agreements. Comment 22 takes issue with § 572.103(b) specifically and § 572.103 generally to the extent that they establish a basis for requiring the Information Form with certain agreement filings. The basis for the Information Form requirement is discussed below in connection with the comments to Subpart D, Subpart F and Appendix A. As indicated below, some adjustments have been made in the Information Form in response to comments. However, the basic requirement of a Form is being retained. Therefore, there is no need to modify the statement of policies with regard to informational needs.

Section 572.103(f)—Section 572.103(f) states Commission policy regarding the need for and means of achieving compliance with the Act's requirement that mandatory provisions be included in certain kinds of agreements. Comment 22 urges that conferences continue to be allowed to draft their own mandatory provisions. As indicated below in the discussion of Subpart H, the purpose of requiring adoption of the model mandatory provisions in Subpart H has been achieved, and Subpart H is deleted from the Final Rule. Appropriate changes have been made in the statement of policy in paragraph (f) to indicate that parties to conference agreements may develop their own mandatory provisions.

Section 572.103(g)—Section 572.103(g) together with § 572.406, were added in Docket No. 84-32 as new sections of Part 572. Section 572.103(g) states Commission policy that agreement must be clear and definite, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will operate.

Although Comment 102 expresses strong support for inclusion of § 572.103(g), a number of other comments suggest that it is vague, unnecessary, or inappropriate and should be deleted or modified. The necessity of such a policy statement was not apparent at the time the Interim Rule was issued. The principles set forth in the policy statement were well settled under the administration of the 1916 Act and nothing in the 1984 Act or its legislative history indicated any departure from those established principles. However, the early experience in the administration of the 1984 Act provided a number of significant instances in which filed agreements contained unacceptably vague, incomplete or indefinite statements of authority. It was this experience that prompted the addition of § 572.103(g) and § 572.406 to Part 572.

This statement of policy merely represents a codification of existing policy. As a point of clarification, it should be noted that it is not the intent of this section to provide a basis for imposing detailed limits on every agreement. Its purpose is to ensure that a complete agreement is filed in sufficient detail to conduct a meaningful review. However, no change in the language of § 572.103(g) is necessary and it is retained in the Final Rule. The other issues raised by the comments are addressed below in the discussion of § 572.406.

Section 572.104 Definitions.

Section 572.104 lists definitions used in Part 572. Changes have been made in response to comments to state more precisely particular definitions.

Section 572.104(a)—Agreement. Section 572.104(a) recites the definition of agreement. This definition is amended to include "cancellation", thereby conforming the definition to the statute.

Section 572.104(b)—Antitrust Laws. Section 572.104(b) recites the definition of "antitrust laws" found in section 3(2) of the Act. Comment 38 states that this definition is used only once in the Interim Rule and should be eliminated, or, in the alternative, rephrased to provide the United States Code citations of the referenced statutes. This definition was included to improve the efficiency of Part 572 as a complete document and for that reason it shall be retained. The definition, however, has been modified to use the United States Code citations in order to make the definitions more functional.

Section 572.104(c)—Appendix. Section 572.104(c) defines the additional material which is appended to, and constitutes a part of, an agreement as an "appendix". Comment 22 suggests that the definition is so narrow as to preclude the use of an appendix to

---

[1] The Office of Management and Budget (OMB) clearance number was also published in the **Federal Register** on June 14, 1984 (49 FR 24521).

[2] Several persons sought to file late comments in Docket No. 84-26 well after the close of the comment period and these requests were denied. For the most part these comments are either repetitious of points already raised in other comments or are rendered moot by the Commission's action regarding Subpart H. For a discussion of the reasons for rejecting these late filed comments see the Commission's Order of Denial in Docket No. 84-26 dated October 17, 1984.

publish provisions, such as self-policing rules, which have routinely been published in an appendix. Comment 39 suggests that the definition, in conjunction with other sections of Part 572, would impose the full 45-day waiting period on "appendices" contents.

The use of an appendix is explained at § 572.402(f), which governs the contents of such an appendix. Section 572.402(f) is amended to permit an expansion of the use of an appendix. The "appendix" publication is not mandatory, nor is there any prohibition against the "appendix" publication of other agreement provisions whose physical location is an agreement is not otherwise specified in this part. The period of review conducted for such filings depends upon the substantive content of the "appendix" and not its form. Parties are not precluded from routine use of appendices, unless the particular provision is one whose placement is required elsewhere in the agreement pursuant to §§ 572.402, 572.501, and 572.502. The Interim Rule definition fulfills these objectives and is retained.

Section 572.104(e)—Common Carrier. Section 572.104(e) recites the definition of the term "common carrier" which is set forth in section 3(6) of the Act. The statutory definition is stated conjunctively rather than disjunctively and requires both the assumption of responsibility for transportation and the utilization of a vessel. Comment 2 suggests that the word "and" be deleted from paragraph (e)(1) and replaced with the word "or". Because this suggested change would substantively alter the statutory definition of a common carrier, the change is not appropriate. The Final Rule therefore continues to recite the statutory definition.

Section 572.104(f)—Conference Agreement. Section 572.104(f) defines a "conference agreement" as one which provides for the collective fixing of rates, an administrative structure, and the filing of a common tariff, unless other features of the arrangement bring it within the definition of a consortium, joint service, pooling, sailing or transshipment agreement. Comment 22 suggests that the "central organization" element of this definition does not clearly encompass simple administrative structures. Comment 28 also suggests that the minimal administrative structure of agreements previously designated "rate agreements" is not clearly embraced by the definition. This definition is intended to include rate agreements. The Interim Rule definition shall therefore be revised to remove any implication that only a large, complex administrative structure would bring a ratemaking agreement within the scope of this definition.

Section 572.104(g)—Consultation. Section 572.104(g) defines "consultation" as the process of conferring between carriers and shippers for the purposes of resolving commercial disputes or reducing malpractices. Comment 39 suggests that the definition's "resolving commercial disputes" language potentially oversteps the "promote . . . commercial resolution" language of the Act and could be interpreted to impose a requirement of binding arbitration.

In response to this suggestion, the definition in the Final Rule shall be clarified to state that "consultation" means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

Section 572.104(i)—Effective Agreement. Section 572.104(i) defines an "effective agreement" as one approved pursuant to section 15 of the 1916 Act or one permitted to become effective pursuant to sections 5 and 6 of the 1984 Act. Comment 38 states that the term is not used in Part 572 and should be deleted. Comment 24 contends that the definition does not encompass agreements which are exempted under either the 1984 Act of the 1916 Act.

The term "effective agreement" is used in the definition of "modification" in section 572.104(r), which in turn supports sections 572.402 and 572.403. Definition of the term is retained, but its scope is expanded to include an agreement previously approved pursuant to section 15 of the 1916 Act or effective pursuant to an exemption under the 1916 Act, or filed and effective pursuant to sections 5 and 6 of the 1984 Act or exempt pursuant to section 16 of the 1984 Act.

Section 572.104(m)—Interconference Agreement. Section 572.104(m) defines an "interconference agreement" as one between conferences serving different trades. Comments 22 and 28 contend that the definition is unnecessarily restricted by the "different trades" condition. These Comments have merit. Because there is no prohibition against an agreement between two conferences in the same trade, such an agreement should be included in the definition of "interconference agreements" and made subject to the requirements placed on such agreements by the Act and Part 572. The Final Rule therefore simply defines "interconference agreement" to mean an agreement between conferences.

Section 572.104(n)—Joint Service/Consortium Agreement. Section 572.104(n) defines a "joint service" or "consortium" agreement as a price fixing arrangement between ocean common carriers wherein the parties operate generally as a single carrier, under a single operating name and a common operating management.

Comment 27 suggests that the definition is too narrow and fails to contemplate a situation where a joint service holds out service only through its participation in a conference and does not independently fix its own rates or publish its own tariff. Comment 22 also contends that a joint service does not always include all of the attributes prescribed by the Interim Rule definition.

The 1984 Act refers to joint service/consortia but does not define these terms. In the interest of providing the industry some guidance in this area, we have developed a definition as consistent as possible with prior convention. We believe that agreements which engage in, or have the authority or potential to engage in, the activities described in this definition are properly treated as a single type of agreement and denominated a "joint service" or "consortium" agreement for the purposes of the Act and Part 572. We agree, however, that the joint service definition should be amended to include those agreements in which the parties choose to exercise their rate fixing and tariff authorities through participation, as a single entity, in a conference or other duly authorized agreement. Accordingly, § 572.104(n) (2) and (3) are revised to read: "(2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff."

Section 572.104(o)—Marine Terminal Facilities. Section 572.104(o) defines the term "marine terminal facilities" to include off-dock container freight stations at inland locations. Comment 38 urges the deletion of this definition because the term does not otherwise appear in Part 572.

This term supports the definition of a marine terminal operator in § 572.104(p). It is appropriate, therefore, to define the facilities utilized by marine terminal operators in order to resolve uncertainties as to the Commission's jurisdiction over agreements governing the use or operation of such facilities. As indicated in some of the other comments, there appears to be some confusion concerning the facilities that are provided by the "marine terminal operator" defined in section 3 of the 1984 Act.

Comments 20 and 34 state that Commission jurisdiction is improperly expanded by defining the term "marine terminal facility" to include off-dock container freight stations at inland locations or other similar facilities from which cargo is tendered to a consignee or received from shippers for vessel or container loading. These Comments suggest that Congress intended the reach of the 1984 Act to be no greater than that of the 1916 Act with respect to marine terminals. Comment 22 argues that the definition would subject importers and exporters to Commission regulation as marine terminal operators and enable them to obtain antitrust immunity under the 1984 Act.

Off-dock container freight stations are properly included within the term "marine terminal facilities." Both the 1984 Act and the 1916 Act refer to terminal operators as persons "furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water." As Comment 20 acknowledges, this phrase has been construed under the provisions of the 1916 Act in *Richmond Transfer and Storage Company*, 20 S.R.R. 599, 20 S.R.R. 177 (1980), to include marine terminal facilities not located on the dock at the water's edge. There is nothing in the 1984 Act or its legislative history to indicate that Congress intended the Commission to now construe marine terminal facilities so as to exclude off-dock container freight stations. Accordingly, the Commission will not, as urged by some comments, delete off-dock container freight stations from the marine terminal facility definition in § 572.104(o).

Comment 28 is concerned that agreements for "pure labor services," such as stevedoring contracts, may be made subject to the filing requirements of the 1984 Act because the phrase "and services connected therewith" is used in defining "marine terminal facilities" in § 572.104(o). Comment 28 misconstrues this definition. The "Supplementary Information" to the Interim Rule indicated that neither the term "marine terminal facility", nor the term "marine terminal operator", would operate to extend Commission jurisdiction over stevedoring or "pure labor services". The phrase "and services connected therewith" is intended to refer to those labor services that are incidental to terminal operators, such as free time, checking, or handling. Accordingly, the suggestion that the above-referenced phrase be deleted has not been adopted.

Section 572.104(p)—Marine Terminal Operator. Section 572.104(p), which tracks the language of the 1984 Act, defines a "marine terminal operator" as a person:

> . . . *engaged* . . . in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water. (Emphasis added).[3]

This definition shall be modified to make clear that shippers, or consignees, as well as their facilities, are not made subject to Part 572 and the Commission's jurisdiction merely because the shippers' or consignees' facilities are used to tender or received proprietary cargo. Shippers or consignees, who for their own or the carrier's convenience, tender or receive proprietary cargo at their owned or leased facilities are not *engaged* in the business of furnishing terminal facilities in connection with a common carrier by water. Such shippers or consignees provide facilities to common carriers only as an incidental element of their primary business concern. Such consignees and shippers do not meet the statutory definition of a marine terminal operator and are not subject to Part 572 and the agreement provisions of the 1984 Act. Accordingly, § 572.104(p) is amended by adding a statement that the term "marine terminal operator" does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with the tendering or receiving of proprietary cargo from a common carrier by water.

Section 572.104(r)—Modification. Section 572.104(r) defines those changes which are interpreted to be "modifications" to agreements and therefore subject to sections of Part 572 dealing with "modifications". Comment 22 contends that "cancellations" are not properly includable in the definition. The Act at section 3(1) suggests a distinction between "modification" and "cancellation." Section 572.104(r) is therefore amended to delete the reference to "cancellations".

Section 572.104(s)—Non-Vessel-Operating Common Carrier. Section 572.104(s) defines a common carrier which does not operate the vessels by which the ocean transportation is provided as a "non-vessel-operating common carrier" (NVOCC) and establishes its relationship to the underlying "ocean common carrier" as that of a "shipper". Comment 39 suggests that this definition be modified to expressly state that an NVOCC is a "common carrier" in its relationship with the underlying shipper. The Interim Rule definition, however, recites the statutory definition and shall be retained in the Final Rule.

Section 572.104(x)—Port. Section 572.104(x) defines the term "port" as the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement. Comment 23 suggests certain revisions to the definition of "port" as well as to the instructions to Part V(A) of the Information Form. Comment 23 objects that the way in which the term "port call" is used in the Form is overly broad and imposes an enormous data collection burden. Certain revisions have been made to the Information Form which should resolve this concern. Therefore, there is no need to change the definition of "port" in § 572.104(x).

Section 572.104(z)—Service Contract. Section 572.104(z) defines the term "service contract" as used in Part 572. This definition recites the definition set forth in the Act and makes no express reference to service contracts with shippers' associations. Comment 39 states that this definition would be improved by expressly recognizing the authority of conferences to enter into service contracts with shippers' associations. Comment 39 states that this change would better reflect the intent of the Act and its legislative history. This suggestion has merit and the definition shall be amended as suggested.

Section 572.104(aa)—Shipper. Section 572.104(aa) tracks section 3(23) of the Act and defines the term shipper as an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is made. Comment 28 suggests clarification of the definition by the inclusion of the word "other" after the words "owner or". Comment 33 suggests

[3] There is a subtle but possible significant difference between the 1984 Act's definition of marine terminal operator and the 1916 Act's definition of a terminal operator as an "other person". Section 1 of the 1916 Act defines the term "other person" as "any person . . . 'carrying on the business of forwarding' or furnishing wharfage, dock, warehouse or other terminal facilities in connection with the common carrier". The term "carrying on the business of forwarding" is defined separately in the 1916 Act. Although the Commission has previously referred to terminal operators as persons carrying on the business of furnishing wharfage dockage etc., the phrase "carry on the business of" does not clearly modify the language "furnishing wharfage, dockage, etc." The 1984 Act, on the other hand, unequivocally requires marine terminal operators to be "engaged in the business of furnishing wharfage, dockage, etc."

the addition of a statement that the term "shipper" also includes "shippers associations". The first suggestion is adopted. This revision should also accommodate the other suggestion that the term "shipper" be expanded to include shippers' association.

Section 572.104(bb)—Shippers' Association. Section 572.104(bb) recites the statutory definition of a shippers' association. Comment 33 states that this definition should make clear that shippers' associations are included within the meaning of the term "shipper" wherever that term is used in Part 572. In view of the change made in the term "shipper", no change in this definition is deemed necessary. The question of whether a shippers' association should be composed only of persons who are the beneficial owners of cargo, as noted in Comment 22, is the subject of a pending petition and is not addressed here.

Section 572.104(cc)—Shippers' Requests and Complaints. Section 572.104(cc) describes the shipper/conference communications which constitute "shippers' requests and complaints" and which are subject to Part 572. Comment 39 suggests that the definition be limited to written communications and exclude misrating claims.

Limiting shippers' requests and complaints in written communications and excluding complaints pertaining to misratings is unduly restrictive and unwarranted. The matter of written versus oral communications is a procedural matter better dealt with in the context of the conference's rules regarding shippers' requests and complaints. Moreover, there appears to be no reason for excluding misratings as a subject matter for shippers' requests and complaints. The handling of misratings is a matter commonly dealt with in tariff publications and as such should not be excluded. Given the nature of misratings, and as long as the conference tariff provides an efficient and fair mechanism for their resolution, it is doubtful that such matters would come to the conference as a shippers' request or complaint. However, if the tariff fails to provide an appropriate remedy, then the tariff itself is open to criticism and is a valid subject for a request or complaint.

It is also suggested that § 572.104(cc) be expanded to include communications involving service contracts. This suggestion has merit and § 572.104(cc) has, therefore, been revised to provide that "shippers' requests and complaints" includes a communication from a shipper to a conference "requesting to enter into a service contract."

Section 572.104(dd)—Space Charter Agreement. Section 572.104(dd) defines that combination of inter-carrier activities which constitutes a "space charter agreement." Comment 28 suggests that there is a possible overlap between the "space charter" and "transshipment" agreement definitions and suggests that the definition of a space charter agreement expressly exclude transshipment agreements.

There is indeed some overlap between the two definitions. This occurs because a transshipment agreement is a type of space charter. To specifically exclude them from the definition of space charter would confuse this relationship. The suggestion therefore is not adopted.

Section 572.104(ff)—Transshipment Agreement. Section 572.104(ff) defines that combination of inter-carrier activities and authorities which are classified as "transshipment agreements." Apart from the previously discussed comment relative to the overlap between "space charter" and "transshipment agreements", Comment 38 contends that the "transshipment agreement" definition is unused in Part 572 and should be deleted. The term "transshipment agreement" is used as an exclusion in defining conference agreements in § 572.104(f) (an exclusion cited in section 3(7) of the Act). The term is also used and components of its definition are repeated in the exemption for "non-exclusive transshipment agreements". The definition therefore will be retained.

Subpart B—Scope

The purpose of Subpart B is to set forth those agreements which are subject to Part 572 and to specifically list certain kinds of agreements to which the rules of Part 572 do not apply. In response to certain comments and in order to state the distinction between subject and non-subject agreements more clearly, Subpart B is being reorganized as two sections. Section 572.201 of the Final Rule encompasses the agreements which were set forth in §§ 572.201 and 572.202 of the Interim Rule and is retitled "Subject Agreements." Section 572.202 of the Final Rule includes those agreements which were set forth in §§ 572.203 through 572.208 of the Interim Rule and is retitled "Non-subject agreements".

Comment 38 proposes that Subpart B be expanded to include "agreements related to transportation to be performed within or between foreign countries." Comment 22, on the other hand, urges that this same category of agreements be added as an exclusion in Subpart C.

Section 5(a) of the Act expressly provides that foreign transportation agreements are not required to be filed with the Commission. Because these agreements are not subject to filing, Subpart B is being modified to include them as agreements which are not subject to Part 572. Because of this addition of the broad class of foreign transportation agreements in Subpart B, the inclusion of foreign inland agreements or foreign marine terminal agreements in Subpart C has been eliminated from the Final Rule. Foreign transportation agreements are not subject to Part 572.

Comment 22 argues that transshipment agreements fall within the class of foreign transportation agreements specified in section 5(a) of the Act and should be excluded from filing. The Comment objects to continued regulation of transshipment agreements whether exclusive or non-exclusive. To the extent that these agreements are not subject to this part under section 572.202(c) or fall within the exemption of section 572.306, they need not be filed. Other types of transshipment agreements, however, are subject to filing requirements.

Section 572.201 (redesignated § 572.201(a)) Agreements by or Among Ocean Common Carriers.

Section 572.201 recites the listing of agreements in section 4(a) of the Act. No substantive changes have been made to this section in the Final Rule.

Section 572.202 (redesignated § 572.201(b)) Marine Terminal Operator Agreements Involving Foreign Commerce.

This section is based on section 4(b) of the Act. In conjunction with § 572.202(e) it clarifies and implements the distinction under the Act between marine terminal operator agreements which involve foreign commerce and those which are exclusively in interstate commerce. The suggestion in Comment 20 that further clarification of the status and treatment of marine terminal operator agreements is necessary has been addressed above in discussing the definitions of "marine terminal facility" and "marine terminal operator".

Section 572.203 (redesignated § 572.202(e)) Marine Terminal Operator Agreements Exclusively in Interstate Commerce.

This section states that a marine terminal operator agreement exclusively in interstate commerce is not subject to Part 572. Comment 38 suggests that this section is superfluous and recommends

that it be deleted. Inasmuch as this section, together with § 572.201(b), distinguishes those exclusively domestic marine terminal operator agreements which are outside the scope of Part 572 from those terminal agreements involving foreign commerce, this section serves a useful purpose and shall be retained. Certain technical changes suggested by Comment 38, however, have been adopted.

Comment 21 expresses concern about inadvertent antitrust exposure and would prefer a procedure whereby parties could obtain antitrust immunity under both the 1984 and 1916 Shipping Acts. Parties that have such concern may file an agreement under both the 1984 and 1916 Shipping Acts and seek to obtain antitrust immunity under both Acts.

Section 572.204 (redesignated § 572.202(d)) Common Carrier Marine Terminal Agreements.

This section provides that Part 572 does not apply to common carrier terminal agreements. Comment 38 suggests that the word "marine" should be added before the word "terminal". This change would bring the language of this section into conformity with section 7(b)(3) of the Act and therefore it is adopted.

Section 572.205 (redesignated § 572.202(f)) Non-Vessel-Operating Common Carrier Agreements.

This section states that agreements solely and exclusively between non-vessel-operating common carriers are not subject to Part 572. Comment 38 states that this section is superfluous and should be deleted. The purpose of this section is to provide guidance with regard to agreements between or among NVOCC's. Such agreements were subject to the 1916 Act but are not within the Commission's jurisdiction under sections 4 and 5 of the 1984 Act. An express statement that these agreements are not subject to Part 572 is therefore appropriate and will be retained in the Final Rule.

Two technical changes shall be made in this section. Comment 38 believes that the use of the word "by" in this section might be read to exclude a three-party space-charter and sailing agreement between one NVOCC and two ocean common carriers. To avoid this unintended interpretation, the word "by" has been deleted from the Final Rule. In addition, the phrase "solely and exclusively" is added in order to further clarify the status of agreements among NVOCC's under the Act.

Section 572.206 (redesignated § 572.202(g)) Ocean Freight Forwarder Agreements.

This section states that ocean freight forwarder agreements are not subject to Part 572. Comment 38 argues that this section is superfluous and should be deleted. Again there would appear to be a useful purpose served by retaining this section in order to provide guidance on those maritime industry agreements which were subject to the 1916 Act but not subject to sections 4 and 5 of the 1984 Act. The technical change suggested in Comment 38 would improve this section and the words "by or" are deleted. In addition, the phrase "solely and exclusively" is added to further clarify this section.

Section 572.207 (redesignated § 572.202(b)) Maritime Labor Agreements.

This section is a restatement of section 5(e) of the Act. No comments were received on this section and no substantive changes have been made to it in the Final Rule.

Section 572.208 (redesignated § 572.202(a)) Acquisitions.

This section is a restatement of section 4(c) of the Act. No comments were received on this section and no substantive changes have been made to it in the Final Rule.

Subpart C—Exemptions

Subpart C treats those agreements which have been exempted from filing or other requirements by the Commission pursuant to section 16 of the Act. In response to certain comments, Subpart C has been reorganized to deal solely with Commission ordered exemptions. The statutory exclusions formerly listed in this subpart have been relocated in Subpart B, as discussed above. Section 572.301 sets forth the procedures applicable to exemptions. Thereafter, each separate exemption is listed in a separate section. This arrangement will facilitate the orderly addition of any new exemptions to this subpart.

Section 572.301 Exemption Procedures.

Section 572.301 sets forth procedures for exempting agreements subject to the Act from any requirement of the Act.

Section 572.301(a)—Authority. Section 572.301(a) concludes with the statement that: "The antitrust laws do not apply to any agreement exempted from any requirement of the Act, including filing and Information Form requirements." Comment 38 states that this sentence should be deleted because the Commission does not have jurisdiction over the antitrust laws. This language was suggested by section 7 of the Act which states that the antitrust laws do not apply to certain agreements. Its purpose was merely to indicate, as provided in the Act, that agreements exempt pursuant to section 16 enjoy antitrust immunity. It was not the intention of this statement to assert or imply Commission jurisdiction over the antitrust laws. In order to eliminate any confusion, this sentence shall be deleted. Deletion, of course, does not in any way affect whatever antitrust immunity attaches to exempt agreements.

Section 572.301(c)—Application for Exemption. Comment 38 suggests that in the first sentence of § 572.301(c) the words "or revocation" should be changed to read "or revocation of an exemption." This suggested change clarifies this section and is adopted.

Section 572.301(f)—Retention of Agreement by Parties. Section 572.301(f) requires that any agreement which has been exempted pursuant to section 16 of the Act shall be retained by the parties and be made available upon request for inspection during the term of the agreement and for a period of three years its termination.

Comments 22 and 38 object to the requirement that copies of exempt agreements be retained for a three-year period. These Comments do not question the Commission's authority to require retenion of agreements but argue that the Commission should not, as a matter of policy, impose an across-the-board requirement for agreements with a *de minimis* impact.

This record keeping requirement is necessary to ensure that the Commission is able to carry out its trade monitoring responsibilities under the Act. Should a question of violation of the Act arise, the exempt agreement must be available for review. Moreover, a three-year period does not appear to be unreasonable. Finally, it does not appear to be a significant burden for parties to retain a copy of an agreement for a period of three years after its expiration. The record retention requirement, therefore, shall be retained as to exempt agreements.

Section 572.302 Foreign Inland Transportation Agreements—Exclusion.

This section in the Interim Rule stated an exclusion from filing for foreign inland transportation agreements. Comment 38 states that such agreements are not statutorily excluded from filing but should nevertheless be exempt from filing pursuant to section 16 of the Act.

Section 5(a) of the Act excludes from filing "agreements related to transportation to be performed within or between foreign countries." The Commission interprets this broad class of agreement to include foreign inland transportation agreements. Because of the inclusion of foreign transportation agreements in Subpart B there is no longer any need to retain this section and it is deleted from the Final Rule .

Section 572.303 Foreign Marine Terminal Agreements—Exclusion.

Section 572.303 in the Interim Rule states statutory exclusion from filing for foreign marine terminal agreements. Comment 38 states that these agreements should be treated as exemptions rather than as exclusions. Foreign marine terminal agreements, however, are also a specific type of the foreign transportation agreement referred to in section 5(a) of the Act. They are, therefore, included within the scope of section 572.202(c) in the Final Rule and are deleted from Subpart C.

Section 572.304 (redesignated § 572.302)) Non-Substantive Modifications to Existing Agreements—Exemption.

This section is based on the exemption which formerly appeared at 46 CFR 524.3(d). The former exemption covered three specific kinds of agreements or modifications:

(1) Technical changes to the text of the agreement itself;

(2) Changes in titles of persons or committees; and

(3) Agreements and changes affecting office facilities, furnishings, supplies and other housekeeping matters. The exemption in the Interim Rule narrowed the former exemption by eliminating the first two types of changes.

Comments 22, 24, 26, 38 and 39 urge that the full scope of the former exemption be restored in the Final Rule. The reason for restricting the former exemption was to ensure that certain changes to the text of the agreement or in the personnel of the agreement administration would be filed so that the agreement on file with the Commission would accurately reflect the actual agreement currently in effect among the parties.

These Comments have merit and the full scope of the former exemption is restored. The purposes to be achieved by limiting the exemption can still be achieved if all such non-substantive agreements or modifications are filed with the Commission for informational purposes. Finally, this section is amended, as suggested by Comment 26, to allow parties to seek a determination from the Director, Bureau of Agreements and Trade Monitoring as to whether a particular agreement or modification in non-substantive.

Section 572.303 (redesignated § 572.304) Husbanding Agreements—Exemption.

This section in the Interim Rule clarified and continued the exemption of husbanding agreements. No comments were received on this section, and no substantive changes have been made to this section in the Final Rule.

Section 572.304 (redesignated § 572.305) Agency Agreements—Exemptions.

This section in the Interim Rule clarified and continued the exemption for agency agreements pursuant to section 16 of the 1984 Act. Comment 19 states that a blanket exemption for agency agreements is not appropriate. This comment, filed by the Port of Los Angeles, notes that in Docket No. 83-48, *Alaska Maritime Agencies, Inc., et al.* v. *Port of Anacortes, et al.*, agents took the position that they should not be responsible for certain charges where they act for disclosed principals. The Port, however, states that it is not always clear for whom an agent is working or whether the agent is authorized to make certain representations. The Port, therefore, seeks some modification of the exemption to address the alleged need of marine terminal operators to know the scope of the authority of the parties with whom they are dealing.

Subsequent to the filing of Comment 19, a settlement was reached and approved by the Presiding Officer in Docket No. 83-48 which may address the Port's concern. *See Alaska Maritime Agencies Inc., et al.* v. *Port of Anacortes, et al.*, Initial Decision and Order Approving Settlement, administratively final October 15, 1984. In addition, § 572.301(f) requires that exempt agreements be retained for a period of three years. Should any problems develop, an affected party could bring them to the Commission's attention. Finally, ports or other parties may seek modification or revocation of this exemption at any time in a separate proceeding under the procedures of this subpart. Such modification, if warranted, would then be based upon a proper factual record. Neither substantive modification nor revocation, however, would appear to be warranted at this time.

Section 572.306(a) (redesignated § 572.304(a)).

Comment 22 believes that the comma following "an agent" where it first appears in this section might imply that the agent is subject to the Act rather than merely state the type of agent whose agreement is subject to the Act. In order to remove any implication that all agents are subject to the Act, the recommended change shall be made and the comma shall be deleted.

Section 572.306(b) (redesignated § 572.304(b)).

Comment 22 also believes that a change is necessary in paragraph (b)(2). This Comment suggests that the words "do not" may have been omitted from paragraph (b)(2) and therefore suggests that the paragraph be revised to read "except those . . . (2) which *do not* permit an agent to enter into similar agreements with more than one carrier in the trade. . . ." There was no omission in the Interim Rule. The language in the Interim Rule carried over the exemption as it was formerly stated in 46 CFR 520.12(b). The former exemption did not apply to agency agreements which permit an agent to enter into similar agreements with more than one carrier in the trade. Because of the potential competitive significance of such agreements an exemption from filing would not be appropriate. This suggestion therefore has not been adopted.

Section 572.307 (redesignated § 572.305) Equipment Interchange Agreements—Exemption.

Section 572.307 in the Interim Rule clarified and continued the exemption for equipment interchange agreements. No comments were received on this section, and no substantive changes have been made to it in the Final Rule.

Section 572.308 Joint Policing Agreements—Exemption.

Section 572.308 continued the 1916 Act exemption for joint policing agreements only for the period of the Interim Rule. This exemption terminates thirty days after the issuance of the Final Rule, and thereafter, joint policing agreements must be filed pursuant to the requirements of the Act and Part 572. Comment 33 supported the termination of this exemption. Comments 22 and 38 are opposed to termination. Comment 22 questions whether joint policying arrangements are even subject to filing.

Joint policing agreements, at a minimum, come within section 4(a)(5) of the Act which applies to agreements among ocean common carriers to engage in an exclusive, preferential, or cooperative working arrangement. In addition, sections 4(a)(1) and (2) of the Act might also apply under certain circumstances. Joint policing arrangements are therefore clearly within the scope of the Act.

Comment 22 argues further that even if such arrangements are subject to sections 4 and 5 of the Act, they should nevertheless be exempt from filing. Comment 22, as does Comment 38, maintains that this exemption may not be terminated at this time without further notice and opportunity for hearing.

This rulemaking proceeding was instituted, among other authorities, pursuant to section 16 of the 1984 Act. *See* 46 CFR 572.101. The Interim Rule published in the **Federal Register** on May 29, 1984, 49 FR 22300, notified all interested parties pursuant to the Administrative Procedure Act (APA) (5 U.S.C. 552(b)) of the proposed elimination of this exemption. All interested parties have had an opportunity to be heard through the filing of written comment in accordance with section 16 of the Act and the APA (5 U.S.C. 552(c)). Having provided the parties notice and opportunity for hearing, the Commission may properly terminate the exemption of joint policying agreements. Finally, no adequate reason not to terminate this exemption has been provided.

Comment 38 questions the rationale provided for terminating the exemption on joint policing agreements. As noted in the discussion of the Interim Rule, there are potential adverse effects on shippers resulting from a joint policing agreement. Joint policing arrangements may involve significant numbers of carriers and consequently may have a widespread effect on shippers utilizing these carriers. The Commission believes that these arrangements are significant enough to require that they be filed and reviewed.

Comment 38 argues that joint policing arrangements are beneficial in that they promote cost savings. Elimination of the exemption, however, will not destroy this benefit. The only result of terminating the exemption is to subject such arrangements to the Act's filing requirements. Given the fact that such arrangements need not be accompanied by elaborate information, and the relatively short waiting period before effectiveness, the burden of requiring that they be filed is minimal. This exemption therefore is terminated in the Final Rule. In light of the fact that this exemption is being terminated, it is unnecessary to address changes to section 572.308 suggested in the comments.

Section 572.309 Credit Information Agreements—Exemption.

Section 572.309 continued the 1916 Act exemption for credit information agreements only for the period of the Interim Rule. This exemption terminates thirty days after the issuance of the Final Rule, and thereafter, these agreements will be subject to the filing requirements of sections 4 and 5 of the Act and Part 572. Comment 33 supported the termination of the exemption for credit information agreements. Other comments (Comments 22, 24, 38, 39) urged that it be retained.

One misconception seems to be common to the comments opposed to termination of the exemption. The result of eliminating the exemption will not be to bar the formation of credit information agreements, but merely to require the parties to comply with the filing requirements. The filing requirements should not present a significant barrier to the formation of these agreements and the parties will be free to share credit information as they did under the 1916 Act.

Comments 24 and 38 take issue with the Commission's statement in the Supplemental Information that "credit is an important factor in price competition." Comment 24 maintains that this exemption does not authorize the collective pricing of credit. Comment 38 asserts that the limitation contained in § 572.309(c) barring the discussion of any matter which is required to be published in a tariff, ensures that these agreements will not result in antitrust abuses.

Credit information agreements must be filed because the distinction between the sharing of credit information and the collective formation of credit policy and pricing can easily become blurred. Accordingly, these agreements should be filed and reviewed in order to ensure that the directives of the Act are satisfied.

Similar to its position taken with respect to joint policing agreements, Comment 22 asserts that there is no requirement that credit information agreements be filed and that if the Commission wishes to terminate the exemption it must provide for additional notice and comment.

The Commission's position on this issue is the same as it is with respect to joint policing agreements. A credit information agreement is a "cooperative working arrangement", within the meaning of section 4(a)(5) of the Act, and therefore is an agreement within the scope of the Act. Consequently, the filing requirements of section 5 and Part 572 must be met. In addition, adequate notice and comment has been provided. The termination of the exemption was duly noticed in the **Federal Register** with the publication of the Interim Rule (49 FR 22301 (1984)). Parties were given an opportunity to comment and the Commission has considered these submissions in accordance with the provisions of the APA.

Comment 24 asserts that the authority to set credit terms is interstitial to collective ratemaking authority. Therefore, according to this Comment, the exemption for credit information agreements should be continued where the parties already have collective ratemaking authority.

Although the establishment of credit rules is interstitial to collective ratemaking authority, establishment of credit rules is not within the scope of activity permitted by a credit information agreement. The two activities are distinct. As mentioned earlier, the purpose of a credit information agreement is the sharing of credit information, not the formation of credit rules. The Commission recognizes, however, that the sharing of certain credit information is inherent in the process of forming collective credit rules. Therefore, where the parties already have collective ratemaking authority and wish to form a credit information agreement, depending on the contents of that agreement, they may already have all the authority they require and may not need an additional agreement.

Finally, Comment 24 maintains that the expiration of this exemption is contrary to the provisions of section 2(1) of the Act to achieve a regulatory system involving a "minimum of government intervention and regulatory costs."

The Commission disagrees. This is not an example of the agency arbitrarily increasing the regulatory burden upon parties subject to the Act. Credit information agreements are properly within the scope of the Act and their significance to price competition requires that they not be exempted from the filing requirements. Because this exemption is being terminated, it is unnecessary to discuss the various suggested modifications to this section.

Section 572.310 (redesignated § 572.306) Nonexclusive Transshipment Agreements-Exemption

Section 572.310 continues the exemption under the 1916 Act for nonexclusive transshipment agreements pursuant to section 16 of the 1984 Act. The exemption in the Interim Rule made a number of changes to the previous

exemption in 46 CFR Part 524. The requirements appearing at § 572.310(a)(2) and (3) were added to the definition of the agreements which fall within the exemption. The specific items which must appear in a tariff were generally retained in § 572.310(c). Section 572.310(d) replaced the former mandatory agreement language with a description of the required and permissive contents of such agreements.

Section 572.310(a) (redesignated § 572.306(a)). Comment 28 objects to the requirement in § 572.310(a)(2) which limits the class of exempt agreements to those which, among other things, do not "guarantee any particular volume of traffic or available capacity." Comment 28 explains that often when a publishing carrier solicits the participation of a connecting or feeder carrier in meeting the needs of a developing trade or carrying cargoes of opportunity, the connecting carrier does not have sufficient unused vessel capacity in place and is obliged to charter additional vessel capacity. The connecting carrier, however, may be reluctant to charter additional capacity unless the publishing carrier agrees to guarantee a minimum volume of cargo. In order to facilitate such arrangements, Comment 28 urges the deletion of the second disqualifying element in paragraph (a)(2).

This exemption indeed is intended to be limited to arrangements that do not guarantee any particular volume of traffic or available capacity. Agreements that contain such guarantees may have more anticompetitive consequences and are more akin to space charter arrangements and therefore are subject to all requirements applying to those arrangements. Accordingly, this suggested change is not made in the Final Rule.

Sections 572.310 (c), (d) and (e) (redesignated sections 572.306 (c), (d) and (e)). Comment 24 suggests that paragraphs (c)(2) and (d)(4) which refer to origin, transshipment and destination "ports" should be modified to make clear that such agreements can apply to intermodal cargo. Transshipment arrangements, by their nature, are limited to the all-water movement of cargo. The suggested change, therefore, is not appropriate. This does not in any way, however, preclude the filing of through intermodal rates by participants in such arrangements.

Comment 38 urges certain substantive modifications to §572.310 (c), (d) and (e) and a conforming technical change in § 572.310(b). Comment 38 would delete the reference to the required tariff provisions cited in § 572.310(b) and enumerated in § 572.310(c). This Comment believes that the tariff regulations are suffficient in this regard. Comment 38 states that making the filing of a tariff a condition to the existence of an exemption is logically inconsistent because there can be no tariff provision until the agreement is effective and no such agreement can be effective unless it is exempt. The provision of § 572.310(c) will be retained in the Final Rule. There would appear to be no harm in having these tariff items enumerated in this exemption section as well as in the tariff rules. Moreover, this is a condition which will only be complied with subsequent to the effectiveness of a nonexclusive transshipment agreement. The apparent dilemma posed by Comment 38 is artificial.

Finally, Comment 38 suggests that § 572.310 (d) and (e) be deleted as unnecessary restrictions on the commercial arrangements of agreement parties. Section 572.310(d) requires that nonexclusive transshipment agreements contain a declaration of the nonexclusive character of the arrangement and lists 13 permissible terms or specifications in such agreements. Section 572.310(e) states that no other subject other than those listed in § 572.310(d) shall be included in an exempted nonexclusive transshipment agreement.

The requirements of § 572.310 (d) and (e) shall be retained. Those provisions are necessary in order to ensure with some degree of specificity the exact parameters of the exemption. Only agreements which meet these requirements need not be subject to the usual filing and review. Parties that wish to have terms other than those permitted under the exemption may draft their agreements accordingly. Such agreements, however, will be subject to filing and review.

Subpart D—Filing and Form Agreements

Subpart D implements the filing requirements of section 5 of the Act. It establishes filing and form requirements, defines and establishes procedures for filing modifications of agreements and specifies those agreements which must be accompanied by an Information Form. Subpart D also provides for a waiver of certain form requirements upon a showing of good cause.

Section 572.401 Filing of Agreement.

Section 572.401 specifies the time and place for submitting an agreement, describes the contents of the transmittal letter, and provides that any agreement and accompanying Information Form which does not meet the requirements of filing shall be rejected in accordance with § 572.601.

Section 572.401(a) Several comments (Comments 1, 22, 24, 28, 34, 38) suggested changes in the filing specifications of § 572.401(a). Comment 38 states that this section should fully carry out the terms of the Act and should therefore provide for the filing of a complete memorandum which specifies the substance of any oral agreement subject to the Act. This suggestion has merit and is adopted. Section 572.401(a) now makes it clear that all agreements, including oral agreements reduced to writing in accordance with the Act, are subject to Part 572 and must be filed.

Comments 24, 28, and 38 contend that the requirement regarding authority to file is cumbersome or unnecessary. Comments 1 and 34 suggest that, consistent with 46 CFR 502.24, an attorney should be allowed to file without further statement of authority. The purpose of the authority to file requirement as set forth in the Interim Rule was to ensure that persons purporting to represent a group of principals did in fact have the authority to do so. There have been some instances in the past where the submissions tendered by parties allegedly on behalf of a group of principals were questionable representations of the intentions of the principals. In addition, there have been occasional failures under the Interim Rule and under predecessor agreement rules to provide verification of the authority to file. Upon inquiry, however, these deficiencies have been found to be an oversight or a technical failing and have been quickly remedied. In the case of a possible misrepresentation there appear to be sufficient safeguards (*e.g.*, public notice of filing and penalties for misrepresentation) in the Final Rule to protect against or remedy any serious filing abuse. Therefore, the requirement for specification of authority to file has been deleted in the Final Rule.

Comment 22 notes that § 572.401(a) does not distinguish between a "subscribing" and "filing" party. Comments 22 and 38 take exception to the reference in this section to the Information Form. Inasmuch as this section is not intended to address the requirements governing the execution (*i.e.* "subscription") of agreements or the required supporting documents (those matters being addressed at § 572.402(d) and Appendix A, Part IX(c)) no change has been made in response to these comments.

Finally, § 572.401(a) has been changed to require only an original and two copies of the Information Form rather than 15 as in the Interim Rule, thereby alleviating the paperwork requirements for parties to agreements.

Section 572.401(b). Section 572.401(b) describes the contents of the transmittal letter which accompanies an agreement filing. Its purpose is to describe the minimum information that is necessary to assure the timely and proper receipt, acknowledgement, public notice and initiation of the review process associated with a filed agreement.

Comment 24 suggests that this section unnecessarily requires the repetition of the submitting party's address and telephone number beneath the letter signature when that information is already provided in the letterhead. An appropriate change has been made to eliminate repetition.

Comment 34 contends that this section should not require that the person executing the agreement and the person signing the transmittal letter be the same. In order to clarify § 572.401(b) in this respect, an appropriate change has been made.

Comment 38 suggests that this section be amended to make clear that the transmittal letter is "submitted" rather than "filed". An appropriate change has been made.

In addition to these changes, this section has been reorganized to more clearly set forth the contents of the transmittal letter.

Section 572.401(c). Section 572.401(c) provides that any agreement and accompanying Information Form which does not meet the requirements of filing shall be rejected in accordance with § 572.601. Comment 38 contends that the reference to the Information Form, and any filing deficiencies therein, as a basis for rejection of a filing exceeds the authority granted in section 6(b) of the Act. Comment 34 criticizes § 572.401(c) as an imprecise paraphrase of the statutory language and redundant of § 572.601 and urges its deletion.

The purpose of § 572.401(c) is to emphasize the consequences of failure to meet the submission requirements of the Act and Part 572, to include both those requirements applicable to the filed agreement itself and those applicable to any submissions required in support of that filing. The authority to include deficiencies in the Information Form as a basis for rejection is clearly provided in section 5(a) of the Act which empowers the Commission by regulation to prescribe the form and manner in which an agreement shall be filed and the additonal information and documents necessary to evaluate the agreement. Section 6(b) of the Act directs the rejection of any agreement that does not meet the requirements of section 5. The Information Form is, by the regulations of Part 572, part of the "requirements" referenced in section 5 of the Act and any substantive failure in its submission is a failure to meet the requirements of section 5 and, therefore, an appropriate basis for rejection. While § 572.401(c) does, to some extent, repeat the requirements expressed in § 572.601, early experience in the administration of the 1984 Act has shown a need for the additional cautionary emphasis. Section 572.401(c) is therefore retained without change.

Section 572.402 Form of Agreements.

Section 572.402 prescribes the form of agreements, with the exception of marine terminal and assessment agreements, filed with the Commission pursuant to section 5 of the Act. The provisions of this section were applicable to new and initial or replacement agreements filed on or after June 18, 1984. They were also made voluntarily applicable to modifications or restatements of agreements in effect before June 18, 1984 until such time as the Commission specifies a schedule for all governed agreements to be in conformity. The Commission's Interim Rule specifically solicited comments as to the compliance schedule to be established.

Comment 28 contends that the form requirements may be impractical and requests their voluntary application rather than their requirement. Comment 34 takes issue with the manner of page numbering specified at § 572.402(b) and the manner of page titling specified at § 572.402(c), stating that it would be preferable to begin the numbering of agreement pages with the first page after the required Title Page and Table of Contents. This Comment further submits that there is no basis for requiring an agreement to have both a "full" name and a "doing business as" name.

The purpose of § 572.402 is to establish a uniform format for agreements in order to facilitate: (1) Timely, accurate execution of the preliminary review imposed by section 6(b) of the Act and the substantive review and disposition directed generally by section 6 of the Act; (2) orderly maintenance and use of Commission records in support of the performance of its statutory obligations; and (3) eventual conversion of these records to a digitalized and/or micrographic form to enhance their cost effective use through computer assisted retrieval techniques. The brief experience under the Interim Rule has already served to demonstrate the utility of the new format in pursuing the first two of these objectives. Significant portions of the gains in processing efficiency can be directly attributed to this standardization.

With the eventual extension of these format requirements to all agreements, even greater economies may reasonably be expected. With respect to the numbering of the pages of an agreement, the division of an agreement into discretely numbered sections should enhance the efficiency with which an agreement can be compiled and maintained, and will improve the efficiency with which an agreement is utilized. As regards the matter of page titling, the purpose of this section is to avoid the identification problem that arises should the pages of a loose-leaf document become separated.

The Interim Rule requirement to use the agreement's "doing business as" name was primarily intended to minimize the space required to title the page because "dba" names are generally shorter than the full name. However, upon further consideration, we believe that it is preferable to require each page of an agreement to be titled with the name that appears on the Title Page and the Rule is modified accordingly.

The Supplementary Information to Interim Rule § 572.402 invited comment as to the time frames for making the format requirements of § 572.402 applicable to agreements existing prior to June 18, 1984. Comment 24 contends that the format requirements should not be made applicable to existing agreements prior to June 18, 1986. Comment 29 suggests a period of ninety days, presumably ninety days after publication of the Final Rule.

As indicated above, the Commission has already experienced significant benefit from the standardized format in terms of administrative efficiency in processing and reviewing agreements. The standardized format should also facilitate the implementation of the other record management initiatives discussed above. A fixed deadline for achieving compliance, however, might produce a crush of filings which would overtax the Commission's resources. Conformance to the format requirements therefore shall be achieved according to the following schedule: (1) All new agreements shall be submitted in the required format when initially filed; (2) any restatement of a previously effective agreement filed subsequent to December 15, 1984 shall be submitted in the required format; (3) any effective agreement which is modified to any degree and for whatever purpose subsequent to December 15, 1984 shall be restated in its entirety and filed in the

required format, including the modification; and (4) all other governed agreements not otherwise brought into compliance shall be conformed to the required format and filed with the Commission by not later than October 1, 1985. This schedule is set forth in § 572.402(h). Finally, we have amended § 572.402 to state that the form requirements do not apply to cancellations of agreements.

Section 572.403 Modification of Agreements.

Section 572.403 establishes requirements with respect to modifications to agreements. Section 572.403(a) indicates which modifications are so significant as to require an accompanying Information Form. Section 572.403(d) provides a procedure for indicating textual changes in agreements and § 572.403(g) prescribes a two-year republication requirement. The comments addressing each of these sections are discussed below.

Section 572.403(a). Section 572.403(a) defines significant modifications as those changes in an agreement that may result in a significant reduction in competition. Where the competitive consequences of an agreement modification are likely to be minor, the Information Form usually would not be required. For example, the addition of a single port to the geographic scope of an agreement would not be a significant modification, but the addition of an entire port range may have such a competitive impact as to be a significant modification. The June 12, 1984 amendment to the Interim Rule dropped the specification that the addition of members to a conference constitutes a significant modification. This amendment also added the word "significant" to changes in geographic scope, to reductions in service levels, and to changes in pool penalty provisions of carrying charges, where such changes would require the filing of the Information Form.

Nine comments address § 572.403. Comment 18 argues that for joint service agreements, the Information Form should only be required where the modification entailed the addition of new parties to the agreement, but not for the addition of ports or vessels.

A joint service agreement may result in a substantial reduction in competition when two or more existing carriers in a trade consolidate their otherwise competing service. Modifications to a joint service agreement that add vessels or extend the port coverage of the agreement are not likely to lead to a substantial reduction in competition, except where the expansion of port coverage includes ports currently served outside the joint service by two or more of the parties. Modification to a joint service agreement that increases the number of parties and, therefore, increases the potential market power of the joint service may have a substantial competitive impact on the trade and raise questions under the general standard. Consequently, the Commission is persuaded that significant modifications to a joint service agreement also include those that add parties to the agreement. An appropriate change is made in the Final Rule.

Comment 22 argues that the Commission is not authorized to require an Information Form either for the initial filing of any agreement or for a modification of an agreement. The Commission addresses the question of its authority to require an Information Form is the discussion of Appendix A.

Comment 26 argues that for conference agreements the only modifications that should require the submission of an Information Form would involve a substantial expansion of geographic scope. The requirement that an Information Form be filed with any modification that results in a "significant reduction in competition" is argued to be too broad and vague.

The Commission generally concurs that, as a practical matter, modifications of conference agreements, which do not add new authorities, will ordinarily only require the Information Form where they substantially increase the geographic scope of the agreement. This requirement is outlined in the Commission's June 12, 1984 amendment to the Interim Rule. However, if a conference agreement is amended to add or expand authority authorizing reductions in service, then such a modification would likely be viewed by the Commission as a significant modification requiring the submission of an Information Form.

The concerns raised by Comment 28 regarding § 572.403 are discussed under Appendix A.

Comment 30, in addition to arguing for the requirement that equal access agreements and modifications thereto be accompanied by an Information Form (an argument that has been addressed along with the concerns of Comment 28 under the Commission's discussion of Appendix A), also urges express reference to specific types of modifications that might result in a significant reduction in competition. These would include: changes in cargo categories and descriptions that result in significant increases in cargo that is subject to a pooling, equal access, joint service, or consortium agreement; significant increases in the cargo or revenue share of a national-flag line in a pooling or equal access agreement; or a significant decrease in the cargo or revenue shares of a third-flag line in a pooling or equal access agreement.

The purpose of requiring an Information Form with significant modifications is to obtain needed information in order to properly and adequately review such modifications under the general standard. The Commission has specified certain modifications that may result in a significant reduction in competition, thereby requiring an Information Form. The Commission has not attempted to provide a *comprehensive* list of all such modifications. Because a pooling agreement is viewed as potentially substantially anticompetitive, any modification to such an agreement that reduced competition would likely be a significant modification requiring the Information Form.

The modifications to a pooling agreement referred to by Comment 30 would also likely result in a significant reduction in competition. Accordingly, as a clarification, § 572.403(a) is amended to state that significant modifications also include "changes in cargo categories or descriptions that result in a significant increase in the amount of cargo subject to the pool, or changes in the allocation of cargo or revenue that significantly change the cargo or revenue shares of national or non-national flag lines."

Comment 30 also argues that the change effected by the June 12, 1984 amendment to the Interim Rule requiring the Information Form only for those modifications that result in "significant" changes in geographic scope, "significant" reductions in service levels and "significant" changes in penalty provisions allows the parties excessive discretion to determine what modifications are in fact "significant".

We do not agree. While parties to agreements are allowed some discretion, in the first instance, to determine which modifications to their agreements are significant, the Commission retains the option to request additional information from the parties under section 6(d) where the "modification" appears significant and the Information Form has not been filed. The Commission does not wish to impose burdensome filing requirements for each and every change regardless of its competitive significance. Parties should contact the Director, Bureau of Agreements and Trade Monitoring for advice as to whether or not a particular modification

requires the filing of an Information Form.

Comment 34 urges that amendments to conference agreements which add authority to establish through intermodal rates should not be considered significant modifications.

One of the objectives of the 1984 Act is to clarify regulatory authority concerning conference intermodal authority. The Conference Report explicitly states that "no special stigma should attach" to conference agreement amendments that establish intermodal authority. H.R. Report 98–600, 98th Cong., 2d Sess. 34 (1984). This does not mean, however, that conference intermodal amendments which extend the scope of price fixing agreements and raise concerns under the general standard should not be scrutinized. An Information Form, therefore, is required. This should not place an excessive burden on the parties because the market share information required in the Form applies only to the relevant trade(s) as determined by the parties. Market share data need not be provided for interior points to be served.

Comment 37 argues that the Commission has no authority to request an Information Form for any conference agreement or modification, and that, in any event, it should not require the Form where the modification solely provides for the addition of members.

The Commission rejects the argument that it has no authority to require an Information Form for reasons stated in its discussion of Appendix A. In regard to the second point, the Commission has, in its June 12, 1984 amendment, already deleted the requirement that a modification adding members to conferences be accompanied by an Information Form.

Comment 38 makes two technical suggestions. First, it is suggested that the second paragraph of the Instructions in Appendix A be conformed with § 572.403(a) (repeating the requirement that the Information Form is to be filed with significant modifications). Second, the Commission is urged to list in one place all agreements that require the Information Form. The first change is adopted. The second recommendation is not practicable, at least for significant modifications under § 572.403(a), because not all the modifications encompassing various combinations of authorities that will be filed can be anticipated. A filing party may contact the Director, Bureau of Agreements and Trade Monitoring for advice in this regard. For the purposes of an initial agreement filing, the Instructions specify that parties to all agreements, with the exception of marine terminal agreements, assessment agreements and agreements exempted from filing under Subpart C of Part 572, are required to file an Information Form in conjunction with the agreement.

Section 572.403(d). Section 572.403(d) establishes a mechanism for indicating textual changes in the language of an agreement. Comment 38 believes that the method of indicating changes is unnecessary and cumbersome. This comment suggests that parties should have the option of submitting separately, for information purposes, a copy of any agreement modification showing the deletions and new provisions.

Section 572.403(d) is intended to avoid any ambiguity as to what is being changed, deleted or added in an agreement and thereby facilitate the review of modifications to that agreement. This purpose may be equally achieved by the alternative method suggested by Comment 38. Section 572.403(d) therefore shall be amended to provide, as an alternative, for the informational filing of a page or pages indicating the proposed modification in the manner prescribed in sections § 572.403 (d)(1) and (d)(2).

Section 572.403(g). Section 572.403(g) requires the republication of an agreement under certain circumstances but exempts such republication from certain requirements of Part 572 when no substantive changes are involved. Comments 24 and 26 contend that the republication requirement is unnecessary and wasteful.

The purpose of § 572.403(g) is to provide for the periodic republication of the entire text of an agreement and to remove those portions of the agreement which have been deleted through prior modifications. Removal of obsolete language enhances the readability of the agreement. This section, however, has been amended so that the republication requirement applies only to those agreements which retain deleted language within the text of the agreement. Agreements which make changes by indicating the change on a separate page filed for information purposes, as provided for in § 572.403(d)(3), need not republish the entire agreement.

Section 572.404 Application for Waiver.

Section 572.404 provides for a waiver, upon a showing of good cause, of the form requirements of §§ 572.401, 572.402 and 572.403 and establishes the procedure and content for waiver requests. No comments were received on this section.

Upon further consideration, the Commission believes that the scope of § 572.404 should be enlarged to provide for a waiver, under appropriate circumstances, from the agreement organization and content requirements of §§ 572.501 and 572.502. There is a direct connection between § 572.402, on the one hand, and §§ 572.501 and 572.502, on the other. Any waiver associated, in particular, with § 572.402(e)(2) would almost certainly require relief from all or portions of §§ 572.501 and 572.502. This broadening of the waiver provision should not be interpreted as a lessening of the importance of these form and manner requirements. The purpose of expanding the waiver provision is to provide for the exceptional situation where some relief may be justified. Accordingly, § 572.404(a) is amended to include §§ 572.501 and 572.502 within the matters for which a waiver may be sought.

Section 572.405 Information Form.

Section 572.405 requires that a completed Information Form accompany certain agreements at the time of their filing. Complete responses are required for each item on the Information Form. Section 572.405(b) and the instructions to the Information Form require that, where the party is unable to provide a complete response, the party should provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain such information.

Because certain parts of the Information Form have been made voluntary or are only required to be completed for certain types of agreements, § 572.405(b) is amended to indicate that a complete response to the Information Form shall be supplied in accordance with the instructions. In addition, in order to relieve any paperwork burden on the parties and to enhance the ability of the Commission to protect the confidentiality of the Information Form, only an original and two copies of the Information Form are required to be filed.

Several comments object to the required explanation for noncompliance, including the use of estimates, as a basis for rejection of the agreement under § 572.601. Comment 37 questioned whether the Commission would use the explanation to reject the agreement on the basis of, for example, the accuracy of estimates or the adequacy of sources. Comment 39 suggests that, where explanations are "meritorious", they should be accepted.

In order to effectively and efficiently utilize the data provided on the Information Form, it is necessary for the Commission to assess the accuracy of such data. The identification of the sources of estimates allows the Commission to determine the extent to which such data should be incorporated in the analysis of the agreement. An explanation of why precise data are not available is required for certain parts of the Information Form in order to ensure that the parties make a reasonable attempt to provide data that is available to them. Available data, as addressed later in the discussions of Parts III and IV of the Information Form, are derived from data that the parties already have available, or would ordinarily acquire in the course of making the commercial decisions underlying the proposed agreement. The Commission has, however, deleted the requirement that an explanation of why precise data are not available accompany estimates in Parts III and IV, and the change is indicated in the relevant sections of the Final Rule. Reasonable explanations for the lack of availability of precise data will continue to be required for the remaining parts of the Information Form which require data and which are not voluntary. Where estimates are not provided, a statement of reasons for not providing estimates and the efforts made to obtain such information is required.

Six comments on § 572.405 address the issue of the Commission's authority to require the Information Form. Four comments took the position that the Commission does not have such authority under the Act. These comments are addressed in the discussion of §§ 572.401(c) and 572.601 and in the discussion of Appendix A—Information Form and Instructions.

Section 572.406 Complete and Definite Agreements.

Section 572.406 provides that any agreement filed under the Act and Part 572 shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties. This section provides that open-ended provisions will be permitted only if the enabling agreement indicates that any further agreement cannot go into effect unless filed and effective under the Act. Finally, this section describes matters which are interstitial to the basic agreement authority. Ten comments were filed in Docket No. 84–32 addressing this section.

The Supplementary Information to Docket No. 84–32 stated:

> The rule does not state how the Commission will treat an agreement that is not sufficiently specific, complete and definite. In most cases, such deficiencies could probably be corrected through informal discussions between the Commission's staff and the parties. An agreement which is severely deficient, however, may be rejected, investigated or subject to a formal request for additional information or to challenge in the court under section 11(h) of the Act.

A number of comments (Comments 101, 105, 106, 107, 108) objected to the discussion insofar as it suggested that an agreement which was severely deficient under the criteria of § 572.406 could be rejected. These Comments argue that the Commission does not have the authority to reject an agreement because it is unclear or indefinite. Such agreements allegedly may only be investigated, subjected to a request for additional information or challenged in court under section 11(h) of the Act. Comments 107 and 110 propose the addition of a new paragraph which would expressly limit the Commission's action on deficient agreements to such an investigation, an information request or an injunction.

As the Supplementary Information in the Interim Rule indicated, the Commission would in most cases seek to resolve deficiencies through informal negotiations and discussions between its staff and the parties. Rejection of an agreement would only occur in a rare case where an agreement is so severely deficient that, on its face, it could not be construed as complete and where even the most basic analysis under the general standard would not be possible. Moreover, in such a case, it would not be possible to determine whether sections 10(a)(2) and 10(a)(3) were complied with. Finally, agreements should be sufficiently precise and definite to determine whether a particular activity is within the scope of the antitrust immunity conferred upon them by section 7 of the Act. The fact that there are other avenues available for dealing with deficient agreements, as suggested, does preclude the use of rejection. Clearly, an informal resolution of such deficiencies is preferred. In other cases, requests for additional information, investigation, or court challenge under section 11(h) of the Act may be appropriate. However, where even the most minimal requirements with regard to definiteness and completeness are not met, rejection may be appropriate. The Commission does not believe that it is necessary to formally state the actions which might be available within the text of § 572.406.

Section 572.406(a). Section 572.406(a) states that a filed agreement shall be the complete agreement among the parties and shall specify in detail the substances of their understanding. Comments 102 supported this section as it appeared in the Interim Rule. Comment 105 urges that this section be eliminated or alternatively amended.

The Commission believes that § 572.406(a) adequately states the general rule that agreements must be complete and definite and this section remains unchanged in the Final Rule.

Section 572.406(b). Section 572.406(b) establishes guidelines concerning open-ended authority in agreements. Comment 102 supports this section in the Interim Rule. Comment 104 favors the elimination of this section but alternatively proposes certain modifications assuming that § 572.406(c) is not eliminated. Comment 105 considers § 572.406 (b) and (c) to be intertwined and proposes modifications to both sections.

Section 572.406(b) provides that agreement clauses which contain enabling authority expressly state that such authority may not be implemented unless the more specific implementing understanding or agreement is filed and effective under the Act. To that extent, this section merely states what the Act otherwise requires. Accordingly, § 572.406(b) is retained in the Final Rule. However, the phrase "open-ended or vague" is deleted.

Section 572.406(c). Section 572.406(c) is intended to provide a guideline regarding interstitial agreement authority. The comments were unanimous in expressing concern with this provision. A majority of comments favor the elimination of paragraph (c) from the Final Rule. Others, as an alternative, propose modification to eliminate phrases such as "routine and ordinary", "anticompetitive effect" and "routine operational". Some comments suggest that this paragraph would revive certain antitrust issues which were intended to be put to rest by the 1984 Act. Other comments suggest that it would erode the "reasonable basis to conclude" defense under section 7(a)(2) of the Act.

Section 572.406(c) is retained in the Final Rule but is amended along the lines suggested in several of the comments. The standard of this section is one that will be applied on an *ad hoc* basis and is not intended to preclude parties from taking interstitial action.

Subpart E—Content and Organization of Agreements

Subpart E provides for the standardization of the organization of an agreement, specifying the name, number,

and order of particular agreement articles.

Comment 38 argues that the requirements of Subpart E exceed the Commission's authority and should be deleted. Comment 34 urges that a period of at least six months subsequent to the adoption of the Final Rule be permitted to conform agreements to the requirements of Subpart E. Comment 28 suggests that the requirements of Subpart E may not be suitable for all agreements and that alternative formats should be permitted. Comment 39 urges that the Commission continue its policy of not specifying the language of agreement provisions. It also urges the Commission to reconsider making the requirements of Subpart E applicable to agreements which were approved prior to June 18, 1984. However, two conferences subscribing to Comment 39 did not object to Subpart E requirements provided that republication is not required prior to June 17, 1985.

The objectives of Subpart E are to: (1) Ensure that the text of an agreement contains the essential articles which are likely to appear in all agreements in a prescribed order; and (2) further support the standardization of agreement format and its associated goals and objectives as discussed above in connection with section 572.402. Nothing in the Act or its legislative history prohibits the Commission from establishing an orderly, minimum structure or organization for agreements filed with the Commission.

Upon consideration of the various proposed compliance schedules and available resources and obligations, the Commission has determined that a phased implementation schedule, both for §§ 572.402 and 572.403 and §§ 572.501 and 572.502, would minimize any burden by allowing up to ten months to achieve compliance. The elements required by § 572.501 are generally found in most agreements and provide the minimum information necessary for a general understanding of an agreement. These requirements, as revised below, shall continue for all agreements except cancellations, marine terminal agreements and assessment agreements. In the event that a waiver from these requirements is deemed necessary, § 572.404 has been expanded to permit application to be made for a waiver from the requirements of §§ 572.501 and 572.502.

Section 572.501 Agreement Provisions—Organization.

Section 572.501 provides a uniform organization for all agreements, except marine terminal agreements and assessment agreements.

Section 572.501(a). Section 572.501(a) imposes a minimum organization and subject matter outline on filed agreements (except for those which are exempted) and reserves the use of certain article numbers. Comment 29 contends that § 572.501(a) should be modified to provide that the content of a specified article is not required to be published unless that content has been commercially agreed to, contending that some of the articles do not otherwise ordinarily exist in some forms of agreements.

Section 572.501 (a) states that article numbers are reserved for the particular provision or authority as indicated in this section. Experience with agreements filed pursuant to the Interim Rule indicates that this statement has not clearly communicated its intended meaning. Some filing parties who perceive that they have no need for a particular article have simply omitted the subject matter of the article and assigned its number to another subject. Each of the articles enumerated in § 572.501 is generally found in nearly all types of agreements. The enumerated Articles 1 through 13 are reserved for the specified subject matter shown in §§ 572.501 and 572.502 and may not be used for any other subject or purpose, regardless of the type of agreement. Where an article is legitimately not applicable, as for example, a charter agreement which is not likely to have a neutral body policing provision, the article number and name is to either be omitted altogether or, to preserve the sense of the article numbering in the agreement, to be included in the text of the agreement followed by the word "None". Accordingly, appropriate revisions have been made in § 572.501(a) to clarify the use of the reserved article numbering system.

Section 572.501(b). Section 572.501(b) sets forth the specific order and describes generally the subject matter of the articles of an agreement.

Certain inquiries received by the Commission's staff suggest that some parties interpret the enumeration of Articles 1 through 13 in §§572.501 and 572.502 to mean that these articles are the only articles or subject matter which may be included in an agreement. Section 572.402(e)(2) clearly states that "any additional material provisions shall be set forth as consecutively number articles." Moreover, an agreement that contained only Articles 1 through 13 would in most instances not contain the full understanding between the agreement parties expressed in the filed agreement. In order to eliminate any further confusion, § 572.501(b) has been amended to state that additional articles required to express the complete understanding between the parties to the agreement and not otherwise incorporated in appendices to the agreement shall immediately follow the enumerated articles. Such articles shall be numbered consecutively commencing with Article 14.

Section 572.501(b)(1). Section 572.501(b)(1) requires the publication of the "full name of the agreement" in Article 1 of the agreement. Comment 34 suggests that the parties to an agreement be permitted to use an abbreviation, acronym, or "doing business as" name. We are not adopting this suggestion. Article 1 is the appropriate place in an agreement to identify that agreement by its complete legal name. We find this requirement to be administratively necessary and not to impose any particular burden on the agreement parties. It therefore shall be retained.

Section 572.501(b)(2). Section 572.501(b)(2) requires a statement of the "Purpose of the Agreement" in Article 2. Comment 34 contends that the elaboration on the meaning of the term "purpose" is unnecessary. While paragraph (b)(2) will be retained, because section 5(b)(1) of the Act requires an agreement to state its "purpose", the elaboration objected to is deleted.

Section 572.501(b)(3). Section 572.501(b)(3) requires the statement of the name, address and corporate/domicile nationality of each party to the agreement in Article 3.

Five comments (Comments 22, 24, 26, 34, 38) question the need for this requirement. Comments 26 and 38 contend that the requirement is burdensome and contrary to the Act and should be deleted. Comment 24 states that this section should be amended to avoid delays in the admission or resignation of agreement members. Comment 22 questions the relevance of stating the parties' nationality.

The purpose of § 572.501(b)(3) is to ensure that the Commission has accurate and current information with respect to the agreement's membership. The lack of such information has been a long-standing problem. It is not the purpose of this section, however, to unreasonably delay the effectiveness of changes in membership, to unnecessarily burden the agreement document itself, or to collect unneeded information. Therefore, appropriate changes have been made to § 572.501(b)(3) and to § 572.605 to provide for expedited review of modifications effecting change in conference membership.

Section 572.501(b)(4). Section 572.501(b)(4) requires a statement of the geographic scope in Article 4. Comment 34 states that agreement members do not necessarily serve their respective trades pursuant to the authority of an agreement and that the implication that they do so serve should be eliminated. It is not the purpose of § 572.501(b)(4) to capture any more than the geographic breadth of the basic agreement. Certain changes have therefore been made in this section.

Comment 28 states that § 572.501(b)(4), as well as § 572.501(b)(5), should expressly require consortium agreements to specify the level and scope of service; otherwise, such agreements may contain "open-ended" or "blank check" authority. The fundamental concern of this Comment, *i.e.* "open-ended authority", has been addressed in § 572.103(g) and § 572.406. As this concern would appear to be met by these sections of the Final Rule, the suggested modifications to § 572.501 (b)(4) or (b)(5) do not appear necessary.

Section 572.501(b)(5). Section 572.501(b)(5) requires in Article 5 a statement of the authorities permitted by the Act and intended to be exercised by the parties to the agreement. Comment 24 states that this requirement creates a risk that persons opposing an action taken pursuant to an agreement may argue that the only authority of the agreement is that stated in Article 5. This Comment suggests the addition of a statement that the parties' authority is to be derived from the entire agreement.

The purpose of Article 5 is to provide a general statement of the activities which the parties are authorized to engage in. Section 572.501(b)(5) has been revised to make this clear and that, except for the specification of fundamental matters, it will require that additional articles be provided which are more specific as to the authority to be exercised and the mechanics of that exercise. Finally, this section is revised to state that the parties may rely on the contents of the entire agreement as authority for their activities.

Section 572.501(b)(6). Section 572.501(b)(6) requires the titles and respective authorities of any agreement officials designated by the agreement parties be provided in Article 6.

Comment 38 contends that the requirements of § 572.501(b)(6) improperly prescribe substantive agreement content, exceed the authority of the Act and should be deleted. Comment 34 requests the clarification of the language and intent of the section with respect to the specification of agreement officials and their duties.

The purpose of § 572.501(b)(6) is to ensure that the Commission, the agreement parties and any other interested parties be informed as to who, by organizational title, is empowered to act on behalf of the agreement parties and in what capacity. This information is necessary to the effective and efficient administration of the Commission's agreement program, both with respect to the pre-effectiveness review of an agreement and the post-effectiveness monitoring of the activities of an agreement. It is not the purpose of this section, however, to unnecessarily delay the effectiveness of changes in such provisions or complicate the agreement document. Therefore, § 572.605 has been amended to provide for expedited review of modifications to Article 6.

Section 572.501(b)(7). Section 572.510(b)(7) requires that the terms and conditions of membership to the agreement be provided in Article 7. Comment 26 contends that this requirement is overly detailed and, in some cases, too trivial to be included in the basic agreement.

Section 572.501(b)(7) is an extension of the requirements of section 5(b)(2) of the Act which mandates that conference agreements provide reasonable and equal terms and conditions for conference membership. Of the nine required articles in § 572.501, it is the least likely to apply to all agreements. The requirements of § 572.501 would only apply to certain rate agreements and would not have application to transshipment, equipment interchange or charter agreements. Section 572.501(b)(7), therefore, has been revised to indicate that its provisions do not apply to certain agreements.

Section 572.502 Organization of Conference and Interconference Agreements.

Section 572.502 implements section 5(b) of the Act by requiring the inclusions of neutral body policing, prohibited acts, consultation, shippers' requests and complaints, and independent action provisions in conference and interconference agreements.

Section 572.502(a). Section 572.502(a) specifies the scope and application of the section with respect to conference agreements. Certain clarifying editorial changes have been made to the section. In addition the section has been revised to provide for the inclusion in agreements of provisions in addition to those prescribed in §§ 572.501 and 572.502.

Section 572.502(a)(1). Section 572.502(a)(1) requires a statement that at the request of an agreement member the conference shall engage the services of an independent neutral body. The section further requires the inclusion of any neutral body procedures established.

Seven comments (Comments 22, 25, 26, 27, 34, 35, 39) were received on this section. None of the Comments take exception to the requirement for an agreement to provide an affirmative statement that a single agreement member may request neutral body policing. However, some contend that there is no statutory authority for requiring that, once implemented, the neutral body policing procedures have to be incorporated into the text of the agreement. Of those, three propose that, if the procedures are required, they should be included in an appendix. It is also suggested this section use the term "self policing" rather than the term "independent neutral body" policing.

Section 572.502(a)(1) implements section 5(b)(4) of the Act which provides for "an independent neutral body" to police the obligations of a conference and its members, if requested by a member line. The section will therefore continue to refer to an "independent neutral body." The requirement that any neutral body policing procedures be included in the agreement derives from the general requirement that an agreement contain the full understanding of the parties. To the extent that these procedures reflect concerted action by the parties, they are part of the agreement and must be filed.

Section 572.605 is amended, however, to provide for expedited review of neutral body policing procedures, excluding any modification of the triggering provision stemming directly from section 5(b)(4) of the Act. Section 572.502(a)(1) is also modified to allow neutral body procedures to be included in a designated appendix to the agreement, which is cross-referenced in Article 10.

Section 572.502(a)(2). Section 572.502(a)(2) requires and affirmative statement that a conference will not engage in conduct prohibited by section 10(c)(1) or 10(c)(3) of the Act. Comment 33 requests that § 572.502(a)(2) be expanded to incorporate the prohibition on refusals to negotiate with shippers' associations contained in section 10(b)(13) of the Act.

Section 572.502(a)(2) implements section 5(b)(5) of the Act which, insofar as section 10 prohibited acts are concerned, requires conference agreements to expressly reference only those prohibitions specified in sections 10(c)(1) and 10(c)(3) of the Act. We note, however, that section 10(c)(1) of the Act prohibits a conference from boycotting or taking any other concerted action resulting in an unreasonable refusal to deal. While not addressing itself directly to shippers' associations, the prohibition against boycotting and other concerted actions may encompass the concern of Comment 33. No change has been made to § 572.502(a)(2).

Section 572.502(a)(3). Section 572.502(a)(3) requires that conference agreements provide procedures for consultation with shippers and for handling of shippers' requests and complaints. Comment 33 suggests that § 572.502(a)(3) should prescribe minimum time frames and other procedures for the consideration of shippers' complaints and requests in a manner similar to that of the mandatory provisions of Subpart H.

Section 572.502(a)(3) implements section 5(b) (6) and (7) of the Act which require conference agreements to contain consultation and request/complaint handling procedures. The mandatory provisions of Subpart H, including § 572.801 (c) and (d), served the purpose of bringing agreements into compliance with section 5(b) of the Act during the transition period. As discussed more fully below in connection with the disposition of Subpart H, that purpose has been served and the Commission is removing the mandatory provisions of Subpart H from the Final Rule. At this time there does not appear to be a need to require parties to agreements to adopt Commission prescribed provisions. Provisions drafted by parties to agreements are carefully reviewed to ensure that they contain sufficient specificity and detail. Accordingly, the changes to this section suggested in Comment 33 are not adopted.

Section 572.502(a)(4). Section 572.502(a)(4) requires that conference agreements specify its independent action procedures. Comment 34 proposes that this section be revised to permit: (1) Independent action procedures which allow for the exercise of such action on less than 10 calendar days' notice; and (2) a conference member to independently elect to provide more than 10 calendar days' notice of its intention to exercise independent action.

Section 572.502(a)(4) tracks the language of section 5(b)(8) of the Act which, in relevant part, provides that conference agreement independent action provisions may not impose a notice period of " * * * more than 10 calendar days * * *" for the exercise of independent action. The revisions suggested by Comment 34 are unnecessary because their intended purpose is presently being served by § 572.502(a)(4). Therefore, no change to this section has been made.

Section 572.502(b). Section 572.502(b) requires every interconference agreement to contain independent action procedures (in addition to the enumerated Articles 1 through 12). Comment 24 contends that interconference agreements should not be required to contain the provisions of Articles 10, 11 and 12 specified in § 572.502(a).

Interconference agreements are generally types of conference agreements and, as such, should be subject to the same requirements. Therefore, the argument that the requirements of § 572.502(a) should not apply to interconference agreements is not persuasive and is rejected. However, a waiver of this requirement may be applied for pursuant to the new provisions of § 572.404. Such a waiver would be available where any or all of Articles 1 through 12 would not be applicable or appropriate given the particular interconference agreement. Finally, it should be noted that provisions which appeared in § 572.802 have been relocated in this section.

Subpart F—Action on Agreements

Subpart F implements section 6 of the Act which establishes procedures under which agreements are reviewed and acted upon by the Commission. The statutory model for review of agreements is the premerger clearance procedures set forth in the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Pub. L. 94–435, 90 Stat. 1390). The procedures of Subpart F are intended to facilitate the expeditious review of agreements based on necessary and relevant information within the time allowed by the Act.

Section 572.601 Preliminary Review—Rejection of Agreements.

Section 572.601(b) provides for the rejection of any agreement that fails to comply with the filing and information requirements of the Act and Part 572. Comments 13, 17, 36, and 39 question the Commission's authority to reject an agreement for failure to meet filing and format requirements. Comments 29, 34, and 38 specifically challenge the authority to reject an agreement after preliminary review, pursuant to § 572.601(a), on the ground that the Information Form is not submitted, or is incomplete and an adequate explanation is not provided. They argue that only a deficiency in the agreement itself provides the basis for rejection. According to these Comments, an incomplete Information Form lacking an adequate explanation should be remedied by a request for additional information.

Section 5(a) of the Act authorizes the Commission to prescribe the additional information that should accompany an agreement. These requirements are contained in § 572.405 pertaining to the Information Form. Section 6(b) of the Act provides for rejection of a submission which does not meet the requirements of section 5(a) of the Act. Section 572.601 implements this rejection authority. An agreement which is submitted with an incomplete Information Form, lacking an adequate explanation where required by § 572.405, fails to comply with § 572.405 and may be rejected. Moreover, the purpose of a request for additional information is not to obtain information which all parties are required to submit with an agreement in the first instance, but to acquire, in special circumstances, further information.

Comment 39 suggests that, before an agreement is rejected, the filing party should have an opportunity to correct any deficiencies within a specified time without suspending the 45-day waiting period. It is further proposed that this section be clarified to explain that agreements may only be rejected for nonconformance with technical filing requirements rather than for substantive deficiencies. Comment 39 also suggests that § 572.601(b) be amended to provide that rejection must occur within 20 days of filing and that, prior to rejection, the filing parties should be notified and given an opportunity to correct any deficiency. Finally, Comment 39 proposes that this section be amended to expressly provide for appeal to the Commission itself when an agreement is rejected.

Most of these concerns expressed in these comments are, as a practical matter, met under the existing Bureau of Agreements and Trade Monitoring procedures for processing agreements. Filing parties presently are given the opportunity to make minor corrections without suspending the 45-day waiting period. These corrections are usually speedily made because of their technical nature.

Every effort is made to review an agreement and accompanying Information Form for deficiencies as expeditiously as possible. In most situations this preliminary review is completed within a few days after the agreement's receipt at the Commission. In the case of particularly complex agreements, slightly more review time may be needed. A specific time period for rejection therefore does not appear

to be necessary or appropriate and could under certain circumstances, deny the Commission and the filing parties necessary flexibility.

As to Comment 39's concern about rejection for other than filing deficiencies, the nature of the preliminary review provided for in section 6(b) of the Act and § 572.601(a) makes clear that this rejection is not based on a substantive review of the agreement.

Decisions on rejection agreements are presently made by the Commission and not the staff. There is, therefore, no need to provide for an appeal procedure to the Commission because they have already considered the matter. If, in the future, this procedure is changed, then, at that time, it would be appropriate to consider an appeal mechanism to provide for Commission review.

Section 572.602 **Federal Register** *Notice.*

Section 572.602 implements section 6(a) of the Act which requires the Commission to transmit notice of the filing of an agreement to the **Federal Register** within seven days of receipt.

Section 572.602(a). Comment 38 suggests that the words "A notice of" be added at the beginning of § 572.602(a). This clarifying change is made in the Final Rule.

Section 572.602(b). Section 572.602(b) describes the contents of the notice to appear in the **Federal Register.** Comment 19 suggests the use of a standardized form of notice which would be completed and filed by the parties with the agreement. Present procedures appear to be adequate and little or no savings in time would appear to result from the suggested change. Accordingly, a standardized form for notice is not adopted.

Commepts 24 and 28 suggest that the notice of the **Federal Register** identify the filing party. This suggestion has merit. This information is submitted with the agreement and its publication in the **Federal Register** would facilitate the effort of interested persons to communicate with the filing party. This section is amended accordingly.

Section 572.603 Comments.

Section 572.603 provides for comment by any interested person to an agreement and addresses the status and confidentiality of such comments.

Section 572.603(a). Section 572.603(a) allows third parties to submit comments to filed agreements. No limitations, except the response period indicated in the **Federal Register** notice, attach to the filing of such comments. Confidential treatment will be afforded comments where the commenter so requests and there exists a proper legal basis for nondisclosure.

This provision attracted a number of comments (Comments 19, 20, 24, 25, 26, 30, 34, 39) both supporting and opposing confidential treatment of third party comments. The majority of these (Comments 19, 20, 24, 25, 26, 34, 39) believe that confidentiality, where appropriate, for third party comments is contrary to the provisions of the Act. It is asserted that the disclosure exemptions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, are the exclusive avenue for withholding third party comments. Some comments (Comments 19, 20, 24, 34, 39) suggest that the filing parties be provided with copies of third party comments. This would allegedly ensure administrative efficiencies, avoid the filing and processing of FOIA requests, and allow the filing party the opportunity to confront adverse information. On the other hand, comment 30 submits that all information filed with an agreement, either by a filing party or third parties, is protected under section 6(j) of the Act. It is asserted that confidentiality for third party comments will encourage submission of more complete comments.

Comment 28 suggests that persons commenting on agreements be allowed to waive confidentiality and Comment 20 proposes that claims of confidentiality be supported by precise statutory grounds. Comment 20 further suggests that the parties be provided with all non-confidential comments. It is suggested that if complete confidentiality is claimed for all parts of a comment, notice of the filing and claimed exemptions be provided to the parties. Comment 20 requests that non-confidential oral communications with Commission staff by persons in opposition to an agreement be made publicly available.

Many of these comments misconstrue both this section and the Act. First, third party comments are not protected by the confidentiality provisions of section 6(j) of the Act. Only "information and documentary material filed with the Commission under section 5 or 6 is exempt from disclosure." 46 U.S.C. App. 1705(j). This information is solely provided by the filing parties. No mention is made in sections 5 and 6 of the Act of "information" to be submitted by third parties. Comments on agreements, however, may in appropriate circumstances be protected under the disclosure exemptions of FOIA (5 U.S.C. 552(b)(C)(1–7)), the Trade Secrets Act (18 U.S.C. 1905), or other similar statutes. Although third party comments are not protected under section 6(j) of the Act, it would be inappropriate and improper, particularly where a request for confidentiality has been received, to routinely make them available to the agreement parties, without prior Commission review.

Requiring commenting parties to provide the agreement parties with the non-confidential portions of comments, or notice (where the whole comment is claimed to be confidential), appears unnecessary. This information would be available from the Commission upon request. Nor do we believe this procedure, whereby non-privileged comments will be available from the Commission upon request, will lead to unnecessary FOIA requests. A FOIA request is not required to obtain clearly non-confidential information. It is properly used in close situations where the Commission and requested may differ on the confidentiality of certain information, and it accords the requesting party certain procedural and legal rights. Finally, it is both administratively burdensome and not required by law, to incorporate all oral comments into a publicly available written record.

As to the suggestion that agreement parties should be allowed to rebut comments, the Commission will provide the opportunity for rebuttal only where the comments become part of the record in a Commission or court proceeding. Prior to the institution of a proceeding not right of rebuttal is provided.

The Commission is adopting the recommendations of Comment 20 that all requests for confidentiality be accompanied by citation and explanation of relevant legal authority for withholding. In the event the Commission determines that it is proper to release information for which confidentialty has been claimed it will notify the submitter prior to such release.

Comment 38 suggests that the words "a written statement" in the first sentence of § 572.603(a) be changed to "written comments." This modification is also made in the Final Rule.

Section 572.603(b). Section 572.603(b) provides that filing of comments does not entitle a party to a Commission reply, institution of a proceeding, discussion of the comment in any Commission or court proceeding, or particpation in a proceeding.

Comment 34, while not taking issue with the substance of this paragraph, suggests that the Commission further limit all substantive communications regarding pending agreements between any third person and any Commission employee.

The body of law pertaining to *ex parte* communications only applies when a formal proceeding has been instituted and the Commission is acting as decisionmaker (5 U.S.C. 557(a)). The waiting period prior to the effective date of an agreement is not such a legal proceeding and no *ex parte* rights attach. In any formal proceeding involving an agreement the present Commission rules embodied at 46 CFR 502.11 and 502.61 appear sufficient. It is therefore is unnecessary to further provide for *ex parte* restrictions in this section.

Comment 28 states that the provisions of § 572.603(b), when read in conjunction with the rules on negotiations in § 572.609, flatly bar commenters from participating in negotiations. While Comment 28 recognizes that commenters have no *right* to participate in negotiations, it requests that the section be amended to allow such participation where appropriate. Comment 28 also proposes that the section be clarified to permit a commenter to engage in follow-up communications with the Commission at the Commission's discretion.

No change to § 572.603(b) will be made. The legislative history indicates that the role of third parties should be limited to submitting comments. Conf. Rept. No. 600, 98th Cong., 2d Sess. 31 (1984). Moreover, the involvement of third parties could complicate and delay the negotiation process by introducing irrelevant or parochial interests. However, the information provided in a comment may be considered by the Commission in the negotiation process. The Commission, however, does interpret the present language of § 572.603(b) and § 572.609 to permit follow-up communications between Commission staff and third party commenters.

Section 572.604 Waiting Period.

Section 572.604 sets forth technical provisions governing the statutory waiting period.

Section 572.604(b). Section 572.604(b) provides that, unless a request for additional information is made or a court order obtained, an agreement becomes effective 45 days after filing with the Commission or on the 30th day after publication in the **Federal Register.** Comment 28 proposes that the Commission publish a notice when it reaches a final determination on a filed agreement and that any commenters receive a copy of the determination.

Currently, the Commission issues a notice of an agreement becoming effective pursuant to section 6(c) of the Act. This notice is not published in the **Federal Register** but is available to the public in the Office of the Secretary. This procedure appears to be sufficient with respect to informing the public of the Commission's action. Accordingly, the suggested change is not adopted.

Section 572.604(c). Section 572.604(c) provides that the waiting period before an agreement becomes effective is suspended when the Commission makes an oral or written request for additional information. The waiting period resumes at the time of the receipt of the requested additional material or an adequate statement of the reasons for noncompliance.

Comment 38 urges the deletion of § 572.604(c) on the grounds that it is duplicative and less clear than similar provisions in section 572.606. A request for additional information is pertinent to this section because it has an effect on the waiting period before an agreement becomes effective. Paragraph (c) therefore is retained.

Comment 19 suggests that parties be notified within 15 days of receipt of an agreement if additional information will be needed. While the goal is to review all agreements expeditiously and, where necessary, notify parties as soon as possible of the need for additional information, a 15-day limit on requests would not allow sufficient flexibility in reviewing complex agreements.

Comment 39 proposes that the parties be allowed to request an extension or suspension of the waiting period. This procedure would be utilized where an agreement was particularly complex and additional time was needed for review or where negotiations were continuing between the parties and the Commission. Alternatively, Comment 39 proposes that the parties be allowed to postpone the waiting period by submitting amendments delaying the agreement's implementation date to a date beyond the 45-day statutory period.

We believe that it would be contrary to the provisions of the Act to extend the waiting period for other than a request for additional information or court order. The parties are also always free to include within the terms of the agreement a date for implementation subsequent to the expiration of the 45-day waiting period to defer implementation of the agreement, or to withdraw the agreement altogether without prejudice to refiling.

Several comments (Comments 22, 27, 34, 39) urge that the procedures for requests for additional information be clarified. Comments 27 and 39 are concerned that routine communications between Commission staff and the agreement parties may be misconstrued as a request for additional information. Similarly, Comment 34 suggests that confusion could be avoided by having one Commission official, preferably the Secretary, responsible for issuing requests for additional information. The Comment also proposes that this section be amended to require a specific authorization statement from an appropriate Commission official to accompany each request which would expressly identify the communication as a request for additional information.

Comments 22, 27 and 34 maintain that oral requests for additional information may be problematic. It is argued that the seven-day period for written confirmation of oral requests is too long. The concern is that the parties might not receive written confirmation of an oral request for additional information made after the 38th day of the waiting period until after they had begun to implement the agreement. Comments 22 and 27 suggest abandonment of the use of oral requests and Comment 34 proposes that an oral request be made only simultaneously or subsequent to the mailing of the written request.

The present procedures contained in § 572.604(c) governing requests for additional information appear adequate. When either an oral or written request for additional information is made, it will be unambiguously identified. There is no need either to have only one official make the request or to include a specific authorization statement. In any situation where an oral request is intended to suspend the effective date of an agreement, that fact will be made clear to the filing parties.

Comment 24 argues that the resumption of the waiting period begins automatically after filing of the response to the request, or submission of the statement of noncompliance. This Comment argues that the Commission has no authority to evaluate the adequacy of the response and only the United States District Court for the District of Columbia can further suspend the waiting period. The Commission did not intend the language "*adequate*" statement of reasons for noncompliance to affect the resumption of the running of the waiting period. We have adopted the suggested change and the word "adequate" has been deleted.

Section 572.605 Request for Expedited Approval.

Section 572.605 implements section 6 of the Act and sets forth grounds and procedures for applying for and granting expedited approval.

Comment 39 proposes that § 572.605 be amended to permit parties to request expedited approval after filing a

response to a request for additional information under the same procedures for expedited approval otherwise applying.

The Commission concurs with this suggestion. It is clearly proper under section 6(e) of the Act to consider expedited approval for agreements whose effective date is suspended by the filing of a request for additional information. An appropriate modification has been made in § 572.605 of the Final Rule.

The Commission is also adding a new paragraph (c) to this section to provide for expedited approval of cancellations of agreements and modifications which reflect changes in conference membership, officials of the agreement, and neutral body authority and procedures. This addresses the desire expressed in comments that these matters be effectuated without unnecessary delay. The Commission will consider the institution of a separate proceeding to exempt these categories of agreements from the waiting period requirements of section 5 of the Act and allow them to become effective upon filing. However, given the notice requirements of section 16 of the Act, that relief cannot be granted within the scope of this proceeding.

Section 572.606 Requests for Additional Information.

Section 572.606 implements section 6(d) of the Act which authorizes requests for additional information.

Section 572.606(a) and (c). Section 572.606(a) provides that the Commission may request additional information, prior to the expiration of the waiting period. When a full response is not supplied, the filing party must submit a statement of reasons for noncompliance.

Section 572.606(c) provides that a request for additional information may be made orally or in writing, but when made orally, written confirmation will be mailed within seven days of the request.

Comment 26 proposes that this action be amended to provide a statement that the Commission will attempt to make requests for additional information early in the waiting period. Only in exceptional circumstances would requests be made in the final days prior to the effective date.

There is no need to amend paragraph (a) as suggested. All requests for additional information will be made as promptly as possible. Of course, the timing of such requests will necessarily vary with the complexity of the agreement.

Several comments (Comments 22, 24, 27, 38) objected to the use of oral requests for supplementary information. The comments express concern with the ambiguities associated with oral requests, particularly when the request is made in the last days prior to the effective date and the parties are making plans to implement the agreement. Comments 22 and 24 submit that the parties are entitled to the certainty of a written request which would be addressed to specific, relevant and readily available material and be specifically identified. Comment 24 suggests that an oral request for additional information only be permitted if written confirmation is received prior to the 45th day of the waiting period.

Section 6(c) of the Act does not require requests for additional information or documentary matter under section 6(c)(2) to be made in writing. It only requires that they are made within the 45-day period. The Commission therefore retains the option to use oral requests followed by written confirmation for further information. When an oral request for additional information is issued the Commission will, as a matter of course, advise the parties of the consequences of this procedure. In the unlikely event parties are unsure of the nature of an oral request for further information, prior to receipt of written confirmation, they may contact the Director, Bureau of Agreements and Trade Monitoring for clarification.

Section 572.606(d). Section 572.606(d) provides that the Commission will specify a reasonable period for a party to reply to a request for additional information.

Comments 24 and 27 assert that the Commission does not have the authority to set a time limit for response. They submit that there is no burden on the Commission until the information is supplied and, therefore, the Commission should not be concerned when, if ever, the information is supplied. They propose that § 572.606(d) be deleted.

The purpose of providing for a reasonable period to respond is to conserve the Commission's resources. Once the Commission undertakes the review of a filed agreement it is beneficial to complete the review process and not have filed agreements pending indefinitely while awaiting responses to requests. This provision is necessary to maintain the orderly management of the agreement review process. In all cases, parties will be provided ample time in which to respond. Parties may always petition for more time, if necessary.

Section 572.606(e). Section 572.606(e) is added to the Final Rule to provide for notice to commenting parties of a request for additional information. The purpose to this provision is to allow for further comment.

Section 572.607 Failure to Comply With Requests for Additional Information.

Section 572.607 implements section 6(i) of the Act which authorizes the Commission to seek court enforcement of its information requests.

Section 572.607(a). Section 572.607(a) of the Interim Rule provides that a failure to comply results "when the party responsible for filing the request" fails to substantially respond. Comment 34 suggests that the reference should be to "a person filing an agreement, or an officer, director, partner, agent or employee thereof." This suggestion would clarify this section and has been adopted.

Comment 24 suggests that the word "satisfactory" be deleted on the ground that if a statement of reason for noncompliance is submitted only a court can evaluate its acceptability.

When the Commission believes a statement of reasons for noncompliance is inadequate it may bring an action in court pursuant to section 6(c)(2)(B) of the Act. The court's function will be to evaluate the sufficiency of the statement of reasons for noncompliance and take appropriate remedial action. This section is not intended to supplant the court's function. This suggested change, however, is not necessary.

Comments 27 and 34 assert that the Commission is not authorized to prescribe a period of time for reply to requests for additional information and thus cannot, pursuant to § 572.607(a), deem that a failure to reply has resulted when a response is not received within that time period. Comment 34 maintains that the only applicable time period is that provided for in section 6(c) of the Act.

These arguments are not convincing. The time periods provided for in section 6(c) of the Act only apply after a response has been received. They do not pertain to the period between the request and the response. As indicated with respect to § 572.606(d) above, the establishment of a time period for response to a request for additional information is necessary to the orderly administration of the agreements program. This does not mean, however, that the Commission will bring a court action pursuant to section 6(i) of the Act when no information has been filed, thereby compelling the parties to file a response and start the running of the waiting period on an agreement they may prefer to withdraw. Finally, where the parties have filed a response to a request for information which is inadequate, the Commission may bring an action pursuant to section 6(i) to compel a more responsive reply and extend the waiting period.

Section 572.607(b). Section 572.607(b) implements the provisions of section 6(i) of the Act which permits the Commission to bring an action in District Court where there has been a failure to substantially comply with a request for additional information.

Comment 24 would remove the word "where" from the first sentence of this section and substitute the words "when it considers that". Comment 24 seeks a clarification that the Commission is not asserting authority reserved for a court under section 6(i) of the Act.

Before the Commission brings an action pursuant to section 6(i) of the Act it must first reach its own finding on the substantiality of a reply to a request for additional information. This finding does not substitute for the court's determination of the adequacy of the reply. To clarify the Commission's function, the recommended change in language has been made.

Section 527.608 Confidentiality of Submitted Material.

Section 572.608 implements section 6(j) of the Act which provides that all information submitted by a filing party other than the agreement itself shall be exempt from disclosure under the FOIA.

Section 572.608(a). Section 572.608(a) provides a general grant of confidentiality to the filing parties for all information submitted to the Commission and lists particular categories of protected information including the Information Form, voluntary submissions of additional information, reasons for noncompliance, and replies to requests for additional information.

Comment 30, consistent with its recommendations concerning § 572.603 pertaining to comments from third parties, suggests that confidentiality be extended to third parties who submit information. Comment 30 submits that nondisclosure will encourage better quality and more detailed comment.

As indicated above, the Commission does not have authority under the 1984 Act to exempt third party comments from disclosure except in conformance with FOIA and the Trade Secrets Act.

Section 572.608(b). Section 572.608(b) provides for the statutory exception to the overall policy of nondisclosure of information submitted by parties filing an agreement. Such information may be disclosed in an administrative or judicial proceeding or in response to a proper request from Congress.

Comment 24 suggests a change in § 572.608(b)(1) by adding the phrase "but only if disclosure takes place in the course of such proceedings" after the words "relevant to". The purpose of the change is to allow information to be released only in the course of a proceeding and not just where that information may be "relevant" to that proceeding.

The language which Comment 24 objects to, "relevant to . . . administrative or judicial proceeding", is adopted verbatim from section 6(j) of the Act. In order to preserve the full scope of this statutory provision, no change in section 572.608(b) is made.

Section 572.608(c). Comment 28 suggests that this section be amended to allow a filing party to waive nondisclosure. Although the Commission itself may not disclose information filed by the parties to an agreement, the parties themselves are not bound by the provisions of section 6(j) of the Act. This section therefore has been amended to add a new paragraph (c) which expressly recognizes the parties' right to make a voluntary disclosure. The rule requires, however, that parties making such a disclosure promptly inform the Commission of their action.

Section 572.609 Negotiations.

Section 572.609 makes clear that the negotiation process may take place at any time after the filing of an agreement up to the conclusion of an injunctive proceeding. The negotiation process will thus be available throughout the pendency of an agreement to resolve differences over an agreement. The negotiation process is limited to the filing party and Commission personnel. Shippers, other government departments or agencies, and other third parties may not participate in negotiations.

The most significant issues concerning this section focus on whether a modification which is the result of negotiations must be published in the **Federal Register**, and the proper role of third parties in the negotiation process. Comment 28 submits that modifications which expand the parties' authority must be published in the **Federal Register**. Comment 26 takes the opposite view and further asserts that the waiting period should not be suspended.

It is unlikely that, as a result of negotiations, an agreement's authority would be expanded. However, in the event that expansion of authority does result from the negotiations, the agreement would be subject to filing as a new agreement pursuant to section 5 of the Act and the provisions of this part. Notice of the filing of the new agreement would therefore be published in the **Federal Register**, pursuant to § 572.602, provided it was not rejected for filing or technical deficiencies.

Comment 39 supports the present version of § 572.609 and notes that third parties are properly excluded from negotiations. Conversely, Comment 28 maintains that third parties should not be flatly barred from involvement in negotiations. The issue of involvement of third parties in negotiations has already been discussed in connection with § 572.603(b). No changes are warranted.

Finally, Comment 24 suggests a change in § 572.609 to clarify that negotiations concerning injunctive proceedings pertain exclusively to injunctions brought pursuant to section 6(h) of the Act.

Because negotiations pursuant to § 572.609 are not intended to be limited to section 6(h) injunctions, the suggested change has not been made. The Commission is not only authorized to seek injunctive relief pursuant to section 6(h) of the Act for violation of the general standard but also pursuant to section 6(i) for failure to substantially comply with a request for additional information and section 11(h) for actions in violation of the Act.

Subpart G of the Rules—Reporting and Record Retention Requirements

Subpart G contains rules which implement the reporting and record retention provisions of the Act. Its purpose is to ensure that the Commission has sufficient information to adequately monitor the concerted activities of regulated parties.

A number of comments object to the reporting and recordkeeping requirements of Subpart G. They object to the broadened definition of "meeting" for which minutes are required, the identification of documents circulated to the members in connection with meetings and the filing of an index on a quarterly basis of all documents distributed to the members and not otherwise filed with the Commission. These comments contend that, in many instances, the list of documents would be massive, and that to require their filing would be an unwarranted intrusion on due process rights. These requirements are said to be an undue and unreasonable burden upon the industry and to be contrary to the legislative intent of the 1984 Act.

It is clear that Congress intended a law which would enable the ocean shipping industry to fashion agreements

in a manner which meets their commercial needs and to have such agreements become effective within a relatively short period, unless there is an indication that such agreements might be contrary to the standard set forth in section 6(g) of the Act. However, it is also clear that Congress intended that the Commission maintain a degree of surveillance over the concerted activities of ocean common carriers and marine terminal operators, adequate to ensure that they do not violate the standards and prohibitions set forth in the Act and that they comply with the mandatory provisions expressly set forth therein. This imposes a greater rather than a lesser surveillance responsibility on the Commission, when compared with the provisions of the 1916 Act.

Upon consideration of the comments submitted and reevaluation of its information needs, the Commission has made several revisions to its Final Rule which relax the record reporting and retention requirements. The Final Rule requires the filing of minutes on the same basis as minutes were required under 46 CFR 537.3 of the former regulations, namely for meetings where the parties are authorized to take final action as opposed to being authorized to take any action. The requirement that the minutes specify any documents distributed to inform or assist the members is deleted. In addition, the index of documents requirement is being modified to include only those documents which are circulated to members and used to reach a final decision on specified matters.

These amendments strike a balance between the enhanced freedom the ocean shipping industry enjoys and the need to ensure that the Commission has the information needed to fulfill its responsibilities under the 1984 Act.

Several comments (Comments 16, 17, 22, 34) allege that the information collection requirements of Subpart G violate the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). The United States Office of Management and Budget (OMB) is charged with the responsibility of reviewing agency regulations for compliance with the Paperwork Reduction Act. The Commission has followed the proper procedures for clearance of Part 572 by OMB. The collection of information requirements contained in this part have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act and have been assigned an OMB control number. *See* § 572.991.

Comment 28 contends that consortium agreements should be included within the coverage of Subpart G and subjected to reporting and indexing requirements. Many consortia and joint service agreements are by their own terms required to submit reports. The addition of such agreements within the coverage of Subpart G would appear to be beyond the scope of this rulemaking proceeding. Should there develop a need to obtain such information in order to effectively monitor consortia, then the Commission will consider an appropriate amendment to this subpart at that time.

Section 572.701 General Requirements.

Section 572.701 contains certain general requirements which apply to all reports required by this subpart.

Section 572.701(b)—Serial Numbers of Reports. Section 572.701(b) provides that each filed report should be assigned a serial number. Comments 13 and 34 state that the serial numbering system should be made optional and that conferences should be allowed to continue to use their established numbered minute systems. It was not the purpose of this requirement to impose a precise numbering system but rather to establish a system for identifying minutes which might be missing. Accordingly, this section is being amended to add a provision which allows any conference or rate agreement which has its own sequential numbering system to continue to use that system in lieu of the system set forth in this section.

Section 572.701(c)—Retention of Records. Section 572.701(c) provides that a copy of each document referenced in the index of documents submitted pursuant to § 572.704 must be retained by the parties for a period of three years and be made available to the Commission upon request. As indicated below, the volume of documents required to be indexed has been substantially reduced. However, the retention of documents is of such importance for surveillance purposes that this requirement shall be retained without change in the Final Rule.

Three comments (Comments 13, 34, 39) object to the provision in this section which states that the Commission may obtain documents upon written request. This objection similarly pertains to § 572.701(d) which also states that documents shall be made available upon request. The comments maintain that the judicial precedent pertaining to section 21(a) of the 1916 Act (46 U.S.C. app. 820), which is similar to section 15(a) of the 1984 Act (46 U.S.C. app. 814), and forms the basis for this subpart, should be followed.

The procedures used for requests for documents under the 1916 Act will be continued and, in situations pertaining to issuance of a request for documents pursuant to § 572.701 (c) and (d), the Commission will state its basis for seeking the documents.

Section 572.701(d). Section 572.701(d) provides that the Director, Bureau of Agreements and Trade Monitoring may request that documents be furnished within a specified time. These documents will be received in confidence.

Comments 13, 22, and 34 maintain that the requirement that documents must be produced upon request is contrary to due process of law. They submit that parties should be permitted an opportunity to oppose the request. Comment 39 maintains that this record production requirement constitutes an unreasonable search and seizure. This objection is without merit. Notice and opportunity for hearing are not a prerequisite to issuance of a request for documents pursuant to section 572.701(d). *Montship Lines, Ltd.* v. *Federal Maritime Board,* 295 F.2d 147 (D.C. Cir. 1961).

Comment 28 objects to the fact that the Director, Bureau of Agreements and Trade Monitoring issues a request for documents. It is urged that the former procedures, applying to section 21(a) of the 1916 Act, under which the Commission itself issued the request for documents, be continued. No modification to this section is necessary. Requests for documents made by the Director may be appealed to the Commission.

Finally, Comment 34 points out that privileged documents such as attorney-client communications are not exempted from the scope of a request for documents. There is, however, no need to amend this section to specifically exclude information which may already be protected by law.

Section 572.701(e). Section 572.701 (e) specifies times when documents must be filed, one of which is after the issueance of a request for documents. Comment 34 refers to its objections pertaining to § 572.701 (c) and (d) and asserts that this section should be deleted. These concerns have already been addressed above and no change is required in this section.

Section 572.702 Filing of Reports Related to Shippers' Requests and Complaints and Consultations.

Section 572.702 further implements section 5(b) of the Act which requires conferences to provide for a consultation process and to establish procedures for considering shippers' requests and complaints.

Section 572.702(a)—Shippers' Requests and Complaints. Section 572.702(a) provides that conferences shall annually file with the Commission a statistical report summarizing activity in several areas pertaining to shippers' requests and complaints. Comment 33 suggests that these reports should identify shippers' associations requests separately from those of individual shipper requests. This change is said to be necessary so that the Commission may carry out its responsibilities to administer and enforce section 10(b)(13) of the Act, which prohibits common carriers from refusing to negotiate with a shippers' association. Comment 27, on the other hand, contends that reports on the number of shipper complaints is unnecessary.

The contents of reports required under this section has been kept to a minimum. Only statistical totals without specific details are required. However, these statistics are important to determine the degree of conference responsiveness to sections 5(b), (6) and (7) as well as to section 10(b)(13) of the Act. With regard to section 10(b)(13) it would be useful to have the statistical reports separately indicate shippers' associations or groups and § 572.702(a) has been amended accordingly in the Final Rule.

Section 572.702(b)—Consultations. Section 572.702(b) requires each conference to file an annual report setting forth a statistical summary of the number of consultations requested and conducted during the calendar year. Several of the comments already discussed in connection with § 572.702(a) make similar arguments with regard to this section. Comment 33 believes that this section also should provide for the separate compilation of statistics on consultations with shippers' associations. Comment 27 argues that this section is unnecessary. Comment 24 contends that the requirement to report on consultations should be eliminated because it will not produce any meaningful information and because it is contrary to the statutory goal of minimizing government intervention.

The reports required by § 572.702(a) are necessary and useful statistical information on the responsiveness of conferences to shippers' concerns which would enable the Commission to determine whether a closer scrutiny of conference consultation activities might be warranted. This section is, however, modified in the Final Rules as was § 572.702(a) to require that reports separately identify shippers' associations and shippers' groups.

Section 572.703 Filing of Minutes.

Section 572.703 defines the term "meeting" and requires certain types of agreements to file minutes of meetings. Certain matters, such as purely administrative discussion, are exempt from the filing requirements of this section.

Section 572.703(a)—Meetings. Section 572.703(a) defines "meetings" within the meaning of this section. It was initially considered desirable to have minutes of all meetings regardless of whether final action was contemplated. Upon further consideration and in light of the comments received, there would appear to be no need to require the submission of minutes of meetings which do not contemplate the taking of final action.

Therefore, this section is amended to provide that minutes need only be provided for meetings which authorize the taking of final action. This modification, in effect, continues the previous requirements under the 1916 Act. This amendment should satisfy the concerns of those comments (Comments 13, 25, 26, 34, 38, 39) which argued that the proposed definition of a "meeting" was too broad.

Section 572.703(b)—Content of Minutes. Section 572.703(b) of the Interim Rule required that the minutes identify all documents distributed at the meeting to inform or assist the members. This requirement is deleted from the Final Rule and the Commission will rely primarily on the index of documents required by § 572.704. This change should meet the concern of those comments (Comments 17, 24, 25, 26, 29, 34, 38, 39) objecting to the minutes content requirement in the Interim Rule.

Comment 29 states that the minutes requirement should not apply to meetings of pooling and equal access agreements in this section. This would have the effect of eliminating not only the minute filing requirements for such agreements but all reporting and record keeping requirements under Subpart G. Comment 38 states that the references to pooling, equal access and discussion agreements should be deleted.

Adequate surveillance under the 1984 Act is of particular importance with respect to pooling and equal access agreements. Therefore, it is necessary to obtain minutes from the parties to such agreements as part of that surveillance program. Final action taken by members of discussion agreements may also have significance for a particular trade. Therefore, the reference to pooling, equal access and discussion is retained in the Final Rule.

Section 572.704 Index of Documents.

Section 572.704 requires that agreements covered in §572.703(a) index all documents which are distributed. Section 572.704(b) further requires this index to be filed with the Commission on a quarterly basis.

This section evoked considerable comment. Nine comments were received in objection (Comments 13, 16, 17, 25, 28, 29, 34, 38, 39). Seven of these comments (Comments 13, 16, 17, 26, 34, 38, 39) urge that the indexing requirement be deleted because it is unduly burdensome, unclear in its application, and contrary to one of the purposes of the Act, namely minimizing of government regulation. Comment 25 objected to the index but in the alternative suggested that, if retained, the Commission eliminate the double reporting of documents which must be identified in conference minutes and which also must be indexed.

The index requirement is modified to include only documents leading to final decision on specified matters. This should reduce the volume of materials to be indexed and limit the indexed documents to those which have substantial regulatory significance. The concern about double reporting expressed by Comment 25 has been addressed by eliminating the requirement in § 572.703(b) that minutes identify documents which are distributed.

Comment 29 requests that pooling and equal access agreements be permitted to submit, in lieu of the index, periodic and final accounting statements.

The requirement that pooling and equal access agreements must, where applicable, submit an index of documents distributed to members is retained. Accounting statements are not the equivalent of, or a substitute for, indexing of documents. The specificity of a document index is necessary to fulfill monitoring responsibilities under the Act. Parties need only identify the documents, not furnish the documents themselves, unless spetifically requested.

Section 572.705 Waiver of Reporting and Record Retention.

Section 572.705 provides for a waiver of any provision of Subpart G upon a showing of good cause. No comments were received on this section and no substantive changes have been made to this section in the Final Rule.

Subpart H—Transitional Rules

Subpart H of the Interim Rule prescribes mandatory provisions in existing conference and interconference

agreements and addresses expiration dates in existing agreements. As discussed more fully below, the mandatory provisions in § 572.801 are deleted from the Final Rule. Those portions of §§ 572.802 and 572.803 which have a continuing purpose are transferred to other subparts of Part 572. All of the sections of Subpart H are therefore either deleted or relocated and the Subpart H designation shall be reserved for possible future use.

Section 572.801 Mandatory Provisions In Existing Conference Agreements

The purpose of § 572.801 was to facilitate the transition from regulation of agreements under the 1916 Act to the regulatory regime of the 1984 Act. In particular, it was important during the transitional phase to establish a mechanism to achieve compliance with section 5(b) of the Act on or before June 18, 1984, the effective date of the Act. To this end, the Commission required that conferences indicate their adoption of certain mandatory provisions set forth in § 572.801. This procedure worked to assure that conference agreements achieve compliance with section 5(b) of the Act.[4] Because the purpose of this section has been achieved, there is no need to retain it in the Final Rule.

Conferences have been permitted to draft their own amendments to supersede the Commission prescribed provisions and to comply with the statutorily mandated requirements. This procedure is continued in the Final Rule. Because this section is being deleted, there is generally no need to address the comments (Comments 22, 30, 31, 38) which proposed specific changes to this section. One comment, however, does merit further discussion at this time.

This U.S. Department of Justice (DOJ) submitted an extensive comment which focused on the right of independent action under section 5(b)(8) of the Act. DOJ contends that the model independent action provision contained in § 572.801(e) of the Interim Rule should be strengthened and made mandatory for all conference agreements in order to ensure that independent action fulfills its purpose under the 1984 Act. Moreover, DOJ urges the Commission, by rule, to expressly prohibit: (1) All collusion among carriers concerning any carrier's decision to exercise or not exercise its right of independent action; (2) the imposition of procedural barriers on the right of independent action; and (3) acts of retaliation against carriers who exercise their right of independent action. To that end, DOJ's comment includes a proposed model conference agreement independent action clause which contains extensive safeguards for the exercise of independent action.

DOJ's proposal is not adopted in the Final Rule. First, this proposal is so far reaching as to be clearly beyond the scope of the current rulemaking proceeding. A separate rulemaking proceeding would be necessary with full opportunity for comment before such a comprehensive rule could be adopted. Second, there is no factual record to provide a basis for the DOJ proposal. Unlike the situation in the motor carrier industry cited by DOJ, where the Interstate Commerce Commission imposed procedures for independent action after it found that the statute was being frustrated, the Commission has only limited experience with independent action under the 1984 Act. At this time, the Commission believes that conferences should be free to draft their own independent action provisions and that such freedom is consistent with the deregulatory spirit of the Act. The Commission is aware of the critical role that independent action plays under the statutory scheme as a counterbalance to conference economic power. Therefore, such provisions receive close scrutiny in the review process.

Where it appears that a particular independent action provision may inhibit independent action, the Commission has sought and obtained modification of the provision by the parties through the negotiation process. These negotiations have led to the deletion from agreements of independent action provisions which mandate that a member taking independent action attend a meeting and explain the independent action before the action may go into effect and also provisions which provide for mandatory compromise of independent action. The negotiaton process has worked thus far to remove objectionable independent action procedures from agreements. At this time it therefore does not appear necessary to undertake a rulemaking proceeding regarding independent action. However, should there by any indication that the right of independent action is being interfered with in any way, such a rulemaking proceeding will be considered.

Section 572.802 Mandatory Provisions in Existing Interconference Agreements.

Section 572.802 in the Interim Rule provided that existing interconference agreements and agreements between carriers not members of the same conference must provide for independent action. Comment 38 suggests that § 572.802 be transferred to § 572.502(b). This suggestion has been adopted.

Section 572.803 Expiration dates In Existing Agreements.

Section 582.803 provides that expiration dates in existing agreements remain in effect on and after June 18, 1984. The section further provides that parties to agreements with expiration dates must file any modification seeking renewal for a specific term, or elimination of the expiration date, in sufficient time to accommodate the waiting period required under the Act. Comment 38 suggests that § 572.803(b) should be transferred to § 572.401. This suggestion is adopted.

Subpart I—Penalties

Subpart I prescribes penalties for violations of Part 572 as provided for in section 13(a) of the Act.

Section 572.901 Failure to File.

Sections 4 and 5(a) of the Act provide for the filing of certain agreements with the Commission. Failure to file such an agreement is a violation of section 5(a) of the Act and Subpart D. This failure to file is subject to the penalties of section 13(a) of the Act (46 U.S.C. app. 1712(a)). Maximum penalties are $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the maximum penalty is $25,000 for each violation.

Section 572.901 is amended to add the phrase "pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 or excluded from filing by the Act". This change clarifies that only agreements subject to the Act and requiring filing can be penalized for failure to file, as opposed to agreements subject to the Act but which do not require filing. This responds to Comments 34 and 38 which suggested these changes.

Section 572.902 Falsification of Reports.

Falsification of any report required by the Act and Part 572, including falsification of any item on the Information Form, is made subject to the civil penalties set forth in section 13(a) of the Act. Such violations may also be subject to criminal sanctions under 18 U.S.C. 1001.

Comment 29 challenges the Commission's authority to provide by rule for penalties for falsification of reports when the Act does not specifically proscribe such activity.

Section 17(a) authorizes the Commission to prescribe rules necessary to carry out the Act and section 13(a), in turn, establishes penalties for violations of the Act and regulations issued thereunder. It is essential that information submitted to the Commission be truthful information if it is to adequately administer the Act. The penalty provision furthers this fundamental purpose.

Comment 29 further asserts that this section is unnecessary because 18 U.S.C. 1001 already makes it a violation of the criminal code of the United States to intentionally make false statements within the context of any matter arising within the jurisdiction of a federal agency.

Section 572.902 is not superfluous. To supplement the criminal penalties under 18 U.S.C. 1001, it provides for civil penalties pursuant to section 13(a). Not all situations involving falsification of reports might merit the imposition of criminal penalties. In some situations civil penalties may be appropriate. Moreover, the reference to 18 U.S.C. 1001 in § 572.902 is a useful reminder of possible criminal liability.

Finally, Comment 29 maintains that the choice of the word "falsification" makes § 572.902 overbroad. It is submitted that unintentional misstatements could be construed as "falsifications" and thereby made subject to penalties.

Section 572.902 is amended by adding the word "knowing" before the word "falsification" where it appears. This modification clarifies that only parties who intentionally, and not mistakenly, submit false information will be subject to penalties.

Comment 22 submits that the penalties provided for in § 572.902 are excessive when considered in light of the difficulty of ascertaining some of the data required on the Information Form.

This Comment appears to be primarily addressed to the content of the Information Form. There should be no misunderstanding, however, of the application of the penalties provisions except in cases where parties knowingly falsify information. Parties will not be subject to penalty under Subpart I where they are unable to supply data requested on the Information Form.

Appendix A to Part 572—Information Form and Instructions

Commission Authority to Require Filing of the Information Form

Section 572.405 requires the party filing certain agreements to provide with the agreement information that is necessary under the Act to review the agreement. The required information is to be provided in the Information Form set forth in Appendix A. Where the filing party is unable to supply a complete response, the party should submit either estimated data with an explanation as to why the precise data are not available or a detailed statement of the reasons for noncompliance and the efforts made to obtain the required information.

Six comments address the issue of the Commission's authority to require the filing of the Information Form. Four comments disagree that the Commission has the authority to require the Information Form to accompany the filing of certain agreements. These comments make two related arguments in support of their position: one, there is no explicit obligation for parties filing agreements under section 5(a) of the Act to submit supplemental detailed information concerning competitive factors with every agreement at the time of its filing; and two, the Information Form, which requests information relevant to the general standard, cannot be the basis for rejection of an agreement under section 5(a) of the Act, which contains no reference to the general standard.

Authority to require the Information Form is manifest for three main reasons. First, the statute clearly and explicitly authorizes the Commission to require that information accompany the filing of agreements and the agreements that do not meet this requirement may be rejected. Specifically, section 5(a) of the Act authorizes the Commission to "prescribe * * * the additional information and documents necessary to evaluate the agreement" (46 U.S.C. app. 1704(a)). The legislative history to section 5 of the Act specifies that the filing requirements are intended "only for information relevant to the Commission evaluation of an agreement rather than for information based on broad standards unrelated to that agreement." (H.R. Report 98–600, 98th Cong., 2d Sess. 28 (1984)). Section 6(b) of the Act authorizes rejection of any agreement filed under section 5(a) of the Act that does not meet the requirements of section 5 of the Act.

Congressional intent concerning the evaluation of an agreement prior to the agreement's effective date is interpreted to require not only a review pursuant to the section 6(b) standard (for compliance with section 5 requirements), but also an analysis based on the section 6(g) general standard for substantially anticompetitive agreements. Moreover, the authority under section 5(a)—to prescribe information to be filed *with* the agreement—differs from the authority under section 6(d)—to require *additional* information to be submitted after the agreement has been filed but prior to its effective date. The initial information filing requirements are designed to provide only the information needed to determine whether or not the agreement raises substantial issues of unreasonable and anticompetitive effects under the section 6(g) general standard. Where such anticompetitive effects are likely, additional information that is necessary in order to make a determination under section 6(g) whether or not to seek to enjoin the agreement may be requested under section 6(d).

Second, Congress has specifically cited in legislative history relevant portions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 as the model for the Commission's agreement review procedures. Pursuant to the Hart-Scott-Rodino Act, the Federal Trade Commission (FTC) developed a report form for information to aid the FTC in its preclearance review of proposed acquisitions and mergers ("Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions").

Third, Congressional policy pronouncements in the Act and the legislative history indicate that one of the purposes of the Act was to end the delay in the processing of agreements and to provide a streamlined regulatory process. Submission of relevant information at the time an agreement is filed that is not available to the Commission but is readily available to the filing party will expedite the processing of agreements.

Two comments specifically refer to the Commission's authority to require an initial Information Form related to the general standard. Comment 23 states that if an information filing requirement is prescribed, it must be limited to those instances where the agreement or modification raises a question under the general standard. Comment 34 accepts the premise that useful information not available to the Commission, but readily available to the parties filing substantially anticompetitive agreements, may be required in conjunction with such filings. Such

[4] A number of persons filed emergency comments (Comments 3, 4, 5, 6, 7, 11, 14 and 18) which either in whole or in part sought modifications of these mandatory provisions. On June 12, 1984 the Commission made certain amendments to the mandatory provisions in the Interim Rule in response to the concerns expressed in the emergency comments

requirements, according to Comment 34, will significantly reduce the need to request additional information from the filing parties, thereby aiding the review process.

In consideration of the above, it is concluded that the 1984 Act does confer the authority to require the submission of the Information Form in conjunction with the filing of certain agreements.

General Discussion of the Information Form

A number of comments argue that the Information Form is "excessive and irrelevant", "burdensome and unnecessary", seeks information not "readily available", or "resuscitates" the *Svenska* standard. Specific comments will be addressed in the discussion of the particular part of the Information Form. However, it should generally be stated that the requirements outlined in the Information Form are within the statutory limits on information gathering powers granted the Commission under sections 5 and 6 of the Act. The data requirements in the Information Form conform to the complicated decision calculus, described in the legislative history, that is required in order to render a determination that an agreement is or is not violative of the section 6(g) general standard. In the Interim Rule, the Commission stated,

> The Commission recognizes that the amount of information requested on the Information Form is significant. These information needs may be refined as the Commission gains experience under the general standard and determines what is relevant and essential to that review. In addition, the Commission plans to develop its own internal sources of trade information and as this information becomes available may be able to reduce the amount of information requested on the Form.

Since the publication of the Interim Rule, valuable experience has been gained in applying the Information Form to the analysis of agreements under the general standard. Moreover, the Commission has acquired and begun to utilize Journal of Commerce and Bureau of Census data sources which, when used in conjunction with its trade monitoring capabilities, provide a better picture of the competitive implications of ocean carrier agreements.

Moreover, the Information Form, as promulgated in the Final Rule, is not set in concrete, but will in all probability continue to evolve in order to appropriately reflect the Commission's regulatory needs in light of its data resources and changes in the regulated industry. Therefore, in the Final Rule there has been a general reduction in the amount of information required in the Form. Specific changes to the Information Form are indicated in the particular Part together with a discussion of the comments and the amendments to the Information Form.

Part by Part Discussion

Part I—Agreement Name. Part I requires the filing party to provide the full name of the agreement. One comment addressed this part simply to indicate that this requirement (along with Part II) was not objectionable as a quick identifier of the agreement. Accordingly, Part I will remain unchanged in the Final Rule.

Part II—Agreement Type. Part II requires the filing party to indicate whether or not the agreement authorizes the parties to collectively fix rates (Part II(A)), to pool cargoes or revenues (Part II(B)), or to establish a joint service or consortium (Part II(C)).

In the Interim Rule, the instructions to the Information Form state that the nature of the agreement determines the extent of information required. Specifically, the instructions require only those agreements that provide for rate-fixing, pooling or joint services/consortia to complete Parts III and IV, which seek information on market share and market competition. Such requirements are justified in the instructions on the basis that "these three types of agreements of all agreements historically filed with the Commission are the most likely to trigger the 6(g) standard because of their potential to create excessive market power."

Part II and the Instructions have been amended to clarify and conform Part II with the intention that only those agreements that provide for rate-fixing, pooling or joint services/consortia *or* significant modifications to such agreements are required to complete Parts III and IV. Parties filing amendments to agreements should refer to section 572.403(a) for guidance as to which amendments require the Information Form. Furthermore, the requirement that a completed Information Form include Part VIII (Reports, Studies or Other Research) for all filing parties has been limited to only those parties that have answered "yes" to any question in Part II (see the discussion under Part VIII).

Comment 23 states that only those types of agreements mentioned in Part II that could raise questions under the general standard should be required to file the Information Form. In particular, the comment argues that the Information Form should only be required for those agreements or modifications that authorize or directly increase the authority of the parties to: (1) Fix ocean rates; (2) allocate cargo or revenue between or among them; or, (3) reduce service at United States ports; and, which may also result in a significant reduction in competition.

The Commission generally agrees with the comment. The Information Form, as formulated in the Final Rule essentially conforms to the comment's suggestion. Part II identifies three types of agreements, the first two of which are identical to the first two agreement categories cited by the comment. Part V requires those agreements with service authority to specify any reduction in service that is likely to occur as a result of the agreement. Thus, Part V addresses those agreements in the comment's third agreement category.

Moreover, for all other agreements, the requirements imposed by the Information Form are minimal. In particular, the only parts of the Information Form required under the Final Rule for parties filing agreements, other than rate-fixing, pooling and joint service agreements, or agreements with service authority, or those agreements exempted from the filing requirement, are Parts I, II, VI and IX. For most agreements, all that these parts require is checking a box or entering name, address and signature. Other than those "Part II agreements" discussed above, the only other subtantive requirement would be imposed upon those agreements that are required to complete Part VI. Because restrictions imposed by governments are the most effective limitations on competition in the ocean liner trades, Part VI captures important information for analysis under the general standard. For example, certain agreements that facilitate access to cargoes subject to foreign cargo preference laws or decrees which are not otherwise required to indicate any market information on the Form would be required to complete Part VI.

Five comments address the requirement that certain types of agreements must complete Parts III and IV of the Information Form.

Two comments refer specifically to the inclusion of joint service agreements in Part II. Comment 18 argues that the implication that joint service agreements are likely to be violative of the general standard should be rejected. Comment 30 supports the requirement that joint service/consortium agreements complete Parts III and IV, citing the potential for this type of agreement to reduce competition especially if the cooperating carriers dominate the relevant trade.

There are two major concerns with joint services under the general standard. The first, which was mentioned in Comment 30, involves a situation where two or more of the parties to the proposed joint service currently have an *existing* service in the trade. Thus, the formation of the joint service eliminates the existing competition between or among the parties in the relevant trade(s). The second concern involves the entry into a trade of a new joint service which is so large as to be able to exercise market dominance in the trade it plans to *enter*.

In order to assess the competitive impact of a new joint service agreement, the filing of an Information Form with such agreements will continue to be required. Therefore, no change is made in the Final Rule in this regard.

Comments 26, 28 and 36 argue that conference agreements are less likely to raise issues under the general standard than service coordination, pooling and joint service agreements. They also argue that information required for conference agreements is excessive and should be deleted or reduced.

The Commission concurs in part with these comments that conference agreements "apart from extraordinary circumstances" are not likely to be violative of the general standard and that the specific statutory restrictions on conference activities diminish the ability of a conference to abuse its position of dominance in a trade. However, such a view, which appears to comport with Congressional intent, does not remove the Commission's responsibility under the Act to review conference agreements for possible violations of the Act. Such a review must consider accepted economic principles which hold that explicit collusion in the form of price-fixing agreements may result in prices that are higher than competitive levels.

There is, however, no presumption that conference agreements will violate the general standard. In setting out the requirements for completing the Information Form, in particular Parts III and IV concerning market share and market competition, the Commission considered those agreements among all the types of agreements with which it was familiar that had the greatest potential to reduce competition and create market power in such a manner as to raise concerns under the general standard. The Commission adheres to its belief that in the unusual and severe cases where the general standard may be violated, either one or a combination of rate-fixing, pooling or joint service agreements will be involved. Consequently, the Commission will continue to apply the more rigorous data requirements contained in Parts III, IV and VIII for conference agreements.

Two comments argue that certain classes of agreements should be added to those having potential substantial anticompetitive implications and that further information filing requirements should be imposed. Comment 28 specifically criticizes the failure to subject service coordination agreements (i.e., "cross chartering combined with joint control over sailings and itineraries") to greater scrutiny than conference agreements. The comment urges that service coordination agreements be required to complete Parts III and IV, and Part VII (Benefits of the Agreement), the completion of which is now voluntary for all types of agreements. Comment 30 proposes the addition of all equal access agreements to those agreements required to complete Parts III and IV.

In partial response to Comment 30, it should be noted that equal access agreements invariably arise in response to the actions of a government and, therefore, require the completion of Part VI. However, in considering these and other recommendations for inclusion in the Final Rule, care must be taken to ensure that all parties affected by the Final Rule have the opportunity to comment. The Commission cannot create new filing requirements for a class of agreements without first availing the affected parties with the opportunity to comment. The Commission may in a separate rulemaking procedure consider and propose rules that would address the issues raised in Comments 28 and 30. Accordingly, the Commission here withholds any further discussion of these aspects of Comments 28 and 30.

Comment 39 recommends that the requirement to submit an Information Form together with the required information contained therein should be "tailored to the type of agreement filed."

The Commission concurs with this comment. The Commission has, consistent with its agreement review responsibilities under the Act, required the Information Form only for new agreements (excluding marine terminal agreements, assessment agreements and exempted agreements) and modifications of agreements that may present substantial issues of competitive harm under the general standard. Moreover, the requirement to complete certain parts of the Form (e.g., Parts III, IV, V and VIII) is, in fact, tailored to the type of agreement involved.

Part III—Market Share Information. Part III requires those parties answering "yes" to Part II (A), (B) or (C) to provide the combined market share of all parties to the agreement (Part III(C)) by providing the amount of liner cargo carried by all parties to the agreement in each sub-trade (Part III(A)) and dividing this amount by the total amount of cargo carried on all liner vessels operating in each sub-trade (Part III(B)). Background Information to Parts III and IV indicates that the amount of cargo is to be given in both weight tons and on a dollar value basis. Sub-trade is defined as liner movements between each foreign country and each U.S. port range within the scope of the agreement, where a port range is identical to the Bureau of Census' U.S. Coastal District. Liner service refers to a definite, advertised schedule, giving relatively frequent sailings at regular intervals between specific U.S. ports or port ranges and designated foreign ports or port ranges.

A number of comments address this part. They express a common concern that the information required in Part III is irrelevant, excessive, burdensome, and meaningless. The earlier discussion of the authority to require filing parties to submit an Information Form with certain agreements addressed the question of the relevancy of the Information Form.

A number of comments generally recommend that carriers be allowed to submit data in the form in which they actually keep it and use it. Several comments urge that market share should be requested as a good faith estimate based on available data and an explanation of the estimating process. Comments on specific data filing requirements in Part III are summarized below. The discussion of the comments and the Commission's statement of its course of action will not follow the summary of each topic, but will pertain to all comments to Part III at the end of this section.

Sub-trade. Comments referring to the requirement that data be given by sub-trade generally object to it on the grounds that trade data is not kept by carriers on a sub-trade basis, and, therefore, such data is not readily available or within the parties' grasp. Cargo data, according to several comments, is kept by carriers on a port, or port range or rate group basis. Moreover, according to two comments (23, 26), the separation of foreign port ranges into foreign countries and the division of U.S. port ranges along the lines of Customs districts does not reflect the markets or trade routes over which carriers actually compete. With intermodalism, Comment 26 argues, the U.S. West Coast should be one port range, not two, because of the ease with

which interior point and minilandbridge traffic can shift from one state to another.

Amount of Cargo on a Weight Ton and Dollar Value Basis. Six comments object to the requirement that cargo data be given in dollar value, two of which also object to a weight ton basis requirement. These comments generally argue that the dollar value of the cargo is not a significant statistic to the carriers so they do not ordinarily keep records of the cargo's dollar value. The dollar value is available through the Bureau of Census, but it is not within the parties' grasp. Comment 36 states that because cargo data compiling methods differ from trade to trade, parties should be permitted to specify the unit of measurement in submitting cargo data if weight ton and dollar value measure are unavailable.

Non-Party Cargo Data (Part III(B)). Comments generally argue that the cargo data collection problems for parties are increased when they are applied to nonparties to the agreement. Several comments maintained that the carriers do not have ready access to cargo information relating to their competitors in a trade. The most reliable information on carrier cargo statistics is Bureau of Census, which should, according to Comment 34, be purchased by the Commission directly instead of being purchased by the parties and then submitted to the Commission. This comment urges that Part III(B) be eliminated along with Part III(C).

Liner Service. Comment 30 recommends that the Commission specify in the Instructions to the Form where it defines liner terms that these definitions and descriptions apply only in the context of the Information Form. Such a clarification would preclude any confusion as to what persons are subject to the Act. For example, bulk parcel tankers may meet the definition of a liner service but, according to the comment, are not subject to the Act.

The Commission generally agrees with the comments to Part III. The Commission does not wish to impose excessive burdens on the filing parties or to require the submission of data not within the parties' grasp. Moreover, the data submitted should be meaningful, that is, the data should not be an artificial manipulation of disparate data (e.g., a combination of parties' business records and Census data in order to derive market share). More importantly, the Commission, which now has access to both the Bureau of Census and Journal of Commerce data bases, is aware, as several comments argued, that these data bases contain weight and dollar value data which are not perfect indicators of market share. More relevant and preferable as a measure of market shares are revenue tons, which may include measurement tons or weight tons, or container statistics measured in TEU's. Such data, where provided, can augment internal data sources.

Accordingly, the Final Rule will indicate that market share data provided in Parts III (A), (B), and (C) may be estimated based on data available to the filing party. All estimates should be accompanied by an explanation indicating how the estimates were derived (an explanation of why precise data are not available is no longer required for Parts III or IV; see discussion of § 572.405). "Available" data is data within the parties' grasp, that is, data that the parties have already acquired, or would ordinarily acquire in the course of undertaking such commercial decisions embodied in their proposed agreement. The Instructions and Explanation and the Information Form will be amended to require that market share data be provided for each sub-trade within the scope of the agreement only where such data is available to the parties or where sub-trades represent the relevant market for liner service. Where the relevant market for liner service is more accurately represented by the entire geographic scope of the agreement, or by certain foreign port ranges (rather than foreign country), or by combinations of U.S. port ranges, the parties may provide market share on that basis. The geographic scope for which market share information is provided should be clearly defined.

Market share data may be provided in units that are ordinarily kept and used by the parties. The data is to be provided for the most recent twelve-month period for which data are available. Where estimates have been made, the filing party should so specify and indicate the basis of their derivation. Units of measurement should be clearly indicated for all data provided.

The Instructions and Explanation will also indicate that the definition of liner service and other liner terms is relevant only to the Information Form and does not affect the determination of persons subject to the Act based on the Act itself or the Final Rule.

Part IV—Market Competition. Part IV requires the filing party to provide the names of all non-party liner operators currently serving each sub-trade (Part IV(A)(1)), the names of all liner operators serving alternative liner routings competing for cargoes carried in each sub-trade (Part IV(A)(2)), and a description of the extent of competition offered by such liner operators (e.g., estimates of market share or underutilized capacity in alternative liner routings, Part IV(A)(3)). This part also requires the identification of all nonliner competitive substitutes (e.g., bulk or air freight, Part IV(B)(1)) and estimates of the percentage of liner cargo that is currently carried by nonliner operators (Part IV(B)(2)).

Eight comments address this part. Five comments argue that much of the data required in this part is not known and not readily obtainable, or if provided by the parties is not meaningful or accurate. These comments generally indicate that data provided in this part would be only an educated guess or a matter of judgment.

Several comments address the relevance of the information required. Comment 28 argues that non-party liner market share adds nothing to market share analysis. Comments 28 and 39 state that data on non-liner competition is not meaningful or helpful to the review of the agreement. However, Comment 38 maintains that such data for liner and non-liner competition would only be relevant to a market share analysis. Comment 34 contends that the need for such data is specified in the legislative history to the Shipping Act of 1984, but the Congressional intent is that such information would be better provided by third-party sources. Comment 27, in arguing that the required information is not readily available to carriers, states that the Commission should recognize the fact that liner and nonliner competition make liner freight rates reasonable.

Comments 23 and 34 recommend that Parts IV(A) (2), (3) and IV(B) should be optional because the data provided serves the parties' interests. Comments 27 and 36 recommend that Parts IV(A) and IV(A)(1) be deleted. Comment 36 requests the addition of certain qualifying terms that would make the data requirements less precise and more at the discretion of the parties.

The Commission recognizes the difficulty of providing precise data in response to the requirements of Part IV. The instructions to this part in the Interim Rule allow the use of estimates in the determination of percentages indicating the extent of liner and non-liner competition in Parts IV (A) and (B), respectively. Parties are expected to have some knowledge of the identity of their competitors and, at least approximately, the degree to which non-party liner operators and certain non-liner operators are competitive with the parties.

The Commission agrees with one comment that the presence of liner and non-liner competition should militate against unreasonably high rate levels. Moreover, the need and relevance of such information to the review of agreements under the general standard is clearly indicated in the legislative history. The extent of liner and non-liner competition aids in the determination of the relevant market share and is necessary in order to determine the potential market power of parties to an agreement operating in that market. The specification of such liner and non-liner competition may tend to decrease the market share of the parties to their benefit in the analysis under the general standard.

The Commission is developing or acquiring data sources that should enable it to supplement the parties' data on the competitive conditions in most ocean trades. However, the Commission, in order to assist and expedite its preliminary review of agreements under the general standard, requires information that the parties could be expected to have concerning their competitors that would complete or support the Commission's data.

Because of the relevance of this information to the preliminary review of an agreement, the Commission continues to require in the Final Rule, parties with affirmative answers to Part II (A), (B) and (C) to complete Part IV. The Final Rule will indicate that the data required can be estimated. Parties should continue to identify the sources for such estimates. The units of measurement to be used in providing cargo data are at the discretion of the parties. However, all units of measurement must be clearly identified. The parties need not, for their responses to Part III or Part IV, utilize any data sources that they have not already acquired, or would not ordinarily acquire in the course of undertaking such commercial decisions embodied in their proposed agreement.

Part V—Service to the Shipping Public Under the Agreement. Part V requires the filing party to identify all U.S. ports expected to be served under the agreement (Part V(A)), to specify each party's reduction in frequency to each port within the scope of the agreement (Part V(B)), and to specify any elimination of service to any U.S. port within the scope of the agreement which occurs as a result of the implementation of the agreement (Part V(C)).

Six comments address Part V. The consensus of the comments is that information concerning the reduction or elimination of service should be required only of agreements that have the authority to reduce service. Ratemaking agreements that do not, according to Comment 32, "seek to control the fact or frequency of any member line's service" should not be required to complete Part V.

The intent of Part V is to obtain information, not otherwise available, that is essential to an analysis under the general standard of reductions in service resulting from the agreement. Clearly, agreements with no service authority cannot be construed as having the potential, through a reduction in competition, to unreasonably reduce service levels. Consequently, the completion of Part V will be required only for those agreements that have service authority. Service authority is defined as including either or both of the following authorities allowing parties to agree between or among themselves: to allocate (or otherwise provide) tonnage or capacity between or among carriers serving the trade(s); to establish a schedule of ports or otherwise allocate ports which each carrier will serve and/or the frequency of each carrier's calls at those ports.

Comment 27 indicates that Part V is relevant, but Part V's emphasis on service to ports is contrary to the Act's intent, which is "to permit carriers to structure their own affairs and thereby provide more efficient service to shippers." Because it does not follow that a reduction in service to ports is a reduction in service to shippers, the Commission should, according to this comment, readjust its focus on ports to address the issue of service to shippers.

The frequency of port calls is used because it is a readily available index of service to shippers. There are, of course, other indices that indicate the service to shippers (including, for example, capacity, type of vessel, transit time, number of handlings). However, to require such data would likely present filing parties with an unduly burdensome data collection task. Moreover, such data would likely be of marginal use for the analysis of most agreements under the general standard. If reductions in frequency or the elimination of service to ports are indicated in Part V, which, when combined with the Commission's general knowledge of trade conditions, are sufficient enough to present questions under the general standards, the Commission may at that time seek additional information either informally or under the authority of section 6(d) of the Act in order to more specifically address the impact of the agreement on service to shippers. Consequently, in lieu of any specific suggestions in the comment as to how service to shippers could be more accurately and practicably determined and obtained, the Commission will continue to utilize port calls as one initial proxy for service to shippers.

Comment 23 maintains that the reference to indirect port calls via surface carriage in the instructions to Part V(A) implies that, for the purposes of responding to Part V(A), a "port" could include inland points and that port calls could include pick-up or delivery at such inland points by railcars and trucks. Comment 23 also recommends that port calls required by Part V(B) refer only to direct or indirect calls by vessels under the direct operational control of the parties.

The Commission is persuaded that potential problems may exist involving excessive data required in Part V for indirect intermodal service and for service by vessels not under the operational control of the parties. Consequently, the use of the term "port calls" in the Information Form and Instructions is changed to delete reference to surface carriage and to account only for port calls by vessels under the direct operational control of one or more parties to the agreement. For the purpose of the Information Form, the term "port" means the place with a harbor that an ocean carrier serves, either directly by oceangoing vessel or indirectly by feeder service. The use of this definition is applicable only to the Information Form and in no way changes the meaning of "port" as referenced elsewhere in the Final Rule. The identification of other forms of indirect service such as intermodal service (e.g., interior point of miniland-bridge service) or transshipment may be provided on a voluntary basis by the parties where such data may assist and expedite the analysis of the agreement's impact on service, but it will not be required with the initial filing. The Commission may, however, request such data pursuant to its authority under section 6(d) of the Act where substantial reductions in service are indicated both by the agreement and by the analysis under the general standard of the agreement and the relevant trade(s).

Comment 36 recommends that Part V(A) be changed to require only the identification of those ports "expected" to be served, and that Part V(B) be amended to require an estimate of any change in the frequency of port calls, rather than reduced sailings.

With regard to the comment's concerns with Part V(B), the analysis of services under the general standard pertains to unreasonable reductions in

the level of service. The Commission need only, therefore, require parties to provide reductions in service that will occur as a result of the implementation of the agreement. With regard to the suggestion that Part V(A) indicate those ports expected to be served, the instructions to Part V(A) already so state. Consequently, Part V(A) will be changed to conform to the instructions.

Comment 26 refers to Part V(B) (2) which specifies that the elimination of service to any port need only be indicated where it occurred "as a result of the implementation of the agreement." This comment urges that similar restrictive language be applied to Part V(B) (1) as well.

Part V(B), seeks information concerning the reduction or elimination of service at any port within the scope of the agreement for the purpose of analyzing the impact of an agreement under the general standard. Consequently, the Commission is only interested in Part V(B) (1), as it is in Part V(B)(2), insofar as the specified reduction of service is likely to occur as a result of the implementation of the agreement. The Final Rule will, therefore, reflect the change in language urged by Comment 26.

Part VI—Foreign Government Involvement in the Liner Market. Part VI requires the filing party to indicate whether or not the agreement was entered into as a direct or indirect response to any law, decree or other action promulgated or otherwise implemented by a foreign government (Part VI(A)). Where the filing party has so indicated, then all such governmental actions that have led to the agreement should be specified (Part VI(B)). The filing party is also required to indicate whether or not the governmental action limits access to the carriage of liner cargoes (Part VI(C)) and, if so, to explain how access is limited (Part VI(D)) and to provide the percentage of liner cargo carried within the scope of the agreement to which access is limited (Part VI(E)).

Four comments address Part VI. Comment 22 has "no quarrel" with this part. Comment 26 states that the instructions to this Part should be clarified so that Parts VI (C), (D) and (E) are required only where Part VI(A) is answered in the affirmative. The concerns of Comment 26 can be alleviated by reference in the Information Form to Part VI(C) which clearly refers to Part VI(A), and to Parts VI (D) and (E), which clearly refer to Part VI(C).

Comment 34 argues that Part VI is not relevant with respect to ratemaking agreements and, therefore, should not be applicable. The Commission concurs that most conference agreements have not usually been established in direct or indirect response to government laws, decrees, etc. Nonetheless, certain laws of foreign governments do require that a carrier, in order to carry cargo in that country's oceanborne foreign commerce, be a conference member. The Commission will retain the requirement that parties filing conference agreements or significant amendments to such agreements answer the pertinent portions of Part VI.

Comment 38 states that government laws are not relevant to any standard pertaining to the rejection of an agreement under sections 6(b) or 6(g) of the Act. Moreover, even if such laws were relevant, no reason is given, according to this comment, as to why Part VI should apply to foreign government and not U.S. laws.

The inclusion of Part VI, as explained in the Interim Rule, is based on the premise that, given the contestability of the liner shipping industry, in all but the rarest cases, only the actions of governments can effectively restrict entry to a trade. In such cases where entry is so restricted, excessive market power is most likely to arise and present significant issues of potential competitive harm under the general standard. Thus, the Commission rejects the claim made by Comment 38 that information concerning foreign government involvement in the liner trades is not relevant to the preliminary review of an agreement under the general standard. The general authority to reject agreements under section 6(b) is addressed earlier in the discussion of Appendix A.

It may be helpful to reiterate and further clarify what is meant by an agreement that is a direct or indirect response to a governmental law, decree or other action. Where, for example, laws of a foreign government require that a carrier, in order to carry cargo in that country's oceanborne foreign commerce, must be a conference member, then an agreement that establishes a conference in order for the parties to enter that trade would be a direct response to such governmental laws and, thus, would be required to answer Part VI. Moreover, a commercial agreement that was in response to a governmental action that was itself in response to the concerted actions of other governments would also be required to complete Part VI. For example, any commercial space charter agreement that was filed in response to laws promulgated by a government that sought to impose cargo sharing schemes through such space chartering agreements and, in such a fashion, implement the UNCTAD Code of Liner Conduct, would be required to complete Part VI.

In addition, the treatment of equal access agreements should be clarified in light of Comment 30, which states that equal access agreements may not be in response to the actions of governments. Such agreements, which facilitate access by certain carriers to cargoes subjected to government preference laws, decrees or other practices necessarily interject a foreign government into liner shipping and, therefore, require the completion of Part VI, which the instructions to the Information Form in the Final Rule will state.

An agreement that was an indirect response to a governmental action would be any agreement that facilitated the implementation of government laws, decrees, etc., or an agreement that flowed from such governmental action. An indirect response to the example stated above would be the creation of a pool that facilitates cargo sharing within the conference even though the pool was not *per se* required by such governmental action.

Only foreign government laws have been addressed in Part VI because the Commission is either familiar with or can easily obtain the information it requires concerning U.S. cargo preference laws. The involvement of foreign governments in liner markets is not necessarily so easily determined.

Part VII—Benefits of the Agreement. Part VII requests the filing party to indicate the benefits of the agreement that will accrue to the parties to the agreement (Part VII(A)) and to shippers and U.S. commerce generally (Part VII(B)). In response to emergency comments, the Information Form was amended to make the completion of Part VII voluntary.

Seven comments address this part. Three comments are generally supportive of this part's inclusion in the Form. Comments 22 and 34 assert that the provision of the agreements' benefits will generally bolster the parties' case. Comment 26 concurs with the amendment to the Interim Rule that makes the completion of Part VII voluntary.

The three comments that oppose Part VII (Comments 27, 32, 37) generally take the position that a statement of benefits and substantiating data is a request for an advance justification of the agreement, placing the burden of proof on the parties to an agreement. These comments believe that Part VII reinstitutes the *Svenska* standard and subverts the intent of the Act.

The Commission included Part VII in the Information Form in order to allow the parties to provide any information concerning increases in efficiency that may offset any reduction in competition resulting from the agreement. Such information would assist the Commission in its review of an agreement under the general standard, which, as outlined in the legislative history, compels the consideration of efficiency benefits. Such benefits may offset any negative effects of an agreement that are found likely to result in a substantial reduction in competition. Part VII allows those persons filing the agreement who are likely to be most knowledgeable about the agreement's resulting efficiencies to demonstrate those benefits. The completion of Part VII should be to the advantage of the filing parties. Moreover, it is not a mandatory requirement.

The Commission will make no *a priori* judgments concerning the benefits of an agreement based on the completion or lack of completion of Part VII. In the absence of the completion of Part VII the Commission, where it is deemed necessary, will on its own undertake the determination of the agreement's benefits. Where Part VII has been completed, the Commission will determine the validity of the efficiencies claimed and enter, again where necessary, its assessment of the agreement's benefits into its analysis of the agreement under the general standard. The Commission does not, therefore, view Part VII as a reinstitution of any aspect of the Commission's agreement approval standards under the Shipping Act, 1916. Part VII will remain unchanged in the Final Rule.

Part VIII—Reports, Studies or Other Research.—Part VIII requires the filing party to identify any reports, studies or other research that were prepared in order to determine the need for the proposed agreement.

Nine comments address this part. All oppose the requirement. These comments contend that it is: an unnecessary regulatory requirement; irrelevant to the general standard; so broad as to be incomprehensible; an invasion of confidential business information; a reinstitution of the *Svenska* test; the first leg of a fishing expedition that is arbitrary and caprcious because of the absence of any exploration in the public record; an unnecessary processing delay; discoverable under 6(d) but not 6(b); and, finally, a return to existing law requiring the parties to show that less anticompetitive alternatives exis.

The Commission believes that a clarification of Part VIII may adequately respond to these comments' objections. The Commission's goal in requiring parties to identify any reports made in conjunction with the proposed agreement is to avail the Commission staff of information within the parties' grasp that would assist and expedite the preliminary review of the agreement under the general standard. The use of the word "need" in the phrase ". . . for the purpose of analyzing, formulating or assessing the *need* for the proposed agreement . . ." is perhaps unfortunate. The Commission does not desire nor does it review as a proper burden to be placed on filing parties an *a priori* justification for the agreement on the basis of the commercial need for the agreement, or on the basis that no less anticompetitive alternatives to the agreement exist. The Commission is interested in any data the parties have gathered relevant to the competitive conditions in the relevant trade(s) and the competitive implications of the agreement. Specifically, this part is intended to solicit information on any studies commissioned or carried out by the parties pursuant to the agreement that examine rates, service levels and number and strength of competition in the relevant trades, or that forecast the effect of the agreement on such parameters.

In light of the comments and in order to clarify Commission intent with respect to Part VIII, the Commission is amending Part VIII and all references to this Part in the Instructions and Explanations to the Form to conform to the amended language. In order to minimize the burden on filing parties, only where the filing party has answered "yes" to Part II(A), (B), or (C) will Part VIII be required to be completed. The instructions to Part VIII will now read as follows:

> Part VIII requires a filing party that has answered "YES" to Part II(A), (B) or (C) to identify any reports, studies or other research that were prepared by or for any or all of the parties for the purpose of analyzing, formulating or assessing the competitive conditions in the relevant trade(s) affected by the agreement, or the competitive impact of the agreement on the relevant trade(s) affected by the agreement.

Part IX—Identification of Person(s) to Contact Regarding the Information Form and Certification of Authenticity. Part IX solicits the name(s) of the person(s) that the Commission may contact regarding any questions concerning the Information Form or a request for additional information. This part also requries a certification of the authenticity by the filing party of the information provided in the Form.

Three comments address Part IX. These comments generally oppose the certification requirement in Part IX(C) as burdensome and redundant. Comment 23 claims that the specific instructions for certification in Part IX(C) require an unreasonable confirmation of factual and legal conclusions regarding the accuracy and completeness of the Form. All comments refer to 18 U.S.C. 1001, which is itself specifically referenced in § 572.902 of the Rules. These comments urge the elimination of Part IX or the modification of its text to allow the filing parties to draft the certifications.

The Commission is persuaded that the text of Part IX(C) may present the parties with burdensome certification requirements. The Commission views, however, that a separate certification of the accuracy and completeness of the Information Form is important to the enforcement of the general standard. In order to relieve the filing parties of burdensome requirements, the Commission is simplifying the certification oath and eliminating the notarization requirement. The certification oath will read as follows:

> This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with the instructions issued by the Federal Maritime Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made, the information is, to the best of my knowledge, true, correct and complete.
> Name (please print or type) _____
> Title _____
> Relationship with parties to agreement _____
> Signature _____
> Date _____

III. Conclusion

This Final Rule, and the accompanying Information Form, are intended to implement the various agreements provisions of the Act in accordance with the 1984 Act's guiding policies. The changes made to the Interim Rule in response to the comments filed in Dockets Nos. 84–26 and 84–32 are intended further to facilitate the filing of agreements by parties and the review and monitoring of agreements by the Commission. These changes generally have reduced the regulatory burden on the ocean shipping industry and have retained only those requirements which are essential to the fulfillment of the Commission's regulatory responsibilities. The Commission believes that the Final Rule establishes a nondiscriminatory regulatory process with a minimum of

government intervention and regulatory costs.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* that these rules will not have a significant economic impact on a substantial number of small entities, within the meaning of that Act. The primary economic impact of these rules would be on ocean common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities, but that impact is not considered to be significant.

List of Comments and Pleadings Filed in Docket No. 84-36

1. Hoppel, Mayer & Coleman. May 30, 1984.
2. Philadelphia Port Corporation. May 31, 1984.
3. Trans-Pacific Freight Conference of Japan/Korea: Japan/Korea Atlantic and Gulf Freight Conference. June 4, 1984.
4. Associated Latin American Freight Conferences; United States Atlantic & Gulf/Panama Freight Conference; Atlantic & Gulf/West Coast of South America Conference; East Coast Colombia Conference; United States Atlantic 7 Gulf/ Southeastern Caribbean Conference; United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Freight Association; United States Atlantic & Gulf/Ecuador Freight Conference; United States Florida/Ecuador Steamship Conference; South Atlantic & Gulf/Panama & Costa Rica Rate Agreement; South Atlantic & Gulf/Guatemala El Salvador & Honduras Rate Agreement. June 1, 1984.
5. Inter-American Freight Conference; Inter-American Freight Conference River Plate/Puerto Rico and U.S. Virgin Islands/ River Plate; Pacific Coast/River Plate Brazil Conference. June 1, 1984.
6. Australia/Eastern U.S.A Feight Conference; The "8900" Lines; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic Freight Conference; Israel/U.S. North Atlantic Ports Westbound Freight Conference; Med-Gulf Conference; Mediterranean-North Pacific Coast Freight Conference; North Atlantic Israel/Eastbound Freight Conference; North Atlantic Mediterranean Freight Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; United States Atlantic Ports/ Italy, France and Spain Freight Conference; West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference. June 4, 1984.
7. Thailand Pacific Freight Conference. June 5, 1984.
8. Pacific Westbound Conference; Pacific Straits Conference; Pacific/Indonesian Conference. June 1, 1984.
9. Graham & James. June 4, 1984.
10. Inter-American Freight Conference, Puerto Rico and U.S. Virgin Islands. June 5, 1984.
11. Chemical Manufacturers Association. June 6, 1984.
12. U.S.-Flag Far East Discussion Agreement. June 8, 1984.
13. North Atlantic/United Kingdom Freight Conference; North Atlantic/French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic/Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference; North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental U.S. Gulf Freight Association; Gulf United Kingdom Conference; Gulf European Freight Association. June 11, 1984.
14. U.S. Department of Justice. June 15, 1984.
15. National Maritime Council. July 24, 1984.
16. Australia/Eastern U.S.A. Freight Conference; The "8900" Lines; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Med-Gulf Conference; Mediterranean-North Pacific Coast Freight Conference; New Zealand Rate Agreement; North Atlantic/Mediterranean Freight Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; U.S. South Atlantic/Portuguese, Moroccan and Mediterranean Rate Agreement; United States Atlantic Ports/Italy, France and Spain Freight Conference; West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC). August 6, 1984.
17. North Atlantic/United Kingdom Freight Conference; North Atlantic/French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic/Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental/ North Atlantic Westbound Freight Conference; North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental U.S. Gulf Freight Association; Gulf United Kingdom Conference; Gulf-European Freight Association; North Europe-South Atlantic Rate Agreement; U.S. South Atlantic-Europe Rate Agreement. August 10, 1984.
18. Johnson Scanstar. August 15, 1984.
19. City of Los Angeles Harbor Department. August 20, 1984.
20. Trans Freight Lines, Inc. August 23, 1984.
21. Port of Sacramento. August 24, 1984.
22. North Europe U.S. Pacific Freight Conference; Pacific Coast European Conference; Latin America/Pacific Coast Steamship Conference; Pacific Coast River Plate Brazil Conference; Pacific/Australia-New Zealand Conference; and their respective member lines. August 27, 1984.
23. Australia/Eastern U.S.A. Freight Conference; The "8900" Lines; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Med-Gulf Conference; Mediterranean North Pacific Coast Freight Conference; North Atlantic/Mediterranean Freight Conference; U.S. Atlantic & Gulf/ Australia-New Zealand Conference; U.S. South Atlantic/Portuguese, Moroccan and Mediterranean Rate Agreement; United States Atlantic Ports/Italy, France and Spain Freight Conference; West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC). [Comment on Information Form]. August 27, 1984.
24. Australia/Eastern U.S.A. Freight Conference; The "8900" Lines; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Med-Gulf Conference; Mediterranean North Pacific Coast Freight Conference; North Atlantic Mediterranean Freight Conference; U.S. Atlantic & Gulf/ Australia-New Zealand Conference; U.S. South Atlantic/Portuguese, Moroccan and Mediterranean Rate Agreement; United States Atlantic Ports/Italy, France and Spain Freight Conference; West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC). [Comment on Proposed Rule]. August 27, 1984.
25. U.S.-Flag Far East Discussion Agreement. August 27, 1984.
26. Malaysia/Pacific Rate Agreement; Pacific/Indonesian Conference; Pacific Straits Conference; Pacific Westbound Conference. August 27, 1984.
27. Council of European & Japanese National Shipowners' Associations. August 27, 1984.
28. American President Lines, Ltd. August 27, 1984.
29. U.S. Gulf/Brazil Pooling Agreement; U.S. Pacific/Brazil Pooling Agreement; Brazil/U.S. Pacific Pooling Agreement; U.S. Gulf/Argentina Pooling Agreement. August 27, 1984.
30. Chemical Manufacturers Association. August 27, 1984.
31. U.S. Department of Justice. August 27, 1984.
32. U.S. Department of Transportation. August 27, 1984.
33. American Institute For Shippers' Associations, Inc. August 28, 1984.
34. North Atlantic/United Kingdom Freight Conference; North Atlantic/French Atlantic Freight Conference; North Atlantic/ Continental Freight Conference; North Atlantic/Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference; North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental U.S. Gulf Freight Association; Gulf-United Kingdom Conference; Gulf-European Freight Association; North Europe-U.S. South Atlantic Rate Agreement; U.S. South Atlantic-Europe Rate Agreement. August 28, 1984.
35. Agreement No. 10305. August 29, 1984.
36. Sea-Land Service, Inc. August 27, 1984.
37. American West African Freight Conference. August 30, 1984.
38. Inter-American Freight Conference; Inter-American Freight Conference-Puerto Rico and U.S. Virgin Islands; Inter-American Freight Conference River Plate/Puerto Rico and U.S. Virgin Island/River Plate. August 30, 1984.
39. Trans-Pacific Freight Conference of Japan/Korea: Japan/Korea-Atlantic and Gulf Freight Conference; TransPacific Freight Conference (Hong Kong); New York Freight Bureau; Philippines/North America Conference; and their member lines. August 30, 1984.

List of Comments and Pleadings Filed in Docket No. 84-32

101. The "8900" Lines; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Italy, South France, South Spain, Portugal/U.S. Gulf and the Island of Puerto Rico (Med-Gulf) Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; U.S. Atlantic Ports/Italy, France and Spain Conference; The West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference (WINAC). October 17, 1984.
102. American President Lines, Ltd. October 17, 1984.
103. Council of European & Japanese National Shipowners Associations. October 17, 1984.
104. Far East Conference; Malaysia Pacific Rate Agreement; Pacific/Indonesian Conference; Pacific-Straits Conference. October 18, 1984.
105. The North European Conferences. October 18, 1984.
106. Trans-Pacific Freight Conference of Japan/Korea: Japan/Korea-Atlantic and Gulf Freight Conference; Trans Pacific Freight Conference (Hong Kong); New York Freight Bureau; Philippines/North America Conference. October 22, 1984.
107. Sea-Land Service, Inc. October 22, 1984.
108. Inter-American Freight Conference. October 22, 1984.
109. Atlantic & Gulf/West Coast South America Conference; East Coast/Colombia Conference; West Coast of South America Northbound Conference; United States Atlantic & Gulf/Ecuador Freight Conference; United States Florida/Ecuador Steamship Freight Association; United States Atlantic & Gulf/Venezuela Freight Association. October 22, 1984.
110. United States Atlantic & Gulf/ Southeastern Caribbean Conference; United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Freight Association; United States South Atlantic & Gulf/Panama & Costa Rica Rate Agreement; United States Atlantic Gulf/Guatemala, Honduras & El Salvador Rate Agreement. October 22, 1984.

List of Subjects in 46 CFR Part 572.

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and recordkeeping requirements.

By the Commission.

Francis C. Hurney,

Secretary.

Therefore, pursuant 5 U.S.C. 553; and sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, and 18 of the Shipping Act of 1984 (46 U.S.C. app. 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1709, 1710, 1712, 1714, 1715, 1716 and 1717) Part 572 of Title 46, Code of Federal Regulations, is revised to read as follows:

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

Subpart A—General Provisions

Sec.
572.101 Authority.
572.102 Purpose.
572.103 Policies.
572.104 Definitions.

Subpart B—Scope

572.201 Subject agreements.
572.202 Non-subject agreements.

Subpart C—Exemptions

572.301 Exemption procedures.
572.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.
572.303 Husbanding agreements—exemption.
572.304 Agency agreements—exemption.
572.305 Equipment interchange agreements—exemption.
572.306 Non-exclusive transshipment agreements—exemption.

Subpart D—Filing and Form of Agreements

572.401 Filing of agreements.
572.402 Form of agreements.
572.403 Modification of agreements.
572.404 Application for waiver.
572.405 Information Form.
572.406 Complete and definite agreements.

Subpart E—Content and Organization of Agreements

572.501 Agreement provisions—organization.
572.502 Organization of conference and interconference agreements.

Subpart F—Action on Agreements

572.601 Preliminary review—rejection of agreements.
572.602 **Federal Register** notice.
572.603 Comment.
572.604 Waiting period.
572.605 Requests for expedited approval.
572.606 Requests for additional information.
572.607 Failure to comply with requests for additional information.
572.608 Confidentiality of submitted material.
572.609 Negotiations.

Subpart G—Reporting and Record Retention Requirements

572.701 General requirements.
572.702 Filing of reports related to shippers' requests and complaints and consultations.
572.703 Filing of minutes.
572.704 Index of documents.
572.705 Waiver of reporting and record retention.

Subpart H—[Reserved]

Subpart I—Penalties

572.901 Failure to file.
572.902 Falsification of reports.

Subpart J—Paperwork Reduction

572.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Appendix A to Part 572—Information Form and Instructions

Authority: Secs. 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 18, of the Shipping Act of 1984 (46 U.S.C. app. 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1709, 1710, 1712, 1714, 1715, 1716 and 1717).

Subpart A—General Provisions

§ 572.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (U.S.C. 553), and sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 18 of the Shipping Act of 1984 ("the Act").

§ 572.102 Purpose.

This part implements those provisions of the Act which govern agreements by or among ocean common carriers and agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

§ 572.103 Policies.

(a) The Act requires that agreements be processed and reviewed according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed in accordance with a general standard as set forth in section 6(g) of the Act and empowers the Commission to obtain certain information to conduct that review. This part sets forth the kind of information for particular types of agreements which the Commission believes relevant to that review. Only that information which is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) In order to further the goal of expedited processing and review, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These requirements as to form do not

affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commerical relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or this part. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing or information requirements of this part.

(e) Under the new regulatory framework established by the Act, the role of the Commission as a monitoring and surveillance agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective. The Act empowers the Commission to impose certain recordkeeping and reporting requirements. This part identifies those classes of agreements which require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. These requirements assure that Commission monitoring responsibilities will be fulfilled.

(f) The Act requires that conference agreements must contain certain mandatory provisions. Each such agreement must: (1) state its purpose; (2) provide reasonable and equal terms and conditions for admission and readmission to membership; (3) allow for withdrawal from membership upon reasonable notice without penalty; (4) require an independent neutral body to police the conference, if requested by a member; (5) prohibit conduct specified in sections 10(c)(1) or 10(c)(3) of the Act; (6) provide for a consultation process; (7) establish procedures for considering shippers' requests and complaints; and (8) provide for independent action. Parties to conference agreements are free to develop their own mandatory provisions in accordance with the requirements of section 5(b) of the Act.

(g) An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

§ 572.104 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement.

(b) *Antitrust Laws* means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), 15 U.S.C. 1, as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), 15 U.S.C. 12, as amended; the Federal Trade Commission Act (38 Stat. 717), 15 U.S.C. 41, as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), 15 U.S.C. 8, 9, as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), 15 U.S.C. 13, as amended; the Antitrust Civil Process Act (76 Stat. 548), 15 U.S.C. 1311, note as amended; and amendments and Acts supplementary thereto.

(c) *Appendix* means a document containing additional material of limited application and appended to an agreement, distinctly differentiated from the main body of the basic agreement.

(d) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent that it provides for the collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that: (1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (2) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Conference agreement* means an agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member must participate in at least one such tariff. The term does not include consortium, joint service, pooling, sailing or transshipment agreements.

(g) *Consultation* means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

(h) *Cooperative working agreement* means an agreement which establishes exclusive, preferential, or cooperative working relationships which are subject to the Shipping Act of 1984, but which do not fall precisely within the arrangements of any specifically defined agreement.

(i) *Effective agreement* means an agreement approved pursuant to section 15 of the Shipping Act, 1916 or effective pursuant to an exemption under that Act, or filed and/or effective under the Act.

(j) *Equal access agreement* means an agreement between ocean common carriers of different nationalities, as determined by the incorporation or domicile of the carriers' operating companies, whereby such common carriers associate for the purpose of gaining reciprocal access to cargo which is otherwise reserved by national decree, legislation, statute or regulation to carriage by the merchant marine of the carriers' respective nations.

(k) *Independent neutral body* means a disinterested third party, authorized by a conference and its members to review, examine and investigate alleged breaches or violations by any member of the conference agreement and/or the agreement's properly promulgated tariffs, rules or regulations.

(l) *Information Form* means the form containing economic information which must accompany the filing of certain kinds of agreements.

(m) *Interconference agreement* means an agreement between conferences.

(n) *Joint service/consortium agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently

publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur and there is no competition between members for traffic in the agreement trade; but they otherwise maintain their separate identities.

(o) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers or between two ocean common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

(p) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier by water.

(q) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(r) *Modification* means any change, alteration, correction, addition, deletion, or revision of an existing effective agreement or to any appendix to such an agreement.

(s) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation portion is provided and is a "shipper" in its relationship with an ocean common carrier.

(t) *Ocean common carrier* means a vessel-operating common carrier, but the term does not include one engaged in ocean transportation by ferry boat or an ocean tramp.

(u) *Ocean freight forwarder* means a person in the United States that (1) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers, and (2) processes the documentation or performs related activities incident to those shipments

(v) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(w) *Pooling agreement* means an agreement between ocean common carriers which provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

(x) *Port* means the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

(y) *Sailing agreement* means an agreement between ocean common carriers which provides for the rationalization of service by establishing a schedule of ports which each carrier will serve and/or the frequency of each carrier's calls at those ports.

(z) *Service contract* means a contract between a shipper or shippers' association and an ocean common carrier or conference in which the shipper or shippers' association makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of either party.

(aa) *Shipper* means an owner or other person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(bb) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(cc) *Shippers' requests and complaints* means a communication from a shipper to a conference requesting a change in tariff rates, rules, regulations, or service; protesting or objecting to existing rates, rules, regulations or service; objecting to rate increases or other tariff changes; protesting allegedly erroneous service contract or tariff implementation or application, and/or requesting to enter into a service contract. Routine information requests are not included in the term.

(dd) *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel capacity for the use of another carrier (or carriers) in exchange for compensation or services. The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo.

(ee) *Through transportation* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(ff) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation. Such an agreement does not provide for the concerted discussion, publication or otherwise fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the transshipment service offered, the port of transshipment and the participation of the nonpublishing carrier.

Subpart B—Scope

§ 572.201 Subject agreements.

(a) *Ocean common carrier agreements.* This part applies to agreements by or among ocean common carriers to:

(1) Discuss, fix, or regulate transportation rates, including through rates, cargo space recommendations, and other conditions of service;

(2) Pool or apportion traffic, revenues, earnings, or losses;

(3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) Engage in exlusive, preferential , or cooperative working arrangements among themselves or with one or more marine terminal operators or non-vessel-operating common carriers;

(6) Control, regulate, or prevent competition in international ocean transportation; and

(7) Regulate or prohibit their use of service contracts.

(b) *Marine terminal operator agreements involving foreign commerce.* This part applies to agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; and

(2) Engage in exclusive, preferential, or cooperative working arrangements.

§ 572.202 Non-Subject agreements.

This part does not apply to the following agreements:

(a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;

(b) Any maritime labor agreement;

(c) Any agreement related to transportation to be performed within or between foreign countries;

(d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States;

(e) Any agreement among marine terminal operators which exclusively and solely involves transportation in the interstate commerce of the United States;

(f) Any agreement exclusively and solely among non-vessel-operating common carriers;

(g) Any agreement exclusively and solely among ocean freight forwarders.

Subpart C—Exemptions

§ 572.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in substantial reduction in competition, or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, Information Form, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Any person may apply for an exemption or revocation of an exemption of any class of agreements or an individual agreement pursuant to section 16 of the Act and this subpart. An application for exemption shall state the particular requirement of the Act for which exemption is sought. The application shall also include a statement of the reasons why an exemption should be granted or revoked and shall provide information relevant to any finding required by the Act. Where an application for exemption of an invdividual agreement is made, the application shall include a copy of the agreement.

(d) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(e) **Federal Register** *notice.* Notice of any proposed exemption or revocation of exemption, whether upon application or upon the Commission's own motion, shall be published in the **Federal Register.** The notice shall include:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the application and any accompanying information are available for inspection in the Commission's offices in Washington, D.C.; and

(5) The final date for filing comments regarding the application.

(f) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Agreements and Trade Monitoring for inspection during the term of the agreement and for a period of three years after its termination.

§ 572.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.

(a) A non-substantive agreement or a non-substantive modification to an existing agreement is an agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, which:

(1) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

(2) Reflects changes in the name of any geographic locality stated therein; the name of the agreement or the name of a party to the agreement; the names and/or numbers of any other section 4 agreement or designated provisions thereof referred to in an agreement; the table of contents of an agreement; the date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or renumbers or reletters articles or subarticles of agreements and references thereto in the text.

(3) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) A copy of the non-substantive modification shall be submitted for information purposes in the proper format but is otherwise exempt from the Information Form, notice and waiting period requirements of this part.

(c) Parties to agreements may seek a determination from the Director, Bureau of Agreements and Trade Monitoring as to whether a particular modification is non-substantive.

§ 572.303 Husbanding agreements—exemption.

(a) A husbanding agreement is an agreement between a principal and an agent both of which are subject to the Act and which provides for the agent's handling of routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does *not* include an agreement which provides for the solicitation or booking of cargoes, signing contracts or bill of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing and Information Form requirements of the Act and of this part.

§ 572.304 Agency agreements—exemption.

(a) An agency agreement is an agreement between a principal and an agent both of which are subject to the Act, which provides for the agent's solicitation and booking of cargoes and signing contracts of affreightment and bills of lading on behalf of an ocean common carrier. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement between persons subject to the Act is exempt from the filing and Information Form requirements of the Act and of this part, except those: (1) Where a common carrier is to be the agent for a competing carrier in the same trade; or (2) which permit an agent to enter into similar agreements with more than one carrier in a trade.

§ 572.305 Equipment interchange agreements—exemption.

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for (1) the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and (2) the transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing and Information Form requirements of the Act and of this part.

§ 572.306 Nonexclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement is an agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not: (1) Prohibit either carrier from entering into similar agreements with other carriers; (2) guarantee any particular volume of traffic or available capacity; or (3) provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing and Information Form requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the orgin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or deliver of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

Subpart D—Filing and Form of Agreements

§ 572.401 Filing of agreements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for review and disposition pursuant to section 6 of the Act, shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such filing shall consist of:

(1) A true copy and 15 additional copies of the filed agreement;

(2) Where required by these regulations, an original and two copies of the completed Information Form referenced at §§ 572.403(a) and 572.405 and Appendix A of this part; and

(3) A letter of transmittal as described in paragraph (b) of this section.

(b)(1) A filed agreement, to include such supporting documents as are submitted, shall be forwarded to the Commission via a letter of transmittal.

(2) The letter of transmittal shall: (i) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned ageeement number of the effective agreement and the revision, page and/or appendix number of the modification being filed; (ii) provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the

agreement or modification; (iii) clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the forwarding party; and, (iv) be signed in the original by the forwarding party or on the forwarding party's behalf by an authorized employee or agent of the forwarding party.

(3) To facilitate the timely and accurate publication of the **Federal Register** Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(c) Any agreement and accompanying Information Form which does not meet the filing requirements of this section shall be rejected in accordance with § 572.601.

(d) Assessment agreements shall be filed and shall become effective upon filing. Assessment agreements need not be accompanied by an Information Form.

(e)(1) Expiration dates to existing agreements or specific provisions thereof, shall remain in effect on and after June 18, 1984.

(2) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the waiting period required under the Act.

§ 572.402 Form of agreements.

The requirements of this section apply to all agreements except for cancellations, marine terminal agreements, and assessment agreements.

(a) Agreements shall be clearly and legibly typewritten on one side only of 8½ inch by 11 inch durable white loose-leaf paper, providing a margin of not less than three-quarters of an inch on all edges.

(b) The first page of every agreement or appendix shall be the Title Page and shall include:

(1) The name in which the agreement holds out service, or, in the absence of such a holding out, the full name of the agreement;

(2) Once assigned, the Commission-assigned agreement number;

(3) The generic classification of the agreement in conformity with the definitions in § 572.104;

(4) The date on which the entire agreement was last republished in accordance with § 572.403(g); and

(5) If applicable, the currently effective expiration date of the agreement and/or any specific provision thereof.

(c) Each agreement page (including modifications and appendices) shall be identified by printing the agreement name (as shown on the agreement Title Page) and, once assigned, the applicable Commission-assigned agreement number at the top of each page.

(d) Each agreement, appendix and/or modification filed will be accompanied by a separate signature page, appended as the last page of the item, which is signed in the original by each of the parties personally or by an authorized representative, indicating immediately below each such signature, the typewritten full name of the signing party and his or her position, including organizational affiliation.

(e) The body of the agreement shall contain:

(1) Immediately following the Title Page, a Table of Contents providing for the location of all agreement provisions.

(2) Following the Table of Contents, the body of the agreement setting forth the operative provisions of the agreement in the order prescribed by §§ 572.501 and 572.502. Any additional material/provisions shall be set forth as consecutively numbered articles.

(f) Any nonsubstantive provisions, as defined in § 572.302, may be separated from the main body of the agreement text by the inclusion of an Appendix to the agreement. Additional provisions which are permitted to be included in an Appendix are referred to in §§ 572.501(b)(3), 572.501(b)(6) and 572.502(a)(1). Such appendices must comply with the format requirements of paragraphs (a) and (c) of this section. Such appendices are to be serialized alphabetically with the first such Appendix being designated on its first page as "Appendix A."

(g) All pages subsequent to the Title Page shall be numbered in the upper right-hand corner. At the option of the parties, the numbering of the pages may start with the first page following the Title Page as Page No. 1 and continue consecutively thereafter; or, in the alternative, the pages containing the Table of Contents may be discretely numbering using consecutive Roman numerals with all pages subsequent to the Table of Contents being consecutively numbered beginning with Page No. 1. In either event, the first edition of any one page shall be designated in the upper right-hand corner as "Original Page No. ——."

(h) All agreements shall conform to the format requirements of this section and § 572.403 and the organization and content requirements of §§ 572.501 and 572.502 according to the following schedule.

(1) Any new agreement shall conform when initially filed.

(2) Any restatement of a previously effective agreement filed subsequent to December 15, 1984, shall conform to the requirements.

(3) Any effective agreement which is modified subsequent to December 15, 1984, shall be restated in its entirety, including the modification, and shall conform to the requirements.

(4) Any other agreement not otherwise brought into conformity with these requirements shall be conformed and filed no later than October 1, 1985.

§ 572.403 Modification of agreements.

The requirements of this section apply to all agreements except for marine terminal agreements and assessment agreements.

(a)(1) Agreement modifications shall be: filed in accordance with the provisions of § 572.401; in the format specified in § 572.402 and this section; and accompanied by an Information Form.

(2) The Information Form shall be completed as it pertains to significant modifications of the agreement.

(3) Significant modifications, for the purposes of this section, are those that may result in a significant reduction in competition. Such modifications include but are not limited to: significant changes in the geographic scope of conference or pooling agreements which expand the scope to cover additional foreign countries or U.S. port ranges, including initial conference intermodal authority, or the extension of the scope of a joint service agreement to ports outside the scope of the existing joint service agreement currently served by two or more of the parties; additions to the number of parties in pooling or joint service agreements; significant reductions in service levels; significant changes in pool penalty provisions or carrying charges; and changes in cargo categories or descriptions that result in a significant increase in the amount of cargo subject to the pool, or changes in the allocation of cargo or revenue that significantly change the cargo or revenue shares of national or non-national flag lines.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published. Such modified pages shall be designated as "revised pages" and shall publish in the upper right-hand corner of the new page the consecutive denomination of the revision, e.g., "1st Revised Page 5."

(c) If a modification exceeds the page being modified and the parties do not wish to modify the entire agreement, the additional material may be published on an original page, designated with the same number as the page being modified and with an alphabetical suffix, i.e. "Original Page 5a."

(d) The language being modified shall be indicated on the page filed as follows:

(1) Language being deleted or superseded shall be struck through; and,

(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(3) As an alternative to publishing such indications of change on the filed page, the filed page may be submitted devoid of such indications if the filing is accompanied by a page, submitted for information/illustration only, setting forth the proposed modifications in accordance with the format prescribed in paragraphs (d) (1) and (2) of this section.

(e) When a revised or new page is revised, or the entire agreement is reissued, the change indications in paragraphs (d)(1) and (d)(2) of this section are to be deleted from the republished pages.

(f) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page which shall report the new location of the agreement's provisions.

(g)(1) In the instance of an agreement which publishes the indications of modifications, specified in paragraph (d) of this section on the filed agreement page itself, then, not later than two years after the last modification to the agreement, the entire agreement shall be republished incorporating such modifications as have been made and shall supersede the previous edition of the agreement.

(2) Such republished agreement will be filed with the Commission in accordance with the filing (except as provided in paragraph (g)(3) of this section), format and content requirements of this part and shall contain nothing other than the previously effective language and such nonsubstantive modifications as are necessary to accomplish the republication.

(3) It is not required that the filing of a republished agreement as described in paragraph (g)(2) of this section, be accompanied by the Information Form or that it be filed in more than an executed original true copy.

§ 572.404 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive the form, organization and content requirements of §§ 572.401, 572.402, 572.403, 572.501 and 572.502.

(b) Requests for permission to depart from the form requirements of this subpart shall be submitted in advance of the filing or submission of the materials to which the requested waiver would apply and shall state: (1) the specific regulations from which relief is sought; (2) the special circumstances requiring the requested relief; and, (3) the beneficial results anticipated to be obtained from the requested waiver.

§ 572.405 Information Form.

(a)(1) Except for marine terminal agreements and assessment agreements, the information required by the Commission for review of an agreement shall be provided in the Information Form set forth in Appendix A to this part.

(2) The filing party to an agreement subject to the Act shall complete and submit an original and two copies of the Information Form at the time that an agreement is filed. The Information Form shall be completed in accordance with this subpart, including the Instructions set forth in Appendix A. Copies of the form may be obtained in person at the Office of the Secretary or by writing to the Secretary of the Commission.

(b) A complete response in accordance with the Instructions to the Information Form shall be supplied to each item on the Information Form that is required to be answered. Whenever the party answering a required part of the Information Form (other than Parts III and IV) is unable to supply a complete response, that party shall provide,for each item for which less than a complete response has been supplied, either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. Use of estimated data with Parts III and IV requires no explanation of why precise data are not available.

(c) Any party filing the Information Form may supplement that Form with any other information or documentary material.

(d) The Information Form and any additional information submitted by a filing party under this section shall not be disclosed except as provided in § 572.608.

§ 572.406 Complete and definite agreements.

(a) Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules, and regulations.

Subpart E—Content and Organization of Agreements

§ 572.501 Agreement provisions—organization.

(a) All agreements, except for cancellations, marine terminal agreements, and assessment agreements, shall be organized and shall include the content as provided by this section. The "article" numbers hereinafter enumerated are reserved for their particular respective provision or authority as indicated in this section and § 572.502 and may not be used for any other subject or purpose nor may the specified subject matter appear elsewhere in the agreement except as herein provided. In the instance of a legitimately inapplicable provision, the article number and title are to be included in the text followed by the word, "None".

(b) All agreements shall organize and number the following articles in the following order and shall observe the guidelines as to content as provided in this section. Additional articles required to definitively express the complete understanding between the parties to the agreement and not otherwise incorporated in appendices to the agreement shall immediately follow the articles enumerated in this subpart (and, where applicable, in § 572.502) and shall be numbered consecutively, commencing with Article 14.

1. *Article 1—Full name of the agreement.*

2. *Article 2—Purpose of the agreement.*

3. *Article 3—Parties to the agreement.* List the current parties to the agreement to include for each participant: (i) the full legal name of the party to include any FMC-assigned agreement number associated with that name; and (ii) the address of its principal office (to the exclusion of the address of any agent or representative not an employee of the participating carrier or association). In the alternative to publishing the membership of the agreement in Article 3, the membership may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 3.

(4) *Article 4—Geographic scope of the agreement.* State the ports or port ranges to which the agreement applies and any inland points or areas to which it also applies with respect to the exercise of the collective activities contemplated and authorized in the agreement.

(5) *Article 5—Overview of Agreement Authority.* State the authorities, as set forth in § 572.201 of this part, intended to be collectively exercised under the auspices of the agreement. To the extent that the summary provided does not represent the full arrangement between the parties, additional articles or appendices of the parties' own designation and subsequent to these enumerated articles will be required to provide the specification of the authority to be exercised and the mechanics of that exercise. Unless it is unsupported by such further explanation, Article 5 is not deemed to be definitive of the authority that the parties may collectively exercise pursuant to the agreement.

(6) *Article 6—Officials of the agreement and delegations of authority.* Specify, by organizational title, the administrative and executive officials determined by the parties to the agreement to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum: (i) the officials with authority to file agreements and agreement modifications and to submit associated supporting materials or with authority to delegate such authority; and, (ii) a statement as to any designated U.S. representative of the agreement required by this chapter. Where convenient, the contents of this article may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 6.

(7) *Article 7—Membership, withdrawal, readmission and expulsion.* Specify the terms and conditions for admission, withdrawal, readmission and expulsion to or from membership in the agreement, including membership fees, refundable deposits and other fees or charges associated with membership. Two-party agreements which do not involve any form of rate, charge or tariff determination or publication authority and which do not otherwise have any conditions of agreement participation other than the commitment of the physical resources of the respective parties are relieved of the requirements of this subparagraph. In such eventuality, the article number and name shall be accounted for as provided in paragraphs (a) and (b)(1) of this section.

(8) *Article 8—Voting.* Specify the procedures, including quorum requirements, by which the agreement membership exercises its collective authority to choose, endorse, decide the disposition of, defeat, or authorize any particular matter, issue or activity.

(9) *Article 9—Duration and termination of the agreement.* Specify, where applicable, the date on which the agreement terminates and describe the procedures to be followed to terminate the agreement.

§ 572.502 Organization of conference and interconference agreements.

(a) Each conference agreement in addition to Articles 1 through 9 contained in § 572.501, and such other matters as may be necessary to express the full understanding of the parties, shall include the following articles organized and including the content as provided in this section:

(1) *Article 10—Neutral body policing.* State that, at the request of any member, the conference shall engage the services of an independent neutral body to fully police the obligations of the conference and its members. Include a description of any such neutral body authority and procedures related thereto. In the alternative to publishing the neutral body and procedures description in Article 10, the description may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 10.

(2) *Article 11—Prohibited acts.* State affirmatively that the conference shall not engage in conduct prohibited by section 10(c)(1) or 10(c)(3) of the Act.

(3) *Article 12—Consultation: Shippers' requests and complaints.* Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(4) *Article 13—Independent action.* Specify the independent action procedures of the conference. Such procedures shall provide that any conference member may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b)(1) Each interconference agreement, in addition to Articles 1 through 9 contained in § 572.501, and Articles 10, 11, and 12 contained in paragraph (a) of this section, shall include the following article: *"Article 13—Independent Action"* which specifies the independent action procedures of the agreement.

(2) Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier.

(3) Each agreement between conferences must provide the right of independent action for each conference.

Subpart F—Action on Agreements

§ 572.601 Preliminary review—rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the filing requirements of the Act and this part and whether the Information Form is complete or where not complete, the deficiency is adequately explained.

(b)(1) The Commission shall reject any agreement that fails to comply with the filing and information requirements under the Act and of this part. The Commission shall notify in writing the person filing the agreement of the reason for rejection of the agreement. The entire filing, including the agreement, the Information Form and any other information or documents submitted, shall be returned to the filing party.

(2) Should the agreement be refiled, the full waiting period must be observed.

§ 572.602 Federal Register notice.

(a) A notice of any filed agreement which is not rejected pursuant to § 572.601 will be transmitted to the **Federal Register** within seven days of the date of filing.

(b) The notice will include:

(1) A short title for the agreement;

(2) The identity of the parties to the agreement and the filing party;

(3) The Federal Maritime Commission agreement number;

(4) A concise summary of the agreement's contents;

(5) A statement that the agreement is available for inspection at the Commission's offices; and

(6) The final date for filing comments regarding the agreement.

§ 572.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and fifteen (15) copies and are not subject to any limitations except the time limits provided in the **Federal Register** notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested, comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. Such requests must include a statement of legal basis for confidential treatment including the citation of appropriate statutory authority. Where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosures.

(b) The filing of a comment does not entitle a person to: (1) reply to the comment by the Commission; (2) the institution of any Commission or court proceeding; (3) discussion of the comment in any Commission or court proceeding concerning the filed agreement; or (4) participation in any proceeding which may be instituted.

§ 572.604 Waiting period.

(a) The waiting period before an agreement becomes effective shall commence on the date that an agreement is filed with the Commission.

(b) Unless suspended by a request for additional information or extended by court order, the waiting period terminates and an agreement becomes effective on the latter of the 45th day after the filing of the agreement with the Commission or on the 30th day after publication of notice of the filing in the **Federal Register.**

(c) The waiting period is suspended on the date when the Commission, either orally or in writing, requests additional information or documentary materials pursuant to section 6(d) of the Act. The waiting period resumes on the date of receipt of the additional material or of a statement of the reasons for noncompliance, and the agreement becomes effective in 45 days unless the waiting period is further extended by court order.

§ 572.605 Requests for expedited approval.

(a) Upon written request of the filing party, the Commission may shorten the review period. Accompanying the request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. If the Commission decides to approve an abbreviated waiting period, the term will be decided after consideration of the parties' needs and the Commission's ability to perform its review functions under a reduced time schedule. In no event, however, may the period be shortened to less than fourteen days after the publication of the notice of the filing of the agreement in the **Federal Register.** When a request for expedited approval is denied by the Commission, the normal waiting period specified in § 572.604 will apply. Such expedition will not be granted routinely and will be granted only in exceptional circumstances which include but are not limited to: the impending expiration of the agreement; operational urgency; Federal or State imposed time limitations; or other reasons which, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited approval will be considered for an agreement whose waiting period has resumed after having been suspended by a request for additional information.

(c) Upon request of the filing party, cancellations of agreements and modifications to the following prescribed agreement provisions will be granted expedited approval fourteen days after publication of notice of filing in the **Federal Register:**

(1) *Article 3*—Parties to the agreement (limited to conference agreements).

(2) *Article 6*—Officials of the agreement and delegations of authority.

(3) *Article 10*—Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

§ 572.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documentary material necessary to complete the statutory review required by section 6 of the Act. The request shall be made prior to the expiration of the waiting period. All additional information and documentary material shall be submitted to the Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, D.C. 20573. If the request is not fully complied with, a statement of reasons for noncompliance shall be provided for each item or portion of such request which is not fully answered.

(b) Where the Commission has made a request for additional information material, the agreement's effective date is 45 days after receipt of the additional material. In the event all material is not submitted, the agreement's effective date will be 45 days after receipt of both the documents and information which are submitted, if any, and the statement indicating the reasons for noncompliance. The Commission may, upon notice to the Attorney General, and pursuant to sections 6(i) and 6(k) of the Act, request the United States District Court for the District of Columbia to further extend the agreement's effective date until there has been substantial compliance.

(c) A request for additional information may be made orally or in writing. In the case of an oral request, a written confirmation of the request shall be mailed to the filing party within seven days of the communication.

(d) The party upon whom a request for additional information is made will have a reasonable time to respond, as specified by the Commission. The test of reasonableness shall be based on the particular circumstances of the request and shall be determined on a case-by-case basis.

(e) Notice that a request for additional information has been made will be published by the Commission and served on commenting parties. Such notice will indicate only that a request has been made and will not specify what information is being sought. Within fifteen (15) days following service of the notice, further comments on the agreement may be filed.

§ 572.607 Failure to comply with requests for additional information.

(a) A failure to comply with a request for additional information results when a person filing an agreement, or an officer, director, partner, agent, or employee thereof fails to substantially respond to the request or does not file a satisfactory statement of reasons for noncompliance. An adequate response is one which directly addresses the Commission's request. When a response is not received by the Commission within a specified time, failure to comply will have occurred.

(b) The Commission may, pursuant to section 6(i) of the Act, request relief from the United States District Court for the District of Columbia when it considers that there has been a failure to substantially comply with a request

for additional information. The Commission may request that the court:

(1) Order compliance with the request; and

(2) At its discretion, grant other equitable relief which under the circumstances seems necessary or appropriate.

(c) Where there has been a failure to substantially comply, section 6(i)(2) of the Act provides that the court shall extend the review period until there has been substantial compliance.

§ 572.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act, all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, and replies to requests for additional information.

(b) Information which is confidential pursuant to paragraph (a) of this section may be disclosed, however, to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is in response to a request from either body of Congress or to a duly authorized committee or subcommittee of Congress.

(c) Parties may voluntarily disclose or make information publicly available. If parties elect to disclose information they shall promptly inform the Commission.

§ 572.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement. Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in negotiations.

Subpart G—Reporting and record retention requirements

§ 572.701 General requirements.

(a) *Address.* All reports required by this subpart should be addressed to the Commission as follows:

Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, D.C. 20573

The lower, left-hand corner of the envelope in which each report is forwarded should indicate the subject of the report and the related agreement number. For example: "Minutes, Agreement 5000."

(b) *Serial numbers of reports.* (1) Each report filed with the Commission should be assigned a number for each subject. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign "Meeting No. 1" to its Minutes, the next meeting will be assigned "Meeting No. 2," and so on. The first Shippers' Request and Complaint report should be designated "Shippers' Request and Complaint Report No. 1," the next report would be "Shippers' Request and Complaint Report No. 2," and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its reports in a manner which differs from that set forth in paragraph (b)(1) of this section may continue to utilize its own system in lieu thereof.

(c) *Retention of records.* Each agreement required to file an index of documents pursuant to this subpart shall retain a copy of each document listed for a minimum period of 3 years after the date the document is distributed to the members and shall make it available to the Commission upon written request.

(d) *Request for documents.* Documents may be requested by the Director, Bureau of Agreements and Trade Monitoring, in writing by reference to a specific minute or index, and shall indicate that the documents will be received in confidence. Requested documents shall be furnished by the parties within the time specified.

(e) *Time for filing.* Documents filed on an annual (calendar) year basis shall be filed by February 15 of the following year. Other documents shall be filed within 30 days of the end of a quarter-year, a meeting, or the receipt of a request for documents.

(f) *Confidentiality.* All information submitted to the Commission under this subpart shall be accorded confidential treatment to the fullest extent permitted by law.

§ 572.702 Filing of reports related to shippers' requests and complaints and consultations.

(a) *Shippers' requests and complaints.* (1) Each conference shall file with the Commission an annual report setting forth under established shippers' request and complaint procedures and for each calendar year, a statistical summary separately showing: (i) The total number of shippers' and shippers' associations requests and complaints received; (ii) the total number which were fully granted; (iii) the total number which were partially granted; and (iv) the total number which were denied.

(2) Each report shall also show the total number of requests or complaints which were pending disposition at the start and at the end of the report period.

(3) Each of the totals which are reported to the Commission shall be divided into three categories: (i) those involving rates or charges; (ii) those involving transportation services; and (iii) those involving other matters.

(b) *Consultations.* Each conference shall file with the Commission an annual report setting forth a statistical summary showing separately the total number of shipper and shippers' associations requests for consultations and the total number of consultations during each calendar year under the established consultation procedures. Each of the totals which are reported to the Commission shall be divided into two categories: (1) Consultations involving commercial disputes; and (2) consultations involving cooperation with shippers in preventing and eliminating malpractices.

§ 572.703 Filing of minutes.

(a) *Meetings.* For purposes of this subpart, the term "meeting" shall include any meeting of the parties to the agreement, including meetings of their agents, principals, owners, committees, or subcommittees of the parties authorized to take final action on behalf of the parties. Where the agreement so authorizes, this includes final action by telephonic or personal pools of the membership.

(b) *Content of minutes.* Except as provided in paragraph (c) of this section, conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, marine terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting defined in paragraph (d) of this section describing all matters within the scope of the agreement which are discussed or considered at any such meeting, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions or the votes taken.

(c) *Exemption.* No minutes need be filed under paragraph (b) of this section with respect to any discussion of or action taken with regard to:

(1) Rates that, if adopted, would be required to be published in the Commodity Rate Section, Class Rate Section, or Open Rate Section of the pertinent tariff on file with the Commission except that this exemption does not apply to discussions limited to general rate policy, general rate changes, the opening or closing of rates, or service or time/volume contracts; or

(2) Purely administrative matters.

§ 572.704 Index of documents.

(a) Each agreement required to file minutes pursuant to § 572.703 shall maintain an index of all reports, circulars, notices, statistics, analytical studies, or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines and are used to reach a final decision on any of the following matters.

(1) Revenue projections and plans. (This would exclude individual rate adjustments but would include general rate adjustments, surcharges and other items affecting shipper costs.)

(2) Studies regarding proposed changes to the conference agreement or its membership.

(3) Non-conference competition.

(4) Changes in the nature and type of transportation service generally and specifically at individual ports or points.

(5) Trade tonnaging requirements, vessel utilization and vessel replacement plans.

(6) Conference participation in trade (market share).

(7) The exercise of the right of independent action.

(8) Development of transportation technology and intermodal services.

(9) Malpractices.

(10) Use of service contracts, time volume rate schemes and loyalty contracts.

(11) Conference relationship with shippers and shipper groups.

(12) Governmental and other foreign requirements affecting the conference.

(b)(1) Each index required to be maintained by paragraph (a) of this section shall be filed with the Commission on a calendar-year quarterly basis.

(2) Each index must be certified by an official of the agreement as true and correct.

§ 572.705 Waiver of reporting and record retention.

Upon a showing of good cause, the Commission may waive any of the provisions of this subpart.

Subpart H—[Reserved]

Subpart I—Penalties

§ 572.901 Failure to file.

Any person operating under an agreement involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 of the Act or excluded from filing by the Act, which has not been filed and has not become effective pursuant to the Act and this part is in violation of the Act and of this part and is subject to the civil penalties set forth in section 13(a) of the Act.

§ 572.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item or the Information Form, is a violation of the rules of this part and is subject to the civil penalites set forth in section 13(a) of the Act and may be subject to the criminal penalites provided for in 18 U.S.C. 1001.

Subpart J—Paperwork Reduction

§ 572.991 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
572.101 through 572.902	3072-0045

Appendix A to Part 572—Information Form and Instructions

Explanation and Instructions for Information Form

The following explanation and instructions accompany the Information Form (Form) and are intended to facilitate the completion of the Form. The explanations and instructions should be read in conjunction with the Shipping Act of 1984 (Act) and with 46 CFR Part 572.

All agreements by or among ocean common carriers referenced in 46 CFR 572.201(a) (excluding assessment agreements, marine terminal agreements and those agreements exempted from the filing of the Information Form pursuant to Subpart C of Part 572) and significant modifications to agreements referenced in § 572.403 filed with the Commission must be accompanied by a completed Information Form, which in all cases necessitates the completion of Parts I, II, VI, and IX.

Part V, which requests information on proposed service and any proposed reduction or elimination of service, is required to be completed only by parties filing agreements with service authority.

Completion of Part VII is optional.

Because of their potential substantial anticompetitive implications, parties filing certain types of agreements, namely rate-fixing (including, for example, agreements authorizing conferences, interconference agreements, and agreements between a conference and one or more ocean common carriers), pooling, and joint-service and consortium agreements are required to complete Parts III, IV and VIII of the Form in addition to the above specified parts required to be completed by all filing parties.

Certain parts of the Form request information that may not be readily available to the filing party. Where precise information is not available, best estimates may be supplied. Where estimates are made, they should be identified by the use of the notation "est." Except for Parts III and IV, furnishing an estimate requires a clear explanation of why the precise information is not available. Where such an explanation is provided, the use of estimates will not ordinarily be regarded as a failure to supply a complete response as specified in 46 CFR 572.601, and does not require a separate statement of reasons for noncompliance.

In all parts of the Form where data are requested, the filing party is required to indicate all sources used to obtain such data. Sources should also be specified where estimates have been made by the filing party.

Part by Part Explanation

Part I

Part I requires the filing party to state the full name of the agreement as also provided under 46 CFR 572.501.

Part II(A)

Part II(A) requires the filing party to indicate whether or not the agreement authorizes the parties to collectively fix rates or significantly modifies an agreement with such authority. Rate-fixing may be authorized by a conference agreement, an interconference agreement, or an agreement between a conference and one or more ocean common carriers.

Part II(B)

Part II(B) requires the filing party to indicate whether or not the agreement authorizes the parties to pool cargoes or revenues, or significantly modifies an agreement with such authority.

Part II(C)

Part II(C) requires the filing party to indicate whether or not the agreement authorizes the parties to establish a new joint service or consortium, or significantly modifies an agreement with such authority.

Background Information to Parts III and IV

If any question in Part II is answered "YES", the filing party is required to complete Parts III, IV and VIII (in addition to completing Parts I, II, VI and IX, which are required to be completed by all filing parties).

The *amount of cargo* is to be measured in appropriate units as determined by the parties (such as revenue tons, weight tons, measurement tons or TEU's). Specify the unit of measurement used.

The relevant trade(s) for the purpose of Parts III and IV is to be determined by the parties. The relevant trade(s) may encompass the entire geographic scope of the agreement, or any combination of U.S. and foreign ports or port ranges or sub-trades within the scope of the agreement as deemed appropriate by the parties. The filing party should clearly identify the relevant trade(s) used for the purposes of completing the Information Form.

Sub-trade is defined as the scope of all liner movements between *each* foreign country and *each* U.S. port range within the scope of the agreement. Each foreign country/U.S. port range pair should be shown separately. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound liner movements should be shown separately.

U.S. port ranges are defined by using the Bureau of Census classification of U.S. Coastal Districts. Thus, the U.S. port ranges are defined as follows:

North Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to the southern boundary of Virginia.

South Atlantic—includes ports along the eastern seaboard from the northern boundary of North Carolina to, but not including Key West, Florida. Also included are all ports in Puerto Rico and the U.S. Virgin Islands.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida to Brownsville, Texas, inclusive.

South Pacific—Includes all ports in the States of California and Hawaii.

North Pacific—Includes all ports in the States of Oregon, Washington, and Alaska.

Great Lakes—Includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Liner service refers to a definite, advertised schedule, giving relatively frequent sailings at regular intervals between specific U.S. ports or port ranges and designated foreign ports or port ranges. *Liner vessels* are defined as those vessels used in a liner service. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel operating ocean common carrier engaged in liner service. *Liner movement* is the carriage of liner cargo by liner operators. The above liner terms, definitions and descriptions are only to be used for the purpose of the Information Form.

Market share information should be provided using data for the most recent twelve (12) month period for which data are available. State the period used. Identify all units of measurement and all sources of the data. Data may be estimated. Indicate where estimates are made and describe the basis of their derivation.

Alternative liner routing is defined as liner service between the foreign country specified in the sub-trade and any North American port(s) other than those located within the port range covered by the sub-trade. The alternative liner routing may serve the sub-trade's port(s) and interior point(s) by way of feeder service, transshipment, surface carriage (such as mini-landbridge), or some other form of substituted transport. Alternative liner routing includes only those liner services which compete for cargoes carried in the sub-trade.

Part III(A)

Part III(A) requires the filing party to provide the total amount of cargo carried on *all parties'* liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

Part III(B)

Part III(B) requires the filing party to provide the total amount of cargo carried on *all* liner vessels (i.e., both party and non-party carriers) operating in each trade identified in (A) within the scope of the agreement for the most recent twelve (12) month period for which data are available.

Part III(C)

Part III(C) requires the filing party to provide the combined market share of all parties operating in each relevant trade within the scope of the agreement. The market share provided in Part III(C) is the quotient (multiplied by 100) of the total derived in Part III(A) divided by the total derived in Part III(B). The *formula for calculating market share* is as follows:

The total amount of cargo carried on all parties' liner vessels in each relevant trade within the scope of the agreement over the most recent twelve-month period for which data are available divided by the total amount of cargo carried on all liner vessels in each relevant trade within the scope of the agreement over the same twelve-month period; which quotient is multiplied by 100.

The relevant trade(s) identified in III(A) should be clearly identified. Each market share calculation should be based on cargo data for identical relevant trades. The most recent twelve-month period for which data are available is to be the same period of time used both in the calculation of the parties' total liner cargo movements [Part III(A)] and in the calculation of the total sub-trade liner cargo movements for all liner operations [Part III(B)].

Part IV(A)

Part IV(A)(1) requires the filing party to provide, for each relevant trade within the scope of the agreement, the names of all liner operators who are not parties to the agreement, and who were offering liner service in that trade at the time the agreement was filed with the Commission.

Part IV(A)(2) requires the filing party to provide, for each relevant trade, the names of all liner operators serving alternative liner routings who compete for the cargoes carried by the parties.

Part IV(A)(3) requires the filing party to describe the extent of the competition offered by all non-party liner operators, including liner operators directly serving the relevant trade(s) *and* liner operators serving alternative liner routings. A description of the extent of competition should include estimates (or precise information where available) of non-party liner operator market share (shown either for each individual operator or for all operators collectively). Any evidence of underutilized capacity in the alternative liner routings may also be provided. Explain how the non-party market share was derived. Specify the units of measurement used in the calculations. Indicate the source(s) used to provide data or estimates.

Part IV(B)

Part IV(B)(1) requires the filing party to identify to the extent known all significant non-liner competitive substitutes that are available to shippers of commodities historically transported by liner service within the scope of the agreement. Non-liner competitive substitutes may include carriage on a charter or contract basis or on an infrequent, irregular basis by bulk, mix container/bulk, breakbulk or other vessel-type operators. Such substitutes may also include carriage by air freight operators or air passenger operators with available "belly space" for air freight. Such substitutes may provide service to a trade through some form of substituted service (e.g., mini-landbridge, transshipment or feeder service) by way of ports within an alternative North American port range(s).

Part IV(B)(2) requires the filing party to estimate the percentage of the total amount of cargo, historically carried in the trade on liner vessels, that has been carried by non-liner competitive substitutes over the most recent twelve (12) month period for which data are available. The intent of Part IV(B)(2) is to determine the amount of liner cargo historically carried in the trade that has been "lost" to non-liner operators. Identify all units of measurement and describe how the percentage was derived. Identify the sources used.

Part V

Part V is required to be completed only by filing parties whose agreements contain service authority, which is defined as including either or both of the following authorities allowing parties to agree between or among themselves: to allocate (or otherwise provide) tonnage or capacity between or among carriers in the relevant trade(s); to establish a schedule of ports which each carrier will serve and/or the frequency of each carrier's calls at those ports. For the singular purpose of the Information Form, "port" means the place with a harbor that an ocean carrier serves either directly by oceangoing vessel or indirectly by feeder service. Port calls are direct or indirect calls at a port by vessels under the direct operational control of one or more parties to the agreement.

Part V(A)

Part V(A) requires the filing party to identify all U.S. ports expected to be served under this agreement. Include all U.S. ports expected to receive direct liner service (port calls by a party) and indirect liner service (port calls by way of some form of substituted service such as feeder service) where those vessels are under the direct operational control of one or more of the parties to the agreement. The identification of other forms of indirect service under the agreement, such as intermodal service (e.g., interior point or minilandbridge) or transshipment may be provided if the parties believe that such information will assist and expedite the Commission's analysis of the agreement's impact on service.

Part V(B)

Part V(B)(1) requires the filing party to specify any party's reduction in frequency of service to any U.S. port within the scope of the agreement where the reduction of service to that port occurs as a result of the implementation of the agreement. Reductions in frequency are determined as follows: (1) for each party and for each U.S. port within the scope of the agreement served by that party, determine total number of port calls over the most recent twelve (12) month period for which data are available (historical port call calculation); (2) for each party and for each U.S. port within the scope of the agreement served by that party, estimate the total number of port calls for the twelve (12) month period immediately following implementation of the agreement (expected port call calculation); (3) calculate the difference between the "historical port call calculation" and the "expected port call calculation." Provide, for each party and for each U.S. port, the following calculations: the "historical port call calculation"; the "expected port call calculation"; and the difference between those calculations.

Part V(B)(2) requires the filing party to specify any elimination of service to any U.S. port within the scope of the agreement that is currently (at the time the agreement is filed) receiving liner service from any party to the agreement, where the elimination of that port occurs as a result of the implementation of the agreement. The term "service to any U.S. port" includes direct service by the parties and indirect service by way of feeder service.

Part VI(A)

Part VI(A) requires the filing party to indicate whether or not the agreement was entered into as a direct or indirect response to any law, decree, rule, regulation or any other governmental action promulgated or otherwise implemented by a foreign government. The agreement may, for example, operate in a context where a foreign government has promulgated or implemented certain cargo reservation, cargo preference or other cargo sharing schemes that favor national flag lines and that require these national lines to be members of a conference. A *direct* response to such governmental action would be the creation of a conference agreement. An *indirect* response to such governmental action would be the creation of a pool that facilitates cargo sharing within a conference even though the pool was not *per se* required by such governmental action. Moreover, a commercial agreement that is in response to a governmental action that was itself in response to the concerted actions of other governments (for example, the UNCTAD Code of Liner Conduct) would be in direct response to a governmental action and so require the completion of Part VI. In addition, an equal access agreement necessarily entails the involvement of a foreign government in liner shipping, thus requiring the completion of Part VI.

Part VI(B)

Part VI(B) requires the filing party to identify all such laws, decrees, rules, regulations or any other foreign governmental actions that have led to the agreement. All such governmental actions should be identified by the type of governmental action (e.g., a law, decree, memorandum order, etc.), the full legal title of the governmental action, the date that the governmental action became (or will become) effective, and the date (if specified) the governmental action will terminate. Part VI(B) also requires a detailed description of the purpose and the nature of the governmental action, including all requirements imposed on the parties by the governmental action, and the specification of each provision in the agreement that is a direct or indirect response to each such governmental action.

Part VI(C)

Part VI(C) requires the filing party to indicate whether or not any law, decree, rule, regulation or any other foreign governmental action identified in Part II(B) limits access to the carriage of liner cargoes within the scope of the agreement. Limited access to the carriage of liner cargoes may be effected by excluding certain liner operators or classes of liner operators (e.g., by national flag or carrier nationality) from the trade entirely, or by reserving certain cargoes for carriage by certain liner operators or classes of liner operators (e.g., by national flag or carrier nationality), or by limiting the ports at which liner operators may call, or by restricting the frequency of scheduled port calls, or by other such measures that restrict the open competition for liner cargoes within the scope of the agreement by liner operators.

Part VI(D)

Part VI(D) requires the filing party to explain how access to cargoes carried by liner operators is limited by the actions of a foreign government as identified in Part VI(B). See Part VI(C) for examples of how access to cargoes can be limited by the actions of a government.

Part VI(E)

Part VI(E) requires the filing party to provide the percentage of the total amount of cargo carried on all liner vessels in the trade to which access is limited by a foreign government. The percentage is derived by dividing the amount of cargo in the trade to which access is limited by a foreign government, by the total amount of cargo carried on all liner vessels in the trade and multiplying the quotient by 100. The *trade* is defined as the scope of the agreement, that is, all foreign and domestic ports or port ranges served under the agreement. The amount of cargo can be measured in revenue tons, weight tons, measurement tons or TEU's. Specify which unit of measurement is used. The amount of cargo should be provided on the basis of the most recent twelve (12) month period for which data are available. Where precise information is not available, best estimates may be supplied. Identify estimates by the use of the notation "est." Indicate the sources of such estimates.

Part VII

The completion of Part VII (A) and (B) is optional.

Part VII(A)

Part VII(A) permits the filing party to indicate all benefits resulting from the agreement that will accrue principally to the parties as a result of the operation of the agreement. Such benefits may include increased operational efficiencies or other reductions in costs that result from the implementation of the agreement. Data that are necessary to substantiate the specified benefits should be submitted.

Part VII(B)

Part VII(B) permits the filing party to indicate all benefits resulting from the agreement that will accrue to shippers and to U.S. commerce generally. Such benefits may include reduced rate levels or improved quality or frequency of service that result from the operation of the agreement. Data that are necessary to substantiate the specified benefits should be submitted.

Part VIII

Part VIII requires a filing party that has answered "yes" to Part II (A), (B) or (C) to identify any reports, studies or other research that were prepared by or for any or all of the parties for the purpose of analyzing, formulating or assessing the competitive conditions in the relevant trade(s) affected by the agreement or the competitive impact of the agreement on the relevant trade(s) affected by the agreement.

Part IX(A)

Part IX(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IX(B)

Part IX(B) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding a request for additional information or documents.

Part IX(C)

Part IX(C) requires generally that the filing party sign and certify that the information in the Form and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or

her relationship with the parties to the agreement.

Federal Maritime Commission

Information Form For Certain Agreements By or Among Ocean Common Carriers

Agreement Number———
(Assigned by FMC)
Part I *Agreement Name:*———

Part II *Agreement Type*

(A) *Rate-Fixing Agreements*
Does the agreement authorize the parties to collectively fix rates or significantly modify an agreement with such authority?
Yes ☐ No ☐

(B) *Pooling Agreements*
Does the agreement authorize the parties to pool cargoes or revenues or significantly modify an agreement with such authority?
Yes ☐ No ☐

(C) *Joint Service or Consortium Agreements*
Does the agreement authorize a joint service/consortium arrangement or significantly modify an agreement with such authority?
Yes ☐ No ☐

If any question in PART II is answered "YES", complete PARTS III, IV, and VIII (in addition to PARTS I, II, VI, and IX that are required to be completed by all filing parties.)

Part III *Market Share Information*

(A) Provide the total amount of cargo carried on all parties' liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

(B) Provide the total amount of cargo carried on all liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

(C) Provide the market share of all parties in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

Part IV *Market Competition*

(A) *Liner Competition*

(1) For each relevant trade within the scope of the agreement, provide the names of all liner operators *not* parties to the agreement, currently offering service in that trade.

(2) Provide the names of all liner operators serving alternative liner routings where those operators compete for cargoes carried by the parties in the relevant trade.

(3) Describe the nature and extent of the competition from the liner operators listed in (A)(1) and (A)(2) above.

(B) *Non-Liner Competition*

(1) Indentify all competitive substitute forms of transport, other than liner service, that are available to shippers of commodities historically transported by liner service in each relevant trade (including, for example, bulk carriers, charter operators, or air freight carriers).

(2) Estimate the percentage of the total amount of liner cargoes in each relevant trade, traditionally carried on liner vessels, that has been carried by non-liner substitute forms of transport over the most recent twelve (12) month period for which data are available.

Part V *Service to the Shipping Public Under the Agreement*

(To be completed only for those agreements which have service authority.)

(A) *Proposed Service*
Identify all U.S. ports expected to be served by the parties under this agreement.

(B) *Reduced Sailings*

(1) Estimate the parties' reductions in frequency of calls at each U.S. port within the scope of the agreement.

(2) Specify the parties' elimination of service to any U.S. port within the scope of the agreement currently served by any party.

Part VI *Foreign Government Involvement in the Liner Market*

(A) Was this agreement entered into as a direct or indirect response to any law, decree, rule, regulation, or other governmental action promulgated or implemented by a foreign government?
Yes ☐ No ☐

(B) If the answer to (A) is "YES", identify all such laws, decrees, rules regulations or other governmental actions and specify all provisions in the agreement that stem from these factors.

(C) If the answer to (A) is "YES", do any of the above identified governmental actions limit access to the carriage of liner cargoes within the scope of the agreement?
Yes ☐ No ☐

(D) If the answer to (C) is "YES", explain how access to liner cargoes is limited by the foreign government.

(E) If the answer to (C) is "YES", provide the percentage of the total liner cargo in the trade to which access is limited by a foreign government. Explain the method by which the percentage was derived.

Part VII *Benefits of the Agreement* (Optional)

(A) Indicate any benefits (such as improved efficiencies or other reductions in transportation costs) that will accrue principally to the parties as a result of the operation of the agreement. Provide the data necessary to substantiate the above specified benefits.

(B) Indicate any benefits (such as lower rate levels or improved service levels) that will accrue to shippers and to U.S. commerce generally as a result of the operation of the agreement. Provide the data necessary to substantiate the above specified benefits.

Part VIII *Reports, Studies or Other Research*

Identify any reports, studies or other research that were prepared by or for any or all of the parties for the purpose of analyzing, formulating or assessing the competitive conditions in the relevant trade(s) affected by the agreement, or the competitive impact of the agreement on the relevant trade(s) affected by the agreement.

Part IX *Identification of Person(s) to Contact Regarding the Information Form and Certification of Authenticity*

(A) Identification of Contact Person ———
(1) Name of Contact Person ———
(2) Title of Contact Person———
(3) Firm Name and Business———
(4) Business Telephone Number ———
(5) Cable Address ———

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).

(1) Name ———
(2) Title ———
(3) Address ———
(4) Telephone ———
(5) Cable Address ———

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made, the information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) ———
Title ———
Relationship with parties to agreement ———

Signature ———
Date ———

[FR Doc. 84-29860 Filed 11-14-84; 8:45 am]
BILLING CODE 6730-01-M

46 CFR Parts 538 and 580

[Docket Nos. 84-21, 84-23 and 84-24]

Service Contracts, Loyalty Contracts, and Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Final Rule implements those provisions of the Shipping Act of 1984 which relate to the areas of (1) service contracts, (2) loyalty contracts, and (3) general tariff filing requirements. It amends and supersedes three previously published Interim Rules in these subject areas and consolidates them into one Final Rule.

EFFECTIVE DATE: December 15, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984, Pub. L. 98-237, 98 Stat. 67, 46 U.S.C. app. 1701-1720 (the Act or the 1984 Act), was enacted on March 20, 1984 and became effective 90 days later, on June 18, 1984. It significantly alters the statutory scheme which previously governed the oceanborne foreign commerce of the United States—the Shipping Act, 1916 (46 U.S.C. app. 801 *et seq.*) (the 1916 Act). As a result of these changes, the Commission determined that it would be necessary to promulgate rules to implement several provisions of the Act, including, *inter alia*, those relating to (1) service contracts and time/volume rates, (2) loyalty contracts and (3) general tariff filing requirements.

The Commission initially issued three Interim Rules covering these subjects, pursuant to the authority given it by section 17 of the Act—Docket No. 84-21 (service contracts and time/volume rates); Docket No. 84-23 (loyalty contracts); and Docket No. 84-24 (other foreign tariff regulations). These Interim Rules also requested comments by the public and, as a result, were commented on by many diverse interests. The Commission is now issuing Final Rules in these three proceedings. However, since they all relate to the general area of tariffs and are all to be contained in a new Part 580 of the Code, they are consolidated in this Rule and Part 580 is published in its entirety. The comments to the Interim Rules will nonetheless be considered separately, and, therefore, the remainder of this discussion will be divided as follows:

Part I. Service Contracts and Time/Volume Rates (Sections 580.7 and 580.12) [Docket No. 84-21]

Part II. Loyalty Contracts (Section 580.16) [Docket No. 84-23]

Part III. Foreign Tariff Filing Regulations—General (Sections 580.0 to 580.6; 580.8 to 580.11; 580.13 to 580.15) [Docket No. 84-24]

I. Service Contracts and Time /Volume Rates—Docket No. 84-21 (Sections 580.7 and 580.12)

The Commission initiated Docket No. 84-21 on May 3, 1984, by publishing an Interim Rule (49 FR 18849) to implement certain provisions of the 1984 Act relating to service contracts and time/volume rates. Interested persons were given 90 days to comment on the rule. In addition, the Commission indicated that concerned individuals could file comments prior to the effective date of the Interim Rule (June 18, 1984) if they perceived serious difficulties with it. The Commission subsequently modified the Interim Rule on June 14, 1984, in response to these emergency comments and solicited additional final comments by August 1, 1984 (49 FR 24701).

The Commission received 17 additional final comments on the Interim Rule. Commenting parties or groups of parties are: (1) Port of Oakland; (2) National Maritime Council; (3) Sea-Land Service, Inc.; (4) Tobacco Association of the United States; (5) Matson Navigation Company, Inc.; (6) The Journal of Commerce; (7) Chemical Manufacturers Association (CMA); (8) E.I. du Pont de Nemours and Company (DuPont); (9) United States Department of Transportation (DOT); (10) NPS International; (11) International Association of NVOCCs (IANVOCC); (12) Inter-American Freight Conference; (13) U.S. Atlantic & Gulf/Australia-New Zealand Conference; Iberian/U.S. North Atlantic Westbound Freight Conference; Greece/U.S. Atlantic Rate Agreement; Italy, South France, South Spain, Portugal/U.S. Gulf and the Island of Puerto Rico (Med-Gulf) Conference; Mediterranean-North Pacific Coast Freight Conference; the "8900" Lines; the West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference; and Marseilles/North Atlantic U.S.A. Freight Conference (North Atlantic Conferences); (14) Pacific Coast European Conference; Latin America/Pacific Coast Steamship Conference; and Pacific Coast River Plate Brazil Conference (Pacific Coast Conferences); (15) Trans-Pacific Freight Conference of Japan/Korea; Japan/Korea-Atlantic and Gulf Freight Conference; Trans-Pacific Freight Conference (Hong Kong); New York Freight Bureau; and Philippines North America Conference (Trans-Pacific Conferences); (16) Pacific Westbound Conference; Far East Conference; Pacific Straits Conference; and Pacific Indonesian Conference (Far East Conferences); and, (17) North Atlantic United Kingdom Freight Conference; North Atlantic French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference, North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental—U.S. Gulf Freight Association; Gulf-United Kingdom Conference; Gulf-European Freight Association; North Europe—U.S. South Atlantic Rate Agreement; and U.S. South Atlantic-Europe Rate Agreement (North European Conferences or NEC).

The following is a section-by-section summary of the various comments received and the Commission's disposition of them. Any comment not directly addressed here has nonetheless been fully considered by the Commission. In addition, the Commission has taken this opportunity to make minor editorial changes in the Final Rule for the sake of greater clarity.

Section 580.7(a)—Definitions

Section 580.7(a)(1)—"Contract Party"

Section 580.7(a)(1) of the Interim Rule defines "contract party" as "a party signing a contract as shipper or ocean common carrier" and any "related" entity "who may engage in the shipment of commodities in the trade covered by the contract." The Inter-American Freight Conference believes that only entities who have actually signed a service contract should be considered contract parties, and the North European Conferences suggest that all entities weith any remote interest in the contract or relation to the contract signatories be specifically named in the contract. CMA suggests revisions which would allow less than the entire membership of an organization to enter into a contract.

The Commission has revised the definition of "contract party" originally proposed, in part, to resolve these comments. While the designation of contract parties is not an essential term subject to public disclosure under the Act, the Commission believes that all parties able to take advantage of the contract must be named in the contract itself. This will allow the Commission to determine which shipments by a carrier are covered by a contract and therefore entitled to a contract rate, and which must be charged the tariff rate. Without such disclosure, it would be virtually impossible to enfore the tariff adherence requirements of the Act. Accordingly, the Rule has been revised to require that all persons or entities entitled to receive or authorized to offer the service contract's non-tariff rates be expressly named in the contract as contract parties.

The Commission has also taken this opportunity to amend the definition of "contract party" to take into account the fluctuating membership which may occur in a shippers' association. The revision accomplishes this by considering any member of a shippers' association, regardless of whether it joined or left the association during the course of the contract, to be a contract party without having to be specifically named in the contract.

Section 580.7(a)(2)—"Geographic Area"

Section 580.7(a)(2) of the Interim Rule defines "geographic area" as "the general location from which or to which the contract cargo will move in intermodal service."

The Inter-American Freight Conference and the North Atlantic Conferences contend that the Commission lacks the authority to

require the application of a service contract to any location not actually agreed to by the contract parties, a result which they believe occurs when this definition is applied to the contract filing requirements of § 580.7(b). The North European Conferences argue that only the concise statement of essential terms, and not the service contract itself, is required by statute to include a reference to geographic areas.

The Commission does not believe that anything in these comments requires it to alter its definition of "geographic area." It is taken directly from language contained in the legislative history to the Act. *See* S. Rep. No. 3, 98th Cong., 1st Sess. 31 (1983). The confusion which has arisen over its use in the Interim Rule derives from the fact that though it was only intended to apply to the statement of essential terms, it might also have applied to the contract itself.

Section 580.7(b) requires service contracts filed with the Commission to state, among other things, "the essential terms." Section 580.7(g)(2) requires the essential terms to include ". . . the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements." Taken together, in conjunction with the definition of "geographic area," these sections could be read to require a broader statement of scope in the service contract than had been actually agreed to by the parties. To clarify this situation, §580.7 is amended in paragraph (b)(3)(ii) to provide that, in the context of the contract filing requirements, the contract need only "reflect the actual locations agreed to by the contract parties."

However, as indicated above, the statement of essential terms must be set forth in terms of geographic areas for through intermodal movements. The description of the geographic area in the statement of essential terms may, within reason, be as broad or as narrow as the parties desire. Depending on the circumstances, "geographic areas" might be stated in terms of countries, regions, states, counties, cities, or zip codes. The propriety of any particular geographic area description contained in an essential terms publication in the initial stages of the implementation of this Final Rule will have to be determined on an *ad hoc* basis. As further experience is gained in this area, section 580.7 may be further amended to reflect the operational realities of this new commercial practice.

Section 580.7(a)(3)—"Port Range"

Comments similar to those discussed above in terms of "geographic area" were also received concerning the definition of "port range". The commenters again assume that the Commission is attempting to impose a broader scope on a service contract than that which may be intended by the contract parties. The amendment to section 580.7(b)(3)(ii), discussed above, should alleviate these concerns, at least with respect to the contract filing requirement. The Commission continues to believe, however, that the statement of essential terms must be in terms of "port ranges" in the case of port-to-port movements and that, in certain instances, this may result in a broader scope than that stated in the contract. This is nonetheless consistent with the Congressional intent referenced above.

Section 580.7(a)(4)—"Service Contract"

DuPont proposes that the definition of "service contract" include a statement that they are contract carriage arrangements and not common carriage. The North European Conferences suggest that the definition allow for a "fixed portion" of a shipper's cargoes and provide antitrust immunity for such arrangements.

The definition of "service contract" in the Interim Rule is taken directly from the Act and will not be modified. In any event DuPont's suggestion would not appear to be legally feasible, because the Act's service contract concept appears to contain elements of common carriage.

NEC's suggestion would, in effect, convert a service contract to a "loyalty contract" as that term is defined by the Act (46 U.S.C. app. 1702(14)). It would be inconsistent with Congress' treatment of loyalty contracts elsewhere in the Act (46 U.S.C. app. 1709(b)(9)) and will not therefore be adopted.

Section 580.7(a)(5)—"Shipper"

The definition of "shipper" is also derived directly from the Act and will be retained. We will, however, accommodate the suggestion of the Inter-American Freight Conference and include a definition of "shippers' association" in the Final Rule for purposes of consistency.

Section 580.7(a)(6)—"Time/Volume Rate"

Section 580.7(a)(6) of the Interim Rule defines a "time/volume rate" as "a freight rate published in a tariff which must vary with the volume of cargo offered or freight revenues received over a specified period of time."

The North European Conferences express concern over use of the words "must vary", which they interpret as meaning that a time/volume rate must vary internally—*i.e.* it must be offered on a sliding scale—and if it merely varies from other tariff rates, only in that it is based on a volume of cargo over time, it is subject to rejection. In addition, noting that the word "freight" is not used in the Act, they state that the Commission has not offered any reason for making a distinction between "freight rates" and "rates." The Inter-American Freight Conference offers an alternative definition for "time/volume rate", and also suggests that it and section 580.7(1), which relates to the use of time/volume rates, be moved to the tariff filing sections of Part 580.

The Commission agrees with this latter point and is redesignating Interim Rule §§ 580.7(a)(6) and 580.7(1) as sections 580.12(a) and 580.12(b), respectively, in the Final Rule. In addition, the Commission believes that the definition proffered by the Inter-American Freight Conference may serve to accommodate NEC's comment and otherwise clarify any ambiguity which may have been inherent in the Interim Rule's definition of "time/volume rate." We are therefore adopting it.

Section 580.7(b)—Contract Filing Requirements

The North European Conferences suggest that the Commission allow the optional filing of service contracts involving exempted commodities referenced in section 8(c) of the Act. While there does not appear to be any legal barrier to allowing the filing of service contracts involving exempted commodities on an optional basis by an individual carrier, conferences' authority to enter into and file such contracts is not as clear. The issue is whether Congress' exemption of certain commodities precludes concerted rate action on those commodities with or without antitrust immunity. That issue will be made the subject of a separate proceeding. At this point, conferences may file service contracts on exempt commodities, at their option. However, this is permitted without prejudice to any subsequent Commission determination of the legality of such practices.

Permitting such contracts to be filed, but then exempting them from the otherwise applicable regulatory requirements could, however, lead to discrimination between similarly situated shippers and allow potential abuse of the filing and publication process. Therefore, although the Commission will permit the optional filing of exempted-commodity contracts, the Final Rule is amended to make it clear that all other regulatory requirements applicable to non-exempt service contracts will apply to such filings.

As mentioned above in the context of "geographic area" and "port range", § 580.7(b) will also be modified to make clear that the only locations which must be included in the service contract are those actually agreed upon by the contracting parties.

We have also modified the numbering system to be used in the filing of service contracts. These changes will enable the Commission to more properly fulfill its responsibilities under the Act. The Final Rule will require that the filing carrier or conference assign each service contract a unique number bearing the prefix "SC"; and reference the applicable essential terms "publication" and the specific "set" of essential terms (which are to be identified by the prefix "ET") within the identified publication. This was done for two purposes: To permit potential shippers to accurately identify the specific "set" of essential terms in which they may have an interest; and to enable the Commission to distinguish among several contracts with the identical essential terms.

Section 580.7(b)(5) of the Interim Rule requires that carriers and conferences identify, in each service contract, the shipment records which will be maintained to support the contract. The North Atlantic Conferences contend that the maintenance of shipment records for service contracts is inequitable, because the requirement is imposed only on shipments moving under service contracts. We believe the record maintenance requirement is necessary to the effective and efficient administration and enforcement of the service contract system. If the need arises, these records will enable the Commission to ascertain whether a particular contract has been used as a device to rebate or grant other unlawful rates or concessions. This requirement should serve to provide valuable competitive safeguards to both carriers and shippers. In addition, it does not appear to be particularly burdensome to the carriers. The Commission's previous regulations applicable to time/volume contracts contained a similar requirement, which was promulgated to assure that records would be available to verify that the terms of the contract were met. It did not appear to cause any particular difficulties in practice.

If any burden exists with respect to the maintenance of records, it more likely arises from the related requirement that such records be maintained by a U.S. resident agent. This is discussed below in the context of section 580.7(k).

Section 580.7(c)—Confidentiality

The North European Conferences submit that service contract *amendments* should be afforded the same confidential treatment as service contracts and that § 580.7(c) should be amended accordingly. The Commission notes that, to the extent a contract amendment alters an essential term of a service contract, it would not be permitted under paragraph (d)(i) of this section. Amendments to non-consequential terms of a service contract are permissible, and should be filed with the Commission for informational purposes. The Commission will accord such amendments the same confidential treatment which the original contract received. Section 580.7(c) has been revised to make this clear.

Section 580.7(d)—Contract Amendments

Section 580.7(d) states that amendments to service contracts will be treated as new contracts for the purposes of the filing and publication requirements. In addition, this section provides that no new contract may retroactively modify the terms or effects of a previously filed contract.

DuPont and CMA propose that only amendments to the essential terms of a service contract be considered new contracts. They further suggest that the reference to "publication" requirements should be changed to "availability requirements" to avoid any confusion with general tariff concepts and to more closely track the language of the Act. In addition, CMA proposes a change to clarify that contract amendments do not terminate the original contract.

The North European Conferences express difficulty in understanding the basis for § 580.7(d), which they believe serves to restrict service contract amendments. They nonetheless offer changes in the wording of the section to ameliorate what they perceive to be detrimental consequences of the Interim Rule.

In light of these comments, the Commission has made several changes in § 580.7(d) of the Interim Rule. In the first place, the Commission agrees that the only modifications to a service contract which should be of any concern are those which modify an essential term of the contract. Modifications to non-essential terms are of little consequence but should nonetheless be filed with the Commission for informational purposes. The Commission does not believe, however, that modifications to essential terms of a service contract should be permitted during the duration of the contract, because they could potentially affect the rights of other similarly situated shippers. For instance, if a shipper was unable to meet its cargo volume commitment under a contract and the parties agreed to lower that amount during the term of the contract, this could discriminate against another shipper who was not able to take advantage of the contract during its initial 30-day offering, because of the volume of cargo originally required to be committed but who could have done so under the lower minimum. Also, the contract parties could agree to alter the geographic areas or port ranges covered by the contract thereby including similarly situated shippers who were not included under the original contract. These situations could be exacerbated if the non-contract shipper had already shipped all or a substantial portion of its cargo prior to the time of the modifictions and is, therefore, no longer able to take advantage of the altered terms. The Commission has concluded that the best approach to avoid such situations is to prohibit any modification to an essential term during the term of the contract.

The parties remain free, however, to mutually agree to terminate the contract at any time during its term. If they take such action, and the minimum quantity has not been met, the cargo previously carried under the contract must be rerated according to the otherwise applicable tariff rates in effect at the time of the shipments (unless the contract provides a different procedure). This procedure would be similar to the carrier's or conference's basic measure of damages if the shipper did not meet the quantity term of the contract and there was no mutually agreed termination. Section 580.7(d)(iii) further recognizes, however, that the contracting parties may, pursuant to § 580.7(g)(2)(vii), set forth in their initial contract specific terms to govern situations in which the "volume requirement" may not be met.

Section 580.7(e)—Transmittal of Service Contracts

DuPont suggests that the Interim Rule be amended to allow carriers and conferences to annotate the inner envelope (containing the service contract) for the purpose of identifying the number assigned to the corresponding statement of essential terms. This would allegedly obviate the need to compare the contract with the filed essential terms.

While the Commission has made certain amendments in this provision, it did so in order to clarify and streamline

the administrative processing of service contracts and related statements of essential terms. However, contracts must still be compared with filed essential terms to ensure that the statement of essential terms contains a *concise* statement of all of the essential terms of the contract(s). The Commission cannot rely on representations on an envelope to meet its statutory responsibilities.

The Final Rule will protect the contents of each envelope containing a service contract by limiting the amount of information on such envelope to the statement "This Envelope Contains a Confidential Service Contract." The Commission cannot maintain the confidentiality of any contract transmitted by any other procedure. If a filing party fails to utilize the specific procedures contained in this section, the confidentiality of the contract could inadvertently be compromised.

Section 580.7(f)—Return of Contracts

Section 580.7(f) of the Interim Rule permits the Commission to return a service contract if its provisions are not substantiated by reference to its statement of essential terms. In addition, § 580.7(j) of the Interim Rule allows the rejection of a statement of essential terms which fails to conform to any of the requirements of the Rule.

As an initial matter, the North European Conferences question the Commission's authority to return or reject service contract filings, lacking express statutory authority to do so. We believe that a carefully circumscribed return and rejection procedure falls within the ambit of the Act's rulemaking authority in section 17, because such procedures are necessary for the enforcement and implementation of section 8(c) of the Act. Without such a procedure, contracts or statements of essential terms which are contrary to the Act or the Commission's regulations could remain in effect for a considerable period of time before being challenged. This would not only subvert the purposes of the service contract provision, but would also substantially affect the rights of similarly situated shippers.

The Commission has determined, however, to treat its return and rejection procedures in one section for purposes of clarity and uniformity. Within 15 days of filing, the Commission can return a contract or statement of essential terms which does not conform to the requirements of paragraph (b) or (g) of § 580.7. When it does so, the Commission will provide a written explanation of its reasons. Parties then have 15 days to refile the document and the Commission can then reject it if it continues to fail to conform. This procedure should satisfy various concerns raised by CMA, the Journal of Commerce, National Maritime Council, North European Conferences, Trans-Pacific Conferences and Pacific Coast Conferences.

We have not adopted the recommendation of CMA that the contract rate should apply to shipments made prior to return or rejection, regardless of whether the contract or statement of essential terms is "cured" and refiled. The otherwise applicable tariff rate must be charged in such situations where rejected terms or returned contracts are not cured and refiled. Any other procedure would unduly favor contract parties who fail to adhere to the requirements of the Act to the disadvantage of competing carriers and shippers and would operate to the detriment of similarly situated shippers not fortunate enough to be the first shipper signatory of a contract.

The Commission will exercise its return and rejection procedure only during a limited 15-day review period. Moreover, this procedure will apply in situations involving significant deficiencies in contract and essential terms provisions, as suggested by the Inter-American Freight Conference.

Section 580.7(g)—Publication of Essential Terms

Section 580.7(g)(1)

Section 580.7(g)(1) of the Interim Rule requires that the essential terms of all service contracts be filed with the Commission and be made available to the general public in tariff format. In addition, this provision requires that the essential terms be made available to all shippers or shippers' associations which are similarly situated under the same terms and conditions for no less than 30 days from the date of filing.

The Inter-American Freight Conference proposes that the phrase "schedule of essential terms" be substituted for "publication of essential terms", and that the heading of § 580.7(g) be changed to "Essential Terms". It also suggests that the first sentence of § 580.7(g)(1) (which requires the essential terms to be filed with the Commission) be deleted, because § 580.7(h) requires a summary of essential terms to be filed with the Commission and is allegedly more in keeping with the Act's requirement that "a concise statement of essential terms shall be filed with the Commission."

Du Pont would add the words "A concise statement of" at the beginning of § 580.7(g)(1). This suggested change is intended to reflect the statutory language quoted above and to distinguish between the "concise statement of essential terms", which is available to the general public, and the "essential terms" themselves, which are to be made available to all similarly situated shippers. To the extent possible, these suggestions are incorporated in the Final Rule.

The North European Conferences propose that the essential terms publication requirement of § 580.7(g) be revised to provide carriers or conferences with the option of filing a copy of the underlying service contract, minus the name of the shipper, in lieu of a concise statement of its essential terms. NEC further submits that, if such an option is exercised, there would be no reason to reject an essential terms' filing on the grounds that it did not include a term "essential" to the contract.

The Commission is not adopting this proposal. First, section 8(c) of the Act clearly requires that "each contract shall be filed with the Commission" and "*at the same time* a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format". (Emphasis added). This contemplates that initially two distinct documents are to be submitted to the Commission *simultaneously*—one, a contract, and the other, a summary of the contract's essential terms in tariff format. In addition, as explained above in the discussion of geographic areas and port ranges, the concise statement of essential terms may, in certain instances, be geographically broader than the locations stated in the contract. Lastly, a brief summary of essential terms will be easier for prospective shippers to review and will facilitate the administration of the service contract system generally and the possible future computerization of such data. To the extent that a service contract meets all the essential terms' format requirements and is appropriately stated in terms of geographic areas or port ranges, it could be submitted, minus the shipper's name, in lieu of a statement of essential terms.

The Trans-Pacific Conferences oppose § 580.7(g)(1) which requires a carrier or conference entering into a service contract to execute a similar contract, under the same essential terms, with any and all similarly situated shippers and shippers' associations which approach the carrier or conference within the first 30 days after the essential terms are filed. They contend that such a requirement is contrary to the Act and impractical under normal operating conditions. They read section 8(c) of the Act as mandating merely that the statement of essential terms must be made available to the general public and that a copy of those terms must be made separately available to any shipper similarly situated who specifically requests it. They do not believe, however, that they are *required* to accord those identical essential terms to other shippers.

The Commission rejects the contention that a carrier or conference which enters into a service contract has only to provide a copy of its essential terms to any similarly situated shipper who requests it. There is nothing in our review of the Act or its legislative history which supports this position. Section 8(c) makes it clear that carriers must make a concise statement of essential terms available to the general public, but that "*those essential terms shall be available to all shippers similarly situated.*" This latter requirement means more than providing similarly situated shippers with an opportunity to view a copy of the essential terms. If it meant only that, it would be redundant, given the preceding requirement that a concise statement of essential terms be made available "to the general public."

The House Merchant Marine and Fisheries Committee put the publication requirement for essential terms in its proper context when it noted:

> It is hoped that the requirement that a service contract's essential terms be filed publicly so that those terms are available to all other shippers who may wish to use them, will preserve an important element of the common-carriage concept that the bill is based on.
>
> H.R. Rep. No. 53, 98th Cong., 1st Sess. 17 (1983).

The Commission believes that section 8(c) requires a carrier which enters into a service contract to enter into similar contracts with other similarly situated shippers if they desire the same essential terms. This requires, of course, the exercise of sound business judgment on the part of the carrier. However, if a carrier chooses to induce business by means of a service contract, it should be prepared to offer the same essential terms to other similarly situated shippers.

The Commission will not attempt here to establish the limits of a carrier's or conference's obligations under a service contract. Nor will it attempt to define what constitutes a similarly situated shipper. These are matters which are more appropriately resolved on a case-by-case basis.

Section 580.7(g)(2)(iv)—Contract Rates

Section 580.7(g)(2)(iv) requires the statement of essential terms to include "the contract rate, rates or rate schedule, including any additional or other charges (viz. surcharges, terminal handling charges, etc.) that apply."

CMA objects to this provision on the ground that it is an unwarranted expansion of the statutory term "line-haul rate," which it believes is all that need be included. Whatever the definition of "line-haul rate" may be (and it is not defined in the statute), it is clear from the legislative history that this essential term was meant to encompass "all compensation to be paid" under a service contract. S. Rep. No. 3, 98th Cong., 1st Sess. 31, 32 (1983). The Commission's refinement of the term "line-haul rate" is thus fully supported and, moreover, should serve to provide all shippers the requisite information they will need in order to make an informed and intelligent decision concerning a service contract.

The Commission has modified § 580.7(g)(2)(iv) to incorporate Sea-Land's suggestion that conditions and terms of service or operation or concessions which in any way affect such rate or charge be disclosed. In addition, we have adopted Matson's suggestion that retroactive price adjustments based on experienced costs be allowed, if the method of determining such adjustments is disclosed in advance in the service contract and the statement of essential terms.

Section 580.7(g)(2)(v)—Term of Contract

Section 580.7(g)(2)(v) of the Interim Rule requires the statement of essential terms to include "the effective date, period, and expiration date of the contract." The North European Conferences contend that the essential terms' publication need only disclose the "term of the contract." The Commission has accepted this suggestion.

Section 580.7(g)(2)(viii)—Deviation

Section 580.7(g)(2)(viii) of the Interim Rule requires a clear description in the statement of essential terms of any circumstances which will permit deviations from the contract terms. CMA views this provision as an unwarranted expansion of the essential terms which are specified in the Act and suggests that it be deleted. The North European Conferences object to subsection (viii)(D) which permits "other deviations from the terms of the contract." NEC contends that the phrase "other deviations" is too vague, that the word "deviations" is incorrectly employed, and that such a catch-all provision is unnecessary to carry out the Act.

Admittedly, section 8(c) of the Act does not expressly include a deviation provision in its list of seven "essential terms." However, the Commission does not consider its deviation provision, § 580.7(g)(2)(viii), to be an "essential term" separate and apart from those set forth in the statute. Rather it relates back to those essential terms and states that if they are subject to change for any reason, that fact should be made apparent. Any contractual provision which can alter an essential term based on future events is a necessary part of the essential term which it affects. Any other interpretation would undermine the purpose for essential terms publication and frustrate the requirement that such terms be made available to "similarly situated shippers." The Commission will therefore continue to require the statement of essential terms to include any deviations that may affect those terms.

Moreover, we do not believe that the term "other deviations" is vague or uncertain. A similar provision was included in the Commission's earlier time/volume rule and apparently engendered no confusion or difficulty. It is intended to be a catch-all provision so that the contracting parties have the maximum amount of flexibility to meet their commercial needs.

Section 580.7(h)—Form and Filing of Essential Terms

The Journal of Commerce suggests that carriers and conferences be allowed to publish essential terms' publications for both export and import trades. It believes that such a procedure would make it easier for the public and interested persons to determine applicable rates. The Journal of Commerce notes that it provides a computerized tariff watching service which would be better served by separate essential terms publications. We will not adopt its suggestion. It is the Commission's intent that a carrier or conference have only one publication containing its essential terms. However, this publication may be divided by trade areas or any other way the carriers or conferences see fit. Requiring statements of essential terms to be included in one publication reduces the number of essential terms' publications and minimizes the scope of any inquiry to ascertain whether a carrier or conference has any essential terms in which a shipping party might be interested.

Section 580.7(h)(3) requires all essential terms' filings to be "printed on yellow paper using black ink." The North European Conferences would amend this provision to provide that the essential terms' publication be legibly printed in black, without using yellow paper. The yellow paper requirement was designed to facilitate mail sorting of essential terms' publications and thus permit their prompt review. The experience gained in the last 90 days has reinforced our belief that the requirement is workable and useful. It is, therefore, retained. The Commission is, however, incorporating the suggestion of NEC concerning clarification of the printing "in black" rather than "using black ink." This will permit the filing of documents printed other than with black ink (*e.g.*, photocopies).

Section 580.7(h)(5) is amended, as suggested by NEC, to require cross-references only in the general commodity tariff that applies in the particular area covered by the essential terms. In so doing, we reject CMA's suggestion that the requirement for cross-referencing be repealed altogether. Tariff cross-references are necessary for users of tariffs to identify all possible applicable rates.

The Commission is also adding a requirement that the essential terms of a service contract or contracts be identified by an essential terms' number in the governing essential terms publication, rather than a service contract number. Because it is anticipated that numerous contracts may be executed under the same essential terms, it is necessary to differentiate and identify which contracts correspond to the appropriate essential terms. *See also*, our discussion above on § 580.7(b).

Section 580.7(i)—Transmittals of Essential Terms Publications

Section 580.7(i) sets forth procedures for the transmittal of concise statements of essential terms. It is silent, however, on the timing of such filings vis-a-vis the filing of service contracts. The Journal of Commerce suggests the contemporaneous transmittal of a service contract with its statement of essential terms. This approach is consistent with the statutory language that a concise statement of essential terms be filed with the Commission "at the same time" a service contract is filed with the Commission. The Commission is amending section 580.7(i) accordingly.

Section 580.7(k)—Resident Agent

Section 580.7(k) of the Interim Rule requires every common carrier and conference to designate a United States resident representative to maintain contract shipment records for a period of five years from completion of each contract. The North Atlantic Conferences and the Trans-Pacific Conferences oppose this provision, on the grounds that it is burdensome, will result in duplication and increased costs, is not directly supported by the Act, and may conflict with foreign non-disclosure statutes. The Trans-Pacific Conferences also contend that the Commission already possesses sufficient means to ensure that service contracts comport with the Act and that users of service contracts should not be burdened with requirements not applicable to others. They also note that the Commission previously rejected a proposal to require the maintenance of all self-pricing records in the United States. Lastly, the North Atlantic Conferences recommend that, because of the impact of a U.S. recordkeeping requirement on inbound conferences, which mainly conduct their shipping transactions abroad, the Commission should, if a recordkeeping requirement is retained, permit inbound conferences to designate a representative abroad.

The Commission has determined to delete the U.S. recordkeeping requirement. Experience gained under our prior time/volume contract rules, which contained a similar provision, does not reveal a compelling necessity for this requirement, at least at this time. Its primary purpose was to aid the Commission in its enforcement efforts. However, the Commission should be able to obtain such records through normal processes, if needed, on a case-by-case basis. If the Commission encounters any difficulties in obtaining such information, it will consider reimposing the U.S. recordkeeping requirement.

Carriers and conferences must, of course, retain whatever records they deem sufficient to support their contractual arrangements (so identified pursuant to § 580.7(b)(3)(vi) of this Rule) and should do so for at least the five-year statute of limitations period contained in section 13(f)(2) of the Act. However, such records need not be maintained in the United States. Section 580.7(j) of the Final Rule reflects this requirement.

Section 580.7(l)—Time/Volume Rates

As mentioned above, this section and the definition of "time/volume rate" in § 580.7(a)(6) will be redesignated §§ 580.12(b) and 580.12(a), respectively.

Two commenters object to the advance enrollment requirement whereby a shipper utilizing a time/volume rate must notify the offering carrier prior to tendering any shipments. The Pacific Coast Conferences believe that such a requirement might preclude multiple-level time/volume rates which automatically apply a second tier, lower rate once a given volume has been achieved. The North European Conferences contend that the word "enrollment" implies that there is only one acceptable method of administering a time/volume rate offering. They further contend that adequate notice of shipper participation could be provided by means other than "enrollment."

We do not believe that a notice requirement for a shipper intending to utilize a time/volume rate is either unwarranted or impractical. It is difficult to conceive how carriers will know when to apply the lower rate unless informed by the shipper that it intends to use it. The Commission further believes that even with such a requirement, multiple-level time/volume rates are still feasible, assuming some initial notification is provided. The Commission did not intend the word "enrollment" to serve as a limitation on the methods by which a shipper can notify a carrier of its intention to use a time/volume rate. It is therefore amending § 580.7(1) (now § 580.12(b)(3)) to eliminate any confusion which may exist.

The Northern European Conferences also object to the requirement that time/volume rates "remain in effect without amendment for the term specified." They view this requirement as inconsistent with the tariff provisions of the Act and the Commission's tariff filing rules. They concede, however, that it would be inappropriate to allow a time/volume tariff filing to be amended to reduce or terminate the term, if it is being used by at least one shipper.

It was not our intention to require a time/volume rate offering to remain in effect in a tariff for the full term if such an offering has not been accepted by a single shipper. However, the Commission continues to believe that once a shipper gives notice that it is tendering cargo under a time/volume rate offering, the terms of that offering may not be amended during the term specified.

CMA proposes that the record of a shipper's notice of its intention to use a time/volume rate should be maintained for at least one year after the shipper has ceased to use the rate. We find this suggestion to have merit and to impose a minimal burden on the carriers. However, in order to be consistent with the retention requirements for service contracts and the relevant statute of limitations (46 U.S.C. app. 1712(f)(2)), the Commission is going to impose a five-year shipper-notice retention requirement and additionally require that shipment records supporting the time/volume rate be maintained for this period of time.

Lastly, the Trans-Pacific Conferences propose that records supporting a time/volume rate be identified in a manner similar to that by which the shipment records regarding service contracts must be identified pursuant to section 580.7(b)(5) of the Interim Rule, *i.e.*, that the parties identify which shipment records will be used to support the contract. They believe that such a requirement will ensure accountability and aid the Commission in its enforcement efforts.

There is merit to placing a similar record identification requirement on both service contracts and time/volume rates. The Commission has, therefore, decided to amend its time/volume rate provision to require the identification of the shipment records which will be maintained to support application of a time/volume rate. Such an identification can easily be made in the context of the time/volume rate offering in the carrier or conference tariff and should impose little burden on shippers or carriers.

General Comments

A. Thirty Day Notice

In the preamble to the Interim Rule, the Commission suggested the possibility of requiring a 30-day advance notice requirement for the implementation of service contracts as an alternative to return or rejection of defective filings after their effective date. The ten parties that filed comments on this issue were divided as to which method was less disruptive of commercial arrangements and whether the Commission was authorized by law to implement such proposals.

Neither the 30-day notice procedure nor the rejection procedure is based upon an express statutory provision. Either would have to rely upon the general rulemaking authority of section 17 of the Act on the basis that such procedures are necessary to enforce the requirements of section 8(c). One other alternative is to abandon both and rely upon the reactive enforcement methods of sections 11 and 13 of the Act. Given these alternatives, the Commission has determined that a carefully circumscribed return and rejection procedure is the best method of ensuring that service contract filings will meet the requirements of the Act with minimal commercial disruption.

B. Minimum Quantity Guidelines

The Tobacco Association recommends that the Commission establish guidelines on minimum quantities eligible for contract rates to prevent unreasonable preference being given to any one industry. The Commission rejects this suggestion. First, the Commission does not possess the empirical economic data, at this time, upon which it could promulgate such guidelines. More importantly, such action would appear contrary to the fundamental Congressional policy underlying the Act that commercial interests be given maximum flexibility in arriving at their business arrangements. Cases of discrimination can be dealt with on an *ad hoc* basis. Any shipper who believes it has been unlawfully disadvantaged has remedies under the Act and may file a complaint with the Commission.

C. Time/Volume Contracts

Under the 1916 Act, the Commission had permitted the use of time/volume contracts by common carriers by water and had issued regulations governing their use (46 CFR 536.7). The May 3, 1984 Interim Rule continued to permit the use of time/volume contracts by "common carriers" and separately permitted the use of service contracts by "ocean common carriers." This position engendered much opposition from those filing emergency comments on that Rule, prior to its June 18, effective date. In response to these comments, the Commission revised the Interim Rule on June 14, 1984 to *inter alia*, treat time/volume contracts as a form of service contract. No separate provision was made concerning the use of time/volume contracts. The net result of this action is that non-vessel-operating common carriers (NVOCC' s or NVO's), which do not meet the definition of "ocean common carrier", are no longer able to offer time/volume rates on a contractual basis. They can, however, continue to offer time/volume rates in their tariffs pursuant to the June 14, 1984 Interim Rule and section 8(b) of the Act.

Several commenters support this position, contending that service contracts are the only type of volume contracting authorized by the Act and that time/volume contracts have been subsumed within the concept of service contract because they implicitly, if not explicitly, include a carrier service commitment to carry at least the minimum volume within the contract period. One commenter also notes that NVO's by definition, do not operate any vessels and, therefore, are in no position to offer any meaningful service commitment as a *quid pro quo* for a volume commitment.

IANVOCC and NPS International, an NVOCC, challenge the Commission's treatment of time/volume contracts. NPS argues that the Commission erred in equating time/volume contracts with service contracts, because the former do not contain any service commitments while the latter do. It submits that nothing in the Act requires the Commission to eliminate NVO time/volume contracting and points to the absence of any useful legislative history on this issue. NPS concedes that ultimately this is a policy issue and not a legal one, but contends that policy considerations support continued time/volume contracting by NVO's. This commenter concludes that the Commission should republish its time/volume regulations previously in effect under the 1916 Act and make them applicable to both ocean common carriers and NVO's. Alternatively, NPS suggests that the Commission could limit the use of time/volume contracts to NVO's. The IANVOCC essentially reiterates NPS' comments.

As noted above, the Commission's May 3 Interim Rule treated service contracts and time/volume contracts as separate and distinct forms of volume contracting but attempted to apply similar regulatory treatment to them. The Commission's June 14 amendment altered this position by treating time/volume contracts as a form of service contract and thereby deleted any reference to time/volume contracts in the Rule. This decision was not made with the purpose of denying to NVO's the ability to offer time/volume contract arrangements. Rather, it was arrived at because the Commission became convinced that what was previously known as a time/volume contract was nothing more than a type of service contract. This decision was further influenced by its conclusion that Congress has only authorized service contracts and time/volume rates under the 1984 Act.

Section 8(b) of the Act, titled "Time-Volume Rates," permits rates in tariffs to vary with the volume of cargo offered over a specified period of time. Section 8(c), titled "Service Contracts," allows ocean common carriers and conferences to enter into service contracts with shippers or shippers' associations. Nothing else in the Act expressly authorizes any other volume arrangements.[1] Nor is there any

[1] The Commission's May 3 Interim Rule relied on the definition of "loyalty contract" (section 3(14)) as

Continued

discussion in the legislative history of the Act which specifically mentions time/volume contracts or would support the concept of time/volume contracts as separate and distinct from service contracts. Thus, a reading of the statute and its legislative history indicates that Congress contemplated but two types of volume arrangements—time/volume rates, which are set forth in tariffs and are not based upon any contractual arrangement between the shipper and carrier, and service contracts, which are not filed in tariffs, and are based on reciprocal commitments by both the carrier and the shipper.

This position is supported by the language of other provisions of the Act. For instance, a shippers' association is defined in section 3(24) as "a group of shippers' that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other *volume rates* or *service contracts*". [Emphasis added]. If Congress had intended that time/volume contracts be offered as a separate category of volume contracting, it would surely have provided shippers' associations the opportunity to avail themselves of such arrangements. However, under the definition, as written, shippers' associations would be precluded from entering into time/volume contracts.

Sections 10(b)(1) through 10(b)(4) require common carriers to adhere to the rates and charges in their "tariffs" and "service contracts." [2] Time/volume contracts are not separately identified or treated. As a result, if time/volume contracts were allowed as a separate form of volume contracting, it is possible that they would not be subject to these constraints, which go to the essence of a common carrier's obligations to the public.

Moreover, section 109(b)(6) prohibits any common carrier from engaging in any unfair or unjustly discriminatory practice in the matter of rates, cargo classifications, and cargo space accomodations. Likewise, section 10(b)(11) prohibits any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever. What is notable about both of these provisions is that they contain an express exception for *service contracts*. This reflects a Congressional recognition that service contracts would perforce favor some shippers, and might discriminate as to rates or cargo classification, or provide distinct preferences or advantages. *See* H.R. Rep. No. 600, 98th Cong., 2d Sess. 40 (1984). A similar exception was not made for time/volume contracts, which are just as inherently discriminatory. This leads us to conclude that Congress did not contemplate the separate availability of time/volume contracts under that name. Even assuming it did, however, it is clear that such contracts would soon run afoul of these proscriptions.

It has been argued that the reason a time/volume contract is different from a service contract is that the former contains no service commitment while the latter does. The Commission cannot accept this contention and moreover believes that its interpretation may explain Congress' silence on the matter of time/volume contracts—it also considered them subsumed within the definition of a service contract.

Under the Commission's prior time/volume rule, a time/volume rate was defined as "[a] rate conditioned upon the shipment of a specific or minimum quantity of cargo over a set period of time, implementation of which is accomplished pursuant to the terms of a time/volume contract * * *." 46 CFR 536.2(p). However, any such contract had to provide, either explicitly or implicitly, basic service commitments on the carrier's part. The carrier had to provide the space necessary to meet the shipper's volume commitment and had to continue to operate in the trade for the duration of the contract. If a carrier failed to meet these obligations, the shipper would have a remedy at law for breach of contract. Time/volume contracts as previously recognized by the Commission thus fit into the definition of service contract contained in the 1984 Act. Whether explicitly or implicitly stated, it is clear that there were definite carrier service commitments under a time/volume contract. There is no meaningful difference between a service contract and a time/volume contract; the latter is simply a sub-category of the former.[3]

Any contrary conclusion would be inconsistent with Congress' treatment of independent action and its relation to service contracts. Congress gave conferences the authority to limit or prohibit the use of service contracts and also exempted such contracts from the mandatory right of independent action, since they were not required to be filed in tariffs. All conference agreements, however, had to provide their members independent action on any rate or service item required to be filed in a tariff, on not more than 10 days' notice. It the Commission were to permit all common carriers to offer time/volume contracts in lieu of or in competition with service contracts, the situation could arise where carriers, through the use of time/volume contracts (to which independent action would apply) could do indirectly what Congress has not authorized them to do directly.

The Commission is not unmindful of the concerns raised by NPS and IANVOCC. However, the Commission is constrained by the Act and is in no position to provide solely for NVO's something Congress saw fit to deny them. In any event, NVO's still have the option of offering time/volume rates, governed by the provisions of this Rule. Lastly, the Commission notes that even if time/volume contracts were permitted, it is likely that NVO's would have difficultly offering them, given their implicit service commitments and the fact that NVO's have, by definition, no meaningful service to commit and no control over the underlying carrier's schedules, capacity, or services in a particular trade.

an indication that Congress recognized the concept of a time/volume contract. In view of the other statutory provisions discussed below, the Commission no longer draws this inference. It is important to note, however, that section 3(14) is the only reference in the statute or its legislative history to time/volume "contracts." That reference in section 3(14) to a "contract based upon time-volume rates" may be to nothing more than the arrangement which arises from a time/volume rate offering in a tariff. In any event, whatever Congress may have meant by a "contract based upon time-volume rates," it was doing so in the context of contracts offered by *ocean common carriers* and not NVO's.

[2] Section 10(b) states in pertinent part:

No common carrier, either alone or in conjunction with any other person, directly or indirectly; may—

(1) charge, demand, collect or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its *tariffs or service contracts;*

(2) rebate, refund or remit in any manner, or by any device, any portion of its rates except in accordance with its *tariffs or service contracts;*

(3) extend or deny to any person any privilege, concession, equipment, or facility except in accordance with its *tariffs or service contracts;*

(4) allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its *tariff* or *service contract* by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means. (Emphasis added).

[3] While NVO's may have offered time/volume contracts under the Commission's previous rule, they had no actual service to commit since they do not actually operate vessels as ocean common carriers. However, that earlier rule had coupled the concept of time/volume rate with time/volume contract—a carrier could not offer one without entering into the other. Even though they had no service to commit, NVO's were forced by circumstances to enter into time/volume contracts with shippers. The 1984 Act expressly rectifies this anomaly by permitting time/volume rates by any common carrier (including NVO's) but restricting service contracts to ocean common carriers who have the requisite service.

II. Loyalty Contracts—Docket No. 84–23 (Section 580.16)

On May 17, 1984, the Commission published an Interim Rule (49 FR 20617) in Docket No. 84–23 governing loyalty contracts (or dual rate contracts, as they were referred to under 1916 Act regulation (46 CFR Part 538)). The purpose of the Interim Rule was to implement section 10(b)(9) of the 1984 Act (46 U.S.C. app. 1709(b)(9)) which states that:

(b) No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

* * * * *

(9) Use a loyalty contract, except in conformity with the antitrust laws;[4]

The Interim Rule deleted the Commission's regulations governing "dual rate contracts" in 46 CFR Part 538 and added a new provision to the Commission's tariff filing regulations in 46 CFR Part 536 (now 46 CFR Part 580) reading as follows:

§ 536.16 Loyalty Contracts

(a) A sample of any loyalty contract, as defined in this part, must be filed in the applicable tariff together with rules which set forth the scope and application of the contract system.

(b) Every sample loyalty contract and applicable rule filed for inclusion in a tariff under paragraph (a) of this section shall make specific reference to a Business Review Letter, issued pursuant to 28 CFR § 50.6, indicating no objection to the use of that contract. A copy of the Business Review Letter shall be simultaneously furnished to the Commission's Director, Bureau of Tariffs. Failure to comply with these requirements will result in the rejection of the contract and the applicable rules pursuant to § 536.10(d).

(c) The use of any loyalty contract in effect prior to June 18, 1984 shall be prohibited after September 18, 1984 unless supported by a Business Review Letter issued pursuant to 28 CFR 50.6. Such Business Review Letter shall be furnished to the Director, Bureau of Tariffs.

The Interim Rule became effective on June 18, 1984 and interested persons were provided 60 days to comment on the Rule. Prior to the Interim Rule's effective date, "emergency" comments were received from Admiral R.A. Ratti, Chemical Manufacturers Association, and Trans-Pacific Freight Conference of Japan/Korea and Japan/Korea-Atlantic and Gulf Freight Conference (TPFC]/K). The Commission published a response to the "emergency" comments on June 14, 1984 (49 FR 24696), in which it restated its earlier interpretation of the Act as it applied to loyalty contracts and affirmed the Interim Rule.

Ten additional comments were filed between the effective date of the Interim Rule and the close of the comment period. The Council of European & Japanese National Shipowner's Associations (CENSA), the National Maritime Council (NMC), TPFC]/K and the Gulf Freight Conference, and U.S. Atlantic & Gulf/Australia New Zealand Conference, et al. (USA&G/A–NZ) generally oppose the Interim Rule. Sea-Land Service, Inc. favors the Rule with some modifications. The Department of Justice (DOJ), the Department of Transportation, and Corning Glass Works generally support the Rule as written, and the Tobacco Association of United States favors elimination of all loyalty contracts.[5]

USA&G/A–NZ, TPFC]/K and CENSA argue that the Commission, as the agency charged with enforcement of the 1984 Act, is responsible for enforcing section 10(b)(9). They believe that the Commission's reliance on a Business Review Letter (BRL) improperly delegates enforcement of section 10(b)(9) to DOJ. These parties further submit that the Commission has the necessary expertise to deal with the antitrust issues which will arise under section 10(b)(9).

USA&G/A–NZ, TPFC]/K and CENSA point out that a BRL only states DOJ's current enforcement intentions and does not determine whether the proposed activity is contrary to the antitrust laws. Accordingly, they argue that, by relying on the BRL, the Commission is applying the wrong standard to determine whether carriers and conferences are in compliance with section 10(b)(9).

CENSA further contends that carriers and conferences do not have the burden of proving that they fall within the exception to section 10(b)(9). Accordingly, it believes that the Commission cannot even require carriers and conferences to obtain BRL's before entering into loyalty contracts with shippers.

CENSA and TPFC]/K also submit that the Commission has no summary tariff rejection authority for substantive violations of the 1984 Act, including a violation of section 10(b)(9). They argue therefore that a loyalty contract may only be rejected after notice and opportunity for hearing. USA&G/A–NZ, TPFC]/K and CENSA interpret the Interim Rule as providing no appeal from denial of a BRL and no opportunity for hearing under the procedure contemplated by the Interim Rule. Sea-Land concurs with these observations and suggests that carriers and conferences be permitted to either file a BRL or prove in a hearing that no antitrust violation exists by use of a particular loyalty contract.

In supporting the Interim Rule, DOJ argues that the Rule fully comports with the 1984 Act, properly reflects applicable antitrust law, and that its promulgation met all appropriate statutory procedures. With respect to the prospect of its issuance of the BRL's contemplated by the Rule, DOJ advises that:

Such a favorable business review will be likely where the Department is presented with a unilateral loyalty contract involving but a single carrier that does not possess significant market power. A favorable business review letter will not be issued, however, for existing and future loyalty contracts of conferences or groups of competitors, because the Department of Justice does not intend to issue business review letters supporting collective loyalty contracts. [Footnote omitted]

All conference loyalty contracts in existence on June 18, 1984, have now been cancelled. This effectively renders moot that portion of the Interim Rule dealing with contracts "in effect" prior to that date (paragraph (c) of the Interim Rule).[6] Thus, it is appropriate for the Commission to now focus on those portions of the Interim Rule that apply to *new* loyalty contracts, that is, contracts filed after June 18, 1984 (paragraphs (a) and (b) of the Interim Rule).

The regulatory scheme pertaining to loyalty contracts filed after June 18, 1984 differs in some respects from that applicable to loyalty contracts existing at the time the 1984 Act became effective. In the case of an existing loyalty contract that was not accompanied by a BRL, the Interim Rule contemplated that the Commission would afford the parties some form of hearing before terminating the contract.[7]

[4] "Loyalty contract" is defined in section 3(14) of the Act (and in the Commission's tariff rules at 46 CFR 580.2(k)) as:

* * * a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.

[5] The suggestion that the Commission abolish *all* loyalty contracts goes beyond the scope of this rulemaking and, moreover, appears contrary to the 1984 Act.

[6] On June 18, 1984, there were 34 loyalty contracts on file with, and approved by, the Commission. Thirty-three of these involved conferences of carriers. The limited legislative history relating to the loyalty contract provision in the Act indicates that while "loyalty contracts involving a single carrier would probably be lawful, * * * any concerted use of loyalty contracts by carriers is likely to violate the antitrust laws." 129 Cong. Rec. H6125 (daily ed. Oct. 6, 1983) (statement of Rep. Jones).

[7] As was stated in the Supplementary Information to the Interim Rule in addressing the concerns

Continued

The same procedure would not necessarily apply to new loyalty contracts because the Interim Rule provides that the Commission will "reject" any loyalty contract that is not accompanied by a BRL. In addition to this procedural distinction, the possible broader antitrust exposure of new loyalty contracts must also be considered. Whatever the antitrust exposure of existing loyalty contracts may have been, the Commission believes, for reasons discussed below, that the use of a loyalty contract filed after June 18, 1984 may violate *both* the antitrust laws[8] *and* section 10(b)(9) of the Act. This suggests that the considerations which prompted the mandatory BRL requirement for existing loyalty contracts may be different from those applicable to new loyalty contracts.

Therefore, the Commission has decided to modify its procedures applicable to loyalty contracts by deleting the mandatory Business Review Letter requirement in the Final Rule. Section 580.16 will be modified in paragraph (b) to make the filing of a BRL *permissive*, with BRL's creating a presumption of legality under section 10(b)(9) of the 1984 Act. Paragraph (a) of § 580.16, which requires that conferences and carriers reflect in their tariffs on file with the Commission any loyalty contract system employed, is mandated by section 8(a)(1)(E) of the 1984 Act and will be retained.

This amended procedure will leave the Commission free to address the merits of individual loyalty contracts under section 10(b)(9) on a case-by-case basis upon complaint or its own motion where circumstances warrant. The result will be to treat section 10(b)(9) in the same manner as any other act "prohibited" under section 10.[9]

It has been suggested that the use of a loyalty contract filed after June 18, 1984, while required to be "in conformity with the antitrust laws" under section 10(b)(9) of the 1984 Act, is an "activity" which otherwise enjoys antitrust immunity by virtue of section 7(a)(2) of that Act.[10] A review of the legislative history of the 1984 Act suggests othewise.

Section 7(a)(3) of H.R. 1878, as reported out of the House Merchant Marine and Fisheries Committee and the House Judiciary Committee, conferred antitrust immunity on:

> (3) any loyalty contract in compliance with section 6 or any activity pursuant to such loyalty contract;

Section 6, to which section 7(a)(3) referred, set forth the requirements pertaining to loyalty contracts. There was significant disagreement between the two Committees regarding the contents of section 6. In order to resolve this dispute, the two Committees reached a compromise which resulted in the deletion of sections 6 and 7(a)(3) and the addition of what is now section 10(b)(9). The following explanation of the deletion of antitrust immunity was given on the floor of the House by Representative Jones:

> The compromise eliminates subsection (a)(3), a provision no longer needed in view of the broader proscription on the use of loyalty contracts in section 9(b)(9) [now 10(b)(9)].

129 Cong. Rec. H 6125 (daily ed. Oct. 6, 1983) (statement of Rep. Jones).

It would appear, therefore, that Congress intends to subject loyalty contracts filed after June 18, 1984 to both section 10(b)(9) of the 1984 Act *and* the antitrust laws.[11] Accordingly, to construe section 7(a)(2) as conferring antitrust immunity on loyalty contracts could well frustrate the intent of Congress. Moreover, if Congress did not intend to impose liability apart from the antitrust laws, there would appear to have been no need for section (b)(9). In order to give meaning to section 10(b)(9), therefore, it would be logical and reasonable to construe it as imposing liability separate from that imposed by the antitrust laws.

III. Foreign Tariff Regulations General—Docket No. 84-24 (Sections 580.0 to 580.6; 580.8 to 580.11; 580.13 to 580.15)

On May 23, 1984, the Commission issued an Interim Rule in Docket No. 84-24 governing the publishing and filing of tariffs by common carriers in the foreign commerce of the United States to implement the 1984 Act (49 FR 21713). The Interim Rule was to become effective on June 18, 1984, and interested persons were permitted to file comments on or before June 22, 1984. In addition, persons believing the Interim Rule created serious problems were urged to bring those concerns to the Commission's attention in writing for immediate review without prejudice to the right of any such party to file further comments within the comment period.

Thereafter, on June 11, 1984, the Commission extended the comment period to July 23, 1984 (49 FR 24023). Between the May 23 and June 11 notices, two carriers filed "emergency" comments requesting certain technical amendments to the Interim Rule. The Commission acceded to the requests of those parties and adopted appropriate modifications.

Thereafter, final comments were filed by 36 parties or groups of parties [12]

---

expressed by a commenter that paragraph (c) of the Interim Rule automatically terminated existing contracts without opportunity for hearing:

> The rule simply does not provide for the "automatic" termination of loyalty contracts. Failure by the carriers and conferences to comply with the rule would require further action by the Commission under the 1984 Act. Such further action would necessarily afford the opportunity for any hearing required by law. 49 FR at 24027.

[8] In mandating BRL's in its Interim Rule, the Commission explained that:

> Only the Department of Justice, which is charged with the enforcement of the antitrust laws, can provide carriers with some assurance that they will not be prosecuted under the antitrust laws for use of a loyalty contract. 49 FR at 20618 n. 2.

[9] As indicated in the "Supplementary Information" to the Interim Rule, substantive provisions of section 10, other than 10(b)(9), may be applicable to loyalty contracts. In *Federal Maritime Board v. Isbrandtsen Company, Inc.*, 356 U.S. 481 (1958), the Supreme Court set aside the Board's approval of a dual-rate system on the ground that it was a discriminatory and unfair method to stifle outside competition in violation of the 1916 Act. The substantive prohibitions underlying the *Isbrandtsen* decision have been carried over in one form or another to the 1984 Act in section 10. While the *Isbrandtsen* decision led to the 1961 enactment of section 14b, an amendment to the 1916 Act to permit dual rate contracts with Commission approval, section 14b was repealed by section 20 of the 1984 Act (46 U.S.C. app. 1719).

[10] Section 7(a)(2) of the 1984 Act (46 U.S.C. app. 1708) provides:

> The antitrust laws do not apply to * * * any activity * * * within the scope of this Act, whether permitted or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that * * * it is pursuant to an agreement on file with the Commission and in effect when the activity took place.* * *.

[11] It is possible that shippers may also have antitrust exposure to the extent they are party to unlawful loyalty arrangements with such carriers.

[12] North Atlantic European Conferences (NEC); Greece/U.S. Atlantic Rate Agreement, Iberian/U.S. North Atlantic Freight Conference, Marseilles North Atlantic U.S.A. Freight Conference, Med-Gulf Conference, Mediterranean-North Pacific Coast Freight Conference, U.S. Atlantic & Gulf/Australia-New Zealand Conference, and West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC); Trans-Pacific Freight Conference of Japan/Korea, Japan/Korea Atlantic and Gulf Freight Conferences, Trans Pacific Freight Conference (Hong Kong), New York Freight Bureau and Philippines North America Conference; Latin America Pacific Coast Steamship Conference, North Europe-U.S. Pacific Freight Conference, and Pacific Coast River Plate Brazil Conference and their Member Lines (Latampac); Chemical Manufacturers Association (CMA); Matson Navigation Company, Inc. (Matson); Zim Container Service; Inter-American Freight Conference (IAFC); Sea-Land Service, Inc. (Sea-Land); National Maritime Council (NMC); Westwood Shipping Lines, Inc.; Greene Companies International Inc.; Coordinated Caribbean Transport, Inc.; Neptune Orient Lines, Ltd.; Box Caribbean Agencies Trinidad Ltd.; Barber Blue Sea Lines, Inc.; Hanjin Container Lines, Ltd.;

Continued

representing all segments of the maritime community.

All of the comments have been carefully considered and many adopted. Several miscellaneous non-substantive administrative and technical changes have been incorporated into the Final Rule without being expressly discussed.

Some comments were received concerning sections of 46 CFR Part 580 which were not changed by the Interim Rule. The revisions to Part 580 that were made in this proceeding were limited to those required by changes in law brought about by the enactment of the 1984 Act. Accordingly, whatever their merits, comments suggesting substantive changes to Part 580 not contemplated by the Interim Rule are beyond the scope of this proceeding and will not be considered. Among such comments are NEC's suggestion to further define the term "all or a fixed portion" in the "loyalty contract" definition § 580.2(k)), and the recommended expansion of the "open rate" definition § 580.2(o)). Several other suggested non-substantive style or technical revisions which result in a simplification or clarification of Part 580 provisions were adopted, *e.g.*, § 580.3(j) (exceptions to the single tariff requirement) and § 580.2(w)(1) (electronic tariff filing format exception).

Summarized below are the significant suggestions of the commenting parties. These comments, together with discussion and disposition, are presented sequentially, according to the section number they address. Any comments not expressly mentioned herein, have either been incorporated as a technical change without discussion or have been found to be without merit, unwarranted, or unnecessary.

General Comments

One of the stated purposes of the 1984 Act is to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the U.S. foreign commerce. These regulations implement the tariff filing requirements of the Act.

Included in section 3 of the Act (46 U.S.C. app. 1702) are new and revised common carrier definitions. Common carriers are divided into two categories: ocean common carriers (otherwise known as vessel operating common carriers or VOCC's) and non-vessel-operating common carriers (also known as NVOCC's or NVO's). This latter type of carrier was not previously defined by statute. Because the Act makes no distinctions in the tariff filing responsibilities between VOCC's and NVOCC's, parties should note that the requirements contained in the Final Rule are equally applicable to both types of common carriers, whether they are domiciled in the United States or in a foreign country.

IAFC suggests that the Commission should explicitly state that any references to a section in Part 536 are amended to refer to the section with the same suffix number in Part 580.

The Commission has adopted IAFC's suggestion to the maximum extent possible. The Interim Rule stated that Part 536 of Title 46, Code of Federal Regulations was redesignated Part 580 and that all internal references would be changed accordingly. Such changes have now been made and any references to Part 536 have been deleted.

Section 580.1—Exemptions and Exclusions

Section 580.1(a)

Section 580.1(a) exempts bulk cargo, forest products, recycled metal scrap, waste paper and paper waste from tariff filing requirements consistent with the treatment of those commodities under the Act. NEC suggests that this paragraph be revised to allow common carriers and conferences to optionally file rates and charges on those exempted commodities in their tariffs.

While there does not appear to be any legal barrier to allowing the filing of rates and charges on exempted commodities on an optional basis by an individual carrier, conferences' authority to do so is not as clear. The issue is whether Congress' exemption of certain commodities precludes concerted rate action on those commodities with or without antitrust immunity. That issue will be the subject of a separate proceeding. At this point, conferences may file rates and charges on exempt commodities, at their option. However, this is permitted without prejudice to any subsequent Commission determination of the legality of such practices.

However, to the extent carriers and conferences elect to file rates and charges on exempt commodities, the Final Rule makes it clear that the prohibitions of section 10 of the 1984 Act and any other statutory and/or regulatory requirements applicable to non-exempt commodities will apply to such filings.

Section 580.2—Definitions

Section 580.2(b)

CMA urges the Commission to clarify that bulk cargo loaded in LASH and Seabee barges is included within the definition of "bulk cargo." This suggestion is consistent with earlier Commission interpretations, and has, accordingly, been incorporated into the Final Rule.

Section 580.2(e)

NEC notes that the Commission, in defining "common carriers" in § 580.2(e), used the term "responsibility", but used the term "liability" in § 580.8(b)(3) when describing the obligations of common carriers, and requests a clarification of these terms.

The definition contained in § 580.2(e) reflects the Act's definition of "common carrier." There was no intention to create a distinction between "responsibility" and "liability." In the interest of consistency, "responsibility" is substituted for "liability" in § 580.8(b)(3) of the Final Rule.

Section 580.2 (i) and (j)

NEC submits that the definitions of "joint rates" and "local rates" in §§ 580.2 (i) and (j), respectively, are inadequate. It suggests that: (1) both be characterized as "ocean" rates; (2) "joint rates" be limited to route combinations resulting from transshipment agreements, and; (3) the definition of "local rates" expressly identify the specified types of prior or subsequent movements which do not alter the rate charged. The purpose of those suggestions is to allow a common carrier to employ other types of water carriers to perform part of the all-water service covered by its "local rates."

The Commission has substantially revised the intermodal tariff filing requirements of § 580.8 and has reduced the number of definitions. These revisions should eliminate any confusion between joint rates and local rates. Similarly, because the definition of "local rates" can reasonably be construed as permitting the employment of other water carriers by a common carrier in establishing an all-water route, the revisions suggested by NEC are not required.

Section 580.2(k)

Transpac, IAFC and NEC recommend that the definition of "loyalty contract" be revised to track the definition of section 3(14) of the 1984 Act. Transpac

---

Central Gulf Lines, Inc.; International Tariff Filing Services, Inc. (Transax Data Corporation); Norton Lilly & Co., Inc.; Maritime Cost and Service Company; T.M.T. Shipping & Chartering of La. Inc.—Agents for Deppe Line; M. G. Otero Company Inc.; Hapag-Lloyd Transpacific Service; Yellow Freight International; Spartan International; Pacific Coast European Conference, Latin America/Pacific Coast Steamship Conference; Pacific Coast River Plate Brazil Conference; Southern Cross Overseas Agency, Inc.; Traffic Service Bureau, Inc.; Distribution-Publications, Inc.; Transmares S.A.; Interocean Express Line; Sherwood Medical; Foss Alaska Lines; TAT Airfreight, Inc.; and F.W. Myers & Co., Inc.

claims that the Interim Rule could be read to cover forms of arrangements not includable under the statutory definition.

The Commission has modified the definition of "loyalty contract" in the Final Rule as suggested by Transpac, IAFC, and NEC.

Section 580.2(p)

NEC suggests that the "open for public inspection" requirement for tariffs be eliminated entirely. It argues that no regulatory or commercial purpose is served by requiring carriers to maintain tariffs in all of the places the Interim Rule describes.

The Commission is presently giving consideration to the automation of tariffs. If and when tariff publications are automated, which would permit the ready retrieval of information at a variety of locations, this requirement may become unnecessary. Until that time, however, the need to have tariffs "open for public inspection" at locations convenient to the tariff user is the only practical way of implementing the publication requirement of section 8 of the Act.

Section 580.2(q)

NEC suggests that "another country" be used instead of "foreign country" in defining "person" and elsewhere in the Final Rule. "Foreign country" is used in the Act's definition of "person" and will be retained.

Section 580.2(w)(1)

NEC recommends that the Final Rule allow the electronic filing of entire tariffs and not just "tariff pages". It argues that because § 580.5(a) requires title pages to be filed on "heavier paper than the paper used in the body of the tariff" an exception should be made for those title pages filed electronically to avoid the problems inherent in using two different qualities of paper on computer printers.

The NEC comment is well taken. Accordingly, the Final Rule eliminates the "heavy paper" requirement for title pages in § 580.5(a).

Section 580.3—Filing of Tariffs; General

Section 580.3(j)

NEC suggests that an exception to the single tariff requirement for conferences and rate agreements be allowed for ratemaking agreements between groups of conferences, or between conferences and independent carriers, or new conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements. NEC argues that, administratively and practically, effective tariff harmonization cannot be accomplished by a newly approved agreement's effective date and that, therefore, the Commission's present single tariff requirement has to be routinely waived whenever a new conference is formed or an existing conference's authority is expanded.

NEC's suggestion has merit and is incorporated in the Final Rule.

Section 580.4—Tariff Format

Section 580.4(f)

The Interim Rule eliminated a previous Part 536 requirement that a check sheet be included in a tariff. The Final Rule makes such "check sheets" optional. Check sheets are used to provide a record of the correction numbers assigned to amendments issued to tariffs. Typically, correction numbers are handwritten on the check sheet as the new tariff amendments are published or, for the agency's purposes, as the amendments are recieved for filing with the Commission. A limited number of tariff publishers avoid the manual notation of correction numbers on check sheets by publishing and filing a check sheet containing the preprinted numbers of all the effective corrections with page identifications each time the tariff is amended. This practice stems from the domestic tariff filing rules of the Interstate Commerce Commission which require such a control system.

Those opposing the elimination of check sheets described its use as a necessary means of confirming or ensuring that all amendments have been received and accounted for up to the date and correction number shown on the last entry on the check sheet. It is also argued that the procedure preserves the integrity of rate quotations.

Many comments were directed towards describing the commenters' individual needs for tariff check sheets. Most of the comments noted that without a check sheet a tariff user would be unable to determine whether the publication was complete at any given time. It is pointed out that under the check sheet recording system, gaps in the numbers noted on the check sheet alert a tariff user to the potential that there may be page amendments missing or unaccounted for which could affect any rate quotation or tariff rule. Check sheets are also said to be used to monitor rate changes of selected carriers where, by merely recording the latest correction numbers, a competing carrier or tariff watching service can readily determine at any later date the identification of pages or rate changes which were filed since the tariff was last reviewed.

Admittedly, the check sheets provide a simple means of monitoring tariff changes. However, at issue here is whether the Commission should be called upon to bear the considerable expense and burden of maintaining the tariff check sheet requirement for use by the shipping industry when, for the purpose of carryi g out its functions and responsibilities, the check sheet is not necessary to the Commission.

From the Commission's standpoint the check sheet serves little, if any, regulatory or tariff husbanding purpose. When a new or initial tariff is filed, every page is reflected as "original page." When a page is amended, the replacement page must be numbered in a numerically consecutive order with the first revised page cancelling the original page, the 2nd revised page cancelling the first revised page, etc. Hence, the highest numbered revised page contains the rates in effect. The effective time period of any rate item is easily traced by observing the effective date published on each and every revised page. In the event that any consecutively numbered revised page is not received for filing (which would show up as a gap on a check sheet) the subsequent filing could be rejected since it would cancel a non-existing tariff page. The check sheet, it should be noted, does not alter the application of rates in any manner.

It is neither practical nor meaningful for the Commission to expend considerable time and resources working with a carrier or publishing agent when gaps or missing correction references occur on a check sheet because there is no requirement that the relating correction numbers be filed in consecutive order. A tariff filer who fails to place its publication on file, or fails to ensure that amendments are received by the Commission, does so at its own risk. The Final Rule contains provisions to provide for the receipt of tariffs and amendments. Because "filing" is elsewhere defined as receipt *by the Commission* (*see* 580.3(a)(1)) and the failure to file is a statutory violation, the check sheet safeguard is only a commercial convenience.

The Commission is not insensitive to the needs of persons utilizing tariffs and check sheets. However, it cannot afford to dedicate a substantial portion of its resources on functions which are superfluous to its regulatory responsibilities. In order to accommodate the needs of these persons, the use of check sheets will be permitted on a voluntary basis for use by such entities and not for processing by the Commission. This alternative is preferable to either prohibiting them or imposing them as an additional regulatory burden on all tariff filers.

Section 580.5—Tariff Contents

Section 580.5(d)

Former § 536.5(d) governing "transshipment service" was deleted in the Interim Rule. Certain commenters note that the Commission's Interim Rule on agreements continues to require that any transshipment service be reflected in a tariff (46 CFR 572.310).[13] The Commission is urged to resolve the apparent conflict.

The Commission has decided to reinstate the transshipment service provision in the Final Rule to ensure consistency between the requirements of Part 580 and Part 572. However, to avoid subjecting tariff filers to unnecessary paperwork or expense, the Commission is deleting Exhibit 8, referred to in the previous § 536.5(c)(13), which specified a detailed format for transshipment service tariffs. Transshipment service tariffs which comply with the general tariff format requirements and the specific requirements of § 580.5(d)(13) should be sufficiently clear to serve their regulatory purpose.

Section 580.5(d)(18)

This section, redesignated § 580.5(d)(20) in the Final Rule, governs "overcharge claims" and provides, *inter alia*, that refund claims for overcharges may be filed within three years of the date the cause of action accrued. NEC contends that compliance with this section could be construed to constitute a waiver of constitutional rights and defenses.

Section 11(g) of the 1984 Act (46 U.S.C. app. 1710(g)) permits claims to be filed within three years. This change from the Shipping Act, 1916, which provided a two year limitations period, is reflected in the Final Rule. Questions regarding attempts to revive claims barred by the two year limitation of the 1916 Act will be determined on an *ad hoc* basis in cases where they arise. *See Application of Shipping Act of 1984 To Formal Proceedings Pending Before Federal Maritime Commission on June 18, 1984*, 49 FR 21798, May 23, 1984.

Section 580.6—Statement of Rates and Charges

IAFC urges clarification of the use of the terms "rate" and "charge", noting that although the terms are used conjunctively in the title to § 580.6, there is no reference to the term "charges" in the text of the section itself.

The Act requires the filing of both "rates" and "charges" but draws no clear distinction between them. The Final Rule will, therefore, reflect the statutory language where appropriate.

Section 580.8—Tariffs Containing Through Rates for Through Transportation

Many of the commenters suggestions intended to simplify and clarify filing regulations have been incorporated into the Final Rule. The provisions contained in the Final Rule should also more closely follow the statutory scheme of the 1984 Act.

Section 580.8(a)

Section 580.8(a) of the Final Rule defines only two intermodal tariffs terms: "through rate" and "through transportation." These are the only definitions needed to implement existing intermodal tariff filing requirements and concepts. The definitions of "contracting carrier," "joint through intermodal rate," "participating carrier," "through rate" and "through intermodal rate" contained in the Interim Rule were deemed unnecessary and have been deleted.

The Interim Rule defined the terms "contracting carrier" and "participating carrier" to draw distinctions between "through intermodal rates" and "joint through intermodal rates." The 1984 Act, however, does not make this distinction and requires only that each carrier and conference file tariffs showing all its rates, charges, etc., "* * * between all points or ports on its own route and on any through transportation route that has been established." (46 U.S.C. app. 1707). The Final Rule will allow common carriers and conferences to file through rates for any *type* of through transportation. The through transportation services provided by common carriers and conferences may be the result of various forms of contractual relationships between those participating in the service. The matter of a common carrier providing a through transportation service in conjunction with a carrier not subject to the Act is governed by § 580.8(b)(3), which requires common carriers to provide in the contract of affreightment a clear explanation of the carrier's responsibility when through transportation services are offered.

Section 580.8(b)

Section 580.8(b) prescribes tariff filling requirements for through transportation services. These requirements are in addition to those for port-to-port service tariffs.

Matson suggest that the Interim Rule be amended to clarify whether through rates must be published in separate tariffs or may be combined with tariffs containing port-to-port rates. Carriers and conferences will not be precluded from including both through rates and port-to-port rates in the same tariff publication. The Final Rule is clarified accordingly.

NEC commented that the Interim Rule should not be interpreted to require that a comprehensive list of services be named on the title page of each tariff. The Final Rule is amended to require that the title page of each through rate tariff contain only a list of the countries to, from, or between which the through rates apply, and a *brief* description of the modes of service offered under the tariff.

The Final Rule further modifies the previous tariff filing requirement that specific ports through which through shipments may move be listed, and permits carriers and conferences to name a range or ranges of ports to be utilized for through movements to reflect the routing for through intermodal transportation.

Likewise, the Final Rule carriers forward the Interim Rule provisions which allow common carries and conferences to establish through rates to, from or between all points within a region. While official government publications naming identified regions, such as the *National Five Digit ZIP Code and Post Office Directory*, are acceptable to specify a region, the suggestions of NEC and WINAC that tariff filers be permitted to define regions by non-official descriptions are rejected. Absent an objective standard to guide tariff writers and users, a proliferation of methods to describe regions can be anticipated, undermining the Commission's underlying policy of tariff simplification.

Sea-Land proposes several amendments to expand the disclosure of participating carrier services to all types of intermodal tariffs. In eliminating the definitions of "joint through intermodal rate" and "participating carrier", the Final Rule also necessarily does away with the Interim Rule's requirement that intermodal tariffs separately list each point served by each participating carrier. By expressly providing that inland through rate divisions need not be disclosed in intermodal tariffs, Congress made a basic determination not to subject the specifics of inland carrier rates to Shipping Act tariff disclosure. This policy underlies the

[13] Docket No. 84-28—*Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984*. (49 FR 22296, May 29, 1984).

elimination and simplication of many previously prescribed through rate tariff requirements as they applied to inland movements. Sea-Land's proposals are contrary to this basic policy and, therefore, are not adopted.

NEC suggests that the requirement in section 580.8(b) that tariffs contain on the "title page or an interior page referenced on the title page" a list of the points/ports to which the rates apply be eliminated because this information is already contained on the rate pages themselves and need not be repeated elsewhere. This suggestion will not be adopted. Absent a list or description on a tariff's title or interior page of the points/ports to which the tariff applies, tariff users would have great difficulty finding the rate to be applied to their particular shipments. Some title pages filed with the Commission have contained broad scope descriptions, *e.g.*, "European Continent," but internally listed ports/points in only a few countries. This has resulted in shippers being required to examine each page of a number of generally described tariffs, a practice which has substantially thwarted the underlying regulatory purpose of tariffs, *i.e.*, the ready disclosure of rates to shippers. It is only through a title or internal page listing that the tariff user is able to determine the scope of the publication and find the desired rate without having to page through each tariff. Accordingly, the Final Rule requires that the listing of points, ports, or regions be shown in Rule No. 1 of the tariff, and that the title page describe the general scope of the tariff by naming the countries to, from or between which the rates apply. These requirements will facilitate rapid determination of the appropriate intermodal tariff.

Section 580.8(c)

Section 580.8(c) of the Interim Rule governs amendments to intermodal tariffs. Latampac contends that this paragraph could allow an individual conference line to take one-day independent action on a new service point. This would allegedly cause disruptive intra-conference competition with a deleterious impact on the trades as a whole and would be inconsistent with conference authority to regulate advance notice of independent action, subject to the 10-day limitation of section 5 of the 1984 Act. Latampac urges the Commission to clarify §580.8(c) by reference to such conference authority under section 5 of the 1984 Act.

The Final Rule contains a number of provisions which may generally authorize filings that conflict with limitations placed on conference members by their particular conference agreement. Rather than complicate the Final Rule with a number of exceptions such as the one suggested by Latampac, the Commission will generally interpret such provisions as not authorizing violations of conference agreements. The provision allowing the filing of new inland points is retained and now appears in section 580.8(b).

NEC opposes exempting controlled carriers from the 30-day notice requirements with respect to tariffs establishing new or initial joint through intermodal rates and/or through intermodel rates. NEC argues that the Interim Rule repeals the special permission provisions of section 9(c) of the 1984 Act (46 U.S.C. app. 1708(c)) and that such an exemption otherwise undermines the purposes of the controlled carrier provisions of the statute.

NMC is also opposed to easing the 30-day notice requirements for controlled carriers. NMC contends that the Interim Rule appears to be inconsistent with the 1984 Act and recommends that the Commission reinstate the requirement that controlled carriers observe a 30-day filing period, subject to *ad hoc* exceptions, rather than extend exceptions on an across-the-board basis.

Likewise, Sea-Land recommends that the Commission apply a special permission approach similar to that found in § 580.10(a)(3) to allow controlled carriers' rates to be filed on less than 30 days notice in lieu of a general waiver of the notice period for rates that meet but do not go below those previously established by non-controlled carriers. Sea-Land claims that the proposed modification would maintain the proper conformity between Part 580 and section 9 of the 1984 Act.

To avoid a possible conflict with the intent of the controlled carrier provisions of the Act, section 580.8(c) is deleted. Controlled carriers will, therefore, remain fully subject to the requirements of section 9 of the 1984 Act when publishing new or initial through rates for through intermodal transportation, unless special permission is granted under the provisions of § 580.15 of the Final Rule. This does not alter the previous provisions of former Part 536, carried forward in the Final Rule, allowing the filing of open rates and lower independent action rates by controlled carriers on less than 30-days notice. *See*, sections 580.6(m) and 580.10(a).

In lieu of a provision governing amendments to intermodal tariffs, a new provision has been substituted at section 580.8(c) which governs multiple tariffs. As a result of the determination to allow multiple tariffs in a trade, common carriers and conferences can now be expected to publish rates for the same commodity in different tariffs based upon differences in the modes of services. Similarly, a commodity rate could also be closely related to a separately filed rate in a specialized commodity tariff. Therefore, to allow rate filers needed flexibility and at the same time enable the Commission and all tariff users to locate the appropriate through rate tariff, a new requirement to cross-reference all through rate tariffs when more than one such tariff is published in the same general trade area is imposed. This information must also be disclosed in Rule No. 1 of each tariff.

Exhibits

In addition to the other changes to the tariff filing requirements, new exhibits are provided to facilitate understanding of and compliance with the regulations.

The Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small governmental jurisdictions.

List of Subjects

46 CFR Part 538

Antitrusts, Contracts, Maritime carriers, Rates.

46 CFR Part 580

Antitrust, Cargo, Cargo vessels, Contracts, Exports, Harbors, Imports, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Water carriers, Water transportation.

Corrections

These final rules are subject to review and editing of form before publication in the Code of Federal Regulations. Users are requested to notify the Commission of any omissions and typographical type errors in order that corrections can be made before the Commission's CFR book goes to press in January 1985.

By the Commission.

Francis C. Hurney

Secretary

PART 538—[REMOVED]

Therefore, pursuant to 5 U.S.C. 553; secs. 3, 4, 5, 6, 8, 9, 10, 13, 15, 16, 17, and 19 of the Shipping Act of 1984 [46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716, and 1718) Part 538 of Title 46, Code of Federal Regulations, is removed and Part 580 of Title 46, Code of Federal Regulations, is revised to read as follows:

PART 580—PUBLISHING AND FILING OF TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

Sec.

580.0 Scope.
580.1 Exemptions and exclusions.
580.2 Definitions.
580.3 Filing of tariffs; general.
580.4 Tariff format.
580.5 Tariff contents.
580.6 Statement of rates and charges.
580.7 Filing of service contracts and availability of essential terms.
580.8 Tariffs containing through rates for through transportation.
580.9 Terminal rules, charges and allowances: free time allowed at New York.
580.10 Amendments to tariffs; rejection.
580.11 Supplements to tariffs.
580.12 Time/volume rates.
580.13 Governing tariffs.
580.14 Transfer of operations, transfer of control, changes in common carrier name and changes in conference membership.
580.15 Applications for special permission.
580.16 Loyalty contracts.
580.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Exhibit No. 1 to Part 580—Title Page (Front) Format
Exhibit No. 2 to Part 580—Title Page (Reverse) Format
Exhibit No. 3 to Part 580—Class Tariff or Class and Commodity Tariff Index
Exhibit No. 4 to Part 580—Single Level of Rates, Packed/Unpacked Rates, Special Rates, Emergency Rates and Valuation Rates
Exhibit No. 5 to Part 580—Class Rate Tariff or Class Rate Section of Class and Commodity Tariff

Authority: 5 U.S.C. 553; secs. 3, 4, 5, 6, 8, 9, 10, 13, 15, 16, 17 and 19 of the Shipping Act of 1984 [46 U.S.C. app. 1702—1705, 1707, 1709, 1712, 1714–1716 and 1718).

§ 580.0 Scope.

(a) These regulations govern the publication and filing of tariffs for the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984.

(b) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates and charges for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984. The tariff format and content requirements of this part also reflect the Commission's responsibilities in identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Shipping Act of 1984.

(c)(1) Compliance with this part is mandatory and any tariff submitted for filing which fails to meet criteria specified in this part is subject to rejection pursuant to § 580.10(d)(1). Upon rejection it shall be void and its use unlawful.

(2) Operating without an effective tariff on file with the Commission or charging rates not in conformance with such a tariff is unlawful and, pursuant to section 13 of the Shipping Act of 1984, is subject to a civil penalty of not more than $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

§ 580.1 Exemptions and exclusions.

(a) This part does not apply to bulk cargo, forest products, recycled metal scrap, waste paper and paper waste, except that carriers or conferences which voluntarily file tariff provisions covering otherwise exempt transportation thereby subject themselves to all statutory provisions and the requirements of this part, including the requirement to adhere to the filed tariff provisions.

(b) This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(c) The following services are exempt from the tariff filing requirements of the Act and the rules of this part:

(1) Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(i) Carriage of property is limited to vehicles;

(ii) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(iii) The vessel operator does not move the vehicles on or off the ship; and

(iv) The common carrier does not participate in any joint rates establishing through routes or in any other type of agreement with any other common carrier.

(2) Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada, if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(3) Transportation of mail between the United States and foreign countries.

(4)(i) Transportation by Inoan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario and Superior, Wisconsin, if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(ii) This exemption is inapplicable to cargo originating in or destined to foreign countries other than Canada.

(5)(i) Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(ii) This exemption is inapplicable to cargo originating in or destined to foreign countries other than Canada.

(6)(i) Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers.

(ii) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada.

(iii) The carrier will remain subject to all other provisions of the Shipping Act of 1984.

(7) Transportation of used military household goods and personal effects by non-vessel-operating common carriers.

(d) The following services are subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the Act and the form and content requirements of this part: Transportation of U.S. Department of Defense cargo by American-flag common carriers under terms and conditions negotiated and approved by the Military Sealift Command (MSC), if all the following conditions are met:

(1) Exact copies of all common carrier quotations or tenders accepted by MSC are filed with the Commission as soon as possible after they are approved by MSC, but on not less than one day's filing notice prior to the effective date thereof;

(2) All tenders are filed in triplicate, one copy of which is signed and maintained at the Commission's Washington Office for public inspection;

(3) A letter of transmittal accompanies the filing stating that the documents are submitted in accordance with the requirements of the Shipping Act of 1984 and this section;

(4) Tenders submitted for filing are to be numbered by the respective common carriers as part of a distinct tariff series, with each common carrier's series to begin with the number "1" and run consecutively thereafter;

(5) Each tender which supersedes a prior tender must specifically cancel the prior tender by its series number; and

(6) Amendments or supplements to tenders must also be filed with the Commission upon not less than one day's filing notice and contain an appropriate reference to the original tender being amended or supplemented.

(e) *Controlled common carriers.* (1) A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled common carriers when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment;

(ii) The controlling state subscribed, as of November 17, 1978, to the shipping policy statement contained in note 1, Annex "A" of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(iii) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph;

(iv) The controlled common carrier's rates, charges, classifications, rules or regulations govern transportation of cargo between the controlling state and the United States (including its districts, territories and possessions); or

(v) The controlled common carrier operates in a trade served exclusively by controlled common carriers.

(2) The Commission will notify any common carrier of its classification as a controlled common carrier.

(3)(i) Any common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(ii) The Commission shall review the rebuttal and notify the common carrier of its final decision within 30 days from the date the rebuttal statement was filed.

§ 580.2 Definitions.

For the purposes of this part, the following definitions of terms shall apply unless otherwise indicated by the context of this part (for other definitions see §§ 580.3(a)(1), 580.7(a), 580.8(a), 580.10(a)(1) and 580.12(a)):

(a) *Act* means the Shipping Act of 1984.

(b) *Bulk cargo* means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the tariff filing requirements of this part.

(c) *Class rates* means rates applicable to all articles which have been grouped or "classified" together in a classification tariff or a classification section of a rate tariff.

(d) *Commodity rates* means rates applying to a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Conference* means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing or transshipment arrangement.

(g) *Controlled common carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier operate; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier.

(h) *Forest products* means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls and paper in rolls.

(i) *Joint rates* means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers.

(j) *Local rates* means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.

(k) *Loyalty contract* means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.

(l) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

(m) *Ocean common carrier* means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(n) *Ocean freight forwarder* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(o) *Open rate* means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual common carrier member of the conference to fix its own rates on such commodity or commodities.

(p) *Open for public inspection* means the maintenance of a complete and current set of the tariffs used by a common carrier, or to which it is a party, in each of its offices and those of its agent in every city where it transacts business involving such tariffs.

(q) *Person* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(r) *Proportional rates* means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement.

(s) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(t) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(u) *Tariff* means a publication containing and actual rates, charges, classifications, rules, regulations and practices of a common carrier or conference of common carriers. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier, and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

(v) *Tariff filing* means any tariff, or modification thereto, which is received by the Commission as properly filed pursuant to these rules.

(w) *Tariff filing, electronic* means the transmission of tariff filings to the Commission through the use of commercial data processing terminals. The data processing receiving terminal(s) are to be located in the Commission's Washington, D.C. offices. Tariff material filed electronically must conform to all the regulations applicable to permanent tariff filings, except as follows:

(1) Electronically filed tariff pages received from data processing terminals may be used for filing with the Commission; and

(2) Electronically filed tariff matter shall be accompanied by an electronically filed letter of transmittal.

§ 580.3 Filing of tariffs; general.

(a)(1) As used in this part the terms "file," "filed" or "filing," when used with respect to the filing of tariffs with the Commission, mean actual receipt at the Commission's Washington, D.C. offices.

(2) The Commission will receive tariff filings on an around-the-clock basis. Receipt of tariff filings during other than normal business hours will be time-stamped at a tariff mail drop located in the lobby of the Commission's Washington, D.C. offices. Electronic tariff filings transmitted to the Commission by electronic modes will be receipted by a date-time device on the receiving machine.

(b) Tariffs shall be published and filed by an officer or employee of the common carrier or, if a conference tariff, by an officer or employee of the conferences. In the alternative, publication and filing may be accomplished through an agent authorized to act for such common carrier or conference by a specific written delegation of authority.

(1) A common carrier or conference may delegate authority to a person, not an official or employee of such common carrier or conference, for the purpose of issuing all its tariffs or any particular tariff.

(2) Whenever there is a delegation of tariff-issuing authority by a common carrier or conference, there shall be filed with the Commission a written statement indicating the appointment of the agent and setting forth the exact limits of the agent's authority.

(c) (1) No common carrier or conference shall publish and file any tariff or modification thereto which duplicates or conflicts with any other tariff on file with the Commission to which such common carrier or conference is a party, whether filed by such common carrier, conference, or by an authorized agent.

(2) No common carrier shall publish and file any tariff or modification thereto which conflicts with any other tariff on file with the Commission and which names such common carrier as a participant therein.

(d) All tariffs published in a foreign language shall be accompanied by two true copies translated into the English language when submitted for filing, except that controlled common carriers shall submit three true copies translated into the English language.

(e) All tariff matter filed with the Commission shall be accompanied by a letter of transmittal which clearly identifies the tariff and pages involved. If the sender desires a receipt, a duplicate of such letter must be furnished together with a plain, self-addressed, stamped envelope measuring approximately 4¼ by 9½ inches. The duplicate letter will be stamped with the date of receipt and mailed to the sender in the envelope provided. If a duplicate letter and self-addressed stamped envelope are not submitted, a receipt will not be furnished.

(f) All tariff matter shall be filed in duplicate, except that controlled common carriers shall file all tariff matter in triplicate.

(g) Tariff filings shall be addressed to:

Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

(h) Each common carrier shall keep open for public inspection all tariffs published by it or to which it is a party in the foreign commerce of the United States.

(i) Common carrier participants in a conference tariff are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 8(a)(1) of the Act with regard to keeping tariffs open for public inspection.

(j) A common carrier's obligation to file tariffs pursuant to section 8(a) of the Act and this part must be carried out as follows:

(1) When the common carrier is not a party to an agreement, by filing its own tariff or tariffs.

(2) When the common carrier is party to an agreement, by participation in a single tariff filed by the conference, except that this requirement shall not apply to:

(i) Ratemaking agreements either between or among conferences, or between one or more conferences and one or more independent carriers; or

(ii) New conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements, until ninety (90) days after the fact, unless special permission to extend that period is granted for good cause shown.

(k) When a common carrier is admitted to membership in a conference, cancellation of the common carrier's individual tariff (if any) in the trade served by the conference and revision of the participating common carrier page of the conference tariff (naming the newly admitted common carrier) shall be published and filed with the Commission and may become effective upon the date of such filing, except that:

(1) If the common carrier has an individual tariff in the trade served by the conference and cancellation of that tariff and revision of the participating common carrier page of the conference tariff (naming the newly admitted common carrier) would result in an increase in that common carrier's rates, the common carrier shall, 30 days prior to being admitted as a new conference member, cancel its individual tariff effective 30 days from date of publication, making reference to the conference tariff and where it may be examined, unless special permission to become effective in less than 30 days has been granted by the Commission pursuant to § 580.15; and

(2) A controlled common carrier newly admitted to membership in a conference shall, 30 days prior to admission, file notice of cancellation of any applicable independent tariff effective upon the date of admission to conference membership, unless special permission has been granted by the Commission pursuant to § 580.15.

(l) [Reserved]

(m) Copies of all tariffs on file with the Commission (including all subsequent revisions and changes thereto) shall be made available by common carriers and conferences to any person. A reasonable charge may be made for this service.

(n) New or initial tariffs shall be published and filed to become effective not earlier than 30 days after publication and filing, unless special permission to become effective on less than 30 days' notice has been granted by the Commission pursuant to § 580.15.

(o) Rules applicable to tariffs containing rates, charges, rules and regulations for through transportation, set forth in § 580.8, are additional requirements for use only for through transportation and are not a substitute for any other requirements of this part.

§ 580.4 Tariff format.

(a) All tariffs which are filed and kept open to public inspection shall be clear and legible and shall be plainly printed, mimeographed, multilithed or prepared by some other similar permanent process on durable paper of good quality.

(b) No alteration in writing or erasure shall be made in any tariff publication.

(c) Sufficient marginal space of not less than three-fourths of an inch shall be allowed at the left side of each tariff page to permit insertion in tariff binders. In addition, a margin of not less than one-half inch shall be allowed at the bottom of each tariff page for application of the Commission's receipt stamp.

(d) Tariffs shall be in looseleaf form and printed on pages approximately 8½ by 11 inches. If other than a looseleaf tariff is to be filed, application for permission to make such filing shall be made to the Commission. If permission to file other than a looseleaf tariff is granted by the Commission, such permission will set forth the form and manner of filing the tariff and any amendments or supplements thereto.

(e) (1) Tariff pages shall be printed on one side only and each page after the title page shall be numbered in the upper right-hand corner, except that the anti-rebating statement, as set forth in § 580.5(c)(2)(ii), must be published on the reverse side of the tariff title page (See Exhibit No. 2 to this part) or, alternatively, at any location in the tariff, provided that reference to such location is shown on the title page thereof.

(2) Each tariff page must show the name of the common carrier or conference for whose account the tariff is issued, the effective date, the page number, the FMC number of the tariff, etc., as illustrated by Exhibit No. 4 to this part.

(3) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provisions in the conference tariff.

(f) To the extent applicable, all tariffs filed pursuant to this part shall be arranged in the following order:

Title Page; Check Sheet (optional); Table of Contents; Participating Common Carrier Page; Surcharge and/or Arbitrary/Differential/Outport Differential (or other identifying term) Section; Rules and Regulations Section; Index of Commodities and Classifications; Commodity Rate Section; Classification and Class Rate Section; and Open Rate Section.

§ 580.5 Tariff contents.

(a) The first page of every tariff shall be a title page which shall contain the following information (see Exhibit No. 1 to this part):

(1) The name of the common carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or a Vessel-Operating Common Carrier, or the name of the conference. Tariffs filed pursuant to an agreement shall be further identified with the agreement number. A controlled common carrier subject to section 9 of the Act shall so identify itself under the common carrier name on the title page.

(2) An FMC tariff number assigned by the common carrier or conference. For example:

Smith Line Tariff FMC–1.

The first tariff filed by a common carrier or conference pursuant to this or any prior regulation shall be assigned the number FMC–1. Each tariff thereafter issued by the common carrier or conference shall be assigned the next, consecutive FMC number. Beneath the FMC tariff number shall be shown the number or numbers of any FMC tariff or tariffs cancelled by the issuance of such tariff. For example:

Smith Line Tariff FMC–14 cancels Smith Line Tariff FMC–5 and Smith Line Tariff FMC–9

or

Smith Line Tariff FMC–14 cancels Smith Line Tariff FMC–12.

(3) When an individual common carrier, partnership or joint service operates under a trade name, the legal name or names of each individual common carrier shall be shown as well as the trade name. Alternatively, reference may be made to an internal tariff page where this information is shown.

(4)(i) A list of the ports/regions covered by the tariff or reference to an internal tariff page where such ports/regions are listed. In lieu of such listing of ports, a statement of the range of ports served will be accepted if any exclusion of a port within the range or any restriction applying at a port within the range is specifically stated.

(ii) Whenever tariff application is shown by identification of a range of ports in lieu of listing individual ports, such range of ports must be within a geographical area generally served by the common carrier(s) participating in the tariff.

(5) A statement showing the type of service offered by the common carrier(s), e.g., direct service, transshipment, etc. When transshipment service is indicated, reference shall be made to the page in the tariff describing such service.

(6) A statement showing the type of rates contained in the tariff. For example: local, proportional, through, class, commodity, overland common point, etc.

(7) A reference to other publications which in any manner govern the tariff. Alternatively, reference may be made on the title page to an internal page identifying such governing publications as prescribed in paragraph (c)(6) of this section.

(8) The date on which the tariff will become effective. Every tariff in which any provision is to become effective upon a date different from the general effective date of such tariff shall so indicate in substantially the following form:

Effective: ————(except as otherwise herein provided) or (except as provided in Item No. ————) or (except as provided on page ————).

(9) The name, title and address of the person issuing the tariff or, if the common carrier or conference has appointed a tariff filing agent pursuant to § 580.3(b), the name, title and address of the agent making such filing.

(10) An expiration date if the entire tariff publication is to expire on a specified date.

(11) The names of all participating common carriers in the tariff if more than one common carrier participates. Alternatively, reference may be made to an internal page on which are listed the names of all participating common carriers (see paragraphs (c)(2) and (c)(3) of this section).

(12) The subscription price of the tariff (and any major components thereof offered separately) or a statement that the entire tariff will be furnished without charge, accompanied by a reference to a tariff rule which clearly states where subscriptions may be obtained and the materials which will be furnished to subscribers.

(b) All pages after the title page shall be numbered beginning with "Original Page 1," "Original Page 2," etc. Each page as thereafter revised shall be a consecutively numbered revision of the same page in the form required by paragraphs (a)(6 and (a)(8) of § 580.10. (See Exhibit No. 4 to this part).

For example:

The 7th page in a tariff as originally filed would be titled "Original Page 7." The first revision of this page would be titled "First Revised Page 7 cancels Original page 7."

(c) The body of the tariff shall contain the following:

(1) A table of contents containing a full and complete statement of the exact locations where information in the tariff will be found. Such statement shall list all subjects in alphabetical order and shall show the page number and number of the item, rule or unit where such subject will be found.

(2)(i) The full legal name of each participating common carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or Vessel-Operating Common Carrier and the address of its principal office. Where a joint service participates, the FMC number of the agreement authorizing the joint service shall also be shown.

(ii) Every common carrier shall publish a tariff provision to be effective upon filing which shall read substantially as follows (see Exhibit No. 2 to this part):

(Name of company) has a policy against the payment of any rebate by the company or by an officer, employee, or agent thereof, which payment would be unlawful under the United States Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR 582.

(iii) When the common carriers's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provision set forth in paragraph (c)(2)(ii) of this section in the conference tariff.

(3) All trade names, if any, under which service will be provided and the names of the common carrier or common carriers operating under each such trade name if not shown on the title page.

(4) A list of the ports or ranges of ports to and from which the tariff rates apply, if not shown on the title page, in conformity with paragraph (a)(4) of this section.

(5) A statement indicating the extent of any limitation or restriction if the application of any of the rates, charges, rules or regulations stated in the tariff are restricted to any particular port, pier, etc., or otherwise limited.

(6) A single, complete, alphabetically arranged index listing all commodities for which the tariff names rates, together with a reference to each item or page where a particular article is shown. If a rate item embraces two (2) or more commodities, each commodity shall be shown in the index. Class rate tariffs and tariffs containing both class and commodity rates shall contain, in addition to applicable item or page references, the ratings of commodities to which class rates apply. (See Exhibit No. 3 to this part). Such index may be omitted where rates on less than 100 commodities are included in the tariff. All articles generic to different species of the same commodity should be grouped together. For example:

Paper, building; paper, printing; paper, wrapping.

(7) A full explanation of any symbols, reference marks or abbreviations used in the tariff. If such explanation does not appear on the page where the reference marks or symbols are used, such page shall refer to the page in the tariff where the explanation is given. The symbols shown in § 580.10(a)(7)(i) shall be used only for the purposes indicated therein.

(8) If governed in any manner by other publications, as may be permitted herein, a reference thereto substantially in the following form:

This tariff is governed, except as otherwise provided herein, by Bill of Lading Tariff FMC No. ———— (or by Rules Tariff No. ————), etc.

Where such reference is fully made on the title page, reference elsewhere in the tariff is unnecessary. Governing publications must be on file with the Federal Maritime Commission.

(9) All rates applicable to the transportation of the articles or classes of articles named in the tariff. Rates shall be stated as required by § 580.6.

(10) Rules and regulations which in any way affect the application of the tariff.

(d) Specific tariff rules shall be published to govern each of the following subjects and shall be designated in all tariffs by the numbers

and headings specified below. In the event that a specified rule does not apply to the service offered, the rule number and heading shall be published with a statement that the rule is not applicable. For example: "*Rule No. 15. Open Rates.* Not Applicable."

(1) *Scope.* A list of the ports or range of ports to and from which the tariff rates apply, if not shown on the title page, in conformity with paragraph (a)(4) of this section.

(2) *Application of rates.* A clear statement of all the services provided to the shipper and included in the transportation rates set forth therein.

(3) *Rate applicability rule.* A clear and definite statement of the time at which a rate become applicable to any given shipment.

(4) *Heavy lift.*

(5) *Extra length.*

(6) *Minimum bill of lading charge(s).*

(7) *Payment of freight charges.*

(i) A clear statement of all requirements for the payment of freight charges.

(ii) Currency restrictions, if any, must be specified and the basis for determining the rates of currency exchange must be set forth.

(iii) If credit is extended to shippers, the rule must include the credit terms available and the conditions upon which credit is extended. When credit applications or agreements are required, specimens of such applications or agreements shall be published as part of this rule.

(8) *Specimen Bill(s) of Lading.* A specimen copy of any bill of lading, contract of affreightment or other document evidencing the transportation agreement applicable to the service offered shall be submitted with the tariff, unless a separate bill of lading tariff is on file as permitted by § 580.13(a). Such documents shall not contain provisions inconsistent with the rules and regulations published in any applicable tariff.

(9) *Freight forwarder compensation.* A statement describing the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in accordance with § 510.23(b) of this chapter.

(10) *Application of surcharge and/or arbitraries, differentials, outport differentials or other identifying term.* Tariffs imposing upon the same shipment more than one surcharge and/or arbitary, expressed in percentage terms, shall also clearly state the manner in which the percentages shall be applied in computing the additional charges.

(11) *Minimum quantity rates.* Tariffs naming two or more rates for different quantities of commodities covered by the same description shall state:

When two or more freight rates are named for carriage of goods of the same description over the same route and under similar conditions and the application is dependent upon the quantity of the goods shipped, the total freight charges assessed against the shipment shall not exceed the total charges computed for a larger quantity, if the rate noted alongside a qualification specifying a required minimum quantity (either weight or measurement per container or in containers), will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower rate if the weight or measurement declared for rating purposes is increased to the minimum level.

(12) *Ad Valorem rates.* A statement specifying the exact method of computing the charge (e.g., shipper's declaration, invoice value, delivered value), and the additional liability, if any, assumed by the common carrier in consideration therefor.

(13) *Transshipment.* Tariffs providing for transshipment service pursuant to an ongoing agreement shall provide:

(i) The through rate;

(ii) The routings (origin, transshipment and destination ports); additonal charges, if any (e.g., port arbitrary and/or additional transshipment charges); and participating carriers; and

(iii) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating connecting or feeder carrier. Every participating connecting or feeder carrier, which is a party to transshipment arrangements, has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(14) [Reserved]

(15) *Open rates.* A clear and complete explanation of the extent to which conference rates have been opened pursuant to paragraphs (l) and (m) of § 580.6. Any restriction or limitation on the right of participating common carriers to fix their own rate items, and the extent to which applicable rules and regulations of the conference tariff will continue to govern the rates filed by each individual line, shall also be stated.

(16) *Explosives or other dangerous articles.* A clear statement of all regulations governing the transportation of explosives, inflammable or corrosive material, or other dangerous articles, or a reference to a separate publication which contains such regulations.

(17) *Green salted hides.* A rule which requires that:

(i) The shipping weight for purposes of assessing transportation charges be either a scale weight or a scale weight minus a deduction which amount and method of computation are specified in said rule; and

(ii) The shipper furnishes the common carrier a weighing certificate or dock receipt from an inland common carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo.* Tariffs offering the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the rates assessed on the original movement when such rates are lower than prevailing rates, shall also provide that:

(i) The return of shipments be accomplished within a specific period not to exceed one year;

(ii) The return movement be made over the line of the same common carrier performing the original movement, except that in the case of a conference tariff, return may be made by any member line when the original shipment was carried by a conference member under the conference tariff; and

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return common carrier.

(19) *Shippers requests, consultations and complaints.* Clear and complete instructions in accordance with the effective agreement's provisions, stating where and by what method shippers may file their requests and complaints and how they may engage in consultation under section 5(b)(6) of the Act, together with a sample of the rate request form if one is used or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(20) *Overcharge Claims.*

(i) No tariff in the foreign commerce shall limit the filing of overcharge claims with a common carrier for private settlement to a period of less than three years after accrual of the cause of action nor shall the acceptance of any overcharge claim be conditioned upon the payment of a fee or charge.

(ii) No tariff in the foreign commerce shall require that overcharge claims based on alleged errors in weight, measurement or description of cargo be filed before the cargo has left the custody of the common carrier.

(iii) Tariffs shall contain a rule which states that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application. This rule shall clearly indicate where and by what method such claims are to be filed with the common carrier and shall further advise that such claims may also be filed with the Federal Maritime Commission. At a minimum, tariffs shall contain the following provisions:

(A) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to section 11(g) of the Shipping Act of 1984. Such claims must be filed within three years of the date the cause of action accrued; and

(B) Claims for freight rate adjustments filed in writing will be acknowledged by the common carrier within twenty days of receipt by written notice to the claimant of the tariff provisions actually applied and the claimant's rights under the Act.

(e) Additional rules which affect the application of the tariff shall follow immediately the rules specified in paragraph (d) of this section and shall be numbered consecutively.

(f) Where a tariff rule affects only particular items or rates, the affected items or rates shall specifically refer to such rule.

(g) No rate tariff shall require reference to any other rate tariff for determination of any applicable rate, except that:

(1) Reference may be made to another tariff for terminal and accessorial charges;

(2) Returned cargo rates accompanied by the rule specified in paragraph (d)(18) of this section are permitted;

(3) Reference may be made to another tariff (not containing rates) for commodity lists or generic descriptions as provided in paragraphs (f) and (g) of § 580.6; and

(4) Reference may be made to another tariff (not containing rates) covering:

(i) Explosives, inflammable or corrosive materials, or other dangerous articles;

(ii) Bills of lading or contracts of affreightment;

(iii) Commodity classifications; and

(iv) Routing guides or other similar tariffs as provided in § 580.13.

§ 580.6 Statement of rates and charges.

(a) The application of all rates and charges shall be clear and definite and explicitly stated per 100 pounds, per cubic foot, per ton of 2,000 pounds, per ton of 2,240 pounds or some other expressly defined unit.

(b) All rates and charges shall be stated in a simple and systematic manner. Commodities and generic commodity groupings on which rates are stated shall be listed in alphabetical order. If published in the index, item numbers shall also be shown in the body of the tariff.

(c) Where rates are stated in amounts per package, the method of packing and specifications, showing size, measurement or weight of the packages to which such rates apply shall be shown.

(d) Where rates vary depending upon whether cargo is packed, crated, palletized, bundled, strapped, loose or otherwise prepared or delivered for shipment, there shall be a statement clearly and specifically governing the application of such rates. See Exhibit No. 4 to this part.

(e) Where rates and charges to or from designated ports are determined by the adding or subtracting of arbitraries or differentials to or from rates applicable at other ports, such application shall be clearly shown.

(f) A commodity item may, by use of a generic term, provide rates on a number of articles if such term contains reference to an item in the tariff which clearly defines the type of commodities contained in such generic term or which contains a complete list of such articles, or contains a reference to the FMC number of a separate tariff of the same common carrier or conference containing such definition or list of such articles.

Example: Packinghouse products as described in Item—; or packinghouse products as described under heading "Packinghous products" in FMC No.—or successive issues thereof.

(g) A separate tariff, not containing rates, may be filed by a common carrier or conference showing a list of the commodities on which rates published by reference to generic terms will apply; rate tariffs shall be made subject thereto as provided in paragraph (f) of this section.

(h) When commodity rates are established, the description of the commodity must be specific. Rates may not be applied to analogous articles.

(i) The rate section of a tariff may include a rate applicable to all commodities, or all commodities of a class, on which specific commodity rates are not stated in the tariff, to be called "cargo, n.o.s." (not otherwise specified), "general cargo" or other identifying name, or by broad generic heading such as "chemicals, n.o.s."

(j) A separate tariff naming rates on a group of related commodities may be published if such tariff contains all of the rates applicable to such commodities, which are published by the same common carrier or conference, to or from the same ports or points. When such tariffs are published, reference shall be made thereto in the tariff of general application for the same common carrier or conference, to or from the same ports or points.

(k)(1) Publication of rates which duplicate or conflict with the rates published in the same or any other tariff is prohibited.

(2) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

(3) Where a common carrier or conference publishes both commodity and class rates, a statement shall be published in the tariff clearly indicating which of the two rates shall apply on the commodity or commodities on which both class rates and commodity rates are published.

(l) Where a conference opens any or all rates, each tariff item so opened shall be amended to indicate the word "open" in place of the previously stated rates and shall indicate a reference to a published rule in the tariff clearly defining the word "open" as used in each tariff and indicate where the rates of the individual conference member lines on such items will be found.

(m)(1) Where a conference opens rates pursuant to paragraph (1) of this section, an individual conference member shall not charge rates on the open item unless and until the individual member files a proper tariff rate covering such item as required by these rules. This may be accomplished by the individual common carrier (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing a separate supplement at the end of the conference tariff indicating the rates which will be charged by each individual common carrier and the governing rules and provisions of the conference tariff applicable to each common carrier. Separate open rate tariffs may also be published by a conference (or its tariff agent). when conference members publish their open rates in a separate tariff, such tariffs must reference, on the tilte page, the conference tariff in which the open rated condition is reflected.

(2)(i) Controlled common carriers filing open rates are subject to the 30-day controlled common carrier notice requirement of § 580.10(a)(3)(i), except when special permission is granted by the Commission under § 580.15.

(ii) Notwithstanding paragraph (m)(2)(i) of this section, a conference may, on less than 30 days' notice, file reduced rates on behalf of controlled common carrier members for open-rated commodities:

(A) At or above the minimum level set by the conference; or

(B) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the Act, in the trade involved.

(n) Special or emergency rates, or rates conditioned upon an expiration date or other factor, shall be shown under the same commodity item, generic heading or class, in the same place in the tariff as the ordinarily applicable rates. (See Exhibit No. 4 to this part.)

(1) If only a portion of particular rates or other provisions will expire with a special date, a notation to that effect shall clearly be shown in connection with such items as indicated in Exhibit No. 4 to this part.

(2) Project rates may be placed in a special section of the tariff if the Table of Contents or Commodity Index contains a specific reference to "Project Rates."

(o) All rate pages shall be filed in the form and manner shown in Exhibit Nos. 4 and 5 to this part.

(p) The number of rate columns may vary as required to state rates to one or more ports, port groupings or port ranges. The width of all columns in the rate block section of tariff rate pages may vary as required. (See Exhibit No. 5 to this part.)

§ 580.7 Filing of service contracts and availability of essential terms.

(a) *Definitions.* The following definitions shall apply for purposes of this section:

(1) *Contract party* means a party signing a service contract as shipper, shippers' association, or ocean common carrier and any other named entity associated with such party entitled to receive or authorized to offer services under the contract; except that in the case of a shippers' association, individual members need not be named in the contract.

(2) *Geographic area* means the general location from which or to which cargo subject to a service contract will move in intermodal service.

(3) *Port range* means those ports in the countries of loading or unloading of the contract cargo that are regularly served by the contracting carrier or conference, as specified in the tariff applicable to the service in which the contract is to be employed, even if the contract itself contemplates use of but a single port within that range.

(4) *Service contract* means a contract between a shipper or a shippers' association and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of either party.

(5) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(6) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(b) *Contract filing requirements.*

(1) Except for contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, every ocean common carrier and conference that enters into a service contract with a shipper or shippers' association shall file with the Director, Bureau of Tariffs, as specified in paragraph (e) of this section, a true and complete copy of each contract prior to its effective date.

(2) Service contracts involving the exempted commodities listed in paragraph (b)(1) of this section may be filed pursuant to this section at the option of the contract parties. Upon filing, such contracts will be subject to the same requirements as those contracts involving non-exempt commodities.

(3) Service contracts shall clearly state:

(i) The contract parties;

(ii) The essential terms, except that the origin and destination of cargo moving pursuant to the contract need not be stated in the form of "port ranges" or "geographic areas" but shall reflect the actual locations agreed to by the contract parties;

(iii) A unique service contract number bearing the prefix "SC";

(iv) The FMC number of the governing essential terms publication which contains the carrier's or conference's statement of essential terms;

(v) A specific reference to the essential terms number ("ET No. ——") in the governing publication which contains the summary of the essential terms of the contract as provided in paragraph (h) of this section; and

(vi) The shipment records which will be maintained to support the contract.

(c) *Confidentiality.* (1) All service contracts filed with the Commission will, to the full extent permitted by law, be held in confidence.

(2) Amendments to non-essential terms of a service contract will be accorded similar confidential treatment.

(d) *Modification and termination of contracts.* (1) The essential terms of a service contract cannot be modified during the duration of the contract.

(2) Service contracts may be terminated by mutual agreement of the parties.

(3) In the event of a contract termination as provided in paragraph (d)(2) of this section, if the minimum quantity required by the contract has not been met, the cargo previously carried under the contract must be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of such shipments, unless the contract itself provides an alternative procedure for dealing with such a situation.

(e) *Transmittal of service contracts.* Service contracts are to be filed in single copy contained in double envelopes which contain no other material. The outer envelope is to be addressed to the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573. The inner envelope is to be sealed, contain only the executed contract(s) and shall state: "This Envelope Contains a Confidential Service Contract." The top of each page of a filed service contract shall be stamped "Confidential."

(f) *Contract implementation, return and rejection.* (1) Performance under a service contract may begin without prior Commission authorization, on the date the service contract and statement of essential terms are on file with the Commission.

(2)(i) Within 15 days of filing of the contract and statement of essential terms, the Commission may return to the contract parties a service contract or statement of essential terms that does not conform to the requirements of paragraph (b) or paragraph (g) of this section. The Commission shall provide the contract parties a written explanation of the reasons for such return. The contract parties shall have 15 days from the date of return to refile the contract or statement of essential terms.

(ii) Within 15 days of refiling, the Commission may reject a refiled contract or statement of essential terms that does not conform to the requirements of paragraph (b) or paragraph (g) of this section.

(3)(i) If a returned service contract or statement of essential terms is not refiled, performance under the service contract shall be unlawful after the 15-day refiling period has expired.

(ii) If refiled and subsequently refected, performance under the service contract shall be unlawful after the contract parties receive notice of the rejection.

(4) If performance under the service contract becomes unlawful by operation of this paragraph, all services theretofore performed under the service contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services.

(5) The minimum 30-day period of availability of essential terms required by paragraph (g) of this section shall be suspended upon return of a service contract or statement of essential terms and a new 30-day period shall commence upon refiling thereof.

(g) *Availability of essential terms.*

(1)(i) A concise statement of the essential terms of each service contract shall be filed with the Commission and made available to the general public in tariff format pursuant to the requirements of paragraph (h) of this section.

(ii) The essential terms of each service contract must be made available to all shippers or shippers' associations similarly situated under the same terms and conditions for a specified period of no less than 30 days from the date of filing of the concise statement of essential terms.

(2) The essential terms shall include, where applicable, the following:

(i) The origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

(ii) The commodity or commodities involved;

(iii) The minimum quantity of cargo or freight revenue necessary to obtain the rate or rate schedule(s);

(iv) The contract rate, rates or rate schedule(s), including any additional or other charges (viz. surcharges, terminal handling charges, etc.) that apply; provisions specifying methods of retroactive rate adjustments based upon experienced costs; and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges;

(v) The term of the contract;

(vi) Carrier or conference service commitments;

(vii) Liquidated damages for nonperformance, if any, or where the volume requirement may not be met during the contract period in situations other than those described in paragraph (g)(2)(viii) of this section, the rate, charge, or rate basis which will be applied; and

(viii) A clear description of any circumstance which will permit:

(A) A reduction in the quantity of cargo or amount of revenues required under the contract;

(B) An extension of the contract term without any change in the contract rate or rate schedule;

(C) A discontinuance of the contract; or

(D) Any other deviation from the terms of the contract.

(h) *Form and filing of essential terms.*

(1) Each carrier or conference shall summarize the essential terms of service contracts it has executed in a governing publication on file with the Commission.

(2)(i) The form and manner requirements applicable to governing tariffs as set forth in this part shall apply to the essential terms publication.

(ii) Such publication shall include an alphabetical index of the commodities covered by the service contracts.

(3) All essential terms filings shall be printed in black on yellow paper.

(4) The essential terms of a service contract or contracts shall be identified with an essential terms number bearing the prefix "ET No." The "ET No." shall be located on the top of each page used to summarize the essential terms of a service contract or contracts.

(5)(i) The essential terms publication shall contain on its title page or in a rule of such publication reference to the carrier's or conference's tariff(s) of general applicability. The tariff of general applicability is the tariff which would apply in the absence of a service contract.

(ii) Every tariff of general applicability shall bear a reference to the FMC number of a carrier's or conference's governing essential terms publication.

(i) *Transmittal of essential terms publications.* At the same time that a service contract is filed with the Commission, publications containing the essential terms of service contracts shall be transmitted to the Commission with an accompanying transmittal letter in an envelope which contains only matter relating to essential terms. The envelope and the inside address on the transmittal letter are to be addressed to the "Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573."

(j) *Recordkeeping.* Every common carrier or conference shall maintain contract shipment records for a period of five years from the termination of each contract.

(k) *Submission of modifications.* Any time a service contract is modified, terminated, or extended, a notice to that effect shall be filed with the Commission.

§ 580.8 Tariffs containing through rates for through transportation.

(a) *Definitions.* The following definitions shall apply for purposes of this section:

(1) *Through rate* means the single amount charged by a common carrier in connection with through transportation.

(2) *Through transportation* means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

(b) *Filing requirements.* Every common carrier and conference subject to the Act, which establishes through rates for through transportation shall file tariffs which state all such rates and related charges, rules, regulations, privileges or facilities, granted or allowed. Through rates may be filed in separate tariff publications or as a part of a port-to-port tariff. Such tariffs shall be filed and maintained in the manner set out in the Act and in accordance with the rules of this part. Through rate tariffs shall be filed in the name of the common carrier or conference subject to the Act. Through rate tariffs shall be initially filed on thirty days' notice as provided by sections 8 and 9 of the Act, unless a shorter notice is permitted pursuant to special permission. Amendments to tariffs containing through rates which provide for the addition of new inland points may, however, become effective upon publication and filing. Such tariffs shall contain the following provisions:

(1) The title page shall identify the tariff as a "through rate" tariff and shall also provide a brief description of the modes of services covered by the tariff (e.g., rail/motor/ocean services) and the trade area covered by the tariff. The trade area shall be described on the title page by naming the countries to, from or between which the through rates apply and the port(s) or range(s) of port via which through transportation will be performed.

(2) Rule No. 1 of each through rate tariff shall provide:

(i) A clear description of the points, regions, or ports to, from or between which the rates apply. Each point, region or port shall be described by its commonly used geographic name. The utilization of U.S. postal ZIP codes is permitted; and

(ii) The name of the port or ports via which through shipments will be moved; or a clear description of the range or ranges of ports via which through shipments will be moved.

(3) A contract of affreightment clearly setting forth the responsibility for through transportation which is consistent with the holding out provided by the application of the rates and conditions of the tariff.

(c) *Multiple tariffs.* Common carriers and conferences which publish more than one through rate tariff from, to or between the same points, ports or regions, based on mode of service, description of commodities, etc., shall provide in Rule No. 1 of each respective tariff a cross-reference to the FMC number and description of the application of such other tariff(s).

§ 580.9 Terminal rules, charges and allowances; free time allowed at New York.

(a) Every tariff filed pursuant to this part shall state separately all terminal or other charges, privileges or facilities under the control of the common carrier or conference which are granted or allowed to shippers.

(b) Wherever a tariff includes charges for terminal services, canal tolls or additional charges not under the control of the common carrier or conference, which merely acts as a collection agent for the charges, and the agency making such charges to the common carrier increases the charges without notice to the common carrier conference, such charges may be increased in the common carrier or conference tariff without being subject to the 30-day advance filing requirement of this part or separately stated on the bill of lading.

(c) Every tariff naming rates on import traffic shipped through the port of New York, or to a range of ports which includes New York, shall contain a rule in compliance with Part 525 of this chapter.

§ 580.10 Amendments to tariffs; rejection.

(a) *Tariff amendments.* (1) For the purposes of this part, "amendments" means all changes in, additions to, or deletions from a tariff.

(2) Amendments which provide for new or initial rates, or amendments which provide for changes in rates, charges, rules or other provisions resulting in an increase in cost to the shipper, shall be published and filed to become effective not earlier than 30 days after the date of publication and filing, unless special permission to become effective on less than said 30 days' notice has been granted by the Commission pursuant to § 580.15.

(3)(i) Amendments which provide for changes in rates, charges, rules, regulations or other provisions resulting in a decrease in cost to the shipper, or amendments which result in no change in cost to the shipper, may become effective upon publication and filing; except that all changes to controlled common carrier tariffs shall not become effective earlier than 30 days from the date of filing unless special permission has been granted by the Commission under § 580.15, or the change affects tariff matters which are the subject of a suspension proceeding, in which case § 580.11(g) shall apply.

(ii) Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the Act, in the trade involved.

(4) An amendment containing a rate on a specific commodity not previously named in a tariff which is a reduction or no change in cost to the shipper may become effective upon publication and filing, if:

(i) The tariff contains a "cargo, n.o.s." or similar general cargo rate which would otherwise be applicable to the specific commodity;

(ii) The specific commodity rate is equal to or lower than the previously applicable general cargo rate; and

(iii) The common carrier is not a controlled common carrier which has not received special permission authorizing the amendment.

(5) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "Cargo, n.o.s." or similar general cargo rate, is a rate increase and shall be published and filed to become effective not earlier than 30 days after the date of filing in the absence of special permission for an earlier effective date pursuant to § 580.15.

(6) Looseleaf tariffs shall be amended by reprinting the entire page upon which any modification is made. An amended tariff page shall be designated in the upper right-hand corner as a "revised page" in the manner illustrated by Exhibit No. 4 to this part. For example:

First revised page 1;
or
First revised page 21.

(7)(i) The revised page filed to accomplish a tariff amendment shall reprint the page to be replaced in its entirety, changing only the matter on the page which is modified. Changes in existing rates, charges, classifications, rules or other provisions accomplished by an amendment shall be indicated on the revised page by the following uniform symbols:

(R) To denote a reduction.
(A) To denote an increase.
(C) To denote changes in wording which result in neither an increase nor a decrease in charges.
(D) To denote a deletion.
(E) To denote an exception to a general change.
(N) To denote reissued matter.
(I) To denote new or initial matter.
(K) To denote a rate or charge that is filed by a controlled common carrier member of a conference under independent action.

(ii) An explanation of such symbols shall be set forth in the tariff as required by § 580.5(c)(7).

(8) Each revised tariff page shall cancel the previously issued page upon which a change is made. The previous page being cancelled shall be indicated immediately under the designation of the new revised page number as illustrated by Exhibit No. 4 to this part. For example:

First revised page 1 cancels original page 1;
or
Fifth revised page 21 cancels fourth revised page 21.

All matter on a cancelled page which is not being changed shall be reissued on the revised page at it appeared on the page being cancelled.

(9) Each revised page shall, in the upper right-hand corner, state the effective date of the changes made on that page. Such effective date shall be subject to the requirements of sections 8 and 9 of the Act and of this section. Revised pages may also state the issue date.

(10) When a revised page cancelling a previous page deletes any matter contained in the previous page, the deletion shall be indicated by the symbol "(D)" and any other symbol under paragraph (a)(7)(i) of this section applicable to the effect of the deletion upon the common carrier's rates or charges.

(11) Every tariff amendment effective upon less than statutory notice pursuant to special permission granted by the Commission, shall show in connection with such change the notation required by § 580.15(f).

(12) Increased rates brought forward from a previously filed page prior to their effective date, shall be designated with the symbol "(N)" as "reissued" and state their original effective date.

(13) If, on account of expansion of matter on any page, it becomes necessary to add an additional page in order to accommodate said new matter, such additional page (except when it follows the final page) shall be given the same number as the previous page with a letter suffix unless all subsequent pages are reissued and renumbered. For example:

Original Page 4–A, Original Page 4–B, etc.

If it is necessary to change matter on Original Page 4–A it may be done by issuing First Revised Page 4–A which shall indicate the cancellation of Original Page 4–A.

(14) When a revised page deletes rates, rules or other provisions previously published on the page which it cancels and such rates, rules or provisions are published on a different page, the revised page shall make a specific reference to the page on which the rates, rules or provisions will be found and the page to which reference is made shall contain the following notation in connection with such rates, rules or other provisions:

For (here insert rates, rules or other provisions in question) in effect prior to the effective date hereof see page ——.

Subsequently revised pages of the same number shall omit this notation insofar as this particular tariff matter is concerned.

(b) [Reserved]

(c) [Reserved]

(d) *Rejection of tariff amendments or other tariff publications.* (1) Any amendment (or other tariff publication) submitted for filing which fails in any respect to conform with the Act, or with the provisions of this part, is subject to rejection or partial rejection. When tariff matter is rejected, either in whole or in part, the Commission, acting through a designated official, will inform the person tendering the material for filing of the rejection by telegram, cablegram or letter.

(2) Upon receipt of notice of a rejection, the filing party shall immediately remove such rejected material from its effective tariff and immediately notify all subscribers to affected tariffs that the rejected material is void.

(3) The number assigned to an amendment (or other tariff publication) which has been rejected may not be used again. The rejected material may not be referred to in any subsequent amendment (or other tariff publication) in any manner whatsoever, except that a notation shall appear at the bottom of any new tariff matter issued to replace rejected matter which reads substantially as follows:

Issued in lieu of —— Page No. —— rejected by the Federal Maritime Commission.

§ 580.11 Supplements to tariffs.

(a) Supplements to tariffs may be filed only to accomplish the following:

(1) To cancel a tariff in whole or in part.

(2) To provide for a general rate decrease applicable to all, or substantially all, the commodities listed in a tariff.

(3) To provide for a general rate increase applicable to all, or substantially all, the commodities listed in a tariff.

(4) To indicate seasonal discontinuance, temporary suspension or reinstitution of service covered by a tariff .

(5) To provide for change in name of the publishing common carrier or its tariff agent.

(6) To indicate controlled common carrier rates which have been suspended by the Commission.

(b) Supplements filed pursuant to paragraphs (a)(2) and (a)(3) of this section which do not change the rates applicable to all listed commodities shall bear one of the following notations:

(1) The general rate increase/decrease provided for on this page applies to all commodities stated herein except the following (here list the excepted commodities or commodity item numbers); or

(2) The general rate increase/decrease provided for on this page applies to all commodities stated herein except those noted on page——.

(c) General rate change supplements (paragraphs (a)(2) and (a)(3) of this section) shall bear an expiration date that coincides with the date the changes will be reflected in the rates and charges in the tariff. Such date shall not be more than 90 days after the date of filing. No more than one such supplement may be in effect at any time.

(d) Additional supplements to other than looseleaf tariffs shall be filed as provided by any special permission authority granted by the Commission pursuant to §§ 580.4(d) and 580.15.

(e) Supplements shall be numbered consecutively on the upper right-hand corner of each page. For example:

Supplement No. 1 to FMC Tariff No. —— .

(f) General rate increase/decrease supplements filed by controlled common carriers are subject to the 30-day notice requirements of § 580.10, unless special permission has been granted pursuant to § 580.15 or the change affects tariff matter which is the subject of a suspension proceeding, in which case § 580.11(g) shall apply.

(g) *Treatment of suspended tariff matter (controlled common carriers).* (1) Tariff matter filed by a controlled common carrier may be suspended at any time before its effective date. Tariff matter already in effect may be suspended upon issuance of a show cause order on not less than 60 days' notice to the common carrier. In either instance, the suspension period shall not exceed 180 days.

(2) Upon receipt of a suspension order the controlled common carrier shall immediately file a supplement which:

(i) Contains the specific rates, charges, classifications or rules suspended;

(ii) Cites the date upon which the suspension becomes effective; and

(iii) States that all use and application of the suspended tariff matter is deferred for the period specified in the suspension order.

(3) Controlled common carrier tariff matter filed to become effective during a suspension period in lieu of the suspended matter may become effective immediately upon filing or upon the effective date of the suspension, whichever is later. In determining whether to reject replacement rates, the Commission will consider whether such rates result in total charges (e.g., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a U.S.-flag or reciprocal-flag common carrier serving the same trade.

(i) The filing controlled common carrier shall identify the specific U.S.-flag or reciprocal-flag common carrier's rates, charges, classification or rules resulting in total charges which equal or are lower than its own.

(ii) All replacement filings shall state on the appropriate tariff page the following:

Filed pursuant to 46 U.S.C. app. 1708(d) and 46 CFR 580.11(g)

§ 580.12 Time/volume rates.

(a) *Definition.* "Time/volume rate", for the purposes of this section, means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(b) *General requirements.* (1) Time/volume rates may be offered by common

carriers or conferences. All rates, charges, classifications, rules and practices concerning time/volume rates must be published in an applicable tariff on file with the Commission. The time/volume rate offering must identify the shipment records which will be maintained to support the rate.

(2) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment.

(3) Any shipper utilizing a time/volume rate must give notice to the offering carrier or conference of its intention to use such a rate prior to tendering any shipments under such an arrangement. Notice may be accomplished by any effective method deemed appropriate by the offering carrier or conference and set forth in the applicable tariff.

(4) Shipper notices and shipment records supporting a time/volume rate shall be maintained by any offering carrier or conference for at least five years after any shipper's use of a time/volume rate has ended.

(c) *Continuation of contracts.* Any contract with respect to a time/volume rate entered into prior to June 18, 1984, pursuant to former § 536.7, and in effect on that date, shall be permitted to remain in effect for the duration of the term specified in the contract or until June 17, 1985, whichever occurs first.

§ 580.13 Governing tariffs.

(a) If it is undesirable or impractical to include tariff rules or bills of lading/contracts of affreightment in a rate tariff as required by paragraphs (c)(10) and (d)(8) of § 580.5, such materials may be separately published and filed as a "rules tariff" and/or "bill of lading tariff." Classifications of freight and similar tariff matter may also be published and filed as separate "governing tariffs." Rate tariffs affected by such governing publications shall be made expressly subject thereto by the inclusion of a reference in substantially the following form:

Except as otherwise provided, this tariff is governed by (insert type of tariff) FMC No. ——.

(b) No rate tariff shall refer to or be governed by another rate tariff.

(c) Tariffs naming rates for the transportation of explosives, inflammable or corrosive material, or other dangerous articles, shall contain (as required by § 580.5(d)(16)) the rules and regulations issued by the common carrier or conference governing the transportation of such articles or reference to a separate publication, commercial or governmental, where such regulations are available to the general public.

§ 580.14 Transfer of operations, transfer of control, changes in common carrier name and changes in conference membership.

(a) Whenever a common carrier with an individual tariff on file changes its name or transfers operating control to another person, the person who will thereafter operate the common carrier service shall make appropriate tariff filings to indicate the change in name. Subsequent amendments to such tariffs shall be in the name of the new common carrier.

(b) Whenever the name of a common carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating common carrier's new name.

(c) Whenever the operation, control or ownership of a common carrier is transferred resulting in a majority portion of the interest of that common carrier being owned or controlled in any manner by a government under whose registry the vessels of the common carrier are operated, the common carrier shall immediately notify the Commission in writing of the details of the change.

§ 580.15 Applications for special permission.

(a)(1) Section 8(d) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases in rates or the issuance of new or initial rates on less than statutory notice. Section 9(c) of the Act authorizes the Commission to permit a controlled common carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will grant such permission only in cases where merit is demonstrated.

(2) Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be filed with reasonable promptness after issuance of the defective tariff publication.

(b) Application for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent that holds authorization to file the tariff publication. Such applications shall be accompanied by a filing fee of $90.

(c) Application for special permission shall be made only by cable, telegram or letter except that in emergency situations, application may be made by telephone if the telephone communication is promptly followed by a cable, telex or letter and the filing fee of $90.

(d)(1) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth by the Commission.

(2) If the exact authority granted by the special permission is not used, and more, less or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

(e) Applications for special permission shall contain the following information:

(1) The name of the conference or carrier.

(2) The FMC number and description of the specific tariff involved.

(3) The rate, commodity, rules, etc. (related to the application), and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(f) Every tariff or tariff amendment filed pursuant to special permission granted by the Commission shall contain the following notation:

Issued under authority of Federal Maritime Commission Special Permission No. ——.

The filing common carrier(s) shall fill in the blank with the special permission letter and number assigned by the Commission. For example: No. F–1212 or No. CC–1212.

§ 580.16 Loyalty contracts.

(a) A sample of any loyalty contract, as defined in this part, must be filed in the applicable tariff together with rules which set forth the scope and application of the contract system.

(b) The use of any sample loyalty contract and applicable rules filed for inclusion in a tariff under paragraph (a) of this section shall be presumed to be "in conformity with the antitrust laws," within the meaning of section 10(b)(9) of the Act, if such contract makes reference to a Business Review Letter, issued pursuant to 28 CFR § 50.6, indicating no objection to the use of that contract.

§ 580.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget [OMB] for each agency information collection requirement:

Section	Current OMB control No.
580.3	3072-0009
580.7(f)	3072-0044
580.8 through 580.15	3072-0009

BILLING CODE 6730-01-M

EXHIBIT NO. 1 TO PART 580

Title Page (Front) Format
(See § 580.5(a))

ORIGINAL TITLE PAGE
TO
FMC NO. 1

EFFECTIVE DATE: JANUARY 1, 1985

CARLETON STEAMSHIP LINE

A VESSEL OPERATING COMMON CARRIER

FREIGHT TARIFF NO. 1

NAMING
CLASS AND COMMODITY RATES
AND
RULES AND REGULATIONS

GOVERNING THE TRANSPORTATION OF
GENERAL COMMODITIES
VIA
DIRECT/TRANSSHIPMENT SERVICE
(SEE PAGE 8)

FROM
U. S. PACIFIC COAST PORTS
(AS SPECIFIED IN RULE 1)
TO
PORTS IN JAPAN AND KOREA
(AS SPECIFIED IN RULE 1)

FOR REFERENCE TO GOVERNING PUBLICATIONS, SEE PAGE 11.

FOR LIST OF PARTICIPATING COMMON CARRIERS, SEE PAGE 4.

SUBSCRIPTION PRICE: U. S. $200.00 PER CALENDAR YEAR OR FRACTION THEREOF, INCLUDING ALL SUPPLEMENTARY MATTER AND REVISIONS THERETO. SEE RULE NO. 23.

ISSUED BY:

CARLETON B. JOHANSEN
ISSUING OFFICER
6402 BRYAN STREET
BUCKLER, CALIFORNIA 94199

EXHIBIT NO. 2 TO PART 580

Title Page (Reverse) Format
(See §§ 580.4(e) and 580.5(c)(2))

ANTI-REBATING POLICY

Carleton Steamship Line has a policy against the payment of any rebate by the company or any officer, employee, or agent thereof, which payment would be unlawful under the United States Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR 582.

EXHIBIT NO. 3 TO PART 580

Class Tariff or Class and Commodity Tariff Index
(See § 580.5(c)(6))

CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1	FMC NO.	ORIG/REV	PAGE
		1st Rev.	28
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS		Original	28
		EFFECTIVE DATE:	
TO : PORTS IN JAPAN AND KOREA		January 3, 1985	

COMMODITY AND/OR CLASS RATE INDEX

Commodity	Class or Item Number	Commodity	Class or Item Number
Abrasives	5	Implements, Agricultural	1000
Acids	1	Iron or steel articles, viz:	
Agricultural Implements	1000	Cable, rope and strand	2400
		Pipes and tubes	100
		Structural, N.O.S.	85
		Washers	1315

NOTE: Where a tariff publishes both class and commodity rates, different numerical series must be used to differentiate between item numbers and class rating numbers. For example, as shown above, the class ratings are numbered from 1 to 100 and the commodity item numbers series begin with 1000.

EXHIBIT NO. 4 TO PART 580

Single Level of Rates, Packed/Unpacked Rates,
Special Rates, Emergency Rates and Valuation Rates
(See §§ 580.4(e)(2); 580.5(b); 580.6(d); 580.6(n); 580.6(o) and 580.10(a))

CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1	FMC NO.	ORIG/REV	PAGE
		2nd Rev.	33
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS		1st Rev.	33
TO : PORTS IN JAPAN AND KOREA		EFFECTIVE DATE:	
Except as otherwise provided herein, rates apply per ton of 1000 Kilos (W) or 1 Cubic Metre (M), whichever produces the greater revenue.		January 6, 1985	

Commodity Description and Packaging	Rate Basis	Rates in U.S. Dollars: Japan	Rates in U.S. Dollars: Korea	Item No.
Fans, electric	W/M	76.00	—	3100-00
Fish, frozen, in bulk	W	230.00	237.00	3110-90
Iron and steel:				3600-10
Turnbuckles	W	29.50	32.00	
Emergency rate effective 1-15-85 to 3-15-85(R)1/	W	26.00	28.00	
Lime, hydrated, packed	W	29.25	34.75	4125-40
Medicines, patent preparations:				5000-10
Values up to $200 per 40 CFT	M	34.00	37.00	
Values exceeding $200 but not exceeding $500 per 40 CFT	M	52.75	58.00	
Values exceeding $500 per 40 CFT	M	67.75	74.00	
Tractors:				7127-05
Unpacked	W/M	145.00	154.00	
Packed	W/M	140.00	149.00	
Zinc, viz:				9259-00
Bars, circles, ingots, pigs, plates, sheets and slabs	2240 lbs or 40 CFT	---	49.00	
Ingots: Special rate effective 1-15-85 expiring 3-15-85(R)1/	2240 lbs	---	47.00	
Ingots: Special rate effective 3-15-85 expiring 6-15-85(R)1/	2240 lbs	---	48.00	

1/Symbols denoting a change, as set forth in § 580.10(a)(7), must be shown in the commodity description column either to the left or right of the commodity.

NOTE: All tariff pages, except the title page and reverse side of the title page, shall be filed in the form and manner as prescribed above the rate block on this page.

EXHIBIT NO. 5 TO PART 580

Class Rate Tariff or Class Rate
Section of Class and Commodity Tariff
(See §§ 580.6(o) and 580.6(p))

CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1	FMC NO.	ORIG/REV	PAGE
		ORIGINAL	35
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS			
TO : PORTS IN JAPAN AND KOREA		EFFECTIVE DATE:	
CLASS RATES		January 1, 1985	

Except as otherwise provided, rates apply per ton of 2240 lbs. or 40 CFT whichever produces the greater revenue.	CLASS			
PORTS TO WHICH RATES APPLY	5	10	15	20
Ports A, B, C	$50.00	$82.50	$95.00	$102.00
Ports D, E, F, G	47.00	56.30	84.00	90.00
Ports H, I	37.75	53.00	66.00	78.00

[FR Doc. 84-29011 Filed 11-14-84; 8:45 am]
BILLING CODE 6730-01-C

46 CFR Parts 585 and 587

[Docket No. 84-22 (for Part 587)]

Actions To Address Conditions Unfavorable to Shipping in the Foreign Trade of the United States and Conditions Unduly Impairing Access of U.S.-Flag Vessels to Ocean Trade Between Foreign Ports

AGENCY: Federal Maritime Commission.

ACTION: Final Rules.

SUMMARY: These Final Rules revise and supersede the Commission's regulations in Subchapter D implementing section 19 of the Merchant Marine Act, 1920 and the Interim Rule implementing section 13(b)(5) of the Shipping Act of 1984 which became effective on June 18, 1984. The revision of Part 585 implementing section 19 of the 1920 Act merely makes technical corrections. The revisions of Part 587 implementing the 1984 Act relate to, among other items, definitions, factors which would indicate conditions unduly impairing access of U.S.-flag vessels in cross trades, petitions for relief, proceedings, decisions, sanctions and effective date of decisions.

DATES: Effective December 15, 1984.

FOR FURTHER INFORMATION CONTACT:
Robert A. Ellsworth, Director, Office of Policy Planning and International Affairs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5870
Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

I. Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States

In the Commission's program to review and republish all of its regulations since the passage of the Shipping Act of 1984 (the Act) (46 U.S.C. app. 1701), certain technical and style changes appeared to be required for Part 585, *"Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States"* (formerly 46 CFR Part 506). These regulations implement section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. app. 876(1)(b)). Previously, a Final Rule on Part 585 was published in the **Federal Register** at 49 FR 20616 (May 17, 1984) but further changes were deemed necessary.

The non-substantive technical and style changes to Part 585 reflect revisions in nomenclature and Commission organization, correction of typographical errors and removal of superfluous verbiage. Outdated and obsolete provisions have also been deleted. Also changed or deleted, where feasible, are citations to other laws required by recodifications and other statutory changes; references to the obsolete General Order system; "Provided, however"; and gender specific terms. There are no substantive changes to Part 585.

II. Actions to Address Conditions Unduly Impairing Access of U.S.-Flag vessels to Ocean Trade Between Foreign Ports

The Shipping Act of 1984 was enacted on March 20, 1984, with an effective date of June 18, 1984. Section 13(b)(5) (46 U.S.C. app. 1712(b)(5)) of the Act provides that:

> If, after notice and hearing, the Commission finds that the action of a common carrier, acting alone or in concert with any person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including the imposition of any of the penalties authorized under paragraphs (1), (2), and (3) of this subsection [13(b)].[1]

On May 16, 1984, the Commission published in the **Federal Register** (49 FR 20654), corrected 49 FR 21931, May 24, 1984), an Interim Rule implementing section 13(b)(5) of the Act. The Commission provided ninety days for comments on the Interim Rule. Comments were received from: (1) Parties to FMC Agreement No. 10050 (Agreement No. 10050); (2) American President Lines Ltd.; (3) Chilean Line, Inc.; (4) China Ocean Shipping Company (COSCO); (5) Council of European and Japanese National Shipowners' Associations (CENSA); (6) Consultative Shipping Group (CSG)[2]; (7) Delta Steamship Lines, Inc. (Delta); (8) Government of Japan; (9) National Maritime Council (NMC); (10) Sea-Land Service, Inc.; (11) United States Department of State; (12) Transportes Navieros Ecuatorianos (Transnave); and (13) United States Department of Tranportation (DOT). After consideration of these comments, the Commission is issuing this Final Rule to supersede the Interim Rule.

[1] These penalties include suspension of the tariffs of a common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, and the imposition of a civil penalty of not more than $50,000 per shipment for the acceptance or handling of cargo for carriage under a tariff that has been suspended or after the common carrier's right to utilize that tariff has been suspended. *See* 46 U.S.C. app. 1712(b)(1)(3).

[2] The CSG includes the governments of Belgium, Denmark, Finland, France, Federal Republic of Germany, Greece, Italy, Japan, Netherlands, Norway, Spain, Sweden and the United Kingdom.

Discussion of Comments

Section 587.1. Purpose.

Section 587.1(a)

Agreement No. 10050 proposes definitions that it believes will clarify three terms: "U.S.-flag vessel," "U.S.-flag carrier," and "ocean trade between foreign ports."

"U.S.-flag vessel" is defined in the Interim Rule as "a vessel documented under the laws of the United States". Agreement No. 10050 takes the position that, while this definition is technically correct, it should be amended to make clear that the term includes vessels of all types, whether liner, bulk, tramp or other category as recognized in § 587.3(a). The Commission agrees with this clarification and the Final Rule is being revised accordingly.

The suggested change clarifies the definition of a U.S-flag vessel in the Final Rule. This definition is supported by the legislative history of the Act. Both the House and Senate Reports point out that section 13(b)(5) "is broad enough to permit retaliation against liner operators in U.S. trades for events occurring in foreign bulk trades."[3] As noted in the Reports, section 13(b)(5) supersedes section 14(a) of the Shipping Act, 1916. Congress, however, did not use the language of section 14(a) which limited relief to "a common carrier by water which is a citizen of the United States * * *." Instead, in section 13(b)(5) reference is made to the much broader category of vessels documented under the laws of the United States. For reasons stated above, we believe relief under section 13(b)(5) is intended to cover the types of U.S.-flag vessels mentioned in the Final Rule.

"U.S.-flag carrier" is defined in the Interim Rule as an "owner or operator of a U.S.-flag vessel". Agreement No. 10050 suggests that, in light of modern service freight systems, including intermodal, feeder, relay and other connecting operations, the definition be expanded so that relief under section 13(b)(5) is not limited to all-water or exclusively U.S.-flag vessel operations. The Commission has not adopted this suggestion because the Act only protects "vessels documented under the laws of the United States". The suggested changes would go beyond the scope of the Act.

In the area of intermodal transport, § 587.2(d) makes clear that relief is

[3] *See* H.R. Rep. No. 53, 98th Cong., 1st Sess. 22-23; S. Rep. No. 3, 98th Cong., 1st Sess. 39 (1983).

offered to U.S.-flag carriers in instances where a government or commercial practice results in, or may result in, unequal or unfair opportunity for U.S.-flag vessel access to port or intermodal facilities or services related to the carriage of cargo inland to or from ports in a cross trade. It is not necessary, therefore, to revise the definition of a U.S.-flag carrier to accomplish this purpose.

The phrase "ocean trade between foreign ports" was not defined in the Interim Rule. However, in the "Supplementary Information" accompanying the Interim Rule, it was pointed out that the phrase "ocean trade between foreign ports," includes intermodal movements. Agreement No. 10050 suggests that the phrase "ocean trade between foreign ports" be defined as "cargo moving entirely or in part by ocean carriage between ports and/or points in foreign countries." The Commission agrees that the phrase should be explained in the text of the Final Rule and has done so in § 587.1(a)(1) by inserting the words, "which includes intermodal movements," after "ocean trade between foreign ports."

CENSA notes that § 587.1(a) of the Interim Rule refers to only one of the purposes of the Act, which is to encourage the development of the U.S.-flag liner fleet (46 U.S.C. app. 1701). CENSA suggests that any action taken by the Commission must balance all of the Act's "purposes", including the other two which are: (1) To establish a non-discriminatory regulatory process; and (2) to provide an efficient and economic transportation system insofar as possible, in harmony with, and responsive to, international shipping practices.

Section 13(b)(5) protects U.S.-flag vessel access to cross trades, thus encouraging the development of the U.S.-flag liner fleet. To the extent that the other purposes of the Act are pertinent in any particular section 13(b)(5) matter, they will be taken into consideration.

Sections 587.1 (b) and (c)

Agreement No. 10050 suggests that § 587.1 (b) and (c) be strengthened to provide relief for *prospective* harm. Delta suggests changes in § 587.1(c) to authorize Commission action upon a finding that a U.S.-flag carrier will incur "imminent" harm in the trade. Transnave objects to any imposition of sanctions for prospective harm and suggests that paragraph (c) be changed to allow Commission action, but no punitive sanctions until actual harm is shown.

It is the Commission's intention, as pointed out in the Supplementary Information accompanying the Interim Rule, that Commission Flexibility to act swiftly when harm to a U.S.-flag carrier has been demonstrated or is imminent be preserved. In order to make this point clear, paragraphs (b) and (c) of § 587.1 of the Interim Rule are being amended to indicate that Commission action may be taken when undue impairment is "imminent".

On the other hand, we appreciate Transnave's concern with respect to remedial versus punitive measures that may be taken by the Commission on the basis of prospective harm. Should the Commission find that the adverse practice or activity from which relief is sought has not yet occurred, but that punitive sanctions are warranted when it does occur, such sanctions will be made effective concurrently with the actual implementation of the practice or activity threatening undue impairment of access. Section 587.7(c) of the Final Rule now so provides.

Delta points out that § 587.1(c) would appear to limit conditions unduly imparing the access of a U.S.-flag carrier to those where the carrier is unable to enter the trade or where actual participation is being eroded for reasons other than its commercial ability or competitiveness. Delta, therefore, suggests that this provision be expanded to enable the Commission to find impairment of access when a U.S.-flag carrier is prevented from *increasing* its participation in a cross trade for reasons other than its competitive ability.

The Commission agrees that the term "eroded" could be interpreted to limit the Commission's ability to find that the expansion of a U.S.-flag carrier's participation in a trade may have been unfairly restricted. The Interim Rule is, therefore, being amended to clarify this point by substituting the term "restricted" for "eroded."

Agreement No. 10050 and Delta recommend the deletion of the cautionary language in § 587.1(c) of the Interim Rule, which provides that section 13(b)(5) procedures should not be used as an instrument for the harassment of foreign-flag carriers operating in the U.S. foreign trades. These commenters believe that adequate safeguards against the filing of frivolous petitions are elsewhere provided for in the Interim Rule. CENSA, however, favors retention of the cautionary language.

The Commission agrees that the Rule otherwise provides ample safeguards against potential harassment. Section 587.3 allows the Commission to reject frivolous or deficient petitions and requires petitions for relief to be supported by affidavits and other supporting documents. Given these safeguards, the cautionary language in section 587.1(c) would appear unnecessary and is, therefore, deleted. This deletion, however, does not reflect a change in Commission policy. The Commission will carefully review section 13(b)(5) petitions in order to ensure that the procedures of Part 587 are not abused.

CENSA suggests that, when the Commission evaluates the operational ability of a carrier to offer a service, it consider recent U.S./CSG discussions on the criteria which such a carrier should meet. CENSA goes on to note that the specific criteria set out in the Interim Rule have been overtaken by developments in these discussions.

The Commission is aware of and closely follows the U.S./CSG discussions, which have centered on reaching an agreement regarding reciprocal competitive access for U.S. and CSG vessels to U.S. and CSG trades with developing nations. These discussions are ongoing and no agreement has been concluded between the United States Government and the CSG Governments. It would, therefore, be premature to even consider formalizing, in the Final Rule, the policies still under discussion.

Section 587.1(c) of the Interim Rule provided that the condition of unduly imparired access would be found only where a U.S.-flag carrier is "fit, willing and able" to enter a trade in which its access is being unduly impaired. Upon further consideration, the Commission does not believe that U.S.-flag carriers should be required to meet a rigid "fit, willing and able" standard with regard to foreign-to-foreign trades when foreign-flag carriers have free and unrestricted access to U.S. trades. Therefore, the term "fit, willing and able" has been deleted from the Final Rule and in its place is substituted the term "commercially able". The "commercially able" standard will still allow the Commission to screen out a frivolous petition without imposing an overly restrictive standard on U.S.-flag carriers.

Section 587.1(d)

Section 587.1(d) provides that when examining conditions in trade between foreign ports, and considering appropriate action, the Commission will give due regard to U.S. maritime policy and U.S. Government shipping arrangements with other nations, as well as the degree of reciprocal access afforded in U.S. foreign trades to the

carriers of the countries against whom action is requested.

CENSA and the CSG suggest that the Commission also give due regard to the U.S./CSG discussions, particularly on the issue of restrictive commercial practices and derogations from reciprocal competitive access. CENSA urges that complaints received by the Commission concerning restrictive commercial practices be first taken up at the diplomatic level with the governments of the carriers concerned. The CSG believes that the Commission should make clear that it would normally look to the CSG Governments to remedy any restrictive commercial practices in their trades. In addition, the CSG notes that the Commission should avoid any threat to derogations agreed upon in the U.S./CSG discussions. These derogations include certain government and commercial agreements which in some way restrict competitive access but were in effect prior to the start of the ongoing U.S./CSG discussions.

As discussed in connection with § 587.1(c) above, an agreement between the U.S. and CSG has not yet been accepted by either party and, therefore, cannot be considered by the Commission for the purposes of the Final Rule. In appropriate circumstances the Commission will, under § 587.6 of the Final Rule, request that the Secretary of State seek resolution of restrictive practices through diplomatic channels.

Section 587.2. Factors indicating conditions unduly imparing access.

This section provides various examples of factors which would be deemed to indicate conditions unduly impairing access of a U.S.-flag vessel to cross trades. Numerous comments addressed various portions of this section. DOT is generally concerned that certain of the listed practices of ocean carriers or foreign governments might be considered as *per se* impairment of access of U.S.-flag vessels to a cross trade. Specifically mentioned is § 587.2(c) which cites certain commercial activities, e.g. closed conferences employing deferred rebates, as indicating conditions unduly impairing access. The discussion below with respect to § 587.2(c) should allay any concern that closed conferences employing deferred rebates would be treated by the Commisison as *per se* violations of section 13(b)(5).

Delta suggests that this section be expanded to list additional factors indicating conditions of impaired access, including: (1) The existence of foreign intergovernmental agreements; (2) discriminatory fines, taxes or other financial penalties levied on cargo, shippers and consignees when using U.S.-flag vessels; and (3) discriminatory financial benefits granted to shippers or consignees when using other than U.S.-flag vessels.

The first factor suggested by Delta, i.e., foreign intergovernmental agreements, is too broad and indefinite to be included in this section. However, to the extent that an intergovernmental agreement reserved substantial amounts of cargo or otherwise restricted access to cargo, it could be a factor indicating unduly impaired access. Such cargo reservation arrangements are covered in § 587.2(b).

Fines (fees) for those employing U.S.-flag vessels or benefits for those not doing so are factors which the Commission would consider as unduly impairing access. Accordingly, § 587.2(a) is being so amended.

Section 587.2(a)

Section 587.2(a) states that the imposition upon U.S.-flag vessels of fees, charges, requirements, or restrictions different from those imposed on other vessels, or which preclude or tend to preclude U.S.-flag vessels from competing in the trade on the same basis as any other vessel, is a factor which may indicate unduly impaired access.

Agreement No. 10050 notes that § 587.2(a) of the Interim Rule does not make specific reference to "national-flag" operators. Agreement No. 10050 is concerned that this omission might be read as an unintended limitation on the scope of this section especially in view of the express reference to national-flag vessels in § 587.2(b). Such a limitation on the scope of § 587.2(a) was not intended. Section 587.2(a) is, therefore, being clarified by amending the phrase "from those imposed on other vessels" to read "from those imposed on national-flag or other vessels" in the Final Rule. This is not to say that imposition of different restrictions on national and non-national carriers results in a *per se* finding of conditions unduly impairing the access of U.S.-flag vessels. The United States Government itself makes a distinction between U.S.-flag carriers and other carriers under its various cargo preference statutes. The Commision will determine whether the alleged restrictions are unfair or unreasonable after consideration of all the facts relevant to each case.

COSCO reads §587.2 (a) and (d) as requiring that U.S.-flag vessels receive not merely the same treatment as other cross-trading vessels, but instead, treatment as favorable as is accorded vessels flying the flag of the bilateral trading partners. COSCO believes that the effect of these sections is to require foreign governments to give U.S.-flag vessels most favored nation (MFN) treatment.[4] COSCO asserts that the United States Government does not accord MFN treatment to COSCO vessels and concludes that these sections are contrary to principles of equality and mutual benefit.

As stated above, the Commission is charged by the Act with determining whether alleged restrictions are unfair or unreasonable to U.S.-flag vessel access. The Commission will make such a determination after consideration of all facts relevant to each case. Facts that the Commission would consider would include the treatment of national-flag and other vessels in U.S. cross trades, as well as the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom the Commission action is contemplated.

Agreement No. 10050 suggests that discriminatory burdens applied to intermodal and connecting services should be mentioned in § 587.2(a). We do not believe this change is necessary. As previously discussed, § 587.2(d) should adequately address the concerns regarding intermodal restrictions expressed by Agreement No. 10050.

Section 587.2(b)

Section 587.2(b) includes, as a factor indicating undue impairment, the "reservation" of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S.-flag vessels. CENSA and the CSG suggest that this provision be clarified to indicate that it does not apply to commercial cargo-sharing arrangements. Agreement No. 10050 urges that it be strengthened to state that the United States will oppose cargo-sharing schemes and that 40/40/20 and other restrictive devices may be met by similar restrictions.

Use of the word "reservation" in § 587.2(b) refers to government reservation laws. Only governments can reserve cargoes to carriers. Commercial pools may allocate the commercial cargo captured by its members but these are cargoes for which they compete. Section 587.2(b) would, however, cover the situation where a commercial cargo-sharing agreement is government-influenced, or a conference pool or any

[4] In these circumstances MFN treatment would generally require that a nation give U.S.-flag carriers treatment, e.g., regarding port call notice, fees, etc., no less favorable than the treatment accorded that nation's most favored trading partner.

other conference practice operates in a predatory fashion, such that it is unduly impairing the access of a U.S.-flag carrier in a cross trade.

Section 587.2(c)

The Interim Rule provides that the use of predatory practices, including, but not limited to, closed conferences employing fighting ships or deferred rebates, is a factor which may unduly impair the access of a U.S.-flag vessel to cross trades. Although the wording of this paragraph follows the language used in both the House and Senate Reports,[5] which listed "closed conferences employing fighting ships or deferred rebates" as practices which could have the effect of unduly impairing the access of U.S.-flag vessels to trade between foreign ports, several commenters objected to its inclusion in the Interim Rule.

DOT, Department of State, CENSA, CSG and COSCO all suggest that specific references to closed conferences employing deferred rebates be deleted as a factor indicating unduly impaired access. It is pointed out that these practices are not unlawful in some foreign trades. As stated above, DOT believes that reference to these practices creates the impression that they may be considered as *per se* violations of section 13(b)(5).

Delta, on the other hand, submits that "closed conferences employing * * * deferred rebates," is one of the most effective devices used in foreign-to-foreign trades for closing a trade to outsiders and the fact that this practice is not considered predatory by many of our trading partners is irrelevant. Delta maintains that while the Commission need not impose U.S. open-conference policy on foreign-to-foreign trades to secure reasonable access to those trades for U.S. vessels, it should consider that policy in determining whether conditions exist which unduly impair the access of a U.S.-flag vessel.

Agreement No. 10050 suggests that the reference to possible entities which may engage in predatory practices be expanded to include not only "closed conferences" but all conferences, open or closed, pools and carriers employing fighting ships. Agreement No. 10050 would agree to the removal of the term "deferred rebates", provided that the Commission state that its removal is without prejudice to future consideration of finding deferred rebates as a factor impairing access.

The "factors" enumerated in § 587.2 were not intended to be either exclusive or conclusive. These practices would ultimately require a finding that they resulted in undue impairment of access before sanctions would be imposed. Thus, the mere existence in a trade of a closed conference which utilizes deferred rebates would not, in and of itself, support a conclusion that deferred rebates unduly impair access of a U.S.-flag vessel. It is only where they are used in a predatory fashion that such practices would violate this section. To make this clear we are inserting the word "possibly" prior to the phrase "including but not limited to closed conferences employing fighting ships or deferred rebates * * *" in § 587.2(c). Furthermore, the list of practices that may be predatory was not meant to be exhaustive. By its terms, § 587.2(c) includes use of any "predatory practice". Delta's suggestion that the Commission consider U.S. open-conference policy when determining whether undue impairment exists under § 587.2(c), is accommodated by § 587.1(d) which provides that the Commission will consider the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom Commission action is contemplated.

Section 587.2(d)

The Government of Japan suggests that the reference in § 587.2(d) to unequal treatment with respect to intermodal facilities is inappropriate for inclusion as a factor requiring retaliatory action because it extends U.S. regulatory authority to the domestic transportation systems of another country. Agreement No. 10050 supports retention of § 587.2(d).

In light of the world-wide growth and development of intermodal transportation systems, the reference in § 587.2(d) to "intermodal facilities and services" is necessary in order to provide meaningful protection to U.S.-flag vessels. Denial of the opportunity to compete for intermodal cargo on a fair basis can constitute an undue impairment of access in the same fashion as unfair discrimination in access to port-to-port cargo movements. For this reason, no change to section 587.2(d) is being made.

Sections 587.2 (b), (c), (d), and (e)

Agreement No. 10050 suggests that references to "U.S.-flag vessel(s)" in § 587.2 (b), (c), (d), and (e) should be changed to "U.S.-flag carrier(s)", thereby incorporating this commenter's proposed definition of "U.S.-flag carrier" which, in part, was meant to expend the coverage for relief to foreign-flag feederships of U.S. carriers. For the reasons discussed above in connection with § 587.1(a), Agreement No. 10050's proposed definition of "U.S.-flag carrier" is not accepted and changes to these paragraphs are not made.

Section 587.3. Petitions for relief.

Agreement No. 10050 suggests that a new paragraph be added to § 587.3 stating that petitioners may recommend time periods for Commission action on a petition. We are not adopting this suggestion. If a filing party desires to specify a time period for Commission action, it may do so under § 587.3(b)(9). However, due to the possible significant foreign policy implications of any action taken, the Commission believes it requires maximum flexibility in structuring section 13(b)(5) proceedings and determining when sanctions should be applied. It cannot be locked into any rigid, pre-determined time frames.

Section 587.3(a)—Filing

Agreement No. 10050 suggests that the term "U.S.-flag carrier" be substituted for the "owner or operator of a liner, bulk, tramp or other vessel documented under the laws of the United States" as the person who may file a petition for relief under § 587.3(a). This suggested language change is predicated on the Commission's acceptance of Agreement No. 10050's definition of "U.S.-flag carrier". For the reasons discussed above in connection with § 587.1(a), this suggestion is not adopted. In any event, a "U.S.-flag carrier" obviously may file a petition under § 587.3(a).

Section 587.3(b)—Contents

Section 587.3(b) lists what should be included in the contents of petitions for relief. Delta and Agreement No. 10050 believe that many of the mandatory submission requirements, e.g., certified documents, statistics, affidavits of fact and memorandum of law, should be made permissive. We disagree. By requiring a complete submission at the initial stage of the proceeding, the Commission is better able to move with dispatch if warranted. The mandatory requirements of this section therefore shall, except as modified below, be continued.

Delta and Agreement No. 10050 suggest that certain information, i.e., certified copies of foreign laws and certain statistics, may be difficult or impossible for the petitioner to provide, and that in such a case, the petition could be rejected by the Commission as deficient, causing undue delay or denial of consideration of an otherwise meritorious petition. The Commission understands that obtaining a certified copy of a foreign law may sometimes be difficult and is revising § 587.3(b)(4) to provide that certified copies of the law, rule, regulation or other document are to be provided "when available". The Commission believes, however, that the petitioning parties should *generally* be able to provide a concise description and citation of the foreign laws, rule, or government or commercial practice which is alleged to impair access to a trade. This information will obviously be essential to section 13(b)(5) deliberations.

Likewise, the Commission concludes that statistics relating to alleged harm required under § 587.3(b)(7)(i) and (b)(7)(iii), are necessary to make an informed decision regarding the merits of the petition and the harm alleged. The Commission will exercise its judgment when evaluating the statistics provided, including the particular circumstances surrounding each petition, and will consider the difficulties involved in obtaining and/or compiling these statistics.

In addition, affidavits of fact and memoranda of law provide needed information to enable the Commission to evaluate the merits of the petition and proceed expeditiously where swift action may be critical to prevent irreparable harm to the U.S.-flag carrier. Therefore, these documents remain a requirement for petition contents.

Section 587.3(b)(2)

Section 587.3(b)(2) of the Interim Rule requires that "the name and address of each party (carrier, person, or foreign government agency) against whom the petition is made" be included in the petition. DOT believes that this section should be amended to require "the name of each party (foreign government, agency or instrumentality thereof, carrier or other person) against whom the petition is made." DOT points out that addition of the language "foreign government, agency or instrumentality thereof", would enable a petitioner to name a quasi-governmental organization, such as a national commodity or cargo allocation authority, that is acting in concert with common carriers to unduly impair the access of a U.S.-flag vessel. The language, "carrier or other person" is intended to make § 587.3(b)(2) more consistent with the Act which defines "person" to, in effect, include a carrier. DOT's suggestion clarifies the definition of "party" and is, therefore, being adopted.

CENSA notes that § 587.3(b)(2) fails to require the petition to be served on the parties. The CENSA comment has merit and § 587.4(b) of the Final Rule (previously § 587.6(b)) provides for such service by the Commission. In cases where a foreign government, agency or instumentality thereof, is named as a party in the petition, the Commission will seek service through appropriate diplomatic channels. In order for the Commission to recognize, with certainty, whether a party named in a petition is a foreign government, agency or instrumentality thereof, it is requiring a statement to that affect under § 587.3(b)(2) of the Final Rule.

Section 587.3(b)(5)

Section 587.3(b)(5) of the Interim Rule requires that a petition include "any other evidence" of the existence of a government or commercial practice alleged to be causing undue impairment of access. Agreement No. 10050 has suggested that § 587.3(b)(5) be expanded to include other evidence relating to any "law, rule or regulation" as well as any "government or commercial practice". Agreement No. 10050 believes this change is appropriate because, as it noted in its comment on § 587.3(b)(4), a certified copy of foreign laws may not be obtainable. Although this section would probably allow for the inclusion of such information under either § 587.3(b)(3) or § 587.3(b)(7), the change suggested in § 587.3(b)(5) is being adopted to include "any other information relating to any law, rule, or regulation, or indicating the existence of any government or commercial practice."

One other change is being made to § 587.3(b)(5). The term "evidence" is being deleted and in its place the term "information" is being inserted. This change is made here and in any other section of the Final Rule where the term "evidence" is used. The contents of the petition cannot be properly characterized as "evidence" at this point in the section 13(b)(5) procedure.

Section 587.3(b)(8)

Section 587.3(b)(8) of the Interim Rule requires a memorandum of law addressing relevant legal issues. Agreement No. 10050 believes that it is not clear whether this provision contemplates submission of a separate document. It suggests that a change be made to indicate that any legal discussion, where appropriate, may be incorporated in the petition for relief. This suggestion is being adopted in the Final Rule. The Commission will permit the petitioner to submit a separate memorandum as part of the petition or, where appropriate, incorporate any legal discussion within the petition. Section 587.3(b)(8) is being amended accordingly.

Section 587.4. Receipt of relevant information.

(Redesignated Section 587.5 in the Final Rule)

CENSA suggests that information submitted to the Commission be made available to all interested parties. Agreement No. 10050 suggests that any information submitted pursuant to this section should be provided to the petitioning or affected U.S.-flag carrier before it is made part of the record. DOT recommends the establishment of standards for confidential treatment and procedures for segregating proprietary information from other factual statements and arguments in order to provide maximum disclosure of information.

Persons submitting information pursuant to § 587.5 of the Final Rule may request that all or any portion of that information be accorded confidential treatment under an appropriate exemption of the Freedom of Information Act (FOIA) (5 U.S.C. 552). Where an exemption applies, proprietary or other information would be protected from disclosure. The Commission does not believe it is necessary to specifically provide for confidential treatment of business or other information in Part 587.

It should be noted that any information which is submitted, even if covered by a FOIA exemption, must be disclosed to all parties in any proceeding under Part 587 if that information is made part of the record in the proceeding upon which the Commission will base its decision. Fundamental precepts of due process require that such information be made available to all parties in a proceeding. Where appropriate, such information may be shielded from public disclosure through a protective order. In any event, Commission action will be based on the record before it. Finally, there does not appear to be any need or reason for submitting information to a petitioning or affected U.S.-flag carrier prior to making the information a part of the public record.

Section 587.4(a)

(Redesignated Section 587.5(a) in the Final Rule)

DOT recommends that § 587.4(a) of the Interim Rule be modified to provide for both compulsory production of information in appropriate circumstances and express sanctions for failure to produce information, noting comparable provisions under the Commission's regulations implementing

[5] *See* H.R. Rep. No. 53, 98th Cong., 1st Sess. 22–23; S. Rep. No. 3, 98th Cong., 1st Sess. 30 (1983).

section 19(l)(b) of the Merchant Marine Act of 1920.[6]

The Commission believes it unnecessary to make a specific reference in the Final Rule to the Commission's subpoena powers conferred by section 12 of the Shipping Act of 1984 (46 U.S.C. app. 1711). Nothing precludes the Commission from employing its subpoena powers in a section 13(b)(5) proceeding. Furthermore, the failure of affected parties to provide information may result in findings or conclusions that would be adverse to them.

Section 587.4(b)

(Redesignated section 587.5(b) in the Final Rule)

The phrase "*bona fide*" has been deleted from § 587.5(b) of the Final Rule. A petition which has been published in the **Federal Register** has in effect been determined to be *bona fide* and the phrase "*bona fide*" in this section is unnecessary.

Section 587.5. Notification to Secretary of State.

(Redesignated section 587.6 in the Final Rule)

Section 587.5 (now § 587.6 in the Final Rule) provides for notification to the Secretary of State by the Commission when there are indications that conditions unduly impairing the access of a U.S.-flag vessel to trade between foreign ports exist. The section provides that the Commission may request that the Secretary of State seek resolution of the matter through diplomatic channels and may request the Secretary to report the results of such efforts within a specified time period.

CENSA suggests that this section be amended to explicitly permit the Secretary of State to "concert" with friendly governments sharing the same aim of free access to trade, so that joint efforts may be made to seek a diplomatic solution. The CSG states that where resistance against restrictive trade practices is intended to be collective, the Commission should invariably request the Secretary of State to join in the pursuit of a diplomatic resolution to each problem.

COSCO suggests that in the event actions complained of are those of a controlled carrier or of a foreign government, the Final Rule should *require* the Commission to request that the Secretary of State seek diplomatic resolution and report to the Commission on those diplomatic efforts before a Commission proceeding begins.

These suggestions are not being adopted. The Commission would, of course, seek assistance from the State Department, where feasible and appropriate, and prefers, where possible, diplomatic resolution of matters raised in section 13(b)(5) petitions. However, in some cases, attempts to seek resolution through diplomatic channels may be time consuming and could result in a U.S.-flag carrier suffering irreparable harm. Commission requests that the Secretary of State seek diplomatic resolution of section 13(b)(5) matters will, therefore, be kept discretionary.

Delta seeks to clearly the Commission's enforcement role by modifying § 587.5 to clarify indicate that the Commission and not the Department of State is responsible for the enforcement of section 13(b)(5). Delta also suggests that an affected U.S.-flag carrier be kept apprised of the progress of any diplomatic negotiations undertaken by the Secretary of State.

The Shipping Act of 1984 unequivocally entrusts this Commission with the administration and enforcement of section 13(b)(5). We have no intention of abdicating those responsibilities in any way. The Commission is neither required to request assistance from the Secretary of State nor required to delay action pending a diplomatic resolution. As noted above, however, the diplomatic resolution of grievances presented in section 13(b)(5) matters would generally appear preferable to unilateral Commission action. The Commission may, of course, assist in these diplomatic efforts if requested.

We do not believe it necessary or appropriate to provide in the Final Rule that the U.S.-flag carrier or any other party will be apprised by the Commission of the progress of diplomatic negotiations. U.S-flag carriers or other parties can, of course, contact the Department of State with respect to the status of diplomatic negotiations.

The Department of Transportation suggests that § 587.5 be amended to provide that the Commission also notify the Secretary of Transportation and when appropriate consult with the Secretaries of State and Transportation on policy questions. The Interim Rule specifies notification to the Secretary of State because it is our understanding that the Department of State is the agency which would have the primary responsibility to seek diplomatic resolution of 13(b)(5) matters which will involve foreign laws and commercial practices existing in foreign-to-foreign trades. However, the Commission will, as in the past, consult with the Secretary of Transportation, who is the Administration's chief spokesperson for maritime policy, and with various other agencies of the Executive Branch in matters relevant to their areas of interest, and will keep them informed as requested. The Commission does not believe that DOT's proposal should be incorporated into the Final Rule, but rather that consultation with other agencies should be handled on an *ad hoc* basis.

NMC suggests that once a "proper" petition for relief has been filed, notification to the Secretary of State under § 587.5 should be provided within a specified number of days. As indicated in connection with § 587.3, the Commission requires maximum flexibility in structuring the procedures and cannot be locked into any pre-determined time frames. The Commission will act as expeditiously as possible in each instance.

Section 587.6. Hearing.

(Redesignated Section 587.4 in the Final Rule)

Section 587.6 (now § 587.4 in the Final Rule) provides for proceedings pursuant to section 13(b)(5). DOT believes that it is unclear whether the term "hearing" refers to oral argument or to the more general opportunity to be heard, either orally or in writing, on matters potentially affecting one's interests. DOT suggests that the title of the section be changed to "Procedure" or "Notice and Opportunity to be Heard" and that the word "proceedings" be substituted for the word "hearings" where it appears in this section.

Section 587.6 establishes a basic procedure of notice and opportunity to be heard in a section 13(b)(5) proceeding. Section 587.6(a) provides for the institution of a proceeding upon the filing of a meritorious petition or upon the Commission's own motion. Section 587.6(b) further provides that notice of any such proceeding will be published in the **Federal Register** and interested or affected persons will have an opportunity to reply to the petition. Section 587.6(c) provides that the Commission may issue a final determination after there has been notice and opportunity to be heard or it may order further hearing if warranted. Any further hearings ordered by the Commission will be structured on a case-by-case basis.

The meaning of the term "hearing" in § 587.6(c) would appear to be sufficiently clear and this term shall be retained. However, the title of this section shall be changed from "Hearing" to "Proceeding" in order to more accurately reflect the contents of this section which includes procedures other than hearing procedures. This section is also being amended to require that an original and 15 copies of replies be filed with the Secretary. Finally, section 587.6 has been redesignated as § 587.4. This placement provides for a more logical sequence in the Final Rule.

Section 587.6(b) of the Interim Rule is being amended to indicate that notice of the institution of a proceeding will be served on the parties by the Commission (section 587.4(b)(1) of the Final Rule). Additionally, this paragraph is being amended to note that replies to a petition by interested, or adversely affected parties will be sumbitted pursuant to § 587.5 of the Final Rule (previously § 587.4). This amendement is being made to clarify that § 587.5 of the Final Rule provides respondents or other interested parties the opportunity to reply to a petition by submitting information. In addition, a technical language modification is being made to § 587.6(b) of the Interim Rule regarding the form of factual submissions (section 587.4(b)(2) of the Final Rule).

Transnave suggests that special procedures be established in the Final Rule to provide for expedited evidentiary hearings and Commission decision within 120 days. It believes that the Final Rule should expressly guarantee the respondent the right to challenge information received by the Commission under § 587.5 (previously § 587.4). Similarly, CENSA expresses concern that the *ad hoc* hearing procedures satisfy the standards of due process and the Administrative Procedure Act (APA) (5 U.S.C. 553).

A formal procedural framework for consideration of petitions would not provide the necessary flexibility to address all the various circumstances under which an action for impairment of access might arise. In establishing the appropriate procedures for each case, the mandates of fundamental due process will, however, be observed and respondents will have an opportunity to confront petitioners' allegations. In certain situations the requirements of due process may be met by the filing of written submissions. In others, more formal procedures may be appropriate. Whatever procedures the Commission establishes, it will ensure that all procedures will satisfy the requirements of due process and, where applicable, the APA.

Section 587.6(b)

(Redesignated Section 587.4(b) in the Final Rule)

CENSA points out that § 587.6(b) of the Interim Rule appears to require that factual submissions of persons responding to a petition be supported by affidavits and sworn documents, but that it does not clearly make the same requirement for the submission of the petitioner's factual allegations. It is the Commission's intention that both the petitioner(s) and respondent(s) provide supporting affidavits and sworn documents. In addition to the requirement in § 587.4(b)(2) of the Final Rule, that factual submissions shall be in affidavit form, §§ 587.3(b) and 587.5(a) (previously § 587.4(a)) are being amended to make this clear.

CENSA suggests that actual notice of a proceeding should be given to affected parties. As mentioned above, such notice will be given by the Commission and § 587.4(b) of the Final Rule so provides.

Transnave submits that due process requires that affected parties be given not less than 30 days to reply to a petition. It is unlikely that the Commission would prescribe a period of less than 30 days for response to a petition, given the fact that certain responses might be based on information located outside of the United States and that certain documents might require English translations. The Commission, however, will consider the length of time needed to respond, as well as the likelihood that injury will result from a delay, on a case-by-case basis.

Agreement No. 10050 believes that procedural time frames are inadequately addressed in the Interim Rule and proposes that a new provision be added which states that prompt response and expeditious action may be required in any given case. NMC suggests the imposition of specific deadlines for completion of the various procedural stages of a section 13(b)(5) proceeding.

As noted earlier in discussing comments on § 587.3, because of the possible complexity and significant foreign policy considerations underlying section 13(b)(5) petitions, the Commission requires maximum flexibility in structuring appropriate proceedings and formulating the necessary time frames. The Commission will, therefore, not attempt to prescribe procedural deadlines in its Final Rule.

Section 587.7. Decisions; sanctions; effective date.

Section 587.7 (a) and (b)

COSCO suggests that prior to the imposition of sanctions, the Commission take into consideration the fault of the person against whom the sanction would be imposed and the effect of such sanctions on the trade. In resolving a section 13(b)(5) petition, the Commission intends, as the law requires it to do, to consider the complete record and make an informed decision based on all the facts, taking into account all the ramifications of its decision such as those raised by COSCO.

Section 587.7(b)

CENSA suggests that § 587.7(b) should be amended to provide that sanctions based on the restrictive trade practices of a foreign government will be imposed only against that government or a carrier of that government. COSCO notes that it is inappropriate for the Commission to impose sanctions against a carrier which is acting in compliance with the laws of a foreign government. The Commission cannot limit itself with respect to the nationality of a carrier on which sanctions may be imposed. In each case brought before the Commission, the role that a government plays in unduly impairing the access of a U.S.-flag carrier, as well as the role of the national-flag lines of that government and other carriers, will be considered. Whatever sanctions might be imposed by the Commission will be against those parties which are either directly or indirectly responsible for undue impairment of access of a U.S.-flag vessel.

Section 587.7(c)

(Redesignated Section 587.7(d) in the Final Rule)

Section 587.7(c) of the Interim Rule provides for the publication and effective date of a Commission decision. CENSA suggests that all parties should be served with a decision. It is the intention of the Commission to serve the decision on all parties and § 587.7(a) is being amended to make this clear.

CENSA suggests that all decisions should be published in the **Federal Register**. The Commission agrees with this suggestion and § 587.7(d) of the Final Rule is so amended.

CENSA believes it is improper to set the effective date of a Commission action under section 13(b)(5) prior to Presidential review. As previously discussed, the Executive Branch will have ample opportunity to comment on section 13(b)(5) petitions and participate

[6] See 46 CFR Part 383 (formerly Part 506), as amended, 49 FR 20610 (May 17, 1984).

in section 13(b)(5) proceedings, if it desires. Moreover, the Commission has already established procedures for advising, and consulting with, the Department of State, prior to the issuance of any final order. In no event will the Commission establish an effective date of less than 10 days from the date an order is issued. This should provide the President time to review a decision of the Commission issued under section 13(b)(5). It would neither be appropriate nor fair to any affected carrier to allow the Presidential review period to delay publication of an effective date.

Agreement No. 10050 and Delta believe that 30 days is too lengthy a time period between publication of the Commission decision and its effective date. The Commission believes that a 30 day notice period would generally be appropriate and necessary, given the international ramifications of a section 13(b)(5) action. However, because there may be circumstances and situations requiring more expedited action, § 587.7(d)(2) of the Final Rule allows the Commission, "for good cause", to prescribe an effective date of less than 30 days.

Section 587.7(e)

A new procedure has been added to § 587.7 which provides that any party may file a petition for reconsideration of any final decision under this part. Section 587.7(e) further provides for service of the petition upon all parties and states that the petition does not in itself stay the effective date of Commission action.

Section 587.8. Submission of orders to the President.

Sections 587.7, 587.8, and 587.9

DOT suggests that §§ 587.7, 587.8 and 587.9 be modified to allow the President a reasonable opportunity to classify the Commission's decision for national security reasons and thereby withhold it from publication in appropriate circumstances. We do not agree. Any potentially sensitive issue involving national defense or national security surrounding a section 13(b)(5) case or its outcome, can be expected to be brought to the Commission's attention by the Executive Branch well prior to a Commission decision. In addition, § 587.8 procedures are consistent with those established in section 9 of the Act (46 U.S.C. app. 1708), which provides for the publication of a Commission order of "suspension or final order of disapproval of rates, charges . . . of a controlled carrier . . .", concurrent with submission of the order for Presidential review. Similarly, as in any section 13(b)(5) order, the President may stay the effect of the Commission's order for reasons of national defense or foreign policy. Therefore, the Commission will not withhold a section 13(b)(5) decision pending Presidential review.

Section 587.8

The Interim Rule provided that a decision imposing sanctions would be transmitted to the President concurrently with the submission of the decision for publication in the **Federal Register**. CENSA believes that *all* decisions, including those that do not impose sanctions, should be submitted immediately to the President. We see no reason to submit decisions to the President which do not impose sanctions. If no action is being taken there is no reason to involve the President. CENSA's suggestion, therefore, is not adopted.

To clarify the term "decision", this section is being amended in the Final Rule to refer to "any decision imposing sanctions." In certain situations where impairment of access may be "imminent", the Commission may wish to issue two decisions. The first decision would be a notice of intent to impose sanctions should the action threatening the impairment of access occur. This decision would be followed by a second notice imposing sanctions when the action impairing access actually takes place. In such a situation, both decisions would be transmitted to the President. Alternatively, the Commission could, in its discretion, issue a single decision, to be served on the President, imposing sanctions at the time the action impairing access actually occurs.

Conforming changes have been made throughout the Rule to accommodate this change. Reference to "final" determinations or decisions have, therefore, been dropped. A "decision" however must pertain to a substantive finding or conclusion as distinguished from a procedural ruling.

Section 587.9. Postponement, discontinuance or suspension of action.

Section 587.9 provides that the Commission may, on its own motion, upon petition or by order of the President, postpone, discontinue or suspend any or all actions taken by it under the provisions of this part. Agreement No. 10050 suggests that this section state that the filing of a petition does not stay the effective date of a Commission action except upon compelling showing. As with petitions for reconsideration under new § 587.7(e), the filing of a petition to postpone, discontinue or suspend would not, in and of itself, stay the effective date of that action. Section 587.9 of the Interim Rule is being amended to make this clear. In addition, § 587.9 has been reorganized in order to clarify the distinction between discretionary and mandatory postponements. Finally, some editorial changes have been made in the language of this section.

The Commission has carefully considered all comments submitted to the Interim Rule and as discussed above, has made a number of changes to accommodate valid suggestions therein. Other non-substantive technical or style changes have been made and not expressly discussed. Any comments not expressly mentioned herein, nevertheless have been considered and found to be without merit, unwarranted, or unnecessary.

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that the Final Rule published herein will not have a significant economic impact on a substantial number of small entities, within the meaning of that Act. The primary economic impact of the Final Rule would effect common carriers by water, which generally are not small entities. A secondary impact may fall on shippers, some of which may be small entities, but that impact is not considered to be significant.

List of Subjects in 46 CFR Parts 585 and 587

Foreign relations, Foreign trade, Maritime carriers; Rates and fares.

Therefore, pursuant to 5 U.S.C. 553; section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. app. 876(1)(b)); sections 13(b) (5), 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712(b)(5), 1714 and 1716); and Reorganization Plan No. 7 of 1961 (75 Stat. 840) Parts 585 and 587 of Title 46, Code of Federal Regulations are revised to read as follows:

PART 585–REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

Sec.

585.1 Purpose.
585.2 Scope.
585.3 Findings—Conditions unfavorable to shipping in the foreign trade of the United States.
585.4 Petitions for section 19 relief—General—Who may file.
585.5 Petitions—How filed.
585.6 Petitions—Contents.
585.7 Petitions—Amendment or dismissal of.
585.8 Initial action to meet apparent conditions unfavorable—Resolution through diplomatic channels.
585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States.
585.10 Participation of interested persons.
585.11 Production of information.
585.12 Production of information—Failure to produce.
585.13 Postponement, discontinuance, or suspension of action.
585.14 Content and effective date of regulation.

Authority: 5 U.S.C. 553; sec. 19 (i) (b) of the Merchant Marine Act, 1920 (46 U.S.C. app. 876(i) (b)); secs. 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1714 and 1716); and Reorganization Plan No. 7 of 1961 (75 Stat. 840).

§ 585.1 Purpose.

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§ 585.2 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§ 585.3 Findings—Conditions unfavorable to shipping in the foreign trade of the United States.

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, or if such conditions:

(a) Impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or which preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States;

(c) Are otherwise unfavorable to shipping in the foreign trade of the United States;

(d) Are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally-accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States.

§ 585.4 Petitions for section 19 relief—General—Who may file.

Any person, including, but not limited to, any importer, exporter, shipper, consignee, or owner, operator or charterer of a liner, bulk, or tramp vessel, who has been harmed by, or who can reasonably expect harm from existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for the relief under the provisions of this part.

§ 585.5 Petitions—How filed.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

§ 585.6 Petitions—Contents.

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) A concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) A certified copy of any law, rule, regulation or other document involved and, if not English, a certified English translation thereof;

(c) Any other evidence of the existence of such practice or competitive method;

(d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) Statistics for the representative period showing a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures for the total cargo carried or projected in the trade for the period;

(2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo interest if injury is claimed on that basis; and

(3) A statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will, in view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.7 Petitions—Amendment or dismissal of.

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition will result in its dismissal. For good cause shown additional time for amendment may be granted.

§ 585.8 Initial action to meet apparent conditions unfavorable—Resolution through diplomatic channels.

Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission will notify the Secretary of State that such conditions apparently exist, and may request he or she seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of his or her efforts at a specified time.

§ 585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States.

Upon a submission of a petition filed under the rules of this part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exists, and may, without further proceeding, issue regulations. Such regulations may effect the following:

(a) Imposition of equalizing fees or chargers;

(b) Limitation of sailings to and from United States ports or of amount or type of cargo during a specified period;

(c) Suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports; and

(d) Any other action the Commission finds necessary and appropriate in the public interest to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

§ 585.10 Participation of interested persons.

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the **Federal Register** and interested persons will then be allowed to participate in this procedure by the submission of written data, views or arguments, with or without opportunity to present same orally.

§ 585.11 Production of information.

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exists, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(a) Statistics for a representative period showing cargo carried to and from the United States in the affected trade on vessels owned, operated or chartered by it by type, source, value, and directions.

(b) Information for a representative period on the activities of vessels owned, operated, or chartered, which shall include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities; and such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) Information for a specified future period on the prospective activities of vessels which it owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to be received from foreign authorities; and such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.12 Production of information—Failure to produce.

The Commission may, when there is a failure to produce any information ordered produced under § 585.11, make appropriate findings of fact or deem such a failure to produce as an admission that conditions unfavorable to shipping in the foreign trade of the United States do exist.

§ 585.13 Postponement, discontinuance, or suspension of action.

The Commission may, on its own motion or upon petition postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone or discontinue any or all such actions if the President forms the Commission that postponement, discontinuance, or suspension is required for reasons of foreign policy or national security.

§ 585.14 Content and effective date of regulation.

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose. Regulations shall be published in the **Federal Register.** Except where conditions warrant and for good cause, regulations promugated under the rules of this part shall not become effective until 30 days after the date of publication.

Note.—In accordance with 44 U.S.C. 3506(c)(5), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act, because there are nine or fewer respondents.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

Sec.
587.1 Purpose; general provisions.
587.2 Factors indicating conditions unduly impairing access.
587.3 Petitions for relief.
587.4 Proceeding.
587.5 Receipt of relevant information.
587.6 Notification to Secretary of State.
587.7 Decision; sanctions; effective date.
587.8 Submission of decision to the President.
587.9 Postponement, discontinuance, or suspension of action.

Authority: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712(b)(5), 1714, and 1716).

§ 587.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter "U.S.-flag vessel") to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S.-flag vessel hereinafter "U.S.-flag carrier") may petition the Federal Maritime Commission for relief under the authority of section 13(b)(5) of the Shipping Act of 1984 ("the Act") [46 U.S.C. app. 1712(b)(5)].

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(5) may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S.-flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

(b)(1) This part implements the statutory notice and hearing requirement and ensures that due process is afforded to all affected parties. At the same time, it allows for flexibility in structuring proceedings so that the Commission may act expeditiously whenever harm to a U.S.-flag carrier resulting from impaired access to cross trades has been demonstrated or is imminent.

(2) The provisions of Part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and except as the Commission may otherwise determine by order.

(c) The condition of unduly impaired access will be found only where a U.S.-flag carrier is commercially able to enter a trade in which its access is being unduly impaired, or is reasonably expected to be impaired, or where actual participation in a trade by a U.S.-flag carrier is being restricted for reasons other than its commercial ability or competitiveness.

(d) In examining conditions in a trade between foreign ports, and in considering appropriate action, the Commission will give due regard to U.S. maritime policy and U.S. Government shipping arrangements with other nations, as well as the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom Commission action is contemplated.

§ 587.2 Factors indicating conditions unduly impairing access.

For the purpose of this part, factors which would indicate the existence of conditions created by foreign government action or action of a common carrier acting alone or in concert with any person, which unduly impair access of a U.S.-flag vessel engaged in or seeking access to ocean trade between foreign ports, include, but are not limited to:

(a) Imposition upon U.S.-flag vessels or upon shippers or consignees using such vessels, of fees, charges, requirements, or restrictions different from those imposed on national-flag or other vessels, or which preclude or tend to preclude U.S.-flag vessels from competing in the trade on the same basis as any other vessel.

(b) Reservation of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S.-flag vessels.

(c) Use of predatory practices, possibly including but not limited to closed conferences employing fighting ships or deferred rebates, which unduly impair access of a U.S.-flag vessel to the trade.

(d) Any government or commercial practice that results in, or may result in, unequal and unfair opportunity for U.S.-flag vessel access to port or intermodal facilities or services related to the carriage of cargo inland to or from ports in the trade.

(e) Any other practice which unduly impairs access of a U.S.-flag vessel to trade between foreign ports.

§ 587.3 Petitions for relief.

(a) *Filing.* (1) Any owner or operator of a liner, bulk, tramp or other vessel documented under the laws of the United States who believes that its access to ocean trade between foreign ports has been, or will be, unduly impaired may file a written petition for relief under the provisions of this part.

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

(b) *Contents.* Petitions for relief shall include the following and shall also include an affidavit attesting to the truth and accuracy of the information submitted:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made and a statement as to whether the party is a foreign government, agency or instrumentality thereof;

(3) A concise description and citation of the foreign law, rule or government or commercial practice complained of;

(4) A certified copy of any law, rule, regulation or other document concerned, when available and, if not in English, a certified English translation thereof;

(5) Any other information relating to any law, rule or regulation, or indicating the existence of any government or commerical practice;

(6) A description of the service offered or proposed, as a result of which petitioner is alleging harm, including information which indicates the ability of the petitioner to otherwise participate in the trade;

(7) A clear description, in detail, of the harm already caused, or which may reasonably be expected to be caused, to the petitioner for a representative period, including:

(i) Statistics documenting present or prospective cargo loss due to discriminatory government or commercial practices if harm is alleged on that basis; such statistics shall include figures for the total cargo carried or projected to be carried by petitioner in the trade for the period, and the sources of the statistics;

(ii) Information documenting how the petitioner is being prevented from entering a trade, if injury is claimed on that basis;

(iii) statistics or other information documenting the impact of discriminatory government or commercial practices resulting in an increase in costs, service restrictions, or other harm on the basis of which injury is claimed, and the sources of the statistics; and

(iv) A statement as to why the period is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues.

(9) A recommended action, rule or regulation, the result of which will, in the view of the petitioner, address the alleged conditions unduly impairing the access of petitioner to the affected trade.

(c) *Deficient petition.* A petition which substantially fails to comply with the requirements of paragraph (b) of this section shall be rejected and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

§ 587.4 Proceeding.

(a) Upon the Commission's own motion or upon the filing of a petition which meets the requirements of § 587.3, when there are indications that conditions unduly imparing the access of a U.S.-flag vessel to trade between foreign ports may exist, the Commission will institute a proceeding pursuant to this part.

(b)(1) Notice of the institution of any such proceeding will be published in the **Federal Register,** and that notice and petition, if any, will be served on the parties.

(2) Interested or adversely affected persons will be allowed a period of time to reply to the petition by the submission of written data, views or legal arguments pursuant to § 587.5 of this part. Factual submissions shall be in affidavit form.

(3) An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

(c) Following the close of the initial response period, the Commission may issue a decision or order further hearings if warranted. If further hearings are ordered, they will be conducted pursuant to procedures to be outlined by the Commission in its order.

§ 587.5 Receipt of relevant information

(a) In making its decision on matters arising under section 13(b)(5) of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. All such submissions should be supported by affidavits of fact and memorandum of law. Relevant information may include, but is not limited to:

(1) Statistics, with sources, or, if unavailable, the best estimates pertaining to:

(i) The total cargo carried in the affected liner or bulk trade by type, source, value, tonnage and direction.

(ii) Cargo carried in the affected trade on vessels owned or operated by any person or conference, by type, source, value, tonnage and direction.

(iii) The percentage such cargo carried is of the total affected liner or bulk trade, on a tonnage and value basis.

(iv) The amount of cargo reserved by a foreign government for national-flag or other vessels in the affected trade, on a tonnage and value basis, and a listing of the types of cargo and specific commodities which are reserved for national-flag or other vessels.

(2) Information on the operations of vessels of any party serving the affected trade, including sailings to and from ports in the trade, taxes or other charges paid to foreign authorities, and subsidies or other payments received from foreign authorities.

(3) Information clarifiying the meaning of the foreign law, rule, regulation or practice complained of, and a description of its implementation.

(4) Complete copies of all conference and other agreements, including amendments and related documents, which apply in the trade.

(b) Once introduced or adduced, information of the character described in paragraph (a) of this section, and petitions and responses thereto, shall be made part of the record for decision and may provide the basis for Commission findings of fact and conclusions of law, and for the imposition of sanctions under the Act and this part.

§ 587.6 Notification to Secretary of State.

When there are indications that conditions unduly impairing the access of a U.S.-flag vessel to trade between foreign ports may exist, the Commission shall so notify the Secretary of State and may request that the Secretary of State seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts within a specified time period.

§ 587.7 Decision; sanctions; effective date.

(a) Upon completion of any proceeding conducted under this part, the Commission will issue and serve a decision on all parties.

(b) If the Commission finds that conditions unduly impairing access of a U.S.-flag vessel to ocean trade between foreign ports exist, any of the following actions may be taken:

(1) Imposition of equalizing fees or charges applied in the foreign trade of the United States;

(2) Limitation of sailings to and from United States ports, or of amount or type of cargo carried, during a specified period;

(3)(i) Suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports, including the carrier's right to use any or all tariffs of conferences in U.S. trades of which it is a member for any period the Commission specifies, or until such time as unimpaired access is secured for U.S.-flag carriers in the affected trade.

(ii) Acceptance or handling of cargo for carriage under a tariff that has been suspended, or after a common carrier's right to utilize that tariff has been suspended pursuant to this part, will subject a carrier to the imposition of a civil penalty as provided under the Act (46 U.S.C. app. 1712(b)(3)) of not more than $50,000 per shipment; and

(4) Any other action the Commission finds necessary and appropriate to address conditions unduly impairing access of a U.S.-flag vessel to trade between foreign ports.

(c) If the Commission finds that conditions impairing access of a U.S.-flag vessel to ocean trade between foreign ports has not yet occurred, and punitive sanctions are warranted, such sanctions will be imposed to become effective simultaneously with the implementation of the action that would unduly impair the access of a U.S.-flag vessel.

(d)(1) All decisions will be published in the **Federal Register**.

(2) Decisions imposing sanctions, except where conditions warrant and for good cause, will become effective 30 days after the date of publication.

(e) Any party may file a petition to reconsider any decision under this part. Such a petition shall be served on all other parties to the proceeding and shall not, in and of itself, stay the effective date of the Commission action.

§ 587.8 Submission of decision to the President.

Concurrently with the submission of any decision imposing sanctions to the **Federal Register** pursuant to § 587.7(d)(1), the Commission shall transmit that decision to the President of the United States who may, within ten days after receiving the decision, disapprove it if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

§ 587.9 Postponement, discontinuance, or suspension of action.

(a) The Commission may, on its own motion or upon a petition, postpone, discontinue, or suspend any action taken by it under the provisions of this part. Such a petition will be served on all other parties and will not, in and of itself, stay the effective date of Commission action.

(b) The Commission shall postpone, discontinue or suspend any action provided for in its final decision if so directed by the President for reasons of national defense or foreign policy of the United States as provided in § 587.8.

Note.—In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act because such collection of information is pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-29815 Filed 11-14-84; 8:45 am]

BILLING CODE 6730-01-M

Reader Aids

Federal Register

Vol. 49, No. 222

Thursday, November 15, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943-44072.....1
44073-44192.....2
44193-44272.....5
44273-44442.....6
44443-44620.....7
44621-44740.....8
44741-44888.....9
44889-44984.....13
44985-45106.....14
45107-45408.....15

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Notice:
November 7, 1984..... 44741

Proclamations:
5270..... 44073
5271..... 44075
5272..... 44077
5273..... 44079
5274..... 44081
5275..... 44193
5276..... 44195
5277..... 44197
5278..... 45107

5 CFR

Proposed Rules:
2429..... 44902

7 CFR

2..... 44743
210..... 45109
220..... 45109
225..... 45109
226..... 45109
301..... 44083
429..... 44443
441..... 44985
600..... 44743
729..... 44889
907..... 44199, 44757
910..... 44084, 44744, 44890, 45109
915..... 44447
928..... 44199
932..... 44447
944..... 44447
982..... 44745
984..... 44745
989..... 44745
1004..... 44986
1139..... 43943
1446..... 45109

Proposed Rules:
27..... 44902
52..... 43970
53..... 44724
54..... 44724, 44758
420..... 44480
421..... 44478
424..... 44485
425..... 44490
432..... 44495
725..... 44103
910..... 44299
982..... 44500
984..... 44299
1007..... 44760
1464..... 44103

8 CFR

238..... 44745
292..... 44084

9 CFR

50..... 44273
78..... 44987, 45110
81..... 44087, 45111
92..... 44088
354..... 44091

Proposed Rules:
92..... 44501
381..... 44640

10 CFR

50..... 45112, 45114

Proposed Rules:
50..... 44645
71..... 44502
505..... 44590

11 CFR

5..... 44091

12 CFR

204..... 44448
207..... 43946
220..... 43946
221..... 43946
224..... 43946
303..... 44746
308..... 44746
563..... 45115
701..... 44993
795..... 44993

Proposed Rules:
5..... 45007
8..... 45102

13 CFR

120..... 44091

Proposed Rules:
107..... 44062

14 CFR

1..... 44422
27..... 44422
29..... 44422
39..... 44093, 44094, 44449, 44621, 44890, 44987
43..... 44602
71..... 44450
73..... 44096, 44451
91..... 44422
97..... 44990
255..... 44451

Proposed Rules:
Ch. I..... 44766
39..... 45011
71..... 44104, 44650, 45011, 45166-45171
73..... 45011, 45168, 45169
75..... 45171

15 CFR

7 44622

Proposed Rules:

303 44651
320 44903

16 CFR

13 45115–45117
305 44200
1700 44455

Proposed Rules:

300 44913
303 44913

17 CFR

33 44891
200 43950
240 45117

Proposed Rules:

1 44105
140 45015
144 45015
239 45172
274 45172

18 CFR

3 44273
157 44275
271 ..... 44201, 44993
274 44275
284 44275
341 44628
356 44628
360 44628
361 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273

Proposed Rules:

271 ..... 44217, 45174, 45175
430 44105

19 CFR

4 44867
6 44867
7 44867
10 44867
11 44867
12 44867
18 44867
19 44867
24 44867
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
162 44867
172 44867
174 44867
191 44867

20 CFR

395 44277
404 ..... 43951, 44458

21 CFR

74 44096
178 44994
193 ..... 44458, 45123
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
540 44749
561 45124
573 ..... 44630, 45124

Proposed Rules:

146 44652
450 44919
511 44766

22 CFR

220 44631

Proposed Rules:

41 44920

24 CFR

205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44982

25 CFR

5h 43951
301 44460

Proposed Rules:

1 44300
41 ..... 44300, 44310, 44921
48 ..... 44300, 44310, 44921

27 CFR

9 ..... 44202, 44895

Proposed Rules:

4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR

2 44097
15 44995
511 44056

Proposed Rules:

545 44059

29 CFR

530 44262
1952 44202
2619 45129

Proposed Rules:

2617 44106
2640 45018
2648 45018

30 CFR

915 44206
917 44750
935 ..... 43952, 44461, 44996

Proposed Rules:

250 44924
917 44653
920 43974
931 44769
938 43974

33 CFR

117 ..... 43953–43956, 44207, 44632, 45130
165 44632

Proposed Rules:

117 ..... 43975, 44925
165 44926

36 CFR

Proposed Rules:

223 44109
291 45117
1121 44310

38 CFR

3 ..... 44099, 45130

39 CFR

10 45130
265 44286

40 CFR

52 ..... 44099, 44208, 44287, 44463, 44996
60 44633
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 45292
180 ..... 44464–44467, 45132
261 44978
704 45133
761 44634
775 44997

Proposed Rules:

50 44770
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178
81 ..... 43977, 45031
147 44111
170 45181
261 44718
271 ..... 44111, 44312, 44506
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 44218
716 44220

41 CFR

Ch. 101 44468
101–20 44469
101–41 44470
101–47 44471

42 CFR

36 44288
403 44472
405 44472

43 CFR

Public Land Orders:

1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997

Proposed Rules:

3160 44655
3420 44221

44 CFR

64 ..... 44751, 45133
65 ..... 45134, 45135
67 45136

Proposed Rules:

67 45181

45 CFR

801 44473

46 CFR

500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397

47 CFR

2 ..... 44101, 44997
15 44210
25 44751
31 44289
43 44289
73 ..... 43957, 44101, 45139–45146
74 45155

Proposed Rules:

73 ..... 44113, 44114, 45186
90 44223

48 CFR

Proposed Rules:

1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR

1 44102
173 43963
178 43965
179 43963
391 44210
392 44210
571 44899
575 44751

Proposed Rules:

23 44772
195 44928
1102 44224

50 CFR

17 ..... 43965, 44753, 45160
258 44474
611 44757
620 44102
652 45164
663 ..... 44838, 44901
671 44757
676 44998

Proposed Rules:

17 ..... 44507, 44712
222 44774
227 44774
611 44655
672 44655
675 44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 6, 1984.

OL
9

SS
22

10
5

984

MI

OL
9

SS
22

NO
5

984

MI

OL
9

SS
22

NO
5

984

MI



Just Released

Code of Federal Regulations

Revised as of July 1, 1984

Quantity	Volume	Price	Amount
_____	Title 29—Labor (Parts 1900–1910) (Stock No. 022–003–95368–0)	$15.00	$_____
_____	Title 40—Protection of Environment Part 52 (Stock No. 022–003–95399–0)	14.00	_____
_____	Parts 190–399 (Stock No. 022–003–95404–0)	13.00	_____

Total Order $_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form **Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA* MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the Code of Federal Regulations publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

VOL
49

ISS
222

NO
15

1984

UMI

OL
9
SS
23
NO
6
984
MI

11-16-84
Vol. 49 No. 223

federal register

Friday
November 16, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 84 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S.MAIL

Postage and Fees Paid
U S Government Printing Office
375

SECOND CLASS NEWSPAPER

OL
9
SS
23
NO
6
984
MI

11-16-84
Vol. 49 No. 223
Pages 45409-45570

federal register

Friday
November 16, 1984

Selected Subjects

Aid to Families with Dependent Children
Social Security Administration
Air Pollution Control
Environmental Protection Agency
Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Cable Television
Federal Communications Commission
Crop Insurance
Federal Crop Insurance Corporation
Hazardous Waste
Environmental Protection Agency
Income Taxes
Internal Revenue Service
Marketing Agreements
Agricultural Marketing Service
Radio
Federal Communications Commission
Reporting and Recordkeeping Requirements
Economic Regulatory Administration
Environmental Protection Agency

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Contents

Federal Register
Vol. 49, No. 223
Friday, November 16, 1984

The President
PROCLAMATIONS
45411 Adoption Week, National (Proc. 5280)
45413 Family Weeks, National (Proc. 5281)
45409 Farm-City Week, National (Proc. 5279)

Executive Agencies

Administrative Conference of United States
NOTICES
45464 Administrative Hearing Facilities Directory; expanded second edition availability

Agricultural Marketing Service
RULES
45415 Lemons grown in Arizona and California
45415 Oranges (navel) grown in Arizona and California

Agricultural Stabilization and Conservation Service
NOTICES
Meetings:
45464 National Conservation Review Group

Agriculture Department
See Agricultural Stabilization and Conservation Service; Farmers Home Administration; Federal Crop Insurance Corporation; Soil Conservation Service.

Air Force Department
NOTICES
Meetings:
45475 Academy Board of Visitors

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
45490 December

Commerce Department
See also International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.
NOTICES
Meetings:
45465 President's Commission on Industrial Competiveness

Commodity Futures Trading Commission
RULES
Registration, etc.:
45418 Minimum financial and reporting requirements and registration procedures; transfer of functions to National Futures Association; effective date
NOTICES
National Futures Association:
Authorization to perform registration functions (Editorial Note: For a document on this subject, see entry listed under this agency's RULES category)
45472 Privacy Act; systems of records

Defense Department
See also Air Force Department; Navy Department.

Economic Regulatory Administration
PROPOSED RULES
45445 Petroleum allocation and price regulations; reporting and recordkeeping requirements

Education Department
NOTICES
45479 Agency information collection activities under OMB review
Grants; availability, etc.:
45476 Handicapped education research
45476 Handicapped education research; funding priorities

Employment and Training Administration
NOTICES
Adjustment assistance:
45502 Tobin Hamilton Shoe Co.

Employment Standards Administration
NOTICES
45526 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (AL, CA, MA, ME, MI, NV, NJ, OR, WA, and WI)

Energy Department
See also Economic Regulatory Administration.
NOTICES
Environmental statements; availability, etc.:
45481 Durango, CO

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
45422 Alumax of South Carolina; primary aluminum reduction plant, Mount Holly, S.C.; alternative performance test requirement
Toxic substances:
45425 Small manufacturer exemption standards; reporting and recordkeeping requirements
PROPOSED RULES
Hazardous waste program authorizations:
45452 Florida
NOTICES
Environmental statements; availability, etc.:
45485 Agency statements; review and comment
45486 Agency statements; weekly receipts
Meetings:
45483 Administrator's Pesticide Advisory Committee
45484 FIFRA Scientific Advisory Panel
45483 National Drinking Water Advisory Council
Pesticide programs:
45486 Rebuttable presumptions against registration, etc.; lindane, etc.

Pesticide registration, cancellation, etc.:
45484 NOR-AM Chemical Co. et al.; correction
Pesticides; emergency exemption applications:
45483 Methamidophos, etc.; correction
Pesticides; experimental use permit applications:
45483 Albany International et al.; correction
45483 American Cyanamid Co. et al.; correction
45483 E.I. du Pont de Nemours & Co. et al.; correction
Toxic and hazardous substances control:
45484 Premanufacture exemption approvals; correction
45483, 45484 Premanufacture notices receipts; correction (3 documents)
45485 Significant new uses notices receipts; correction

Equal Employment Opportunity Commission
RULES
Employment discrimination; charges; designation of State and local fair employment practice agencies (706 agencies)
45422 Kansas; correction

Farmers Home Administration
RULES
45416 Credit reports (individual); correction

Federal Aviation Administration
RULES
Aircraft:
45418 Anti-misfueling; tank filler opening adapters; final rule and request for comments; correction
Airworthiness directives:
45416 Alexander Schleicher
45417 Vickers-Slingsby
45418 Restricted areas; correction
45418 Transition areas; correction
NOTICES
45418 Exemption petitions; summary and disposition

Federal Communications Commission
RULES
Television broadcasting:
45431 Cable television systems; frequency channeling requirements and restrictions, and signal leakage monitoring
PROPOSED RULES
Radio services, special:
45454 Private land mobile services; frequency coordination procedures

Federal Crop Insurance Corporation
PROPOSED RULES
Administrative regulations:
45444 Late planting agreement option regulations

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
45488 Texas

Federal Home Loan Bank Board
NOTICES
45522 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
45488 Agreements filed, etc.
45522 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
45488 Fidelcor, Inc., et al.
45489 National Penn Bancshares, Inc., et al.
45522 Meetings; Sunshine Act (3 documents)

Fish and Wildlife Service
NOTICES
45494 Marine mammal permit applications

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
45420 Amoxicillin trihydrate and clavulanate potassium tablets
45421 Amoxicillin trihydrate intramammary infusion
45422 Chlortetracycline soluble powder
45420 Flurogestone acetate-impregnated vaginal sponge
NOTICES
Food for human consumption:
45491 Bread, enriched; identity standard deviation; market testing permits
Meetings:
45490 Advisory committees, panels, etc.

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Care Financing Administration; Social Security Administration.
NOTICES
45489 Agency information collection activities under OMB review

Health Care Financing Administration
RULES
Medicaid:
45431 Early and periodic screening, diagnosis, and treatment (EPSDT) program; correction
NOTICES
Grants and cooperative agreements:
45491 Research and demonstration grants; technical assistance conference

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service.
NOTICES
Environmental statements; availability, etc.:
45493 Dunn-Nokota Methanol Project, ND
Meetings:
45492 Garrison Diversion Unit Commission.
45492 Privacy Act; systems of records

Internal Revenue Service
PROPOSED RULES
Income taxes:
45450 Individual retirement plans; annual information reports by trustees and issuers
45449 Industrial development bonds for water facilities, interest exemption; hearing
Procedure and administration:
45452 Tax shelters, registration and potentially abusive; investor list requirement; hearing change

International Trade Administration
NOTICES
Antidumping:
45465 Carbon steel bars and structural shapes from Canada
45469 Carbon steel plate from Finland
45469 Choline Chloride from Canada
45467 Clear sheet glass from Italy.
45466 Chloropicrin from China.
45467 Viscose rayon staple fiber from France.
Export privileges, actions affecting:
45468 Kubicek, Josef, et al.

Interstate Commerce Commission
NOTICES
Authority delegations:
45501 Maximum limits of compensation under Bankruptcy Act; decisions on petitions
Railroad operation, acquistion, construction, etc.:
45500 Jackson Industrial Development Co.
Railroad services abandonment:
45500 Chicago & North Western Transportation Co.
45501 Seaboard System Railroad, Inc.

Justice Department
See Parole Commission.

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office; Wage and Hour Division.
NOTICES
45501 Agency information collection activities under OMB review

Land Management Bureau
NOTICES
Airport leases:
45497 Nevada
45494 Wyoming
Classification of public lands:
45496 Minnesota
Coal leases, exploration licenses, etc.:
45494 Montana
Environmental statements; availability, etc.:
45498 Jarbidge Resource Area, Idaho; hearing
Meetings:
45494 Butte District Advisory Council
45495 Moab District Advisory Council
Resource management plans, etc.:
45498 Esmeralda-Southern Nye Planning Area, NV
Sale of public lands:
45496 Florida
Survey plat filings:
45495, 45496 California (4 documents)
Vehicle restrictions on public lands:
45496 California
Withdrawal and reservation of lands:
45497 Wyoming

Management and Budget Office
NOTICES
45552 Budget rescissions and deferrals; cumulative report

Merit Systems Protection Board
NOTICES
45523 Meetings; Sunshine Act

Mine Safety and Health Administration
NOTICES
45502 Petitions for mandatory safety standard modifications; summary of affirmative decisions

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
45500 ODECO Oil & Gas Co.
45499 Tenneco Oil Exploration & Production

National Bureau of Standards
NOTICES
Information processing standards, Federal:
45470 FIPS Minimal BASIC; interpretation; correction
45470 Local area networks; baseband carrier sense multiple access with collision detection and physical layer specifications, etc.; correction
45470 Metropolitan statistical areas; definitions; correction

National Oceanic and Atmospheric Administration
NOTICES
Coastal zone management programs:
45470 California
Marine mammal permit applications, etc.:
45494 U.S.S.R. Ministry of Fisheries, All-Union Scientific Institute of Fisheries and Oceanography

National Science Foundation
NOTICES
Meetings:
45510 Engineering Advisory Committee
45510 Ethics and Values in Science and Technology Advisory Committee
45511 Law and Social Sciences Advisory Panel

Navy Department
NOTICES
Meetings:
45476 Chief of Naval Operations Executive Panel Advisory Committee
45476 Education and Training Advisory Board

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
45512 Commonwealth Edison Co.
45514 Vermont Yankee Nuclear Power Corp.
Environmental statements; availability, etc.:
45514 Florida Power & Light Co.
45512 Georgia Power Co. et al.
45512 Northern States Power Co. et al.
45513 Power Authority of State of New York
45511 Export and import license applications for nuclear facilities or materials

Parole Commission
NOTICES
45523 Meetings; Sunshine Act

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transactions exemptions:
45504 Citizens Bank of Evans City et al.

Personnel Management Office
PROPOSED RULES
Pay administration:
45444 Federal claims collection; services of officials to conduct hearings; interim; correction

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
45515 Dahlen, ND

Small Business Administration
NOTICES
Applications, etc.:
45516 DGC Capital Co.
45517 UV Capital
Disaster loan areas:
45516 California
45516 Oregon
45516 Texas
Meetings; regional advisory councils:
45517 Ohio
45517 Puerto Rico

Social Security Administration
RULES
Social security benefits:
45420 Deductions, reductions, and nonpayment of benefits; Government pensions; correction
PROPOSED RULES
Public assistance programs:
45558 Aid to families with dependent children and adult assistance programs
NOTICES
45490 Organization, functions, and authority delegations; correction

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
45485 Mitten Lane flood prevention and drainage RC&D measure, SC
45484 Rock Creek Watershed, PA

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
45471 Brazil

Trade Representative, Office of United States
NOTICES
Import quotas and exclusions, etc.:
45515 Alkaline batteries

Transportation Department
See also Federal Aviation Administration.
NOTICES
45517 Agency information collection activities under OMB review.
Meetings:
45518 Reorganization of Metropolitan Washington Airports Advisory Commission

Treasury Department
See also Internal Revenue Service.
NOTICES
45519 Agency information collection activities under OMB review

United States Information Agency
NOTICES
Grants; availability, etc.:
45519 International educational and cultural activities

Veterans Administration
NOTICES
45520 Agency information collection activities under OMB review

Wage and Hour Division
NOTICES
45510 Learners, certificates authorizing employment at special minimum wages

---

Separate Parts in This Issue

Part II
45526 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part III
45552 Office of Management and Budget

Part IV
45558 Department of Health and Human Services, Social Security Administration

---

Readers Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5279 45409
5280 45411
5281 45413

5 CFR
Proposed Rules:
930 45444

7 CFR
907 45415
910 45415
1910 45416
Proposed Rules:
400 45444

10 CFR
Proposed Rules:
210 45445

14 CFR
39 (2 documents) 45416, 45417
43 45418
71 45418
73 45418

17 CFR
1 45418
3 45418
140 45418
145 45418

20 CFR
404 45420

21 CFR
529 45420
540 (2 documents) 45420, 45421
546 45422
556 45421

26 CFR
Proposed Rules:
1 (2 documents) 45449, 45450
301 45452

29 CFR
1601 45424

40 CFR
60 45424
704 45425
Proposed Rules:
271 45452

42 CFR
400 45431
441 45431

45 CFR
Proposed Rules:
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

47 CFR
76 45431
Proposed Rules:
0 45454
1 45454
90 45454

Federal Register
Vol. 49, No. 223
Friday, November 16, 1984

Presidential Documents

Title 3—

The President

Proclamation 5279 of November 13, 1984

National Farm-City Week, 1984

By the President of the United States of America

A Proclamation

One of this Nation's greatest blessings is the abundant food supply on which we all depend each and every day of our lives. Our food stores, with row after row of wholesome, nutritious foods, display a sight so commonplace that Americans tend to forget the enormous effort involved in our complex system of food production, distribution, and marketing.

Our food supply depends upon the farmers who plant their crops and through hard work, faith, and patience, bring in a golden harvest. But it also depends on many people who live in towns and cities. It relies on those who provide farm equipment and production supplies for farmers, as well as on the processors who prepare the products for delivery throughout the Nation by a dependable network of transportation. Finally, we rely on the merchants who store and sell the agricultural products.

It is appropriate that we recognize the interdependence of all those involved in the system with a National Farm-City Week near Thanksgiving. As we give thanks for our food in this great land of freedom, let us also pause to salute the 23 million Americans who work directly in some essential task in agriculture, on farms, and in cities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period November 16 through November 22, 1984, as National Farm-City Week. I call upon all Americans, in rural areas and in cities alike, to join in recognizing the accomplishments of our productive farm families and of our urban residents in working together in a spirit of cooperation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-30217
Filed 11-14-84; 12:04 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5280 of November 13, 1984

National Adoption Week, 1984

By the President of the United States of America

A Proclamation

Families have always stood at the center of our society, preserving good and worthy traditions from our past and entrusting those traditions to our children, our greatest hope for the future. At a time when many fear that the family is in decline, it is fitting that we give special recognition to those who are rebuilding families by promoting adoption.

More children with permanent homes mean fewer children with permanent problems. That is why we must encourage a national effort to promote the adoption of children, and particularly children with special needs. Through the Adoption Assistance and Child Welfare Act of 1980, some 6,000 children have been adopted who otherwise might not have been, and the number is growing. The recently enacted Child Abuse Prevention and Treatment Act will provide further assistance to couples who adopt children with special needs.

We must never forget those couples who know the anguish of prolonged waiting to welcome an adopted child into their home. One aspect of the tragedy of the 1.5 million abortions performed each year is that so many women who undergo abortions are unaware of the many couples who desperately want to share their loving homes with a baby. No woman need fear that the child she carries is unwanted. We must continue to promote constructive alternatives to abortion through the Adolescent Family Life program and by encouraging the efforts of private citizens who are helping women with crisis pregnancies.

National Adoption Week gives us an opportuntiy to reaffirm our commitment to give every child waiting to be adopted the chance to become part of a family. During this Thanksgiving season, let us work to encourage community acceptance and support for adoption and take time to recognize the efforts of the parent groups and agencies that assure adoptive placements for waiting children. Most importantly, let us pay tribute to those special couples who have opened their homes and hearts to adopted children, forming the bonds of love that we call the family.

The Congress, by Senate Joint Resolution 238, has designated the week of November 19 through November 25, 1984, as "National Adoption Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 19 through November 25, 1984, as National Adoption Week, and I call on all Americans and governmental and private agencies to observe the week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-30218
Filed 11-14-84; 12:05 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5281 of November 15, 1984

National Family Week, 1984

By the President of the United States of America

A Proclamation

Strong families are the foundation of society. Through them we pass on our traditions, rituals, and values. From them we receive the love, encouragement, and education needed to meet human challenges. Family life provides opportunities and time for the spiritual growth that fosters generosity of spirit and responsible citizenship.

Family experiences shape our response to the larger communities in which we live. The best American traditions echo family values that call on us to nurture and guide the young, to help enrich the lives of the handicapped, to assist less fortunate neighbors, and to cherish the elderly. Let us summon our individual and community resources to promote healthy families capable of carrying on these traditions and providing strength to our society.

National Family Week gives us a chance to honor families and to renew our commitment to the family strength that gives people the ability to withstand external influences and maintain their individual integrity. We should take this occasion to commend the loyalty family members show one another in facing the adversities as well as the joys of life together. And let us especially honor those Americans who, through adoption or foster care, have extended their families as centers of love and life to those in need of true family support.

The Congress, by Senate Joint Resolution 211, has designated the week of November 18 through November 24, 1984, as "National Family Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 18 through November 24, 1984, as National Family Week. I invite the Governors of the several states, the chief officials of local governments, and all Americans to observe this week with appropriate ceremonies and activities. As we celebrate this Thanksgiving Week, I also invite all Americans to give thanks for the many blessings that they have derived from their family relationships and to reflect upon the importance of maintaining strong families.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-30369
Filed 11-15-84; 11:41 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 223
Friday, November 16, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 602, Amdt. 1, Navel Orange Reg. 603, Navel Orange Reg. 604]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations increase the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period November 9–15, 1984, and establish the quantity that may be shipped during the periods November 16–22, and November 23–29, 1984. Such action is needed to provide for orderly marketing of fresh navel oranges for these periods due to the marketing situation confronting the orange industry.

EFFECTIVE DATES: Amended Regulation 602 (§ 907.902) is effective for the period November 9–15, 1984. Regulation 603 (§ 907.903) becomes effective on November 16, 1984. Regulation 604 (907.904) becomes effective on November 23, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural, Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entitities.

These regulations are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

These actions are consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on September 25, 1984. The committee met again publicly on November 13, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is improved except for the expected decrease during the week of the Thanksgiving holiday.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication of the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulations at an open meeting. It is necessary to effectuate the declared policy of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provision and the effective dates.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. Section 907.902 is revised to read as follows:

§ 907.902 Navel Orange Regulation 602.

(a) *District 1:* 976,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* 74,000 cartons;
(d) *District 4:* Unlimited cartons.

2. Section 907.903 is added as follows:

§ 907.903 Navel Orange Regulation 603.

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 16 through November 22, 1984, are established as follows:

(a) *District 1:* 644,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* 56,000 cartons;
(d) *District 4:* Unlimited cartons.

3. Section 907.904 is added as follows:

§ 907.904 Navel Orange Regulation 604.

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 23 through November 29, 1984, are established as follows:

(a) *District 1:* 1,140,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* 60,000 cartons;
(d) *District 4:* Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 14, 1984.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-30311 Filed 11-14-84; 4:53 pm]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regs. 490 and 489, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 210,000 cartons during the period November 18–24, 1984, and increases the quantity of lemons that may be shipped to 265,000 cartons during the period November 11–17, 1984.

Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective November 18, 1984, and the amendment is effective for the period November 11–17, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–074). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on November 12, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee met again by telephone, on November 13, 1984, and recommended an increase in such quantity for the week ending November 17, 1984. The committee reports that lemon demand is improved.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.790 is added to read as follows:

§ 910.790 Lemon Regulation 490.

The quantity of lemons grown in California and Arizona which may be handled during the period November 18, 1984, through November 24, 1984, is established at 210,000 cartons.

2. Section 910.789 Lemon Regulation 489 is revised to read as follows:

§ 910.789 Lemon Regulation 489.

The quantity of lemons grown in California and Arizona which may be handled during the period November 11, 1984, through November 17, 1984, is established at 265,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 14, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-30010 Filed 11-15-84; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1910

Individual Credit Reports; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published October 18, 1984, (49 FR 40789). In the revision to FmHA's regulation regarding Credit Reports (Individual), published on October 18, 1984, the word "nonrefundable" was incorrectly typed as "non-fundable." The intent of this action is to correct this error.

FOR FURTHER INFORMATION CONTACT: Mathias J. Felber, Branch Chief, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, Room 5340, South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. 20250, Telephone (202) 382–1543.

SUPPLEMENTARY INFORMATION: The following correction is made in FR DOC. 84–27580 appearing on pages 40789 to 40793 in the issue of October 18, 1984.

PART 1910—GENERAL

§ 1910.53 [Corrected]

Paragraph (b) of § 1910.53, appearing on page 40791 is corrected by changing the word "non-fundable" in the last sentence to read as "nonrefundable."

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10, Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

Dated: November 2, 1984.

Michael E. Brunner,

Acting Administrator, Farmers Home Administration.

[FR Doc. 84-30173 Filed 11-15-84; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ANE–15; Amdt. 39–4945]

Airworthiness Directives; Alexander Schleicher, Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the incorporation of a cockpit placard and the exchange of two pages in the Flight Manual and in the Instructions for Continued Airworthiness of Alexander Schleicher Model ASK–21 Sailplanes. This AD is needed to have these items in the English language as required by FAR 21.29(a)(3).

EFFECTIVE DATE: November 14, 1984.

Compliance required within the next 25 hours time in service after the effective date of this AD unless already accomplished.

Incorporation by Reference—Approved by the Director of the Federal Register on November 14, 1984.

ADDRESSES: The applicable technical note may be obtained from Alexander Schleicher Segelflugzeubau, D–6416 Poppenhausen, Federal Republic of Germany.

A copy of the technical note is contained in the Rules Docket at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30, or Cheryl McCabe, ANE–152, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7112.

SUPPLEMENTARY INFORMATION: Inquiries were received from two FAA Offices concerning a non-compliance with FAR 21.29(a)(3). One required placard in the ASK–21 is in the German language and the required manual references to this placard are also in German. FAR 21.29(a)(3) states that all manuals, placards, listings, and instrument markings required by the applicable airworthiness requirements be presented in the English language. In order to comply with regulatory requirements, Alexander Schleicher Technical Note No. 14 for Model ASK–12 gliders was written.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Approximately 13 aircraft are affected by the requirements of this AD for an estimated cost impact of $35 per aircraft or $455 for the fleet.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Alexander Schleicher: Applies to Model ASK–21 sailplanes, all serial numbers, certificated in any category.

Compliance is required within the next 25 hours time in service after the effective date of this AD, unless already accomplished.

To comply with the requirements of Federal Aviation Regulation 21.29(a)(3), accomplish the following:

1. Remove the one placard in the German language fitted in the front and rear cockpit, and replace with new placards in the English language, in accordance with Alexander Schleicher ASK–21 Technical Note No. 14, dated May 16, 1984.

2. Remove and replace the following manual pages in accordance with Alexander Schleicher ASK–21 Technical Note No. 14, dated May 16, 1984:

a. In the Flight Manual, remove pages 2 (December 20, 1983) and 21 (March 9, 1983), and replace with pages 2 (May 16, 1984) and 21 (May 16, 1984).

b. In the Instructions for Continued Airworthiness, remove pages 2 (December 20, 1984) and 59 (March 9, 1983), and replace with pages 2 (May 16, 1984) and 59 (May 16, 1984).

3. Paragraph 2 of this AD may be accomplished by the pilot with logbook entry.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 extension 2710.

The Alexander Schleicher ASK–21 Technical Note No. 14, dated May 16, 1984, identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Alexander Schleicher Segelflugzeubau, D–6416 Poppenhausen, Federal Republic of Germany. These documents may also be examined at the Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on November 14, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.)

Note.—The FAA has determined that this regulation only involves a total of 13 sailplanes at an approximate cost of $455 or $35 per sailplane. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291 and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

Issued in Burlington, Massachusetts, on October 23, 1984.

Robert E. Whittington,

Director, New England Region Federal.

[FR Doc. 84-30075 Filed 11-13-84; 10:42 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84–ANE–11; Amdt. No. 39–4941]

Airworthiness Directive; Vickers-Slingsby; Slingsby Engineering Limited (S.E.L.); Model T65A Vega Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the glass reinforced plastic operating tongue of the elevator for cracks and lack of stiffness, and reinforcement if necessary; inspection of the pivot bearings for the elevator rocker arm assembly for excessive wear, and replacement if necessary; inspection of the tailplane center hinge pin mounting rib for cracks and/or damage, and reinforcement or replacement as appropriate, on Vickers-Slingsby Model T65A Vega sailplanes. The AD is needed to prevent malfunction of the elevator which could cause loss of control of the sailplane.

EFFECTIVE DATE: November 16, 1984.

Compliance Schedule—as prescribed in the body of the AD.

Incorporation by Reference—approved by the Director of the Federal Register on November 16, 1984.

ADDRESSES: The applicable technical instructions may be obtained from Slingsby Engineering Limited, Ings Lane, Kirbymoorside, York YO62EZ, England.

A copy of the technical instruction is contained in the Rules Docket at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration (FAA), c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 or Cheryl McCabe, ANE–152, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7112.

SUPPLEMENTARY INFORMATION: There have been reports of cracking and lack of stiffness in the central elevator hinge and associated tailplane structure on Model T65 Vega sailplanes, which the manufacturer attributes to heavy landings and/or excessive bearing loads during elevator assembly. Based on this determination and to prevent malfunction of the elevator, the manufacturer issued Technical Instruction No. 104/T65, Issue 1, dated September 22, 1982, and Issue 2, dated February 14, 1983. Issue 2, dated February 14, 1983, is not made a part of this AD. Since these conditions are likely to occur on other sailplanes of this type and could lead to loss of control of the sailplane, an AD is being issued which requires inspection and reinforcement or replacement if required of these structures and components.

Since a situation exists that requires the immediate adoption of this

regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Lists of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Vickers-Slingsby: Applies to Model T65A gliders, all serial numbers certificated in any category.

Compliance required as indicated.

To prevent possible malfunction of the elevator, accomplish the following:

1. Within the next 10 hours time in service, after the effective date of this AD, unless already accomplished, inspect the following in accordance with Slingsby Engineering Ltd. (S.E.L.) Technical Instruction (TI) No. 104/T65, Issue 1, Section 1, dated September 22, 1982 (hereinafter referred to as TI):

A. The pivot bearings (P/N 04DU04) for the elevator rocker arm assembly on top of the fin for wear,

B. The glass reinforced plastic operating tongue of the elevator which projects forward into the tailplane for cracks, damage, or lack of stiffness, and,

C. The tailplane center hinge pin mounting rib at the section just forward of the hinge pin for cracks and/or damage.

2. Prior to further flight:

A. If wear is found in excess of 0.01 inches in the forward and aft direction as a result of the inspection of Item 1A above, repair in accordance with Section 3 of the T1 described in Item 1.

B. If cracks, damage or lack of stiffness are found as a result of the inspection of Item 1B above, repair in accordance with Section 2 of the TI described in Item 1.

C. If cracks or damage are found as a result of the inspection of Item 1C above, replace with a new reinforced rib in accordance with Section 4 of the TI described in Item 1.

3. Within the next 100 hours time in service, if cracks or damage are not found, unless already accomplished, reinforce the elevator in accordance with Section 5 of the TI described in Item 1.

4. Alternate inspections, adjustment of the inspection interval, or other actions which provide an equivalent level of safety must be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 Ext. 2710.

The Slingsby Engineering Ltd. (S.E.L.) Technical Instruction (TI) No. 104/T65, Issue 1, dated September 22, 1982, identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552 (a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request from Slingsby Engineering Limited, Ings Lane, Kirbymoorside, York YO62EZ, England. This document may also be examined at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective November 16, 1984

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation only involves a total of 9 sailplanes at an estimated cost of $1,260 or $140 per sailplane. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 CFR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

Note.—The incorporation by reference provisions of this document were approved by the Director of the Federal Register on November 16, 1984. The referenced technical notes are available at the Federal Register.

Issued in Burlington, Massachusetts on October 16, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-30076 Filed 11-15-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 43

[Docket No. 24309; Amdt. No. 43-24]

Anti-Misfueling: Tank Filler Opening Adapters

Correction

In the issue of Wednesday, November 7, 1984, in the document appearing on page 44602, make the following corrections:

1. In the first column, last paragraph, fourth line, insert the word "Air" after the word "National".

2. In the third column, in the file line at the end of the document, "FR Doc. 84-25211" should have read "FR Doc. 84-29211".

BILLING CODE 1505-01-M

---

14 CFR Part 71

[Airspace Docket No. 84-ASO-18]

Designation of Transition Area, Palatka, FL

Correction

In FR Doc. 84-29209 appearing on page 44450 in the issue of Wednesday, November 7, 1984, make the following correction: In the second column, fourth line from the bottom, "20°39'30"" should read "29°39' 30"".

BILLING CODE 1505-01-M

---

14 CFR Parts 73

[Airspace Docket No. 84-AWA-21]

Subdivision of Restricted Area R-5103A, McGregor, NM

Correction

In the issue of Wednesday, November 7, 1984, on page 44451 in the second column, a correction to FR Doc. 84-28167 appeared. The correction was inaccurate and should have appeared as follows:

On page 42920, second column, the first and second lines of the description of restricted area R-5103A McGregor, NM [Revised] should have read:

Boundaries. Beginning at lat. 32°15'00" N., long. 106°10'00" W.; to lat. 32°15'00" N., long.

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3,140 and 145

Minimum Financial and Related Reporting Requirements; Registration Requirements; Transfer of Certain Registration Functions to the National Futures Association; Effective Date of Final Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of effective date of order and final rules.

SUMMARY: On October 9, 1984, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice and Order authorizing the National Futures Association ("NFA") to perform, on behalf of the Commission, certain registration functions concerning futures commission merchants ("FCMs"), commodity trading advisors ("CTAs"), commodity pool operators ("CPOs") and the associated persons ("APs") of such registrants. 49 FR 39593. The Order was to take effect on December 31, 1984, or at such earlier time as the Commission authorized by appropriate advance notice.

By separate **Federal Register** release of that same date, the Commission adopted amendments to its own regulations governing minimum financial and related reporting requirements and registration procedures to reflect this transfer of registration functions (49 FR 39518). The Commission deferred the effective date of these rules until fifteen days after further notice of the effective date is published in the **Federal Register**. The Commission is now providing notice that its Order and the related final rules will become effective on December 3, 1984.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin M. Foley, Chief Counsel, or Lawrence B. Patent, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On October 9, 1984, the Commission published in the **Federal Register** a Notice and Order authorizing the National Futures Association to perform, on behalf of the Commission, certain registration functions concerning FCMs, CTAs, CPOs and APs of such registrants. 49 FR 39593. Specifically, the Order authorized NFA to process and grant, where appropriate, applications for initial and renewed registration with the Commission for those categories of registrant, and to issue temporary licenses to qualified APs, in accordance with the standards established by the Commodity Exchange Act ("Act") and the regulations thereunder.[1] The Order did not authorize NFA to grant conditional registration, to deny registration or to take any other adverse action concerning registration until the Commission has adopted its own regulations and procedures to review such actions. Nor did the Order authorize NFA to accept or act upon requests for exemption from registration or for "no-action" positions with respect to the applicable registration requirements.[2]

In order to implement this transfer of its registration functions, the Commission, by separate **Federal Register** release of that same date, adopted as final rules amendments to its own regulations governing minimum financial and related reporting requirements and registration procedures. 49 FR 39518. The amendments, which are technical and conforming in nature, affect the Commission's existing rules contained in Parts 1, 3, 140 and 145 of its regulations and are designed to furnish applicants and registrants with specific instructions on where to file registration applications, financial reports and other related documents. Specifically, the rules have been amended to provide that certain documents related to the activities and operations of FCMs, CPOs, and CTAs, and the APs of such registrants, are now to be filed with NFA instead of the Commission.[3]

The effective date of both the Commission's Order and the amendments to its regulations was deferred at the time they were adopted. The Order was to take effect on December 31, 1984, or at such earlier time as the Commission authorized by appropriate advance notice. With respect to the amendments, the Commission stated that it would publish a second notice in the **Federal Register** at least fifteen days before the rules were to take effect. These delays were necessary because it was unclear at that time the exact date NFA would be prepared to assume the Commission's registration functions.

The Commission has been advised by NFA that its systems and procedures will be in place by December 3, 1984 and, in that connection, the Commission's staff is prepared to effectuate the transfer of its registration files and computer data base with respect to FCMs, CPOs, CTAs and their APs by that date. Therefore, the Commission is now providing notice that the Order authorizing NFA to perform certain registration functions with respect to those categories of registrant and the amendments to the Commission's own regulations necessary to implement this transfer of its registration functions will become effective on December 3, 1984. Upon transfer, NFA will be responsible for processing all new, and virtually all pending, registration applications of such registrants.

In order to ensure a smooth transition and, in particular, to prepare its data base to transfer to NFA, the Commission will be required to stop processing applications for a period of time prior to December 3. Therefore, the Commission is announcing that, with respect to those categories of registrant for whom processing responsibility is being transferred to NFA, it will not process any application for registration received by the Commission after November 14, 1984. Such application will be transferred to NFA and any check for fees will be endorsed over to NFA.

The Commission anticipates that, following the transfer of its registration files and data base to NFA, that organization will require a period of time to load the data into its own computer and organize the files. This period of time is expected to last approximately two weeks. Thus, there will be a period of approximately one month when applications will not be processed either by the Commission or NFA. The Commission recognizes that such a delay may result in inconvenience to certain applicants. However, the transfer which the Commission and NFA are undertaking is extremely complex, and it is simply impossible to process applications during the period. To attempt to do so would jeopardize the efficient transfer of the Commission's files and data base and, thus, risk more significant processing delays which would be detrimental to all Commission registrants.

In connection with this transfer, the Commission is also revising the instructions to its registration forms. Essentially, these revisions affect the address to which registration forms are to be sent and the fees which must accompany them. Thus, as of December 3, 1984, FCMs, CPOs, CTAs and IBs must send initial and renewal applications, Form 7-R, and any amendments or supplements thereto filed on Form 3-R, to the National Futures Association, Office of the Secretary, P.O. Box 96363, Chicago, Illinois 60693. Principals and APs of such registrants must submit a Form 8-R and fingerprints, if required, (as well as the Form 8-S, in the case of an AP transferring to another registrant) to NFA at the same address. Floor brokers, LTMs and APs of LTMs must submit all relevant forms to the Commodity Futures Trading Commission, Central Regional Office, P.O. Box 70685, Chicago, Illinois 60673. Applicants and registrants in these latter three categories should note that the Commission's post office box number is different from that found in the present instructions. Of course, materials sent to

[1] NFA already has authority to grant applications for registration of introducing brokers ("IBs") and their associated persons and may issue temporary licenses to qualified APs of IBs. The Commission will continue to have direct registration responsibility for floor brokers ("FBs"), leverage transaction merchants ("LTMs") and associated persons of leverage transaction merchants.

[2] The full scope of NFA's authority and obligations under this Order is set forth in the October 9, 1984 **Federal Register** release.

[3] A more complete description of the amendments to the Commission's rules is set forth in the October 9, 1984 **Federal Register** release.

the wrong box number will be forwarded.

The fees which must accompany applications for registration for those categories of registrant for whom processing responsibility is being transferred to NFA have also changed. An application filed with NFA must be accompanied by the following fee:[1]

Applicant	Initial	Renewal
FCM	$250	$100
IB	75	25
CPO	50	25
CTA	50	25
Branch Office	0	0
AP	30	N/A

The fees for applications for registration filed with the Commission have not changed, however:

Applicant	Initial	Renewal
LTM	$475	$275
Branch Office	0	0
AP	35	N/A
FB	25	25

As noted above, the Commission will not process any application for registration received after November 14 for those categories of registrant for whom registration responsibility is being transferred to NFA. Such application will be forwarded to NFA for processing and the fee will be endorsed over to NFA. Because NFA fees are generally lower than those presently charged by the Commission, NFA has advised the Commission that it will credit each member with the difference between the fee charged by the Commission and that charged by NFA.

Issued by the Commission on November 13, 1984 in Washington, D.C.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84-30172 Filed 11-15-84; 8:45 am]

BILLING CODE 6351-01-M

[1] The fees for FCMs, CPOs and CTAs were approved by the Commission on November 5, 1984.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old Age, Survivors, and Disability Insurance Benefits; Deductions, Reductions, and Nonpayments of Benefits

Correction

In the last line of a correction appearing on page 44458 in the issue of Wednesday, November 7, 1984, "404.406" should have read "404.408a".

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs Not Subject to Certification; Flurogestone Acetate-Impregnated Vaginal Sponge

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) sponsored by G.D. Searle & Co. The NADA provides for the intravaginal use in sheep of a flurogestone acetate-impregnated sponge for synchronizing estrus/ovulation in cycling adult ewes.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-433-1414.

SUPPLEMENTARY INFORMATION: G.D. Searle & Co., P.O. Box 5110, Chicago, IL 60680, is the sponsor of NADA 34-601, which provides for the intravaginal use of a flurogestone acetate-impregnated sponge for synchronizing estrus/ovulation in cycling adult ewes during their normal breeding season.

NADA 34-601 was orginally approved by letter dated July 12, 1967. At that time approvals were not codified by publication in the **Federal Register**. Accordingly, FDA is now amending the regulations to codify G.D. Searle's approved NADA. This action, codification of a previously approved NADA, does not constitute reaffirmation of the safety and effectiveness data supporting this approval. Because the NADA was approved before July 1, 1975, the sponsor was not required to submit a summary of the safety and effectiveness data and information in accordance with the freedom of information provisions of the animal drug regulations in 21 CFR 514.11(e)(2)(ii). However, a summary of the basis for approval is available upon request in accordance with 21 CFR 514.11(e)(2)(i).

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 529

Animal drugs, Miscellaneous use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 529 is amended by adding new § 529.1003 to read as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 529.1003 Flurogestone acetate-impregnated vaginal sponge.

(a) *Specifications.* Each vaginal sponge contains 20 milligrams of flurogestone acetate.

(b) *Sponsor.* See No. 000014 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Indications for use.* For synchronizing estrus/ovulation in cycling adult ewes during their normal breeding season.

(2) *Limitations.* Using applicator provided, insert sponge into ewe's vagina 13 days before desired start of breeding. For intravaginal use in sheep only. Do not use in young ewes that have not had lambs. Use plastic or rubber gloves when handling large numbers of sponges to minimize exposure to drug. Do not leave sponge in the vagina for more than 21 days. Ewes must not be slaughtered for food within 30 days of sponge removal.

Effective date. November 16, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 8, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-30127 Filed 11-15-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for use of amoxicillin trihydrate and clavulanate potassium tablets in dogs. The drug is labled for the treatment of skin infections such as superficial/juvenile and deep pyoderma.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham Inc., Bristol, TN 37620, filed NADA 55-099 for Synuloz™ (amoxicillin trihydrate and clavulanate potassium) tablets for use in dogs. The drug is for the treatment of skin infections such as superficila/juvenile and deep pyoderma due to beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, and *Staphylococcus* spp. The application is approved and the regulations amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fisher Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*) and (f)(1)(ii)(*e*)(2)), may be seen in the Dockets Management Branch (address above). The statement of exemption contains information on the environmental impact of the manufacturing process, as required under 21 CFR 25.1(g).

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics, penicillin.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347 (21 U.S.C. 360 (i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 540 is amended by adding new § 540.103g to read as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 540.103g Amoxicillin trihydrate and clavulanate potassium film-coated tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate and clavulanate potassium tablets are film-coated tablets composed of amoxicillin trihydrate and clavulanate potassium with or without one or more suitable and harmless lubricants, diluents, and binders. Each tablet contains amoxicillin trihydrate and clavulanic acid as the potassium salt equivalent to either 50 milligrams of amoxicillin and 12.5 milligrams clavulanic acid, or 100 milligrams of amoxicillin and 25 milligrams clavulanic acid, or 200 milligrams amoxicillin and 50 milligrams clavulanic acid. Its amoxicillin trihydrate content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of amoxicillin that it is represented to contain. Its clavulanate potassium content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of clavulanic acid that it is represented to contain. Its moisture content is not more than 7 percent. Tablets shall disintegrate within 30 minutes. The amoxicillin trihydrate conforms to the standards prescribed by § 440.3(a)(1) of this chapter. The clavulanate potassium conforms to the standards prescribed by § 455.15(a)(1) of this chapter.

(2) *Labeling.* It shall be labled in accordance with the requirements of paragraph (c) of this section and § 510.55 of this chapter; in addition, this drug shall be labled "amoxicillin and clavulanate potassium tablets".

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each request shall contain:

(i) Results of tests and assays on:

(*a*) The amoxicillin trihydrate used in making the batch for potency, safety, moisture, pH, amoxicillin content, concordance, crystallinity, and identity.

(*b*) The clavulanate potassium used in making the batch for clavulanic acid content, moisture, pH, identity, and clavam-2-carboxylate content.

(*c*) The batch for amoxicillin contents, clavulanic acid content, moisture, and disintegration time.

(ii) Sample required for:

(*a*) The amoxicillin trihydrate used in making the batch: packages, each containing approximately 300 milligrams.

(*b*) The clavulanate potassium used in making the batch: packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of 100 tablets.

(b) *Tests and methods of assay*—(1) *Amoxicillin and clavulanic acid contents.* Proceed as in § 440.103d(b) of this chapter.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Disintegration time.* Proceed as directed in § 436.212 of this chapter, using the procedure described in paragraph (e)(1) of that section.

(c) *Conditions of marketing*—(1) *Specifications.* The drug conforms to the requirements of paragraph (a) of this section.

(2) *Sponsor.* See No. 000029 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Dogs*—(a) *Amount.* 6.25 milligrams per pound of body weight twice daily (equivalent to 5 milligrams amoxicillin and 1.25 milligrams clavulanic acid per pound body weight).

(*b*) *Indications for use.* It is used in the treatment of skin infections such as superficial/juvenile and deep pyoderma due to beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, and *Staphylococcus* spp.

(*c*) *Limitations.* Administer for 10 to 14 days or 48 hours after all symptoms have subsided. If no improvement is seen in 7 days, discontinue therapy and reevaluate the case. Not for use in dogs maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) [Reserved]

Effective date. November 16, 1984.

(Sec. 512(i) and (n), 82 Stat. 347 (21 U.S.C. 360b(i) and (n)))

Dated: November 8, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-30129 Filed 11-15-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 540 and 556

Animal Drugs, Feeds, and Related Products; Amoxicillin Trihydrate Intramammary Infusion

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect

approval of a new animal drug application (NADA) filed by Beecham Laboratories providing for the use of amoxicillin trihydrate intramammary infusion for the treatment of subclinical infectious bovine mastitis in lactating cows. The regulations are also amended to establish a tolerance for amoxicillin residues in milk.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed NADA 55–100 for Amoxi-Mast®, amoxicillin trihydrate for intramammary infusion. The drug is for the treatment of subclinical infectious bovine mastitis in lactating cows due to *Streptococcus agalactiae* and *Staphylococcus aureus* (penicillin sensitive). The application is approved and the regulations amended accordingly. The basis for approval is discussed in the freedom of information summary. The regulations are also amended to establish a tolerance for negligible residues of amoxicillin in milk.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(iii)), may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 540
Animal drugs, Antibiotics, Penicillin.

21 CFR Part 556
Animal drugs, Foods, Residues.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.65), Parts 540 and 556 are amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. Part 540 is amended by adding new § 540.803 to read as follows:

§ 540.803 Amoxicillin trihydrate for intramammary infusion.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate for intramammary infusion contains sterile amoxicillin trihydrate in a menstruum of refined semisynthetic vegetable oil with a suitable and harmless dispersing agent and preservative. Each 10-milliliter syringe contains amoxicillin trihydrate equivalent to 62.5 milligrams of amoxicillin. Its potency is satisfactory if it contains 90 to 120 percent of the amount of amoxicillin that it is represented to contain. Its moisture content is not more than 1.0 percent. The amoxicillin trihydrate used conforms to the requirements of § 529.3 of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of paragraph (c) of this section and § 510.55 of this chapter.

(3) *Request for certification samples.* In addition to complying with the requirements of § 514.50 of this chapter, each such request shall contain:

(i) The results of tests and assay on:

(*a*) The amoxicillin trihydrate used in making the batch for potency, sterility, pyrogens, safety, moisture, pH, amoxicillin content, concordance, identity, and crystallinity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) The amoxicillin trihydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 5 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in amoxicillin in § 436.105 of this chapter, preparing the sample for assay as follows: Expel the syringe contents into a high-speed glass blender jar containing 400 milliliters of 0.1*M* potassium phosphate buffer, pH 6.0 (solution 3) and 1 milliliter of polysorbate 80. Blend for 3 to 5 minutes. Further dilute an aliquot of the blend with solution 3 to the reference concentration of 0.1 microgram of amoxicillin per milliliter.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(c) *Conditions of marketing*—(1) *Specifications.* The drug conforms to the certification requirements of paragraph (a) of this section.

(2) *Sponsor.* See No. 000029 in § 510.600(c) of this chapter.

(3) *Related tolerances.* See § 556.38 of this chapter.

(4) *Conditions of use*—(i) *Lactating cows*—(*a*) *Amount.* Each single dose syringe contains 10 milliliters (equivalent to 62.5 milligrams amoxicillin base).

(*b*) *Indications for use.* For the treatment of subclinical infectious bovine mastitis due to *Streptococcus agalactiae* and *Staphylococcus aureus* (penicillin sensitive).

(*c*) *Limitations.* Administer after milking. Clean and disinfect the teat. Use one syringe per infected quarter every 12 hours for a maximum of 3 doses. Do not use milk for food purposes if taken from treated animals within 60 hours (5 milkings) after last treatment. Do not slaughter treated animals for food purposes within 12 days after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) [Reserved]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

2. Part 556 is amended by revising § 556.38 to read as follows:

§ 556.38 Amoxicillin.

A tolerance of 0.01 part per million is established for negligible residues of amoxicillin in milk and in the uncooked edible tissues of cattle.

Effective date. November 16, 1984.

(Sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n)))

Dated: November 8, 1984.

Lester M. Crawford,
Director, Center for Veterinary Medicine.

[FR Doc. 84–30130 Filed 11–15–84; 8:45 am]
BILLING CODE 4160–01–M

---

21 CFR Part 546

Tetracycline Antibiotic Drugs for Animal use; Chlortetracycline Soluble Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplement to a new animal drug application (NADA) filed by SDS Biotech Corp. that provides revised labeling and human food safety data for chlortetracycline hydrochloride soluble powder for use in animal drinking water. The labeling is in compliance with the recommendations made for the drug by the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: SDS Biotech Corp., 7528 Auburn Rd., P.O. Box 348, Concord Township, Painesville, OH 44077, has filed a supplement to NADA 65–178 for CtC-Soluble (chlortetracycline hydrochloride powder) for use in chickens, turkeys, swine, and cattle. The supplement is approved and the regulations are amended accordingly. The basis for the approval is discussed in the freedom of information summary.

In a notice published in the Federal Register of April 27, 1979 (44 FR 24931), the agency announced the effective indications for which chlortetracycline soluble powders for animal use may be marketed and proposed to withdraw approval of NADA's for products labeled for conditions lacking substantial evidence of effectiveness. The agency's conclusions regarding efficacy were in accord with the findings of the NAS/NRC Drug Efficacy Study Group's evaluation of chlortetracycline soluble powder. The April 27, 1979 Federal Register notice identified Diamond Shamrock's NADA 65–178 as being subject to it. Diamond Shamrock subsequently transferred ownership of the NADA to the SDS Biotech Corp. This supplement complies with requirements stated in the notice.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(iii) and (g)) may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 546

Animal drugs, Antibiotics, Tetracycline.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b(i) and (n)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 546 is amended in § 546.110c(c) by revising (c)(2), by removing footnote "1" and its text from (c)(5), and by adding new (c)(5)(v) to read as follows:

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 546.110c Chlortetracycline powder (chlortetracycline hydrochloride powder).

* * * * *

(c) * * *

(2) *Sponsor.* No. 000010 in § 510.600(c) of this chapter for conditions of use as in paragraph (c)(5)(iii) and (iv) of this section; No. 010042 in § 510.600(c) of this chapter for conditions of use as in paragraph (c)(5)(i) and (ii) of this section; No. 052313 in § 510.600(c) of this chapter for conditions of use as in paragraph (c)(5)(v) of this section.

* * * * *

(5) * * *

(v) The following uses of chlortetracycline hydrochloride in drinking water are NAS/NRC reviewed and are deemed effective; applications for these uses need not include the effectiveness data specified by § 514.111 of this chapter:

(*a*) *Chickens—(1) Amount per gallon.* 200 to 400 milligrams.

(*i*) *Indications for use.* For the control of infectious synovitis caused by *M. synoviae.*

(ii) Limitations. Prepare fresh solution daily, as sole source of chlortetracycline, do not use for more than 14 days, do not slaughter animals for food within 24 hours of treatment, do not use in laying chickens.

(2) Amount per gallon. 400 to 800 milligrams.

(i) Indications for use. For the control of chronic respiratory disease (CRD) and air sac infections caused by *M. gallisepticum* and *E. coli.*

(ii) Limitations. Prepare fresh solution daily, as sole source of chlortetracycline, do not use for more than 14 days, do not slaughter animals for food within 24 hours of treatment, do not use in laying chickens.

(b) Turkeys—(1) Amount per gallon. 400 milligrams.

(i) Indications for use. For the control of infectious synovitis caused by *M. synoviae.*

(ii) Limitations. Prepared fresh solution daily, as sole source of chlortetracycline, do not use for more than 14 days, do not slaughter animals for food within 24 hours of treatment, for growing turkeys only.

(2) Amount. 25 milligrams per pound of body weight daily.

(i) Indications for use. For the control of complicating bacterial organisms associated with bluecomb (transmissible enteritis, coronaviral enteritis).

(ii) Limitations. Prepare fresh solution daily, as sole source of chlortetracycline, do not use for more than 14 days, do not slaughter animals for food within 24 hours of treatment, for growing turkeys only.

(*c*) *Swine—(1) Amount.* 10 milligrams per pound body weight daily in divided doses.

(*2*) *Indications for use.* For the control and treatment of bacterial enteritis (scours) caused by *E. coli* and *Salmonella* spp. and bacterial pneumonia associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp.

(*3*) *Limitations.* Prepare fresh solution daily, as sole source of chlortetracycline, do not use more than 5 days, do not slaughter animals for food within 5 days of treatment..

(*d*) *Calves, beef cattle, and nonlactating dairy cattle—(1) Amount.* 10 milligrams per pound daily in divided doses.

(*2*) *Indications for use.* For the control and treatment of bacterial enteritis (scours) caused by *E. coli* and *Salmonella* spp. and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp. *Hemophilus* spp., and *Klebsiella* spp.

(*3*) *Limitations.* Prepare fresh solution daily, use as a drench, as sole source of chlortetracycline, do not use more than 5 days, do not slaughter animals for food within 24 hours of treatment, do not use in lactating cattle.

Effective date. November 16, 1984.

(Sec. 512 (i) and (n), 82 Stat. 347, 359–361 (21 U.S.C. 360 (i) and (n)))

Dated: November 8, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-30128 Filed 11-15-84; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; Correction.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on certified designated 706 agencies. Publication of this amendment effectuates the designation of the Kansas Commission on Civil Rights as a certified 706 Agency and corrects the notice published in Federal Register Volume 49, No. 180 on September 14, 1984, regarding the Kansas City, Missouri Human Relations Department as a certified 706 Agency.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Hollis Larkins, Equal Employment Opportunity Commission, Office of Program Operations, Special Services Staff, 2401 E Street NW., Washington, D.C. 20507, telephone 202/634–6806.

SUPPLEMENTARY INFORMATION: The Commission has determined that the Kansas Commission on Civil Rights meets the eligibility criteria for certification of a designated 706 Agency as established in 29 CFR 1601.75(b). In accordance with 29 CFR 1601.75(c) the Commission hereby amends the list of certified designated 706 agencies to include the Kansas Commission on Civil Rights. Publication of this amendment to § 1601.80 effectuates the designation of the following agency as a certified 706 Agency: Kansas Commission on Civil Rights.

The Commission has determined that the notice, as published in Volume 49, No. 180 on September 14, 1984, regarding the Kansas City, Missouri Human Relations Department as a certified 706 Agency did not properly reflect the action taken by the Commission.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

§ 1601.80 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.80 by adding the Kansas Commission on Civil Rights and by removing the Kansas City, Missouri Human Relations Department.

(42 U.S.C. 2000e–12(a))

Signed at Washington, D.C. this 9th day of November 1984.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 84-30127 Filed 11-15-84; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-4-FRL-2719-6]

Standards of Performance for New Stationary Sources; Alternative Test Requirements for Alumax of South Carolina's Mt. Holly Plant, Mt. Holly, SC

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today establishes an alternative air emissions performance testing frequency requirement for Alumax of South Carolina's primary aluminum reduction plant in Mt. Holly, South Carolina, as provided in 40 CFR 60.195(b). Rather than conduct monthly fluoride emission performance tests on the anode bake plant, this source will be allowed to test it once a year. This action is justified by fluoride emission data provided by the company through the State air pollution control agency. This action, which is expected to have no effect on the National Ambient Air Quality Standards, was proposed in the Federal Register of February 28, 1984 (48 FR 7254); no comments were received.

DATE: This action is effective December 17, 1984.

ADDRESS: Background information is available for public inspection at the following address: Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Joe Riley of the EPA Region IV Air Management Branch at the Atlanta address given above, telephone 404/881–4901 (FTS: 257–4901).

SUPPLEMENTARY INFORMATION: On January 26, 1976 (41 FR 3828), EPA promulgated Standards of Performance for New Primary Aluminum Reduction Plants as Subpart S of 40 CFR Part 60, pursuant to the provisions of section 111 of the Clean Air Act. Under the original standards, the affected source was required to conduct a performance test on startup on any other occasion the Agency might require a test under section 114 of the Clean Air Act. On June 30, 1980 (45 FR 44027), EPA revised 40 CFR 60.195 to require performance testing at least once per month for the life of a new primary aluminum plant. At the same time, however, the Agency provided that alternative test requirements could be established for the primary control system or an anode bake plant if the source could demonstrate control system or an anode bake plant if the source could demonstrate that emissions have low variability during day-to-day operations.

On October 19, 1976, the Environmental Protection Agency (EPA) delegated to the South Carolina Department of Health and Environmental Control (SCDHEC) authority to administer Subpart S of 40 CFR Part 60. Under the terms of the delegation, performance tests were to be scheduled and performed in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Accordingly, SCDHEC has transmitted to EPA for its approval a petition for alternative test requirements submitted by Alumax of South Carolina, Mount Holly plant.

Alumax is requesting a change in the testing requirements established for primary aluminum plants by 40 CFR Part 60. Specifically the source wishes to be allowed to change the frequency of testing the anode bake plant from once a month to once a year. EPA had earlier denied such a request by Alumax [see 48 FR 22919 (May 23, 1983)] because adequate supporting information was lacking.

On the basis of the supporting information submitted, EPA now grants this request since it meets the requirements of 40 CFR 60.195(b). Actual emissions from the anode bake plant systems are far below the allowable emissions. Day-to-day variations in the anode bake plant emissions are not great enough to cause emissions in excess of the standard for fluorides.

This alternative requirement will not preclude the Agency or SCDHEC from requiring performance testing at any time. Finally, it can be withdrawn at any time that the Administrator finds that it is not adequate to assure compliance with the emission standards applicable to this source.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 15, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, aluminum, ammonium sulfate plants, cement industry, coal, copper, electric power plants, glass and glass products, grains, intergovernmental relations, iron, lead, metals, motor vehicles, nitric acid plants, paper and paper products industry, petroleum, phosphate, sewage disposal, steel, sulfuric acid plants, waste treatment and disposal, zinc.

(Secs. 111 and 301(a) of the Clean Act (42 U.S.C. 7411 and 7601(a))).

Dated: November 9, 1984.

William D. Ruckelshaus,

Adminstrator.

PART 60—[AMENDED]

Part 60 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Standards of Performance for Primary Aluminum Reduction Plants

Section 60.195 is amended by revising paragraph (b)(2) to read as follows:

§60.195 Test methods and procedures.

* * * * *

(b) * * *

(2) Alternative testing requirements are established for Alumax of South Carolina's Mt. Holly Plant in Mt. Holly, South Carolina: The anode bake plant and primary control system are to be tested once a year rather than once a month.

[FR Doc. 84-30117 Filed 11-15-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 704

[OPTS-60011C; FRL 2471-5]

Reporting and Recordkeeping Requirements; Small Manufacturer Exemption Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule sets forth general exemption standards for small manufacturers of chemical substances under section 8(a) of the Toxic Substances Control Act. Manufacturers who qualify as "small" under these standards will be exempt from most subsequent section 8(a) reporting and recordkeeping rules. The exemption standards have been designed to reduce the paperwork burden on small chemical manufacturers, while ensuring that EPA will receive a sufficient amount of production, use, exposure, and other information to support assessment of chemical risks.

DATES: This regulation shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on November 30, 1984. This regulation becomes effective on December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460; Toll free: (800–424–9065); In Washington, D.C.: (554–1404); Outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Legal Authority

Section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), authorizes the Administrator of the Environmental Protection Agency to establish, by rule, reporting and recordkeeping requirements for chemical manufacturers and processors. TSCA includes the importation of chemicals in its definition of "manufacture." TSCA section 8(a)(2) lists some of the types of data which the Administrator may require to be kept or reported, including information concerning the identity, production volume, and exposure potential of chemicals manufactured or processed.

By the terms of the statute, small manufacturers and processors are usually exempt from section 8(a) reporting and recordkeeping requirements. TSCA section 8(a)(3)(B) states that the Administrator shall by rule "prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors * * *."

Under the authority of section 8(a)(3)(A)(ii), the Administrator need not apply this exemption with regard to a chemical substance or mixture that is subject to:

1. A proposed or promulgated rule under TSCA section 4 (testing requirement), section 5(b)(4) (a list of chemicals which may present an unreasonable risk), or section 6 (control actions), or

2. An order in effect under section 5(e) (new chemical information), or

3. Relief granted as a result of civil action brought under section 5 or 7.

B. The Proposed Rule

Initially, EPA took a case-by-case approach to the definition of small manufacturers and processors ; the Agency established individual exemption standards for each section 8(a) rule. Subsequently, EPA decided to initiate the development of general exemption standards for small manufacturers. These standards were proposed in the Federal Register of June 23, 1982 (47 FR 27206). The proposed exemption standards applied to all chemical manufacturers that could be subject to section 8(a) reporting requirements. They were based on a number of factors, including the following:

1. Consultation with the Small Business Administration and other Federal agencies regarding their definition of small companies,

2. Preliminary comments and suggestions from representatives of the chemical industry, and

3. An economic analysis of various alternative exemption criteria, performed by an independent contractor. Documentation of these factors is part of the public record for this rule.

The preamble to the proposed rule described all exemption criteria considered by EPA, and requested comment on several alternatives. The Agency received few public comments on the proposal, although several of the commenters were organizations representing a substantial number of chemical manufacturing firms. Most commenters approved of the proposed exemption standards; there were few objections or suggested changes. Accordingly, this final rule contains only minor changes in the content of the standards. This final rule also reflects little change in the Agency's objectives, methodology, and economic justification for the exemption standards. This preamble therefore only summarizes EPA's objectives and rationale for the rule. The preamble to the proposed rule contains a more detailed discussion of these points.

During the past year the Agency has considered limiting the scope of the small manufacturer exemption rule in order that the rule would apply only to manufacturers of substances listed on the initial or revised TSCA Chemical Substances Inventory, and not to

chemicals added to the Inventory after completing premanufacture notice review. EPA has determined, however, that this type of change in scope is not necessary to meet the Agency's information needs. The final rule therefore has the same scope as the version proposed in 1982; it is applicable to manufacturers of all chemical substances, regardless of when the substances were listed on the Inventory. EPA's reasons for suggesting and then rejecting this change are set forth in Unit IV of this preamble.

II. Scope and Content of the Final Rule

The final rule contains two exemption standards. These standards will be applicable to chemical manufacturers (including importers), but not to chemical processors. At present, EPA will continue to develop exemption standards for small processors on a rule-by-rule basis. All data in this preamble represent the manufacturing portion of the chemical industry.

The exemption standards in this final rule will apply to all manufacturers of chemical substances subject to TSCA section 8(a) reporting and recordkeeping rules, unless the Agency specifically provides otherwise in a particular section 8(a) rule. A manufacturer of these chemical substances will qualify as "small" if it meets either of the exemption standards set forth below:

1. *First standard.* A chemical manufacturer will qualify as "small" under this standard if the total annual sales revenue of all plant sites that it owns or controls (or which are owned or controlled by its foreign or domestic parent company, if any) is less than $40 million. However, if a manufacturer with total annual sales of less than $40 million produces (annually) over 45,400 kilograms (100,000 pounds) of a particular subject chemical at a particular plant site, that manufacturer will not qualify as small with regard to that chemical at that plant site.

Under this first standard, a company that meets the sales criterion for small but does not meet volume criterion for all of its sites will be subject only to reporting or recordkeeping for sites producing 45,400 kilograms or more of the chemical per year.

2. *Second standard.* A chemical manufacturer will qualify as small if the total annual sales revenue of all plant sites that it owns or controls (or that are owned or controlled by its foreign or domestic parent company, if any) is less than $4 million, regardless of the quantity of chemicals produced by that firm.

For purposes of these two standards, total annual sales means the total revenue generated by the sale of all products, including non-chemical products, that are produced at all sites owned or controlled by the manufacturer and its parent company, if any. EPA will periodically adjust, as necessary, the sales values of both standards to allow for inflation after the promulgation of this rule. The Agency will use an index from the Bureau of Labor Statistics (BLS) for this purpose: the Producer Price Index for Chemicals and Allied Products.

EPA recognizes the possibility that the sales values may also be subject to deflationary economic trends. The Agency would adjust the sales values downward if significant deflation were to occur. However, the likelihood of deflation in amounts significant enough to trigger adjustment of the sales values is extremely small. For purposes of convenience, then, this rule will refer to the mechanism for adjusting the sales values as an inflation index.

Companies will use the corporate fiscal year as the 12-month period for which both annual sales and production volume are to be calculated. In the first standard, annual production volume means the total amount of a chemical substance produced or imported during the designated 12-month period.

A parent manufacturing company is one which owns or controls another company. Ownership or control exists when a parent company owns 50 percent or more of another company's voting stock or other equity rights, or has the power to control the management and policies of the other company. This definition is drawn from the 1977 Economic Census Report of Organization of the United States Department of Commerce.

Plant site means a contiguous property unit which serves as the location for chemical manufacturing. There may be more than one manufacturing plant located on a particular site.

III. Agency Objectives

Industry compliance with TSCA reporting and recordkeeping requirements involves the expenditure of time, money, and personnel resources. These costs have particular impact on companies which have limited financial and personnel resources. Such manufacturers tend to have fewer administrative personnel and less capability for data compilation and recordkeeping than do larger firms.

In spite of the potential burden imposed on small manufacturers by reporting rules, some commenters opposed the establishment of any exemption based on company size. These commenters stated the Agency's information needs may be greater when smaller companies are involved, because small firms may be less able to maintain proper precautions for pollution and exposure control. Without expressing any views on the merits of this claim, EPA's response is that the establishment of a small manufacturer definition is not a discretionary action. Section 8(a) requires the establishment of a small business exemption; in enacting TSCA, Congress recognized a need "to protect small manufacturers from unreasonably burdensome reporting requirements" (Conf. Rep. No. 94–1679, 94th Cong., 2d Sess. 80 (1976)).

However, in establishing a small manufacturer exemption, EPA does not intend to ignore its information gathering responsibility. The information collection authority of TSCA section 8(a) reflects congressional recognition of EPA's need for sufficient data from the chemical industry. Congress acknowledged that EPA needs sufficient data to accurately assess the risk potential of individual chemicals. Based on this congressional intent, the Agency has concluded that it is inappropriate to exempt a company from section 8(a) reporting requirements if the firm produces a subject chemical in substantial quantities. High volume chemical production reflects a greater potential for environmental release. Production data therefore would be valuable to EPA as a measure of chemical exposure risk.

The Agency has structured the exemption standards to balance the need for risk-related information with the need to minimize the reporting and recordkeeping burden on small manufacturers. While each standard contains a measure of a company's available resources, the first standard also contains a criterion which measures chemical production volume and thereby reflects EPA's information needs.

EPA also has the authority to change the general exemption standards contained in this rule in appropriate cases when Agency access to necessary information is blocked by the exemption. The Agency therefore will be able to gain access to information on the production activities of the smallest manufacturers, if necessary for effective risk assessment. However, when changing the general exemption standards for a specific rule, EPA must follow full notice and comment rulemaking procedures with regard to the amended standards.

EPA has an additional objective for the general exemption standards. The

standards should not prevent section 8(a) rules from providing information representative of firms of different sizes. Large and small firms have varying amounts of capital available, and therefore may utilize different production processes, techniques, and equipment. Different methods of production may cause the potential for chemical exposure to vary among large and small firms. It is important for the Agency to be able to monitor these differences. In order to ensure that EPA will receive representative section 8(c) data, the parameters of the exemption standards have been structured to allow the Agency to obtain production, use, and exposure data from some small firms.

A final requirement for the standards is that they be easily analyzed and applied by both industry and the Agency. EPA has selected exemption criteria that represent readily available data. These data enable identification of companies which would be likely to qualify for an exemption. The standards can also be easily enforced, because the selected criteria will enable EPA to monitor compliance with the exemption.

IV. Possible Change in the Scope of the Rule

As noted in Unit I.B., above, during the time since this rule was proposed the Agency has considered and rejected a reduction in the scope of the general exemption standards contained in the proposed rule. This decision is based on recent EPA evaluation of the relative impact of the exemption standards set forth in this rule on the Agency's ability to gather section 8(a) data from manufacturers of different types of chemicals.

EPA considered making the standards applicable only to manufacturers of chemical substances which were reported for the initial TSCA Inventory or the revised Inventory, and not to manufacturers of chemicals that are new or have been subject to premanufacture notification. The Agency thought that the general exemption standards could possibly hinder EPA's ability to gather production data on new or recently commercialized chemicals, and thus make it difficult for the Agency to monitor the activities of relatively small firms that produce such chemicals. In view of this concern, the EPA considered developing separate, more stringent exemption standards for small manufacturers of new or recently commercialized chemicals.

However, after reviewing this option the Agency determined that a single set of exemption standards will not prevent the Agency from meeting its information needs with section 8(a) rules, regardless of the type of chemicals involved. The economic data supporting this decision are contained in the public record for this rule. EPA therefore is promulgating this rule as it was proposed, with general exemption standards applicable to manufacturers of all chemical substances, old and new.

V. The Exemption Standards

EPA is establishing general exemption standards that will be applicable to all future section 8(a) rules, with limited exceptions. Industry representatives have expressed their preference for exemption criteria that are easily understood and predictable from rule to rule. Commenters on the proposed rule approved of EPA's plan to establish a set of general standards that will clearly indicate the exemption status of individual companies, and thereby provide predictability to those companies for their long range planning. General exemption standards also will decrease administrative costs to EPA by enabling the Agency to avoid establishing new standards for each rule.

This rule contains two baseline exemption standards, the first of which contains two parameters, or criteria for exemption. The second standard consists of a single exemption criterion.

A. Structure of the First Standard

The structure of the two-parameter exemption standard remains unchanged from the proposed rule. The parameters are total annual plant site production volume per chemical and total annual company sales (the latter including total sales of the parent company or subsidiary(ies), if any). Manufacturers are required to meet both parameters in order to qualify for an exemption from reporting requirements under this standard.

Plant site production volume is an "information" parameter that makes the first exemption standard sensitive to chemical exposure potential. Industry representatives have expressed their recognition of EPA's need for information under TSCA section 8(a), and production volume enables the exemption standard to reflect those information needs. The Agency did consider a number of other parameters during the development of the proposed rule, including: total annual company profit, total company assets, total annual company sales, annual chemical sales, total number of company employees, and market share per chemical. Of all parameters considered by EPA, production volume was judged to best approximate exposure potential. The Agency's rationale in selecting this information parameter is set forth in greater detail in the preamble to the proposed rule.

EPA has also included a total annual sales criterion in the first exemption standard as a "resource" parameter. This additional parameter ensures that the standard will be an accurate indicator of the financial resources available to a manufacturer for compliance with reporting and recordkeeping requirements.

EPA's economic analysis indicated that an exemption standard containing production volume and total sales parameters, with manufacturers required to meet both parameters in order to qualify for an exemption from reporting requirements, will best enable EPA to meet its objectives for the small manufacturer exemption. The Agency would not receive sufficient information for its regulatory purposes from a reporting rule containing an exemption standard with a single "resource" criterion, because a rule with such a standard would not be sensitive to the exposure potential of some high production volume plant sites. The value of the "resource" parameter would have to be set low enough for EPA to obtain an adequate amount of plant site data, thereby preventing some relatively small firms from qualifying for an exemption. However, a two-parameter standard will ensure that future section 8(a) rules will provide EPA with sufficient information on the chemicals subject to those rules, while targeting the exemption toward firms with the fewest available resources.

A majority of the commenters on the proposed rule approved of the structure and criteria of the two-parameter standard. Although EPA specifically requested comment on the possible use of employee number as a measure of company size, only one comment on employee number was received; that commenter advised against using employee number in the first exemption standard. Nevertheless, several commenters did object to the exemption parameters chosen by EPA for the first standard, stating that production volume and total sales criteria are inadequate measures of chemical exposure potential and a company's available resources. The only alternative parameters suggested in the public comments were total annual chemical sales and market share per chemical.

EPA maintains that neither chemical sales nor market share is an adequate substitute for the chosen parameters. A parameter that measures only chemical sales would not reflect a diversified

firm's full financial capabilities, because chemical sales may be only a small part of the total revenue a company receives from sale of all products. Thus, a chemical sales criterion would not always be an accurate measure of a firm's ability to handle a reporting burden.

In addition, chemical sales revenue is not regularly reported as a separate line item in a company's financial statements unless chemical sales are a major part of a firm's business. For many companies, chemical sales are not the primary product line. These companies and EPA may have considerable difficulty in determining the amount of total annual chemical sales. A total sales parameter is therefore preferable as a "resource" parameter, in terms of both accuracy and practicality.

Market share is also an impractical exemption criterion, for two reasons. First, market share is a less accurate "information" parameter than production volume. Market share is a relative measure of exposure potential, rather than an absolute measure. It is possible that a firm with a large share of a small market for a particular chemical may present less potential for exposure than a firm with a small share of the total industry production of a large volume chemical. There is less potential for such inaccuracy with the production volume parameter.

EPA has also concluded that market share is often difficult to determine and, as an exemption criterion, would be difficult for EPA to enforce. While many firms may be able to calculate their share of the market for their products, it is unlikely that all chemical manufacturers will be able to do so. Furthermore, EPA and individual chemical firms may not have access to the proprietary data needed to judge market share accurately.

B. Parameter Values in the First Standard

In selecting parameter values, EPA has defined "small" in terms of company resources and Agency information needs.

EPA recognizes that general exemption standards by their very nature are likely to prevent the Agency from obtaining information on some chemicals subject to section 8(a) rules; certain subject chemicals may be produced solely by manufacturers that qualify as small firms, thereby preventing the Agency from receiving any reports on those chemicals. Although EPA intends to exempt as many small manufacturers as possible from future reporting requirements, the Agency also has sought to limit the number of zero-report chemicals by establishing a ceiling for the range of acceptable parameter values—a level beyond which the amount of information lost becomes too great for effective risk assessment.

EPA has determined that the maximum acceptable percentage of zero-report chemicals is 10 percent, and has assigned values to the exemption parameters which will cause the Agency to lose information on no more than 10 percent of all chemicals subject to future section 8(a) rules. (In specific cases involving section 8(a) rules for chemicals for which no reports will be received, EPA will have to determine whether its information needs warrant a rule-specific change in the exemption standards.) EPA's rationale in making this determination of allowable information loss is described in greater detail in the preamble of the proposed rule (47 FR 27209), and remains unchanged here. Although EPA specifically requested public comment on this point, the Agency did not receive any adverse comments.

The exemption standards in this rule also will maximize the number of individual manufacturing plant sites (locations) reporting under the exemption standards, in order to monitor the different production processes and techniques utilized by different sized firms.

Commenters on the proposed rule did not express any objection to the value assigned to the production volume parameter: 45,400 kilograms (100,000 pounds) per chemical per plant site. This amount of production represents a cut-off point beyond which EPA regards exposure potential (and Agency information needs) as significant.

The major point of concern among commenters was the $30 million value assigned to the total sales parameters of the first exemption standard. Several commenters stated that this proposed value should be increased in the final rule, in order that the parameter reflect the effects of inflation since 1980, the year of the Proposed Rule Related Notice for the exemption rule. These commenters stated that, because of inflation, the $30 million figure now represents a smaller chemical firm than it did in 1980. The sales parameter is therefore too low to identify accurately the type of small firm that EPA seeks to exempt. The commenters suggested that a sales parameter value of $40 million would reflect the impact of inflation on both sales revenue and reporting costs.

EPA also recognizes that inflation will have an ongoing impact on the ability of the sales parameter to accurately reflect a company's financial resources. The Agency therefore has changed the value of the total annual sales parameter in the final rule to $40 million. This adjusted sales figure will more accurately reflect a small manufacturer's current ability to comply with reporting requirements.

EPA calculated the $40 million figure using the BLS Producer Price Index for Chemicals and Allied Products. This Index was mentioned in the preamble to the proposed rule. Commenters on the proposal generally agreed that this Index accurately measures the impact of inflation within the chemical industry. The Index reflects a cumulative inflationary increase of approximately 30 percent during the past three years. Thus, $30 million in 1979 dollars translates to an approximate value of $40 million in 1983.

C. The Second Exemption Standard

The final small manufacturer exemption contains a second standard that is independent of the first, but that also utilizes a total annual sales criterion. The purpose of this standard is to ensure that there will be no reporting burden on the manufacturers with the smallest available financial and personnel resources. The value assigned to this standard in the final rule is $4 million, $1 million more than was originally proposed. As with the first exemption standard, this adjustment was made to account for inflation, using the BLS Producer Price Index.

D. Combined Impact of the Two Exemption Standards

In proposing the small manufacturer exemption standards, EPA used an economic support analysis, contained in the public record, to demonstrate the probable impact of the sales figures contained in the standards. Agency analysts have since reviewed the existing economic data, and have determined that adjustment of the sales criteria for inflation will not significantly alter the anticipated impact of the exemption standards.

Thus, the two standards together will exempt approximately 36 percent of all chemical manufacturing firms subject to section 8(a) rules. The two standards will exempt approximately 12 percent of the total number of manufacturing sites from reporting and recordkeeping requirements. The total reporting and recordkeeping cost to the chemical industry will be reduced by approximately 15 percent.

The final exemption standards will enable EPA to achieve its purpose of defining "small" within the constraints of Agency information requirements. In addition to the fact that 100 percent of all firms with less than $4 million in sales will be exempt, the economic analysis indicates that the standards will also exempt over 62 percent of firms with less than $40 million in sales. The analysis further indicates that the impact of the exemption will be concentrated among smaller firms.

With regard to the potential information loss, the Agency can expect to lose information on approximately 10 percent of all existing chemicals that are subject to future section 8(a) reporting requirements. These zero-report chemicals would be concentrated primarily in the low- and mid-production volume range. As previously described, this projected amount of information loss represents the maximum amount that the Agency has determined it can afford to lose and still be capable of effective chemical risk assessment.

In cases where the Agency believes that the exemption standards will prevent it from obtaining adequate information on chemicals of particular concern, EPA may use rulemaking procedures to change the standards to obtain more data. Such changes would be applicable to individual rules only and would be subject to public comment. They are not expected to be necessary on a regular basis.

EPA has also determined that the general exemption standards will reduce by approximately 15 percent the total number of chemical reports that the Agency would have received had there been no exemption. The overall percentage of reports lost will probably be somewhat less than 15 percent, because in certain cases the Agency may change the exemption standards to obtain more data on particular chemicals.

Two commenters claimed that the exemption standards did not contain criteria that would be sensitive to the varying risks posed by chemicals with different levels of toxicity. In developing the standards contained in this rule, EPA found it difficult to identify a single set of quantitative exemption criteria that would reflect chemical toxicity. The Agency therefore chose the more easily measured criteria of total annual sales and plant site production volume. However, despite the use of these non-toxicity criteria, EPA anticipates that section 8(a) reporting rules will provide sufficient information for effective risk assessment. As noted above, EPA has structured the exemption standards to minimize the Agency's information loss. EPA expects to receive adequate information for risk assessment purposes, including health and environmental effects data, from larger firms and plant sites that do not qualify for the exemption. Moreover, the Agency can change the general exemption standards, by rule, if its information needs warrant such action.

EPA therefore has concluded that it need not create exemption standards that are sensitive to toxicity risk, as long as EPA is able to use section 8(a) rules to obtain the data it needs for effective risk assessment; the current exemption standards would not adversely affect the Agency's chemical assessment activities.

E. Indexing the Sales Values

Several commenters suggested that the rule be amended to include an automatic annual inflation adjustment for both sales criteria. An automatic adjustment provision would ensure that the sales criteria will continue to reflect the current desired impact of the exemption, despite changing economic conditions.

An adjustment of the sales value may not be necessary on an annual basis, particularly if no new section 8(a) rules are promulgated during a given year or the rate of inflation is relatively low. In addition, each automatic adjustment would require preparation of a **Federal Register** notice, which in turn would require an annual expenditure of Agency resources. By maintaining discretionary authority to adjust the sales figures for inflation as necessary, whenever a new reporting rule (with exemption) is promulgated, EPA will minimize the additional administrative burden while ensuring that the exemption standards continue to reflect current economic conditions.

Thus, in the final rule the Agency retains discretionary authority to adjust the sales figures, as necessary, to account for inflation. Adjustments will be made only when a new reporting rule is being promulgated and a significant amount of inflation has occurred since the most recent previous adjustment of the exemption values. In view of the effects of inflation since 1980, EPA will regard a 20 percent or greater increase in the BLS Producer Price Index as a "significant" inflationary increase.

VI. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA is promulgating this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in the "DATES" Unit of this notice. The effective date of this rule has, in turn, been calculated from the promulgation date.

VII. Rulemaking Record

The documents listed below constitute the administrative record for this rule (docket number OPTS–80011C). All documents, including the index to this public record, are available to the public in the OPTS Reading Room, 8:00 a.m. to 4:00 p.m. weekdays, except legal holidays (Rm. E–107, 401 M St., SW., Washington, D.C. 20460). This record includes basic information considered by the Agency in developing the final rule. The record includes the following categories of information, which are more specifically described in the TSCA Small Manufacturer Exemption Rule Index to the Public Record:

1. The Proposed Rule-Related Notice (45 FR 66180 (October 6, 1980)).
2. Written comments received in response to the Proposed Rule-Related Notice.
3. The Proposed Rule (47 FR 27206 (June 23, 1982)).
4. Written comments received in response to the Proposed Rule.
5. Minutes of all meetings between EPA personnel and persons outside the Agency pertaining to the development of this rule.
6. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule.
7. Inter- and intra-agency memoranda and communications which are specifically noted in the index of the record for this rule.
8. The independent contractor analysis of the TSCA section 8(a) small manufacturer exemption, plus any other economic data generated in support of this rule.
9. Any comments received from the Office of Management and Budget during its review of the rule regarding compliance with the Paperwork Reduction Act or Executive Order 12291.

EPA requests that, between the date of this notice and the effective date of this rule, persons identify any perceived errors or omissions in the record.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the

requirements of a Regulatory Impact Analysis. This regulation is not a Major rule.

This final rule contains exemption standards and is intended to reduce regulatory compliance costs to certain small chemical manufacturers under future rules. EPA will analyze the impact of the reporting and recordkeeping rules that contain these standards as each of those rules is proposed. The exemption standards by their nature will not adversely affect employment, productivity, investment, or innovation, and will not have a significant adverse effect on competition.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA has developed this final rule in accordance with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Act requires the Administrator to establish efficient, flexible regulatory procedures which have a minimal economic impact on small businesses. While imposing no direct economic burden on small businesses, this rule will reduce the impact of TSCA section 8(a) reporting and recordkeeping rules on small chemical manufacturers by clearly identifying chemical manufacturers who qualify for a section 8(a) exemption.

This preamble and its underlying analysis should be viewed in combination as a Regulatory Flexibility Analysis within the meaning of the Regulatory Flexibility Act. The preamble contains a discussion of the legal basis, purpose, and content of this rule. The preamble also contains a discussion of relevant issues and comments received, as well as a summary of the projected impact of the exemption standards. The economic analysis performed by EPA's independent contractor compared the impacts of various alternative exemption standards considered by EPA. That analysis is contained in the public record for this rule.

As required by the Regulatory Flexibility Act, EPA has solicited and evaluated the comments and suggestions of all interested persons. These comments are contained in the public record for this rule. EPA has also received comments on this rule from the Chief Counsel for Advocacy of the Small Business Administration, as required by section 8(a)(3)(B) of TSCA.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, authorizes the Director of the Office of Management and Budget to review certain information requests by Federal agencies. The small manufacturer exemption standards, while associated with the information collection requirements of TSCA section 8(a), do not themselves require the submission of information. The final rule is therefore not subject to the requirements of the Paperwork Reduction Act. It will, however, accomplish the objectives of the Act. The exemption will reduce the regulatory burden on certain small businesses to a minimum level which is consistent with Agency information needs.

(Sec. 8(a)(3)(B), Pub. L. 94-469, 90 Stat. 2027, (15 U.S.C. 2607(a)(3)(B)))

List of Subjects in 40 CFR Part 704

Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: November 6, 1984.

William D. Ruckelshaus,

Administrator.

PART 704—[AMENDED]

Therefore, Part 704 of Chapter I of 40 CFR is amended as follows:

1. In § 704.3, by adding paragraphs (a), (d), (k) through (m), (o), and (q) through (s) to read as follows:

§ 704.3 Definitions.

* * * * *

(a) "Annual" means the corporate fiscal year.

* * * * *

(d) "Domestic" means within the geographic boundaries of the 50 United States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

* * * * *

(k) "Manufacturer" means a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance.

(l) "Own or control" means ownership of 50 percent or more of a company's voting stock or other equity rights, or the power to control the management and policies of that company. A company may own or control one or more plant sites. A company may be owned or controlled by a foreign or domestic parent company.

(m) "Parent company" is a company that owns or controls another company.

* * * * *

(o) "Production volume" means the quantity of a chemical substance which is produced by a manufacturer, as measured in kilograms or pounds.

* * * * *

(q) "Site" means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one plant on a single site.

(r) "Small manufacturer" means a manufacturer (or importer) that meets either of the standards set forth below. Small manufacturers should read the introductory paragraph of § 704.5 and paragraph (d) of § 704.5 to obtain complete information on the TSCA section 8(a) small manufacturer exemption.

(1) *First standard.* A manufacturer of a chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual production volume of a particular chemical substance at any individual site owned or controlled by the manufacturer is greater than 45,400 kilograms (100,000 pounds), the manufacturer shall not qualify as small for purposes of reporting on the production of that chemical substance at that site, unless the manufacturer qualifies as small under paragraph (r)(2) of this section.

(2) *Second standard.* A manufacturer of a chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of chemicals produced by that manufacturer.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales values when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide Federal Register notification when changing the total annual sales values.

(s) "Total annual sales" means the total annual revenue (in dollars) generated by the sale of all products of a company. Total annual sales must include the total annual sales revenue of all sites owned or controlled by that company, and the total annual sales revenue of that company's foreign or domestic parent company, if any.

* * * * *

2. By revising the introductory text and adding paragraph (d) to § 704.5 of Subpart A to read as follows:

§ 704.5 Exemptions.

Persons described in this section are exempt from all rules promulgated under the authority of section 8(a) after December 31, 1984, unless otherwise provided by rule; this provision is superseded by section 8(a) rules containing specific exemptions that differ from those described in this section. Manufacturers who are subject to reporting requirements in Part 704 of 40 CFR should examine those requirements to determine whether the exemptions contained in this section apply. Additionally, paragraph (d) of this section contains a specific exception to the small manufacturer exemption standards.

* * * * *

(d) *Persons who are small manufacturers of certain chemical substances.* Persons who qualify as small manufacturers as defined in paragraph (r) of § 704.3. Notwithstanding this exemption, the Administrator may, for any rule promulgated under section 8(a), require reporting or recordkeeping from any small manufacturer of a chemical substance that is subject to a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or is subject to an order in effect under TSCA section 5(e), or is the subject of relief that has been granted under a civil action brought under TSCA section 5 or 7.

[FR Doc. 84-30113 Filed 11-15-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 441

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program

Correction

In FR Doc. 84-28545 beginning on page 43654 in the issue of Wednesday, October 31, 1984, make the following corrections:

1. On page 43654, second column, fifteen lines above "II. Proposed Rule", "or" should have read "of".

2. On page 43660, second column, in the first "*Response*", third line, "to" should have read "and". Also, in the eleventh line, insert the word "are" before the word "for".

3. On page 43663, second column, last paragraph, third line, "to" should have read "too".

4. On the same page, third column, in the second "*Response*", three lines from the bottom, "described" should have read "describe".

5. On page 43664, first column, eight lines from the bottom, "neceessary" should have read "necessary".

§ 441.56 [Corrected]

6. On page 43666, in § 441.56(b)(1), second column, 12th line, "relative" should have read "relating".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[Docket No. 21006; FCC 84-516]

Adding Frequency Channeling Requirements and Restrictions and Requiring Monitoring for Signal Leakage From Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In finalizing a long outstanding proceeding, the Commission has amended its rules to prevent cable television signal interference to aeronautical communication and navigation radio systems. Before cable television systems can operate on frequencies allocated for aeronautical radio, they must meet frequency offset, monitoring and cumulative signal leakage requirements. This will ensure the safety of life while allowing maximum possible use of broadband cable systems.

DATE: Effective December 17, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 632-9660, and Freda Lippert Thyden, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Second Report and Order

In the matter of amendment of Part 76 of the Commission's Rules to Add Frequency Channelling Requirements and Restrictions and to Require Monitoring for Signal Leakage From Cable Television Systems (Docket No. 21006).

Adopted: October 26, 1984.

Released: November 9, 1984.

By the Commission.

Introduction

1. We have before us the *Further Notice of Proposed Rulemaking*, 76 F.C.C. 2d 311 (1980), in this proceeding proposing revision of Commission Rules (§§ 76.610-76.613) adopted in the first *Report and Order*, 65 F.C.C. 2d 613 (1977), in this docket. These regulations were enacted to ensure that cable television (CATV) systems not cause harmful interference to the operation of aeronautical and marine radio services and yet allow maximum possible use of broadband cable systems.

2. Cable TV systems are not generally considered to be sources of interference to over-the-air radio services because their signals are conveyed within a closed cable. However, interference can occur if signal leakage of sufficient magnitude occurs due to poor construction of, or damage to, a system's coaxial cables. In the beginning of the cable television industry's development, cable systems used only VHF television frequencies that could be received directly by conventional television receivers (54-72 MHz, 76-88 MHz and 174-216 MHz). When cable operators foresaw the need for additional channel capacity, they began to operate on frequencies generally referred to as "midband" (108-174 MHz) and "superband" (216 to 400 MHz). These frequencies are used over-the-air by other radio services including aeronautical, marine, and emergency radio services. Excessive radiation leakage from cable systems operating on frequencies in the "midband" and "superband" can cause interference to over-the-air radio communications on frequencies in these safety and emergency services.[1]

Background

3. On July 27, 1977, the Commission adopted the first *Report and Order*, providing an interim solution to cable usage of aeronautical radio frequencies. It prohibited use of any frequency within 100 kilohertz (kHz) of emergency

[1] The frequency bands at issue in this proceeding which are allocated for aeronautical use are 108-136 MHz, and 225-400 MHz, as well as the aeronautical and marine emergency frequencies 121.5 MHz, 156.8 MHz, and 243 MHz.

frequency 121.5 MHz or within 50 kHz of emergency frequencies 156.8 MHz and 243.0 MHz and implemented the following: (1) Cable frequency offsets of 50 kHz or more from aviation navigation frequencies used in bands 108–136 and 328.6–335.4 MHz within 111 kilometers (60 nautical miles) of any portion of the cable system; (2) cable frequency offsets of 100 kHz or more from aviation frequencies used in bands 118–136 MHz, 225–328.6 MHz and 335.4–400 MHz within 111 kilometers of any portion of the cable system; (3) regular monitoring of any cable system using midband or superband frequencies for signal leakage sources on at least an annual basis; (4) notification and offset requirements applicable to all cable systems operating in these radio frequency bands with peak power levels equal to or greater than 10^{-5} watts; [2] and (5) suspension or termination of operations in frequency bands by any cable system causing harmful interference to emergency over-the-air radio services.

4. Subsequent to release of the *Report and Order*, the Commission commenced a study to determine how the public could be assured that harmful interference to aeronautical and marine emergency radio services would not occur from cable television operations. To assist in this task, it chartered the Advisory Committee on Cable Signal Leakage which provided advice on the conduct of the study, evaluated the results, and authored a report which recommended a new regulatory approach for the Commission.[3]

5. On November 1, 1979, the *Final Report of the Advisory Committee on Cable Signal Leakage* (*Advisory Report*) was released. The Committee concluded that it is possible to predict, by ground-based measurement techniques, whether a cable system will produce fields that could cause interference to aeronautical radio services and, based upon this conclusion, advocated a new regulatory approach for the Commission. This approach consisted of the following elements: (1) "Grandfathering" existing systems under a modified version of existing rules, for a period of 5 to 10 years to permit cable system improvements in the normal course of rebuilding; (2) adoption of a new set of rules based on proof that cable system leakage is below a specified threshold and allowing cable systems meeting this criteria, by implementation of either airspace or ground-based measurements, to use any frequencies desired (with a very few minor restrictions); (3) increasing the permissible level of individual cable leakage sources; and (4) retention of Commission authority to terminate a cable system operation if harmful interference occurs, regardless of whether leakage criteria are met.

6. On March 24, 1980, the Commission issued a *Further Notice of Proposed Rule Making* (*Further Notice*) inviting comments on the Advisory Committee's technical conclusions and recommendations.[4] In large measure, the Commission's proposed changes to the rules paralleled or supplemented recommendations of the advisory Committee.[5] In response to the *Further Notice*, the Commission received initial or reply comments from over twenty-five different parties including cable television operators, a cable television manufacturer, cable engineering consulting firms, a cable television trade association, private aviation interests represented by aeronautical service or trade associations, a commercial frequency and spectral monitoring firm, amateur radio operators, as well as other federal governmental agencies.[6] Many of these parties also responded to the *Public Notice* of March 12, 1981, inviting additional comments on the general feasibility of frequency offsets.[7]

Summary of Comments

7. There was considerable discussion by commenters on the degree and nature of risks posed by cable interference on frequencies in use by the aeronautical radio service. Incidents of cable signal leakage detection were also discussed. These matters are germane to the question of whether cable operators should be permitted, as generally recommended by the Advisory Committee, to operate without restriction on any frequency in aeronautical radio service bands. Aside from the *Advisory Report*, neither cable nor aviation interests cite or rely on any studies or research not previously considered by the Commission.

8. Aviation interests maintain that there have been at least three documented instances of cable interference,[8] proving that the present rules are not adequate. They further state that all available engineering studies to date fail to provide sufficient evidence to show that without frequency offsets cable systems can operate and not cause interference in the aeronautical bands. While the Federal Aviation Administration (FAA) recommends strengthening existing rules, Aeronautical Radio, Inc., and Air Transportation Association (ARINC/ATA) are convinced that the only meaningful solution to the problem is to prohibit cable use of aeronautical frequencies completely.

9. On the other hand, cable interests contend that the number of incidents of interference in the aeronautical radio band is exceedingly small, especially considering that there are more than 4,100 cable systems covering over 10,600 communities. Indeed, some cable interests maintain that even in the few reported incidents that did occur, no harmful or serious interference to aeronautical radio transmission occurred. For example, Warner Amex Cable Communications, Inc., states that not a single case of "harmful" interference has been documented and that even in the worst case which has occurred to date, no documentation exists to show that actual communications were disrupted. In addition, cable interests maintain that the cable industry's record over the years is commendable especially when considered with records of other services and that, on balance, cable

[2] By an *Order*, 85 F.C.C. 2d 397 (1981), the Commission modified the notification procedure by providing that cable systems could not operate in aeronautical radio bands until approval had been provided by the Commission. Formerly, cable systems merely had to provide notification 90 days prior to use of a frequency in these bands.

[3] Active participants in this study included the Federal Aviation Administration, the National Cable Television Association, the National Telecommunications and Information Administration of the Department of Commerce, representatives of the cable television industry and private aviation interests as well as the Commission.

[4] The initial and reply comment periods were originally April 25, 1980, and May 12, 1980, respectively, but by *Order*, adopted April 22, 1980, were extended to June 25, 1980, and July 10, 1980, respectively.

[5] Because results of the research project indicated a low potential for interference to maritime radio services, no rules except those relating to emergency frequency 156.8 MHz were proposed in this area.

[6] We are denying the request submitted by Southern California Frequency Coordinating Committee for an extension of time since it fails to conform with the guidelines of § 1.46 of the Rules.

[7] To ensure all interested parties a full and fair opportunity to participate in this proceeding, by public notice (#07947) dated March 12, 1981, we invited additional comments on new information placed in the docket and, additionally, by public notice (#003310) dated September 11, 1981, we advised interested persons to file comments by September 18, 1981. We accepted all comments and reply comments filed prior to September 28, 1981, as timely filed. Comments submitted after that date shall be treated as informal submissions.

[8] There are currently five documented cases of cable TV interference to aeronautical radio systems, as discussed later in this *Report*. While there was some debate over what constituted interference, the *Further Notice*, at the time of its release, made general reference to "three cases."

operators have been diligent in complying with the rules.[9]

Discussion

Reported Incidents of Interference

10. In the first *Report and Order*, we noted that cable signal leakage can cause "harmful interference," but believed the probability of actual disruption of aeronautical communications services was remote. We believed there were two principal ways by which cable interference could occur: (1) By gross neglect of signal leakage problems in the cable system, leading to a large number of leakage sources, or (2) by the occurrence of one or more complete breaks in the outer conductor of the cable itself. At that time we knew of only one such case of interference. This documented incidence of interference, which occurred in Harrisburg, Pennsylvania, in April, 1976, resulted from a radiating signal from a cable system owned by Sammons Communications of Pennsylvania. The signal caused unwanted noise in aircraft receivers by the opening of squelch circuits.

11. There have since been four more reported incidents of cable signal leakage into aeronautical radio frequencies. The second additional incident occurred in September, 1978, near Hagerstown, Maryland, during the course of field work conducted by Advisory Committee members. In this case, the interference signal was traced to a cable system, owned by Antietam Cable TV, which had in operation a signal pilot carrier on the same frequency as the aircraft navigation operation.[10]

12. The third reported incident involved a pilot carrier signal on a cable system, owned by Oxnard Cablevision in Oxnard, California. In October, 1978, the FAA notified the Commission that, for several weeks, aircraft had been intermittently receiving interference to communications between aircraft and the air traffic control center. Because this was a possible hazard to safety of life and property the Commission issued a cease operations order pursuant to Rule § 76.613(c). Subsequent monitoring and investigation revealed that the cable operator had failed to file the required notification of prospective use of frequency in accordance with Rule § 76.610. Additionally, the cable system had signal leakage at a number of locations in excess of limits specified in § 76.605(a)(12) of the Commission's Rules.[11]

13. The fourth reported case occurred near Wilmington, North Carolina, and was traced to a cable system owned by Coastal Cable Company which operated in North Myrtle Beach, South Carolina. In April, 1979, the FAA notified the Commission that incoming aircraft were experiencing interference on a frequency used by aircraft on landing approach to the Wilmington Airport. Investigation revealed that a cable system in North Myrtle Beach was operating a pilot carrier signal on 118.25 MHz for controlling the gain of the system's amplifiers. Subsequent testing confirmed that the cable system was the source of the interference.[12] The cable operator subsequently changed the pilot frequency to 118.197 MHz in accordance with § 76.610(b) of the Rules.

14. The fifth and most serious incident of cable signal leakage into aeronautical radio bands involved a cable system in Flint, Michigan, owned by Comcast Cablevision Corporation. During the months of August and September, 1980, aircraft flying in the vicinity of Flint were repeatedly experiencing interference on frequency 133.25 MHz when attempting to communicate with the air traffic control center in Oberlin, Ohio. It was discovered that the sources of the interference were annular cracks in the outer sheathing of a cable line on the cable system.[13] The leakage source was repaired and no further interference was detected.

15. A subsequent inspection of a portion of the entire Flint cable plant, however, uncovered the existence of several more leaks, each of which substantially exceeded the 20 uV/m at 3 meters standard of § 76.605(a)(12). In addition, it was learned that the cable operator had not complied with prior notification requirements for use of frequency 133.25 MHz and four other frequencies in the aeronautical radio service bands. Nor did the cable operator stop using the channel after notification from the Commission of a potential interference conflict from that frequency usage. In reviewing the circumstances of this case, the Commission stated that the cable operator's actions, taken as a whole, demonstrated a shocking disregard for the safety of life, and were so grave in nature that it imposed the maximum forfeiture allowable by statute ($20,000).[14]

16. We believe these five cases clearly show the potential dangers that exist from uncontrolled cable signal leakage and from the failure of cable systems to offset from frequencies in use by aeronautical services. In each of the reported incidents, cable operators failed to observe the frequency offset requirements and essentially operated on the same frequencies used by aeronautical radio services in the area.[15]

In each of the cases, cable operators also had signal leakage sources in excess of the permissible limits of Rule § 76.605(a)(12). Additionally, in each of the cases cable operators failed to engage in regular and routine monitoring of their systems pursuant to § 76.610(d) of the Rules. The Flint, Michigan incident, which occurred afer the *Further Notice* was released, has caused us to reevaluate our initial position on the risks presented by operation on the same frequencies used by aeronautical

[9] In support of that contention, the National Cable Television Association (NCTA) provides statistical information, garnered from *FCC Reports of Interference Complaints Received* (compiled on a periodic basis by the Field Operations Bureau), to show that cable television ranks low as a cause of interference to aeronautical frequencies, whereas aviation ranks high as a source of interference to its own radio services. Further reference to all parties' comments will appear in the Discussion Section of this document.

[10] The Commission did not institute any forfeiture or other formal enforcement action against the cable operator because the cable operator had voluntarily consented to be a participant in the research program, and had readily complied with the Advisory Committee's request to change from the frequency in use.

[11] Subsequently, the operator of the system was issued a notice of apparent liability for forfeiture in the amount of $1,500 for violation of § 76.610(b) of the Rules. In *Memorandum Opinion and Order re Oxnard Cablevision* (Mimeo No. 20594) (released August 24, 1979), the operator was assessed the full amount on the basis that the failure to report its intended use of a frequency within the 108–136 MHz band frustrated critical Commission efforts to avoid precisely the kind of potentially dangerous interference to aeronautical uses which occurred in this case. It was further stated that where such crucial regulatory objectives as the safety of life and property in the air are served, the Commission's Rules must be strictly enforced and compliance strongly encouraged by substantial penalties for violations.

[12] In its reply comments to the *Further Notice*, NCTA states that signal leakage in the Carolina case was minimal and that the interference was not the product of direct cable signal leakage. Instead, it suggests that the interference may have resulted from radiating elements at the cable headend tower.

[13] Inspection of the cable showed two annular cracks which might have made the length of outer sheathing between the two cracks act as a sleeve dipole antenna resonant near frequency 133.25 MHz.

[14] *Comcast Cablevision Corporation*, 86 F.C.C. 2d 707 (1981).

[15] This appears to be true, as well, for the incident which occurred in the vicinity of Wilmington, North Carolina, even though there is strong disagreement between cable and aviation interests over the precise cause and location of the interference. While the FAA suggests that the interference may have resulted from phase addition of leakage sources from the cable system forming in effect an "endfire radiation antenna pattern," it concedes that available information is too inconclusive to show the actual cause. The FAA does submit, however, that the interference resulted directly from the operation of a cochannel carrier in the system and could have been avoided by frequency offsetting.

radio services. That incident pointed out not only the danger involved in co-channel use of aeronautical frequencies, but the substantial risk presented by a major break in a cable system. Therefore, we are now considerably less confident than we were when we issued the *Further Notice* that cable operators will diligently control signal leakage on their systems or operate safely without frequency offset requirements.[16]

17. Our concerns are not alleviated by the cable industry's record of relatively little interference to aeronautical radio services over the last 20 to 30 years. For only in recent years have cable operators begun to make use of the midband and superband channels. Until recently there have been very few instances of simultaneous use of the same frequency by cable systems and nearby aeronautical radio services. Only in the last few years has the FAA been making communications frequency assignments at 50 kHz (and more recently at 25 kHz) intervals thus, placing aeronautical radio services on frequencies traditionally used as closed circuit carrier frequencies for cable television signals. We postulate that the low number of reported incidents of interference attributable to cable might well be because cable television, considered to be a closed transmission medium, was never thought by an affected party to be the source generating the interference.

18. The cable industry has alleged that its record of compliance with our interference rules is exemplary. However, the inspection program of the Commission's Field Operations Bureau has discovered numerous systems in violation of the 20 μV/m standard of Rule § 76.605(a)(12), noncompliance with notification requirements of Rule § 76.610, or violation of frequency offset requirements. This indicates that many cable operators have been lax in their responsibilities in this area and that the cable industry's record of compliance is questionable. We believe the record supports strengthening, not relaxing, the present requirements, especially considering the potential for aviation disaster.

19. Based on the record at this time, we are unable to conclude that cable operators can be relied upon to maintain their systems sufficiently free from signal leakage as not to create risks of harmful interference in the aeronautical radio frequency bands. Many have not adequately complied with either signal leakage standards or monitoring requirements. Although no new cases of interference have been reported during the past four years, as the FAA begins upgrading its facilities and "splitting" channels, conflicts become increasingly likely. Until such time as there is confidence that CATV systems are sufficiently closed transmission facilities so as to be incapable of causing harmful interference to services in these bands, it is necessary to continue with a regulatory solution.

20. While we wish to decrease the potential for interference to aeronautical services from cable television operations, we believe that there are less drastic solutions than frequency prohibitions. The Advisory Committee has recommended that cable systems be allowed to operate in the aeronautical radio bands with certain less-imposing restrictions than the present frequency offsets. Limited frequency offsets, basic cable signal leakage performance tests, and monitoring requirements constitute a reasonable accommodation of the desire to prevent harmful interference to aeronautical radio services with our intention of allowing maximum possible use of broadband cable TV system. The new rules will provide for cable operation in aeronautical radio bands 108–136 MHz and 224–400 MHz. The specifics will be discussed in the following paragraphs.

Frequency Offset Requirements

21. The record supports frequency offsets as being necessary to ensure an absence of harmful interference to aeronautical frequencies. Accordingly, the new frequency offset requirements will be made applicable to all cable carriers even if the aeronautical channel to be protected is not in use locally. This will provide assurance to cable operators and aviation interests alike that cable systems will not interfere with aeronautical transmissions. Futhermore, it will bring a much needed simplification to enforcement efforts. Uniform offsets also will eliminate the need for frequency clearances.[17] In sum, cable operators and aviation interests under the new rules will no longer need to be concerned over prospective conflicts with aeronautical channel usage as long as the new criteria are met.

22. *Communications Bands.* In aeronautical communications bands, the new rules will permit frequency offset separations of 12.5 kHz from aeronautical frequencies and specify a frequency tolerance of ±5 kHz. Therefore, cable carriers would always be offset by at least 7.5 kHz from any aeronautical radiocommunication frequency. This change represents a significant reduction from the existing frequency offset requirement of 100 kHz, ±25 kHz. Moreover, the FAA in its comments indicated that heterodyne beats above 4 kHz audio frequency are cutoff in typical communication receivers. That is, beats of 7.5 kHz would not be heard by aviation pilots. Even if a receiver passes audio above 4 kHz it should not cause objectionable interference.

23. Some of the cable interests maintained that frequency offsets would be extremely burdensome. They argued that the existing cable technology providing for 400 MHz and higher systems with channel capacities of 50 or more rely on precise interval carrier frequency plans designed to reduce or eliminate distortion effects which ordinarily accompany increased channel loading. NCTA states some frequency plans presently employed by cable operators consist of: (1) The harmonically related carrier plan (HRC) in which the visual carrier frequencies are precisely assigned to multiples of 6 MHz; and (2) the incrementally related carrier plan (IRC) in which the carrier frequencies equal 1.25 MHz plus some integral multiple of 6 MHz. NCTA asserts that it is not possible under either plan to offset visual carrier frequencies without significantly degrading system performance.

24. There is evidence in this proceeding, however, that shows that cable operators employing HRC systems can meet frequency offset requirements similar in nature to those advocated by the FAA in its comments without too much difficulty and without having to abandon considerable portions of cable bandwidth. For example, the comments of I. Switzer from Cable America, Inc., suggest that cable operators using HRC systems can meet the 12.5 kHz standard. Under this proposal, Switzer indicates that there would be minimal shifts of visual and aural carrier frequencies. Switzer adds that the "heterodyne above audio" principle proposed is one already in use by the FAA, ARINC, and foreign authorities in the operation of networks of aeronautical transmitters on the same nominal frequency.

25. The principal which Switzer advances in this proceeding involves offsetting the 6 MHz master oscillator. Because precise control of the master oscillator affects precise control of all the visual frequencies, the master oscillator can be adjusted to give the desired offset in the aviation bands to the accuracy and stability, if required, of 1×10^{-10} parts through use of a rubidium oscillator.

26. While there is considerable merit in the underlying principle of the Switzer proposal, it may have certain limitations. Although the Switzer proposal may not pose a problem in meeting 12.5 kHz offset in the 118 to 136 MHz portion of the communication bands, it presents problems of insufficient offsets in the 225–400 MHz spectrum. This is because the master oscillator frequency is not set at exactly 6 MHz but at a slightly different frequency interval. This difference in frequency interval at the higher harmonics of the master oscillator causes the offset to move either toward the next higher aeronautical frequency or toward the next lower aeronautical frequency regardless of whether the chosen oscillator frequency is higher or lower than 6 MHz. As a result, in some instances, the frequency separation at the upper end of the cable spectrum may not be able to meet a frequency offset of 12.5 kHz.[18]

27. Further investigation of this approach led to FAA development of a computer program capable of determining whether an HRC system with an offset oscillator would be able to meet required offsets. The program's results showed that a master oscillator set at 6.0003 MHz would provide a minimal offset of 6 kHz up to the HRC's 61st harmonic (Channel 49). The 66th harmonic (Channel 54) would still be separated by 5.2 kHz from the nearest aeronautical frequency of 396.025 MHz. In addition, the program assumed a comb generator oscillator frequency accuracy and stability of ±1 Hz. In sum, the program demonstrated that a cable system employing HRC technology would be able to meet a frequency offset of 6 kHz except for the 62nd through 66th harmonic (Channels 50–54). It further showed that even at that 66th harmonic (Channel 54), the minimum frequency separation would nevertheless be at least 5.2 kHz.[19] Thus, under this program, only a minimal number of channels in the aeronautical communication band would be precluded from use by cable systems even if the minimal offset of 5.2 kHz were considered objectionable in this range of the radio spectrum.[20]

28. While IRC-type systems can meet frequency offset requirements of the 12.5 kHz standard, evidence also shows that HRC-type systems can be sufficiently offset without substantial readjustment or displacement of many cable channels on their systems. Therefore, the new rules will also accommodate cable systems employing HRC techniques, as an alternative method of compliance. HRC systems must maintain the master oscillator frequency of the comb generator at 6.0003 MHz with a frequency stability of ±1 Hz.

29. Some cable interests argued that frequency offsets would pose serious frequency coordination problems for cable operators who desire to transmit digital data over their systems and would inhibit the growth of data services on cable systems. The rules adopted today only restrict cable frequencies in the aeronautical bands if power levels exceed 10^{-4} watts in a 25 kHz bandwidth. Thus, cable operation on these frequencies at peak power levels less than 10^{-4} watts, under rules adopted today, could be used without prior approval from the Commission. Most of the current data services are transmitted at power levels less than 10^{-4} watts. Therefore, since many cable systems may be well suited for the purpose of carrying wideband and data signals, the new rules may actually be less restrictive.

30. The evidence in this proceeding suggests that cable systems of conventional design or ones which use either HRC or IRC techniques can operate using frequency offsets without considerable difficulty or overwhelming costs.[21] The conventional systems can achieve frequency offsets by controlling the frequency stability of each channel independently, as they do today. HRC systems can achieve these offsets by controlling the frequency of all channels from a single source—the harmonic comb generator oscillator—with a very high degree of accuracy and stability.

31. The record indicates that cost for individual crystals to control each frequency in the aeronautical band on a conventional system would be less than $200 each and the cost of a rubidium or similar type crystal needed on an HRC system to set and maintain the master oscillator would be in the $5,000 range. Considering that these are one-time costs that can be amortized or depreciated by cable operators over a relatively short period of time, the benefits of frequency offsetting clearly outweigh the costs. In addition, cable operators will not have to vacate a frequency, or perhaps redesign the technical parameters of their system, if at some time in the future new aeronautical frequencies are put into operation near the system.

32. NCTA claimed that a frequency offset requirement in the aeronautical communication band would constitute an impermissible channelization plan. In the first *Report and Order* and *Further Notice*, we postponed consideration of a general standard frequency channeling plan which would allocate channels throughout the cable spectrum for different services and functions. We did not preclude, however, the use of a more general frequency offset plan which would prevent harmful interference to the aeronautical radio service. The plan adopted herein is flexible and is not "impermissible."

33. *Navigation Bands.* Based upon the *Advisory Report's* recommendation, we are adopting frequency offsets at odd multiples of 25 kHz with a frequency tolerance of ±5 kHz to provide a minimum absolute offset of at least 20 kHz from any radionavigation frequency assignment.[22] Protection of this nature is necessary because radionavigation receivers might be more sensitive to certain kinds of interference than communications receivers and the consequences of interference could provide false guidance information.

34. Cable interests opposed frequency offsets in these bands for substantially

---

[16] In this regard, even the previous research of the Advisory Committee casts some doubt and skepticism over a cable operator's ability to operate in aeronautical radio bands without offsets because of risks presented by cable signal leakage. Technical Conclusion (3) of the *Advisory Report*, at 99, states that two of thirteen systems examined exhibited airspace fields "which could be expected to cause interference to aeronautical radio receivers."

[17] Upon cable operators' compliance with the current notification requirements of Rule 76.610(b), the Commission coordinates the notified frequencies with the FAA.

[18] For example, if we assume a frequency separation of 12.5 kHz from HRC Channel A (120.00 MHz) such that the frequency for Channel A is 120.0125 MHz, the fundamental oscillator frequency will be 120.0125 MHz divided by 20 or 6.000625 MHz. The 40th harmonic of this oscillator frequency will be forty times the frequency 6.000625 or 240.025 MHz. This frequency, however, may coincide with a nominal frequency assigned by the Department of Defense (DOD).

[19] Commercial aeronautical receivers have an audio passband upper cutoff frequency between 2.75 kHz and 3.00 kHz whereas general aviation receivers have audio passbands in excess of 4.00 kHz. On this point, Malarkey-Taylor states that "the Cable America proposal does, in fact, neatly interweave all of its HRC frequencies between all possible aeronautical assignments; that in all cases, the co-channel beat will exceed 4 kHz and therefore will generally be inaudible."

[20] Even though the last five channels (Channels 50–54) would have an offset of less than 6 kHz (5.2 kHz being the smallest offset) from the next higher aeronautical frequency, we are not aware of any evidence in the record which would indicate that these reduced offsets, combined with new stringent frequency tolerances, would present any problems to assignments for DOD or other governmental use in this portion of the radio spectrum.

[21] In this regard, we received very little information on the hardships imposed on existing systems in complying with the present frequency offset requirements. The only filing of a cable operator which attempted to present some tangible evidence of the *possible* burdens that could result to individual systems was made by Warner Amex.

[22] In the *Further Notice*, the Commission specifically proposed a frequency offset criterion for radionavigation bands.

the same reasons they opposed frequency offsets in the communications bands. Aviation interests suggested that the proposed frequency offsets for these bands is the minimum amount of protection that should be provided. Although ARINC/ATA stated that this proposal would effectively reduce by one half the protection provided by the present rules, it should prevent co-channel interference in that the current navigation band (108–118 MHz) uses 50 kHz channels. ARINC/ATA recommend, however, that the geographical scope of protection should be increased significantly beyond the present 111 km if the adjacent channel protection is reduced to 25 kHz.

35. Since neither FAA nor ARINC/ATA express any significant opposition to a reduction in channel frequency separation from 50 kHz to 25 kHz, this change will be adopted. Because the new rules make the frequency offset requirements applicable to all assignments in both aeronautical radiocommunication and radionavigation without regard for use, there is no need to continue the geographic separation requirements except for those systems allowed to operate under the existing rules on a grandfathered basis. Accordingly, the 25 kHz frequency offset at odd multiples with a frequency tolerance of ±5 kHz, which will provide a minimum absolute separation of 20 kHz, should provide ample protection.

Basic Signal Leakage Criteria

36. The establishment of basic signal leakage performance standards and procedures is of equal importance with frequency offset standards to assure that cable operations do not cause harmful interference to aeronautical communications. A principal purpose of the Advisory Committee's research was to determine the relationship between cable television system signal leakage and the probability of interference to aeronautical radio services. The Advisory Committee found that an acceptable correlation could be obtained between ground-based measurements and airspace measurements. It concluded that this relationship was sufficiently understood, through a "Cumulative Leakage Index" (CLI),[22] and that it was possible to determine with high reliability whether a given cable system is sufficiently free of signal leakage to prevent airspace radio interference. Accordingly, it recommended that the Commission adopt quantitative criteria for differentiation between acceptable and unacceptable levels of cable signal leakage. It further recommended that the Commission allow those cable systems which met the quantitative criteria to operate within the aeronautical radio service bands. The standard, which the Advisory Committee recommends, is as follows:

> The basic leakage performance criterion should be that the 90th percentile power output at the test signal from an aircraft antenna such as that used in the research reviewed herein, at an altitude of 450 meters above the cable system, should be less than −100 dBm when the cable system is energized with an unmodulated test signal having power equal to the peak power of the highest cable television carrier within the VHF television bands.

37. We indicated that the proposed rules would not specify a 90th percentile of less than −100 dBm at 450 meters altitude especially in view of the Advisory Committee's finding that direct measurement of this standard was not usually feasible. Rather, specified values would be chosen in such a way that the *expected* 90th percentile power at 450 meters would be −100 dBm or less. Since neither the cable operator nor the Commission would generally be able to make a direct measurement of that parameter, rules were proposed which would specify the required measurements. We proposed that the standard could be met providing evidence, under any one of the following methods (See the *Advisory Report* for a complete discussion of these criteria):

(a) 10 log I_{3000} is equal to or less than −7, prior to carriage of signals in the aeronautical radio bands and at least once a year thereafter;

(b) 10 log I_{∞} is equal to or less than 64, prior to carriage of signals in the aeronautical radio bands and at least once a year thereafter; or

(c) by measurement in the airspace the equivalent field from cable signal leakage does not exceed 10 microvolts per meter at an altitude of 450 meters above the average terrain of the cable system,

Where I_{3000} and I_{∞} are calculated leakage indexes based on ground measurements.[24]

38. Cable television interests generally considered the proposed signal leakage criteria for cable systems acceptable and, accordingly, agreed with the criteria set forth in the *Further Notice*. Moreover, as pointed out by NCTA, improvement in cable technology has further minimized the potential for interference as older systems are replaced by newer, more refined operations with superior system integrity.

39. Aeronautical radio interests did not specifically oppose the basic signal leakage criteria proposal. The FAA did state that if frequency offsets are not adopted by the Commission, then the only acceptable alternative would be to lower the cumulative leakage level from −100 dBm to −125 dBm, which would require redefining the cumulative leakage criteria. The FAA indicated, however, that any redefinition of the criteria would be impractical. Since there was virtually no opposition to the proposed basic signal leakage criteria by either cable interests or aeronautical interests, and it is in the public interest to do so, we are adopting the criteria as proposed.

40. The standards, procedures, and techniques that are used in determining cable signal leakage performance are extremely important to ensure that cable signal emissions are within acceptable limits and pose little or no danger of harmful interference to aeronautical radio operations. The basic annual signal leakage performance standards should not be confused with regular and routine monitoring and neither should the standards, procedures and techniques for the signal leakage tests be confused with those utilized for monitoring. We note that some parties, in their comments, failed to appreciate the distinction between the proposed basic signal leakage performance standard and regular and routine monitoring requirements. The purposes and objectives of the proposed two separate sets of requirements are indeed different. Simply stated, the basic annual signal leakage performance requirements are intended to provide periodic assessment of a system; whereas regular and routine monitoring requirements are intended to assure that a cable operator undertakes responsible steps and appropriate procedures to detect and correct signal leakage sources throughout the year.

41. *Standard For Cable System Coverage.* For the ground-based methods, the Advisory Committee recommended that the leakage measurements should be based on a sampling of at least 75% of the cable strand and include any portions of the cable system known or expected by the cable operator to have less leakage integrity than the average of the system. The FAA stated that as much of the system as possible should be measured with 75% of the system as a minimum. And, if 75% was not accessible, airborne measurements should be made. In calculating the cumulative leakage index, cable operators should be required, according to the FAA, to include all detectable radiation even if it is less than the maximum level allowable for individual leakage sources. ARINC/ATA also commented that if only 75% of the system is examined, a major fault causing massive emissions may be overlooked.

42. NCTA stated that since alternative procedures for leakage can provide acceptable results, as indicated in the Advisory Committee Report, the method of measuring leakage should remain unspecified. It agrees with the Commission's proposal that the test should be conducted in such a manner as to be representative of the entire cable plant. NCTA believes that in lieu of the 75% requirement, a statistically verifiable test would be more than adequate. Moreover, a non-statistical approach would entail a potentially large measure of discrete measurements which would be extremely burdensome to the cable operator. In addition, NCTA believes that deviations from the standard method should be permitted on an engineering showing that the standard method does not produce representative results. Further, the collection of data should list the magnitude and location of all leaks detected during routine monitoring over a period not to exceed one year using the measurement method prescribed in § 76.609(h) of the Commission's Rules.

43. It is not unreasonable to require that 75 percent of the cable plant be examined if ground-based measurements are used. The Advisory Committee in their investigation of the various test procedures measured between 60 and 95 percent of each system. We agree with the Advisory Committee that ground-based measurement of signal leakage, although not a trivial chore, is feasible for most cable television operators who want to use aeronautical radio frequencies. If a cable system is so substantial in size that ground based measurement would be difficult, or impractical from an economic standard, then the airspace measurement method is a practical alternative.

44. We also agree with the Advisory Committee that the sampling should include any portions of the cable system known or expected by the cable operator to have less leakage integrity than the average of the system. In view of the evidence obtained by the Advisory Committee that older systems are most likely to cause interference, the oldest portions of the system should be selected for inclusion in the 75% sampling. If the cable operator performs the basis signal leakage performance measurements over 75% of the cable plant taking into account the older portions of the system, there is no reason to require measurements for the entire system since the calculations used in obtaining the CLI include the worst part of the strand.

45. Airspace measurements must be used if 75% of the system is not accessible for the ground-based measurements. We agree with the Advisory Committee that the use of airborne measurements may be especially important for cable systems serving large numbers of high rise buildings. In those circumstances where a significant portion of the cable plant is installed in high rise buildings, airborne measurements should be undertaken in lieu of ground-based measurements, as suggested by ARINC and ATA.

46. Alternative measurement techniques, such as a statistically verifiable approach suggested by NCTA, in lieu of the 75 percent sampling standard, cannot be supported at this time. The Advisory Committee has provided the only authoritative work so far. Moreover, detailed descriptions of any alternative measurement techniques have not been presented. Such information is important for consideration of alternative procedures. The new rules will, however, provide for alternative methods if approved by the Commission.

47. Existing systems will be required to meet the CLI by actual testing. In addition, the results should be included as part of the notification process before operating under the new rules. Tests must also be performed at least once each year thereafter. Routine monitoring will be required irrespective of whether the system is operating as a new or existing system.

48. In accordance with the FAA's suggestion, new systems will be required to do progressive cumulative leakage tests as construction progresses. Before any portion of a cable distribution plant is turned on with carrier frequencies in the aeronautical bands with a peak power level above 10^{-4} watts in a 25 kHz bandwidth, a cumulative leakage test shall be performed on that portion of the plant. The results should be incorporated into the overall cumulative leakage index which shall be reflective of the cumulative leakage index for the cable distribution plant in actual service.[25] Tests shall be performed at least once a year thereafter. All test results should be maintained by the cable operator for review upon Commission request.

49. *Test Carrier Procedure.* The Advisory Committee also stated in its recommendations relative to both ground-based and airspace measurements that:

> The unmodulated test carrier should be within the VHF aeronautical radio bands, and at the level of the peak power of the highest signal components within the bands.

50. Cable interests argued that unmodulated test carriers should not be required because such carriers, having no unique identifying information transmitted with them, are difficult to detect. A modulated test signal, however, would permit immediate aural recognition and identification of a test carrier because presumably it would not be duplicated in the external electromagnetic environment. Cable interests also argued that the proposed requirement of an unmodulated carrier would make the presently used measurement devices obsolete. Cable interests contend that the current used measuring devices are equal or better at detecting signal leakage than those devices using unmodulated carriers. Accordingly, they argue that use of either modulated or unmodulated test carriers should be allowed. Aeronautical interests did not specifically address this point.

51. To allow for cable system concerns, the referenced test procedure shall utilize an unmodulated carrier the power level of which is equal to the peak power level of the highest sync pulse or the highest level of any other signal carrier on the cable system in the aeronautical bands. However, if a modulated test signal is used, the test signal and detector technique must, when considered together, yield the same result as though an unmodulated test signal were used in conjunction with a detection technique which would yield the equivalent RMS value of said unmodulated carrier.

52. *Calibration: Air Space Measurements.* The Advisory Committee recommended the use of airborne measurements. As suggested by the FAA, the final rule will specify that calibration shall be performed in

[22] For a complete discussion of the CLI, see the Final Report of the Advisory Committee on Cable Signal Leakage. This report is available as item number PB80-119605 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone 703/487-4650.

[24] The Advisory Committee had also recommended raising the individual leakage source limit from 20 uV/m to 100 uV/m. However, this was based on observations of interference in the airspace. Since we wish to maintain interference protection to ground level receivers, we will retain the 20 uV/m leakage limit, as recently affirmed in a Commission action pertaining to CATV interference on amateur radio frequencies. See *Memorandum Opinion and Order* adopted June 15, 1984, denying RM-4040 from the American Radio Relay League, Inc.

[25] The test carrier which will be used in the tests will be allowed providing the frequency is included in the notification.

the city where the leakage measurements are to be taken and within a reasonable period of time prior to the taking of such measurements. The measurement system (including the receiving antenna) should be calibrated against a known field of 10 microvolts per meter produced by a well characterized antenna and ground plane. The half power bandwidth of the detector should be 25 kHz or less.

53. *Calibration: Ground-based Measurements.* The Advisory Committee recommended that measurements upon which calculation of I_{5000} or L_s are based must either be made with a dipole and a field intensity meter as described in Section 76.609(h) of Commission's Rules or by means of another device which is calibrated in a realistic fashion against such dipole and field intensity meter.

54. NCTA believes that the Commission should not mandate a specific procedure, but should allow maximum flexibility subject to good engineering practices, for new measurement techniques. It contends that any set procedure relating to calibration should be performed according to standard engineering procedures. Quantitative measurements to determine field strength of radio frequency energy radiated by cable systems should continue to be made in accordance with § 76.609(h) of the Rules, as it has proven to be effective while allowing adequate flexibility. NCTA also suggests that traceable calibration data should be provided for the instrumentation used to perform the measurements. In reply comments, NCTA further considered it inappropriate for the Commission to mandate a choice of leakage detection systems because there is a need for maximum flexibility to enable the adoption of new and better measurement techniques as they arise. Otherwise, it believes use of innovative measurement devices which might provide more accurate measurements may be restricted.

55. Although the FAA does not believe that measurement procedures should be detailed in the Rules, it is of the view that the Commission should publish descriptions of several different acceptable methods by means of Commission reports or public notices. Such publications should state whether the method described is suitable for individual or cumulative measurements or both. The Rules should require, however, that one of the acceptable methods should be used. If new procedures of instrumentation become available, the Commission should evaluate the suitability of the development and issue a public notice if the method is found to be acceptable. In reply comments, the FAA maintained that its recommendation that descriptions of acceptable measurement techniques be published by the Commission is intended to maintain some level of uniformity in the measurement process. The FAA agrees with NCTA that good engineering practice should be adhered to in making measurements, but adds that in matters of commercial aviation good engineering practice often includes standards much more strict than in non-aviation engineering disciplines. In addition, it agrees that traceable calibration data for the instrumentation used in routine monitoring and maintenance should also be on file with the Commission. The purpose of the requirement, according to the FAA, is for a simple look at the cable system to evaluate its year-by-year performance.

56. The Advisory Committee's recommendations appear well based and are being adopted. The calibration method should be in accordance with good engineering standards if the measurements are not made with a dipole and field intensity meter as described in § 76.609(h) of the Rules. Also, no comments were received objecting to our proposal to modify § 76.609(h) to require a separation of 3 meters in all cases. Therefore, the Rules will be so modified.[26] We will also adopt the suggestion by NCTA that traceable calibration data be provided for the instrumentation used to perform the measurement. Any cable system not using the dipole method of measurement described in § 76.609(h) must be able to support the procedure used.[27]

Cable System Power Levels

57. Based upon the *Advisory Report*, the *Further Notice* proposed to change the cable system power levels, at which the aeronautical restrictions apply, from 10^{-5} watts to 10^{-4} watts. The Advisory Committee in its research had determined that aural signal carriers are low power and have a very low probability of causing interference even under "worst case" conditions of signal leakage. Thus, these low levels signals could be excluded from frequency offset requirements. The 10^{-4} watts power level in a 25 kHz bandwidth will provide that exclusion.

58. ARINC/ATA contends that the documented cases of interference to voice communications show that the proposed change in cable system power levels is not warranted. In particular, they allege that the proposed changes would increase a VOR receiver's susceptibility to interference because the identification signal is aural and its lower power is more sensitive to interference. The FAA was not specifically opposed to the proposed changes, but recommended that indiscriminate increases in conducted power levels of carriers in the air communications bands be prohibited. NCTA is in total agreement with the *Advisory Committee's* recommendation. In response to ARINC/ATA's claims, NCTA states that the sensitivity of the aural receiver portion of a VOR is typically equal to that of aural communications receivers (−100 dBm) and, accordingly, NCTA concludes that the proposed change in threshold power levels is not unreasonable in light of the evidence found in the *Advisory Report*.

59. The Advisory Committee found that the worst cable system signal leakage observed exhibited airspace fields about 11 dB higher than detectable by aeronautical receivers and that these fields were not attributable to aural carriers but to visual carriers. The Advisory Committee pointed out that aural carriers are 13 to 17 decibels lower in level than visual carriers. While interference, as noted by ARINC/ATA, has been caused to voice communications, it has not been attributed to the aural carriers of any cable system, but rather to video signal carriers that were operated on the same nominal frequency as used for aeronautical radio. Therefore, the proposed change in cable system threshold power levels from 10^{-5} watts to 10^{-4} watts is being adopted. In addition, we will retain the threshold power level of 10^{-5} watts, but not for advance notification.

Routine Monitoring

60. Although in the *Further Notice* we expressed reservation about specifying how monitoring should be performed on a cable system, it was proposed that "routine" monitoring should include the use of leakage detectors on at least one service vehicle or in one fourth of the total number of vehicles, or whichever is larger. It was also proposed that cable operators should inspect the entire cable system at least once every three months.

[26] This modification will apply not only to systems which fall within the new requirements, but to existing systems which choose to operate under the existing rules on a grandfathered basis.

[27] We note, for example, that as pointed out in its comments, NCTA has issued several technical manuals or publications on cable signal leakage ("Signal Leakage and Interference Control," Manual No. 741) and cable system measurements ("Standards of Good Engineering Practices for Measurements on Cable Television Systems," NCTA 008-0477).

61. Although cable interests did not generally oppose routine monitoring requirements, they strongly urged the Commission not to adopt rigid, detailed monitoring procedures such as specifying the number of vehicles required to be equipped with leakage detectors. NCTA mentioned that alternative methods of monitoring exist within the industry and that, accordingly, the Commission should defer to recognized standard engineering practices on the part of cable operators. NCTA did support the collection of data on the magnitude and location of all leaks.

62. Keystone was strongly opposed to the proposed monitoring requirements that cable operators examine the entire cable plant once every three months and have leakage detectors on at least one service vehicle. Keystone estimated that total cost of equipment for monitoring would run approximately $70,000 for its systems and that work-hours associated with these requirements would significantly increase the overall costs of these requirements. Instead, it claimed that continual monitoring at the headend of a cable system through the use of crystal-controlled carriers having a strict tolerance would be more practical and feasible than the expensive equipment and manpower burdens inherent in the degree of "routine monitoring" depicted by the Commission.

63. For clarification at this juncture, once again we note the distinction between basic cable signal leakage performance tests and monitoring requirements. The cumulative leakage requirements are intended to determine the cumulative signal leakage index of the system as a whole in terms of interference potential to aeronautical radio services. Routine monitoring requirements are intended to assure that the cable operator checks the system regularly for excessive leaks and makes proper repairs. Such monitoring can be done by service personnel while conducting service calls, installations, etc. The only extra effort on the part of cable operators comes when leaks are found and must be repaired. Such leak repair programs should actually be part of the preventive maintenance programs that are in place today.

64. Because many effective monitoring schemes for cable systems depend on such factors as system size and age, it would be inadvisable to prescribe the exact technical practices to be followed by cable operators in the monitoring and maintenance of their systems. In addition, cable operators must retain records of the monitoring and maintenance procedures utilized, including the monitoring method and equipment employed as well as the manner in which the method is consistent with recognized standard engineering practices. Also, operators must maintain logs which show any leakage sources above the individual signal leakage standard detected by the monitoring, the magnitude and probable cause of these leakage sources, and the dates on which they were corrected. Regular monitoring of the entire system will be required every three months. Again, documentation of monitoring results should be maintained by the cable operator for review upon Commission request.

Grandfathering

65. In the *Further Notice* we proposed a transition period at the end of which existing systems would be required to come into compliance with the new rules. Although a specific time period was not mentioned, it was suggested that this transition period be as short as possible, but long enough to allow existing operators to meet the new standards in the normal course of their rebuilding programs. The Advisory Committee recommended a period of five to ten years.

66. Cable interests favored a transition period. NCTA expressed a preference for a ten year period so that individual systems would be able to expand existing capacity without being forced to make an economic choice between expansion and rebuilding of existing systems. The FAA was in favor of a transition period of between five and ten years in order to provide an orderly implementation of the rules by all cable systems using ATC bands.

67. We find no need for a lengthy transition period. First, the present rules already subject cable operators to frequency offset requirements especially where usage conflicts with aeronautical radio services. Thus, in many instances, cable operators are already accustomed to frequency offsets. Second, and of great significance, cable operators will not have to rebuild existing systems under the newly revised rules.[28] Third, compliance with the new rules should not be costly for most cable operators because any new costs will be tempered by the cable for most cable operator's ability to amortize or depreciate them over a relatively short period of time. For all of these reasons, we believe that a five year transition or grandfathering period will adequately afford existing cable operators the time they need to adjust to the changes under the new rules. While we recognize genuine cable operator concern over difficulty that *might* be occasioned in complying with the rules, we must meet our responsibility to quickly *ensure* the safe operation of radio services vital to the protection of life.[29] Only in documented cases of extreme economic hardship will consideration be given to extending the transition period.

68. In a similar vein, we have decided to reduce the overall scope of grandfathering under the old rules by limiting such privileges to those requests for cable usage of aeronautical radio frequencies received or authorized prior to the adoption of this *Report and Order*. Should usage of any of the authorized frequencies by an aeronautical radio service arise in the vicinity (generally within 111 km) of the cable system, the system will forfeit its grandfathering privileges to that frequency and, absent a grant of waiver, will not be permitted to substitute a different frequency not previously approved by the Commission.[30]

Compliance And Enforcement

69. As we indicated in the *Further Notice*, the authority to terminate operation of sources of actual interference is fundamental to the Commission's responsibilities. While aviation interests agreed with this statement, they were sharply critical of the Commission's efforts in preventing interference at the outset. The FAA stated that not only had the Commission failed to establish an effective monitoring program directed at preventing signal leakage problems, but it appeared reluctant to enforce its own rules and use its forfeiture powers except in the most egregious instances. Accordingly, aviation interests believed that the Commission should increase its enforcement activities, such as employing its personnel to conduct spot checks and regular monitoring of signal leakage levels. On the other hand, cable interests maintained that a majority of cable operators have complied with the

[28] If compliance with the cumulative signal leakage standard had been required as a condition prior to operation in the aeronautical bands (with or without frequency offset obligations), it is quite possible that a number of cable systems might not have been able to meet this prerequisite without rebuilding entire systems.

[29] The waiver process is suitable for the handling of those few individual cases where it is demonstrated that substantial hardship might result.

[30] We do not believe, as suggestged by Warner Amex, that cable systems which have pre-cleared frequencies should be permanently grandfathered. Authorizations to cable operators to operate on frequencies in the aeronautical radio bands do *not* create any permanent rights of use. See Section 76.610 of our Rules and Section 304 of the Communications Act.

rules and therefore needless regulatory overbearance along the lines suggested by aviation interests was not needed.

70. Compliance and enforcement programs are extremely important to reduce and prevent interference from cable operations and, accordingly, the Commission has considerably stepped up its activities in these areas. Indeed, substantial monetary penalties have been meted out to cable operators who failed to compy with pre-notification and frequency offset requirements. During the past three years, the Commission has issued 22 forfeitures to CATV systems totalling $161,000. In addition, numerous systems have been directed to cease operation for the failure to obtain prior clearance of use of specific frequencies, notwithstanding the substantial economic costs incurred. The number of on-site inspections and investigations of cable systems by the Commission's field staff has been increased in order to determine the degree of compliance with the rules and to ascertain the existence of signal leakage problems. These actions should clearly dispel any notions that might previously have existed concerning this agency's enforcement posture. We continue to believe that the authority to terminate operations that cause harmful interference, as described in Section 76.613, is essential; such authority will be retained. The Commission plans to continue to increase its compliance and enforcement efforts to ensure that cable operators do not pose hazards to the safe functioning of aeronautical radio services.

Conclusion

71. In summary, cable systems may operate in aeronautical radio bands subject to the following provisions:

(1) *Frequency Offset Requirements*—In the aeronautical communications bands (118–136 MHz, 225–328.6 MHz, and 335.4–400 MHz), cable carriers must be offset from aeronautical channel center frequencies by 12.5 kHz ± 5 KHz. Aeronautical communication frequencies are spaced at 25 kHz increments, beginning at the lower band edges. In the navigational bands (108–118 MHz and 328.6–335.4 MHz) cable carriers must be offset from aeronautical channel center frequencies by 25 kHz ± 5 kHz. Aeronautical navigation frequencies are spaced at 50 kHz increments, beginning at the lower band edges. (Harmonically Related Carrier (HRC) systems will be permitted provided the master oscillator frequency is set at 6.0003 MHz with a stability of ± 1 Hz, regardless of actual offset.)

(2) *Basic Signal Leakage Criteria*—Cable systems must show compliance with such criteria by use of groundbased or airspace measurements as a prerequisite for operation in the aeronautical radio bands.

(3) *Increased Threshold Power Levels*—The power levels of carriers or signal components in aeronautical radio bands on cable systems is changed (except for operation on the emergency frequencies) from 10^{-5} to 10^{-4} watts.

(4) *Monitoring Requirements*—Cable operators using frequency bands 108–136 MHz or 225–400 MHz will have to provide for regular monitoring for signal leakage covering all portions of the cable system at least once every three months.

(5) *Grandfathering*—Cable systems in operation before adoption of this *Order* will be allowed to operate under the existing rules for five years, after which time all cable systems will be subject to the new rules.

72. As indicated at the outset, the primary goal in this proceeding is to determine the best way to assure the protection of aeronautical navigation and safety radio services from harmful interference. However, there must be an equal attempt not to constrain the development and utilization of new cable technologies. While the record does not support prohibiting cable operation on frequencies used by aeronautical radio services, it does support technically well maintained cable system operation on aeronautical radio frequencies. If systems comply with frequency offset, monitoring, and cumulative signal leakage requirements, no harmful interference should result. These newly revised rules constitute an appropriate accommodation of the various interests involved.

Regulatory Flexibility Analysis

I. Need for and Purpose of Rule

73. The Commission has concluded that to assure the protection of aeronautical, navigation and safety radio services from harmful interference, cable systems should not be permitted to operate on the same frequencies used by aeronautical radio services. It has also concluded, however, that it is in the public interest for cable systems to operate in the aeronautical radio bands if they comply with frequency offset, monitoring and cumulative signal leakage requirements.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

74. Aviation interests argue that the present rules on cable interference to aeronautical radio transmissions are ineffective. They submit that engineering studies fail to provide sufficient evidence to show that cable systems can operate without interference being caused in the aeronautical bands if they are not using frequency offsets and/or leakage index measurements. Cable interests contend that the number of interference incidents in the aeronautical radio band is small. They argue that there have been few reported incidents and furthermore, these caused neither harmful nor serious interference to aeronautical radio transmissions. They contend that they should be able to operate on the same frequencies used by the aeronautical safety services without additional regulatory measures. However, cable interests do not take issue with the proposed signal leakage criteria, or generally oppose routine monitoring requirements.

B. Assessment

75. At the present time, cable operators cannot be universally relied upon to maintain systems sufficiently free from signal leakage so as not to create risks of harmful interference in the aeronautical radio frequency bands if the same frequencies are used. Frequency offset, signal leakage criteria and monitoring requirements thus are necessary for cable operation in the aeronautical service. Under these new rules, many cable operations with more than twelve channels, that is 65% of present systems, will require a system conversion with its attendant costs. New systems, of course, will not require any such conversion, and their costs will only be minimally increased by the need to comply with these new regulations. These costs are considered a small investment compared to an airliner crash.

C. Changes Made as a Result of This Proceeding

76. Cable television systems may operate in the aeronautical radio bands 108–136 MHz and 225–400 MHz if they meet uniform channel frequency offset requirements, basic signal leakage performance criteria (cumulative leakage index), and monitoring requirements.

77. The cable system power levels, at which aeronautical restrictions apply, were relaxed.

III. Significant Alternatives Considered and Rejected

78. We considered allowing cable usage of non-emergency aeronautical radio frequencies without frequency offsets and/or cumulative signal leakage index requirements. In view of five reported interference incidents, particularly one occurring at Flint, Michigan, we re-evaluated the risks presented by cable operation on the same frequencies used by aeronautical radio services. That incident pointed out not only the danger involved in cochannel use of aeronautical frequencies, but the substantial risk presented by a major break in the cable system. To ensure that cable systems do not cause harmful interference to aeronautical radio services, we rejected proposals allowing cable usage of non-emergency aeronautical radio frequencies without offsets or cumulative signal leakage index requirements.

79. Authority for the action taken herein is contained in Sections 1, 302, 303, 304, 307, 308, and 309 of the Communications Act of 1934, as amended (47 U.S.C. 151 et. seq.).

80. Accordingly, it is ordered, that the Commission's Rules are amended, effective December 17, 1984, or after approval by the Office of Management and Budget, whichever is later, as described above and set forth in the attached Appendix A.

81. It is further ordered that the Secretary of the Commission will publish the *Second Report and Order* in the FCC Reports.

82. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

83. It is further ordered, that this proceeding is terminated.

84. For further information concerning this proceeding, contact Freda Lippert Thyden, Mass Media Bureau, (202) 632–7792, on legal concerns or Bernard Gorden, Mass Media Bureau, (202) 632–9660, on technical concerns.

(Secs. 1, 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. 47 CFR 76.609 is amended by revising paragraph (h)(3) to read as follows:

§ 76.609 Measurements.

* * * * * *

(h) * * *

* * * * * *

(3) The resonant half wave dipole antenna shall be placed 3 meters from and positioned directly below the system components and at 3 meters above ground. Where such placement results in a separation of less than 3 meters between the center of the dipole antenna and the system components, or less than 3 meters between the dipole and ground level, the dipole shall be repositioned to provide a separation of 3 meters from the system components at a height of 3 meters or more above ground.

* * * * *

2. 47 CFR 76.610 is revised to read as follows:

§ 76.610 Operation in the frequency bands 108–136 and 225–400 MHz—scope of application.

The provisions of §§ 76.611, 76.612, 76.613, 76.614, 76.615 and 76.618 are applicable to all cable television systems transmitting carriers or other signal components carried at a peak power level equal to or greater than 10–5 watts at any point in the cable distribution system in the frequency bands 108–136 and 225–400 MHz for any purpose.

3. 47 CFR 76.611 is revised to read as follows:

§ 76.611 Cable television basic signal leakage performance criteria.

(a) No cable television system shall commence or provide service in the frequency bands 108–136 and 225–400 MHz unless such system is in compliance with one of the following cable television basic signal leakage performance criteria:

(1) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, based on a sampling of at least 75% of the cable strand, and including any portions of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the system, the cable operator demonstrates compliance with a cumulative signal leakage index by showing either that (i) 10 log I_{3000} is equal to or less than −7 or (ii) 10 log I_0 is equal to or less than 64, using one of the following formulae:

$$I_{3000} = \frac{1}{\emptyset} \sum_{i=1}^{n} \frac{E_i^2}{R_i^2}$$

$$I_{\infty} = \frac{1}{\emptyset} \sum_{i=1}^{n} E_i^2$$

where:

$$R_i^2 = r_i^2 + (3000)^2$$

r_i is the distance (in meters) between the leakage source and the center of the cable television system;

$\emptyset$ is the fraction of the system cable length actually examined for leakage sources and is equal to the strand miles of plant tested divided by the total strand miles in the plant;

R_i is the slant height distance (in meters) from leakage source i to a point 3000 meters above the center of the cable television system;

E_i is the electric field strength in microvolts per meter (uV/m) measured pursuant to § 76.609(h) 3 meters from the leak i; and

n is the number of leaks found of field strength equal to or greater than 50 uV/m pursuant to Section 76.609(h).

The sum is carried over all leaks i detected in the cable examined; or

(2) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, the cable operator demonstrates by measurement in the airspace that at no point does the field strength generated by the cable system exceed 10 microvolts per meter (uV/m) RMS at an altitude of 450 meters above the average terrain of the cable system. The measurement system (including the receiving antenna) shall be calibrated against a known field of 10 uV/m RMS produced by a well characterized antenna consisting of orthogonal resonant dipoles, both parallel to and one quarter wavelength above ground plane of a diameter of two meters or more at ground level. The dipoles shall have centers collocated and be excited 90 degrees apart. The half-power bandwidth of the detector shall be 25 kHz. If an aeronautical receiver is used for this purpose it shall meet the standards of the Radio Technical Commission for Aeronautics (RCTA) for aeronautical communications receivers. The aircraft antenna shall be horizontally polarized. Calibration shall be made in the community unit or, if more than one, in any of the community

units of the physical system within a reasonable time period to performing the measurements. If data is recorded digitally the 90th percentile level of points recorded over the cable system shall not exceed 10 uV/m RMS; if analog recording is used the peak values of the curves, when smoothed according to good engineering practices, shall not exceed 10 uV/m RMS.

(b) In paragraph (a)(1) and (a)(2) of this section the unmodulated test signal used on the cable plant shall: (1) Be within the VHF aeronautical band 108–136 MHz and (2) have a peak power level equal to the peak power level of the strongest cable television carrier or signal component carried on the system.

(c) In paragraph (a)(1) and (2) of this section, if a modulated test signal is used, the test signal and detector technique must, when considered together, yield the same result as though an unmodulated test signal were used in conjunction with a detection technique which would yield the RMS value of said unmodulated carrier.

(d) If a sampling of at least 75% of the cable strand (and including any portions of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the system) as described in paragraph (a)(1) cannot be obtained by the cable operator or is otherwise not reasonably feasible, the cable operator shall perform the airspace measurements described in paragraph (a)(2).

(e) Prior to providing service to any subscriber on a new section of cable plant, the operator shall show compliance with either: (1) The basic signal leakage criteria in accordance with paragraph (a)(1) or (a)(2) of this section for the entire plant in operation or (2) a showing shall be made indicating that no individual leak in the new section of the plant exceeds 20 uV/m at 3 meters in accordance with § 76.609 of the Rules.

(f) Notwithstanding paragraph (a) of this section, a cable operator shall be permitted to operate on any frequency which is offset pursuant to § 76.612 in the frequency band 108–136 MHz for the purpose of demonstrating compliance with the cable television basic signal leakage performance criteria.

4. New 47 CFR 76.612 Cable television frequency separation standards, is added to Subpart K, Part 76 to read as follows:

§ 76.612 Cable television frequency separation standards.

All cable television systems which operate in the frequency bands 108–136 and 225–400 MHz shall comply with the following cable television frequency separation standards:

(a) In the aeronautical radiocommunication bands 118–136, 225–328.6 and 335.4–400 MHz, the frequency of all carrier signals or signal components carried at a peak power level equal to or greater than 10^{-4} watts in a 25 kHz bandwidth must operate at frequencies offset from certain frequencies which may be used by aeronautical radio services operated by Commission licensees or by the United States Government or its Agencies. The aeronautical frequencies from which offsets must be maintained are those frequencies which are: Within one of the aeronautical bands defined in this subparagraph, and when expressed in MHz and divided by 0.025 yield an integer. The offset must meet one of the following two criteria:

(1) All such cable carriers or signal components shall be offset by 12.5 kHz with a frequency tolerance of ±5 kHz; or

(2) The fundamental frequency from which the visual carrier frequencies are derived by multiplication by an integer number shall be 6.0003 MHz with a frequency tolerance of ±1 Hz (Harmonically Related Carrier comb generators only).

(b) In the aeronautical radionavigation bands 108–118 and 328.6–335.4 MHz, the nominal frequency of any cable system carrier or signal component carried at a peak power level equal to or greater than 10^{-4} watts in a 25 kHz bandwidth shall be an odd multiple of 25 kHz with a frequency tolerance of ±5 kHz.

5. New 47 CFR 76.614 Cable television system monitoring, is added to Subpart K, Part 76, to read as follows:

§ 76.614 Cable television system monitoring.

All cable television operators shall provide for regular signal leakage monitoring of their cable television systems for signal leakage, covering all portions of the systems at least once every three months. Monitoring equipment and procedures utilized by a cable operator shall be adequate to detect a leakage source which produces a field strength in these bands of 20 uV/m or greater at a distance of 3 meters. During regular monitoring, any leakage source which produces a field strength of 20 uV/m or greater at a distance of 3 meters in the aeronautical radio frequency bands shall be noted and such leakage sources shall be eliminated within a reasonable period of time. The operator shall maintain a log showing the date and location of each leakage source identified, the date on which the leakage was eliminated, and the probable cause of the leakage. The log shall be kept on file for a period of two (2) years and shall be made available to authorized representatives of the Commission upon request.

6. New 47 CFR 76.615 Notification requirements, is added to Subpart K, Part 76, to read as follows:

§ 76.615 Notification requirements.

All cable television operators shall comply with each of the following notification requirements.

(a) The operator of the cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands, noting the type of information carried by the signal (television picture, aural, pilot carrier, or system control, etc.). The timely filing of FCC Form 325, Schedule 2, will meet this requirement.

(b) The operator of a cable system shall notify the Commission before transmitting any carrier or other signal component with a peak power level equal to or greater than 10^{-6} watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands. However, the operator of a cable system which if operating or will operate under § 76.618 shall not commence use of any frequency or frequencies in these bands using peak power levels equal to or greater than 10^{-4} watts without prior Commission notification. Such notification shall include:

(1) Legal name and local address of the cable television operator;

(2) The names and FCC identifiers (e.g., CA0001) of the system communities affected;

(3) The names and telephone numbers of local system officials who are responsible for compliance with §§ 76.610 through 76.618 of the Rules;

(4) Statement of compliance with the basic signal leakage criteria by use of ground-based or airspace measurements per § 76.611;

(5) The geographic location of the cable system which describes in latitude and longitude, in degrees, minutes and seconds a point near the center of the cable system, together with the distance (in kilometers) from the designated point to the most remote point of the cable plant, existing or planned, which defines a circle enclosing the entire cable plant;

(6) A description of the routine monitoring procedure to be used; and

(7) For cable operators subject to § 76.611, the cumulative signal leakage index derived under § 76.611(a)(1) or the results of airspace measurements derived under § 76.611(a)(2), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. The information described in (b)(7) shall be provided to the Commission each calendar year thereafter.

7. New 47 CFR 76.618 Grandfathering, is added to Subpart K, Part 76, to read as follows:

§ 76.618 Grandfathering.

A cable television system which commenced operation prior to January 1, 1985, shall be permitted to operate under this section and shall not be subject to the provisions of §§ 76.611 and 76.612 until January 1, 1990, *provided, however,* that all carrier signals or signal components carried at a peak power level equal to or greater than 10^{-4} watts shall be operated at frequencies offset from aeronautical radio services operated by Commission licensees or by the United States Government or its Agencies within 111 km (60 nautical miles) of any portion of the cable system by 45 kHz plus the frequency tolerance of the cable signal or signal component. The limit of 111 km may be increased by the Commission in cases of "extended service volumes" as defined by the Federal Aviation Administration or other Federal Government Agency for low altitude radio navigation or communication services. Operators of cable systems that are notified by the Commission that a change in operation of an aeronautical radio service will place the cable systems in conflict with any of the offset criteria, the operators are responsible for eliminating such conflict at their own expense and shall vacate the frequencies upon direction of the Commission.

Appendix B

Parties Filing Comments

(1) Air Transport Association of America & Aeronautical Radio, Inc.
(2) American Video Corp. et al.
(3) Braun, Warren
(4) Federal Aviation Administration
(5) Jerrold Division, General Instrument Corp.
(6) Keystone Communicable, Inc.
(7) National Cable Television Association, Inc.
(8) Sammons Communications, Inc.
(9) Storer Broadcasting Co.
(10) Viacom International, Inc.

Parties Filing Reply Comments

(1) Aeronautical Radio, Inc. & Air Transport Association of America
(2) American Video Corporation et al.
(3) Federal Aviation Administration
(4) National Cable Television Association, Inc.

Parties Filing Further Reply Comments

(1) Federal Aviation Administration
(2) National Cable Television Association, Inc.

Parties Filing Second Further Reply Comments

(1) Aeronautical Radio, Inc. & Air Transport Association
(2) Communications General Corp.
(3) Dempsey, John
(4) Kuykendall, E.D. Jr.
(5) National Cable Television Association
(6) Rice, Arthur R.
(7) Shaw, Will A.
(8) Switzer, I.
(9) Telecable Corporation
(10) Thorpe, C.L.
(11) Warner Amex Cable Communications, Inc.
(12) Worth, Nicholas E.

[FR Doc. 84-29849 Filed 11-15-84; 8:45 am]
BILLING CODE 4712-01-M

Proposed Rules

Federal Register
Vol. 49, No. 223
Friday, November 16, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

Programs for Specific Positions and Examinations (Miscellaneous)

Correction

In FR Doc. 84-28616 beginning on page 43691 in the issue of Wednesday, October 31, 1984, make the following corrections:

1. On page 43691, second column, six lines from the bottom, "assures" should have read "assumes".

2. On the same page, in the third column, first complete paragraph, nine lines from the bottom, "need" should have read "needs".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 0987S]

General Administrative Regulations; Late Planting Agreement Option Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith proposes to revise and reissue the Late Planting Agreement Option (7 CFR Part 400, Subpart A), effective with the 1985 and succeeding crop years to: (1) Change the cause of loss from excess moisture to adverse weather conditions; and (2) publish a corrected list of crop insurance regulations to which the Late Planting Agreement Option applies. The intended effect of this rule is to broaden the cause of loss and to update the regulation authorized to include the provisions of the Late Planting Agreement Option.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than January 15, 1985, to be sure of consideration.

ADDRESS: Written comments on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Tuesday, February 21, 1984, FCIC published a final rule at 49 FR 6319, prescribing procedures for the implementation of a Late Planting Agreement Option of insurance on certain crops. The cause of loss in the option was listed as "excess moisture." FCIC proposes to broaden the cause of loss to include all elements of "adverse weather conditions." On Tuesday, March 13, 1984, a correction was published amending the list of crop insurance regulations to which this part is applicable. 7 CFR 400.4 herein, contains the list as corrected by the March 13, 1984, publication, and adds an additional crop insurance regulation (Popcorn) thereto.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of Federal Assistance Program to which these regulations applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that this action to promulgate regulations for the implementation of FCIC's Late Planting Agreement constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Departmental Regulation 1512-1 (December 15, 1983). The sunset review date established for these regulations is October 1, 1989.

It has also been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 7 CFR Part 400

Crop insurance, Late planting agreement option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Late Planting Agreement Option, Subpart A to Part 400 of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart A—Late Planting Agreement Option; Regulations for the 1985 and Succeeding Crop Years

Sec.

400.1 Availability of the Late Planting Agreement Option.
400.2 Definitions.
400.3 Responsibilities of the insured.
400.4 Applicability to crops insured.
400.5 The Late Planting Agreement Option.

Authority: Sec. 508, Pub.L. 75-430, 52 Stat. 73, as amended (7 U.S.C. 1508).

Subpart A—Late Planting Agreement Option; Regulations for the 1985 and Succeeding Crop Years

§ 400.1 Availability of the Late Planting Agreement Option.

The Late Planting Agreement Option shall be offered under the provisions contained in 7 CFR Parts 402 through 499 within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in § 400.4 of this subpart. All provisions of the applicable contract for the insured crop apply, except those provisions which are in conflict with this part.

§ 400.2 Definitions.

For the purposes of the Late Planting Agreement Option:

(1) "Final planting date" means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(2) "Late Planting Agreement Option" means that agreement between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(3) "Production guarantee" means the guaranteed level of production under the provisions of the applicable contract for crop insurance (sometimes expressed in amounts of insurance).

§ 400.3 Responsibilities of the insured.

The insured is solely responsible for the completion of the Late Planting Agreement Option Form and for the acuracy of the data provided on that form. The provisions of this subsection shall not relieve the insured of its responsibilities under the provisions of the insurance contract.

§ 400.4 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring corps:

7 CFR Part 418 Wheat
7 CFR Part 419 Barley
7 CFR Part 420 Grain Sorghum
7 CFR Part 421 Cotton
7 CFR Part 422 Potatoes
7 CFR Part 423 Flax
7 CFR Part 424 Rice
7 CFR Part 425 Peanuts
7 CFR Part 427 Oats
7 CFR Part 428 Sunflowers
7 CFR Part 429 Rye
7 CFR Part 430 Sugar Beets
7 CFR Part 431 Soybeans
7 CFR Part 432 Corn
7 CFR Part 433 Dry Beans
7 CFR Part 434 Tobacco (Dollar Plan)
7 CFR Part 435 Tobacco (Quota Plan)
7 CFR Part 436 Tobacco (Guaranteed Production Plan)
7 CFR Part 438 Tomatoes
7 CFR Part 443 Hybrid Seed
7 CFR Part 447 Popcorn

The Late Planting Option shall be available in all counties in which the Corportion offers insurance on the crops insured under the above-mentioned 7 CFR Parts.

§ 400.5 The Late Planting Agreement Option.

The provisions of the Late Planting Agreement Option are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[FCI-9]

Late Planting Agreement Option

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Crop _____

Nowithstanding the provisions of Section 2 of the policy regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted for 20 days after such date which delay in planting was caused by adverse weather conditions. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced 10 percent for each five days or portion thereof that the acreage is planted after the final planting date. Each 10 percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date. The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option. If planting continues under this Agreement after the acreage reporting date on file in the service office the acreage reporting date will be extended to 5 days after the completion of planting the acreage to which insurance will attach under this option.

Insured's Signature _____
Corporation Representatives's Signature and Code Number _____
Date _____
Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)).

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and regulations promulgated thereunder (7 CFR Part 400 *et seq.*). The information requested is necessary for FCIC to institute the Late Planting Agreement Option. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, processors, other U.S. Department of Agriculture agencies, the Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, magistrate, or administrative tribunal. Furnishing the information requested on this form is voluntary. However, failure to furnish the complete requested information may result in the Late Planting Agreement Option not being accepted by the Corporation.

Done in Washington, D.C., on May 23, 1984.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,
Acting Manager.

Dated: November 9, 1984.

[FR Doc. 84-30089 Filed 11-15-84; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 210

Reduction of Recordkeeping Requirements

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to Executive Order 12287, and to eliminate unnecessary and costly regulatory burdens on firms and on the public, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) proposes to amend 10 CFR 210.1, which requires the maintenance of oil pricing and allocation records pursuant to 10 CFR Parts 210, 211, and 212. The proposed amendment would eliminate this recordkeeping requirement for all firms, except those with records which are essential to the timely and orderly completion of the oil pricing enforcement program.

DATE: Written comments must be received by December 17, 1984.

ADDRESS: Comments should be submitted to: Office of Special Counsel, Attn: Recordkeeping Comments, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

James N. Solit, Office of Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6500.

Jack Vandenberg, Public Information Officer, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue,

SW., Washington, D.C. 20585, (202) 252–5810.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Amendment.
A. Current Status of the Enforcement Program.
B. Effect of Present Recordkeeping Requirements.
C. Firms Required to Maintain Records.
1. Firms Which are Parties in Litigation.
2. Firms Under Orders for Restitutionary Payments.
3. Firms Under Audit.
4. Inquiries Relating to Newly Discovered Oil Reports.
5. Third-Party Records.
6. Notification of Firms Required to Maintain Records.
III. Written Comments.
IV. Procedural Matters.
A. Executive Order 12291.
B. Regulatory Flexibility Act.
C. Environmental Review.

I. Background

More than ten years ago petroleum price and allocation controls were imposed pursuant to the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended (15 U.S.C. 751 *et seq.*). To aid the government's enforcement of these controls, firms and individuals subject to the controls were required to comply with extensive reporting and recordkeeping requirements.

On January 28, 1981, in Executive Order 12287 (46 FR 9909, January 30, 1981), the President removed all remaining price and allocation controls from crude oil and refined petroleum products. The Order continued the reporting and recordkeeping requirements then in effect but directed the Secretary of Energy to "promptly review those requirements and . . . [to] eliminate them, except for those that are necessary for emergency planning and energy information gathering purposes required by law."

On March 30, 1981, ERA eliminated or modified most of the reporting requirements. Simultaneously, however, the agency adopted 10 CFR 210.1 to require all firms to maintain the historical records compiled as a result of the requirements in 10 CFR Parts 210, 211, and 212 that were in effect on January 27, 1981, the final day of controls. (46 FR 20508, April 3, 1981). ERA continued these recordkeeping requirements to enable DOE to bring its enforcement activity to an orderly conclusion.

Subsequently, ERA proposed to exempt certain types of firms from the recordkeeping requirement. (48 FR 261, January 4, 1983). All of the public comments received supported the adoption of this proposal. However, because of enforcement litigation which required for a limited period of time the continuation of the recordkeeping requirements, ERA withdrew the proposal. (48 FR 55577, December 14, 1983) In the notice withdrawing the proposal, ERA reaffirmed its intention to reduce the burden of unnecessary recordkeeping by stating:

> ERA recognizes the cost and burden the maintenance of records pursuant to § 210.1 imposes on firms. Thus, ERA will monitor the litigation process and, when circumstances allow, will take appropriate action to reduce the record preservation requirements of the regulations. (48 FR 55577, December 14, 1983).

II. Proposed Amendment

A. Current Status of the Enforcement Program

At the time the President removed the oil pricing and allocation controls, there was a backlog of enforcement investigations and litigation by DOE that involved over 2,000 firms. This backlog included over 1,500 ERA audits and investigations that either were in progress or were still pending. This latter category included crude reselling activity, on which virtually no work had been initiated, and which involved over 300 crude reseller firms. At the same time, cases previously developed by ERA involving more than 500 firms were being litigated by the Department.

Through a concerted effort over the past three years to conclude enforcement investigations and litigation, DOE has resolved enforcement matters involving over 1,400 firms. ERA's audit inventory now involves less than 150 firms, with most of the unfinished cases in final stages of completion, where the matters will either be brought into litigation, settled or closed out. Additionally, at the time of this notice there are about 400 firms in administrative and judicial litigation with DOE involving cases not resolved by ERA. Thus, the total number of firms with enforcement matters still to be resolved with DOE—firms either now in litigation or subject to future litigation—is less than 600 firms.

B. Effect of Present Recordkeeping Requirements

The recordkeeping requirements now in effect force each of the more than 200,000 firms that were subject to the rules and regulations under the EPAA to maintain records relating to their EPAA compliance for the entire eight-year period of controls. Many firms have thus had to maintain records for almost twelve years.

In comparison, the Internal Revenue Service generally requires firms to maintain their records for not more than three years. (26 CFR 1.6000–1 and 301.6501(a)(1). The Securities and Exchange Commission requires firms to maintain most of their records for not more than six years. (17 CFR 240.17a–4; § 270.31a–2; and § 275.204–2). The Federal Trade Commission requires firms to maintain their records for not more than four years. (16 CFR 300.31; 303.39; 305.15; 453.6; and 703.6).

The present DOE requirements apply not only to firms subject to ERA audits and enforcement actions; they also extend to firms and individuals that were never charged with alleged regulatory violations. Additionally, unless otherwise relieved of such requirements, they continue to apply to firms that have fully resolved all regulatory disputes with DOE.

Nearly four years after decontrol, these requirements remain in place and continue to impose on thousands of firms—especially retailers, jobbers, and other small business concerns—heavy burdens and costs which ultimately are passed on to the public in the form of higher prices. They also divert financial resources from economically productive activities to the maintenance or records, thus lessening productivity and efficiency. ERA believes that any remaining benefit from requiring all firms to maintain all of their records is clearly outweighted by the burden imposed on American businesses and consumers.

Therefore, pursuant to Executive Order 12287, ERA proposes to eliminate the recordkeeping requirements for all firms except those which fall within certain specific and limited categories. Firms still required to maintain records will be subject to 10 CFR § 210.1 only until such records are no longer necessary to DOE for enforcement purposes. Firms to be exempted from further recordkeeping may wish, however, to retain voluntarily their records for other reasons, such as support for claims in proceedings administered by the Office of Hearings and Appeals pursuant to 10 CFR Part 205, Subpart V.

ERA intends to reduce the recordkeeping requirements as much as is practical and to eliminate them altogether as soon as possible. To aid in determining how best to achieve these goals, ERA solicits comments from the public on this proposal and on several other questions.

First, suggestions from the public are requested for further reductions of the recordkeeping requirements. These suggestions should contain rationales supporting the suggested reductions.

Second, members of the public are requested to point out any categories of records which they believe to be particularly burdensome to maintain. These comments should suggest specific amendatory language for possible use by ERA in reducing the burdens of maintaining such records.

Third, some members of the public have suggested that ERA should termiante the recordkeeping requirements immediately. Comments are therefore solicited on the possibility of eliminating all of the recordkeeping requirements in 10 CFR § 210.1, instead of finalizing the proposed amendment. ERA requests commenters to set forth rationales supporting their positions on this option.

C. Firms Required to Maintain Records

Under the proposed amendment, the firms required to maintain records have pending or unresolved enforcement matters or have records essential for the preparation and prosecution of enforcement cases involving other firms. To the extent possible, firms will be required to maintain only those records relevant to the requirements of the enforcement program, thus permitting some firms to reduce partially their current inventory of records. Those firms still required to maintain records fall within the limited categories described below. All other firms are to be exempted from the recordkeeping requirements of 10 CFR 210.1.

1. Firms Which Are Parties in Litigation

A party to administrative or judicial litigation has a duty not to destroy evidence relevant to that proceeding. At the time of this notice, there are pending before administrative and judicial tribunals enforcement cases brought by ERA against 409 firms alleged to have violated the price and allocation regulations. The records of firms which are parties in this litigation with DOE must be retained.

A firm is a party in litigation with DOE if: (a)(1) The firm has received a Notice of Probable Violation or a Proposed Remedial Order, or (2) the firm and DOE are parties in a lawsuit arising under EPAA or the regulations issued thereunder; and (b) there has been no final (i.e., non-appealable) administrative or judicial resolution or settlement regarding the alleged violations, or DOE has not informed the firm in writing that the government has concluded its review of the matter.

A firm which is a party in litigation with DOE would be required to maintain its records until the litigation is brought to its final conclusion or until the firm is notified in writing by DOE that the records need no longer be kept, whichever is sooner.

2. Firms Under Orders for Restitutionary Payments

Occasionally, a firm will be subject to a requirement to make restitutionary payments over an extended period of time. This may be the result of a negotiated settlement of alleged violations of oil pricing and allocation regulations set forth in a consent order or, less frequently, an obligation imposed by an administrative or judicial order that has found the firm in violation of such regulations. In such cases, a firm's compliance is not fulfilled until all payments are made. Under the proposed amendment, firms must retain the records relevant to the alleged violations that are the basis for the restitutionary obligation until such payments are completed.

3. Firms Under Audit

A firm is considered under audit if: (a) The firm has been audited by ERA and has not received a Notice of Probable Violation or a Proposed Remedial Order and ERA has not informed the firm in writing that ERA will take no enforcement action; (b) ERA is presently conducting an audit; or, (c) ERA has notified the firm of an audit but the firm has refused to provide records and is subject to a subpoena. Any firm that is under audit or that has been notified that it is subject to an audit has a duty to maintain records relevant to that investigation. At the time of this notice, 130 firms remain under audit.

Firms under audit include 31 firms with audits currently in progress, 29 firms that have been notified of audits but have refused to provide records and are subject to subpoena enforcement action and 70 firms with completed audits in which ERA has not made a determination to initiate a formal enforcement action (such as issuing a Proposing Remedial Order).

a. *Firms with Audits in Progress or with Completed Audits in Which ERA Has Not Yet Made a Determination to Initiate a Formal Enforcement Action.* ERA proposes to require firms presently under audit which do not have outstanding subpoenas or subpoenas enforced after November 1, 1983, and firms with completed audits in which ERA has not yet made a determination to initiate a formal enforcement action, to maintain their records for a limited period of time.

Each of these firms will be required to maintain its records until June 30, 1985, unless ERA extends this period on a firm-by-firm basis. If before the end of this period or an individual firm's extension, ERA determines that it no longer needs the firm's records for enforcement purposes, ERA will so notify the firm in writing and the firm will no longer be required to maintain its records.

Thus, a firm will be required to maintain its records until one of the following: (1) June 30, 1985, unless on an individual firm basis the period is extended; (2) the end of the firm's extension; or (3) the firm receives written notification that ERA no longer needs the records.

By June 30, 1985, or by the end of an individual firm's extension, each of the firms in this group will either: (1) become a party in litigation (as defined in paragraph 1 above), in which case the firm would still be required to maintain its records; or (2) not become a party in litigation, in which case the firm would no longer be required to maintain its records.

If a firm under audit should discontinue its voluntary cooperation and require a subpoena, such a firm would then be subject to the recordkeeping requirements for firms which have outstanding or recently enforced subpoenas, as discussed below.

b. *Firms Which Have Outstanding or Recently Enforced Subpoenas.* A number of firms subject to audit have refused to allow ERA to examine their records, with the result that the agency has issued subpoenas for the records sought. In many cases, judicial enforcement of the subpoenas has been required. Due to delays imposed by these actions, along with the uncertainties this lack of cooperation brings to program management during the final phase of the enforcement work, the amount of time allocated to complete audits for firms which have received subpoenas is substantially longer than that for firms that have voluntarily cooperated in an audit.

As a consequence, ERA proposes to require those firms with outstanding subpoenas or which receive subpoenas in the future, as well as firms that have already provided records pursuant to a subpoena enforced after November 1, 1983, to maintain their records for two years after full compliance with the subpoena, or until notified in writing by ERA, whichever is sooner. If, prior to the end of this two-year period, the firm becomes involved in litigation with DOE relating to its pricing or allocation practices during the period of controls, that firm will then be subject to the recordkeeping requirements applicable to firms which are parties in litigation, as discussed in paragraph 1 above.

4. Inquiries Relating to Newly Discovered Oil Reports

As a result of an opinion by the Temporary Emergency Court of Appeals in *Seneca Oil Co. v. Department of Energy* (712 F.2d 1384 [TECA 1983], which resolved a regulatory interpretation relating to the definition of "newly discovered" crude oil, ERA is having to obtain supplemental data from certain firms on crude oil production they reported during 1978 and 1979. Some of these firms have already received data inquiries from ERA; others have yet to receive any communication from the agency.

ERA proposes to require these firms, which reported the production of "newly discovered" crude oil in 1978 and 1979, to maintain certain crude oil production records which are necessary to establish that the crude oil qualifies as "newly discovered" under 10 CFR 212.79, together with production and sales records for properties from which oil certified as "newly discovered" was sold.

Each of these firms will be required to maintain these records until June 30, 1985, unless ERA on a firm-by-firm basis extends this period. If before the end of this period or an individual firm's extension, ERA determines that it no longer needs the firm's records for enforcement purposes, ERA will so notify the firm in writing and the firm will no longer be required to maintain its records.

Thus, a firm will be required to maintain its records until one of the following: (1) June 30, 1985, unless on an individual firm basis the period is extended; (2) the end of the firm's extension; or (3) the firm receives written notification that ERA no longer needs the records.

By June 30, 1985, or by the end of an individual firm's extension, each of the firms in this group will either: (1) Become a party in litigation (as defined in paragraph 1 above), in which case the firm would still be required to maintain its records; or (2) not become a party in litigation, in which case the firm would no longer be required to maintain its records.

5. Third-Party Records

In limited instances, DOE needs the records of one firm in support of enforcement work involving another firm. Such records are known as third-party records. DOE has reviewed all of the pending enforcement litigation and investigative matters and has identified a limited number of cases that still require records from third-party firms. This review indicates that not more than 150 firms will be found to have third-party records actually needed for enforcement purposes. DOE is determined to keep the number of firms required to maintain third-party records as small as possible. The third-party firms will be required to keep only those records considered essential to the completion of the enforcement matters for which the records are needed.

Each of these third-party firms will be required to maintain the records identified by DOE until June 30, 1985, unless DOE on a firm-by-firm basis extends this period. If before the end of this period or an individual firm's extension, DOE determines that it no longer needs a firm's third-party records for enforcement purposes, DOE will so notify the firm in writing and the firm will no longer be required to maintain its records.

Thus, a firm will be required to maintain its third-party records until one of the following: (1) June 30, 1985, unless on an individual firm basis the period is extended; (2) the end of the firm's extension; or (3) the firm receives written notification that DOE no longer needs the records.

6. Notification of Firms Required to Maintain Records

Firms which are parties in litigation and firms under orders for restitutionary payments will be considered notified by publication of the final rule in the **Federal Register.**

Firms which are under audit, firms required to maintain third-party records, or firms required to maintain "newly discovered" crude oil production records will receive direct notification from ERA by certified mail prior to publication of the final rule.

Firms not described in this notice or which do not receive notification prior to publication of the final rule, will be exempt from the recordkeeping requirements of 10 CFR 210.1.

III. Written Comments

Interested parties and the general public are invited to comment on the proposed amendment of 10 CFR 210.1 and on the other options discussed in this notice. All comments should be submitted by 4:30 p.m., E.S.T., on December 17, 1984 to the address indicated at the beginning of this notice. All comments received by ERA will be available for public inspection in the DOE Freedom of Information Office, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which is considered to be confidential should be so identified. ERA reserves the right to determine the confidential status of the information or data and to treat it according to the agency's determination.

IV. Procedural Matters

A. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981), requires an agency to prepare a regulatory impact analysis for any proposed major rule. Because the proposal will substantially reduce recordkeeping burdens and thus lessen costs to firms and the public, ERA has determined that the proposal is not a major rule as defined in Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), requires an agency to prepare an initial regulatory flexibility analysis for any proposed rule which will have a significant economic impact on a substantial number of small entities.

Although ERA has determined that no formal regulatory flexibility analysis need be prepared, this prepared will benefit many small entities by relieving them of substantial recordkeeping burdens. Therefore, this proposal will further the objectives of the Regulatory Flexibility Act.

C. Environmental Review

ERA has determined that the proposal, which is essentially administrative in nature, is not a major federal action with a significant environmental impact. Consequently, no Environmental Assessment or Environmental Impact Statement is required under the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*).

List of Subjects in 10 CFR Part 210

Petroleum price regulations, Reporting requirements.

(Federal Energy Administration Act of 1974, Pub. L. 93-275; Department of Energy Organization Act, Pub. L. 95-91)

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, E.O. 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47, 39 FR 24.

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on November 14, 1984.

Rayburn Hanzlik,

Administrator Economic Regulatory Administration.

PART 210—GENERAL ALLOCATION AND PRICE RULES

10 CFR, Part 210 is amended by revising § 210.1 to read as follows:

Subpart A—Recordkeeping

§ 210.1 Records.

(a) The recordkeeping requirements that were in effect on January 27, 1981, in Parts 210, 211, and 212 will remain in effect for (1) all transactions prior to February 1, 1981; and (2) all allowed expenses incurred and paid prior to April 1, 1981 under § 212.78 of Part 212. These requirements include, but are not limited to, the requirements that were in effect on January 27, 1981, in § 210.92 of this part; in §§ 211.67(a)(5)(ii); 211.89; 211.109; 211.127; and 211.223 of Part 211; and in §§ 212.78(h)(5)(ii); 212.78(h)(6); 212.83(c)(2)(iii)(E)(I); 212.83(c)(2)(iii)(E)(II); 212.83(c)(2)(iii) "F_i"; 212.83(i); 212.93(a); 212.93(b)(4)(iii)(B)(I); 212.93(i)(4); 212.94(b)(2)(iii); 212.128; 212.132; 212.172; and § 212.67 of Part 212.

(b) Effective [date of publication of the final rule], paragraph (a) of this section shall apply to only:

(1) Those firms which are parties in litigation with DOE, as defined in paragraph (c)(1) below. Any such firm shall remain subject to paragraph (a) of this section until the litigation is brought to its final conclusion of the firm is notified in writing by DOE that its records are no longer needed, whichever occurs first.

(2) Those firms which are subject to an administrative or judicial order, consent order, or other settlement or order providing for restitutionary payments. Any such firm shall remain subject to paragraph (a) of this section until the firm makes all of the payments required by the resolution, order, or settlement.

(3)(i) Those firms with completed audits in which DOE has not yet made a determination to initiate a formal enforcement action and firms under audit which do not have outstanding subpoenas. Any such firm shall remain subject to paragraph (a) of this section until one of the following: June 30, 1985, unless this period is extended on a firm-by-firm basis; the end of the individual firm's extension; or the firm is notified in writing by DOE that its records are no longer needed. However, if a firm in this group shall become a party in litigation, the firm shall then be subject to the recordkeeping requirements for firms in litigation set forth in paragraph (b)(1) above.

(ii) Those firms under audit which have outstanding subpoenas on [date of publication of final rule] or which receive subpoenas at any time thereafter or which have supplied records for an audit as the result of a subpoena enforced after November 1, 1983. Any such firm shall remain subject to paragraph (a) of this section until two years after full compliance with the subpoena or until notified in writing by DOE that its records are no longer needed, whichever occurs first. However, if a firm in this group shall become a party in litigation, the firm shall then be subject to the recordkeeping requirements for firms in litigation set forth in paragraph (b)(1) above.

(4) Those firms which are subject to requests for data necessary to verify that crude oil qualifies as "newly discovered" crude oil under 10 CFR 212.79. Any such firm shall remain subject to paragraph (a) of this section until one of the following: June 30, 1985, unless this period is extended on a firm-by-firm basis; the end of an individual firm's extension; or the firm is notified in writing by DOE that its records are no longer needed. However, if a firm in this group shall become a party in litigation, the firm shall then be subject to the recordkeeping requirements for firms in litigation set forth in paragraph (b)(1) above.

(5) Those firms whose records are determined by DOE as necessary to complete the enforcement investigation of another firm which is also subject to paragraph (a) of this section. Any such firm whose records are so needed shall remain subject to paragraph (a) of this section until one of the following: June 30, 1985, unless this period is extended on a firm-by-firm basis; the end of the individual firm's extension; or the firm is notified in writing by DOE that its records are no longer needed.

(c) For purposes of this section:

(1) A firm is "a party in litigation" if:

(i)(A) The firm has received a Notice of Probable Violation or a Proposed Remedial Order, or (B) the firm and DOE are parties in a lawsuit arising under the Emergency Petroleum Allocation Act of 1973, as amended (15 U.S.C. 751 *et seq.*) or 10 CFR Parts 210, 211, or 212; and

(ii)(A) there has been no final (that is, non-appealable) administrative or judicial resolution, or (B) DOE has not informed the firm in writing that the Department has completed its review of the matter.

(2) A firm means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship, or any other entity, however organized, including charitable, educational, or other eleemosynary institutions, and state and local governments. A firm includes a parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(OMB Control No. 1903-0073)

[FR Doc. 84-30275 Filed 11-14-84; 4:20 pm]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-190-78]

Income Tax Exemption for Interest on Industrial Development Bonds for Certain Water Facilities; Public Hearings on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the income tax exemption for interest on industrial development bonds issued to finance certain water facilities.

DATES: The public hearing will be held on Wednesday, January 30, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, January 16, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-190-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 103 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, August 22, 1984 (49 FR 33283).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Wednesday, January 16, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An Agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-30158 Filed 11-15-84; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[EE-65-83]

Annual Information Reports by Trustees and Issuers of Individual Retirement Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This document contains proposed regulations that require annual reporting of information relating to individual retirement plans. The regulations reflect changes made to the applicable reporting requirements by both news release IR-83-88 and the Tax Reform Act of 1984. The regulations affect trustees of individual retirement accounts and issuers of individual retirement annuities (including accounts and annuities that are simplified employee pensions), and individuals who own or benefit from such individual retirement plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 15, 1985. The amendments are proposed to be effective for reports relating to calendar years beginning after 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-65-83), 1111 Constitution Avenue, NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Philip R. Bosco of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 408 of the Internal Revenue Code of 1954 defines various individual retirement plans, including individual retirement accounts, individual retirement annuities, and simplified employee pensions. Section 408(i) of the Code provides that the trustee of an individual retirement account or the issuer of an individual retirement annuity (including an account or annuity that is a simplified employee pension) shall make such reports regarding the status of an account or annuity as the Secretary may require under regulations.

Section 1.408-5(c)(1) of the Income Tax Regulations (26 CFR Part 1) under section 408 of the Code requires that an annual report must be furnished to each participant, i.e., the individual for whose benefit the account was established or in whose name the annuity was purchased (or the beneficiary of such individual). The report must contain the following information for transactions occurring during the calender year: the amount of contributions; the amount of distributions; in the case of an endowment contract, the amount of the premium paid allocable to the cost of life insurance; and the name and address of the trustee or issuer. The report must be furnished on or before June 30 following the calendar year for which the report is required. Paragraph (c)(2) of § 1.408-5 provides that the Commissioner may require the annual report to be filed with the Service at the time the Commissioner specifies.

On June 28, 1983, the Service issued news release IR-83-88 relating to the filing requirement permissible under § 1.408-5(c)(2). Beginning with the 1983 calendar year, the annual reports required by § 1.408-5 must also be filed with the Service. New Form 5498, Individual Retirement Arrangement Information, has been developed for this purpose. The form, a copy of which may be utilized to satisfy the existing reporting requirement of § 1.408-5, must contain the following information for transactions occurring during the calendar year: the amount of contributions (exclusive of rollover contributions for calendar years after 1983); the amount of rollover contributions (for calendar years after 1983); and the name and address of the trustee or issuer. For the 1983 calendar year, the form must be filed with the Service, and the annual report furnished to the participant, on or before June 30, 1984. Finally, IR-83-88 stated that, for calendar year 1984, the form must be filed with the Service on or before February 28, 1985, and the annual report must be furnished to the participant on or before June 30, 1985.

On July 18, 1984, section 147 of the Tax Reform Act of 1984 (Pub. L. 98-369) amended section 408(i) to provide that the information reports required by such section identify the taxable year to which individual retirement plan contributions relate. This amendment is effective for contributions made after December 31, 1984.

The proposed regulations contained in this document amend § 1.408-5 to conform such section to both the new filing requirements announced in news release IR-83-88 and the new reporting requirement added by the Tax Reform Act or 1984. The amendments are to be issued under the authority contained in sections 408(i) and 7805 of the Code (88 Stat. 964, 26 U.S.C. 408(i); 68A Stat. 917, 26 U.S.C. 7805, respectively).

As proposed, the regulations necessarily modify the requirements of IR-83-88 for calendar years 1984 and thereafter. Beginning with calendar year 1984, Form 5498 shall be filed with the Service and the statement to the participant shall be furnished to such person on or before May 31 following the calendar year for which such reports are required. For calendar year 1984, this is a change of the due dates originally announced in IR-83-88. Beginning with calendar year 1985, both Form 5498 and the statement to the participant must report, as the amount of contributions for the calendar year, the amount of contributions made during or after the calendar year that relate to such calendar year. Also beginning with calendar year 1985, both Form 5498 and the statement to the participant must report, in the case of an endowment contract premium allocable to the cost of life insurance, that amount of the premium paid either during or after the calendar year that relates to such calendar year.

Finally, the proposed regulations contain special transitional requirements for the 1985 calendar year

reports. For that calendar year both Form 5498 and the statement to the participant must report, as a separate entry, the amount of contributions made during 1985 that relate to 1984. This requirement also applies to the statement to the participant in the case of an endowment contract premium allocable to the cost of life insurance paid during 1985 that relates to 1984.

Special Analysis

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in either Executive Order 12291 or the Treasury and OMB implementation of that Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Philip R. Bosco of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.401-1—1.425-1

Employee benefit plans, Pensions, Individual retirement accounts.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Section 1.408-5 is revised to read as follows:

§ 1.408-5 Annual reports by trustees and issuers.

(a) *Requirement and form of report.* The trustee of an individual retirement account or the issuer of an individual retirement annuity (including an account or annuity that is a simplified employee pension) shall make annual calendar year reports on Form 5498 concerning the status of the account or annuity. The report shall contain the following information for transactions occurring during or after the calendar year that relate to such calendar year:

(1) The name, address, and identifying number of the trustee or issuer;

(2) The name, address, and identifying number of the participant (the individual on whose behalf the account is established or in whose name the annuity is purchased (or the beneficiary of the individual or owner));

(3) The amount of contributions (exclusive of rollover contributions) made during or after the calendar year that relate to such calendar year;

(4) The amount of rollover contributions made during the calendar year;

(5) In the case of an endowment contract, the amount of the premium allocable to the cost of life insurance paid either during or after the calendar year that relates to such calendar year; and

(6) Such other information as the Commissioner may require.

(b) *Manner and time for filing.* The report on Form 5498 shall be filed, accompanied by transmittal Form 1096, with the appropriate Internal Revenue Service Center. The report shall be filed on or before May 31 following the calendar year for which the report is required.

(c) *Statement to participants.* (1) Each trustee or issuer required to file Form 5498 under this section shall furnish the participant a statement containing the information required to be furnished on Form 5498 plus the value of the account or annuity at the end of the calendar year. A copy of Form 5498, containing the additional information specified in the previous sentence, may be used to satisfy the statement requirement of this paragraph. If a copy of Form 5498 is not used to satisfy the statement requirement of this paragraph, the statement shall contain the following language: "This information is being furnished to the Internal Revenue Service."

(2) Each statement required by this paragraph to be furnished to participants shall be furnished to such person on or before May 31 following the calendar year for which the report on Form 5498 is required.

(d) *Penalties.* Section 6693 prescribes penalties for failure to file an annual report required by this section.

(e) *Effective date.* In general, this section applies to reports for calendar years beginning with 1983. For additional requirements relating to the 1985 calendar year reports, see paragraph (f) of this section. For special requirements relating to the 1983 and 1984 calendar year reports, see paragraph (g) of this section. For requirements relating to pre-1983 calendar year reports, see 26 CFR 1.408-5 (1983).

(f) *Reports for calendar year 1985.* For calendar year 1985, both Form 5498 and the statement to the participant must report, as a separate entry, the amount of contributions made during the 1985 calendar year that relate to the 1984 calendar year. This also applies, in the case of the statement to the participant, to endowment contract premiums allocable to the cost of life insurance that are paid during the 1985 calendar year but that relate to the 1984 calendar year.

(g) *Reports for calendar years 1983 and 1984.* (1) For calendar years 1983 and 1984, neither Form 5498 nor the statement to the participant need identify the calendar year to which a contribution relates. The form and statement need only report the amount of contributions actually made during the calendar year. This also applies to endowment contract premiums allocable to the cost of life insurance and paid during the calendar year.

(2) For calendar years 1983 and 1984, Form 5498 need not report (but the statement to the participant must report), in the case of an endowment contract, the amount of the premium allocable to the cost of life insurance paid during the calendar year.

(3) For calendar year 1983, neither Form 5498 nor the statement to the participant need separately report rollover contributions made during the calendar year. Rollover contributions are to be aggregated with the amount of other contributions made during the calendar year.

(4) For calendar year 1983, the statement to the participant need not contain the language required by paragraph (c)(1) of this section.

(5) For calendar year 1983, Form 5498 shall be filed, and the statement to the participant shall be furnished, on or before June 30, 1984.

(h) *Related reports by trustees and issuers.* See § 1.408–7 for reports relating to distributions from individual retirement plans.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-30157 Filed 11-15-84; 8:45 am]

BILLING CODE 4830-01-M

---

26 CFR Part 301

[LR-142-84; LR-149-84; LR-213-84]

Tax Shelter Registration and Requirement to Maintain Lists of Investors in Potentially Abusive Tax Shelters; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of date of public hearing on proposed regulations.

SUMMARY: This document provides notice of a change of date of a public hearing on proposed regulations relating to tax shelter registration, and the requirement to maintain lists of investors in potentially abusive tax shelters.

DATES: The public hearing will be held on Thursday, January 17, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, January 3, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR–142–84, LR–149–84, LR–213–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: By a notice appearing in the **Federal Register** for Tuesday, September 18, 1984 (49 FR 36510), it was announced that a public hearing on proposed regulations relating to tax shelter registration and the requirement to maintain lists of investors in potentially abusive tax shelter was scheduled to be held on Thursday, November 15, 1984, beginning at 10:00 a.m. in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The proposed regulations pertaining to tax shelter registration appeared in the **Federal Register** for Wednesday, August 15, 1984 (49 FR 32728) (See FR Doc. No. 84–21729). The proposed regulations pertaining to the requirement to maintain lists of investors in potentially abusive tax shelters appeared in the **Federal Register** for Wednesday, August 29, 1984 (49 FR 34246) (See FR Doc. No. 84–22938). The public hearing on these proposed regulations will be held in conjunction with the public hearing on the additional proposed regulations pertaining to tax shelter registration and the requirement to maintain lists of investors in potentially abusive tax shelter that appeared in the **Federal Register** for Wednesday, October 31, 1984 (49 FR 43714).

Accordingly, the date for the public hearing has been changed, and it is scheduled to be held on Thursday, January 17, 1985.

Outlines of oral comments must be delivered or mailed by Thursday, January 3, 1985.

In all other respects the details with respect to the hearing remain the same.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-30156 Filed 11-15-84; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-4-FRL-2719-4]

Florida; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Florida for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: Florida has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Florida's application and has made the tentative decision that Florida's hazardous waste program satisfies all of the requirements necessary to qualify for Final Authorization. This tentative decision is contingent upon Florida completing the regulatory changes by January 28, 1985, as outlined in EPA's letter to the State on August 24, 1984. Thus, EPA intends to grant Final Authorization to the State to operate its program in lieu of the federal program. Florida's application for Final Authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATES: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for 7:00 p.m., Tuesday, December 18, 1984.

EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by December 11, 1984. EPA will determine by December 12, 1984, whether there is significant interest to hold the public hearing. Florida will participate in the public hearing held by EPA on this subject, if a hearing is to be held. All written comments on the Florida Final Authorization Application must be received by the close of business on December 18, 1984.

ADDRESSES: The public hearing, if held, will take place at the Holiday Inn, Flamenco Room, 1302 Apalachee Parkway, Tallahassee, Florida. Copies of Florida's Final Authorization Application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying:

Mr. Robert W. McVety, Administrator, Solid & Hazardous Waste Section, Florida Department of Environmental Regulation, 2600 Blair Stone Road, Twin Towers, Tallahassee, Florida 32301–8241 (904) 488–0300.

Environmental Protection Agency, Regional Office Library, Room 121, 345 Courtland Street NE., Atlanta, Georgia 30365, Contact: Carolyn Mitchell (404) 881–4216.

U.S. Environmental Protection Agency, Headquarters Library, PM–211A, 401 M Street SW., Washington, DC 20460 (202) 382–5926.

Written comments on the application and written or telephone communication of interest in EPA's holding a public hearing on the Florida application must be sent to: Allan E. Antley, Chief, Waste Planning Section, U.S. EPA, 345 Courtland Street NE., Atlanta, Georgia 30365 (404) 881–3016.

If you wish to find out whether or not EPA will hold a public hearing on the Florida application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after December 12, 1984, Mr. Robert W. McVety, Administrator, Solid & Hazardous Waste Section, Florida Department of Environmental Regulation, 2600 Blair Stone Road, Twin Towers, Tallahassee, Florida 32301–8241 (904) 488–0300.

FOR FURTHER INFORMATION CONTACT: Allan E. Antley, Chief, Waste Planning Section, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365 (404) 881–3016.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize the State hazardous waste programs to operate in the State in lieu of the federal hazardous waste program. Two types of authorization may be granted. The first type, known as "Interim Authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the federal program (Section 3006(c), 42 U.S.C. 6228(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to Interim Authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263, and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities), and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II, Component A, covers general permitting procedures and technical standards for containers and tanks. Phase II, Component B. covers permitting of incinerator facilities, and Phase II, Component C, address permitting of landfills, surface impoundments, waste piles, and land treatment facilities.

By statute, all Interim Authorizations expire on January 28, 1985. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received Final Authorization, as described below.

The second type of authorization is a "Final" (permanent) Authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the federal program, (2) is consistent with the federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6228(b)). States need not have obtained Interim Authorization in order to qualify for Final Authorization. EPA regulations for Final Authorization appear at 40 CFR 271.1–271.23.

B. Florida

The State received Interim Authorization for Phase I on May 19, 1982; Interim Authorization for Phase II, Components A and B, on December 29, 1983, and Component C on February 24, 1984. On December 7, 1983, the State submitted a draft application for Final Authorization. The complete application for Final Authorization was submitted on July 2, 1984. Prior to submission of the application to EPA, Florida published notice on May 4, 1984, of a Public Hearing to be held on June 7, 1984. Since the State did not receive comments or a request for a public hearing, the hearing was cancelled.

On August 24, 1984, EPA sent comments on the final application to the State. The comments requested the State make several regulatory changes necessary for equivalency to the RCRA program. The State was also requested to provide clarification and more detail on coordination between the Central office and District offices, particularly in processing permits, and to submit a strategy for compliance monitoring and enforcement.

By letter dated August 27, 1984, the State provided details on the Department's development of a RCRA Program Implementation Manual (PIM) which will contain the policies and procedures for permitting and inspection and enforcement, as well as a training plan for all hazardous waste personnel.

On September 7, 1984, Florida submitted several proposed revisions to the State's hazardous waste rules which are necessary to qualify for Final Authorization. These amendments will be effective by December 1984. These changes will resolve the regulatory deficiencies noted by EPA and will result in State rules equivalent to RCRA.

The Florida Department of Environmental Regulation has been evaluated to determine its capability to conduct a quality hazardous waste program. The State has all the enforcement mechanisms necessary for conducting an effective compliance program. The State's management practices reflect adequate planning and execution. The program staff has the technical expertise, training, and the commitment to operate an adequate hazardous waste program in Florida. Florida has exceeded the prorated total for inspections and has been successful in collecting penalty settlements. The State intends to achieve implementation of the National Permits Strategy since all active hazardous waste facilities should be issued a Temporary Operation Permit (TOP) by the first quarter of 1985.

EPA's Final Determination on granting authorization will be based on the State's ability to implement EPA's permitting recommendations contained in the Letter of Intent.

EPA has reviewed Florida's application and has tentatively determined that the State's program meets all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization to Florida. Copies of Florida's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny Final Authorization to Florida. EPA expects to publish a final decision on whether or not to approve Florida's program in the **Federal Register** by January 24, 1985. The **Federal Register** notice will include a summary of the reasons for the Final Determination and a response to all major comments.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C 605(B), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 Executive Order 12291.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians-lands, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegation 8-7.

Dated: October 17, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 84-30119 Filed 11-15-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 90

[PR Docket No. 83-737; FCC 84-482]

Frequency Coordination in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Parts 0, 1, and 90 of the Commission's Rules to revise frequency coordination procedures in the private land mobile radio services. Such action was encouraged by Congress in amendments to the Communications Act of 1934, and is expected to result in more efficient procedures and a more reliable, up-to-date private land mobile radio data base.

DATES: Comments are due by March 11, 1985 and replies by April 25, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson or Herb Zeiler, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Organizations and functions.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 90

Private land mobile radio services, Radio.

Notice of Proposed Rule Making

In the matter of Frequency Coordination in the Private Land Mobile Radio Services PR Docket No. 83-737.

Adopted: October 17, 1984.
Released November 9, 1984.

By the Commission.

I. Introduction

A. History of Coordination

1. In the private land mobile radio services, as a general rule, spectrum is shared. Even at 800 MHz and in the 470-512 MHz band where there are provisions for exclusive channel assignments within specified geographic areas, there is an overall requirement that the use of channels must be shared in order to accommodate what continues to be an extraordinary growth in the use of land mobile communications systems. Prior to 1958 the Commission's Rules governing the private land mobile radio services contained few provisions designating specific procedures for frequency coordination by applicants and users. They did recite, however, the over-riding policy that frequencies were available only on a shared basis, and that applicants and licensees were expected to cooperate in the selection and use of these frequencies in order to minimize the likelihood of interference. To assist in carrying out this requirement, interested parties over the years formed committees which maintained records of frequency usage. These committees were generally representatives of the entities using the services so that individual applicants had the assurance that, in selecting a frequency for the applicant's use, the judgment of the committee involved would be both knowledgeable and impartial.

2. In 1958 the Commission amended its rules with respect to the approach which could be used by applicants when effecting coordination in the private services. A procedure was established whereby the applicant could work through a representative frequency coordinating committee and secure a frequency recommendation by it for submission to the Commission.[1] Thus, for the first time the Commission recognized a mechanism whereby an applicant could request a group representative of the user community to select for the applicant what the group regarded as the most appropriate frequency. The Commission in turn would give the recommendation of this group some deference in deciding to approve or disapprove the application.

3. In taking this action, the Commission enunciated some general prinicples on the subject of frequency coordinating committees:

a. That the frequency coordinating committees must be representative of all eligibles in the radio service concerned in the area the committee purports to serve;

b. That the recommendation is advisory, and not binding on either the applicant or the Commission;

c. That the Commission has the power to remedy the situation should there be discrimination or misuse of functions by the frequency coordinating committees;

d. That there is no bar to recognition of an alternative frequency coordinating committee if it were more representative of eligible licensees;

e. That any fee charged may only represent the cost of providing the service;

f. That there can be no discrimination between members and non-members in the provision of service; and

g. That all requests for coordination must be honored.[2]

4. Generally, these principles have governed the functions of all frequency coordinating committees from 1969 to the present. In 1982, however, the Congress amended the Communications Act.[3] Among other things, it affirmed that the Commission had the authority to utilize assistance furnished by frequency coordinating committees, 47 U.S.C. 332(b)(1). It also recognized the "value of the assistance" provided to the Commission by these committees. Specifically, the Conference Report pointed out that:

> . . . The frequency coordinating Committees not only provide for more efficent use of the congested land mobile spectrum, but also enable all users, large and small, to obtain the coordination necessary to place their stations on the air. Without such frequency coordinating activity some of these applicants would not be able to afford the engineering required in the application process. Thus, by essentially equalizing the frequency selection process for all applicants, the applicants are placed on a competitive parity, with no one applicant operating on a better or more commercially advantageous frequency than his or her competitor. . . .
>
> To further promote fairness in frequency allocation, the Conferees encourage the Commission to recognize those frequency coordinating committees for any given service which are most representative of the users of that service. The Conferees also encourage the Commission to develop rules or procedures for monitoring the performance of coordinating committees. H.R. Rep. No. 97-765, 97 Cong., 2d Sess. 53 (1982).

B. Notice of Inquiry

5. In 1983, responding to the above-quoted language, the Commission commenced a proceeding to examine its private land mobile radio frequency coordination procedures. A Notice of inquiry (NOI) was adopted on July 14, 1983, soliciting comments to enable the Commission to evaluate and, if necessay, update its policies governing the operations of frequency coordinating committees, particularly in light of its desire to upgrade its data base and improve its overall processing and spectrum management functions for these radio services.[4] In the NOI comment were requested on the following salient issues:

a. What should the major functions of frequency coordinating committees be?

b. What authority should frequency coordinating committees have?

c. Should there be one exclusive or multiple frequency coordinating committees per radio service?

d. What oversight by the Commission of frequency coordinating committees should there be?

e. Is the field study option of frequency coordination effective and should it be retained?

Forty-two (42) sets of formal comments to the NOI were filed along with twenty-six (26) sets of reply comments. A breakdown of those responding to the NOI is as follows:

Class	Comments	Replies
Coordinating committees	17	7
Non-coordinating organizations	3	1
Licensing services	2	1
Manufacturers	1	1
Users and individuals	19	16
Total	42	26

Note.—A list of the commenters is contained in Appendix A.

II. Discussion

6. Since 1958 when we adopted the First Report and Order in Docket No. 11991., *Supra,* permitting the use of coordinating committees, we have allowed applicants two options for effecting coordination in the selection of frequencies in the private land mobile radio services. The first is for the applicant to select his or her own frequency, and to submit an application accompanied by a report based upon a field study, indicating both the degree of probable interference to all existing stations operating on the frequency within a set distance, and a statement that these co-channel stations have been notified of the proposed operation.[5] The second option is to have a frequency coordinating committee select the frequency, based on its experience and familiarity with the local operating environment.[6]

7. This present approach, however, has posed problems for the Commission and the coordinating committees. First, because there are no defined standards for field studies, the quality of field study reports varies widely. Some appear to be virtually arbitrary frequency chocies, and most present very little, if any, technical interference analysis. In addition, the co-channel and adjacent channel notification requirements are sometimes ignored or abused. As a result the Commission has had to send numerous letters requesting further information from the applicant concerning the technical parameters used in the accomplishment of the field study and a list of all the existing licensees that were notified. Many of the comments on the NOI indicated that the field study option, to be more meaningful, should be made much more rigorous.

8. A second problem with the current approach is the delay it injects into application processing, and the uncertainty which it leaves subsequent frequency selections by the coordinating committees. Under present procedures, when an application is received by the Commission, it is placed in the processing line. As many as 30 days may elapse before it is examined. Then, if it is accompanied by a field study, a FCC Form 1049 is completed by the Commission and sent to the appropriate coordinating committee to allow it to upgrade its date base to reflect this frequency request and to provide comments to the Commission on the proposal based on the committee's knowledge of the applicant's operating environment. The coordinator has 14 days to comment on the proposal. The result of this procedure is a time period of approximately 30-35 days during which the coordinator could recommend the same frequency to another applicant unaware that there is is an application already in the Commission's processing line requesting the frequency. This in turn leads to applications having to be recoordinated and delay for the parties concerned.

9. Another problem area in the current coordination process has been that of add-on users of community repeaters.[7] Here, since the base station facility has already been coordinated, some have questioned the need to require coordination of the subsequent licensees. Other, however, have responded that the coordinating committees need to know who is on the frequency, how many control stations are being operated, where they are located, and how many mobiles are involved, if they are to do a proper job of selecting frequencies for future applicants. To allow these add-on users to go on the air without coordination undermines the integrity of the committees' selection procedures, they maintain, in exactly the same way as does the existing field study approach. A *Notice of Inquiry,* PR Docket 82-226 addressing this particular issue was released in April 1982, and subsequently terminated with a statement that the subject would be covered in the *Notice of Inquiry* in this proceeding.[8]

10. In a somewhat similar vein is the problem raised when a community repeater seeks to convert to a private carrier operation. Here, an applicant, sometimes but not always, seeks to substitute itself for what previously has been a number of separate licensees. This type of system conversion has raised numerous problems for the frequency coordinators because the new applicant may or may not be acting in conjunction with the other licensees on the frequency. It thus is not clear to the coordinator whether the new applicant is to be substituted for the previous licensees of the frequency with their mobiles and control stations purged from the data base, or whether the new applicant's requested mobiles and control stations are in addition to those already on the frequency. This has led to great confusion as to the number of stations in operation and has impaired

---

[1] *In the Matter of Amendment of Part 11, Rules Governing the Industrial Radio Services, To Delete, Modify and Create Services and To Effect Changes in the Availability of Frequencies, First Report and Order.* Docket No. 11991, FCC 58-602, 23 FR 4784 (June 28, 1951).

[2] *Frequency Coordination in the Industrial Radio Services,* 16 FCC 2d 305, 306 (1969).

[3] "The Communications Amendments Act of 1982," P.L. 97-259, 96 STAT 1087, September 13, 1982. Section 331 of the Communications Act of 1934, as amended, is codified at 47 U.S.C. 332.

[4] *Notice of Inquiry,* PR Docket No. 83-737, 48 FR 35149, August 3, 1983.

[5] If proposing operation in the 150-170 MHz band the field study must also take into account stations operating on frequencies 15 kHz removed.

[6] 47 CFR 90.175 contains the present frequency coordination requirements.

[7] "Add on users" are persons who seek to be licensed on an already licensed base station facility ("community repeaters"). See generally the proceeding in Docket No. 18921 for a discussion of multiple licensing.

[8] *Order Terminating Proceeding,* PR Docket 82-226, FCC 83-330, released July 25, 1983.

the coordinator's ability to make sound frequency recommendations.

11. In light of these and other deficiencies and prior to enunciating our specific proposals to address them based on the comments we have received, we think it useful to explain our objectives for this proceeding. In brief, they are to refine our approach to the frequency selection process in order to improve the quality of recommendations, to minimize processing delays, to encourage interservice frequency sharing where appropriate, and to facilitate the introduction of new technologies into the private land mobile radio services. These goals are necessitated by the rapidly increasing rate of growth of mobile radio communications combined with technological innovations. Advances in system design have made digital voice/data systems and narrowband systems more and more desirable to mobile radio users as they seek to initiate or expend systems on increasingly scarce spectrum. This demand, and the increasing sophistication in technology, compounds the need for effective coordination, if all licensees are to continue operating in an efficient manner.

12. Our over-riding purpose in this proceeding therefore is to establish a mechanism whereby there can be some consensus by the user community that when new applicants seek to use the spectrum, the frequency selected is the most appropriate. To accomplish this we are proposing to require all applicants to go to the frequency coordinating committee which is responsible for the frequencies for which the applicant wishes to apply, and describe the type of communications systems they wish to operate. Further applicants shall either: (1) Indicate they have a frequency preference and want the coordinating committees agreement that this is an appropriate frequency given the present spectrum operating environment, or (2) ask the committee to select what it believes would be the best frequency. If the coordinating committee does not agree with the applicant, the applicant may submit to the coordinating committee a field study or technical submission to support the contention that the frequency the applicant requests is an appropriate one. If the coordinating committee and the applicant still cannot agree, the application, field study and the committee's written reasons for disputing the requested frequency will be forwarded to the Commission for evaluation and decision. Fundamental to this approach is assuring the integrity of the data on which the committee makes its recommendations. This in turn means that at any given moment the entity selecting the frequency must be fully apprised of the actual operating environment, including all pending proposals at the Commission. Two further corrollaries that flow from this are (1) all applications which could affect the radio environment must be coordinated through the committee and (2) all coordination requests must be centralized in a single locus for each radio service. This we believe is the only way to assure the integrity of the data base and that the frequency selection process has taken into account all existing grants and pending proposals in the most efficient and effective manner, while minimizing disputes and the application delays which are a consequence thereof.

13. Under this unified coordination concept therefore we are proposing that all applications filed on the Form 574, both for new stations, add-on users to existing stations, and station modifications, regardless of frequency band, first be submitted to the recognized frequency coordinator in the service in which the applicant is applying.[9] [10] [11] This includes station modifications for changes in frequency, emission, power, antenna height, number of stations, location, ownership, and class of station.[12] The coordinator would in turn review the application, approve the frequency by certifying it is the most appropriate in the committee's view, and forward the application to the Commission. All applications returned by the Commission would be returned through the coordinator. Under this approach the coordinator would be aware of the status of all pending proposals, which could affect its frequency selection process. Furthermore, there would be no discrepencies between the system parameters coordinated and those specified on the application filed with the Commission. The only exceptions to this procedure would be applications for a frequency shared with the Federal Government, applications for a frequency below 25 MHz, applications for an itinerant use frequency, applications for special temporary authorities (STAs) for less than 180 days, applications for developmental operations, applications for a frequency in the Radiolocation Service, applications for mobiles operating in the 470–512 MHz band where the frequency is assigned on an exclusive basis, and applications for mobile and control stations operating in the 800 MHz band where the frequency is assigned on an exclusive basis. These applications could be sent directly to the Commission and would not require frequency coordination.

14. We are also proposing to certify only one coordinator per service or group. [13] As noted above we believe this is necessary in order to maintain the integrity of the data base and the frequency selection process. If multiple coordinators are involved in a single service there would be no practical way of keeping track of the pending frequency selections of each coordinator. This would lead to applications having to be recoordinated between competing coordinators which in turn would result in additional delays. Further under multiple coordinators, applicants could "shop" for a desired frequency. While competition among multiple coordinators could lower fees, without definite assignment criteria, it would undermine the basic intent of frequency coordination, which is to maximize the efficient use of the spectrum.

15. Additionally, we intend to certify a coordinator at the conclusion of this proceeding for: (1) Each separate radio service regulated under Part 90, (2) the four 800 MHz frequency categories (§ 90.617), and (3) the 900 MHz paging channels (§ 90.494).[14] [15] Organizations desiring to be certified coordinator for a particular service or group should file their requests as comments to this proceeding.[16] [17] Each request should

[9] Presently, frequencies in the Business Radio Service below 450 MHz are not required to be coordinated. However, with the implementation of narrowband technologies (See Docket 84–279) coordination of these frequencies would appear to be necessary.

[10] Renewal applications (Form 574–R) will not have to be submitted to the coordinator.

[11] In light of the problems outlined in paragraph 10, pending adoption of final rules in this proceeding that specify what information must be submitted to frequency coordinators and the Commission, we will not allow the conversion of community repeater operations to private carrier systems nor will we license new private carrier systems except on frequencies specifically reserved for that type of operation, such as the 900 MHz paging frequencies and the 800 MHz SMR frequencies.

[12] Changes in class of station include changing from a community repeater (multiple licensed) to a cooperative, and unshared to shared use.

[13] The selection of a single coordinator for each service or pool of frequencies does not signal a departure from our general preference for the competitive offering of communications services. First, the coordinators do not offer a communications service; their function is to assist the Commission in the selection of the most appropriate frequency for the applicant taking into account the already existing user environment. Second, the coordinating committees are non-profit organizations representative of users therefore competition in the recommendation of frequencies is not necessary to assure the lowest price or the best

Continued

include the following: (1) An overall description of the organizational structure, (2) an outline of the proposed coordination process, including an estimate of the fees and processing times, (3) the entities' qualifications including how they are representative of the users in the groups, (4) how they intend to comply with the proposals in this proceeding, including proposed procedures for accessing other ccordinators' data bases, and (5) how they would encourage implementation of spectrum effecient technologies consistent with technical flexibility permitted under Commission rules, policies, and proposals. If more than one request per service or group is received we will make a decision based on our assessment of the applicants' experience, plans for coordinating the service, technical capabilities, and representativeness.[18]

16. Under this new procedure all applications required to be filed on Form 574, with the exception of those noted above, would first be submitted to the appropriate frequency coordinator. The coordinator would process the applications in order or receipt. Applicants would have the option of: (1) Asking the coordinator to select the best available frequency for the area based on the system parameters specified; or (2) specifying both the frequency and the system parameters under which it wishes to operate.[19] Once received, the coordinator would check the application to see that all the entries are correct and that the proposed operation is in compliance with the Commission's rules.[20] If an error is detected the application would be returned to the applicant. If the application is in order and the frequency column left blank by the applicant, a frequency would be selected by the coordinator. Requests for a specific band would be honored, if possible. The coordinator would then specify a frequency on the application and forward it and a statement of concurrence to the Commission. If the applicant specified a particular frequency and the coordinator agreed with the proposed operation, the application would be forwarded to the Commission with a statement that the coordinator agreed with the proposed operation. If the coordinator did not agree either with the frequency selection or the system parameters specified, the request for coordination would be denied and the coordinator would return the application to the applicant. If the applicant does not agree with the coordinator's decision, it may submit a technical showing (field study) to the coordinator supporting its position. If the coordinator agrees with the showing submitted, the application would be forwarded to the Commission along with a statement of concurrence. In cases where the coordinator still does not agree with the proposed operation the coordinator must provide the applicant with a technical explanation why the request is being denied and what alternative frequency it would recommend. If the applicant still wants to pursue its initial request, it may then bring the matter to the Commission for decision.

17. In order to make the best possible frequency selection the coordinator must have a complete, accurate, and current knowledge of the radio environment with which the proposed system will interact. This in our opinion can be provided most reliably by the Commission's data base. In addition, use of the Commission's data base would provide a commonality of data upon which to base selections and allow coordinators to maximize interservice and interpool sharing. Finally, this approach would allow all coordinators to use a computerized data base without requiring large expeditures. Recently the Commission stated that it planned to prepare a competitive solicitation document to select a contractor to make Commission data files on the Private Land Mobile Radio Services available to the public.[21] The contractor ultimately selected will develop a computer system capable of providing access to the public on a commercial basis at a reasonable cost. We are proposing that all coordinators have the capability of accessing the information in this data base and that they make frequency recommendations based on the information contained therein.

18. Presently frequency coordinators are required to recommend to an applicant a frequency that "will result in the least amount of interference to all existing stations operating in a particular area." [22] There are no specific Commission criteria for determining this frequency. The methodology is left up to the individual coordinators. We do not believe there should be any deviation from this basic principle of recommending the frequency which is predicted to result in the least amount of interference. We do not intend to specify procedures to be used in selecting frequencies, but will allow the coordinator the option of developing and using its own general assignment plan in accordance with any pertinent assignment criteria specified in the Commission's Rules or, where apropriate, individually engineering-in stations. In our opinion there are too many variables which could affect the coordination process for the Commission to develop a rigid assignment plan and require its use in all cases. We believe individual coordinators are in the best position to determine whether a general assignment plan should be used and what it should be or whether there are extenuating factors such as ducting or terrain irregularities requiring an individual evaluation. For these reasons we intend to allow each coordinator to develop specific selection methodology to select a frequency. Prospective coordinators are asked to submit, in addition to their qualifications, a general description of the frequency assignment methodology they propose to employ.

19. A number of private land mobile frequencies are allocated to more than one radio service. These non-exclusive allocations must be shared between users of different radio services. Under

service. Third, since the coordinating committees are non-profit ogranizations comprised of and representative of the end users, we are confident that even sole source providers they can fairly and impartially administer the frequency coordination process for the benefit of all.

[14] We are not proposing to require coordination in the Radiolocation Service since frequencies allocated to this service are either below 25 MHz or above 952 MHz. Coordination in these frequency bands is not required under current rules.

[15] To date no single organization has demonstrated itself representative of the diverse users in the Special Emergency Radio Service. However, it appears that the need for frequency coordination in this service outweighs the need for the coordinator to be absolutely representative of all users. Frequency coordination in the Special Emergency Radio Service (SERS) was addressed in the *Report and Order* of PR Docket 81–416, 49 FR 4492, February 7, 1984, where we indicated it was advisable to defer selection of a coordinator for the Special Emergency Radio Service until all facets of the coordination process were examined in this proceeding. Accordingly, we intend to select a coordinator for the SERS at the conclusion of this proceeding.

[16] We will consider continuing our policy of appointing coordinators for the specialized groups now recognized under the Business and Motor Carrier Radio Services if we receive requests to do so.

[17] Entities may request to be the coordinator in more than one service or group.

[18] Should there be no interest expressed in coordinating a particular radio service or group, we may combine that service or group with another.

[19] An applicant could request a frequency band preference, however the coordinator would not be required to honor this request. For example if the applicant requested the 150 MHz band but in the coordinator's opinion this band was already too congested at the location requested, the coordinator could recommend a frequency in another band.

[20] Applications with requests for waiver of the rules will be submitted to the coordinator who shall concur or disagree with the waiver request when it forwards the Form 574 to the Commission. The Commission retains the authority to consider all arguments before granting or disapproving any waiver requests.

[21] *Report and Order*, Gen. Docket 83–483, adopted August 8, 1984.

[22] Section 90.175 of the rules.

the present coordination procedure, coordinators do not issue a recommendation on one of these frequencies until they have solicited and received concurrence from each of the other services having sharing rights to the frequency. In most cases these concurrences are obtained by exchanging documents through the mail. It is apparent that little efficiency will be gained by automating the initial frequency selection process and then allowing a manual process to see if another coordinator selected the same frequency for the area in question. Coordinators, therefore, should have the capability to access each others' pending frequency selections. Comments are specifically requested on this matter.

20. Presently, all applications for out-of-service assignments must be accompanied by a concurring statement from the coordinator having responsibility for coordination in the radio service in which the frequency requested is allocated.[23] Again these concurrences are usually obtained by exchanging documents through the mail. This minimizes the efficiency of the proposed system. We realize, however, that the two coordinators may have different selection methodologies. Comments are requested as to how we can change this procedure to better take advantage of the system being proposed.

21. Coordinators are not currently required to be involved in post licensing conflicts such as interference resulting from equipment not being operated in accordance with recommended system parameters, or propagation anomalies not anticipated by the coordinator. Many, however, do participate to a certain extent in resolving such problems. Under the one coordinator per service approach being proposed here we believe coordinators should be involved if disputes arise. Accordingly, coordinators will be expected to be involved should post licensing conflicts pertaining to coordination arise.

22. Currently, the Commission recognizes an organization to be the coordinating committee of a particular radio service or group of users within that service.[24] In the NOI, we indicated that we could oversee coordinators by imposing pre-recognition requirements such as representativeness, data processing capability, compatibility with the FCC data system, etc. We stated that we could alternatively or additionally oversee coordinators on the basis of performance, such as the quality and timeliness of recommendations, and indicated that suggested performance standards would be helpful. Most of the comments indicated that the frequency coordinators should be representative of the users, and supported some type of pre-recognition requirements. As previously discussed, we are proposing to require that prospective coordinators (for all services) submit their qualifications to the Commission, and in the case of multiple submissions, the Commission will select the best qualified applicant based upon its assessment of the submitted qualifications. However, we are inclined to give great weight to the existing committee structure which is in place and which has worked very well over the years.

23. Concerning the issue of overseeing the performance of coordinating committees for such factors as quality and timeliness of recommendations, the NOI specifically requested suggestions on standards. Most of the comments agreed that some type of standards or guidelines should be established by the Commission. Timeliness, i.e., speed of providing a frequency recommendation, and quality, i.e., recommending the best available frequency, were the two performance criteria most often mentioned. However, none of the comments suggested time frames of coordination. After consideration of the comments on performance standards, we are proposing that each coordinating committee shall be subject to a performance analysis by the Commission when it is deemed necessary by the number of complaints received or if the Commission has reason to believe that a committees performance is below standard or not in the public interest. The Commission may withdraw recognition of a coordinating committee if it is established that a committee's performance is below standard or not in the best public interest. We are not proposing to establish a specific standard for speed of service since this would depend upon the individual committee's procedures and resources. We feel that a review of quality of service, by analyzing the type and number of complaints received, will indicate not only whether the appropriate frequencies are being recommended, but also whether coordination is being performed within a reasonable time.

24. We have considered whether the Commission should regulate the fees charged by coordinators or impose restraints on profitability or use of profits. Most of the comments indicated that the Commission should not get involved with fees; that fees charged (if any) should be determined by each coordinating group; that the coordination process should be non-profit; and that fees should reflect the actual cost of coordination. Several commentors feared that the coordinators might charge exorbitant fees for their service. After considering this matter we are inclined only to require that the coordinators establish standard charges reflecting the cost of providing various services, that these charges be uniformly applied to all would-be applicants and that the method of arriving at the charges be kept available for public inspection. Applicants may come to us if they believe these guidelines are being violated. Our ability to withdraw our recognition of a particular frequency coordinator should minimize the potential for any unfair practices in this regard.

25. We generally agree with the majority of comments on the issue of fees and are proposing that fees charged by frequency advisory committees must reasonably reflect the cost of providing service.

III. Summary of Proposals

26. In summary, we are proposing rules to govern frequency coordination and the role of non-Federal Government coordinators in the private land mobile licensing process. Under the proposed approach we would recognize one coordinator for each radio service or pool of frequencies. Applicants proposing new stations or modifying existing licenses would send their completed applications (Form 574) to the recognized coordinator in the service in which they are applying. The coordinator would check the application for completeness and accuracy, compliance with the Commission's rules, and determine the most suitable frequency, which may be either the applicant's or coordinator's choice. If an error is detected or the coordinator does not agree with the system parameters, the application would be returned to the applicant. The applicant may then submit to the coordinator a technical showing (field study) to support its choice of frequencies or other parameters in question. Once the coordinator is satisfied that the application is in order and that the proposed operation would result in the least amount of interference to existing users, the application would be forwarded to the Commission. If the applicant cannot convince the coordinator that its proposed operation is acceptable, the case would be submitted to the Commission for decision. Basically, this approach places more reliance on the private sector in the overall licensing process. However, the Commission would still retain final authority in all licensing matters. We are convinced that this approach would facilitate application processing, maximize spectrum utilization, provide an up-to-date data base, and allow for the introduction of new technologies with minimum disruption to existing operations.

27. Rule changes reflecting the proposed approach to frequency coordination are presented in Appendix C. Many of the rule changes concern only application procedures and processing. Because of their editorial nature, they may not have been specifically mentioned in the preceeding discussion. It is suggested that the proposed rules be carefully examined when preparing comments in this proceeding.

IV. Regulatory Flexibility Act Initial Analysis

28. *Reason for action.* The Commission believes that its rules and policies concerning private land mobile radio frequency selection and assignments should be updated, particularly since the Commission received Congressional Authorization in the 1982 amendments to the Communication Act to utilize the assistance of frequency coordinating committees. It is in this light that the Commission is proposing changes to its Parts 0, 1, and 90 rules.

29. *The Objectives.* The Commission's objective is to implement coordination procedures that would allow greater participation by frequency coordinators in the overall frequency assignment process, resulting in an accurate, up-to-date land mobile radio base.

30. *Legal Basis.* The actions proposed herein are taken pursuant to Sections 4(i), 303(b), 303(g), 303(r), and 331(b) of the Communications Act of 1934, as amended.

31. *Description, potential impact and number of small entities affected.* We do not believe that this NPRM will have a significant economic impact upon a substantial number of small entities. The proposed rules require that all applicants submit applications for station authorizations, modifications, and renewals directly to the appropriate radio service frequency coordinator. Some frequency coordinators will charge fees for their services, while others will not. In the services where fees are charged, some applicants will now be required to pay a coordination fee although under previous rules they may have elected to conduct field studies. It is felt however that coordination fees resulting from the proposed rules will probably be less than the cost to an applicant for a properly performed engineering field study. The proposed rules will have an effect on a few commercial organizations which have been providing licensing assistance to applicants, both in the preparation of applications and field studies. The overall economic impact to these few firms is unknown, since assistance provided to land mobile radio applicants is only a part of their overall business.

32. *Recording, recordkeeping and other compliance requirements.* No additional recording, recordkeeping or other compliance requirements are anticipated. The applicant, rather than sending the application directly to the Commission, would submit it to the appropriate frequency coordinator, who after review and concurrence, would then forward it to the Commission for final action.

33. *Federal rules which overlap, duplicate or conflict with this rule.* None.

34. *Any significant alternatives minimizing impact on small entities and consistent with the stated objectives.* None.

V. Ordering Clauses

35. Accordingly, notice is hereby given of rule making to amend the Commission's Rules and Regulations, in accordance with the proposal set forth in the attached Appendix C.

36. Additionally, applications now on file or those that subsequently may be filed proposing to convert community repeater operations to private carrier operations or to establish new private carrier systems will be returned without action.

37. It is further ordered that the Secretary shall cause a copy of this *Notice of Proposed Rule Making* to be served upon the Chief Counsel for Advocacy of the Small Business Administration. The Secretary shall also cause a copy to be published in the **Federal Register.**

38. We encourage all interested parties to respond to this *Notice of Proposed Rule Making* since such information as they may provide often forms the basis for further Commission action. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, and *ex parte* presentation is any written or oral communication (other than formal written comments/ pleadings or formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding, must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

39. Pursuant to applicable procedures set out in § 1.415 of the Rules and Regulations, 47 CFR § 1.415, interested persons may file comments on or before March 11, 1985 and reply comments on or before April 25, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public files and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

40. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file and original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file and original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commisison Public Reference

[23] When this requirement was adopted individual coordinators only kept licensee data for the service they coordinated. There was no way for the coordinator to determine the interference potential of the frequencies in other services.

[24] A list of the currently recognized frequency coordinating committees is presented in Appendix E.

Room at its headquarters in Washington, D.C.

41. For further information on this proceeding, contact Eugene Thomson or Herb Zeiler, Private Radio Bureau, Washington, D.C. 20554, (202) 634–2443.

(Secs. 4, 303, 48 stat., as amended, 1068, 1082; 47 U.S.C. 154, 303)

Federal Communications Commisison.

William J. Tricarico,

Secretary.

Appendix A

Formal comments were filed in this proceeding by the following:

Aeronautical Radio, Inc.
American Automobile Association
Associated Public-Safety Communication Officers, Inc.
Association of Maximum Service Telecasters
Bell Operating Companies
Black's Radio Co.
California Public Safety Radio Association, Inc.
Central Committee on Telecommunications of the American Petroleum Institute
Central Station Electrical Protection Association
Champagne-Webber, Inc.
Communications Engineering Co.
Comtronix, Inc.
Continental Telcom, Inc.
Environmental Lifestyle, Inc.
Forest Industries Telecommunications
Forestry Conservation Communications Association
General Electric Company
Greater Philadelphia Search and Rescue
Helper Instrument Co.
International Association of Fire Chiefs, Inc.
International Municipal Signal Association
International Taxicab Association
Manufacturers Radio Frequency Advisory Committee
Marshall Communications
Michigan Telephone Company
National Association of Business and Educational Radio, Inc.
National License Corporation
National Mobile Radio Asspciation
Q-Tronics, Ltd.
RMS Electronics, Inc.
Merrill T. See
David W. Shelton
Skyphone, Inc.
Special Industrial Radio Service Association, Inc.
Spectrum Resources, Inc.
State of California, Office of Telecommunications
Tel-Air Communications, Inc.
Teletech, Inc.
TRA Electronic Communications, Inc.
Utilities Telecommunications Council
Video Connection, Inc.

Reply comments were filed by the following:

A–1 Communications Inc.
Aeronautical Radio, Inc.
Air Mobile Systems
Associated Public-Safety Communications Officers, Inc.
Atlantic Communications, Inc.
Central Committee on Telecommunications of the American Petroleum Institute
Channel Communications, Inc.
Communications Specialists Co., Inc.
Cook's Communications
County of Chester, Pennsylvania
Dynatel Communications Corporation
Engineering Communications, Inc.
Frontier Radio, Inc.
Gabriel Communications
Hayworth Communication Service, Inc.
Lesa's 2-Way Radio
Manufacturers Radio Frequency Advisory Committee
McGee Communications-Electronics, Inc.
Motorola, Inc.
National Association of Business and Educational Radio, Inc.
National Mobile Radio Association
Resco, Inc.
Skory Communications
Special Industrial Radio Service Association, Inc.
Teletech, Inc.
Utilities Telecommunications Council

Appendix B

The current recognized frequency coordinating organizations for the private land mobile radio services are:

Radio service	Organization
Local Government	Any public safety coordinator.
Police	APCO.
Fire	IMSA.
Highway Maintenance	AASHTO.
Forestry-Conservation	FCCA.
Special Emergency	None.
Power	UTC.
Petroleum	API.
Forest Products	FIT.
Motion Picture	None.
Relay Press	None.
Special Industrial	SIRSA.
Business	NABER.
Business (Central Station only)	CSEPA.
Business (Airport only)	ARINC.
Manufacturers	MRFAC.
Telephone Maintenance	TELFAC.
Motor Carrier (property)	ATA.
Motor Carrier (urban passenger)	APTA.
Motor Carrier (interurban passenger)	ABA.
Railroad	AAR.
Taxicab	ITA.
Automobile Emergency	AAA.
Radiolocation	None.

Appendix C—Proposed Frequency Coordination Rules

Parts 0, 1, and 90 of the Commission's Rules and Regulations are amended to read:

PART 0—[AMENDED]

1. section 0.131 is amended by adding a new paragraph (g).

§ 0.131 Functions of the Bureau.

* * * * *

(g) Certifies frequency coordinating committees or organizations in the private land mobile radio services, considers petitions seeking review of the committee's actions, and engages in oversight of the committee's actions.

PART 1—[AMENDED]

2. section 1.912 is amended by adding a new paragraph (b).

§ 1.912 Where applications are to be filed.

* * * * *

(b) Unless otherwise specified, all applications for station authorizations and modifications under Part 90 of this chapter shall be sent to the certified frequency coordinator for the radio service concerned.

* * * * *

PART 90—[AMENDED]

3. In § 90.19(e)(17), the first sentence is revised to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(e) * * *

(17) This frequency is available for assignment for the development and operation of nonvoice systems. * * *

* * * * *

4. section 90.53(b)(8) and (b)(31) are revised to read as follows:

§ 90.53 Frequencies.

* * * * *

(b) * * *

(8) Applications for this frequency will not be granted when the distance between the proposed station and existing adjacent channel base station is less than 16 km. (10 mi.).

* * * * *

(31) This frequency is removed by 22.5 kHz from frequencies assigned to other radio services. Utilization of this frequency may result in, as well as be subject to, interference under certain operating conditions. During the frequency coordination precedure it is recommended that adjacent channel users be contacted to resolve potential interference problems before operations begin. Should interference occur, the licensee may be required to take necessary steps to resolve the problem. See § 90.173(b).

5. Section 90.67(c)(29) is revised to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(c) * * *

(29) This frequency is shared with the Taxicab and Special Industrial Radio Services. Use of this frequency is limit to stations located at least 80.5 km (50 miles) from the center of any urbanized area of 600,000 or more population (U.S. Census of Population, 1970). All operations on this frequency are limited to a maximum transmitter output power of 75 watts. Evidence of interservice coordination showing that minimum separation requirements for co-channel and adjacent channel operations have been satisfied is required.

* * * * *

6. Section 90.73(d)(28) is revised to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(d) * * *

(28) This frequency is shared with the Taxicab and Forest Products Radio Services. Use of this frequency is limited to stations located at least 80.5 km (50 miles) from the center of any urbanized area of 600,000 or more population (U.S. Census of Population, 1970). All operations on this frequency are limited to a transmitter putput power of 75 watts. Evidence of interservice coordination showing that the minimum separation requirements for co-channel and adjacent channel operations have been satisfied is required.

* * * * *

Section 90.93(c)(11) is revised to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(c) * * *

(11) This frequency is shared with the Forest Products and Special Industrial Radio Services. Use of this frequency is limited to stations located at least 80.5 km (50 miles) from the center of any urbanized area of 600,000 or more population (U.S. Census of Population, 1970). Evidence of interservice coordination showing that the minimum separation requirements for co-channel and adjacent channel operations have been satisfied is required.

* * * * *

8. Section. 90.127(a) is revised to read as follows:

§ 90.127 Filing of applications.

(a) Unless otherwise specified, all applications for station authorizations and modifications shall be submitted to the certified frequency coordinator for the radido service involved.

* * * * *

9. The introductory text of § 90.129 is revised to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

Each application received by the Commission shall be accompanied by the appropriate information listed below:

* * * * *

10. § 90.135(a)(3), (a)(4), (a)(5), (a)(8), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (c)(2) are revised and (b)(8) is added to read as follows:

§ 90.135 Modification of license.

(a) * * *

* * * * *

(3) Any change in output power from that authorized.

(4) Any change in antenna height from that authorized.

(5) Any change in the location or number of base station, control, or mobile transmitters from that authorized.

* * * * *

(8) Any change in the class of a land station including changing from multiple licensed to cooperated use, and unshared to shared use.

(b) * * *

* * * * *

(3) Change in the number and location of station control points.

(4) Change in the number of mobile units for stations assigned exclusive frequencies in the 470–512 MHz band.

(5) Change in the number of mobile units, and number and location of control stations for systems assigned exclusive frequencies in the 806–821 MHz band.

(6) Change in the number of mobile units operated by Radio-location Service licensees.

(7) Change enabling interconnection of the land station with the public switched telephone network. See § 90.477.

(8) Any other change not listed in paragraph (a) of this section.

* * * * *

(c)(1) * * *

(2) In the case of a change listed in paragraphs (b)(3), (b)(4), (b)(5), (b)(6), (b)(7) and (b)(8) of this section, the licensee shall notify the Commission within 30 days of the change. The notice may be filed on FCC Form 574 or may be contained in a letter specifying the nature of the change, the name and address of the licensee as appearing on Commission records, and the call sign, class, and radio service of the station. The notice shall be sent to: Federal Communications Commission, Gettsyburg, Pennsylvania 17325.

11. Section 90.137 is amended by revising the introductory text of paragraph (a) and adding paragraph (a)(3).

§ 90.137 Applications for operation at temporary locations.

(a) An application for authority to operate a base station or a fixed station at temporary locations for a period between 180 days and 1 year shall be submitted in accordance with the following:

* * * * *

(3) These applications shall contain evidence of frequency coordination in accordance with § 90.175.

* * * * *

12. Section 90.139 is revised as follows:

§ 90.139 Preliminary processing of applications.

(a) For those applicatons requiring frequency coordination in accordance with § 90.175, initial examination of all applications will be performed by the applicable radio service frequency coordinator. Applications which are incomplete with respect to answers, supplementary statements, execution, or other matters of a formal character shall be deemed to be defective and may be returned to the applicant with a brief statement as to such defects. In addition, if an applicant is requested to file any additional documents or information not included in the prescribed application form, failure to comply with such request will be deemed to render the application defective, and such application may be returned. Applications will also be deemed to be defective and may be returned to the applicant in the following cases:

(1) Statutory disqualification of applicant;

(2) Proposed use or purpose of station would be unlawful;

(3) Requested frequency is not allocated for assignment for the service proposed.

(b) Applications which are not in accordance with the provisions of this chapter, or other requirements of the Commission, will be considered defective and may be returned unless accompanied by a request in accordance with § 90.151 of this part.

(c) Applications received by the Commission from the frequency coordinators for filing are given a file number. The assignment of a file number to an application is for administrative convenience and does not indicate the acceptance of the application for filing and processing.

§ 90.141 [Reserved]

13. Section 90.141 is removed and reserved.

14. Section 90.145 is amended by adding a new paragraph (c)

§ 90.145 Special temporary authority.

* * * * *

(c) Requests to operate under special temporary authority for periods

exceeding 180 days shall be made through the applicable frequency coordinator.

15. Section 90.151 (d) is revised to read as follows:

§ 90.151 Requests for waiver.

* * * * *

(d) All requests for waiver of the rules in this part submitted with applications for new stations or modifications shall be submitted to the certified frequency coordinatior for the radio service involved. See § 90.127(a).

16. Section 90.159 is revised to read as follows:

§ 90.159 Temporary permit.

An applicant for a private land mobile station license utilizing an already authorized facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed temporary license certificate after submitting a formal application for station license to the appropriate frequency coordinating committee provided that the antenna(s) employed by the control station(s) is (are) twenty feet or less above ground or twenty feet or less above a manmade structure other than an antenna tower to which it is affixed. The temporary operation of stations, other than mobile stations within the Canadian coordination zone will be limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 6.1 meters above average terrain.

17. Section 90.175 is revised to read as follows:

§ 90.175 Frequency coordination requirements.

Except for applications listed in paragraph (g) of this section each application. (1) For a new frequency assignment; (2) for a change in existing facilities by increasing or decreasing the authorized power, raising or lowering the authorized antenna height, changing any authorized station location or the location of the antenna; (3) for the addition of a base station within the licensee's existing area of operation; or (4) for the addition of mobile and/or control stations to existing facilities, or for a change to or the addition of digital voice or nonvoice emission, shall include a showing of frequency coordination as set forth below.

(a) For frequencies below 25 MHz.

(1) No coordination is required.

(b) For frequencies between 25 and 470 MHz:

(1) A statement from a frequency coordinating committee recommending the optimum frequency with respect to cochannel operations and interference considerations. The Committee's recommendations may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate any contemplated interference. The Committee shall not recommend any adjacent channel frequency 15 KHz removed to existing stations which would result in a separation of less than 10 miles. If the frequency recommended is in the 150–170 MHz band, is 15 kHz removed from a frequency which is available to another radio service, and is assignable only after coordination, the committee's statement shall affirmatively show that coordination with a similar committee for the other service has been accomplished. When frequencies are shared by more than one service, concurrence shall be obtained from the other cognizant coordinators.

(c) For frequencies between 470 and 512 MHz and 806–821/851–886 MHz.

(1) A statement from a frequency coordinating committee recommending specific frequencies which are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service or category of users involved.

(d) For frequencies in the 929–930 MHz band.

(1) A statement from a frequency coordinating committee recommending the optimum frequency with respect to cochannel operations and interference considerations.

(e) Any recommendation submitted in accordance with paragraph (b)(1), (c)(1), or (d)(1) of this section is purely advisory in character and is not binding on either the applicant or the Commission. Applicants are advised not to purchase radio equipment on specific frequencies until a valid authorization has been obtained from the Commission.

(f) Applications for facilities near the Canadian border north of line A or east of line C in Alaska may require coordination with the Canadian government. See § 1.955 of this chapter.

(g) The following applications need not be accompanied by evidence of frequency coordination:

(1) Applications for a Federal Government frequency.

(2) Applications for a frequency in the band 216–220 MHz.

(3) Applications for a frequency allocated primarily for developmental operations.

(4) Applications for the special Industrial Radio service or the Business Radio Service specifying an itinerant operation only.

(5) Application in the Radiolocation Service.

18. Section 90.176 (a)(1), (a)(3), (b)(1), and (b)(3) are revised to read as follows:

§ 90.176 Interservice sharing of frequencies in the 150–174 and 450–474 MHz bands.

(a) * * *

(1) A determination by the applicant's frequency coordinating committee that there are no satisfactory frequencies available within the applicant's own radio service in the area of desired operation;

* * * * *

(3) A statement from the frequency coordinator(s) having responsibility for the coordination in the radio service(s) in which the frequency in question is assigned concurring in its assignment in the manner proposed and stating that it will not result in harmful interference to existing or planned systems in the service(s) in which the frequency is assigned.

* * * * *

(b) * * *

(1) A determination by the applicant's frequency coordinating committee that there are no satisfactory frequencies available within the applicant's own radio service in the area of desired operation;

* * * * *

(3) A statement from the frequency coordinator(s) having responsibility for the coordination in the radio service(s) in which the frequency in question is assigned concurring in its assignment in the manner proposed and stating that it will not result in harmful interference to existing or planned systems in the service(s) in which the frequency is assigned.

* * * * *

19. Section 90.354 is revised to read as follows:

§ 90.354 Forms to be used.

Applications for trunked radio facilities shall be submitted on FCC Forms 574 and 574 B to the appropriate radio service frequency coordinator.

20. Section 90.356 is amended by adding a new subparagraph (e) to read:

§ 90.356 Supplemental information to be furnished by applicants for facilities under this subpart.

* * * * *

(e) All applicants for these frequencies must comply with frequency coordination requirements of § 90.175(c).

21. Section 90.360 is revised to read as follows:

§ 90.360 Processing of applications.

Applications for facilities to operate on the frequencies governed by this Subpart will be processed as follows:

(a) All applications will be submitted to the appropriate frequency coordinator to determine whether they are acceptable for filing.

(b) Frequencies may be specified by the applicant pursuant to the applicable provisions of § 90.621 of the rules or the applicant may elect to have the frequency coordinator select the frequencies. Frequencies will be selected in accordance with the Commission's assignment policies and loading criteria. If the application cannot be granted because of lack of availability of frequencies, it will be placed in queue on a waiting list in the order it was received.

(c) After determining that the application is suitable for filing, and making a frequency recommendation, the coordinator will submit the application to the Commission.

22. Section 90.390 is revised to read as follows:

§ 90.390 Temporary permit.

An applicant for a Subpart M radio station license to use an already existing facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed certification of FCC Form 572 after submitting a formal application for station license to the appropriate frequency coordinator, provided that the antenna(s) employed by the control station(s) is (are) twenty feet or less above ground or twenty feet or less above a manmade structure other an antenna tower which it is affixed.

23. Section 90.494(b) is revised to read as follows:

§ 90.494 One-way paging operations in the 929–930 MHz band.

* * * * *

(b) All applicants for these frequencies must comply with the frequency coordination requirements of § 90.175(d).

* * * * *

24. Section 90.605 is revised to read as follows:

§ 90.605 Forms to be used.

Applications for conventional and trunked radio facilities shall be submitted on FCC Forms 574 and 574 B to the appropriate radio service frequency coordinator.

25. Section 90.607 is amended by adding a new subparagraph (e) to read:

§ 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.

* * * * *

(e) All applicants for these frequencies must comply with the frequency coordination requirements of § 90.175(c).

26. Section 90.611 is revised to read as follows:

§ 90.611 Processing of applications.

Applications for facilities to operate on the frequencies governed by this subpart will be processed as follows:

(a) All applications will be submitted to the appropriate frequency coordinator to determine whether they are acceptable for filing.

(b) Frequencies may be specified by the applicant pursuant to the applicable provisions of § 90.621 of the rules or the applicant may elect to have the frequency coordinator select the frequencies. Frequencies will be selected in accordance with the Commission's assignment policies and loading criteria.

(c) After determining that the application is suitable for filing, and making a frequency recommendation, the coordinator will submit the application to the Commission.

27. In § 90.621 the introductory text of paragraph (a) and the text of (c) are revised to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) Applicants eligible in the Public Safety/Special Emergency, Industrial/Land Transportation, Business, and SMRS Categories must specify the frequencies on which the proposed system will operate pursuant to a recommendation by the appropriate frequency coordinating committee.

* * * * *

(c) Trunked systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, SMRS and Business Categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour and to limit co-channel interference levels to 30 dBu over an applicants requested service area. This would result in a mileage separation of 70 miles for typical system parameters. Separations will be less than 70 miles where the requested service areas, terrain or other factors warrant reduction. We will not accept recommendations of more than 70 miles separation from coordinating groups. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account.

* * * * *

28. Section 90.657 is revised to read as follows:

§ 90.657 Temporary permit.

An applicant for a Subpart S radio station license to use an already existing facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed certification of FCC Form 572 after submitting a formal application for station license to the appropriate frequency coordinator, provided that the antenna(s) employed by the control station(s) is (are) twenty feet or less above ground or twenty feet or less above a manmade structure other than an antenna tower to which it is affixed.

[FR Doc. 84-29907 Filed 11-15-84; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 223
Friday, November 16, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Directory of Administrative Hearing Facilities; Publication

The Office of the Chairman of the Administrative Conference of the United States announces publication of the expanded second edition of its "Directory of Administrative Hearing Facilities." The directory is designed to assist persons who are scheduling administrative hearing and conferences to locate and reserve appropriate facilities at minimal expenses. It identifies and describes approximately 1700 courtrooms, conference rooms, hearing rooms, and other locations across the country in which administrative proceedings may be held. The directory also lists contacts to call when seeking to reserve these facilities.

The Office of the Chairman has a limited supply of copies of the directory for distribution to federal agencies and others who have a special need or interest. To request a copy, write to Charles Pou, Jr., Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, D.C. 20037, or telephone (202) 254–7065.

November 13, 1984.

Richard K. Berg,

General Counsel.

[FR Doc. 84–30133 Filed 11–15–84; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Conservation Review Group; Meeting

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Conservation Program (ACP) National Conservation Review Group will meet to consider recommendations from State and County ACP review groups with respect to the operational features of the program. Also, comments and suggestions will be received from the public concerning procedures to govern the various conservation and environmental programs administered by the Agricultural Stabilization and Conservation Service (ASCS).

DATE: Meeting date: December 12, 1984.

ADDRESSES: Meeting location: Room 4960 South Building, U.S. Department of Agriculture, 14th & Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Chief, Conservation Programs Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 3606–S, South Building, Washington, D.C. 20013, 202–447–7333.

SUPPLEMENTARY INFORMATION: The Agricultural Conservation Program (ACP) National Conservation Review Group meeting is scheduled to be held from 9:00 a.m. to 12:00 p.m. on December 12, 1984, in Room 4960, South Building, U.S. Department of Agriculture, Washington, D.C. Meeting sessions will be open to the public. The agenda will include consideration of State and county review group recommendations for changes in the administrative procedures and policy guidelines of the ACP. Also an opportunity will be provided for the public to present comments on the various conservation and environmental programs. The meeting may also include discussion of current procedures, criteria, and guidelines relevant to the implementation of this program.

Because of the limitations of space available, persons desiring to attend the meeting should call Mr. Vincent Grimes (202) 447–7333 to reserve a seat.

Dated: November 13, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84–30175 Filed 11–15–84; 8:45 am]

BILLING CODE 3410–05–M

Soil Conservation Service

Rock Creek Watershed, Adams County PA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rock Creek Watershed, Adams County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Olson, State Conservationist, Soil Conservation Service, Federal Building 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone (717) 782–4453.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James H. Olson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include the installation of conservation and management practices for erosion and sediment control on 12,400 acres of cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting James H. Olson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program.) Presidential executive order 12372 establishing the state and local review of federal and federally assisted programs and projects is applicable.

Dated: November 7, 1984.

James H. Olson,

State Conservationist.

[FR Doc. 84–30080 Filed 11–15–84; 8:45 am]

BILLING CODE 3410–16–M

Finding of No Significant Impact; Mitten Lane Flood Prevention and Drainage RC&D Measure, Berkeley County, SC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mitten Lane Flood Prevention and Drainage RC&D Measure, Berkeley County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina, 29201, telephone (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns flood prevention and improved drainage for area in the Mitten Lane area just outside Moncks Corner. The planned works of improvement include one and one-half miles of stream channel work to increase flow capacity.

The Notice of Finding No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program.)

Dated: November 7, 1984.

Billy Abercrombie,

State Conservationist.

[FR Doc. 84–30108 Filed 11–15–84; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness, Capital Resources Committee; Cancellation of Meeting

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of Meeting Cancellation.

SUMMARY: This notice announces the cancellation of a meeting of the Capital Resources Committee of the Commission. The meeting was to have been held on November 19, 1984.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place NW., Washington, DC. 20503, telephone: 202–395–4527.

SUPPLEMENTARY INFORMATION: A notice in the **Federal Register** for November 2, 1984 (p. 44118) informed the public of a meeting of the Capital Resources Committee of the President's Commission on Industrial Competitiveness. The meeting was scheduled for November 19, 1984. The meeting has been cancelled.

Dated: November 14, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84–30276 Filed 11–14–84; 4:10 pm]

BILLING CODE 3510–18–M

International Trade Administration

[A–122–005]

Carbon Steel Bars and Structural Shapes From Canada; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On September 28, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on carbon steel bars and structural shapes from Canada. The review covers carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd., its subsidiary, Vancouver Rolling Mills, Ltd., the six other known exporters of this merchandise to the United States, and the period September 1, 1982, through August 31, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 38323) the preliminary results of its administrative review of the antidumping finding on carbon steel bars and structural shapes from Canada (29 FR 13319, September 25, 1964). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of carbon steel bars, bar-shapes under 3 inches, and structural shapes 3 inches and over, currently classifiable under items 606.8300 and 609.8000 of the Tariff Schedules of the United States Annotated, manufactured by Western Canada Steel Limited and/or its subsidiary, the Vancouver Rolling Mills Limited of Vancouver, Canada.

The review covers Western Canada Steel Limited, its subsidiary, Vancouver Rolling Mills, Limited, the six other known exporters of this merchandise to the United States, and the period September 1, 1982, through August 31, 1983.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review

are the same as those presented in the preliminary results of review, and we determine that the following margins exist for the period September 1, 1982, through August 31, 1983.

Manufacturer/Exporter	Margin (percent)
Western Canada Steel Ltd	[1] 40.64
Western Canada/A.J. Forsyth Co., Ltd	[1] .01
Western Canada/Mitsubishi Canada Ltd	[1] .01
Western Canada/Mitsui & Co. (Canada) Ltd	[1] .01
Western Canada/Tudor Sales Ltd	[1] .01
Western Canada/Cam Chain Co., Ltd	3.20
Western Canada/Chatham Steel Ltd	3.20

[1] No shipments during the period.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. The Department shall waive the cash deposit requirement for A.J. Forsyth Co., Ltd., Mitsubishi Canada Ltd., Mitsui & Co. (Canada) Ltd., and Tudor Sales Ltd., since the margins for these firms are less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes. For any shipments from a new exporter of carbon steel bars and structural shapes manufactured by Western Canada Steel, Ltd. or its subsidiary, Vancouver Rolling Mills Ltd., not covered in this or prior reviews, whose first shipments occurred after August 31, 1983 and who is unrelated to any covered firm, a cash deposit of 3.20 percent shall be required on future entries. These deposit requirements and waivers are effective for all shipments of Canadian carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd. or its subsidiary, Vancouver Rolling Mills Ltd., entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

November 6, 1984.

[FR Doc. 84-30083 Filed 11-15-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-002]

Chloropicrin From the People's Republic of China; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Duty Order

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on chloropicrin from the People's Republic of China. The review covers the one known Chinese exporter and one known third-country reseller of this merchandise to the United States and the period September 19, 1983 through January 31, 1984.

The Chinese exporter failed to respond to our questionnaire. For that firm we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Maureen A. Flannery or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 10691) an antidumping duty order on chloropicrin from the People's Republic of China and announced its intent to conduct an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of chloropicrin, also know as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant. Chloropicrin is currently classifiable under items 408.1600, 408.2900, and 425.5290 of the Tariff Schedules of the United States Annotated.

The review covers the one known Chinese exporter, China National Chemicals Import and Export Corporation (SINOCHEM), and one known third-country (Hong Kong) reseller, William Hunt & Co. (International) Ltd., of this merchandise to the United States and the period September 19, 1983 through January 31, 1984.

William Hunt & Co. (International) Ltd. did not ship Chinese chloropicrin to the United States during the period. The estimated antidumping duties cash deposit rate for the firm will be the fair value rate. SINOCHEM failed to respond to our questionnaire. For that non-responsive firm the Department used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is that firm's fair value rate.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period September 19, 1983 through January 31, 1984:

Exporter/third-country reseller (country)	Margin (percent)
SINOCHEM	59
SINOCHEM/William Hunt & Co. (International) Ltd. (Hong Kong)	[1] 59

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties

of 58 percent shall be required on all shipments of Chinese chloropicrin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1685(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

November 5, 1984

[FR Doc. 84-30081 Filed 11-15-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-025]

Clear Sheet Glass From Italy; Final Results of Administrative Review of Dumping Finding

AGENCY: International Trade Administration/Import Administration. Commerce.

ACTION: Notice of Final Results of Administrative Review of Dumping Finding.

SUMMARY: On July 25, 1984, the Department of Commerce published the preliminary results of its administrative review of the dumping finding on clear sheet glass from Italy. The review covers the five known manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and the period December 1, 1982 through November 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 29990-29991) the preliminary results of its administrative review of the dumping finding on clear sheet glass from Italy (36 FR 23360, December 9, 1971). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of clear sheet glass from Italy. This merchandise is currently classifiable under items 542.3120 through 542.4835 of the Tariff Schedules of the United States Annotated.

The review covers the five known manufacturers and/or exporters of this merchandise to the United States currently covered by the findings and the period December 1, 1982 through November 30, 1983.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as the preliminary results, and we determine that the following margins exist for the period:

Manufacturer/exporter	Margin (percent)
Societa Italiano Vetro	[1] 19.02
Vernante Pennitalia S.p.A.	[1] 44.56
Vetreria Milanese Luxottini	[1] 45.80
Vetrobel S.I.R.T.	59.80
Veneziana Vetro S.p.A.	4.51

[1] No shipments during the period.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the perenctages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any future shipments from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1983, and who is unrelated to any covered firm, a cash deposit of 4.51 percent shall be required. These deposit requirements shall become effective on the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary For Import Administration.

November 1, 1984.

[FR Doc. 84-30080 Filed 11-15-84; 8:45 am]

BILLING CODE 3510-DS-M

Viscose Rayon Staple Fiber From France; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On August 30, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from France. The review covers the two known exporters and one third-country (Netherlands) reseller of this merchandise to the United States and the period March 1, 1983 through February 29, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of reveiw.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Ron Nichols or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 34387) the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from France (44 FR 17156, March 21, 1979). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous

form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated.

The review covers the two known exporters of French viscose rayon staple fiber, Rhone-Poulenc Textile and Achille Bayart et Cie, the one known third-country (Netherlands) reseller, B.V. Textielfabriek Huizen, and the period March 1, 1983 through February 29, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our reveiw are the same as those presented in the preliminary results, and we determine that, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 24 percent shall be required on all shipments of French viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative reveiw. The Department intends to begin immediately the next administrative review.

The Department encourage interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a) of the Tarriff Act of 1930 (19 U.S.C. 1675(a)(1) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

November 5, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30082 Filed 11-15-84; 8:45 am]
BILLING CODE 3510-DS-M

[Case No. 656]

J.O.K. Inc., et al.; Order Temporarily Denying Export Privileges

In the matter of: Josef Kubicek, individually and doing business as, Exclusitrade, Inc. and J.O.K., Inc., with locations at 18 La Vista Verde, Rancho Palos Verdes, CA 90274 and 2001 Artesia Boulevard, Redondo Beach, CA 90278 and Lakeside Office Park, No. 4 Wakefield, MA 01880; William Carlton Dart, individually and doing business as, Display Systems, Inc. and Perpetuum Inc., with locations at 2000 Martin Avenue, Santa Clara, CA 95050; Robert William Haire, Sr., individually and doing business as, Display Systems, Inc. 2000 Martin Avenue, Santa Clara, CA 95050 and Exclusitrade, Inc. with locations at 18 La Vista Verde Rancho, Palo Verdes, CA 90274 and 2001 Artesia Boulevard, Redondo Beach, CA 90278 and Lakeside Office Park, No. 4 Wakefield, MA 01880; Raymond Shields Spitz, Star Route 45E, Spirit Lake, ID 83869.

The Department of Commerce (Department), pursuant to the provisions § 388.19 of the Export Administration Regulations (15 CFR Parts 388–399) (1984)) (Regulations), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to: Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc., with offices located in California and Massachusetts; William Carlton Dart, individually and doing business as Display Systems, Inc. and Perpetuum, Inc., both of Santa Clara, California; Robert William Haire, Sr., doing business as Exclusitrade, Inc. and Display Systems, Inc.; and Raymond Shields Spitz, of Spirit Lake, Idaho.

The Department states: (1) That, from June 1983 to February 1984, Josef Kubicek, William Carlton Dart, Robert William Haire, Sr., and Raymond Shields Spitz conspired and acted in concert to export U.S.-origin equipment used in the production, manufacture and construction of integrated circuit devices from the United States to Czechoslovakia in violation of the Regulations, as described in greater detail in (2) through (6); (2) that, in June 1983, in furtherance of their conspiracy, Kubicek and Haire, doing business as Exclusitrade, purchased six U.S.-origin Model 320A and 320B wafer polishers having limited manufacturing capabilities; (3) that, in October and November 1983, Dart and Haire, doing business as Display Systems Inc., and Kubicek, doing business as Exclusitrade and J.O.K., Inc., contracted for two of these polishers to be modified so as to have the much greater manufacturing capabilities of the U.S. manufacturer's Model 3700 wafer polishers, incorporating the condition that two more polishers would be similarly modified upon acceptance by the Czechoslovakian purchaser of the first two polishers; (4) that, after learning that the Department, which reinstated the validated export license requirement for Model 3700 wafer polishers in June 1981, would not issue a validated license for the export of such equipment to Czechoslovakia, Kubicek, et al., arranged for a third party to export the two modified polishers as Model 320B polishers under general license G–DEST (the second two modified polishers were to be exported upon the successful export and acceptance by the Czechoslovakian purchaser of the first two polishers); (5) that, on December 13, 1983, in furtherance of the conspiracy, Spitz received training in the operation of the modified polishers to facilitate his installation of the equipment in Czechoslovakia; and (6) that the first two modified polishers were seized at Los Angeles International Airport on February 9, 1984 after being processed for export by the third party to Czechoslovakia as Model 320B wafer polishers under general license G–DEST.

The Department further states that it believes that respondents herein may in the future engage in a similar pattern of conduct contrary to the Regulations, unless appropriate action is taken to preclude such attempts.

Based on the showing made by the Department, I find that an order temporarily denying all export privileges to respondents is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982)), and the Regulations.[1]

Anyone who is now or may in the future be dealing with the respondents or anyone who is now or may be subsequently named as a related party in transactions that in any way involve U.S.-origin commodities or technical data in specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which any respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation

II. The respondents, their successors or assignees, officers, partners, representatives agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application. (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extend not only to the respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(b) of the Regulations, any respondent or any related party may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room H6716 14th Street and Constitution Avenue NW., Washington, D.C. 20230, an appropriate motion for relief and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This order is effective immediately. It remains in effect until the final disposition of any administrative proceedings that might be initiated against the respondents based on the Department's allegations recited at the outset of this Order. A copy of this Order and Parts 387 and 388 of the Regulations shall be served upon each respondent.

Dated: November 6, 1984.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84-30079 Filed 11-15-84; 8:45 am]
BILLING CODE 3510-DT-M

[1] The authority granted by the Act terminated March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

[A–405–401]

Carbon Steel Plate From Finland; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for the respondent in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A); and, that we have determined to postpone our final determination as to whether sales of carbon steel plate from Finland have occurred at less than fair value, until not later than December 7, 1984.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: On March 6, 1984, the Department of Commerce published notice in the **Federal Register** (49 FR 9873) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether carbon steel plate from Finland was being, or was likely to be, sold at less than fair value. On July 25, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 29986). The notice stated that if these investigations proceeded normally we would make our final determination by October 2, 1984..

On August 6, 1984 counsel for the respondent in this case, Rautaruukki Oy, requested that we extend the period for the final determination until December 7, 1984, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if an exporter who accounts for a significant proportion of the merchandise requests an extension after an affirmative preliminary determination. Rautaruukki Oy is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than December 7, 1984.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30159 Filed 11-15-84; 8:45 am]
BILLING CODE 3510-DS-M

[A–122–016]

Antidumping Duty Order; Choline Chloride From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning choline chloride from Canada, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that choline chloride from Canada is being sold at less than fair value and that sales of choline chloride from Canada are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of choline chloride from Canada made on or after April 30, 1984, the date on which the Department published its "Preliminary Determination of Sales At Less Than Fair Value" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: David Johnston, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–2239.

SUPPLEMENTARY INFORMATION: The merchandise covered by this investigation is choline chloride, which is currently classifiable under item number 439.5055 of the *Tariff Schedules of the United States Annotated (TSUSA)*.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on April 30, 1984, the Department published its preliminary determination that there was reason to believe or suspect that choline chloride from Canada was being sold at less than fair value (49 FR 18344). On September 18, 1984, the Department published its final determination that these imports were being sold at less than fair value (49 FR 36532).

On October 29, 1984, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations are materially injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United Stastes Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of choline chloride from Canada. These antidumping duties will be assessed on all unliquidated entries of choline chloride entered, or withdrawn from warehouse, for consumption on or after April 30, 1984, the date on which the Department published its "Preliminary Determination of Sales At Less Than Fair Value" notice in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	*Weighted-Average Margins (%)*
All Manufacturers/Producers/ Exporters	9.73

This determination constitutes an antidumping order with respect to choline chloride from Canada, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30160 Filed 11-15-84; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 41030-4130]

Federal Information Processing Standard Minimal BASIC (FIPS PUB 68); Proposed Interpretation 1; Requirements and Exception Reporting

Correction

In FR Doc. 84-28548, beginning on page 43578, in the issue of Tuesday, October 30, 1984, make the following corrections:

1. On page 43578, column two, under "*Issues*" and "*1*", in line two, "100" should read "110".

BILLING CODE 1505-01-M

[Docket No. 40110-4110]

Approval of Federal Information Processing Standard 107, Local Area Networks: Baseband Carrier Sense Multiple Access With Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol

Correction

In FR Doc. 84-28664, beginning on page 43740, in the issue of Wednesday, October 31, 1984, make the following correction.

On the same page, column three, fifth paragraph, third line, "(IELL)" should read "(IEEE)".

BILLING CODE 1505-01-M

[Docket No. 4011-4111]

Approval of Federal Information Processing Standard 8-5, Metropolitan Statistical Areas (Including CMSAs, PMSAs, and NECMAs)

Correction

In FR Doc. 84-28665, beginning on page 43739, in the issue of Wednesday, October 31, 1984, make the following corrections:

1. On page 43739 column one, the docket number should read as set forth above.

2. On the same page, same column, the last word of the subject heading should read as set forth above.

3. On the same page, column three, paragraph numbered "3.", line four, the last word should read "(MSAs)", and on line eleven, add the word "concept" after the word "general".

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Southern Pacific Transportation Company From Objection of the California Coastal Commission to Proposed Santa Ynez River Bridge Rehabilitation Project; Appeal

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal.

SUMMARY: On October 24, 1984, Southern Pacific Transportation Company (SPTC) appealed to the Secretary of Commerce (Secretary) an objection by the California Coastal Commission (CCC) to SPTC's certification that its proposed Santa Ynez Bridge Rehabilitation Project, requiring permits from the Army Corps of Engineers and the Air Force, is consistent with the California Coastal Management Program. This appeal has been filed pursuant to subparagraph (A) of section 307(c)(3) of the Coastal Zone Management Act of 1972, (CZMA) as amended, 16 U.S.C. 1456(c)(3)(A).

Interested persons are advised that they may submit comments to the Secretary on the issues raised by the parties to this appeal within 30 days from the date of this notice. Such comments should be sent to Robert J. McManus, General Counsel, National Oceanic and Atmospheric Administration, Room 5814, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Copies of comments should also be sent to the following persons:

1. Ms. Mary Hudson, Staff Attorney, California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, CA 94105
2. Mr. Dick Clark, Regulatory Branch, Department of the Army, Los Angeles District Corps of Engineers, Construction-Operations Division, 300 N. Los Angeles Street, Los Angeles, CA 90012
3. Mr. Allen Naydol, 4392 AEROSG–DED, Vanderberg Air Force Base, CA 93437
4. David W. Long, Southern Pacific Transportation Corporation, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

Comments should address whether SPTC's proposed bridge rehabilitation project complies with the regulatory criteria, as set forth at 15 CFR 930.121 and 930.122, to be considered by the Secretary in deciding this appeal.

Access to SPTC's notice of appeal and accompanying public information is available to the public at the following State and Federal offices during normal business hours:

1. California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, CA 94105
2. Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Department of Commerce, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235
3. Department of the Army, Los Angeles District Corps of Engineers, Construction-Operations Division, 300 N. Los Angeles Street, Los Angeles, CA 90012.

FOR FURTHER INFORMATION CONTACT: David P. Drake, Attorney Advisor, Office of the Assistant General Counsel for Ocean Services (202–254–7512).

SUPPLEMENTARY INFORMATION: SPTC has proposed to rehabilitate its existing railroad bridge across the mouth of the Santa Ynez River near Surf, California. The project calls for excavation of the river bed and relocation of the bridge. SPTC has prepared an Environmental Assessment and a mitigation plan to offset project impacts.

In July 1984, SPTC submitted a certification to the CCC stating that the proposed activity complied with the approved California Coastal Management Program and that it would be conducted in a manner consistent with the program. The CCC objected to the consistency certification on the grounds that: (1) The project will alter flow of the river, which in turn may have an adverse effect on the estuary habitat; (2) the proposed excavation is inconsistent with the estuary fill and dredge provisions of the California Coastal Act (section 30233); and (3) the project will interfere with the public's right to access to the ocean during the period of construction (sections 30211 and 30212).

SPTC appealed this objection to the Secretary on the grounds that SPTC's bridge rehabilitation project is "consistent with the objective of [the CZMA]" and "necessary in the interest of national security." 16 U.S.C. 1456(c)(3)(A). The Secretary may sustain SPTC's appeal on either of these two grounds. To sustain the appeal on the first ground, the regulatory criteria set forth at 15 CFR 930.121 must be met: (a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the CZMA; (b) when performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest; (c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Clean Water Act, as amended; and (d) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the state management program. To meet the second ground, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed.

If the Secretary does not find that the activity meets either of these two grounds, the Federal agency shall not approve the activity.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Administration)

Dated: November 7, 1984.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 84-30102 Filed 11-15-84; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Level for Certain Man-Made Fiber Textile Products Produced or Manufactured in Brazil

November 13, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 19, 1984. For further information contact James Nader, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated March 28, 1984 (FR 13084) established restraint limits for certain specific categories of cotton and man-made fiber textiles and textile porducts, including Category 614 (other woven fabric, n.e.s.), produced or manufactured in Brazil and exported during the agreement year which began in April 1, 1984 and extends through March 31, 1985. The Governments of the United States and the Federative Republic of Brazil have agreed to amend further their Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982, as amended, to increase the designated consultation level for Category 614 from 3,000,000 square yards to 4,000,000 square yards for goods exported during the current agreement year which began on April 1, 1984. The letter to the Commissioner of Customs which follows this notice amends the March 28, 1984 directive to increase this level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983

(48 FR. 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 13, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of March 28, 1984, which established import restraint limits for certain categories of cotton and man-made fiber textiles and textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1984.

Effective on November 19, 1984, the directive of March 28, 1984 is hereby amended to include an adjusted restraint level of 4,000,000 square yards [1] for man-made fiber textile products in Category 614.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30101 Filed 11-15-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The level has not been adjusted to account for any imports exported after March 31, 1984.

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; Notice of Modification to Systems of Records and New Routine Use

AGENCY: Commodity Futures Trading Commission.

ACTION: New Systems Notice of intended modifications to existing systems of records and of new routine use.

SUMMARY: The Commodity Futures Trading Commission is intending to modify two existing systems of records to include materials submitted by two new categories of registrants—leverage transaction merchants and their associated persons—or obtained by the Commission as a result of processing such persons for registration. In addition the two systems are being modified to reflect the planned assumption of certain registration functions, including the maintenance of Commission registration records, by the National Futures Association. The Commission is also proposing a routine use to allow the disclosure of information concerning guaranteed introducing brokers to the guaranteeing futures commission merchants.

EFFECTIVE DATE: December 31, 1984, or such earlier date as the Commission may announce by appropriate notice in connection with the transfer of functions to the National Futures Association unless, with respect to the new routine use, any comments received by the Commission would result in a different determination.

ADDRESS: Comments should be addressed to Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581; Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581; telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

Introduction

Following the directives of the Privacy Act of 1974, the Commodity Futures Trading Commission currently maintains two systems of Commission records related to the registration of persons engaging in certain types of commodity-related activities: CFTC-12 (Fitness Investigations) and CFTC-20 (Registration of Futures Commission Merchants, Floor Brokers, Associated Persons, Commodity Trading Advisors, Commodity Pool Operators and Introducing Brokers). On November 9, 1984, the Commission submitted a New Systems Report concerning modifications to these systems to the Director of the Office of Management and Budget, the President of the Senate and the Speaker of the House of Representatives.

As currently set forth, these two systems contain Registration Forms 7-R, 8-R and 8-S, related supplements and schedules, Forms 3-R and 8-T, fingerprint cards, correspondence, and reports reflecting information developed from various sources relating to the registration and fitness of applicants, registrants and persons affiliated with futures commission merchants (FCMs), introducing brokers (IBs), commodity pool operators (CPOs) and commodity trading advisors (CTAs).[1] The Commission now intends to modify CFTC-12 and CFTC-20 to reflect (1) the creation of two new classes of registrants, leverage transaction merchants (LTMs) and associated persons (APs) of LTMs, and (2) the planned transfer to the National Futures Association (NFA) of certain registration functions, including the maintenance of Commission records, with respect to FCMs, CPOs, CTAs and their respective APs. In addition the Commission is proposing as a routine use the disclosure of information in each system to any FCM with whom an applicant or registered IB has entered or plans to enter a guarantee agreement under Commission regulations.

LTMs and Their APs

On February 13, 1984, the Commission published in the **Federal Register** amendments to its regulations which, among other things, established a requirement that leverage transaction merchants and their associated persons register with the Commission in order to engage in leverage transaction activities.[2] The Commission took that action pursuant to the authority contained in sections 8a(5) and 19 of the Commodity Exchange Act as amended by the Futures Trading Act of 1982.[3] The registration procedures, which became effective on April 13, 1984, were patterned after those applicable to FCMs, CPOs, CTAs, IBs and their APs. For example, LTMs must submit Form 7-R (and Form 8-R for each principal of the firm) as do FCMs, IBs, CPOs, and CTAs. Similarly, APs of LTMs must submit Form 8-R as now done by other APs. The Commission's rules on fingerprinting also apply. Thus the new regulations have not changed the kind of information collected but merely enlarge the categories of persons submitting the information. The Commission's description of CFTC-12 and CFTC-20 has been revised to incorporate the regulatory additions.

NFA's Role

On September 28, 1984, the Commission issued an Order pursuant to Section 8a(10) of the Act authorizing NFA to assume, no later than December 31, 1984, the responsibility for performing certain portions of the Commission's registration functions applicable to FCMs, CPOs, CTAs and their APs. Specifically NFA is authorized to process and, as appropriate, grant applications for initial and renewed registration of those persons and to issue temporary licenses to eligible APs. The Commission had previously authorized NFA to perform such functions with respect to IBs and their APs.[4] In the September 28 Order, which was published in the **Federal Register** on October 9, 1984, the Commission also designated NFA as the Commission's official custodian of the registration records which NFA must maintain in connection with its performance of the Commission's registration functions.[5]

On July 8, 1983, the Commission published a revised description of its two systems of registration records to reflect, among other things, the fact that NFA would be maintaining the registration records petaining to IBs and their APs.[6] As a consequence of the Commission's recent determination to transfer registration functions for additional categories of registrants to NFA, the Commission has now further modified its description of CFTC-12 and CFTC-20 provide for both NFA's expanded role and the attendant change in location of the records.

Routine Use

In addition to modifying CFTC-12 and CFTC-20, the Commission is proposing to provide for an additional routine use that will apply solely to limited portions of these two systems of records.[7] The routine use would permit the disclosure of any information contained in CFTC-12 and CFTC-20 pertaining to an applicant or register IB to any FCM with whom the IB has entered or plans to enter a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10). The purpose behind this proposal relates to the responsibility a guaranteeing FCM assumes for the IB's financial obligations and the protection of the IB's customers. It is analogous to the purpose supporting the existing routine use of registration information, which permits disclosure to a person (FCM, IB, COP, CTA or LTM) with whom an applicant or registrant is or plans to be affiliated as an associated person or principal. As with the "employer routine use," the "guarantor-FCM routine use" will facilitate the disclosure of nonpublic information that can assist the FCMs in monitoring the caliber of persons engaging in activities as IBs and for which the FCMs are guaranteeing compliance with the Act and regulations thereunder.

The Commission notes that the protections of the Privacy Act address information about individuals which, as indicated in guidelines issued by the Office of Management and Budget, in personal (and not entrepreneurial) in nature.[8] Accordingly, the Commission believes that it is not required to adopt this disclosure policy as a formal routine use, since with respect to those IBs that are sole proprietors (individuals), the information collected pertains to the IBs in an entrepreneurial role. Nevertheless, in the interest of providing notice to IB applicants and registrants that such information contained in their registration records may be disclosed without their specific consent to FCMs by which they are or may be guaranteed, the Commission is publishing this additional routine use as part of the revised description of CFTC-12 and CFTC-20.

Description of Systems of Records

CFTC-12

SYSTEM NAME:

Fitness Investigations.

SYSTEM LOCATION:

Division of Trading and Markets, 2033 K Street, NW., Washington D.C. 20581. Limited records are located in the Chicago regional office, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606. Limited records on futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and their respective associted persons and principals are also located at the offices of the National Futures Association (NFA), 200 West Madison Street, Suite 1600, Chicago, Illinois 60660.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied or who may apply to the Commission or NFA, as applicable, for registration as floor brokers or as associated persons, and principals (as defined in 17 CFR 3.1) of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and leverage transaction merchants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes copies of applications (Forms 7-R, 8-R, and 8-S), biographical supplements (Form 8-R), other forms (Forms 8-T and 3-R), supplementary attachments, fingerprint cards, correspondence, reports and memoranda reflecting information developed from various sources outside the agency and NFA. In addition, the system contains records of each CFTC fitness investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4f(1), 4k(4), 4k(5), 4n(1), 8a(1)-(5), 8a(10) and 19 of the Commodity Exchange Act as amended, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6n(1), 12a(1)-(5), 12a(10) and 23 (1982).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to all of the Commission's systems of records, including this system, were set forth under the caption, "General Statement of Routine Uses," in 47 FR 43759, 43760-61 (October 4, 1982), and subsequently modified in 47 FR 44830, 44831 (October 12, 1982). In addition, information contained in this system of records may be disclosed by the Commission as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchant with whom an applicant or registered introducing broker has or plans to enter a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records maintained by FNA, but any such disclosure must be made in accordance with Commission-approved NFA rules and under circumstances authorized by the Commission as consistent with Commission's regulations and routine uses. The currently authorized circumstances are set forth in the Commission's September 28, 1984 Order authorizing NFA to perform certain Commission registration functions including the maintenance of Commission records and are published at 49 FR 39593, 39596 (October 9, 1984), except that Item 2b therein is hereby modified to eliminate the requirement of specific consent by the applicant or

[1] *See* 48 FR 31446 (July 8, 1983) and 48 FR 44102 (September 27, 1984).

[2] 49 FR 5498.

[3] 7 U.S.C. 12a (5) and 23 (1982).

[4] 48 FR 35158 (August 3, 1983) and 49 FR 8226 (March 5, 1984), effective May 31, 1984.

[5] 49 FR 39593.

[6] 48 FR 31466.

[7] While a principal purpose of the Privacy Act is to restrict the unauthorized dissemination of personal information concerning an individual, it does authorize the disclosure of records relating to individuals if such disclosure is made pursuant to a "routine use" which has been adopted by the affected agency. 5 U.S.C. 522a(b)(3). The Commission has already established eight routine uses that apply to all of its systems of records. These eight were set forth most recently at 47 FR 43759, 43760-61 (October 4, 1982), with one amendment published subsequently at 47 FR 44830, 44831 (October 12, 1982). In addition, the Commission has also adopted one routine use solely applicable to the two systems of registration records. 48 FR 44102 (September 27, 1983).

[8] *See* 40 FR 28948, 28961 (July 9, 1975).

registered introducing broker to disclosure in the circumstance described by that item.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, index cards, microfiche.

RETRIEVABILITY:

By the name of the individual or firm, or by assigned identification number. Where applicable, the Commission's computer cross-indexes the individual's file to the name of the leverage transaction merchant with whom the individual is associated or affiliated.

SAFEGUARDS:

General office security measures including secured rooms or premises and, in appropriate cases, lockable files cabinets with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Applications, biographical supplements, other forms, related documents and correspondence are maintained on the CFTC's or NFA's premises, as applicable, for three years after the individual's registration(s), or that of the firm(s) with which the individual is associated as an associated person or affiliated as a principal, becomes inactive. Records are then stored at an appropriate site for an additional seven years before being destroyed; CFTC-held records are stored in the Federal Records Center, and NFA-held records are to be stored either on NFA's premises or in appropriate fireproof off-site facilties.

Computer records are maintained permanently on the CFTC's or NFA's premises, as applicable, and are updated periodically as long as the individual remains pending for registration, registered in any capacity, or affiliated with any registrant as a principal. Computer records on persons who may apply may be maintained indefinitely. Microfiche records, when produced, are maintained permanently on the CFTC's or NFA's premises.

SYSTEM MANAGER(S) AND ADDRESSES:

Assistant Director, Registration Unit, Division of Trading and Markets, at the Commission's principal office, and Chief, Registration Branch, in the Commission's Chicago regional office, or their designees.

For records held by NFA: Director of Registration, National Futures Association, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606, or his designee.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves, should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581; telephone (202) 254-3382.

RECORD SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's employer; federal, state and local regulatory and law enforcement agencies; commodities and securities exchanges, National Futures Association and National Association of Securities Dealers; and other miscellaneous sources. Computer records are prepared from the forms, supplements, attachments and related documents submitted to the Commission or NFA and from information developed during the fitness inquiry.

CFTC-20

SYSTEM NAME:

Registration of Floor Brokers, Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Leverage Transaction Merchants, and Associated Persons.

SYSTEM LOCATION:

For floor brokers, leverage transaction merchants and their associated persons: Chicago office (primary files); all other CFTC offices have summary information (microfiche records). The Commission maintains offices in the following locations:

2033 K Street, NW., Washington, D.C. 20581;
2000 L Street, NW., Washington, D.C. 20581;
233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606;
One World Trade Center, Suite 4747, New York, New York 10004;
4901 Main Street, Room 400, Kansas City, Missouri 64112;
510 Grain Exchange Building, Minneapolis, Minnesota 55415; and
10850 Wilshire Boulevard, Suite 370, Los Angeles, California 90024.

For all other categories of registrants: National Futures Association (NFA), 200 West Madison Street, Suite 1600, Chicago, Illinois 60606.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the CFTC or NFA, as applicable by CFTC regulations, for registration as floor brokers or as associated persons, and principals (as defined in 17 CFR 3.1) of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertainting to the registration and fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes applications for registration (Forms 7–R, 8–R and 8–S) and biographical supplements (Form 8–R); schedules and supplementary attachments to those Forms; fingerprint cards; notices of termination (Form 8–T); supplemental statements (Form 3–R); correspondence relating to registration between the CFTC or NFA and the applicant, registrant or principal; and reports reflecting information developed from sources outside the CFTC or NFA and related to fitness for registration or affiliation.

Computerized systems, consisting primarily of information taken from the registration forms, are maintained by the CFTC's Chicago regional office and NFA for their respective categories. Computer records include the name, date and place of birth, social security number (optional), exchange membership (floor brokers only), firm affiliation, and the residence or business address, or both, of each associated person, floor broker, and principal. Computer records also include information relating to name, trade name, principal office address, records address, names of principals and branch managers of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, and leverage transaction merchants; names of advisory services for commodity trading advisors; and names of pools for commodity pool operators.

Directories and microfiche records, when produced, list the name, business address, and exchange membership affiliation of all registered floor brokers and the name and firm affiliation of all associated persons and principals. These directories and microfiche records, as well as registration forms and biographical supplements, except for any confidential information on supplementary attachments to the forms, are publicly available to any person for disclosure, inspection and copying. Auxiliary records, such as card indices which summarize information contained in this system regarding each associated person, floor broker and principal, may also be maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4f(1), 4k(4), 4k(5), 4n(1), 8a(1), 8a(5), 8a(10) and 19 of the Commodity Exchange Act as amended, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6n(1), 12a(1), 12a(5), 12a(10) and 23 (1982).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to all of the Commission's systems of records, including this system, were set forth under the caption, "General Statement of Routine Uses," in 47 43759, 43759, 43760–61 (October 4, 1982), and subsequently modified in 47 FR 44830, 44831 (October 12, 1982). In addition, information contained in this system of records may be disclosed by the Commission as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchant with whom an applicant or registered introducing broker has or plan to enter a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records maintained by NFA, but any such disclosure must be made in accordance with Commission-approved NFA rules and under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. The currently authorized circumstances are set forth in the Commission's September 28, 1984 Order authorizing NFA to perform certain Commission registration functions including the maintenance of Commission records and are published at 49 FR 39593, 38596 (October 9, 1984), except that Item 2b therein is hereby modified to eliminate the requirement of specific consent by the applicant or registered introducing broker to disclosure in the circumstance described in that item.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, index cards, microfiche.

RETRIEVABILITY:

By the name of the individual or firm, or by assigned identification number. Where applicable, the computers cross-index the individual's primary registration file to the name of futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant with whom the individual is associated or affiliated.

SAFEGUARDS:

General office security measures including secured rooms or premises and, in appropriate cases, lockable file cabinets, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Applications, biographical supplements, other forms, related documents and correspondence are maintained on the CFTC's or NFA's premises, as applicable, for three years after the individual's registration(s), or that of the firm(s) with which the individual is associated as an associated person or affiliated as a principal, becomes inactive. Records are then stored at an appropriate site for an additional seven years before being destroyed; CFTC-held records are stored in the Federal Records Center, and NFA-held records are to be stored either on NFA's premises or in appropriate fireproof off-site facilities.

Computer records are maintained permanently on the CFTC's or NFA's premises, as applicable, and are updated periodically as long as the individual remains pending for registration, registered in any capacity, or affiliated with any registrant as a principal. Any computer printouts that are produced in order to publish directories are maintained on the premises for six months and then destroyed. Microfiche records, when produced, are maintained permanently on the CFTC's or NFA's premises.

SYSTEM MANAGER(S) AND ADDRESSES:

For floor brokers and associated persons and principals of leverage transaction merchants: Chief, Registration Branch, Commodity Futures Trading Commission, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606, or his designee.

For associated persons and principals of futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors: Director of Registration, National Futures Association, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606, or his designee.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system or records, or contesting the content of records about themselves contained in this system of records, should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, NW.,Washington, D.C. 20581; telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's employer; federal, state and local regulatory and law enforcement agencies; commodities and securities exchanges, National Futures Association and National Association of Securities Dealers; and other miscellaneous sources. The computer records are prepared from the forms, supplements, attachments and related documents submitted to the Commission or NFA and from information developed during the fitness inquiry.

Issued in Washington, D.C., on November 9, 1984 by the Commission.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-30136 Filed 11-15-84 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, Nov 30-Dec 1, 1984. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

This meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and

(6) of section 552b(c), Title 5, United States Code. These closed sessions will include: attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal information and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meetings sessions will be held in the Superintendent's Conference Room, Harmon Hall, USAF Academy.

For further information, contact Major David W. Keith, Headquarters, U.S. Air Force (MPPA), Washington, D.C. 20330, at (202) 697-7116.

Norita C. Koritko,

Air Force Federal Register Liaison Officer

[FR Doc. 84-30282 Filed 11-15-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee, Space Exploitation Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Exploitation Task Force will meet 3-4 December 1984, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review Navy space issues. The entire agenda for the meeting will consist of discussions of key issues regarding the Navy's role in the military exploitation of space and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest require that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756-1205.

Dated: November 14, 1984.

Dennis Gonzalez,

Lieutenant, JACC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 84-30282 Filed 11-16-84; 11:54 am]

BILLING CODE 3810-AE-M

Secretary of the Navy's Advisory Board on Education and Training (SABET); Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of the Navy's Advisory Board on Education and Training will meet in Pensacola, Florida, on December 3, 1984, from 8:30 a.m. to 4:30 p.m. The Executive Session of the Board will meet December 4, 1984, from 8:30 a.m. until 10:30 a.m. All sessions will be open to the public.

The Board will hear briefings on the training strategies of the Naval Reserves and its interface with the regular Navy. At a working lunch at the Naval Technical Training Center, Corry Station, they will meet with students attending the EW School to discuss the training and instruction provided. The Working Session of the Board will include interim reports of the Technology Committee, the Civilian Military Linkage Committee, the Financial Assistance and a committee update of the math and science initiative.

For further information concerning this meeting contact: Mrs. Carol Osborn, (Code 00A1), Professional Assistant to the Principal Civilian Advisor on Naval Education and Training, NAS Pensacola, Florida, 32508, Telephone #(904) 452-4199.

Dated: November 13, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-30195 Filed 11-15-84; 11:54 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Dates for Transmittal of New Applications for Fiscal Year 1985.

SUMMARY: Applications are invited for new projects under the Research in Education of the Handicapped program.

Authority for this program is contained in Sections 641-644 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441-1444)

This program supports research, surveys, or demonstration projects relating to the educational needs of handicapped children. Under this program, the Secretary makes awards to eligible parties of research and related activities to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth, and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and related activities supported under this program shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth, including physical education or recreation.

Organization of Notice

This notice contains two parts. Part I is a list of all application closing dates covered by this notice. Part II contains individual application announcements for each priority area.

Transmittal of Applications: An application for new projects must be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

Applications Delivered by Mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: CFDA Number 84.023, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW. Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Applications may be submitted by institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies.

Part I—List of Program Announcements Published in This Notice

CFDA No.	Program	Closing date
84.023C	Research in Education of the Handicapped—Field Initiated Research Projects.	Jan. 28, 1985.
84.023P	Research in Education of the Handicapped—Enhancing Instructional Program Options Projects.	Feb. 15, 1985
84.023B	Research in Education of the Handicapped—Student Initiated Research Projects.	Mar. 15, 1985
84.023R	Research in Education of the Handicapped—Special Population/Handicapped Projects.	Apr. 2, 1985

Part II—Application Notices

84.023 Research in Education of the Handicapped—Field Initiated Research Projects

Closing Date: January 28, 1985.

Applications are invited for new Field Initiated Research projects under the Research in Education of the Handicapped program.

The purpose of this priority is to provide support for a broad range of field initiated research projects focusing on the education of handicapped children and youth. The appropriate areas of interest for projects are limited only by the mission of the research program—the support of applied research relating to the eduction of handicapped children and youth.

Available Funds: It is estimated that approximately $2,700,000 will be available for support of 27 new projects under this program in fiscal year 1985. This estimates does not bind the Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations. Award approval is for a period of up to 60 months. *See* 34 CFR 75.253.

84.023P Research in Educotion of the Handicapped—Enhancing Instructional Program Options Projects

Closing Date: February 15, 1985.

Applications are invited for new awards for projects for Enhancing Instructional Program Options projects under the Research in Education of the Handicapped program.

The purpose of this priority is to provide support for projects to enhance the capacity of local educational agencies to provide a variety of instructional options and screening procedures prior to evaluation and placement of children with learning problems in special education.

Available Funds: It is estimated that approximately $1,375,000 will be available for support of 14 new projects in fiscal year 1985. This estimate does not bind the Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations. Award approval is for a period of up to 36 months. *See* 34 CFR 75.253.

84.023B Research in Education of the Handicapped—Student Initiated Research Projects

Closing Date: March 15, 1985.

Applications are invited for new Student Initiated Research projects under the Research in Education of the Handicapped program.

The purpose of this priority is to provide support to postsecondary students to initiate and direct a broad range of research and research related projects focusing on the education of handicappted children. Content of the research projects is limited only by the mission of the research program—the support of applied research relating to the eduction of handicapped children and youth.

Available Funds: It is estimated that approximately $250,000 will be available for support of 25 new projects under this program in fiscal year 1985. This estimate does not bind the Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations. Award approval is for a period of up to 18 months. *See* 34 CFR 75.253.

84.023R Research in Educotion of the Handicapped—Special Population/Handicapped Projects

Closing Date: April 2, 1985.

Applications are invited for new Special Population/Handicapped projects under the Research in Education of the Handicapped program.

The purpose of these projects is to support projects dealing with the unique educational problems resulting from a combination of membership in a particular special population and having (a) handicapping condition(s). The Secretary will give an absolute preference to proposals for projects that identify and analyze intervention strategies for serving secondary-aged handicapped students who are also youthful offenders, children of migrant families, school dropouts, or substance abusers.

Available Funds: It is estimated that approximately $800,000 will be available for support of 10 new projects under this program in fiscal year 1985. This estimate does not bind the Department of Education to a specified number of awards or to the amount of any award unless that amount is otherwise specified by statute or regulations. Award approval is for a period of up to 24 months. *See* 34 CFR 75.253.

Application Forms: Application forms and program information packages are expected to be available on November 30, 1984 and may be obtained by writing to the Research Projects Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary

further urges that applicants not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1820–0028)

Applicable Regulations: Regulations applicable to this program announcement include the following:

(a) Regulations governing the Research in Education of the Handicapped program (34 CFR Part 324).

(b) Any final annual priorities adopted by the Secretary. A notice of proposed biennial funding priorities is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priorities set forth in this application notice. If there are any substantive changes made in these proposed priorities when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

(c) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT:

Dr. James Hamilton, Research Projects Branch, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511), Washington, D.C. 20202. Telephone: (202) 732–1110

(20 U.S.C. 1441–1444)

(Catalog of Federal Domestic Assistance Number 84.023; Research in Education of the Handicapped)

Dated: November 13, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-30145 Filed 11-15-84; 8:45 am]

BILLING CODE 4000-01-M

Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of Proposed Biennial Funding Priorities.

SUMMARY: The Secretary proposes biennial funding priorities or the Research in Education of the Handicapped program. To ensure wide and effective use of program funds, the Secretary proposes to select from among 11 priorites in order to direct funds to the areas of greatest need for fiscal years 1985 and 1986. A separate competition will be established for each selected priority.

DATE: Comments must be received on or before January 15, 1985.

ADDRESS: Comments should be addressed to Nancy Safer, Research Projects Branch, Division of Educational Services, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3513), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Nancy Safer Telephone: (202) 732–1064.

SUPPLEMENTARY INFORMATION: The Research in Education of the Handicapped program, authorized by Sections 641–644 of Part E of the Education of the Handicapped Act (20 U.S.C. 1411–1444), supports research, surveys, or demonstration projects relating to the educational needs of handicapped children. Under this program, the Secretary makes awards to eligible parties for research and related activities, to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth, and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and related activities supported under this program shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education related practices and services for handicapped children and youth, including physical education or recreation.

The Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, included amendments to the provisions of Section 641 of the Act. Under section 641(c) of the Act, the Secretary is expressly required to publish proposed research priorities in the Federal Register every two years, analyze and consider any public comments received, and then publish final research priorities. In accordance with this requirement, the Secretary proposes to select from among the following priorities to make fiscal year 1985 and fiscal year 1986 new awards.

Priorities

The proposed priorities have been selected in response to legislative requirements, program initiatives, and professional and advocacy concerns. As a result of focusing national research efforts on the following priorities, the Secretary expects improvement in the delivery of special educational services, more effective and efficient instructional services, and improvement in the educational performance and transitional accomplishments of handicapped children and youth.

The directed research component provides an opportunity to target national research efforts towards Federally identified priorities. The directed research priorities for fiscal years 1985 and 1986 are expected to—(a) provide solutions to problems associated with educating children and youth with different handicapping conditions within the same special educational placement option (Program Organization Option Projects); (b) encourage the provision of instructional program options and screening procedures for children with learning problems prior to their evaluation and placement in special education (Enhancing Instructional Program Options); (c) assure the use of the results of education related research studies to develop and field-test improved practices in educating handicapped students (Implementation of Research Projects); (d) provide information necessary to deal with the unique educational problems of special education populations of secondary-aged handicapped students, i.e., handicapped youthful offenders, handicapped children of migrant families, handicapped school dropouts, or handicapped substance abusers (Special Population/Handicapped Projects); (e) build further research on issues related to the education of handicapped children on assembled extant data files, records, and information (Extant Data Bases Projects); (f) review and synthesize existing research related to education of the handicapped, examine the implications of that research for educational practice, and determine further research needs (Research Integration projects); (g) increase teaching/learning efficiency by supporting projects that focus on teacher and school variables associated with improved performance of handicapped students on a variety of educational outcome measures (Increasing Teaching/Efficiency Projects); (h) provide information about the comparative effectiveness and efficiency of alternative interventions for educating preschool and secondary-aged handicapped children and youth (Comparative Research Projects); and, (i) provide information about the effect of standards and criteria used to provide credentials, employ and promote school personnel and the effect of standards and criteria used to determine placement, promotion, graduation or programming of handicapped students (Standards and Criteria Projects).

Field-Initiated Research Projects. This priority provides support for a broad range of field-initiated research projects focusing on the education of handicapped children and youth. The appropriate areas of interest for projects are limited only by the mission of the research program—support of applied research relating to the education of handicapped children and youth. (Fiscal Years 1985 and 1986)

Student-Initiated Research Projects. This priority provides support to post secondary students to initiate and direct a broad range of research and research related projects focusing on the education of handicapped children. Content of the research projects is limited only by the mission of the research program—the support of applied research relating to the education of handicapped children and youth. (Fiscal Years 1985 and 1986)

Program Organization Option Projects. This priority supports projects dealing with solutions to the unique instructional, management, personnel, and financial problems associated with educating children and youth with different handicapping conditions within the same special educational placement option. (*See* 34 CFR 300.551, *Continuum of alternative placements.*) (Fiscal Year 1986)

Implementation of Research Projects. This priority supports projects that use the results of education related research studies to develop and field-test improved practices in educating handicapped students. (Fiscal Year 1986)

Enhancing Instructional Program Options. This priority provides support for projects to enhance the capacity of local educational agencies to provide a variety of instructional options and screening procedures prior to evaluation and placement of children with learning problems in special education. (Fiscal Years 1985 and 1986)

Special Population/Handicapped Projects. This priority supports projects dealing with the unique educational problems resulting from a combination of membership in a particular special population and having (a) handicapping condition(s). The Secretary will give an absolute preference to projects that identify and analyze intervention strategies for serving secondary-aged handicapped students who are also youthful offenders, children of migrant families, school dropouts, or substance abusers. (Fiscal Years 1985 and 1986)

Extant Data Base Projects. This priority supports projects related to the education of handicapped children that use existing data files or records and information as the data source of research focusing on issues related to the education of handicapped children. (Fiscal Year 1986)

Research Integration Projects. This priority supports projects that review and synthesize existing research related to education of the handicapped, examine the implications of that research for practice in the education of the handicapped, and that determine future research needs. (Fiscal Years 1985 and 1986)

Increasing Teaching/Learning Efficiency Projects. This priority supports projects that focus on teacher and school variables associated with improved performance of handicapped students as shown by a variety of educational outcome measures. (Fiscal Year 1986)

Comparative Research Projects. This priority supports projects which systematically, through experimental or quasi-experimental designs, compare the effectiveness and efficiency of alternative interventions for educating preschool or secondary-aged handicapped children and youth. (Fiscal Year 1986)

Standards and Criteria Projects. This priority supports projects to study—(a) the effect and impact of standards and criteria used to provide credentials, employ, and promote school personnel; or (b) the effect and impact of standards and criteria used for determining placement, promotion, graduation, or programming of handicapped students. (Fiscal Year 1986)

Information collection requirements have been approved by the Office of Management and Budget under control number 1820–0028.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before January 15, 1985 will be considered before the Secretary issues final priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3513, Switzer Building, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday though Friday of each week except Federal holidays.

(20 U.S.C. 1441–1444)

(Catalog of Federal Domestic Assistance Number 84.023; Research in Education of the Handicapped)

Dated: November 13, 1984.

T.H. Bell,

Secretary.

[FR Doc. 84-30144 Filed 11-15-84; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 17, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 13, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Revision
Title: State Performance Report
Agency Form Number: ED 686–2
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden
Responses: 54
Burden Hours: 21,870
Recordkeeping Burden
Recordkeepers: 54
Burden Hours: 540

Abstract: This report is used to obtain participation and performance data on the ECIA Chapter 1 program throughout the nation. The data provide information needed to comply with Sections 417(a), 418(a), and 422 of the General Education Provisions Act, and Sections 555(d) and 555(e) of Chapter 1, ECIA.

Type of Review Requested: New
Title: Application for the Magnet Schools Assistance Program
Agency Form Number: ED A10–1P
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden
Responses: 100
Burden Hours: 2,000
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: The application is used by LEAs to apply for magnet schools projects. The Department needs this information to make awards and insure that proposed projects meet the requirements of the statute and regulations.

Type of Review Requested: Revision
Title: State Application, Chapter 2 of the Education Consolidation and Improvement Act of 1981
Agency Form Number: ED 1000
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden
Responses: 52
Burden Hours: 104
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: This form is used as an annual application to the Secretary as a precondition to receiving the authorized funds.

Type of Review Requested: Extension
Title: Application for Women's Educational Equity Act (WEEA) Program
Agency Form Number: ED 436–1
Frequency: Annually
Affected Public: Individuals or Households, State or Local Governments, Non-Profit Institutions
Reporting Burden
Responses: 600
Burden Hours: 9,600
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: Local schools, State educational agencies, colleges, universities, non-profit organizations, and individuals are required to submit an annual application to receive funds under the WEEA program. The WEEA staff analyzes the application to insure that federal funds are used for programs that most effectively achieve the purposes of the statute.

Type of Review Requested: Extension
Title: Application for: Civil Rights Technical Assistance and Training (State Educational Agency Program)
Agency Form Number: ED 296–1
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden
Responses: 120
Burden Hours: 2,400
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: The application is used by State educational agencies to apply for assistance under Title IV of the Civil Rights Act of 1964. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

Type of Review Requested: Extension
Title: Application for Civil Rights Technical Assistance and Training Desegregation Assistance Center Program
Agency Form Number: ED 296–2
Frequency: Annually
Affected Public: Non-Profit Institutions
Reporting Burden:
Responses: 40
Burden Hours: 640
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The application is used by non-profit insitutions to apply for desegregation assistance center non-competitive continuation awards under Title IV of the Civil Rights Act of 1964. The Department needs this information to evaluate these proposed projects and set the amount of each award in accordance with program regulations.

Office of Special Education and Rehabilitative Service

Type of Review Requested: Extensions
Title: RSA Discretionary Program Application Instructions
Agency Form Number: ED 424
Frequency: Annually
Affected Public: State or local governments, Businesses or other for-profit and non-profit institutions
Reporting Burden:
Responses: 1,170
Burden Hours: 46,800
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: Instructions are required so that all applications will be completed in accordance with specified and unique requirements of various RSA programs. Program staff and/or outside reviewers use the application information to evaluate program progress, project viability, soundness of approach, and reasonableness of proposed cost of new and continuation applications.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Fast Response Survey System, Survey of Patron Use of Computers in Public Libraries
Agency Form Number: ED 2379–20
Frequency: Non-Recurring
Affected Public: Non-Profit Institutions
Reporting Burden:
Responses: 900
Burden Hours: 225
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey seeks to obtain nationally representative information on a recent technological and educational development in public libraries—patron use of computer hardware and software. Findings will be used to guide and promote the efforts of public libraries as they try to initiate or expand their services in this area.

Type of Review Requested: New
Title: National Assessment of Educational Progress: Field Test for 1985–86 Assessment
Agency Form Number: ED 2371
Frequency: Non-Recurring
Affected Public: Individuals or Households; State or Local Governments
Reporting Burden:
Responses: 10,366
Burden Hours: 6,168
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: Congress authorized the National Assessment of Educational Progress to assess the condition and progress of education in the nation. This survey will field test math, reading, science and computer competency items for the school year 1985–86 assessment. The results of the field test will be used to refine objectives, background questions and exercises. The respondents are teachers, principals and students. The students are ages 9, 13, and 17.

Type of Review Requested: New
Title: National Assessment of Educational Progress 1985 Young Adult Literacy Assessment
Agency Form Number: ED 2371–17YAL
Frequency: Non-Recurring
Affected Public: Individuals or Households
Reporting Burden
Responses: 3,600
Burden Hours: 5,410
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: Congress mandated the collection of National Assessment survey data. The assessment of Young Adult Literacy will be conducted in 1985, and results will yield a profile of literacy for the group and provide information on the effectiveness of their learning experiences and a baseline from which trends can be plotted. Respondents will be a representative sample of young adults, ages 21–25.

Type of Review Requested: Reinstatement
Title: High School and Beyond (HB&B) Third Follow-up (Class of 1980) and National Longitudinal Study of the Class of 1972 (NLS–72) Fifth Follow-up Field Test
Agency Form Number: ED 2441–1, 2441–2, 2422–1
Frequency: Non-Recurring
Affected Public: Individual or Households
Reporting Burden
Responses: 1,200
Burden Hours: 800
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: In response to the need for policy-relevant time series data on nationally representative samples of high school sophomores and seniors, NCES instituted the National Longitudinal Studies (NLS) program. Two components of NLS are the NLS–72 and HS&B studies. These studies are designed to examine longitudinally the educational, vocational, and personal development of high school students. The field test is needed to test new survey items, identify errors in instruction, and evaluate field administration procedures.

Type of Review Requested: New
Title: Public School Survey, School Year 1984–85
Agency Form Number: ED
Frequency: Biennually
Affected Public: State or Local Governments
Reporting Burden
Responses: 13,550
Burden Hours: 6,075
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey will provide policy makers with basic statistics and issue oriented data on public elementary and secondary schools which are not currently being collected by National Center for Education Statistics. For example, information will be collected on the training of teachers compared to their current assignments and the use of incentives. The respondents will be public school administrators and teachers.

[FR Doc. 84–30143 Filed 11–15–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Availability of Draft Environmental Impact Statement (DEIS) and Public Hearing on the DEIS; Uranium Mill Tailings Remedial Action at Durango, CO

AGENCY: Department of Energy.

ACTION: Notice of availability of DEIS and announcement of public hearing on the DEIS.

SUMMARY: The Department of Energy (DOE) has published a draft environmental impact statement, DOE/EIS–0111–D, Remedial Actions at the Former Vanadium Corporation of America mill site, Durango, La Plata County, Colorado (October, 1984) for a proposed DOE action to perform remedial actions on residual radioactive material at the inactive uranium mill in Durango, Colorado.

Written comments are invited and a public hearing will be held with respect to the DEIS. Written and oral comments will be given equal consideration.

DATES: Written comments should be received at DOE by January 11, 1985, in order to ensure consideration in preparation of the final environmental impact statement. The public hearing is scheduled for December 18, 1984, in Durango, Colorado at 2:00 p.m. and resuming at 7:00 p.m. Requests to speak and preferred times should be received at DOE by December 14, 1984.

ADDRESS: Written comments on the DEIS and requests to speak at the hearing should be addressed to: Mr. John G. Themelis, Project Manager, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue NE., Suite 1700, Albuquerque, New Mexico, 87108.

FOR FURTHER INFORMATION CONTACT:

1. Mr. John G. Themelis, Project Manager, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue, NE, Suite 1700, Albuquerque, New Mexico, 87108. Phone (505) 844–3941.
2. Dr. Robert J. Stern, Director, Office of Environmental Compliance, Office of the Assistant Secretary for Policy, Safety, and Environment, U.S. Department of Energy, Washington, D.C., 20585. Phone (202) 252–4600.
3. Mr. Henry Garson, Esq., Assistant General Counsel for Environment, U.S. Department of Energy, Washington, D.C., 20585. Phone (202) 252–6947.

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent

The Department of Energy published a Notice of Intent (46 FR 30383–30385) on June 8, 1981, regarding the preparation of an EIS and the conduct of public scoping meetings for the remedial actions at the Durango inactive uranium mill site.

II. Background for the Proposed Project

The uranium mill tailings at the Former Vanadium Corporation of America processing site are adjacent to the business district of Durango, Colorado. The site is a 128-acre tract of land recently acquired by Hecla Mining Company from Ranchers Exploration and Development Corporation of Albuquerque, New Mexico. The site contains approximately 1.6 million cubic yards of contaminated materials including 1.2 million cubic yards of uranium and vanadium tailings. The tailings were produced by the former United States Vanadium Corporation from 1943 to 1946, and by the Vanadium Corporation of America from 1949 to 1963. Vanadium tailings and uranium ore were processed for sale to the U.S. Atomic Energy Commission until the mill was closed in 1963.

In 1978 the U.S. Congress passed the Uranium Mill Tailings Radiation Control Act, Pub. L. 95–604. In this Act the Congress found that uranium mill tailings may pose a potential and significant radiation health hazard. It authorized the DOE to carry out

remedial action at each site in cooperation with other Federal agencies and with the state or Indian tribe affected by the action. It gave to the Nuclear Regulatory Commission (NRC) responsibility for consulting with the DOE over a range of subjects concerning conduct of remedial action, for concurring with the selected remedial action and with any cooperative agreement with a state or Indian tribe, and for licensing the maintenance of each tailings disposal site after the remedial action is completed.

In addition, the Environmental Protection Agency (EPA) was given the responsibility to set standards to protect public health, safety, and the environment at the tailings site and the disposal sites. The EPA issued standards for remedial actions at inactive uranium processing sites on January 5, 1983 (48 FR 590).

In accordance with Pub. L. 95–604, the DOE designated 24 sites for remedial action. One of them is the former processing site in Durango, Colorado. The State of Colorado has investigated several locations where the tailings might safely be disposed of and recommended three for further analysis. Of the three sites, the Long Hollow and Bodo Canyon sites were selected for further analysis in the EIS.

III. Scope of the DEIS

The DEIS evaluates the no-action alternative (1) and four alternatives for minimizing the potential public health hazards associated with the Durango site contaminated materials; (2) stabilization of the contaminated materials on the Durango site; (3) transportation of the contaminated materials to the Bodo Canyon site for disposal, and decontamination of the Durango site; (4) transportation of the contaminated materials to the Long Hollow site for disposal, and decontamination of the Durango site; and (5) transportation of the contaminated materials to the Long Hollow site for reprocessing and stabilization, and decontamination of the Durango site (preferred alternative).

An assessment of the impacts of these alternatives was made in terms of effects on radiation levels, air quality, soils and mineral resources, surface- and ground-water resources, ecosystems, land use, sound levels, historical and cultural resources, populations and employment, economic structures, and transportation networks.

Remedial action would include the removal of contaminated soils and vegetation from the floodplain-wetlands area along the Animas River and Lightner Creek.

In accordance with DOE regulations for compliance with floodplains/wetlands environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain and wetlands assessment, to be incorporated in the final environmental impact statement of this proposed action. Maps and further information are available from DOE at the address shown below. A draft of the floodplain/wetlands assessment is included as Appendix J of the draft EIS.

IV. Comment Procedures

A. Availability of Draft EIS

Copies of the DEIS have been distributed to Federal, State, and local agencies, organizations, and to individuals known to be interested in the Durango remedial action project. Additional copies may be obtained from the Project Manager, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue, NE, Suite 1700, Albuquerque, New Mexico, 87108. Phone (505) 844–3941.

Copies of the DEIS are available for public inspection at the following locations:

Durango Public Library, 1188 East Second Avenue, Durango, CO 81301.
Energy Resource Center, 1333 Broadway, Oakland, CA 94612.
Chicago Office Library, 9800 South Cass Avenue, Argonne, IL, 60639.
Energy/Env. Center, Denver Public Library, 1357 Broadway, Denver, CO, 80210.
Idaho Office Library, 550 Second Street, Idaho Falls, ID, 83401.
Grand Junction Area Office Library, P.O. Box 2567, Grand Junction, CO, 81502.
National Atomic Museum, Kirtland Air Force Base East, Albuquerque, NM, 87115.
Nevada Office Library, 2753 South Highland Drive, Las Vegas, NV, 89114.
Oak Ridge Office Library, Federal Building, Oak Ridge, TN, 37830.
Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C., 20585.
Richland Office Library, Federal Building, Richland, WA, 99352.
Savannah Office Library, Savannah River Plant, Aiken, SC, 29801.

B. Written Comments

Interested parties are invited to provide written comments on the DEIS to the Project Manager in Albuquerque, New Mexico, at the address given above. Comments should be identified on the outside of the envelope with the designation "Drafts EIS on Durango Site." All comments and related information should be received by DOE by January 11, 1985, in order to ensure consideration in preparing the final statement.

Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

C. Public Hearing

1. *Participation Procedure.* Public hearings on the draft statement will be held at the County Extension Building, Durango, Colorado on December 18, 1984 at 2:00 p.m. and at 7:00 p.m. to provide an opportunity for oral presentations by interested persons.

A DOE official will designate a presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing.

Any person who desires to speak at the hearing should notify the Project Manager at the Albuquerque, New Mexico address listed above before December 14, 1984 so that time can be scheduled. Although not required, persons who intend to speak are encouraged to provide a brief summary of the presentation.

Individuals who did not make an advance arrangement to speak may register to speak at the hearing. After all scheduled speakers, an opportunity will be provided to these individuals to speak. Time for each participant will be limited depending on time available and the number of responses.

2. *Conduct of Hearing.* DOE will arrange the schedule of presentations to be heard and will establish basic rules and procedures for conducting the hearing. The length of each presentation may be limited, depending on the number of persons desiring to speak.

Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the start of the hearing.

A transcript of the hearing will be made and the entire record of the hearing including the transcript will be retained by DOE and made available for inspection at the same locations as listed above for review of the DEIS (Section IV A). Additional copies of the complete transcript will also be available at the public document centers noted above. Any person may purchase a copy of the transcript from the reporter.

D. Public Meetings

In addition to the public hearings, DOE will also conduct informal public information meetings on the DEIS in Durango. DOE will issue specific information on the time and place of the meetings in the local news media.

Issued in Washington, D.C., November 9, 1984.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84–30085 Filed 11–15–84; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51533; FRL–2659–2]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84–22533, beginning on page 33721, in the issue of Friday, August 24, 1984, make the following correction: On page 33722, in column one, under PMN 84–1068, line three should have read: dimethylthio-carbamylthio–N'–phenyl".

BILLING CODE 1505–01–M

[OPTS–51534; FRL–2662–5]

Toxic Substances; Certain Chemicals; Premanufacture Notices

Correction:

In FR Doc. 84–23048, beginning on page 34572, in the issue of Friday, August 31, 1984, make the following correction. On page 34573, in column two, PMN 84–1078" should read "PMN 84–1080".

BILLING CODE 1505–01–M

[OPP–50623; FRL–2662–6]

Issuance of Experimental Use Permits

Correction

In FR Doc. 84–23047, beginning on page 35039, in the issue of Wednesday, September 5, 1984, make the following correction. On page 35040, column three line 14, "1200" should read "12200".

BILLING CODE 1505–01–M

[OPP–50620; FRL–2649–5]

Issuance of Experimental Use Permits; E.I. du Pont de Nemours and Co., et al.

Correction

In FR Doc. 84–20844, beginning on page 31759, in the issue of Wednesday, August 8, 1984, make the following correction: On the same page, column three, first full paragraph, line 14, "40" should read "400".

BILLING CODE 1505–01–M

[OPP–50621; OPP–FRL–2649–6]

Issuance of Experimental Use Permits; Albany International, et al.

Corrections:

In FR Doc. 84–20873, beginning on page 31757, in the issue of Wednesday, August 8, 1984, make the following corrections: On page 31757, column one, in the heading, "Albany International Inc." should read "Albany International,".

On page 31758, column one, first full paragraph, line five, "inset" should read "insect".

On the same page, column two, first full paragraph, line six, the first word should read "fluvalinate".

BILLING CODE 1505–01–M

[OPP–180658; FRL–2675–2]

Emergency Exemptions; California Department of Food and Agriculture; et al

Correction

In FR Doc. 84–24916, beginning on page 37842, in the issue of Wednesday, September 26, 1984, make the following corrections: On the same page the subject heading should read as set forth above and in column three, item "9", add "(Libby Welch)" at the end of the paragraph.

BILLING CODE 1505–01–M

[OPP–00187; PH–FRL 2720–1]

Administrator's Pesticide Advisory Committee; Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Labeling of the Administrator's Pesticide Advisory Committee (APAC) will hold a meeting to discuss organizational issues relating to the function of the subcommittee. The meeting will be open to the public.

DATE: The meeting will take place on Tuesday, December 4, 1984, at 9:00 a.m. and adjourn by 12 noon.

ADDRESS: The meeting will be held in: Environmental Protection Agency, Rm. W–1001, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committee (TS–788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–630, 401 M St., SW., Washington, D.C. 20460, (202–382–7801).

SUPPLEMENTARY INFORMATION: The Office of Pesticide Programs (OPP) is undertaking a project to evaluate whether pesticide labeling is communicating use, hazard, and precautionary information effectively. OPP plans to explore not only labeling but also other means of communication such as educational and training programs, media campaigns, etc. The APAC, at its October 25, 1984 meeting, decided unanimously to form a subcommittee to advise the Agency on labeling and hazard communication.

The first meeting of the Subcommittee will be an organizational meeting to define the goals and objectives of the Subcommittee, the subjects it plans to address, and its methodology for addressing them. A more complete agenda will be available at a later date.

The meeting will be open to the public and time will be set aside for public comments concerning the organization of the Subcommittee. Any member of the public wishing to present an oral or written statement relating to the Subcommittee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above.

Dated: November 9, 1984.

Marcia Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84–30142 Filed 11–15–84; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL–2719–5]

National Drinking Water Advisory Council; Open Meeting

Under Section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), will be held at 9:30 a.m. on December 6, 1984, and at 8:30 a.m. on December 7, 1984, at the U.S. Environmental Protection Agency's Regional Office, Hawaii and Trust Territories Room, 215 Freemont Street, San Francisco, California 94105. Council Subcommittees will be meeting at the Regional Office on December 5, 1984.

The purpose of the meeting will be to consider various aspects of the Revised Regulations, Phase I and Phase II. Other main agenda items will include a panel discussion on monitoring for unregulated contaminants, and Council Subcommittee reports on EPA's Direct Implementation regulations for the UIC Program in seven States and some Indian Lands and compliance monitoring and enforcement oversight for the Public Water Systems Supervision Program.

This meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to five minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382–5533. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before November 30, 1984.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at the Council meeting and will be part of the permanent meeting record.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Executive Assistant, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH–550), 401 M Street SW., Washington, D.C. 20460.

The telephone number is: Area Code 202/382–5533.

Dated: November 7, 1984.

Henry Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84–30118 Filed 11–15–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30245; FRL–2675–3]

Certain Companies; Applications to Register Pesticide Products; NOR–AM Chemical Co., et al.

Correction

In FR Doc. 84–24924, beginning on page 37840, in the issue of Wednesday, September 26, 1984, make the following corrections, on page 37840, column three, seventeenth line "**Contract**" should read "**Contact**". On the same page under "**Supplementary Information**", paragraph numbered "1.", line six, "(N–N (propyl-" should read "(*N*–propyl–*N*–".

On page 37841, column one, first line, "Sulfamide" should read "sulfamide".

On the same page, same column, line twenty-two, "Extrin ®" should read "Ectrin ®".

BILLING CODE 1505–01–M

[OPTS–59168A; OTS–FRL 2678–1]

Certain Chemicals; Approval of Test Marketing Exemption

Correction

In FR Doc. 84–25216, appearing on page 37461, in the issue of Monday, September 24, 1984, make the following correction: In column two under "**Supplementary Information**", in paragraph one, fifth line from the bottom, insert the word "of" between "receipt" and "new".

BILLING CODE 1505–01–M

[OPTS–51535, TSH–FRL 2666–5]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84–23711, beginning on page 35414, in the issue of Friday, September 7, 1984, make the following corrections: On page 35417, column one, under "**PMN 84–1129**", line two, "aceted" should read "acetic", and on line three, "C_n" should read "C_n".

On the same page, same column under "**PMN 84–1130**", line three, "C_8 C_{10}" should read "C_8—C_{10} and "C_n" should read "C_n".

BILLING CODE 1505–01–M

[OPP–00186; PH–FRL 2719–8]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel to review the Proposed Special Review Criteria and Procedures Rule; to review the Agency's policy on genetically engineered and nonindigenous microbial pesticides; to review the final rule classifying certain grain fumigants as restricted use pesticides; and to review certain Standard Evaluation Procedures being promulgated by the Office of Pesticide Programs' Hazard Evaluation Division. The meeting will be open to the public.

DATES: Thursday and Friday, December 13 and 14, 1984, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meeting will be held at: Ramada Inn, 901 North Fairfax Drive, Alexandria, VA 22314, (703–683–6000).

FOR FURTHER INFORMATION CONTACT: By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1115, Crystal Mall, Building No. 2, Arlington, VA 22202, (703–557–7096).

SUPPLEMENTARY INFORMATION: The agenda for this meeting is:

1. Review of the Agency's Proposed Special Review Criteria and Procedures Rule.
2. Review of the Agency's policy on genetically engineered and nonindigenous microbial pesticides.
3. Review of a final rule adding certain grain fumigant uses of additional active ingredients to the list of those which the Agency has classified for restricted use.
4. Review of certain draft Standard Evaluation Procedures (SEPs) for the following scientific studies: Environmental Risk Assessment, Hydrolysis, Aqueous Photolysis, Aerobic Soil Metabolism, Teratology and Magnitude of the Residue: Crop Field Trials (raw agricultural commodities).
5. Completion of any unfinished business from previous Panel meetings.
6. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to item 1 may be obtained by contacting: Joanne Dizikes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7400).

Copies of documents relating to item 2 may be obtained by contacting: Federick S. Betz, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1128C, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–9307).

Copies of documents relating to item 3 may be obtained by contacting: Robert Forest, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, Crystal Mall, Building No. 2 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–0592).

Copies of documents relating to item 4 may be obtained by contacting: Stephen Johnson, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1124, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7695).

Any member of the public wishing to submit written comments should contact Philip H. Gray, Jr. at the address or phone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements will be made part of the record and will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than December 7, 1984, in order to ensure appropriate consideration by the Panel.

Dated: November 8, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84–30141 Filed 11–15–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–50526; TSH–FRL–2677–1]

Significant New Use Notification; Receipt

Correction

In FR Doc. 84–25218, beginning on page 37460, in the issue of Monday, September 24, 1984, make the following corrections:

1. Under "**SUPPLEMENTARY INFORMATION**" the first word should read "Section".

2. Under "**SNUR 84–1.**" same column, line one, "4'4" should read "4,4' ".

BILLING CODE 1505–01–M

[ER–FRL–2720–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 29, 1984 through November 2, 1984 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Request for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–AFS–G65039–00, Rating LO, Cibola Nat'l Forest, Kiowa, Rita Blanca, Black Kettle, and McClellan Nat'l Grasslands, Land and Resource Management Plan, NM, TX, OK. SUMMARY: EPA expressed no objection to the preferred alternative, but expressed concerns with the lack of specific documentation on the proposed uses of pesticides and requested that more specific details on pesticide use be supplied.

ERP No. D–BLM–L–61158–ID, Rating LO, Jacks Creek Wilderness Study Areas, Designation, ID. SUMMARY: EPA expressed no objections to the wilderness recommendation, but suggested additional information on herbicide spraying, soil stability, and fisheries impacts be provided in the FEIS.

ERP No. D–FHW–F40239–MN, Rating EC2, MN TH–33 improvements, I–35 to TH–53, MN. SUMMARY: EPA believes the project has potentially significant environmental effects regardless of the alternative selected. In the urban section of the project, the throughtown alternative impacts numerous noise sensitive receptor, while the bypass alternatives impact a great number of ecologically sensitive areas. In the rural section of the project all the alternatives impact many acres of ecologically sensitive lands. EPA recommends an alternative that would upgrade the existing alignment.

ERP No D–FHW–G40112–AR, Rating LO, US 71 Construction, (State Project 4833), I–40 to Fayetteville Bypass, AR. SUMMARY: EPA has not identified any potential environmental impacts requiring substantive changes to the proposal.

ERP No. D–FHW–L40138–AK, Rating E02, Knik Arm Bridge Crossing Construction, Cook Inlet, AK. SUMMARY: EPA is concerned that neither of the two proposed crossing alternatives appear to conform with the State Implementation Plan for air quality. Projected violations of Nat'l Ambient Air Quality Stds. for carbon monoxide need to be prevented if the bridge alternative is selected. For the bridge alternatives, EPA believes the secondary development impacts to the Mat-Su Borough, have not been evaluated sufficiently and adequate mitigation has not been proposed.

Final EISs

ERP No. F–AFS–L61149–WA, Early Winters Alpine Winter Sports Study, Permit, Okanogan NF, WA. SUMMARY: Although EPA believes the FEIS does not include a sufficient guarantee that air quality impacts from secondary growth and wood stove use will be adequately mitigated, a cooperative agreement is being prepared with the Forest Service, Washington Dept. of Ecology, and Okanogan County to resolve this concern. Without mitigation, total suspended particulates will exceed Nat'l Ambient Air Quality Stds.

ERP No. D–FHW–E40400–FL, FL–22/232/39th Ave. Road Improvement, I–75 to Gainesville Regional Airport, FL. SUMMARY EPA believes that the project's long-term impacts to wet-lands and water quality are manageable if appropriate erosion control measures are implemented.

ERP F–FHW–F40178–MN, West River Parkway Construction, Franklin Ave. to Plymouth Ave., MN. SUMMARY: EPA does not object to the implementation of the proposed project. The selection Alternative 1 alleviated potential air quality impacts.

ERP No. F–NOA–B8900007–MA, Waquoit Bay Nat'l Estuarine Sanctuary Designation, Nantucket Sound, MA. SUMMARY: EPA believes that the proposed sanctuary will not cause significant adverse impact on the environmental, nor affect the ground water quality of the Cape Code sole source aquifer so as to create a significant hazard to public health.

Dated: November 13, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84–30180 Filed 11–15–84; 8:45 am]

BILLING CODE 6560–01–M

[ER-FRL-2720-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed November 5, 1984 through November 9, 1984, Pursuant to 40 CFR 1506.9.

EIS No. 840470, FSuppl, NHT, REG, 1985 Model Year Light Trucks Corporate Average Fuel Economy Standards, Due: December 17, 1984, Contact: Joseph Innes (202) 426-0846.

EIS No. 840493, DSuppl, AFS, MT, Lewis and Clark National Forest Land and Resource Management Plan, Wilderness Designation, Due: February 15, 1985, Contact: John Gorman (406) 727-0901.

EIS No. 840503, Draft, AFS, NH, ME, White Mountain National Forest Land and Resource Management Plan, Due: February 28, 1985, Contact: Carl Gebhardt (603) 524-6450.

EIS No. 840504, Final, FHW, OH, Ohio Turnpike (I-76/I-80/I-90) Upgrading, IN to PA State Line, Due: December 17, 1984, Contact: John Hibbs (614) 469-6060.

EIS No. 840505, Final NHT, REG, 1986 Model Year Corporate Average Fuel Economy Standards, Due: December 17, 1984, Contact: Joseph Innes (202) 426-0846.

EIS No. 840506, Final, BLM, WY, Platte River Resource Area, Resource Management Plan, Due: December 17, 1984, Contact: Jim Melton (307) 261-5101.

EIS No. 840507, Draft, AFS, SC, Sumter National Forest Land and Resource Management, Due: February 15, 1985, Contact: Donald Eng (803) 765-5222.

EIS No. 840508, Final BLM, UT, Cedar, Beaver, Garfield and Antimony Planning Units, Resource Management Plan, Due: December 17, 1984, Contact: Sheridan Hansen (801) 586-2458.

EIS No. 840509, Final, BLM, NV, Lahontan Resource Area, Resource Management Plan, Due: December 17, 1984, Contact: Thomas Owen (702) 882-1631.

EIS No. 840510, Final, FHW, WA, Washington State Convention and Trade Center, Leasing/Construction, Pike Street to Freeway Park, King County, Due: December 17, 1984, Contact: P.C. Gregson (206) 753-2120.

EIS No. 840511, Draft, UMT, MD, Baltimore Northeast Corridor Transit Improvements, Baltimore County, Due: January 4, 1985, Contact: John Carudo (215) 597-4179.

EIS No. 840512, Draft, FHW, OR, SW 257th Avenue Extension, I-84 to Stark Street, Multnomah County, Due: January 11, 1985, Contact: Dale Wilken (503) 399-5749.

EIS No. 840513, Draft, USN, WA, Puget Sound Area, Carrier Battle Group Homeporting, Construction/Operation, Snohomish County, Due: January 14, 1985, Contact: Rear Admiral L.S. Severance (206) 526-3075.

EIS No. 840514, Draft, DOE, CO, Durango/Vanadium Inactive Uranium/Vanadium Mill Tailina Site, Redmedial Actions/Clean-up of Radioactively-Contaminated Material, Durango, La Plata County, Due: January 11, 1985, Contact: James Morley (505) 844-3941.

EIS No. 840515, Draft, NRC, GA, Vogtle Electric Generating Plant, Unit 1 and 2, Operation, License Issuance, Burke County, Due: January 7, 1985, Contact: Darl Hood (301) 492-8474.

EIS No. 840516, Draft, BLM, NV, Esmeralde-Southern Nye Planning Area, Resource Management Plan, Esmeralda and Nye Counties, Due: February 19, 1985, Contact: Stephen Mellington (702) 388-6403.

EIS No. 840517, Draft, MMS, ATL, MA, RI, CT, NY, NJ, PA, DE, MD, 1985 OCS Oil/Gas Sale No. 111, Exploration/Development/Production of Hydrocarbon Resources, Lease Offering, Due: January 8, 1985, Contact: Heino Beckert (703) 285-2265.

EIS No. 840518, Final, MMS, CA, Point Arguello Field OCS Oil and Gas Development/Gavista Processing Facility, Santa Barbara County, Due: December 17, 1984, Contact: Mary Elaine Warhurst (213) 688-4360.

Amended Notices

EIS No. 840482, DSuppl, AFS, MT, Flathead National Forest Land and Resource Management Plan, Due: February 15, 1985, Published FR 11-2-84—Filing date reestablished.

EIS No. 840414, Draft, USN, ATL, VA, Navy Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS II), Operation, Chesapeake Bay and Atlantic Ocean, Due: December 13, 1984, Published FR 9-21-84—Review extended.

Dated: November 13, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-30188 Filed 11-15-84; 8:45 am]

BILLING CODE 4560-50-M

[OPP-30088; FRL-2720-8]

Certain Pesticide Chemicals; Intent To Reassess Certain RPAR and Pre-RPAR Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to reassess certain RPAR or pre-RPAR pesticide decisions.

SUMMARY: This notice announces the intent of the EPA to reassess decisions made regarding the rebuttable presumptions against registration (RPARs) or pre-RPARs of certain chemicals and the anticipated schedule for such reassessments. The RPAR or pre-RPAR decisions for the pesticides lindane, benomyl, paraquat, DDVP, EPN, PCNB, the EBDCs and terbutryn will be reassessed. Each such reassessment will be based on a review of the full complement of health and safety data available within the agency. For the EBDCs, EPN, PCNB, DDVP and terbutryn, the Agency is awaiting receipt of additional health and safety data which the Agency has previously requested from registrants or are otherwise under development and which the Agency considers necessary to conduct the reassessments concerning these pesticides. This notice includes a list of the data considered by the agency to be necessary for the reassessment of EBDCs, EPN, PCNB, DDVP and terbutryn and the projected dates for receipt of such data by the Agency.

FOR FURTHER INFORMATION CONTACT:

By mail:

Frank T. Sanders, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7420).

SUPPLEMENTARY INFORMATION:

I. Background

On September 19, 1984, the Agency and the plaintiffs in *NRDC, et al.* v. *Ruckelshaus, et al.* (Civil Action No. 83-1509) executed a Settlement agreement. In that agreement, the agency agreed to reassess its RPAR decisions concerning the pesticides lindane, benomyl, the EBDCs, EPN, and PCNB, and its pre-RPAR decisions concerning the pesticides paraquat, terbutryn and DDVP. On October 14, 1984, Judge Oliver Gasch of the U.S. District Court for the District of Columbia approved the Settlement Agreement.

This Notice is published pursuant to a provision of the Settlement agreement which requires the Agency to issue for publication in the **Federal Register** a notice of its intention to reassess these particular RPAR or pre-RPAR decisions and a list of data considered necessary to conduct the reassessments for the EBDCs, EPN, PCNB, DDVP, and terbutryn and the projected dates for receipt of such data by EPA.

II. Regulatory Framework

Before a pesticide product may be sold or distributed in the United States, the product must be registered in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), sections 3(a) and 12(a)(1). A pesticide registration is a license allowing a pesticide product to be sold and distributed for a specified use or uses in accordance with label instructions and precautions and other terms and conditions of registration. A pesticide product will be registered only if it performs its intended pesticidal function without causing "unreasonable adverse effects on the environment."

Under FIFRA section 6, the Administrator of EPA may cancel the registration of a pesticide product or modify the terms and conditions of its registration whenever it is determined that the pesticide product causes unreasonable adverse effects on the environment. The Agency created the RPAR process to facilitate the identification of pesticide products (or uses thereof) which may not satisfy the statutory standard for registration, and to provide an informal procedure through which to gather and evaluate information about the risks and benefits of these products and uses. The regulations governing the RPAR process are set forth at 40 CFR 162.11.

III. Reassessments

In each reassessment, the Agency will independently review the full complement of available health and safety data, assess applicable health and environmental risks, and reach an appropriate regulatory decision in accordance with law. Such decision may consist of a proposed or final Registration Standard, a notice of RPAR, a notice of proposed RPAR decision, a Notice of Intent to Suspend, or a Notice of Intent to Cancel concerning the particular pesticide. Upon completion of each reassessment, the Agency will, in its discretion, place the particular pesticide in the most appropriate stage of the regulatory process to avoid unnecessary delay in reaching a final regulatory decision.

EPA will complete its reassessments for the individual chemicals according to the following schedule unless an individual deadline is extended for "good cause" as provided below.

Chemical	Date for completion of reassessment
Lindane	Sept. 30, 1985.
Benomyl	Mar. 31, 1986.
Paraquat	Do.
EBDCs	Dec. 31, 1986.
EPN	Do.
PCNB	Do.
DDVP	Do.
Terbutryn	Do.

For each particular pesticide, the date for completion of a reassessment may be extended for "good cause" upon agreement of the plaintiffs in *NRDC, et al.* v. *Ruckelshaus, et al.* and the Agency. If the plaintiffs and the Agency are unable to reach an agreement on the need for such an extension, the Settlement Agreement provides that the Agency may apply to the Court to modify, for good cause shown, the date previously agreed upon for completion of a particular reassessment.

IV. Data Considered Necessary for Reassessments Which Are Currently Unavailable and the Projected Dates of Receipt

Data	Projected date of receipt
A. EBDCs	
1. Dietary exposure studies:	
a. Crop residue (each parent EBDC and its major metabolites and degradates, including ethylene thiourea (ETU))	1/86
b. Plant/livestock metabolism (each parent EBDC and ETU)	1/86
c. Conversion, reduction, concentration during processing (each parent EBDC and its metabolites and degradation products, especially ETU)	4/86
2. Product chemistry:	
a. Product identity (all product components, including each parent EBDC and its ETU conversion product)	1/86
b. Product analysis (all product components, including each parent EBDC and its ETU conversion product)	1/86
c. Certification of ingredients (all product components, including each parent EBDC and its ETU conversion product)	1/86
d. Physical and chemical characteristics (all product components, including each parent EBDC and its ETU conversion product)	1/86
3. Toxicological studies:	
a. 90-day subchronic feeding (each parent EBDC and ETU)	11/85
b. 90-day subchronic inhalation (each parent EBDC and ETU)	11/85

Data	Projected date of receipt					
	Amobeh	Maneb	Mancozeb	Nabam	Zineb	Metiram
4. Mutagenicity testing	2/86	3/86	11/85	2/86	2/86	2/86
a. Ames assays for gene mutation	2/86	3/86	11/85	2/86	2/86	2/86
b. Host mediated assays	2/86	3/86	11/85	2/86	2/86	2/86
c. In vitro mammalian cell assays	2/86	3/86	11/85	2/86	2/86	2/86
d. In vitro or in vivo cytogenic assays	2/86	3/86	11/85	2/86	2/86	2/86
e. In vitro or in vivo primary hepatocyte repair test	2/86	3/86	11/85	2/86	2/86	2/86
5 Metabolism study	2/86	3/86	[1] 4/83	2/86	2/86	12/86
6. Dermal absorption study	2/86	3/86	[1] 4/83	2/86	2/86	12/86

[1] Data submitted and currently under review.

Data	Projected date of receipt
B. EPN	
1. Toxicology data requirements: Teratogenicity (2 species: rat and rabbit)	11/86
2. Reentry protection data requirements: Field study—foliar dislodgeable residues (on all crops for which EPN is registered)	1/86
3. A study to explore the mechanism of recovery from EPN-induced delayed neurotoxicity	1/86
C. PCNB	
1. Product chemistry:	
a. New confidential statement of formula showing HCB level of 0.5%, maximum	2/86
b. Annual progress report on new technology to achieve 0.1% HCB	(1)
2. Residue study for PCNB and HCB levels in processed potatoes	12/85
3. Applicator exposure study: Data demonstrating that packaging and use patterns will not result in unreasonable adverse effects to applicators	12/85
D. DDVP	
1 Mutagenicity studies:	
a. In-vitro mutagenicity	4/85
b. In-vivo micronucleus assay	4/85
c. Dominant lethal assay	4/85
d. Sister chromatid exchange	4/85
2. Oncogenicity studies: NTP bioassay	3/86
E. Terbutryn	
Teratogenicity study	11/86

[1] Annually.

Information concerning the status of these reassessments will be provided to interested persons by the Agency on an ongoing basis.

Dated: November 14, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-30252 Filed 11-15-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Texas; Amendment to Notice of a Major-Disaster Declaration

[FEMA-727-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-727-DR), dated October 30, 1984, and related determinations.

DATED: November 8, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of Texas, dated October 30, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 30, 1984:

Precinct Four in Harris County as an area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-30101 Filed 11-15-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-000014-056.

Title: Trans Pacific Freight Conference (Hong Kong).

Parties:
American President Lines, Ltd.
Barber Blue Sea Line
Japan Line, Ltd.
A.P. Moller Maersk Line
Nippon Yusen Kaisha
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Line, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would authorize independent action to be taken over the letter or wire signature of the person authorized to do so.

Agreement No. 202-005700-038.

Title: New York Freight Bureau.

Parties:
Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

SYNOPSIS: The proposed amendment would authorize independent action to be taken over the letter or wire signature of the person authorized to do so.

Agreement No. 223-010674.

Title: Elizabeth New Jersey, Terminal Services Agreement.

Parties: Sea-Land Service, Inc.
Cia Chilena de Navegacion Interoceanica S.A.

Synopsis: Under Agreement No. 223-010674, Sea-Land will provide terminal services to Cia Chilena de Navegacion Interoceanica S.A. at the Elizabeth-Port Authority Marine Terminal. The term of the agreement shall be for one year from its effective date. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 13, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30174 Filed 11-15-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fidelcor, Inc., et al; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express the views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Rosemont, Pennsylvania; to engage *de novo* through its subsidiary, Latimer & Buck, Inc., Rosemont, Pennsylvania, in servicing of loans and other extensions of credit for Applicant's accounts or for the accounts of others. This application is to expand the previously approved geographic scope (Delaware, eastern Pennsylvania, and southern New Jersey) to include the entire United States.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *MCORP*, Dallas, Texas; to engage *de novo* through functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law including making loans and investments and taking deposits.

Board of Governors of the Federal Reserve System, November 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30077 Filed 11-15-84; 8:45 am]

BILLING CODE 6210-01-M

National Penn Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requires a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 7, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 20 percent of the voting shares of National Bank of the Main Line, Wayne, Pennsylvania (in organization).

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Water Tower Bancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 80 percent or more of the voting shares of Water Tower Trust and Savings Bank, Chicago, Illinois.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Star City Bancshares, Inc.*, Star City, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Star City, Star City, Arkansas.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Security Holding, Inc.*, Aurora, Colorado; to become a bank holding company by acquiring at least 80 percent of the voting shares of East National Bank, Denver, Colorado; and to acquire Mountain Holding, Inc., Aurora, Colorado, and Security Bancorporation, Inc., Boulder, Colorado, thereby indirectly acquiring Security Bank of Aurora, Aurora, Colorado and Security Bank of Boulder, Boulder, Colorado.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Kingsland Bancshares, Inc.*, Kingsland, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Kingsland National Bank, Kingsland, Texas.

Board of Governors of the Federal Reserve System, November 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30078 Filed 11-15-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on November 9, 1984.

Public Health Service Administration

Office of the Assistant Secretary for Health

Subject: 1986 National Mortality Followback Survey—Pretest—New
Respondents: Individual

Subject: Evaluation of the Products & Services of PHS Clearinghouses—New
Respondents: State/Local government; Businesses; Federal agencies

National Institutes of Health

Subject: Private Sector Perspectives on Health Issues of Minority Americans—New
Respondents: State and Local governments and businesses

Health Resources and Services Administration

Subject: Common Reporting Requirements for Urban Indian Health Programs—New
Respondents: Non-profit Institutions

Alcohol, Drug Abuse and Mental Health Administration

Subject: Mental Health of Primary Care Training Program—New
Respondents: Individuals/Non profit Institutions
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Child Support Enforcement Activities Under Title IV-D of the Social Security Act—Extension no change—OCSE-3 (0960-0154)
Respondents: Individuals
Subject: Report of Continuing Disability Interview—Revision—SSA-454BK (0960-0072)
Respondents: Individuals
Subject: Report by Person Entitled to Special age 72 Payments—Extension no change—SSA-1625 (0960-0094)
Respondents: Individuals
OMB Desk Officer: Robert J. Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503; ATTN: (name of OMB Desk Officer.)

Dated: November 9, 1984.

Harry A. Hadd,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-30000 Filed 11-15-84; 8:45 am]

BILLING CODE 4150-01-M

Social Security Administration; Statement of Organization, Functions and Delegation of Authority

Correction

In FR Doc. 84-27433 beginning on page 40671 in the issue of Wednesday, October 17, 1984, make the following corrections:

1. On page 40671, third column:

a. In the fourth line, "All SEA" should have read "all SSA";

b. In the seventeenth line, "OLIS" should have read "OIS";

c. In the twenty-second line, "the" should have read "to";

d. In the thirty-seventh line, "(OIS)" should have read "(OSI)"; and

e. In the forty-sixth line, "Directs" should have read " directs".

2. On page 40672:

a. In the first column, first line, "to" should have read "the";

b. In the second column, eighteenth line of paragraph E., "enforce" should have read "enforces".

BILLING CODE 1505-01-M

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Mental Health Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the meeting of the National Advisory Mental Health Council during the month of December 1984.

National Advisory Mental Health Council: December 3–4; 9:00 a.m., National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205.

Open: Contact: Ms. Helen Garrett, Committee Management Officer, Parklawn Building, Room 17C–26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: The meeting scheduled for December 3–4 will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance at this 2-day open meeting will be limited to space available.

Substantive information, summaries of the meetings, and roster of Committee members may be obtained from Ms. Helen W. Garrett, Committee Management Officer, National Institute of Mental Health, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. (301) 443–4333.

Dated: November 9, 1984.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 84-30125 Filed 11-15-84; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. December 13 and 14; 9 a.m. on December 13; 8 a.m. on December 14, Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, December 13, 9 a.m. to 12 m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, December 13, 2 p.m. to 4 p.m., December 14, 8 a.m. to 2:30 p.m.; Bert L. Schrivener, Center for Veterinary Medicine (HFV–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4557.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment of animal diseases and makes appropriate recommendations to the Commissioner of Food and Drugs.

Agenda—Open public hearing. Interested persons desiring to present data, information, or views orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. On December 13, the committee will discuss: (1) The role of the Veterinary Medicine Advisory Committee, (2) the role of the Center for Veterinary Medicine Council and its relation to the Advisory Committee, and (3) the definition of the policymaking process in the Center for Veterinary Medicine.

On December 14, the committee will discuss: (1) Pending policy decisions in the Center, (2) development of an agenda for dealing with policy issues, and (3) a committee agenda for the next meeting.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committed meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's descretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockvile, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 9, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30132 Filed 11-15-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P–0360]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Schmidt Baking Co., Inc., to market test a bread enriched to the nutrient levels recommended by the National Academy of Sciences, Food and Nutrition Board (FNB), in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than February 14, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Schmidt Baking Co., Inc., Baltimore, MD 21236.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard of identity for enriched bread (21 CFR 136.115) in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of U.S. RDA of vitamin B–6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115, with the exception of these deviations.

The permit provides for the temporary marketing of a total of 88,950,000 pounds of the product. The test product will be distributed in the States of Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia and in the District of Columbia. The test product is to be manufactured at Schmidt Baking Co., Inc., plants located in Baltimore, MD 21236; Cumberland, MD 21502; Verona, VA 24482; and Martinsburg, WV 25401.

The principal display panel of the label states the product name as "enriched special formula bread," and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. A side-by-side comparison of the percentage of U.S. RDA's nutrients in the test product and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than February 14, 1985.

Dated: November 8, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-30131 Filed 11-15-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[ORD–052–N]

Medicare and Medicaid Programs; Health Care Financing Research and Demonstration Cooperative Agreements and Grants; Technical Assistance Conference

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces a Technical Assistance Conference (Conference) to be held to discuss the priority areas and the guidelines for the anticipated Federal fiscal year 1985 HCFA cooperative agreements and grants. The Conference will convene on Wednesday, November 28, 1984 from 8:30 a.m. to 5:00 p.m. at Social Security Headquarters, in the Social Security Auditorium of the Altmeyer Building, at 6401 Security Boulevard, Baltimore, Maryland.

We urge potential applicants for HCFA cooperative agreements and grants to attend. The purpose of the conference will be to provide potential applicants with guidelines for preparing their applications in terms of methodology and research design, to discuss the availability of HCFA data sets relevant to HCFA's solicitation areas, and to provide information on the use of cooperative agreements as an award instrument. In addition, we will discuss the rigor of the research and evaluation design for demonstrations, as well as the methodology for estimating waiver costs.

Further information regarding the Conference may be obtained by contacting Michael J. Hoban, Acting Director, Office of Operations Support, Office of Research and Demonstrations, Health Care Financing Administration, (301) 594–7370 or 594–7371. We note that reservations are required because of space limitations. Attendance is limited to the first 700 persons who make reservations, and no more than two attendees from any one organization will be accepted.

Dated: November 14, 1984.
Carolyne K. Davis,
Administrator, Health Care Financing Administration.
[FR Doc. 84-30083 Filed 11-15-84; 11:20 am]
BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Garrison Diversion Unit Commission; Business Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commission business meeting:

Name: Garrison Diversion Unit Commission.

Date of Meeting: Wednesday, November 28, 1984.

Time of Meeting: 8:00 a.m.—5:00 p.m.

Place of Meeting: Room 628, Dirksen Senate Office Building (entrance: 1st and C Street, NE.), Washington, D.C.

Contact Person: James C. Wiley, Staff Director, (202) 453-3900.

Purpose: The Commission will discuss the Interim Staff Report on Issues and Alternatives, released November 7, 1984. In its discussions, the Commission will consider testimony presented at the public hearings of November 16-17 in Fargo, ND., as well as comments received on the Report through Wednesday, November 21.

Public Participation: Any interested person may attend and observe the metting.

Transcripts: A transcript of the meeting will be available for public review at the Commission offices: Room 603, 300 7th Street, SW., Washington, D.C., between 8:30 a.m. and 4:00 p.m., Monday—Friday. For copies of the transcript, please contact James C. Wiley, (202) 453-3900.

Dated: November 8, 1984.
E.N. Broadbent,
Federal Representative.
[FR Doc. 84-30098 Filed 11-15-84; 8:45 am]
BILLING CODE 4310-70-M

Privacy Act of 1974; Revision and Update of Systems of Records

This notice updates and revises the information which the Department of the Interior has published describing systems of records maintained which are subject to the requirements of Section 3 of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**.

Two notices, describing records maintained by the Bureau of Reclamation, are being revised to add new compatible routine uses. The notice titled "Collection Contracts—Interior, Reclamation-6", previously published in the **Federal Register** on April 11, 1977 (42 FR 19096), is revised to add new routine disclosures to: (1) Non-Federal auditors under contract with agencies with whom the Bureau has written agreements permitting access to financial records for audit purposes; (2) to Federal, State, and local agencies with regard to the hiring retention of an employee; and (3) to Federal agencies to collect debts through administrative or salary offset. The notice titled "Concessions—Interior, Reclamation-7", previously published in the **Federal Register** on April 11, 1977 (42 FR 19096), is revised to add a new routine disclosure to non-Federal auditors as described above. Both notices are revised to add disclosures to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12). The revised notices are published in their entirety below.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before December 17, 1984, will be considered. The notices shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: November 8, 1984.
Oscar W. Mueller, Jr.,
Director, Office of Information Resources Management.

Interior/WBR-6

SYSTEM NAME:

Collection Contracts—Interior, Reclamation–6.

SYSTEM LOCATION:

Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who lease, rent, or buy from the Bureau of Reclamation under a collection contract or agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual collection documents with copies of related bills and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3701, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are for the negotiation and administration of contracts to collect monies due the Bureau of Reclamation. Disclosures outside the Department of the Interior may be made: (1) To the Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violationor potential violation of a statute, regulation, rule, order or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (4) to non-Federal auditors under contract with the Departments of Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits; (5) where relevant or necessary to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit, information may be disclosed: (a) To a Federal agency that has requested the information, or (b) to a Federal, State, or local agency to enable the Department of the Interior to obtain information from such agency; (6) to a Federal agency for the purpose of collecting a debt owed the Federal Government through administrative or salary offset.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 522a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

In accordance with requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

The records are maintained for 6 years and 3 months after close of fiscal year, unless involved in litigation. Disposal is in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officers, Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of a record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals contracting with the Bureau and related contracts and agreements.

Interior/WBR-7

SYSTEM NAME:

Concessions—Interior, Reclamation–7.

SYSTEM LOCATION:

Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual concessionaires. Records in this system pertaining to individuals contain principally properietary information concerning sole proprietorships, but may also reflect personal information. In addition, the system maintains records concerning corporations and other business entities, some of which may contain personal information. Only the records reflecting personal information are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Rental or lease agreements with individuals providing services or concessions at Bureau facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reclamation Law of 1902, as amended, 43 U.S.C. 371, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is administrative control over concessions operating at Reclamation facilities. Disclosures outside the Department of the Interior may be made: (1) To State or local government agencies for taxation purposes; (2) to the Department of Justice when related to litigation or anticipated litigation; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (5) to non-Federal auditors under contract with the Departments of Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

In accordance with requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

The records are maintained for 6 years and 3 months after close of fiscal year, unless involved in litigation. Disposal is in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officers, Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of a record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained.

[FR Doc. 84-30087 Filed 11-15-84; 8:45 am]
BILLING CODE 4310-06-M

[INT-DEIS 84-62]

Dunn-Nokota Methanol Project; Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft environmental impact statement for the sale of water an industrial water service contract with the Nokota Company for a proposed Methanol Project in Dunn County, North Dakota. It would produce 86,940 barrels per stream day of Methanol from 43,156 net short tons per stream day of lignite coal and would require use of 16,800 acre-feet of water annually from Lake Sakakawea.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7622, Bureau of

Reclamation, Washington, DC 20240. Telephone: (202) 343–4991

Division of Management Support, General Services, Library Section, Cod 950, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303) 234–3011

Regional Director, Bureau of Reclamation, Federal Building, 316 North 26th Street, Billings, MT 59103, Telephone: (406) 657–6214

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, Bureau of Reclamation, or the Regional Director, at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

Dated: November 13, 1984.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 84-30135 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Issuance of Permit; USSR Ministry of Fisheries

On August 21, 1984, Notice was published in the **Federal Register** (49 FR 33159), that an application had been filed with the National Marine Fisheries Service, and Fish and Wildlife Service by the USSR Ministry of Fisheries, All-Union Scientific Institute of Fisheries and Oceanography, Moscow, USSR, for a permit to take by killing 200 Pacific walrus (*Odobenus rosmarus*), 200 ribbon seal (*Phoca fasciata*), 200 largha seal (*Phoca largha*), 100 ringed seal (*Phoca hispida*), 300 bearded seal (Erignathus barbatus), and 100 Steller sea lion (Eumetopicas jubatus), for the purpose of scientific research.

Notice is hereby given that on November 7, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service and Fish and Wildlife Service jointly issued a Scientific Research Permit to the USSR Ministry of Fisheries for the above taking subject to certain conditions set forth therein.

The Permit and related documents are available for reveiw in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802; and Director, Fish and Wildlife Service, U.S. Department of the Interior, 18th & C Streets, NW. Washington, D.C. 20240.

Dated: November 7, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

Richard K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 84-30128 Filed 11-15-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W-72525]

Airport Leases; Wyoming; Application

Notice is hereby given that, pursuant to the Act of May 24, 1928, 49 U.S. C. 211–214, the Town of Cokeville, Wyoming, has applied for an airport lease for the following described public land:

Sixth Principal Meridian, Wyoming

T. 24 N., R. 119 W.,
sec. 29, lot 6.
The land described contains 25.66 acres.

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their comments, together with their name and address, to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyoming 82901.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-30091 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-22-M

[M 62151]

Montana; Invitation Coal Exploration License Application

Members of the public are hereby invited to participate with Peabody Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Rosebud County, Montana:

T.1 N., R. 40 E., P.M.M.
Sec. 26: S½NE¼
80.00 acres.

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Peabody Coal Company, Rocky Mountain Division, 10375 East Harvard Avenue, Suite 400, Denver, Colorado 80231. Such written notice must refer to serial number M 62151 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of the Notice in the Forsyth Independent, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: November 6, 1984.

Robert T. Webb,

Chief, Branch of Solid Minerals.

[FR Doc. 84-30093 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-DN-M

Butte District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will be held Thursday and Friday, December 13 and 14, 1984.

The meeting will begin at 1 p.m., December 13 in the conference room of the Butte District Office at 106 North Parkmont, Butte, Montana. The agenda will include (1) the Garnet RMP, (2) the wild horse program, (3) the current status of the land adjustment program, (4) the BLM grazing fee study, (5) the wilderness program, (6) small scale mining, (7) weed control and (8) water rights adjudication.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the District Manager.

Summary minutes of the meeting will be maintained in the district office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: November 7, 1984.

Jack A. McIntosh,

District Manager.

[FR Doc. 84-30086 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-DN-M

Moab District Advisory Council; Meeting and Field Trip

AGENCY: Bureau of Land Management, Utah, Interior.

ACTION: Moab District Advisory Council, Meeting and Field Trip.

SUMMARY: The Council will conduct a field trip on December 13 and 14, 1984. The public is invited but must provide their own transportation.

Location: Moab District Office, 82 East Dogwood, Moab, Utah.

SUPPLEMENTARY INFORMATION: Agenda:

December 13:
- 9:00 a.m.—Briefing on Nuclear Waste Terminal Storage (NWTS) Program, Moab District Office (MDO)
- 10:00 a.m.—Leave MDO for Needles Overlook
- 11:15 a.m.—Arrive Needles Overlook, Briefing on Potential Railroad Routes per Department of Energy Studies
- 11:45 a.m.—Lunch
- 12:30 p.m.—Leave for Hart Point
- 12:45 p.m.—Hart Point Deer Winter Range and Turner Water Rock Tank
- 1:45 p.m.—Leave for Davis Canyon
- 2:30 p.m.—Arrive Davis Canyon (Tour Canyon)
- 4:30 p.m.—Leave for Monticello
- 6:00 p.m.—Dinner in Monticello

December 14 (Good Weather Option):
- 8:00 a.m.—Leave Monticello BLM Office
- 9:00 a.m.—Begin Tour of Wexpro Facility
- 10:45 a.m.—Tour Patterson Field
- 11:30 a.m.—Lunch, Montezuma Creek
- 1:00 p.m.—Tour Marathon Oil
- 2:30 p.m.—Discussion of Proposed Sale to Hay Hot Oil for Produced Water Disposal
- 3:00 p.m.—Whitley Lease (Flood Plain)
- 4:00 p.m.—Final Wrap-Up, Sand Island

December 14 (Bad Weather Option):
- 8:00 a.m.—Leave Monticello BLM Office
- 9:15 a.m.—Tour PTM Leases
- 10:30 a.m.—Tour Sand Island (Discuss River Management)
- 11:30 a.m.—Visit Muley Point Water System, Seeding, and Overlook
- 12:15 p.m.—Muley Point
- 1:30 p.m.—Visit Lisle Adams' Project on State Land
- 2:30 p.m.—Tour to Kane Gulch Visitor Complex
- 3:15 p.m.—Junction S–261/U–95 (Discuss Project Bold)
- 4:00 p.m.—Mule Canyon, Ramada
- 4:45 p.m.—Butler Wash Ruin (Wrap-Up and Leave 5:30 p.m.)

FOR FURTHER INFORMATION CONTACT: Mary Plumb, Public Affairs Officer, Bureau of Land Management, Moab District, 82 East Dogwood (P.O. Box 970), Moab, Utah 84532, Telephone: 801–259–6111.

Kenneth V. Rhea,

Acting Moab District Manager.

[FR Doc. 84-30094 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-DN-M

[Group 855] California

Filing of Plat of Survey; California

November 1, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Riverside County

T. 2S., R. 3 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and the survey of a right-of-way in section 11, Township 2 South, Range 3 East, San Bernardino Meridian, under Group No. 855, California, was accepted September 12, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was excuted to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-30112 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-40-M

[Group 855]

Filing of Plat of Survey; California

November 1, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Riverside County

T. 2 S., R. 3 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and the survey of a right-of-way in section 11, Township 2 South, Range 3 East, San Bernardino Meridian, under Group No. 855, California, was accepted September 12, 1984, and amended October 16, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-30092 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-40-M

[Group 663]

Filing of Plat of Survey; California

November 1, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Sonoma County

T. 10 N., R. 7 W.

2. This plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, and certain boundaries of mineral surveys, and the survey of the subdivision of sections 7, 17, 18, 19, and 20, Township 10 North, Range 7 West, Mount Diablo Meridian, under Group No. 663, California, was accepted September 28, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-30110 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-40-M

[C-24-84, C-23-84]

Filing of Plat of Survey; California

November 1, 1984.

1. These supplemental plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, San Bernardino County

T. 5 N., R. 1 W.

Mount Diablo Meridian, Placer County

T. 14 N., R. 10 E.

2. These supplemental plat of (1) section 36, Township 5 North, Range 1 East, San Bernardino Meridian, and (2) the SW 1/4 of Section 6, Township 14 North, Range 10 East, Mount Diablo Meridian, California, were accepted September 27, 1984, and September 25, 1984, respectively.

3. These supplemental plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These supplemental plats were executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-30111 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-40-M

Public Use Restriction; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary vehicle use restrictions in the Short Canyon Area within Kern County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This action restricts vehicle use on BLM-administered public land in the Short Canyon Area in Kern County, California, due to recent flood-caused damage. Maps of the affected area are available at the Caliente Resource Area Office, 520 Butte Street, Bakersfield, California. All vehicle use in this area is prohibited except for administrative and rehabilitative purposes. Persons allowed to drive in the area will be designated by and authorized officer. This closure will apply for one year from date of publication in the **Federal Register**.

The public lands affected by this closure are located in portions of T. 26 S., R. 35 E., M.D.M., Sections 20, 21, 22, 26, 27, 28, 29, 32, 33, 34, and 35.

SUPPLEMENTARY INFORMATION: Due to extensive flooding that occurred during July and August, massive amounts of sandy soils have been eroded and deposited in the Short Canyon Area. These recently deposited soils, as well as eroded hillside soils, and loss of soil-holding vegetation, represent a potential hazard in that they are highly vulnerable to further erosion and subsequent massive soil movement. This situation directly effects commercial and residential developments in the area. In order to stabilize the eroded area, a temporary vehicle closure will be maintained so that vegetation can be reestablished to protect these fragile soils. Authority for this vehicle closure is contained in CFR Title 43, Chapter II, Part 8364.1(a).

DATES: This vehicle closure will be effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 520 Butte Street, Bakersfield, California 93305; (805) 861-4236.

Dated: November 11, 1984.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 84-30098 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-40-M

Realty Action—Recreation and Public Purpose Sale; Public Land in Washington County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—R & PP Sale, Public Lands, Washington County, Florida.

SUMMARY: The following described lands have been examined and found suitable for sale for recreation and public purposes under the Recreation and Public Purpose Act of 1926 (44 Stat. 741, 43 U.S.C. 869), as amended.

Tallahassees Meridian, Florida T. 2 N., R. 15 W., Sec. 26: S½ NE¼ (80 acres).

The Washington County, Board of County Commissioners proposes to use this 80 acre tract for a recreational park. They will construct boat launching facilities, camping areas, and fish attracters (artificial reefs), along with maintaining a wildlife management and erosion control program.

It has been determined that the proposed use is in the public's best interest, and is consistent with the policy of the Bureau of Land Management.

The patent will be subject to all existing rights and reservations of record.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent, or 18 months from the date of this Notice, or upon publication of a Notice of Termination. Detailed information concerning the sale, including the environmental assessment and land report is available for review at the BLM office listed below.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the District Manager, Jackson District Office, P.O. Box 11348, Jackson, Mississippi 39213. Comments will be evaluated by the District Manager, who may vacate or modify this Realty Action. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Douglas Jones, (601) 960-4405.

Robert Todd,

Associate District Manager.

[FR Doc. 84-30178 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-31848]

Realty Action; Recreation and Public Purposes Classification; Carlton County, MN

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Classification for Recreation and Public Purposes, Carlton County, Minnesota, ES-31848.

SUMMARY: The following public land has been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869):

Fourth Principal Meridian, Carlton County, Minnesota

T. 48N., R. 21W.,
Sec. 28: NE¼NE¼.
Containing 40 acres

The Carlton Board of County Commissioners has applied for this land so that it can be included within the County Memorial Forest system for use as wildlife habitat and recreational purposes.

The land is physically suited to the proposed use and is not of national significance. Since the land is valuable for a local public program it is considered chiefly valuable for public purposes and therefore suitable for classification and sale under the Recreation and Public Purposes Act. This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.6. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

The classification of this land will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments: For a period of 45 days from the date of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the State Director, this Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53201, or by calling Priscilla McLain at (414) 291-4427.

Chuck Steele,

District Manager.

[FR Doc. 84-30181 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-84-M

[N-38849]

Airport Lease Amendment; Nevada

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), the Lahontan Airport Development Association has applied to amend its existing airport lease, serial number N-38849 to include the following described lands:

A parcel of land situated in the N½ of the NW¼ of Section 25, T., 18 N., R. 24 E., M.D.B. & M., and being more particularly described as follows:

Beginning at the section corner common to sections 23, 24, 25, and 26, T. 18 N., R. 24 E., M.B.D. & M., thence due East for a distance of 2258.31 feet, thence South 68°59' West for a distance of 2419.25 feet, thence due North for a distance of 867.64 feet, to the point of beginning, containing 22.28 acres, more or less.

A parcel of land situated in the SE¼ of the SE¼ of the SE¼ of Section 23, T. 18 N., R. 24 E., M.D.B. & M., and being more particularly described as follows:

Beginning at the section corner common to sections 23, 24, 25, and 26, T. 18 N, R. 24 E., M.D.B. & M, thence due North for a distance of 203.64 feet, thence South 68°59' West for a distance 583.71 feet, thence North 89°24' East for a distance of 544.91 feet, to the point of beginning, containing 1.27 acres, more or less.

These lands are located in Lyon County, Nevada.

The application was filed on October 19, 1984, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, Carson City District Office, 1050 East William Street, Suite 335, Carson City, Nevada 89701.

Thomas J. Owen,

District Manager.

[FR Doc. 30179 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-HC-M

[W-32093, W-71385, W-71386, W-71391, W-71414, W-71895]

Notice of Proposed Continuation of Withdrawal; Wyoming

November 8, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to continue the existing withdrawals on 16,638.94 acres for the Pathfinder Reservoir, North Platte Project, for an additional 100 years. The remaining acreage in the existing withdrawals will be relinquished. The lands remain closed to surface entry and mining. All of the lands, except those within the National Wildlife Refuge withdrawal, have been and will continue to be open to mineral leasing.

DATE: Comments and requests for public meeting should be received February 14, 1985.

ADDRESS: Comments and meeting requests should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307-772-2089.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that parts of the existing withdrawals made by the Secretarial Orders of September 21, 1903, January 27, 1904, October 10, 1905, January 20, 1932, June 25, 1940, and Public Land Order No. 5286 dated October 11, 1972, be continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands proposed for continuation are those lands that lie at or below the elevation of 5,850.1 feet in the following described subdivisions:

Sixth Principal Meridian, Wyoming

T. 26 N., R. 84 W.,
Sec. 4, lots 3, 4, S½NW¼, W½SW¼, SE¼SW¼;
Sec. 5, lots 1, 2, S½NE¼, N½SE¼, SE¼SE¼;
Sec. 8, E½NE¼;
Sec. 9, NW¼, W½SW¼, SE¼;
Sec. 10, W½SW¼.
T. 27 N., R. 84 W.,
Sec. 5, lots 2, 4;
Sec. 6, lots 1, 2, 3, 5, SW¼NE¼, SE¼NW¼, E½SW¼, S½S½NW¼SE¼, S½SE¼;
Sec. 8, NW¼NW¼;
Sec. 28, NW¼SW¼, S½SW¼;
Sec. 29, NW¼NE¼, S½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 30, NE¼, NE¼NW¼, N½SE¼;
Sec. 32, E½, NE¼NW¼;
Sec. 33, NW¼, N½SW¼, SW¼SW¼.
T. 28 N., R. 84 W.,
Sec. 4, lots 1-4, S½N½, SW¼, W½SE¼;
Sec. 5, lots 1-4, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 6, lots 1, 2, 3, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 7, lots 1-4, SW¼NE¼, E½W½, SE¼;
Sec. 8, N½, SE¼SE¼;
Sec. 9, W½E½NE¼, W½NE¼, W½, W½NE¼SE¼; NW¼SE¼, S½SE¼;
Sec. 10, SW¼;
Sec. 15, NW¼NW¼, SW½;
Sec. 16, N½, NE¼NW¼SW¼, E½SW¼, SE¼;
Sec. 17, NE¼, N½SW¼, SW¼SW¼;

Sec. 18, lots 1, 2, NW¼NE¼, E½NW¼;
Sec. 19, NE¼NE¼, NW¼SE¼NE¼, E½SW¼, W½NW¼SE¼, NW¼SW¼SE¼;
Sec. 20, S½SE¼NE¼, NW¼NW¼NW¼, SE¼SW¼, SE¼;
Sec. 21, W½E½NE¼, W½NE¼, NE¼NW¼, S½NW¼, SW¼, NW¼SE¼, W½SW¼SE¼;
Sec. 28, SW¼NE¼NW¼, W½W½, NE¼NE¼SW¼;
Sec. 29, NE¼, E½SW¼NW¼, E½NW¼, E½SE¼, E½W½SE¼;
Sec. 30, lots 1, 2, NE¼NW¼;
Sec. 31, SE¼SE¼SE¼;
Sec. 32, NE¼, NE¼SW¼, SE¼NW¼ SW¼, S½SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼;
Sec. 33, W½NE¼NW¼, NW¼NW¼, W½SW¼NW¼, W½NW½SW¼, NW¼SW¼SW¼.

T. 29 N., R. 84 W.,
Sec. 5, S½;
Sec. 6, lots 5, 6, 7, S½SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, N½NE¼, SE¼NE¼, NE¼NE¼ NW¼, NE¼NE¼SE¼;
Sec. 8, NE¼, N½NW¼, NW¼SW¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, NE¼SE¼;
Sec. 9, W½W½NE¼, NE¼NW¼, S½NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, S½NE¼SE¼, W½SE¼, SE¼SW¼;
Sec. 13, SW¼SW¼;
Sec. 14, S½S½;
Sec. 16, W½NE¼, W½, SW¼SE¼;
Sec. 17, E½SE¼NE¼, E½E½SE¼;
Sec. 19, SE¼SE¼SE¼;
Sec. 20, E½NE¼, S½SW¼NE¼, S½SE¼ NW¼, S½;
Sec. 21, W½, W½SW¼SE¼;
Sec. 22, S½SW¼SE¼, SE¼NE¼, SE¼;
Sec. 23, NE¼, NE¼NW¼, S½S½NW¼, S½;
Sec. 24, NW¼NW¼, S½NW¼, SW¼, SW¼SE¼;
Sec. 28, N½N½, SW¼NW¼, N½SE¼ NW¼, NW¼SW¼, SW¼SE¼;
Sec. 27, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 28, SW¼NE¼NE¼, S½NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 29, W½NE¼, N½NW¼, E½SE¼ NW¼, E½SW¼, NE¼SW¼SW¼, SE½;
Sec. 30, NE¼NE¼, SE¼NW¼NE¼;
Sec. 31, S½NE¼NE¼, SE¼NE¼, N½SE¼NE¼, NE¼SE¼, SE¼SE¼SE¼;
Sec. 32, 33;
Sec. 34, N½, N½SW¼, SW¼SW¼;
Sec. 35, N½NE¼, NE¼NW¼, S½NW¼;
Sec. 36, W½NW¼, NW¼SW¼, NE¼SW¼SW¼.

T. 28 N., R. 85 W.,
Sec. 1, SE¼SE¼NE¼, S½S½SW¼, NE¼SE¼, E½NW¼SE¼, S½SE¼;
Sec. 11, SE¼NE¼NE¼;
Sec. 12, NE¼, N½NW¼, N½SW¼NW¼, SE¼NW¼, E½NW¼SW¼, E½SW¼, SE¼SW¼SW¼, NW¼SE¼;
Sec. 13, SE¼NE¼, NE¼NW¼NW¼, S½NW¼NW¼;
Sec. 14, S½NE¼NE¼, S½NE¼, SE¼;
Sec. 23, NE¼, NE¼SE¼;
Sec. 25, N½NE¼, SE¼NE¼, NE¼NW¼.

T. 29 N., R. 85 W.,
Sec. 1, SE¼NE¼, N½NW¼SW¼, E½SW¼, N½SE¼, SW¼SE¼, NW¼SE¼SE¼;
Sec. 2, N½NE¼SE¼;
Sec. 3, NE¼SW¼, N½NE¼SW¼, N½NW¼SE¼, NW¼NE¼SE¼;
Sec. 4, lots 1, 2, N½S½, N½SE¼SW¼, N½SW¼SE¼, NW¼SE¼SE¼;
Sec. 5, SE¼NW¼, NW¼SW¼, N½NE¼ SW¼, N½NW¼SE¼, NE¼SE¼;
Sec. 12, W½NW¼NE¼, NE¼NW¼, E½SW¼NW¼, SE¼NW¼, NW¼SW¼, NW¼NE¼SE¼.

T. 30 N., R. 85 W.,
Sec. 28, SW¼SW¼SW¼, S½SE¼SW¼;
Sec. 27, SE¼SW¼NE¼, E½NW¼SE¼, SE¼SE¼;
Sec. 32, E½SE¼;
Sec. 33, S½SW¼, S½NE¼SE¼, S½SE¼;
Sec. 34, NE¼NE¼, E½E½NW¼;
Sec. 35, N½;
Sec. 36, S½NE¼NE¼, NW¼NE¼, S½NE¼, W½, SE¼.

T. 29 N., R. 86 W.,
Sec. 12, S½NE¼NE¼, N½SE¼NE¼, SW¼SE¼NE¼.

The area described contains 10,838.94 acres in Carbon and Natrona Counties, Wyoming.

The purpose of the withdrawal is to protect the Pathfinder Reservoir, North Platte Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuation. All interested persons who desire a public meeting for the purpose of being heard must submit a written request to the Chief, Branch of Land Resources, within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

P.D. Leonard,

Associate State Director, Wyoming.

[FR Doc. 84-30163 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-22-M

Jarbidge RMP/EIS Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Scheduling of an Additional Public Hearing for the Draft Jarbidge Resource Management Plan (RMP) and EIS.

SUMMARY: Information regarding the Draft Jarbidge RMP/EIS was published in the Federal Register on October 22, 1984 (49 FR 41289). In response to requests for additional hearings, the following public hearing will be held: December 5, 1984, 2:00 p.m. The hearing will be held at the Three Creek School which is located 37 miles west of Rogerson, Idaho, along the Rogerson to Jarbidge highway.

For additional information contact: Ted Milesnick, Boise District BLM, 3948 Development Avenue, Boise, Idaho 83705, (208) 334-1582.

Dated: November 9, 1984.

Martin J. Zimmer,

District Manager.

[FR Doc. 84-30180 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-GG-M

[Int DRMP/EIS 84-50]

Availability of the Draft Resource Management Plan/Environmental Impact Statement for the Esmeralda-Southern Nye Planning Area, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of and Public Hearings on the Draft Resource Management Plan/Environmental Impact Statement for the Esmeralda-Southern Nye Planning Area, Las Vegas and Battle Mountain Districts, Nevada.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the BLM, Las Vegas and Battle Mountain Districts has prepared a combined Resource Management Plan/Environmental Impact Statement for the Esmeralda-Southern Nye Planning Area, Las Vegas and Battle Mountain Districts, Nevada.

SUPPLEMENTARY INFORMATION: The Esmeralda-Southern Nye Resource Management Plan-Environmental Impact Statement is a comprehensive land use planning document which establishes management actions and objectives for resource condition and use levels, the standards for monitoring and evaluating the plan's effectiveness, and the need for more detailed management plan(s) and support actions. It also is an environmental impact statement which analyzes the effects of implementing a multiple use resource management plan on 3.4 million acres of public land in the Las Vegas and Battle Mountain Districts in Nevada. Four alternatives are being considered along with the Preferred Alternatives. The Preferred Alternative proposes to limit off-road vehicles on 113,971 acres of public land and close 15 acres of public land to off-road vehicle use. The Preferred Alternative includes a proposal for identifying a pool of 94,949 acres of public land for disposal and for designating 357 miles of utility corridors while identifying 30 miles of planning corridors. The Preferred Alternative proposes that 17,850 acres in one wilderness study area be recommended suitable for wilderness designation. The affected environment is discussed, and the environmental consequences occurring from each alternative are documented.

FOR FURTHER INFORMATION CONTACT: Kemp Conn, District Manager, Attn: RMP/EIS Project Manager, Las Vegas District Office, P.O. Box 26569, Las Vegas, NV 89126 (702) 388-6403.

Copies of the draft document are available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 18th and C Streets, Washington, D.C. 20240
Bureau of Land Management, Nevada State Office, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5448
Bureau of Land Management, Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada 89102, (702) 385-6400
Bureau of Land Management, Battle Mountain District Office, North 2nd and Scott Streets, Battle Mountain, Nevada 89820, (702) 635-5181
Bureau of Land Management, Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445, (702) 623-3676
Bureau of Land Management, Elko District Office 2002 Idaho Street, Elko, Nevada 89801, (702) 738-4071
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289-4965
Bureau of Land Management, Carson City District Office, 1050 E. William Street, Carson City, Nevada 89701, (702) 882-1613
Bureau of Land Management, Tonopah Resource Area Office, 102 Old Radar Base Rd., Tonopah, Nevada 89049, (702) 482-6214.

Also, copies are available for review at the following public libraries:

Public Libraries

Amargosa Public Library, Star Route 15, Box 401-T, Lathrop Wells, Nevada 89020
Beatty Community Library, 323 Montgomery, Beatty, Nevada 89002
Charleston Heights Library, 800 Brush Street, Las Vegas, Nevada 89107
Clark County Community College, Learning Resource Center, 3200 E. Cheyenne Ave., North Las Vegas, Nevada 89030
Esmeralda County Public Library, Silver Peak, Nevada 89013
Las Vegas Public Library, 1862 E. Charleston Blvd., Las Vegas, Nevada 89104
Mount Charleston Public Library, P.O. Box 269, S.R. 89038, Mt. Charleston, Nevada 89101
North Las Vegas Library, 2300 Civic Center Drive, North Las Vegas, Nevada 89030
Pahrump Public Library, Pahrump, Nevada 89041
Clark County Library, 1401 E. Flamingo Rd., Las Vegas, Nevada 89109
Esmeralda County Public Library, County Courthouse, Goldfield, Nevada 89013
Washoe County Library, 301 S. Center Street, Reno, Nevada 89505
University of Nevada, Las Vegas, James R. Dickinson Library, 4505 Maryland Parkway, Las Vegas, Nevada 89154
University of Nevada, Las Vegas, Getchell Library, Government Publications Dept., Reno, Nevada 89507.

A copy of the Draft RMP/EIS will be sent to all individuals, agencies, and groups who have expressed interest in the Esmeralda-Southern Nye Area planning process, and a limited number of copies are available upon request to the District Manager at the above address.

DATES: Written comments concerning issues pertinent to the Esmeralda-Southern Nye Planning Area RMP/EIS will be accepted until February 19, 1985. Public hearings have been scheduled for January 15, 1985, at 7:00 p.m. in the Pahrump Community Center, Room B in Pahrump, Nevada, January 16, 1985, at 7:00 p.m. in the Esmeralda County Courthouse in Goldfield, Nevada and January 17, 1985, 7:00 p.m. at the Showboat Hotel, Plantation Room, 2800 E. Fremont Street, Las Vegas, Nevada. Testimony concerning the issues will be accepted at these hearings. Interested individuals, representatives of organizations and public officials wishing to testify are requested to contact the District Manager for advance registration by 4:15 p.m., January 14, 1985. Oral testimony will be limited to 10 minutes.

Dated: November 2, 1984.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 84-29870 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5377, Block 185, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 6, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 146, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the

Coastal Management Section *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 7, 1984

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-30080 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Proposed Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 072, Block 12, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on November 8, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 9, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-30102 Filed 11-15-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-131)]

Chicago and North Western Transportation Co.; Abandonment in Douglas County, NE; Findings

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company to abandon its 5.6 mile rail line between milepost 123.1 at Omaha and milepost 117.5 at Florence in Douglas County, NE. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) a financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." any offer previously made must be remade within this 10 days period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-30107 Filed 11-15-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30418]

Jackson Industrial Development Co.; Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interest Commerce Commission exempts from the requirement prior approval under 49 U.S.C. 11301 the issuance by the Jackson Industrial Development Company of a secured note or notes, in an amount not to exceed $145,000, in connection with its acquisition of certain rail assets of the Missouri Pacific Railroad Company in Cape Girardeau County, MO.

DATES: This exemption is effective on November 15, 1984. Petitions to reopen this proceeding must be filed December 6, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30418 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Peter A. Gilbertson, Suite 350, 1575 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 5, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-30105 Filed 11-15-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 55 (Sub-61)]

Petition for Maximum Limits of Compensation Under the Former Bankruptcy Act; Delegation to Divisions of the Commission

AGENCY: Interstate Commerce Commission.

ACTION: Procedural change.

SUMMARY: For reasons of administrative efficiency the Commission is delegating decisions on petitions requesting that the Commission set maximum limits of compensation pursuant to sections 77(c)(2) and 77(c)(12) of the former Bankruptcy Act, from the entire Commission to Division 1 and Division 2.

DATES: The change in procedure is effective on November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245;

or

Leslie D. Miller, (202) 275-7618.

SUPPLEMENTARY INFORMATION: Under sections 77(c)(2) and 77(c)(12) of the former Bankruptcy Act, as amended (11 U.S.C. 205), while the bankruptcy court awards actual compensation for services rendered on behalf of the debtor's estate, the Commission is responsible for setting the maximum compensation limits that may be awarded. The Commission acts in response to petitions requesting that the maximum compensation limits be set. Since February, 1978, when the Commission ratified the appointment of the trustee in Finance Docket No. 28460, *Chicago Milwaukee, St. Paul and Pacific Railroad Company*, compensation matters have been considered by the entire Commission, rather than by divisions of the Commission.

For reasons of administrative efficiency, petitions requesting that the Commission set the maximum limits of compensation will be delegated from the entire Commission to Division 1 and Division 2. Since this is a final action undertaken to revise internal organizational matters, formal comments are unnecessary under 5 U.S.C. 553(b)(A).

This action does not significantly affect the quality of the human environment or energy conservation.

Dated: November 8, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-30106 Filed 11-15-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-128X)]

Seaboard System Railroad, Inc.—Discontinuance of Service and Trackage Rights in Bibb and Shelby Counties, IL; Exemption

The Seaboard System Railroad, Inc. (SBD) has filed a notice of exemption under 49 CFR Part 1152 Subpart F, *Exempt Abandonments and Discontinuances of Service and Trackage Rights*, as amended in *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55 (1984). SBD will discontinue (1) service over 7.97 miles of line of the Woodstock and Blockton Railway, which is jointly owned by SBD and Southern Railway, between Blockton Junction and Blockton in Bibb County, AL, and (2) trackage rights over 20.08 miles of line of the Southern Railway between Blockton and Gurnee Junction, including the Coleandor and Belle Ellen Branches, in Bibb and Shelby Counties, AL.

SBD has certified (1) that it has moved no local or overhead traffic over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Alabama has been notified in writing at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This exemption will be effective on December 16, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 26, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 6, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Fred R. Birkholz, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use concerns.

Decided: November 8, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30108 Filed 11-15-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How ofter the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and use of the information collection

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208 NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration
Job Corps Health Questionnaire
1205–0033; ETA 653
On occasion
Individuals or households
18,000 respondents; 5,940 hours; 1 form

The Health Questionnaire is used to obtain the health history of applicants to the program to determine medical eligibility. The applicant must not have a health condition which represents a potentially serious hazard to the youth or others, results in a significant interference in the normal performance of duties, or requires frequent, expensive, or prolonged treatment.

Revision

Bureau of Labor Statistics
Point of Purchase Survey
1220–0044; CPP–2A, CPP–2B, CPP–3
Annually
Individuals or households
3,894 responses; 4,868 hours; 4 forms

The Point of Purchase Survey will use the forms to gather information on the type of outlets at which consumers shop for consumer items. The information collected forms the sampling frame for approximately 85% of the outlet sample used for collecting price information for the Nation's Consumer Price Index (CPI).

Signed at Washington, D.C. this 8th day of November 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–30170 Filed 11–15–84; 8:45 am]

BILLING CODE 4510–30; 4510–24–M

Employment and Training Administration

[TA–W–15,419]

Tobin Hamilton Shoe Company, Birch Tree, MO; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 13, 1984, in response to a worker petition received on August 3, 1984, which was filed by three workers on behalf of workers at the Tobin Hamilton Shoe Company, Birch Tree, Missouri.

An active certification covering the petitioning group of workers was in effect during the relevant period (TA–W–12, 984A). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 7th day of November 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84–30171 Filed 11–15–84; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: that an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTRACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: November 7, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M–81–3–M	46 FR 29018	AMAX lead Co. of Missouri	30 CFR 57.4–61A	Installation of ventilation/fire doors would not enhance the safety of personnel in the mine. Granted with conditions.
M–81–54–M	46 FR 42230	Bunker Hill Co	30 CFR 57.9–99	Operation of a small mancoach on the ore train positioned immediately behind the locomotive in view of the operator of the train considered acceptable alternate method. Granted with conditions.
M–81–57–M	46 FR 58283	Concoco, Inc	30 CFR 57.19–54	Use of bridge strand ropes, protected by solid oak rope guides installed on the hoisting cage, considered acceptable alternate method. Granted with conditions.
M–81–58–M	46 FR 58283	Glens Falls Portland Cement Co	30 CFR 56.16–14(b)	Proposal to cease crane operations anytime trucks or other vehicles are within operating distance of the crane and to place barricades at both ends of the storage hall to prevent unauthorized entry considered acceptable alternate method. Granted with conditions.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M–81–66–M	47 FR 11997	San Pedro Mining Co	30 CFR 57.19–7	Use of the hoist without and overspeed device under specific operating conditions considered acceptable alternate method. Granted with conditions.
M–81–67–M	47 FR 8434	ASARCO, Inc	30 CFR 57.4–61A	Reversal of the main ventilating fan with specified conditions considered acceptable alternate method. Granted with conditions.
M–81–68–M	46 FR 62199	ASARCO, Inc	30 CFR 57.4–61B	Driving a range from the main underground shop to intersect the return airway, construction of suitable bulkheads or ventilation doors at necessary main shop entries and reversal of the main fan considered acceptable alternate method. Granted with conditions.
M–82–8–M	47 FR 13501	Tenneco/ Metals Co	30 CFR 57.4–43	Having buildings located within 100 feet of the mine opening equipped with heat and smoke sensors considered acceptable alternate method. Granted with conditions.
M–82–16–M	47 FR 24453	Morton Salt Division of Morton Thiokol, Inc.	30 CFR 57.21–24(a)	In the event of main fan stoppage or malfunction, withdrawal of all personnel from active areas to a designated location determined by petitioner with specific safeguards considered acceptable alternate method. Granted with conditions.
M–82–18–M	47 FR 24484	Morton salt Division of Morton Thiokol Inc	30 CFR 57.21–78	Use of nonpermissible equipment under prescribed conditions considered acceptable alternate method. Granted with conditions.
M–82–19–M	47 FR 24482	Morton Salt Division of Morton Thiokol, Inc.	30 CFR 57.21–46	Petitioner's proposal to make crosscuts that will result in centerline distances of about 180 feet for those crosscuts made between rooms, with such room widths and crosscut widths being about 70 feet considered acceptable alternate method. Granted with conditions.
M–82–32–M	48 FR 97	International Salt Co	30 CFR 57.4–61B	Petitioner's proposal to use a refuge chamber in lieu of installing fire doors considered acceptable alternate method. Granted with conditions.
M–82–33–M	48 FR 4575	Rio Algom Corp	30 CFR 57.21–97	Petitioner's proposal to use regular electric blasting detonators in lieu of millisecond delay detonators considered acceptable alternate method. Granted with conditions.
M–82–34–M	48 FR 4576	Rio Algom Corp	30 CFR 57.21–78	Maintenance of the present overcasts, constructed of 8 x 8 inch timer with headboards or squeeze blocks as a framework to absorb the ground movement, and 2 x 12 inch lagging with all exposed surfaces rendered incombustible considered acceptable alternate method. Granted with conditions.
M–82–37–M	48 FR 9397	Callahan Mining Corp	30 CFR 57.11–59	Use of a self-contained breathing apparatus capable of a quick connect with compressed air stored in containers near the hoist operator which provides a minimum of 12 hours of respirable atmosphere considered acceptable alternate method. Granted with conditions.
M–82–38–M	48 FR 11536	Weaver Construction Co	30 CFR 57.4–52	Operation of gasoline powered service vehicles owned by equipment service companies, electricians and explosive dealers in the mine under specified conditions considered acceptable alternate method. Granted with conditions.
M–83–2–M	48 FR 20525	Hecla Mining Co	30 CFR57.4–43	Installation of metal sheeting on the outside of the front of a structure located approximately 60 feet from the south tunnel portal and use of other precautionary measures considered acceptable alternate method. Granted with conditions.
M–83–37–C	48 FR 37743	Mid-Continent Resources, Inc	30 CFR 75.1303	Drilling and loading of valley explosive holes as a one-step operation with specified conditions considered acceptable alternate method. Granted with conditions.
M–83–39–C	48 FR 45325	Pyro Mining Co	30 CFR 75.1710	Use of cabs or canopies on specified mining equipment in certain mining heights would result in a diminution of safety. Granted with conditions.
M–83–44–C	48 FR 37744	Red Oak Coal Corp	30 CFR 75.1714–2(e)(3)	Storage of SCSRs more than 25 feet from persons during mantrips considered acceptable alternate method. Granted with conditions.
M–83–77–C	48 FR 36349	Alabama By-Products Corp	30 CFR 75.326	Use of belt entries as additional intake entries with specified safeguards considered acceptable alternate method. Granted with conditions.
M–83–78–C	48 FR 43421	Alabama By-Products Corp	30 CFR 75.1103–4(a)	Installation of low-level carbon monoxide detectors with specified safeguards considered acceptable alternate method. Granted with conditions.
M–83–80–C	48 FR 43422	Dorna Kay Coal Co., Inc	30 CFR 75.1710	Use of cab or canopies in specified low mining heights would result in a diminution of safety. Granted in part with conditions.
M–83–87–C	48 FR 48678	Pearl Coal Co	30 CFR 75.1710	Use of cabs of canopies on specified mining equipment in certain mining heights would result in a diminution of safety. Granted in part with conditions.
M–83–101–C	48 FR 51871	Consolidation Coal Co	30 CFR 75.1105	Proposal to install an automatic fire suppression device over the pumps activated by heat sensors considered acceptable alternate method. Granted with specific conditions.
M–83–103–C	48 FR 51870	AMAX Coal Co	30 CFR 75.302–4(d)	Operation of the auxiliary blowing fan system during idle shifts and weekends under specified conditions considered acceptable alternate method. Granted with conditions.
M–83–109–C	48 FR 51872	K. & D. Coal Co	30 CFR 75.902	Petitioner's proposal to deenergize and lock out all low-voltage, three-phase circuits, lock out the pumps from the surface, and post a warning sign at the mine's entry while personnel are underground considered acceptable alternate method. Granted with conditions.
M–83–116–C	48 FR 51871	H.A.T. Coal Co	30 CFR 75.902	Petitioner's proposal to deenergize and lock out all low-voltage, three-phase circuits, lock out the pumps from the surface, and post a warning sign at the mine's entry while personnel are underground considered acceptable alternate method. Granted with conditions.
M–83–117–C	48 FR 51873	Westmoreland Coal Co	30 CFR 75.326	Use of intake air which is coursed through the belt haulage and/or track entries to ventilate active working places with specified safeguards considered acceptable alternate method. Granted with conditions.
M–83–119–C	48 FR 51872	Sewell Coal Co	30 CFR 75.1710	Use of cabs or canopies on specified mining equipment in certain mining heights would result in a diminution of safety. Granted in part with conditions.
M–83–135–C	49 FR 874	Consolidation Coal Co	30 CFR 75.326	Use of air conducted through the belt haulage entries at the working places to maximize the effectiveness of the entries considered acceptable alternate method. Granted with conditions.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-83-136-C	49 FR 675	Consolidation Coal Co	30 CFR 75.1103-4	Installation of an early fire and telemetry system with carbon monoxide monitors installed at specific locations considered acceptable alternate method. Granted with conditions.
M-83-155-C	49 FR 4263	K. and L. Coal Co.	30 CFR 75.902	Petitioner's proposal to deenergize and lock out all low-voltage, three-phase circuits, lock out the pumps from the surface, and post a warning sign at the mine's entry while personnel are underground considered acceptable alternate method. Granted with conditions.
M-83-154-C	49 FR 5215	Jewell Smokeless Coal Corp	30 CFR 77.214(a)	Construction of a refuse embankment in an area containing eight abandoned mines in the Kennedy seam considered acceptable alternate method. Granted with conditions.
M-83-160-C	49 FR 5218	K.M. & K. Coal Co	30 CFR 75.1400	Proposed operation of mancage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method of compliance. Granted with conditions.
M-83-165-C	49 FR 5214	Bullion Hollow Enterprises, Inc	30 CFR 75.1710	Use of cabs or canopies on specified mining equipment in certain mining heights would result in a diminution of safety. Granted in part with conditions.
M-83-166-C	49 FR 7309	Westmoreland Coal Co	30 CFR 75.1103-4(a)	Use of a fire sensor and warning device system capable of identification of fire by activated sensors considered acceptable alternate method. Granted with conditions.
M-83-171-C	49 FR 3944	Monterey Coal Co	30 CFR 77.216-3(a)	Inspection of the water impoundment every three months under specified conditions in lieu of every seven days considered acceptable alternate method. Granted with conditions.
M-84-13-C	49 FR 9977	White Oak Coal Co., Inc	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Tan-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.

[FR Doc. 84-30199 Filed 11-15-84; 8:45 am]
BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Application No. D-2935, et al.] Proposed Exemptions; Citizens Bank of Evans City, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Program, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications of file with the Department for a complete statement of the facts and representations.

Citizens Bank of Evans City Pension Plan and Trust (the Plan) Located in Evans City, Pennsylvania

[Application No. D-2935]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the past lease (the Lease) of certain real property (the Property) by the Plan to the Citizens National Bank of Evans City, Pennsylvania (the Employer), the sponsor of the Plan; (2) the proposed sale of the Property by the Plan to the Employer; and (3) the assumption by the Employer of certain indebtedness of the Plan; provided the terms and conditions of the Lease, the sale of the Property and the assumption of indebtedness by the Employer was

and will be at least as favorable to the Plan as the Plan could obtain in an arm's length transaction between unrelated parties. The Lease was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in section 414 and 2003 of the Act.

Effective Dates: The effective dates of this exemption, if granted, will be January 1, 1975 for the Lease; and the date the grant of the exemption is published in the **Federal Register** for the sale of the Property by the Plan to the Employer and the assumption by the Employer of the indebtedness of the Plan.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with approximately 59 participants. The Employer is the trustee of the Plan. Plan assets, as of December 31, 1982, taking into account the value of the Property was $828,192. On May 23, 1973, the Employer entered into an agreement of purchase for the Property with unrelated third party sellers. At the time of purchase the Employer contemplated that improvements would be made to the existing building on the Property which building would then be used as the Employer's office facility. However, after discussions with the Comptroller of the Currency it was determined that the acquisition of the Property by the Employer would cause the Employer to exceed certain limitations imposed on the Employer by the Comptroller of the Currency. As a result, the Employer assigned its rights under the agreement of purchase to the Plan on June 29, 1973.

2. On August 9, 1973, the Plan purchased the Property for $95,000. The employer advanced $5,000 to the unrelated sellers and loaned $90,000 to the Plan to pay the remainder of the purchase price. Subsequent to the Plan's purchase of the Property, improvements were made on the Property and financed on an interim basis by the Employer. The $5,000 advance was repaid to the Employer by the Plan on December 31, 1973. The $90,000 loan was repaid to the Employer by the Plan on August 29, 1974. On August 29, 1974 the entire transaction was "closed" by the execution of the following documents: (1) The Lease by the Plan to the Employer for the Property was entered into for a 15 year term with three options to renew for 10 years each. The Lease was on a triple net basis with all expenses paid by the Employer. Rent for the initial 15 year term was set at $60,000 per year; (2) a non-recourse mortgage by the Plan to three independent area savings and loan associations (the S&Ls) for $416,000 for a 15 year term at 9½% interest per annum to assume the financing of the improvements on the Property;[1] and (3) the assignment of the Lease to the S&Ls to secure the mortgage note.

3. The applicant represents that all payments on the Lease have been made in a timely fashion in accordance with the terms of the Lease agreement. The applicant represents that the Lease rentals were determined by the trustees after taking into consideration other area rental rates. Also, Prior to entering into the transactions the trustees performed an economic analysis and determined that the Plan would experience a positive cash flow and a high rate of return on its initial capital investment as a result of purchasing the Property and entering into the Lease. As a result of their analysis the trustees represent that the Lease and accompanying transactions were in the best interests of the participants and beneficiaries of the Plan.

4. The Plan now intends to sell the Property to the Employer for the sum of $398,000. The Plan will receive $308,000 in cash and the Employer will purchase the Property subject to existing mortgage, with an approximate remaining balance of $90,000. Nicklas, King & Company (Nicklas), an independent appraiser, from Pittsburgh, Pennsylvania, states that as of November 15, 1983, the fair market value of the Property, taking into account the leasehold interest of the Employer was approximately $398,000. Barone and Sons, Inc. (Barone), an independent appraiser from Pittsburgh, Pennsylvania, states that as of November 1, 1983, the fair market value of the Property taking into account the leasehold interest of the Employer was between $385,000 to $410,000. Both Nicklas and Barone indicate that the proper method of valuing the Property was to value the remaining leasehold interest of the Employer. Both Nicklas and Barone represent that a valuation of the Property in fee simple would produce a lower value for the Property. Nicklas represents that if the Property was valued in fee simple of the Property, as of November 1, 1983 would be approximately $350,000. Barone represents that the probability another unrelated tenant or owner could be found is not great and that the local demand for office space is insufficient to support a facility as large as the Property. Therefore, Barone represents that if the Property were vacant it could only be rented at rates substantially below the present rentals on the Lease. As a result, Barone represents valuation of the leasehold interest of the Employer equals or exceeds the value of the Property in fee simple. The Plan will not pay any taxes or commissions in connection with the sale of the Property to the Employer. The Lease will be terminated upon sale to the Employer.

5. In summary, the applicants represent that the statutory criteria of section 408(a) of the Act have been satisfied as follows: (1) The trustees represent that at the time the transactions were entered into they were appropriate and in the best interests of the Plan; (2) rentals were determined by the trustees prior to entering into the Lease after taking into consideration other area rentals; (3) all payment of rentals were made in a timely fashion in accordance with the terms of the Lease; (4) the Lease will be terminated by the sale to the Employer; (5) the sales price for the Property was determined according to valuations by two independent appraisers; and (6) no expenses will be charged the Plan by reason of the sale of the Property.

Finally, the applicants represent that the Lease was entered into prior to the effective date of the Act without knowledge that the transactions would become prohibited on January 1, 1975. As soon as the applicants realized that the Lease had become a prohibited transaction, the applicants submitted a good faith request for an exemption instead of terminating the Lease.

For Further Information Contact: Louis Campagna of the Department, telephone (202) 523-8873. (This is not a toll-free number.)

A.B. Dick Products Company of Des Moines Employees Profit Sharing Plan and Trust Located in Des Moines, Iowa

[Application No. D-5234]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply for a period of five years from the date of an exemption grant to (1) the purchase by the Plan of certain leases of equipment (the Leases) from A.B. Dick

[1] The department expresses no opinion as to whether the mortgage by the Plan to the S&Ls constitutes a prohibited transaction under section 406 of the Act. Accordingly, no relief from section 406 is proposed by the Department for the mortgage.

Products Company of Des Moines (the Employer), and (2) the agreement by the Employer to indemnify the Plan against any loss relating to the Leases and also to repurchase any leases that are in default in accordance with paragraph (C) below, provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. The acquisition of a Lease from the Employer shall not cause the Plan to hold immediately following the acquisition: (i) more than 50 percent of the current value (as that term is defined in section 3(26) of the Act) of Plan assets in Leases sold by the Employer; or (ii) more than 10 percent of Plan assets (as defined above) in Leases of any one lessee.

C. Upon default by the lessee on any payment due under a Lease, the Employer guarantees in writing the immediate payment of all remaining rental payments and all other amounts due and owing under the Lease. A Lease shall be deemed to be in default for purposes of this section, if a payment due under the terms and conditions of the Lease is past due for 30 days; or in the event the lessee shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors or a liquidating agent, offer a composition or extension to creditors, make a bulk sale; or in the event any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or of amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation, or dissolution shall be begun by or against the lessee; or in the event of the appointment under any jurisdiction at law or in equity of any receiver of any property of the lessee; or in the event the condition of affairs of the lessee shall so change as to, in the opinion of the Trustee or other appropriate Plan fiduciaries, impair its security or increase its credit risk.

D. The Plan receives adequate security for the property underlying the Lease. For purposes of this exemption, the term adequate security means that the property is secured by a perfected security interest in the property leased, so that, if there is a default on the Lease, and the security is foreclosed upon, or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan will experience no loss.

E. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee, and the proceeds from such insurance will be assigned to the Plan.

F. The Plan shall maintain for the duration of any Lease which is sold to the Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plan, during normal business hours by the Internal Revenue Service, the Department of Labor, Plan participants, any employer of Plan participants, any employee organization any of whose members are covered by the Plan, or any duly authorized employee or representative of the above described persons.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 36 participants. As of December 31, 1983, the Plan had assets of $249,679.01. The Trustee is Valley National Bank (the Bank) located in Des Moines, Iowa.

2. The Employer is in the business of selling and leasing duplicating equipment, high speed typewriters and word processing equipment. The Employer, prior to the effective date of the Act, sold a number of leases of duplicating equipment and high speed typewriters to the Plan. On September 21, 1979, the Department granted Exemption 79–50 (44 FR 54790) to permit the Plan to invest up to 50% of Plan assets in such Leases, with the condition that no more than 10% of Plan assets be invested in the Leases of any one customer. The applicant seeks an additional five year exemption for the Plan to purchase Leases from the Employer. The Leases involve equipment which is leased to third parties. The Leases vary in length from twelve to thirty-six months, depending on the cost of the equipment, and will be sold to the Plan for cash. The Plan purchased eight Leases under Exemption 79–50 and the Bank represents that the Plan has complied with the percentage limitations thereunder. The Bank further represents that there have been no defaults on the eight Leases purchased by the Plan. The applicant represents that over the past five years, the Leases, which are completely net to the Plan, have averaged a 17.28% net rate of return.

3. The purchase price of a Lease will be based upon the retail price of the equipment being leased. In addition, no commissions will be paid to anyone as a result of sales of Leases to the Plan. The rental for the Leases purchased by the Plan will be calculated by the same method used to calculate the rental for the Employer's leases. Rentals will be comparable to what the Plan could obtain in a direct transaction with an unrelated third party. Title to the equipment passes to the Plan upon the purchase of any Lease.

4. Notwithstanding the fact that the Plan will acquire and hold title to the equipment under each Lease, as a further protection to the Plan, such equipment will be secured by a perfected security interest which will name the Plan as the secured party. If the security would be foreclosed upon, in the event of default, the value and liquidity of the security will be such that it may reasonably be anticipated that loss of principal or interest will not result.

5. The Plan will assume the position of lessor with the attendant rights and obligations under the terms of the Leases. However, the Employer will be liable under the warranty clauses of that agreement and all warranty work will be performed by the Employer at no charge to the Plan. Furthermore, if a default would occur, the Plan would have full recourse against the Employer and the Employer has agreed to repurchase any Lease defaulted upon at the purchase option price, pursuant to the terms of the Lease, and also to indemnify the Plan for any loss suffered.

6. The Bank will serve as an independent fiduciary on behalf of the Plan with respect to the proposed transactions. The Bank has advanced and will continue to advance credit to the Employer. The Bank represents that neither the Employer nor the principal of the Employer own stock in Banks of Iowa, Inc., the parent of the Bank, nor do any of the shareholders or officers of the Employer sit on the board of directors of the Bank or its parent corporation. The deposits of the Employer and the principal of the Employer in the aggregate total less than 1% of the total deposits of the Bank. The Bank's loans to the Employer and to the principal of the Employer in the aggregate total less than 1% of the total loans of the Bank. The Bank further represents that so long as it serves as trustee of the Plan, the Bank will not engage in the purchase of Leases from the Employer except on behalf of the Plan. The Bank will not purchase any Employer leases on its own account.

7. The Bank represents that it will approve all purchases of Leases and will determine that each purchase is a fair market value transaction. The Bank further represents that it will make an individual determination prior to the purchase of each Lease that the purchase is appropriate and suitable for the Plan. In addition, the Bank represents that it will monitor the terms of the Leases and take whatever action is necessary to enforce the rights of the Plan.

8. At the end of the initial lease term, the lessee has three options, with the following consequences to the Plan: (a) the customer may renew the Lease with the Plan's rights and obligations remaining the same as during the initial term; (b) the customer may purchase the equipment at the purchase option price, in which case the Plan would receive the proceeds; and (c) the customer may choose not to renew the Lease or purchase the equipment, in which case the Employer would purchase the equipment from the Plan at the purchase option price.

9. In summary, the applicant represents that the proposed sales of the Leases by the Employer to the Plan meet the requirements of section 408(a) of the Act, because: (a) The sales will be limited to a five year period and will be limited to 50 percent of Plan assets with the condition that no more than ten percent of plan assets be invested in the Leases of any one customer; (b) the decision to purchase a Lease will be made by the Bank acting as independent fiduciary on behalf of the Plan; (c) perfected security interests will be filed on the equipment; (d) the Employer will guarantee the payment of the Leases upon the lessee's default or termination of the Lease; and (e) the Leases are net to the Plan and have averaged a net return of more than 17.28 percent to the Plan over the past five years.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Family Medical Clinic of Pearl, P.A. Profit Sharing Plan (the Profit Sharing Plan) and Family Medical Clinic of Pearl, P.A. Money Purchase Pension Plan (the Pension Plan; Together, the Plans) Located in Pearl, Mississippi

[Application No. D–5392]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase by the Profit Sharing Plan of a parcel of unimproved real property (Lot 1), located in Pearl, Mississippi, from Robert R. Rester, M.D., for $28,476, and the purchase by the Pension Plan of a parcel of unimproved real property (Lot 2), located in Pearl, Mississippi, from Dr. Rester for $22,770, provided the purchase prices do not exceed the fair market values of the Lots on the date of the acquisitions.

Summary of Facts and Representations

1. Family Medical Clinic of Pearl, P.A. (the Employer) is engaged in the practice of medicine in Pearl, Mississippi. The Plans are defined contribution Plans which had 4 participants each as of January 1, 1984. Both Plans allow individual participant direction of investments.

2. Dr. Rester, who is an employee, director and 100% shareholder of the Employer, has an individually directed account in each Plan. Dr. Rester is also the trustee of each Plan. As of July 31, 1984, Dr. Rester's Profit Sharing Plan account had a total of $115,386, and his Pension Plan account had a total of $99,244.

3. Dr. Rester owns several parcels of unimproved real estate, including Lots 1 and 2, located in the Boyington Oaks Office Park, Pearl, Mississippi. Dr. Rester now desires to direct his account in the Profit Sharing Plan to purchase Lot 1, and his account in the Pension Plan to purchase Lot 2, at the Lot's fair market values, as long-term investments that will diversify the assets of each account. Payment for each Lot will be in cash, and no commissions or other costs will be paid by either account. Deeds for each Lot will be filed and recorded in the Land Records of Rankin County, Mississippi. Dr. Rester's account in each Plan is segregated from the other accounts, and his accounts will bear the risk of all gains and losses from the investments. The separate accounts of Dr. Rester are the only accounts affected by the proposed sales.

4. Messrs. R.D. Morrow, Jr. and David L. Morrow, Jr., independent real estate appraisers in Brandon, Mississippi, have appraised Lot 1 as having a fair market value of $28,476, and Lot 2 as having a fair market value of $22,770 both as of September 21, 1984.

5. In summary, the applicant represents that the proposed transactions meet the criteria of section 408(a) of the Act because: (1) The purchase of Lot 1 involves approximately 24.7% of Dr. Rester's account in the Profit Sharing Plan, and the purchase of Lot 2 involves approximately 22.9% of Dr. Rester's account in the Pension Plan; (2) the sales will be at prices established by independent appraisal; (3) Dr. Rester is the only participant of the Plans to be affected by the transactions; and (4) Dr. Rester has determined that the proposed transactions are appropriate for and in the best interests of his accounts in the Plans, and he desires that the transactions be consummated by the accounts.

Notice to Interested Persons: Because Dr. Rester is the only participant in the Plans to be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the date of publication of this notice in the Federal Register.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust) Located in New York, New York

[Application No. D–5456]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the use of a portion of the purchase price paid by the Trust in connection with purchase of three industrial parks located in Orange and Los Angeles Counties, California (the Parks) to pay off outstanding mortgages held by the Pacific Mutual Life Insurance Company (Pacific), and the First Interstate Mortgage Company (First Interstate), parties in interest with respect to the Trust.

Effective Date: If granted, this exemption will be effective October 21, 1983.

Summary of Facts and Representations

1. The Trust is a tax-exempt trust established, effective January 1, 1984, pursuant to an amendment and restatement of the Bell System Trust. Prior to January 1, 1984, the Trust was known as the Bell System Trust (BST). Pursuant to the court-ordered divestiture by American Telephone and Telegraph Company AT&T), the sponsor of the Trust, of certain portions of its

subsidiaries effective January 1, 1984, the BST was split into separate plans for the nine newly created companies (the Companies). The approximately $4 billion in assets of the BST invested in real estate, including real estate to be acquired after January 1, 1984 pursuant to commitments by the BST entered into prior to January 1, 1984, are held in the Trust for a 10 year period from the effective date of the divestiture. Each plan for the newly organized Companies, which includes a newly created plan on behalf of AT&T and subsidiaries has an undivided proportionate interest in the Trust based upon the BST's actuarily determined liabilities as of January 1, 1984. As of December 31, 1982, the Bell System Pension Plan and the Bell System Management Pension Plan, the plans funded by the BST, had total assets of approximately $46 billion, and covered a total of approximately 1,165,000 participants.

2. Pursuant to the terms of the BST trust agreement dated October 1, 1980, AT&T reserved the power to hire investment managers to invest all or some of the funds held in the BST. (Hereinafter the term "the Trust" shall refer to both the BST and the Trust, as applicable.) Heitman Advisory Corporation (Heitman), an Illinois corporation with its principal office in Chicago, Illinois, is an investment advisor registered with the Securities and Exchange Commission and the Security Division of the Secretary of State of the State of Illinois. Heitman has enterd into a management agreement with AT&T whereby Heitman has agreed to act as an investment manager for a portion of the Trust assets. Specifically, Heitman's duties are to invest allocated Trust funds, directly or indirectly, in parcels of real estate or real estate related investments. As an investment manager, Heitman has sole responsibility and discretion for the acquisition, management and disposition of each real estate related investment acquired by Heitman on behalf of the Trust. All amounts allocated to Heitman from the Trust are allocated through Harris Trust and Savings Bank (Harris Bank), one of the Trust's trustees. All such investments are purchased in the name of Harris Bank as trustee for the Trust, or such investment may be held by another nominee of the Trust, as may be designated to Heitman.

3. All investment decisions made by Heitman for the Trust are made by Heitman's investment committee. This committee consists of Messrs. Norman Perlmutter, Miles Berger, William Jenson, Herbert Kuehnle, Eric Mayer, Stuart Isen, George A. Scheidler, and Lester Rosenberg. None of these individuals is an officer, director or employee of AT&T or any affiliate. None of the stock of Heitman or any affiliate is held by AT&T or any affiliate, nor does any officer, director, or employee of AT&T or any affiliate own any stock in Heitman or any affiliate.

4. On October 21, 1983, Heitman, as investment manager to the Trust, and Bank of America National Trust & Savings Association, as ancillary trustee for Harris Bank, entered into a purchase agreement with Dunn Construction Company, a California general partnership, dba DCC Properties, and Calinda Properties, a California general partnership (collectively, the Sellers) to acquire the Parks for a price of $42.2 million. The Parks are known as the Fountain Valley Industrial Park, the Valley East Industrial Park and the Orangewood Industrial Park. Heitman represents that neither of the Sellers and no tenants in the the Parks are parties in interest with respect to the Trust. However, the applicant represents that two of the seven lending institutions which held mortgages on the Parks, Pacific and First Interstate, are affiliates of fiduciaries to the Trust. Pacific is the parent of Pacific Investment Management Comany, an investment manager to the Trust, and First Interstate is a "brother-sister" corporation with First Interstate Bank of Oregon, a fiduciary to the Trust.

5. The closing of the purchase of the Parks occurred on January 17, 1984, through an escrow procedure as the purchase price was paid to an escrowee and a portion of it was applied to pay off the outstanding principal balances owed to the mortgage lenders. Title was therefore conveyed to the Trust free and clear of the Seller's mortgages. The Parks are currently held in the Trust.

6. The applicant seeks an exemption for the application of a portion of the purchase price of pay off the outstanding mortgages of Pacific and First Interstate. Neither of the lenders had any authority, control or responsibility with respect to the investment decision to acquire the Parks as all negotiations concerning the acquisition of the Parks was conducted by Heitman. Heitman's decision to acquire the Parks was not influenced by the fact that Pacific and First Interstate are affiliates of other fiduciaries with respect to the Trust. Heitman did not discover the relationship of the two lenders to the Trust until a date after Heitman made the decision to acquire the Parks on behalf of the Trust. In the course of its acquisition of the Parks for the Trust, Heitman determined that the acquisition of the Parks not subject to any outstanding mortgages was in the best interests of the Trust.

7. Heitman believes that it qualifies as a "Qualified Professional Asset Manager" as defined in Part V(a) of the class exemption published in the **Federal Register** on March 13, 1984 (47 FR 56945). The two lenders do not have the authority to appoint Heitman as a manager of funds held by the Trust or to negotiate the terms of Heitman's investment management agreement with AT&T with respect to the Trust. However, Heitman does not qualify for the Part I—General Exemption with respect to the Trust due to the fact that more than 20% of the total client assets managed by Heitman are Trust assets.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because (a) Heitman, a Trust fiduciary completely independent of the mortgagees, negotiated the transaction without regard to the fact that the mortgagees are parties in interest with respect to the Trust; (b) neither the mortgagees or their affiliates had any discretion with respect to Heitman's decision to acquire the Parks; and (c) the transaction was effected on terms not less favorable to the Trust than those available with unrelated parties.

Notice to Interested Persons: Interested persons will be notified in the manner agreed upon by the applicant and the Department within 30 days of the date of publication of this notice in the **Federal Register**. Comments are due within 60 days of the date of publication.

For Further Information Contact: Mr. David Stander of the Department, telepone (202) 523–8881. (This is not a toll-free number.)

Truman Arnold Retirement Trust (the Plan) Located in Texarkana, Texas

[Application No. D–5466]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continued leasing beyond June 30, 1984, of certain real property (the Property) by the Plan to Truman Arnold Distributing Co., Inc. (the Employer), a party in interest to the Plan, provided that the terms of the lease (the New Lease) are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Effective Date: If the proposed exemption is granted, it will be effective July 1, 1984.

Summary of Facts and Representations

1. The Employer owns and operates an interstate chain of convenience stores and distribution centers for petroleum products. Stock of the Employer is wholly owned by O. Truman Arnold (Mr. Arnold) who also wholly owns Truman Arnold Transport Company (Transport).

The Plan as of September 30, 1983, had net assets of $2,404,556 and 182 participants. Employees of both the Employer and Transport are covered by the Plan. The trustee of the Plan (the Trustee) is State First National Bank of Texarkana, Texas.

2. The Plan acquired land and buildings comprising the Property in Texarkana, Texas, which the Plan leased (Lease 1) prior to July 1, 1974, to the Employer and Transport for use as a home office site.[2] In 1979, the Employer expanded its home office operations by purchasing a parcel of property contiguous with the original parcel owned by the Plan and constructing a building on the new property (the Expansion Property). Pursuant to an exemption application filed by the Employer and others, the Department granted an exemption [3] permitting the Employer to contribute the Expansion Property to the Plan and permitting the Plan to lease the Expansion Property (Lease 2) back to the Employer. The current exemption application seeks relief to permit the continuation of Lease 1 beyond June 30, 1984, on terms similar to those contained in Lease 2. The applicants represent that the only Plan assets to which the Employer is a lessee, user, issuer or obligee are the Property and the Expansion Property.

3. The Property was appraised by Jim Freeman (Mr. Freeman) of P.M. Brown, Inc., Realtors in Texarkana, Texas, at $256,000 as of September 15, 1983. Mr. Freeman, who has no relationship with the Employer, Transport or their principals, is a senior member of both the American Society of Appraisers and the American Association of Certified Appraisers. Mr. Freeman determined that the gross fair rental value of the Property was $33,480 per year and, adjusting for estimated taxes, insurance, maintenance and management expenses, the net fair rental value was $28,705 per year. Mr. Freeman opined that the Property is a multipurpose property that could be easily converted to other uses should the need arise.

In addition to appraising the Property, Mr. Freeman also appraised the Expansion Property which he valued at $310,000. Thus, the value of the Property and the Expansion Property as of September 15, 1983, totaled $566,000, which constituted 23.5% of the Plan's assets at that time.

4. The New Lease was negotiated prior to July 1, 1984, by Commercial National Bank in Shreveport, Louisiana (the Bank), acting in its capacity as the Plan's independent fiduciary [4] with regard to the Property, and the Employer. The New Lease is a triple net lease having a primary term of five years with three additional five-year terms which may be exercised solely in the Bank's discretion. The initial rental rate is $35,840 per year, which amount equals 14% of the fair market value of the Property. Every third year of the New Lease the fair market value and fair rental value of the Property will be determined by an independent appraiser selected by the Bank. The rental rate will be adjusted every third year based on the new appraisal, and the rental rate at all times will be, on a triple net basis, the greater of the fair rental rate determined by the appraiser or 14% of the fair market value of the Property. The Employer will maintain adequate fire and casualty insurance on the Property as determined by the Bank with the Plan named as loss payee. Further, the Employer and Mr. Arnold, individually, have agreed to indemnify the Plan against any decline in the market value of the Property below $256,000.

5. The Bank has full responsibility and exclusive authority to take all actions on behalf of the Plan with respect to the Property, including selling the Property if the Bank determines that the sale is in the best interests of the Plan and its participants and beneficiaries. The Bank concluded prior to July 1, 1984, that the Plan should retain the Property as an investment and that the Plan should continue to lease the Property to the Employer. In reaching this conclusion, the Bank reviewed the Plan's financial records and asset portfolio. The Bank found that the Trustee maintains more than 20% of the Plan's assets in liquid assets consisting of cash, government securities, marketable corporate debt and equity instruments, accounts receivable, and cash surrender values of life insurance policies. Only 24 of the current 182 Plan participants will reach normal retirement age in the next ten years. Both the Trustee and the Bank feel that the liquid assets maintained in the Plan should be more than adequate to fulfill any contingent liabilities in the foreseeable future. Because the Property is readily adaptable to other uses, the Plan is indemnified against a decline in the fair market value of the Property, and the Property has appreciated in value over the years it has been a Plan asset, the Bank believes the Plan should continue to own the Property.

The terms of the New Lease were found by the Bank to be no less favorable to the Plan than terms obtainable in an arm's length transaction with an unrelated party. The current gross fair rental value of the Property determined through an appraisal is $33,480 per year, yet the Plan will be paid $35,840 on a triple net basis. The Bank also views the guaranteed 14% return on the fair market value of the Property as an attractive feature of the New Lease. The Bank examined the past payment records of the Employer and found that it has never defaulted on any rental payments to the Plan. The Bank also examined the financial statements of the Employer and concluded that the Employer is a responsible lessee and is financially healthy.

6. In summary, the applicants represent that the subject transaction satisfies the exemption criteria of section 408(a) of the Act because: (a) The interests of the Plan with regard to the Property and the New Lease are represented by an independent fiduciary, the Bank; (b) the initial rental rate under the New Lease is 14% of the fair market value of the Property, which amount is not less than the current fair rental value of the Property; (c) the rental rate will be adjusted every third year of the New Lease based on independent appraisals of the Property and will equal the greater of 14% of the fair market value of the Property or the fair rental value of the Property; (d) the value of the Property and the Expansion Property represent less than 24% of the Plan's assets; (e) the Plan is indemnified

[2] The applicants represent that Lease 1 was encompassed until June 30, 1984, by the transitional rules of sections 414(c)(2) and 2003(c)(2)(B) of the Act. The Department expresses no opinion as to the applicability of sections 414(c)(2) and 2003(c)(2)(B) of the Act to Lease 1.

[3] See Prohibited Transactions Exemption 81–86, 46 FR 36273, July 14, 1981.

[4] The Employer maintains with the Bank two checking accounts which represent .000023% of the Bank's total deposits as of December 31, 1983. The Bank has no other relationships with the Employer, Transport or their principals.

against any decline in the fair market value of the Property below $256,000; and (f) the Bank determined, following extensive review and evaluation, that the retention of the Property as a Plan asset and the continued leasing of the Property to the Employer under the terms of the New Lease are in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its praticipants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogration of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 13th day of November, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-30177 Filed 11-15-84; 8:45 am]

BILLING CODE 4510-29-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following normal labor turnover certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522-9, as amended and § 522.20 to 522.25, as amended).

Big River Mfg. Co., Kittanning, PA; 8-31-84 to 8-30-85; 10 percent of the total number of factory production workers. (Boy's shirts)

Bland Sportwear, Inc., Bland, VA; 7-24-84 to 7-23-85; 10 learners. (Men's and boys' shirts)

The following normal labor turnover certificates were issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and § 522.30 to 522.35, as amended.)

Louis Gallet, Inc., Uniontown, PA; 6-22-84 to 6-21-85; 5 learners. (Ladies' sweaters)

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum wages is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before December 3, 1984.

Signed at Washington, D.C. this 9th day of November 1984.

Arthur H. Korn,

Authorized Representative of the Administrator.

[FR Doc. 84-30168 Filed 11-15-84; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and Time: December 4-5, 1984:
9:00 a.m.-5:00 p.m., December 4
9:00 a.m.-3:00 p.m., December 5

Place: National Sciene Foundation, 1800 G Street, NW., Room 540, Washington, D.C. 20550.

Type of Meeting: Open.

Contact Person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357-9571.

Summary Minutes: Mrs. Mary Poats at the above address.

Purpose of Advisory Committee Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Summarized Agenda: Discussions on issues, opportunites and future directions for the Engineering Directorate; discussion of the Engineering Directorate budgets for FY 85 and FY 86; reports from Directorate Advisory Committee Chairmen; discussion with NSE Director as well as other items.

M. Rebecca Winkler,

Committee Management Officer.

November 13, 1984.

[FR Doc. 84-30139 Filed 11-15-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Ethics and Values in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ethics and Values in Science and Technology.

Date and Time: December 3 and 4, 1984; 8:30 a.m. to 6 p.m. each day.

Place: Room 1242A, National Science Foundation, 1800 G Street, NW., Washington, D.C. (Room 415, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, D.C., December 4, 8:30 a.m. to noon.)

Type of Meeting: Part Open; Open, December 4, 1 p.m.-6 p.m.; Closed—remainder of scheduled time.

Contact Person: Dr. Rachelle Hollander, Program Director, Ethics and Values in Science and Technology, National Science Foundation, Washington, D.C. 20550, Telephone 202/357-7552.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendation concerning support for research and related activities in this field.

Agenda: Open—General discussion of the current status and future plans of the Ethics and Values in Science and Technology program. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

November 13, 1984.

[FR Doc. 84-30138 Filed 11-15-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Law and Social Sciences of the Division of Social and Economic Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub.L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Sciences of the Advisory Panel for Social and Economic Science.

Date and Time: November 30th and December 1st, 1984; 9:00 a.m. to 5:00 p.m.

Palce: Room 628, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Sciences Program, Room 312, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550; telephone (202) 357-9567.

Purpose of Subpanel: To provide advice and recommendation concerning support for research in Law and Social Sciences.

Agenda: Closed portion: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

November 13, 1984.

[FR Doc. 84-30137 Filed 11-15-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export and Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export and import licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 13th day of November 1984 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

NRC Export Applications

Name of applicant, date of application, date received, application No.	Material type (percent)	Material in kilograms: Total element	Material in kilograms: Total isotope	End-use	Country of destination
Westinghouse Electric Corp., Oct. 19, 1984, Oct. 25, 1984, XSNM02177.	3.3	86,000	2,954	For conversion to UO_2, pelleting and assembly into fuel rods for return to U.S. for Commanche Peak No. 2.	Sweden.
International Energy Association Ltd., Oct. 30, 1984, Nov. 5, 1984, ISNM84012.	4.0	1,600	60	Samples to be delivered to Ledoux and Co. for isotopic and chemical analysis.	From United Kingdom, Federal Republic of Germany, Netherlands.
Exxon Nuclear Co., Inc., Nov. 1, 1984, Nov. 6, 1984, XSNM02161, amendment No. 01.	5.0	Additional 33,518	Additional 1,125	Reload fuel for Biblis A	West Germany.
	5.0	Additional 51,750	Additional 1,800	Reload fuel for Blayais 1, 2, and 3	France.
	5.0	Additional 1,429	Additional 10	Reload fuel for Tihange	Belgium.
	5.0	70,000	3,080	Add KRB IIC as another ultimate consignee. Increase enrichment to 5%.	West Germany.
Marubeni America Corp., Nov. 2, 1984, Nov. 6, 1984, XSNM02179.	3.95	18,562	554	Reload fuel for Fukushima I, unit 4	Japan.

NRC EXPORT APPLICATIONS—Continued

Name of applicant, date of application, date received, application No.	Material type (percent)	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Manubeni America Corp., Nov. 2, 1984, Nov. 8, 1984, XSNM02190.	9.8%	5,934	180	Reload fuel for Fukushima I, unit 4	Japan.
Westinghouse Electric Corp., Oct. 22, 1984, Oct. 25, 1984, XSNM04011.	3.3	96,898	2,954	For ultimate use in Commanche Peak, unit 2	From Sweden.

[FR Doc. 84-30163 Filed 11-15-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. STN 50-454, STN 50-455]

Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of November 8, 1984, oral argument on the intervenors' challenge to the Licensing Board's October 16, 1984 supplemental initial decision will be held at *10:00 a.m. on Thursday, November 29, 1984, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: *November 9, 1984.*
For the Appeal Board.
Barbara A. Tompkins,
Secretary to the Appeal Board.

[FR Doc. 84-30169 Filed 11-15-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-424 and 50-425]

Georgia Power Co., et al.; Availability of Draft Environmental Statement of Vogtle Electric Generating Plant, Units 1 and 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement (NUREG–1087) prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia, is available for inspection by the public in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and in the Burke County Library, 4th Street, Waynesboro, Georgia 30830. The Draft Statement is also being made available at the Office of Planning and Budget, Room 615B, 270 Washington Street, S.W., Atlanta, Georgia 30334 and at the Central Savannah River APDC, 2123 Wrightsboro Road, Augusta, Georgia 30904.

The applicants' Environmental Report, as supplemented, submitted by Georgia Power Company is also available for public inspection at the above designated locations. Notice of availability of the applicants' Environmental Report was published in the **Federal Register** on December 28, 1983 (48 FR 57183).

Pursuant to 10 CFR Part 51, interested persons may submit comments on the applicants' Environmental Report, as supplemented, and the Draft Environmental Statement for the Commission's consideration. Federal, State and local agencies are being provided with copies of the applicants' Environmental Report and the Draft Environmental Statement. Comments are due by January 7, 1985. Comments by Federal, State and Local Officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Burke County Library, 4th Street, Waynesboro, Georgia 30830. Upon Consideration of comments submitted with respect to the Draft Environmental Statement, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the **Federal Register**.

Comments on the Draft Environmental Statement from interested persons of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Free single copies of NUREG-1087 may be requested for public comment by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 9th day of November, 1984.

For the Nuclear Regulatory Commission.
Elinor G. Adensam,
Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-30164 Filed 11-15-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co. Monticello Nuclear Generating Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR–22 issued to Northern States Power Company, (NSP/the licensee) for operation of the Monticello Nuclear Generating Plant, (the facility), located in Wright County, Minnesota.

Environmental Assessment

Identification of Proposed Action

The proposed action would permit the licensee to implement changes (called the Average Power Range Monitor/Rod Block Monitor/Technical Specification (ARTS) Improvement Program) to the Monticello Nuclear Generating Plant and Technical Specifications as described in its letter of May 30, 1984, as supplemented May 31, September 6, and October 17, 1984.

The Need for the Proposed Action

The need for the proposed action is to: (i) Reduce the need for manual setpoint adjustments and allow for more direct thermal limit administration; (ii) improve the quality of electronic hardware in the Rod Block Monitor; and (iii) change certain operating limits to bring about consistency among the various changes being implemented.

Environmental Impacts of the Proposed Action

The proposed action improves the accuracy of indications provided to the operator for control of thermal parameters in the reactor. While the proposed amendment changes a number of operating control features, the net power level is unchanged and the response of the reactor protection system under accident conditions is unchanged. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed change otherwise affect radiological plant effluents. Occupational exposures to radiation would also be unaffected. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential non-radiological impacts, the proposed change involves systems located within the restricted area as defined in 10 CFR Part 20. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed change.

Since we have concluded that there is no measurable environmental impact associated with the proposed changes to the Technical Specifications, any alternatives to these changes will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action would involve no use of resources not previously considered in connection with the Final Environmental Statement related to operation (Final Environmental Statement dated November 1972).

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated May 30, 1984, as supplemented by letters dated May 31, September 6, and October 17, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room located at the Environmental Conservation Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland, this 9th day of November, 1984.

For the Nuclear Regulatory Commission.
Gus C. Lainas,
Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-30167 Filed 11-15-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Power Authority of the State of New York (the licensee), for the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The exemption would relax the requirements to provide a 3-hour fire barrier between redundant shutdown divisions and to provide at least 20 feet of separation without intervening combustibles between redundant shutdown divisions at certain zone boundaries within the crescent area of the reactor building. The licensee would install either a fire barrier of lesser rating or a water curtain in place of a 3-hour barrier around four open stairways and would install water curtains between redundant shutdown divisions in place of the above separation requirement.

The Need for the Proposed Action

The proposed exemption is needed because the existing level of fire protection and proposed modifications for the FitzPatrick facility, as described in the licensee's request, represent the most practical method for meeting the intent of Appendix R. Literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated February 26, 1982, and supplements dated July 13 and November 11, 1982; March 1, April 5, and May 19, 1983; and July 16, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland this 9th day of November, 1984.

For the Nuclear Regulatory Commission.
Gus C. Lainas,
Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-30165 Filed 11-15-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; (Vermont Yankee Nuclear Power Station); Exemption

I

Vermont Yankee Nuclear Power Corporation (the licensee) is authorized by Facility Operating License No. DPR-28 to operate the Vermont Yankee Nuclear Power Station (the facility) at steady-state reactor power level not in excess of 1593 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a boiling water reactor located at the licensee's site in Windham County, Vermont.

II

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.2 of Appendix E requires that each licensee at each site shall annual exercise its emergency plan.

By letter dated August 6, 1984, the licensee requested an exemption from the annual exercise requirement of Section IV.F of Appendix E. Specifically, the licensee would substitute an event that occured on June 15, 1984 in place of the planned November 1984 on-site exercise. The event, which involved local high radiation readings substantially above background, resulting from a traversing incore probe stuck in an unshielded position outside of the reactor core, resulted in complete implementation of their Emergency Plan to the Alert level.

This event adequately substitutes for the planned on-site exercise in that the licensee: (1) Identified the nature and cause of the high radiation condition and took immediate action to protect personnel; (2) correctly classified the event based on Emergency Action Level; (3) activated and staffed all emergency facilities to the Alert level; (4) used the emergency response centers and resources to evaluate the problem and determined the best course of action; and (5) notified the NRC and all three emergency planning zone states (Vermont, New Hampshire and Massachusetts) with both New Hampshire and Massachusetts sending representatives to the Emergency Operations Facility. In addition, the NRC Resident Inspector observed activity in the emergency facilities.

The emergency was terminated and recovery was successfully completed. Formal critiques were held with event participants. Both the NRC Resident Inspector and the state representatives were in attendance at the critiques. Comments generated by the critique demonstrated recognition of where problems were encountered. Follow-up of comments in the areas of procedures, equipment and training is proceeding. The critiques and follow-up activities stemming from the June 15, 1984 event should result in improvements in emergency response capability similar to what would be expected from the conduct of an on-site exercise. No violations were identified by the Resident Inspector. The licensee acted in a manner which adequately provided protective measures for the health and safety of the public in that it was determined that there were no releases of radioactive material offsite. The last full scale emergency exercise was held September 21, 1983. The next full scale emergency exercise is planned for April 1985.

Section IV.F of Appendix E requires that each licensee shall annually exercises it emergency plan. Exercise shall:

(1) Test the adequacy of timing and adequacy of implementing procedures and methods,

(2) Test emergency equipment and communications networks,

(3) Test the public notification system, and

(4) Ensure that emergency organization personnel are familiar with their duties.

The June 15, 1984 event exercised the emergency plan. Based on an evaluation of the event, response to the event, and subsequent activities, the staff concludes that the licensee adequately demonstrated the capability to implement its emergency plan in order to protect the health and safety of the public.

Based on the above, we conclude that the licensee's request for a one-time exemption is reasonable and that granting the requested exemption will not adversely affect the overall state of emergency preparedness for Vermont Yankee Nuclear Power Station. Therefore, the licensee's request for exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter August 6, 1984, as discussed above, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.

Therefore, the Commission hereby approves the following exemption: Exemption from the exercise requirements of 10 CFR 50, Appendix E, Section IV.F, involving the conduct of an on-site exercise during November 1984.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (49 FR 44175).

Dated at Bethesda, Maryland this 9th day of November 1984.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-30166 Filed 11-15-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Plant Unit Nos. 3 and 4 located in Dade County, Florida.

Identification of Proposed Action

The amendments would consits of changes to the operating licenses and Technical Specifications (TSs) and would authorize an increase of the storage capacity of both spent fuel pools (SEPs) from 621 fuel assemblies to 1404 fuel assemblies with enrichments no greater than 4.5 weight percent U-235.

The amendments to the TSs are responsive to the licensee's application dated March 14, 1984. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment By the Office of Nuclear Reactor Regulation Relating to the Modification of the Spent Fuel Storage Pools, Operating License Nos. DPR-31 and DPR-41, Florida Power and Light Company, Turkey, Point Plant Unit Nos. 3 and 4, Docket Nos. 50-251 and 251," dated November 14, 1984.

Summary of Environmental Assessment

The Final Generaic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), Volumes 1-3 concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differnces in SFP designs, the FGEIS recommended licensing SFP expansions on a case-by-case basis.

For Turkey Point Plant Unit Nos. 3 and 4, the expansion of the storage capacity of the SFPs will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by a individual at the site boundary is less than 0.1 millirem per year; the estimated dose to the population within a 50-mile radius is estimated to be less than 0.1 person-rem per year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background rediation. The estimated radiation doses incurred by workers taking part in the modifications to the SFPs will be about 60 person-rems. This represents about a 7% increase in the average annual dose from routine occupational radiation exposure at the plant which was about 870 person-rems/year/unit over the five year period of 1978-1982.

The only non-radiological discharge altered by the modifications to the SEPs is the waste heat. The total load to the station closed cycle cooling canals will be increased by about 0.3 percent. Thus, there is no significant environmental impact attributable to the discharge waste heat from the station due to this very small increase.

Finding of No Significant Impact

The staff has revieed the proposed modifications to the facilities relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issance of the proposed amendments to the licenses will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environmental impact statement need not be prepared for this action.

For further details with respect to this action, see (1) the appliation for amendments to the Technical Specifications dated March 14, 1984 and supplemented July 23, August 22 and September 16, 1984, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), (3) the Final Enviromental Statement for Turkey Point Plant Units 3 and 4 issued July 1972, and (4) the Environmental Assessment dated November 14, 1984. These document are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington D.C. 20555 and at the Environmental and Urban Affairs Library, Florida International University Miami, Florida 35199.

Dated at Bethesda Maryland, this 14th day of November 1984.

For the Nuclear Regulatory Commission.

Dominic V. Vassallo,

Acting Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-30288 Filed 11-15-84; 8:59 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments Certain Alkaline Batteries

On November 6, 1984, the United States International Trade Commission referred to the President for review its determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, and in the sale, of certain alkaline batteries that infringe a U.S. registered trademark. The Commission also found that the respondents had misappropriated the trade dress of the complainant and had falsely designated the origin of the batteries. All respondents but one were found to have violated the Fair Packaging and Labeling Act (15 U.S.C. 1452 and 1453). The Commission found that the importations in question have the tendency to injure substantially and efficiently and economically operated United States industry. The Commission directed the U.S. Customs Service to exclude from entry into the United States alkaline batteries that infringe the registered trademark or that copy the trade dress of the complainant, Duracell, Inc.

Under section 337(g), the President, for policy reasons, may disapprove the Commission's determination within sixty days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The determination and related orders become final automatically following the sixty day review period, if the President has not disapproved. The President also may approve the determination, making it, and any order issued under its authority, final on the date the Commission receives notice.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this case. Parties commenting on domestic policy issues should refer to the portion of the Commission's record in which that issue is discussed. Parties should provide a rationale if the domestic policy issue was not raised before the Commission.

Comments of more than 15 letter-sized pages, including attachments will not be accepted. Twenty copies of the submission must be provided. Comments must be delivered by the close of business, Friday, November 30, 1984, to the Secretary, Trade Policy Staff Committee, 600 17th Street, NW., Washington, D.C. 20506. For furtber information, call Alice Zalik (202) 395-3432.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 84-30147 Filed 11-15-84; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

Dahlen, ND 58224 (Citizens of Dahlen, Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued November 9, 1984.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy

Docket Number: A85-4.

Name of affected Post Office: Dahlen, North Dakota.

Petitioners: Citizens of Dahlen.

Type of determination: Closing.

Date of filing of appeal papers: October 30, 1984.

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on employees [39 U.S.C. 404(b)(2)(B)].

3. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

4. Economic savings to the Postal Service [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the

requests; a copy shall be served on the Petitioners.

The two appeal letters sent to the Commission do not identify the persons who wish review of the Postal Service's decision to close the Dahlen post office. The review procedure requires that petitioners be identified in order that the Commission may ascertain that review has been requested by a person served by the post office in question. The statute limits the right to ask for review to patrons of post offices the Postal Service has decided to close [39 U.S.C. 404(b)(5)]. Furthermore, the identifty of petitioners is necessary in order that the Commission and the Postal Service may send them documents in this case—in addition to these documents being posted in the affected post offices.

In light of the 30-day statutory deadline for filing appeals in these cases, we are provisionally accepting the two appeal letters and establishing Docket No. A85–4 for their consideration. We will give the patrons of the Dahlen office 30 days in which to amend the appeal letters to meet our rules of practice by supplying the names of the patrons requesting review. If the Commission does not receive the necessary addition to this case within 30 days of the issuance of this order, we intend to dismiss this case.

The Postal Service has previously filed its record in this case. We appreciate that cooperation.

The Commission orders:

(A) The October 30 and 31 appeal letters concerning the closing of the Dahlen post office are accepted with the condition that a patron requesting review must be identified within 30 days from the date of this Order.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

October 30, 1984, Filing of Petition
November 9, 1984, Notice and Order of Filing of Appeal
December 10, 1984, Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
December 20, 1984, Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
January 9, 1985, Postal Service Answering Brief [*see* CFR 3001.115(c)].
January 24, 1985, (1) Petitioner's Reply Brief should petitioners choose to file one [*see* CFR 3001.115(d)].
January 31, 1985, (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
February 27, 1985, Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 84–30087 Filed 11–15–84; 8:45 am]
BILLING CODE 7715–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0189]

DGC Capital Co.; Issuance of a Small Business Investment Company License

On July 17, 1984, a notice was published in the **Federal Register** (49 FR 28954) stating that an application has been filed by DGC Capital Company, Norwest Center, Duluth, Minnesota 55802, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license to operate as a small business investment company.

Interested parties were given until close of business August 17, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0189 on October 29, 1984, to DGC Capital Company to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 7, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–30154 Filed 11–15–84; 8:45 am]
BILLING CODE 8025–01–M

[Designation of Disaster Loan Area No. 6210; Amdt. No. 1]

California; Designation of Disaster Loan Area

The above numbered designation of Disaster Loan Area (49 FR 43142) is amended by adding the following Counties within the State of California, as a result of Pub. L. 98–473, El Nino related ocean conditions in the Pacific Ocean beginning December 1982: Alemada, Del Norte, Los Angeles, Marin, Monterey, San Francisco, San Luis Obispo, San Mateo, Santa Cruz, Sonoma. All other information remains the same, i.e., applications for loans for economic injury may be filed until the close of business on July 22, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 9, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–30149 Filed 11–15–84; 8:45 am]
BILLING CODE 8025–01–M

[Designation of Disaster Loan Area No. 6223; Amdt. No. 1]

Oregon; Designation of Disaster Loan Area

The above numbered designation of Disaster Loan Area (49 FR 43142) is amendment by adding the remaining 29 counties within the state of Oregon, as a result of Pub. L. 98–473, El Nino related ocean conditions in the Pacific Ocean beginning December 1982. All other information remains the same; i.e., applications for loans may be filed until the close of business on July 22, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 9, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–30150 Filed 11–15–84; 8:45 am]
BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area (No. 2173); Amdt. No. 1]

Texas; Designation of Disaster Loan Area

The above numbered declaration (49 FR 44258) is amended in accordance with the amendment to the President's declaration of October 30, 1984, to include Precinct one in Nueces County as an adjacent area in the State of Texas as a result of damage from severe storms, high winds, and flooding beginning on or about October 19, 1984. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on December 31, 1984, and for economic injury until the close of business on July 30, 1985.

(Catalog of Federal Domestic Assistance Programs No. 59002 and 59008)

Date: November 8, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84–30151 Filed 11–15–84; 8:45 am]
BILLING CODE 8025–01–M

[License No. 03/03–0175]

UV Capital; Issuance of a Small Business Investment Company License

On September 12, 1984, a notice was published in the **Federal Register** (49 FR 35891) stating that an application has been filed by UV Capital, 9 South 12th Street, Third Floor, Richmond, Virginia 23219, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license to operate as a small business investment company.

Interested parties were given until close of business October 13, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information. SBA issued License No. 03/03–0175 on October 29, 1984, to UV Capital to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011. Small Business Investment Companies)

Dated: November 7, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–30155 Filed 11–15–84; 8:45 am]
BILLING CODE 8025–01–M

Region II Advisory Council; Public Meeting

The Small Business Administration Region II Advisory Council located in the geographical area of Hato Rey, Puerto Rico, will hold a public meeting at 9:00 a.m., Wednesday, December 5, 1984, at Room 401, Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico, to discuss such matters as may be presented by members, staff of the Small Business Administration or others attending.

For further information, write or call Wilfred Benítez Robles, District Director, Small Business Administration, Federal Building, Room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico, 00918—(809) 753–4003.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 8, 1984.

[FR Doc. 84–30153 Filed 11–15–84; 8:45 am]
BILLING CODE 8025–01–M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting at 9:30 a.m., on Monday, December 3, 1984, at the Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Room B–1 (located on the cafeteria level of the building), Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call S. Charles Hemming, District Director, U.S. Small Business Administration, 317 AJC Federal Building, 1240 East Ninth Street, Cleveland, Ohio 44199, (216) 522–4182.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 8, 1984.

[FR Doc. 84–30152 Filed 11–15–84; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB October 20–November 7, 1984

AGENCY: Office of the Secretary, DOT

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period October 20–November 7, 1984, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 426–1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from October 20–November 7, 1984:

DOT No: 2512
OMB No: 2120–0028
By: Federal Aviation Administration
Title: Operations Specifications
Forms: FAA Form 8400–7, FAA Form 8400–1/1A
Frequency: On occasion
Respondents: Applicants for air carrier operating certificates

Need/Use: Federal Aviation Act of 1958, section 604 (49 U.S.C. 1424) authorizes issuance of air carrier operating certificates. Operations specifications information collected is used to determine applicant's eligibility. The information also becomes part of the air carrier operating certificate.

DOT No: 2513
OMB No: 2125–0520
By: Federal Highway Administration
Title: Authorization to Transport Passengers in a Truck
Forms: None
Frequency: On occasion
Respondents: Motor Carriers

Need/Use: To meet Federal Highway Administration requirements prohibiting the transportation of passengers in the cab of a truck unless specifically

authorized by the motor carrier management in writing.

DOT No: 2514
OMB No: 2120-0063
By: Federal Aviation Administration
Title: Airport Operating Certificate
Forms: FAA Forms 52 80-1 and 52 80-2
Frequency: Annually and on occasion
Respondents: State and Local Governments

Need/Use: To operate an airport serving air carriers, a person must obtain and maintain an Airport Operating Certificate. The application initiates the certification process including airport inspection and documentation of safe airport operations and equipment. The certification remains valid if safety standards are maintained as verified by inspections, records, and reports.

DOT No: 2515
OMB No: 2137-0048
By: Research and Special Programs Administration
Title: Recordkeeping Requirements for Liquid Natural Gas Facilities
Forms: None
Frequency: As necessary
Respondents: Operators of LNG facilities

Need/Use: The liquefied natural gas (LNG) safety regulations (49 CFR Part 193) have been established under the Pipeline Safety Act of 1979. They establish comprehensive regulations for LNG facilities which include recordkeeping requirements and other written plans.

DOT No: 2516
OMB No: New
By: Federal Aviation Administration
Title: FAR Part 150—Airport Noise Compatibility Planning
Forms: None
Frequency: On occasion
Respondents: State and Local Governments and Businesses

Need/Use: The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the Federal Aviation Administration for review and approval. Federal Aviation Administration approval makes the noise compatibility projects eligible for an 8 percent set-aside of discretionary grant funds under the Federal Aviation Administration Airport Improvement Program.

Issued in Washington, D.C. on November 9, 1984.

Jon H. Seymour,

Deputy Assistant Secretary for Administration.

[FR Doc. 84-30106 Filed 11-15-84; 8:45 am]
BILLING CODE 4910-62-M

[Notice No. 84-17]

Advisory Commission on the Reorganization of the Metropolitan Washington Airports

Notice is hereby given of the fifth meeting of the Advisory Commission on the Reorganization of the Metropolitan Washington Airports, an advisory committee reporting to the Secretary of Transportation. The Commission is charged with developing a plan for the transfer of the Metropolitan Washington Airports, Washington National and Dulles International, from the federal government to an appropriate state, local, or interstate governmental body. Its charter was published in the Federal Register of June 18, 1984 (49 FR 24967).

The fifth meeting will be held Thursday, November 29 at 10:00 a.m. in room 2230 of the Department of Transportation headquarters building (Nassif Building), 400 Seventh Street, SW., Washington, D.C.

Summary agenda for the November 29 meeting:

I. Further discussion of alternate structures for a new airport authority; possibility of an interstate authority; and development of a position for the report to the Secretary.

II. Related matters, as raised by the members.

The meeting will be open to the public. Press will be asked to register at the door.

Additional information may be obtained from the Commission's office at: Room 9413, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590; or by calling 202-472-7934.

Issued at Washington, D.C. on November 13, 1984.

Gregory Wolfe,

Executive Director, Advisory Commission on the Reorganization of the Metropolitan Washington Airports.

[FR Doc. 84-30109 Filed 11-15-84; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-84-22]

American Airlines, Inc.; Summary of Petition for Exemption

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of a petition by American Airlines, Inc. seeking temporary relief from the 1000-mile flights restriction on operations at Washington National Airport. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: December 5, 1984.

ADDRESS: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 24325, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

Richard Beitel,

Acting Assistant Chief Counsel Regulations and Enforcement Division.

Petition Docket No. 24325

American Airlines, 14 CFR 159.60

Petitioner requests a six month exemption from the requirements of the Metropolitan Washington Airports Rule, 14 CFR 159.60, to operate four National Airport (DCA)-Dallas/Ft. Worth (DFW) nonstop roundtrips. American proposes to replace four existing National/Dulles-Dallas/Ft. Worth roundtrips with four Dulles-DFW nonstop roundtrips and four National-DFW nonstop roundtrips. This exemption is requested because petitioner believes that its current service between Dulles and DEW will be inadequate to cope with passenger demand after November 5, 1984. On that date, Braniff discontinued three of its four Dulles-DFW roundtrips. Petitioner's National/Dulles-DFW service has since its inauguration in June 1981 developed a substantial market for travel between Dulles and DFW. Many of petitioner's Dulles flights are now sold out well in advance of departure time. As a result, significant numbers of potential passengers between Dulles and DFW are being turned away. Many of these "turn aways" gravitate to National Airport where service to and from DFW can be found via intermediate points such as Atlanta, Nashville, Pittsburgh, St. Louis, Kansas City and Chicago. The "turn away" problem will be exacerbated by Braniff's November 5 reduction in service. The requested exemption would provide a significant increase in seats available for passengers travelling between Dulles and DFW, thereby permitting continued growth in this important market. Petitioner believes that the recent Braniff announcement is good cause for granting an exemption on short notice (pursuant to 14 CFR 11.27) to be effective as soon as the FAA determines to be feasible. Since the requested exemption is a temporary one, extending for a period of six months, the FAA would have an opportunity to assess the effect on Dulles traffic of petitioner's operation of separate nonstop services between each of Washington's three major airports and DFW. Prior to expiration of the exemption, petitioner would make available to the FAA complete data concerning the Washington area airports utilized by passengers travelling to and from Dallas/Ft. Worth.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 15, 1984.

[FR Doc. 84-30388 Filed 11-15-84; 11:41 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 13, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0224
Form Number: IRS Form 6248
Type of Review: New
Title: Credit or Refund of Windfall Profit Tax to Certain Trust Beneficiaries for Windfall Profit Tax Paid by a Trust
Clearance Officer: Garrick Shear (202) 566-6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of Alcohol, Tobacco, and Firearms

OMB Number: None
Form Number: ATF Rec 5110/12
Type of Review: Revision
Title: Equipment and Structure—Marks, Signs and Calibrations
OMB Number: None
Form Number: ATF Rec 5110/11
Type of Review: Revision
Title: Marks and Labels of Containers of Distilled Spirits
Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 84-30104 Filed 11-15-84; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Grants Program; Private Not-For-Profit Organizations in Support of International Education and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private Organizations," expiration date January 31, 1987.

Private Sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Professional Development Seminars in the Dominican Republic and Guatemala

USIA is interested in supporting two five-day seminars, one to take place in Santo Domingo, the Dominican Republic (June 3-7, 1985), the other in Guatemala City, Guatemala (June 10-14, 1985). The conference organizer must be able to provide for each seminar a panel of bilingual (English and Spanish) American experts in the fields to be covered by each of the seminars.

The seminar in the Dominican Republic on contemporary America will have as its topics: 1: The U.S. Governmental System; 2. Domestic and International Factors in the Formulation of U.S. Foreign Policy; 3. Economics and Trade Issues, regional and bilateral; 4. Current Trends in U.S. Society and Social Behavior; 5. U.S./Latin American Relations; 6. Media and Communications; 7. The Impact of Science and Technology on U.S. Society; 8. New Developments in Education; 9. New Developments in the Plastic Arts in the U.S.

The seminar in Guatemala will cover a variety of themes similar in scope although *not identical* to those proposed for the Dominican Republic. It is conceivable, therefore, that some if not all of the specialists may be able to serve on both panels. The seminars will be held under the auspices of USIS Santo Domingo and USIS Guatemala City.

Interested private sector organizations should have demonstrated expertise in Latin American and Caribbean affairs and in handling the organization of conferences of this type.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming and with organizations that have substantial potential to obtain third party private sector funding and/or in-kind cost sharing in addition to USIA funding. Requests for Agency funds should be primarily for travel and per diem

expenses, and, if necessary, for modest additional administrative costs.

Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations *must* postmark their general letter of interest within 30 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN. Initiative Programs), United States Information Agency, 301 4th Street S.W., Washington, D.C. 20547.

Dated: November 8, 1984.

Albert Ball,

Deputy Director, Office of Private Sector Programs.

[FR Doc. 84-30134 Filed 11-15-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains reinstatements, extensions, and a revision and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20530, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 9, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Veterans Benefits.
2. Compliance Inspection Report.
3. VA Form 26-1839.
4. On occasion.
5. Individuals or households.
6. 453,000 responses.
7. 113,250 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. School Attendance Report.
3. VA Form 21-674b.
4. On occasion.
5. Individuals or households.
6. 39,500 responses.
7. 3,300 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Application for Burial Benefits.
3. VA Form 21-530.
4. On occasion.
5. Individuals or households.
6. 384,000 responses.
7. 128,000 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Request to Mortgage Company for Amount of Unpaid Mortgage.
3. VA Form 29-712.
4. On occasion.
5. Individuals or households.
6. 1,000 responses.
7. 167 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Application for Survivors' and Dependents' Educational Assistance.
3. VA Form 22-5490.
4. On occasion.
5. Individuals or households.
6. 16,000 responses.
7. 8,000 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Certification of Loan Disbursement.
3. VA Form 26-1876.
4. On occasion.
5. Individuals or households; Businesses or other for-profit; Small businesses or organizations.
6. 145,000 responses.
7. 72,500 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Application for Release from Personal Liability to the Government on a Home Loan.
3. VA Form 26-6381.
4. On occasion.
5. Individuals or households; Businesses or other for-profit.
6. 18,000 responses.
7. 3,000 hours.
8. Not applicable.

Reinstatement

1. Department of Veterans Benefits.
2. Notice to Veterans Administration of Veteran or Beneficiary Incarcerated in Penal Institution.
3. VA Form 21-4193.
4. On occasion.
5. Individuals or households.
6. 1,664 responses.
7. 416 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Application for Change of Permanent Plan (Medical).
3. VA Form 29-1549.
4. On occasion.
5. Individuals or households.
6. 65 responses.
7. 98 hours.
8. Not applicable.

Reinstatements

1. Department of Veterans Benefits.
2. Title VI Compliance Review Report and Supplement.
3. VA Form 27-8734 and VA Form 27-8734a.
4. On occasion.
5. Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
6. 4,367 responses.
7. 4,367 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Wood Destroying Insect Information-Existing Construction.
3. VA Form 26-8850.
4. On occasion.
5. Individuals or households; Businesses or other for-profit; Small businesses or organizations.
6. 113,000 responses.
7. 37,667 hours.
8. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit Only).
3. VA Form 26-8629.
4. On occasion.
5. Individuals or households; Businesses or other for-profit.
6. 2,600 responses.
7. 867 hours.
8. Not applicable.

[FR Doc. 84-30140 Filed 11-15-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 223
Friday, November 10, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Home Loan Bank Board	1
Federal Maritime Commission	2
Federal Reserve System	3-5
Merit Systems Protection Board	6
Parole Commission	7

1

FEDERAL HOME BANK BOARD

TIME AND DATE: 2:30 p.m. Friday, November 30, 1984.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee, (202-377-6677).

MATTERS TO BE CONSIDERED:

Net Worth Requirements of Insured Institutions
Limitations on Direct Investment by Insured Institutions
Subordinated Debentures
No. 99, November 14, 1984.

[FR Doc. 84-30230 Filed 11-14-84; 2:27 pm]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 13, 1984, 49 FR 44974.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: November 14, 1984, 9:00 a.m.

CHANGE IN THE MEETING: Addition of the following item to the closed session: 2. Docket No. 84-33: Section 19 Inquiry—United States/Argentina and United States/Brazil Trades, and Docket No. 84-34: Shipping Conditions in the United States/Argentina Trade—Consideration of Certain Motions and Pleadings.

Francis C. Hurney,
Secretary.

[Fr Doc. 84-30186 Filed 11-13-84; 4:50 p.m.]
BILLING CODE 6730-01-M

3

FEDERAL RESERVE SYSTEM

Committee on Employee Benefits of the Federal Reserve System.

TIME AND DATE: 2:30 p.m., Wednesday, November 21, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include (1) Office of Employees Benefits' expense budgets for 1984 and 1985; (2) technical amendments to the Retirement and Thrift Plans; and (3) proposed trust and flexible benefit plan under the Internal Revenue Code.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 13, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-30185 Filed 11-13-84; 4:50 pm]
BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, November 21, 1984, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 14, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-30214 Filed 11-14-84; 11:54 am]
BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 21, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendment to the Board's Regulation AA (Unfair or Deceptive Acts or Practices) to implement, as to banks, the Federal Trade Commission's credit practices rule prohibiting certain contract provisions and practices deemed unfair or deceptive.
2. Proposed amendment to Regulation Z (Truth in Lending) regarding the regulation's coverage of credit cards used for certain exempt transactions. (Proposed earlier for public comment; Docket No. R-0501).
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 13, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-30213 Filed 11-14-84; 11:54 am]
BILLING CODE 6210-01-M

6

MERIT SYSTEMS PROTECTION BOARD

Notice of deletion of items from the October 30, 1984 Agenda.

CHANGE IN THE MEETING: The following items were deleted from the agenda of the closed meeting of October 30, 1984:

1. *Hagan* v. *U.S. Postal Service*, MSPB Docket No. BN07528310018.
2. *Doe* v. *Department of the Air Force*, MSPB Docket No. DA07528310714.

For the Board.

Dated: November 14, 1984.

Stephen E. Manrose,
Acting Clerk of the Board.

[FR Doc. 84-30257 Filed 11-14-84; 3:05 pm]
BILLING CODE 7405-01-M

7

PAROLE COMMISSION

Pursuant To The Government In The Sunshine Act, Pub. L. 94-409 (5 U.S.C. Section 552b)

AGENCY HOLDING MEETING: U.S. Parole Commission, National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters).

TIME AND DATE: Tuesday, November 20, 1984—2:00 p.m.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately four cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492-5987.

Dated: November 13, 1984.

Joseph A. Barry,
General Counsel, United States Parole Commission.

[FR Doc. 84-30274 Filed 11-14-84; 3:50 pm]
BILLING CODE 4410-10-M

federal register

Friday
November 16, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

VOL 49 ISS 223 NO 16 1984 UMI

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA83–5119	Sept. 16, 1983.
Massachusetts: MA84–3010	Apr. 6, 1984
Michigan: MI84–2042	July 9, 1982
New Jersey: NJ84–3019	July 6, 1984
Nevada:	
NV84–5017	June 29, 1984
NV84–5014	June 8, 1984
Oregon: OR84–5020	June 22, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Alabama:	
AL83–1011 (AL84–1033)	Feb. 18, 1983.
83–1084 (AL84–1032)	Nov. 25, 1983.
Maine: ME83–3008 (ME84–3031)	Apr. 15, 1983.
Washington: WA83–5110 (WA84–5040)	June 3, 1983.
Wisconsin: SI83–2076 (WI84–5030)	Sept. 30, 1983.

Signed at Washington, D.C. this 9th day of November 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. CA83-5119 - MOD. #7 (48 FR 41702-September 16, 1983) San Diego County, California	Basic Hourly Rates	Fringe Benefits
OMIT:		
Electricians:		
Electricians	$20.00	3% + $3.90
Cable Splicers	20.45	3% + $3.90
Utility Technician	16.50	3%+.74
Sound Installers	16.47	3% + $1.46
ADD: Electricians:		
Electricians	20.00	3% + $3.90
Cable Splicers	20.45	3% + $3.90
Sound Installers	16.47	3% + $1.46
Utility Technician #1	16.50	3%+.74
Utility Technician #2	12.50	3%+.74

Utility Technician #1: Installation of street lights and traffic signals, including electrical circuitry, programable controller, pedestal mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius of duct banks, location for manholes, street lights, and traffic signals.

Utility Technician #2: Distribution of material at job site, installation of underground ducts for electrical, telephone, cable TV, and communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

MODIFICATIONS P. 2

DECISION NO. NJ84-3019 - MOD. #4 (49 FR 27883 - July 6, 1984) Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey	Basic Hourly Rates	Fringe Benefits
OMIT:		
ROOFERS:		
Zone 2:		
All rates and classifications		
ADD:		
ROOFERS:		
Zone 2:		
Shingle, slate and tile Mechanic II for shingle, slate or tile work - handles and transports all materials, tools and equipment; clean-up debris	13.92	2.25
	6.25	2.25
All other work Mechanic II for all other work - handles and transports all materials, tools and equipment; clean-up debris	19.57	2.93+k
	8.25	2.93+k
FOOTNOTE:		
k. Paid Holiday: Election Day.		

DECISION NO. MA84-3010 - MOD. #4 (49 FR 13809 - April 6, 1984) ESSEX, SUFFOLK, MIDDLESEX, NORFOLK, BRISTOL, PLYMOUTH, BARNSTABLE, DUKES AND NANTUCKET COUNTIES, MASSACHUSETTS	Basic Hourly Rates	Fringe Benefits
CHANGE:		
"LABORERS (WRECKING)" to read "LABORERS (WRECKING - Area 1)"		

DECISION NO. OR84-5020 - MOD. #5 (49 FR 25821) - June 22, 1984 Statewide Oregon	Basic Hourly Rates	Fringe Benefits
OMIT:		
Electricians:		
Area 3:		
Omit rate & Area Description		
ADD:		
Electricians:		
Area 3:		
Coos, Curry, and Lincoln Counties; Douglas and Lane Counties (Area lying West of a line North and South from the NE corner of Coos County to the SE corner of Lincoln County	$15.00	$4.35 +3%
CHANGE:		
Ironworkers:		
Structural, Reinforcing, Ornamental, Riggers, Fence Erectors, Signal Man	17.48	$4.71

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MI82-2042 - MOD. #3 (47 FR 29976 - July 9, 1982) Statewide, Michigan		
OMIT: Power Equipment Operators-Underground Construction		
ADD: Power Equipment Operators-Underground Construction:		
Contracts over $400,000:		
Zone 1:		
Class 1	$14.93	13% + $4.35
Class 2	14.55	13% + $4.35
Class 3	13.90	13% + $4.35
Class 4	13.40	13% + $4.35
Zone 2:		
Class 1	13.42	13% + $4.35
Class 2	12.89	13% + $4.35
Class 3	12.45	13% + $4.35
Class 4	12.20	13% + $4.35
Contracts $400,000 or less:		
Zone 1:		
Class 1	14.04	13% + $4.35
Class 2	13.66	13% + $4.35
Class 3	13.02	13% + $4.35
Class 4	12.51	13% + $4.35
Zone 2:		
Class 1	12.09	13% + $4.35
Class 2	11.57	13% + $4.35
Class 3	11.12	13% + $4.35
Class 4	10.88	13% + $4.35

	Basic Hourly Rates	Fringe Benefits
Definition of Zones:		
Zone 1: Bay, Branch, Calhoun, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Oakland, Saginaw, Sanilac, Shiawassee, St. Clair, Tuscola, Washtenaw, Wayne Counties.		
Zone 2: Remainder of State		

DECISION NO. MI82-2042 (Cont'd)

POWER EQUIPMENT OPERATORS: UNDERGROUND CONSTRUCTION

CLASSIFICATIONS:

CLASS I - Backfiller Tamper, Backhoe, Batch Plant Operator (concrete), Clamshell, Concrete Paver (two drum or larger), Conveyor Loader (euclid type), Crane (crawler, truck type or pile driving); Dozer (9 ft. blade and over), Dragline, Elevating Grader, Endloader (over 1½ cubic yds. capacity), Gradall (and similar type equipment), Mechanic, Power Shovel, Roller (asphalt), Scraper (self-propelled or tractor drawn), Side Boom Tractor (type D-4 or equivalent and larger), Slip Form Paver, Slope Paver, Trencher (over 8 ft. digging capacity), Wall Drilling Rig.

CLASS II - Boom Truck (power swing type boom), Crusher, Dozer (less than 9 ft. blade), Endloader (1½ cubic yds. capacity and smaller), Hoist, Pump (one or more--4 in. discharge or larger--gas or diesel powered or powered by generator of 300 amps or more--inclusive of generator), Side Boom Tractor (smaller than type D-4 or equivalent), Sweeper (Wayne type and similar equipment), Tractor (pneu-tired, other than backhoe or front end loader), Trencher (8 ft. digging capacity).

CLASS III - Air Compressors (6000 cfm or larger), Air Compressors (two or more--less than 600 cfm), Boom Truck (non-swinging, non-powered type boom), Concrete Breaker (self-propelled or truck mounted--includes compressor), Concrete Paver (one drum--1½ yd. or larger), Elevator (other than passenger), Maintenance Man, Mechanic Helper, Pump (two or more--4 in. up to 6 in. discharge--gas or diesel powered--excluding submersible pumps), Pumpcrete Machine (and similar equipment), Wagon Drill (multiple), Welding Machine or Generator (two or more 300 amp. or larger--gas or diesel powered).

CLASS IV - Boiler, Concrete Saw (40 h.p. or over), Curing Machine (self-propelled), Farm Tractor (with attachment), Finishing Machine (concrete), Fireman, Hydraulic Pipe Pushing Machine, Mulching Equipment, Oiler, Pumps (two or more up to 4 in. discharge if used three hours or more a day--gas diesel powered--excluding submersible pumps), Roller (other than asphalt), Stump Remover, Trencher (service), Vibrating Compaction Equipment (self-propelled, 6ft. wide or over)

ISION NO. NV84-5017 - MOD. #2
9 FR 26874 - June 29, 1984)
shoe County, Nevada

IT:
aborers

D:
aborers

	AREA 1	AREA 2	AREA 3	AREA 4
Group 1	$13.92	$15.42	$15.92	$16.92
Group 2	14.02	15.52	16.02	17.02
Group 3	14.17	15.67	16.17	17.17
Group 4	14.42	15.92	16.42	17.42
Group 5	14.72	16.22	16.72	17.72
Group 6-A	14.72	16.22	16.72	17.72
Group 6-B	14.42	15.92	16.42	17.42
Group 6-C	14.07	15.57	16.07	17.07

Fringe Benefits:
$2.80

AREA DEFINITIONS

a 1: Area within 50 road miles of either the Carson City Courthouse or the Washoe County Courthouse

a 2: Area Between 50 and 150 road miles of the Washoe County Courthouse

a 3: Area between 150 and 300 road miles of the Washoe County Courthouse

a 4: Area over 300 road miles of the Washoe County Courthouse

DECISION NO. NV84-5014 - MOD. #5
(49 FR 23988 - June 8, 1984)
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway construction in Douglas County), Nevada

OMIT:
Laborers:
Remaining Counties

ADD:
Laborers:
Remaining Counties:

	AREA 1	AREA 2	AREA 3	AREA 4
Group 1	$13.92	$15.42	$15.92	$16.92
Group 2	14.02	15.52	16.02	17.02
Group 3	14.17	15.67	16.17	17.17
Group 4	14.42	15.92	16.42	17.42
Group 5	14.72	16.22	16.72	17.72
Group 6-A	14.72	16.22	16.72	17.72
Group 6-B	14.42	15.92	16.42	17.42
Group 6-C	14.07	15.57	16.07	17.07

Fringe Benefits:
$2.80

AREA DEFINITIONS

Area 1: Area within 50 road miles of either the Carson City Courthouse or the Washoe County Courthouse

Area 2: Area Between 50 and 150 road miles of the Washoe County Courthouse

Area 3: Area between 150 and 300 road miles of the Washoe County Courthouse

Area 4: Area over 300 road miles of the Washoe County Courthouse

SUPERSEDEAS DECISION

STATE: Alabama

COUNTIES: Calhoun,Etowah,Green,Jefferson, Pickens,St. Clair,Shelby,Sumter, Talladega,Tuscaloosa, & Walker

DECISION NUMBER: AL84-1033

DATE: Date of Publication

Supersedes Decision No.: AL83-1011 dated February 18, 1983 in 48 FR 7366.

DESCRIPTION OF WORK: HEAVY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 9.50	
CARPENTERS:		
1. Green,Pickens,Sumter, & Tuscaloosa Counties	11.67	.10
2. Jefferson, Shelby, Walker, & that portion of St. Clair & Talladega Cos. west of HWY 231 from the Blount Co. line south to Interstate 20. Also that portion of St. Clair & Talladega Cos. south of Interstate 20 & west of U.S. Alternate 231 south, not including the city of Talladega & that portion of Talladega Co. South, of the City of Talladega & west & south of the Talladega National Forest	12.13	1.13
3. Calhoun,Etowah, & Remainder of St. Clair, & Talladega Counties	10.84	.72
ELECTRICIANS	14.70	1.20
		+3%
IRONWORKERS	14.67	1.93
LABORERS:		
Zone 1: Jefferson, St. Clair,Shelby,Talladega, & Walker Counties:		
1. Asphalt Raker,Air Tool Oper.,Chain Saw Oper., Concrete Saw Oper., Vibrator Oper.	8.47	1.15
2. General Laborers,Hand Blade Oper.,Batch Truck Dumper	8.56	1.15
3. Pipelayer, Mucker, Mortar Mixer	8.69	1.15
4. Powderman & Blaster	9.57	1.15
5. Tunnel Work--		
Tunnel Miner	9.79	1.15
Tunnel Laborer	9.05	1.15
Chuck Tender	9.22	1.15
Pneumatic Concrete Gun Oper., & Nozzleman	9.41	1.15

	Basic Hourly Rates	Fringe Benefits
LABORERS: (Cont'd)		
Zone 2: Calhoun,Etowah, Green,Pickens,Sumter, & Tuscaloosa Counties:		
1. Asphalt Raker,Air Tool,Chain Saw Oper.,Concrete Saw Oper.,Vibrator Oper.	$ 8.03	1.15
2. General Laborer,Hand Blade Oper.,Batch Truck Dumper	7.85	1.15
3. Pipelayer,Mucker, Mortar Mixer	7.98	1.15
4. Powderman & Blaster	8.74	1.15
5. Tunnel Work--		
Tunnel Miner	8.83	1.15
Tunnel Laborer	8.34	1.15
Chuck Tender	8.52	1.15
Pneumatic Concrete Gun Oper. & Nozzleman	8.71	1.15
PLUMBERS & PIPEFITTERS	9.45	.65
POWER EQUIPMENT OPERATORS:		
Class A	12.91	1.50
Class B	12.19	1.50
Class C	11.65	1.50
Class D	10.83	1.50
TRUCK DRIVERS:		
1. Up to 1½ tons	7.44	.58
2. 1½ up to 3 tons	7.73	.58
3. 3 tons up to 5 tons	8.08	.58
4. Off Road Truck	8.80	.58
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		

POWER EQUIPMENT OPERATORS: Classification Definitions.

Class A: Asphalt plant, asphalt spreader, backhoe, boat oper.(inboard), boom tractor, bulldozer, cableways, cherry picker, compressors-2 or more within 200 ft. radius, concrete plants-stationary, mixer oper., concrete pump, conveyors-2 or more up to 4, core driller-crane-derricks-draglines-deck hoist on construction barges, crane-hydro, dinky locomotive distributors-bituminous surface, dredge oper., farm tractor with attachments (30 hp or more-which are an integral part of tractor), forklift, front end loader, gradall, headhouse oper., heavy duty, mechanic, hoist-2 drums or more,ice plant in connection with concrete mixers-5 bags or over, motor graders, piledriver, push tractor, quarry master, & rock crusher, rollers-asphalt, scraper, scrapers in tandem (operator to receive 25¢ per hour for each additional scraper), shovels, trenching machines & all similar equipment.

Class B: Crawler, tractor, hoist-drum, pumps-2 or more 4 inch & over, under 5 within 200 ft. radius rollers(other than asphalt), winch truck, well points & other equipment used for dewatering.

Class C: Air compressor, blade graders-pull type, farm tractor with attachments finishing machine--screed mounted self-propelled, mixers - under 5 bags.

Class D: Outboard boats, air compressor-125 & under, conveyor-one, (1) tended by oiler, pumps--under 4 inch or under, welding machines-3 or under, oiler in-goard boats, deckhand.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Alabama

COUNTIES: Jefferson, Shelby, & St. Clair

DECISION NO.: AL84-1032

DATE: Date of Publication

Supersedes Decision No.: AL83-1084 dated November 25, 1983 in 48 FR 53252.

DESCRIPTION OF WORK: BUILDING CONSTRUCTION Projects (does not include residential construction consisting of single family homes and apartments up to and including 4 (four) stories.)

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$13.03	$1.72
CARPENTERS	13.12	1.43
CEMENT MASONS	8.35	
ELECTRICIANS	14.70	3.5%+ 1.20
GLAZIERS	12.64	2.07a
IRONWORKERS	14.67	1.93
PAINTERS	12.85	.70
PLASTERERS	11.31	.70
PLUMBERS & PIPEFITTERS	14.65	2.37
ROOFERS	11.45	.60
SHEET METAL WORKERS	14.46	2.31
SPRINKLER FITTERS	14.57	3.23
TILE SETTERS	12.25	.60
TRUCK DRIVERS	6.06	
LABORERS:		
Group A	9.26	1.30
Group B	9.19	1.30
Group C	9.13	1.30
Group D	9.06	1.30
Group E	9.56	1.30
Group F	10.11	1.30
Group G	9.98	1.30
Group H	10.04	1.30
Group I	9.93	1.30
Group J	9.75	1.30
Group K	10.90	1.30
POWER EQUIPMENT OPERATORS:		
Group A	13.25	1.50
Group B	12.60	1.50
Group C	11.29	1.50
Group D	14.12	1.50
Group E	13.24	1.50
Group F	11.45	1.50

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTE:
a - Paid Holidays include New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, and Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(A)(1)(ii)).

POWER EQUIPMENT OPERATORS:

Classification Definitions

GROUP A - Asphalt plant,boom tractor,bulldozer,cableways,core driller, compressors (2 or more),crane-derrick-dragline,dinky locomotive,dredges, forklift,front end loader,gradall,heavy-duty mechanic,hoist (1 drum or more),mixers,push tractor,scrapers,shovels,trenching machine, (and all similar equipment),winch trucks,motor graders,concrete pump,piledriver, rotary drill.

GROUP B - Air compressor(over 125),asphalt spreaders,blade graders,(pull type),boat operator,conveyor (2 or more up to 4),crawler tractor,distributors, (bituminous surface),farm tractors,finishing machine,pumps over 4 inches, rollers,welding machine (4 or more).

GROUP C - Air Compressor(125 & under),oilers-fireman,conveyor (1 tended by oiler),pumps (under 4 inches),welding machines (3 or under).

STEEL ERECTION-

GROUP D - Crane,dragline,derricks,hoist,piledrivers,winch truck,forklift, tower cranes,climbing cranes,cherry picker,mechanics,locomotives,tug boat.

GROUP E - Tractors, gas or diesel driven welding machine (4 or more), air compressors over 125 (2 or less), power generating units (gas or diesel).

GROUP F - Gas or diesel driven welding machine (3 or less),air compressor 125 and under (2 or less),oiler,fireman,small boat.

LABORERS:

Classification Definitions:

Group A - Air or electrical tool operators and asphalt rakers

Group B - Vibrator operators, chain saw operators, operators of mechanical equipment which replaces wheelbarrows or buggies, power mowers, mortar mixers, pipe layers, concrete and clay and muckers

Group C - Plasterers' tenders and hod carriers

Group D - Mason tenders and building laborers

Group E - Burners on demolition, wagon drill operators and tunnel laborers

Group F - Powderman

Group G - Caisson-driller (10' diameter)

Group H - Tunnel miner

Group I - Pneumatic concrete gun operator and nozzleman

Group J - Chuck Tender

Group K - Oxygen operator

SUPERSEDEAS DECISION

STATE: MAINE COUNTY: YORK
DECISION NO. ME84-3031 DATE: DATE OF PUBLICATION
Supersedes Decision NO. ME83-3008, dated April 15, 1983 in 48 FR 16413.
DESCRIPTION OF WORK: Building Construction Projects

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	11.66	1.68
CARPENTERS	9.26	
CEMENT MASONS/FINISHERS	10.78	
DRYWALL/SHEET ROCK HANGERS	9.19	
ELECTRICIANS	11.24	
ELEVATOR CONSTRUCTION: MECHANIC	12.80	3.00 +a
HELPER	8.96	3.00 +a
PROBATIONARY HELPER	6.40	
GLAZIERS	6.99	
INSULATION INSTALLERS (Perimeter of Building)	6.25	
IRONWORKERS	10.43	
LABORERS:		
Fence Installers	5.08	
Mason Tenders	5.96	
Laborers	7.11	
MILLWRIGHTS	6.50	
PAINTERS	6.26	
PLUMBERS, PIPEFITTERS & STEAMFITTERS	11.32	
ROOFERS	9.47	.16
SHEET METAL WORKERS	10.03	
SPRINKLER FITTERS	10.00	
TAPERS	9.25	
TRUCK DRIVERS	5.41	
POWER EQUIPMENT OPERATORS:		
Backhoe	8.93	
Bulldozer	6.90	
Grader	7.78	
Loader	6.26	

WELDER - Rate for craft to which the welding is incidental.

FOOTNOTE:
a. Paid Holidays: New Year's Day, Lincoln's Birthday, Memorial Day, 4th of July, Columbus Day, Armistice Day, Thanksgiving Day, Friday after Thanksgiving Day, Christmas Day.

b. Vacation Pay Credit: Employer contributes 6% of basic hourly rate for 6 months to 5 years or more of service.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Washington COUNTIES: Statewide
DECISION NUMBER: WA84-5040 DATE: Date of Publication
Supersedes Decision No. WA83-5110 dated June 3, 1983 in 48 FR 25108
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	21.07	3.30
Area 2	21.52	3.54
Area 3	20.15	3.53
BOILERMAKERS	19.67	4.25
BRICKLAYERS, MARBLE SETTERS:		
Area 1:		
Masonry contracts under $100,000.00	13.07	4.04
Masonry contracts over $100,000.00	16.23	4.04
Area 2	17.28	1.87
Area 3	17.84	2.29
Area 4	18.45	3.18
Area 5	17.11	2.85
Area 6:		
Masonry contracts under $100,000.00	13.31	3.40
Masonry contracts over $100,000.00	16.64	3.40
Area 7	18.18	3.50
Area 8	18.35	3.28
CARPENTERS:		
Area 1:		
(See footnote "e" regarding cost of project)		
Carpenters	12.68	3.67
Piledrivers:		
Piledriver	12.80	3.67
Boom man	12.88	3.67
Creosote	13.00	3.67
Millwright	13.08	3.67
All other work:		
Carpenters & Lathers	16.13	3.67
Piledriver, saw filer, stationary power woodworking tool op.	16.28	3.67
Boom men, carpenters working on burned, charred, creosoted or similarly treated material	16.38	3.67
CARPENTERS (CONT'D):		
Piledriver, creosoted material	16.53	3.67
Millwright, machine erector	16.63	3.67
AREA 2:		
Carpenters & Drywall applicator	17.22	2.81
Carpenter on creosoted material	17.32	2.81
Sawfilers, stationary power saw, floor finisher, floor layers, shingler, floor sander and other stationary power woodworking tools	17.35	2.81
Millwright & machine erector	17.72	2.81
Piledriver, bridge, dock and wharf builders	17.42	2.81
Acoustical workers	17.38	2.81
Boom men	17.47	2.81
AREA 3:		
(See Footnote "d" regarding cost of project)		
Carpenters, automatic nailing machine, form stripper, manhole builder	16.31	4.02
Floor layers & finishers, stationary power saw op.	16.46	4.02
Millwright & machine erector	16.56	4.02
Certified welder	16.71	4.02
Piledrivermen, bridge, dock & wharf builder	16.41	4.02
Buck men	16.51	4.02
AREA 4:		
Carpenters	16.27	3.32
Piledriver, sawfiler, stationary power woodworking tool	16.42	3.32

	Basic Hourly Rates	Fringe Benefits
CARPENTERS (CONT'D):		
AREA 4: (CONT'D):		
Boom man, carpenters working on burned, charred, or similarly treated material	16.52	3.32
Piledriver, creosote	16.63	3.32
Millwright & machine erector	16.77	3.32
AREA 5:		
Carpenters, lathers, sawfilers, stationary power saw, floor layer, floor finisher, floor sander and stationary wood working tools	14.00	2.66
Millwright & machine erector	17.56	2.66
Piledriver, bridge, dock and wharf builder	17.26	2.66
Acoustical workers	17.22	2.66
CEMENT MASONS:		
AREA 1:		
Group 1	15.62	3.70
Group 2	16.12	3.70
Group 3	16.62	3.70
AREA 2:		
Cement masons Composition, color, mastic, trowel machine, grinder, power tool, gunnite nozzleman	17.86	3.45
AREA 3:		
Cement masons Composition, color, mastic, trowel machine, grinder, power tools, gunnite nozzleman	18.11	3.45
AREA 4:		
Cement masons Composition workers and power machinery	16.95	3.00
AREA 5:		
Group 1	15.86	3.20
Group 2	16.36	3.20
Group 3	16.86	3.20
DRYWALL & ACOUSTICAL APPLICATORS:		
Area 1	14.40	4.02

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Area 1:		
Electricians	19.70	3%+ 3.33
Cable Splicers	20.10	3%+ 3.33
Area 2:		
Electricians	20.87	3%+ 4.80
Cable Splicers	21.91	3%+ 4.80
Area 3:		
Electricians	20.03	3%+ 3.75
Cable Splicers	22.03	3%+ 3.75
Area 4:		
Electricians	17.62	3%+ 3.38½
Cable Splicers	19.38	3%+ 3.38½
Area 5:		
Electricians	18.80	3%+ 3.50
Cable Splicers	19.55	3%+ 3.50
Area 6:		
Electricians	18.06	3%+ 3.32
Cable Splicers	19.87	3%+ 3.32
Area 7:		
Electricians	18.70	3%+ 3.38
Cable Splicers	20.57	3%+ 3.38
Area 8:		
Electricians	21.00	3%+ 3.20
Cable Splicers	23.10	3%+ 3.20
ELECTRONIC TECHNICIANS:		
Area 1	10.08	3%+ 0.69
Area 2	13.66	2.63

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Mechanics:		
Area 1	19.855	a+3.37
Area 2	20.76	a+3.00
Area 3	19.445	a+3.00
Elevator Helpers - Areas 1,2 and 3 - 70% of JourneymanRate Plus the above Fringe Benefits		
Probationary Helpers - Areas 1, 2 and 3 - 50% of Journeyman Rate excluding Fringe Benefits		
GLAZIERS:		
Area 1	13.70	b+1.34
Area 2	17.11	2.76
Area 3	10.91	2.51
Area 4	13.79	2.04
Area 5	17.84	b+1.85
Area 6	13.06	2.03
Area 7	16.24	1.84
INSULATION APPLICATORS	14.22	2.66
IRONWORKERS	17.48	4.71
LATHERS:		
Area 1	17.27	3.05
Area 2	14.42	1.86
MASON TENDERS:		
Area 1	14.76	3.30
PAINTERS:		
Area 1:		
Brush	15.97	2.59
Drywall Taper	14.39	2.59
Steel; Spray; Steam Cleaning	16.47	2.59
Swing Stage or High work over 30'	16.67	2.59
Bitumastic;Sandblasting; Bridge; Tanks on legs; Tower; Stacks; Steeples	16.77	2.59
TV, Radio and Electrical Transmission Towers	17.47	2.59
Area 2:		
Brush	15.59	3.09
Spray	16.24	3.09
Bridges, High work over 50' (brush)	17.14	3.09
Bridges, High work over 50' (spray)	17.79	3.09
Drywall Finishers	17.48	2.11
Highway & Parking Lot Painter	17.64	1.05
Area 3:		
General Painters	16.74	2.72
Drywall Tapers	17.78	2.72
Industrial Painter	17.14	2.72

	Basic Hourly Rates	Fringe Benefits
PAINTERS (Cont'd):		
Area 4:		
Striper	16.65	2.05
Area 5:		
Journeyman Painters	15.97	2.46
Taper Finishers	16.22	2.46
Spray Painters, Steel Painters, Steam Cleaning, Acid Etching	16.47	2.46
Swing Stage Work or high work over 30 ft.	16.67	2.46
Bitumastic, Sand Blasting, Bridges, Towers, Stacks, Steeples, Tank on Legs	16.77	2.46
TV, Radio and Electrical Transmission Towers	17.47	2.46
PLASTERERS:		
Area 1	15.88	3.20
Area 2	17.31	3.62
Area 3	16.23	3.31
PLASTERERS' TENDERS:		
Area 1	14.27	3.37
PLUMBERS:		
Area 1	17.25	6.82
Area 2	19.43	6.98
Area 3	19.89	6.76
Area 4	20.48	3.70
Area 5	19.00	6.82
ROOFERS:		
Area 1	14.56	4.10
Area 2	16.48	2.55
Area 3:		
Roofers; Waterproofers	18.85	2.57
Slate and Tile Roofers	19.10	2.57
Area 4:		
Roofers; Waterproofers	16.75	3.04
Slate and Tile Roofers	17.00	3.04
Area 5:		
Roofers; Waterproofers	14.77	1.81
Slate and Tile Roofers	15.27	1.81
Area 6:		
Roofers	14.60	2.90
Handling of irritating material (coal tar or epoxy)	16.60	2.90

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS:		
Area 1	17.46	3%+ 3.08
Area 2	21.54	3%+ 2.24
Area 3	17.89	4.54
Area 4	19.65	3%+ 2.33
Area 5	20.71	3%+ 3.07
Area 6	20.52	3%+ 3.07
Area 7	18.76	3%+ 3.10
SOFT FLOOR LAYERS:		
Area 1	14.19	1.74
Area 2	15.72	2.99
Area 3	15.00	2.34
Area 4	11.75	1.79
Area 5	17.03	3.10
Area 6	13.786	c+2.38
Area 7	15.71	3.09
Area 8	15.05	1.89
SPRINKLER FITTERS:		
Area 1	21.14	6.76
Area 2	19.17	3.23
TERRAZZO WORKERS; TILE SETTERS:		
Area 1	15.17	3.30
Area 2	16.61	1.87
Area 3	17.84	2.29
Area 4	17.69	3.12
Area 5	17.31	3.05
Area 6	16.64	3.40
Area 7	16.86	3.43
TILE, MARBLE & TERRAZZO FINISHERS:		
Area 1	14.77	2.22
Area 2	15.70	2.10
Area 3	12.64	3.30
IRRIGATION & LANDSCAPE CONSTRUCTION: (STATEWIDE):		
Laborers	8.66	2.50
Plumbers	10.62	2.31
Power Equipment Operators	10.96	2.95

LABORERS (AREA 1)

(See footnote "e" regarding cost of project.)
All Counties and portions of Counties East of the 120th Meridian (except DOE Hanford Site in Benton and Franklin Counties)

BUILDING, HEAVY and HIGHWAY CONSTRUCTION

GROUPS	BASE RATE	FRINGE BENEFITS
1	$13.72	$3.37
2	13.97	3.37
3	14.22	3.37
4	14.47	3.37

AREA 2

All Counties West of the 120th Meridian including the portions of Chelan, Douglas, Kittitas, Okanogan and Yakima that lie west of the 120th Meridian and the Northern portion of Pacific County (excluding those areas included in Area 3)

GROUPS	BASE RATE	FRINGE BENEFITS
1	$ 8.46	$3.43
2	10.78	3.43
3	14.96	3.43
4	15.44	3.43
5	15.80	3.43
Sewer & Water Line Construction Only:		
Laborer	13.80	3.31
Topman	14.14	3.31
Pipe layer	14.20	3.31

AREA 3

(See Footnote "d" regarding cost of project)
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties, and the Southern portion of Pacific County

GROUPS	ZONE 1) BASE RATE	(Add to BASE RATE)
1	$13.59	Zone 2 - $0.65
2	13.94	Zone 3 - 1.15
3	14.24	Zone 4 - 1.70
4	14.49	Zone 5 - 2.75
5	10.87	

FRINGE BENEFITS: $4.10

LABORERS (CONT'D)
AREA 4
DOE Hanford site in Benton & Franklin Counties

GROUPS	BASE RATE	FRINGE BENEFITS
1	$14.10	$ 3.12
2	14.35	3.12
3	14.60	3.12
4	14.85	3.12
5	15.10	3.12

LINE CONSTRUCTION

	BASE RATE (ZONE 1)
Group 1: Cable Splicer, Leadman Pole Sprayer	$10.53
Group 2: Lineman, Pole Sprayer. Heavy Line Equipment Man, Certified Lineman Welder	18.11
Group 3: Tree Trimmer	16.35
Group 4: Line Equipment Man	15.61
Group 5: Head Groundman, Powderman, Jackhammer Man	13.66
Group 6: Head Groundman	13.66
Group 7: Groundman	12.84

ZONE DIFFERENTIAL (Add to BASE RATE)	FRINGE BENEFITS
Zone 2 - $2.40	Groups 1 to 3 - $3.00+3½%
Zone 3 - 3.15	Groups 4 to 7 - 2.30+3½%
Zone 4 - 3.90	
Zone 5 - 5.15	

*Groups 3 and 6 receive BASE RATEONLY (no Zone Differential)

ZONE DEFINITIONS - LINE CONSTRUCTION ONLY

ZONE 1 - 0 to 3 miles radius from the geographical center of Seattle, Tacoma, Portland, Medford
ZONE 2 - 3 to 20 miles radius from Seattle, Tacoma, Portland, Medford; and 0 to 20 miles radius from the Cities listed below
ZONE 3 - 20 to 35 miles radius from all Cities
ZONE 4 - 35 to 50 miles radius from all Cities
ZONE 5 - More than 50 miles radius from all Cities

BASE POINTS

Bellingham	Astoria	Coeur D'Alene	Ellensburg
Ephrata	Baker	Kellogg	Everett
Kennewick	Bend	Lewiston	Longview
Olympia	Corvallis	Oro Fino	Sandpoint
Spokane	Lakeview	Walla Walla	Klamath Falls
Wenatchee	Pendleton	Yakima	Roseburg
Wilbur	The Dalles		Umatilla
Eugene	Burns		

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
(AREA 1)		
(See footnote "e" regarding cost of project)		
All Counties and portions of Counties East of the 120th Meridian (except DOE Hanford Site in Benton and Franklin Counties):		
Group 1	14.02	4.35
Group 2	14.32	4.35
Group 3	14.87	4.35
Group 4	15.02	4.35
Group 5	15.17	4.35
Group 6	15.42	4.35
Group 7	15.67	4.35
Group 8	16.67	4.35
(AREA 2)		
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in (Area 3):		
Group 1	18.73	4.16
Group 2	18.23	4.16
Group 3	17.79	4.16
Group 4	17.43	4.16
Group 5	17.13	4.16
Group 6	15.33	4.16
(AREA 3)		
(See footnote "d" regarding cost of project)		
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties; and the Southern portion of Pacific County:		
	ZONE 1	
Group 1	14.00	4.60
Group 2	15.18	4.60
Group 3	15.33	4.60
Group 4	15.53	4.60
Group 5	15.56	4.60
Group 6	15.67	4.60
Group 7	15.74	4.60
Group 8	15.87	4.60
Group 9	15.96	4.60
Group 10	16.04	4.60
Group 11	16.06	4.60
Group 12	16.15	4.60
Group 13	16.25	4.60
Group 14	16.48	4.60
Group 15	16.67	4.60
Group 16	16.91	4.60
Group 17	17.10	4.60
Group 18	17.34	4.60
Group 19	17.52	4.60

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
(AREA 3) (Cont'd)		
ZONE DIFFERENTIAL - (Add to Zone 1 Rate):		
Zone 2 - $0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		
Sewer & Waterline Construction:		
Group 1:		
Backhoe (780 Case type & larger with attachments), Ditching Machine, Side Boom (all Cat, Type D-3 & larger), Dozer (all Cat, Type D-3 & larger), Motor Grader, Back Filler, Front-end Loader (2 yds. & over), Mechanic, Clam, Dragline, Crane, Screed, Mechanic Welder, Shovel 3 yds. & under	16.92	4.01
Group 2:		
Backhoe (680 Case type & smaller with attachments), Side Boom (any smaller than Cat D-3), Dozer (any type smaller than Cat D-3), Front-end Loader (under 2 yds.), Gin Truck, Boring Machine, Bending Machine, Boom Truck (stationary), Pot firemen (engine operated above 3 bbl) Service Plow, Mechanical Greaser (large grease truck) Drills (Leroi type), Tractair, Well point system, Paving Machines, Rollers & Compactors	16.425	4.01

DECISION NO.: WA84-5040

Page 8

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Sewer & Waterline Construction (Cont'd):		
Group 3:		
Oiler, Air Compressor, Pump, Oil-Greaser, Chain Type Ditcher (Ditch Witch) Concrete Saw, Welding Machine	14.46	4.01
(DREDGING - AREA 1)		
All Counties & portions of Counties East of the 120th Meridian:		
Group 1	16.63	4.35
Group 2	16.73	4.35
Group 3	17.07	4.35
Group 4	17.12	4.35
Group 5	17.49	4.35
(DREDGING -AREA 2)		
All Counties & portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and the Northern part of Pacific County:		
Group 1	16.75	3.96
Group 2	16.85	3.96
Group 3	17.19	3.96
Group 4	17.24	3.96
Group 5	17.61	3.96
(DREDGING - AREA 3)		
Clark, Cowlitz,& Klickitat Counties; Pacific County (Southern portion); Skamania & Wahkiakum Counties:		
Group 1	16.97	3.87
Group 1-A	17.68	3.87
Group 2	16.43	3.87
Group 3	16.02	3.87
Group 4	15.67	3.87
(AREA 4)		
DOE Hanford Site in Benton and Franklin Counties:		
Group 1	14.28	4.10
Group 2	14.58	4.10
Group 3	15.13	4.10
Group 4	15.28	4.10
Group 5	15.43	4.10
Group 6	15.68	4.10
Group 7	15.93	4.10
Group 8	16.93	4.10
Group 9	16.18	4.10

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
(AREA 1)		
(See footnote "e" regarding cost of project)		
All Counties & portions of Counties East of the 120th Meridian (Except DOE Hanford Site in Benton & Franklin Counties:		
Group 1	12.75	4.10
Group 2	15.19	4.10
Group 3	15.23	4.10
Group 4	15.29	4.10
Group 5	15.38	4.10
Group 6	15.59	4.10
Group 7	15.63	4.10
Group 8	15.69	4.10
Group 9	15.73	4.10
Group 10	15.84	4.10
Group 11	15.88	4.10
Group 12	16.19	4.10
Group 13	16.33	4.10
Group 14	16.49	4.10
Group 15	16.63	4.10
(AREA 2)		
All Counties & portions of Counties West of the 120th Meridian (Except those enumerated in Area 3) including the Northern portion of Pacific County & all of Kittitas & Yakima Counties:		
Group 1	17.06	3.64
Group 2	17.11	3.64
Group 3	17.16	3.64
Group 4	17.27	3.64
Group 5	17.33	3.64
Group 6	17.37	3.64
Group 7	17.38	3.64
Group 8	17.44	3.64
Group 9	17.49	3.64
Group 10	17.51	3.64
Group 11	17.54	3.64
Group 12	17.64	3.64
Group 13	17.66	3.64
Group 14	17.70	3.64
Group 15	17.82	3.64
Group 16	17.86	3.64
Group 17	17.98	3.64
Group 18	18.01	3.64
Group 19	18.19	3.64
Group 20	18.35	3.64
Group 21	18.51	3.64
Group 22	12.00	3.64
Group 23	15.25	3.64

DECISION NO.: WA84-5040

Page 9

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (Cont'd):		
(AREA 3)		
(See footnote "d" regarding cost of project)		
Clark, Cowlitz, Klickitat, Skamania, & Wahkiakum Counties; & the Southern portion of Pacific		
County:	ZONE 1	
Group 1	14.59	4.57
Group 2	14.74	4.57
Group 3	14.79	4.57
Group 4	14.84	4.57
Group 5	14.89	4.57
Group 6	14.99	4.57
Group 7	15.09	4.57
Group 8	15.19	4.57
Group 9	15.29	4.57
Group 10	15.46	4.57
Group 11	15.56	4.57
Group 12	15.66	4.57
Group 13	15.76	4.57
Group 14	15.86	4.57
ZONE DIFFERENTIAL - (Add to Zone 1 Rate):		
Zone 2 - $0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		
(AREA 4)		
DOE Hanford Site in Benton & Franklin Counties:		
Group 1	15.19	3.48
Group 2	15.23	3.48
Group 3	15.29	3.48
Group 4	15.38	3.48
Group 5	15.59	3.48
Group 6	15.63	3.48
Group 7	15.69	3.48
Group 8	15.73	3.48
Group 9	15.84	3.48
Group 10	15.88	3.48
Group 11	16.19	3.48
Group 12	16.33	3.48
Group 13	16.49	3.48
Group 14	16.63	3.48

	Basic Hourly Rates	Fringe Benefits

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

"Where Pacific County is stated as "Northern Portion" or "Southern Portion" such areas are defined as follows:

Pacific County (northern portion) - North of Wahkiakum County northern boundary extended due west to the Pacific Ocean

Pacific County (southern portion) - South of Wahkiakum County northern boundary extended due west to the Pacific Ocean

FOOTNOTES:

a. Employer contributers 8% of basic hourly rate for over 5 years service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day.

b. Two weeks' vacation with pay after 1 year employment. Also seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day.

c. 4% of all gross wages to be placed to the credit of the employee with less than one (1) year's service - 6% of all gross wages to be placed to the credit of the employee with more than one (1) year of service.

d. Employees shall be paid 80% of the basic hourly rate plus full fringe on projects with a total value, including the cost of utilities, of less than $1 million; or on projects which involve work on buildings, bridges, or docks, and which meet both of the following criteria:

(a) The total cost of the project is less than $1.5 million excluding the cost of underground utilities which are located 5 ft or more outside or away from the building, bridge, or dock, and which are incidental or subordinate to it. "Utilities" are facilities for electricity, water, gas, sewerage (including storm), and communications.

(b) Work on buildings, bridges, or docks shall constitute 20% or more of the cost of the project.

e. LABORERS (AREA 1), POWER EQUIPMENT OPERATORS (AREA 1) & TRUCK DRIVERS (AREA 1):
All Counties and portions of Counties East of the 120th Meridian except DOE Hanford Site in Benton and Franklin Counties
All projects involving any or all components listed below, the dollar value of which is equal to or less than the amounts shown shall receive 80% of the base rate plus full fringe benefits:

Paving	$ 75,000
Crushing	200,000
Grading & Clearing	350,000
Bridges & Related Work	500,000
Utilities	Unlimited
Buildings	2,000,000 (exclusive of mechanical & electrical subcontracts)

EXCEPTION: Paving within 45 mile radius of Spokane or Lewiston shall receive full rate. For work that exceeds the amounts shown above, full rates as specified below shall apply Eastern Washington private works language

AREA and ZONE DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: Chelan, Clallam, Douglas, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, and Okanogan Counties, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom, and Yakima Counties
Area 2: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 3: Remaining Counties

BRICKLAYERS; MARBLE SETTERS:
Area 1: Adams County (except City of Othello); Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, and Stevens Counties; Grand Coulee Dam Area in Okanogan County; and Whitman County
Area 2: Benton, Franklin, and Walla Walla Counties
Area 3: Chelan, Douglas and Grant Counties; Okanogan County (except area of Grand Coulee Dam); and the portion of Adams County that includes the City of Othello
Area 4: Clallam, Island, Jefferson, King, Kitsap, and Snohomish
Area 5: Clark and Cowlitz Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties, and ten mile strip bordering the Columbia River in Klickitat County
Area 6: Kittitas and Yakima Counties; Klickitat County (except a ten mile strip bordering the Columbia River)

AREA and ZONE DESCRIPTIONS (Cont'd)

BRICKLAYERS; MARBLE SETTERS:
Area 1: Adams County (except City of Othello); Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, and Stevens Counties; Grand Coulee Dam Area in Okanogan County; and Whitman County
Area 2: Benton, Franklin, and Walla Walla Counties
Area 3: Chelan, Douglas and Grant Counties; Okanogan County (except area of Grand Coulee Dam); and the portion of Adams County that includes the City of Othello
Area 4: Clallam, Island, Jefferson, King, Kitsap, and Snohomish
Area 5: Clark and Cowlitz Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties, and ten mile strip bordering the Columbia River in Klickitat County
Area 6: Kittitas and Yakima Counties; Klickitat County (except a ten mile strip bordering the Columbia River)
Area 7: Grays Harbor, Lewis, and Mason Counties; Pacific County (northern portion); Pierce and Thurston Counties
Area 8: San Juan, Skagit and Whatcom

CARPENTERS:
Area 1: All Counties and parts of Counties east of the 120th Meridian except the counties in areas 4 and 5
Area 2: All Counties and parts of Counties west of the 120th Meridian except the counties in area 3, 4 and 5
Area 3: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion), Skamania and Wahkiakum Counties
Area 4: DOE Hanford Site in Benton and Franklin Counties
Area 5: Chelan, Kittitas, Yakima, Okanagon and the Western parts of Douglas and Grant Counties

CEMENT MASONS:
Area 1: Adams and Asotin Counties; Benton and Franklin Counties (except DOE Hanford Site); Chelan, Columbina, Douglas, Ferry, Garfield, and Grant Counties; Kittitas County (except western portion lying one mile west of the City of Easton); Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties
Area 2: Clallam, Grays Harbor, and Jefferson Counties; King County (southern portion); Kitsap County; Kittitas County (western portion lying one mile west of the City of Easton); Lewis and Mason Counties; Pacific County (northern portion); Pierce and Thurston Counties
Area 3: Island, San Juan, Skagit, and Snohomish Counties; King County (northern portion); Whatcom County

AREA and ZONE DESCRIPTIONS (Cont'd)

CEMENT MASONS (Cont'd):
Area 4: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 5: DOE Hanford Site in Benton and Franklin Counties

GROUP DESCRIPTIONS FOR CEMENT MASONS - AREAS 1 and 5

Group 1: Journeyman Cement Mason, includes but not limited to: Rodding, Tamping, Floating, Troweling, Patching, Stoning, Rubbing, Sack Rubbing; All exposed aggregate finishing, setting of Screeds, Screed Forms, Curb and gutter and sidewalk forms, Preparation of all concrete for caulking of the joints and the caulking of expansion joints, Preparation of concrete for the application of hardeners, sealers and curing compounds and their application; Grouting and dry packing of Machine Base; Removal of Snap Ties and She-Bolts prior to patching of concrete
Group 2: Power Troweling Machine Operator; Troweling of Magnesite, Toroganal or material with epoxy base or oxychloride base; All power Grinders, Brushing Hammer, Chipping Gun, Gunnite Nozzleman; All sandblasting for architectural finishes and exposing of aggregate for finish; Concrete sawing and cutting for expansion joints and scoring for decorative patterns; Operating of Clary-type Floats, Longitudinal Floats, Rodding Machines and Belting Machines; Scarifiers
Group 3: Grinding, Brushing or Chipping of Toxic materials or high density concrete; Operating power tools on a Scaffold

DRYWALL & ACOUSTICAL WORKERS:
Area 1: Clark, Cowlitz, Klickitat, southern portion of Pacific County, Skamania, Wahkiakum County

ELECTRICIANS:
Area 1: Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties
Area 2: Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, and Yakima Counties
Area 3: Chelan, Douglas, Grant, and Okanogan Counties
Area 4: Clallam, Jefferson, King, and Kitsap Counties
Area 5: Clark, Klickitat, and Skamania Counties
Area 6: Cowlitz and Wahkiakum Counties
Area 7: Grays Harbor, Lewis, Mason, Pierce, Pacific, and Thurston Counties
Area 8: Island, San Juan, Skagit, Snohomish, and Whatcom Counties

AREA DESCRIPTIONS (Cont'd)

ELECTRONIC TECHNICIANS:
(Installation and repair of low-voltage communication and alarm systems, excluding any work under the jurisdiction of a journeyman wireman):
Area 1: Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties
Area 2: Clallam, Jefferson, King, and Kitsap Counties

ELEVATOR CONSTRUCTORS:
Area 1: Adams, Asotin, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman Counties
Area 2: Chelan, Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, and Mason Counties; Pacific County (northern portion); Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom, and Yakima Cos.
Area 3: 'Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

GLAZIERS:
Area 1: Adams County (northeastern portion); Ferry County; Lincoln County (eastern half); Pend Oreille, Spokane, and Stevens Counties
Area 2: Adams County (southeastern portion); Benton, Columbia, Franklin, and Walla Walla Counties
Area 3: Adams County (southwestern corner); Chelan, Douglas, and Grant Counties; Lincoln County (western half); and Okanogan County
Area 4: Asotin, Garfield, and Whitman Counties
Area 5: Clallam, Island, Jefferson, Grays Harbor, King, Kitsap, Lewis, and Mason Counties; Pacific (northern portion); Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom Counties
Area 6: Yakima and Kittitas Counties
Area 7: Clark, Cowlitz, and Klickitat Counties, Pacific County (southern portion); Skamania and Wahkiakum Counties

LATHERS:
Area 1: Clallam, Island, Jefferson, King, Kitsap, and Lewis Counties; Pacific County (northern portion); Pierce, San Juan, Skagit, Snohomish, and Whatcom Counties
Area 2: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

MASON TENDERS:
Area 1: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

AREA DESCRIPTIONS (Cont'd)

PAINTERS:
Area 1: Adams and Asotin Counties; Benton and Franklin Counties (except DOE Hanford Site); Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima Counties
Area 2: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 3: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pierce, San Juan, Skagit, Snohomish, and Thurston Counties; Pacific County (northern portion); and Whatcom County
Area 4: Statewide except (Clark, Cowlitz, and Klickitat Counties; Pacific County (southern Portion); Skamania and Wahkiakum Counties
Area 5: DOE Hanford site in Benton and Franklin Counties

PLASTERERS:
Area 1: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties
Area 2: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, and Mason Counties; Pacific County (northern portion); Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom Counties
Area 3: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

PLASTERERS' TENDERS:
Area 1: All Counties and portions of Counties east of the 120th Meridian

PLUMBERS:
Area 1: Chelan County; Kittitas County (north of 47°15' N. Lat.); Douglas County (west of the 119°30' W. Long.); Okanogan County (except the area lying east of the 119°31' W. Long., North to 48°30' N. Lat.)
Area 2: Adams County (southern portion), Asotin County (except the City of Clarkston), Benton, Columbia, Franklin, Garfield, Grant, Klickitat, Walla Walla, and Yakima Counties; Douglas County (east of 119°30' W. Long.); Ferry County (west of a line drawn from Creston in Lincoln County northward to the Canadian Border), Kittitas County (south of 47°15' N. Lat.), Lincoln County (west of a line drawn from Schrag in Adams County northward to the Ferry County Line), and Okanogan County (east of 119°30' W. Long. and south of 48°30' N. Lat.)
Area 3: Adams County (northern portion including the City of Ritzville), Asotin County (City of Clarkston only), Cowlitz County; Ferry County (east to a line drawn from Creston in Lincoln County northward to the Canadian Border), Grays Harbor, Island, Kitsap, and Lewis Counties; Lincoln County (east of a line drawn from Schrag in Adams County northward to the Ferry County Line), Mason, Pend Oreille, Pierce, Skagit, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Whatcom, Whitman, Clark, and Skamania Counties (those portions lying north of a east-west line drawn through Woodland eastward to the Klickitat County Line
Area 4: Clark and Skamania Counties south of an east-west line drawn through Woodland eastward to the Klickitat County Line
Area 5: Clallam, King, and Jefferson Counties; and all Dam Sites on the Skagit River in Whatcom County

AREA DESCRIPTIONS (Cont'd)

ROOFERS:
Area 1: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman Counties
Area 2: Benton, Franklin, Kittitas, Klickitat and Yakima Counties
Area 3: Clallam, Jefferson, King, Kitsap, Mason, and Snohomish Counties
Area 4: Cowlits, Grays Harbor, Lewis, Pacific, Pierce, Thurston, and Wahkiakum Counties
Area 5: Island, San Juan, Skagit, and Whatcom Counties
Area 6: Clark and Skamania Counties

SHEET METAL WORKERS:
Area 1: Adams, Asotin, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman Counties
Area 2: Clallam, Jefferson, Kitsap, and Mason Counties
Area 3: Clark and Skamania Counties
Area 4: Cowlits, Grays Harbor, Lewis, Pacific, Pierce, Thurston, and Wahkiakum counties
Area 5: King, Kittitas, Island, and Snohomish Counties
Area 6: Whatcom, Skagit, and San Juan Counties
Area 7: Benton, Columbia, Franklin, Garfield, Klickitat, Walla Walla, and Yakima Counties

SOFT FLOOR LAYERS:
Area 1: Adams County (northeastern portion); Ferry County; Lincoln County (eastern half); Pend Oreille, Spokane, and Stevens Counties
Area 2: Adams County (southeastern portion); Benton, Columbia, Franklin, and Walla Walla Counties
Area 3: Adams County (southwestern portion); Chelan, Douglas, and Grant Counties, Lincoln County (western half); Okanogan County
Area 4: Asotin, Garfield, and Whitman Counties
Area 5: Island, King, Kitsap, Skagit, Snohomish and Whatcom
Area 6: Clark, Cowlits, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 7: Grays Harbor, Lewis, and Mason Counties; Pacific County (northern portion); Pierce and Thurston Counties
Area 8: Yakima and Kittitas County

SPRINKLER FITTERS:
Area 1: Skagit, Snohomish, King, Island, Kitsap, Pierce, and Thurston Counties
Area 2: Remaining Counties

TERRAZZO WORKERS; TILE SETTERS:
Area 1: Adams County (except that portion which include the City of Othello), Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties, and Grand Coulee Dam area in Okanogan County
Area 2: Benton, Franklin, and Walla Walla Counties
Area 3: Chelan, Douglas, Grant, Okanogan County (except area of Grand Coulee Dam), and the portion of Adams County that include the City of Othello)

AREA DESCRIPTIONS (Cont'd)

TERRAZZO WORKERS; TILE SETTERS: (Cont'd)
Area 4: Clallam, Island, Jefferson, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom Counties
Area 5: Clark and Cowlitz Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties, and a ten-mile strip bordering the Columbia River in Klickitat County
Area 6: Kittitas, Klickitat (except 10 mile striping bordering the Columbia River), and Yakima Counties
Area 7: Grays Harbor, Lewis, Mason, Pierce, and Thurston Counties

TILE, MARBLE, and TERRAZZO FINISHERS:
Area 1: All Counties west of the Cascade Mountain Range (except Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 2: Clark and Cowlitz Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties, and a ten-mile strip bprdering the Columbia River in Klickitat County
Area 3: Adams County (except that portion which includes the City of Othello), Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties, and Grand Coulee Dam area in Okanogan County

ZONE DESCRIPTIONS (AREA 3) ONLY

LABORERS,
POWER EQUIPMENT and TRUCK DRIVERS
Astoria, Bingen, Goldendale, The Dalles, Longview, Portland and Vancouver

ZONE 1 - all jobs or projects located within 30 miles of the respective City Hall
ZONE 2 - more than 30 miles but less than 40 miles from the respective City Hall
ZONE 3 - more than 40 miles but less than 50 miles from the respective City Hall
ZONE 4 - more than 50 miles but less than 80 miles from the respective City Hall
ZONE 5 - more than 80 miles from the respective City Hall

LABORERS (AREA 1)
All Counties and portions of Counties East of the 120th Meridian
(Except DOE Hanford Site in Benton and Franklin Counties)

BUILDING, HEAVY, and HIGHWAY CONSTRUCTION

Group 1: Brush Hog Feeder; Carpenter Tender; Concrete Crewman (to include: Stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, Pumpcrete Machine, Signaling, handling the nozzle of Squeesecrete or similar machine - 6 in. and smaller); Crusher Feeder; Demolition (to include: clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector (to include: Guard Rail, Guide and Reference Post, Sign Posts, and Right-of-way Markers); General Laborer; Grout Machine Header Tender; Hippers; Riprap Man; Scaffold Erector, wood or steel; Scaleman; Stake Jumper; Structural Mover (to include: separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Truck Loader; Well-point Man; Window Cleaner; Miner Class "A" - Bull Gang, Pump Crete Crewman including Distribution Pipe, Assembling and Dismantle and Nipper; Track Laborer; Railroad Equipment, power driven; Dual Mobile Power Spiker or Puller

Group 2: Asphalt Raker; Asphalt Roller, walking; Cement Finisher Tender; Cement Handler; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman, non-mechanical; Driller Tender (when required to move and position machine); Form Cleaning Machine Feeder; Stacker; Form Setter, paving; Grade Checker using level; Jackhammer Operator; Nozzleman (to include: Squeeze and Flow-crete Nozzle); Nozzleman, water, air or steam; Pavement Breaker; Pipelayer, corrugated metal culvert; Pipelayer, multi-section; Pot Tender; Powderman Tender; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Rodder and Spreader; Sandblast Tailhoseman; Tamper (to include: operation of Barco, Essex and similar Tampers, and Pavement Breakers); Trencher, Shawnee; Tugger Operator; Vibrator, under 4 inches; Wagon Drills; Water Pipe Liner; Wheelbarrow, power driven; Miner Class "B" - Brakeman, Finisher, Vibrator and Form Setter

Group 3: Air Track Drill; Brush Machine (to include: Horizontal Construction Joint Clean-up Brush Machine, power propelled); Caisson Worker, free air, Chain Saw Operator and Faller; Concrete Stack (to include: Laborers when 40 ft. high); Gunnite (to include: operation of machine and nozzle); High Scaler; Hod Carrier; Laser Beam Operator (to include: Grade Checkers and Elevation control); Monitor Operator (track or similar mounting); Mortar Mixer; Nozzleman (to include: Jet Blasting Nozzleman, over 1,200 lbs., Jet Blast Machine, power propelled, Sandblast Nozzle); Pipelayer (to include: working Topman, Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker, Shorer, Valve or meter Installer); Pipewrapper; Vibrator, 4 inches and over; Miner Class "C" - Miner and Nozzleman for concrete and Laser Beam Operator in Tunnels

Group 4: Drills with dual masts; Powderman; Miner Class "D" - Raise and Shaft Miner and Laser Beam Operator on Raises and Shafts; Powderman receives $0.25 an hour additional

LABORERS (Cont'd)
AREA 2

All Counties and portions of Counties West of the 120th Meridian including the portions of Chelan, Douglas, Kittitas, Okanogan, and Yakima that lie West of the 120th Meridian, and the Northern part of Pacific County, but excluding those portions contained in Area 3

Group 1: Fence Laborer, Window Washer
Group 2: Batch Weighman, Crusher Feeder, Pilot Car, Toolroom Man (at job site)
Group 3: General Laborer; Air, Gas or Electric Vibrating Screed; Ballast Regulator Machine; Carpenter Tender; Chipping Gun; Chuck Tender; Concrete Form Stripper; Cement Finisher Tender; Curing Labor; Demolition, Wrecking and Moving including Charred Material, Epoxy Technician; Gabian Basket Builders; Grinders; Pot Tender; Powderman's Tender; Stake Hopper; Topman-Tailman; Tugger Operator
Group 4: Cement Dumper-Paving; Clary Power Spreader; Concrete Saw Operator; Faller and Bucker Chain Saw; Grade Checker; High Scaler; Jackhammer; Manhole Builder; Morterman and Hodcarrier; Nozzleman (concrete pump, green cutter when using combination of high pressure air & water on concrete and rock, sandblast, gunnite, shotcrete) water blaster; Pavement Breaker; Pipe Layer & Caulker; Pipe reliner (not insert type); Railroad Spike Puller (Power); Raker - Asphalt; Spreader (concrete); Timberman-Sewer (lagger, shorer & cribber); Track Liner (power); Tamper (multiple and self-propelled); Tamper & Similar Electric, Air & Gas operated tools; Vibrator; Wagon Driller & Air Track Operator; Wall Point Laborer
Group 5: Caisson Worker; Miner; Powderman; Re-Timberman

LABORERS (Cont'd)
AREA 1

Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties, and the Southern portion of Pacific County

Group 1: General Laborer; Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutter; Car and Truck Loaders; Carpenter Tender; Changehouse Man or Dry Shack Man; Choke Setter; Clean-up Laborers; Concrete Laborers; Culvert, hand labor; Curing, concrete; Demolition, wrecking and moving Laborers; Drillers' Tenders; Dumpers, road oil crew; Dumpman (for grading crew); Fine Graders; Form Strippers (not swinging stages); Guard Rail, Median Rail, Reference Post, Guide Post, Right-of-Way Marker; Leverman or Aggregate Spreader (Flaherty and similar types); Loading Spotters; Material Yard Man (including electrical); Powderman Tender; Pittsburgh Chipper Operator or similar types; Ribbon Setters (including steel forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipman; Slopers; Sprayman; Stake Chaser; Stockpiler; Timber Faller and Bucker (hand labor); Toolroom Man (at job-site); Tunnel Muck Gang (above ground); Weighman - Crusher (aggregate when used); Railroad Track Laborers

Group 2: Applicator (including Pot Tender for same) applying protective material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Splicer; Clary, power spreader and similar types; Cleanup Nozzleman-Greencutter (concrete, rock, etc.); Concrete power Buggymen; Crusher Feeder; Demolition and wrecking charred materials; Grade Checker; Gunite Nozzleman Tender; Gunite and Sandblasting Pot Tender; Handlers or Mixers of all materials of an irritating nature (including cement and lime); Power Tool Operators, includes but not limited to: Dry Pack Machine, Jackhammer, Chipping Guns, Paving Breakers, Vibrators (less than 4" in diameter); Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers; Ribbon Setter, head; Rip Rap Man, head, hand placed; Sand Blasting (wet); Stake Setter; Tunnel-Muckers; Brakemen; Concrete Crew; Bull Gang (underground)

Group 3: Asphalt Rakers; Bit Grinder; Drill Doctor; Drill Operators; Air Tracks; Cat Drills; Wagon Drills; Rubber - mounted Drills and other similar types; Concrete Saw Operator; Gunite Nozzlemen; High Scalers; Strippers and Drillers (covers work in swinging stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down or sloping and stripping); Laser Beam (pipe laying); Applicable when employee assigned to move, set up, align Laser Beam; Manhole Builder; Powdermen; Power Saw Operators (bucking and falling); Pumpcrete Nozzleman; Sandblasting (dry); Sewer (Pipe Layers); Sewer Timberman; Track Liners; Anchor Machines, Ballast Regulators, multiple Tampers, Power Jacks; Tugger Operator; Tunnel Chuck Tenders; Rippers and Timbermen; Vibrators (4" and larger); Water Blaster; Welder

Group 4: Laser Beam (tunnel) - Tunnel Miners; Tunnel Powdermen

Group 5: Fence Builder

LABORERS (Cont'd)
AREA 4
DOE Hanford Site in Benton and Franklin Counties

Group 1: Brush Hog Feeder; Carpenter Tender; Concrete Crewman (to include: Stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, Pumpcrete Machine, Signaling, handling the Nozzle of Squeezecrete or similar machine - 6 in. and smaller); Crusher Feeder; Demolition (to include: clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector (to include: Guard Rail, Guide and reference Post, Sign Posts, and Right-of-way Markers); General Laborer; Grout Machine Header Tender; Hippers; Riprap Man; Scaffold Erector, wood or steel; Scaleman; Stake Jumper; Structural Mover (to include: separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Truck Loader; Wellpoint Man; Window Cleaner; Miner Class "A" - Bull Gang, Pump Crete Crewman including Distribution Pipe, Assembling and Dismantle and Nipper

Group 2: Asphalt Raker; Asphalt Roller, walking; Cement Finisher Tender; Cement Handler; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman, non-mechanical; Driller Tender (when required to move and position machine); Form Cleaning Machine Feeder; Stacker; Form Setter, paving; Grade Checker using level; Jackhammer Operator; Nozzleman (to include: Squeeze and Flow-crete Nozzle); Nozzleman, water, air or steam; Pavement Breaker; Pipelayer, corrugated metal culvert; Pipelayer, multisection; Pot Tender; Powderman Tender; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Redder and Spreader; Sandblast Tailhoseman; Tamper (to include: operation of Barco, Essex and similar Tampers, and Pavement Breakers); Trencher, Shawnee; Tugger Operator; Vibrator, under 4 inches; Wagon Drills; Water Pipe Liner; Wheelbarrow, power driven; Miner Class "B" - Brakeman, Finisher, Vibrator and Form Setter

Group 3: Air Track Drill; Brush Machine (to include: Horizontal Construction Joint Clean-up Brush Machine, power propelled); Caisson Worker, free air, Chain Saw Operator and Faller; Concrete Stack (to include: Laborers when 40 ft. high); Gunnite (to include: operation of machine and nozzle); High Scaler; Hod Carrier; Laser Beam Operator (to include: Grade Checkers and Elevation control); Monitor Operator (track or similar mounting); Mortar Mixer; Nozzleman (to include: Jet Blasting Nozzleman, over 1,200 lbs., Jet Blast Machine, power propelled, Sandblast Nozzle); Pipelayer (to include: working Topman, Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker, Shorer, Valve or meter Installer); Pipewrapper; Vibrator, 4 inches and over; Miner Class "C" - Miner and Nozzleman for concrete and Laser Beam Operator in Tunnels

Group 4: Drills with dual masts; Miner Class "D" - Raise and Shaft Miner and Laser Beam Operator on Raises and Shafts

Group 5: Powderman

POWER EQUIPMENT OPERATORS
(AREA 1)
All Counties and portions of Counties East of the 120th Meridian
(Except DOE Hanford Site in Benton and Franklin Counties)

Group 1: Bit Grinder; Bolt Threading Machine; Compressor, under 2,000 cu. ft. per minute, gas, diesel or electric power; Crusher Feeder (mechanical); Deckhand; Driller's Tender; Fireman and Heater Tender; Grade Checker; Tender (Mechanic, H.D.); Oiler, Oiler and Cable Tender, Mucking Machine; Pumpman; Rollers, all types on subgrade (farm type, Case, John Deere and similar - or Compacting or Vibrator) except when pulled by Dozer with operable blade; Steam Cleaner; Welding Machine; Hydro-seeder

Group 2: A-Frame Truck (single-drum); Assistant Refrigeration Plant (under 1,000 tons); Assistant Plant Operator; Fireman or Pugmixer (asphalt); Bagley or Stationary Scraper; Belt Finishing Machine; Blower Operator (cement); Cement Hog; Compressor (2,000 cu. ft. or over, 2 or more, gas, diesel or electric power); Concrete Saw multiple cut); Distributor Leverman; Elevator hoisting materials; Dope Pots (power agitated); Fork lift or Lumber Stacker; Hydralift and similar; Gin Trucks (Pipeline); Hoist, single drum; Loader (Bucker, Elevator and Conveyors); Longitudinal Float; Mixer (portable - concrete); Pavement Breaker; Hydra Hammer and similar; Power Broom; Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Roas and similar on construction job site); Tractor (farm type R/T with attachments except Backhoe); Tugger Operator; Ditch Witch or similar

Group 3: A-Frame Truck (2 or more drums); Assistant Refrigeration Plant and Chiller Operator (over 1,000 tons); Backfillers (Cleveland and similar); Beltcrete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Batch Plant and Wet Mix Operator, single unit (concrete); Bending Machine; Boring Machine (earth); Boring Machine (rock under 8" bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without crane); Cleaning and Doping Machine (Pipeline); Elevating Belt-type Loader (Euclid, Barber Green or similar); Elevating Grader-type Loader (Dumor, Adams or similar); Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Mixermobile; Mucking Machines; Soil Stabiliser (P & H or similar); Spreader Machine; Pump; Tractor to D-6 or equivalent and Trenchavator; Transverse Finish Machine, Turnhead Operator

Group 4: Blade Operator (Motor Patrol and attachments); Concrete Pump (Squeeze-crete, Flow-crete, Pump-crete, Whitman and similar); Drills (Churn, Core, Calyx, or Diamond); Equipment Serviceman, Greaser and Oiler; Hoist (2 or more drums or Tower Hoist); Loaders Overhead and Front-end, under 4 yds. R/T); Pave or Curb Extruders (asphalt or concrete); Refrigeration Plant Engineers (under 1,000 tons); Rubber-tired Skidders (R/T with or without attachments); Surface Heater and Planer Machine; Trenching Machines (under 7 ft. depth capacity); Turnhead (with no screening); Vacuum Drill (Reverse Circulation Drill, under 5" bit)

POWER EQUIPMENT OPERATORS
AREA 1 (Cont'd)

Group 5: Backhoe (under 1 yard); Crane (25 tons and under); Derrick and Stifflegs (under 65 tons); Drilling Equipment (8" bit and over) (Robbins, Reverse Circulation and similar); Moe Ram; Piledriving Engineers; Paving (dual drum); Refrigeration Plant Engineer (1,000 tons and over); Signalman (Whirleys, Highline, Hammerheads or similar)

Group 6: Asphalt Plant Operator; Automatic Subgrader (Ditches and Trimmers (Autograde, ABC, H.A. Hansen and similar on grade wire); Backhoes (1 yard to 3 yards); Batch Plant (over 4 units); Batch and Wet Mix Operator (multiple units, 2 and including 4); Blade (finish and Bluetop) (Automatic, CMI, ABC, and similar when used as automatic); Boat Operator; Boom Cats (side); Cableway Controller (Dispatcher); Clamshell Operator (under 3 yds.); Concrete Slip Form Paver; Cranes (over 25 tons including 45 tons); Crusher, Grizzle and Screening Plant Operator; Draglines (under 3 yards); Drill Doctor; H.D. Mechanic; H.D. Welder; Loader Operator (Front-end and Overhead, 4 yards including 8 yards); Multiple Dozer Units with single blade; Quad-track or similar equipment; Rollerman (finishing pavement); Rubber-tired Scrapers (one motor with one scraper, under 40 yards); Rubber-tired Scrapers, Multi-engine power with one Scraper (Euclid, TS 24 and similar); Rubber-tired Scrapers, one motor with one scraper (40 yards and over); Rubber-tired Scraper, multiple engines with two scrapers; Scraper Operator; Shovels (under 3 yards); Tractors (D-6 and equivalent and over); Trenching Machines (7 feet depth and over, and screed operator

Group 7: Backhoe (3 yards and over); Cableway Operators; Clamshell Operator (3 yards and over); Cranes (over 45 tons to 85 tons); Derricks and Stifflegs (65 tons and over); Draglines (3 yards and over); Elevating Belt (Holland type); Loader 360 degrees revolving Koehring Scooper or similar; Loaders (Overhead and Front-end, over 8 yards to 10 yards); Rubber-tired Scrapers (multiple engine with three or more Scrapers); Shovels (3 yards and over); Whirleys and Hammerheads, all

Group 8: Cranes (85 tons and over, and all climbing, rail and tower); Loaders (Overhead and Front-end, 10 yards and over); Helicopter Pilot

AREA 2
All Counties and portions of Counties West of the 120th Meridian
(Except those enumerated in Area 3)

Group 1: Cranes, 100 tons and over or 200' of boom including jib and over; Loaders, 8 yds. and over; Shovels and attachments, 6 yds. and over

Group 2: Cableways; Cranes, over 45 tons up to 100 tons or over 150' including jib; Rollagon; Tower Crane; Helicopter, Winch; Remote Control Operator; Loader, Overhead, 6 yds. up to 8 yds.; Shovels, Backhoes, over 3 yds. to 6 yds.; Slipform Pavers; Scrapers, self-propelled, 45 yds. and over; Quad 9, HD 41, D-10

POWER EQUIPMENT OPERATORS (Cont'd)
(AREA 2) (Cont'd)

Group 3: Concrete Batch Plant Operator; Bump Cutter; Cranes, 20 tons through 45 tons; Hydralifts; Chipper; Crushers; Derrick; Drilling Machine; Finishing Machine; Loaders, Overhead, under 6 yds.; Mechanics; Mixers, Asphalt Plant; Motor Patrol Graders, finishing; Pump Truck mounted Concrete Pump with boom attachment; Piledriver Operator; Screed Man; Shovels, Backhoes 3 yds. and under; Subgrader, Trimmer; Tractors, Backhoes, over 60 HP; Scrapers, Self-propelled, under 45 yds.

Group 4: Brooms; Dozers, D-9 and under; Paydozers; A-Frame Crane; Cranes up to 20 tons; Conveyors; Hoists, Air Tugger; Loaders, elevating type; Fork Lifts; Motor Patrol Grader, non-finishing; Mucking Machine; Concrete Pumps; Roller, Plant Mix or Multi-lift materials; Saws, Concrete; Scrapers, Carryall; Spreaders, Blaw Knox; Trenching Machines; Equipment Service Engineer; Oiler Driver on Truck Cranes over 45 tons; Tractor, Backhoe, 60 HP and under

Group 5: Oiler Driver on Truck Cranes, 45 tons and under; Oil Distributors, blower; Assistant Engineer (formerly Oiler classification); Pavement Breaker; Posthole Digger, mechanical; Power Plant; Wheel Tractors, Farmall type; Compressor; Pumps, water; Rollers, other than plant mix;

Group 6: Gradechecker and Stakeman

AREA 3
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties; and the Southern portion of Pacific County

Group 1: Oiler, including Plant, Crane, Crusher, Guardrail equipment, and Trenching Machine; Assistant Conveyor Operator; Crusher Feederman; Deckhand; Self-propelled Scaffolding Operator; Guardrail Punch Oiler; Pump Operator, under 4"; Brakeman; Switchman; Parts Man (tool room)

Group 2: Blade Operator, pulled type; Truck Crane Oiler - driver, 25 ton capacity or over; Crane Fireman (all equipment except floating); A-Frame Truck Operator, single drum; Tugger or Coffin type Hoist Operator; Driller Tender; Auger; Oiler; Boatman; Fork Lift or Lumber Stacker Operator (on job site); Oiler, combination Guardrail Machines; Temporary Heating Plant Operator; Grade Oiler, required to check grade; Grade Checker; Tar Pot Fireman; Tar Pot Fireman (power agitated); H.D. Repairman Tender; Helicopter Radioman (ground); Roller Operator, grading of base rock (not asphalt)

Group 3: Asphalt Plant Fireman; Pugmill Operator (any type); Truck mounted Asphalt Spreader, with Screed; Compressor Operator (any power), under 1,250 cu. ft. total capacity; Conveyor Operator; Mixer Box Operator (C.T.B., Dry Batch, etc.); Cement Hog; Concrete Saw; Concrete Curing Machine (riding type); Wire Mat or Brooming Machine; Boss Carrier Operator (on job site); Bucket Elevator Loader, Barber Greene and similar types; Hydraulic Pipe Press; Pump Operator (any power), 4" and over; Hydrostatic Pump; Motorman; Ballast Jack Tamper; Bell Boy, phones, etc.; Tamping Machine, mechanical self-propelled; Hydrographic Seeder Machine, straw, pulp or seed; Broom Operator, self-propelled (on job site); Air Filtration Equipment; Welding Machine Operator

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 3 (Cont'd)

Group 4: Screed Operator; Compactor, including Vibratory; Compressor (any power) over 1,250 cu. ft. total capacity; Combination Mixer and Compressor, Gunnite Work; Concrete Mixer Operator, single drum, under five bag capacity; Helicopter Hoist Operator; Floating Equipment Fireman; Lull Hi-lift Operator or similar type; Fork Lift, over 5 ton; Serivce Oiler (Greaser); Hydra Hammer or similar types; Pavement Breaker; Pump Operator, more than 5 (any size); Roller Operator, Oiling, C.T.B.

Group 5: Extrusion Machine; Wagner Factor or similar type (without blade); Concrete Batch Plant Quality Control Operator; Power Jumbo, Setting Slip Forms, etc. in tunnels; Slip Form Pumps, Power driven Hydraulic Lifting Device for concrete forms; Hoist, single drum; Elevator Operator; Pulva-mixer or similar types; Chip Spreading Machine Operator; Lime Spreading (on job site); Sweeper (Wayne type) Self-propelled (on job site); Tractor, rubber-tired 50 H.P. Flywheel and under; Trenching Machine, maximum digging capacity 3 ft. depth

Group 6: Asphalt Burner and Reconditioner; Pavement Grinder and/or Grooving Machine (riding type); Cast-in-place Pipe Laying Machine; Maginnis Internal Full Slab Vibrator; Concrete Finishing Machine, Clary, Johnson, Bidwell, Burgess Bridge Deck or similar type; Curb Machine, Mechanical Berm, Curb and/or Curb and Gutter; Concrete Joint Machine; Concrete Planer; Concrete Paving Machine; Concrete Spreader; Loaders, rubber-tired type, 2¼ cu. yds. and under; Rock Spreaders, self-propelled

Group 7: Roller (any asphalt mix); Beltcrete; Pumpcrete Operator (any type); Fuller-Kenyon and similar; Concrete Pump; Grouting Machine; Concrete Mixer, single drum, five bag capacity and over; Tower Mobile Operator; A-Frame Truck, double drum; Boom Truck; Churn Drill and Earth Boring Machine; Hydraulic Backhoe, wheel type 3/8 cu. yds. and under with or without Front End attachments 2¼ cu. yds. and under (Ford, John Deere, Case type); Elevating Grader, Tractor towed requiring Operator or Grader; Pot Rammer

Group 8: Diesel-electric Engineer, Plant, Crusher, Generator, Floating; Batch Plant and/or wet mix, one and two drum; Generator Operator; Belt Loader, Kolman and Ko Cal types; Asphalt Paver Operator

Group 9: Bulldozer; Drill Cat Operator; Side-boom Cat; Compactor, with blade; Concrete Cooling Machine; Chicago Boom and similar types; Lift Slab Machine; Boom type lifting device, 5 ton capacity or less; Cherry Picker or similar type Crane-hoist, 5 ton capacity or less; Grizzley Crusher; Crusher Plant; Drill Doctor; Boring Machine; Guardrail Punch and Auger (all types); Surface Heater and Planer; Hydraulic Backhoe, track type 3/8 cu. yds.; Loader, Front End and Overhead, 2¼ cu. yds. and under 4 cu. yds.; Hammer Operator; Pipe Cleaning, Doping, Bending and Wrapping Machines; Bolt-threading Machine; Drill Doctor (bit grinder); H.D. Mechanic Machine Tool Operator; Stationary Drag Scraper; Tractor, rubber-tired over 50 H.P. Flywheel; Tractor with boom attachment; Trench Machine, maximum digging capacity over 3 ft. depth; Asphalt Plant Operator

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 3 (Cont'd)

Group 10: Bulldozer, twin engine (TC 12 and similar); Cable Plow (any type); Compactor, multi-engine; Jack Operator, Elevating Barges; Barge Operator, self-unloading; Rubber-tired Dozers and Pushers (Michigan, Cat, Hough type); Driller - Percussion, Diamond, Core, Cable, Rotary and similar type

Group 11: Miner Mobile; Concrete Breaker; Crane Operator, 25 tons and under; Combination Guardrail Machines, i.e., Punch, Auger, etc.; Shovel; Dragline; Clamshell, Hoe, etc., under 1 cu .yd.; Grade-alls, under 1 cu. yd.; Mucking Machine (tunnel)

Group 12: Blade Operator; Batch Plant and/or Wet Mix, 3 units or more; Reinforced Tank Banding Machine (K-17 or similar); Hoist, two or more drums; Elevating Loader, Athey and similar; Piledriver (not crane type); Rubber-tired Scraper, single and twin engine; Single Scraper, with Push-pull attachments, self-loader; Paddle Wheel, auger type; Blade mounted Spreaders Ulrich and similar types; Shield Operator

Group 13: Blade Operator, finish; Blade, externally controlled by electronic, mechanical hydraulic means; Blade, multi-engine; Concrete Paving Road Mixer; Derrick, under 100 tons; Hoist, Stiff Leg, Guy Derrick or similar, 50 tons and over; Cableway Operator 25 ton and over; Crane, over 25 ton and including 40 tons; Piledriver Operator; Floating Clamshell, etc., under 3 cu. yds.; Floating Crane (Derrick Barge), less than 30 ton; Elevating Grader, operated by tractor operator, Sierra, Euclid, or similar; Back Filling Machine; Shovel, etc. 1 cu. yd. and less than 3 cu. yds.; Grade-all, 1 cu. yd. and over; Bridge Crane Operator

Group 14: Tower Crane Operator; Rubber-tired Scraper, with Tandem Scrapers, self-loading, Paddle Wheel, auger type, finish and/or 2 or more units

Group 15: Rock Mound Operator; Loader, 4 cu. yds., but less than 6 cu. yds.

Group 16: Autograder or "Trimmer"; Tandem Bulldozer, Quad-nine and similar; Automatic Concrete Slip Form Paver; Concrete Canal Line; Cableway, 25 ton and over; Crane, over 40 ton and including 100 ton; Whirley, 80 ton and under; Floating Clamshell, etc., 3 cu. yds. and over; Floating Crane (Derrick Barge) 30 ton but less than 80 ton; Loader, 6 cu. yds., but less than 12 cu. yds.; Rubber-tired Scraper, with Tandem Scrapers, multi-engine; Shovel, etc., 3 cu. yds. but less than 5 cu. yds.; Wheel Excavator, under 750 cu yds. per hour

Group 17: Crane over 100 ton and including 200 ton; Whirley, over 80 ton and including 150 ton; Floating Crane (Derrick Barge), 80 ton, but less than 150 ton; Loader, 12 cu. yds. and over; Shovel, etc., 5 cu. yds. and over; Canal Trimmer

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 3 (Cont'd)

Group 18: Crane, over 200 ton; Whirley, 150 ton and over; Floating Crane, 150 ton but less than 250 ton; Wheel Excavator, over 750 cu. yds. per hour; Band Wagons, in connection with Wheel Excavator

Group 19: Helicopter, when used in erecting work; Floating Crane, 250 ton and over; Remote contolled earth moving equipment; Underwater equipment, remote or otherwise

DREDGING

AREA 1 - All Counties and portions of Counties East of the 120th Meridian

AREA 2 - All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and the Northern part of Pacific County

Group 1: Assistant Mate (Deckhand)

Group 2: Oiler

Group 3: Assistant Engineer (Electric, Diesel, Steam of Booster Pump); Mates and Boatmen

Group 4: Craneman, Engineer Welder

Group 5: Leverman, Hydraulic

AREA 3- DREDGING

Clark, Cowlits, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

Group 1: Leverman, Hydraulic

Group 2-A: Leverman, Dipper

Group 2: Assistant Engineer (including Watch Engineer, Mechanic, and Machinist) and Mate

Group 3: Tenderman (Boatman, attending Dredging Plant); Fireman

Group 4: Assistant Mate (Deckhand); Oiler

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 4
DOE Hanford Site in Benton and Franklin Counties

Group 1: Bit Grinders; Bolt Threading Machine; Compressors (under 2,000 CFM, gas, diesel or electric power); Crusher Feeder (mechanical); Deck Hand; Driller Tender; Fireman and Heater Tender; Grade Checker; Mechanic or Welder, H.D.; Hydro-seeder, Mulcher, Nozzleman; Oiler; Oiler and Cable Tender, Mucking Machine; Pumpman; Rollers, all types on subgrade (farm type, Case, John Deere and similar, or Compacting Vibrator), except when pulled by Dozer with operable blade; Steam Cleaner; Welding Machine

Group 2: A-Frame Truck (single drum); Assistant Refrigeration Plant (under 1,000 ton); Assistant Plant Operator, Fireman or Pugmixer (asphalt); Bagley or Stationary Scraper; Belt Finishing Machine; Blower Operator (cement); Cement Hog; Compressor (2,000 CFM or over, 2 or more, gas, diesel or electric power); Concrete Saw (multiple cut); Distributor Leverman; Ditch Witch or similar; Elevator, hoisting materials; Dope Pots (power agitated); Fork Lift or Lumber Stacker, Hydra-lift and similar; Gin Trucks (pipeline); Hoist, single drum; Loaders (bucket, elevators and conveyors); Longitudinal Float; Mixer (portable - concrete); Pavement Breaker, Hydra-hammer and similar; Power Broom; Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Ross and similar on construction job only); Tractor (Farm type R/T with attachments, except Backhoe); Tugger Operator

Group 3: A-Frame Truck (2 or more drums); Assistant Regrigeration Plant and Chiller Operator (over 1000 ton); Backfillers (Cleveland and similar); Batch Plant and Wet Mix Operator, single unit (concrete); Belt-crete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Bend Machine; Bob Cat; Boring Machine (earth); Boring Machine (rock under 8" bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginau or similar); Canal Lining Machine (concrete); Cleaning and Doping Machine (pipeline); Deck Engineer; Elevating Belt-type Loader (Euclid, Barber Green and similar); Elevating Grader-type Loader (Dumor, Adams or similar); Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Mixermobile; Posthole Auger or Punch; Pump (Grout or Jet); Soil Stabilizer (P & H or similar); Spreader Machine; Tractor (to D-6 or equivalent) and Traxcavator; Traverse Finish Machine; Turnhead Operator

Group 4: Blade Operator (Motor Patrol and attachments); Concrete Pumps (Squeeze-crete, Flow-crete, Pump-crete, Whitman and similar); Curb Extruder (asphalt or concrete); Drills (Churn, Core, Calyx, or Diamond); Equipment Serviceman, Greaser and Oiler; Hoist (2 or more drums or Tower Hoist); Loaders (Overhead and Front-end, under 4 yds. R/T); Refrigeration Plant Engineers (under 1000 ton); Rubber-tire Skidders (R/T with or without attachments); Screed Operator; Surface Heater and Planer Machine; Trenching Machines (under 7 ft. depth capacity); Turnhead (with re-screening); Vacuum Drill (Reverse Circulation Drill under 8" bit)

POWER EQUIPMENT OPERATORS (Cont'd)
AREA 4 (Cont'd)

Group 5: Drilling Equipment (8" bit and over) (Robbins, Reverse Circulation and similar); Hoe Ram; Paving (dual drum); Refrigeration Plant Engineer (1000 tons and over); Signalman (Whirleys, Highline, Hammerheads or similar)

Group 6: Automatic Subgrader (Ditches and Trimmers)(Autograde, ABC, R.A. Hansen and similar on grade wire); Backhoe (under 1 yd.); Batch Plant (over 4 units); Batch and Wet Mix Operator (multiple units, 2 and including 4); Boat Operator; Cableway Controller (Dispatcher); Cranes (25 tons and under); Derricks and Stifflegs (under 65 tons); Drill Doctor; Multiple Dozer Units with single blade; Paving Machine (asphalt and concrete); Piledriving Engineers; Quad-track or similar equipment; Rollerman (finishing pavement); Trenching Machines (7 ft. depth and over)

Group 7: Asphalt Plant Operator (Backhoes (1 yd. to 3 yds.); Blade (finish and Bluetop) Automatic, CMI, ABC and similar when used as automatic; Boom Cats (side); Cableway Operators; Clamshell Operators (under 3 yds.); Concrete Slip Form Paver; Cranes (over 25 tons, including 45 tons); Crusher, Grizzle and Screening Plant Operator; Draglines (under 3 yds.); Elevating Belt (Holland type); H.D. Mechanic; H.D. Welder; Loader Operator (Front-end and Overhead, 4 yards, including 8 yards); Mucking Machine; Quad-track or similar equipment; Rubber-tired Scrapers; Shovels (under 3 yds.); Tractors (D-6 and equivalent and over)

Group 8: Backhoes (3 yds. and over); Cranes (over 45 tons, to 85 tons); Cranes (85 tons and over, all climbing, rails and tower); Clamshell Operator (3 yds. and over); Derricks and Stifflegs (65 tons and over); Draglines (3 yds. and over); Loader (360 degrees revolving Koehring Scooper or similar); Loaders (Overhead and Front-end, over 8 yds.); Helicopter Pilot; Shovels (3 yds. and over); Whirleys and Hammerheads, all

Group 9: Transi-lift

TRUCK DRIVERS (AREA 1)

All Counties and portions of Counties East of the 120th Meridian (Except DOE Hanford Site in Benton and Franklin Counties)

Group 1: Escort Driver or Pilot Car, pickup hauling employees or material
Group 2: Flat Bed Truck, single rear axle; Fork Lift, 3,000 lbs. and under; Tender and Swamper; Leverperson loading Trucks at Bunkers; Pick-up hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired pulling trailer or similar equipment); Water Tank Truck, 1,800 gallons
Group 3: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material); Tireperson No. 1

TRUCK DRIVERS (Cont'd)
AREA 1 (Cont'd)

Group 4: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power operated Sweeper; Straddle Carrier (Ross Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yards and under); Trucks, side, end, and bottom dump (under 6 yards); Water Tank Truck, 1,801 - 4,000 gallons

Group 5: Auto Crane, 2,000 lbs. capacity; Bulk Cement Spreader; Dumptor (6 yds. and under); Flat Bed Truck (with hydarulic system); Fork Lift (3,001 - 16,000 lbs.); Rubber-tired Tunnel Jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks, 4,001 to 6,000 gallons; Wrecker and Tow Trucks; Fuel Truck Driver; Steam Cleaner and Washer; Flaherty Spreader

Group 6: Service Greaser; Tireperson No. 2; Truck, side, end, and bottom Dump (over 6 yds. to 12 yds.); Oil Distributor Driver (Road, Boot Person, Lever Person, Tender)

Group 7: A-Frame; Water Tank Truck, 6,001 to 8,000 gallons

Group 8: Dumptor (over 6 yds.); Transit Mixers and Trucks hauling concrete (6 yds. to 10 yds.); Trucks, side, end, and bottom dump (over 12 yds. including 20 yds.); Semi Truck and Trailer 50 tons and under; Lowboy

Group 9: Low Boy (over 50 tons); Water Tank Trucks, 8,001 to 10,000 gallons; Tractor with Steer Trailer; Truck mounted Crane with load bearing surface, either mounted or pulled

Group 10: Transit Mixer and Trucks hauling concrete (10 yds. to 15 yds.); Trucks, side, end, and bottom dump (over 20 yds. including 30 yds.); Water Tank Truck (10,001 to 12,000 gallons); Fork Lift, over 16,000 lbs.; Flaherty Spreader Box Driver; Flow Boys; Semi-end Dumps

Group 11: Mechanic, Field

Group 12: Tournarocker, D. W.'s and similar, with 2 to 4 wheel power tractor with trailer, gallonage or yardage scale, whichever is greater; Transit Mixers and Trucks hauling concrete (15 yds. to 20 yds.); Trucks, side, end, and bottom dump (over 30 yds. to 40 yds.); Water Tank Truck, 12,001 to 14,000 gallons

Group 13: Transit Mixers and Trucks hauling concrete (over 20 yds.); Trucks, side, end, and bottom dump (over 40 yds. to 50 yds.)

Group 14: Trucks, side, end, and bottom dumps (over 50 yds. to 100 yds.)

Group 15: Helicopter Pilot hauling employees or material; Trucks, side, end, and bottom dump (over 100 yards)

TRUCK DRIVERS (Cont'd)
AREA 2
All Counties and portions of Counties West of the 120th Meridian (Except those enumerated in Area 3) including the Northern portion of Pacific County and all of Kittitas and Yakima Counties

Group 1: Leverman and Loaders at Bunkers and Batch Plants; Swampers; and Checkers

Group 2: Team Drivers

Group 3: Bull Lifts and similar equipment used in loading and unloading trucks, transporting materials on job site (warehousing); Dumpsters and similar equipment (including Tournarockers, Tournawagon, Turnatrailer, Cat DW series, Terra Cobra, LeTourneau, Westinghouse, Athey Wagon, Euclid, two and four-wheeled power tractor with trailer and similar top-loaded equipment transporting material: Dump Trucks, side, end and bottom dump, including Semi-trucks and Trains or combinations thereof) - up to and including 5 yds.; Flatbed, single rear axle; Fuel Truck; Grease Truck; Greaser, Battery Service Man and/or Tire Service Man; Scissor Truck; Spreader, Flaherty; Tractor (small, rubber-tired); Vacuum Truck; Water Wagon and Tank Trucks, up to 1,600 gallons; Winch Truck, single rear axle; Wrecker, Tow Truck and similar equipment

Group 4: Flatbed, dual rear axle

Group 5: Buggymobile; Hyster Operators; Straddle Carrier (Ross, Hyster, and similar equipment); Water Wagon and Tank Trucks, 1,6000 gallons to 3,000 gallons

Group 6: Transit-mix, 0 to and including 4½ yards

Group 7: Dumpsters and similar equipment (as listed in Group 3) - over 5 yds. to and including 12 yds.; Explosive Truck (field mix) anmilar equipment; Lowbed and Heavy Duty Trailer, under 50 tons gross; Road Oil Distributor Driver; Slurry Truck; Sno-go and similar equipment; Winch Truck, dual rear axle

Group 8: Dumpster and similar equipment (as listed in Group 3) - over 12 yards to and including 16 yards

Group 9: Bulk Cement Tankers; Dumpsters and similar equipment (as listed in Group 3) - over 16 yds. to and including 20 yds.; Water Wagon and Trank Truck, over 3,000 gallons

Group 10: Bull Lifts or similar equipment used in loading or unloading trucks transporting materials on job site, other than warehousing

Group 11: Transit-mix, over 4 yds. to and including 6 yds.

Group 12: "A" Frame or Hydralift Trucks or similar equipment

TRUCK DRIVERS (Cont'd)
AREA 2 (Cont'd)

Group 13: Dumpster and similar equipment (as listed in Group 3) - over 20 yds. to and including 30 yds.; Lowbed and Heavy Duty Trailer, over 50 tons gross to and including 100 tons gross

Group 14: Transit-mix, over 6 yds. to and including 8 yds.

Group 15: Dumpsters and similar equipment (as listed in Group 3) - over 30 yds. to and including 40 yds.; Lowbed and Heavy Duty Trailer, over 100 tons gross

Group 16: Transit-mix, over 8 yds. to and including 10 yds.

Group 17: Dumpsters and similar equipment (as listed in Group 3) - over 40 yds. to and including 55 yds.

Group 18: Transit-mix, over 10 yds. to and including 12 yds.

Group 19: Transit-mix, over 12 yds. to and including 16 yds.

Group 20: Transit-mix, over 16 yds. to and including 20 yds.

Group 21: Transit-mix, over 20 yds.

Group 22: Escort or Pilot Car

Group 23: Flat bed (single rear axle); pickup truck

AREA 3
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties; and the Southern portion of Pacific County

Group 1: Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Dump trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: 6 cu. yds. and under, Lift Jitneys, Fork Lifts (all sizes in loading, unloading and transporting material on job site); Loader and/or Leverman on Concrete Dry Batch Plant (manually operated); Pilot Car; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Tender; Truck Mechanic Tender; Warehouseman (warehouse parts, tool men and parts chaser, checkers and receivers); Water Wagons (rated capacity) - up to 1,600 gallons

Group 2: "A" Frame or Hydra-lift Truck with load bearing surface; Lubrication Man, Fuel Truck Driver, Fireman, Wash Rack, Steam Cleaner or combinations; Team Drivers

TRUCK DRIVERS (Cont'd)
AREA 3 (Cont'd)

Group 3: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 6 cu. yds. and including 10 cu. yds.; Slurry Truck Driver or Leverman; Transit Mix, and Wet or Dry Mix Trucks: 5 cu. yds. and under; Fireman (full-time basis); Water Wagons (rated capacity) - 1,600 to 3,000 gallons

Group 4: Flaherty Spreader Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer, Truck and Trailers or doubles transporting equipment or wet or dry materials; Lumber Carrier Driver - Stadddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Water Wagons (rated capacity) - 3,000 to 5,000 gallons

Group 5: Dumpsters or similar equipment, all sizes; Transit Mix and Wet or Dry Trucks, over 5 cu. yds. and including 7 cu. yds.

Group 6: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 10 cu. yds. and including 20 cu. yds.; Transit Mix and Wet or Dry Mix Truck, over 7 cu. yds. and including 9 cu. yds.; Truck Mechanic - Welder - Body Repairman; Water Wagons (rated capacity) - 5,000 to 7,000 gallons

Group 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 20 cu. yds. and including 30 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 9 cu. yds. and including 11 cu. yds.; Water Wagons (rated capacity) over 7,000 gallons to 10,000 gallons

Group 8: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 30 cu. yds. and including 40 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 11 cu. yds. and including 13 cu. yds.; Water Wagon (rated capacity) over 10,000 gallons to 15,000 gallons

Group 9: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 40 cu. yds. and including 50 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 13 cu. yds. and including 15 cu. yds.

Group 10: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds.

Group 11: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 60 cu. yds. and including 70 cu. yds.

Group 12: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 70 cu. yds. and including 80 cu. yds.

TRUCK DRIVERS (Cont'd)
AREA 3 (Cont'd)

Group 13: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu yds. and including 90 cu. yds.

Group 14: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 90 cu. yds. and including 100 cu. yds.

AREA 4
DOE Hanford Site in Benton and Franklin Counties

Group 1: Flat Bed Truck, single rear axle; Fork Lift, 3,000 lbs. and under; Tender and Swamper; Leverperson loading Trucks at Bunkers; Pick-up hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired Pulling trailer or similar equipment); Water Tank Truck, 1,800 gallons

Group 2: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material; Tireperson No. 1

Group 3: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power Operated Sweeper; Straddle Carrier (Ross Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yds. and under); Trucks, side, end, and bottom dump (under 6 yds.); Water Tank Truck, 1,801 - 4,000 gallons

Group 4: Auto Crane, 2,000 lbs. capacity; Bulk Cement Spreader; Dumptor (6 yds. and under); Flat Bed Truck (with hydraulic system); Fork Lift (3,001 - 16,000 lbs.); Rubber-tired Tunnel Jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks, 4,001 to 6,000 gallons; Wrecker and Tow Trucks; Fuel Truck Driver; Steam Cleaner and Washer; Flaherty Spreader

Group 5: Service Greaser; Tireperson No. 2; Truck, side, end, and bottom Dump (over 6 yds. to 12 yds.); Oil Distributor Driver (road, Boot Person, Lever Person, Tender)

Group 6: A-Frame; Water Tank Truck, 6,001 to 8,000 gallons

Group 7: Dumptor (over 6 yards); Transit Mixers and Trucks hauling concrete (6 yards to 10 yards); Trucks, side, end, and bottom dump (over 12 yards including 20 yards); Semi Truck and Trailer; Lowboy 50 tons and under

Group 8: Low Boy (over 50 ton); Water Tank Trucks, 8,001 to 10,000 gallons; Tractor with Steer Trailer; Truck mounted Crane with load bearing surface, either mounted or pulled

Group 9: Transit Mixer and Trucks hauling concrete (10 yds. to 15 yds.); Trucks, side, end, and bottom dump (over 20 yds. including 30 yds.); Water Tank Truck (10,001 to 12,000 gallons); Fork Lift, over 16,000 lbs.; Flaherty Spreader Box Driver; Flow Boys; Semi-end Dumps

TRUCK DRIVERS (Cont'd)
AREA 4 (Cont'd)

Group 10: Mechanic; Field

Group 11: Tournarocker, D.W.'s and similar, with 2 or 4 wheel power tractor with trailer, gallonage or yardage scale, whichever is greater; Transit Mixers and Trucks hauling concrete (15 yds. to 20 yds.); Trucks, side, end, and bottom dump (over 30 yds. to 40 yds.); Water Tank Truck, 12,001 to 14,000 gallons

Group 12: Transit Mixers and Trucks hauling concrete (over 20 yds.); Trucks, side, end, and bottom dump (over 40 yds. to 50 yds.)

Group 13: Trucks, side, end, and bottom dumps (over 50 yds. to 100 yds.)

Group 14: Helicopter Pilot hauling employees or material; Trucks, side, end, and bottom dump (over 100 yards)

Drivers and Tenders (hauling sacked cement - add $.15 per hour)

Winch Truck - takes classification of Truck on which Winch is mounted.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 84-30074 Filed 11-15-84; 8:45 am]
BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: Wisconsin

COUNTIES: Brown, Door, Kewaunee & Oconto

DECISION NUMBER: WI 84-5030

DATE: Date of Publication

Supersedes Decision No. WI83-2076 dated, September 30, 1983, in 48 FR 45003

DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.75	$2.01
BOILERMAKERS	17.345	3.25
BRICKLAYERS, Marble Setters & Stonemasons	12.70	2.44
CARPENTERS & SOFT FLOOR LAYERS	13.61	2.21
CEMENT MASONS	12.20	2.44
ELECTRICIANS	15.95	1.40+9½%
GLAZIERS	13.11	3.00
ELEVATOR CONSTRUCTORS:		
Mechanics	16.56	3.00
Helpers	11.59	3.00
Helpers (Prob.)	8.28	
IRONWORKERS:		
Structural, Ornamental and Reinforcing	14.08	3.00
Millwrights & Pile-drivermen	14.06	2.11
PAINTERS:		
Brush	14.05	1.00
Structural Steel & Spray	14.43	1.00
PLASTERERS	12.75	2.15
PLUMBERS/PIPEFITTERS	17.37	2.76
ROOFERS	14.50	1.50
SHEET METAL WORKERS	14.16	5.37
TERRAZZO WORKERS & TILE SETTERS	12.75	2.15
LABORERS:		
Building:		
Class I:		
General	11.03	1.43
Class II:		
Plasterers & Mason Tender	11.13	1.43
Class III:		
Jackhammer Operator	11.28	1.43
POWER EQUIPMENT OPERATORS:		
Group I	15.72	3.42
Group II	15.22	3.42
Group III	14.44	3.42
Group IV	13.88	3.42
Group V	13.41	3.42

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

POWER EQUIPMENT OPERATORS (Classifications)

Group 1 - Cranes, shovels, draglines, backhoes, clamshells, derricks caisson rigs, pile driver, skid rigs, dredge operator and traveling crane (bridge type), concrete paver (over 27E), concrete spreader and distributor

Group 2 - Concrete and grout pumps, material hoists, stack hoists, tractor or truck mounted hydraulic backhoe, tractor or truck mounted hydraulic crane (10 tons or under), manhoists, tractor (over 40 h.p.), bulldozer (over 40 h.p.), endloader (over 40 h.p.), motor patrol, scraper operator, sideboom, straddle carrier, mechanic and welder, bituminous plant and paver operator, roller (over 5 tons), rail level-machine (railroad), tie placer tie extractor, tie tamper, stone leveler, rotary drill operator and blaster, percussion drilling machine, trencher (wheel type or chain type having over 8-inch bucket), elevator

Group 3 - Backfiller, concrete auto breaker (large), concrete finishing machines (road type), roller (rubber tire), concrete batch hopper, concrete mixers (14S or over), screw type pumps, and gypsum pumps, tractor, bulldozer, endloader (under 40 h. p.), pumps (well points), trencher (chain type having bucket 8-inch and under), industrial locomotives, roller (under 5 tons) and fireman (pile drivers and derricks), hoists (automatic), forklift (over 12'), tampers-compactors (riding type), assistant engineer, "A" frames and winch trucks, concrete auto breaker, hydrohammers (small), brooms and sweeper, hoists (tuggers), stump chipper (large), boats (tug, safety, work barges and launch).

Group 4 - Shouldering machine operator, screed operator, farm or industrial tractor mounted equipment, post hole digger, stone crushers and screening plants, fireman (asphalt plants), air compressor (400 CFM or over), augers (vertical and horizonal), air electric, hydraulic jacks (slip form) prestress machine, skid steer loader, boiler operators (temporary heat), forklift (12' and under)

Group 5 - Generators over 150 KW, pumps over 3", combination small equipment operator, compressors (under 400 CFM), welding machines, heaters (mechanical), generators (under 150 KW), pumps (3" and under), winches (small electric) Oiler and greaser, conveyor.

Unlisted classifications needed for work not included within the scope of the classification listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

VOL
49

SS
23

NO
16

1984

UMI

federal register

Friday
November 16, 1984

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1984.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of November 1, 1984, of 23 deferrals contained in the two special messages of FY 1985. These messages were transmitted to the Congress on October 1 and 31, 1984.

Rescissions (Table A and Attachment A)

As of November 1, 1984, there were no rescission proposals pending before the Congress

Deferrals (Table B and Attachment B)

As of November 1, 1984, $1,240.9 million in 1985 budget authority was being deferred from obligation and $6.7 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral Reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** Listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984

Vol. 49, FR p. 44870, Friday November 9, 1984

David A. Stockman,

Director, Office of Management and Budget.

BILLING CODE 3110-01-M

-2-

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$ 0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	$ 0

****

TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$ 1,426.4
Routine Executive releases through November 1, 1984 (OMB/Agency Releases of $178.9 million and cumulative adjustments of $0 million)	- 178.9
Overturned by the Congress	0
Currently before the Congress	$ 1,247.5

a/ This amount includes $6.7 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of November 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1985

As of November 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 11-1-84
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Economic support fund.....	D85-2	280,500		10-1-84					280,500
Military assistance.....	D85-3	18,500		10-1-84					18,500
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					9,704
Expenses, brush disposal.....	D85-5	55,850		10-1-84					55,850
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	300,000		10-1-84					300,000
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84	-150				977
DEPARTMENT OF ENERGY									
Power Marketing Administrations									
Southeastern Power Administration, Operation and maintenance.....	D85-16	12,467		10-31-84					12,467
Southwestern Power Administration, Operation and maintenance.....	D85-17	7,260		10-31-84					7,260
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D85-18	3,000		10-31-84					3,000

Attachment B - Status of Deferrals - Fiscal Year 1985

As of November 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 11-1-84
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).....	D85-8	424		10-1-84					424
Social Security Administration									
Limitation on administrative expenses (construction).....	D85-9	15,488		10-1-84					15,488
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)..	D85-10	49		10-1-84					49
DEPARTMENT OF JUSTICE									
Federal Prison System									
Buildings and facilities.....	D85-19	44,534		10-31-84					44,534
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund.....	D85-20	32,928		10-31-84					32,928
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (airport and airway trust).....	D85-11	537,205		10-1-84	-163000				374,205
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund.....	D85-12	55,400		10-1-84	-2557				52,843
	D85-13	19,900		10-1-84	-13201				6,699
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses.....	D85-21	4,408		10-1-84					4,408
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund.....	D85-14	14,300		10-1-84					14,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration.....	D85-15	108		10-1-84					108
U. S. Information Agency									
Salaries and expenses.....	D85-22	2,433		10-31-84					2,433
Salaries and expenses, special foreign currency program.....	D85-23	852		10-31-84					852
TOTAL, DEFERRALS.....		1,426,444	0		-178,908	0		0	1,247,536

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

[FR Doc. 84-30148 Filed 11-15-84; 8:45 am]
BILLING CODE 3110-01-C

VOL
49

SS
23

NO
16

1984

MI

federal register

Friday
November 16, 1984

Part IV

Department of Health and Human Services

Social Security Administration

45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, and 237

Aid to Families With Dependent Children Adult Assistance Programs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, 237

Aid to Families With Dependent Children Adult Assistance Programs

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Social Security Administration is proposing to amend regulations relating to the Aid to Families with Dependent Children (AFDC) program under title IV–A and the adult categories under titles I, X, XIV or XVI (AABD) of the Social Security Act. This action is being taken promote fiscal savings, reduce the paperwork burden and increase State flexibility in the administration of these programs. Specifically, we propose to amend 45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, 237.

DATES: Comments must be received on or before January 15, 1985.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B–448, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, between 8:00 a.m. and 4:30 p.m., on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Levering, Office of Family Assistance, Social Security Administration, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, telephone (202) 245–2837.

SUPPLEMENTARY INFORMATION: The Office of Family Assistance, in the Social Security Administration (SSA), has undertaken a review of existing regulations under title IV–A and titles I, X, XIV and XVI (AABD) in order to recommend regulatory changes that would result in savings to State and Federal goverments, provide States greater flexibility, and/or relieve the burden of paperwork on State agencies. These proposed regulations are the result of that review.

The proposed changes apply to both the AFDC and adult assistance programs unless otherwise specified. Additionally, some of the proposed changes would clarify policy areas as a result of implementation of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35 (hereinafter referred to as OBRA). Unless otherwise noted, the estimated savings are Federal dollars only.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not:

(1) Have an annual effect on the economy of $100 million or more. The combined Federal and State annual savings of these regulatory provisions are estimated to be up to $52 million.

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Pursuant to the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department has determined that this rulemaking would not impose any new recordkeeping, information collection, or reporting requirement requiring OMB approval.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. For each particular regulation with a "significant impact on a substantial number of small entities" (e.g., small business) we must publish an initial analysis describing the regulation's impact on them. This analysis is to indicate the purpose and reason for the regulation and the number of small businesses to which it would apply, to anticipate reporting and recordkeeping requirements, to identify possible overlap and conflict with other Federal regulations and to describe possible alternative means of accomplishing the stated objectives which would minimize the impact on small businesses.

We certify that these regulations will not have any significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments and individuals. We do not believe that any provision will have direct impact on small businesses or other small entitles within the intent of the Regulatory Flexibility Act and therefore, a regulatory flexibility analysis is not required.

Discussion of Major Proposed Regulations

(A) 45 CFR Part 205

Optional Telephone Hearings—45 CFR 205.10(a)(1)

Current regulations require that each State provide applicants and recipients an opportunity for a hearing where the agency proposes to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payments to a protective, vendor, or two-party payment. We propose to amend the regulations at 45 CFR 205.10(a) to specify that States have the option of offering a telephone hearing when mutually agreed upon by the applicant or recipient and the State agency, as an alternative to face-to-face hearings.

One State, New Mexico, operated a demonstration project to study the effects of telephone conferencing as a substitute for in-person hearings under the AFDC program. The experiment was designed based on the following research questions: (1) Are hearings conducted over the telephone perceived to meet due process standards as specified by the courts for administrative hearings? (2) is the quality of the hearing changed by the introduction of telephone conferencing? and (3) are telephone hearings cost-effective?

The results of this study were favorable in response to all three of the research questions and conclusively demonstrated that telephone hearings can generate savings in both hearing officer productivity and travel expenses.

The comments uniformly expressed by both recipients and caseworkers were that fair and impartial hearings were still conducted and that recipients had full opportunity to present testimony. There were no significant differences in outcome results. A higher percentage ended in the recipient's favor and the time frame for handing down the hearing decision was shortened.

During a telephone hearing, for example, the hearing officer can remain at his/her place of employment, while all other pertinent parties can gather at the State agency. Should the recipient for whatever reason be unable to attend at the last moment, the hearing officer has not lost time in travel and is able to continue with routine work. Telephone hearings also make the hearing system more accessible to applicants and recipients. Additionally, the waiting period for a hearing and the hearing decision may also be shortened and thus benefit applicants and recipients.

Under this proposal, if a recipient chooses a telephone hearing rather than a face-to-face hearing, the State must still assure that all applicable provisions of the hearing process are met. Any request for a telephone hearing must be knowing and voluntary. In addition, the recipient must be given adequate opportunity to be represented, examine and cross-examine witnesses, and examine the contents of the case file, and the hearing must be conducted at a reasonable time and date.

If all States were to allow telephone hearings, savings are estimated to be up to $2 million annually, based on approximately 59 percent of all hearings being conducted by telephone.

Aid Paid Pending the Hearing Decision—45 CFR 205.10(a)(4)(i)(B) and (6)(i) and (7)

Current regulations at 45 CFR 205.10(a)(6)(i) specify, in pertinent part, that if a recipient requests a hearing within the timely notice period, assistance shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing. The regulations do, however, specify two exceptions to the continuation of assistance: (1) A determination made at the hearing that the sole issue is one of State or Federal law of policy, or a change in State or Federal law and not one of incorrect grant computation; and (2) a change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after the notice of change. It is further provided in this regulation that if the agency's action is sustained at the hearing, the aid paid pending the hearing is subject to recovery by the agency.

Many States have interpreted the current regulation very narrowly. Aside from the specific exceptions specified in the regulation, States believe they must continue the assistance in all cases, even where the recipient does not want aid paid pending the hearing.

Prior to OBRA, recovery of overpayments was optional under the AFDC program. As such, when an agency's action was upheld, most States did not recover benefits paid during the period between the hearing request and the decision. However, OBRA now mandates the recovery of such AFDC payments, if the State's proposed action is upheld. Recovery of benefits remains optional for the adult assistance programs.

Because of this, some recipients and States are concerned over requiring the grant to be continued pending a hearing in all instances and then being confronted with recovery of this money when the State's action is upheld. Based on current available data, 58% of the hearing decisions rendered (January–March 1981) upheld the States' proposed actions.

We believe the recipient should be afforded a clear choice to refuse or to receive assistance pending a hearing. The regulations were not intended to preclude such action if requested by the recipient. Aid must be continued where the recipient requests this and it is not otherwise precluded under the regulations. Safeguards should be established in the State to ensure the recipient's decision is informed and not made under duress. Likewise, in the event the hearing decision is favorable to the recipient and he/she has elected not to receive aid paid pending, the State must reimburse him/her in accordance with 45 CFR 205.10(a)(18).

We propose, therefore, to amend the regulations to explicitly allow States to provide the recipient the opportunity to decline receipt of continued assistance, if the hearing is requested within the timely notice period.

This proposed change will provide consistency with current policy of two other Federal programs—Food Stamp and SSI. In many instances, the same individuals are receiving benefits from more than one of these programs. This change will clarify that States can coordinate this aspect of the AFDC and adult assistance programs with the Food Stamp and SSI programs.

In addition, we propose to amend 45 CFR 205.10(a)(4)(i)(B) to provide where applicable, that the adequate notice inform an AFDC recipient that the assistance must be repaid if the agency action is upheld. Under the adult assistance programs, such notice will be provided where the State has elected to recover when an agency action is upheld.

These proposed clarifications of the regulations also apply to the adult assistance programs.

We estimate savings of up to $1 million annually.

Hearings Related to Change in Manner or Form of Payment—45 CFR 205.10(a)(4), (a)(5) and (a)(6); and 45 CFR 234.60(a)(11)

Current regulations require that recipients have the opportunity for a hearing regarding any intended action to reduce or suspend assistance or change the manner or form of payment. These hearings are currently held before any action can occur even when the amount of assistance is unaffected, but a protective, vendor, or two-party payment is sought.

We propose to change the methodology and timing for fair hearings held in connection with the imposition of protective, vendor or two-party payments. Therefore, we are deleting all references to protective, vendor and two-party payments from the existing fair hearings regulations at 45 CFR 205.10 and are establishing separate requirements in the regulations at § 234.60.

In cases where the amount of payment is at issue, the opportunity for a fair hearing pursuant to §205.10 must still be provided.

Under the new requirements governing protective, vendor or two-party payments, the State must provide an opportunity for a fair hearing on the issue of whether protective, vendor or two-party payments should be instituted and to whom the payments will be made after the determination to institute such payments has been made. If the State sends a protective, vendor or two-party payment, it must also provide the recipient with an adequate notice as discussed in the revisions to section 234.

The reasons for these changes to the regulations are discussed in the section of the preamble relating to changes in the regulations governing protective, vendor, and two-party payments.

State Procedures for Issuance of Replacement Checks—45 CFR 205.32

In a statement before a Congressional subcommittee hearing on fraud and abuse involving several Federal programs in 1981, the Associate Commissioner for the Office of Family Assistance described several initiatives under review including possible rulemaking changes to reduce the incidence of duplicate check issuance as a result of AFDC checks being lost or stolen. Preliminary findings from a study undertaken to gather statistical data on the incidence of duplicate checks showed that, in the 32 States responding duplicate checks constituted 7.1 percent of all AFDC checks issued in 1979. They

are costly, both administratively and from the standpoint of potential fraud.

We propose, therefore, to provide in regulations, prescribed procedures governing the issuance of duplicate (hereinafter referred to as replacement) checks under the AFDC program.

First, we propose uniform procedures under which a State must, prior to the issuance of a replacement check: (1) Initiate, when appropriate, an immediate stop payment order on the original check through appropriate banking procedures (such action would not be applicable when the original check is returned by the recipient and a replacement check is issued because of a name change or there is a change in the grantee, etc.); and

(2) where the original check is not returned, secure a signed statement from the recipient attesting to the non-receipt, loss or theft of the original check. In this way, an adequate audit trail is established for documenting potential fraud.

Further, we propose to provide that States may, at their option, require recipients to report lost or stolen checks to the police or other appropriate authorities. Such investigations would assist in resolving many reports of lost or stolen checks. More importantly, it may deter incidents of fraud. Early investigation of stolen check cases should lead to quicker apprehension and be a significant factor in crime prevention. A State may make filing such a report a prerequisite for issuance of a replacement check in cases of lost or stolen checks. A State may also establish procedures for the verification of such reports. For example, the State may require that the recipient provide a copy of the report made to the police, or other appropriate authorities.

In establishing procedures for issuance of replacement checks, States must ensure that no undue delays occur in issuing a new payment.

These proposed rules would result in more efficient and effective program administration. Annual savings are estimated at up to $1 million in Federal funds, and up to $5 million in State funds, based on State data relating to the number of replacement checks issued.

(B) 45 CFR Part 208

Redeterminations—45 CFR 208.10(a)(9)

Current regulations at 45 CFR 208.10(a)(9) require that AFDC eligibility be redetermined at least every six months. We propose to amend the regulations to provide that it may take place less frequently than every 6 months but in no case less frequently than every 12 months for those recipients who must report monthly, or where the State has an approved alternative redetermination plan based on an error-prone profiling system under which the State varies redetermination frequencies (i.e., more or less frequent than every six months). In addition, we propose to require that at least one AFDC redetermination in each case each year must be face to face.

We are amending this section to permit States to schedule their AFDC redeterminations as infrequently as every 12 months, under certain circumstances, for several reasons. First, legislation enacted by OBRA and modified by the Deficit Reduction Act of 1984 provides that States require certain categories of recipients to submit monthly reporting forms. For those cases that must report monthly, whether as a Federal requirement or at State option, the State is reviewing very similar information to that which is secured when the State redetermines eligibility.

Prior to the monthly reporting requirement, States were only required to redetermine eligibility at least every 6 months to assure that no changes in family circumstances had occurred which would affect eligibility and the amount of payment. With monthly reporting, there is sufficient and timely contact with the case situation so that redeterminations may be scheduled less often than every 6 months, at the State's option.

Secondly, we believe cost savings can be maximized by concentrating and directing State efforts to cases which are more likely to have errors. Therefore, also for those cases which are identified as low error-prone based on an approved State error-prone profiling system, the intervals between redeterminations may be as much as 12 months. The savings generated from reviewing less error-prone cases as infrequently as every 12 months will permit States to concentrate on high error-prone cases that are subject to frequent changes in eligibility status or have high average dollar errors per case. Thus, under this proposed rule, intervals between redeterminations in low error-prone cases could be once a year while high error-prone redeterminations could be monthly, but more typically, could occur three or four times a year.

The experience of the Supplemental Security Income (SSI) program with error-prone profiles and the results of AFDC demonstration projects in Texas, New Hampshire, South Carolina and West Virginia have shown considerable administration cost savings can be achieved by concentrating and directing State efforts to cases which are most likely to have errors and, therefore, need more frequent redeterminations. Thus, earlier identification of changes can be made and costly long-term errors can be prevented.

Lastly, we have added a requirement that all cases be redetermined face to face at least once every 12 months in order to verify all eligibility factors and to ensure personal contact between the agency and the individual(s). However, if the State redetermines a case more frequently, the additional redeterminations are not required to be face to face. Yearly face-to-face redeterminations are most effective in identifying inconsistencies in the information provided in the monthly reports or in answers provided by the recipient during the interview. Face-to-face contact gives caseworkers an opportunity to restate agency requirements for receipt of AFDC and gives recipients time in which to ask questions and have policies clarified. We believe face-to-face redeterminations are cost effective because increases in administrative costs will be offset by the reduction in erroneous payments. Furthermore, this would also make the AFDC program consistent with recertification requirements in the Food Stamp Program.

This proposed regulatory change only applies to AFDC and not the adult assistance programs.

We estimate savings of up to $15 million annually.

(C) 45 CFR Part 233

Allocation of Income—45 CFR 233.20(a)(3)(ii)(C)

Current regulations at 45 CFR 233.20(a)(3)(ii)(C) provide that States may have a policy to allocate a portion of an individual's income to support his or her non-assistance dependents, before counting the remaining income available to the assitance unit. Dependents are not defined by regulation. States define the dependents for whom their allocation policy applies.

We propose to amend the regulations to address three specific concerns.

A. Some States have been interpreting the provisions to mean that income may be allocated only to an individual's dependents and not to the individual him/herself when such individual is not applying for assistance. The proposed regulation clarifies that, for purposes of allocating income, a dependent may include the individual, as well as his or her non-assistance dependents. States that allocate income to meet the individual's own needs must check the allocation box on the State Plan Preprint.

B. Some States have been permitting income to be allocated to support individuals whose needs have been removed from the grant under the child support enforcement sanction provisions of 45 CFR 232.12(d) or because of a sanction for failing to meet the requirements of the WIN, Employment Search or Community Work Experience Programs provisions at 45 CFR 224.51, 45 CFR 238.22 and 45 CFR 240.22. Permitting income to be allocated to the support of a sanctioned individual before counting the remaining income available to the assistance unit has the effect of circumventing the intent of the sanction provisions, i.e., that assistance will be determined without regard to the needs of the sanctioned person. Therefore, to remedy this, the proposed regulation provides that States may not allocate income to meet the needs of a sanctioned individual.

C. States have been permitting income to be allocated to meet the need of a wide variety of persons. As a result, in some cases income has been used to support other individuals rather than the individual's own children who are receiving AFDC. In order to assure that an individual's income is used primarily to support the members of his or her own family who are in the assistance unit, we propose to revise the existing provisions on the amounts of income that may be allocated and the persons for whom income may be allocated. The proposed regulation restricts the income allocation provision to permit allocation only for the individual's own needs (when he or she is not applying for or receiving assistance), the needs of others who are or could be claimed as dependents for determining Federal personal income tax liability, or those whom the individual is legally obligated to support. Within this limitation, States may elect which dependents to include for coverage. The amounts which may be allocated and the individuals for whom income may be allocated are consistent with similar provisions regarding the income of stepparents and alien sponsors (45 CFR 233.20(a)(3)(xiv) and 233.51(b)(1) respectively). In specifying the amount of income which would be considered available to an assistance unit, the Congress made certain provisions to assure that stepparents and alien sponsors would retain sufficient income to meet their own needs and the needs of their dependents. These amounts reflect the amounts that States have determined are necessary to meet current living expenses as well as those amounts that are actually paid to support other individuals and therefore are not available to meet the needs of the assistance unit. Since these are amounts that Congress has determined are reasonable, we have adopted them as the maximum amounts that may be allocated in other similar circumstances.

We estimate savings of up to $1 million annually.

Counting Windfalls as Income—45 CFR 233.20(a)(3)(ii)(F)

Counting Income Tax Refunds as Resources—45 CFR 233.20(a)(3)(iv)(E)

The general rule in assistance programs is that all earned and unearned funds received by an assistance unit must be counted as income for the month of receipt except funds that are expressly disregarded as income in a Federal statute. However, under longstanding Federal policy for the AFDC and adult assistance programs, a State agency may treat non-recurring payments which are in the nature of a windfall as resources instead of as income. A windfall is a sum that is not earned, does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum. A windfall might come from an inheritance, lottery winnings, or an income tax refund, but not title II Social Security or VA benefits. Social Security or VA benefits covering more than one month's benefits are instead examples of accumulated monthly income received in a single lump sum.

In reviewing the legislative history of OBRA, we believe that the Congress intended all lump sum payments (including windfalls) to be treated as income under the AFDC program. The Senate Finance Committee Report, No. 97-139, dated November 17, 1981, (on page 505) indicates that lump sum income should be "considered available to meet the ongoing needs of an AFDC family . . .". Given the intent of the lump sum provision to assure use of available funds in future months, we believe that windfall payments should be considered lump sum income. In the absence of the proposed change, the very type of payments Congress intended be counted and used to meet the family's future needs may not be budgeted for meeting future needs, if treated initially as a resource and not retained. Accordingly, for AFDC, we plan to classify payments in the nature of a windfall (with the sole exception of income tax refunds) as unearned income from a non-recurring source and treat them as a lump sum in accordance with 45 CFR 233.20(a)(3)(ii)(F) unless otherwise disregarded, e.g., under the casual and inconsequential income policy at 45 CFR 233.20(a)(3)(iv).

With respect to income tax refunds, except for an Earned Income Credit payment, a tax refund recognizes that there was an overwithholding of taxes during the year. Under the AFDC program, since the $75 standard work expense disregard applies to gross income and respresents all work expenses excluduing child care, the actual amount of tax withheld has no bearing on the income counted or the amount of actual assistance payable to a recipient. Thus, since some portion of the income tax withholding may have exceeded, in combination with other work expenses, the $75 standard disregard, and therefore may have already been counted as income, it should not again be counted as income when it is returned to the recipient.

Therefore, for the AFDC program we are proposing to make an exception in the case of income tax refunds and require States to treat these refunds only as resources (liquid assets). However, any portion of a tax refund which represents an earned income credit (EIC) payment would still be considered as earned income in accordance with 45 CFR 233.20(a)(6)(ix)(C). The EIC portion of any tax refund (or any EIC payments for that matter) must be treated as earned income because the statute specifically requires that such payments be considered as earned income (section 402(d) of the Social Security Act). When EIC payments are made in a single lump sum they are paid through the income tax collection system. Thus, in those cases, the payments would come in the form of a tax refund.

Neither the lump sum income change nor the $75 standard work expense change applies to the adult assistance programs. Therefore, we are not changing the policy in effect for these programs. At State option, these payments may be considered either as income or as a resource.

We estimate savings of up $1 million annually.

Casual and Inconsequential Income—45 CFR 233.20(a)(3)(iv)

Until 1975, Federal regulations at 45 CFR 233.20(a)(3)(ii)(*c*) provided that "only such net income as is actually available for current use on a regular basis will be considered . . ." Even though the regulations were changed in 1975 to require that income available for current use be counted, States were still permitted to exclude income considered "casual and inconsequential." One major reason was to help States avoid administrative complexities associated

with budgeting unpredictable income under the prospective budgeting system.

Another consideration behind this policy was to allow some latitude in disregarding small gifts, which do not realistically represent income available to meet the family's living expenses, e.g., Christmas, graduation and birthday gifts, and which are difficult to administratively track. However, there is currently considerable variation in the amounts and types of income that States define as casual and inconsequential, and exceptionally large non-recurring sums have been disregarded under both the AFDC and adult assistance programs. Currently, 19 States have imposed dollar amounts to be disregarded as casual and inconsequential income. These amounts include: $60 a quarter, $40 a month, $30 a quarter, or $10 a month. Therefore, we propose to amend the regulations at 45 CFR 233.20(a)(iv) to provide that the State can optionally exclude gifts which represent reasonable nominal amounts not to exceed $30 for any recipient for any quarter. We selected $30 because it falls within the average range of the dollar amount currently used by States, and because it is the level used in the Food Stamp Program.

We estimate savings of up to $1 million annually.

Definition of Stepparent—45 CFR 233.20(a)(3)(xiv); 45 CFR 233.90(a)(1); 45 CFR 237.50(b)(3)(ii); and 45 CFR 237.50(b)(4)(ii)

Several States have questioned whether the AFDC provision at 45 CFR 233.90 which specifies that a stepparent must be "ceremonially" married includes common law marriage in States that recognize a common law marriage as valid under the laws of the State.

We propose to amend the regulation at 45 CFR 233.90(a)(1) to remove the word "ceremonially" and clarify that in determining whether a child has been deprived of parental support, the marriage must only be one that is recognized as a valid marriage under the laws of the State. This includes common law marriages. The reason we included the word "ceremonially" was to deter States from counting the income of a "man in the house" as available to the assistance unit. We never intended to exclude the income of a person who was legally and validly married to the parent of an AFDC child under State law. Therefore, we are clarifying the regulations to reflect this intent.

We propose to further amend the regulation at 45 CFR 233.20 (a)(3)(xiv) to clarify that a stepparent is one who is married to the child's parent under State law. We estimate savings up to $1 million annually.

We are also removing the word "ceremonially" from the provisions at 45 CFR 237.50(b)(3)(ii) and (4)(ii) to conform with these proposed changes.

Disregard of Income from VISTA Payments—45 CFR 233.20(a)(4)(ii)(*h*)

In accordance with section 404(g) of Pub. L. 93–113, the Domestic Volunteer Service Act of 1973, payments received by applicants and recipients participating in the Volunteers in Service to America (VISTA) Program have been disregarded, regardless of the amount of such payments.

On December 13, 1979, Congress enacted Pub. L. 96–143 the Domestic Volunteer Service Act of 1979, which included a provision limiting this disregard. Section 9 of Pub. L. 96–143 provides that the disregard "shall not apply in case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, . . . or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater."

Since Federal regulations were not revised at that time, we are amending them now to accurately reflect section 9 of Pub. L. 96–143.

(D) 45 CFR Part 234

Criteria for Use of Restricted Payments—45 CFR 234.60(a)(2)(ii); 45 CFR 234.60(a)(6)

Section 406(b)(2) of the Social Security Act provides for restricted payments (a protective payee, vendor payments, or two-party checks) in situations where the caretaker relative has demonstrated an inability to manage funds, thereby imperiling the child's welfare. In addition to mandating that States make a determination of mismanagement prior to making a restricted payment, the statute also includes certain conditions which must be met by States in implementing this provision. The State must: (1) Provide opportunity for a fair hearing before the State agency on the determination of inability to manage funds; (2) undertake and continue special efforts to develop greater ability on the part of the relative to manage funds; and (3) conduct periodic reviews to ascertain whether conditions justifying a determination of mismanagement still exist. When first enacted, Congress limited the number of cases at 5 percent that a State could have in restricted payment status. This statutory limitation was subsequently raised twice to 10 percent and 20 percent. Then, in OBRA, Congress deleted the limitation entirely and also provided States the authority to allow recipients to voluntarily request restricted payments without a determination of mismanagement.

An NPRM, published in 1979 (45 FR 11803), to implement changes required by Pub. L. 95–171, approved November 12, 1977, generated comments from States requesting clarification of what constitutes mismanagement. In that NPRM, we proposed to include a rule that a determination of mismanagement could not be made solely on the fact that bills were not timely paid. To respond to those request, the final regulations included requirements which States must take into account in determining whether there has been mismanagement. These are: (1) Whether funds were spent for some emergency or extraordinary reason; (2) whether expenses for necessary bills exceeded the recipient's grant and other income; and (3) whether withholding of a payment was an exercise of consumer rights when there is a legitimate dispute as to whether terms of an agreement have been met. These requirements were not intended to be all inclusive, but rather to provide a framework under which States could implement the restricted payment provisions.

States have asked for more flexibility in determining when mismanagement exists so that they may tailor their vendor payment programs to specific situations not covered by existing regulations. This is a reasonable request. Since 1979, State agencies have had considerable experience in handling cases of mismanagement under the Act and implementing regulations. This experience has demonstrated that these rules have proved to be too restrictive and thus, in many situations, States have not been able to adequately protect dependent children from the caretakers' mismanagement of the AFDC grant.

Therefore, we are proposing to amend the regulation by removing the specific criteria under which a determination of mismanagement is made and allowing States to establish the criteria for such a determination (with one exception). The effect of this is to restore Federal policy in this area nearly to what it was prior to 1979. Under this change, States will have more flexibility in meeting a variety of situations in which mismanagement arises, which cannot now be met. However, the States will still have to meet the conditions of section 406 and other provisions of the

Act requiring that their mismanagement determinations be reasonable in light of the welfare of the dependent child.

However, we propose in these regulations that mismanagement will be presumed after two months' nonpayment of rent. We believe this is a reasonable minimum criteria for mismanagement. Nonpayment of rent is a serious problem because it may place the recipient in jeopardy of eviction from his or her current housing with no immediate prospects for finding new housing.

While AFDC recipients may face a variety of short term crises from month to month, being homeless presents them with a grave situation which can only exacerbate their other problems. In light of this, it seems to us that the welfare of dependent children cannot be adequately safeguarded when such children's families are under constant threat of being without a place to live. Therefore, this proposed change not only fulfills the statutory imperative to protect the welfare of dependent children but is also squarely in keeping with the purposes of the AFDC program, as expressed in section 401 of the Social Security Act, to provide for the care of dependent children in their own homes and to help maintain and strengthen family life.

An additional benefit of this policy may be to increase the availability of adequate housing in jurisdictions where landlords are reluctant to rent to welfare recipients.

Additionally, in cases where protective payments are being made, States are currently required to make referrals for social services where problems and needs for services and care of the recipients are beyond the ability of the protective payee to handle.

We propose to delete this automatic requirement for social services referral. States will be given flexibility so that they need not refer recipients to social services when they are unnecessary or unwanted. For example, counseling services are of little value when recipient does not seek them.

For much the same reasons as we made the changes in the criteria for mismanagement, we are also proposing to change the methodology and timing of fair hearings as previously noted in the discussion of 45 CFR 205.10.

Currently, the opportunity for advance hearings can result in considerable delays before the new payment form is instituted, due to delays in administrative proceedings. Even though a State holds these hearings in the time frames required under the existing regulations, they can't always be done expeditiously enough to prevent irreparable harm, such as evictions, from occurring. Accordingly, we believe a change to post hearings will enable the State to react more quickly to situations in which the protection of dependent children requires urgent and immediate action.

In order to give States maximum flexibility, we have not specified any particular procedures to be followed by the States in conducting the fair hearings. In the absence of such procedures in the regulations, States will need to establish appropriate procedures consistent with constitutional requirements. We have, however, required States to provide adequate notice to recipients concurrently with the insitution of protective, vendor, or two-party payments.

One of the key purposes of these changes, including the change to the definition of mismanagement, is to help to alleviate the shortage of housing that is adversely affecting AFDC recipients. The shortage of such housing is becoming an increasingly serious problem working substantial hardship in AFDC children. The experience in New York City is illustrative of the significant problems faced by AFDC recipients as the result of the mismanagement of rent allowances by a small portion of recipients. The failure of a few recipients to pay their rent has resulted in the unwillingness of many New York City landlords to rent to AFDC recipients, to the great hardship of many AFDC children. For example, New York City authorities, in response to an acute shortage of rental housing for AFDC recipients, recently sent out over 50,000 inquiries seeking rental units. Only about 110 replies were received. In addition, as noted above, under the existing regulations it often is difficult to place an AFDC recipient who is not paying rent on protective, vendor and two-party payments without a substantial delay while a hearing is being pursued. Since many landlords are unwilling to risk such a delay should the recipient fail to pay rent, there is a growing shortage of rental housing for AFDC recipients. Since State and local authorities will now be able to place recipients on protective, vendor and two-party payments prior to the opportunity for a hearing, this delay will be eliminated. All these changes, by making it easier for State and local authorities to place AFDC recipients on protective, vendor, or two-party payments, should result in a greater willingness of landlords to rent to AFDC recipients, thereby helping alleviate the present shortage of housing for AFDC recipients.

Comments are requested whether these regulations should establish hearing procedures or whether the specification of appropriate procedures should be left to the States.

We estimate annual savings of up to $1 million.

Review of Restricted Payment Cases—45 CFR 234.60(a)(9)

Currently, States are required to review restricted payment cases as frequently as indicated by the individual's circumstances and at least every 6 months in the AFDC program. The specified time frame for review was changed in 1980 from 3 months to 6 months to coincide with the time frame for periodic eligibility redeterminations. It was done in response to comments received in relation to the restricted payment NPRM to provide administrative ease in case management.

We now propose to change the time frame for review of these cases. In cases where a vendor or two-party payment has been instituted, review will be made at the request of the recipient, but not more than once every 12 months. The recipient will have the burden of proof in showing that circumstances have changed sufficiently so that vendor or two-party payments are no longer justified.

These changes will ensure continuity of the form of assistance, once an action has been taken to institute these restricted payments. In cases with protective payments, review can continue to be made as frequently as indicated by the individual's circumstances, but we propose that review be required at least once every 2 years, regarding the need for protective payments and the way they are being carried out. Maximum flexibility is retained in protective payment cases, to help ensure that necessary changes can be made swiftly when indicated. Federal and State administrative costs would also be reduced.

These proposed changes will also minimize the number of times the recipients is required to report similar information and permit the State to avoid repetitious and unnecessary reviews. They will also enable States, in the absence of changes in the individual's circumstances, to include the restricted payment review with the regularly scheduled eligibility redetermination.

We estimate annual savings of up to $1 million.

(E) Technical Amendments

A. OBRA extensively revised the title IV–A statute. Because of the major work effort involved in developing regulations and providing guidance to States for implementation of these new provisions, several technical changes to the regulations were inadvertently not made. We propose to amend our regulations to reflect these technical changes to the Social Security Act.

1. Section 2181 of OBRA repealed section 403(g) of the Social Security Act. This section had established a penalty to reduce by 1 percent the quarterly amount payable to a State under title IV–A for failure to inform of and provide and arrange for early and periodic screening, diagnosis and treatment [EPSDT] under title XIX for children receiving assistance under AFDC. The regulations at §§ 201.14(a)(3) and 205.146(c) are removed to reflect this amendment to the Social Security Act.

2. Section 2319 of OBRA repealed section 403(a)(3)(A) of the Act which authorized 75% matching for training, and as a result, we consider training to be an administrative expense under section 403(a)(3)(C) which provides for 50% matching. The regulations at 45 CFR 205.45 (b) and (c) are amended to reflect this change. They do not apply to the adult assistance programs.

3. Section 2353(b) of OBRA repealed section 402(a)(5) of the Social Security Act, as in effect with respect to Puerto Rico, Guam, and the Virgin Islands. This provision had related to the establishment and maintenance of personnel standards on a merit basis, and for the training and effective use of paid subprofessional staff. The regulations at 45 CFR Part 225 are now currently applicable only to the adult assistance programs, and have been revised to delete the reference to the AFDC program.

4. Section 2605(f) of OBRA prohibits counting Low Income Home Energy Assistance Program (LIHEAP) benefits as either income or resources for any purpose under any Federal or State law relating to taxation, food stamps, public assistance, or welfare programs.

Although the status is very clear and leaves no decision to the Secretary, an amendment is needed to update the list of disregard requirements currently included in the regulations, and to distinguish the permanent and mandatory exlcusion of LIHEAP benefits from the temporary and optional exclusion of certain other home energy assistance (48 FR 33304, July 21, 1983). Therefore, the regulations at 45 CFR 233.20(a)(4)(ii) are amended to exclude from income and resources, benefits provided under the Low Income Home Energy Assistance Program.

B. Additionally, we propose the following changes to conform regulatory policy to existing legislation.

1. The Food Stamp Program regulations at 7 CFR 272.1(g)(1)(i) provide that State agencies shall eliminate the purchase requirement for all households on or before January 1, 1979. Prior to that date, the title IV–A agency could deduct the food stamp purchase cost and consider it an AFDC payment for purposes of Federal matching. This provision at 45 CFR 234.11(b) is removed as it is now obsolete.

2. Pub. L. 97–34, The Economic Recovery Tax Act of 1981, terminated the separate WIN and Welfare Tax Credits, for providing employment to AFDC recipients, and effective January 1, 1982, added these two groups to the groups provided for in the Targeted Jobs Tax Credit program, i.e., recipients of AFDC for at least 90 days and WIN/WIN Demonstration participants.

Pub. L. 97–34, also provided that certification of AFDC recipient status is now a function of a designated local agency. Under Federal policy, the State Employment Security Agency will provide the required certification. The State and local IV–A agency function will be limited to providing verification that the individual being hired has been an AFDC recipient for at least 90 days or is a participant in the WIN or WIN Demonstration program. Therefore, the regulations at 45 CFR 235.40 relating to the certification of AFDC recipients for employment incentive tax credit, are removed as no longer applicable to the title IV–A agency.

The regulations at 45 CFR 205.50(a)(1)(i)(D) have been revised to provide for the release of information to verify that an individual has been a recipient of AFDC for at least 90 days or is a WIN/WIN Demonstration participant.

3. Pub. L. 92–603, October 30, 1972, provided the Secretary authority to assure that social security account numbers be assigned to, among others, any applicant for or recipient of benefits under federally funded programs. Subsequently, section 7 of Pub. L. 93–579, The Privacy Act of 1974, made it unlawful for any Federal, State, or local government agency to deny any right, benefit or privilege because of an individual's refusal to disclose his social security number, unless such disclosure is required by Federal statute, or the disclosure of the social security number is to a Federal, State, or local agency which maintained a system of records in existence and operating before January 1, 1975, if such disclosure was required by statute or regulation adopted prior to such date to verify the identity of the individual.

As a result of these statutory provisions, Federal regulations were developed (45 CFR 206.10 (b) and (c)); (section 206.10 was completely renumbered under TEFRA implementing regulations). They provide that the State IV–A agency could impose the disclosure as a condition of eligibility for AFDC only if the State had in effect prior to January 1975, a system of welfare or Medicaid records for which disclosure of the SSN was required by statute or regulation, in order to verify the identity of the individual. However, in 1975, Pub. L. 93–647 mandated that as a condition of eligibility for AFDC, all applicants and recipients must furnish the IV–A agency a social security number. Regulations implementing this statutory provision are codified at 45 CFR 232.10. This change in Federal statute and the regulations at 45 CFR 232.10 have rendered obsolete those provisions in 45 CFR 206.10, and they are accordingly removed.

3. Section 101(a) of Pub. L. 98–272 repealed section 408 of the Social Security Act, and established a new Part E under title IV of the Act. The State agency responsible for administering the program authorized by Part B of title IV is to administer or supervise administration of this new Part E, *Federal Payments for Foster Care and Adoption Assistance.* This repeal is effective at the time the State plan under IV–E becomes effective, but not later than September 30, 1982. The regulations at 45 CFR 233.110 are revised to reflect this amendment to the Social Security Act. Other references to AFDC Foster Care at 45 CFR 233.90(c), 45 CFR 233.10(b), and 45 CFR 232.10(c) are deleted as well.

4. Section 507 of Pub. L. 94–566 amended section 407 of the Social Security Act to provide for a reduction in the AFDC payment by the amount of unemployment compensation a child's unemployed parent receives and that the family is ineligible if the parent refuses to apply for or accept unemployment compensation. Although the pertinent program policy was amended to reflect this change, the parallel FFP provision was not. The regulation now at 45 CFR 233.100(c)(1)(v) is amended, therefore, to reflect this change in statute.

5. Section 407(c)(A)(i) of the Social Security Act provides that FFP is not available in any payment of aid made to an unemployed principal earner during the first 30 days of unemployment. The implementing regulation however provides that if the principal earner is "not unemployed" during the 30-period, there is no FFP. This is a difficult grammatical construction to understand and might be read to mean that if the principal earner is "unemployed" during the 30-day period, FFP is available. Because this would contravene the statute, the regulation now at 45 CFR 233.100(c)(2)(i) is amended to clarify that FFP is not available for payments that cover the first 30 days of unemployment.

Additionally, those regulatory provisions that still reference the word "father" are amended to substitute the word "parent" as required to eliminate, where possible, gender discrimination.

We have also corrected as a result of our own review, general references and citations. We have deleted some obsolete material from 45 CFR 205.40(d) and 45 CFR 233.27(b)(2) and corrected references in 45 CFR 205.50(a) and (a)(2)(i)(A).

These regulations are issued under the authority of section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended, 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Programs No. 13.808, Public Assistance Maintenance Assistance (State Aid))

List of Subjects

45 CFR Part 201

Aid to families with dependent children, Family assistance, Grant programs-social programs, Guam, Public assistance, Puerto Rico, Virgin Islands.

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 225

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Volunteers.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family Assistance, Grant progress-social programs.

45 CFR Part 233

Aid to families with dependent children, Aliens, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 234

Aid to families with dependent children, Family assistance, Grant programs-social programs, Health facilities, Public assistance, Public housing.

45 CFR Part 235

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 237

Aid to Families with dependent children, Family assistance, Grant programs-social programs, Public assistance prorams.

Dated: February 9, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: March 19, 1984.

Revised & Approved: September 21, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

Title 45 Chapter II of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 201—[AMENDED]

A. Part 201 is amended as follows:

1. Section 201.14 is amended by vacating and reserving paragraph (a)(3) as follows:

§ 201.14 Reconsideration under section 1116(d) of the Act.

(a) • • •

(3) [Reserved]

• • • • • •

PART 205—[AMENDED]

B. Part 205 is amended as follows:

1. The Table of Contents in Part 205 is amended by adding § 205.32 to read as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

• • • • • •

Sec.

205.32 Procedures for issuance of replacement checks.

• • • • • •

2. Section 205.10 is amended by revising paragraph (a)(2) to read as follows:

§ 205.10 Hearings.

(a) • • •

(1) • • •

(2) Hearing procedures shall be issued and publicized by the State agency. Such procedures shall provide for a face-to-face hearing, or where the State and the applicant or recipient mutually agree, a hearing by telephone. Under this provision, the State shall assure that the applicant or recipient is afforded all rights as specified in this section, whether the hearings is face-to-face or by telephone;

• • • • • •

3. Section 205.10 is amended by revising the introductory text of (a)(4) to read as follows:

§ 205.10 Hearings.

(a) • • •

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance:

• • • • • •

4. Section 205.10 is amended by revising paragraph (a)(4)(i)(B) to read as follows:

§ 205.10 Hearings.

(a) • • •

(4) • • •

(i) • • •

(B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid under title IV–A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

• • • • • •

5. Section 205.10 is amended by revising the introductory text of paragraph (a)(5) to read as follows:

§ 205.10 Hearings.

(a) • • •

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his or her claim for financial assistance (including a request for supplemental payments under §§ 233.23 and 233.27) is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients

unless the reason for an individual appeal is incorrect grant computation.

* * * * *

6. Section 205.10 is amended by revising paragraphs (a)(6)(i), (a)(6)(i)(A), (a)(6)(i)(B) and by adding a new paragraph (a)(6)(i)(C) to read as follows:

§ 205.10 Hearings.

(a) * * *

(6) * * *

(i) Assistance shall not be suspended, reduced, discontinued or terminated, (but is subject to recovery by the agency if its action is sustained), until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation;

(B) A change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change; or

(C) The recipient specifically requests that he or she not receive continued assistance pending a hearing decision;

* * * * *

7. Section 205.10 is amended by revising paragraph (a)(7) to read as follows:

§ 205.10 Hearings.

(a) * * *

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless (i) the recipient specifically requests that continued assistance not be paid pending the hearing decision; or (ii) at the hearing it is determined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the hearing, unless the recipient specifically requests that continued assistance not be paid pending the hearing decision.

* * * * *

8. Part 205 is amended to add a new § 205.22 to read as follows:

§ 205.22 Procedures for issuance of replacement checks.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that (1) procedures are in effect to ensure that no undue delays occur in issuing a replacement check; and (2) when applicable, prior to the issuance of a replacement check, the State agency must:

(i) Issue a stop payment order on the original AFDC check through appropriate banking procedures; and

(ii) Require recipients to execute a signed statement attesting to the non-receipt, loss, or theft of the original AFDC check. However, if obtaining such a statement from the recipient will cause the issuance of the check to be unduly delayed, the statement may be obtained within a reasonable time after the check is issued.

(b) *State option.* A State plan may provide that as a condition for issuance of a replacement check, a recipient is required to report a lost or stolen AFDC check to the police or other appropriate authorities. Under this provision, the State agency may require that the recipient verify that a report was made to the police or other appropriate authorities and, if so, the agency will establish procedures for such verification.

9. Section 205.40 is amended by vacating and reserving paragraph (d) as follows:

§ 205.40 Quality control system.

* * * * *

[Reserved]

10. Section 205.45 is amended by revising paragraphs (b) and (c) to read as follows:

§ 205.45 Federal financial participation in relation to State emergency welfare preparedness.

* * * * *

(b) Federal financial participation is available at 50 percent under title IV–A for providing training in emergency welfare preparedness for all staff and for volunteers.

(c) In Guam, Puerto Rico, and the Virgin Islands, Federal financial participation is available at the rate of 75 percent in expenditures for emergency welfare preparedness under titles I, X, XIV, XVI (AABD) of the Social Security Act.

* * * * *

11. Section 205.50 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) State plan requirements. A State plan for financial assistance under title IV–A of the Social Security Act, must provide that:

* * * * *

12. Section 205.50 is amended to revise paragraph (a)(1)(i)(D) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(1) * * *

(i) * * *

(D) The verification to the Employment Security Agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97–34, the Economic Recovery Tax Act of 1981.

* * * * *

13. Section 205.50 is amended by revising paragraph (a)(2)(i)(A) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(2) * * *

(i) * * *

(A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section);

* * * * *

14. Section 205.146 is amended by vacating and reserving paragraph (c) as follows:

§ 205.146 Specific limitations on Federal financial participation under title IV–A.

* * * * *

(c) [Reserved]

* * * * *

PART 206—[AMENDED]

C. Part 206 is amended as set forth below:

1. Section 206.10 is amended by removing and reserving paragraphs (a)(1)(iv) and (a)(1)(v) as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) * * *

(1) * * *

(iv)–(v) [Reserved]

* * * * *

2. Section 206.10 is amended by revising paragraph (a)(9)(iii) and adding (a)(9)(iv) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) * * *

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) * * *

(ii) * * *

(iii) Periodically, within agency established time standards, but not less frequently than every 12 months in OAA, AB, APTD, and AABD, on eligibility factors subject to change. For recipients of AFDC, eligibility will be redetermined at least every 6 months except in the case of monthly reporting cases or cases covered by an approved error-prone profiling system as specified in paragraph (a)(9)(iv) of this section. Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once in every 12 months. A redetermination is a periodic scheduled case folder review of all factors affecting AFDC eligibility and payment amount, i.e., continued absence, income (including child and spousal support) etc.

(iv) In accordance with paragraph (a)(9)(iii) of this section, under an alternative redetermination plan based on error-prone profiling, which has been approved by the Secretary, and includes:

(A) a description of the statistical methodology used to develop the error-prone profile system upon which the redetermination schedule is based;

(B) the criteria to be used to vary the scope of review and to assign different redetermination frequencies for different types of cases; and

(C) a detailed outline of the evaluation system, including provisions for necessary changes in the error-prone output, such as types of cases, types of errors, frequencies of redeterminations and corrective action.

* * * * *

PART 225—[AMENDED]

D. Part 225 is amended as set forth below:

1. Section 225.2 is amended by revising the introductory paragraph and by revising paragraph (a)(1) to read as follows:

§ 225.2 State plan requirements.

The State plan for financial assistance programs under titles I, X, XIV, or XVI (AABD) of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare services under title IV–B of the Act must:

(a) * * *

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of persons of low income and little or no formal education, including employment of young and middle aged adults, older persons, and the physically and mentally disabled, and in the case of a State plan for financial assistance under title I, X, XIV, or XVI (AABD), of recipients; and will provide that such subprofessional positions are subject to merit system requirements, except where special exemption is approved on the basis of a State alternative plan for recruitment and selection among the disadvantaged of persons who have the potential ability for training and job performance to help assure achievement of program objectives:

* * * * *

2. Section 225.3 is revised to read as follows:

§ 225.3 Federal financial participation.

Under the State plan for financial assistance programs under titles I, X, XIV, XVI (AABD) or for child welfare services under title IV-B of the Act, Federal financial participation in expenditures for the recruitment, selection, training, and employment and other use of subprofessional staff and volunteers is available at the rates and under related conditions established for training, services, and other administrative costs under the respective titles.

PART 232—[AMENDED]

E. PArt 232 is amended as set forth below:

1. Section 232.10 is amended by revising paragraph (c) to read as follows:

§ 232.10 Furnishing of social security numbes.

* * * * *

(c) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers.

* * * * *

PART 233—[AMENDED]

F. Part 233 is amended as set forth below:

1. The Table of Contents in Part 233 is amended by revising the section heading for § 233.110 to read as follows:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

* * * * *

Sec.

233.110 Foster care maintenance and adoption assistance.

* * * * *

2. Section 233.10 is amended by revising paragraphs (b)(2) (ii)(*a*)(*2*) and (*3*) to read as follows:

§ 233.10 General provisions regarding coverage and eligibility.

* * * * *

(b) * * *

(ii) * * *

(*a*) * * *

(2) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a principal earner, and

(*3*) Living in the home of a parent or of certain relatives specified in the Act.

* * * * *

3. Section 233.20 is amended by revising paragraph (a)(3)(ii)(C) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(ii) * * *

(C) States may have policies which provide for allocating an individual's income for his or her own support if the individual is not applying for or receiving assistance; for the support of other individuals living in the same household but not receiving assistance; and for the support of other individuals living in another household. Such other individuals are those who are or could be claimed by the individual as dependents for determining Federal personal income tax liability, or those he or she is legally obligated to support. No income may be allocated to meet the needs of an individual who has been sanctioned under sections 224.51, 232.12(d), 238.22 or 240.22. The amount allocated for the individual and the other individuals who are living in the home must not exceed the State's need standard amount for a family group of the same conposition. The amount allocated for individuals not living in the home must not exceed the amount actually paid.

* * * * *

4. Section 233.20 is amended by revising paragraphs (a)(3)(ii)(D) and the introductory text of (a)(3)(ii)(F) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(ii) * * *

(D) Net income, except as provided in paragraph (a)(3)(xiii) of this section, and

resources available for current use shall be considered; income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

* * * * *

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of windfall, e.g., inheritances or lottery winnings), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month.

* * * * *

5. Section 233.20 is amended by revising (a)(3)(iv) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(iv) Provide that in determining the availability of income and resources, the following will not be included as income (A) Except for AFDC, income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment); (B) loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs; (C) home produce of an applicant or recipient, utilized by him and his household for their own consumption; (D) for AFDC, any amounts paid by a State IV–A agency from State-only funds to meet needs of children receiving AFDC, if the payments are made under a statutorily-established State program which has been continuously in effect since before January 1, 1979; (E) for AFDC, income tax refunds (except the earned income credit (EIC) portion) but such payments shall be considered as resources; and (F) at State option, small nonrecurring gifts, such as those for Christmas, birthdays and graduations, not to exceed $30 per recipient in any quarter.

* * * * *

6. Section 233.20 is amended by revising paragraph (a)(3)(xiv) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(xiv) For AFDC, in States that do not have laws of general applicability holding the stepparent legally responsible to the same extent as the natural or adoptive parent, the State agency shall count as income to the assistance unit the income of the stepparent (i.e., one who is married, under State law, to the child's parent) of an AFDC child who is living in the household with the child after applying the following disregards (exception: if the stepparent is included in the assistance unit, the disregard under paragraph (a)(11) (i) and (ii) of this section apply instead:

(A) The first $75 of the gross earned income of the stepparent if he or she is employed full-time. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $75 for stepparents who are not employed on a full-time basis or not employed throughout the month;

(B) An additional amount for the support of the stepparent and any other individuals who are living in the home, but whose needs are not taken into account in making the AFDC eligibility determinations and are or could be claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability. This disregarded amount shall equal the State's need standard amount for a family group of the same composition as the stepparent and those other individuals described in the preceding sentence;

(C) Amounts actually paid by the stepparent to individuals not living in the home but who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability; and

(D) Payments by such stepparent of alimony or child support with respect to individuals not living in the household.

* * * * *

7. Section 233.20 is amended by revising paragraph (a)(4) (ii)(*h*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(4) * * *

(ii) * * *

(*h*) Payments to applicants or recipients participating in the Volunteers in Service to America (VISTA) Program, except that this disregard will not be applied when the Director of ACTION determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the States where the volunteers are serving, whichever is greater. [Section 404(g) of Pub. L. 93–113, as amended by section 9 of Pub. L. 96–143):

* * * * *

8. Section 233.20 is amended by adding a new paragraph (a)(4)(ii)(*l*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(4) * * *

(ii) * * *

(*l*) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to section 2605(f) of Pub. L. 97–35;

* * * * *

9. Section 233.27 is amended by revising paragraph (b)(2) to read as follows:

§ 233.27 Supplemental payments under retrospective budgeting.

* * * * *

(b) * * *

(2) The agency may include as income cash in hand or available in bank accounts. It may also include as income any cash disregarded in determining need or the amount of the assistance payment, but not cash payments that are disregarded by paragraphs (c) on relocation assistance, (d) on educational grants or loans and (g) on payments for certain services.

10. Section 233.90 is amended by revising paragraph (a)(1) to read as follows:

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or

* * * * *

11. Section 233.90 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 233.90 Factors specific to AFDC.

* * * * *

(c) * * *

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for a concurrent period for the same child in the home of another relative or as foster care under title IV–E;

(ii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as foster care under title IV–E; and

* * * * *

12. Section 233.100 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 233.100 Dependent children of unemployed parents.

(a) Requirements for State Plans. If a State wishes to provide AFDC for children of unemployed parents, the State plan under title IV–A of the Social Security Act must:

* * * * *

§ 233.100 [Amended]

13. Section 233.100 is amended by removing paragraphs (a)(7) and (a)(8):

14. Section 233.100 is amended by vacating and reserving paragraph (b) as set forth below:

§ 233.100 Dependent children of unemployed parents.

* * * * *

(b) [Reserved.]

* * * * *

15. Section 233.100 is amended by revising paragraphs (c)(1)(iv) and (c)(1)(v) to read as follows:

§ 233.100 Dependent children of unemployed parents.

* * * * *

(c) * * *

(1) * * *

(iv) Whose parent who is the principal earner (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner (*a*) is currently registered with the WIN program unless exempt or is registered with the public employment office in the State if exempt from WIN registration under § 224.20(b)(6) or because there is no WIN program in which he can effectively participate; and (*b*) has not refused to apply for or accept unemployment compensation under an unemployment compensation law of a State or of the United States.

* * * * *

16. Section 233.100 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 233.100 Dependent children of unemployed parents.

* * * * *

(c) * * *

(2) * * *

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

* * * * *

17. Section 233.100 is revised as set forth below:

§ 233.100 Foster care maintenance and adoption assistance.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act must provide that the State has in effect a plan approved under Part E, title IV of the Social Security Act, and operates a foster care maintenance and adoption assistance program in conformity with such a plan.

PART 234—[AMENDED]

G. Part 234 is amended as set forth below:

1. Section 234.11 is amended by vacating and reserving paragraph (b) as follows:

§ 234.11 Assistance is the form of money payments; deduction of food stamp costs.

* * * * *

(b) [Reserved.]

2. Section 234.60 is amended by revising paragraphs (a)(2)(i) and (ii) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(2)(i) Methods will be in effect to identify children whose relatives have demonstrated an inability to manage funds such that payments to the relative have not been or are not currently used in the best interest of the child. This means that the relative has mismanaged funds such that allowing him or her to continue to manage the AFDC grant would be contrary to the welfare of the child.

(ii) States will establish the criteria to determine if mismanagement exists, with the exception of the following limitation:

(A) Where the asserted mismanagement involves nonpayment of rent, mismanagement will be presumed after two months of such nonpayment. The recipient may rebut such presumption by demonstrating that the nonpayment was the result of a life-threatening emergency to the family compelling the temporary nonpayment of rent, or that rent was withheld as an appropriate response to the willful and unlawful refusal of the landlord to provide essential services.

(B) States may establish additional criteria for determining when nonpayment of rent constitutes mismanagement, but such additional criteria shall not restrict the application of the above presumption.

* * * * *

3. Section 234.60 is amended to vacate and reserve paragraph (a)(6) as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(6) [Reserved]

* * * * *

4. Section 234.60 is amended by revising paragraphs (a)(9)(i) and (ii) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(9)(i) Review will be made at the request of the recipient, but not more than once every 12 months, of the need for vendor and two-party payments. The recipient shall have the responsibility in any such review of showing that circumstances have changed such that vendor and two-party payments are no longer justified.

(ii) Review will be made as frequently as indicated by the individual's circumstances, and at least every 2 years, of the need for protective payments and the way in which a protective payee's responsibilities are carried out.

* * * * *

5. Section 234.60 is amended by revising paragraph (a)(11) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(11) Opportunity for a fair hearing will be given to any individual claiming assistance in relation to the determination:

(i) That a protective, vendor, and two-party payment should be made or continued.

(ii) As to the payee selected.

In either case, the opportunity for a fair hearing shall be given after the determination, and such determination shall take effect at the time it is made, and shall continue in effect until changed. The agency must provide adequate notice at the time the determination is effective. For purposes of this section, adequate notice means a written notice that includes a statement of the action the agency has taken, the reasons for the action, and an explanation of the individual's right to request a State agency fair hearing.

* * * * *

H. Part 235 is amended as set forth below:

1. The Table of Contents of Part 235 is amended by vacating and reserving § 235.40:

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Sec.
235.40 [Reserved]

* * * * *

2. Section 235.40 is vacated and reserved as follows:

§ 235.40 [Reserved.]

PART 237—[AMENDED]

1. Part 237 is amended as set forth below:

1. Section 237.50 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 237.50 Recipient count, Federal financial participation.

* * * * *

(b) * * *

(3) * * *

(ii) As used in paragraph (b)(3)(i) of this section, the term "parent" means the natural or adoptive parent, or the stepparent who was married under State law to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "spouse" means an individual who is the husband or wife of the child's own parent, as defined above, by reason of a ceremonial or other legal marriage.

* * * * *

2. Section 237.50 is amended by revising paragraph (b)(4) to read as follows:

§ 237.50 Recipient count, Federal financial participation.

* * * * *

(b) * * *

(4)(i) When at least one of the children in a family is eligible due to the unemployment of his or her parent who is the principal earner in the home, the recipient count may include all eligible children, the parent who is the principal earner and spouse with whom the children are living, if the needs of such parent and spouse were included in computing the assistance payment.

(ii) For purposes of paragraph (b)(4)(i) of this section, the definitions of the terms "parent" and "spouse" as specified in paragraph (b)(3)(ii) of this section are applicable.

* * * * *

[FR Doc. 84-30176 Filed 11-15-84; 11:48 am]
BILLING CODE 4190-11-M

Reader Aids

Federal Register
Vol. 49, No. 223
Friday, November 16, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072	1
44073–44192	2
44193–44272	5
44273–44442	6
44443–44620	7
44621–44740	8
44741–44888	9
44889–44984	13
44985–45106	14
45107–45408	15
45409–45570	16

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Notice:
November 7, 1984 44741

Proclamations:
5270 44073
5271 44075
5272 44077
5273 44079
5274 44081
5275 44193
5276 44195
5277 44197
5278 45107
5279 45409
5280 45411
5281 45413

5 CFR

Proposed Rules:
930 45444
2429 44902

7 CFR

2 44743
210 45109
220 45109
225 45109
226 45109
301 44083
429 44443
441 44985
600 44743
729 44889
907 ..... 44199, 44757, 45415
910 ..... 44084, 44744, 44890, 45109, 45415
915 44447
928 44199
932 44447
944 44447
982 44745
984 44745
989 44745
1004 44986
1139 43943
1446 45109
1910 45416

Proposed Rules:
27 44902
52 43970
53 44724
54 ..... 44724, 44758
400 45444
420 44480
421 44476
424 44485
425 44490
432 44495
725 44103
910 44299
982 44500
984 44299
1007 44760
1464 44103

8 CFR

238 44745
292 44084

9 CFR

50 44273
78 ..... 44987, 45110
81 ..... 44087, 45111
92 44088
354 44091

Proposed Rules:
92 44501
381 44640

10 CFR

50 ..... 45112, 45114

Proposed Rules:
50 44645
71 44502
210 45445
605 44580

11 CFR

6 44091

12 CFR

204 44448
207 43946
220 43946
221 43946
224 43946
303 44746
308 44746
563 45115
701 44993
795 44993

Proposed Rules:
5 45007
8 45102

13 CFR

120 44091

Proposed Rules:
107 44062

14 CFR

1 44422
27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417
43 ..... 44602, 45418
71 ..... 44450, 45418
73 ..... 44096, 44451, 45418
91 44422
97 44990
255 44451

Proposed Rules:
Ch. I 44766
39 45011
71 ..... 44104, 44650, 45011, 45166–45171
73 ..... 45011, 45168, 45169
75 45171

15 CFR
7 44622

Proposed Rules:
303 44651
320 44903

16 CFR
13 45115–45117
305 44200
1700 44455

Proposed Rules:
300 44913
303 44913

17 CFR
1 45418
3 45418
33 44891
140 45418
145 45418
200 43950
240 45117

Proposed Rules:
1 44105
140 45015
144 45015
239 45172
274 45172

18 CFR
3 44273
157 44275
271 ..... 44201, 44993
274 44275
284 44275
341 44628
356 44628
360 44626
361 44626
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273

Proposed Rules:
271 ..... 44217, 45174, 45175
430 44105

19 CFR
4 44867
6 44867
7 44867
10 44867
11 44867
12 44867
18 44867
19 44867
24 44867
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
162 44867
172 44867
174 44867
191 44867

20 CFR
395 44277
404 ..... 43951, 44458, 45420

21 CFR
74 44096
178 44994
193 ..... 44458, 45123
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 45421
561 45124
573 ..... 44630, 45124

Proposed Rules:
146 44652
450 44919
511 44766

22 CFR
220 44631

Proposed Rules:
41 44920

24 CFR
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44982

26 CFR
5h 43951
301 44460

Proposed Rules:
1 ..... 44300, 45449, 45450
41 ..... 44300, 44310, 44921
48 ..... 44300, 44310, 44921
301 45452

27 CFR
9 ..... 44202, 44895

Proposed Rules:
4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR
2 44097
15 44995
511 44056

Proposed Rules:
545 44059

29 CFR
530 44262
1601 45424
1952 44202
2619 45129

Proposed Rules:
2617 44106
2640 45018
2648 45018

30 CFR
915 44206
917 44750
935 ..... 43952, 44461, 44996

Proposed Rules:
250 44924
917 44653
920 43974
931 44769
938 43974

33 CFR
117 ..... 43953–43956, 44207, 44632, 45130
165 44632

Proposed Rules:
117 ..... 43975, 44925
165 44926

36 CFR

Proposed Rules:
223 44109
291 45117
1121 44310

38 CFR
3 ..... 44099, 45130

39 CFR
10 45130
265 44286

40 CFR
52 ..... 44099, 44208, 44287, 44463, 44996
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 45292
180 ..... 44464–44467, 45132
261 44978
704 ..... 45133, 45425
761 44634
775 44997

Proposed Rules:
50 44770
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178
81 ..... 43977, 45031
147 44111
170 45181
261 44718
271 ..... 44111, 44312, 44506, 45452
406 44926
407 44926
408 44926
409 44926
411 44926
422 44926
424 44926
426 44926
431 44926
432 44926
439 44926
712 44218
716 44220

41 CFR
Ch. 101 44468
101–20 44469
101–41 44470
101–47 44471

42 CFR
36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR

Public Land Orders:
1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997

Proposed Rules:
3160 44655
3420 44221

44 CFR
64 ..... 44751, 45133
65 ..... 45134, 45135
67 45136

Proposed Rules:
67 45181

45 CFR
801 44473

Proposed Rules:
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364

585 45397
587 45397

47 CFR
2 ..... 44101, 44997
15 44210
25 44751
31 44289
43 44289
73 ..... 43957, 44101, 45139–45146
74 45155
76 45431

Proposed Rules:
0 45454
1 45454
73 ..... 44113, 44114, 45186
90 ..... 44223, 45454

48 CFR

Proposed Rules:
1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR
1 44102
173 43963
178 43965
179 43963
391 44210
392 44210
571 44899
575 44751

Proposed Rules:
23 44772
195 44928
1102 44224

50 CFR
17 ..... 43965, 44753, 45160
258 44474
611 44757
620 44102
652 45164
663 ..... 44638, 44901
671 44757
676 44998

Proposed Rules:
17 ..... 44507, 44712
222 44774
227 44774
611 44655
672 44655
675 44655

List of Public Laws

Note: This completes the listing of public laws enacted during the second session of the 98th Congress.

[Last listing: November 6, 1984]

The listing will be resumed when bills are enacted into public law during the first session of the 99th Congress which convenes on January 3, 1985.

H.R. 1314/Pub. L. 98–614
Reorganization Act Amendments of 1984. (Nov. 8, 1984; 98 Stat. 3192) Price: $1.00

H.R. 2300/Pub. L. 98–615
Civil Service Retirement Spouse Equity Act of 1984. (Nov. 8, 1984; 98 Stat. 3195) Price: $1.50

H.R. 2867/Pub. L. 98–616
The Hazardous and Solid Waste Amendments of 1984. (Nov. 8, 1984; 98 Stat. 3221) Price: $2.50

H.R. 5386/Pub. L. 98–617
To amend part A of title XVIII of the Social Security Act with respect to the payment rates for routine home care and other services included in hospice care. (Nov. 8, 1984; 98 Stat. 3294) Price: $1.00

H.R. 5399/Pub. L. 98–618
Intelligence Authorization Act for fiscal year 1985. (Nov. 8, 1984; 98 Stat. 3298) Price: $1.00

H.R. 6028/Pub. L. 98–619
Department of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1985. (Nov. 8, 1984; 98 Stat. 3305) Price: $1.50

H.R. 6163/Pub. L. 98–620
To amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes. (Nov. 8, 1984; 98 Stat. 3335) Price: $1.75

H.R. 6224/Pub. L. 98–621
Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Nov. 8, 1984; 98 Stat. 3369) Price: $1.00

H.R. 6286/Pub. L. 98–622
Patent Law Amendments Act of 1984. (Nov. 8, 1984; 98 Stat. 3383) Price: $1.00

H.R. 6342/Pub. L. 98–623
To approve governing international fishery agreements with Iceland and the EEC; to establish national standards for artificial reefs; to implement the Convention on the Conservation of Antarctic Marine Living Resources; and for the other purposes. (Nov. 8, 1984; 98 Stat. 3394) Price: $1.25

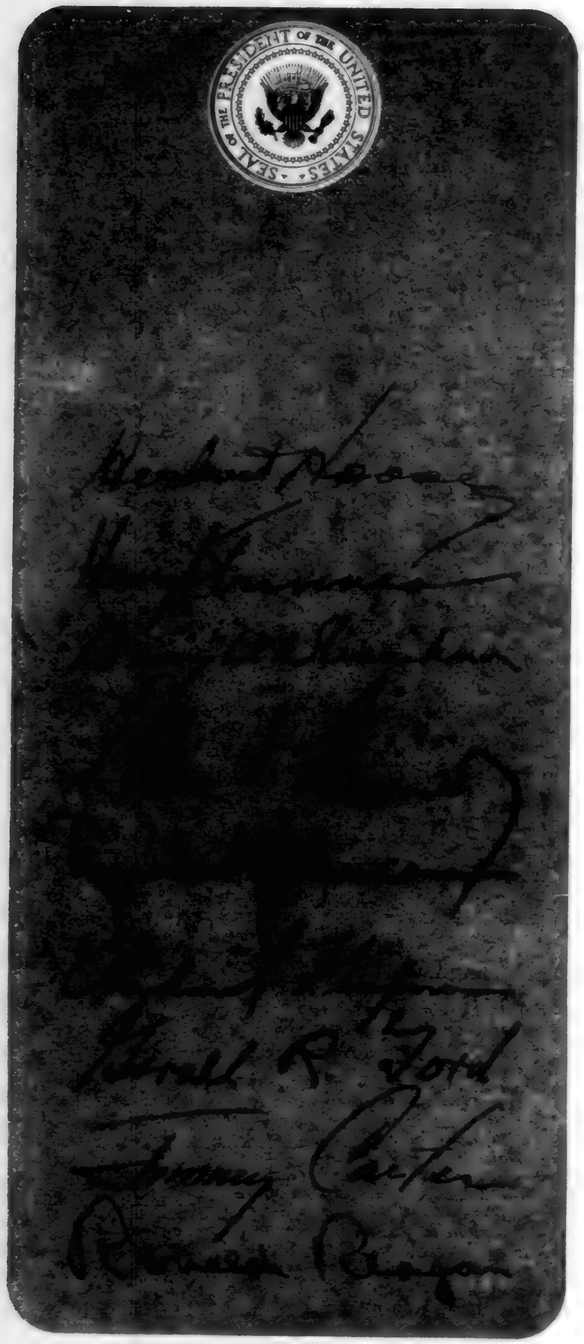
OL
9

SS
23

NO
6

984

MI



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are now available:

Herbert Hoover

1929	$19.00
1930	$19.00
1931	$20.00
1932–33	$24.00
Proclamations & Executive Orders-March 4, 1929 to March 4, 1933 2 Volume set	$32.00

Harry Truman

1945	$18.00
1946	$17.00
1947	$17.00
1948	$22.00
1949	$18.00
1950	$19.00
1951	$20.00
1952–53	$24.00

Dwight D. Eisenhower

1953	$20.00
1954	$23.00
1955	$20.00
1956	$23.00
1957	$20.00
1958	$20.00
1959	$21.00
1960–61	$23.00

John Kennedy

1961	$20.00
1962	$21.00
1963	$21.00

Lyndon B. Johnson

1963–64 (Book I)	$21.00
1963–64 (Book II)	$21.00
1965 (Book I)	$18.00
1965 (Book II)	$18.00
1966 (Book I)	$19.00
1966 (Book II)	$20.00
1967 (Book I)	$19.00
1967 (Book II)	$18.00
1968–69 (Book I)	$20.00
1968–69 (Book II)	$19.00

Richard Nixon

1969	$23.00
1970	$24.00
1971	$25.00
1972	$24.00
1973	$22.00
1974	$18.00

Gerald R. Ford

1974	$19.00
1975 (Book I)	$22.00
1975 (Book II)	$22.00
1976–77 (Book I)	$23.00
1976–77 (Book II)	$22.00
1976–77 (Book III)	$22.00

Jimmy Carter

1977 (Book I)	$23.00
1977 (Book II)	$22.00
1978 (Book I)	$24.00
1978 (Book II)	$25.00
1979 (Book I)	$24.00
1979 (Book II)	$24.00
1980–81 (Book I)	$21.00
1980–81 (Book II)	$22.00
1980–81 (Book III)	$24.00

Ronald Reagan

1981	$25.00
1982 (Book I)	$19.00
1982 (Book II)	$25.00

Published by Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

9
SS
23
NO
6
984
MI

OL
9

SS
24

10
9

984

MI

11-19-84
Vol. 49 No. 224

federal register

Monday
November 19, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 84 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

Postage and Fees Paid
U.S. Government Printing Office
375
SECOND CLASS NEWSPAPER

OL
9

SS
24

10
9

984

MI

11-19-84
Vol. 49 No. 224
Pages 45571-45732

federal register

Monday
November 19, 1984

Selected Subjects

Accounting
Federal Highway Administration
Animal Drugs
Food and Drug Administration
Bridges
Coast Guard
Chemicals
Environmental Protection Agency
Claims
Treasury Department
Government Employees
Personnel Management Office
Grant Programs—Social Programs
Health and Human Services Department
Hazardous Materials Transportation
Coast Guard
Research and Special Programs Administration
Marine Safety
Coast Guard
Marketing Agreements
Agricultural Marketing Service
Motor Vehicles
Federal Trade Commission
Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Organization and Functions (Government Agencies)
Federal Communications Commission

Radio Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
Environmental Protection Agency

Retirement
Personnel Management Office

Television Broadcasting
Federal Communications Commission

Vessels
Coast Guard

Contents

Federal Register
Vol. 49, No. 224
Monday, November 19, 1984

Agricultural Marketing Service
PROPOSED RULES
45592 Lettuce grown in Texas

Agriculture Department
See Agricultural Marketing Service; Farmers Home Administration.

Arts and Humanities, National Foundation
NOTICES
Meetings:
45673 Design Arts Advisory Panel

Bonneville Power Administration
NOTICES
Wholesale power rates:
45640 Residential exchange; section 7(b)(3) methodology; inquiry

Civil Aeronautics Board
NOTICES
45634 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
45634 Hawaii One Corp.
45635 Tradewinds Airways Ltd.
45634 Unicorn Air, Ltd.
45633 Wrangell Air Service

Coast Guard
RULES
Drawbridge operations:
45580 Florida
Regattas and marine parades:
45579 Annual Parker Thanksgiving Regatta
45580 Lake Havasu Classic
PROPOSED RULES
Drawbridge operations:
45596 North Carolina
Ports and waterways safety and waterfront facilities:
45597 Radioactive materials
Vessel documentation and measurement:
45623 Hailing port marking, etc.

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.

Comptroller of Currency
PROPOSED RULES
National banks:
45592 Assessment of fees; correction

Defense Department
See Navy Department.

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation petitions:
45643 Northwest Alaskan Pipeline Co.
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
45641 Baltimore Gas & Electric Co.

Energy Department
See Bonneville Power Administration; Enonomic Regulatory Administration; Hearings and Appeals Office, Energy Department.

Environmental Protection Agency
RULES
Toxic substances:
45581 Chemical export notification; test rules applicability; clarification
PROPOSED RULES
Toxic substances:
45606 2-(2-Butoxyethoxy) ethyl acetate; testing requirements
45598 Chemical information rules; additional automatic reporting
45602 Health and safety data reporting; submission of lists and copies of studies
45610 Oleylamine; testing requirements
NOTICES
45651 Agency information collection activities under OMB review
Toxic and hazardous substances control:
45651 Ethylene bis(oxyethylene) diacetate; Interagency Testing Committee response
45654 1,2,3,4,7,7-Hexachloronorbornadiene; Interagency Testing Committee response
45657 Premanufacture notices receipts

Farmers Home Administration
NOTICES
45632, 45633 Natural resource management guide; meetings (5 documents)

Federal Communications Commission
RULES
Organization, functions, and authority delegations:
45582 Managing Director Office; reorganization
Radio and television broadcasting:
45587 Changes in facilities of television and FM stations; correction
Radio stations; table of assignments:
45584 California
45585 New Mexico
45584 Texas
Television stations; table of assignments:
45586 Michigan
45583 Texas
PROPOSED RULES
Television stations; table of assignments:
45625 Tennessee et al.
NOTICES
45659 Agency information collection activities under OMB review
45660 Emergency broadcast system; closed circuit test
Hearings, etc.:
45659 Levine, Anita L., et al.

Meetings:
45660 Radio Broadcasting Advisory Committee
45659 Meetings; Sunshine Act
45660 Rulemaking proceedings filed, granted, denied, etc.; petitions

Federal Highway Administration
RULES
Payment procedures:
45577 Reimbursement; State highway agency audit expense

Federal Maritime Commission
NOTICES
45660 Agreements filed, etc. (2 documents)

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
45661 Community Bancorporation, Inc., et al.
45661 Home National Corp. et al.
45662 Security Pacific Corp.

Federal Trade Commission
RULES
45692 Motor vehicles, used; trade rule for sales

Food and Drug Administration
PROPOSED RULES
Animal drugs, feeds, and related products:
45593 medicated free-choice feeds
NOTICES
Food for human consumption:
45663 Methyl mercury in fish; compliance policy guide; availability
Human drugs:
45664 Single-entity coronary vasodilators containing controlled-release nitroglycerin; exemption revoked, etc.; correction

Foreign Claims Settlement Commission
NOTICES
45690 Meetings; Sunshine Act

General Services Administration
NOTICES
Travel regulations:
45662 Relocation allowances; real estate sale and purchase expenses reimbursement

Health and Human Services Department
See also Food and Drug Administration.
PROPOSED RULES
Grants, administration:
45617 Automatic data processing equipment and services; conditions for federal financial participation

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
45651 Decisions and orders
Remedial orders:
45650 Objections filed
45645, 45648 Special refund procedures; implementation and inquiry (2 documents)

Interior Department
See National Park Service; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
PROPOSED RULES
45593 Antidumping and countervailing duties; advance notice
NOTICES
Countervailing duties:
45635 Unwrought zinc and ferroalloys from Spain
Meetings:
45636 Management-Labor Textile Advisory Committee

Interstate Commerce Commission
NOTICES
Rail carriers:
45671 Environmental notices in abandonment and rail exemption proceedings; State agency listing
Railroad operation, acquisition, construction, etc.:
45672 Ford County Historic Railroad Preservation Foundation
45672 Industrial Development Corp.
Railroad services abandonment:
45671 Southern Pacific Transportation Co.

Justice Department
NOTICES
Pollution control; consent judgments:
45672 New Castle County, DE

National Bureau of Standards
NOTICES
Grants; availability, etc.:
45636 Fire research program

National Highway Traffic Safety Administration
PROPOSED RULES
45629 Motor vehicle theft prevention; meeting

National Mediation Board
NOTICES
45690 Meetings; Sunshine Act

National Oceanic and Atmospheric Administration
NOTICES
Coastal zone management programs:
45637 California; consistency appeal hearing
Meetings:
45638 Caribbean Fishery Management Council; agenda change
45637 Mid-Atlantic Fishery Management Council
45638 North Pacific Fishery Management Council
45637 South Atlantic Fishery Management Council

National Park Service
NOTICES
45664 Appalachian National Scenic Trail; rights-of-way relocations
Environmental statements; availability, etc.:
45664 Fort Union National Monument, Mora County, NM
Land protection plans; availability, etc.:
45664 Alibates Flint Quarries National Monument, Potter County, TX
Meetings:
45664 Indiana Dunes National Lakeshore Advisory Commission

National Science Foundation
NOTICES
Meetings:
45673 Advanced Scientific Computing Advisory Committee
45673 Computer Research Advisory Committee

Navy Department
NOTICES
Environmental statements; availability, etc.:
45639 Stapleton-Fort Wadsworth Complex, NY; surface action group homeport facility
Meetings:
45639 Naval Postgraduate School, Board of Advisors to Superintendent

Nuclear Regulatory Commission
RULES
Production and utilization facilities, domestic licensing:
45571 Environmental qualification of electric equipment
NOTICES
Applications, etc.:
45676–45680 Arkansas Power & Light Co. (4 documents)
45682 Duke Power Co.
45682 Houston Light & Power Co., et al.
Environmental Statements; availability, etc.:
45675 Florida Power & Light Co.
45675 Tennessee Valley Authority
Meetings:
45674 Reactor Safeguards Advisory Committee (2 documents)

Personnel Management Office
PROPOSED RULES
Excepted service:
45588 Cooks; Schedule A appointment authority revocation
Retirement:
45588 Civil Service Retirement and Disability Fund; federal claims collection

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
45627 Special fireworks; reclassification; advance notice

Securities and Exchange Commission
NOTICES
Hearings, etc.:
45683 Kansallis North America Inc.
45684 Middle South Utilities, Inc.
45685 Van Kampen Merritt Inc.
Self-regulatory organizations; proposed rule changes:
45687 Chicago Board Options Exchange, Inc. (2 documents)

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent and interim regulatory programs:
45595 Blaster certification program; extension of time, etc.

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
45638 Taiwan
45638 Sri Lanka
Export visa requirements; certification, etc.:
45636 Dominican Republic

Transportation Department
See Coast Guard; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration.

Treasury Department
See also Comptroller of Currency.
RULES
45578 Federal claims collection
NOTICES
Bonds, Treasury:
45688 2009–2014 series

Veterans Administration
NOTICES
Meetings:
45688 Former Prisoners of War Advisory Committee

Separate Parts in This Issue

Part II
45692 Federal Trade Commission

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Proposed Rules:
213 45588
831 45588

7 CFR
Proposed Rules:
971 45592

10 CFR
50 45571

12 CFR
Proposed Rules:
8 45592

18 CFR
455 45692

19 CFR
Proposed Rules:
353 45593
355 45593

21 CFR
Proposed Rules:
510 45593

22 CFR
140 45577

30 CFR
Proposed Rules:
816 45595
817 45595
855 45595

31 CFR
5 45578

33 CFR
100 (2 documents) 45579, 45580
117 45580
Proposed Rules:
117 45596
126 45597
160 45597

40 CFR
707 45581
Proposed Rules:
712 45598
716 45602
799 (2 documents) 45606, 45610

45 CFR
Proposed Rules:
95 45617

46 CFR
Proposed Rules:
67 45623

47 CFR
0 45582
73 (6 documents) 45583–45587
Proposed Rules:
73 45625

49 CFR
Proposed Rules:
172 45627
173 45627
542 45629

Rules and Regulations

Federal Register
Vol. 49, No. 224
Monday, November 19, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Environmental Qualification of Electric Equipment; Removal of June 30, 1982 Deadline

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: In response to a ruling by the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), the Commission published on March 7, 1984, a proposed rule deleting from power plant operating licenses a June 30, 1982, deadline for environmental qualification of electric equipment imposed by previous Commission order. After considering public comments received, the Commission is adopting the proposed rule as a final rule with a minor modification.[1] Licensees of operating power plants will therefore be expected to meet the schedule for environmental qualification set out in 10 CFR 50.49(g).

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492–8693.

SUPPLEMENTARY INFORMATION:

I. Background

Events leading up to this rulemaking were summarized in the notice of proposed rulemaking, 49 FR 8445 (March 7, 1984), and in the Commission's Policy Statement issued that same day, 49 FR 8422. In the notice of proposed rulemaking the Commission stated the issue presented to be: "Whether the deadline of June 30, 1982, shall be deleted from every operating license in which it appears, leaving the compliance schedule for completing the environmental qualification of safety-related electric equipment set by 10 CFR 50.49."[2] The Commission also set forth in the notice of proposed rulemaking a special procedure whereby plant-specific comments would be referred to the staff for review and consideration of possible enforcement action. The Commission noted that it would consider any generic implications resulting from review of plant-specific comments in deciding whether to delete the deadline for all plants. On August 7, 1984, in response to requests by some commentaters, the Commission extended the comment period to August 13, 1984. (49 FR 31432).

II. Public Comments

Twenty-two comments were received on the proposed rule. Nine favored adoption of the rule, twelve opposed the rule, and one comment discussed seismic issues not germane to the rulemaking. Of the nine comments favoring the rule, six were submitted by utility owners of power reactors, one by a law firm representing two such utilities, one by an individual, and one by the Nuclear Utility Group on Environmental Qualification, representing numerous power plant licensees. Of the twelve comments opposing the rule, five were filed by individuals], four by intervenor groups, one by the Harvard Law School Environmental Law Society, one by the Union of Concerned Scientists, and one by the State of Maine. The comment related to seismic matters was filed by an attorney representing Georgians Against Nuclear Energy.

Most of the comments pro and con were relatively succinct and stated arguments addressed by the Commission in its policy statement. Those favoring deletion of the deadline pointed to the fact that the task of environmental qualification of all safety-related electric equipment in nuclear power plants has proven to be a much more difficult and extensive task than was originally thought. These commenters noted that great progress had been made, both prior to and following the previous deadline, and that the schedule in 10 CFR 50.49 is a realistic approach to completing the program at all facilities. Those opposing deletion of the deadline were generally dissatisfied with progress to date, and in some cases urged retention of the deadline as a reminder that environmental qualification had not been completed on the schedule originally set by the Commission. These commenters did not generally urge that plants be shut down to complete the effort, but did feel that deletion of the deadline would encourage utilities to further delay environmental qualification. Three comments focused on equipment qualification at specific facilities.

The Union of Concerned Scientists filed a lengthy comment in which the following major points are raised. Commission responses follow each point.

1. The Atomic Energy Act requires the Commission to consider all comments bearing on whether issuance of the proposed license amendments would be inimical to the public health and safety.

Commission Response. The gravamen of this contention is that the

[1] The Commission voted on September 4, 1984 to adopt the rule and an accompanying Statement of Consideration subject to the addition of separate views. Immediately thereafter, the Union of Concerned Scientists ("UCS") petitioned the Commission to reconsider its adoption of this rule. Under these circumstances, the Commission determined to review its action and to defer publication of the Statement of Consideration. While the Commission's review was pending, the D.C. Circuit directed the Commission to provide the Court a copy of the Final Rule and Statement of Consideration.

The Commission's review did not reveal any reasons for modifying the rule as adopted. Accordingly, UCS's petition is denied for the reasons stated in this modified Statement of Consideration which supplants the Statement of September 4, 1984. The Commission has forwarded a copy of this modified statement to the D.C. Circuit.

[2] Section 50.49(g) provides as follows:

(g) Each holder of an operating license issued prior to February 22, 1983, shall, by May 20, 1983 identify the electric equipment important to safety within the scope of this section already qualified and submit a schedule for either the qualification to the provisions of this section or for the replacement of the remaining electric equipment important to safety within the scope of this section. This schedule must establish a goal of final environmental qualification of the electric equipment within the scope of this section by the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier. The Director of the Office of Nuclear Reactor Regulation may grant requests for extensions of this deadline to a date no later than November 30, 1985, for specific pieces of equipment if these requests are filed on a timely basis and demonstrate good cause for the extension, such as procurement lead time, test complications, and installation problems. In exceptional cases, the Commission itself may consider and grant extensions beyond November 30, 1985 for completion of environmental qualification.

Commission should not have stated, in the notice of proposed rulemaking, that the plant-specific comments would be treated via 10 CFR 2.206, because this tantamount to excluding evidence relevant to the rulemaking.

The Commission was quite clear in the notice of proposed rulemaking that comments which had a bearing only on a single facility were to be treated under 10 CFR 2.206 because the proposed rule was intended to lift an industry-wide deadline "set for purposes not directly related to safety." 49 FR 8445. However, the Commission also stated "that a number of comments, each raising issues about particular plants, would in the aggregate have a bearing on the Commission's proposal to eliminate the June 30, 1982, deadline." *Id.* The procedure outlined for staff review of plant-specific comments concluded as follows: "In deciding whether to make final the proposed elimination of the June 30, 1982 deadline, the Commission will consider the generic implications of the Director's preliminary judgments." *Id.* Thus, the Commission intended that all comments, both general and plant-specific, would be considered relevant to the final decision.

2. The stated basis for the proposed rule distorts the history of the environmental qualification issue and ignores the distinction between regulation and enforcement.

Commission Response. UCS argues that the Commission's characterization, in the notice of proposed rulemaking, that the June 30, 1982 deadline was not a "substantive safety standard" is erroneous. The Commission's position on this issue was set out at length in the notice of proposed rulemaking and accompanying Policy Statement, and has not changed. The June 30, 1982 deadline is not a substantive safety standard by which the safe operation of individual facilities was to be measured.

3. The rulemaking record cannot support the license amendments.

Commission Response. UCS contends that the rulemaking record is poorly organized, incomplete, and taken as a whole insufficient to support the issuance of a rule. UCS' position is that the rulemaking cannot be completed until licensee documentation has been received (as a result of recent staff-license meetings) and all final Safety Evaluation Reports been written, because "the Commission cannot amend reactor licenses . . without making a safety finding for each operating plant."

On the matter of the state of the record itself, the Commission and its staff have attempted to provide for public inspection all available material considered by the NRC. Several commenters requested and received specific records for individual facilities. The Commission believes that any interested person could have reviewed any documentation available for one or more plants within the comment period provided. Staff assistance was available whenever requested to locate specific data or to sort out complex files.

As for the substantial number of technical documents provided by licensees directly to the Franklin Research Center (FRC) for its review, but not provided to the NRC staff, the Commission believes that there was no legal requirement to make that documentation available for comment in this rulemaking. The technical documents relied on by the FRC were not necessary to the Commission's determination of the issue in this rulemaking, were not consulted by the Commission, and were therefore not part of the rulemaking record. The issue in this rulemaking was whether the June 30, 1982 deadline should be retained because either licensees were not diligently pursuing environmental qualification or because there were generic safety problems. The Technical Evaluation Reports ("TER") by the FRC, which are a part of the record, provided adequate documentation for resolving these issues. These TERs were based on the FRC's review of the technical documentation supplied to it by licensees. The identification of this technical documentation by FRC, together with the FRC's conclusions about the status of environmental qualification at the facilities being reviewed, was sufficient in itself to support the Commission's conclusion that licensees were diligently pursuing environmental qualification.

The TERs also evaluated the technical documentation and were the primary documents for the NRC staff's preparation of Safety Evaluation Reports ("SER"), also in the rulemaking record, which formed the basis for the Director of Nuclear Reactor Regulation's report to the Commission that there are no generic safety issues involving environmental qualification. Thus, the public had available to it all the material relied on by the NRC in resolving the issue presented by this rulemaking.

The issue of whether a plant-specific safety finding is involved for each facility has been discussed. The Commission has stated its position that the generic deadline was not a safety standard for each facility, and thus removing the deadline by rule does not require plant-specific findings.

4. There is no rational basis for the safety finding that is required to support the proposed license amendments.

Commission Response. In support of this argument, UCS restates many of the technical issues which were reviewed in the Commission's Policy Statement. In UCS' view, the documentation supporting qualification of some equipment is inadequate and does not support continued operation of the facility. UCS also argues that the NRC review of qualification data has been insufficiently detailed to reach valid conclusions about the safety of the facilities.

UCS misreads the court's decision in *UCS* v. *NRC*, 711 F.2d 370 (D.C. Cir. 1983) to support its contention that plant specific safety findings are required to support deletion of the deadline. The court did not say that any such finding was actually necessary before the deadline could be deleted. Rather, the court found that because in its view the Commission had apparently made a generic safety finding to support the Interim Rule, the Commission had to provide an opportunity to comment on that alleged safety finding.

The Commission has now explained that it does not rely on plant-specific safety findings in the present rule. Nothing in *UCS* v. *NRC* requires such findings. Plant-specific safety findings are not required for these proposed license amendments because these amendments do not have the effect of authorizing any plant operation not previously authorized, after full consideration for safety, when the facility licenses were issued. As explained above, the deadline was not set as a safety matter or as a cutoff date beyond which reactors could no longer operate if all of their equipment was not qualified. Rather, the purpose of the deadline was to urge licensee compliance with the environmental qualification program. Accordingly, those proposed license amendments do not involve the technical issues associated with the qualification status of various pieces of equipment at nuclear power plants. The justifications for continued operation are relevant to the deadline only to the extent that they reveal whether licensees have considered the effects of deficiencies in a timely manner. The Commission's review of the record shows that licensees have been actively attaining compliance with the environmental qualification requirements. Thus, the purpose of the deadline has been achieved. If there are individual instances of safety problems, the Commission has adequate enforcement tools, including shutdown orders, to deal with such problems. Thus, deletion of the deadline does not affect public health and safety.

Furthermore, the Commission's staff is reviewing the qualification program at every operating facility and has also examined qualification data for many specific pieces of equipment. Where problems or deficiencies are identified, corrective action by the licensee is required. In some cases, a justification for continued operation (JCO) may be requested within a short time if facility operation is contemplated before the deficiency can be corrected. The proper remedy for any person disagreeing with the Commission's position on any given facility is to seek enforcement action via 10 CFR 2.206. One such petition has been received, filed by UCS, in regard to the emergency feedwater system at Three Mile Island Unit 1. The Commission's staff has reviewed the petitioner's allegation and found that the emergency feedwater system at Three Mile Island Unit 1 is environmentally qualified in accordance with 10 CFR 50.49. Therefore, the petition was denied.

UCS also alleged qualification deficiencies in four dockets, namely, Three Mile Island Unit 1, Kewaunee, San Onofre Unit 1, and Haddam Neck. These allegations will be dealt with in Section IV below.

III. Response To FUSE Comment And UCS Petition

One commenter, Floridians United For Safe Energy (FUSE), was highly critical of the Commission's prior actions on environmental qualification and requested that the Commission take 14 listed actions to correct the alleged deficiencies. These 14 actions are identical to those requested by the Union of Concerned Scientists (UCS) in a petition filed with the Commission of February 7, 1984. The Commission had decided that the first five of the 14 requested actions are relevant to this rulemaking, and accordingly, those issues will be stated and responded to below. The remaining nine issues have been dealt with separately as described in a letter to UCS.

Request 1. Direct the Staff to obtain immediately (within 10 days) from each nuclear power plant licensee and license applicant a report documenting the use of each deficient component listed in the UCS petition, and a detailed justification for continued operation pending qualification of the equipment. (The equipment listed was: solenoid valves, Barksdale pressure switches, Static-O-Ring pressure switches, ITT-Barton transmitters, Limitorque valve operators, Anaconda flexible conduit, Rockwell hydrogen recombiners, and O'Brien Electric Penetration Assembly, Model K Connectors.)

Commission Response. All of the above equipment highlighted by UCS have already been the subject of NRC Office of Inspection and Enforcement Information Notices. Licensees were required by 10 CFR 50.49 to identify all equipment remaining to be qualified, including the items cited by UCS where applicable, and to establish a schedule for qualification (which might involve analysis, testing or replacement) within the confines of § 50.49(g). If a licensee identifies unqualified equipment previously thought to be qualified, or overlooked in prior reviews, the licensee is required by § 50.49(h) to notify the Commission within 60 days if additional time may be needed to complete qualification.

Following receipt of the 10 CFR 50.49 submittals, the staff scheduled meetings with each licensee to discuss all remaining open issues regarding environmental qualification, and to identify the information necessary to issue a final safety evaluation report on environmental qualification for each facility. These meetings have been completed and the staff is now preparing an SER for each facility. Licensee approaches for resolving environmental qualification deficiencies include replacing equipment, performing additional testing and/or analysis, assembling additional qualification documentation, installing radiation shielding, and relocating equipment. Whenever equipment is identified which is not qualified for its application, the licensee has been required immediately to provide a justification for continued operation, if a justification had not been previously submitted. In a few cases where it appeared that licensee efforts had not been adequate, the staff has conducted an audit of licensee files and has made clear what steps need to be taken to demonstrate compliance with the Commission's environmental qualification requirements.

The Commission believes that this approach, which places the burden on licensees to complete environmental qualification on a reasonable schedule, is preferable to the ad hoc program proposed by UCS that could lead to delay in completion of the program at individual plants. In this area as in all other areas of NRC jurisdiction, the Commission relies on its licensees to carry out the regulatory requirements in a responsible manner, subject to NRC review and audit, and backed up by inspection and enforcement.

Request 2. Direct the staff to review this information within two weeks and make an independent determination as to whether there is justification for continued operation pending qualification of the equipment.

Commission Response. Even if the Commission were to receive all of the data covered by Request #1, the simple result implied by Request 2, *i.e., to determine whether* continued operation is or is not justifiable, would not obtain. As to each individual piece of equipment, at least the following steps must be carried out:

1. How is the item being used in the plant? For how long is it needed in an accident situation? Does it provide a critical function or indication, or is it in the "like to have" category? Is it backed up by other pieces of equipment?

2. What environment will the item of equipment see in each of a number of accident scenarios? Will it see a harsh environment in accidents for which it is needed or desired? Can it provide its function prior to being overwhelmed by environmental conditions?

3. What do the test data show concerning the item? Is it unqualified only in respect to one parameter or several? By what margin is it unqualified? Has it failed in every test, or has it passed some and failed some? Is the test data reliable or is there reason to question its validity?

4. If the item is clearly unqualified in its application, what risk is represented by continued operation? Can compensating measures such as procedures or valve alignments, etc., be used until a qualified piece of equipment can be installed? When will a qualified item be available, and when could it be installed?

The answers to these questions are not immediately obvious from a cursory review of a few documents. In each case the expertise of a number of persons experienced in a variety of disciplines must be called upon. Additional data may be needed which may or may not be immediately available. A site visit might be necessary to gain a clear picture of the item's use, location, configuration, and importance to plant operations. Arguments may arise over the interpretation of test data.

In short, UCS has greatly oversimplified the process of environmental qualification of safety-related electric equipment in nuclear power plants as a straightforward one, where answers immediately turn out yes or no. If the matter were that simple, the Commission and its licensees would not have been struggling for some five years to complete the program. In many cases environmental qualification efforts are at the edge of modern technology and material science. Tests must be carried

out under conditions which are difficult to create in the laboratory, and arguments arise over whether simulated conditions accurately represent the environment of a nuclear accident. Finally, reasonable disagreements can arise over the need for a piece of equipment, the environment it will see in an accident, the probability of that accident occurring over a brief period of time, and the consequences of equipment failure.

The Commission believes the phased but expeditious program mandated by 10 CFR 50.49 should continue. Where the staff feels that licensee efforts fall short of an acceptable level, action will be taken. Where information indicates that a serious, immediate safety hazard exists at a particular facility, prompt corrective action will be required including plant shutdown where necessary.

Request 3. Direct the staff at the conclusion of this review to order those plants for which adequate justification is not present to cease operation until the equipment in question is qualified or replaced.

Commission Response. As stated, if the Commission determines that plant operation is not justified with certain unqualified equipment, plant shutdown will be ordered. However, the Commission relies on licensees and its inspection program to report serious safety matters requiring immediate action.

Request 4. Provide a process for expeditious public comment on the Staff's determination and supporting submittals.

Commission Response. Whenever a licensee is requested to provide a justification for continued operation, the documentation is provided on the docket of that facility and is therefore available for public inspection. If any person believes that staff's acceptance of the licensee's position is in error, that person may request licensing action pursuant to 10 CFR 2.206.

Request 5. Commission may modify or affirm the Staff's action, taking into consideration public comments it has received.

Commission Response. If licensing action is sought on an individual facility pursuant to 10 CFR 2.206, the Commission has discretion under its rules to review the decision of the office director. *See* 10 CFR 2.206(c)(1).

IV. Plant Specific Comments

Four comments were filed which allege equipment qualification deficiencies at specific plants:

TMI, Kewaunee, San Onofre 1, Haddam Neck—UCS
Maine Yankee—Attorney General, State of Maine [3]
Pilgrim, Seabrook [4]—John F. Dougherty
Point Beach—Wisconsin's Environmental Decade

These comments have been reviewed by the NRC staff as provided in the notice of proposed rulemaking. The Director of Nuclear Reactor Regulation has found that the comments do not raise generic issues relevant to this rulemaking and has therefore recommended that these comments be treated according to 10 CFR 2.206. The Commission has agreed with this recommendation. The Director will review these comments according to the procedures specified in that regulation, and will take licensing action as he decides appropriate, if any. The status of environmental qualification at these facilities is set out below for information.

TMI–1

In response to the UCS 2.206 petition noted above, the staff has reviewed and evaluated the licensee's environmental qualification (EQ) program. Specifically, the qualification status of the emergency feedwater (EFW) system and electrical equipment associated with this system was assessed against the Commission's requirements and found to be in compliance. (DD–84–22).

As part of this effort, the staff met with the licensee and performed several audits of the licensee's EQ files. In response to the staff's findings during these audits, the licensee made substantial improvements in the EQ documentation for the EFW System and associated electrical equipment. The licensee is in the process of reviewing its EQ documentation for all other electrical equipment required to be qualified. The staff will audit the licensee's EQ documentation for several items of equipment other than the EFW system to ensure that the licensee's program complies with the Commission's requirements as set forth in 10 CFR 50.49.

[3] The State of Maine's comment also contains legal arguments which are responded to above in connection with the UCS comment and petition, and which the Commission has previously addressed in the notice of proposed rulemaking and accompanying policy statement issued March 7, 1984.

[4] Mr. Dougherty's comment regarding Seabrook did not deal with specific qualification deficiencies, but referred only to the licensee's financial difficulties. For this reason, Seabrook will not be discussed further below and will not be the subject of § 2.206 treatment.

Kewaunee

The staff has completed its Safety Evaluation Report for Kewaunee, and has concluded as follows:

1. Wisconsin Public Service's electrical equipment environmental qualification program complies with the requirements of 10 CFR 50.49.

2. The proposed resolutions for each of the environmental deficiencies identified in the February 2, 1983 SER and FRC TER are acceptable. There are no longer any outstanding justifications for continued operation for this facility.

San Onofre 1

This plant is currently not operating. The staff met with the licensee on December 20, 1983 to discuss resolution of the TER deficiencies. In order to ensure compliance with the Commission's requirements, this facility's EQ files were audited by the staff on October 2–4, 1984. Prior to return to service, the licensee is required to submit justifications for continued operation for all equipment which is within the scope of 10 CFR 50.49 and not fully qualified.

Haddam Neck

The staff met with the licensee on April 10, 1984 to discuss the resolution of the TER deficiencies. During that meeting, the licensee informed the staff that the temperature elements, cited by USC as having deficient JCO, will be replaced with qualified elements by March 31, 1985 in accordance with an extension granted by the NRC staff. (The staff had previously reviewed and accepted the JCO for these elements.)

In regard to the in-core thermocouples cited by USC, the licensee stated during the April 10 meeting that these devices are now fully qualified and thus a JCO is no longer required. Upon receipt of a final submittal from the licensee documenting the results of the April 10 meeting, the staff will prepare an SER reporting its evaluation, and will schedule a later audit of the licensee's EQ files to confirm compliance with the Commission's requirements.

Maine Yankee

The staff met with the licensee on April 4, 1984. The licensee's final submittal was dated May 31, 1984. The staff is now reviewing this submittal.

Pilgrim

The staff met with the licensee on May 22, 1984. The licensee made two submittals dated July 9, 1984 and August 3, 1984. The staff is now reviewing these submittals.

Point Beach Units 1 and 2

The staff has completed its Safety Evaluation Reports for both of these units. As to each unit the staff has concluded:

1. Wisconsin Electric's electrical equipment environmental qualification program complies with the requirements of 10 CFR 50.49.

2. The proposed resolution of each of the environmental qualification deficiencies identified in the December 22, 1982 SER and FRC TER are acceptable.

3. Continued operation until completion of the licensee's environmental qualification program will not present undue risk to the public health and safety.

The licensee's qualification files will be audited at a later date to confirm that all of the Commission's requirements have been met.

V. Decision on Final Rule

The Commission has reviewed the comments and does not find in them convincing arguments in favor of retaining the license condition deadlines. The Commission agrees with commenters who expressed impatience at the length of time which has already been devoted to the effort of achieving full qualification of safety-related equipment in nuclear power plants. The program has taken much longer than expected, and has involved difficulties and complexity not foreseen at the time the 1982 date was inserted in operating licenses.

However, the Commission believes that the approach most likely to accomplish completion of the program in the most expeditious and thorough fashion is that contained in 10 CFR 50.49. Under this program environmental qualification should be complete in calendar year 1985. The staff continues to monitor licensees' progress closely, and the Commission itself will maintain an active role in supervision of the program. For the present the Commission is satisfied that progress is adequate and that retention of the 1982 deadline on a generic basis would serve no purpose. Enforcement action will be taken on individual plants if circumstances warrant.[5]

[5] In his separate views Commissioner Asselstine disavows his previous agreement with the Notice of Proposed Rulemaking and the Commission's Policy Statement. The Commission believes that this rulemaking record does not support such a change in position. In its Policy Statement, the Commission agreed that because the June 30, 1982 deadline was not intended as a cut-off date for operation, the establishment of that deadline did not contain an implicit judgment that operation beyond that date would require a safety finding. As the Commission's Policy Statement made clear, this rulemaking was conducted solely to respond to the remand in *UCS v. NRC*, 711 F.2d 370 (D.C. Cir. 1983) and should not be taken as an indication that the Commission had changed its mind to now believe that the 1982 deadline had plant-specific safety significance.

Nor does Commissioner Asselstine's reason for wanting to retain the deadline contradict the Commission's position. He states that "the Commission should retain [the deadline] as an effective enforcement tool to assure continued diligence by licensees in carrying out an effective equipment qualification program." Putting aside the issue of whether the Commission could even rely on this deadline as a basis for initiating enforcement actions at this late date, it is clear that Commissioner Asselstine would not use the deadline to enforce safety deficiencies, but would use it only for the purposes for which it was intended, *i.e.*, to assure licensee diligence in completing the environmental qualification. Thus, Commissioner Asselstine's reason for wanting to retain the deadline is not based on a difference over its intended use, but really on whether the record shows that the reasoning for imposing the deadline has been met. For the reasons given above, the Commission had found that the deadline accomplished its purpose: As a general matter, licensees are diligently pursuing effective environmental qualification programs. The fact that one facility, Three Mile Island, Unit 1 required additional prodding, prodding which the NRC staff reported as being successful, does not undercut the validity of this generic finding.

The Commission is therefore adopting as a final rule the removal of the June 30, 1982, deadline from power plant operating licenses. In response to one of the public comments, which noted that some licensees may have license condition deadlines other than June 30, 1982, the proposed rule is being modified slightly by the addition of the words underlined: ". . . that the schedule in this paragraph supersedes the June 30, 1982, deadline, *or any other previously imposed date,* for environmental qualification of electric equipment contained in certain nuclear power operating licenses." Because the rule relieves a restriction, it is effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1).

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The rule effects only licensees of nuclear power plants. These companies do not fall within the scope of "small entities" as set forth in the Regulatory Flexibility Act or the small business size standards set forth in the regulations of the Small Business Administration, 10 CFR Part 121.

Paperwork Reduction Act Statement

This rule contains no information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Environmental Impact Statement

The promulgation of this rule would not result in any activity affecting the environment. The rule relates to the schedule for compliance with a rule and as such is procedural in nature for the purposes of environmental analysis. Accordingly, the categorical exclusion in 10 CFR 51.22(c)(3) applies and no environmental assessment need be prepared.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Intergovernmental regulations, Incorporation by reference, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Recordkeeping and reporting requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, notice is hereby given that the following amendment to 10 CFR Part 50 is adopted.

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2223, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

(Sec. 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Secs. 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958 as amended (42 U.S.C. 2273), §§ 50.10(a), (b) and (c), 50.44, 50.46, 50.48, 50.54 and 50.58(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2282(d)).

§ 50.49 [Amended]

2. 10 CFR Part 50, § 50.49, paragraph (g) is amended by the addition of a sentence to the end thereof. Paragraph (g) is revised to read as follows:

. . . . . .

(g) Each holder of an operating license issued prior to February 22, 1983, shall, be May 20, 1983, identify the electric equipment important to safety within the scope of this section already qualified and submit a schedule for either the qualification to the provisions of this section or for the replacement of the remaining electric equipment important to safety within the scope of this section. This schedule must establish a goal of final environmental qualification of the electric equipment within the scope of this section by the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier. The Director of the Office of Nuclear Reactor Regulation may grant requests for extensions of this deadline to a date no later than November 30, 1985, for specific pieces of equipment if these requests are filed on a timely basis and demonstrate good cause for the extension, such as procurement lead time, test complications, and installation problems. In exceptional cases, the Commission itself may consider and grant extensions beyond November 30, 1985, for completion of environmental qualification.

The schedule in this paragraph supersedes the June 30, 1982, deadline, or any other previously imposed date, for environmental qualification of electric equipment contained in certain nuclear power operating licenses.

* * * * *

Commissioner Asselstine's separate views follow.

Dated at Washington, D.C. this 13th day of November, 1984.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Assistant Secretary of the Commission.

Commissioner Asselstine's Comments on the Notice of Final Rulemaking Regarding the Removal of the June 20, 1982 Deadline From Operating Licenses for Environmental Qualification of Electrical Equipment

I cannot agree with the Commission's final rule to remove the June 30, 1982 deadline from nuclear powerplant operating licenses for the environmental qualification of electrical equipment. The Commission's final rule fails to provide the safety justification needed to remove the June 30, 1982 deadline from plant operating licenses and is not adequately supported by the record of this rulemaking. Moreover, commenters were not afforded a fair opportunity to comment on some of the information that formed the basis for the NRC staff's safety judgments that plants without properly qualified electrical equipment can operate safely until ongoing equipment qualification efforts are completed. For these reasons, I conclude that the Commission should not remove the June 30, 1982 deadline from plant operating licenses at this time.

Implicit in the Commission's decision to impose a deadline for qualification of equipment is a safety judgment by the Commission that extended operation of nuclear plants without properly qualified equipment does not provide an adequate level of protection to the public health and safety. The June 30, 1982 deadline was intended to motivate licensees to pursue effective equipment qualification programs with due diligence, thereby correcting a widespread licensee recalcitrance in properly qualifying safety-related equipment. The Commission also set the deadline to ensure that safety related equipment was qualified within a reasonable period of time—two years.

In deciding to remove the June 30, 1982 deadline from operating licenses, the Commission has concluded: (1) That the purpose of motivating licensees to pursue effective equipment qualification programs with due diligence has been achieved; (2) that extended operation of the plants beyond the June 30, 1982 deadline without fully qualified electrical equipment will not pose an undue risk to the public health and safety; and (3) that there is no generic equipment qualification problem common to many plants, such that a generic solution such as the June 30, 1982 deadline should be retained. More than two years after the expiration of the June 30, 1982 deadline, it appears that the Commission does not have an adequate factual basis for any of these conclusions.

I originally agreed with the course the Commission takes in its rulemaking and with the issuance of a new equipment qualification rule and policy statement. However, my agreement was based on assurances from the NRC staff that licensees were diligently pursuing adequate qualification programs and that the NRC was conducting an in-depth review of the information provided by licensees to support their justifications for continued operation (JCO's) or findings of qualification. Upon detailed examination it appears that these assurances were optimistic at best.

At the time the Commission issued this rule in proposed form, the staff advised the Commission that all licensees were cooperating in pursuing effective environmental qualification programs. See, Transcript of January 6, 1984 Commission meeting, p. 118. Yet, the record of this rulemaking disclosed several instances within the past few months in which licensees have failed to pursue effective equipment qualification efforts with due diligence. See, Union of Concerned Scientists' comments, pp. 22, 48–66. Many of these instances were confirmed by the NRC staff during the Commission meeting to consider this final rule. See, Transcript of September 4, 1984 Commission meeting, pp. 32–35, 64–68. Moreover, in those instances in which the Commission now argues that the environmental qualification deficiencies at specific plants identified by commenters have been corrected, the description of how those deficiencies have been corrected is so general as to be meaningless. This is hardly surprising since the first version of the proposed final rule submitted to the Commission in August failed to address *any* of the plant-specific deficiencies identified by commenters on the proposed rule. Given the evidence of continuing instances of licensee recalcitrance and the hurried and superficial reviews of the plant-specific deficiencies identified by commenters on the proposed rule, there is no basis in this rulemaking record for concluding that all licensees are now pursuing effective environmental qualification programs with due diligence.

Nor is there a basis for the Commission's conclusion that continued operation of nuclear plants presents no undue risk to the public health and safety. Although the staff assures us that there has been improvement in recent months, to date a considerable amount of safety-related equipment still has not been shown to be properly qualified. See, Transcript of September 4, 1984 Commission meeting, pp. 71–72. Justifications for continued operation (JCO's) for virtually all plants were submitted by the licensees in 1981. Reviews of these JCO's by the NRC staff and its contractors have repeatedly identified errors requiring further justifications. Further, even in the case of the more recent JCO's, the staff's inquiry has largely accepted the assertions made by the licensee that its equipment is qualified, and except in a very limited number of cases, the staff has not performed the detailed examination of supporting documentation needed to verify independently that either the equipment is properly qualified or that there is an adequate justification for continued operation. See, Transcript of September 4, 1984 Commission meeting, pp. 69–72. Nor is there any reason to believe that an in-depth examination of the licensee's documentation will occur any time in the near future. In the very few cases where staff has begun such in-depth reviews the evidence indicates that licensee efforts have been inadequate. Thus, because there has been no in-depth review by the NRC, there is no reason to conclude, as the majority does, that there is indeed no generic problem with equipment. Rather, UCS's comments suggest that there may be generic problems with certain equipment, and the Commission has not adequately explained why the equipment identified indicates no generic problem.

Thus, the evidence indicates that all licensees are not diligently pursuing effective equipment qualification programs. The evidence also indicates that independent verification of the licensees' JCO's or assertions of qualification will not occur any time soon, and certainly not before the Commission's new deadline in 10 CFR 50.49 (March 31, 1985). Given this indeterminate state of affairs, the Commission lacks reasonable assurance that there will not in fact be extended operation of these plants with equipment unqualified to perform its safety related functions. Instead of eliminating the deadline, the Commission should retain it as an effective enforcement tool to assure diligence by licensees in carrying out an effective equipment qualification program.

Finally, it is clear that commenters were not afforded a fair opportunity to comment on the technical information that formed the basis for the licensees' assertions that equipment is properly qualified or for the JCO's. The Union of Concerned Scientists, for example, details a number of instances in which this information was not included in the rulemaking record. See, UCS comments, pp. 27–30, and UCS letter to Commission dated September 5, 1984. The absence of this information effectively denied commenters a fair opportunity to comment on the staff's judgments on equipment qualification and the JCO's.

The Commission majority explains that it was not legally required to make documents relied upon by Franklin Research Center (FRC) available for comment in this rulemaking. The majority explains that this documentation was not necessary to the Commission's determination of the issue in this rulemaking and that the staff's Technical Evaluation Reports (TER's) provided adequate justification for concluding that licensees are diligently pursuing environmental qualification and that there are no generic safety problems so that the June 30, 1982 deadline ought to be retained. The Commission's explanation misses the point. The Commission may have relied upon the FRC reviews in making its conclusions, but FRC in conducting the reviews upon which the Commission relies must have relied in turn upon the documentation the Commission now says is not relevant to the rulemaking. Had the Commission itself conducted reviews of this documentation instead of contracting out to FRC the underlying documentation for the Commission's decision surely would have to be available for comment. The mere identification of information without providing an opportunity to inspect that information and challenge the bases for FRC's and staff's conclusions hardly amounts to a fair opportunity to comment.

For all of these reasons I cannot concur in the Commission's action. I would retain the June 30, 1982 deadline to be used as an enforcement tool to ensure that licensees have effective environmental qualification programs. Further, the Commission ought to be more diligent in conducting in-depth reviews of licensee documentation so that plants do not continue to operate for extended periods of time with the state of their equipment basically indeterminate.

[FR Doc. 84-30299 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

[FHWA Docket No. 83-25]

Reimbursement; State Highway Agency Audit Expense

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This document revises existing FHWA regulations by expanding the types of audit costs incurred by State highway agencies (SHA) that are eligible for Federal reimbursement. The revisions implement section 159 of the Surface Transportation Assistance Act of 1982 (STAA of 1982). Section 159 allows FHWA to reimburse States for costs incurred in performing Federal-aid project related audits which directly benefit the Federal-Aid Highway Program.

EFFECTIVE DATE: This final rule is effective December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey C. Wood, Chief, Federal/State Financial Management Branch, (202) 426-0563, or Mr. Frank L. Calhoun, Office of the Chief Counsel, (202) 426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the President signed into law the STAA of 1982 (Pub. L. 97-424, 96 Stat. 2097). Section 159 amends the definition of the term, "construction," in 23 U.S.C. 101(a) by adding, "and also includes costs incurred by the State in performing Federal-aid project related audits which directly benefit the Federal-Aid Highway Program." This enables the costs of audits to be eligible for Federal reimbursement in accordance with the provisions of title 23, U.S.C.

On February 24, 1984, the FWHA published a notice of proposed rulemaking (NPRM) (49 FR 6921) which proposed revisions to implement section 159. The NPRM proposed a revision to Part 140, Subpart G of 23 CFR. This subpart prescribes policies for reimbursing an SHA for the costs of salaries, wages, and related costs of its employees. Section 140.713(a) identifies several types of personnel whose costs are not reimbursable. Since internal auditing is listed as a nonreimbursable item, it was proposed to delete the words "internal auditing" from this section.

Part 140, Subpart H of 23 CFR establishes the SHA's responsibility for the audit of third party contract costs and the reimbursement criteria for Federal participation in the costs of these audits. Section 159 of the STAA of 1982 provides for the reimbursement of all audit costs which directly benefit the Federal-Aid Highway Program which is not limited only to the audits of third party contracts. To accomplish this, the FHWA proposed to revise Subpart H by: (1) Removing the term "Third Party Contract Costs" from the title, (2) removing the portion of § 140.801 relating to the audit of third party contract costs, (3) replacing the definition of "audit" in § 140.805 with the definition of "project related audits," (4) incorporating the provisions of § 140.807(a) and removing the term "third party contract," and (5) adding a new § 140.807(b) requiring audit costs be equitably distributed to all benefiting parties and to the major FHWA funding categories. As proposed, FHWA would determine, on a case-by-case basis, if necessary, which audits "directly benefit" Federal-aid highway projects

and meet other eligibility requirements for participation in audit expenses.

Three State highway agencies responded to the NPRM published on February 24, 1984. Two comments expressed support for the proposed revisions while the remaining commenter expressed an objection. However, the commenter objected to the proposal that reimbursable audit costs be restricted to those that directly benefit the Federal-aid highway program. Since this restriction is expressly mandated by section 159 of the STAA of 1982, the provision as proposed remains in the final rule.

In view of the above, the revisions as proposed in the February 24 NPRM are retained in the final rule in their entirety.

The FHWA has determined that this document contains neither a major proposal under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. The anticipated impact of this proposal is so minimal as to not require preparation of a full regulatory evaluation. Audit costs represent a very small portion of the costs of the Federal-Aid Highway Program. Few, if any, States are expected to receive more than $100,000 annually of additional Federal funds as a result of the revised regulations. For this reason and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, and under the authority of section 159 of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097; 23 U.S.C. 121 and 315; 49 CFR 1.48(b), the FHWA amends Title 23, Code of Federal Regulations, Part 140, Subparts G and H as set forth below.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 140

Accounting, Grant programs—transportation, Highways and roads.

Issued: November 8, 1984.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA amends 23 CFR Part 140, Subparts G and H as set forth below.

PART 140—REIMBURSEMENT

Subpart G—Payroll and Related Expense of Public Employees; General Administration and Other Overhead; and Cost Accumulation Centers and Distribution Methods

1. Section 140.713 is amended by removing the words "internal auditing" from paragraph (a)(1). As revised paragraph (a)(1) reads as follows:

§ 140.713 General administration and other overhead.

(a)* * *

(1) Directors, department heads, legal, accounting, budgeting, personnel, and procurement units.

* * * * *

2. Subpart H is revised in its entirety to read as follows:

Subpart H—State Highway Agency Audit Expense

Sec.

140.801 Purpose.
140.803 Policy.
140.805 Definitions.
140.807 Reimbursable costs.

Authority: 23 U.S.C. 121 and 315; 49 CFR 1.48(b).

Subpart H—State Highway Agency Audit Expense

§ 140.801 Purpose.

To establish the reimbursement criteria for Federal participation in project related audit expenses.

§ 140.803 Policy.

Project related audits performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable Federal laws and regulations are eligible for Federal participation. The State highway agency (SHA) may use other State, local public agency, and Federal audit organizations as well as licensed or certified public accounting firms to augment its audit force.

§ 140.805 Definitions.

(a) *Project related audits*—audits which directly benefit Federal-aid highway projects. Audits performed in accordance with the requirements of 23 CFR Part 12, audits of third party contract costs, and other audits providing assurance that a recipient has complied with FHWA regulations are all considered project related audits. Audits benefiting only nonfederal projects, those performed for SHA management use only, or those serving similar nonfederal purposes are not considered project related.

(b) *Third party contract costs*—project related costs incurred by railroads, utilities, consultants, governmental instrumentalities, universities, nonprofit organizations, construction contractors (force account work), and organizations engaged in right-of-way studies, planning, research, or related activities where the terms of a proposal or contract (including lump sum) necessitate an audit. Construction contracts (except force account work) are not included in this group.

§ 140.807 Reimbursable costs.

(a) Federal funds may be used to reimburse an SHA for the following types of project related audit costs:

(1) Salaries, wages, and related costs paid to public employees in accordance with Subpart G of this part.

(2) Payments by the SHA to any Federal, State, or local public agency audit organization, and

(3) Payments by the SHA to licensed or certified public accounting firms.

(b) Audit costs incurred by an SHA shall be equitably distributed to all benefiting parties. The portion of these costs allocated to the Federal-Aid Highway Program which are not directly related to a specific project or projects shall be equitably distributed, as a minimum, to the major FHWA funding categories in that State.

[FR Doc. 84-30340 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 5

Claims Collection

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Part 5 of Title 31, Code of Federal Regulations, governs the collection of claims from Treasury employees. Since early 1979, § 5.3 has required that an uncollectible claim in excess of $100 be referred to the General Counsel or the head of the legal division of a bureau or office before it may be administratively terminated. This final rule raises from $100 to $300 the limit of uncollectible claims which may be administratively terminated without such referral. The cost of collecting claims has increased since 1979 and the Department has determined that increasing the limit to $300 will reduce administrative burdens and be more cost-effective. Moreover, a survey of claims between $100 and $500 referred to counsel indicated that almost 90 percent subsequently are administratively terminated.

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: Charles A. Pistole, Department of the Treasury, Room 2450, 1500 Pennsylvania Ave., NW., Washington, D.C. 20220 (202-566-2431, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Since the establishment of the $100 limit in 1979, the cost of processing claims has increased significantly. Since almost 90 percent of claims under $500 referred to counsel for consideration subsequently are administratively terminated, the continued referral of such claims is not cost-effective. The Department has determined that increasing the value of claims which must be referred to counsel to $300 will decrease administrative burdens and be more cost-effective.

Special Analyses

Because this document relates to agency management, the notice and comment requirements of 5 U.S.C. 553(b), the requirement for a delayed effective date of 5 U.S.C. 553(d), and the provisions of Executive Order 12291 are inapplicable. Because no notice of proposed rulemaking is required by 5 U.S.C. 553 or by any other statute, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) are inapplicable to this document.

Authority: This amendment is issued under the authority of 31 U.S.C. 3711, 96 Stat. 971 (1982).

List of Subjects in 31 CFR Part 5

Claims.

PART 5—[AMENDED]

§ 5.3 [Amended]

Section 5.3 of 31 CFR Part 5 is amended by changing "$100" to "$300."

Dated: October 15, 1984.

Terence C. Golden,

Assistant Secretary for Administration.

[FR Doc. 84-30216 Filed 11-16-84; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 84-76]

Marine Event; Annual Parker Thanksgiving Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Annual Parker Thanksgiving Regatta. This event will be held on 23 thru 25 November 1984 at Headgate Rock Dam. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 23 November 1984 and terminate on 25 November 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 45 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold this event was not received until 19 September 1984, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 84-76) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

The Southern California Speedboat Club "Annual Parker Thanksgiving Regatta" will be conducted on 23 thru 25 November 1984 starting from Headgate Rock Dam. This event will have 60 to 70 hydroplanes and runabouts, 13 to 21 feet in length that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Regulations

In consideration of the foregoing Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section to read as follows:

§ 100.35-11-84-76 Annual Parker Thanksgiving Regatta, Parker, AZ.

(a) *Regulated Area:* The following area may be closed intermittently to all vessel traffic. That portion of the Colorado River north of the city of Parker, AZ starting from Headgate Rock Dam, thence northeasterly along the natural flow of the river for one (01) mile, on Moovalya Lake.

(b) *Effective Dates:* These regulations will be effective from 7:00 AM to 5:00 PM Mountain Standard Time on 23 thru 25 November 1984.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the

effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directors of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35))

Dated: 5 November 1984.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 84-30280 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 100

[CGD11 84-71]

Lake Havasu Classic; Thompson Bay, Lake Havasu, AZ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish special local regulations during the Lake Havasu Classic. This event will be held on 21 through 24 November 1984 at Thompson Bay, Lake Havasu, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 21 November 1984 and terminate on 24 November 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: On 1 October 1984, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (49 FR 38655). Interested persons were requested to submit comments and no comments were received.

Drafting information:

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Comments

Although no comments were received, interested persons wishing to comment may do so by submitting written arguments to the office listed under **FOR FURTHER INFORMATION CONTACT** in this preamble. Commenters should include their names and addresses, identify this notice (CGD11 84-71), and give reasons for their comments. Based on comments received, the regulation may be changed.

Discussion of Regulation

The Havasu Sports Federation's "Lake Havasu Classic" will be conducted on the Colorado River beginning 21 November 1984, east of Spectator Point in Thompson Bay, Lake Havasu. This event will have 75 tunnel and pleasure/modified V-bottom outboard boats, 10 to 20 feet in length that could pose hazards to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Regulations

In consideration of the foregoing, the Coast Guard Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35-11-84-71 Lake Havasu Classic, Lake Havasu, Arizona.

(a) *Regulated Area.* The following area may be closed intermittently to all vessel traffic. That portion of Thompson Bay, Lake Havasu, Arizona starting approximately 100 yards on a bearing of 130°T off Spectator Point, thence due north approximately 1110 yards, thence 140°T approximately 2200 yards, thence due west approximately 2400 yards, then back to the starting point.

(b) *Effective Dates.* These regulations will be effective from 8:00 a.m. to 5:30 p.m. on 21 through 24 November 1984.

(c) *Special Local Regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall, block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: 5 November 1984.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc 84-30287 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 117

[CGD7 84-23]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Town of Jupiter, the Coast Guard is changing the regulations governing the Indiantown Road Bridge (State Road 706), mile 1006.2, Palm Beach County by permitting the number of openings to be limited during certain periods. This change is being made because periods of peak vessel and vehicular traffic have increased.

This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, telephone: (305) 350-4103.

SUPPLEMENTARY INFORMATION: On 26 June 1984, the Coast Guard published proposed rule 49 FR 26608 concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated 10 July 1984. In each notice interested persons were given until 13 August 1984 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

No comments were received in response to the publication in the **Federal Register** or the Public Notice. Since the final rule will provide for more openings per hour than actually occurred during the 1983 winter season, it is not considered unreasonable to navigation and should provide for the needs of vehicular traffic by eliminating back to back openings which are a source of vehicular traffic congestion. Temporary regulations, on and experimental basis, were implemented in November 1983 providing for hour and half-hour openings 7 a.m. to 6 p.m. daily to evaluate the effects on navigation. A meeting was held in the Seventh Coast Guard District Office in May 1984 at which time, an alternate proposal for solicitation of comments on 20 minute openings was agreed upon by the Town of Jupiter. The Florida Council of Yacht Clubs objected to the hour and half-hour temporary regulations, but offered no objection to the proposed 20 minute openings.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations will exempt commercial vessels such as tugs with tows and regularly scheduled cruise vessels. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing Part 117 of Title 33, Code of Federal Regulations, is amended by redesignating paragraph (i) of § 117.261 as (i)(1) and adding a new paragraph (i)(2) immediately after (i)(1) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(i)(2) AIWW, mile 1006.2, State Road 706, Indiantown Road, Jupiter, Palm Beach County, Florida. From 1 November through 30 April, from 7:00 a.m. to 6:00 p.m., the draw need not open except on the hour, 20 minutes after the hour, and 40 minutes after the hour to pass all accumulated vessels. At all other times, the draw shall open on signal. Public vessels of the United States, tugs with tows, cruise vessels operated on a regular schedule, and vessels in distress shall be passed at any time.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1 (g)(3))

Dated: November 7, 1984.

A.R. Larzelere,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 84-30286 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 707

[OPTS-120003; TSH-FRL 2720-5]

Notification of Chemical Export; Applicability of Final Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Statement of clarification.

SUMMARY: This notice clarifies the requirements for notification of chemical exports under section 12(b) of the Toxic Substances Control Act (TSCA). These notification requirements will be activated at the effective date of a Phase I final rule when a TSCA section 4 test rule is being promulgated in two phases.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 12(b) of TSCA requires that persons who export or intend to export certain chemical substances and mixtures must notify the Administrator of such export or intent to export. The Administrator in turn is required to notify the appropriate foreign governments of the availability of data or EPA's action with respect to the substance. Regulations interpreting the requirements of section 12(b) were published in the **Federal Register** of December 16, 1980 (45 FR 82844) and codified at 40 CFR Part 707. Also, a statement of clarification regarding the export of asbestos and asbestos containing mixtures was published in the **Federal Register** of July 21, 1981 (46 FR 37608.

Several regulatory actions or orders under TSCA trigger the section 12(b) export notification requirements, one of which is a data submission requirement under section 4. For the purposes of the section 12(b) activities, the Agency interprets a section 4 data submission requirement to mean the promulgation of a final test rule under section 4. The asbestos clarification cited above states this policy. Also, the EPA publication "A Guide for Chemical Importers/Exporters—Volume I: Overview" reiterates this statement. This publication may be obtained by contacting the TSCA Assistance Office.

The Agency has determined that it would be inappropriate to require notification of export of substances based upon a proposed section 4 test rule. Since the conditions of a proposed rule and the substances involved are subject to change, the Agency deemed that sending a notice of availability of data to foreign governments would be premature at that stage of rulemaking. However, promulgation of a final test rule represents the Agency's commitment to proceed with data collection with respect to specific

substances. While the results of required testing may not be available for some time, a notice to the foreign government about the export of such substances serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities.

II. Clarification Requested

After the section 12(b) rule was promulgated, the Agency began to utilize a two-phase process for developing certain test rules. See 47 FR 13012 (March 26, 1982). A Phase I final test rule identifies the substances to be tested and the effects or characteristics for which testing is required. It also requires manufacturers and/or processors of the substances to submit study plans for the conduct of the required testing. A Phase II final rule establishes the testing standards and the schedule for submission of the data resulting from such testing.

The first Phase I final rule will become effective on November 23, 1984. It requires testing of 1,1,1-trichloroethane (TCEA) for developmental toxicity (49 FR 39810). On September 26, 1984 the Agency received a letter from the Dow Chemical Company requesting an opinion as to whether the export notification requirements of TSCA section 12(b) will be triggered by the TCEA Phase I final rule.

The Agency has concluded that, in the case of a two-phase section 4 rulemaking, the section 12(b) requirements are activated by the Phase I final rule. The Phase I rule represents the Agency's final decision to proceed with required testing of a substance. This rulemaking will have been preceded by a proposal and an opportunity to comment so that issues regarding the reasons for required testing of a given substance will have been identified and resolved. Therefore, the Agency believes that delaying section 12(b) export notification requirements until the Phase II rule becomes effective would not be consistent with the purposes of section 12(b).

In most instances EPA expects to develop section 4 test rules in a single phase so as to speed the initiation of testing. However, EPA may continue to use the two-phase final rulemaking approach for certain substances. Therefore, this statement of clarification provides notice to those persons who export or intent to export a chemical substance or mixture subject to a Phase I final test rule that they must submit notices required by TSCA section 12(b)(1) and 40 CFR Part 707.

Dated: November 8, 1984.

Marcia E. Williams,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 84-30225 Filed 11-16-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Reorganization of the Office of Managing Director

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to reflect the reorganization of the Office of Managing Director and to clarify the Managing Director's responsibilities under the functions of the Office. This action is taken to promote operational efficiency. Late submission to the FCC representative and to the Office of Federal Register caused the delay in publication.

EFFECTIVE DATE: August 1, 1984.

FOR FURTHER INFORMATION CONTACT: Karl Brimmer, (202) 632-3906.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Commission organization, Organization and functions (Government Agencies).

Order

In the matter of amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Office of Managing Director.

Adopted: June 20, 1984.
Released: August 9, 1984.

By the Managing Director.

1. The Commission has approved changes in the organization of the Office of Managing Director. Implementation of the proposed changes requires amendment of § 0.12 of the Commission's Rules and Regulations.

2. In addition, the Managing Director, under delegated authority, is amending certain phrases to clarify his responsibilities under the functions of the Office. Implementation of the proposed change requires amendment of § 0.11 of the Commission's Rules and Regulations.

3. To promote operational efficiency, the Office of the Managing Director is being reorganized. Briefly: (1) The Management Services Branch of the Planning and Analysis Division be abolished and all its administrative management functions, with the exception of those functions related to forms management and paperwork reduction, be transferred with the staff performing the functions, to the Management Planning and Program Evaluation Office; (2) the Records Management Branch of the Information Processing Divison be transferred to the Planning and Analysis Division to be combined with the forms management and paperwork reduction functions into a new branch to be named the Information Resources Branch; (3) the planning and Analysis Division be assigned strategic long-range planning responsibilities for information resource management and be renamed Information Resources Planning Division; (4) the Systems and Technology Planning Branch be renamed Information Planning Branch to more closely identify it with the Information Resource Management planning, budgeting and acquisition functions; (5) the Network Management Staff be retitled the Office Automation Division; (6) the Systems Library Branch of the Computer Applications Division be abolished and its functions absorbed at the Division level; and (7) the 3 and 4 letter call sign assignment functions of the Call Sign Unit in the Information Processing Division be transferred to the immediate office of the Video Services Division of the Mass Media Bureau.

4. To clarify his responsibilities in the area of national defense, the Managing Director is amending the language describing his national defense functions.

5. The amendments adopted herein pertain to agency organization. The prior public notice and comment procedures and effective date provision of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, are, therefore, inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

6. In view of the foregoing, it is ordered, effective August 1, 1984, that Part 0 of the Rules and Regulations is amended as set forth in the Appendix hereto.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

PART 0—[AMENDED]

Appendix

Part 0 of Chapter I of Title 47 of the Federal Regulations is amended as follows:

§ 0.11 [Amended]

1. Paragraph (a)(10) of § 0.11 is amended by removing the words "alternative Commission representative to emergency planning groups of other agencies." and inserting, in their place, the words "FCC Defense Coordinator and Principal to both the National Communications System and to the Network Communications Security Committee."

2. § 0.12 is amended by revising (c), (e) (1) and (e)(4) to read as follows:

§ 0.12 Units in the Office.

* * * * * *

(c) Management Planning and Program Evaluation Office.

(e) * * *

(1) Office Automation Division.

* * * * * *

(4) Information Resources Planning Division.

* * * * * *

[FR Doc. 84-30286 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-375; RM-4311]

TV Broadcast Station in Longview, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 54 to Longview, Texas, as its third television assignment in response to a petition filed by Peggy Ann Rothchild.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Longview, Texas) MM Docket No. 83-375, RM-4311.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making* (48 FR 18844, published April 26, 1983) issued in response to a petition for rule making filed by Peggy Ann Rothchild ("Rothchild") proposing to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, to assign UHF Television Channel 54 to Longview, Texas, as its third television assignment. In response to the *Notice*, petitioner filed comments and restated her intention to apply for Channel 54 at Longview, Texas. KLMB-TV, Incorporated ("KLMB"), permittee of Station KLMG-TV, Longview, Texas, filed opposing comments and reply comments.

2. Rothchild, in her comments reiterates her continued intention to apply for a construction permit for Channel 54 if the channel is allocated to Longview, Texas.

3. KLMB generally opposes the proposed assignment in Longview, on the same grounds that it opposed the assignment of Channel 57 to Tyler, Texas. See, *Report and Order*, 48 FR 56588, published December 15, 1983. Here, as in Tyler, Texas, KLMB argues that the petition for rule making was not supported by an adequate engineering showing. In both instances, KLMB noted that the showing consisted merely of a computer printout prepared by Edward M. Johnson and Associates ("Johnson") and failed to state the underlying assumption of the data or to show the preclusive effects of the proposed assignments. KLMB questioned Johnson's qualifications, referring to a history of submissions to the Commission which raised questions as to his qualifications and veracity. This history is said to call into question whether Rothchild's engineering submission complies with the Commission's technical rules.

4. In *Tyler, Texas, supra*, we stated that the assignment of Channel 60 met the minimum separation requirements of § 73.610 of the Commission's Rules and would provide Tyler with a city-grade signal. We therefore determined that the Commission's technical requirements had been met. In addition, we stated that the additional matters raised by KLMB concerning technical qualifications and veracity were not matters for consideration in a rule making proceeding.

5. As for the technical information submitted here, the above factors cited in *Tyler* are controlling. The proposed assignment in Longview meets the minimum separation requirements of § 73.610 and will also provide Longview with a city grade signal. Any additional matters raised regarding the technical sufficiency of the proposal are outside the scope of this proceeding and should be raised during the application stage.

6. KLMB also argues, as it did in *Tyler, Texas*, that Longview cannot support an additional full service commercial station in Longview. KLMB alleges that the petition lacks any claim of Longview's future growth. KLMB asserts that Rothchild has failed to demonstrate any need for a new full service television station at Longview, which receives numerous alternative services. As we noted in *Tyler*, this is also a matter that is more appropriately raised at the application stage.

7. Lastly, KLMB asserts that Johnson has attempted to induce potential or existing low power applicants, including Rothchild, to seek full-service channel assignments and has done so by misleading them with erroneous interpretations of the rules and failing to inform them that full-service stations are more extensively regulated than are low power stations. Accordingly, argues KLMB, this raises questions as to the credibility of Rothchild's expressions of intent to apply for a new channel at Longview, especially since Rothchild's previous interests were confined to low power applications. As we concluded in *Tyler*, the sufficiency of the application eventually submitted for a full service station is a matter that can best be determined at the application stage.

8. Accordingly, since the proposal can provide a second local television service, and pursuant to authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Longview, TX	16+,[1] 51-, and 54+

[1] Reserved for land mobile use.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-30285 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 82-357; RM-4103]

FM Broadcast Station in Terrell Hills, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Class C FM Channel 294 for Channel 292A in Terrell Hills, Texas, and modifies the license for FM Station KESI, Terrell Hills, Texas, in response to a Petition for Reconsideration filed by S.I.T. Broadcasting Corp.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Terrell Hills, Texas) BC Docket No. 82-357, RM-4103.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Petition for Reconsideration of the *Report and Order*, 48 FR 34779, published August 1, 1983, which denied the proposal to substitute Class C FM Channel 294 for Channel 292A in Terrell Hills, Texas, and to modify the license of SIT Broadcasting Corporation ("petitioner") for FM Station KESI, Terrell Hills, accordingly. In the alternative, KESI requested temporary authority to operate on Channel 294 pending a comparative hearing on the channel's permanent allocation. An opposition was submitted by Laura Pryor ("Pryor"). petitioner replied to the opposition.

2. In the *Notice of Proposed Rule Making*, 48 FR 31010, published July 16, 1982, we proposed the substitution of channels at Terrell Hills and the modification of Station KESI's license to specify operation on Channel 294 in lieu of Channel 292A in Terrell Hills, Texas, as requested. However, we also stated that in conformity with Commission precedent, as expressed in *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), should another interest in the assignment be shown, the proposed modification could not be made and the channel, if assigned, would be open to competing applications. Individual comments were filed by Leroy P. Muehlstein, David K. Bamberger and Laura Pryor, each expressing an interest in applying for operation on the channel, if it were allotted.

3. In the *Report and Order, supra*, we concluded that the license of Station KESI could not be modified to specify operation on Channel 294 without a comparative hearing to determine which of the applicants was best qualified to operate a station in the public interest. We rejected petitioner's contention that modification of its license without a comparative hearing would not be inconsistent with our established policy in *Cheyenne, Wyoming supra*. This contention was based on alleged interference problems to the signal of Station KESI from blocking effect and from cross modulation of Stations KVAR and KTFM, San Antonio, Texas.

4. In a recent supplement to SIT's petition for reconsideration, petitioner reports, and attaches letters stating that all previous expressions of interest in Class C Channel 294 that were filed by other parties, have been withdrawn. Consequently petitioner argues that consistent with our holding in *Cheyenne*, KESI's license modification can now be routinely granted.

5. In light of the fact that all previous expressions of interest have been withdrawn, we are now in a position to grant the substitution of Channel 294 for Channel 292A in Terrell Hills, Texas, and the modification.

6. In view of the above, it is ordered, That the Petition for Reconsideration, filed herein by SIT Broadcasting Corporation, is granted.

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Terrell Hills, TX	294

8. It is further ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Station KESI-FM, Terrell Hills, Texas, is modified to specify operation on Channel 294, subject to the following conditions:

(a) At least 30 days before operating on Channel 294, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

9. It is further ordered, That the Secretary shall send a copy of this *Order* by certified mail, return receipt requested, to: SIT Broadcasting Corporation, c/o Thomas J. Keller, Verner, Liipfert, Bernhard, & McPherson, 1660 L Street, NW., Suite 1000, Washington, D.C. 20009.

10. It is further ordered, That this proceeding is terminated.

11. For further information concerning this proceeding, contact Arthur D. Scrutchins, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-30284 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 83-1123; RM-4520]

FM Broadcast Station in Garberville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Class C Channel 284 for Channel 261A at Garberville, California, and modifies the license for Station KERG(FM) accordingly, in response to a Petition for Reconsideration filed by the licensee, Daniel J. Healy.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Garberville, California); MM Docket 83-1123, RM-4520.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. In response to a request from Daniel J. Healy, the Commission adopted the *Report and Order*, 49 FR 23057, published June 4, 1984, which substituted Channel 284C2 for Channel 261A at Garberville, California, and modified the license for Station KERG(FM) to specify Channel 284C2. Healy has filed a Petition for Reconsideration requesting that the assignment be upgraded to a Class C channel (284) and his station's license be modified accordingly.

2. In his Petiton for Reconsideration, Healy argues that the Commission's action was a departure from what he sought. He contends that the *Notice* did not specify that a Class C2 channel would be assigned to Garberville. As a final issue, Healy argues that his station suffers serious and continuing coverage problems, noting (1) that his present antenna site on Pratt Mountain is the only practical higher elevation with electric power near his city of license and (2) that a Class C2 operation at the present location with a 900 W BRP will not be sufficient to provide a competitive signal, even in the city of license. Based on the arguments presented, and the fact that no one opposed the assignment, Healy urges the Commission to reconsider its earlier action.

3. In the *Notice*, we held that the future implementation of Docket 80-90 would provide for Class C2 channels (equivalent to a Class B facility) and would permit a power increase to 0.9 kW to correspond with the current antenna height of Station KERG.

4. In the *Report and Order*, we assigned a Class C2 channel based on petitioners stated need, his present tower and his concern for cost efficiency. However, we believe that the petitioner has provided substantive arguments in favor of a reconsideration of our earlier decision. Therefore, in the interest of insuring expanded service to meet the needs of the Garberville area, we shall substitute Class C Channel 284 for Channel 261A at Garberville, California. As for the modification of license for Station KERG(FM), no other parties expressed an interest in applying for a Class C channel in response to the *Notice*. Therefore, the modification can be granted.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communciations Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commisson's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Garberville, CA	284

6. It is further ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Station KERG(FM), Garberville, California, is modified to specify operation on Channel 284, subject to the following conditions:

(a) At least 30 days before operating on Channel 233, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning the above, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules, Mass Media Bureau.

[FR Doc. 84-30287 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 84-12; RM-4608]

FM Broadcast Station in Hobbs, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 275 to Hobbs, New Mexico, as that community's third commercial FM service, at the request of Smith Family Radio, Inc.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Hobbs, New Mexico); MM Docket No. 84-12, RM-4608.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 3219, published January 26, 1984, proposing the assignment of Channel 275 to Hobbs, New Mexico, as that community's third commercial FM service. The Notice was adopted in response to a petition filed by Smith Family Radio, Inc. ("petitioner"). Petitioner failed to file timely comments or reply comments to the proposal.[1] Reply comments were filed by Noalmark Broadcasting Corporation ("Noalmark"), licensee of KYKK, Humble City, New Mexico, and KZOR-FM, Hobbs, New Mexico.

2. Since Hobbs, New Mexico, is located within 320 kilometers (199 miles) of the common U.S.-Mexican border, concurrence of the Mexican government has been obtained.

3. Noalmark states that the proceeding should be terminated without finalization of the proposed assignment to Hobbs because petitioner failed to file supporting comments or to restate its intention to apply for the channel, if assigned. However, petitioner has corrected the oversight of failing to restate its interest.

4. In view of petitioner's interest in applying for the proposed assignment and since Hobbs could receive its third commercial FM service, we believe that the public interest would be served by assigning Channel 275 to Hobbs, New Mexico. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in sections 4(i),

[1] Petitioner's comments were filed late. Petitioner did not file a request for acceptance of the late-filed comments nor did it provide an explanation why they were filed late. However, we will accept the comments for the purpose of permitting the petitioner to reaffirm its interest in the proposed channel.

5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city.

City	Channel No.
Hobbs, NM	231, 239, and 275.

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-30280 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1000; RM-4577]

TV Broadcast Station in Battle Creek, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 43 to Battle Creek, Michigan; as its second channel assignment in response to a petition filed by Wolverine Broadcasting Co.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Battle Creek, Michigan); MM Docket No. 83–1000, RM–4577.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 45438, published October 5, 1983, issued in response to a petition for rule making filed by Wolverine Broadcasting Company ("Wolverine") proposing to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, by allotting UHF Television Channel 43 to Battle Creek, Michigan, as its second channel assignment. In response to the *Notice*, Wolverine filed comments and restated its intention to apply for Channel 43 at Battle Creek. Channel 41, Inc., ("WUHQ") licensee of UHF Station WUHQ–TV Battle Creek, (Channel 41) filed opposing and reply comments.

2. In the *Notice*, we stated that UHF Channel 43 could be allotted to Battle Creek provided that a site restriction of 25.3 miles north is imposed to avoid short-spacing to Stations WSJV (Channel 28), Elkhart, Indiana, WUHQ–TV (Channel 41), Battle Creek, and unused Channel *58 in Ann Arbor, Michigan. We further stated that due to the large site restriction, Wolverine ("petitioner") was requested to make a showing that it could provide the requisite 80 dBu city grade signal to Battle Creek from the restricted area.

3. In its comments WUHQ notes that generally the Commission does not allocate UHF stations within six channels of each other to the same community. Citing *Sixth Report and Order*, 41 F.C.C. 148, at par. 175 (1952). Consequently, WUHQ contends that the requested assignment of Channel 43 to the same community would create intermodulation interference. WUHQ questions whether Wolverine can provide a city grade signal to Battle Creek and still conform to the 20 miles separation required between Channels 41 and 43. WUHQ further questions whether petitioner, as the licensee of an AM station in the same community, can also operate a local television station. See § 73.636 of the Commission's Rules.

4. In reply, WUHQ argues that Wolverine failed to provide the information required by the Commission concerning its ability to provide a city-grade signal over Battle Creek. WUHQ also notes that while Wolverine purports to maintain a 75 mile separation from its proposed station to Station WSJV-TV, Elkhart/South Bend, a map provided by Wolverine, indicates that the proposed site would be short spaced to WSJV-TV. Finally, WUHQ, argues that if Wolverine's request to establish a site restriction three miles east of Ann Arbor for Channel 58 were granted, Ann Arbor would be deprived of local service since the transmitter would be located somewhat closer to Detroit and a licensee would have a tendency to provide service aimed at Detroit.

5. As noted above, the *Notice*, originally proposed a 25.3 mile site restriction for Channel 43 in order to avoid short spacing to Stations WSJV–TV (Channel 28) Elkhart, Indiana, WUHQ–TV (Channel 41), Battle Creek, and unused Channel *58 in Ann Arbor, Michigan. After a further staff review of the information submitted, we agree with Wolverine that a site restriction of 3 miles east of Ann Arbor for unused Channel *58 would reduce the original 25.3 mile site restriction for Channel 43 to 4.7 miles north of the city, thereby allowing the assignment of Channel 43 in conformity with the Commission's minimum distance requirements.

6. Contrary to WUHQ's arguments, the new site restriction should not change the orientation of a future station on Channel *58 from Ann Arbor to Detroit. There is no evidence that a station on Channel *58 would be inclined to serve Detroit (a city 40 miles away) as opposed to Ann Arbor, its community of license due to a 3 mile site restriction east of the city.

7. WUHQ's concern that the allotment of Channel 43 to Battle Creek might create intermodulation interference to Channel 41 is misplaced. The Commission has concluded that so long as the 20 mile separation is observed between UHF stations within six channels of each other, there should be no objectionable interference. See, *Sacramento, California*, 55 R.R. 2d 259 (1983). Therefore, as we have already noted, Channel 43 can be allotted to Battle Creek in compliance with the Commission's minimum spacing requirements. With respect to WUHQ's allegations regarding Wolverine's possible multiple ownership violations (Section 73.636), the Commission has previously held that an applicant's qualifications are not germane to an allocation proceeding but should be considered in the context of the application process. See *Caldwell, Ohio*, 46 R.R. 2d 1453 (1980) and *Billings, Montana*, 51 R.R. 2d 259 (1982). Further Note 1, § 73.636 permits the Commission to consider waiving the rule on a case by case basis. In view of the above, we believe the public would be benefitted by the assignment of Channel 43 to Battle Creek as its second television broadcast service.

8. Accordingly, pursuant to the authority contained in section 4(1), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is

amended with respect to the community listed below:

City	Channel No.
Battle Creek, MI	41+, and 43–

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning the above, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-30280 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1377]

Amendment to Classify Certain Changes in TV and FM Facilities; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the Commission's vote in the Report and Order in this proceeding, concerning an amendment to classify certain changes in TV and FM facilities, published in the **Federal Register** on August 15, 1984, (49 FR 32586). Commissioner Patrick's statement is included.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 632–6485.

Erratum

In the matter of revision of §§ 73.3571, 73.3572 and 73.3573 of the Commission's Rules; MM Docket No 83–1377.

Released: November 9, 1984.

The Report and Order, FCC 84–298, released August 10, 1984, in the above-entitled matter is corrected to indicate "Commissioner Patrick dissenting in part and issuing a separate statement" after the phrase BY THE COMMISSION:

William J. Tricarico,

Secretary, Federal Communications Commission.

Statement of Commissioner Patrick attached.

Separate Statement of Commissioner Dennis R. Patrick Dissenting In Part

In re: Matter of Revision of §§ 73.3571, 73.3572 and 73.3573 of the Commission's Rules (Docket No. 83–1377).

I generally support this item. Reclassifying various changes as minor, rather than major, is warranted where it expedites application processing without contravening applicable legal or public policy constraints. I disagree, however, that the reclassification of ownership changes in Paragraph 9 as minor is either appropriate under the law or desirable as a matter of policy.

The controlling law is, I believe, section 309(c)(1) of the Act. Section 309(c)(1) exempts from the statutory public notice and 30-day waiting period otherwise required under section 309(b) "any minor amendment of an application to which such subsection is applicable." No definition of minor is given in that subsection, however.

The majority's reliance on section 309(c)(2)(B) of the Act suggests that they have looked to that section for elucidation of the major/minor distinction.[1] Section 309(c)(2)(B) requires formal procedures, *i.e.*, public notice and a 30-day comment period, to accompany an application for transfer or assignment of a license, unless the transfer or assignment "does not involve a substantial change in ownership or control." [2] Although it is not clear that this particular substantiality test was also intended to apply to the license application stage, it is certainly within the Commission discretion to so apply it.

Using this guidepost, I must disagree with the majority's conclusion, however.

Using this guidepost, I must disagree with the majority's conclusion, however. The Commission has always looked at ownership and control of individual owners, not of a group of owners as a whole, in determining whether a substantial change in ownership or control has occurred. Paragraph 9 of the Report & Order, however, permits focus on whether the *group's* ownership stays at 50% of its original share. The result is that in certain circumstances there could be a "substantial change in *individual* ownership or control" that is nonetheless categorized as "minor."

This appears to be directly at odds with the definition drawn from section 309(c)(2)(B). For example, under Paragraph 9, if a broadcast applicant is owned 94% by A and 6% by B, B could become the 100% owner and the change would be considered "minor". A change from 6% to 100% ownership would in almost all cases represent a substantial change in both ownership and control.[3] Such a change would also seem to be anything but "minor," as that word is commonly understood.

Even if I did not have questions about the legal propriety of the majority's change, I would have policy problems with the new rule. I would not have had problems amending the Commission's rules to permit an applicant under these circumstances to keep its file number and place in the processing line. I believe, however, that we ought not to streamline our procedures at the expense of giving notice and opportunity to file petitions to deny to members of the public where changes may be substantial. As I have indicated, a change from 6% to 100% ownership, which will now be within the ambits of a "minor" change, seems anything but minor. Regardless of its label, such a change warrants local notice and the opportunity to comment. Thus, although I can agree with my fellow commissioners that no overriding purpose would be served by having an applicant lose its file number and place in the processing line, I simply cannot agree that no overriding purpose would ever be served by permitting the public to file petitions to deny against a 100% owner whom they might not have filed against as a 6% owner.

For these reasons, I respectfully dissent to Paragraph 9 of the First Report & Order.

[FR Doc. 84-30256 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Section 309(c)(2)(B) controls applications for transfer or assignment of authorizations, not license applications per se. The latter are the subject of this rulemaking. No explanation for the majority's reliance on this section is offered.

[2] The notice and waiting period requirements were adopted in order to give interested parties the opportunity to learn of the pendency of an application in order to file a petition to deny before its grant. *See* H.R. Rep. No. 1800, 86th Cong., 2d Sess. 11 (1960); S. Rep. No. 690, 86th Cong., 1st Sess. 2–5 (1959).

[3] There may be specific cases where the facts lead us to a different conclusion. For example, in a recent case we concluded that because a minority owner already had *de facto* control, acquisition of additional shares did not constitute a substantial change in ownership or control. Memorandum Opinion and Order Approving Applications to Transfer Control of Metromedia, Inc., 55 RR 2d 1278, *recon. denied*, 56 RR 2d 1198 (1984). My objection to the rule change in Paragraph 9 is that it makes a general exception a rule without reference to specific facts and circumstances.

Proposed Rules

Federal Register
Vol. 49, No. 224
Monday, November 19, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations would revoke the Schedule A excepted service appointing authority used by agencies to hire cooks at other than fixed locations, because an adequate supply of candidates for most positions is available through competitive examinations. Revocation would bring the positions filled under the Schedule A appointing authority into the competitive service and permit noncompetitive conversion of their incumbents to competitive appointments. Before the effective date, positions for which examining is still impracticable may be placed under other excepted appointing authorities. Persons serving in those positions may be converted to excepted appointments under those authorities.

DATE: Comments must be received on or before January 18, 1985.

ADDRESS: Written comments may be sent or delivered to Richard B. Post, Associate Director for Staffing, Office of Personnel Management, 1900 E Street, Room 6F08, NW, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, Staffing Policy Analysis Division, Staffing Group, (202) 632–6000.

SUPPLEMENTARY INFORMATION: The Schedule A authority, 5 CFR 213.3102(b), was established in 1905 for use by all agencies to fill cook positions when the Civil Service Commission found examining to be impracticable. It was reissued in 1939, without the requirement for prior approval of individual exceptions, but with a prohibition against use to fill positions in fixed locations. It has not been amended since.

The authority has been used by relatively few agencies that operate construction or survey camps and dredges. When the Schedule A authority was established, competitive examinations did not produce enough candidates for cook positions in those activities. The availability of competitive applicants for the postions has improved, and many of the positions are now filled in the competitive service. The only positions for which examining is still impracticable are those in survey, construction, or dredging operations which, because of their high mobility or remote location, are characterized by frequent turnover, and for which an adequate labor force can be recruited only by immediate gate hiring on a local basis. Agencies that have such activities have received specific Schedule A authorities for use in local hires. Cook positions could be filled under those authorities as well as under 5 CFR 213.3102(b).

Because there is no longer a general need to fill cook positions outside the competitive service, continuation of an excepted appointing authority available to all agencies is not appropriate. The Office of Personnel Management, therefore, proposes to revoke the Schedule A appointing authority in 5 CFR 213.3102(b), effective 30 days after publication of the final rule. On the effective date, persons serving in positions filled under that authority may be brought into the competitive service in accordance with the provisions of 5 CFR 316.702. Qualified employees may subsequently be converted to competitive appointments under the provision of 5 CFR 315.701. Before the effective date, agencies that have positions filled under 5 CFR 213.3102(b) should review those positions to identify any for which examining is still impracticable. If any agency has another excepted appointing authority available that would be appropriate for filling its cook positions, current employees may be converted to excepted appointments under that authority. Requests to establish specific excepted appointing authority for any positions not covered by current exceptions must be submitted in accordance with the provisions of 5 CFR Part 213 and the instructions contained in chapter 213 of the Federal Personnel Manual.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

PART 213—[AMENDED]

Accordingly, OPM proposes to amend 5 CFR Part 213 as follows:

1. The authority for Part 213 reads as follows:

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 comp., p. 218)

§ 213.3102 [Amended]

2. Paragraph (b) of § 213.3102 is removed and reserved.

[FR Doc. 84-30291 Filed 11-16-84; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 831

Collection of Debts Due the Retirement Fund

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its regulations on the collection of debts due the Civil Service Retirement and Disability Fund (retirement fund). These proposed regulations include changes to reflect provisions of Pub. L. 97–365, the Debt Collection Act of 1982 (DCA), enacted October 25, 1982. They also reflect the recent revision of the Federal Claims Collection Standards (FCCS) published jointly by the Department of Justice and the General Accounting Office on March 9, 1984 (49 FR 8889). Section 5514 of title 5, United States Code, requires an agency to prescribe regulations for the offset of debts from salary, and the FCCS require an agency to prescribe regulations for the administrative offset of debts from other payments.

DATE: Comments must be received on or before December 19, 1984.

ADDRESS: Send comments to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford or Patricia A. Rochester, (202) 632–4634.

SUPPLEMENTARY INFORMATION: These proposed regulations would revise Subpart M and delete Subpart P of Part 831, Title 5, Code of Federal Regulations, to implement the concepts and procedures outlined in the DCA and FCCS for debts owed the retirement fund.

Specifically, the proposed regulations would expand the scope of administrative offset, permit OPM to assess interest, administrative costs, and penalty charges, and authorize reports to consumer reporting agencies or contracting with a collection agency when a debt is delinquent. These new features and changes would result in a more cost-effective debt collection program.

Collection and Enforcement

In the past, OPM's collection efforts primarily focused on offsetting the debt from annuity and workers' compensation benefit payments and, when offset was not available, demands for payment and litigation. The DCA requires that administrative offset be in the best interests of the United States, enhance the likelihood of collection, and be cost effective. The proposed regulations state OPM's policy to demand payment in one lump sum. However, it is OPM's experience that most individuals owing debts to the retirement fund are financially unable to pay the full amount in one payment. Therefore, the proposed regulations would provide for administrative offset as well as other forms of installment payments. These arrangements enhance OPM's ability to collect debts and are convenient for the debtor.

The proposed regulations would expand debt collection methods as follows:

a. When a current employee or member of the Armed Forces or Reserves owes a debt to the retirement fund, OPM may, with the assistance of the paying agency, offset the debt from the employee's or member's current pay.

b. When an employee is due a back pay award under 5 U.S.C. 5596, a debt due the retirement fund and caused by the same unjustified or unwarrented personnel action may be offset from the award. Upon separation, employees are usually eligible for either a refund of contributions or an annuity. When the separation is later found to be an unwarranted or unjustified personnel action, it will be reversed. This reversal cancels the entitlement to any payments made from the retirement fund because of the separation. To the extent money is available from a back pay award, it will be offset by the amount of the payments made from the retirement fund. Any portion of the debt that cannot be collected from the back pay award will be pursued under an alternative collection method.

c. A debt may be offset from other payments due the debtor from other agencies in accordance with the FCCS.

To strengthen enforcement of collections, the proposed regulations would provide for assessing interest, penalty fees, and administrative costs when a debt is delinquent. Also, OPM plans to report delinquent debts to a consumer reporting agency and contract with private sector collection agencies for collection of debts.

Exemptions

Under the proposed regulations, not all actions to withhold money from annuity payments would be processed by the procedures described in § 831.1304. Frequently, annuitants make elections requiring additional deductions from their annuities. In many cases, OPM cannot process these elections in time to adjust the annuity payment on the appropriate effective date. As a result, the adjustment is made retroactively. Since annuitants initiate these elections and enjoy the benefits, they know, or should know, that they are consenting to deductions from their annuities. By effecting an election, annuitants are deemed to consent to such retroactive adjustments. To avoid financial hardship to annuitants, though, OPM would process retroactive adjustments covering more than 120 days in accordance with the procedures described in § 831.1304.

To relieve any financial hardship for the annuitant, OPM routinely makes interim, estimated payments to applicants for annuity. Such estimated payments continue until required evidence is available for computing the actual rate of annuity. Since these payments are made with the understanding that they will be recovered from the actual, accrued annuity due at the time of final processing of the claim, the annuitant will be deemed to consent to the recovery. To avoid financial hardship on the annuitant, this exception would be limited to adjustments that do not exceed the amount of the first regular annuity payment.

Administrative Due Process

The due process requirements of the DCA and FCCS are, for the most part, the same as those previously described in Subpart M of 5 CFR Part 831. The proposed regulations in § 831.1304 describe the debtor's rights. Except for the two debt exemptions described above, these rights apply regardless of the method used to collect the debt.

In some cases, rights are available in addition to those described in § 831.1304. For example, delinquent debtors would also be notified of their rights under § 831.1307 before OPM makes a report to a consumer reporting agency. Also, employees and members of the Armed Forces or Reserves would on request be granted a hearing on the repayment schedule, if a hearing has not previously been provided under § 831.1304.

In 1980, the United States Court of Appeals for the Ninth Circuit, (*Shannon v. Civil Service Commission*, 621 F.2d 1030) affirmed a 1977 District Court decision (444 F. Supp. 354) and held that the language in 5 U.S.C. 8346(b) concerning waiver of overpaid retirement benefits required (1) that an opportunity for waiver consideration be offered before any recovery could begin; and (2) that the standards for waiver in section 8346(b), i.e., "fault" and "equity and good conscience," involve questions of credibility and veracity that can only be resolved through an oral administrative evidentiary hearing. In the meantime, the Civil Service Commission (CSC) had issued regulations in 1979 providing for evidentiary hearings on unfavorable CSC waiver decisions before recovery could begin.

The language of section 8346(b) was amended by the Civil Service Reform Act of 1978 (Pub. L. 95–454, 92 Stat. 1111 (October 13, 1978)), to substitute OPM for the previously existing CSC. In addition, the Reform Act established a separate and independent agency, the Merit System Protection Board (MSPB), to handle appeals from OPM decisions.

The MSPB also offers an evidentiary hearing in the course of its judgment of appeals from OPM decisions. So, under current regulations, both OPM and MSPB offer evidentiary hearings on cases involving waivers—a duplication of effort that is both wasteful and inefficient.

Furthermore, as a result of the separation of functions under the Reform Act (the CSC formerly handled both the initial decision and the appeal), OPM's decisions on waiver are not final decisions as were the decisions of the CSC under the pre-Reform Act version of the statute. So the OPM hearing is a delay in the final waiver decison without any corresponding benefit to either the debtor or the Government.

In addition, the DCA requires, in the case of offset from salary, that the hearing be conducted by an official outside the supervision and control of the head of the agency. Consequently, the proposed regulations would eliminate OPM's hearing and continue the provision for hearing before the MSPB.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations are on administrative practices that will affect only the Federal Government.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government emplyees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Donald J. Devine,
Director.

PART 831—RETIREMENT

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

1. Paragraph (b)(2) of § 831.109 is revised to read as follows:

§ 831.109 Initial decision and reconsideration.

* * * * *

(b) *Actions covered elsewhere.*

* * * * *

(2) A request for reconsideration of a decision to collect a debt will be made in accordance with § 831.1304(b).

* * * * *

2. Subpart M of Part 831 is revised to read as follows:

Subpart M—Collection of Debts

Sec.
831.1301 Purpose.
831.1302 Scope.
831.1303 Definitions.
831.1304 Processing.
831.1305 Collection of debts.
831.1306 Collection by administrative offset.
831.1307 Use of consumer reporting agencies.
831.1308 Referral for litigation.

Authority: 5 U.S.C. 8347(a).

Subpart M—Collection of Debts

§ 831.1301 Purpose.

This subpart prescribes procedures to be followed by the Office of Personnel Management (OPM), which are consistent with the Federal Claims Collection Standards (FCCS) (Chapter II of Title 4, Code of Federal Regulations), in the collection of debts owed to the Civil Service Retirement and Disability Fund.

§ 831.1302 Scope.

This subpart covers the collection of debts due the Civil Service Retirement Fund, with the exception of the collection of court-imposed judgments, amounts referred to the Department of Justice because of fraud, and amounts collected from back pay awards in accordance with § 550.805(e)(2) of this chapter.

§ 831.1303 Definitions.

For the purposes of this subpart:

"Additional charges" means interest, penalties, and/or administrative costs owed on a debt.

"Annuitant" means a retired employee or Member, spouse, widow, widower, or child receiving recurring benefits under the provisions of subchapter III, chapter 83 of title 5, United States Code.

"Compromise" is an adjustment of the total amount of the debt to be collected based upon the considerations established by the FCCS (4 CFR Part 103).

"Consumer reporting agency" has the meaning provided in 31 U.S.C. 3701(a)(3).

"Debt" means a payment of benefits to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

"Delinquent" has the same meaning provided in 4 CFR 101.2(b).

"FCCS" means the Federal Claims Collection Standards (Chapter II of Title 4, Code of Federal Regulations).

"Offset" means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

"Reconsideration" is the process of reexamining the individual's liability for the debt based on:

(1) Proper application of law and regulation; and

(2) Correctness of the mathematical computation.

"Repayment schedule" means the amount of each payment and number of payments to be made to liquidate the debt as determined by OPM.

"Retirement fund" means the Civil Service Retirement and Disability Fund.

"Voluntary repayment agreement" means an alternative to offset that is agreed to by OPM and includes a repayment schedule.

"Waiver" is a decision not to recover a debt under authority of 5 U.S.C. 8346(b).

§ 831.1304 Processing.

(a) *Notice.* Except as provided in § 831.1305, OPM will, before starting collection, tell the debtor in writing—

(1) The reason for and the amount of the debt;

(2) The date on which the full payment is due;

(3) OPM's policy on interest, penalties, and administrative charges;

(4) If payment in full would create financial hardship and offset is available, the types of payment(s) to be offset, the repayment schedule, the right to request an adjustment in the repayment schedule and the right to request a voluntary repayment agreement in lieu of offset;

(5) The individual's right to inspect and/or receive a copy of the Government's records relating to the debt;

(6) The method and time period (30 calendar days) for requesting reconsideration, waiver, and/or compromise, and, in the case of offset, an adjustment to the repayment schedule;

(7) The standards used by OPM for determining entitlement to waiver;

(8) The right to an evidentiary hearing on a waiver request (if OPM's waiver decision finds the individual liable), in accordance with paragraph (c)(2) of this section; and

(9) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a later timely appeal of a waiver denial to the Merit Systems Protection Board, will stop collection proceedings, unless: (i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of these procedures.

(b) *Requests for reconsideration, waiver, and/or compromise.* (1) A request for reconsideration, waiver, and/or compromise must be postmarked or, if hand delivered, received within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. OPM may extend the time limit for filing when individuals can prove that they were not notified of the time and were not otherwise aware of it, or that they were prevented by circumstances beyond their control from making the request within the time limit.

(2) When a request for reconsideration, waiver, and/or compromise covered by this paragraph is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(3) Individuals requesting reconsideration, waiver, and/or compromise will be given a full opportunity to present any pertinent information and documentation supporting their position.

(4) An individual's request for waiver will be evaluated on the basis of the standards set forth in Subpart N of this part. An individual's request for compromise will be evaluated on the basis of standards set forth in the FCCS (4 CFR Part 103).

(c) *Reconsideration, waiver, and/or compromise decisions.* (1) OPM's decision will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) After consideration of all pertinent information, a written decision will be issued. The decision will state the extent of the individual's liability, and, for waiver and compromise requests, whether the debt will be waived or compromised. If the individual is determined to be liable for all or a portion of the debt, the decision will reaffirm or modify the conditions for the collection previously proposed under § 831.1304(a). The decision will state the individual's right to appeal to the Merit Systems Protection Board as provided by § 1201.3 of the title, and, in the case of a denial of waiver, that a timely appeal will stop collection of the debt.

§831.1305 Collection of debts.

(a) *Means of collection.* Collection of a debt may be made by means of offset, under § 831.1306 or any other statutory provision providing for offset of money due the debtor from the Federal Government, or by referral to the Justice Department for litigation (§ 831.1309). Referral may also be made to a collection agency under the provisions of the FCCS.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the debt in accordance with standards established in the FCCS at 4 CFR 102.13. Additional charges will be waived when required by the FCCS. In addition, such charges may be waived when OPM determines collection would be against equity and good conscience using the standards prescribed in §§ 831.1403 through 831.1405 of this part or when waiver would be in the best interest of the United States.

(c) *Collection in installments.* Whenever feasible, debts will be collected in one lump sum. However, when the debtor is financially unable to pay in one lump sum or fails to respond to a demand for full payment and offset is available, installment payments may be effected. The amount of the installment payments will be set in accordance with the criteria in 4 CFR 102.11.

(d) *Commencement of collection.* (1) Except as provided in paragraph (d)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 831.1304(a)(6) expire or OPM has issued decisions on all timely requests for those rights, and the Merit Systems Protection Board has acted on any timely appeal of a waiver denial, unless (i) failure to make an offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 832.1304 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly and amounts recovered by offset but later found not owned will be refunded promptly.

(2) The procedures identified in § 831.1304 will not be applied when the debt is caused by (i) a retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or (ii) interim, estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the last advance payment, or the date the formal determination is made, whichever is later.

§ 831.1306 Collection by Administrative offset.

(a) *Offset of retirement payments.* A debt may be collected in whole or in part from a lump-sum retirement payment or recurring annuity payments.

(b) *Offset from other payments.* (1) A debt may be offset from other payments due the debtor from other agencies in accordance with 4 CFR 102.3, except that offset from back pay awarded under the provisions of 5 U.S.C. 5596 (and 5 CFR 550.801 *et seq.*) will be made in accordance with § 550.805(e)(2) of this chapter.

(2) When the debtor is an employee, or a member of the Armed Forces or a reserve component of the Armed Forces, OPM may effect collection action by offset of the debtor's pay in accordance with 5 U.S.C. 5514. Due process described in § 831.1304 will apply. The questions of fact and liability, and entitlements to waiver or compromise determined through that process are deemed correct and will not be amended under salary offset procedures. When the debtor did not receive a hearing on the amount of offset under § 831.1304 and requests such hearing, one will be conducted in accordance with Subpart K, Part 550 of this chapter.

§ 831.1307 Use of consumer reporting agencies.

(a) *Notice.* If a debtor's response to the notice described in § 831.1304(a) does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to OPM, and the debtor's rights under § 831.1304 have been exhausted, OPM may report the debtor to a consumer reporting agency. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule may result in a report to a consumer reporting agency. Before making a report to a consumer reporting agency, OPM will notify the debtor in writing that (1) the payment is overdue; (2) OPM intends, after 60 days, to make a report as described in paragraph (b) of this section to a consumer reporting agency; (3) the debtor's right to dispute the liability has been exhausted under § 831.1304; and (4) the debtor may suspend OPM action or referral by paying the debt in one lump sum, or making payments current under a repayment schedule.

(b) *Report.* Whenever a debtor's response to the notice described in paragraph (a) of this section fails to comply with paragraph (a)(4) of this section and 60 days have elapsed since the notice was mailed, OPM may report to a consumer reporting agency that an individual is responsible for an unpaid debt and provide the following information.

(1) The individual's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual.

(2) The amount, status, and history of the debt.

(3) The fact that the debt arose in connection with the administration of the Civil Service Retirement System.

(c) *Subsequent reports.* OMP will undate its report to the consumer reporting agency whenever it has knowledge of events that substantially change the status or the amount of the liability.

§ 831.1308 Referral for litigation.

From time to time and in a manner consistent with the General Accounting Office's and the Justice Department's instruction, OPM will refer certain overpayments to the Justice Department for litigation. Referral for litigation will suspend processing under this subpart.

Subpart P—[Removed]

3. Subpart P is removed and reserved.

§§ 831.1601—831.1605 [Reserved]

[FR Doc. 84-30190 Filed 11-16-84; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 971

[Amdt. 1]

Lettuce Grown in South Texas; Amendment No. 1 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the continuing handling regulation § 971.322 to require city destinations on inspection certificates and release forms. It would help the committee identify markets that would respond most favorably to market development projects. The amendment would promote orderly marketing of lettuce by providing marketing information.

DATES: Comments due December 4, 1984.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Four copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2036.

SUPPLEMENTARY INFORMATION: This proposed rule had been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 144 and Order No. 971 regulate the handling of lettuce grown in designated counties in South Texas. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Lettuce Committee, established under the order, is responsible for its local administration.

Because requirements under this program have been changed infrequently, in October 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting in McAllen, Texas, on October 10, 1984, the committee recommended that the regulation be revised to require that city destinations be shown on inspection certificates and release forms.

In an effort to increase trade awareness of South Texas lettuce in various markets, funds have been allocated to continue promotional and marketing research. The committee believes that requiring city destinations on inspection certificates and release forms should help it to identify markets that would respond favorably to future market development projects.

Although the proposed regulation would be effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division. The Department will evaluate committee recommendations and information submitted by the committee and other available information and determine whether modification, suspension or termination of the regulations on shipments of South Texas lettuce would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 971

Marketing agreements and orders, Lettuce, Texas.

PART 971—LETTUCE GROWN IN SOUTH TEXAS

Section 971.322(c) (46 FR 57024) is hereby proposed to be revised as follows:

§ 971.322 Handling regulation.

* * * * *

(c) *Inspection.* (1) No handler shall handle lettuce unless such lettuce is inspected by the Texas-Federal Inspection Service and an appropriate inspection certificate or release form with city destinations listed has been issued for it, except when relieved of such requirement by paragraph (d) or (e) of this section.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 14, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-30312 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 84–36]

Assessment of Fees; National Banks; District of Columbia Banks

Correction

In FR Doc. 84–30073 beginning on page 45102 in the issue of Wednesday, November 14, 1984, make the following corrections:

1. On page 45104, in the second column, in Table 2, in the second entry of the third column, "$.700" should read "$1,700". The corrected table reads as follows:

TABLE 2—PROPOSAL FOR SEMI-ANNUAL ASSESSMENT SCHEDULE FOR JANUARY 1985

If the bank's total assets (consolidated domestic and foreign subsidiaries) are—		The semi-annual assessment is—		
Over— (million)	But not over— (million)	This amount—	Plus	Of excess over— (million)
0	$1.7	0	0.0001000	0
$1.7	15	$1,700	.0001125	$1.7
15	85	3,263	.0001100	15
85	165	10,963	.0000985	85
165	835	18,843	.0000955	165
835	1,670	82,413	.0000845	835
1,670	5,010	89,948	.0000840	1,670
5,010	16,695	223,568	.0000834	5,010
16,695	33,390	620,878	.0000832	16,695
33,390		1,155,118	.0000821	33,390

2. On page 45105, in Table 4, the column heading "$100,00" should read "$100,000".

§ 8.2 [Corrected]

3. Also on page 45105, in § 8.2(a), in the table, the last entry in columns one, two, and five should each have read "X_n$" and in column three "Y$_n$". The corrected table reads as follows:

If the bank's total assets (consolidated domestic and foreign subsidiaries) are—			The semi-annual assessment is—		
Over— col. A (million)	to	But not over— col. B (million)	This amount— col. C	Plus col. D	Of excess over— col. E (million)
$0		X_1$	0	.0011000	0
X_1$		X$_2$	Y$_1$	.0001125	X_1$
X$_2$		X$_3$	Y$_2$	.0001100	X$_2$
X$_3$		X$_4$	Y$_3$	.0000970	X$_3$
X$_4$		X$_5$	Y$_4$	.0000955	X$_4$
X$_5$		X$_6$	Y$_5$	.0000845	X$_5$
X$_6$		X$_7$	Y$_6$	.0000840	X$_6$
X$_7$		X$_8$	Y$_7$	.0000835	X$_7$
X$_8$		X$_9$	Y$_8$	.0000832	X$_8$
X$_9$			Y$_9$	.0000821	X$_9$

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 41050–4150]

Antidumping and Countervailing Duties

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Import Administration invites proposals from the public on regulatory changes to implement the provisions of the Trade and Tariff Act of 1984 concerning the imposition of antidumping and countervailing duties and to make improvements in the current regulations concerning antidumping and countervailing duties.

DATE: Written comments should be received no later than December 21, 1984.

ADDRESS: Address written comments to Stephen J. Powell, Assistant General Counsel for Import Administration, Room H3622, U.S. Department of Commerce, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce is preparing to revise the regulations in 19 CFR Parts 353 and 355 concerning imposition of antidumping and countervailing duties. The revisions will implement amendments to title VII of the Tariff Act of 1930, as amended, made by title VI of the Trade and Tariff Act of 1984 (Pub. L. 98–573; October 30, 1984) and, as appropriate, will modify the regulations for the purpose of improving administrative efficiency and codifying existing administrative practices.

The Department is issuing this advance notice of proposed rulemaking to enable the public to offer written suggestions for the proposed rule. The formal notice of proposed rulemaking is expected to be published in February 1984, followed by an additional period for comments by the public.

Authority: 5 U.S.C. 301; 19 U.S.C. 1303 and 1671–1677g, as amended by the Trade and Tariff Act of 1984 (Title VI of Pub. L. 98–573; October 30, 1984).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30256 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. 79P–0197]

New Animal Drug Requirements for Medicated Free-Choice Feeds

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the new animal drug requirements for medicated blocks to revise the approval requirements for use of new animal drugs in medicated blocks and other medicated free-choice feed products. The proposal is based on FDA's evaluation of the current regulatory requirements in light of a citizen petition filed jointly by the American Feed Manufacturers Association (AFMA) and the Animal Health Institute (AHI). The proposal would add a new optional method, within the framwork of existing requirements, for submitting data to the agency. It would not impose additional requirements.

DATE: Written comments on or before January 18, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard P. Lehmann, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3134.

SUPPLEMENTARY INFORMATION: In a citizen petition dated June 6, 1979, AFMA and AHI requested that FDA regulate medicated blocks and similar articles as medicated feeds rather than as new animal drugs. By letter dated March 12, 1980, FDA denied the citizen petition. On May 23, 1980, AFMA and AHI petitioned for reconsideration. After reconsidering the matter, FDA is issuing this proposal to grant the substance of the relief requested.

AFMA and AHI asked FDA to recognize that medicated block, liquid feed supplements, and similar "free-choice" articles are, under the provisions of the Federal Food, Drug, and Cosmetic Act (the act), "animal feeds bearing or containing new animal drugs" rather than "new animal drugs" and thus should be regulated as medicated feeds.

Section 510.455 (21 CFR 510.455) states that, in view of questions about the safety and effectiveness of drugs administered in medicated blocks, medicated blocks constitute new animal drugs. The petition contended that the agency has no legal authority to regulate medicated blocks under section 512(b) of the act (21 U.S.C. 360b(b)). It stated that a feedblock that does not contain medication meets the statutory definition of "animal feed" under section 201(x) of the act (21 U.S.C. 321(x)) because the blocks are "intended for use as a substantial source of nutrients in the diet of the animal," even if not intended to be the sole ration. Under section 201(w) of the act, a new animal drug includes drugs intended for use in feed, but does not include the animal feed. Thus, the petition contended that only the drug substance and not the entire medicated feedblock could be a "new animal drug."

The petition suggested specific approval requirements for medicated blocks and other medicated free-choice feeds under section 512(m) of the act. It further suggested eliminating the requirement of a new animal drug application (NADA) under section 512(b) of the act for the finished feed, while retaining this requirement for the drug substance. The petition recognized that use of medicated free-choice feeds pose questions not posed by other medicated feeds about composition of the feed and stability and consumption of the drug product in the animal feed. It stated, however, that the information necessary to respond to these questions could be submitted in medicated feed applications and that drug sponsors and feed manufacturers are willing to provide those data. The petition stated that the drug manufacturer and medicated feed applicant would each supply some of the data for each particular type of final formulation, demonstrating that a safe and effective dose of the drug would be provided by that particular free-choice product, and suggested the use of master files to permit each manufacturer to retain the confidentiality of its data.

The agency has reconsidered the petition. Although FDA continues to believe that in light of questions about safety and effectiveness it does have authority to regulate medicated blocks under section 512(b) of the act, it has concluded that the revisions suggested by AFMA and AHI would simplify the approval process in a manner consistent with the act and regulations. Accordingly, FDA proposes to grant in substance the relief sought.

The proposal set forth below would give an additional option to a drug sponsor. The existing regulation now allows two options. A drug sponsor may submit an NADA for a drug amenable to free-choice administration as a dosage form product under 21 CFR Part 520. Such an approved NADA would not provide a basis for the approval of medicated feed applications.

Alternatively, a sponsor may submit an NADA or supplemental NADA to provide for the manufacture of a finished free-choice feed under 21 CFR Part 558. Such supplemental NADA's are to contain safety and effectiveness data, including consumption and stability data, regarding free-choice administration of the new animal drug in specific products. These data can be generated and submitted by the drug manufacturer. The formula for the product is then published under 21 CFR Part 558 and provides a basis for approval of medicated feed applications that conform to the formula. The manufacturer of a free-choice feed product can also generate some or all of these data. In that case, the data can be incorporated into the supplemental NADA by reference to a master file submitted by the free-choice feed manufacturer.

The new option provides for the submission of data in a master file by a free-choice feed manufacturer as previously described. However, individual free-choice product formulations and product-specific data then would appear only in the master file of the appropriate feed manufacturer and would remain as confidential proprietary information belonging to that manufacturer.

Following approval of the NADA or initial supplemental NADA demonstrating that a new animal drug is suitable for free-choice administration in a particular product, a regulation or an amendment to an existing regulation in Part 558 would be published providing for such use. The regulation would state that free-choice administration of the new animal drug would be limited to specific uses in products covered by approved supplemental NADA's. A statement that the drug is approved for use only in specific free-choice products would be published as a part of the regulation.

A medicated feed application submitted for a free-choice product would have to contain, in relevant part, the exact formula of the product to be manufactured. It would be approved if (1) the formula is the same as the one for which acceptable data have been submitted in a master file by the medicated feed applicant, and use of the new animal drug in the formula was approved in a supplemental NADA that references the master file; or (2) the medicated feed applicant has provided written authority to reference a master file that has acceptable data for the formula in question and use of the new animal drug in the formula was approved in a supplemental NADA that references the master file.

Compared with the existing regulation, the proposal would provide greater flexibility to medicated block manufacturers. Although the existing regulation gives the new animal drug manufacturer the option of submitting an NADA for the manufacture of a medicated premix for the subsequent manufacture of a medicated block, in its Guidelines for the Manufacture and Control of Medicated Blocks issued January 1978, FDA's Center for Veterinary Medicine interpreted § 510.455 as requiring the publication of the exact formula of the finished medicated block. AFMA and AHI contend that manufacturers of medicated blocks need to protect the confidentiality of their data; otherwise, manufacturers will have no incentive to develop such data. Under the proposal, these data could remain as proprietary information of the finished medicated feed manufacturer.

FDA is concerned that variations in the formula of free-choice products may have an effect on their consumption and thus on the amount of drug consumed. If a drug product has been shown to be safe and effective for free-choice administration at a given level or a range of levels (usually this would be accomplished by the drug sponsor), approval for use in a free-choice product having a different formulation could be obtained by demonstrating that the new formulation is consumed at a rate that is consistent with the original approval and that the drug is stable in the new formulation. This approval would be accomplished, as described above, by filing a supplemental NADA providing for the free-choice administration of the new animal drug in the new formulation.

Section 510.455 now covers only medicated blocks. The proposal would also provide for other methods for free-choice administration, such as mineral mixes and liquid feed tank supplements ("lick tank" supplements) containing one or more animal drugs. The manufacture of such products will become subject to the current good manufacturing practice regulations for medicated feeds. In addition, the current regulation includes in paragraph (e) certain transitional provisions including time frames for the submission of information and data which have since expired. Therefore, the provisions of this paragraph are removed.

The petition asked FDA to revoke its existing Guidelines for the Manufacture and Control of Medicated Blocks and to adopt new guidelines suggested in the petition. If the proposal is adopted as a final rule, FDA will at that time consider adopting revised guidelines.

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rule is not a major rule as defined by that Order. The basis for this determination is that the proposal would not impose any additional requirements for approval of new animal drugs for medicated free-choice feeds containing new animal drugs. It would only provide for a new optional method for submitting and referencing data.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal would be to reduce regulatory burdens currently affecting both large and small businesses. FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

Paperwork Reduction Act of 1980

Section 510.455(e) of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

PART 510—NEW ANIMAL DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 510 be amended by revising § 510.455, to read as follows:

§ 510.455 New animal drug requirements regarding free-choice administration in feeds.

(a) For the purpose of this section, free-choice administration of animal drugs in feeds involves feeds that are placed in feeding or grazing areas and are not intended to be consumed fully at a single feeding or to constitute the entire diet of the animal. Such methods of administering drugs include medicated blocks (agglomerated feed compressed into a solid mass and cohesive enough ot hold its form), mineral mixes, and liquid feed tank supplements ("lick tank" supplements) containing one or more animal drugs. The manufacture of medicated free-choice feeds is subject to the current good manufacturing practice regulations for medicated feeds.

(b) The Food and Drug Administration has concluded that there are questions about the safety and effectiveness of drugs when administered free-choice in feeds. Therefore, such methods of administration cause the drugs so administered to constitute new animal drugs, for which approved new animal drug applications (NADA's) are required. (See § 510.3(i).)

(c) An NADA or supplemental NADA for products for free-choice feeding submitted for approval under section 512(b) of the act should provide for:

(1) The manufacture of a finished product for the free-choice administration of a new animal drug. Such an approval will not provide a basis upon which an application can be approved under section 512(m) of the act; or

(2) The manufacture of a new animal drug premix for use in the subsequent manufacture of a free-choice medicated animal feed. The approved NADA will provide a basis upon which an application can be approved under section 512(m) of the act. Data for a specific free-choice product may, if desired, be generated and submitted to the Food and Drug Administration by the manufacturer of the free-choice feed in the form of a master file, which can be referenced in the NADA or supplemental NADA submitted by the new animal drug sponsor.

(d) Approval of the NADA or supplemental NADA submitted under paragraph (c) of this section will be reflected in a regulation in Part 558 of this chapter published under section 512(i) of this act. The regulation will either state the formulation of the approved free-choice product or specify the specific free-choice administration products in which the drug is approved for use. If the approval is for a premix, the regulation in Part 558 of this chapter will indicate that each use of the premix in a free-choice product must be the subject of an approved supplemental NADA.

(e) An application under 512(m) of the act to provide for manufacture of a specific free-choice feed from an approved premix may be submitted and will be approved if, in addition to the information required by the medicated feed application, it includes a reference to the exact formula of the product to be manufactured as follows:

(1) The formula is the same as the one published in the new animal drug regulation; or

(2) The data in a master file have been referenced in an NADA or supplemental NADA; and

(3) Use of the premix in the specific formulation has been approved on the basis that:

(i) The formula is the same as the one for which acceptable data have been submitted in a master file by the medicated feed applicant; or

(ii) The medicated feed applicant has provided written authority to reference a master file that has acceptable data for the formula in question.

Interested persons may, on or before January 16, 1985, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 11, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-30197 Filed 11-16-84; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816, 817 and 855

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of Public Comment Period, Announcement of a Public Meeting and Public Hearing, Cancellation of Public Hearings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) announces a public meeting on November 26, 1984 in Hearing Room C, House Office Building, 16th & Water

Streets, Olympia, Washington at 3:00 p.m., Pacific Standard Time (PST), and a public hearing on November 27, 1984 in Hearing Room C, House Office Building, 16th & Water Streets, Olympia, Washington at 10:00 a.m., PST, to receive testimony on OSM's proposed blaster certification program.

The proceedings at both the public meeting and the public hearing will be transcribed and placed in the administrative record. OSM also extends the comment period on the proposed rule until November 30, 1984. OSM cancels previously announced public hearings in Washington, Denver and Knoxville.

DATES: The public meeting will be held on November 26, 1984 at 3:00 p.m., Pacific Standard Time (PST). The public hearing will be held on November 27, 1984 at 10:00 a.m., PST. The comment period on the proposed rule is extended to 5:00 p.m. PST on November 30, 1984.

ADDRESS: Written Comments must be mailed to:

Administrative Record Room (Blaster Certification), Office of Surface Mining, P.O. Box 1420, Mills, Wyoming 82644

or hand-delivered to:

Office of Surface Mining, Freden Building, 835 Pendell Boulevard, Mills, Wyoming 82644.

FOR FURTHER INFORMATION CONTACT: James Kress, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-5361 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: On September 11, 1984, OSM published the proposed rule "Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program: Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands." 49 FR 35714. This rule proposes to revise 30 CFR Parts 816 and 817 and to add a new rule at 30 CFR Part 850. The proposed rule is needed to comply with 30 CFR 850.12, which requires that each regulatory authority promulgate a blaster certification program for surface coal mining operations.

The proposed rule included several erroneous dates which were corrected in a notice published September 25, 1984 (49 FR 37641). The corrected notice established a comment period closing November 27, 1984, and announced public hearings in Washington, D.C., Denver, and Knoxville. The notice also provided that OSM would hold hearings in nine additional States upon request, and would cancel any among the Washington, Denver and Knoxville hearings for which no requests to testify were received.

OSM received no request by the stated deadline to testify at the Washington, Denver, or Knoxville hearings. Therefore, all three are cancelled.

The Washington Irrigation and Development Company (WIDCO) requested both a public hearing and a public meeting in Washington. OSM will hold the public meeting at 3:00 p.m., PST, on November 26, 1984, in Hearing Room C, House Office Building, 16th & Water Streets, Olympia, Washington. OSM will hold the public hearing at the same location begining at 10:00 a.m., PST, on November 27, 1984. The proceedings at both the public meeting and the public hearing will be transcribed and placed in the administrative record for this rulemaking.

OSM received no requests to hold public hearings in the other eight States; thus, none will be held.

In order for all persons to have the opportunity to submit comments, and to enable OSM to give public notice of the Olympia hearing required under 30 CFR 736.12(b), OSM is extending the comment period on the proposed rule until 5:00 p.m., PST, on November 29, 1984.

Dated: November 13, 1984.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 84-30215 Filed 11-16-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDS-84-05]

Drawbridge Operation Regulations: Northeast River, Castle Hayne, NC

AGENCY: Coast Guard. DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is considering amending the regulations that govern the operation of the drawbridge across the Northeast River, mile 27.0 at Castle Hayne, North Carolina. The request is for 4 hours advance notice for draw openings at all times. This proposal is being made because of a significant decrease in draw openings over the past two years. The closing of a cement plant upstream of the bridge is the primary factor in the lack of demand for draw openings. In 1982 the bridge opened 186 times, in 1983 38 times, and it opened only 10 times between January and August of 1984. Approval of this request would allow the railroad to remove its bridge tender from the current 40 hour weekly attendance and probably still provide for the reasonable needs of navigation.

DATE: Comments must be received by December 19, 1984.

ADDRESS: Comments, if any, will be available for review from 8 A.M. to 4:30 P.M. Monday through Friday at Room 609, Fifth Coast Guard District, 431 Crawford Street, Portsmouth Virginia, 23705-5004.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify this proposed rule by Docket Number or bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The rule may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received and it is determined that an opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafter of this notice is W.J. Creed, Project Officer.

Discussion of Proposed Rule: The railroad made the request to open the bridge on 4 hours advance notice because of a significant decrease in water traffic over the past two years. The main reason for the decrease in water traffic is closing or a cement plant that was located upstream of the bridge. This cement plant has been permanently closed and the cement producing machinery has been dismantled and sent to an inland site. Therefore, the prospect for this cement plant reopening is nil. This fact, together with the fact that the bridge has opened only 10 times over the first eight months of 1984 gives rise toward a conclusion that the needs of navigation can be reasonably met by opening the bridge on 4 hours advance notice.

Economic Assessment and Certification: This proposed regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, the proposed regulation is considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation of the proposal has not been conducted because the expected economic impact is so minimal as to not warrant the evaluation. In accordance with section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is also certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—[AMENDED]

Proposed Regulation: In consideration of the foregoing, the Coast Guard proposes to revise § 117.829 of Title 33, Code of Federal Regulations to read as follows:

§ 117.829 Northeast River.

The draw of the Seaboard System Railroad bridge across the Northeast River, mile 27.0, at Castle Hayne, North Carolina shall open signal if at least 4 hours notice is given.

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46 (c)(5); 33 CFR 1.05-1(g)(3))

Dated: October 30, 1984.

James C. Irwin,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 84-30271 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Parts 126 and 160

[CGD 84-039]

Radioactive Materials

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal solicits public comment on a change to regulations defining the terms "cargo of particular hazard" and "certain dangerous cargo". This action is necessary because the term "large quantity" radioactive shipment used in these definitions was deleted in a recent change to 49 CFR Parts 171 through 178. The intended effect of the proposed regulations is to substitute the new term "highway route controlled quantity" for the obsolete term "large quantity".

DATE: Comments must be submitted on or before January 3, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC) (CGD 84-039), U.S. Coast Guard, Washington, D.C. 20593. The comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC), Room 2110, Coast Guard Headquarters Building, 2100 2nd St. SW., Washington, D.C. Normal working hours are between 7:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Copies of the environmental assessment may also be inspected or copied at that address or obtained by a written request to the same address. To expedite processing, it is asked that requests for the environmental assessment not be included in the comments submitted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Environment and Systems, telephone 202-426-1450. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 84-039) and the specific proposals of this notice to which their comments apply, and give reasons for each comment. If acknowledgement is desired, a self-addressed, stamped post card should be enclosed. All comments received before expiration of the comment period will be considered before final action is taken on this proposal.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Lieutenant Ellis H. Davison, II, Project Manager, of the Office of Marine Environment and Systems, and Mr. Michael N. Mervin, Project Counsel, of the Office of Chief Counsel.

Background

On March 10, 1983 the Research and Special Programs Administration (RSPA) of the Department of Transportation published a final rule in the Federal Register (48 FR 10218) making a number of changes in the regulations governing shipment of radioactive materials. These changes were intended to maintain consistency between U.S. regulations and those of the International Atomic Energy Agency. Regulations contained in 49 CFR Parts 173 and 176 apply to marine-mode transportation of hazardous materials, and are cross-referenced in the Coast Guard's definitions of "cargo of particular hazard" (33 CFR 126.10) and "certain dangerous cargo" (33 CFR 160.203).

Two changes in 49 CFR Part 173 affect 33 CFR 126.10(c) and 33 CFR 160.203. The "Fissile Class III" package classification now appears in 49 CFR 173.455(a)(3), rather than 49 CFR 173.389(a)(3). In addition to renumbering the section, there are minor editorial changes.

The other change, from the term "large quantity" to "highway route controlled quantity", is a change in substance as well as terminology. Under the previous regulatory scheme the "large quantity" classification entailed additional packaging and handling requirements for radioactive materials. The use of operational controls has essentially been abandoned in the U.S. as well as world-wide. The package itself must be capable of maintaining its integrity without human intervention. The only remaining use for the term "large quantity" involved rules governing highway routing. For these reasons the term was changed to "highway route controlled". In addition, the technical classification system for radionuclides used previously for "large quantity", the "transport group" system, was changed to the "A_1/A_2" system for the new "highway route controlled quantity". The A_1/A_2 criteria were selected to duplicate the previous criteria as closely as practicable while establishing a more uniform level of safety.

The Coast Guard proposes retaining highway route controlled quantities of radioactive materials as cargoes of particular hazard and certain dangerous cargoes. Ports are frequently near major population centers and the restrictions applied to cargoes of particular hazard and certain dangerous cargoes provide a margin of safety similar to RSPA highway route restrictions.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. RSPA expects (48 FR 10221) that some "special form radioactive materials" (Defined in 49 CFR 173.403(z)), previously large quantity radioactive materials, will not be highway route controlled quantity radioactive materials. These materials therefore would not be cargoes of particular hazard and certain dangerous

cargoes under the proposed rule. RSPA further expects that some normal form alpha-emitting nuclides that were not previously large quantity radioactive materials will be highway route controlled quantity radioactive materials. These materials would become cargoes of particular hazard and certain dangerous cargoes under the proposed rule. The Coast Guard expects that the net result of these countervailing effects would be either a small net cost reduction or a small net cost increase under the proposed rules, and, in any case, a minimal economic impact.

Regulatory Flexibility Act Certification

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. As noted above, the changes would be countervailing and the net economic impact of the proposed regulations on waterfront facilities, both "large" and "small", would be minimal.

Environmental Assessment

Because of the small volume of radioactive materials shipped and the rarity of incidents involving radioactive material, the proposed change would have little or no effect on the environment. According to the U.S. Army Corps of Engineers report, *Waterborne Commerce of the United States*, radioactive materials accounted for 531,600 of the 20,111,500,000 short tons, or .003%, of cargo shipped by water in the U.S. between 1971 and 1981. They accounted for .06% of the 851,585,415 tons of chemicals over this period. For the same period, RSPA's Hazardous Materials Incident Reporting System (HMIRS) shows two incidents involving radioactive materials out of the 257 involving waterborne transportation of hazardous materials, of which one occurred in the United States.

These incidents involved a total of 3 pounds of radioactive materials, or .00008% of the approximately 4,890,000 pounds of hazardous materials involved in incidents reported in the HMIRS over that period. Although there is not enough data for any kind of statistical significance, the proportion of radioactive materials spilled, 1,000 times less than the proportion of radioactive materials shipped, appears to indicate that the previous regulatory system functioned well. The proposed action would be an improvement to this system.

An environmental assessment and a Finding of No Significant Impact have been prepared and are available as detailed under **ADDRESSES** above.

List of Subjects

33 CFR Part 126

Hazardous materials transportation, Harbors, Cargo vessels, Marine safety.

33 CFR Part 160

Hazardous materials transportation, Harbors, Cargo vessels, Marine safety, Navigation (water).

PART 126—[AMENDED]

In consideration of the preceding, it is proposed to amend Chapter I, Title 33 of the Code of Federal Regulations as follows:

1. By revising § 126.10(c) of Subchapter L to read as follows:

§ 126.10 Cargo of particular hazard.

* * * * *

(c) Highway route controlled quantity radioactive material, as defined in 49 CFR 173.403(l), or Fissile Class III shipments of fissile radioactive material, as defined in 49 CFR 173.455(a)(3).

* * * * *

PART 160—[AMENDED]

2. By revising § 160.203(c) of Subchapter P to read as follows:

§ 160.203 Definitions.

* * * * *

(c) Highway route controlled quantity radioactive material, as defined in 49 CFR 173.403(l), or Fissile Class III shipments of fissile radioactive material, as defined in 49 CFR 173.455(a)(3).

* * * * *

(33 U.S.C. 1225, 1231; 49 CFR 1.46(n)(4))

Dated: November 13, 1984.

J.W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 84-30273 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPTS-820040; TSH-FRL 2584-2]

Chemical Information Rules; Additional Automatic Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Toxic Substances Control Act section 8(a) Preliminary Assessment Information rule. The rule currently provides that all chemicals and mixtures designated by the Interagency Testing Committee (ITC) for testing consideration by the EPA within 12 months will be made subject to reporting by their manufacturers under the rule without separate proposal and comment. Chemicals are added to the rule by the Agency at the same time the ITC report is published. The amendment being proposed today would extend this automatic reporting provision to include those chemicals recommended by the ITC but not designated for action by the Agency within 12 months.

DATE: Comments on this proposal must be submitted on or before January 18, 1985.

ADDRESS: Written comments must bear the document control number OPTS-82004O. Submit an original plus two copies to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460

All written comments filed under this notice will be available for public inspection in Rm. E-107 at the address given above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION

I. Introduction

The Preliminary Assessment Information rule, issued by EPA and published in the **Federal Register** of June 22, 1982 (47 FR 26992), requires chemical manufacturers to complete EPA Form No. 7710-35 on selected chemicals and to submit the reports to the Agency. The rule is contained in 40 CFR Part 712. Form No. 7710-35 requires that manufacturers report general production, use and exposure information on chemicals listed in 40 CFR 712.30. On May 11, 1983 (48 FR 21294), the Agency amended this rule to provide for the addition to the rule's reporting requirements, without additional proposal and comment, of those chemical substances and mixtures designated for 12-month Agency response by the Interagency Testing Committee. Upon receipt of each ITC report, the Agency will issue a regulation adding the chemicals to 40 CFR 712.30 and requiring the submission of EPA Form No. 7710-35 on the designated substances. Manufacturers must report within 90 days of the publication of each regulation.

The Agency is proposing today that chemicals recommended by the ITC but not designated for 12-month response also be made subject to the Preliminary Assessment Information rule without individual proposal and comment.

At this time, the Agency is also proposing similar automatic reporting requirements for non-designated ITC recommendations under the TSCA section 8(d) Health and Safety Data Reporting rule. Under that rule, persons are required to submit unpublished health and safety studies on chemical substances and designated mixtures which are listed in 40 CFR 716.17.

II. Need for Automatic Reporting

Within one year after the ITC designates a chemical substance or mixture for testing, EPA must initiate rulemaking to require testing under section 4 of TSCA or publish its reasons for not initiating rulemaking. The Agency needs preliminary assessment information to supplement available data for evaluating the need and basis for requiring additional testing. Further, this information is needed by the Agency in evaluating existing or future test data on the chemical by providing a preliminary basis for evaluating the likelihood that human or environmental exposures may achieve levels found to cause adverse effects in tests.

The Agency needs the preliminary assessment information quickly for designated chemicals in order to meet the statutorily mandated 12-month decision point. For this reason, the Agency issued the amendment, which was published in the **Federal Register** of May 11, 1983 (48 FR 21294), providing for addition to the rule without individual proposal and comment all chemicals designated by the ITC for 12-month response by the Agency.

During the later stages of development of that amendment, the ITC in its Eleventh Report added to its priority list six substances but did not designate them for EPA response within one year. This was the first time the ITC had recommended substances without designating them for a 12-month response period. The previously proposed amendment for automatic reporting on designated substances did discuss the possibility of automatic reporting for substances recommended but not designated for 12-month response. The Agency is now proposing for comment the automatic addition to the rule of recommended (non-designated) substances.

The Agency believes that automatic addition of ITC chemical substances and mixtures that are recommended but not designated by the ITC to the Preliminary Assessment Information rule will benefit both industry and EPA and will provide valuable information to the Agency in a timely manner.

III. Rationale for Automatic Reporting

A. Efficiency

In the past, the ITC has issued their reports containing designated substances on a regular and predictable time schedule which allows companies to plan their reporting activities for certain times of the year. Similarly, EPA can plan resource allocations for the processing and analysis of these reports when they are received.

Although non-designated chemicals may be included in future ITC reports along with designated chemicals, reporting by companies to the Agency may not occur at the same time, if EPA decides to propose reporting requirements for these substances, receive comment, and then promulgate a separate rule amendment. That is, at the time the ITC issues a report, the Agency will simultaneously add the designated chemicals to the final 8(a) rule, but only propose the non-designated chemicals for reporting. Thus, for one ITC report which contains both designated and non-designated chemicals; industry would be reporting at two different times; coincident with the ITC report publication for the designated chemicals and later for the non-designated chemicals. Since the Preliminary Assessment Information rule asks for the most current data when reporting, if a manufacturer decided to collect data for both the designated and non-designated chemicals at the same time, there is a possibility that the non-designated information could be outdated by the time reporting was required for those chemicals. Assuming that the ITC continues to recommend designated and non-designated chemicals twice a year, industry would have to plan for four data collection and reporting periods per year.

Reporting on designated and non-designated chemicals at the same time may save companies some start-up costs. Fixed costs are estimated to account for approximately half of the reporting cost for companies submitting Preliminary Assessment Information Reports (EPA Form No. 7710-35). [See preamble to the Preliminary Assessment Information rule, 47 FR 26992). One part of these fixed costs is associated with the time a company must allot for determining whether it produces a listed chemical and at which site. Some large companies which produce many products have indicated to the Agency that this search for production records accounted for a large part of their costs in reporting. Those companies, and others like them, will save money by collecting and reporting information to the Agency on both designated and non-designated chemcials at the same time.

Another part of this fixed cost is the time and effort needed for companies to familiarize those personnel who will complete the form with the requirements of the rule. If companies must report at different times for designated and non-designated chemicals, they may be unable to assign the same person to reporting activities for each amendment. Thus, the cost for instructing a new person may be incurred for companies which must report twice, rather than once, for a given ITC report.

The requirement for automatic reporting on both designated and non-designated ITC substances will also be a more efficient use of Agency resources. With automatic reporting on non-designated substances, the Agency will also be relieved of the additional cost associated with four additional rulemakings per year (two for proposals and two for final amendments adding these chemicals to the Preliminary Assessment Information rule). The savings to the Agency is estimated to be about $40,000.

The Agency requests comment on whether the relative burden of reporting on non-designated substances added automatically is less than reporting for these chemicals added through notice and comment.

B. Concurrent Analysis

In some cases, the Agency will be considering designated and non-designated members of a category concurrently. When the Agency is evaluating data on these related substances it will need information on all of the substances, whether or not they have been designated by the ITC. The Agency believes that it would be inefficient to have separate testing negotiations or rulemakings on different chemically-related substances that in all likelihood pose similar testing issues. Therefore, to make the best use of its resources, EPA prefers to consider designated and non-designated substances together.

The ITC's Tenth and Eleventh Reports (47 FR 22585 and 47 FR 54626) have already produced a situation of separate reporting on both non-designated and designated substances from the same category. In its Tenth Report, the ITC

designated 1,2,4-trimethylbenzene, while in its Eleventh Report the ITC recommended but did not designate mixed trimethylbenzenes, 1,2,3-trimethylbenzene, and 1,3,5-trimethylbenzene. Of the three domestic manufacturers of these substances (as determined from the TSCA Inventory), one manufacturer produced three of the substances (one designated and two non-designated), the second company manufactured two of the substances (one designated and one non-designated), and the remaining manufacturer produced only the designated member. Thus, for the first two companies, reporting at different times of the year would eliminate the efficiencies of reporting on the designated and non-designated substances at the same time.

C. Opportunity for Withdrawing Chemicals

Although this proposed regulation does not provide for notice and comment on the addition of ITC-recommended chemicals to the rule, the proposal will amend the rule to allow persons to submit requests for the removal of specific chemicals. Firms choosing to submit a request for the removal of a chemical added through the automatic mechanism should promptly submit to the Agency its reasons for that removal. The chemical may then be withdrawn from the rule at the Agency's discretion, for good cause. The Agency will issue a rule amendment for publication in the **Federal Register** when withdrawing a chemical from the rule. This amendment will remove the chemical from the reporting requirements of 40 CFR 712.30 and provide the reasons for that removal. A similar provision is being proposed today for addition to the section 8(d) rule.

Further, EPA's experience with both the section 8(a) and 8(d) rules has shown that despite adding many chemcials to the rules in the past, (section 8(a) 47 FR 27013, section 8(d) 47 FR 38780) very few of the comments received by the Agency directly questioned the appropriateness of a particular substance being subject to the rule. Not one of these comments subsequently led to the exclusion of an ITC chemical from the rule.

Finally, because of the ITC's chemical selection process, there is little likelihood that a substance will be recommended for testing that is no longer manufactured or imported, or has not been for many years, or is manufactured solely for use as a pesticide, food, or drug. Thus, the necessity of removing chemicals from the rule for any of the above reasons will be extremely remote.

In conclusion, EPA believes that amending the Preliminary Assessment Information rule to provide for automatic reporting on chemicals recommended but not designated by the ITC:

(1) Is necessary and will lead to an improved system of gathering information needed to evaluate such recommendations and the risks posed by those chemicals.

(2) Will reduce reporting costs for industry and processing costs for the Agency.

(3) Will still permit subject companies the opportunity to convince the Agency that reporting on particular chemicals may not be necessary.

IV. Chemical Limit

The Office of Management and Budget (OMB) during its review of this rule under Executive Order 12291 and the Paperwork Reduction Act suggested that the Agency put a numerical limit on the number of recommended chemicals, categories of chemicals and designated mixtures that would be subject to automatic reporting under sections 8(a) and 8(d) in any one year. EPA agreed to consider such a numerical limit since EPA's current capacity for evaluating candidates for the initiation of test rules is limited. If that limit is exceeded, the Agency will be unable to proceed with its evaluation of testing candidates in a timely manner. Further, with such a backlog information collected by EPA under sections 8(a) and 8(d) on those additional chemicals may go unused. This would result in an unnecessary reporting burden for the public and would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection;

Section 4(e)(1)(A) of TSCA permits the ITC to designate for EPA's response no more than 50 chemicals, designated mixtures and categories of chemicals per year. This limit was set by Congress in recognition of the excessive burden that adding too many chemicals would place on both EPA and the public. It thus is reasonable to conclude that EPA cannot practically and effectively use section 8(a) and 8(b) reported information on more than 50 chemicals per year. It is therefore proposed that a limit of 50 should apply to automatic reporting of all chemicals, designated mixtures and categories of chemicals, whether designated or merely recommended for testing by the ITC. This limit could be exceeded if necessary to obtain reporting on designated chemicals, but no automatic reporting would be required on recommended chemicals unless the total was less than 50 in any year.

In the event that the ITC designates and recommends a total of more than 50 chemicals, designated mixtures and categories of chemicals in a year, EPA could still require reporting on all of them. All of the designated chemicals could be listed for automatic reporting. The Agency could require automatic reporting on the recommended chemicals until the overall limit of 50 was reached; it could require reporting on the remainder by rulemaking if it believes it can effectively and promptly evaluate the reported data.

EPA has included language in § 712.1 of the proposed rule limiting the number of chemicals subject to automatic reporting. The Agency requests comment on whether such a limit should apply, what level it should be at, and how it should apply to designated and recommended chemicals.

V. Who Must Report

Persons subject to the Preliminary Assessment Information rule as specified in 40 CFR 712.20 and 712.25. Additional descriptions were published in the **Federal Register** of June 22, 1982, (47 FR 26992).

Generally, a manufacturer (or an importer) must submit a Preliminary Assessment Information Manufacturer's report (EPA Form No. 7710-35) for each subject chemical he manufactures. If he manufactures a chemical at more than one site, he would submit a form for each site.

A manufacturer is exempt from reporting if he qualifies as a small business by meeting the following two criteria during the reporting period: total annual parent company sales below $40 million, and total production of the listed chemical at the site below 45,000 kilograms. Also, companies with total annual sales below $4 million are exempt from reporting regardless of how much of the chemical is manufactured. EPA has separately proposed a generic definition of small manufacturers for TSCA section 8(a) rules published in the **Federal Register** of June 23, 1982 (47 FR 27206). If the final generic small manufacturers definition is issued before this rule is final, EPA plans to apply the generic definition to reporting under this rule. The Agency will periodically change the dollar values in this generic standard, if necessary, to reflect inflation.

VI. Release of Aggregate Data

For this amendment, the Agency will follow the procedures for release of aggregate data and exemption requests from release of aggregate statistics described in the Rule Related Notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). As described in that notice, the Agency must receive a request for an exemption from release of aggregate data no later than the end of the reporting period.

VII. Economic Impact

The cost estimates of this proposal are based largely on methods and data developed for the original section 8(a) Preliminary Assessment Information rule. Some of the parameters used were revised as necessary to update costs to current levels.

Although the ITC in its Eleventh Report added six recommended but not designated chemicals to its priority list, three of those chemicals were actually suggested for testing in the Tenth Report. The Agency has assumed that a maximum of three chemicals will be recommended but not designated in each future ITC report. No chemicals were recommended but not designated in the ITC's Twelfth or Thirteenth Reports.

Assuming that two ITC reports will be issued each year, a total of six chemicals are assumed to be recommended but not designated in those reports. It is expected that for each chemical listed, approximately one manufacturer would be producing the substance and be required to report. The Agency expects 12 reports to be submitted from six to eight sites for chemicals that may be recommended but not designated each year by the ITC. The small manufacturer exemption will eliminate reporting by approximately one manufacturer and one to two sites (16 percent reduction) and reduce the number of reports submitted by two (20 percent reduction). A net total of about five to seven plant sites will be affected each year by amendments adding non-designated ITC chemicals and a maximum of about 10 reports will be expected per year for non-designated chemicals.

The current cost estimates are as follows:

Fixed costs: (cost of becoming familiar with the regulation and identifying which chemicals to report) = $590 per plant site

Variable Costs: (cost of completing the form, certification requirements, etc.) = $520 per report

Projected maximum annual reporting costs for chemicals recommended but not designated in future ITC reports are:

10 reports @ $520/report = $5,200

+5 to 7 familiarization cases @ $590/case = $2,950–$4,130

Yearly total = $8,150–$9,330

The corresponding maximum industry reporting burdens are:

Familiarization: 18 hours x 5 to 7 sites = 90–126

Reporting: 16 hours x 10 reports = 160

Total = 250–286 hours per year

Average burden-hours per site = 41–50

Average burden-hours per firm = 50–57

It is difficult to estimate the cost savings of one-time reporting for companies which produce both designated and non-designated substances from the same category that appear on the same ITC report. However, in such cases those manufacturers' reporting costs will be considerably reduced due to built-in efficiencies of reporting for both at the same time. (This assumes that manufacturers otherwise would not collect information on both types of chemicals at the same time since reporting periods may vary and the Agency requires manufacturers to report their most current information.) Also, by only listing ITC substances twice a year as compared to four times a year manufacturers will save the additional resources required in searching the list of subject chemicals and determining which, if any, of these chemicals they manufacture.

Maximum EPA data processing costs for chemicals recommended but not designated for 12-month Agency response are expected to be:

$80 per report × 10 reports/year = $800 year.

The elimination of separate proposed and final amendments adding non-designated chemicals to the Preliminary Assessment Information rule will reduce the Agency's costs as follows:

	Cost per person-month	Person-months per rulemaking	Cost per rule
Managerial	$10,643	.25	$2,711
Professional	8,434	.75	6,325
Clerical	3,614	.25	904
Total			9,941

Thus, promulgation of this amendment will save the Agency up to $40,000 per year by eliminating two proposed and two final amendments per year.

VIII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

IX. Public Record

The public record for this proposed rulemaking is a continuation of the record (OPTS–82004) for the Preliminary Assessment Information rule published in the June 22, 1982, issue of the **Federal Register** (47 FR 26992). All documents, including the index to this public record, are available for inspection in the OPTS Reading Room, Rm. E–107, 401 M St. SW., Washington, D.C., from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this proposed rule. The Agency will supplement the record with the following types of additional information as it is received.

1. All comments on this proposed amendment.

2. All relevent support documents and studies.

3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

5. Any factual information considered by the Agency in developing the rule.

6. Reports Impact Analysis for 40 CFR Part 712 and this rulemaking.

7. Tenth through Thirteenth Reports of the ITC; 47 FR 22585 (Tenth Report) 47 FR 54628 (Eleventh Report), 48 FR 24443 (Twelfth Report) and 48 FR 55674 (Thirteenth Report).

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and that date. The final rule will also permit persons to point out any errors or omissons in the record.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy.

This amendment was submitted to the OMB for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the record for this rulemaking.

B. Regulatory Flexibility Act

This amendment will not have a significant economic impact on small entities. Consistent with the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, small manufacturers have been defined and excluded from manufacturer reporting requirements.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

(Sec. 8(a), Pub. L. 94–469, 90 Stat. 2003 (15 U.S.C. 2607(a)))

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Reporting and recordkeeping requirements.

Dated: November 2, 1984.

William D. Ruckelshaus,

Administrator.

PART 712—[AMENDED]

Therefore, it is proposed that 40 CFR Part 712 be amended as follows:

1. In § 712.1 by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 712.1 Scope and compliance.

* * * * *

(b) Chemical substances, categories of chemicals and designated mixtures which have been recommended by the Interagency Testing Committee for testing consideration by the Agency but not designated for Agency response within 12 months, will be added to § 712.30(c) only to the extent that the total number of such chemicals has not exceeded 50 in any one year.

2. In § 712.30 by revising paragraph (c) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(c) Chemical substances, categories of chemicals, and designated mixtures that have been added by the Interagency Testing Committee, established under section 4 of TSCA, to the section 4(e) Priority List for testing consideration by the Agency, will become subject to this subpart 30 days after EPA lists the chemical substances or mixtures in the Federal Register. A Preliminary Assessment Information—Manufacturer's Report must be submitted for each chemical substance and mixture within 60 days after the effective date of the listing. At the discretion of the Assistant Administrator for Pesticides and Toxic Substances, a listed substance may be withdrawn, for good cause, from the rule's reporting requirements prior to the effective date. Any information submitted showing why a substance(s) or designated mixture(s) should not be subject to the rule must be received by EPA within 14 days after the date of publication of the notice under this paragraph. If a substance or designated mixture is removed, a Federal Register notice announcing this decision will be published no later than the effective date of the amendment. Any information submitted must be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, ATTN: 8(a) Auto-ITC.

* * * * *

[FR Doc. 84–30228 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 716

[OPTS–84010; FRL 2584–3]

Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal would amend the automatic reporting provision of the Health and Safety Data Reporting rule under section 8(d) of the Toxic Substances Control Act (TSCA) (40 CFR Part 716 Subpart A) published on September 2, 1982 (47 FR 38780). The amendment will change 40 CFR 716.18(b), to require without separate proposal and comment reporting of unpublished health and safety studies on chemicals recommended for testing by the Interagency Testing Committee (ITC) but not designated for action by EPA within 12 months. Two other amendments are also included. One would allow for the removal of ITC-recommended chemicals by the Assistant Administrator for Pesticides and Toxic Substances before the effective date of an amendment adding ITC-recommended chemicals to the section 8(d) rule. The other amendment would modify the procedures for requesting reporting deadline extensions.

DATE: Comments on this proposal must be submitted on or before January 18, 1985.

ADDRESS: Written comments must bear the document control number OPTS–84010. Submit an original plus two copies to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

All written comments filed under this notice will be available for public inspection in Rm. E–107 at the address given above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA issued a rule under section 8(d) of TSCA (40 CFR Part 716 Subpart A) published in the Federal Register of September 2, 1982 (47 FR 3870) which requires persons to submit unpublished health and safety studies on chemicals listed in § 716.17. The Agency will use the studies to support its investigations of the risks posed by chemicals, and, in particular, to support its decisions whether to require industry to test chemicals under section 4 of TSCA.

Persons subject to section 8(d) must submit copies of studies in their possession and lists of studies ongoing at the time of submission, or known to but not possessed by the submitter. Persons who are manufacturing or processing a chemical at the time it is listed in the rule, or are proposing to do so, are required to submit both copies and lists of studies for that chemical. Persons subject to the rule must submit lists of studies initiated within three years after a chemical is added to the rule. If a study is listed by a company, that company must submit a copy of the study within 30 days of its completion.

The September 2, 1982 rule required reporting on chemcials recommended for testing by the Interagency Testing Committee in its First through Fifth Reports and a few other chemicals which were being reviewed by EPA. The Agency also included in that rule a provision for automatically making subject to the rule chemicals recommended for testing by the ITC and designated for twelve-month Agency response. Thus, every time the ITC designates a substance in one of its reports, the Agency will automatically add the substances to § 716.17(b) of the rule and require reporting within 90 days. Non-ITC chemicals are added to the rule after publication in the Federal Register of a notice of proposed amendment of § 716.17. There will be a 30-day public comment period on the notice; after consideration of the comments, a final amendment will identify the substances and mixtures added.

On September 2, 1982, EPA also proposed to amend § 716.17 by adding the chemicals designated for priority testing by the ITC in its Sixth through Tenth Reports (47 FR 38780). On March 30, 1983 (48 FR 13178) the final amendment adding these chemicals to the rule was published in the Federal Register.

Subsequent to publication of the original 8(d) rule, the Agency has used the automatic reporting provision described above to add chemicals designated by the ITC in its Eleventh, Twelfth and Thirteenth Reports (47 FR 54624, 48 FR 24386, 48 FR 55581.)

In addition to the chemicals designated by the ITC in its Eleventh Report, the ITC also added to its priority list six substances which it did not designate for EPA response within one year. This was the first time the ITC had recommended substances without designating them for 12-month response period. Although the language in § 716.18(b) does not specifically limit the Agency to only including designated substances, EPA will propose for public comment the automatic addition to the rule of recommended (non-designated) substances.

The Agency believes that automatic addition to the section 8(d) rule of chemical substances and mixtures that are recommended but not designated by the ITC will benefit both industry and EPA and will provide valuable information to the Agency in a more timely manner.

At this time, the Agency is also proposing similar automatic reporting requirements for non-designated ITC recommendations under the TSCA section 8(a) Preliminary Assessment Information rule. Under that rule, persons are required to report general production, use and exposure information to the Agency on chemicals listed in § 712.30.

II. Rationale for Automatic Reporting

A. Efficiency

In the past, the ITC has issued their reports containing designated substances on a regular and predictable time schedule which allowed companies to plan their reporting activities for certain times of the year. Similarly, EPA plans resource allocations for the processing and analysis of these reports when they are received.

Although non-designated chemicals may be included in future ITC reports along with designated chemicals, reporting by companies to the Agency may not occur at the same time, if EPA decides to propose reporting requirement for the non-designated substances, receive comment, and then promulgate a separate rule amendment adding these chemicals. That is, at the time the ITC issues a report, the Agency will simultaneously add the designated chemicals to the final 8(d) rule, but only propose the non-designated chemicals for reporting. Thus, for one ITC report which contains both designated and non-designated chemicals, industry would be reporting at two different times; coincident with the ITC report publication for the designated chemicals and later for the non-designated chemicals. Some companies may not search for studies on non-designated chemicals at the time the ITC recommends them because there is a chance that the Agency may never require reporting on them. Assuming that the ITC continues to recommend designated and non-designated chemicals twice a year, industry would have to plan for four file searches and reporting periods per year. The Agency believes that requiring automatic reporting on ITC non-designated chemicals is justified from an efficiency (resource) standpoint for the Government and industry. Respondents to the section 8(d) rule generally consist of a core group of companies that are large and are actively engaged in testing the chemicals they manufacture or process. Also, many of these companies have established procedures for responding to future additions of chemicals to the rule which usually occurs twice per year—approximately May and November. EPA believes that it would be less efficient for such companies to conduct four file searches per year instead of the two under the automatic provision. As will be discussed below, EPA would much prefer not to promulgate each section 8(d) amendment for non-designated chemical long after receipt of the ITC report because of the long delay in receiving studies essential to our assessment process.

The Agency requests comment on whether the relative burden of reporting on non-designated substances added automatically is less than reporting for these chemicals added through notice and comment.

B. Concurrent Analysis

In some cases, the Agency will be considering designated and non-designated members of a category concurrently. When the Agency is evaluating data on these related substances it will need information on all of the substances, whether or not they have been designated by the ITC. The Agency believes that it would be inefficient to have separate testing negotiations or rulemakings on different chemically-related substances that in all likelihood pose similar testing issues. Therefore, to make the best use of its resources, EPA prefers to consider designated and non-designated substances together.

The ITC's Tenth and Eleventh Reports (47 FR 22585 and 47 FR 54628) have already produced a situation of separate reporting on both non-designated and designated substances from the same category. In its Tenth Report, the ITC designated 1,2,4-trimethylbenzene, while in its Eleventh Report the ITC recommended but did not designate mixed trimethylbenzenes, 1,2,3-trimethylbenzene, and 1,3,5-trimethylbenzene. The section 8(d) reporting requirement for 1,2,4,-trimethylbenzene became effective on March 30, 1983 (48 FR 13178) while that for the other non-designated trimethylbenzene became effective on January 13, 1984 (49 FR 1696). Of the three domestic manufacturers of these substances (as determined from the TSCA Inventory), one manufacturer produced three of the substances (one designated and two non-designated), the second company manufactured two of the substances (one designated and one non-designated), and the remaining manufacturer produced only the designated member. Thus, for the first two companies, reporting at different times of the year eliminated the efficiencies of reporting on the designated and non-designated substances at the same time.

C. Opportunity for Withdrawing Chemicals

Although this proposed regulation does not provide for notice and comment on the addition of ITC-recommended chemicals to the rule, the proposal will amend the rule to allow persons to submit requests for the removal of specific chemicals. Firms choosing to submit a request for the removal of a chemical added through the automatic mechanism should promptly submit to the Agency its reasons for that removal. The chemical may then be withdrawn from the rule at the Agency's discretion, for good cause. The Agency will issue a rule amendment for publication in the **Federal Register** when withdrawing a chemical from the rule. This amendment will remove the chemical from the reporting requirements of the rule and provide the reasons for that removal.

Some possible reasons for removal could include: (1) The chemical is no longer manufactured and has not been for the last five years; (2) it is used entirely as a food, drug, or pesticide; or (3) some other factor exists that would clearly warrant the removal of the chemical from the rule. Any information submitted must be received by EPA within 14 days after the date of publication in the **Federal Register** of the amendment adding the chemical to the 8(d) rule. Based on the submitted information, the Assistant Administrator for Pesticides and Toxic Substances could revoke the reporting requirement for that chemical at his or her discretion. If a chemical is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment. This notice will explain why the chemical was removed.

Further, because of the ITC's chemical selection process, there is little likelihood that a chemical will be recommended for testing that is no longer manufactured or imported, or has not been for many years, or is manufactured solely for use as a pesticide, food, or drug. Thus, the necessity of removing chemicals from the rule for any of the above reasons will be extremely remote.

In conclusion, EPA believes that amending the section 8(d) rule to provide for automatic reporting on chemicals recommended but not designated by the ITC:

(1) Is necessary and will lead to an improved system of gathering information needed to evaluate such recommendations and the risks posed by those chemicals.

(2) Will reduce reporting costs for industry and processing costs for the Agency.

(3) Will still permit subject companies the opportunity to convince the Agency that reporting on particular chemicals may not be necessary.

III. Chemical Limit

The Office of Management and Budget (OMB) during its review of this rule under Executive Order 12291 and the Paperwork Reduction Act suggested that the Agency put a numerical limit on the number of recommended chemicals, categories of chemicals and designated mixtures that would be subject to automatic reporting under sections 8(a) and 8(d) in any one year. EPA agreed to consider such a numerical limit since EPA's current capacity for evaluating candidates for the initiation of test rules is limited. If that limit is exceeded, the Agency will be unable to proceed with its evaluation of testing candidates in a timely manner. Further, with such backlog information collected by EPA under sections 8(a) and 8(d) on those additional chemicals may go unused. This would result in an unnecessary reporting burden for the public and would be "of no practical utility" to the Agency, thus violating the Paperwork Reduction Act's standards for information collection.

Section 4(e)(1)(A) of TSCA permits the ITC to designate for EPA's response no more than 50 chemicals, designated mixtures and categories of chemicals per year. This limit was set by Congress in recognition of the excessive burden that adding too many chemicals would place on both EPA and the public. It thus is reasonable to conclude that EPA cannot practically and effectively use section 8(a) and 8(d) reported information on more than 50 chemicals per year. It is therefore proposed that a limit of 50 should apply to automatic reporting of all chemicals, designated mixtures and categories of chemicals, whether designated or merely recommended for testing by the ITC. This limit could be exceeded if necessary to obtain reporting on designated chemicals, but no automatic reporting would be required on recommended chemicals unless the total was less than 50 in any year.

In the event that the ITC designates and recommends a total of more that 50 chemicals, designated mixtures and categories of chemicals in a year, EPA could still require reporting on all of them. All of the designated chemicals could be listed for automatic reporting. The Agency could require automatic reporting on the recommended chemicals until the overall limit of 50 was reached; it could require reporting on the remainder by rulemaking if it believes it can effectively and promptly evaluate the reported data.

EPA has included language in § 716.1 of the proposed rule limiting the number of chemicals subject to automatic reporting. The Agency requests comment on whether such a limit should apply, what level it should be at, and how it should apply to designated and recommended chemicals.

IV. Additional Amendment

The Agency is also amending the section 8(d) rule by modifying § 716.14(c). This section provides for extensions to reporting deadlines. The section would be changed to require that extension requests must be postmarked on or before 40 days after the effective date of the listing of a chemical in § 716.17. EPA believes that this change is needed so that EPA staff will have adequate time to process the requests and notify each requester of the Agency's decision. Also, the extension requests must be addressed to the Office Director, Office of Toxic Substances, who will grant or deny the requests.

V. Who Must Report

Persons subject to the section 8(d) Health and Safety Data Reporting rule as specified in 40 CFR 716.4(b). Additional descriptions were published in the **Federal Register** of September 2, 1982 (47 FR 38780).

Generally, a person who manufactures or processes a chemical or designated mixture listed in § 716.17 at the time it is listed, or who has done so during the previous ten years, must comply with this rule.

VI. Confidentiality

A person submitting a health and safety study may claim all or part of the study confidential. However, health and safety information about a chemical that has been offered for commercial distribution or is subject to testing under section 4 or notice under section 5 can be withheld from disclosure only to the extent that disclosure would reveal (1) processing information and (2) percent composition of mixtures, or contains information the disclosure of which would clearly be an unwarranted invasion of the personal privacy (such as individual medical records), as provided in 5 U.S.C. 552(b)(6). EPA intends to vigorously challenge claims of confidentiality for health and safety studies that do not meet these standards.

VII. Economic Impact

The impact of this amendment, in terms of cost savings afforded firms now conducting separate rule reviews and file searches for designated and non-designated ITC chemicals, is derived below. In making these estimates, it is assumed that the ITC recommends but does not designate three chemicals in each of its two semi-annual reports. Furthermore, based on data for past ITC recommendations on designated chemicals it is estimated that compliance with the rule for these six chemicals will require approximately 30 firms to conduct a rule review. Of these 30 firms, about 16 will have studies on the subject chemicals to submit.

Cost of eliminating duplicative compliance steps are as follows:

A. Corporate rule review: 2 hours/firm × $70/hour managerial time × 30 potential respondent firms = $4,200/yr.

B. Corporate review (site identification): 3 hours/firm × $70/hour managerial time × 16 potential respondent firms = $3,360/yr.

C. File searches: 6 hours/site × $45/hour technical time × 16 potential respondent firms × 1.5 sites/firm = $6,480/yr.

Total savings = about $14,000/yr.

Savings per affected firm: $878.

These figures may overstate the effects of this amendment since some firms may already be evaluating both classes of ITC chemicals concurrently. However, since it is impossible to know how many firms are doing this versus waiting for the notice-and-comment process on non-designated chemicals, the total of $14,000 can be considered a reasonable upper bound on the annual cost savings which may accrue to affected firms if this amendment is adopted.

After considering these savings, the total cost to industry of reporting will be:

(1) *Title Listing*—(Assuming one list per respondent and one hour of effort at $18 per hour) 16 lists × 1 hr./list × $18/hr. = $288.

(2) *Photocopying (materials)*—(Based on past averages of 22 studies per chemical and 50 pages per study) 6 chemicals × 22 × 50 pages × $.05/page = $330.

Photocopying (labor)—(Assume $18 per hour to copy and one half hour of labor per study) 6 chemicals × 22 × $18/hr. × 0.5 hr./study = $1,188.

(3) *Managerial Review*—(Assume one hour/study at $70 per hour) 6 chemicals × 22 × $70 × 1 = $9,240.

(4) *Ongoing Reporting*—(Assume 20 percent of respondents prepare submissions; labor = $70, time = 2 hrs. per submission) 16 respondents × .2 × $70 × 2 = $448.

(Ongoing reporting effective for three years) $448 × 3 = $1,344.

Total Cost to Industry = $12,388.

The proposal benefits the EPA since it will eliminate the need for a notice-and-comment rulemaking process twice per year for non-designated ITC chemicals. This will eliminate the need for four separate rulemaking efforts per year, i.e., two proposals and two final rules for section 8(d) reporting on non-designated chemicals. We estimate that each effort requires a total of three weeks of professional time, one week of managerial time, and one week of clerical time. Resource savings are estimated as follows:

	Cost per person-month	Person-month per rulemaking	Cost per rulemaking
Managerial	$10,843	.25	$2,711
Professional	8,434	.75	6,326
Clerical	3,614	.25	904
(Total)			9,941

Thus, promulgation of this amendment will save the Agency up to $40,000 per year by eliminating two proposed and two final amendments per year.

VIII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

IX. Public Record

EPA has established a public record (docket number OPTS–84010) for this proposed rulemaking document which, along with a complete index, is available for inspection in Rm. E–107, 401 M St., SW., Washington, D.C., 20460, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this proposed rule. The Agency will supplement the record with additional information as it is received. The record includes the following categories of information.

1. Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 084003.

2. Reports Impact Analysis for 40 CFR Part 716 and this rulemaking.

3. Tenth through Thirteenth Reports of the ITC; 47 FR 22585 (Tenth Report) 47 FR 54626 (Eleventh Report), 48 FR 24443 (Twelfth Report) and 48 FR 55674 (Thirteenth Report).

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and such designation. The final rule will also permit persons to point out any errors or omissions in the record.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a Regulatory Impact Analysis. EPA has determined that these amendments are not major because they do not have an effect of $100 million or more on the economy. They are expected to decrease the annual cost of compliance. They do not have a significant effect on competition, cost, or prices.

These amendments were submitted to OMB for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

These amendments will not have a significant economic impact on a number of small entities. They do not affect the size of the potential universe of respondents. The effects on small entities of reporting under the section 8(d) rule were discussed in the preamble to the September 2, 1982 rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

(Sec. 8(d), Pub. L. 94–469, 90 Stat. 2003 (15 U.S.C. 2607(d)))

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous

materials, Imports, Reporting and recordkeeping requirements.

Dated: November 2, 1984.

William D. Ruckelshaus,

Administrator.

PART 716—[AMENDED]

Therefore, it is proposed that 40 CFR Part 716 be amended as follows:

1. In § 716.1 by redesignating existing paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 716.1 Scope and compliance.

* * * * *

(b) Chemical substances, categories of chemicals and designated mixtures which have been recommended by the Interagency Testing Committee for testing consideration by the Agency but not designated for Agency response within 12 months, will be added to § 716.18 only to the extent that the total number of designated and recommended chemicals has not exceeded 50 in any one year.

* * * * *

2. In § 716.14, by revising paragraph (c) to read as follows:

§ 716.14 Reporting schedule.

* * * * *

(c) Respondents who cannot meet a deadline under this section may apply for a reasonable extension of time. Requests for extensions must be addressed to: Director, Office of Toxic Substances (TS–792), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attn: Section 8(d) extension. Extension requests must be postmarked on or before 40 days after the effective date of the listing of a chemical or designated mixture in § 716.17. The Office Director will grant or deny extension requests.

3. In § 716.18, by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 716.18 Additions to lists of chemicals and designated mixtures to which this subpart applies.

* * * * *

(b) Except as provided in paragraph (c) of this section, chemicals, categories of chemicals, and designated mixtures that have been added to the TSCA section 4(e) Priority List by the Interagency Testing Committee, established under section 4 of TSCA, will become subject to this Subpart 30 days after publication of a notice to that effect in the **Federal Register.**

(c) Prior to the effective date of an amendment under paragraph (b) of this section the Assistant Administrator for Pesticides and Toxic Substances may for good cause withdraw a chemical or designated mixture from the rule's reporting requirements. Any information submitted showing why a chemical or designated mixture should not be subject to the rule must be received by EPA within 14 days after the date of publication of the notice under paragraph (b) of this section. If a chemical or designated mixture is removed, a **Federal Register** notice announcing this decision will be published no later than the effective date of the amendment under paragraph (b) of this section. Any information submitted must be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances, (TS–793), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attn: 8(d) Auto-ITC.

[FR Doc. 84–30224 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 799

[OPTS–42062; TSH–FRL 2690–3]

2-(2-Butoxyethoxy) Ethyl Acetate; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: On November 8, 1983, The Interagency Testing Committee (ITC) designated 2-[2-Butoxyethoxy)ethyl acetate, CAS No. 124–17–4, also known as diethylene glycol butyl ether acetate (DGBA), for priority testing consideration for reproductive effects, subchronic toxicity, and toxicokinetic studies. EPA is issuing this ANPR under section 4(a) of the Toxic Substances Control Act (TSCA) to (1) inform the public that EPA is expanding the scope of this rulemaking to include diethylene glycol butyl ether (DGBE), CAS No. 112–34–5; (2) define the testing EPA is considering proposing for both chemicals; and (3) seek public comment on EPA's plan to propose a test rule for these chemicals. This action constitutes EPA's response to the ITC for DGBA.

DATE: Written comments should be submitted on or before January 18, 1985.

ADDRESS: Written comments should bear the document control number [OPTS–42062] and should be submitted in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E–108, 401 M Street SW., Washington, D.C. 20460.

The public record supporting this action is available for inspection in Room E–107 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room E–542, 401 M Street SW., Washington, D.C. 20460, Toll Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the U.S.A.: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION: The Interagency Testing Committee (ITC) in its Thirteenth Report to the Administrator, published in the **Federal Register** of December 14, 1983 (48 FR 55674), designated that DGBA be given priority consideration for health effects testing.

I. Background

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC to designate to EPA a list of chemicals to receive priority consideration for testing under section 4(a) of TSCA. EPA is required to respond within 12 months of the date of designation, either by initiating rulemaking under section 4(a) or publishing in the **Federal Register** reasons for not doing so.

The ITC designated DGBA for priority testing consideration in its Thirteenth Report. The specific designation was alkyloxyethylene acetates and included two chemical substances, DGBA and ethylene bis(oxyethylene) diacetate. The ITC recommended that both chemicals be tested for toxicokinetics, subchronic toxicity, and reproductive effects. The Agency is responding to the ethylene bis(oxyethylene) diacetate designation in a separate notice.

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities,

and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine whether there is substantial production and significant or substantial exposure or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, EPA can require testing under section 4(a)(1)(B) whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information. EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations concerning DGBA, EPA considered all available relevant information, including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and published and unpublished data available to the Agency, including information submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716).

II. Response of EPA to the ITC

EPA has reviewed the ITC's report, the data upon which its testing recommendations were based, and information obtained from EPA's own information-gathering activities. The Agency has previously indicated that although it would generally initiate rulemaking for testing through publication of a proposed rule, it may in certain instances such as chemical categories and certain complex chemicals initiate action through publication of an advance notice of proposed rulemaking, as it is doing in this case. There are a number of reasons why the Agency has chosen to initiate rulemaking for DGBA and DGBE by issuing this ANPR.

First, rather than just responding to the ITC designation of DGBA alone, EPA is expanding this rulemaking proceeding by including a second chemical substance (DGBE). Addition of DGBE to this rulemaking has resulted from the Agency's review of information concerning both chemical substances, which are members of a larger chemical category—the glycol ethers. This review has led the Agency to conclude that both DGBA and DGBE are likely to have similar toxicological effects. Both DGBA and DGBE have similar acute and subchronic toxicity and both chemical substances affect the renal system in rats (see Unit III. E below). In addition, the acetate esters of other glycol ethers (methyl and ethyl ethylene glycols) have been shown to produce effects identical to their corresponding ethers (Ref. 7). Moreover, the ITC's concern for DGBA's potential to cause reproductive effects, which was based on an analogy to the effects of certain glycol ethers, also applies to DGBE (See Unit III. E). Finally, DGBE is believed to have similar or greater consumer and occupational exposures than DGBA (see Unit III. D). Thus, the Agency believes that DGBE and DGBA (which is the acetate ester of DGBE) should both be included in this TSCA section 4(a) rulemaking proceeding.

Second, expansion of this rulemaking to include DGBE has raised difficult scientific and policy issues that the Agency believes necessitate early public comment through this ANPR. For example, based upon information on structural analogs, DGBA is believed to rapidly metabolize to DGBE. If this is the case, it may be necessary to require testing of only DGBE because toxicological data on DGBE may allow EPA to predict the risks of human exposure posed by both DGBA and DGBE (see Unit V). The submission of early public comment on this issue will assist the Agency in ensuring that any proposal which the Agency issues will provide for only that testing which is necessary to reasonably determine or predict the health effects of DGBA and DGBE.

Finally, the manufacturers and/or importers of DGBE (who were notified of the Agency's concern in April 1984 (Ref. 16), recently submitted a number of studies on the toxic effects of DGBE. The Agency is still reviewing these studies and, because they were submitted only recently, EPA could not make a final assessment of whether the studies are adequate to evaluate the toxicological effects of DGBE and possibly DGBA prior to its statutory deadline for issuing this response to the ITC designation of DGBA. Issuance of this ANPR both initiates the section 4(a) rulemaking process and provides the public with an early opportunity to comment on the issue of whether these studies will provide sufficient data to reasonably determine or predict the health effects of concern not only for DGBE but also for the ITC-designated chemical substance DGBA.

III. General Information

A. Chemical Description

DGBE and DGBA are colorless, relatively nonpolar liquids with faint, sweet orders. A summary of the physical properties of DGBE and DGBA is presented in the table below. The chemicals are excellent solvents and cosolvents for high molecular weight resins (Ref. 10).

PHYSICAL PROPERTIES OF DGBE AND DGBA [1]

Property	DGBE	DGBA
Density (g per ml)	0.948	0.981
Molecular weight (g per mole)	162.3	204.3
Freezing point (°C)	−68.0	−32
Boiling point (°C)	230.4	245.6
Vapor pressure at 25°C (mm Hg)	0.043	<0.01
Flash point open cup (°C)	200.6	240.

[1] (Ref. 8).

B. Manufacturing

DGBE is manufactured by reacting n-butyl alcohol with ethylene oxide. DGBA is manufactured by reacting DGBE with acetic anhydride. Both chemicals are produced in enclosed processes with all waste streams recycled. DGBE is produced or imported by eight companies (Ref. 19). Production of DGBE in 1981 and 1982 was 50 and 48

million pounds, respectively (Ref. 11). DGBA is produced by only one company, Tennessee Eastman at Kingsport, Tennessee. Current production is confidential, but is in the range of 1 to 10 million pounds per year (Ref. 2).

C. Use

DGBE and DGBA are found in a number of industrial and consumer products. DGBE and DGBA are used in inks and industrial coatings as solvents and carriers. Unlike the lower molecular weight glycol ethers which rapidly evaporate, DGBE and DGBA serve to slow the rate of evaporation (Ref. 10). Inks and coatings containing DGBE and DGBA are usually oven dried (Refs. 2 and 20). DGBE and DGBA are also used as coalescing agents in consumer latex paint at concentrations of 0.5 to 3 percent by weight (Refs. 5, 12, and 21). Coalescing agents are compounds added to latex paints to act as plasticizers for the latex polymer. Plasticizers soften the colloidal latex particles and allow them to merge and form a uniform film upon drying. Coalescing agents slowly volatilize from paint over several days following application (Ref. 12). DGBE and DGBA also serve as solvents in the manufacture of microelectronics (Ref. 3).

DGBE is also used as a diluent in brake fluids, and as a component of cutting oils (Ref. 10), and in a number of consumer and industrial products including metal cleaners, paint removers, stamp pad inks, floor cleaners and floor wax strippers, floor finishes, spray cleaners, and penetrating oils (Ref. 6).

D. Potential Exposure

EPA believes at the present time that the largest exposures to DGBE and DGBA will occur from their use as coalescing agents in latex paints and as solvents in consumer products. Exposures during manufacture and processing are believed to be low. Actual chemical production occurs only a few weeks per year and in enclosed processes. They are used in low concentrations in various products and their low vapor pressure minimizes their potential for inhalation exposure in other uses (Refs. 2, 5 and 6).

A study of coalescing agents indicates that DGBE and DGBA will be slowly released from latex wall paint to the air over several days following application (Ref. 12). While DGBA and DGBE have low vapor pressures, releases of the glycol ethers from the large surface areas of painted walls are estimated to result in concentrations of 1 to 5 parts per million (ppm) in consumers' homes. Consumers exposed to these levels are estimated to receive doses of 1 to 10 milligrams per kilogram per day (mg/kg/day). While consumers would be exposed to these levels for only a few days per year, painters would be exposed each workday (Ref. 9).

The estimated dosage from dermal exposure to DGBE and DGBA in latex paint is believed to be much less than that by inhalation. While painters and consumers received significant dermal exposure to latex paints, dermal contact with DGBE and DGBA in the paints is expected to be minimal. Both compounds are reported to partition into the latex polymer particles from the solvent portion of latex paints; as a result, they would be relatively unavailable for dermal absorption (Ref. 12).

DGBE is also used in a wide variety of commercial and consumer products. Some commercial products have considerable dermal exposure, such as cutting fluids and brake fluids. Consumer products containing DGBE such as cleaners, waxes, and penetrating oils also have potential for dermal exposure. Levels of DGBE in commercial products is not known, but DGBE is present in consumer products at levels up to 10 percent (Ref. 6).

E. Health Effects

Little toxicological information has been found on DGBE and DGBA. DGBE and DGBA have relatively low acute toxicities with the rat oral median lethal doses (LD_{50}s) greater than 5,000 milligrams per kilogram (mg/kg). At doses slightly less than the LD_{50}, DGBE has been reported to cause narcosis (Ref. 8). In rabbits, dermal LD_{50}s differ from oral LD_{50}s by a factor of only two, indicating that both chemicals are absorbed through the skin (Refs. 1 and 15). The chemicals are relatively nonirritating to the skin and eye (Refs. 1 and 8). The limited subchronic data indicate that in rats, oral doses of 500 to 1,000 mg/kg/day of either chemical affect the renal system, causing degeneration of the kidney tubules (Refs. 1 and 4). DGBA has also been reported to cause hematuria (Ref. 1).

DGBE and DGBA are also suspected of causing reproductive and other effects based upon analogy to other glycol ethers, and to ethylene glycol butyl ether (EGBE) in particular. EGBE has been reported to cause teratogenic and fetotoxic effects, renal toxicity, hematuria, and hemolysis (erythrocyte fragility) (Ref. 13).

Erythrocyte fragility has been reported as the lowest observed effect for EGBE with an inhalation no-observed-effect concentration of 32 ppm (Ref. 14). No information has been found on the mutagenicity and oncogenicity of DGBA and DGBE.

EPA has no information on the environmental effects of DGBE and DGBA. The ITC had no concerns over DGBA's environmental effects due to its predicted rapid degradation in the environment. Based upon its own analysis, the Agency agrees with the ITC that DGBA will rapidly degrade (Ref. 18). The Agency also believes that DGBE will degrade in a similar manner to DGBA (Ref. 17).

IV. Tentative EPA Decision

A. Preliminary Finding

At this time, EPA believes that DGBE and DGBA may meet the criteria for a finding under section 4(a)(1)(B)(i) of TSCA. This belief is based upon the potential for substantial human exposure presented in Unit III. D above. EPA also believes that DGBA and DGBE may meet the criteria for a finding under section 4(a)(1)(A)(i) for hematological effects. EGBE, a close analog to DGBA and DGBE, is reported to have a no-observed-effect level for hematological effects close to the levels estimated for exposures from latex paint (Ref. 14). The Agency believes that the available data may be inadequate to reasonably determine or predict the health effects of these chemicals and that testing is necessary to develop such data.

B. Testing Under Consideration

In order to assess the potential hazards of DGBE and DGBA, EPA is considering proposing testing DGBE and DGBA for the following effects: Subchronic toxicity (including neurotoxic and behavioral toxicity and renal and hematological effects), developmental effects, reproductive toxicity, mutagenicity and carcinogenicity. The subchronic toxicity testing is being considered on the basis of the lack of no-observed-effect levels for the reported renal effects. Testing for developmental, hematological, and reproductive effects is based upon analogy to the effects of other glycol ethers. Neurotoxic effects testing is based upon the narcosis reported for DGBE (See Unit V. 4 below). Evidence of mutagenicity and carcinogenicity have not been reported nor is EPA aware of any evidence of these effects in other glycol ethers. However, because of the specific emphasis TSCA places upon carcinogenicity and mutagenicity, the Agency is proposing mutagenicity testing with oncogenicity testing if the mutagenicity testing is positive.

At the present time, EPA is considering requiring the following test program for both compounds. A 90-day subchronic oral study would be performed with a complete histopathology of reproductive organs including: ovaries, testes, uterus, cervix and vagina, epididymides, seminal vesicles, and prostate and pituitary glands. Effects observed in these organs would trigger a requirement for full reproductive effects testing. Neurotoxicity and behavioral toxicity testing would also be performed on the test animals. As part of the 90-day subchronic study, a satellite group is proposed to evaluate hematological effects. Hematological testing would consist of serial sacrifices with blood counts, measurements of blood chemistry, and bone marrow studies over the first 2 weeks of dosing. This schedule is being considered because of the transitory blood effects reported for EGBE (Ref. 13). Developmental effects testing by the oral route would be required as would a tiered mutagenicity test sequence. Positive findings in certain mutagenicity tests would lead to further mutagenicity testing and, in some cases, to carcinogenicity testing. EPA is also considering requiring comparative pharmacokinetics for the inhalation and oral routes of exposure to allow an evaluation of the effect of the route of exposure upon the effects of DGBA and DGBE.

V. Issues for Comments

1. EPA requests comments on the testing program set forth in this advance notice for DGBE and DGBA.

2. EPA is considering testing of only DGBE if DGBA can be shown to rapidly metabolize to DGBE. Is such an approach appropriate for these two substances? If so, what testing is necessary to demonstrate that this metabolism occurs and to permit the use of DGBE test data in assessing the risks of exposure to DGBA?

3. EPA is considering proposing testing for toxic effects by oral administration of doses while the major route of exposure for DGBE and DGBA will be inhalation and to a lesser extent dermal contact. EPA recognizes the toxicological problems in extrapolation of dose response data from one route of exposure to another. However, the Agency believes that the low vapor pressures of DGBE and DGBA may prevent inhalation dosing of the animals at levels sufficient to reliably evaluate the chemicals' toxic effects. EPA requests comments and information on the effect of the route of administration on the toxicology of these chemicals.

4. EPA is considering requiring neurotoxicity testing for DGBA and DGBE. Neurotoxicity testing is being considered because of the report that DGBE caused narcosis when administered at doses near the acute LD_{50}, and also because another glycol ether, ethylene, glycol methyl ether, has been reported to cause neuropathy in workers (Ref. 6). However, DGBE and DGBA have not been reported to cause neurotoxic effects when tested at lower doses for longer periods of time (Refs. 1 and 4). Further, ethylene glycol ethyl and butyl ethers, which are structurally closer to DGBE and DGBA then ethylene glycol mehtyl ether, do not cause neuropathy. EPA recognizes that consumer and commercial exposures from latex paints result in doses several orders of magnitude below the levels of DGBE reported to cause narcosis, but in the absence of test data, the Agency is reluctant to conclude that the substances are unlikely to present unreasonable risks of neurotoxicity. EPA is therefore requesting comments on the need for neurotoxicity testing.

VI. Development of Rulemaking

After reviewing the ITC report and other available information, EPA believes that there is sufficient reason to proceed with the development of a test rule for DGBE and DGBA. A bibliography of all published and unpublished studies received by the Agency is available for review as part of the public record (see Unit VII below). In publishing this ANPR, EPA wishes to receive comments on the testing being considered and the basis for requiring that testing.

The Agency will analyze all comments, production and use patterns, available data, and other relevant issues raised on comments on this ANPR.

VII. Public Record

EPA has established a public record for this ANPR, docket number [OPTS-42062]. The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notice containing the designation of DGBA to the priority list (48 FR 55674) and all comments on DGBA received in response to that notice.

(2) Communications (public).

(a) Letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(3) Published and unpublished data.

(4) Technical support document.

B. References

(1) Draize, J.A., E. Alvarez, M.F. Whitesell, G. Woodard, E.C. Hagen, A.A. Nelson. "Toxicological investigations of compounds proposed for use as insect repellents. A. Local and systemic effects following topical skin application. B. Acute oral toxicity. C. Pathological examination." Journal of Pharmacological and Experimental Therapeutics 93: 26–39. 1948.

(2) Eastman Kodak Company. Eastman Chemicals Division, Kingsport, TN 37662. Letter from D.W. Kreh to TSCA Public Information Office, U.S. Environmental Protection Agency, Washington, D.C. 20460. January 1984.

(3) Engelhard Industries. Engelhard Industries Specialty Chemicals Division, 1 West Central Ave. East Newark, NJ 07029. Letter from W.J. Stimpfel. March 1984.

(4) Kesten H.D., M.G. Mulinos, L. Pomerantz. "Pathologic effects of certain glycols and related compounds." Archives of Pathology 27: 447–465. 1939.

(5) NIOSH. National Institute for Occupational Safety and Health. Cincinnati, OH. Computer print out: NIOSH Trade-name Ingredient Data Base—National Occupational Hazard Survey. Retrieved Nov. 15, 1983.

(6) NIOSH. National Institute for Occupational Safety and Health. Cincinnati, OH. Computer Printout: NIOSH Trade-name Ingredient Data Base—National Occupational Hazard Survey Retrieval April 3, 1984.

(7) Nagano K., E. Nakayama, M. Koyano, H. Oobayashi, H. Adachi, T. Yamada. "Mouse testicular atrophy induced by ethylene glycol mono alkyl ethers," Japan Journal of Industrial Health 21: 29–35 1979.

(8) Patty's Industrial Hygiene and Toxicology, 1982, 3rd rev. ed., Vol. 2 C, New York: Wiley-Interscience pp. 3909–4052. 1982.

(9) Platz R. (Aug. 20) Dynamac Corp., 11140 Rockville Pike, Rockville, MD 20852. Exposure to DGBE and DGBA in latex paint. Memorandum to Paul Price, Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. 20460, 1984.

(10) SRI, Stanford Research Institute International. Glycol Ethers, *In* Chemical Economics Handbook, Menlo Park, CA. Sections 663.5021A–663.5022Z. 1979.

(11) SRI, Stanford Research Institute International. Glycol Ethers, *In* Chemical Economics Handbook, Menlo Park, CA. p.663.5022H, Online update April 1984. 1984.

(12) Sullivan D.A. "Water and solvent evaporation from latex and latex paint films," Journal of Paint Technology 47(610): 60–67. 1975

(13) Tyler T.R., G. Millicously, D.E. Dodd, I.M. Pritts, K.A. France, L.C. Fisher. "A teratologic evaluation of ethylene glycol monobutyl ether in Fisher 344 rats and New Zealand White rabbits following inhalation exposure," Bushy Run Research Center, R.D. 4, Mellon Rd. Export, PA 15632. 1983.

(14) Tyler T.R. "Acute and subchronic toxicity of ethylene glycol monobutyl ether," Union Carbide Corporation, Corporate Applied Toxicology, P.O. Box 8361, South Charleston, WV 25303. 1983.

(15) Union Carbide Corp. Toxicology studies data sheet: butyl carbitol. Union Carbide Corp., Corporate Applied Toxicology, P.O. Box 8361, South Charleston, WV 1968.

(16) USEPA. (April) U.S. Environmental Protection Agency. Office of Toxic

Substances. Letter to diethylene glycol butyl ether manufacturers and users. 1984.

(17) USEPA. (May 1). Behavior/distribution of diethylene glycol butyl ether in the environment. Intraagency memorandum from R. Kinerson to P. Price, Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, DC 20460. 1948.

(18) USEPA. (November 20) U.S. Environmental Protection Agency. ENPART analysis of DGBA, TGD, and oleylamine. Interagency memorandum to Test Rules Development Branch, Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, DC 20460. 1984.

(19) USEPA. U.S. Environmental Protection Agency. TSCA Chemical Substances Inventory (public portion). Washington, DC 20460. 1984.

(20) Volpe, P. (Nov. 16), National Association of Printing Ink Manufacturers, Harrison, NY. Personal communication with A. Engelkemeir, Dynamac Corp., 11140 Rockville Pike, Rockville, MD 20852. 1983.

(21) Wosbkenberg, J. (Dec 9). SCM Glidden Corp., 6131 Sprague Rd., Strongsville, OH 44136. Personal Communication with A. Engelkemeir, Dynamac Corp., 11140 Rockville Pike, Rockville, MD 20852. 1983.

This record includes basic information considered by the Agency in developing this notice and is available for public inspection and copying in the OPTS Reading Room, Rm. E–107, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays (401 M St., SW., Washington, D.C. 20460). The Agency will supplement the record periodically with additional relevant information received.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2003; 15 U.S.C. 2601)

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–30229 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 799

[OPTS–42061; FRL 2690–5]

Oleylamine; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing that manufacturers and processors of oleyamine (9-octadecenylamine, ODA) be required, under the Toxic Substances Control Act, to perform testing for (1) developmental toxicity, (2) 90-day dermal subchronic toxicity which will include neurobehavioral observations, emphasis on reproductive system histopathology, and a dermal absorption determination, and (3) mutagenicity using a tiered scheme with triggers to oncogenicity testing. This proposed rule is in response to the Interagency Testing Committee's designation of ODA for priority consideration of health effects testing.

DATES: Submit written comments on or before January 18, 1985. Make requests to submit oral comments by January 3, 1985. If requests are made to submit oral comments, EPA will hold a public meeting on February 4, 1985, on this rule in Washington, D.C. For further information on arranging to speak at the meeting see Unit VI of this preamble.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS–42061) to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St. SW., Washington, D.C. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Rm. E–543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the Interagency Testing Committee's designation of oleylamine for health effects testing consideration.

I. Introduction

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated oleylamine (9-octadecenylamine, or ODA, CAS #112–90–3) for priority consideration in its 13th Report and submitted it to EPA on November 25, 1983. The submission was published in the **Federal Register** of December 14, 1983 (48 FR 55674). (Hereafter "ODA" will refer to the substance, 9-octadecenylamine, and the term "oleylamine" will refer to commerical fatty amine mixtures containing 65 to 76 percent ODA.) The ITC recommended that ODA be considered for a staged testing program, beginning with toxicokinetics and then testing for mutagenicity and teratogenicity if percutaneous absorption is demonstrated. This notice of proposed rulemaking serves as EPA's response to the recommendations of the ITC for ODA. The bases of these recommendations were as follows: production of 4.5 to 5.5 million pounds per year, estimated occupational exposure of 3,155 workers, positive data from dietary and intraperitoneal teratogenicity studies, and lack of sufficient data to characterize the effects of concern for ODA.

Under section 4(a) of TSCA, the Administrator shall by rule require testing of a chemical substance or mixture to develop approrpriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

In making a section 4(a)(1)(A)(i) finding, EPA considers both exposure and toxicity information to make the finding that the chemical may present an unreasonable risk. For the first finding under section 4(a)(1)(B), EPA considers only production, exposure and release information to determine if there is substantial production and significant or substantial exposure or substantial release. For the second finding under both sections 4(a)(1)(A) and 4(a)(1)(B), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure or environmental release of the chemical. In making the third finding that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed in 45 FR 48528 and 46 FR 30300 and the section 4(a)(1)(B) findings are discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations for ODA, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of ODA under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); unpublished health and safety studies submitted by manufacturers and processors of ODA under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency.

II. Proposed Rule

On the basis of its evaluation as described in this proposed rule and the technical support document (Ref. 1), EPA is proposing for ODA oral developmental toxicity [1] testing, a tiered mutagenicity testing scheme with the capacity to trigger oncogenicity testing (see further explanation in section VI–E of Ref. 1; see also II.H of this notice), and a 90-day dermal subchronic toxicity test. The 90-day test is to include neurobehavioral observations, emphasis on reproductive system histopathology and a dermal absorption determination. The Agency is proposing this testing under the authority of section 4(a)(1)(B) of TSCA; the developmental toxicity testing is also being proposed under section 4(a)(1)(A).

A. Profile

ODA (CAS No. 112–90–3) is a yellow liquid with an ammoniacal ordor. Typical fatty amine mixtures (67 percent ODA) have a boiling range of 275–344 °C at 760 mm HG and a specific gravity of 0.819 at 38 °C. ODA's solubility in water is estimated to be 0.5×10^{-3} mg/l or less at 20 °C, its estimated vapor pressure is 0.5×10^{-4} mm Hg at 10 °C and its estimated log P (octanol-water partition coefficient) ranges from 7.5 to 8.1.

$CH_3(CH_2)_7Ch=CH(CH_2)_7CH_2NH_2$

9=octadecenylamine (ODA)

Industry estimates of production of oleylamine in 1982 range from 5.5 to 6.5 million pounds, and the U.S. International Trade Commission (USITC) reports 1982 oleylamine production to be 4.952 million pounds. Both of these production figures are for fatty amine mixtures called oleylamine by the producers. EPA estimates that the ODA contained in all the fatty amine mixtures produced in 1982 amounts to between 18 and 29 million pounds. ODA is produced by six firms: Akzo Chemie America; Witco Chemcial Corp.; Jetco Chemicals, Inc.; Sherex Chemical Company, Inc.; Borg-Warner Corp.; and Tomah Products, Inc. Production is conducted at nine sites. Akzo uses a continuous reaction process and the others use closed batch reactors. Akzo produces over fifty percent of the total U.S. production. ODA's major use in which human exposure is probable is as an additive to petroleum lubricants or as an intermediate for such additives. It is also used as a collector agent in ore flotation, in asphalt preparation, in a concrete mold release agent and in the manufacture of paper, paperboard, and glues. For a more detailed discussion of properties, productions, uses and exposure of oleylamine and other ODA-containing mixtures, see the oleylamine support document available from the TSCA Assistance Office.

B. Findings

EPA is basing its proposed testing of ODA on the authority of sections 4(a)(1)(A) and 4(a)(1)(B) of TSCA.

1. The section 4(a)(1)(A) findings for developmental effects are as follows:

a. EPA finds that the manufacture, processing, and use of ODA may present an unreasonable risk of injury to human health due to developmental toxicity because (1) available animal studies suggest that ODA may cause such effects and (2) in excess of 2.8 million individuals are potentially exposed to ODA as a result of its manufacture, processing, and use. The primary route of human entry is thought to be dermal absorption of ODA-containing lubricants.

b. EPA also finds that there are insufficient animal and human data to reasonably determine or predict the developmental toxicity of ODA. The finding of "may present an unreasonable risk" of adverse developmental effects is based in part on a study (Ref. 2) in which pregnant mice (4-5 per dose group) were exposed to single doses of ODA either by intraperitonal (i.p.) injection (200, 400, 800, or 1,600 mg/kg) or orally (200, 800, or 3,200 mg/kg). Maternal lethality was produced in the two highest i.p. groups and the highest oral group. Dose-related increases occurred in percentages of fetal resorption (all groups) and skeletal malformations (400 and 800 mg/kg i.p. groups). Dose-related decreases occurred in fetal body weights in all i.p. groups.

These data are not adequate to characterize the potential developmental toxicity of ODA. The study was too limited in design, and analysis and reporting of results provided too little information to adequately assess ODA's potential as a developmental hazard.

Rabbit and rat studies (Refs. 3 through 7) also support a finding of a potential unreasonable risk of adverse developmental effects. In each of these studies pregnant rabbits or rats (14–22 per dose group) were exposed orally to a 1:1 mixture of ODA hydrofluoride and cetylamine hydrofluoride (1.2, 6.0, and 30 mg/kg/day) during all or part of the gestation period until sacrifice or day 21 postnatally. Teratological, fertility, reproductive, and perinatal and postnatal observations were made. Compared to controls, there were increased intrauterine deaths at the majority of dose levels in the majority of groups, and ossification variations and malformations at the higher three dose levels in approximately one-half of the test groups.

These data are also not adequate to characterize the potential adverse developmental effects of ODA. The effects were not always observed at levels of statistical significance; there was evidence of inconsistent observations from study to study; and it cannot be determined to what extent the adverse effects observed may have been influenced by the presence of the hydrofluoride or cetylamine constituents.

c. EPA finds that additional developmental effects testing of ODA is necessary to develop adequate data to evaluate reasonably the developmental risks posed by exposure to ODA.

2. The section 4(a)(1)(B) findings are as follows:

a. EPA finds that ODA is produced in substantial quantities. Production of oleylamine was reported by the USITC to be 4.952 million pounds in 1982. Production estimates for ODA, however, range to 29 million pounds for 1982

[1] The Agency has concluded that the term "developmental toxicity" is more appropriate than the term "teratogenicity" and therefore it will be used in place of the term "teratogenicity". For a more complete discussion see 49 FR 39610 (October 10, 1984).

when the ODA portion of captive production as well as production of all commercial OSA-containing substances is taken into account.

b. EPA also finds that there may be substantial human exposure to ODA. On the basis of the National Occupational Hazard Survey conducted in 1972–1974, eight occupations in six industries involving an estimated 3,155 workers were found to be subject to exposure to ODA-containing products of various kinds. The major human exposure route is thought to be dermal absorption from ODA-containing lubricants handled by mechanics and workers in other machine-related occupations. For 1984, the Bureau of Labor Statistics has identified eight mechanic and other machine-related occupations which involve approximately 2.8 million workers.

c. EPA finds that there are insufficient data available to reasonably determine or predict the effects of this exposure in the areas of developmental toxicity, mutagenicity, oncogenicity, subchronic toxicity, neurobehavioral effects, reproductive histopathology and dermal absorption. EPA, therefore, finds that testing of ODA is necessary to develop such data.

The analysis on which the above findings are based is presented in the oleylamine support document which is a part of this rulemaking record (Ref. 1). EPA is proposing limited initial testing of ODA rather than the full range of testing often used by the Agency under section 4(a)(1)(B) of TSCA.

In cases of section 4(a)(1)(B) findings for chemicals with widespread exposure at moderate to high concentration levels, such as 1,1,1-trichloroethane, EPA has generally followed a policy that data from a broad range of tests are necessary to reasonably determine or predict the risks that may be presented by the chemical's manufacture, processing, distribution in commerce, use, and disposal. Such tests include mutagenicity, acute toxicity, acute dermal irritation/corrosion, acute eye irritation/corrosion, skin sensitization, oncogenicity, chronic effects, reproductive effects, teratogenicity, and neurotoxicity (**Federal Register**, June 5, 1981, 46 FR 30302). EPA would require testing for all such effects for which adequate data are not available. However, in cases where EPA finds that there is substantial production and that a substantial number of persons may be exposed, but that such exposure is typically to low levels of a chemical, EPA makes a case-by-case judgment as to what testing should be required. The use of a screening approach seems appropriate for low-level exposure to chemicals for which little or no toxicity data exist. Adverse effects would only be expected at these exposure levels for highly toxic chemicals. Screening tests should enable EPA to identify significant toxicities of the chemical and determine what, if any, further testing is necessary.

The low-level exposure situation appears to apply to ODA. Specifically, the Agency notes that use of ODA is not expected to expand to types of products other than the current use in lubricants and related products, and that product concentrations are limited to 1 percent or less of oleylamine. Thus, in conjunction with existing data on acute effects and the developmental toxicity testing proposed above, EPA believes that for ODA a screening approach consisting of mutagenicity tests and a 90-day dermal subchronic test with reproductive system histopathology and neurobehavioral observations is appropriate. The dermal route of administration reflects the expected human exposure pattern. The added reproductive system histopathology in the subchronic test will screen for reproductive toxicity. Similarly, a functional observation battery will screen for neurotoxic effects, and mutagenicity testing will screen for oncogenic potential. In all cases, positive results could lead to a determination that more testing should be done; negative results would provide reasonable assurance of little or no potential risk.

From data for structurally similar chemicals, EPA believes that some dermal absorption of ODA will occur (see section VI.A of Support Document). Therefore, the Agency is not following the ITC's recommendation of an initial toxicokinetics study with testing for specific health effects if percutaneous absorption is demonstrated. However, EPA is proposing that a dermal absorption determination be conducted as part of the 90-day subchronic study to provide data relevent to interpreting the oral test for developmental effects.

The ITC recommendations and EPA's proposed tests are summarized below:

TESTING FOR OLEYLAMINE

Test	ITC recommendation	EPA proposal
Toxicokinetics	X	X [a]
Genotoxicity	Conditional [b]	X
Teratogenicity	Conditional [b]	X (Developmental toxicity) Conditional [c]
Oncogenicity		X
90-Day dermal subchronic toxicity, Neurobehavioral observations		X [a]
Reproductive system histopathology		X [a]

[a] Included in 90-day subchronic testing.
[b] Depends on toxicokinetics results.
[c] Depends on genotoxicity results.

EPA is not proposing an oncogenicity bioassay based on the section 4(a)(1)(B) finding because EPA considers the required mutagenicity tests as an appropriate first tier for oncogenicity. However, EPA finds that if certain of the required mutagenicity tests produce positive results, this will be sufficient to indicate that ODA may present an unreasonable risk of oncogenic effects. In such circumstances, EPA finds that without data from a 2-year bioassay there will be insufficient data to predict oncogenicity, and testing will be necessary to develop oncogenicity data.

The scheme for triggering to higher-tier mutagenicity and oncogenicity testing is similar to that proposed for the cresols (48 FR 31812, July 11, 1983) and the C9 aromatic hydrocarbons (48 FR 23086, May 23, 1983). The tier testing scheme proposed for ODA is described in detail in unit V.1.D. of the oleylamine support document which is part of this rule-making record. The Agency has received and evaluated comments on these notices and is reviewing its policy on the use of triggers between mutagenicity tests and from mutagenicity tests to oncogenicity testing. EPA will publish the results of this review in the near future. The Agency does not request further comment in this area, but those wishing to comment may do so.

C. Test Substance

ODA is routinely manufactured, sold, and used industrially as a fatty-amine mixture. Laboratory grade ODA (97 percent pure) is used in much smaller quantities. EPA is proposing that the test substance be the purest commercial form of ODA in a suitable vehicle. Comments are requested in unit II.H of this preamble on whether the commercial or laboratory grade ODA would be the most appropriate test substance. The vehicle should be one such as mineral oil for which there are historical toxicological data and which will not interfere with test results.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Administrator makes section 4(a) findings (manufacturing, processing, distribution in commerce, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the findings occur during use, distribution, or disposal. Because EPA has found that the manufacture, processing and use of ODA may present an unreasonable risk of developmental effects and that the use of ODA-containing substances may give rise to substantial human exposure (unit II.B), EPA is proposing that persons who manufacture or process, or who intend to manufacture or process substances containing this chemical at any time from the effective date of this test rule to the end of the reimbursement period, be subject to the rule. The end of the reimbursement period will be 5 years, or an amount of time equal to that which was required to develop data if more than 5 years, after the submission of the last final report required under the final test rule. As discussed in unit II.E, EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement.

E. Test Rule Development and Exemptions

Test rule development for ODA will be conducted as a two-phase process under the regulations in 40 CFR Part 790 (49 FR 39774, October 10, 1984). In this proposed phase I rule, EPA is proposing that specific testing be required for ODA. This phase of the rulemaking will allow the public to comment on the decision to require testing and the specific types of tests to be required. Phase II will begin after promulgation of the final phase I rule. In phase II, EPA will receive proposed study plans for the specific test requirements adopted in the phase I rule. EPA will make those study plans available for public comment. After comment, the Agency will adopt the study plans, as proposed or modified, as specific test standards for the tests required by the phase I rule. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards adopted.

EPA's final regulations for the issuance of exemptions from two-phase test rule testing requirements are in 40 CFR Part 790 (49 FR 39774, October 10, 1984). In accordance with these rules, any manufacturer or processor subject to a phase I test rule may submit an application to EPA for an exemption from submitting study plans and from conducting any or all of the tests required under such a rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for ODA. As noted in unit II.C, EPA has specified that the highest purity ODA commercially available be used for testing.

F. Reporting Requirements

EPA is proposing that all data developed under this rule be developed and reported in accordance with the final TSCA Good Laboratory Practice (GLP) Standards (40 CFR Part 792).

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the phase II rulemaking in which study plans are approved.

TSCA section 14(b)(1)(A)(ii) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

G. Enforcement Provisions

Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to (1) establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA. The Agency considers that failure to comply with any aspect of a section 4 rule or the submission of invalid data would be violations of section 15 of TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by authorized representatives of the EPA for the purpose of determining compliance with this rule. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to TSCA Good Laboratory Practice Standards and the test standards adopted in the phase II rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they had never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Each day of operation in violation may constitute a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors

listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

H. Issues

1. EPA believes that manufacturers of any ODA-containing substances should be subject to this proposed rule. However, some such substances contain very small quantities of ODA. Of the 22.2 million pounds of primary fatty amine mixtures produced in the U.S. in 1982 (Ref. 10), 6 percent or 1.3 million pounds contained less than 20 percent ODA; some contained as little as 1 percent. The Agency requests comment from interested parties as to whether there is an ODA concentration below which a manufacturer of such a substance need not be required to perform testing.

2. EPA finds that ODA is produced in substantial quantities and that a substantial number of people are potentially exposed to it, but that exposures are to products containing low concentrations of ODA. The Agency requests comment from interested parties on the issue of whether the reproductive toxicity and neurotoxicity screening tests proposed for ODA are adequate, given the low expected exposure levels of ODA.

3. The ITC recommended an initial toxicokinetics study on ODA with mutagenicity and teratogenicity studies if percutaneous absorption is demonstrated. EPA proposes health studies initially, with dermal absorption as a part of a 90-day subchronic test. Because the Agency's analysis suggests that some dermal absorption is likely (Ref. 1), EPA believes health effects testing would still be necessary to determine the significance of whatever absorption did take place. ODA producers recommend an initial toxicokinetics study to determine ODA absorption (Ref. 9). They feel that a low degree of absorption would eliminate any need for further tests. The Agency requests comment from other interested parties on the issue of whether dermal toxicokinetics studies should precede other testing of ODA, and if so, how a suitable level of dermal absorption might be selected to serve as a trigger for additional health effects testing.

4. EPA has proposed that the route of administration of ODA be dermal in a 90-day dermal subchronic test and a 2-year oncogenicity test (if such testing is indicated by prior mutagenicity tests) because the primary route of human exposure is dermal absorption. However, certain difficulties are encountered when the dermal route of exposure is used. For example, due to scratching or licking by the test animal, it may be difficult to determine the actual amount of test substance available for absorption. The Agency requests comment from interested parties as to whether the dermal or some other route of administration of ODA should be used in the 90-day subchronic or oncogenicity tests.

5. Although the primary route of human exposure to ODA is by dermal absorption, EPA has proposed developmental toxicity testing by the oral route. This is based on the fact that the available data base on developmental toxicity testing by the dermal absorption route is extremely small whereas that for oral testing is considerable. For this reason EPA believes the advantage of being better able to interpret data obtained by the oral route outweighs that of the expected human exposure (dermal) route. The Agency requests comment from interested parties as to whether the oral route is the most appropriate for animal studies of developmental toxicity in this case.

6. EPA has proposed that reproductive system histopathology studies be conducted in conjunction with a 90-day dermal subchronic test with ODA. Organs to be studied are vagina, uterus, ovaries, testes, epididymus, seminal vesicles, and prostate. The Agency requests comment as to the adequacy of these studies as indicators of potential reproductive system effects.

7. EPA is proposing that the test substance be the purest commercial form of ODA. The purest ODA generally used in commerce consists of fatty amine mixtures containing 65 to 76 percent ODA. A laboratory grade is also available which is 97 percent ODA. In general, the Agency prefers that the purest available form of a chemical be used for testing, in order that interpretation of test data will not be complicated by the presence of substantial quantities of other substances. For many substances, a large fraction of the expected exposure is to a high purity material. In the case of ODA, however, only a very small number of laboratory workers may be exposed to 97 percent ODA. The Agency requests comment on which substance should be tested in this instance.

III. Economic Analysis of Proposed Rule

To evaluate the potential economic impact of test rules, EPA has adopted a two-stage approach. All candidates for test rules go through a Level I analysis; this analysis consists of evaluating each chemical, or chemical group on four principal market characteristics: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. The results of the Level I analysis for ODA, along with a consideration of the cost of the required tests, indicate that the potential for an adverse economic impact is very low; therefore, a Level II analysis, which quantifies the potential for adverse economic impact, was not needed for ODA.

Total testing costs for the testing in this proposed rule for ODA are estimated to range from $391,593 to $1,174,628 depending on the need to perform higher-tiered mutagenicity and oncogenicity testing. The annualized costs range is $101,468 to $304,365 per year based upon specific test requirements. On the basis of an estimated total ODA production volume of 18 to 29 million pounds per year, the cost of testing represents approximately 0.6 to 1.7 cents per pound of ODA contained in the various amine products. These costs represent between 0.01 to as much as 1 percent of amine product value depending on ODA content.

The potential for significant adverse economic effects due to this test rule is small. The market characteristics of ODA-containing products indicate that the potential for adverse economic impact as a result of the small additional product cost increases is low. This suggests that the ecomonic impact would be minimal.

For a more complete and thorough discussion of the methodology used to conduct the economic analysis of this test rule see Ref. 8. A copy of this document is available in the public record for this rulemaking, docket number [OPTS–42061].

IV. Availability of Test Facilities and Personnel

Section 4(b)(1) requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing", October 1981, can be obtained through the National Technical Information Service (Publication No. PB 82–140773).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this proposed rule.

V. Guidelines and Study Plans

The following guidelines/study plans and other relevant sources of information cited in this proposed test rulemaking are available from the following sources:

1. National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703–487–4650).

NTIS publication No.	Title	Price
PB 83–153916	Pesticide Assessment Guidelines	$15.00
PB 84–233295	New and Revised Health Effects Test Guidelines	25.00

2. Hemisphere Publishing Corp., 1025 Vermont Avenue, NW., Washington, D.C. 20095, (202–783–3958).

Dermatotoxicology, 2nd Ed., 1983 Editors: F. F. Marzulli and H. I. Maibach.....$64.50

3. OECD Publications and Information Center, Suite 120, 1750 Pennsylvania Avenue, NW., Washington, D.C. 20006, (202–724–1857).

OECD Guidelines for the Testing of Chemicals..... $80.00

VI. Public Meetings

If persons indicate to EPA that they wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting on February 4, 1985, in Washington, D.C. This meeting will be held after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. Information on the exact time and place of the meeting will be available from the TSCA Assistance Office. Toll Free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the U.S.A.: (Operator-202–554–1404).

Persons who wish to attend or present comments at the meeting should call the TSCA Assistance Office by January 3, 1985. While the meeting will be open to the public, active participation will be limited to those persons who have arranged to present comments and to designated EPA participants. Attendees should call the TSCA Assistance Office before making travel plans because the meeting will not be held if members of the public do not indicate they wish to make oral comments.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register** The effective date will be calculated from the promulgation date.

VIII. Public Record

EPA has established a public record for this rulemaking, docket number [OPTS–42061]. This record includes the basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The agency will supplement the record with additional information as it is received.

The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the designation of ODA to the priority list (48 FR 55674, December 14, 1983) and all comments on ODA received in response to that notice.

(b) Notice of proposed test rule on ODA.

(c) Notice of final rule on EPA's TSCA good laboratory practice standards (48 FR 53922, November 29, 1983).

(d) Notice of final rule on test rule development and exemption procedures (49 FR 39774, October 10, 1984).

(e) Notice of final rule on 1,1,1-trichloroethane establishing Part 799 General Provisions (49 FR 39810, October 10, 1984).

(f) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(2) Support Documents: consisting of:

(a) ODA technical support document.

(b) Economic analysis support document.

(3) Minutes of informal meetings.

(4) Communications before proposal consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(d) Reports—published and unpublished factual materials, including contractor's reports.

B. References

(1) USEPA. U.S. Environmenal Protection Agency. Assessment of testing needs: oleylamine (9-octadecenylamine) support document. Washington, D.C. Office of Toxic Substances. 1984.

(2) Eifinger, F.F. and Koehler, F. "Comparative Teratological Studies with Organic Fluoride Compounds, their Bases and Amines." Dtsch. zahnaerztl. Z. 32:861–866. (In German; English translation) 1977.

(3) Bio/dynamics Inc. A segment III perinatal and postnatal study of amine fluoride 335/242 in rats. Project No. 72R–619. Philadelphia, PA: Menley and James Laboratories. 1973.

(4) Bio/dynamics Inc. Amine fluoride 335/242 segment II rabbit teratology study. Project No. 72R–618. Philadelphia, PA: Menley and James Laboratories. 1973.

(5) Bio/dynamics Inc. A segment I rat fertility study of amine fluoride 335/242. Project No. 72R–617. Philadelphia, PA: Menley & James Laboratories. 1973.

(6) Bio/dynamics Inc. A segment II rat teratology study of amine fluoride 335/242. Project No. 72R–620. Philadelphia, PA: Menley and James Laboratories. 1973.

(7) Bio/dynamics Inc. Segment II rat teratology study of amine fluoride 335/242 (repeat of previous study). Project No. 73R–880. Philadelphia, PA: Menley and James Laboratories. 1973.

(8) USEPA. U.S. Environmental Protection Agency. Economic Impact Analysis of Proposed Test Rule for 9-Octadecenylamine. Washington, D.C. Office of Toxic Substances. 1984.

(9) USEPA. U.S. Environmenal Protection Agency report of meeting with representatives of Akzo Chemie America and Chemical Manufacturers Association. May 9, 1984.

(10) USITC. International Trade Commission. Synthetic Organic Chemicals. U.S. production and sales, 1982. Washington, D.C.: U.S. Government Printing Office, USITC pub. 1422. 1983.

Confidential business information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room, Rm. E–107, 401 M St. SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. According to section 1, definition (b) "major rule" means any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the estimated annual cost of all the testing proposed for ODA is $115,048 to $344,625 per year over the testing and reimbursement period. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on users' prices for this chemical, even if all test costs are passed on. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic effects of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments received from OMB are included in the Public Record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulated, will not have a significant impact on a substantial number of small entities for the following reasons:

1. All six manufacturers are large businesses or subsidiaries of large businesses. There are no small manufacturers of this chemical.

2. Small processors are not expected to perform testing themselves, or participate in the organization of the testing efforts.

3. Small processors will experience only very minor costs if any in securing exemption from testing requirements and are unlikely to be affected by reimbursement requirements.

4. The magnitude of the unit costs of testing is relatively low, or less than two cents per pound in the upper bound case. Thus, any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*, and has assigned OMB control number 2070—0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2006; 15 U.S.C. 2603)

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

PART 799—[AMENDED]

Therefore, it is proposed that 40 CFR Part 799 be amended by adding § 799.3300 to read as follows:

§ 799.3300 Oleylamine.

(a) *Identification of test substance.* (1) 9-Octadecenylamine (hereafter ODA) (CAS No. 112–90–3) shall be tested in accordance with this part.

(2) The ODA test substance shall be the purest commercial form: Laboratory grade (97 percent ODA). The vehicle shall be one such as mineral oil for which there are adequate historical toxicological data and which will not interfere in the test results.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process substances containing ODA from the effective date of the final rule to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans and shall conduct tests and submit data as specified in this section and Part 790 of this chapter. (Information collection requirements approved by the Office of Management and Budget under control number 2070–0033.)

(c) *Health effects testing*—(1) *Developmental effects*—(i) *Required testing.* An oral developmental toxicity test shall be conducted with ODA in two mammalian species, preferably rat and rabbit.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by NTIS (PB 84–233295) should be consulted. Additional guidance may be obtained from the Pesticide Assessment Guidelines, published by NTIS (PB 83–153916).

(2) *Mutagenic effects—Chromosomal aberrations—(i) Required testing.* (A) An *in vitro* cytogenetics test shall be conducted with ODA.

(B) An *in vivo* cytogenetics test shall be conducted with ODA if the *in vitro* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(A) of this section produces a negative result.

(C) A dominant lethal assay shall be conducted with ODA if either the *in vitro* or *in vivo* cytogenetics test conducted pursuant to paragraph (c)(2)(i) (A) or (B) of this section produces a positive result.

(D) A heritable translocation assay shall be conducted with ODA if the dominant lethal assay conducted pursuant to paragraph (c)(2)(i)(C) of this section produces a positive result.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by NTIS (PB 84–233295), should be consulted. Additional guidance may be obtained from the Pesticide Assessment Guidelines, published by NTIS (PB 83–153916).

(3) *Mutagenic effects—Gene Mutations*—(i) *Required testing.* (A) A *Salmonella typhimurium* mammalian microsomal reverse mutation assay (hereinafter "Ames assay") shall be conducted with ODA.

(B) A gene mutation in somatic cells assay shall be conducted with ODA if the Ames assay conducted pursuant to paragraph (c)(3)(i)(A) of this section produces a negative result.

(C) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted for ODA if either the Ames assay or the gene mutation in somatic cells assay conducted pursuant to paragraph (c)(3)(i) (A) or (B) of this section produces a positive result.

(D) A mouse specific locus test shall be conducted for ODA if the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(i)(C) of this section produces a positive result.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by NTIS (PB 84–233295), should be consulted. Additional guidance may be obtained from the Pesticide Assessment Guidelines, published by NTIS (PB 83–153916).

(4) *Oncogenicity*—(i) *Required testing.* A 2-year, dermal oncogenicity bioassay shall be conducted with ODA if positive results are obtained in any of the following mutagenic effect tests conducted pursuant to paragraph (c) (2) or (3) of this section:

(A) The gene mutation assay in mammalian cells.

(B) The sex-linked recessive lethal gene mutation assay in *Drosophila melanogaster.*

(C) The *in vitro* cytogenetics assay, or

(D) the *in vivo* cytogenetics assay.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by the NTIS (PB 84–233295), should be consulted. Additional guidance may be obtained from the Organization for Economic Cooperation and Development (OECD) "Guidelines for the Testing of Chemicals" as adopted by the OECD Council on May 12, 1981, and the Pesticide Assessment Guidelines, published by NTIS (PB 83–153916).

(5) *Subchronic effects*—(i) *Required testing.* A 90-day dermal subchronic toxicity test shall be conducted with ODA. Neurobehavioral observations, reproductive system histopathology, and a dermal absorption determination shall be included.

(ii) *Study plans.* For guidance in preparing study plans, the New and Revised Health Effects Test Guidelines, published by the NTIS (PB 84–233295), and *Dermatotoxicology*, 2nd Ed., published by the Hemisphere Publishing Corp. should be consulted. Additional guidance may be obtained from the Pesticide Guidelines, published by NTIS (PB 83–153916).

(d) *Availability of guidelines.* The guidelines cited in this proposed rule are available from:

(1) National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703–487–4650).

NTIS publication	Title
PB 83–153916 PB 84–233295	Pesticide Assessment Guidelines New and Revised Health Effects Test Guidelines

(2) Hemisphere Publishing Corp., 1025 Vermont Ave, NW., Washington, D.C. 20095, (202–783–3958).
Dermatotoxicology, 2nd Ed., 1983
Editors: F. F. Marzulli and H. I. Maibach.

(3) OECD Publications and Information Center, Suite 120, 1750 Pennsylvania Ave., NW., Washington, D.C. 20006, (202–724–1857). OECD Guidelines for the Testing of Chemicals.

[FR Doc. 84–30222 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 95

Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: In September 1978, Health and Human Services (HHS) published a regulation containing requirements that State and local governments must observe to claim Federal reimbursement for the costs of automatic data processing (ADP) equipment and services. The regulations are applicable to certain public assistance programs under the Social Security Act. The regulations were modified in February 1980 to implement certain changes.

These regulations change requirements for the claiming of Federal matching funds for the acquisition of automatic data processing (ADP) equipment and services in the administration of public assistance programs under the Social Security Act titles I, IV, X, XIV, XVI (AABD), XIX and XX.

The change modifies the regulation to conform to recent legislative changes and raises the HHS prior approval threshold for most State and local government acquisitions. The purpose of the change is to:

—Simplify and make these regulations consistent, to the maximum extent possible, with those regulations that govern availability of FFP at the enhanced matching rate for computerized systems that support programs under title IV–A, IV–D and XIX of the Social Security Act;

—Allow States more flexibility in implementing small systems; and

—Reduce paperwork.

DATES: Comments must be received by January 18, 1985. If we receive substantive comments, HHS will reissue the NPRM at a later date. We will consider comments submitted in response to the present effort to update Office of Management and Budget Circular A–102, to the extent that such comments relate to provisions of these proposed regulations.

ADDRESSES: Send written comments to: Joseph F. Costa, Director, Office of Public and State Data Systems, OMAS, Hubert H. Humphrey Building Room 514–E, 200 Independence Ave., SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Joseph F. Costa (202) 245–7488.

SUPPLEMENTARY INFORMATION: HHS, then Health, Education, and Welfare (HEW), published final regulations "Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation", Subpart F of 45 CFR Part 95 in the **Federal Register**, page 44851, on September 29, 1978. These regulations required State and local governments to obtain prior written approval by the Department for the acquisition of ADP equipment or ADP services when the acquisition costs exceeded $25,000. These regulations were modified by a rule change published in the **Federal Register**, page 10794, on February 19, 1980, to raise the prior approval threshold to $100,000 for acquisitions costing that amount or more in Federal and State funds over a twelve-month period and to $200,000 in Federal and State funds for the total acquisition. The change also required States to submit a brief prior notice of acquisition for ADP equipment and services that cost $25,000 to $100,000 over a twelve-month period.

In analyzing State requests made since the 1980 regulation change, HHS found that State requests for acquisitions costing between $100,000 and $200,000 represent 9.9 percent of the total number of requests but only 1.4 percent of the dollar amount requested. Additionally, HHS found that States had submitted only 109 prior notices during the three-year period. Therefore, HHS is raising the prior approval threshold to $200,000 for acquisitions costing that amount or more in Federal and State funds over a twelve-month period and to $300,000 in Federal and State funds for the total acquisition; and is eliminating the prior notice requirement, thus reducing paperwork requirements. The changes also modify the regulation to conform to recent legislative changes in administration of some Social Security Act programs and to clarify the regulatory language.

Specifics of the changes are:

1. The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272, June 17, 1980) amended title IV of the Social Security Act by adding Part E—Federal Payments for Foster Care and Adoption Assistance. We are adding title IV–E to the applicable list of programs covered under this regulation. This is based on

the provisions in section 474 of the Social Security Act. The title IV–E program is administered by the Office of Human Development Services, HHS. We are retaining title IV–B because of the interaction of program and information systems requirements between titles IV–A, IV–B and IV–E.

2. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) established seven block grant programs to be administered by the Secretary of Health and Human Services. Section 2352 of this Act amends title XX of the Social Security Act to establish a social services block grant. Since the States must assume administration of a block grant in its entirety, all references to the title XX program will be deleted from this regulation. Section 2352 of this Act also deleted the social services programs in Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands under titles I, IV–A, X, XIV and XVI (AABD). All references to these social service programs have also been deleted.

3. Sections 405 and 406 of Pub. L. 96–265 modified title IV–D and title IV–A of the Social Security Act respectively to provide enhanced FFP for States which opt to plan, design, develop, improve and install computerized systems which meet the functional and administrative requirements stated in Pub. L. 96–265 and delineated in regulations promulgated by the Department on September 30, 1981. The regulation citations are 45 CFR Parts 205 and 307. Title XIX of the Social Security Act also authorizes enhanced FFP for Medicaid systems. The title XIX enhanced funding regulation citation is 42 CFR Part 433, Subpart C. The proposed changes to Part 95 cross-reference the regulations for higher level matching in Federal financial participation available for certain ADP systems.

4. We are making minor amendments to Section 95.605 to include certain definitions now included in regulations governing enhanced funding for titles IV–A, IV–D and XIX. The definitions that are common to multiple programs will be included in 45 CFR Part 95, Subpart F and eliminated from the companion regulations for titles IV–A, IV–D and XIX. This will eliminate redundant and/or conflicting term definitions from the regulations governing ADP systems, equipment and services. The term definitions affected are:

—Advance planning document is modified to include the requirement for a statement of alternative considerations and a requirements analysis. Definitions of these terms are added to § 95.605.

—"Automatic data processing equipment" is expanded to include the term "hardware" to be interchangeable with "automatic data processing equipment". Hardware is the terminology used in Pub. L. 96–265 that authorizes titles IV–A and IV–D of the Social Security Act to provide enhanced funding for States that design, develop, improve and install computerized systems which meet the functional and administrative requirements stated in Pub. L. 96–265.

—"Design or system design" was included in § 95.605 under the term "system design". The modified definition standardizes the term as defined in regulations governing enhanced funding for systems authorized under titles IV–A, IV–D and XIX.

—"Development", "Installation", and "Operation" are term definitions not included previously in 45 CFR Part 95, Subpart F but that were included in Parts 205 and 307 of this title for specific requirements for titles IV–A and IV–D and 42 CFR Part 433, Subpart C for specific requirements of title XIX. Inclusion of these definitions in this section standardizes the definitions for the multiple programs and eliminates the repetition of the terms in the companion regulations.

—"Enhanced matching rate" is being added to define the term used for the higher level matching rate for FFP authorized for certain ADP systems by 45 CFR Part 205 and § 307.30 for titles IV–A and IV–D and 42 CFR Part 433, Subpart C for title XIX.

—"Software" is modified to clarify and simplify the term definition.

—Service agreement is modified to define the meaning of the word "primarily" used in item (f) of the current definition, and to add the period of time the agreement covers to its definition (new item (g)), and the requirement for a schedule of expected total charges to the titles covered by this regulation for the period of the service agreement (new item (h)). The current regulation requires the service provider to obtain HHS prior approval for ADP equipment and ADP services that are acquired primarily to support the titles covered by this subpart. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when the titles may reasonably be expected to be billed for more than 50 percent of the total charges made to all users of the equipment and services. If, however, the titles covered by this regulation are to be directly charged for the cost of the purchase or lease of ADP equipment or services acquired for a central processing facility, the provisions of § 95.611(a) apply.

If the public finds these revised definitions to be acceptable, we will rescind other conflicting definitions contained in Parts 205 and 307 of this title and 45 CFR Part 433, Subpart C, to the extent that statutory requirements permit, when we publish these regulations in final form.

5. Section 95.611(a), is modified to raise the prior approval threshold of $100,000 to provide that a State shall obtain prior written approval from the Department when it plans to acquire ADP equipment or services that it anticipates will have total acquisition costs of $200,000 or more in State and Federal funds over a twelve-month period, or $300,000 or more in Federal and State funds for the total acquisition, unless the acquisition is noncompetitive from a commercial source, or the State plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate. The State requests for funding of ADP acquisitions costing between $100,000 and $200,000 since the February 1980 rule change that raised the threshold to $100,000, represent 1.4 percent of the total dollar amount requested and 9.9 percent of the total number of State requests received. By raising the threshold to $200,000, HHS will continue to prior approve most State expenditures but will substantially reduce the number of required State submittals. The purpose of the change is to allow States to implement small systems or system changes more quickly; simplify the process of State application for Federal financial participation in the costs of ADP systems; and reduce paperwork burden.

Section 95.611(b)(2) is changed to specify when a State is required to obtain HHS prior approval of a service agreement. Section 95.611(b)(3) is changed to modify the requirement for prior approval of request for proposal (RFP). States currently are required to submit each RFP for prior approval. The modified regulation will require prior approval of the RFP only for complex procurements or when the grantee has a history of performance problems.

6. Section 95.612 presently requires a State to notify HHS when it acquires ADP equipment or services that will cost $25,000 to $100,000 over a twelve-month period in Federal and State funds. This requirement is eliminated by these proposed changes. Experience since the implementation of the prior notice rule indicates that most acquisitions are for larger amounts. Since imposition of the prior notice rule in February 1980, States have submitted only 109 prior notices. In order to maintain proper oversight of State acquisitions costing below the proposed new threshold of $200,000, HHS will conduct periodic on-site surveys as required in the proposed new § 95.621(d).

7. Section 95.613 is modified by adding the phrase "regardless of any conditions for prior approval" to the first sentence of the section. The revised sentence will read: "Procurements of ADP equipment and services are subject to the procurement standards prescribed by Subpart P of 45 CFR Part 74 regardless of any conditions for prior approval." This added phrase emphasizes that Federal procurement standards, including free and open competition, apply to all acquisitions notwithstanding the fact that HHS will only require prior approval of acquisitions that cost in excess of $200,000.

8. We are making a minor modification to the title of § 95.615 to clarify the language of the requirement pertaining to access to State agency ADP records and systems. The clarification is intended to emphasize that State agencies must allow HHS access to ADP systems and all records pertaining to the systems from planning through operational stages including cost records of the agency, contractors and subcontractors.

9. We are proposing three changes to § 95.617, Software and ownership rights. The changes, intended as language clarification only, are:

—The first sentence under § 95.617(a) is amended to include the phrase "must include a clause in all procurement instruments that provides that the State or local government". The sentence will now read: "The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modification thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart."

—The title of § 95.617(b) is being changed from "Exemption" to "Federal license" because that term more aptly describes the subject of the regulatory provision.

—The regulation provision reference in § 95.617(c) is being changed from "of this subpart" to "in paragraphs (a) and (b) of this section" to point directly to the referenced provisions.

10. We are changing the last phrase in § 95.619 to simplify the language by substituting "a shorter period is justified" for "the elapsed shorter period of time is sufficient to justify the Federal funds involved". The requirement will read: "ADP systems designed, developed, or installed with Federal financial participation shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified."

11. We are adding a provision at § 95.621(d) that states that HHS will conduct periodic on-site reviews to assure that State acquisitions costing less than $200,000 were made in accordance with 45 CFR Part 74 and to determine the efficiency, economy and effectiveness of the acquired equipment or service.

12. We are changing § 95.623 to remove the specification that waiver of HHS prior approval can be made only for acquisitions prior to the effective date of these regulations. The change will permit HHS to waive the prior approval requirement in those instances where a State failed to obtain prior approval of acquisitions, as long as a State submits a waiver request within six months following an acquisition, the acquisition is justified and beneficial to the Department's programs, and the Department finds that it would have prior approved the acquisition if a proper request for such approval had been made by the State agency. This change is intended to cover acquisitions under unusual circumstances and is not to be viewed by States as a relaxation of the prior approval requirement.

13. A new § 95.625, Increased FFP for certain ADP systems, is being added to cross reference the general regulatory provisions governing ADP acquisitions of this subpart to the specific regulatory provisions that States must meet to qualify for enhanced funding for ADP systems that support State plans for titles IV-A, IV-D and XIX of the Social Security Act. The section states availability of enhanced matching for certain systems and gives the regulatory citations of specific requirements for such systems.

14. The section heading for § 95.631 and § 95.633 is being changed from "Cost Allocation Plan" to "Federal Financial Participation in Costs of ADP Acquisitions" to more accurately reflect the subject of the sections.

15. Section 95.631 is being changed as follows: The title of § 95.631 is changed from "Relationship to the approved cost allocation plan" to "Cost identification for purpose of FFP claims." As with the section heading, this change is being made more accurately title the subject of the section. The provisions of the section have been restated to describe in a straightforward manner, the methods States must use in identifying, accounting for, and claiming FFP for costs incurred in system development and operation and in acquiring service from a State operated central data processing facility.

16. We are revising § 95.641 (now entitled "Exemption from Subpart G of this part") to explain more clearly the relation of Subpart G of Part 95 to ADP equipment and this Subpart F.

Subpart G concerns "Equipment Acquired Under Public Assistance Programs." Among other things, Subpart G permits a State to charge the cost of equipment having a unit acquisition cost of more than $25,000 only by means of depreciation or use allowances, not by claiming the full cost in the year of acquisition. Section 95.641 of this Subpart F, as we propose to revise the section, explains that, although that restriction applies to ADP equipment as well as other equipment, the Department will, in the case of ADP equipment, consider requests for waivers of the restriction. The revised text also explains that, if the acquisition of the equipment is part of an advance planning document that is subject to the prior approval requirements of this Subpart F, the State may submit the request for waiver as part of the advance planning document.

17. We are deleting § 95.643. The purpose of that section is to waive for HHS public assistance programs any prior approval requirements for ADP costs in the OMB principles for determining allowable costs of governments (OMB Circular A–87). However, we find the section redundant and unnecessary. The charging of ADP equipment under these programs is fully treated in Subpart G of Part 95. ADP services require prior approval only as specifically provided in this Subpart F.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

Regulatory Flexibility Analysis

Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. This rule has no significant effect on a substantial number of small

entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the Department has previously obtained OMB clearance of the process described in this document under which the States may apply for and obtain Federal financial participation in their ADP acquisitions. The OMB approval number is 0990-0058.

Catalog of Federal Domestic Assistance Program Numbers 13.645 Child Welfare Services—State Grants, 13.658, Foster Care, Maintenance, 13.659, Adoption Assistance; 13.679, Child Support Enforcement Program; 13.714, Medical Assistance Program; 13.808, Assistance Payments—Maintenance Assistance; 13.810, Assistance Payments—State and Local Training.

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs—social programs, Social Security, Time.

Dated: January 3, 1984.

Margaret M. Heckler,

Secretary.

PART 95—[AMENDED]

45 CFR Part 95, Subpart F is amended as set forth below:

1. The Table of Contents is revised to read as follows:

Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation

General

Sec.

95.601 Scope and applicability.
95.605 Definitions.

Specific Conditions for FFP

95.611 Prior approval conditions.
95.613 Procurement standards.
95.615 Access to systems and records.
95.617 Software ownership rights.
95.619 Use of ADP systems.
95.621 ADP reviews.
95.623 Waiver of prior approval requirements.
95.625 Increased FFP for certain ADP systems.

Federal Financial Participation in Costs of ADP Acquisitions

95.631 Cost identification for purposes of FFP claims.
95.633 Nondiscrimination requirements.

Exemptions

95.641 Applicability of rules for charging equipment in Subpart G of this part.

Authority: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

2. Section 95.601 is revised to read as follows:

General

§ 95.601 Scope and applicability.

This subpart prescribes the conditions under which the Department of Health and Human Services will approve Federal financial participation (FFP), at the applicable rates, for the costs of automatic data processing incurred under an approved State plan for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), or XIX of the Social Security Act.

(Approved by the Office of Management and Budget under Control Number 0990-0058)

3. Section 95.605 is revised to read as follows:

§ 95.605 Definitions.

As used in this part, the term:

"Acceptance documents" means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

"Acquisition" means acquiring ADP equipment or services from commercial sources or from State or local government resources.

"Advance planning document" or "APD" means a written plan of action to acquire the proposed ADP services or equipment. The APD must contain a statement of needs and objectives; a statement of alternatives considered; a requirements analysis; a preliminary cost/benefits analysis; a personnel resource statement indicating availability of qualified and adequate staff, including a project director to accomplish the project objectives; a detailed description of the nature and scope of the activities to be undertaken and the methods to be used to accomplish the project; a proposed activity schedule for the project; a proposed budget; and a statement indicating the period of time the State expects to use the ADP service or equipment.

"Alternative Considerations" means methods of satisfying the stated needs and objectives (e.g., upgrade or transfer of an existing system), that the State considered in addition to the selected method.

"Approving component" means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services; Social Security Administration (SSA) for cash assistance for titles I, IV–A, X, XIV, and XVI(AABD); Office of Human Development services (OHDS) for social services for titles IV–B (child welfare services) and IV–E (foster care and adoption assistance); Office of Child Support Enforcement (OCSE) for title IV–D; and Health Care Financing Administration (HCFA) for title XIX of the Social Security Act.

"Automatic data processing" or "ADP" means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

"Automatic data processing equipment" or "ADP equipment" or "Hardware" means automatic equipment that accepts and stores data, performs calculations and other processing steps, and produces information. This includes:

(a) Electronic digital computers;

(b) Peripheral or auxiliary equipment used in support of electronic computers;

(c) Data transmission or communications equipment; and

(d) Data input equipment.

"Automatic data processing services" or "ADP services" means:

(a) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State or agency; and/or

(b) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation.

"Data processing" means the preparation of source media containing data or basic elements of information, and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording, and transmitting.

"Department" means the Department of Health and Human Services.

"Design" or "system design" means a combination of narrative and diagrams describing the structure of a new or more efficient automatic data processing system. This includes the use of hardware to the extent necessary for the design phase.

"Development" means the definition of system requirements, detailing of system and program specifications, programming and testing. This includes the use of hardware to the extent necessary for the development phase.

"Enhanced matching rate" means the higher than regular rate of FFP authorized by titles IV–A, IV–D, and XIX of the Social Security Act for acquisition or improvement of systems, services and equipment that conform to specific requirements designed to improve administration of the Aid to Families with Dependent Children, Child Support Enforcement and Medicaid programs.

"Feasibility study" means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems can be made to warrant the substantial investment of staff, time, and money, and whether the plan is capable of being accomplished successfully.

"FFP" means Federal financial participation.

"Installation" means the intergrated testing of programs and subsystems, system conversion, and turnover to operational status. This includes the use of hardware to the extent necessary for the installation phase.

"Operation" means the automated processing of data used in the administration of State plans for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD) or XIX of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.35 and 307.35(b) for specific requirements for title IV–A and IV–D, and 42 CFR Part 433, Subpart C for specific requirements for title XIX.

"Regular matching rate" means the normal rate of FFP authorized by titles IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD) and XIX of the Social Security Act for State and local agency administration of programs authorized by those titles.

"Requirements Analysis" means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

"Service agreement" means a document signed by the State or local agency and the State or local central data processing facility providing ADP services (provider) which:

(a) Identifies those ADP services the central data processing facility will provide;

(b) Includes, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;

(c) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(d) Includes assurances that services provided will be timely and satisfactory;

(e) Includes assurances that information in the computer system as well as access, use, and disposal of ADP data will be safeguarded in accordance with provisions of 45 CFR 205.50 and 45 CFR 303.21;

(f) Requires the provider to obtain prior approval from the Department for ADP equipment and ADP services that are acquired primarily to support the titles covered by this subpart and requires the provider to comply with 45 CFR Part 74, Subpart P for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when these titles may reasonably be expected to be billed more than 50% of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement. If, however, the titles covered by this regulation are to be directly charged for the cost of the purchase or lease of ADP equipment or services acquired for a central processing facility, the provisions of § 96.611(a) apply;

(g) Includes the beginning and ending dates of the period of time covered by the service agreement; and

(h) Includes a schedule of expected total charges to the titles covered by this regulation for the period of the service agreement.

"Software" means a set of computer programs, procedure, and associated documentation used to operate the hardware.

"State agency" means the State agency administering or supervising the administration of the State plan that is required by the Department for the Social Security Act programs.

"System specifications" means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data—which is required to determine the ADP equipment and software necessary to implement the system design.

"System study" means the examination of existing information flow and operational procedures within an organization. The study essentially consists of three basic phases: Data gathering, investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting of the parts and relationships uncovered through the analysis into an efficient system.

4. Section 95.611 is amended by revising paragraphs (a) and (b) as follows:

Specific Conditions for FFP

§ 95.611 Prior approval conditions.

(a) *General Acquisition requirement.* A State shall obtain prior written approval from the Department when it plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of $200,000 or more in Federal and State funds over any twelve-month period, or $300,000 or more in Federal and State funds for the total acquisition. A State shall obtain prior written approval from the Department when it plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate authorized by 45 CFR 205.35, 45 CFR Part 307 or 42 CFR Part 433, Subpart C regardless of the acquisition cost. A State shall also obtain prior written approval from the Department when it plans to acquire noncompetitively from a non-governmental source ADP equipment or services that cost more than $25,000 in Federal and State funds. The State shall submit requests for prior systems approval, signed by the appropriate State official, to the Assistant Secretary for Management and Budget (ASMB), Department of Health and Human Services. Requests from States shall indicate clearly the Social Security Act titles under which funding is requested, the estimated cost for the total acquisition, and the estimated amount or percent that is requested for each title. The State shall send three copies of the request for each component to the Department that must approve the request. The Department will acknowledge receipt of the State request.

(b) *Specific prior approval requirements.* The State agency shall obtain written approval of the Department:

(1) For the advance planning document or any change of the advance planning document prior to entering into contractual agreements or making any other commitment for acquisition of ADP equipment or ADP services;

(2) For the service agreement (when data processing services are to be provided by a State central data processing facility or by another State or local agency), any extension of the period covered by the service agreement, or for changes to any of the other elements of a service agreement listed in § 95.605.

(3) When required, for the request for proposal (RFP), prior to its issuance when service or equipment proposals are being solicited from non-

governmental sources. The Department requires approval of the RFP if the procurement is complex, the grantee has a history of performance problems, or the State proposes to claim FFP at the enhanced matching rate;

(4) When required, for the contract, prior to signature of the contracting officer. The Department requires approval of the contract if the procurement is complex, the grantee has a history of performance problems, or the State proposes to claim FFP at the enhanced matching rate;

(5) When required for:

(i) The feasibility study;

(ii) The system study;

(iii) The system design;

(iv) The system specifications; and

(v) The acceptance document.

The Department will notify the State agency if such prior approval is required under § 95.611(b) (3), (4) or (5) for acquisitions for which the State proposes to claim FFP as the regular matching rate. The State shall consider prior approval required for the RFP, contract and system design documents when the State proposes to claim FFP at an enhanced matching rate.

* * * * *

§ 95.612 [Removed]

5. Part 95 is amended by removing § 95.612.

6. Section 95.613 is revised to read as follows:

§ 95.613 Procurement standards.

Procurements of ADP equipment and services are subject to the procurement standards prescribed by Subpart P of 45 CFR, Part 74 regardless of any conditions for prior approval. Those standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated. Those standards, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and to ADP services and equipment acquired by a State or local central data processing facility primarily to support the Social Security Act programs covered by this subpart. Since it is an acquisition by one government agency from another, the service agreement between the State agency and the State central data processing facility is, in accordance with 45 CFR 74.160, exempt from the procurement standards.

7. Section 95.615 is amended by removing the word "records" from the section heading and inserting in its place the words "systems and records" to read as follows:

§ 95.615 Access to systems and records.

* * * * *

8. Section 95.617 is amended by revising paragraphs (a), (b) and (c) as follows:

§ 95.617 Software and ownership rights.

(a) *General.* The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart.

(b) *Federal license.* The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(c) *Proprietary software.* Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (a) and (b) of this section.

9. Section 95.619 is revised to read as follows:

§ 95.619 Use of ADP systems.

ADP systems designed, developed, or installed with Federal financial participation shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified.

10. A new paragraph (d) is added to § 95.621 to read as follows:

§ 95.621 ADP reviews.

* * * * *

(d) Acquisitions not subject to prior approval. A review conducted on an audit basis to assure that system and equipment acquisitions costing less than $200,000 were made in accordance with 45 CFR Part 74 and the conditions of this subpart, and to determine the efficiency, economy and effectiveness of the equipment or system.

11. Section 95.623 is revised to read as follows:

§ 95.623 Waiver of prior approval requirements.

ADP equipment and services acquired by a State agency without required prior approval of the Department may qualify for FFP provided the Department waives the prior approval requirement. The Department will waive the prior approval requirement provided that:

(a) The State submits a request for retroactive approval within six months following the acquisition that conforms to the conditions specified in 45 CFR 95.611.

(b) The State provides justification for failure to obtain prior approval,

(c) The Department determines that the ADP equipment or service is cost beneficial to the Department's programs, and would have received prior approval had a request for such approval been made by the State agency, and

(d) The Department agrees to the acquisition. 45 CFR 205.37 and 307.15 prohibit waiver of prior approval for ADP acquisitions funded by titles IV–A and IV–D at the enhanced matching rate.

12. A new § 95.625 is added to read as follows:

§ 95.625 Increased FFP for certain ADP systems.

(a) General. FFP is available at enhanced matching rates for individual or integrated systems that support State plans for titles IV–A, IV–D and/or XIX provided the systems meet specific regulatory provisions established by the individual programs.

(b) Specific regulatory references. The applicable regulations for the title IV–A program are contained in 45 CFR 205.35. The applicable regulations for the title IV–D program are contained in 45 CFR Part 307. The applicable regulations for the title XIX program are contained in 42 CFR 432, Subpart C and 42 CFR 433, Subpart C.

13. The center heading before §§ 95.631 and 95.633 is revised to read as follows:

Federal Financial Participation in Costs of ADP Acquisitions

14. Section 95.631 is revised to read as follows:

§ 95.631 Cost identification for purposes of FFP claims.

The conditions of this subpart apply notwithstanding the existence of an approved cost allocation plan. State agencies shall assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(a) *Development costs.* The State agency shall identify the actual development costs incurred under an approved APD in its departmental accounting system, and assign these costs to the project cost center established in accordance with the approved cost allocation plan required by Subpart E of this part. The State must distribute these costs, as incurred, to all funding sources in accordance with the procedure stated in the APD as approved by HHS.

(b) *Operational costs.* Costs incurred for the operation of an ADP system shall be identified and assigned to funding sources in accordance with the approved cost allocation plan required by Subpart E of this part.

(c) *Service agreement costs.* States that operate a central data processing facility shall use their approved central service cost allocation plan required by OMB Circular A–87 to identify and assign costs incurred under a service agreement with the State agency. The State agency will then distribute these costs to funding sources in accordance with paragraphs (a) and (b) of this section.

15. Section 95.641 is revised to read as follows:

§ 95.641 Applicability of rules for charging equipment in Subpart G of this part.

ADP equipment, as well as other equipment acquired under public assistance programs, is subject to Subpart G of this part. Among other things, Subpart G provides that a State may charge only depreciation or use allowances for equipment with a unit acquisition cost of over $25,000. For ADP equipment, however, HHS will consider requests for waivers of that restriction. If the acquisition of the equipment is part of an APD that is subject to the prior approval requirements of this Subpart F, the State may submit the request for a waiver as part of the APD.

16. Section 95.643 is removed.

§ 95.643 [Removed]

[FR Doc. 84-29342 Filed 11-16-84; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 84-027]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the requirements pertaining to marking of vessels documented under the laws of the United States. Under the proposed regulations, the requirement to mark a vessel with a hailing port would be eliminated. In lieu of a hailing port marking, the owner would be required to mark the rear exterior of the vessel with the abbreviation "U.S." and the official number assigned by the Coast Guard. These proposed changes are based on comments received in response to an Advanve Notice of Proposed Rulemaking (ANPRM). The proposed new markings would provide a more positive basis for identifying a vessel seen on the water as a vessel documented under the laws of the United States.

DATES: Comments must be received on or before February 19, 1985.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/24), (CGD 84–027), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered and will be available for inspection or copying at the Marine Safety Council (G–CMC/24), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426–1477 between the hours of 7 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert R. Meeks (Staff Attorney), Office of Merchant Marine Safety, (202) 426–1492, or (202) 426–1493. Normal office hours are between 7 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Robert R. Meeks (Staff Attorney), Office of Merchant Marine Safety; and Lieutenant Sandra R. Sylvester (Project Attorney), Office of the Chief Counsel.

Comments Invited

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person making them, and identify this notice (CGD 84–027). Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but the Coast Guard will further evaluate the need for public hearings based on the comments received in respones to the NPRM.

Background

An ANPRM published in the **Federal Register** on May 17, 1984 [49 FR 20872] pointed out that recent changes in the regulations pertaining to marking of vessels documented under the laws of the United States had resulted in complaints from other agencies and members of the public. The ANPRM requested comments on whether the Coast Guard should continue to have a regulation requiring the marking of a hailing port, and, if so, what limitations should apply to the owner's choice of a port to be marked.

Discussion of Comments and Action

The following summarizes the comments received and the action proposed by the Coast Guard. Of the 25 comments received, 13 said or strongly implied a hailing port marking should be required by regulation; 8 said or strongly implied the requirement should be eliminated or that certain types of vessels, such as yachts or river barges, should be exempt; the other comments did not take a position on the issue.

Those who want to continue the regulatory requirement for marking a hailing port gave several reasons. Some said the marking of a port on a vessel is a longstanding and colorful tradition of the sea and should continue for that reason if for no other. Others said the hailing port mark is useful for identifying the vessel or the vessel's owner and for locating the vessel's records. Still others stressed the value of the hailing port as an aid to law enforcement and in search and rescue efforts. The hailing port was also said to provide some indication of a vessel's nationality for international purposes.

Those who feel hailing port markings should be eliminated also gave several reasons. Some said marking a hailing port on a vessel is expensive and provides no benefit to the owner for the money spent. One commenter said marking a yacht can cost several hundred dollars. Other commenters pointed out that in addition to the initial marking expense, changes in hailing port markings necessitated by movement of corporate offices or transfers of vessels to other companies can mean additional expense due to remarking and delayed vessel operations. Several commenters said hailing port markings have little value as a means for identifying a vessel or locating its records.

Most commenters said if hailing port markings are required the owner should have broad discretion in selecting a place to be marked. Markings suggested by commenters included: any geographical place, "real or imagined"; any port through which the owner can be directly traced; any place meeting the criteria previously set out in section 47 of Title 46, United States Code; any place having "a meaningful relationship to the shipowner's operations"; the "actual home port [where] the boat is

realistically based"; any place within the geographical area of responsibility of his home port; any place recognized by the U.S. Postal Service as a bona fide mailing address; an identifiable location in the State displayed, including a yacht club or marina; the port where the vessel is berthed, or from which it mainly sails; the owner's place of birth; the letters U.S.A.; the State where the vessel owner resides; and the vessel's home port. A few commenters said the only port marking which should be permitted is the place where the vessel's records are kept. Some commenters said if changes in the requirements for marking a hailing port are made, the Coast Guard should permit existing vessels to retain their current markings.

In addition to responses to the questions included in the ANPRM, some commenters discussed other issues related to vessel marking. One commenter, who took no position on whether the regulatory requirement for hailing port markings should be continued, said port markings produce confusion for local taxing authorities and other local officials. The commenter said this confusion can place vessel owners in the position of having to litigate their liability for personal property tax when tax assessors improperly rely on the hailing port marking as a basis for asserting tax liability. Another commenter, who said display of a hailing port is virtually useless as an aid in identifying vessels or owners, suggested a more useful and logical approach would be to require marking the vessel's official number preceded by "No." on the outside of the vessel.

As the ANPRM noted, Congress repealed the statutes which required marking the name of a port on a documented vessel. Under the pertinent statute in effect now, 46 U.S.C. 12116(c), the owner of a documented vessel is required to "affix to the vessel and maintain in the manner prescribed by the Secretary the number assigned and any other identification markings the Secretary may require." A hailing port marking could be required under this statute as an identification marking. However, as several commenters pointed out, a hailing port marking has little practical value as a basis for vessel identification. Under the current system of documentation there is no limit on the number of vessels which may be marked with the same name and hailing port. This and other aspects of the system for selecting hailing port markings makes it difficult for one who sees a vessel marked with a certain hailing port to trace that vessel's owner or locate its records. None of the suggested alternative approaches to selecting a hailing port to be marked on a vessel would provide much improvement in relation to vessel identification. Therefore, the Coast Guard proposes to eliminate the requirement to mark a hailing port on a documented vessel.

Although the Coast Guard considers a hailing port mark of little value in vessel identification, as several commenters pointed out, vessel identification through external markings is important for law enforcement, search and rescue, and other purposes. For that reason, in lieu of the requirement to mark a hailing port, the Coast Guard proposes to require the owner of a documented vessel to mark the exterior of the vessel with the official number assigned by the Coast Guard. The official number is a unique identifier. It is assigned to each vessel at the time it is first documented and remains assigned to the vessel permanently. It provides a positive basis for identification of any documented vessel seen on the water. Using the official number, Coast Guard officials can locate the vessel's official documentation records and determine the vessel's owner of record.

The proposed requirement to mark the official number on the exterior of a documented vessel would be in addition to the existing regulation which requires the owner to mark the official number permanently on some clearly visible interior structural part of the hull. The proposed marking would be placed on the stern of the vessel. If the stern space is inadequate, the owner would be required to place the marking on some clearly visible exterior part of the hull on both sides of the vessel near the stern. In either case, the proposed regulation would require the marking to be made using block-type arabic numerals not less than four (4) inches in height.

In addition to the need for a mark to aid in identification, the Coast Guard believes there is a need for an exterior mark to show the nationality of a documented vessel. The Coast Guard proposes to address this need by requiring the owner to mark the letters U.S. in front of the official number. For example, the mark would appear as: U.S. 654321. This form of marking will aid law enforcement personnel in deciding whether a vessel is a vessel of the United States if it is not flying a flag. The letters U.S. would be required to be block letters not less than four (4) inches in height. The proposed exterior markings, consisting of U.S. and the official number, could be made by use of any means and materials which would result in durable markings.

In proposing these changes to the marking regulations, the Coast Guard proposes to permit vessels which are now properly documented and marked to retain the existing markings for a maximum of five (5) years from the date the proposed regulations are effective. Any change in home port or change in ownership prior to the five year limit would require the markings to be changed at that time to comply with the proposed regulations. Those who wish to continue to mark a hailing port for personal reasons, such as tradition or pride, would be permitted to do so. There would be no requirement to advise the Coast Guard if a hailing port marking is used.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Marking a particular vessel can cost only a few dollars or hundreds of dollars, depending on the materials used and who does the work, but there would be no significant change in the relative cost of marking the vessel under the proposal. The proposal would require marking a vessel with a group of letters and numbers, whereas current regulations require marking the name of a port. For new vessels there would be some savings for the initial owner and subsequent owners due to a reduced need to remark the vessel as the owner relocates or as ownership of the vessel changes. Economic impact on owners of existing documented vessels would be minimal, since application of the proposed changes as to them is deferred for up to five years.

Regulatory Flexibility Act

Since the impact of this proposal is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 67

Vessels, Documentation.

Proposed Regulatory Change

PART 67—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend 46 CFR Part 67 as follows:

1. The authority citation for Part 67 is revised to read as follows:

Authority: 46 U.S.C. 12103, 12113, 12115, 12120, 12121, 65 Stat. 290 (31 U.S.C. 483a); 41 Stat. 1002, 80 Stat. 795 (46 App. U.S.C. 927); 41 Stat. 1006 (46 App. U.S.C. 983); 94 Stat. 978 (42 U.S.C. 9101).

§ 67.13-7 [Removed]

2. Section 67.13-7 is deleted.

3. Section 67.15-1 is revised to read as follows:

§ 67.15-1 Official number marking requirement.

(a) The official number of the vessel must be marked:

(1) On some clearly visible interior structural part of the hull; and

(2) On some clearly visible exterior part of the stern of the vessel. If the stern surface is too small to accommodate the required marking, it must be placed on some clearly visible exterior part of the hull on both sides of the vessel within five (5) feet of the stern.

(b) The marking required by paragraph (a)(1) of this section must be block-type arabic numerals not less than three (3) inches in height and may be made by any permanent method which cannot be obliterated or obscured.

(c) Each marking required by paragraph (a)(2) of this section must be preceded by the abbreviation "U.S." Block-type letters and block-type arabic numerals not less than four (4) inches in height must be used. Marking(s) may be made by use of any materials which would result in durable markings.

(d) Paragraph (a)(2) of this section is not applicable to a vessel properly documented under the laws of the United States on or before the effective date of this regulation until the home port of the vessel is changed, the ownership of the vessel is changed in whole or in part, or until five (5) years after the effective date of this regulation, whichever first occurs.

4. Section 67.15-3 is revised to read as follows:

§ 67.15-3 Name Marking requirements.

(a) *Pleasure vessels.* For vessels documented exclusively for pleasure, the name of the vessel must be marked in clearly legible letters not less than four (4) inches in height on some clearly visible part of the hull.

(b) *Vessels with square bow.* For vessels having a square bow, the name of the vessel may be marked in clearly legible letters not less than four (4) inches in height on some clearly visible exterior part of the bow, rather than as specified in paragraph (c) of this section, in order to avoid obliteration. The name must be marked in clearly legible letters not less than four (4) inches in height on some clearly visible exterior part of the stern.

(c) *Other vessels.* For vessels other than those covered in paragraphs (a) and (b) of this section, the name of the vessels must be marked in clearly legible letters not less than four (4) inches in height on some clearly visible exterior part of the port and starboard bow and the stern of the vessel.

(d) The markings required by paragraphs (a), (b), and (c), of this section may be made by use of any means and materials which result in durable markings.

5. Section 67.15-5 is amended by revising paragraph (b) to read as follows:

§ 67.15-5 Requirement for evidence of marking.

* * * * *

(b) When there is a change in the name of the vessel or in any other exterior marking required by this subpart.

* * * * *

Dated: November 14, 1984.

B. G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 84-30270 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-417; RM-4310; RM-4526]

TV Broadcast Station in Kingsport, TN et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein optionally proposes the assignment of UHF TV Channel 44 to Kingsport, Tennessee, at the request of Peggy Anne Rothchild, or Channel 44 to Harlan, Kentucky, at the request of Holston Valley Broadcasting Corporation. Additionally, Family TV, Inc. is requested to comment on the proposed change of offset for Channel 44 at Evansville, Indiana. The assignment of Channel 44 at Kingsport could provide that community with its second local television service and the assignment at Harlan, Kentucky, could provide that community with its first local television service.

DATES: Comments must be filed on or before December 31, 1984, and reply comments on or before January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Further Notice of Proposed Rule Making and Order to Show Cause

In the matter of amendment of §73.606(b), table of assignments, television broadcast stations. (Kingsport, Tennessee, Harlan, Kentucky [1] and Evansville, Indiana [1]) MM Docket No. 83-417, RM-4310, RM-4526.

Adopted: October 18, 1984.

Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration its Notice of Proposed Rule Making, 48 FR 23865, published May 27, 1983, proposing the assignment of UHF Television Channel 44 to Kingsport, Tennessee, at the request of Peggy Ann Rothchild ("Rothchild"). Holston Valley Broadcasting Corporation ("HVBC"), licensee of TV Station WKPT (Channel 19), Kingsport Tennessee, filed a counterproposal requesting the assignment of Channel 44 to Harlan, Kentucky, and stating its intention to apply for the channel, if assigned.[2] The Harlan proposal requires a change in the offset of Channel 44 at Evansville, Indiana, licensed to Family TV, Inc. Rothchild filed comments reiterating her intention to apply for the channel at Kingsport if assigned. No reply comments were filed by either party. The staff has determined that Channel 44 is the ony channel available for assignment to either community. Therefore, before the Commission can make a comparative evaluation of both proposals, the willingness of the Evansville licensee to change offset must be explored.

2. Kinsport (population 32,027),[3] in Sullivan County (population 143,968), is located in eastern Tennessee, approximately 140 kilometers (88 miles) northeast of Knoxville, Tennessee. It is served by Station WKPT (Channel 19). Harlan (population 3,024), the seat of Harlan County (population 41,889), is located in eastern Kentucky.

[1] These communities have been added to the caption.

[2] Public Notice of the counterproposal was given on June 30, 1983, Report No. 1413.

[3] Population figures are taken from the 1980 U.S. Census.

approximately 75 kilometers (47 miles) northwest of Kingsport. Harlan has no local television service.

3. Channel 44 can be assigned to Kingsport in compliance with the Commission's mileage separation requirements if the transmitter is sited at least one mile northwest of the community. The assignment of Channel 44 at Harlan comports with the mileage requirements if the offset on Channel 44 at Evansville, Indiana, is changed from minus to zero. In a subsequent filing, HVBC has informed the Commission that it is willing to reimburse Family TV, Inc., licensee of Station WEVV–TV, for its reasonable and prudent costs associated with the change in frequency offset. However, we have not been informed by Family TV as to its willingness to change its offset. Therefore, to enable the Commission to make a final determination herein, we are issuing an Order to Show Cause to Family TV to determine its willingness to modify its facilities to reflect a zero offset.

4. Based on the above discussion, we are seeking comments on the proposed changes to the Television Table of Assignments, § 73.606(b) of the Rules, to read as follows, for the communities listed below:

City	Channel No.	
	Present	Proposed
Option I		
Kingsport, TN	19	19,44–
Option II		
Kingsport, TN	19	19,
Harlan, KY		44–
Evansville, ID	7, *9+, 14–, 25–, and 44–.	7, *9+, 14–, 25–, and 44.

5. It is ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Family TV, Inc., licensee of Station WEVV–TV, Evansville, Indiana, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 44 in lieu of Channel 44— as proposed herein.

6. Pursuant to § 1.87 of the Commission's Rules, Family TV, Inc. may, not later than December 31, 1984, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Family TV may not later than December 31, 1984, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. In this case, the Commission may call on Family TV to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the Order to Show Cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Family TV will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission if the above-mentioned channel modification is ultimately found to be in the public interest.

7. It is further ordered, That the Secretary shall send a copy of this Further Notice of Proposed Rule Making and Order to Show Cause by certified mail, return receipt requested, to Family TV, Inc., 1405 N. Main Street, Evansville, Indiana 47711.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before December 31, 1984, and reply comments on or before January 15, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, as follows:

Edward M. Johnson & Associates, Inc., One Regency Square, Suite 450, Knoxville, Tennessee 37915 (Consultant to Rothchild)

John B. Jacob, Esq., Dennis J. Kelly, Esq., Cordon and Jacob, 2000 L Street, NW, Suite 616, Washington, D.C. 20036 (Counsel to HVBC)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assingments. An *ex parte* contact is a message (spoke or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in this proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84–30286 Filed 11–16–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM–195]

Reclassification of Special Fireworks

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Notice solicits comment on the merits of a petition for rulemaking filed with the MTB proposing to reclassify certain fireworks currently classed as Class B explosive to Class C explosive.

DATE: Comments must be received by February 14, 1985.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation Washington, D.C., 20590. Comments should identify the docket and be submitted, if possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C., 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Irving R. Abis, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C., 20590, (202) 426–2075.

SUPPLEMENTARY INFORMATION: On October 26, 1984, the United States Display Fireworks Association (USDFA) filed a petition for rulemaking under the provisions of 49 CFR § 106.31. The petition is published verbatim in this notice. MTB's publication of the USDFA's petition as an Advance Notice of Proposed Rulemaking does not constitute a decision by MTB to undertake a rulemaking action on the substance of the petition. This Advance Notice is issued solely to obtain comments on the merits of the petition from interested parties as one aspect of its decision on whether to proceed with rulemaking.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

Petition for Rulemaking Proposed by the United States Display Fireworks Association

I. Introduction

A. Preamble

As compared to fireworks used by the general public and display projectiles used for military purposes, special (or display) fireworks are most commonly used on the Fourth of July and at public events and are handled by professional pyrotechnic managers or semi-professional personnel. This is an industry that is characterized by small, family owned businesses, often dating back seven to ten generations to Italy. These professional artisans developed public display pyrotechnics in the United States based on age-old technologies, practices and methods. The tools and materials of this industry segment have changed little over the last two hundred years. Nonetheless, the industry has, in the main, complied with the recent trends toward more government regulation and have done so willingly. Yet a point has come where federal regulations governing transportation of special fireworks products threaten the livelihood of businesses and degrade rather than promote certain attendant safety factors. Such demands of cost and time beyond what can be reasonably expected in the public interest often seriously hinder the quality of service to users and customers and threaten to drive these small companies further into unprofitability as well as to discourage new generations and new entrants of people into the field. One result of this trend is the importation of more foreign made fireworks products. In addition, more domestic manufacturers are having difficulty taking delivery on foreign and domestic materials needed to manufacture safe display pyrotechnics which have now become synonymous with the birthday of our country.

We respectfully ask that the Secretary of Transportation provide regulatory relief for this industry and heed its safety recommendations.

B. Purpose of Petition

In accordance with the provisions in Part 106 of 49 C.F.R. the U.S. Display Fireworks Association proposes a rulemaking for the establishment of amendments to the present rules contained in Parts 172.101–173.100. The purpose of the proposed rulemaking is to seek relief from regulatory over-classification of the transportation of display fireworks and to enhance safety in transporting products on public roads by differentiating between special and display fireworks and reclassifying display articles under Class C regulations.

C. Reason for Petition

The companies comprising the display fireworks industry make up a unique segment of the pyrotechnics industry. These mostly family owned, small businesses use long established artisan oriented techniques for producing and using special fireworks.

Bacause (sic) of federal regulations these companies can no longer ship products by means of air freight or rail. Now, however, enforcement of

Department of Transportation regulations has effectively precluded economic shipment by common carrier trucks. Regulatory requirements caused by classification of display fireworks as Class B result in truck companies demanding a "mini-rate" charge which is economically prohibitive. Certain other regulations often make shipment, even by company owned vehicles, cost prohibitive because of required additional employees attendant in the trucks during stops where rural safe havens are not readily available. From a safety standpoint, required placards announcing "B-Explosive" flatly invite vehicle breakins and theft of fireworks which are then unsafely and improperly ignited (without a projection tube).

In summary, the reason for this petition is threefold: (1) make truck common carrier transportation economically available to the display fireworks industry; (2) make company vehicle transportation economic and time efficient; and (3) enhance safety by the elimination of placards entitled "B-Explosives".

D. Definitions

Display Fireworks: special fireworks that are not military in use and whose purpose is for typical, local display events which are prepared and activated by trained personnel

In this petition, special fireworks and display fireworks may be used interchangeably.

Company Operated Vehicle: a roadway vehicle owned or operated by the manufacturer or distributor of display fireworks who is not a contract transportation agent or a common carrier

Manufacturer: a domestic person or company who makes or modifies or sells or activates display fireworks articles

Distributor: a domestic person or company who sells or activates display fireworks

Foreign Display Fireworks: articles which are originally manufactured outside the United States and that are not modified or operationally enhanced by a domestic manufacturer

The Industry: the segment of the pyrotechnics and special fireworks industry in the United States that manufactures and distributes display fireworks

II Proposed Rulemaking

A. Amendment of Specific Sections

As experienced by manufacturers and distributors of display fireworks, Part 173.88(d) effectively constitutes an over-classification of display fireworks. In order to achieve relief from the requirement that a motor vehicle "must be attended at all times by its driver or a qualified representative of the motor carrier that operates it", it is recommended that special fireworks, as defined in Part 173.88(d), be redefined so as to separate display fireworks articles from military projectiles (for which no relief is sought) by reclassifying display fireworks under Class C of Part 173.100 of 49 C.F.R.

This change also requires amending Part 172.101 to add to a listing of "Fireworks, display" so that Column 3 reads "Class C explosive", Column 4 reads "Explosive C", Column 5(a) reads "none", Column 5(b) reads 173.100", Column 6(a) reads "Forbidden:, 6(b) reads "150" and Columns 7(a) and (b) read "1.2" with 7(c) reading "Passenger vessels in metal lockers only". Inclusion of display fireworks under Class C would apply to the transportation of display fireworks in vehicles operated by fireworks manufacturers and distributors, and by common carriers or contract carriage operators.

These amendments reclassify display fireworks as Class C but, as a result of Part 172.101, 6(a) prohibit the transport of such material by passenger carrying aircraft or railcar. This restriction is in industry recognition of the safety needs peculiar to those modes of transportation and to continue those overriding safety measures which should remain unmodified.

B. Assessment of Proposed Rulemaking

1. *Safety Considerations.* On February 16, 1984, the applicant provided a Statement of Safety Considerations For The Transportation of Class B, Special Fireworks (Appendix A) to, and at the request of, the Office of the Secretary. Other safety considerations are detailed as follows.

a. *Record:* The absence of any on-the-road accident involving explosion or ignition of special fireworks is clear demonstration that the industry is capable of exercising a high degree of safety in transporting its products. Obviously, this safety record demonstration is operational in nature and provides imperical evidence of safety over the period of time since DOT and other Federal agencies have been keeping data and records.

b. *Professional Managers and Technicians:* Because of the pyrotechnic nature of special fireworks, the personnel involved in transporting products in manufactuer and distributor operated vehicles are almost always trained, technical artisans. Rarely do industry members employ vehicle drivers only to haul products to customer sites. When common carriers are involved in shipping special fireworks, packages are adjusted in size and weight so that such products can be transported without the presence of professional managers. Therefore, safety is enhanced by such professional personnel who are normally involved in special fireworks handling.

c. *Safety Comparison:* In comparing the transportation safety record of display fireworks and petroleum products (which are not required to have vehicle attendance at all times), the relative operational safety of display fireworks is generally greater. For example, a load of gasoline can immediately ignite upon contact of spark or flame. This is not particularly true of display fireworks. This comparison demonstrates and suggests an over-classification of display fireworks as Class B.

d. *Placard Related Safety:* The special fireworks industry is unfortunately plagued by breakin and robbery of company owned vehicles because of both placarding reading "B-Explosive" and company names that include the word "fireworks". Many companies have not used the name "fireworks" because of this reason.

By reclassification of display fireworks as Class C, placards announcing explosives will be eliminated which will further enhance safety by stopping theft and the unprofessional use of stolen fireworks.

2. *Indirect Considerations.* There have been occurences (sic) where domestic, special fireworks manufacturers and distributors have found that federal transportation regulations have tended to restrict sale and delivery of products to customers in certain geographical areas. Therefore, there has been some tendency in the domestic industry in ' recent years not to market its products as widely and to the full array of domestic users it once did. This industry retreat is not unrelated to the problems and the often excessive costs of complying with Class B regulations which confront this particular industry.

At the same time, and not unrelated to adjustments in the marketplace, there has been a rise in the importation and use of foreign made display fireworks (sic) which typically are less safe than domestic products. For various reasons, unenhanced and unmodified foreign projectiles have tended to be sold directly (and without the benefit of modifications) to domestic users, many of whom once purchased from domestic sources.

Increasingly, there is a tendency for customers to buy more available, cheaper and unsafe foreign fireworks.

Foreign government subsidization of fireworks manufacturing and export and the fact that product liability is usually not enforceable and, finally, the use of less "lifting powder" all make foreign products cheaper to U.S. customers who often can not get timely and economical delivery of safe bona fide products from domestic manufacturers due to what becomes regulatory barriers. There is a demonstrable record of mishaps and unsafe operation of such foreign special fireworks, the lates of which was premature detonation of fireworks that occurred in the Washington metropolitan area on the Fourth of July, 1984. This information is offered because of the accompanying safety degradation that may be of significance to the Department.

3. *Regulatory Compliance.* It has been proven that it is difficult to comply with certain Class B regulations and still profitably and safely deliver special fireworks to users. For example, approximately two thirds of most transportation of display fireworks takes place in areas where no safe havens exist. Therefore, it often requires greater driving time and transportation logistics to safely transport products than if certain regulatory requirements for display fireworks did not exist. In some respects this increased "exposure time" degrades transportation safety.

4. **Regulatory Precedent.** The applicant believes that this petition is similar in nature to Docket HM–167, Amendment Numbers 172–92 and 173–175, a petition of the Sporting Arms and Ammunition Manufacturers Institute. DOT acted favorably on that petition for reasons such as successful transportation history and minimal hazard. We believe this rulemaking is a precedent which provides certain justification to grant the request under this petition.

5. *Operational Relief and Business Benefits.* The applicant has assessed the operational problems posed by the referenced regulations against what specific and minimal amendments are necessary to give relief from the encumbrances which are typically experienced from over-classification of display fireworks. Those amendments are specified in Section II, A of this petition. The following are real and operational relief and benefits which will result from amending regulations.

a. *Cost and Time:* An amendment under this petition will relieve the inflation of employee and operational time cost which have threatened the economic viability of the display fireworks industry and the probable success of its business future.

b. *Service to the Public:* The applicant states that its ability to safely serve the public would be significantly enhanced by the removal of display fireworks from Class B Hazardous Material Transportation Regulations thereby allowing both company and common carrier vehicles to deliver fireworks to the customer in less time and with less exposure to circumstances which pose safety hazards.

c. *Placards Regulations:* Removal of Class B placarding requirements through reclassification of display fireworks will enable the industry to more successfully avoid vehicle breakins and thus protect against illegal detonation of fireworks articles by thieves.

6. *Legislative History and Congressional intent.* The petitioner references the hearing record of S. 1933, The Federal Railroad Safety Act of 1969, as an example of the intent of Congress to provide relief as is recommended under this petition. Title III (Hazardous Materials Control) of the Act created a hazardous materials technical staff to oversee all transportation of dangerous materials. The Department of Transportation testified in these hearings on cost/benefit in which transportation of explosives is cited. The Department noted that "The regulations should minimize the hazard to the public, within the limits of economic feasibility." (Appendix B) [1]

7. *Supportive Data.* An industry survey of the Association's eighty members confirmed the restrictive impact of current Class B regulations on the transportation of display fireworks. The forty-five responses to the survey establish a substantial assessment pattern. Federal regulations have brought changes in transporting display fireworks that render members unable to satisfactorily serve customers. Two-thirds of the companies do a significant portion of business in rural areas where there are no readily available safe havens. Although two-thirds of the companies are over twenty years old, no one has reported or ever known of a highway accident resulting in fire or explosion of display fireworks in transport. Members unanimously believe manufacturers and distributors, as well as common carriers, can safely transport display fireworks without the application of the regulatory requirements occasioned by classification under Class B Explosives. These professionals have historically shown their understanding transportation safety and their ability to self regulate transportation of products in the industry.

III. Conclusion

The applicant respectfully requests a rulemaking and approval of this petition based on Congressional intent, regulatory purpose, enhancement of safety in the public interest and the need to maintain economic integrity of the display fireworks industry.

Appendix A

1. *History*—There has never been accidental explosion of Class B fireworks during transportation—according to an informal survey of professionals in the Class B industry.

2. *Shipping Containerization*—All Class B products are packed tightly in lined, waterproof cartons and banded for safety purposes.

3. *Manufacturer Operated Vehicles*—All trucks are locked and have metal-lined exteriors and woodlined interiors.

4. *Ignition Safety Properties*—Class B products will only ignite by application of direct flame to ignition devices. Ignition will not occur from high temperature or impact alone.

5. *Transportation Safety Comparison*—It is commonly held by industry personnel that Class B products, in transit, are less subject to explosion than gasoline or petroleum products in transit.

(49 U.S.C. 1804, 1806; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Issued in Washington, D.C., on November 13, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84–30318 Filed 11–16–84; 8:45 am]

BILLING CODE 4910–60–M

[1] The petitioner cites the following document as Appendix B: Hearings on S. 1933, S.2915, and S. 3061 Before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Session, ser. 91–32 at 55 (1969). It is available for review in the docket file.

National Highway Traffic Safety Administration

49 CFR Part 542

[Docket No. T84–01; Notice 1]

Federal Motor Vehicle Theft Prevention

AGENCY: Department of Transportation, National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of public meeting.

SUMMARY: This notice announces public meeting to obtain comment on the implementation of the recently enacted

Title IV of the Motor Vehicle Information and Cost Savings Act. Title VI seeks to reduce the theft of cars for parts by requiring the placing of identifying numbers or symbols on certain parts in high theft lines of cars. The meeting will focus on the actions which the agency must take in the next 6 months to implement that legislation. Those actions include proposing a vehicle theft prevention standard for high theft lines of new passenger cars and selecting the parts and lines subject to the standard. Among the issues to be considered are the following: The data to be used to calculate the median theft rate for all new passenger car lines and thereby determine the high theft lines; the parts on which identification is to be placed and the nature of that identification; the performance requirements for the techniques used to place the identification on the parts; and certification of compliance with the theft prevention standard. While the meeting is open to the public, attendance is limited to the space available.

DATE: Written suggestions for questions to be asked at the meeting should be received not later than December 5, 1984.

The meeting will be held December 6–7, 1984. The December 6 session will begin at 10:30 a.m.

Written comments on the subjects discussed at the meeting should be received not later than December 17, 1984.

ADDRESSES: The location of meeting will be in Room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C.

Written questions and comments should be sent to Docket Section, Room 5108, National Highway Traffic Safety Administration, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: William Boehly, Director, Office of Market Incentives, National Highway Traffic Safety Administration, Washington D.C. 20590, (202) 426–1740.

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act

On October 25, 1984, the President signed the Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. 98–547. That Act added a Title VI to the Motor Vehicle Information and Cost Savings Act which seeks to deter and reduce passenger car thefts. (Under the delegation of authority by the Secretary at 49 CFR 501.2(f), the responsibilities imposed by Title VI will be carried out by the National Highway Traffic Safety Administrator.) Congress found that certain cars are often stolen in order to be diamantled and then their parts are illegally resold to repair shops. Often, the value of those parts far exceeds the original purchase price of the vehicle. That fact, coupled with the difficulty of tracing stolen parts and hence successfully prosecuting the thieves, has made car theft into a major crime "industry."

To reduce these thefts, Title VI requires the issuance of a motor vehicle theft prevention standard requiring the inscribing or affixing of permanent identification on the major original equipment and replacement parts of frequently stolen passenger cars. The statute requires that the standard be stated in terms of performance; be practicable; apply relevant, objective criteria; and cost $15.00 or less per covered vehicle (or a lesser, reasonable amount for a covered replacement part). Placing identifying numbers on these parts (and symbols on any replacement parts) will make it possible to determine when the parts have been obtained from vehicles which may have been stolen. By combining the identification program with the provisions in the Vehicle Theft Act for criminal penalties for tampering with the I.D.'s as well as stricter Federal car theft penalties and more stringent import and export controls, Congress anticipates that the rate of motor vehicle theft will be reduced and, in turn, insurance premiums will go down.

The House Committee report on Title VI states that the Committee expected that NHTSA would select the vehicle identification number specified by Federal Motor Vehicle Safety Standard No. 115 and Part 565 of Title 49, Code of Federal Regulations, or a derivative thereof as the identifier to be placed on new parts and a logo or other symbol to be placed on replacement parts. The agency would not specify the particular means for placing these types of identification on parts. Instead, it would prescribe objective and practicable performance criteria to be met by means to be selected by the manufacturers. Those criteria must reflect the agency's consideration of factors such as the availability of technology for meeting the criteria and the cost of the technology. Once the agency has established appropriate criteria, the manufacturers will then select a particular means of identifying the parts from among the technologies capable of meeting the criteria.

The standard will apply to parts for car lines having or expected to have a theft rate above the median rate for all new passenger cars sold in the United States, and to their corresponding major replacement parts. It will also cover certain car lines that are not themselves subject to high rates of theft, but which have parts interchangeable with high theft lines.

Selecting the lines subject to the standard is a process necessitating that NHTSA take several steps, including:

1. Using best source available, obtain and publish vehicle theft data for the nation as a whole. These data are to be published in the **Federal Register** for review and comment, and then used to determine the nation's median theft rate in accordance with a formula set forth in Title VI.

2. By rulemaking, prescribe any information that automobile manufacturers will be required to make available to NHTSA to aid in selecting the major parts and high theft lines to be covered.

3. Based upon the information obtained in accordance with 1 and 2 above, determine which high theft lines and major parts are to be covered by the theft prevention standard.

Title VI provides that the standard may not apply to more than 14 of the passenger car lines distributed in the United States by any individual manufacturer prior to the effective date of the standard. Lines initially distributed after that date may be added to the standard in later years. It also specifies that the parts and lines to be subject to the standard may be selected by agreement between the Administrator and the manufacturer. If agreement cannot be reached, the selection will be made by the agency.

NHTSA must also determine which major parts are to be covered (i.e., which parts, up to a statutory maximum of 14 per car, will bear the identifying numbers or symbols envisioned by Title VI).

Manufacturers must certify compliance with the theft prevention standard. Section 606(c) requires that vehicles subject to the standard be accompanied by the certification when they are delivered for introduction into interstate commerce. Unlike the National Traffic and Motor Vehicle Safety Act under which Federal Motor Vehicle Safety Standards are issued, Title VI makes no provision for the temporary importation of noncomplying vehicles. The agency is authorized to issue rules prescribing the manner and form of the certification.

Public Meeting

To aid the agency in fulfilling its responsibilities under Title VI, NHTSA will hold an informal public meeting on December 6 and 7, 1984, at the time and place indicated at the beginning of this notice. The selection of these dates was dictated by the tight schedule set forth in Title VI for the rulemaking necessary to set up the theft prevention program. Title VI provides that a proposed theft prevention standard must be issued within 3 months after the date of enactment ot Title VI, i.e., the deadline is January 24.

On the first day of the meeting, the topics will include discussion of the identification to be placed on parts, the performance criteria for the means used to place the identification on the parts, the parts to be marked, the date to be used in calculating the median theft rate, and the procedures for negotiating the selection of parts and high theft lines. On the second day, the topics will include the requirements for certification of compliance with the theft prevention standard, including the issue of the definition of "manufacturer." A fuller description of the topics for the meeting will be placed in the docket by the agency not later than November 26, 1984.

Interested persons are invited to attend the meeting. The meeting will be conducted in a very informal manner. It will differ from other rulemaking meetings conducted by NHTSA in that interested persons will not be asked to present a prepared statement. Instead, a member of the presiding panel of agency officials will make a statement on issues concerning each topic to be discussed. The panel will then ask for volunteers from the audience to answer questions concerning these topics. The responses will aid the agency in formulating its initial proposals for implementing the anti-theft program. Interested persons are invited to submit suggested questions in writing prior to the meeting. Those questions should be addressed to: Docket Section, Room 5108, National Highway Traffic Safety Administration. They should make reference to the Docket Number listed at the beginning of this Notice. A verbatim transcript of the public meeting will be prepared and placed in the docket as soon as possible after the meeting.

Several opportunities will be given interested persons to submit written comments in connection with the rulemaking necessary to establish the theft prevention program. Interested persons may submit written views and data concerning the subjects to be discussed at the meeting, whether or not they attend the meeting. Those submissions should be sent to the same address as the suggested questions. In view of the tight schedule which the agency must meet, such submissions must be received not later than December 17, 1984. Submissions received after that date will be considered together with the comments received during the second opportunity for submitting comments, i.e., on the proposals to be issued early next year.

The agency recommends that interested persons consult the docket established for this notice. Materials relevant to the theft prevention program are being placed in the docket as they become available. Those materials include memorandums summarizing the subjects discussed in agency contacts with individual interested parties.

Issued: November 13, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-30192 Filed 11-16-84; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 49, No. 224
Monday, November 19, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Famers Home Administration (FmHA) State Office located in Lincoln, Nebraska, is announcing a rescheduled public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting formerly November 9, 1984, now on November 30, 1984, 1:00 p.m. to 3:00 p.m.

Comments must be received no later than December 30, 1984.

ADDRESSES: Meeting location at Room 148, Federal Building, Lincoln, Nebraska 68505.

Written comments and further information will be addressed to: State Director, FmHA, Room 308, Federal Building, Lincoln, Nebraska 68505 (404–471–5551).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Nebraska State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Nebraska. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30281 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Jackson, Mississippi, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 7, 1984, 10:00 a.m. to 12:00 p.m.

Comments must be received no later than January 6, 1985.

ADDRESSES: Meeting location at Federal Building, Room 707, Jackson, Mississippi 39269.

Written comments and further information will be addressed to: State Director, FmHA, Suite 831, Federal Building, Jackson, Mississippi 39269 (601–969–4316).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Mississippi State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Mississippi. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30277 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Amherst, Massachusetts and servicing Rhode Island, is announcing an public information meeting to discuss its draft Natural Resource Management Guide.

DATE: Meeting on December 11, 1984, 10:00 a.m. 12:00 p.m.

Comments must be received no later than January 10, 1985.

ADDRESSES: Meeting location at Harmony Fire Station, Putnam Pike, Harmony, Rhode Island.

Written comments and further information will be addressed to: State Director, FmHA, 451 West Street, Amherst, Massachusetts 01002 (413–253–3471).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA has prepared a draft Natural Resource Management Guide for the State of Rhode Island. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Rhode Island. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contract FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangement to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30278 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Nashville, Tennessee, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 11, 1984, 2:00 p.m. to 4:00 p.m.

ADDRESS: Meeting location at FmHA Conference Room, Room 538, Federal Building, Nashville, Tennessee.

Comments must be received no later than January 10, 1985.

Written comments and further information will be addressed to: State Director, FmHA, Room 538, Federal Building, Nashville, Tennessee 37203 (615–251–7341).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Tennessee State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Tennessee. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30280 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Montpelier, Vermont is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 13, 1984, 2:00 p.m. to 4:00 p.m.

Comments must be received no later than January 12, 1985.

ADDRESSES: Meeting location at Holiday Inn, Sykes Avenue, White River Junction, Vermont.

Written comments and further information will be addressed to: State Director, FmHA, 141 Main Street, P.O. Box 588, Montpelier, Vermont 05602 (802–223–2371).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Vermont State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Vermont. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 13, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-30279 Filed 11-16-84; 8:45 am]

BILLING CODE 3410-07-M

CIVIL AERONAUTICS BOARD

[Order 84-11-8]

Fitness Determination of Daniel S. Baldwin, Inc., d/b/a Wrangell Air Service

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination Order 84–11–8, Order to Show Cause.

SUMMARY: The Board is proposing to find that Daniel S. Baldwin, Inc., d/b/a Wrangell Air Service is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin J. McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5920.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–11–8 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, DC 20428. Persons outside the metropolitan area may send a postcard request for Order 84–11–8 to that address.

Dated: November 2, 1984

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-30317 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42321]

Hawaii One Corp. Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled matter is assigned to be held on November 20, 1984, at 10:00 a.m. (local time), in Room 1012, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties and prospective parties shall, no later than November 19, 1984, submit four copies to the Judge and one copy to each party and prospective party at the office of their counsel in Washington of (1) proposed stipulations; (2) responses to pending requests for information and evidence; (3) proposed requests for additional information and evidence; (4) statements of position; and (5) proposed procedural dates.

Dated at Washington, D.C., November 13, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-30313 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41306]

Unicorn Air, Ltd., Fitness Investigation; Prehearing Conference and Request for Supplemental Evidence

Notice is hereby given that a prehearing conference in the above-captioned proceeding will be held on December 5, 1984, at 9:30 a.m. (local time) in Room 1027, 1825 Connecticut Avenue NW., Washington, D.C., before Chief Administrative Law Judge Elias C. Rodriguez.

The purpose of the prehearing conference is to review Unicorn Air's updated exhibits and supplementary data and to establish future procedural dates. The supplementary evidence requested by the Bureau of International Aviation submitted under cover of its letter of October 30, 1984, is to be submitted by the applicant by November 20, 1984. In addition, the information requested in the attachment to this notice will be served on or before November 26, 1984 (actual date of delivery, not mailing date).

Dated at Washington, D.C., November 13, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

Request for Supplemental Evidence

Item 1. The introduction to Unicorn's Updated Exhibits states, at 2, that "Unicorn Air has now decided *to acquire* DC-8-62 aircraft re-engined with noise-compliant General Electric/SNECMA CFM-56 high-bypass ratio turbo fan engines (DC-8-72 when re-engined)" (emphasis added).

Exhibit 101 at 8 states that "[t]he six aircraft required for the Company's proposed service will be *purchased* or leased during the start-up phase of the Company" (emphasis added).

Provide the following information in connection with the above statements:

1. The source of the six aircraft and, if purchased, the estimated purchase price, including spare parts.

2. Unicorn's total estimated start-up capital requirement in the event aircraft are purchased and where that start-up capital will come from.

Item 2. Exhibit 101 at 9 states that "the terms of a firm [aircraft purchase and reconfiguration] contract have been negotiated with E Systems, Greenville, Texas Division."

Provide a copy of the contract negotiated with the E Systems company. If a copy is unavailable, explain why and summarize the contract terms which have been negotiated.

Item 3. Exhibit 104 at 12 states that "100% of all classes of Unicorn's stock is owned by United States citizens. . . ." Exhibit 105 at 22 shows "10,000 shares authorized."

Provide:

1. The number of shares issued and outstanding by class of stock.

2. The respective owners of the outstanding shares.

Item 4. Exhibit 105 at 22 states that "[t]he note due from ATT, Inc. is discussed in, and appended to, Exhibit 107 hereof."

Provide a copy of the ATT note, which was not attached to Exhibit 107.

Item 5. With respect to Exhibit 105 at 22, it is noted that preoperating expenses are customarily shown as assets in the balance sheet of a development stage enterprise. No preoperating expenses are shown as assets on Unicorn's balance sheet at Exhibit 106 at 22.

Explain how much preoperating expenses have been incurred by Unicorn to date and where they have been recorded in Unicorn's accounting system.

Item 6. Exhibit 401 at 69, Unicorn's pro forma balance sheets, show a long term debt (LTD) of $70.5 million for the first normal year of operation, and LTD's of $40.2 million and $17.8 million for prior periods.

Since it appears that Unicorn expects to have obtained loans for all, or substantially all, of these amounts prior to any demonstrated profitable operations, indicate where the loans will come from and why the lenders will be willing to lend the money to Unicorn in these circumstances.

[FR Doc. 84-30314 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended November 2, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Oct. 29, 1984	42591	Trans International Airlines, Inc., c/o Burwell, Hansen, Manley & Peters, 1708 New Hampshire Avenue N.W., Washington, D.C. 20009. Application of Trans International Airlines, Inc., pursuant to section 401(d)(3) of the Act and Subpart Q of the Board's Regulations applies for an amendment of its certificate of public convenience and necessity for interstate and overseas charter air transportation. Answers may be filed by November 26, 1984.
Oct. 29, 1984	42592	Trans International Airlines, Inc., c/o Burwell, Hansen, Manley & Peters, 1708 New Hampshire Avenue NW., Washington, D.C. 20009. Application of Trans International Airline, Inc., pursuant to section 401(d)(3) of the Act and Subpart Q of the Board's Regulations applies for an amendment of its certificate of public convenience and necessity for foreign charter air transportation. Answers may be filed by November 26, 1984.
Oct. 29, 1984	[illegible]	TPI International Airways, Inc., c/o Harry A. Bowen, Esq. Bowen & Atkin, 2020 K Street NW., Suite 350, Washington, D.C. 20006. Corrected Application of TPI International Airways, Inc. pursuant to Order 84-9-68. Answers may be filed by November 26, 1984.
Oct. 30, 1984	[illegible]	Skystar International, Inc., c/o George T. Volsky, Esq. 1333 H Street NW., Suite 600, Washington, D.C. 20005. Application of Skystar International Inc. pursuant to section 401 of the Act and Subpart Q of the Board's Regulations applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas charter air transportation of persons, property and mail between any point or points in the United States or its possessions or territories.

Date filed	Docket No.	Description
Nov. 1, 1984	42570	Answers may be filed by November 27, 1984. Bahamasair Holdings Limited, c/o George U. Carneal, Hogan & Hartson, 815 Connecticut Avenue NW. Washington, D.C. 20006. Amendment to the Application of Bahamasair Holdings Limited submitting supplemental information in support of its application for renewal and amendment of a foreign air carrier permit. Answers may be filed by November 29, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-30315 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-11-38]

Order to Show Cause; Tradewinds Airways Ltd.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 84-11-38.

SUMMARY: The Board proposes to act on the following permit application:

Applicant: Tradewinds Airways Limited.

Application Date: May 12, 1983, as supplemented.

Docket: 41484.

Authority: The Board proposes to reissue Tradewinds' cargo charter authority and add scheduled authority under the bilateral Agreement to serve U.S. coterminal points Atlanta, Boston, Chicago, Detroit, Los Angeles, Miami, New York and San Francisco, with authority to serve Boston, Chicago, Detroit, Los Angeles, and New York, via the intermediate point Toronto, Canada.

Objections: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, NO LATER THAN December 3, 1984, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Federal Aviation Administration, the Department of Transportation, the Department of State, and the Ambassador of Great Britain and Northern Ireland in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Addresses for objections:

Docket 41484, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428

Applicant: Tradewinds Airways Limited, c/o Messrs. Beckman, Farmer, and Kirstein, Beckman & Farmer, 1001 Connecticut Avenue NW., Suite 235, Washington, D.C. 20036.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Ave., NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

For further information, contact Allen Brown, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

Dated: November 9, 1984

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-30316 Filed 11-16-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-469-038; C-469-061]

Unwrought Zinc From Spain and Ferroalloys From Spain; Amendment to Final Results of Administrative Reviews of Countervailing Duty Orders

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Amendment to Final Results of Administrative Reviews of Countervailing Duty Orders.

NOTICE: On February 21, 1984, the Department of Commerce ("the Department") published the final results of its administrative review of the countervailing duty order on ferroalloys from Spain (49 FR 6397). On August 14, 1984, we published the final results of the administrative review of the countervailing duty order on unwrought zinc from Spain (49 FR 32436).

We instructed the Customs Service to assess countervailing duties at the appropriate rates on any shipments exported on or after January 1, 1982, and entered, or withdrawn from warehouse, for consumption on or before April 22, 1982, with regard to ferroalloys from Spain, and on or before April 21, 1982, with regard to unwrought zinc from Spain.

Section 104(b) of the Trade Agreements Act of 1979 ("the TAA") requires the Department to suspend liquidation of entries, or withdrawals from warehouse, for consumption on or after the date of receipt of the International Trade Commission's ("the ITC") notification to the Department that a request for an injury determination has been made. Although the ITC received the requests for investigation in both ferroalloys and unwrought zinc from Spain on April 23, 1982, it did not notify the Department until May 3, 1982 with regard to unwrought zinc from Spain, and until July 28, 1982 with regard to ferroalloys from Spain. We are publishing this amended notice in order to lift the suspension of liquidation on all entries, or withdrawals from warehouse, for consumption of ferroalloys and unwrought zinc from Spain between the date that the ITC received the requests for injury determination and the date that it notified the Department of its receipt of the requests.

Therefore, the Department will instruct the Customs Service to assess countervailing duties at the appropriate rates on any shipments of Spanish unwrought zinc entered, or withdrawn from warehouse, for consumption on or after April 22, 1982, and on or before May 2, 1982, and on any shipments of Spanish ferroalloys entered, or withdrawn from warehouse, for consumption on or after April 23, 1982, and on or before July 25, 1982.

EFFECTIVE DATE: November 9, 1984.

FOR FURTHER INFORMATION CONTACT: Alan A. Long or Bernard Carreau, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-2786.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930

(19 U.S.C. 1675(a)(1)), section 104(b) of the TAA (19 U.S.C. 1671 note), and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: November 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-30255 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DS-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on December 6, 1984; 1:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials, the TTPG, U.S. representatives to GATT, and U.S. negotiators on bilateral textile and apparel agreements on problems and conditions in the domestic industry and to furnish information on world trade in these products.

General Session: 1:00–1:45 p.m. Review of import trends, international activities, report on conditions in the domestic market, and other business.

Executive Session: 1:45–3:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part 166 (1982)) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 4104, U.S. Department of Commerce, (202 377–3031).

For futher information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: November 7, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-30254 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

Continuation of Research Grants Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcing continuation of Research Grants Programs.

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Fire Research, National Bureau of Standards, is continuing an approximately $1.85 million per year program of research grants in selected areas of research related to the Center's in-house research program. The program is limited to unsolicited proposals and is highly competitive. Initial notice of this research grants program was published in the **Federal Register** on February 20, 1981 (48 FR 13250).

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Levine, Chief, Office of Fire Research Services, Center for fire Research, National Bureau of Standards, Gaithsburg, MD 20899, (301) 921–3845.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NBS Center for Fire Research conducts directly and through grants and contracts, a basic and applied fire research program. Approximately $1.85 million per year are available for grants and contracts under this program. These grants and contracts are awarded on the basis of unsolicited proposals that are in accord with the objectives and programs of the Center for Fire Research.

These are:

(a) *Exploratory Fire Research*—Ignition and combustion of solids, action of fire retardants, soot formation, plume entrainment, and polymer gasification and char formation chemistry.

(b) *Fire Toxicology*—Measurement of the acute toxicity of fire gases, development of test methods and safety criteria, research into the additive or synergistic acute effects of multiple gaseous toxicants, and developments of behavior models for incapacitation.

(c) *Furnishings Flammability*—Development of laboratory size tests and measurements that are of use in predicting the performance of upholstered furniture and other furnishings in all full scale fire. Mathematical modeling of these processes.

(d) *Fire Performance and Validation*—Obtaining and analyzing experimental data from full scale fire tests for input to model development. Evaluation of the validity of mathematical models and correlations revelant to the tests.

(e) *Smoke Hazard Calculation*—Development and evaluation of mathematical smoke and toxic species transport models. Methods to calculate hazard development vs. time. Methods to calculate ventilation requirements for safety under conditions created by unwanted fire.

(f) *Fire Growth and Extinction*—Research into the physics and chemistry of fire processes such as burning rate, flame spread, suppression, and extinction, and the development of an understanding of the relationship between these processes as they contribute to fire growth, suppression, and smoke transport in buildings.

(g) *Compartment Fire Models*—The creation, augmentation, and validation of computer models of fire growth in compartments, and selected algorithms that can be used in the models.

(h) *Fire Safety Performance*—Integration of the results of the above programs to create new methods to design for fire safety, and calculational tools for such designs. Some research is carried out, as necessary, into the behavior of persons at risk in fire and ways to calculate how rapidly such persons can evacuate the structure or otherwise find refuge.

Proposal Review Process

Unsolicited proposals that are received in the Center for Fire Research are assigned to the relevant group leader of the eight programs listed above for review, including external peer review, and recommendation on funding. Both the technical value of the proposal and the relationship of the work proposed to the needs of the group leader's program are taken into consideration in the group leader's recommendation to the Center Director. If a proposal is funded, a member of the Center's professional staff who performs related research will be appointed "Scientific Officer" to monitor the progress and facilitate the application of the work.

Grant proposals should be addressed to Grants Office, Office of Acquisition and Assistance, Room B–141, Building 301, National Bureau of Standards, Gaithersburg, MD 20899, with an information copy to Dr. Levine.

In order to avoid unnecessary effort, it is suggested that before preparing a proposal, you write or call Dr. Levine, at the address shown above, to ascertain whether there is possible interest in your idea, and whom to contact for further discussion is such interest does exist.

Dated: November 13, 1984.

Ernest Ambler,

Director.

[FR Doc. 84-30302 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Mid-Atlantic Fishery Management Council will meet December 5–6, 1984, at the Ramada Inn, Industrial Highway, Essington, PA (telephone: 215–521–9800), to discuss the Surf Clam and Ocean Quahog Fishery Management Plan (FMP), Striped Bass FMP, Swordfish FMP, joint venture applications and policy, as well as other fishery management and administrative matters.

The public meeting may be lengthened or shortened depending upon progress on the agency. The Council may go into closed session to discuss employment and/or national security matters. A detailed agenda will be made available to the public around November 23, 1984. For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: November 9, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-30244 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The South Atlantic Fishery Management Council will convene a public meeting in Duck Key, FL, November 26–29, 1984, to discuss the swordfish, mackerel, stripe bass, flounder, certain law enforcement activities, the FY 1985 budget, and other management business. A detailed agenda will be available around November 16. For further information, contact David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, S.C. 29407; telephone: (803) 571–4366.

Dated: November 9, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-30245 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

Coastal Zone Management; Federal Consistency Appeal by Exxon Co., U.S.A. From Objection of the California Coastal Commission (Santa Ynez Unit Development and Production Plan)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearing.

SUMMARY: Effective September 21, 1984, the Secretary of Commerce (Secretary) resumed consideration of the appeal by Exxon Company, U.S.A. (Exxon) pursuant to subparagraphs (A) and (B) of section 307(c) (3) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c) (3) (A) and (B) from the objection by the California Coastal Commission to Option A of Exxon's oil and gas Development and Production Plan for the Santa Ynez Unit, Santa Barbara Channel, California. Notice of the Secretary's resumption of the appeal was published in the **Federal Register** of October 12, 1984 (49 FR 40072).

Notice is hereby given that a public hearing on Exxon's appeal will be held at 1:30 p.m., Tuesday, December 11, 1984, at the Lobero Theatre, 33 East Canon Perdido, Santa Barbara, California. This public hearing is authorized by 15 CFR 930.129 and will be conducted by the National Oceanic and Atmospheric Administration for the purpose of receiving testimony from interested persons and organizations on whether Exxon's oil and gas activities as proposed under Option A of its Santa Ynez Unit Development and Production Plan filed with the U.S. Department of the Interior, Minerals Management Service, meet the regulatory criteria set forth at 15 CFR 930.121 and 930.122 to be considered by the Secretary in deciding Exxon's appeal.

Exxon appealed to the Secretary on the grounds that Exxon's proposed oil and gas activities are "consistent with the objectives of [the CZMA]" and "necessary in the interest of national security." 16 U.S.C. 1456(c) (3) (A) and (B). The Secretary may sustain Exxon's appeal on either of these two grounds. To sustain the appeal on the first ground, the regulatory criteria set forth at 15 CFR 930.121 must be met: (a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the CZMA; (b) when performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest; (c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Clean Water Act, as amended; and (d) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the state management program. To meet the second ground, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed.

After providing an opportunity for Exxon, the California Coastal Commission, and the County of Santa Barbara to present a brief summary of their positions, testimony at the public hearing will be limited to 5 minutes per individual or organization. Written comments will also be accepted at the hearing. Those speakers submitting lengthy written comments are encouraged to summarize their remarks in order not to exceed the allotted time.

Information relating to Exxon's appeal is available at the following locations:

1. California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, CA 94105.

2. Office of the Assistant General Counsel for Ocean Services, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

3. Minerals Management Service, Pacific OCS Region, Public Information Room, 1340 W. 6th Street, Los Angeles, CA 90017.

4. Santa Barbara Public Library, 40 E. Anapamu, Santa Barbara, CA 93101.

FOR FURTHER INFORMATION CONTACT: David P. Drake, Attorney Advisor, Office of the Assistant General Counsel for Ocean Services, at the above address, (202) 254–7512.

SUPPLEMENTARY INFORMATION: For further information regarding Exxon's appeal see the notices published in the **Federal Register**, October 12, 1984 (49 FR 40072); March 6, 1984 (49 FR 8274); August 31, 1983 (48 FR 49483); and August 5, 1983 (49 FR 35692).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: November 8, 1984.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 84-30287 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council; Amended Meeting Notice

The agenda (published November 6, 1984, 49 FR 44319), for the public meeting on December 5–6, 1984, of the Caribbean Fishery Management Council has been changed. In addition to previously-stated agenda items a public hearing, on December 6, 1984, will be convened subsequent to the Council's meeting, at 2 p.m., to consider the latest changes to the Swordfish Fishery Management Plan. All other information remains unchanged. For further information, contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918; telephone: 809–753–6910.

Dated: November 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-30289 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Halibut Subcommittee will convene a public meeting, November 14, 1984, at 7 a.m. in Council's offices at 411 W. Fourth Avenue, Anchorage, AK. The Subcommittee will be briefed on the Council staff's progress in preparing material on halibut management options for presentation to the full Council at the Council's December 5–7, 1984 meeting in Anchorage. For further information, contact the North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: November 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-30287 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Officials Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 14, 1984.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 8, 1979, as amended, between the Governments of the United States and the Dominican Republic, the Government of the Dominican Republic has notified the United States Government that Jose Miguel Ceron Pena is replacing Arturo Peguero Almanzar as an official authorized to issue export visas for textiles and textile products covered by the agreement. The purpose of this notice is to advise the public of this change. The following is a complete list of officials currently authorized to issue visas:

Susana Cabrera.
Luis Ma. Kalaff.
Alvaro Messina.
Jose Miguel Ceron Pena.
Angel Vasquez Perdomo.
Ernesto Trejo.

Effective Date: December 1, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30200 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DR-M

Officials Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

November 14, 1984.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, the Government of Sri Lanka has notified the United States Government that: Mr. P.M.A.J. Silva has been named to sign export visas issued by the Greater Colombo Economic Commission, repacing Mr. C.F. Ratnasingham, who will no longer issue these documents. The purpose of this notice is to advise the public of this change.

Effective Date: December 1, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30199 Filed 11-16-84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting an Import Restraint Limit for Certain Man-Made Fiber Textiles and Textile Products From Taiwan

November 13, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 19, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377–4212.

Background

The bilateral agreement of November 18, 1982, concerning cotton, wool, and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain categories during an agreement year for swing and shift, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same agreement year. Pursuant to terms of the bilateral agreement, the import restraint limit established for Category 638 exported during the twelve-month period which began on January 1, 1984, is being increased. The limit for Category 319 is being reduced to account for swing applied to Category 638. In addition, 41 dozen are being subtracted for application to another category as shift subtracted, according to the terms of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), and July 16, 1984 (49 FR 28754).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 13, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 13, 1983, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of goods exported during the twelve-month period beginning on January 1, 1984 and extending through December 31, 1984 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Effective on November 19, 1984, the directive of December 13, 1983 is hereby further amended to include an adjusted restraint limit of 1,879,953 dozen for man-made fiber textile products in Category 638.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30253 Filed 11-14-84; 3:23 pm]

BILLING CODE 3510-DR-M

[1] The agreement of November 18, 1982 concerning cotton, wool and man-made fiber textile products from Taiwan provides that (1) specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivlent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1983.

DEPARTMENT OF DEFENSE

Department of the Navy

Proposed U.S. Navy Surface Action Group Homeport Facility, Stapleton-Fort Wadsworth Complex, Stapleton, Staten Island, NY; Public Hearing and Availability of the Draft Environmental Impact Statement (EIS)

Notice: The U.S. Navy pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (43 CFR Part 1500), has prepared and filed with the U.S. Environmental Protection Agency, a draft Environmental Impact Statement (DEIS) for the proposed Surface Action Group homeport facility. The DEIS ha been distributed to various New York, Massachusetts, and Rhode Island state and local agencies, interest groups, media, and public libraries. Copies of the DEIS may also be viewed during normal business hours (8:00 a.m.–4:30 p.m.) at the Naval Station New York (207 Flushing Avenue, Brooklyn, New York).

A public hearing to inform the public of the study's findings and to solicit comments on the Navy's proposed homeport facility will be held at the following location:

College of Staten Island—Sunnyside Campus 715 Ocean Terrace, Staten Island, New York, Building: Auditorium Bldg. #3

Dates and Times: Tuesday, December 4, 1984, 6:30 p.m. to approximately 12:30 a.m.; Wednesday, Dedcember 5, 1984, 10:00 a.m. to 6:00 p.m.

The hearing will be co-chaired by the U.S. Navy and the U.S. Army Corps of Engineers in accordance with the National Environmental Policy Act, Council of Environmental Quality regulations and applicable U.S. Navy and U.S. Army Corps of Engineers (COE) regulations.

The U.S. navy will apply for COE construction permits fillowing the decision by the Secretary of the Navy on the proposed action. The hearing will also allow the COE to obtain the data of concern to the public interest which will provide a basis for their decision-making process if it is required. All interested parties are invited and urged to be present or represented at this meeting. This includes representatives of Federal and non-Federal agencies; commercial, business, industrial, transportation, and utilities agencies; civic, ecological, and environmental groups, fish and wildlife organizations; interested and concerned citizens and other interests. All parties will be afforded full opportunity to express their views, but in order to allow all an opportunity to speak, statements will be limited to 10 minutes. If longer statements are to be presented, they should be delivered in writing either at the hearing or mailed to the office listed below and summarized at the public hearing: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Code 202E, Building 77L, Philadelphia, PA 19112.

Oral statements will be heard and transcribed by a stenographer, but for accuracy of record all statements should be submitted in writing. All statements, both oral and written, will become part of the official record on this study.

The public hearing will be reported verbatim. Copies of the transcript of the proceedings may be purchased from the Navy. The cost of a copy will correspond directly to the number of pages enclosed within the transcript. In addition, copies will be made available for public inspection at Naval Station, New York (207 Flushing Avenue, Brooklyn) and the COE Library (26 Federal Plaza, New York City).

Final decision on the proposed plans will be made only after full consideration is given to the views of responsible agencies, groups and citizens.

Written statements will be accepted until December 10, 1984.

Questions concerning this public notice may be directed to Mr. Robert Ostermueller at 215–897–6257.

Dated: November 19, 1984.

Dennis Gonzalez,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 84-30198 Filed 11-16-84; 8:45 am]

BILLING CODE 3810-AE-M

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on December 6–7, 1984, at Herrmann Hall at the School. On both days the first session will commence at 8:15 a.m. and terminate at 12:00 noon and the second session will commence at 1:15 p.m. and terminate at 5:00 p.m. All sessions are open to the public.

The purpose of the meeting is to elicit the advice of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting contact: Commander J. Michael Masica, USN (Code 007), Naval Postgraduate School, Monterey, California 93943, Telephone: (408) 646–2514.

Dated: November 13, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 84-30194 Filed 11-16-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Intent To Develop a Methodology To Implement Section 7(b)(3) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent and request for recommendations. *BPA File No:* 7(b)(3)–1. (BPA requests that all comments and documents which become part of the Official Record compiled in developing the 7(b)(3) methodology and rate adjustment contain the file number designation 7(b)(3)–1).

SUMMARY: BPA intends to develop a methodology to implement section 7(b)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act), 16 U.S.C. 839e(b)(3). Section 7(b)(3) of the Pacific Northwest Power Act provides that preference customer rates may not include costs or benefits resulting from a net revenue surplus or deficiency for the period July 1, 1981, through June 30, 1985, caused by a difference between forecasted and actual direct-service industrial (DSI) loads and an over- or underrecovery of the net exchange costs. The methodology will resolve the manner in which the amount specified in section 7(b)(3) will be quantified, allocated, and recovered.

At this time, BPA announces its intent to prepare this methodology and is seeking from interested persons suggestions, advice, and recommendations which can be used to develop the section 7(b)(3) methodology. BPA expects to have a proposed methodology prepared in January 1985. BPA will then publish a notice announcing the proposal.

Responsible Official: Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of the 7(b)(3) methodology.

DATES: Suggestions and recommendations concerning the development of the proposed section 7(b)(3) methodology will be accepted through November 30, 1984, by the Public Involvement Manager at the address below. Due to legal limitations (ex parte restrictions), BPA will not accept oral recommendations except in meetings for which formal notice has been given. Oral communications should be for the purpose of requesting either status reports or procedural information.

A subsequent notice will announce BPA's proposed schedule for formal hearings set by the Hearing Officer as specified in section 7(i) of the Pacific Northwest Power Act. These hearings will give interested persons an opportunity to present both oral and written comments on the proposal.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Johnson, Public Involvement Office, at the above address, telephone 503–230–3478. BPA maintains toll-free lines for the use of persons within the region. Oregon callers outside of Portland may use 800–452–8429; callers in Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California may use 800–547–6048. Additional information is available from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla, Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

The Pacific Northwest Power Act directed PBA to provide the benefits of low-cost Federal power to residential and small farm consumers served by all the region's utilities. The process for providing low-cost power to these consumers is a subsidy program referred to as the residential exchange. The Pacific Northwest Power Act requires the subsidy to be passed directly to the residential and small farm consumers of participating utilities by means of lower retail rates for these consumers.

The Pacific Northwest Power Act defines the procedure to be followed in implementing the residential exchange. Under the residential exchange, a regional utility can offer to sell to BPA the amount of high-cost power that would be required to serve its residential and small farm consumers. BPA purchases that amount of power. BPA then offers, in exchange, to sell an equivalent amount of low-cost Federal power to that utility to serve its residential and small farm consumers. The residential exchange does not result in power transfer either to or from BPA.

Since BPA is directed to "buy high" and "sell low", the residential exchange produces a net cost for BPA that must be recovered. The Pacific Northwest Power Act provides for all of BPA's customer classes to contribute to the residential exchange subsidy through revenue from BPA power sales received from the customer classes. However, until July 1, 1985, BPA's class of direct-service industrial (DSI) customers has the primary responsibility for the recovery of the net cost of the residential exchange.

The revenue received from the DSIs is dependent upon the cumulative loads of the DSI customers, since the revenue equals the DSI loads multiplied by the rates charged to the DSIs for power purchases. Thus, a variation in the DSI loads will cause a corresponding variation in the revenue received from the DSIs. Since the net cost of the residential exchange program is recovered primarily from the revenue received from the DSIs prior to July 1, 1985, the actual loads of the DSIs during that time period have a significant effect upon the actual recovery of the net cost. While not the only factor affecting the recovery of the net cost, the DSI loads represent a major component of the net cost recovery calculations.

However, projections of DSI loads are not always accurate because the level of loads varies with numerous economic factors that are difficult to predict. Consequently, the actual DSI loads could either have exceeded or fallen short of projections. Likewise, the actual revenue received from the DSIs could either have exceeded or fallen short of projections. If the DSI loads exceeded projections, then an overrecovery of revenue necessary to meet the net cost obligation could have occurred. Conversely, if DSI loads fell short of projections, an underrecovery of

revenue necessary to meet the net cost obligation could have occurred.

The real possibility of an over- or underrecovery is acknowledged in the Pacific Northwest Power Act and addressed by section 7(b)(3). This section directs BPA to examine the time period for which the DSIs are primarily responsible for the net cost of the residential exchange and determine if an over- or underrecovery actually did occur as a result of unanticipated variations in actual DSI loads. If either an over- or underrecovery resulted in a net revenue surplus or deficiency, BPA is directed to correct for any revenue surplus due to an overrecovery, or for any revenue deficiency due to an underrecovery. First, this section directs BPA to exclude and subsequent costs (due to an underrecovery) or benefits (due to an overrecovery) from rates charged to BPA's preference customers.

The relevant portion in section 7(b)(3) specifies the following:

> Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occuring for the period ending June 30, 1985, to the extent such surplus or deficiency is cause by—
>
> (A) A difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1) of this subsection; and
>
> (B) An overrecovery or underrecovery of the net costs incurred by the Administrator under section 5(c) as a result of such difference.

This language from Section 7(b)(3) describes the exclusion for preference customers from benefits/costs of a net revenue surplus/deficiency associated with the net cost of the residential exchange caused by variations in the DSI loads from the loads forecasted in BPA's 1981, 1982, and 1983 rate cases. This excluded benefit or cost is referred to as the 7(b)(3) amount.

Section 7(b)(3) then describes the method for repaying/recovering the surplus/deficiency:

> Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonble period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.

BPA has identified two separate steps that must be accomplished in order to fulfill the requirements of section 7(b)(3). First, the calculation of a net revenue surplus or deficiency caused by an over- or underrecovery of the net cost of the residential exchange must be made. Second, the 7(b)(3) amount must be allocated and recovered as described in section 7(b)(3). BPA proposes to develop and implement a methodology (the 7(b)(3) methodology) to accomplish these two steps.

II. Process

A two-stage process will be used to develop and implement the 7(b)(3) methodology. In the first stage, a methodology to calculate and recover the 7(b)(3) amount will be developed and adopted. The second stage will be the calculation and allocation of the 7(b)(3) amount using actual data.

The schedule for the process is as follows:

Stage 1—Develop Methodology

Publish Initial Proposal on 7(b)(3) Methodology (including available data), January 1985
7(i) Hearing on 7(b)(3) Methodology, Spring 1985
Final Proposal on 7(b)(3) Methodology, Summer 1985

Stage 2—Determine Rate Adjustments

Publish Initial Proposal on Implementation of 7(b)(3) Methodology (Tentative Data), Fall 1985
7(i) Hearing on Implementation of 7(b)(3) Methodology, Fall 1985
Final Proposal on Implementation of 7(b)(3) Methodology (Final Data), Spring 1986
Methodology Implemented, July–October 1986

The initial proposal for the 7(b)(3) methodology, to be published in January 1985, will include the following: (1) A method to calculate the 7(b)(3) amount; (2) a method for recovering/allocating the 7(b)(3) amount; (3) all actual and forecasted data available at that time; and (4) a detailed schedule for the remainder of the process.

III. Major Issues

The following major issues were identified in previous customer meetings and are expected to be addressed in the hearings. The first set of major issues deals with calculation of the 7(b)(3) amount and are outlined below.

Net Revenue Surplus or Deficiency. This calculation is the first step in determining if there is a 7(b)(3) amount, and two general alternatives for making the determination have been identified. The first alternative would define the net revenue surplus or deficiency as the net income for the period. The second alternative would define the net revenue surplus or deficiency as the difference between the actual and forecasted financial performance for the period.

Net Exchange Costs. A definition of "net exchange costs" must be established and a determination of how much of the net exchange costs assigned to the DSIs were actually recovered must be calculated by BPA.

Mitigation. When load underruns occur, BPA can either reduce costs or make additional sales, thereby reducing the impact of the lost sales. A determination must be made as to the appropriateness of subtracting resource cost reductions or revenues from alternative sales that took place during DSI load underruns from the calculated underrecovery of net exchange costs assigned to the DSIs.

The second set of major issues to be dealt with in the initial proposal are those that relate to the allocation and recovery of the 7(b)(3) amount, and are outlined as follows.

Allocation to Rate Classes. Once the 7(b)(3) amount is determined, an allocation must be made to the rate classes to recover that amount. The methodology will indicate which classes are allocated the 7(b)(3) amount and under what circumstances, if any, the preference customers will receive a corresponding credit.

Intraclass Allocation. The 7(b)(3) amount must eventually be recovered from individual customers. The appropriateness of allocating the 7(b)(3) amount directly to individual DSIs causing the surplus or deficiency will be considered when choosing a method for intraclass allocation.

Recovery Mechanism. The recovery of the 7(b)(3) amount can be tied to consumption prior to July 1, 1985, or included as a surcharge on post-1985 rates. The method to recover the 7(b)(3) amount must also take into consideration the period of time within which the 7(b)(3) amount will be recovered/allocated.

Issued in Portland, Oregon, on October 31, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84–30236 Filed 11–16–84; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Case Nos. 50154–6010–01–82; 50154–5010–02–82]

Notice and Issuance of Final Prohibition Order; Powerplant and Industrial Fuel Use Act of 1978; Baltimore Gas and Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and issuance of prohibition order to Baltimore Gas and Electric Company.

SUMMARY: In accordance with former section 301(b) and section 702(a) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of its issuance of a final prohibition order to the Baltimore Gas and Electric Company's (BG&E) Brandon Shores Generating Units 1 and 2 (hereafter referred to as Brandon Shores 1 and 2), located in Anne Arundel County, Maryland. The order prohibits Brandon Shores 1 and 2 from burning natural gas or petroleum as their primary energy source, in accordance with the effective date of the prohibition set forth in the **EFFECTIVE DATES** section, below.

The prohibition order procedures for powerplants electing continued coverage under former section 301 of FUA[1] are found at 10 CFR 501.31, 501.33, 501.51 and 504.6. Additional information on the proceeding, together with the final prohibition order to Brandon Shores 1 and 2 appear under **SUPPLEMENTARY INFORMATION** below.

EFFECTIVE DATES: The final prohibition order and the prohibition contained therein shall take effect on January 18, 1985, except that the use of natural gas or petroleum as a primary energy source in Brandon Shores 1 and 2 shall not be prohibited:

1. During any period that BG&E, due to circumstances beyond its reasonable control, is unable to burn coal in the unit(s), or is unable to burn coal in the unit(s) in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders;

2. During any period that BG&E, due to circumstances beyond its reasonable control, is unable to purchase or secure delivery of a supply of coal suitable for operation of the unit(s) in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders; and

3. During any other periods as provided or permitted by FUA or applicable ERA rules, regulations or orders.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Coal and Electricity Division, Forrestal Building, Room GA–033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9101

Steven E. Ferguson Esq., Department of Energy, Office of the General Counsel, Forrestal Building, Room 6A–141, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6739.

The public file containing a copy of this notice and all other documents and supporting materials related to the proceeding is available for inspection upon request Monday through Friday from 8:00 a.m. to 4:00 p.m., at the Department of Energy, Freedom of Information Reading Room,. Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–6020.

SUPPLEMENTARY INFORMATION: (1) *Procedures.* ERA issued the proposed prohibition order to BG&E's Brandon Shores 1 and 2 on October 9, 1979 (44 FR 59264, October 15, 1979), commencing a proceeding designed to prohibit the use of petroleum or natural gas as the primary energy source in the units if the required findings of the then-effective section 301(b) of FUA (hereafter referred to as "former section 301(b)"), discussed below, could be made.

In accordance with 10 CFR 501.51(b), the issuance of the proposed prohibition order to Brandon Shores 1 and 2 would have commenced an initial three-month public comment period, during which interested parties could (1) challenge ERA's initial finding that Brandon Shores 1 and 2 have or previously had the technical capability to use coal as their primary energy source and (2) comment upon the proposed statutory findings which former section 302(b) requires ERA to make prior to the issuance of any final prohibition order.

However, as noted in the section entitled Comments and Public Hearing Procedures of the proposed prohibition order, pursuant to § 501.51(b)(6), subsequent to the date of this order, ERA received a request from BG&E to reduce the initial comment period from three months to a period of 45 days. ERA granted this request. Separate notice of this decision was published on the same day as the proposed prohibition order (44 FR 59264, October 15, 1979). Additionally, the interested parties were required to furnish ERA with any evidence bearing upon the other statutory findings which former section 301(b) of FUA requires ERA to make prior to the issuance of a final prohibition order to Brandon Shores 1 and 2. BG&E was required by the then-effective 10 CFR 502.51(b)(3),[2] during this period, to identify any exemptions for which it believed Brandon Shores 1 and 2 might qualify, but was not required to submit evidence supporting the claim of entitlement to any exemption at that time. The initial public comment period of the Brandon Shores 1 and 2 proposed prohibition order expired on November 29, 1979. No comments contrary to ERA's initial finding were received. However, BG&E did not submit evidence relating to other statutory finds that ERA has to make under former section 301(b) and identified a potential exemption qualification that might be asserted against the application of the final prohibition order to Brandon Shores 1 and 2. The potential exemption qualification was noted and identified in the Notice of Intention to Proceed cited below.

On the basis of the evidence available to it following the expiration of the initial comment period, EPA determined to continue with the order proceeding concerning Brandon Shores 1 and 2 and accordingly, issued its Notice of Intention to Proceed with the proceeding on September 5, 1980 (45 FR 59941, September 11, 1980). This action commenced a three-month public comment period, which expired on December 12, 1980.

On September 27, 1984, ERA issued a Notice of Availability of Tentative Staff Analysis (TSA) (49 FR 39208), October 4, 1984), in accordance with 10 CFR 501.51. The TSA concluded that the findings of technical and financial feasibility required by former section 301(b) of FUA could be made with respect to Brandon Shores 1 and 2 and recommended that a final prohibition order issued to the units. The staff conclusions were based upon information provided by BG&E and other information available to ERA, all of which is included in the administrative record of the proceeding. In accordance with 10 CFR 501.51(b)(8), the Notice of Availability established a 14-day comment period during which a public hearing could also be requested. No comments on the TSA were received during the period provided, and no public hearing was requested.

NEPA Compliance. In accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), DOE has performed an environmental review of the proposed action and published a Draft Environmental Impact Statement (DEIS) (DOE/EIS–0105–D) in December 1983 and a Final Environmental Impact Statement (FEIS) in July 1984 (DOE/EIS–0150–F). The Brandon Shores Record of Decision (ROD) dated October 22, 1984, prepared under DOE's NEPA guidelines (45 FR 20694, March 28, 1980) concluded that the proposed conversion to coal is the preferred alternative of the EIS and stated that DOE will finalize and issue prohibition orders for Brandon Shores 1 and 2.

[1] In accordance with procedures issued by ERA on October 1, 1981, to implement the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, August 13, 1981), BG&E, on November 9, 1981, elected to have Brandon Shores 1 and 2 remain subject to former section 301(b) of FUA.

[2] The requirement that a proposed order recipient identify any exemptions for which the powerplant might qualify during the initial three-month comment period was deleted from 10 CFR 501.51(b)(3), effective May 21, 1982 (47 FR 17073, April 21, 1982).

Prohibition Order

After review and consideration of the whole record in this proceeding, and finding its proposed actions to be supported by reliable, probative, and substantial evidence, ERA issues the following prohibition to:

Baltimore Gas and Electric Company, Brandon Shores Generating Units 1 and 2, Anne Arundel County, Maryland

Case Nos.
50154–6010–01–82
50154–6010–02–82

Pursuant to former section 301(b) of FUA and 10 CFR § 504.6, ERA hereby prohibits the above-named powerplant from buring petroleum or natural gas as a primary energy source.

As provided in former section 301(b) (1) and (2) of FUA and 10 CFR 504.6 (c), (d), (e), and (f), this prohibition order is based upon the following findings:

Finding of Technical Feasibility

As required by former section 301(b) (1) and (2) of FUA, ERA finds that (1) Brandon Shores 1 and 2 have the technical capability to use coal or another alternate fuel as a primary energy source, and (2) that it is technically feasible for Brandon Shores 1 and 2 to use coal or another alternate fuel as their primary energy source without substantial physical modification of the unit and without substantial reduction in the rated capacity of the units.

This finding is based upon information contained in the public record and cited in the TSA (49 FR 39208, October 4, 1984), which indicates that Brandon Shores 1 and 2 were designed and constructed to burn coal as their primary energy source, and that Unit 1 is currently being so operated. The Analysis Branch of the Office of Fuels Programs confirmed this fact in a memorandum entitled Prohibition Order Analysis of Baltimore Gas and Electric's Brandon Shores Generating Station dated July 6, 1984.

Brandon Shores 1 and 2 are identical 628 MW generating units whose main boilers are Carolina RBE–04 type single arrangement, dry bottom models manufactured by Babcock and Wilcox. Both units were to have been oil fired, but provisions were made in the original design for them to be converted to coal, although no coal firing equipment was initially installed. An analysis of the technical capabilities of the units by Pacific Northwest Laboratory showed that the use of compliance coal (coal with a maximum of 1.2 lb. $SO_2/10_6$ Btu or less by weight, which by definition would meet the Maryland State Implementation Plan (SIP) for sulfur dioxide emissions) together with the installation of certain coal-handling, ash-handling and auxiliary facilities and the installation of appropriate particulate emission control devices, would enable the units to burn coal. The report further stated that there is no significant derating when converting to compliance coal. The net rated output of each unit would probably be 620 MW when burning compliance coal, 8 MW being allotted to auxiliary power for the operation of coal pulverizers and additional fans. Neither the additional equipment nor the potential anticipated derating is "substantial" within the meaning of 10 CFR 504.6(c)(e), in absence of evidence to the contrary.

Finding of Financial Feasibility

As required by former section 301(b)(3) of FUA, ERA finds that it is financially feasible for Brandon Shores 1 and 2 to use coal as their primary energy source. This finding is based upon (1) ERA staff calculations of record, using the general cost calculation formula in 10 CFR 504.12, the results of which indicate that the use of coal as the primary energy source for Brandon Shores 1 and 2 will not substantially exceed the cost of using imported petroleum. These findings were reconfirmed in a memorandum dated July 6, 1984, from the Analysis Branch. Brandon Shores Unit 1 has been completed and is prepared to begin burning coal in compliance with the Clean Air Act. Unit 2 is projected to be completed by 1988. In accordance with former 10 CFR 504.6(f)(1),[3] the ERA staff therefore presumed that the use of coal as the primary energy source for the units is financially feasible.

Terms and Conditions

The Order and its prohibition to Brandon Shores 1 and 2, stated above, shall take effect on January 18, 1985, except that the use of natural gas or petroleum as a primary energy source in Brandon Shores 1 and 2 shall not be prohibited:

1. During any period that BG&E, due to circumstances beyond its reasonable control, is unable to burn coal in the unit(s), or is unable to burn coal in the unit(s) in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders;

2. During any period that BG&E, due to circumstances beyond its reasonable control, is unable to purchase or secure delivery of a supply of coal suitable for operation of the unit(s) in compliance with all applicable federal, State and local laws, rules, regulations ordinances or orders; and

3. During any other periods as provided or permitted by FUA or applicable ERA rules, regulations or orders.

Pursuant to 10 CFR 501.69, any person aggrieved by this Order may petition for judicical review thereof at any time before the 60th day following publication in the **Federal Register**.

Issued in Washington, D.C., on November 7, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–30837 Filed 11–16–84; 8:45 am]

BILLING CODE 6450–01–M

[3] Former 10 CFR 504.6(f)(1), which continues to be applicable to electing powerplants (SEE: 47 FR 22365, May 24, 1982), is found at 45 FR 53662, 53686.

[ERA Docket No. 84–15–NG]

Natural Gas Imports; Application To Amend Import Authorizations To Sell Unused Authorized Volumes on a Spot or Short-Term Basis; Northwest Alaskan Pipeline Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend current and pending natural gas import authorizations to sell unclaimed authorized volumes on a spot or short-term basis.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 16, 1984, of an application by Northwest Alaskan Pipeline Company (Northwest Alaskan) for a "blanket" authorization to allow sales on a spot or short-term basis of any authorized volumes of imported natural gas not purchased by its long-term contract purchasers. All such sales would be made on an interruptible or best-efforts basis and would not preempt Northwest Alaskan's firm requirements. The

specific terms and conditions of each sale, including the price, volumen, and duration, would be determined by negotiation between Northwest Alaskan, Northwest Alaskan's Canadian supplier, Pan-Alberta Gas Ltd. (Pan-Alberta), and the ultimate purchaser. It is the intent of Northwest Alaskan that spot sales arrangements utilize the existing Alaska Natural Gas Transportation System (ANGTS) to the maximum extent possible, thereby reducing costs for Northwest Alaskan's long-term contract customers.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act, section 9 of the Alaskan Natural Gas Transportation Act, and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to interven or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on December 19, 1984.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6030.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6667.

SUPPLEMENTARY INFORMATION:

Northwest Alaskan purchases Canadian natural gas from Pan-Alberta pursuant to two contracts dated March 9, 1978, as amended. Under the terms of the first contract (Western Contract), Northwest Alaskan can request that Pan-Alberta make available up to 240,000 Mcf of natural gas on an annual average basis. Imported at a point near Kingsgate, British Columbia, this gas is resold to Pacific Interstate Transmission Company and transported over prebuilt portions of the Western Leg of the ANGTS and through other pipelines for eventual sale in southern California.

Under its second contract with Pan-Alberta (Eastern Contract), Northwest Alaskan can purchase up to 800,000 Mcf of natural gas on an annual average daily basis. These volumes are imported at a point near Monchy, Saskatchewan, and are resold to three purchasers, Northern Natural Gas Company, a Division of InterNorth, Inc., Panhandle Eastern Pipe Line Company, and United Gas Pipeline Company. Respective volumes for the three firms are 200,000 Mcf per day, 150,000 Mcf per day, and 450,000 Mcf per day. The gas is transported over the Eastern Leg of the ANGTS.

On October 10, 1984, Northwest Alaskan filed with the ERA three applications to amend its current import authorizations. Two of these applications were requests for amendments of the authorization to conform to amended Western and Eastern Contracts and for the import authorizations to be extended until October 31, 2001, and October 31, 2002, respectively. These applications also requested removal of certain conditions imposed on current authorization in light of contract amendments which the applicant asserts make the import arrangements more market responsive. Notices of these applications for amended authorizations were issued on October 23, 1984 (49 FR 43091 and 49 FR 43094, October 26, 1984).

This notice concerns the third application in which Northwest Alaskan asks for blanket approval from ERA to make spot or short-term direct sales of Canadian gas in the United States under its existing import authorizations referred to above, to the extent that its long term purchasers do not take their full contract amounts. Northwest Alaskan (in coordination with Pan-Alberta) proposed first to negotiate with its pipeline customers and their end-users to recapture and maintain gas sales that would be lost to alternative fuels in their markets. Additionally, Northwest Alaskan would work with Pan-Alberta to make spot sales to end-users not associated with its present customers' markets and which do not displace other Canadian gas sales. All such sales would be made on an interruptible or best-efforts basis and would not preempt Northwest Alaskan's firm commitments.

The specific terms and conditions of each sale, including the price, volume, and duration, would be determined by negotiation between Northwest Alaskan, Pan-Alberta, and the ultimate purchaser. It is Northwest Alaskan's stated intention that spot-sale arrangements would utilize the existing ANGTS prebuilt facilities to the maximum extent possible. Northwest Alaskan also would seek to obtain incentive transportation rates for both U.S. and Canadian ANGTS transportation facilities, if necessary, to make the spot sales viable. Under the blanket authority, Northwest Alaskan requests it be allowed to negotiate individual spot sales contracts within the limits of its import authorizations without prior authorization from the ERA for each such sale. Northwest Alaskan contends this would allow it to respond quickly to conditions in the U.S. gas market and recapture and maintain gas markets against competing alternative fuels. Northwest Alaskan proposes to submit an informational report on these sales to ERA every six months.

Northwest Alaskan maintains granting of this authorization is in the public interest for the following reasons. First, spot sales of Canadian gas utilizing the ANGTS prebuilt facilities would lower the unit costs of transporting Canadian gas to U.S. markets through the ANGTS. Such transportation cost reductions would benefit Northwest Alaskan's U.S. contract purchasers as well as any other U.S. purchasers who receive this gas. Second, spot sales of Canadian gas would provide an economical, interruptible supply of gas which might enable Northwest Alaskan's contract purchasers to recapture customers that have left their systems in recent years and to maintain customers that might otherwise leave their systems for alternative fuels. Thus, Northwest Alaskan says, the facilities of the U.S. contract purchasers would be more fully utilized to the benefit of customers of these pipeline systems. Recapturing and maintaining gas loads, it continues, would benefit U.S. consumers by ensuring access to a long-term, secure supply of Canadian natural gas for U.S. gas markets, which would be available long after the current, short-term surplus has dissipated.

Northwest Alaskan's application is one of several received by this agency concerning purchases of imported gas for spot and short-term market opportunities. The authorization sought would provide Northwest Alaskan a "blanket" or generic import approval to negotiate and transact individual spot and short-term arrangements without further regulatory action. In certain respects this application is similar to an application the ERA received from Cabot Energy Supply Corporation on August 31, 1984, in response to which comments have been requested (49 FR 44011, November 1, 1984). Such sales generally respond to unique market demands and opportunities, and to be effective normally require prompt action. Although its application does not identify specific resale customers, price, or delivery and end use points, Northwest Alaskan indicates any transaction under the requested blanket authorization will take place only if it is market competitive and thus made in a manner fully consistent with the policy and regulatory guidelines applied by this agency in approving gas imports.

Because spot and short-term trading represents a new and growing activity within the U.S. gas market, the public comments on Northwest Alaskan's application will be especially useful in determining our regulatory approach to these arrangements. This type of application is subject to the policy considerations that now govern the review of traditional gas import arrangements, as set forth by the Secretary of Energy last February (49 FR 6687, February 22, 1984). This policy, with its strong emphasis on competitive prices and contract flexibility, has the objective of freeing commercial parties from undue government interference in contract terms and emphasizes the importance of buyer-seller negotiated arrangements.

Public comment on this application is encouraged by this notice. Intervention requirements will be liberally applied and the views expressed by interested parties will be given careful and thorough consideration in evaluating Northwest Alaskan's application. Parties providing comments or opposing this application should address any legal, procedural, or policy issues raised by this application, including, for example, its consistency with the considerations set forth in the Secretary's policy guidelines, with emphasis on its competitiveness.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–033–B, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., December 19, 1984.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the EPA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest Alaskan's application is available for inspection and copying in the Natural Gas Division Docket Room, Room GA–033–B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on November 2, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–30235 Filed 11–16–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $244,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Eddy Refining Company and Key Oil Company, a refiner and a reseller, respectively, of refined petroleum products located in Houston, Texas.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0206.

FOR FURTHER INFORMATION CONTACT:

Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Eddy Refining Company and Key Oil Company, which settled possible violations of DOE price controls in the firms' sales of refined petroleum products to its customers during the period October 1, 1973 through January 28, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Eddy and Key pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Eddy and Key products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for

public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: November 7, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 7, 1984.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Eddy Refining Company, Key Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0206.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the DOE Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a remedial order. The Subpart V process may be used in situations where the DOE cannot readily ascertain the persons who were injured or the amounts that such persons are eligible to receives as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Eddy Refining Company (EDDY) and Key Oil Company (Key). Eddy is a refiner and Key is a reseller-retailer of refined petroleum products as those terms were defined in 10 CFR § 212.31. Eddy and Key are located in Houston, Texas, and Key operates a number of retail service stations in the Texas Gulf Coast area. The firms were subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Parts 205, 210, 211, 212 and 213 until January 28, 1981, when all refined petroleum products still regulated by the DOE were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9900 (January 30, 1981). As a part of its enforcement responsibilities, ERA audited Eddy's and Key's sales of refined petroleum products from December 1, 1973 through June 30, 1976 (the audit period). The audit revealed possible regulatory violations, the amount of which depended upon whether Eddy and Key were determined to be a single firm, as ERA maintained, or two independent companies, as was the position of the firms. In order to settle all claims and disputes between the firms and the DOE regarding Eddy's and Key's compliance with the federal petroleum price and allocation regulations administered and enforced by the DOE during the period of October 1, 1973 through January 28, 1981, the firms entered into a consent order on July 19, 1983 in which Eddy and Key agreed to remit $244,000 to the DOE. (1) The consent order provides that this sum be paid in 30 successive monthly installments of approximately $8,133 each, beginning on October 1, 1983. The funds are being deposited into an interest-bearing escrow account for ultimate distribution to the parties who may have been injured by the alleged overcharges. This Proposed Decision concerns the distribution of the funds that have been or will be deposited into the escrow account plus accrued interest. The funds on deposit in the Eddy/Key escrow account, including interest, amounted to $92,417.47 as of August 31, 1984.

II. Proposed Refund Procedures

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Eddy/Key consent order fund. The Subpart V regulations authorize the OHA, upon request by the appropriate enforcement official, to fashion special procedures to distribute funds received as a result of settlement of an enforcement proceeding. 10 CFR 205.281, 205.282. The Subpart V process may be used in situation where DOE is unable readily to identify persons who were injured or to ascertain the amounts that such persons are eligible to receive as a result of enforcement proceedings. 10 CFR 205.280; *see also In re The Charter Co.*, 47 FR 16396 (April 16, 1982) (proposed decision); *Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982). The ERA indicated in its petition that those circumstances exist in this case; therefore, we will grant ERA's petition and assume jurisdiction over the distribution of the Eddy/Key consent order funds.

As we have stated in previous decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V. proceedings. *See generally Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by Eddy's and Key's pricing practices during the period October 1, 1973 through January 28, 1981. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary if any funds remain. *See generally Office of Special Counsel*, 10 DOE ¶85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

A. Refunds to Injured Purchasers

We propose that the Eddy/Key consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Eddy's and Key's alleged pricing violations. The information available to us at this time regarding the firms' operations does not provide the names and addresses of the firms' customers. Our experience with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully indentified, will fall into two categories: (1) Resellers (including retailers) of Eddy of Key refined petroleum products, and (2) firms, individuals, or organizations that were consumers (end-users) of refined petroleum products obtained from the two firms. The products purchased by these claimants were purchased either directly from Eddy or Key or from other firms in a chain of distribution leading back to the two firms.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of convered products from Eddy and Key for the period October 1, 1973 through January 28, 1981. If the products were not purchased directly from Eddy or Key, the claimant will be required to include a statement setting forth his or her reasons for believing the product originated with one of the two firms. *See, e.g.*, standard Oil Co. (Indiana)/Union Camp Corp., 11 DOE ¶85,007 (1983). In addition, a reseller or retailer or refined petroleum products that files a claim generally will be required to establish that if absorbed the alleged overcharges and was thereby injured. To make this showing, each reseller or retailer will be required to show that it maintained "banks" or unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased covered products from Eddy or Key, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Eddy and Key during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an indivdual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./ Siouxland propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Eddy/Key consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount, Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it also allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Eddy or Key and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85, 069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the early months of the consent order period are quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable. (2) *See Texas Oil & Gas Corp.; Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,228 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Eddy and Key petroleum products need only document their purchased volumes from Eddy or Key to make a sufficient showing that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases from Eddy or Key, however, we propose that it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Eddy or Key refined petroleum products. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of the products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.000635 per gallon ($244,000 received from Eddy and Key divided by 384,445,000 gallons of refined petroleum products sold by the firms during the audit period). (3)

Successful claimants will receive refund based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE. As of October 31, 1984, accrued interest will increase the per gallon refund amount by $.000010 for a total per gallon amount of $.000645. Consequently, a successful claimant who purchased, for example, 100,000 gallons of refined petroleum products from Eddy or Key during each of the months of the consent order period will receive a refund of $5,676 (100,000 gallons times 86 months times .000645).

Since Eddy and Key are paying the consent order amount in monthly installments, the entire amount will not be on deposit in the escrow account until April 1986. Thus it is possible that we will be in a position to grant refunds in excess of the current balance of the escrow account. To avoid this situation, we propose to delay processing of all applications for refund in this proceeding until the close of the application period. If at that time, the balance of the escrow account is insufficient to cover the amount of approved refunds, we will disburse refunds, on a pro rata basis, at such a percentage of the approved refund amounts that the account will not be overdrawn. The unpaid portion of an applicant's refund amount will be disbursed at such a time when sufficient funds are on deposit in the escrow account to cover all remaining unpaid refund amounts.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225.

Detailed procedures for filing applications applications will be provided in a final Decision and Order. Applications for refunds should not be filed until issuance of the final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, we will provide notice to such associations as the National Oil Jobbers Council and the Texas Oil Marketing Association, which may be helpful in advising potential claimants of the proceeding. We will also circulate an announcement summarizing the refund procedures to the local media for metropolitan Houston, the area in which Key operated retail outlets, in an effort to reach consumers who may be eligible for refunds. We solicit comments regarding any additional methods for advising potential claimants of this proceeding.

B. Distribution fo the Remainder of the Consent Order Funds

In the event that money remains in the Eddy/Key escrow account after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We will therefore reserve this issue for determination at a later date.

It is therefore ordered that:

The $244,000 refund amount currently being remitted by Eddy and Key in monthly installments pursuant to the consent order executed on July 19, 1983 will be distributed in accordance with the foregoing Decision.

Notes

(1) During the period from August 1 through December 31, 1977, Eddy made voluntary refunds to its customers in the amount of $432,733. The two firms have agreed to pay the additional $244,000 "in full settlement of all remaining DOE challenges to prices paid by purchasers of refined petroleum products from Eddy and/or Key" during the period October 1, 1973 through January 28, 1981. Consent Order at 7.

(2) Resellers who claim a refund in excess of $5,000, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for up to the $5,000 threshold amount without being required to submit evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

(3) Eddy sold 384,445,000 gallons of refined petroleum products during the consent order period. According to Eddy, Key and the DOE audit of the two firms, Key purchased all or substantially all of its covered products from Eddy during the period. Consequently the combined total sales volume of the two firms is approximately equal to Eddy's sales volume, and we have determined that we will use the Eddy figure in our calculations of the volumetric refund amount.

[FR Doc. 84-30208 Filed 11-16-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $39,900 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving J.S. Beebe and J.S. Beebe, Jr., producers of crude oil located in Union County, Arkansas.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0505.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by J.S. Beebe and J.S. Beebe, Jr. which settled all disputes between DOE and Messrs. Beebe concerning possible violations of DOE price regulations with respect to the firm's sales of crude oil during the period September 1, 1973 through April 30, 1977.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by J.S. Beebe and J.S. Beebe, Jr. pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Beebe crude oil during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours or 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: November 2, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

November 2, 1984.

Name of Firm: J.S. Beebe and J.S. Beebe, Jr.

Date of Filing: June 29, 1984.

Case Number: HEF-0505.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with J.S. Beebe and J.S. Beebe, Jr. (hereinafter referred to as Beebe). Pursuant to this consent order, Beebe refunded $39,901.19 in settlement of allegations that it had violated the DOE pricing regulations. Those funds, which have already been paid to the DOE, are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.

I. Regulatory Background

The consent order involved in this proceeding resulted from an audit conducted by the DOE and its predecessor agencies. As a result of this audit and investigation, the DOE alleged that during the Consent Order period, September 1, 1973 through April 30, 1977, Beebe sold crude oil at prices in excess of those established in the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.

Those regulations generally required crude oil producers to determine the first sale price of crude oil on the basis of the level of production from a property during a specified base period, *i.e.*, the base production control level (BPCL). *See* 6 CFR 150.354; 10 CFR 212.72-.74. The term "property" was defined as the right to produce crude oil which arises from a lease or fee interest. 6 CFR 150.354(b)(2); 10 CFR 212.72. Crude oil production that did not exceed the BPCL for a particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule prior to February 1, 1976, and at the upper tier ceiling price level after that date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Prior to February 1, 1976, in months in which new oil could be sold from a property, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b). Additionally, crude oil produced from a "stripper well property" could generally be sold at market price levels. Producers and resellers of crude oil were generally required to certify in writing to each purchaser in the distribution chain the respective volumes of the various categories of price-controlled domestic crude oil included in each purchase. 10 CFR 212.131(a)(4), (b)(1). Refiners were required to report these certifications to the DOE and its predecessors whfen they processed the crude oil to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. As discussed above, the federal regulations governing the price of crude oil created a price disparity between, on the one hand, foreign crude and uncontrolled domestic crude oil, and old and upper-tier (price-controlled) oil on the other hand. These price controls had an unequal effect on refiners and their downstream customers because some refiners had greater access to the cheap old oil than others. Firms which had little or no access to price-controlled oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent firms, with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened their viability. To remedy these imbalances, the DOE established the Entitlements Program. 39 FR 31650 (1974); 39 FR 39740 (1974). Under the Entitlements Program, refiners with proportionally greater access to cheap price-controlled oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefits associated with access to the lower-priced domestic crude oil.

II. Factual Background

Beebe is the operator of six crude oil producing properties in Union County, Arkansas. According to the Petition for Implementation of Special Refund Procedures filed by the ERA, Beebe overcharged two firms to which it made first sales of crude oil. Those firms were identified as Cross Development Co. and Lion Oil Co. The types of alleged violations involved in this proceeding fall into two categories. The first alleged violation involves incorrect certifications. The firm was alleged to have overcharged purchasers by an amount per barrel which represents the difference between the "new" or "stripper well"prices and the maximum price permitted for "old" oil. The second type of violation involved concerns Beebe's alleged sales of "old" oil at levels in excess of the applicable ceiling price. Beebe allegedly determined May 15, 1973 posted prices for crude oil incorrectly and thus sold crude oil at a price higher than that permitted by the regulations. On September 7, 1983, Beebe and the ERA entered into a Consent Order in which the Government agreed to terminate the pending investigation and administrative proceedings and Beebe agreed to pay a stipulated sum of money to the DOE.

III. Jurisdiction

The procedural regulations of the Department of Energy set forth general guidelines by which the Office of

Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V.(1) Those regulations provide that the Subpart V process may be used in situations where the Department of Energy is unable to identify readily persons who were or may have been injured by alleged or adjudicated violations or to readily ascertain the amount of their alleged injuries. 10 CFR 205.280. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record developed in this proceeding, we have concluded that, although the identity of the first purchasers of Beebe's crude oil is known, it may be difficult to identify other potentially injured parties and to determine to what extent a refund applicant may have been injured by Beebe's pricing or certification practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The Office of Hearings and Appeals therefore will accept jurisdiction over the funds which Beebe paid to the DOE in settlement of the enforcement proceedings underlying the Petition for Implementation of Special Refund Proceedings.

IV. Proposed Refund Procedures

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those which are the subject of the present proceedings. In *Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶82,521 (1982), 47 FR 2196 (January 14, 1982) hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶82,553 (1982), 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*), which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violations. (2) Because the types of alleged violations that underlie the present proceeding are substantially the same as those that were the subject of the *Alkek* and *Adams* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore propose to establish first-stage refund procedures in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek* and *Adams* determinations. Because of the difficulty inherent in establishing the level of injury to parties in the present case, there may be a portion of the refund moneys remaining after all successful first-stage claimants h ave been paid. As in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures for these cases until we know how much money will remain after first-stage claims are paid. *See Office of Enforcement*, 9 DOE ¶82,508 (1982). Our preliminary views concerning possible second-stage resolutions are contained in *In Re Stripper Well Exemption Litigation*. Case No. HEF-0025, 48 FR 57608 (1983).

It is Therefore Ordered That:

The refund amount provided in conjunction with the consent order entered into between the Economic Regulatory Administration (ERA) and J.S. Beebe and J.S Beebe, Jr. on September 7, 1983 shall be distributed in the manner set forth in the foregoing Decision.

Notes

(1) At one time crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to overcharged parties including ultimate consumers. However, since the President has exempted crude oil and all refined petroleum products from the DOE regulatory program, *see* Exec. Order No. 12287, 46 FR 9909 (1981), price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past.

(2) We subsequently added to the Alkek/Adams "pool" the portion of the Amoco consent order funds that was allocated for crude oil claims. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in In re Stripper Well Exemption Litigation, Case No. HEF-0025, 48 FR 57608 (1983).

[FR Doc. 84-30234 Filed 11-16-84; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Period of October 8 Through October 19, 1984

During the period of October 8 through October 19, 1984, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: November 6, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Eason Oil Company Oklahoma City, Oklahoma HRO-0254, Crude Oil

On October 17, 1984, Eason Oil Company (Eason), 2601 NW., Expressway, Oklahoma City, Oklahoma 73112, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued to the firm on September 14, 1984. In the PRO, the ERA found that during the period September 1, 1973 through December 31, 1979, Eason committed violations of the pricing regulations set forth in 10 CFR Part 212, Subpart E, in sales of gasoline, kerosene, gas oil, natural gas liquids and natural gas liquids products.

According to the PRO, the pricing violations resulted in $4,130,365 of overcharges.

Isthmus Trading Corporation and Richard Gonzales, Houston, Texas HRO-0252, Crude Oil

On October 16, 1984, Isthmus Trading Company, Suite 280, 10700 Northwest Freeway, Houston, Texas 77092, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on September 14, 1984. In the PRO, the Office of Enforcement found that during the period from April 1980 through December 1980, the firm charged prices for crude oil in excess of those permitted under 10 CFR 212.186, 210.62(c) and 205.202. In particular, the PRO alleges that the recipients engaged in the practice of "layering".

According to the PRO, the pricing violations resulted in $4,127,925.19 of overcharges.

J.R. Adams Oil Company Guymon, Oklahoma HRO-0253, Crude Oil

On October 17, 1984, J.R. Adams Oil Company, P.O. Box 487, Guymon, Oklahoma 74447, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on September 14, 1984. In the PRO, the Office of Enforcement found that during the period March 4, 1974 through July 30, 1974, J.R. Adams Oil Company resold refined petroleum products at prices in excess of those permitted under 10 CFR Part 212.

According to the PRO, the J.R. Adams Oil Company violation resulted in $539,551 of overcharges.

[FR Doc. 84-30233 Filed 11-16-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of October 15 through October 19, 1984

During the week of October 15 through October 19, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Lynberg & Nelsen, 10/18/74, HFA-0248

Lynberg & Nelsen filed an Appeal from a determination issued by the Office of General Counsel of the Department of Energy (DOE) that provided Lynberg with the public copy, *i.e.*, a copy with confidential and properietary information deleted, of a Proposed Remedial Order (PRO). In considering the Appeal, the DOE discussed general procedures for processing requests for copies of PROs. The DOE determined that an adequate response to such a request is to refer the requester to copies of PROs in the Public Reading Room. In making such a referral the authorizing official should indicate that if a requester desires the release of deleted material, he should file a request under the Freedom of Information Act (FOIA). Accordingly, the Appeal was dismissed. The DOE determined, however, that the Appeal was to be treated as an FOIA request for the information deleted from the PRO, and transferred to an appropriate FOIA authorizing official for a determination on the request.

Request for Exception

THREE L INC., 10/16/84, HEE-0083

Three L Inc. filed an Application for Exception seeking relief from the requirement that it prepare and file Form EIA-782B with the DOE Energy Information Administration. In considering the request, the DOE found that there was merit to the firm's contentions that it was burdened by the filing requirement. After balancing this burden against the public interest in gathering reliable energy data, the determination was made that a limited form of exception relief was appropriate. Accordingly, exception relief was granted to simplify the reporting requirements and thereby reduce any burden to Three L. While reducing the difficulty of completing Form EIA-782B, this type of relief insures that the DOE will continue to receive data from a representative sample of energy firms.

Refund Applications

Standard Oil Company (Indiana)/Joseph Sam Mistretta, 10/16/84, RF21-11147

The DOE issued a decision and Order concerning an Application for Refund filed by Joseph Sam Mistretta, a retailer of Amoco motor gasoline. Mistretta elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering this application, the DOE concluded that the applicant should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refund granted in this proceeding totals $665.

Willis Distributing Co., Inc./Ettwein's Mobil, 10/18/84, RF41-0006

The DOE issued a Decision and Order concerning an Application for Refund filed by Ettewein's Mobil, a retailer of Willis motor gasoline. The firm elected to apply for a refund based upon the presumption of injury for small claims outlined in *Willis Distributing Co., Inc.* 12 DOE ¶ 85,062 (1984). Based on the statement and information submitted by Ettwein's Mobil, the DOE concluded that the applicant should receive a refund of $1,630 based upon the total volume of its Willis motor gasoline purchases.

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Evangeline Refining Company—HEF-0207

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 6, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-30232 Filed 11-16-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL- 2719-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Water Programs

• *Title:* Survey Report on Great Lakes Beach Closings (EPA#0094).

Abstract: Anually public health officials in the 86 counties bordering the Great Lakes identify frequency of closing of their public bathing beaches. This and related information enables EPA to determine the effects of municipal water treatment practices and storm sewer overflows on these beaches and to do reseach, program planning and program evaluation.

Respondents: Public health officials in 86 counties bordering the Great Lakes.

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, SW., Washington, D.C. 20460

and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: November 13, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-30116 Filed 11-16-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42063; TSH-FRL 2688-6]

Ethylene Bis(Oxyethylene) Diacetate; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice is EPA's response to the Interagency Testing Committee's (ITC) designation of ethylene bis(oxyethylene) diacetate (triethylene glycol diacetate, or TGD; CAS # 111-21-7) for priority consideration for health effects testing. The ITC did not recommend chemical fate or environmental effects testing for TGD. EPA is not initiating rulemaking at this time under section 4(a) of the Toxic Substances Control Act (TSCA) to require health effects testing of TGD. The Agency finds that available data are sufficient to reasonably determine or predict the effects on human health of TGD under its current conditions of manufacture and use. Because adequate information is available, further testing for health effects is not warranted for TGD at this time.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C. (554-1404), Outside the U.S.A.: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is not initiating rulemaking at this time under section 4(a) of TSCA to require health effects testing of TGD as designated by the ITC in its Thirteenth Report.

I. Background

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC to recommend to EPA a list of chemicals to receive priority consideration for testing under section 4(a) of TSCA.

The ITC designated TGD for priority consideration in its Thirteenth Report, published in the **Federal Register** of December 14, 1983 (48 FR 55674). The designation was alkloxyethylene acetates, specificalaly TGD and 2-(2-butoxyethoxy)ethyl acetate. This notice constitutes EPA's response to the ITC's designation of TGD. The Agency is responding to the 2-(2-butoxyethoxy)ethyl acetate designation in a separate notice.

The ITC recommended that TGD be tested for subchronic toxicity, toxicokinetics, and reproductive effects. The rationale for recommending these tests was based on probable hydrolysis to a glycol ether (triethylene glycol) and concern about possible reproductive effects such as the lower molecular weigth glycol ether demonstrate.

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine whether there is substantial production, and significant or substantial exposure or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can require testing whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both section 4(a)(1)(A)(ii) and section 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information. EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations concerning TGD, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and published and unpublished data available to the Agency, including information submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716).

II. Review of Available Data

A. Release and Exposure

Two companies currently manufacture TGD; they are Eastman Kodak Company, Eastman Chemicals Division in Kingsport, TN (Refs. 1 and 2), and Celanese Fibers Operations in Charlotte, NC (Ref. 3). Combined production by these two firms is between 1 and 10 million pounds annually (Ref. 2). CTC Organics, Inc., of Atlanta, GA, imports TGD from Japan (Refs. 4 and 5), apparently for resale in small lots.

TGD is produced in a closed system. Eastman Kodak states that approximately 50 workers are exposed to TGD for 75 hours per year (Ref. 2) during manufacturing operations; Celanese states that three persons per year are exposed. Because closed systems are employed and TGD is nonvolatile, EPA expects that these occupational exposures will be minimal.

The only known commercial use of TGD is as a plasticizer in the production of cigarette filter tips. This processing application is automated and expected to result in very little human exposure (Ref. 6).

Smokers will be exposed to TGD as it elutes from cigarette filters. EPA estimates that approximately 75 micrograms TGD will be eluted in mainstream smoke from a filter cigarette (Ref. 7). For a 60-kg person, who smokes 3 packs of filter cigarettes per day, these releases will result in inhalation exposures between 0.05 to 0.1 mg/kg/day.

Based upon information on production and use of TGD, releases to the environment are expected to be small. The ITC stated that it expected TGD to rapidly degrade in the environment. Based upon its own analysis, the Agency agrees with the ITC (Ref. 8).

B. Health Effects

No information on the biochemistry or *in vitro* effects of TGD could be located in the published literature, and none was submitted in response to the section 8(d) information gathering rule.

1. *Pharmacokinetics.* No studies specifically conducted on the pharmacokinetics of TGD are available. A metabolism study in rats submitted by Eastman Kodak (Refs. 9 and 10) indicates that TGD is rapidly absorbed from the gut, de-esterified, and excreted in the urine as triethylene glycol and metabolites of triethylene glycol.

2. *Acute toxicity.* The acute toxicity of TGD is low in rodents by all routes of administration. the intraperitoneal median lethal dose (LD_{50}) for the rat is 1,560 milligrams per kilogram (mg/kg) (Refs. 11 and 15). Reported values for the oral LD_{50}'s for the rat in three studies ranged from 14,300 to 25,100 mg/kg (Refs. 9, 11, 12, and 13). Oral LD_{50}'s for the mouse and rabbit are reported to be greater than 3,200 mg/kg (Refs. 1 and 14). A 6-hour inhalation LC_{50} in rats for an aerosol of TGD is reported to be greater than 6,100 mg/m³ (Ref. 6). Dermal LD_{50}'s of TGD in rabbits and guinea pigs are 8,800 and 22,000 mg/kg (Refs. 11, 13, 14 and 15). TGD is reported to produce slight irritation to the skin and eye in the rabbit (Refs. 14 and 15). TGD is reported not to cause skin sensitization (Ref. 14).

3. *Subchronic toxisity.* EPA has received three subchronic studies on TGD in rats (Ref. 9). The first is a 90-day study which reported no observed effects in rats fed a diet containing 1,000 or 10,000 ppm TGD (approximately 60 or 600 mg/kg/day). The study included analyses of blood and urine samples taken on days 47 and 89 of the study and gross necropsy and histopathology immediately following cessation of dosing (day 90). The second is a 21-day gavage study where the animals were given doses of 7,000 mg/kg/day, 5 days per week, for a total of 14 doses. This dosage produced hydropic degeneration of the liver. No other effects were observed. The third is an inhalation study where rats were exposed to air saturated with TGD vapor (17 ppm or 163 mg/m³) for 6 hours a day, 5 days a week, for a total of 22 exposures. No effects were observed in the study. The Agency believes that these studies are sufficient to demonstrate that TGD has a subchronic no-observed-effect-level of 600 mg/kg/day or more.

4. *Reproductive effects.* No studies characterizing the teratogenic or reproductive effects of TGD were submitted or found in the literature. However, the subchronic toxicity studies discussed above did not report any indication of adverse effects in gross and histopathological examinations of the reproductive organs (Ref. 9). Further, the primary metabolite of TGD, triethylene glycol, unlike lower molecular weight glycol ethers, was negative in a screen for reproductive toxicity effects (Ref. 16).

III. Decision Not To Initiate Rulemaking

EPA has decided not to initiate rulemaking at this time to require health effects testing of TGD under section 4(a) of TSCA. EPA believes that although substantial numbers of persons are exposed to small quantities of TGD through smoking filter cigarettes (see Unit II. A, above), existing data are sufficient to reasonably predict the effects of this exposure.

The Agency concludes that available data are sufficient to address the health effects testing concerns of the ITC for TGD when viewed in the light of the low levels of exposure to the substance. Toxicological studies on TGD submitted by Eastman Kodak are sufficient to conclude that present exposures to TGD will not result in subchronic toxicity. Although studies specifically designed to evaluate the reproductive effects of TGD are not available, EPA believes that it currently has sufficient information available to predict that present exposures to TGD will not result in adverse reproductive effects of TGD. First, TGD was not reported to have caused adverse effects in the reproductive organs in an available subchronic study. Second, while TGD does metabolize to triethylene glycol, available data indicate that triethylene glycol does not appear to cause reproductive effects (see Unit II.B.4, above). EPA's review of available information concerning TGD has revealed no basis for requiring testing for other health effects or for environmental fate or environmental effects.

IV. Public Record

EPA has established a public record for this decision not to test under section 4 of TSCA (docket number OPTS-42063). The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** Notice containing the designation of TGD to the priority list and all comments on TGD received in response to that notice (48 FR 55674; December 14, 1983).

(2) Communications (public). (a) Letters. (b) Contact reports of telephone conversations. (c) Meeting summaries.

(3) Published and unpublished data.

B. References

(1) Eastman Kodak Company. (July 13). Eastman Chemicals Division, Kingsport, TN 37662. Triethylene glycol diacetate; ethylenebis (oxyethylene) diacetate. . . . Letter from G.Y. Brokaw to M. Greif, TSCA Interagency Testing Committee, Washington, D.C. 1982.

(2) Eastman Kodak Company. (Jan. 6). Eastman Chemicals Division, Kingsport, TN 37662. Letter from D.W. Kreh to TSCA Public Information Office, U.S. Environmental Protection Agency, Washington, D.C. 20460. 1984.

(3) Celanese. (Oct. 7). Celanese Fibers Operations, P.O. Box 32414, Charlotte, NC 28232. Ethylene bis (oxyethylene) diacetate. Letter from J.C. Pullen to L. Borghi, Dynamac Corporation, 11140 Rockville Pike, Rockville, MD 20852. 1983.

(4) Dynamac Corporation. (Feb. 6). 11140 Rockville Pike, Rockville, MD 20852. Memorandum to file from W. Bauer summarizing telephone conversations with J. Marriner, CTC Organics, Atlanta, GA, and R. Perez, Universal Preservachem, New York, NY. 1984.

(5) Dynamac Corporation. (Feb. 16). 11140 Rockville Pike. Rockville, MD 20852. Letter confirming telephone conversation from W. Bauer to J. Marriner, CTC Organics, Inc., PO. Box 6932, Atlanta, GA 30315. 1984.

(6) Celanese. (Aug.). Celanese Fibers Marketing Company. Product bulletin: Fiberset™ tow plasticizers. WSP 5.60 (a section of the manual "World Smoking Products"). Box 32414, Charlotte, NC 28232. 1978.

(7) Dynamac Corporation. (July). 11140 Rockville, MD 20852. Memorandum to file on consumer exposure to TGD in cigarette smoke. 1984.

(8) USEPA. (November, 20) U.S. Environmental Protection Agency. ENPART analysis of DGBA, TGD, oleylamine. Interagency Memorandum From R. Kinnenson to Test Rules Development Branch, Office of Toxic Substances. U.S. Environmental Protection Agency, Washington, D.C. 20460. 1984.

(9) Eastman Kodak Company. (Jan. 26). Eastman Chemicals Division, Kingsport, TN 37662. Letter from Robert L. Raleigh, MD, to Lynn Bradley, U.S. Environmental Protection Agency, Washington, D.C. 20460. 1984.

(10) McKennis, H., Turner, R.A., Turnbull, L.B., Bowman, E.R. "The excretion and metabolism of triethylene glycol." Toxicol Appl. Pharmacol. 4:411–431. 1962.

(11) "Patty's Industrial Hygiene and Toxicology," 3rd rev. ed. Vol. 2C. Clayton G.D., Clayton F.E., eds. New York: Wiley-Interscience, pp. 4007–4009, 4012–4014, 4028–4029. 1982.

(12) Smyth, H.F., Carpenter, C.P., Weil, C.S., Pozzani, U.C., Striegel, J.A., Nycum, J.S. "Range-finding toxicity data: list VII," Am. Ind. Hyg. Assoc. J. 30:470–476. 1969.

(13) Union Carbide Corporation. (Mar. 27). Technical data sheet: Toxicology studies. Triethylene glycol diacetate. Industrial Medicine and Toxicology Department, New York, NY 10017. 1969.

(14) Eastman Kodak Company. (Apr. 29) Material safety data sheet: Estrobond® G plasticizer. MSDS–10, 124A–4. Eastman Chemical Products, Inc., Kingsport, TN 37662. 1983.

(15) Union Carbide Corporation. Section 8(d) submission (Mar. 19, 1984) Jackson B. Browning to USEPA, docket OPTS–84009.

(16) Schuler, R.L., Hardin, B.D., Niemeier, R.W. et al. Results of testing fifteen glycol ethers in a short-term in vivo reproductive toxicity assay. Preprint. Paper presented at NIOSH Symposium on Toxic Effects. Cincinnati, OH: National Institute for Occupational Safety and Health. 1983.

This record includes basic information considered by the Agency in developing this notice, and is available from 8 a.m. to 4 p.m. Monday through Friday except legal holidays, in the OPTS Reading Room, Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement the record periodically with additional relevant information received.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2006; (15 U.S.C. 2604))

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–30228 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–42060; FRL 2690–4]

1,2,3,4,7,7-Hexachloronorbornadiene; Response to the Interagency Testing Committee

AGENCY: Environment Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's recommendation that EPA consider requiring health effects testing of 1,2,3,4,7,7-hexachloronorbornadiene under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not at this time initiating rulemaking under section 4(a) to require health effects testing of 1,2,3,4,7,7-hexachloronorbornadiene. EPA believes that the present limited manufacture and controlled disposal of this chemical is not expected to cause substantial or significant human exposure or present an unreasonable risk of injury to human health or the environment. However, EPA is planning to initiate rulemaking under sections 8(a) and/or 5(a) (2) of TSCA to monitor any significant changes in these conditions.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M St., SW., Washington, D.C. 20460; Toll Free: (800–424–9065); In Washington, D.C.: (554–1404), Outside the USA: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is not at this time initiating rulemaking under section 4(a) of TSCA for 1,2,3,4,7,7-hexachloronorbornadiene because of limited production and low potential for human exposure.

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate regulations which require manufacturers and processors to test chemical substances and mixtures. The data developed as a result of such testing will be used by EPA to evaluate the risks that these chemicals may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of test rules under section 4(a) of the Act. The ITC may designate up to 50 of its recommendations at any one time for priority consideration by EPA. EPA is required to respond within 12 months of the date of a priority designation, either by initiating rulemaking under section 4(a) or publishing in the **Federal Register** reasons for not doing so.

1,2,3,4,7,7-Hexachloronorbornadiene (HEX–BCH) (CAS No. 3389–71–7) was designated for priority testing consideration in the Thirteenth Report of the ITC, submitted to the EPA Administrator on November 8, 1983 and published in the **Federal Register** on December 14, 1983 [48 FR 55674] (Ref. 1). The ITC recommended that HEX–BCH be tested for subchronic health effects including neurotoxicity, and for biochemical effects including enzyme-inducing capabilities. The ITC did not recommend HEX–BCH for environmental effects testing.

The ITC based its health effects testing recommendation for HEX–BCH on the concern that possible human exposure may result from releases of HEX–BCH to the environment through waste discharges from the manufacturing plant. The chemical has been found in the waters and sediment of the Mississippi River and its tributaries, and in edible portions of fish caught in the Mississippi. In addition, HEX–BCH waste was disposed of in surface landfills for many years and traces of the chemical have been identified in private well water in the vicinity of the surface landfills.

II. Assessment of Exposure

HEX–BCH has been produced in the U.S. solely by the Velsicol Chemical Corporation at one plant location in Memphis, Tennessee. The only use for HEX–BCH is as an intermediate in the manufacture of the pesticide endrin. The ITC report stated that endrin production was 2 million to 4 million pounds in 1981 (Ref. 1). Based on this production volume of endrin, the ITC estimated that the annual production of HEX–BCH in 1981 was 1.5 million to 3 million pounds.

In 1978, endrin was classified as a restricted use pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Ref. 2). The restrictions on its use and application are very limiting and have caused a sharp reduction in its use in the U.S. (Ref. 3). According to Velsicol, there is no longer any production of endrin in the U.S. (Ref. 4). Therefore, because the use of endrin has decreased, the large scale production of HEX–BCH is no longer necessary (Refs. 3 and 5). Velsicol notified the ITC, during the preparation of the Thirteenth Report, that HEX–BCH is no longer manufactured by Velsicol. In a letter dated October 3, 1983, to the ITC, Velsicol stated that HEX–BCH has not been produced since May, 1982 and that they currently have no plans to produce it in the future (Ref. 6). In addition, the Agency is not aware of any importation of HEX–BCH into the U.S.

However, due to a market demand for endrin in Mexico, Velsicol decided to resume production of HEX–BCH at its plant in Memphis (Ref. 7). The HEX–BCH is converted to isodrin at the Memphis plant and then shipped to Mexico for conversion to endrin. Isodrin is the immediate precursor to endrin.

The Mexican-produced endrin is then sent to the U.S. for use in U.S. markets. Velsicol notified EPA that this production run of HEX–BCH began in mid-March, 1984 and was completed at the end of May, 1984. The amount of HEX–BCH produced was less than 300,000 pounds (Ref. 8).

Subsequently, Velsicol, in a letter of August 14, 1984, voluntarily cancelled their U.S. pesticide registrations for technical endrin and for two of their three endrin formulations (Ref. 9). The remaining formulation will be cancelled no later than August 1, 1985 because of prior commitments Velsicol has made to customers. Because, at present, the only use for HEX–BCH is as an intermediate in the production of endrin, it is clear that the possibility of any future manufacture of HEX–BCH is small.

In addition, Velsicol states that HEX–BCH is produced in a closed system and that the conversion to isodrin also takes place in that system without isolation of the HEX–BCH intermediate (Ref. 7). Velsicol has advised EPA that there are seven employees, working in various HEX–BCH processes, who are potentially exposed to HEX–BCH. Three of these workers are involved with production of HEX–BCH, three are involved in the next reaction step to isodrin and one worker is involved in waste disposal. Velsicol estimates that exposure is minimal and that the only potential worker exposure is during sampling and waste disposal. The company estimates that exposure during sampling is no more than 15 minutes per 8-hour day. Total exposure from all sources is estimated to be 15 to 20 minutes per 8-hour day for each worker (Ref. 4, exhibit VI).

The aqueous and solid wastes from the process are managed under treatment and disposal systems which are closely controlled and monitored by the manufacturing company, the State, and Federal authorities.

The aqueous wastes from the process are pretreated at the Velsicol facility and then sent to the Memphis North Wastewater Treatment Plant for further treatment (Ref. 10). The operation and subsequent discharges from the Memphis North treatment facility are controlled under the National Pollution Discharge Elimination System (NPDES) program (Ref. 11). Tennessee's NPDES program was approved by EPA in 1977 (Ref. 12). In addition, the city of Memphis issued a permit to Velsicol allowing up to 30 pounds per day of HEX–BCH to be discharged to the Memphis North facility for treatment (Ref. 13). The discharges during the recent limited production have averaged 2 to 3 pounds per day (Refs. 7, 8, and 13).

Further, both Velsicol's pretreatment and the treatment of the HEX–BCH wastes by the Memphis facility result in a significant reduction of HEX–BCH levels in the effluent going into the Mississippi River (Ref. 10). The levels of HEX–BCH in the effluent entering the Mississippi River, for the period of mid-March, 1984 to the end of April, 1984, ranged from 5.8 ppb to <1 ppb. The average effluent concentration of HEX–BCH, for the 25 days for which analyses are available, is 3.02 ppb. The Agency believes, given the large dilution factor of the Mississippi just south of Memphis, and the low amount of HEX–BCH entering the river, that this concentration of HEX–BCH will not present an unreasonable risk to health or the environment (Ref. 13).

The solid wastes containing HEX–BCH are either buried in an approved secure landfill for hazardous wastes or are incinerated. Approximately 70 percent of the solid wastes go to the landfill (Ref. 4, exhibit V).

However, while the present production and disposal practices appear to be sufficient to prevent unreasonable risk to human health, disposal practices associated with past HEX–BCH production have not been adequate to prevent contamination of private surface wells or fish species which are found in rivers in the area of the disposal site.

Prior to 1977, HEX–BCH wastes were deposited at the Hardeman County, Tennessee toxic waste dumpsite. This waste disposal site is situated on a 243 acre tract of land owned by Velsicol, 27 acres of which were utilized for actual waste disposal (Ref. 10, exhibit V). During the period in which this site was used, 1964–1973, an estimated 300,000 to 500,000 barrels of liquid and solid waste were dumped. These barrels, some of which contained HEX–BCH wastes, were buried in shallow trenches dug into the ridges at the dumpsite (Ref. 14).

In 1966, the Federal Water Pollution Control Administration requested that the U.S. Geological Survey (U.S.G.S.) investigate the disposal operation at the Hardeman site. The study was to determine potential for contamination of the hydrologic environment (Ref. 10, exhibit V). The conclusion from this 1966 study was that there was no possibility for any existing water table wells to produce contaminated water in the dumpsite area (Ref. 10, exhibit V).

However, in 1977, 4 years after the closure of the dumpsite, the Tennessee Division of Water Quality Control and the U.S.G.S. began a second study to reexamine the disposal site. The conclusion from the earlier study was disputed. The 1977 report found that chemical analysis of ground water from the aquifer indicated the presence of organic contaminants from the disposal site (Ref. 10, exhibit V).

In 1978, as the second report was being completed, residents in the vicinity of the disposal site reported strange odors and tastes from their private well water. As a result, the State of Tennessee and EPA collected samples from selected residential wells. As many as 13 organic contaminants, including HEX–BCH, were detected in the local wells (Ref. 4, exhibit III).

Following the detection of the contaminants, an environmental assessment program was initiated by Velsicol in cooperation with the Tennessee Department of Public Health and Region IV of EPA. The investigations in the assessment program included extensive water sampling, aquatic and terrestrial biological effects, surface water monitoring, runoff and sediment transport, air quality monitoring and hydrogeologic studies. As a result of the environmental assessment program and other data generated by Tennessee and EPA, it was determined that the primary routes for contamination from the Hardeman site were via the ground water and surface runoff (Refs. 4, exhibit III and 10, exhibit V).

After the environmental assessment, which lasted for 2 years, was completed, several remedial methods of controlling the contaminants from the site were evaluated. It was decided that the remedy which was the most efficient and which would directly control the two major identified pathways of contamination from the site, was to install a low permeability cap over the waste disposal site (Ref. 10, exhibit V). The State of Tennessee accepted Velsicol's proposal in July, 1980 (Ref. 15).

The capping took place July, August, and September, 1980. The cap was constructed of low permeability clay which covered the dumpsite to a depth ranging from 1 to 3 feet. The cap was then covered with a 6 inch layer of topsoil in order to facilitate development of a vegetative cover (Ref. 10, exhibit V). The cap serves as a shield to prevent infiltration by precipitation, volatization to air, surface runoff and contact by wildlife. In addition, the 243 acre Velsicol property is fenced and posted to keep people out.

As a part of the environmental evaluation and the subsequent capping procedure, Velsicol agreed to a 3-year monitoring program which included the testing of various environmental factors every quarter year from July, 1980 to

July, 1983. The monitoring was contracted by Velsicol to a private environmental engineering company.

The initial 3-year monitoring program is completed. Tests show that the clay cap has reduced the infiltration of water by more than 99 percent. This surpasses the design, which called for at least a 97.8 reduction (Ref. 10, exhibit II). The tests showed that contamination is not migrating beyond a previously defined ground water plume in the vicinity of the disposal site. In addition, the residents in the area are no longer dependent on ground water from the dumpsite area. A water line was built in 1979 which connected the residents to the water supply of the city of Toone, Tennessee (Ref. 10, exhibit II).

The conclusions from the 3-year monitoring period, and from pre-cap and cap installation monitoring, show a marked reduction in the concentration levels of the organic contaminants, including HEX–BCH, in the ground water and in stream sediment and surface water. In many cases there is an absence of contamination (Ref. 4, exhibits II and III). The capping has proven to be an effective remedial measure in controlling the contamination from the Hardeman waste disposal site. In an environmental evaluation and assessment report, dated May, 1984, a continuation of monitoring is recommended (Ref. 4, exhibit II).

In September, 1983, the Velsicol Hardeman County waste disposal site was included on the National Priorities List (NPL) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 *et. seq.*) (Ref. 16). The NPL serves, primarily as an informational tool for use by EPA in identifying disposal sites that appear to present a significant risk to public health or the environment. Each site was scored and then ranked and placed into one of 9 groups, according to its priority. The Hardeman site is ranked in group 4, indicating that it is not a top priority site for immediate remedial action. The current response status of the site, according to the NPL, is that conditions are currently being addressed through EPA-sanctioned voluntary actions by parties responsible for wastes at the site (Ref. 17). In addition, the NPL states that when the monitoring period ends, Velsicol, the State, and EPA will review the effectiveness of the cap. Any additional measures to control the site will be discussed at that time, including the possible need for decontaminating area ground water (Ref. 16).

III. Decision Not To Test

EPA has decided that testing of HEX–BCH under section 4(a)(1)(A) or 4(a)(1)(B) of TSCA is not warranted at this time because production and the potential for human exposure are extremely limited. Therefore, the likelihood of unreasonable risk to humans is small.

From May, 1982 until March, 1984, Velsicol did not manufacture HEX–BCH. Then, after an interval of nearly 2 years, Velsicol began producing a limited quantity of the chemical at one manufacturing site. This HEX–BCH was produced solely for use as an intermediate of isodrin, which in turn, is solely for export and used solely in the production of endrin. The production run lasted for less than 3 months, was limited to under 300,000 pounds, and resulted in minimal occupational exposure. Subsequent to this production run, Velsicol voluntarily cancelled their pesticide registration for technical endrin, which means that it is possible that they will never produce HEX–BCH again. The manufacturing wastes, both aqueous and solid, are handled under adequate waste management facilities. Furthermore, the presence of HEX–BCH in private well water, reported in 1978, is attributed to the poor waste disposal practices followed during the 9 years, in which the Hardeman dumpsite was used to dispose of HEX–BCH. In addition, the presence of HEX–BCH reported in fish in a 1978 study is also a result of contamination from the Hardeman site (Ref. 19).

Since 1978, when the 2-year environmental assessment was begun, through the remedial action of capping the site, followed by 3 years of extensive monitoring, studies show that contamination from the Hardeman site has been effectively controlled. Finally, review of the control measures and any future remedial actions are to be handled under the authority of CERCLA.

In light of the current limited production, the adequate waste disposal practices, and the on-going evaluation and investigation at the Hardeman waste disposal site, EPA has determined that it can reasonably be predicted that under present conditions HEX–BCH will not present an unreasonable risk of injury to human health. EPA has, therefore, decided not to proceed with section 4 rulemaking at this time. However, should the current situation change such that EPA has cause to be concerned about substantial production and/or increased exposure, then EPA reserves the right to propose a test rule or take other action to obtain health and/or environmental effects test data on HEX—BCH. In addition, EPA is planning to initiate rulemaking pursuant to sections 8(a) and/or 5(a)(2) to TSCA to monitor for such changes by requiring the notification of the Agency prior to any future manufacture, importation or processing of HEX–BCH in the U.S.

In addition, EPA's Office of Solid Waste is evaluating the available health and monitoring data on HEX–BCH to determine whether additional action should be taken under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6901 *et seq.*) (Ref. 20). This review and evaluation by the Agency will determine whether HEX–BCH should be listed as a generic or specific hazardous waste under RCRA. Any additional rulemakings for HEX–BCH will appear separately from this Notice.

IV. References

(1) USEPA. Thirteenth Report of the Interagency Testing Committee to the Administrator: Receipt of Report and Request for Comments Regarding Priority List of Chemicals. **Federal Register**, December 14, 1983 (48 FR 55674).

(2) USEPA. Pesticide Uses by Regulations: Pesticide Use Restrictions-Final Rule. **Federal Register**, February 9, 1978 (43 FR 5788).

(3) ITC. Memorandum. 1,2,3,4,7,7-Hexachloronorbornadiene (HEX–BCH). Martin Greif, Executive Secretary, ITC, to File. September 27, 1983.

(4) Velsicol. Hexachloronorbornadiene—Additional Information. Letter from Alfred A. Levin, Velsicol Chemical Corporation, to Richard Troast, Office of Toxic Substances, EPA, and exhibits I–IV (exhibits IV and V Confidential Business Information) (CBI). June 25, 1984.

(5) USEPA. Memoranda. 1,2,3,4,7,7-Hexachloronorbornadiene. L. Borghi to TSCA Interagency Testing Committee, Attention: Dr. E. Weisburger. August 16, 1983 and August 24, 1983 (clarification).

(6) Velsicol. Letter from Alfred A. Levin, Velsicol Chemical Corporation, to Dr. Martin Greif, Office of Toxic Substances, EPA. 1,2,3,4,7,7-Hexachloronorbornadiene. October 3, 1983.

(7) Velsicol. Letter from Alfred A. Levin, Velsicol Chemical Corporation, to Richard Troast, Office of Toxic Substances, EPA. May 14, 1984.

(8) Velsicol. Letter from Alfred A. Levin, Velsicol Chemical Corporation to Richard Troast, EPA. Hexachloronorbornadiene. May 31, 1984.

(9) Velsicol. Letter from M. Olav Messerschmidt, Velsicol Chemical Corporation to Douglas Campt, EPA. Voluntary Cancellation. August 14, 1984.

(10) Velsicol. 1,2,3,4,7,7-Hexachloronorbornadiene. Response to the Thirteenth Interagency Testing Committee. Letter from Alfred A. Levin and exhibits I–XI (exhibits I, II, and IV CBI). February 6, 1984.

(11) USEPA. Computer Printout from EPA Region IV, P.C.S. Quick Look Report on NPDES/RCRA Waste Treatment Facilities in Tennessee. July 3, 1984.

(12) USEPA. Letter from Douglas M. Costle, EPA Administrator, to the Honorable Ray Blanton, Governor of Tennessee. December 28, 1977.

(13) Memphis. Letter from John M. Leonard, Administrator, Environmental Engineering, Division of Public Works, City of Memphis, to Linda Tuxen, Office of Toxic Substances, EPA. HEX–BCH discharge from Velsicol Chemical Company to the City of Memphis Wastewater Treatment Plant. July 24, 1984.

(14) Clark, C.S., Bjornson, H.S., Holland, J.W., et al. "Evaluation of the Health Risks Associated with the Treatment and Disposal of Municipal Wastewater and Sludge". EPA 600/1–80–030, PB 81–175945, USEPA Cincinnatic, Ohio. pp. 36–43. 1981.

(15) Tennessee. Letter from Dr. Eugene W. Fowinkle, Commissioner of Public Health, State of Tennessee, to John M. Rademacher, Vice-President of Environmental, Health and Regulatory Affairs, Velsicol Chemical Corporation. Hardeman County Disposal Site. July 10, 1980.

(16) USEPA. Final and Proposed Amendments to National Oil and Hazardous Substances Contingency Plan; National Priorities List. **Federal Register**, September 8, 1983 (48 FR 40658).

(17) USEPA. Hazardous Waste Sites; National Priorities List, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency. August, 1983.

(18) USEPA. Hazardous Waste Site; Descriptions; National Priorities List—Final Rule, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency. August, 1983.

(19) Yurawecz, M.P., Roach, J.A.G. "Gas-Liquid Chromatographic Determination of Chlorinated Norbornene Derivatives in Fish." Journal of the Association of Official Analytical Chemists, 61(1): 26–31, 1978.

(20) USEPA. Memorandum. Hexachloronorbornadiene. David Friedman, Manager, Methods Program, Office of Solid Waste, to Jeff Davidson, Test Rules Development Branch. March 16, 1984.

V. Public Record

The EPA has established a public record of this testing decision (docket number OPTS–42060). This record includes:

(1) **Federal Register** Notice designating 1,2,3,4,7,7-hexachloronorbornadiene to the priority list and comments received in response thereto.

(2) Contractor reports.

(3) Communications consisting of letters, contact reports of telephone conversations, and meeting summaries.

(4) Confidential Business Information submissions by Velsicol Chemical Corporation. While part of the public record, these submissions are not available for public review.

The record, containing the basic information considered by the Agency in developing its decision, is available for inspection in the OPTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-30223 Filed 11-16-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51545; BH-FRL 2720-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-three PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 85–107, 85–108 and 85–109, January 30, 1985

PMN 85–110 and 85–111, February 2, 1985

PMN 85–112, 85–113, 85–114, 85–115, 85–116, 85–117, 85–118, 85–119, 85–120, 85–121, 85–122, 85–123, 85–124 and 85–125, February 3, 1985

PMN 85–126, 85–127, 85–128 and 85–129, February 4, 1985.

Written comments by:

PMN 85–107, 85–108 and 85–109, December 31, 1984

PMN 85–110 and 85–111, January 3, 1985

PMN 85–112, 85–113, 85–114, 85–115, 85–116, 85–117, 85–118, 85–119, 85–120, 85–121, 85–122, 85–123, 85–124 and 85–125, January 4, 1985

PMN 85–126, 85–127, 85–128 and 85–129, January 5, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51545]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 85–107

Manufacturer. The Upjohn Company.

Chemical. (G) Polyurethane resin.

Use/Production. (G) Industrial thermoplastics. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 3 workers, up to 6 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. Less than 20 kg released to land. Disposal by sanitary landfill via licensed commercial carting service.

PMN 85–108

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 6 workers.

Environmental Release/Disposal. Release to land.

PMN 85–109

Manufacturer. Canusa Coating Systems Limited.

Chemical. (G) Arylthiodialkanoylhydrazide.

Use/Production. (S) Industrial antioxdant for use in extruded or molded plastics. Prod. range: 3,000–6,000 kg/yr.

Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Not an irritant.

Exposure. Manufacture: Inhalation, a total of 1 worker, up to 8 hr/da, up to 110 da/yr.

Environmental Release/Disposal. 0.3 kg released to air.

PMN 85–110

Manufacturer. Confidential.

Chemical. (G) Polysulfide polymer.

Use/Production. (G) Rubber additive. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–112

Manufacturer. Confidential.
Chemical. (G) Polymer of disubstituted polysiloxane, substituted phenol and substituted alkanoyl halide.
Use/Production. (G) Contained use in commercial articles. Prod. range: 0–30 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: Dermal, a total of 4 workers, up to 0.5 hr/da, up to 10 da/yr.
Environmental Release/Disposal. No release. Disposal by less than 0.1 to less than 1 kg/batch incinerated.

PMN 85–113

Manufacturer. General Electric Company.
Chemical. (G) Terephthalic acid, polymer with (poly oxyalkylene) bis(N-aryl trimellitimide) and butanediol.
Use/Production. (S) Industrial consumer and sporting goods, automotive and fasteners. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 130 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. Less than 10 kg/batch released to land. Disposal by landfill.

PMN 85–114

Manufacturer. Confidential.
Chemical. (G) Blocked aromatic isocyanate prepolymer.
Use/Production. (S) Industrial crosslinker for tough, impact-resistant polyurethane coatings for metal substrates. Prod. range: 150,000–300,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 12 workers, up to 6 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. 0.5 to 10.0 kg/batch released to water. Disposal by biological treatment system and navigable waterway after biotreatment.

PMN 85–115

Importer. Confidential.
Chemical. (G) Aromatic polyisocyanate adduct.
Use/Import. (S) Industrial and commercial component of moisture-curing one-pack polyurethane coatings. Import range: 18,144–90,400 kg/yr.
Toxicity Data. No data submitted.
Exposure. Import, processing and use: A total of 20 workers.
Environmental Release/Disposal. No release.

PMN 85–116

Importer. Naarden International.
Chemical. (S) 7,9 dimethylspiro (5.5) undecan-3-one.
Use/Import. (S) Consumer fragrance ingredient. Import range: Confidential.
Toxicity Data. Acute oral: (Males and females) > 5.0 ml/kg; Irritation: Skin—Severe, Eye—Irritant; Ames Test: Non-mutagenic; Skin sensitization: Weak/Non-sensitizer.
Exposure. Processing: Dermal, a total of 5 workers, up to 6 hrs/da, up to 6 da/yr.
Environmental Release/Disposal. 50 parts per million (ppm) maximum released to air.

PMN 85–117

Manufacturer. Confidential.
Chemical. (G) Hydroxy resin.
Use/Production. (S) Base-precursor for resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–118

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (S) Oligomer used in paint. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Severe.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–119

Manufacturer. Confidential.
Chemical. (G) Hydroxy resin.
Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–120

Manufacturer. Confidential.
Chemical. (G) Hydroxy acrylic resin.
Use/Production. (S) Hydroxy acrylic resin to be converted into paint products. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–121

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Acrylic copolymer used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85–122

Manufacturer. Phillips Chemical Company.
Chemical. (G) Copolymer of vinyl amides and organic acid salt.
Use/Production. (S) Industrial and commercial polymer flooding for enhanced oil recovery under high temperature (255–300°F) and high salinity conditions. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacturer: Dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–123

Manufacturer. Phillips Chemical Company.
Chemical. (G) Copolymer of vinyl amides and organic acid salt.
Use/Production. (S) Industrial and commercial polymer flooding for enhanced oil recovery under high temperature (225–300 °F) and drilling mud viscosifier additive for high temperature and salinity conditions. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacturer: Dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–124

Manufacturer. Phillips Chemical Company.
Chemical. (G) Copolymer of vinyl amides and organic acid salts.
Use/Production. (S) Industrial and commercial cross-linkable polymer for channel blocking in enhanced oil recovery. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–125

Manufacturer. Phillips Chemical Company.
Chemical. (G) Copolymer of vinyl amides and organic acid salts.
Use/Production. (S) Industrial and commercial cross-linkable polymer for channel blocking in enhanced oil recovery. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–126

Manufacturer. Ashland Chemical Company.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Cured thermoset crosslinked plastic. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, up to 1 worker/shift, 5 min/sample.
Environmental Release/Disposal. Essentially none.

PMN 85–127

Manufacturer. Confidential.
Chemical. (G) Butanamide, N-substituted alkyl.
Use/Production. (S) Site-limited intermediate. Prod. range: 1,500–1,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 1 hr/da, up to 17 da/yr.
Environmental Release/Disposal. No data submitted.

PMN 85–128

Manufacturer. Confidential.
Chemical. (G) Butanamide, N-substituted alkyl.
Use/Production. (S) Site-limited intermediate. Prod. range: 1,500–1,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 1 hr/da, up to 17 da/yr.
Environmental Release/Disposal. No data submitted.

PMN 85–129

Importer. American Hoechst Corporation.
Chemical. (G) Styrene, acrylate polymer.
Use/Import. (S) Commercial and consumer binder for water base paints. Import range: 2,250–7,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: Dermal, a total of 4–6 workers, up to 75 manhours/yr.
Environmental Release/Disposal. No data submitted.

Dated: November 13, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–30227 Filed 11–16–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

New FM Stations; Applications for Consolidated Hearing; Anita L. Levine, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Anita L. Levine, Greenfield, CA.	BPH–831021AC	84–1020
B. New American Broadcasters Limited Partnership, Greenfield, CA.	BPH–840217AD	84–1021
C. Lisa Hamzey and Peter Baird, d.d.a. Somoco Radio Company, Ltd., Greenfield, CA.	BPH–840217AH	84–1022
D. South Monterey County Broadcasting Company, Greenfield, CA.	BPH–840217AI	84–1023
E. Rio Salinas Broadcasting Co., Greenfield, CA.	BPH–840217AJ	84–1024
F. Susan E. Bushell, Greenfield, CA.	BPH–840217AR	84–1025
G. Ralin Broadcasting Corporation, Greenfield, CA.	BPH–840217AS	84–1026

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), G
2. Air Hazard, B, C, D, E, F, G.
3. Comparative, A, B, C, D, E, F, G.
4. Ultimate, A, B, C, D, E, F, G.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue(s)

1. If a final environmental impact statement is issued with respect to G (Ralin) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84–30286 Filed 11–16–84; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 9, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submissions are available from Doris Peacock, Agency Clearance Officer, (202) 632–7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–4814.

OMB Number: 3060–0178

Title: § 73.1560, Operating Power Tolerance
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 1,108 Respondents; 1,108 Hours

OMB Number: 3060–0181

Title: § 73.1615, Operation during Modification of Facilities
Action: Extension
Respondents: Businesses (including small businesses)

Estimated Annual Burden: 200 Respondents; 165 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30281 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1487]

Application for Review of Actions in Rule Making Proceedings

November 9, 1984.

The following Application for review of Mass Media Bureau's action in returning Kodiak's petition for rule making is published pursuant to CFR 1.429(e). Oppositions to this application for review must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Kodiak, Alaska)

Filed By: Michael H. Bader & James E. Dunstan, Attorneys for Kodiak Broadcasting Company, Inc., on 8-13-84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30283 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

A Closed Circuit Test of the Emergency Broadcast System During the Week of December 3, 1984

November 13, 1984.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of December 3, 1984. Only ABC, CBS, MBS, NBC, NPR, AP Radio and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC and PBS television networks are not participating in the Test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 30 to 45 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a closed circuit test and will not be broadcast over the air.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30284 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

Radio Advisory Committee; Meeting

December 5, 1984.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled for 1:30 p.m., Wednesday, December 5, 1984, in Room 330, 1200 19th Street NW., Washington, D.C.

The Committee will consider:

—Revision of the United States—Mexican AM Radio Broadcasting Agreement;

—Preparations for the 1986 ITU Regional Administrative Radio Conference on Expansion of the AM Band; and

—Other business.

The meetings of the Committee are public and are open for participants by all interested persons. The meeting scheduled for December 5, 1984 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please contact the Committee Chairman, Louis C. Stephens, or Jonathan David, at FCC Headquarters: (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30282 Filed 11-16-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009522-050.
Title: Med-Gulf Conference.
Parties:
Atlanttrafik Express Service
Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola S.A.
Constellation Lines, S.A.
Costa Line
d'Amico Line S.N.p.A
Egyptian Navigation Co., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana S.A
"Italia" Societa' Per Azioni di Navigazione
Jugolinija
Jugooceanija
Lykes Bros Steamship Co., Ltd.
Nedlloyd Lines
Nordana Line/Danneborg Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would terminate the agreement ninety days after the Mediterranean/U.S.A. Conference Agreement becomes effective.

Agreement No.: 202-009615-042.
Title: Iberian/U.S. North Atlantic Westbound Freight Conference.
Parties:
Atlanttrafik Express Service
Compania Trasatlantic Espanola, S.A.
Costa Line
Egyptian Navigation Co.
Farrell Lines, Inc.
Hapag Lloyd, A.G.
"Italia" S.p.A.N.
Nedlloyd Lines, Inc.
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would terminate the agreement ninety days after the Mediterranean/U.S.A. Conference Agreement becomes effective.

Agreement No.: 224-010675.
Title: San Pedro Terminal Agreement.
Parties:
American President Lines, Ltd. (APL)
Eagle Marine Services, Ltd. (Eagle)
Westwood Shipping Lines (Westwood)

Synopsis: agreement No. 224-010675 provides that APL and its wholly owned subsidiary Eagle Marine Lines, Ltd., will provide terminal and stevedoring services for Westwood's vessels at Berths 121-126, San Pedro, California. The agreement will have a term of 5-years after its effective date. The parties have requested a shortened review period for the agreement.

Dated: November 14, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30285 Filed 11-16-84; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Change of Name

The Federal Maritime Commission has received notice that the assets and business of Trader Navigation Co., Ltd., d/b/a Atlanttrafik Express Service, have been sold to new owners. As a result of this sale, effective September 19, 1984, the corporate name has been changed to Atlanttrafik Express Service, Ltd., d/b/a. Atlanttrafik Express Service and/or AES.

Notice is given that this name change applies in regard to the participation of Trader Navigation Co., Ltd. in the following agreements:

Agreement No.	Description
5846	WINAC
6200	U.S. Atlantic & Gulf/Australia New Zealand Conference.
9520A, 9522B, 9522C, 9522D, 9522E	Med-Gulf Conference.
9615	Iberian/U.S. North Atlantic Westbound Freight Conference.
11258	Australia-Eastern U.S.A. Shipping Conference.
11270	Worldwide Equipment Interchange & Lease Agreement.

This name change also applies to the participation of Trader Navigation Co., Ltd., in the following connecting carrier agreements filed with the Commission pursuant to General Order 23:

Agreement No.	Connecting carrier
51482	Barber-Blue Sea Line.
51845	Tropical Shipping & Construction Co., Ltd.
52173	KNSM-Kroonburgh BV.
52198	Compagnie Marocaine de Navigation.

Dated: November 14, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30251 Filed 11-16-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Ban Corporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later that December 7, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Community Bancorporation, Inc.*, Greenville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank, Greenville, South Carolina.

2. *Highlands Bankshares, Inc.*, Petersburg, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The Grant County Bank, Petersburg, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Banco Del Pacifico*, Guayas, Ecuador; to become a bank holding company by acquiring 50.02 percent of the voting shares of Pacific National Bank, Miami, Florida.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cowden Bancorp, Inc.*, Springfield, Illinois; to acquire 100 percent of the voting shares of Oakwood Bancorp, Inc. Springfield, Illinois, thereby indirectly acquiring the State Bank of Oakwood, Oakwood, Illinois.

2. *Charter 17 Bancorp, Inc.*, Richmond, Indiana; to acquire 24.9 percent of the voting shares of Midwest National Corporation, Indianapolis, Indiana, thereby indirectly acquiring Midwest National Bank, Indianapolis, Indiana.

3. *First Fontanelle Bancorporation*, Fontanelle, Iowa; to become a bank holding company by acquiring 97.5 percent of the voting shares of First National Bank, Fontanelle, Iowa.

Board of Governors of the Federal Reserve System, November 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30304 Filed 11-16-84; 8:45 am]

BILLING CODE 6210-01-M

Home National Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulations Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Reugulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested pesons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dsipute, summarizing the evidence that commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Home National Corporation*, Milford, Massachusetts; to engage *de novo* through its subsidiary , H.N.B. Service Corporation, Milford, Massachusetts, in servicing mortgage

loans for their account and for the account of others including all activities incidental thereto and specifically including the following activities: Processing of loan applications for approval by the mortgagee; preparation of documents relating to the mortgage loans including the mortgage note, disclosure statements, and RESPA statements; billing and collection of payments and disbursement of ecrows for taxes and insurance; collection of delinquent accounts; and preparation of periodic reports to the mortgages. These activities would be performed in the State of Massachusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Farmers Bancshares, Inc.*, Malone, Florida; to engage *de novo* through its subsidiary, Farmers Insurance Agency, Inc., Malone, Florida, in selling auto, homeowners/rentors, life and health/medical insurance in a community having a population of less than 5,000.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Fletcher Corporation*, Indianapolis, Indiana; to engage *de novo* through its subsidiary, American Fletcher Mortgage Company, Inc., Lexington, Kentucky, in making first mortgage loans on 1–4 family residences for sale to other investors. These activities would be conducted from an office in Lexington, Kentucky, serving Fayette, Bourbon, Jessamine, Woodford, Madison, Scott, and Clark Counties, Kentucky.

Board of Governors of the Federal Reserve System, November 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30205 Filed 11-16-84; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Application To Engage de Novo in Nonbanking Activities

The Company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible edverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than December 10, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to engage *de novo* through the following national bank subsidiaries in providing consumer banking services, including lending services, deposit taking services, trust and advisory services: Security Pacific Naitonal Bank of Arizona, Phoenix, Arizona; Security Pacific National Bank of Colorado, Denver, Colorado; Security Pacific National Bank of Connecticut, East Hartford, Connecticut; Security Pacific National Bank of Florida, Orlando, Florida; Security Pacific National Bank of Georgia, Atlanta, Georgia; Security Pacific National Bank of Hawaii, Honolulu, Hawaii; Security Pacific National Bank of Illinois, Schaumberg, Illinois; Security Pacific National Bank of Massachusetts, Natick, Massachusetts; Security Pacific National Bank of Minnesota, Burnsville, Minneaota; Security Pacific National Bank of Nevada, Las Vegas, Nevada; Security Pacific National Bank of New Mexico, Albuquerque, New Mexico; Security Pacific National Bank of New York, White Plains, New York; Security Pacific National Bank of North Carolina, Charlotte, North Carolina; Security Pacific National Bank of Oregon, Portland, Oregon; Security Pacific National Bank of Pennsylvania, King of Prussia, Pennsylvania; Security Pacific National Bank of Texas (Dallas), Dallas, Texas; Security Pacific National Bank of Texas (Houston), Houston, Texas; Security Pacific National Bank of Utah, Salt Lake City, Utah; Security Pacific National Bank of Virginia, McLean, Virginia; Security Pacific National Bank of Washington, Bellevue, Washington.

Board of Governors of the Federal Reserve System, November 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30206 Filed 11-16-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 12]

Changes to Federal Travel Regulations

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Notice of changes to Federal Travel Regulations (FTR).

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 12, transmitting a changed page to amend FPMR 101-7, Federal Travel Regulation (FTR), Chapter 2, Part 6, to increase the maximum dollar amount for reimbursement of allowable real estate sale and purchase expenses incident to change of official station.

EFFECTIVE DATE: The revised provisions in Part 6 of Chapter 2 of the FTR are effective for employees whose effective date of transfer is on or after October 1, 1984. For purposes of these regulations, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Raymond Price, Travel and Transportation Regulations Division, (703) 557-1256.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the pruposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Section 118 of Pub. L. 98-151 (97 Stat. 977), November 14, 1983, which amended the statutory authority for the employee relocation allowances contained in subchapter II of chapter 57, title 5, United States Code, introduced into the law for the first time dollar limitations for reimbursement of expenses for the sale and/or purchase of a residence incident to an employee's transfer to a new official station.

The amended 5 U.S.C. 5724a(a)(4) also provides for an annual update in the maximum dollar amount applicable to reimbursement of expenses incurred by an employee for sale and purchase of a residence. The law requires that the dollar amounts be increased effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component for December of the preceding year over that published for December of the second preceding year.

Explanation of changes. Paragraphs 2-6.2g(1) and (2) are amended to reflect a 3.5 percent increase in the dollar maximums for reimbursement of allowable expenses incurred for the sale of the residence at the old official station from $15,000 to $15,525, and for the purchase of a new residence at the new official station from $7,500 to $7,763. Agencies should make a pen and ink change to annotate the Real Estate Expenses section on page 6 of Table 2 in Appendix 2-A to reflect the new dollar amounts and the effective date. The table will be changed officially in a future change to the regulations. Accordingly, the Federal Travel Regulations, are amended as follows:

CHAPTER 2—RELOCATION ALLOWANCES

PART 6—ALLOWANCES FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. Authority Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707; Executive Order No. 11609, July 22, 1971, and No. 12466, February 27, 1984

2. Paragraph 2-6.2g is revised to read as follows:

2-6.2. Reimbursable and nonreimbursable expenses.

* * * * *

g. *Overall Limitations. The total amount of expenses that may be reimbursed is as follows:*

(1) In connection with the sale of the residence at the old official station, reimbursement shall not exceed 10 percent of the actual sale price or $15,525, whichever is the lesser amount.

(2) In connection with the purchase of a residence at the new official station, reimbursement shall not exceed 5 percent of the purchase price of $7,763, whichever is the lesser amount.

* * * * *

Dated: October 29, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-30203 Filed 11-16-84; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0347]

Action Level for Methyl Mercury in Fish; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of FDA Compliance Policy Guide 7108.07. The guide has been revised to change the basis for enforcement of the action level for mercury in fish from total mercury content to methyl mercury content. The revised action level, 1 part per million (ppm) mercury fromo methyl mercury, is effective immediately.

ADDRESS: Written comments regarding the action level and requests for single copies of the revised guide are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John M. Taylor, Center for Food Safety and Applied Nutrition (HFF-310), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0187.

SUPPLEMENTARY INFORMATION: Since its adoption, the 1 ppm action level for mercury in fish has been based upon the toxicity of methyl mercury. FDA has enforced this level, however, on the basis of total mercury because, at the time the agency established this action level, no suitable analytical enforcement method for methyl mercury existed. In most fish, almost all the mercury present is in the form of the methyl compound.

In the **Federal Register** of January 19, 1979 (44 FR 3990), FDA made a commitment to revise the action level to a methyl mercury basis when an appropriate method for this form of mercury became available. Currently, the method in the the fourteenth edition of the Association of Offical Analytical Chemists (AOAC) book of methods, § 25.146-25.152, is suitable for determining methyl mercury content for enforcement purposes. The agency has accordingly revised the mercury action level to make clear that agency enforcement actions will be based on the methyl mercury content of the fish.

The agency acknowledges that the revision of the action level might result in a slight increase in consumer exposure to methyl mercury. However, this increase in exposure will not be of public health concern. Previously, the agency considered that the total mercury measured was all from methyl mercury. Now, the agency can specifically measure the mercury from the methyl compound. The use of this new method thus effectuates the original intent of the 1 ppm action level. The agency reaffirms that this action level is adequate to protect the public health. The use of the new method will continue to assure that exposure to methyl mercury is adequately controlled.

Interested persons may submit written comments, along with supportive data, on FDA Compliance Policy Guide 7108.07, to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 9, 1984.

William F. Rondolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30199 Filed 11-16-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 77N-0240; DESI 1785]

Certain Single-Entity Coronary Vasodilators—Oral Nitroglycerin; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions

Correction

In the correction to FR Doc. 84–23855 that appeared in the third column of page 45071, in the issue of Wednesday, November 14, 1984, make the following corrections:

1. In paragraph 2. , The formula in the seventh line should have read "($C_3H_5N_3O_9$)".

2. In paragraph 3. , fourth line, "does" should have read "doses".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability Draft Land Protection Plan; Alibates Flint Quarries National Monument, Potter County, TX

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Chapter 1 of Title 36 of the Code of Federal Regulations and the final interpretive rule for Preparation of Land Protection Plans printed in the **Federal Register** on May 11, 1983 (48 FR 21121), the National Park Service has prepared a Draft Land Protection Plan for Alibates Flint Quarries National Monument, Potter County, Texas.

The Draft Land Protection Plan addresses the protection of 291.74 acres within the authorized boundary that have not been acquired. It considers alternate means of protection, provides for public use and safety and identifies what land or interest in land need to be in Federal ownership in order to achieve managment purposes consistent with the intent of Congress in authorizing the park.

Copies of the Draft Land Protection Plan are available from Lake Meredith Recreation Area/Alibates Flint Quarries National Monument, Post Office Box 1438, Fritch, Texas 79036; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to submit comments on the Draft Land Protection Plan should provide them to the Superintendent, Lake Meredith Recreation Area/ Alibates Flint Quarries National Monument, at the address provided above, within 30 days from the publication date of this notice.

Dated: November 2, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84–30241 Filed 11–16–84; 8:45 am]

BILLING CODE 4310-70-M

Availability Draft General Management Plan/Environmental Assessment; Port Union National Monument, Mora County, NM

Pursuant to the National Environmental Policy Act of 1969, and Title 40 of the Code of Federal Regulations, the National Park Service has prepared a Draft General Management Plan/Environmental Assessment, Fort Union National Monument, Mora County, New Mexico.

The Draft General Management Plan/ Environmental Assessment will chart an effective management and development strategy for future resource management, visitor use, and operations at Fort Union National Monument.

Copies of the Draft General Management Plan/Environmental Assessment are available from Capulin Mountain/Fort Union National Monuments, Capulin, New Mexico 88414; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to provide comments on the Draft General Management Plan/ Environmental Assessment should provide them to the Superintendent, Capulin Mountain/Fort Union National Monuments, Capulin, New Mexico 88414, within 30 days from the publication date of this notice.

Dated: November 2, 1984.

Robert I. Karr,

Regional Director, Southwest Region.

[FR Doc. 84–30240 Filed 11–16–84; 8:45 am]

BILLING CODE 4310-70-M

Indiana Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Indiana Dunes National Lakeshore Advisory Commission will be held at 10 a.m., CDT, on Friday, December 7, 1984, at the Indiana Dunes National Lakeshore Visitor Center at U.S. Highway 12 and Kemil Road, Chesterton, Indiana.

The Commission was established by the Act of November 5, 1966, 80 Stat. 1309, 16 U.S.C. 460u–7, as amended by the Act of October 18, 1976, 90 Stat. 2530, 2533, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Indiana Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John R. Schnurlein (Chairperson)
Mr. Ronald Bensz
Ms. Anna R. Carlson
Mr. Harry W. Frey
Mr. R. M. Gacki
Ms. Gail H. Harris
Mr. James Holland
Ms. Lynne Kaser
Mr. James H. Lahey
Mr. William L. Lieber
Ms. Kay M. Rhame
Dr. John Tucker
Mr. Norman E. Tufford

Matters to be discussed at this meeting include:

1. Chairman's Quarterly Report.
2. Status of Land Protection.
3. Quarterly Status Report of 1984 Operations.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dale B. Engquist, Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304, telephone 219–926–7561.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of the Indiana Dune National Lakeshore located at 1100 North Mineral Springs Road, Porter, Indiana.

Dated: November 8, 1984.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 84–30238 Filed 11–16–84; 8:45 am]

BILLING CODE 4310-70-M

Appalachian National Scenic Trail; Relocations of Rights-of-Way

AGENCY: National Park Service, Interior.

ACTION: Notice of relocation.

SUMMARY: The proposed relocations set forth below are deemed necessary to preserve the purpose for which the Appalachian National Scenic Trail was established. As a part of the program to protect and establish an Appalachian Trail corridor, the Department of the Interior, in consultation with affected landowners, trail clubs, and state and Federal Government representatives, has determined that where the Trail is now along roads, close to houses or otherwise poorly located, the National Park Service, will seek an alternative location. When necessary, an alternative Trail route will be located outside the existing right-of-way pursuant to section 7 of the National Trails System Act, which established a process for necessary relocations after publication of notice in the **Federal Register** and appropriate consultation.

DATE: Written comments, suggestions or objections will be accepted until December 19, 1984.

ADDRESS: Comments should be directed to: Project Manager, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425.

FOR FURTHER INFORMATION CONTACT: David Richie, Manager, Appalachian Trail Project, Telephone (304) 535–2346.

SUPPLEMENTARY INFORMATION:

Background

The National Trails System Act became law on October 2, 1968. The Act created a system to identify and establish a National Trails System. It also established the Pacific Crest Trail and the Appalachian Trail as the intial National Scenic Trails.

Section 7 of the National Trails system Act created a process for the administration and development of National Scenic Trails. This process included the responsibility to select an initial right-of-way for the National Scenic Trails and to publish notice of this right-of-way in the **Federal Register** together with appropriate maps and descriptions. In selecting this right-of-way, the Secretary was required to obtain the advice and assistance of the states, local governments, private organizations, and landowners and land users concerned. For a two-year period after selection, he was also required to withhold federal action and to encourage the states or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the National Scenic Trail. These responsibilities for the Appalachian Trail have been completed. A preliminary right-of-way and Trail route was selected after compliance with the consultation requirements of the Act and published in the **Federal Register**, Vol. 36, No. 197, Saturday, October 9, 1971, and the states and local governments have subsequently had the opportunity to act to protect the Trail.

Changes in the Trail route within the previously established right-of-way are routinely made. Section 7 also established a process for necessary relocations of the right-of-way after publication of notice in the **Federal Register**. This process includes the responsibility to relocate segments of a National Scenic Trail right-of-way if such a relocation is necessary to preserve the purpose for which the Trail was established.

On March 21, 1978, Pub. L. 95–248 was enacted amending the original National Trails System Act. The thrust of this amendment was to further the protection efforts under the original legislation, calling for an immediate federal land acquisition program. It also directed that this program be substantially completed within three years of September 30, 1978.

The original Act was further amended by Pub. L. 95–625 dated November 10, 1978. This Act eliminated the requirement for the Federal Government to wait two years after notice of selection of the right-of-way before acquisition could be initiated. We are kept advised on any action by states or localities to protect the Trail where relocations are involved.

As a part of this program to protect and establish an Appalachian Trail corridor, the Department of the Interior, in consultation with landowners, trail clubs, and government representatives, has determined that where the Trail is along roads, close to houses or otherwise poorly located, the National Park Service, will seek an alternative location, wherever possible, either pursuant to a change in Trail route, if feasible, within the existing right-of-way, or pursuant to the process outlined above by publishing a notice of right-of-way relocation in the **Federal Register** after appropriate consultation.

Consistent with this decision, the rights-of-way for the following sections of the Appalachian National Scenic Trail will be relocated outside of the originally designated rights-of-way to facilitate revised Trail routes that take advantage of the terrain so that these portions of the Trail meet the criteria and the purpose for which this Trail was established.

Beginning approximately 2,500 feet south of Joe's Hole on the Bald Mountain/Caratunk Town Line, Maine, continuing northwesterly ending at Middle Mountain, as indicated in panel 61A.

Beginning at Crocker Mountain, Maine, continuing southeasterly to a point approximately 2,500 feet southwest of the summit of Sugarloaf Mountain, turning southwesterly to Spaulding Mountain, continuing southwesterly to Lone Mountain, then descending Lone Mountain, turning northwesterly, as indicated in panels 85A, 85B, 85C, and 86A.

Beginning at the Jefferson National Forest, Troutville, Virginia, continuing northwesterly crossing Route 11/220 and passing under Interstate 81, then turning southwesterly parallel to I–81 for approximately 3,900 feet, then turning west as indicated in panels 567A, 568A and 569A.

Appropriate maps, as designated above, are provided as an appendix to this notice to indicate the revised rights-of-way and the Trail route within those rights-of-way. These changes are in compliance with provisions of Section 7 of the National Trails System Act, as amended, as discussed above.

Affected landowners have been contacted and afforded an opportunity to provide us their advice and assistance in selection of the revised rights-of-way and Trail routes within those rights-of-way. In addition, the rights-of-way and Trail routes have been selected in consultation with members of the Advisory Council for the Appalachian National Scenic Trail and with state and local officials.

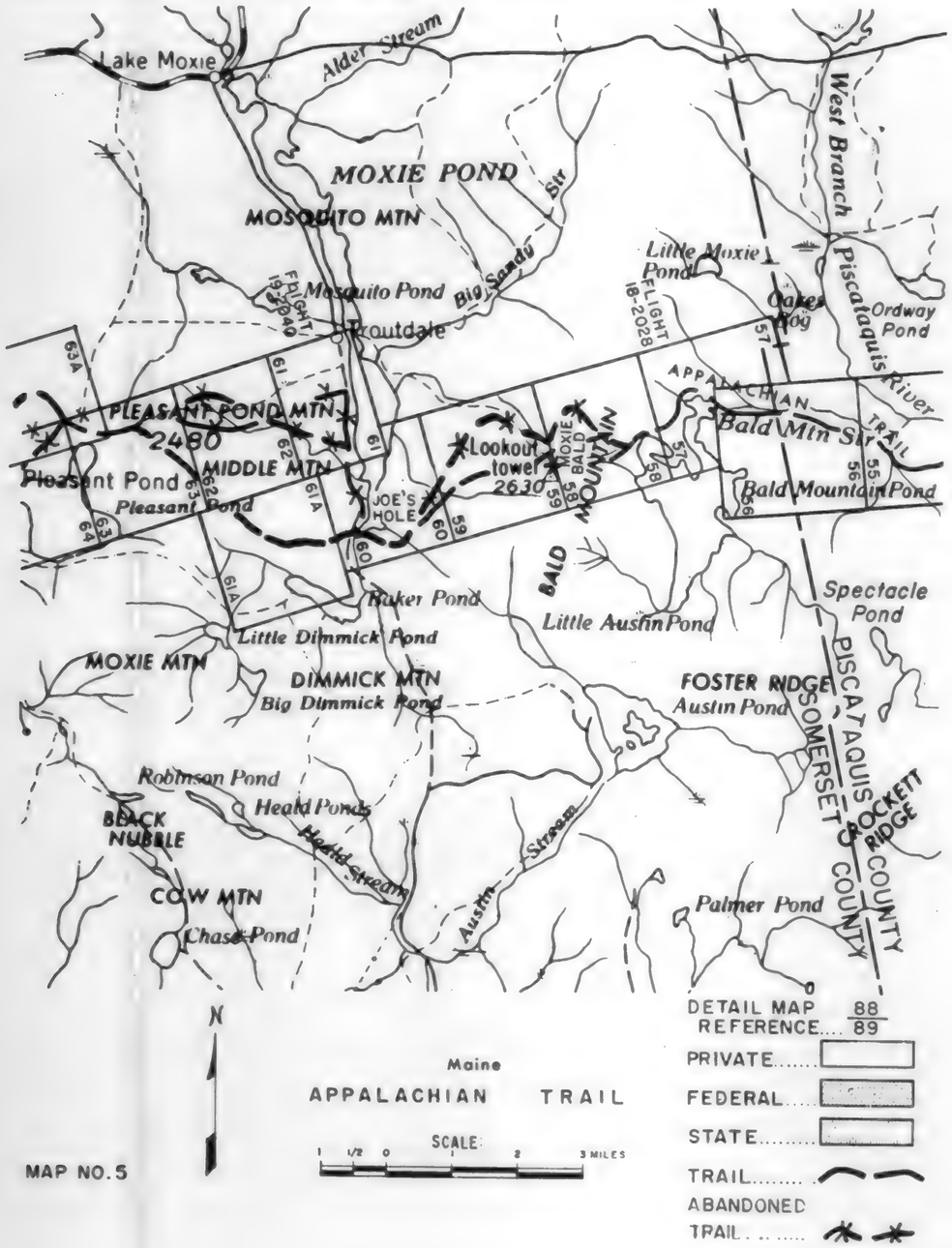
The purpose of this notice is to request further public comment in the proposed relocation of the trail right-of-way and trail routes. An environmental assessment report relating to each relocation where the National Park Service is acquiring land is on file in the Project Manager's Office, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425. Comments concerning relocations may also be provided to the Project Manager on or before December 19, 1984.

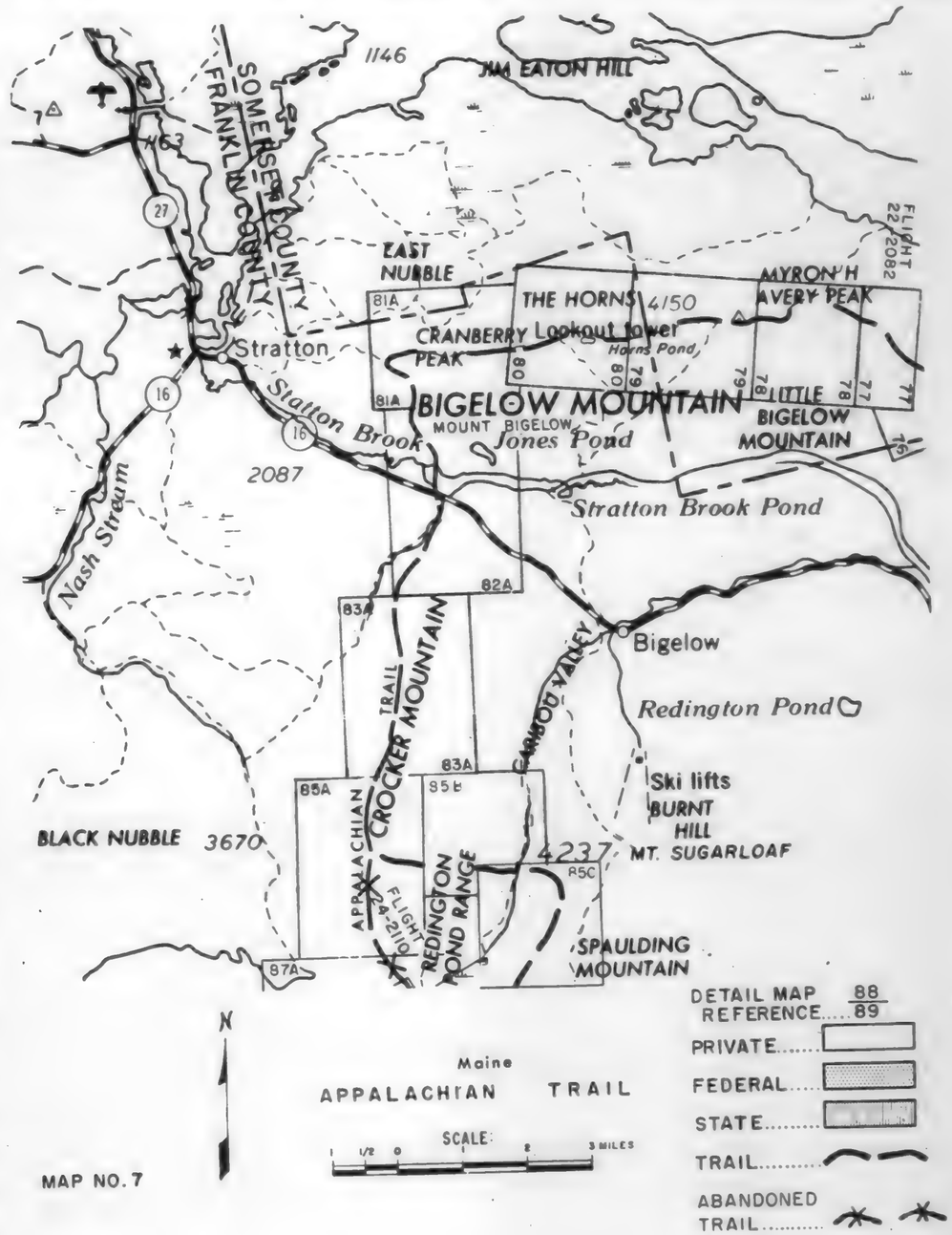
Following review of comments on the environmental assessment and the relocations, a decision regarding findings of significant impact pertaining to these relocations, and the implementation of the relocations, will be published.

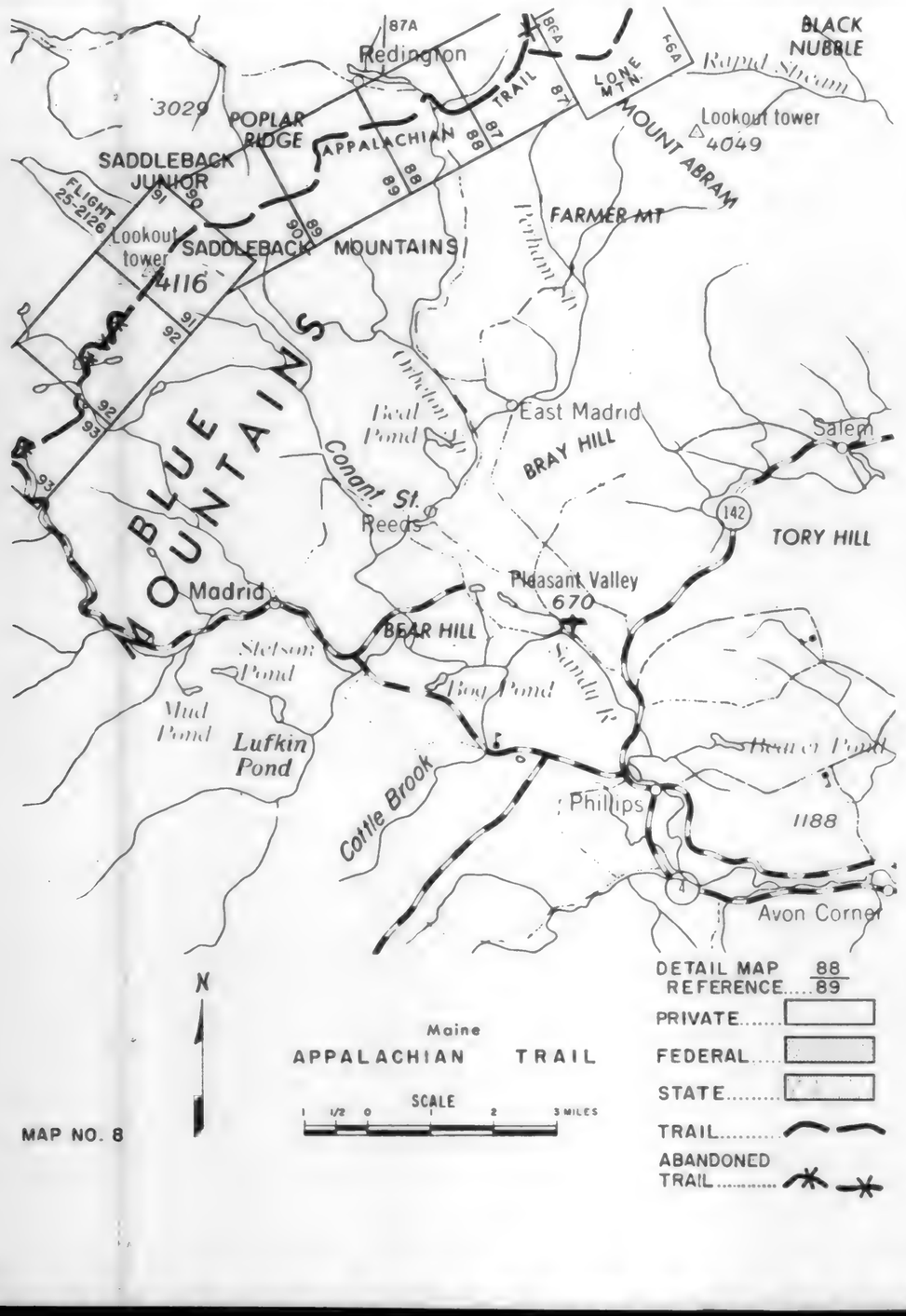
Russell E. Dickenson,

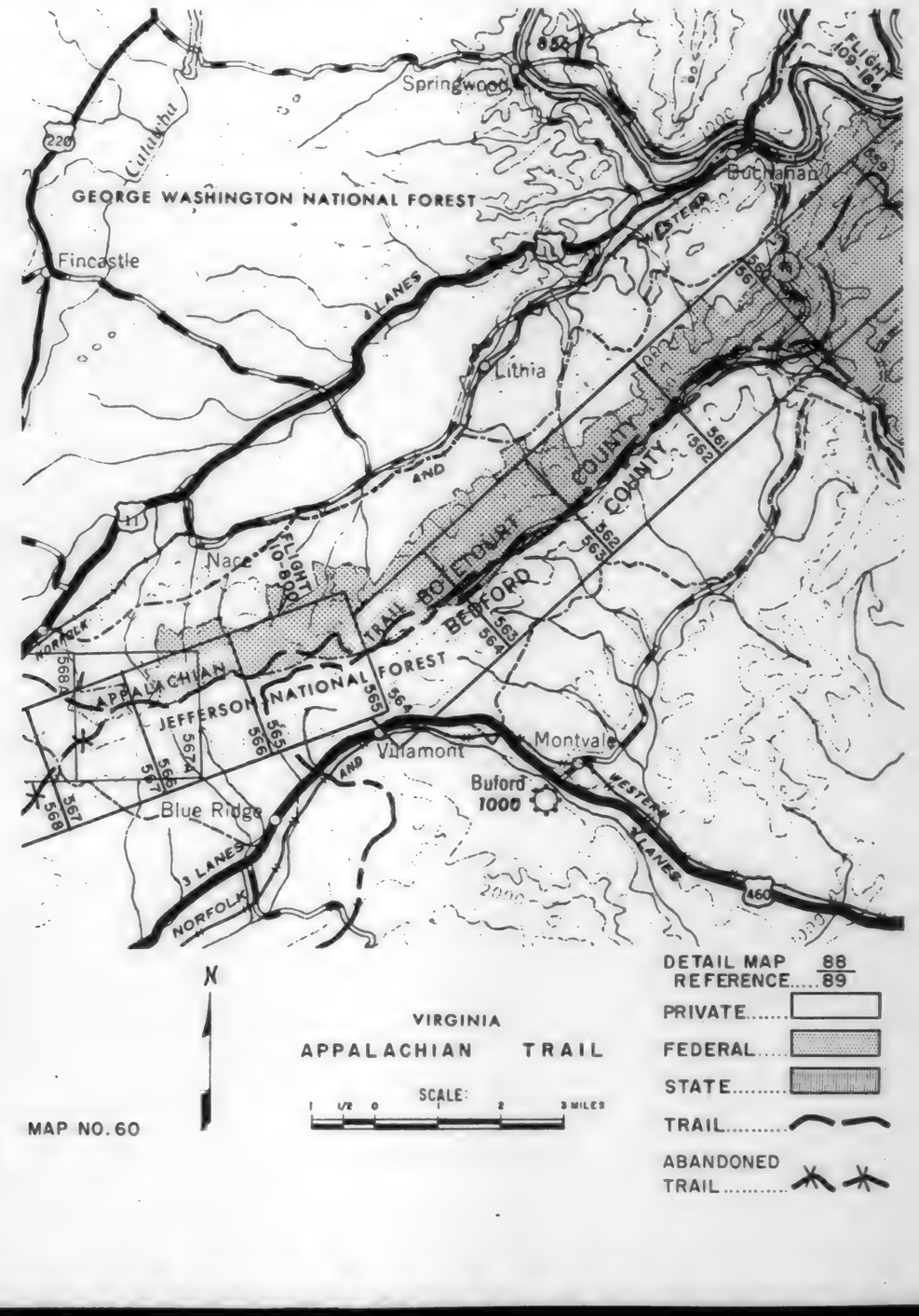
Director, National Park Service.

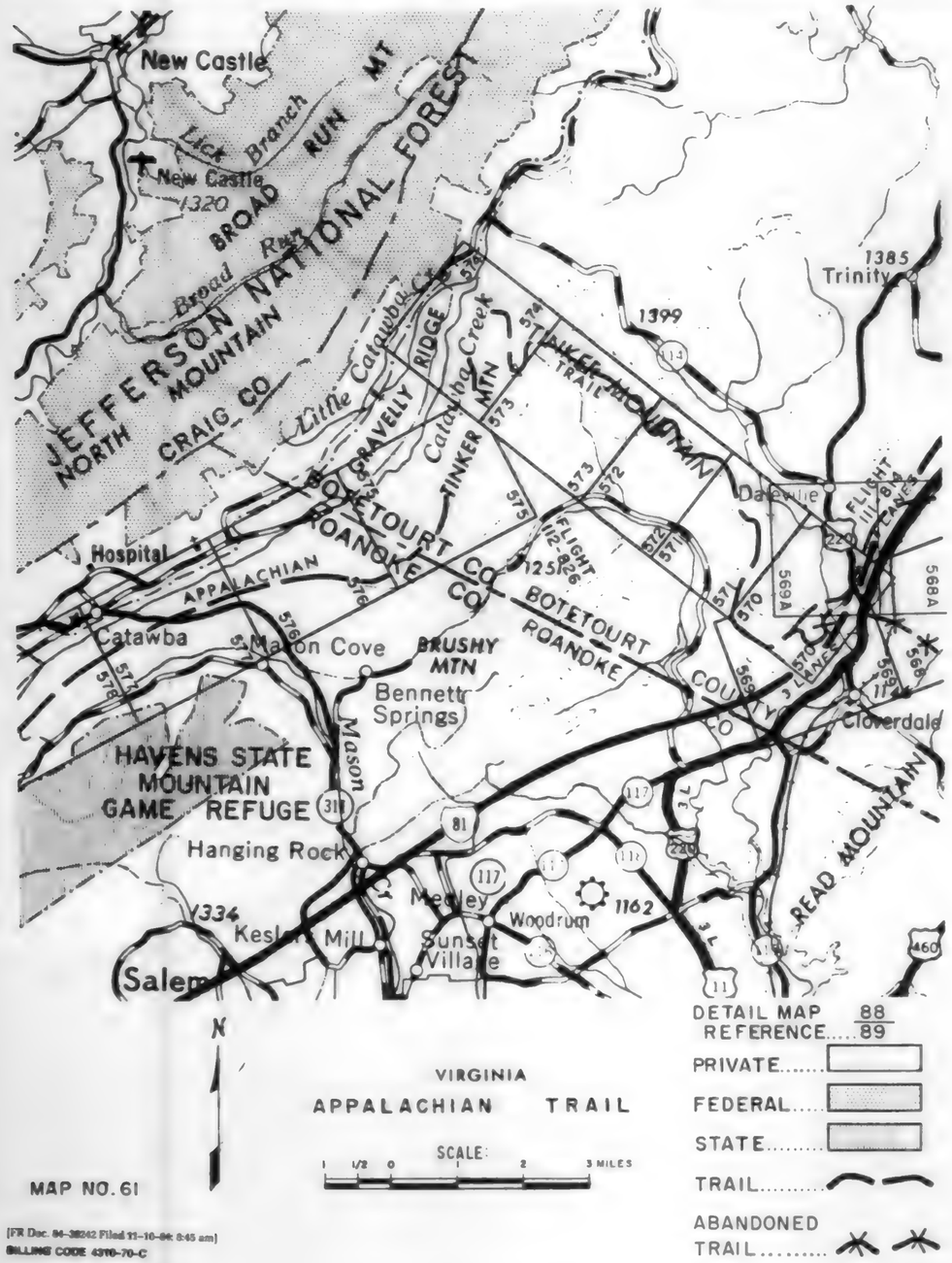
BILLING CODE 4310-70-M


Lake Moxie
Alder Stream
MOXIE POND
MOSQUITO MTN
Mosquito Pond
Big Sandy Str
Routdale
FLIGHT 19-2049
Little Moxie Pond
FLIGHT 18-2028
Oakes Bog
West Branch
Piscataquis River
Ordway Pond
APPALACHIAN TRAIL
Bald Mtn Str
Bald Mountain Pond
PLEASANT POND MTN
2480
MIDDLE MTN
Pleasant Pond
Lookout tower 2630
MOXIE BALD MOUNTAIN
JOE'S HOLE
Baker Pond
Little Dimmick Pond
BALD MOUNTAIN
Little Austin Pond
Spectacle Pond
MOXIE MTN
DIMMICK MTN
Big Dimmick Pond
FOSTER RIDGE
Austin Pond
PISCATAQUIS SOMERSET COUNTY
CROCKETT RIDGE COUNTY
Robinson Pond
Heald Ponds
Heald Stream
BLACK NUBBLE
COW MTN
Chase Pond
Austin Stream
Palmer Pond
DETAIL MAP REFERENCE.... 88/89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL
N
Maine
APPALACHIAN TRAIL
SCALE: 1 1/2 0 1 2 3 MILES
MAP NO. 5


1146
JIM EATON HILL
FLIGHT 22-2082
SOMERSET COUNTY
FRANKLIN COUNTY
EAST NUBBLE
THE HORNS 4150
MYRON H AVERY PEAK
CRANBERRY PEAK
Lookout tower
Horns Pond
Stratton
BIGELOW MOUNTAIN
MOUNT BIGELOW
Jones Pond
LITTLE BIGELOW MOUNTAIN
Stratton Brook
Stratton Brook Pond
2087
Nash Stream
Bigelow
CARRYING VALLEY
CROCKER MOUNTAIN TRAIL
Redington Pond
Ski lifts
BURNT HILL
MT. SUGARLOAF
BLACK NUBBLE 3670
4237
APPALACHIAN TRAIL
REDINGTON POND RANGE
FLIGHT 7A-2110
SPAULDING MOUNTAIN
DETAIL MAP REFERENCE.... 88/89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL
N
Maine
APPALACHIAN TRAIL
SCALE: 1 1/2 0 1 2 3 MILES
MAP NO. 7


Redington
87A
86A
TRAIL
LONE MTN.
86A
BLACK NUBBLE
Rapid Stream
3029
POPLAR RIDGE
APPALACHIAN
SADDLEBACK JUNIOR
FLIGHT 25-2126
Lookout tower
4116
SADDLEBACK MOUNTAINS
Lookout tower
4049
MOUNT ABRAM
FARMER MT
Pelham Mt
BLUE MOUNTAINS
Orbeton Stream
East Madrid
Bear Pond
BRAY HILL
Salem
Conant St.
Reeds
142
TORY HILL
Madrid
Pleasant Valley
670
BEAR HILL
Sandy R
Stetson Pond
Mud Pond
Lufkin Pond
Bog Pond
Beaver Pond
Cottle Brook
Phillips
1188
Avon Corner
N
Maine
APPALACHIAN TRAIL
SCALE
1 1/2 0 1 2 3 MILES
MAP NO. 8
DETAIL MAP REFERENCE 88 89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL


Springwood
FLIGHT 109-182
220
Catawba
GEORGE WASHINGTON NATIONAL FOREST
Buchanan
Fincastle
LANES
Lithia
AND
COUNTY
Nace
FLIGHT 110-180
TRAIL
BOTETOURT
BEDFORD
NORFOLK
APPALACHIAN
JEFFERSON NATIONAL FOREST
Montvale
Viriamont
Buford 1000
Blue Ridge
WESTERN
3 LANES
NORFOLK
460
N
VIRGINIA
APPALACHIAN TRAIL
SCALE:
1 1/2 0 1 2 3 MILES
MAP NO. 60
DETAIL MAP REFERENCE 88 89
PRIVATE
FEDERAL
STATE
TRAIL
ABANDONED TRAIL



[FR Doc. 84-30242 Filed 11-16-84; 8:45 am]
BILLING CODE 4310-70-C

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-12 (Sub-No. 61X)]

Southern Pacific Transportation Co.; Abandonment and Discontinuance of Service Exemption in Yamhill County, OR; Exemption

Southern Pacific Transportation Company, (SPT) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*, 1 I.C.C. 2d 55, decided April 16, 1984. SPT will discontinue service and abandon its line of railroad known as the Westside Branch between milepost 742.568 near Carlton and milepost 754.568 near Seghers, a distance of 12.00 miles in Yamhill County, OR.

SPT has certified that (1) no local traffic has moved over the line for at least 2 years, (2) overhead traffic is not handled on the lines, and (3) no formal complaint, filed by a user of rail service on the line, or by a state or local governmental entity acting on behalf of a user, regarding cessation of service over the line, either is pending with the Commission, or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Utilities Commission in Oregon has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment or discontinuance of service will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on December 19, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 29, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: G.A. Laakso, One Market Plaza, Southern Pacific Bldg., San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided:

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30200 Filed 11-16-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 274 (Sub-No. 10); Ex Parte No. 282 (Sub-No. 3)]

Environmental Notices in Abandonment and Rail Exemption Proceedings; Railroad Consolidation Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: By decision served and published April 17, 1984 (49 FR 15087), the Commission adopted regulations requiring rail carrier applicants in abandonment and exemption proceedings to issue environmental notices directly to the appropriate State agency. A list of the designated State agencies was published September 20, 1984 (49 FR 36942), but it contained some incorrect designations. A corrected list is published in this notice.

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: Wayne Michel, (202) 275-7657.

SUPPLEMENTARY INFORMATION: We are publishing a revised list of the State agencies designated to receive environmental notices (see Appendix). In those instances where more than one agency was selected by the State, we have chosen the agency that will receive the notice. For those States that did not designate an agency, the notice must be served upon the governor as shown in the list.

Decided: November 13, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

Alabama Department of Environmental Management, 2721 Gunter Park Drive, Montgomery, AL 36130.
Alaska Department of Environmental Conservation, 437 E Street, Anchorage, AK 99501.
Governor, State of Arizona, State Capitol, Phoenix, AZ 87007.
Governor, State of Arkansas, State Capitol, Little Rock, AR 72201.
Chief, Railroad Operations & Safety Branch, California Public Utilities Commission, 1390 Market Street, San Francisco, CA 94102.
Public Utilities Commission, 1560 Logan Street, Office Level II, Denver, CO 80203.
Governor, State of Connecticut, State Capitol, Hartford, CT 06115.
Federal Aid Coordinator, Budget Office, State Single Point of Contact, P.O. Box 1401, Dover, DE 19903.
Mayor, 1350 Pennsylvania Avenue, NW., Washington, DC 20004.
Executive Office of the Governor, Office of Planning & Budgeting, The Capitol, Tallahassee, FL 32301.
Administrator, Georgia State Clearinghouse, Room 608, 270 Washington Street, SW., Atlanta, GA 30334.
State of Idaho Transportation Department, P.O. Box 7129, Boise, ID 83707.
Governor, State of Illinois, State House, Springfield, IL 62706.
Indiana Department of Transportation, 143 west Market Street, Suite 300, Indianapolis, IN 46204.
Office of the General Counsel, Iowa Department of Transportation, Transportation Regulation Authority, 507 10th Street, Des Moines, IA 50319
Governor, State of Kansas, State House, Topeka, KS 66612.
Governor, Commonwealth of Kentucky, State Capitol, Frankfort, KY 40601.
Governor, State of Louisiana, State Capitol, Baton Rouge, LA 70804.
Governor, State of Maine, State House, Augusta, ME 04333.
Director, State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, MD 21201.
Governor, Commonwealth of Massachusetts, State House, Boston, MA 02133.
Michigan Department of Transportation, Bureau of Urban and Public Transportation, Box 30028, Lansing, MI 48909.
Governor, State of Minnesota, State Capitol, St. Paul, MN 55515.
Governor, State of Mississippi, New Capitol, Jackson, MS 39201.
Chief Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, Mo 65102.
Transportation Division, Department of Commerce, 1424 9th Avenue, Helena, MT 59620-0401.
Department of Environmental Control, P.O. Box 94877, Lincoln, NE 68509-4877.
State Office of Community Services, Capitol Complex, Carson City, NV 89710.
Governor, State of New Hampshire, State House, Concord, NH 03301.

Office of the Commissioner, Department of Environmental Protection, CN 402, Trenton, NJ 08625.
Governor, State of New Mexico, State Capitol, Santa Fe, NM 87503.
State Clearing House, Division of Budget, State Capitol, Albany, NY 12224.
North Carolina State Clearinghouse, 116 West Jones Street, Raleigh, NC 27611.
Governor, State of North Dakota, State Capitol, Bismarck, ND 58505.
Governor, State of Ohio, State House, Columbus, OH 43215.
Oklahoma Corporation Commission, Transportation Division, Railroad Department, Jim Thorpe Building, Oklahoma City, OK 73105.
Public Utility Commissioner, Rail/Air Program, Labor & Industries Building, Salem, OR 97310.
Governor, Commonwealth of Pennsylvania, The Capitol, Harrisburg, PA 17120.
Department of Administration, Statewide Planning Program, 265 Melrose Street, Providence, RI 02907.
Governor's Division of Transportation, Edgar A. Brown Building, 1205 Pendleton Street, Suite 476, Columbia, SC 29201.
Governor, State of South Dakota, State Capitol, Pierre, SD 57501.
Tennessee Department of Transportation, Public Transportation & Aeronautics Division, James K. Polk Building, Suite 700, Nashville, TN 37219.
Governor, State of Texas, State Capitol, Austin, TX 78701.
Office of Planning and Budget, State Capitol Building, Salt Lake City, UT 84114.
Governor, State of Vermont, State House, Montpelier, VT 05602.
Rail Division Administrator, Department of Highways & Transportation, 1221 East Broad Street, Richmond, VA 23219.
Governor, State of Washington, Legislative Building, Olympia, WA 98504.
West Virginia Railroad Maintenance Authority, P.O. Box 490, Moorefield, WV 26836.
Wisconsin Department of Transportation, Office of General Counsel, P.O. Box 7910, Madison, WI 53707.
State Planning Coordinator's Office, 2320 Capitol Avenue, Cheyenne, WY 82002.

[FR Doc. 84-30212 Filed 11-16-84; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30558]

Industrial Development Corporation; Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts the Industrial Development Corporation of Clinton County, PA, from 49 U.S.C. Subtitle IV [except sections 10905(f) (4), 10505(e) and (g)], in connection with operations over a 1.9-mile line in Clinton County, PA.

DATES: This exemption is effective on November 16, 1984. Petitions for reconsideration must be filed by December 6, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30558 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners representative: Peter A. Gilbertson, Suite 350, 1575 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 5, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-30210 Filed 11-16-84; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30538]

Ford County Historic Railroad Preservation Foundation; Operation Exemption in Ford County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10901 the operation by the Ford County Historic Railroad Preservation Foundation of that portion of the former Dodge City Branch of the St. Louis Southwestern Railway Company between milepost 351.00 and milepost 373.63 in Ford County, KS.

DATES: This exemption shall be effective on December 19, 1984. Petitions to stay must be filed by November 29, 1984. Petitions for reconsideration must be filed by December 10, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30538 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Vic Moser, 335 N. Washington, Suite 30, Hutchison, KS 67501.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 9, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-30211 Filed 11-16-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act of 1981; New Castle County, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 19, 1984, a proposed Partial Consent Decree in *United States of America* v. *New Castle County, et al.*, Civil Action No. 80-489, was lodged with the United States District Court for the District of Delaware. The proposed Partial Consent Decree concerns the hazardous waste site known as Tybouts Corner in New Castle County, Delaware.

Under the terms of the Partial Consent Decree, New Castle County, William C. Ward, and Stauffer Chemical Company will install an alternate water supply system for residences and facilities surrounding the Tybouts Corner Landfill. This Decree will not become effective unless the Court approves it before December 20, 1984. As a result thereof, the public comment period has been shortened to fifteen (15) days because of the need to expeditiously install the alternate water supply system.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *New Castle County, et al.*, D.J. Ref. 90-7-1-143.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney, Federal Building, Wilmington, Delaware and at the office of Region III, U.S. Environmental Protection Agency, 6th and Walnut Streets, Philadelphia, Pennsylvania.

The Partial Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Rooms 1512 and 1644, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-30466 Filed 11-16-84; 10:28 am]
BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel Meeting; Amended Notice

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Exploration/Research Section) to the National Council on the Arts that was to be held on November 28, 1984, from 9:00 a.m.-5:30 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, has been changed. The meeting will now be held on November 29, 1984 from 9:00 a.m.-5:30 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: November 8, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-30248 Filed 11-16-84; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer Research.

Date and time: December 5, 1984 9:00 a.m. to 5:00 p.m.; December 6, 1984 9:00 a.m. to 5:00 p.m.; December 7, 1984 9:00 a.m. to 3:00 p.m.

Place: Room 543, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550.

Type of meeting: Part Open—December 5 Closed—10:00 a.m. to 5:00 p.m.; December 6 Open—9:00 a.m. to 5:00 p.m.; December 7 Open—9:00 a.m. to 3:00 p.m.

Contact person: Mr. Kent K. Curtis, Division Director, Division of Computer Research, Room 338, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550 Telephone: (202) 357-9747. Anyone planning to attend this meeting should notify Mr. Curtis no later than November 30, 1984.

Purpose of committee: To provide advice and recommendations concerning support of Computer Research.

Summary minutes: May be obtained from the contact person at the above address.

Agenda

Wednesday, December 5, 1984, Room 543—9:00 a.m. to 10:00 a.m.—Open; Room 543—10:00 a.m. to 5:00 p.m.—Closed

9:00 a.m.-9:30 a.m.—Office of Advanced Scientific Computing, John W. Connolly
9:30 a.m.-10:00 a.m.—Oversight Review Goals and Procedures, Kent K. Curtis
10:00 a.m.-5:00 p.m.—Oversight Review of Software Systems Science, Computer Systems Design, Software Engineering, Intelligent Systems, Special Projects, Computer Research Equipment

Thursday, December 6, 1984, Room 543—9:00 a.m. to 5:00 p.m.—Open

9:00 a.m.-10:00 a.m.—Status Report on Division of Computer Research, Kent K. Curtis
10:00 a.m.-10:15 a.m.—Break
10:15 a.m.-11:00 a.m.—Graduate Student Support in Computer Research, Lawrence H. Oliver
11:00 a.m.-11:30 a.m.—Coordinated Experimental Research, Bruce H. Barnes
11:30 a.m.-12:00 Noon—Presidential Young Investigators, Harry G. Hughes
12:00 Noon-1:00 p.m.—Lunch
1:00 p.m.-3:00 p.m.—Oversight Review Reports, Lawrence Snyder
3:00 p.m.-3:15 p.m.—Break
3:15 p.m.-5:00 p.m.—FCCSET Report and DARPA Strategic Computing Program, Robert E. Kahn

Friday, December 7, 1984, Room 540—9:00 a.m. to 11:00 a.m.—Open; Room 543—11:00 a.m.-3:00 p.m.—Open

9:00 a.m.-11:00 a.m.—Joint Meeting of Advisory Committee for Office of Advanced Scientific Computing and Division of Computer Research
11:00 a.m.-11:30 a.m.—Director of NSF, Erich Bloch
11:30 a.m.-12:00 Noon—Assistant Director for Mathematical and Physical Sciences, Marcel Bardon
12:00 Noon-1:00 p.m.—Lanch
1:00 p.m.-3:00 p.m.—Committee Business, Lawrence Snyder
3:00 p.m.—Adjourn

Reason for closing: The Committee will be reviewing grants and declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director of NSF on July 6, 1979.

November 14, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-30230 Filed 11-16-84; 8:45 am]
BILLING CODE 7555-01-M

Program Advisory Committee for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended

Pub. L. 92-463, the National Science Foundation announced the following meeting:

Name: Program Advisory Committee for Advanced Scientific Computing.

Dates and Times: December 5, 6, 7, 8, 1984—Dec. 5, 7:00 P.M.–10:00 P.M.; Dec. 6, 7, 8:00 P.M. to 5:00 P.M.; Dec. 8, 8:00 A.M.–1:00 P.M.

Places:

Dec. 5—NSF
- Room 504—New Technologies (Dr. John Connolly)
- Room 510—Centers (Dr. Larry Lee)
- Room 543—Networking—(Dan Van Belleghem)

Dec. 6—The ASAE Conference Center, American Society of Association Executives, 1575 Eye Street NW., Washington, D.C. 20005

Dec. 7, 8—NSF, Room 540

Security notice: Due to security regulations, persons wishing to attend the December 5, 6, 7, 8, 1984 meetings must notify the Office of Advanced Scientific Computing by December 3, 1984 (202–357–7558).

Type of meeting: Part Open, Part Closed.

Open, Wednesday Night, Dec. 5th, 1984

Open, Dec. 6, 1984, ASAE Conference Center (Policy Advisory Committee), 8:00 A.M. to 1:00 P.M.

Closed, Dec. 6, 1984, ASAE Conference Center (Policy Advisory Committee), 1:00 P.M. to 5:00 P.M.

Open, Dec. 7, 1984, NSF (Policy Advisory Committee), 8:00 A.M. to 1:00 P.M.

Closed, Dec. 7, 1984, NSF (Policy Advisory Committee), 1:00 P.M. to 5:00 P.M.

Closed, Dec. 8, 1984, NSF, 8:00 A.M. to 1:00 P.M.

Contact person: Dr. John W. D. Connolly, National Science Foundation, Washington, D.C. 20550, Phone: (202) 357–7558.

Summary of minutes: May be obtained from Dr. John W.D. Connolly.

Purpose of committee: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenda: The open session will be focused on planning and policy issues. These will include a review of recent actions, budget priorities, and future solicitations for supercomputer centers and networking. The closed sessions will involve review of pending proposals.

Reason for closing: The closed sessions of the meeting will deal with a review of proposals containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director of NSF on July 6, 1979.

November 14, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-30280 Filed 11-16-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Combined Subcommittees on Reactor Radiological Effects and Waste Management; Meeting

The ACRS Subcommittees on Reactor Radiological Effects and Waste Management will hold a combined meeting on November 30 and December 1, 1984, 1717 H Street, NW, Washington.

The meeting will, for the most part, be open to public attendance. Some portions of the meeting may be closed as required for the discussion of privileged information under Exemption 9(b).

The agenda for subject meeting shall be as follows:

Friday, November 30, 1984, Room 1167—8:30 a.m. until the conclusion of business

Saturday, December 1, 1984, Room 1046—8:30 a.m. until the conclusion of business

The Subcommittees will review research programs in the areas of: Chemical engineering (process control), occupational radiation protection, high- and low-level waste management, emergency planning, health effects, and meteorology and hydrology in order to formulate recommendations for the ACRS Report to the Congress on the NRC Safety Research Program for FY 1986 and 1987.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittees will then hear presentations by and hold discussions with representatives of DOE, the NRC Staff, Subcommittee consultants, and other interested persons regrding the previously named topics.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepared telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 13, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-30300 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on November 28 and 29, 1984, in Room 1046, 1717 H Street, NW, Washington, DC.

Most of the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information. A portion of the meeting will be closed to hold discussions which, if held in public session might result in the premature disclosure of information which would in turn frustrate the Commission's ability to implement affected RES programs effectively.

The agenda for subject meeting shall be as follows:

Wednesday, November 28, 1984—8:30 a.m. until the conclusion of business

Thursday, November 29, 1984—8:30 a.m. until the conclusion of business

The Subcommittee will review: (1) NRC–RES thermal-hydraulic research programs for the ACRS Report to Congress, (2) Yankee Atomic Electric's request for an exemption to Appendix K to 10 CFR 50.46, (3) analysis work performed by NRR as part of the ATWS resolution effort, (4) the NRR review of the Westinghouse Owners Group SG Tube Rupture Program, (5) the status of the NRR review of Westinghouse and ENC ECCS Evaluation Models for Westinghouse UPI plants, and (6) the status of the USI A–43 resolution effort and development of associated Regulatory Guide 1.82.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 13, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-30301 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Florida Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to Florida Power and Light Company (the licensee), for the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida.

Environmental Assessment

Identification of Proposed Action: The exemptions are related to Sections III.A, III.G and III.O of Appendix R to 10 CFR Part 50. Section III.A requires that two separate water supplies be provided. Section III.G calls for fire protection features to protect structures, systems, and components important to safe shutdown. This protection can be obtained by separation, utilizing fire barriers, installation of fire suppression systems, and enclosure of cable and equipment. Section III.O requires an oil collection system. The licensee requested exemptions for St. Lucie 1 in the areas of suppression system installation, separation distance of redundant safe shutdown trains, 3-hour fire rated barriers, 3-hour fire rated doors and the size of the oil collection tank.

These exemptions are responsive to the licensee's application for exemptions dated April 12, 1983, as supplemented by a letter dated April 25, 1983.

The Need for the Proposed Action: The proposed exemptions are needed because the features described in the licensee's request regarding the existing fire protection at their plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemptions will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impact associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the St. Lucie Plant Unit No. 1.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemptions dated April 12, 1983, and the supplement dated April 25, 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C. 20555 and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Bethesda, Maryland this 9th day of November, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-30303 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority: Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting of relief from the requirements of section XI of the ASME Boiler and Pressure Vessel Code as allowed by 10 CFR 50.55a to Tennessee Valley Authority (the licensee) for the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

Environmental assessment

Identification of Proposed Action: The proposed action would provide relief from hydrostatic testing requirements of the ASME Code Section XI for the installation of additional piping to the existing 14-inch Essential Raw Coolant Water (ERCW) and the diesel generator piping. Two sections of pipe, 10 feet in length and 14 inches in diameter, will be installed in the existing ERCW supply lines.

The Need for the Proposed Action: This new piping will provide a cooling water interface between the existing diesel generator building, turbine building, and the new diesel generator. The licensee was granted relief from ASME Section XI hydrostatic test requirements on December 23, 1982, for the replacement of portions of carbon steel piping in the ERCW until January 1986. The proposed relief requested by the licensee on September 21, 1984, is considered an extension of the previous relief. It is not practical to perform the hydrostatic test since it would involve long sections of 14-inch, 24-inch and 30-inch piping in the supply headers. The ERCW piping has no isolation valves. Also, the existing butterfly valves would have to be isolated since they are not designed to withstand the hydrostatic test pressure.

Environmental Impacts of the Proposed Action: The installation will be performed with both units shutdown. The proposed relief will provide alternate examinations to see that there is adequate assurance of the integrity of the new piping and associated welds as described in the licensee's request. Consequently, the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief. With regard to potential non-radiological impacts, the proposed relief does not affect non-radiological plant effluents and has no other environment impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative Use Of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement for the Sequoyah Nuclear Station.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letter dated September 21, 1984. This is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington D.C. 20555 and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland, this 13th day of November 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 84-30302 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Company; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-51, issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit No. 1 (ANO-1) located in Pope County, Arkansas.

In accordance with the licensee's application dated September 12, 1984, as supplemented November 8, 1984, the proposed amendment would provide additional operability requirements, limiting conditions for operation and surveillance requirements related to the Emergency Feedwater System (EFW) as a result of the EFW upgrade modifications which are required by NUREG-0737, Item II.E.1.2, Auxiliary Feedwater System Automatic Initiation and Flow Indication.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples (Example (ii)) of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed Technical Specification modifications impose additional limitations, restrictions and controls and, therefore, fall within this example. Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By December 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specifity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 9th day of November 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-30305 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-51, issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit No. 1 (ANO-1) located in Pope County, Arkansas.

The amendment would modify Table 3.5.1.1 of the ANO-1 Technical Specifications in the specification on pressurizer level channels in accordance with the licensee's application dated October 15, 1984. The amendment would reflect the number of instrument channels to monitor pressurizer level which will be available following the refueling for Cycle 7. The modifications necessitating this change will replace the existing pressurizer monitoring system, consisting of three selectable pressure transmitter inputs, with two independent instrument channels. This modification will provide separate instrument loops for pressurizer level completely independent of the non-nuclear instrumentation system in keeping with the alternate shutdown requirements of Appendix R to 10 CFR Part 50. The proposed change does not affect the minimum number of channels required to be operable or the minimum degree of redundancy required by the Technical Specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in

accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change to make the license conform to changes in the regulations where the license change results in very minor changes to facility operations clearly in keeping with the regulations (Example (vii)). The proposed Technical Specification modification is a change resulting from a modification in keeping with changes in the regulations and resulting in minor changes to facility operations and, therefore, falls within this example. Therefore, since the application for amendment involves proposed changes that are similar to the example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By December 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 9th day of November 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 38886– Filed 11–16–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–313]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–51, issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit No. 1 (ANO–1), located in Pope County, Arkansas.

The amendment would permit operation of ANO–1 for Cycle 7 in accordance with the licensee's application for amendment dated September 26, 1984, as supplemented by letter dated October 31, 1984. The design cycle length would be 420 effective full power days (EFPD). The amendment would revise the Appendix A Technical Specifications to account for changes in power peaking and control rod worths and would consist of revised Reactor Protection System trip setpoints, regulating rod group insertion limits, axial power shaping rod insertion limits, axial power imbalance limits and control rod group assignments.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain Examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to reload amendments involving no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question (Example (iii)). This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and the NRC has previously found such methods acceptable. The proposed amendment would permit operation for Cycle 7 with fuel that is not significantly different from that used in previous cycles. The mechanical design of the fuel assemblies in Cycle 7 is unchanged from Cycle 6. There are no significant changes in the nuclear design of Cycle 7. The thermal-hydraulic design evaluation remains bounded by the Final Safety Analysis Report and the previous reloads, and the thermal performance of the core during accidents and transients for the Cycle 7 reload remains within the bounds of previously accepted analyses. Therefore, since the application for amendment involves proposed changes that are similar to the example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By December 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 9th day of November 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-30307 Filed 11-16-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–51, issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit No. 1 (ANO–1) located in Pope County, Arkansas.

In accordance with the licensee's application dated October 9, 1984, the amendment would permit the Reactor Coolant System (RCS) to be heated above 280°F with the reactor subcritical and with 14 of the 16 steam system safety valves not operable (they would be gagged to prevent them from opening) and with 2 of the 16 safety valves set to open at higher pressures but low enough to provide overpressure protection. This amendment would allow the licensee to perform the 10-year hydrostatic test of the ANO–1 steam system as required by the Technical Specifications. The RCS would be heated by the use of Reactor Coolant pump operation and, therefore, the ANO–1 steam system would be tested by the use of steam rather than water.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change has been reviewed against each of the above criteria.

The proposed change would not involve an increase in the probability or consequences of an accident previously evaluated because the RCS would not be critical and the pressures in the steam system would not exceed the design margins.

The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because any postulated accident that could result from such a change would indeed be bounded by accidents previously evaluated.

The proposed change would not involve a significant reduction in a margin of safety because the energy required to provide the pressures for testing could indeed be dissipated through the 2 ungagged safety valves, thus preventing an overpressure in the steam system. This would provide the same or higher protection to the steam system that 16 valves provide when the RCS is operating at full power. In addition, the proposed change would not incur the stresses to the steam system which would result from the weight of the water if the system were to be tested by water pressure.

On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

By December 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW, Suite 700, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 9th day of November 1984.

For the Nuclear Regulatory Commission.
John F. Stolz,
Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-30305 Filed 11-16-84; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, 50-287]

Duke Power Co. (Oconee Nuclear Station, Units 1, 2 and 3); Exemption

I

The Duke Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DRP-38, DPR-47, and DPR-55 which authorize the operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3 (the facilities), at reactor power levels not in excess of 2568 megawatts thermal (rated power) for each unit. The facilities are Babcock and Wilcox designed pressurized water reactors located at the licensee's site in Oconee County, South Carolina.

The licenses are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

10 CFR Part 50.55a requires that piping and components of boiling and pressurized water plants by examined and pressure tested to the requirements of Section XI of the ASME Code and that the examinations and tests be completed during each of four (4) ten-year intervals. These ten-year intervals are calculated from the start date of commercial operation of the facility.

10 CFR Part 50.55a(g)(4) requires that licensees update their pump and valve inservice inspection (ISI) and testing (IST) programs to newer edition of Section XI of the Code each ten years. Since the regulations require these updates based on the 10-year anniversary of facility commercial operation, multi-unit sites often find that each unit has an ISI and IST program structured for a slightly different edition of the Code.

III

By letter dated December 2, 1983, the licensee requested an exemption to the requirements of 10 CFR Part 50.55a(g)(4) which would allow the use of a common start date for ISI and IST for all three Oconee units and for that date to be at other than 120 months from the date of commercial operation of any one unit.

According to the regulations, the second ten-year interval for the ISI program began or should begin on July 16, 1983, September 10, 1984, and December 17, 1985, for Oconee Units 1, 2, and 3, respectively. The licensee has requested a common start date of April 1, 1984. The Commission's staff has reviewed this request and has determined that a common ISI start date for the three units has inherent administrative, technical, and cost saving advantages, both for the licensee and the Commission. The staff has concluded that:

1. The same Code edition and addenda, by regulation, can be used as the basis for the ISI program for all three units;

2. Since the units are similar in design, only one ISI program would have to be written and submitted by the licensee;

3. The Commission's staff would have to review and approve only one submittal instead of three; and

4. The change of the ISI start date of April 1, 1984, will not affect the completion of examination and pressure test requirements for the inspection intervals.

The licensee has requested a common IST start date of July 1, 1982. If this exemption request were not granted, Oconee Unit 1 would be required to have an IST program structured to the 1980 Edition of the Code with Addenda through Winter 1980, and Oconee Units 2 and 3 would be required to have their IST programs structured to the 1980 Edition of the Code with Addenda through Winter 1981. Therefore, there would be very little change for the current 10-year update of the IST program.

Since the selected start date of July 1982 is basically one year prior to that which would normally be required by the regulations for Oconee Unit 1, future IST program updates for all three Oconee units will constitute a voluntary update to a newer Code sooner than would normally be required. For Oconee Units 2 and 3, the IST program will be in accordance with a slightly older edition of the Code than would have been required by the regulations, but the Commission's staff concludes that the use of a single IST program for all three Oconee Units is more beneficial in terms of net overall plant safety.

Therefore, the staff concludes that the exemption request should be granted. If a common start date were not established, the ISI and IST programs at Oconee would be accomplished, for some period of time, to two different ASME Codes. Although administratively possible, this situation could contribute to increased personnel errors in the performance of inspection and testing requirements to two different versions of the Code. This can create a substantial and additional administrative workload for what can be described as only nominal technical differences in the inspection and testing requirements.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's letter of December 2, 1983, is authorized by law, and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the requirements of 10 CFR 50.55a(g)(4).

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (49 FR 43822).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 7th day of November 1984.

For the Nuclear Regulatory Commission.
Darrell G. Eisenhut,
Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-30304 Filed 11-16-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-499 OL; 50-498 OL]

Houston Lighting & Power Co. et al.; Order

Atomic Safety and Licensing Appeal Board: Administrative Judges: Gary J. Edles, Chairman, Dr. W. Reed Johnson, Thomas S. Moore.

In the matter of Houston Lighting & Power Company, et al. (South Texas Project, Units 1 and 2) Docket Nos. 50-498 OL; 50-499 OL. November 13, 1984.

Order

Oral argument on the pending appeal of the Citizens Concerned About Nuclear Power, Inc. (CCANP) will be held at *9:30 a.m. on Thursday, December 13, 1984,* in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Appellant CCANP will be allotted a total of one hour for the presentation of argument. It may reserve a portion of its time for rebuttal. The respondents Houston Lighting and Power Company and the NRC staff will be allotted a total of one hour for presentation of argument, to be divided as they see fit. In the absence of agreement, each respondent will be allotted 30 minutes. In preparing for argument, counsel may assume that the Board will be familiar with the Licensing Board's decision that is the subject of the appeal, as well as the appellate positions of the parties as reflected in their briefs.

Each party is to notify the Secretary to this Board by letter, mailed no later than December 3, 1984, of the name of the person who will be arguing on its behalf. Respondents shall also notify us whether they have reached agreement on an allocation of time.

It is so ordered.

For the Appeal Board.
C. Jean Shoemaker,
Secretary of the Appeal Board.

[FR Doc. 84-30306 Filed 11-16-84; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14232; (812-5922)]

Kansallis North America Inc.; Application for Order Exempting Applicant From all Provisions of the Act

November 9, 1984.

Notice is hereby given that Kansallis North America Inc. ("Applicant"), a corporation organized under the laws of Delaware, c/o Barry L. Dastin, Esquire, White & Case, 1155 Avenue of the Americas, New York, New York 10036, filed an application on August 16, 1984, for a Commission order, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it has been formed by Kansallis-Osake-Pankki, a commercial bank organized under the laws of Finland (the "Bank") solely as a financing vehicle for the Bank. Applicant represents that all of its capital stock will be purchased for cash and held by the Bank and that no other common or capital stock will be issued. Applicant states that its sole business will be the provision of funds to the Bank and substantially all of Applicant's assets will consist of amounts receivable from the Bank. Applicant states that, in connection with prior issuances of commercial paper in the United States, the Bank obtained an exemptive order under section 6(c) of the Act (Investment Company Act Release No. 10821). Applicant states that, because certain institutional purchasers of commercial paper may limit their purchases of debt obligations to obligations of domestic issuers, the Bank has organized Applicant to provide a vehicle through which it may sell commercial paper to such purchasers and others.

Applicant proposes to issue and sell in the United States short-term negotiable promissory notes of the type generally referred to as commercial paper (the "Notes"). Applicant states that the Notes will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured and unsubordinated indebtedness of Applicant and prior to the claims of holders of Applicant's common stock. Applicant represents that payment of the principal, interest and premium, if any, on the Notes will be unconditionally guaranteed by the Bank and thus the holders of the Notes could be considered holders of the Bank's obligations. Applicant states further that the proceeds of the sale of the Notes (to the extent not applied to repayment of maturing Notes or payment of current expenses) would be place on short-term deposit with, or lent to, the Bank. Applicant states that the deposits or loans would be withdrawn by, or repaid to, Applicant on terms substantially similar to those of the Notes and will allow Applicant to make timely payments on the Notes. Applicant states that the guarantee of the Bank will rank *pari passu* with other insecured and unsubordinated indebtedness of the Bank (including its deposit liabilities) and prior to the claims of holders of the Bank's common stock.

Applicant represents that the Notes will be of prime quality and will be issued in minimum denominations of $100,000 and the other terms of the Notes, including their maturity and manner of offering, will be such as to qualify them for the exemption from registration under the Securities Act of 1933, as amended (the "1933 Act"), provided by section 3(a)(3) of the 1933 Act. Applicant represents further that it will not issue and sell the Notes until it has received an opinion of its special legal counsel in the United States to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to such exemption. Applicant does not request Commission review or approval of counsel's opinion regarding the availability of an exemption under section 3(a)(3) of the 1933 Act. Applicant states that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements in connection with issuance and sale of the Notes.

Applicant represents that the presently proposed issue of securities and all future issues in the United States will have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that its special United States counsel will have certified that such rating has been received, provided, however, that no such rating will be required if in the opinion of special United States counsel for Applicant, such counsel having taken into account for the purpose thereof the doctrine of integration referred to in Rule 502 under the 1933 Act and various releases and no-action letters made public by the Commission, an exemption from registration is available respecting such issue under section 4(2) of the 1933 Act.

The Notes will be issued and sold by Applicant to a commercial paper dealer or dealers in the United States which will reoffer the Notes as principal to investors in the United States. The Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by the dealer to institutional investors and other entities and individuals who normally purchase commercial paper. Applicant undertakes to ensure that the dealer will provide to each offeree who has indicated an interest in Applicant's securities, and prior to any sale of Notes to such offeree, a memorandum which (i) describes Applicant's business and (ii) contains all of the information with respect to the Bank which the Bank is required, pursuant to the terms of its exemptive order under section 6(c) of the Act, to provide to offerees of its commercial paper. The memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and such memorandum will be updated periodically to reflect material changes in the Bank's financial status to the extent not previously reflected in the memorandum.

Applicant states that it may, from time to time, offer other debt securities for sale in the United States which will in effect be guaranteed by the Bank by means of a guarantee or letter of credit. The proceeds of such securities will similarly be deposited with, or loaned to, the Bank. Future offerings by Applicant of securities in the United States will be made only pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration under the 1933 Act and any such offering will be made on the basis of disclosure documents appropriate for such

registration or exemption, as the case may be, and in any event at least as comprehensive as those used in the presently proposed offering and in no event less comprehensive than those customarily used in similar offerings in the United States. Such disclosure documents will be updated periodically to reflect material changes in the Bank's financial status to the extent not previously reflected in such disclosure documents. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in Applicant's securities then being offered, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder. Applicant consents to any order granting the relief requested being expressly conditioned upon Applicant's compliance with the foregoing undertakings regarding disclosure documents.

Applicant and the Bank will appoint United States Corporation Company as their agent to accept service or process in any action based on the Notes or the guarantee by the Bank and instituted in any State or Federal court by the holder of any of the Notes. Applicant and the Bank will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect to any such action and will also be subject to suit in any other court in the United States which would have jurisdiction. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant or by the Bank under its guarantee.

Applicant also undertakes, in connection with any future offering in the United States of Applicant's securities, to appoint and have the Bank appoint an agent to accept any process that may be served in any action based on such securities and instituted in any State or Federal court in the City and State of New York in respect of any such action and will also be subject to suit in any other court in the United States that would have jurisdiction. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due in respect of such securities have been paid.

Applicant does not believe that it is an investment company as defined in the Act; however, Applicant wishes to resolve any uncertainties concerning its status under the Act. Applicant submits that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the applicant may, not later than December 4, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exhange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30282 Filed 11-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23478; (70-7034)]

Middle South Utilities, Inc.; Proposal To Enter Into Revolving Credit Agreement for the Issuance and Sale of Unsecured Promissory Notes

November 9, 1984.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, proposes a transaction subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 and Rule 50(a)(2) thereunder.

Middle South proposes to enter into a revolving credit agreement ("Credit Agreement") providing for the issuance and sale by Middle South of up to $130,000,000 of its unsecured promissory notes to a group of commercial banks. The initial borrowing under the Credit Agreement will be used for the payment of any outstanding promissory notes issued by Middle South to various commercial banks under an existing credit agreement dated as of June 27, 1980, as amended (HCAR No. 21628, June 17, 1980). As of September 30, 1984, there were no balances outstanding under the existing credit agreement. The proceeds of the borrowings under the existing credit agreement were, or will have been, utilized by Middle South to purchase, at various times, the common stocks of certain of its subsidiary companies and for other lawful corporate purposes. Subsequent borrowings under the Credit Agreement will be used by Middle South to purchase additional common stock of its subsidiaries and for other lawful corporate purposes. The issuance and acquisition of such common stock will be the subject of separate filings with this Commission.

Under the terms of the Credit Agreement, Middle South may borrow and reborrow until December 31, 1985 by issuing to the participating banks its unsecured promissory notes payable on December 31, 1985 ("Notes"). Each borrowing and each payment by Middle South will be pro rata among the participating banks according to their respective Commitments. Subject to the right of Middle South at any time on three business days' notice to terminate the Commitments or from time to time to reduce the Commitments then in effect, the Commitments will remain in effect until December 31, 1985. Any such reduction of the Commitments will be accompanied by prepayment of the Notes and accrued interest thereon to the extent that the aggregate principal amount thereof then outstanding exceeds the Commitments of the participating banks as so reduced.

The Notes issued will bear interest from the date thereof on their unpaid principal amount at a rate per annum which shall be a percentage equal to the sum of ¾ of 1% and the product of 107% multiplied by the Base Rate. As used herein, the Base Rate means, at any time of determination thereof, the greater of (i) the prime commercial loan rate of Manufacturers Hanover Trust Company (the "MHTC Rate") then in effect or (ii) the sum of ½ of 1% per annum and the latest three-week moving average of secondary market morning offering rates for three-month certificates of deposit of major United States money market banks (the "C/D Rate"). The interest on the Notes will be payable quarterly in arrears. Based upon the MHTC Rate (12.50%) and the C/D Rate (10.35%) in effect as of October 26, 1984, the effective interest cost to Middle South of the proposed borrowings as of that date would by 14.125% per annum. Middle South presently intends to repay the Notes out of the proceeds of the sale of additional shares of its common stock.

The Notes will be prepayable at any time on two business days' notice in whole or in part without premium.

Middle South will agree to pay to each participating bank, quarterly in arrears, a commitment fee from December 31, 1984 to and including December 31, 1985 (or any earlier date of termination of the Commitments) of ½ of 1% per annum on the average daily unused portion of the Commitments in effect during the period for which payment is made.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 4, 1984, to the Secretary, Securities and Exchange Commission, Washingon, DC 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30294 Filed 11-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14231; (812-5939)]

Van Kampen Merritt Inc., Insured Municipals Income Trusts and American Portfolio Advisory Service Inc.; Filing of Application for an Order

November 9, 1984.

Notice is hereby given that Van Kampen Merritt Inc. ("Van Kampen"), Insured Municipals Income Trusts, 1901 North Naper Boulevard, Naperville, IL 60566 including the various state insured municipals income trusts and all other similar insured unit investment trusts to be sponsored in the future by Van Kampen (collectively, the "VKM Trust"), and American Portfolio Advisory Service Inc. ("American," collectively, "Applicants") 4200 Commerce Court, Lisle, IL 60532 filed an application on September 14, 1984, and an amendment thereto on November 5, 1984, for an order of the Commission pursuant to section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 thereunder to the extent necessary to permit Van Kampen to purchase from Bond Investors Guaranty Insurance Co. ("BIG") insurance guaranteeing the payment in a timely manner of interest and/or principal with respect to securities in the VKM Trust; pursuant to section 17(b) exempting Applicants from the provisions of section 17(a) to the extent necessary to permit the VKM Trust to purchase certain insurance coverage and to accept any settlement which might arise from a claim made upon the insurance; and pursuant to section 6(c) exempting Applicants from the provisions of section 26(a)(2)(C) to allow the Trustee of the VKM Trust to make (and deduct as a VKM Trust expense) premium payments on the insurance because a portion thereof might be deemed to be made to an affiliated person. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

According to the application, the VKM Trust is a unit investment trust, comprised of separate and distinct series, each having a separate portfolio of underlying securities (each such series referred to as a "VKM Unit Investment Series"). The application states that the objectives of the VKM Trust are a high level of current income exempt from Federal income taxation accompanied by conservation of capital. The VKM Trust pursues these objectives by investing in fixed, diversified portfolios of long-term tax-exempt securities. In addition, with respect to each VKM Unit Investment Series, the VKM Trust obtains a municipal bond insurance policy guaranteeing the timely payment of principal and interest on the securities in the portfolio of such Unit Investment Series. the application represents that, during the initial offering period, the units are offered to the public at a public offering price based on the aggregate offering prices of the securities in the portfolio of the VKM Unit Investment Series plus a sales charge. The application further represents that, for secondary market purposes, units are offered at a price based on the aggregate bid prices of the securities in the portfolio of the VKM Unit Investment Series plus a sales charge. Each VKM Unit Investment Series to date has been created under the laws of the State of New York and is governed by the provisions of master and supplemental trust indentures between Van Kampen and Bradford Trust Company (the "Trustee").

Applicants state that each bond in the portfolio of a VKM Investment Series is covered by either "unit trust" or "new issue" municipal bond insurance. Applicants further state that bonds covered by a new issue policy are not usually insured by the VKM Unit Investment Series under its unit trust policy. According to Applicants, the VKM Trust primarily obtains unit trust insurance from AMBAC Indemnity Corporation ("AMBAC") and new issue insurance is obtained directly by the bond issuer. The annual premiums on unit trust policies purchased by the VKM Trust are a VKM Trust expense, whereas the premium for any new issue insurance policy is paid for in advance by the bond issuer.

Applicants state that, in January, 1984, Van Kampen was acquired by Xerox Corporation. Applicants further state that Xerox Credit Corporation, a wholly owned subsidiary of Xerox Corporation, has entered into an agreement with American International Group, Inc., Phibro-Salomon Inc., and Bankers Trust New York Corporation to become a shareholder in Bond Investors Group, Inc., a holding company, the principal asset of which is BIG, an insurance company organized under the laws of Illinois and licensed to engage in the underwriting and issuance of municipal bond guarantee insurance. Because Xerox Credit Corporation will own 25% of the equity of the organization, BIG could be considered an affiliate of an affiliate of Van Kampen.

According to the application, it is anticipated that approximately two-thirds of the total par value of each VKM Unit Investment Series will be insured by AMBAC. The application states, however, that Van Kampen has no assurance that AMBAC has sufficient insuring capacity to make additional commitments for insurance and to guarantee that Van Kampen will be able to continue to bring the VKM Trust to market in the volume Van Kampen desires. The application contends that reserve requirements imposed by various state insurance commissions and demands from competitor sponsors have prevented, and probably will continue to prevent, AMBAC from doing much more than meeting its commitments at the current levels to the sponsors with whom it is presently dealing. Applicants assert that no company or group of companies known to the Applicants has expressed any intention to provide such insurance to the VKM Trust in the immediate future. Applicants further assert that if the Commission does not permit the VKM Trust to acquire the insurance under the

arrangements described herein, Van Kampen will not be able to offer the VKM Trust in the volume it desires.

Applicants propose that BIG will provide direct insurance to the VKM Trust and reinsurance to AMBAC. Van Kampen represents that the aggregate face amount insured under unit trust policies by BIG from time to time for the VKM Trust will not exceed 40% of the aggregate face amount under unit trust policies in all applicable series of the VKM Trust. Only securities purchased after the date of the order of the requested exemption would be considered.

Applicants request an order pursuant to section 17(d) of the Act and Rule 17d-1 thereunder to permit BIG, subject to the aggregate face amount limitations, to provide insurance to the VKM Trust. According to Applicants, the proposed transactions would involve the payment by the VKM Trust to BIG of annual premiums. The premium rates will be determined by BIG within a rate framework applicable to all trust sponsors and filed with applicable state insurance regulatory authorities, based upon its determinations of the creditworthiness of the issuer of the bonds, the risk of default by the bond issuer, the potential liability arising from insuring such bond issue, and the demand of sponsors to apply for such insurance on behalf of their trusts. Applicants represent that the setting of BIG's premiums will not be controlled by the VKM Trust, Van Kampen, Xerox Corporation, Xerox Credit Corporation, or American. Applicants state that, once bonds have been deposited in a VKM Unit Investment Series, the premium rate for each issue of bonds is protected by the policy obtained by the Unit Investment Series. Applicants further state that the insurance policy is non-cancellable and continues in force so long as the Unit Investment Series is in existence, the insurer is still in business, and the bonds continue to be held by such Unit Investment Series.

According to Applicants, its proposed arrangement with BIG will be identical or substantially identical to the insurance currently being offered to all the sponsors of insured municipal bond trusts. Applicants represent that Xerox Corporation will indirectly have only a 25% interest in the earnings of BIG while it maintains a 100% interest in Van Kampen, the success of which is largely dependent upon competitively priced unit investment trusts.

Applicants state that, to eliminate any potential conflict of interest between Van Kampen, the VKM Trust, and any affiliated person of Van Kampen or the VKM Trust, as a condition to the granting of this exemptive request, Van Kampen undertakes that the provisions of the Trust Indentures and Agreements between Van Kampen and the Trustee will be amended to provide that American, a wholly owned subsidiary of Van Kampen and the evaluator of the VKM Trust, will be the exclusive entity to make recommendations to the Trustee with respect to the sale of any security of any VKM Investment Series. Van Kampen and American undertake that the board of directors of American will be increased by three disinterested persons. Applicants further state that American's board of directors will always consist of a minimum of three disinterested directors except for such reasonable periods necessary to fill vacancies. Van Kampen and American further undertake that American's board of directors, including a majority of the directors who are not interested persons, will adopt criteria providing the basis upon which American would make recommendations for the sale of VKM Unit Investment Series securities in a manner reasonably designed to protect the VKM Trust from any overreaching or unfairness with respect to insurance coverage. Finally, Van Kampen and American undertake that American's board of directors, including a majority of the disinterested directors, will review at least semi-annually all sales of portfolio securities for the purpose of determining whether such sales were effected in compliance with the adopted criteria.

The criteria to be adopted for the sale of VKM Unit Investment Series securities will include standards for determining when the cash in the VKM Trust for the series in question is inadequate for sale to satisfy redemptions; procedures for making the sales to satisfy redemptions; criteria for selecting bonds within each series to be put out for bids; and provisions for record keeping, reporting, and reviewing the sales of bonds. Applicants represent that any bonds in the portfolio which are in default or, except under compelling circumstances, which are in imminent danger of default, in the reasonable judgment of the Company, will not be sold. However, Applicants state, sales of bonds which have been insured by the issuer will not be restricted.

Applicants also request an exemption from the provisions of section 17(a)(1) of the Act to the extent that BIG might, by providing insurance directly to the VKM Trust or through reinsurance arrangements be deemed, as principal, to be selling any "property" to the VKM Trust, and an exemption from the provisions of section 17(a)(2) of the Act, to the extent that, in the event of a default on a bond, the insuring companies acquire an interest in either the coupons or principal of one of the bonds. Applicants assert that the terms of the proposed transaction, including the consideration to be paid or received are resonable and fair and do not involve overreaching on the part of any person concerned. The premiums to be charged with respect to providing such insurance and the amounts to be paid by the affiliated parties to the VKM Trust are fixed in nature and easily ascertainable (because they involve the payment of either a predetermined amount of interest due on a bond or the principal amount thereof at the time of maturity). Applicants further assert that the transaction is consistent with the policy of the VKM Trust, i.e., that it invest in municipal bonds insured as to the payment of principal and interest, and the transaction is consistent with the general policy and purposes of the Act.

Applicants also request an order of the Commission pursuant to section 6(c) of the Act for exemption from the provisions of section 26(a)(2)(C). Applicants state that the proposed transaction involves the payment by the Trustee on an annual basis of the insurance premiums necessary to keep the proposed insurance in force, and such payments may be deemed to be made to an affiliated person of the depositor of or principal underwriter of the VKM Trust. Applicants contend, however, that, even if the Commission permits the purchase of such insurance on behalf of the VKM Trust, the Trustee will not agree to the proposed transaction unless it is entitled to charge the VKM Trust for the expense of the required insurance premiums.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 3, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For fthe Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30283 Filed 11-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21479; (SR-CBOE-84-29)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Partial Approval of Proposed Rule Change

November 13, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 19, 1984, the Chicago Board Options Exchange, Incorporated ("CBOE") LaSalle at Van Buren, Chicago, IL 60605, filed with the Securities and Exchange Commission the proposed rule change described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

In its filing, CBOE proposes to: (1) Commerce closing rotations in expiring series of individual stock options on the last trading day prior to expiration as soon as practicable after 3:00 p.m. but not until a final price for the underlying stock is established on the primary market; and (2) extend open trading in expiring series of index options on the last trading day before expiration from 3:00 p.m. to 3:10 p.m. and eliminate, except in unusual circumstances, closing rotations in the expiring index options series. CBOE indicates that the statutory basis for both portions of the proposed rule change in section 6(b)(5) of the Act.

The CBOE states that the first portion of the proposed rule change would permit closing rotations in expiring series of individual stock options to be priced in relationship to the closing price in the primary market for the underlying stock. Under existing rules, closing rotations in expiring series of individual stock options commence at 3:00 p.m. CBOE has found, however, that a 3:00 p.m. closing rotation has not proved to be "entirely adequate to permit utilization of the closing price of the stock in establishing prices for the expiring option series." In particular, CBOE notes that orders to buy or sell substantial blocks of stock, that can have a material effect on the closing price of the stocks, are now occurring at the close of trading on the last business day before expiration, and that these transactions are not being reported over the Consolidated Transaction Reporting System until several minutes after 3:00 p.m. CBOE asserts that if these late reports reflect a change in the closing price of an underlying stock, the pricing of expiring options series during the closing rotation may be disrupted. The proposed rule change would avoid such pricing disruptions by permitting the closing rotations to commence only after the final price of the underlying stock has been established.

CBOE also has proposed to permit open trading in expiring series of index options to continue until 3:10 p.m. Chicago time on the Friday prior to expiration and eliminate closing rotations in such series, except in unusual circumstances.[1] In this regard, CBOE states that closing rotations in expiring index options series do no appear necessary because in-the-money long call and put positions are cash settled at expiration by the exercise procedures at parity with the closing index price. CBOE also indicates that extending open trading for expiring index option series to 3:10 p.m. would conform their trading hours to the trading hours of other standardized options.[2] In addition, CBOE notes that the rule change would conform CBOE's rule to the rules of the American Stock Exchantge, Inc. ("Amex").[3]

Interested persons are invited to submit written data, views arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to file No. SR-CBOE-84-29.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the CBOE.

The Commission finds that the second portion of the proposed rule change—the portion permitting open trading in expiring index options series until 3:10 p.m., without closing rotations—is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the second portion of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that this part of the proposed rule change is identical to Amex rules that were published for comment and approved by the Commission. In addition, CBOE's S&P 100 and S&P 500 index options series will expire November 17, 1984, and approval of this portion of the rule change will enable the change to be in effect for the traditing day of November 16, 1984.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the portion of the proposed rule change eliminating closing rotations for expiring series of index options and extending open trading in such series to 3:00 p.m. on the last trading day prior to expiration hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30290 Filed 11-16-84; 8:45 am]

BILLING CODE 8010-01-M

[1] Under CBOE Rule 6.2, Commentary .02, floor officials would be able to require a closing rotation for expiring index option series if unusual market conditions exist.

[2] Non-expiring individual stock options, for example, normally trade until 3:10 p.m. Chicago time.

[3] *See* Amex Rules 903C and 918C. *See also* Securities Exchange Act Release No. 20169, September 9, 1983, 48 FR 41545, September 15, 1983, in which the Commission approved a similar proposal by Amex to eliminate closing rotations in expiring index option series and to extend free trading in such series to 3:10 p.m. Chicago time on the last trading prior to expiration. *See also* the Commission's temporary approval of Amex's proposed rule change in Securities Exchange Act Release No. 19977, July 15, 1983, 48 FR 33388, July 21, 1983.

[Release No. 21476; (SR-CBOE-84-26)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

November 9, 1984.

The Chicago Board Options Exchange, Incorporated ("CBOE") LaSalle at Van Buren, Chicago, IL 60605, submitted on August 15, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act") and Rule 19b–4 thereunder, to amend the Exchange's rules relating to arbitration of disputes between public customers and an associated person or a member of the Exchange. These amendments provide, in pertinent part, that the limit on small claims proceedings will be raised from $2,500 to $5,000 exclusive of interest and costs; that the time limitation upon submission will not apply to any case which is directed to arbitration by a court; that, where permitted by law, the statute of limitations will be tolled when a claimant, rather than all parties, files a submission agreement; that where there are multiple claimants or respondents, the Director of Arbitration shall have discretion to award more than one peremptory challenge to each party, and that there will be unlimited challenges for cause; and that the arbitrators may bar a respondent from presenting a defense if the respondent pleads only a general denial or fails to specify all available defenses. The proposed rule change also establishes a new fee schedule which slightly increases filing fees in certain cases.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21380, September 27, 1984) and by publication in the **Federal Register** (49 FR 39401, October 5, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organizations and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30291 Filed 11–16–84; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular]

Notes; Public Debt Series—No. 35–84

Washington, November 9, 1984.

The Secretary announced on November 8, 1984, that the interest rate on the bonds designated Bonds of 2009–2014, described in Department Circular—Public Debt Series—No. 35–84, dated November 1, 1984, will be 11¾ percent. Interest on the bonds will be payable at the rate of 11¾ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84–30246 Filed 11–16–84; 8:45 am]

BILLING CODE 4810–40–M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Meeting

The Veterans Administration gives notice under Pub. L. 92–463, section 10(a)(2) that a meeting of the Advisory Committee of Former Prisoners of War will be held at the Veterans Administation Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, on December 13 and 14, 1984. The purpose of the Committee is to consult with and advise the Administrator of Veterans' Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war and on the need of such veterans with respect to compensation, health care, and rehabilitation.

The meeting will convene at 9 a.m. both days in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Miss Linda Gardner, Administrative Assistant to the Chief Benefits Director, Veterans Administration Central Office (phone 202/389–2455) prior to December 3, 1984.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. H.B. Mars, Acting Director, Compensation and Pension Service, Department of Veterans Benefits, Room 400, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Summary minutes of the meeting and rosters of the Committee members may be obtained from Miss Linda Gardner at the aforementioned address.

Dated: November 9, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–30247 Filed 11–16–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 224
Monday, November 19, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Communications Commission	1
Foreign Claims Settlement Commission	2
National Mediation Board	3

1

FEDERAL COMMUNICATIONS COMMISSION

FCC to hold open Commission meeting, Wednesday, November 21, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, November 21, 1984, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—*Title:* Report and Order to amend Part 2 of the Commission's Rules to provide frequencies for a Government and non-Government fixed service. *Summary:* The FCC will consider the amendment of its regulations to reallocate frequencies in the 900 MHz band for a Government and non-Government fixed service.

General—2—Report and Order to amend the Commission's Rules to provide additional frequencies for the use of Aural Broadcast Studio Transmitter Links and Intercity Relay Stations. *Summary:* The FCC will consider the amendment of its regulations to reallocate new frequencies for Aural Broadcast Studio Transmitter Links and Intercity Relay Stations.

General—3—*Title:* Amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 896–902 MHz and 935–941 MHz bands for Private Land Mobile Use. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rule Making which proposes to release additional frequencies in the 900 MHz band for use by the Private Land Mobile Radio Services.

General—4—*Title:* Notice of Proposed Rule Making to amend Parts 2 and 22 of the Commission's Rules to provide additional frequencies for cellular service use. *Summary:* The FCC will consider a proposal to amend its regulations to reallocate frequencies at 845–851 MHz and 890–896 MHz for additional cellular use.

General—5—*Title:* Rulemaking Regarding Spectrum Allocation to Establish a Land Mobile Satellite Service for the Provision of Various Common Carrier Services (RM–4247). *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rulemaking allocating spectrum to establish a Land Mobile satellite service and, is so, what procedures to follow regarding rules changes and acceptance of applications.

General—6—*Title:* Creation of An Additional Private Radio Service. *Summary:* The Commission will consider whether to adopt rules to implement the new Private Radio Communications Service (PRCS).

General—7—*Title: Report and Order* to amend the Commission's Rules to allocate spectrum for a Public Air-ground radiotelephone service. *Summary:* The FCC will consider whether to adopt a *Report and Order* to allocate frequencies in the 900 MHz bands for a new public air-ground radiotelephone service.

Common Carrier—1—*Title:* Memorandum Opinion and Order in the Matters of Pacific Bell, Southern Bell and South Central Bell, Southwestern Bell, New York Telephone and New England Telephone, New Jersey Bell, Northwestern Bell, Pacific Northwest Bell and Ameritech Operating Companies Petitions for Waiver of Section 64.702 of the Commission's Rules and Regulations To Provide Certain Types of Protocol Conversion Within Their Basic Telephone Networks. *Summary:* The Commission will consider whether to waive the *Computer II* Rules to enable the petitioning Bell Operating Companies to provide certain types of protocol conversion within their telephone networks, specifically X.25-to-X.75 protocol conversion.

Common Carrier—2—*Title:* Revisions to Tariff F.C.C. No. 259 (WATS) for Advanced 800 Services. *Summary:* Commission consideration of Transmittal No. 173 proposing to revise several existing Advanced 800 services and in addition to offer one new service, Call Prompter. MCI has filed a petition to reject or in the alternative to suspend and investigate on the grounds that an insufficient showing has been made under section 61.38 of the Commission's Rules.

Common Carrier—3—*Title:* AT&T Communications, Inc., Revisions to Tariffs F.C.C. No. 263 and F.C.C. No. 1 filed under Transmittal No. 79. *Summary:* The Commission will consider applications for review of an order by the Chiefs, Common Carrier Bureau denying petitions to reject or suspend tariff revisions filed by AT&T Communications, Inc. implementing its Block of Time optional calling plan.

Common Carrier—4—*Title:* Guidelines for Dominant Carriers Optional MTS Rates and Rate Structure Plans. *Summary:* The Commission will consider issuing a Notice of Proposed Rulemaking to invite comment on the adoption of guidelines for optional MTS rates and rate structures.

Common Carrier—5—*Title:* In the Matter of Changes in the Corporate Structure and Operations of the Communications Satellite Corporation. *Summary:* The Commission will consider the petitions for reconsideration, filed by Communications Satellite Corporation, M/A–COM, Inc. and United Satellite Action, of the actions taken in the Second Memorandum Opinion and Order in the *Comsat Structure* proceeding.

Common Carrier—6—*Title:* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor: Sixth Report and Order (CC Docket No. 79–252). *Summary:* The Commission will consider issues raised in its NPRM concerning potential mandatory detariffing of all carriers subject to forbearance.

Common Carrier—7—*Title:* In the Matter of AT&T Earnings on Interstate and Foreign Services During 1978. *Summary:* The Commission will consider the issues that are presented by earnings that arose from the interstate and foreign service tariffs of AT&T during 1978.

Mass Media—1—*Title:* Application for Review of the Mass Media Bureau's action denying a petition for reconsideration and returning the low power television application of Arnold N. Applebaum for Channel 19, Paso Robles, California. *Summary:* The Commission will consider whether the Bureau properly returned, as unacceptable for filing, the application of Arnold N. Applebaum for a new low power television station on Channel 19, Paso Robles, California.

Mass Media—2—*Title:* Application for Review of the Mass Media Bureau's action denying a petition for reconsideration and returning the low power television application of Las Manzanas Television Company for Channel 53 in Seattle, Washington. *Subject:* The Commission will consider whether the Bureau properly returned the application of Las Manzanas for a new low power television station at Seattle, Washington, as unacceptable for filing.

Mass Media—3—*Title:* Application for review of the Mass Media Bureau's action denying a petition for reconsideration and returning the low power television application of Local Service Television, Inc., for a new low power television station on Channel 13 in Miami, Florida. *Subject:* The Commission will consider whether the Bureau properly returned the application of Local Service Television, Inc., for a new low power television station, as unacceptable for filing.

Mass Media—4—*Title:* Applications for consent to the assignment of licenses of UHF Stations KTXA–TV, Arlington, and KTXH–TV, Houston, Texas, to wholly owned subsidiaries of Gulf Broadcasting Company. *Summary:* The Commission will consider the applications to assign the

licenses of UHF Stations KTXA–TV, Arlington, and KTXH–TV, Houston, Texas, to wholly owned subsidiaries of Gulf Broadcasting Company. The assignees request grant of these applications pursuant to Note 4 of § 73.3555 of the Commission's Rules, which permits applications for UHF television stations to be considered on a case-by-case basis to determine whether common ownership of radio/television combinations in the same market would be in the public interest.

Mass Media—5—*Title:* Petition for Rule Making to delete a VHF television channel from New York City, New York and reassign that channel to Long Island, New York. *Summary:* The Commission will consider a Petition for Rule Making filed by Long Island Coalition for Fair Broadcasting, Inc. to amend the Television Table of Assignments by deleting a VHF channel from New York City, New York and reassigning that channel to Long Island, New York.

Mass Media—6—*Title:* Amendment of the List of major television markets. *Summary:* The Commission will consider adopting a *Report and Order* adding Melbourne and Cocoa, Florida to the Orlando-Daytona Beach, Florida major television market designation.

Mass Media—7—*Title:* Amendment of Part 74, Subpart L of the Commission's Rules Pertaining to FM Radio Broadcast Translator Stations. Amendment of Subparts F and L of Part 74 to permit use of alternative input sources for FM broadcast translator stations and to permit uniform 10 watt FM translator power. The Commission will consider the request by Moody Bible Institute for partial reconsideration of the original decision to deny Moody's previous request to amend the FM broadcast translator rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–30322 Filed 11–15–84; 9:37 am]

BILLING CODE 6712–01–M

2

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 12–84]

Announcement in Regard to Commission Meetings and Hearings.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, and Time, and Subject Matter

Tues., Novc. 27, 1984 at 10:30 a.m.—Oral Hearings on objections to decisions issued under the Second Czechoslovakian Claims Program:
CZ–2–1107—Ludvika Kabatek
CZ–2–1101—Joseph Kabatek
CZ–2–0070—Paul Loyd, et al

Wed., Nov. 28, 1984 at 10:30 a.m.—Consideration of Final Decisions and Amended Final Decisions issued under the Second Czechoslovakian Claims Program, and Proposed Decisions issued under the Vietnam Claims Program (Pub. L. 96–606).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111–20th Street, NW., Washington, D.C.

Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111–20th Street, NW., Room 409, Washington, D.C. 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C. on November 13, 1984.

Judith H. Lock,

Administrative Officer.

[FR Doc. 84–30415 Filed 11–15–84; 1:47 pm]

BILLING CODE 4410–01–M

3

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, December 5, 1984.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of November, 1984.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

DATE OF NOTICE: November 14, 1984.

Mr. Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 84–30416 Filed 11–15–84; 1:47 pm]

BILLING CODE 7550–01–M

---

register

federal

Monday
November 19, 1984

Part II

Federal Trade Commission

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles; Final Trade Regulation Rule

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final Trade Regulation Rule.

SUMMARY: The Federal Trade Commission issues a final Rule, the purpose of which is to reduce oral misrepresentations, and consumer reliance thereon, in the used car transaction by providing consumers with accurate information concerning warranty coverage and other important information. The Rule requires used car dealers to disclose, on a window sticker ("Buyers Guide") posted on used cars offered for sale to consumers, information about the warranty coverage offered, the meaning of an "as is" sale and other related information.

This notice contains the Rule's Statement of Basis and Purpose incorporating a Regulatory Artalysis and the text of the Rule.

EFFECTIVE DATE: May 9, 1985.

ADDRESS: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 376–2893.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 455

Motor vehicles, Trade practices.

TRADE REGULATION RULE CONCERNING THE SALE OF USED MOTOR VEHICLES, STATEMENT OF BASIS AND PURPOSE AND REGULATORY ANALYSIS

I. Introduction

A. Overview of the Rule

In recent years, more than ten million used cars have been sold annually by franchised and independent dealers. For many consumers, the purchase of a used car represents a substantial, necessary investment in a reliable means of transportation. Despite the significance of this investment and the relative unfamiliarity of most consumers with the mechanical operation of an automobile, many used car buyers currently receive little accurate warranty and mechanical condition information to assist them in their purchase. Consumers' ability to obtain this information has been hampered by various unfair and deceptive practices identified during the course of this rulemaking proceeding. The record establishes that these practices have resulted in substantial consumer injury in the used car market. To correct these unfair and deceptive practices in the used car industry, it is necessary to promulgate the accompanying Trade Regulation Rule. By providing for the disclosure at the point of sale of information concerning the extent of warranty coverage, the Commission believes that used car dealers will be discouraged from engaging in the deceptive practices established in the record. Instead, used car buyers will be able to make informed purchasing decisions based on accurate and complete information about warranty protection offered.

The record demonstrates that used car dealers and their agents have engaged in deceptive sales practices. These include:

(1) Misrepresenting the mechanical condition of a used vehicle;

(2) Misrepresenting the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) Representing that a used vehicle is sold with a warranty when the vehicle is sold without a warranty.

The record also demonstrates that used car dealers and their agents engage in unfair practices. These include:

(1) Failing to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) Failing to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

The Commission has concluded that these acts and practices are deceptive or unfair within the meaning of Section 5 of the Federal Trade Commission Act and are appropriately remedied by the Trade Regulation Rule being promulgated today.

The primary purpose of this Rule is to prevent and discourage oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule provides a uniform method for written disclosure of such information by means of a "Buyers Guide." The Rule requires clear disclosure through the Buyers Guide of the existence of any warranty coverage and of the terms and conditions of any warranty offered in connection with the sale of a used car, including the duration of coverage and the percentage of total repair costs to be paid by the dealer. The Rule also includes certain additional disclosures that are incorporated on the Buyers Guide, including: A list of the fourteen major systems of an automobile and defects that can occur in these systems; a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; and a warning against reliance on spoken promises that are not confirmed in writing. When the used car transaction is conducted in Spanish, the Rule requires that a Spanish-language version of the Buyers Guide be provided to the consumer, and the Rule includes a text for a Spanish-language version. In addition, the Rule provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. The Rule further requires dealers to give copies of the Buyers Guide reflecting the final terms of sale to the consumer.

This overview has highlighted the central elements of the Rule. Virtually all other provisions of the Rule, including certain definitions, are designed to ensure the integrity of this disclosure scheme. The Commission believes that this Rule, which requires that warranty information be provided in written form, will effectively curb many of the unfair and deceptive practices identified in the rulemaking record with minimal intrusion into the business operations of used car dealers.

B. Historical Background

The used car rulemaking proceeding grew out of an investigation begun by the Commission's Seattle Regional Office in 1973. That investigation resulted in a 1973 report which recommended that the Commission, pursuant to its authority under section 6(g) of the FTC Act,[1] regulate the sale of used cars through a system of required inspections by dealers, disclosure of defects, and mandatory warranties on parts found to be without defects.[2] Subsequently, at the Commission's direction, the staff of the Bureau of Consumer Protection in Washington, D.C. continued the investigation.

In 1975, during the pendency of the staff investigation, the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Magnuson-Moss Act") became effective.[3] In Title I of the

[1] 15 U.S.C. 46(g).

[2] Seattle Regional Office Used Car Analytical Programming Guide (September 17, 1973).

[3] Pub. L. 93–637 (Jan. 4, 1975), codified at 15 U.S.C. 2301 *et seq.*

Magnuson-Moss Act, Congress directed the Commission to initiate a rulemaking proceeding dealing with "warranties and warranty practices in connection with the sale of used motor vehicles." [4] This statutory directive expressly authorized the Commission to proceed under both Title I of the Magnuson-Moss Act and any other statutory authority available to the Commission.[5]

An Initial Staff Report by the staff of the Bureau of Consumer Protection was published in December 1975. In that report, the staff recommended that the Commission initiate a rulemaking proceeding.[6] The Initial Staff Report described warranty practices, as well as a variety of other practices related to the sale of used cars, that, in the staff's opinion, violated Section 5 of the Federal Trade Commission Act,[7] as well as Title I of the Magnuson-Moss Act.

In compliance with the congressional directive, the Commission, after reviewing the Initial Staff Report, published an Initial Notice of Proposed Rulemaking ("Initial Notice") on January 6, 1976.[8] The Initial Notice proposed a Trade Regulation Rule designed to remedy the allegedly unlawful practices through (1) a "window sticker" posted on each car disclosing warranty terms, warranty disclaimers, prior use of the vehicle, mileage, prior repairs, and dealer identification information; and (2) a specified form of warranty disclaimer to be used in "as is" sale contracts. Additional remedies suggested for public comment in the Initial Notice included disclosure of mechanical defect information and a "pre-purchase inspection opportunity" which would have given consumers the right to take a car to a third party for inspection prior to purchase.

The Commission amended the Initial Notice with the publication of additional questions for public comment in a May 21, 1976, Federal Register notice ("Second Notice").[9] These additional questions focused on whether dealers should be required to disclose known defects and to disclose whether or not each car had been inspected for defects. The questions also sought comment on the best format for communicating the disclosures to the consumer. Other questions published in this Second Notice asked whether the Vehicle Identification Number (VIN) should be added to the form and whether disclosures should be required in sales of used cars between dealers.

Following publication of the Second Notice, the staff attempted to focus public comment by preparing and circulating to interested parties a suggested format (in the form of a window sticker) [10] for the disclosures proposed in the Initial and Second Notices. A Final Notice establishing the dates and locations of public hearings, setting the final date for receipt of written comments, and designating issues for consideration in accordance with § 1.13(d) (5) and (6) of the Commission's Rules of Practice, 16 CFR 1.13(d) (5), (6), was published on September 15, 1976.[11]

Written comments on the Initial and Second Notices and on the suggested format were received through October 22, 1976. Numerous comments were made by consumers, used car dealers, dealers associations, consumer groups, state and local law enforcement officials, members of Congress, legal aid attorneys, auto rental and leasing associations, federal agencies and other interested parties. Books, articles, research reports, and interviews conducted by Commission staff were also submitted for the rulemaking record.[12]

Following the written comment period, public hearings were held in six cities from December 6, 1976, through May 4, 1977.[13] All witnesses were given an opportunity to make an opening presentation followed by cross-examination conducted by Commission staff and by designated representatives of used car dealers, the auto rental and leasing industries, and consumer groups.[14] Rebuttal statements were accepted after the hearings until August 31, 1977.[15]

The written comments, the materials placed on the record by the Presiding Officer and the Commission staff, the hearing transcripts and exhibits, and the rebuttal statements comprise the principal evidentiary record of this proceeding. After the receipt of rebuttal statements, reports to the Commission based on the rulemaking record were prepared by the Presiding Officer,[16] who made findings on the issues that had been designated by the Commission for the public hearings, and by the Commission staff,[17] who summarized and analyzed the record evidence and made recommendations to the Commission for a Trade Regulation Rule.

The Presiding Officer found *inter alia*, that many used car dealers misrepresent or fail to disclose material facts relating to the mechanical condition of used cars and the dealer's responsibility for making repairs after sale. The staff, after coming to a similar conclusion, recommended a revised Trade Regulation Rule which would have required mandatory inspection and disclosure of defects regarding certain mechanical and safety components of used cars. The revised rule would have also required disclosures of warranty coverage, repair cost estimates, prior use, mileage, availability of service contracts, vehicle identification information, and dealership identification information. These disclosurers were to be made on a "window sticker" attached to the side window of the used car.

Pursuant to § 1.13(h) of the Commission's Rules of Practice, 16 CFR 1.13(h), publication of the Final Staff Report initiated a sixty-day comment period which afforded the public an opportunity to comment on the reports

[4] 15 U.S.C. 2309(b).

[5] *Id.*

[6] Staff Report on the Used Motor Vehicle Industry: Proposed Trade Regulation Rule and Staff Memorandum (hereinafter cited as "Initial Staff Report"). The rulemaking record of this proceeding has been designated No. 215–54 in the Commission's Public Reference Branch. The Initial Staff Report and related documents are filed in category B of the record and are contained in volumes labeled 215–54–1–2.

[7] 15 U.S.C. 45.

[8] 41 FR 1089 (1976).

[9] 41 FR 20698 (1976). The publication of the Second Notice resulted from early comment criticizing the initial proposed rule.

[10] See Final Staff Report at Appendix D, *infra* n. 17.

[11] 41 FR 39337 (1976).

[12] The written comments and other written materials are filed in categories "C–M" of the rulemaking record and are contained in volumes 215–54–1–3 through 215–54–1–13.

[13] Hearings were held in Boston, Cleveland, Dallas, Los Angeles, San Francisco, and Washington D.C. The transcripts of the hearings were filed in Category "P" of the proceeding and are contained in volumes labeled 215–54–1–16.

[14] The designated representatives were Automobile Owners Action Council, San Francisco Consumer Action and California Public Interest Research Group; Car and Truck Renting and Leasing Association; American Automotive Leasing Association; and National Automobile Dealers Association.

[15] Rebuttal statements are filed in Category "Q" of the record and are contained in volumes labeled 215–54–1–17.

[16] Report of the Presiding Officer on Proposed Trade Regulation Rule For Sale of Used Motor Vehicles (16 CFR Part 455), May 22, 1978 (hereinafter cited as "Presiding Officer's Report"). Notice of publication of the Presiding Officer's Report was given on June 30, 1978. 43 FR 28521 (1978).

[17] Sale of Used Motor Vehicles, Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 455), September, 1978 (hereinafter cited as "Staff Report"). Notice of publication of the Staff Report was given on November 14, 1978. 43 FR 53729 (1978). Many of the citations in this statement are to the Staff Report, which recounts and summarizes the records evidence.

of the Presiding Officer and the staff. This comment period was originally scheduled to close on January 4, 1979. In order to allow additional time for comments, including comments on an FTC Bureau of Economics report placed on the record on January 5, 1979, the Commission extended the comment period for thirty days to February 13, 1979.[18]

On July 26, 1979, the staff's summary of post-record comments, memorandum recommending modifications in the proposed rule, and a memorandum from the Director of the Bureau of Consumer Protection outlining an alternative "optional inspection" rule were forwarded to the Commission. On September 25, 1979, the Commission heard oral presentation from selected rulemaking participants who had been invited to present their views directly to the Commission as provided in § 1.13(i) of the Commission's Rules, 16 CFR 1.13(i).[19] On October 11, 1979, the Commission met to consider whether to adopt a final rule, and if so, what form the rule should take. Although no final determination was made during that meeting, the Commission rejected the mandatory inspection approach recommended by staff and directed the staff to analyze an optional inspection rule.[20]

On April 4, 1980, the staff forwarded to the Commission a memorandum recommending adoption of an optional inspection rule. On May 16, 1980, the Commission met to consider the redrafted rule and, with certain modifications, tentatively adopted the staff recommendations.[21] The Commission further directed the staff to prepare a request for technical comment by the public on the likely effectiveness of the optional inspection proposal, the format and comprehensibility of the proposed disclosure form and any drafting errors in the text of the proposed Rule. Pursuant to § 1.14(a) of the Commission's Rules of Practice, 16 CFR 1.14(a), the Commission published the request for comment in the August 7, 1980, **Federal Register.**[22] Comments were accepted through November 7, 1980.[23]

On January 14, 1981, the staff forwarded to the Commission a summary of the technical comments and final recommendations for modifying the proposed optional inspection rule in light of those comments. A supplemental recommendations memorandum and revised summary of comments was forwarded by staff to the Commission on February 20, 1981. On April 14, 1981, the Commission met and determined not to adopt the "optional inspection rule." In its place, the Commission approved a Rule requiring, by means of a window sticker, the disclosure of warranty information and the disclosure of certain major defects known to the dealer at the time of sale. At the same meeting, the Commission directed the staff: to revise the list of defects that must be disclosed if known; to contract for consumer testing of the comprehensibility of the window sticker; to conform the text of the Rule to the concepts adopted in substance by the Commission; and to return the Rule and the Statement of Basis and Purpose to the Commission for promulgation.

On August 14, 1981, the Commission voted to promulgate a final Trade Regulation Rule Concerning the Sale of Used Motor Vehicles and publish a Statement of Basis and Purpose for the Rule.[24] On August 18, 1981, the Federal Trade Commission promulgated the final rule. [16 CFR Part 455 (1982)].

Section 21 of the FTC Improvements Act of 1980, 15 U.S.C. 57a–1 (Supp. IV 1980), gave Congress the power to veto a rule promulgated by the FTC if the Senate and the House of Representatives each adopted a concurrent resolution disapproving the rule within the time period provided in the statute. On May 18, 1982, the Senate passed Senate Concurrent Resolution 60 disapproving the Used Car Rule by a vote of 69–27. 128 Cong. Rec. Section 5402 (May 18, 1982). On May 26, 1982, the House of Representatives, by a vote of 286–133, joined the Senate in disapproving the FTC rule. 128 Cong. Rec. H2882–83 (May 26, 1982). Pursuant to 15 U.S.C. 57a–1, these actions constituted a veto of the rule. However, the legislative veto provision in Section 21 of the FTC Improvements Act of 1980 was held unconstitutional by the Supreme Court on July 6, 1983, *U.S. Senate* v. *FTC*, —— U.S. —— (1983), 103 S. Ct. 3556 (1983); *U.S. House of Representatives* v. *FTC*, —— U.S. —— (1983), 103 S. Ct. 3556 (1983). This decision invalidated the Congressional veto of the rule.

Prior to the Congressional veto, several parties sought judicial review of the rule in the United States Court of Appeals for the Second Circuit, *Miller Motor Car Corporation, et al.* v. *FTC*, 2d Cir. No. 81–4144. Pursuant to a stipulation by the parties in that proceeding, the court entered an order permitting withdrawal of these causes pending Congressional consideration of the rule. The order provided that the petitioners could reinstate the cases twenty days after any decision of the Supreme Court of the United States that has the effect of invalidating Senate Concurrent Resolution 60. On July 26, 1983, the lawsuit challenging the Used Car Rule was duly reinstated.

On August 9, 1983, the Commission determined that the rule would become effective six months after entry of a judgment by the court of appeals disposing of the reinstated petitions for review in *Miller Motor Car Corporation*. On the same date, the Commission determined to reexamine the rule to consider whether modifications are appropriate.

On August 16, 1983, petitioners in *Miller Motor Car Corporation*, filed a motion in the United States Court of Appeals for the Second Circuit seeking leave to make additional oral submissions and written presentations before the Federal Trade Commission. Pursuant to this motion and the Commission's own August 9, 1983, decision to reconsider the rule, the Commission entered into a joint stipulation with petitioners agreeing to a remand. On September 14, 1983, the court of appeals entered an order remanding the Used Car Rule proceeding to the Commission and granting the petitioners in *Miller Motor Car Corporation* leave to make additional submissions.

[18] 44 FR 914 (1979). These post-record comments are filed in Category "S" of the record and are contained in volumes labeled 215–54–1–19.

[19] The participants were: National Automobile Dealers Association; San Francisco Consumer Action and California Public Interest Research Group; National Independent Automobile Dealers Association; American Car Rental Association; Virginia Independent Automobile Dealers Association; Consumer Bankers Association; Automobile Owners Action Council; National Consumer Law Center; and American Imported Automobile Dealers Association.

[20] The Commission also eliminated from further consideration the staff's proposals for disclosure of prior use and mileage of used cars.

[21] The Commission directed the staff (1) to delete the requirement that a dealer give an estimate of the cost to repair any system marked "Not OK"; (2) to add a requirement that dealers disclose all known defects (in addition to those discovered during the course of an inspection); (3) to eliminate a disclosure relating to vehicles that had been declared a "total loss" by insurers; and (4) to include in the text of the Rule a list of the unfair or deceptive practices in accordance with *Katherine Gibbe School (Inc.) v. FTC*, 612 F.2d 658 (2d Cir. 1979).

[22] 45 FR 52750 (1980).

[23] The comment period was scheduled to close on October 7, 1980, but was extended to November 7, 1980, in response to requests from the National Automobile Dealers Association and the Center For Auto Safety. See 45 FR 66810 (1980). These comments are filed in Category "T" of the record and are contained in volumes labeled 215–54–1–20.

[24] 46 FR 41328 (1981). This Statement of Basis and Purpose supersedes the Statement of Basis and Purpose adopted with the 1981 Rule.

The order also required the Commission to: (1) Reopen the record with respect to 16 CFR 455.2(c) and related sections, dealing with disclosure of known defects, and any other issues that the Commission, in its discretion, might elect to consider pursuant to the **Federal Register** notice of August 9, 1983, and (2) provide all interested persons with notice of this action and an opportunity to submit comments and rebuttal thereto. Except for purposes of the remand, the court retained jurisdiction over the rule.

On December 16, 1983, the Federal Trade Commission published an invitation of public comment in the **Federal Register**, 48 FR 55784 (1983). This notice invited written public comments on the provisions of the rule requiring dealers to disclose known defects. The purpose of the comment period was to assist the Commission in determining whether these provisions should be modified or eliminated.

In addressing these questions, commenters were asked to place particular emphasis on information obtained (such as data bearing on costs or benefits of the rule or changes in state or local laws or regulations) since the closing of the original rulemaking proceeding on August 31, 1977. Commenters were also urged to submit their views on matters of policy concerning the defect disclosure provisions as to which no previous opportunity to submit comments has been provided.[25]

The comment period was scheduled to end on January 16, 1984, but it was extended to January 31, 1984. On March 2, 1984, the Commission announced a 20-day period for rebuttal submissions.

The National Automobile Dealers Association petitioned the Commission on January 31, 1984, requesting an extension of the comment period for 60 days to allow NADA to complete and submit a cost/benefit study. The Commission denied this request, stating that it would consider accepting the study when it was completed. NADA submitted the completed cost/benefit study on March 22, 1984. On April 3, 1984, NADA filed an errata submission correcting a calculation in the cost/benefit study. The Commission received the study and the errata submission as record documents. Because the NADA study presented an extensive analysis of the costs and benefits associated with the defect disclosure requirement, the Commission announced a 20-day rebuttal period to allow interested parties to respond to the study and the errata submission. This rebuttal period ended on May 14, 1984.

On July 10, 1984, the Commission tentatively adopted a revised rule that eliminated provisions requiring that dealers disclose known defects. In addition, the rule modified the wording and prominence of the disclosures on the window sticker. On July 31, 1984, the Commission announced a 30-day comment period seeking comments on technical issues concerning the tentatively adopted rule and substantive comments on the implications of a survey of used car buyers recently placed on the rulemaking record.[26] After careful consideration and review of the comments submitted during the recent comment and rebuttal periods as well as the original rulemaking record taken as a whole, the Commission has voted to promulgate a revised Trade Regulation Rule concerning the sale of used motor vehicles.

C. Description of the Industry

With new car prices steadily rising, the used car market has become an increasingly attractive source of personal transportation for consumers. Industry data show that three of every four used car purchasers in this country buy used cars as their primary form of personal transportation.[27] The used car market continues to expand over the new car market.[28] In 1979, two of every three cars sold in the United States were used. Consumers in that year spent $66.7 billion, including the value of trade-ins, in purchasing 18.5 million used cars from all sources.[29] Dealers retailed 10.48 million of those cars for total revenues of over $45 billion.[30]

1. Used Cars Purchased

The typical used car purchased in 1979 can generally be described as a $3,660 intermediate-sized sedan slightly under five years old with 29,000 miles on the odometer. Twenty-nine percent of all used cars bought were one year old or less, 34 percent were two years old, and 37 percent three or more years of age.[31] Average prices were $6,300 for the latest models, $5,000 for year-old cars, $4,000 for 2-year old models, and $2,900, $2,300, $1,800, $1,500 and $1,000 respectively for cars 3–7 years of age and older.[32] Average mileage of these cars at the time of purchase ranged from 9,900 miles for the newest models to 66,250 miles for the oldest.[33]

2. Used Car Sellers

Sales by dealers accounted for 60 percent of all used car sales in 1979. Some 21,000 franchised new car dealers who also sell used cars dominate the dealer share of the used car market and retailed about 7.8 million units, or 42 percent of all used cars sold in 1979. Their total revenues were $32.6 billion, almost one-half the total amount paid by consumers for all used cars.[34] Cars sold at these dealerships for an average price of $4,200 and had been driven an average of 21,200 miles at the time of purchase.[35]

Independent dealers selling only used cars usually retailed older, less expensive cars; in 1979, the average car sold by such dealers cost $3,700 and had 32,800 miles on the odometer.[36] With

[25] Although the Commission sought comments during the rulemaking proceeding on the general question of whether dealers should be required to disclose known defects on a window sticker [*See* 41 FR 20698 (May 21, 1976)], the Commission did not invite comments on the specific known defects disclosure provision that was included in the rule promulgated on August 14, 1981.

[26] A report on a National Survey of Private Buyers and Sellers of Used Automobile (Baseline Survey).

[27] Used Car Data, 1979 Hertz Corporation Poll, published in *Hertz News*, October 1, 1979, with additional data published on July 21, 1980 (hereinafter cited as 1979 Hertz Poll). 7/21/80 at 1. These data combine an analysis of 10-year used car sales data with the results of a 1979 Hertz national mail poll of used car buyers, internal Hertz data, and published industry figures. These publicly-issued studies have not been considered or relied upon by the Commission in making its decision to promulgate this Trade Regulation Rule; rather, this information is presented for illustrative, background purposes. While the Commission has not, therefore, considered the evidentiary value of these reports, the Commission notes that data from these studies have been cited by a major industry association in a post-record comment. National Independent Automobile Dealers Association (NIADA), T–742 at 4, 9.

[28] For example, in 1979, 10.3 million new cars were sold compared to 18.5 million used cars. See 1979 Hertz Poll, *supra* n. 27, Table IV.

[29] *Id.* Thirty-four percent of used car buyers traded in an older car when they bought one used in 1979. The value of trade-ins amounted to some 36 percent of the total market sales figures. *Id.* at 2. Other industry tabulations include only "net" payments to dealers, excluding trade-in value, and would therefore be significantly lower than the Hertz estimate.

The Hertz data also assume one transaction from driver to driver. For example, a car traded by a consumer to a dealer and subsequently resold to another private individual, even after several dealer-to-dealer title transfers, was counted as one transaction. The Hertz sales figures may therefore differ from other industry estimates that count the intermediate transfers as individual sales.

[30] *Id.*

[31] *Id.*, 7/21/80 at Table V. All dollar figures are rounded to the nearest $100. Thirteen percent of the cars were 7 or more years old.

[32] *Id.*

[33] *Id.* All mileage figures are rounded to the nearest 100. Intermediate-sized cars had the following average mileages: 1 year—13,200; 2 years—20,000; 3 years—30,000; 4 years—42,300; 5 years—51,600; and 6 years—58,600.

[34] *Id.* at Table III; Mitchell, National Automobile Dealers Association (NADA), Oral Presentation before the Commission, September 25, 1979, TR 5.

[35] *Id.* at Table V.

[36] *Id.*

unit sales of 3.3 million, their market share in 1979 was about 18 percent and total revenues were $12.6 billion.[37] There are some 36,000 independent used car dealers.[38]

Private sales to individuals at an average price of $2,835 accounted for the remaining 40 percent of used car sales in 1979.[39] These cars had an average of 36,999 miles on the odometer.[40] For purposes of this data, this category includes direct sales by fleet operators, such as government agencies, public utility companies, and lease-rental companies that periodically retail their vehicle fleets. Retail fleet operator sales to individuals comprised less than two percent of all used cars sold in 1979, although this category of used car seller is increasing.[41]

Commissioned sales agents are uniformly used in the industry by all but the smallest dealerships.[42] There is a high degree of movement of commissioned sales agents from dealer to dealer within the industry.[43]

3. Used Car Buyers

Compared to new car buyers, used car purchasers are typically younger—36 as opposed to 45 years of age—and their family unit earns less.[44] It appears from the statistics cited earlier in this section that many would-be new car buyers are seeking personal transportation from the used car market because of the lower cost involved.[45] Twenty-eighty percent of used car buyers in 1979 reported having professional or technical occupations and another 17 percent held managerial, official or proprietorship positions.[46] Some 15 percent of the used car buyers in 1979 who had previously purchased cars were in the used car market for the first time.[47] Sixty percent of used car buyers in that year financed an average of 69 percent of the purchase price, a figure which parallels the 61 percent new car transactions that are financed.[48]

Basis For a Rule

Our examination of the record in this proceeding convinces us that deceptive and unfair acts and practices are prevalent in connection with the sale of used cars. Consumers are frequently misled or deceived by affirmative misrepresentations concerning both the extent of warranty coverage offered by used car dealers and the mechanical condition of used cars. Moreover, consumers are harmed by dealers' failure to provide timely disclosure of "as is" sales or warranty terms. In the following section, we set forth a description of the used car industry and of the unfair and deceptive practices that the Commission seeks to address by the Trade Regulation Rule promulgated today.

A. Deceptive Practices in the Industry

The record in this proceeding demonstrates deceptive and unfair acts and practices by used car dealers. The principal abuses recorded relate to oral misrepresentations by dealers regarding: (1) Warranty responsibilities for after-sale repairs, and (2) mechanical condition at the time of sale. Such oral statements are often inconsistent with the warranty terms, or disclaimers thereof, provided in the written sales contract. Consumer injury occurs because consumers make purchasing decisions based on dealer deception, and not only fail to get the car they bargained for but face unexpected expensive repair bills.

1. Warranty Practices

a. *General Overview.* The record demonstrates the material significance to consumers of information concerning warranty coverage.[49] Nonetheless, many used car dealers mislead consumers into believing that they have broad post-purchase warranty coverage when in fact consumers receive limited or no warranty protection against repairs that may become necessary after the sale.[50] Frequently, dealers and their sales agents not only fail to disclose conspicuously the limited nature of their repair responsibility, but also orally misrepresent the extent of warranty coverage.[51] In many cases, dealers make verbal promises to repair defects after sale that are contradicted by final written contract terms disclaiming all repair responsibility.[52]

Abuses are particularly prominent in that portion of the used car market in which cars are sold with no warranty coverage or "as is." The record demonstrates that, in many "as is" sales, dealers regularly make oral representations of vehicle quality (condition) and warranty coverage (promise to repair after sale) that are not memorialized in the contract. Instead, those oral representations are contradicted by "as is" contract terms which enable dealers to renege on their oral promises legally.[53] Consumers, relying on these oral misrepresentations, often believe that they will receive more protection with respect to post-sale repairs than is actually provided. In fact, however, there is widespread failure by dealers to honor oral promises relied on by consumers in making purchasing decisions in both "as is" and warranted sales.[54] When dealers fail to honor their oral promises, used car buyers often face expensive and unexpected repair bills.[55] Such unanticipated repair bills occasionally result in loan default and vehicle repossession.[56]

b. *"As Is" Sales and Warranty Terms in the Marketplace.* A significant proportion of used cars are sold by dealers on an "as is" basis, with no written or implied warranty.[57] Two studies involving used car purchasers indicate that about half of all buyers purchase used cars with no warranty.[58]

---

[37] *Id.* at Tables III, V.

[38] Lemov, NIADA, Oral Presentation before the Commission, September 25, 1979, TR 84.

[39] 1979 Hertz Poll, *supra* n. 27, 7/21/80 at Table V.

[40] *Id.*

[41] *Id.* at 4.

[42] Vojtko, TR 4274; Bigham, TR 5274–77. Small dealerships are staffed solely by the owner.

[43] Warwick, TR 5363; Bigham, TR 5274–77. One sales agent who described these practices in detail had been employed at different times by 20 franchised dealerships since 1963. Warwick, TR [illegible].

[44] Family income averages $20,000 a year for used car buyers and $29,500 for new car buyers. 1979 Hertz Poll, *supra* n. 27 10/1/79, at 5.

[45] The Hertz data calculates that ownership and operating costs for the typical used car purchased in 1979, based on buyer expectations of 3 years and 30,000 miles of driving, are less than 24 cents a mile. The same costs for the average new 1979 model—a slightly-smaller, mid-range unit—are 36.5 cents a mile, about one-third more. *Id.*, 7/21/80, at 2. Used, standard-sized models can be less expensive to run than new, smaller cars because of the discounts available on them in today's market compared to the premium prices commanded by the smaller cars.

[46] *Id.*, 10/1/79, at 5. Another 33 percent were laborers, craftmen, or foremen; the remaining buyers reported their occupations as retired (5%), unemployed (4%), student (3%) or other (10%). *Id.*

[47] *Id.* at 2.

[48] *Id.* at 7. The Hertz Poll new car figure is based on a *Newsweek* Survey. Federal Reserve System Figures for 1977 show some 75 percent of new cars financed in that year.

[49] Staff Report at 291–305.

[50] See II.A.1.c(1) and (2) *infra.*

[51] *Id.*

[52] *Id.*

[53] Staff Report at 295–296 n. 96.

[54] *Id.* at 296–297 n. 96.

[55] In some extreme cases, these repair bills approach 20–50 percent of the car's selling price. *Id.* at 58–61, 299, n. 101.

[56] *Id.* at 300 n. 102. A legal aid attorney in Los Angeles testified that about half of the vehicle repossession cases with which he is familiar originated from dealers' failure to honor oral promises to repair in "as is" sales. Rouda, TR 3446.

[57] Used car dealers confirm the widespread use of "as is" sales. Many dealers reported selling cars exclusively on an "as is" basis or noted that a high percentage of used cars are retailed "as is." Some dealers testified that they rely on "as is" sales only for a small portion of cars sold and offer written warranties on newer models. Although most "as is" sales do involve older, generally cheaper cars, this is not necessarily so. A number of dealers suggest that any used car offered for sale may be sold "as is." Staff Report at 249–252 nn. 2–8.

[58] In the Survey Research Laboratory (hereinafter cited as SRL) study, *Beliefs and Experiences of*

Continued

"As is" sales have a significant legal impact on consumers. In most states that have adopted the Uniform Commercial Code (UCC), the contract terms "as is" or "with all faults" exclude the implied warranties of merchantability and fitness for a particular purpose that normally would arise in a used car transaction under state law.[59] As a result, dealers selling cars "as is" are not legally responsible, as a rule, for defects that exist at the time of sale or repairs that become necessary after the sale is completed.[60] The legal effect of "as is" sales assumes particular importance for consumers in used car transactions because of the parol evidence rule enacted in most states as part of the Uniform Commercial Code. Under the parol evidence rule, evidence of any oral agreement that contradicts the final written contract terms is excluded.[61] Thus, in the event of a dispute over the extent of the dealer's responsibility for post-purchase repairs, consumers generally cannot use evidence of oral promises to repair in order to establish dealer liability.

Because of the severe legal consequences of an "as is" sale, consumers who purchase "as is" and experience post-purchase repair problems constitute a large percentage of used car complainants. State and local law enforcement and consumer agency officials report that "as is" sales represent a substantial portion of their used car cases and complaints; and legal aid attorneys, representing low-income consumers, agree that most of the used car problems affecting their clients occur in "as is" sales transactions.[62]

The terms of written warranties given to used car buyers vary markedly in duration, coverage, and allocation of costs between buyers and sellers.[63] Warranty duration generally ranges from 30 days or 1,000 miles to 12 months or 12,000 miles, with the longer duration terms typically given for late model cars.[64] When warranties are given, most extend for a period of 30 days, regardless of vehicle age.[65]

The warranty coverage of vehicle components tends to vary even more widely than does warranty duration. Coverage rarely extends to all vehicle systems and components. Rather, protection typically extends to the "drive train" (engine, transmission, and rear axle), or to "safety" components in those instances where dealers are required to warrant their cars under state safety inspection laws.[66]

The warranty term that varies most widely relates to allocation of cost—the respective shares of total costs to be paid by the dealer and buyer for repairs that become necessary after sale. Some dealers give warranties covering 100 percent of the repair costs for the more expensive, late model cars.[67] However, "split-cost" coverage is far more representative of the written warranties associated with used car sales.[68] "Split-cost" involves shared responsibility by the dealer and buyer, each paying a stated percentage of total repair costs. Although the percentage split figures vary considerably,[69] many dealers indicate that a 30-day warranty with an even "50–50" cost allocation is most common.[70]

Percentage discounts, substantively the same as "split-cost" warranties, are also common cost allocation terms used by dealers in warranties. Generally, discount terms give the buyer a 10–25 percent reduction on the cost of parts and labor for repairs made by the dealer after sale.[71] Some dealers restrict the discount to parts only or to labor only.[72]

A number of dealers also report selling service contracts with their used cars. The terms of service contracts sold to buyers vary almost as widely as those of written warranties [73] and range in cost from under $50 to over $200.[74] Unlike warranties, service contracts are priced separately and are not included in the price of the vehicle.[75]

In sum, the record evidence reveals a broad range of warranty terms offered to used car buyers to protect against repair expenses that become necessary after sale. In addition, most written warranties given by dealers cover only a portion of repair expenses that may become necessary after sale.

c. *Dealer Deception.*

(1) "As Is" Sales.

By far the most common abuse evidenced in the record with respect to warranties is the frequent dealer practice of making oral promises to repair defects arising after sale that contradict the written "as is" clause in the sales contract.[76] Dealers often couple these promises with oral representations about mechanical condition.[77] Thus, the record is replete with examples of "as is" sales in which representations were made to the effect that a particular vehicle was in "good condition" and assurances were given to the consumer that "if anything goes wrong, just bring it in and we'll take care of it.[78] Representations as to mechanical condition are rarely, if ever, incorporated into sales contracts.[79] They

---

Dissatisfied Purchasers of Used Motor Vehicles, 52 percent of the responding buyers across the country reported receiving no warranty with their used car. HX 160(A), Appendix C, Question 21. In the study *An Investigation of the Retail Used Motor Vehicle Market: An Evaluation of Disclosure and Regulation* (hereinafter cited as Wisconsin Study), 43 to 55 percent of the sampled purchasers in Wisconsin, Iowa, and Minnesota bought their used cars "as is." HX 164(A), Table IV–20 at 30. Approximately half of the individual consumers who presented testimony in this proceeding complained of dealer practices involving "as is" sales. Staff Report at 252 n. 10.

[59] Uniform Commercial Code section 2–316(3)(a) states: (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty.

[60] *See generally* Staff Report at 483–486 for a full discussion of state laws relating to "as is" sales.

[61] Section 2–202 of the UCC states:

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of dealing or usage of trade (Section 1–205) or by course of performance (Section 2–208); and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

[62] Staff Report at 249–251.

[63] *See generally* Staff Report at 253–260. In the Wisconsin Study, for example, 75–82 percent of Wisconsin dealers surveyed varied their warranties according to vehicle age, condition, and price. HX 164(A) at 44 and Table V–4, Question 4.

[64] Staff Report at 254 nn. 14–15.

[65] *Id.* at 255 n. 16.

[66] *Id.* at 255–256 nn. 17–18. A representative of the Center for Auto Safety, who surveyed dealer practices in Cleveland, Dallas, and Washington, D.C., by means of "test shoppers," observed that the "drive train" limitation was the most common restriction on 30-day warranties offered by the dealers surveyed. Wilka, TR 6458–59. However, coverage even under this type of restricted warranty may vary. One state official noted that the most popular warranty observed in Connecticut was a "drive train" warranty that covered only the "rear end" (i.e., differential and rear axle) and transmission. Simmons, TR 540.

[67] Staff Report at 257 n. 21.

[68] *Id.* at 257–260 nn. 22–29.

[69] *Id.* at 59–60 nn. 27–29.

[70] *Id.* at 258 nn. 23–24. The 30-day, 50/50 warranty was offered 25–40 percent of the time by dealers surveyed in the Wisconsin Study, for example—more than any other. HX 164(A) at Table V–4. Thirty-five percent of all dealers surveyed in Dallas, Cleveland, and Washington, D.C., by the Center for Auto Safety offered test shoppers a 30-day, 50/50 warranty. Wilka, TR 6458.

[71] Staff Report at 259 n. 25.

[72] *Id.* at 259, n. 26.

[73] *Id.* at 260–261, n.30.

[74] *Id.*

[75] *Id.*

[76] Presiding Officer's Report at 46–47, 125; Staff Report at 275–277, 286–287.

[77] Presiding Officer's Report at 125; Staff Report at 275–276.

[78] Staff Report at 276–277 n.85.

[79] Presiding Officer's Report at 47.

are, instead, almost always restricted to oral statements made during the bargaining process.[80]

As a result, used cars buyers with little or no mechanical condition information [81] about particular vehicles have been assured by salespersons of the quality of the vehicle they are buying. They often purchase "as is" and, by direct misrepresentation or inference, are led to believe that the seller will correct defects discovered after sale. Later, when defects are discovered and the buyer returns to the seller seeking repairs, he/she learns not only that the assertions about mechanical condition are untrue, but also that his/her sales contract fails to hold the seller responsible.[82] Thus, consumers purchasing "as is" but relying on contradictory oral promises are stripped of the protection afforded by either express [83] or implied warranties and, at the same time, have no legal recourse against the dealer because prior or contemporaneous oral statements that contradict final written contract terms are generally not legally binding.[84] Evidence in the record demonstrates that this predicament occurs frequently in the used car market [85] and is often cited as the chief problem in used car sales.[86]

Several dealer practices lead to the situation described above. First, dealers commonly fail to provide adequate written definitions as to the real meaning of an "as is" sale.[87] Rather, when explanations are forthcoming, they typically take the form of oral statements relating a variety of plausible excuses as to why the vehicle can only be sold "as is". Thus, consumers are told that the vehicle's age, or mileage, or low selling price demand that the sale be on an "as is" basis.[88]

In light of these dealer practices, it is not surprising that a significance portion of used car buyers do not understand the legal significant of the phrase "as is." [89] In three studies of used car buyers, from 25 percent to as many as 59 percent of the persons surveyed failed to identify a correct description of an "as is" sale or mistakenly believed that the seller, or the seller and buyer jointly, would be legally responsible for repairs after sale.[90] These buyers were responding to hypothetical questions posed after sale. However, the widespread lack of basic consumer understanding about "as is" sales or implied warranties is corroborated in the record by legal aid attorneys, state and local officials, consumers, and consumer groups across the country, and even by some dealers.[91] Many of these same witnesses reported that used car buyers often believe, erroneously, that "as is" means "as it appears to be," referring to visible or known defects (like body rust or dents) as opposed to latent defects, or "as equipped," referring to vehicle accessories already installed. Indeed, the evidence demonstrates that a great many consumers who buy "as is" erroneously believe their cars are warranted in some manner—that the dealer will fix problems arising after sale—despite the written "as is" contract clause.[92]

It has been suggested that consumers' mistaken beliefs about warranty coverage in "as is" sales may be caused in part by their lack of experience in purchasing cars and by their general marketplace belief that sellers stand behind their products.[93] While this may provide a partial explanation, the record taken as a whole supports the finding that consumers' misunderstandings about their after-sale repair responsibility in "as is" sales stem primarily from deceptive practices by used car dealers and their sales agents.[94]

(2) Written Warranty Coverage.

Despite the crucial role that warranty information could play in used car purchasing decisions, many used car buyers who receive written warranties are unaware of their actual liability for repairs that may become necessary after sale.[95] The record further establishes that certain dealer practices lead to consumer misunderstandings regarding written warranty terms. Discrepancies between oral representations of the warranty coverage made while the consumer is first considering purchase and actual written warranty terms are commonplace.[96] Typically, purchasers who receive written warranties believe that more is warranted than is the case.[97] Oral representations of a "full 100%/30-day" warranty, for example, often turn out in fact to be limited "drive train" warranties (engine, transmission, and rear axle) or simple percentage discounts on labor or parts.[98] One consumer stated that an oral 6-month unconditional warranty was contradicted by the written 30-day warranty received.[99] Another consumer stated that an oral 90-day warranty promise was in fact a 30-day warranty.[100] Another consumer stated that oral representations made during the sales pitch differed from the actual terms of the $185 service contract received.[101] In one study, verbal assurances given by dealers differed from the actual written warranties in 34 percent of the situations where "test shoppers" were able to see a written warranty.[102] Consumers typically rely on these inaccurate verbal warranty descriptions in making purchasing decisions.[103]

As a result of these dealer practices at the time of sale, used car buyers are typically unaware of the actual terms of the written warranties they receive.[104] Thus, consumers rarely have a complete picture of the true cost of a used car purchase and often have a false impression of the dealer's actual after-sale repair responsibilities. The misrepresentations described above cause consumers to expand substantial sums of money for post-sale repairs which they are led to believe will be paid for by the dealer.[105]

d. *Dealer Unfairness.*

Many used car dealers also fail to provide clear, conspicuous, and timely written disclosure of the meaning of "as is." Many "as is" disclosures are couched in complex, legalistic terms which neither explain the meaning of "as is" in understandable language nor inform the buyer that the dealer is not responsible for any repair after the sale is final.[106] Other "as is" disclosures oversimplify the true meaning of an "as is" sale by merely stating that the vehicle is sold "As Is," or "As Is—With All Faults." [107]

Some dealers also do not conspicuously disclose the "as is" clauses in the sales contract nor present the clause to the consumer in a timely manner. Instead, disclosures generally are not made until the consumer is already committed to the purchase and is faced with a series of documents to sign in rapid order and in a pressured environment.[108]

As in the case of "as is" disclosure, dealers frequently fail to provide clear, conspicuous and timely disclosure of warranty terms. In many cases involving written warranties, dealers fail to disclose actual limitations and restrictions on coverage when orally describing warranty coverage, so that consumers are left confused about the extent of warranty coverage on the car. A used car salesman testified, for example, that dealers he knew of or worked for in California gave buyers "50/50 warranties" without explaining what that coverage actually meant.[109] In another study, warranty documents received by a large precentage of survey respondents failed to describe the items that the dealer would repair; the dealer's share of repair cost responsibility was also frequently not disclosed.[110] One legal aid attorney stated that most of his clients did not understand the meaning of a split-cost, 50/50 warranty.[111] Several consumers stated that, at the time of purchase, they were not aware of the terms of the warranty.[112]

Frequently dealers obscure the need for full warranty information disclosure by answering consumers' initial inquiries about warranty coverage with such generalities as "good warranty" or "full guarantee," with no further explanation of terms.[113]

Dealers also often fail to give the buyer copies of the written warranty until after the sales contract has been signed. A consumer group representative testified that, in a study of dealer practices conducted in Cleveland, Dallas, and Washington, D.C., detailed warranty information was given to the "test shoppers" (posing as consumers) only after persistent questioning.[114] In fact, potential buyers are usually not introduced to written warranty disclosures until after they have decided to buy and the sale is about to be finalized.[115] As the transaction is concluded in the pressured atmosphere of the dealer's "closing room," [116] it is not surprising that consumers often fail to see or fully comprehend specific warranty terms.[117] The record establishes that copies of written warranties are rarely received by consumers before they enter the closing room.[118] At times the document is not provided until after the buyer signs the sales agreement.[119] In some instances, warranty documents are not provided to consumers at all.[120]

The Commission finds that, although the failures to disclose described above are not generally deceptive, such practices are unfair in violation of section 5 of the FTC Act. When dealer representations lead buyers to believe that warranty coverage is other than it in fact is, or that a car is sold with a warranty when it is not, the failure to disclose the true state of affairs constitutes deception. Failure to disclose

---

[80] *Id.*

[81] Staff Report at 83–84 n.75.

[82] *Id.* at 274–280.

[83] The "as is" clause also contradicts express, oral representations concerning mechanical condition made during the bargaining process. Thus, it serves to negate express oral warranties as well as implied warranties.

[84] See II.A.1.b. *supra.*

[85] Staff Report at 295–300.

[86] *See, e.g.*, Wolkowitz, Legal Aid, HX 150 at 2; Epstein, Legal Aid, HX 166 at 2.

[87] For example, dealers are all too often silent about the meaning of "as is." When comments are made, they are usually in response to consumers' questions. When consumers who already thought they knew the meaning of "as is" were queried as to the basis for their "as is" knowledge, 82 percent said they already had this knowledge. Only 18 percent reported that the salesperson explained the meaning of "as is." National Analysts Inc., *Report on a Survey of Buyers of Used Cars* (hereinafter cited as National Analysts Study) HX 162(A), Table 19 at T1.

[88] *See, e.g.*, Baker, consumer, TR 466–67, 472 (salesmen said they could not warrant a car selling as cheap as $1,400, but that consumer would not run into any problems); McCalip, dealer, TR 6918–19 (dealer tells the consumer the car is now "as is," "that's why you're getting a lower price"); Warwick, salesman, TR 5373 (salesman will "talk his way around" the "as is" by saying that the car would cost more with a warranty); Brauchli, local official, TR 3607–08, 3630–31 (if dealer does explain, he will offer the buyer a "special deal", representing that "as is" is merely to protect the dealership, "but for you we'll stand behind the car").

[89] Presiding Officer's Report at 124; see II.A.1.b. *supra.* Some dealers believe that consumers do understand the meaning of "as is" but conveniently forget when problems arise. *See, e.g.*, Corkhill, dealer organization; C–23 at 12. However, other industry members recognized that a most frequently expressed complaint on the rulemaking record relates to lack of understanding on the part of consumers of what an "as is" sale means and that a contributing factor to that lack of understanding is dealer misrepresentation. NIADA, S–739 at 82–83.

[90] Wisconsin Study, HX 164(A) at 13; National Analysts Study, HX 162(A), Table 18, at 21; SRL Study, HX 160(A), Appendix C, Question 14 and accompanying table. *But see* Table 11 of the Baseline Survey showing that approximately 90 percent of both Wisconsin and non-Wisconsin consumers understood the meaning of an "as is" sale. The data do not raise serious questions about the need for an "as is" disclosure because, in the Commission's view, consumer deception relating to "as is" sales is probably caused more by the dealer's misrepresentations or failure to disclose that a particular car is being sold "as is" than by lack of general consumer understanding of the meaning of "as is". Moreover, as Table 15 of the study demonstrates, Wisconsin consumers were more likely to understand the dealer's post-sale repair responsibilities than were their counterparts in the rest of the country. This difference probably resulted from the "as is" and warranty disclosures mandated by the Wisconsin law.

[91] Staff Report at 283–284 n. 37; 290 n. 90.

[92] *Id.* at 279–280 n. 69. In addition, 28 percent of the responding used car buyers in the SRL Study who learned after sale that they had actually bought "as is" mistakenly believed, or were not sure, at the time of sale that their cars were warranted. HX 160(A), Table 12 and accompanying text at 2–24, Appendix C, Question 20.

[93] *Id.* at 280 n. 69.

[94] Presiding Officer's Report at 128. See nn. 78–83 and accompanying text *supra.*

[95] *See generally* Staff Report at 281–285, 278–281, and 288–290.

[96] *Id.* at 286 n. 84.

[97] *Id.* at 286 n. 86. In the Wisconsin Study, for example, a much greater proportion of Wisconsin consumers reported receiving 30-day, full coverage warranties than Wisconsin dealers reported giving them. *Id.* at 289, Table 1.

[98] *Id.* at 287 n. 85.

[99] Clifford, L–1134 at 1.

[100] Gash, L–1016 at 1.

[101] Kersey, TR 5636–40.

[102] California Public Interest Research Group, *A CALPIRG Study: Practices in the Used Motor Vehicle Industry* (hereinafter cited as "CALPIRG Study"), HX 82 at 17.

[103] Staff Report at 275–277 n. 66; 286–287 nn. 84–86.

[104] *Id.* at 281 n. 71.

[105] Presiding Officer's Report, "Findings on Issue 6," at 128.

[106] McCalip, dealer, TR 6918. See also Brown, dealer organization, HX 80 at 10 (dealers' written statement disclaiming warranties verbal sales representations which is signed by the buyer at the time of sale). *Cf.* Rothschild, legal aid, TR 3190 (unclear warranty disclaimers are among primary problems); Alpert, legal aid, J–17 at 3 ("as is" disclosures are technical). Whether the language suffices as an effective disclaimer under state law is, of course, a separate issue. Indeed, Comment 4 to UCC section 2–313, governing express warranties, makes it clear that a seller cannot negate responsibility for express warranties simply by inserting a clause in the contract "generally disclaiming all warranties, 'express or implied'." Such a clause, the comment states, "cannot be given liberal effect under § 2–316" (Exclusion or Modification of Warranties).

[107] Stine, state official, TR 4361 (occasionally sees a big "as is" stamped at the top of used car contracts with a 50/50 guarantee on brakes and shocks); Friedman, state officials, TR 4472–73 (typical disclosure in Colorado is "this car is being sold on an 'as is' basis"); Goldinger, local official, TR 3554 (current "as is" language in all contracts fails to inform consumers of the limitations of their rights); Fan, legal aid, TR 4130 (Dealers use standard form contract with large "as is"); Sugarman, Dealer, TR 4089 (consumer signs slip of paper stating that the sale is "as is").

[108] Although some dealers profess diligence in disclosing the "as is" nature of the sale, the record demonstrates that when this is so, it is typically after the consumer has decided to buy, or the disclosure is vague, inconspicuous, or incomplete. The most common "as is" disclosure practice evidenced in the record is that potential buyers are not introduced to the "as is" clause, if it is recognized at all, until the sale is about to be finalized. Typically, the buyer is shepherded into the "closing room." (a term used throughout the hearings to denote the room or place, typically within the dealer's place of business, where the potential buyer is taken to discuss the details of the transaction) where he or she is handed a number of documents to simultaneously read, digest, and sign and where the final selling price and financing terms, if any, are determined. Consumers, already emotionally committed to the purchase and anxious to close the deal, often fail to read each document thoroughly. Unless their attention is specifically directed to it, buyers do not see or fully comprehend the "as is" clause disclaiming all warranties. Staff Report at 285–286.

[109] Bigham, TR 5269.

[110] SRL Study, HX 160(A), Appendix C, Questions 23A, 23B. See also Staff Report at 283, n. 75; 285–286, nn. 79–83.

[111] Berry, TR 132–133.

[112] *See, e.g.*, Morrison, L–1068 at 2; Kersey, TR 5636; Carr I–80 at 1; Holliday, I–164 at 1.

[113] Staff Report at 285 n. 80.

[114] Wilka, TR 6457.

[115] SRL Study, HX 160(A), Appendix C, Question 22; Staff Report at 286 n. 42; 282 n. 72.

[116] See n. 90 *supra.* See also Staff Report at 282, n. 73; 538–539.

[117] *Id.* at 268 n. 47; 283, n. 74.

[118] *Id.* at 285 n. 82.

[119] *Id.* at 286 n. 83. Sixteen percent of the used car buyers responding in the SRL Study reported receiving the warranty sometime after signing the contract. SRL Study, HX 160(A) at Appendix C, Question 22.

[120] Staff Report at 284–285 n. 79.

information material in light of other representations also constitutes deception.[121] Absent any dealer practice that leads consumers to expect certain coverage, however, the failure to provide timely and complete information to consumers about important contract terms may cause substantial consumer injury, that consumers cannot reasonably avoid through the exercise of consumer choice, without offsetting benefits to consumers or competition. In such circumstances, the failure to disclose is unfair, but not deceptive.

The record clearly establishes that substantial consumer injury occurs as a result of dealers failing to disclose the meaning of "as is" or failing to disclose warranty terms. As discussed above, liability for post-sale repairs is a material factor in consumer purchasing decisions. Moreover, unexpected liability often causes consumers to be faced with expensive and unexpected repair bills.[122] Information regarding liability for post-sale problems is particularly important because dealers generally know more about the condition of the car than do consumers.[123] Moreover, the Commission discerns no benefits flowing from the practice of failing to provide timely disclosure of the dealer's responsibility for repairing post-sale problems except that dealers avoid the cost of making the disclosure. We believe, however, that the cost of providing such disclosures will be minimal.

We also conclude that consumers cannot reasonably avoid, through free purchase decisions, the injury caused by the dealer's failure to disclose its post-sale repair responsibilities. Information about the warranty terms offered or the fact that a particular car is being sold "as is" can be obtained only from the dealer. The record establishes that copies of the sales contract containing an "as is" clause or the terms of the written warranty are typically received by consumers in the "closing room" after the psychological decision to buy has been made.[124] The record further reveals that the sales contract containing the "as is" clause and the written warranty are often couched in complex, legalistic terms which most buyers cannot readily understand.[125] When consumers receive these documents along with many other sales documents in the "closing room," where there is little opportunity to consider all documents carefully.[126] In sum, the record shows that information which is essential to an informed consumer choice is not being effectively made available. Since the principal thrust of our consumer unfairness standard is to ensure that sellers do not harm the free exercise of consumer sovereignty or consumer choice, this conduct is unfair within the meaning of the FTC Act.

2. Mechanical Condition Practices

a. *Materiality of Mechanical Condition Information.* The utility of a vehicle as a means of transportation is directly affected by its mechanical condition. Therefore, it is not surprising that consumer research indicates consumers' consistent concern about mechanical condition.[127] In fact, mechanical condition at the time of sale is reported by consumers as the most important factor in reaching a purchasing decision.[128] Consumers who are aware of mechanical condition prior to purchase are able to use that information in pricing and selecting vehicles, as well as in budgeting for repair expenses. For example, record surveys indicate that consumers who had potential used car purchases inspected prior to purchase made significant use of inspection results in subsequent bargaining for repairs and price reductions or in making purchasing decisions.[129]

Mechanical condition information is also important because needed repairs resulting from hidden defects are costly to consumers. The rulemaking record demonstrates this fact. The Northern California Auto Club's diagnostic records showed 1,000 defects in 160 vehicles taken from dealers' lots to the diagnostic center by consumers considering purchase. The average estimated cost per vehicle for the repair of defects present was $162.80.[130] The Missouri Auto Club records showed an estimated average repair cost of $235.64 per car with 312 defects present in the 56 vehicles it surveyed.[131] In the National Analysts Study, consumers reported costs for defects repaired and estimated costs for defects which surfaced but remained unrepaired.[132] Actual repair expense ranged from a few dollars to $1500, with the average at $109. The average estimated costs for repairs not completed was $98. The Survey Research Laboratory Report also computed actual and estimated costs of repair.[133] Because this study received data only from complaining respondents, actual and estimated repair costs were significantly higher on a per vehicle basis. Estimated performed repair costs averaged about $350 per vehicle. In addition, respondents faced future repair costs (repairs yet to be performed) which were estimated at approximately $275 per car.

The great bulk of repair cost is borne by the purchaser.[134] Moreover, out-of-pocket costs caused by defects often go beyond the cost of repairs. Purchasers of defective vehicles can lose their only form of transportation, a loss which may lead to other dislocations, including missed work and loss of wages.[135] Other costs may be incurred when safety-related defects cause or contribute to accidents that damage property and cause personal injury or death.[136] The impact on the poor from the purchase of a defective used vehicle may be particularly severe, since an unexpected repair bill may seriously disrupt an already strained budget.[137]

Therefore, the Commission finds that mechanical condition information is material to the used car transaction. Dealer misrepresentations regarding mechanical condition are therefore deceptive acts and practices.

b. *Deception Concerning the Mechanical Condition of Used Cars.* The record demonstrates that misrepresenting a car's mechanical condition is a common dealer practice.[138] Record testimony and

[121] See Ward Lab., Inc. 55 F.T.C. 1337 (1959), *aff'd* 276 F.2d 952 (2nd Cir.), *cert. denied* 364 U.S. 827 (1960).

[122] *Id.* at 298–297 n. 98.

[123] See Section IV.A.1.a *infra.*

[124] Staff Report 261–290.

[125] *Id.* at 288–284.

[126] *Id.* at 282–286.

[127] National Analysts Study, HX 162(A) at 8–9; Wisconsin Study, HX 164(A) at 16–17.

[128] Wisconsin Study, HX 164(A) at 16–17 and Table IV–1.

[129] Northern California Auto Club, HX 116(A) at 5–7; Missouri Auto Club, HX 158(A) at 5–7; Staff Report at 68 n. 54. *See also* Wisconsin Study, HX 164(A) at Tables IV–16, IV–17.

[130] HX 116(A) at 3–5; TR 4606–07.

[131] HX 158(A) at 4–5; TR 6628–29.

[132] HX 162(A) at 34–36. Respondents reporting defects (136 out of 400) were asked to provide actual and projected repair costs.

[133] SRL Study, HX 160(A) at 12.

[134] Seattle Regional Office Study, B–1 at 31; National Analysts Study, HX 162(A) at 34; Wisconsin Study, HX 164(A) at Table-IV-19. See also Baer, consumer organization, TR 3665; Baron, legal aid, TR 3911; Nowicki, state official, TR 2667–69; Newcomb, legal aid, J–74 at 1.

[135] Staff Report at 64 n. 49.

[136] *Id.* at n. 50.

[137] *Id.* at 64–65.

[138] Staff Report at 103 n. 102. One salesman testified that some dealers purposefully kept their sales staff ignorant about known defects to assure that salespeople would present the car for sale in a positive manner. Bigham, TR 5274–77. Some dealers, disputing that they engage in affirmative misconduct, state that they have difficulty

Continued

documentary evidence regarding such misrepresentations are supported by data reported in several studies. In one study, complainants reported that sales agents commonly made general statements about the overall quality of the car. These statements were coded as very favorable in 34 percent of the cases, favorable in 56 percent, and neutral in the remaining 10 percent. Only 2 of the over 800 respondents reported that the salesman made a negative comment.[139] Complainants were also asked if any specific representations were made about different vehicle components, and responses to this question were cross-tabulated against reported defects. The study found that where a specific component had been represented as being in good condition, the complainant was more likely to have had a problem with that component than if no specific positive comment had been made.[140] This finding suggests that defects have been hidden behind contradictory oral statements.[141]

In the National Analysts Study, consumers reported that dealers discussed mechanical condition in about three-quarters of the cases and nearly always described it as good or very good.[142] These descriptions were later thought to be inaccurate 13 percent of the time.[143]

The National Analysts Study also correlated defect discovery data with disclosure practices data. The correlation revealed that consumers encountered greater post-sale defect problems when the salesperson remained silent with regard to defects than when he or she did disclose defects.[144]

The Wisconsin Study provided additional data on the accuracy of dealer representations by comparing representations of mechanical condition made by dealers and private sellers. With regard to general mechanical condition, 17.1 percent of the consumers surveyed reported inaccurate information from the dealer compared to 9.4 percent who reported receiving inaccurate information from private sellers.[145]

The Missouri and Northern California Auto Club Studies provide additional data on the accuracy of sales representations. In these studies, respondents were asked whether, before the consumer's Auto Club inspection, the salesman had said anything about the condition of each system in which the Auto Club subsequently found a problem. Out of a total of 1,312 defects discovered by the inspection, only 87 were discussed in any manner by a salesman.[146] Of the 87 defective components discussed, 14 had been described by the salesman as being in good condition, 12 had been described as "probably allright" and 60 had been described as being in need of repair.[147]

The possibilities for deception in the used car market were described by Stanley Hoynitski, who testified on behalf of the Pennsylvania Automobile Dealers Association.

> The used car business is a natural business for some unscrupulous businessmen. . . . The nature of the motor vehicle, with its many thousands of internal parts, makes it highly susceptible to hidden defects, known or unknown to the seller. There is need to protect the consumer from these unscrupulous dealers who I acknowledge have crept into the [used car] business.[148]

One factor which facilitates a dealer's ability to make general representations about the quality of a used car without questioning by consumers is the general industry practice of appearance reconditioning known as "detailing."[149] After dealers obtain vehicles, they routinely engage in detailing, whereby the vehicle's interior, exterior, trunk, and engine compartment are thoroughly cleaned in order to enhance the car' saleability.[150] Because many consumers rely on appearance cues in estimating a vehicle's mechanical condition, consumer injury can result when detailing obscures poor mechanical condition. That consumers think an attractive car is also sound mechanically is well-established in the record through testimony and documentary evidence.[151] Furthermore, survey data demonstrate that consumers judge a car's mechanical condition based on appearance cues and think that "clean" cars are in substantially better mechanical condition than cars described as being somewhat less attractive.[152] Another study shows that dealers identify "exterior condition" as the most important factor affecting a consumer's purchasing decision.[153] Therefore, it is not surprising that dealers invest heavily in detailing. One dealer association official stated that his membership spent an average of $53 per car on appearance work.[154] Regardless of whether "detailing" is used solely to make the car more marketable or to disguise poor mechanical condition, the practice of detailing contributes to the persuasiveness of dealer representations that a car is in sound mechanical condition when such is not the case.

c. *Consumer Reliance on Dealer Representations and Injury.* The record clearly demonstrates the existence of a substantial information disparity between the buyer and seller in the used car market relating to the mechanical condition of used cars.[155] Used motor vehicle purchasers do not have at their disposal, as a general rule, information sufficient to arrive at an informed buying decision. Insofar as mechanical condition is concerned, consumers are dependent, with rare exception, on the seller's representations to inform them of mechanical condition.[156] The record also shows that many purchasers base their assessments of the condition and value of a particular vehicle on dealer oral representations and on the physical appearance of the car.[157] The record shows that consumer injury results from buyer reliance on oral representations and promises by the seller which are inconsistent both with the actual condition of the car as known to the dealer and with the terms of the written contract. Moreover, representations as

controlling oral representations made by salespeople. *See, e.g.,* Vojtko, TR. 4274; Jones, C–56 at 3.

[139] SRL Study, HX 160(A) at 13.

[140] *Id.* at Table 7.

[141] This finding may, to some extent, have resulted from consumers' propensity to remember the sales agent's representations about a particular component more clearly if they had a problem with that component.

[142] HX 162(A) at Tables 13 and 14.

[143] *Id.* at Table 15. We note there is no basis for inferring that the dealer knew the information was inaccurate.

[144] *Id.* at Table 25.

[145] HX 164(A) at Table IV–4.

[146] Northern California Auto Club, HX 116(A) at 4–5; Missouri Auto Club, HX 158(A) at 4–5.

[147] Since one respondent did not respond, there were a total of 86 responses rather than 87.

[148] Hoynitski, dealer organization, TR 6037.

[149] The Commission does not hold that "detailing" in and of itself is deceptive. However, as described herein, detailing can lend credence to oral misrepresentations.

[150] Staff Report at 97–98 n. 94.

[151] *Id.* at 99 n. 95.

[152] *Id.* at 100–101 nn. 96, 97.

[153] Wisconsin Study, HX 164(A) at 43.

[154] Nagel, dealer organization, TR 4108.

[155] Presiding Officer's Report at 90–92; Staff Report at 83–97.

[156] Presiding Officer's Report at 90, 128.

[157] Staff Report at 118–122. The record does show that a minority of consumers obtain third-party inspections by independent mechanics. *Id.* at 93–95, 119–120. The record contains conflicting evidence as to whether such inspections are allowed throughout the industry. Dealers and others asserted that inspection opportunities are currently available to consumers. *Id.* at 87. However, the record demonstrates that off-premises inspections are not allowed on a regular basis. *Id.* at 89. Thus, in the current state of the market, consumers obtain little information about the mechanical condition of a prospective used car purchase from any source other than the dealer.

to the mechanical condition are seldom, if ever, incorporated into sales contracts. They are restricted almost entirely to oral statements made by the dealer during the selling process and, thus, are unenforceable should the consumer attempt to sue to recover damages for dealer misconduct.[158]

Based on the evidence in the rulemaking record, the Commission finds that many used car dealers have knowingly misrepresented the mechanical condition of the cars they sell and thereby cause substantial injury to consumers.

B. Prevalence Of Unfair and Deceptive Acts and Practices in the Marketplace

In assessing the prevalence, or frequency, of unfair and deceptive practices occurring in the used car industry, the Commission has examined a number of factors. These include the number of consumer complaints reported to the Commission and to state and local agencies; documentary evidence such as written warranties and warranty disclaimers used by dealers in used car transactions; testimony offered by state and local law enforcement officers, consumer agency officials, legal aid attorneys, consumer group representatives, individual consumers, used car dealers, present and former used car sales agents, mechanics and automobile repair instructors; and empirical studies of used car dealer practices, the mechanical condition of used cars on dealers' lots, and used car buyer attitudes and beliefs. This evidence is set forth in detail in section II.A. above, and establishes that many dealers misrepresent or fail to disclose material facts concerning the terms and extent of warranty coverage and the mechanical condition of cars at the time of sale.

In recent years approximately ten million used cars have been purchased annually from the nation's 60,000 used car dealers.[159] These dealers, as an established business practice, make oral representations concerning warranties and mechanical condition. The record demonstrates that many dealers or their sales agents make oral promises to repair after sale which are contradicted by "as is" warranty disclaimers or other written contract terms. Additionally, many dealers fail to inform consumers prior to purchase of limitations on warranties provided to them or of the meaning of key terms in the purchase contract (e.g., the "as is" clause). In those cases where warranty coverage is disclosed before the sale is consummated, it is typically in the pressured atmosphere of the "closing room", where consumers' full understanding of contract terms is thwarted. Consumers unexpectedly learn the full extent of their repair responsibility when dealers fail to honor these oral promises or when discrepancies between verbal and written warranties are discovered after sale.[160]

Moreover, the record demonstrates that many dealers also misrepresent the mechanical condition of the cars offered for sale. Several studies in the record demonstrate that dealer representations of condition at the time of sale are inconsistent with consumer perception of the condition of the car immediately after the sale.[161]

In the face of repeated testimony concerning the large number of used car complaints filed by consumers with consumer agencies or legal aid offices and record studies, some dealers and dealer organizations argue that the number of valid consumer complaints about used cars and used car dealers is insignificant when compared to the total volume of used cars sold.[162] The National Automobile Dealers Association (NADA) concludes that the National Analysts Study provides evidence that unfair and deceptive sales techniques are not prevalent in the used car industry.[163] Accepting the data that demonstrate 13 percent of the respondents in that study received inaccurate information, NADA concludes that the 13 percent deceptive rate figure does not establish prevalence.[164] Assuming approximately 10 million sales by used car dealers per year, a 13 percent deception rate would suggest a possible 1.3 million incidences of deception per year.[165] Data from the Wisconsin Study, cited by NADA,[166] demonstrate that 20.8 percent of the responding consumers report misrepresentation by dealers of mechanical defects.[167] The Commission believes that these record studies reveal a widespread occurrence of deceptive practices that is otherwise reflected in the rulemaking record.[168]

In addition, the Commission recognizes the formal complaints actually filed by consumers represent only a small portion of problems experienced by used car buyers.[169] A scientific measure of the level of unreported problems was provided as an adjunct to one of the studies entered into the record. In that study, it was estimated that complaints reflect only one to three percent of actual problems.[170] Similarly, although the actual number of warranty and warranty disclaimer documents in the record is small, state and local consumer agency officials, legal aid attorneys, and some industry members report that they are typical of the industry.[171]

We therefore determine that the rulemaking record taken as a whole demonstrates the prevalence of unfair and deceptive practices. The clear and unavoidable conclusion established by the record is that many dealers do misrepresent or fail to disclose material facts relating to the dealer's responsibility for making repairs after sale or misrepresent the mechanical condition of vehicles offered for sale. The practices are pervasive and among the chief sources of complaints received by various consumer protection organizations throughout the country.[172] The record evidence is therefore sufficient to convince the Commission that these unfair and deceptive practices are prevalent.

---

[158] Presiding Officer's Report at 47.

[159] Staff Report at 455, Appendix 1. For data on the number of used car dealers nationwide, see Mitchell, NADA and Lemov, NIADA. Oral Presentation before the Commission, September 25, 1979, TR 5, 84.

[160] In the CALPIRG Study (where test shoppers saw a warranty before sale), verbal and written warranties given by dealers differed 34 percent of the time. HX 82 at 17.

[161] *See, e.g.*, National Analysts Study, HX 162(A) at Tables 14, 15; SRL Study, HX 160(A) at Table 7; Wisconsin Study, HX 164(A) at Table IV–4; HX 116(A) at 4–5; HX 158(A) at 4–5; Staff Report at 103–107 nn. 102–107.

[162] Staff Report at 42–43, n. 6. See, e.g., NIADA, S–739 at 70–72; NADA, S–738 at 174–187.

[163] NADA S–738 at 179.

[164] *Id.* at 179–180.

[165] This figure is based on 10 million sales per year by used car dealers. The significance of the National Analysts Study is enhanced by the fact that data are drawn from a sample of all purchasers in 20 states and is therefore not limited to complaints. HX 162(A) at 1–4. The Wisconsin Study data demonstrate a 17.1 percent deception rate. HX 164(A) at Table IV–4.

[166] NADA, S–738 at 181.

[167] Wisconsin Study, HX 164(A) at Table IV–21.

[168] The Commission has earlier noted limitations on its interpretation of the results of the CALPIRG Study. See n. 136 *supra*. Although the methodology and results of other record studies have been challenged (see Presiding Officer's Report at 105–116; Staff Report at 19–37), the Commission believes that these studies, while not necessarily flawless in methodology in every respect, provide probative evidence of practices in the used car market which other record testimony corroborates.

[169] Staff Report at 44 n. 8; Andreasen, TR 6944–45; 6966–68; 6979–80. The Commission notes that dealer organizations, in their post-record comments, reject the "tip of the iceberg" theory. NIADA, S–739 at 70–71; NADA, S–738 at 173–174. The Commission notes that consumer complaints are but one measure of the existence of a market problem.

[170] Staff Report at 45 n. 9.

[171] *Id.* at 288–70 nn. 48, 50–55.

[172] Presiding Officer's Report at 47–48.

C. Legal Basis for the Rule

1. Rulemaking Authority

The Commission's authority to promulgate this trade regulation rule is derived from two sources. The first of these is section 109(b) of the Magnuson-Moss Warranty Act, which states in pertinent part:

> The Commission shall initiate within one year after the date of the enactment of this Act a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this title, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this title, *or other law*, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure. (emphasis supplied) [173]

As the rulemaking record establishes, warranty practices in the used car market have resulted in significant consumer injury. In the preceding section of this Statement,[174] we have summarily described the practices which have deceived buyers about the extent and terms of their warranty coverage. There, we recounted evidence concerning oral misrepresentations by dealers about the scope and terms of warranty coverage as well as unfair failures to disclose the limited nature of their post-sale repair responsibilities. In many instances, verbal promises to repair have been negated by final contract terms containing an "as is" clause that disclaims all responsibility for post-sale repairs. These promises are exacerbated by widespread consumer misunderstanding of the term "as is" and by dealers' failure to disclose, in an adequate and timely manner, the existence and meaning of this term.

These practices, therefore, fall squarely within the scope of section 109(b). By addressing them in a Rule, the Commission is following its statutory mandate "to supplement the protections offered to the consumer" by the Warranty Act.

The second source of statutory authority for this rulemaking is the Federal Trade Commission Act, a source implicitly preserved by 109(b), which permits the Commission to "exercise any authority it may have under this title, or other law" in promulgating rules under that Section. Section 111(a)(1) of the Warranty Act is more explicit:

> Nothing contained in this title shall be construed to repeal, invalidate or supersede the Federal Trade Commission Act. . . .[175]

Section 5(a)(1) of the FTC Act declares unlawful "unfair or deceptive acts or practices in or affecting commerce," and section 18(a)(1)(B) of the Act authorizes the Commission to enforce that statutory provision by prescribing

> Rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. . . . Rules under this Subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.[176]

The Commission believes that the record should contain a preponderance of substantial reliable evidence in support of a proposed rule before that rule is promulgated. This belief is based partly on the Commission's perception of its function and partly on statutory and judicial authority. Any rule promulgated by the FTC may be challenged in court and may be set aside if "the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record . . . taken as a whole." FTC Act section 18(e)(3)(A), 15 U.S.C. 57(e)(3)(A) (West Supp. 1983). Congress imposed this high standard as a "greater procedural safeguard" because of the "potentially pervasive and deep effect" of FTC rules. *American Optometric Ass'n* v. *FTC*, 626 F.2d 896, 905 (D.C. Cir. 1980) (Quoting H.R. Rep. No. 1107, 93d Cong., 2d Sess. 45–46, 1974 U.S. Code Cong. & Ad. News 7702, 7715.) Therefore, the Commission takes seriously its responsibility to determine if there is a preponderance of substantial reliable evidence to support a proposed rule, and to see that any supporting evidence is clearly recorded.

Initially, the Commission requires substantial evidence for the factual propositions underlying the determination that an existing act or practice is legally unfair or deceptive. When substantial evidence both supports and contradicts such a finding, the Commission bases its decisions on the preponderance of the evidence. Before promulgating a rule rather than bringing individual cases, however, the Commission believes the public interest requires answers to the following additional questions: (1) Is the act or practice prevalent? (2) Does a significant harm exist? (3) Will the proposed rule reduce that harm? and (4) Will the benefits of the rule exceed its costs? [177]

In analyzing each of these questions, three types of evidence are frequently brought to bear: quantitative studies, expert testimony, and anecdotes. The Commission has the flexibility to marshal evidence for a rulemaking record that combines the best mix of these three. However, it has a responsibility to see that the best evidence reasonably available is included.[178]

The best evidence will often be surveys or other methodologically sound quantitative studies. Carefully prepared studies can often give a reliable answer to each of the four questions. First, reliable estimates of the incidence of a practice are an integral part of an assessment of prevalance and are frequently well-suited to quantitative methods. Second, the overall harm caused by a problem is best measured by determining both the magnitude of consumer injury when it occurs and the frequency of such an injury. This issue is also well-suited to quantitative analysis. Third, the effectiveness of a proposed remedy can often be shown only by quantitative studies since informally observed changes may be influenced by other, uncontrolled factors, or may be the result of chance (*i.e.*, not statistically significant). Finally, quantitative studies are most helpful when comparing costs with benefits.

In many instances, of course, precise quantitative answers to these questions are not possible, or could be obtained only at a prohibitive cost. In such cases, the Commission will seek alternative ways to conduct a systematic assessment of the benefits and cost of its regulatory proposals. As in considering the merits of a rule, the Commission will balance the benefits and costs of obtaining additional information. Although carefully structured quantitative studies are generally preferred as evidence in a rulemaking record, the Commission believes that it is possible in some instances to support a rule without such studies.

---

[173] 15 U.S.C. 2309(b).

[174] For further discussion of the abuses relating to warranties, see Section II.A.1. *supra*.

[175] 15 U.S.C. 2311(a)(1).

[176] 15 U.S.C. 57a(a)(1)(B).

[177] Although the Commission believes that these questions should be asked and, to the extent possible, answered in every rulemaking on the basis of the best evidence reasonably available, it recognizes there is room for variation in the specific answers that would justify the issuance of a rule, depending upon the circumstances of each particular rulemaking. Different industries lend themselves in varying degrees to answering these questions. The characteristics of the industry, the ability to reasonably gather information, the burdensomeness of the regulation, and the agency's ability to address the unfair or deceptive practice by alternative means must be considered.

[178] The concept of "reasonably available" takes into account the practical resource constraints on the ability of the Commission or parties to a rulemaking to marshal evidence bearing on a particular problem.

The second type of evidence is expert testimony. The primary use of expert testimony is in providing underlying technical details, such as medical or engineering facts or information concerning state law and procedures. Expert testimony is also useful to address the methodology of quantitative studies, and its possible effects on the results. Finally, experts can give their own opinions regarding the issues facing the Commission. These opinions are usually predictions of what quantitative studies would show. As such, they are less satisfactory than an actual study. When an expert's opinion conflicts with the conclusions of a study, the study itself is generally more reliable, unless deficiencies in the methodology or execution of the study have been established and a better study would, in all likelihood, support the expert's opinion.

A third type of evidence is anecdotes. Narratives of specific consumer injuries are helpful in certain ways. They call attention to a possible problem; they illustrate the contours of a known problem; and they may suggest areas for further inquiry. By themselves, anecdotes are generally good evidence that some harm exists. Without thorough exploration of the details of individual examples, however, anecdotes cannot establish the cause of a problem. Moreover, anecdotes give little evidence of the frequency of the harm, they provide limited evidence for the effectiveness of a proposed rule and virtually no evidence of the balance of benefits and costs. Therefore, anecdotal evidence is rarely sufficient to provide the "substantial evidence" which the Commission requires in the rulemaking record.

The foregoing section of this Statement describes practices which, as discussed below, are unfair or deceptive practices under section 5 of the Act. In addition to the warranty practices outlined above, the record also demonstrates that used car buyers are often deceived about the mechanical condition of the cars they purchase by various practices.[179]

2. Section 5 Analysis

a. Deception. Certain elements undergird all Commission findings of deception. On October 14, 1983, the Commission adopted a Policy Statement on Deception setting forth in detail an analysis of its deception jurisdiction.[180] The Commission summarized its deception authority by stating that it will find an act or practice deceptive if there is a representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstance, and the representation, omission, or practice is material. These elements articulate the factors actually used in earlier Commission cases to identify whether an act or practice was deceptive.[181]

The requirement that an act or practice be "likely to mislead" reflects the long established principle that the Commission need not find actual deception to hold that a violation of Section 5 has occurred.[182] This concept was explained as early as 1964, when the Commission stated:

> In the application of the [the deception] standard to the many different factual patterns that have arisen in case before the Commission, certain principles have been well established. One is that under Section 5 actual deception of particular consumers need not be shown.[183]

Similarly, the requirement that an act or practice by considered from the perspective of a "consumer acting reasonably in the circumstances" reflects the fact that virtually all representations, even those that are scrupulously honest, can be misunderstood by some consumers. The Commission has long recognized that the law should not be applied in such a way as to find that honest representations are deceptive simply because they are misunderstood by a few.[184] Thus, the Commission has noted that an advertisement would not be considered deceptive merely because it could be "unreasonably misunderstood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed."[185] In recent cases, this concept has been increasingly emphasized by the Commission.[186]

The third element of deception is materiality. As noted in the Commission's policy statement, a material representation, Commission, act, or practice involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product. Consumers thus are likely to suffer injury from a material misrepresentation.[187] This element too is well established in past Commission deception cases.[188]

b. Unfairness. The Commission's authority to prohibit unfair acts or practices in the marketplace is well established. The Commission and the courts have developed an extensive body of law concerning unfair practices.[189]

The Wheeler-Lea amendment of 1938 and the 1975 and 1980 FTC Improvements Acts constitute legislative recognition that, in an imperfect system, certain commercial practices may impose undue costs and risks on individuals, depriving them of the benefits normally associated with free and vigorous competition.[190] In this proceeding, the Commission is exercising its unfairness jurisdiction to determine whether dealers' failure to disclose the "as is" nature of the sale or to make warranty terms available to consumers prior to the sale of a used car is an unfair practice.

In December 1980, the Commission prepared a formal statement analyzing the legal basis for the exercise of its Section 5 consumer unfairness jurisdiction.[191] That document reviewed the Commission's prior exercise of its unfairness jurisdiction and clarified the criteria for its future use of this authority.

Consumer injury is the central focus of any inquiry regarding unfairness. Not every instance of consumer injury is unfair, however, because virtually any commercial practice involves a complex mix of benefits and costs. In its statement, the Commission observed that:

> To justify a finding of unfairness the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided.[192]

The Commission's unfairness authority does not extend to trivial or speculative harm. "An injury may be sufficiently substantial, however, if it does a small harm to a large number of people, or if it raises a significant risk of concrete harm."[193] Furthermore, except in aggravated cases where tangible injury can be clearly demonstrated, subjective types of harm—embarrassment, emotional distress, etc.—will not be enough to warrant a finding of unfairness. Rather, economic or other tangible harm must also be present.[194]

Failing to disclose warranty terms and "as is" disclaimers before the bargaining process begins causes substantial injury to consumers. Consumers who overestimate the extent of warranty protection are likely to pay significantly more for the car than they would if this information had been disclosed. Such information is particularly important when dealers misrepresent the mechanical condition of the car. The only arguable countervailing benefit to consumers or competition produced by a dealer's failure to disclose warranty terms in a timely manner would be that dealers can avoid the exceedingly small cost of disclosure. The injury caused by failing to disclose warranty terms, however, far outweighs any countervailing benefit.

Further, we conclude that the injury produced by a dealer's failure to disclose this information could not reasonably be avoided through the exercise of consumer sovereignty. Consumers must rely on the dealer to provide accurate information about written warranties provided with a vehicle. Consumers cannot use general knowledge of warranties offered by used car dealers to predict what a particular dealer will offer because warranty terms given to used car buyers vary markedly.[195]

3. Regulatory Analysis

Section V of this Statement sets forth a detailed discussion of the benefits and costs of each rule provision. This analysis is no different from that embodied in the statutory requirement to conduct a regulatory analysis.[196] For this reason, the Commission has integrated the regulatory analysis with the Statement of Basis and Purpose for the Rule.

D. Remedies

Section 109(b) of the Magnuson-Moss Warranty Act explicitly authorizes the Commission to issue rules "dealing with" used car warranties and warranty practices and, in prescribing such rules, to require a "disclosure that a used motor vehicle is sold without any warranty" as well as the specific "form and content of such a disclosure."[197] Complementary remedial authority is found in section 18 of the FTC Act, which authorizes the Commission, in addition to issuing rules defining unfair or deceptive practices, to include in its rules "requirements prescribed for the purpose of preventing such acts or practices."[198]

In fashioning any such remedy for the deceptive practices found to exist in the rulemaking record, the Commission is bound to show a "reasonable relationship" between the remedy and the practice.[199] The Commission's approach to fashioning a remedy in rulemaking is different from that used in individual cases because rules regulate innocent parties as well as law violators. This distinction makes careful attention to the effectiveness of the remedy particularly important in rulemaking. Evidence of the effectiveness of a remedy may be more difficult to obtain than evidence establishing the existence and prevalence of unlawful practices because evidence bearing on the effect of a remedy is inherently predictive. However, the Commission believes that remedies, as all other aspects of a rule, should be supported by the best evidence reasonably available.

After a careful examination of the record, the Commission has developed a Rule that it believes will be an effective remedy for the unfair and deceptive practices in the used car industry. The Commission, therefore, believes that the Rule and each of its elements described below represent a justifiable exercise of its statutory authority.

1. Warranty and "As Is" Disclosures

The record clearly demonstrates that "as is" sales are fraught with dealer misrepresentations regarding both mechanical condition of cars sold and dealer after-sale repair responsibility.[200] In addition, the record demonstrates that many consumers do not understand the nature of an "as is" sale.[201] Such ignorance is aggravated by dealer practices that result in inconspicuous, untimely, and unclear disclosures.[202] The record further demonstrates that dealers orally misrepresent the terms of written warranties and service contracts and fail to make timely, conspicuous, and clear disclosure of warranty and service contract terms.[203]

To remedy these unfair and deceptive practices, the Rule requires that, on the window sticker, dealers indicate whether a warranty is offered or whether the car is sold "as is", i.e., without any warranties.[204] If a warranty is offered, the dealer must disclose on the sticker the systems that are covered, the percentage of total repair costs paid for by the dealer and the duration of the warranty.[205] If a service contract is offered, the dealer must indicate its cost.

Some industry members argue that warranty or "as is" disclosure requirements are unnecessary because they duplicate the pre-sale availability requirements of the Magnuson-Moss Warranty Act and existing state law

---

[179] The most serious of these forms of deception occurs in the sale of "as is" cars. At least 50 percent of all used cars are sold with no warranty. See Staff Report at 248–53; 295–300. *See also* Presiding Officer's Report at 46–47; 124–25.

[180] Commission letter to Hon. John D. Dingell, Chairman, Subcommittee on Oversight and Investigations (hereinafter cited as "Deception Statement"). Letter from Commission to the Honorable Bob Packwood and the Honorable Bob Kasten (March 5, 1984). *See also* Cliffdale Associates, Inc., Docket No. 9156 (March 23, 1984).

[181] Sears, Roebuck and Co., 95 F.T.C. 406 (1980), *aff'd*, 676 F.2d 385 (9th Cir. 1982).

[182] See generally, Deception Statement at 4–7 and cases cited therein for a more detailed discussion of the "likely to mislead" principle.

[183] Statement of Basis and Purpose, Cigarette Advertising and Labeling Rule, p. 84, 29 FR 8324 (1964).

[184] Heinz W. Kirchner, 63 F.T.C. 1282 (1963), *aff'd*, 337 F.2d 751 (9th Cir. 1964). However, if a representation or practice is directed at a distinctive target group, the Commission will determine the effect of the representation on a member of that group. Ideal Toy Co., 64 F.T.C. 297, 310 (1964). See Deception Statement at 7–14.

[185] Heinz W. Kirchner, 63 F.T.C. 1282 at 1290.

[186] *See, e.g.*, American Home Products, D.8918 (1981); Sterling Drug, D.8919 (July 5, 1983); Bristol-Myers, D.8917 (July 5, 1983), appeal docketed, No. 83–4167 (2d Cir. Sept. 12, 1983). This concept also is discussed at DS 7–15 and the cases cited therein.

[187] The policy statement specifically recognizes that an act or practice need only be likely to cause injury to be considered deceptive. Actual injury is not required. DS 16.

[188] American Home Products, 98 F.T.C. 136 (1981), *aff'd*, 695 F.2d 681 (3d Cir. 1982) Ford Motor Co., 84 F.T.C. 729 (1974) (consent), *modified*, 547 F.2d 954 (6th Cir. 1976), *reissued*, May 16, 1977 (slip opinion). See Statement of Basis and Purpose, Cigarette Advertising and Labeling Rules, DS 15.

[189] See generally, FTC v. R.F. Keppel Bros., 291 U.S. 304, 313 (1934); Statement of Basis and Purpose Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 FR 8324, 8355 (1964); All States Industries Inc. v. F.T.C., 423 F.2d 423 (4th Cir.), *cert. denied*, 400 U.S. 233, 244–45 n.5 (1972); Spiegel, Inc., 88 F.T.C. 425 (1975), *aff'd in part*, 540 F.2d 287 (7th Cir. 1976).

[190] *See, e.g.*, Horizon Corporation, 97 F.T.C. 464 (1981).

[191] *See* Letter from the Commission to the Honorable Wendell H. Ford and the Honorable John C. Danforth (Dec. 17, 1980) (hereinafter cited as "Commission Unfairness Statement"). *See also* Horizon Corporation, 97 F.T.C. 464 (1981); Letter from the Commission to the Honorable Bob Packwood and the Honorable Bob Kasten (March 5, 1982) (hereinafter cited as "Commission Letter").

Continued

[192] Commission Unfairness Statement, *supra* note 191.

[193] *Id.*

[194] *Id.*

[195] *See* discussion of warranty terms in the used car industry in Section II A.1.b. *supra*.

[196] Section 22 of the Federal Trade Commission Act, as amended, 15 U.S.C. 57b–3. The statutory authority specifically provides for integrating the regulatory analysis with the Statement of Basis and Purpose. *See* FTC Act section 22(b)(3)(A)(ii), 15 U.S.C. 57b–3.

[197] 15 U.S.C. 2309(b).

[198] 15 U.S.C. 57a(a)(1)(B). The Commission's authority to adopt such requirements was recognized in Katharine Gibbs School (Inc.) v. FTC, 612 F.2d 658, 662 (2nd Cir. 1979).

[199] FTC v. National Lead Co., 352 U.S. 419, 428–29 (1957); Jacob Siegel Co. v. FTC, 327 U.S. 608 (1946). This standard was recently held applicable to Section 18 rulemaking. American Optometric Ass'n v. FTC, 626 F.2d 896, 911 n.8 (D.C. Cir. 1980).

[200] Staff Report at 103–130, 263–360, 295–299; NIADA, S–739 at 82–83.

[201] *See* n. 92 and accompanying text *supra*.

[202] Staff Report at 262–80; 295–300; NIADA, S–739 at 82–83.

[203] *Id.* at 280–290; 303–305.

[204] This remedial approach has been commented upon favorably by one industry organization. See NIADA, S–739 at 112–113, 120–121, Appendix B.

[205] *Id.* at 111–113, 130–121, Appendix B.

with regard to "as is" disclosures.[206] The warranty and "as is" disclosures required by this Rule do not duplicate Magnuson-Moss Act requirements but supplement them as specifically directed by Congress in Section 109(a). Section 109(a) specifically directed the Commission to address, with regard to the used car industry alone, the appropriate disclosure for sales in which "no warranty" was given. The Act itself does not require disclosures regarding "as is" sales. Likewise, state laws with regard to "as is" sales do not require point of sale disclosures but disclosure prior to consummation, i.e., in the "closing room."[207]

These requirements will remedy the deceptive practice of misrepresentation concerning post-sale repair responsibilities and unfair failure to disclose warranty coverage. Moreover, the fact that the disclosure will be available to consumers on a window sticker will ensure that consumers will receive warranty information at a time when the information can influence their purchasing decision. The Baseline Survey indicates that a disclosure of warranty information on a window sticker increases consumers' understanding of the dealer's post-sale repair responsibility.[208] Therefore, the warranty disclosure provisions of the Rule, which respond directly to both the dealer deceptions about warranties and unfair failures to disclose warranties, will provide an effective remedy for the documented abuses.

2. Spoken Promises Warning

The Rule also requires a disclosure to consumers that, unless oral promises are reduced to writting, they are difficult to enforce. As noted above, the record is replete with evidence that dealers orally misrepresent both the mechanical condition of used cars and the dealer's after-sale repair responsibility.[209] The record demonstrates that consumers rely on oral statements made by dealers at the point of purchase even though those oral statements are not confirmed in writing.[210] Consumers are therefore frequently deceived at the point of purchase by representations which are not only untrue but also unenforceable. A warning to consumers that all oral promises should be reduced to writing is therefore clearly justified by the record.[211]

We believe that the level of oral misrepresentation at the used car lot can be reduced if consumers are informed of the need to secure a written record of all promises made in connection with a used car sale.[212] By introducing this information into the used car market, the Commission expects consumer reliance on oral statements to decrease and insistence on a written confirmation of representations made at the time of sale to increase. If the consumer is able to obtain written confirmation of those statements in a sales contract that can be used in the event of a dispute, many dealers are likely to be more reluctant than they are at present to make false or misleading oral statements. As a result, a "spoken promises" warning should act as a deterrent to deception in the used car market and is clearly related to deceptive practices by used car sellers.

3. List of Major Mechanical and Safety Systems

The list of major mechanical and safety systems is designed to address the record evidence that misrepresentations concerning mechanical condition are often made on a system-by-system basis. The components listed are those most likely to be represented by dealers as being in good condition without any confirmation of such representations in writing.[213]

The list of systems on the Buyers Guide is reasonably related to these abuses. The list provides a framework for consumers to evaluate the extent of the warranty coverage which must be indicated on the warranties section of the sticker. Consumers will also be able to utilize the list when comparing the warranties offered on different cars or offered by different dealers. The list also serves other remedial purposes. By identifying the major components of the car, the list counters the specific dealer misrepresentations that certain consumer-noted problems are minor.[214] It also identifies for consumers the systems they may wish to have inspected by a third party prior to purchase. Further, it provides information about major defects that could occur in these systems to provide further guidance to consumers on what should be evaluated during the third-party inspection.

4. Notice of Availability of Pre-Purchase Inspection Opportunity

Pre-purchase inspection by a third party can provide consumers with valuable information regarding the mechanical condition of a used car and can considerably enhance the consumer's bargaining position.[215] However, the record demonstrates that few consumers actually seek independent inspections by a qualified mechanic.[216] The record shows that this result is in part caused by certain dealer practices which discourage the consumer's use of independent pre-purchase inspections.[217]

Dealers make general representations that their cars are in sound mechanical condition.[218] Consumers rely on dealer representations of sound mechanical condition and thus do not perceive a need to obtain an independent pre-purchase inspection.[219] In addition, the record demonstrates that dealers commonly "detail" cars. Since consumers often believe that "good looking" cars are "good running" cars, this dealer practice discourages consumer belief in the need for inspections.[220]

Although the record does not support imposition of a mandatory right to independent, off-the-lot, pre-purchase inspections,[221] it does support a required disclosure which suggests that consumers inquire about the availability of an independent, pre-purchase inspection. Such a disclosure focuses consumer attention on the idea of pre-purchase inspection as a means of evaluating a car's mechanical condition. In addition, the notice allows consumers to gauge dealers representations concerning mechanical condition by measuring those representations against dealer willingness to permit third-party inspections and independent confirmaton of such representations.

[206] *See* Merrill-Wahus, dealer organization, T–165; Sapp, dealer organization, T–503; Stores, dealer organization, T–567; Boniface, dealer, T–217; Nicholson, dealer, T–710; Lohmann, dealer, T–714.

[207] Staff Report at 483–498.

[208] *See* n. 293 *infra*.

[209] Staff Report at 103–130; 262–80; 295–315.

[210] *Id.* at 108–110, 274–277. While the industry recognizes that oral misrepresentation occurs, it denies prevalence. *See, e.g.*, NIADA, S–739 at 70–71; NADA, S–736 at 174–187.

[211] Industry members also recognize the need for such a disclosure. *See, e.g.*, Virginia Independent Automobile Dealers Association, T–700 at 9; NIADA, S–739 at 121; NIADA, T–742 at Appendix 1. Industry objections to earlier proposals for this disclosure were addressed to tone rather than substance. *See, e.g.*, NADA, T–740; Antoniewicz, dealer organization, T–500; Sapp, dealer organization, T–503. The language of the disclosure has since been modified.

[212] The Commission notes that certain industry members reach a similar conclusion. *See* NIADA, S–739 at 112–113.

[213] Staff Report at 108–115.

[214] Staff Report at 108 n. 104.

[215] Staff Report at 67–70.

[216] *Id.* at 93–94.

[217] *Id.* at 87–89 n. 61.

[218] *Id.* at 103–109.

[219] *Id.* at 108–130.

[220] *Id.* at 97–103.

[221] *See* Section IV.C. *infra*.

III. Section-by-Section Analysis

Section 455.1(a)—List of unfair or deceptive acts or practices.

The record of this rulemaking proceeding documents the widespread occurrance of a variety of unfair or deceptive practices in the used car market. These practices are specifically enumerated in this subsection of the Rule.[222] As set forth below, engaging in any of the practices enumerated in this section is not a violation of the Rule. Compliance with the Rule is attained by meeting the requirements of §§ 455.2 through 455.5 of the Rule. Nevertheless, the Commission, based on the record of this proceeding, considers these practices to be unfair or deceptive under Section 5 of the Federal Trade Commission Act, so that violations will be subject to future law enforcement actions by the Commission.

Section 455.1(b)—Definition of rule violation.

As noted immediately above, compliance with the Rule is attained by meeting the requirements of §§ 455.2 through 455.5 of the Rule. Each violation of this Rule, which is issued pursuant to section 18 of the Federal Trade Commission Act, carries a civil penalty of up to $10,000 which the Commission may seek in the appropriate federal district court. It is therefore essential that the provisions of this Rule precisely describe the responsibilities of each person covered. To insure such precision, this subsection limits any rule violation to the failure to comply with the remedial provisions set forth in §§ 455.2 through 455.5 of the Rule. By defining a Rule violation in terms of compliance with these explicit requirements, there is no question as to the steps that a used vehicle dealer must take to comply with the Rule.

Section 455.1(c)—Definitions.

The scope of the Rule adopted here is determined largely by the definition of key terms described in this subsection. As set forth below, each of these terms has been specifically defined so as to insure the most appropriate coverage of the Rule.

Section 455.1(c)(1)—"Vehicle".

As initially proposed,[223] the Rule would have covered any motorized vehicle, including motorcycles, designed to carry not more than 15 people. However, upon consideration of the evidence in the record, the Commission has concluded that, while the definition of "vehicle" should be broad enough to include the many personal use vehicles on the market, the definition should not be so broad as to cover vehicles that are generally used for commercial activity. Under §455.1(c)(1), coverage of the Rule has been limited to vehicles, other than motorcycles, of a size and weight most often purchased by individual consumers.[224]

The size and weight limitations in the definition of "vehicle" are designed so as to include light-duty trucks which are frequently used for personal activities, because the record reflects numerous consumer complaints concerning such vehicles.[225] Conversely, large trucks are excluded from the definition because of their specialized commercial nature and because buyers of large trucks generally appear to be more knowledgeable and sophisticated than the average used car buyer.[226] To distinguish between trucks used for commercial purposes and those used for personal transportation, the Commission has relied upon criteria developed by the Environmental Protection Agency for the classification of light-duty trucks.[227] The size and weight parameters set in the definition of "vehicle" also exclude large recreational vehicles from the Rule. There is insufficient evidence in the record to conclude that sales of these vehicles are characterized by the deceptive practices that the Rule is designed to prevent.

Finally, the definition of "vehicle" excludes motorcycles. While some witnesses suggested inclusion, there is little record evidence regarding deception by motorcycle dealers.[228]

Section 455.1(c)(2) defines "used vehicle" in a manner consistent with the Commission's decision in *Peacock Buick, Inc.*[229] In *Peacock*, we concluded that the term "used car" should include "any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer."[230]

An alternative definition to "used vehicle" suggested during the rulemaking proceeding turned on whether a car had been previously sold to a person who "purchased the vehicle in good faith" for a purpose other than resale or whether a car had been previously used in a variety of specified situations (e.g., as a rental or driver education car or as a demonstrator). Based on record comment[231] and our own analysis, we have concluded that this definition would be not only confusing to consumers and dealers but also difficult for the Commission to enforce. Accordingly, the Commission has adopted the present definition in an effort both to clarify and to simplify the question of which vehicles are covered by the Rule.

In adopting this definition, the Commission specifically intends to include within the scope of the Rule cars identified on the record as "demonstrators."[232] Many states, for the purpose of titling laws, identify as "new" vehicles for which title has not passed to a purchaser despite extensive use of the vehicle as a demonstrator model. However, the record reflects that used cars sold as "demonstrators" are subject to dealer oral misrepresentations concerning overall quality of mechanical condition.[233] Therefore, the Commission has concluded that, notwithstanding the various state titling laws, there is substantial record justification and legal precedent for including demonstrators within the scope of the Rule.[234]

Insofar as a vehicle is sold for its parts and not as an operating vehicle, there appears to be no need to provide consumers with the kind of information customarily used to evaluate an automobile as a means of personal transportation. Accordingly, the definition of "used vehicle" specifically excludes those used cars sold only for salvage.

[222] Although one participant contended that a substantially similar list failed to meet the specificity requirements enunciated in *Katharine Gibbs School (Inc.)* v. *FTC*, 612 F.2d 658, 662 (2nd Cir. 1979), the Commission believes that the list of unfair or deceptive practices meets the Gibbs standard. *See* NADA, T–741, at 31.

[223] 41 FR 1089 (1976).

[224] Staff Report at 397–399.

[225] Staff Report at 400–402.

[226] *Id.* at 401.

[227] 41 FR 56316 (1976).

[228] Staff Report at 403.

[229] 86 FTC 1532 (1975).

[230] *Id.* at 1566.

[231] Staff Report at 404.

[232] "Demonstrators" included cars represented as "dealer demonstrators" "factory demonstrators," "executive demonstrators" and the like. *Id.* at 344.

[233] *See, e.g.*, Towle, TR 577–83; Brewton, TR 2761–66.

[234] Our decision to include demonstrators in the definition of "used vehicle" does not in any way preempt state titling laws which identify demonstrator models as "new" cars. The Rule adopted here does not interfere with the classification of demonstrators for purposes of title; the Rule only requires that, if driven more than the limited number of miles needed to move or road test a vehicle, a car, when offered for sale, must display the Buyers Guide so as to provide consumers with warranty disclosures. Moreover, it should be noted that the Rule does not conflict with other federal statutes. At most, some dealers may find that they will have to post the federally-mandated new car vehicle disclosure sticker (required under the Monroney Act, 15 U.S.C. 1231 *et seq.* (1972)), as well as the Buyers Guide, in those few instances (*e.g.*, demonstrators) where a vehicle straddles the line between new and used.

Section 455.1(c)(3)—"Dealer".

This subsection defines a "dealer" in terms of the number and frequency of used car sales or offerings. The original rule proposed by the Commission defined a dealer as anyone who engaged in the business of offering for sale or selling used cars to the general public. Based on testimony in the record indicating the difficulty of interpreting the phrase "in the business of," [235] the Commission has concluded that a numerical standard would be easier to enforce and would provide better notice to the public concerning the applicability of the Rule. The record reflects that most states set the dividing line between a dealer and a casual seller of used cars at between three and six vehicles each year.[236] We have determined that five vehicles is the optimal cut-off point because any number less than that may unnecessarily include within the Rule occasional private sales of personal cars by their owners. Conversely, a number greater than five increases the risk that the Rule will be inapplicable to the so-called "curbstone" seller who, though buying and selling a substantial number of used cars per year (often from a residential location) may not formally be engaged in what would be termed the "business" of used car sales.[237]

The definition of "dealer" also excludes those who engage in the private sale of used cars, other than those who sell more than five cars per twelve-month period. Although a number of witnesses testified in favor of subjecting private sales to the requirements of the Rule,[238] the Commission does not find any basis to extend the provisions of the Rule to the private market. Indeed, the record discloses considerable evidence indicating that, in many instances, consumers receive more accurate information about the mechanical condition of used cars from private parties than from used car dealers.[239] The record also indicates that private parties generally do not offer warranties in connection with the sale of their used cars.[240] Therefore, the Commission finds that the record has not documented a sufficient incidence of deceptive sales practices in the private market to justify what would be a substantial expansion of the Rule's scope.

A considerable amount of discussion in the record focused on the question of whether the Rule should cover both franchise and independent used car dealers. Our review of the record in this regard convinces us that both types of used car dealers should be included within the scope of the Rule, since the frequency of dealer misrepresentation concerning warranty coverage and mechanical condition, as well as the severity of defects occurring soon after sale, is sufficiently great among both franchise and independent dealers.[241]

The definition of dealer specifically excludes banks, financial institutions, and a lessor selling leased vehicles to the vehicle's lessee, to a buyer procured by the vehicle's lessee, or to the lessee's employee. Thus, in most instances, sales of leased vehicles by the vehicle's lessor, where the lessor retains no actual or constructive possession of the vehicle, are exempt from the Rule.

By the terms of this exemption, banks and financial institutions selling used cars forfeited as collateral on consumer loans also need not comply with the requirements of the Rule. Various banking representatives have requested that this exemption be extended to the affiliates and subsidiaries of banks and financial institutions.[242] The gravamen of the banks' arguments is that confusion will occur if the Rule does not explicitly permit banking affiliates and subsidiaries to conduct the same type of used car sales as the banks themselves may conduct without coming under the Rule. However, the Commission believes that the record does not include sufficient evidence to determine the extent to which existing banking regulations might permit financial institutions to engage in the retail sale of used cars through businesses operated by their affiliates and subsidiaries. Therefore, the Commission declines to extend the exemption for banks to include banking affiliates and subsidiaries.[243]

Some witnesses appearing in the proceeding argued in the rulemaking record that fleet sales of used cars are not made in a retail sales environment.[244] However, the record demonstrates that many fleet operators sell significant numbers of used cars to individual consumers at retail.[245] As a result, the Commission has determined that fleet sales should remain within the coverage of the Rule. Fleet operators remain free to petition the Commission and present evidence indicating that an exemption would be appropriate.

The Commission intends, by the exemptions from the definition of "dealer," to remove from the scope of the Rule used car sales where the absence of a retail sales environment substantially diminishes the risk of the deceptive practices that we have found to be characteristic of used car sales presentations.

Section 455.1(c)(4)—"Consumer".

This subsection defines the class of persons intended to be the direct beneficiaries of the disclosures required by the Rule. The definition adopted here extends beyond the definition of "consumer" in the Magnuson-Moss Act [246] and in other product information disclosure statutes [247] to include any person who is not a used car dealer. The record fails to establish that business purchasers in general are more knowledgeable than other consumers with regard to mechanical condition and warranty information. The Commission, absent record evidence to the contrary, cannot presume that those purchasing used cars for other than personal use, particularly small businesses that may be owned and operated by individuals, are more sophisticated than individual private purchasers with respect to the warranty coverage that may be provided or the mechanical condition of used cars. Moreover, we believe that a definition of consumer which would require dealers to differentiate purchasers on the basis of knowledge or sophistication in the area of used cars would unfairly burden used car dealers. It is, in our judgment, extremely difficult to predict who is likely to shop at a particular used car lot or what will be level of sophistication among the various persons who decide to buy. To require that the dealer estimate the sophistication of prospective purchasers would be an onerous task that would unnecessarily increase a dealer's risk of violating the Rule. Therefore, in order to insure the necessary pre-sale

[235] Staff Report at 405–407.
[236] *Id.* at 406.
[237] *Id.*
[238] *Id.* at 407.
[239] HX 104(A) at Tables IV–3, IV–4.
[240] See, e.g., HX 104(A) at Table IV–20 (97.8 percent of respondents reported receiving no warranty from the private seller).
[241] Staff Report at 408–415.
[242] *See* Motion of Consumer Bankers Association, April 13, 1981; American Bankers Association, T–747. While we are mindful of the Federal Trade Commission Act's exclusion of banks from the Commission's jurisdiction under Section 5, the Commission believes that subsidiaries of financial institutions which are engaged in the business of selling used cars are covered by this Rule.
[243] The Commission notes that these issues may be more appropriately explored in the context of an exemption proceeding under section 18(g) of the Federal Trade Commission Act.
[244] Staff Report at 415.
[245] *Id.* at 416.
[246] Under sections 101 (1) and (3) of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 (1), (3), a "consumer" means a buyer of any product normally used for personal, family, or household purposes.
[247] *E.g.*, Consumer Credit Protection Act, 15 U.S.C. 1602.

availability of the information disclosures prescribed in the Rule without unduly burdening used car dealers, the Commission has adopted a more inclusive definition of "consumer." [248]

Sections 455.1(c) (5), (8), (7)—"Warranty," "Implied warranty," and "Service contract".

These subsections define the terms "warranty," "implied warranty," and "service contract" in a manner which conforms to the definitions of those terms in the Magnuson-Moss Warranty Act.[249] Persons subject to this Trade Regulation Rule should be aware that the provisions of the Magnuson-Moss Warranty Act and the Commission's Rules interpreting that Act are fully applicable to any written warranty offered in connection with the sale of a used Car.[250] Persons affected by this Rule should therefore consult the terms of the Magunson-Moss Warranty Act and the Commission's Rules interpreting that Act for a clear explanation of the duties arising under the Act.

In the definition of "service contract", we intend to clarify our intent not to regulate service contracts in those states which classify such contracts as "repair insurance". In those states, service contracts are regulated by state insurance authorities and are therefore excluded from the Commission's jurisdiction by the McCarran-Ferguson Act.[251]

Section 455.1(c)(8)—"You".

The term "you" in the operative sections of the rule refers to used car dealers. However, in the Buyers Guide prescribed by the Rule, "you" refers exclusively to the purchaser of a used car. This distinction is recognized in the definition set forth in this subsection. The Commission has adopted this distinction in an effort to clarify and simplify the Buyers Guide.

Section 455.2(a)—General duties.

The Rule requires that before offering a used vehicle for sale to a consumer, dealers prepare and display the "Buyers Guide" on the side window of the vehicle. This placement should attract consumer attention without blocking the driver's line of sight during a test drive or otherwise interfering with a dealer's sales presentation.[252] The Rule also prescribes the precise size, type style, and format of the window sticker. In the Commission's opinion, a uniform method of disclosure will alleviate confusion and possible deception which might result from inconsistent versions of the Buyers Guide. A standardized form will also minimize the risk to dealers who might otherwise post a disclosure form which does not satisfy the Rule's requirements and who would thereby subject themselves to potential liability. Finally a standardized form will facilitate consumer comparison of warranty coverage offered by different dealers of different vehicles.

In order to evaluate the effectiveness of the Buyers Guide in communicating information to consumers concerning a used car, the Commission's staff arranged for a series of consumer comprehension tests.[253] Based on the consumer testing results, the Commission incorporated into the 1981 Buyers Guide a variety of technical changes in the graphic design of the Guide and the language used to convey the various information disclosures. The Buyers Guide included in the Rule we promulgate today has been revised to make the warranty and "as is" disclosures more prominent.

As explained below, the Buyers Guide contains several information disclosures that the Commission believes to be necessary to prevent deception in the used car marketplace: (1) A warning concerning the importance of obtaining oral promises in writing; (2) a listing of a major systems of an automobile; and (3) a recommendation that consumers ask about pre-purchase inspection opportunity.

The Buyers Guide encourages consumers to obtain in writing all promises made in connection with a used car sales presentation. This information is vital to consumers who may try to enforce a dealer's promises only to find that promises not reduced to writing or included within the terms of the written sales contract are unenforceable. The spoken promises warning, therefore, is designed to reduce dealers' oral misrepresentations—and consumer reliance thereon—that the record demonstrates occur with frequency in the used car market.[254]

Second, the Buyers Guide lists the major systems in an automobile along with some major defects that may occur in these systems. The Commission has concluded that, in order to benefit from the warranty disclosures required by the Rule, consumers need to be aware of the major automotive systems they should evaluate before purchasing a used car. This is especially so in light of overwhelming record data indicating lack of consumer knowledge with regard to mechanical condition and warranty terms. By prominently displaying this information at the point of purchase, the Buyers Guide will provide consumers with a valuable frame of reference within which to evaluate dealer oral representations regarding mechanical condition and warranty coverage. Consumers can also use the list of major defects as a guide in obtaining a pre-purchase inspection by an independent mechanic.

Third, the Buyers Guide advises consumers to ask the used car dealer about the possibility of pre-purchase inspections. Consumers can use third-party information concerning the mechancial condition of a used car to determine whether the dealer has engaged in misrepresentation or failure to disclose material information during the transaction.[255] This information also may assist consumers in negotiating improved warranty coverage or a lower purchase price.

Section 455.2(b)—Disclosure of warranty information.

In section 109(b) of the Magnuson-Moss Act, Congress directed the Commission to initiate this proceeding to determine the need for rules concerning warranty practices in the used car market. As summarized in Section II.A.1 of this Statement of Basis and Purpose, the evidence received by the Commission during the rulemaking proceeding demonstrates that, because of unfair and deceptive dealer practices, consumers generally have little understanding of the extent of warranty coverage (or lack thereof) accompanying

[248] Certain dealers may have clientele (*e.g.*, large businesses that regularly purchase used vehicles) that clearly do not require the disclosures provided by the Rule. Although the Commission believes that these dealers are few in number, the Commission would consider the advisability of exempting such dealers from the Rule. Therefore, it would be appropriate for such dealers to file a petition for exemption with the Commission to enable the Commission to consider these specialized situations.
[249] 15 U.S.C. 2301(6)(B), (7), (8).
[250] *See, e.g.*, 15 U.S.C. 2302–2308. See also 16 CFR Parts 700 (interpretations of Magnuson-Moss Warranty Act); 701 (disclosure of written consumer product warranty terms and conditions); 702 (presale availability of written warranty terms); and 703 (informal dispute settlement procedures).
[251] 15 U.S.C. 1011.
[252] The Rule also permits the removal of the Used Car Buyers Guide for purposes of a test drive. *See* § 455.2(a)(1).
[253] Market Facts Inc., "Exploratory Research into Consumer Attitudes Toward the Used Car Buyers Guide," May 1981. The Commission also contracted for consumer testing for previous versions of the Rule. *See* Hollander Study (August 1980) and Public Communications Center Study (December 1980). Attachments to Staff Memorandum to the Commission, Final Recommendations Concerning Used Car TRR, dated January 14, 1981.
[254] *See* Sections II.A.1, II.A.2 *supra*.
[255] *See* Sections II.D.4 *supra*.

the purchase of a used car. Consumers therefore do not fully anticipate the repair costs that may accompany the ownership of a used car.[274] There is also substantial evidence that used car dealers frequently misrepresent or fail to disclose both the terms and conditions of warranty coverage offered to their consumers.[275]

The Commission has determined that the least burdensome, most economical means of insuring the availability of adequate used car warranty information is to provide consumers with point-of-purchase disclosures. Accordingly, § 455.2 of the Rule imposes on used car dealers a duty to fill in and display a Buyers Guide on all used cars sold to consumers. If a warranty accompanies a car offered for sale, a dealer must, under the Rule, inform the buyer whether the warranty is full or limited, what percentage of the repair cost the dealer will pay, the systems covered by the warranty, and the duration of the warranty. The dealer must also indicate, by marking the correct disclosure on the Used Car Buyers Guide, if no warranty accompanies the car (i.e., the car is sold "as is") or if state law "implied warranties" are the consumer's only form of postsale protection.[276] Finally, the Rule requires each dealer to indicate the availability, if any, of a service contract covering repair costs. It is the Commission's belief that this warranty information, when displayed on the Buyers Guide, should prevent the failures to disclose and the misrepresentations of warranty coverage documented in the record. It also should assist consumers in evaluating the long-term cost of used car ownership and thereby reduce the extensive consumer injury that results from unanticipated repair costs.

During the course of this proceeding, the Commission considered several different methods of disclosing the warranty information required by the Rule. Because of the many different warranties in the marketplace and the various methods of describing those warranties, the Commission has adopted a disclosure format that provides blank spaces for the dealer to use in describing the system covered by a warranty and the duration of that warranty. However, notwithstanding the flexibility afforded by this method of warranty information disclosure, the use of shorthand phrases to describe the systems of a car (e.g., "drive train" to describe the engine, transmission, drive shaft, and differential) is prohibited by § 455.2(b)(2)(ii) of the Rule. The record reflects that shorthand phrases, such as "drive train" or "power train", are used by dealers to connote parts of a car but that consumers do not understand such shorthand terms and are therefore not able to assess the value of a warranty offered on a "drive train."[277] Furthermore, such shorthand terms do not convey identical meaning throughout the used car industry.[278] Therefore, while the Commission wishes to provide flexibility to dealers in describing systems covered by warranties, we are requiring that dealers spell out which specific systems are covered by the warranty.

Some dealers may wish to provide warranty coverage for some systems of a used car and at the same time disclaim all other express or implied warranty coverage for the other systems of the car. In addition, some dealers may wish to list on the Buyers Guide the specific exclusions from the warranty coverage. Therefore, a dealer may use the space provided for the warranty disclosures to write in such disclaimers or exclusions.

Sections 445.2(c-e)—Additional disclosures.

A number of the Rule's additional disclosure requirements are intended by the Commission to integrate the information provided by the Buyers Guide into the contract of sale between used car dealers and consumers and to memorialize on the form the details of each sales transaction so that the Buyers Guide may be used in the event of a dispute between buyer and seller.

Section 455.2(c)—Name and address.

Section 455.2(d)—Make and model.

Section 455.2(c) requires the name and address of the business or dealership selling the car to be listed on the Buyers Guide. By requiring that the seller identify in writing the person responsible for selling each used car and making the disclosures required by the Rule, the Commission intends to enhance the value of the Buyers Guide as evidence in the event that disputes arise between buyers and sellers. The same purpose is served by the requirement in § 455.2(d) that the dealer disclose on the Guide the make, model, model year, and vehicle identification number of each used car.

Section 455.2(e)—Complaints.

The rulemaking record indicates that dealers report difficulty in controlling the oral representations of salespeople and that salespeople often are not informed of material facts by the dealer.[281] If disputes arise over Buyers Guide disclosures, consumers must be able to identify the person responsible for handling consumer complaints. This is especially true in light of the fact that salespeople in the used car business are often transient.[282] As a result, § 455.2(e) of the Rule requires each dealer to identify on the Buyers Guide the person to contact if a problem arises after sale.

Section 455.3—Incorporation of the Used Car Buyers Guide into sales contract.

To insure that the disclosures made on the Buyers Guide are available to the consumer, § 455.3(a) provides that each dealer must deliver to the purchaser at the time of sale a copy of the Buyers Guide containing all of the disclosures required by the Rule and reflecting the agreed-upon terms of warranty coverage. Section 455.2(b) provides that changes in the terms of warranty coverage must be reflected on the Buyers Guide.

Section 455.3(b) of the Rule further strengthens the importance of the Buyers Guide by requiring that the information on the window form be incorporated by reference into the sales contract for each used car sold. By integrating the Buyers Guide within the "four corners" of the used car sales contract, the Commission intends that the Buyers Guide become part of the written agreement between buyer and seller, so that, in the event of disputes between buyers and sellers, the information on the Buyers Guide would fall outside the exclusions of the parole evidence rule of contract law.

To inform consumers that the information on the Buyers Guide is a part of the sales contract and governs in the event that the sales contract contains contradictory terms, § 455.3(b) contains a disclosure that must be incorporated into all sales contracts. The Commission believes that the sales contract disclosure will clarify for both consumers and dealers the necessity for the information on the Buyers Guide to accurately reflect the terms of the sale.

By requiring the addition of the specific clause into consumer sales contracts, the Commission intends to insure that the protections of the Rule are available to consumers. Thus, we intend that consumers who are injured by dealer deceptions concerning the disclosures on the Buyers Guide could bring breach of contract actions, since those disclosures are a part of the contract. In other trade regulation rules, we have also required that clauses reflecting particular consumer rights be added to consumer contracts.[283]

Section 455.4—Contrary statements.

As noted throughout this Statement of Basis and Purpose, the Commission has found that one of the principal consumer abuses in the used car market is oral misrepresentation concerning the warranty coverage that the dealer intends to provide after the time of sale and the mechanical condition of used cars. To enhance the effectiveness of the written disclosures in the Buyers Guide, the Commission has incorporated into § 455.4 of the Rule an explicit prohibition of oral or written statements or other practices that alter or contradict the disclosures in the Buyers Guide. This provision is not intended to interfere with negotiations between dealers and consumers concerning the terms and conditions of warranty coverage. However, any final warranty terms agreed upon in such negotiations must be identified in the sales contract and summarized on the copy of the Buyers Guide given to the buyer.[284]

Section 455.5—Spanish languages sales.

Earlier versions of § 455.5 of the Rule had required that the Buyers Guide be in the language in which the sale is conducted. Such an open-ended requirement could have resulted in Buyers Guide translations of varying linguistic quality and accuracy unless the Commission were to publish official Buyers Guide translations in all of the several dozen languages used in the United States. The evidence in the record indicates that, besides English, Spanish is the language most frequently used during used car sales transactions.[285] Therefore, the Commission has decided to limit the scope of § 455.5 to Spanish translations of the Buyers Guide so as to insure that Spanish-speaking citizens may have access to the Buyers Guide information. Where the sale is conducted in Spanish, § 455.5 requires that a Spanish version of the Buyers Guide be posted and provided to the purchaser. For those dealers who conduct transactions both English and Spanish, both versions of the Buyers Guide may be posted.

Section 455.6—Exceptions.

The standards for state exemptions set forth in § 455.6(a) conform to the congressional directive in the FTC Improvements Act of 1980 concerning state exemptions from the Funeral Industry Trade Regulation Rule. The Commission will assess requests for exemptions from state agencies by analyzing the state requirement in comparison to the Rule. The Commission here offers no opinion as to whether there are any state or local regulations currently in effect which do provide a level of protection as great as or greater than that provided by the Rule. Instead, as set forth in § 455.6(b), the Commission will determine the appropriate interrelationship between the Rule and state regulation on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.16 of the Commission's Rules of Practice. Appropriate petitions for exemption made by state governments will be evaluated to determine the overall level of protection to consumers and whether the state scheme that offers protection as great as, or greater than, the Rule is administered and enforced effectively. Should a jurisdiction be granted an exemption under this section, the Commission intends to forgo enforcement of the Rule in that jurisdiction while the exemption is in effect.

Section 455.7—Severability.

By this section, the Commission expresses its intention that each provision of the Rule is separate and severable. If one or more parts are found to be invalid, the other portions of the Rule will continue in effect.

IV. Alternatives Considered

During the course of this proceeding, the Commission considered several alternatives to the Rule it adopted in August 1981. Each variation involved warranty disclosures including an explanation of "as is" sales, a list of major mechanical systems, a disclosure of known defects, and a spoken promise warning. Except for the known defects disclosure, the Commission is convinced that record evidence indicates each of these features should be included in any rule designed to address the unfair and deceptive practices identified in this record, which lead to consumers experiencing unanticipated repair costs following purchase.[286]

The options considered could be described generally as various methods for requiring disclosure of information from the dealer concerning the mechanical condition of the cars the dealer offers for sale. Those alternatives were:

1. Disclosure of Known Defects
2. Mandatory Inspection
3. Optional Inspection
4. Mandatory Third-Party Inspection
5. Cooling-off Period
6. Disclosure of Prior Use
7. Disclosure of Odometer Accuracy
8. Disclosure of Estimated Repair Costs
9. Disclosure of Prior Repairs
10. Disclosure of Flooded or Wrecked Vehicles

A. Disclosure of Known Defects

The 1981 Rule contained provisions requiring dealers to disclose certain material defects, if known at the time of sale. (See August 1981 Rule 16 CFR 455.2(c) (1982)). That Rule defined the specific defects that were to be disclosed in §§ 455.6 (a) through (i). Sections 455 (j) through (n) set forth tests to be used by dealers to determine the existence of defects.

The August 1981 Rule provided in § 455.2(c) that dealers have knowledge of a defect when they obtain facts or information about the condition of a vehicle (e.g. through an inspection, from a previous owner, from the seller at an auction) which would lead a reasonable person under the circumstances to conclude that the car contained one or more of the defects listed in the Rule.

Finally, the 1981 Rule did not allow dealers to use lower standards for determining that a defect exists in older cars. Consequently, the age of the vehicle would have been irrelevant to the assessment of whether the vehicle satisfied the defect standards.

The Commission has reviewed the known defects disclosure provisions of the August 1981 Rule pursuant to a remand from the United States Court of Appeals for the Second Circuit in *Miller Motor Car Corporation, et al.* v. *F.T.C.* 2d Cir. No. 81-4144. The court ordered the Commission to reopen the rulemaking record with respect to the provisions requiring dealers to disclose known defects and provide all interested persons an opportunity to submit comments and rebuttal statements.[287] As a result of this review,

---

[274] Staff Report at 281–305.

[275] *Id.*

[276] A separate "Implied Warranties Only" disclosure is prescribed for use in those states that prohibit "as is" sales, and in those instances where a dealer chooses to sell a used car with neither an express warranty nor an "as is" disclaimer.

[277] Staff Report at 255 nn. 17, 19; 287, n. 85.

[278] *Id.* at 255–256 nn. 18, 19.

[281] *Id.* at 103–109 nn. 103–108.

[282] *See, e.g.*, Warwick, TR 5380.

[283] *See, e.g.*, Cooling-Off Period For Door-to-Door Sales, 16 CFR Part 429; Preservation of Consumers' Claims and Defenses (Holder-in-Due-Course), 16 CFR Part 433. *See also Arthur Murray Studio of Washington* v. *FTC*, 458 F.2d 622 (5th Cir. 1972); *All-State Industries, Inc.* v. *FTC*, 423 F.2d 423 (4th Cir.) *cert. denied*, 400 U.S. 828 (1970).

[284] Staff Report at 313 n. 122.

[285] *Id.* at 545 nn. 15 and 16.

[286] For these reasons, the Commission rejected the alternative of issuing no rule.

[287] As stated earlier, the court's order was issued pursuant to a joint stipulation by the parties agreeing to an order remanding the rule to the Commission for reconsideration.

the Commission has decided not to include a known defect disclosure requirement in the Rule, to make the warranty and "as is" disclosures on the Buyers Guide more prominent, and to make other minor adjustments to the Buyers Guide.

In reaching its decision, the Commission carefully analyzed the rulemaking record including the comments submitted during the recent comment and rebuttal periods to determine the potential effects of the known defects disclosure requirement, both intended and unintended. The Commission has concluded that the known defects disclosure requirement will not provide used car buyers with a reliable source of information concerning a car's mechanical condition and that the provision would be exceedingly difficult to enforce.

We believe that the warranty and "as is" disclosures—along with the warning about spoken promises and the pre-purchase inspection notice—are effective remedies for the deceptive practices occurring in the used car industry. The record provides solid support for the conclusion that the benefits of these remedies far outweigh their costs. The record does not support, however, a conclusion that the benefits of the defects disclosure requirement outweigh its costs. The Commission's reasons for promulgating a rule without the known defects disclosure provision are set forth below.

1. The Reliability of Information Disclosed Under a Known Defects' Disclosure Requirement

Any benefits from a known defects disclosure requirement depend on the extent to which dealers have detailed knowledge about the mechanical condition of the vehicles they sell and whether the dealer's knowledge of defects can be communicated in a way that will not be confusing to potential used car buyers.

a. Dealer Knowledge of Defects. In order to provide useful disclosures under the known defects disclosure requirement, dealers must have knowledge of specific defects. If dealers do not ordinarily possess knowledge about specific defects, they would only be able to discover such information through additional inspections. Inspections will be costly and will ultimately raise the price of used cars.[268] Therefore, in determining the costs and benefits of the known defect disclosure requirement, the issue of whether dealers ordinarily have knowledge about specific defects is an important one.

Despite the importance of this question, there is relatively little direct evidence that addresses it. The record does indicate that most experts and commenters agree that all dealers assess the *general* condition of the cars they sell and that individual dealers may examine cars thoroughly. However, even during the initial rulemaking proceeding there was disagreement concerning what the record reveals about the extent of the *average* dealer's knowledge of the condition of specific systems in his or her cars at the time of sale. The Presiding Officer concluded that:

> In many instances, dealers themselves do not know the extent of defects present in a vehicle. To be sure, nothing in the record would indicate that dealers are regularly caught short, buying or taking in trade vehicles on which they have made major miscalculations on overall physical condition. The record supports the findings, however, that dealers may not have precise knowledge of all defects which are present in a vehicle.[269]

In 1981, the Commission disagreed with the Presiding Officer and concluded that, although the dealer inspection process is not perfect, dealers know of specific significant defects. This decision was based on the following inferences drawn from record evidence: (1) Dealers routinely inspect vehicles for defects; (2) dealers who purchase cars at auctions can and do inspect for defects after purchase and have an option to rescind or renegotiate the sale if they find sufficient problems with the vehicle; (3) when not purchasing at auction, the industry practice is to appraise a vehicle before purchase (usually through a visual inspection and road test) and (4) after purchase by dealers, additional defects are discovered during further inspections, appearance reconditioning, and repairs.[270] In addition, in 1981, the Commission relied on survey evidence indicating high levels of significant mechanical defects occurring within the first weeks of ownership and a decreasing frequency of defect discovery in subsequent periods.[271]

The Commission's current review of both the preexisting rulemaking record and the additional comments submitted during the present proceeding indicates that the conclusion that dealers ordinarily know about specific defects may well be incorrect and, in any event, is not supported by a preponderance of substantial reliable evidence.

First, careful inspections do not always reveal or predict mechanical problems that may occur shortly after the sale. Thus, there is little basis for inferring knowledge from the mere fact that failures occur after purchase. In Wisconsin, where dealers are required to inspect their cars and disclose the results of the inspection, one record study indicates that 51 percent of Wisconsin used car buyers ultimately repaired problems not known when they bought their cars.[272] These data are consistent with another record study which indicates 52.1 percent of Wisconsin consumers, who purchased cars after the Wisconsin law went into effect, discovered defects after the sale.[273] Moreover, in a comment supporting the "known defects" provision, Detroit II,[274] a company currently providing warranties for used cars, points out that even after cars are inspected for inclusion in their warranty program and all "known defects" are repaired, a survey of their buyers revealed that "slightly over 50% of them have some sort of mechanical problem within 45 days of the sale."[275] The Detroit II figures are within the range of the incidence of mechanical problems experienced by used car buyers generally.[276]

Second, dealer knowledge about general condition of a car does not necessarily mean that the dealer has knowledge of specific defects. Although there is evidence that dealers have a high degree of confidence in their ability to assess the general condition of a car through a walk-around examination and a test drive,[277] this general assessment of overall condition is probably sufficient to protect the dealer's interest only because most buyers are likely to perform no more than a similarly superficial examination.[278] Moreover, the dealer's evaluation is likely to focus on the cost of appearance reconditioning or detailing because, as the record indicates, many consumers believe that a "good looking" car is also mechanically sound.[279] There is, however, no evidence that such measures are ordinarily adequate to reveal specific mechanical defects.[280]

Third, although the record contains anecdotal evidence indicating that dealers know about specific defects, other record evidence supports the conclusion that most dealers do not have knowledge of specific defects. Indeed, the record contains extensive testimony from dealers and vocational educational instructors that the inspection process is uncertain and imperfect.[281]

Even though the utility of a "known defects" disclosure depends on dealers having system-by-system information about the cars they sell, the provision gives dealers little incentive to inspect their cars. Under the provision, honest dealers who learn of defects must reveal their knowledge on the disclosure portion of the window sticker, whereas dealers who avoid gaining this knowledge may honestly leave the sticker blank. Disclosing "known defects" calls attention to the car's problems, but does not reward the dealer's integrity for revealing these problems. Thus, a dealer who regularly inspects and honestly discloses all "known defects" may be put at a competitive disadvantage relative to dealers who do not inspect. This factor may then have the unintended and perverse effect of discouraging, rather than encouraging, inspections and disclosure of defects.

b. Buyer Knowledge Under the Defects Disclosure Provision

The known defects provision was intended to improve a potential buyer's knowledge of a used car's condition by providing information about certain major defects known to the dealer. Based on its conclusion that dealers usually know about the condition of specific systems in the used automobiles they sell, in 1981 the Commission believed that dealer disclosure of major defects would enable consumers to assess more accurately the true cost of ownership, i.e., purchase price plus repair costs for defects. The Commission expected that more accurate knowledge about the true condition of the car would reduce consumer injury resulting from unanticipated repair costs and that such defect information would increase bargaining for desired warranty coverage and the price on a car of known condition.

As stated above, the Commission cannot now conclude from its review of the rulemaking record that dealers generally possess system-by-system knowledge of the cars they sell. This major deficiency in the evidentiary foundation for the known defects disclosure provision casts serious doubt on the effectiveness of this provision as a means of providing information about specific defects to consumers. Another major deficiency in the evidentiary basis for the "known defects" disclosure requirement is that the record surveys, which often provide the best evidence of the effectiveness of a rule provision, do not provide clearcut evidence that a defect disclosure requirement would improve consumers' knowledge of defects. Moreover, the Commission fears that the defect disclosure requirement may confuse consumers and thus cause them to base their purchasing decisions on inaccurate information.

Two record surveys present data that could be used to predict the effectiveness of the "known defects" disclosure provision. These surveys produced data showing the effects of the Wisconsin mandatory disclosure law which, at the time both studies were conducted, required dealers to inspect each vehicle in a specified manner, make safety repairs, and provide the inspection results to the purchaser prior to signing the sales contract.[282] One of the surveys was submitted to the Commission in 1977 and was considered by the Commission in promulgating the August 1981 Rule. The report on the survey was referred to in the August 1981 Statement of Basis and Purpose as the Wisconsin Study.[283]

The Wisconsin Study was designed to examine the effects of the Wisconsin mandatory inspection/disclosure law. In the study prepared by the Center for Public Representation, Madison, Wisconsin, a consumer questionnaire was sent to over 5,000 purchasers of used vehicles in Wisconsin, Iowa, and Minnesota. One thousand five hundred fifty five consumers responded to the survey. A survey questionnaire was also directed to more than 5,000 used vehicle dealers in Wisconsin and interviews, with written follow-up, were carried out with members of the Dealer Inspection Unit of the Wisconsin Motor Vehicle Department which is responsible for enforcing Wisconsin regulations.

The three states included in the study were chosen because of the differences in their regulatory systems. In 1972, Wisconsin's Division of Motor Vehicles promulgated an administrative regulation, MVD 24, which requires that all used motor vehicle dealers perform a walk around and under-the-hood inspection of each car they intend to sell at retail and record their findings on a disclosure statement.[284] In addition, dealers are required to repair designated safety items determined to be "not OK." Iowa, since 1972, has required that every motor vehicle pass a safety inspection before operational title can be passed.[285] A car not passing inspection can still be sold, but the buyer owns it by a restricted title and cannot drive the vehicle until the safety inspection has been passed. In contrast to Wisconsin and Iowa, Minnesota does not require

---

[268] There is little agreement on exactly how costly these inspections might be. *Compare* Staff Report 213–29 (estimates range from a few dollars to $600 or more) *with* HX–164(A) Table V–9 (Wisconsin dealers' estimates range between $6.75 and $50).

[269] Presiding Officer's Report at 91 (footnote omitted).

[270] 1981 Statement of Basis and Purpose, 46 FR 41338, 41342.

[271] *Id.* at 41337.

[272] Table 16 of the Baseline Survey shows that 65 percent of Wisconsin consumers made repairs, but only 14 percent (Table 9) knew of problems when they bought the car. Thus, at least 51 percent (65 percent minus 14 percent) experienced unknown problems.

[273] Wisconsin Study HX 164(A) at Table IV–12.

[274] At the time Detroit II submitted its comment, approximately 20 dealers in Florida were participating in the Detroit II inspection/warranty program.

[275] XB–02 at 1 (The Detroit II Corporation, Inc.). Approximately five hundred cars were included in the survey. The reliability of the survey is uncertain because neither the survey questionnaire nor an explanation of the methods used to compile survey data was submitted with the comment.

[276] *See* Staff Report 46–48. In a national survey, about 34% of respondents reported that they experienced defects in used vehicles. About 50% of these occurred in the first month. HX–162(A) at 29 (National Analysts Study). In a local survey, 66.1% of used cars had defects that appear in the first 90 days after the sale B–1 at 27 (Seattle Survey).

[277] Staff Report 77; HX–164(A) at 46 and Table V–7 (The Wisconsin Study).

[278] Staff Report at 83–87.

[279] Staff Report at 99.

[280] One record study presented survey evidence suggesting that dealers fail to disclose known defects when such information is provided by prospective buyers. The California Public Interest Research Group (CALPIRG) undertook a survey that tested for the degree of known mechanical defect disclosure by dealers to consumers. The survey used trained test shoppers who participated in actual sales transactions up to the point of determining what disclosures were made. After a test car was taken from the dealer's lot to a diagnostic center for inspection, the test shopper returned the car with a copy of the diagnostic report and discussed the report with the salesperson. The test shoppers then broke off negotiations. A second test shopper returned on a follow-up visit to determine whether the results of the diagnosis were disclosed to the new prospective buyers. CALPIRG reports that, in 75 of the 101 completed tests, the follow-up purchaser did not receive defect information that had been provided to the dealer. In 47 of these 75 cases of non-disclosure, the second test shopper dealt with the same salesman who had been given the diagnostic results by the first test shopper.

Although these data suggests that, when told about defects, dealers fail to disclose this information to consumers, no inference can be drawn from these data concerning the extent to which dealers generally know about specific defects.

[281] Staff Report at 46–53.

[282] The law also required a window sticker disclosing warranty terms and defining "as is". In 1983 the law was amended to require that inspection results be disclosed on a window sticker along with warranty information.

[283] An investigation of the Retail Used Motor Vehicle Market: An Evaluation of Disclosure and Regulation, Center for Public Representation, HX. 164(A).

[284] Staff Report at 19–23.

[285] *Id.*

dealer disclosure, nor does it have any kind of safety inspection system.[286]

The other survey, entitled "A Report On A National Survey Private Buyers and Sellers of Used Automobiles" was submitted to the Commission in September 1982. Consequently, it was not considered in promulgating the 1981 Rule. This report presented data that was developed from responses to a national telephone survey of private buyers and sellers of used automobiles. The survey was conducted to provide baseline data for a future evaluation of the impact of the rule on the used car market. Transactions for the state of Wisconsin were oversampled so that Wisconsin could serve as a control. In total, 312 interviews were conducted for Wisconsin and 1,431 interviews were conducted for the rest of the country. The survey was perfomed by a private contractor, the Bureau of Social Science Research, pursuant to a 1978 contract with the FTC's Bureau of Consumer Protection. The data for the survey was collected from October 1979 to February 1980. We will refer to this survey as the Baseline Survey (BLS).

When the Commission promulgated the Rule in 1981, it cited data from the Wisconsin Study suggesting that the Wisconsin law increased overall consumer awareness of defects prior to purchase and that the law made it more likely that consumers would receive defect information from the dealer. However, contradictions in the data presented in the Wisconsin Study become apparent upon close review. On the one hand, the data show some increase in the percentage of post-law buyers who knew about defects before the sale and those who received pre-purchase defect information from dealers.[287] On the other hand, data from the study shows that more consumers in Minnesota (a state with no defect disclosure requirement) reported awareness of defects prior to sale than consumers in post-law Wisconsin.[288]

Finally, the data in the Wisconsin Study do not show that the Wisconsin defect disclosure requirement made it more likely that consumers would receive the information they felt they needed concerning the car's mechanical condition. Approximately 32 percent of pre-law consumers reported that they lacked needed information on the car's mechanical condition. This percentage decreased only slightly for post-law consumers (28.52 percent).[289] Moreover, there was essentially no difference in the percentage of pre-law and post-law consumers reporting that the dealer gave them accurate information on the mechanical condition of the car they purchased (62.6 percent vs 62.6 percent).[290]

Given the contradictions in the data presented in the Wisconsin Study, the Commission believes that the study is inconclusive with respect to the issue of whether a defect disclosure requirement would increase consumers' awareness of defects.[291] The inconclusive nature of the Wisconsin data tends to indicate that the Wisconsin defect disclosure requirement did not have a strong effect on consumers' knowledge of defects. Such a finding supports the Commission's decision to promulgate the Rule without this provision.

The Baseline Survey provides even more compelling reasons to eliminate the known defect disclosure provision from the Rule. Taken as a whole, the BLS data suggest that the expected beneficial effects of a defect disclosure requirement were not achieved in Wisconsin.[292] On the other hand, the BLS data do show expected beneficial effects of the warranty disclosures required by the Wisconsin law.[293]

Although the report on the Baseline Survey presents statistics separately for Wisconsin and the rest of the country, the report does not test or elaborate on any differences between the values of the same statistic in the two regions. In the following discussion of the Baseline Survey we will discuss some of those differences and their significance. Even though such comparisons were not made in the survey report, there is nothing in the method of collecting the data that would make comparisons between the two subpopulations inappropriate. The sample sizes in the subpopulations of Wisconsin consumers are large enough to permit valid statistical conclusions to be drawn by comparing data from Wisconsin consumers with data from non-Wisconsin consumers.

In comparing the value of a simple statistic (such as an average or a proportion responding in a particular way) for Wisconsin with its value for the rest of the country, it is, in general, incorrect to attribute all of the difference to the Wisconsin used car law. Nevertheless, it is important to know whether any differences exist. A finding of no difference in consumer experiences with used car transactions where strong remedies are present casts doubt on the effectiveness of such remedies.

The Baseline Survey suggests that the Wisconsin defect disclosure requirement has not increased the amount of information consumers receive about the mechanical condition of a used car. Fourteen percent of Wisconsin consumers, compared to 15 percent in the rest of the country, know about a problem with the car before purchase. Of those who knew about a defect, the percentage of non-Wisconsin consumers reporting that mechanical problems were disclosed by the dealer (24 percent) is higher than the percentage of Wisconsin consumers reporting defect disclosures from the dealer (20 percent), although the difference is not statistically significant.[294] Thus, 3 percent of Wisconsin consumers responding to the survey learned of a defect from the dealer, compared to 4 percent of consumers elsewhere.[295]

The BLS also suggests that the Wisconsin defect disclosure requirement did not improve consumers' ability to predict future repair costs. For problems known at the time of purchase, Table 14 of the BLS indicates that consumers outside of Wisconsin were just as likely to consider repair costs to be about what they expected as Wisconsin consumers. Moreover, Wisconsin consumers are no more likely than others to be "very satisfied" with their purchase (62 percent in Wisconsin, 63 percent elsewhere), and are slightly more likely to be "very dissatisfied." (12 percent vs 5 percent) (Table 19 A).[296] They also give their cars slightly lower ratings on overall mechanical condition and body and interior condition (Table 19, B and C), although only the difference in mechanical condition rating is statistically significant.

As Table 16 indicates, a higher percentage of Wisconsin consumers (65 percent) than non-Wisconsin consumers (60 percent) had repairs performed after the sale. If all problems known at the time of purchase are later repaired, then 51 percent of Wisconsin consumers fixed problems that were not known when they bought the car, compared to 46 percent of non-Wisconsin consumers.[297] These data are quite consistent with the Detroit II comment indicating that a large precentage of cars experience mechanical problems even after inspection and repair.[298]

In sum, the data compiled in the Baseline Survey generally show that some of the expected benefits of the Wisconsin warranty disclosure requirement were observed in Wisconsin, but the data do not show that the law's defect disclosure requirement had achieved beneficial results. This difference in the warranty disclosure data compared to the data relating to defect disclosures generally supports the Commission's view that the beneficial effects of a defect disclosure requirement in the Used Motor Vehicle Rule are questionable. No one comparison of Wisconsin and the rest of the country compels this conclusion. Nonetheless, in our view, the overall pattern of results supports our decision to promulgate a Rule without the "known defects" disclosure provisions.

The fact that the data compiled in the Baseline Survey generally do not show that the Wisconsin defect disclosure has achieved beneficial results and that the data in the Wisconsin Study is inconclusive on this point, must be considered as strong evidence supporting the Commission's decision to promulgate a Rule without the known defect disclosure requirement. The Commission is particularly concerned about the reliability of defect disclosures from dealers and the enforceability of a provision requiring such disclosures. Given these concerns, the lack of survey data showing significant benefits for defect disclosures confirms the Commission's belief that requiring such disclosures will not serve the public interest.

In addition to our serious questions concerning the effectiveness of a defect disclosure provision in making consumers aware of defects prior to purchase, we are equally concerned that the defect disclosure provision included in the 1981 Rule may confuse consumers and cause them to make inaccurate assumptions about the condition of a car after reading the defect disclosure. In cases in which the dealer knew of defects in the car, the provision was intended to result in disclosure of that information to potential buyers. However, in many cases dealers might not inspect or might not discover existing defects. In these cases, the "known defect" disclosure portion of the sticker would be left blank. Disclosure, therefore, might be the source of substantial confusion because the absence of disclosed defects does not necessarily mean that none exists.[299] These concerns are particularly significant given the conclusion that in Wisconsin, most buyers do not learn of defects from the dealer.

Unfortunately, there are at least five separate circumstances in which the dealer could list "no known defects": (1) A dealer inspects and accurately determines that no defect exists; (2) a dealer inspects but fails to discover a

---

[286] *Id.*

[287] As noted in August 1981 Statement of Basis and Purpose:

> The Wisconsin Study indicates that 28.1 percent of pre-law buyers who bought from dealers were aware of defects prior to purchase. This percentage increased to 38.7 percent among those who purchased from dealers following passage of the mandatory inspection law. HX 164(A) at Table IV–12. This increase in defect awareness was accompanied by an increase in the number of buyers who stated that their knowledge of defects came from information supplied by the dealer. In the Wisconsin Study, 1 percent of pre-law respondents said that they learned of defects before purchase from dealers. In the post-law sample, 9 percent said they learned of defects before purchase from dealers. Computed from data in HX 164(A).

46 FR 41342 (1981).

[288] HX 164(A) at Table IV–12. This table indicates that 38.7 percent of Wisconsin post-law consumers who bought from dealers were aware of defects prior to purchase, whereas 40.7 percent of Minnesota consumers buying from dealers knew about defects prior to purchase.

[289] Wisconsin Study HX 164(A), Table IV–2.

[290] *Id.* Table IV–3.

[291] The Wisconsin data also indicated that prices paid by Wisconsin consumers who purchased from dealers fell by 8.73 percent after the Wisconsin inspection/disclosure law went into effect. The authors of the study stated that these apparent savings should not be considered as benefits of the Wisconsin law for three reasons. First, they could not be sure that price shifts were attributable to the Wisconsin law. Second, they were concerned that the price drop may have been a short run phenomenon. Third, they felt that, even if price changes were caused by the Wisconsin law and are permanent, they should not be treated as net increases in the welfare of Wisconsin consumers. In their view, the drop in price not only makes a used vehicle less expensive to buy, it also makes the existing stock of vehicles less valuable. Thus, the price decline reduced the trade-in value of used vehicles, causing welfare losses to some consumers.

[292] The August 1981 Rule required disclosure of defects on the window sticker. However, at the time the Baseline Survey was conducted, the Wisconsin law required only that dealers present a defect disclosure statement to consumers before signing the contract. Therefore, it could be argued that the Baseline Survey data showing the effects of the Wisconsin defect disclosure requirement should not be compared to the known defects disclosure provision because schemes used by dealers to prevent consumers from reading the defect disclosure are likely to work in Wisconsin but are unlikely to work when the defect disclosures must be placed on the car.

Although the comparison is not perfect, the Commission believes that studies of disclosures in different formats can provide useful information regarding the likely effect of the rule. Because the Baseline data reflect knowledge at the time of sale, and disclosure in Wisconsin occurs before the sale is concluded, the Wisconsin experience provides a reasonable assessment of the value of presale disclosure. Moreover, if we accept the argument that studies of the effectiveness of a law requiring defect disclosures prior to signing the sales contract have no relationship to the effectiveness of defect disclosures on a car's window sticker, then there is no empirical evidence in the record showing the likely effect of such a window sticker disclosure. Given the other significant problems with the defect disclosure requirement discussed in Section IV A of this Statement, the absence of such evidence would support our decision to promulgate a rule without a defect disclosure provision.

[293] An important purpose of a warranty disclosure is to make consumers aware of warranty coverage at a point when they can use this information in their purchasing decisions. Although the sample sizes are small, the Baseline Survey suggests that the Wisconsin warranty/as is disclosure accomplishes this purpose. About the same percentage of Wisconsin consumers (34 percent) as non-Wisconsin (35 percent) consumers learned of the warranty "while thinking about the car". Wisconsin consumers, however, were more likely to learn of the warranty "while negotiating" (58 percent vs 41 percent). Moreover, a higher percentage of non-Wisconsin consumers learned of the warranty late in the transaction. Table 12 shows that twenty percent of non-Wisconsin consumers learned of the warranty "when signing" the sales contract while only 5 percent of Wisconsin consumers learned of the warranty this late in the transaction.

The Baseline Survey also suggests that Wisconsin consumers had a better understanding of the dealer's post-sale repair responsibilities than non-Wisconsin consumers. This effect is shown in Table 15, Part B by the fact that Wisconsin dealers were more likely to correct post-sale problems when their customers thought the dealer should pay. Seventy-eight percent of consumers who brought their cars back to the dealer in Wisconsin reported that the dealer corrected or helped pay for the problem. Sixty-nine percent of non-Wisconsin consumers who brought their cars back to the dealer actually obtained repairs from the dealer.

[294] Baseline Survey, Table 9.

[295] Table 9 of the Baseline Survey shows that 14 percent of Wisconsin consumers were aware of mechanical defects before they bought their used cars. Twenty four percent of these consumers reported that they learned of mechanical problems from the dealer. Therefore, 3 percent of all Wisconsin consumers responding to the survey learned of mechanical problems from the dealer (20 percent of the 14 percent who knew about defects). Likewise, 4 percent of all consumer respondents in the rest of the country learned of mechanical problems from the dealer (24 percent of the 15 percent who knew abut defects).

[296] The difference in the proportion who are "very dissatisfied" is statistically significant. Consumer satisfaction is a good measure of the effectiveness of a defect disclosure remedy because the occurrence of major unknown problems after the sale is likely to have a significant effect on a consumer's level of satisfaction. Whether defect disclosures merely make consumers aware of the condition of a car, or induce dealers to make repairs or improve warranty coverage, consumer satisfaction should improve as a result. Consequently, it is reasonable to expect that consumer satisfaction would be significantly lower in states without a defect disclosure requirement compared to Wisconsin where dealers are required to inspect their cars and disclose major defects, if defect disclosure benefits consumers.

[297] For Wisconsin consumers, 65 percent made repairs (Table 16), but only 14 percent (Table 9) knew of the problems when they bought the car. Thus, 51 percent (65 percent minus 14 percent) experienced unknown problems.

Survey data indicate that 83 percent of Wisconsin consumers repair defects known at the time of sale, compared to 71 percent in the rest of the country. Adjusting for this factor, 53 percent of Wisconsin consumers fixed problems not known at the time of sale, compared to 40 percent elsewhere. If the same fraction of problems discovered after sale are repaired, then 64 percent of Wisconsin consumers (53 percent divided by 83 percent) experienced a problem after sale, compared to 69 percent in the rest of the country (49 percent divided by 71 percent).

[298] XB–02 (The Detroit II Corporation, Inc.).

[299] The "known defects" disclosure provision had no mechanism by which a system could be declared defect-free. A dealer could assure consumers that a system is "OK" by providing a warranty for the system. Although the *warranty* disclosure provision of the Rule facilitates the dealer's offering this assurance, a *known defects* provision would not help the buyer in this case.

defect that does exist; (3) a dealer does not inspect and a defect exists; (4) a dealer does not inspect and there is no defect; and (5) a dishonest dealer does not reveal a known defect.[300]

Thus, a buyer relying on the absence of a disclosure of a known defect may incorrectly assume that no defect exists, when in fact the buyer would only know that the seller had claimed no knowledge of a defect. The disclosure that the dealer is not aware of any defects in a car provides no information about the actual existence of an undiscovered or latent defect. Thus, buyers may not only be getting no useful information about a car's condition, but may be affirmatively harmed by mistakenly inferring that the dealer's lack of knowledge about defects means that no defets exist.[301] Unscrupulous dealers or salespersons could easily exploit the likelihood that consumers will mistake the absence of a disclosure for a claim that the car is of high quality. For example, dealers might highlight that there are no "known defects" in the car or argue that the requirement to disclose known defects makes an independent inspection unnecessary—"If we knew of any problems, we'd have to tell you about them."[302]

The danger that buyers may mistake a claim of "no known defects" for a claim about the car's overall quality or about its freedom from specific defects is especially great if the car is sold "as is." In fact, a "common abuse" identified in the original rulemaking record with respect to warranties was oral misrepresentations by dealers exploiting buyer confusion about their legal rights in "as is" sales.[303] If the "known defects" provision is retained, dealers selling "as is" cars could easily use the absence of disclosed defects in an effort to assure buyers that, because the car contains no "known defects", the "as is" warning is irrelevant. In addition, buyers may be further confused by incorrectly assuming that a dealer's disclosure of no known defects satisfies the window sticker's admonition to get "all promises in writing".

In view of the extensive evidence of dealer misrepresentations concerning the mechanical condition of their cars coupled with the likelihood that defect disclosures would be confusing to consumers or even be used to facilitate dealer misrepresentations, the Commission believes that a known defect disclosure will not serve the public interest. It gives the wrong signal to consumers by encouraging them to focus their attention on dealer-controlled information about a car's mechanical condition. In contrast, the warranty disclosure requirements, the warning about spoken promises and the pre-purchase inspection notice encourage consumers to avoid reliance on dealer-controlled information about a car's mechanical condition. The presence of the defect disclosure requirement on the Buyers Guide is confusing and likely to undermine the effectiveness of the essential protections afforded by the rule.

2. Enforceability

Another major reason for promulgating a Rule without the known defects disclosure requirement is the enforcement problems this provision would present. In order to establish a violation of the "known defects" provision it would be necessary to prove that (1) the car is defective, (2) the defect was present at the time of sale, and (3) the dealer (or the dealer's agent or employee) knew about the defect at the time of sale. The "knowledge" element may be proved by showing that the dealer had obtained "facts or information about the condition of [the] vehicle * * * which would lead a reasonable person under the circumstances to conclude that the car contained one or more of the defects [enumerated in the rule]."[304]

Unlike some other rules, a Rule with a "known defects" disclosure provision is not self-enforcing.[305] Rather, dealers would have every incentive to avoid inspecting their cars as well as to avoid disclosing defects if any are found. Indeed, the more prevalent are disclosures by other dealers in the marketplace, the more incentive any individual dealer would have *not* to disclose defects in his or her cars. When many dealers inspect and make honest disclosures, consumers, are even more likely to infer that lack of a disclosure implies "no defect." Thus when inspections are prevalent, dealers can benefit by failing to reveal the true condition of their cars.[306] Given the lack of any self-enforcing mechanism, the level of compliance with the "known defects" disclosure provision would depend wholly on the degree of the FTC's enforcement presence in the marketplace. This is particularly troubling because enforcement of this provision is likely to be quite difficult.

First, our means of targeting potential violators are seriously flawed because unknow defects frequently show up in cars soon after sale. The data discussed above indicate that a majority of buyers experience problems after sale that were not known at the time of sale.[307] Thus, cars sold by the average dealer may have many undisclosed and, indeed, unknown defects that surface following sale. Because the number of latent defects may vary considerably, an "unlucky" but honest dealer may have undisclosed defects that appear at an even higher rate. Thus, the prevalence of complaints would not provide an accurate gauge for targeting our enforcement effects.

The only enforcement technique that avoids these problems is the use of "test shoppers". One "shopper" would approach a dealer as a potential buyer, receive permission to take a car to a diagnostic center for inspection, return the car to the dealer and discuss the inspection report with the salesperson. A second "shopper" would subsequently return to the dealer to determine whether defects included in the inspection report were being disclosed to new prospective buyers. However, such an enforcement mechanism would be both costly and intrusive. Moreover, it relies on the reliability and consistency of opinion among mechanics, an issue about which there is some doubt.[308] Finally, holding dealers

[300] A dishonest dealer may reveal another, more minor defect to give the appearance of honesty.

[301] The "known defects" disclosure in the 1981 Rule contained a warning that the absence of a disclosed defect does not necessarily mean that the car is free from defects. However, there is no evidence that this warning would be effective. For example, a consumer comparing a car with a disclosed defect and car with an undisclosed defect may find the inference that the car with no disclosed defect was in better condition irresistable despite the warning.

[302] The Commission expects that dealers will use the warranty disclosure portion of the window sticker as a sales tool. We can hardly expect this use to be confined to one portion of the sticker. However,

[303] 1981 Statement of Basis and Purpose 46 FR at 41333 (1981); Staff Report 275–77, 289–97; Presiding Officer's Report 46–47, 125.

[304] 1981 Rule 455.2(c).

[305] We have noted previously that auction facilities have rules that allow dealers to rescind or renegotiate the sale, if the dealer purchasing the vehicle finds major problems. This right to rescind or renegotiate the sale is a self-enforcing remedy in that it allows the buyers and sellers at auctions to settle their differences without the need for a third party intervernor.

[306] *See* XB–21 at 33 (NADA) and XB–22 at 24 (NIADA) for dealers' arguments on this point.

[307] Baseline Study at Tables 9 and 16; XB–02 at 1 (The Detroit II Corporation, Inc.). *See* discussion in Section IV. A.1.b. *supra.*

[308] A study done by the California Public Interest Group (CALPIRG) demonstrates the extent to which mechanics can differ. Part of the CALPIRG plan was to take used cars to a diagnostic center to obtain reports on their condition. Before doing this, CALPIRG compared diagnostic centers to determine their reliability. The results of this comparison demonstrates the inconsistency of mechanics in noting defects:

Continued

liable for failure to disclose defects brought to their attention by test shoppers places a continual burden on dealers to update their disclosure forms whenever a potential buyer alleges a problem. This would substantially increase the costs of the provision, possibly even requiring dealers to remove previously inspected cars from sale until the allegations of a defect could be verified and the form updated.

Second, even if we were able to identify potential targets, the standards set forth in the "known defects" provision are sufficiently ambiguous that winning a contested enforcement action would be extremely difficult. For example, the "known defects" disclosure provision would have required disclosure of a defect for "oil leakage excluding normal seepage." The use of terms such as "abnormal" and "improper" in the criteria for determining whether a system has a major known defect imply that it is up to the dealer to determine when along a continuum the presence of a particular condition becomes a defect.[309] Such ambiguities would make compliance with the provision difficult and were a major focal point for dealer's complaints about the provision.[310] These same ambiguities, however, will also make winning a contested enforcement action very difficult.

Even if we were to meet the burden of establishing that a car is defective, we would still be required to prove that the defect existed at time of sale. This again is a formidable task since the appearance of a defect shortly after the sale does not imply that the defect existed prior to sale. New mechanical problems may develop and latent defects may appear at any time.[311] Although the August 1981 Rule would have prohibited dealers from considering a car's age in determining whether a defect exists, this standard is clearly unrealistic for certain categories of problems.[312] Further, because certain conditions occur naturally as a car ages, it is difficult, if not impossible, to determine reliably at what point such a condition becomes a "defect." Additionally, mechanics may disagree about what constitutes a defect or whether a defect in fact exists.[313]

There could also be a serious problem in proving that a dealer had knowledge of a defect. There is no recordkeeping requirement accompanying this provision and, even if one were added, the dealer's incentives to comply would be problematic. Absent records of dealer inspections, the Commission would be forced to either limit enforcement actions to blatant defects—such as body rust or bald tires—that develop over long periods of time, or prove cases based on constructive knowledge. In proving constructive knowledge we risk the evolution of the "actual knowledge" standard into a "should have known" standard. However, with a "should have known" standard, we risk the "known defects" disclosure requirement, in effect, becoming a mandatory inspection requirement.[314]

Finally, the Commission notes the problems of proof in its cases alleging defects in new automobiles. In most of these cases there have been thousands of vehicles with the relevant manufacturing defect, manufacturers have had regular reporting systems to identify problems, and engineering analyses have been able to establish the cause of the problem. Even so, establishing a manufacturer's knowledge of a defect has been one of the most difficult aspects of these cases. Establishing that an *individual* used car dealer has knowledge of a *particular* defect in a series of sales of *individual* cars of different makes, models and ages would be a very difficult, resource-intensive undertaking.

In sum, the vague terms used to define defects and the formidable evidentiary barriers created by the need to establish dealer knowledge of defects would severely limit the Commission's ability to enforce the "known defects" disclosure provision. In the Commission's judgment, such a use of its resources would be inappropriate, particularly in comparison to other enforcement priorities. Moreover, the Commission believes it is inappropriate, and likely to undermine respect for the law in general and the Commission's rules in particular, to promulgate rules where enforcement will necessarily be problematic at best.

The Commission stated in the August 1981 Statement of Basis and Purpose that it expected dealers to comply with the defect disclosure requirement since failure to comply with the requirement might be enforced by a fine of up to $10,000 for each violation. In addition, the Commission relied on findings presented in a record survey (the Wisconsin study) showing that, under Wisconsin's mandatory inspection-disclosure law, more consumers were aware of defects prior to purchase and the percentage of buyers receiving pre-purchase defect information from dealers increased after the Wisconsin law went into effect.[315]

The threat of fines may or may not be sufficient to assure some compliance with the rule, but we can be reasonably assured that full compliance is far from guaranteed and that compliance by the "bad actors" in the industry is questionable at best. The effectiveness of fines in achieving compliance is affected substantially by two factors: First the ability of the regulated industry to bring its practices into compliance with the rule, and second, the regulated industry's perception of the likelihood of

We found that while there is some consistency amongst diagnosticians who are checking the same car—it is frequently weak. For example, out of the total problems noted by one or more of the diagnosticians for the three cars, which had undergone six diagnoses each, there was only one instance in which even five out of the six diagnosticians noted the same problem (a worn front tire). There were only four problems which four of these diagnosticians commonly noted (bad wiper blades, cracked windshield, inoperative backup lights, and poor brake condition). Three of the six diagnosticians agreed upon 12 other problems with these vehicles.

There were 15 problems out of 63 which at least two of the six diagnosticians noted. The remaining 31 problems uncovered by only one of the six diagnosticians were not confirmed by any of the others.

Out of the 36 total problems noted by the diagnosticians for the two cars which had been taken for five diagnoses each, there was one instance when all five diagnosticians agreed that a common problem existed (a dirty air filter). There were only three other instances in which four of the diagnosticians noted a common problem (bad tailpipe, leaking valve cover, bad gas filter), and five in which only three of the five did so. At least two of the five commonly noted 13 different problems, while 14 of the 36 problems noted in two cars had been mentioned by only one diagnostician and not confirmed by any of the other four.

The charts show instances where one diagnostician indicates that a brake job will be necessary in the near future, another says it is necessary immediately, and a third one indicates that the brakes have another 5,000 miles of lining left. In another case, two diagnosticians indicate that a left rear axle seal is leaking, while a third one notes that it is the right rear axle seal that should be replaced.

HX 82 at 6.

[309] Eight of the twenty-four defect criteria included in the August 1981 Rule used relative terms such as "abnormal" and "improper." *See* 1981 Rule, 16 CFR 455.6 (1982).

[310] *See* Staff's Summary of Comments in Response to the Dec. 10, 1983 Comment Period and the March 2, 1984 Rebuttal Period at 43–44, & nn. 146, 148.

[311] *See* discussion in Section IV.A.1.a. *supra.*

[312] *See* XB–23 at 10, American Car Rental Association.

[313] *See* n. 308 *supra.*

[314] Because the Rule requires that the form be made part of the sales contract by reference, consumers may litigate provisions of the Rule in private disputes. Thus, even if the FTC were to conduct its enforcement activities in ways that assiduously sought to avoid the development of a "should have known" standard, such a standard might have evolved through private litigation.

[315] *See* n. 287 *supra.*

punishment. As we discussed earlier in this statement, the Commission is very concerned about the ability of the industry to understand its obligations under the "known defects" provision. The Commission is even more concerned about its ability to enforce this provision. The ambiguity which, of necessity, characterized dealer obligations under the known defects disclosure provision would make it difficult for dealers to comply with the rule or, at least, to know whether they are in compliance with the rule even when they take steps to comply. In addition, the difficulties inherent in bringing even a single case to court under a "known defects" standard is likely to make rule enforcement, at best, sporadic. As consequence, it is not at all clear that fines will produce anything more than perfunctory compliance with the rule.

Finally, the Commission does not believe the Wisconsin Study provides a good basis upon which to assess dealer compliance with the "known defects" disclosure provision. Given the inconclusive nature of the Wisconsin data, the Commission does not believe the data support a prediction of substantial dealer compliance. Moreover, the Baseline Survey indicates that whatever levels of compliance have been achieved have not significantly benefitted consumers.[316]

4. Alternatives to the Known Defects Disclosure Requirement

During the course of the review proceeding held pursuant to the court remand order in *Miller Motor Car, supra*, the Commission has considered several alternatives to the known defects disclosure requirement. The Commission considered, first, whether changes could be made to this provision to resolve the significant problems discussed in detail above. The Commission also reevaluated the mandatory and optional inspection provisions that were considered as alternatives to the known defect disclosure requirement when the Commission issued the August 1981 Statement of Basis and Purpose. The Commission, however, has determined that neither approach is preferable to simply promulgating a rule without the known defects disclosure requirement.

5. Modifications to the Known Defect Disclosure Requirement

The known defects disclosure requirement could be modified to reduce the likelihood that disclosure would cause dealers to incur additional inspection costs. These changes could clarify or eliminate some of the relative terms used in the defect criteria and more clearly define the "reasonable person" standard. However, even if the known defects disclosure provision could be made so clear that dealers would disclose known defects without incuring additional inspection costs, the provision would not, in the Commission's view, provide significant benefits to consumers.

The Commission believes that any disclosure remedy that encourages consumers to rely on dealer-provided information about a car's mechanical condition undermines other more important disclosures required by the Rule. The warranty disclosures, the spoken promises warning, and the pre-purchase inspection notice are intended to signal that consumers should not rely on the dealer for information about a car's mechanical condition. This message is critical because the rulemaking record shows that many dealers misrepresent the condition of the cars they sell. On the other hand, encouraging consumers to rely on disclosures from the dealer to determine a car's mechanical condition presents a confusing and contradictory message that may itself (or with the aid of a shrewd dealer) dissuade consumers from shopping for the best warranty terms or obtaining independent inspections. Therefore, although it may be possible to modify the known defect disclosure provision to make its defect standards more precise and limit the standard for determining the dealer's knowledge of a defect, this alternative would still undermine the effectiveness of more important disclosures on the window sticker.

Additionally, enforcement of the rule could arguably be enhanced by requiring dealers to maintain records of inspections when they inspect cars. However, such recordkeeping requirements are not likely to be followed by dealers inclined to break the law, and can only serve to discourage dealers from inspecting their cars prior to sale. Consequently, the Commission does not believe that modifying the known defect disclosure provision is a viable alternative.

B. Mandatory Inspection

In August 1981, the Commission considered and rejected a requirement that dealers inspect their cars and disclose the results of the inspection.[317] The Commission again rejects the mandatory inspection alternative. In addition, some of the reasons stated above for eliminating the known defect disclosure provisions apply with equal force to the mandatory inspection requirement.

The mandatory disclosure provision would have involved a checklist in which each major mechanical system was to be checked "OK" or "NOT OK," together with an indication of the reason for any "NOT OK" checks. Dealers would have been required to follow a specified inspection protocol when performing inspections.

This approach was proposed by staff in a 1978 Staff Report to address the problem of dealer misrepresentation of mechanical condition directly. Under this alternative, buyers would have had a specified number of days to report any problems with "OK" systems, and, during the period to report problems, dealers would be responsible for repairing any defects in these systems.

Industry members expressed concern about the increased post-sale liability that would be incurred by dealers who checked systems "OK."[318] In addition, because "OK" checks in effect created warranties under state law, some industry members questioned whether a rule that required dealers to inspect and check "OK" where appropriate would contravene the intent of Congress expressed in 102(b)(2) of the Magnuson-Moss Warranty Act, which explicitly prohibits the Commission from mandating warranties.[319]

There was also concern by dealers and dealer organizations that dealers' cost of operation would increase under a mandatory plan;[320] that is, that dealers would have to pay for the inspection of each car offered for sale and would pass those costs on to the buyer in the form of higher selling prices for cars.[321] Such a result would not have been dictated by market forces but would ahve been uniformly required for every used car as a result of government intrusion into the marketplace.

The issue of the costs of inspection was addressed extensively in the record. The staff believed that because a majority of dealers currently inspect cars, inspection costs for most dealers would not increase.[322] As noted above, however, the Commission is not convinced that present inspection practices would provide the detailed, system-by-system information that a mandatory inspection rule would require.[323] Furthermore, for those dealers who did not currently inspect, staff projected a cost range of $15–30 per car.[324]

While the mandatory inspection proposal was favored by many consumer organizations,[325] the Commission, in light of the aforementioned concerns, determined that this remedial approach was not feasible.

The Commission also believes that the mandatory inspection alternative should be rejected because it is more likely to undermine the effectiveness of more important disclosures required by the Rule than either the defect disclosure requirement or an optional inspection provision. A mandatory inspection checklist, by its very nature, serves to induce consumer reliance on the dealer's inspection, discouraging consumers from seeking independent inspections. Moreover, consumers who rely on dealer inspections may well forego the search for important warranty protections. In addition, this emphasis on the results of a mandatory inspection works to the consumer's detriment because the dealer can be required only to disclose current defects, not conditions indicating that components may fail in the near future and require expensive repairs. Consumers who obtain independent inspections can find out whether components currently functioning adequately may need expensive repairs in the near future. Of course, consumers who obtain good warranty protection will not have to bear the expense of repairing malfunctions that occur during the warranty period. In short, the Commission is concerned that a mandatory inspection rule has the potential to do more harm than good because it encourages reliance on dealer inspections and, as a consequence, discourages consumers from seeking more reliable information. Finally, the Baseline Survey suggests that Wisconsin's version of the same remedy has not achieved significant beneficial effects.[326]

C. Optional Inspection

In promulgating the 1981 Rule, the Commission also considered an optional inspection provision as an alternative to the known defect disclosure requirement. Under this alternative, as under the mandatory inspection proposal, dealers would be required to post a window sticker with a list of mechanical systems. However, the checklist would have an additional column: "No Rating."[327] The dealer would have no obligation to inspect. If a dealer chose not to inspect, the mechanical systems could simply be checked "No Rating." Additionally, if the dealer inspected and found a system not to be defective, but did not want to assume liability for its condition, the dealer could also check "No Rating."[328] This alternative would give dealers the flexibility to determine whether to inspect as well as whether to assume responsibility for the condition of nondefective systems. If, however, the dealer did inspect or otherwise discovered specified systems to be defective, he or she would have to disclose such systems as "Not OK" and describe what the particular problem was.

There is little difference between optional inspection and known defects disclosure except that the former approach provides a format which permits dealers to disclose what components or systems are "OK" and, thus, counterbalance defect disclosures.

The Commission rejected the optional inspection approach in 1981 and we reject it today because of concerns expressed by consumer groups and industry representatives. First, some groups expressed concern that an optional inspection rule would detract from warrant disclosures, especially those relating to "as is" sales, by focusing the buyer's attention on the condition of individual components at the time of sale rather than on the dealer's continuing responsibility—if any—for post-sale repairs.[329] Others were concerned that a simple "OK"/"Not OK"/"No Rating" evaluation system might not clearly and accurately communicate a car's individual condition and, thus, could lead to consumer confusion and, perhaps, even deception.[330] Some believed that if dealers of older and cheaper used cars chose not to inspect, checked "no rating" and sold "as is" with no warranty, the consumer could conceivably be harmed by an optional inspection rule, since the "no rating" option could undermine a consumer's attempt through litigation to enforce oral dealer promises about condition.[331]

The question was also raised as to whether the optional inspection approach would provide consumers with useful information. A number of commentators believed that dealers, particularly in "as is" sales, would simply mark all systems "No Rating".[332]

In addition, there was some concern about the cost of an optional inspection approach. Dealers and dealer organizations claimed that the cost of inspection, even on an optional basis, would be high, and that consumers would ultimately shoulder those costs through higher used car prices.[333]

---

[316] *See* Section IV.A.1.b *supra*.

[317] The determination occurred at a Commission meeting held on October 11, 1979.

[318] See NIADA, S–739, at 44, 86, 101; Wilkerson, S–586; Gadwin, S–624; Suvan, S–469; Roland, S–553. *See also*, NIADA, S–739 at 88; Murphy, S–708 at 1; Knauf, S–410 at 1.

[319] NADA, S–738 at 62–77; AAA, S–833 at 2; NIADA, S–739, S–562; Delaware Valley Auto Dealers Association, S–461; Texas Independent Automobile Dealers Association, S–1008; Virginia Independent Automobile Dealers Association, S–1023.

[320] NADA, S–738; NIADA, S–739; Texas Independent Automobile Dealers Association, S–1006; Patnode, S–999; Bryson, S–378; Suvan, S–469.

[321] Virginia Independent Automobile Dealers Association, S–1023; Smith, S–970; Mitchell, S–569; Carter, S–618; Hawley, S–980.

[322] *See* Staff Report at 213–241.

[323] *See* Section IV.A.1.a. *supra*.

[324] However, one dealer association conducted a survey of mechanics which produced a cost of inspection ranging from $25 to $250 per car. See post-record comment of NIADA, T–742 at Appendix III. See generally NIADA, S–739; Whetman, S–790; Texas Independent Automobile Dealers Association, S–993.

[325] *See* AOAC, T–706; CALPIRG, T–727 at 1; Center for Auto Safety, T–733; NCLC, T–833; Newton, T–316; Pfeffer, T–371; Ranstrom, T–508; Carter, T–598.

[326] *See* Section IV.A.1.b. *supra*.

[327] In the version of the optional inspection rule published in the August 7, 1980, Federal Register, the column indicating that a car had not been inspected and that the dealer was making no promises about condition was called "We Don't Know." Technical comments suggested that "We Don't Know" carried pejorative connotations. Therefore, staff recommended that the column be labeled "No Rating." See staff Memorandum to the Commission, Final Recommendations concerning Used Car TRR dated January 14, 1981, at 17–18.

[328] Some such scheme is necessary to avoid the problem of requiring a warranty.

[329] Many commentators stated that buyers would not understand that an "OK" check identified a condition at the time of sale rather than a warranty of future performance. *See* AOAC, T–706 (Appendices B–6, B–9, B–12); CALPIRG, T–733 at 29; CAS, T–733; NCLC, T–833 at 14–15; NADA, T–740 at 26; NIADA, T–742 at 21–22.

[330] *See* AOAC, T–706; CALPIRG, T–727 at 8–12, 34; CAS, T–733; Cueller, T–238; Strickland, T–678; NADA, T–740; NADA, T–740 at 18–19, 33; NIADA, T–742 at 14–15, 25.

[331] AOAC, T–708 at 18 (Appendix B–6); CALPIRG, T–727 at 1, 31–32; Kaufman, T–150; Cueller, T–238; Hartman, T–287; NADA, T–740 at 31; Stokes, T–567.

[332] AOAC, T–708 at 7–15A; CALPIRG, T–727 at 15–18; CAS, T–733; NADA, T–740 at 21; Merrill-Wahus, T–165; Carter, T–68.

[333] Berrier, T–698(b); NADA, T–740 at 22; NIADA, T–742 at 8, 9. The dealer arguments concerning costs were counterbalanced against the evidence that in Wisconsin, after implementation of a mandatory

Continued

As stated above, the optional alternative is essentially a known defects disclosure requirement (known defects would be disclosed as "Not OK" with a mark next to the appropriate defect(s) listed on the form) with a format that allows dealers to indicate which systems are "OK." Therefore, all of the problems associated with the known defects provision apply equally to the optional inspection alternative. This alternative may undermine other more important disclosure remedies included in the rule. Dealers may ignore the defect disclosure requirement and routinely give all systems a "No Rating" designation or may use the disclosure checklist to corroborate their deceptive representations. Policing the defect disclosure component of the optional inspection alternative will create insurmountable enforcement problems. Finally, if the optional inspection provision were to define some defect criteria by using relative terms such as "abnormal," and use the "reasonable person" standard to determine the dealer's knowledge of defects, this alternative may force dealers to incur substantial additional inspection costs.

D. Mandatory Third-Party Inspection Opportunity

The staff considered, but did not recommend, a mandatory pre-sale third-party inspection opportunity for consumers.[334] Under this alternative, dealers would have been required to allow consumers to take the car off the lot for purposes of obtaining a third-party inspection; consumers would have been assured the availability of independent diagnostic analysis. However, record comments suggested such a rule would result in increased costs, including increased insurance and personnel time. Consumers would thus face the direct costs of inspection, as well as the likely pass-through by the dealer of his or her costs. Because of the potential costs involved in a mandatory, third-party inspection opportunity, the staff did not recommend that the Commission include such a requirement in the final rule.

E. Cooling-Off Period

Some consumer organizations recommended that a cooling-off period be added to the optional inspection rule.[335] The cooling-off period would apply only to vehicles that had not been inspected. Its purpose was to give purchasers of vehicles that had not been inspected an opportunity to discover defects on their own and to give dealers an incentive to inspect in order to avoid the cooling-off period.

The staff rejected the cooling-off period alternative because it appeared to have significant costs and uncertain benefits.[336] The costs to dealers included those arising from the danger of theft, the consumer's use of the vehicle as a free rental car or for "joy riding," uncertainties in financing arrangements (decreasing the rate of inventory turnover or increasing the dealer's capital requirements), increases in insurance rates, repeated detailing expenses, and repeated inspection expenses. If dealers attempted to recover these costs through a user fee to consumers who returned cars, the effectiveness of the cooling-off period would have been reduced since consumers would have little economic incentive to rescind. The Commission did not consider a cooling-off provision a viable option, and therefore the issue of a cooling-off period remedy was not discussed by the Commission as an alternative to, nor in conjunction with, the inspection or disclosure options.

F. Disclosure of Prior Use

The Final Staff Report recommended that the Commission include a disclosure of a car's prior use on the Buyers Guide.[337] "Prior use" refers to the manner in which a car was used prior to being offered for sale on the used car lot—*e.g.*, as a taxi, rental car, police car, etc. In the Final Staff Report, the staff proposed that each of these "prior uses" be listed on a window sticker and that the dealer check an appropriate box.

At the October 11, 1979 meeting, the Commission rejected the disclosure of prior use because it believed that staff had failed to demonstrate that consumers were injured when prior use was not disclosed. The Commission stated that, although it appeared prior use was material to consumers, the record did not sufficiently demonstrate that disclosure of prior use provided consumers with an accurate indication of a car's mechanical condition.[338]

G. Disclosure of Odometer Accuracy

The Final Staff Report recommended that the Commission include mileage disclosure on the Buyers Guide,[339] even though it duplicated federal law.[340] Staff's arguments focused on the fact that, under the law, disclosure need not be made until the time of sale, which often occurs in a pressure situation with the consumer confronted by a number of forms. Therefore, consumers did not always read the odometer disclosure form. Staff also stated that the repeated disclosure on the Buyers Guide was minimally burdensome since the dealer simply had to copy readings from the odometer disclosure form.

The Commission disagreed. On October 11, 1979, it rejected staff's proposal primarily because it duplicated federal law and therefore appeared unnecessary.

H. Disclosure of Estimated Repair Cost

In the Final Staff Report, staff proposed that dealers be required to disclose estimated costs of repair for items checked "Not OK."[341] Staff believed that such a disclosure would enable dealers to reveal to mechanically unsophisticated consumers the true impact of the "Not OK" check. However, at the May 16, 1980 meeting, the Commission rejected the staff's recommendation. The Commission decided that a disclosure of the estimated range of cost would not provide meaningful repair information to consumers, since mechanics could not be specific about repairs for problems not fully diagnosed. The Commission was also concerned about the cost of ascertaining what precise repairs might be necessary.[342]

I. Disclosure of Prior Repairs

The initial rulemaking notice on January 6, 1976, included a proposed rule provision that would have required a description of repair work performed by used car dealers.[343] Staff, however, recommended dropping the proposed disclosure of prior repairs because there was no record evidence to support a finding that prior repairs are reliable indicators of current mechanical condition. Moreover, since consumers consider prior repairs to be a negative attribute, disclosure of prior repairs would have reduced dealer incentive to make such repairs. Finally, the record indicates that most consumers could not make effective use of repair information because they lack the technical expertise to distinguish repairs which might indicate more serious problems from repairs which actually improve the value of the vehicle. The Commission agreed with staff's recommendation to eliminate the proposed prior repair disclosure.[344]

J. Disclosure of Flooded or Wrecked Vehicles

The Final Staff Report recommended that the Commission include a disclosure that vehicles had been flooded or wrecked and established as an insurance "total loss."[345] In staff's view, the record established that such vehicles are not desired by consumers and are often mechanically inferior to vehicles which have not been wrecked or flooded. However, the Commission decided at the May 16, 1980, meeting that, because insurance companies base their decision as to whether a car is totalled on the market value of the car, and not exclusively upon the amount of damage, the information provided could result either in unjustifiable depreciation in the value of a car or in a failure to disclose severe damage.[346] The provision for disclosure of the fact that a vehicle had been flooded or wrecked was therefore deleted from the rule.

V. Economic Impact on Small Businesses and Consumers

A. Analysis of the Used Car Rule—Projected Benefits, Costs, and Effects

As set forth earlier, the Rule comprises five components—two affirmative disclosure requirements relating to the specific vehicle (a disclosure of warranty information, and of the meaning of an "as is" sale), and three other general information disclosures (a spoken promises warning, a major systems list, and a pre-purchase inspection notice). Each element is designed to remedy particular abuses reflected in the rulemaking record and, thus, to a certain extent, is segregable from the whole for the purposes of analyzing projected benefits, costs and effects of the Rule.

However, certain of the projected benefits and costs may not be readily segregable, and therefore are more appropriately attributable to the Rule as a whole, rather than to any particular element of the Rule. For example, the Commission expects that the disclosures required by the Rule will reduce dealer misrepresentations, consumer reliance on such misrepresentations, and the consumer injury that occurs from unexpected liability for repair costs. Such benefits are likely to arise from the impact on the market of the entire Rule, rather than from the impact of any one particular element.

The direct cost of providing used car information required under the Rule is minimal. The dealer need only obtain the Buyers Guide forms, and complete them with readily available information. The Rule would not prevent any car, with or without any warranty, in any condition from being sold. Seen from this perspective, the costs of the Used Car Rule, insofar as it functions as a disclosure device, are minimal.

We now proceed to an analysis of each component of the Rule individually.

1. Disclosure of Availability and Scope of Warranty Coverage

The Rule addresses unfair and deceptive dealer practices with respect to warranty coverage and service contract terms.[347] The record clearly demonstrates that dealers orally misrepresent the terms of written warranties and service contracts.[348] In some cases, salespersons deceptively refer to "good warranty" or "full guarantee" when the warranty coverage offered is severely limited.[349] The allocation of repair responsibility and the duration of the warranty are often overstated or not clarified.[350] In addition, warranty information may not be available for use in the consumer's purchasing decision since warranty terms are often not made known to consumers until after they have decided to purchase.[351] For example, results from one study showed that warranty documents failed to describe the items that the dealer would repair in 24 percent of the cases; the dealer's share of the repair cost was not disclosed 19 percent of the time.[352] Another study found discrepancies between the verbal and written warranty in 34 percent of the cases where test shoppers actually saw the warranty.[353]

The warranty disclosure adopted by the Commission addresses these problems. The shopper will be able to readily ascertain which mechanical systems are warranted, for how long, and how costs of repair will be allocated between the buyer and the used car dealer.

a. *Benefits.* The Rule is designed to provide consumers with pre-sale disclosures of material information regarding warranties at a time prior to the closing of the sales contract. The Commission believes that clear and accurate disclosures of post-sale repair responsibilities at the point of purchase will provide an effective remedy for the consumer injury resulting from dealer misrepresentations of warranty coverage, and from failure to disclose the details of warranty coverage.

If consumers have accurate knowledge of what the dealer will pay in case the consumer encounters problems after the sale, unanticipated repair costs and the consumer injury that results therefrom should be reduced. With warranty information available at the point of sale, the consumer will be better able to make accurate assessments of the probable ownership costs (purchase price plus repair costs) of a car prior to making a purchase decision.[354]

The window sticker will provide consumers with an additional source of information on warranty coverage which they can use as a check against which to measure any oral representations by the dealer about the warranty. With the disclosure on the window sticker, consumers can compare the terms of the written warranty document. Thus, the Commission believes dealers will be less likely to misrepresent warranty coverage. At the same time, consumer reliance on any oral warranty promises should be reduced.

Disclosure of warranty terms also provides another sort of benefit. The terms of the warranty will frequently provide information to the consumer about the condition of the car, since

---

inspection law, the costs of inspections to more than two-thirds of the dealers did not rise. *See, e.g.*, HX 104(A) at V–8. The lack of significant benefits from inspection in Wisconsin revealed by the Baseline Study, however, suggests that more thorough and more costly inspections may be necessary to enhance consumer information significantly.

[334] *See* Staff Report at 87–92 nn. 80–83; 41 FR 1091–1093 (1976).

[335] CALPIRG, T–727 at 2; CAS, T–733. Other witnesses suggested varying time periods. Staff Report at 183, nn. 245–248.

[336] Staff Report at 185–190.

[337] *Id.* at 337–383.

[338] This point was raised by several commentators. NADA, S–736; American Car Rental Association, S–736; Consumer Bankers Association S–737.

[339] Staff Report at 384–391.

[340] Motor Vehicle Cost Savings Act, 15 U.S.C. 1988(a)(1). Further, the seller must disclose that the actual mileage is "unknown" if he or she knows the reading is different from the vehicle's true mileage. 15 U.S.C. 1988(a)(2).

[341] Staff Report at 167–68.

[342] *See* Rork, S–16 at 1; Connors, S–683 at 2; Glahedge, S–678 at 2.

[343] 41 FR 1089 (1976).

[344] This occurred at the October 11, 1979, meeting.

[345] Staff Report at 160–164. Cars that are subjected to flood damage in one state are often shipped out of state for sale and without informing the consumer of damage incurred. In the case of "wrecked" vehicles, insurance companies consider the car a total loss when estimated repairs exceed the vehicle's market value.

[346] *See generally* Jones. Alabama Automotive Dismantlers & Recyclers Association, S–202; Vorhof, Foreign Auto Salvage, S–288.

[347] Staff Report at 280–90.

[348] *Id.* at 303–05.

[349] Presiding Officer's Report at 35.

[350] Staff Report at 284. The SRL Study demonstrates a high percentage of confusion over the dealer's share of repair costs. HX 160(A) at Appendix C. Question 23 A and B.

[351] Staff Report at 282.

[352] SRL Study, HX 160(A), Appendix C, Questions 23A, 23B.

[353] CALPIRG, HX 82 at 17.

[354] The record indicates that some buyers do bargain over warranty coverage. Although the magnitude of such bargaining efforts is difficult to determine, the Commission expects it to increase when buyers have more accurate information about the warranty being offered. Staff Report at 301.

consumers are likely to use the strength of the car's warranty as a signal indicating the dealer's evaluation of the car's mechanical condition. For example, a strong warranty may signal the consumer that the dealer has confidence in the condition of the car. On the other hand, a warranty that does not cover the brake system may lead a shopper to question the condition of the brakes.[355] In general, the lack of a strong warranty may serve to arouse buyer suspicions concerning mechanical condition and may encourage some buyers to seek third-party inspections.

Warranty disclosures made early in the transaction thus will make it possible for consumers to use warranty information to weigh the relative importance of the warranty coverage, the condition of the car, and the price they are willing to pay for it. However, to be used effectively, such disclosures must be made available at a time prior to the signing of the sales contract. If warranty information is not available until late in the transaction, the buyer has little opportunity to utilize the information which the terms of the warranty convey. There is little chance for the final agreement between buyer and seller to reflect the buyer's desire for specific warranty terms or the relative value he or she attaches to warranty coverage, condition of car, and price.

We believe that the availability of warranty information early in the bargaining process should increase consumers' ability to bargain for the terms they desire. This should intensify the pressure on dealers to compete on the basis of the terms of the warranty whenever (and to the extent that) consumers are willing to pay for them. With better information, market forces will be able to work more efficiently to determine the nature of the warranty terms offered.

Of course, to be useful to consumers, the disclosure of information must be easily understandable. Tests of the comprehensibility of the disclosures on the window stickers have shown them to be remarkably clear. Focus group tests by Market Facts, Inc., testing two versions of a form very similar to the one required by the Rule, found that respondents could use the Buyers Guide to determine whether the car had a warranty, what systems were covered, and the length of the warranty.[356] This study suggests that the Buyers Guide will increase consumer certainty as to the warranty coverage offered on a car.

An additional benefit to both buyers and sellers may be reduced litigation costs. Disclosure of warranty terms will provide clear written information about the buyer's rights; a clearer written contract is likely to reduce the impact of oral promises. The Commission thus expects that sellers may be more willing to settle disputes and buyers may be less likely to bring actions for unenforceable oral promises. This should result in a more efficient dispute settlement system.

The Commission believes that clear and conspicuous disclosures of information concerning the availability and scope of warranty coverage is likely to have substantial benefits, given the misrepresentations and failures to disclose and resulting consumer injury demonstrated in the market. We expect reductions in consumer reliance on such oral (and generally unenforceable) warranty promises and in unanticipated repair costs for consumers.

b. *Costs.* The Commission believes that the direct costs of warranty disclosure will consist of the printing, filling out and posting of the Buyers Guide. The Rule itself requires no change in the offering or scope of warranties. Dealers may still sell "as is" or offer a warranty. The Rule requires only that dealers conspicuously disclose the terms of a warranty, if offered, or the fact that the sale is "as is." Thus, the direct costs of the Rule will be minimal.

Some indirect costs may result from warranty disclosure. As warranty disclosures become common, competitive pressures may encourage dealers to increase warranty coverage. In that event, dealers may incur additional post-sale repair costs. Presumably, dealers will not offer warranties with more protection than that for which consumers are willing to pay. Thus, to the extent warranty coverage and therefore post-sale repair costs do increase, such costs will be imposed by consumer demand in the market, not by the Rule.

In our judgment, the projected costs of these disclosures will impose minimal burdens on the industry while significant benefits will accrue to consumers. We therefore believe that the warranty disclosure requirements will be cost-effective.

2. "As Is" Sales

The Rule would require dealers to check an "as is" box on the Buyers Guide when they sell a vehicle with no warranty. Next to the box will be a simple statement explaining the meaning of an "as is" sale.

The record reveals a great deal of confusion on the part of consumers with respect to the meaning of "as is" sales:

> Undoubtedly the most needed disclosure proposed in this proceeding involves "As Is" sales . . . The record is replete with testimony as to the lack of understanding on the part of consumers of the meaning and effect of this term in a sales contract. [357]

Data from three studies on the record show that at least 25%, and perhaps as many as 59%, of buyers cannot correctly describe an "as is" sale. [358]

In addition, the record indicates that the "as is" nature of a transaction is not usually disclosed, if it is disclosed at all, until the sale is about to be made. [359] Some "as is" disclosures are couched in complex legalistic terms. [360] In addition, some dealers will make oral promises to repair problems that arise after sale, even though the sale is made on an "as is" basis. [361] Many buyers, even when aware that a sale is "as is" still believe the seller has a legal responsibility to make post-sale repairs. [362]

a. *Benefits.* The Commission believes the "as is" disclosure will assist in reducing the documented widespread ignorance and misunderstandings with respect to "as is" sales.

The benefits of a clear "as is" disclosure are similar to those benefits resulting from warranty disclosure. Because the disclosure will set out the significance of an "as is" sale, we expect that it will reduce consumer reliance on oral promises to repair problems that arise after sale. We also expect a concomitant reduction in dealer oral misrepresentations that a

---

[355] The list of major systems which is set forth on the Buyers Guide should provide the shopper with a context in which to evaluate the warranty coverage offered on any given car. *See* section V.A.3.c. *infra*.

[356] As directed by the Commission, this study was conducted in May 1981, under a staff contract in order to test whether the Buyers Guide, as revised in accordance with the Rule changes approved by the Commission on April 14, 1981, would communicate information to consumers.

Previously, the staff had contracted for two studies that tested earlier versions of the Buyers Guide developed during the Commission's consideration of an optional inspection rule. Focus group testing conducted by Hollander & Associates in August 1980, indicated some confusion with parts of the form, including the relationship between the mechanical condition checklist and the warranty disclosures. After redesigning the Buyers Guide, the staff contracted with the Public Communications Center in December 1980 to perform mall intercept and focus group tests. In those tests, respondents understood the warranty information provided by the form and found the meaning of "as is" to be very clear. PCC Study, Tables 2, 3, 4, 8, and 17.

[357] Presiding Officer's Report at 79, 163.

[358] Staff Report at 262–263.

[359] *Id.* at 266–67. In some cases, it is never disclosed. *Id.* at 271.

[360] *Id.* at 268.

[361] *Id.* at 275. Many of these promises may be honored. Nevertheless, the "as is" disclosure, together with the spoken promises warning, will inform consumers that such promises may be unenforceable.

[362] *Id.* at 263

warranty is provided since consumers will be able to use the disclosures on the Buyers Guide to evaluate contradictory dealer oral promises. A related benefit of the "as is" disclosure is the disincentive it provides for dealers to represent that a particular component is in good condition or that the vehicle in general is in good condition in light of the lack of warranty coverage.

Tests of the comprehensibility of the "as is" disclosure have indicated that consumers understand the disclosure and will use it in making purchase decisions. [363]

It is possible that some dealers may decide to offer a limited warranty on one or more non-essential systems rather than sell the vehicle "as is" and check the "as is" box on the Buyers Guide. However, we would not be concerned if this should occur. As long as the disclosures on the Buyers Guide accurately reflect the warranty coverage, the consumer who receives such a limited warranty will be able to assess the value of the warranty in determining whether to purchase the vehicle. Any detriment to the consumer in receiving such a limited warranty will be diminished by the fact that the Buyers Guide disclosures will inform the consumer of the limited scope of the warranty by placing it within a context of systems that could be covered by a warranty. [364]

b. *Costs.* The direct costs associated with "as is" disclosure are minimal. The check box and definition will be printed on the Buyers Guide adjacent to the warranty disclosure section. The dealer must merely check the box if the vehicle is sold on an "as is" basis. Thus, essentially no costs will be imposed beyond those already incurred in posting the window sticker.

3. General Information Disclosures

The Rule requires the disclosure of information on three additional aspects of the transaction: a spoken promises warning, pre-purchase inspection opportunity notice, and a list of major mechanical systems. These are to be posted as part of the Buyers Guide. The impact of each of the three disclosures is analyzed separately.

a. *Spoken Promises Warning.* The following notice appears at the top of the Buyers Guide:

> **Important:** Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

The record demonstrates that many dealers orally misrepresent both the mechanical condition of used vehicles and the dealer's after sale repair responsibility. The record also demonstrates that consumers rely on oral statements made by dealers at the point of purchase even though those oral statements are not confirmed in writing. [365] Further, discrepancies between oral representations of warranty coverage and written warranty terms are commonplace. [366] In the face of consumer reliance on oral promises, dealers continue to make affirmative misrepresentations regarding their used vehicles' warranty coverage and mechanical condition. Consumers are therefore frequently deceived at the point of purchase by representations which are not only untrue but also unenforceable. The Commission believes the record contains substantial justification for requiring a warning to consumers that all oral promises should be confirmed in writing. Inclusion of a spoken promises warning would alert consumers to beware of reliance on dealers' oral representations.

(1) Benefits.

The Commission believes that a spoken promises warning will contribute to a reduction in oral misrepresentations of mechanical condition and warranty coverage by dealers and, in conjunction with the other disclosures on the Buyers Guide, assist in deterring deception. The level of misrepresentation at the used vehicle lot will be reduced if consumers are informed of the need to secure a written record of all statements made in conjunction with a used vehicle sale. If consumers do in fact ask dealers to confirm their promises in writing, making them available in case of disputes and enforceable in court, dealers are likely to be more reluctant than they are at present to make false or misleading statements.

At the same time, the introduction of this information into the used vehicle market should lead to a decrease in consumer reliance on oral statements and an increased insistence by consumers on written confirmation of all representations made at the time of sale. Such written confirmation of representations should reduce ambiguity and/or misunderstanding between buyer and seller as to whether or not a promise was made. With promises regarding mechanical condition and warranty coverage in writing, the consumer will have an additional means of checking the representations made in any warranty or service contract document and can check the statements against the results of an independent inspection, if one is performed. Additional sources of information decrease the necessity of consumers relying exclusively on the oral promises of dealers.

If consumers are able to obtain written confirmation in the Buyers Guide of oral statements made by dealers at the time of sale, these statements become part of the sales contract and can be used in the event of later disputes between buyers and sellers. Having dealer promises in writing should increase the ease of enforceability of these promises and thus decrease the need for post-sale litigation to enforce oral promises.

(2) Costs.

The printing costs, as described above, are minimal since the spoken promises warning will appear on every Buyers Guide printed for the dealer.

b. *Pre-Purchase Inspection Notice.* The Buyers Guide contains a notice suggesting that buyers ask dealers about their policies regarding independent pre-purchase inspections:

> Ask the dealer if you may have this car inspected by your mechanic either on or off the lot.

Although pre-purchase inspection by a third party can provide consumers with important information regarding the mechanical condition of a used car, the record demonstrates that few consumers actually seek independent inspections by a qualified mechanic. [367] This circumstance may be attributed to dealer policies which disallow such inspections and to factors which inhibit consumers from seeking inspections. [368] More importantly, however, consumers rely on dealers' representations of sound mechanical condition, and, thus, do not perceive a need to obtain an independent pre-purchase inspection. [369]

(1) Benefits.

The notice of availability of independent third-party inspections will generate several benefits for consumers and dealers. For consumers, a disclosure of the dealer's policy concerning independent inspections informs consumers that independent inspection

---

[363] *See* n. 356, and accompanying text *supra*.

[364] The list of major systems will be particularly useful in providing a context for the evaluation of warranty coverage.

[365] Staff Report at 103–130; 282–90; 295–315.

[366] *Id.* at 108–110; 274–77.

[367] *Id.*

[368] *Id.* at 93–94.

[369] *Id.* at 87–103. One dealer practice that discourages independent pre-purchase inspection is "detailing". The practice of "detailing" involves cleaning and cosmetically reconditioning cars without necessarily making mechanical or safety repairs. *Id.* at 97–103. Consumers who equate appearance with performance do not believe that independent, pre-purchase inspections are necessary.

is one means of corroborating dealers' oral statement regarding mechanical condition. In addition, the disclosure alerts consumers to the fact that independent inspection is a valuable means of determining the condition of the used car at the time of sale. Nevertheless, the decision to allow such inspection will remain voluntary for the dealer; the notice will simply alert consumers to a possible opportunity. Any effects that flow from dealers' decisions to extend this opportunity will be the result of consumer demand and dealers' responses.

If the notice does, in fact, encourage consumers to obtain independent inspections, this may reduce consumer reliance on dealer-controlled information. If, as a result of third-party inspections, buyers find a discrepancy between the results of an independent evaluation and the condition reported by the dealer, buyers would have enhanced their bargaining position with respect to the dealer.[370] On the other hand, the possibility of independent inspections may provide dealers with a disincentive to misrepresent orally mechanical condition in light of the risk that the consumer could discover misrepresentations as a result of third-party evaluations.

The notice not only focuses consumers' attention on the idea of pre-purchase inspection as a means of evaluating a car's mechanical condition but also provides consumers with a means of comparison shopping among the various terms and conditions offered by different used car dealers. This possibility may also provide benefits to dealers. Some dealers may make the availability of independent inspections a component of their marketing strategy. Their willingness to allow third-party inspections could provide consumers with information on the trustworthiness of the dealer. The notice may thus provide dealers with a way of communicating to consumers that their representations are trustworthy and will withstand the test of comparison with a third-party evaluation.

(2) Costs.

There are no direct costs associated with this disclosure. As with the spoken promises warning, the notice of availability of pre-purchase inspection is to be pre-printed on the Buyers Guide.

There may be some indirect costs resulting from disclosure of an independent inspection opportunity. If, as a result of the disclosure, consumers begin to value independent off-premises inspections and begin to demand such inspections, dealers may incur additional costs. These costs may include the costs of increased insurance premiums and employee time to accompany vehicles off the premises to safeguard against misuse or theft and the cost of foregone opportunities to show cars to other prospective buyers while the cars off the lot. Dealers would presumably pass along to consumers any increased costs of this sort and would only offer the opportunity for third-party inspections if, and to the extent that, consumers were willing to pay a price which would allow the dealers to cover those costs. Any costs of this sort would thus be imposed by the market, not by the Rule.

c. *List of Major Systems and Defects.* The Buyers Guide also contains a pre-printed list of 14 major mechanical and safety systems of a car. The list of systems includes all major mechanical systems or components of an automobile.

The record shows that dealer misrepresentations concerning mechanical conditions are often made on a system-by-system basis. The systems listed are those most likely to be represented by dealers as being in good condition, but without any confirmation of such representations in writing.[371]

(1) Benefits.

The list of major mechanical systems identifies for consumers the important systems on which they may want to seek mechanical condition information, either from the dealer or through an independent inspection. Furthermore, the list will enable consumers to evaluate which systems are covered by any warranties offered by the dealer. The list may also prompt consumers to seek information on costs to repair systems not in good order.

The record demonstrates that consumers are most interested in the condition of the car at the time of sale but are discouraged from inspecting mechanical condition as a result of dealer practices.[372] Highlighting the importance of mechanical systems may lead consumers to focus on them somewhat more specifically. As consumers begin to be more astute and critical, dealers' marketing incentives may shift away from cosmetic pre-sale reconditioning to remedying mechanical condition factors.

Thus, the list of systems will provide consumers with a framework for systematically evaluating and comparing the mechanical condition and warranty coverage offered between cars and dealers. The increased availability of information to consumers should also contribute to a reduction in the incidence of unanticipated repair costs by consumers.

(2) Costs.

The listing of major mechanical systems will not lead to any direct costs to dealers since it will be pre-printed on the Buyers Guide.

4. Summary

The Commission believes that each of the elements of the Rule will diminish the deceptive practices currently existing in the used car market. We expect that the elements of the Rule, taken together, will provide significant benefits while imposing only minimal direct costs. Any indirect costs that might result from the rule would result from dealer attempts to satisfy consumer demand and, therefore, by definition would be justified by significant benefits.

B. Conclusion

In formulating this Rule as the remedy for recorded abuses in the used car industry, the Commission has assessed the economic impact on consumers and small businesses. The Commission concludes that the benefits of this Rule outweigh its costs and that the Rule will be effective in remedying the unfair and deceptive practices established in the record.

IV. Other Matters

A. Impact Evaluation

The Commission believes it is essential to measure the degree of impact this Rule will have on the used car market, and therefore, has determined to perform an impact evaluation study three years from the effective date of the Rule. Such a study should assist the Commission in assessing the effectiveness of the Rule, and could illustrate whether proceedings to amend the Rule would be appropriate.

B. Readability

With the adoption of this Rule, the Commission again recognizes its goal of writing understandable regulations. The Commission has for some time required that disclosures to consumers be written in plain and easily understandable language.[373] The Buyers Guide approved by the Commission in 1981 was designed and reviewed to ensure that the disclosures will be conveyed in a clear and succinct manner. Moreover, various versions of the Buyers Guide were subjected to several rounds of consumer testing to measure comprehensibility. Based on the results of that testing, the Commission believed that the Buyers Guide approved in 1981 would be understood by consumers. The Buyer Guide included in the Rule we promulgate today is similar to the Guide approved in 1981. However, it contains warranty and "as is" disclosures that are more prominent and less complicated than the 1981 Buyers Guide.

The Rule itself is also written in understandable language. This reflects the Commission's commitment to the principle that regulations which apply to small businesses should be readily understood. After reviewing the language of the Rule carefully, the Commission believes that its provisions will be understood by the affected industry members.

Title 16 of the Code of Federal Regulations, Chapter I, is amended by adding Part 455 to read as follows:

[370] *Id.* at 109–130.

[371] Staff Report at 109–115.

[372] *Id.*

[373] Section 21(a) (2) of the FTC Improvements Act, 15 U.S.C. 57a–1.

PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

Sec.

455.1 General duties of a used vehicle dealer; definitions.
455.2 Consumer sales—window form.
455.3 Window form.
455.4 Contrary statements.
455.5 Spanish language sales.
455.6 State exemptions.
455.7 Severability.

Authority: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

§ 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

(b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act:

(1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

(c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule. (d) The following definitions shall apply for purposes of this part:

(1) "Vehicle" means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.

(2) "Used vehicle" means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the state and a salvage certificate issued).

(3) "Dealer" means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(4) "Consumer" means any person who is not a used vehicle dealer.

(5) "Warranty" means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.

(6) "Implied warranty" means an implied warranty arising under state law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.

(7) "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, provided that such contract is not regulated in your state as the business of insurance.

(8) "You" means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

§ 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle a "Buyers Guide" as required by this Rule.

(1) Use a side window to display the form so both sides of the form can be read, with the title "Buyers Guide" facing to the outside. You may remove a form temporarily from the window during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7¼ inches wide in the type styles, sizes and format indicated.

BILLING CODE 6750-01-M

BUYERS GUIDE

28 pt Thumwrate Bold caps
2 pt Rule

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

10/12 Thumwrate Bold c & lc flush left ragged right maximum line 42 picas

_____ _____ _____ _____
VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

10 pt Baseline Rule
6 pt Thumwrate Bold caps

_____
DEALER STOCK NUMBER (Optional)

10 pt Baseline Rule
6 pt Thumwrate Bold caps

WARRANTIES FOR THIS VEHICLE:

10 pt Thumwrate Bold caps

2 pt Rule

☐ AS IS - NO WARRANTY

54 pt Box
42 pt Thumwrate Bold caps

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

10/10 Thumwrate Bold c & lc flush left ragged right maximum line 42 picas

1 pt Rule

☐ WARRANTY

54 pt Box
42 pt Thumwrate Bold caps

☐ **FULL** ☐ **LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.**

10/10 Thumwrate Bold c & lc 4½ picas indent on 2nd line

SYSTEMS COVERED:

DURATION:

10 pt Thumwrate Bold caps

10 pt Baseline Rule

☐ **SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductable, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.**

10/10 Thumwrate Bold c & lc maximum line 42 picas

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

10/10 Thumwrate Bold caps flush left ragged right maximum line 42 picas

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

10/10 Thumwrate Bold c & lc flush left ragged right maximum line 42 picas

12 pt Thumwrate Bold lc flush left ragged right maximum line 42 picas

2 pt Rule

Below is a list of some major defects that may occur in used motor vehicles.

3/5 Thumwrate Bold c & lc flush left ragged right maximum line 20 picas [illegible] on 2nd line

Frame & Body
Frame-cracks, corrective welds, or rusted through
Dogtracks—bent or twisted frame

Engine
Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft lifters and push rods
Abnormal exhaust discharge

Transmission & Drive Shaft
Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or chatters

Differential
Improper fluid level or leakage excluding normal seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty differential

Cooling System
Leakage including radiator
Improperly functioning water pump

Electrical System
Battery leakage
Improperly functioning alternator, generator, battery, or starter

Fuel System
Visible leakage

Inoperable Accessories
Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System
Failure warning light broken
Pedal not firm under pressure (DOT spec.)
Not enough pedal reserve (DOT spec.)
Does not stop vehicle in straight (DOT spec.)
Hoses damaged
Drum or rotor too thin (Mfgr. Specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Steering System
Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System
Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires
Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels
Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System
Leakage

2 pt Rule

_____
DEALER

10 pt Baseline Rule
6 pt Thumwrate Bold caps

_____
ADDRESS

_____
SEE FOR COMPLAINTS

2 pt Rule

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

10/12 Thumwrate Bold c & lc maximum line 42 picas

BILLING CODE 6750-01-C

When filling out the form, follow the directions in (b) through (e) of this section and § 455.4 of this part.

(b) *Warranties*—(1) *No Implied Warranty—"As Is"/No Warranty.* (i) If you offer the vehicle without any implied warranty, *i.e.*, "as is," mark the box provided. If you offer the vehicle with implied warranties only, substitute the disclosure specified below, and mark the box provided. If you first offer the vehicle "as is" or with implied warranties only but then sell it with a warranty, cross out the "As Is—No Warranty" or "Implied Warranties Only" disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your state law limits or prohibits "as is" sales of vehicles, that state law overrides this part and this rule does not give you the right to sell "as is." In such states, the heading "As Is—No Warranty" and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted. If you sell vehicles in states that permit "as is" sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of "As Is—No Warranty":[1]

Implied Warranties Only

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) *Full/Limited Warranty.* If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information;

(i) Whether the warranty offered is "Full" or "Limited."[2] Mark the box next to the appropriate designation.

(ii) Which of the specific systems are covered (for example, "engine, transmission, diffential"). You cannot use shorthand, such as "drive train" or "power train" for covered systems.

(iii) The duration (for example, "30 days or 1,000 miles, whichever occurs first").

(iv) The percentage of the repair cost paid by you (for example, "The dealer will pay 100% of the labor and 100% of the parts."

(v) If the vehicle is still under the manufacturer's original warranty, you may add the following paragraph below the "Full/Limited Warranty" disclosure: MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc. If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the "As Is—No Warranty" box or the "Implied Warranties Only" box, as appropriate.

(3) *Service contracts.* If you make a service contract (other than a contract that is regulated in your state as the business of insurance) available on the vehicle, you must add the following heading and paragraph below the "Full/Limited Warranty" disclosure and mark the box provided.[3]

☐ Service Contract

A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

(c) *Name and Address.* Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.

(d) *Make, Model, Model Year, VIN.* Put the vehicle's name (for example, "Chevrolet"), model (for example, "Vega"), model year, and Vehicle Identification Number (VIN) in the spaces provided. You may write the dealer stock number in the space provided or you may leave this space blank.

(e) *Complaints.* In the space provided, put the name and telephone number of the person who should be contacted if any complaints arise after sale.

§ 455.3 Window form.

(a) *Form given to buyer.* Give the buyer of a used vehicle sold by you the window form displayed under § 455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.

(b) *Incorporated into contract.* The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

§ 455.4 Contrary statements.

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in § 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

§ 455.5 Spanish language sales.

If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the following translation and layout for Spanish language sales:[4]

BILLING CODE 6750-01-M

[1] *See* § 455.5 n. 4 for the Spanish version of this disclosure.

[2] A "Full" warranty is defined by the Federal Minimum Standards for Warranty set forth in 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304 (1975). The Magnuson-Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate "Full" or "Limited" for such cars, cross out both designations, leaving only "Warranty".

[3] *See* § 455.5 n. 4 for the Spanish version of this disclosure.

[4] Use the following language for the "Implied Warranties Only" disclosure when required by § 455.2(b)(1):

Garantías implícitas solamente

Este término significa que el vendedor no hace promesas específicas de arreglar lo que requiera reparación cuando usted compra el vehículo o después del momento de la venta. Pero, las "garantías implícitas" de la ley estatal pueden darle a usted algunos derechos y hacer que el vendedor resuelva problemas graves que no fueron evidentes cuando usted compró el vehículo.

Use the following language for the "Service Contract" disclosure required by § 455.2(b)(3):

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las "garantías implícitas" de acuerdo a la ley del estado pueden concederle derechos adicionales.

GUIA DEL COMPRADOR

28 pt Triumvirate Bold caps

2 pt Rule

IMPORTANTE: Las promesas verbales son difíciles de hacer cumplir. Solicita al vendedor que ponga todas las promesas por escrito. Conserve este formulario.

10/12 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

MARCA DEL VEHICULO _____ MODELO _____ AÑO _____ NUMERO DE IDENTIFICACION _____

10 pt Baseline Rule

6 pt Triumvirate Bold caps

NUMERO DE ABASTO DEL DISTRIBUIDOR (Opcional) _____

10 pt Baseline Rule

6 pt Triumvirate Bold caps

GARANTIAS PARA ESTE VEHICULO:

10 pt Triumvirate Bold caps

2 pt Rule

☐ COMO ESTA - SIN GARANTIA

36 pt Box

32 pt Triumvirate Bold caps

USTED PAGARA TODOS LOS GASTOS DE CUALQUIER REPARACION QUE SEA NECESARIA. El vendedor no asume ninguna responsabilidad por cualquier las reparaciones, sean cuales sean las declaraciones verbales que haya hecho acerca del vehículo.

10/10 Triumvirate Bold c & lc maximum line 42 picas

1 pt Rule

☐ GARANTIA

32 pt Triumvirate Bold caps

☐COMPLETA ☐LIMITADA. El vendedor pagará _____% de la mano de obra y _____% de los repuestos los sistemas cubiertos que dejen de funcionar durante el periodo de garantía. Pida al vendedo una copia del documento de garantía donde se explican detalladamente la cobertura de la garantía, exclusiones y las obligaciones que tiene el vendedor de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.

10/10 Triumvirate Bold c & lc 6½ pcas indent on 2nd line

10 pt Triumvirate Bold caps

SISTEMAS CUBIERTOS POR LA GARANTIA:	DURACION:

10 pt Baseline Rule

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las 'garantías implícitas' de acuerdo a la ley del estado pueden concederle derechos adicionales.

10/10 Triumvirate Bold c & lc maximum line 42 picas

INSPECCION PREVIA A LA COMPRA: PREGUNTE AL VENDEDOR SI PUEDE USTED TRAER UN MECANICO PARA QUE INSPECCIONE EL AUTOMOVIL O LLEVAR EL AUTOMOVIL PARA QUE ESTE LO INSPECCIONE EN SU TALLER.

10/10 Triumvirate Bold caps maximum line 42 picas

VEASE EL DORSE DE ESTE FORMULARIO donde se proporciona información adicional importante, incluyendo una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

10/10 Triumvirate Bold c & lc flush left ragged right maximum line 42 picas

A continuación presentamos una lista de algunos de los principales defectos que pueden ocurrir en vehiculos usados.

12 pt Triumvirate Bold lc
flush left ragged right
maximum line 42 picas

2 pt Rule

Chasis y carrocería
Chasis-grietas, soldaduras correctivas u oxidado
Chasis doblado o torcido

Motor
Fuga de aceite, excluyendo el escape normal
Bloque o tapa de recamara agrietados
Correas que faltan o no funcionan
Fallo o pistoneo
Emision excesiva de humo por el sistema de escape

Transmisión y eje de cardan
Nivel de liquido inadecuado o fuga, excluyendo filtración normal
Cubierta agrietada o dañada visible
Vibración o ruido anormal ocasion de por una transmisión o eje de cardan defectuosa
Cambio de marchas o funcionmiento inadecuado en cualquier marcha
Embrague manual patina o vibra

Diferencial
Nivel de liquido inadecuado o fuga excluyendo filtración normal
Cubierta agrietada o dañada visible
Ruido o vibración anormal ocasionado por diferencial defectuoso

Sistema de refrigeración
Fuga, incluido el radiador
Bomba de agua defectuosa

Sistema electrico
Fuga en las baterías
Alternador generador, batería, o motor de arranque defectuosos

Sistema de combustible
Escape visible de combustible

Accesorios averiados
Indicadores o medidores del cuadro de instrumentos
Acondicionador de aire
Calefactor y descarchador

Sistema de frenos
Luz de advertencia de falla dañada
Pedal no firma bajo presión (Especif. del Dpto de Transp.)
Juego insuficiente en el pedal (Especif. del Dpto de Transp.)
No detiene el vehiculo en linea recta (Especif. del Dpto de Transp.)
Conductos dañados
Tambor o disco muy delgados (Especif. del fabricante)
Grosor de las bandas de los frenos menor de 1/32 de pulgada
Sistema de servofreno dañado o con escape
Partes estructurales o mecánicas danadas

Sistema de dirección
Juego excesivo en el volante (Especif. Dpto de Transp.)
Juego en el varillaje en exceso de 1/4 pulgada
Engranaje del volante de dirección se agarrota
Ruedas delanteras mal alineadas (Especif. del Dpto de Transp.)
Correas del sistema de servodirección agrietadas o flojas
Nivel del liquido del sistema de servodirección inadecuado

Sistema de suspensión
Sellos de conexión de rodamientos defectuosos
Piezas estructurales dobladas o dañadas
Barra de estabilización desconectada
Resorte roto
Montura del amortiguador floja
Bujes de goma dañadas o ausentes
Estabilizador para curvas dañadas o ausente
Amortiguador tiene fuga o funciona defectuosamente

Llantas
Profundidad de la banda de rodamiento menor de 2/32 de pulgada
Diferentes tamanos de llanta
Danos visibles

Ruedas
Grietas visibles, danos o reparaciones
Pernos de montaje sueltos o ausentes

Sistema de Escape
Fuga

2 pt Rule

10 pt Baseline Rule
6 pt Triumvirate Bold caps

VENDEDOR

DIRECCION

VEASE PARA RECLAMACIONES

2 pt Rule
10/12 Triumvirate Bold c & lc
maximum line 42 picas

IMPORTANTE: La informacion contenida en este formulario forma parte de todo contrato de compra de este vehiculo. Constituye una contravencion de la ley federal (16 C.F.R. 455) quitar este rotulo antes de la compra del vehiculo por el consumidor (salvo para conducir el automovil en calidad de prueba).

BILLING CODE 6750-01-C

§ 455.6 State exemptions.

(a) If, upon application to the Commission by an appropriate state agency, the Commission determines, that—

(1) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

(b) Applications for exemption under Subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

§ 455.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission, Commissioner Bailey dissenting.

Dated: November 9, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-30086 Filed 11-16-84; 8:45 am]

BILLING CODE 6750-01-M

Reader Aids

Federal Register

Vol. 49, No. 224

Monday, November 19, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943-44072	1
44073-44192	2
44193-44272	5
44273-44442	6
44443-44620	7
44621-44740	8
44741-44888	9
44889-44984	13
44985-45106	14
45107-45408	15
45409-45570	16
45571-45732	19

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Notice:

November 7, 1984 44741

Proclamations:

5270 44073
5271 44075
5272 44077
5273 44079
5274 44081
5275 44193
5276 44195
5277 44197
5278 45107
5279 45409
5280 45411
5281 45413

5 CFR

Proposed Rules:

213 45588
831 45588
930 45444
2429 44902

7 CFR

2 44743
210 45109
220 45109
225 45109
226 45109
301 44083
429 44443
441 44985
600 44743
729 44889
907 ..... 44199, 44757, 45415
910 ..... 44084, 44744, 44890, 45109, 45415
915 44447
928 44199
932 44447
944 44447
982 44745
984 44745
989 44745
1004 44986
1139 43943
1446 45109
1910 45416

Proposed Rules:

27 44902
52 43970
53 44724
54 ..... 44724, 44758
400 45444
420 44480
421 44476
424 44485
425 44490
432 44496
725 44103
910 44299
971 45592
982 44500
984 44299
1007 44760
1464 44103

8 CFR

238 44745
292 44084

9 CFR

50 44273
78 ..... 44987, 45110
81 ..... 44087, 45111
92 44058
354 44091

Proposed Rules:

92 44501
381 44540

10 CFR

50 ..... 45112, 45114, 45571

Proposed Rules:

50 44845
71 44502
210 45445
605 44590

11 CFR

6 44091

12 CFR

204 44448
207 43946
220 43946
221 43946
224 43946
303 44745
305 44745
563 45115
701 44993
795 44993

Proposed Rules:

5 45007
8 ..... 45102, 45592

13 CFR

120 44091

Proposed Rules:

107 44062

14 CFR

1 44422
27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417
43 ..... 44602, 45418
71 ..... 44450, 45418
73 ..... 44096, 44451, 45418

91 44422
97 44990
255 44451

Proposed Rules:
Ch. I 44766
39 45011
71 ..... 44104, 44650, 45011, 45166–45171
73 ..... 45011, 45168, 45169
75 45171

15 CFR
7 44622

Proposed Rules:
303 44651
320 44903

16 CFR
13 45115–45117
305 44200
455 45692
1700 44455

Proposed Rules:
300 44913
303 44913

17 CFR
1 45418
3 45418
33 44891
140 45418
145 45418
200 43950
240 45117

Proposed Rules:
1 44105
140 45015
144 45015
239 45172
274 45172

18 CFR
3 44273
157 44275
271 ..... 44201, 44993
274 44275
284 44275
341 44628
356 44628
360 44628
361 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273

Proposed Rules:
271 ..... 44217, 45174, 45175
430 44105

19 CFR
4 44867
6 44867
7 44867
10 44867
11 44867
12 44867
18 44867
19 44867
24 44867
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
162 44867
172 44867
174 44867
191 44867

Proposed Rules:
353 45593
355 45593

20 CFR
395 44277
404 ..... 43951, 44458, 45420

21 CFR
74 44096
178 44994
193 ..... 44458, 45123
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 45421
561 45124
573 ..... 44630, 45124

Proposed Rules:
146 44652
450 44919
510 45593
511 44766

22 CFR
220 44631

Proposed Rules:
41 44920

23 CFR
140 45577

24 CFR
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44982

26 CFR
5h 43951
301 44460

Proposed Rules:
1 ..... 44300, 45449, 45450
41 ..... 44300, 44310, 44921
48 ..... 44300, 44310, 44921
301 45452

27 CFR
9 ..... 44202, 44895

Proposed Rules:
4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR
2 44097
15 44995
511 44056

Proposed Rules:
545 44059

29 CFR
530 44262
1601 45424
1952 44202
2619 45129

Proposed Rules:
2617 44106
2640 45018
2648 45018

30 CFR
915 44206
917 44750
935 ..... 43952, 44461, 44996

Proposed Rules:
250 44924
816 45595
817 45595
855 45595
917 44653
920 43974
931 44769
938 43974

31 CFR
5 45578

33 CFR
100 ..... 45579, 45580
117 ..... 43953–43956, 44207, 44632, 45130, 45580
165 44632

Proposed Rules:
117 ..... 43975, 44925, 45596
126 45597
160 45597
165 44926

36 CFR

Proposed Rules:
223 44109
291 45117
1121 44310

38 CFR
3 ..... 44099, 45130

39 CFR
10 45130
265 44286

40 CFR
52 ..... 44099, 44208, 44287, 44463, 44996
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 45292
180 ..... 44464–44467, 45132
261 44978
704 ..... 45133, 45425
707 45581
761 44634
775 44997

Proposed Rules:
50 44770
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178
81 ..... 43977, 45031
147 44111
170 45181
261 44718
271 ..... 44111, 44312, 44506, 45452
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 ..... 44218, 45598
716 ..... 44220, 45602
799 ..... 45606, 45610

41 CFR
Ch. 101 44468
101–20 44469
101–41 44470
101–47 44471

42 CFR
36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR

Public Land Orders:
1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997

Proposed Rules:
3160 44655
3420 44221

44 CFR
64 ..... 44751, 45133
65 ..... 45134, 45135
67 45136

Proposed Rules:
67 45181

45 CFR
801 44473

Proposed Rules:
95 45617
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397

Proposed Rules:
67 45623

47 CFR
0 45582
2 ..... 44101, 44997
15 44210
25 44751
31 44289
43 44289
73 ..... 43957, 44101, 45139–45146, 45583–45587
74 45155
76 45431

Proposed Rules:
0 45454
1 45454
73 ..... 44113, 44114, 45186, 45625
90 ..... 44223, 45454

48 CFR

Proposed Rules:
1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR
1 44102
173 43963
178 43965
179 43963
391 44210
392 44210
571 44899
575 44751

Proposed Rules:
23 44772
172 45627
173 45627
195 44928
542 45629
1102 44224

50 CFR
17 ..... 43965, 44753, 45160
258 44474
611 44757
620 44102
652 45164
663 ..... 44638, 44901
671 44757
676 44998

Proposed Rules:
17 ..... 44507, 44712
222 44774
227 44774
611 44655
672 44655
675 44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List November 16, 1984.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0–45	13.00	Jan. 1, 1984
46–51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53–209	13.00	Jan. 1, 1984
210–299	13.00	Jan. 1, 1984
300–399	7.50	Jan. 1, 1984
400–699	13.00	Jan. 1, 1984
700–899	13.00	Jan. 1, 1984
900–999	14.00	Jan. 1, 1984
1000–1059	12.00	Jan. 1, 1984
1060–1119	9.50	Jan. 1, 1984
1120–1199	7.50	Jan. 1, 1984
1200–1499	13.00	Jan. 1, 1984
1500–1899	6.00	Jan. 1, 1984
1900–1944	14.00	Jan. 1, 1984
1945–End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1–199	13.00	Jan. 1, 1984
200–End	9.50	Jan. 1, 1984
10 Parts:		
0–199	14.00	Jan. 1, 1984
200–399	12.00	Jan. 1, 1984
400–499	12.00	Jan. 1, 1984
500–End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1–199	9.00	Jan. 1, 1984
200–299	14.00	Jan. 1, 1984
300–499	9.50	Jan. 1, 1984
500–End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1–59	13.00	Jan. 1, 1984
60–139	13.00	Jan. 1, 1984
140–199	7.00	Jan. 1, 1984
200–1199	13.00	Jan. 1, 1984
1200–End	7.50	Jan. 1, 1984
15 Parts:		
0–299	7.00	Jan. 1, 1984
300–399	13.00	Jan. 1, 1984
400–End	12.00	Jan. 1, 1984
16 Parts:		
0–149	9.00	Jan. 1, 1984
150–999	9.50	Jan. 1, 1984
1000–End	13.00	Jan. 1, 1984
17 Parts:		
1–239	14.00	Apr. 1, 1984
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1–399	7.50	Apr. 1, 1984
400–499	13.00	Apr. 1, 1984
500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1984
100–169	12.00	Apr. 1, 1984
170–199	12.00	Apr. 1, 1984
200–299	4.25	Apr. 1, 1984
300–499	14.00	Apr. 1, 1984
500–599	13.00	Apr. 1, 1984
600–799	6.00	Apr. 1, 1984
800–1299	9.50	Apr. 1, 1984
1300–End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0–199	8.00	Apr. 1, 1984
200–499	14.00	Apr. 1, 1984
500–699	6.00	Apr. 1, 1984
700–1699	12.00	Apr. 1, 1984
1700–End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0–1.169	14.50	Apr. 1, 1984
§§ 1.170–1.300	10.00	Apr. 1, 1984
§§ 1.301–1.400	7.50	Apr. 1, 1984
§§ 1.401–1.500	13.00	Apr. 1, 1984
§§ 1.501–1.640	12.00	Apr. 1, 1984
§§ 1.641–1.850	12.00	Apr. 1, 1984
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	13.00	Apr. 1, 1984
30–39	9.00	Apr. 1, 1984
40–299	14.00	Apr. 1, 1984
300–499	9.50	Apr. 1, 1984
500–599	8.00	[1] Apr. 1, 1980
600–End	5.50	Apr. 1, 1984
27 Parts:		
1–199	13.00	Apr. 1, 1984
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0–99	14.00	July 1, 1984
100–499	6.50	July 1, 1984
500–899	14.00	July 1, 1984
900–1899	7.50	July 1, 1984
1900–1910	15.00	July 1, 1984
1911–1919	5.50	July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	7.00	July 1, 1983
200–699	5.50	July 1, 1984
700–End	13.00	Oct. 1, 1984
31 Parts:		
0–199	8.00	July 1, 1984
200–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
*1–39, Vol. I	15.00	July 1, 1984
*1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	9.00	July 1, 1983
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–699	12.00	July 1, 1983
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1983
200–End	7.00	July 1, 1983
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	15.00	July 1, 1983
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	7.00	July 1, 1983
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
*52	14.00	July 1, 1984
*53–80	18.00	July 1, 1984
81–99	7.50	July 1, 1983
100–149	9.50	July 1, 1984
150–189	6.50	July 1, 1983
*190–399	13.00	July 1, 1984
400–424	6.50	July 1, 1983
425–End	13.00	July 1, 1983
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	7.00	July 1, 1983
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	6.50	July 1, 1983
18, Vol. II, Parts 6–19	7.00	July 1, 1983
18, Vol. III, Parts 20–52	6.50	July 1, 1983
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1983
61–399	7.50	Oct. 1, 1983
400–End	17.00	Oct. 1, 1983
43 Parts:		
1–999	9.00	Oct. 1, 1983
1000–3999	14.00	Oct. 1, 1983
4000–End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1–199	9.00	Oct. 1, 1983
200–499	6.00	Oct. 1, 1983
500–1199	12.00	Oct. 1, 1983
1200–End	9.00	Oct. 1, 1983
46 Parts:		
1–40	9.00	Oct. 1, 1983
41–69	9.00	Oct. 1, 1983
70–89	5.00	Oct. 1, 1983
90–139	9.00	Oct. 1, 1983
140–155	8.00	Oct. 1, 1983
156–165	9.00	Oct. 1, 1983
166–199	7.00	Oct. 1, 1983
200–399	12.00	Oct. 1, 1983
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	12.00	Oct. 1, 1983
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48	1.50	[2] Sept. 19, 1983
49 Parts:		
1–99	7.00	Oct. 1, 1983
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	12.00	Oct. 1, 1983
400–999	13.00	Oct. 1, 1983
1000–1199	12.00	Oct. 1, 1983
1200–1299	12.00	Oct. 1, 1983
1300–End	7.50	Oct. 1, 1983
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1984 CFR set	550.00	1984
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984

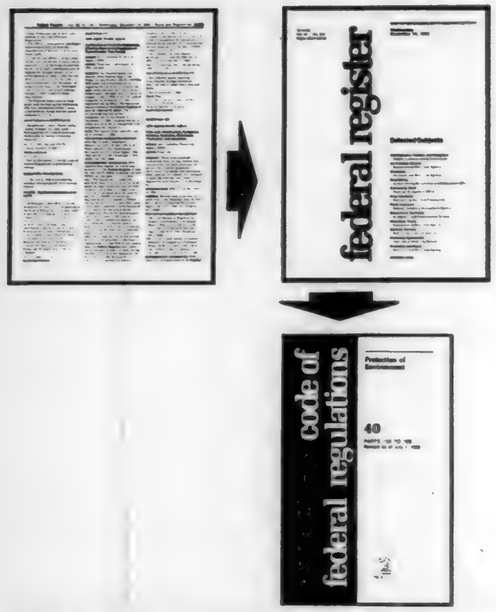
[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

OL
9
SS
24
NO
9
984
MI

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 180 volumes contains the annual codification of the final regulations printed in the **Federal Register.** Each of the 50 titles is updated annually.

Subscription Prices:

- **Federal Register**
  - **Paper:**
    - One year as issued: $300 domestic; $375 foreign
    - Six months: $150 domestic; $187.50 foreign
  - **24x Microfiche Format:**
    - One year as issued: $145 domestic; $181.25 foreign
    - Six months: $72.50 domestic; $90.65 foreign
- **Code of Federal Regulations**
  - **Paper:**
    - One year as issued: $550.00 domestic; $687.50 foreign
    - Single volumes: Individually priced.
  - **24x Microfiche Format:**
    - Current year (as issued): $200 domestic; $250 foreign
    - Previous year's full set (single shipment): $155 domestic; $193.75 foreign

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $_____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only

Total charges $_____

Fill in the boxes below.

Credit Card No.: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone No.:
Area Code Home Area Code Office

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

Please send me

PAPER:

_____ **Federal Register:** ___ $300 per year domestic; $375 foreign
___ $150 per six-month domestic; $187.50 foreign

_____ **Code of Federal Regulations:** ___ $550 per year domestic; $687.50 foreign

24x MICROFICHE FORMAT:

_____ **Federal Register:** ___ One year as issued: $145 domestic; $181.25 foreign ___ Six months: $72.50 domestic; $90.65 foreign

_____ **Code of Federal Regulations:** ___ Current year: $200 domestic; $250 foreign ___ Previous year's full set (single shipment): $155 domestic; $193.75 foreign

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity Charges

_____ Publications _____
_____ Subscription _____
Special Shipping Charges _____
International Handling _____
Special Charges _____
Discount _____

_____ UPNS
_____ Balance Due
_____ Discount
_____ Refund

VOL
49
ISS
224
NO
19
1984
UMI

11-20-84
Vol. 49 No. 225

federal register

Tuesday
November 20, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 84 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S. MAIL
Postage and Fees Paid
U.S. Government Printing Office
375
SECOND CLASS NEWSPAPER

11-20-84
Vol. 49 No. 225
Pages 45733-45842

federal register

Tuesday
November 20, 1984

Selected Subjects

Administrative Practice and Procedure
Federal Grain Inspection Service
Merit Systems Protection Board

Agricultural Commodities
Agricultural Marketing Service

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Conflict of Interests
Small Business Administration

Endangered and Threatened Species
Fish and Wildlife Service

Excise Taxes
Internal Revenue Service

Grant Programs—Education
Education Department

Hazardous Materials Transportation
Research and Special Programs Administration

Marine Safety
Coast Guard

Quarantine
Animal and Plant Health Inspection Service

Telecommunications
Rural Electrification Administration

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Contents

Federal Register
Vol. 49, No. 225
Tuesday, November 20, 1984

The President
ADMINISTRATIVE ORDERS
45733 Determination under Section 301 of the Trade Act (Memorandum of November 16, 1984)

Executive Agencies

Agency for International Development
NOTICES
Housing guaranty programs:
45815 Zimbabwe
Meetings:
45815 Joint Committee on Agricultural Research and Development et al.

Agricultural Marketing Service
RULES
Perishable Agricultural Commodities Act:
45735 Statutory trust

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Federal Grain Inspection Service; Forest Service; Rural Electrification Administration.

Animal and Plant Health Inspection Service
RULES
Livestock and poultry quarantine:
45741 Lethal avian influenza; interim

Arts and Humanities, National Foundation
NOTICES
Meetings:
45821 Design Arts Advisory Panel
45822 Humanities Panel
45822 Inter-Arts Advisory Panel

Census Bureau
NOTICES
45771 Voting Rights Act; minority language assistance provision determinations; correction

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
45770 Oregon
45770 Rhode Island

Coast Guard
RULES
Regattas and marine parades:
45748 Fort Lauderdale Christmas Boat Parade

Commerce Department
See also Census Bureau; International Trade Administration; National Bureau of Standards
NOTICES
45770 Agency information collection activities under OMB review

Consumer Product Safety Commission
NOTICES
Consent agreements:
45778 Gee Kay Fabrics, Inc., et al.

Defense Department
See also Uniformed Services University of the Health Sciences.
NOTICES
Committees; establishment, renewals, terminations, etc.:
45778 Secretary of Defense Media Advisory Council

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
45820 Cuca Pharmacy, Inc.
45820 E.I. du Pont de Nemours & Co.
45818 McCown, Coleman Preston, D.D.S.
45820 Rosen, Stephen Granet, D.D.S.

Education Department
PROPOSED RULES
Elementary and secondary education, and postsecondary education:
45834 State grants for strengthening skills of teachers and instruction in mathematics, science, foreign language, and computer learning

Employment and Training Administration
NOTICES
Adjustment assistance:
45821 Buffalo Color Corp. et al.
45820 Sjoblom Shake & Shingle Mill et al.

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
Meetings:
45779 National Petroleum Council
Patent licenses, exclusive:
45779 Geotomographics, Ltd.
45778 P.I.D. Associates Inc.

Energy Research Office
NOTICES
Meetings:
45779 Energy Research Advisory Board

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States
45761 Iowa
45764 Maryland
45765 New Hampshire
NOTICES
Meetings:
45806 Science Advisory Board (2 documents)

Pesticide, food, and feed additive petitions:
45806 American Cyanamid et al.; correction
Toxic and hazardous substances control:
45805, 45806 Premanufacture notices; monthly status reports; correction (2 documents)
45806 Premanufacture notices receipts; correction

Farmers Home Administration
NOTICES
45770 Natural resource management guide; meeting

Federal Aviation Administration
RULES
Airworthiness directives:
45743, 45744 Boeing (2 documents)
45745 Dowty Rotol Ltd.
45748 Short Brothers Ltd.
45745 McDonnell Douglas
45747 Transition areas (2 documents)
PROPOSED RULES
Airworthiness directives:
45755 Airbus Industries
45756, 45757 Transition areas (2 documents)
NOTICES
Airport noise compatibility program:
45825 Los Angeles International Airport, CA

Federal Communications Commission
PROPOSED RULES
Frequency allocations and radio treaty matters:
45766 Radiodetermination satellite service, spectrum allocation and licensing; extension of time

Federal Deposit Insurance Corporation
NOTICES
45829 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
45798 Allegheny Generating Co.
45799 Allegheny Power Service Corp. (2 documents)
45785 ANR Pipeline Co.
45800 Carolina Power & Light Co.
45800 Centel Corp.
45800, 45801 Consolidated Edison Co. of New York, Inc. (2 documents)
45801 Florida Power Corp.
45803 Florida Power & Light Co. (2 documents)
45803 Green Mountain Power Corp.
45786 Idaho Power Co.
45804 Iowa Power & Light Co.
45786 K N Energy, Inc.
45804 Louisiana Public Service Commission et al.
45787 Louisville Gas & Electric Co.
45804 Mississippi Power & Light Co.
45805 Montaup Electric Co. (2 documents)
45787 New England Power Co.
45787, 45788 Niagara Mohawk Power Corp. (3 documents)
45788 Northern Indiana Public Service Co.
45789 Northern Natural Gas Co.
45789 Northwest Pipeline Corp. et al.
45791 Oklahoma Gas & Electric Co.
45791 Pacific Power & Light Co.
45792 Panhandle Eastern Pipe Line Co. (2 documents)
45792 Philadelphia Electric Co.
45793 Potomac Electric Power Co.
45793 Public Service Co. of Indiana, Inc.
45794 Public Service Co. of New Mexico
45793 Public Utilities Commission of State of California et al.
45794 Southwest Gas Corp.
45794 Texas-New Mexico Power Co.
45794 Tennessee Gas Pipeline Co.
45795 Tucson Electric Power Co.
45795 Union Electric Co.
45796 Western Gas Interstate Co.
45796 Wisconsin Public Service Corp.
Natural gas companies:
45795 Small producer certificates, applications
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
45797 Abbott Chemicals, Inc.
45797 Gilroy Energy Co., Inc.
45797 Seadrift Cogeneration
45798 Winooski Hydroelectric Co.

Federal Grain Inspection Service
PROPOSED RULES
45751 Restrictions on representation

Federal Maritime Commission
NOTICES
45807 Agreements filed, etc. (2 documents)

Federal Mine Safety and Health Review Commission
NOTICES
45829 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
45808 Community Bankshares, Inc., et al.
45808 First Kentucky National Corp., et al.
45808 Suntrust Banks, Inc.

Fiscal Service
NOTICES
Surety companies acceptable on Federal Bonds:
45828 Compass Insurance Co.

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
45766 Ruth's Golden Aster
NOTICES
45813 Endangered and threatened species permit applications
45813 Marine mammal permit applications

Food and Drug Administration
NOTICES
Medical devices:
45811 Sulfur hexafluoride for treatment of complex retinal detachment; application request
Meetings:
45809 Advisory committees, panels, etc.
45811 Anti-Anginal Agents Workshop on Testing; cancellation

Forest Service
NOTICES
Meetings:
45770 Bridger-Teton National Forest Grazing Advisory Board

General Services Administration
RULES
Federal Information Resources Management Regulation:
45748 Looseleaf edition; Federal agency ordering procedures

Health and Human Services Department
See Food and Drug Administration; National Institutes of Health

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
45780, 45781 Cases filed (2 documents)
45782 Special refund procedures; implementation and inquiry

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service.

Internal Revenue Service
PROPOSED RULES
Excise taxes:
45758 Crude oil windfall profit tax; credit or refund to certain trust beneficiaries

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
PROPOSED RULES
45757 Adjustment assistance for firms and industries; correction
NOTICES
Meetings:
45771 Computer Systems Technical Advisory Committee et al.
45771 Telecommunications Equipment Technical Advisory Committee

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
45817 Marion County Railway Co.
Railroad services abandonment:
45816 Baltimore & Ohio Railroad Co. (2 documents)
45817 Chesapeake & Ohio Railway Co. (2 documents)
45816 Seaboard System Railroad, Inc.

Justice Department
See Drug Enforcement Administration.

Labor Department
See also Employment and Training Administration.
NOTICES
Senior Executive Service:
45820 Performance Review Board; membership

Land Management Bureau
NOTICES
Opening of public lands:
45814 Nevada; correction

Merit Systems Protection Board
PROPOSED RULES
Practice and procedure:
45751 Ancillary matters; discovery (service of subpoenas)

National Bureau of Standards
NOTICES
Information processing standards, Federal:
45772 FIPS COBOL; proposed revision
45774 FIPS Fortran and FIPS Minimal Basic; proposed revision

National Institutes of Health
NOTICES
Meetings:
45813 National Cancer Institute

National Park Service
NOTICES
Historic Places National Register; pending nominations:
45814 Indiana et al.

National Science Foundation
NOTICES
45823 Agency information collection activities under OMB review
Meetings:
45823 Advisory Council

National Transportation Safety Board
NOTICES
45829, 45830 Meetings; Sunshine Act (2 documents)

Nuclear Regulatory Commission
NOTICES
Meetings:
45824 Reactor Safeguards Advisory Committee
45830 Meetings; Sunshine Act

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
45830 Meetings; Sunshine Act

Personnel Management Office
NOTICES
Meetings:
45824 Federal Prevailing Rate Advisory Committee

Railroad Retirement Board
NOTICES
45824 Agency information collection activities under OMB review

Rural Electrification Administration
PROPOSED RULES
Telephone standards and specifications:
45753 Filled splice closures (Bulletin 345–72)
45754 Shield bonding connectors (Bulletin 345–65)
45752 Telephone station protectors

Research and Special Programs Administration
RULES
Hazardous materials:
45749 ICAO technical instructions; implementation

Securities and Exchange Commission
NOTICES
Hearings, etc.:
45825 State Bank of Victoria
45830 Meetings; Sunshine Act

Small Business Administration
RULES
Conflict of interests:
45742 Conduct standards; transfer of counselors
NOTICES
Meetings; regional advisory councils:
45825 Vermont

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
45777 India

Transportation Department
See Coast Guard; Federal Aviation Administration; Research and Special Programs Administration.

Treasury Department
See also Fiscal Service; Internal Revenue Service.
NOTICES
45828 Erie Lakawanna Inc.; sealed bid auction of common stock

Uniformed Services University of the Health Sciences
NOTICES
45829 Meetings; Sunshine Act

Separate Parts in This Issue

Part II
45834 Department of Education

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
November 16, 1984..... 45733
5 CFR
Proposed Rules:
1255..... 45751
7 CFR
46..... 45735
Proposed Rules:
800..... 45751
1772 (3 documents)..... 45752–45754
9 CFR
81..... 45741
13 CFR
105..... 45742
14 CFR
39 (5 documents)..... 45743–45746
71 (2 documents)..... 45747
Proposed Rules:
39..... 45755
71 (2 documents)..... 45756, 45757
15 CFR
Proposed Rules:
320..... 45757
26 CFR
Proposed Rules:
51..... 45758
33 CFR
100..... 45748
34 CFR
Proposed Rules:
Ch. VI..... 45834
76..... 45834
208..... 45834
40 CFR
Proposed Rules:
52 (3 documents)..... 45761–45765
41 CFR
Ch. 201..... 45748
47 CFR
Proposed Rules:
2..... 45766
49 CFR
171..... 45749
173..... 45749
175..... 45749
50 CFR
Proposed Rules:
17..... 45766

Federal Register
Vol. 49, No. 225
Tuesday, November 20, 1984

Presidential Documents

Title 3—

The President

Memorandum of November 16, 1984

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301(a)(2) of the Trade Act of 1974, as amended (19 U.S.C. 2411(a)(2)), I have determined that restrictions imposed by the Government of Argentina through its postal authorities on services provided by U.S. courier companies are unreasonable and a restriction of U.S. commerce for the reasons stated below.

With a view toward elimination of these restrictions, I am directing you to hold another round of consultations as requested by the Government of Argentina. I further instruct you to submit proposals for action under Section 301 within thirty days if the issue is not resolved through consultations.

Statement of Reasons

Based on a petition by the Air Courier Conference of America, the USTR initiated an investigation on November 7, 1983, into complaints that the Government of Argentina through its Postal Administration, ENCOTEL, had imposed restrictions on the delivery of time-sensitive commercial documents, which have essentially prohibited U.S. couriers from the international carriage of such items.

In an effort to resolve the issue, the United States held a series of consultations with the Government of Argentina and ENCOTEL. During the first of these meetings, ENCOTEL claimed that its restriction of courier services was based on the Express Mail Agreement between ENCOTEL and the U.S. Postal Service and their national postal monopoly.

In follow-up discussions, the Argentine representatives agreed with the U.S. point that the Express Mail Agreement did not provide the basis for exclusion of the couriers from the market for delivery of time-sensitive commercial items. It was explained further that, as a matter of U.S. Postal Service policy, air couriers were outside the scope of postal treaties and agreements and that the couriers provided a service different from that provided by the postal services even under Express Mail Agreements.

The Government of Argentina indicated its intent to resolve the matter but no action has been taken to eliminate the restrictions on courier services. However, Argentina has recently requested an additional round of consultations with a view toward resolving the issue.

I have concluded that U.S. interests would best be served by stating unequivocally that the Argentine restrictions are unreasonable and a restriction of U.S. commerce. In deference to the Argentine request, I have instructed the USTR to engage in a final round of consultations. Failing resolution of the issue within thirty days, I will consider other appropriate action under Section 301(a).

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, November 16, 1984.

[FR Doc. 84-30660
Filed 11-19-84; 11:08 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 225
Tuesday, November 20, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

Regulations Under the Perishable Agricultural Commodities Act; Addition of Provisions To Effect a Statutory Trust

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking provides amendments to Part 46, of the Regulations (other than Rules of Practice) under the Perishable Agricultural Commodities Act (PACA). The purpose of the amendments is to implement Pub. L. 98–273, approved May 7, 1984, by which Congress amended the PACA to impress a statutory trust on perishable agricultural commodities received by commission merchants, dealers, and brokers for the benefit of suppliers, sellers, or agents who have not been paid. Such commodities and proceeds from their sale are to be held in a floating trust by the receiver so as to be available as a source of payment to any unpaid supplier, seller, or agent until payment of money owed in connection with fruit and vegetable transactions has been made. The regulations describe the transactions to which the trust applies, how the trust will be effectuated and how rights to trust assets are to be perfected and preserved. In addition, current regulations are amended where necessary so as to carry out the purposes of the statutory trust.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: John D. Flanagan, Assistant Chief, P.A.C.A. Branch, Fruit and Vegetable Division, AMS, Room 2095, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–3212.

SUPPLEMENTARY INFORMATION: These actions have been reviewed under Secretary's Memorandum 1512–1 and E.O. 12291 and have been classified as "nonmajor" because they do not meet any of the criteria identified under the Executive Order. These actions will not have an annual effect on the economy of $100 million or more, nor will they result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. These actions will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these rules do not have a significant economic impact on a substantial number of small entities. Although there are numerous small entities doing business subject to the Perishable Agricultural Commodities Act, these regulations merely assure suppliers, sellers, or agents that assets will be available from which they will be paid in the event of nonpayment by the buyer or receiver. The regulations do not change a buyer or receiver's liability to a supplier, seller, or agent on its underlying sales contract.

Discussion of Comments

On August 28, 1984, the Department of Agriculture (USDA) proposed regulations that would amend 7 CFR Part 46 of the Perishable Agricultural Commodities Act. The 30-day period for comments on the proposals expired September 27, 1984.

During the comment period, the USDA received 29 letters. Twenty commentors stated that they approved of the legislation and regulations. Several comments were received which asked for clarification and changes in the proposed regulations.

General

One commentor recommended that the term "default" in § 46.46(b)(3) be deleted. One commentor stated that the word "contemplated" in § 46.46(c) was not properly used and that the word "goods" in § 46.46(d)(1) be changed to "perishable agricultural commodity". Another commentor stated that the words "final sale" in § 46.2(aa)(1) should be defined or referenced and the phrase ". . . date of the accounting for the initial shipment . . ." in § 46.2(z)(2) should be defined. The recommendations were not accepted since the terms, words, and phrases are appropriate in their current context, and are applicable to the regulations as drawn. Another commentor thought the term "acceptance" as used in §§ 46.2(z)(2) and 46.2(aa)(1) should be either defined or referenced. The term "acceptance" is already defined in § 46.2(dd) of the current regulations, and is applicable to these provisions.

One commentor observed that it appeared that while the regulations provide that the trust provisions shall be implemented on or after the effective date of the regulations, the legislative history states that the legislation became effective on enactment. The comment addressed only a limited part of the legislative history. In its directive to the Secretary of Agriculture, Congress confirmed that there is a need to follow the rule-making procedure to establish enabling regulations. Thus, the amendments cannot be implemented until the regulations are effective.

One commentor questioned whether accounts receivable sold by a principal to a third party are subject to the trust provision and asked whether a buyer of receivables could file a claim against the trust to collect the receivables. The purchaser of accounts receivable is not a trust beneficiary and buys at its own risk since these trust assets are subject to recall for payment to unpaid produce sellers.

One commentor asked whether a crop lien-holder could file a claim against the trust to collect from a person who has paid a grower for fruits and vegetables as to whose crop the lender holds a lien. Trust benefits accrue only on trading transactions in fruits and vegetables, and assets are set aside to pay obligations incurred only in connection with those transactions.

One commentor asked whether there would be a pro-rata distribution of assets in instances where there were insufficient funds to pay the full amount owed the creditors. Where USDA may become involved, an informal distribution would be made on a pro-rata basis to beneficiaries who have protected their rights to trust benefits.

Where a court is involved, USDA would recommend to the court that the available trust assets be distributed on a pro-rata basis to all beneficiaries who have protected their right to trust benefits.

Once commentor asked if the USDA would make a determination of contract liability in instances where there is a valid dispute over contract performance. A notice to protect rights to trust benefits preserves the right to claim against trust assets. The notice must be filed by a beneficiary within 30 days after the date payment under the terms of the contract became past due. The obligation for timely filing cannot be set aside or extended. Any dispute could be resolved without adversely affecting a claim against trust assets.

One commentor requested clarification as to when payment was due growers from grower's agents in transactions that call for an agent to accept goods for storage and packing and sale to be on a later date. The prompt accounting and prompt payment requirements set forth in §§ 46.2(z)((2) and 46.2(aa)(8)(9) of the regulations require that accounting and payment be made within 30 days after the goods are received for sale. Trust coverage begins when the goods are received by the agent. The agreed upon time for prompt payment between a grower's agent and its customer begins to run when the goods are sold. Section 46.2(z)(2) has been amended to clarify the agent's responsibility for accounting in marketing contracts that include storage of goods prior to sale.

One commentor stated that the word "ownership" was confusing when applied to contracts since it was not clear when time to file a trust notice would begin and should be redrafted. We cannot accept this recommendation. The language of the regulations is clear that the trust comes into effect when the goods are received, but the times for payment under the trust are as set forth in the prompt payment regulations, § 46.2(aa), or as otherwise agreed between the contracting parties.

Section 46.2(z)(2)

One commentor questioned whether the requirement for an initial accounting by a grower's agent and subsequent interim accountings during a crop season could be changed by written agreement. A grower's agent and its principal can agree to times for accounting and payment for goods different than those contained in the prompt accounting and prompt payment regulations. A grower's agent cannot avoid its responsibility to protect its principal's rights to trust benefits by a contractual agreement. However, a principal may elect to waive its rights to trust benefits (§ 46.46(d)(2)).

Sections 46.2(aa)(1) and 46.2(z)(2)

Two commentors objected to the provisions in the regulations that commission merchants must "account promptly" and "make full payment promptly" within 20 days from the date goods are accepted at destination. Both commentors stated that the current regulation calling for payment within ten days after the date of last sale was more workable. The regulations defining prompt accounting and payment were modified so as to insure that trust benefits would be available to the principal. It was necessary that a firm time for payment be established. Without a positive time for prompt accounting and payment, the owner of the goods would lose its right to trust benefits. The recommendation was not accepted. The 20-day period also fulfills the intent of Congress that the Secretary of Agriculture establish a reasonable time for payment agreements.

Section 46.2(aa)(8)

One commentor suggested that the provision calling for payment by a grower's agent in five days from the date the agent is paid be changed from five calendar days to five working days. This recommendation was not accepted. Current regulations include Sundays and holidays in computing time periods for prompt payment under the Act. No problems have been encountered in the application of this rule. It is the intent of the legislation that monies owed by agents to their principal be paid promptly.

Section 46.46(a)

One commentor indicated the phrase " . . . existing as of . . ." was unclear and should be deleted. This recommendation was not accepted ". . . since existing as of . . ." deals with transactions that are entered into prior to the effective date of the regulations but which still be protected under the trust if a timely notice is filed. It would also cover contracts entered into prior to the effective date of the regulations, but which call for performance at a later date, i.e., futures contracts.

Section 46.46(b)(1)

One commentor expressed concern that it did not appear clear when goods will be considered to have been "received" in cases when there is an invalid rejection. As a result of this comment, § 46.46(b)(1) has been reworded and referenced to present regulations, § 46.2(bb).

One commentor asked whether the word "proffered" in the definition of "received" meant at the time a shipper places a commodity free on board or did it mean when the shipment arrived at destination. Goods could be "proffered" at any time or place in the marketing chain.

Section 46.46(c)

One commentor submitted language which it suggested be added to this section that would provide that a buyer of trust assets would receive them free of any trust interest. This language cannot be accepted since the legislation states that all trust assets shall be available in trust until full payment is made to the sellers. A purchaser of trust assets could only hold a secondary interest since the assets would be subject to recall.

Section 46.46(d)(2)

One commentor questioned whether a broker should be held responsible for preserving its principal's rights under the trust. Brokers whose operations are confined to performing the duties of negotiating sales and purchases on behalf of the vendor or purchaser, with the principal invoicing the buyer, do not have additional trust responsibilities. Brokers who act on behalf of undisclosed principals assume the trust responsibilities of the undisclosed principal and must comply with the trust requirements. Also, brokers that accept responsibility to act as an agent, performing duties including, but not limited to, those of taking billing, receiving goods, invoicing, and collecting monies due the seller have an agent's responsibility under the trust provisions. They must maintain the trust, are responsible for giving timely written notice to a defaulting debtor, and filing timely notices with the Secretary of Agriculture to preserve the principals' rights to trust benefits.

One commentor was concerned that the waiver explanation in this section was worded so as to indicate that only principals to an agency agreement could waive their rights to trust protection, and that there was no provision for waivers under different types of contracts. The regulations establish the makeup of an effective waiver. They are not intended to address contracting parties' rights to execute waivers.

One commentor objected to § 46.46(d)(2) of the regulations as placing undue and obligatory burdens on all commission merchants and said it should be deleted. This recommendation cannot be accepted. The commission merchant is the person who knows when and to whom the goods were sold. It has the responsibility to protect the principal's rights to trust benefits.

Section 46.46(f)(l)(2)

One commentor stated that terms of payment are arranged at the time a transaction is entered into and not before the transaction is made and that the regulations should be changed to clarify this. This recommendation cannot be accepted. The regulations track the requirements of the legislation and confirm the expressed intent of Congress that parties that elect to use times for payment different from those set out in § 46.46(aa) of the regulations have the obligation to reduce the agreement to writing during the negotiations before entering into the transaction.

One commentor indicated that the majority of shipments were not paid for in 30 days, and that 45 days should be the maximum time for payment to which a seller can agree to and still qualify for coverage under the trust. This recommendation was not accepted since administrative experience and industry sources indicated a 30-day payment is reasonable. The 30-day period also fulfills the intent of Congress that the Secretary of Agriculture establish a reasonable time for payment for credit transactions.

Section 46.46(g)(2)

One commentor observed that the term "given" as set out in § 46.46(g)(2) was not clear as to whether it meant when the notice of trust was mailed by the trust beneficiary or when the debtor receives the notice. The legislators did not address the meaning of the term "given". It is intended that in the absence of a showing to the contrary, the notice has been "given" to the debtor on the same date as a notice to protect rights to trust benefits is filed with Secretary of Agriculture.

Trust Provision

The purpose of the Perishable Agricultural Commodities Act ("PACA" or "the Act"), 7 U.S.C. 449a–499s, is to suppress unfair and fraudulent practices in the marketing of fruits and vegetables in interstate and foreign commerce. The Act provides a code of fair play in the marketplace, and provides aid to traders in enforcing their contracts. In the past few years, three problem areas have become apparent. They reflect changes in the industry's financial picture, and have added an abnormal marketing risk burden against which sellers are unable to protect themselves. Climbing overhead costs, including the cost of debt servicing, are reflected by a marked increase in delayed payments for produce. Also, an increase in hidden security agreements which encumber buyers' assets results in the diversion of money owed for produce away from suppliers. Finally, business failures and bankruptcy losses with no possibility of meaningful recovery have shown a steady increase. These factors combine to prejudice sellers' ability to obtain prompt payment for produce. It is these problem areas that the provisions of Pub. L. 98–273 are intended to overcome.

These amendments to the Perishable Agricultural Commodities Act provide suppliers and sellers of fruits and vegetables, or their agents, a self-help tool that will enable them to protect themselves against the abnormal risk of losses resulting from slow-pay and no-pay practices by buyers or receivers of fruits and vegetables. Pub. L. 98–273 impresses a trust on commodities received, food and other products derived from them, and any receivables or proceeds from their sale for the benefit of all unpaid suppliers, sellers, and agents. When goods are not paid for promptly, suppliers, sellers, or agents must file written notice with the debtor and the Secretary to preserve their right to trust benefits. The district courts of the United States are vested with jurisdiction to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust. Failure to maintain the trust is a violation of Section 2 of the Act, and action can be taken by the Secretary to revoke or suspend the license of a violator. The regulations clarify and add to present rules in order to establish, where needed, times for prompt payment so as to qualify the transactions for trust benefits. The regulations also set forth the maximum time within which suppliers, sellers, and agents may agree payment is due, and still be covered by the trust provision. They also define the responsibilities of agents to protect the rights of their principals.

Explanation of the Regulations

The regulations define the rights and obligations of sellers, buyers, and third parties with respect to the trust. The following section-by-section analysis sets forth the reasons for the regulations, and their anticipated application to the business of buying and selling perishable agricultural commodities.

Section 46.46(a) provides that all transactions in perishable agricultural commodities existing as of and entered into on or after the effective date of the regulations will be subject to the trust requirements of § 46.46. The regulations fulfill the Congressional intent as to the application of the statutory trust provisions.

The legislation includes the terms "received", "dissipation", and "calendar days" without providing a full definition. These terms are essential to the administration of the trust provisions, but they are not currently defined in the regulations. Definitions are included in the regulations as § 46.46(b). The regulations also define the term "default" in § 46.46(b)(3).

Section 5(c)(2) of the legislation impresses a trust on perishable agricultural commodities *received* by a commission merchant, dealer, or broker in all transactions, and on all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products for the benefit of all unpaid sellers, suppliers, and agents until full payment is made of the sums owing in connection with such transactions. As used in section 5(c)(2) of Pub. L. 98–273, "received" means the time when the buyer, receiver, or agent gains ownership of, control over, or possession of the perishable agricultural commodities. This definition is contained in § 46.46(b). It also provides for situations in which there has been a rejection of goods without reasonable cause. This definition relates specifically to the time the trust becomes effective.

The term "dissipation" can be summarized as an act or failure to act which could prejudice trust assets or the ability of the unpaid supplier, seller, or agent to obtain payment due.

The definition clarifies the circumstances or actions that constitute "dissipation", and which could trigger action by the Secretary when he initiates action in the district courts of the United States to obtain a restraining order or other injunctive relief against such dissipation of trust assets. This definition is contained in § 46.46(b)(2) of the regulations.

The legislation establishes that a beneficiary must act to preserve its rights to trust benefits by filing a written notice with the debtor and the Secretary within 30 calendar days after a default in payment by a buyer or receiver in connection with the purchase or receipt of perishable agricultural commodities. The regulations make it clear that a default occurs when a buyer or receiver of perishable agricultural commodities fails to pay for them within the appropriate time period for the type of transaction involved, as provided in

§ 46.2(aa) of the regulations, or as otherwise agreed upon by the parties. A default also occurs when a party first learns that a payment instrument which it has received has been dishonored. This definition is contained in § 46.46(b)(3) of the regulations.

Defining "calendar days" as used in section 5(c)(2) of the legislation establishes the means of protecting trust beneficiaries' ability to file a timely notice to preserve their trust benefits when the thirtieth calendar day falls on a Saturday, Sunday, or holiday. This definition is found in § 46.46(b)(4) of the regulations.

The legislation provides that the perishable agricultural commodities received in all transactions and all inventories of food or other products derived from the commodities, and all receivables or proceeds from the sale of such commodities shall comprise the trust. Section 46.46(c) of the regulations clarifies the intent of Congress that the trust is to be a nonsegregated "floating" trust, and that commingling of trust assets is permitted. There is no necessity to specifically identify all of the trust assets through the entire accrual and disposal process other than as required under current regulations. When claiming under the trust it is the responsibility of the claimant against the trust to establish, through business records, the details of the transaction for which payment is sought.

Trust assets are available for other uses by the buyer or receiver. For example, trust assets may be used to pay other creditors. It is the buyer's or receiver's responsibility as trustee to insure that it has sufficient assets to assure prompt payment for produce and that any beneficiary under the trust will receive full payment, including sufficient assets to cover the value of disputed shipments.

While the regulations do not prohibit a buyer or receiver from granting a secured interest in trust assets, they make it clear that the secured interest is secondary and specifically voidable in order to satisfy debts to unpaid suppliers, sellers, or agents in perishable agricultural commodity transactions. Similarly, claims of non-secured creditors are subordinate to the priority trust claims of supplier-creditors.

If a buyer or receiver declares bankruptcy, makes an assignment for the benefit of creditors, declares its intention to sell under the bulk sales law, or otherwise terminates its business, trust assets are not to be considered part of the estate to be distributed to other creditors or sold unless all trust beneficiaries have been paid. This follows the precedent of the similar statutory trust imposed on certain assets of meat packers, after which the statutory trust provision of the PACA has been patterned.

Since all types of transactions in perishable agricultural commodities are subject to trust benefits, responsibilities accrue to each supplier, seller, agent, receiver, and buyer in the marketing chain. Section 46.46(d)(1) provides that a supplier, seller or agent who has met the eligibility requirements of § 46.46(f)(1) and (2) is automatically eligible to participate in the trust upon the transfer of ownership, possession, or control of the commodities to the buyer or receiver. Such supplier, seller or agent must act to preserve its right to participate by filing a notice of its intent in accordance with § 46.46(g), which is discussed below.

Section 46.46(d)(2) deals with situations in which a commission merchant, dealer or broker acts as an agent for a seller or supplier. The provision makes clear that such an agent must negotiate a contract on behalf of its principal which qualifies for trust protection unless the principal previously waived its right to participate in the trust. The requirements for an effective waiver are set forth in this section. The agent also has the duty to file timely notices to preserve trust benefits with the buyer or receiver and the Secretary as provided in § 46.46(g). It cannot avoid this duty by a contract provision.

When an agent gains ownership, possession or control of commodities, it is subject to the trust requirements. In other instances, the principal will have recourse against an agent because the agent has agreed to receive payment for the goods.

Section 46.46(e) requires that trust assets must be freely available to satisfy transactions in fruits and vegetables and flags dissipation as a violation of Section 2 of the Act. This carries out the intent of Congress in amending the Act. It is incumbent upon buyers or receivers to insure that trust assets are available to pay suppliers, sellers, or agents. Dissipation of the trust assets and other actions which breach this duty of trust maintenance would be sanctionable. In addition, it is incumbent upon a seller's agent to protect its principal's rights to trust protection. The agent's responsibilities are set forth in §§ 46.46(d) and 46.2 (z) and (aa), and are discussed elsewhere in this document. The regulations impose strict duties on all sellers' agents because they have the potential to prejudice a seller's rights and thus defeat the purposes of the amendment. For example, under these regulations an agent who failed to preserve its principal's rights by not filing the timely notices as required would be considered to have failed to perform a duty in violation of Section 2 of the Act.

The legislation provides that in order to preserve its benefits, a supplier, seller, or agent must file its written notice of intent to preserve its rights to trust benefits with the debtor and the Secretary within 30 calendar days after a debtor's default in payment. The legislation also sets forth requirements for the preparation and preservation of records of written agreements which vary the time for payment from the times prescribed in the regulations. Section 46.46(f)(1) carries out the expressed intent of Congress. It provides that if the sales contract is silent as to the time for payment, the times specified in § 46.2(aa) of the regulations apply to the transaction and that the transaction is subject to trust protection. If they agree to a payment period different from those established in § 46.2(aa), the parties have the responsibility to reduce the agreement to writing during the negotiations before entering into the transaction. A copy must be maintained in each party's records, and the times for payment must be disclosed on invoices, accountings and other documents relating to the transaction.

Congress directed the Secretary to establish the maximum time by which the parties to a transaction can agree payment must be made and still qualify for coverage under the trust. An agreement for payment after such time will not qualify for trust coverage.

Current payment practices, as reflected by administrative experience and industry sources, indicate that contracts calling for payment within 30 days from receipt and acceptance of the goods should qualify for trust coverage, and that contracts that call for later payment should not qualify for trust coverage. Therefore, as set forth in § 46.46(f)(2), if an agreement calls for payment 31 days or more after receipt and acceptance of the goods, the trust provisions will not apply to that transaction.

So long as the seller or supplier could establish the terms of the transaction, meet the requirements of § 46.46 (f) and (g), and meet all other requirements of the regulations, its right to trust benefits would be preserved. Thus, the failure of a receiver to maintain proper records would not defeat the trust. These amendments preserve the statutory protection which Congress intended to be available for unpaid sellers or suppliers who did all that was necessary to perfect their rights.

The legislation provides that the trust provision shall not apply to transactions between a cooperative association (as defined in the Agricultural Marketing Act, 12 U.S.C. 1141j(a)), and its members. Section 46.46(f)(3) which reflects this determination is included in the regulations.

Many contracts between agents and their principals involve advances of funds by the agent for seed, equipment, or payment of contemplated expenses. Section 46.46(f)(4) of the regulations makes it clear that money advances or allowable expenses paid are not a part of the trust, and that the amount claimable by the supplier, seller or grower is the net amount due after allowable deductions for advances and all allowable expenses paid by the agent.

The legislation is clear that an absolute precondition to pursuing trust assets held by a defaulting buyer or receiver is the filing of a written notice by the seller, supplier or agent after a failure to pay within the prescribed time periods has elapsed. The prescribed time periods are set forth in § 46.46(g)(1), and track the legislative directive that the filing of a notice of intent to preserve the benefits of the trust must be made. These time frames have previously been explained in the discussion of § 46.46(f)(1), above.

Section 46.46(g)(2) provides that timely filing of the notice of intent to preserve trust benefits will be accomplished if written notice is given to the debtor and filed with the Secretary within 30 calendar days after default, as provided in Subsection (g)(1). Filing with the Secretary is actual receipt by the P.A.C.A. Branch headquarters office in Washington, D.C., or one of its regional offices. Timely notice will enable the Secretary to take prompt action when necessary to prevent dissipation of trust assets. The contents of the notice as proposed in § 46.46(g)(3) insures that sufficient information is available to indicate that the transaction is entitled to trust protection under the regulations, and to establish the identity of the transaction to facilitate further action which may be necessary on eligible transactions.

Conforming Changes

As a result of the amendment establishing a trust for the benefit of produce creditors, and the contents of the regulations to effectuate the trust fund provisions, it is necessary to revise the prompt accounting and prompt payment provisions for certain types of contracts to insure that the transactions covered by those provisions will be eligible for trust coverage. These changes will not change the current administration of the program in significant ways, but rather will tend to make the trust fund provisions and other provisions of the Act operate in a uniformly consistent manner. The changes deal with the definitions of "account promptly" contained in § 46.2(z) and "full payment promptly" contained in § 46.2(aa).

Section 46.2(z) deals with prompt accounting requirements pertaining to consignment and joint account and grower's agent transactions. The current provision provides for accountings within time frames that are measured from the date of final sale, the receipt of payment for the goods, or in the case of certain grower's agent agreements at reasonable intervals during the season and within a reasonable time following the close of transactions for a season. The revision requires that appropriate accounting be made within time frames geared not only to dates of final sale and receipt of payment, but also to the date goods are received by the agent and received and accepted at destination, and in all cases requires such accounting to be made within 30 days or less from the date of receipt of the goods by the agent for sale. Also, this revision clarifies that agents are responsible for accounting in marketing contracts that include storage of goods prior to sale.

Section 46.2(aa)(1) currently provides that full payment promptly with respect to consignment or joint account transactions means payment within 10 days after the date of final sale with respect to each shipment. The revision requires that payment be made within that time frame, or within 20 days from the date the goods are accepted at destination, whichever comes first.

Section 46.2(aa)(8) currently provides that a grower's agent or shipper who delivers individual lots of produce for or on behalf of others must make full payment within five days after receipt of payment from the purchaser or receipt of the net proceeds with respect to consignment or joint account transactions. The revision establishes definite maximum times for payment so as to insure trust applicability.

Section 46.2(aa)(9) currently provides in part that partial payments are to be made at reasonable intervals during a shipping season by a grower's agent or shipper who harvests, packs or distributes entire crops or multiple lots for or on behalf of others, and final payment is to be made within a reasonable time after the last transaction in a season. The revision establishes definite maximum times for payment so as to insure trust applicability.

Section 46.2(aa)(10) establishes a time for prompt payment for contracts based on terms not described elsewhere in the regulations. It requires payment within 20 days from the date of acceptance of a shipment as provided for in the contract, and as the term "acceptance" is defined in § 46.2(dd).

Section 46.2(aa)(9) currently provides that parties to a contract may enter an express agreement at the time a contract is made to provide a different time for payment than that prescribed in the regulations for the type of contract involved. This provision is being removed from § 46.2(aa)(9) and renumbered § 46.2(aa)(11), and include the requirement that the terms of any agreement to vary the times for payment prescribed in subparagraphs (1) through (10) be reduced to writing before entering the transaction so as to assure conformity with the provisions of the trust.

Finally, the last sentence of § 46.2(aa) is revised to delete the provision that payment in connection with transactions or situations not covered by the rest of the subsection must be made in a reasonable time.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Commodities exchanges, Penalties.

PART 46—[AMENDED]

Accordingly, 7 CFR Part 46 is amended as follows:

Section 46.2 is amended by revising paragraphs (z)(2), (aa)(1), (aa)(8), (aa)(9), and the last sentence of the flush paragraph at the end of (aa), and by adding paragraphs (aa)(10) and (aa)(11) to read as follows:

§ 46.2 Definitions.

* * * * *

(z) * * *

* * * * *

(2) In connection with consignment or joint account transactions, within 10 days after the date of final sale with respect to each shipment, or within 20 days from the date the goods are accepted at destination, whichever comes first: *Provided,* That whenever a grower's agent or shipper distributes individual lots of produce for or on behalf of others, accounting to the principal shall be made within 30 days after receipt of the shipment from the principal for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first. Whenever a grower's agent or shipper

harvests, packs, or distributes entire crops or multiple lots therefrom for or on behalf of others, an accounting on the initial shipment shall be rendered within 30 days after receipt of the goods for sale. Accountings for subsequent shipments shall be made at 10-day intervals from the date of the accounting for the initial shipment and a final accounting for the season shall be made to each principal within 30 days from the date the agent receives the last shipment for the season from that principal: *Provided further,* That whenever the marketing agreement between a principal and agent includes a provision for storage of goods prior to sale, the agent shall render accountings of inventory and expenses incurred to date at 30-day intervals from the date the goods are received by the agent until sales from storage begin, and *Provided further,* That nothing in the regulations in this part shall prohibit cooperative associations from accounting to their members on the basis of seasonal pools or other arrangements provided by their regulations or bylaws; and

* * * * *

(aa) * * *

(1) Payment of net proceeds for produce received on consignment or the pro-rata share of the net profits for produce received on joint account, within 10 days after the date of final sale with respect to each shipment, or within 20 days from the date the goods are accepted at destination, whichever comes first.

* * * * *

(8) Payment by growers agents or shippers who distribute individual lots of produce for or on behalf of others, within 30 days after receipt of the goods from the principal for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first.

(9) Whenever a grower's agent or shipper harvests, packs, or distributes entire crops or multiple lots therefrom for or on behalf of others, payment for the initial shipment shall be made within 30 days after receipt of the goods for sale or within 5 days after the date the agent receives payment for the goods, whichever comes first. Payment for subsequent shipments shall be made at 10-day intervals from the date of the accounting for the initial shipment or within 5 days after the date the agent receives payment for the goods, whichever comes first, and final payment for the seasons shall be made to each principal within 30 days from the date the agent receives the last shipment for the season from that principal.

(10) When contracts are based on terms other than those described in these regulations, payment is due the supplier-seller within 20 days from the date of acceptance of the shipment under the terms of the contract and § 46.2(dd).

(11) Parties who elect to use different times of payment than those set forth in paragraphs (aa) (1) through (10) of this section must reduce their agreement to writing before entering into the transaction and maintain a copy of the agreement in their records. If they have so agreed, then payment within the agreed upon time shall constitute "full payment promptly". *Provided,* That the party claiming the existence of such an agreement for time of payment shall have the burden of proving it.

* * * If there is a dispute concerning a transaction, the foregoing time periods for prompt payment apply only to payment of the undisputed amount.

3. Section 46.46 is added to read as follows:

§ 46.46 Statutory trust.

(a) *Scope.* The requirements of this section cover all transactions existing as of and entered into on or after the effective date of these regulations which have been issued pursuant to Pub. L. 98-273.

(b) *Definitions.* (1) "Received" means the time when the buyer, receiver, or agent gains ownership, control, or possession of the perishable agricultural commodities: *Provided,* That when perishable agricultural commodities have not been received as described above, and where there is a rejection without reasonable cause as provided in § 46.2(bb) and (cc), the goods will be considered to have been received when proffered.

(2) "Dissipation" means any act or failure to act which could result in the diversion of trust assets or which could prejudice or impair the ability of unpaid suppliers, sellers, or agents to recover money owed in connection with produce transactions.

(3) "Default" means the failure to pay promptly money owed in connection with transactions in perishable agricultural commodities; *i.e.,* within the period of time applicable to the type of transaction as established by the provisions of the regulations (§ 46.2(aa)), or as otherwise agreed upon by the parties.

(4) "Calendar days" as used in Section 5(c) 3 of the Act means every day of the week, including Saturdays, Sundays, and holidays, except that if the thirtieth calendar day falls on a Saturday, Sunday, or holiday, the final day with respect to the time for filing a written notice of intent to preserve the benefit of the trust shall be the next day upon which there is postal delivery service.

(c) *Trust Assets.* The trust is made up of perishable agricultural commodities received in all transactions, all inventories of food or other products derived from such perishable agricultural commodities, and all receivables or proceeds from the sale of such commodities and food or products derived therefrom. Trust assets are to be preserved as a nonsegregated "floating" trust. Commingling of trust assets is contemplated.

(d) *Trust Benefits.* (1) When a seller, supplier or agent who has met the eligibility requirements of paragraphs (f) (1) and (2) of this section transfers ownership, possession, or control of goods to a commission merchant, dealer, or broker, it automatically becomes eligible to participate in the trust. Participants who preserve their rights to benefits in accordance with paragraph (g) of this section remain beneficiaries until they are paid in full.

(2) Commission merchants, dealers, and brokers acting on behalf of others have the duty to preserve their principals' rights to trust benefits by filing timely written notice with their customers and with the Secretary in accordance with paragraph (g) of this section. The responsibility for filing the notice to protect the principals' rights is obligatory and cannot be avoided by the agent or receiver by means of a contract provision. Persons acting as agents also have the responsibility to negotiate contracts which entitle their principals to the protection of the trust provisions: *Provided,* That a principal may elect to waive its right to trust protection. To be effective, the waiver must be in writing and separate and distinct from any agency contract, must be signed by the principal prior to the time affected trading contracts are negotiated, must clearly state the principal's intent to waive its right to become a trust beneficiary on a given transaction, or a series of transactions, and must include the date the agent's authority to act on its behalf expires. In the event an agent fails to perform the duty of protecting its principal's rights to trust benefits, it may be held liable to the principal for damages. The principal must preserve its rights to trust benefits by filing appropriate notices with the agent and/or the buyer and the Secretary in accordance with paragraph (g) of this section.

(e) *Trust Maintenance.* (1) Commission merchants, dealers and brokers are required to maintain trust assets in a manner that such assets are freely available to satisfy outstanding obligations to sellers of perishable agricultural commodities. Any act or omission which is inconsistent with this responsibility, including dissipation of trust assets, is unlawful and in violation of Section 2 of the Act, (7 U.S.C. 499b).

(2) Agents who sell perishable agricultural commodities on behalf of a principal are required to preserve the principal's rights as a trust beneficiary as set forth in § 46.2(z), (aa) and paragraphs (d), (f), and (g) of this section. Any act or omission which is inconsistent with this responsibility, including failure to give timely notice of intent to preserve trust benefits, is unlawful and in violation of Section 2 of the Act, (7 U.S.C. 499b).

(f) *Prompt Payment and Eligibility for Trust Benefits.* (1) The times for prompt accounting and prompt payment are set out in § 46.2(z) and (aa). Parties who elect to use different times for payment must reduce their agreement to writing before entering into the transaction and maintain a copy of their agreement in their records, and the times of payment must be disclosed on invoices, accountings, and other documents relating to the transaction.

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree and still qualify for coverage under the trust is 30 days after receipt and acceptance of the commodities as defined in § 46.2(dd) and paragraph (b)(1) of this section.

(3) The trust provisions do not apply to transactions between a cooperative association (as defined in Section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), and its members.

(4) The amount claimable against the trust by a beneficiary or grower will be the net amount due after allowable deductions of contemplated expenses or advances made in connection with the transaction by the commission merchant, dealer, or broker.

(g) *Filing Notice of Intent to Preserve Trust Benefits.* (1) Notice of intent to preserve benefits under the trust must be in writing, given to the debtor, and filed with the Secretary within 30 calendar days:

(i) After expiration of the time prescribed by which payment must be made pursuant to regulation,

(ii) After expiration of such other time by which payment must be made as the parties have expressly agreed to in writing before entering into the transaction, but not longer than the time prescribed in paragraph (f)(2) of this section, or

(iii) After the time the supplier, seller or agent has received notice that a payment instrument promptly presented for payment has been dishonored.

Failures to pay within the time periods set forth in paragraphs (g)(1)(i) and (ii) of this section constitute defaults.

(2) Timely filing of a notice of intent to preserve trust benefits by a trust beneficiary will be considered to have been made if written notice is given to the debtor and filed with the Secretary by delivery at the headquarters office or a regional office of the P.A.C.A. Branch of the Fruit and Vegetable Division, Agricultural Marketing Service, within 30 calendar days after default as described above in paragraph (b)(3) of this section.

(3) An appropriate notice of intent to preserve trust benefits must be in writing, must include the statement that it is a notice of intent to preserve trust benefits, and must include information which establishes for each shipment:

(i) The name and addresses of the trust beneficiary, seller-supplier, commission merchant, or agent and the debtor, as applicable,

(ii) The date of the transaction, commodity, contract terms, invoice, price, and the date payment was due,

(iii) The date of receipt of notice that a payment instrument has been dishonored (if appropriate),

(iv) The amount past due and unpaid.

(Approved by the Office of Management and Budget under control number 0581-0031)

(Sec. 1, 46 Stat. 531, as amended; 7 U.S.C. 499a *et seq.*)

The reporting and/or record-keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Paper Work Reduction Act of 1980 (44 U.S.C. Chap. 35). OMB No. 0581-0031, Expiration Date 08/31/86.

Done at Washington, D.C. this 15th day of November, 1984.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 84-30462 Filed 11-19-84; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 84-111]

Lethal Avian Influenza; Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of areas quarantined in Pennsylvania under the Lethal Avian Influenza interim rule by deleting from quarantined area status one premises in Lebanon County. The interim rule imposes prohibitions and restrictions on the interstate movement from quarantined areas of live poultry, poultry eggs, and certain other items. However, it is no longer necessary for such purpose to include as a quarantined area the premises deleted from quarantined area status.

DATES: Effective date is November 14, 1984. Written comments must be received on or before January 20, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. H.A. McDaniel, Chief Staff Officer, Technical Support Staff, VS, APHIS, USDA, Room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8087.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Lethal Avian Influenza" interim rule which is set forth in 9 CFR Part 81. Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania. Among other things, the interim rule designates several premises in Pennsylvania as quarantined areas and prohibits or restricts certain interstate movements from these quarantined areas of live poultry, poultry eggs, and certain other items because of lethal avian influenza.

Prior to the effective date of this document, four premises in Pennsylvania were designated as quarantined areas. This document deletes the following premises in Lebanon County from the list of quarantined areas (This premises in Lebanon County was incorrectly listed in the interim rule as being located in Lancaster County.):

The premises of Harold Dice, RD #1, Box 125, Fredricksburg, PA 17026, located in Bethel Township approximately 5½ miles east of Fredricksburg on Legionaire Road (T 510).

The poultry on this premises have been depopulated and the premises has been cleaned and disinfected. Sufficient

time has now elapsed to ensure that this premises is free of lethal avian influenza virus. Under these circumstances there is no longer a basis for imposing prohibitions or restrictions because of lethal avian influenza on the interstate movement of live poultry or other items from this premises.

With this change the quarantined areas in Pennsylvania consist of two premises in Berks County and one premises in Lancaster County. The revised list of quarantined areas is set forth in the rule portion of this document.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary prohibitions and restrictions on the movement of live poultry and certain other items from the premises in Lebanon County released from quarantined area status.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the Federal Register.

Executive Order and Regulatory Flexibility Act

This action has been received in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The portion of the poultry industry affected by this document represents less than one percent of the poultry industry in the United States.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

Accordingly, § 81.4 of 9 CFR Part 81 is revised to read as follows:

§ 81.4 Quarantined areas.

Pennsylvania.—(a) Berks County. (1) The premises of Fred Wright, RD #1, Box 100, Richland, PA 17087, located in Bethel Township approximately 2½ miles south of Bethel on Bordner Road.

(2) The premises of Fred Wright, RD #1, Box 100, Richland, PA 17087, located in Bethel Township approximately 2½ miles northwest of Bethel on Schubert Road.

(b) *Lancaster County.* The premises of David Sauder, RD #1 Box 192, East Earl, PA 17519, located in East Earl Township approximately 9/10 of a mile west of Terre Hill on Centerville Road.

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–6, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 689; sec. 2, 65 Stat. 693; secs. 2-3, 5–6, and 11, 76 Stat. 129–132; 79 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a–1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 14th day of November, 1984.

B.G. Johnson

Acting Deputy Administrator, Veterinary Services

[FR Doc 84-30480 Filed 11-19-84 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

[Rev. 2, Amdt. 5]

Standards of Conduct

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On August 7, 1984, the internal organization of the Agency Office of General Counsel was returned to an earlier organization in which the advisory functions of the office were divided into two offices, the Office of Financial Law and the Office of General Law. As part of this reorganization, the responsibilities of the Agency Standards of Conduct Counselor and the Agency Ethics Officer were transferred from the Associate General Counsel for General Law to the Associate General Counsel for Financial Law. The purpose of this amendment is to reflect this transfer of duties in the regulations.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT: Michael F. Kinkead, Attorney, Small Business Administration, Room 722, 1441 L Street, NW., Washington, D.C. 20416. (202) 653–6381.

SUPPLEMENTARY INFORMATION: SBA is publishing this rule change in final form since it relates only to Agency management and is, therefore, exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 12291.

List of Subjects in 13 CFR Part 105

Conflict of interests.

PART 105—[AMENDED]

Accordingly, pursuant to the authority contained in Section 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 634(b)(6)), SBA is amending Part 105, Chapter I, Title 13 of the Code of Federal Regulations by revising §§ 105.802(a) and 105.803(a) to read as follows:

§ 105.802 Standards of Conduct Counselors.

(a) The SBA Standards of Conduct Counselor shall be the Associate General Counsel for Financial Law. He shall be assisted by a Regional Standards of Conduct Counselor for each SBA Region. The Regional Counsel shall be the Regional Standards of Conduct Counselor for each Region.

* * * * *

§ 105.803 Designated Agency Ethics Officials.

(a) The Designated Agency Ethics Official, appointed by the Administrator pursuant to the Ethics in Government Act of 1978, shall be the Associate General Counsel for Financial Law. He may, in turn, appoint an Alternate Designated Agency Ethics Official, who will be an attorney in the Office of Financial Law. The Alternate Official will assist the designated Agency Ethics Official and shall act for him, in his

absence, in the performance of his official functions.

* * * * *

James C. Sanders,

Administrator.

[FR Doc. 84-30439 Filed 11-19-84; 8:45 am]

BILLING CODE 6025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-85-AD; Amdt. 39-4951]

Airworthiness Directives; Boeing Models 727-200, 727-200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 727 series airplanes which requires inspection and repair, if necessary, of the elevator rear spar. This action is prompted by several recent reports of numerous cracks in the rear spar flange radii at the elevator tab hinge points. Failure to detect cracks in this area increases the susceptibility of the airplane to tab flutter which could lead to loss of the airplane.

DATE: Effective November 20, 1984.

ADDRESSES: The service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Don Gonder, Airframe Branch, ANM-120S, telephone (206) 431-2927. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: There have been five reported cases of cracked elevator rear spars on Boeing Model 727 Series airplanes. The spars have contained numerous cracks. In one case it was also reported that an elevator tab hinge was loose. The cracks have occurred in the upper and lower flange bend radii of the spar at the tab hinge brackets. In two instances, three cracks were reported at three of five hinge brackets. It is believed that the cracks are fatigue-related and are initiated by interference between the spar flange bend radii and the sharp edges on shear plates mounted between the spar and the elevator tab hinges. This interference is a result of a design change incorporated in Model 727 airplanes, line number 1720 and subsequent. Cracks in the spar web tend to transfer loads to the hinge brackets and accelerate the loosening of the bracket attachment. Loose hinge brackets and cracks in the spar web will reduce the rigidity of the elevator tab mounting structure. This condition will increase the susceptibility of the airplane to tab flutter, which could lead to failure of empennage components and subsequent loss of the airplane.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued to require inspection and repair, if necessary, of the elevator rear spar on Boeing Model 727 series airplanes from line number 1720 and subsequent.

Since a situation exists which requires immediate adoption of this amendment it is found that notice and public procedure hereon are impracticable and good cause exists for making this AD effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 727-200 series and 727-200F series airplanes certificated in all categories, listed in Boeing Service Bulletin No. 727-55-0065, Original Issue, dated August 13, 1984. Compliance is required as indicated unless already accomplished.

To detect cracks in the elevator rear spar, accomplish the following:

A. Within the next 300 hours time in service after the effective date of this AD or prior to accumulating 8000 hours total time in service whichever occurs later, inspect the elevator rear spar for cracks in accordance with Boeing Service Bulletin No. 727-55-0065, Original Issue or later FAA approved revisions. Repeat the inspections at intervals not to exceed 1600 hours time in service.

B. Repair cracked structure before further flight in accordance with Boeing Service Bulletin No. 727-55-0065, Original Issue or later FAA approved revisions. Repaired but unmodified structure must be inspected prior to accumulating 8000 hours time in service after repair and thereafter at intervals not to exceed 1600 hours time in service. Cracks within the limits specified in the service bulletin may be stop drilled as an interim repair. All stop drilled cracks must be reinspected 1600 hours after stop drilling and must have the repair specified in the service bulletin accomplished within 3200 hours after stop drilling.

C. Modification in accordance with Boeing Service Bulletin No. 727-55-0065, Original Issue or later FAA approved revisions, eliminates the need for the repetitive inspections required by paragraphs A. and B., above, and constitutes terminating action for this AD.

D. Inspections accomplished in accordance with Boeing Service Bulletin No. 727-55-0065 prior to the effective date of this AD, satisfy the initial inspection requirements of paragraph A. of this AD.

E. On request by an operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times in this AD, if the request contains substantiating data to justify the increase for that operator.

F. Aircraft may be ferried to a maintenance base for repair in accordance with FAR 21.197 and 21.199.

G. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents also may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 20, 1984.

(Secs. 313(a), 314(a), and 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on October 31, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-30333 Filed 11-19-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-37-AD; Amdt. 39-4949]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which supersedes an existing AD, to require repetitive inspections of the horizontal stabilizer center section rear spar attach lugs on certain Boeing 737 series airplanes. The existing AD requires a one-time visual inspection; however, a subsequent reassessment by the manufacturer has shown the need for repetitive inspections. Failure to detect cracks in the horizontal stabilizer center section near spar attach lugs may result in separation of the horizontal stabilizer from the airplane.

DATE: Effective December 15, 1984.

ADDRESSES: The referenced service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: An amendment to Part 39 of the Federal Aviation Regulations to include an AD (81-11-07) requiring a one-time visual inspection of the horizontal stabilizer center section spar attach lugs on certain Boeing 737 series airplanes was published in the **Federal Register** on May 26, 1981 (46 FR 28147). A subsequent structural reassessment by the manufacturer revealed the need for repetitive inspections. These additional inspections were specified in a manufacturer's Service Bulletin 737-55A1029, Revision 3, dated February 3, 1983. A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspections of the horizontal stabilizer rear spar attach lugs on certain Boeing 737 series airplanes was published in the **Federal Register** on June 22, 1984 (49 FR 25638). The comment period closed on August 7, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

There were a total of five responses to the proposed amendment as published, four of which contained no objections. One commenter recommended that the initial inspection be accomplished within 500 landings rather than the proposed 200 landings. The significance of the problem was the primary consideration in the determination of the initial inspection time. Recognizing the fact that loss of the airplane will result if the horizontal stabilizer is lost, and that these lugs are the only structural members holding the stabilizer on the airplane, the importance of the lugs becomes apparent. It is not unreasonable to require that they be inspected within a short period of time. Accordingly, the proposal is adopted without change.

It is estimated that 200 airplanes of U.S. registry will be affected by this AD. Approximately 4 manhours will be required per airplane to perform the inspection. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspection will be $32,000. Therefore, the rule is not considered a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive.

Boeing: Applies to Boeing Model 737 series airplanes, certificated in all categories, listed in Boeing Service Bulletin 737-55A1029, Revision 3. To ensure continued structural integrity of the horizontal stabilizer, accomplish the following, unless previously accomplished:

A. Inspect the rear spar horizontal stabilizer attach lugs for cracks in accordance with instructions in Boeing Service Bulletin 737-55A1029, Revision 3, or later FAA approved revision, upon the accumulation of the threshold number of landings specified in Table I of the service bulletin or within 200 landings after the effective date of this AD, whichever occurs later. Repeat these inspections at intervals not exceeding those specified in Table I of the service bulletin.

B. Cracked parts must be replaced or repaired in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region before further flight.

C. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with the AD, subject to the acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Upon request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection interval in this AD, if the request contains substantiating date to justify the increase for the operator.

This supersedes Amendment No. 39-4122 (46 FR 28147; May 26, 1981), AD 81-11-07.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 15, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on October 31, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-30335 Filed 11-19-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-ANE-16; Amdt. 39-4946]

Airworthiness Directives; Dowty Rotol Limited Type R.209/4-40-4.5/2 Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends existing airworthiness directive (AD) 78-16-02 which requires repetitive inspections for cracks in the propeller hub (arms) on the Dowty Rotol Type R.209/4-40-4.5/2 propellers. The amendment is needed because a new strengthened hub has been made available as an alternative and the use of this hub eliminates the need for the repetitive inspection.

DATE: Effective November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Martin Buchman, Engine and Propeller Standards Staff, ANE-110, Aircraft Certification Division, New England Region, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone 617-273-7079.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3272, AD 78-16-02, which currently requires repetitive inspections for cracks in the propeller hub (arms) on Dowty Rotol Type R.209/4-40-4.5/2 propellers. After issuing Amendment 39-3272, the FAA has determined that the installation of an alternate strengthened hub eliminates the need for the repetitive inspections required by the AD.

The amendment also changes the authority for providing adjustments of the inspection intervals and equivalent means of compliance.

This action clarifies an exis'ing AD by limiting its effect to those propeller hubs which are subject to develop cracks. Propellers with later developed, strengthened hubs, are not subject to this problem and it is not necessary that they be subject to the same inspections mandated by the original AD. Accordingly, as this is essentially editorial and clarifying in effect, notice and public procedure from here on are unnecessary and contrary to the public interest and good cause exists for making the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Propellers, Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-3272, AD 78-16-02, as follows:

1. By adding a new paragraph (a)(3) as follows:

(a)(3) Compliance with this AD is not required for propellers having the new strengthened hub Part No. 601023446 installed in place of hub Part No. 601023335.

2. By revising paragraph (e) to read as follows:

(e) "Upon request, the Manager, Engine and Propeller Standards Staff, ANE-110, FAA, New England Region, may adjust the inspection interval. . . ." This amendment becomes effective on November 15, 1984.

This amendment amends Amendment 39-3272, AD 78-16-02.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation provides an alternative to existing requirements. The cost of a propeller modification to include the strengthened hub is approximately $30,000 and the cost of each of the existing repetitive inspection, which would be eliminated, is approximately $2500. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

Issued in Burlington Massachusetts, on October 24, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-30336 Filed 11-19-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-89-AD; Amdt. 39-4952]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires a one-time inspection of the wing flap hinge bracket lower attach studs on certain Donnell Douglas DC-9 and Military C-9 series airplanes. There have been reports of flap hinge bracket lower attach stud failures which, if not corrected, could result in the rotation of the flap bracket during flap actuation and subsequent jamming of the aileron control cables. This situation could result in the loss of flap and aileron (lateral) control, as well as damage to the spoiler, flap vanes, and primary wing structure.

DATE: Effective November 20, 1984.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: This AD is promoted by reports from two operators concerning two instances of failed wing flap hinge lower attach studs which attach the wing flap outboard idler hinge to the wing rear spar at station Xw=333.148. When the lower studs failed, the support fitting rotated upwards under flap loading. Because the aileron control cables pass through a hole in the support bracket, rotation of the bracket could cause the control cables to be severed or jammed. This could cause the loss of lateral control of the airplane. Stud failures have been attributed to hydrogen embrittlement. Accomplishment of the non-destructive inspection (NDI) as outlined in McDonnell Douglas Service Bulletin A57-162, dated April 27, 1984, or later FAA approved revisions, will detect cracked hinge studs and thereby preclude the possibility of stud failure.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires non-destructive inspection of the wing flap hinge lower attach studs.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDONNELL DOUGLAS: Applies to McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (Military) series airplanes which have been modified in accordance with McDonnell Douglas Service Bulletin 57–118 and/or production equivalent, certificated in all categories. Compliance required as indicated unless previously accomplished.

To detect cracked wing flap outboard hinge lower stud(s) due to hydrogen embrittlement, and prevent failure of the wing hinge bracket, accomplish the following:

A. Prior to the accumulation of 10,400 landings or within 400 landings, whichever occurs later, from effective date of this AD, ultrasonically inspect the flap hinge fitting lower studs for cracking in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A57–162, dated April 27, 1984, or later FAA approved revisions.

B. If no cracking is found, no further action is required.

C. If cracking is found, replace all four studs in accordance with the Accomplishment Instructions of Paragraph 2 of McDonnell Douglas DC–9 Alert Service Bulletin A57–162, dated April 27, 1984, or later FAA approved revisions.

D. Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective November 20, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on October 31, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-30332 Filed 11-19-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-96-AD; Amdt. 39-4950]

Airworthiness Directives; Short Brothers Ltd. Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3–60 series airplanes which requires replacement of the existing pitot type oil cooler air intake scoop with a "D" type scoop. Several instances of icing of the existing scoop have been reported while operating in severe icing conditions. Partial blocking of the scoop by ice results in high oil temperatures which could require shutdown of an engine during flight.

DATE: Effective December 15, 1984.

Compliance: Required within the next 60 days after the effective date of this AD (unless already accomplished).

ADDRESSES: The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202 or may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Ltd. Service Bulletin SD360–71–05 as mandatory. Service experience and evaluation by the manufacturer have shown that the existing pitot type coil cooler air intake scoop fitted to the SD3–60 airplane tends to ice more easily than the "D" type scoop fitted to the SD3–30 airplane. Several reports of high oil temperatures have been reported while operating in severe icing conditions. Investigation revealed that this was caused by ice blocking the oil cooler air intake scoop.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring replacement of the oil cooler intake scoops was published in the **Federal Register** on September 11, 1984 (49 FR 35642). The comment period closed on September 29, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that approximately 10 airplanes of U.S. Registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are provided by the manufacturer at no cost. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,400. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directives:

Short Brothers Ltd: Applies to Model SD3–60 airplanes as listed in Short Brothers Service Bulletin SD360–71–05, dated March 1984, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent icing of the oil cooler air intake scoop, accomplish the following:

A. Within 60 days after the effective date of this airworthiness directive (AD), install the "D" type oil cooler air intake scoop on both intake cowls in accordance with Short Brothers Ltd. Service Bulletin SD360–71–05, dated March 1984.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective December 15, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Short Brothers Ltd. Model SD3–60 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on October 31, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-30334 Filed 11-19-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-AGL-7]

Alteration to Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Monroe, Michigan, transition area to accommodate a new RNAV Runway 20 instrument approach procedure to Custer Airport.

The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 GMT, February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

History

On Tuesday, September 4, 1984, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area near Monroe, Michigan (49 FR 34846).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Monroe, MI

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Custer Airport (lat. 41°56'10"N., long. 83°26'15"W.) excluding the portion which overlies the Detroit, Michigan, 700-foot transition area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; [49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983]; and 14 CFR 11.69)

Issued in Des Plaines, Illinois, on October 31, 1984.

Edwin S. Harris,

Acting Director, Great Lakes Region.

[FR Doc. 84-30327 Filed 11-19-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ANM-24]

Revise Transition Area; Price, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment revises the description of the Price, Utah, transition area. The description makes reference to the Carbon VOR which will be relocated and upgraded. This action amends the description to reflect the revised NAVAID coordinates and nomenclature.

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: George L. Orr, Airspace & Procedures Specialist, ANM–531, Federal Aviation Administration, Airspace Docket No. 84–ANM–24, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, the telephone number is (206) 431–2531.

SUPPLEMENTARY INFORMATION: The Price, Utah transition area was established to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions or instrument weather conditions. The relocation of the Carbon VOR area will require new points of reference for accuracy. The geographical area and associated airspace encompassed by the transition area will remain unchanged.

Since this action involves only editorial changes in the description of the transition area and makes no substantive change, notice and public procedure herein are unnecessary. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter

that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 GMT, February 14, 1985, as follows:

Price, Utah, Transition Area (Revised)

"That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Carbon VOR/DME (Lat. 39° 36'11.6"N., Long. 10°45'10.1" W), and within 2 miles each side of the 200° radial of the Carbon VOR/DME, extending from the 5-mile radius area to 8 miles south of the VOR; that airspace extending upward from 1,200 feet above the surface within 6 miles west and 11 miles east of the 020° and 200° radials of the Carbon VOR/DME extending from 9 miles north to 18.5 miles south of the VOR".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington on November 7, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-30330 Filed 11-19-84; 8:45 am]
BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

[CGD7; 84-35]

Marine Parade; Fort Lauderdale Christmas Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Fort Lauderdale Christmas Boat Parade. This event will be held on December 15, 1984 between 1830 and 2230 local time. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective at 1830 local time on December 15, 1984 and terminate at 2230 local time on December 15, 1984.

ADDRESSES: Even though this a final rule, any comments should be mailed to Commander, USCG Group Miami, 100 Macarthur Causeway, Miami Beach, FL 33139. The comments and other materials referenced in this rule will be available for inspection and copying at 100 Macarthur Causeway, Communications Center. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: ENS T. F. Tabrah (305) 350-4309.

SUPPLEMENTARY INFORMATION: A Notice of proposed rulemaking was not published for this regulation. There is insufficient time to publish a notice before this event and since the regulations are necessary to safeguard persons and property from the associated hazards notice and comment procedures would be contrary to the public's interest under 5 U.S.C. 553(B). Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. Based upon comments received, the regulation may be changed.

Drafting Information: The drafters of notice are ENS T.F. Tabrah, project officer, USCG Group Miami and LCDR K.E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations: Fort Lauderdale Annual Christmas Boat Parade is a 10 mile parade with approximately 100-125 boats displaying decorative lighting expected to participate. Regulations are issued by the Commander, U.S. Coast Guard Group Miami as a public service to facilitate the holding of this event, to promote maritime safety, and to reduce to a minimum interference with other vessel traffic in the area.

Economic Evaluation and Certification: This final rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed under **ADDRESSES**. Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based upon the information in the draft evaluation, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

In consideration of the foregoing, the Coast Guard is amending Part 100 of Title 33, Code of Federal Regulations, by adding a temporary § 100.35-T735 to read as follows:

§ 100.35-T735

(a) *Regulated area:* All navigable waters from Fort Everglades Turning Basin (approximate position 26-05.5N, 080-07.0W) proceeding north in the Intracoastal Waterway to Lake Santa Barbara (approximate position 26-14.4N, 080-05.8W).

(b) *Special Local Regulations:* (1) All vessel traffic in the regulated area will be controlled by the Partrol Commander and will proceed at 5 MPH when passing parade participants.

(2) Rule 20 of the Navigation Rules, International-Inland of December 1983 will be suspended for registered participants only.

(3) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be signal for any non-participating vessels to stop immediately. The display of a red distress flare from a patrol vessel will be signal for any and all vessels to stop immediately.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: October 4, 1984.

G.E. Walton,

Captain, U.S. Coast Guard Commander, USCG Group Miami.

[FR Doc. 84-30272 Filed 11-19-84; 8:45 am]
BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

Federal Information Resources Management Regulation (FIRMR); Procedures for Ordering Looseleaf Edition

AGENCY: Office of Information Resources Management, GSA.

ACTION: Final notice of procedures for Federal agencies/departments to order the looseleaf edition of the FIRMR.

SUMMARY: This is the final notice announcing procedures for Federal agencies/departments to order copies of the looseleaf edition of the FIRMR. Individual agency offices are responsible for making their quantity requirements for the FIRMR known to their agency's Government Printing Office (GPO) Liaison Officer. Agency GPO Liaison Officers are responsible for consolidating and submitting their agency's requirements to the GPO on a SF-1, citing GPO jacket No. 456-938 and GSA rider requisition No. 5-00193.

DATES: Applicable Dates: The complete text of the FIRMR, including temporary regulations, is scheduled for publication in the **Federal Register** by December 1984. The looseleaf edition will be distributed as soon after that time as possible. Agency GPO Liaison Officers have been advised to take action to consolidate their agency's FIRMR distribution requirements and submit orders to the GPO no later than January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Thomas, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) The General Services Administration established the Federal Information Resources Management Regulation on April 1, 1984. The FIRMR is located in the Code of Federal Regulations at Title 41 as a new Chapter 201.

(2) The FIRMR combines certain provisions of the Federal Procurement Regulations (FPR) and the Federal Property Management Regulations (FPMR) that concern the acquisition, management, and use of information resources (including automatic data processing (ADP), office automation, records management, and telecommunications) into a single regulation. The complete text of the FIRMR, including the integrated text of former FPR/FPMR provisions and temporary regulations, is scheduled for publication in the **Federal Register** by December 1984. Distribution of the looseleaf edition is expected as soon after that time as possible.

(3) The initial printing of the looseleaf edition of the FIRMR will include the complete codified text and all temporary regulations and bulletins in a three ring embossed binder of about 250 pages. Amendments and other temporary regulations will be distributed as they are issued, as well as information and guidance bulletins, indices of current bulletins, handbooks, reports, and illustrations of forms pertaining to the subject matter.

(4) Since the provisions of the FIRMR are pertinent to many agency activities, it is recommended that the following offices have access to the FIRMR: The senior official designated by the agency head according to the Paperwork Reduction Act of 1980 (44 U.S.C. 3506); the senior procurement executive designated by the agency head according to the Office of Federal Procurement Policy Act Amendment of 1983 (41 U.S.C. 414); policy and program development offices reporting to the above referenced senior officials; information resources program (including ADP, office automation, and telecommunications), personal property, and facilities management offices; records management offices; procurement and contracting offices (including all procurement personnel assigned to information resources acquisitions); and budget, administrative, oversight, audit, Inspector General, and legal counsel offices and reference libraries supporting agency information resources activities.

(5) Agency GPO Liaison Officers have been requested to consolidate their agency's copy requirements on a SF-1 citing GPO jacket No. 456-938 and GSA rider requisition No. 5-00193. Consolidated SF-1's must be submitted to the Central Office, GPO, no later than January 11, 1985, and must be submitted through agency's Washington, DC headquarters office only. It is imperative that immediate action is taken to assemble agency distribution lists for the FIRMR and make copy requirements known to GPO by January 11, 1985. If too few copies are ordered, GPO supplies may not be available for replenishment, and reprints will be much costlier. Once FIRMR distribution requirements have been established, distribution lists for the FPR and Subchapters B and F of the FPMR will no longer be used to distribute FIRMR materials.

(6) All production costs for the looseleaf edition of the FIRMR will be prorated to participating Federal activities by GPO. Since total copy requirements are not yet known, GPO is unable to provide an estimate of the cost. However, it is anticipated that the cost for FY 1985 will be between $20.00 and $25.00.

(7) Private sector companies, associations, businesses, publishers, and other interested parties will be provided with an opportunity to place subscription orders to the looseleaf edition of the FIRMR with the Superintendent of Documents. Ordering information will be provided in a subsequent **Federal Register** notice prior to the publication date.

Dated: November 14, 1984.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 84-30417 Filed 11-19-84; 8:45 am]
BILLING CODE 6820-25-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, and 175

[Docket No. HM-184B; Amdt. Nos. 171-80, 173-181, 175-32]

Implementation of the ICAO Technical Instructions

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This document amends the Hazardous Materials Regulations (HMR) in order to permit the offering, acceptance and transportation by aircraft, and by motor vehicle incident to transportation by aircraft, of hazardous materials shipments conforming to the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft when the 1985 edition of the ICAO Technical Instructions becomes effective on January 1, 1985, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-0656.

SUPPLEMENTARY INFORMATION: On July 2, 1984, the MTB published a notice (Docket HM-184B, Notice No. 84-5) in the **Federal Register** (49 FR 27180) which requested public comment on the need to amend the Hazardous Materials

Regulations (HMR) in order to take account of the 1985 edition of the ICAO Technical Instructions.

Two commenters responded to Notice No. 84–5. Following full consideration of the comments received, the proposals contained in the notice are being adopted with certain changes. Both comments received supported the actions proposed in the Notice of Proposed Rulemaking with the exception of the amendments to § 175.10(a)(2) concerning the transport of aircraft parts, equipment and supplies. While both commenters agreed that aircraft parts, equipment and supplies that meet the definition of a hazardous material should be properly identified, marked, labeled and packaged during transportation, they felt that the regulations should permit the use of the standard long-life reusable packagings used by aircraft parts manufacturers and by many carriers for the transportation of such hazardous materials aboard aircraft.

The amendment to § 175.10(a)(2) was proposed in response to changes made to the exceptions in the ICAO Technical Instructions for aircraft parts and supplies. However, the MTB now believes that the ICAO amendments to the exceptions for aircraft parts and supplies will be reconsidered at the next meeting of the ICAO Dangerous Goods Panel, and one specific proposal for such reconsideration has already been submitted to ICAO by a member of the Dangerous Goods Panel. Because the likelihood exists that the ICAO exceptions for aircraft parts and supplies will be farther amended in the near future, the MTB has decided to make no change to § 175.10(a)(2) at this time, and the proposed amendment is, therefore, withdrawn. Amendment of this paragraph will be considered in a future rulemaking on the basis of the results of the anticipated ICAO reconsideration of the matter.

An editorial change has been made to the text of § 175.10(a)(22) that appeared in the notice to require that the individual transporting the barometer advise the operator of the presence of the barometer, and to clarify that it is the operator of the aircraft who must advise the pilot-in-command of the presence of a mercury barometer aboard the aircraft.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, 49 CFR Parts 171, 173 and 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. In § 171.7, paragraph (d)(27) is revised to read:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(27) International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284–AN/905 (ICAO Technical Instructions), 1985 edition.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

§ 173.860 (Amended)

2. In § 173.860, paragraph (b)(1) is removed.

PART 175—CARRIAGE BY AIRCRAFT

3. In § 175.10, a new paragraph (a)(22) is added as follows:

§ 175.10 Exceptions.

(a) * * *

(22) A mercurial barometer carried as carry-on-baggage only, by a representative of a government weather bureau or similar official agency, provided that individual advises the operator of the presence of the barometer in his baggage. The barometer must be packaged in a strong outer packaging having sealed inner liner or bag of strong, leak proof and puncture-resistant material impervious to mercury, which will prevent the escape of mercury from the package irrespective of its position. The pilot-in-command must be informed of the presence of any such barometer by the operator of the aircraft.

4. In § 175.33, the existing paragraphs (a)(3), (4), (5) and (6) are redesignated as (a)(5), (6), (7) and (8) respectively, paragraph (a)(2) is revised and new paragraphs (a)(3) and (a)(4) are added as follows:

§ 175.33 Notification of pilot-in-command.

(a) * * *

(2) The toal number of packages;

(3) The net quantity or gross weight, as applicable, for each package except those containing radioactive materials and those for which there is no limit imposed on the maximum net quantity per package;

(4) The location of the packages aboard the aircraft;

* * * * *

§ 175.85 [Amended]

5. In § 175.85(c)(1)(v), the figures "90 °F (32 °C)" are replaced by the figures "73 °F (23 °C)".

(49 U.S.C. 1803, 1804, 1806; 49 CFR 1.53, App. A to Part 1]

Note.—The Materials Transportation Bureau has determined that this document is not a "major rule" under the terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034) and does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) I certify that this amendment will not have a significant economic impact on a substantial number of small entities because the overall economic impact of this amendment is minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C. on November 14, 1984.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84-30436 Filed 11-19-84; 8:45 am]
BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 49, No. 225
Tuesday, November 20, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1255

Ancillary Matters; Discovery

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Proposed rule.

SUMMARY: Under 5 U.S.C. 1205(b)(2)(A), the Special Counsel may issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. Current regulations of the Office of the Special Counsel permit service of subpenas by delivery either in person or by registered or certified mail. However, the regulations are not clear as to when delivery of subpenas by the above methods is effective. To avoid confusion, the regulation is proposed to be amended to clarify that service of subpenas is effective when made by delivery in person or by registered or certified mail to the residence or principal place of business of the person to be served.

DATE: Comments are due on or before December 20, 1984.

ADDRESS: Send comments to Office of Special Counsel, Leonard M. Dribinsky, 1120 Vermont Avenue, NW., Suite 1100, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Leonard M. Dribinsky, (202) 653–8968.

SUPPLEMENTARY INFORMATION:

E.O. 12291, Federal Regulation

OSC has determined that this is not a major rule as defined in section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to the manner in which OSC may serve subpenas.

List of Subjects in 5 CFR Part 1255

Administrative practice and procedure, Ancillary matters, Discovery, Government employees.

PART 1255—[AMENDED]

Accordingly, pursuant to 5 U.S.C. 1206(k), OSC amends 5 CFR Part 1255 by revising § 1255.1 to read as follows:

§ 1255.1 Subpenas.

(a) The Special Counsel may issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. A subpena may be served by delivery in person or by registered or certified mail to the residence or principal place of business of the person to be served.

(b) Service of subpenas may be effected by one or more of the following means:

(1) *By delivery to an individual.* The subpena may be delivered to the person to be served.

(2) *By delivery to an address.* The subpena may be left at the residence or principal place of business of the person to be served.

(3) *By registered or certified mail.* The subpena may be sent by registered or certified mail to the residence or principal place of business of the person to be served.

(c) The subpenas must be signed by the Special Counsel, or by his designee upon a specific delegation by the Special Counsel. Subpenas may not be signed in blank.

(d) In the case of contumacy or failure to obey a subpena issued by the Speical Counsel or his designee, the Special Counsel may request the United States District Court for the judicial district in which the person to whom the subpena is addressed resides, or is served, to issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Upon any failure to obey an order of the court granted pursuant to the application of the Special Counsel, the Special Counsel may request the court to hold the person or persons to whom the order was directed in contempt of court.

(e) Application to a federal court for enforcement of a subpena issued under this section may be made by the Special Counsel or his designee.

Dated: November 8, 1984.

K. William O'Connor,

Special Counsel.

[FR Doc. 84-29863 Filed 11-19-84; 8:45 am]
BILLING CODE 7405-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Restrictions on Representations

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) has reviewed its regulations on Restrictions on Representations. FGIS proposes to amend its regulations on "Restrictions on Representations" by clarifying and condensing the provision on restrictions with respect to designations, marks, and representations and making other miscellaneous non-substantive changes for clarity. These proposed changes will facilitate use of the regulations.

DATE: Comments must be submitted on or before January 18, 1985.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., (address above), telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. The action has been classified as nonmajor, because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the inspection and weighing services and those entities that perform such services do not meet the requirements for small entities.

Review of Regulations

The review of the regulations on Restrictions on Representations (7 CFR 800.55–800.57) included a determination of the continued need for and consequences of the regulations. An objective was to assure that the language of the regulations is clear and that the regulations are consistent with FGIS policy. FGIS has determined that these regulations in general are serving their intended purpose, are consistent with FGIS policy, are necessary, and should remain in effect.

FGIS proposes, however, to: (1) change the title of the provisions to "Descriptions" from "Restrictions on Representations"; (2) Amend § 800.55, Restrictions with respect to descriptions of grain by grade by (a) changing the title to Descriptions by grade, and (b) revising the section by clarifying the language and adding certain provisions which appear in section 6, United States grain Standards Act, relating to prohibited descriptions; (3) Amend § 800.57, Restrictions with respect to designations, marks, and representations, by (a) changing the title to Requirements on descriptions, (b) revising the section to clarify and condense the language, and (c) incorporating sub-paragraphs (a) through (i) into two sub-paragraphs (a) and (b); and (4) Renumber the current § 800.57 as § 800.56.

By a final rule published in the **Federal Register** on September 14, 1984, (49 FR 36067) FGIS removed § 800.56, Official certificates, official forms, and official marks. The definitions comprising this section were moved to § 800.0(b).

The above changes are proposed to condense and clarify these regulations.

These proposed changes also would facilitate the use of the regulations.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, and Grain.

PART 800—GENERAL REGULATIONS

Accordingly, it is proposed that §§ 800.55 and 800.57 "Restrictions on Representations" be amended as follows:

1. The Centerheading which precedes § 800.55 be amended to read as follows:

Descriptions

2. Section 800.55 be revised to read as follows:

§ 800.55 Descriptions by Grade.

(a) *General.* In any sale, offer for sale, or consignment for sale, which involves the shipment of grain in interstate or foreign commerce, the description of grain, as being of a grade in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, other document, or description on bags or other containers of the grain, is prohibited if such description is other than by an official grade designation, with or without additional information as to specified factors. An official grade designation contains any of the following: the term "U.S.," the numerals 1 through 5, the term "Sample grade," or the name of a subclass or a special grade of grain specified in the Official United States Standards for Grain.

(b) *Proprietary brand names or trademarks.* A description of grain by a proprietary brand name or a trademark that does not resemble an official grade designation will not be considered to be a description by grade; but a description by a proprietary brand name or trademark that contains singly or in combination any of the terms referenced in paragraph (a) of this section shall be considered to resemble an official grade designation.

(c) *Use of one or more factor designations.* In interstate commerce, a description of grain by the use of one or more grade factor designations which appear in the Official United States Standards for Grain or by other criteria will not be considered to be a description by grade.

(d) *False or misleading descriptions.* In any sale, offer for sale, or consignment for sale of any grain which involves the shipment of grain from the United States to any place outside thereof, knowingly using a false or misleading description of grain by official grade designation, or other description is prohibited.

3. Section 800.57 be redesignated as § 800.56 and revised to read as follows:

§ 800.56 Requirements on descriptions.

Section 13 of the Act contains certain prohibitions with respect to the use of official grade designations, official marks, and other representations with respect to grain.

(a) the use of an official grade designation, with or without factor information, or of official criteria information, or of the term "official grain standards," shall not, without additional information, be considered to be a representation that the grain was officially inspected.

(b) The use of any symbol or term listed as an official mark, at § 800.0(b)(68), with respect to grain shall be considered to be a representation of official service under the Act: Provided however, that the use of the official marks "official certificate;" "officially inspected;" "official inspection;" "officially weighed;" "official weight;" and "official weighing" shall not be considered to be a representation of official service under the act if it is clearly shown that the activity occurred under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*): Provided further, that the use of the official mark 'officially tested" with respect to grain inspection and weighing equipment shall not be considered to be a representation of testing under the Act if it is clearly shown that the equipment was tested under a State statute.

Authority: Secs. 7, 15, 18, Pub. L. 94–582, 90 Stat. 2870, 2883, 2884;) (7 U.S.C. 76, 87b, 87e).

Dated: October 30, 1984.

K. A. Gilles,

Administrator.

[FR Doc. 84–30373 Filed 11–19–84; 8:45 am]

BILLING CODE 3410–EN–M

Rural Electrification Administration

7 CFR Part 1772

[REA Bulletin 345–39]

REA Specification for Telephone Station Protectors

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–39, REA Specification for Telephone Station Protectors to adopt PEG–2–1983, an industry standard, and withdraw REA's PE–42, a proprietary REA standard addressing the same product.

The Protection Engineers' Group (PEG) is a subordinate body of the U.S. Telephone Association's (USTA) Engineering Committee. PEG develops uniform industry standards for protective devices used in telecommunications systems in addition to other activities. The group enjoys broad support and participation from operating companies as well as a number of government agencies, including REA, from throughout the United States and Canada. PEG–2–1983, Specification for Telephone Station Protectors, represents a consensus of these participants as to the minimum acceptable performance requirements for a telephone station protector.

DATE: Public comments must be received by REA no later than January 22, 1985.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: E.J. Cohen, Engineering Management and Standards Engineer, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8696. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–39, REA Specification for Telephone Station Protectors. REA will seek approval for Incorporation by Reference from the Director of the Office of the Federal Register prior to the issuance of a final rule. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the ecomony of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse affects on competition, employment, investment or productivity and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans.

Copies of the revised bulletin are available upon request from the address indicated above. Copies of PEG–2–1983 may be obtained for a nominal fee from the United States Telephone Association, 1801 "K" Street NW., #1201, Washington, DC 20006, telephone (202) 872–1200. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

Background

The present edition of PE–42 was developed in 1980 by REA. While industry comments were sought and considered at several points in the development, REA retained ultimate control of the document's content. Other major operating telephone companies took a similar position and, as a result, several specifications, each varying slightly in content and requirements were developed for this product.

The Protection Engineers' Group (PEG) is a subordinate body of the U.S. Telephone Association's (USTA) Engineering Committee. PEG develops uniform industry standards for protective devices used in telecommunications systems in addition to other activities. The group enjoys broad support and participation from operating companies as well as a number of government agencies, including REA, from throughout the United States and Canada. PEG–2–1983, Specification for Telephone Station Protectors, represents a consensus of these participants as to the minimun acceptable performance requirements for a telephone station protector.

REA's role in developing and adopting this specification is in accordance with the requirements of OMB Circular A–119 which requires Federal agencies to adopt private sector standards in lieu of developing their own in-house standards.

List of Subjects in 7 CFR 1772

Loan programs—communications, Telecommunications, Telephone.

PART 1772—[AMENDED]

In view of the above, the Administrator is proposing to amend 7 CFR Part 1772. Section 1772.97 is amended to add the following entry:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications

* * * * *

345–39...REA Specification for Telephone Station Protectors.

* * * * *

(7 U.S.C. 901 et seq.)

Dated: November 2, 1984.

Jack Van Mark,

Acting Administrator.

[FR Doc. 84–30374 Filed 11–19–84; 8:45 am]

BILLING CODE 3410–15–M

---

7 CFR Part 1777

REA Bulletin 345–72; REA Specification for Filled Splice Closures, PE–74

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–72, REA Specification for Filled Splice Closures, PE–74, to permit salvageable and non-salvageable parts in reenterable splice closures, to delinate required hardware materials, to address testing parameters for different encapsulating compounds, to add a test requirement for the cable closure encapsulant system in a simulated application environment and to require closure identification and assembly instructions in the product package. All splice closure manufacturers and REA borrowers will be impacted in that REA's revised requirements will reflect state of the art technology and will this permit the construction of the best, most cost-effective facilities possible.

DATE: Public comments must be received by REA no later than January 22, 1985.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: M. Wilson Magruder, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8667. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend 7 CFR 1772.97, Incorporated by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–72, REA Specification for Filled Splice Closures,

PE–74. REA will seek approval for Incorporation by Reference from the Director of the Office of the Federal Register prior to the issuance of a final rule. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans.

Copies of the document are available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

Background

The present edition of REA's Specification for Filled Splice Closures does not differentiate salvageable and non-salvageable closure parts. By specifically addressing both categories of closures misunderstanding relative to the use of salvageable and non-salvageable parts will be circumvented. A closure kit is required by the revised specification. By specifying all materials constituting a closure, i.e., case, shield bonding hardware and reenterable encapsulant, all necessary materials are in a single on site when needed. Tests for both jelling and non-jelling compounds are required to assure satisfactory encapsulant performance in and out of its system and will eliminate potential bias towards the use of either type of encapsulant. The closure performance evaluation was modified to include a test that considers the realistic possibility of a damaged cable sheath channeling water to the splice bundle. The splice closure must demonstrate during this test that the splice is truly protected from a potentially damaging environment. Closure identification marking requirements added to this revision will permit quick recognition of the closure design and the manufacturer. Inclusion of assembly instructions will prevent mistakes in case assembly and in encapsulant application which could lead to splice failure.

The revisions to this specification will result in a better defined closure product for REA borrowers with minimum impact to the closure manufacturers. Slight product cost increases may result from the requirements for instructions and marking but should be more than offset by convenience and assistance to the borrower. The quality of closures to REA borrowers should increase.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

PART 1772—[AMENDED]

In view of the above, REA is proposing to amend 7 CFR Part 1772. Section 1772.97 would be amended by revising the entry 345–72 to read as follows:

§ 1772.97 Incorporation by reference of Telephone standards and specifications.

* * * * *

345–72	PE–74	REA.

Specification for Filled Splice Closures.

* * * * *

(7 U.S.C. 901 et seq.)

Dated: November 14, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84–30448 Filed 11–19–84; 8:45 am]

BILLING CODE 3410–15–M

7 CFR Part 1772

REA Bulletin 345–65, REA Specification for Cable Shield Bonding Connectors, PE–33

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standard and Specifications, by issuing a revised Bulletin 345–65, REA Specification for Cable Shield Bonding Connectors, PE–33. This revision will incorporate a section on shield bonding connector specifically designed for installation on filled buried service wire. The current standard does not cover the requirement for buried service wire shield bonding connectors. Including the new section in PE–33 will provide REA telephone borrowers with more suitable and less costly connector for use on buried service wire. Presently, shield bonding connectors for large size cables are used on small diameter buried service wires making a satisfactory difficult and requiring much more time to complete. Manufacturers of shield bonding connectors and all REA borrowers will be impact in that REA's requirements will reflect state of the art technology and will thus permit the construction of the best, most cost-effective facilities possible.

DATE: Public comments must be received by REA no later than January 22, 1985.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director Telecommunications Engineering and Standard Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: M. Wilson Magruder, Chief, Outside Plant Branch, Telecommunications Engineering and Standard Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8667. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–65, REA Specification for Cable Shield Bonding Connectors, PE–33. REA will seek approval for Incorporation by Reference from the Director of the Office of the Federal Register prior to the issuance of a final rule. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse affects on competition, employment, investment or productivity and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans.

Copies of the document are available upon request from the address indicated above. All written submissions made

pursuant to this action will be made available for public inspection during regular business hours at the above address.

Background

The Present edition of REA's Specification for Cable Shield Bonding Connectors, PE–33, does not address those designed specifically for use on filled buried service wire. As a result, connectors meeting the present specification are ill-suited for this use and a satisfactory installation is difficult and requires excessive time to complete. A number of manufacturers produce shield bonding connectors which are designed for this use and which will permit an acceptable installation at a significantly lower cost in time and materials. The revised specification recognizes this state of the art technology and permits its application on the systems of REA borrowers.

In view of the above, the Administrator is proposing to issue a revised Bulletin 345–65, REA Specification for Cable Shield Bonding Connectors, PE–33.

Indexing Terms: As required by 1 CFR 18.20, the following are the indexed terms and list of subjects:

List of Subjects in 7 CFR Part 18

Loan programs—communications, Telecommunications.

Dated November 14, 1984

Harold V. Hunter,

Administrator

[FR Doc. 84–30449 Filed 11–19–84; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–97–AD]

Airworthiness Directives: Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspections for cracking of flap beams No. 2, left and right, on Airbus Industrie Model A300 B2 and B4 series airplanes. During fatigue tests, the flap beam developed cracks and ultimately failed. This condition can lead to flap asymmetry and create a hazardous flight condition.

DATE: Comments must be received no later than December 30, 1984.

ADDRESSES: The applicable service information may be obtained from Airbus Idustrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac, France, or may also be examined Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–97–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: The French Civil Aviation Authority (DGAC) has issued a Consigne de Navigabilite which mandates compliance with the requirements of Airbus Industrie Service Bulletin A300–57–116.

Analyses show that cracks may occur at the bolt holes of the flap beam base members and light alloy side members. Fatigue tests proved these analyses, since the flap beam developed cracks at 43,000 simulated landings and failed in the expected locations at 48,000 simulated landings. Based on this data the manufacturer determined that the flap beam must be inspected prior to 15,000 landings to detect cracks before failure of the beam.

The service bulletin prescribes inspections for cracking of the base steel member and light alloy side members of the flap beams No. 2, LH and RH. The service bulletin also prescribes replacement of the flap beams if cracks exceed a specified dimension.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the action previously mentioned to prevent flap beam failure, which in turn can cause flap asymmetry.

It is estimated that 33 U.S. registered airplanes would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $15,840. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects In 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in all categories. To prevent flap asymmetry, within 120 days after the effective date of this AD or upon reaching 15,000 landings, whichever occurs later, accomplish the following, unless previously accomplished:

A. Inspect the base steel member and light alloy side members of the flap beams No. 2, LH and RH, for cracks, in accordance with the accomplishment instructions of Airbus Industrie Service Bulletin A300–57–116, Revision 1, dated August 27, 1983.

1. If no cracks are found, repeat the inspection at intervals not to exceed 1,700 landings.

2. If cracks are detected, repeat the inspection at intervals not to exceed 250 landings as long as crack length is 4mm or shorter. If crack length exceeds 4mm, the flap beam must be replaced before further flight.

B. Five thousand (5,000) additional landings are permitted before performing the first of the repetitive inspections required by paragraph A.1., above, if the modification described in Airbus Industrie Service Bulletin A300–57–128, dated August 27, 1983, is incorporated, provided:

1. No cracks are detected, and

2. The number of landings accumulated is 16,700 or less.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on October 31, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–30331 Filed 11–19–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 84–ANM–29]

Proposed Establishment of Transition Area, Huntington, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Huntington, Utah. The intended effect of the proposed action is to provide controlled airspace from 700 feet above the surface for aircraft executing the instrument approach procedure to Huntington Municipal Airport. This action is necessary to ensure segregation of the aircraft using the approach procedures in instrument weather conditions.

DATES: Comments must be received on or before December 21, 1984.

ADDRESSES: Send comments to: Manager Airspace & Procedures Branch, ANM–530, Federal Aviation Administration, Docket No. 84–ANM–29, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Regional Counsel Office at the above address.

An informal docket may also be examined during normal business hours at the Airspace & Procedures Branch, Air Traffic Division, same address.

FOR FURTHER INFORMATION CONTACT: George Orr, Airspace & Procedures Specialist, ANM–531; the telephone number is: (206) 431–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures Branch, 17900 Pacific Highway South, Seattle, WA, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, at the address previously listed. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and for the same reasons, (4) it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows.

Huntington, Utah Transition Area [New]

"That airspace extending upward from 700 feet above the surface within 3 miles west and 5 miles east of the 210° radial of Carbon VOR (lat. 39° 36' 11.6"N., Long. 110° 45' 10.1"W.) extending from 10 miles south to 24 miles south of the VOR; that airspace extending upward from 1200 feet above the surface within 6 miles west and 8 miles east of the 210° radial of the Carbon VOR extending from 5 miles south to 24 miles south of the VOR, excluding the portion within the Price, Utah, 1200 foot transition area, and the portion that overlaps V208."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 2, 1983)); and 14 CFR 11.65)

Issued in Seattle, Washington, on October 23, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–30329 Filed 11–19–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 84–ANM–33]

Proposed Removal of the Nucla, Colorado Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Nucla, Colorado transition area was established to ensure segregation of aircraft operating in instrument weather conditions, and other aircraft operating in visual weather conditions. It was established in anticipation of instrument approach procedures to the Hopkins Field Airport using the Nucla NDB. However, the Nucla NDB has failed certification tests despite efforts to correct the deficiencies and approach procedures cannot be authorized. Therefore, the transition area is no longer necessary.

Although cancellation of the transition area would eliminate both the 700 and 1200 foot areas, adjacent 1200 foot transition areas would automatically fill in and controlled airspace would remain at 1200 feet and above.

DATES: Comments must be received on or before January 2, 1985.

ADDRESSES: Send comments on the proposal to: Manager Airspace & Procedures Branch, ANM–530, FAA Northwest Mountain Region, Docket No. 84–ANM–33, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Regional Counsel Office at the same address.

An informal docket may also be examined during normal business hours in the Airspace & Procedures Branch, Air Traffic Division, same address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, at the same address. The telephone number is (206) 431–2533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify Airspace Docket No. 84–ANM–33 and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking final action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration at the addresses listed above. Communications must identify Airspace Docket No. 84–ANM–33. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application process.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Nucla, Colorado, transition area and thereby release that airspace below 1200 feet above ground level for other than instrument weather operations. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Remove the Nucla, Colorado Transition Area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Seattle, Washington, on November 7, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–30328 Filed 11–19–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 320

[Docket No. 40787–4087]

Adjustment Assistance for Firms and Industries

Correction

In FR Doc. 84–29695 beginning on page 44902 in the issue of Tuesday, November 13, 1984, make the following corrections:

1. On page 44904, in the third column, §320.2(d), in the second line, "to readjustment" should read "for adjustment".

2. On page 44906, in the first column, §320.8, in the third line, insert "or" before "knowingly".

3. On the same page, in the same column, §320.12(a), in the fifth line, "of" should read "on".

4. On page 44907, in the first column, §320.24(c), in the fourth line, insert "a" after "by".

5. On the same page, in the second column, §320.24(g)(3), the last two

sentences beginning "The party * * *" should have begun a new paragraph.

BILLING CODE 1501-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR-56-83]

Credit or Refund of Windfall Profit Taxes to Certain Trust Beneficiaries

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 6430 of the Internal Revenue Code of 1954 relating to a credit or refund of windfall profit taxes to certain trust beneficiaries. Changes to the applicable law were made by the Technical Corrections Act of 1982. The regulations would provide guidance on the requirements for qualification for, and the computation of, this credit or refund of windfall profit tax.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 22, 1985. The regulations are proposed to be effective with respect to crude oil removed (or deemed removed) during calendar years beginning after December 31, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-56-83) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW. Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3516, not a toll-free call).

SUPPLEMENTARY INFORMATION

Background

This document contains proposed amendments to the Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51). These amendments are proposed to conform the regulations to section 106(a)(4)(A) of the Technical Corrections Act of 1982 (Pub. L. 97-448). These proposed regulations are to be issued under the authority contained in sections 6430(e) and 7805 of the Internal Revenue Code of 1954 (96 Stat. 2390 and 68A Stat. 917; 26 U.S.C. 6430(e) and 7805).

In General

Under section 6430(a) and the proposed regulations, any portion of the windfall profit tax paid by a trust which is attributable to a qualified beneficiary is treated as an overpayment of windfall profit tax by such beneficiary, and this overpayment is to be credited against any windfall profit tax imposed on the beneficiary or refunded to the beneficiary. An overpayment is attributable to a qualified beneficiary to the extent that windfall profit tax is paid by the trust, with respect to the qualified royalty production of the trust that is allocated, in accordance with rules contained in section 6430 and the proposed regulations, to such qualified beneficiary.

Under section 6430(b) and the proposed regulations, the amount under section 6430(a) is limited to an amount attributable to the beneficiary's unused exempt royalty limit for the calendar year. The proposed regulations also provide rules for allocating the qualified royalty production of the trust between the trust and its income beneficiaries and definitions for the terms "qualified beneficiary," "qualified royalty production" and "producer."

The proposed regulations provide that a qualified beneficiary shall treat a credit for, or refund of, windfall profit tax determined under section 6430 as an additional distribution to such beneficiary of distributable net income (DNI) of the trust. The beneficiary shall then include this additional distribution of DNI in income. This rule is designed to reflect the fact that taxes generating the overpayment are deductible by the trust against its income tax liability even though such taxes have been refunded to the trust's beneficiaries. If the trust had paid or incurred the net amount of windfall tax during the year (*i.e.*, net of the overpayment) and claimed the corresponding deduction for taxes, the trust would have had additional DNI to distribute to its beneficiaries. This additional DNI to the trust would then generate an additional deduction to the trust when distributed to the beneficiaries, and the beneficiaries would have included such distribution in gross income. Absent the rule described in this paragraph, the beneficiary would, in effect, be getting a distribution of DNI from the trust tax-free.

The proposed regulations also clarify that section 6430 is not available to the extent that the trust is a grantor trust (*i.e.*, a trust the income of which is taxed to a grantor, or other person, under subchapter J of the Code) since a grantor trust does not have adjusted distributable net income and since the grantor, rather than the trust, is the producer in the case of grantor trust.

Under section 4994(f)(2)(C) and the proposed regulations, a qualified beneficiary may elect to increase the credit under section 6430 by reducing the royalty owner's exemption under section 4994(f).

The proposed regulations also contain a proposed amendment to the regulations under section 4997 which would impose on a trust the requirement to furnish to each qualified beneficiary a Form 6248.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that the proposed rule is not subject to review under Executive Order 12291 or the Treasury—OMB implementation of that Order, dated April 29, 1983. Accordingly, a Regulatory Impact Analyses is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the

Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects in 26 CFR Part 51

Excise tax, Petroleum, Crude Oil Windfall Profit Tax Act of 1980.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 51 are as follows:

PART 51—[AMENDED]

Paragraph 1. Paragraph (f)(4) of § 51.4994-1 is proposed to be added to read as follows:

§ 51.4994-1 Definitions relating to exemptions.

* * * * *

(f) *Exempt royalty oil.*

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) *Royalty limit*—(i) *In general.* Except as provided in paragraph (f)(4)(iv) of this section, a qualified royalty owner's qualified royalty production is determined by applying section 4994(f)(2)(A).

(ii) *Production exceeds limitation.* If a qualified royalty owner's qualified royalty production for any quarter exceeds the royalty limit in section 4994(f)(2)(A) for such quarter, the royalty owner may allocate the royalty limit for such quarter to any qualified royalty production that the royalty owner selects.

(iii) *Allocation of royalty limit among taxpayers.* For the purpose of allocating the royalty limit in section 4994(f)(2)(A) among taxpayers, section 6429(c) (2) through (4) will be applied except that the royalty limit determined under section 4994(f)(2)(A) is substituted in place of $2,500 each time it appears in section 6429(c) (2) thru (4).

(iv) *Election to increase section 6430 royalty credit by reducing the royalty owner's exemption.* Any qualified royalty owner who is a qualified beneficiary (within the meaning of section 6430 and § 51.6430-1(d)(1)) for any quarter may elect, by way of a marginal notation on Form 6249, to reduce by any amount the qualified royalty owner's royalty limit determined under section 4994(f)(2)(A) for such quarter after applying paragraph (f)(4)(iii) of this section.

* * * * *

Par. 2. Paragraph (c) of § 51.4997-2 is amended by adding at the end thereof a new paragraph (c)(7) to read as follows:

§ 51.4997-2 Certain information to be furnished by producers and others.

* * * * *

(c) *Yearly statement of windfall profit tax liability* * * *

* * * * *

(7) *Trusts with qualified royalty production.* In the case of any trust that is a producer (within the meaning of paragraph (b) of § 51.4996-1), that has qualified royalty production for the calendar year (within the meaning of § 51.6430-1(d)(2)) and that has beneficiaries who are qualified beneficiaries (within the meaning of § 51.6430-1(d)(1)), such trust shall furnish to each qualified beneficiary, and file with the Internal Revenue Service, a Form 6248 in accordance with that form's instructions and the rules of this paragraph. A separate statement shall be furnished to, and a separate information return shall be filed for, each qualified beneficiary.

* * * * *

Par. 3. There is added immediately after § 51.6402-1 the following new section:

§ 51.6430-1 Credit or refund of windfall profit tax to certain trust beneficiaries.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, that portion of the crude oil windfall profit tax imposed by section 4986 which is paid by any trust with respect to any qualified beneficiary's allocable trust production (within the meaning of paragraph (c) of this section) shall be treated as an overpayment of such tax by such qualified beneficiary. The overpayment described in this paragraph (a) is deemed to be made on the day that an overpayment by the trust would be deemed to be made if the trust's payment of such tax with respect to the same crude oil were an overpayment. Any such overpayment shall be credited against the crude oil windfall profit tax liability of such qualified beneficiary or shall be refunded to such qualified beneficiary. See paragraph (b) of this section for a rule that coordinates this credit or refund with the exemption for exempt royalty oil provided in section 4994(f) and which may require a reduction of the amount determined under this paragraph. See paragraph (d) of this section for definitions of the terms "qualified beneficiary", "qualified royalty production", and "producer".

(b) *Coordination with royalty exemption*—(1) *In general.* If the aggregate amount of the allocable trust production (as defined in paragraph (c) of this section) attributable to any qualified beneficiary exceeds such beneficiary's unused exempt royalty limit for such calendar year, then the amount treated as an overpayment under paragraph (a) of this section with respect to such qualified beneficiary shall be reduced by the amount of the overpayment attributable to such excess. The amount of this reduction is equal to the amount of the overpayment determined under paragraph (a) multiplied by a fraction the numerator of which is the amount of such excess and the denominator of which is the aggregate amount of the beneficiary's allocable trust production, and can be expressed by the following formula:

$$R = O \times \frac{E}{P}$$

Where:

R = the amount of the reduction;
O = the amount of the overpayment determined under paragraph (a) of this section;
E = the amount of the excess; and
P = the aggregate amount of the beneficiary's allocable trust production.

(2) *Unused exempt royalty limit.* The unused exempt royalty limit of any qualified beneficiary for any calendar year is the amount described in section 6430(b)(2) which can be expressed in terms of the following formula:

$$U = (D \times L) - Y$$

Where:

U = the unused exempt royalty limit;
D = the number of the days in such calendar year;
L = the limitation in barrels determined from the table contained in section 4994(f)(2)(A)(ii); and
Y = the amount of exempt royalty oil (within the meaning of section 4994 (f)) with respect to which such qualified beneficiary is the producer, and which is removed from the premises during such calendar year.

(c) *Allocable trust production*—(1) *In general.* For purposes of this section, the term "allocable trust production" means, with respect to any qualified beneficiary, the qualified royalty production of any trust (as defined in paragraph (d)(2) of this section) which is removed (or deemed removed) from the premises during the calendar year, and is allocated to such qualified beneficiary under paragraph (c)(2) of this section.

(2) *Allocation of production*—(i) *In general.* The qualified royalty production of a trust for any calendar year shall be allocated between the trust and its income beneficiaries by first allocating to the trust an amount of production based on that portion of the trust income attributable to the qualified royalty production that is set aside under state law in any reserve for depletion for the calendar year, and by then allocating the remaining qualified royalty production between the trust and the income beneficiaries in accordance with their respective shares of the adjusted distributable net income for the calendar year attributable to the qualified royalty production. Adjusted distributable net income not attributable to qualified royalty production and income set aside in a depletion reserve not attributable to qualified royalty production shall not be considered for purposes of this calculation. Furthermore, the calculation must be done on the basis of a calendar year even though the trust's taxable year may be other than a calendar year. Thus, for purposes of this paragraph (c)(2), a fiscal year trust must compute its adjusted distributable net income for the calendar year and its reserve for depletion for the calendar year.

(ii) *Adjusted distributable net income.* The term "adjusted distributable net income" means the distributable net income (as defined in section 643) of the trust for the calendar year reduced by any excess in the amount of income added to any depletion reserve maintained by the trust for the calendar year (regardless of the trust's taxable year) over the depletion deduction allowable to the trust under section 611 with respect to the qualified royalty production of the trust for the calendar year.

(iii) *Allocation pro rata from each unit of production.* Each person's allocable share of the qualified royalty production of the trust is deemed to be a pro rata share of each unit (*i.e.*, type and category, including each base price and removal price category) of oil in such qualified royalty production.

(iv) *Grantor trusts.* To the extent that a trust is a grantor trust (*i.e.*, a trust the income of which is taxed to a grantor, or other person, under subchapter J of the Code), qualified royalty production shall not be allocated to a qualified beneficiary of the trust under this section because, to the extent that a trust is a grantor trust, the trust does not have adjusted distributable net income and the grantor rather than the trust is the producer of the crude oil. (See § 51.4996–1(b)(2).)

(3) *Production from transferred Property—(i) In general.* The allocable trust production of any qualified beneficiary shall not include any production attributable to an interest in property which has been transferred after June 9, 1981, in a transfer (including changes in beneficiaries of the trust) which is described in section 613A(c)(9)(A), and is not described in section 613A(c)(9)(B).

(ii) *Exception.* Paragraph (c)(3)(i) of this section shall not apply in the case of any transfer so long as the transferor and the qualified beneficiary are required by section 6340(b)(3) to share the amount determined under section 6430(b)(2)(A). The preceding sentence shall apply to the transfer of any property only if the production attributable to the property was allocable trust production or qualified royalty production of the transferor.

(d) *Definition—(1) Qualified beneficiary.* The term "qualified beneficiary" means any individual or estate which is a beneficiary of any trust which is a producer.

(2) *Qualified royalty production of a trust.* The term "qualified royalty production of a trust" generally means, with respect to any trust, taxable crude oil (within the meaning of section 4991(a)) which is attributable to any economic interest of such trust other than an operating mineral interest of such trust other than an operating mineral interest (within the meaning of section 614(d)). However, such term does not include taxable crude oil attributable to any overriding royalty interest, production payment, net profits interest, or similar interest of the person which—

(A) Is created after June 9, 1981, out of an operating mineral interest in property which is proven oil or gas property (within the meaning of section 613A(c)(9)(A)) on the date such interest is created, and

(B) Is not created pursuant to a binding contract entered into before June 10, 1981.

(3) *Producer.* The term "producer" has the meaning given to such term by paragraph (b) of § 51.4996–1.

(e) *Overpayment treated as additional distribution.* Any qualified beneficiary who claims a credit or refund as a result of an overpayment generated under section 6430 must treat the amount of such credit or refund as an additional distribution of distributable net income of trust. Such distribution shall be in addition to any other amount of distributable net income distributed to such beneficiary, and shall be deemed to be paid or accrued on the date that the credit or refund under this section is paid or accrued.

(f) *Example.* The following examples illustrate the application of the rules of this paragraph:

Example (1). Assume that for the calendar year 1983, Trust A has 2,000 barrels of qualified royalty production, royalty income of $60,000, $10,000 of cash expenses, and claims a percentage depletion deduction of $9,600 while setting aside $18,000 (2,000 barrels × 30 percent × $30/barrels) of royalty income in a reserved or depletion recognized under state law. Thus, the excess of the reserve for depletion for the year over the amount allowable as a deduction for depletion to the trust for the year is $8,400 ($18,000 − $9,600). Assume further that A paid windfall profit tax on the royalty oil removed during the calendar year in the amount of $4,000 ($2 per barrel). Under these facts, the first 600 barrels [2,000 barrels × $18,000/$60,000) of A's qualified royalty production is allocated to A. In addition, A has distributable net income in the amount of $40,400 ($60,000 − $10,000 − $9,600) and adjusted distributable net income of $32,000 ($40,400 − $8,400). If under the provisions of the trust document A distributes the $32,000 of income to the two beneficiaries, B and C, in the amounts of $22,857 and $9,143, respectively, the remaining 1,400 barrels of qualified royalty production (2,000 barrels − 600 barrels allocated to the trust) must be allocated between B and C as follows:

1,000 barrels to B (1,400 × (22,857/32,000) and 400 barrels to C (1,400 × (9,143/32,000)). Assume all of the qualified royalty production is removed from the same property. Under section 6430(a) and paragraph (a) of this section and before the application of section 6430(b) and paragraph (b) of this section, B would be treated as having made an overpayment of windfall profit tax during the calender year in the amount of $2,000 ($2×1,000 barrels) and C would be treated as having made an overpayment in the amount of $800 ($2×400 barrels).

Example (2). Assume the same facts as in example (1), and assume that C claimed a royalty owner's exemption under section 4994 (f) for the calendar year with respect to 500 barrels of oil held outside the trust. Under these facts, both B and C must reduce the overpayment determined under paragraph (a) of this section. B's unused royalty limit is 730 barrels (365 days × 2 barrels) and the excess of the number of barrels allocated to B in example (1) over the unused royalty limit is 270 barrels (1,000 barrels − 730 barrels). C's unused royalty limit is 230 barrels (730 barrels − 500 barrels) and the excess of the number of barrels allocable to C in example (1) over the unused royalty limit is 170 barrels (400 barrels − 230 barrels). As a result, B must reduce the amount of the overpayment by $540 ($2,000 × (270 barrels/1,000 barrels)) and C must reduce the amount of the overpayment by $340 ($800 × (170 barrels/400 barrels)). Thus, B may claim a credit or refund in the amount of $1,460 ($2,000 − $540) and must, if such credit or refund is claimed, treat the $1,460 as an additional distribution of distributable net income. C may claim a credit or refund in the amount of $460 ($800 − $340) and must, if such credit or refund is claimed, treat the $460 as an additional distribution of distributable net income.

(g) *Over payment credited against estimated tax liability.* See section 6654(G)(3)(B) for a rule that allows a taxpayer to offset the overpayment determined under this section against the taxpayer's liability to make estimated tax payments.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84–30319. Filed 11–19–84; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA No. 1582; A–7 FRL 2721–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The State of Iowa submitted to EPA revised rules pertaining to preconstruction review procedures. The purpose of these revisions is to cure deficiencies in the State's preconstruction review procedures that would be applicable in nonattainment areas. The purpose of today's notice is to propose approval of these regulations, but delay final approval until the State makes certain commitments or EPA finalizes revisions to the new source review regulations proposed August 25, 1983. These rules were adopted by the Iowa Water, Air and Waste Commission on July 17, 1984, and submitted to EPA on July 18, 1984.

Today's notice also announces that the Iowa regulations for controlling air pollution have been recodified. The Iowa Department of Environmental Quality (DEQ) air quality regulations were codified at Department 400, Title I, Chapter 1 through Chapter 14. The DEQ was merged with other State agencies on July 1, 1983, to form the Iowa Department of Water, Air and Waste Management (WAWM). The WAWM air quality regulations are now codified at Department 900, Title II, Chapter 20 through Chapter 39.

DATES: Comments must be received no later than December 20, 1984.

ADDRESSES: Comments should be addressed to Mr. Larry Hacker, Air Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the State's submission and EPA's technical evaluation are available at the above address, and at the following location: Iowa Department of Water, Air and Waste Management, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at the EPA address above or call (816) 374–3791 (FTS 758–3791).

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 1980, EPA notified the State of Iowa that its preconstruction review program was inadequate to satisfy the requirement of Section 110(a)(4) of the Clean Air Act. The notification was published in the **Federal Register** (45 FR 14561, March 6, 1980), and advised that if approvable rules were not submitted by December 31, 1980, the State's new source review procedures would not longer be approved. The March 6, 1980, notice was in accordance with section 110(a)(2)(H) of the Act and 40 CFR 51.6.

In addition to the finding of deficiency, the March 6, 1980, rulemaking disapproved the Iowa Part D SIP because the State had no adequate means of preventing CO sources from constructing in violation of Section 173 of the Clean Air Act. The growth restrictions went into effect on July 1, 1979, and remain in effect until the SIP is approved.

The regulations in question were in Chapter 3 of the regulations of the Iowa DEQ. On July 1, 1983, the DEQ was merged with other State agencies to form the Iowa Department of Water, Air and Waste Management. The WAWM air quality rules are codified at Department 900, Chapter 20 through Chapter 39. The DEQ Chapter 3 regulations are now in WAWM 900–22 Controlling Pollution.

On March 28, 1984, the WAWM provided EPA with draft revisions of the Chapter 22 rules pertaining to preconstruction review and emission offsets. Additional draft regulations were submitted to EPA on May 2, 1984. The State held a public hearing on June 11, 1984, and submitted final draft regulations to EPA on July 2, 1984. These regulations were adopted by the Iowa Water, Air and Waste Commission on July 17, 1984. This process satisfies the notification and hearing requirements of 40 CFR 51.4.

EPA has reviewed Iowa's revised regulations and believes that the revisions adopted cure most of the deficiencies in the State's Part D plan, except for crediting of emissions offsets. EPA also believes that the revisions continue to meet the other new source review requirements identified in Section 110 of the Clean Air Act and 40 CFR 51.18.

II. Review of the State's Submission

Permit requirements for new or modified sources are contained in Chapter 22 of the Department of Water, Air and Waste Management (WAWM).

Rule 900–22.1 sets forth general requirements for permits, i.e., who must apply and which sources are exempt. Iowa must make an enforceable commitment not to use the exemption provisions to exempt any major stationary source or major modification from review before EPA can take final action approving this SIP revision. The WAWM regulations contain permit requirements for anerobic lagoons. These requirements are intended to control odor emissions. EPA has no authority to require odor control regulations and has no odor standards. For that reason, EPA is not proposing any action on the WAWM odor regulations. Rule 22.1(4), Conditional permits, is the State's regulation pertaining to preconstruction review of new or modified sources. Rule 900–22.1 satisfies the requirements of 40 CFR 51.18(a), (b) and (c), and the public participation required by § 51.18(h).

Rule 900–22.2 contains procedures which the State follows when processing permit applications. Rule 900–22.3 describe conditions under which permits may be issued. This rule has been revised by adding 22.3 (3)g which satisfies the requirements of 40 CFR 51.18(j)(5)(i) and is approvable. Rule 22.3(3)f is also approvable because portable equipment must receive a supplemental permit if relocation would interfere with attainment or maintenance of air quality standards. Thus, if relocated to a nonattainment area, the source would have to obtain offsets if otherwise required by the regulations since relocation to a nonattainment area can be presumed to interfere with attainment and maintenance of standards.

Rule 900–22.5 contains permit requirements for nonattainment areas. The definitions in 22.5(1) are consistent with the definitions in 40 CFR 51.18(j) and are approvable.

40 CFR 51.18(j)(4) allows that a plan may provide that the provisions of § 51.18(j) do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent

quantifiable, are considered in calculating the potential to emit and the source does not belong to the categories identified.

The Iowa DWAWM has included the exemption authorized by § 51.18(j)(4) as part of its definition of potential to emit found in 900–22.5(1)c. Although the Iowa definition does not expressly state that sources which are major only because of certain fugitive emissions are exempt from the substantive provisions of the permit rule, EPA believes the State clearly intends such an exemption. EPA also believes the State clearly intended that such emissions be counted in determining a source's potential to emit. Thus, EPA believes the State's definition of "potential to emit" is approvable.

Requirements pertaining to offsets in nonattainment areas are contained in 22.5(2). These regulations are applicable in primary and secondary particulate nonattainment areas and carbon monoxide nonattainment areas. This is acceptable because the State is attainment for the remainder of the criteria pollutants, i.e., sulfur dioxide, ozone, lead, and nitrogen oxides. The offset requirements pertaining to secondary particulate nonattainment areas were approved by EPA on September 29, 1981 (46 FR 47546). The State revised the offset applicability rule [22.5(2)d] to include carbon monoxide in order to cure the deficiency in its Part D plan that was identified on March 6, 1980 (45 FR 14568).

Subrule 22.5(2)a requires emissions offsets for major source construction or modification in primary particulate nonattainment areas prior to start up. If such source construction or modification occurs in an attainment or unclassified area, modeling is required to estimate worst case ground level concentrations of particulate matter. If the predicted impact is greater than 5 μ/m^3 24 hour value or 1 μ/m^3 annual value, the source is required to obtain offsets. This regulation satisfies Section 173(1) of the Act and is approvable.

Subrule 22.5(2)b requires particulate matter offsets prior to start up for major source construction or modification in secondary particulate matter nonattainment areas, if offsets are reasonably available as identified in Subrules 22.5(4)c through i. This rule requires modeling to determine worst case ground level particulate matter concentrations if a major source is to be constructed in attainment or unclassified areas. Major sources constructed in attainment or unclassified areas may be required to obtain offsets if modeled maximum ground level concentrations in secondary TSP nonttainment areas are greater than 5 μ/m^3 on a 24 hour basis. This rule was approved on September 29, 1981 (46 FR 47546).

Subrule 22.5(2)d requires emissions offsets for major sources and major modifications for carbon monoxide (CO) emissions in CO nonattainment areas. This regulation satisfies Section 173(1) of the Act and is approvable. Offset requirements for particulate matter sources were approved on March 6, 1980 (46 FR 14561.)

Subrule 22.5(2)e requires that emissions offsets for any regulated air contaminant shall provide for reasonable further progress toward attainment of an applicable air quality standard and provide a net air quality benefit in an affected area. This is consistent with 40 CFR 51.18(j)(3)(i)(*a*) and is approvable.

Subrule 22.5(2)f requires emissions offsets from sources which become major because of an emission limit relaxation established after August 7, 1980, relating to capacity of the source such as a restriction on hours of operation. The offset rules would apply as if construction had not yet commenced. This is consistent with 51.18(j)(5)(ii) and is approvable.

Rule 22.5(4) identifies acceptable emission offsets. Subrule 22.5(4)a requires that the effect of the offset must be measured or predicted in the same area as the emissions of the major source or modification. This is consistent with the interpretive ruling in 40 CFR Part 51, Appendix S, Section IV.D, and is consistent with Section 51.18(j)(3)(ii)(*f*).

Subrule 22.5(4)b establishes an offset ratio of greater than 1:1 for areas other than primary particulate matter nonattainment areas and a minimum 1.25:1 for primary standard nonattainment areas. All such offsets must meet the reasonable further progress requirement of Subrule 22.5(2)e, discussed above. Subrule 22.5(4)b, therefore, meets the requirements of Section 173 of the Act.

Subrule 22.5(4)c allows offset credits for uncontrolled existing sources if there is an emission reduction below the source's potential to emit. To be creditable, such reductions must occur on or after January 1, 1978. This regulation is approvable because the Iowa attainment demonstration accounts for the full potential to emit of uncontrolled sources.

Subrule 22.5(4)d, *Greater control of existing sources,* allows offset credit for additional reductions at sources beyond the actual emissions of such sources on January 1, 1978, where such emissions are in compliance with SIP requirements. This would be available to offset emissions at a major source or major modification in or affecting a nonattainment area. The difference between the SIP required emissions and the new reduced rate would be available for offsets. This would not apply to emissions reduced to meet a SIP requirement after January 1, 1978. This rule is approvable.

Subrule 22.5(4)e allows credit for permanent controls of fugitive dust emissions. This rule is approvable.

Subrule 22.5(4)f allows offset credit for fuel switching provided there is a demonstration that the cleaner fuel will be available for at least five years. This rule is consistent with the requirements of § 51.18(j)(3)(ii)(*b*).

Subrule 22.5(4)g allows offset credit for reduced operating hours, if the reduced operating hours are included in the permit and the reduction occurred after January 1, 1978; and the work force is notified of the curtailment. This rule is inconsistent with § 51.18(j)(3)(ii)(*c*) because it does not provide that credit may be given for past curtailments only if the new source is a replacement for the curtailed source.

Subrule 22.5(4)h allows offsets credits for reduced operating capacity of an existing source provided the permit is amended to limit the operating capacity. This rule is approvable.

Subrule 22.5(4)i allows offset credit for closing of an existing source or plant. The source owner or operator is required to notify the work force of the proposed shutdown. This rule is inconsistent with § 51.18(j)(3)(ii)(*c*) because it does not provide that credit may be given for past shutdowns only if the new source is a replacement for the shutdown source.

Subrule 22.5(4)j allows external offsets, i.e., from sources not owned or controlled by a source seeking such offsets. Credit may be allowed provided the external source's permit is amended to require the reduced emissions or a consent order is entered into by the department and existing sources. This rule is not approvable because it does not contain provisions for making State issued consent orders federally enforceable, as required by § 51.18(j)(3)(ii)(*c*).

Subrule 22.5(5) authorizes banking of offsets in nonattainment areas. The amount of offsets which may be used is limited by the applicable offset ratio in subrule 22.5(4)b. The State retains the right to reduce or cancel banked offsets if the banked offsets are needed to show attainment of an applicable standard. This is consistent with Appendix S, Section IV.C.

Subrule 22.5(6) requires that major new or modified sources locating in nonattainment areas shall meet an emission rate shown to represent lowest achievable emission rate (LAER). This satisfies the requirement of section 173(2) of the Act.

Subrule 22.5(7) requires that owners or operators of major new sources or modified sources seeking to locate in a nonattainment area that have sources in other parts of the State be in compliance with existing emissions standards or on a schedule for compliance. This satisfies the requirement of section 173(3) of the Clean Air Act.

Subrule 22.5(8) requires alternate site analyses for sources of carbon monoxide seeking to locate in a carbon monoxide nonattainment area, if such an area did not attain the primary standard by December 31, 1982. This rule satisfies the requirement of Section 172(b)(11)(A) of the Clean Air Act, as amended.

Rule 900–22.6(455B) *Nonatttainment area designations* establishes criteria that the Water, Air and Waste Management Commission will follow when reviewing the status of Iowa nonattainment areas. EPA is not proposing any action on this rule because it is not a requirement of Section 110 of the Act.

Rule 900–22.7(455B) *Alternative emissions control program* was not submitted to EPA as a SIP revision; thus, EPA is not proposing action on this rule.

III. Proposed Action

Today's notice proposes to approve the regulations discussed above except those pertaining to anerobic lagoons Rule 900–22.6(455B).

EPA believes the preconstruction review regulations found in Chapter 22 of the WAWM regulations satisfy the requirements of section 173 of the Clean Air Act, as amended.

The State's definitions of "source" are contained in 900–22.5(1)g and 900–22.5(1)s. These definitions are consistent with EPA's "dual source" definition promulgated at 45 FR 52676 (August 7, 1980). On October 14, 1981 (46 FR 50766), EPA revised the definition of source for nonattainment areas to be consistent with the source definition for attainment mares, i.e., the "single source" definition. The EPA "single source" definition was challenged in the Appeals Court of the D.C. Circuit (*NRDC* v. *Gorsuch,* 685 F.2d 718 (1982)). The EPA "single source" definition was upheld by the U.S. Supreme Court on June 25, 1984 (Nos. 82–1005, 82–1247 and 82–1591).

Iowa's statutes prohibit the State's adoption of requirements more stringent than EPA's. However, the State's "dual source" definition was adopted prior to EPA's revised source definition of October 14, 1981. The definitions of source were not among the revisions adopted by the State on July 17, 1984. By letter of July 12. 1984, the State confirmed that the source definition is a dual source definition. The State indicated that a revision will be made at some future date. The State's letter also states it will interpret its source definition in a manner consistent with the Supreme Court decision when such an interpretation is reasonable.

EPA believes, however, that the State's definitions must be interpreted consistent with the dual definition, as adopted in the State regulations, until revised. EPA is proposing to approve the definitions on the understanding that Iowa will implement them consistent with the dual definition.

The definitions as written are more stringent that EPA's single source" definition. Therefore, EPA believes the State's rules 22.5(1)g ad 22.5(1)s are approvable.

The Iowa offset provisions in Rules 22.5(4)g and 22.5(4)i do not provide credit only for direct replacement of the curtailed or shutdown source by the new source as required by 40 CFR 51.18(j)(3)(ii)(*c*). The provisions of Rule 22.5(4)j do not contain a provision for making state issued consent orders federally enforceable.

On August 25, 1983 (48 FR 38742), EPA proposed revisions to 40 CFR Part 51 and Part 52 affecting *federal enforceability* and the *crediting of source shutdowns and curtailments* as offsets in nonattainment areas among other proposed changes. EPA proposed these changes in order to meet the terms of a settlement agreement between EPA and a number of industries and trade associations challenging the relevant EPA regulations. *Chemical Manufacturers Association* v. *EPA*, D.C. Cir. No. 79–1112 (Settlement agreement entered into February 22, 1982). Iowa Rules 22.5(4)g, 22.5(4)i and 22.5(4)j would be approvable when EPA finalizes the proposed rulemaking.

EPA proposes two alternative actions regarding the revised Iowa regulations in Chapter 22:

1. If the State provides a written commitment to follow the requirements of 40 CFR 51.18(j)(3)(ii)(c) until the CMA rulemaking is completed and revise Rules 22.5(4)g and 22.5(4)i to be consistent with § 51.18(j)(3)(ii)(c), if the existing provisions are not changed by CMA, and make provision for making state issued consent orders in Rule 22.5.(4)j federally enforceable, EPA will proceed to take final action approving the rules in Chapter 22 after the 30 day comment period or

2. EPA will delay final action on the State revised new source review and offset rules until after the EPA proposed revisions to 40 CFR Part 51 and Part 52 become final regulations. If the Iowa rules are consistent with the final regulations, EPA will proceed with a final rulemaking to approve the Iowa Chapter 22 rules.

Today's notice proposes to remove the moratorium on construction of new carbon monoxide sources in the Des Moines CO nonattainment area. This moratorium has been in effect since July 1, 1979.

Today's notice announces that the rules affecting air pollution control activities in the State of Iowa are now codified at Department 900, Title II, Chapter 20 through Chapter 39. This recodification became effective on July 1, 1983. EPA proposes to approve the recodification as part of the SIP. The recodification and EPA's approval would not change any substantive requirements of the SIP, but would merely add Iowa's revised numbering system to the SIP.

EPA solicits comments from the public on today's proposed rulemaking. EPA will consider all such comments received 30 days from publication.

Under 5 U.S.C. section 605(b), I certify this action, if promulgated, would not have a significant economic impact on a substantial number of small entities. It imposes no new regulatory requirements, because it would only approve State regulations.

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Environmental Protection Agency, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act, as amended.) (42 U.S.C. 7410 and 7472))

Dated: August 2, 1984.

Morris Kay,

Regional Administrator.

[FR Doc. 84-30422 Filed 11-19-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[EPA Docket No. AM001MD; A-3-FRL 2721-6]

Proposed Approval of Revisions to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Maryland Air Management Administration (MAMA) has submitted a proposed revision to the Maryland State Implementation Plan (SIP) in the form of a Secretarial Order (by Consent) for the American Cyanamid Company. The Order provides the Company with a Plan for Compliance (PFC) and an alternative method of assessing compliance for certain installations located at the plant by allowing the averaging or "bubbling" of volatile organic compound (VOC) emissions over a 24-hour period. This Notice summarizes the Order and proposes EPA approval.

DATE: EPA must receive any comments on or before December 20, 1984.

ADDRESSES: Copies of documents relevant to this proposed action are available for review at the following addresses.

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106

Maryland Department of Health and Mental Hygiene, Air Management Administration, 201 West Preston Street, Baltimore, MD 21201

Written comments should be sent to: David L. Arnold, Chief, Delmarva/DC Section, U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Mr. James B. Topsale, P.E. 3AM13, 215/597-4553 at the EPA, Region III address indicated above.

SUPPLEMENTARY INFORMATION:

Background

The American Cyanamid Company (the Company), located in Harve de Grace, Maryland operates adhesive manufacturing and application installations. It is located in the Metropolitan Baltimore Intrastate Air Quality Control Region which is designated as an extension/nonattainment area for ozone (O_3). The ambient O_3 standard is to be achieved by December 31, 1987 for the area's approved Part D plan as discussed in 48 FR 5048 and 49 FR 8610. As stated in the Order, the installations at the Harve de Grace plant include paper and fabric adhesive coating towers, a honeycomb core print line, and a corrugating line. The plant also has adhesive mixing facilities.

The paper and fabric adhesive coating operation consists of tower #2, tower #3, and tower #5, and the FM-1000 coater/dryer, all of which are subject to the requirements of COMAR 10.18.21.07, *Paper, Fabric, and Vinyl Coating.*

This regulation defined emission standards which were to be achieved by December 31, 1982. The Company has achieved significant reductions in VOC emissions by means of reformulation, solvent substitution, converson to hot melt adhesives, and the installation of new equipment. These activities have reduced the Company's VOC emissions from 182.1 tons per year in 1980 to 99.7 tons per year in 1983. The Company has determined that there are no low solvent coatings available for the remainder of their existing coatings, and has requested that they be allowed to average or "bubble" their emissions from the 3 towers and the coater/dryer to achieve compliance. The subject of this SIP revision is the State Secretarial Order for the Company that provides a new PFC and an alternative method of assessing compliance under COMAR 10.18.21.02.C(1). This alternative method, or "bubble", consists of calculating the daily production weighted average of actual VOC emissions from the 3 towers and the coater/dryer. The Company will be considered out of the compliance if this calculated 24-hour average of allowable VOC emissions is greater than the calculated 24 hour average of allowable VOC emissions for that same time period.

The Company shall calculate *actual* emissions from these installations for each day (24 hour period) that any of the installations are in operation based on actual production rates, coating solids contents, and maximum VOC contents. The Company shall register with the MAMA by submitting a list of all production coatings and their maximum VOC solvent contents as applied and maximum application rates that are to be used in each of the 4 processes. The Company will also be considered out of compliance each time a coating's solvent content or application rate exceeds the value registered by the Company for that coating.

Prior to June 1, 1985 the Company shall calculate allowable emissions on the basis that each coating complies with an emission standard of 3.2 pounds of VOC per gallon of coating applied minus water and exempt solvent. Beginning June 1, 1985, allowable emissions shall be calculated on the basis that each coating complies with the applicable emission standard of COMAR 10.18.21.07B (2.9 pounds of VOC per gallon of coating applied minus water and exempt solvent). The Company has requested the interim standard of 3.2 pounds of VOC per gallon of coating in order to allow time for adjusting their production schedules to meet the requirements of the bubble. The Company is in full and continuous compliance with this Order at the present time.

The Company shall calculate daily actual and allowable emissions from the towers and coater/dryer and submit a summary report to the MAMA on a quarterly basis. The summary report shall show for each reporting period each calculated 24-hour average of actual VOC emissions and each calculated 24-hour average of allowable VOC emissions. The Company shall also identify which exempt solvents are being utilized in their coatings. The proposed method for determining compliance is consistent with EPA's Can Coating Operation Policy statement as discussed in the December 8, 1980 Federal Register (45 FR 80824).

EPA Evaluation

Based on our review of this Secretarial Order, EPA is today proposing to approve it as a SIP revision. The State of Maryland has certified that, after adequate public notice, a public hearing was held on May 23, 1984 with respect to this SIP revision in Baltimore, Maryland.

The Company has maintained Reasonable Further Progress in achieving compliance with Maryland's COMAR regulations. VOC emissions have been reduced from 182.1 tons per year in 1980, to 99.7 tons per year in 1983 and will be reduced further to 92.7 tons per year in 1985, whereupon compliance will be achieved. EPA agrees that June 1, 1985 is the earliest practical date to achieve compliance. This extension of time to achieve compliance will not jeopardize attainment of the O_3 standard by 1987.

Based on the fact that the Company will achieve significant reductions in VOC emissions between 1980 and 1985, and on the fact that no further reductions in VOC emissions are required after 1985 in order for the Company to achieve compliance, EPA has determined that this compliance schedule is expeditious. This is further supported by the fact that the Company is not in compliance with the requirements of the Secretarial Order.

In addition, EPA is proposing to approve this Secretarial Order as a SIP revision with the understanding that the Company will subtract out exempt solvents according to accepted EPA methodology when they are calculating pounds of VOC emissions per gallon of coatings.

Conclusion: The Regional Administrator's decision to propose approval of the Order is based on a determination that the SIP revision meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The Public is invited to submit, to the address stated above, comments on whether the proposed revision to the State of Maryland's SIP should be approved.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget for review. Pursuant to the provisions of 5 U.S.C. 605(b), the Regional Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1982).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. (Sections 7401-7642).

Dated: September 28, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84-30421 Filed 11-19-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL 2721-4]

Approval and Promulgation of Implementation Plans; New Hampshire; New Source Review Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to Part Air 610 of Chapter 600, "Statewide Permit System" of the New Hampshire State Implementation Plan (SIP). These revisions amend New Hampshire's regulations for the preconstruction permitting of new major sources and major modifications in nonattainment areas in accordance with Part D of the Clean Air Act. The intended effect of this action is to propose approval the amended New Hampshire regulations as revisions to the SIP under section 110 of the Clean Air Act.

DATE: Comments must be received on or before December 20, 1984.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and at the New Hampshire Air Resources Commission, Health and Welfare Bldg., Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Marcial L. Spink (617) 223-4868, FTS 223-4868.

SUPPLEMENTARY INFORMATION: On April 9, 1984 and September 10, 1984 the New Hampshire Air Resources Commission (NHARC) submitted revisions to Part Air 610 of Chapter 600, "Statewide Permit System" of the New Hampshire SIP. These revisions amend New Hampshire's regulations for the preconstruction permitting of new major sources and major modifications in nonattainment areas.

EPA's review of these new source review (NSR) revisions indicates that they meet the requirements of 40 CFR 51.18 in accordance with sections 172(b)(b) and 173 of the Clean Air Act.

The New Hampsire NSR revisions incorporate by reference the definitions of 40 CFR 51.18(j)(1), revised as of July 1, 1982, except for the definition of "stationary source." The definition of that term that was published in the Federal Register on August 7, 1980 (45 FR 52743) is employed in the New Hampsire SIP for NSR purposes. New Hampsire's intent is that the so-called "dual definition" of stationary source be in effect in New Hampshire. However, the definition of stationary source *alone* does not accomplish this intent. In order to have the "dual definition" of stationary source, the definitions of the terms "building, structure, facility" and the term "installation" as specified in 45 FR 52743 must also be employed as those terms are contained *within* the stationary source definition and are integral to its meaning. NHARC has informed EPA by letter dated September 10, 1984 that the Air Resources Commission shall interpret the adopted language of Air 610.01 to mean that the definitions of the terms building, structure, facility and the term installation as specified in 45 FR 52743 must also be used in conjunction with the definition of stationary source, specified in the same Federal Register of August 7, 1980, in order to carry out the intended use of the "dual definition" of stationary source for NSR purposes. Therefore, under the State's NSR plan both the entire plant and each individual piece of air pollution emitting equipment within the plant are considered to be stationary sources. Use of the "dual definition" of stationary source within a SIP for NSR purposes is approvable by EPA. NHARC's September 10, 1984 letter is part of the SIP revision EPA today proposes to approve.

The definition of "building, structure, facility" in the New Hampshire rules exempts the activities of any vessels from applicability determinations. This is not approvable under the court decision in *NRDC* v. *Gorsuch,* D.C. Cir. No. 81-2201. However, the definition of "building, structure, facility" contained in 45 FR 52743 which New Hampshire has indicated it intends to use under its dual definition does include vessel activities. EPA proposes to approve the New Hampshire rules on the specific understanding that New Hampshire does intend to include vessel activities in all applicability determinations.

New Hampshire's NSR program does not require offsets for sources of VOC or other hydrocarbons. This is federally approvable under EPA's rural ozone policy.

A more detailed evaluation of New Hampshire's NSR requirements is provided in a memorandum dated october 1, 1984 entitled, "New Hampshire NSR Plan." Copies of that memorandum are available upon request from the EPA Regional Office specified in the **ADDRESSES** section of this notice.

Proposed Action: EPA is proposing to approve revisions submitted in April 9, 1984 and September 10, 1984 by the NHARC amending the New Hampshire SIP requirements for the preconstruction permitting of new major sources and major modification in nonattainment areas.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.18. These

revisions are being proposed pursuant to sections 110(a) and 301(a) of the Clean Air act, amended (42 U.S.C. 7410 (a) and 7601 (a)).

Dated: October 1, 1984.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 84-30023 Filed 11-19-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket Nos. 84-689 and 84-690]

Allocating Spectrum for, and Establishing Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: The Commission has extended the time for filing comments and reply comments in this proceeding concerning a Radiodetermination Satellite Service. This action is taken in response to several requests.

DATES: Comments are now due by December 17, 1984 and replies by January 17, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, (202) 634-1662.

SUPPLEMENTARY INFORMATION: The Proposed Rule in this proceeding was published on September 18, 1984 on page (49 FR) 36512.

In the matter of amendment of the Commission's rules to allocate spectrum for, and to establish other rules and policies pertaining to, a radiodetermination satellite service, Gen. Docket No. 84-689, RM-4426; in the matter of policies and procedures for the licensing of space and earth stations in the radiodetermination satellite service, Gen. Docket No. 84-690; in the matter of the applications of Geostar Corporation For Authority to Construct, Launch and Operate Space Stations in the Radiodetermination Satellite Service, File Nos. 2191-DSS-P/LA-83 2192-DSS-P/LA-83 2193-DSS-P/LA-83 2194-DSS-P/LA-83.

Adopted: November 8, 1984.

By the Chief, Common Carrier Bureau.

Several requests to modify the application filing and processing procedures adopted in the above-captioned proceeding have been received. To provide sufficient time to resolve these issues, the filing dates are extended as follows pursuant to § 0.291 of the Commission's rules on delegations of authority:

Applications for radiodetermination satellite systems to be considered concurrently with those of Geostar Corporation may be filed on or before December 3, 1984.

Comments with respect to Gen. Docket Nos. 84-689 and 84-690 may be filed on or before December 17, 1984. Reply comments may be filed on or before January 17, 1985.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 84-30027 Filed 11-19-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Pityopsis Ruthii (Ruth's Golden Aster)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list *Pityopsis ruthii* (Ruth's golden aster), a plant endemic to Polk County, Tennessee, as an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. *Pityopsis ruthii* is endangered by water quality degradation, toxic chemical spills, water level and flow regime alterations, and potentially from trampling associated with recreational use of its habitat. This proposal, if made final, would implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Pityopsis ruthii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 22, 1985. Public hearing requests must be received by January 4, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to Mr. Warren T. Parker, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Pityopsis ruthii was first collected by Albert Ruth, a Knoxville botanist, near the Hiwassee River in Polk County, Tennessee. Ruth often visited this area between 1894 and and 1902 and collected this unusual plant on several occasions (Bowers, 1972a). J. K. Small (1897) named the species in honor of Ruth, including it in the genus *Chrysopsis* in his original description. In 1933, Small transferred the species to the genus *Pityopsis*. Several alternative taxonomic treatments have been proposed for this and associated species (Harms, 1969; Bowers, 1972b; Cronquist, 1980; Semple *et al.*, 1980). Regardless of which genus (*Pityopsis, Heterotheca* or *Chrysopsis*) the species is included in, all authors have recognized the specific distinctness of this unique plant. The inclusion of this species in the genus *Pityopsis*, as advocated by Semple *et al.* (1980), is widely supported and is followed here.

Following Ruth's original collections, *Pityopsis ruthii* was not collected again for almost 50 years. Harms (1969) speculated that the species might be extinct. Bowers (1972a) reported that *Pityopsis ruthii* had been rediscovered on the Hiwassee River by himself and two other Knoxville botanists and stated that W. J. Dress had also collected the species in 1953. The Dress collection had not been reported in the literature, and his collections were housed in herbaria outside the region. This resulted in a 19-year lapse in knowledge of Dress' discovery. In 1976, A. White discovered a small population of *Pityopsis ruthii* on the Ocoee River, Polk County, Tennessee (White, 1978). Despite searches of apparently suitable habitat on the adjacent Tellico and Conasauga River systems by White (1977), and Wofford and Smith (1980), *Pityopsis ruthii* is only known to occur on short reaches of the Ocoee and Hiwassee Rivers.

Pityopsis ruthii is a fibrous-rooted perenial which grows only in the soil-filled cracks of phyllite boulders in and adjacent to the Ocoee and Hiwassee Rivers. The stems are from one to three decimeters tall and bear long narrow leaves covered with silvery hairs. The yellow flowers appear in a paniculate inflorescence in late August and

September. Its fruits (achenes) develop a few weeks after the flowers fade (Wofford and Smith, 1980).

Federal Government actions on this species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. The Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) [now section 4(b)(3)] of the Act, and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Pityopsis ruthii* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (48 FR 17909) publication, which also determined 13 plant species to be endangered or threatened species. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82479); *Pityopsis ruthii* was included in that notice as a category-1 species. Category-1 species are those for which data in the Service's possession indicate listing is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Pityopsis ruthii* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Pityopsis ruthii* was warranted, and that although other pending proposals had precluded its proposal, expeditious progress was being made to add this and other species to the list. Notice of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Publication of the present proposal constitutes the Service's finding that the petitioned action is warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pityopsis ruthii* (Small) Small (Ruth's golden aster) [SYN: *Chrysopsis ruthii* Small and *Heterotheca ruthii* (Small) Harms], are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The two known populations of *Pityopsis ruthii* occur on short reaches of rivers in which water regimes are controlled by upstream dams. The dams are operated by the Tennessee Valley Authority. Natural water flows in the Hiwassee River, through the area where the species occurs, have been basically eliminated since construction of the Appalachia Dam in 1943 (White, 1977). Water usually bypasses this area through a large pipeline between the dam and the powerhouse which is located several miles downstream of the dam. Apart from temporary releases to flush toxic chemical spills from the river, the prime source of water for this river reach is inflow from small tributaries and surface runoff from the adjacent slopes (Wofford and Smith, 1980; Parrish, 1981). This elimination of natural flow cycles with annual scouring of the boulders on which *Pityopsis ruthii* grows has permitted more competitive species to invade the boulders and encroach and overshadow the riverbanks (White, 1977). *Pityopsis ruthii* has little shade tolerance and is replaced by other species when sunlight is reduced by 50 percent (Wofford and Smith, 1980; White, 1977). *Pityopsis ruthii* has adapted to and is not displaced by the high water flows which periodically remove this more competitive vegetation and scour the rocks and riverbanks. If present trends continue it would appear that *Pityopsis ruthii* will eventually be displaced from the Hiwassee River.

The Ocoee River population of fewer than 500 plants (Wofford and Smith, 1980) appears to be subject to detrimental impacts of flood stage flows during the growing season. Present water management on the Ocoee River results in frequent releases that approximate the high flow conditions that would naturally occur only a few times per year. Although periodic high flows appear to be essential for maintenance of the *Pityopsis ruthii* habitat; the regular high flows on the Ocoee River may be exceeding the species' capability to withstand this normally beneficial action. A closer correlation between water management and the needs of *Pityopsis ruthii* is needed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Current recreational use of the Hiwassee River is limited to hiking and fishing on the banks adjacent to the *Pityopsis ruthii* population. Current levels of activity do not appear to be adversely affecting the species. Should levels of these activities increase in the future, they could threaten the species if they are not managed in a way which minimizes direct impacts such as trampling. Recreational use of the Ocoee River primarily consists of white-water sports like rafting. Since this activity takes place in the river, it would not appear to be impacting *Pityopsis ruthii* at this time. Observers and photographers of these white-water activities have trampled Ruth's golden aster in the past (Collins, pers. comm., 1984). *Pityopsis ruthii* is not currently in commercial trade as an ornamental plant. However, Farmer (1977) indicates that the species was excellent potential for horticultural use and public awareness of the species could generate a demand.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms.* Although there is no legislation in the State of Tennessee which provides protection for *Pityopsis ruthii*, the Committee for Tennessee Rare Plants (1978) recognizes the species as an endangered component of the State's flora. The Tennessee Department of Conservation also recognizes Ruth's golden aster as endangered in its current (1984) revision of the Official Rare Plant List of Tennessee issued pursuant to the Governor's Executive Order on March 7, 1980, and compiled with the assistance

of a scientific advisory committee and with other public input. Removal of plants without a permit from the National Forest is prohibited by regulation. However, this regulation is difficult to enforce. The Endangered Species Act would provide additional protection for the species..

E. *Other natural and manmade factors affecting its continued existence.* Water quality in the Ocoee River is drastically reduced on a regular basis because of mining activities in the Copperhill area, upstream of the *Pityopsis ruthii* population. Sediment levels are generally high, and acidity levels as low as pH 1.2 have been recorded in the Ocoee River (White, 1977). These water quality problems have adversely impacted the aquatic fauna of this reach of the Ocoee River and are probably adversely affecting the *Pityopsis ruthii* population.

Several spills of toxic chemicals (sulfuric acid) have occurred on the Hiwassee River. In order to flush these chemicals from the river, releases from the Appalachia Dam have been made. These releases have resulted, on at least one occasion (1976), in a loss of seed production for the year (White, 1977).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Pityopsis ruthii* as endangered. With only two populations of this species known to exist, it definitely warrants protection under the Act; endangered status seems appropriate because of the threats facing both populations. Critical habitat is not being designated for reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the speicies which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Pityopsis ruthii* at this time. The species has high potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on Ruth's golden aster. Although removal and reduction to possession of endangered plants from lands under Federal jurisdiction is prohibited by the Endangered Species Act, such provisions are difficult to enforce effectively. Publication of critical habitat descriptions would make *Pityopsis ruthii* more vulnerable and would increase enforcement problems for the U.S. Forest Service. Increased visits to both populations stimulated by critical habitat designation could also result in trampling problems. Both of the federal agencies involved in managing the habitat of Ruth's golden aster have been informed of the locations of this species and of the importance of protecting it, so no additional benefits from the notification function of critical habitat designation would result. Therefore, it would not be prudent to determine critical habitat for *Pityopsis ruthii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for listed species. Such actions are intitiated by the Service following listing. The protection required of Federal agencies and the applicable prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requres Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existance of a proposed species. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service (Cherokee National Forest) and the Tennessee Valley Authority have jurisdiction over this species' habitat or essential components of its habitat. Federal activities that could impact *Pityopsis ruthii* and its habitat in the future include, but are not limited to, the following: management of flow regimes and water levels on the Ocoee and Hiwassee Rivers, timber harvesting, recreational development, channel alterations, road and bridge construction, permits for mineral exploration, and implementation of forest management plans. It has been the experience of the Service that the large majority of Section 7 consultations are resolved so that the species is protected and the project can continue.

The Tennessee Valley Authority, through its Natural Heritage Program, was notified on July 27, 1984, of the Service's intent to propose Ruth's golden aster as endangered, and will provide its comments during the official comment period. The Supervisor of the Cherokee National Forest has been contacted, as well as the Forest Service's Regional Forester (through the Regional Botanist in Atlanta); both have indicated they will comment on the proposal during the official comment period.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Pityopsis ruthii*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition will apply to *Pityopsis ruthii*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417). Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Pityopsis ruthii*;

(2) the location of any additional populations of *Pityopsis ruthii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range and distribution of this species; and

(4) current or planned activities in the subject area and their possible impacts on *Pityopsis ruthii*.

Final promulgation of the regulation on *Pityopsis ruthii* will take into consideration the comments and any additional information received by the Sevice, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Request must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Endangered Species Field Station (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Bowers, F.D. 1972a. The existence of *Heterotheca ruthii* (Compositae). Castanea 37:130–132.

Bowers, F.D. 1972b. A bionysematic study of *Heterotheca* section *Pityopsis*. Ph.D. Dissertation, University of Tennessee, Knoxville, TN. 188 pp.

Committee for Tennessee Rare Plants. 1978. The rare vascular plants of Tennessee. Journal of the Tennessee Academy of Science 53:128–133.

Cronquist, A. 1980. Vascular flora of the southeastern United States. Vol. 1. Asteraceae. University of North Carolina Press, Chapel Hill, NC. 261 pp.

Farmer, R.E., Jr. 1977. Seed Propagation of *Heterotheca ruthii*. Castanea 42:146–148.

Harms, V.L. 1969. A preliminary conspectus of *Heterotheca* section *Pityopsis*. Castanea 34:402–409.

Heifetz, J., and W.L. Milstead. 1979. Status report for *Heterotheca ruthii*. Unpublished report by Southeast Region, U.S. Fish and Wildlife Service, Atlanta, GA.

Parrish, L.L. 1981. Personal communication by letter to Mr. Dick Biggins (Biologist with the Endangered Species Field Station in Asheville, North Carolina) regarding river flows in the Hiwassee River.

Semple, J.C., V.C. Blok, and P.P. Heiman. 1980. Morphological, anatomical, habit and habitat differences among the golden aster genera *Chrysopsis, Heterotheca, Pityopsis* (Compositae-Asteraceae). Canadian Journal of Botany 58:147–163.

Small, J.K. 1897. Studies in the botany of the Southeastern United States: XII. Bulletin of the Torrey Botanical Club 24:493.

Small, J.K. 1933. Manual of the Southeastern flora. Published by the author, New York, NY. P. 1341.

White, A.J. 1977. An autecological study of the endangered species, *Heterotheca ruthii* (Small) Harms. M.S. Thesis, University of Tennessee, Knoxville, TN. 73 pp.

White, A.J. 1978. Range extensions of the proposed endangered plant, *Heterotheca ruthii* (Compositae). Castanea 43:263.

Wofford, B.E., and D.K. Smith. 1980. Status report for *Heterotheca ruthii* (Ruth's golden aster). Unpublished report prepared under contract for the U.S. Fish and Wildlife Service, Atlanta, GA.

Author

The primary author of this proposed rule is Mr. Robert R. Currie, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321). Preliminary status information was provided by Mr. J. Heifetz and Dr. W. C. Milstead, formerly of the Service's Southeastern Regional Office, Atlanta, Georgia.

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Asteraceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family						
* * * * * * *						
Pityopsis ruthii (SYN: *Heterotheca ruthii* and *Chrysopsis ruthii*)	Ruth's golden aster	U.S.A. (TN)	E		NA	NA
* * * * * * *						

Dated: November 5, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-30458 Filed 11-19-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 225
Tuesday, November 20, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Raleigh, North Carolina, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 20, 1984, 1:00 p.m. to 4:00 p.m. Comments must be received no later than January 19, 1985.

ADDRESSES: Meeting location at Room 209, Federal Building, 2310 New Bern Avenue, Raleigh, North Carolina.

FOR FURTHER INFORMATION CONTACT: Written comments and further information will be addressed to: State Director, FmHA, 310 New Bern Avenue, Raleigh, North Carolina 27601 (919–755–4640).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's North Carolina State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and the affect the financing of FmHA activities in North Carolina. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 14, 1984.

David J. Howe,
Director, Program Support Staff.

[FR Doc. 84–30447 Filed 11–19–84; 8:45 am]
BILLING CODE 3410–07–M

Forest Service

Bridger-Teton National Forest Grazing Advisory Board; Meeting

The Bridger-Teton National Forest Grazing Advisory Board will meet at 1:00 p.m., December 12, 1984, in the Conference Room of the Sublette County Library, Pinedale, Wyoming. The purpose of this meeting is to discuss utilization of range betterment funds and the development of allotment management plans.

The meeting will be open to the public. Persons who wish to attend should notify Forest Supervisor Reid Jackson, Box 1888, Jackson, Wyoming 83001, telephone (307) 733–2752. Written statements may be filed with the board before or after the meeting.

The board has established the following rules for public participation:

1. If a group wishes to be heard at the meeting, they are required to select a chairman to voice their ideas.

2. Persons or groups may send written statements to the Forest Supervisor for presentation at the meeting.

3. The Chairman of the Forest Grazing Advisory Board will set aside a time period on the agenda for public comment.

Dated: November 8, 1984.

Reid Jackson,
Forest Supervisor.

[FR Doc. 84–30418 Filed 11–19–84; 8:45 am]
BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Oregon Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules; and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 4:00 p.m., on December 14, 1984, at the City Hall, Room A, 1120 S.W. 5th Street, Portland, Oregon 97204. The purpose of the meeting is to plan for future programs.

Persons desiring additional information, or planning a presentation to the Committee; should contact the Northwestern Regional Office at (206) 442–1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 15, 1984.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 84–30338 Filed 11–19–84; 8:45 am]
BILLING CODE 6335–01–M

Rhode Island Advisory Committee; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission orginally scheduled for November 20, 1984, at Providence, Rhode Island (FR Doc. 84–29677 on page 44935) has a new meeting date.

The meeting will be held on November 27, 1984. The address and time will remain the same.

Dated at Washington, D.C., November 15, 1984.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 84–30339 Filed 11–19–84; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1985 Post Enumeration Survey
Form Numbers: Agency—DB–1300 and DB–1302; OMB—None
Type of Request: New collection
Burden: 6,000 respondents; 2,000 reporting hours
Needs and Uses: The Post Enumeration Survey (PES) consists of a sample of blocks that will be completely listed and matched to the 1985 Pretest Census in Tampa, Florida. This survey is being conducted as part of the planning activities for the 1990 Decennial Census. The persons listed in the PES who do not match to the census will estimate census omissions and persons not in the PES will estimate erroneous enumerations. The difference is the estimate of net undercount.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

AGENCY: Bureau of the Census
TITLE: Census Employment Inquiry
FORM NUMBERS: Agency—BC–170; OMB—0607–0139
TYPE OF REQUEST: Revision of a currently approved collection
BURDEN: 20,000 respondents; 5,000 reporting hours
NEEDS AND USES: During 1985 the Census Bureau will need to hire numerous short-term, temporary workers to conduct the 1985 Pretests and other special censuses. This form will be used to collect personal information, such as work experience, from job applicants. The forms will be reviewed by selecting officials to determine the applicants' qualifications for the job.
Affected Public: Individuals or households
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6822, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503

Dated: November 14, 1984.

Edward Michals,
Department Clearance Officer.

[FR Doc. 84–30437 Filed 11–19–84; 8:45 am]
BILLING CODE 3510–CW–M

Bureau of the Census

Coverage Under the Voting Rights Act Amendments of 1982; Wisconsin; Correction

AGENCY: Bureau of the Census, Commerce.

ACTION: Correction: Voting Rights Act Amendments of 1982, Determinations under Title III (OFR, Vol. 49, No. 123, June 25, 1984).

SUMMARY: This document corrects the determination of the language covered in two towns in Wisconsin. Both towns were designated for coverage under the Voting Rights Act Amendments of 1982 because of the number of American Indians in the town who were of a single language minority who reported speaking a language other than English at home and who do not speak English well enough to participate in the electoral process. In producing the list of determinations, the specific American Indian language covered in the towns was shown incorrectly.

Incorrect Statement

Political subdivision	Single language minority
Wisconsin	
Couderay Town (Sawyer County).	American Indian (Winnebago)
Komensky Town (Jackson County).	American Indian (Ojibwa)

Correct Statement

Political subdivision	Single language minority
Wisconsin	
Couderay Town (Sawyer County).	American Indian (Ojibwa)
Komensky Town (Jackson County).	American Indian (Winnebago)

FOR FURTHER INFORMATION CONTACT: Edith K. McArthur, Population Division, U.S. Bureau of the Census, Washington, D.C. 20233, telephone (301) 763–5158.

Dated: November 14, 1984.

John G. Keane,
Director, U.S. Bureau of the Census.

[FR Doc. 84–30412 Filed 11–19–84; 8:45 am]
BILLING CODE 3510–07–M

International Trade Administration

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held December 6, 1984, at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to telecommunications equipment or technology.

The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377–4217. For further information contact Mrs. Margaret A. Cornejo (202) 377–5542.

Dated: November 14, 1984.

Milton M. Baltas,
Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 84–30436 Filed 11–19–84; 8:45 am]
BILLING CODE 3510–DT–M

Joint Meeting of the Computer Systems Technical Advisory Committee, Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee, and Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A joint meeting of the Electronic Instrumentation Technical Advisory Committee, the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee and the Computer Systems Technical Advisory Committee will be held December 7, 1984, 9:30 a.m., Herbert C. Hoover Building, Room 6708, 14th Street and Constitution Avenue, N.W., Washington, D.C. The Committees advise the Office of Export

Administration with respect to technical question which affect the level of export controls applicable to electronic instrumentation, computer systems or technology.

The Committees will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

Copies of the Notice of Determination to close meetings or portions thereof are available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: November 14, 1984.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 84-30435 Filed 11-19-84; 8:45 am]
BILLING CODE 3510-DT-M

National Bureau of Standards

[Docket No. 41028-4128]

Proposed Revision of FIPS COBOL

Under the provisions of Public Law 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing (ADP) standards. A revision of Federal Information Processing Standards (FIPS) COBOL (FIPS PUB 21-2) is being proposed for Federal use.

The purpose of the proposed revision is to: (1) Adopt American National Standard Programming Language, COBOL, X3.23-198 as FIPS COBOL, (2) make the goals of the FIPS more definitive, (3) recognize advances in programming technology, (4) provide more specific guidance concerning the applicability for each language, and (5) provide consistent policy for all the FIPS languages.

Prior to the submission of this proposed revised standards to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs of, impact on, and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Comments concerning the adoption of this proposed revision are invited and may be sent to Director, Institute for Computer Sciencies and Technology, ATTN: Proposed FIPS COBOL, National Bureau of Standards, Gaithersburg, MD 20899. To be considered, comments on this proposed action must be received on or before March 20, 1985.

Written comments received in response to this notice plus written comments obtained from Federal departments and agencies will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

Persons desiring further information about this proposed revision may contact, Ms. Mabel Vickers, Data Management and Programming Languages Division, Center for Programming Sciencie and Technology, Institute for Computer Sciencie and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301/921-2431.

Dated: November 14, 1984.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 21-2

(date)

Announcing the Standard for COBOL

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Service Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* COBOL (FIPS PUB 21-2).

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard Programming Language, COBOL, X3.23-198, as amplified herein as a Federal Information Processing Standard (FIPS). This revision supersedes FIPS PUB 21-1 and reflects major changes and improvement in the COBOL specifications. It also contains changes to the Objectives, Applicability, and Implementation portions of FIPS COBOL to recognize advances in programming technology and to provide consistent policy for all FIPS languages. The American National Standard defines the elements of the COBOL programming language and the rules for their use. The purpose of the standard is to promote portability of COBAL programs for use on a variety of data processing systems. The standard is used by implementors as the reference authority in developing compilers and by users who need to know the precise syntactic and semantic rules of the standard language.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard Programming Language COBOL, X3.23-198.

7. *Related Documents.*

a. Federal Information Resources Management Regulation 201.36.1310, Implementation of Federal Information Processing and Federal Telecommunications Standards into Solicitation Documents, Federal Information Processing Standards (FIPS) Programming Languages.

b. Federal Information Processing Standards Publication 29.1, Interpretation Procedures for Federal Information Processing Standards Programming Languages.

c. NBS Special Publication 500-117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—to encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—to reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—to reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—to protect the existing software assets of the Federal government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS COBOL is one of the high level programming language standards provide for use by all Federal departments and agencies. FIPS COBOL is especially suited for applications that emphasize the manipulation of characters, records, files, and input/output (in contrast to those primarily concerned with scientific and numeric computations).

b. The use of EIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application of program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Non-standard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of report generation, database management, or text processing languages. The use of any facility should be considered in the context of system life, system cost, and potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a COBOL source program, then the resulting program should conform to the conditions and specifications of FIPS COBOL.

10. *Specifications.* FIPS COBOL specifications are the language specifications contained in American National Standard Programming Language COBOL, X3.23-198-.

The X3.23-198- document specifies the form of a program written in COBOL, formats for data, and rules for program and data interpretation.

The standard does not specify limits on the size of programs, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing.

In addition, the following requirements apply:

a. For purposes of FIPS COBOL, the modules defined in X3.23-198- are combined into three subsets and four optional modules. The three subsets of FIPS COBOL are identified as Minimum, Intermediate, and High. The four optional modules are Report Writer, Communications, Debug, and Segmentation. These four optional modules are not in integral part of any of the subsets; however, none, all, or any combination of the optional modules may be associated with any of the subsets.

The high subset is composed of all language elements of the highest level of all required modules. The intermediate subset is composed of all language elements of level 1 of all required modules. The minimum subset is composed of all language elements of level 1 of the Nucleus, Sequential I-O, and Inter-Program Communication modules.

The following table reflects the composition of the required subsets and the relationship of the subsets and the optional modules. The numbers in the table refer to the level within a module as designated in X3.23-198-, and a dash denotes the corresponding module is omitted or may be omitted.

Modules	COBOL Subsets		
	Minimum	Intermediate	High
Required			
Nucleus	1	1	2
Sequential I-O	1	1	2
Relative I-O		1	2
Indexed I-O		1	2
Inter-Program Communication	1	1	2
Sort-Merge		1	2
Source Text Manipulation		1	2
Optional			
Report Writer	-, 1, or 2	-, 1, or 2	-, 1, or 2
Communication	-, 1, or 2	-, 1, or 2	-, 1, or 2
Debug	-, 1, or 2	-, 1, or 2	-, 1, or 2
Segmentation	-, 1, or 2	-, 1, or 2	-, 1, or 2

b. A facility should be available in the compiler for the user to optionally specify monitoring of his source program at compile time. The monitoring may be specified for a subset of FIPS COBOL, for any of the optional modules, for the obsolete language elements contained within the selected subset and optional modules, or for any combination of subset, optional modules and obsolete elements. The monitoring may be specified for any subset at or below the highest subset for which the compiler is implemented and for any optional module at or below the level of the optional module for which the compiler is implemented. The monitoring is an analysis of the syntax used in the source program against the syntax included in the user selected FIPS COBOL subset or optional modules. Any syntax used in the source program that does not conform to that included in the user selected FIPS COBOL subset and optional modules will be diagnosed and identified to the user through a message on the source program listing. The message provided will identify:

—The clause, statement or header that directly contains the non-conforming syntax. (For the purpose of this requirement the definitions contained in American National Standard Programming Language COBOL, X3.23-198__, section III, Glossary apply.)

—The source program line which contains the non-conforming syntax

and the beginning location of the syntax within the line.

—The FIPS COBOL subset or optional module level required to support the non-conforming syntax if the non-conforming syntax is within a higher subset or higher level of an optional module included in compiler.

—The syntax as "non-conforming," if the non-conforming syntax is within FIPS COBOL subsets or optional module levels that are not included in the compiler or the non-conforming syntax is non-standard COBOL.

—The syntax as "obsolete" if the syntax identified is in the obsolete category in a subset or optional module included in the compiler.

11. *Implementation.* The implementation of FIPS COBOL involves three areas of consideration: acquisition of COBOL compilers, interpretation of FIPS COBOL, and validation of COBOL compilers.

11.1 *Acquisition of COBOL Compilers.* This publication is effective (date of publication of final document in the Federal Register). COBOL compilers acquired for Federal use after this date should implement at least one of the required subsets of FIPS COBOL. If the functionality of one or more of the optional modules meet programmatic requirements, then those optional modules also should be acquired. Conformance to FIPS COBOL should be considered whether COBOL compiles are developed internally, acquired as part of an ADP system procurement, acquired by separate procuremnt, used under an ADP leasing management, or specified for use in contracts for programming services.

A transition period provides time for industry to produce COBOL compilers conforming to the standard. The transition period begins on the effective date and continues for eighteen (18) months thereafter. The following apply during the transition period:

a. The provisions of FIPS PUB 21–1 apply to compilers ordered before the date of this publication but delivered subsequent to the date of this publication; however, the requirement for these compilers to contain any of the optional modules defined herein is waived if they are not needed to meet programmatic requirements.

b. The provisions of this publication apply to orders placed after the date of this publication; however, a compiler conforming to FIPS PUB 21–1 may be acquired for interim use until the conforming compiler is available.

11.2 *Interpretation of FIPS COBOL.* NBS provides for the resolution of questions regarding FIPS COBOL specifications and requirements, and issues official intepretations as needed. All questions about the interpretation of FIPS COBOL should be addressed to: Director, Institute for Computer Sciences and Technology, Attn: COBOL Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of COBOL Compilers.* The General Services Administration (GSA), through its Federal Software Testing Center (FSTC), provides a service for the purpose of validating the conformance to this standard of compilers offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the FSTC which is located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041–3467 (703–756–6153).

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 21–2 (FIPS PUB 21–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 84-30881 Filed 11-19-84; 8:45 am]
BILLING CODE 3510-13-M

[Docket No. 41027–4127]

Proposed Revision of FIPS Fortran and FIPS Minimal Basic

Under the provisions of Public Law 89–306 (79 Stat. 1127; 40 U.S.C. 759 (f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing (ADP) standards. Revisions of Federal Information Processing Standard FIPS Fortran (FIPS PUB 69–1) and FIPS Minimal Basic (FIPS PUB 68–1) are being proposed for Federal use.

The purpose of the proposed revision is to: (1) Make the goals of the FIPS more definitive, (2) recognize advances in programming technology, (3) provide more specific guidance concerning the applicability for each language, and (4) provide consistent policy for all the FIPS languages. The language specifications of FIPS Fortran and FIPS Minimal Basic are not changed.

Prior to the submission of these proposed revised standards to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs of, impact on, and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Comments concerning the adoption of these proposed revisions are invited and may be sent to Director, Institute for Computer Sciences and Technology, ATTN: Proposed FIPS Fortran and Minimal Basic Revision, National Bureau of Standards, Gaithersburg, MD 20899. To be considered, comments on this proposed action must be received on or before March 20, 1985.

Written comments received in response to this notice plus written comments obtained from Federal departments and agencies will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

Persons desiring further information about these proposed revisions may contact, Ms. Mabel Vickers, Data Management and Programming Languages Division, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301/921–2431.

Dated: November 14, 1984.

Federal Information Processing Standards Publication 69–1

(date)

Announcing the Standard for Fortran

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Fortran (FIPS PUB 69).

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the revision of Federal Information Processing Standard Fortran. This revision supersedes FIPS PUB 69 and reflects changes to the Objectives, Applicability, and Implementation portions of FIPS Fortran. FIPS Fortran is the adopotion of American National Standard

Programming Language Fortran, X3.9–1978. The American National Standard specifies the form and establishes the interpretation of programs expressed in the Fortran programming language. The standard consists of a full language and a subset language. The purpose of the standard is to promote portability of Fortran programs for use on a variety of data processing systems. The standard is used by implementors as the reference authority in developing compilers interpreters, or other forms of high level language processors, and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard Programming Language Fortran, X3.9–1978.

7. *Related Documents.*

a. Federal Information Resources Management Regulation 201–36.1310, Implementation of Federal Information Processing and Federal Telecommunications Standards into Solicitation Documents, Federal Information Processing Standards (FIPS) Programming Languages.

b. Federal Information Processing Standards Publication 29–1, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—to encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—to reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—to reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—to protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS Fortran is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS Fortran is especially suited for: (1) the generation programs to solve recurrent numerical, scientific and engineering problems, particularly those which depend upon efficient computation or access to mathematical or statistical libraries of subprograms; (2) the efficient implementation of algorithms on a wide range of computing equipment of varying power structure.

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Non-standard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of statistical or numerical software packages. The use of any facility should be considered in the context of system life, system cost, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a Fortran source program, then the resulting program should conform to the conditions and specifications of FIPS Fortran.

10. *Specifications.* FIPS Fortran specifications are the language specifications contained in American National Standard Programming Language Fortran, X3.9–1978. The Fortran standard describes two levels of the Fortran language. Fortran refers to the full language and Subset Fortran refers to the subset of the full language.

The X3.9–1978 document specifies the form of a program written in Fortran, formats of data for input and output, and semantic rules for program and data interpretation.

The standard does not specify limits on the size or complexity of programs, the range or precision of numeric quantities or the method of rounding of numeric results, the results when the rules of the standard fail to establish an interpretation, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing.

A facility should be available in the processor that allows a Fortran source program to be analyzed with respect to FIPS Fortran. Any statement appearing in the source program that does not conform syntactically to the specifications of FIPS Fortran should be explicitly identified.

11. *Implementation.* The implementation of FIPS Fortran involves three areas of consideration: acquisition of Fortran processors, interpretation of FIPS Fortran, and validation of Fortran processors.

11.1 *Acquisition of Fortran Processors.* This publication is effective (date of publication of final document in the Federal Register). Fortran processors acquired for Federal use after this date should implement FIPS Fortran. Conformance to FIPS Fortran should be

considered whether Fortran processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing management, or specified for use in contracts for programming services.

11.2 *Interpretation of FIPS Fortran.* NBS provides for the resolution of questions regarding FIPS Fortran specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS Fortran should be addressed to: Director, Institute for Computer Sciences and Technology, Attn: Fortran Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of Fortran Processors.* The General Services Administration (GSA), through its Federal Software Testing Center (FSTC), provides a service for the purpose of validating the conformance to this standard of language processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the FSTC which is located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041–3467 (703–756–6153).

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 69–1 (FIPS PUB 69–1), and title. Payment may be made by check, money order, or deposit account.

Federal Information Processing Standards Publication 68–1

(date)

Announcing the Standard for Minimal Basic

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Minimal Basic (FIPS PUB 68–1).

2. *Category of Standard.* Software Standard, Programming Language.

(3) *Explanation.* This publication announces the revision of Federal Information Processing Standard (FIPS) Minimal Basic. This revision supersedes FIPS PUB 68 and reflects changes to the Objectives, Applicability, and Implementation portions of FIPS Minimal Basic. FIPS Minimal Basic is the adoption of American National Standard Programming Language Minimal Basic, X3.60–1978. The American National Standard defines the syntax of the Minimal Basic programming language and the semantics for its interpretation. The standard is used by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors and by other computer professionals who need to know the precise syntactic and semantic rules of the standard language.

(4) *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard Programming Language Minimal Basic, X3.68–1978.

7. *Related Documents.*

a. Federal Information Resources Management Regulation 201–36.1310, Implementation of Federal Information Processing and Federal Telecommunications Standards into Solicitation Documents, Federal Information Processing Standards (FIPS) Programming Languages.

b. Federal Information Processing Standards Publication 29–1, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500–*117*, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS Minimal Basic is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS Minimal Basic is especially suited for: (1) the rapid development of computer programs to solve small nonrecurrent problems, particularly on computers providing time-shared or interactive service; and (2) for use in computing environments in which ease of learning and casual use are dominant factors.

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Non-standard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisified through the use of report application-oriented software package. The use of any facility should be considered in the context of system life, system cost, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a Basic source program, then the resulting program should conform to the conditions and specifications of FIPS Minimal Basic.

10. *Specifications.* FIPS Minimal Basic specifications are the language specifications contained in American National Standard Programming Language Minimal Basic, X3.68–1978.

The X3.68–1978 document specifies the form of a program written in Minimal Basic, formats of data for input and output, minimal precision and range of numeric representations for input and output, semantic rules for program and data interpretation, and errors and exceptional circumstances that must be detected by a standard-conforming Basic processor.

The standard does not specify limits on the size of programs, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing. Although Minimal Basic is primarily an interactive language, the standard does not restrict implementations to the interactive mode.

11. *Implementation.* The implementation of FIPS Minimal Basic involves three areas of consideration: acquisition of Minimal Basic processor, interpretation of FIPS Minimal Basic, and validation of Minimal Basic processors.

11.1 *Acquisition of Minimal Basic Processors.* This publication is effective (date of publication of final document in the Federal Register). Minimal Basic processors acquired for Federal use after this date should implement FIPS Minimal Basic. Conformance to FIPS Minimal Basic should be considered whether Minimal Basic processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing managment, or specified for use in contracts for programming services.

11.2 *Interpretation of FIPS Minimal Basic.* NBS provides for the resolution of questions regarding FIPS Minimal Basic specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS Minimal Basic should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: Basic Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of Minimal Basic Processors.* The General Services Administration (GSA), through its Federal Software Testing Center (FSTC), provides a service for the purpose of validating the conformance to this standard of language processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the FSTC which is located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041–3467 (703–756–6153).

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 68–1 (FIPS PUB 68–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 84-30350 Filed 11-19-84; 8:45 am]
BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limits for Certain Cotton Textile Products Produced or Manufactured in India

November 15, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 21, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended, between the Governments of the United States and India includes flexibility provisions allowing, among other things, for percentage increases in certain categories during an agreement year, provided a deduction in equivalent square yards is made in another specific limit category (serving). Under the terms of the bilateral agreement and at the request of the Government of India, further swing is being applied to the import limits established for cotton textile products in Categories 335 (coats), 336 (dresses), 338/339/340 (shirts and blouses), 343 (skirts). These adjustments will result in decreases in all of the foregoing category limits except Category 338/339/340 which will be increased from 1,619,984 dozen to 1,088,238 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), and July 16, 1984 (49 FR 28754).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 15, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 13, 1984, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of cotton, wool and man-made fiber textile products exported during the twelve-month period beginning on January 1, 1984 and extending through December 31, 1984, produced or manufactured in India, in excess of designated limits. The Chairman further advised you that the limits are subject to adjustment.[1]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of December 21, 1982, between the Governments of the United States and India which provide, in part, that: (1) Group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Effective on November 21, 1984, paragraph 1 of the directive of December 13, 1983 is hereby further amended to include the following adjusted limits:

Category	Adjusted 12-mo limits [1]
335	159,752 dozen.
336	247,546 dozen.
336-T/338-T/340	1,069,278 dozen.
342	984,363 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1983.

The actions taken with respect to the Government of India and with respect to imports of cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30446 Filed 11-19-84; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Gee Kay Fabrics, Inc., et al.; Provisional Acceptance of Consent Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of Consent Agreement.

SUMMARY: The Commission has provisionally accepted a consent agreement containing a cease and desist order offered by Gee Kay Fabrics, Inc., and Geroge Krasnov, individually, in which they agree to cease and desist from selling or offering sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material which fails to conform to the Standard for the Flammability of Childrens's Sleepwear: Sizes 0 through 6X (FF3-71) (16 CFR part 1516); the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (FF5-74) (16 CFR Part 1616); or the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610). If finally accepted, this consent agreement will settle allegations of the Commission staff that Gee Kay Fabrics, Inc., and corporate officer have violated the provisions of the Flammable Fabrics Act.

DATES: Written comments on the provisionally accepted consent agreement must be received by the Commission by December 5, 1984.

ADDRESSES: Written comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Copies of the agreement may be viewed or obtained from the Office of the Secretary, Consumer Product Safety Commission, 8th Floor, 1111 18th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Stephen E. Joyce, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. Phone 301-492-6626.

Dated: November 15, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-30405 Filed 11-19-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Secretary of Defense Media Advisory Council

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Secretary of Defense Media Advisory Council has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The Council will advise the Secretary of Defense on matters concerning the interface between the Department of Defense and the national and international press corps; review the newly prepared OASD(PA) plan for interface with the news media during military operations and recommend changes or alternative approaches to the Secretary of Defense; review the findings of the CJCS/Media-Military Relations Committee Study (Sidle Panel); review the public affairs curriculum at the various Service senior colleges and service academies and recommend changes or new approaches to the Secretary; review the curriculum at the Defense Information School to ensure that future public affairs personnel receive realistic training for their future positions; participate in seminars or similar programs at the various Service senior colleges and Service academies and the Defense Information School; meet periodically with the Secretary of Defense, Chairman of the Joint Chiefs of Staff and senior Department of Defense public affairs officers to discuss the Department's public affairs policies on both specific and general issues.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 14, 1984.

[FR Doc. 84-30371 Filed 11-19-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Intent To Grant Exclusive Patent License; P.I.D. Associates, Inc.

Notice is hereby given of an intent to grant to P.I.D. Associates, Inc. of Hendersonville, N.C., an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,252,777, entitled "Recovery of Aluminum and Other Metal Values from Fly Ash." The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(1) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brough the invention to practical application expenditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Signed at Washington, D.C. on this 7th day of November 1984.

Theodore J. Garrish,

General Counsel.

[FR Doc. 84-30343 Filed 11-19-84; 8:45 am]

BILLING CODE 6450-01-M

Intent to Grant Exclusive Patent License; Geotomographics, Ltd.

Notice is hereby given of an intent to grant to Geotomographics, Ltd. Of Alamo, California, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,161,687, entitled "Method for Locating Underground Anomalies by Diffraction of Electromagnetic Waves Passing between Spaced Boreholes." The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Signed at Washington, D.C. on this 7th day of November 1984.

Theodore J. Garrish,

General Counsel.

[FR Doc. 84-30344 Filed 11-19-84; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council Refinery, Capability Task Group; Meeting

Notice is hereby given that the Refinery Capability Task Group will meet in December 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and finding will be based on information and data to be gathered by the various task groups.

The Refinery Capability Task Group will hold its first meeting on Tueday, December 4, 1984, starting at 9:00 a.m., in Conference Room DE 7-8 of Fluor Engineers, Inc., One Fluor Drive, Sugarland, Texas.

The tentative agenda for the Refinery Capability Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Discuss the scope of the overall study.
3. Discuss the study assignment of the U.S. Refinery Capability Task Group.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353/2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 13, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84-30443 Filed 11-19-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Supply Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Supply Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and Time: December 12, 1984—9:30 a.m.—4:00 p.m.

Place: O'Hare Marriott, 8535 Wast Higgins Road, Room 399, Chicago, IL 60631.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., (202) 252-5444.

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the panel: To examine the future energy needs of the Nation and develop judgments on the essential ingredients of a balanced energy R&D effort. The Panel has established Supply, Demand, Research and Infrastructure Subpanels to assist in carrying out its assignments.

Tentative Agenda

- Review of long-range energy R&D goals and the National Energy Policy Plan
- Briefing by Department of Energy staff on the Renewable Energy Program evaluation process
- Review of revised working papers on:
  - —Electricity
  - —Liquids
  - —Gas
  - —Coal
  - —Renewables
  - —Fusion
  - —Transportation, distribution, and storage
- Plan future subpanel efforts and meetings
- Public Comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 100 Independence Avenue, SW, Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 13, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-30442 Filed 11-19-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed Week of October 19 Through October 26, 1984

During the Week of October 19 through October 26, 1984, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 13, 1984.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 19 through Oct. 26, 1984]

Date	Name and location of applicant	Case No.	Type of Submission
Oct. 22, 1984	James T. O'Reilly, Cincinnati, OH	HFA-0255	Appeals of an Information Request Denial. If Granted: The October 10, 1984 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and James T. O'Reilly would receive access to certain information regarding Fernald, Ohio contract facilities known as Feed Materials Production Center (FMPC).
Do	John H. Hnatio, Mt. Airy, MD	HFA-0257	Appeal of an Information Request Denial. If granted: John Hnatio would receive a determination which, according to his submission, would completely respond to the issues raised in an appeal to the Office of Hearings and Appeals on March 20, 1984.
Do	Petroleum Carrier Company, Inc., Lafayette, LA	HRD-0246 and HRH-0245	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing convened in connection with a Statement of Objections submitted by Petroleum Carrier Company, Inc. in response to the Proposed Remedial Order (Case No. HRO-0226).
Oct. 24, 1984	AWECO, Inc., Washington, DC	HRS-0046	Request for Stay. If granted: The Proposed Remedial Order proceeding (Case No. HRO-0179) involving AWECO, Inc., would be stayed pending settlement negotiations.
Do	Economic Regulatory Administration, Washington, DC	HRD-0248	Motion For Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted in response to a May 1, 1979 Proposed Remedial Order (Case No. HRX-0107) issued to Marathon Petroleum Company.
Oct. 25, 1984	Albuquerque Operations Office, Albuquerque, NM	HFA-0259	Appeal of an Information Request Denial. If granted: John R. Selby would receive access to limited portions of documents pertaining to a DOE contract for the "New Detonator Facility."
Oct. 26, 1984	American Federation of Government Employees, Pittsburgh, PA.	HFA-0256	Appeal of an Information Request Denial. If granted: The September 26, 1984 Freedom of Information Request Denial issued by the Coal Utilization Technology Division would be rescinded, and the American Federation of Government Employees would receive access to a complete copy of all Department of Energy records detailing the hazardous waste management practices of GE Matsco Corporation and all other contractors and subcontractors, engaged in the generation and disposal of hazardous waste at the Pittsburgh Energy Technology Center from May 7, 1980 to the present time.

REFUND APPLICATIONS RECEIVED

[Week of Oct. 19 to Oct. 26, 1984]

Date	Name of refund proceding/name of refund applicant	Case No.
Oct. 22, 1984	Amoco/Massachusetts	RQ21-124.
Do.	Amoco/Assiniboine & Sioux Tribes	RQ21-125.
Do.	Gulf/Buck's Service Station	RF40-152.
Do.	Gulf/Gray's Gulf	RF40-153.
Do.	Gulf/B.N.M., Inc.	RF40-154.
Do.	Gulf/Manchester's Gulf	RF40-155.
Do.	Gulf/Estes Gulf Service	RF40-156.
Do.	Gulf/Herman's Service Station, Inc	RF40-157.
Do.	Windham/Save 4 Stores	RF43-8.
Oct. 23, 1984	Amoco/Cities Service Company	RF21-12362
Do.	Gulf/Double S. Rauch	RF40-158.
Do.	Gulf/General Battery Corporation	RF40-159.
Oct. 19, 1984	Amoco/Kansas	RQ21-126.
Do.	Belridge/Kansas	RQ8-127.
Do.	Palo Pinto/Kansas	RQ5-128.
Oct. 24, 1984	Texas Oil & Gas Corp/Hill Petroleum, Inc	RF42-2.
Oct. 25, 1984	Gulf/Alpa Tire & Service Company	RF40-160.
Do.	Gulf/Alderman's Gulf Service	RF40-161.
Oct. 26, 1984	Gulf/Kennedy Gulf Service Station	RF40-162.
Do.	Gulf/Jack Smith Gulf Service	RF40-163.
Do.	Gulf/Howell Gulf Service Station	RF40-164.
Do.	Gulf/Johnston Service, Inc	RF40-165.
Do.	Amtel/M.V. Gardenhire Oil Co	RF46-10.
Do.	Amtel/Daniel Konenek	RF46-11.
Do.	Amtel/Motor Fuels & Supply Co	RF46-12.
Do.	Amtel/William D. Dollar	RF46-13.
Do.	Amtel/Chaney Oil Co. of Vicksburg	RF46-14.
Do.	Amtel/Bill's Kwik Tips	RF46-15.
Do.	Amtel/Berg Oil Company	RF46-16.

[FR Doc. 84-30945 Filed 11-19-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed Week of October 26 Through November 2, 1984

During the Week of October 26 through November 2, 1984, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 13, 1984.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 26 through Nov. 2, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 18, 1983	M&M Minerals Corp., Jackson, MS	HRH-0031	Request for Evidentiary Hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Objections submitted by M&M Minerals Corporation in response to the Proposed Remedial Order (Case No. HRO-0018) issued to it.
Oct. 29, 1984	Dr. Milton M. Hoening, Washington, DC	HFA-0261	Appeal of an Information Request Denial. If granted: The September 27, 1984 Freedom of Information request denial issued by the Office of Nuclear Materials Production would be rescined, and Dr. Milton M. Hoening would receive access to 10 photographs of the Nuclear Materials Production facilities.
Nov. 2, 1984	CMC Oil Co., Washington, DC	HRD-0247 and HRH-0247	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in conection with the Statement of Objections submitted by CMC Oil Company in response to the Proposed Remedial Order (Case No. HRO-0135) issued to RFS Petroleum Inc.

NOTICE OF OBJECTION RECEIVED

[Week of Oct. 26 to Nov. 2, 1984]

Date	Name and location of applicant	Case No.
Oct. 30, 1984	Seneca Oil Co., Washington, DC	HEE-0075

REFUND APPLICATIONS RECEIVED

[Week of Oct. 26 to Nov. 2, 1984]

Date	Name of Refund proceeding/name of refund applicant	Case No.
Oct. 26, 1984	Willis/Huttel's Mobil Service	RF41-12
Oct. 29, 1984	Gulf/Louis J. Kennedy Trucking Company	RF40-166
Do.	Gulf/Metro-Dade County	RF40-167
Do.	Gulf/Greenleaf Service Station	RF40-168
Do.	Gulf/Karlin Gulf Service	RF40-169
Do.	Amoco/Anoka-Hennepin Independent School District	RF21-12363
Do.	Gulf/Standard Trucking Company	RF40-170
Do.	Willis/Harvey Bean	RF41-13
Oct. 30, 1984	Gulf/Poole Truck Line, Inc	RF40-171
Do.	Gulf/Pewter's Gulf Service	RF40-172
Do.	Gulf/John L. Baltz	RF40-173
Do.	Gulf/Gary Beitzel	RF40-174
Do.	Gulf/Jerry Dybul	RF40-175
Do.	Gulf/Bobby G. Dyson	RF40-176
Do.	Gulf/William C. Ebert	RF40-177
Do.	Gulf/Nancy B. Finch	RF40-178
Do.	Gulf/Patrick Gedig	RF40-179
Do.	Gulf/Michael Green	RF40-180
Do.	Gulf/David R. Hasse	RF40-181
Do.	Gulf/Darwin Huett	RF40-182
Do.	Gulf/Richard A. Klemm, Sr	RF40-183
Do.	Gulf/David D. Lawrey	RF40-184
Do.	Gulf/Franklin J. Lyse	RF40-185
Do.	Gulf/Patrick Malek	RF40-186
Do.	Gulf/Partick Malek	RF40-187
Do.	Gulf/Byron McCrary	RF40-188
Do.	Gulf/James Sabel	RF40-189
Do.	Gulf/Jerome A. Schmechel	RF40-190
Do.	Gulf/Dwight W. Shafer	RF40-191
Do.	Gulf/John R. Sternemann	RF40-192
Do.	Gulf/Ralph C. Uzzle	RF40-193
Do.	Gulf/Richard P. Ward	RF40-194
Do.	Gulf/Richard F. Wilcoxon	RF40-195
Do.	Gulf/David A. Williams	RF40-196
Do.	Gulf/Robert Witthuhn	RF40-197
Do.	Gulf/James Zorn	RF40-198
Do.	Gulf/Dees Automotive Service	RF40-199
Do.	Gary Energy Corp/Butane Power & Equipment Co	RF47-1
Oct. 31, 1984	Gulf/Pat's Gulf Service Station	RF40-200
Do.	Gulf/Coy W. Nutt's Southside Gulf	RF40-201
Do.	Gulf/Younce Gulf Service, Inc	RF40-202
Do.	Gulf/Keith's Gulf Service	RF40-203

REFUND APPLICATIONS RECEIVED—Continued.

[Week of Oct. 28 to Nov. 2, 1984]

Date	Name of Refund proceeding/name of refund applicant	Case No.
Do.	Gulf/Huffhines' Gulf Service	RF40-204
Do.	Gulf/Lee Aderholt's Gulf	RF40-205
Oct. 29, 1984	Widener Oil Co/Wade's Oil Service	RF46-1
Nov. 1, 1984	Gulf/Associated Auto & Truck Rents, Inc	RF40-206
Do.	Amtel/John T. Harpster	RF46-17
Do.	Amtel/Mobley Oil Company	RF47-18
Nov. 2, 1984	Gulf/Jim Edwards Gulf	RF40-207
Do.	Gulf/Theatres Service Company	RF40-208
Do.	Gulf/Clinton Gulf Service	RF40-209
Do.	Amoco/Spillane's Servicecenters	RF21-12365
Do.	Gulf/Martin's Gulf Service	RF40-210
Do.	Amoco/Idaho	RQ21-129

[FR Doc. 84-30246 Filed 11-19-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Warren Oil Co.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Warren Oil Company in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by February 19, 1985, should conspicuously display a reference to case number HEF-0193, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between Warren Oil Company and DOE. The consent order settled all disputes between DOE and Warren concerning possible violations of DOE price regulations with respect to the firm's sales of No. 2 heating oil, kerosene, No. 4 fuel oil, and No. 6 fuel oil during the period November 1, 1973 through April 30, 1974.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by February 19, 1985, and should be sent to the address set forth at the beginning of this notice.

Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: November 13, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 13, 1984.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Warren Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0193.

This decision involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations of the Department of Energy (DOE), ERA may request that the OHA formulate and implement special procedures to make refunds in order to remedy the effects of violations of DOE regulations. As we have stated in previous decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 (1981). The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. In this case ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it entered into with Warren Oil Company (Warren), a firm located in Providence, Rhode Island.

Warren, a reseller of No. 2 heating oil, kerosene, No. 4 fuel oil, and No. 6 fuel oil, sold petroleum products to resellers and end-users during the period of federal price controls, and was therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. A DOE audit of Warren's records revealed possible regulatory violations with respect to the firm's pricing of refined petroleum products during the period November 1, 1973 through April 30, 1974 (hereinafter referred to as the audit period). In order to settle all claims and disputes between Warren and DOE regarding the firm's sales of kersoene, heating oil and fuel oils during the audit period, Warren and DOE entered into a consent order on August 31, 1979. Under the terms of the consent order Warren agreed to remit $68,681.82 to the DOE. The funds were deposited into an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of October 31, 1984, the Warren escrow account had earned $24,385.47 in interest. This Decision concerns the distribution of the $68,681.82 that was deposited into the escrow account, plus the accrued interest.

On July 31, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Warren's alleged violations. 49 FR 31487 (August 7, 1984). In the proposed decision we described a two-stage process for the distribution of the funds made available by the Warren consent order. In the first stage, we will refund money to identifiable purchasers of No. 2 heating oil, kerosene, No. 4 fuel oil, and No. 6 fuel oil who may have been injured by Warren's pricing practices during the period November 1, 1973 through April 30, 1974. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

This decision establishes procedures for filing claims in the first stage of the Warren refund proceeding. We will describe the information that a purchaser of Warren petroleum products should submit in order to demonstrate eligibility to receive a portion of the consent order funds. We will not, however, determine procedures for a second stage of the refund process in this decision. Our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund. It is therefore premature for us to address issues regarding the disposition of any remaining funds after all the first stage claims have been paid. In response to our July 31, 1984 proposed decision, several States filed comments involving the disposition of possible funds remaining at the conclusion of the first stage proceedings. Therefore, those comments will not be discussed here.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Warren consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.,* 9 DOE ¶ 82,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Warren consent order funds.

II. Refunds to Identifiable Purchasers

The Warren consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by Warren's alleged pricing violations. The information available to us at this time regarding Warren's operations during the consent order period provides the names and addresses of a few of the firm's customers. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Warren No. 2 heating oil, kerosene, No. 4 fuel oil, and No. 6 fuel oil for the period November 1, 1973 through April 30, 1974. If the products were not purchased directly from Warren the claimant must include a statement setting forth its reasons for maintaining the product originated with Warren. In addition, a reseller or retailer of Warren petroleum products that files a claim generally will be required to establish that it was unable to pass the alleged overcharges on to its customers. To make this showing, a reseller or retailer claimant will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased the product from Warren, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Warren during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.,* 12 DOE ¶ 85,064 (1984) and cases cited therein at 88,164.

The presumption that claiments seeking smaller refunds were injured by the pricing practices settled in the Warren consent order is based on a number of considerations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Warren and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claiment will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold

level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are expecially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is faily low, and the time period of the consent order was quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,609 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Warren petroleum products need only document their purchase volumes from Warren to make a sufficient showing that they were injured by the alleged overcharges. If a reseller or retailer made only spot purchases from Warren, however, it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for Warren petroleum products. *See Amoco* at 88,200.

As discussed above, we have made a finding that end-users (i.e. consumers) of Warren petroleum products were injured by the firm's pricing practices, and they will not be required to submit any other evidence of injury in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). Therefore, in this proceeding a consumer need only document the specific quantities of Warren petroleum products it purchased during the audit period.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. In the present case, based on information available at this time, the volumetric refund amount is $.0082563 per gallon.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

III. Application for Refund

After having considered all the comments received concerning the first stage proceedings tentatively adopted in our July 31, 1984 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased Warren petroleum products. An application must be in writing, signed by the applicant, and specify that it pertains to the Warren Oil Company Consent Order Fund, Case Number HEF–0193.

An applicant should indicate from whom the No. 2 heating oil, kerosene, No. 4 fuel oil or No. 6 fuel oil was purchased and, if the applicant is not a direct purchaser from Warren, it should also indicate the basis for its belief that the petroleum product purchased originated from Warren. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Warren petroleum product, such as whether it was a reseller or ultimate consumer. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973 through January 27, 1981. The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is being considered. *See* 10 CFR 205.9(d).

Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Warren Oil Company Consent Order Refund Proceedings, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the Warren consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

IV. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It is therefore ordered that:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF–0193 is hereby granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by Warren Oil Company, pursuant to the consent order executed on August 31, 1979, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: November 13, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Notes

Resellers whose monthly purchases during the period for which a refund is claimed exceed $5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the $5,000 threshold amount without being required to submit evidence of injury. *See Vickers* at 85,396; *see also Ada* at 85,122.

[FR Doc. 84-30347 Filed 11-19-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP84–748–000]

ANR Pipeline Co.; Application

November 9, 1984.

Take notice that on September 27, 1984, as supplemented October 4, and October 27, 1984, ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48423, filed in Docket No. CP84–748–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a limited term, best-efforts transportation service on behalf of Shepherd Oil, Inc. (Shepherd), and the operation of facilities necessary to effectuate delivery of the gas to Shepherd, all as more fully set forth in the application, as supplemented, which is on file with the Commission and open to public inspection.

ANR explains that within a few weeks after implementation of the end-user transportation blanket activities as provided by Commission Order No. 319, issued August 5, 1983, Shepherd commenced negotiations with ANR, requesting ANR to transport volumes of gas Shepherd was negotiating to acquire. ANR further explains that based on its interpretation of the scope of its authority to construct delivery facilities to accomplish the proposed transportation service for Shepherd, ANR built a tap on its 26-inch mainline for delivery to the Shepherd facilities in Jefferson Davis Parish, Louisiana. Coincidentally with the completion of the facilities, the Commission issued Order No. 319A effective November 3, 1983, which prohibited the type of construction undertaken by ANR, it is stated. However, the Commission did provide in the order that ". . . any certificate holder that has constructed a tap to deliver transportation gas pursuant to § 157.209 should seek prospective case-by-case certificate authority for operation of the tap . . ." it is further stated. ANR herein requests specific authorization to utilize the facilities to accomplish the direct delivery of gas to Shepherd. ANR avers that upon installation of the facilities the same remained unused pending a determination of the most appropriate format for authorization to operate. Further, it is averred that on February 9, 1984, the determination was made to utilize the facilities consisting of one 4-inch connection on ANR's 26-inch mainline plus associated high pressure piping, valves, fittings, and appurtenances, which collectively had a construction cost of $34,000, solely as "Section 311" facilities and transportation commenced for Shepherd as part of an integrated transportation service utilizing Louisiana Instrastate Gas Company (LIG) as the instrastate pipeline accomplishing delivery to Shepherd. ANR's transportation on behalf of LIG has been provided pursuant to Part 284 of the Commission's Regulations, it is asserted.

ANR states that it has been advised that Shepherd requires economical source of supply and the most cost-efficient transportation service to serve Shepherd's chemical production plant in Jennings, Louisiana; accordingly, Shepherd has requested that ANR obtain authorization to operate the delivery facilities and that the direct transportation of end-user gas be undertaken without reliance on the intermediate service of the intrastate pipeline. ANR indicates that it has been advised that LIG concurs with the changes in service proposed herein. ANR further indicates that in the event the facilities are utilized for the end-user service proposed herein, Shepherd would reimburse ANR for the construction costs.

ANR indicates that it has entered into a transportation agreement dated March 23, 1984, which provides that ANR would transport on a best-efforts basis up to 5,040 dt equivalent of gas per day through June 30, 1985, which gas Shepherd would cause its seller, ANR Production Company (ProdCo), to tender to ANR at various points of interconnection between the pipeline facilities of ANR and ProdCo. ANR states that it would tranpsort such volumes to Shepherd at a point of interconnection of the facilities of ANR and Shepherd in Jefferson Davis Parish. ANR would receive 45.1 cents per dt equivalent for each dt of gas transported to Shepherd, it is stated. In addition to the tap facilities constructed by ANR, 4,000 feet of pipeline connecting Shepherd's facilities to ANR's tap and meter station would be required to effectuate the end-user transportation service and would be built by Shepherd, it is further stated.

Finally, ANR indicates in its October 27, 1984, supplement that with respect to ANR's request for flexible authority to provide additional transportation service on behalf of Shepherd, at Shepherd's request, where such service is within the authorized transportation volumes, where the gas would be tendered at the proposed delivery point and the gas would be consumed at

Shepherd's Jennings, Louisiana, facility, ANR modifies its request to conform to the requirements of a 7(c) application. ANR requests such authority as would permit it to undertake additional transportation service for Shepherd, as Shepherd would require. It is stated that additional service would be limited to the addition or deletion of points of receipt only as required to provide the transportation proposed herein and as consistent with changes which Shepherd and its sellers determine are necessary to satisfy the delivery and take requirements of a sales agreement(s). ANR proposes to file, by February 1, annual tariff revisions setting forth addition and deletions of any source of supply and/or receipt points made during the previous calendar year.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 29, 1984, filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30388 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-10-000]

Idaho Power Co.; Application

November 9, 1984.

Take notice that on November 1, 1984, Idaho Power Company (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to seaction 204 of the Federal Power Act seeking an Order authorizing the Applicant to (a) finance a portion of the cost of the retrofit of the Applicant's 33⅓% undivided interest in certain air and water pollution control facilities in Units 1, 2 and 3 of the Jim Bridger steam generating Plant through loan agreements with Sweetwater County, Wyoming (County), which will provide for the issuance by the County of not to exceed $18,000,000 aggregate principal amount of pollution control revenue bonds and the loan of the proceeds of the Applicant and (b) the assumption of liability as guarantor of the principal of, interest on the premium if any on the Bonds of the County. The proposed issuance date for the initial series of the Bonds is on or after December 12, 1984.

Any person desiring to be heard or to protest with reference to said application should on or before December 1, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file petition to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30394 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-60-000]

K N Energy, Inc.; Application

November 9, 1984.

Take notice that on October 25, 1984, K N Energy, Inc. (K N) (K N) P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85-60-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing revisions in its jurisdictional customers' contract demands and winter period service demands and for a one-time waiver of the requirements of its FERC Gas Tariff to permit such revisions, all as more fully described in its application which is on file with the Commission and open to public inspection.

K N proposes to increase the contract demand service of Greeley Gas Company (Greeley) and Midwest Energy, Inc. (Midwest), by 50 Mcf of gas per day and 500 Mcf of gas per day, respectively. K N states that these contract demand increases are necessary to accommodate growth in the market areas of Greeley and Midwest.

K N also proposes to decrease its contract demand service to the City of Central City and Producers Gas Equities (Producers) by a net total of 221 Mcf of gas per day and to decrease its winter period service by a net total of 329 Mcf of gas per day to Northwestern Public Service Co. and Producers. K N states that these proposed service decreases are attributable to the three customer's projected lower requirements and decreasing sales due to conservation and other economic factors.

In addition, K N requests a waiver of the requirements of its FERC Gas Tariff to permit, on a one-time basis, a net decrease in winter period service demand without a corresponding increases of such demand.

K N also filed revised Exhibits A to its service agreements with the five jurisdictional wholesale customers who have requested the above revisions in the demand volumes under Rate Schedules CD and WPS. K N requests that the proposed Exhibits A be made effective on November 1, 1984, or upon the issuance of an order granting authorization for the revised demand volumes as described above.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceding or to participates as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rule.

Take further notice that, pursuant to the authority contained in and subject to jurisdication conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procdure herein provided for, unless otherwise advised, it will be unnecessary for K N to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30395 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-7-000]

Louisville Gas and Electric Co.; Application

November 9, 1984.

Take notice that on October 21, 1984, Louisville Gas and Electric Company filed an application pursuant to Section 204 of the Federal Power Act seeking an order authorizing the issuance of short-term debt securities of not more than $130,000,000.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 1, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30396 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-75-000]

New England Power Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, New England Power Company (NEP) tendered for filing as an initial rate schedule a Power Contract between NEP and Bangor Hydro-Electric Company (Bangor) that provides for the sale of capacity and related energy from NEP's Brayton Point Unit No. 4 for the period November 1, 1984 to October 31, 1986. Also filed was a Service Agreement between the parties to provide transmission service of Bangor's entitlement under NEP's FERC Electric Tariff, Original Volume Number 3, as on file with this Commission.

NEP states that the sale will be at the full cost of service rate related to Brayton Point Unit No. 4, as determined under the Power Contract.

NEP requests an effective date of November 1, 1984, pursuant to the parties' agreements, and in connection therewith requests waiver of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30352 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-99-000]

Niagara Mohawk Power Corp.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that Niagara Mohawk Power Corporation (Niagara), on November 5, 1984, tendered for filing as a rate schedule, an agreement between Niagara and Rochester Gas and Electric Corporation (RG&E) dated October 1, 1984.

Niagara presently has on file an agreement with RG&E dated April 1, 1979. The Original Agreement is to provide transmission service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY) and RG&E. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. 114. This agreement is being transmitted as a supplement to the existing agreement and supersedes Supplement No. 4.

The October 1, 1984 agreement, which is a supplement to the original agreement, revises the transmission rates. Niagara requests a waiver of the Commission's prior notice requirements in order to allow said agreement to become effective April 1, 1984.

Copies of the filing were served upon the following:

Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30883 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-100-000]

Niagara Mohawk Power Corp.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that Niagara Mohawk Power Corporation (Niagara), on November 5, 1984, tendered for filing as a rate schedule, an agreement between Niagara and the Rochester Gas and Electric Corporation (Rochester) dated October 1, 1984.

Niagara presently has on file an agreement with Rochester dated July 3, 1980 and last amended May 12, 1983. This agreement is for the transmission of Rochester's share of the Oswego #6 generation unit over Niagara's transmission system to Rochester.

The October 1, 1984 agreement contained in this filing revises the transmission rate for transmitting Oswego Unit #6 power and energy from the Oswego Unit #6 generating station to Rochester as provided for in the terms of the original agreement. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of July 1, 1984.

Copies of the filing were served upon the Rochester Gas and Electric Corporation and the State of New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30884 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-102-000]

Niagara Mohawk Power Corp., Filing

November 14, 1984

The filing Company submits the following:

Take notice that Niagara Mohawk Power Corporation (Niagara), an November 5, 1984, tendered for filing as a rate schedule, an agreement between Niagara and Rochester Gas and Electric Corporation (Rochester) dated October 1, 1984.

Niagara presently has on file an agreement with Rochester dated February 14, 1975. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 92. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting FitzPatrick power and energy from the Power Authority of the State of New york to Rochester as provided for in terms of the original agreement. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of September 1, 1984.

Copies of the filing were served upon the following:

Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30885 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-72-000]

Northern Indiana Public Service Co.; Filing

November 14, 1984

The filing Company submits the following:

Take notice that on October 29, 1984, Northern Indiana Public Service Company (NIPSCO) tendered for filing as initial rate schedules, service schedules to an interconnection agreement with the Wabash Valley Power Association, Inc. (Wabash Valley) providing for:

Service Schedule D-1—Firm Wheeling Service NIPSCO to Wabash Valley
Service Schedule E-1—Short Term Capacity NIPSCO to Wabash Valley
Service Schedule F-1—Emergency Energy NIPSCO to Wabash Valley
Service Schedule G-1—Interchange Energy NIPSCO to Wabash Valley
Service Schedule H-1—Seasonal Capacity NIPSCO to Wabash Valley
Service Schedule J—Operating Reserves
Service Schedule J-1—Non-Firm Wheeling Service NIPSCO to Wabash Valley

The effective date of service schedules shall be the date when the interconnection agreement has been approved by all applicable regulatory authorities, including the Rural Electrification Administration.

NIPSCO respectfully requests waiver of any Commission requirements not addressed by the filing as it is being made pursuant to a Settlement Agreement and the Commission's July 3, 1984 Order in Docket EL83-4-000.

Copies of this filing have been served upon Wabash Valley and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30886 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-40-000]

Northern Natural Gas Co.; Application

November 9, 1984

Take notice that on October 19, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-40-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities in the Matagorda Island area (MAT), offshore Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate 8.0 miles of 12-inch pipeline with associated metering and appurtenant facilities extending from the production platform located in MAT block 555-L to a subsea interconnection with the existing 12-inch pipeline facilities owned by Valero Transmission Company in MAT block 485, all in offshore Texas. It is explained that the proposed facilities would be utilized to transport Exploration and Production, Division of InterNorth, Inc.'s 20.71 percent ownership interest in reserves underlying MAT block 555-L back to Northern's system. It is explained that the facilities would have a daily design capacity of 18,600 Mcf. The estimated cost of facilities is $4,300,000, which would be financed out of cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30887 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST84-1221, et al.]

Northwest Pipeline Corp., et al.; Self-Implementing

November 9, 1984.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 or Part 157 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before December 21, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and transporter/seller [1]	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST84-1221 Northwest Pipeline Corp	MGL Production Co	9/04/84	F(157)		
ST84-1222 Northwest Pipeline Corp	Colorado Interstate Gas Co	9/04/84	G		
ST84-1223 Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	9/05/84	B		
ST84-1224 Tennessee Gas Pipeline Co	Baltimore Gas and Electric Co	9/05/84	B		
ST84-1225 Tennessee Gas Pipeline Co	Esperanza Gas Co	9/05/84	B		
ST84-1226 Tennessee Gas Pipeline Co	Channel Industries Gas Co	9/05/84	B		
ST84-1227 Tennessee Gas Pipeline Co	Baltimore Gas and Electric Co	9/05/84	B		
ST84-1228 Colorado Interstate Gas Co	Colorado State University	9/04/84	F(157)		
ST84-1229 Colorado Interstate Gas Co	Northwest Pipeline Corp	9/04/84	G		
ST84-1230 Consolidated Gas Transmission Corp	Dayton Power and Light Co	9/04/84	B		
ST84-1231 Consumers Power Co	Michigan Gas Storage Co	9/04/84	G(HT)		
ST84-1232 Michigan Gas Storage Co	Battle Creek Gas Co	9/04/84	B		
ST84-1233 ANR Pipeline Co	Phillips Petroleum Co	9/06/84	F(157)		
ST84-1234 Louisiana Intrastate Gas Corp	Gulf South Pipeline Co	9/06/84	C	02-03-85	39.90
ST84-1235 Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	9/06/84	G		
ST84-1236 Oklahoma Natural Gas Co	Bridgeline Gas Distribution Co	9/07/84	C	02-04-85	35.00
ST84-1237 Transcontinental Gas Pipe Line Corp	Panhandle Eastern Pipe Line Co	9/07/84	G		
ST84-1238 Valero Transmission Co	Transcontinental Gas Pipe Line Corp	9/07/84	C		
ST84-1239 Natural Gas Pipeline Co. of America	Texas Eastern Transmission Corp	9/10/84	G		
ST84-1240 Natural Gas Pipeline Co. of America	Texas Eastern Transmission Corp	9/10/84	G		
ST84-1241 Columbia Gulf Transmission Co	Natural Gas Pipeline Co. of America	9/10/84	G		
ST84-1242 Equitable Gas Co	Columbia Gas Transmission Corp	9/10/84	G		
ST84-1243 Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	9/14/84	B		
ST84-1244 ANR Pipeline Co	Northern Illinois Gas Co	9/10/84	B		
ST84-1245 Northern Natural Gas Co	Transcontinental Gas Pipe Line Corp	9/10/84	G		
ST84-1246 Northern Natural Gas Co	ANR Pipeline Co	9/10/84	G		
ST84-1247 Northern Natural Gas Co	Natural Gas Pipeline Co. of America	9/10/84	G		
ST84-1248 Tennessee Gas Pipeline Co	Consolidated Edison of New York	9/11/84	B		
ST84-1249 Natural Gas Pipeline Co. of America	Columbia Gas Transmission Corp	9/11/84	G		
ST84-1250 Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	9/14/84	B		
ST84-1251 The Rive Gas Co	Gas Transport, Inc	9/12/84	G(HT)		
ST84-1252 Gasdel Pipeline System Inc	Public Service Electric and Gas Co	9/12/84	B		
ST84-1253 Northwest Pipeline Corp	Tennessee Gas Pipeline Co	9/12/84	G		
ST84-1254 Transcontinental Gas Pipe Line Corp	Federal Paper Board Co., Inc	9/14/84	F(157)		
ST84-1255 ANR Pipeline Co	Delhi Gas Pipeline Corp	9/12/84	B		
ST84-1256 ANR Pipeline Co	North Central Public Service Co	9/12/84	B		
ST84-1257 ANR Pipeline Co	Sohio Oil Co	9/12/84	F(157)		
ST84-1258 Tennessee Gas Pipeline Co	USS Chemicals (U.S. Steel Corp.)	9/17/84	F(157)		
ST84-1259 Tennessee Gas Pipeline Co	The Celotex Corp. (Jim Walter Corp.)	9/17/84	F(157)		
ST84-1260 Texas Eastern Transmission Corp	Delhi Gas Pipeline Corp	9/17/84	B		
ST84-1261 Florida Gas Transmission Co	Public Service Electric and Gas Co	9/13/84	B		
ST84-1262 Panhandle Eastern Pipe Line Co	Archer-Daniels-Midland Co	9/17/84	F(157)		
ST84-1263 Colorado Interstate Gas Co	Cosden Oil and Chemical Co	9/17/84	F(157)		
ST84-1264 Northern Natural Gas Co	Cosden Oil and Chemical Co	9/17/84	F(157)		
ST84-1265 Northern Natural Gas Co	Celanese Fibers Operations, et al	9/17/84	F(157)		
ST84-1266 Transcontinental Gas Pipe Line Corp	Corpus Christi Gas Gathering, Inc	9/17/84	B		
ST84-1267 Columbia Gas Transmission Corp	The Celotex Corp	9/18/84	F(157)		
ST84-1268 Columbia Gas Transmission Corp	W. R. Grace and Co	9/18/84	F(157)		
ST84-1269 Columbia Gas Transmission Corp	W. R. Grace and Co	9/18/84	F(157)		
ST84-1270 Columbia Gas Transmission Corp	Richards and Sons, Inc	9/18/84	F(157)		
ST84-1271 Columbia Gas Transmission Corp	Tru-Fit Products Corp	9/18/84	F(157)		
ST84-1272 Columbia Gas Transmission Corp	Tru-Fit Products Corp	9/18/84	F(157)		
ST84-1273 Columbia Gas Transmission Corp	UBS Chemicals, Acrylic Sheet Unit	9/18/84	F(157)		
ST84-1274 Columbia Gas Transmission Corp	SOHIO Oil Co	9/18/84	F(157)		
ST84-1275 Northern Natural Gas Co	Peoples Natural Gas Co	9/20/84	B		
ST84-1276 Northern Natural Gas Co	Northern Illinois Gas Co	9/20/84	B		
ST84-1277 Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	9/20/84	B		
ST84-1278 Trunkline Gas Co	Louisiana Intrastate Gas Corp	9/21/84	B		
ST84-1279 Panhandle Eastern Pipe Line Co	Manville Building Materials Corp	9/21/84	F(157)		
ST84-1280 Valley Gas Transmission, Inc	Esperanza Transmission Co	9/21/84	B		
ST84-1281 ANR Pipeline Co	Producer's Gas Co	9/20/84	B		
ST84-1282 Natural Gas Pipeline Co. of America	Gulf South Pipeline Co	9/24/84	B		
ST84-1283 Lone Star Gas Co	Campeon Pipeline Corp	9/24/84	B		
ST84-1284 Intrastate Gathering Corp	Tennessee Gas Pipeline Co	9/25/84	C		
ST84-1285 Columbia Gulf Transmission Co	Transcontinental Gas Pipe Line Corp	9/24/84	G		
ST84-1286 Columbia Gulf Transmission Co	Ponchartrain Natural Gas System	9/24/84	B		
ST84-1287 Panhandle Eastern Pipe Line Co	Kaiser Aluminum and Chemical Corp	9/25/84	F(157)		
ST84-1288 Panhandle Eastern Pipe Line Co	Archer-Daniels-Midland Co	9/25/84	F(157)		
ST84-1289 Tennessee Gas Pipeline Co	Louisiana Indust. Gas Supply System	9/26/84	B		
ST84-1291 Columbia Gas Transmission Corp	Columbia Gas of Ohio, Inc	9/25/84	B		
ST84-1292 Columbia Gas Transmission Corp	Columbia Gas of Ohio, Inc	9/25/84	B		
ST84-1293 Tennessee Gas Pipeline Co	Ouvira Gas Co	9/28/84	B		
ST84-1294 Arkansas-Louisiana Gas Co	International Paper Co	9/27/84	F(157)		
ST84-1295 Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	9/26/84	B		
ST84-1296 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	9/27/84	B		
ST84-1297 Transcontinental Gas Pipe Line Corp	Esperanza Transmission Co	9/27/84	B		
ST84-1298 Ozark Gas Transmission System	Delhi Gas Pipeline Corp	9/26/84	B		
ST84-1299 National Fuel Gas Supply Corp	Tennessee Gas Pipeline Co	9/28/84	G		
ST84-1300 Northern Natural Gas Co	Tennessee Gas Pipeline Co	9/28/84	G		
ST84-1301 Northern Natural Gas Co	THC Pipeline Co	9/28/84	B		
ST84-1302 Northern Natural Gas Co	Farmland Industries, Inc	9/28/84	F(157)		
ST84-1303 United Gas Pipe Line Co	Texas Industrial Energy	9/27/84	B		
ST84-1304 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	9/28/84	C		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 84-30398 Filed 11-19-84; 8:45 am]
BILLING CODE 6717-01

[Docket No. ES85-9-000]

Oklahoma Gas and Electric Co.; Application

November 9, 1984

Take notice that on October 3, 1984, Oklahoma Gas and Electric Company filed an application pursuant to Section 204 of the Federal Power Act seeking an order to issue not more than $200,000,000 of short term debt securities from time to time during the period ending December 31, 1987.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing must file motions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-30399 Filed 11-19-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-613-000]

Pacific Power & Light Co.; Order Accepting Rates for Filing, Granting Intervention, Denying Request for Contract Interpretation, and Terminating Docket

Issued November 14, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On August 23, 1984, PacificCorp, doing business as Pacific Power & Light Company (PP&L), tendered for filing an interconnection and sales agreement, dated July 31, 1984, between PP&L and Pacific Gas and Electric Company (PG&E).[1] The agreement provides for the joint ownership of 115 kV interconnection facilities located in Shasta County, California, and for the sale by PP&L to PG&E of: (1) A minimum of 250,000 MWh of firm energy per year; and (2) at PG&E's option, up to 50,000 MWh of optional energy per year. The maximum delivery of both firm and optional energy may not exceed 11,000 MWh per week. Rates for both firm and optional energy are to be 21 mills/kWh off peak and 28.5 mills/kWh on peak through December 31, 1987. Rates are to be adjusted annually thereafter pursuant to a formulary rate. The agreement has a term through December 31, 1992, with option for renewal. In addition to the scheduled energy, the agreement provides for the exchange of spot purchases of energy or energy and capacity at prices, times, and rates of delivery to be agreed upon by the parties. On September 12, 1984, PG&E filed a certificate of concurrence.

Notice of the filing was published in the **Federal Register**,[2] with comments due on or before September 21, 1984. Northern California Power Agency (NCPA), on behalf of itself and its members,[3] filed a timely motion to intervene, claiming that its interests as a customer and competitor of PG&E may be directly affected by the outcome of this proceeding. Specifically, NCPA expresses concern that transactions under the filed agreement may limit the availability of transmission by PG&E to NCPA under existing interconnection agreements to prevent PG&E from fulfilling its transmission and support services obligations under its Diablo Canyon nuclear project license conditions. NCPA does not oppose the filing, but requests that PG&E be required to concur in NCPA's interpretation of the filed agreement in a manner consistent with PG&E's existing obligations to NCPA.[4] Alternatively, NCPA requests that the Commission endorse such interpretation in its order accepting the agreement for filing.

On October 4, 1984, PP&L filed an answer to NCPA's motion, requesting that intervention be denied, because NCPA has no direct interest in the agreement and its alleged concerns are premature and speculative. Alternatively, PP&L requests that NCPA's request regarding interpretation of the agreement be denied. On October 9, 1984, PG&E filed an answer to NCPA's motion to intervene, opposing intervention on grounds that NCPA's claimed interest is speculative, irrelevant, and not directly affected by the outcome of this proceeding.

Discussion

Notwithstanding the opposition of PP&L and PG&E to NCPA's intervention, we find that good cause exists to grant NCPA's motion. We are satisfied that NCPA has expressed an interest in the outcome of this proceeding, as a customer and competitor of PG&E, and that its participation may be in the public interest. Accordingly, we shall grant the motion to intervene.

NCPA's request that PG&E be required to adopt its interpretation of the proposed agreement will be denied. We note that NCPA does not allege, nor has our review indicated, that any terms or conditions in the filed agreement directly contravene PG&E's interconnection agreements with NCPA or the Diablo Canyon license conditions. Thus, while implementation of the interconnection and sales agreement with PP&L may impinge upon PG&E's existing transmission commitments to NCPA under some future hypothetical circumstances, we cannot now conclude that any provisions of the proposed agreement dictate such a result. Therefore, we need not interpret the proposed agreement so as to perchase conflicts with PG&E's existing transmission obligations. In this regard, we will assume that PG&E will conform to the requirements of the Federal Power Act and the Commission's regulations, will honor the terms of its Nuclear Regulatory Commission license, and will implement its filed rate schedules consistently with its existing contractual obligations. To the extent that NCPA believes, at some future time, that PG&E has violated its existing obligations in actual practice, NCPA would be free to file a complaint with this Commission or seek any other relief deemed appropriate.

Upon review of the filing, we find that the proposed rates will not produce excessive revenues. Futhermore, NCPA

[1] *See* Attachment for rate schedule designations.

[2] 49 FR 35981 (Sept. 13, 1984).

[3] NCPA's members are the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, California, and the Plumas-Sierra Rural Electric Cooperative.

[4] NCPA requests that PG&E agree to NCPA's interpretation of the proposed agreement in four respects: (1) That the 115 kV facilities not be considered as part of PG&E's Intertie facilities in applying paragraph F.7(a) of its Diablo Canyon Nuclear Regulatory Commission licenses; (2) that advance notice required by paragraph 5.1.4. for use of the 115 kV facilities, for transactions other than those under the proposed agreement, not be withheld to preclude transmission for NCPA; (3) that the preclusion in paragraph 6.1.3 of the use of the 115 kV facilities if such use would impair the other party's full use and enjoyment not apply to NCPA loads if such loads could have been transmitted to NCPA prior to the newly-constructed 115 kV facilities; and (4) that ordered use of the 115 kV facilities to fulfill transmission obligations to NCPA under the license or its agreements with PG&E not be considered grounds for termination pursuant to paragraph 6.3.2.

has identified no substantive concerns which might lead us to conclude otherwise. Accordingly, we shall accept PP&L's submittal for filing, without suspension or a hearing, to become effective upon commencement of service.[5]

The Commission orders

(A) NCPA's motion to intervene is hereby granted.

(B) NCPA's request that PG&E be required to adopt its interpretation of the agreement is hereby denied.

(C) PP&L's interconnection and sales agreement with PG&E is hereby accepted for filing to become effective upon commencement of service, without suspension or a hearing. PP&L and PG&E are directed to notify the Commission of the date of commencement of service under the agreement.

(D) Docket No. ER84–613–000 is hereby terminated.

(E) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment—Rate Schedule Designations

Docket No. ER84–613–000

Pacific Power & Light Company

(1) Supplement No. 1 to Rate Schedule FPC No. 83

Pacific Gas and Electric Company

(2) Supplement No. 1 to Rate Schedule FPC No. 29 (Concurs in (1) above)

[FR Doc. 84–30357 Filed 11–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–21–000]

Panhandle Eastern Pipe Line Co.; Change in FERC Gas Tariff

November 14, 1984.

Take notice that on November 7, 1984 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

Eleventh Revised Sheet No. 1
Original Sheet Nos. 3–F, 32–Y and 32–Z

Panhandle states that these sheets are submitted to provide Rate Schedule RG which provides for the gathering of natural gas released by Panhandle for sale to others. For gathering services pursuant to Rate Schedule RG Panhandle proposes to utilize rates which were deemed appropriate for gathering by producers on behalf of pipelines in Docket No. RM80–47–002.

Panhandle requests an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 30358 Filed 11–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–51–000]

Panhandle Eastern Pipe Line Co.; Application

November 9, 1984

Take notice that on October 23, 1984, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84–51–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of the K N Energy, Inc. (K N) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to implement a transportation agreement between Applicant and K N dated August 12, 1983, as amended July 23, 1984 (Agreement). Pursuant to the Agreement, Applicant proposes to transport on behalf of K N, on an interruptible basis, a daily volume of natural gas not to exceed 2,000 Mcf from an existing point of receipt in Kiowa County, Kansas, to existing points of interconnection of the facilities of K N and Applicant in Reno County, Kansas, and Converse County, Wyoming. Applicant states that it would charge K N 3.90 cents per Mcf of gas for this service and that such charge is pursuant to a Commission-approved stipulation and agreement on Applicant's general rate filing in Docket No. RP82–56

Any person desiring to be heard or to make any protest with reference to said application should on or before November 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided, for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30400 Filed 11–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–78–000]

Philadelphia Electric Co.; Filing

November 14, 1984.

Take notice that on November 5, 1984, Philadelphia Electric Company submitted for filing its certificate of concurrence to the October 30, 1984 filing by Allegheny Power Service Corporation of an agreement dated as of January 1, 1985. This agreement addresses limited term and

[5] We note, however, that any changes in the rates resulting from formulary adjustments or additional transactions pursuant to section 3.6 of the agreement will constitute changes in the rate schedules and require timely filings pursuant to part 35 of our regulations.

supplemental power and energy among Monogehela Power Company, The Potomac Edison Company, West Penn Power Company and Philadelphia Electric Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30399 Filed 11–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–93–000]

Potomac Electric Power Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on November 2, 1984 Potomac Electric Power Company (Pepco) tendered for filing under Part 35.12 of the Commission's Regulations an Agreement dated November 2, 1984 between Pepco and Public Service Electric & Gas Company (PSE&G) providing the general terms and conditions and establishing rates for the sale by Pepco to PSE&G of certain specified transmission capability.

The parties have requested a waiver of the Commission's Rules and Regulations to permit the proposed rates to become effective on less than 60 day's notice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30360 Filed 11–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL85–6–000]

Public Utilities Commission of the State of California, et al.; Petition for Declaratory Order

November 9, 1984.

Take notice that on November 1, 1984, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company ("California Parties") submitted for filing a petition for a declaratory order and any other relief the Commission may be empowered to grant.

The California Parties request that the Commission expeditiously issue an order declaring the following:

(a) The Bonneville Power Administration (BPA) Near Term Intertie Access Policy and the August 20, 1984 BPA decision to charge the highest nonfirm rate for Exportable Agreement sales are BPA rate and rate schedule changes;

(b) The Access Policy and August 20 action must be established by BPA through the ratemaking procedures in the Northwest Power Act, particularly section 7(a)(2) and (k) before becoming effective; and

(c) BPA's use of the Access Policy and August 20 action before receiving Commission confirmation and approval is in violation of law and Commission regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30402 Filed 11–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–76–000]

Public Service Co. of Indiana, Inc.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, Public Service Company of Indiana, Inc. (PSI) tendered for filing pursuant to the Interconnection Agreement for Interim Power between PSI and American Municipal Power-Ohio, Inc. (AMPO) a First Supplemental Agreement to become effective December 25, 1984, pursuant to § 35.2 of the Commission's Regulations.

This First Supplemental Agreement modifies the Agreement as follows:

1. Deletes Section 1—Duration and inserts a new Section 1—Duration which excludes the restrictive language applicable to AMPO.
2. Deletes Paragraph 1.01 of Exhibit "A" Interim Power Rate Schedule and inserts a new Paragraph 1.01 which provides for an increase in PSI's charge for such service.

Copies of the filing were served upon AMPO, the Public Utility Commission of Ohio and Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30361 Filed 11–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC85-2-000]

Public Service Co. of New Mexico; Application

November 9, 1984.

The filing Company submits the following:

Take notice that, pursuant to section 203 of the Federal Power Act, on November 1, 1984, Public Service Company of New Mexico (PNM) filed an application seeking an Order or other appropriate determination for approval of the following transactions:

1. The sale by PNM to the Incorporated County of Los Alamos, New Mexico (County) of a 7.20% undivided ownership interest in the San Juan Unit 4 Main Power Transformer of the San Juan Generating Station located in San Juan County, New Mexico. The purchase price to be paid to PNM for the 7.20% interest in the Main Power Transformer as of December 31, 1984 is $148,787.41.

2. The sale by PNM to the County of two 115 kV–12,470/7,200 volt step-down transformers located in the Community of White Rock in the County. The value of the two transformers as of December 31, 1984, is $281,630.76.

3. The sale by PNM to the United States of America (Government), represented by the United States Department of Energy (DOE), of a PNM owned transmission line and associated equipment and facilities (TE Line) located in the County in exchange for a Government owned transmission line and associated equipment and facilities located in Santa Fe County, New Mexico, and other consideration. The negotiated value of the TE Line is $480,000.

PNM is an electrical utility incorporated in State of New Mexico, with its principal office in Albuquerque, New Mexico. The County is a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico.

After the acquisitions, the facilities will continue to be used to provide the same services now provided.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should file on or before December 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30401 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-3-001]

Southwest Gas Corp.; Tariff Sheet Filing

November 14, 1984.

Take notice that on November 2, 1984, Southwest Gas Corporation (Southwest), P.O. Box 15015, 5241 Spring Mountain Road, Las Vegas, Nevada 89114-5015, filed in Docket No. TC85-3-001 Substitute Fifth Revised Tariff Sheet No. 25C to its FERC Gas Tariff, Original Volume No. 1.

Southwest states that it is filing the instant tariff sheet to correct certain errors in the Fifth Revised Tariff Sheet that it had filed on October 9, 1984, in Docket No. TC85-3-000. The prior filing was made pursuant to § 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update annually their indices of entitlements to reflect changes in the Priority 2 entitlements of essential agricultural users on their systems.

Southwest explains that in its prior tariff sheet filing it had inadvertently omitted the peak day and annual Priority 2(a) (Essential Agricultural Use) gas entitlements of one of its customers, Sierra Pacific Power Company. Southwest submits that these requirements are in fact 642 Mcf of gas on peak days and 118,832 Mcf annually. In its instant filing, Southwest tenders a substitute tariff sheet that reflects these entitlements.

Southwest requests that its tendered Fifth Revised Tariff Sheet No. 25C, as amended, be accepted for filing effective November 1, 1984.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before November 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30383 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP63-247-001]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition to Amend

November 9, 1984.

Take notice that on October 12, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP63-247-001 a petition to amend the Commission's order issued May 16, 1963, in Docket No. CP63-247 pursuant to section 7(c) of the Natural Gas Act so as to authorize the replacement of an existing 10,500 horsepower compressor facility with two 3,450 horsepower compressors in Vernon Parish, Louisiana, all as more fully set forth in this petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that pursuant to the Commission order issued May 16, 1963, it constructed, *inter alia*, Station 504, which consists of a single 10,500 horsepower compressor. Petitioner also states that the compressor is now obsolete and vendor support is no longer available; and, in addition, the unit would need extensive repairs in order to be operable beyond 1984. Petitioner states that the cost of such repairs would be prohibitive due to the unavailability of parts. Petitioner estimates the direct cost of the new compressor to be $7,016,000.

Petitioner submits that the proposed reduction in horsepower at the described location would be adequate to handle the throughput requirements of the 20-inch Kinder-Natchitoches line. Petitoner further states that the new engines would be designed to permit gas to be compressed in either direction on the Kinder-Natchitoches line.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Nov. 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30404 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-92-000]

Texas-New Mexico Power Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on November 2, 1984, Texas-New Mexico Power Company (TNP) tendered for filing an "Agreement For Electric Service" between TNP and Southwest Texas Electric Cooperative, Inc. (SWTEC) executed July 31, 1984. This Agreement provides for electric power transportation service to be rendered by TNP to SWTEC.

TNP states that TNP does not presently render any electric power service to SWTEC and therefore that the Agreement constitutes an initial rate schedule pursuant to § 35.12 of the Commission's regulations.

TNP proposes an effective date of January 2, 1985 for its wheeling obligations under the Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30382 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-97-000]

Tucson Electric Power Co.; Filing

November 14, 1984.

The filing company submits the following:

Take notice that Tucson Electric Power Company ("Tucson") on November 5, 1984, tendered for filing Amendment No. 1 to the Interconnection Agreement between San Diego Gas & Electric Company and Tucson Electric Power Company." The primary purpose of this Amendment No. 1 is to specify the terms, conditions and rates under which Tucson has agreed to sell 150 megawatts of firm system power to San Diego commencing October 28, 1984 resulting from a temporary and unusual operating condition on San Diego's system created by virtue of certain of San Diego's electric generating plants temporarily being out of operation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30384 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-582-00]

Union Electric Co.; Compliance Report

November 14, 1984.

Take notice that August 2, 1984, Union Electric Company (the Company) submitted for filing its Transmission Service Transaction 2 of Service Schedule B.

The Company states that since the filing of transmission Transaction 1, the City of Malden (the City) has requested that the Company provide additional transmission service, in excess of that set out in that transaction. Accordingly, the Company and the City have negotiated and signed a new transaction desiganted as Transmission Service Transaction 2.

It is the intent of the parties that all transmission service provided prior to June 1, 1984 was provided under the terms of Transaction 1, and that all transmission service provided on or after June 1, 1984, up to and including May 31, 1989, has been and will be provided under the terms of Transaction 2, subject to all of the terms and conditions set out therein.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 26, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30385 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS85-2-000, et al.]

Viking Resources, Inc., et al.; Applications for "Small Producer" Certificates [1]

November 14, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before November 26, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file peitions to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be representated at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS85-2-000	10/1/84	Viking Resources, Inc., P.O. Box 2441, Monroe, LA 71207.
CS85-3-000	10/15/84	Fargo Energy Corporation, 2101 IH 35 South, Suite 302, Austin TX 78741.
CS85-4-000	10/15/84	James F. Bragg, 241 Flanders Rd., Woodbury, CT 06798.
CS85-5-000	10/15/84	Producing Energy Venture, a Texas General Partnership, 5222 FM 1960 West, Suite 250, Houston, TX 77069.
CS85-6-000	10/23/84	Marsh Engineering, Inc., P.O. Box 53614, Lafayette, LA 70505.
CS85-8-000	10/29/84	Turner Production Company, One Energy Square, #852, 4925 Greenville, Dallas, TX 75206.
CS85-10-000	11/1/84	Brewer Oil & Gas Company, Post Office Drawer 3088, Lake Charles, LA 70602.

[FR Doc. 84-30386 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-75-000]

Western Gas Interstate Co.; Application

November 9, 1984.

Take notice that on October 30, 1984, Western Gas Interstate Gas Company (Western), 900 United Bank Tower, 400 West 15th Street, Austin, Texas 78701, filed in Docket No. CP85-75-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Western states that approximately 2.5 miles of its 6-inch line in Sherman County, Texas, would have to be replaced and relocated because of the enlargement and rerouting of U.S. Highway 287 through the existing pipeline right-of-way. Western proposes to replace and relocate the 2.5 miles of 6-inch line with 8-inch line at an estimated of $198,358,000 which would be financed from internally generated funds or short-term loans. It is stated that the 2.5-miles pipeline segment must be replaced and relocated immediately since the proposed highway right-of-way is to be clear by April 1, 1985.

Western states that the difference in the costs of replacing the existing line with the proposed 8-inch pipe compared to replacing it with 6-inch pipe are *de minimis* and that the benefit to Western's customers of replacing the 6-inch pipe with 8-inch pipe is substantially due to the cost savings associated with replacing the existing line with larger line today at 1984 costs in anticipation of needed capacity increases in the future.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the National Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Western to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30349 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-71-000]

Wisconsin Public Service Corp.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 29, 1984, Wisconsin Public Service Corporation (WPS) tendered for filing a Supplement dated October 10, 1984 to the Service agreement between WPS and Wisconsin Public Power Incorporated System, Sun Prairie, Wisconsin (WPPI) under WPS's FERC Electric Tariff, Original Volume No. 2.

WPS states that the proposed supplement provides for a one year change of the date of which WPPI may begin peak shaving from January 1, 1985 to January 1, 1986. This requires the revision of the January 1, 1985 date in Article 1.2 of the April 16, 1984 Supplement to the Service Agreement between WPPI and WPS.

WPS further states that the extension of the commencement date for peak shaving was requested by WPPI in a letter to WPS dated October 1, 1984. WPS also states that this request is reasonable and should be approved.

According to WPS, except for the revision of the peak shaving commencement date of January 1, 1986, this filing will result in no change in rates, schedules, or revenues of WPS. WPS proposed an effective date of January 1, 1985, for this Supplement.

Copies of this filing have been served upon WPPI and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such notions or protests should be filed on or before November 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 30367 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-440-001]

Abbott Chemicals, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 9, 1984.

On October 18, 1984, Abbott Chemicals, Inc. (Applicant) of P.O. Box 278, Barceloneta, Puerto Rico 00617, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.107 of the Commission's regulations. An application for this facility was originally submitted by Abbott Energy, Inc. on September 23, 1983, Docket No. QF83-440-000. Abbott Energy, Inc. withdrew their application October 18, 1984, and transferred ownership to Abbott Chemeicals, Inc. No determination has been make that the submittal constitutes a complete filing.

The topping-cycle congeneration facility is located in Barceloneta, Puerto Rico. The facility consists of a diesel generator set with waste heat recovery equipment. The useful thermal output in the form of steam and hot water, which is used for refrigeration, and process steam. The primary energy source is fuel oil No. 6. The electric power production capacity of the facility is 20,230 kilowatts. Operation of the facility began December 1983.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30361 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-16-000]

Gilroy Energy Co., Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 9, 1984.

On October 10, 1984, Gilroy Energy Company, Inc. (Applicant), a wholly-owned subsidiary of Gilroy Foods, Inc. of P.O. Box 1088, Gilroy, California 95020, submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle congeneration facility will be located at the food processing plant of Gilroy Foods, Inc., in the City of Gilroy, Santa Clara County, California. The facility will consits of a combustion turbine generator, a waste heat recovery boiler and an extraction steam turbine-generator. Extracted steam will be will be used for drying agricultural products, principally onions and garlic. The net electric power production capacity 121.7 MW is expected to be sold to Pacific Gas and Electric Company. The primary energy source will be natural gas. Operation of the facility will begin in early 1987. No electric utility, electric utility holding company or any combination thereof will have more than 50% ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30363 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-15-000]

Seadrift Cogeneration; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 9, 1984.

On Ocotber 9, 1984, Seadrift Cogeneration (Applicant) of 10375 Richmond, 3rd Floor, Houston, Texas 77042, submitted for filing an application for certification of a facility (as a qualifying cogeneration facility) pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal consitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Union Carbide Polyoleins chemcial plant at Seadrift, Texas. The facility will commence its initial operation in the third quarter of 1985 and will consist of two combustion turbine generators, two waste heat recovery boilers (WHRB) and one steam turbine-generator. Steam from the WHRB's and condensed steam as hot condensate will be utilized for chemical process thermal requirements at the chemical plant. The initial net electric power production capacity will be 84 MW. After 1989, the facility will be expanded to meet additional chemical; plant thermal requirements. The maximum net electric power production capacity of the expanded facility will be 312.4 MW. The primary energy source will be natural gas. No electric utility, electric utility holding company or any combination thereof will have more than 50% ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publications of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30403 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-52-000]

Winooski Hydroelectric Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 9, 1984.

On October 22, 1984, Winooski Hydroelectric Company (Applicant), of 26 State Street, Montpelier, Vermont 05602, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility will be located on the Winooski River near the towns of East Montpelier and Berlin, Vermont. The power production capacity will be 800 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30349 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-504-000]

Allegheny Generating Co.; Order Accepting for Filing and Suspending Rates, Granting, Intervention, Granting Request for Waiver of Advance Filing Limitation, and Establishing Hearing Procedures

Issued: November 14, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On June 20, 1984, as completed on September 4, 1984,[1] Allegheny Generating Company (AGC), a wholly owned subsidiary of the Allegheny Power System (APS),[2] tendered for filing, as an initial rate schedule, a unit sale agreement which provides for the sale of capacity and energy from the Bath County Pumped Storage Project (Bath County) to the APS operating companies.[3] Bath County is currently being constructed by Virginia Electric and Power Company (VEPCO). AGC purchased a 20% ownership share of Bath County from VEPCO and has an option to purchase (by direct ownership or through a power purchase agreement) an additional 20% share of VEPCO's entitlement. AGC's proposed rate is a comprehensive cost of service formula. The proposed rates will generate annual revenues of about $83 million. The proposed agreement also provides for the passthrough by AGC to the APS operating companies of the purchased power costs of the additional 20% share of Bath County, should an additional purchase power agreement be entered with VEPCO. AGC requests an effective date of October 1, 1985, the date commercial operation of Bath County is expected to commence. AGC also requests waiver of the 120-day advance filing limitation to facilitate the revision of the requirements rate schedules, on file at the five retail commissions under whose jurisdiction the APS companies operate, to reflect the cost of the Bath County project.

Notice of the filing was published in the Federal Register,[4] with comments due on or before July 18, 1984. The Public Service Commissions of West Virginia, Maryland, and Pennsylvania filed timely notices of intervention, but raised no substantive issues. In addition, ARMCO, Inc. (an industrial customer of West Penn Power Company), the Maryland People's Counsel (MPC), and the Pennsylvania Office of Consumer Advocate (POCA) filed timely motions to intervene.

ARMCO contends that Bath County is an imprudent investment and will not be useful in providing service. ARMCO further asserts that the proposed unit sale agreement will result in unjust and unreasonable rates. POCA and MPC raise various cost of service issues.[5] In support of their request for suspension and a hearing as to AGC's submittal, POCA and MPC express concern that the State regulatory commissions will be preempted from exercising any review of the rates set at the Federal level, if the purchasing companies simply pass through the rates as purchased power and fuel expense.

In an untimely motion to intervene filed on July 26, 1984, Airco Industrial Gases and Airco Carbon (Airco) (industrial customers of West Penn Power Company) protest the proposed automatic adjustment formula rate. Airco states that it filed its motion to intervene late because it was not served with a copy of the filing on June 20, 1984 and had no opportunity to prepare the motion prior to notice in the Federal Register. Furthermore, Airco states that it was unsure as to what actions the Pennsylvania Commission would take on related Bath County issues.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notices and motions to intervene serve to make the Public Service Commission of West Virginia, the Public Service Commission of Maryland, the Pennsylvania Public Utility Commission, ARMCO, MPC, and POCA parties to this proceeding. We also note that, as industrial customers of West Penn Power Company, one of the APS operating companies, Airco appears to have an interest in the outcome of this proceeding. Furthermore, given the relatively short delay in seeking to intervene and the early stage of this proceeding, we believe that granting Airco's motion should result in no undue prejudice or delay. Accordingly, we find that good cause exists to grant Airco's untimely motion to intervene.

Our preliminary review of AGC's initial rate schedule and the pleadings indicates that the submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept AGC's submittal for filing and suspend its operation as ordered below.[6]

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our preliminary review indicates that the proposed cost of service formula may not produce substantially excessive revenues. As noted above, AGC requests waiver of the 120-day advance filing limitation. The prohibition against filings made more than 120 days prior to the effective date is intended to insure that, when the Commission evaluates a proposed rate, the cost data reflecting the time period when the rate will be effective will not be highly speculative. In the instant docket, the proposed rate is a formulary rate which will pass through actual costs and thus the reliability of cost data projections is not relevant. Therefore, we shall grant the request for waiver. Accordingly, we shall suspend AGC's submittal for a nominal period, to become effective, subject to refund, on the in-service date of the Bath County project.

The Commission orders:

(A) Airco's motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) AGC's request for waiver of the 120-day advance filing limitation is hereby granted.

(C) AGC's initial rate schedule is hereby accepted for filing and suspended, to become effective, subject to refund, on the in-service date of the Bath County project.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of AGC's rates.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Rate Schedule Designations

Designation	Description
(1) Rate Schedule FERC No. 1.	Unit Sale Agreement.
(2) Supplement No. 1 to Rate Schedule FERC No. 1.	Appendix I.
(3) Supplement No. 2 to Rate Schedule FERC No. 1.	Amendment to Section 1.2(b)(i) of Appendix I included in letter dated 8-31-84.

[FR Doc. 84-30375 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-78-000]

Allegheny Power Service Corp.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, Allegheny Power Service Corporation (Allegheny) tendered for filing an Agreement concerning limited term and supplemental power service among Monongahela Power Company (Monongahela), the Potomac Edison Company (Potomac), West Penn Power Company (West Penn) and Philadelphia Electric Company (Buyer).

The Agreement sets forth terms pursuant to which Monongahela, Potomac and West Penn will deliver to Buyer 344,000 kilowatts of limited term power and energy and 86,000 kilowatts of supplemental power and energy for 1985 or such other amounts as the parties may agree on from time-to-time in 1985 and in future periods.

The parties have requested an effective date of January 1, 1985, and therefore request waives of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30376 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-79-000]

Allegheny Power Service Corp.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, Allegheny Power Service Corporation (Allegheny) tendered for filing an Agreement concerning limited term and supplemental power service among Monongahela Power Company (Monongahela), the Potomac Edison Company (Potomac), West Penn Power Company (West Penn) and Atlantic City Electric Company (Buyer).

The agreement sets forth terms pursuant to which Monongahela, Potomac and West Penn will deliver to Buyer 92,000 kilowatts of limited term power and energy and 23,000 kilowatts of supplemental power and energy for 1985 or such amounts as the parties may agree on from time-to-time in 1985 and in future periods.

The parties have requested an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

[1] By letter dated August 2, 1984, the Director of the Office of Electric Power Regulation advised Allegheny Generating Company that its original submittal was deficient. The company responded to the letter directive, by providing additional information, on September 4, 1984.

[2] AGC is jointly owned by Monogahela Power Company, the Potomac Edison Company, and West Penn Power Company. All three of these companies are wholly owned by the Allegheny power System.

[3] *See* Attachment for rate schedule designations.

[4] 49 28308 (1984).

[5] The issues raised include: (1) The automatic adjustment nature of the cost of service formula; (2) the claimed return on common equity and the stated equity ratio; (3) inclusion in investment of plant which will allegedly not be used or useful; (4) the recovery of unspecified indirect expenses; and (5) excessive depreciation rates.

[6] The Company characterizes its submittal as an initial rate schedule. Even if we were to adopt that characterization, the Commission has previously decided that it has suspension authority under section 205 of the Federal Power Act with respect to initial rate schedules. *Middle South Energy, Inc.*, 23 FERC ¶ 61,277, 61,572 (1983).

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to invervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-30677 Filed 11-19-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-73-000]

Carolina Power & Light Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 29, 1984, Carolina Power & Light Company (CP&L) tendered for filing revised rates for its resale customers that would produce a decrease in rates and charges to those customers. CP&L has also tendered for filing Revised Sheet Nos. 5-8A to its FPC Electric Tariff, First Revised Volume No. I, containing revised rates and charges applicable to CP&L's three municipal, one private distribution utility, 18 rural electric cooperatives, and one partial requirements sales-for-resale customers. The revised rates are contained in proposed Resale Service Schedules RS83-1B, RS763-2B, and RS83-3D for CP&L's cooperative municipal and private, and partial requirements customers, respectively. Accompanying resale fuel adjustment clause currently in effect, is applicable to all rate schedules.

CP&L states that the proposed changes are being made in order to change the manner in which CP&L collects gross receipts taxes from its sales-for-resale customers. The changes are necessitated by the July 6, 1984, action of the North Carolina General Assembly whereby it amended the law regarding the currently-effective 6% gross receipts tax for bills rendered on and after January 1, 1985. As of that date, the gross receipts tax will be 3.22%, and there will be a 3% sales tax. Rural electric cooperatives will be required to pay both taxes directly to the State. Municipalities will pay the sales tax portion directly, but CP&L will continue to collect gross receipts taxes from those customers. CP&L's private distribution utility customer will pay both the gross receipts and sales taxes directly.

The presently effective 6% gross receipts tax is included in the base rates contained in all three of CP&L's currently-effective sales-for-resale rate schedules. Proposed Rate Schedule RS83-1B removes the entire 6% from the rural electric cooperative rate and results in a rate reduction of $9,140,396 based on billing comparisons for a 1984 test period. Proposed Rate Schedule RS83-3D reflects the fact that the Fayetteville Public Works Commission will pay the sales tax directly but CP&L will collect the 3.22% gross receipt tax for sales to Fayetteville. This results in a reduction of $1,853,589 from that customer based on the billing comparisons for a 1984 test period. Proposed Rate Schedule RS83-2B has been adjusted to reflect applicable changes for the customers that buy under the rate schedule, resulting in a $65,146 reduction.

CP&L request that the proposed rates be accepted for filing without suspension to become effective for billings on and after January 1, 1985, which coincides with the date on which the North Carolina law changes become effective.

Copies of the appropriate portions of the filing have been served upon CP&L's jurisdictional resale customers and the State Commissions of North Carolina and South Carolina.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Captiol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-30678 Filed 11-19-84; 8:45]
BILLING CODE 6717-01-M

[Docket No. ER85-69-000]

Centel Corp.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, Centel Corporation (Centel) Southern Colorado Power Division (Colorado) tendered for filing Electric Rate Adjustment No. 4 applicable to sales of power and energy to the City of Las Animas. Adjustment No. 4 reflects decrease in revenues from sales to Las Animas of $74,780.69 based on the 12 month period ending December 31, 1984. Centel requests an effective date of January 1, 1985.

Copies of the filing were served upon the City of Las Animas and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-30679 Filed 11-19-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-103-000]

Consolidated Edison Company of New York, Inc.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on November 5, 1984, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing a supplement (the "Supplement") to its Rate Schedule FERC No. 69, an agreement to provide transmission service to The Connecticut Light and Power Company and Western Massachusetts Electric Company, the companies of the Northeast Utilities system (the "NU Companies"). The Supplement increases the transmission charge from 2.6 mills to 2.7 mills per kilowatthour for interruptible transmission of power and energy purchased by the NU Companies from companies in the Pennsylvania-New Jersey-Maryland power pool. The Supplement would increase annual revenues from jurisdictional service during Period I by $501.70.

Con Edison requests waiver of the notice requirements of §35.3 of the Commission's requlations so that the Supplement can be made effective as of September 15, 1984.

Con Edison states that a copy of this filing has been served by mail upon the NU Companies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-30680 Filed 11-19-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-679-000]

Florida Power Corp.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Motion for Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued November 13, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On September 14, 1984, Florida Power Corporation (FPC) tendered for filing a proposed two-step increase in its wholesale power and transmission rates to its investor-owned, municipal, and cooperative customers.[1] Step 1, reflecting the commencement of commercial operations at the company's Crystal River No. 5 Generating Unit, would increase jurisdictional revenues by about $10.5 million (9.8%), based on a calendar 1985 test year. Step 2, representing the inclusion of 50% of CWIP in rate base, would incease FPC's wholesale rates by an additional $1.1 million, for a total increase of $11.6 million (10.8%). The company requests an effective date of November 15, 1984,[2] for the Step 1 rates, and January 1, 1985, for its Step 2 rates. In addition, FPC's filing contains several proposed changes in the terms and conditions of service.

Notice of FPC's filing was published in the **Federal Register**,[3] with comments due, after extension, on or before October 12, 1984. Timely motions to intervene were filed by Seminole Electric Cooperative, Inc. (Seminole) and, jointly, by the Cities of Alachua, Bartow, Bushnell, Chattahoochee, Fort Meade, Leesburg, Mount Dora, Newberry, Ocala, Quincy, Wauchula, Williston, Gainesville, Tallahassee, St. Cloud, Lakeland, and Kissimee, Florida, and the Sebring Utilities Commission (Florida Cities).

Seminole and the Florida Cities request a five month suspension of both the Step 1 and 2 rates. In support of their position, they have raised many cost of service issues, including allegations that FPC has: (1) Used an excessive rate of return; (2) overstated cash working capital needs, fuel stock inventory, demand projections, and expenses for operations and maintenance, taxes, depreciation, and nuclear decommissioning; (3) improperly calculated amounts relating to deferred taxes; (4) improperly included prior-period nuclear maintenance expenses, certain production CWIP, and certain administrative and general expenses; (5) included 17 oil-fired units in "plant held for future use;" (6) attempted to reflect retroactively differences in treatment by this Commission and the Florida Public Service Commission of CWIP and tax normalization; and (7) chosen an unnecessarily expensive method for funding spent nuclear fuel burned in prior periods.

In addition, Seninole protests the absence of voltage discounts and interruptible rates in FPC's tariffs. The Florida Cities move that the Commission summarily reject the company's

[1] Under FPC's electric tariff, the utility provides either full requirements or combined partial requirements and transmission service to 13 municipal customers. Seven other customers receive transmission service under the tariff in connection with service under separate interconnection agreements. FPC's filing also contains revisions to separate contracts under which Reedy Creek Utilities Company and the City of Wauchula, Florida, receive partial requirements service. Finally, FPC proposes revisions to the contract under which Seminole Electric Cooperative, Inc., takes transmission and distribution service, and supplemental service.

[2] FPC states that the Crystal River No. 5 unit is expected to commence commercial operations on November 1, 1985; in the event that the date changes, the company will notify the Commission and the affected wholesale customers.

[3] 49 FR 36180 (1984).

inclusion of $1,164,000 attributable to a gross receipts tax imposed by the State of Florida in the event that FPC's rates are not suspended beyond December 31, 1984. The Florida Cities state that, effective January 1, 1985, FPC will not be required to collect the tax from its wholesale customers. Since the company's rates are based on a calendar 1985 test year, the Florida Cities contend that the company's inclusion of the item in rates to be collected during 1984 is improper. The Florida Cities also challenge several tariff provisions proposed by FPC as anticompetitive or discriminatory.[4] Finally, the Florida Cities request that the Commission institute price squeeze procedures.

On October 23, 1984, FPC filed an answer. The company acknowledges that it has erred in amortizing deferred tax reserve deficiencies and including certain membership and industry association dues as part of administrative and general expenses. As to these two items, FPC states that it accepts summary disposition but that filing of revised rates is unnecessary because the adjustments do not raise the company's return on equity above a level which is just and reasonable. The company opposes, however, the requests for maximum suspension of its proposed rates or summary disposition as to the inclusion of amounts attributable to State gross receipts taxes for any period during 1984 that FPC's rates will be collected.

On November 5, 1984, FPC, Seminole, and the Florida Cities notified the Commission that they had reached a settlement in principle of all rate level issues, reserving the terms and conditions of service for further negotiation and litigation if necessary. As a result, Seminole and the Florida Cities have withdrawn their request for a five month suspension of the company's filing and support FPC's request for a one day suspension of its proposed rates. On November 6, 1984, counsel for FPC submitted a letter specifying the proposed settlement revenue levels which counsel states will be applied to all of its wholesale customers.

[4] Specifically, the Florida Cities challenge provisions which (1) permit the company to refuse service for end-use load not previously served at wholesale or retail if this would increase FPC's unit cost of service to existing customers; (2) allow FPC to charge partial requirements customers who have previously given notice of conversion to full requirements service for the additional load in the event that the conversion does not occur as scheduled; and (3) require one year's notice of termination of service, such notice to given within four months of FPC's filing of any changes in the tariff.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[5] the timely, unopposed motions of Seminole and the Florida Cities serve to make them parties to this proceeding.

With respect to the Florida Cities' motion for summary disposition, we note that FPC, of its own decision, has chosen to base its proposed rates on a 1985 test year in which the company will not be paying a gross receipts tax. While our regulations allow a utility to select a test year which begins beyond the proposed effective date for its rate increase, they do not permit the utility to get the best of both worlds by also including an out-of-pocket expense from a prior year. Because FPC has improperly included an out-of-test-year expense in its cost of service, we shall grant the Florida Cities' motion for summary disposition and require FPC to revise its rates accordingly. In light of FPC's agreement with the customers' claims as to calculation of the *South Georgia* adjustment and administrative and general expenses, and because we are requiring the company to make a compliance filing reflecting the summary disposition ordered above, we shall direct FPC to further revise its rates to reflect the additional two adjustments.[6]

Our preliminary review of FPC's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we stated that rate filings would ordinarily be suspended for one day where preliminary review indicates that the rates may be unjust and unreasonable, but may not generate substantially excessive revenues, as defined in *West Texas*. We also stated in that order that we would consider extraordinary circumstances, such as where the customers specifically request a nominal suspension for settlement purposes. Based upon the intervenors' consent to a one day suspension, we shall suspend the proposed Step 1 and 2 rates, as modified, for those customers for one day, to become effective, subject to refund, on November 16, 1984, and January 2, 1985, respectively. Further, as to those customers which have not intervened and which are not parties to the November 5, 1984, request for a one day suspension, we shall also suspend the proposed Step 1 and 2 rates, as modified, for one day, based on: (1) The company's commitment to offer the settlement provisions to all affected customers, (2) our expectation that the company will seek to implement the settlement rates on an interim basis in the near future, and (3) the reduced revenue levels stated in FPC's November 6 letter. However, as to any non-intervening or non-settling customer, we expressly reserve the option to revisit the suspension question if the lower settlement rates are not implemented promptly in lieu of the filed rates.

In light of the price squeeze allegations, we shall institute price squeeze procedures and phase those proceedings, in accordance with Commission policy and practice as established in *Arkansas Power & Light Co.*, 8 FERC ¶ 61,131 (1979).

The Commission orders:

(A) The Florida Cities' motion for summary disposition is hereby granted. Within thirty (30) days of the date of this order, FPC shall file revised tariff sheets and related cost-supporting statements reflecting the exclusion of State gross receipt taxes from the company's cost of service, as well as FPC's recalculation of the amortized deferred tax reserve deficiencies and its administrative and general expenses.

(B) FPC's proposed Step 1 and Step 2 rates, as modified by Ordering Paragraph (A), are hereby accepted for filing and suspended for one day from the proposed effective dates, to become effective, subject to refund, on November, 16, 1984, and January 2, 1985, respectively.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), and public hearing shall be held concerning the justness and reasonebleness of FPC's rates.

(D) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(G) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30382 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[5] 18 CFR 385.214.

[6] We also note that, as to the disputed terms and conditions, FPC has agreed not to implement them until the parties have resolved their differences. In the event that the parties are unable to do so, FPC stats that it will defer implementation until the Commission issues a final decision on the merits of its proposal.

[Docket No. ER85-83-000]

Florida Power and Light Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 29, 1984, Florida Power and Light Company (FP&L) tendered for filing the following documents:

(1) Attachment A to Agreement for Full Requirements Electric Service by Florida Power & Light Company to Seminole Electric Cooperative, Inc. (Full Requirements Service Agreement).

(2) Exhibit A to the Full Requirements Service Agreement for the Black Creek delivery point.

(3) Exhibit A to the Full Requirements Service Agreement for the Calusa delivery point.

(4) Revised Sheet Nos. 23, 24 and 25 of Florida Power & Light Company FERC Electric Tariff First Revised Volume No. 1 (Tariff).

(5) Attachment C to Aggregate Billing Partial Requirements Service Agreement between Florida Power & Light Company and Seminole Electric Cooperative, Inc. (ABPRSA).

(6) Exhibit A to the ABPRSA for the Black Creek delivery point.

(7) Exhibit A to the ABPRSA for the Calusa delivery point.

FP&L states that the above listed documents provide for the termination of full requirements electric service at the Calusa and Black Creek delivery points under the Full Requirements Service Agreement and FP&L's Tariff and provide for the commencement of partial requirements electric service at such delivery points under the ABPRSA as of October 29, 1984.

This filing is being made in accordance with the terms and conditions of the ABPRSA and the Full Requirements Service Agreement previously filed with the Commission in Docket No. ER84-379-000 and for the reasons stated above. Should a waiver of Section 35.3 of the Commission's Regulations be necessary, FP&L respectfully request that such waiver be granted to this extent that Items 1 through 7, above, be made effective October 29, 1984.

FP&L states that this filing has been served upon each of its wholesale customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30383 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-101-000]

Florida Power & Light Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on November 5, 1984, tendered for filing a contract executed by both parties entitled "Contract for Interchange Service Between Florida Power & Light Company and City of Gainesville, Flordia". FPL states that this Contract supersedes the existing contract which is on file with the Commission, designated as FPL Rate Schedule FERC No. 27, as supplemented.

FPL respectfully requests that the proposed Contract be made effective on October 29, 1984 and therefore requests waiver of the Commission's notice requirement. FPL states that the City of Gainesville, Florida supports FPL's requests for such waiver. According to FPL, a copy of this filing was served upon the City of Gainesville, Florida.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30384 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-105-000]

Green Mountain Power Corp.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that Green Mountain Power Corporation (Green Mountain) on November 5, 1984, filed a Notice of Termination of its Rate Schedule FERC No. 69 with respect to Berlin gas turbine, between Green Mountain Power Corporation (Seller) and Central Vermont Public Service Corporation (Buyer) dated as of April 6, 1978. Under the terms of the purchase agreement, the sale took place in the period from April 1, 1978 to April 30, 1978.

Green Mountain states that the Notice of Termination was served on the contracting parties and the regulatory commissions of the State of Vermont, where the contracting parties operate. Green Mountain has also requested a waiver of the notice requirement, so that the Notice of Termination will be made

effective as of the April 30, 1978 termination date provided for in the purchase agreement with Central Vermont Public Service Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30385 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-70-000]

Iowa Power and Light Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 29, 1984, Iowa Power and Light Company (Iowa) tendered for filing a Notice of Cancellation of a Participation Power Agreement (Agreement) dated April 28, 1972 between Iowa and Iowa-Illinois Gas and Electric Company (Iowa-Illinois), designated as Iowa Power and Light Company Rate Schedule No. 43.

Iowa states that the Agreement expired on its own terms on June 1, 1973; that the Notice of Cancellation was mailed to Iowa-Illinois, the only purchaser from Iowa under the Agreement; and that the filing was mailed to Iowa-Illinois and the Iowa State Commerce Commission.

Iowa requests an effective date of June 1, 1973 and therefore requests a waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30386 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-5-000]

Louisiana Public Service Commission v. Arkansas Power & Light Co. et al.; Complaint

November 14, 1984.

The filing Company submits the following:

Take notice that on October 29, 1984, the Louisiana Public Service Commission, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (18 CFR 385.206) filed a Complaint against Arkansas Power & Light Company, Mississippi Power & Light Company, Middle South Utilities, Inc. and Middle South Service, Inc. The Louisiana Commission requests that the Commission institute a proceeding under Section 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) and make the following determinations:

a. A Unit Power Purchase Agreement for the sale of 31.5% of Independent Unit No. 2, a coal-fired electric generating unit located in the State of Arkansas, between Arkansas Power & Light Co. and Mississippi Power & Light Co. for a five year term with an option for an additional 20 years term, violates the requirement of a regulatory filing of rate and contractual changes under Section 205 of the Federal Power Act (16 U.S.C. 824d) and Section 205 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.205), is discriminatory, unfair an unreasonable and violates the Federal Power Act, violates the traditional arrangements among the Middle South Utilities System operating companies, and violates the agreement proposed by Middle South Services, Inc. to govern transactions among the Middle South Utilities operating companies;

b. The Unit Power Purchase Agreement for the sale of Independent Unit No. 2 be declared null and void; and,

c. Formal proceedings be stayed pending the final resolution of FERC Docket No. ER82-483-000, except that dicovery be permitted for the perpetuation of testimony for future use in this proceeding and the case be assigned to a presiding administrative law judge to presiding administrative law judge to preside over the discovery process.

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this complaint are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30387 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-96-000]

Mississippi Power & Light Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on November 5, 1984 Mississippi Power & Light Company (MP&L) tendered for filing a fully executed Agreement for Establishment of an Additional SMEPA Off-System Delivery Point dated August 22, 1984, between MP&L and South Mississippi Elecric Power Association (SMEPA). This Agreement supplements the Interchange Agreement entered into between MP&L and SMEPA July 18, 1979, and filed with the Commission in FERC Docket No. ER79-529. Under that Interconnection Agreement, MP&L agreed among other things to transmit capacity and energy over MP&L's transmission system from SMEPA facilities to SMEPA Off-System Delivery Points. The August 22, 1984 Agreement establishes an additional Off-System Delivery Point to which SMEPA Capacity and energy is to be transmitted over MP&L's transmission system. The proposed change does not affect the present level of billings on service rendered by MP&L to SMEPA under the service schedules of the MP&L-SMEPA Interconnection Agreement.

To the extent necessary, MP&L requests waiver of the Commission's notice requirements to permit the Agreement to become effective as of August 22, 1984.

A copy of this filing has been mailed to SMEPA and to the Mississippi Public Service Commission, according to MP&L.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30388 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-74-000]

Montaup Electric Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on October 30, 1984, Montaup Electric Company (Montaup) tendered for filing an admendment of the Unit Sales Contract between Montaup and Taunton Municipal Lighting Plant for the sale of capacity and energy from Canal Unit No. 2 (FERC Rate Schedule No. 70). The amendment extends this unit sale for a three-year period beginning November 1, 1984. The percentage (1.7123-10 mw) remains the same as in the original Agreement. The capacity charge is $4.48 per kilowatt per month. Attachment A provides the cost justification for this figure.

Montaup requests waiver of the 60-day notice requirement.

According to Montaup copies of the filing have been served upon the Massachusetts Department of Public Utilities and Taunton Municipal Lighting Plant.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 84-30389 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-106-000]

Montaup Electric Co.; Filing

November 14, 1984.

The filing Company submits the following:

Take notice that on November 5, 1984 Montaup Electric Company ("Montaup" or "the Company") tendered for filing rate schedule revisions incorporating a new M-10 rate for all-requirements service to Montaup's affiliates Eastern Edison Company ("Eastern Edison") in Massachusetts and Blackstone Valley Electric Company ("Blackstone") in Rhode Island and contract demand service to three non-affiliated customers: the Town of Middleborough in Massachusetts and Pascoag Fire District and Newport Electric Corporation in Rhode Island. The rate schedule revisions provide for a first-step increase of $16.6 million, or 6.4%, and a second-step increase of $17.8 million, or an additional 0.4%. Montaup requests that the first-step rates be made effective on January 5, 1985 and that the second-step rates be made effective on January 6, 1985.

This increase is requested to offset the increase in Montaup's costs over the 1984 level being recovered through the M-9 rates and to include additional construction work in progress ("CWIP") in rate base pursuant to section 35.26(c)(3) of the Commission's regulations. The filing (1) increases the demand charge from $15.02708 per KW/month as provided in the M-9 rate as currently charged to Montaup's affiliates to $17.21104 per KW/month in the first step and $17.34467 in the second step, (2) decreases the energy charge from 3.0275 cents per kwh as provided in the M-9 rate to 2.7674 cents per kwh, and (3) incorporates changes in the fuel adjustment clause to reflect recent changes in the Commission's regulations governing fuel clauses. The filing also includes related changes in agreements under which Eastern Edison and Blackstone rent transmission facilities to Montaup and Montaup rents such facilities to Eastern Edison.

Montaup's filing was served on the affected customers and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30390 Filed 11-19-84; 8:45 am]

BILLING CODE 6717-01-M

[OPTS-53064; FRL-2673-3]

Premanufacture Notices; Monthly Status Report for July 1984

Correction

In FR Doc. 84-24751 beginning on page 36913 in the issue of Thursday, September 20, 1984, make the following corrections:

1. On page 36914, Table I, PMN No. 84-966, second column, "Oligomeiric" should read "Oligomeric"; and in PMN No. 84-986, second column, "(4,6-disulfo-2-maphthylazo)" should read "(4,6-disulfo-2-naphthylazo)".

2. On page 36916, Table II, PMN No. 84-863, second column, "Portein" should read "Protein", and in PMN No. 84-673, second column, "milamine" should read "melamine".

3. On page 36918, Table IV, PMN No. 83-661, second column, "Carbocyetic" should read "Carbocyclic"; and in PMN No. 84-540, second column, "Siloyanes" should read "Siloxanes".

4. On page 36919, Table V, PMN No. 84-274, second column, "[—1-XO-2-propenyl)OXY]" should read "[(1-OXO-2-propenyl)OXY]".

BILLING CODE 7405-01-M

[SAB-FRL-2721-1]

Clean Air Scientific Advisory Committee, Science Advisory Board, Subcommittee on the National Ambient Air Quality Standard Setting Process; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Clean Air Scientific Advisory Committee's (CASAC) Subcommittee on the National Ambient Air Quality Standard (NAAQS) Setting Process will be held on December 6-7, 1984 in Room 1101W, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. The meeting will begin at 1:30 p.m. on December 6, 1984 and adjourn at 12:00 noon on December 7, 1984.

The purpose of the meeting is to examine the process whereby the Agency sets NAAQS's. The Subcommittee will gather information from the Agency and the interested public on means to improve this process.

The meeting is open to the public; however, seating is limited. Any member of the public wishing to attend, make a presentation, or obtain information should contact Mr. A. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board, by close of business November 30, 1984. The telphone number is (202) 382-2552.

Dated: November 13, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84-30428 Filed 11-19-84; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board, Executive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board. The meeting will be held on December 5-6 in Room 1101 West Tower, EPA Headquarters, 401 M Street, SW, Washington, D.C. The meeting will begin at approximately 9:15 am on December 5 and will adjourn at approximately 12 noon on December 6.

The agenda for the meeting will include reports of Subcommittees and Committees including: Environmental Health Committee review of Health Assessment Documents for Cadmium, Manganese, Chromium, Trichloroethylene, Perchloroethylene, Vinylidene Chloride, Ethylene Oxide, and Ethylene Dichloride. The Committee will also discuss the conclusions of the Environmental Effects, Transport and Fate Committee review of incineration of hazardous wastes at sea and on land, Research Outlook 1985, and other items of Member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board, (202) 382-4126 before close of business November 26, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

November 13, 1984.

[FR Doc. 84-30425 Filed 11-19-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-5150; TSH-FRL 2693-7]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-27141, beginning on page 41100, in the issue of Friday, October 19, 1984, make the following corrections: on page 41100, column three, under **PMN 84-1230**, eighth line, "<" should read ">". On page 41101, column two, under **PMN 85-10**, first line, "Point" should read "Pont".

BILLING CODE 1505-01-M

[PF-388; PH-FRL 2693-8]

Certain Companies; Pesticide Tolerance Petitions

Correction

In FR Doc. 84-27140, beginning on page 40658, in the issue of Wednesday, October 17, 1984, make the following corrections:

1. On page 40659, column one, under **"I. Initial Filings"**, paragraph 1., fifth line, the last word should read "pendimethalin", and on the seventh line, the first word should read "dinitrobenzenamine".

2. In paragraph 2., last line before the table, the first word should read "Pyridazinone".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53063; FRL-2545-8]

Premanufacture Notices Monthly Status Report for June 1984

Correction

In FR Doc. 84-20420 beginning on page 31138 in the issue of Friday, August 3, 1984, make the following corrections:

1. On page 31189, Table I, third column, entries one, two, and three, "(6/15/83)" should read "(6/15/84)".

2. On the same page, Table I, second column, entry four, "49 FR 24782 (6/15/83)" should be removed; and in the third column, entry four. "Do" should read "49 FR 24782 (6/15/84)".

3. On the same page, Table I, third column, entries five through eighteen, "(6/15/83)" should read, "(6/15/84)".

4. On the same page, Table I, PMN No. 84-815, second column, "4,4'-diphenylemthane" should read "4,4'-diphenylmthane" and "polyporpozxylated" should read "polypropoxylated"; PMN No. 84-831, second column, "Strene" should read "Styrene"; PMN No. 84-838, second column, "naphthalenecartboxamide" should read "naphthalenecarboxamide"; PMN No. 84-848, second column, "Alyl" should read "Alkyl"; PMN No. 84-854, second column, "(octadecylozxy)" should read "(octadecyloxy)"; and PMN No. 84-469, second column, "4-Acetylamino)" should read "4-Acetylamino)".

5. On page 31140, Table I, PMN No. 84-882, second column, "dochloro" should read "dichloro".

6. On the same page, Table II, PMN No. 84-671, second column, "carbonmonocylic" should read "carbomonocylic"; PMN No. 84-701, second column, "polymer" should read "polymer"; PMN No. 84-707, second column, "Polyesterimide" should read, "Polyamideimide"; PMN No. 84-708, second column, "gylcerin" should read, "glycerine"; PMN No. 84-713, second column, "Acrulated" should read, "Acrylated"; PMN No. 84-722, second column, "1-Naphthalenesulfonic" should read "1-Naphthalene sulfonic"; and "azol-barium" should read "azo]-barium".

7. On page 31141, Table II, PMN No. 84-734, second column, "terpolymen" should read "terpolymer"; and PMN No. 84-787, second column,"Hydrocyl" should read "Hydroxyl".

8. On page 31142, Table III, PMN No. 84-734, second column, "resin" should follow "phenolic".

9. On page 31143, Table IV, PMN No. 83-1232, second column, "diamines, and" should read "diamines, an".

10. On the same page, Table V, PMN No. 82-388, second column should end with "zinc salt.".

11. On page 31144, Table V, PMN No. 84-306, second column, "oxy', methyl ester" should read, "oxy-, methyl ester".

BILLING CODE 1505-01

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for coments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-010676.

Title:
Mediterranean /U.S.A. Freight Conference.

Parties:
Atlanttrafik Express Service
Achille Lauro
C.I.A. Venezolana de Navegation
Compania Trasatlantica Spanish line, S.A.
Constellation Lines/Medamer Shipping Co., Ltd.
Costa Line
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolombiana S.A.
"Italia" Societa' Per Azioni di Navigazione
Jugolinija
Jugooceanija
Lykes Bros Steamship Co., Ltd.
Nedlloyd Lines
Nordana Line/Danneborg Lines AS
Sea-Land Service, Inc.

Synopsis: The proposed agreement would establish a new conference agreement in the trade from various ports and points in countries bordering on the Mediterranean Sea and from points in Continental Europe to United States Atlantic and Gulf ports, to U.S. inland and coastal points via such ports and to ports and points in Puerto Rico. Existing conference agreements in this trade in which the parties participate will be terminated within ninety days of the effectiveness of Agreement 202-010676.

Agreement No. 202-010677.

Title: Iberian-U.S. North Atlantic Ports Westbound Stabilization Agreement.

Parties:
The Iberian/U.S. North Atlantic Westbound Freight Conference (Agreement No. 202-009615)
A.P. Moller-Maersk Line

Synopis: The proposed agreement would permit the parties to agree upon rates and tariff provisions in the trade from Spanish and Portuguese ports and points in Continental Europe via either direct or tansshipment service to U.S. Atlantic ports in the Hampton Roads/Portland, Maine range an to U.S. coastal and interior points via such ports. It would also permit the parties to discuss and exchange statistics and to share facilities in connection with the functions permitted by the agreement.

Agreement No. 203-010678.

Title: Mediterranean—U.S. South Atlantic and Gulf Ports Westbound Stabilization Agreement.

Parties:
The Med-Gulf Conference (Agreement No. 202-009522)
A.P. Moller-Maersk Line

Synopsis: The proposed agreement would permit the parties to agree upon rates and tariff provisions in the trade from Italian, French Mediterranean, Portuguese, Spanish and Spanish North African Ports (excluding Spanish ports north of Portugal) and all points in Continental Europe to U.S. South Atlantic ports in the Moorehead City, North Carolina/Brownsville, Texas range and to U.S. coastal and interior points via such ports. It would also permit the parties to discuss and exchange statistics and to share facilities in connection with the functions permitted by the agreement.

Agreement No. 203-010679

Title: Italy-U.S. North Atlantic Ports Westbound Stabilization Agreement

Parties:
The West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference (Agreement No. 202-002846)
A.P. Moller-Maersk Line

Synopsis: The proposed agreement would permit the parties to agree upon rates and tariff provisions in the trade from ports and points in Italy and Yugoslavia and other points in Continental Europe to U.S. ports in the Hampton Roads/Portland range and to U.S. coastal and inland points via such ports. It would also permit the parties to discuss and exchange statistics and to share facilities in connection with the functions permitted by the agreement.

By Order of the Federal Maritime Commission.

Dated: November 15, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30413 Filed 11-19-84; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-002846-056.

Title: West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference.

Parties:
Atlanttrafik Express Service
C.ia Trasatlantica-Spanish Line
Constellation Lines, S.A.
Costa Line
Egyptian Navigation Co., Ltd.
Farrell Lines, Inc.
"Italia" Societa' per Azioni di Navigazione
Jugolinija
Nedlloyd Lines
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would terminate the agreement ninety days after the Mediterranean/U.S.A. Conference Agreement becomes effective.

Agreement No. 202-005660-039.

Title: Marseilles North Atlantic U.S.A. Freight Conference.

Parties:
Italia, S.p.A.N.
Nedlloyd Lines
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would terminate the agreement ninety days after the Mediterranean/U.S.A. Conference Agreement becomes effective.

By Order of the Federal Maritime Commission.

Dated: November 15, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30414 Filed 11-19-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Bankshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banding practices." Any request of a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval or the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Community Bankshares, Inc.*, Cornelia, Georgia; to engage *de novo* in management consulting to depository institutions.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneaplois, Minnesota; to engage *de novo* through its wholly-owned subsidiary, FBS Brokerage Services, Inc. ("Company"), Minneapolis, Minnesota, in operating discount brokerage service. The securities brokerage services will be restricted to buying and selling securities solely as agent for the accounts of customers. Company may also offer other incidental services such as custodial services, individual retirement accounts, and cash management services. In addition, Company will engage in related securities credit activities pursuant to Regulation T. These activities will be conducted in the states of Minnesota, North Dakota, South Dakota, Wisconsin, Montana, Arizona, and Florida.

Board of Governors of the Federal Reserve System, November 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30340 Filed 11-19-84; 8:45 am]

BILLING CODE 6210-01-M

First Kentucky National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1984.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Kentucky National Corporation*, Louisville, Kentucky; to acquire at least 25 and up to 100 percent of the voting shares of The American National Bank & Trust Company, Bowling Green, Kentucky.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Farmers and Merchants Financial Services, Inc.*, St. Paul, Minnesota; to acquire 81 percent of the voting shares of State Bank of Hanska, Hanska, Minnesota.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Community Bancorporation, Inc.*, Bellville, Texas; to acquire 100 percent of the voting share of the Waller Bank, N.A., Waller, Texas.

2. *Provident Bancorp, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of Provident Bank-Denton, Denton, Texas, a *de novo* bank.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Columbia Bancorp, Inc.*, Avondale, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Columbia Bank, Avondale, Arizona.

Board of Governors of the Federal Reserve System, November 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30341 Filed 11-19-84; 8:45 am]

BILLING CODE 6210-01-M

Suntrust Banks, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governor not later than December 7, 1974.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

SunTrust Banks, Inc., Atlanta, Georgia: to become a bank holding company by acquiring Sun Banks, Inc., Orlando, Florida, and Trust Company of Georgia, Atlanta, Georgia and its wholly owned subsidiary, Southern Bancshares, Inc., Atlanta, Georgia, thereby indirectly acquiring the following banks: Sun Bank, N.A., Orlando; Sun Bank/South Florida, N.A., Fort Lauderdale; Sun Bank/Palm Beach County, N.A., Delray Beach; Sun Bank/North Florida, N.A., Jacksonville; Sun Bank/Sun coast, N.A., St. Petersburg; Sun Bank/Southwest, N.A., Cape Coral; Flagship Bank of Fort Myers, North Fort Myers; Sun Bank of Tampa Bay, Tampa; Sun Bank of Ocala, Ocala; Sun Bank of Gainesville, Gainesville; Sun First National Bank of Polk County, Lake Wales; Flagship State Bank of Polk County, Fort Meade; Sun Bank of Volusia County, Daytona Beach; Sun Bank of St. Lucie County, Fort Pierce; Sun Bank of Miami, Miami; Flagship National Bank of Miami, Miami; Sun Bank of Pasco County, Zephyrhills; Sun Bank/West Florida, N.A., Pensacola; Sun Bank/Okeechobee, Okeechobee; Sun Bank/Indian River, N.A. Vero Beach; Sun First National Bank of DeFuniak Springs, DeFuniak Springs; Sun Bank/Highlands County, N.A., Avon Park; Sun Bank and Trust/Charlotte County, N.A., Port Charlotte; The Hillsboro Sun Bank, Plant City; Sun Bank/Naples, N.A., Naples; Sun Bank/Sarasota County, N.A., Sarasota; Sun Bank/Citrus County, N.A., Crystal River; Sun Bank/DeSoto County, N.A., Arcadia; and Sun Bank/Tallahassee, N.A., Tallahassee, all in Florida; and Trust Company Bank, Atlanta; The First National Bank of Athens, Athens-Madision; Trust Company Bank of Augusta, N.A., Augusta; Trust Company Bank of Carroll County, Bowdon-Carrollton; Trust Company Bank of Clayton County, Jonesboro; Trust Company Bank of Cobb County, N.A., Smyrna; The National Bank and Trust Company of Columbus, Columbus; Trust Company Bank of Douglas County, Douglasville; Trust Company Bank of Gwinnett County, Lawrenceville; Trust Company Bank of Henry County, N.A., McDonough; Trust Company Bank of Middle Georgia, N.A., Macon-Warner Robins; Trust Company Bank of Rockdale, Conyers; The First National Bank of Rome, Rome; Trust Company of Georgia Bank of Savannah, N.A., Savannah; Trust Company Bank of South Georgia, N.A., Albany-Thomasville; Trust Company Bank of Troup County, LaGrange; and First National Bank of Wayne County, Jesup; all located in Georgia; and The First National Bank of Brunswick, Brunswick-Waycross; and Trust Company Bank of Coffee County, Douglas, both located in Georgia; and The Rockmart Bank, Rockmart; and First National Bank of Thomson, Thomson, Georgia, both located in Georgia.

SunTrust Banks, Inc. has also applied to acquire Sunbank Service Corporation, Orlando; Sunbank Mortgage Company, Orlando; SBF Agency, Inc., Orlando; Trusco Data Systems of Florida, Inc., Gainesville, all located in Florida; and Trust Company Mortgage, Atlanta; and Trusco Properties, Inc., Atlanta, both located in Georgia; thereby engaging in the activities of data processing; making and servicing loans, acting as agent or broker for credit life, accident, and health insurance; investment or financial advice; and arranging commercial real estate equity financing.

In this regard, TCG Sub, Inc., Atlanta, Georgia, has applied to become a bank holding company by acquiring Trust Company of Georgia and its wholly owned subsidiary, Southern Bancshares, Inc., thereby indirectly acquiring all of the above listed banks owned by both acquirees, and has also applied to acquire the above listed nonbanking companies owned by Trust Company of Georgia. TCG Sub, Inc. will be the survivor of the merger with Trust Company of Georgia. Subsequently, TCG Sub, Inc. will be acquired by SunTrust Banks, Inc. Upon consummation, TCG Sub, Inc. will change its name to Trust Company of Georgia.

Board of Governors of the Federal Reserve System, November 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30342 Filed 11-19-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Gastroenterology-Urology Devices Panel

Date, time, and place. December 11, 9 a.m., Rm 1207, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 2 p.m.; closed presentation of data, 2 p.m. to 3 p.m.; open commmittee discussion, 3 p.m. to 4 p.m.; Dr Norman T. Welford, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia

Ave., Silver Spring, MD 20910, 301–427–7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation. r

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 20, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an apheresis device and an intragastric balloon.

Closed presentation of data. The committee may review and discuss trade secret or confidential commercial information in these premarket appproval applications. This portion of the meeting would be closed to permit discussion of this information (5 U.S.C. 552b(c) (4)).

Blood Products Advisory Committee

Date, time, and place. December 13 and 14, 8:30 a.m., Auditorium, Lister Hill Center, National Library of Medicine, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 13, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 5 p.m.; closed presentation of data, December 14, 8:30 a.m. to 12:30 p.m.; closed committee deliberations 1:30 p.m. to 4:30 p.m.; Dr. Isaac F. Roubein, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4696.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss (1) the reclassification of the following Category IIIA products under the provisions of 21 CFR 601.26: (a) Fibrinolysin and Desoxyribonuclease Combined (Bovine), Fibrinolysin and Desoxyribonuclease Combined (Bovine) with Chloramphenicol—License No. 1, Parke-Davis, Division of Warner-Lambert Co., (b) Whole Blood (Human) Heparin, (c) Fibrinolysin (Human), License No. 2, Merck Sharp and Dohme, Division of Merck & Co., Inc., and (2) safety and effectiveness data for the test for antibody to human T-lymphotropic virus (HTLV–III) and other issues relating to the possible use of the test in screening blood and plasma donor sera.

Closed presentation of data. The committee will hear trade secret or confidential commercial information relevant to investigational new drug applications and biological license applications for the test for antibody to HTLV–III. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee discussion. The committee will discuss trade secret or confidential commercial information relevant to investigational new drug applications and biological license applications for the test for antibody to HTLV–III. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. December 13 and 14, 8:30 a.m., Conference Rm. 6, Bldg. 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 13, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed presentation of data, December 14, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; James P. Hannan, Center for Drugs and Biologics (HFN–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3500.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) "Guidelines for Clinical Investigation of Local Anesthetics"—consideration of preclinical and clinical cardiac and central nervous system toxicity screening procedures; (2) Forane (isoflurane) hepatotoxicity—clinical evidence; (3) incidence and nature of adverse reactions from inadvertent administration of lidocaine additive solutions as bolus injections; and (4) respiratory difficulty following Tracrium (atracurium) reversal.

Closed presentation of data. The committee will hear trade secret or confidential commercial information relevant to investigational new drug application 23,006. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files complied for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action, review of trade secrets and confidential commerical or financial information submitted to the agency; consideration of matters involving investgatory files complied for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not idependently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 14, 1984.

Mark Novitch,

Acting Commissioner of Food and Drug.

[FR Doc. 84-30243 Filed 11-19-84; 8:45 am]

BILLING CODE 4160-01-M

Public Workshop on Testing Anti-Anginal Agents; Public Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the public workshop to discuss methodology for testing the effectiveness of anti-anginal agents. Several interested persons who had been scheduled to attend to make important presentations have notified the agency that they would be unable to attend. The workshop, scheduled for November 26, 1984, was announced by notice in the **Federal Register** of October 25, 1984 (49 FR 42986). The agency anticipates that the matter of methodology for testing the effectiveness of anti-anginal agents will be considered at a future date, and appropriate notice will be made of any public workshop or meeting.

FOR FURTHER INFORMATION CONTACT: Joan C. Standaert, Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

Dated: November 14, 1984.

[FR Doc. 84-30223 Filed 11-19-84; 10:33 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0257]

Sulfur Hexafluoride for Treatment of Cases of Complex Retinal Detachment; Invitation To Submit Premarket Approval Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has established an Orphan Products Development Office to identify and facilitate the availability of products useful in treating or diagnosing uncommon diseases. This office also will promote availability of products for common diseases where commercial sponsorship of the products either is lacking or is not totally committed to obtaining marketing approval. By this notice, the Orphan Products Development Office invites the submission of a premarket approval application under the Medical Device Amendments of 1976 for the use of sulfur hexafluoride in the treatment of cases of complex retinal detachment.

FOR FURTHER INFORMATION CONTACT: Roger Gregorio, Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: FDA will publish notices in the **Federal Register** inviting sponsorship of specific products when significant amounts of clinical data are available for those products. The notices will describe the available preclinical and clinical data and what additional studies, if any, may be needed for submission of an application for marketing approval.

Sulfur Hexafluoride

Sulfur hexafluoride is an inert gas injected into the vitreous to tamponade the retina which, in conjunction with other surgical measures, provides improvement in the success rate for cases of complex retinal detachment.

The incidence of retinal detachment in the United States as estimated by Haimann et al. (*Archives of Ophthalmology*, 100:289–292, February

1982) is approximately 12.4 per 100,000 population, or almost 30,000 cases yearly. The primary objective of repair is to bring the detached retina into apposition with the retinal pigment epithelium for a sufficient period of time to permit healing adequate to prevent redetachment. Different methods—scleral buckling, cryotherapy, laser therapy—have been used to accomplish this objective. In the majority of cases, these methods produce a good surgical result without any redetachment up to 6 months and with restoration of visual acuity. There are, however, patients who have complex detachments that fail with surgery or in whom a poor visual result is achieved. Additional procedures have proved beneficial in such patients.

Intraocular air, studied as a therapeutic measure for retinal detachment since 1911 (Ohm, *Archives of Ophthalmology*, 79:442–450, 1911), was reported to be useful by a number of investigators. Rohmer (*Archives of Ophthalmology*, 32:257–274, 1912) used intraocular air in eight cases, obtaining two reattachments; but at this time the need to create an irritative adhesion was not recognized. Arruga (*Archives of Ophthalmology*, 13:523, 1935) used surface diathermy to create the adhesion with air injection, but with giant tears he was concerned about passage of the air into the subretinal space and positioned the patient so that the air did not tamponade the break. At this time, the function of the air was believed to be to reduce subretinal fluid through compression. Rosengren (*Acta Ophthalmologia*, 16:177, 1938), using diathermy for the seal, emphasized the use of air for internal compression of the detached margin to the underlying pigment epithelium. Rosengren (*Acta Ophthalmologia, Kbh.*, 25:111–125, 1947) reported 6 years' experience in 100 cases, obtaining 88 percent reattachment in single breaks and 85 percent reattachment in dialysis. Arruga (*Arch. Soc. Oftal. Hisp.*, Amer., 22:813–819, 1962) reported an 87 percent successful reattachment rate in 262 cases.

Ten years' experience with the use of intraocular air in the clinical management of giant retinal tears, a subset of retinal detachments, is presented by Norton et al. (*American Journal of Ophthalmology*, 68:1011–1021, 1969), who describe the technique of injecting intravitreal air with and without scleral buckling.

Not all investigators were pleased with the results obtained from intraocular injection of air. Fineberg et al. (*Modern Problems of Ophthalmology*, 12:173–176, 1974) stated that air is frequently absorbed before a strong chorioretinal adhesion can form. The time needed for firm chorioretinal adhesion was studied by Lincoff and McLean (*British Journal of Ophthalmology*, 49:337–346, 1965). They showed in a study of cryosurgery for experimentally produced retinal detachment in rabbits that by the seventh day postattachment procedure there was a firm chorioretinal adhesion. Based on the work of Lincoff and McLean, the clinical community believes that an intravitreal gas persisting less than 7 days would be less than ideal. Constable and Swanson (*Archives of Ophthalmology*, 93:416–419, 1975) compared the persistence of gases—air, sulfur hexafluoride 70 percent with air mixture, and octafluorocyclobutane 70 percent with air mixture—placed in owl monkey eyes, and showed total resorption of air in 3.8 days, sulfur hexafluoride in 6.1 days, and octaflorocyclobutane in 10.2 days. Fineberg et al. (*American Journal of Ophthalmology*, 79:67–76, 1975) reported resorption of air in 5 to 6 days and sulfur hexafluoride in 10 to 11 days. These authors stressed that the expansion of sulfur hexafluoride when it is not diluted with air, results in an increase in intraocular pressure. They concluded that a 60:40 ratio of air to sulfur hexafluoride would prevent untoward increases in intraocular pressure. These physiologic studies, together with clinical observations that, when air was used, some retinas redetach after several days, led to the clinical presumption of the value of a longer lasting gas.

Norton (*Transactions of the American Academy of Ophthalmology and Otolaryngology*, pp. OP 85–OP 98, March–April 1973) described the historical and preclinical information that led to an interest in studying sulfur hexafluoride, the technique for its use, and possible adverse reactions, such as increased intraocular pressure and cataract formation. Cataract formation is possible with any gas in contact with the lens due to a drying effect. This finding has led investigators to recommend positioning of the patient so that the gas moves posteriorly and liquid bathes the back of the lens.

Sulfur hexafluoride for use as an adjunct to the management of cases of complex retinal detachment is a class III device requiring premarket approval under section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) because on May 28, 1976, there was in effect for the product a notice of claimed exemption for an investigational new drug (section 520(l)(1)(C) of the act (21 U.S.C. 360j(l)(1)(C))).

FDA has considered the literature supporting the safety and effectiveness of sulfur hexafluoride as an adjunct to the management of cases of complex retinal detachment. The agency has determined, with the advice of its Ophthalmic Devices Panel, an FDA advisory committee, that the literature, together with the additional data and information described below, is sufficient to provide the basis for a premarket approval application (PMA) for the device. FDA cautions, however, that this determination does not constitute a decision by the agency to approve any PMA for the device. An applicant shall include in its PMA the following data and information:

(1) Full reports of all information, whether favorable or unfavorable, published or known to or which should reasonably be known to the applicant, concerning investigations which have been made to show whether or not the applicant's device is safe and effective. Such reports shall include: (a) References to the papers cited in this notice which the applicant believes are applicable to its device under the conditions of use prescribed, recommended, or suggested in the device's proposed labeling; (b) copies of any other papers, published or unpublished, which the applicant believes are applicable to its device under the conditions of use prescribed, recommended, or suggested in the device's proposed labeling; and (c) all other valid scientific evidence of safety and effectiveness within the meaning of § 860.7 of FDA's regulations governing medical device classification procedures (21 CFR 860.7) which the applicant believes are applicable to its device under the conditions of use prescribed, recommended, or suggested in the device's proposed labeling.

The full reports shall be accompanied by a summary and an analysis demonstrating the safety and effectiveness of the applicant's device under the conditions of use prescribed, recommended, or suggested in the device's proposed labeling.

(2) A full statement of the components, ingredients, and properties and of the principle or principles of operation, of the applicant's device.

(3) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, the applicant's device. Such information shall include manufacturing control information sufficient to assure the identity, purity, sterility, and stability of the applicant's device. Evidence of purity and sterility should include the manufacturer's processing and quality control procedures and final product test criteria, which will be maintained under current good manufacturing practice controls, and test data that show that these procedures result in an adequately pure and sterile product.

(4) Specimens of the device's proposed labeling, including a package insert providing a clear definition of indications for use, adequate directions for use, and any proposed contraindications and/or warnings. The proposed labeling shall comply with § 801.109 of FDA's regulations governing exemptions from adequate directions for use (21 CFR 801.109).

Copies of pertinent published papers are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

FDA will be pleased to meet with potential sponsors to discuss the data and requirements. Manufacturers interested in submitting a premarket approval application should contact Roger Gregorio at the address above.

Dated: November 9, 1984.

Marion J. Finkel,

Director, Orphan Products Development.

[FR Doc. 84–30337 Filed 11–19–84; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Meetings for Review of Grant Applications

Pursuant to Pub. L. 92–463, notice is hereby given for meetings of several committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Cancer Center Support Review Committee.

Dates: November 29–30, 1984.

Place: Holiday Inn Hotel, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Times

Open: November 29, 8:30 a.m.–9:00 a.m.

Agenda: A review of administrative details.

Closed: November 29, 9:00 a.m.—recess. November 30, 8:30 a.m.—adjournment.

Closure reason: To review grant applications.

Executive Secretary: Dr. John W. Abrell, Westwood Building, Room 828, National Institutes of Health, Bethesda, MD 20205.

Phone: 301/496–9767.

Name of Committee: Cancer Research Manpower Review Committee.

Dates: January 17–18, 1985.

Place: National Institutes of Health, Building 31A, Conference Room 4, 9000 Rockville Pike, Bethesda, MD 20205.

Times

Open: January 17, 8:30 a.m.–9:00 a.m.

Agenda: To review of administrative details.

Closed: January 17, 9:00 a.m.—recess. January 18, 8:30 a.m.—adjournment.

Closure reason: To review grant applications.

Executive Secretary: Dr. Leon J. Niemiec, Westwood Building, Room 832, National Institutes of Health, Bethesda, MD 20205.

Phone: 301/496–7978.

Dated: November 9, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–30344 Filed 11–19–84; 10:35 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit; Mote Marine Laboratory

Notice is hereby given that an applicant has applied in due form for a permit to take (harass) sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations governing the taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant: Mote Marine Laboratory, 1600 City Island Park, Sarasota, FL 33577

2. Type of Permit: Renewal and amendment of Marine Mammal take (harass) permit, PRT 2–9757

3. Name and Number of Animals: Manatee (*Trichechus manatus*) 200 takes, 40 animals, 5 harassments/animal

4. Type of Activity: Take (harassments)

5. Location of Activity: To include Western Coastal Florida from Cedar Key to Naples

6. Period of Activity: Two years

The purpose of this application is to test the applicability of sonar for use in monitoring manatee movements and behavior.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned PRT #685009. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Service.

Documents submitted in connection with the above application are available for review during normal business hours in room 601, 1000 N. Glebe Road, Arlington, VA.

Dated: November 14, 1984.

R.K. Robinson,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 84–30321 Filed 11–19–84; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Application for Permit; University of California, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT# 685333

Applicant: Brian James Walton, The Peregrine Fund, Univ. of CA, Santa Cruz, CA

The applicant requests a permit to take peregrine falcon (*Falco peregrinus*) eggs fro nests in CA, OR, WA, NV, and AZ form hatching. These young and young from a captive-breeding program, will be released to the wild for enhancement of survival.

PRT# 676073

Applicant: University of Michigan, Museum of Zoology, Ann Arbor, MI

The applicant requests a permit to import 5000-year-old leopard (*Panthera pardus*) bones and skulls salvaged from Egypt for purposes of scientific research.

PRT# 685142

Applicant: Bramble Park Zoo, Watertown, SD

The applicant requests a permit to purchase in interstate commerce one captive born male nene goose (*Branta sandvicensis*) from Mosquito Creek Game Farm, WAI, for enhancement of propagation.

PRT# 685757

Applicant: Massachusetts Div. of Fisheries & Wildlife, Boston, MA

The applicant requests a permit to take up to 20 hatchling red-bellied turtles (*Pseudemys rubriventris bangsi*) annually in Massachusetts for holding over the winter and subsequent release in the spring for enhancement of survival.

PRT# 677112

Applicant: Patuxent Wildlife Research Center, Laurel, MD

The applicant requests amendement of their permit for bald eagle (*Haliaeetus leucocephalus*) research to increase the number of captive-produced eggs or young that may be placed in wild nests for 20 to 40 per year.

PRT# 676811

Applicant: USFWS, Regional Director, Reg. 2, Albuquerque, NM

The applicant requests amendment of their permit to conduct activities outlined in the Service's program advice or in approved recovry plans for listed animals. They request that the permit include listed plants.

Document and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 601, 1000 North Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT/APP number when submitting comments.

November 14, 1984.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-30320 Filed 11-19-84; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Order Providing for Opening of Lands; Nevada

Correction

In FR Doc. 84-28889 appearing on page 44154 in the issue of Friday, November 2, 1984, make the following correction:

In the second column, twelfth line from the bottom of the page, "E½E½W ½;" should have read "E½, E½W½;".

BILLING CODE 1505-01-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 10, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 5, 1984.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Brown County

Stone Head, *Hendricks, Thomas A., House and Stone Head Road Marker,* IN 135 and Bellsville Rd.

Clark County

Charlestown, *Downs, Thomas, House,* 1045 Main St.

Laporte County

LaPorte, *Morrison, Francis H., House,* 1217 Michigan Ave.

Lake County

Lowell vicinity, *Buckley Homestead,* 3606 Belshaw Rd.

Madison County

Anderson, *West Central Historic District,* Roughly bounded by Brown-Delaware, 10th, John, and 13th Sts.

Porter County

Valparaiso, *Loring, Dr. David J., Residence and Clinic,* 102 Washington St.

KENTUCKY

Jefferson County

Louisville, *Oxmoor (Boundary Decrease),* 7500 Shelbyville Rd.

PUERTO RICO

Ponce County

Coamo, *Church San Blas de Illescas of Coamo (Historic Churches of Puerto Rico TR),* Marrio Braschi St.

Aguadilla County

Hatillo, *Church Nuestra Senora del Carmen of Hatillo (Historic Churches of Puerto Rico TR),* Luis M. Lacomba St.

Arecibo County

Utuado, *Church San Miguel Arcangel of Utuado (Historic Churches of Puerto Rico TR),* Dr. Barbosa St.

Guayama County

Aibonito, *Church San Jose of Aibonito (Historic Churches of Puerto Rico TR),* Emeterio Betances St. Cayey, *Church Nuestra Senora de la Asuncion of Cayey (Historic Churches of Puerto Rico TR),* Munoz Rivera St.

Humacao County

Naguabo, *Church Nuestra Senora del Rosario of Naguabo (Historic Churches of Puerto Rico TR),* Town Plaza

Mayaguez County

Guayanilla, *Church Immaculada Concepcion of Guayanilla (Historic Churches of Puerto Rico TR),* Concepcion St.

Sabana Grande, *Church of San Isidro Labrador and Santa Maria de la Cabeza of Sabana Grande (Historic Churches of Puerto Rico TR),* Angel G. Martinez St.

San German, *Church San German Auxerre of San German (Historic Churches of Puerto Rico TR),* De la Cruz St.

Ponce County

Juana Diaz, *Church San Juan Bautistay San Ramon Nonato of Juana Diaz (Historic Churches of Puerto Rico TR),* Town Plaza

Ponce, *Cathedral Nuestra Senora de Guadalupe of Ponce (Historic Churches of Puerto Rico TR),* Town Plaza

SOUTH CAROLINA

Fairfield County

Winnsoboro vicinity, *Lemmon, Bob, House (Fairfield County MRA),* Off SC 213

VIRGINA

Danville (Independent City)

Danville, *Hotel Danville (Municipal Building and City Market),* 600 Main St.

Henrico County

Glen Allen vicinity, *Walkerton,* Mountain Rd.

WISCONSIN

Clark County

Neillsville, *Grand Avenue Bridge,* Grand Ave.

Crawford County

Prairie du Chien, *Folsom, W. H. C., House,* 108 Blackhawk Ave.

Dane County

McFarland, *Lewis Mound Group (47–Da–74),* Burma Rd.

Jefferson County

Jefferson, *Jefferson Fire Station,* 146 E. Milwaukee St.

Watertown, *Beals and Torrey Shoe Co. Building,* 100 W. Milwaukee St.

Milwaukee County

Milwaukee, *Oneida Street Station,* 108 W. Wells and 816 N. Edison Sts.

Walworth County

Whitewater, *Halverson Log Cabin,* University of Wisconsin-Whitewater Campus

Waukesha County

Oconomowoc, *National Guard Armory 127th Regiment Infantry Company G,* 103 E. Jefferson and Main Sts.

Winnebago County

Menasha, *Upper Main Street Historic District,* 103—240 Main, 3 Mill, 56 Racine, and 408 Water Sts.

Oshkosh, *Oshkosh State Normal School Historic District,* Buildings at 800, 842, and 912 Algoma Blvd., and 845 Elmwood Ave.

Oshkosh, *Pollack, William E., Residence,* 765 Algoma Blvd.

Oshkosh, *Wall, Thomas R., Residence,* 751 Algoma Blvd.

[FR Doc. 84-30330 Filed 11-19-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development and the Board for International Food and Agricultural Development; Meetings

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the eleventh meeting of the Joint Committee on Agricultural Research and Development (JCARD) on December 4–5, 1984 and the sixty-seventh meeting of the Board for International Food and Agricultural Development (BIFAD) on December 5–6, 1984.

JCARD Meeting

The purposes of the JCARD meeting are to: Discuss issues relating to the International Agricultural Research Centers (IARCs), and the Stock Assessment Collaborative Research Support Program (CRSPs); take action on Strengthening Grant evaluations, hear a report providing obserations by chief reviewers of the Strengthening Grant Program; and consider the JCARD program of work for 1985.

On December 4, the JCARD Executive Committee will meet from 9:00 a.m. to 12:00 moon in Room 5951 New State Department Building, 22nd and C Streets, N.W., Washington, D.C.; and the full JCARD will meet in that room from 1:00 p.m. to 5:00 p.m. On December 5, the full JCARD will meet from 9:00 a.m. to 12:00 noon in Room 1207, New State Department Building, 22nd and C Streets, N.W. Washington, D.C.

BIFAD Meeting

The BIFAD meeting will take place in two sessions. The purpose of the first session, on December 5, is to serve as a forum for the exchange of ideas and experiences between AID and outside experts on plans and prospects for agricultural research in Africa. The program will include presentations as follows: Agricultural research in Africa as a part of a global system (Vernon Ruttan, University of Minnesota); prospects for increasing food production in Africa and the role of science and technology and policy reform (John Mellor and/or Christopher Delgado, International Food Policy Research Institute—IFPRI); and a strategy for agricultural research in Africa (AID Africa Bureau).

The purposes of the second session, on December 6, will be to consider action on guidelines for AID-university Memoranda of Understanding; review activities of the Joint Committee on Agricultural Research and Development (JCARD); and to hear trip reports on the visit of university deans to India; the evaluation of farming systems project in Swaziland; the Memorandum of Understanding between AID and Brazilian Agricultural Research Organization (EMBRAPA); and the meeting of the AID Agricultural Officers in Latin America and the Caribbean.

The first session (the forum) will be held on Wednesday, December 5, from 1:30 p.m. to 5:00 p.m. in Room 451 of the Joseph Henry Building, 2122 Pennsylvania Avenue, N.W., Washington, D.C. The second session, on Thursday, December 6, will begin at 9:00 a.m. and adjourn at 12:00 noon, and will be held in Room 1107, New State Department Building, 22nd and C Streets, N.W., Washington, D.C.

All of the meetings are open to the public. Any interested person may attend, may file written statements with the Committee and Board before or after the meetings, or may present oral statements in accordance with procedures established by the Committee and Board, and to the extent the time available for the meeting permit. For those meetings held in the State Department, an escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the rooms.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative for the JCARD meetings. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, D.C. 20523 or telephone him at (202) 632–8532.

Dr. Erven J. Long, Coordinator, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at the BIFAD meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523 or telephone him at (703) 235–8929.

Dated: November 14, 1984.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 84-30436 Filed 11-19-84; 8:45 am]

BILLING CODE 8116-01-M

Housing Guaranty Program; Investment Opportunity; Zimbabwe

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to Zimbabwe (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families residing in Zimbabwe.

A prior notice for this borrowing was published seeking expressions of interest. The Borrower is now ready to receive bids for the loan. The name and address of the Borrower's representative, the amount of the loan and project number are indicated below.

Zimbabwe

Project: 613–HG–001B—$25,000 000
Ministry of Finance, Harare, Zimbabwe, Telex: 2141 ZW

Attention: Mr. Arthur Charamba, Acting Deputy Secretary.

Copies of all bids should also be sent to:

(1) USAID/Harare—Telex No. 4428 ZW Harare, Zimbabwe

(2) PRE/H, A.I.D. Washington, D.C. 20523 Telex No. 892703

By this notice of investment opportunity, the Borrower is soliciting loan proposals from any interested investment bankers or lenders. Such proposals should be received by the Borrower not later than 8:00 a.m. Zimbabwe time, Thursday, November 29, 1984. The bids should provide for a single $25 million disbursement in January 1985. The loan should allow a ten year grace period and have a 25–30 year maturity period. Fixed and/or variable interest rates may be proposed. Prepayment options should also be specified.

Selection of investment bankers and/or lenders and the terms of the loans are initially subject to the individual discretion of the Borrowers and thereafter subject to approval by A.I.D. The lenders and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Director, Office of Housing and Urban Programs, Agency for International Development, Room 625, SA/12, Washington, D.C. 20523, Telephone: (202) 632–9837.

Dated: November 15, 1984.

John T. Howley,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 84-30468 Filed 11-19-84; 8:45 am]

BILLING CODE 4710-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-94X)]

Rail Carriers; Baltimore and Ohio Railroad Co.; Abandonment; In Taylor County, WV; Exemption

The Baltimore and Ohio Railroad Company (B&O) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*, as modified by *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55, decided April 16, 1984. B&O intends to abandon its line of railroad known as the Sand Lick Branch, which extends between Stations 0+00 and 118+18, a distance of approximately 2.24 miles in Taylor County, WV.

B&O has certified that: (1) No local traffic has moved over the line for at least 2 years, (2) overhead traffic is not handled on the line, and (3) no formal complaint, filed by a user of rail service on the line, or by a state or local governmental entity acting on behalf of a user, regarding cessation of service over the line, either is pending with the Commission, or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Service Commission (or equivalent agency) in West Virginia has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the discontinuance of service will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on December 20, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 30, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Rene J. Gunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 9, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30431 Filed 11-19-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-96X)]

Rail Carriers; Baltimore and Ohio Railroad Co.; Discontinuance of Trackage Rights; In Sangamon County, IL; Exemption

The Baltimore and Ohio Railroad Company (B&O) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights*. The discontinuance of trackage rights is over that portion of Illinois Central Gulf Railroad Company's (ICG) line at or near Springfield, IL between B&O Station 9545+70 (milepost 180.76) and B&O Station 9573+53 (milepost 181.29), a distance of approximately 0.53 miles in Sangamon, IL.

B&O has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Illinois has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption willl be effective on December 20, 1984 (unless stayed pending reconsideration). Petition to stay the effective date of the exemption must be filed by November 30, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1984 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Rene J. Gunning, 100 North Charles Street, Suite 2204, Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 13, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30433 Filed 11-19-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-64X)]

Rail Carriers; Chesapeake and Ohio Railway Co.; Abandonment Exemption; In Logan County, WV; Exemption

The Chesapeake and Ohio Railway Company (C&O) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*, as modified by *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55, decided April 16, 1984. C&O will abandon that portion of its Whitman Creek Subdivision between stations 39+93 and 131+00, a distance of approximately 1.90 miles in Logan County, WV.

C&O has certified that: (1) No local traffic has moved over the line for at least 2 years, (2) overhead traffic is not handled on the line, and (3) no formal complaint, filed by a user of rail service on the line, or by a state or local governmental entity acting on behalf of a user, regarding cessation of service over the line, either is pending with the Commission, or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Service Commission (or equivalent agency) in West Virginia has been notified in writing at least 10 days prior to the filing of this notice. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on December 20, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 30, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Rene J. Gunning, 100 North Charles Street, Suite 2204, Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 13, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30436 Filed 11-19-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-65X)]

Rail Carriers; Chesapeake and Ohio Railway Co.; Abandonment; Seneca County, OH, Exemption

The Chesapeake and Ohio Part Railway Company (C&O) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. C&O's abandonment involves two portions of its line of railroad at or near Fostoria, OH, between Stations 1784+05 and 179+14, a distance of approximately 0.27 miles and between Stations 1876+67 and 1895+65, a distance of approximately 0.36 miles, all in Seneca County, OH.

C&O has certified (1) that no local traffic has moved over the line for at least 2 years and that no overhead traffic moves over the line, and (2) that no formal complaint, filed by a user of rail service on the line, or by a state or local governmental entity acting on behalf of such user, regarding cessation of service over the line, either is pending with the Commission or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Service Commission (or equivalent agency) in Ohio has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 366 I.C.C. 91 (1979).

The exemption will be effective on December 20, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by November 29, 1984; and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of any petition filed with the Commission must be sent to C&O's representatives:

Rene J. Gunning, 100 North Charles Street, Suite 2204, Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 9, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30429 Filed 11-19-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30519]

Rail Carriers; Marion County Railway Co.; Exemption; Common Control; Exemption

On June 29, 1984, Marion County Railway Company (MCRC) filed a notice of exemption under 49 CFR 1180.2(d)(2) in connection with its proposed lease and operation of a line of track between Milepost AC-362.0 and Milepost AC-332.3, a distance of 6.3 miles, located in and owned by Marion County, SC (County). In Docket No. AB-55 (Sub-No. 86), *Seaboard System Railroad, Inc.—Abandonment—Marion County* (not printed), served May 16, 1984, the County was authorized to acquire the 6.3-mile line and the abandonment application was dismissed. Subsequently, at the request of the County, and before the purchase was

consummated, the May 16th decision was modified by decision served October 12, 1984. The modification notes that MCRC will operate the line on behalf of the County and thereby insures that MCRC's operations of the line will not result in a transfer of the service obligation in violation of 49 U.S.C. 10905(f)(4).

Willard R. Formyduval, president of MCRC, also controls and operates 3 Class III railroads: Warrenton Railroad Company (Warrenton), Aberdeen and Briar Patch Railway Company (Aberdeen), and Hartwell Railway Company (Hartwell). Mr. Formyduval owns 77 percent of the stock of Warrenton, is president and sole shareholder of Aberdeen, and is president and owner of 12.5 percent of the outstanding shares in Hartwell. Aberdeen owns an 80 percent interest in MCRC, and Mr. Formyduval will own or control a 90 percent interest in MCRC.

The acquisition of control of MCRC by Arberdeen and, consequently, by Mr. Formyduval comes within the class of transactions exempted from prior approval under 49 CFR 1180.2(d)(2). The lines of MCRC, Aberdeen, Warrenton, and Hartwell do not connect with each other, and the acquisition of control is not part of a series of anticipated transactions that could lead to a connection. The transaction involves no Class I carriers.

As a condition to the use of this exemption, any employee affected by the acquisition of control shall be protected pursuant to *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Decided: November 9, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30430 Filed 11-19-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-118)]

Rail Carriers; Seaboard System Railroad, Inc.,—Abandonment—In Daviess and McLean Counties, KY; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc., to abandon its 20.9-mile rail line between Livermore (milepost D-193.7) and Owensboro (milepost D-214.6) in Daviess and McLean Counties, KY. The abandonment certificate will become effective 30 days after the publication of this Notice unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedure regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-30432 Filed 11-19-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 82-28]

Coleman Preston McCown, D.D.S.; Denial of Application

On September 30, 1982, the then Acting Administrator of the Drug Enforcement Administration (DEA) issued to Coleman Preston McCown, D.D.S. (Respondent), of Landover, Maryland, an Order the Show Cause proposing to deny the Respondent's pending application for registration pursuant to 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's controlled substance-related felony conviction on March 26, 1981, in the United States District Court for the District of Maryland. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

Respondent was incarcerated at the time the Order to Show Cause was issued and therefore could not attend or participate in a hearing. Accordingly, Administrative Law Judge Francis L. Young entered a consent order on December 15, 1982, in which counsel for Respondent agreed to inform counsel for the Government when Dr. McCown would be free and able to be present at a hearing. Subsequently, the hearing in this proceeding was held on April 17, 1984, in Washington, D.C., Judge Francis L. Young presiding. At the hearing a second application from Respondent, in addition to the one specified in the Order the Show Cause, was put into evidence. It was dated May 20, 1982. These proceedings apply to all of Respondent's pending applications for DEA registration.

On June 21, 1984, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. No exceptions were filed and on July 17, 1984, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on December 3, 1979, Respondent was present at a Washington, D.C. restaurant when an officer of the Drug Enforcement Task Force, working undercover, purchased a quantity of cocaine from an acquaintance of Respondent. Respondent was aware of what was occurring and let it be known that he too was a dealer in cocaine. During the meeting, Respondent boasted about his methods used to evade police discovery, including display of a police fraternal organization sticker on his Mercedes-Benz.

Subsequently, on June 14, 1980, a DEA Special Agent was taken to Respondent's apartment by a cooperating individual. Respondent sold the Agent 3.5 grams of cocaine for $280. During this visit, the Agent was introduced to Respondent's paramour. About two weeks later, the Agent returned to Respondent's apartment at the direction of Respondent's paramour. On this occasion the Agent purchased 3.5 grams of cocaine from the woman for $250. She stated that she was making this sale on instructions given her by Respondent.

On June 30, 1980, the Agent again spoke with Respondent by telephone while Respondent was at his dental office. They agreed to meet at a shopping center so that the Agent might purchase some cocaine from Respondent. When they met, the Agent told Respondent that he was interested in purchasing an ounce of cocaine. Respondent left the Agent's automobile in which he and the Agent were sitting, went to his own car, retrieved a leather bag, returned to the Agent's car and pulled out two plastic bags which contained cocaine. The Agent then purchased an ounce of cocaine from the Respondent for $2,000. Respondent was carrying approximately 12 ounces of cocaine with him in the leather bag. On this occasion and in a subsequent conversation, Respondent and the Agent discussed the availability of heroin. Respondent assured the Agent that he would be able to supply some heroin to him.

Pursuant to a search warrant, officers entered and searched Respondent's apartment on September 18, 1980. They sized approximately one pound of cocaine there valued at about $30,000 wholesale. The officers also seized a quantity of cocaine paraphernalia from the apartment including some lidocaine (a dilutant of cocaine), a number of "quills" or straws cut on an angle to facilitate the snorting of cocaine, strainers, a finely instrumented Mettler scale, razor blades, measuring spoons, a quantity of glassine envelopes in which the cocaine would be packaged for sale, and other items.

While the search warrant was being executed at Respondent's apartment, Respondent was arrested in a parking lot outside his dental office as he prepared to enter his car. At that time he had with him five clear plastic bags containing a total of 142 grams of 43% pure cocaine in a large bag and an additional clear plastic bag containing 31 grams of 29% pure cocaine in his pocket. Respondent had left his dental office immediately before he was arrested.

Consequently, a grand jury of the United States District Court for the District of Maryland handed up a five-count indictment charging Respondent and his girl friend with conspiring to unlawfully distribute cocaine. Respondent was also charged with three counts of distribution and possession. On March 26, 1981, Respondent pled guilty to one count of aiding and abetting the distribution of cocaine, a Schedule II narcotic controlled substance. This is a felony conviction relating to controlled substances. Therefore, there is a lawful basis for the denial of Respondent's pending applications for registration under 21 U.S.C. 824(a)(2). *Serling Drug Company*, Docket No. 74-12, 40 FR 11918 (1975); *Raphael C. Cilento, M.D.*, Docket No. 79-2, 44 FR 30466 (1979); and *Thomas W. Moore, Jr., M.D.*, Docket No. 79-13, 45 FR 40743 (1980).

The Administrative Law Judge found that Dr. McCown is among a small group of general practice dentists in the Washington, D.C. area qualified to use general anesthesia in general practice dentistry, as distinguished from dental surgery. There are dental patients who, because of fear, can have general dental work done only when under general anesthesia. Dr. McCown's continued practice of this specialty in dentistry depends on his ability to administer general anesthesia. To do so he must have a DEA registration.

The Administrative Law Judge further found that Respondent's dental practice license was revoked by the Maryland authorities on March 7, 1984. The revocation will be stayed, however, effective upon his successfully passing a clinical practice examination. The revocation order, to which Respondent consented, further provides that upon the successful passing of the examination, Respondent will be placed on probation subject to certain conditions. He must keep duplicate copies of all controlled dangerous substances prescriptions he writes and arrange for supervision by another dentist who will submit quarterly reports on Respondent's professional ability and on his compliance with the order. Also, Respondent must undergo psychotherapy with a therapist who will submit quarterly reports. Respondent must complete a remedial training program and meet other requirements. There are no provisions of the Maryland State Board of Dental Examiner's order having to do specifically with the administration or dispensing, as opposed to prescribing of controlled substances.

Respondent stressed the fact that the Maryland Board of Dental Examiners has seen fit to permit him to resume his practice of dentistry as long as he meets certain conditions. Judge Young noted that the present status of Respondent's ability to practice is uncertain on this record. The Board's consent order provides that Respondent's license to practice "is hereby revoked." It then goes on to provide that the "foregoing revocation, *shall be stayed upon* Respondent's successfully *passing* [an] examination. (*Italic added.*) As of the date of the hearing in the instant proceeding, Respondent had not yet taken that examination. So, as of that date, Respondent was not licensed to practice dentistry.

The consent order also provided that "*should* the Board's revocation order be stayed, the Respondent shall be placed on probation subject to [a number of] conditions." (*Italic added.*) The conditions indicate that the Maryland Board of Dental Examiners is willing to permit Respondent to resume practice only under close professional supervision. The Administrative Law Judge further stated that there was nothing in the consent order to indicate that the Board contemplated Respondent's return to the same specialized type of dental practice, calling for administering anesthesia to virtually every patient coming to him for treatment.

The Administrative Law Judge recommended to the Administrator of DEA that Respondent's applications be denied. The Administrator adopts the recommended ruling, findings of fact and conclusions of law of the Administrative Law Judge in their entirety.

The Administrator of the Drug Enforcement Administration is charged with deciding whether, or under what circumstances, Respondent can be entrusted with the handling of heavily abused controlled substances as a DEA registrant. At this time the Administrator believes that Rspondent, a major drug dealer, is a danger to the public health and safety and has not earned that trust. Respondent's criminal activity, although not related to his dental practice, clearly shows a disregard for the law and an indifference to his responsibilities as a registrant and a health professional. The Drug Enforcement Administration has consistently held that conviction of a controlled substance-related felony, even though unrelated to a registrant's professional practice, requires the same sanctions as one which is so related. See, *Tilman J. Bently, D.O.*, Docket No. 82-22, 49 FR 35049 (1984); *Dennis Howard Harris, M.D.*, Docket No. 84-19, 49 FR 39930 (1984); *Raymond H. Wood, D.D.S.*, Docket No. 82-32, 48 FR 48727 (1983); and *Aaron A. Moss, D.D.S.*, Docket No. 80-2, 45 FR 72850 (1980).

The Administrator further concludes that there has been no showing that Respondent needs a DEA registration to practice general dentistry. It is only to pursue his unique specialty that Respondent seeks to be registered. Denial of his application will not result in Respondent's being unable to practice his profession at all. Respondent is free to reapply in the future and his application will be evaluated in light of the then existing circumstances.

Accordingly, having concluded that there is a lawful basis for the denial of Respondent's applications for registration and having further concluded that under the facts and circumstances presented in this case, the applications should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the applications of Coleman Preston McCown, D.D.S., for registration under the Controlled Substances Act, be, and they hereby are, denied, effective December 20, 1984.

Date: November 9, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-30609 Filed 11-19-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-6]

Cuca Pharmacy, Inc.; Miami, FL; Hearing

Notice is hereby given that on March 29, 1984, the Drug Enforcement Administration, Department of Justice, issued to Cuca Pharmacy, Inc., an Order To Show Cause and Immediate Suspension Of Registration affording Respondent the opportunity to show cause as to why the Drug Enforcement Administration should not revoke its DEA Certificate of Registration, AC1760912.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, November 27, 1984, in Courtroom I, U.S. District Court, Old Courthouse Building, 300 N.E. 1st Avenue, Miami, Florida.

Dated: November 9, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-30608 Filed 11-19-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-44]

Stephen Granet Rosen, D.D.S., Miami Beach, FL.; Hearing

Notice is hereby given that on September 28, 1984, the Drug Enforcement Administration, Department of Justice, issued to Stephen Granet Rosen, D.D.S., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AR0153065, as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, November 28, 1984, in Courtroom I, U.S. District Court, Old Courthouse Building, 300 N.E. 1st Avenue, Miami, Florida.

Dated: November 9, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-30610 Filed 11-19-84; 8:45 am]

BILLING CODE 4410-09-M

Application; Importation of Controlled Substances; E.I. du Pont de Nemours and Co.

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 29, 1984, E. I. du Pont de Nemours and Company, Chambers Works, Deepwater, New Jersey 08023, made application to the Drug Enforcement Administration to be registered as an importer of Thebaine (9333), a basic class controlled substance in Schedule II.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than December 20, 1984.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: November 9, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-30611 Filed 11-19-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Reappointment of Members to the Performance Review Board

This Notice amends Department of Labor Notice published on December 9, 1983 (48 FR 55199), listing Department of Labor members of the Performance Review Board of the Senior Executive Service.

The following executives are hereby reappointed to new 3-year terms, effective November 18, 1984:

Thomas C. Komarek
Janet L. Norwood

FOR FURTHER INFORMATION CONTACT:
Mr. Larry K. Goodwin, Acting Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, D.C. 20210.

Signed at Washington, D.C., this 14th day of November 1984.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 84-30458 Filed 11-19-84; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Sjoblom Shake and Shingle Mail, et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 5, 1984–November 9, 1984.

In order for a affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sale or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,418; Sjoblom Shake and Shingle Mill, Winlock, WA

Affirmative Determinations

TA-W-15,355; E.I. duPont De Nemours & Co., Inc., Chemicals and Pigments Department, Newport, DE

A certification was issued covering all workers engaged in employment related to the production of copper phthalocyanine (CPC) blue pigment separated on or after January 1, 1984 and before August 15, 1984.

TA-W-15,432; Towmotor Corp., Mentor, OH

A certification was issued covering all workers separated on or after January 1, 1984.

TA-W-15,417; Purolator Products, Inc., Rahway, NJ

A certification was issued covering all workers separated on or after July 1, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 5, 1984–November 9, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 13, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-30456 Filed 11-19-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Buffalo Color Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 30, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 30, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 13th day of November 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Buffalo Color Corp. (USWA)	Buffalo, NY	11/6/84	10/30/84	TA-W-15,550	Paste, powder, indigo.
Caryco Mining, Ltd. (workers)	Huntington, WV	11/6/84	10/31/84	TA-W-15,551	Coal, metallurgical, mining.
Century Brass Products, Inc. (UAW)	Waterbury, CT	11/5/84	11/1/84	TA-W-15,552	Wire rods and strip.
Century Brass Products, Inc. (UAW)	New Milford, CT	11/5/84	11/1/84	TA-W-15,553	Brass tubes.
Chippewa Shoe Co. (company)	Chippewa Falls, WI	11/5/84	10/31/84	TA-W-15,554	Boots—leather men's work and sport.
Craddock-Terry Shoe Corp. (ACTWU)	Dillwyn, VA	11/2/84	10/29/84	TA-W-15,555	Footwear, men's.
Craddock-Terry Shoe Corp. (ACTWU)	Blackstone, VA	11/2/84	10/29/84	TA-W-15,556	Footwear, women's.
Equitable Fashions (Int'l leather Goods)	New Brunswick, NJ	10/25/84	10/19/84	TA-W-15,557	Handbags, women's.
Euclid, Inc., Division of Clark Michigan Co. (UAW)	Solon, OH	11/5/84	10/31/84	TA-W-15,558	Parts and warehouse.
Euclid, Inc., Division of Clark Michigan Co. (UAW)	Euclid, OH	11/5/84	10/31/84	TA-W-15,559	Trucks, construction, road-off.
Facet Enterprises, Inc., Filter Products Division (workers)	Madison Heights, MI	10/29/84	10/22/84	TA-W-15,560	Facet filters.
Mercury Sportswear Co., Inc. (ILGWU)	New York, NY	11/5/84	10/31/84	TA-W-15,561	Pants, skirts, jackets.
Texaco, Inc. (OPEIU)	Port Arthur, TX	10/25/84	10/19/84	TA-W-15,562	Petroleum refining.

[FR Doc. 84-30457 Filed 11-19-84; 8:45 am]

BILLING CODE 4510-30-M

CHAPTER VI—OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION

Design Arts Advisory Panel (Fellowships Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Fellowships Section) to the National Council on the Arts will be held on December 5-6, 1984, from 9:00 a.m. to 5:30 p.m. in Room Mo-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussions of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and (9)(b) of

section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment of the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

November 15, 1984.

[FR Doc. 84-30294 Filed 11-19-84; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel (Interdisciplinary Arts Project Section); Meeting

Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Interdisciplinary Arts Project Section) to the National Council on the Arts will be held on December 3–4, 1984, from 9:00 a.m. to 8:00 p.m., December 5, 1984, from 9:00 a.m. to 6:30 p.m., December 6, 1984, from 9:00 a.m. to 7:30 p.m., and December 7, 1984, from 9:00 a.m. to 6:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C.

A portion of this meeting will be open to the public on December 7, 1984, from 12:30 to 3:30 p.m., to discuss policy.

The remaining sessions of this meeting on December 3–4, 1984, from 9:00 a.m. to 8:00 p.m., December 5, 1984, from 9:00 a.m. to 6:30 p.m., December 6, from 9:00 a.m. to 7:30 p.m., December 7, 1984, from 9:00 a.m. to 12:00 noon, and December 7, from 3:30 to 6:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John N. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, of Council & Panel Operations, National Endowment for the Arts.

November 13, 1984.

[FR Doc. 84-30823 Filed 11-19-84; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506:

1. Date: December 3, 1984.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Research Translation Program: Slavic Panel, Division of Research Programs, for projects beginning after April 1, 1985.
2. Date: December 10, 1984.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Research Translation Program: Romance Panel, Division of Research Programs, for projects beginning after April 1, 1985.
3. Date: December 7, 1984.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Summer Stipends applications in American History III, submitted to the Division of Fellowships and Seminars beginning after May 1, 1985.
4. Date: December 3, 1984.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 316–2
   Program: This meeting will review Summer Stipends applications in American History I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
5. Date: December 4, 1984.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 316–2
   Program: This meeting will review Summer Stipends applications in Early Modern and Modern European History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
6. Date: December 4, 1984.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Summer Stipends applications in Early European History; Classics; Medieval and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
7. Date: December 5, 1984.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Summer Stipends applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
8. Date: December 6, 1984.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 316–2
   Program: This meeting will review Summer Stipends applications in Philosophy I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
9. Date: December 7, 1984.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 316–2
   Program: This meeting will review Summer Stipends applications in Anthropology, Folklore, Archaeology, and Linguistics, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
10. Date: December 10, 1984.
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 415
    Program: This meeting will review Summer Stipends applications in Sociology, Psychology, and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
11. Date: December 10, 1984.
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 316–2
    Program: This meeting will review Summer Stipends applications in Foreign Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
12. Date: December 11, 1984.
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 316–2
    Program: This meeting will review Summer Stipends applications in Latin American, Asian, African, and Near Eastern History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

13. Date: December 12, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Summer Stipends applications in Romance Languages and Literature; submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
14. Date: December 13, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 316–2
    Program: This meeting will review Summer Stipends Applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
15. Date: December 14, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Summer Stipends applications in Philosophy II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
16. Date: December 14, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 316–2
    Program: This meeting will review Summer Stipends applications in Communications and Drama, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
17 Date: December 17, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Summer Stipends applications in Music and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
18. Date: December 17, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 316–2
    Program: This meeting will review Summer Stipends applications in Modern American and British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
19. Date: December 18, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Summer Stipends applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
20. Date: December 19, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 316–2
    Program: This meeting will review Summer Stipends applications in Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
21. Date: December 19, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Summer Stipends applications in Political Science and Economics, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
22. Date: December 20, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 316–2
    Program: This meeting will review Summer Stipends applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
23. Date: December 20, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Summer Stipends applications in Constitutional (Bicentennial); Law and Jurisprudence submitted to the Division of Fellowships and Seminars; for projects beginning after May 1, 1985.
24. Date: December 12, 1984
    Time: 8:30 a.m. to 5:30 p.m.
    Room: 316–2
    Program: This meeting will review Summer Stipends applications in Comparative Literature; Literary Theory and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.
25. Date: December 3–4, 1984
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 430
    Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after April 1, 1985.
26. Date: December 7, 1984
    Time: 9:00 a.m. to 5:00 p.m.
    Room: 415
    Program: This meeting will review applications submitted for the Humanities Programs for Nontraditional Learners, Division of Education Programs, for projects beginning after February 1985.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider informaton that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 84-30408 Filed 11-19-84; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 395–9421.

OMB Desk Officer: Carlos Tellez, (202) 395–7340.

Title: Survey of Graduate Science and Egnineering Students and Postdoctorates.

Affected Public: Universities and Colleges.

Number of Responses: 8,400; total of 13,300 burden hours.

Abstract: The survey is the only source of national statistics on graduate student and postdoctorate support and characteristics of faculty employed in graduate science/engineering (S/E) programs. Data are used by Federal agencies, state Education Boards, professional societies, and institutions of higher education in monitoring S/E educational progress and in planning to meet future S/E personnel needs.

Dated: November 15, 1984.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 84-30445 Filed 11-19-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Council Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: NSF Advisory Council.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Date: Thursday, December 6, 1984.

Time: 9:00 a.m. to 3:00 p.m.

Type of Meeting: Open.

Contact Person: Mrs. Susan Kemnitzer, Executive Secretary, NSF Advisory Council, National Science Foundation, Room 527.

1800 G Street, NW., Washington, D.C. 20550. Telephone: 202/357–9730.

Purpose of Advisory Council: The purpose of the NSF Advisory Council is to provide advise and council to the NSF Director and principal members of his staff on matters of Foundationwide concern. It represents a cross section of the scientific disciplines and program areas that are supported by the Foundation.

Summary Minutes: May be obtained from the contact person at above stated address.

Agenda: To assess the public's perception of science and technology generally and NSF specifically.

Dated: November 15, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-30444 Filed 11-19-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Combined Subcommittees on San Onofre Nuclear Generating Station Unit 1 and Systematic Evaluation Program; Meeting Changes

The ACRS Subcommittee meeting on San Onofre Nuclear Generating Station Unit 1 previously scheduled for Monday, November 26, 1984 has been changed to a combined meeting, *San Onofre Nuclear Generating Station Unit 1 and Systematic Evaluation Program*, for Tuesday, November 27, 1984, 8:30 a.m. until the conclusion of business, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The Subcommittee will discuss the NRC Staff's technical basis for restart of San Onofre Nuclear Generating Station Unit 1.

All other items regarding this meeting remain the same as announced in the **Federal Register** published Monday, November 5, 1984 (49 FR 44253).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 15, 1984.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 84-30441 Filed 11-19-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, Decembers 6, 1984
Thursday, December 13, 1984
Thursday, December 20, 1984

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW, Washington, D.C. 20415, (202) 632–9710).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

November 9, 1984.

[FR Doc. 84-30221 Filed 11-19-84; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chpater 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Employer's Quarterly or Annual Report of Contributions Under the RUIA.

(2) Form(s) submitted: DC–1.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: Recordkeeping, Quarterly, Annually.

(5) Respondents: Business or other for profit.

(6) Annual responses: 2,387.

(7) Annual reporting hours: 835.

(8) Collection description: Railroad employers are required to make contributions to the RUI fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Robert Fishman (202–395–6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 84-30418 Filed 11-19-84; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14235; 2 (812–5938)]

State Bank of Victoria and S.B. Victoria Funding Inc.; Exempting

November 14, 1984.

Notice is hereby given that State Bank of Victoria (the "Bank") 385 Bourke Street Melbourne, Victoria 3000 Australia, an Australian bank, and its wholly-owned subsidiary S.B. Victoria Funding Inc.("Funding,"and jointly with Bank, the "Applicants"), 1209 Orange Street, Wilmington, DE 19801, a Delaware corporation, filed an application on September 14, 1984, for an order of the Commission, purusant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicatons from all provisions of the Act in connection with their proposed issuance of commercial paper in the United States. All interested persons are referred to the application on file with the Commission for a statement of the presentations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

The Bank, the principal offices of which are located in Melbourne, is the third largest savings bank in Australia with assets of more than $6.5 billion, desposits of more than $5.8 billion, and reserve funds of more than $267 million. According to Applicants, the Bank is an autonomous body authorized to do business and regulated under the provisions of the State Bank Act of 1958 (the "State Bank Act"). Applicants state that the management of the Bank is vested in commissioners, who are appointed by the Governor of the State of Victoria (the "State"), acting on the advice of the State Cabinet. Applicants further state that the Bank's commissioners hold all the property of the Bank for and on account of the State government. Monies belonging or payable to the Bank are deemed to be public monies pursuant to the State Bank Act.

Applicants represent that the Bank's principal business is the receipt of deposits and making loans, including housing loans, personal loans to individuals, and loans to public authorities. Although counted among Australia's savings banks, the Bank, through a 1980 amendment to the State Banking Act, was authorized to provide full trading bank (*i. e.*, commercial bank) facilities, including custodial services, money transfers, travel services, insurance for properties mortgaged to the Bank, foreign exchange, import/export trade financing, and letters of credit. In addition, the Bank participates in merchant banking through its 25.8% shareholding in Tricontinental Holdings Limited, which in turn participates in all areas of merchant banking including money markets and commerical and international financial advisory services.

Applicants state that the Bank is authorized to carry on its business solely by and under the State Bank Act. Applicants assert that, under the State Bank Act, the Bank's commissioners establish rates of interest payable by or to the Bank and reserve requirements for deposits with the Bank. Applicants contend that, although the Bank is not required by law to observe any specified asset distribution or liquidity convention imposed on Australian banks by the Commonwealth Banking Act of 1959, as administered by the Reserve Bank of Australia ("the RBA"), the Bank has voluntarily agreed to comply with certain monetary regulations imposed by the RBA. Applicants further state that the State Banking Act requires the Bank to forward to the State Tresurer an annual audited statement of its accounts to be presented to the Governor and both houses of State Parliament.

Applicant propose to offer for sale in the United States unsecured short-term promissory notes of the type generally referred to as commerical paper (the "Notes"). According to Applicants, the Notes will be in bearer form, denominated in United States dollars, of prime quality, and issued in minimum denominations of at least $100,000. Applicants state that the Notes will have a maturity of nine months or less, exclusive of days of grace, and will neither be payable on demand nor provide for any extension, renewal, or automatic "roll-over" at the option of either the holder or the issuer.

Applicants represent the Notes will be effectively secured by the credit of the Bank and the guarantee of the State. It is anticipated that the Notes will be issued by Funding and secured by obligations of the Bank under a loan agreement with Funding (the "Loan Obligations") pursuant to which Funding shall lend to the Bank the proceeds derived from the sale of the Notes and the Bank shall agree to make payments to Funding on such Loan Obligations in amounts sufficient to pay the principal of and interests on the Notes. Alternately, Applicants state, the Notes may be issued as direct obligations of the Bank guaranteed by the State. It is represented that the Notes issued by Funding will rank *pari passu* among themselves, equally with all other unsecured, unsubordinated indebtedness of Funding, and superior to the rights of Funding's shareholder. It is further represented that the Bank's Loan Obligation will rank equally with all other unsecured, unsubordinated indebtedness of the Bank.

According to Applicants, the Notes will not be advertised or otherwise offered for sale to the general public, but, instead, will be issued and sold through one or more commercial paper dealers in the United States to investors in the United States who normally purchase commercial paper. Applicants will require the dealer(s) to provide each offeree of the Notes prior to purchase with a memorandum which briefly describes the business of Applicants, including the Bank's most recent publicly available fiscal year-end balance sheet and profit and loss statement, which shall have been audited in the manner customarily done by its auditors. Applicants contend that the memorandum will briefly describe the differences between the accounting principals applied in the preparation of its financial statements and "generally accepted accounting principals" used by banks in the United States. Applicants further contend that the memorandum and financial statements will be at least as comprehensive as those customarily used by United States issuers in offering commercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of the Applicants.

Applicants represent that the presently proposed and any future issuance of Notes or other debt securities by them in the United States shall have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that Applicants' legal

counsel in the United States will certify that such a rating has been received. Applicants state, however, that no such rating need be obtained with respect to any issue if, in the opinion of Applicants' legal counsel in the United States, counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in Rule 502 of Regulation D under the Securities Act of 1933 (the "1933 Act").

Applicants state that the terms of the Notes, including their negotiability, maturity, minimum denomination, manner of offering to investors, and use of proceeds will qualify them for the exemption from registration under Section 3(a)(3) of the 1933 Act. The Notes will be prime quality negotiable commercial paper of the type eligible for discount by Federal Reserve Banks and will arise out of, or the proceeds of which will be used for, current transactions. Applicants will not issue or sell any Notes, however, until they have received an opinion from their legal counsel in the United States to the effect that the offering of the Notes is entitled to the exemption. Applicants do not request Commission review or approval of such opinion.

Applicants will appoint a bank or trust company in the United States to act as their agent in issuing the Notes on their behalf. They will appoint either that financial institution or some other United States person which normally acts in such capacity to accept any process served in any action based on a Note and instituted by the holder of the Note in any state or federal court having jurisdiction in the matter. Applicants will expressly accept the juriadiction of any state or federal court in the state of New York sitting in New York County in respect of any such action. The appointment of an authorized agent to accept service of process and the consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicants. Applicants will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering and sale of the Notes or otherwise in connection with the Notes.

Applicants may in the future offer and sell other debt securities in the United States. No future securities shall be offered or sold unless (a) the securities are registered under the 1933 Act, or (b) in the opinion of United States counsel for Applicants an exemption from registration under the 1933 Act is available with respect to the offer and sale, or (c) the staff of the Commission states that it would not recommend that the Commission take any action under the 1933 Act if such securities are not registered. Applicants undertake that any future offering of securities of the Bank or Funding in the United States will be made on the basis of disclosure documents which are appropriate and customary for the offering, whether made pursuant to a registration statement under the 1933 Act or an exemption therefrom (and in any event as comprehensive as those used in offerings of similar securities by issuers in the United States), and will be updated periodically to reflect material changes in the business or financial status of the Bank or Funding. In any future offering of securities of the Bank or Funding in the United States made through dealers or underwriters, Applicants will secure an undertaking from each dealer or underwriter to furnish such disclosure documents to each offeree of such securities, prior to any sale of the securities to such offeree.

Applicants also undertake, in connection with any future offering in the United States of their debt securities, to appoint a United States person as agent to accept any process served in any action based on any securities and instituted in any state or federal court having jurisdiction by the holder of the security. Applicants further undertake that they will expressly accept the jurisdiction of any state or federal court in the State of New York sitting in New York County in respect of any action. The appointment of an agent to accept service of process and the consent to jurisdiction will be irrevocable so long as the securities remain outstanding and until all amounts due and to become due in respect of the securities have been paid. Applicants will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the securities or otherwise in connection with the securities. Applicants agree that any Commission order is expressly conditioned on the Applicants' compliance with all undertakings set forth in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 10, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30453 Filed 11-19-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:00 A.M., December 3, 1984, at the Lincoln Inn, in St. Johnsbury, Vermont, to discuss such businesses as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call David C. Emery, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602. (802) 229-0538.

Dated: November 13, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-30440 Filed 11-19-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Los Angeles International Airport, FAA Acceptance of Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its acceptance of noise exposure maps submitted by Los Angeles International Airport (LAX) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. The FAA also announces formal receipt of the proposed LAX noise compatibility program submitted for review and approval under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved by the Administrator on or before April 13, 1985.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the LAX noise exposure maps, and of the start of the formal review period for the associated noise compatibility program is October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Ellis A. Ohnstad, Airport Planning Officer, AWP-611, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 536-6250. Comments on the proposed noise compatibility program should also be submitted to that office.

SUPPLEMENTARY INFORMATION: This noise announces that the FAA has accepted noise exposure maps for Los Angeles International Airport effective October 15, 1984; and is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before April 13, 1985. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that is accepted by FAA as meeting Federal Aviation Regulation Part 150 promulgated pursuant to Title I of the Act, may also submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Los Angeles International Airport has submitted to the FAA on May 26, 1983, noise exposure maps, descriptions, and other documentation which were produced during an airport noise control and land use compatibility (ANCLUC) study conducted at LAX from October 1980 to June 1984. It was requested that the FAA accept this material as a noise exposure map as described in Section 103 (a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

SUPPLEMENTARY INFORMATION:

The FAA has completed its review of the noise exposure maps and related material submitted by Los Angeles International Airport. The FAA has accepted the noise exposure maps for Los Angeles International Airport effective October 15, 1984.

FAA's acceptance of an airport operator's noise exposure map is limited to the determination that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program, or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's acceptance of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Upon the October 15, 1984, acceptance of the noise exposure maps, the FAA has formally received the noise compatibility program for LAX. Preliminary review of the submitted material indicated that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 13, 1984.

The proposed program includes recommended measures relating to flight procedures for noise control purposes which are exempt from the 180-day review procedures. The FAA's detailed evaluation of these measures will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate of foreign commerce, and be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land uses authorities, will be considered by the FAA to the extent practicable. Because the FAA may approve a proposed noise compatibility program in less than 180 days, no formal comment period has been established. Comments received subsequent to FAA approval or disapproval, even if received beyond the 180-day limit, will be acknowledged and considered in evaluating project applications to implement elements of the program. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters , 800 Independence Avenue, SW., Room 617, Washington, D.C.

Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Room 6E25, Hawthorne, California

Los Angeles Department of Airports, One World Way, Fourth Floor, Los Angeles, California

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Hawthorne, California, on October 23, 1984.

Alex Hammond,

Acting Director, Western-Pacific Region.

[FR Doc. 84-30328 Filed 11-19-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Announcement of Sealed Bid Auction for 103,783 Shares of Erie Lackawanna Inc. Common Stock

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury announces that it is receiving offers to purchase 103,783 shares of common stock of Erie Lackawanna Inc. ("EL") owned by the United States (the "Shares"). The shares represent approximately 12.3 percent of the outstanding common stock of EL. Offers to purchase the Shares must be made by sealed bid, under the procedures and subject to the terms and conditions set forth in an Invitation for Bids (the "Invitation"). Bids must be received by 3:00 p.m. (Washington, D.C. time) on December 10, 1984, in order to be considered.

The invitation may be obtained by mail or in person, beginning at 10:00 a.m. on November 19, 1984 at the office set forth below: Office of the Assistant General Counsel (Banking and Finance), United States Department of the Treasury, Room 2026, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220. Only one copy will be furnished to any individual or address.

FOR FURTHER INFORMATION CONTACT: Elen Seidman (202–566–2278) or Nina Mendelsohn (202–535–6726), Office of the General Counsel, Department of the Treasury, Room 2026, Main Treasury Building, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION: Full details concerning the sale are available only in the Invitation and all bids must be submitted in the form set forth in the invitation. The following, however, summarizes the major conditions of this sale.

(1) The Shares will be sold only as a block and only for cash.

(2) The Department of the Treasury reserves the right to reject all bids.

(3) All bidders will be required to submit information described in the Invitation concerning the bidder.

(4) All bidders will be required to submit a deposit of $20,000 in the form of a certified check, which will be returned to unsuccessful bidders and credited to the purchase price for the successful bidder.

(5) To be considered, bids must be received no later than 3:00 p.m. (Washington, D.C. time) on December 10, 1984 at Room 3321, Main Treasury Building, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220. Late bids will not be accepted.

(6) The purchaser of the Shares will be required to execute an investment intent letter stating that the Shares are purchased for investment and not with a view to distribution.

(7) The Shares will be legended with a notice that they may not be sold, transferred or hypothecated without compliance with the Securities Act of 1933.

(8) The successful bidder will be required to execute a stock purchase agreement in the form set forth in the invitation.

Dated: November 19, 1984.

Thomas J. Healey,

Assistant Secretary, (Domestic Finance).

[FR Doc. 84-30831 Filed 11-19-84; 10:24 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 3]

Compass Insurance Co.; Surety Companies Acceptable on Federal Bonds Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Compass Insurance Company, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective today. The company was last listed as an acceptable surety on Federal bonds at 49 FR 27251, July 2, 1984.

With respect to any bonds currently in force with Compass Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, (formerly Bureau of Government Financial Operations), Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–5745.

Dated: November 9, 1984.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 84-30372 Filed 11-19-84; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 225
Tuesday, November 20, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Department of Defense, Uniformed Services University of the Health Sciences	1
Federal Deposit Insurance Corporation	2
Federal Mine Safety and Health Review Commission	3
National Transportation Safety Board	4, 5
Nuclear Regulatory Commission	6
Pacific Northwest Electric Power and Conservation Planning Council	7
Securities and Exchange Commission	8

1

DEPARTMENT OF DEFENSE, UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES, DOD

Notice of Meeting.

SUMMARY: The Uniformed Services University of the Health Sciences will meet in open session on November 19, 1984 at 8:00 am at the Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814. This is a Board of Regents Meeting and matters to be considered are (1) Approval of Minutes, 10 September 1984, (2) Faculty Appointments, (3) Report—Associate Dean for Operations: Budget, Program Budget Decision 079 and Univrsity Response, construction update, (4) Report—President USUHS: (a) Graduate Program: Certification of Graduate Students, Continuing Medical Education (CME) Program, (b) F. Edward Hebert School of Medicine: Reciprocal Training Programs, Memoranda of Understanding With United Kingdom, (c) Institutional Profile, (d) Henry M. Jackson Foundation for the Advancement of Military Medicine—Letters to House and Senate Leaderships; (e) Report on Audit Report, (f) Informational Items, (5) Comments by Members, Board of Regents, (6) Comments by Chairman, Board of Regents. The next meeting is scheduled for January 1985.

FOR ADDITIONAL INFORMATION CONTACT: Donald L. Hagengruber, (202) 295–3049.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 14, 1984.

[FR Doc. 84-30370 Filed 11-16-84; 4:00 pm]

BILLING CODE 3810-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Wednesday, November 14, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of First American Bank of Amery, Amery, Wisconsin, an insured State nonmember bank, for consent to merge, under its charter and title, with first American Bank of Colfax, Colfax, Wisconsin, and for consent to establish the sole office of First American Bank of Colfax as a branch of the resultant bank.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: November 14, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-30478 Filed 11-16-84; 11:51 am]

BILLING CODE 6714-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 14, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, November 21, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Youghiogheny & Ohio Company, Docket No. LAKE 83–88. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR 75.308, a mandatory safety standard dealing with the accumulation of methane in mine working places.)

Any person intending to attend this meeting who requires special accessibility features and/or any auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 150(a)(3) and 160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–3629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-30477 Filed 11-16-84; 11:00 am]

BILLING CODE 6735-01-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-35]

TIME AND DATE: 9 a.m., Tuesday, November 20, 1984.

PLACE: NTSB Board Room, 6th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

A majority of the Board determined by recorded vote that the business of the Board required holding this meeting and that no earlier announcement was possible.

1. *Marine Accident Report:* Grounding of the United States Tank Ship S.S. MOBILOIL in the Columbia river, near Saint Helens, Oregon, March 19, 1984.
2. *Reconsideration of Probable Cause:* Aviation Accident Report: Cessna A185E,

Middleton Airport, Evergreen, Alabama, January 3, 1981.
3. *Opinion and Order:* Petition of Willett. Docket, SM-3207; disposition of Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Fleming (202) 382-6525.

H. Ray Smith, jr.,
Federal Register Liaison Officer.
November 16, 1984.
[FR Doc. 84-30488 Filed 11-16-84; 11:20 am]
BILLING CODE 7533-01-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-35]

TIME AND DATE: 10:30 a.m., Friday, November 16, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTER TO BE CONSIDERED:

A majority of the Board determined by recorded vote that the business of the Board required holding this meeting at this time and that no earlier announcement was possible.
1. Briefing by Boeing Company on windshear training.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

H. Ray Smith, Jr.,
Federal register Liaison Officer.
November 16, 1984.
[FR Doc. 84-30486 Filed 11-16-84; 11:20 am]
BILLING CODE 7533-01-M

6

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 19, 26, December 3, and 10, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 19

Monday, November 19

1:30 p.m.—Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, November 20

10:00 a.m.—Semi-Annual Briefing on Appraisal of Operating Experience (Public Meeting)

Wednesday, November 21

9:30 a.m.—Briefing and Discussion of Issues in Operation of San Onofre Unit 1 (Public Meeting)

11:30 a.m.—Affirmation Meeting (Public Meeting)
a. Suggested Revision to Order Proposed Concerning Shoreham Low Power License

Week of November 26—Tentative

Tuesday, November 27

10:00 a.m.—Affirmation Meeting (Public Meeting) (if needed)

Week of December 3—Tentative

Monday, December 3

2:00 p.m.—Discussion/Possible Vote on Severe Accident Policy Statement (Public Meeting)

Wednesday, December 5

10:00 a.m.—Discussion of Indian Point Order (Public Meeting) (if needed)
2:00 p.m.—Discussion of Criteria for Important to Safety and Safety Related (Public Meeting)

Thursday, December 6

2:00 p.m.—Affirmation Meeting (Public Meeting) (if needed)

Week of December 10—Tentative

Monday, December 10

1:00 p.m.—Discussion of Adjudication Matters Related to Catawba-1 (Closed—Ex. 10) (if needed)
2:00 p.m.—Discussion/Possible Vote on Full Power Operating License for Catawba-1 (Public Meeting)

Tuesday, December 11

10:00 a.m.—Staff Follow-up to 11/15 DOE Briefing on High Level Waste Program (Public Meeting)

Wednesday, December 12

2:00 p.m.—Year End Budget Review (Public Meeting)

Thursday, December 13

2:00 p.m.—Affirmation Meeting (Public Meeting) (if needed)

Friday, December 14

10:00 a.m.—Discussion of 1985 Policy and Planning Guidance (Public Meeting)
2:00 p.m.—Briefing and Discussion on the Hearing Process (Public Meeting)

ADDITIONAL INFORMATION:

OI Briefing (Closed—Ex. 5, 6, & 7) was held on November 2.
Affirmation of "Aamodt Motion for Investigation of Radioactive Releases during the TMI-2 Accident" scheduled for November 15, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

George T. Mazuzan,
Office of the Secretary.
November 16, 1984
[FR Doc. 84-30582 Filed 11-16-84; 3:50 pm]
BILLING CODE 7590-01-M

7

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

AGENCY HOLDING THE MEETING: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council)

Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. The Council will hold an Executive Session to discuss pending litigation.

TIME AND DATE: November 28-29, 1984. 9:00 a.m.

PLACE: Council Office Meeting Room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

1. Council Decision on Possible Exemptions to Council's Model Conservation Standards.
2. Staff Presentation on Increasing the Interruptibility of the Direct Service Industries.
3. Staff Presentation on Cost of Delaying the Model Conservation Standards.
4. Staff Presentation on Economic/Demographic Assumptions.
5. Staff Presentation on Power Planning Division Workplan.
6. Staff Presentation and Public Comment on Fish and Wildlife Goals.
7. Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222-5161.

Edward Sheets,
Executive Director.
[FR Doc. 84-30478 Filed 11-16-84; 11:09 am]
BILLING CODE 6560-50-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 19, 1984, at 450 Fifth Street, N.W., Washington, D.C.

Open meetings will be held on Monday, November 19, 1984, at 1:00 p.m. and on Tuesday, November 20, 1984 at 2:30 p.m. in Room 1C30. A closed meeting will be held on Tuesday, November 20, 1984, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has

certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Monday, November 19, 1984, at 1:00 p.m., will be:

The Commission will meet with the Public Oversight Board (POB) of the American Institute of Certified Public Accountants to discuss oversight of accounting firms which practice before the Commission. The POB is an independent board of prominent individuals established by the AICPA to oversee the activities of the SEC Practice Section of the AICPA's Division for CPA Firms and to represent the public interest in the performance of its oversight function. The POB also serves as a liaison between the Commission and the SEC Practice Section and coordinates access by the Commission to the peer review process. Topics of discussion are expected to include the interrelationship of the components of the regulatory process, quality control standards established by the AICPA to govern the accounting and auditing practices of accounting firms, the effect of membership in the SEC Practice Section on the quality of practice of member firms, POB and Commission oversight of the peer review process, and the SEC Practice Section's Special Investigations Committee which was established to investigate alleged audit failures. For further information, please contact Ed Coulson at (202) 272-2050.

The subject matter of the closed meeting scheduled for Tuesday, November 20, 1984, at 10:00 a.m., will be:

Litigation matter.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Tuesday, November 20, 1984, at 2:30 p.m., will be:

1. Consideration of whether to grant the application filed pursuant to Section 9(c) of the Investment Company Act of 1940 by Walter E. Robb, III for exemptive relief from the prohibitions of Section 9(a) of that Act. For further information, please contact Gary Sundick at (202) 272-2344.
2. Consideration of whether to propose for public comment an amendment to Rule 22c-1 and a new Rule 22e-2 under the Investment Company Act of 1940 which would limit the days on which an investment company must price its redeemable securities to customary United States business days, and would provide that an investment company which prices its redeemable securities in accordance with rule 22c-1 will not be in violation of Section 22(e). For further information, please contact Jay B. Gould at (202) 272-2107.
3. Consideration of whether to propose for public comment Rule 151 under the Securities Act of 1933 (the "Act") which would provide a safe harbor for certain types of annuity contracts by defining the term "annuity contract," as used in Section 3(a)(8) of the Act. For further information, please contact Karen L. Skidmore at (202) 272-2067.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barry Mehlman (202) 272-2014.

November 16, 1984.
Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-30532 Filed 11-16-84; 3:24 pm]
BILLING CODE 8010-01-M

federal register

Tuesday
November 20, 1984

Part II

Department of Education

34 CFR Parts 76 and 208 and Chapter VI
State Grants for Strengthening Skills of Teachers and Instruction in Mathematics, Science, Foreign Language and Computer Learning; Proposed Rules

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education and Office of Postsecondary Education

34 CFR Parts 76 and 208 and Chapter VI

State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations for the program of State grants for strengthening the skills of teachers and instruction in mathematics, science, foreign languages, and computer learning. The proposed regulations implement Sections 201–211 and 213 of Title II of the Education for Economic Security Act. Under this program, assistance is provided to State educational agencies to strengthen elementary and secondary education programs and to State agencies for higher education to strengthen higher education programs.

DATE: Comments must be received on or before January 4, 1985.

ADDRESSES: Comments should be addressed to Dr. Walter E. Steidle, Chairman, Mathematics and Science Teacher Education Improvement Task Force, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 2010, FOB–6), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Walter E. Steidle. Telephone: (202) 245–7965.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1984, the President signed into law the Education for Economic Security Act (Pub. L. 98–377), 98 Stat. 1267, 20 U.S.C. 3901 *et seq.* The Act is designed to improve the quality of mathematics and science teaching and instruction in the United States. Title II of the Act authorizes the Secretary to make financial assistance available to States to improve the skills of teachers and instruction in mathematics, science, foreign languages, and computer learning, and to increase the access of all students to that instruction. Title II also authorizes the Secretary to make discretionary grants for programs of national significance in mathematics and science instruction, computer learning, and instruction in critical foreign languages.

The proposed regulations in Part 208 do not apply to the Secretary's discretionary grants in Section 212 of Title II. Rather, these proposed regulations implement the program of formula grants to States authorized by Sections 201–211 and 213 of Title II. These formula grants to States include funds for elementary and secondary education programs and funds for higher education programs.

To receive funds under Part 208, a State must file with the Secretary an application that designates the State educational agency (SEA) as the agency responsible for the administration and supervision of elementary and secondary education programs, and the State agency for higher education as the agency responsible for higher education programs. For the second year for which funds are available under Part 208, a State must file an assessment of need.

For Fiscal Year 1985, Congress appropriated $100,000,000 for all programs authorized under Title II. This amount includes the funds required to be expended under the Secretary's Discretionary Fund for Programs of National Significance authorized under Section 212 of Title II.

Summary of Provisions in These Proposed Regulations

Regulations That Apply to Programs Under Part 208

Section 208.2 indicates that, with two exceptions, the proposed regulations apply to all programs for which the Secretary provides financial assistance under Part 208. Those exceptions are the proposed regulations in Subpart B, which do not apply to higher education programs authorized under Section 207 of Title II, and the proposed regulations in Subpart C, which do not apply to elementary and secondary education programs authorized under Section 208 of Title II. In addition, as § 208.2 indicates, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities) apply to programs under Part 208.

State Application Procedures

Sections 208.11–208.13 implement Sections 208 and 209 of Title II. As indicated in § 208.11, a State that desires to receive a grant under Part 208 must have on file with the Secretary an application and, for the second year for which funds are made available, an assessment of need. Sections 208.12 and 208.13 contain the requirements for State applications and State assessments of need, respectively. As those sections indicate, both the State application and the State assessment of need may be submitted in any form that the State determines is appropriate, provided they contain certain specified provisions.

Under § 208.13, a State does not have to file its assessment of need in order to receive its first grant award. Rather, no later than nine months after the date for which funds first become available for obligation under Part 208, the State must prepare and make available to local educational agencies (LEAs) within the State a preliminary assessment of the status of mathematics, science, foreign languages, and computer learning within the State's public and private elementary and secondary schools and institutions of higher education. The State must prepare a final version of this assessment for submission to the Secretary no later than the end of the first year for which funds are made available.

A State must file an application under § 208.12 with the Secretary in order to receive its first grant award under Part 208. This application, however, does not have to be resubmitted for the State to receive future payments. Instead, the State need only submit any needed amendments, in accordance with 34 CFR 76.140–76.141. In addition, for the second year for which funds are available under Part 208, the State must amend the program description in the application, in accordance with § 208.12(b)(2), to describe how the services provided in the State address unmet needs identified in the final State assessment of need.

Allotment Procedures

Sections 208.21–208.24, which implement Sections 204 and 205 of Title II, contain the Secretary's procedures for allotting funds appropriated for use under Part 208. Under § 208.21, the Secretary determines the amount of funds to be allotted to a State for each fiscal year on the basis of the number of children aged five to seventeen, inclusive, within the State compared to the total number of those children in all the States. In no case, however, may the amount a State is eligible to receive be less than 0.5 percent of the amount of funds available for grants to States under Part 208. From the amount of funds a State is eligible to receive, the Secretary allots to the State seventy (70) percent for use in elementary and secondary education programs and thirty (30) percent for use in higher education programs.

From the amount available for purposes of Section 204(c) of Title II for each fiscal year, the Secretary allots, under § 208.23, up to one-half of that amount among the Insular Areas according to their respective needs. The Secretary allots, under § 208.24, not less than one-half of the amount available for purposes of Section 204(c) to the Bureau of Indian Affairs for programs under this part for children in elementary and secondary schools operated for Indian children by the Department of the Interior.

Elementary and Secondary Education Program Requirements

Sections § 208.31–208.36 implement Sections 206, 209, and 210 of Title II. As indicated in § 208.31(a), an LEA must submit to the SEA an application and an assessment of need in order to receive funds under Part 208. Sections 208.32(a) and 208.33 describe the content of the application and the assessment of need, respectively. As § 208.33(c) indicates, an LEA's assessment of need must reflect the needs of children and teachers in both public and private elementary and secondary schools in the LEA.

In order that an LEA may participate as soon as possible in programs under Part 208, the Secretary anticipates that the LEA will submit these documents, and therefore be eligible to receive funds, prior to receipt of the SEA's preliminary assessment of need required in § 208.13. The LEA's application and assessment of need do not have to be resubmitted. However, § 208.32(b) does require submission of certain information in order for the LEA to receive a renewal of funds under Part 208.

Section 208.35 describes the permissible uses of funds by LEAs. As § 208.35(a) indicates, an LEA must first use the funds it receives under Part 208 to satisfy the needs the LEA has identified for the expansion and improvement of inservice training and retraining in mathematics and science of teachers and other appropriate school personnel in public and private schools. If the LEA determines that it does not need some or all of the funds it receives under Part 208 to meet these needs, the LEA may request the SEA to waive the provisions in § 208.35(a) in order that the LEA may use the funds not needed for retraining and inservice training in mathematics and science for computer learning and instruction, foreign language instruction, and instructional materials and equipment related to mathematics and science. In granting the LEA's request for a waiver, the SEA must ensure that the LEA will meet the requirements for the equitable participation of children and teachers in private schools.

Higher Education Program Requirements

Sections 208.41–208.43 implement Section 207 of Title II. The proposed regulations describe the procedures for the allocation of funds between the State agency for higher education and institutions of higher education, and discuss the use of funds by these agencies.

Supplement, Not Supplant

Section 209(b)(6) of Title II provides that funds made available under Part 208 may be used only to supplement and, to the extent practicable, increase the level of funds that would, in the absence of funds made available under Part 208, be available for the purposes described in Sections 206 and 207 of Title II. As indicated in § 208.51, the Secretary interprets Section 209(b)(6) of Title II to prohibit the supplanting of funds from non-Federal sources.

Participation of Children and Teachers in Private Schools

Section 208.61 implements the requirements in Section 211(a)–(b) of Title II for the equitable participation of private school children and teachers in the purposes and benefits of Title II. As indicated in § 208.61(a), the requirement for the equitable participation of children applies to SEAs and LEAs. To make the requirement for the equitable participation of teachers in Section 211(b) of Title II consistent with other statutory provisions, § 208.61(b) makes that requirement applicable to SEAs, LEAs, and State agencies for higher education. Section 208.61 and 34 CFR 76.651–76.662 implement the equitable participation requirements.

If an SEA, LEA, or State agency for higher education is prohibited by law from providing, or if the Secretary determines that an agency has substantially failed or is unwilling to provide, for this equitable participation, Section 211(c) of Title II requires the Secretary to arrange to provide benefits under Part 208 through a bypass. Sections 208.62–208.67 implement Section 211(c) of Title II. These proposed sections contain the procedures for a bypass, including notice by the Secretary of the Secretary's intent to implement a bypass, the appointment of a hearing officer, and hearing procedures.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would primarily affect States and State agencies, which are not considered to be small entities under the Regulatory Flexibility Act. To the extent that the proposed regulations would affect small LEAs and small institutions of higher education, there would not be a significant economic impact since the burdens that would be imposed are minimal. Moreover, the statute permits an LEA to enter into arrangements with one or more LEAs within the State, with the SEA, or with both the SEA and LEAs to carry out authorized activities. Thus, a small LEA has the option of filing an application for benefits on its own behalf or, to achieve economies of scale, of sharing responsibility with other LEAs or with the SEA.

Paperwork Reduction Act of 1980

The information collection requirements contained in these proposed regulations at §§ 208.12, 208.13, 208.32, and 208.33 will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

A copy of any comments that only concern information collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue, NW., Washington, DC 20503. Attention: Desk Officer for the U.S. Department of Education.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early

notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Comments are particularly invited on two sections. Section 208.12(a)(4)(ii) requires a State's application to include procedures for approving applications by the "appropriate State agency, including procedures to ensure that the State agency will not disapprove an application without notice and opportunity for a hearing in accordance with 34 CFR 76.401." The Secretary, however, does not interpret disapproval of applications to include a determination by a State agency for higher education as to the relative merit of a competing application under § 208.41(a). The Secretary is interested in receiving comments on any problems this provision may pose.

The Secretary also requests specific comments on § 208.24. Section 208.24 implements Section 204(c) of Title II, which requires the Secretary to allot not less than one-half of the funds available for purposes of Section 204(c) "to such agency as the Secretary deems appropriate" for programs for children in elementary and secondary schools operated for Indian children by the Department of the Interior. As § 208.24 indicates, the Secretary proposes to allot these funds to the Bureau of Indian Affairs in the Department of the Interior. The Secretary, however, requests comments on whether allotment to another agency or organization or retention by the Department of Education would be more appropriate.

Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before January 4, 1985 will be considered in developing the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2010, FOB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 76

Grant programs-education, Grants administration, State-administered programs.

34 CFR Part 208

Colleges and universities, Education, Education of disadvantaged, Elementary and secondary education, Foreign languages, Grant programs—education, Private schools, Reporting and recordkeeping requirements, Science and technology, Teachers, Training program, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. Unless otherwise noted, the citations refer to sections of the Education for Economic Security Act.

(Catalog of Federal Domestic Assistance No. not assigned yet)

Dated: November 16, 1984.

T.H. Bell,

Secretary of Education.

The Secretary proposes to amend Part 76, add a new Part 208, and amend Chapter VI of Title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

§ 76.1 [Amended]

1. In the table in § 76.1, "A. Elementary and Secondary Education Programs" is amended by adding the following language:

State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning. . . . Sections 201–208, 208–211, 213 of Title II of the Education for Economic Security Act (20 U.S.C. 3961–3966, 3968–3971, 3973). . . . Part 208 (except Subpart C). . . . 84.———.

2. In the table in § 76.1, "D. Higher Education Program" is amended by adding the following language:

State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning. . . . Sections 201–205, 207–211, 213 of Title II of the Education for Economic Security Act (20 U.S.C. 3961–3965, 3967–3971, 3973). . . . Part 208 (except Subpart B). . . . 84.———.

3. Section 76–102 is amended by redesignating paragraph (x) as paragraph (y) and adding a new paragraph (x) to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

* * * * * *

(x) *Math-science programs.* The State application under Section 209 of Title II of the Education for Economic Security Act.

* * * * * *

4. In § 76.103, is amended by removing the "and" after paragraph (c)(2), by removing the period and adding "; and" after paragraph (c)(3), and by adding a new paragraph (c)(4) to read as follows:

§ 76.103 Three-year State plans.

* * * * * *

(c) * * *

(4) The State application under Section 209 of Title II of the Education for Economic Security Act.

* * * * * *

§ 76.125 [Amended]

5. In the table in § 76.125, "Other Elementary and Secondary Program" is amended by adding the following language:

84. ———State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning . . . Title II of the Education for Economic Security Act (20 U.S.C. 3961–3971, 3973) * * * 208.

6. In § 76.401, is amended by adding a new paragraph (a)(8) to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) * * *

(8) State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning.

* * * * * *

§ 76.563 [Amended]

7. The table in § 76.563 is amended by adding the following language:

State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning * * * Section 201–211, 213 of Title II of the Education for Economic Security Act

8. A new Part 208 is added to read as follows:

PART 208—STATE GRANTS FOR STRENGTHENING THE SKILLS OF TEACHERS AND INSTRUCTION IN MATHEMATICS, SCIENCE, FOREIGN LANGUAGES, AND COMPUTER LEARNING

Subpart A—How States Obtain Funds for Programs Under This Part

General

Sec.
208.1 Purpose.
208.2 Regulations that apply to programs under this part.
208.3 Definitions that apply to programs under this part.
208.4—208.10 [Reserved]

State Application Procedures

208.11 Conditions a State must meet to receive funds.
208.12 State application.
208.13 State assessment of need.
208.14—208.20 [Reserved]

Allotment Procedures

208.21 Allotment to States.
208.22 Reallotment to States.
208.23 Allotment to the Insular Areas.
208.24 Allotment to the Bureau of Indian Affairs.
208.25—208.30 [Reserved]

Subpart B—Elementary and Secondary Education Program Requirements

208.31 Conditions an LEA must meet to receive funds.
208.32 LEA application and renewal.
208.33 LEA assessment of need.
208.34 Allocation of funds.
208.35 Use of funds by LEAs.
208.36 Use of funds by SEAs.
208.37—208.40 [Reserved]

Subpart C—Higher Education Program Requirements

208.41 Allocation of funds.
208.42 Use of funds by State agencies for higher education.
208.43 Use of funds by institutions of higher education.
208.44 —208.50 [Reserved]

Subpart D—Fiscal Requirements

208.51 Supplement, not supplant.
208.52—208.60 [Reserved]

Subpart E—Participation of Children and Teachers in Private Schools

208.61 Participation of children and teachers in private shcools.
208.62 Bypass—General.
208.63 Notice by the Secretary.
208.64 Bypass procedures.
208.65 Appointment and functions of a hearing officer.
208.66 Hearing procedures.
208.67 Post-hearing procedures.
208.68—208.70 [Reserved]

Authority: Secs. 201–211, 213, of Title II of the Education for Economic Security Act, Pub. L. 98–377, 98 Stat. 1273–1282 (20 U.S.C. 3961–3971, 3973), unless otherwise noted.

Subpart A—How States Obtain Funds for Programs Under This Part

General

§ 208.1 Purpose.

The Secretary provides financial assistance under this part to States to—

(a) Improve the skills of teachers and instruction in mathematics, science, foreign languages, and computer learning; and

(b) Increase the access of all students to this instruction.

(Sec. 201, 20 U.S.C. 3961)

§ 208.2 Regulations that apply to programs under this part.

The following regulations apply to programs for which the Secretary provides financial assistance under this part:

(a) The regulations in this part, except that—

(1) Subpart C does not apply to elementary and secondary education programs authorized under Section 206 of Title II; and

(2) Subpart B does not apply to higher education programs authorized under Section 207 of Title II.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Secs. 201–211, 213, 20 U.S.C. 3961–3971, 3973)

§ 208.3 Definitions that apply to programs under this part.

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in Sections 3 and 202 of the Education for Economic Security Act:

Area vocational education school
Elementary school
Governor
Institution of higher education
Junior or community college
Local educational agency
Secondary school
Secretary
State
State agency for higher education
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Fiscal Year
Nonprofit
Private
Public

(c) *Additional definitions.* The following terms are used in this part:

"Critical foreign languages" means languages designated by the Secretary in a notice published in the **Federal Register** as critical to national security, economic, or scientific needs.

"ECIA" means the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801 et seq.

"Gifted and talented student" means a student, identified by various measures, who demonstrates actual or potential high performance capability in the fields of mathematics, science, foreign languages, or computer learning.

"Historically underrepresented and underserved groups" include females, minorities, handicapped persons, persons of limited-English proficiency, and migrants.

"Private nonprofit organizations" include museums, libraries, educational television stations, professional science, mathematics, and engineering associations, and associations for the development and dissemination of projects designed to improve student understanding and performance in science, mathematics, and critical foreign languages that meet the definitions of "private" and "nonprofit" in 34 CFR 77.1.

"Title II" means Title II of the Education for Economic Security Act.

(Secs. 3, 201–211, 213, 20 U.S.C. 3902, 3961–3971, 3973; Sec. 408(a)(1) of GEPA, 20 U.S.C. 1221e–3(a)(1); 34 CFR 77.1)

§§ 208.4–208.10 [Reserved]

State Application Procedures

§ 208.11 Conditions a State must meet to receive funds.

A State that desires to receive funds under this part shall have on file with the Secretary—

(a) An application that meets the requirements in § 208.12; and

(b) For the second year for which funds are made available, a State assessment of need submitted in accordance with the requirements in § 208.13.

(Secs. 208, 209, 20 U.S.C. 3968, 3969)

§ 208.12 State application.

(a) *Contents.* A State application may be submitted in any form that the State determines is appropriate, provided the application—

(1) Designates the—

(i) State educational agency (SEA) as the agency responsible for the administration and supervision of the elementary and secondary education

programs described in Subpart B of this part; and

(ii) State agency for higher education as the agency responsible for the administration and supervision of higher education programs described in Subpart C of this part;

(2) Describes the programs for which funds will be used under this part;

(3) Provides assurances that payments will be distributed by the State in accordance with the provisions of §§ 208.34 and 208.41;

(4) Provides procedures for—

(i) Submitting applications for the programs described in Subpart B and C of this part; and

(ii) Approval of applications by the appropriate State agency, including procedures to ensure that the State agency will not disapprove an application without notice and opportunity for a hearing in accordance with 34 CFR 78.401. The Secretary does not interpret disapproval of an application to include a determination by a State agency for higher education as to the relative merit of a competing application under § 208.41(a);

(5) Provides assurances that—

(i) The State will prepare and submit the assessment of need required under § 208.13;

(ii) In the second year for which funds are available under this part, the State will seek funds for purposes consistent with the findings of the State assessment of need;

(iii) For programs described in Subpart B of this part, the provisions of Section 210 of Title II will be carried out; and

(iv) To the extent feasible, evaluation of the programs assisted will be performed;

(6) Provides assurances that funds made available under this part will be used to supplement and not supplant non-Federal funds in accordance with § 208.51;

(7) Provides assurances for the equitable participation of private school children and teachers in the purposes and benefits of Title II in accordance with § 208.61; and

(8) Provides fiscal control and accounting procedures to—

(i) Ensure proper accounting of funds made available under this part; and

(ii) Ensure the verification of the programs assisted under this part.

(b) *Amendments.* (1) A State shall amend its application as necessary in accordance with the provisions in 34 CFR 76.140–76.141.

(2)(i) For the second year for which funds are made available under this part, the State shall amend the program description required under paragraph (a)(2) of this section to describe how the services provided in the State address unmet needs identified in the final State assessment of need required under § 208.13(a)(2).

(ii) To meet the requirement in paragraph (b)(2)(i) of this section, the state may cross-reference the program description in § 208.13(b)(2) if that description includes the information required in paragraph (b)(2)(i) of this section.

(c) *Approval.* The Secretary approves any State application that meets the requirements of this section.

(Sec. 209, 20 U.S.C. 3969)

§ 208.13 State assessment of need.

(a) A State shall—

(1) After examining the local assessments submitted under § 208.33, prepare and make available to local educational agencies (LEAs) within the State a preliminary assessment of the status of mathematics, science, foreign languages, and computer learning within the State's public and private elementary and secondary schools and institutions of higher education no later than nine months following the date for which funds first become available for obligation under this part; and

(2) Prepare a final version of the assessment for submission to the Secretary no later than the end of the first year for which funds under this part are made available.

(b) The State assessment may be submitted in any form that the State determines is appropriate, provided the assessment—

(1) Describes and provides a five-year projection of—

(i) The availability of qualified mathematics, science, foreign language, and computer learning teachers at the secondary and postsecondary education levels within the State;

(ii) The qualifications of teachers in mathematics, science, foreign languages, and computer learning at the secondary and postsecondary education levels;

(iii) The qualifications of teachers at the elementary level to teach mathematics, science, foreign languages, and computer learning;

(iv) The State standards for teacher certification, including any special exceptions currently made, for teachers of mathematics, science, foreign languages, and computer learning;

(v) The availability of adequate curricula and instructional materials and equipment in mathematics, science, foreign languages, and computer learning; and

(vi) The degree of access to instruction in mathematics, science, foreign languages, and computer learning of historically under represented and underserved groups and of the gifted and talented; and

(2) Describes the programs, initiatives, and resources committed or projected to be undertaken within the State to—

(i) Improve teacher recruitment and retention in the fields of mathematics, science, foreign languages, and computer learning;

(ii) Improve teacher qualifications and skills in the fields of mathematics, science, foreign languages, and computer learning;

(iii) Improve curricula in mathematics, science, foreign languages, and computer learning, including instructional materials and equipment; and

(iv) Improve access for historically underrepresented and underserved groups and for the gifted and talented to instruction in mathematics, science, foreign languages, and computer learning.

(c) The State assessment must be—

(1) Developed in consultation with the Governor, State legislature, State Board of Education, LEAs within the State, and representatives within the State of—

(i) Vocational secondary schools and area vocational education schools;

(ii) Public and private institutions of higher education;

(iii) Teacher organizations;

(iv) Private industry;

(v) Other public and private nonprofit organizations; and

(vi) Private elementary and secondary schools; and

(2) Submitted jointly by the SEA and the State agency for higher education.

(Sec. 208, 20 U.S.C. 3968)

§§ 208.14–208.20 [Reserved]

Allotment Procedures

§ 208.21 Allotment to States.

(a)(1) From ninety (90) percent of the funds appropriated under Title II for each fiscal year, the Secretary calculates for each State an amount that bears the same ratio to the ninety (90) percent as the number of children aged five to seventeen, inclusive, in the State bears to the number of those children in all States except that the amount for any State will not be less than 0.5 percent of the amount available under this section in any fiscal year.

(2) For purposes of this section—

(i) The term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; and

(ii) The Secretary determines the number of children aged five to seventeen, inclusive, on the basis of the most recent satisfactory data available from the Bureau of the Census.

(b) From the amount of funds that a State is eligible to receive under paragraph (a) of this section, the Secretary allots to the State—

(1) Seventy (70) percent of those funds for use in elementary and secondary education programs under Section 206 of Title II and Subpart B of this part; and

(2) Thirty (30) percent of those funds for use in higher education programs under Section 207 of Title II and Subpart C of this part.

(Secs. 204(a), 205, 20 U.S.C. 3964(a), 3965)

§ 208.22 Reallotment to States.

(a) If the Secretary determines for any fiscal year that the full amount a State receives under § 208.21 is not required for that fiscal year to carry out the purposes of this part, the Secretary reallots the excess funds to other States in proportion to the original allotments to those States under § 208.21 for that year.

(b) If the Secretary determines that the amount to be reallotted to a State under paragraph (a) of this section exceeds the amount the State needs and will be able to use for that year, the Secretary reduces the amount for that State and reallots the excess funds proportionately among the remaining States.

(c) Any funds reallotted to a State are considered part of the State's allotment under § 208.21 for that year.

(Sec. 204(b), 20 U.S.C. 3964(b))

§ 208.23 Allotment to the Insular Areas.

(a)(1) From the amount available for carrying out Section 204(c) of Title II for each fiscal year, the Secretary allots up to one-half of that amount among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective needs.

(2) The Secretary determines respective needs according to the relative number of children aged five to seventeen, inclusive, within each Insular Area. To make this determination, the Secretary uses the most recent satisfactory data available from the Bureau of the Census.

(b) An Insular Area may include the funds it is eligible to receive under paragraph (a) of this section in its consolidated grant application in accordance with 34 CFR 76.125–76.137.

(Sec. 204(c), 20 U.S.C. 3964(c); S. Rep. No. 151, 98th Cong., 1st Sess. 12 (1984))

§ 208.24 Allotment to the Bureau of Indian Affairs.

(a) From the amount available for carrying out Section 204(c) of Title II for each fiscal year, the Secretary allots not less than one-half of that amount to the Bureau of Indian Affairs for programs under this part for children in elementary and secondary schools operated for Indian children by the U.S. Department of the Interior.

(b) The Bureau of Indian Affairs does not have to comply with the requirements for higher education programs in Section 207 of Title II and Subpart C of this part.

(Sec. 204(c), 20 U.S.C. 3964(c); S. Rep. No. 151, 98th Cong., 1st Sess. 12 (1984))

§§ 208.25–208.30 [Revised]

Subpart B—Elementary and Secondary Education Program Requirements

§ 208.31 Conditions an LEA must meet to receive funds.

(a) For the first year for which funds are made available under this part, an LEA that desires to receive an allocation of funds shall submit to the SEA an—

(1) Application that meets the requirements of § 208.32(a); and

(2) Assessment of need that meets the requirements of § 208.33.

(b) To receive a renewal of funds under this part, the LEA shall submit to the SEA the information required in § 208.32(b).

(Secs. 206(b)(3), 209(b)(4), 210, 20 U.S.C. 3966(b)(3), 3969(b)(4), 3970)

§ 208.32 LEA application and renewal.

(a) *Application.* Each LEA application must include—

(1) Information the SEA may require describing the LEA's proposed activities and expenditures of funds for those activities under § 208.35;

(2) Any assurance the SEA may require to ensure that the LEA will comply with the provisions of Title II and this part; and

(3) An assurance that programs of inservice training and retraining will take into account the need for greater access to and participation in mathematics, science, and computer learning programs and careers for students from historically underrepresented and underserved groups.

(b) *Renewal.* To receive a renewal of funds under this part, an LEA shall submit to the SEA—

(1) Evidence that shows the LEA is implementing the programs assisted under this part so that—

(i) A substantial number of teachers in public and private schools in the LEA are being served; and

(ii) Several grade levels of instruction are involved in the LEA's program;

(2) A description of how the services assisted will address unmet needs described in the State's assessment of need in § 208.13; and

(3) Any other information required by the SEA.

(Secs. 206(b)(1), (3), 209(b)(4), 210(b), 20 U.S.C. 3966(b)(1), (3), 3969(b)(4), 3970(b))

§ 208.33 LEA assessment of need.

(a) Each LEA assessment must include the need for assistance in—

(1) Teacher training, retraining, and inservice training and the training of appropriate school personnel in the areas of mathematics, science, foreign languages, and computer learning, including a description of—

(i) The availability and qualifications of teachers at the secondary level in the areas of mathematics, science, foreign languages, and computer learning; and

(ii) The qualifications of teachers at the elementary level to teach those areas;

(2) Improving instructional materials and equipment related to mathematics and science education; and

(3) Improving the access to instruction in mathematics, science, foreign languages, and computer learning of students from historically underrepresented and underserved groups and of gifted and talented students based on an assessment of the current degree of access to instruction of these students.

(b) The assessment of need must include a description of—

(1) The types of services to be provided under § 208.35 (a) and (c); and

(2) How the services assisted will meet the program needs of the LEA.

(c) The assessment of need under this section must reflect the needs of children and teachers in public and private elementary and secondary schools in the LEA.

(Secs. 210, 211, 20 U.S.C. 3970, 3971)

§ 208.34 Allocation of funds.

(a) *Funds for LEAs.* An SEA shall distribute to LEAs within the State for use under § 208.35 not less than seventy (70) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1) as follows:

(1) Fifty (50) percent of the funds must be distributed according to the relative number of children enrolled in public and private schools within the school districts of the LEAs.

(2) Fifty (50) percent of the funds must be distributed based on the relative number of children aged five to seventeen, inclusive, in the public schools of the LEAs within the State who—

(i) Are from families below the poverty level as determined under Section 111(c)(2)(A) of Title I of the Elementary and Secondary Education Act of 1965; and

(ii) Are from families above the poverty level as determined under Section 111(c)(2)(B) of Title I of the Elementary and Secondary Education Act of 1965.

(b) *Funds for SEAs.* An SEA may reserve for use in accordance with § 208.36 not more than thirty (30) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1).

(Sec. 206(b), 20 U.S.C. 3966(b))

§ 208.35 Use of funds by LEAs.

(a) Except as provided in paragraphs (b) and (c) of this section, an LEA shall use the funds it receives under § 208.34(a) for the expansion and improvement of inservice training and retraining in the fields of mathematics and science of teachers and other appropriate school personnel, including vocational education teachers who use mathematics and science in teaching vocational education courses.

(b)(1) If an LEA determines that it does not need some or all of the funds received under this part to meet the needs identified in its assessment of need for the training and retraining specified in paragraph (a) of this section, the LEA may request the SEA to waive the provisions in paragraph (a) of this section in order that the LEA may use funds not needed under paragraph (a) of this section for programs under paragraph (c) of this section.

(2)(i) If the SEA determines that the LEA does not need some or all of the funds the LEA received under this part to meet the needs identified in the LEA's assessment of need for the training and retraining specified in paragraph (a) of this section, the SEA shall grant the LEA's request for a waiver.

(ii) In granting a waiver, the SEA shall ensure that the LEA will meet the requirements for the equitable participation of children and teachers in private schools in accordance with Section 211 of Title II and 34 CFR 76.651–76.662.

(c)(1) Except as provided in paragraph (c)(2) of this section, if an LEA receives a waiver under paragraph (b) of this section, the LEA shall use funds not needed under paragraph (a) of this section for—

(i) Computer learning and instruction;

(ii) Foreign language instruction; and

(iii) Instructional materials and equipment related to mathematics and science instruction.

(2) Of the funds an LEA receives under § 208.34(a), an LEA may not use more than—

(i) Thirty (30) percent for the purchase of computers and computer-related instructional equipment; and

(ii) Fifteen (15) percent to strengthen instruction in foreign languages.

(d) An LEA may carry out the training and instruction under this section—

(1) Through agreements with public agencies, private industry, institutions of higher education, private nonprofit organizations, and other appropriate institutions; and

(2) In conjunction with one or more LEAs within the State, with the SEA, or with both LEAs and the SEA.

(Secs. 206 (b), (c), 210(c), 211, 20 U.S.C. 3966 (b), (c), 3970(c), 3971)

§ 208.36 Use of funds by SEAs.

(a)(1) Subject to the requirement in paragraph (a)(2) of this section, an SEA shall use not less than twenty (20) percent of the funds made available under § 208.21(b)(1) for the benefit of children in public and private elementary and secondary schools for programs in the fields of mathematics, science, foreign languages, and computer learning for—

(i) Demonstration and exemplary programs for—

(A) Teacher training, retraining, and inservice upgrading of teacher skills;

(B) Instructional materials and equipment and necessary technical assistance; and

(C) Special projects that meet the requirements in paragraph (a)(2) of this section; and

(ii) The dissemination of information relating to demonstration and exemplary programs to all LEAs within the State.

(2) The SEA shall use not less than twenty (20) percent of the funds used to meet the requirement in paragraph (a)(1) of this section for special projects in mathematics, science, foreign languages, and computer learning for—

(i) Students from historically underrepresented and underserved groups; and

(ii) Gifted and talented students. The projects for gifted and talented students may include assistance to magnet schools for those students.

(b) An SEA shall use not less than five (5) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1) to provide technical assistance to LEAs and, if appropriate, institutions of higher education and private nonprofit organizations that are conducting programs under § 208.35.

(c) An SEA may not use more than five (5) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1) for—

(1) The State assessment of need required by § 208.13; and

(2) The costs incurred by the SEA for administering and evaluating programs assisted under this part in the State.

(Secs. 206(d)–(f), 211, 20 U.S.C. 3966(d)–(f), 3971)

§§ 208.37–208.40 [Reserved]

Subpart C—Higher Education Program Requirements

§ 208.41 Allocation funds.

(a) *Funds for institutions of higher education.* (1) A state agency for higher education shall distribute on a competitive basis to institutions of higher education within the State that apply for payments not less than seventy-five (75) percent of the funds made available for higher education programs under § 208.21(b)(2).

(2) The State agency for higher education shall make every effort to ensure equitable participation of private and public institutions of higher education.

(b) *Funds for State agencies for higher education.* A State agency for higher education may reserve for use in accordance with § 208.42 not more than twenty-five (25) percent of the funds made available for higher education programs under § 208.21(b)(2).

(Sec. 207(b), 20 U.S.C. 3967(b))

§ 208.42 Use of funds by State agencies for higher education.

(a)(1) Subject to the requirement in paragraph (a)(2) of this section, a State agency for higher education shall use not less than twenty (20) percent of the funds made available for higher education programs under § 208.21(b)(2) for cooperative program among institutions of higher education, LEAs, SEAs, private industry, and private nonprofit organizations for the development and dissemination of projects designed to improve student understanding and performance in science, mathematics, and critical foreign languages.

(2) In carrying out the requirement in paragraph (a)(1) of this section, the State agency for higher education shall give special consideration to programs involving consortial arrangements that include LEAs.

(b) A State agency for higher education may not use more than five (5) percent of the funds made available for higher education programs under § 208.21(b)(2) for—

(1) The State assessment of need required by § 208.13; and

(2) The costs incurred by the State agency for higher education for administering and evaluating program assisted under this part in the State.

(Sec. 207(c), 211(b), 20 U.S.C. 3967(c), (d), 3971(b))

§ 208.43 Use of funds by institutions of higher education.

(a) Subject to the requirement in paragraph (b) of this section, an institution of higher education shall use the funds awarded under § 208.41(a) for—

(1) Establishing traineeship programs for new teachers who will specialize in teaching mathematics and science at the secondary school level;

(2) Retraining secondary school teachers, who specialize in disciplines other than the teaching of mathematics and science, to specialize in the teaching of mathematics, science, or computer learning, including provision of stipends for participation in institutes authorized under Title I of the Education for Economic Security Act; and

(3) Inservice training for elementary, secondary, and vocational school teachers and training for other appropriate school personnel to improve their teaching skills in the fields of mathematics, science, and computer learning, including stipends for participation in institutes authorized under Title I of the Education for Economic Security Act.

(b) To receive funds for programs under paragraphs (a)(2) and (3) of this section, an institution of higher education shall enter into an agreement with an LEA, or a consortium of LEAs, to provide inservice training and retraining for elementary and secondary school teachers in public and private schools in the LEA or LEAs.

(c) Each institution of higher education receiving funds under § 208.41(a) shall assure that programs of training, retraining, and inservice training will take into account the need for greater access to and participation in mathematics, science, and computer learning and careers for—

(1) Students from historically underrepresented and underserved groups; and

(2) Gifted and talented students.

(Sec. 207(b), 20 U.S.C. 3967(b))

§§ 208.44–208.50 [Reserved]

Subpart D—Fiscal Requirements

§ 208.51 Supplement, not supplant.

Any grantee or subgrantee that receives funds under this part—

(a) May use those funds only to supplement and, to the extent practicable, increase the level of funds from non-Federal sources that would, in the absence of funds made available under this part, be made available for the purposes described in Sections 206 and 207 of title II; and

(b) May not use funds made available under this part to supplant funds from non-Federal sources.

(Sec. 209(b)(6), 20 U.S.C. 3969(b)(6))

§§ 208.52–208.60 [Reserved]

Subpart E—Participation of Children and Teachers in Private Schools

§ 208.61 Participation of children and teachers in private schools.

(a) *Participation of children.* To the extent consistent with the number of children in the State or an LEA who are enrolled in private elementary and secondary schools, an SEA or LEA, after consultation with appropriate private school representatives, shall provide services and arangements for the benefit of these children to ensure their equitable participation in the purposes and benefits of Title II.

(b) *Participation of teachers.* (1) To the extent consistent with the number of children in the State or an LEA who are enrolled in private elementary and secondary schools, an SEA, LEA, or State agency for higher education, after consultation with appropriate private school representatives, shall provide teacher training, retraining, and inservice training to ensure the equitable participation of private school teachers in the purposes and benefits of Title II.

(2) To receive funds for programs under § 208.43(a)(2)–(3), an institution of higher education shall meet the requirements in § 208.43(b) for serving teachers in private elementary and secondary schools.

(c) *Applicable requirements.* In fulfilling the equitable participation requirements in paragraphs (a) and (b) of this section, an SEA, LEA, or State agency for higher education shall comply with the provisions in 34 CFR 76.651–76.662.

(Secs. 206(b)(3), 207(b)(3), 211(a), (b), 20 U.S.C. 3966(b)(3), 3967(b)(3), 3971(a), (b))

§ 208.62 Bypass—General.

(a) The Secretary implements a bypass if an SEA, LEA, or State agency for higher education—

(1) Is prohibited by law from providing the services under this part for private school children and teachers on an equitable basis as required in § 208.61; or

(2) Has substantially failed or is unwilling to provide the services under this part for private school children and teachers on an equitable basis as required in § 208.61.

(b) If the Secretary implements a bypass, the Secretary waives the responsibility of the SEA, LEA, or State agency for higher education for providing Title II services for private school children and teachers and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the Title II services for private school children and teachers under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allotment of Title II funds. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(Sec. 211(c), 20 U.S.C. 3971(c); Sec. 557(b)(3)(A) or ECIA, 20 U.S.C. 3806(b)(3)(A))

§ 208.63 Notice by the Secretary.

(a) Before any final action to implement a bypass, the Secretary provides the affected SEA, LEA, or State agency for higher education with written notice.

(b) In the written notice, the Secretary—

(1) States the reason for the proposed bypass in sufficient deal to allow the SEA, LEA, or State agency for higher education to respond;

(2) Cites the requirement with which the SEA, LEA, or State agency for higher education has allegedly failed to comply; and

(3) Advises the SEA, LEA, or State agency for higher education that it has at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and to request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the SEA, LEA, or State agency for higher education by certified mail with return receipt requested.

(Sec. 211(c), 20 U.S.C. 3971(c); Sec. 557(b)(4)(A) of ECIA, 20 U.S.C. 3806(b)(4)(A))

§ 208.64 Bypass procedures.

Sections 208.65–208.67 contain the procedures that the Secretary uses in

conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(Sec. 211(c), 20 U.S.C. 3971(c); Sec. 557(b)(4)(A) of ECIA, 20 U.S.C. 3806(b)(4)(A))

§ 208.65 Appointment and functions of a hearing officer.

(a) If an SEA, LEA, or State agency for higher education requests a show cause hearing, the Secretary oppoints a hearing officer and notifies appropriate representatives of the affected private school children and teachers that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the SEA, LEA, State agency for higher education, and representatives of the private school children and teachers of the time and place of the hearing.

(Sec. 211(c), 20 U.S.C. 3971(c); Sec. 557(b)(4)(A) of ECIA, 20 U.S.C. 3806(b)(4)(A))

§ 208.66 Hearing procedures.

(a) At the hearing a transcript is taken. The SEA, LEA, State agency for higher education, and representatives of the private school children and teachers each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the SEA, LEA, State agency for higher education, representatives of the private school children and teachers, or Department of Education officials.

(Sec. 211(c), 20 U.S.C. 3971(c); Sec. 557(b)(4)(A) of ECIA, 20 U.S.C. 3806(b)(4)(A))

§ 208.67 Post-hearing procedures.

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the SEA, LEA, State agency for higher education, representatives of private school children and teachers, and the Secretary.

(b) The SEA, LEA, State agency for higher education, and representatives of private school children and teachers each may submit written comments on the decision to the Secretary within thirty days from receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(Sec. 211(c), 20 U.S.C. 3971(c); Sec. 557(b)(4)(A) of ECIA, 20 U.S.C. 3806(b)(4)(A))

§§ 208.68–208.70 [Reserved]

CHAPTER VI—OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION

9. A cross-reference is added at the end of the table of contents to read as follows:

Cross-Reference.

Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning, 34 CFR Part 208.

[FR Doc. 84-30531 Filed 11-19-84; 8:45 am]
BILLING CODE 4000-01-M

Reader Aids

Federal Register
Vol. 49, No. 225
Tuesday, November 20, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-3867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register	
General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408
Code of Federal Regulations	
General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419
Laws	
Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230
United States Government Manual	523-5230
Other Services	
Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072	1
44073–44192	2
44193–44272	5
44273–44442	6
44443–44620	7
44621–44740	8
44741–44888	9
44889–44984	13
44985–45106	14
45107–45408	15
45409–45570	16
45571–45732	19
45733–45842	20

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
November 16, 1984 45733

Notice:
November 7, 1984 44741

Proclamations:
5270 44073
5271 44075
5272 44077
5273 44079
5274 44081
5275 44193
5276 44195
5277 44197
5278 45107
5279 45409
5280 45411
5281 45413

5 CFR

Proposed Rules:
213 45588
831 45588
930 45444
1255 45751
2429 44902

7 CFR

2 44743
46 45735
210 45109
220 45109
225 45109
226 45109
301 44083
429 44443
441 44985
600 44743
729 44889
907 ..... 44199, 44757, 45415
910 ..... 44084, 44744, 44890, 45109, 45415
915 44447
928 44199
932 44447
944 44447
982 44745
984 44745
989 44745
1004 44986
1139 43943
1446 45109
1910 45416

Proposed Rules:
27 44902
52 43970
53 44724
54 ..... 44724, 44758
400 45444
420 44480
421 44476
424 44485
425 44490
432 44495
725 44103
800 45751
910 44299
971 45592
982 44500
984 44299
1007 44760
1464 44103
1772 45752–45754

8 CFR

238 44745
292 44084

9 CFR

50 44273
78 ..... 44987, 45110
81 ..... 44087, 45111, 45741
92 44088
354 44091

Proposed Rules:
92 44501
381 44640

10 CFR

50 ..... 45112, 45114, 45571

Proposed Rules:
50 44645
71 44502
210 45445
605 44590

11 CFR

6 44091

12 CFR

204 44448
207 43946
220 43946
221 43946
224 43946
303 44746
308 44746
563 45115
701 44993
795 44993

Proposed Rules:
5 45007
6 ..... 45102, 45592

13 CFR

105 45742
120 44091

Proposed Rules:
107 44062

14 CFR

1 44422

27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417, 45743–45746
43 ..... 44602, 45418
71 ..... 44450, 45418, 45747
73 ..... 44096, 44451, 45418
91 44422
97 44990
255 44451

Proposed Rules:
Ch. I 44766
39 ..... 45011, 45755
71 ..... 44104, 44650, 45011, 45166–45171, 45756, 45757
73 ..... 45011, 45168, 45169
75 45171

15 CFR
7 44622

Proposed Rules:
303 44651
320 ..... 44903, 45757

16 CFR
13 45115–45117
305 44200
455 45692
1700 44455

Proposed Rules:
300 44913
303 44913

17 CFR
1 45418
3 45418
33 44891
140 45418
145 45418
200 43950
240 45117

Proposed Rules:
1 44105
140 45015
144 45015
239 45172
274 45172

18 CFR
3 44273
157 44275
271 ..... 44201, 44993
274 44275
284 44275
341 44628
356 44628
360 44628
361 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273

Proposed Rules:
271 ..... 44217, 45174, 45175
430 44105

19 CFR
4 44867
6 44867
7 44867
10 44867
11 44867
12 44867
18 44867
19 44867
24 44867
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
162 44867
172 44867
174 44867
191 44867

Proposed Rules:
353 45593
355 45593

20 CFR
395 44277
404 ..... 43951, 44458, 45420

21 CFR
74 44096
178 44994
193 ..... 44458, 45123
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 45421
561 45124
573 ..... 44630, 45124

Proposed Rules:
146 44652
450 44919
510 45593
511 44766

22 CFR
220 44631

Proposed Rules:
41 44920

23 CFR
140 45577

24 CFR
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44982

26 CFR
5h 43951
301 44460

Proposed Rules:
1 ..... 44300, 45449, 45450
41 ..... 44300, 44310, 44921
48 ..... 44300, 44310, 44921
51 45758
301 45452

27 CFR
9 ..... 44202, 44895

Proposed Rules:
4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR
2 44097
15 44995
511 44056

Proposed Rules:
545 44059

29 CFR
530 44262
1601 45424
1952 44202
2619 45129

Proposed Rules:
2617 44106
2640 45018
2648 45018

30 CFR
915 44206
917 44750
935 ..... 43952, 44461, 44996

Proposed Rules:
250 44924
816 45595
817 45595
855 45595
917 44653
920 43974
931 44769
938 43974

31 CFR
5 45578

33 CFR
100 ..... 45579, 45580, 45758
117 ..... 43953–43956, 44207, 44632, 45130, 45580
165 44632

Proposed Rules:
117 ..... 43975, 44925, 45596
126 45597
160 45597
165 44926

34 CFR

Proposed Rules:
Ch. VI 45834
76 45834
208 45834

36 CFR

Proposed Rules:
223 44109
291 45117
1121 44310

38 CFR
3 ..... 44099, 45130

39 CFR
10 45130
265 44286

40 CFR
52 ..... 44099, 44208, 44287, 44463, 44996
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 45292
180 ..... 44464–44467, 45132
261 44978
704 ..... 45133, 45425
707 45581
761 44634
775 44997

Proposed Rules:
50 44770
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178, 45761–45765
81 ..... 43977, 45031
147 44111
170 45181
261 44718
271 ..... 44111, 44312, 44506, 45452
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 ..... 44218, 45598
716 ..... 44220, 45602
799 ..... 45606, 45610

41 CFR
Ch. 101 44468
101–20 44469
101–41 44470
101–47 44471
Ch. 201 45748

42 CFR
36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR

Public Land Orders:
1821 44473

6547 (corrected by PLO 6577) 44997
6577 44997

Proposed Rules:
3160 44655
3420 44221

44 CFR
64 ..... 44751, 45133
65 ..... 45134, 45135
67 45136

Proposed Rules:
67 45181

45 CFR
801 44473

Proposed Rules:
95 45617
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397

Proposed Rules:
67 45623

47 CFR
0 45582
2 ..... 44101, 44997
15 44210
25 44751
31 44289
43 44289
73 ..... 43957, 44101, 45139–45146, 45583–45587
74 45155
76 45431

Proposed Rules:
0 45454
1 45454
2 45766
73 ..... 44113, 44114, 45186, 45625
90 ..... 44223, 45454

48 CFR

Proposed Rules:
1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR
1 44102
171 45749
173 ..... 43963, 45749
175 45749
178 43965
179 43963
391 44210
392 44210
571 44899
575 44751

Proposed Rules:
23 44772
172 45627
173 45627
195 44928
542 45629
1102 44224

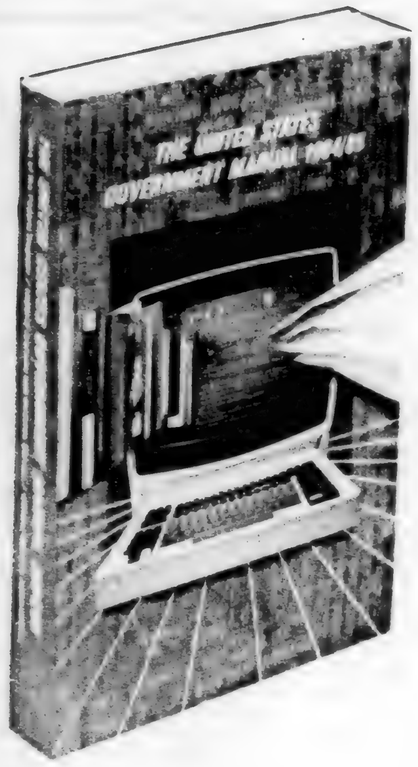
50 CFR
17 ..... 43965, 44753, 45160
258 44474
611 44757
620 44102
652 45164
663 ..... 44638, 44901
671 44757
676 44998

Proposed Rules:
17 ..... 44507, 44712, 45766
222 44774
227 44774
611 44655
672 44655
675 44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.



Order Now!

The United States Government Manual 1984/85

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and subject/agency indexes.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

$12.00 per copy

Order Form Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

★ 6049

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only

Total charges $_____

Fill in the boxes below

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone No.: Area Code ☐☐☐ Home ☐☐☐-☐☐☐☐ Area Code ☐☐☐ Office ☐☐☐-☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me _____ copies of The United States Government Manual, 1984/85 at $12.00 per copy. Stock No. 022-003-01108-9

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity Charges

_____ Publications _____

_____ Subscription _____

Special Shipping Charges _____

International Handling _____

Special Charges _____

OPNR _____

_____ UPNS

_____ Balance Due

_____ Discount

_____ Refund

AMV

VOL
49

ISS
225

NO
20

1984

UMI

OL
9
SS
26
NO
1
984
MI

11-21-84
Vol. 49 No. 226

federal register

Wednesday
November 21, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 84 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

11-21-84
Vol. 49 No. 226
Pages 45843-46096

federal register

Wednesday
November 21, 1984

Selected Subjects

Administrative Practice and Procedure
Interstate Commerce Commission
Air Pollution Control
Environmental Protection Agency
Animal Biologics
Animal and Plant Health Inspection Service
Authority Delegations (Government Agencies)
Securities and Exchange Commission
Education
Maritime Administration
Endangered and Threatened Species
Fish and Wildlife Service
Fisheries
National Oceanic and Atmospheric Administration
Government Contracts
Labor Department
Handicapped
Commerce Department
Hazardous Waste
Environmental Protection Agency
Pesticides and Pests
Environmental Protection Agency
Radio Broadcasting
Federal Communications Commission

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Savings and Loan Associations
Federal Home Loan Bank Board

Toxic Substances
Environmental Protection Agency

Travel and Transportation Expenses
Animal and Plant Health Inspection Service

Veterans
Veterans Administration

Contents

Federal Register
Vol. 49, No. 226
Wednesday, November 21, 1984

Agency for International Development
NOTICES
Senior Executive Service:
45934 Performance Review Board; membership

Agriculture Department
See also Animal and Plant Health Inspection Service; Forest Service.
NOTICES
45889 Agency information collection activities under OMB review
Senior Executive Service:
45889 Performance Review Board; membership

Animal and Plant Health Inspection Service
RULES
Animal and poultry import restrictions:
45843 Overtime services relating to imports and exports; commuted traveltime allowances
Viruses, serums, toxins, etc.:
45845 Biological products, production requirements, etc.; restrictions on movements, etc.

Army Department
NOTICES
Meetings:
45895 Coastal Engineering Research Board

Civil Aeronautics Board
PROPOSED RULES
Procedural regulations:
Transfer of CAB functions to Transportation Department [Editorial Note: For a document on this subject, see entry under Transportation Department.]

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.
PROPOSED RULES
45861 Nondiscrimination on basis of handicap in federally conducted programs and activities
NOTICES
Meetings:
45891 Steel Advisory Committee

Defense Department
See also Army Department.
NOTICES
Committees; establishment, renewals, terminations, etc.:
45895 Sizing DOD Medical Treatment Facilities Blue Ribbon Panel

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
45938 Schedules I and II, 1984 aggregate for fentanyl

Education Department
NOTICES
Meetings:
45896 Education Statistics Advisory Council

Energy Department
See also Energy Information Administration; Energy Research Office; Federal Energy Regulatory Commission.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
45896 European Atomic Energy Community and Canada

Energy Information Administration
NOTICES
45896 Natural gas, high cost; alternative fuel price ceilings and incremental price threshold

Energy Research Office
NOTICES
Meetings:
45922 High Energy Physics Advisory Panel

Environmental Protection Agency
RULES
Hazardous waste:
46094 Treatment, storage, and disposal facilities; interim status standards for owners and operators
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions; etc.:
45852 Chlorothalonil
45849 Definitions and interpretations; broccoli, cabbage, etc.
45851 O-Ethyl O-[4-methylthio) phenyl] S-propyl phosphorodithioate
45854 Oryzalin
45853 Permethrin
Pesticides; tolerances in animal feeds:
45848 O-Ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate
Toxic substances:
46066 Premanufacture notification exemptions; exemption for polymers
PROPOSED RULES
Air programs:
45871 Ambient air quality standards and surveillance for particulate matter, and ambient air monitoring reference and equivalent methods; extension of time
Air quality implementation plans; approval and promulgation; various States:
45872 New York
Hazardous waste program authorizations:
45874 Minnesota
Pesticide programs:
45873 Registration and classification procedures; correction

Pesticides; tolerances in foods:
45869 O-Ethyl O-[4-(methylthio) phenyl] S-propyl phosphorodithioate
NOTICES
Committees; establishment, renewals, terminations, etc.:
45926 FIFRA Scientific Advisory Panel; membership
Pesticide applicator certification; State plans:
45927 American Samoa; correction
Pesticide, food, and feed additive petitions:
45926 Interregional Research Project No. 4
Pesticide registration, cancellation, etc.:
45923 NOR-AM Chemical Co. et al.
Pesticides; emergency exemption applications:
45924 Diethatyl-ethyl, etc.
Pesticides; experimental use permit applications:
45924 Elanco Products Co. et al.
Pesticides; temporary tolerances:
45925 Amitraz
45927 Zeocon Corp.; correction

Federal Communications Commission
PROPOSED RULES
Radio services, special:
45875 Private land mobile services; public safety channel allocation, Los Angeles, Calif.

Federal Deposit Insurance Corporation
NOTICES
45927 Agency information collection activities under OMB review
46003 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
45898 Alabama-Tennessee Natural Gas Co.
45911 Allegheny Power Service Corp.
45912 American Electric Power Service Corp.
45912 Arizona Public Service Co.
45899 Arkansas Louisiana Gas Co. (2 documents)
45920 Bonneville Power Administration
45900, 45912 Colorado Interstate Gas Co. (2 documents)
45912 Columbia Gas Transmission Corp. et al.
45900 Columbia Gulf Transmission Co.
45900 Columbia Gulf Transmission Co. et al.
45913 Commonwealth Edison Co.
45913 Consolidated Gas Transmission Corp.
45913 Consumers Power Co.
45901 East Tennessee Natural Gas Co.
45901 Florida Power Corp.
45914 Florida Power & Light Co.
45914 Great Lakes Gas Transmission Co.
45901 Kanawha Valley Co.
45902 Lawrenceburg Gas Transmission Corp.
45914 Lone Star Gas Co.
45915, 45916 Michigan Gas Storage Co. (3 documents)
45902 Natural Gas Pipeline Co. of America
45916, 45917 Northern Natural Gas Co.l (3 documents)
45917 Northwest Pipeline Corp.
45918 Panhandle Eastern Pipe Line Co.
45919 Pennsylvania Power & Light Co. et al.
45903, 45919 Public Service Co. of New Mexico (2 documents)
45919 San Diego Gas & Electric Co.
45903, 45919 Tennessee Gas Pipeline Co. (2 documents)
45904 Texas Eastern Transmission Corp.
45920 West Texas Utilities Co.
45904 Hydroelectric applications (Chittenden Falls Hydro Power, Inc., et al.)
46003 Meetings; Sunshine Act
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
45921 Bethlehem Steel Corp. (2 documents)
45921 Calaveras County Water District
45922 Modesto Energy Co.
45922 Oklahoma Vawt Associates
45922 University of Oklahoma

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation, etc.:
45846 Employment contracts; removal of restrictions
NOTICES
46003 Meetings; Sunshine Act

Federal Labor Relations Authority
RULES
Office addresses and geographic jurisdictions:
45843 Washington, D.C., Regional Offices; telephone change

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
45928 Bank of Boston Corp.
45928 H & R Bankshares, Inc., et al.
Federal Reserve Bank services; fee schedules and pricing principles:
45929 Automated clearing house service
45930 Wire transfers of funds and net settlement service
46003 Meetings; Sunshine Act (2 documents)

Fine Arts Commission
NOTICES
45894 Meetings

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
45887 Key Largo woodrat and cotton mouse; comment period reopened
45880 Northern flying squirrel
45884 Slender rush-pea

Food and Drug Administration
NOTICES
Animal drugs, feeds, and related products:
45930 Extra-label use in food-producing animals; compliance policy guide, availability
Medical devices; premarket approval:
45931 Radionics, Inc.

Forest Service
NOTICES
45889 Small business timber set-aside program; proposed changes

Health and Human Services Department
See Food and Drug Administration.

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
45931 Fallon Paiute-Shoshone Indian Reservation, NV

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
RULES
Excise taxes:
45849 Heavy vehicle use, diesel fuel, and sale of piggyback trailers; and extension of payment due date for fuel taxes; temporary, correction

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Scientific articles; duty free entry:
45891 Bituminous Coal Research, Inc.
45891 Brookhaven National Laboratory
45891 Iowa State University et al.
45892 National Bureau of Standards
45892 Pennsylvania Hospital
45892 Smithsonian Institution
45893 University of California et al.
45893 University of Michigan
45893 Veterans Administration Medical Center (2 documents)

International Trade Commission
NOTICES
45935 Agency information collection activities under OMB review
Import investigations:
45935 Agricultural tillage tools from Brazil
45937 Carbon steel wire rod from Germany
45935 Fabric and expanded neoprene laminate from Japan
45936 Shrimp Industry, U.S. Gulf and South Atlantic; competitive conditions
45936 Spherical roller bearings and components
45937 Woodworking machines

Interstate Commerce Commission
RULES
Practice and procedure:
45858 Statutory findings; codification in CFR
NOTICES
Railroad operation, acquisition, construction, etc.:
45938 Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

Justice Department
See Drug Enforcement Administration; Juvenile Justice and Delinquency Prevention Office.

Juvenile Justice and Delinquency Prevention Office
NOTICES
Meetings:
45939 Coordinating Council

Labor Department
RULES
45855 Walsh-Healy Public Contracts Act; general provisions
NOTICES
Meetings:
45891 Steel Advisory Committee

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
45933 Thermopolis-Alcova-Casper Transmission line project; Wyoming
Exchange of public lands for private land:
45933 New Mexico; correction
Meetings:
45933 Richfield District Grazing Advisory Board

Maritime Administration
RULES
Merchant marine training:
45857 Admission and training of midshipmen at Merchant Marine Academy
NOTICES
46000 Bulk operating-differential subsidy operators; dry bulk cargo transport; inquiry

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
45933 Chevron U.S.A. Inc.

National Aeronautics and Space Administration
NOTICES
Meetings:
45939 Advisory Council

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
45859 Atlantic surf clam and ocean quahog
PROPOSED RULES
Fishery conservation and management:
45888 Atlantic swordfish; South Atlantic Fishery Management Council; hearing

National Technical Information Service
NOTICES
45894 Inventions, Government-owned; availability for licensing

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
45939 Cleveland Electric Illuminating Co.
45939 Georgia Institute of Technology
Meetings:
45940 Reactor Safeguards Advisory Committee; location change
45941 Operating licenses, amendments; no significant hazards consideration; monthly notices

Securities and Exchange Commission
RULES
Organization, functions, and authority delegations:
45847 Director of the Division of Corporation Finance

NOTICES
Hearings, etc.:
45998 Central Power & Light Co.
45998 Midland Capital Corp. et al.
45993 Storage Equities, Inc.
Self-regulatory organizations; proposed rule changes:
45994 American Stock Exchange, Inc.
45994 National Association of Securities Dealers, Inc.
Self-regulatory organizations; unlisted trading privileges:
45996 Boston Stock Exchange
45997 Midwest Stock Exchange
45997 Pacific Stock Exchange
45997, 45998 Philadelphia Stock Exchange (2 documents)

Surface Mining Reclamation and Enforcement Office
NOTICES
Environmental statements; availability, etc.:
45934 Tennessee surface coal mining permits

Textile Agreements Implementation Committee
NOTICES
Export visa requirements; certification, etc.:
45895 Korea

Transportation Department
See also Maritime Administration.
PROPOSED RULES
Air transportation industry; procedural regulations:
46006 Transfer of Civil Aeronautics Board functions to DOT

Treasury Department
See also Internal Revenue Service.
NOTICES
Notes, Treasury:
46001 AB–1986 series

Veterans Administration
PROPOSED RULES
45870 Overpayments, waiver

Wage and Hour Division
See entry under Labor Department.

Separate Parts in This Issue

Part II
46006 Department of Transportation, Office of the Secretary

Part III
46066 Environmental Protection Agency

Part IV
46094 Environmental Protection Agency

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Ch. XIV, App. A 45843

9 CFR
97 45843
113 45845
114 45845

12 CFR
545 45846
563 45846

14 CFR
Proposed Rules:
Ch. II 46006

38 CFR
Proposed Rules:
1 45870

40 CFR
180 (5 documents) 45849–45854
265 46094
723 46066
Proposed Rules:
50 45871
52 45872
53 45871
58 45871
152 45873
157 45873
158 45873
162 45873
271 45874

41 CFR
50–201 45855

15 CFR
Proposed Rules:
8c 45861

17 CFR
200 45847

21 CFR
561 45848
Proposed Rules:
193 45869

26 CFR
41 45849
48 45849

46 CFR
310 45857

47 CFR
Proposed Rules:
2 45875
73 45875
90 45875

49 CFR
1160 45858
1165 45858
1168 45858
1181 45858
1182 45858

50 CFR
652 45859
Proposed Rules:
17 (3 documents) 45880–45887
630 45888

Rules and Regulations

Federal Register
Vol. 49, No. 226
Wednesday, November 21, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV, App. A

Regional Office Telephone Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(3) (47 FR 40783) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1984) to establish new telephone numbers for the Authority's Washington, D.C. Regional Office. The Washington, D.C. Regional Office location and mailing address have not been changed.

EFFECTIVE DATE: November 6, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel (202) 382–0834.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1984)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1984). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the changed telephone numbers of the Washington, D.C. Regional Office of the Authority. The Washington Regional Office location and mailing address have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(3) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1984)) is amended to read as follows:

APPENDIX A TO 5 CFR CH. XIV—CURRENT ADDRESSES AND GEOGRAPHIC JURISDICTIONS

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(3) *Washington Regional Office*—1111 18th Street, NW., 7th Floor, Washington, D.C. 20033
Telephone: FTS—653–8500; Commercial—(202) 653–8500
Mailing Address: P.O. Box 33758, Washington, D.C. 20033–0758.

(5 U.S.C. 7134)

Dated: November 7, 1984.

John C. Miller,
General Counsel, Federal Labor Relations Authority.

[FR Doc. 84–30420 Filed 11–20–84; 8:45 am]
BILLING CODE 6727–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 84–089]

Overtime Services Relating to Imports and Exports; Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations which establish charges for reimbursable overtime work performed by employees of Veterinary Services (VS) at border ports, seaports, and airports: (1) By reassigning work locations from which inspectors may be dispatched and the locations where they will, upon request, perform inspection, quarantine, and other services relating to the importation and exportation of animals and certain other regulated articles and (2) by revising the commuted traveltime allowances involved in providing such reimbursable overtime services. This amendment is necessary in order to advise the public of the reassignment of work locations, services areas, and traveltime allowances. The effect of this amendment is to expand or reduce the commuted traveltime periods associated with providing the reimbursable overtime work.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Executive Officer, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8511.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 97, "Overtime Services Relating to Imports and Exports," (referred to below as the regulations) set forth provisions for obtaining, on a reimbursable basis, inspection, quarantine, and other services pertaining to the importation and exportation of animals during Sundays, holidays or at times outside the regular tour of duty of the employees of Veterinary Services (VS) who perform such services. The inspection, quarantine, and other reimbursable overtime services authorized by 7 U.S.C. 2260 are provided upon request by any person, firm or corporation having ownership, custody, or control of the animals or articles requiring such services.

Section 97.2 of the regulations contains administrative instructions prescribing commuted traveltime periods. Traveltime allowances reflect, as nearly as is practicable, the time, measured in hours, required for a VS employee to travel from the office where the employee is stationed to the locality where the reimbursable overtime service is provided.

This document amends § 97.2 of the regulations by revising the locations serviced by VS employees and the traveltime allowances used in determining the charge to be assessed for the reimbursable overtime work for certain locations in California, Illinois, Louisiana, Montana, Oregon, and Washington, as indicated in the rule

portion of this document. The amendment is necessary to reflect changes in the time necessarily spent in reporting to and returning from the place at which an employee of Veterinary Services performs overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. A traveltime allowance may be included in determining the charge assessed the recipient of the reimbursable overtime service provided.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Specifically, this amendment affects only those entities that request the services of an inspector on a Sunday, a holiday, or on an overtime basis. Services of an inspector during regularly established hours of service at a port are still furnished free of charge to those requiring the service. The pay provisions appropriate for employees performing inspection and quarantine services at ports of entry, and the features of the reimbursable plan for recovering the costs of furnishing port of entry inspection depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this rule are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication of this document in the Federal Register.

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Therefore, § 97.2 of 9 CFR is amended by revising the entries in the table for California, Illinois, Louisiana, Montana, Oregon, and Washington, set forth below in alphabetical sequence, as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area: Within	Metropolitan area: Outside
California:			
Calexico	San Ysidro		3
Edwards Air Force Base	Los Angeles		4
Los Angeles and Los Angeles International Airport	San Bernardino		5
Do	Los Angeles	2	
Los Angeles Harbor, San Pedro, including Long Beach, Wilmington, and Terminal Island	Los Angeles		2
March Field	do		5
Newport Beach	do		4
Ontario	do		3
Ramona	San Ysidro		2
Sacramento		1	
Do	San Francisco		5
San Diego		1	
Do	San Ysidro		2
San Francisco including, Alameda, Richmond, Pittsburg, and other ports in San Francisco and San Pablo Bay areas		2	
San Louis Obispo	San Pedro		6
San Ysidro		1	
Stockton	San Francisco		4
Illinois:			
Bloomington	Pana		3
Do	Tolono		3
Camp Grove	El Paso		3
Chicago		3	
Peoria	El Paso		2
Do	Tolono		4
Springfield	El Paso		3
Do	Nebo		3
Do	Pana		2
Do	Tolono		3
Louisiana:			
Acadian Regional Airport, New Iberia	Abbeville		2
Any point below Chalmette and on the East Bank, Belle Chasse, LA, and points to and including Port Sulphur on the west bank	Baton Rouge		4
Any point on the Mississippi River above the St. Charles-Jefferson Parish boundary to and including Gramercy	do		2
Morgan City	do		5
New Orleans including Orleans Parish and all points on the east bank of the Mississippi River from the St. Charles-Jefferson Parish boundary to and including Chalmette, LA, and all points on the west bank from the St. Charles-Jefferson Parish boundary to but excluding Belle Chasse, LA.	do		4
Undesignated ports	do		3

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from	Metropolitan area: Within	Metropolitan area: Outside
Montana:			
Great Falls Airport	Vaughn	1	
Port of Opheim	Opheim		1
Do	Wolf Point		5
Port of Raymond	Raymond		1
Port of Sweetgrass	Great Falls		5
Sweetgrass		1	
Oregon:			
Portland	Canby		3
Do	Salem		3
Do	Troutdale	2	
Washington:		1	
Blaine	Seattle		6
Do	Blaine		2
Lynden	Seattle		6
Do	Oroville, WA		6
Moses Lake	Spokane		5
Do	Wenatchee		3
Do	Yakima		4
Do		1	
Oroville	Olympia		3
Sea-Tac Airport		2	
Seattle	Blaine		2
Sumas	Seattle		6
Do	do		3
Tacoma			

Authority: 84 Stat. 561; 7 U.S.C. 2260; 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C., this 14th day of November, 1984.

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-30451 Filed 11-20-84; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Parts 113 and 114

[Docket No. 84-071]

Viruses, Serums, Toxins, and Analogous; Standard Requirements and Production Requirements for Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This action reduces restrictions on movement of partially prepared products or serials of completed fractions of combination products between licensed establishments by removing the requirement for common ownership of establishments and by removing the provision limiting bulk shipments to inactivated materials only. Preparation of certain products from beginning to final use form in a single licensed manufacturing facility is sometimes not feasible and frequently less economical than partial preparation in more than one licensed establishment. This amendment permits licensure of establishments for preparation and shipment of products for further manufacture.

EFFECTIVE DATE: This amendment becomes effective November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets. These revisions reduce regulatory requirements.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not result in a significant economic impact on a substantial number of small entities. Small entities are defined as independently owned businesses not dominant in the field of veterinary biologics manufacturing.

Background

Preparation of certain biological products from beginning to final use form in a single licensed manufacturing facility is sometimes not feasible and frequently less economical than partial preparation in more than one licensed establishment. This is especially true of

products of synthetic origin or those resulting from new advanced technologies. Producers of the immunogenic portions of these products frequently have no facilities or marketing capability for final use products. Firms capable of completing and marketing final use products often do not have the capability of preparing these basic immunogenic components. At present, 9 CFR 114.3(d) restricts combined use of separate producing establishments to those licensed establishments under common ownership. It also restricts bulk shipments to inactivated materials. This revision permits the use of licensed facilities not under common ownership to share in the preparation of final use products and removes the restrictions prohibiting shipment of live cultures. Such changes will permit use of facilities where the most economical methods are available for preparation of fractions to be used in products of other licensed manufacturers or for export. Establishments may be licensed for preparation of final use products, as at present, for products for further manufacture, or for both.

Provisions regarding bulk liquid products and concentrates in large containers which are allowed to be prepared in licensed establishments for export only are made in 9 CFR 112.8. Tests to be conducted on these products are prescribed in 9 CFR 113.10. This revision extends the provisions for testing to include bulk material shipped for further manufacture.

The Department requires that the methods of shipment will not result in harm to the product or the environment.

Comments Received

On April 10, 1984, a notice of proposed rulemaking was published in the **Federal Register** at 49 FR 14288 discussing this revision and soliciting comments.

Comments were received from 17 commercial concerns and one State regulatory official. All recommended adoption of the proposed amendment.

One licensed manufacturer recommended exclusion of components or fractions used in diagnostic test kits from requirements for licensure. This recommendation was based on the fact that these products are not administered to animals and that efficacy is established in tests applied to each serial. Failure to control the quality of biologically active entities in a test kit could result in loss of specificity or sensitivity undetected in the serial tests. Licensure of the producers of these fractions or components would not be an unjustified imposition. Therefore, this recommendation was not accepted.

Four firms recommended that, in addition to provisions regarding partially prepared products allowed to be prepared in licensed establishments for export only, imported products should also be considered. One firm opposed this recommendation on the basis that adequate supplies of all materials are available domestically. The advantages of obtaining partially prepared products by importation are virtually identical with those attributed to the basic proposal regarding domestic manufacture. Therefore, the proposed revision of 9 CFR 114.3(d) is being changed to include products imported for distribution and sale in accordance with 9 CFR 104.5. This will permit importation of partially prepared products subject to the controls specified in 9 CFR 104.5 and with the same assurance of final product quality.

Three comments were received which raised questions about Standard Requirement potency tests on products not in completed form. No action was deemed necessary because these products would not be subject to such tests.

List of Subjects in 9 CFR Parts 113 and 114

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Section 113.10 is revised to read:

§ 113.10 Testing of bulk material for export or for further manufacture.

When a product is prepared in a licensed establishment for export in large multiple-dose containers as provided in § 112.8(d) or (e) of this subchapter or for further manufacturing purposes as provided in § 114.3(d) of this subchapter, samples of the bulk material shall be subjected to all required tests prescribed in the filed Outline of Production or Standard Requirements for the product. Samples of concentrated liquid product shall be diluted to a volume equal to the contents of the sample times the concentration factor prior to initiating potency tests.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

Section 114.3(d) is revised to read:

§ 114.3 Separation of establishments.

* * * * *

(d) Partially prepared products or serials of completed products for further manufacture may be moved from one licensed establishment to another licensed establishment, imported under the provisions of § 104.5, or moved from a licensed establishment for purpose of being exported under conditions prescribed in an Outline of Production filed with Veterinary Services. Licensed products or products imported for distribution and sale may be prepared and recommended for final use, for further manufacturing purposes, or both. All serials shall be subject to the requirements for testing and release specified in § 113.5 or § 113.10 and to the requirements for identification specified in § 114.4.

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 14th day of November 1984.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-30452 Filed 11-20-84; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545 and 563

[No. 84-652]

Employment Contracts; Removal of Restrictions

Dated: November 15, 1984.

AGENCY: Federal Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") has adopted amendments to its regulations regarding employment contracts that would allow officers of federally chartered associations to enter into employment contracts concerning their employment as officers with entities or persons other than the association, and which would prevent the termination of employment contracts between institutions which are in default, and their officers or employees, if the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC") approves the contracts in writing. The amendments are intended to provide greater flexibility to institutions and the Corporation.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 377–6434), Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552

SUPPLEMENTARY INFORMATION: The Board's regulations governing employment contracts of officers of federally chartered associations provide that an officer may not enter into a contract of employment regarding his duties as an officer with any entity or person other than the association. 12 CFR 545.122(b) (1984). This regulation was adopted in 1974 at a time when all federal associations were mutual institutions. Since that time a large number of such institutions have chosen to convert to stock form under the Board's Conversion Regulations. 12 CFR Part 563b (1984). Many of these stock institutions are affiliates of holding companies regulated by the Board. Absent amendment, § 545.122(b) could be interpreted to bar officers of a subsidiary association from participating in a parent holding company's pension plan or other legitimate employment contracts. The same problem arises with respect to officers of a federal mutual association who also serve as employees of the association's service corporations or finance subsidiaries. The Board believes that an employment contract between an officer of a federal association and its holding company or subsidiary presents little risk of a conflict of interest on the part of the officer. In addition, § 545.122(b) could be interpreted to prevent the Corporation from securing qualified officers for institutions in unstable financial circumstances. While the Board has determined to rescind the provision, it is mindful that some potential for abuse of employment contracts with third parties may exist in certain circumstances. The Board therefore emphasizes that its conflict-of-interest, corporate-opportunity and management-interlock restrictions will continue to apply to such arrangements. These restrictions impose a high standard of fiduciary duty on corporate officers, and should be scrupulously observed.

In addition, the Board's Insurance Regulations require that any employment contract between an officer or employee and an institution the accounts of which are insured by the Corporation ("insured institution") must provide that "[i]f the institution is in default (as defined in section 401(d) of the National Housing Act), all obligations under the contract shall terminate as of the date of default", excluding vested rights. 12 CFR 563.39(b)(4). This provision was originally added to the Board's regulations in order to "provide further protection to the Federal Savings and Loan Insurance Corporation." 46 FR 9917, 9918 (1981). Although this provision does "protect" the FSLIC insurance fund by terminating possibly overly generous employment contracts entered into by defaulting institutions to which the Corporation might have to provide assistance, this provision may make it difficult for such an institution to secure qualified personnel, and therefore may contribute to the further decline of the institution and an increased need for FSLIC assistance. Thus, in order to more fully protect the FSLIC insurance and to provide insured institutions with additional flexibility with regard to employment contracts, the Board has determined to amend § 563.39(b) to eliminate the required inclusion of § 563.39(b)(4) in employment contracts of institutions in default, if prior written approval has been secured from the Corporation.

The Board has determined that observance of the notice and comment procedure requirements of 5 U.S.C. 552(b) (1982) and 12 CFR 508.11 and the delay of effective date provided pursuant to 5 U.S.C. 552(d) (1982) and 12 CFR 508.14 are unnecessary because the amendments relieve restrictions currently applicable to insured institutions and their officers and employees, and will not adversely affect current practices.

List of Subjects in 12 CFR Parts 545 and 563

Savings and loan associations.

Accordingly, the Board hereby amends Parts 545 and 563 of Subchapters C and D, respectively, of Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

§ 545.112 [Amended]

1. Amend § 545.122 by removing paragraph (b) thereof and removing the designation "(a) *General.*" preceding the remaining text.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

2. Amend paragraph (b)(4) of § 563.39 by changing the period at the end thereof to a colon, and adding the following proviso thereto:

§ 563.39 Employment contracts.

* * * * *

(b) *Required provisions.* * * *

(4) * * *: *Provided,* that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the Corporation.

* * * * *

(Sec. 5 of the Home Owners' Loan Act, 12 U.S.C. 1464; secs. 402, 403, and 407 of the National Housing Act, 12 U.S.C. 1725, 1726 and 1730; Reorg. Plan No. 3 of 1947, 3 CFR 1071 (1943–1948 Compilation))

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-30515 Filed 11-20-84; 8:45 am]

BILLING CODE 6720-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6557; 34-21478; 39-841]

Delegation of Authority to Director of the Division of Corporation Finance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its rules governing delegation of authority under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Trust Indenture Act of 1939 to delegate authority to the Director of the Division of Corporation Finance to adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia M. Jayne, EDGAR Special Counsel, (202) 272–2589, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission currently is operating a pilot project for the receipt, processing and dissemination of filings made in an electronic format known as "EDGAR" for Electronic Data Gathering, Analysis and Retrieval. To accommodate the filing and review of documents in an electronic format, the Commission adopted temporary rules and forms.[1] Under the EDGAR temporary rules, the term "received" is defined, for purposes of determining the filing date, as the date that such filing is accepted by the Commission for a document filed in an electronic format.[2] This definition allows the Commission to adjust the filing date in case of any equipment malfunction or technical problem.

The Commission now is amending its rules governing delegation of authority

[1] See Release No. 33-6539 (June 27, 1984), 49 FR 28044 (July 10, 1984).

[2] 17 CFR 230.499(b)(5), 240.12b-37(b), and 260.0-12(b).

to delegate to the Director of the Division of Corporation Finance the authority to adjust the date of filing to a date not earlier than the registrant's initial attempt to file in cases where the Commission's acceptance of a filing submitted in an electronic format is delayed because of equipment malfunction or technical problem. These cases include, but are not limited to, problems with respect to hardware or software, transmission or reception, communication network, line or wire unavailability, or diskette or magnetic tape damage.

The Commission finds that this amendment relates solely to rules of agency procedure or practice and, accordingly, that notice and prior publication for comments pursuant to the Administrative Procedure Act (5 U.S.C. 533(b)(3)(B)), are unnecessary.

List of Subjects in 17 CFR Part 200

Reporting and recordkeeping requirements, Securities.

Text of Amendment

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Accordingly, 17 CFR Chapter II is amended by adding new paragraphs (a)(9), (e)(4) and (f)(11) to § 200.30–1 to read as follows:

§ 200.30–1 Delegation of Authority to Director of Division of Corporation Finance.

* * * * *

(a) * * *

(9) To adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

* * * * *

(e) * * *

(4) To adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

(f) * * *

(11) To adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

* * * * *

(Pub. L. 87–592, 76 Stat. 394, 15 U.S.C. 78d–1, 78d–2)

By the Commission.

Dated: November 13, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30480 Filed 11–20–84; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 1H5318/R674; PH–FRL 2718–1]

Tolerances for Pesticides in Animal Feeds; O-Ethyl O-[4-(Methylthio) Phenyl] S-Propyl Phosphorodithioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to increase the established tolerance for residues of the insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] S-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the commodity cottonseed hulls from 1.0 part per million (ppm) to 10.0 ppm. This regulation was requested pursuant to a petition by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 19, 1981, which announced that Mobay Chemical Corp., Agricultural Chemicals Division, Hawthorn Rd., Kansas City, MO 64120, had submitted food/feed additive petition (FAP 1H5318) proposing to amend 21 CFR Parts 193 and 561 by establishing regulations for residues of the insecticide *O*-ethyl *O*-[4-(methylthio)phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities cottonseed hulls and cottonseed oil. The petition was subsequently amended by increasing the tolerance proposal for residues on cottonseed hulls from 4.5 ppm to 10.0 ppm.

No comments were received in response to the notices of filing.

Elsewhere in this issue of the **Federal Register**, the Agency is issuing related documents establishing a rule increasing the tolerance for *O*-ethyl *O*-[4-methylthio)phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites on cottonseed from 0.5 ppm to 5.0 ppm, and a proposal that the tolerance for residues of the insecticide on cottonseed oil (21 CFR 193.212) be revoked.

The scientific data and other relevant material considered in support of this regulation are contained and discussed in a related document (PP 1F2561/R673) published elsewhere in this issue of the **Federal Register**.

The pesticide is considered useful for the purpose for which the regulation is sought. It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 751, 7 U.S.C. 135(a) *et seq.*). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels or conditions for safe use of additives, or raising such food or feed additive levels, do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1))

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: November 5, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, 21 CFR Part 561 is amended by revising § 561.233, to read as follows:

§ 561.233 O-Ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate.

A tolerance of 10 parts per million is established for residues of the insecticide *O*-ethyl *O*-[4-(methylthio)phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in cottonseed hulls resulting from application of the pesticide to growing cotton.

[FR Doc. 84–29943 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 41 and 48

[T.D. 7970]

Heavy Vehicle Use Tax; Tax on Diesel Fuel; Tax on the Sale of Piggyback Trailers; Extension of Payment Due Date for Certain Fuel Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary rule.

SUMMARY: This document contains corrections to the **Federal Register** publication beginning at 49 FR 34466 of the temporary regulations which were the subject of Treasury Decision 7970 relating to the imposition of heavy vehicle use tax, the increases of the tax on diesel fuel, the reduction for a one-year period of the tax on the sale of piggyback trailers and semi-trailers, and the extension of the payment due date for certain fuel taxes.

EFFECTIVE DATES: The regulations relating to the heavy vehicle use tax are effective after June 30, 1984. The regulations relating to the tax on diesel fuel are effective after July 31, 1984. The regulations relating to the tax on the sale of piggyback trailers are effective for piggyback trailers sold at retail after July 17, 1984, and before July 18, 1985. The regulations relating to the fuel tax payment date are effective for certain fuel taxes due after March 31, 1983. The corrections are to be effective with respect to the same dates.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Divisions, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, telephone 202–566–3935 (note a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1984, the **Federal Register** published temporary regulations (49 FR 34466) relating to heavy vehicle use tax under sections 4481, 4482 and 4483 of the Internal Revenue Code of 1954, as amended by section 513 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424, 96 Stat. 2177) and sections 901, 902, and 903 of the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984) (Pub. L. 98–369, 98 Stat. 1003). The document also contained temporary regulations in the form of questions and answers relating to an increase in the tax on diesel fuel under section 4041(a) of the Code, a credit or refund to original purchasers of diesel-powered automobiles and light trucks under section 6427(g) of the Code, and an exemption of certain buses from the diesel fuel tax under section 6427(b)(2) of the Code, as amended by sections 911(a), 911(b), and 915 of the Tax Reform Act of 1984, respectively. Also contained were temporary regulations in the form of questions and answers relating to the reduction in the retailers excise tax on the sale of piggyback trailers and semi-trailers under section 4051(d) of the Code as amended by section 921 of the Tax Reform Act of 1984. Also included were questions and answers relating to an extension of the payment due date for certain fuel taxes under section 518 (a) of the Highway Revenue Act of 1982 as amended by section 734(i) of the Tax Reform Act of 1984.

Need for Correction

As published, Treasury Decision 7970, cites a reference inaccurately in two locations. These errors appear on page 34469. In the middle column, within the section number of the heading "§ 41.4481–1T Special rules for small owner-operators (temporary)" the reference to "§ 41.4481–1T" should read "§ 41.4481–1aT". In the right-hand column, the ninth and tenth lines from the bottom of the page incorrectly includes the references "§ 41.4481–1T"that should read "§ 41.4481–1aT".

The third correction is also required in the right-hand column on page 34469. The sixth line that reads "weight of at leats 55,000 pounds but not" should read "weight of at least 55,000 pounds but not".

The final correction is required in § 48.6427–2T (A–12), middle column, page 34475. The thirteenth line of (A–12) incorrectly includes the word "again" rather than the word "gain".

Correction of Publication

Accordingly, the publication of Treasury Decision 7970 which was the subject of FR Doc. 84–23130 (August 31, 1984), is corrected as follows:

"§ 44.4481–1aT. [Correctly designated, and corrected]

Paragraph 1. On page 34469, in the second column six lines from the bottom, the section number designation "§ 41.4481–1T" is removed and the language "§ 41.4481–1aT" is added in its place.

Par. 2. On the same page, in correctly designated § 41.4481–1aT(a)(2), the language "weight of at leats 55,000 pounds but not" is removed and the language "weight of at least 55,000 pounds but not" is added in its place.

Par. 3. On the same page, in the third column, in correctly designated § 41.4481–1aT(b), in the ninth and tenth lines from the bottom of the page, the language "§ 41.4481–1T" is removed and the language "§ 41.4481–1aT" is added in its place.

§ 48.6427–2T [Corrected]

Par. 4. On page 34475, in the second column, in § 48.6427–2T, in paragraph A–12, in the thirteenth line, the word "again" is removed and the word "gain" is added in its place.

George H. Jelly,

Director, Legislation and Regulations Divison.

[FR Doc. 84–30481 Filed 11–20–84; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300100A; PH–FRL 2718–3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules amend 40 CFR 180.1(h) by (1) adding definitions for the

crop categories broccoli, cabbage, caneberries, and squash; and (2) redefining existing crop categories for beans, celery, and tangerines. These amendments were requested by the University of California Cooperative Extension Program at Davis, California, the Interregional Research Project No. 4 (IR–4), and upon the initiative of the Administrator, EPA.

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: Written objections, identified by the document control number [OPP–300100A], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA issued three proposed rules, published in the **Federal Register**, which announced that the named agencies had submitted requests to EPA proposing that 40 CFR 180.1(h) be amended, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act as follows:

1. University of California Cooperative Extension Program at Davis, 116 B St., Davis, CA 95616. 49 FR 37809, September 26, 1984. Proposed adding two general crop categories (cabbage and broccoli) to column A, corresponding specific raw agricultural commodities to column B, and adding further definitive crops to column B in the case of "celery" already listed in column A. The requestor indicated the need for clarification of the status of certain specialty crops with respect to existing residue clearances, in order that such crops may be included on pesticide labeling or treated in accordance with existing labeling directions.

2. The Administrator, EPA, 49 FR 37811, September 26, 1984. EPA issued a final rule, published in the **Federal Register** of January 6, 1982 (47 FR 623), intended to clarify and update the definition of "beans" as it appears in 40 CFR 180.1(h). The revised definition of beans included the names of five genera of beans: *Cicer, Glycine, Phaseolus, Vicia,* and *Vigna* spp.

It was subsequently determined that *Glycine* sp. should not have been included in a broad and general definition of "beans" since soybeans, the predominant species of the genus, is an oil seed and may require oil processing studies before a tolerance can be established. Certain pesticides will tend to concentrate in the oil seed processed products. If residues in processed products exceed those in the raw agricultural commodity, separate food additive regulations would have to be established under 21 CFR Parts 193 and 561. To avoid the possibility of illegal pesticide residues in soybean processed products, "*Glycine* sp. (including soybeans)" needs to be deleted from the definition of "beans" in 40 CFR 180.1(h). The remaining genera of beans are not considered as oil seeds, thus require no oil seed processing studies nor food or feed additive regulations.

In examining the definitions in column B for "Beans (dry)" and "Beans (succulent)" in column A, some ambiguity exists as to what "beans" are intended. To clarify that beans (dry) and beans (succulent) pertain to those bean crops listed in column B, the two definitions are amended by adding the qualifier "above" to the column B definitions.

3. Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. 49 FR 37810, September 26, 1984. Proposed:

a. Revising the current definition of tangerines to include mandarins, tangelos, tangors, tangerines and hybrids of these. Currently tangerines is defined to include only tangelos and tangerines. According to IR–4, tangerines, or mandarins, are characterized by a loose skin that separates readily from the pulp, and by segments which separate readily from each other; they are grown in all citrus areas of the U.S. The tangor is a citrus hybrid resulting from cross-breeding mandarins and sweet oranges and is somewhat intermediate in characteristics. The tangelo is a cross of mandarin and grapefruit or pummelo.

b. Adding the general crop category "Caneberries" to column A and the corresponding specific raw agricultural commodities blackberries, boysenberries, dewberries, loganberries, raspberries, youngberries, and "varieties to these" to column B. The IR–4 supports this request by pointing out that each of these specific crops is a species of the genus *Rubus* in the family Rosaceae and that they are all very similar physiologically and by virtue of cultivation patterns. Canes may be erect, semierect, or trailing. Blackberries are usually heavily-thorned but some thornless varieties are known. Dewberries (sometimes called trailing blackberry) and related varieties (including boysenberry, loganberry, and youngberry) are generally less thorny than blackberries but very similar otherwise. Raspberries are nearly thornless. Fruits are borne in loose clusters on laterals that grow from the canes. They consist of numerous small seeds, each imbedded in a juicy pulp, and all adhering to a fleshy base. The base separates from the plant when the fruit is harvested in all cases except for raspberries, in which the base or receptacle is retained on the plant.

c. Adding the general crop category "squash" to column A and the corresponding specific raw agricultural commodities pumpkins, summer squash, and winter squash to column B. The IR–4 supports this request by pointing out that each of these specific crops is a species of the genus *Cucurbita* in the family Cucurbitaceae and that varieties of several species of *Cucurbita* carry the name "pumpkin." Generally, pumpkin is the edible fruit of cucurbits used for feed or food when ripe, and having somewhat coarse, strongly-flavored flesh; winter squash has finer texture and less strongly flavored flesh. Summer squashes are commonly harvested while the rinds on the fruit are soft and tender; otherwise, the plants are essentially similar to those of winter squash and pumpkin.

There were no comments nor requests for referral to an Advisory Committee received in response to the proposed rules.

The regulations are considered useful for the purpose for which they are sought. The Agency has determined that the establishment of the regulations will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 2, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1(h) is amended by revising the list of definitive crops in column B for "Beans", "Beans (dry)", "Beans (succulent)", "Celery", and "Tangerines"; adding and alphabetically inserting definitions for "Broccoli", "Cabbage", "Caneberries", and "Squash" in column A and the definitive crops in column B to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
. . . . .	
Beans	*Cicer arietinum* (chickpeas, garbanzo beans); *Phaseolus* spp. (including kidney beans, lima beans, mung beans, navy beans, pinto beans, snap beans, and wax beans); *Vicia faba* (broad beans, fava beans) *Vigna* spp. (including asparagus beans, blackeyed peas, and cowpeas).
Beans (dry)	All beans above in dry form only.
Beans (succulent)	All beans above in succulent form only.
Broccoli	Broccoli, chinese broccoli (gia lon, white flowering broccoli).
Cabbage	Cabbage, Chinese cabbage (tight-heading varieties only).
Caneberries	Blackberries, boysenberries, dewberries, loganberries, raspberries, youngberries, and [illegible] of these.
Celery	Celery, Florence fennel (sweet anise, sweet fennel, finochio) (fresh leaves and stalks only).
. . . . .	
Squash	Pumpkins, summer, and winter squash.
. . . . .	
Tangerines	Tangerines (mandarins or mandarin oranges); tangelos, tangors, and other hybrids of tangerine with other citrus.
. . . . .	

[FR Doc. 84-29941 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1F2561/R673; PH–FRL 2717–8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; O-Ethyl O-[4-(Methylthio) Phenyl] S-Propyl Phosphorodithioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity cottonseed. This regulation to establish a maximum permissible level for the insecticide was requested in a petition submitted by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–577–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 19, 1981 (46 FR 51283), which announced that Mobay Chemical Corp., Agricultural Chemicals Division, Hawthorn Rd., Kansas City, MO 64120, had filed pesticide petition 1F2561 to EPA proposing that 40 CFR 180.374 be amended by increasing the established tolerance for the combined residues of the insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity cottonseed from 0.5 part per million (ppm) to 3.0 ppm. The petition was subsequently amended by increasing the proposed tolerance level of 3.0 ppm to 5.0 ppm.

There were no comments received in response to the notice of filing.

Elsewhere in this issue of the **Federal Register**, the Agency is issuing a related document that proposes that the tolerance for residues of the insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites [21 CFR 193.212) in cottonseed oil be revoked.

Since *O*-ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate is a cholinesterase inhibitor, this chemical is being added to the list under 40 CFR 180.3(e)(5).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include a 2-year rat feeding/oncogenicity study which had a no-observed-effect level (NOEL) of 6.0 ppm (0.3 mg/kg/day) for cholinesterase inhibition and was not oncogenic under the conditions of the study at the dose levels tested (6, 60, and 250 ppm (0.3, 3.0, and 12.5 mg/kg/day)); a 2-year dog feeding study which had a NOEL of 10.0 ppm (0.25 mg/kg/day) for cholinesterase effects; a 22-month mouse feeding/oncogenicity study which was negative for oncogenic effects under the conditions of the study at the dose levels tested (2.5, 25, 200, and 400 ppm (0.38, 3.8, 30, and 60 mg/kg/day)); a 3-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg/day) (highest level tested); a rat and rabbit teratology study which were negative for teratogenic effects at 30 milligrams (mg)/kilogram (kg); and a hen neurotoxicity study which demonstrated negative potential. Studies on mutagenicity showed negative potential. Based on the 2-year dog feeding study with a 10 ppm NOEL for cholinesterase effects and using a 10-fold safety factor, the acceptable daily intake (ADI) for man is 0.025 mg/kg bw/day. The theoretical maximum residue contribution (TMRC) from these tolerances and the previously established tolerances for residues in or on cottonseed utilize 0.92 percent of the ADI.

The pesticide is considered useful for the purpose for which the tolerance is sought. There are no regulatory actions pending against the continued registration of the pesticide. The metabolism of the pesticide is adequately understood, and an adequate analytical method, GLC phosphorous mode detection, is available for enforcement purposes. The established meat, milk, poultry, and egg tolerances are adequate to cover secondary residues resulting in these commodities from the proposed use.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 5, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. In § 180.3 by amending paragraph (e)(5) by adding and alphabetically inserting an entry for the insecticide, to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(e) * * *

(5) * * *

* * * * *

O-Ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites.

* * * * *

2. In § 180.374 by revising the entry for cottonseed, to read as follows:

§ 180.374 O-Ethyl O-[4-(methylthio) phenyl] S-propyl phosphorodithioate; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cottonseed	5.0
* * * * *	

[FR Doc. 84-29944 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2E2744/R694; FRL 2719-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Chlorothalonil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide chlorothalonil in or on the agricultural commodities cocoa beans and coffee beans. This regulation to establish the maximum permissible levels for residues of the fungicide in or on these commodities was requested by Diamond Shamrock Corp. (now SDS Biotech Corp.).

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: Written objections, identified by the document control number [PP 2E2744/R694], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 6, 1982 (47 FR 44153), that Diamond Shamrock Corp. had submitted a pesticide petition (PP 2E2744) to EPA. This petition proposed that tolerances be established for residues of the fungicide chlorothalonil and its metabolite in or on the raw agricultural commodities cocoa beans and coffee beans at 0.05 part per million (ppm). The petition was subsequently amended in the Federal Register of July 13, 1983 (48 FR 32077), by proposing to increase the tolerance on coffee beans from 0.05 to 0.2 ppm.

No comments were received in response to these notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data on technical chlorothalonil considered in support of the tolerances include a 2-year dog feeding study with a no-observed-effect level (NOEL) of 60 ppm (1.50 mg/kg body weight); a 2-year rat feeding study with a NOEL of 60 ppm (3.0 mg/kg body weight) with no oncogenic effects observed at any dosage tested under the conditions of the study; a 3-generation rat reproduction study with a NOEL of 15,000 ppm (750.0 mg/kg body weight) for reproduction effects and 1,500 ppm (75.0 mg/kg body weight) for lactation effects; a rabbit teratogenicity study with a NOEL of 62.5 mg/kg body weight (highest dose tested); five mutagenicity studies as follows: cell transformation in newborn rats, negative; mammalian cell gene point mutation, negative; Ames test, negative; *in vitro* mammalian point mutation, negative; and DNA repair, negative (except it may interfere with DNA repair in TA–1538 cells); a National Cancer Institute (NCI) rat oncogenicity study (#NCI–CG–TR–41, 1978), which was positive for neoplasia in male and female Osborne-Mendel rats at 5,063 ppm and 10,126 ppm (759 mg/kg and 1,589 mg/kg body weight respectively) but was not oncogenic in $B_6C_3F_1$ mice at the highest dose tested of 10,126 ppm (1,589 mg/kg body weight); and a 2-year mouse oncogenicity study in male and female CD–1 mice at 0, 750, 1,500, and 3,000 ppm (0, 107, 214, and 430 mg/kg body weight respectively). This second study was suggestive of effects in male mice for tubular adenomas and carcinomas of the kidney and squamous and glandular carcinomas of the gastric mucosa. However, there was no dose-dependent relationship in the occurrence of these lesions.

The toxicology data on the metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, considered in support of the tolerances include a 90-day dog feeding study with a NOEL of less than 50 ppm (1.25 mg/kg body weight); a rabbit teratogenicity study with a NOEL of greater than 5 mg/kg (the highest dose tested); four mutagenicity studies as follows: a host-mediated assay in the mouse, negative; *in vivo* cytogenic in the mouse, negative; dominant lethal in the mouse, negative; but a significant increase in early death at week 3 of mating (spermatid stage) was noted at 6.5 mg/kg body weight/day; and a dominant lethal in the rat, negative at 8 mg/kg weight/day for 5 days; and a 2-year oncogenic study in male and female CD–1 mice at 0, 375, 750, and 1,500 ppm (0, 53.6, 107, and 214 mg/kg body weight respectively). This study was negative for oncogenic effects under the conditions of the study, but no NOEL was established.

Deficiencies have been alleged in the report of the NCI studies, and therefore SDS Biotech Corp. is repeating the 2-year rat study. Their final report is scheduled to be submitted to the Agency in mid-1985. However, the Agency has performed a preliminary risk assessment based on the assumption that the

incidence of renal neoplasia in female rats as reported in the NCI rat study is attributable to chlorothalonil. The method used in calculating the risk was the one-hit model. Based on this information, the preliminary risk calculation for the theoretical maximum residue contribution (TMRC) from tolerances already established in 40 CFR 180.275 is 1.49×10^{-5}. The combined upper limits of preliminary risk calculation associated with these proposed tolerances is about 4.4×10^{-6}.

Based on the 2-year dog feeding study with chlorothalonil, the NOEL is 60 ppm or 1.5 mg/kg body weight. Using a 100-fold safety factor, the acceptable daily intake (ADI) is 0.0150 mg/kg body weight/day, and the maximum permissible intake (MPI) is 0.90 mg/kg for a 60-kg person. The combined tolerances in coffee beans and cocoa beans add 0.0023 mg to the TMRC and use a maximum of 0.26 percent of the ADI. The published tolerances use 0.714 mg or 79.3 of the ADI.

The pesticide is considered useful for the purpose for which the tolerances are sought. As the proposed uses do not involve any items normally used for livestock feed, there is no expectation of secondary residues in meat, milk, poultry, and eggs. It is concluded that the tolerances will protect the public health. An adequate analytical method for determining residues of chlorothalonil and its metabolite is available for enforcement purposes, i.e., gas chromatography with an electron capture detector. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 60–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 2, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.275 is amended by adding and alphabetically inserting the following commodities, to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cocoa beans	0.05
Coffee beans	0.20
* * * * *	

[FR Doc. 84-30114 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F2995/R714; PH–FRL 2718–4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide permethrin and its metabolites in or on the commodity pistachios. This regulation to establish maximum permissible levels for the combined residues of permethrin was requested pursuant to a petition by ICI Americas, Inc.

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: Written objections, identified by the document control number [PP 4F2995/R714], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–2690.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of January 4, 1984 (49 FR 503), which announced that ICI Americas, Inc., Agricultural Chemicals Division, Concord Pike and New Murphy Rd., Wilmington, DE 19897, had submitted a pesticide petition, PP 4F2995, proposing to establish a tolerance for the combined residues of the insecticide permethrin [3-phenoxyphenyl)methyl(+)-*cis, trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, and its metabolites(+)-*cis, trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (2-phenoxyphenyl) methanol (3-PBA) in or on the raw agricultural commodity pistachios.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance have been discussed in detail in the Federal Register of October 18, 1982 (47 FR 45008).

Granting this tolerance will increase the theoretical maximum residue contribution from 1.0383 to 1.0384 mg/day. This increase is slight, and thus the discussion of the toxicological concerns applies without revision to the newly listed commodity. The percentage of the acceptable daily intake use will remain at 34.61.

The metabolism of permethrin is adequately understood, and an adequate analytical method, gas-liquid chromatography with an electron capture detector, is available for enforcement purposes. No actions are pending against continued registration of permethrin, and no other considerations are involved in establishing the tolerance.

The tolerance established by amending 40 CFR 180.378 will be adequate to cover residues in pistachios. There are no feed items associated with pistachios, and a label restriction precludes the grazing of livestock in treated orchards. There is no reasonable expectation of secondary residues in meat, milk, poultry, and eggs as a result of this use.

The pesticide is considered useful for the purpose for which the tolerance is sought. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 2, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.378(b) is amended by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Pistachios	0.1
* * * * *	

[FR Doc. 84–29940 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 3F2874/R721; FRL–2722–3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oryzalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide oryzalin in or on the raw agricultural commodities barley grain and wheat grain. The regulation to establish maximum permissible levels for residues of oryzalin was requested pursuant to a petition by the Elanco Products Co.

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: 1Written objections, identified by the document control number [PP 3F2874/R721], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 8, 1983 (48 FR 26535), which announced that Elanco Products Co., 740 South Alabama St., Indianapolis IN 46285, had submitted a pesticide petition (3F2874) that proposed to amend 40 CFR 180.304 by establishing tolerances for residues of the herbicide oryzalin (3,4-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the raw agricultural commodities barley grain at 0.05 part per million (ppm) and wheat grain at 0.05 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and relevant material have been evaluated. The toxicology data evaluated include a 90-day feeding study (rat) with a no-observation-effect level (NOEL) of 750 ppm (37.5 mg/kg/day); a 90-day feeding study (dog) with a NOEL of 750 ppm (18.75 mg/kg/day); a 3-generation reproduction study (rat) with a NOEL of 250 ppm (12.5 mg/kg/day); a teratology study (rat) with NOEL of 2,250 ppm (112 mg/kg/day), the highest dose tested; a teratology study (rabbit) with a NOEL of 125 mg/kg/day (highest level tested); a chronic feeding/oncogenicity study (mouse) with a NOEL of 500 ppm (71.4 mg/kg/day) and no observed oncogenic effects at any level tested (0, 500, 1,350, and 3,650 ppm; equivalent to 0, 71.4, 192.8, and 521.2 mg/kg/day); DNA repair synthesis in rat hepatocyte primary cultures (negative); and a Sister Chromatid Exchange assay in Chinese hamster bone marrow (negative orally, positive intraperitoneally).

A 2-year chronic feeding/oncogenicity study in the rat at dietary doses of 0, 300, 900, and 2,700 ppm demonstrated a dose-related reduction in survival at the high dose. Evaluation of all available data, and in particular tumor-bearing animals, provided evidence that there was a statistical increase in basal cell-type tumors in both sexes, with an earlier incidence in males. These basal cell-type tumors (benign) of the skin were significantly increased at 900 ppm (equivalent to 9 mg/kg/day in the food of the study rats). There were 11/120 basal cell tumors in control rats, 16/120 at 3 mg/kg/day, and 32/120 at 9 mg/kg/day. Examination of the various models for goodness of fit demonstrated that the multi-stage model provided the best fit for the data. The multi-stage model for males or for both sexes lead to approximately the same level of potency as estimated by the 95 percent upper confidence bound on the slope or dose response as indicated by $Q_1^* = 3.75 \times 10^{-3}$ both sexes) or $Q_1^* = 4.426 \times 10^{-3}$ male data only. The $Q_1^* = 3.375 \times 10^{-3}$ has been used in lieu of the latter figure because it includes a larger sample size. Assuming that 100 percent of the crops are treated and residue levels are at tolerance levels, the upper bound estimate of dietary oncogenic risk from published tolerances is calculated to be 5.11×10^{-6}. However, dietary risk estimates are significantly lower when considering actual residue data which show residues are from nondetectable to values less than published levels. Actual residue data for the proposed wheat and barley uses show no detectable residues (NDR) to less than 0.04 ppm in grains and NDR in process milled fractions. The dietary oncogenic risk for wheat and barley, calculated using the tolerance levels and assuming 100 percent of the wheat and barley crops are treated with oryzalin, is 4.4×10^{-6}. However, the dietary risk estimates

associated with the wheat and barley tolerances based upon expected residues in grain and milled fractions are $< 66 \times^{-7}$. If the percentages of the crop treated are considered, the risk estimates are reduced even further.

Desirable data lacking is a long-term nonrodent (dog) feeding study of at least 1-year duration.

The company has been notified of the deficiency and has agreed to conduct the study and to remove the use from the label should the results of the study exceed the risk criteria for chronic toxicity as stated in 40 CFR 162.11.

The acceptable daily intake (ADI), based on the 90-day dog feeding study (NOEL of 750 ppm (18.75 mg/kg/day)) and a 2,000-fold safety factor, is calculated to be 0.0094 mg/kg/day.The maximum permissible intake (MPI) for a 60-kg human is calculated to be 0.5625 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.0080 mg/day. The current action will utilize an additional 1.38 percent of the ADI. Published tolerances currently utilize 1.61 percent of the ADI.

There are no regulatory actions pending against the continued registration of oryzalin. This product contains a nitrosoamine at levels less than 1 ppm. Based on an Agency policy published in the **Federal Register** of June 15, 1980 (45 FR 42854), this level of nitrosoamine falls below the currently acceptable risk criteria. The metabolism of oryzalin in plants and animals has been adequately delineated for the uses. An adequate analytical method, gas chromatography using an electron capture detector, is available for enforcement purposes. There is no reasonable expectation of residues occurring in meat, fat, and meat byproducts of cattle, horses, swine, sheep, goats, poultry, milk, or eggs from these tolerances.

The pesticide is considered useful for the purpose for which the tolerances are sought. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346(d)(2)))

Dated: November 9, 1984.

John W. Melone,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.304 is amended by adding and alphabetically inserting the commodities, to read as follows:

§ 180.304 Oryzalin; tolerances for residues.

Commodities	Parts per million
* * * * *	
Grain, barley	0.05
Grain, wheat	0.05
* * * * *	

[FR Doc. 84–30547 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

41 CFR Part 50–201

General Regulations Under the Walsh-Healey Public Contracts Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the Walsh-Healey Public Contracts Act regulations to provide an alternative definition for a regular dealer in specialty advertising products bidding on contracts subject to the Act. This alternative definition will relieve potential contractors in the specialty advertising products industry from having to maintain stock in a manner inconsistent with the practice in that industry, will alleviate related Federal procurement problems and will encourage more competition in the procurement process.

EFFECTIVE DATE: December 21, 1984.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On May 30, 1984, a proposal was published in the **Federal Register** (49 FR 22502) to add a new paragraph (a)(2)(xi) to section 50–201.101, 41 CFR 50–201, General Regulations Under the Walsh-Healey Public Contracts Act (PCA) to provide an alternative definition for regular dealers in specialty advertising products who bid on Federal contracts subject to the Act.

The General Services Administration (GSA) had requested that a special definition for regular dealers in specialty advertising products be provided because of information that the general definition of a regular dealer contained in the regulations was not appropriate for a regular dealer in specialty advertising products and because failure to provide such a special definition would seriously impair GSA's ability to procure specialty advertising products.

Specialty advertising is a promotional or advertising medium that utilizes products which are custom-imprinted, designed or manufactured with a logo of the name and address of the buyer or an advertising or promotional message, e.g., T-shirts, ball point pens, key tags, and calendars imprinted with advertising or promotional material.

Section 1(a) of the PCA provides that contracts subject to the Act may only be awarded to a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or supplied under the contract. A regular dealer is defined in 41 CFR 50–201.101(a)(2) as "a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and

required under the contract are bought, kept in stock, and sold to the public in the usual course of business." Furthermore, 41 CFR 50–206.53(b)(2) provides, in part, that the stock maintained by a regular dealer must be a "true inventory from which sales are made."

Information submitted by GSA and the Specialty Advertising Association International (SAAI) who also requested a special definition indicated that few manufacturers in the industry maintain their own sales force and virtually all sell through distributors (dealers).

GSA also found that the stock maintained by most specialty advertising distributors is minimal and generally would not constitute a true inventory from which sales are made. Because the purchases offered for sale are custom-tailored to satisy the needs of the purchaser, the normal method of business in this industry would be for the distributor to order the product from the manufacturer who then would dropship the imprinted product directly to the purchaser. Government purchases of specialty advertising products constitute only a small portion of the industry's total sales, and GSA stated that continued application of the general regular dealer eligibility requirement would severely impair the agency's ability to procure specialty advertising products.

Given these circumstances, the Department of Labor, pursuant to section 4 of the Walsh-Healey Public Contracts Act published a proposal to amend 41 CFR 50–201.101 to provide an alternative definition for regular dealers in specialty products. Interested persons were given 30 days to comment on the proposal.

One hundred and twenty-four comments were received, all in support of the proposed rule. A number of manufacturers of specialty advertising products commented that all of their sales were made through distributors and that the custom nature of their business prohibited their distributors from maintaining stock which is a "true inventory from which sales are made" as required by the PCA regulations. Many distributors commented that the regulatory change would allow them to bid on Federal contracts for specialty advertising products. The Specialty Advertising Association International which represents 3000 firms who manufacture or distribute specialty advertising products expressed strong support for the proposal.

GSA and one Member of Congress also commented favorably on the proposal.

Accordingly, pursuant to section 4 of the Walsh-Healey Public Contracts Act, the alternative definition for regular dealers in specialty advertising products is hereby adopted as proposed without change.

Classification

This rule is not classified as a "major rule" under Executive Order 21191 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

At the time of publication of the proposed rule, the Secretary of Labor certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that the rule would have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)) and therefore no regulatory flexibility analysis was required. This conclusion was reached because the number of affected businesses was not substantial. During the comment period, the Chief Counsel for Advocacy of the SBA expressed disagreement with our conclusion and urged that a regulatory flexibility analysis be prepared for publication with the final rule. That analysis is set forth below.

Final Regulatory Flexibility Analysis

An alternative definition specifically limited to regular dealers in specialty advertising products was proposed in order to relieve potential contractors in the industry from having to maintain stock in a manner inconsistent with the practice in the industry, alleviate Federal procurement problems resulting from the lack of qualified bidders, as well as encourage more competition in bidding on Federal contracts for specialty advertising products.

All manufacturers and distributors of specialty advertising products commenting on the proposal supported its adoption noting that the regulatory change would permit more distributors to qualify to bid on Federal contracts. None of the comments received noted any negative economic or other impact from adoption of the rule.

It is estimated that there are approximately 4,500 distributors (dealers) in specialty advertising products, almost all of which are small businesses. Information available to us indicates that a large percentage of the distributors bidding on Federal contracts for specialty advertising products may have been ineligible to bid on such contracts because the stock maintained by these firms generally would not constitute a true inventory from which sales are made as previously required by the regulations. Accordingly, the only impact of adoption of this alternative definition would be to increase competition by qualifying a significant number of additional distributors to bid for such contracts. Conversely, by increasing competition for such contracts adoption of the alternative definition may result in bidders who qualified under the previous regulations not receiving awards of contracts they otherwise may have obtained.

Paperwork Reduction Act

Section 50–201.104 of the PCA regulations, 41 CFR 50–201, provides that whenever a dealer to whom a contract subject to the Act has been awarded causes a manufacturer to deliver goods directly to the government, the dealer becomes the agent of the manufacturer in executing the contract and as the principal of such agent the manufacturer will be deemed to have agreed to the PCA stipulations contained in the contract. In order to ensure that manufacturers are made aware of their obligations under the Act, the alternative definition for regular dealers in specialty advertising products requires such dealers on all orders for direct shipment to the U.S. government to insert a notice to the manufacturer that the products are being purchased for the U.S. government and that the manufacturer must comply with the PCA. No objections to this notification requirement contained in the proposal were received.

The notification requirement contained in the regulation has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and has been assigned OMB control number 1215–0157.

List of Subjects in 41 CFR Part 50–201

Administrative practice and procedure, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Recordkeeping requirements, Reporting and recordkeeping requirements, Wages.

Accordingly, Part 50–201 of Chapter 50 of Title 41 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C. on this 16th day of November 1984.

William M. Otter,

Administrator, Wage and Hour Division.

PART 50–201—GENERAL REGULATIONS

1. The authority citation for Part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended (41 U.S.C. 40, unless otherwise noted).

2. 41 CFR 50–201.101 is amended by adding a new paragraph (a)(2)(xi) to § 50–201.101 as follows:

§ 50–201.101 Manufacturer or regular dealer.

(a) *Definitions.* * * *

(2) * * *

(xi) A regular dealer in specialty advertising products may be a person who owns, operates, or maintains a store, warehouse, or other place of business in which such person maintains samples of the products sold, whose principal business is contracting to sell products that are custom-imprinted to meet the buyer's specific advertising or promotional requirements, who after the sale orders the products from the manufacturer for direct shipment to the buyer, and who sells substantial quantities of such products to the public regularly and in the usual course of business. *Provided,* that on all orders for the United States Government the dealer agrees to insert a notice to the manufacturer to the effect that the products are purchased for the United States Government and that the manufacturer is within the terms of 41 CFR 50–201.104 requiring compliance with the labor standards provisions of the Public Contracts Act. (Approved by the Office of Management and Budget under OMB control number 1215–0157.)

* * * * *

[FR Doc. 84–30513 Filed 11–20–84; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

Admission and Training of Midshipmen at the United States Merchant Marine Academy

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its regulations to change the deadline date by which a candidate seeking admission to the United States Merchant Marine Academy must have attained 17 years of age but not have passed his or her 25th birthday. The purpose of the amendment is to establish for the Academy a deadline date of July 1 which is consistent with all other Federal service academies.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin M. Hackett, Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration—DOT, 400 Seventh Street, SW., Room 7302, Washington, DC 20590, Telephone: (202) 426–5759.

SUPPLEMENTARY INFORMATION: 46 CFR 310.54 establishes general requirements for eligibility for admission to the United States Merchant Marine Academy (USMMA). Paragraph (b) of that section establishes the minimum and maximum age for admission to the Academy. It also establishes a deadline date for reaching the minimum and maximum age, respectively.

The United States Merchant Marine Academy Regulations were amended, effective May 20, 1982, to conform with the regulations to the provisions of the Maritime Education and Training Act of 1980 (Pub. L. 96–453). The deadline date for minimum and maximum age for a candidate seeking admission to the Academy was set at June 15 of the year of admission. It has been determined that June 15 is not consistent with the deadline date set at the other Federal service academies, which is July 1 of the year of admission. By changing the deadline date at the United States Merchant Marine Academy, MARAD is reflecting a policy of adjusting selected provisions in its regulations to accomplish comparability with the other service academies in terms of military service requirements, in particular, the United States Naval Academy. Military active duty upon graduation from the academy is an equal service alternative to serving as a merchant marine officer on vessels of the United States in fulfilling the service obligation established by statute.

Furthermore, a deadline date that is consistent with that for the other Federal service academies would eliminate confusion for Congressional nominating authorities and candidates to the U.S. Merchant Marine Academy who may also be applying to the U.S. Naval Academy or to one of the other service academies.

The required minimum age of 17 years and the maximum age of 25 years shall remain unchanged at the U.S. Merchant Marine Academy. Although the maximum age of 25 years does differ from the maximum age permitted at the other Federal academies (22 years), this greater age permits the widest possible age latitude. Also, USMMA students will still be able to meet the maximum age at graduation set for commissioning in a substantial number of Navy designator areas to which their Academy education has direct relevance.

E.O. 12291, Statutory Requirements and DOT Procedure

The Maritime Administrator has made a determination that this rulemaking meets none of the criteria in Executive Order 12291 for a major rule. This rulemaking will have no economic impact. Accordingly, under Department of Transportation regulatory policies and procedures (44 FR 11034, February 28, 1979), a determination has been made that this regulation is nonsignificant and that a full regulatory evaluation is unnecessary. The regulation contains no new or amended reporting requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). This rule will affect only students and applicants to the USMMA. Since this final rule will have no economic impact, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

It is imperative that this amendment to Subpart C of 46 CFR Part 310 be published as a final rule without any opportunity for public comment. The recruitment cycle has begun for students interested in applying to the class entering July 1985. Publication of a proposed rule with a public comment period probably would create substantial confusion for the Congressional nominating authorities who are responsible for initiating nominations of applicants who meet the precise eligibility requirements by December 31, 1984. Moreover, MARAD views this rulemaking to be

noncontroversial and believes there is no reason to anticipate any reasonable negative public comments, since the changes would benefit some candidates for admission to the USMMA and would penalize nobody.

Therefore, pursuant to provisions of 5 U.S.C. 553, good cause exists for finding notice and public comment procedure is impracticable and unnecessary. In addition, due to the urgency surrounding the candidate selection process, the Maritime Administration finds good cause to make this regulation effective immediately under 5 U.S.C. 553.

List of Subjects in 46 CFR Part 310

Grants programs, Education, Maritime Administration, Schools, Seamen.

PART 310—MERCHANT MARINE TRAINING

Accordingly, Subpart C of 46 CFR Part 310 is amended as follows:

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

§ 310.54 [Amended]

Section 310.54, General requirements for eligibility, is amended by revising paragraph (b) to read:

(b) *Age.* On July 1 of the year of admission to the Academy, a candidate shall be not less than seventeen (17) years of age and shall not have passed his or her twenty-fifth (25) birthday.

Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66.

This regulation is not subject to the requirements of Section 3507 of Pub. L. 96-511. December 11, 1980.

Dated: November 14, 1984.

By Order of the Maritime Administration.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-30511 Filed 11-20-84; 8:45 am]

BILLING CODE 4910-81-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160, 1165, 1168, 1181, and 1182

[Ex Parte No. MC-173]

Codification of Statutory Findings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Interstate Commerce Commission is required by certain sections of Title 49, United State Code, to make certain statutory findings when issuing decisions on applications filed by motor carriers, water carriers, brokers, and freight forwarders. At present, these findings are published in full with groups of the applications published in the *ICC Register*. In an effort to economize on publication costs, the Commission is codifying the findings in the Code of Federal Regulations, and will use shortened versions of the preambles with the published applications.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Kathleen King, (202) 275-7429.

SUPPLEMENTARY INFORMATION: Since the rules presented here are procedural in nature we will forgo notice and comment upon them.

This decision is neither a major Federal action significantly affecting the quality of the environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

The Secretary has certified that these rules will have no impact on small entities. The information contained in the findings will not be affected.

We adopt the rules as set forth in the appendix.

List of Subjects in 49 CFR Parts 1160, 1165, 1168, 1181, and 1182

Administrative practice and procedure.

(49 U.S.C. 10922, 10923, 10928, 11301, 11343, 11344, and 11349)

Dated: November 13, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49 Parts 1160, 1165, 1168, 1181, and 1182 of the Code of Federal Regulations are amended as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

A new § 1160.24 is added to read as follows:

§ 1160.24 Statutory findings for applications filed under 49 U.S.C. 10922 (a) and (b), 10923, and 10924.

The following findings are made for applications seeking permanent authority for motor common and contract carriers of property, freight forwarders, water carriers, and brokers:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is, fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: motor common carrier of property (except fitness-only)that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificates is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property (except fitness-only), freight forwarder, and household goods broker—that the transportation is or will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

2. A new § 1160.88 is added to read as follows:

§ 1160.88 Statutory findings for applications filed under 49 U.S.C. 10922(c)(1) (A) and (B), and (c)(2)(B), and 10923.

The following findings are made for applications seeking permanent authority for motor common carriers of passengers and motor contract carriers of passengers:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1165—REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY, MOTOR CARRIERS OF PASSENGERS AND FREIGHT FORWARDERS

4. A new § 1165.29a is added to read as follows:

§ 1165.29a Statutory findings for applications filed under 49 U.S.C. 10922(i).

The following findings are made for applications seeking removal of restrictions:

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(i).

PART 1168—RULES GOVERNING THE ISSUANCE OF A CERTIFICATE TO PROVIDE REGULAR-ROUTE TRANSPORTATION OF PASSENGERS ENTIRELY IN ONE STATE UNDER 49 U.S.C. 10922(c)(2)(A)

5. A new § 1168.7 is added to read as follows:

§ 1168.7 Statutory findings for applications filed under 49 U.S.C. 10922(c)(2)(A).

The following findings are made for 90-day intrastate applications filed by motor common carriers of passengers under 49 U.S.C. 10922(c)(2)(A):

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

6. The following text is added as new sections 1181.6, 1181.19a, 1181.27 and 1181.33 as follows:

§ —— Statutory findings are made for applications filed under 49 U.S.C. 10926.

The following findings for applications filed under 49 U.S.C. 10926:

We find, subject to a timely filed petition for reconsideration, that each transaction is exempt frpm section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1182—MOTOR CARRIER APPLICATIONS TO CONSOLIDATE, MERGE, OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343-11344

7. A new § 1182.6 is added to read as follows:

§ 1182.6 Statutory findings for applications filed under 49 U.S.C. 11343-11344.

The following findings are made for applications to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344:

We preliminarily find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated. This finding shall not be deemed to exist where the application is opposed. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

[FR Doc. 84-30492 Filed 11-20-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 31220-245]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam fishery time adjustment.

SUMMARY: NOAA issues this notice to reduce allowable surf clam fishing time from twelve hours per week to six hours every other week by use of a reduced-fishing schedule for vessels harvesting surf clams in the Mid-Atlantic Area of the fishery conservation zone. This action is required to prevent significant overharvest of surf clam allocations and avoid closure of the fishery. The intended effect is to reduce the rate of harvest from the fishery.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, Acting Surf Clam Management Coordinator, 617-281-3600, extension 273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(a)(3)(i) a provision for reduction of allowable surf clam fishing time if, on review of available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota for surf clams probably will be exceeded.

Logbooks submitted by fishermen and processors show that during the first four weeks of the final quarter, which began October 1, 1984, surf clam landings for the fishing year exceeded 2,243,000 bushels. Thus, 95 percent of the 1984 2,350,000 bushel quota has been harvested during 83 percent of the fishing year. However, the Mid-Atlantic Fishery Management Council unanimously voted to increase the optimum yield by 200,000 bushels. This additional amount of surf clams increased the total annual surf clam quota to 2,550,000 bushels on November 9, 1984 (49 FR 45164, November 15, 1984).

Examination of 1982 and 1983 weekly surf clam catch rates shows that surf clam catch rates are increasing each year over the previous year. Therefore, even with the increased quota, the potential for a closure in November is imminent unless catch rates decline.

The Regional Director has determined that without a reduction in fishing time for surf clams, the fourth quarterly quota, even with the additional allocation, will be exceeded. Therefore, the Secretary of Commerce reduces fishing time to reduce the possibility that harvests will exceed the quarterly allocation and annual optimum yield.

The reduced-fishing schedule divides the surf clam fleet in half alphabetically, divides the remaining weeks of the fishing year into odd and even weeks and assigns one-half of the fleet to odd weeks and the other half to even weeks. The first letter of a surf clam vessel's name will determine which week the vessel will conduct its six-hour fishing activity. The six-hour period begins at 12:00 noon and ends at 6:00 p.m. Vessels with names beginning with letters A-M will fish during odd weeks. Vessels with names begining with letters N-Z will fish during even weeks. All vessels will fish on their presently scheduled fishing days.

Therefore, the following schedule is in effect:

Week of Nov. 18–24—odd vessels (A–M); may fish the 6-hr period
Week of Nov. 25–Dec. 1—even vessels (N–Z); may fish the 6-hr period
Week of Dec. 2–8—odd vessels (A–M); may fish the 6-hr period
Week of Dec. 9–15—even vessels (N–Z); may fish the 6-hr period

The reduced-fishing schedule will continue until December 15, 1984. The fishery is expected to close at this time.

Further notice of the closure or additional adjustments in the fishing time will be forthcoming after the Regional Director reviews the level of harvest under this revised fishing schedule.

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: November 16, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-30886 Filed 11-16-84; 4:30 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 226
Wednesday, November 21, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 8c

[Docket No. 40923-4123]

Enforcement of Nondiscrimination on the Basis of Handicap

AGENCY: Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Department of Commerce.

DATES: To be assured of consideration, comments must be in writing and must be received on or before March 21, 1985. Comments should refer to specific sections of the regulation.

ADDRESS: Comments should be sent to: Gerald R. Lucas, Director, Office of Civil Rights, U.S. Department of Commerce, Room H6010, Washington, D.C. 20230. Comments received will be available for public inspection in Room H6010, Department of Commerce, Washington, D.C. 20230, from 8:30 a.m. to 5:00 p.m. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Stearns, Chief, EEO Division, Room 6010, Department of Commerce, Washington, D.C. 20230. TDD/VOICE: 377–5691.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Commerce. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,697 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies on April 15, 1983.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR 1978 Comp., p. 206).

Interested persons are invited to submit written comments on the proposed regulations. All written comments received by the date specified above will be considered in determining whether and what final rule will be issued. After all submitted comments are reviewed, the Deputy Assistant Secretary for Administration will publish in the **Federal Register** the Department's final action on the proposal.

Under Executive Order 12291, the Department must judge whether this proposed regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This proposed regulation is not major because it is not likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

The General Counsel, Department of Commerce, has certified under provisions of the Regulatory Flexibility Act that this notice of proposed rulemaking does not have a significant impact on a substantial number of small entities because its effect will be upon individuals, ensuring that no qualified handicapped individual will, on the basis of that handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency and is not expected to significantly impact small entities regarding costs of compliance with the rule, costs of completing paperwork or recordkeeping requests, the competitive positions of small entities in relation to larger entities, cash flow and liquidity of small entities, or the ability of a small entity to remain in the market. As a result, an initial Regulatory Flexibility Analysis was not prepared.

This proposed rulemaking does not contain a collection of information requirements for purposes of the Paperwork Reduction Act.

The Department has determined that this regulation, if adopted, will not

significantly affect the quality of the human environment. Therefore, no environmental assessment of draft or final Environmentnal Impact Statement was or will be prepared.

The Department determined that this proposed rule, if adopted, will not directly affect the coastal zone of any state with an approved coastal zone management program.

Section-By-Section Analysis

Section 8c.1 Purpose.

Section 8c.1 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in program or activities conducted by Executive agencies or the United States Postal Service.

Section 8c.2 Application.

The proposed regulation applies to all programs or activities conducted by the agency.

Section 8c.3 Definitions.

"Agency." For purposes of this regulation "agency" means Department of Commerce. The Export Administration Review Board (EARB) located in the International Trade Administration's Office of Export Administration is covered by this regulation.

"Assistant Attorney General." Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have a equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 8c.60(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (*see* § 8c.70(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 8c.50 and 8c.70(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulations for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all the customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

We encourage comment on paragraph (1). The language we have proposed comes directly from the Supreme Court's interpretation of section 504. However, so long as the definition of "qualified handicapped persons" remains faithful to the statute and current case law, we are receptive to alternative language.

For programs or activities that do not fall under the first subparagraph, subparagraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 8c.10 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 8c.11 Notice.

Section 8c.11 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 8c.30 General prohibitions against discrimination.

Section 8c.30 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 8c.30 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 8c.30. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 8c.50–8c.51) and communications (§ 8c.60) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This subparagraph prohibits both overtly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons in effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 8c.30(b)(3) to the process of selecting sites for contruction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification.

A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 8c.30).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, an thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 8c.40 Employment.

Section 8c.40 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a recent decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981).

Consistent with that decision, this section provides that the standards, requirements and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 8c.70(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1979 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 8c.49 Program accessibility: Discrimination prohibited.

Section 8c.49 states the general nondiscrimination principle underlying the program accessibility requirements of sections 8c.49 and 8c.50.

Section 8c.50 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–58), with certain modifications. Thus, 8c.50 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 8c.50(a)(1)). However, § 8c.50, unlike 28 CFR 41.56–57, places explicit limits on the agency's obligation to ensure program accessibility (§ 8c.50(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This subparagraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 8c.60(e). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does nor require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Associate* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is a effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This subparagraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This subparagraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 8c.50(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 8c.50 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 8c.70.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provisions of aids. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated settings appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program's accessibility requirement by delivering service at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement included in § 8c.50(d).

Section 8c.51 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 8c.51 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607 (1982). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 8c.50.

Section 8c.60 Communications.

Section 8c.60 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 8c.60(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency § 8c.60(a)(1)(i). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 8c.60(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 8c.50(a)(3)). Unless not required by § 8c.60(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 8c.60 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 8c.60 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 8c.70.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ c.60(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § 8c.11 is effectively communicated to handicapped persons.

Section 8c.70 Compliance procedures.

Paragraphs (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 8c.70(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 8c.70(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law,

the relief granted if noncompliance is found, and notice of the right to appeal (§ c.70)(g)). One appeal within the agency shall be provided (§ c.70)(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ c.70)(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 15 CFR Part 8c

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, it is proposed that Part 8c be added to Chapter 15, subtitle A of the Code of Federal Regulations to read as follows:

Dated: September 20, 1984.

Otto Wolff,

Deputy Assistant Secretary for Administration.

PART 8c—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF COMMERCE

Sec.

8c.1 Purpose.
8c.2 Application.
8c.3 Definitions.
8c.4–8c.9 [Reserved]
8c.10 Self-evaluation.
8c.11 Notice.
8c.12–8c.29 [Reserved]
8c.30 General prohibitions against discrimination.
8c.31–8c.39 [Reserved]
8c.40 Employment.
8c.41–8c.48 [Reserved]
8c.49 Program accessibility: Discriminination prohibited.
8c.50 Program accessibility: Existing facilities.
8c.51 Program accessibility: New construction and alterations.
8c.52–8c.59 [Reserved]
8c.60 Communications.
8c.61–8c.69 [Reserved]
8c.70 Compliance procedures.
8c.71–8c.99 [Reserved]

Authority: 29 U.S.C. 794.

§ 8c.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Services.

§ 8c.2 Application.

This part applies to all programs or activities conducted by the agency.

§ 8c.3 Definitions.

For purposes of this part, the term—

"Agency" means Department of Commerce.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ 8c.4–8c.9 [Reserved]

§ 8c.10 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 8c.11 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 8c.12–8c.29 [Reserved]

§ 8c.30 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide defferent or separate aid, benefits, or services to handicaped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 8c.31–8c.39 [Reserved]

§ 8c.40 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 8c.41–8c.48 [Reserved]

§ 8c.49 Program accessibility: Discriminination prohibited.

Except as otherwise provided in §§ 8c.50 and 9c.51, no qualified handicapped person shall because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 8c.50 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities

accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personal believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 8c.50(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations in existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time Period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 8c.51 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR § 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 8c.52–8c.59 [Reserved]

§ 8c.60 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped persons.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 8c.60 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 8c.61–8c.69 [Reserved]

§ 8c.70 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Office for Personnel and Civil Rights, who shall perform, or designate someone to perform, the duties of the agency as set forth in subsections (d) through (h) of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 8c.70(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Assistant Secretary for Administration, who shall perform or designate someone to perform, the duties of the agency as set forth in subsection (j) of this section.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be so delegated.

§ 8c.71–8c.99 [Reserved]

[FR Doc. 84-30522 Filed 11-20-84; 8:45 am]
BILLING CODE 3510-EF-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[OPP-00000/P358; PH-FR 2718-2]

O-Ethyl O-[4-(Methylthio)Phenyl] S-Propyl Phosphorodithioate; Proposed Revocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of a food additive regulation for residues of the insecticide *O*-ethyl *O*-[4-(mehtylthio)Phenyl] *S*-propyl phophorodithioate. EPA is initiating this action.

DATE: Written comments, identified by the document control number [OPP–00000/P359], must be received on or before January 22, 1985.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and Support Division (TS–757C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M. St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 205, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Agency is issuing a related document that establishes a tolerance for residues of the insecticide *O*-ethyl *O*-[4-(methylthio)phenyl] *S*-propyl phosphorodithioate (also know as Bolstar) (40 CFR 180.374) in or on cottonseed at 5 parts per million (ppm) and a document that establishes a feed additive regulation for this insecticide on cottonseed hulls at 10 ppm (21 CFR 561.233). The regulations pertaining to pesticide chemicals in processed food (21 CFR 170.19) provide, in part, that when pesticide chemical residues occur in processed foods owing to the use of raw agricultural commodities that contained a pesticide chemical in conformity with a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act, the processed food will not be regarded as adulterated so long as the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

It has been determined that residues of the insecticide in cottonseed oil, resulting from use of the insecticide on the growing crop cotton, will not exceed the tolerance being established on the raw agricultural commodity. Therefore, a separate food additive regulation for cottonseed oil is not required, nor is it appropriate. Since the 5-ppm tolerance level established in this issue of the **Federal Register** is higher than the existing 1-ppm food additive regulation for this commodity, the existing regulation is no longer necessary and should be deleted from 21 CFR Part 193. Based on the above facts, the Agency is proposing to revoke the food additive regulation 21 CFR 193.212 for the residues of the insecticide at 1 ppm in cottonseed oil.

Any person who has registered or submitted an application under the

Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide that contains *O*-ethyl *O*-[4-(methyl)phenyl] *S*-propyl phosphorodithioate may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke the 21 CFR 193.212 be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposal to revoke 21 CFR 193.212. Comments must bear a notation indicating the document control number, [OPP–00000/P359]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause any increase in prices, and will not have an adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164; 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to remove duplicated and therefore unnecessary information from the Code of Federal Regulations, it is expected that little or no economic impact would occur at any level of business enterprises. Accordingly, it is certified that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 408(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(h)))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: November 5, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs

PART 193—[AMENDED]

§ 193.212 [Removed]

Therefore, it is proposed that § 193.212 *O-Ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate* be removed.

[FR Doc. 84–29942 Filed 11–20–84; 8:45 am]
BILLING CODE 6560–50–M

VETERANS ADMINISTRATION

38 CFR Part 1

Waiver of Overpayments

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: The Veterans Administration proposes to amend 38 CFR 1.962 by clarifying that the term "overpayment" excludes payments received by third parties who are neither payees nor beneficiaries. This situation usually arises when erroneous benefit payments are made shortly after the payee's or beneficiary's death and are received by, or credited to the account of, a non-entitled third party. Title 38, United States Code, section 3102(a) prohibits recovery of an overpayment where recovery would be against equity and good conscience. Currently, 38 CFR 1.963(c) permits waiver consideration of Veterans Administration payments that have come into the possession of a person other than the person entitled. By clarifying that such payments to third parties who are neither payees nor beneficiaries are excluded from the definition of an overpayment, and by deleting § 1.963(c), we will properly limit waiver consideration to deserving veterans and beneficiaries.

DATES: Comments must be received on or before December 21, 1984.

ADDRESSES: Interested persons are invited to send written comments to the Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW. Washington, D.C. 20420. Comments will be available for inspection only at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 8, 1985.

FOR FURTHER INFORMATION CONTACT: Peter T. Mulhern, (202) 389–3405.

SUPPLEMENTARY INFORMATION: These proposed revisions to regulations will be applicable nationwide. However, for debts which are within the jurisdiction of the Hartford, Connecticut, Regional Office, the Hartford Committee on Waivers and Compromises will continue to consider waiver requests made by non-payees within the Regional Office's jurisdiction who have received compensation or pension benefit payments to which they have no claim of entitlement. This deviation is necessary for the Hartford Regional Office because of a decision rendered on April 11, 1983, by the U.S. District Court for the District of Connecticut. The court order requires that notice and waiver rights be extended to individuals within the jurisdiction of the Hartford Regional Office who are indebted to the U.S. because compensation or pension benefit payments were transferred, subsequent to the death of a beneficiary, into an account which these individuals held jointly with the deceased beneficiary. The U.S. District Court has not rescinded this order. However, in the event modification or recission of the order is obtained, these regulations will be given effect within the jurisdiction of the Hartford Regional Office.

The Administrator hereby certifies that these proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of Section 603 and 604. The reason for this certification is that these proposed rules will affect only a small number of individuals indebted to the U.S. Government. Small entities are not directly regulated or significantly affected. These proposed rules have also been reviewed under E.O.12291. They have been determined to be nonmajor because they will only affect certain individuals requesting waiver of collection of an indebtedness to the U.S. Government. They will not have a $100 million annual impact on the economy. These rules will not have any adverse economic impact on, or increase costs or prices to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practices and procedures, Veterans.

Approved: August 27, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

38 CFR Part 1, General, is amended as follows:

§ 1.957 [Amended]

1. In § 1.957, paragraph (a)(2)(ii)(B) and the title and introductory text of paragraph (b) are amended by changing the title "Chief, Centralized Accounts Receivable Division" to "Chief, Finance and Centralized Accounts Receivable Division."

2. The introductory paragraph and paragraph (a) to § 1.962 are revised to read as follows:

§ 1.962 Waiver of overpayment.

There shall be no collection of an overpayment, or any interest thereon, which results from participation in a benefit program administered under any law by the VA when it is determined by a regional office Committee on Waivers and Compromises that collection would be against equity and good conscience. For the purpose of this regulation, the term "overpayment" refers only to those benefit payments made to a designated living payee or beneficiary in excess of the amount due or to which such payee or beneficiary is entitled. The death of an indebted payee, either prior to a request for waiver of the indebtedness or during Committee consideration of the waiver request, shall not preclude waiver consideration. There shall be no waiver consideration of an indebtedness that results from the receipt of a benefit payment by a non-payee who has no claim or entitlement to such payment.

(a) Waiver consideration is applicable to an indebtedness resulting from work study and education loan default, as well as indebtedness of veteran-borrower, veteran transferee, or indebted spouse of either, arising out of participation in the loan program administered under 38 U.S.C. ch. 37. Also subject to waiver consideration is an indebtedness which is the result of VA hospitalization, domiciliary care, or treatment of a veteran, either furnished in error or on the basis of tentative eligibility.

(38 U.S.C. 3102(a))

* * * * *

§ 1.963 [Amended]

3. Section 1.963 is amended by removing paragraph (c).

(38 U.S.C. 210(c))

[FR Doc. 84–30523 Filed 11–20–84; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 53, and 58

[AD–FRL 2722–1]

National Ambient Air Quality Standards for Particulate Matter, Ambient Air Quality Surveillance for Particulate Matter, and Ambient Air Monitoring Reference and Equivalent Methods; Proposed Rules

AGENCY: Environmental Protection Agency.

ACTION: Extension of Public Comment Periods.

SUMMARY: On March 20, 1984, EPA proposed revisions to the national ambient air quality standards for particulate matter in 40 CFR Part 50 (49 FR 10408), and to EPA's regulations concerning ambient air quality surveillance in 40 CFR Part 58 (49 FR 10435) and ambient air monitoring reference and equivalent methods in 40 CFR Part 53 (49 FR 10454). On May 25, 1984, (49 FR 22109) and on September 5, 1984 (49 FR 35029) EPA extended the public comment periods on the three proposals and the deadlines for rebuttal and supplementary information submitted pursuant to section 307(d)(5)(iv) of the Clean Air Act regarding comments received at the April 30, 1984 public hearing. The September 5 notice established November 16, 1984 as the common date for submittal of comments.

Today's notice extends the period for public comment on the Part 50, Part 53, and Part 58 proposals and on the public hearing until the 60th day after EPA proposes the Part 51 and Part 52 requirements for particulate matter. These proposals are expected to be published shortly. This action is being taken in response to public request for additional time to prepare comments on the March 20 proposals.

DATES: Written comments on these proposed rules must be received 60 days after proposal of the Part 51 and Part 52 requirements. The exact date will be announced in the Notice proposing Part 51 and Part 52 requirements.

ADDRESSES: Submit comments (duplicate copies are preferred) on the proposed revisions to the national ambient air quality standards for particular matter to: Central Docket Section (LE–131), Environmental Protection Agency, Attn: Docket No. A–82–37, 401 M Street, SW., Washington, D.C. 20460. Comments on the proposed revisions to EPA's regulations on ambient air quality surveillance for particulate matter should be sent to the same address, Attn: Docket No. A–83–13. Comments on the proposed revisions to the ambient air monitoring reference and equivalent methods should also be sent to the same address, Attn: Docket A–82–43. The dockets are located in the Central Docket Section of the Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Strategies and Air Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–12, Research Triangle Park, N.C. 27711. Telephone (919) 541–5531 (FTS: 629–5531).

SUPPLEMENTARY INFORMATION: At the time of the March 20 proposals, EPA announced that there would be a special comment period for the limited purpose of allowing comment on the implications, if any, for the air quality standards and the air quality surveillance regulations of EPA's proposals concerning (1) requirements for preparation, adoption and submittal of implementation plans in 40 CFR Part 51 and associated guidelines, and (2) approval and promulgation of implementation plans in 40 CFR Part 52. Today's extension provides for this opportunity to comment. Therefore, public comments relating to the Part 50, Part 53 and Part 58 notices, including any comments on the implication of the Part 51 and Part 52 proposals, must be submitted within the 60 day comment period provided by this notice.

Dated: November 7, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84–30548 Filed 11–20–84; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[A-3-FRL-2722-5]

Approval and Promulgation of Implementation Plans; New York

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice is to advise the public that additional information is available concerning the State of New York's request to revise its State Implementation Plan to allow Orange and Rockland Utilities, Incorporated (ORU) to reconvert two units at its Lovett Generating Station from oil to coal. This information pertains to proposed requirements under which ORU can reconvert to coal. It consists in part of three documents. These documents describe the conditions under which ORU will be required to monitor the effects on ambient air quality of the reconversion and under which competing air quality dispersion models will be evaluated. It also consists in part of an agreement between the Environmental Protection Agency (EPA) and ORU regarding the coal reconversion.

DATE: EPA is soliciting comments on matters raised in today's notice. The deadline for submitting comments is December 21, 1984.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278.

Copies of all relevant documents are available for review during normal business hours at the following addresses:

1. Environmental Protection Agency, Region II, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278
2. New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233
3. New York State Department of Environmental Conservation, Region 3 Office, 202 Mamaroneck Avenue, White Plains, New York 10601

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Room 1005, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice published on March 15, 1983 (48 FR 11093), the Environmental Protection Agency (EPA) announced that the State of New York had submitted a request to revise the sulfur dioxide (SO_2) portion of its State Implementation Plan (SIP). The revision is in the form of an order for a "special limitation" which would allow Orange & Rockland Utilities, Inc. (ORU) to reconvert units 4 and 5 at its Lovett Generating Station in Stony Point, New York, from oil to coal provided that either of the following SO_2 emission limitations are met:

1.0 pound SO_2 per million British thermal units (lb/MMBtu) heat input (equivalent to the use of 0.7 percent sulfur content coal) for units 4 and 5 if both are operated on coal; or

1.5 lbs SO_2/MMBtu heat input (1.0 percent sulfur content coal) for one unit if the other unit is operated on fuel oil (at 0.37 percent sulfur content, by weight) or natural gas or is not operated.

The current federally approved SIP contains a 0.2 lb sulfur/MMBtu (equivalent to 0.25 percent sulfur, by weight) sulfur content limitation for a coal fired facility in this part of New York State.

The State of New York has determined that the existing stacks for units 4 and 5 are less than "good engineering practice" (GEP) height. Therefore, the State's emission limitations are based on the premise that the stacks for units 4 and 5 will be combined and raised from a height of 206 and 239 feet, respectively, to a height of 475 feet. This will prevent high ground level concentrations due to disturbed wind flow around the power house building at the plant (downwash).

The State's submittal included an air quality dispersion modeling analysis of the Lovett coal conversion. However, the Lovett power plant is located in an area defined as having "complex" terrain and EPA's *Guideline on Air Quality Models* (EPA–450/2–78–078) does not identify a "refined" model to be used in such areas. The State's analysis utilized a nonguideline, unvalidated model. This analysis indicated that the proposed revision would not cause or contribute to a violation of the national ambient air quality standards (NAAQS) for SO_2.

The State also evaluated the proposed project using the Complex I dispersion model. The EPA considers the Complex I model the preferred screening technique for complex terrain areas. The results of this analysis, utilizing the Complex I model, conflicted with the earlier State modeling analysis. Thus, in its March 15, 1983 **Federal Register** proposal, EPA solicited public comment on whether or not New York's SIP revision met the requirements of Section 110 of the Clean Air Act. A complete discussion of the proposed revision is contained in EPA's March 15, 1983 **Federal Register** notice and will not be presented here. Also, public comments received on that notice will be addressed in a future **Federal Register** publication.

The purpose of today's action is to present a discussion of recent developments relating to the proposed reconversion at the power plant, and inform the public of the availability of documents entitled "Protocol for the Evaluation and Comparison of Air Quality Models for the Lovett Generating Station," "Quality Assurance Plan for the Lovett Sulfur Dioxide Monitoring Network," and "Quality Assurance Plan for the Lovett Meteorological Monitoring Network" and of an agreement between EPA and ORU regarding the reconversion.

Air Quality Dispersion Modeling

Due to the technical questions associated with the dispersion modeling analyses performed by the State of New York, EPA recommended that a study be performed of the actual air quality impacts in the area that result after units 4 and 5 are reconverted to coal in conformance with the State's order. The findings of this study would be used to evaluate three dispersion models to determine which is the most accurate predictor of air quality in the Lovett area. The model ultimately selected will be used to evaluate the SO_2 emissions limit for the plant. New York will then have to submit to EPA any needed modifications of its current order. The EPA, the State of New York Department of Environmental Conservation (NYSDEC) and ORU have agreed that the ORU will perform the study. The protocol documents mentioned earlier have been developed to guide this effort. They are available for public inspection at the addresses presented earlier. The following is a brief summary of their provisions.

1. ORU will install and operate 11 continuous SO_2 monitors and five meteorological stations at locations defined in the protocol.
2. Ambient air monitoring will be conducted for a minimum of 12 months prior to coal-burning at either unit in order to determine existing background SO_2 concentrations.
3. Ambient data will be collected for a minimum of 12 months after the reconversion shakedown period.

4. The reconversion shakedown period will last no longer than six months after coal burning is initiated at either unit.
5. These data will be used as input to the three contending dispersion models. The contending models are Complex I, NYSDEC, and modified NYSDEC.
6. Within 18 months following the reconversion shakedown period, ORU is to submit a new dispersion modeling analysis and appropriate emissions limits determined through use of the highest scoring model as determined through the protocol's evaluation system and in accordance with current EPA modeling procedures.
7. The schedule for execution of the protocol and any SIP revision which appears necessary after the application of the chosen model, will extend for 36 months from the time that shakedown is complete.

Stack Height

As mentioned earlier, this reconversion includes replacement of two existing stacks, having heights of 206 feet and 239 feet, with a single stack serving both units 4 and 5. This single stack, 475 feet high, would be designed with two flues, each serving one of the units. The height of the stack was determined by the State on the basis of the EPA stack height regulations using a refined formula. New York's conclusion regarding GEP was based on the application of an engineering formula which gave credit for the height of the power house structure plus 1.5 times the lesser of the height or width of the structure.

Since that time, portions of EPA's stack height regulations which formed the basis for Lovett's proposed stack modification were overturned by the U.S. Court of Appeals for the District of Columbia Circuit *Sierra Club* v. *EPA*, 719 F. 2d 436 (1983), *cert. denied*, 52 U.S.L.W. 3929 (U.S. July 2, 1984). In response EPA published proposed revised stack height regulations on November 9, 1984 (49 FR 44878).

EPA has reviewed the results of a preliminary analysis conducted for ORU using one of the contending dispersion models. The model was run to determine what effect, if any, the combining of flues into a single stack has on the location of maximum predicted SO_2 concentrations and, thus, on the design of the model evaluation study. The results show that, under worst case plant conditions, the same receptors are calculated to record the maximum 3-hour and 24-hour average concentrations for one single and two colocated stacks. Therefore, any enhanced dispersion due to combining of stacks does not move the predicted area of highest concentrations, and the same monitoring network can be assumed valid for both plant configurations.

EPA's new proposed stack height rules will authorize for cases like the Lovett Generating Station reliance on the GEP formula described earlier. While EPA believes that this proposal is consistent with the Court's decision in *Sierra Club* v. *EPA*, supra, the terms of the Lovett reconversion will be reviewed for consistency when EPA's new stack height regulations are promulgated. This may result in revised SO_2 emission limits.

The ORU has acknowledged these conditions in an agreement that is part of the rulemaking docket. This agreement is also available for public inspection at the addresses cited earlier. The major provisions of this agreement concern:

1. Procedures describing how the model of choice will be applied to determine the final SO_2 emission limit;
2. Assurance that the modeling protocol is executed to completion;
3. ORU's commitment that the final emission limits for Lovett station will be developed according to EPA's revised stack height regulations.

Limited Duration of Emission Limits

The EPA proposes to limit the term of its approval of the emission limits proposed for Lovett's units 4 and 5 to a period of 42 months from the start of shakedown of the affected units. The EPA anticipates that evaluation of the SO_2 emission limits for units 4 and 5 will be calculated by ORU in accordance with the schedule set forth in the agreement discussed earlier in today's notice. It will then be up to New York State to submit any necessary revisions to EPA for approval as a permanent part of its SIP. Also, it should be noted that EPA will reevaluate, and may revoke or revise its interim approval prior to the expiration of this 42 month period if ORU fails to: (1) Follow the modeling protocol described earlier or (2) submit a new dispersion analysis and final emission limits on the schedule outlined in its agreement with EPA.

Summary

The EPA is today making all relevant documents available for public inspection. The EPA is soliciting comments on matters raised in this notice for 30 days. A rulemaking notice taking final action will be published soon thereafter.

Under 5 U.S.C. 605(b), the Regional Administrator has certified that SIP approvals do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide.

(Secs. 110 and 301, Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: September 24, 1984.

Christopher Daggett,

Regional Administrator.

[FR Doc. 84–30558 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Parts 152, 157, 158 and 162

[OPP-30071; FRL 2604–1(b)]

Pesticide Registration and Classification Procedures

Correction

In FR Doc. 84–25226 beginning on page 37916 in the issue of Wednesday, September 26, 1984, make the following corrections:

1. On page 37916, first column, **ADDRESS**, fourth line, "(TS–757C0" should read "(TS–757C)".
2. On page 37917, third column, first complete paragraph, fifth line, "pesticidal" should read "pesticide".
3. On page 37916, third column, second complete paragraph, seventh line, "§ 162.6(b)1)" should read "§ 162.6(b)(1)".
4. On page 37931, first column, Distribution Table, entry 162.3(q), second column, "152.2(b)" should read "156.2(b)"; and entry 162.3(s), second column, "152.2(c)" should read "156.2(c)".
5. On the same page, first column, Distribution Table, second line from the bottom should have appeared as:

DISTRIBUTION TABLE

Old section	New section
. . . . .	
(c)(1)–(5)	152.8 and 152.10.
(6)	[Deleted]

6. On the same page, second column, Derivation Table, last line, entry 152.20(a), second column, "162.(c)" should read "162.5(c)".
7. On the same page, third column, Derivation Table, entry Subparts N through Q [Reserved], second column, "162.15" should be removed.

§ 152.109 [Corrected]

8. On page 37940, third column, § 152.100, tenth line, "CFR 164.13" should read "CFR 164.130".

BILLING CODE 1505-01-M

40 CFR Part 271

[A-5-FRL-2721-8]

Minnesota: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Minnesota for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: Minnesota has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Minnesota's application and has made the tentative decision that Minnesota's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, the U.S. EPA intends to grant final authorization to the State to operate its program in lieu of the federal program. Minnesota's application for final authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATE: A public hearing is scheduled for 7:00 p.m., December 27, 1984. The U.S. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to the U.S. EPA be telephone or in writing by December 19, 1984. The U.S. EPA will determine by December 21, 1984, whether there is significant interest to hold the public hearing. Minnesota will participate in any public hearing held by the U.S. EPA on this subject. All written comments on the Minnesota final authorization application must be received by the close of the public hearing on December 27, 1984.

ADDRESSES: Copies of Minnesota's final authorization application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying:

Minnesota Pollution Control Agency, 1935 West County Road B-2 (2nd Floor), Roseville, Minnesota 55113. Contact: Ms. Karen Ryss (612) 297-1793

U.S. Environmental Protection Agency, Waste Management Division, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604. Contact: Lillian Bagus (312) 886-4158

U.S. Environmental Protection Agency, Headquarters Library, PM-211A, 401 M Street, SW., Washington, DC 20460, (202) 382-5926

Written comments on the application and written or telephone communication of interest in holding a public hearing on the Minnesota application must be sent to Lillian Bagus, Minnesota Regulatory Specialist, Waste Management Branch, Waste Management Division, U.S. EPA, 320 South Dearborn, Chicago, Illinois, 60604, (312) 886-4158.

If you wish to find out whether or not the U.S. EPA will hold a public hearing on the Minnesota application based on the U.S. EPA's decision that there was significant public interest in such a hearing, write or telephone after December 21, 1984, the U.S. EPA contact person listed below.

If significant public interest is expressed, the U.S. EPA will hold a public hearing on Minnesota's application for final authorization on December 27, 1984, at 7:00 p.m. at the Minnesota Pollution Control Board, Main Board Room, 1935 West County Road, B-2 (1st Floor), Roseville, Minnesota, 55113.

FOR FURTHER INFORMATION CONTACT: Lillian Bagus, Minnesota Regulatory Specialist, Waste Management Branch, Waste Management Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois, 60604, (312) 886-4156.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the U.S. EPA to authorize the State hazardous waste program to operate in the State in lieu of the federal hazadous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if the U.S. EPA determines that the State program is "substantially equivalent" to the federal program (Section 3006(c), 42 U.S.C. 6226(c)). The U.S. EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the U.S. EPA regulations in 40 CFR Parts 260-263, and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities), and Phase II, covering the U.S. EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks. Phase II B covers permitting of incinerator facilities, and Phase II C addresses permitting of landfills, surface impoundments, wastepiles, and land treatment facilities. By statute, all interim authorizations expire on January 26, 1986. Responsibility for the hazardous waste program returns (reverts) to the U.S. EPA on that date if the State has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by the U.S. EPA if the Agency finds that the State program: (1) Is "equivalent" to the federal program (2) is consistent with the federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. The U.S. EPA regulations for final authorization appear at 40 CFR 271.1-271.23.

B. Minnesota

On May 30, 1984, Minnesota submitted a draft application for final authorization. The complete application for final authorization was submitted on July 26, 1984. Prior to submission of the application to the U.S. EPA, Minnesota solicited public comments from June 18, 1984, through July 20, 1984, and held a public hearing on July 20, 1984. The State received no written comments, and no comments were presented at the public hearing. The Minnesota Pollution Control Agency (MPCA) received six telephone requests for copies of the State's application and additional information. The State satisfactorily addressed all requests.

On September 7, 1984, the U.S. EPA transmitted to Minnesota consolidated comments on the State's complete application for final authorization. The U.S. EPA identified a number of areas that required further clarifications and additional information. The comments are summarized as follows: 1. The U.S. EPA requested Minnesota to submit copies of the State's proposed manifest form and rules with the official response to the U.S. EPA's consolidated comments; 2. The State was asked to revise its permit strategy to correct a discrepancy regarding the number of permit applications called in and the number of permit applications remaining to be called in; 3. In addition, the State was asked to clarify that the MPCA and the Minnesota Pollution Control Board (MPCB) both represent the State as parties to the Memorandum of Agreement (MOA); and, 4. The U.S. EPA's comments also included a request for further clarifications and additional information in several areas of the Attorney General's Statement.

Minnesota responded satisfactorily to the U.S. EPA's comments in a letter dated September 26, 1984. The State submitted a copy of its proposed manifest form and rules and corrected the discrepancy in the permit strategy. The Office of the Attorney General of the State of Minnesota provided the requested clarifications and additional information, including the clarification on the signatories to the MOA.

The U.S. EPA evaluated the Solid and Hazardous Waste Division of the MPCA to determine its capability to conduct a quality hazardous waste management program. Minnesota has received outstanding ratings for overall program management and implementation for both FY 1983 and FY 1984. The Minnesota permitting program has shown initiative, aggressiveness, and a high degree of quality. The State has the enforcement authority necessary for conducting an effective compliance and enforcement program. The State's management practices reflect sound planning and execution. The program staff has the technical experitise, the training, and the will to control hazardous waste in Minnesota.

Region V's capability assessment was transmitted to the State on October 9, 1984, together with a Letter of Intent. The Letter of Intent highlights the status of the groundwater monitoring program in Minnesota and incorporates the following agreements: 1. Minnesota agrees to conduct a Comprehensive Groundwater Monitoring Evaluation at one of the State's four Subpart F facilities during FY 1985. In addition, the State agrees to conduct Compliance Evaluation Inspections at the three remaining Subpart F facilities during FY 1985; and, 2. The U.S. EPA agrees to provide training for the State staff before the staff conducts the above evaluations/inspections.

The U.S. EPA has reviewed Minnesota's application, and has tentatively determined that the State's program meets all the requirements necessary to qualify for final authorization. Consequently, the U.S. EPA intends to grant final authorization to Minnesota. Copies of Minnesota's application are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

The U.S. EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Minnesota. The U.S. EPA expects to make a final decision on whether or not to approve Minnesota's program by January 26, 1985, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(B), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 Executive Order 12291.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians-lands, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegation 8-7.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-30557 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84-902; RM-3975; FCC 84-444]

Frequency Reallocation Making Additional Portions of the 470-512 MHz Band Available for Police use in Los Angeles County

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission proposes to make Channel 19 frequencies available for immediate use by the Sheriff's Department in Los Angeles County. The Los Angeles County Sheriff has requested immediate relief because his present system is inadequate to serve needs which must be met while the Commission considers the general issue of long-term nationwide requirements of public safety users.

EFFECTIVE DATE: Comments must be submitted on or before December 20, 1984 and replies on or before January 4, 1985.

ADDRESS: Federal Communications Commission, 1919 "M" Street, NW., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Don Precure, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554, (202) 653-8170.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 73

Television.

47 CFR Part 90

Public Safety Radio Services.

Proposed Rule Making

In the matter of amendment of Parts 2, 73, and 90 of the Commission's Rules and Regulations to Allocate Additional Channels in the Band 470-512 MHz for Public Safety Services; GEN. Docket 84-902, RM-3975.

Adopted: September 26, 1984.
Released: October 11, 1984.

By the Commission: Commissioner Quello concurring and issuing a statement.

I. Introduction

1. The Los Angeles County Sheriff's Department (the Sheriff) filed a petition asking that the 470-512 MHz frequency band comprising UHF television channels fourteen through twenty be

reallocated for land mobile radio use and that two of those channels be specifically set aside for the Public Safety Radio Services. More recently, the Department has filed a "Supplement to Petition for Rule Making" to amend its request. In this Supplement the Sheriff asks that two channels be made available for public safety use in each of our largest cities and that, in the interim, television Channel 19 [500–506 MHz] be reallocated for public safety use in Los Angeles. The Sheriff bases his need for immediate relief in Los Angeles on two problems. One is congested channels that result in excessive time delays in gaining access to channels by patrol officers. The other is an insufficient amount of spectrum that is appropriate to support a system using portable hand-held units.

2. In this Notice we address only the Sheriff's narrow request, as set forth in his Supplement to Petition, for reallocation of Channel 19 to solve his need for immediate relief in Los Angeles County. PR Docket No. 84–232 addresses the more general concern of accommodating public safety communications requirements on a nationwide basis.[1] In this Notice, we propose to make Channel 19 frequencies available, by rule making or waiver, for public safety use in the Los Angeles area.

3. In reviewing the Sheriff's request for spectrum relief and in making these proposals, we recognize that we have been given specific guidance in allocation matters relating to public safety radio users by two recent amendments to the Communications Act and their accompanying legislative histories. In adopting the 1982 amendments to the Communications Act, for example, Congress reiterated the Commission's basic responsibility to "promote the safety of life and property" and made it clear that we should be "ever vigilant to promote the private land mobile spectrum needs of police departments and other public agencies which need to use such radio services to fulfill adequately their obligations to protect the American public." [2] In adopting the FCC Authorization Act of 1983, Congress made clear its intention that "public safety consideration should be a top priority when frequency allocation decisions are made." [3]

[1] Future Public Safety Telecommunications Requirements, Notice of Inquiry, 48 FR 6734 (1983).

[2] 47 U.S.C. 332(a); House Report No. 97–765, 97th Cong., 2nd Sess. 53 (1982).

[3] House of Rep. No. 98–360, 98th Cong., 1st Sess. 21 (1983).

4. The D.C. Circuit recently recognized our public safety responsibilities in *National Association of Broadcasters v. Federal Communications Commission, et al.*, No. 82–1928, (D.C. Cir. July 24, 1984). In that case, the Court stated that the Congressional reference to giving public safety a "top priority" does not grant public safety users an absolute right to a particular spot on the spectrum, but it does require the Commission to give public safety needs priority over those of commercial broadcasters. *Id.*, slip op. at 42. Of course, this does not mean that all public safety spectrum requests must be granted. In *Neighborhood TV Company, Inc. v. FCC*, No. 83–1635, slip op. at 29 (D.C. Cir. August 17, 1984), the Court specifically rejected that notion, finding that the Commission did not run afoul of the Congressional mandate to give public safety top priority in spectrum decisions by not giving some of the spectrum allocated for low power television to public safety. Nor do we suggest by our institution of this proceeding that any public safety organization will be granted new or different spectrum whenever it so requests. In general, we do not look favorably upon spectrum change requests. Where, however, a public safety organization makes such a request, we believe it is our statutory obligation to examine whether the request is necessary for furthering the safety of life and property.

5. As explained more fully below, the unique circumstances of Los Angeles County lead us to an affirmative response to the Sheriff's request. Specifically, we believe the Sheriff's difficulties in equipping his officers with portable hand-held radios endangers the safety of both the officers and the public they are trying to protect. This problem is exacerbated by the large geographic area (approximately 4,000 square miles) and the diverse topography (from mountains to deserts to coastal lands) over which the Sheriff has jurisdiction. The general spectrum congestion that is present in the Los Angeles Basin further heightens the problem.

II. Procedural Background

6. The Sheriff's "Petition for Rule Making" was filed on September 1, 1981, and placed on Public Notice on September 21.[4] Comments were due by October 21, and replies by November 5, 1981. Comments and replies were filed for some time after these dates although no requests for time extensions were received or granted.

7. The Sheriff's "Supplement to Petition for Rule Making" was filed on November 4, 1983, and was put on Public Notice on November 17 with comments due December 17.[5] Upon review of the Supplement, the Chief Scientist determined that there was a need for additional information and on December 2 posed a number of questions to the Sheriff's Department. Answers were received on December 8, 1983. Both the comment and reply periods were extended; the latter ended February 16, 1984.

8. During December 1983 and January 1984 the Field Office Bureau monitored use of the Sheriff's channels and released its findings in a report.[6] In June 1984 the Sheriff filed extensive comments on the monitoring report.[7]

III. Discussion

9. The Los Angeles County Sheriff's Department is the nation's sixth largest law enforcement agency.[8] It has staff of 7,800 personnel and a fleet of over 1,200 vehicles. For communications, the Sheriff operates two separate radio systems. His "patrol radio system" for basic vehicular patrol services operates on thirty-eight frequencies in the 39 MHz band.[9] Twenty-six of these are used for thirteen dispatch frequency pairs, three are used for simplex dispatch operation, six are for simplex tactical and command post "talk around" channels, and three are for sensitive operations. The Sheriff's "investigative radio

[4] In his original petition, the Sheriff asked the Commission to reallocate 7 UHF television channels to the land mobile services, move stations operating on those channels to other channels and provide federal funding or compensation, establish more realistic television receiver standards so "taboos" based on these standards could be relaxed, permit large land mobile system operators to reserve spectrum, base channel loading standards on monitoring rather than number of mobile units, and immediately reallocate Channels 15 and 18 to public safety use in the Los Angeles area.

[5] With his Supplement, the Sheriff focused his petition on creating more UHF channels through adoption of more efficient spectrum utilization techniques such as changes in the taboos, allocating unused and new UHF channels to land mobile services, reserving at least 12 MHz of spectrum (the equivalent of two television channels) for public safety land mobile use, and assigning Channel 19 for public safety use in the Los Angeles area.

[6] FCC Field Operations Bureau Report 84–01, "Limited Spectrum Occupancy Study", February 1984 (FOB Report).

[7] Los Angeles County Sheriff's Department, "Response to Field Operations Bureau Limited Spectrum Occupancy Study FCC/FOB 84–01." (filed June 25, 1984) (Response).

[8] Los Angeles County Sheriff's Department, Supplement to Petition for Rule Making, RM–3975 (filed Nov. 4, 1983), page 17 (Supplement).

[9] Response at 20, 22, 23. At the time the Supplement was filed, the Sheriff operated with 38 frequencies: 20 were used for 10 duplex pairs and 18 were for simplex channels. Supplement at 19. The Sheriff has recently acquired additional 39 MHz frequencies for a total 40.

system" consists of portable and mobile units on ten freqency pairs in the 470 MHz band.[10] These are used for detective operations.

10. The Sheriff reports congestion on his radio systems in both the 39 and 470 MHz bands. The more serious problem, however, is with his patrol radio system in the 39 MHz band. As described by the Sheriff:

> *During busy periods, requests for emergency assistance [by patrol officers using their car radios] often are lost (unheard) or unreasonably delayed.* Waiting time to access a radio channel during average busy periods ranges from 1 minute 28 seconds to 3 minutes 46 seconds (a system utilization factor of 96%). Peak busy hour waiting is a maximum of 7.9 minutes.[11]

The Sheriff also reports that congestion results in delays in dispatching personnel in response to citizens' requests for service, failures to report arrivals at and departures from dispatch locations, and delays in communicating about other Sheriff's Department activities.

11. Because these congestion levels were significant enough to cause concern, the Chief Scientist asked the Sheriff for additional information about his system and about the studies on which he based his conclusions of system congestion.[12] The Commission's Field Operations Bureau also undertook to gather its own information on the usage of the Sheriff's frequencies.

12. The Field Operations Bureau's study, which involved periodic monitoring of fifty-nine of the Sheriff's frequencies in the 39 and 470 MHz bands from several different monitoring sites, provided data relating to the amount of time that the monitored channels registered voice or tone use. Our Field Operations Bureau and the Sheriff have applied different analytic techniques to this data and have reached conflicting conclusions about the occupancy rate of the monitored channels. The Sheriff has also used different testing methodology and reached different usage results for the same channels that were monitored by FOB. In addition the Sheriff has provided information about delays his officers experience in gaining access to channels, *viz.*, waiting time, a factor not measured in the FOB study. The Sheriff asserts that it is waiting time, not occupancy, that is critical.

13. We are not prepared at this time to make a judgment about what the Sheriff's loading is or ought to be. Nor can we define at this time what delays are tolerable for different public safety uses. As the Sheriff has pointed out, there are no definitive standards against which to measure the Sheriff's occupancy levels. There is also no model of how an ideal public safety radio system should be configured. These have been controversial points within the land mobile community in the past and, because developments in radio technology and uses are not static, agreement on appropriate standards has not been reached. With data available to us in this proceeding from only one system in one market, we, too, are reluctant to articulate standards.

14. Because the Sheriff's spectrum request is not based on congestion alone, we need not reach the issue of the acceptable usage levels for either the Los Angeles County Sheriff or public safety in general. We go forward with this proceeding on another basis, *i.e.*, the Sheriff's need for hand-held radios. When coupled with the unique and aggravating factors present in the Los Angeles Basin—the expansive geography, diverse topography and general spectrum congestion—the need for hand-held portables is a sufficient basis for our initiating this Notice of Proposed Rulemaking.

15. In his Supplement, the Sheriff has described his need for a communications system using portable hand-held units. We note that police departments in most major cities use communications systems with small portable radios carried by the officers, rather than rely solely on larger, more powerful units which must be vehicularly mounted. Portable units are vital to an officer's ability to use radio for back-up assistance or emergency help when away from his car. In subsequent contacts with the Commission, the Sheriff has emphasized the problem he faces in implementing a portable radio system with the frequencies now assigned to him at 39 MHz. The ambient noise present in major metropolitan areas, the propagation characteristics of 39 MHz frequencies, and system design considerations make their use impractical for meeting the Sheriff's portable radio requirements.

16. For these reasons, we agree that the Sheriff's need for a portable communications system is real and cannot realistically be met with the spectrum now available to him at 39 MHz. Although the Sheriff's spectrum at 470 MHz is compatible with portable equipment, the Sheriff has only ten channel pairs there, which are currently used by detectives. The Sheriff does not have enough spectrum at 470 MHz to accommodate his patrol use in addition to investigative use if equipment is used that is currently commercially available in this country. Because of assignments to others, sufficient land mobile channels suitable for portable radios are not available to meet the Sheriff's need in the Los Angeles area.[13]

17. In light of the Sheriff's need for portable radios and his inability to satisfy the need with spectrum already allotted for use in the Los Angeles area, the question before us is whether a suitable solution can be found. We have considered whether technology could offer relief by enabling the Sheriff to increase sufficiently the communications capacity of his 470 MHz band frequencies, the only band the Sheriff has that would permit portable radios to be used. Both narrowband technology, which can multiply the channel of a given amount of spectrum, and trunking, which makes better traffic management possible, may provide future relief to spectrum problems like the Sheriff's. However, these technologies do not provide a current solution in this case, given the Sheriff's need to improve his communications system immediately and at costs comparable to those of the commercial marketplace. Neither narrowband nor trunked system portable radios are currently manufactured or available in this country for public safety systems in the 470 MHz band.[14] These technologies may, therefore, be more appropriate as solutions to future rather than current spectrum inadequacies.[15] Moreover,

[10] This spectrum was reallocated from television Channel 14 to land mobile use in Los Angeles with the Commission's decision in Docket 18261. *Land Mobile Use of TV Channels, First Report and Order*, 23 FCC 2d 325 (1970).

[11] Supplement at 20 (emphasis in original).

[12] Letter from Robert S. Powers, Chief Scientist, to Sheriff Sherman Block, December 2, 1983; letter from John D. Lane, Esq., Attorney for the Los Angeles County Sheriff's Department, to Robert S. Powers, December 7, 1983 (with enclosures).

[13] Spectrum released from the 800–900 MHz band reserves, for example, has already been assigned to others in the Los Angeles area. Land mobile spectrum at 150 MHz, 450 MHz, and 470 MHz has also been assigned to others.

[14] ACSB and narrowband FM systems are being developed for the 400 MHz and 900 MHz regions of the spectrum, and 400 MHz narrowband FM equipment is available outside the United States. ACSB production equipment is available for the 150 MHz band. On July 18, 1984, Sideband Technology, Inc., filed a petition for reallocation of the 216–222 MHz band to the private land mobile radio services for exclusive use by narrowband systems (RM–4831).

[15] We note that the Sheriff is planning to increase his communications capacity with digital equipment.

even if portables were available for a trunked system in the 470 MHz band, the Sheriff would still have insufficient spectrum in the 470 MHz band to handle his growing needs.

IV. Proposal

18. Because no technological solution is commercially available now for the 470 MHz channels available to the Sheriff, we are proposing to make spectrum available in the UHF television band to satisfy the Sheriff's compelling need for a public safety communications system that accomodates portable radios. Specifically, we are proposing to make frequencies available from Channel 19.

19. The Sheriff has proposed reallocation of Channel 19 from television broadcasting to public safety use in Los Angeles County. The Sheriff has stated his intention to conduct tests demonstrting that this reallocation is feasible and will not cause interference to television station KSCI–TV, which is licensed in San Bernardino and operates on Channel 18 from a transmitter site located between San Bernardino and Los Angeles. The station places a predicted Grade B or better contour over populated parts of Los Angeles County. Accordingly, a rule change to reallocate Channel 19 presents a viable solution only if the Sheriff's tests show that use of Channel 19 will not cause harmful interference to reception of the Channel 18 signal of Station KSCI–TV.

20. We find use of Channel 19 by the Sheriff to be an attractive solution for meeting the Sheriff's public safety spectrum needs because, if technically and operationally feasible, the Sheriff's needs can be met without any loss of television service.[16] Because channel 18's signal covers much of the Los Angeles area, Channel 19 cannot be used for television in Los Angeles. At the same time, Channel 19 spectrum can solve the Sheriff's needs. First, Channel 19 frequencies are compatible with portable communications; indeed, portable equipment is commercially available. Second, there are sufficient channels available to avoid congestion. Finally, the spectrum is adjacent to the Channel 20 frequencies used by the City of Los Angeles Police Department (L.A.P.D.), thereby permitting the L.A.P.D. and the Sheriff to use radios that can tune across both Channel 19 and Channel 20 frequencies. Such mutual aid compatibility is an important asset, given the unique configuration of Los Angeles County and the interlocking jurisdictions of L.A.P.D. (within the incorporated city limits) and the Sheriff (all unincorporated areas of the county). There are areas of the county, for example, where one side of a street is under L.A.P.D. authority and the other is side under the Sheriff's jurisdiction. It is not uncommon in a vehicular pursuit for the pursued car to cross jurisdictions several times. The ability of the two departments to communicate by radio (at present they can only communicate by telephone) would thus promote their ability to foster public safety.

21. We are also cognizant, however, that reallocation of Channel 19 for public safety use in Los Angeles County would require modification of the television/land mobile sharing rules adopted in Docket 18261. The rules adopted in that docket preclude the operation of land mobile systems within the service area of a television station operating on an adjacent channel. [17] Because KSCI-TV is licensed to operate on channel 18 from a location between San Bernardino and Los Angeles, land mobile use of Channel 19 in the Los Angeles area does not meet the minimum separation distance for interservice sharing provided in Docket 18261 and would ordinarily not be permitted.

22. The Sheriff asserts, however, that a system can be engineered to meet his needs without causing interference to television reception.[18] He has filed an engineering statement claiming that the sharing criteria adopted in Docket 18261 are overly restrictive and that mobile use of Channel 19 in Los Angeles is feasible under certain conditions. To demonstrate that Channel 19 can be used without causing television interference, the Sheriff started tests in early September. According to his draft test plan, submitted to the Commission's staff on July 9, 1984.

The testing program will establish technical criteria for design and development of a Land Mobile radio system in the 500–506 MHz band in a manner which will not cause interference to the reception of KSCI, Channel 18.

The procedure, as briefly outlined in the draft test plan and as elaborated to the Commission's staff on August 7, 1984, will commence with laboratory work to establish criteria for land mobile use of Channel 19. This is expected to be followed by field tests and measurements at specific frequencies. The Sheriff has stated that he will advise the licensee of Channel 18 of his test plan and invite the licensee's representatives to observe the actual field studies. We expect that these test results will be submitted to the Commission as soon as they are completed and in no event later than the deadline for filing comments in this proceeding.

23. Obviously, we are concerned whether general land mobile operation on Channel 19 might cause harmful interference to reception of Station KSCI-TV, Channel 18, within its service area. For this reason, we will give careful consideration to the results of the Sheriff's test and any others that might be conducted before considering adoption of any final rules to permit land mobile use of Channel 19.

24. We note, moreover, that while harmful interference to Channel 18 might result if we reallocate Channel 19 for land mobile use in Los Angeles County without any restrictions, a carefully engineered system might be able to avoid this problem. The Sheriff maintains that he could carefully engineer a system using portions of Channel 19 spectrum to avoid any such interference. Should the Sheriff's test show that Channel 19 is usable, but only with restrictions, we will consider waiving our rules to allow operation of a specific system carefully designed to avoid interference to reception of Channel 18, rather than changing our rules to reallocate Channel 19 in the Los Angeles area. We note, however that dependency on careful engineering to avoid interference to Channel 18 might restrict the Sheriff's ability to modify or expand his system once it is built. Additionally, the licensee of Channel 18 might be limited in its ability to modify its facilities in a way which would change the interference relationship between its signal and any authorized public safety mobile system using Channel 19 frequencies. Both the Sheriff and KSCI-TV are therefore urged to address these matters in their comments.

25. We also note the possibility that Channel 18 might receive harmful interference even from a carefully engineered land mobile system. In that event, we may have to make a public interest determination that balances the level of interference to Channel 18 against the public safety need for spectrum by the Los Angeles County Sheriff's Department. Accordingly, in this proceeding, we might take action that results in an order of modification of KSCI-TV's license in order to permit the Sheriff's use of some Channel 19 frequencies in the Los Angeles area. Pursuant to section 316 of the Communications Act, as amended, KSCI-TV has an opportunity in this proceeding to protest the proposed modification. 47 U.S.C. 316(a). We invite all interested parties to comment on this balancing.[19] We also invite comment on what effect the congressional mandate that we give public safety use of spectrum top priority in spectrum allocation decisions should have on our decision.

26. Finally, we note that low power television station K2OAA, Bear Valley Springs, California, operates on Channel 20 with a transmitter approximately 23 miles north of the northern border of Los Angeles County. While we have not addressed the general question of land mobile interference to low power television stations in our rules,[20] we have considered whether such interference might be a problem here and have concluded that it is not.[21] We invite K2OAA to comment on our analysis here and on any impact the proposed land mobile operation may have on its service. If there is any conflict, however, we believe priority should be given to the Sheriff.

V. Conclusions

27. We are proposing, by rule making or waiver, to reallocate or otherwise allow use of Channel 19 or some frequencies thereof, it there will be no undue interference to Channel 18. We believe that such reallocation is warranted in order to permit the Sheriff to construct a modern communications system, compatible with operation of portable handheld radio units, which can adequately serve the Sheriff today and for the next several years. We believe that allowing use of frequencies from Channel 19 would achieve this goal without disrupting or eliminating television service. We ask interested persons to comment on our proposal and to address how we should weigh and balance the advantages and disadvantages in light of the Sheriff's need for an improved communications system, the potential impact on broadcasting, statutory guidance in 47 U.S.C. 332(a) and section 9 of the Federal Communications Commission Authorization Act of 1983, Pub. L. 98–214, 97 Stat. 1467, and the recent court decisions in *National Association of Broadcasters* v. *Federal Communications Commission, et al., supra,* and *Neighborhood TV Company* v. *FCC, supra.* In reaching a decision in this proceeding, we will consider the test to be conducted by the Sheriff, the resulting reports, comments regarding this and any other tests which may be conducted, and comments associated with this Notice.[22] We also invite parties to suggest any alternatives that they believe present a better solution. In doing so, we ask such commenters specifically to discuss why Channel 19 is not viable or desirable in their opinion, how their suggested alternative would meet the Sheriff's needs, and whether other services would be disrupted.

VI. Procedural Matters

28. Authority for issuance of this Notice of Proposed Rule Making is contained in sections 4(i), 302, 303 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303, and 316. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before December 20, 1984 and reply comments on or before January 4, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

29. The Secretary is directed to serve a copy of this Notice by Certified Mail to Bear Valley Property Owners Association, the licensee of K20AA, Channel 20, Bear Valley Springs, California, and by First Class Mail to those applicants for low power television stations listed in the attached Appendix.

30. The Secretary is further directed to serve a copy of this Notice by Certified Mail on Global Television, Inc., the licensee of KSCI–TV, Channel 18, San Bernadino, California.

31. Global Television, Inc., is hereby made a party to this proceeding and is afforded an opportunity to submit comments on the relevant proposals contained herein within the comment and reply period specified above and specifically to state reasons why such actions should not be taken, if it has any objection.

32. In accordance with the provisions of § 1.419 of the Rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission Public Reference Room at its headquarters, Room 239, 1919 "M" Street, NW., in Washington, D.C.

33. For further information concerning this proceeding, contact Don Precure, Office of Science and Technology (202) 653–8170. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte,* contacts are prohibited in Commission proceedings such as this one, which involve channel assignments and potential modifications to outstanding broadcast licenses. *See,* 47 CFR § 1.1207(d). An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially

---

[16] We refer to existing or potential full power television. We are not considering the loss of potential low power service in our analysis. Currently, a number of LTV applications are pending for use of Channel 19 in Southern California. Some pending applications propose to serve various communities north of Los Angeles County, while the rest propose to serve various communities in and around the San Diego area. Thus, while it appears that some of these would not be foreclosed, the use of Channel 19 by the Sheriff could preclude the licensing of some of these applications. Where there is such a conflict, however, we believe we should give priority to the Sheriff. *See Neighborhood TV Company, Inc. v. FCC, supra* at 28. A list of potentially affected low power applicants is contained in the attached Appendix.

[17] 47 CFR Part 90, Subpart L; *First Report and Order, Docket 18261,* 23 FCC 2d 323 (1970).

[18] While we do not believe that definitive conclusions can be drawn, we note that the Sheriff has advised us that he received no interference complaints during the 1984 Summer Olympics, when Channel 19 was temporarily used for land mobile communication. Our Field Operations Bureau also received no complaints.

[19] Should there be interference complaints resulting from the Sheriff's use of Channel 19, if such use is subsequently authorized, we would expect the Sheriff to correct any reported interference problems involving the Sheriff's operation that exceed any interference we may define as acceptable at the conclusion of this proceeding. We would not expect to provide relief from any interference within the range we may conclude is acceptable.

[20] In *Low Power Television Service,* 47 FR 21468, 21479, 51 RR2d 479, 490 (1982), the Commission provided that low power stations would be authorized on a secondary basis to stations in primary allocations existing at that time. *See Neighborhood TV Company, Inc. v. FCC, supra.*

[21] In reaching this conclusion, we assumed that a land mobile base station using the maximum power and height permitted by our rules would be located along the Los Angeles County border at the point nearest K2OAA's transmitter. Applying the field strength curves in 47 CFR 73.699, fig. 10b, to this hypothetical base station, we have concluded that its interference contour would fall several miles short of K2OAA's 74 dBu service contour calculated on the basis of K2OAA's actual antenna height, a calculation more advantageous to K2OAA than the height above average terrain provided by 47 CFR 74.707(a). In making this analysis, we used the same O dB desired to undesired signal ratio as was used in developing the sharing criteria for full service television stations and land mobile operations in Docket 18261, *Notice of Proposed Rule Making,* 14 FCC 2d 287, 300 (1968), *adopted in First Report and Order,* 23 FCC 2d 325 (1970). In addition, consideration shielding can be expected from the mountain range between K2OAA's transmitter site and the Los Angeles County border.

[22] As stated above, we expect the Sheriff to file his test results no later than the date he files his comments in this proceeding.

filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in this proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not to be considered in the proceeding.

34. Pursuant to section 605 of the Regulatory Flexibility Act of 1980, Pub. L. 96–354, we find that the proposed action herein would not have, if adopted, a significant economic impact on a substantial number of small businesses. At most, this proposed action would not have an impact on more than 45 small businesses (primarily low power TV applicants). Moreover, it does not propose to displace anyone currently assigned to any of the bands being considered in this proposal. Any allocation alternative being considered herein would only provide spectrum, which is currently unused by its assigned service, for shared use by public safety users.

35. It is ordered that a copy of this Notice of Proposed Rule Making be served upon the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix—LPTV Applications Possibly Affected by LM Use of Channel 19 in Los Angeles County

The following applications to operate low power television stations on channel 19 may be affected by this proposed land mobile use of channel 19 in Los Angeles County:

LPTV applicant	Distance from Los Angeles (miles)	City to be served
Blacks Desiring Media, Inc	84	Edwards, CA northeast of L.A.
Howard LP Television, Inc	91	Escondido, CA southeast of L.A.
Broadcast Data Corp	98	San Diego, CA.
Carter Broadcasting Corp	[illegible]	Do.
Connecticut Home Theater	[illegible]	Do.
Echonet Corp	[illegible]	Do.
Figgie Communications	[illegible]	Do.
George Fritzinger	[illegible]	Do.
Minority Communications	[illegible]	Do.
N & K LPTV Inc	[illegible]	Do.
Wade Comm. Group Inc	[illegible]	Do.
Baby Boom Broadcasting	103	Escondido, CA.
Amer. Television Network	103	Rancho Santa Fe, CA S.E. of L.A.
Catholic Views Broadcasting	103	San Diego, CA, etc.
Tel-Radio Comm. Properties	110	San Diego, CA.
High Desert Broadcasting	112	Ridgecrest, CA northeast of L.A.
Arnold N. Applebaum	113	Ridgecrest, CA.
Evangelina Garcia Garza	113	Do.
Evansta Romero	113	Do.
Jo Ann's Balloon Boutique	113	Do.
Juan Ramon Ortiz	113	Do.
Juan Villareal	113	Do.
Lidia Rodriguez	113	Do.
Mike A. Mendoza	113	Do.
Minerva Rodriguez Fries	113	Do.
Latin America, TV Ltd	113	San Diego, CA.
Austin B. Petersen	117	Do.
Bernard Q. Petersen	117	Do.
Debra M. Kamp	117	Do.
Gregory A. Petersen	117	Do.
Kurt J. Petersen	117	Do.
Quentin L. Breen	117	Do.
Thomas F. Miller	117	Do.
Cassidyne Productions Inc	120	Do.
Charles Billings	120	Do.
Metro TV	120	Do.
Media Properties	120	Do.
Millard V. Oakley	120	Do.
Northcoast Broadcast Corp	120	Do.
Vistacom	120	Do.
Hi-Desert Publishing Co	135	Bagdad, CA northeast of L.A.
Arnold N. Applebaum	164	Paso Robles, CA northwest of L.A.
Marie G. Berner	164	Paso Robles, CA.
Response Broadcasting Corp	164	Do.
Eddie Robinson	164	San Luis Obispo, northwest of L.A.

Concurring Statement of Commissioner James H. Quello

In re: Notice of Proposed Rule Making proposing interim relief requested by the Los Angeles County Sheriff in his petition, RM–3975.

I reluctantly concur because I believe that this Notice of Proposed Rulemaking is premature. The record is far from convincing that interim relief is required and it is far from clear that the relief proposed in the Notice is appropriate.

The Sheriff began by insisting that the spectrum assigned to him was insufficient for his needs, that his radio channels were very congested and that communications supporting his public safety mission were inadequate. After the Commission's Field Operations Bureau attempted to confirm channel congestion and found, as a preliminary matter, that the channels appeared to be lightly loaded, the Sheriff attacked the Bureau's study and then hastened to assert that the "real problem" was that he needed hand-held units for his patrol force to be used outside of vehicles. Hand-held units for use at 39 MHz, it was further asserted, were unwieldy and of too limited range. Hand-held units are available at 39 MHz albeit with longer antennae and shorter range than UHF.

The licensee of Channel 18 is alerted by this Notice that he may be subject to significant interference and that his license may be subject to modification to accommodate such interference. Should such interference require a significant modification, it can only increase the burden of proof that the Sheriff has yet to meet.

While I believe this document should properly be captioned a Notice of Inquiry, I reluctantly support it as characterized only to invite public comment on the unresolved questions which remain. First, I invite comment on the need for additional spectrum. Second, assuming that need can be established, I am interested in alternatives to the solution proposed.

I share my colleagues' concern that this Commission give special attention to the communications needs of the public safety services. The simple assertion of such a need, however, requires a leap of faith that I am not yet ready to make. Should the comments prove convincing, I will support this significant policy change.

Therefore, I concur.

[FR Doc. 30485 Filed 11–20–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Kinds of Northern Flying Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for two kinds of northern flying squirrel found in the Appalachian Mountains of North Carolina, Tennessee, Virginia, and West Virginia. Both are evidently very rare and jeopardized by habitat loss, human disturbance, and competition with, and the transfer of a lethal parasite from, the more common southern flying squirrel. This proposal, if made final, would extend the protection of the Endangered Species Act of 1973, as amended, to these two kinds of northern flying squirrel. The Service seeks data and comments from the public.

DATE: Comments from the public and the States of North Carolina, Tennessee, Virginia, and West Virginia must be received by January 22, 1985. Public hearing requests must be received by January 7, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240. Comments and materals received will be available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

The so-called flying squirrels do not actually fly, but are capable of extensive and maneuverable gliding by means of a furred, sheetlike membrane along the sides of the body, between the fore and hind limbs. There are 35 species, most of them in the forested parts of Eurasia (Nowak and Paradiso 1983). Only two species occur in North America: The southern flying squirrel (*Glaucomys volans*), found in extreme southeastern Canada, the eastern half of the United States, Mexico, and Central America; and the northern flying squirrel (*Glaucomys sabrinus*), found mainly in Canada, Alaska, and the western and northern parts of the conterminous United States (Hall 1981).

Until well into the 20th century, *G. sabrinus* was not known to occur in the eastern United States to the south of New York. Then, Miller (1936) described the subspecies *G. s. fuscus*, based on specimens collected in the Appalachian Mountains of eastern West Virginia, and Handley (1953) described *G. s. coloratus* from specimens taken in the Appalachians of eastern Tennessee and western North Carolina. Subsequently, *G. s. fuscus* was found also in the southwestern part of Virginia (Handley 1980). For purposes of convenience, *G. S. coloratus* may be referred to as the Carolina northern flying squirrel, and *G. S. fuscus* as the Virginian northern flying squirrel.

According to Handley (1953), seven specimens of *G. s. Coloratus* averaged 286 millimeters (11¼ inches) in total length and 134 millimeters (5¼ inches) in tail length, and five specimens of *G. s. fuscus* averaged 266 millimeters (10½ inches) in total length and 115 millimeters (4½ inches) in tail length. The coloration of both subspecies is generally brown above and buffy or orange white below. *G. s. coloratus* is the darker of the two, but both are considerably darker than the subspecies of *G. s. sabrinus* found farther to the north in the eastern U.S.

There has long been recognition that *G. s. coloratus* and *G. s. fuscus* are rare and that their survival might be in jeopardy. Since their original discovery, only about 30 specimens are known to have been collected, dead or alive, and at only about 8 localities. Recent efforts have failed to find these squirrels at most of these same localities. There are numerous actual or potential problems. Both subspecies may have been declining since the Pleistocene, along with the contraction of suitable boreal forest habitat. That now have relictual distributions in widely scattered areas at high elevations. Their decline has probably been accelerated through clearing of forests and other disturbances by people. They apparently are being displaced in at least some areas by the more adaptable and aggressive southern flying squirrel (*G. volans*). In addition, there is growing evidence that the nematode parasite *Strongyloides*, which is carried without obvious harm by *G. volans*, is being transferred to *G. sabrinus* with lethal effect.

Handley (1980) classified *G. s. fuscus* as "endangered" in Virginia. The West Virginia Department of Natural Resources includes this subspecies in its list of animals of special concern, and refers to it as being of "scientific interest." Weigl (1977) classified *G. s. coloratus* as "threatened" in North Carolina. Kennedy and Harvey (1980) indicated that *G. s. coloratus* is considered to be "deemed in need of special management" by the Tennessee Wildlife Resources Agency and to be of "special concern" by the Tennessee Heritage Program. In a report published by the U.S. Forest Service, Lowman (1975) stated that *G. s. coloratus* and *G. s. fuscus* are "threatened" in Virginia, North Carolina, and Tennessee.

In its Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (48 FR 58454–58480), the U.S. Fish and Wildlife Service placed both subspecies in category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial data were not then available to biologically support such a proposal. Subsequently, the Service received a report from Dr. Donald W. Linzey (1983), who had been contracted more than three years earlier to investigate the status of the two flying squirrels. The data in Dr. Linzey's report, along with other new information assembled by the Service, show that a proposal to list both squirrels as endangered is now warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.* and regulations promulgated to implement the listing provisions of the Act (to be codified in 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the two northern flying squirrels, *Glaucomys, sabrinus coloratus* and *G. s. fuscus*, are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* According to Professor Peter D. Weigl of Wake Forest University (1977, and pers. comm., March 2, 1984), *G. s. coloratus* and *G. s. fuscus* occur primarily in the ecotone, or vegetation transition zone, between the coniferous and northern hardwood forests. Both forest types are used in the search for food, while the hardwood areas are needed for nesting sites. As these squirrels are adapted to cold, boreal conditions, their range has probably been contracting since the end of the Pleistocene (Ice Age). They now have a relictual distribution, restricted to isolated areas at high elevations, separated by vast stretches of unsuitable habitat. In these last occupied zones, the squirrels and their habitat may be coming under increasing pressure from human disturbance, such as logging and development of skiing and other recreational facilities. Handley (1980) stated that while the range of *G. s. fuscus* had probably

already been fragmented prior to the arrival of European settlers, its decline has undoubtedly been accelerated by the clearing of forests during the past 200 years, and that it must be on the verge of extinction in Virginia. Lowman (1975) considered both subspecies to be threatened "due to reduction of habitat by logging and other land use."

Available evidence indicates that *G. s. coloratus* and *G. s. fuscus* are rare and that their historical decline is continuing. The two subspecies are represented by only 28 specimens in museum collections (Linzey 1983; West Virginia Department of Natural Resources, pers. comm., April 25, 1984). A few other individuals have been captured alive and then released. The museum specimens were taken in 7 separate areas of North Carolina (Yancey County), Tennessee (Carter and Sevier Counties), Virginia (Smyth County), and West Virginia (Pocahontas and Randolph Counties). Weigl (1977), in a paper prepared for a symposium in 1975, stated that in the previous 10 years the two subspecies had been captured only in 2 of these areas—the Roan Mountain vicinity of Carter County, Tennessee, and Whitetop Mountain, Smyth County, Virginia. He noted that 8 weeks of trapping in 1965–1966 in the Mount Mitchell area of Yancey County, North Carolina, the type locality of *G. s. coloratus*, had failed to find a single individual. Weigl (pers. comm., March 2, 1984) added that during the past few years he had failed to find *G. s. coloratus* in the Roan Mountain area.

Linzey (1983) reported the results of a 40-month search for *G. s. coloratus* and *G. s. fuscus* throughout their range. During this investigation, he placed 490 nest boxes at 35 sites in Maryland, North Carolina, Tennessee, Virginia, and West Virginia, including 6 of the 7 areas in which the subspecies had been previously collected. The boxes were checked at regular intervals, and any occupants were captured and identified. Only 3 individual northern flying squirrels were found in the course of the study. In April 1981, a pair of *G. s. coloratus* was caught in the Mount Mitchell area of North Carolina, and in May 1981 an adult female *G. s. fuscus* was taken in an area of Pocahontas County, West Virginia, from which the subspecies was not previously known. All 3 individuals were marked and released. This investigation thus showed that both subspecies still exist, but that they are very rare and perhaps no longer present in much of their former range.

B. *Overutilization for commercial, recreational, scientific, educational purposes.* The subject subspecies are not known to be jeopardized by human utilization. Nonetheless, flying squirrels are highly desirable as pets to some persons, and collecting for such purposes is at least a potential threat to the already rare *G. s. coloratus* and *G. s. fuscus*.

C. *Disease or predation.* Weigl (pers. comm., March 2, 1984) suggested that increasing human recreational use of northern flying squirrel habitat might result in predation of *G. s. coloratus* and *fuscus* by pets, especially cats.

D. *Other inadequacy of existing regulatory mechanisms.* Not now known to be applicable.

E. *Other natural or manmade factors affecting its continued existence.* According the Handley (1960), logging and other clearing activity has not only reduced the original habitat of the northern flying squirrel (*G. sabrinus*), but resulted in an invasion of this zone by the southern flying squirrel (*G. volans*). Regrowth in cleared areas, if any, tended to be deciduous forest favored by *G. volans*, and hence the way was opened for the spread of that species.

Weigl (1978) pointed out that originally there was apparently little overlap between the ranges of the two species, with *G. sabrinus* found in the higher elevations of the Appalachians and *G. volans* in the lower. When *G. volans* began to expand into the habitat of *G. sabrinus*, however, it seems to have successfully competed with and displaced the latter species. Weigl's studies of captive animals have demonstrated that *G. volans*, though smaller than *G. sabrinus*, is more aggressive, more active in territorial defense, and dominant in competition for nests. When the two species meet in an ecotone between coniferous and deciduous forest, *G. volans* would be expected to force *G. sabrinus* out into the purely coniferous zone, which lacks favorable nesting sites, and thus the breeding level of the latter species would be reduced.

In addition to its success in direct confrontations, *G. volans* has evidently employed a more subtle, but deadly, biological mechanism against *G. sabrinus*. Weigl (1975, and pers. comm., March 2, 1984) maintained captive colonies of the two species in adjacent outdoor aviaries. All the *G. sabrinus* weakened and died within three months, and this mortality was associated with heavy infestations of the nematode parasite *Strongyloides*. All the *G. volans* also carried the parasite, but they remained in apparent good health and continued to breed. Subsequently, *Strongyloides* was found in five wild populations of *G. volans* in North Carolina, but never in wild *G. sabrinus*. Experiments in captivity, however, demonstrated that *Strongyloides* could be transferred from *G. volans* to *G. sabrinus*. Apparently, *G. volans* is the natural host of this parasite and has developed an immunity to its ill effects. Under original conditions, with the two squirrel species occupying largely separate ranges, there would have been little interchange. When contact between the two was increased through habitat disruption, *Strongyloides* could spread to *G. sabrinus*, which lacked any immunity, and thus could serve as a powerful competitive weapon for *G. volans*.

Because of its ability to displace *G. sabrinus* by the means described above, *G. volans* seems to have taken over much of the former's range in the Appalachians. Handley (1960) reported that in Virginia *G. volans* now occurs to the tops of the highest mountains and occupies the best remnants of habitat that is suitable for *G. sabrinus*. Weigl (pers. comm., March 2, 1984) stated that he has failed to trap *G. sabrinus* at Roan Mountain, Tennessee during the past few years, but at the same time has found *G. volans* to be more abundant at higher elevations in this area. As noted above, Linzey (1983) captured only 3 specimens of *G. sabrinus* during 40 months of study, and yet an effort had been made to place the nest boxes in areas that appeared to have habitat suitable for the species, including most of the localities from which it had previously been recorded. In these same nest boxes, Linzey captured at least 29 individual *G. volans*.

The decision to propose endangered status for the Carolina and Virginia northern flying squirrels was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. Critical habitat is not being proposed, because it would be imprudent to do so. A decision to take no action would exclude the two flying squirrels from needed protection pursuant to the Endangered Species Act. A decision to propose only threatened status would not adequately express the evident rarity and multiplicity of problems of these animals. Therefore, no action or lising as threatened would be contrary to the intent of the Act.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. The Service finds that designation of critical habitat for the Carolina and Virginia northern flying squirrels is not prudent at this time. Flying squirrels in general are popular as pets (see, for example, Lowery 1974). Although the two subject subspecies are not now known to be collected for this purpose, publication of a precise critical habitat description and map could expose these rare and vulnerable animals to increased disturbance and taking. Moreover, the nest boxes placed during the recent status survey are still present and being used for study. These boxes are readily visible and flying squirrels may be easily trapped therein during their diurnal period of inactivity. Any publicity regarding the location of these boxes should be avoided.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with the States, and requires recovery actions. Such actions are initiated by the Service following listing. The protection required by Federal agencies, and taking and harm prohibitions, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402, and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29989). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No specific Federal activities that may be affected in this regard, with respect to the proposed listing of the Carolina and Virginia northern flying squirrels, are known at this time. Much of the region that these squirrels may inhabit, however, is within national forest land. Therefore, certain actions by the U.S. Forest Service, such as timber sales, establishment of recreational facilities, and spraying of insecticides, may become subject to conferral and/or consultation.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife species. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any Carolina or Virginia northern flying squirrel. It would also be illegal to possess, sell, deliver, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Service will now review the Carolina and Virginia northern flying squirrels to determine whether they should be placed on the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, or considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any rules finally adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the Carolina and Virginia northern flying squirrels;

(2) The location of any additional populations of these species and the reasons why any of their habitat should or should not be determined to be critical habitat as provided for by Section 4 of the Act;

(3) Additional information concerning the distribution of these species; and

(4) Current or planned activities in the involved areas, and their possible impacts on the Carolina and Virginia northern flying squirrels.

Final promulgation of the regulations on the Carolina and Virginia northern flying squirrels will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Director (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240.

National Environmental Policy Act

The U.S. Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endanged Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References

Hall, E.R. 1981. The Mammals of North America. John Wiley & Sons, New York, 2 vols.

Handley, C.O., Jr. 1953. A new flying squirrel from the southern Appalachian Mountains. Proc. Biol. Soc. Washington, 66:191–194.

Handley, C.O., Jr. 1960. Mammals. *In* Linzey, D.W. (ed), Endanged and threatened plants and animals of Virginia. Center for Environmental Studies, Virginia Polytechnic Inst. & State Univ., pp. 483–621.

Kennedy, M.L., and M.J. Harvey. 1980. Mammals. *In* Eagar, D.C., and R.M. Hatcher (eds.) Tenessee's rare wildlife, vol. I: the vertebrates, Tennessee Wildl. Resources Agency, pp. C1–C50.

Linzey, D.W. 1983. Status and distribution of the northern water shrew (*Sorex palustris*) and two subspecies of northern flying squirrel (*Glaucomys sabrinus coloratus*

and *Glaucomys sabrinus fuscus*). Final Rept. to U.S. Fish and Wildl. Serv. 42 pp.
Lowery, G.H., Jr. 1974. The Mammals of Louisiana and Its Adjacent Waters. Louisiana State Univ. Press. xxiii + 565 pp.
Lowman, G.E. 1975. A survey of endangered, threatened, rare, status undetermined, peripheral, and unique mammals of the southeastern national forests and grasslands. U.S. Dept. Agriculture, Forest Serv., Southern Region. vi + 121 pp.
Miller, G.S., Jr. 1896. A new flying squirrel from West Virginia. Proc. Biol. Soc. Washington, 40:143–144.
Nowak, R.M., and J.L. Paradiso. 1983. Walker's Mammals of the World. Johns Hopkins Univ. Press, Baltimore, 2 vols.
Weigl, P.D. 1975. Parasitism as a possible biological weapon affecting the ranges and interactions of the flying squirrels, *Glaucomys volans* and *Glaucomys sabrinus*. Paper presented at 55th Annual Meeting, Amer. Soc. Mammalogists, Univ. Montana, 6 pp.
Weigl, P.D. 1977. Northern flying squirrel. *In* Cooper, J.E., S.S. Robinson, and J.B. Funderburg (eds.), Endangered and threatened plants and animals of North Carolina. North Carolina State Mus. Nat. Hist., Raleigh, pp. 398–400.
Weigl, P.D. 1978. Resource overlap, interspecific interactions and the distribution of the flying squirrels, *Glaucomys volans* and *G. sabrinus*. Amer. Midl. Nat., 100:83–96.

Author

The primary author of this proposed rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*	*	*
Squirrel, Carolina northern flying.	*Glaucomys sabrinus coloratus.*	U.S.A. (NC, TN)	Entire	E	NA	NA	
Squirrel, Virginia northern flying.	*Glaucomys sabrinus fuscus.*	U.S.A. (VA, WV)	do	E	NA	NA	
*	*	*	*	*	*	*	*

Dated: October 31, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-29875 Filed 11-20-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Hoffmanseggia Tenella To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine endangered status for a plant, *Hoffmanseggia tenella* (slender rush-pea). Historically, this plant has been reported from three localities in Nueces and Kleberg Counties, Texas. Currently, only one population is known to exist and it is threatened by the encroachment of King Ranch bluestem and bermuda grass. There is no current management plan for slender rush-pea, nor is there State or Federal protection. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Hoffmanseggia tenella*. Critical habitat is not being proposed at this time. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 22, 1985. Public hearing requests must be received by January 7, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, S.W., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Endangered Species Staff, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766–3972, FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Historically, this plant has only been known from two Texas counties. It was first collected by Mrs. F. E. Clements between Robstown and Alice, Nueces County, Texas on November 22, 1931. Tharp and Williams described the plant as *Hoffmanseggia tenella* (Williams 1936). Another collection was made in 1964 from the King Ranch in Kleberg County. The only other known records were collections from Nueces County by Mary Johnson in 1976 and Geyata Ajilvsgi in 1982. A field survey of the area, conducted in 1982, resulted in only one population (with only three individual plants) being found in Nueces County. This population was found near Petronilla Creek and State Highway 70 in an eroded area and along the highway in a gravel dump. Two plants in the existing population are located on private property, and one plant is located on adjacent State Highway right-of-way (Ajilvsgi, pers. comm., 1984).

Hoffmanseggia tenella is a perennial in the bean family with stems 8 to 15 centimeters (cm) tall terminating in a 3-5-flowered inflorescence without glands. The flowers are orange and approximately 5 millimeters (mm) long with 10 stamens. The leaves are bipinnately compound; petioles are up to 13 cm long, leaflets are in 5 or 6 pairs on each of 3 to 7 pinnae, are oblong, 2 to 4 mm long and 1 to 2 mm broad. The legumes are 12 to 15 mm long, 4 to 6 mm broad, and contain from 2 to 4 seeds. Flowering usually occurs from early March to June, sporadically thereafter depending upon the rainfall.

The one known population of *Hoffmanseggia tenella* occurs in the Blackland Prairie Area of the Gulf Coastal Prairie. The habitat of this plant is the hard clay soil of creek banks and associated barren areas where King Ranch bluestem is absent (Mahler 1982).

The surrounding vegetation consists largely of two grasses, King Ranch bluestem and bermuda, which have been introduced into the area for roadside management and range improvement. Observation of this taxon shows that it occurs in the lower seral stages of succession, and may possibly be a pioneer species. *Hoffmanseggia tenella* is an invader species of highly disturbed soils where it persists until it is crowded out by competition from other encroaching species. The population biology and ecology of this species are relatively unknown and additional studies are needed.

This first Federal action involving this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)A), and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Hoffmanseggia tenella* was included in the 1975 Smithsonian report, the July 1, 1975 notice, and the June 16, 1976 proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn, although a 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979 Federal Register (44 FR 70796), the Service published a notice withdrawing the June 16, 1976 proposal, along with four other proposals which had expired. A revised notice for plants was published in the December 15, 1980 Federal Register (45 FR 82480) and included *Hoffmanseggia tenella* as a category 1 species. Category 1 comprises taxa for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980 Notice of Review were considered to be petitioned, and the deadline for a finding on those species including *Hoffmanseggia tenella* was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Hoffmanseggia tenella* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(ii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

A status report compiled by Dr. W.F. Mahler in 1982 and investigations carried out by Service botanists and others have provided new biological data which are included in this proposal. These new data include recent documentation of low numbers of plants and threats to the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (49 FR 3890, to be codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hoffmanseggia tenella* Tharp & L.O. Wms. (slender rush-pea) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to the continued existence of *Hoffmanseggia tenella* is the alteration of this species' habitat. The single known population in Nueces County was found growing in an eroded area, which indicates that this plant demands an ecological niche in one of the lower seral stages of succession (Mahler 1982). However, the habitat for *Hoffmanseggia tenella* in the Texas Gulf Coastal Prairie has been severely limited because non-native, introduced grasses, such as King Ranch bluestem and bermuda, have escaped into uncultivated areas. As a result, the native grasses and forbs are being eliminated from the natural vegetation. In addition, private and public land owners have altered the natural habitat to prevent soil erosion, to improve rangeland, and to control prairie fires. Roadside management practices have diminished the waste areas along public roads and highways by seeding the area with King Ranch bluestem and bermuda. Private land owners have also adopted the practice of planting King Ranch bluestem to preserve rangeland from possible soil erosion, or to increase usable rangeland. These practices have destroyed the natural system of the Texas Gulf Coastal Prairie, which provided disturbed habitat for *Hoffmanseggia tenella*. The result of these practices has been that the habitat for *Hoffmanseggia tenella* on the Texas Gulf Coastal Prairie has been severely limited because the introduced grasses have escaped into uncultivated areas. Therefore, the native grasses and forbs are being eliminated from their natural habitat. With only one population in Nueces County, this species is extremely vulnerable, and is subject to complete elimination if there is any more modification to its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade in this plant is not known to exist; however, critical habitat is not being proposed because of the potential for collecting and vandalism. The existing population is not located on Federal lands and therefore would not be protected from taking by the Endangered Species Act. Excessive recreational and scientific use is not known or anticipated.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Hoffmanseggia tenella* is not protected by either Federal or State laws.

E. *Other natural or manmade factors affecting its continued existence. Hoffmanseggia tenella* is in a particularly precarious situation because it is limited to one known population. The seriousness of this problem is compounded by this population consistency of only three plants. This species' genetic variability is severely limited and therefore less able to accommodate the stress of changes in its physical environment. With ony one population known to exist, this taxon is especially vulnerable to minor artificial or natural disturbances (Mahler 1982).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Hoffmanseggia tenella* as

endangered without critical habitat. Endangered status seems appropriate because there is only one known population of this species with three individual plants, and the habitat that this plant must have to exist is rapidly decreasing because of the introduction of King Ranch bluestem. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Act does not protect endangered plants from taking or vandalism on lands which are not under Federal jurisdiction. This would result in an especially severe problem for *Hoffmanseggia tenella*, whose habitat is located along a state highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and to vandalism. Therefore, it would not be prudent to determine critical habitat for *Hoffmanseggia tenella* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery action, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existance of a proposed species. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existance of such a species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. However, *Hoffmanseggia tenella* is not known to occur on Federal lands, and there are no known Federal actions that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hoffmanseggia tenella*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition will apply to *Hoffmanseggia tenella*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. *Hoffmanseggia tenella* occurs primarily on private land. At present, no populations are known to exist on Federal land. It is expected that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Hoffmanseggia tenella;*

(2) The location of any additional populations of *Hoffmanseggia tenella* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Hoffmanseggia tenella.*

Final promulgation of the regulation on *Hoffmanseggia tenella* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differes from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed withing 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Mahler, W. F. 1982. Status report on *Hoffmanseggia tenella.* U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 10 pp.
Williams, L. O. 1936. Field and Herbarium Studies, IV. Annals of the Missouri Botanical Garden 23:451–452.

Author

The Primary author of this proposed rule is Peggy Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Alburquerque, New Mexico 87103 (505/766–3972, FTS 474–3972). The preliminary listing package was provided by Catherine Coats, Herbarium, Southern Methodist University, Dallas, Texas 75275. The editor is LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975 FTS 235–1975). Status information was provided by Dr. W. F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275 (214/692–2257).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Fabaceae—Legume family						
Hoffmanseggia tenella	Slender rush-pea	U.S.A. (TX)	E		NA	NA

* * * * *

Dated: November 7, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-30474 Filed 11-20-84; 8:45 am]
BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat for the Key Largo Woodrat and Key Largo Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the proposal to designate critical habitat for the Key Largo woodrat and Key Largo cotton mouse is reopened. Both of these federally-listed endangered species are native to Key Largo, Monroe County, Florida.

DATES: The comment period reopens on November 21, 1984. Comments must be received by May 8, 1985.

ADDRESSES: Comments and materials should be sent to the Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (904/791–2580; FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) are small mammals native to the tropical hardwood forests of Key Largo, Monroe County, Florida. The range of both species on Key Largo has been reduced by commercial and residential development, and projected future development jeopardizes much of the remaining habitat of these rodents.

In the **Federal Register** of September 21, 1983 (48 FR 43040), the Service issued an emergency rule determining endangered status for the Key Largo woodrat and cotton mouse, pursuant to the Endangered Species Act of 1973, as amended. The emergency designation expired on May 18, 1984. On February 9, 1984 (49 FR 4951), the Service proposed permanent endangered status and critical habitat for both species. A public hearing on the proposal was held April 24, 1984, in Tavernier, Monroe County, Florida. On August 31, 1984 (49 FR 34504), the Service published a final rule determining permanent endangered status for the Key Largo woodrat and cotton mouse. The critical habitat designation was deleted from the final rule to expedite the listing process, as provided for by section 4(b)(6)(C) of the Act, as amended in 1982. Section 4(b)(6)(C) requires, however, that critical habitat be designated within 2 years of its proposal, if not designated concurrently with the final regulation listing the species.

On July 20, 1984, Mr. Lindell Marsh, an attorney representing several landowners on north Key Largo, requested the Service to attend a meeting to begin development of a habitat conservation plan pursuant to section 10(a) of the Act. The purpose of the plan would be to resolve conflicts between development and endangered species on north Key Largo. Participants in the plan would include appropriate State and local agencies, landowners, and conservation groups. The approval of a permit pursuant to section 10(a) of the Act would allow incidental take of federally endangered species on north Key Largo, provided that such take was mitigated by conservation measures and would not appreciably reduce the likelihood of the survival and recovery of any such species in the wild.

Section 4(b)(2) of the Act requires that economic and other impacts be taken into consideration when specifying critical habitat. Since development of a conservation plan for north Key Largo would be likely to generate considerable additional data on the economic and other impacts of critical habitat designation for the Key Largo woodrat and cotton mouse, the Service desires to

provide an opportunity for these data to be analyzed before designating critical habitat for these species. The comment period on the proposal of critical habitat for the Key Largo woodrat and cotton mouse is therefore reopened. All interested parties, whether or not involved with the conservation plan, are invited to submit comments and substantive information concerning impacts of critical habitat designation for the Key Largo woodrat and cotton mouse. Comments may be submitted until May 8, 1985, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 98 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 25, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-30479 Filed 11-20-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

South Atlantic Fishery Management Council

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Swordfish Fishery Management Plan; Notice of public hearing.

SUMMARY: The South Atlantic Fishery Management Council will hold a public hearing in conjunction with their upcoming Council meeting to allow for input on the changes to the draft Swordfish Fishery Management Plan.

DATES: The hearing will be held on November 27, 1984, from 1:30 p.m. until 5:00 p.m. in Marathon, Florida. Written comments will be accepted until December 17, 1984.

ADDRESSES: Send comments to: David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, or Jack T. Brawner, Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

The hearing will take place at Hawk's Cay, Market 61, Marathon, Florida.

FOR FURTHER INFORMATION CONTACT: David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 803–571–4366; or Jack T. Brawner, Regional Director, Southeast Region, 813–893–3141.

SUPPLEMENTARY INFORMATION: The hearing will deal with a fishery management plan which establishes a management regime for swordfish in the fishery conservation zone from Maine through Texas, including Puerto Rico and the U.S. Virgin Islands. Measures to be discussed include:

1. Restriction of domestic catches of small fish by variable season closures with certain exemptions for the five council areas. The calculation of closed days takes into account seasonal landings patterns in each Council region.

2. Incorporation of the Preliminary Fishery Management Plan for Billfish and Sharks into the plan and a cap on swordfish bycatch for foreign fishermen.

For more information, please see the notice of public hearing published in the **Federal Register** October 17, 1984, 49 FR 40621.

Dated: November 16, 1984.

Richard B. Roe,

Director, Office of Protective Species and Halibut Conservation, National Marine Fisheries Service.

[FR Doc. 84-30597 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 226
Wednesday, November 21, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Member of Performance Review Boards; Amended List

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board members published June 18, 1984, 48 FR 24910.

EFFECTIVE DATE: Upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250, (202/447–6905).

The membership of the Department of Agriculture's Performance Review Boards is amended by adding the name of Merritt W. Sprague.

Done this 16th day of November 1984.

John R. Block,

Secretary.

[FR Doc. 84-30555 Filed 11-20-84; 8:24 am]

BILLING CODE 3116-01-M

Forms Under Review by Office of Management and Budget

November 16, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service
Reporting Illegal Aliens to INS
On occasion
Individuals or households, State or local governments; 34,932 responses; 3,699 hours; not applicable under 3504(h)
Mildred Kriegel, (703) 756–3429.

Jane A. Benoit,

Acting Departmental Clearance Officer.

[FR Doc. 84-30553 Filed 11-20-84; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Small Business Timber Set-Aside Program; Proposed Changes

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy.

SUMMARY: The Forest Service is proposing changes in the operation of the Small Business Timber Set-Aside Program. The proposed policy changes, which will be implemented through revision of the Forest Service Manual, would change: (1) The method of establishing and changing the small business share in each marketing area, (2) selection of set-aside sales, (3) manufacturing requirements for logs harvested from set-aside sales, and (4) operation of the Special Salvage Timber Sale Program.

DATES: Comments must be received by January 22, 1985.

ADDRESSES: Send written comments to R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David Spores, Timber Management Staff, (202) 447–4051.

SUPPLEMENTARY INFORMATION: The Small Business Act (15 U.S.C. 631 et seq.), as amended, establishes the policy that Federal Agencies shall ensure that a fair proportion of the sales of Government property are made to small business concerns. For purposes of Federal timber sale programs, small businesses are defined as those firms primarily engaged in the forest products industry that have 500 or fewer employees.

Currently, the Forest Service operates a set-aside program under the terms of a 1971 agreement between the Department of Agriculture and the Small Business Administration (SBA). Policy and procedures for the program are set forth in SBA regulations at 13 CFR Part 121, in Forest Service regulations at 36 CFR Part 223, Subpart B and Forest Service Manual Chapter 2430.

The current program provides for the establishment of small business shares for each market area. Market areas generally coincide with National Forests. Small business shares are recomputed at 5-year intervals based on the proportion of the sale program which is purchased by small business firms in the preceding 5 years. Following establishment of shares, a record of volumes purchased by small business firms is maintained by 6-month periods. If the proportion of volume purchased by small business falls below the small business share by 10 percent or more, sales are set-aside for preferential bidding by small business firms. Small business purchasers of set-aside sales must manufacture or sell to other shall business firms at least 70 percent of the volume of the sale (50 percent in Alaska).

The Forest Service and Small Business Administration (SBA) conducted a joint review of the

operation of the set-aside program in 1982 and 1983. This review, as well as reviews by other Agencies, identified a number of areas of concern about program operations. The following proposals deal with these concerns and are the result of extensive discussions between the Forest Service and SBA, discussions with representatives of associations representing both small business and large business segments of the industry, and discussions with representatives of individual firms. Following these discussions it appears that there is a substantial amount of agreement among the interested parties. It now appears to be timely to make a formal proposal and publish it for public comment.

Proposed Policy Changes

A. Establishment of Small Business Shares

Currently, shares for all market areas are recalculated at 5-year intervals based on the small business purchase history during the preceding 5 years, that is, small business purchases as a percent of total purchases. This procedure has provided an incentive in some areas for purchasers to bid for timber to influence the share rather than to bid on the basis of need for timber. It has also led to an increase of shares in some areas will beyond harvest levels of small business firms. The proposed revision of the program recognizes Regional differences in relation to timber supply and demand, dependence on National Forest timber, and market fluctuations in recent years.

1. *All Regions.* Under the proposed policy, the small business share would be calculated as follows: (a) No market area would have a small business share which exceeds 80 percent of the sale program. (b) No market area would have its small business share reduced below 50 percent of the original base share established in 1971.

2. *Region 8 (Southern), Region 9 (Eastern), and Region 10 (Alaska).* Current procedures for establishing small business shares would remain in effect, subject to the upper limit of 80 percent. Shares in Regions 8 and 9 would be recomputed in 1986, based on the small business purchase history for FY 1981–1985.

3. *Region 1 (Northern), Region 2 (Rocky Mountain), Region 3 (Southwestern), and Region 4 (Intermountain).* New small business shares would be calculated during FY 1985 based on the average of the small business harvest history for 1975–1984 and the small business purchase history for the same period. The calculation would use an arithmetic average giving equal weight to purchase and harvest history.

The Forest Service anticipates that harvest and purchase histories for the 1975–1984 period will be available for market areas in Regions 1–4 shortly in order to facilitate evaluation of the proposals.

4. *Region 5 (Pacific Southwest) and Region 6 (Pacific Northwest).* Shares established in 1981, based on the small business purchase history for 1976–1980 would be maintained, except in market areas where the small business harvest history for 1975–1979 differs from the established share by more than 10 percent. Where such a difference exists, the new small business share would be set halfway between the current share and the small business harvest history for that period. Structural changes in the industry since 1980 would be reflected as discussed in B(2) below.

B. Future Share Changes

1. *Regions 8, 9, and 10.* The current system of establishing shares would be continued in the future; however, the Forest Service and SBA have agreed to study the implementation of the revised program nationally to determine whether it would be appropriate to change the program in Regions 8 and 9. This study should be completed within 2 years.

2. *All Other Regions.* No further regular recomputations of small business shares will be scheduled. Shares would be changed based on structural changes in the industry, i.e. a mill either changes size class or ceases operations. Any such structural changes would be reflected by a change in the small business share at the start of the 6-month period beginning at least 12 months after the change occurs. The basis of the change would be the average of the purchase history (percent) and the harvest history (percent) for the 5-year period prior to the structural change.

C. Purchases by Non-manufacturers

(Firms that do not process most of the logs they cut.)

1. *Regions 8, 9, and 10.* Current procedures for allocating purchases by non-manufacturers to large or small businesses based on anticipated size of the firm that will process the timber will be followed.

2. *Regions 1–6.* Open sales purchased by non-manufacturers would not be credited to purchase history or the 6-month purchase analysis until the volume is harvested. At that time, the actual volumes would be credited to the size class of the firms where the logs are delivered for manufacture.

D. Triggering of Set-Aside Sales

1. Following current procedures, a set-aside program would be initiated whenever small business firms fail to purchase the small business share by 10 percent or more. However, if it is determined that the program has been triggered by only a fractional amount, set asides may not be offered in the following period.

2. When a set-aside program is triggered on a market area, a volume of timber equalling the deficit in small business purchases plus the small business share would be set-aside in the next period; however, at least 20 percent of the timber volume offered in any 6-month period would be open non-set-aside sales.

E. Selection of Set-Aside Sales

The current joint sale selection process will be continued. Proposed set-aside sales would be identified by the Forest Supervisor subject to concurrence by the local SBA representative. The tentative selection of sales to be set-aside, if the SBA set-aside program is triggered, would be completed and announced 60 days prior to the start of the next 6-month period.

F. Manufacturing Requirements on Set-Aside Sales

1. In all Regions, except Regions 8 and 10, the 70/30 rule would be enforced. This means that the timber sale contract would require that at least 70 percent of the advertised volume of a set-aside sale be processed in a small business manufacturing facility.

2. In Region 10 a 50/50 rule would be enforced. This means that the timber sale contract would require that at least 50 percent of the advertised volume of a set-aside sale be processed in a small business manufacturing facility.

3. In Region 8, the timber sale contract would require that 100 percent of the softwood sawtimber from set-aside sales would be processed in a small business manufacturing facility. Hardwood sawtimber in this Region would be subject to the 70/30 rule.

Implementation of the preceding changes in manufacturing requirements will require revision of the SBA Size Standard Regulations. It is anticipated that SBA will initiate appropriate rulemaking to accommodate these changes.

The Forest Service will explore revisions of contract damage provisions, cancellation regulations, and debarment regulations to ensure that adequate authorities are available to ensure strict compliance with the new manufacturing requirements.

G. Special Salvage Timber Sale Program

The Special Salvage Timber Sale Program (SSTS) provides for the set-aside of small salvage sales for preferential award to firms with 25 or fewer employees. The Small Business Administration is developing a proposal to revise the size standard regulation for this program to remove the 70/30 manufacturing requirement from sales set-aside under this program. When this change is made, it is proposed that timber volume from SSTS set-aside sales be separate from all consideration under the regular timber set-aside program.

Dated: November 15, 1984.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 84-30510 Filed 11-20-84; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

DEPARTMENT OF LABOR

Steel Advisory Committee; Meeting

On December 6, 1983, five subcommittees we established to serve the Steel Advisory Committee. Those subcommittees were: Subcommittee on the State of the Industry, Subcommittee on Trade Issues, Subcommittee on Capital Formation Issues, Subcommittee on Industry Rationalization Issues, and Subcommittee on Employment, Productivity and Adjustment Issues.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1976), as amended, notice is hereby given that the Subcommittee on Trade Issues and Industry Rationalization Issues will meet on November 28, 1984 at 9:00 a.m. and 10:00 a.m., respectively. These meetings will be held in Room 4830, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington D.C.

These meetings are notices under exceptional circumstances. The Steel Advisory Committee has noticed a full Committee meeting for November 28, 1984 (49 FR 45205 (1984)). The membership of these subcommittees intend to review and forward, if appropriate, consensus findings and recommendations to the full Committee for consideration. To permit review by the Steel Advisory Committee, these subcommittees will meet under an expedited public notice.

The purpose of these meetings is to present these Subcommittee's consensus findings and recommendations. For further information regarding these Subcommittees' agenda, meeting schedules, objectives or structure, please contact Dr. Timothy P. Roth, Executive Director, Steel Advisory Committee, whose mailing address is: Room 6324, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; or telephone (202) 377–0703. With regard to general questions relating to the Administration of these Subcommittees as required by the Federal Advisory Committee Act, please contact Robert H. Brumley, II, Special Assistant to the General Counsel, U.S. Department of Commerce (202) 377–4772.

The public is welcome to attend these meetings and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Exectuve Director of the Committee in advance of this meeting. The Subcommittee Chairs retain the prerogative to place limits on the duration of oral statements and discussions. Written Statements may be submitted before or after each session.

Dated: November 19, 1984.

Timoth P. Roth, Ph.D.,

Executive Director, Steel Advisory Committee.

[FR Doc. 84-30697 Filed 11-19-84; 2:23 pm]

BILLING CODE 3510-BP-M; 4510-23-M

DEPARTMENT OF COMMERCE

International Trade Administration

Disposition of Application for Duty-Free Entry of Scientific Instrument; Bituminous Coal Research, Inc.

Processing of the Bituminous Coal Research, Inc., application (Docket Number 83–349) has been discontinued. The U.S. Customs Service has denied this application because the instruments are not being imported for scientific purposes.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30611 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Brookhaven National Laboratory

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–164. Applicant: Brookhaven National Laboratory, Upton, NY 11973. Instrument: Double Monochromator and Remote Control Filter Assembly for Neutron Spectrometer. Manufacturer: Franke & Heydrich KG, West Germany. Intended use: See notice at 49 FR 19563.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for an instrument previously imported for the use of the applicant. The instrument and accessories were made by the same manufacturer. The National Bureau of Standards advises in its memorandum dated September 28, 1984 that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 30614 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Loss Spectrometers; Iowa State University

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84–235. Applicant: Iowa State University, Ames, IA 50011. Instrument: Low Energy Electron Loss Spectrometer with Accessories. Manufacturer: Leybold-Heraeus, West Germany. Intended use: See notice at 49 FR 30984.

Docket No.: 84–248. Applicant: Lehigh University, Bethlehem, PA 18015. Instrument: Electron Loss Spectrometer,

Model ELS 22. Manufacturer: Leybold-Heraeus, West Germany. Intended use: See notice at 49 FR 32838.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments provide the applicants with the capability of determining (1) low energy electron loss and (2) measuring the nature and orientation of adsorbed species. The National Bureau of Standards advises in its memorandum dated October 18, 1984 that (1) the capability of the foreign instruments described above is pertinent to the applicants' intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30813 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; National Bureau of Standards

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-231. Applicant: National Bureau of Standards, Washington, DC 20234. Instrument: Photoelectron Spectrometer, Model ESMKII. Manufacturer: V.G. Instruments, Inc., United Kingdom. Intended use: See notice at 49 FR 32838.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) vacuum to 1×10^{-10} torr, (2) sample heating and cooling from 120 to 900 degrees kelvin and (3) a low energy ion scattering system. The National Institutes of Health advises in its memorandum dated September 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30810 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Pennsylvania Hospital

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-207.

Applicant: Pennsylvania Hospital, Philadelphia, PA 19107. Instrument: NMR Pulsed Spectrometer, Model CPS-2 with Accessories. Manufacturer: Spin-Lock, Ltd., Canada. Intended use: See notice at 49 FR 24912.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The instrument is capable of measuring T_1, $T_{1\rho}$, T_{1D} and various T_2 of water protons in cell and model systems at 36 megahertz. The National Institutes of Health advises in its memorandum dated September 6, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30806 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Smithsonian Institution

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-246. Applicant: Smithsonian Institution, Washington, DC 20560. Instrument: Gas Chromatograph Mass Spectrometer Data System, Model 8230. Manufacturer: Finnigan MAT, GmbH, West Germany. Intended use: See notice at 49 FR 30985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) high resolution (50 000 10% valley), (2) a mass range of 2100 atomic mass units at full acceleration voltage and (3) multiple ion selection. The National Institutes of Health advises in its memorandum dated September 6, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30807 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Disposition of Applications for Duty-Free Entry of Scientific Instrument; University of California

Processing of the following applications has been discontinued pursuant to Customs Service rulings that the articles are components ineligible for duty-free entry 15 CFR 301.2(k):

Docket No.: 83-204. Applicant: University of California, Livermore. Article: Nb_3Sn Superconductor for 2 High Field Magnets.

Docket No.: 83-223. Applicant: Brookhaven National Laboratory. Article: 4m Spherical Diffraction Gratings.

Docket No.: 83-294. Applicant: University of California, San Diego. Article: Superconducting Magnet System, Model 100/110.

Docket No.: 83-300. Applicant: Georgia Institute of Technology. Article: Extended Interaction Oscillator, Model VKT 2458T1.

Docket No.: 83-356. Applicant: NASA/Jet Propulsion Laboratory. Article: Prisms for Interferometer.

Docket No.: 84-113. Applicant: University of California, Santa Barbara. Article: 500 Quad Hybrid Microstrip Preamplifiers, Model MSD2.

Docket No.: 84-123. Applicant: Research Foundation of the State of New York. Article: Scintillating Crystals (10 each).

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30812 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Michigan

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-233. Applicant: The University of Michigan, Ann Arbor, MI 48109. Instrument: Evacuable Fourier Transform Infrared Spectrometer. Manufacturer: Bomem, Inc., Canada. Intended use: See notice at 49 FR 30986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a spectral range of 10 to 500 cm^{-1} with a minimal resolution of 0.04 cm^{-1}. The National Institutes of Health advises in its memorandum dated September 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30808 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Veterans Administration Medical Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-242. Applicant: The Veterans Administration Medical Center, Wood, IL 53193. Instrument: Particle Zeta Meter (Particle Electrophoresis Apparatus), Model Mark II. Manufacturer: Rank Brothers, United Kingdom. Intended use: See notice at 49 FR 30984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of providing accurate measurements at high ionic strength such as with physiological levels of salinity. The National Institutes of Health advises in its memorandum dated September 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of not other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Fee Educational and Scientific Materials)

Frank W. Creel

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30809 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Veterans Administration Medical Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-215. Applicant: Veterans Administration Medical Center, Long Beach, CA 90822. Instrument: Cylindrical Microelectrophoresis Apparatus, Model Mark I. Manufacturer: Rank Brothers Scientific Instruments, United Kingdom. Intended use: See notice at 49 FR 28428.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument uses thermostating to provide precise temperature control and uses an immersible microscope objective to provide three-dimensional focusing on single cells. The National Institutes of Health advises in its memorandum dated September 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30010 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, VA 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-620, 815
Device for Simulating Stress on Packages During Coupling of Railcars
SN 6-650, 739
Method For Screening Bacteria and Application Thereof for Field Control of Pythium Spp. on Small Crops
SN 6-651, 563
Nonabsorbent Roller Applicator

Department of Health and Human Services

SN 6-321, 689 (4, 476, 462)
Use of Context to Simplify Two-Dimensional Computer Input
SN 6-380, 471 (4,475,401)
Vibration Dosimeter
SN 6-585,333
T-Cell Receptor/Specific for Antigen Polypeptides and Related Polynucleotides
SN 6-632,726
Monoclonal Antibody Against Human Blood group H Type 1 Antigen
SN 6-639,673
Hydrophobic Dental Composites Based on a Polyfluorinated Dental Resin
SN 6-647,728
Improved Toposcopic Catheter and Method of Fabrication
SN 6-654,213
Synthetic Peptides for the Production of Specific Keratin Proteins

Department of the Air Force

SN 6-051,315 (4,441,312)
Combined Cycle Ramjet Engine
SN 6-329, 560 (4,442,513)
Security System Signal Processor
SN 6-331,750 (4,442,523)
High Power Metal Vapor Laser
SN 6-339,257 (4,443,059)
High Energy Laser Mirror
SN 6-347,383 (4,442,453)
Photo Reconnaissance System
SN 6-356,576 (4,442,293)
Di-Acetylenyl-Substituted 2-Phenylbenzothiazoles
SN 6-366,745 (4,440,687)
Azido Nitramino Ethers
SN 6-370,232 (4,442,776)
Detonator Block
SN 6-417,931 (4,443,349)
Fluorinated Aliphatic Polyalkylether Lubricant with an Additive Composed of an Aromatic Phosphine Substituted with Perfluoroalkylether Groups
SN 6-431,866
Sensor System
SN 6-620,211
Fly's Eye Sensor Nonlinear Signal Processing
SN 6-620,212
Solar Cell Coverslide Extraction Method and Apparatus
SN 6-624,568
Adaptive Mutual Interference Suppression Method
SN 6-627,699
Magnetostiatic Wave Frequency Analyzer Apparatus
SN 6-629,862
High or Low-Side State Relay with Current Limiting and Operational Testing
SN 6-629,926
Phase Only Adaptive Nulling In A Monopulse Antenna
SN 6-634,247
Direct View Helmet Mounted Telescope
SN 6-634,345
Thermally Stable Thermoset Resin Compositions
SN 6-634,346
Thermosetting Arylether Compounds and Their Synthesis
SN 6-635,393
LPE Semiconductor Material Transfer Method
SN 6-636,454
Safing and Arming Mechanism
SN 6-640,636
Propellant Tank Resupply System
SN 6-958,920 (4,443,766)
Precision Digital Sampler

Department of the Army

SN 6-311,369 (4,447,427)
Method for Treating Bacterial Infections with 2-Acetyl and 2-Propionylpyridine Thiosemicarbazones
SN 6-323,626 (4,453,768)
Portable Reclining Examination Chair
SN 6-338,695 (4,439,012)
Dual-Secondary Mirror Cassegrain Optical System
SN 6-348,462 (4,440,771)
2-Acetyl Quioline Thiosemicarbazones Useful in Treatment of Gonorrhea, Malaria or Bacterial Infections
SN 6-348,539 (4,447,395)
Sampling Device
SN 6-394,566 (4,444,119)
Fast Response Impulse Generator
SN 6-423,574 (4,463,680)
Method of Generating Single-Event, Unconfined Fuel-Air Detonation
SN 6-455,366 (4,441,942)
Embedment System for Ultrahigh-Burning Rate Propellants of Solid Propulsion Subsystems
SN 6-624,564
Immunologically Active Peptides Capable of Inducing Immunization Against Malaria and Genes Encoding Therefor
SN 6-635,072
Vehicle Anchoring System
SN 6-646,535
Fuse Status Indicator System
SN 6-646,536
Chemical Sensor Matrix
SN 6-647,767
A Single Optical Fiber Telephone System
SN 6-891,255 (4,239,063)
Manifold Insulated with Knitted Impregnated Sleeve
SN 6-971,459 (4,220,297)
Finlet Injector
SN 6-972,303 (4,214,156)
Gyrodynamic Fixture for Measuring Thrust Force Components

[FR Doc. 84-30473 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, December 12, 1984 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also

matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566-1066.

Dated in Washington, D.C. November 14, 1984.

Charles H. Atherton,

Secretary.

[FR Doc. 84-30487 Filed 11-20-84; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending Coverage of Export Visa Requirement To Include Certain Man-Made Fiber Luggage Produced or Manufactured in the Republic of Korea

November 16, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 3, 1984. For further inforamtion contact Ross Arnold, International Trade Specialist (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, the Governments of the United States and the Republic of Korea, have agreed to amend the existing export visa requirement to include man-made fiber luggage in Category 670pt. (only T.S.U.S.A. numbers 706-4144 and 706-4152), which will be visaed as "670-L." This coverage is in addition to the coverage of cotton, wool and man-made fiber textiles and textile products described in the CITA directive of May 19, 1972, as amended. The visa stamp is not being changed and the official of the Government of the Republic of Korea authorized to issue visas also remains unchanged at this time.

The expanded visa coverage will be effective for Category 670pt. (TSUSA numbers 706.4144 and 706.4152), produced or manufactured in Korea and exported on and after September 1, 1984. Merchandise in this category exported before September 1, 1984 will not be denied entry for lack of a visa.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), and July 16, 1984 (49 FR 28754).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 16, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 19, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products produced or manufactured in the Republic of Korea.

Effective on December 3, 1984, man-made fiber textile products in Category 670pt. (only T.S.U.S.A. numbers 706.4144 and 706.4152), produced or manufactured in the Republic of Korea and exported on and after September 1, 1984, will be required to be visaed as Category 670-L. Merchandise in Category 670pt. (only T.S.U.S.A. numbers 706.4144 and 706.4152) which has been exported before September 1, 1984 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30514 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of a Blue Ribbon Panel On Sizing DoD Medical Treatment Facilities

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

This Blue Ribbon Panel is being established to review the criteria for sizing military hospitals and to determine if expanded use of available civilian facilities could be cost-effective. Nominees for the Panel are being identified to ensure that its membership will be balanced by the inclusion of distinguished representatives from all of the relevant health-related disciplines—clinical medicine, hospital administration, health policy, health planning, economics, and engineering.

The expected duration of the Panel's work is ten months. During that period, the Panel will meet monthly, and will conduct such site visits as are necessary to familiarize the members with the physical details of specific construction projects.

Dated: November 15, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84-30554 Filed 11-20-84; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Coastal Engineering Research Board; Meeting

In accordance with sec. 10. (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Coastal Engineering Research Board (CERB).

The meeting will be held at the Hotel Continental, 505 North Michigan Avenue, Chicago, Illinois, from 8:30 a.m. to 5:00 p.m. on December 11, from 8:00 a.m. to 4:30 p.m. on December 12, and from 8:00 a.m. to 11:00 a.m. on December 13, 1984.

The December 11 session will be devoted to presentations on a review of CERB business, fiscal year 1985 Corps/Coastal Research and Development programs, Coast of Florida Erosion and Storm Effects Study; research needs of Pacific Ocean and North Atlantic Divisions; North Central Division activities in wave gaging; Presque Isle, Pennsylvania Shore Protection Study; Illinois Beach State Park Study; Great Lakes shore protection projects; nourishment activities at New Buffalo, St. Joseph, and Indiana National Lakeshore; major Great Lakes harbor rehabilitations; monitoring of Cattaraugus and Cleveland Harbors; and a brief update of the change in 17 Lake Michigan profiles monitored since the mid-70's.

December 12 will be devoted to a field trip inspection flight for the Board members viewing various shorelines along Illinois, Wisconsin, Michigan, and Indiana. A bus tour is planned traveling around the coast to several beach sites,

returning to the Illinois coastline with stops at various lakefront projects.

Time on the morning of December 13 will be used to discuss the field inspections, presentations on North Central Division research needs, and recommendations by the Board.

Participation by the public is scheduled for 9:00 a.m. on December 13. Members of the public may attend the field inspection but must provide their own transportation. The entire meeting is open to the public subject to the following:

a. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

b. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

c. Inquiries and notice of intent to attend the meeting may be addressed to Colonel Robert C. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180–0631.

Michael Volpe,

Colonel, Corps of Engineers, Executive Director, Civil Works.

[FR Doc. 84-30545 Filed 11-20-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics (ACES); Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 13 and 14, 1984.

ADDRESS: 1200 19th Street NW., Room 823, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: John W. Christensen, Executive Director, 1200 19th Street NW., (Brown Building) Room 717–C, Washington, DC 20208. Telephone—(202) 254–8227.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 96–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) and is responsible for establishing standards to insure that statistics and analyses disseminated by the center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes:

A discussion of program direction and priorities for the National Center for Education Statistics.

The effects of electronic communication on the quality and timeliness of data.

An update on the evaluation of NCES.

An update on the *Private School Survey.*

An update on vocational education data collection.

A discussion of the tenth annual ACES report to the Congress.

Such old business and new business as the Chairman or membership may put before the Council.

Records are kept of all Council proceedings, and are available for public inspection at the office of the Executive Director, Advisory Council on Education Statistics, 1200 19th Street NW., (Brown Building) Room 717–C, Washington, DC 20208.

Dated November 15, 1984.

Donald J. Senese,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 84-30468 Filed 11-20-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the following retransfer:

RTD/EU(CA)–6, from Atomic Energy of Canada, Ltd., Chalk River, Canada, to Nukem, Hanau, the Federal Republic of Germany, 50 kilograms of uranium, enriched to 93.15% in U–235, in the form of uranium-aluminum cold scrap, for purification and subsequent return to Canada for fabrication of fuel for the NRX and NRU reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 19, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-30739 Filed 11-20-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceiling and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective December 1, 1984. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, D.C. 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	4.10
Arizona	4.10
Arkansas [1]	4.10
California	4.15
Colorado [2]	4.21
Connecticut [1]	4.48
Delaware [1]	4.39
Florida	4.39
Georgia [1]	4.39
Idaho [2]	4.21
Illinois	4.08
Indiana [1]	4.14
Iowa [1]	4.11
Kansas [1]	4.11
Kentucky [1]	4.14
Louisiana	4.04
Maine [1]	4.48
Maryland [1]	4.39
Massachusetts	4.28
Michigan [1]	4.14
Minnesota	3.98
Mississippi [1]	4.39
Missouri [1]	4.11
Montana [2]	4.21
Nebraska [1]	4.11
Nevada [1]	4.28
New Hampshire [1]	4.48
New Jersey [1]	4.39
New Mexico	3.72
New York	4.35
North Carolina [1]	4.39
North Dakota [1]	4.11
Ohio	3.83
Oklahoma [1]	4.10
Oregon [1]	4.28
Pennsylvania	4.39
Rhode Island [1]	4.48
South Carolina [1]	4.39
South Dakota [1]	4.11
Tennessee	4.31
Texas	3.98
Utah [2]	4.21
Vermont [1]	4.48
Virginia [1]	4.39
Washington [1]	4.28
West Virginia [1]	4.14
Wisconsin	4.13
Wyoming [2]	4.21

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM–79–21.

[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II—Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during September 1984 was $32.54 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective December 1, 1984, is $7.29 per million BTU's.

Section III—Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 161, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: For each selling price, the number of gallons sold to large industrial users in the months of July 1984, August 1984, and September 1984.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective December 1, 1984, (shown in Section I) are based on the reported price on No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, July 1984, August 1984, and Septement 1984. Reported prices for sales in July 1984 were adjusted by the percent change in the nationwide volume-weighted average price from July 1984 to September 1984. Prices for August 1984 were similarly adjusted by the percent change in the nationwide volume-weighted average price from August 1984 to September 1984. The volume-weighted 3-month average of the adjusted July 1984 and August 1984, and the reported September 1984 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downerd by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to detemine the State's average low price. The adjusted weighted average price [as calculated in Section III.B. (2)] was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each state. For those States which had not reported sales during one or more months of the 3-month period, the approrjate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon)

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of July 1984, August 1984, and September 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending November 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of September 1984. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	
Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	

Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	
Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, D.C., November 19, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 84-30760 Filed 11-20-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Alabama-Tennessee Natural Gas Co.; Application

[Docket Nos. CP84-709-000 and CP84-709-001]

November 15, 1984.

Take notice that on September 12, 1984, Alabama-Tennessee Natural Gas Company (A–T), Post Office Box 918, Florence, Alabama 35631, filed in Docket No. CP84–709–000 an application, as amended November 2, 1984, in Docket No. CP84–709–001, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a realignment of maximum contract volumes among several of its customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, A–T seeks authority to increase the maximum daily contract quantities presently authorized for delivery by a total of 3,222 Mcf of gas to seven of its resale customers which A–T asserts have indicated an immediate need for additional peak day supply during the upcoming 1984–85 winter heating season.

A–T proposes to increase the maximum contract volumes to the following customers by the corresponding volumes:

Name of customer	Proposed increase (Mcf)
Russellville, AL	1,000
North Alabama Gas District	853
Hardin County Gas District	89
Iuka, MS	108
Tishomingo, MS	902
Lawrence Colbert Counties Gas District	372
North Mississippi Rural Gas Company	627
Total Increase	3,222

A–T states that all seven of the customers have signed precedent agreements for these additional volumes. A–T also indicates that the gas to be made available for these increases is a total of 4,900 Mcf per day previously covered by long-term direct sales contracts which have expired.

A–T indicates that approval of its proposal would enable the seven customers to receive the additional supplies through the year 2000. A–T indicates that no construction of facilities would be required.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30496 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-22-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc., Tariff Filing

November 14, 1984.

Take notice that on November 8, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc., (Arkla) tendered the following tariff sheets for filing in its FERC gas tariff:

(1) First Revised Sheet No. 12] superseding Original Sheet Nos. 12] through 12M in Arkla's FERC Gas Tariff First Revised Volume No. 1, being a Notice of Cancellation of tariff provisions having to do with the Louisiana First Use Tax Adjustment; and

(2) First Revised Sheet No. 188D superseding Original Sheet Nos. 188D through 188G in Arkla's FERC Gas Tariff Original Volume No. 3, being a Notice of Cancellation of tariff provisions having to do with the Louisiana First Use Tax Adjustment; and

(3) Second Revised Sheet No. 221 superseding First Revised Sheet No. 221 in Arkla's FERC Gas Tariff First Revised Volume No. 2, being a change in the availability clause for Arkla's ECOSHARE Transportation Rate Schedule.

The change in the availability clause for Arkla's ECOSHARE Transportation Rate Schedule is to reduce the 5,000 MMBtu per day threshold eligibility volume for ECOSHARE transportation to 1,5000 MMBtu's per day. Applicant states that the reason for the change is to add flexibility to its ECOSHARE transportation program by extending eligibility for participation in the program to certain smaller industrial customers which may require the service in order to remain competitively viable.

Arkla proposes an effective date for these tariff sheets of 30 days after they are filed and requests such approvals and waivers as may be necessary to permit this to be done.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30497 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-68-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc., Request Under Blanket Authorization

November 14, 1984.

Take notice that on October 26, 1984, Arkansas Louisiana Gas Company, a divison of Arkla, Inc. (Arkla) P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85–68–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of International Paper Company (IPC) under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla proposes to transport up to 18,000 Mcf of gas per day for use in IPC's industrial plant in Pine Bluff, Arkansas, until the earlier of the following dates occurs: (1) One year from the date of commencement of transportation service; (2) September 1, 1985; (3) the date on which prior notice authorization under 18 CFR § 157.209(b)(2) and (e)(2) ends, which date, as to the date of this request, is 11:59 p.m. on June 30, 1985; or (4) the date that Arkla receives and accepts certificate authorization for the long-term transportation of gas for IPC as requested in Arkla's application filed with the Commission in Docket No. CP85–54–000. It is stated that the gas to be transported would be purchased from Vesta Energy Company (Vesta) and would be used for the production of paper products and plant protection.

Arkla indicates that it has released certain gas supplies which IPC has purchased from Vesta and that these supplies are subject to the ceiling price provisions of Sections 102 and 103 of the Natural Gas Policy Act of 1978. It is indicated that Arkla would receive the gas at existing interconnections with Vesta in Johnson and Pope Counties, Arkansas, and Custer and Pontotoc Counties, Oklahoma.

Arkla states that it would charge the currently applicable transportation rate in accordance with its ECOSHARE Transportation Rate Schedule, FERC Gas Tariff, First Revised Volume No. 2. It is explained that if any part of the revenues payable to Arkla for this transportation service is required to be credited to Arkla's Account 191, an added incentive charge of $0.05 per million Btu is payable by IPC, and in such event, the transportation rate is the applicable rate under Arkla's ECOSHARE-AIC Rate Schedule on file as Substitute Sheet No. 223 of Arkla's FERC Gas Tariff, First Revised Volume No. 2.

Arkla also requests flexible authority to add and/or delete sources of gas and/or receipt of delivery points. With respect to such flexible authority Arkla states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt of delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and the end-user;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement as to whether the gas is committed or dedicated within the meaning of NGPA Section 2(18);

(5) If the new source of supply involves released gas which is committed or dedicated as defined in No. 4, reference the suppliers' Natural Gas Act Section 7(b) abandonment authorization;

(6) Location of the receipt/delivery points being added or deleted;

(7) Identify of any other pipeline involved in the transportation.

Arkla submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the daily and annual volumes levels proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30488 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA 85-1-32-002]

Colorado Interstate Gas Co.; Compliance Filing

November 14, 1984.

Take notice that on October 29, 1984, Colorado Interstate Gas Company (CIG) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1 in compliance with ordering paragraphs (C), (D) and (F) of the Federal Energy Regulatory Commission's (Commission) September 28, 1984 order in this docket: Substitute Nineteenth Revised Sheet No. 7; Substitute Nineteenth Revised Sheet No. 8.

These tariff sheets indicate a reduction in rates. CIG asserts the reduction is an insignificant amount and it proposes to maintain its existing rates accepted by the Commission on September 28, 1984. CIG believes its proposal to maintain its existing rates in effect is in the public interest, because it would save CIG and its customers administrative expenses and regulatory burdens. CIG states that any overcollection, including interest, will be flowed through to its customers by means of its PGA Account No. 191. CIG requests any waivers that are deemed necessary to accept this filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30489 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-47-000]

Columbia Gulf Transmission Co.; Application

November 15, 1984.

Take notice that on October 18, 1984, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-47-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 3,000 Mcf of natural gas per day for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to implement the terms of a transportation agreement between Columbia Gulf and Natural dated August 3, 1984, whereby Columbia Gulf has agreed to transport on a contract demand basis, up to 3,000 Mcf of natural gas per day for Natural for a term of five years and year to year thereafter. Columbia Gulf proposes a contract demand charge of $4.94 per Mcf of gas and 16.24 cents per Mcf for excess volumes received for transportation.

Columbia Gulf states that the gas to be transported has been purchased by Natural from Diamond Shamrock Corporation and Santa Fe Energy in Vermilion Block 57, offshore Louisiana. It is explained that this gas would be received by Columbia Gulf for Natural's account at a point in Vermilion Block 57 and that Columbia Gulf would redeliver the gas to Natural at the outlet of Texaco's Henry Plant, Vermilion Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30500 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-166-004]

Columbia Gulf Transmission Co. and Transcontinental Gas Pipe Line Corp.; Petition To Amend

November 15, 1984.

Take notice that on October 19, 1984, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP83-166-004 pursuant to Section 7 of the Natural Gas Act a joint petition to amend the Commission's order issued July 7, 1983, in Docket No. CP83-166-000 so as to authorize an additional point of receipt for exchange gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Columbia Gulf and Transco are currently exchanging thermally equivalent quantities of natural gas produced from certain sources of supply offshore, Louisiana. It is asserted that the gas exchange and transportation agreement dated November 10, 1981, which forms the basis for the July 7, 1983, certificate, provides for a gas-for-gas exchange with no monetary compensation to either party unless the quantity of gas provided by Transco exceeds that provided by Columbia Gulf. It is explained that in the event Transco delivers more gas than Columbia Gulf, such quantities would be redelivered at two existing points of interconnection between Columbia Gulf and Transco; at Evangeline Parish, Louisiana, and Terrebonne Parish, Louisiana. It is further explained that for such transportation, Transco pays to Columbia Gulf a service charge as follows: (1) Gas delivered at Terrebonne, 6.42 cents per Mcf of gas plus fuel; and (2) gas delivered to Evangeline, 16.03 cents per Mcf of gas plus fuel.

It is stated that, currently, Columbia Gulf's gas is delivered to Transco by or for the account of Columbia Gulf from West Cameron Blocks 426 and 427 and delivered to the existing platform in West Cameron Block 480. Petitioners state that Transco's gas delivered to Columbia Gulf by or for the account of Transco from (1) West Cameron Blocks 624 and 625 and delivered at an existing underwater side tap on the 24-inch pipeline jointly-owned by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and Columbia Gulf in West Cameron Block 624 and (2) Vermilion Block 57 and delivered at an existing underwater side tap on the 36-inch pipeline jointly-owned by Columbia Gulf and Tennessee in Vermilion Block 46.

By joint petition to amend, Columbia Gulf and Transco request authority to include Vermilion Block 45, offshore Louisiana, as an additional source of supply for Transco. It is asserted that the Vermilion Block 45 gas is 100 percent committed to Transco pursuant to a gas purchase agreement with Kerr McGee Corporation (Kerr McGee) and that such gas would be delivered by Kerr McGee to Transco at Vermilion Block 57 and Transco would deliver such gas to Columbia Gulf at the above-listed point of delivery in Vermilion Block 46.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30501 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-23-000]

East Tennessee Natural Gas Co.; Tariff Filing

November 14, 1984.

Take notice that on November 9, 1984 East Tennessee Natural Gas Company (East Tennessee) tendered for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective on December 1, 1984: Original Sheet No. 53; Original Sheet Nos. 54 Through 103; First Revised Sheet No. 1.

East Tennessee states that the sole purpose of these tariff sheets is to implement the ETS Rate Schedule, applicable to transportation of gas on behalf of East Tennessee's system sales customers pursuant to § 157.45 *et seq.* which gas has been purchased from East Tennessee. The proposed effective date is December 1, 1984.

East Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30502 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-47-000]

Florida Power Corp.; Filing

(November 15, 1984)

The filing Company submits the following:

Take notice that on November 1, 1984 Florida Power Corporation (Florida Power) tendered for filing Service Schedule F providing for assured capacity and energy interchange service between Florida Power and the Sebring Utilities Commission. Florida Power states that Service Schedule F is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and the Sebring Utilities Commission designated as Florida Power's Rate Schedule FERC No. 90.

Florida Power requests that Service Schedule F be permitted to become effective November 1, 1984, and therefore requests waiver of the sixty day notice requirements.

Copies of this filing have been served upon the Sebring Utilities Commission and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30503 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-83-000]

Kanawha Valley Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, Kanawha Valley Company (Kanawha) tendered for filing modifications to its 1935 and 1937 Agreements with Appalachian Power Company (Appalachian) providing for the supply of power and energy from Kanawha's

Marmet and London (Project No. 1175) and Winfield (Project No. 1290) hydro-electric plants, respectively, to be effective January 1, 1985.

The modifications would increase annual revenues to Kanawha for sales to Appalachian by $342,680 based on the twelve-month period ended June 30, 1984.

The proposed changes are required due to increases in the cost of providing service under the 1935 and 1937 Agreements since the last rate modification in 1982. The rates under the proposed modification are designed to provided Kanawha with the opportunity to earn an 11.89% overall return. Both Kanawha and Appalachian are affiliates of the American Electric Power System.

Kanawha proposes an effective date of January 1, 1985.

According to Kanawha copies of the filing have been served upon Public Service Commission of West Virginia, the Virginia State Corporation Commission and Appalachian Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30504 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-631-001]

Lawrenceburg Gas Transmission Corp.; Amendment

November 15, 1984.

Take notice that on November 2, 1984, Lawrenceburg Gas Transmission Corporation (Lawrenceburg), 230 West High Street, Lawrenceburg, Indiana 47025, filed in Docket No. CP 84-631-001 an amendment to its pending application filed in Docket No CP84-631-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect a revision in the billing demand language of its Rate Schedule CDS-1 all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Lawrenceburg states that it has traditionally sold interruptible volumes to its affiliate Cincinnati Gas and Electric Company (CG&E) at levels in excess of the contract demand of 3,000 Mcf of gas per day, pursuant to the "more than or less than" provisions of Lawrenceburg's Rate Schedule CDS-1. Lawrenceburg states that its commodity rates under Rate Schedule CDS-1 were designed on the basis of both the firm and interruptible volumes sold and that the calculation of billing demand under Rate Schedule CDS-1 has also been based upon both firm and interruptible volumes sold.

Lawrenceburg states that the Commission, in its June 29, 1984 order in Docket No. CP84-209-000 (27 FERC 61,488), limited its deliveries to CG&E to an average of 3,000 Mcf of gas per day. Lawrenceburg submits that it filed its application in Docket No. CP84-631-000 for authorization to establish a new excess gas rate schedule, Rate Schedule XS-1, in order to permit it to continue its historic interruptible service to CG&E up to the level of Lawrenceburg's contract demand with its pipeline supplier. Lawrenceburg states that it intends that the calculation of billing demand under Rate Schedule CDS-1 would reflect both the level of firm service rendered under Rate Schedule CDS-1 as well as the interruptible service rendered under proposed Rate Schedule XS-1. Lawrenceburg proposes to revise the billing demand language of Rate Schedule CDS-1 to reflect this intent. Lawrenceburg avers that it would file the revised tariff sheet reflecting the change in tariff language upon Commission authorization of service under Rate Schedule XS-1.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons having heretofore filed need not do so again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30505 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-44-000]

Natural Gas Pipeline Company of America; Request Under Blanket Authorization

November 13, 1984.

Take notice that on October 16, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-44-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Bethlehem Steel Corporation (Bethlehem) under the certificate issued in Docket No. CP82-402-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport up to a maximum of 25 billion Btu of natural gas per day for Bethlehem from Custer and Woodward Counties, Oklahoma, to Cook County, Illinois, for which it would charge a transportation fee of 57.2 cents per million Btu of gas received for transportation, plus an added incentive charge of 5.0 cents per million Btu of gas received for transportation during the term of Natural's Rate Schedule AIC. In addition, Bethlehem would pay the Gas Research Institute's surcharge funding unit per million Btu as shown on Sheet No. 5 of Natural's FERC Gas Tariff.

Additionally, Natural proposes flexible authority to add and/or delete sources of gas and/or receipt or delivery points in performance of this transportation service for Bethlehem. The term of the transportation service is through June 30, 1985, it is stated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest if filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30506 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-679-001]

Public Service Company of New Mexico; Amendment

November 15, 1984.

Take notice that on October 19, 1984, Public Service Company of New Mexico (PSC), Alvarado Square, Albuquerque, New Mexico 87158, filed in Docket No. CP84-679-001 an amendment to its pending application filed August 31, 1984, in Docket No. CP84-679-000 pursuant to section 7(c) of the Natural Gas Act so as to reflect the establishment of San Juan Interstate Gas Co. (San Juan Interstate), a subsidiary of Sunbelt Mining Company, Inc. (Sunbelt), as the company which would be the certificate holder under the proposals in Docket No. CP84-679-000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

PSC, an electric utility operating in New Mexico, sought Commission authorization in Docket No. CP84-679-000, to acquire a certain interstate natural gas pipeline and related New Mexico facilities of Western Gas Interstate Company (WGI) in order to operate WGI's facilities designated as the Antelope Ridge facilities. PSC also stated that WGI requested Commission approval in Docket No. CP84-623-000 to abandon these facilities pursuant to section 7(b) of the Natural Gas Act. PSC proposed in Docket No. CP84-679-000 that a subsidiary, to be created by Sunbelt, would operate the Antelope Ridge facilities in the same manner and perform the same transportation and sales services as WGI had. PSC asserted that the proposed abandonment, purchase, and sale arrangements resulted out of an April 12, 1984, settlement and agreement of the "New Mexico Natural Gas Antitrust Litigation," MDL No. 403 (N. Mex.).

PSC, in the amended Docket No. CP84-679-001, proposes the establishment of San Juan Interstate as the certificate holder and operator of the Antelope Ridge facilities. PSC requests that any certificate to be issued in these proceedings to be in the name of San Juan Interstate.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30507 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-28-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

November 15, 1984.

Take notice that on October 12, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-28-000 an application pursuant to Section 7(c) of the Natural Gas Act for a cetificate of public convenience and necessity authorizing Tennessee to install a 3,450 horsepower compressor and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that its mainline system operates at near capacity during winter periods when withdrawing gas from Bear Creek storage and that should Tennessee require maximum deliverability from its gas supplies in Texas at maximum withdrawal from Bear Creek storage, Tennessee's mainline system would be unable to move these volumes beyond Station 47, Ouachita Parish, Louisiana. Tennessee herein proposes to install a 3,450 horsepower compressor and appurtenant facilities enabling Tennessee to divert up to 197,500 Mcf of gas per day from Tennessee's Texas mainline system through Tennessee's Kinder-Natchitoches line to Kinder, thus enabling Tennessee to route the gas from Kinder to either the Kinder-Portland system or the Delta-Portland System. It is stated that both the Kinder-Portland and Delta-Portland systems have excess capacity. Tennessee states that the direct cost of the facilities is estimated to be $4,313,000.

It is explained that the diversion of gas on Tennessee's system, which would be effectuated by the proposal herein, would provide greater operational flexibility and would enable Tennessee to alleviate capacity problems which may arise on Tennessee's mainline system. It is further explained that such diversion would allow for greater utilization of the more modern facilities on Tennessee's Kinder-Portland and Delta-Portland systems. Tennessee further states that the installation of the 3,450 horsepower compressor would minimize, if not eliminate, Tennessee's need for additional mainline capacity in the near future.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Tennessee to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30808 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-210-001]

Texas Eastern Transmission Corp.; Petition To Amend

November 15, 1984.

Take notice that on October 19, 1984, Texas Eastern Transmission Corporation (Petitioner), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP84-210-001 a petition to amend the Commission's order issued on April 12, 1984, in Docket No. CP84-210-000 pursuant to Section 7(c) of the Natural Gas Act so as to authorize an extension of the term of the transportation service presently being provided to Carnegie Natural Gas Company (Carnegie) until October 31, 1985, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that Carnegie requested Petitioner to continue to deliver up to 55,900 dt equivalent of natural gas per day for Carnegie's account to Columbia Gas Transmission Corporation (Columbia). It is explained that Carnegie would deliver the gas to Petitioner by displacement. Petitioner states further that it began transportation of gas on May 2, 1984, pursuant to the terms of a May 1, 1984, service agreement between Petitioner and Carnegie. Petitioner explains that it would receive the gas from Carnegie at Petitioner's M and R Station Nos. 1275 and 008 located in Greene County, Pennsylvania; and Petitioner would then transport and redeliver the gas to Columbia, for the account of Carnegie, at a point of interconnection between Petitioner and Columbia, M and R Station No. 077, located in Fairfield County, Ohio. It is explained that Columbia would then transport the gas to Columbia Gas of Ohio, Inc., which would in turn transport and deliver the gas to Carnegie at four M and R stations located in Lorain and Scioto Counties in Ohio. Carnegie would then deliver the gas to United States Steel Corporation, it is stated.

The present certificate authorization expires on February 13, 1985. Petitioner states that the extended service would be pursuant to the terms and conditions of a September 24, 1984, letter agreement between Petitioner and Carnegie.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30809 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3273-002, et al.]

Hydroelectric Applications (Chittenden Falls Hydro Power Inc. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 3273-002.

c. Date Filed: December 27, 1983.

d. Applicant: Chittenden Falls Hydro Power, Inc.

e. Name of project: Chittenden Falls.

f. Location: Kinderhook Creek at Rossman, Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. P. S. Eckhoff, Chittenden Falls Hydro Power, Inc., Box 806, Melville, Long Island, New York 11747.

i. Comment Date: December 20, 1984.

j. Description of Project: This amendment was filed in accordance with Article 25 of the license for Project No. 3273, which required the Licensee to conduct a feasibility analysis of installing additional capacity. The Licensee has determined that the addition of 500 kW to the existing 550-kW project is economically feasible. Proposed additions include: (1) reactivation of an existing 4-foot-by 8-foot headgate on the West end of the dam; (2) a new 62-foot-long, 6-foot-diameter penstock; (3) a new 500-kW turbine; (4) three, 400-foot-long transmission lines; and (5) appurtenant facilities. The average annual generation would be increased from 2,500 MWh to 3, 940 MWh.

k. Purpose of Project: Project energy would continue to be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: B, C, & D1.

2 a. Type of Application: Amendment of License—New Transmission Line.

b. Project No.: 3816-003.

c. Date Filed: December 30, 1983.

d. Applicant: Energenics Systems, Inc.

e. Name of Project: Southside Canal.

f. Location: Mesa County, Colorado, on the United States Bureau of Reclamation's 32.8-mile-long Southside Canal.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Gransville J. Smith, President, Energenics Systems, Inc., 1100 17th Street, NW., Suite 1109, Washington, D.C. 20036.

i. Comment Date: December 28, 1984.

j. Description of Project: The proposed amendment would revise the licensed location of the project transmission line to consist of a new 12.47-kV transmission line 3.3 miles in length which will run from a proposed electrical substation next to the powerhouse for Project No. 3816 to a 138-kV transmission line owned by Colorado Utility Company. A new substation occupying a space of approximately 40 feet by 40 feet will be constructed at the point of interconnection with the Colorado Utility Company. Approximately 2.2 miles of the transmission line will cross lands under the management of the Bureau of Land Management, and the remaining 1.1 miles of line will cross private land.

k. Purpose of Project: The proposed transmission line would convey power generated at the Southside Canal Project No. 3816 to a transmission line owned by Colorado Utility Company.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

3 a. Type of Application: License (5MW or less).

b. Project No.: 6167-004

c. Date Filed: September 11, 1984.

d. Applicant: Ronald E. Rulofson.

3e. Name of Project: Eltapom Creek Hydroelectric.

f. Location: On Eltapom Creek, partially within the Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act., 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Ronald E. Rulofson, P.O. Box 108, Hyampom, California 96046.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 2,200 feet; (2) a 42-inch-diameter, 3,000-foot-long low pressure pipe; (3) a 24-inch-diameter, 700-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 1,490 kW, operating under a head of 440 feet; and (5) a 12-kV, 2-mile-long transmission to connect the project with an existing Pacific Gas and Electric Company (PG&E) line north of the powerhouse.

k. Purpose of Project: The estimated annual generation of 4.8 million kWh would be sold to GP&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D1.

4 a. Type of Application: Major License.

b. Project No: 7042-001.

c. Date Filed: March 7, 1984.

d. Applicant: Cities of Minden, Natchitoches, and Ruston, Louisiana.

e. Name of Project: John H. Overton Lock and Dam Hydro.

f. Location: Red River mile 89, in Rapides Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Vice President Forte & Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers John H. Overton Lock and Dam, as well as the Corps intake and outflow channels. These facilities are presently under construction. The project would consist of the following: (1) A new concrete powerhouse, approximately 160 feet long, 140 feet wide, housing three turbine-generator units with a total installed capacity of 25,500 kW. The powerhouse would be located adjacent to and integral with the Corps' structure; (2) approximately 11.74 miles of new transmission line at 138-kV; (3) a new substation located at the power plant; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 104,089 MWh. The license application was filed during the term of the Applicants' preliminary permit for Project No. 7042-000.

k. Purpose of Project: Energy produced at the project would be utilized in the Applicants' municipal electrical systems for distribution to their customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

5 a. Type of Application: License (Over 5MW).

b. Project No.: 7396-001.

c. Date Filed: March 30, 1984.

d. Applicant: The Incorporated County of Los Alamos.

e. Name of Project: Abiquiu Water Power Project.

f. Location: On Rio Chama in Rio Arriba County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—835(r).

h. Contact Person: Mr Ronald C. Jack, County Administrator, Incorporated County of Los Alamos, 2300 Trinity Drive, P.O. Box 30, Los Alamos, New Mexico 87544.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Abiquiu Dam, Reservoir and outlet works and would consist of: (1) A new 11-foot, 2-inch-diameter steel liner to be installed in the outlet works and a bifurcation; (2) a new 11-foot, 2-inch-diameter steel penstock, about 120 feet long, and a bypass facility encased in concrete; (3) a new powerhouse, at elevation 6,029 feet (NGVD), to contain 2 turbine-generator units rated at 5,500 kW each for a total rated capacity of 11,000 kW; (4) a tailrace returning flow to the river immediately downstream of the dam; (5) a new 69-kV transmission line about 0.2-mile-long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 43,500,000 kWh. Project energy would be utilized by the Applicant. The application was filed during the term of Applicant's preliminary permit for Project No. 7396.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C.

6 a. Type of Application: License (Major less than 5 MW).

b. Project No.: 8022-000.

c. Date Filed: February 2, 1984.

d. Applicant: West Slope Hydro Partners.

e. Name of Project. Uncompahgre Valley Hydroelectric Project No. 1.

f. Location: U.S. Bureau of Reclamation's South Canal, Montrose County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Douglas A. Spaulding, INDECO of Minnesota, Inc., 1500 South Lilac Drive, 351 Tyrol West Building, Minneapolis, Minnesota 55416.

i. Comment Date: December 27, 1984.

j. Competing Application: Project No.: 8035-000, Date Filed: February 2, 1984.

k. Description of Project: The proposed project would utilize the U.S. Bureau of Reclamation's South Canal and would consist of the following: (1) A proposed intake headworks located at an existing canal drop, approximately .6 mile downstream of the Gunnison Tunnel West Portal; (2) a proposed 120-inch-diameter penstock, approximately 1,600 feet long; (3) a proposed powerhouse with a single 3,500-kW capacity generating unit; (4) a proposed short powerhouse discharge channel leading to the adjacent South Canal; (5) a proposed ½-mile-long 34.5-kV transmission line; and (6) appurtenant facilities.

l. Purpose of Project: The estimated average annual generation of 23,651,000 kWh would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

7 a. Type of Application: License (Major less than 5 MW).

b. Project No.: 8026-000.

c. Date Filed: February 2, 1984.

d. Applicant: West Slope Hydro Partners.

e. Name of Project. Uncompahgre Valley Hydroelectric Project No. 5.

f. Location: U.S. Bureau of Reclamation's South Canal, Montrose County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Douglas A. Spaulding, INDECO of Minnesota, Inc., 1500 South Lilac Drive, 351 Tyrol West Building, Minneapolis, Minnesota 55416.

i. Comment Date: December 27, 1984.

j. Competing Application: Project No.: 8039-000, Date Filed: February 2, 1984.

k. Description of Project: The proposed project would utilize the U.S. Bureau of Reclamation's South Canal and would consist of the following: (1) A proposed intake headworks located at an existing canal drop, approximately 9.4 miles downstream of the Gunnison Tunnel West Portal; (2) a proposed 78-inch-diameter penstock, approximately 900 feet long; (3) a proposed powerhouse with a single 2,000-kW capacity generating unit; (4) a proposed short powerhouse discharge channel leading to the adjacent South Canal; (5) a proposed 5-mile-long 34.5-kV transmission line; and (6) appurtenant facilities.

l. Purpose of Project: The estimated average annual generation of 10,592,000 kWh would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

8 a. Type of Application: Exemption (5MW or Less).
b. Project No: 8066–001.
c. Date Filed: April 26, 1984.
d. Applicant: American Hydro Power Company.
e. Name of Project: Warrior Ridge Project.
f. Location: On the Juanita River in Huntingdon County, Pennsylvania.
g. Filed Pursuant to: 16 U.S.C., 2705 and 2708.
h. Contact Person: Mr. Peter A. McGrath, American Hydro Power Company, 4026 Chestnut Street, Philadelphia, Pennsylvania 19104.
i. Comment Date: December 24, 1984.
j. Description of Project: The proposed project would consist of: (1) the existing Warrior Ridge Dam which consists of three sections, (a) A 374.5-foot-long, 27-foot-high overflow section with a crest elevation at 658.0 feet MSL, (b) and approximately 51-foot-high, 300-foot-long powerhouse section, and (c) a 136-foot-long auxiliary spillway with a crest elevation of 662.0 feet MSL; (2) the re-installation of 1.5 feet of flashboards; (3) a 65-acre reservoir which impounds 400 acre-feet of gross storage at top of flashboards; (4) an existing powerhouse to contain an installed generating capacity of 2.85 MW; and (5) appurtenant facilities.
The dam and appurtenant facilities are owned by the Pennsylvania Electric Company. The Applicant estimates the average annual energy production to be 12,191,200 kWh.
k. Purpose of Project: The Applicant intends to sell the total output generated to General Public Utilities/Penelec.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.
m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority, of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.
9 a. Type of Application: Preliminary Permit.
b. Project No.: 8395–000.
c. Date Filed: June 26, 1984.
d. Applicant: F. & T. Energy Corporation.
e. Name of Project: David D. Terry L & D No. 6.
f. Location: On Arkansas River in Pulaski County, Arkansas.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., Post Office Box 64844, Baton Rouge, Louisiana 70896.
i. Comment Date: January 11, 1985.
j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' David D. Terry Lock and Dam No. 6 and would consist of: (1) A new 1,500-foot-long intake channel at the right river bank; (2) a new powerhouse containing turbine-generator units having a total rated capacity of 32,000 kW; (3) a tailrace channel returning flow to the river about 2,500 feet downstream from the dam; (4) a new 5.2-mile-long transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 165,000,000 kWh. Project energy would be sold to the Arkansas Power and Light Company or to local municipalities.
k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 12 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.
10 a. Type of Application: 5 MW Exemption.
b. Project No: 8423–000.
c. Date Filed: July 11, 1984.
d. Applicant: City of Granite Falls, Minnesota.
e. Name of Project: Granite Falls Hydro.
f. Location: On the Minnesota River in Yellow Medicine and Chippewa Counties, Minnesota.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).
h. Contact Person: Mr. Richard Voller, City Manager, 885 Prentice, Granite Falls, Minnesota 56241.
h. Contact Person: Mr. Richard Voller, City Manager, 885 Prentice, Granite Falls, Minnesota 56241.
i. Comment Date: December 31, 1984.
J. Description of Project: The proposed project would consist of: (1) An existing concrete overflow spillway about 250 feet long and 18 feet in height; (2) the removal of the contiguous existing 74-foot-long flood gate structure, which will be replaced by three concrete Tainter gate bays with a gate height of 14 feet; (3) an existing powerhouse structure integral with the dam, 28 feet by 40 feet, housing two existing turbine-generator units with a total installed capacity of 470 kW; (4) the addition of a new powerhouse, adjacent to the existing powerhouse which will house a third turbine-generator unit with an installed capacity of 710 kW; (5) a reservoir 3.5 miles in length and water surface area of approximately 60 acres at normal maximum water surface elevation of 900.74 feet, m.s.l.; (6) a proposed 4.16–kV transmission line approximately 100 feet long; and (7) appurtenant facilities. The applicant estimates that the average annual energy for all three units would be 4,360,000 kWh.
k. Purpose of Project: The applicant anticipates that project energy will be utilized within its municipal utility system.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.
11 a. Type of Application: Exemption from Licensing (5MW or less).
b. Project No.: 8450–000.
c. Date Filed: July 20, 1984.
d. Applicant: Small Hydro East.
e. Name of Project: Stoney Brook.
f. Location: Stoney Brook in Oxford County, Maine.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).
h. Contact Person: James D. Sysko, Small Hydro East, Star Route 240, Bethel, Maine 04217.
i. Comment Date: December 31, 1984.
j. Description of Project: The existing project consists of: (1) An existing 12-foot-high, 16-foot-long concrete dam with earthen abutments; (2) an existing 12-acre reservoir at an elevation of 1,240 feet m.s.l.; (3) a concrete inlet structure at an elevation of 1,210 feet m.s.l.; (4) a 4,800-foot-long, 6-inch-diameter underground penstock; (5) a 12-foot by 8-foot powerhouse containing a turbine/generator unit with an installed capacity of 17 kW; (6) a 5,000-foot-long, 7.2–kV transmission line; and (7) appurtenant facilities.
Proposed improvements include: (1) proposed gate works at the dam; (2) a proposed 4,800-foot-long, 6-inch-diameter under ground penstock; (3) a proposed 800-foot-long, 10-inch-diameter pipeline; (4) rebuilding the existing turbine/generator unit to increase the capacity to 35 kW; (5) a proposed 5,600-foot-long, 7.2–kV transmission line; and (6) appurtenant facilities. The average annual generation would increase from 72 MWh to 240 MWh.
k. Purpose of Project: Project energy will continue to be sold to Central Maine Power Company. In addition, a portion of the power will be supplied to the Applicant's home.
l. This notice also consists of the following standard paragraphs: A1, B, C, D3a, A9.
m. Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.
12 a. Type of Application: Preliminary Permit.
b. Project No: 8532–000.
c. Date Filed: August 16, 1984.
d. Applicant: Juniper Ridge Ranches, Inc.
e. Name of Project: Juniper Ridge.
f. Location: On Pit River in Lassen County, California; partially within U.S. lands administered by U.S. Bureau of Land Management.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).
h. Contact Person: Mr. Thomas Vestal, P.O. Box 250, Fall River Mills, California 96028.
i. Comment Date: December 31, 1984.
j. Competing Application: Project No. 8296. Date Filed: May 5, 1984.
A public notice was issued on July 17, 1984 and expired September 17, 1984.
k. Description of Project: The proposed project would consist of: (1) a 15-foot-high, 320-foot-long, diversion structure at elevation 4,095 feet; (2) a 15-foot-high, 250-foot-long intake structure containing trash racks and fish screen facilities; (3) a 14-foot-diameter, 25,950-foot-long diversion tunnel; (4) two 102-inch-diameter, 3,950-foot-long penstocks; (5) a powerhouse with a total installed capacity of 45 MW; and (6) a 69-kV, 9,920-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The estimated 123.5 million kWh generated annually by the proposed project would be sold to PG&E.
l. Purpose of Project: The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project. The estimated cost of conducting these studies is $490,000. No new roads would be constructed to conduct these studies.
m. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.
13 a. Type of Application: Preliminary Permit.
b. Project No.: 8541–000.
c. Date Filed: August 21, 1984.
d. Applicant: Palisade Associates.
e. Name of Project: Grand Valley.
f. Location: On the Colorado River in Mesa County, Colorado and occupying lands administered by the Bureau of Reclamation.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).
h. Contact Person: Mr. Joel Kirk Rector, Attorney at Law, 8 Peabody Terrace #32, Cambridge, Massachusetts 02138.
i. Comment Date: January 22, 1985.
j. Description of Project: The proposed would utilize the existing Grand Valley Diversion Dam and Reservoir owned by the Bureau of Reclamation and would consist of: (1) A proposed penstock 10 feet long, approximately 3 meters in diameter; (2) a proposed powerhouse 40 feet wide and 80 feet long containing a proposed turbine/generator with a total rated capacity of 1.6 MW; (3) a proposed tailrace 80 feet wide and 80 feet long; (4) a new 12.5-kV transmission line 50 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 11.0 GWh operating under a net hydraulic head of 14 feet. Project power would be sold to the Public Service Company of Colorado or to local municipalities.
k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.
l. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.
14 a. Type of Application: Preliminary Permit.
b. Project No.: 8576–000.
c. Date Filed: September 4, 1984.
d. Applicant: PRODEK, Inc.
e. Name of Project: Stillhouse Hollow Dam Water Power.
f. Location: On the Lampasas River in Bell County, Texas.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Flake H. Wells, III, P.O. Box 12608, El Paso, Texas 79912.
i. Comment Date: January 28, 1985.
j. Description of Project: The proposed project would utilize the existing Corps of Engineers Stillhouse Hollow Dam, Reservoir, and outlet works and would consist of: (1) about 540 feet of new 11-foot-diameter steel tunnel liner to be installed inside the existing outlet works; (2) a proposed closure gate; (3) a proposed 11-foot-diameter branch penstock about 70 feet long; (4) a proposed 54-inch bypass valve; (5) a proposed concrete powerhouse about 180 feet by 40 feet, housing turbine-generators with a total installed capacity of 7500 kW; (6) a new tailrace channel about 200 feet long; (7) about 600 feet of transmission line at 25-kV; and (8) appurtenant facilities. Applicant estimates that the average annual energy generation would be 13,000,000 kWh.
k. Purpose of Project: The applicant anticipates that project energy will be marketed to an established operating electric utility.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $55,000.
15 a. Type of Application: Preliminary Permit.
b. Project No.: 8580–000.
c. Date Filed: September 4, 1984.
d. Applicant: Breck Richards.
e. Name of Project: Calamity Draw Water Power.
f. Location: Montrose County Colorado on a tributary of the San Miguel River, and occupying Bureau of Land Management lands.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Martin A. Jones, P.E., 0171 Ute Way, Silt, Colorado 81652.
i. Comment Date: January 14, 1985.
j. Description of Project: The proposed project would consist of: (1) A 9.5 foot high and 50 foot wide earthfill dam including a spillway at elevation 5520 feet USGS datum; (2) a 0.8 acre reservoir with a proposed storage capacity of 3.0 acre-feet at surface elevation 5530 feet; (3) a proposed penstock 8,800 feet long approximately 18 inches in diameter; (4) a proposed powerhouse 24 feet long and 16 feet wide containing two proposed turbine/generators with a rated capacity of 100 kW each; (5) a tailrace; (6) an existing transmission line 4.0 miles long; and (7) appurtenant facilities. The

estimated average annual energy produced by the project would be 500,000 kWh operating under a net hydraulic head of 280 feet. Project power would be sold to Colorado-Ute, a utility company.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $6,450.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 8582–000.

c. Date Filed: September 4, 1984.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Quayle Creek Hydroelectric Power.

f. Location: On the Quayle Creek in Clear Creek County, Colorado on lands within the Arapaho National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert E. Stout, 6941 S. Cherokee Street, Littleton, Colorado 80120.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) a 4 to 6-foot high and 20-foot-long proposed dam including a spillway at elevation 10,160 feet USFS datum; (2) a reservoir of negligible size and storage capacity; (3) a proposed penstock 3,500 feet long, aproximately 3 feet in diameter; (4) a proposed powerhouse made of prefabricated corrugated steel, 15 feet long and 15 feet wide; (5) a proposed turbine/generator with a rated capacity of 700 kW; (6) a proposed tailrace 4 feet in diameter and 20 feet long; (7) a new three-phase 25-kV transmission line 1,600 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 2.5 million kilowatthours operating under a net hydraulic head of 280 feet. Project energy would be sold to the Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7,A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

17a. Type of Application: Preliminary Permit.

b. Project No.: 8585–000.

c. Date Filed: September 5, 1984.

d. Applicant: Rivers Electric Company.

e. Name of Project: Little Falls.

f. Location: On the Passaic River in Passaic County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles R. Pepe, 120 North Pascack Road, Spring Valley, New York 10977.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) The existing Beatties Mill Dam, which has an overall length of aproximately 267 feet and a height of 20 feet to spillway crest elevation 161.1 feet M.S.L.; (2) the exising 350-acre reservoir which has a storage capacity of 1,435 acre-feet; (3) a proposed powerhouse which will contain an installed generating capactiy of 3 MW; and (4) apurtenant faciliities. The project would generate up to 12,000,000 kWh annually.

k. All existing project facilities are currently owned by: Beattie Manufacturing Co., 242 Main Street, Little Falls, New Jersey; and Passaic Valley Water Commission, Box 230, Clifton, New Jersey.

l. Purpose of Project: The Applicant proposes to sell the power to and directly connect with the Public Service Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, finanical feasibility, environmnental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

18 a. Type of Application: Preliminary Permit.

b. Project No: 8589–000.

c. Date Filed: September 10, 1984.

d. Applicant: Triple Star Hydro Ltd.

e. Name of Project: Triple Star Hydroelectric Project.

f. Location: On Soldier Creek, near Junction City, within Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 40-foot-long diversion dam at elevation 2,430 feet; (2) a 36-inch-diameter, 6,250-foot-long diversion pipeline; (3) a 30-inch-diameter, 3,000-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 1,770 kW operating under a head of 680 feet; and (5) a 1-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 11.6 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

19 a. Type of Application: Preliminary Permit.

b. Project No: 8591–000.

c. Date Filed: September 10, 1984.

d. Applicant: Boise Canyon Hydro Ltd.

e. Name of Project: Boise Canyon Hydroelectric Project.

f. Location: On Boise Creek, near Orleans, with the Six Rivers National Forest, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: January 18, 1985.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 18-foot-long diversion dam at elevation 1,325 feet; (2) a 36-inch-diameter, 23,000-foot-long diversion pipeline; (3) a 30-inch-diameter, 1,560-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 2,600 kW operating under a head of 925 feet; and (5) a 0.5-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 10.7 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs; A6, A7, A9, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 8602–000.

c. Date Filed: September 17, 1984.

d. Applicant: Robert W. Compton.

e. Name of Project: Deadwood River.

f. Location: In the Boise National Forest, on Deadwood River, near Lowman, in Boise County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Larry J. Hellhake, 809 N. Liberty St., Boise, Idaho 83704.

i. Comment Date: January 18, 1985.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high check dam at elevation 4,250 feet with fish screens and controls to provide minimum flows downstream; (2) a 28,300-foot-long, 66-inch-diameter buried steel penstock; (3) a powerhouse at elevation 3,750 feet containing a single generator with a rated capacity of 9.65 MW and an annual energy production of 24.78 GWh; (4) a tailrace, and (5) a 1-mile-long transmission line to an existing Idaho Power Comapany line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 24-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construction and operate the project. Applicant has state that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $10,000.

k. Purpose of Project: Power may be marketed to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 8603–000.

c. Date Filed: September 17, 1984.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Herman Gulch.

f. Location: On the Herman Gulch Creek in Clear Creek County, Colorado on lands within the Arapaho National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert E. Stout, 6941 S. Cherokee Street, Littleton, Colorado 80120.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) a 4 to 6 foot high and 25-foot-long proposed dam including spillway at elevation 10,890 feet USGS datum; (2) a reservoir of negligible size and storage capacity; (3) a proposed penstock 3,200 feet long approximately 3 feet in diameter; (4) a proposed powerhouse made of corrugated steel 15 feet long and 15 feet wide; (5) four turbine/generators with a total rated capacity of 1000 kW; (6) a proposed tailrace 20 feet long and 5 feet in diameter; (7) an existing 25-kV transmission line 200 feet in length; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 4 million kWh operating under a net hydraulic head of 435 feet. Project power would be sold to the Public Service of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.. Applicant estimates that the cost of the studies under permit would be $20,000.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 8619–000.

c. Date Filed: September 27, 1984.

d. Applicant: Doe Run Creek Hydro Rehabilitation Association.

e. Name of Project: Doe Run Creek.

f. Location: On Doe Run Creek in Meade County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Daniel Swan, Power Development Systems, Inc., 140 Outer Loop, Louisville, Kentucky 40214.

i. Comment Date: January 18, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 15-foot-high and 75-foot-wide dam including spillway at elevation 520 feet USGS datum; (2) a reservoir of negligible size and storage capacity; (3) an existing penstock 120 feet long with a 3-foot-diameter; (4) a proposed powerhouse 10 feet square containing a new generator with a rated capacity of 35 kW; (5) a proposed afterbay; (6) a proposed 480-volt transmission line 600 feet in length; and (7) appurtenant facilities. The dam is owned by Ms. Dorothy Smith. The estimated average annual energy produced by the project would be 140,000 kWh operating under a net hydraulic head of 15 feet. Project power would be sold to the Louisville Gas and Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $3,000.

23 a. Type of Application: Preliminary Permit.

b. Project No.: 8676–000.

c. Date Filed: October 22, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: McMillan No. 2.

f. Location: On Little Cow Creek, near Round Mountain, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002, (916) 222–1414.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) an intake structure on Little Cow Creek at elevation 3,860 feet msl; (2) a 27-inch-diameter, 7,900-foot-long diversion conduit; (3) an 24-inch-diameter, 17,500-foot-long penstock; (4) a powerhouse located at elevation 2,120 feet msl with a total installed capacity of 2,707 kW, and (5) a 21,000-foot-long, 12-kV transmission line to interconnect to an existing Pacific Gas and Electric

Company line. Applicant estimates the average annual energy generation at 6.35 GWh using 1,650 foot of head and 18 cfs of flow. Project power would be sold to a public utility.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $75,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Competing Applications

A1. Exemption for Small Hydroelectic Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectic Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption, application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License of Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exempton application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notice of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial licenses, small hydroelectric exemption or conduit exemption application. No competing applications or notices or intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular applications (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coorination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agancy does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agancy does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 16, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30682 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-77-000]

Allegheny Power Service Corp.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, Allegheny Power Service Corporation (Allegheny) tendered for filing a Notice

of Cancellation of the Monogahela Power Company Rate Schedule FPC No. 33, the Potomac Edison Company Rate Schedule FPC No. 38, and West Penn Power Company Rate Schedule FPC No. 32. Allegheny states that the Contract expired by its own terms on December 31, 1980.

Copies of this filing were served upon UGI Corporation, Pennsylvania Public Utility Commission, Public Utility Commission of Ohio, West Virginia Public Service Commission, Maryland Public Service Commission and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30680 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-88-000]

American Electric Power Service Corp.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, American Electric Power Service Corporation (AEP) tendered for filing Modification No. 2, dated October 1, 1982 among Appalachian Power Company (Appalachian), Ohio Power Company (Ohio Power), Monongahela Power Company (Monongahela) and West Penn Power Company (West Penn). Appalachian and Ohio Power constitute the AEP Parties. Monongahela and West Penn constitute the APS Parties.

Under the Power Supply Agreement the AEP Parties are delivering to the APS Parties for resale to General Public Utilities Corporation (GPU), under a Power Resale Agreement, dated October 1, 1982, among Monongahela, West Penn, Jersey Central Power and Light Company Metropolitan Edison Company, and Pennsylvania Electric Company, 580 MW of capacity and energy during the period October 25, 1982 through December 31, 1990, inclusive.

This Modification increases the monthly demand charge, by the AEP Parties to the APS Parties, from $2,100,000 to $2,670,000. This increase reflects the addition of the new 1300 MW Rockport Unit No. 1 to the group of 1300 MW units as anticipated in the original Power Supply Agreement upon which the monthly demand charge is based.

The Parties have requested an effective date of January 1, 1984 for this Modification.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30684 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC85-3-000]

Arizona Public Service Co.; Application

November 15, 1984.

Take notice that Arizona Public Service Company, ("Company") on November 6, 1984, tendered for filing an application for sale of certain electrical facilities, including some 69kV transmission lines, conductors and poles to Salt River Project Agricultural Improvement and Power District ("District"). After all requisite approvals are obtained, as a result of the sale, transmission service will be provided by District to the Company at its Gilbert and Chandler Substations in Maricopa County, Arizona. No customer of either party will be affected by the proposed sale.

Copies of the filing were served upon the District and the Arizona Corporation Commission. Approval of the filing is requested as soon as possible, but in no event later than sixty (60) days from the filing date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30585 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-452-000, et al.]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Monthly Status Conference

November 15, 1984.

Take notice that on November 29, 1984, at 1:30 p.m., the Commission Staff will convene the next monthly conference in the above-docketed proceeding to discuss the status of the special marketing program.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

All interested persons and Staff are invited to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30569 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-483-003]

Colorado Interstate Gas Co.; Petition To Amend

November 15, 1984.

Take notice that on October 22, 1984, Colorado Interstate Gas Company (Petitioner), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP82-483-003 a petition to amend the order issued on November 26, 1982, in Docket No. CP82-483-000 pursuant to section 7(c) of the Natural Gas Act so as to permit the addition of a delivery point under the gas transportation agreement

(transportation agreement) dated March 16, 1982, as amended June 29, 1982, and August 31, 1984, between the Petitioner and Wycon Chemical Company (Wycon), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it and Wycon have excuted an amendment to the transportation agreement adding the Bullfrog 2-7-36-86 well located in Natrona County, Wyoming, as a new delivery point of Wycon's gas supply to Petitioner. Petitioner states that this well is currently connected to a gathering system owned and operated by Petitioner and that gas is currently being gathered and transported by Petitioner on behalf of Wycon pursuant to 18 CFR 157.209 and the authority granted to Petitioner in Docket No. CP84-558-000.

Additionally, Petitioner requests authority to add and delete supply delivery points to the transportation agreement and to file annually by January 31 tariff revisions reflecting the additions and deletions. Petitioner also proposes to impose a gathering charge of 12.0 cents per Mcf gathered from the Bullfrog 2-7-36-86 well.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30670 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-85-000 and ER83-437-004]

Commonwealth Edison Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, Commonwealth Edison Company (Commonwealth) tendered for filing proposed changes in its FERC Electric Tariff. The proposed changes replace the Electric Service Contracts between Commonwealth Edison Company and the Cities of Batavia, Geneva, Naperville, Rock Falls and St. Charles, Illinois (the Cities) in accordance with a Settlement Agreement dated July 9, 1984, between the Company and the Cities. The Settlement Agreement was approved by the Federal Energy Regulatory Commission in its letter dated October 2, 1984.

A copy of the filing has been served upon the Cities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30671 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-52-000]

Consolidated Gas Transmission Corp.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 23, 1984, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-52-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for an end-user under the certificate issued in Docket No. CP82-537-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Mobay Chemical Corporation (Mobay) has acquired an Appalachian supply of natural gas from Industrial Energy Services Company (IESCO). Consolidated proposed to transport up to 2,000 dt equivalent of natural gas per day from the facilities of IESCO to facilities owned by Hope Gas, Inc., for further delivery to Mobay's facilities in Marshall County, West Virginia. It is explained that the end-use of the gas would be 50 percent for process and feedstock needs and 50 percent for non-high priority use. It is asserted that Consolidated would charge Mobay in accordance to its Rate Schedule TI, a rate of 30.95 cents per dt.

It is explained that the term of the transportation service would be from the date of initial deliveries and continuing for a period of 180 days.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30672 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-81-000]

Consumers Power Co.; Filing

November 15, 1984.

Take notice that Consumers Power Company ("Consumers") on November 2, 1984 tendered for filing Consumers' Supplemental Agreement No. 1 to the Service Agreement Wholesale for Resale Electric Service with the Village of Chelsea, Michigan, dated as of March 10, 1977.

Supplemental Agreement No. 1 reduces the capacity reservation in the Service Agreement by 1,737 kW since Chelsea participates by that amount in the Michigan Public Power Agency's ownership in the J.H. Campbell Unit 3. In addition for purposes of determining the capacity charges for the month of January, 1984, and succeeding months, the customer's historical demands for each month of the eleven month period preceding the month of January, 1984, shall be reduced by 1,737 kW.

Consumers Power states that copies of the filing were served on the Village

of Chelsea and on the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30573 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-35-000]

Florida Power & Light Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, Florida Power and Light Company (FP&L) tendered for filing an Amendment Number One to Service Agreement for the Supply of Wholesale Power Service to Municipalities and Rural Electric Cooperatives (Amendment) between Florida Power & Light Company and the City of Clewiston.

FP&L states that the proposed Amendment replaces in its entirety Exhibit A to the Service Agreement for the Supply of Wholesale Electric Power Service to Municipalities and Rural Electric Cooperatives between Florida Power & Light Company and the City of Clewiston. Such revised Exhibit A describes the additional metering and protective provisions necessary to accommodate the interconnection of certain generating facilities with the City of Clewiston. According to FP&L, the City of Clewiston will remain a full requirements customer receiving service under F&PL's Sale for Resale Rate Schedule FR-2 or its successor schedule(s).

FP&L respectfully requests that the proposed Amendment be made effective on October 29, 1984, and therefore requests waiver of the Commission's notice requirements. FP&L states that the City of Clewiston supports FP&L's request for such waiver.

According to FP&L a copy of this filing was sent to the City of Clewiston and to the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determinining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30574 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-540-001]

Great Lakes Gas Transmission Co.; Amendment

November 15, 1984.

Take notice that on October 12, 1984, Great Lakes Gas Transmission Company (Applicant), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP84-540-001 an amendment to its pending application filed in Docket No. CP84-540-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity so as to reflect certain newly executed contractual arrangements with TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to increase transportation service for TransCanada under an existing natural gas transportation contract from 815,000 Mcf of natural gas per day to 1,070,000 Mcf per day, commencing November 1, 1987, and to increase to 1,270,000 Mcf per day during the succeeding contract years.

Applicant states that its gas transportation contract with TransCanada provides for transportation of gas from the United States-Canadian international boundary near Emerson, Manitoba, to the United States-Canadian international boundary near Sault Ste. Marie and St. Clair, Michigan. Applicant further states that the increase in transportation service has been requested by TransCanada in conjunction with the gas to be exported by TransCanada at Niagara, Ontario, which gas is *inter alia*, the subject of an application filed by Niagara Interstate Pipeline System (NIPS), pending in Docket No. CP83-170-001. Applicant states that its application is being filed in support of NIPS project.

Applicant states that the amended application is being filed due to the newly-executed contractual arrangements between TransCanada and Applicant. Applicant further states that the amended application contains all pertinent exhibits and supersedes the initial application filed on July 3, 1984, and that the total facilities required, their cost, and geographic location are the same as shown in Applicant's application.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons having heretofore filed need not do so again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30575 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-39-000]

Lone Star Gas Company a Division of ENSERCH Corp.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 15, 1984, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-39-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon certain gas sales facilities under the authorization issued in Docket No. CP83-59-000, as amended, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Lone Star proposes to abandon line A16 from Station 167+00 to Station 243+94 (end) and line A18-5 from Station 38+12 to Station 129+32 (end) all located in Wichita County, Texas. Lone Star states that the segments of pipeline proposed for abandonment are no longer used or useful in Lone Star's operations. Lone Star states further that the proposed abandonment would not result in the loss of any gas supply or the termination of service to any existing customer. Lone Star asserts that the customers previously served by the segments proposed for abandonment have discontinued service some time ago, as they no longer desired gas service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30576 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-30-000]

Michigan Gas Storage Co.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 15, 1984, Michigan Gas Storage Company (Storage Company) 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85-30-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of James River Corporation (James River) under the certificate issued in Docket No. CP84-451-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Storage Company proposes to provide transportation for up to 8,200 Mcf of gas per day on an interruptible basis pursuant to a transportation agreement dated October 4, 1984, between Storage Company and James River. Storage Company explains that the term of the authorization as herein sought is from the date automatic authorization expires or such later date as the Commission finds appropriate, through termination of authorization as provided by Subpart F of Part 157 of the Regulations or termination of the transportation agreement, whichever occurs first.

Storage Company states it would receive the gas from Panhandle Eastern Pipe Line Company (Panhandle) at various existing points of interconnection between Panhandle and Storage Company (provided that such points of interconnection are downstream from Storage Company's South Lyon measuring station in Oakland County, Michigan) or such other points as the parties might hereafter agree to. It is explained that the gas would then be redelivered to Consumers Power Company (Consumers) at existing interconnections between the facilities of Consumers and Storage Company. Storage Company states that James River is the end-use customer of Consumers which is supplied by Storage Company and that end-use of the gas is for boiler fuel at James River's Kalamazoo plant.

In addition, Storage Company requests flexible authority to add or delete sources of supply or receipt/delivery points. Any changes in source or receipt/delivery points are intended to be on behalf of the same end-user at the same end-user location and within the maximum daily and annual volumes authorized in this docket, it is submitted.

Furthermore, Storage Company agrees that within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points to file all pertinent information required.

It is stated that the transportation rate for this service is based upon Storage Company's T-3 tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30577 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-37-000]

Michigan Gas Storage Co.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 15, 1984, Michigan Gas Storage Company (Storage Company), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85-37-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Allied Paper Incorporated (Allied) under the certificate issued in Docket No. CP84-451-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Storage Company proposes to provide transportation for up to 5,000 Mcf of gas per day on an interruptible basis pursuant to a transportation agreement dated October 12, 1984, between Storage Company and Allied Storage Company explains that the term of the authorization as herein sought is from the date automatic authorization expires or such later date as the Commission finds appropriate, through termination of authorization as provided by Subpart F of Part 157 of the Regulations or termination of the transportation agreement, whichever occurs first.

Storage Company states that it would receive the gas from Panhandle Eastern Pipe Line Company (Panhandle) at various existing points of interconnection between Panhandle and Storage Company (provided that such points of interconnection are down stream from Storage Company's South Lyon measuring station in Oakland County, Michigan) or such other points as the parties might hereafter agree to. It is explained that the gas would then be redelivered to Consumers Power Company (Consumers) at existing interconnections between the facilities of Consumers and Storage Company. It

is further explained that Allied is the end-use customer of Consumers which is supplied by Storage Company and that the end-use of the gas is for boiler fuel at Allied's Bryant Mill.

In addition, Storage Company requests flexible authority to add or delete sources of supply or receipt/delivery points. Any changes in source or receipt/delivery points are intended to be on behalf of the same end-user at the same end-user location and within the maximum daily and annual volumes authorized in this docket, it is submitted.

Furthermore, Storage Company agrees that within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points to file all pertinent information required.

It is stated that the transportation rate for this service is based upon Storage Company's T–3 tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30678 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–38–000]

Michigan Gas Storage Co.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 15, 1984, Michigan Gas Storage Company (Storage Company), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85–38–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of James River Corporation (James River), under the certificate issued in Docket No. CP84–451–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Storage Company proposes to provide transportation for up to 12,000 Mcf of gas per day on an interruptible basis pursuant to a Transportation Agreement dated October 1, 1984, between Storage Company and James River. Storage Company explains that the term of the authorization as herein sought is from the date automatic authorization expires or such later date as the Commission finds appropriate, through termination of authorization as provided by Subpart F of Part 157 of the Regulations or termination of the transportation agreement, whichever occurs first.

Storage Company states that it would receive the gas from Panhandle Eastern Pipe Line Company (Panhandle) at various existing points of interconnection between Panhandle and Storage Company (provided that such points of interconnection are downstream from Storage Company's South Lyon measuring station in Oakland County, Michigan) or such other points as the parties might hereafter agree to. It is explained that the gas would then be redelivered to Consumers Power Company (Consumers) at existing interconnections between the facilities of Consumers and Storage Company. It is further explained that James River is the end-use customer of Consumers which is supplied by Storage Company and that the end-use of the gas is for boiler fuel at James River's KVP Plant.

In addition, Storage company requests flexible authority to add or delete sources of supply or receipt/delivery points. Any changes in source or receipt/delivery points are intended to be on behalf of the same end-user at the same end-user location and within the maximum daily and annual volumes authorized in this docket, it is submitted.

Furthermore, Storage Company agrees that within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points to file all pertinent information required.

It is stated that the transportation rate for this service is based upon Storage Company's T–3 tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30679 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–48–000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 18, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–48–000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new delivery point and appurtenant facilities for an eligible end-user under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct a new delivery point and appurtenant facilities located in Hardin County, Iowa, for Iowa Electric Light and Power Company to serve a new residential customer, Iowa Falls Mobile Home Park, for residential heating needs. Northern states that the estimated peak day and annual volumes are expected to reach a level of 155 Mcf and 28,555 Mcf of gas, respectively, in the fifth year. The proposed sale would be made in accordance with Northern's Rate Schedule CD–1. It is stated the estimated cost of these facilities is $28,784.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30680 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–49–000]

Northern Natural Gas Co. Division of InterNorth, Inc.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 18, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–49–000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new delivery point and appurtenant facilities for an eligible end-user under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate a new delivery point located in Burt County, Nebraska, for the delivery of natural gas to Minnegasco, Inc. (Minnegasco), in order that Minnegasco may provide natural gas service to an end-user, Densified Forage Products, to meet their alfalfa dehydrating and space heating needs. Northern states that the peak day and annual volumes are expected to reach a level of 154 Mcf and 18,120 Mcf of gas, respectively, in the fifth year. Northern states that the proposed sale would be made in accordance with Northern's Rate Schedule CD–1 with the required volumes served from the existing firm entitlement of Minnegasco. The estimated cost of the proposed facilities is $28,919, it is indicated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30681 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–69–000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

November 15, 1984

Take notice that on October 26, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–69–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate four small volume sales measuring stations to accommodate natural gas deliveries to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), under the certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it would install, operate, and maintain four small volume measuring stations to make sales of natural gas to four end-user customers through Peoples. Northern further states that the proposed facilities would be located in Scott and Dakota Counties, Minnesota, Blackhawk County, Iowa, and Ford County, Kansas. Northern avers that the volumes delivered would provide necessary natural gas for residential heating. Northern further avers that the volumes delivered are within Peoples' presently authorized firm entitlement, which was certificated in Docket No. CP82–500–001 on July 29, 1983.

Northern estimates that the cost of the proposed facilities to be $3,136. Such cost, it is asserted, would be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and the respective letter agreements between Northern and Peoples dated July 10, 1984, and August 31, 1984.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30682 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–560–001]

Northwest Pipeline Corp., Amendment

November 15, 1984.

Take notice that on September 28, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP84–560–001 pursuant to section 7 of the Natural Gas Act an amendment to Northwest's application filed July 10, 1984, in Docket No. CP84–560–000 so as to reflect a change in the receipt points at which NGL Production Company (NGL) would tender natural gas to Northwest for transportation, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that on July 10, 1984, Northwest filed in Docket No. CP84–560–000 an application for certificate authorization, among other things, to transport up to 5,000 Mcf of natural gas per day for the account of NGL pursuant to a gas transportation agreement, dated May 29, 1984 (transportation agreement). The proposed transportation service, it is stated, provided for NGL's tendering the natural gas for transportation at existing points of interconnection between Montana-Dakota Utilities Co. (Mondak) pipeline and the Colorado Interstate Gas Company (CIG) pipeline in Park County, Wyoming (Elk Basin receipt point), or Fremont County, Wyoming (Madden receipt point). It is explained that Northwest, utilizing its March 11, 1980, gas transportation and exchange agreement with CIG, would provide for the transportation of NGL's gas to existing points of delivery on Northwest's transmission system in Sweetwater County, Wyoming, or Uintah County, Utah, and that Northwest would then transport NGL's gas on its mainline facilities and redeliver thermally equivalent volumes

of gas, less fuel, to NGL's processing plants in Rio Blanco County, Colorado, and Lincoln County, Wyoming.

Northwest proposes to amend its transportation service pursuant to the gas transportation agreement as amended by a letter agreement dated August 10, 1984. Northwest states that NGL would now tender its gas to Northwest for transportation at existing delivery points from CIG to Northwest in Sweetwater County, Wyoming, and Uintah County, Utah. Northwest states that NGL and CIG have entered into a gas transportation agreement to provide the transportation of NGL's gs from the existing points of interconnection between Mondak and CIG to the above-mentioned points of delivery from CIG to Northwest.

Northwest further states that NGL intends to utilize a portion of this gas to replace fuel which would be used by a proposed carbon dioxide conditioning plant located adjacent to its Foundation Creek processing plant in addition to replacing fuel and shrinkage use incurred at its processing plants.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30584 Filed 11-20-84 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-45-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 18, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-46-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on behalf of S.C.M. Corporation (S.C.M.) under the certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport gas on behalf of S.C.M. pursuant to a transportation agreement dated August 30, 1984, as amended October 10, 1984, among S.C.M., Panhandle and East Ohio Gas Company (East Ohio), a local distribution company. Panhandle proposes to receive from S.C.M. a transportation quantity of up to 4,400 Mcf of gas per day at existing points of interconnection between Panhandle and Union Texas Products Corporation in Major and Kingfisher Counties, Oklahoma, and redeliver on an interruptible basis thermally equivalent volumes less a four percent reduction for fuel to East Ohio at an existing point of interconnection in Lucas County, Ohio. Panhandle states that East Ohio would then make ultimate redeliveries to S.C.M. at the Ashtabula I and II plants in Ohio.

Panhandle estimates that the annual volume, peak day volume and average day volume would be 1,387,000 Mcf, 4,400 Mcf and 3,800 Mcf of gas, respectively. Panhandle indicates that the end user would use the gas for boiler fuel, TiO_2 heat transfer, $TiCl_4$ heat transfer, spray drying and miscellaneous process heating and that the transported volumes would constitute 100 percent of the fuel needs of the plants.

Panhandle indicates it would charge S.C.M. a contract service rate and excess service rate of 42.0 cents and 87.0 cents, respectively, per million Btu's plus in each case a 1.24 cent-per million Btu GRI surcharge as provided by Panhandle's Rate Schedule OST. Panhandle states that no added incentive charge is involved.

Panhandle has also submitted a letter from East Ohio indicating that it has sufficient capacity to transport the gas but that it would interrupt the transportation if continued transportation would cause a decrease in supply purchases. Panhandle states that the transportation would be rendered through existing facilities and that the gas to be transported is not gas released by Panhandle. Also, Panhandle submitted a letter from the producer indicating that the gas would be sold at a price not in excess of the maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA). Panhandle requests authorization expiring the earlier of (1) eighteen months from the effective date of the transportation agreement, (2) termination of authorization under Subpart F of Part 157 of the Regulations or (3) termination of the agreement by either party.

In addition to the authority as herein described, Panhandle requests flexible authority to add or delete sources of supply or receipt/delivery points, if such altered service is on behalf of the same end-user, at the same end-user location, within the maximum daily and annual volumes authorized in this docket, and under the same terms and conditions authorized for the basic service. Within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points, Panhandle indicates it would file the following information in this docket, where applicable to the changes in service:

(1) Copy of the gas purchase contract between the seller and the end-user.

(2) Statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price.

(3) Statement of the NGPA pricing categories of the added supply, if released gas, and the volumes attributable to each category.

(4) Statement that the gas is not committed or dedicated within the meaning of NGPA Section 2(18).

(5) Location of the receipt/delivery points being added or deleted, and the name of the producer/supplier.

(6) Where an intermediary participation in the transaction between the seller and the end-user the information required by Section 157.209(c)(1)(ix) of the Regulations.

(7) Identity of any other pipeline involved in the transportation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30588 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-82-000]

Pennsylvania Power & Light Co. and Jersey Central Power & Light Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, CPU Service Corporation (GPU) tendered for filing, on behalf of the above listed utilities, a proposed interconnection agreement, dated August 28, 1984.

GPU states that the agreement covers the construction, operation and maintenance of a 230 kV interconnection between the two systems connecting the Jersey Central Power & Light Company Gilbert Substation with the Pennsylvania Power & Light Company Martins Creek Substation at a point where the 230 kV line crosses the border between New Jersey and Pennsylvania.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30587 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC85-4-000]

Public Service Company of New Mexico; Petition for Declaratory Order and Application for Approval Pursuant to Section 203(a) of The Federal Power Act

November 15, 1984.

Take notice that, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission and section 203(a) of the Federal Power Act, on November 13, 1984, Public Service Company of New Mexico ("PNM") filed a Petition for Declaratory Order and Application for Approval pursuant to section 203(a) of the Federal Power Act, requesting the approval of the sale of PNM's Eastern Interconnection Project ("EIP"), including a 345 kV transmission line and associated switching equipment and DC converting facilities, to Trusts to be formed for the benefit of Emerson Leasing Ventures, Inc., and General Foods Credit Corporation, as Owner Participants, in connection with a leveraged lease financing of the EIP.

PNM further requests a declaratory order stating that the Owner Participants and Trusts will not, as a result of their ownership of the EIP, become "public utilities" as that term is defined in section 201(e) of the Federal Power Act. The purchase price for the EIP is estimated at approximately $80,000,000.

After the sale to the Owner Participants and the simultaneous lease-back to PNM, PNM will maintain and operate the EIP and use the EIP for the same purposes as previously contemplated by PNM. The EIP is scheduled to go into commercial operation in January 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30589 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-84-000]

San Diego Gas & Electric Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, San Diego Gas & Electric Company (SDG&E) tendered for filing an Interconnection and Exchange Agreement between SDG&E and Imperial Irrigation District (IID).

The Agreement provides for the terms and conditions of interconnection between the two parties and also provides for the exchange of capacity and energy.

SDG&E requests an effective date of January 1, 1985.

Copies of this filing were served upon the Public Utilities Commission of the State of California and IID.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 835.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30590 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-248-004]

Tennessee Gas Pipeline Co.; a Division of Tenneco Inc.; Petition to Amend

November 15, 1984.

Take notice that on October 15, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner) P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP78-284-004 a

petition to amend the Commission's order issued June 21, 1978, as amended, in Docket No. CP78–248 pursuant to section 7(c) of the Natural Gas Act, so as authorize reduction in the quantity of natural gas transported for the account of United Gas Pipe Line Company (United), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner seeks to reduce the quantity of natural gas transported for the account of United from 10,000 Mcf of gas per day to 1,000 Mcf per day. The gas is being purchased by United and delivered to Tennessee at an existing point of interconnection between their facilities in Colorado County, Texas. Tennessee redelivers equivalent volumes to United, less volumes for plant fuel, shrinkage, and Tennessee's fuel and use requirements, at the interconnection of their facilities in Ouachita Parish, Louisiana.

Petitioner proposes to make such reduction in the transportation quantity effective March 17, 1984, pursuant to the provisions of Section 2.1 of its transportation agreement dated March 17, 1978, as amended on May 17, 1983.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30590 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL84–44–000 and EF84–2011–001]

Bonneville Power Administration

Filing and Request for Declaratory Order

November 15, 1984.

Take notice that on September 11, 1984, Bonneville Power Administration (BPA) submitted to the Commission what BPA described as a supplemental response to a data request from the Commission staff in Docket Nos. EF84–2011–000 and EF84–2021–000. This material, which will be filed under Docket No. EF84–2011–001 at this time, concerned BPA's implementation of an Industrial Incentive Rate which BPA had established.

Take notice that on September 12, 1984, Southern California Edison Company, San Diego Gas & Electric Company, Los Angeles Department of Water and Power, California Energy Commission, Burbank Public Service Department, Pasadena Water and Power Department, Glendale Public Service Department, and the California Public Utilities Commission (the California parties) filed a motion for declaratory order concerning the Industrial Incentive Rate. The request was filed by the California parties in Docket Nos. EF84–2011–000 and EF84–2021–000, but has been given a new docket designation, EL84–44–000. In this filing the California parties asked that the Commission issue an order declaring that the Industrial Incentive Rate established by BPA has not been confirmed and approved by the Commission on an interim basis or otherwise. The California parties requested that the Commission assign a new docket number to the BPA filing of September 11, 1984 and either summarily reject the filing as deficient or issue notice of BPA's filing. On September 24, 1984, the Direct Service Industries filed a response in Docket Nos. EF84–2011–000 and EF84–2021–000 to the motion of the California Parties.

Any person desiring to be heard or to protest concerning BPA's filing of September 11, 1984, or the motion for the declaratory order filed on September 12, 1984, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filings described above are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30591 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–81–000]

West Texas Utilities Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, West Texas Utilities Company (WTU) tendered for filing proposed changes in its FERC Electric Service Tariff, Original Volume No. 1, unexecuted letter amendments to its electric service agreement with Texas-New Mexico Power Company (formerly Community Public Service Company) and executed letter amendments to contracts for electric service with the Cities of Brady and Coleman, Texas. WTU has proposed a phased rate increase based upon a rate base which includes construction work in progress (CWIP) to the extent permitted under the Commission's regulations. Level B rates, proposed to be effective on January 1, 1985, would increase revenues from jurisdictional sales by $4,419,857 based on calendar year 1985. Level A Rates, proposed to be effective on December 31, 1984, would increase revenues from jurisdictional sales by $4,419,857 based on calendar year 1985. The only difference between the two sets of rates is the return on common equity which the rates are designed to produce. WTU requests that the Level A rates be suspended until January 1, 1985, in accordance with the terms of settlement in the Company's last rate case.

WTU states that it seeks to increase its rates for jurisdictional service in order to earn a fair return on its investment in utility property and thereby attract the capital it needs in order to complete construction of new generating and transmission capability.

Copies of the filing have been served on the customers of WTU affected by the filing and upon the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30592 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30593 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–21–000]

Bethlehem Steel Corp. Burns Harbor No. 2; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 15, 1984.

On October 12, 1984, Bethlehem Steel Corporation (Applicant) of 8th and Eaton Avenues, Bethlehem, Pennsylvania 18016 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility known as Burns Harbor Facility No. 2 is located at the Bethlehem's steel mill in Burns Harbor, Indiana. The extraction turbine generator set, installed in 1969, is driven by 850 psig, 900 °F steam. The primary energy source is natural gas (78%) supplemented by coke oven and blast furnance gases. extracted steam at the rate of 300,000 lb/hr at 265 psig and 650 °F is used for process requirements at the Burns Harbor steel plant. The net electric power production capacity is 51,000 kW. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30588 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–22–000]

Bethlehem Steel Corp. Burns Harbor No. 1; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 15, 1984.

On October 12, 1984, Bethlehem Steel Corporation (Applicant) of 8th and Eaton Avenues, Bethlehem, Pennsylvania 18016 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility known as Burns Harbor Facility No. 1 is located at the Bethlehem's steel mill in Burns Harbor, Indiana. The extraction turbine generator set, installed in 1969, is driven by 850 psig, 900 °F steam. The primary energy source is natural gas (78%) supplemented by coke oven and blast furnace gases. Extracted steam at the rate of 300,000 lb/hr at 265 psig and 650 °F is used for process requirements at the Burns Harbor steel plant. The net electric power production capacity is 51,000 kW. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30587 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–26–000]

Calaveras County Water District; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 15, 1984.

On October 15, 1984, Calaveras County Water District (Applicant), of 427 E. St. Charles Street, P.O. Box 846, San Andreas, California 95249 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2,530 kilowatt hydroelectric facility (P. 2903) will be located on the Calaveras River, in Calaveras County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by

the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30698 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-55-000]

Modesto Energy Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 15, 1984.

On October 25, 1984, Modesto Energy Company, (Attention: Robert Colman) 880 Third Avenue, New York, New York 10022 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed facility will be located near Modesto California and will consist of two (6,000 kW each) steam turbine generator units fueled by waste in the form of non-recappable automobile and truck tires. It is estimated that the facility will produce 80 million kilowatthours annually.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30560 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-24-000]

Oklahoma Vawt Associates; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 15, 1984.

On October 16, 1985, Oklahoma Vawt Associates (Applicant), of 3719 North Portland, Oklahoma City, Oklahoma 73112 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 36 megawatt wind facility is located in Ames, Oklahoma.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30562 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-42-000]

University of Oklahoma; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 15, 1984.

On October 18, 1984, the University of Oklahoma, Department of Physical Plant, 160 Felgar Street, Norman, Oklahoma 73019 (Applicant) submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The existing topping-cycle cogeneration facility, located on the main campus, consists of four natural gas fired steam boilers driving three steam extraction turbine generators with a total capacity of 12,500 kW. A new 3,800 kW steam turbine generator unit is being installed. Steam extracted from the turbines will be used for space heating and cooling, domestic water heating and process related applications.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30582 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Saturday, December 8, 1984, 9 a.m. to 6 p.m.

Place: National Science Foundation, Room 543, 1800 G Street, NW., Washington, DC 20550.

Contact: Dr. P. K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, Washington, DC 20545, Telephone: 301-353-4829.

Purpose of Panel

To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Saturday, December 8, 1984

—Discussion of Department of Energy High Energy Physics and National Science Foundation Elementary Particle Physics FY 1985 Budgets and Scenarios for FY 1986

—Status of the Subpanel on Computer Needs for the Next Decade
—Discussion of Planning for the 1985 HEPAP Retreat
—Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Issued at Washington, DC on November 16, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-30599 Filed 11-20-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30246; PH-FRL 2717-6]

Pesticides; Applications To Register Products; NOR-AM Chemical Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register certain pesticide products containing active ingredients not included in any previously registered products and products involving changed use patterns pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 21, 1984.

ADDRESS: By mail submit comments identified by the document control number [OPP-30246] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In Person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location and telephone number	Address
PM 21, Henry Jacoby.	Rm. 229, CM#2, (703-557-1900).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM 17, Timothy Gardiner.	Rm. 207, CM#2, (703-557-2690).	Do.
PM 25, Robert Taylor.	Rm. 245, CM#2, (703-557-1800).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving changed use patterns pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 45639-OL. Applicant: NOR-AM Chemical Co., 3509 Silverside Rd., PO Box 7495, Wilmington, DE 19803. Product name: Prochloraz-Manganese Complex (4 to 1) Technical. Fungicide. Active ingredient: Tetrakis-[1[*N*-propyl-*N*-2-(2,4,6-trichlorophenoxy) ethyl carbamoyl] imidazole] manganese (II) chloride 95%. Proposed classification/Use: General. For use in formulating fungicides only. (PM 21)

2. File Symbol: 352-UGL. Applicant: E.I. du Pont de Nemours and Co., Wilmington, DE 19898. Product name: Ally Herbicide. Herbicide. Active ingredient: Methyl 2-[[[[(4-methoxy-6-methyl-1,3,5,-triazin-2-yl)amino]carbonyl]amino]sulfonyl]benzoate 60%. Proposed classification/Use: General. For use on barley and wheat. Type registration: Conditional. (PM 25)

II. Products Involving Changed Use Patterns

1. File Symbol: 45639-OT. Application NOR-AM Chemical Co., 3509 Silverside Rd., PO Box 7495, Wilmington, DE 19803. Product name: Prochloraz-Manganese Complex (4 to 1) W.P. Fungicide. Active ingredient: Tetrakis-[1 [*N*-propyl-*N*-2-(2,4,6-trichlorophenoxy) ethyl carbamoyl] imidazole] manganese (II) chloride 47.5%. Proposed classification/Use: General. To include in its presently registered use, new use on ornamental plants. (PM 21)

2. File Symbol: 45639-OA. Applicant: NOR-AM Chemical Co. Product name: Prochloraz E.C. Fungicide. Active ingredient: Prochloraz *N*-propyl-*N*-[2-(2,4,6-trichlorophenoxy) ethyl]-1 *H*-imidazole-1-carboxamide 36.2%. Proposed classification/Use: General. To include in its presently registered use, new use for control of certain turfgrass diseases. (PM 21)

3. EPA Registration No: 20954-115. Applicant: Zoecon Corp., 975 California Ave., Palo Alto, CA 94304. Product name: Mavrik® 2E Insecticide. Insecticide. Active ingredient: (Alpha *RS, 2R*)-fluvalinate [(*RS*)-alpha-cyano-3-phenoxybenzyl (*R*)-2-[chloro-4-(trifluormethyl)anilino]-3-methyl-butanonte] 25%. Proposed classification/Use: Restricted. To include in its presently registered use, new use for outdoor use on agriculture commodities. Type registration: Conditional. (PM 17)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support

Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available in the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: November 2, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-29945 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180660 PH-FRL 2720-7]

Pesticides; Emergency Exemptions; Arkansas State Plant Board, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the five States listed below, during the period of September 23, 1984 to October 9, 1984. Also listed are seven crisis exemptions initiated by four States and three by the U.S. Department of Agriculture. These exemptions are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and crisis exemption for the name of the contact person. The following information applies to all contact people.

By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of diethatyl-ethyl on spinach to control weeds; October 3, 1984 to May 31, 1985. Arkansas had initiated a crisis exemption for this use. (Stan Austin)

2. California Department of Food and Agriculture for the use of metalaxyl on sunflower seeds for export to France and Italy to control downy mildew; September 28, 1984 to September 15, 1985. (Jack E. Housenger)

3. California Department of Food and Agriculture for the use of carbaryl on home garden crops to eradicate gypsy moth larvae and Japanese beetles; September 23, 1984 to July 31, 1985. California had initiated a crisis exemption for this use. (Jim Tompkins)

4. Texas Department of Agriculture for the use of metalaxyl on sunflower seeds for export to France and Italy to control downy mildew; September 28, 1984 to December 31, 1984. (Jack E. Housenger)

5. Washington Department of Agriculture for the use of carbofuran on raspberries to control root weevils; October 9, 1984 to February 28, 1985. (Jim Tompkins)

6. Wisconsin Department of Agriculture Trade and Consumer Protection for the use of paraquat on dry beans as a harvest aid; October 5, 1984 to December 31, 1984. Wisconsin had initiated a crisis exemption for this use. (Stan Austin)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on September 13, 1984, for the use of paraquat on grain sorghum as a harvest aid. The need for this program has ended. (Jim Tompkins)

2. Florida Department of Agriculture and Consumer Affairs on September 27, 1984, for the use of permethrin on watercress to control diamondback moths. The crisis along with the right to take a crisis in the future for this use was withdrawn by the Agency on September 28, 1984. (Jim Tompkins)

3. Louisiana Department of Agriculture on September 27, 1984, for the use of methyl bromide on bee hives to eradicate the acarine mite in Iberia and Vermilion Parishes in Louisiana. The need for this program has ended. (Jack E. Housenger)

4. Ohio Department of Agriculture on September 11, 1984, for the use of paraquat on dried beans as a desiccant. The need for this program has ended. (Libby Welch)

5. U.S. Department of Agriculture on August 15, 1984, for the use of calcium cyanide on bee hives to eradicate the acarine mite in Texas. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last for 1 year. (Jack E. Housenger)

6. U.S. Department of Agriculture on August 23, 1984, for the use of calcium cyanide on bee hives to eradicate the acarine mite in Louisiana. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last for 1 year. (Jack E. Housenger)

7. U.S. Department of Agriculture on September 14, 1984, for the use of diquat on citrus trees to control the citrus canker. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last for 1 year. (Jack E. Housenger)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: November 8, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-30230 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50612; FRL 2719-2]

Pesticides; Issuance of Experimental Use Permits; Elanco Products Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471–EUP–63. Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 3,615 pounds of the herbicide ethalfluralin on peanuts to evaluate the control of weeds. A total of 4,820 acres are involved; the program is authorized only in the States of Alabama, Florida, Georgia, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. The experimental use permit is effective from March 1, 1984 to March 1, 1985.

(Richard Mountfort, PM 23, Rm. 253, CB#2, (703–557–1830))

43808–EUP–1. Extension. The State of Florida, Department of Citrus, 1115 E. Memorial Blvd., P.O. Box 148, Lakeland, FL 33802. This experimental use permit allows the use of 939.2 pounds (3,000 pounds originally authorized) of the plant growth regulator 5-chloro-3-methyl-4-nitro-1H-pyrazole on citrus to evaluate its use as an abscission agent. A total of 500 acres are involved; the program is authorized only in the State of Florida. The experimental use permit is effective from January 5, 1984 to January 5, 1985. A temporary tolerance for residues of the active ingredient in or on oranges has been established. (Robert Taylor, PM 25, Rm. 251, CM#2, (703–557–1800))

524–EUP–60. Issuance. Monsanto Company, 1101 17th St., NW., Washington, DC 20036. This experimental use permit allows the use of 3,100 pounds of the plant growth regulator N-[(acetylamino)methyl]-2-chloro-N-(2,6-diethylphenyl)-acetamide on turf grasses to evaluate the control of weeds. A total of 3,100 acres are involved. (Robert Taylor, PM 25, Rm. 251, CM#2, (703–557–1800))

524–EUP–61. Issuance. Monsanto Company, 1101 17th St., NW., Washington, DC 20036. This experimental use permit allows the use of 3,100 pounds of the plant growth regulator N-[(acetylamino)methyl]-2-chloro-N-(2,6-diethylphenyl)-acetamide on turf grasses to evaluate the control of weeds. A total of 3,100 acres are involved; this permit and the one above are authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. Both permits are effective from January 3, 1984 to January 3, 1986. The permits will use the same active ingredient but different formulations. (Robert Taylor, PM 25, Rm. 251, CM#2, (703–557–1800))

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquiries concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; Stat. 828 (7 U.S.C. 136c))

Dated: November 7, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-30115 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 1G2503/T465; PH–FRL 2720–6]

Pesticides; Renewal of Temporary Tolerances; Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the insecticide/miticide amitraz and its metabolites in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire August 31, 1985.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of March 31, 1982, (47 FR 13575), stating that temporary tolerances had been established for the combined residues of the insecticide/miticide amitraz *N'*-(2,4-dimethylphenyl)-*N*-[[(2,4-dimethylphenyl) iminol]methyl]-*N*-methylemthanimid-amide and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound) in or on the raw agricultural commodities fat, meat and meat byproducts of hogs at 0.1 part per million (ppm). These tolerances were renewed in response to pesticide petition PP 1G2503, submitted by Nor-Am Chemical Company.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 45639–EUP–2 which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136.

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire August 31, 1985. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** on May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: October 22, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-30241 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

[PF-394; PH-FRL 2718-5]

Pesticide Tolerance Petitions; Interregional Research Project No. 4 (IR-4)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received feed and food additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-394] and the petition number, at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Attention: Donald R. Stubbs. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section, Registration Division (TS-767C) Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716 B. CM No. 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has received feed and food additive (FAP) petitions from the Interregional Research Project No. 4 (IR-4) National Director, Dr. R. H. Kupelian, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, relating to the establishment of tolerances for certain pesticide chemicals in or on certain feed and food commodities in accordance with the Federal Food, Drug, and Cosmetic Act.

Initial Filing

1. *FAP 3H5394.* IR-4. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide phosphamidon (2-chloro-2-diethylcarbamoyl-1-methylvinyl dimethyl phosphate) including its related cholinesterase inhibiting metabolites in or on the food commodity dry hops at 30 parts per million (ppm) resulting from application of the pesticide to the growing crop. The proposed analytical method for determining residues is gas chromatography using a phosphorus specific flame photometric detector.

2. *FAP 4H5438.* IR-4. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide/nematicide oxamyl (methyl *N',N'* dimethyl-*N*-(methylcarbamoyl)oxyl]-1-thiooxamidate) in or on the food commodity raisins at 4 ppm resulting from application of the pesticide to the growing crop.

3. *FAP 4H5438.* IR-4. Proposes amending 21 CFR 561.285 by establishing a regulation permitting residues of the insecticide/nematicide oxamyl in or on the feed commodities raisin waste at 4 ppm, and in or on grape pomace at 0.5 ppm resulting from application of the pesticide to the growing crop.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))

Dated: October 31, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-29837 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00180A; FRL 2721-3]

FIFRA Scientific Advisory Panel Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of three members to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of September 5, 1984 (49 FR 35040).

FOR FURTHER INFORMATION CONTACT: By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel (TS-766C), Office of Pesticide Programs, Office Location and telephone number : Rm. 1115, Crystal Mall Building No. 2, Arlington, VA, (703-557-7098).

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. Accordingly, seven members were appointed in March 24, 1983, to the Panel (which, at the time, was constituted under the Federal Advisory Committee Act rather than FIFRA), with the terms of two members scheduled to expire on September 30, 1984, the terms of three members scheduled to expire on September 30, 1985, and the terms of the remaining two members scheduled to expire on September 30, 1986. One panel member resigned in July 1984 due to his impending prolonged absence from the country. Thus EPA was faced with the need for appointing three new Panel members. Lists of nominees were obtained from NIH and NSF, and a public notice of nominees, including biographical data, appeared in the **Federal Register** of September 5, 1984. Five comments were received in response to this Notice.

My decision to appoint the following three nominees to serve as members of the Scientific Advisory Panel is based upon several factors including comments received, the need for a disciplinary mix, and the need for wide geographic representation.

Harold Lee Bergman, Professor of Zoology and Physiology, Department of Zoology and Physiology, University of Wyoming, Laramie, Wyoming 82071. Born: Sault St. Marie, Mich., July 8, 1941. Education: Eastern Michigan University, BA 1968, MS, 1971; Michigan State University, PhD (fisheries biology), 1973. Professional experience: Fishery Biologist, Great Lakes Fishery Lab, US Fish and Wildlife Service, Ann Arbor, Michigan, 1968-1971; Research Assistant Fishery Biology, Department of Fisheries and Wildlife, Michigan State University, East Lansing, 1971-1973; Research Associate, environmental physiology, Department of Physiology, 1974; Research Associate, properties of liver and lung microsomal mixed-function oxidases and their role in the metabolism of drugs and xenobiotics to toxic reactive intermediates; hepatic drug elimination in pregnancy; environmental impact, Environmental Science Division, Oak Ridge National Laboratory, Oak Ridge, Tennessee, 1974-1975; Assistant Professor, Zoology and Physiology, University of Wyoming, 1975-present. Concurrent Position: Editor, Black Thunder Study, Wyoming Environmental Institute, 1975. Societies: Sigma Xi; American Fisheries Society; AAAS; North American Benthological Society. Research: Physiological ecology of fishes and the effects of environmental perturbation on aquatic animals.

Richard Allan Griesemer, Director, Biology Division, Oak Ridge National Laboratory, Post Office Box Y, Oak Ridge, Tennessee 37831. Born: Andreas, Pa., May 8, 1929. Education: Ohio State University, DVM 1953, PhD (veterinary pathology), 1959. Professional experience: Instructor, Veterinary Pathology, Ohio State University 1953-1955; Jr. Pathologist, Virology Branch, Armed Forces Institute of Pathology, 1955-1957; from instructor to professor Veterinary Pathology, Ohio State University, 1957-1971, Chairman of Department, 1967-1971; Associate Director, National Center Primate Biology, University of California, Davis, 1971-1973; senior resident staff member, Carcino-Genesis Program, Oak Ridge National Laboratory, 1973-1975, Program Manager, Cancer and Toxicology Program, 1975-1977; Associate Director, Carcinogenesis Testing, National Cancer Institute, 1977-1980; Director, Biology Division, Oak Ridge National Laboratory, 1980-present. Concurrent Position: Memorial Animal Resources Advisory Committee, NIH 1969-1973. Honors and Awards: National Gaines Award, American Veterinary Medical Association. Societies: AAAS; American Veterinary Medical Association; American College of Veterinary Pathology; International Academy of Pathologists; American Association of Cancer Research. Research: Morphogenesis of cancer; environmental co-carcinogenesis.

Joe Wheeler Grisham, Professor and Chairman, Department of Pathology, School of Medicine, University of North Carolina, Chapel Hill, North Carolina 27514. Born: Brush Creek, Tenn., December 5, 1931. Education: Vanderbilt University, AB 1953, MD 1957. Professional experience: Resident pathologist, School of Medicine, Washington University 1957-1960; from instructor to professor of pathology and anatomy, 1960-1973; Professor, and Chairman, Department of Pathology, School of Medicine, University of North Carolina, Chapel Hill, 1973-present. Concurrent positions: National Cancer Institute fellow, 1958-1959; Life Insurance Medical Research Fund fellow, 1959-1961; Markle Scholar, 1964-1969; member, board science councellors, National Institute Environmental Health Science, 1974-1978. Societies: American Association Cancer Research; American Association Study Liver Disease; International Academy of Pathologists; American Society of Cell Biologists. Research: Liver diseases, especially cirrhosis; chemical carcinogenesis; regulation of cellular proliferation; DNA replication and repair.

Meetings of the Scientific Advisory Panel are always announced in the **Federal Register**, at least 15 days prior to each meeting. It is expected that the next meeting will take place shortly. When a definite date and place have been decided upon, the appropriate announcement will appear in the **Federal Register.**

Dated: November 13, 1984.

Alvin L. Alm,

Deputy Administrator.

[FR Doc. 84-30424 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP 42058; FRL-2711-3]

Territory of American Samoa; Submission of State Plan for Certification of Pesticide Applicators

Correction

In FR Doc. 84-29113 beginning on page 44552 in the issue of Wednesday, November 7, 1984, the docket number in the heading should be corrected to read as it appears in the above heading.

BILLING CODE 1505-01-M

[PP 3G2932/T467; PH-FRL 2709-3]

Zoecon Corp.; Establishment of Temporary Tolerances

Correction

In FR Doc. 84-28810 beginning on page 44551 in the issue of Wednesday, November 7, 1984, make the following correction: In the third column, **SUPPLEMENTARY INFORMATION,** eighth line "(R)-2-2[2-chloro-4-" should read "(R)-2-[2-cloro-4-".

BILLING CODE 1505-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Consolidated Reports of Condition and Income (Savings Banks) (OMB No. 3064-0054).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget Standard Form 83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4351.

SUMMARY: The FDIC is submitting for OMB approval a change in the reporting frequency of the Consolidated Reports of Income and Condition (Call Reports) filed by insured state-chartered savings banks. As in the past, the Report of Condition would continue to be filed on a quarterly basis. However, under the proposed change in reporting frequency, the existing Report of Income, which is presently filed on only a semiannual basis, would be filed quarterly. This change in reporting frequency would be effective beginning with the March 1985 call date. The purpose for this change is to obtain more timely and complete information needed by the FDIC to effectively monitor the financial condition and performance of individual savings banks. It is estimated that the change in reporting frequency of the Report of Income will increase the average reporting burden on each bank by 11 hours annually (5.5 hours for each of the two new quarterly reporting periods).

Dated: November 15, 1984.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 84-30538 Filed 11-20-84; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than December 13, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to engage in the taking of deposits; the making and servicing of consumer loans; engaging in trust company functions; and acting as an investment or financial advisor, through the following national bank subsidiaries: Bank of Boston—Ft. Lauderdale, N.A., Ft. Lauderdale, Florida; Bank of Boston—Jacksonville, N.A., Jacksonville, Florida; Bank of Boston—Orlando, N.A., Orlando, Florida; Bank of Boston—St. Petersburg, N.A., St. Petersburg, Florida; and Bank of Boston—Tampa, N.A., Tampa, Florida. These activities will be conducted in the State of Florida.

Board of Governors of the Federal Reserve System, November 15, 1984.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 84-30461 Filed 11-20-84; 8:45 am]
BILLING CODE 6210-01-M

H & R Bankshares, Inc., et. al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *H & R Bankshares, Inc.,* Charleston, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Danville, Danville, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Guaranty Capital Corporation,* Mamou, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Guaranty Bank of Mamou, Mamou, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.,* Springfield, Illinois; to merge with Sagamon Banc Shares II, Inc., Springfield, Illinois, thereby indirectly acquiring 100 percent of the voting shares of Coffeen State Bank, Coffeen, Illinois.

2. *CBC Bancorp, Ltd.,* Chicago, Illinois; to acquire 80 percent or more of the voting shares of Heritage Bank of Oakwood, Westmont, Illinois.

3. *Comerica Incorporated,* Detroit, Michigan; to acquire 100 percent of the voting shares of Comerica Bank-Lansing, N.A., Lansing, Michigan (in organization).

4. *F & M Bancorp,* Rochester, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants Bank of Rochester, Indiana, Rochester, Indiana.

D. **Federal Reserve Bank of St Louis** (Delmer P. Weisz, Vice President (411 Locust Street, St. Louis, Missouri 63166:

1. *Wilson & Muir Bancorp, Inc.,* Bardstown, Kentucky; to acquire at least 80 percent of the voting shares of Citizens Bank & Trust Company of Grayson County, Leitchfield, Kentucky.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cush-Banc Shares, Inc.,* Cushing, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Cushing, Cushing, Texas.

Board of Governors of the Federal Reserve System, November 15, 1984
James McAfee,
Associate Secretary of the Board.
[FR Doc. 84-30462 Filed 11-20-84; 8:45 am]
BILLING CODE 6210-01-M

Fee Schedules for Federal Reserve Bank Services; Automated Clearing House Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Fee Schedule for the Automated Clearing House Service.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board"), has approved a revised fee schedule for the Reserve Bank automated clearing house ("ACH") service.

EFFECTIVE DATES: All transaction fees will be implemented on December 27, 1984, except the fee for handling paper ACH return items and notifications of change, which will become effective on January 31, 1985. All fixed fees will be implemented on December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202)452-2231) or Florence M. Young, Manager, Electronic Payments Section (202/452-3955), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Elaine M. Boutilier, Attorney (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On March 29, 1984, the Reserve Banks implemented new fees for the ACH service that were set to recover 60 percent of the total costs in accordance with the incentive pricing policy adopted by the Board in April 1982. 49 FR 6564. In accordance with this policy, the revised ACH fees are set to recover 80 percent of the costs of providing commercial ACH services. This incentive pricing policy was established in order to encourage growth in the ACH service, generally. It is believed appropriate to continue the incentive pricing policy through 1985 in order to avoid disruption among users of Federal Reserve ACH services. At the same time, several aspects of the ACH fee schedule have been re-evaluated. These aspects include: (1) The use of benefits-based fees; (2) the level of transaction fees; (3) the level of fees for non-electronic deliveries; and (4) the practice of recovering the costs associated with handling ACH return items and notifications of change through transaction fees.

Benefits-Based Fees

The ACH service is used to process two types of transactions—credit transactions and debit transactions. Because the institutions receiving funds, that is, the receivers of credits and the originators of debits, receive the funds earlier through the ACH than they would if a paper check were used, the previous ACH fee schedule assessed higher fees to these ACH participants. This pricing policy was intended to encourage use of the ACH.

Because of the trend towards the use of private sector ACH processing, under the benefits-based fee structure, cross-subsidies would occur among depository institutions using Federal Reserve services and privately operated ACHs. For example, if a user of the Federal Reserve's ACH service originates a credit transaction destined for a privately operated ACH, the originator would be charged 1.0 cent and the privately operated ACH would be charged 3.0 cents under the current fee schedule. For this reason, the Board believes that continue use of benefits-based fees is inappropriate, and has determined that the same transaction fees will be assessed to originators and receivers of ACH transactions.

Level of ACH Transaction Fees

The revised fee schedule includes a reduction in inter-ACH fees of approximately 0.2 cent for the originator and the receiver to reflect more accurately the cost of providing this element of the ACH service.

Non-Electronic Delivery Fee

The non-electronic delivery fees are intended to recover the costs of generating magnetic tapes, diskettes and paper listings containing ACH transactions, preparing them for delivery and delivering them to messengers or via ground transportation. The processing necessary to generate physical output and to prepare it for delivery is a time consuming, labor intensive activity. In addition, ground transportation is costly. The current fees of $0.75 for messenger pick-up and $1.75 for ground delivery are not recovering the costs that the Reserve Banks incur in making non-electronic deliveries. Therefore, the non-electronic delivery fees will be increased to $1.25 for each messenger pick-up and to $3.00 for each delivery to institutions using Federal Reserve transportation.

ACH Return Items and Notifications of Change

The costs of processing return items and notifications of change [1] are currently recovered through basic transaction fees. About 96 percent of return items and notifications of change are deposited with the Federal Reserve in paper form. As a result, return item processing tends to be an extremely labor intensive and costly operation and constitutes a disproportionately high share of ACH operating costs. Assessing the full costs of return item processing to institutions returning transactions would result in the costs of the ACH service being assessed to users more equitably. In addition, the efficiency of the ACH mechanism can be improved by assessing a fee for return item processing to encourage despository institutions to deposit automated return items. Therefore, the Board has approved a fee of $2.50 for handling paper ACH return items and notifications of change. The Reserve Banks plan to begin converting ACH return items and notifications of change to automated form on January 31, 1985, and the fee for handling these items will be implemented on that date.

While it may be desirable to assess a fee for automated return items and notifications of change, it is not now possible because of operating considerations. The Reserve Banks will be implementing new ACH software and have discontinued making modifications to the current ACH software. The current software does not provide the capability to assess a fee for automated return items and notifications of change. However, when the new ACH software is implemented the Board will review the possibility of assessing a fee for automated return items and notifications of change.

Cost, Volume, and Revenue Projections

At the 80 percent recovery rate, Reserve Bank commercial ACH costs, including the PSAF and float, are projected to amount to $18.0 million for 1985. Revenues are estimated at $18.4 million, resulting in a net revenue surplus of approximately $400,000.

Accordingly, the Board has approved the following fee schedule for the Federal Reserve's ACH service:

[1] Notifications of change are used by receiving institutions to advise originators of recurring transactions about changes in such elements as customer's names and account numbers.

Transaction fees	
Origination:	
Intra-ACH	1.0 cents.
Inter-ACH:	
Unsorted	1.8 cents.
Presorted	1.2 cents.
Night time surcharges:	
Debits	6.0 cents.
Next-day credits	3.0 cents.
Receipt:	
Intra-ACH	1.0 cents.
Inter-ACH	1.8 cents.
New York	1.2 cents.
Paper return items and notifications of change	$2.50.
Fixed Fees	
Deposit fees:	
Tape handling	$3.00 per tape.
File processing	$1.00 per file.
Receiver handling fees:	
Courier	$3.00 per delivery.
Messenger pick-up	$1.25 per delivery.
Telephone advice:	
Including 10 pieces of information	$2.50
Each additional piece of information	$0.05.

The current fees for corporate trade payments will remain in effect. Also, institutions having an electronic connection with the Federal Reserve will be assessed monthly fees as approved earlier by the Board. 49 FR 30669.

By order of the Board of Governors of the Federal Reserve System, November 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30483 Filed 11-20-84; 8:45 am]

BILLING CODE 6210-01-M

Fee Schedules for Federal Reserve Bank Services; Wire Transfer of Funds and Net Settlement

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Fee Schedule for Wire Transfers of Funds and Net Settlement Service.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board") has approved a reduction in the basic fee for originating or receiving a wire transfer of funds from $0.60 to $0.55.

EFFECTIVE DATE: December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Ellicott C. McEntee, Associate Director (202/452–2231) or Florence M. Young, Manager, Electronic Payments Section (202/452–3955), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452–3625) or Elaine M. Boutilier, Attorney (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Effective September 27, 1984, the fee for originating or receiving a wire transfer of funds was reduced $0.05 to a new basic fee of $0.60 per transfer. 49 FR 35886. At the same time, the Board approved assessing fixed monthly fees to all depository institutions having an electronic connection with the Federal Reserve for one or more priced services, beginning January 1985. 49 FR 36689.

When the reduction in the basic fee was approved, it was stated that if the Reserve Banks' estimates continued to show a net surplus for this service, the Board would consider a further reduction in the basic fee for originating or receiving a wire transfer of funds.

Based on the Reserve Banks' current estimates for the full year 1984, total costs, including the private sector adjustment factor ("PSAF"), are expected to be $57.1 million, and revenues are anticipated to be $62.4 million, resulting in a net revenue surplus of $5.3 million. The volume of basic funds transfers originated is expected to amount to 41.1 million. Accordingly, the Board has approved a reduction in the basic fee for originating or receiving a wire transfer of funds. All other elements of the current fee schedule remain unchanged.

The Reserve Banks' 1985 projections indicate that total costs, including the PSAF, will amount to $62.8 million. Based on the transaction fee of $0.55 and on income that will be allocated to the funds transfer and net settlement service from fixed monthly electronic connection fees, 1985 revenues are expected to amount to $63.0 million, resulting in a net revenue surplus of $200,000.

Accordingly, the Board has approved the following fee schedule for the wire transfer of funds and net settlement service:

Wire Transfer of Funds	
Basic transfer originated	$0.55
Basic transfer received	0.55
Off-line origination	5.50
Telephone advise	3.00

Net Settlement[1]	
Settlement entry	$1.30
Off-line settlement	8.00
Telephone advise	3.00

[1] In cases where net settlement arrangements result in higher operating costs than those incurred for standard arrangements, the Reserve Banks may establish higher fees.

By order of the Board of Governors of the Federal Reserve System, November 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30480 Filed 11-20-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0141]

Extra-Label Use of New Animal Drugs in Food-Producing Animals; Availability of a Revised Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revising the compliance policy guide entitled "Extra-Label Use of New Animal Drugs in Food-Producing Animals." This revision clarifies one of the criteria in the guide.

ADDRESS: The revised guide is available for public examination at, and comments and requests for single copies may be sent to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3336.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 17, 1984 (49 FR 20915), FDA announced the availability of the compliance policy guide entitled "Extra-Label Use of New Animal Drugs in Food-Producing Animals" prepared by FDA's Center for Veterinary Medicine (CVM).

The parenthetical information under criteria to be met and precautions to be observed in the previous guide caused some veterinarians to believe that FDA would not, in any circumstance, permit use of a drug in the species for which the drug is not approved. This was not intended by CVM. Therefore, the parenthetical information is being deleted.

The policy guide is available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (address above). In accordance with 21 CFR 10.85(d)(3) and (i), any person may submit written comments on the revised guide. Written comments should be sent to the Dockets Management Branch. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Although such comments will be considered if the guide is revised again in the future, the agency will not defer regulatory action pending any such revision.

Dated: November 15, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30467 Filed 11-20-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0294]

Radionics, Inc.; Premarket Approval Supplement for the Cosman ICP Tele-Sensor™ and Cosman ICP Tele-Monitor™ System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Radionics, Inc., Burlington, MA, for premarket approval, under the Medical Device Amendments of 1976, of the Cosman ICP Tele-Sensor™ and Cosman ICP Tele-Monitor™ System. The device is indicated for closed intraventricular pressure monitoring in patients 2 years of age and older in cases of brain tumors or brain tumor surgery where elevated intraventricular pressure is anticipated. Use of the device in patients under 2 years of age is investigational. After reviewing the recommendation of the Neurological Devices Panel (formerly the Neurological Device Section of the Respiratory and Nervous System Devices Panel), FDA notified the applicant that FDA notified the applicant that FDA approved the supplemental application because the applicant had shown the device to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by December 21, 1984.

ADDRESS: Written requests for copies of the summary of safety and effectiviness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzer, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7226.

SUPPLEMENTARY INFORMATION: On November 1, 1983, Radionics, Inc., Burlington, MA 01803, submitted to FDA a supplemental application for premarket approval of the Cosman ICP Tele-Sensor™ and Cosman ICP Tele-Monitor™ System. The device is an implanted intracranial pressure sensor and monitor. The device is indicated for closed intraventricular pressure monitoring in patients 2 years of age and older in cases of brain tumors or brain tumor surgery where elevated intraventricular pressure is anticipated. Use of the device in patients under 2 years of age is investigational. On February 24, 1984, the then Neurological Device Section of the Respiratory and Nervous System Devices Panel, an FDA advisory committe, reviewed and recommended approval of the supplemental application. (On April 24, 1984, the Neurological Device Section of the Respiratory and Nervous System Devices Panel was terminated. Concurrently, FDA established the Neurological Devices Panel (see 49 FR 17446; April 24, 1984).) On October 19, 1984, FDA approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA based its appproval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at the Center for Devices and Radiological Health—contact Robert F. Munzer (HFZ–430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this supplemental application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the supplemental application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 21, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 15, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30468 Filed 11-20-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fallon Paiute-Shoshone Indian Reservation, Nevada; Amendment to Federal Indian Liquor Laws

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Ordinance No. IX was duly adopted by the Fallon Business Council on May 9, 1984. Ordinance No. IX amends a previous ordinance adopted by the Fallon Business Council which was published on January 27, 1972, 37 FR 1253. The instant ordinance relates to the application of the federal Indian liquor laws within the areas of Indian country under the jurisdiction of the Fallon Paiute-Shoshone Tribes. It reads as follows:

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

Resolution No. 84–F–33

Whereas: The Fallon Business Council being a recognized governing body of the Constitution of the Fallon Paiute-Shoshone Tribe of which does exercise the privileges and powers of self-government to conserve and develop our resources for the social economic well being of our tribe; and

Whereas: The Fallon Business Council on July 12, 1983 did establish a board known as the Law & Order Committee of the Fallon Paiute-Shoshone Tribe whose primary duty is to review and if necessary to amend, revise, and update the Law and Order Codes of the Fallon Paiute-Shoshone Tribe; and

Whereas: The Law and Order Committee did review, amend, revise and update Ordinance IX of the Fallon Paiute-Shoshone Tribe known as the Liquor Ordinance; and

Whereas: The Law and Order Committee did bring before the Fallon Business Council such revised ordinance for approval; and

Whereas: The Fallon Business Council did approve and cause such revised ordinance to be posted publicly for a period of thirty days for comment; and

Whereas: At termination of the thirty days, no comment was received desirous of any change;

Therefore be it resolved: That the ordinance of the Law & Order Code, Title Nine, Liquor Ordinance, is hereby amended, revised, and updated as per attached.

Certification

At a duly held meeting of the governing body of the Fallon Paiute-Shoshone Tribe, consisting of 7 members of which 4 constitutes a quorum was present on this 9th day of May 1984, and voted 5 for, 0 against, 1 abstention in the adoption of the foregoing resolution by the powers invested in its Constitution and By-Laws.

Vicki Rosse,
Secretary/Treasurer, Fallon Business Council.

Recommended Approval:

Ray Albert,
Acting Superintendent.
Date: June 21, 1984

Fallon Paiute-Shoshone Tribe

An ordinance, pursuant to 18 U.S.C. 1161 (1966), amending Ordinance No. IX enacted on November 9, 1971 and published in the **Federal Register** on January 27, 1972, regulating the possession and sale of intoxicating beverages within the exterior boundaries of the Fallon Paiute-Shoshone Reservation and Colony, Nevada.

Be it enacted by the Business Council of the Fallon Reservation and Colony, Nevada, that the following provisions shall regulate and govern the possession and sale of introxicating beverages within the exterior boundaries of the Fallon Reservation and Colony:

Section 1. Purpose and Definitions

(a) Pursuant to 25 CFR 11.1(e) (1982), this ordinance pre-empts the provision of 25 CFR 11.55 (1982). This ordinance regulates and governs the sale and possession of intoxicating beverages within the exterior boundaries of the Fallon Reservation and Colony and the provisions of 25 CFR 11.55 (1982) do not apply.

(b) As used in this ordinance, "intoxicating beverages" means liquor, beer, wine, and every liquid containing one-half of one percent or more alcohol by volume and which is used for beverage purposes.

Section 2. Possession of Intoxicating Beverages

(a) The possession of intoxicating beverages by any person twenty-one (21) years of age or older shall be lawful within the exterior boundaries of the Fallon Reservation and Colony except as otherwise provided herein.

(b) It is unlawful for any person under the age of Twenty-one (21) years to purchase, possess, or consume intoxicating beverages.

Section 3. Furnishing Intoxicating Beverages Unlawful

(a) It is unlawful for any person to sell, deliver, give away, or otherwise furnish any intoxicating beverage to any person who is under the influence of intoxicating beverages.

(b) It is unlawful for any person to sell, deliver, give away, or otherwise furnish any intoxicating beverage to any person under the age of twenty-one (21) years, or to leave or deposit any intoxicating beverage in any place with the intent that the same shall be procured by any person under the age of twenty-one (21) years.

Section 4. Penalty Applicable to Unlawful Possession or Furnishing of Intoxicating Beverages

(a) Any Indian who violates any provision of section 2 or section 3 shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine of not more than $300.00, or by sentence to imprisonment for not more than 150 days, or both fine and imprisonment.

(b) Any non-Indian who violates any provision of section 2 or section 3 shall be referred to the State of Nevada and/or federal law enforcement authorities for prosecution under applicable law.

Section 5. Sale of Intoxicating Beverages

(a) It shall be lawful for any person twenty-one years of age or older to sell intoxicating beverages within the exterior boundaries of the Fallon Reservation and Colony, Nevada; *Provided*, that the person selling intoxicating beverages or the employer of the person selling intoxicating beverages has obtained a valid tribal liquor license issued by the Fallon Reservation-Colony Business Council, in addition to any other license which may be required.

(b) The tribal liquor license will authorize the holder thereof or an employee of the holder to sell intoxicating beverages at places specifically identified in the tribal liquor license. The tribal liquor license will also specifically authorize the holder thereof or an employee of the holder to sell intoxicating beverages in retail packages, by the drink for consumption on the premises, or both.

Section 6. Application Process for Tribal Liquor License

(a) All applications for a tribal liquor license must be submitted to the Fallon Reservation-Colony Business Council.

(b) If the application is denied, the decision of the Fallon Reservation-Colony Business Council may be appealed by the applicant to the Fallon Tribal Court. The applicant will have the burden of proving by clear and convincing evidence that the application was wrongfully denied.

(c) If the application is granted, a tribal liquor license will be issued by the Fallon Reservation-Colony Business Council after the payment of the required tribal liquor license fee. The tribal liquor license must set forth the name of the license holder, the location and description of the building, room, or other premises where sales of intoxicating beverages may be made, and whether sales may be made in retail packages, by the drink for consumption on the premises, or both.

(d) All required licenses must be displayed in a conspicuous place within the building, room, or other premises where intoxicating beverages are sold.

(e) The tribal liquor license will be issued for a period of one year.

(f) Once each year, through appropriate resolutions, the Fallon Reservation-Colony Business Council will determine what information is required in the tribal liquor license application and the amount of the tribal liquor license fee.

Section 7. Penalty Applicable to Sale of Intoxicating Beverages

(a) Any Indian who sells intoxicating beverages in violation of section 5 shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine of not more than $300.00, or by sentence to imprisonment for not more than 150 days, or both such fine and imprisonment.

(b) Any non-Indian who sells intoxicating beverages in violation of section 5 shall be referred to the State of Nevada and/or federal law enforcement authorities for prosecution under applicable law.

(c) If any holder or the employee of any holder of a tribal liquor license violates the provisions of section 2 or section 3, the tribal liquor license may be revoked by the Fallon Reservation-Colony Business Council.

(d) Any person whose license is revoked under this section shall have the right to appeal the decision of the Fallon Reservation-Colony Business Council to the Fallon Tribal Court. The former license holder will have the burden of proving by clear and convincing evidence that the license was wrongfully revoked.

[FR Doc. 84-30472 Filed 11-20-84; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[NM-58259]

Navajo Relocation Exchange Amended Notice; Dona Ana County, NM

Correction

In FR Doc. 84-28573 beginning on page 43594 in the issue of Tuesday, October 30, 1984, make the following corrections:

1. On page 43594, in the second column, the following line should be added as the first line of the "Roberts Rauch" description:

Township 21 North, Range 29 East, G&SRB&M

2. On the same page, in the third column, is the description for "Township 20", the following line should be added between the entries for "Sec. 6" and "Sec. 8":

Sec. 7, Lots 1,2,3,4, E½W½, E½;

3. On the same page and in the same column, the entry between "Sec. 18" and "Sec. 20" reading "Sec. 29", should read "Sec. 19".

BILLING CODE 1505-01-M

Richfield District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Richfield District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579 that a meeting of the Richfield District Grazing Advisory Board will be held December 20, 1984 at 9:00 A.M. in the BLM District Office, 150 East 900 North, Richfield, Utah 84701.

Agenda for the Board meeting will be:

1. Final ranking of Districts range projects.
2. Review of East Plut Allotment grazing problems.
3. Winter road maintenance problems.
4. Sheep trailing and potential footrot situation.
5. Winter grazing condition.
6. Arrange next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 P.M. and 2:00 P.M. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Summary minutes of the Board Meeting will be maintained in the District Office and will be available for public inspection and reproductions during regular business hours within 30 days following the meeting.

Donald L. Pendleton,
District Manager.
November 13, 1984.

[FR Doc. 84- Filed 30670-11-20-84; 8:45 am]
BILLING CODE 4310-DQ-M

Wyoming; Adoption of Final Environmental Impact Statement on Thermopolis-Alcova-Casper Transmission Line Project

November 13, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Adoption of Final Environmental Impact Statement for Thermopolis-Alcova-Casper Electrical Transmission Line Project.

SUMMARY: Pursuant to 1506.3 (a), (b), and (c) of the National Environmental Policy Act of 1969 and the Regulations for Implementing the Provisions of the National Environmental Policy Act 43 CFR Parts 1500-1508, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has adopted the final environmental impact statement for the purpose of constructing and maintaining 152 miles of new 230 kv of which 136 miles will be 230/345 kv line to replace two existing but deteriorating 69 kv lines as described in the FEIS prepared by the Department of Energy, Western Area Power Administration and released November 1984 (No. DOE/EIS 0101-F).

The final impact statement analyses the impacts that would result from the construction, operation, and maintenance of the Thermopolis-Alcova-Casper Transmission Line Project.

The comments made by the Bureau of Land Management (BLM) on the draft statement were adequately addressed in the final. No new issues were raised between the draft and the final, and a BLM evaluation of both the draft and final EIS concluded that the documents contents and analyses were adequate for adoption.

Adoption of the FEIS by BLM will be considered official 30 days after publication of this notice in the **Federal Register.** Any comments or exceptions which could affect the adoption should be forwarded to: State Director, Wyoming (934), P.O. Box 1828, Cheyenne, Wyoming 82003, within the 30-day period.

Hillary A. Oden,
State Director, Wyoming.

[FR Doc. 84-30469 Filed 11-20-84; 8:45 am]
BILLING CODE 4310-22-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 299 Federal Unit Agreement No. 14-08-0001-8850, submitted on November 8, 1984, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Main Pass Block 299 Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m. 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 14, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico Region.

[FR Doc. 84-30528 Filed 11-20-84; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Availability of Draft Comprehensive Environmental Impact Statement and Public Hearing on Permitting Under the Tennessee Federal Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of draft comprehensive environmental impact statement and public hearing.

SUMMARY: The Office of Surface Mining (OSM) is making available for public review and comment a draft environmental impact statement (EIS) on permitting under the Tennessee Federal Program. This EIS has been prepared to analyze comprehensive impacts to the human environment that would result from decisions by OSM on individual permit applications for surface coal mining operations under the Federal regulatory program for Tennessee. A public hearing will be held to obtain comments on this draft EIS. All interested parties are invited to attend this hearing to give their comments.

DATES: *Comment period:* The comment period for the draft EIS will extend until 5:00 p.m. (eastern time) on January 18, 1985.

Public hearing: A public hearing on the draft EIS will be held on January 8, 1985, at 7:00 p.m., in Knoxville, Tennessee.

ADDRESSES: *Written Comments:* Hand deliver or mail to the Office of Surface Mining, U.S. Department of the Interior, Division of Permit and Environmental Analysis, Room 134, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public hearing: Tennessee Ballroom, Holiday Inn, World's Fair, 525 Henley Street, Knoxville, Tennessee 37902.

Availability of copies: Copies of the draft EIS are available at the following OSM offices:

Office of Surface Mining, U.S. Department of the Interior, Room 134, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, (telephone: 202-343-5854).

Knoxville Field Office, Office of Surface Mining, U.S. Department of the Interior, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Dr. Mark A. Boster, Office of Surface Mining, Room 134, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240, (telephone: 202-343-5854).

SUPPLEMENTARY INFORMATION: *Written comments:* Written comments should be as specific as possible. OSM appreciates all comments, but those most useful and likely to influence decisions in the preparation of the final EIS are those that provide facts and analyses to support any recommendations or conclusions. OSM cannot assure that written comments received after the time indicated under **DATES** or at locations other than that in Washington, D.C., indicated under **ADDRESSES**, Will be considered or included in the preparation of the final EIS.

Public hearings: Filing of written statements by commenters at the time of the hearing is requested and will greatly assist the transcribers. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons who are present in the audience and wish to comment have been heard.

Background

In accordance with the provisions of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (SMCRA), OSM implemented, on October 1, 1984, a Federal program for the regulation of surface coal mining operations in the State of Tennessee. The purpose of this EIS is to analyze the cumulative impacts of decisions by OSM on permit applications for coal mining under this Federal program for Tennessee. The analysis provides compliance with the National Environmental Policy Act of 1969 (NEPA) for decisions on permit applications for existing and proposed operations in Tennessee. In addition, this EIS will form the basis for NEPA compliance for future decisions on permit applications.

Alternatives

The decisions available to OSM with regard to individual mining and reclamation permit applications are approval of the application, approval with conditions to meet the requirements of SMCRA, disapproval of the permit, and no action. The no action decision is not available to OSM as an alternative, because the Secretary is required to make decisions on all applications.

OSM has evaluated a range of permitting alternatives to estimate annual acreage disturbed in Tennessee, and by this means has estimated the resulting cumulative impacts of individual permitting decisions. For the purpose of the cumulative impacts analysis, it has been estimated that OSM would be able to make the necessary findings for nearly 100 percent of all pending and new applications for mining permits. In addition, a lower range of permit approvals that result in 70 percent of current annual disturbance and an upper range of 130 percent have been analyzed.

Dated: November 15, 1984.

Drent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 84-30494 Filed 11-20-84; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Senior Executive Service; Performance Review Board; Members

October 29, 1984.

On or about October 29, 1984, the following persons will be added as members to the Performance Review Board:

Julius W. Becton
Walter H. Bollinger
Joan Dudik-Gayoso
Duff G. Gillespie

Jan Barrow,

Executive Secretary, Performance Review Board, Agency for International Development.

[FR Doc. 84-30530 Filed 11-20-84; 8:45 am]

BILLING CODE 8116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with the investigation of processed mushrooms (Inv. No. 332-84) pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), in accordance with a request by the President on March 10, 1977, and amplified by the Office of the United States Trade Representative in a letter of March 30, 1977.

Summary of Proposals

(1) Number of forms submitted: One.

(2) Title of form: Processed Mushrooms—Quarterly Report on Production, Sales, and Inventories.

(3) Type of request: Extension of expiration date.

(4) Frequency of use: Quarterly.

(5) Description of respondents: U.S. mushroom processors.

(6) Estimated number of respondents: 40.

(7) Estimated total number of hours to complete the forms: 40 per quarter.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Tim McCarty, USITC (tel. no. 202-724-1753). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to William Fry, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Issued: November 14, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 30517 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-223 (Preliminary)

Agricultural Tillage Tools From Brazil

Determination

On the basis of the record [1] developed in investigation No. 701-TA-223 (Preliminary), the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Brazil of agricultural tillage tools, provided for in item 666.00 of the Tariff Schedules of the United States, which are alleged to be subsized by the Government of Brazil.

Background

On September 28, 1984, a petition was filed with the Commission and the Department of Commerce by Ingersoll Products Corp. of Chicago, IL, Empire Plow Co. of Cleveland, OH, and Nichols Tillage Tools of Sterling, CO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of agricultural tillage tools from Brazil. Accordingly, effective September 28, 1984, the Commission instituted preliminary countervailing duty investigation No. 701-TA-223 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 15, 1984 (49 FR 40231). A public conference was held in Washington, DC, on October 25, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on November 13, 1984. A public version of the Commission's report, *Agricultural Tillage Tools from Brazil* (investigation No. 701-TA-223 (Preliminary), USITC Publication 1609, November 1984) contains the views of the Commission and information developed during the investigation.

Issued: November 13, 1984.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30521 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-206 (Preliminary)]

Fabric and Expanded Neoprene Laminate From Japan

Determination

On the basis of the record [1] developed in investigation No. 731-TA-206 (Preliminary), the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of fabric and expanded neoprene lamiante (except for fabric and expanded neoprene laminate containing metallic oxides), provided for in items 355.81, 355.82, 359.50, and 359.60 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 28, 1984, a petition was filed with the Commission and the Department of Commerce by Rubatex Corp., Bedford, VA, alleging that an industry in the United States is materially injured by reason of LTFV imports of fabric and expanded neoprene laminate from Japan. Accordingly, effective September 28, 1984, the Commission instituted

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Stern and Vice Chairman Liebeler dissenting.

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern determines as follows:

(1) There is reasonable indication of material injury to a domestic industry consisting of production of petitoner's grade R-1400-N fabric and expanded neoprene laminate and any other comparable domestically produced material in thicknesses of 1/8 inch or greater;

(2) There is reasonable indication of material retardation of a domestic industry consisting of petitioner's grade R-131-N fabric and expanded neoprene laminate and any other comparable domestically produced material in thicknesses of 1/8 inch or greater; and

(3) There is no reasonable indication of material injury, threat thereof, or material retardation regarding domestic industries consisting of production most similar in characteristics and uses to fabric and expanded neoprene laminate in thicknesses less than 1/8 inch and to fabric and expanded neoprene laminate containing metallic oxides.

preliminary antidumping investigation No. 731-TA-206 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 11, 1984 (49 FR 39924). A public conference was held in Washington, DC, on October 22, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determiation in this investigation to the Secretary of Commerce on November 13, 1984. The views of the Commission are contained in USITC Publication 1608 (November 1984), entitled "Investigation No. 731-TA-206 (Preliminary), Fabric and Expanded Neoprene Laminate from Japan."

By Order of the Commission.

Issued: November 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30519 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-179]

Certain Spherical Roller Bearings and Components Thereof; Commission Decision not to Review Initial Determination of no Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination.

SUMMARY: Notice is hereby given that the Commission has determined not to review an initial determination (ID) that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation based on a finding that the patent in controversy, U.S. Letters Patent 3,996,753 ('753 patent) is invalid for failure to meet the requirements of 35 U.S.C. 112.

FOR FURTHER INFORMATION CONTACT: Frank J Schuchat, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-1625.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53-210.56 of the Commission's Rules of Practice and Procedure. (19 CFR 210.53-210.56).

The Commission instituted this investigation in response to a complaint filed by SKF Industries Inc. (SKF), King of Prussia, Pennsylvania, seeking an investigation to determine whether there is a violation of section 337 in the importation of certain spherical roller bearings and components thereof, into the United States, or in their sale, by reason of alleged infringement of claims 1-4, 11, 12, 16, 17, 19-23, 25, 26, 28, or 29 of the '753 patent. Complainant SKF alleged that the effect or tendency of the unfair acts was to destroy or substantially injure an industry, efficiently and economically operated, in the United States. SKF requested issuance of a permanent exclusion order an a permanent cease and desist order.

Two firms were named as respondents: (1) FAG Bearings Corporation, Stamford, Connecticut, and (2) FAG Kugelfischer George Schafer & Co., Schweinfurt, Federal Republic of Germany. A notice of investigation was issued and published in the **Federal Register** of January 11, 1984. (49 FR 1433-34).

A hearing was held before the presiding officer from July 31, 1984 to August 10, 1984. Appearances were made by counsel for SKF and counsel for respondents and by the Commission investigative attorney.

On October 12, 1984, the presiding officer issued an ID that there is no violation of section 337 in the importation or sale of the spherical roller bearings under investigation. Specifically, the presiding officer found the '753 patent is invalid under 35 U.S.C. 112.

Complainant SKF filed a petition for review of the presiding officer's determination on October 2, 1984. On that same date, respondents filed a contingent petition for review. No other petitions or agency comments were received.

Copies of the public version of the ID and all other nonconfidential documents in the record of this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone (202) 523-0161.

By Order of the Commission.

Issued by: November 15, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30525 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

[332-201]

Conditions of Competition Affecting the U.S. Gulf and South Atlantic Shrimp Industry

AGENCY: International Trade Commission.

ACTION: At the request of the United States Trade Representative (USTR), the Commission has instituted investigation No. 332-201 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of gathering and presenting information on the competitive and economic factors affecting the performance of the U.S. Gulf and South Atlantic shrimp industry.

EFFECTIVE DATE: November 8, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Newman, Mr. Roger Corey, or Ms. Rose Steller, Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission , Washington, D.C. 20436, telephone 202-724-0087, 202-724-1759, or 202-724-2862, respectively.

Background

The USTR requested on October 5, 1984, that the Commission investigate the competitive conditions affecting the performance of the U.S. Gulf and South Atlantic shrimp industry. The USTR specified that the investigation cover warm water white, pink, and brown shrimp in the common product forms of fresh, chilled, frozen, and prepared or preserved. To the extent possible, the study will provide information on the structure of the U.S. Gulf and South Atlantic shrimp industry and markets; a comparison of the costs of production of shrimp in the United States and major foreign supplying countries; a comparison of transportation costs for domestic and imported shrimp to major U.S. markets; a comparison of marketing practices of U.S. and foreign suppliers; levels and tends of U.S. shrimp consumption, production, and trade; shrimp prices; and U.S. and foreign governmment involvement in shrimp industries; and barriers to trade in shrimp. Further, the Commission has been asked to examine the development of shrimp aquaculture and surimi-based imitation-shrimp products in the United States and foreign countries.

Public Hearing

A public hearing in connection with the investigation will be held beginning on March 21, 1985, in New Orleans, LA at a time and place to be announced. All interested persons shall have the right to appear by counsel or in person, to present information and to be heard.

Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission., 701 E Street NW., Washington, D.C. 20436, not later than noon, March 14, 1985.

Written Submissions

In lieu of, or in addition to, appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules or practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but not later than March 7, 1985. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By Order of the Commission.

Issued: November 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30516 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-205 (Preliminary)]

Carbon Steel Wire Rod From the German Democratic Republic

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from the German Democratic Republic of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 26, 1984, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of Atlantic Steel Co., Continental Steel Co., Georgetown Steel Corp., North Star Steel Co.-Texas, and Raritan River Steel Co., alleging that imports of carbon steel wire rod from the German Demoratic Republic are being sold at LTFV. Accordingly, effective September 26, 1984, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 3, 1984 (49 FR 39113). The conference was held in Washington, DC, on October 19, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on September 13, 1984. A public version of the Commission's report, Carbon Steel Wire Rod from the German Democratic Republic (investigation No. 731-TA-205 (Preliminary), USITC Publication 1607, November 1984) contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: November 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30520 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler and Commissioner Lodwick determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports.

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: C.O.M.B. Company.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 13, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By Order of the Commission.

Issued: November 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30518 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28640 (Sub-9)[1]]

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.; Reorganization; Acquisition by Grand Trunk Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Application and petition accepted.

SUMMARY: The Commission is accepting for consideration the submission by Chicago and North Western Transportation Company (CNW) in support of its amendments to its application filed under section 5(b) of the Milwaukee Railroad Restructuring Act, 45 U.S.C. 904(b) (MRR) and the reorganization plan filed under section 77 of the Bankruptcy Act to acquire and operate the core assets of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW). The Commission also is accepting the petition, filed by the MILW trustee, for modification of the plan of reorganization approved by the Commission.

DATES: In a decision served November 13, 1984, and published at 49 FR 45277, November 15, 1984, the Commission established a procedural schedule applicable to this proceeding.

ADDRESSES: Appropriate addresses were also listed in the decision served November 13, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245

or

Joseph C. Levin, (202) 275-7936

SUPPLEMENTARY INFORMATION: On November 7, 1984, CNW filed its submission in support of amendments to its reorganization plan and its MRR application to acquire and operate MILW's core assets. The submission was filed pursuant to Order No. 782 of the Reorganization Court, which referred the matter to the Commission for its review and recommendation. The material submitted is in compliance, and is sufficient to permit us to undertake the review contemplated by that Order. Accordingly, CNW's submission is accepted for consideration. As required by Order No. 782, the CNW's modified proposal will be reviewed by the Commission and also will be evaluated by the Commission in light of the proposal of the Soo Line Railroad Company as filed or modified.

We also are accepting for consideration the petition, filed by the trustee of the MILW pursuant to the above court order for modification of the plan of reorganization approved in our decision served September 26, 1984.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The submission by CNW and the Trustee of MILW are accepted for consideration.

2. This decision is effective on November 21, 1984.

Decided: November 14, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Gradison did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-30491 Filed 11-20-84; 8:45 am]

BILLING CODE 7035-01-M

[1] Embraces Finance Docket No. 28640 (Sub-No. 9 A-E, K-N, and P-BB), MC-F-15251, and MC-F-15231 (Sub-Nos. 1 and 2).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances; Revised 1984 Aggregate Production Quota for Fentanyl

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Revision of the 1984 aggregate production quota for fentanyl.

SUMMARY: This notice revises the aggregate production quota for fentanyl.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. Code, Section 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

On February 1, 1984, a notice of the final aggregate production quota for fentanyl was published in the Federal Register (49 FR 4051). Since the finalization of this quota, DEA has been advised by the bulk manufacturer of fentanyl that additional production of this substance will be necessary in 1984. This increase is required in order to supply an additional amount of fentanyl to the dosage form manufacturer who has made DEA aware of increased domestic sales in 1984 relative to 1983. In addition, this increase is necessary to provide sufficient amounts of material for the product introduction of a new dosage form manufacturer, for research and for quality assurance samples by the bulk manufacturer. In order to allow additional production in 1984, the aggregate production quota must be revised.

On November 6, 1984, the Administrator received from the bulk manufacturer of fentanyl a request that they be granted, pursuant to 21 CFR 1307.03, an emergency exception to the proposed publication, notice and comment requirements of 21 CFR 1303.13(c). This exception is required because normal notice and comment procedures cannot be completed in sufficient time to permit the manufacturer to satisfy these legitimate medical needs in 1984. The Administrator is satisfied that the exception requested is warranted and in the public interest. Accordingly, the requirements of 21 CFR 1303.13(c) are suspended with respect to this quota adjustment. Request to be well reasoned and thus the rules of § 1303.13(c) are suspended with respect to this quota adjustment.

Therefore, the Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, Section 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby orders that the 1984 aggregate production quota for fentanyl, expressed in grams of anhydrous base be established as follows:

Basic class	Previously finalized 1984 aggregate	Established revised 1984 aggregate
Fentanyl	11,000	4,210

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

This order is effective upon publication.

Dated: November 15, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-30561 Filed 11-20-84; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Federal Coordinating Council an Juvenile Justice and Delinquency Prevention; Meeting

The third quarterly meeting of the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, D.C., on December 13, 1984. The meeting will take place at ACTION, Room 522, 806 Connecticut Avenue, N.W., from 9:00 a.m. to 12 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the federal effort in the area of juvenile justice and delinquency prevention.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (202) 724-7655.

Dated: November 15, 1984.

Approved:

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 84-30463 Filed 11-20-84; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-89]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on the Commerical Use of Space.

DATE AND TIME: December 10, 1984, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue SW, Room 7002, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Carl R. Praktish, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Task Force on the Commercial Use of Space was established under the NASA Advisory Council to counsel NASA on the development of the appropriate policies, programs, and research priorities to foster the commercial use of space and on the conduct of those programs. The Task Force, chaired by Thomas A. Vanderslice, has a total of 11 members.

The meeting will be closed to the public from 3 p.m. to 5 p.m. on December 10, 1984, for a discussion of qualifications of candidates to participate in the Task Force as additional members. Because this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), has been determined that this session should be closed to the public.

For the open session, visitors will be admitted to the meeting room up to its capacity, which is approximately 50 persons, including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open—except for the closed sessions as noted in the following agenda.

Agenda

December 10, 1984

9 a.m.—Introduction
9:15 a.m.—National Policy and NASA Objectives
10:30 a.m.—Current Views on Commercial Opportunities
1:30 p.m.—The Opportunities to Work in Space
3 p.m.—Planning Session (closed)
5 p.m.—Adjourn

Richard L. Daniels

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

November 15, 1984.

[FR Doc. 84-30471 Filed 11-20-84; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-441]

Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 2); Issuance of Director's Decision Under 10 CFR 2.206 (DD-84-23)

Notice is hereby given that the Deputy Director, Office of Inspection and Enforcement, has denied a petition under 10 CFR 2.206 filed by Susan L. Hiatt, on behalf of Ohio Citizens for Responsible Energy (OCRE). In its petition, OCRE requested that the Director, Office of Inspection and Enforcement, order the Cleveland Electric Illuminating Company (CEI) to show cause why the construction permit for Perry Unit 2 should not be revoked or suspended. The bases for this request are OCRE's assertions that: (1) CEI's apparent abandonment of construction of the facility constitutes grounds for revocation or suspension of the construction permit and (2) CEI's silence to the Commission on the matter of the completion of the facility and its statements to the Regional Administrator that corrective actions will be completed on Unit 2 within the year, in spite of its public statements that no work is being done or money is being expended on the facility, raises the question of whether CEI has made a material false statement which would constitute grounds for revocation of its construction permit.

Upon consideration of the petitioner's request, the staff has determined that no adequate basis exists to suspend or revoke the construction permit. The reasons for the denial of OCRE's petition are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date, which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555, and in the local public document room for Perry Nuclear Power Plant located at Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland this 15th day of November 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 84-30548 Filed 11-20-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-276]

Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License; Georgia Institute of Technology

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of Orders authorizing the Georgia Institute of Technology (licensee) to dismantle and dispose of the component parts of the AGN 201 research and training reactor in their possession, and terminating Facility Operating License No. R-111 in accordance with the licensee's application dated September 26, 1984.

The first of these Orders would be issued following the Commission's

review and approval of the licensee's plan for disposition of the reactor components and decontamination of the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By December 21, 1984, the licensee may file a request for a hearing with respect to issuance of either or both of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any Order which may be entered on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the actions under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. When petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas: (petitioner's name and telephone number); (date petition was mailed); (Georgia Institute of Technology) and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Michael Drew, Legal Division, Office of Contract Administration, Georgia Institute of Technology, Atlanta, Georgia 30332.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated September 26, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Maryland, this 13th day of November, 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 84-30540 Filed 11-20-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Hope Creek Generating Station Unit 1; Location Change

The ACRS Subcommittee on Hope Creek Generating Station Unit 1 scheduled at the Hilton of Philadelphia has been changed to the *Sheraton University City, 36th & Chestnut Street, Philadelphia, PA for November 28 and 29, 1984.* Notice of this meeting was published Friday, November 9, 1984 (49 FR 44832).

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, November 28, 1984—2:00 p.m. until the conclusion of business

Thursday, November 29, 1984—8:30 a.m. until the conclusion of business

The Subcommittee will review the operating license application of the Public Service Electric and Gas Company for the Hope Creek Generating Station.

Oral statements may be presented by members of the public with concurence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Public Service Electric and Gas Company, NRC Staff, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Medhat M. El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 15, 1984.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 84-30551 Filed 11-20-84; 8:45 am]

BILLING CODE 7590-01-M

Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This monthly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on October 24, 1984 (49 FR 42814) through November 13, 1984.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By December 21, 1984 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene becomes parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held

would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, providing that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commissioner's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: November 2, 1984.

Description of amendments request: The amendments would modify the Technical Specifications to delete the 8-hour day but maintain the nominal 40-hour work week from Section 6, Administrative Controls.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The example which the licensee stated the proposed amendments fit is: "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature," We agree. The Technical Specification change under consideration (6.2.2.f.) requires development of administrative procedures to limit working hours of unit staff who perform safety related functions. The objective is to be met by reducting the consecutive days worked from seven to five, increasing the consecutive days off, and increasing the days off per five week shift rotation. Our preliminary evaluation indicates that this action which is administrative in nature will also enhance plant safety.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Esquire, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Arkansas Power and Light Company, Dockets Nos. 50–313 and 50–368, Arkansas Nuclear One, Units Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: March 16, 1984, supplemented by letter dated August 22, 1984.

Description of amendment request: The request dated August 22, 1984, revises the request for amendment dated March 16, 1984, which was noticed on May 23, 1984 (49 FR 21825). The proposed changes, as revised by the August 22, 1984 request, would modify the Technical Specifications in response to the Commission's Generic Letter 83–37 dated November 1, 1983, concerning Technical Specifications related to implemented TMI Action Plan Items. The proposed changes, as revised, would add Technical Specification Limiting Conditions for Operation and Surveillance Requirements for:

(1) The reactor coolant system vents in accordance with 10 CFR 50.44(c)(3)(iii) which superseded TMI Action Plan Item II.b.I;

(2) The post-accident sampling system in accordance with TMI Action Plan Item II.B.3;

(3) The post-accident effluent monitors for radioactive iodine and particulate sampling in accordance with TMI Action Plan Item II.F.1.2;

(4) The containment high range monitors in accordance with TMI Action Plan Item II.F.1.3;

(5) The containment pressure monitors in accordance with TMI Action Plan Item II.F.1.4;

(6) The containment water level monitor in accordance with TMI Action Plan Item II.F.1.5; and

(7) The containment hydrogen monitor in accordance with TMI Action Plan Item II.F.1.6.

In addition, the proposed changes, as revised, would modify the Technical Specifications in response to the Commission's Generic Letter 82–16 dated September 20, 1982, related to implemented TMI Action Plan Items. However, the changes proposed by the March 16, 1984 request concerning the Technical Specifications regarding limitation of overtime by plant staff performing safety related functions in accordance with TMI Action Plan Item I.A.1.3. was not modified by the request dated August 22, 1984, and therefore that part of the notice issued in 49 FR 21825 is unchanged.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change that constituties an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications impose additional limitations, restrictions and controls and therefore fall within this example.

Therefore, since the application for amendments involves proposed changes that are similar to the example for which no significant hazards considerations exists, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicoholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, DC 20036.

NRC Branch Chiefs: John F. Stolz, James R. Miller.

Arkansas Power and Light Company, Dockets Nos. 50–313 and 50–368, Arkansas Nuclear One, Units Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: October 16, 1984.

Description of amendment request: The amendment would add Technical Specifications which would require that keys to key operated handswitches for the containment purge valves for Arkansas Nuclear One, Units Nos. 1 & 2, be removed when the purge valves are required to be closed. This would prevent inadvertent opening of the ANO–1 & 2 containment purge valves during operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, on control not presently included in the Technical Specifications. The proposed Technical Specification modifications impose additional limitations, restrictions and controls and, therefore, fall within this example. Therefore, since the application for amendments involves proposed changes that are similar to the example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, DC 20036.

NRC Branch Chief: John F. Stolz, James R. Miller.

Carolina Power & Light Company, Docket Nos. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: September 28, 1984.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Tables 3.3.5.2–1 and 4.3.5.2.–1 and TS 3/4.6.6.4 to reflect requirements for the drywell/suppression chamber hydrogen and oxygen analyzers issued as Brunswick-2 Amendment No. 99 on August 13, 1984.

The proposed Technical Specification changes would delete item, 7, drywell oxygen concentration, and renumber items 8, 9 and 10 in TS Tables 3.3.5.2–1 and 4.3.5.2–1. The drywell oxygen concentration indication on the remote shutdown panel has been removed as part of the replacement of the existing drywell hydrogen/oxygen monitoring system with a new wide-range monitoring system. The new wide-range monitoring system was approved for Unit 1 in Amendment No. 63 dated December 28, 1983. It was also included in a staff review dated July 30, 1984 of TMI Item II.F.1.6, Containment Hydrogen Monitor. The proposed changes also revise TS 4.6.6.4 by incorporating the increased calibration gas sample ranges necessary due to the increased measurement range of the new hydrogen and oxygen monitoring system and by incorporating revised instrument tag numbers.

The changes proposed are consistent with both the existing Brunswick-1 Technical Specifications and the BWR–4 Standard Technical Specifications guidance. Similar Technical Specification changes were issued as Amendment No. 63 for Burnswick-1 on December 28, 1983. This action was noticed for both units on August 22, 1983 (48 FR 38118), but was not issued for Unit 2 since the modifications were not complete for Unit 2 at that time. The licensee has now completed the modification for Unit 2 and has requested the appropriate Technical Specification changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples involving no significant hazards consideration include: "(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature;" and, "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement."

The deletion of item 7 and renumbering of items 8, 9 and 10 in Table 3.3.5.2–1 and 4.3.5.2–1, the removal of the oxygen concentration indication which was replaced by the new values in the wide-range monitoring system, and the changes in instrument tag numbers are encompassed by example (i) above in that the changes would be administrative changes to achieve consistency between the Technical Specifications and the revised physical configuration of the nuclear power plant. The balance of the changes to the Technical Specifications called for by the amendment request, namely the changes in gas sample ranges, constitute additional limitations and are therefore encompassed by example (ii) above since they would add limitations and restrictions not presently included in the Technical Specifications.

Therefore, since the application for amendment involves proposed changes that are similar to the example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: October 2, 1984.

Description of amendment request: The proposed amendment would change Table 4.3.5.9–1 to remove the requirement for control room alarm annunciation when the noble gas activity monitors of the main stack monitoring system, the reactor building ventilation monitoring system, or the turbine building ventilation monitoring system experience a high-voltage circuit failure. In addition, the requirement for control room alarm annunciation is removed for the condition when the noble gas activity monitor of the reactor

building ventilation system is not set in the "operate mode." These changes reflect the actual design features of the monitors and should have been reflected in Amendment Nos. 62 and 88 which were issued on December 27, 1983. These features are usually included in new facilities and are therefore included in the Standard Technical Specifications. The fact that these features were not present in the Brunswick facilities was inadvertently overlooked in the review of Amendment Nos. 62 and 88.

Although control room alarm annunciation for high-voltage low circuit failure does not exist for these systems, adequate means are available and are currently being employed to ensure operability of the monitors. The reactor building ventilation monitoring system is equipped with monitors manufactured by Nuclear Measurements Corporation (NMC). The design of the NMC monitors does not provide an alarm function for high-voltage low conditions. If such a condition were to exist, the affected monitor would indicate a significant reduction in the count rate. Such a reduction would be obvious to personnel performing the required once per shift channel functional test and to personnel who verify instrument operability on a weekly basis. A complete loss of high voltage will cause a sufficient loss of counts to initiate a downscale/inoperative annunciation. In addition, the NMC monitors are not equipped with an operate mode switch that is capable of providing annunication. However, as mentioned above, the channel checks which are performed once per shift ensure timely verification of the monitor's operability. There are also administrative controls which require independent verification of instrument operability prior to returning a monitor to service following repair or routine maintenance.

General Atomic Wide Range Gas Monitors are used for the main stack monitoring system and the turbine building ventilation monitoring system. These monitors do not provide an alarm function for high-voltage low conditions. However, two built-in self test functions (a loss of counts test and a check source test) provide indirect monitoring of high-voltage performance. A complete high-voltage failure will result in a loss of counts which will trigger the downscale/inoperative annunciation. Decreasing high-voltage will result in failure of the check source test which also generates downscale/inoperative annunciation. These tests are performed automatically at five minute and 24 hour intervals, respectively, and ensure proper high-voltage operation.

Basis for proposed no significant hazards consideration determination: Based on the above information we conclude that there are adequate alternative means available to ensure operability of the monitors. Therefore, (1) operation of the facility in accord with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) during our review we could find no way that operation as proposed could create the possibility of a new or different kind of accident from any accident previously evaluated; (3) the above information, the other means to assure operability of the monitors, indicates that operation of the facility would not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power and Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of amendment request: July 17, 1984.

Description of amendment request: This amendment would revise the Technical Specifications to allow use of Integrated Leak Rate Test (ILRT) duration criteria contained in ANSI N45.4-1972.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards considerations by providing certain examples published in the Federal Register on April 6, 1983 (48 FR 14864). One of the examples of an amendment which will likely be found to involve no significant hazards considerations is (vii)—a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The amendment request matches example vii because the change in test duration for containment integrated leak rate measurements is being accomplished according to section 7.6 of ANSI N45.4-1972. The use of ANSI N45.4-1972 is required by 10 CFR Part 50 Appendix J, therefore, the minor changes are clearly in keeping with the regulations.

Therefore, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois

Date of amendment request: September 27, 1984.

Description of amendment request: The proposed amendment would change the Technical Specifications for the reactor scram system. The changes would provide new limiting conditions for operation and surveillance requirements for a newly modified scram system having improved reliability. The modifications were implemented per an NRC Order issued on June 24, 1983. The proposed changes to the Technical Specifications are based upon the licensee's final design of its scram system and its review of model technical specifications provided as guidance by the NRC staff.

Basis for proposed no significant hazards consideration determination: The licensee submittal of September 27, 1984 contained an evaluation of the proposed action, and a basis for a proposed no significant hazards consideration determination, as follows: Subsequent to a failure of 76 of 185 control rods to fully insert at Browns Ferry Unit 3 in response to a manual scram signal, the Commission had embarked on an indepth review of the BWR control rod drive system which identified a number of design issues requiring both short and long term corrective measures. On October 1, 1980 letters were sent to all BWR licensees requesting commitments to reevaluate the present scram system and modifying it as necessary to meet both the design and performance criteria as developed by the BWR Owners Subgroup. Accordingly, a confirmatory order was written June 24, 1983 for Dresden Unit 2 regarding a schedule for implementation of the long term corrective actions. That Confirmatory Order also provided model technical specification changes. Based on Commonwealth Edison's final design and upon a review of the model technical specifications, Commonwealth Edison is proposing a number of changes to Appendix A of the Technical Specification for Dresden Unit 2 in accordance with the forementioned Confirmatory Order.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing specific examples. The examples of actions involving no significant hazards consideration include: (ii) Changes that constitute an additional limitation or restriction or control not presently within the technical specification e.g., a more stringent surveillance requirement.

The changes proposed in this application for amendment are encompassed by this example because of the additional limitations and restrictions that will be added by this Technical Specification amendment.

Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, Commonwealth Edison has made a proposed determination that the application involves no significant hazards considerations.

The staff has reviewed the licensee's significant hazards consideration determination and, based on this review, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Attorney for licensee: Robert A. Fitzgibbons, Jr., Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: John A. Zwolinski.

Commonwealth Edison Company, Docket No. 20-237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois

Date of amendment request: September 28, 1984.

Description of amendment request: The amendment would change the calibration and functional test frequencies for certain specific instruments that are being modified into analog trip systems. These modifications are being made to achieve full compliance with the requirements of 10 CFR 50.49 (Environmental Qualification of Electrical Equipment).

Basis for proposed no significant hazards consideration determination: The licensee has evaluated the proposed Technical Specification change and has determined that the change does not represent a significant hazards consideration. The licensee's proposed determination is based on the following considerations.

The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The examples of actions likely to involve no significant hazards consideration include: (vi) A change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the changes are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculation model or design method.

The licensee's proposed amendement would change the calibration and functional test frequencies for certain specific instruments that are being modified into analog trip systems. The use of analog trip units, and the acceptable intervals for their calibration and testing, has been reviewed and accepted by the NRC in their review and acceptance of General Electrical Topical Report NEDO-21617-A, "Analog Transmitter/Trip Units Systems for Engineered Safeguard Sensor Trip Inputs," dated December 1978. The analog sensor transmitter channel calibration interval is less stringent than the current requirements on the existing equipment, but the proposed calibration interval falls within the interval specified in the approved Topical Report for this equipment, and is consistent with the Standard Technical Specifications as endorsed, and is consistent with the Standard Technical Specifications as endorsed by Chapter 16 of the Standard Review plan. This calibration frequency has been found acceptable by the staff and approved, in letter dated August 2, 1984, for use at a similar unit, Quad Cities Unit No. 1. Since the requested amendment is encompassed by the example (vi) of the guidance for which no significant hazards consideration is likely to exist, the licensee has made a proposed determination that the proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and, based on this review, the staff has made a proposed determination that the proposed application for amendment involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: John A. Zwolinski.

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois.

Date of amendment request: October 2, 1984.

Description of amendment request: The submittal requests changes in Section 5.2 of the Dresden Unit 2 Technical Specifications to allow for the use of General Electric (GE) hybrid design hafnium control rod assemblies. These assemblies will be used to replace standard control rod assemblies during the current Unit 2 refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determininig whether a significant hazards consideration exists [10 CFR 50.92(c)]. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the proposed amendment and the related topical report. The licensee concludes that the proposed amendment does not involve a significant hazards consideration and based on the following discussion the staff concurs with this conclusion.

The Hybrid I Control Rod (HICR) Assembly has been designed by GE to be used as a direct replacement for the

present control rod assemblies. The description of these control rods was submitted to the NRC by GE in topical report NEDE–22290. The staff's safety evaluation of the report was based on information provided in (a) NEDE–22290, (b) a meeting with GE representatives; and (c) responses to NRC staff questions and concluded that there is reasonable assurance that the substitution of Type I HICRs for other approved GE control blades will not result in unacceptable hazards to the public and should, in fact, result in improved control blade performance and a positive contribution to reactor safety. Therefore, NEDE–22290, as amended to incorporate this safety evaluation, is approved as a referential document for the GE Type I HICR by NRC letter dated August 22, 1983.

The staff had determined that: (1) The nuclear and mechanical properties of the HICR do not differ from currently used assemblies in a significant way; (2) the possiblity of an accident different from those analyzed in the FSAR would not result from these changes because, in addition to the above, these systems would not be operated in a manner new or different from that described in the FSAR; and (3) the margin of safety as analyzed in Technical Specifications would not be reduced because the proposed amendment involves no significant relaxation of the criteria used to establish safety limits, no significant relaxation of the bases for limiting safety system settings, and no significant relaxation in limiting conditions for operation. Therefore, the staff finds that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Attorney for licensee: Robert G. Fitzgibbons, Jr., Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: John A. Zwolinski.

Commonwealth Edison Company, Docket Nos. 50–373 & 50–374, La Salle County Station, Units 1 & 2, La Salle County, Illinois

Date of amendment request: September 19, 1984 as modified by letter of October 5, 1984.

Description of amendment request: The proposed amendments to Operating License NPF–11 and Operating License NPF–18 would revise the La Salle Unit 1 and Unit 2 Technical Specifications consistent with a design change in the location of the reactor water cleanup (RWCU) pumps to a point in the system containing lower water temperature. The Technical Specifications changes will eliminate the requirement to specify limits on the ambient and differential temperature measurements in the RWCU pump rooms in Tables 3.3.2–1, 3.3.2–2, 3.3.2–3, and 4.3.2–1. These Technical Specification revisions are requested because the RWCU system recirculation pumps do not contain reactor water at full operating temperature and pressure as originally designed and spurious isolations have occurred.

To allow for better pump operation based on operating experience at other plants, the system design was built with the heat exchangers in the lines upstream of the pumps. This resulted in lower water temperature in both pumps in the RWCU pump rooms. However, the leak detection system was not changed at the time the position of the RWCU pumps were changed. The original RWCU system temperatures, anticipated at the pumps and in the pump rooms, were retained by the licensee for the RWCU pump rooms leak detection and the RWCU isolation instrumentation design. The RWCU isolation instrumentation has logic trips based on the following: (1) System high differential flow, (2) ambient and differential temperatures, and (3) reactor building sump level. Trips based on items (1) and (2) above provide automatic isolation signals to the RWCU system. Item (3) provides remote alarm provisions to the control room to allow the operator to manually isolate the RWCU system. Although the RWCU systems have a lower temperature as this water passes through the RWCU pump rooms, the ambient and differential temperature trip setpoints for these temperature channels (set at temperatures for equivalent allowable leakage) are very near the normal operating temperatures. This has caused spurious isolations (no leaks present). Because of the change in the location of these pumps, these temperature channels and their logic trip inputs are unnecessary. Sufficient diversity remains in the differential flow and reactor low water level automatic isolations to ensure that actual RWCU leakage in the pump rooms is monitored and will be promptly isolated. In addition, a ruptured RWCU system can be detectd and isolated manually if area sump pumps indicate leakage in the system. Since the ambient and differential temperatures have proven unnecessary inputs for RWCU isolation and have caused spurious isolations, the staff agrees that it is prudent to remove them from the protection system and from the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined and the NRC staff agrees that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the reactor water cleanup (RWCU) system will still have adequate isolation capability and meets the requirements for cold system piping as specified in the Final Safety Analysis Report for this system.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the bounding leakage from the RWCU System has already been evaluated.

(3) Involve a significant reduction in the margin of safety because the remaining protective instrumentations is fully adequate to monitor for leakage and isolate the affected RWCU system if the leakage exceeds the required limits.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut, Avenue, NW., Washington D.C. 20036.

NRC Branch Chief: A. Schwencer.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County Michigan

Date of amendment request: May 31, 1984.

Description of amendment request: The amendment would decrease the

required frequency given in the Technical Specifications (TS) for control rod drive performance testing to a frequency of once every major refueling outage. Currently, TS require performance of the following tests every 6 months:

(1) Withdrawal of each drive, stopping at each locking position to check latching and unlatching operations and the functioning of the position indication system.

(2) Scram of each drive from full withdrawn position. Maximum scram time from system trip to 90 percent of insertion shall not exceed 2.5 seconds.

Also, the TS currently require performance of the control rod insertion test at each major refueling outage but not less frequently than once a year. This test involves insertion of each drive over its entire stroke with reduced hydraulic system pressure to determine that drive friction is normal. The proposed amendment would decrease the frequency of these three test to once every major refueling outage.

Basis for proposed no significant hazards consideration determination; According to the standards of 10 CFR 50.92, a proposed amendment involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

A. Insertion Test

The current TS require the control rod insertion test to determine that drive friction is normal once a year. The proposed change would specify the test frequency as once every major refueling outage. Since major refueling outages occur about once a year at Big Rock Point, the test frequency would be essentially unchanged. Therefore, the staff proposes to determine that the requested action does not involve a signficant hazards consideration in that it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

B. Withdrawal Test

The current TS require performance of the control rod withdrawal test including latching, unlatching, and position indication at each latch position during each major refueling and once every 6 months during power operation. The proposed change would remove the requirement to perform the test once every 6 months during power operation. Therefore, the proposed test frequency would be just during each major refueling outage. Since major refueling outages occur about once a year at Big Rock Point, the proposed change is basically a reduction in test frequency from twice-a-year to once-a-year. However, the current TS also require daily testing (exercising or movement) of any control rod which is not fully inserted. This test also involves latching, unlatching, and a check on position indication, but only at a couple of latch positions. Thus, this test involves the same elements as the withdrawal test and the daily test could be described as a mini-withdrawal test. While the daily test is less rigorous than the withdrawal test, the daily test is obviously performed much more frequently than once every 6 months. Because of the combination of these tests, the deletion of the test every 6 months during power operation does not significantly reduce the licensee's capability to diagnose control rod drive operability problems.

Also the Standard Technical Specifications (STS) for General Electric Boiling Water Reactors (GE–BWR) do not include such a withdrawal test in the interim between refueling outages. The STS are the staff's general guidance for determining the adequacy of TS.

Therefore, the staff proposes to determine that the requested action does not involve a significant hazards consideration in that it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

C. Scram Time Test

The current TS require the control rod scram time tests to be performed at major refueling outages and every 6 months during power operation. The proposed change would remove the requirements to perform the test once every 6 months during power operation. Therefore, the proposed test frequency would be just during major refueling outages. Since major refueling outages occur about once a year at Big Rock Point, the propose change is basically a reduction in test frequency from twice-a-year to once-a-year.

The licensee states that deletion of the scram time test every 6 months during power operation would not significantly reduce the margin of safety for the control rod drive system because past tests have shown that the system is reliable and there is no significant degradation of performance in a 1-year period of time.

The scram time test history for Big Rock Point does show that the contol rod drive system is reliable; there have only been two scram test failures. Both failures were during testing in 1978 and both were due to degradation of a particular kind of rubber disc. The preventive maintenance program has been enhanced to prevent recurrent failures of the discs. Also, the test history does show that performance in the time tests does not degrade significantly over a 1-year period of time. Therefore, deletion of the test every 6 months during power operation would not significantly affect the reliability of the scram system.

Therefore, the staff proposes to determine that the requested action does not involve a significant hazards consideration in that it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Walter A. Paulson, Acting Chief.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 8, 1984.

Description of amendment request: This is an application for an amendment to Operating License DPR–66, revising the Technical Specifications to comply with requirements (NUREG–0737) imposed by the Commission as a result of the Three Mile Island accident. The proposed changes are patterned after the staff's Standard Technical Specifications transmitted by Generic Letter 83–37. They are as follows:

(1) Tables 3.3–11 and 4.3–7 would be revised by adding Instrument No. 10, Containment Sump Wide Range Water

Level, to comply with the staff's requirement. In addition, Table 3.3–11 would be revised to include Instrument No. 9, PORV Control Pressure Channels, which was previously added to Table 4.3–7 by Amendment No. 45.

(2) Sections 3.4.12, 4.4.12 and B3/4.4.12 would be added to specify the limiting conditions for operation, associated surveillance requirements, and basis for the reactor coolant vent system.

(3) Section 3.6.4.1 would be revised to apply specifically to the wide range hydrogen analyzers installed to meet staff requirements.

(4) Section 6.8.4 would be added to require a post-accident monitoring program be established, implemented and maintained.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these, Example (ii), involving no significant hazards considerations is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications". All proposed specifications described above are currently non-existent in the Beaver Valley Unit 1 Technical Specifications. Issuance of an amendment to incorporate them would be an action that matches the quoted example. Therefore, the staff proposes to characterize the proposed amendment as involving no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Florida Power & Light Co., Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: September 10, 1984.

Description of amendment request: The proposed amendment would make changes in the technical specifications of St. Lucie Plant, Unit No. 1 by providing flow rates and tolerances for each of the two sodium hydroxide sources. When Amendment 49 to Operating License DPR–67 was issued, the flow rates and tolerances were not available and the licensee committed to supply them at a future date.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards contained in 10 CFR 50.92 by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples involving no significant hazards consideration (i) relates to a purely administrative change to the technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. This change does not meet any of the cited examples but is believed to be administrative in nature in that it provides the numbers specifically called for in Amendment 49. Specifically in Technical Specification 4.6.2.2.d, the licensee is required to provide flow rates and tolerances within six months following restart from the 1983 refueling outage. This application for amendment satisfies that requirement and is felt to be administrative in nature.

Another example (ii) relates to a change that institutes an additional limitation or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. This change meets this example in that it now specifies the flows and pressures that are required to be met in order to declare the spray additive system operable. It is more restrictive in that numbers specifying flow and pressure now exist where none existed before.

Based on the above, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Port Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esq., Newman, and Holtzinger, 1615 L Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: April 23, 1984.

Description of amendment request: The proposed amendment would revise the reporting requirements of the Technical Specifications to bring them into conformance with the recent revision to 10 CFR 50.72 and with the new 10 CFR 50.73.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain examples (48 FR 14870). One example of an amendment that is considered not likely to involve a significant hazards consideration is "(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operation clearly in keeping with the regulations."

Since the proposed changes deal with reporting requirements and would have little or no effect on facility operations, and are proposed in order to conform to changes in the regulations, they are encompassed by this example. Therefore, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 NW First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: April 23, 1984.

Description of amendment request: The proposed amendment would permit opening of certain containment isolation valves (which would otherwise be required to be isolated in accordance with Technical Specification 3.6.1) provided that a dedicated operator is stationed at the valve to isolate the penetration upon receipt of a containment isolation signal. Inability to open the affected valves prevents conformance with other requirements of the Technical Specifications which in many cases would necessitate an undesirable plant shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One of the examples (vi) of actions involving no significant hazards considerations is a change which may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system specified in the Standard Review Plan. . . .

Chapter 16 of the Standard Review Plan refers to NUREG–0103, Standard Technical Specifications for B&W Pressurized Water Reactors (B&W STS), which are applicable to this plant. Table 3.6–1 of the B&W STS suggests that designated containment isolation valves "may be opened on an intermittent basis under administrative control." The proposed amendment would be within the criteria specified in the Standard Review Plan. Therefore, since the proposed amendment is encompassed by this example, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: May 31, 1984.

Description of amendment request: The proposed amendment would exempt from the provisions of Technical Specification (TS) 3.0.4. these TSs: 3.4.11, 3.9.9, and 3.9.11. TS 3.0.4 prevents entry into an operational mode unless the Limiting Conditions for Operation are met, without reliance on ACTION statements, unless otherwise excepted. TS 3.4.11, recently requested by the licensee and not yet in place, applies to Reactor Coolant System (RCS) vents. TS 3.9.9 governs the containment purge isolation system operability, and TS 3.9.11 requires missile shielding and water depth over fuel assemblies in the storage tanks.

Basis for proposed no significant hazards consideration determination:

TS 3.4.11

The NRC staff's Generic Letter 83–87 (November 1, 1983) allows continued Power Operation and startup provided the inoperable vent path is deactivated. Because there are no additional safety concerns during the less significant modes of Hot Standby or Hot Shutdown with regard to RCS vents, the requested exemption is within the intent of NRC guidance on this matter, and therefore the staff concludes that the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

TSs 3.9.9 and 3.9.11

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One of the examples (vi) of actions involving no significant hazards considerations is a change which may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system specified in the Standard Review Plan.

With regard to TS 3.9.9, the Standard Review Plan refers to the B&W Standard Technical Specifications (B&W STS) which apply to this plant. TS 3.9.9 of the B&W STS clearly permits exemption from the provisions of Section 3.0.4. For TS 3.9.11, analysis required by the Standard Review Plan does not take into consideration the operating mode of the reactor. Therefore, the proposed change cannot affect a safety margin. Therefore, these proposed changes are encompassed by this example.

For the reasons discussed above, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: July 25, 1984.

Description of amendment request: The proposed amendment would delete Surveillance Requirement 4.8.1.1.1.a.2, which requires that the sump pumps in the tunnel containing the DC control feeds to the 230 Kv switchgear be verified to be operable at least once every seven days. The licensee presents information which is asserted to show that the DC control feed cables, which the sump pumps are intended to keep dry, are not adversely affected by immersion in rain or salt water. Therefore, weekly surveillance, and presently-required operation of the diesel generators if the sump pumps are not operable, are not necessary to assure plant safety.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards considered not likely to involve a significant hazards consideration by providing certain examples (48 FR 14870). One example (iv) is a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. Since demonstration of operability of the sump pumps (the operating restriction) was initially included in the Technical Specifications to assure that common mode failure of the DC feeds due to flooding would not occur, acceptable evidence that the DC control feed cables would not fail due to flooding constitutes demonstration of acceptable operation of the cables. The proposed change is encompassed by this example, and therefore, the staff proposes to demonstrate that the proposed amendment involves no significant hazards considerations.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 30, 1984.

Description of amendment requests: The proposed amendment would revise Technical Specification 3.3.3.45, Remo. Shutdown System, to be consistent v 'th the new remote shutdown system. The new system has been reviewed and accepted by the NRC and will be installed during Refuel V after which the revised Technical Specification would become effective. Operability and surveillance requirements for the remote shutdown system transfer switches are also added.

Basis for proposed no significant hazards consideration determination: As part of its compliance with the requirements of 10 CFR Part 50,

Appendix R, the licensee provided a new remote shutdown system. The NRC staff reviewed the design of the new system and on January 6, 1983, approved this system and noted that Technical Specifications governing the system are required. The proposed amendment provides these revised Technical Specifications. Because these changes are necessary to cover this previously-accepted new system and to conform with the requirements of the regulations, and because they add additional limitations, restrictions, and controls (example ii, 48 FR 14870), the Commission's staff finds that the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety. The staff, therefore, proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz. .

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 30, 1984.

Description of amendment request: The proposed amendment would change the applicability of Technical Specification 3.3.3.3 to allow the Triaxial Peak Accelograph on top of the reactor vessel head to be inoperable during Modes 5 and 6, and the head is off the reactor. This accelograph provides no useful function when the head is off.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (i) purely administrative changes to the Technical Specifications, for example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature. The change proposed by the licensee is such an administrative change to correct the error involved in the present Technical Specifications in not considering the lack of need for operability of the Head Accelograph when the reactor vessel head is off the reactor vessel. Therefore the Commission's staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: September 28, 1984.

Description of amendment request: The proposed amendment would correct errors and inconsistencies in and clarify certain radiological effluent Technical Specifications (TSs). Specifically, change 1 revises TS 3.3.3.8 to require source check prior to each release rather than daily; change 2 revises TS 3.3.3.9 to change specified modes for applicability and surveillance on RM-A1 to "During periods of Reactor Building purge"; change 3 corrects a typographical error and changes source check requirements in TS 3.3.3.9 to be consistent with other TSs; change 4 adds reporting requirements in TS 3.3.3.10 in the event of inoperability of Waste Gas Decay Tank monitors for more than 14 days; change 5 clarifies that only the in-service Waste Gas Decay Tank need be continuously monitored (TS 4.7.13.5); change 6 corrects an inconsistency in the requirements for reporting unavailability of vegetable samples (TS 6.9.2); and change 7 clarifies the group of individuals to be considered when reporting doses 6.9.1.4).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration is a purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nonmenclature. The proposed changes fall within the scope of this example, as follows:

Change 1. When TS 3.3.3.8 was initially developed, releases through RM-L7 (Secondary Drain Tank liquid effluent line monitor) were being made continuously. These releases are now being made on a "Batch" basis. The proposed change would be consistent with other batch type release monitors.

Change 2. When the applicable modes for operation of RM-A1 (Reactor Building purge exhaust duct monitor) were determined, Crystal River Unit 3 was allowed to purge during all modes. Since then, purging has been restricted to Modes 5 and 6. The operability requirements are proposed to reflect this restriction and require monitoring only during times purging is performed. Therefore, this change is administrative in nature.

Change 3. This change corrects a typographical error which erroneously tied Auxiliary Building exhaust monitoring to periods of Reactor Building purge. It also changes the erroneous requirement to perform a source check prior to release through the Auxiliary Building exhaust monitor (RM-A2), which is required to operate continuously by TS 3.7.8.1.

Change 4. Compliance with current TSs is not possible in this case. TS 3.3.3.10 allows operation with inoperable Waste Gas Decay Tank monitors for up to 14 days. After that, entrance into TS 3.0.3 (shutdown) would generally be required. However, the monitor is required to be operable in all modes so shutdown would not satisfy this requirement. In addition, initiating plant shutdown would result in release of additional hydrogen which could have safety consequences if the monitor were inoperable. Thus, the proposed change, in defining action to be taken after 14 days, corrects the TS error.

Change 5. This change would clarify that only the in-service Waste Gas Decay Tank needs to be continuously monitored for hydrogen and oxygen concentrations.

Change 6. The unavailability of vegetable samples is reported in the Annual Radiological Environmental Operating Report not as a special report as implied in the present TS 6.9.2. Specification 3.7.11.4 does not require a special report, thus the reference to 3.7.11.4 has been deleted.

Change 7. This change would change "individuals" to "members of the public", which is a defined term, while "individuals" is not. This change clarifies the scope of individuals to be considered when reporting doses per this requirement. Individuals who are not members of the public are covered under other requirements.

As discussed specifically above, the Commission's staff concludes that the proposed changes fall within the scope of this example. On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: May 4, 1984, as revised September 12, 1984.

Description of amendment request: The amendment would change the Technical Specifications to expand the present definition of operability to explicitly include functionality of support equipment, redundant trains and electric power supplies. The amendment would also add provisions to the Technical Specifications to allow a system, subsystem, train, component or device to be considered OPERABLE under certain conditions when the normal or emergency power source providing power to the system, subsystem, etc. is INOPERABLE.

The present definition of operable requires only that a system or component be capable of performing its intended function in its required manner in order to be considered operable.

The proposed change was submitted in response to an April 10, 1980, NRC request that licensees submit proposed Technical Specifications concerning the definition of the term "OPERABLE" that conform with Model Technical Specifications included with the April 10, 1980 request.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to a change that constitutes an additional limitation, restriction or control not presently in the Technical Specifications (Example (ii)).

The proposed change would add additional limitations and is therefore similar to this example.

The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Pots and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: October 18, 1984, supplementing the request of September 5, 1984.

Description of amendment request: This submittal supplements the request for amendment dated September 5, 1984, which was noticed in the Federal Register on October 24, 1984 (49 FR 42819). This supplemental request for Technical Specification (TS) change relates to the proposed High Pressure Coolant Injection (HPCI) steamline differential pressure trip setpoint/allowable value modification to the TSs. The purpose of this change is to update the TS trip setpoint for these instruments which are being replaced by the Analog Transmitter Trip System (ATTS). Since the time that original setpoint was determined, a better calculational method has been developed. This proposed change uses the Regulatory Guide 1.105 methodology in updating the setpoint for the new ATTS instruments, and takes credit for the improved error and drift characteristics of the new system. This change replaces the trip setpoint listed in the TSs with the newly evaluated allowable value determined through Regulatory Guide 1.105 methodology. Changes to the surveillance requirements are the same as those discussed in the October 24, 1984 Federal Register Notice for ATTS instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following evaluations against each of the above three criteria for the proposed change:

GPC reviewed the proposed change and considers it not to involve a significant hazards consideration for the following reasons:

1. It will not significantly increase the probability or consequences of an accident previously evaluated because the new ATTS instruments are of a superior design as compared to the current instruments. In addition, the setpoint was determined using the criteria of Regulatory Guide 1.105, and therefore, still meets the Final Safety Analysis Report (FSAR) criteria.

2. It will not create the possibility of a new or different kind of accident from any accident previously evaluated, because the basic trip function, as described in the FSAR, is unchanged.

3. It will not involve a significant reduction in a margin of safety because the original design basis was maintained. In addition, Regulatory Guide 1.105 criteria were used in the calculation of the new setpoint.

The Commission's staff agrees with the licensees' evaluation that the change meets the three criteria of the Commission's guidance as stated above. On this basis, the Commission proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amemdment request: September 5, 1984.

Description of amendment request: These amendments would modify the Technical Specifications to add leak rate limits and test requirements for the automatic depressurization system.

These additional requirements are submitted in response to the NUREG-0737 requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An

example of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications impose additional limitations, restrictions and controls and therefore fall within this example.

Therefore, since the application for amendments involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: September 5, 1984.

Description of amendment request: This amendment would modify the Technical Specifications to add limiting conditions for operation, trip setpoints and surveillance requirements for the monitors which provide the high radiation isolation signals to the containment purge and vent valves.

The above proposed Technical Specification modifications were submitted to reflect implementation of NUREG–0737 Item II.E.4.2(7) which requires that the purge and vent valves close automatically on a high containment radiation signal.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications impose additional limitations, restrictions and controls and therefore fall within this example.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corpration, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County New Jersey

Date of amendment request: August 11, 1980 as supplemented October 18, 1982, December 5, 1983, February 9 and March 23, 1984.

Description of amendment request: The proposed amendment requests approval of Technical Specification (TS) changes relating to station electric distribution system voltage.

Basis for proposed no significant hazards consideration determination: The criteria and NRC staff positions regarding degraded grid voltage protection were sent to Jersey Central Power and Light Company (JCP&L), now GPU Nuclear Corporation (GPU), on August 11, 1976 and on June 3, 1977. JCP&L responses were dated November 5, 1976, April 18, 1977, September 25, 1979, August 11, 1980, and April 30, 1981. EG&G Idaho under contract to NRC performed a detailed review and technical evaluation of the submittals. The results of this review are contained in the staff's Safety Evaluation (SE) entitled "Degraded Grid Protection for Class 1E Power Systems, Oyster Creek Nuclear Power Station" dated October 16, 1981. The proposed amendment change request supports the design of the grid undervoltage protection system and the mode of operation of the bus tie breakers previously approved in the October 16, 1981 SE and includes relay surveillance requirements, setpoints and limits, and limiting conditions for operation (LDO).

The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (ii) of action not likely to involve a significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the TS; for example, a more stringent surveillance requirement. The changes proposed in the application for amendment are encompassed by this example and the requested action fulfills the requirements set forth in the SE dated October 16, 1981. On this basis, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Branch Chief: John A. Zwolinski, Chief.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Date of amendment request: August 4, 1983 and supplemented February 8, 1984.

Description of amendment request: The proposed amendment requests approval of a Technical Specification (TS) change to Section 3.1 which would raise the high drywell pressure trip setpoint from 2.0 psig to 2.4 psig.

Basis for proposed no significant hazards consideration determination: The proposed amendment involves a slight increase in the established trip setting which initiates automatic protective actions, but does not involve a change of any of the limiting safety system settings listed in Section 2.3 of the TS. This change will increase the separation between the containment operating pressure and the pressure trip setpoint which would reduce the likelihood of spurious trips and will ensure that only valid signals will challenge the trip system. However, the setpoint is still low enough that the trips initiated by the affected instruments will occur in time to ensure that they will perform their protective function. Although this change may slightly reduce in some way a safety margin, the results of this change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The decrease in the likelihood of spurious trips will significantly reduce the possibility of plant disruptions or transients which lead to more significant events.

The Commission has provided guidance concerning the application of standards for no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (vi) of action not likely to involve a significant hazards consideration relates to change which either may result in some increase to the probability or

consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The changes proposed in the application for amendment are encompassed by this example. On this basis, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski, Chief.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 8, 1984.

Description of amendment request: The proposed amendment requests approval of Technical Specification (TS) changes to Section 6.0, Administrative Controls.

Basis for proposed no significant hazards consideration determination: The proposed amendment change request would provide a Plant Engineering organization which is more responsive to the continuing operations and maintenance needs of the Oyster Creek facility and to enhance the administrative capabilities of the organization. The reorganization would be achieved by:

—Reducing the number of direct interfaces to both the Plant Engineering Director and the Manager—Plant Engineering.
—Providing a three Manager structure with specific responsibilities in the areas of Operations, Maintenance, and Support.
—Providing direct interfaces within Plant Engineering for the related organizations of the Oyster Creek division and GPUN.
—Assigning specific responsibility to a dedicated group for discharging the administrative functions of Plant Engineering.

The responsibilities presently under the congizance of the "Manager-Plant Engineering" will be split into three specific areas: Operations Engineering, Maintenance Engineering, and Support Engineering. Each of these disciplines will be headed by a respective Manager with appropriate Technical/Administrative backgrounds and capabilities required for the existing managerial position as specified in the Oyster Creek Technical Specification Facility Staff Qualifications, Section 6.3. The three managers shall directly report to the Plant Engineering Director. This concept also provides increased time on the Managerial level for both Technical/Administrative support to the Supervisory/Engineering personnel.

This change is administrative based on the consideration that the technical/educational/administrative and experience requirements for the three managerial positions are not changed. Therefore, the related revision to section 6.3 of the Technical Specifications requires only a wording change for "Manager—Plant Engineering" to "Managers—Plant Engineering".

The position title of Fire Pretection Supervisor will be revised to Site Fire Pretection Coordinator, which is a title change and is considered administrative only. This change is incorporated, based on the consideration that the position no longer directly supervises the activities of Fire Protection personnel. Technical responsibilities remain unchanged. This position reports to the Manager—Support Engineering, but continues direct access to the Plant Engineering Division providing an additional level of technical support to this function.

The position title of Manager-Core Engineering will be revised to Core Manager. This is a title change and, therefore, administrative only. The technical responsibilities shall remain as presently specified in the Oyster Creek Technical Specification Facility Staff Qualifications, Section 6.3. Also, the direct report for this position will be the Manager—Operations Engineering. This organizational change relieves this position of a degree of administrative responsibilities and relinquishes this time to the discharge of technical duties. This also provides an additional level of technical expertise to the Plant Engineering Director.

The position of Chemistry Manager no longer falls under the cognizance of Plant Engineering. This position now reports to the Plant Operations Director and is, therefore, deleted from Plant Engineering. Also, it should be noted the position now is titled Manager—Plant Chemistry.

Another change that is being made within the organization at Oyster Creek is that the position of Manager, Radiological Controls has been upgraded to the Director level. The TS requirements for this position remain the same.

An additional proposed amendment request would update the requirements for written procedures in effect for Oyster Creek and the addition of the NUREG–0737 requirement for a special report that is to be submitted after the failure of, or challenge to, relief and safety valves. The model TS for these reporting requirements were described in the NRC's Generic Letter No. 82–16. However, subsequent issuance of the new "LER rule" (10 CFR 50.73) supersedes the model reporting requirement of most events that may be attributable to or, associated with failures of relief and safety valves. Therefore, Oyster Creek has proposed reporting failures and challenges to relief and safety valves, which do not constitute an LER, within 60 days of the occurrence. This proposed administrative change is consistent with the intent of the NUREG–0737 requirement.

The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (i) of action not likely to involve a significant hazards consideration relates to a purely administrative change to TS: for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. The changes proposed in the application for amendment are encompassed by this exampole.

On this basis, the staff proposes to determine that the proposed amendment involves no significant hazards condsiderations.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036

NRC Branch Chief: John A. Zwolinski, Chief.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 1, 1984, as revised and supplemented July 11, 1984, August 2, 1984, and September 11, 1984.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs)

related to the allowable concentration of hydrogen and oxygen in the waste gas holdup system and the associated hydrogen/oxygen monitoring instrumentation. The proposed amendment would remove the current limit on oxygen content provided that the hydrogen content is below 4% and would remove the current limit on hydrogen content provided that the oxygen content is below 2%. The proposed TSs would require two hydrogen monitors and two oxygen monitors to assure compliance with the proposed hydrogen and oxygen limits; the proposed TSs also include action statements to be followed if the hydrogen or oxygen limits are exceeded.

The proposed amendment also includes administrative changes to correct wording.

Basis for proposed no significant hazards consideration determination: The proposed amendment would relax the hydrogen/oxygen limits currently specified in the TSs, but the proposed limits are within the limits currently specified in the Standard Review Plan (SRP). Also the installation of dual monitors for hydrogen and oxygen would meet SRP requirements. Thus, the proposed change may result in some increase in the probability of a previously-analyzed accident but the results of the change would be clearly within the safety of margin specified in the SRP because the SRP requirements will be met by the proposed TS change. Therefore, the proposed change in the TS is in the same category as Example (vi), 48 FR 14870, which cites changes "clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan" as an action not likely to involve a significant hazard consideration. The changes to correct wording in the Technical Specifications are purely administrative changes encompassed by the Commission's Example (i), 48 FR 14870, of actions not likely to involve significant hazards considerations.

Based on the foregoing, the Commission's staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: September 24, 1984.

Description of amendment request: The amendment application requested two changes to the TMI-1 Technical Specifications, Section 6.12, High Radiation Area. The first proposed change would provide reference to 10 CFR 20.202(b)(3) to define a high radiation area. The second proposed change would amend Technical Specification Section 6.12.1a. to address dose rate monitoring requirements for groups of individuals entering a high radiation area. The existing Technical Specifications are currently silent with respect to dose rate monitoring requirements for groups of individuals. The licensee has requested the change to (1) achieve consistency between the TMI-1 and Oyster Creek Nuclear Generating Station Technical Specifications, (2) allow better radiation monitoring equipment inventory control, and (3) increase worker productivity and thereby reduce personnel exposure to radiation.

Basis for proposed no significant hazards consideration determination: The Commission's staff considers the first proposed change, which provides reference to 10 CFR 20.202(b)(3) to define a high radiation area, to be a purely administrative change which is not considered likely to involve a significant hazards consideration, Example (i), 48 FR 14870. The proposed change provides convenient reference to the applicable definition and neither relaxes nor increases the requirements of the Technical Specifications.

The Commission's staff considers the second change, which amends the Technical Specifications to address dose rate monitoring requirements for groups of individuals entering high radiation areas, to be a change which may reduce in some way the applicable safety margin, but the results of the change are clearly within all acceptable criteria in the Standard Review Plan, Example (vi), 48 FR 14870. That is, since the existing Technical Specifications are silent with respect to dose rate monitoring requirements for groups of individuals, one could interpret the existing requirements to be that each member of a group must comply with the applicable requirements on an individual basis. This could result in each member of a group carrying his or her own dose rate monitoring or integrating device.

However, under the proposed Technical Specification change, only one member of a group would be required to carry the required devise. Consequently, by neglecting any increase in worker productivity which could reduce stay times and therefore exposures, one could postulate a reduction in a margin of safety. However, the proposed change is clearly within all acceptable criteria in the Standard Review Plan, and is consistent with the requirements of the Standard Specifications for Babcock & Wilcox plants.

Based on the foregoing discussion, the Commission's staff proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 20, 1984.

Description of amendment request: The proposed amendment would change the Duane Arnold Energy Center (DAEC) Technical Specifications to, (i) change the additional snubber testing in the event of a snubber failure, from 10% to 5%, (ii) delete the requirement to increase the drag force by 50% when the snubbers are functionally tested, (iii) delete the snubbers list from the Technical Specifications in accordance with the Nuclear Regulatory Commission guidance of Generic Letter 84-13, and (iv) correct some errors.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In item (i) the licensee has requested a reduction of the additional testing of snubbers required after a failure of a snubber, from 10% to 5% of the snubbers in the category of failed snubber. The initial testing of each snubber category will continue to be performed for a sample of 10% of the total number of snubbers in each type. The licensee's evaluation indicates, and we agree, that, although the proposed reduction in testing would involve a relaxation of the existing Technical Specification, it will not significantly increase the probability or consequences of an accident previously evaluated, or create the probability of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

In item (ii) the licensee requested that the requirement to increase the drag force 50% when the snubbers are functionally tested be deleted. The licensee states that the test machines used for snubber testing use loads up to 5000 pounds with a sensitivity of ±0.1% or 5 pounds force. The measured drag force of a smaller snubber could be of the order of 5 pounds. A 50% increase in the drag force may, therefore, not be measurable with any accuracy or reliability. In addition, the additional activities associated with 50% increase in drag force would cause radiation exposures to personnel without any reliable increase in safety. The licensee therefore concludes, and the staff agrees, that although the proposed change is a relaxation of the current Technical Specifications, the change will not involve a significant increase in the probability or consequences of a previously evaluated accident, or create the probability of a new or different kind of accident from any accident prieviously evaluated, or involved a significant reduction in a margin of safety.

In item (iii) the licensee has requested that the snubbers list in the Technical Specifications be deleted as suggested by the Nuclear Regulatory Commission in the Generic Letter 84-13.

In item (iv) the licensee has requested to change the Technical Specifications to correct some errors. The Commission has provided some examples of actions which are likely or not likely to involve significant hazards consideration (48 FR 14870). One of the examples not involving significant hazards consideration is a purely administrative change to Technical Specifications, for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The changes requested in items (iii) and (iv) are administrative changes only and are encompassed by the above Commission example involving no significant hazards consideration.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: September 26, 1984.

Description of amendment request: The proposed amendment would remove the commitment of the use, by the Security Force, of rifles from the Duane Arnold Energy Center Security Plan and the Guard Training and Qualification Plan.

Basis for proposed no significant hazards consideration determination: Elimination of the rifles does not decrease the capability of the security force. Rifles are long range weapons which are not suited for use within a confined area. Due to their long range destructive capability, rifle shots could injure personnel and damage equipment on and off-site. The amendment would authorize a change in composition of small arms and other shoulder fired weapons available onsite for response personnel. The elimination of rifles, therefore, does not decrease the safeguards effectiveness at this site. Any additional description of the change beyond that stated above involves Safeguards Information, which is being withheld from public disclosure pursuant to 10 CFR 73.21.

Based on the above discussion, the staff has concluded that the proposed change meets the Commission standards as defined in 10 CFR 50.92(c), for amendments which do not involve a significant hazards consideration, because such a change would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, and (3) involve a significant reduction in a margin of safety.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, Iowa 52401.

Attorney for license: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 9, 1984.

Description of amendment request: The amendment would revise Figure 6.2.1-1 "Offsite Organization" in the Technical Specifications by changing a position title from "Vice President-Nuclear Support" to "Director-Nuclear Support." The offsite organization provides unit management and technical support. The position for which a title change is being considered is responsible for nuclear fuel, offsite nuclear service and support, and radiological and environmental areas including radiochemistry service and support areas.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to a purely administrative change to Technical Specifications such as a change in nomenclature in Technical Specifications. The change of the position title in Technical Specification Figure 6.2.1-1 is similar to this example since the change does not affect the functions of the position or alter the lines of communication or responsibility. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, George M. McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell, and Reynolds, 1220 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Elinor G. Adensam.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 9, 1982, as supplemented by submittals dated September 12, 1983, March 7, 1984, April 10, 1984 and July 19, 1984.

Description of amendment request: The Amendment request of June 9, 1982 was initially noticed on August 23, 1983 (48 FR 38408). The June 9, 1982 Amendment request would change the Radiological Effluent Technical Specifications to assure compliance with Appendix I of 10 CFR Par 50. The Amendment provides new Technical Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. This change also incorporates into the Technical Specifications the bases that support the operation and surveillance requirements. In addition, some changes were made in administrative controls, specifically dealing with the process control program and the offsite dose calculation manual.

Subsequent to the initial notice, the licensee proposed revisions to the June 9, 1982 amendment application by letters dated September 12, 1983, March 7, 1984, April 10, 1984 and July 19, 1984. The revisions proposed by these supplemental submittals would change the original amendment by providing specific detailed information in the Radiological Effluent Technical Specifications. The overall objective of the proposed amendment to assure compliance with Appendix I of 10 CFR Part 50 is not altered by the supplemental submittals.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a "no significant hazards consideration" determination by providing certain examples (48 FR 14870). One of the examples (ii) of action not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions of controls not presently included in the technical specifications.

The Commission, in a revision to Appendix I, 10 CFR Part 50 required licensees to imporve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonably achievable. In complying with this requirement it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. The additional Technical Specifications requested by the June 9, 1982 submittal were proposed in response to this Commission requirement. Therefore, the staff, in the August 23, 1983 notice, proposed to determine that the June 9, 1982 application did not involve a significant hazards consideration because the change constituted additional restrictions and controls. The revisions proposed by the supplemental submittals of September 19, 1983, March 7, 1984, April 10, 1984 and July 19, 1984 do not change the basic intent of the original application but serve only to clarify and provide specific details to the proposed Radiological Effluent Technical Specifications. Therefore, the revisions proposed by the supplemental submittals do not change our originally proposed determination that the requested change will not involve significant hazards considerations.

Local Public Document Room locations: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Branch Chief: Domenic B. Vassallo.

Pennsylvania Power & Light Company, Docket No. 50-387, Susquehanna Steam Electric Stations, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: May 18, 1984, as supplemented by PP&L letter dated September 20, 1984.

Description of amendment request: The purpose of the proposed amendment request is to revise the Susquehanna Unit 1 Technical Specifications to reflect changes incorporated into the Susquehanna Unit 2 Technical Specifications. The following is a list of proposed changes to the Unit 1 Technical Specifications based onthe Unit 2 Technical Specifications:

1. Page ii, change item 1.35 from "REPORTABLE OCCURRENCE" to read "REPORTABLE EVENT."

2. Page ii, delete line item "TABLE 1.1" and "TABLE 1.2" from this page and incorporate into list of tables.

3. Page viii, change "EMERGENCY WATER SYSTEM" under item 3/4.7.1 to read "EMERGENCY SERVICE WATER SYSTEM."

4. Page ix, change "Motor Operated Valve Thermal Overload Protection" to read "Motor-Operated Valves Thermal Overload Protection."

5. Page xviii, correct typographical error under SECTION 5.1 to read "Map Defining Unrestricted Areas . . ."

6. Page xx, under SECTION 6.9 in the first line item, delete the words ". . . And Reportable Occurrences." Also delete line items "Reportable Occurrences," "Prompt Notification With Written Followup," and "Thirty Day Written Reports." Transfer line items SECTION 6.13, 6.14, and 6.15 from page xxi to page xx.

7. New page xxi through xxv—add list of Figures and Tables.

8. Page 1-6, item 1.37 e. would be changed to read, ". . . welds, bellows, resilient material seals, or O-rings, is OPERABLE."

9. Page 1-10, delete commas between the footnote notations under the MODE SWITCH POSITION column for Conditions 3 and 4. Condition 5 under the MODE SWITCH POSITION column would be changed to read "Shutdown * * * # or Refuel * * * #."

10. Page B 2-2, correct typographical error in footnote b to read ". . . NEDO-20340 and Amendment 1, . . ."

11. Page 3/4 1-4, under ACTION 2., modify first line to read, ". . . within 1 hour, disarm . . ."

12. The phrase ". . . within one hour . . ." would be modified to read ". . . within 1 hour . . ." on pages 3/4 1-9, 3/4 1-13, 3/4 2-7, 3/4 3-1 (twice), 3/4 3-4 (five times), 3/4 3-9 (twice), 3/4 3-16 (three times), 3/4 3-30 (three times), 3/4 3-48 (twice), 3/4 3-53 (twice), 3/4 3-59 (twice), 3/4 3-74, 3/4 3-76, 3/4 4-24 (twice), 3/4 4-25 (twice), 3/4 7-36, 3/4 7-38, 3/4 7-39, 3/4 7-42, 3/4 7-43, 3/4 7-45, 3/4 8-1 (twice), 3/4 8-11, 3/4 9-17 (twice), 3/4 9-18 (twice), and 6-14.

13. Page 3/4 1-9, under ACTION a.2., modify second line to read ". . . associated control rods inoperable and:"

14. Page 3/4 1-9, under ACTION b.2., modify second line to read ". . . scram accumulators inoperable . . ."

15. Page 3/4 1-14, in Technical Specification 4.1.3.7.c., the second line would be changed to read ". . . indicated by a "Full out" position . . ."

16. The following figures would be modified for clarity:
Figure 3.1.5-2
Figure 3.2.1-1
Figure 3.2.1-2
Figure 3.2.1-3
Figure 3.2.3-1
Figure 3.2.3-2
Figure 5.1.2-1

17. Page 3/4 2-1, in Technical Specification 3.2.1, the third line would read ". . . shown in Figures 3.2.1-1, . . ."

18. Page 3/4 2-1, in Technical Specification 4.2.1, add, "d. The provisions of Specification 4.0.4 are not applicable." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

19. Page 3/4 2-5, in Technical Specification 4.2.2, add, "d. The provisions of Specification 4.0.4 are not applicable." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

20. Page 3/4 2-6, in Technical Specification 3.2.3, change the fourth line to read, ". . . system is OPERABLE per Specification 3.3.4.2 and the turbine bypass system is OPERABLE per Specification 3.7.8, with:"

21. Page 3/4 2-6, under APPLICABILITY, correct the typographical error in the first line to read, "OPERATIONAL CONDITION 1, when . . ."

22. Page 3/4 2-7, redesignate ACTION statement b. as ACTION statement c. and add a new ACTION statement b. to read, "With the turbine bypass system inoperable per Specification 3.7.8, operation may continue and the provisions of Specification 3.0.4 are not applicable provided that within 1 hour, MCPR is determined to be greater than or equal to the MCPR limit as a function of average scram time as shown in Figure 3.2.3-1, turbine bypass inoperable curve, times the K_f shown in Figure 3.2.3-2."

23. Page 3/4 2-7, under Technical Specification 4.2.3, add "d. The provisions of Specification 4.0.4 are not applicable." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

24. Page 3/4 2-10, in Technical Specification 4.2.4, revise first line to read, "LHGRs shall be determined . . ."

25. Page 3/4 2-10, in Technical Specification 4.2.4, add, "d. The provisions of Specification 4.0.4 are not applicable." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

26. Change second line of title to read, "ACTION STATEMENTS" on pages 3/4 3-4, 3/4 3-16, 3/4 3-30, 3/4 3-48, and 3/4 3-59.

27. Page 3/4 3-5, modify the beginning of notation statements (b) and (g) to read, "This function is automatically bypassed . . ."

28. Under the heading REACTOR WATER CLEANUP SYSTEM ISOLATION on pages 3/4 3-12, 3/4 3-18, 3/4 3-21, and 3/4 3-24, change "RWCS" to read "RWCU" in items a, b, c, and f. Also change "Delta Pressure" to read "Flow" in item f. on these same pages.

29. Page 3/4 3-16, in footnote **, change "valves" to read "dampers."

30. Page 3/4 3-20, in footnote #, change "TSH-G3S-N600" to read "TSH-G33-N600."

31. Page 3/4 3-21, under trip function 1.a.3), change the footnote notation in the RESPONSE TIME column from "(2)" to read "(a)."

32. Page 3/4 3-21, under trip function 3.b., delete reference to footnote (a) following words "Main Steam Line Radiation—High."

33. Page 3/4 3-33, replace Table 3.3.3-3 with revised Table 3.3.3-3.

34. Page 3/4 3-53, modify the beginning of NOTES c, d, and e to read, "This function is automatically bypassed . . ."

35. Page 3/4 3-54, add symbol for "less than or equal to" at beginning of words under the ALLOWABLE VALUE column for trip functions 6.a and 6.c.

36. Page 3/4 3-55, delete reference to notiation (c) under the CHANNEL FUNCTIONAL TEST column for trip functions 1.a., 1.b., and 1.c.

37. Page 3/4 3-56, change "NOTES:" to read "TABLE NOTATIONS." Add parenthesis to notes a. and b.

38. Page 3/4 3-56, delete note c.

39. Page 3/4 3-58, add symbol for "less than or equal to" at beginning of setpoint under the ALARM/TRIP SETPOINT column for item 1.

40. Page 3/4 3-58, delete "(RR-D12-R610)" under the INSTRUMENTATION column for item 1. Under the same column, delete "(Channel #13)" and "(Channel #14)" for items 2.a.1) and 2.a.2), reapectively.

41. Page 3/4 3-62, replace Table 3.3.7.2-1 with revised Table 3.3.7.2-1.

42. Page 3/4 3-63, replace Table 4.3.7.2-1 with revised Table 4.3.7.2-1.

43. Page 3/4 3-83, the units "microcuries/ml" would be modified to read "microcurie/mL."

44. Delete the statement "(Operating plants may substitute previously established calibration procedures for this requirement.)" under note (3) on page 3/4 3-85 and under note (2) on page 3/4 3-92.

45. Page 3/4 3-88, under the APPLICABILITY column, change the notation from "***" to read "**" for item 4.a.

46. Delete footnote ** and reassign footnote *** as footnote ** on pages 3/4 3-89 and 3/4 3-92. Add the words ". . . and offgas treatment system." to the end of the new footnote**.

47. Page 3/4 3-89, change the last statement under ACTION 115 to read, ". . . at least HOT SHUTDOWN within 12 hours."

48. Page 3/4 3-91, under the MODES IN WHICH SURVEILLANCE REQUIRED column, change the notation from "***" to read "**" for item 4.a.

49. Page 3/4 3-92, change beginning of notation (3)2. to read, "4 volume percent . . ."

50. Page 3/4 4-2, change the third line under Technical Specification 4.4.1.2 and the first line under Technical Specification 4.4.1.2.a. from" . . . recirculation pump flow . . ." to read ". . . recirculation loop flow . . ."

51. Page 3/4 4-5, delete the comma from the footnote notation for Technical Specification 3.4.2.

52. Page 3/4 4-5, add footnote notation "##" at the end of Technical Specification 4.4.2.b. and add the associated footnote to read "##" The provisions of Specification 4.0.4 are not applicable provided the surveillance is performed within 12 hours after reactor steam pressure is adequate to perform the test." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

53. Page 3/4 4-6, change line four under ACTION to read, ". . . required gaseous or particulate . . ."

54. Page 3/4 4-9, delete "REACTOR COOLANT SYSTEM" from top left corner of page.

55. Page 3/4 4-11, change Technical Specification 4.4.4.c to read ". . . conductivity monitor is inoperable, obtaining an in-line . . ."

56. Page 3/4 4-13, ". . . 0.2 microcuries per gram . . ." to read ". . . 0.2 microcurire per gram . . ." (six places on page).

57. Page 3/4 4-13, correct typographical error at beginning of ACTION b. to read "In OPERATIONAL CONDITIONS..."

58. Page 3/4 4-16, in Technical Specifications 3.4.6.1.a. and 3.4.6.1.b., change ". . . any one hour . . . " to read ". . . any 1-hour . . ."

59. Page 3/4 4-24, in Technical Specification 3.4.9.1, delete the comma in the footnote notation.

60. Page 3/4 4-25, in Technical Specification 3.4.9.2, delete the comma in the footnote notation.

61. Page 3/4 5–3, correct typographical error at top of page to read, "LIMITING CONDITION FOR OPERATION (Continued)"

62. Change "delta P" by replacing the word delta with the symbol for delta on pages 3/4 5–3 (twice), 3/4 5–4, and 3/4 5–5.

63. Page 3/4 5–4, in Technical Specification 4.5.1.a.1.b), change to read ". . . in its correct ** position." and add the associated footnote to read, "** Except that an automatic valve capable of automatic return to its ECCS position when an ECCS signal is present may be in position for another mode of operation." This change is a clarification of the wording "correct position" regarding automatic valves with multiple functions.

64. Page 3/4 5–4, correct typographical error in beginning of Technical Specification 4.5.1.b. to read, "Verifying that, when tested . . ."

65. Page 3/4 6–2, correct typographical error in ACTION e. to read, ". . . valves in hydrostatically tested lines . . ."

66. Page 3/4 6–6, change footnote** to read ". . . interlock is tested upon initial entry after . . ." This change provides operational flexibility yet achieves the same level of assurance that interlocks are tested.

67. Page 3/4 6–7, redesignate Technical Specification 4.6.1.4.d. as Technical Specification 4.6.1.4.c

68. Page 3/4 6–14, change Technical Specification 4.6.2.1.c. to read, ". . . at least sixteen surface water temperature . . ."

69. Page 3/4 6–14, change Technical Specification 4.6.2.1.d. to read, " . . . initial differential pressure of at least 4.3 psi and verifying . . ."

70. Page 3/4 6–15, change Technical Specification 4.6.2.2.c. from "At least once per 3 years . . ." to read, "At least once per 5 years . . ." This change corrects a typographical error.

71. Page 3/4 6–33, delete footnote notation "*" from item 3, and the associated footnote.

72. Page 3/4, change Technical Specification 3.6.6.3. to read, ". . . unit cooler subsystems (1V414A,B, 1V415A,B, and 1V416A,B) shall be . . ."

73. Page 3/4 6–38, change Technical Specification 4.6.6.3 to read, ". . . unit cooler subsystem required above shall be deomonstrated . . ."

74. Page 3/4 7–2, change Technical Specification 4.7.1.2.a. to read, ". . . that each valve (manual, power operated or automatic) servicing safety-related equipment . . ."

75. Change ". . . 0.005 microcuries . . . " to read ". . . 0.005 microcurie . . ." on pages 3/4 7–31 (twice) and 3/4 7–32.

76. Page 3/4 7–31, in Technical Specification 4.7.5.2.a.1., change ". . . excluding Hydrogen 3, and . . ." to read, "excluding Hydrogen 3 (Tritium), and . . ."

77. Page 3/4 7–38, in Technical Specification 4.7.6.3.2.b., correct typographical error to read, "At least one per 18 months . . ."

78. Page 3/4 7–40, in Technical Specification 4.7.6.5.b.2., change to read, ". . . inspection and re-racking for all fire hose stations, and"

79. Page 3/4 7–40, in Technical Specification 4.7.6.5.b.3., change to read, ". . . gaskets in the couplings for all fire hose stations."

80. Page 3/4 8–1, in ACTION, a., change ". . . within four hours . . ." to read, "within 4 hours . . ."

81. Page 3/4 8–1, in ACTION b., change ". . . within three hours . . ." to read, ". . . within 3 hours . . ."

82. Page 3/4 8–5, change beginning of Technical Specification 4.8.1.1.2.d.7. to read "Simulating a loss-of-offsite power . . ."

83. Page 3/4 8–5, change "kW" to read "kw" (four places on page).

84. Page 3/4 8–5, in footnote, change ". . . for one hour . . ." to read, ". . . for 1 hour . . ."

85. Page 3/4 8–6, in Technical Specification 4.8.1.1.2.f.2., change to read, ". . . ASME Code Section XI Article IWD–5000."

86. Change ". . . 150×10^{-6} ohms . . ." to read ". . . 150×10^{-6} ohm . . ." on pages 3/4 8–11 and 3/4 8–12.

87. Page 3/48–22, change Technical Specification 3.8.4.1 to read, "All primary containment penetration conductor overcurrent protective devices shown in Table 3.8.4.1.–1 and all fuses tested pursuant to specification 4.8.4.1.a.2 shall be OPERABLE."

88. Page 3/4 8–22, change ACTION a. to read, "With one or more of the above required containment penetration conductor overcurrent devices shown in Table 3.8.4.1–1 and/or fuses tested pursuant Specification 4.8.4.1.a.2 inoperable:

1. Restore the protective device(s) to OPERABLE status or deenergize the circuit(s) by tripping, racking out, or removing the alternate device or racking out by removing the inoperable device within 72 hours, and

2. Declare the affected system or component inoperable, and

3. Verify at least once per 7 days thereafter the alternate device is tripped, racked out, or removed, or the device is racked out or removed.

Otherwise, be in at least HOT SHUTDOWN within the next 12 hours and in COLD SHUTDOWN within the following 24 hours."

89. Page 3/4 8–22, change ACTION b. to read, "The provisions of Specification 3.0.4 are not applicable to overcurrent devices which have the inoperable device racked out or removed or, which have the alternate device tripped, racked out, or removed." This change provides clarifications that removal of the inoperable device is equivalent to racking out the same device. Additionally, the change permits tripping, racking or removal of an alternate device to protect primary containment penetration conductors.

90. Page 3/4 8–22, change Technical Specification 4.8.4.1 to read, ". . . protective devices required above shall be . . ."

91. Redesignate the footnote notation associated with title "Type 2 Molded Case Circuit Breakers" from "+" to read "#" on pages 3/4 8–24, 3/4 8–25, and 3/4 8–26.

92. Page 3/4 8–24, modify the description under the SYSTEMS OR EQUIPMENT POWERED column to read, "HVB211F016-Main Stm, Line Drain Inboard Isolution" for items 14.

93. Page 3/4 8–25, modify the description under the SYSTEMS OR EQUIPMENT POWERED column to read, "HVE511F007-RCIC Inbrd Steam Line Isolation" for item 20.

94. Page 3/4 8–28, under the SYSTEMS OR EQUIPMENT POWERED column, change "pp" to read "Pump" for items 33, 38, and 40.

95. Page 3/4 8–28, redesignate footnote "+" as "#" and modify to read, "Each location number represents two breakers in series."

96. Page 3/4 8–28, Technical Specification 4.8.4.2.1 would be modified to read, "The thermal overload protection for the above required valves shall be verified to be bypassed continuously by an OPERABLE integral bypass device by verifying that the thermal overload protection is bypassed:

a. At least once per 18 months, and

b. Following maintenance on the motor starter."

97. Page 3/4 8–28, Technical Specification 4.8.4.2.2 would be modified to read, "The thermal overload protection shall be verified to be bypassed following activities during which the thermal overload protection was temporarily placed in force."

98. Page 3/4 8–30, in the VALVE NUMBER column, change "HB–E11–1F015B" to read "HV–E11–1F015B," and in the SYSTEM(S) AFFECTED column change "NSS" tyo read "NSSS."

99. Page 3/4 8–31, in the VALVE NUMBER column, change "HV–E11–1F0738" to read "HV–E11–1F073B."

100. Page 3/4 8–33, in Technical Specification 4.8.4.3.b., change words "over-voltage," "undervoltage" and "under-frequency" to read, "overvoltage," "undervoltage," and "underfrequency," respectively.

101. Page 3/4 9–1, change the footnote notation in Technical Specifications 4.9.1.2 and 4.9.1.3, and footnote itself from "*" to read "##."

102. Page 3/4 9–3, delete the footnote notation "**" in the ACTION statement and the associated footnote.

103. Page 3/4 9–3, change the footnote notation "#" in Technical Specification 3.9.2.d. and the associated footnote to "**."

104. Page 3/4 9–13, add "Suspension of movement of the control rod and/or associated control rod drive mechanism shall not preclude completion of the movement of the component to a safe conservative position." to the end of the ACTION statement.

105. Page 3/4 9–15, add "Suspension of movement of the control rods and/or associated control rod drive mechanisms shall not preclude completion of the movement of the components to a safe conservative position." to the end of the ACTION statement.

106. Page 3/4 11–5, in note c., change to read, ". . . the LLD specification applies include the following . . ."

107. Page 3/4 11–10, under the Type of Activity Analysis column, change the footnote notation from "h" to read "g, h" for the Principal Gamma Emitters in section B.

108. Page 3/4 11–12, in note g., change to read, ". . . the LLD specification applies include the following . . ." and ". . . Radioactive Effluent Release Report, pursuant to . . ."

109. Page 3/4 11–18, in the ACTION statement, change to read, ". . . be in at least HOT SHUTDOWN within the next 12 hours."

110. Page 3/4 11–22, in the fourth line of ACTION a., change to read, ". . . calculations shall be made including . . ."

111. Page 3/4 12–2, redesignate Technical Specifications 4.12.1 and 4.12.2 as Technical Specifications 4.12.1.1 and 4.12.1.2 respectively.

112. Pages 3/4 12–3 through 3/4 12–6 change all column titles to all capital letters, delete designations in parantheses from the second column, and add periods to all statements in the third and fourth columns.

113. Orient the table notation vertically on the page for pages 3/4 12–7, 3/4 12–8, 3/4 12–11, and 3/4 12–12.

114. Page 3/4 12–7, in note b, delete the remainder of the paragraph beginning with. "The 40 stations is not an absolute . . ."

115. Page 3/4 12–8, in note h, correct typographical error to read, ". . . gradient or rechange properties . . ."

116. Page 3/4 12–9, change footnote * to read, ". . . 30,000 pCi/L may be used."

117. Page 3/4 12–11, in note a, correct typographical error to read, ". . . Radiological Environmental Operating . . ."

118. The following figures would be modified to update in the PP&L property line:

Figure 5.1.1–1
Figure 5.1.3–1a
Figure 5.1.3–1b

119. Page 6–1, in section 6.1.2, change to read, ". . . signed by the Senior Vice President—Nuclear shall be reissued . . ."

120. Page 6–1, in section 6.2.2.b., change to read, "At least one licensed Reactor Operator assigned to and qualified on that unit shall be in the control room when fuel is in the reactor. In addition, while the reactor is in OPERATIONAL CONDITION 1, 2 or 3, at least one licensed Senior Reactor Operator qualified on this unit shall be in the Control Room. This individual may be qualified on both units and be serving in this capacity on both units."

121. Pages 6–5 through 6–6 make Table 6.2.2–1, including all notations, identical to the same table on pages 6–5 through 6–6 of the Susquehanna Unit 2 Technical Specifications.

122. Page 6–7, section 6.5.1.5, change to read, "The quorum of the PORC . . ."

123. Page 6–10, section 6.5.2.2, change to read, "The SRC shall be composed of nine individuals who . . ."

124. Page 6–10, section 6.5.2.6, change to read, "The quorum of the SRC and ". . . at least four SRC members including . . ."

125. Page 6–10, section 6.5.2.7, change to read, "The SRC shall be responsible for the review of:" and revise ". . . Section 50.59, 10 CFR . . ." to read ". . . 10 CFR 50.59 . . ." (three places).

126. Page 6–16, section 6.9.1.2, change to read, "The startup report shall address each of the startup tests . . ."

127. Page 6–16, redesignate footnote "1" and "2" as "*" and "**," respectively.

128. Page 6–17, second paragraph of section 6.9.1.6, change to read ". . . within 90 days of when the change(s) . . ."

129. Page 6–20, third paragraph, change to read, ". . . results of these analyses and measurements . . ."

130. Page 6–20, fourth paragraph, change to read, ". . . two legible maps** covering . . ." and ". . . the LLD required by Table 4.12.1–1 was not achievable."

131. Pages 6–21 and 6–22, change title of 6.9.1.11 to read, "SEMIANNUAL RADIOACTIVE EFFLUENT RELEASE REPORT*"

132. Page 6–21, section 6.9.1.11, revise first sentence of first paragraph to read, "Routine Semiannual Radioactive Effluent . . ."

133. Page 6–21, section 6.9.1.11, revise the first sentence of the second and third paragraphs to read, "The Semiannual Radioactive Effluent . . ."

134. Page 6–22, revise the first sentence of the first, second, third and fifth paragraphs to read, "The Semiannual Radioactive Effluent . . ."

135. Page 6–22, delete the fourth paragraph.

136. Page 6–24, section 6.10.2.1., change to read, ". . . service lives of all snubbers, including the date . . ."

At the Susquehanna site, reactor operation and control is accomplished in a dual type control room where controls and reactor operators for each unit are located. The plant design for both units is generally identical with some minor differences as described in the Final Safety Analysis Report for Susquehanna. Consequently, consistency and uniformity between Unit 1 and Unit 2 Technical Specifications will minimize the potential for confusion and Technical Specification violation, and allow a consistent basis for operating, maintenance and surveillance procedures for both units.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include:

(i) A purely administrative change to the Technical Specifications, to achieve consistency throughout the Technical Specifications, correction of errors or clarification; (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; and (vii) a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The changes proposed in the application for amendment are encompassed by these examples in the following ways:

(1) The following proposed changes in the Technical Specifications are for typing errors, correcting punctuations, updating the index (Table of Contents), minor changes to add clarity, and updating to reflect two unit operation and are encompased by the Commission's example (i) of actions not likely to involve significant hazards considerations: (items are enumerated as above) Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, and 136.

(3) The following proposed changes in the Technical Specifications are requirements which constitute an additional limitation, restriction, or control not presently included in Unit 1 requirements and are encompassed by the Commission's example (ii) of actions not likely to involve significant hazards considerations: Items 22, 55, 87, 88 and 102.

(3) The following proposed changes in the Technical Specifications is a change to make the license conform with the requirements of the regulations for two-unit staffing with a common control room, where the change results in very minor changes to facility operations clearly in keeping with the regulations, and is encompassed by the Commission's example (vii) of actions not likely to involve significant hazards considerations: Item 121.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the above proposed changes involve no significant hazards consideration. For item 66, the proposed change achieves the same level of assurance that the interlocks will be tested prior to entry into an operational condition requiring primary containment integrity while allowing some operational flexibility on actual timing of surveillance test performance. No safety analysis is affected by this change. This change clearly does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety. For item 89, the proposed change provides clarification that removal of the inoperable device is equivalent to racking out the same device. Additionally, the change permits tripping, racking or removal of an alternative device to protect primary containment penetration conductors. No safety analysis is affected by this change since protection of the containment penetration conductor is maintained. This change is consistent with existing controls and remains within the bases for protection of the primary containment penetration conductors. This proposed change clearly does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: September 7, 1984.

Description of amendment request: The purpose of the proposed amendment request is to change Technical Specifications to remove the 50° blocking requirement on containment purge valves and to revise the maximum isolation times for the containment purge valves. Specifically, on page ¾ 6–11 in Technical Specification 3.6.1.8, delete the phrase, ". . . provided that each butterfly value is blocked so as not to open more than 50°". On page ¾ 6–11 in Technical Specification 4.6.1.8.1, delete the phrase, ". . . to be blocked so as to open to less than or equal to 50° open unless so verified within the previous 31 days, and shall be verified . . .". On page ¾ 6–20 under *"Containment Purge"*, valves HV–15703, HV–15704, HV–15705, HV–15711, HV–15713, HV–15714, HV–15721, HV–15722, HV–15723 HV–15724, and HV–15725, would each have a maximum isolation time of 15 seconds.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (iv) of action not likely to involve a significant hazards consideration is a relief granted upon demonstration of acceptable operation from an operation restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a relief have been met. At the time of issuance of Facility Operating License No. NPF–14, qualification data, demonstrating the operability of the containment purge valves during and after a loss of coolant accident, had not been provided. As a result, the operating license for the Susquehanna, Unit 1 facility contains appropriate license conditions and technical specification restrictions limiting the maximum opening position of the containment purge valves to 50° (90° being full open). Subsequently, qualification data for the containment purge valves were provided and found acceptable by the NRC staff as discussed in Section 22 (II.E.4.2) of Supplement No. 6 to the Susquehanna Safety Evaluaton Report. The staff proposes to conclude that the proposed technical specification changes to remove the containment purge valve blocking limitations would be within example (iv), and do not involve a significant increase in the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident from any accident previously evaluated, and the proposed changes do not result in a significant reduction in a margin of safety.

Other examples of action not likely to involve a significant hazards consideration are (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement, and (vi) a change which either may result in some increase to the probability or consequences of a previously—analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. Changes to the isolation times of the containment purge valves listed in Technical Specification Table 3.6.3–1 involve reducing the maximum isolation time for eight of the valves listed and increasing the maximum isolation time for three of the valves listed. The proposed maximum isolation time for all containment purge valves would be 15 seconds. The staff proposes to conclude that the proposed maximum isolation time changes to containment purge valves which result in a reduction in the maximum isolation time fall within example (ii), and changes to containment purge valves which result in an increase in the maximum isolation time fall within example (vi), and do not involve a significant increase in the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident from any accident previously evaluated, and the proposed changes do not result in a significant reduction in a margin of safety. Therefore, the proposed changes are considered likely to involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin, Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, Docket No. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: September 19, 1984.

Description of amendment request: The proposed amendments would revise License Condition 2.C.(23)(b) of Facility Operating License No. NPF–14 and License Condition 2.C.(8)(b) of Facility Operating License No. NPF–22. These license conditions currently require the licensee to perform the nonlinear analysis to qualify the In-Vessel Rack (F22–E006) to the Seismic Qualification Review Team (SQRT) criteria and provide the qualification documentation to the NRC staff for review and approval prior to commencement of the first refueling outage. The licensee proposes to revise these license conditions to read, "Prior to use, PP&L shall complete qualification and documentation for the in-vessel rack (F22–E006)." The licensee has stated that the current planning for the first refueling outage of each unit is to off-load the core, thereby eliminating the need for the in-vessel rack during the refueling outage.

Basis for proposed no significant hazards consideration determination: The licensee in his letter of September 19, 1984, stated that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the in-vessel rack is not necessary to perform any core manipulations, but is rather, a device which can be used as a convenience. No credit for its use is taken in any safety analysis. The licensee stated the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the in-vessel rack is not planned to be utilized during the refueling operation nor is its use required to perform core manipulations. The licensee also stated the proposed change does not result in a significant reduction in the margin of safety because the procedures involved in the refueling or any other core manipulation do not require the use of the in-vessel rack. The staff agrees with the licensee's evaluation in this regard, and accordingly, the NRC staff proposed to find the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: A Schwencer.

Pennsylvania Power & Light Company, Docket No. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: September 28, 1984.

Description of amendment request: The purpose of the proposed amendment request is to change Susquehanna Unit 1 and Unit 2 Technical Specifications 4.5.6.3 and 4.7.2. regarding HEPA filters and charcoal adsorber units to incorporate clarifications discussed in NRC Generic Letter No. 83–13, dated March 2, 1983. The clarifications to the Technical Specifications were provided to clearly reflect the required relationship between the guidance in Regulatory Guide 1.52, Revision 2, and ANSI N510–1979; the testing requirements of the HEPA filters and charcoal adsorber units; and the NRC staff assumptions used in its safety evaluations for the ESF atmospheric cleanup systems.

Basis for proposed no significant hazards consideration determination. The Commission has provided guidance concerning the application of the no no significant hazards consideration standard by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve significant hazards considerations, example (i), a purely administrative change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The NRC staff proposes to find that the changes to Susquehanna Unit 1 and Unit 2 Technical Specifications 4.6.5.3 and 4.7.2. fall within the Commission's example (i) and does not involve a significant hazards consideration because the change as discussed in NRC Generic Letter No. 83–13 provides clarification to the technical specification to clearly reflect the relationships between the guidance in Regulatory Guide 1.52, Revision 2, and ANSI N510–1975; the testing requirements of the HEPA filters and charcoal absorbers units; and the NRC Staff assumptions used in its safety evaluations for the ESF atmospheric cleanup systems.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: A Schwencer.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: September 14, 1984.

Description of amendment request: Deletion of the tabular listing (Table 3.11.D.1) of snubbers in the Technical Specifications (TSs) in accordance with the NRC staff guidance contained in Generic Letter 84–13 ("Technical Specifications for Snubbers", May 3, 1984). In addition, the proposed changes would add the criteria contained in Generic Letter 84–13 specifying which snubbers are required to be operable and which snubbers are exempted from this requirement. Deletion of Table 3.11.D.1 from the Peach Bottom Units 2 and 3 TSs eliminates the need for frequent TS amendments to incorporate changes in the snubber listing. This list of individual snubber location, size, and system affected will be maintained in plant procedures as required by § 50.71(c) of 10 CFR Part 50.

Basis for proposed no significant hazards consideration determination: The Commission's staff has previously evaluated the inclusion of the snubber

listings in the TSs (Generic Letter 84–13) and has concluded that such listings are not necessary provided the snubber TS is modified to specify which snubbers are required to be operable. The licensees' amendment request would add specific language to address which snubbers are required to be operable and which are exempted in accordance with the staff's guidance provided in the above referenced Generic Letter. Furthermore, the Peach Bottom TSs recordkeeping requirements in Section 4.11.D.4 for snubbers are not altered for this requested change. These plant records must contain a record of the service life, installation date, etc., of each snubber. Since any change in snubber quantities, types, or locations would be a change to the facility, such changes would be subject to the provisions of 10 CFR 50.59, and these changes would have to be reflected in the records required. On May 3, 1984, the Commission sent a letter to all licensees which indicated the above conclusion regarding inclusion of snubber tables in the TSs and indicated that such changes were not required but that the licensee could choose to request an amendment to delete the tabular listing of snubbers.

The Commission's staff finds that removal of the snubber tables with the added criteria specified in Generic Letter 84–13 would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because although the proposed change would delete the snubber table from the TSs, plant records must still be maintained on each snubber; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because any changes in snubber quantities, types or location would still be subject to the provisions of 10 CFR 50.59, and these changes would have to be reflected in the plant records; or (3) involve a significant reduction in a margin of safety because the proposed changes would add additional TS requirements which would specify which snubbers are required to be operable to maintain the designed margin of safety. Having made these findings, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006.

NRC Branch Chief: John F. Stolz.

Portland General Electric Company, Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: September 20, 1984.

Description of amendment request: The amendment would revise the channel functional test that is required to be performed on the pressurizer power-operated relief valve (PORV) within 31 days prior to its use as overpressure protection for the reactor coolant system during cold shutdowns. Current requirements state that the valve should be demonstrated operable by performance of a channel functional test, but excluding valve operation. PGE states in its request that a full channel functional test that excludes valve operation would require lifting leads or the use of jumpers. Changes such as these would normally require a full test *with valve operation* to ensure that all temporary changes had been restored to normal. Since this would be contrary to the desired test, PGE requests that the surveillance requirement be clarified or modified to state that the channel functional test would be performed to the maximum extent possible (components tested without performing any action such as lifting a lead that would require valve operation as a retest requirement).

The second part of the request involves a revision to a basis statement resulting from a design change completed during the 1984 refueling outage. This change does not involve an amendment to the operating license.

Basis for proposed no significant hazards consideration determination: The revision to the PORV surveillance test is consistent with the NRC's original request—that the test exclude valve operation. That being the case, it would be undesirable to lift leads or fuses, etc., in order to conduct a full channel functional test at the risk of not restoring the circuitry properly and thereby leading to valve unreliability. This would be contrary to the intent of the test. Therefore it appears that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident, or (3) involve a significant reduction in a margin of safety. Based on the foregoing, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The second change involves a change to the basis for a technical specification but does not involve an amendment to the license, since as stated in § 50.36 (a) such bases are not part of the technical specifications. Therefore no proposed finding regarding "no significant hazards consideration" is required.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Portland General Electric Company et. al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 1, 1984.

Description of amendment request: The following changes to the technical specifications and the operating license are proposed:

1. *Page 6–4a.* New Technical Specification 6.2.2.g would be added to require that overtime limits be implemented in accordance with NRC Generic Letter 82–12.

2. *Page 3/4 3–12.* Table 4.3–1 of the Trojan Technical Specifications would be changed to add an 18-month calibration requirement for the low hydraulic control oil pressure switch. This switch generates a reactor trip on turbine trip.

3. *Operating License.* License conditions 13, 14 and 15 would be deleted from the license and would be incorporated in Paragraph 6.8.4 of the Appendix A Technical Specifications.

4. *Page 6–13.* Paragraph 6.8 is being retitled "Procedures and Programs" in accordance with Revision 4 of NUREG–0452, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors".

5. *Page 6–14.* New Paragraph 6.8.4. would be added to include the requirements previously included in license conditions 13, 14 and 15. Additionally, Paragraph 6.8.4.d would incorporate the Standard Technical Specification for Post-Accident Sampling.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance to the NRC staff for such determinations by providing examples of amendments that are likely—and not likely—to include a significant hazards consideration. Two examples of amendments not likely to involve a significant hazards consideration are (i) a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications; and (ii) a change that consititutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

All of the five changes discussed above are encompassed by these two examples. Changes No. 1, 2 and part of 5 add new requirements with respect to overtime restrictions, a new surveillance requirement for the turbine trip circuitry, and a new program for the post-accident sampling system and are encompassed by example (ii) actions not likely to involve significant hazards considerations. Changes No. 3, 4 and the rest of 5 are purely administrative in nature, in that the changes involve moving the requirements from the license itself to a new seciton of the technical specifications. These latter changes are thus encompassed by example (i) of actions not likely to involve significant hazards considerations.

Since the proposed changes are similar to the examples which have been determined not likely to involve a significant hazards consideration, the staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment requests: October 9, 1984.

Description of amendment request: The proposed amendment would revise the Technical Specifications to impose stricter limitations on leakage rates from unidentified sources inside the primary containment. The proposed revisions include increasing the frequency of monitoring and recording the reactor cooling leakage rate from once per day to once every four hours and limiting any increase in unidentified leakage to 2 gpm within any 24-hour period. In addition, it would now be required that an inoperable Primary Containment Sump Monitoring System be restored to operable status within a 24-hour period.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications." The proposed revisions are encompassed by this example since more stringent limitations on leakage rates from unidentified sources are being imposed.

Based on the foregoing, the Commission proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Public Service Co. of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generation Station, Platteville, Colorado

Date of amendment request: September 27, 1984.

Description of amendment request: The proposed change to the Technical Specifications revises the fire hose station numbering scheme. The new scheme consists of a numbering sequence which indicates the building, floor level and location of the station.

Basis for proposed no significant hazards consideration determination: The Commisison has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions that are considered not likely to involve significant hazards considerations include purely administrative changes to the Technical Specifications: for example, a change in nomenclature. Since the proposed change only provides new, more meaningful numbers for the existing hose stations, we propose to determine that this action involves no significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P. O. Box 840, Denver, Colorado 80201.

NRC Branch Chief: Eric H. Johnson.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: May 31, 1984, as supplemented July 31 and August 31, 1984.

Description of amendment request: The amendment would incorporate a license condition requiring Sacramento Municipal Utility District to follow its plan for implementing the Living Schedule Plan for the Rancho Seco Nuclear Generating Station. The proposed amendment provides for establishment of schedules for a wide range of planned plant modifications including those required by NRC, as well as those modifications deemed desirable by the licensee, and provides methods for accommodating changes to such schedules.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to a purely administrative change to the Technical Specifications. The incorporation of a license condition requiring use of a plan to provide for scheduling modifications and notification of scheduling changes is purely administrative.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: October 1, 1984 (Reference PCN-148, 152, 162 and 164).

Description of Amendment Request: The proposed changes would revise Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants" to accommodate CPC software changes being implemented for Cycle 2 operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed license amendment involves a significant hazards consideration by providing certain examples (48 FR 14870) of amendments not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may in some way reduce a margin of safety, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. Each of the proposed changes proposed by the licensee is similar to example (vi) and thus it is proposed that no significant hazards consideration exists for the requested changes. A description of each proposed change to the technical specifications, and a discussion of how each change is similar to example (vi) of 48 FR 14870 follow:

1. Proposed Change PCN-148

The proposed change would revise Table 2.2-2 of Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants." The CPC is an integral part of the reactor protection system. Some CPC addressable constants are provided to allow calibration of the CPC system to more accurately predict power level and radial power peaking factors. Other CPC addressable constants allow the CPC to account for measurement uncertainties or inoperable equipment. The proposed change would add the CPC addressable constant PCALIB (point ID Number 104) to Table 2.-2. Specifically, CPC addressable constant PCALIB is defined as calorimetric power at the time of the latest calibration. This addressable constant is added to one of the CPC algorithms which applies uncertainties to the calculations of the thermal power and neutron flux power level by the CPC. Because of a change in these algorithms for Cycle 2, the addition of addressable constant PCALIB ensures the application of correct power measurement uncertainty at each power level.

The proposed change is similar to example (vi) of 48 FR 14870 in that the proposed change is a small refinement of the previously used calculational model, and, although the change may in some way reduce a safety margin, it is nevertheless within the SRP acceptance critieria. Specifically, this change applies uncertainties to the measured reactor power level used by CPC. Further, Cycle 2 safety analyses included the proposed change in the simulated CPC response to the anticipated operational occurrences (A00's) and postulated accidents which depend on the CPC to provide reactor trip protection. All Cycle 2 A00's and postulated accidents were shown in the Reload Analysis Report to be within all acceptable crtieria with respect to the system or component specified in the applicable section of the Standard Review Plan (Section 7.2). Furthermore, the proposed change enhances the reactor protection system's ability to meet the criteria specified in Standard Review Plan Section 7.2 "Reactor Trip System" in that it enhances the CPC's ability to sense accident conditions and to initiate the operation of systems and components important to safety.

2. Proposed Change PCN-152

The proposed change would revise Table 2.2-2 of Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants", by addiing the addressable constant RCPLIM (point ID Number, 103), the reactor power cutback time limit, to Table 2.2-2. The CPC algorithms which require RCPLIM are a small part of a large CPC software package update provided to the licensee by Combustion Engineering (C-E), the CPC vendor. This change represents a standard software package for C-E CPC's. San Onofre 2 and 3 do not contain the hardware necessary to implement reactor power cutback. Thus, the proposed addition of RCPLIM does not have any effect on CPC function. The new addressable constant will be set to zero in the data base.

The proposed change is similar to example (vi) of 48 FR 14870 in that it may result in a slight reduction of a safety margin, but is nevertheless within the SRP acceptance crtieria. Specifically, it provides for future refinement of the CPC by the addition of algorithms to support a reactor power cutback system. At present, the necessary hardware for a reactor cutback system is not installed at San Onofre 2 and 3 and the algorithms are deactivated by the use of appropriate addressable and non-addressable constants.

3. Proposed Change PCN-162

The proposed change would revise Table 2.2-2 of Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants". Specifically the proposed change redefines the CPC addressable constant TCREF (point ID Number 98). The addressable constant TCREF is currently defined as the "Temperature Shadowing Factor Correction Multiplier". Temperature Shadowing is the decalibration of ex-core neutron flux power resulting from changes in inlet coolant density. A modification to the CPC temperature shadowing factor (TSF) algorithm for Cycle 2 has resulted in the temperature shadowing correction multipler becoming fixed in the CPC software. The proposed change would redefine the addressable constant TCREF as the "Reference Cold Leg Temperature," consistent with the CPC temperature shadowing factor algorithm modifications and would reclassify it as a Type I addressable constant (Type I constants require periodic calibration). The proposed change combined with temperature shadowing factor modifications would improve the thermal margin at nominal inlet temperature. At conditions other than nominal conditions, the proposed change provides a more conservative temperature shadowing correction.

The proposed change is similar to example (vi) of 48 FR 14870 in that although it may result in the reduction of a safety margin, it nevertheless is within the SRP acceptance criteria. Specifically, the proposed change is a refinement of the previously used calculational model for correcting excore detector signals for the effects of temperature shadowing. Further, Cycle 2 safety analyses included the proposed change into the simulated CPC response to the anticipated operational occurrences (AOO's) and postulated accidents which depend on the CPC to show protection. All Cycle 2 AOO's and postulated accidents were clearly within all acceptable criteria with respect to the system or component specified in the applicable section of the Standard Review Plan (Section 7.2). Furthermore, the proposed change enhances the reactor protection system's ability to meet the criteria specified in Standard Review Plan 7.2 "Reactor Trip System" in that it enhances the CPC's ability to sense accident conditions and to initiate the operation of systems and components important to safety.

4. Proposed Change PCN-164

The proposed change would revise Table 2.2-2 of Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants". Specifically, the proposed change revises the allowable value for the addressable constant TR (point ID number 63), the azimuthal tilt allowance. The azimuthal power tilt is a measure of the power asymmetry between the azimuthally symmetric fuel assemblies. This change is made in order to make the CPC consistent with the core operating limit supervisory system (COLSS) azimuthal tilt algorithm modifications. The COLSS provides reliable and continual information on the status of the reactor as an aid to the operator. The proposed change would revise the minimum allowed value of addressable constant TR from 1.02 to 1.00. The proposed change increases the range of TR values which can be used as addressable constants.

The proposed change is similar to example (vi) of 48 FR 14870 in that it may result in the reduction of a safety margin, but it nevertheless is within the SRP acceptance criteria. Specifically, the proposed change is a refinement of the previously used calculational model which estimates the azimuthal tilt in the reactor. Further, the change enhances the reactor protection system's ability to meet the criteria specified in Standard Review Plan Section 7.2, "Reactor Trip System," in that it enhanced the CPC's ability to sense accident conditions and to initiate the operation of systems and components important to safety.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Requests: October 1, 1984 *(Reference:* Proposed Changes PCN-160 and PCN-168).

Description of amendment request: The proposed changes revise the technical specifications relating to the departure from nucleate boiling ratio (DNBR) limit and special test exceptions to allow CEA misalignment during required physics testing. The change to the DNBR limit results from the Cycle 2 safety analysis. The special test exception revision is required to accommodate required physics testing in light of more restrictive CEA insertion limits required for Cycle 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

Both of the proposed changes are similar to example (vi) of 48 FR 14870. Therefore it is proposed that these changes do not involve significant hazards considerations. A description of each of the proposed change and how each is similar to example (vi) of 48 FR 14870 follows:

1. Proposed Change PCN-160

The proposed change revises Technical Specifications (T.S) 2.1.1.1, "Safety Limits—Reactor Core—DNBR," and 2.2.1, "Limiting Safety System Settings—Reactor Trip Setpoints," and T.S. Bases 2.2.1, "Reactor Trip Setpoints," and 3/4.4.1, "Reactor Coolant Loops and Coolant Circulation," which specify the departure from nuclear boiling ratio (DNBR) limiting safety system settings (LSSS). DNBR is a unitless value calculated from reactor core thermal-hydraulic conditions on a real-time basis from an empirical correlation that has been reviewed and approved by the NRC staff. It is a measure of thermal margin. Maintaining core conditions such that DNBR is above a minimum value helps to ensure that the fuel cladding will not overheat during anticipated operational occurrences (AOO). The technical specifications affected by this change fall into two categories: first, the technical specifications establishing the reactor core safety limit for DNBR and the reactor protective instrumentation trip setpoint limit (or LOSS) which ensures that the established safety limit is not violated; and second, the various technical specification based which refer to the DNBR safety limit or LSSS.

T.S. 2.1.1.1. and Table 2.2-1, "Reactor Protective Instrumentation Trip Setpoint Limits," establish the DNBR safety limit and the LSSS, respectively. The proposed change would revise both values from 1.20 to 1.31. The revision results from a change in the manner in which uncertainties are accounted for in the departure from nucleate boiling (DNB) limit calculation. This revision will be implemented by a revised core protection calculator (CPC) DNBR constant, changes to the CPC thermal margin alogorithm constants, and the use of a consistent set of constants for the thermal-hydraulic computer code used in transient analysis. (Note: the CPC is an integral part of the reactor protective system. During an AOO, it provides trip signals in time to prevent fuel damage.) The proposed change also deletes a portion of Note 5 of Table 2.2-1 which allows the lowering of the DNBR LSSS by an additional 0.01 to 1.19, because this flexibility is no longer needed. The DNBR LSSS values given in T.S. Bases 2.2.1 and 3/4.4.1 are also changed for consistency.

The proposed change is similar to Example (vi) of 48 FR 14870 in that while it may have a slight effect on safety margin, it nevertheless is within the SRP acceptance criteria. Specifically, the proposed DNBR safety limit meets the 95/95 percent probability/confidence requirements of SRP Section 4.4, "Thermal and Hydraulic Design." Further, the results of all safety analyses performed in support of Cycle 2 and specifically those which use DNBR as acceptance criteria are clearly within the limits specified in the SRP. On this basis, the NRC staff proposed to determine that this change does not involve a significant hazards consideration.

2. Proposed Change PCN-168

The proposed change revises Technical Specification 3/4.10.4, Special

Test Exceptions—Center CEA Misalignment" an ¾.10.4 Bases. This T.S. permits CEA misalignment during physics tests which will be conducted to determine the isothermal temperature coefficient, moderator temperature coefficient (MTC), and power coefficient (these coefficients are a measure of the effects of changes in temperature and power on reactivity). The physics tests are conducted to meet the requirement that a test program be established to demonstrate that the reactor plant can be operated in accordance with the design requirements important to safety. Periodic measurement of MTC is required by Technical Specification ¾.1.1.3, "Moderator Temperature Coefficient". The proposed change includes an exception to permit insertion of regulating control rod group 6 beyond the transient insertion limit during testing, and a surveillance requirement to continuously monitor departure from nucleate boiling ratio (DNBR) during testing. T.S. 3.10.4 establishes the special test exceptions for the performance of physics tests to determine the isothermal temperature coefficient, moderator temperature coefficient, and power coefficient. T.S. 3.10.4 suspends Technical Specifications 3.1.3.1 and 3.1.3.6 (the CEA position and regulating CEA insertion limit—limiting conditions for operation, respectively) and allows the center CEA (CEA #1) to be purposely misaligned during the physics tests. The proposed revision would allow regulating group #6 to be inserted beyond its transient insertion limit during this testing. In addition, a surveillance requirement to continuously monitor DNBR margin is added. The test procedures for Cycle 2 (which are virtually identical to those used in Cycle 1) require Group 6 to be moved and may result in the transient insertion limit being exceeded due to the application of a more restrictive power dependent insertion limit (PDIL) for Cycle 2 (Figure 3.1–2 of the technical specifications).

The proposed change is similar to Example (vi) of 48 FR 14870 in that although it may increase the consequences of a previously analyzed accident, the results of the change are nevertheless within the acceptance criteria of the SRP. Specifically, SRP Section 4.3, "Nuclear Design" requires physics measurements be made during startup and during the cycle of operation to verify design predictions. Technical Specification 3/4.1.1.3 requires periodic measurement of MTC for this purpose. The proposed change meets these testing requirements by allowing the specified CEA insertion limits for CEA group 6 to be exceeded for the purpose of physics tests. The accident which would be most adversely affected by group 6 insertion beyond the specified limits is the control rod ejection accident, for which the acceptance criteria are delineated in SRP Section 15.4.8. The analysis of the CEA ejection accident shows that the SRP acceptance criteria are met with group; 6 insertion beyond the transient insertion limit to the extent required for the determination of reactivity coefficients. Because the proposed change accommodates special tests required by the SRP and because analysis of the limiting accident has shown the accident consequences to be within the SRP acceptance criteria, the proposed change is similar to Example (vi) of 48 FR 14870. On these bases, the NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Franciso, California 94111.

NRC Branch Chief: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: October 1, 1984 (Reference PCN–150, 151, 153 and 169) and October 11, 1984 (Reference PCN–149).

Description of amendment request: The proposed changes would revise the technical specifications (T.S.) to be consistent with the assumptions used for the Cycle 2 safety analysis. In the analysis of anticipated operational occurrences and accidents, the safety analysis assumes that the plant is in an initial operating space defined by various plant parameters such as power level, control rod configurations, power distribution, cold leg temperatures, etc. Provided that the plant operates within the analyzed range of these parameters, the consequences of anticipated operational occurences and accidents will be bounded by the safety analysis and within the acceptance criteria defined for analyzed anticipated operational occurrences and accidents. The technical specifications define ranges for the various plant parameters to assure that plant operation is bounded by the safety analysis. The proposed changes revise the technical specifications to be consistent with cycle 2 safety analysis assumptions.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff proposes to determine that the proposed changes do not involve significant hazards considerations. In this regard, the Commission has provided guidance concerning the application of standards for determining whether or not a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. Example (iii) relates to a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for technical specifications, that the analytical methods used to demonstrate conference with the technical specifications and regulations are not significantly changes, and that the NRC has previously found such methods acceptable. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP). Each of the proposed changes is similar to one of these examples. On this basis, it is proposed that these changes do not involve significant hazards considerations. The following is a description of each of the proposed changes and how each is similar to one of the examples of 48 FR 14870.

1. Proposed Change PCN–149

The proposed change would revise Technical Specification 3.2.6, "Reactor Coolant Cold Leg Temperature-Limiting Condition for Operation". This T.S. requires that the reactor coolant cold leg temperature (Tc) be maintained between 544°F and 558°F when in Mode 1, above 30% of rated thermal power. This limiting condition for operation ensures that the cold leg temperature is maintained within the limits assumed in the accident analyses. The proposed change would reduce the lower limit on cold leg temperature from 544°F to 535°F for power levels greater than 30% and less than or equal to 70% of rated thermal power. The proposed change provides additional operational flexibility for plant maneuvering. This proposed change is similar to Exmaple (vi) of 48 FR 14870 in that it may increase the consequences of a previously analyzed accident but where the results are within all acceptance criteria in the SRP. The lower limit of Tc is established taking into account its effect on decreased heat removal events (e.g. a loss of condenser vaccum) and peak clad temperature during a large break loss of coolant accident (LOCA). A lower Tc tends to increase peak reactor coolant system (RCS) pressure in the decreased heat removal events, and peak clad temperature for the LOCA. SRP Section 15.2.1 specifies that peak RCS pressure should not exceed 110% of design pressure (i.e. 2750 psi) as an acceptance criteria for the decreased heat removal events. SRP Section 15.2.6 specifies that peak clad temperatures should not exceed 2200°F during a LOCA. The proposed reduction of Tc is accommodated for by restriction of the applicability of the reduced Tc to power levels of less than or equal to 70%. This restriction results in a peak RCS pressure of less than 2750 psi for the loss of condenser vacuum accident and a peak clad temperature of less that 2,200°F for the large break LOCA. Because the results for these limiting events are within the SRP acceptance criteria, the proposed change is similar to Example (vi) to 48 FR 14870. On this basis the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

2. Proposed Change PCN–150

The proposed change would revise Technical Specification 3.2.7, "Power Distribution Limits-Axial Shape Index," which specifies the axial shape index (ASI) limit for power operation (Mode 1) with reactor power level greater than 20% rated thermal power. ASI is a measure of power distribution within the reactor core and has a direct effect on thermal margin. The need for a limiting condition for operation (LCO) on ASI comes from the requirement that reactor design include appropriate margin to ensure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences.

T.S. 3.2.7 specifies the ASI LCO. The proposed change would reduce the upper limit of ASI from +0.50 to +0.28 with the Core Operating Limit Supervisory System (COLSS) in service and from +0.50 to +0.20 with COLSS out of servive. (Note: COLSS is a monitoring system used as an aid to the operator.) Since the lower limit on ASI is not changed, the proposed change would further restrict the allowed range of ASI.

The Cycle 2 safety analysis is based on the revised range of ASI. The proposed change reduces the ASI band from that currently allowed for Cycle 1. Because it constitutes an additional restriction, this change is similar to Example (ii) of 48 FR 14870. On this basis the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

3. Proposed Change PCN–151

The proposed change would revise Figure 3.1–2, "CEA Insertion Limits vs. Fraction of Allowable Thermal Power," of Technical Specification 3.1.3.6, "Reactivity Control Systems—Regulating CEA Insertion Limits." This T. S. specifies the withdrawal sequence and power dependent insertion limits (PDIL) for the regulating control element assembly (CEA) groups. The need for a specified withdrawal sequence and PDIL comes from the requirement that reactor design include appropriate margin to assure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including anticipated operational occurrences. To this end, Figure 3.1–2 helps to ensure that (1) acceptable power distribution limits are maintained, (2) the minimum shutdown margin is maintained, and (3) the potential effects of CEA misalignments are limited to acceptable levels. The proposed change would revise the short term steady state insertion limit and transient insertion limit specified by Figure 3.1–2. The long term steady state insertion limit would remain unchanged. The existing transient insertion limits of Figure 3.1–2 allow insertion of CEA groups 3, 4, 5 and 6 when the reactor is critical. The revised transient insertion limits would allow only CEA groups 5 and 6 to be inserted when the reactor is critical. The current Figure 3.1–2 restricts overlap between CEA groups to a maximum of 60". Cycle 2 was analyzed with a 60" overlap. However, to be consistent with the overlap used by the plant's automatic rod position controller, revised Figure 3.1–2 limits the CEA positions to a 50" overlap. This limit is more restrictive, and is conservative with respect to the analysis. This proposed change to the short term steady state insertion limit and transient insertion limit constitutes an additional limitation or restriction which is not included in the existing technical specifications, but is included as an assumption in the Cycle 2 accident and transient analysis. Because the proposed change constitutes an additional limitation, it is similar to Example (ii) of 48 FR 14870. On this basis the NRC staff proposes to determine that change does not involve a significant hazards consideration.

4. Proposed Change PCN–153

The proposed change would revise Technical Specification 3.1.1.3, "Reactivity Control Systems-Moderator Temperature Coefficient," which specifies the moderator temperature coefficient (MTC) limits for power operation and startup (Modes 1 and 2, respectively). MTC is a measure of the effect that reactor coolant temperature has on reactivity, which in turn effects reactor power (i.e., in the presence of a negative MTC, a decrease in temperature will cause an increase in power). The need for a limiting condition for operation (LCO) on MTC comes from the requirement that reactor design include appropriate limits on the potential amount and rate of reactivity increase.

T.S. 3.1.1.3 established the MTC LCO. The proposed change would revise the positive MTC limit from less than 0.13x10–4 delta k/k/F for all reactor power levels to less than 0.0 delta k/k/F for reactor power levels greater than 70% rated thermal power and less than 0.5x10–4 delta k/k/F for reactor power levels less than or equal to 70% of rated thermal power. This revision is consistent with the assumptions used in the Cycle 2 accident and transient analysis. For reactor power levels greater than 70% of rated thermal power, the proposed change constitutes an additional limitation or restriction not inlcuded in the existing technical specifications. For reactor power levels less than or equal to 70% of rated thermal power, the proposed change would result in a slight increase in the allowed MTC range.

The part of the proposed change which is applicable during operation at power greater than 70% of rated thermal power is similar to Example (ii) of 48 FR 14870, because it constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The part of the proposed change which is applicable during operation at power less than or equal to 70% of rated thermal power is

similar to Example (vi) of 48 FR 14870 in that although it may result in a reduced safety margin, it nevertheless is within the SRP acceptance criteria. The anticipated operational occurrences (AOO) and postulated accidents that are more adverse in the presence of a positive MTC are affected by this part of the proposed change. The AOO's and postulated accidents that are limiting at zero or low power include (1) the rod ejection accident (Standard Review Plan Section 15.4.8), (2) the uncontrolled control rod assembly withdrawal from a subcritical or low power startup condition (SRP Sectoin 15.4.1), (3) the loss of non-emergency AC power to the station auxiliaries, including a 4-pump loss of flow (SRP Section 15.2.6), and (4) the reactor coolant pump seizure and reactor coolant pump shaft break (SRP Section 15.3.4). During AOO"s the SRP acceptance criteria require that no fuel design limits be violated. During postulated accidents the SRP acceptance criteria require that the core be maintained in a coolable geometry and that doses at the site boundary be within specified limits. The results of all AOO and postulated accident analyses for Cycle 2, including those specifically mentioned above, are clearly within all acceptance criteria with respect to the system or component specified in the SRP. Based on the above, the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

5. Proposed Change PCN–169

The proposed change would revise Technical Specification 5.3.1, "Design Features—Reactor Core—Fuel Assemblies" which specifies various fuel assembly design limits including the maximum total weight of uranium in a fuel rod. The proposed change would increase the maximum total weight of uranium in a fuel rod from 1807 gm to 1900 gm. This change in required to accommodate as-built variations or possible fuel density changes which may be included in cycle 2 and future cycles.

The proposed change does not affect the maximum fuel enrichment specified in T.S. 5.3.1. Further, the actual uranium weight per fuel rod is explicitly accounted for in the core performance analysis and the reactor safety analysis. The maximum weight of uranium in a fuel rod during Cycle 2 operation will be approximately 1820 gm.

The proposed change is similar to example (iii) of 48 FR 14870 in that the change will accommodate fuel density changes which may occur as a result of normal reactor core reloading. The fuel assemblies are not significantly different from those found previously acceptable to the NRC, nor are there any significant changes to the acceptance criteria of the technical specifications or the analytical methodology used to demonstrate conformance with the technical specifications and regulations. On this basis the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Requests: March 2 and April 2, 1984 (Reference PCN–99, 100, 101 102).

Description of Amendment Requests: The proposed changes would revise the technical specifications (T.S.) relating to radiation and radioactive effluent monitoring instrumentation as follows:

1. Proposed Change PCN–99 is a request to revise Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System (ESFAS)". Instrumentation. The proposed change clarifies requirements for radiation monitors which support the containment purge isolation ESFAS function to improve consistency with the Final Safety Analysis Report (FSAR), Standard Technical Specifications (NUREG–0212, or STS), and technical specifications for other non-ESFAS functions served by the same instrument. The proposed change also reflects the addition of the dedicated purge effluent monitors which are to be installed in accordance with License Conditions 2.C(17) and 2.C(15) for Units 2 and 3, respectively.

2. Proposed Change PCN–100 is a request to revise Technical Specification 3/4.3.3.1, "Radiation Alarm Monitoring Instrumentation". The proposed change improves consistency with the FSAR and STS, consolidates NUREG–0737 wide range noble gas monitoring requirements from Specification 3/4.3.3.6, Accident Monitoring Instrumentation, adds increased flexibility to Action statements and revises the applicability for the condenser evacuation system and plant vent stack monitors.

3. Proposed Change PCN–101 is a request to delete from Technical Specification ¾.3.3.6, "Accident Monitoring Instrumentation", those radiation monitors listed in Table 3.3–10 which were installed to satisfy NUREG–0737 wide range noble gas monitoring requirements. Consistent with Standard Technical Specifications and Proposed Change PCN–100, these NUREG–0737 monitors will be covered by Specification ¾.3.3.1, "Radiation Monitoring Instrumentation".

4. Proposed Change PCN–102 is a request to revise Technical Specification ¾.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation". The proposed change increases operating flexibility by crediting recent and near future design changes when implemented, revising Action statements, and eliminating cross referencing to other specifications not relating to effluent monitoring.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed license amendment involves a significant hazards consideration by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Example (ii) relates to a change which is an additional requirement or restriction not currently included in the technical specifications: for example, a more stringent surveillance requirement. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP).

Each of the changes proposed by the licensees is similar to one of the above examples, and thus it is proposed that the changes do not involve a significant hazards consideration. These four proposed changes (PCN's) referred to above, collectively affect overall technical specification requirements relating to radiation and radioactive

effluent monitoring instrumentation, and would accomplish the following specific items:

1. Reflect the addition of the dedicated containment purge effluent radiation monitor required by license conditions 2.C(17), Unit 2 and 2.C(15), Unit 3.

2. Achieve consistency in the requirements for containment area radiation monitors between individual technical specifications and the FSAR.

3. Increase the allowed out-of-service time for the containment high range area radiation monitors and main steam line area radiation monitors.

4. Reduce operability requirements for the condenser evacuation system radiation monitors so that they will be required to be operable only in those plant operational modes where the condenser evacuation system is a potential gaseous release pathway.

5. Reduce the minimum required number of plant vent stack wide range radiation monitors from two to one.

6. Revise the action to be taken when a condenser evacuation system or plant vent stack wide range radiation monitor is out of service to clarify when a special report is required.

7. Revise the list of specific instruments which can function as the waste gas holdup system monitor.

8. Revise the action to be taken when waste gas holdup system explosive gas monitoring instrumentation is inoperable. The revised T.S. would require appropriate compensatory measures to be taken, but would no longer require a plant shutdown if both hydrogen or both oxygen analyzers are inoperable.

9. Delete the current limitations on the period for which compensatory measures can be taken when radioactive effluent monitoring instrumentation is inoperable, to eliminate a conflict in the technical specifications.

10. Revise the action to be taken when effluent flow monitoring instrumentation is inoperable to require less frequent flow estimates.

11. Reduce the frequency of required grab sampling when plant vent stack effluent monitoring requirements are not met.

12. Make editorial revisions to the effluent monitoring technical specifications and correct editorial discrepancies between the San Onofre 2 and 3 technical specifications and the standard technical specifications.

The following is a more detailed description of each of the 12 items listed above, and a description of how each is similar to one of the three examples of 48 FR 14870 discussed above.

1. *Addition of Dedicated Containment Purge Effluent Monitor.* License conditions 2.C(17), Unit 2 and 2.C(15), Unit 3, require the installation of a dedicated purge effluent monitor for each unit prior to startup following the first refueling outage. The proposed changes (PCN 90, 100 and 102) make the necessary T.S. revisions to accommodate the installation of this dedicated purge effluent monitor (RT–7828). The proposed T.S. changes also establish requirements for a second radiation monitor when it is modified to automatically terminate purge effluent releases, and provide additional flexibility to avoid a plant shutdown, should the monitor currently performing the purge effluent monitoring function become inoperable prior to installation of the new monitor.

Currently, the containment airborne radiation monitor, RT–7804, is used to monitor the purge effluent. In addition, this containment airborne radiation monitor is also part of the containment purge isolation system (CPIS), an engineered safety feature (ESF) to mitigate the consequences of a fuel handling accident in Mode 6. Further, this monitor is also used for reactor coolant system leakage detection in Modes 1–4. The containment airborne radiation monitor does not directly monitor the containment purge exhaust, but monitors the containment atmosphere near the purge exhaust which is representative of purge releases.

Technical Specification 3/4.3.2 "Engineered Safety Feature Actuation System (ESFAS) Instrumentation" requires that CPIS instrumentation be operable and defines functional tests which must be periodically conducted to verify operability. Likewise, T.S. 3/4.3.3.1, "Radiation Monitoring Alarm Instrumentation", specifies operability requirements for containment airborne radiation monitors. Technical Specification 3/4.3.3.9,, "Radioactive Gaseous Effluent Monitoring Instrumentation", specifies operability requirements for the containment purge effluent monitors. Because one instrument, containment airborne radiation monitor RT–7804, now performs all three functions, the most restrictive operability and surveillance requirements (which are required for the effluent monitoring function) are now contained in each of the above technical specifications. With the addition of the dedicated purge effluent monitor, RT–7804 will no longer perform an effluent monitoring function. Thus only CPIS and RCS leakage detection requirements need be specified in T.S. 3/4.3.2 and 3/4.3.3.1, and T.S. 3/4.3.3.9 will define the operability requirements for the new purge effluent monitor, RT–7828.

The specific current requirements of T.S. 3/4.3.2, 3/4.3.3.1 and 3/4.3.3.9 relating to purge effluent monitoring instrumentation, the proposed changes to these requirements reflecting the addition of the dedicated purge effluent monitor, and the basis for the proposed no significant hazards consideration determination for each change are described below:

(a) T.S. 3/4.3.2, Table 3.3–3, "Engineered Safety Feature Actuation System Instrumentation," Item 12.b and T.S. 3/4.3.3.1, Table 3.3–6, item 2.b requires that at least one of two airborne radiation monitors capable of monitoring gaseous, iodine, and particulate radioactivity in containment, be operable in all plant operational modes. The proposed change will require a gaseous and particulate activity monitoring channel to be operable in modes 1–4 for RCS leakage detection and will require that a gaseous, a particulate and an iodine monitoring channel to be operable during refueling (mode 6) to mitigate the consequences of a fuel handling accident. No containment airborne monitoring channel will be required to be operable in mode 5. Thus, this change removes purge effluent monitoring functional requirements from the containment airborne radiation monitors.

(b) T.S. 3/4.3.2, Table 4.3–2 and T.S. 3/4.3.3.1, Table 4.3–3 specify surveillance tests which periodically must be performed to verify the operability of the containment airbrone radiation monitors. Because RT–7804 now serves as a containment purge effluent monitor, containment airborne radiation monitor surveillances are currently required for all modes of plant operation. The proposed change will require surveillances to be performed for the gaseous and particulate channels only in modes 1, 2, 3, 4 and 6, and for the iodine channel in Mode 6. No surveillances will be required in Mode 5.

(c) T.S. 3/4.3.2, Table 3.3–4 and T.S. 3/4.3.3.1, Table 3.3–6 currently reference the Offsite Dose Calculation Manual (ODCM) to determine the setpoints for the containment airborne radiation monitors, because the ODCM specifies methodology for setpoint calculation for the effluent monitors. Since RT–7804 will no longer serve the purge effluent montoring function, reference to the ODCM is no longer appropriate. Therefore, the proposed change would incorporate a different setpoint methodology for the containment

airborne radiation monitors into the Tables 3.3–4 and 3.3–6.

(d) When the minimum operability requirements for containment airborne radiation monitors are not satisfied, T.S. 3/4.3.2 and 3/4.3.3.1 refer to T.S. 3/4.3.3.9 for the action to be taken. T/S 3/4.3.3.9 applies to effluent monitoring and requires closure of the purge valves in this case. This reference is no longer appropriate since the containment airborne radiation monitor no longer serves an effluent monitoring function. The proposed change will require that the action requirements of specification 3/4.4.5.1, "RCS Leakage Detection" be followed when the gaseous and particulate channels are inoperable in Modes 1–4 and will require closure of the purge isolation valves when the minimum operability requirements for gaseous iodine and particulate channels are not met in Mode 6. These actions are based on the containment airborne radiation monitor RCS leakage detection and fuel handling accident mitigation functions.

T.S. 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentations," Table 3.3–13 currently requires that containment airborne radiation monitor RT–7804 be operable at all times to monitor containment purge system releases. Table 4.3–9 specifies the surveillance requirements to verify operability of this monitor. In the event that the containment airborne radiation monitor is inoperable, the plant operators are requried to suspend releases via the containment purge system. Because of the need to purge frequently in order to maintain containment internal pressure within allowable limits, suspension of purging will result in plant shutdown within a few days. License Conditions 2.C(17) (Unit 2) and 2.C(15) (Unite 3) require installation of a dedicated purge effluent monitor prior to start up following the first refueling. The proposed change will require the use of this new monitor (RT–7828) instead of the containment airborne radiation monitor currently used to monitor purge releases. In addition, the proposed change will permit the use of the wide range plant vent stack radiation monitor (provided that it is equipped to automatically terminate purge releases) to monitor purge effluent. The plant vent stack wide range radiation monitor can be aligned to monitor the purge stack but currently is not equipped to terminate purge releases. This proposed change will provide the diversity necessary to avoid unit shutdown due to a purge monitor failure.

Until the dedicated purge effluent monitor is installed, the proposed T.S. would allow the plant vent stack wide range monitor to be used for purge effleuent monitoring, even though it is not capable of terminating purge release, if the containment airborne radiation monitor is inoperable. In this circumstance, the revised T.S. will require that the other Unit's plant vent stack wide range monitor be aligned to the plant vent stack and, in the event of an alarm on either unit's wide range plant vent stack monitor or the normal range plant vent stack monitor, the revised T.S. will require that containment purging be immediately terminated and the plant vent stack monitor be realigned to the plant vent stack. This provision will be in effect only until installation of the dedicated purge effluent monitor. After the dedicated monitor is installed, suspension of containment purging will again be required if the minimum purge effluent operability requirements are not met.

Since the new monitor will not perform an ESFAS function, the surveillance requirements for it are revised to be consistent with the STS surveillance requirements for purge effluent monitors. Specifically, channel checks will be required daily instead of each shift as is required for ESFAS instruments.

The proposed no significant hazards consideration determination for the above described proposed changes is based on their similarity to examples of changes not likely to involve a significant hazards consideration provided in 48 FR 14870. The proposed changes resulting directly from the installation of the dedicated purge effluent monitor (i.e., items (a) through (d), above) are similar to example (ii) in that they incorporate additional restrictions not currently included in the technical specifications. The proposed interim relaxation of the action to be taken when the containment airborne radiation monitor is out of service (i.e., item (e), above) is similar to example (vi) in that it may in some ways reduce a safety margin but the results are within the SRP acceptance criteria. The following discussion gives the basis for this conclusion about item (e), above.

Currently, containment airborne radiation monitor RT–7804 is used as the purge effluent monitor. This is a secondary function. The primary functions of the containment airborne radiation monitor are to mitigate the consequences of a fuel handling accident and to detect RCS leakage. The proposed change does not affect these requirements. RT–7804 does not directlyl sample the purge exhaust but samples the containment atmosphere which is assumed to be homogeneous and therefore representative of purge effluent. The proposed change will no longer allow the use of RT–7804 as the purge effluent monitor but will require either the new dedicated purge effluent monitor, RT–7828, or the wide range plant vent stack monitor, RT–7865, be used for purge effluent monitoring. Both of these monitors directly sample the purge stack. The requirement that only radiation monitors which directly sample the purge stack can be used for purge effluent monitoring is an additional restriction. Therefore, this change is similar to example (ii) of 48 FR 14870, and on this basis, the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

The revision to the action to be taken when the purge effluent monitor is inoperable is similar to example (vi) in that it reduces existing requirements but satisfies the applicable SRP acceptance criteria. SRP Section 11.5, "Process and Effluent Radiological Monitoring Instrumentation and Sampling Systems," requires that the constainment purge exhaust be continuously monitored for noble gases and provisions be made to automatically terminate releases. The proposed change would allow vent stack monitor RT–7865 to satify the purge effluent monitoring function when the containment airborne monitor is inoperable, even though it is currently not equipped to terminate purge realease. However, in the event of a significant radioactivity release inside containment, there are three other radiation monitors (the two containment area monitors, and the one other containment airborne monitor) which will automatically isolate containment purging, thereby limiting releases. Thus the containment purge will continue to be monitored and provisions to automatically terminate purge releases continue to exist with the proposed change. Therefore, the SRP acceptance criteria are satisfied and the proposed change is similar to example (vi) of 48 FR 14870. On this basis, the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

2. *Containment Area Radiation Monitors.* There are two containment area radiation monitors which are capable of isolating containment purge on detection of high radiation inside containment. Technical Specifications 3/4.3.2, "ESFAS Instrumentation" and 3/4.3.3.1, "Radiation Monitoring Alarm Instrumentation" specify operability and surveillance requirements, setpoints and actions to be taken in the event of inoperability for the containment area radiation monitors. The function of these radiation monitors is to mitigate the consequences of a fuel handling accident. Additionally, these monitors satisfy the NUREG–0737 requirement to isolate containment purge on a high radiation signal in operating Modes 1–4.

T.S. 3/4.3.2 currently requires that at least one of two-containment area radiation moinitors and associated actuation logic be operable in Mode 6. The actuation logic is currently required to all modes because it supports the purge effluent monitoring requirement for the containment airborne radiation monitor. Applicability in all modes is no longer required with installation of the dedicated purge monitor. T.S. 3/4.3.3.1 requires that at least one containment area radiation monitor be operable in Modes 1, 2, 3, 4 and 6. T.S. 3/4.3.2 specifies a trip setpoint of 2.4 mR/hr in Mode 6 with an acceptable value to allow for drift between surveillances of 2.5 mR/hr. T.S. 3/4.3.3.1 specifies a setpoint of 325 mR/hr for Modes 1–4. The proposed changes make T.S. 3/4.3.2 and T.S. 3/4.3.3.1 containment area radiation monitoring requirements consistent with one another.

The proposed change revises T.S. 3/4.3.2 to: (1) Require at least one containment area monitor to be operable in Modes 1, 2, 3, 4 and 6, i.e. consistent with T.S. 3/4.3.3.1; (2) include a setpoint for Modes 1–4 of 325 mR/hr with an acceptable value of 340 mR/hr to allow for drift between suveillances; (3) require operability of the actuation logic in Modes 1–4; and, (4) require that the containment purge valves be closed in the event that both containment area monitors are inoperable in Modes 1–4.

T.S. 3/4.3.3.1 currently requires initiation of a preplanned alternate method of monitoring in the event that both containment area monitors are inoperable in Modes 1–4. In lieu of initiation of the preplanned alternate method of monitoring, the proposed change will require that the purge valves be closed consistent with revised T.S.3/4.3.2.

With the exception of the incorporation of a containment area monitor trip setpoint allowable value of 340 mR/hr, the proposed changes described above achieve consistency between the containment area monitoring requirements of T.S. 3/4.3.2 and T.S. 3/4.3.3.1. Therefore, these changes are similar to example (i) of 48 FR 14870, and on this basis the NRC staff proposes to determine that they do not constitute a significant hazards consideration.

The proposed change to incorporate an allowable trip value of 340 mR/hr may result in a slightly higher (5%) trip setpoint if instrument drift were to occur. This change is similar to example (vi) of 48 FR 14870 in that it involves a slight reduction in existing requirements, the results of which meets applicable acceptance criterial The STS, NUREG–0212, recommends setpoints and allowable values of less than or equal to twice the background radiation level. On this basis, the final safety analysis report allows a setpoint of 625 mR/hr. Therefore, the proposed allowable value is less than the recommended value of less than or equal to twice the background radiation level. Therefore, this change is similar to Example (vi) in that it may reduce in some way a safety margin, but where the results are clearly within all applicable acceptance criteria. On this basis it is proposed that the above changes relating to containment area radiation monitors do not involve a significant hazards consideration.

3. *Out of Service Time for the Containment Highrange and Main Steam Line Area Radiation Monitors.* Technical Specifications 3/4.3.3.1, "Radiation Alarm Monitoring Instrumentation," and 3/4.3.3.6, "Accident Monitoring Instrumentation", require two containment high range area radiation monitors and two channels of main steam line area radiation monitors (one channel/steam line) to be operable during plant power operation, startup, hot standby or hot shutdown (Modes 1–4, respectively) and defines the action to be taken when the minimum operability requirements for these monitors are not met. With one containment high range area radiation monitor or one channel of main steam line area radiation monitors inoperable, either the inoperable monitor must be restored within seven days or the plant must be in hot shutdown within the next 12 hours. With both containment high range area radiation monitors inoperable, at least one monitor must be restored to operable status within 48 hours or the plant must be in hot shutdown within the next 12 hours. The proposed change would increase the time allowed when one containment high range area radiation monitor or one channel of main steam area radiation monitors is inoperable from seven to thirty days.

This proposed change is similar to example (vi) of 48 FR 14870 since it represents a reduction in existing requirements but meets the SRP acceptance criteria.

Standard Review Plan (SRP) Section 16.0, Technical Specifications, provides acceptance criteria for technical specifications. In general, proposed technical specifications are acceptable if they conform to the STS. However, SRP Section 16.0 allows deviation from the STS provided that the differences are justified on the basis of uniqueness in plant design or other considerations. At the time of issuance, the San Onofre 2 and 3 technical specifications for the main steam line area radiation monitors and the containment high range area radiation monitors were consistent with the existing STS. However, operational experience to date has indicated that the seven day allowance for an inoperable monitor to be insufficient. These monitors were installed to comply with the high range radiation monitoring requirements of NUREG–0737, "Clarification of TMI Action Plan Requirements" which required the monitors to be qualified to operate in the postulated high post accident radiation fields. The licensee states that the high range radiation monitors have prove to be difficult to repair when inoperable. The difficulty associated with repair of these instruments is due to the requirement that they be environmentally qualified to operate in the postulated high post-accident radiation fields. This requirement precludes the use of pre-amplifiers located at the detectors. As a result, only the very small currents (on the order of a few pico amps) generated by the detectors are carried by the cables to the instrument electronics located in low radiation areas. Because of the small currents involved, troubleshooting is difficult and time consuming.

The proposed increase in the time allowed for the containment or main steam line area monitors to be out of service is justified on the basis that these monitors perform a less significant safety function than other instrumentation to which this action statement applies. The existing action statement applies to many other instruments which would be used to mitigate the consequences of a design bases accident, in addition to the main steam line and containment high range area radiation monitors. It should be noted that the radiation monitoring channels do not directly contribute to the mitigation of consequences of design bases accidents in the same sense as the other instrumentation to which the existing action statement applies. The proposed change does not increase the allowed out of service time for other instrumentation.

In summary, the licensee proposes that the increase in the time allowed to restore an inoperable containment high range or main steam line area radiation monitor to operable status from seven to thirty days is justified because:

(1) NRC requirements regarding environmental qualifications necessitate a design which is inherently difficult and time consuming to trouble shoot; and

(2) The lesser safety significance of these radiation monitors as compared to other instruments to which the same action applies.

Although this change deviates from the STS as issued to San Onofre 2 and 3, this deviation is justified based on the above considerations and therefore is consistent with SRP Section 16 acceptance criteria for deviations from the STS.

Thus, this change is similar to example (vi) of 48 FR 14870 in that it may result in increased accident consequences, but the results of the change are clearly within all acceptance criteria for the system or component specified in the SRP. Therefore, the NRC staff proposes to determine that these changes do not involve a significant hazards consideration.

4. *Condenser Evacuation System Radiation Monitor.* Technical Specifications 3/4.3.3.1, "Radiation Alarm Monitoring Instrumentation," 3/4.3.3.6, "Accident Monitoring Instrumentation," and 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation," delineate operability and surveillance requirements and actions to be taken when the minimum operability requirements for condenser evacuation system monitoring instrumentation are not met.

These T.S. currently require the condenser evacuation system be monitored at all times and require the a wide range condenser evacuation monitor be operable when the plant is in Modes 1–3. The purpose of the condenser evacuation system is to draw a vacuum on the condenser thereby removing air and non-condensible gases. During normal plant operation, small amounts of radioactive noble gases can enter the secondary system from the reactor coolant system (RCS) via steam generator tube leakage within allowable limits. When the RCS is depressurized during cold shutdown and refueling (Modes 5 and 6), or when the steam generators are isolated from the turbine and condenser by closure of the main steam isolation valves (MSIV's), there is no driving force or pathway for radioactive noble gases from the RCS to the condenser. There are two condenser evacuation system noble gas radiation monitors. The wide range condenser evacuation noble gas monitor provides post accident noble gas monitoring capability. The normal range monitor provides noble gas monitoring capability during normal plant operation and anticipated operational occurrences. The proposed change would require that the wide range condenser evacuation system monitor be operable when the plant is in Modes 1–3 and any MSIV or MSIV bypass valve is not fully closed. The proposed change would require either the normal range or wide range condenser evacuation system noble gas monitor to be operable when the plant is in Mode 4 and either as MSIV or an MSIV bypass valve is not fully closed. Thus the proposed change would no longer require a condenser evacuation system monitor to be operable when the plant is in Modes 5 or 6 or when the MSIV's and MSIV bypass valves are closed. The proposed change also reduces the operational modes for which surveillances must be performed on the condenser evacuation system to correspond to these reduced operability requirements.

This proposed change is similar to example (vi) of 48 FR 14870 in that the reduction is operability requirements for the condenser evacuation system radiation monitors may in some way reduce a margin of safety but nevertheless meets the acceptance criteria in SRP Section 11.5 and in NUREG–0737. SRP Section 11.5 requires that all major and potentially significant paths for release of radioactive material during normal reactor operation, including anticipated operational occurrences, be monitored. NUREG–0737 required the installation of a wide range noble gas monitor on potential gaseous effluent release paths capable of monitoring postulated post accident concentrations of noble gases.

The condenser evacuation system is monitored because it is a potential gaseous radioactive effluent release path during normal plant operation due to primary-to-secondary steam generator table leakage within allowable limits and in the event of a steam generator tube rupture. However, when the MSIV's and MSIV bypass valves are closed isolating the steam generators from the condenser, or when the RCS is depressurized (Modes 5 and 6), the condenser evacuation system is not a potential gaseous effluent release path. Accordingly, the proposed change requires monitoring of this path when it is a potential gaseous release path. Specifically, in Modes 1–4 with any MSIV or MSIV bypass valve not fully closed. In Modes 1–3, the wide range monitor is required to satisfy NUREG–0737 accident monitoring requirements. In Mode 4, because the potential for an accident is lower and the consequences are less severe, either the normal range or the wide range monitor is required.

The proposed change satisfies the SRP Section 11.5 and NUREG–0737 criteria for condenser evacuation system noble gas monitoring in that it (1) requires monitoring when the condenser evacuation system is a potential release path and (2) requires wide range noble gas monitoring capability. Therefore, the proposed change is similar to example (vi) of 48 FR 14870 and thus the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

5. *Plant Vent Stack Monitors.* Technical Specification 3/4.3.3.1, "Radiation Alarm Monitoring Instrumentation," 3/4.3.3.6, "Accident Monitoring Instrumentation," and 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation," define operability and surveillance requirements for plant vent stack radiation monitors and actions to be taken when the minimum operability requirements are not met. Collectively, these specifications require monitoring of the plant vent stack at all times, with both wide range plant vent stack monitors operable with the plant in Modes 1–3 and either the normal range or both wide range monitors operable at all other times. The proposed change will require at least one wide range monitor in Modes 1–3 and either of the wide range plant vent stack monitors or the normal range plant vent stack monitors at all other times.

There are two plant vent stacks, one associated with Unit 2, the other with Unit 3. The two plant vent stacks are fed from a common plenum. Exhaust from the shared auxiliary buildings and the two fuel handling buildings are mixed in a common plenum and released via the Units 2 and 3 plant vent stacks. The normal range plant vent stack noble gas radiation monitor provides noble gas monitoring capability for normal operation and anticipated operation occurrences. Two wide range plant vent stacks noble gas radiation monitors, one for each of the Units 2 and 3 plant vent stacks, provides post accident noble gas monitoring capability. The proposed change would require at least one of the two wide range plant vent stack noble gas radiation monitors to be operable with the plant in Modes 1–3, and at least one of the two wide range monitors or the normal range plant vent stack noble gas radiation monitor to be operable at all other times.

These proposed changes are similar to example (vi) of 48 FR 14870 in that they may in some way reduce a margin of safety but where the results are clearly within all acceptance criteria in the SRP. SRP Section 11.5, "Process and Effluent Radiological Monitoring Instrumentation and Sampling Systems," requires that plant vent stack effluents be continuously monitored for noble gases. In the Standard Technical Specifications (STS), in NUREG–0472, "Standard Radiological Effluent Technical Specifications for Pressurized Water Reactors," and in the San Onofre Units 2 and 3 Technical Specifications, the plant vent stack effluent radiation monitoring requirements are contained in T.S. 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation." T.S. 3/4.3.3.9 requires that plant vent stack effluent monitoring and sampling instrumentation be operable in all modes. Therefore, the proposed change still preserves the effluent monitoring requirements defined in SRP Section 11.

The plant vent stack wide range noble gas radiation monitors were installed to satisfy NUREG–0737, "Clarification of TMI Action Plan Requirements," for wide range noble gas monitoring capability. NUREG–0737 required the installation of wide range noble gas radiation monitors on potential gaseous effluent release paths capable of monitoring postulated post accident concentrations of noble gas. The plant vent stacks are a potential release path and wide range noble gas monitors are installed on each of the two plant vent stacks, one for Unit 2, the other for Unit 3. However, the two plant vent stacks are not independent release paths since they are fed from a plenum common to both units. Because the two plant vent stacks are fed from a common plenum, the noble gas releases from one plant vent stack can be conservatively correlated to measured noble gas releases from the other. Thus, only one wide range noble gas monitor is required to quantify total noble gas releases. Accordingly, the proposed change requires one plant vent stack wide range monitor to be operable in modes 1–3. In Mode 4, where the potential for postulated accidents is lower and the radiological consequences are less severe, the proposed change would continue to allow the normal range plant vent stack noble gas monitor to be used in lieu of a wide range monitor. Because the SRP Section 11.5 effluent monitoring requirements continue to be satisfied by the proposed change, and the NUREG–0737 plant vent stack wide range noble gas monitoring requirements are satisfied, the proposed change is similar to example (vi) of 48 FR 14870. Therefore, the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

6. *Clarification of Special Reporting Requirements for Wide Range Radiation Monitor Inoperability.* In the event that the minimum operability requirements are not met for the plant vent stack and condenser evacuation noble gas radiation monitors in Modes 1–3, and the containment high range and main steam line area radiation monitors in Mode 4, the action statement in T. S. 3/4.3.3.9 currently allows 72 hours to restore the inoperable instruments to operable status or requires that (1) a preplanned alternate method of monitoring be initiated and (2) a special report be submitted within 14 days outlining the aciton taken. It is unclear whether this report is required within 14 days of the instrument inoperability regardless of whether or not the preplanned alternate was initiated, or within 14 days of initiation of the preplanned alternate. The proposed change would revise the action statement to require submittal of a special report within 14 days of initiation of the preplanned alternate. That is, if the instrument was restored to operable status within 72 hours, no special report would be required by the proposed change.

This change clarifies the special reporting requirement. Because this change is being made for clarity and is editorial in nature, it is similar to example (i) of 48 FR 14870 and therefore the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

7. *Waste Gas Holdup System Radiation Monitoring.* Technical Specification 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation," defines operability and surveillance requirements for the waste gas holdup system radiation monitors and defines the action to be taken if the minimum operability requirements are not met. T.S. 3/4.3.3.9 currently requires that the waste gas holdup system monitor (2/3RT–7814) or the plant vent stack normal range radiation monitor (3/4RT–7808) be operable at all times and capable of terminating waste gas holdup system releases. The proposed change deletes the waste gas holdup system monitor (2/3RT–7814) and in addition would allow either the Unit 2 or Unit 3 plant vent stack wide range radiation monitors (2RT–7865 or 3RT–7865) to perform the waste gas holdup system monitoring function. A recent design change has provided both of the wide range plant vent stack monitors with the capability of terminating waste gas holdup system releases. Because all three plant vent stack monitors are capable of terminating waste gas holdup system releases, and at least one of the three plant vent stack monitors is required to be operable at all times, it is redundant to include the option of using waste gas holdup system radiation monitors (2/3RT–7814) in T.S. 3/4.3.3.9.

These proposed changes are similar to example (i) of 48 FR 14870. Although the proposed change deletes one of the radiation monitors associated with the waste gas holdup system, it does not remove the requirements to monitor waste gas releases. Because the change merely identifies the instruments which can perform this function, it is editorial in nature. Therefore, the proposed change is similar to example (i) and on this basis the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

8. *Waste Gas Holdup System Explosive Gas Monitoring.* T.S. 3/4.3.3.9. requires that the waste gas holdup system explosive gas monitoring system, consisting of two hydrogen and two oxygen monitors, be operable during operation of the waste gas holdup system.

Gaseous radwaste from the RCS accumulates in the waste gas surge tank. Subsequently, the gaseous radwaste is compressed into one of the waste gas decay tanks for holdup to allow for decay of short lived isotopes prior to release. Two hydrogen and two oxygen analyzers are provided. One of each is a continuous analyzer, the other is a periodic analyzer. The continuous hydrogen and oxygen analyzers monitor the waste gas surge tank. The periodic analyzers can monitor either the surge tank or any of the decay tanks and are normally aligned to the decay tank that is in use. Because the decay tanks are operated above atmospheric pressure, thereby preventing oxygen inleakage, an explosive gas mixture cannot exist in the decay tanks unless one first existed in the surge tank before compression. Therefore, monitoring the surge tank is the preferred method of detecting the formation of explosive gas mixtures in both the surge tank and the decay tanks.

When one or more channels of explosive gas monitoring instrumentation is inoperable, Action 39 of T.S. 3/4.3.3.9 becomes applicable. In the event a continuous analyzer on the surge tank becomes inoperable, Action 39 currently does not require alignment of the operable periodic monitor to the

surge tank. Thus operation of the waste gas system could continue, in compliance with Action 39, with the surge tank un-monitored. The proposed revision to Action 39 will require the remaining operable analyzer channel to be aligned to the waste gas surge tank thereby ensuring that the surge tank continues to be monitored.

If both hydrogen analyzers or both oxygen analyzers are inoperable, Action 39 currently requires a plant shutdown within 48 hours. In lieu of the currently required plant shutdown, the proposed change would revise Action 39 to require grab samples be taken at least once per four hours and analyzed within the next four hours until the analyzers are returned to service. This proposed change is similar to example (i) of 48 FR 14870 in that it achieves consistency throughout the technical specifications and corrects an error. The operability requirements for hydrogen and oxygen analyzers and Action 39 are intended to maintain compliance with specification 3/4.11.2.5, "Explosive Gas Mixture".

In the event one hydrogen or oxygen analyzer is inoperable, the current specification does not assure effective explosive gas monitoring. The proposed change corrects this error by requiring correct system alignment of the remaining operable instruments. In addition, the proposed change achieves consistency between Action 39, of T.S. 3/4.3.3.9 and Specification 3/4.11.2.5. Because this change corrects an error and achieves consistency, it is similar to example (i) of 48 FR 14870. On this basis the NRC staff proposes to determine that the change does not involve a significant hazards determination.

9. *Deletion of Time Limits in Effluent Monitoring Action Statements.* The applicability of actions to be taken when radioactive gaseous effluent monitoring instrumentation is inoperable is limited to a specified period (e.g. 30 days). If effluent release continues beyond this period, even while continuing to implement the compensatory measures specified by the action, because of the time limit, this action would be outside of the bounds of the T.S. and would therefore invoke Specification 3.0.3. T.S. 3.0.3. would require that action be taken to initiate a plant shutdown, as would suspending releases. T.S. 3/4.3.3.9 has an exception to Specification 3.0.3. Therefore, at the end of the existing action time limit, it would be interpreted that no additional action is required. The 3.0.3 exception conflicts with the time limits in the actions. The proposed change removes the time limits, thereby eliminating the existing conflict. The proposed change will continue to require reporting of effluent monitoring instrumentation inoperabilities of greater then 30 days duration and continued implementation of the specified compensatory measures.

The current actions to be taken in the event of instrument inoperability are limited to specified period (e.g. 30 days) at the end of which, the bounds of the technical specifications would be exceeded, thereby invoking Specification 3.0.3. However, there is a 3.0.3 exception for Specification 3/4.3.3.9. The proposed change deletes the time limits on the actions but continues to require a report to be filed in the event an instrument is inoperable for greater than 30 days. The deletion of the time limits resolves this inconsistency. Because this change achieves consistently within the technical specifications, it is similar to example (i) of 48 FR 14870. On this basis, the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

10. *Effluent Flow Instrumentation Action Requirements.* Currently if the flow rate measuring instrumentation is inoperable, T.S. 3/4.3.3.9, Table 3.3–13 requires estimation of the flow each 4 hours but does not specify a method. The proposed change would require flow estimation at least once every 8 hours and would state that system design characteristics (e.g. fan performance curves) may be used to estimate flow. The proposed change would reduce the frequency of flow rate estimations required when a flow monitoring instrumentation is out of service. This reduction in existing requirements is similar to example (vi) of 48 FR 14870 because, although it is a reduction, the applicable acceptance criteria are nevertheless satisfied. The standard radiological effluent technical specifications (NUREG–0472) provide action to be taken in the event of flow instrument inoperability, recommending that the flow rate be estimated at least once per 8 hours. Consistent with NUREG–0472, the proposed change would require that flow estimates be made at least once per 8 hours. Therefore, the proposed change satisfies the acceptance criteria and is similar to example (vi). On this basis, the NRC staff proposed to determine that the change does not involve significant hazards consideration.

11. *Inoperable Plan Vent Stack Monitor Action Requirements.* When the minimum plant vent stack effluent monitoring requirements are not met, Table 3.13–13 of T.S. 3/4.3.3.9 requires that grab samples be taken at least once per 8 hours. The proposed change will reduce the frequency to at least once per 12 hours. This reduction is similar to example (vi) of 48 FR 14870 because although it is a reduction of existing requirements, the change meets the applicable acceptance criteria. NUREG–0472, the generic radiological effluent technical specifications, provide the acceptance criteria for radioactive effluent monitoring instrumentation technical specifications. NUREG–0472 requires grab samples to be taken at least once per 12 hours when plant vent effluent monitoring instrumentation is inoperable. The proposed change is consistent with this and therefore is similar to example (vi) of 48 FR 14870. On this basis the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

12. *Editorial Changes.* The following editorial changes are made to ensure consistency with the substantive changes described above, correct existing errors, and to achieve consistency with the standard technical specifications, and are therefore similar to example (i) of 48 FR 14870. On this basis the NRC staff proposes to determine that the following changes do not involve a significant hazards consideration.

(a) The first proposed editorial changes add an exception to T.S. 3.0.3 for the containment airborne radiation monitors when the plant is in Mode 6 and an exception to T.S. 3.0.4 for the containment airborne radiation monitors and automatic actuation logic when the plant is in Mode 6.

This proposed change is similar to example (i) of 48 FR 14870 in that it achieves consistency within the technical specifications.

The CPIS containment airborne radiation monitors are required to be operable in Mode 6. The governing requirements for the CPIS are found in T.S. 3/4.9.9, "(Refueling Operations) Containment Purge Isolation System," which requires the CPIS to be operable during core alleviations and movements of irradiated fuel inside containment. In the event that the CPIS is inoperable, T.S. 3/4.9.9 requires purge isolation valve closure. If the purge isolation valves cannot be closed, T.S. 3.0.3 as applied to T.S. 3/4.9.9 requires the cessation of core alterations and movements of irradiated fuel. In the event of the inoperability of the CPIS containment airborne radiation monitors, which are required to be operable in Mode 6 by T.S. 3/4.3.2, and the inability of the purge values to close, T.S. 3.0.3 requires the plant to be planted in a mode which does not require containment airborne radiation monitor operability (i.e., Mode 5). The proposed exception to T.S. 3.0.3 will prevent this and will make the required actions consistent with T.S. 3/4.9.9.

The proposed change will add an exception to T.S. 3.0.4 for containment airborne radiation monitors during operation in Mode 6. The governing CPIS requirements are contained in T.S. 3/4.9.9, which includes an exception to T.S. 3.0.4. Therefore, these proposed changes achieve consistency within the technical specifications and are similar to example (i) of 48 FR 14870.

(b) The second proposed change adds instrument tag numbers to identify specific instruments which perform the radiation and effluent monitoring functions covered by specifications 3/4.3.2, 3/4.3.3.1 and 3/4.3.3.9. This change is editorial and similar to example (i) of 48 FR 14870.

(c) The word "alarm" is deleted from the phrase "radiation monitoring alarm instrumentation" which is used in the titles of Specification 3/4.3.3.1 and Table 3.3-6 and elsewhere in the Specification. The words "alarm/trip" are substituted for the word "alarm" where it is used in the context of a setpoint. In NUREG–0212, "Standard Technical Specifications (STS) for Combustion Engineering Pressurized Water Reactors", T.S. 3/4.3.3.1 is titled "Radiation Monitoring Instrumentation" and uses the words "alarm/trip" in describing setpoints. This proposed change would make the San Onofre 2 and 3 T.S. consistent with the STS in this respect. This change is editorial in nature and has no effect other than to improve consistency with the STS. Because the proposed changes is editorial in nature, it is similar for example (i) of 48 FR 14870.

(d) Another proposed change repeats Actions 13, 16, 17, 17a and 17b from T.S. 3/4.3.2. in T.S. 3/4.3.2. in T.S. 3/4.3.3.1, thereby eliminating the current cross referencing. This proposed change is editorial and similar to example (i) of 48 FR 14870.

(e) Another proposed change deletes from Specification 3/4.3.3.6, "Accident Monitoring Instrumentation," the operability, surveillance and action requirements for the containment high range area radiation monitors, main steam line area radiation monitors, condenser evacuation system wide range monitors and the plant vent/purge stack wide range monitors. Operability requirements for these instruments are also included in T.S. 3/4.3.3.1, "Radiation Monitoring Instrumentation". It is redundant and inconsistent with the STS to include requirements for these instruments in T.S. 3/4.3.3.6. Therefore, this change is editorial and similar to example (i) of 48 FR 14870.

(f) The T.S. 3.3.3.6 Action statement which specifies the actions to be taken when the accident monitoring instrumentation operability requirements are not met, erroneously refers to "radiation monitoring alarm channels". The action should refer to "accident monitoring channels" since T.S. 3.3.3.6 concerns other instrumentation in addition to radiation monitoring instrumentation. The proposed change is similar to example (i) of 48 FR 14870 in that it corrects this error.

(g) Table 3.3–13 currently requires flow rate monitors and/or samples flow rate monitors for the condenser evaluation system, plant vent stack, and containment purge effluent pathways. The proposed change will require a sample flow measuring device and a process flow measuring device to be operable for each of these release pathways. The sample flow rate measuring device verifies sample flow through the monitoring/sampling instrumentation. The process flow rate measuring device measures the total effluent releases via a pathway. The proposed change is editorial in that it more explicitly states the existing requirements. Because this change editorially corrects nomenclature, it is similar to example (i) of 48 FR 14870.

The normal range condenser evacuation system monitor and the normal range plant vent stack monitors are not equipped to measure effluent flow rates. The proposed change notes that these instruments are not so equipped and requires that either another means of flow rate measurement be available or the action covering flow measuring device inoperability be complied with.

This change is similar to example (i) of 48 FR 14870 because it is editorial in nature, in that it restates existing requirements to ensure the effluent flow rates are measured.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocker, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Tennessee Valley Authority, Docket No., 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: August 23, 1984.

Description of amendment request: The amendment would revise the Technical Specifications (T.S.) of the operating license to: (1) Modify the core physics, thermal and hydraulic limits to be consistent with the reanalyses associated with replacing about one-third of the core during the Cycle 6 core reload outage and (2) reflect changes in various specifications as a result of plant modifications performed during the outage. Specifically, the amendment would result in changes to the T.S. in the following areas:

1. Changes related to the Cycle 6 core reload involving removal of depleted fuel assemblies in about one-third of the nuclear reactor core and replacement with new fuel with attendant T.S. changes in the core protection safety limits and reactor protection system setpoints. The new fuel will include fuel assemblies of the same type as previously loaded, plus four Westinghouse "QUAD+" demonstration assemblies. The latter assemblies will be located in non-limiting core periphery locations. The actual T.S. changes include changes in the Operating Limit Minimum Critical Power Ratio (OLMCPR), deletion of tables on maximum average planar exposure for fuel types no longer used, and changes to the references cited in the bases to reflect that TVA performed the reload analyses.

2. Changes in the T.S. revising the tables listing instrumentation for suppression pool bulk temperature to reflect the installation of an improved torus temperature monitoring system being installed as part of the Mark I containment program.

3. Changes to the T.S. to reflect modifications to the scram discharge instrument volumes (SDIV); each of the SDIVs will be provided with electronic level switches. The changes to the T.S. are to add operability, surveillance and calibration requirements for the new level instrumentation.

4. Changes to T.S. instrumentation tables to add new instrumentation for high-range gaseous effluent monitors and containment high-range radiation monitors and to replace drywell pressure and suppression chamber water level instruments with new wide-range instruments in response to requirements in NUREG–0737; items II.F.1.1, II.F.1.3, II.F.1.4, and II.F.1.5. Administrative requirements will be

revised to reflect II.F.1.1, and II.F.1.3 reporting requirements.

5. Changes to T.S. Reactor Protection System (RPS) instrumentation tables to delete the Main Steamline Isolation Valve (MSIV) and main condenser low vacuum scram functions when the mode switch is not in the RUN position.

6. Changes to T.S. instrumentation tables to reflect new instrument numbers for new upgraded drywell temperature and pressure instrumentation.

7. Revision to the table of testable penetrations to reflect the new testable penetrations as a result of modifications to the flange side of several isolation valves.

8. Revision of the T.S. table for containment isolation valve surveillance to add two new isolation valves that are part of a newly installed redundant discharge line from the drywell compressor into containment and to delete one isolation valve which was removed from the demineralized water systme.

9. Revision of T.S. to provide limiting conditions for operation and surveillance requirements for monitoring of the reactor protection system power supply.

10. Modify the T.S to apply to the new analog (continuous measuring) instrumentation. The analog instrumentation replaces certain mechanical-type pressure and level switches with a more accurate and more stable electronic transmitter/electronic switch system and will provide improved performance of trip functions for reactor protection system actuation, and containment isolation. The changes to the T.S. include:

a. in the tables on functional test frequencies, calibration frequencies and surveillance requirements, for each switch replaced, add the instrument number beneath the parameter being monitored and/or controlled.

b. add notes to the above tables to specify how the functional and calibration tests are to be conducted.

c. in addition to the above administrative changes, change the calibration requirements to incorporate extended calibration intervals. However, the required setpoints, functional test frequencies and channel check frequencies for the instrumentation will not be changed. The new calibration requirements, together with the new instrumentation, are expected to provide a more reliable instrumentation system.

11. Changes to reflect deactivation of the Residual Heat Removal (RHR) head spray line containment isolation valves. (The head spray line has been removed as a result of a pipe crack study). The head spray containment penetration will become a spare.

12. Changes to the primary containment air lock leak testing requirements.

13. Administrative changes to the T.S. involving changes to the Table of Contents to reflect the above changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards by providing examples of actions that are likely, and are not likely, to involve significant hazards considerations (48 FR 14870). Four examples of actions not likely to involve significant hazards considerations are:

"(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

"(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

"(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

"(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method."

Each of the changes to the T.S. described above is encompassed by one of the above examples of actions not likely to involve a significant hazards consideration or is otherwise bounded by the criteria for such a determination. The basis for this determination for each of the changes is discussed below.

1. Core Reload

The changes to the T.S. associated with removing depleted spent fuel from the reactor and replacing these with new fuel assemblies is encompassed by example (iii) above of those actions not likely to involve a significant hazards consideration.

The proposed reload involves fuel assemblies of the same type (P8X8R) as previously found acceptable by the staff and loaded in the core in previous cycles. The reload also includes four Westinghouse fuel assemblies (QUAD+) in peripheral locations. These assemblies are analytically similar to the P8X8R fuel such that results of analytical methods used by licensee for the P8X8R fuel bound the QUAD+ assemblies. The analytical methods used by the licensee to demonstrate conformance to the technical specifications are applicable to P8X8R and QUAD+ fuel and have not been significantly changed from those previously approved by the staff. Since each replacement fuel assembly is of the same type as previously added to all three Browns Ferry units and other BWRs or is analytically similar to those fuel assemblies, and since the codes, models and analytical techniques used to analyze the reload have been approved by the NRC, the changes to the T.S. associated with the reload are clearly encompassed by example (iii) of the guidance provided by the Commission for an action not likely to involve a significant hazards consideration.

2. Suppression Pool Temperature Monitoring System

One of the changes to the T.S. is to revise the tables that list the instrumentation associated with suppression pool bulk temperature monitoring. This reflects a modification which provides an improved torus temperature monitoring system which consists of 16 sensors. This will provide a more accurate indication of the torus water bulk temperature as required by NUREG–0661 and will replace the suppression chamber water temperature instruments presently listed in the T.S.

This change proposed for Unit 2 is the same as found acceptable for Units 1 and 3. We conclude, based on our review that this change does not result in an increase in the probability or consequences of a previously-analyzed accident, create the possibility or a new kind of accident or result in any reductions in safety margins.

3. Scram Discharge Instrument Volume

The SDIVs are being modified to address inadequacies identified by the partial rod insertion event on Browns Ferry Unit 3 in June 1980. One of the modifications includes adding electronic level switches to initiate a scram on a high level in the SDIV. The electronic type are direct replacements for differential pressure type sensors and are more suitable for the SDIV level sensing application. The Technical Specifications would be amended to reflect the nomenclature of the new sensors and to reflect the functional testing method by which the associated instrumentation channels will be tested. The replacement of a component such as a sensor, with another of a different design may in some way reduce a safety margin. However, the SDIV protection function is designed with sufficient independence and redundancy as required by the Standard Review Plan (Section 7) to ensure reliability. This change is therefore encompassed by example (vi) of the Commission's guidance.

4. Accident Monitoring Instrumentation

Item II.F.1 of NUREG–0737, "Clarification of TMI Action Plan Requirements," requires all licensees to install five new monitoring systems and to provide onsite sampling/analysis capability for a specified range of radionuclides. For all six categories, NUREG–0737 states: "Changes to technical specifications will be required." During this refueling outage, the licensee will install: (a) a gaseous effluent high range radiation monitoring system, (b) a containment high-range radiation monitoring system, (c) a drywell wide-range pressure monitoring system and (d) a suppression chamber wide-range water level monitoring system. These items were required by NUREG–0737, item II.F.1.1, II.F.1.3, II.F.1.4 and II.F.1.5, respectively. The changes to the T.S., which track the model T.S. provided to the licensee by the staff, are to add operability and surveillance requirements on the new monitoring systems.

The revisions also delete the present drywell pressure and suppression chamber water level instruments since they are being replace by items (c) and (d) above. The changes to the technical specifications are necessary administrative follow-up actions required by the Commission. Adding the new surveillance requirements and controls is encompassed by example (ii) of actions not likely to involve significant hazards consideration.

5. MSIV and Condenser Low Vacuum Scram

A number of scram bypasses are provided in the reactor protection system (RPS) to account for the varying protection requirements depending on reactor conditions and to allow for instrument service during reactor operations. Some bypasses are automatic, others are manual. There is an automatic bypass of the acram function associated with main steamline isolation and main condenser low vacuum if the reactor pressure is below 1055 psig. The bypass allows reactor operations at low power with the main steamlines isolated and the main condenser not in operation. These conditions exist during startups, certain reactivity tests during refueling, and hot standby conditions. This is commonly referred to as "bottled-up operation." Although the scram bypass switches are presently set at 1055 psig they were originally set at 600 psig. However, testing conducted in 1974 demonstrated that bottled-up operation was acceptable at pressures up to 1055 psig. The scram bypass switches were therefore reset to 1055 psig as specified in the current T.S.

The setpoint for the reactor high pressure scram function is also 1055 psig. Because the reactor will scram due to high pressure at or above 1055 psig there is no useful purpose served by activating the MSIV isolation and condenser low vacuum scram functions at pressure above 1055 psig. The licensee therefore proposes to bypass the MSIV isolation and low vacuum isolation scram functions for all pressures when in refuel, or startup/hot standby mode.

Due to the presence of the high pressure scram function, deletion of the MSIV isolation and low vacuum scram functions in the startup mode is not likely to affect the probability or consequences of previously-analyzed accidents. Our preliminary evaluation of the proposed change also indicates that it is not likely to reduce a safety margin and will not create the possibility of a new accident. Based on our evaluation of the three factors in 10 CFR 50.92, the staff has made a preliminary determination that the proposed changes to the Technical Specifications involve no significant hazards consideration.

6. Drywell Temperature and Pressure

The drywell temperature and pressure surveillance instrumentation is being upgraded this outage to provide qualified, more reliable instrumentation. The T.S. are being revised to reflect new instrument numbers. The surveillance requirements remain unchanged. The changes to the technical specifications are necessary administrative follow up actions required by the Commission and are clearly encompassed by example (i) of actions not likely to involve significant hazards considerations.

7. Testable Penetrations

Modifications to permit testing are being made to the flange side of fourteen containment isolation valves which cannot be isolated from primary containment to be leak tested. This modification will provide two gaskets with a pressure tap between the gaskets to allow the flange to be leak tested. Operability of the valve will not be affected by this modification. Fourteen new testable penetrations resulted and they are to be added to the table of testable penetrations with double o-ring seals. Since surveillance requirements are being added, the change is encompassed by example (ii) of actions not likely to involve significant hazards considerations.

Several editorial changes were also made to this table. They include revising the identification of penetration X–35 to indicate it is now a spare, adding the drywell head penetration that has been previously included in the test program but was inadvertently left out of the table, and removing penetration X–213A which no longer exists. These changes are purely administrative and are encompassed by example (i) of the guidance provided by the Commission for actions not likely to involve significant hazards considerations.

8. Redundant Air Supply to Drywell

During the current outage, TVA has installed a second discharge line from the drywell compressor into containment. This line was added to provide the capability for isolation of approximately one-half of the drywell suppression equipment in the case of a drywell line leak. This air supply will be used to supply two inboard MSIVs, and approximately one-half of all other air-operated equipment in the drywell. This will significantly reduce the possibility of any one control air pipe break inside containment from requiring immediate shutdown and isolation due to MSIVs, MSRVs, and drywell coolers being inoperable. Since any line penetrating containment requires two isolation valves, the table in the Technical Specifications listing the isolation valves that must be periodically tested is being revised to add these two new isolation valves. TVA has concluded that this modification will increase the

margin of safety. The changes to the technical specifications are necessary administrative follow up actions essential to the implementation of this improvement. The two isolation valves being added to the T.S. are new valves not presently listed in the T.S. If they were not added to the table of valves to be periodically tested, there would be no T.S. requirement to test these valves. This same change was approved for Unit 1 by Amendment No. 92 issued December 12, 1983. Adding these additional controls is encompassed by example (ii) of the guidance provided by the Commission for actions not likely to involve significant hazards considerations.

One isolation valve on the demineralized water system was removed from Unit 2. The demineralized water system is no longer used since makeup is supplied from the condensate system. the isolation valve was removed and the line capped. The T.S. are being revised to remove this valve from the table of valves to be tested. The changes to the technical specifications are necessary administrative follow up actions essential to the implementation of the improvement. The changes are clearly encompassed by example (i) provided by the Commission for actions not likely to involve significant hazards considerations. The above changes have been approved for Unit 1 by Amendment No. 92 to Facility Operating License No. DPR–33 issued December 12, 1983.

9. Monitoring of RPS Power Supply

By letter dated September 24, 1980, the staff informed TVA (and most other BWRs) that "we have determined that modifications should be performed to provide fully redundant Class IE protection at the interface of non-Class IE power supplies and the RPS." By letter dated December 4, 1980, TVA committed to install the required modifications. By letter dated October 30, 1981 and July 28, 1982, NRC sent TVA model Technical Specifications for RPS power supply monitoring equipment. During the current outage of Unit 2, the RPS is being modified to provide a fully redundant Cass 1E protection at the interface of the non-Class 1E power supplies and the RPS. This will ensure that failure of a non-Class 1E reactor protection power supply will not cause adverse interaction to the Class 1E reactor protection system.

The Technical Specifications are being revised similar to the model T.S. provided to TVA to reflect the limiting conditions for operation and surveillance requirements associated with the RPS modifications. The changes to the T.S. are necessary administrative follow up actions essential to the implementation of these improvements. The additional limitations and controls, which are presently not in the T.S., are encompassed by example (ii) of the guidance provided by the Commission for actions not likely to involve significant hazards considerations.

10. Analog Trip System

The RPS, the primary containment isolation system (PCIS), and the core standby cooling systems (CSCS) use mechanical-type switches in the sensors that monitor plant process parameters. These mechanical-type switches are very subject to drift in the set point as is evident from the many licensee event reports (LERs) that have been submitted reporting calibration drifts in these switches. Advances in technology make it possible to replace the mechanical-type switches with a more accurate and more stable electronic transmitter/electronic switch system. The modification involves removing one device and substituting other devices to perform the same function. Changes in design bases, protective function, redundancy, setpoints and logic are not involved. Similar modifications have been approved for other BWRs and for Browns Ferry Unit 1 by Amendment No. 93 issued December 16, 1983.

As described previously, most of the changes to the T.S. are administrative in nature (i.e., adding the specific number and types of sensor and adding notes to describe how testing is conducted). As such, they are encompassed by example (i) of the guidance provided by the Commission for actions not likely to involve significant hazards considerations. The changes in surveillance requirements are not encompassed by an example of the guidance provided by the Commission. Some of the surveillance intervals have been increased commensurate with the reduced drift for the new instruments. However because the modification and TS changes will not eliminate or modify any protective functions nor permit any new operational conditions, they do not create the possibility of a new kind of accident or significantly increase the probability or consequences of an accident. Because of the increased reliability and stability, and reduced drift of the analog trip system the increased surveillance intervals would not reduce any safety margin. These changes therefore meet the criteria for a no significant hazards consideration.

11. RHR Head Spray

As a result of a pipe crack study, TVA decided to remove the RHR head spray piping inside containment. This modification in itself requires no T.S. changes. However, because the piping has been permanently capped-off, there is no longer any need for containment isolation valves 74–77 and 74–78 to be operable. Also the penetration, "X–17" should henceforth be identified as "former RHR head spray" or "blank". Because these changes will not (a) increase the probability or consequence of an accident previously evaluated (b) create the possibility of a new kind of accident or (c) decrease any margin of safety, the staff has made a proposed determination that this change involves no significant hazards consideration.

12. Personnel Air Lock Testing

The primary containment airlock surveillance requirement for periodic leak testing would be changed to conform to 10 CFR 50 Appendix J. This change constitutes a more stringent surveillance requirement and is therefore encompassed by example (ii) of actions not likely to involve significant hazards considerations.

13. Administrative Changes

A couple of administrative changes are being made to the Technical Specifications. These include (1) revising the Table of Contents to reflect the changes above, and (2) changing the nomenclature for "safety" valves to "relief" valves since these terms no longer have any distinction. These changes are encompassed by example (i) cited by the Commission as an action not likely to involve a significant hazards consideration.

Since all of the changes to the T.S. given in the areas above are encompassed by an example in the guidance provided by the Commission of actions not likely to involve a significant hazards consideration or otherwise meet the necessary criteria, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Branch Chief: Domenic B. Vassallo.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: (1) August 20, 1984; (2) August 27, 1984; (3) August 28, 1984.

Description of amendment request: (1) The licensee requested changes to the Technical Specifications for Units 1 and 2 to allow the use of a fifth vital battery system to satisfy limiting conditions for operation when one of the trained vital batteries is out of service. Installation of support systems is also required in order to ensure the operability of the fifth vital battery whenever it is used as a substitute for a training battery system. The installation and use of a fifth vital battery system would substantially reduce the possibility of a two unit shutdown in the event of a battery system outage.

(2) The licensee requested another change that would revise the type of detectors used in certain fire zones throughout Units 1 and 2. Thermal detectors would replace some of the infrared detectors since Sequoyah has experienced high failure rates attributed to temperature and radiation environments surrounding the infrared detectors. The change in detectors is expected to increase the fire detection system availability and reliability.

(3) Finally, the licensee proposed changing the Technical Specifications to allow a change in mode of power operations whenever one steam generator level transmitter is inoperable. This change in the requirements would remove and inconsistency that now exists between requirements for limting conditions for operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards consideration relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed changes (1–3) involved here are similar to this example in that there may be some increase to the probability or consequences of a previously analyzed accident, but the results of the change clearly remain within all acceptable criteria.

For proposed change (1) the addition of a fifth vital battery system enhances plant operations without an expected change in the previously analyzed postulated accident. A second example provided in the Federal Register is a purely administrative change to the Technical Specifications. To some extent proposed change (3) is involved here in that the Technical Specifications is being changed to achieve consistency between limiting conditions of operation.

On this basis, the NRC staff proposes to determine that the proposed changes do not involve significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Attorney for licensee: Herbert S. Sanger, Jr., Esa., General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B33, Knoxville, Tennessee 37902.

NRC Branch Chief: Elinor G. Andensam.

Union Electric Company, Docket 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: October 3, 1984.

Description of amendment request: The purpose of the proposed amendment request is to revise Technical Specification Table 4.11–1 to include two additional Batch Waste Release Tanks. Presently there are two 100,000 gallon tanks which are required for storage and/or discharge of waste water. Due to an increase in the volume of secondary liquid waste from condensate demineralizer regenerations two additional 100,000 gallon Batch Waste Release Tanks are required Originally, the volume of waste from regeneration of the condensate demineralizers was estimated at 17,000 gallons per day. Two additional 100,000 gallon tanks should provide adequate capability based on revised estimates of the increase of discharge volume.

Basis for proposed no significant hazards consideration determination: The licensee, in his letter of October 3, 1984, stated that the proposed change does not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; nor create the possibility of a new or different kind of accident or condition over previous evaluations; nor involve a significant reduction in a margin of safety. Based on the foregoing, the requested amendment does not present a significant hazard. The Commission has provided guidance concerning the application of the Standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). For the addition of two 100,000 gallon tanks, the request is similar to the example of a change that constitutes an additional limitation, restriction, or control not presently in the Technical Specifications. The addition of two 100,000 gallon tanks will provide additional liquid waste system control not presently in the Technical Specifications. The staff has made a significant hazards determination and has concluded that this amendment request does not result in a significant hazards consideration because: (1) The construction of two additional batch waste release tanks does not increase the probability or consequences of an accident since the amount of radioactivity resulting from material stored in these tanks will be negligible; (2) the rupture of a waste release tank was analyzed in the FSAR; therefore, this does not create the possibility of a new or different accident; and (3) the margin of safety is not reduced because the new batch tanks will have the same Technical Specification limits as those presently at the plant.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Union Electric Company, Docket 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: October 8, 1984.

Description of amendment request: The purpose of the proposed amendment request is to revise Technical Specification 6.5.1.2 and Figure 6.2–2. The revision of Technical Specification Figure 6.2–2 includes two additional positions, and also revises Technical Specification 6.5.1.2 to include an additional member to the On-Site Review Committee (ORC). The additions to Figure 6.2–2 include the new positions of Assistant Manager, Administrative and the Superintendent, Outages. The addition of the Assistant Manager, Administrative is designed to enhance the effectiveness and capability of the Operations Department by segregating certain administrative and personnel matters from the operation and maintenance of the plant. In the same

effort to enhance plant operations and maintenance, the Superintendent, Outages will be responsible for all aspects of planning and scheduling plant outages. While the amendment request represents changes in reporting relationships and responsibilities, it does not represent a change in any organizational commitments. The addition of the Assistant Manager, Administrative to ORC in Technical Specification 6.5.1.2 is purely administrative since the actual personnel involved are currently members of ORC.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards consideration relates to a purely administrative change to Technical Specifications.

The revision of Technical Specification Figure 6.2–2 to include two additional positions, and also a revision to Technical Specification 6.5.1.2 to include an additional member to the On-Site Review Committee (ORC) is purely administrative and does not constitute additional organizational controls not presently included in the Technical Specifications. Furthermore, the actual personnel involved are currently members of ORC. This request for Technical Specification change does not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Based on this information, the requested Technical Specification change does not present a significant hazard consideration.

Local Public Document Room Locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 26, 1984.

Description of amendment request: The proposed amendment would add Limiting Conditions for Operation and Surveillance Requirements to incorporate the requirements of Appendix J on the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment. The proposed changes were requested by the NRC of all licensees to bring them into conformance with § 50.54(o) and Appendix J of 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions which involve no significant hazards consideration include a chance that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement.

The changes proposed in this application for amendment are encompassed by this example because restrictions would be added to conform to the Rules and Regulations of the Commission. The published § 50.54(o) and Appendix J of 10 CFR Part 50 ensure that systems and components which penetrate the containment are tested on a regular interval and the leak tight integrity of the primary reactor containment is ensured.

Therefore, since the application for amendment involves proposed changes similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Bratleboro, Vermont 05301.

Attorney for license: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: Domenic B. Vassallo.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 19, 1984.

Description of amendment request: The proposed change revises Technical Specification Table 4.1–2A to delete the requirement to test control rod drop times at cold shutdown. The current requirement is for verifying the rod drop time to be no more than 1.8 seconds to dashpot entry for cold conditions, after a refueling shutdown or after maintenance requiring the breach of the Reactor Coolant System integrity (Technical Specifications Table 4.1–2A). The assumption of a specific rod drop time at cold conditions is not incorporated into any safety analysis. To ensure the availability of the negative reactivity, control rod drop time verification is necessary only before the core attains critically following reactor heatup. This requirement will be fulfilled by maintaining the Technical Specifications provision for control rod timing tests at hot shutdown. Therefore, the cold rod drop timing tests can be eliminated without compromising plant safety or any safety analysis.

Basis for proposed no significant hazards consideration determination: The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration, because the changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that these changes to not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 5, 1984.

Description of amendment request: Revises earlier request dated May 2, 1984, which was noticed in the Federal Register on June 20, 1984 (49 FR 23530 at 23582). The proposed amendments modify the earlier proposed containment tendons in response to NRC staff comments. The revised proposed

Technical Specifications more nearly conform to the Standard Technical Specifications.

Basic for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations is example (ii), a change which constitutes an additional restriction, limitation or control not currently found in the Technical Specifications. The licensee's revised submittal meets this example by providing additional limiting conditions for operation requiring shutdown in the event of certain tendon surveillance test failures. It also provides additional conditions for conduct of tendon surveillance testing including additional criteria for selection of tendons tested, additional criteria for physical testing of tendons and additional criteria for inspecting sheathing filler grease. These additional criteria constitute additional limitations not presently found in the license's proposed Technical Specifications, therefore, the staff proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 7, 1984.

Description of amendment request: The proposed amendments would modify earlier submittals dated April 19, 1983 and April 13, 1984. Proposed Table 15.3.14–1 "Safe Shutdown Area Fire Protection" has been revised to reflect additional fire protection sprinkler systems which are being installed in the plant auxiliary building.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (ii), a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Table 15.3.14–1 is incorporated by reference in the Limiting Conditions for Operation (LCOs) proposed in the earlier submittals. Additions to the table such as those proposed by the licensee expand the area of applicability of those LCOs and therefore propose additional controls. Therefore, the staff proposes to determine that the requested amendments involve no significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1880 M. Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plants Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 25, 1984.

Description of amendment request: The licensee has requested that the effective date (December 31, 1984) for amendments 84 and 88 to Facility Operating License Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plant Units 1 and 2, respectively be delayed until March 1, 1985. These amendments, issued on April 30, 1984, provided for the use of an improved instrument power supply system by December 31, 1984. The licensee contends that installation has been delayed and that startup testing necessary to declare the systems operable may not be complete by the effective date. The units would then be required to shut down.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (i) a purely administrative change to the Technical Specifications. In this instance, the only change requested to already approved Technical Specifications is the effective date. The effective date of December 31, 1984 was based on installation completion dates projected in March 1984. The licensee has indicated that completion of installation has been delayed and startup testing to assure system operability may not be completed by December 31, 1984 and has requested a delay of two months in the effective date of the Technical Specifications contained in Amendments 84 and 88. The staff has determined that this change is administrative in nature and meets the Commission's example (i) of actions involving no significant hazards considerations. Therefore, the staff proposes to determine that the action involves no significanat hazards considerations.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: August 24, 1983, as supplemented June 29, 1984.

Description of amendment request: The request for amendment was initially noticed on October 26, 1983 48 FR 49598. This action would provide a definition of the term "OPERABLE" in the Kewaunee Plant Technical Specifications. The licensee responded to an NRC request in submitting this proposed amendment. The proposed amendment conforms to the NRC request and provides for a revised definition that is more restrictive in that it extends the definition to include systems that are associated with the system in question.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include actions which are purely administrative changes to the Technical Specifications, and changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications.

The changes proposed in the application for amendment are encompassed by these examples in that: (1) The guidance provided by NRC and proposed in the amendment for the revised definition of the term "OPERABLE" is more restrictive in that the operability of systems associated with the system must also now be considered; and (2) the resulting format and editorial changes are purely administrative changes. Therefore, since the application for amendment involves

proposed changes that are similar to the example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: September 13, 1984.

Description of amendment request: This amendment responds to NRC Generic Letter 84-13 as related to the deletion of the list of snubbers from the Kewaunee Technical Specifications (TS). Changes are also made in the snubber TS by deleting obsolete references to the initital snubber inspection. The language of the TS is also changed to relate to the TS to safety-related snubbers only.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One example of actions involving no significant hazards consideration is a change that relates to "(i) A purely administrative change to Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature."

The licensee has proposed to delete an unneeded table of snubbers, to change the Table of Contents and make corrections to delete an obsolete requirement and relate the existing requirements to safety-related equipment only, in the Technical Specifications. This requested change is similar to the Commission's example (i) and is intended to achieve consistency of the Table of Contents with the Technical Specifications and to make needed corrections in the Technical Specifications.

Since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket No. 374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of amendment request: September 25, 1984.

Brief description of amendment: The amendment would change the LaSalle Unit 2 Technical Specifications to reflect a reactor scram on low control rod drive pump discharge pressure modification as required for completion by License Condition 2.C.(7).

Date of publication of individual notice in **Federal Register:** October 24, 1984 (49 FR 42810).

Expiration date of individual notice: November 23, 1984.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: October 19, 1984.

Brief description of amendment: Amendment would change the nomenclature in the Technical Specifications, Tables 3.6-1 and 3.6-2, because newly installed valves in the plant, as replacements or additional valves, will carry different tag numbers. These new valves will be qualified to the same standards as those currently installed and will be tested in accordance with approved technical specifications.

Date of publication of individual notice in **Federal Register:** October 29, 1984 (49 FR 43517).

Expiration date of individual notice: November 28, 1984.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Statiqn, Unit No. 1, San Diego County, California

Date of amendment request: September 20, 1984, as supported August 14, 1984.

Brief description of amendment: The amendment would incorporate a license condition which modifies the implementation schedule for the post-accident sampling system.

Date of publication of individual notice in **Federal Register:** October 22, 1984 (49 FR 41300).

Expiration date of individual notice: November 21, 1984.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 25, 1981, (Item 1 only), as supplemented September 20, 1983, and September 11, 1984.

Description of amendment request: The proposed amendment submitted by application dated September 25, 1981 (Item 1 only), as supplemented through September 20, 1983, was considered for issuance as discussed at 49 FR 17875. Subsequently, the proposed amendment was modified further on September 11, 1984. The proposed amendment would delete valves MS 603A and MS 611A in the steam generator drain lines from the listing of containment isolation valves that must be demonstrated operable by periodic surveillance tests (Table 3.6-2, Part C, Appendix A Technical Specifications). The proposed amendment would also remove the restriction to intermittent operation under administrative control applicable to valves MS 603 and MS 611, add an isolation time requirement for these valves, and relocate their listing in Table 3.6-2 from Part C to Part A. Valves MS 603 and MS 611 also are in the steam generator drain lines. The proposed amendment would be effective upon completion of proposed modifications to the steam-generator blowdown system.

The original design for the Davis-Besse facility allowed for the periodic draining of the steam generators to control the accumulation of solids in the once-through steam generators (OTSG). The system could also be used for blowdown of the OTSG at power on an intermittent basis under administrative control. An arrangement of two valves in parallel on each OTSG drain line was used to provide for pressure reduction, flow control, and containment isolation. The valves allowed for remote manual operation under administrative control.

To provide improved chemistry control in the OTSG, a new blowdown system is being installed which will permit OTSG blowdown to be used at any power level on a continuous basis, if necessary. The improved circulation from the OTSG to the main condenser and then to the polishing demineralizers will remove dissolved and suspended solids, and, thereby, improve water quality.

In the new system, valves MS 603A and MS 611A and associated piping will be deleted and valves MS 603 and MS 611 (which are in parallel with MS 603A and MS 611A) will be provided with an automatic steam and feedwater rupture control system (SFRCS) closure signal to isolate the OTSG in the event of a loss of main feedwater or a rupture of a main stem line or feedwater line. In the new system, these valves will provide only the containment isolation function described with a maximum isolation time of 80 seconds. A control valve will be installed in each OTSG drain line near the condenser inlet to provide pressure reduction and flow control previously provided by valves MS 603A and MS 611A. With this new system, the drain lines could be full and pressurized up to the control valve at all times when there is no SFRCS signal to valves MS 603 and MS 611.

With the new system, portions of lines outside containment, which previously were pressurized only intermittently, can be pressurized continuously at any power level. This change does, therefore, result in an increase in the probability of a rupture of these lines because of the increased amount of time the lines would be pressurized. The consequences of such a rupture, however, are not likely to be altered materially with the new system.

Date of publication of individual notice in **Federal Register:** November 2, 1984, 49 FR 44169.

Expiration date of individual notice: December 3, 1984.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment udner the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: April 10, 1984.

Brief description of amendments: Technical Specifications for the reactor coolant system pressure isolation valves (PIV's) allowable leakage criteria are modified to conform to recent Commission guidance. The Farley 1 and 2 Technical Specifications are standardized including the number and identification of PIV's to be tested.

Date of issuance: October 15, 1984.

Effective date: October 15, 1984.

Amendment Nos. 50 and 41.

Facilities Operating License Nos. NPF-2 and NPF-8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 (49 FR 25351).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1984.

No significant hazards consideration comments received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: August 17, 1984.

Brief description of amendments: The Technical Specifications are changed to delete "during shutdown" from surveillance testing to allow scheduling of the surveillance without requiring a plant shutdown on October 10, 1984.

Date of issuance: October 17, 1984.

Effective date: October 17, 1984.

Amendment Nos.: 51 and No. 42.

Facilities Operating License Nos. NPF-2 and NPF-8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1984 (49 FR 35702).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1984.

No signfiicant hazards consideration comments received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: March 30, 1984, supplemented Mary 29, 1984.

Brief description of amendments: Technical Specification values for reload fuel maximum enrichment are increased from 3.5 weight percent to 4.3 weight percent U–235.

Date of issuance: November 8, 1984.
Effective date: November 8, 1984.
Amendment Nos. 52 and 43.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1984 (49 FR 29903).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments were received: No

Local Public Document Room location: Geoge S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama.

Date of application for amendments: May 14, 1984.

Brief description of amendments: Technical Specifications, Section 6 Administrative Controls, are revised to reflect changes in the title of the Vice President Nuclear Generation to be Senior Vice President and to eliminate the former management position.

Date of issuance: November 13, 1984.
Effective date: November 13, 1984.
Amendment Nos.: 53 and 44.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 (49 FR 25352).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1984.

No significant hazards consideration comments were received.

Local Public Documents Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: June 15, 1984.

Brief description of amendment: The amendment revises the testing requirements for hydraulic shock suppressors (snubbers) and adds new requirements for mechanical snubber operability and testing to ensure that these devices are operable.

Date of issuance: October 15, 1984.
Effective date: October 15, 1984.
Amendment Nos. 84.

Facility Operating License No. DPR–51. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33355)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1984.

No significant hazards consideration comments received. No.

Local Public Documents Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 73801.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: August 13, 1984.

Brief description of amendment: The amendment modifies the ANO–1 TS for Steam Generator Surveillance to (1) provide clarity, (2) modify the designation of those areas identified as special areas in the steam generator where imperfections have been previously found and (3) allow the sleeving of ten steam generator tubes as part of a demonstration program.

Date of issuance: November 8, 1984.
Effective date: November 8, 1984.
Amendment No. 86.

Facility Operating License No. DPR–51. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38391 and 38392).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments were received. No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 73801.

Arkansas Power and Light Company, Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of application for amendments: March 16, 1984.

Brief description of amendments: The amendments revise the Technical Specifications to incorporate administrative controls for shift overtime for all plant staff performing safety-related functions in accordance with NRC Generic Letter 82–16. These amendments are in partial response to the March 16, 1984, application. The other items contained in the application are being considered separately.

Date of issuance: October 29, 1984.
Effective date: October 29, 1984.
Amendment Nos.: 85 and 57.

Facility Operating License Nos. DPR–51 and NPF–6. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 23, 1984 (49 FR 21825).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1984.

No significant hazards considerartion comments received: None.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendments: August 9, 1984, as amended September 21, and October 19, 1984.

Brief description of amendment: These changes to the Technical Specifictions incorporate limiting conditions of operation of, and calibration requirements for, instrumentation added in accordance with Regulatory Guide 1.97 and NUREG–0737, Items II.F.1.1, 3, 4, and 5. The instruments measure temperatures in the torus suppression pool and monitor certain parameters in a post-accident situation.

Date of issuance: November 7, 1984.
Effective date: November 7, 1984.
Amendment No.: 83.

Facility Operating License Nos. DPR–35. Amendment revised the Technical Specifictions.

Date of initial notice in Federal Register: August 22, 1984 (49 FR 33357).

Subsequent to the initial notice in the **Federal Register,** the Boston Edison Company, by letters dated September 21 and October 19, 1984, revised its submittal. These revisions substituted note (1) for note (7) in Table 3.2.F for the following instrument channels: Suppression Chamber Water Temperature, Torus Water Level (wide range), Containment Pressure (high range), and Containment Pressure (low range). For these instruments, note 1 is the more consistent with staff guidance in that it requires restoration of an inoperable channel within 30 days, whereas note 7 does not impose a definite time limit for such restoration. The minimum number of operable instrument channels for Containment High Radiation (drywell) called for in Table 3.2.F was increased from one to two to meet the Commission's requirement stated in NUREG–0737, Item II.F.1–3. The proposed addition to Table 3.2.F for Containment High Radiation (Torus) was deleted since the Commission does not require this measurement to be made.

These revisions are within the scope of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: June 13, 1984.

Brief description of amendment: The amendments revise the Technical Specifications to reduce the minimum permitted water height covering spent fuel in the spent fuel pool.

Date of issuance: October 25, 1984.
Effective date: October 25, 1984.
Amendment Nos.: 77 and 104.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33359).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: July 25, 1984.

Brief Description of amendment request: These amendments revise the La Salle County Station, Units 1 and 2 Technical Specifications to modify limits on monitors in accordance with guidance in Generic Letter No. 83–36, "NUREG–0737 Technical Specification." The action statements for the accident monitoring instrumentation for (1) Drywell Hydrogen Monitors, (2) Primary Containment Gross Radiation, and (3) Noble Gas Monitors are modified as provided by Generic Letter 83–36.

Date of issuance: November 9, 1984.
Effective date: November 9, 1984.
Amendment Nos.: 19 and 5.

Facility Operating Licenses Nos. NFP–11 and NFP–18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38390).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of application for amendment: October 29, 1982 and June 8, 1983, as revised on January 19 and 23, 1984.

Description: The amendment modifies the Appendix A Technical Specifications by incorporating radiological effluent technical specifications and certain other administrative changes to clarify existing technical specifications regarding actions to be taken when a nuclear instrumentation channel becomes inoperable.

Date of Issuance: October 18, 1984.
Effective date: 180 days from the date of its issuance.
Amendment No.: 36.

Provisional Operating License No. DPR–45. Amendment revised Appendix A Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38400) October 26, 1983 (48 FR 49584), and June 20, 1984 (49 FR 25358).

The Commission's related evaluation of the amendment is contained in Safety Evaluations dated October 18, 1984.

No Significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 14, 1983 and May 7, 1984.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to (1) allow continued plant operation with one air lock door inoperable under certain conditions, (2) add new surveillance requirements to the emergency air lock, and (3) change the existing air lock surveillance requirements. In addition, the amendment also corrects a typographical error on Page ¾ 6–10 of the Technical Specifications.

Date of Issuance: November 8, 1984.
Effective date: November 8, 1984.
Amendment No.: 82.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49585) and July 24, 1984 (49 FR 29906).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 14, 1983 and supplemented by letter dated September 22, 1983 and July 3, 1984.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to clarify conditions under which the safety action of protection system channels are manually bypassed or blocked by the protection system logic.

Date of Issuance: November 13, 1984.
Effective date: November 13, 1984.
Amendment No.: 83.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49585).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida.

Date of application of amendment: June 4, 1984.

Brief description of amendment: The amendment changed the Technical Specifications and authorized the licensee to operate the St. Lucie Plant, Unit No. 2, for Cycle 2.

Date of Issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendment No.: 8.

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1984 (49 FR 29902 at 29909).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1984.

No Significant hazards consideration comments received. No comments were received.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point, Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: June 15, 1984.

Brief description of amendments: The amendments revise Appendix A of the Technical Specifications for the TMI Items in our Generic Letter 83-37 dated November 1, 1983.

Date of Issuance: October 17, 1984.

Effective date: October 17, 1984.

Amendment Nos.: 110 and 104.

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33364).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1984.

No significant hazards consideration comments have been received.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 24, 1984.

Brief description of amendment: This amendment changes the Technical Specifications to allow increasing the U-235 enrichment limit in the high density fuel storage racks.

Date of issuance: November 8, 1984.

Effective date: November 8, 1984.

Amendment No.: 72.

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 23, 1984 (49 FR 21830).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: August 28, 1984 as supplemented September 7, 1984.

Brief descripton of amendment: The amendment to Technical Specification Section 5.3.1.E would remove the weight limitation of the spent fuel shipping cask.

Date of Issuance: October 29, 1984.

Effective date: October 29, 1984.

Amendment No.: 77.

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38400).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 29, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unite No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 4, 1984, as supplemented August 8, 1984.

Brief description of amendment: This amendment corrects a clerical error in TS 3.6.7 by changing "Hot Standby" to "Hot Shutdown"; adds a comment to TS Table 4.1-1 to include independent testing of the shunt trip and undervoltage trip features; deletes TS 6.15 on environmental qualification that has been superseded by 10 CFR 50.49; and revises TS 6.16 to cover the Post Accident Sampling Program by adding Particulate Sampling, Reactor Coolant Sampling and Containment Atmosphere Sampling.

Date of issuance: October 31, 1984.

Effective date: October 31, 1984.

Amendment No. 102.

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33365).

The Commission's related evalution of the amendment is contained in a Safety Evaluation dated October 31, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Data of application for amendment: July 20 1983, as supplemented January 27 and August 8, 1984.

Brief description of amendment: The amendment revises the Technical Specifications and the bases to permit operation of the Residual Heat Removal (RHR) system with reduced water flow and corrects a discrepancy between the bases to the Technical Specifications and the Updated Final Safety Analysis Report (UFSAR) for DAEC.

Date of issuance: October 29, 1984.

Effective date: October 29, 1984.

Amendment No.: 108.

Facility Operating License No. DPR-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17863). Subsequent to the initial notice in the **Federal Register**, the license, by letter dated August 8, 1984, submitted a non-proprietary version of the subject application which falls within the scope of the original notice

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: January 31, 1984.

Brief Description of amendment: The revision to the Technical Specifications makes changes to Section 6.0, "Administrative Controls."

Date of issuance: October 29, 1984.

Effective date: October 29, 1984.

Amendment No.: 65.

Facility Operating License No. DPR-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 49 FR 17866.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1984

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library-Documents, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date application for amendment: March 2, 1979, superseded by submittal dated February 1, 1984.

Brief description of amendment: The amendment revises the Technical Specifications to add Limiting Conditions for Operating and surveillance requirements for Radiological Effluents.

Date of Issuance: November 2, 1984.

Effective date: January 1, 1985.

Amendment No.: 66.

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43140) and August 22, 1984 (49 FR 33366)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield-Documents, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: April 13, 1984, as supplemented August 3, 1984.

Brief description of amendment: The amendment revises the Technical Specification to add Limiting Conditions for Operation and surveillance requirements for the equipment that provides automatic initiation of the diesel generators.

Date of issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendment No.: 67.

Facility Operating License No. DPR-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38403).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library-Documents, Oswego, New York 13126.

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Generating Station, Unit No. 1, New London County, Connecticut

Date of application for Amendment: July 17, 1984.

Brief description of amendment: The Technical Specification changes proposed by the amendment request modify the Appendix A Technical Specifications to lower the primary containment oxygen concentration from 5% to 4% and further limit the amount of oxygen in the containment drywell and wetwell to assure sufficient inerting (nitrogen inerted) to prevent combustible gas mixtures due to hydrogen generation following LOCAs.

Date of issuance: November 1, 1984.

Effective date: November 1, 1984.

Amendment No. 101.

Provisional Operating License No. DPR-21. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38406).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: May 29, 1984, as supplemented August 16, 1984.

Brief description of amendment: The amendment changes the Technical Specifications to add surveillance and operability requirements for the residual heat removal (RHR) intertie line valves and add limitations on use of the intertie line. This amendment also deletes Technical Specifications pertaining to the recirculation system crosstie lines, which have been removed.

Date of Issuance: October 31, 1984.

Effective date: October 31, 1984.

Amendment No.: 27.

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 49 FR 38404.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 17, 1984.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to reflect the use of hybrid design hafnium control rod assemblies. These assemblies will be used to replace standard control rod assemblies during the current Monticello refueling outage.

The other change pertaining to site boundaries proposed in the August 17, 1984 application is being handled by separate action.

Date of issuance: November 2, 1984.

Effective date: November 2, 1984.

Amendment No.: 28.

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38405).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated November 2, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Northern States Power Company, Docket No. 50-282 Prairie Island Nuclear Generating Plant, Unit No. 1, Goodhue County, Minnesota

Date of application for amendment: July 9, 1984.

Description of amendment: This amendment adds a Technical Specification which considers the steam generator having three tubes containing defects in the tube sheet region to be operable.

Date of issuance: October 18, 1984.

Effective date: October 18, 1984.

Amendment No.: 71.

Facility Operating License No. DPR-42. Amendment revised the Technical Specifications.

No significant hazards consideration comments received: No.

Date of initial notice in **Federal Register.** July 24, 1984 (49 FR 29915).

The Commission related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1984.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: April 12, 1984

Brief description of amendments: These amendments modify surveillance requirements for the station batteries (dc emergency power).

Date of issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendments Nos.: 103 and 105.

Facility Operating Licenses Nos. DPR-44 and DPR-56. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register.** July 24, 1984 (49 FR 29917).

The Commission related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: July 13, 1984.

Brief description of amendment: The amendment corrects the height of the meteorological instruments on the tower and revises the necessary remote shutdown instrumentation.

Date of issuance: October 24, 1984.

Effective date: October 24, 1984.

Amendment No.: 96.

Facility Operating License No. NPF-1. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register.** August 22, 1984 (49 FR 33353 at 33369).

The Commission related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1984.

No significant hazards consideration comments received: No comments received.

Location of Local Public Document Room: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application of amendment: July 13, 1984.

Brief description of amendment: The amendment makes numerous changes to reporting requirements to conform to revised 10 CFR 50.72 and new § 50.73; adds a requirement to report challenges and failures of pressurizer power-operated relief valves and safety valves; revises the schedule for reporting any degradation of control building connection bolts; and changes the title of the off-site (corporate) review committee.

Date of issuance: October 30, 1984.

Effective date: October 30, 1984.

Amendment No.: 97.

Facility Operating License No. NPF-11: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33353 at 33368).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1984.

No significant hazards consideration comments received: No comments received.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of application for amendment: May 10, 1984.

Brief description of amendment: Modification of the sampling and analysis requirements for secondary coolant radioactivity described in the Technical Specifications. Daily sampling is now required when the activity increases to 10% of the limit instead of the 25% value previously imposed while daily sampling is no longer required if the activity increases by 25% over an equilibrium value.

Date of issuance: October 26, 1984.

Effective date: October 26, 1984.

Amendment No.: 44.

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1984 (49 FR 25372).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 5, 1982 and supplemented September 2, 1983.

Brief description of amendments: Amendments add a clarifying note to existing Technical Specifications which delineates operating restrictions when one Main Steam Isolation Valve solenoid vent value is isolated.

Date of issuance: October 15, 1984.

Effective date: October 15, 1984.

Amendment Nos.: 57 and 28.

Facility Operating Licenses Nos. DPR-70 and DPR-75: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49593).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1984.

No significant hazards consideration comments have been received.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 5, 1982.

Brief description of amendments: Change Technical Specifications regarding performance of a Reactor Coolant System water inventory balance.

Date of issuance: October 17, 1984.

Effective date: October 17, 1984.

Amendment Nos.: 58 and 27.

Facility Operating Licenses Nos. DPR-70 and DPR-75: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38420).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1984.

No significant hazards consideration comments have been received.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: April 11, 1983.

Brief description of amendment: The amendment revises the Technical Specifications to (1) revise the allowable leakage limit for components of the Decay Heat Removal System (DHRS), and (2) include test requirements for determining leakage from the Reactor Building Spray System (RBSS).

Date of issuance: October 30, 1984.

Effective date: October 30, 1984.

Amendment No.: 57.

Facility Operating License No. DPR-54. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 26, 1984 (49 FR 3353).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: November 24, 1982, as supplemented May 11, 1983.

Brief description of amendment: The amendment involves changes to the TSs to revise the Reactor Building post tensioning tendon surveillance requirements.

Date of issuance: November 6, 1984.

Effective date: November 6, 1984.

Amendment No.: 58.

Facility Operating License No. DPR-54. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17872) on August 22, 1984 (49 FR 33369).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: March 30, 1984

Brief description of amendment: The amendment deletes license condition 2.C.(15) which requires control room installation of the residual heat removal system suction isolation valve power lockout capability.

Date of issuance: October 15, 1984

Effective date: October 15, 1984.

Amendment No.: 29

Facility Operating License No. NPF-12. Amendment revised the license.

Date of initial notice in **Federal Register:** July 24, 1984 (49 FR 29919).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina.

Date of application for amendment: November 16, 1983.

Brief description of amendment: The amendment modifies the Technical Specifications to add additional containment penetration conductor overcurrent protection devices to Table 3.8-1 and to correct typographic errors.

Date of issuance: October 24, 1984.

Effective date: October 24, 1984.

Amendment No.: 30.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 26, 1984 (49 FR 3354).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina.

Date of application for amendment: March 22, 1984.

Brief description of amendment: The amendment modifies the Technical Specifications to add additional valves to Table 3.8-2, "Motor Operated Valves Thermal Overload Protection and/or Bypass Devices" and to correct typographical errors in the same table.

Date of issuance: October 24, 1984.

Effective date: October 24, 1984.

Amendment No.: 31

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33370).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina.

Date of application for amendment: July 24, 1984.

Brief description of amendment: The amendment modifies Technical Specification Tables 3.3-7, "Seismic Monitoring Instrumentation," and 4.3-4, "Seismic Monitoring Instrumentation Requirements," to allow an installed triaxial peak accelerograph to be moved to an accumulator safety injection line from the pressurizer surge line. A typographical error in Table 3.3-7 is also corrected.

Date of issuance: November 8, 1984.

Effective date: November 8, 1984.

Amendment No.: 32.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38409).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: May 17, 1984 and May 7, 1981.

Brief description of amendment: The amendment approves changes to Appendix A limiting conditions for operation and surveillance requirements related to the auxiliary feedwater system.

Date of issuance: October 24, 1984.

Effective date: November 7, 1984.

Amendment No. 82.

Provisional Operating Licensing No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1984 (49 FR 29920) and March 22, 1984 (49 FR 10743).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: July 9, 1984 with supplemental information dated September 4, 1984 and October 24, 1984.

Brief description of amendment: The amendment approves changes to Appendix A Technical Specifications which incorporate operability and surveillance requirements for the plant modifications addressed by Generic Letter 83-37 as well as other changes for conformity to the Standard Technical Specifications.

Date of issuance: November 2, 1984.

Effective date: January 1, 1985 with full implementation within 60 days of issuance.

Amendment No. 83.

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Public Library, 242 Avenida Del Mar, San Clemente, California 92672.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application for amendments: June 27 and 29, and July 18, 1984.

Brief description of amendments: The amendments modify the Technical Specifications to (1) allow manual coupling and uncoupling of the control element assemblies (CEA's) to the control element drive motor (CEDM) drive shaft extensions during refueling, (2) allow weighing of CEAs during refueling (3) allow the water level during refueling to be as low as 23 feet above the fuel assemblies, (4) allow correction of the measured heat dissipation of the fuel handling building post-accident cleanup filter system (FHBPACFS) heaters to the nominal voltage for purposes of determining heater operability, and (5) specificy a tube thinning criteria of 44% for all steam generator tubes.

Date of issuance: October 26, 1984.

Effective date: October 26, 1984.

Amendment Nos. 26 and 15.

Facility Operating License Nos. NPF-10 and NPF-15: Amendment revised the Technical Specifications.

Dates of initial notice in **Federal Register:** August 22, 1984 (49 FR 33371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1984.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application for amendments: September 3, 1982 and January 25, 1983.

Brief description of amendments: The amendments change Technical Specifications 3.4.1.4.1, "REACTOR COOLANT SYSTEM; COLD SHUTDOWN—LOOPS FILLED" to allow removal of both trains of shutdown cooling from service while in MODE 5, provided that one reactor coolant pump is in operation and both reactor coolant loops are operable.

Date of issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendment Nos.: 27 and 16.

Facility Operating License Nos. NPF-10 and NPF-15: Amendment revised the Technical Specifications.

Dates of initial notices in **Federal Register:** February 24, 1984 (49 FR 7042) and July 24, 1984 (49 FR 29922).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1984.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: April 30, 1982 as supplemented June 10, 1982.

Brief description of amendments: These amendments change the appendices A and B Technical Specifications to: (1) Revise the reactor water cleanup system isolation instrumentation operability requirements (2) revise RHRSW pump operability requirements, (3) revise the

suppression chamber water level datum for HPCI suction switchover (4) correct a typographical error, (5) delete surveillance requirements for RWCU system compartment temperature detectors (6) clarify residual heat removal operability and surveillance requirements (7) revise drywell-to-torus leak rate testing bases (8) revise the requirements on control rod drive maintenance when fuel is present around the rods (9) on Unit 2, revise the surveillance requirements for standby coolant supply pumps and (10) revise raw milk sampling requirements.

Date of issuance: October 16, 1984.

Effective date: October 16, 1984.

Amendment Nos.: 114, 108 and 82.

Facility Operating License Nos. DPR-33, DPR-52, and DPR-68. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 49 FR 25375 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: April 3, 1984.

Brief description of amendment: The amendments revise a condition in the license for each one of the Browns Ferry units which requires the licensee to "maintain in effect and fully implement all provisions of the Commission—approved physical security plan * * *" to reflect that the Commission has reviewed and accepted a revised security plan, to replace the licensee's physical security plan dated June 15, 1978. The amendments change this reference, and therefore make operational the revised physical security plan dated May 15, 1982, as revised by letters dated August 31, 1982 and October 19, 1982. In approving the plan the Commission disapproved language in Section 9.1 which would have permitted designating containment as a nonvital area during extended maintenance outages when all fuel was removed from the reactor vessel. Language requiring maintenance of positive access control over containment during refueling outages, has been incorporated into the amendments. Inasmuch as the effect of the disapproval of the plan in this one respect constitutes a partial denial of the amendment as requested, a separate Notice of Denial of Amendments has been issued.

Date of issuance: October 29, 1984.

Effective date: October 29, 1984.

Amendment Nos.: 115, 109 and 83.

Facility Operating License Nos. DPR-33, DPR-52, and DPR-68. Amendments revised licenses.

Date of initial notice in **Federal Register:** May 23, 1984 (49 FR 21846).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: November 21, 1983 (Item 1 only), as supplemented May 2, 1984.

Brief description of amendment: The amendment modifies Technical Specification 4.5.2.d to permit removal of power to the Decay Heat Removal System suction line isolation valves, DH-11 and DH-12, during operation in Modes 1, 2 or 3.

Date of issuance: November 6, 1984.

Effective date: November 6, 1984.

Amendment No. 77.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38411).

The Commission's related evaluation of the amendment is contained in a Safety evaluation dated November 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 3801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: March 31, 1983, June 16, 1983 and February 9, 1984 (supplemented February 14 and 21, 1984).

Brief description of amendments: These amendments revise the Technical Specifications to add post-accident monitoring equipment as a result of NUREG-0737 (Post-TMI Requirements) reviews.

Date of issuance: October 15, 1984.

Effective date: October 15, 1984.

Amendment Nos. 100 and 99.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 1983 (48 FR 33091), August 23, 1983 (48 FR 38429) and May 23, 1984 (49 FR 21849).

Significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 2318.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any

required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 21, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possibile effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contents which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties of the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commision, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of application for amendment: July 23 and August 1, 1984, as supplemented by letters dated August 8, 17, 20(2), and 23, 1984; September 7(2) and 17, 1984; and October 4, 12 and 22, 1984.

Brief description of amendment: The amendment:

1. Authorizes Cycle 10 operation at full power (2300 Mwt) with new steam generators.

2. Revises the Appendix A Technical Specification to:

(1) Increase setpoint limits for hot channel factors F_0 and F delta$_H$ limits;

(2) Increase BOL moderator temperature coefficient limits;

(3) Decrease overtemperature and overpower delta T setpoints;

(4) Provide for use of Power Distribution Control (PDC) II;

(5) Revise Reactor Coolant Pump Operability requirements;

(6) Add additional control rod drive evaluations (tests) while the containment integrity is not intact;

(7) Updated core descriptions; and

(8) General update to correct errors and inconsistencies with the TS and between the TS and FSAR.

Date of issuance: November 7, 1984.

Effective date: November 7, 1984.

Amendment No. 87.

Facility Operating License No. DPR–23. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, **Federal Register** Notices, August 24, 1984 (49 FR 33764) and October 5, 1984 (49 FR 39396).

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated November 7, 1984.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Pennsylvania Power & Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: October 19, 1984.

Brief description of amendment: This amendment changes Technical Specification 4.1.3.1.4 regarding scram discharge volume operability by providing a clarification of intent to permit retest of the scram discharge volume vent and drain valves.

Date of issuance: October 24, 1984.

Effective date: October 19, 1984.

Amendment No.: 25.

Facility Operating License No.: NFP–14.

Amendment revised the Technical Specifications. Public comment requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1984.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Plant, Unit No. 3, Westchester County, New York

Date of amendment request: November 1, 1984, as supplemented November 6, 1984.

Description of amendment request: This amendment revises the Technical Specifications, Section 4.1.A.1.f to change the steam generator tube plugging limit for pitting from an imperfection plugging depth of 50% to 63%.

Date of Issuance: November 9, 1984.

Amendment No. 50.

Effective Date: November 9, 1984.

Facility Operating License No. DPR–64. Amendment revised the Technical Specifications.

Press release issued requesting comments as to propose no significant hazards consideration: No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated November 6, 1984.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Southern California Edison Company, Docket No. 50206, San Onofre Unit 1, San Diego County, California

Date of application for amendment: July 23, 1984.

Brief description of amendment: The amendment revises limiting conditions for operation for snubbers in accordance with GL–84–13. In addition, some changes to surveillance requirements are made.

Date of issuance: October 15, 1984.

Effective date: October 15, 1984.

Amendment No. 81.

Provisional Operating License No. DPR–13. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. Press Release.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated October 15, 1984.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida del Mar, San Clemente, CA 92676.

Dated at Bethesda, Maryland this 15th day of November 1984.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch #3 Division of Licensing.

[FR Doc. 84–30580 Filed 11–20–84; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Storage Equities, Inc., Common Stock, $.10 Par Value; Notice of Application To Withdraw From Listing And Registration

November 15, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) The Registration's common stock has been listed on the Amex. On October 16, 1984, the Commission declared effective a registration statement on Form 8–A pursuant to which the common stock became registered on the New York Stock Exchange ("NYSE").

(2) In making the decision to withdraw its common stock from listing on the Amex, the Registrant considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Registrant does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

(3) Amex has informed the Registrant that it has no objection to the withdrawal of the Registrant's common stock from listing on the Amex.

Any interested person may, on or before December 7, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date

mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30538 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. SR-Amex-84-33; Rel. No. 21493]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc.

November 16, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1984, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Amex proposes to change its rules applicable to the use of index option escrow receipts ("escrow receipts") for short call positions on broad-based index options that permit a customer to carry, on a covered basis, short call options contracts overlying a broad-based index without deposition margin with the carrying broker-dealer.[1] Under existing rules, the bank or trust company issuing the escrow receipt certifies that it holds for the customer at least ten qualified equity securities, each issued by a different entity, with a fixed aggregate dollar value at trade date and that it agrees to meet customer's settlement obligation upon assignment. The proposed rule change would, among other things, reduce the number of equity securities required to be held by the bank or trust company from 10 qualified equity securities to one or more qualified equity securities and would also permit the use of cash, cash equivalents or a combination thereof. In addition, such securities, cash or cash equivalents deposited in the bank by the customer must have an aggregate market value, at the time the option is written, of not less that 100 percent of the aggregate current index value.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR-Amex-84-33.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the Amex.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30542 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21480; SR-NASD-84-27]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Filing Requirements of the Interpretation of the Board of Governors—Review of Corporate Financing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 5, 1984, the National Association of Securities Dealers, Inc. ("Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing the notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes the filing requirements of the Interpretation of the Board of Governors—Review of Corporate Financing ("Corporate Financing Interpretation") pursuant to Article III, Section 1 of the Rules of Fair Pracitice of the Association for the purpose of exempting from the requirements all debt and equity offerings of securities offered by a corporate, foreign government, or foreign government agancy issuer which has senior non-convertible debt or preferred securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these comments may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Corporate Financing Interpretation under Article III, Section 1 of the Rules of Fair Practice (NASD Manual (CCH ¶2151) requires that most public offerings of debt and equity securities which involve member participation be filed with the Association for a review of the underwriting terms and arrangements. Certain types of offerings have been exempted from the filing requirements where market forces or other constraints were present to assure the fairness and reasonableness of underwriting terms and arrangements, including specifically the amount of underwriting compensation.

The Corporate Financing Interpretation exempts from the filing requirements straight debt issues rated "B" or better by a recognized rating service. In addition, pursuant to Notice-to-Members 83-12 (March 8, 1983), securities registered as part of a "shelf" registration on Form S-3 are exempt from the filing rquirements. This rule change was approved by the Commission as a clarification of the filing requirement of the NASD's Corporate Financing Interpretation.

In early 1982, the Association determined that a review of the filing requirements under the Corporate Financing Interpretation should be initiated. This determination was based on several of the comments received on a proposal for codification of the Corporate Financing Rule distributed to the membership for comment in Notice-to-Members 81-16 (April 17, 1981) which included a number of additional proposed exemptions from the filing requirements.

The Association is proposing a rule change to exempt from the filing requirements of the Corporate Financing Interpretation, securities offered by a corporate, foreign government of foreign government agency issuer which has senior non-convertible debt or preferred securities which are rated in one of the four highest generic rating categorie considered by the securities industry to denominate the securities as "investment grade." The term "investment grade" refers to securities which have been rated "AAA" through "BBB" by Standard & Poor's and "Aaa" through "Baa" by Moody's.

It is the determination of the Association to limit the exemption of offerings of corporate and government securities, as compared to offerings of direct participation programs and real estate investment trusts. It is the experience of the Association that the terms of such latter offerings often approach the maximum limits on underwriting compensation permitted under the Association's compensation guidelines. In addition, offerings of securities by direct participation programs are subject to the provisions of Appendix F of Article III, Section 34 of the Rules of Fair Practice and require review to assure compliance with its affirmative suitability and due diligence provisions. Thus, the Association concluded that such offerings by direct participation programs and real estate investment trusts shoud be subject to review of underwriting terms and arrangements.

Foreign private issuers offer equity securities in the United States in the form of American Depository Receipts representing the securities being issued. With respect of offerings of debt securities, it is the understanding of the Association that foreign private issuers generally will not offer debt securities in the United States unless such debt receives a rating in one of the four highest generic rating categories by a nationally recognized statistical rating organization.

The exemption is also proposed to be available to foreign government and foreign government agency issuers. Foreign governments and their agencies do not offer their debt securities in the United States unless such securities receive an investment grade rating. Agencies of foreign governments are enumerated separately to clarify that the exemption is available to offerings by agencies of a foreign government which may not be considered an offering by that government itself nor by a foreign private corporate entity.

In order to quailfy for the proposed exemption, an enumerated issuer must have senior non-convertible debt or preferred equity securites rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. This reflects the Association's determination that an investment grade debt rating on senior debt or preferred equity securities of a corporation can be relied upon to assure the fair pricing of offerings of both debt and equity and the reasonableness of underwriting compensation, given the forces in the market, the corresponding requirement of competitive pricing, and the ability of the issuer to bargain for competitive compensation to the underwriter. This requirement would narrow the currently available exemption for debt offerings by corporate, non-corporate and foreign government and foreign government agency issuers. Thus, offerings rated "B" and "BB" by Standard and Poor's and rated "B" and "Ba" by Moody's would no longer be exempt from the Association's filing requirements. The exemption would, however, be expanded with respect to offerings of equity securities by corporate issuers which have investment grade senior non-convertible debt or preferred securities who are now required to file.

The investment grade rating is required with respect to an outstanding or a current offering of debt securities which is senior to other debt security obligations of the corporation. Alternatively, this condition may be satisfied by an investment grade rating of non-convertible preferred equity securities of the corporation. Thus, not only would an offering of investment grade senior debt or preferred equity securities be exempt from the filing requirements, but so too would any subsequent offering of debt or equity securities of a corporate issuer.

The association believes that a rating by a nationally recognized statistical rating organization which focuses on the financial characteristics of the issuer can be relied upon as a basis for an exemption from the filing requirements with the Corporate Financing Interpretation. In order to qualify for the exemption a rating must be received in one of the "four highest general rating categories", i.e. "AA" through "BBB" by Standard & Poor's and "Aaa" through "Baa" by Moody's. A "generic" rating category is a major rating category and does not include subcategories. A "nationally recognized statistical rating organization" refers to firms engaged in the business of providing ratings on securities which have been recognized by the Securities and Exchange Commission for this purpose. The language of this part of the exemption is compatible with that in Section B(2) of the Instructions to the Form S-3 Registration Statement. The four highest generic rating categories are considered investment grade as the ratings reflect confidence regarding the ability of the corporation to meet dividends and to redeem the obligations when required to do so.

The proposed amendments relate only to the filing requirements and do not constitute exemptions from the substantive requirements of the Corporate Financing Interpretation. Members will still be expected to assure compliance with those requirements in any offerings in which they participate. Additionally, the proposed exemptions relate only to the filing requirement under the Corporate Financing Interpretation; these exemptions do not extend to offerings which are subject to Schedule E to Article IV, Section 2 of the NASD By-Laws concerning offerings by members of their own securities or those of affiliates.

The proposed rule change is being made pursuant to Sections 15A(b)(2) and 15A(b)(6) of the Securities Exchange Act of 1934 in furtherance of the Association's responsibility for promulgating rules which prevent fraudulent and manipulative practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and generally protect investors.

(B) Self-Regulatory Organizations Statement on Burden on Competition

The proposed amendment results in the exemption from the filing requirements of the Corporate Financing Interpretation of debt and equity securities offered by a corporate, foreign government, or foreign government agency issuer which has senior non-convertible debt or preferred securities which are rated in one of the four

[1] The Chicago Board Options Exchange, Incorporated filed a substantially similar proposal with the Commission. *See* File No. SR-CBOE-84-28, Securities Exchange Act Release No. 21360, October 15, 1984, 49 FR 41122 October 20, 1984.

highest generic rating categories by a nationally recognized statistical rating organization. This change would relieve certain issuers which must currently file with the Association from the obligation of compliance with these requirements. Conversely, certain other offerings currently exempt from filing, would be required to do so.

Under the present Corporate Financing Interpretation, "shelf" offerings of securities registered on Form S-3 and straight-debt issues rated "B" or better by a recognized rating service need not be filed with the Association. Accordingly, by amending the filing requirements to exempt a narrower class of issuers, debt instruments rated "B" or "BB" by Standard and Poor's and "B" or "Ba" by Moody's would become subject to NASD review. Issuances of such non-investment grade, speculative fixed income securities usually involves higher underwriting compensation. Such speculative debt is often marketed much like equity. Filing and review of underwriting terms and arrangements for such issuings are considered by the Association to be justified. It should be noted however, that should the issuer of a debt offering which is not of investment grade also have outstanding investment grade senior debt, the issuer would not be required to file the lesser debt offering.

The proposed amendment would extend the filing requirement exemption to corporate equity offerings of issuers with outstanding investment grade senior debt. Thus, such seasoned corporate equity issuers which are currently required to comply with both the substantive and filing requirements of the Interpretation would be relieved of the filing requirements. With respect to offerings of non-convertible debt and preferred securities, the association believes that regardless of the issuing entity, the issurance of securities rated investment grade is unlikely to require review of the underwriting terms and arrangements. Underwriting compensation in connection with investment grade debt offerings is traditionally modest in terms of the permissible level of compensation.

For the foregoing reasons, the Association believes that the proposed rule change presents no impact in competition which is not necessary in furtherance of the purposes of the Exchange Act as amended.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

A proposed rule change to exempt debt and equity offerings of seasoned issuers was published for member comment in Notice-to-Member 83-25 (May 27, 1983). The Association received one comment on the rule proposal. After due consideration of the comment received, the Board of Governors approved the proposed rule change. Due to recent evolutionary changes in the use of registration forms by seasoned issuers, the proposed rule change was substantially altered which required the withdrawal of the initial proposal and the filing of this proposed amendment to the filing requirement. The Association has concluded that no additional publication for comment is necessary.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this Notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 12, 1984.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: November 14, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30535 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Boston Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 14, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Adams-Russell Co., Inc.
Common Stock, $.50 Par Value, File No. 7-8119

American International Group, Inc.
Common Stock, $.2.50 Par Value, File No. 7-8120

National Convenience Stores, Inc.
Common Stock, $.41 ⅔ Par Value, File No. 7-8121

Lorimar
Common Stock, No Par Value, File No. 7-8122

T Bar, Inc.
Common Stock, $.25 Par Value, File No. 7-8123

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30539 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 14, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Mestek, Inc.
Common Stock, $5.00 Par Value, File No. 7-8139

General Motors Corporation
Class E Common Stock, File No. 7-8140

Harris Graphics Corporation
Common Stock, $.01 Par Value, File No. 7-8141

AGS Computers Inc.
Common Stock, $.10 Par Value, File No. 7-8142

Storage Equities, Inc.
Common Stock, $.10 Par Value, File No. 7-8143

Wilfred American Educational Corporation
Common Stock, $.10 Par Value, File No. 7-8144

TNP Enterprises, Inc.
Common Stock, $.10 Par Value, File No. 7-8134

Ozark Holdings, Inc.
Common Stock, $.50 Par Value, File No. 7-8135

American International Group, Inc.
Common Stock, $2.50 Par Value, File No. 7-8136

Bergen Brunswig Corp.
Class A Common Stock, $1.50 Par Value, File No. 7-8137

Korea Fund
Common Stock, $.01 Par Value, File No. 7-8138

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1984, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30540 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Pacific Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 14, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Amdahl Corporation
Common Stock, $.05 Par Value, File No. 7-8124

Bankers Trust NY
Common Stock, $10.00 Par Value, File No. 7-8125

Chesebrough-Ponds
Common Stock, $1.00 Par Value. File No. 7-8126

Coleco Industries
Common Stock, $1.00 Par Value, File No. 7-8127

Dun & Bradstreet
Common Stock, $1.00 Par Value, File No. 7-8128

Horn & Hardart
Common Stock, $.666 Par Value, File No. 7-8129

Illinois Power
Common Stock, No Par Value, File No. 7-8130

Kroger Company
Common Stock, $1.00 Par Value, File No. 7-8131

Public Service of Indiana
Common Stock, No Par Value, File No. 7-8132

Telesphere International
Common Stock, $.01 Par Value, File No. 7-8133

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30536 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Philadelphia Stock Exchange Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 14, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Pulte Home Corporation
Common Stock, $1.00 Par Value, File No. 7-8117

The Quaker Oats Company
Common Stock, $5.00 Part Value, File No. 7-8118

Security Pacific Corporation
Common Stock, $10.00 Par Value, File No. 7-8114

GenRad, Inc.
Common Stock, $1.00 Par Value, File No. 7-8115

Club Med, Inc.
Common Stock, $1.00 Par Value, File No. 7-8116

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30537 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organization; Philadelphia Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 16, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Pan Am Corp.
Common stock, $.25 Par Value, File No. 7-8145

Burroughs Corp.
Common stock, $5.00 Par Value, File No. 7-8146

Helene Curtis Industries, Inc.
Common Stock, $1.00 Par Value, File No. 7-8147

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 10, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30541 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23479; 70-7003]

Central Power & Light Co.; Supplemental Notice of Proposal Requesting Approval of Pollution Control Financing

November 14, 1984.

Central Power and Light Company ("Company"), 120 North Chaparral Street, Corpus Christi,Texas, 78401, a wholly owned subsidiary of Central and South West Corporation, a registered holding company, has filed an amendment to a proposal pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

An aggregate of $139,200,000 amount of Matagorda County Navigation District Number One Adjustable Rate Pollution Control Revenue Bonds (Central Power and Light Company Project) Series 1984 ("Series 1984 Bonds") were issued in October 1984 pursuant to an order of the Commission (HCAR No. 23462) under which the Commission reserved jurisdiction for the issuance of an additional $60,800,000 aggregate principal amount of bonds. The Company now requests authority for the issuance of up to $160,000,000 aggregate principal amount of bonds ("Additional Bonds"), which amount includes the $60,800,000 over which the Commission has reserved jurisdiction. Such bonds will have substantially the same terms as the Series 1984 Bonds previously approved, however, based on market conditions, the first date on which the initial interest rate may be changed and the first right of bondholders to cause redemption of or put the Additional Bonds may be up to five years after the issuance, rather than one year as is the case for the Series 1984 Bonds. As a result of the extended initial put, market conditions may require that the Additional Bonds provide for refunding protection for up to the first five years through the issuance of debt securities at a lower interest cost than the Additional Bonds or otherwise.

The Company also proposes to issue, as security for the payment of the Additional Bonds, First Mortgage Bonds by executing a Supplemental Indenture to its Mortgage Indenture dated November 1, 1943 to The First National Bank of Chicago and A.R. Bohm, Trustee. The First Mortgage Bonds will be issued to the Trustee (RepublicBank, Dallas, N.A.) under the Indenture of Trust in respect of the Additional Bonds, between First Mortgage Bonds will be held by the Trustee solely for the benefit of the holders of Additional Bonds and will not be transferable except to a successor Trustee. The First Mortgage Bonds will be issued in the exact amount and have the same terms as the Additional Bonds and payments thereon will be used to make the necessary payments of interest and principal on the Additional Bonds.

If market conditions change drastically between now and the issuance of an order in this file, an event the Company considers highly unlikely, the Company will issue the Additional Bonds as conventional fixed interest term bonds of from a 5 to 30 year term. Any such term bonds issued would also have First Mortgage Bonds issued as a security backup.

The supplemental proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 10, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the supplemental proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30488 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14236; 812-5886]

Midland Capital Corp. and Midland Venture Capital Ltd.; Filing of Application for an Order Amending a Prior Order Exempting Applicants

Notice is hereby given that Midland Capital Corporation ("Midland"), and its wholly-owned subsidiary, Midland Venture Captial Limited ("Ventures"), 950 Third Avenue, New York, NY, 10022, a small business investment company ("SBIC") licensed by the Small Business Administration ("SBA") under the Small Business Investment Act of 1958, as amended ("SBI Act") (jointly, under Act of 1940 ("Act") as business development companies, filed an application on June 29, 1984, and an amendment thereto on November 6, 1984, for an order of the Commission, pursuant to Section 6(c) of the Act, modifying certain conditions of a prior order ("Second Order") of the Commission dated February 9, 1983 (Investment Company Act Release No. 13021/Securities Exchange Act Release No. 19498) to the extent necessary to exempt Applicants from the asset coverage requirements of Section 18(a), as modified by Section 61, of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Midland provides ventures capital equity financing and managerial advisory services to selected independent businesses which, in the opinion of Midland's board of directors, have a significant potential for long-term growth. Midland is a publicly-held company whose common stock is traded on the over-the-counter market.

Applicants state that Ventures, as an SBIC, has obtained financing through subordinated debentures issued to, or guaranteed by, the SBA in accordance with the provisions of the SBI Act and the exemption from Section 18(a) of the Act afforded by Section 18(k) of the Act. Under the SBI, Ventures is eligible to issue SBA-guaranteed debentures in an aggregate principal amount of at least up to 300% of its "private capital" (defined in § 107.3 of the Regulations under the SBI Act as its combined paid-in capital and paid-in surplus), subject to a maximum of $35,000,000 principal amount outstanding at any time.

Applicants state that they are successors of Midland Capital Corporation, a New York corporation ("Old Midland"), which, prior to the close of business on December 31, 1981, was a business development company under the Act and an SBIC licensed under the SBI Act. As of the close of business on December 31, 1981, Old Midland was reorganized into a two-tier structure ("Reorganization") by the merger of Old Midland into Ventures, which continued as a wholly-owned subsidiary of Midland.

Applicants state that, in connection with the Reorganization, Applicants and Old Midland, on December 29, 1981, obtained an order of the Commission (Investment Company Act Release No. 12131) ("First Order") granting exemptions from Section 57(a) of the Act of the extent necessary to permit Applicants and Old Midland to consummate the Reorganization and to permit Applicants to engage in certain affiliated or joint transactions subsequent to the Reorganization. The First Order was issued, subject to certain conditions, including, *inter alia*, the compliance of Midland, individually, of Midland and Ventures, on a consolidated basis, with the asset coverage requirements of Section 18(a), as modified by Section 61 of the Act.

Applicants state that the First Order severely restricted their ability to issue senior securities representing indebtedness, and, since Midland and Ventures intended to raise funds for investment through the issuance of indebtedness, including in the case of Ventures, SBA-guaranteed debentures, Applicants sought and received the Second Order of the Commission which, *inter alia*, modified the First Order to exempt Midland and Ventures from the asset coverage requirements of Section 18(a), as modified by Section 61 of the Act on the condition, *inter alia*, that Midland would not itself, and would not cause or permit Ventures to, issue any senior security representing indebtedness or sell any security representing indebtedness of which Midland or Ventures is the issuer, except that Midland and Ventures may issue and sell to banks, insurance companies and other financial institutions their secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof, made by private arrangement, provided: (a) Such notes or evidences of indebtedness are not intended to be publicly distributed, (b) such notes or evidences of indebtedness are not convertible into, exchangeable for, or accompanied by any options to acquire, any equity security, except as otherwise permitted by Section 61(a)(3) of the Act, and (c) immediately after the issuance or sale of any such notes or evidences of indebtedness by either of Midland or Ventures, Applicants on a consolidated basis, and individually, shall have the asset coverage required by Section 18(a), as modified by Section 61 of the Act, except that, in determining whether Midland and Ventures, on a consolidated basis, have the asset coverage required by Section 18(a), as modified by Section 61 of the Act, any borrowings by Ventures pursuant to SBA-guaranteed debentures shall not be considered senior securities and, for purposes of the definition of "asset coverage" in Section 18(h) of the Act, shall be treated as indebtedness not represented by senior securities.

The Second Order further stated that (a) Ventures may obtain financing through the issuance of SBA-guaranteed debentures on such basis and in such amount as the SBA may from time to time permit for SBIC's, (b) Ventures may borrow from Midland and Midland may borrow from Ventures, and (c) Midland may guarantee any borrowings by Ventures, provided that at the time of any such guarantee, and so long as any such guarantee shall be outstanding, 90% of the total assets of Midland are represented by its investment in Ventures or by securities similar to those in which Ventures invests. None of the borrowing or other arrangements permitted by this paragraph were to be deemed senior securities for purposes of the Second Order or Section 18 of the Act.

Applicants proposed to modify the conditions of the Second Order in accordance with the terms and conditions stated herein. The application indicates that Applicants would continue to be permitted to borrow from each other, Ventures would continue to issue SBA-guaranteed debentures, and Midland would continue to be permitted to guarantee the borrowings of Ventures.

If the Order requested by the application is granted by the Commission, Applicants stated that Midland intends to issue a convertible debenture in the principal amount of $2,000,000 as consideration for the purchase of 18,904 shares of common stock of Arrowhead Jewelry ("Arrowhead") from a minority shareholder of Arrowhead. Midland currently owns a majority of the capital stock of Arrowhead. If issued, the debenture would be convertible at any time after February 1, 1986, into 100,000 shares or Midland's common stock at an initial conversion price of $20.00 per share, subject to standard anti-dilution adjustments and to compliance with the provisions of Section 61(a)(3) of the Act. Applicants further state that at Midland's Annual Meeting of Stockholders on April 25, 1984, Midland's stockholders adopted a proposal to permit Midland to issue up to $10,000,000 principal amount of debentures which are convertible into common stock of Midland and which would be issuable in one or more series, provided that no series could have a preference or priority over any other series.

Applicants state, as a condition to the granting of an order pursuant thereto, they will comply with the following: (1) Midland may issue, and may cause or permit Ventures to issue, senior securities representing indebtedness or sell any senior security representing indebtedness of which Midland or Ventures is the issuer either in a privately arranged transaction in which such senior securities are not intended to be publicly distributed or in a public offering so long as Midland or Ventures, as the case may be, has outstanding only one class of senior securities representing indebtedness or, in the alternative, Midland may issue, and may cause or permit Ventures to issue, more than one class of senior securities representing indebtedness or sell more than one class of senior securities representing indebtedness of which Midland or Ventures is the issuer, so long as such senior securities are issued and sold to banks, insurance companies or other institutional investors in privately arranged transactions and are not intended to be publicly distributed and Midland or Ventures, as the case may be, does not have outstanding any publicly held indebtedness; provided that, in either case, (a) any such senior security representing indebtedness shall not be convertible into, exchangeable for, or accompanied by any options, warrants or rights to subscribe or acquire any equity security, except as otherwise permitted by Section 61(a)(3) of the Act, and (b) immediately after the issuance or sale of any such senior security representing indebtedness by either of Midland or Ventures, Midland and Ventures, on a consolidated basis, and Midland and Ventures, individually, shall have the asset coverage required by Section 18(a), as modified by Section 61 of the Act, except that in determining whether Midland and Ventures, on a consolidated basis, have the asset coverage required by Section 18(a), as modified by Section 61 of the Act, any borrowings by Ventures pursuant to SBA-guaranteed debentures shall not be considered senior securities and, for purposes of the definition of "asset coverage" in Section 18(h) of the Act, shall be treated as indebtedness not represented by senior securities. (2)(a) Ventures may obtain financing through the issuance of SBA-guaranteed debentures on such basis and in such amount as the SBA may from time to time permit for SBIC's, (b) Ventures may borrow from Midland, and Midland may borrow from Ventures, and (c) Midland may guarantee any borrowings by Ventures, provided that at the time of any such guarantee, and so long as any such guarantee shall be outstanding, 90% of the total assets of Midland are represented by its investment in Ventures or by securities similar to those in which Ventures invests. The application indicates that none of the borrowings or other arrangements permitted by this subparagraph (2) shall be deemed senior securities for purposes of any order issued pursuant to this application or Section 18 of the Act.

In support of their exemptive request, Applicants state that the restrictive conditions of the Second Order go beyond the provisions of Section 18 and Section 61 of the Act which govern the capital structure of a business development company, such as Midland or Ventures. Applicants further state that since all of the senior securities currently issued or proposed to be issued by Midland rank *pari passu*, they do not give rise to the abuses Section 18(c) of the Act was designed to prevent. Applicants represent that, as business development companies, they will be subject to the restrictions of Section 18 of the Act, as modified by Section 61 of the Act, in issuing or selling any senior security representing indebtedness, and to the 200% asset coverage requirements and the exemption afforded by Section 18(k) of the Act so that the requested exemption is consistent with the purposes of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 10, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30489 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Bulk Operating-Differential Subsidy Operators; Invitation for Comments and Applications for Permission to Carry Dry Bulk Preference Cargoes Without Subsidy

The Maritime Subsidy Board is considering an amendment to all bulk operating-differential subsidy (ODS) contracts that Article I–2(a) be amended to permit vessels to transport dry bulk cargo subject to the cargo preference statutes of the United States, including but not limited to 10 U.S.C. 2631, 46 U.S.C. 1241, and 46 U.S.C. 1241a, at fair and reasonable rates for U.S.-flag commercial vessels but without ODS. The Board is currently considering two applications for a similar amendment.

By letter dated June 7, 1984, Equity Carriers I, Inc., Asoc-Falcon II Shipping Company and Equity Carriers III, Inc. (collectively Equity) requested an amendment to their Operating-Differential Subsidy Agreement, Contract No. MA/MSB–439, in order to allow their vessels to carry dry bulk preference cargoes at fair and reasonable rates but without ODS. Notice of Equity's June 7, 1984 application was published in the **Federal Register** of June 25, 1984 (49 FR 25913) Docket S–755 Sub. 1. A protest was filed on behalf of the American Maritime Association.

By letter dated April 2, 1984, Aeron Marine Shipping Company (Aeron) amended its application of February 8, 1984, to request that its new dry bulk carrier ARCHON be permitted to operate in worldwide dry bulk service with operating-differential subsidy except that the company does not request subsidy when transporting preference cargo. Notice of the amended February 8, 1984, application was published in the **Federal Register** on May 30, 1984 (49 FR 22587) Docket S–756. Comments were received from Equity requesting equal treatment for Equity and other subsidized bulk vessel operators. Protests were received by American Trading Transportation Company, Inc. concerning the substitution of the ARCHON for the GOLDEN DOLPHIN in the ODS contract but not mentioning the preference cargo without ODS issue. AMA protested the preference cargo part of the application. The California and Hawaiian Sugar Co. joined in AMA's protest.

The Maritime Administrator invites all other bulk operators with ODS agreements to submit comments if they wish to have their ODS agreements amended in the manner set forth above.

Any person, firm or corporation having any interest and desiring to offer views and comments on the amendment to all bulk ODS contracts of Article I–2(a) to permit vessels to transport dry bulk cargo subject to the cargo preference statutes of the United States at fair and reasonable rates for U.S.-flag commercial vessels, but without ODS for consideration by the Maritime Subsidy Board should submit them in writing.

All submissions should be sent, in triplicate, to the Secretary, Maritime Subsidy Board, Room 7300, 400 Seventh Street, SW, Washington, D.C. 20590 by 5:00 p.m. on December 7, 1984. The Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

By Order of the Maritime Subsidy Board.

Dated: November 15, 1984.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-30512 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series—No. 36–84]

Treasury Notes of November 30, 1986; Series AB–1986

Washington, November 15, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of November 30, 1986, Series AB–1986 (CUSIP No. 912827 RN 4). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated November 30, 1984, and will bear interest from that date, payable on a semiannual basis on May 31, 1985, and each subsequent 6 months on November 30 and May 31 until the principal becomes payable. They will mature November 30, 1986, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 21, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 20, 1984, and received no later than Friday, November 30, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purposes are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and field range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate

will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Friday, November 30, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, November 28, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, November 30, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-30821 Filed 11-20-84; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 226

Wednesday, November 21, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Deposit Insurance Corporation	1
Federal Energy Regulatory Commission	2
Federal Home Loan Bank Board	3
Federal Reserve System	4, 5

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:37 p.m. on Thursday, November 15, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider an application for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointee), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: November 16, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-30889 Filed 11-19-84; 12:00 pm]

BILLING CODE 6714-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Nov. 14, 1984, 49 FR 45097.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 15, 1984, 10:00 a.m.

CHANGE IN THE MEETING: The following docket number has been added to the item below:

Item No., Docket No. and Company

CAG-3; RP84-120-000, West Texas Gas, Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30594 Filed 11-16-84; 4:59 pm]

BILLING CODE 6717-01-M

3

FEDERAL HOME LOAN BANK BOARD

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:30 p.m., November 30, 1984.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49, No. 223, page 45522, November 16, 1984.

PLACE: Board Room, Sixth Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6677)

CHANGES IN THE MEETING: The following item has been added to the agenda for the accounting for mortgage backed securities.

John F. Ghizzoni,

Assistant Secretary.

No. 100, November 19, 1984.

[FR Doc. 84-30727 Filed 11-19-84; 3:36 pm]

BILLING CODE 6720-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 26, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30888 Filed 11-19-84; 12:09 pm]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 26, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW. Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

An additional item has been added to this meeting:

Studies of (1) futures and options markets, and (2) federal margin regulations (Public Docket No. R-0427).

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30870 Filed 11-19-84; 12:18 pm]

BILLING CODE 6210-01-M

OL
9

SS
26

NO
1

984

MI

federal register

Wednesday
November 21, 1984

Part II

Department of Transportation

Office of the Secretary

14 CFR Ch. II

Transfer of Civil Aeronautics Board Functions to the Department of Transportation; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Ch. II

[Docket No. 82; Notice No. 84-17]

Transfer of Civil Aeronautics Board Functions to DOT

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend 14 CFR Parts 300 through 326, which set forth the procedural regulations of the Civil Aeronautics Board (CAB). On January 1, 1985, the CAB will cease to exist and a number of its remaining functions will transfer to DOT consistent with the requirements of the Airline Deregulation Act of 1978 and the Civil Aeronautics Board Sunset Act of 1984. The proposed amendments are necessary to facilitate the efficient transfer of those CAB functions to DOT. While the Department does not have the authority to make changes to these regulations effective until January 1, 1985, comments on these matters are invited at this time so that the changes can be made expeditiously upon transfer of authority. Changes will also be required in the CAB's economic regulations to reflect the procedures that will apply to DOT's administration of the transferring functions. Commenters are encouraged to provide comments on these matters, which will be the subject of subsequent notices. The Department, however, will not consider substantive changes to the economic regulations governing the transferring CAB functions at this time. Those regulations will be carried over by the Department after the CAB ceases to exist.

DATES: Comments on this notice must be received on or before December 11, 1984.

ADDRESS: Comments should be submitted to the Docket Clerk, Room 10105, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Warren Dean, Assistant General Counsel for International Law, (202) 426-2972, or Vance Fort, Director, Special Programs, Office of the Assistant Secretary for Policy and International Affairs, (202) 426-4341, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Invitation for Comments

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. All comments received on or before the closing date for comments will be considerd by the Secretary before taking action on the proposed rule. The proposals contained in this notice may be changed or withdrawn in the light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive contact with DOT personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the Department to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 82." The postcard will be date/time stamped and returned to the commenter.

Background

The Airline Deregulation Act of 1978 (ADA) mandated regulatory reform for the air transportation industry. As part of the regulatory reform process, the ADA provides for the sunset of the Civil Aeronautics Board (CAB) and the transfer to other agencies, effective January 1, 1985, of those CAB functions that are to continue. As amended by the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443, October 4, 1984) (Sunset Act), the ADA provides that most of the CAB's remaining functions will transfer to DOT, with certain other functions transferring to the United States Postal Service. This proposal would amend the CAB's procedural regulations for DOT consistent with the jurisdictional scheme established by the ADA.

Under the terms of the ADA, as amended, the following CAB functions will transfer to DOT:

- *International aviation*, including participation in bilateral negotiations, selection and certification of U.S. carriers to serve on international routes; granting foreign air carriers authority to serve the United States; regulation of international fares and rates; investigation of unfair or deceptive practices or unfair methods of competition in foreign air transportation; action on unfair, deceptive, or discriminatory practices complaints in foreign air transportation; and regulation of international air mail rates.
- *Essential Air Service Program*, a ten-year subsidy program expiring October 1988, which guarantees a minimum level of air service to all communities that had certificated air carrier service when the ADA was enacted, and to certain other communities.
- *Section 43 Employee Protection*, which provides for the determination of whether the termination of airline employees is due primarily to deregulation, thereby making them eligible for certain Federal financial benefits.[1]
- *Consumer Protection and Air Carrier Fitness*, programs affecting both foreign and domestic air transportion which were specifically transferred to the Department by the Sunset Act.
- *Antitrust authority*, which provides for approval and antitrust immunity for mergers and similar transactions, interlocking relationships, and intercarrier agreements. This authority, except as it relates to agreements in foreign air transportation, expires on January 1, 1989, under the provisions of the Sunset Act.

These and most other functions previously performed by the CAB will be carried out within the Office of the Secretary of Transportation. International aviation functions, Section 43 labor determinations, air carrier fitness demonstrations, antitrust functions and economic analysis of the airline industry will be performed by the Office of the Assistant Secretary for Policy and International Affairs. The Essential Air Service Program will be carried out within a new office to be established by the Office of the Secretary. Most consumer functions will be performed by the Office of the Assistant Secretary for Governmental Affairs. The Department's Research and Special Programs Administration (RSPA) will continue the CAB's information gathering functions.

[1] On May 17, 1984, the U.S. District Court for the District of Columbia held section 43 of the Airline Deregulation Act unconstitutional. *Alaska Airlines v. Donovan* (Civ. Action No. 84-0485 (D.D.C. May 17, 1984)).

The Department of Justice has filed a notice of appeal from this decision in the U.S. Court of Appeals for the District of Columbia.

In addition, the Civil Aeronautics Board responded to the District Court's decision by issuing a show cause order on August 20, 1984. The order stayed all further steps in one of the ten employee protection cases assigned to Administrative Law Judges. The order further directed all parties to show cause by August 30 why the Board should not stay all further procedural steps in the other nine cases.

In the event that the Empolyee Protection Program is reinstated by action of the Courts or of the Congress, responsibility for it will still transfer to the Department of Transportation, which will make its determinations in accord with the final rules adopted pursuant to this notice.

Proposed Adoption of Amended CAB Procedural Regulations

In order to succeed to the CAB functions with a minimum of disruption, it is proposed that DOT adopt the CAB's current procedural regulations (appearing as Parts 300 through 326 of Title 14, Code of Federal Regulations) to carry out these functions with as few changes as possible. As explained below, certain modifications are necessary to reflect the organizational structure of DOT and its operating administrations and as technical corrections to omit references to terminating functions and functions transferring to other agencies. More importantly, DOT is proposing certain additional procedural arrangements to minimize any perception that improper influence could affect the administrative decisions of the Department in hearing cases, such as carrier selection for limited designation foreign air transportation route authority. This concern arises because these decisions are transferring from an independent agency with collegial decisionmaking to a single Cabinet officer within the Executive Branch. A more detailed discussion of the issue and the Department's resolution of it appears in the DOT Plan for Sunset of the Civil Aeronautics Board, dated February 1984, a copy of which is in the rulemaking docket.

This notice is only the first of several rulemaking documents to be issued by the Department in the coming weeks to effectuate the transfer of CAB functions to DOT. Under the Sunset Act, the Department was assigned several additional functions, including the carrying out of the CAB's antitrust authority. The Department will soon issue an NPRM proposing regulation to implement this antitrust authority.

The changes proposed to CAB's procedures reflect a delegation of the CAB functions by the Secretary to the Assistant Secretary for Policy and International Affairs in most cases. This is consistent with the delegation of most international decisions and other significant transportation issues to the DOT Policy Office, to be acted upon on behalf of the Secretary subject to her implicit authority to revoke the delegation. A few delegations would be made to other elements of the Department, such as the delegation of data collection to RSPA. A new office would be constituted to administer EAS functions, although review of its final actions would be assigned by the Secretary to the Assistant Secretary for Policy and International Affairs. The delegations will later be prescribed in a separate notice setting forth revisions to 14 CFR Part 385, but this proposal for changes to the CAB procedural regulations constitutes notice of these proposed arrangements.

This notice proposes one significant departure from routine delegations to assure adequate insulation against potential improper influence on DOT decisions in hearing cases. In the case of limited designation carrier selections under section 401 of the Act in international markets, enforcement proceedings and other determinations required by statute regulation or DOT order to be made upon the record of an oral evidentiary hearing, this notice proposes a special delegation. In those cases, the authority to make final binding decisions would be lodged at the level of the senior career official in the Policy Office, and review of exercises of such delegated authority would be limited to the alternatives of (1) unqualified approval by the Assistant Secretary, or (2) remand to the career official for action consistent with such remand. The order of remand would be without specific recommendation for final action by the Assistant Secretary but with a full explanation of the basis for remand. The Secretary could exercise this delegated review authority in place of the Assistant Secretary but would be subject to the same restrictions. Generally, the Secretary would exercise the review authority only where the decision involves significant national transportation policy issues. As in all cases involving formal evidentiary hearings, this decisionmaking process would be in conformity with the requirements of 5 U.S.C. 556 and other applicable provisions of the Administrative procedure Act (APA), and decisions will be based solely upon the record of the proceeding. These proposed changes to CAB's regulations are set forth in § 302.22a of the proposed rule.

As noted, most of the CAB functions delegated to the Policy Office would be delegated in the normal fashion to the Assistant Secretary. In addition to carrier authority in markets without limited designation, these functions include—

(1) Formal and informal rulemaking;

(2) International fares, rates, and tariff approvals;

(3) International mail rate determinations;

(4) Unfair trade practices complaint proceedings under sections 9 and 23 of the International Air Transportation Competition Act;

(5) Charter application determinations; and

(6) Exemption actions under section 416 of the Federal Aviation Act.

It is recognized that some other cases may warrant treatment as hearing cases under the special delegation to the senior career official discussed above. The CAB, for example, is currently conducting its employee protection proceedings pursuant to section 43 of the ADA under formal hearing procedures. For this reason, the Department proposes to delegate the authority to initiate and decide these cases to the senior career official, and to retain the option of making such a delegation in other exceptional cases.

One other noteworthy modification to CAB organizational arrangements is proposed in this notice. In the absence of international and domestic bureaus that are separately organized from the line of decisionmaking (as at CAB) to provide a separate advocate of the public interest in adversarial proceedings, the Department is proposing to constitute a new Office of the Assistant General Counsel for Aviation Enforcement and Proceedings within the General Counsel's office to undertake the public counsel role. This office would be supervised by an Assistant General Counsel and the Deputy General Counsel only, and not by the General Counsel who would instead provide counsel to the decisionmakers in the Policy Office and to the Secretary on agency decisions. The public counsel would take responsibility for litigating formal hearing cases and enforcement matters before the administrative law judges (ALJ's) or other duly constituted decisionmakers. The public counsel's participation in the decisionmaking phase would be limited to on-the-record submissions. The actions of this new office would not be reviewable or reversable, except by the Deputy General Counsel. Staff of the Office of the Assistant Secretary for Policy and International Affairs responsible for assisting this new office in the performance of its responsibilities also would be segregated from staff participating in the decisionmaking process. A comparable arrangement is already in use at the CAB for initiation of enforcement proceedings by the General Counsel's Office.

An Office of Hearings would be established in the Office of the Assistant Secretary for Administration and would be staffed by administrative law judges who would conduct all formal hearing

cases. The CAB docket section functions, with the exception of Sunshine Act functions which are not applicable to DOT proceedings, would be carried out in a newly established Documentary Services Division in the Office of the General Counsel.

A brief summary of the important decisionmaking procedures follows:

Carrier Selection Decisionmaking at DOT

The carrier selection process for foreign air transportation would be similar to that now used by the CAB; *i.e.*, a quasi-judicial process subject to the requirements of the APA would apply, including separation of functions, on-the-record decisionmaking, and rules governing *ex parte* contacts. This process and the APA requirements would ensure fairness and integrity in carrier selection decisions.

In hearing cases, the senior career official in the Office of the Assistant Secretary for Policy and International Affairs would draft and issue an instituting order establishing the public goals, policies, and criteria for the proceeding. This will be done in consulation with the Office of the General Counsel and Office of the Assistant Secretary for Policy and International Affairs.

DOT staff would appear in such proceedings, as appropriate, in a public counsel role similar to that currently performed by the CAB's Bureau of International Aviation. The DOT staff position would be prepared for presentation to the ALJ by the Office of the General Counsel's new Office of the Assistant General Counsel for Aviation Enforcement and Proceedings in conjunction with staff of the Office of the Assistant Secretary for Policy and International Affairs. Public counsel, airlines, and other interested parties would present their positions to the ALJ. In each hearing case, an ALJ would conduct a formal, on-the-record hearing and issue a recommended decision regarding the carrier to be selected. This recommendation would be reviewed by the senior career official in the Office of the Assistant Secretary for Policy and International Affairs who would issue a decision.

The Assistant Secretary for Policy and International Affairs would have discretionary authority, delegated by the Secretary, to review each decision issued by the senior career official, but his authority would be limited to approving the decision or remanding it for reconsideration. The Secretary, in her discretion, may exercise this review authority in place of the Assistant Secretary, subject to the same limitations and consistant with the criteria established for the exercise of this discretion.

Presidential review would continue to be limited, under Section 801 of the Federal Aviation Act, to national security and foreign relations considerations. Judicial review would continue to be available to any party dissatisfied with the outcome of the decision, to the same extent as under present law.

Essential Air Service Decisionmaking At DOT

A new Office of Essential Air Service (EAS) would be established as a separate office within the Office of the Secretary to administer the EAS subsidy program. This new office would conduct negotiations with carriers, set subsidy and service levels, establish community EAS standards, process carrier selection cases, evaluate and monitor air carrier performance, and perform other related EAS functions currently carried out by the CAB. EAS community hearings, conducted by senior staff members from the Office of EAS, the Office of the General Counsel, and the Office of the Assistant Secretary for Policy and International Affairs, would be instituted when necessary to consider appeals of the essential air transportation service level determinations. The Assistant Secretary for Policy and International Affairs, acting pursuant to authority delegated by the Secretary, would have the discretion to review service level determinations as well as make decisions on carrier selection and subsidy levels. The Secretary, at her discretion, could exercise this review authority in place of the Assistant Secretary.

Section 43 Employee Protection Decisionmaking at DOT

Initial determinations of whether the termination of airline employees is due primarily to deregulation, thereby making them eligible for certain Federal financial benefits, would be the responsibility of the senior career official in the Office of the Assistant Secretary for Policy and International Affairs. As in the case of carrier selection decisionmaking at DOT, an ALJ would conduct a hearing and present a recommended decision to the senior career official. Thereafter, the Assistant Secretary for Policy and International Affairs, or the Secretary, would have discretionary authority to review each decision of the senior career offical but his or her action would be limited to approving the decision or remanding it for reconsideration. DOT staff would appear in proceedings before the ALJ in a public counsel role similar to that currently exercised by the CAB's staff.

Regulatory Evaluation And Regulatory Flexibility Act Determination

This proposal was evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures dated February 26, 1979. The proposal is not considered to be "major," as defined by E.O. 12291, because it would not have an annual effect on the economy of $100 millon or more; it would not cause a major increase in costs or prices for consumers, individual industries, government agencies, or regions; and it would not have a significant adverse effect on competition or any other aspect of the economy. In fact, the economic impact is expected to be so minimal as not to warrant a full regulatory evaluation. The proposal is considered to be significant under DOT's Regulatory Policies and Procedures because it concerns a matter in which there is substantial public interest.

It is certified that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal merely transfers certain continuing CAB functions to appropriate offices within DOT. Small entities should be virtually unaffected.

List of Subjects in 14 CFR Chapter II

Air carriers, Administrative practice and procedure.

Amendment to DOT Order 5810.1C

This order implements the National Environmental Policy Act and will apply to transferring Board Functions. The order will be updated to include provisions currently covered in 14 CFR 312.10, 312.11 and 312.18 and Appendix I.

Proposed Amendment

Accordingly, it is proposed to revise 14 CFR Chapter II, Subchapter B to read as set forth below. (It should be noted that this notice is based on the CAB regulations in effect in May 1984. Later amendments will be reflected in the final rule that will be issued based on this notice.)

(Airline Deregulation Act of 1978 (Pub. L. 95–504, October 24, 1978); Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443, October 4, 1984); Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301 *et. seq.*), and 49 U.S.C. Subtitle I)

Issued in Washington, D.C. November 9, 1984.

Jim Burnley,

Acting Secretary of Transportation.

SUBCHAPTER B—PROCEDURAL REGULATIONS

PART 300—RULES OF CONDUCT IN DOT PROCEEDINGS UNDER THIS CHAPTER

Sec.

300.0 Applicability.
300.0a Applicability of 49 CFR Part 99.
300.1 Judicial standards of practice.
300.2 Prohibited communications.
300.3 Reporting of communications.
300.4 Separation of functions.
300.5 Prohibited conduct.
300.6 Practitioners' standards of conduct.
300.7 Conciseness.
300.8 Gifts and hospitality and other conduct affecting DOT employees.
300.9 Permanent disqualification of employees from matters in which they personally participated before joining DOT or the Civil Aeronautics Board.
300.10 Temporary disqualification of employees from matters in which they had official responsibility before joining DOT or the Civil Aeronautics Board.
300.10a Permanent and temporary disqualification of DOT employees.
300.11 Disqualification of Government officers and employees.
300.12 Practice of special Government employees permitted.
300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.
300.14 Temporary disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters formerly under their official responsibility.
300.15 Opinions or rulings by the General Counsel.
300.16 Waivers.
300.17 Disqualification of partners of DOT employees.
300.18 [Reserved].
300.19 Use of confidential information.
300.20 Violations.

Authority: Secs. 204, 401–419, 901, 903, 1001, 1002, and 1007, Pub. L. 85–726, as amended; 72 Stat. 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 783, 786, 788, 796; 76 Stat. 145; 91 Stat. 1294; 92 Stat. 1732; (49 U.S.C. 1324, 1371–1389, 1471, 1473, 1481, 1482, and 1487), unless otherwise noted.

§ 300.0 Applicability.

The rules of conduct set forth in this part except as otherwise provided in this or any other DOT regulation shall govern the conduct of the parties and their representatives, and the relationships between the Office of the Secretary of Transportation, the Office of the Assistant Secretary for Policy and International Affairs, and the Office of the General Counsel, including regular personnel, special Government employees, consultants, or experts under contract to the Department of Transportation (DOT) and administrative law judges (hereinafter referred to as "DOT employee(s)") and all other persons in all DOT matters resulting from the transfer of authority under Section 1601(b)(1) of the Federal Aviation Act of 1958, as amended by the Civil Aeronautics Board Sunset Act of 1984.

§ 300.0a Applicability of 49 CFR Part 99.

(a) Except as provided in paragraph (b) of this section, each DOT employee involved in matters covered by this chapter shall comply with the rules on "Employee Responsibilities and Conduct" in 49 CFR Part 99.

(b) The rules in this Part shall be construed as being consistent with those in 49 CFR Part 99. If a rule in this Part is more restrictive than a rule in 49 CFR Part 99, the more restrictive rule shall apply.

§ 300.1 Judicial standards of practice.

Under the transfer of authority under Section 1601(b)(1) of the Federal Aviation Act of 1958, certain of DOT's functions are similar to those of a court, and parties to cases before DOT and those who represent such parties are expected—in fact and in appearance—to conduct themselves with honor and dignity as they would before a court. By the same token, any DOT employee or administrative law judge carrying out DOT's quasi-judicial functions and any DOT employee making recommendations or advising them are expected to conduct themselves with the same fidelity to appropriate standards of propriety that characterize a court and its staff. The standing and effectiveness of DOT in carrying out its quasi-judicial functions are in direct relation to the observance by DOT, DOT employees, and the parties and attorneys appearing before DOT of the highest standards of judicial and professional ethics. The rules of conduct set forth in this part are to be interpreted in light of those standards.

§ 300.2 Prohibited communications.

(a) *Basic requirement.* Except as provided in paragraphs (c), (d) and (e) there shall be no substantive communication in either direction between any concerned DOT employee and any interested person outside DOT, concerning a public proceeding, until after final disposition of the proceeding, other than as provided by Federal statute or published DOT rule or order.

(b) *Definitions.* For purposes of this part:

(1) A "substantive communication" is any written or oral communication relevant to the merits of the proceeding.

(2) The "DOT decisionmaker" is defined in 14 CFR 302.22a.

(3) A "concerned DOT employee" is a DOT employee who is or may reasonably be expected to be directly involved in a decision which is subject to a public proceeding.

(4) A "public proceeding" is one of the following:

(i) A proceeding for which a Federal statute requires a hearing, after the filing of the document initiating the proceeding, or a matter on which DOT has ordered a hearing at which an employee presides at the taking of evidence, after the issuance of the order (such a proceeding is referred to as a "hearing case," with any other proceeding sometimes referred to as a "nonhearing case").

(ii) A rulemaking proceeding, after the issuance by DOT of a notice requesting public comment.

(iii) A tariff filing after DOT has ordered an investigation or a complaint has been filed or docketed.

(iv) A proceeding initiated by DOT show-cause order, after the filing in the docket of an identifiable written opposition to the order's tentative findings.

(v) Any other proceeding initiated by a docket filing, after the filing in the docket of an identifiable written opposition to the initiating document.

(c) *General exceptions.* Paragraph (a) of this section shall not apply to the following:

(1) Informal communications between legal counsel, including discussions about stipulations and other communications considered proper in Federal court proceedings.

(2) Information given to a DOT employee who is participating in a hearing case on behalf of an office that is a party, to another DOT employee who is reviewing that work, or to his supervisors within that office.

(3) Communications made in the course of an investigation to determine whether formal enforcement action should be begun.

(4) Settlement discussions and mediation efforts.

(5) Information given at the request of a DOT employee acting upon a specific direction of DOT, in a nonhearing case, where DOT has decided that emergency conditions exist and this rule would otherwise prevent the obtaining of needed information in a timely manner.

(6) Information given at the request of a DOT employee in a tariff matter after a complaint is filed but before an

investigation is ordered, or in a rulemaking proceeding.

(7) Nonhearing cases that are to be decided within 30 days after the filing of the initiating document.

(8) Nonhearing cases arising under section 419 of the Federal Aviation Act, 49 U.S.C. 1389.

(9) In nonhearing cases, communications with other Federal agencies not exempted by paragraph (e) of this section.

(d) *Status and expedition requests.* Paragraph (a) of this section shall not apply to oral or written communications asking about the status, or requesting expeditious treatment, of a public proceeding. However, any request for expeditious treatment should be made in accordance with the Rules of Practice, particularly Rules 14 and 18, §§ 302.14 and 302.18 of this chapter.

(e) *National defense and foreign policy.* In nonhearing cases, paragraph (a) of this section shall not apply to communications concerning national defense or foreign policy matters, including international aviation matters. In hearing cases, any communications on those subjects to or from DOT employees involved in intergovernmental negotiations that would be barred by paragraph (a) are permitted if the communicator's position with respect to those negotiations cannot otherwise be fairly presented, but those communications shall not be considered as part of the record on which decisions must be made.

(f) *Communications not considered.* A communication in violation of this section shall not be considered part of a record, or included as available material, for decision in any proceeding.

§ 300.3 Reporting of communications.

(a) *General.* The following types of substantive communication shall be reported as specified in paragraph (b) of this section:

(1) Any communication in violation of § 300.2(a) of this chapter.

(2) Information given upon determination of an emergency under § 300.2 (c)(5) of this chapter.

(3) Information given at the request of a DOT employee in a rulemaking or tariff matter under § 300.2(c)(6) of this chapter.

(4) Communications in nonhearing cases to be decided within 30 days under § 300.2(c)(7) of this chapter.

(5) Communications in nonhearing cases arising under section 419 of the Federal Aviation Act, 49 U.S.C. 1389, made under § 300.2(c)(8).

(6) Communications in nonhearing cases with other agencies of the Federal government under § 300.2(c)(9).

(b) *Public filing.* (1) A written communication shall be put into the correspondence or other appropriate file of the proceeding, which shall be available for inspection and copying during business hours in the Documentary Services Division.

(2) An oral communication shall be summarized by the DOT employee receiving it. One copy shall be put into a public file as described in paragraph (b)(1) of this section, and another copy shall be mailed to the communicator.

(3) In addition, copies of written communications and oral summaries shall be filed in chronological order in a "Part 300" file maintained in the Documentary Services Division.

(4) Copies of all filings under this part dealing with discontinuances or reductions of air transportation shall be mailed to the directly affected local communities, State agencies, and airport managers.

(c) *Status and expedition requests.* A DOT decisionmaker who receives a communication asking about the status or requesting expeditious treatment of a public proceeding, other than a communication concerning national defense or foreign policy (including international aviation), shall either:

(1) Refer the communicator to the Documentary Services Division.

(2) If the DOT decisionmaker responds by advising on the status, put a memorandum describing the exchange in the public file as described in paragraph (b)(1) of this section.

§ 300.4 Separation of functions.

(a) A DOT employee who is participating in a hearing case on behalf of an office that is a party, another DOT employee who is in fact reviewing the position taken, or who has participated in developing the position taken in that case, or, in cases involving accusatory or disciplinary issues (including all enforcement cases) such employees' supervisors within that office, shall have no substantive communication with any DOT decisionmaker, administrative law judge in the case, or other DOT employee advising them, with respect to that or any factually related hearing case, except in accordance with a published DOT rule or order. In addition, each bureau or office supervisor of a DOT employee who is participating in a hearing case on behalf of that office when it is a party shall have no substantive communication with any administrative law judge in the case, or DOT employee advising the judge, in that or any factually related hearing case, except in accordance with a published DOT rule or order. For each hearing case, or office heads shall maintain a publicly available record of those employees who are participating or are in fact reviewing the position taken, or who have participated in developing the position taken in that case.

(b) In hearing cases involving fares or rates, or applications for a certificate or permit under sections 401 or 402 of the Act, or applications by a holder for a change in a certificate or permit, a supervisor who would not be permitted to advise the DOT decisionmaker under paragraph (a) may advise the DOT decisionmaker in the following manner: The supervisor's advice must either be made orally in an open DOT meeting or by a memorandum placed in the docket or other public file of such matter. Oral advice must be summarized in writing by the supervisor and placed in the docket or file of the matter. A copy of such written memorandum or summary or oral advice must be served on each party to the proceeding within 3 business days after such advice is given to the concerned DOT decisionmaker. Each of the parties may comment in writing on such advice within 5 business days after service or the summary. In no event, however, may a supervisor advise the DOT decisionmaker if he or she acted as the office's counsel or witness in the matter.

(c) In enforcement cases, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, under the supervision of the Deputy General Counsel, will conduct all enforcement proceedings and related investigative functions, while the General Counsel will advise the DOT decisionmaker in the course of the decisional process. The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will report to the Deputy General Counsel. To ensure the independence of these functions, this Office and the Deputy General Counsel, for the purpose of this section, shall be considered an "office" as that term is used in paragraph (a), separate from the General Counsel and the rest of the Office of the General Counsel.

(Sec. 204, 1001, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 788; 49 U.S.C. 1324, 1481)

§ 300.5 Prohibited conduct.

No person shall: (a) Attempt to influence the judgment of a concerned DOT employee by any unlawful means such as deception or the payment of money or other consideration; or

(b) Disrupt or interfere with the fair and orderly disposition of a DOT proceeding.

§ 300.6 Practitioners' standards of conduct.

Every person representing a client in matters before DOT in all contacts with DOT employees, should:

(a) Strictly observe the standards of professional conduct;

(b) Refrain from statements or other actions designed to mislead DOT or to cause unwarranted delay;

(c) Avoid offensive or intemperate behavior;

(d) Advise all clients to avoid improprieties and to obey the law as the attorney believes it to be; and

(e) Terminate the professional relationship with any client who persists in improprieties in proceedings before DOT.

§ 300.7 Conciseness.

Every oral or written statement made in a DOT proceding shall be as concise as possible. Verbose or redundant presentations may be rejected.

§ 300.8 Gifts and hospitality and other conduct affecting DOT employees.

(a) No person, otherwise than as provided by law for the proper discharge of official duty, shall directly or indirectly give, offer, or promise anything of value to any DOT employee for or because of any official act performed or to be performed by DOT employee (18 U.S.C. 201).

(b) Subject to 49 CFR Part 99, it is improper for persons interested in the business of DOT to provide hospitality, gifts, entertainment, or favors to any DOT employee.

(c) Persons interested in the business of DOT should familiarize themselves with (49 CFR Part 99), in order that they shall not encourage or cause any violation of the provisions of that Part by any DOT employee.

§ 300.9 Permanent disqualification of employees from matters in which they personally participated before joining DOT or the Civil Aeronautics Board.

Any DOT employee shall permanently disqualify himself from participation in every matter before the Department in which he previously personally and substantially participated for an interested person or entity, including other agencies of the United States Government, before joining the DOT or the Civil Aeronautics Board. Such disqualification shall be applicable also if a person is closely related to is a DOT employee as partner, associate, employer, or the like, personally and substantially participated in a matter before DOT prior to the employee's employment by the Department or the Civil Aeronautics Board and the circumstances were such that the DOT employee's subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his participation would be affected by his prior relationship. Notwithstanding the foregoing, the disqualification of any DOT employee, including any member of a DOT employee's personal staff or a special Government employee, whose prior personal and substantial participation in a DOT or Civil Aeronautics Board proceeding or whose relationship to one who so participated occurred on behalf of another agency of the United States Government shall only be applicable with respect to issues on which the prior governmental employer took a position in the proceeding unless participation could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship.

§ 300.10 Temporary disqualification of employees from matters in which they had official responsibility before joining DOT or the Civil Aeronautics Board.

Any DOT employee shall temporarily disqualify himself from participation in any matter before DOT if he represented, was associated with or was employed by an interested person or entity including other agencies of the United States Government before joining DOT or the Civil Aeronautics Board, and, although he did not personally and substantially participate in the matter, the matter was within his "official responsibility," as that term is defined in § 300.14 of this chapter except that the action referred to therein shall be private action as well as "Government" action. Such disqualification shall be applicable also if a person closely related to the DOT employee as partner, associate, employer, or the like, who, while not personally and substantially participating in the matter, had it within his "official responsibility" as that term is defined in § 300.14 of this chapter, and modified above, and the circumstances are such that the DOT employee's subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his participation would be affected by his prior relationship. Notwithstanding the foregoing, the disqualification of any DOT employee whose prior "official responsibility" or relationship to one with such responsibility occurred on behalf of another agency of the United States Government shall only be applicable with respect to issues on which the prior governmental employer took a position in the proceeding. The temporary disqualification shall run for a period of one year from the date of the termination of the representation, association, or employment with the interested person or entity.

§ 300.10a Permanent and temporary disqualification of DOT employees.

Due to the transfer of authority under 1601(b)(1) of the Federal Aviation Act of 1958, the terms of §§ 300.9 and 300.10 shall not be construed to apply to DOT employees who previously personally and substantially participated in matters before the Board, which has become the subject of DOT proceedings.

§ 300.11 Disqualification of Government officers and employees.

No officer or employee of the Federal Government, other than a "special government employee" as defined in 18 U.S.C. 202, shall represent anyone, otherwise than in the proper discharge of his official duties, in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest.

(18 U.S.C. 205)

§ 300.12 Practice of special Government employees permitted.

A special Government employee, who qualifies as such under the provisions of 18 U.S.C. 202(a), may participate in DOT proceedings only to the extent and in the manner specified in 18 U.S.C. 205.

§ 300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.

No former Board member or employee or DOT employee shall act as agent or attorney before DOT for anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter, involving a specific party or parties, in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise as a Board member or employee or DOT employee.

(18 U.S.C. 207(a))

§ 300.14 Temporary disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters formerly under their official responsibility.

Within one year after termination of employment with the Board or DOT, no

former Board member or Board employee or DOT employee shall appear personally before DOT on behalf of any person other than the United States in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest and which was under his official responsibility at any time within one year preceding termination of such responsibility. The term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(18 U.S.C. 202(b), 207(b))

§ 300.15 Opinions or rulings by the General Counsel.

(a) The General Counsel is authorized to render opinions or rulings to the public on the application of the provisions of this part. When written request is made for such opinions and rulings, they shall be transmitted to DOT and shall be available to the public in the Documentary Services Division after any appeal to or review by the Secretary has been completed or after the time for review has expired. Identifying details shall normally be stricken from copies available to the public unless the public interest requires disclosure of such details.

(b) If any person is disqualified from a particular proceeding under the provisions of §§ 300.9, 300.10, 300.13, 300.14, and 300.17 of this chapter by a ruling of the General Counsel, or by such person's own action, such disqualification shall be memorialized in a writing filed in the appropriate file of the matter by the General Counsel or such person.

§ 300.16 Waivers.

(a) A former Board member, Board employee or DOT employee with outstanding scientific or technological qualifications who is disqualified from acting in a representative capacity under the provisions of § 300.13 or § 300.14 of this chapter may nevertheless participate in a proceeding in a scientific or technological field pursuant to the terms of a certificate issued in compliance with the proviso following 18 U.S.C. 207 (a) and (b).

(b) An employee who believes his prior employment relationships will not affect the integrity of his services may request that the prohibition of § 300.9 or § 300.10 of this chapter be waived by the appropriate Ethics Counselor under 49 CFR 99.735–71.

§ 300.17 Disqualification of partners of DOT employees.

No partner of a DOT employee shall act as agent or attorney for anyone other than the United States in any DOT proceeding or matter in which such employee participates or has participated personally and substantially through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise, or which is the subject of his official responsibility.

(18 U.S.C. 207(c))

§ 300.18 [Reserved]

§ 300.19 Use of confidential information.

No former CAB member or employee or DOT employee, or any person associated with him or her, shall ever use or undertake to use in any DOT proceeding or matter any confidential facts or information which came into the possession of such Member or employee or to his attention by reason of his employment with the CAB or DOT without first applying for and obtaining the consent of the appropriate ethics counselor for the use of such facts or information.

§ 300.20 Violations.

(a) DOT may disqualify, and deny temporarily or permanently the privilege of appearing or practicing before it in any way to, any person who is found by DOT after written notice of charges and hearing to have engaged in unethical or improper professional conduct. Any violation of this part shall be deemed to be such conduct.

(b) When appropriate in the public interest, DOT may deny any application or other request of a party in a proceeding subject to this part where DOT finds after hearing that such party has, in connection with any DOT proceeding, violated any of the provisions of this part or any of the provisions of Chapter 11 of Title 18 of the United States Code. DOT may also condition its further consideration of such party's application or other request or the effectiveness of any order granting such application or other request upon such party's first taking such action as DOT may deem necessary or appropriate to remedy the violation of this part or Chapter 11 of Title 18 of the United States Code to prevent or deter any repetition of such violation. DOT may in addition issue a cease and desist order against any repetition of such or similar misconduct.

(c) The actions authorized by this section may take place within the framework of the matter during or concerning which the violations occur or in a separate matter, as the DOT decisionmaker or the presiding administrative law judge may direct. A complaint alleging that a violation has occurred in the course of a matter shall be filed in the docket or appropriate public file of such matter unless such complaint is made after DOT's decision of the matter has become final, in which event such complaint may be filed pursuant to Part 302, Subpart B of the rules of practice. A violation in the course of a matter which may be attributable to or affect the fitness of a party will ordinarily either be disposed of within the framework of such matter or be considered within the context of any subsequent matter involving the interests of such party. Other violations will ordinarily be disposed of in a separate proceeding.

(d) In the case of any violation of the provisions of this part, the violator may be subject to civil penalties under the provisions of section 901 of the Act. The violator may also be subject to a proceeding brought under section 1002 before the Department and under sections 903 and 1007 of the Act before a U.S. district court to compel compliance with civil penalties which have been imposed.

PART 302—RULES OF PRACTICE IN PROCEEDINGS

Sec.
302.1 Applicability and description of part.
302.2 Reference to part and method of citing rules.

Subpart A—Rules of General Applicability

302.3 Filing of documents.
302.4 General requirements as to documents.
302.5 Amendment of documents and dismissal.
302.6 Responsive documents.
302.7 Retention of documents by DOT.
302.8 Service of documents.
302.9 Parties.
302.10 Substitution of parties.
302.11 Appearances; rights of witnesses.
302.12 Consolidation of proceedings.
302.13 Joinder of complaints or complainants.
302.14 Participation in hearing cases by persons not parties.
302.15 Formal intervention in hearing cases.
302.16 Computation of time.
302.17 Continuances and extensions of time.
302.18 Motions.
302.19 Subpenas.
302.20 Depositions.
302.21 Attendance fees and mileage.
302.22 Administrative law judges.
302.22a DOT decisionmaker.
302.23 Prehearing conference.
302.24 Hearings.

Sec.
302.25 Argument before the administrative law judge.
302.26 Proposed findings and conclusions before the administrative law judge or the DOT decisionmaker.
302.27 Delegation to administrative law judges and action by administrative law judges after hearing.
302.28 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.
302.29 Tentative decision of DOT.
302.30 Exceptions to tentative decisions of DOT.
302.31 Briefs before DOT.
302.32 Oral argument before DOT.
302.33 Waiver of procedural steps after hearing.
302.35 Shortened procedure.
302.36 Final decision of DOT.
302.37 Petitions for reconsideration or review by the DOT decisionmaker.
302.38 Petitions for rulemaking.
302.39 Objections to public disclosure of information.
302.40 Saving clause.

Subpart B—Rules Applicable to Enforcement Proceedings

302.200 Applicability of this subpart.
302.201 Formal complaints.
302.202 [Reserved]
302.203 Insufficiency of formal complaint.
302.204 Third-party complaints.
302.205 Procedure when no enforcement proceeding is instituted.
302.206 Commencement of enforcement proceeding.
302.206a Assessment of civil penalties.
302.207 Answer.
302.208 Default.
302.209 Reply.
302.210 Parties.
302.210a Consolidation of proceedings.
302.211 Prehearing conference.
302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.
302.213 Hearing.
302.214 Appearances by persons not parties.
302.215 Settlement of proceedings.
302.216 Evidence of previous violations.
302.217 Motions for immediate suspension of operating authority pendente lite.
302.218 Modification or dissolution of enforcement actions.

Subpart C—Rules Applicable to Mail Rate Proceedings

302.300 Applicability of this subpart.
302.301 Parties to the proceeding.

Final Mail Rate Proceedings

302.302 Participation by persons other than parties.
302.303 Institution of proceedings.

Procedure When an Order To Show Cause Is Issued

302.304 Order to show cause.
302.305 Objections and answer to order to show cause.
302.306 Effect of failure to timely file notice and answer raising material issue of fact.
302.307 Procedure when material issue of fact is timely raised.
302.308 Evidence.

Procedure When No Order To Show Cause Is Issued

302.309 Hearing to be ordered.

Temporary Rate Proceedings

302.310 Procedure for fixing temporary service and subsidy mail rates.

Informal Mail Rate Conference Procedure

302.311 Invocation of procedure.
302.312 Scope of conferences.
302.313 Participants in conferences.
302.314 Conditions upon participation.
302.315 Information to be requested from carrier.
302.316 DOT analysis of data for submission of answers thereto.
302.317 Availability of data to Post Office Department.
302.318 Post-conference procedure.
302.319 Effect of conference agreements.
302.320 Waiver of §§ 302.313 and 302.314.
302.321 Time of commencing and terminating conference.

Subpart D—Rules Applicable to Exemption Proceedings

302.400 Applicability of this subpart.
302.401 Filing of application.
302.402 Contents of application.
302.403 Service of application.
302.404 Posting of application.
302.405 Dismissal of incomplete application.
302.406 Answers to applications for exemptions.
302.407 Reply.
302.408 Request for hearing.
302.409 Exemptions on the Department's initiative.
302.410 Emergency exemptions.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges

302.500 Applicability of this subpart.
302.501 Institution of proceedings.
302.502 Contents and service of petition or complaint.
302.503 Dismissal of petition or complaint.
302.504 Order of investigation.
302.505 Complaints requesting suspension of tariffs—answers to such complaints.
302.506 Burden of going forward with the evidence.
302.508 Computing time for filing complaints.

Subpart F—[Reserved]

Subpart G—Rules Applicable to Adequacy of Service Petitions

302.700 Applicability of this subpart.
302.701 Institution of proceedings.
302.702 Contents of petition.
302.703 Parties to the proceeding.
302.704 Action on petition or complaint.
302.705 Hearing.

Subpart H—[Reserved]

Subpart I—Rules Applicable to Route Proceedings Under Sections 401 and 402 of the Act

General Provisions

Sec.
302.901 Applicability.

Applications for Route Authority

302.909 Renewal of fixed-term route authorizations granted by exemption.

Initiation of Route Proceedings

302.915 Initiation of route proceedings by DOT order.

Conduct of Route Proceedings

302.930 Evidence in route proceedings.

Subpart J—Rules Applicable to Proceedings Involving Charter Air Carriers

302.1001 Applicability.
302.1002 Definition.

Immediate Suspension of Operating Authority

302.1011 Rules governing proceedings.
302.1012 Order of suspension.
302.1013 Answer of carrier.
302.1014 Motions.
302.1015 Additional suspension.
302.1016 Accelerated hearing.
302.1017 Final decision.

Special Operating Authorizations

302.1020 Application for special operating authorization.
302.1021 Filing and service of application.
302.1022 Answer.
302.1023 Memoranda of interested persons.
302.1024 Oral argument.
302.1025 Issuance of special authorization.
302.1026 Issuance of special authorization on the Department's initiative.
302.1027 Extension of authorization.

Subpart K–N—[Reserved]

Subpart O—Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation

302.1501 Applicability.
302.1502 Filing.
302.1503 Explanation and data supporting the contract.
302.1504 Service.
302.1505 Complaints.
302.1506 Answers to complaints.
302.1507 Further procedures.
302.1508 Petitions for reconsideration.

Subpart P—[Reserved]

Subpart Q—Expedited Procedures for Processing Licensing Cases

302.1701 Applicability.
302.1702 Subpart A governs.
302.1703 Filing of applications.
302.1704 Contents of applications.
302.1705 Service of documents.
302.1706 Computation of time.
302.1707 Verification.
302.1708 Joint pleadings.
302.1709 Definition of parties.
302.1710 Economic data and other facts.

Sec.
302.1711 Continuances and extensions of time.
302.1712 Oral presentation: initial or recommended decision.
302.1713 Preliminary procedures for rejection or deferral of nonconforming applications.
302.1720 Procedures in certificate cases.
302.1730 Procedures in restriction removal cases.
302.1740 Procedures in foreign air carrier permit cases.
302.1750 Disposition of applications—Orders establishing further procedures.
302.1751 Oral evidentiary hearing.
302.1752 Briefs to the administrative law judge.
302.1753 Administrative law judge's initial or recommended decision.
302.1754 Exceptions to administrative law judge's initial or recommended decision.
302.1755 Briefs before the Department.
302.1756 Oral argument before the DOT decisionmaker.
302.1757 Final decision of the Department.
302.1758 Petitions for reconsideration.
302.1760 Internal procedures.
302.1770 Criteria for use of oral evidentiary hearing procedures and assignment of a case to an administrative law judge.
302.1780 Standards for deciding cases in which expedited, simplified procedures are employed.
302.1790 Waivers.
Appendix A—Index to Rules of Practice

Authority: Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 901, 1001, 1002, 1005, Pub. L. 85-726, as amended, 72 Stat. 737, 742, 743, 754, 757, 758, 760, 763, 770, 783, 788, 794; 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91-190 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402, unless otherwise noted.

§ 302.1 Applicability and description of part.

(a) *Applicability.* This part governs the conduct of all economic proceedings before DOT whether instituted by order of DOT or by the filing with DOT of an application, complaint, petition, or a section 412 contract or agreement. This part also contains delegations to administrative law judges and to the DOT decisionmaker of DOT's function to render the agency decision in certain cases. The decision of administrative law judges is subject to review by the DOT decisionmaker, pursuant to authority delegated by the Secretary. Decisions of the DOT decisionmaker are subject to review at the discretion of the Assistant Secretary for Policy and International Affairs. In appropriate cases, the Secretary may exercise the discretionary review authority. The provisions of Part 203 of this chapter of the Economic Regulations are applicable to participation of air carrier associations in proceedings under this part. Proceedings involving "Alaskan air carriers" are governed by the rules in this part, except as modified by Part 292 of this chapter.

(b) *Description.* Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to Subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT relating to the proceeding.[1] Wherever there is any conflict between one of the general rules in Subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

§ 302.2 Reference to part and method of citing rules.

This part shall be referred to as the "Rules of Practice". Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule". The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "302.8 *Service of documents*", shall be referred to as "Rule 8". Paragraph (a)(2) of that rule, relating to service documents by the parties, shall be referred to as "Rule 8 (a)(2)".

Subpart A—Rules of General Applicability

§ 302.3 Filing of documents.

(a) *Filing address, date of filing, hours.* Documents required by any section of this part to be filed with DOT shall be filed with the Documentary Services Division of Transportation, Washington, D.C. 20590. Such documents shall be deemed to be filed on the date on which they are actually received by DOT. The hours of DOT are from 9:00 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays.

(b) *Formal specifications of documents*—(1) *Typewritten documents.* All typewritten documents, except briefs before DOT, filed under this part shall be on strong, durable paper not larger than 8½ by 14 inches, except that tables, charts and other documents may be larger if folded to the size of the document to which they are physically attached. Typewritten briefs before DOT shall be on paper not larger than 8½ by 11 inches except that tables, charts, and maps physically attached to the brief may be on paper not larger than 8½ by 14 inches and folded to the size of the brief. Requirements as to contents and style of briefs are contained in § 302.31. Text shall be double-spaced except for footnotes and long quotations which may be single-spaced. Type not smaller than elite shall be used. The left margin shall be at least 1½ inches; all other margins shall be at least 1 inch. If the document is bound, it shall be bound on the left side.

(2) *Printed documents.* Printed (typeset) documents that are limited as to number of pages under these rules shall be on paper not larger than 6⅛ inches by 9¼ inches, with all margins of at least 1 inch. The text, footnotes, and all physical attachments to any printed document shall be printed in clear and readable type, not smaller than 11 point, adequately leaded.

(3) *Reproduction of documents.* Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* Unless otherwise specified, an executed original and nineteen (19) true copies of each document required or permitted to be filed under these rules shall be filed with the Documentary Services Division, except that an original and five (5) copies of third party complaints, answers, documents dealing with discovery, and motions addressed to an administrative law judge may be filed in proceedings under Subpart B—Rules Applicable to Enforcement Proceedings. In any route proceeding that affects a point in Alaska, the person filing shall send an additional copy to: Department of Transportation, 701 C Street, Box 27, Anchorage, Alaska 99513. The copies need not be signed but the name of the person signing the document, as distinguished from the firm or organization he or she represents, shall also be typed or printed on all copies below the space provided for signature.

(d) *Table of contents.* All documents filed under this part consisting of twenty or more pages must contain a subject-index of the matter in such document, with page references.

[1] The Federal Aviation Act of 1958 may be found at 72 Stat. 731, and at 49 U.S.C. 1301 *et seq.* The Department's substantive rules may be found in its Economic Regulations and Special Regulations (Subchapters A and D of this chapter, respectively).

§ 302.4 General requirements as to documents.

(a) *Contents.* In case there is no rule, regulation, or order of DOT which prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required by § 312.12 or § 312.14 of this subchapter, such document shall, at the appropriate time, be accompanied by an Environmental Evaluation, a representation and explanation with respect to § 312.9(a)(2) of Part 312, or an Environmental assessment, in conformity with those sections or orders issued thereunder.

(b) *Subscription.* Every application, petition, complaint, motion or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person; *Provided,* That, if signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) *Designation of person to receive service.* The initial document filed by a person shall state on its first page the name and post office address of the person or persons who may be served with any documents filed in the proceeding. It is requested, but not required, that the telephone number of that person also be included.

(d) *Prohibition of certain documents.* No document which is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters shall be filed with DOT unless:

(1) Such document and its filing by the person submitting it has been expressly authorized or required in the Federal Aviation Act of 1958, any other law, this part, other Department regulations, or any order or other document issued by the DOT decisionmaker, the chief administrative law judge or an administrative law judge assigned to the proceeding, and

(2) Such document complies with each of the requirements of §§ 302.3 and 302.8, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication: *Provided, however,* That for good cause shown, pleadings of any public body or civic organization may be submitted in the form of a letter: *Provided further,* That comments concerning tariff agreements, which have not been docketed, may be submitted in the form of a letter.[2]

(e) *Documents improperly filed.* A document which is filed in violation of the prohibition imposed by paragraph (d) of this section, or in violation of a requirement imposed by any other provision of this part, will not be accepted for filing by DOT and will not be physically incorporated in the docket of the proceeding. The sender of such document and all persons who have been served therewith will be notified informally of DOT's action thereon.

(f) *Motions for leave to file otherwise unauthorized documents.* (1) DOT will accept otherwise unauthorized documents for filing only if leave has previously been obtained, from the administrative law judge or the DOT decisionmaker, on written motion and for good cause shown. The written motion may be incorporated into the otherwise unauthorized document for which admission is sought. In such event, the document filed shall be titled to describe both the motion and the underlying documents.

(2) After the assignment of an administrative law judge to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the DOT decisionmaker, these motions shall be addressed to the administrative law judge. At all other times, such motions shall be addressed to the DOT decisionmaker. The administrative law judge or DOT decisionmaker will promptly pass upon such motions.

(3) Such motions shall be filed within seven days after service of any document or order or ruling to which the proposed filing is responsive, and shall be served on all parties to the proceeding. Answers thereto may not be filed.

(4) Such motions shall contain a concise statement of the matters relied upon as good cause and there shall be attached thereto the pleading or other document for which leave to file is sought.

[2] See Subpart L, § 302.1206 providing for the filing of comments with respect to undocketed agreements.

§ 302.5 Amendment of documents and dismissal.

If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of DOT as to the contents thereof, or is otherwise insufficient but not subject to rejection under § 302.4(e), DOT, on its own initiative, or on motion of any party, may strike or dismiss such document, or require its amendment. An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to its designation for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in § 302.18. If properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

§ 302.6 Responsive documents.

(a) Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required. Protests or memoranda of opposition or support, permitted by statute, shall be filed in lieu of answers or shall be combined with answers.

Note: DOT does not grant formal intervention in nonhearing matters, such as applications for exemption under section 416(b) of the Act, and any interested person may file documents authorized under this part without first obtaining leave.

(b) Further responsive documents: Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any further responsive document is not fileable, all new matter contained in such answer shall be deemed controverted. A party to a proceeding whose application has been the subject of a protest or memorandum of opposition or support, permitted by statute, may respond thereto before the close of the hearing in the case to which such documents relate, orally, in writing, or by introducing evidence, subject to appropriate rulings by the

(Secs. 102, 402, 404, and 412 (72 Stat. 740, 757, 760, 770, (49 U.S.C. 1302, 1372, 1374, 1382)); National Environmental Policy Act of 1969 (Pub. L. 91-90, 42 U.S.C. 4321 *et seq.*) and E.O. 11514)

administrative law judge. Once such response has been made, such party may also discuss the protest or memorandum in his brief to the administrative law judge or the DOT decisionmaker or in his or her oral argument.

(c) *Time for filing.* Except as otherwise provided, an answer or any further responsive document shall be filed within seven days after service of the document to which such responsive filing is directed. Protests or memoranda of opposition or support, permitted by statute, shall be filed before the close of the hearing in the case to which they relate.

§ 302.7 Retention of documents by DOT.

All documents filed with or presented to DOT may be retained in the files of the Documentary Services Division. However, DOT may permit the withdrawal of original documents upon the submission of properly authenticated copies to replace such documents.

§ 302.8 Service of documents.

(a) *Who makes service*—(1) *DOT.* Formal complaints, notices, orders to show cause, other orders, and similar documents issued by DOT will be served by DOT upon all parties to the proceeding.

(2) *The parties.* Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with DOT shall be served by such party or other person upon all parties to the proceeding in which it is filed: *Provided,* That motions to expedite filed in any proceeding conducted pursuant to sections 401 and 402 of the Act, shall, in addition, be served on all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are tendered for filing.

(b) *How service may be made.* Service may be made by regular mail, by registered mail, or by personal delivery. In the case of mailing to or from persons located in the territories or west of the Mississippi River to or from persons located in other territories or east of the said river mailing shall be by air mail. The means of service selected must be such as to permit compliance with section 1005(c) of the Act, which provides for service of notices, processes, orders, rules, and regulations by personal service or registered or certified mail.

(c) *Who may be served.* Service upon a party or person may be made upon an individual, or upon a member of a partnership, or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier under section 1005(b) of the Act, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with § 302.4(c) once a proceeding has been commenced.

(d) *Where service may be made.* Personal service may be made on any of the persons described in paragraph (c) of this section wherever they may be found, except that an agent designated by an air carrier under section 1005(b) of the Act may be served only at his office or usual place of residence. Service by regular or registered or certified mail shall be made at the principal place of business of the party to be served, or at his usual residence if he is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by air carrier under section 1005(b) of the Act, or at the post office address stated for a person designated to receive service pursuant to § 302.4(c).

(e) *Proof of service.* Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) An acknowledgment of service signed by a person receiving service personally, or a certificate of the person making personal service.

(f) *Date of service.* Whenever proof of service by mail is made, the date of mailing shall be the date of service. Whenever proof of service by personal delivery is made, the date of such delivery shall be the date of service.

§ 302.9 Parties.

The term "party" wherever used in this part shall include any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and any trustee, receiver, assignee or legal successor thereof, and shall include the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings.

§ 302.10 Substitution of parties.

Upon motion and for good cause shown, DOT may order a substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion.

§ 302.11 Appearances; rights of witnesses.

(a) Any party to a proceeding may appear and be heard in person or by attorney. No register of persons who may practice before DOT is maintained and no application for admission to practice is required. Any person practicing or desiring to practice before DOT may, upon hearing and good cause shown, be suspended or barred from practicing.

(b) Any person appearing in person in any proceeding governed by this part, whether in response to a subpena or by request or permission of DOT, may be accompanied, represented and advised by counsel and may be examined by his own counsel after other questioning.

(c) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpena or by request or permission of DOT, may retain or, on payment of lawfully prescribed costs, procure a copy of any document submitted by him or a copy of any transcript made of his testimony.

§ 302.12 Consolidation of proceedings.

(a) *Initiation of consolidations.* DOT upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although DOT may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and DOT will not undertake to search its docket for all applications which might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless DOT has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed not later than the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or considerations of issues which enlarge, expand and change the nature of the proceeding shall be addressed to the DOT decisionmaker, unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion which is not filed at or prior to the prehearing conference, or within the time prescribed by the DOT decisionmaker in a particular proceeding, as the case may be, shall be dismissed unless the movant shall clearly show good cause for his failure to file such motion on time. A motion which does not relate to an application pending at the time of the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested, or on the date specifically prescribed by the DOT decisionmaker in a particular proceeding for filing of motions for consolidation or contemporaneous consideration, shall likewise be dismissed unless the movant shall clearly show good cause for his failure to file the application within the prescribed period.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with DOT, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95–504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act (5 U.S.C. 551 *et seq.*))

§ 302.13 Joinder of complaints or complainants.

Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The DOT decisionmaker he or she may separate or split complaints if it finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of its business or the ends of justice.

§ 302.14 Participation in hearing cases by persons not parties.

(a) *Requests for expedition.* In any case to which the DOT's principles of practice. Part 300, are applicable, any interested person, including any State, subdivision thereof, State aviation commission, or other public body, may by motion request expedition of such case or file an answer in support of or in opposition to such motions. Such motions and answers shall be served as provided in § 302.8 of this part.

(b) *Participation in hearings.* Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence which is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge a written statement on the issues involved in the proceeding. Such written statements, or protests or memoranda in opposition or support where permitted by statute, shall be filed and served on all parties prior to the close of the hearing.

§ 302.15 Formal intervention in hearing cases.

(a) *Who may intervene.* Petitions for leave to intervene as a party will be entertained only in those cases that are to be decided upon an evidentiary record after notice and hearing. Any person who has a statutory right to be made a party to such proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the ends of justice and will not unduly delay the conduct of such proceeding may be permitted to intervene. DOT does not grant formal intervention, as such, in nonhearing matters, and any interested person may file documents authorized under this part without first obtaining leave.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered:

(1) The nature of the petitioner's right under the statute to be made a party to the proceeding;

(2) The nature and extent of the property, financial or other interest of the petitioner;

(3) The effect of the order which may be entered in the proceeding on petitioner's interest;

(4) The availability of other means whereby the petitioner's interest may be protected;

(5) The extent to which petitioner's interest will be represented by existing parties;

(6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and

(7) The extent to which participation of the petitioner will broaden the issue or delay the proceeding.

These criteria will be liberally interpreted to facilitate the effective participation by members of the public in DOT proceedings.

(c) *Petition to intervene*—(1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he thinks he should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by DOT, any petition for leave to intervene shall be filed within the following time limits:

(i) In a proceeding where DOT issues a show cause order proposing fair and reasonable mail rates, such petition shall be filed within the time specified for filing notice of objection.

(ii) In all other proceedings, including mail rate proceedings where no show cause order is issued, the petition shall be filed with DOT prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(iii) A petition to intervene in any Board proceeding filed by a city, other public body, or a chamber of commerce shall be filed with DOT not later than the last day prior to the beginning of the hearing thereon.

A petition for leave to intervene which is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by DOT that the intervening

party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

(Secs. 203 and 204, Federal Aviation Act of 1958, as amended, 72 Stat. 742 and 743; 49 U.S.C. 1323 and 1324)

§ 302.16 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation of the DOT or DOT decisionmaker the chief administrative law judge or an administrative law judge, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for DOT, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

§ 302.17 Continuances and extensions of time.

(a) *Generally.* Whenever a party has the right or is required to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker, the head of the Documenting Services Division or the administrative law judge assigned to the proceeding may: (1) Before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of the specified period, where the failure to act is clearly shown to have been the result of excusable neglect.

(b) *Procedures.* Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a)(1) or (2) of this section, shall be directed to the DOT decisionmaker. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

§ 302.18 Motions.

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. After the assignment of an administrative law judge to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein.

Note: This paragraph is not construed as authorizing motions in the nature of petitions for reconsideration.

(a–1) *Motions to disqualify DOT employee in review of hearing matters.* In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification within the periods hereinafter prescribed. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions shall be filed on or before the date answers are due pursuant to § 302.28. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions shall be filed on or before the date briefs are due pursuant to § 302.31 or § 302.1755, as applicable. Failure to file a timely motion shall be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee shall be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state with particularity the grounds therefor and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers thereto, and rulings thereon, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except (1) where incorporation of a motion in another document is specifically authorized by a rule or order of DOT, or (2) where a document is filed which requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately entitled and identified to indicate that it incorporates a motion, otherwise the motion will be disregarded.

(c) *Answers to motions.* Within seven days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Unless the DOT decisionmaker or the administrative law judge provides otherwise, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any other responsive document is not fileable, all new matter contained in such answer shall be deemed controverted.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Disposition of motions.* The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if he finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, he or she may refer such motion to that person for decision. The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision.

(f) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to its consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding irrespective of the filing of an appeal or any action taken on it.

(g) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time fixed by this part (or any extension granted thereunder) to take action.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95–504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973 (49 U.S.C. 1324, 1371, 1372, 1481) Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

§ 302.19 Subpenas.

(a) An application for a subpena requiring the attendance of a witness or the production of documentary evidence at a hearing may be made without notice by any party to the administrative law judge designated to preside at the reception of evidence or, in the event that an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge, for action by herself or himself or by the DOT decisionmaker.

(b) A subpena for the attendance of a witness shall be issued on oral application at any time.

(c) An application for a subpena for documentary or tangible evidence shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge. All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpena sought which shall describe the documentary or tangible evidence to be subpenaed with as much particularity as is feasible.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpena shall issue the subpena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpena. It is the purpose of this section, on the one hand, to make subpenas readily available to parties, and, on the other hand, to prevent the improvident issuance of subpenas to secure evidence which is unrelated to the issues of the proceeding or wholly unreasonable in its scope.

(e) Where it appears at a hearing that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge or chief administrative law judge may issue on his own motion a subpena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpenas issued under this section shall be served upon the person to whom directed in accordance with § 302.8(b). Any person upon whom a subpena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpena with the administrative law judge designated to preside at the reception of evidence or, in the event an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge for action by himself or herself or by the DOT decisionmaker. If the person to whom the motion to modify or quash the subpena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law judge denying a motion to quash a subpena. In such cases, the DOT decisionmaker may at any time order that the return date of a subpena which he or she has elected to review be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. Applications therefor shall be addressed to the administrative law judge in writing and shall set forth the need of the moving party for such evidence and the relevancy to the issues of the proceeding. Such applications shall be processed as motions in accordance with § 302.18 except that a grant of such motion by an administrative law judge, in whole or in part, shall be immediately reviewed by the DOT decisionmaker on his or her own initiative and shall be subject to his or her final action. No application will be required for the attendance of DOT personnel or the production of records in their custody when requested by an enforcement attorney. Where a DOT employee has testified in an enforcement proceeding that he or she used documents in his or her custody, or parts thereof, to refresh his or her recollection, a ruling by the administrative law judge for their production shall be final in the absence of an objection by the enforcement attorney. In the event of such objection, the DOT decisionmaker's review will be limited to the documents, or portions thereof, to which objection is taken by the enforcement attorney.

§ 302.20 Depositions.

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned as a hearing officer in a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if (1) the person whose deposition is to be taken would be unavailable at the hearing, or (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or (3) the taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to an administrative law judge designated to preside at the reception of evidence or, in the event that a hearing officer has not been assigned to a proceeding or is not available, to the DOT decisionmaker setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the DOT decisionmaker or the administrative law judge may, in its or his discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, and the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall

be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the officer shall include argument or debate. Objections to questions or evidence shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevance of evidence, and he shall record the evidence subject to objection. Objections to questions or evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the officer, or under his direction, after which the deposition shall be subscribed by the witness unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the officer. If the deposition is not subscribed to by the witness, the officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to the Documentary Services Division and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will only be authorized if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his objections, if any, to such interrogatories and may file such cross-interrogatories as he desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or the administrative law judge considering the application. Objections to interrogatories shall be made before the order for taking the deposition issue and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of § 302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the stenographer, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

§ 302.21 Attendance fees and mileage.

(a) *Where tender of attendance fees and mileage is a condition of compliance with subpena.* No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpena unless upon a service of the subpena he is tendered attendance fees and mileage by the party at whose instance he is called in accordance with the requirements of paragraph (b) of this section: *Provided,* That a witness summoned at the instance of DOT or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his public employment, need not be tendered such fees or mileage at that time.

(b) *Amount of mileage and attendance fees to be paid.* (1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same fees and mileage paid to witnesses for like service in the courts of the United States, as provided in paragraphs (b)(1) (i) through (iii) of this section: *Provided,* That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 403(b) of the Act shall be entitled to any fees or mileage: *And provided further,* That the amounts hereinafter set forth for fees and mileage shall not be applicable for witnesses summoned to testify in Alaska.

(i) *Per diem for attendance.* There shall be tendered $20 for each day of expected attendance at a hearing or place where deposition is to be taken, and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) *Allowance for subsistence.* In addition to per diem for attendance, when attendance is required at a point so far removed from the witness' residence as to prohibit daily return thereto, there shall be tendered an additional sum of $16 per day for expenses of subsistence for each day of expected attendance and including the time necessarily occupied in going to and returning from the place of attendance.

(iii) *Mileage.* There shall be tendered an amount equal to 10 cents per mile for the round trip distance between the witness' place of residence and the place where attendance is required. Regardless of the mode of travel employed, computation of mileage shall be made on the basis of a uniform table of distances adopted by the Attorney General where the travel is covered by such table: *Provided,* That in lieu of this mileage allowance witnesses who are required to travel between the territories and possessions, or to and from the continental United States or between two foreign points shall be tendered a ticket for such transportation at the coach rate available at the time of reservation plus the required per diem attendance fees: *And provided further,* That in Alaska where permitted by section 403(b) of the Federal Aviation Act of 1958, as amended, the witness may, at his option, accept a pass for travel by air.

(2) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, who are summoned to testify at the instance of DOT or one of its employees or the United States or one of its agencies shall be paid in accordance with the provisions of paragraph (b)(1) of this section. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence and mileage from the Government before the close of the proceedings which they are required to attend. Only persons summoned by subpena shall be entitled to claim attendance fees, subsistence or mileage from the Government.

(3) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

(4) Whenever the sums tendered to a witness are inadequate for reimbursement under the requirements of this section, and such witness has complied with the summons, he shall upon request within a reasonable period of time be entitled to such additional sums as may be due him under the provisions of this section. Whenever the sums tendered and paid to a witness are excessive under the above requirements, either because the witness traveled under the free or reduced rate provisions of section 403(b) of the Act, or for any other reasons, the witness shall upon request within a reasonable period of time refund such sums as may be excessive under the provisions of this section.

§ 302.22 Administrative law judges.

(a) *Defined.* The term "administrative law judge" as used in this part includes presiding officers, administrative law judges, or any other DOT employee assigned to hold a hearing in a proceeding.

(b) *Disqualification.* An administrative law judge shall withdraw from the case if at any time he deems himself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

(c) *Powers.* An administrative law judge shall have the following powers, in addition to any others specified in this part:

(1) To give notice concerning and to hold hearings;

(2) To administer oaths and affirmations;

(3) To examine witnesses;

(4) To issue subpenas and to take or cause depositions to be taken;

(5) To rule upon offers of proof and to receive relevant evidence;

(6) To regulate the course and conduct of the hearing;

(7) To hold conferences before or during the hearing, for the settlement or simplification of issues;

(8) To rule on motions and to dispose of procedural requests or similar matters;

(9) To make initial or recommended decisions as provided in § 302.27;

(10) To take any other action authorized by this part, by the Administrative Procedure Act, or by the Federal Aviation Act.

The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision may be filed, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.

(d) *Certification to the DOT decisionmaker for decision.* At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render an initial decision but shall recommend a decision to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act unless, in rulemaking or determining applications for initial licenses, the office advises him that it intends to issue a tentative decision.

§ 302.22a DOT decisionmaker.

(a) *Hearing cases.* In proceedings to be conducted on-the-record after notice and opportunity for an evidentiary hearing, the DOT decisionmaker is a senior career official in the Office of the Assistant Secretary for Policy and International Affairs authorized to issue final decisions of the Department under this Part. In addition, the DOT decisionmaker shall have all the powers of an administrative law judge and those additional powers delegated by the Secretary. Final decisions of the DOT decisionmaker are subject to review at the discretion of the Assistant Secretary for Policy and International Affairs. The Assistant Secretary may remand the decision to the DOT decisionmaker for further action consistent with such order or remand. The Secretary or the Deputy Secretary may exercise this review authority in lieu of the Assistant Secretary for Policy and International Affairs.

(b) *Nonhearing cases.* In all other proceedings, the DOT decisionmaker is the Assistant Secretary for Policy and International Affairs. The Assistant Secretary may delegate this authority in appropriate cases to officials within the Office of the Assistant Secretary for Policy and International Affairs.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

§ 302.23 Prehearing conference.

(a) *Purpose and scope of conference.* Prior to any hearings there will ordinarily be a prehearing conference before an administrative law judge, although in economic enforcement proceedings where the issues are drawn by the pleadings such conference will usually be omitted. Written notice of the prehearing conference shall be sent by the chief administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define and simplify the issues and the scope of the proceeding, to secure statements of the positions of the parties with respect thereto and amendments to the pleadings in conformity therewith, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

(1) Matters which the DOT decisionmaker can consider without the necessity of proof;

(2) Admissions of fact and of the genuiness of documents;

(3) Requests for documents;

(4) Admissibility of evidence;

(5) Limitation of the number of witnesses;

(6) Reducing of oral testimony to exhibit form;

(7) Procedure at the hearing, etc.

The administrative law judge may require further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents prior to hearing by subpena issued in accordance with the provisions of § 302.19 as though at a hearing. Applications for the production prior to hearing of documents in DOT's possession shall be addressed to the administrative law judge, in accordance with the provisions of § 302.19(g), in the same manner as provided therein for production of documents at a hearing.

The administrative law judge may also on his own motion or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(b) *Report of prehearing conference.* The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection which has not been met by a revision of the report if they are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 302.24 Hearings.

(a) *Notice.* The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

(b) *Evidence.* Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice and shall not be unduly repetitious. Evidence shall be presented in written form by all parties wherever feasible, as the administrative law judge may direct.

(c) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(d) *Exceptions.* Formal exceptions to the rulings of the administistrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he desires the administrative law judge to take or his objection to an action taken, and his grounds therefor.

(e) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(f) *Exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(g) *Substitution of copies for original exhibits.* In his discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(h) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such book, paper, or document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy, of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof.

(i) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified; and

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker; and

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with paragraphs (i) (1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the above requirement with the consent of the parties.

(j) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge.

(k) *Transcripts of hearings.* (1) Hearings shall be recorded and transcribed, under supervision of the administrative law judge, by the reporting firm under contract with DOT. Copies of the transcript shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(2) The administrative law judge shall determine whether "ordinary transcript" or "daily transcript" (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and DOT will pay the reporting firm the full cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(i) The nature of the proceeding itself; (ii) the DOT decisionmaker's needs as well as the reasonable needs of the parties; and (iii) the requirements of a fair hearing.

(3) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with DOT, the reporting firm will be obligated to furnish to the DOT daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(4) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which DOT currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(5) Copies of transcripts ordered by parties other than DOT shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(l) *Corrections to transcript.* Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with the Documentary Services Division, within ten (10) days after receipt of the completed transcript by DOT. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the stenographic record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

(m) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and its administrative law judges to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to Subpart B of this part. Each such category shall include any document antedating final DOT decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

1. Official Guide of the Airways for each month prior to and including April 1943; Universal Airline Schedules for each month from May 1943 to September 1944, inclusive; American Aviation Air Traffic Guide for each month from October 1944 to August 1948, inclusive; and Official Airline Guide.

2. Official Guide of the Railways and Russell's Official National Motor Coach Guide.

3. Book of Official CAB Airline Route Maps and Airport to Airport Mileages published by Air Transport Association of America.

4. Shuler Guide and Official Airline Guide Quick Reference Edition.

5. All schedules and amendments thereof, and all tariffs and amendments thereof, of all carriers, on file with DOT.

6. Air Carrier operating certificates or applications therefor, of all carriers, together with any requests for amendment thereof.

7. Monthly reports, Forms 2380 and 2780, for each month through December 1946, and monthly and quarterly reports, Forms 41 and 41(a) (including monthly and annual reports required to be filed by all carriers in connection therewith), filed with DOT.

8. Recurrent Reports of Mileage and Traffic Data of all Domestic Airline Carriers from 1945 and all similar reports issued by the Civil Aeronautics Board, or DOT.

9. Certified Air Carrier Traffic Statistics from 1955, prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of statistics issued by the Civil Aeronautics Board, or DOT.

10. Recurrent Reports of Financial Data of all Domestic Airline Carriers from 1947 through the quarter ended September 30, 1953; issued by the Civil Aeronautics Board, and all such other similar recurrent reports issued by the Civil Aeronautics Board, or DOT.

11. Certificated Air Carrier Financial Data from the quarter ended December 31, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of data issued by the Civil Aeronautics Board, or DOT.

12. Annual Airline Statistics, Domestic Carriers, fiscal years 1938–1941; Annual Airline Statistics, Domestic Carriers, calendar years 1938–1947; prepared by the Bureau of Pricing and Domestic Aviation Civil Aeronautics Board; and all such other similar compilations of statistics issued by the Civil Aeronautics Board, or DOT.

13. Quarterly Report of Air Carrier Operating Factors, for the quarter ended September 30, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other reports for quarterly periods as may be made available to the public by the Civil Aeronautics Board, or DOT.

14. Passenger, mail, express, and freight data submitted to the Board on Form 2787 or on punch cards submitted in lieu of such forms, by all carriers for any months subsequent to March 1955 and any similar data submitted to DOT.

15. Airline Traffic Surveys, compiled by the Civil Aeronautics Board, from September 1946, and any other such surveys made available to the public by the Civil Aeronautics Board or DOT.

16. The publication Competition Among Domestic Air Carriers, March 1–14, 1955, compiled by the Civil Aeronautics Board and published by the Air Transport Association of America, and any other compilations of similar data made available to the public by the Civil Aeronautics Board or DOT.

17. Service Mail Pay and Subsidy for United States Certificated Air Carriers from 1955, published by the Civil Aeronautics Board, and any supplemental data and subsequent issues published by the Civil Aeronautics Board or DOT.

18. Airport Activity Statistics of Certificated Air Carriers, from December 31, 1955; compiled by the Civil Aeronautics Board, and published by Air Transport Association of America, and any subsequent issues thereof published, by DOT.

19. Enplaned Airline Traffic, by community, by year, 1948–1951; Air Commerce Traffic Pattern, fiscal years 1953–1955 and calendar years 1952–1955, published by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereof published by the Federal Aviation Agency.

20. Population Volumes I and II of the Eighteenth (1960) Census of the United States, issued by the Census Bureau, Department of Commerce; and similar publications of the Census Bureau relating to the Seventeenth (1950) Census.

21. The Rand McNally Commercial Atlas and Marketing Guide, from 1956, and the Rand McNally Road Atlas, United States, Canada, and Mexico, from 1956.

22. Survey of Buying Power, from 1955, published by Sales Management Magazine.

23. Volumes II and III of the Census of Manufacturers, 1954, issued by the Bureau of Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1947 and 1958 Census of Manufacturers.

24. Volumes II, IV and VI of the Census of Business, 1954, issued by the Bureau of the Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1948 and 1958 Census of Business.

25. Federal Airways Air Traffic Activity, from 1953–1956 (fiscal year) issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and subsequent

editions thereof issued by the Federal Aviation Agency.

28. National Airport Plan, from 1956, Civil Aeronautics Administration, U.S. Department of Commerce and subsequent editions thereof issued by the Federal Aviation Agency.

27. Record of Airport Facilities, Form ACA-29A, issued by the Civil Aeronautics Administration, U.S. Department of Commerce and by the Federal Aviation Agency.

28. International Section, Airline Traffic Surveys prepared by the Civil Aeronautics Board from March and September 1959, and any such surveys issued or otherwise made available to the parties by the Civil Aeronautics Board or published privately.

29. The ABC World Airways Guide, Thomas Skinner and Co., Ltd., from June 1959.

30. ICAO Statistical Summary, Preliminary Issue and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by the International Civil Aviation Organization, Montreal, Canada, with all changes and additions.

31. Foreign-Commerce Yearbook, from 1951, U.S. Department of Commerce, office of International Trade.

32. Statistical Abstract of the United States, from 1953, U.S. Department of Commerce, Bureau of Census.

33. Yearbook of International Trade Statistics, from 1956.

34. Annual Reports of the Immigration and Naturalization Service, U.S. Department of Justice, from fiscal year ended June 30, 1945.

35. Official Steamship and Airways Guide International. Transportation Guides, Inc., from June 1945.

36. The Airman's Guide, from 1950, issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereto, issued by the Federal Aviation Agency.

37. Plant and Product Directory of the 500 Largest U.S. Industrial Corporations, from 1961, published by Time Inc.

38. Thomas' Register of American Manufacturers, from 1955, published by Thomas Publishing Company.

39. First and Second Class Post Offices, July 1, 1939–July 1, 1946 and Receipts and Classes of Post Offices, from July 1, 1947, issued by the U.S. Post Office Department.

40. Quarterly Report on Federal Aid to Highways, from March 1960, issued by the Bureau of Public Roads of the U.S. Department of Commerce.

41. All forms and reports required by the Post Office Department to be filed by air carriers certificated to transport mail.

42. All orders of the Postmaster General designating schedules for the transportation of mail.

43. Handbook of Airline Statistics from 1961, prepared by the Bureau of Accounts and Statistics, Civil Aeronautics Board or DOT.

44. CAB Forms 242, 243, 244, and 244A (including all monthly, quarterly, semiannual, and annual reports required to be filed by carriers in connection therewith), filed with the Board or DOT.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (m)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act.

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (m)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters which have been noticed.

§ 302.25 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he may, either of his or her own motion, or at the request of a party, permit the presentation of oral argument. He or she may impose such time limits on the argument as he or she may determine, having regard for other assignments for hearing before him or her. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the DOT decisionmaker for consideration in deciding the case.

§ 302.26 Proposed findings and conclusions before the administrative law judge or the DOT decisionmaker.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his consideration briefs to include proposed findings and conclusions of law which shall contain exact references to the record and authorities relied upon. The provisions of this section shall be applicable to proceedings in which the record is certified to the DOT decisionmaker without the preparation of an initial or recommended decision by the administrative law judge.

§ 302.27 Delegation to administrative law judges and action by administrative law judges after hearing.

(a) *Delegation of authority to make the agency decision subject to discretionary review.* Pursuant to the authority conferred on DOT under Section 1601(b)(1) of the Federal Aviation Act of 1958, as amended, there is hereby delegated to each administrative law judge assigned to a particular case subject to this part the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without a recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 801 of the Act. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters which have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.18. The term "initial decision," as used in this part, shall encompass the administrative law judge's decision pursuant to this delegation of authority on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Action by administrative law judge after hearing.* (1) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every initial decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (c) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file proposed findings and conclusions with the DOT decisionmaker and supporting briefs.

(2) Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of proposed findings and conclusions, if any, the administrative law judge shall take the following action:

(i) *Cases subject to section 801 of the Act.* In cases where the action of the Department is subject to the approval of the President pursuant to section 801 of the Act, the administrative law judge shall render a recommended decision orally on the record or in writing.

(ii) *Other matters.* If the proceeding relates to any matter not provided for in paragraph (b)(2)(i) of this section, the administrative law judge shall render an initial decision in writing.

(c) *Effect of initial decision.* Unless a petition for discretionary review is filed pursuant to § 302.28, exceptions are filed pursuant to § 302.1754, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department 30 days after service thereof. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision is stayed until the further order of the DOT decisionmaker.

§ 302.28 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but of the sound discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review of the DOT decisionmaker of an initial decision or recommended decision within 21 days after service thereof, except that the DOT decisionmaker may fix a different period in any decision involving a foreign air carrier where the action of DOT is subject to the approval of the President pursuant to section 801 of the Act. Such petitions shall be accompanied by proof of service on all parties.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, DOT rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but which the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker or the Chief Administrative Law Judge, petitions shall not exceed 20 pages including appendices and other papers physically attached to the petition. Petitions of more than 10 pages shall contain a subject index with page references.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answer.* Within 15 days after service of a petition for discretionary review, any party may file and serve an answer of not more than 15 pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he shall do so in a single document of not more than 20 pages.

(c) *Orders declining review.* DOT orders declining to exercise the discretionary right of review will specify the date upon which the administrative law judge's decision shall become effective as the final decision of DOT. A petition for reconsideration of a DOT order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker's discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of DOT in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may exercise his or her right of review upon petition for review or on his or her own initiative. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review which will:

(i) Specify the issues to which review will be limited. Such issues shall constitute one or more of the issues raised in a petition for discretionary review, and/or matters which the DOT decisionmaker desires to review on his or her own initiative. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to § 302.31, and considered by the DOT decisionmaker.

(ii) Specify the portions of the administrative law judge's decision, if any, which are to be stayed as well as the effective date of the remaining portions thereof.

(iii) Designate the parties to the review proceeding.

§ 302.29 Tentative decision of DOT.

(a) Except as provided in paragraph (b) of this section, whenever the administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any proposed findings and conclusions submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the DOT decisionmaker shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision may be filed, the time within which briefs in support of the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the DOT decisionmaker within the period fixed (which in no event shall be less than 10 days), it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) Notwithstanding the provisions of paragraph (a) of this section, in rule making proceedings or proceedings determining applications for initial licenses, the DOT decisionmaker may omit a tentative decision in any case in which he or she finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires. The DOT decisionmaker may also, in DOT's discretion, omit a tentative decision in proceedings under Subpart Q. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.22a.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973 (49 U.S.C. 1324, 1371, 1372, 1481 (Administrative Procedure Act) 5 U.S.C. 551 *et seq.*))

§ 302.30 Exceptions to tentative decisions of DOT.

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several repetitive exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto. *Provided, however,* That exceptions shall specify any matters of law, fact or policy which were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion which is not expressly made the subject of an exception in compliance with the provisions of this section. *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

§ 302.31 Briefs before DOT.

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial decisions or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to § 302.28(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within 30 days after date of service of the order granting discretionary review. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker or the administrative law judge (where the administrative law judge's decision was not made under delegated authority) may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs*—(1) *Contents.* Each brief shall discuss every point of law, fact or precedent which the party submitting it is entitled to raise and which it wished the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed 5 pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved.

(2) *Incorporation by reference.* Briefs to the DOT decisionmaker shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading: *Provided, however,* That instead of submitting a brief to the DOT decisionmaker a party may adopt by reference specifically identified pages or the whole of his or her prior brief to the administrative law judge if the latter complies with all requirements of this section. In such cases, the party shall file with the Documentary Services Division a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length and index.* Briefs shall comply with the formal specifications set forth in § 302.3(b). Except by permission or direction of the DOT decisionmaker, brief shall not exceed 50 pages including pages contained in any appendix, table, chart, or other document physically attached to the brief, but excluding maps and the summary of the argument. In this case "map" means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation. Any brief that exceeds 10 pages shall contain a subject index of its contents, including page references.

§ 302.32 Oral argument before the DOT decisionmaker.

(a) If any party desires to argue a case orally before the DOT decisionmaker, he shall request leave to make such argument in his exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be presented to the DOT decisionmaker at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued. All such material shall be served on all parties to the proceeding and eight copies transmitted to the Documentary Services Division at least five (5) calendar days in advance of the argument. As used herein "material" includes, but is not limited to, maps, charts included in briefs, and exhibits which are enlarged and used for demonstration purposes at the argument, but does not include the enlargements of such exhibits.

§ 302.33 Waiver of procedural steps after hearing.

The parties of any proceeding may agree to waive any one or more of the following procedural steps provided in §§ 302.25 through 302.32: Oral argument before the administrative law judge, the filing of proposed findings and conclusions for the administrative law judge or for the DOT decisionmaker, a recommended decision of the administrative law judge, a tentative decision of the DOT decisionmaker, a petition for discretionary review of or exceptions to ab initial decision or recommended decision, and the filing of briefs with the DOT decisionmaker, or oral argument before the DOT decisionmaker.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95–504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

§ 302.35 Shortened procedure.

In cases where a hearing is not required by law, §§ 302.23 through 302.33, relating to prehearing, hearing, and post-hearing procedures, shall not be applicable except to the extent that DOT shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the ends of justice.

§ 302.36 Final decision of DOT.

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order which will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed "final orders" within the purview of § 302.37(a), unless reviewed pursuant to § 302.22a.

§ 302.37 Petitions for reconsideration or review by the DOT decisionmaker.

(a) *DOT orders subject to reconsideration; time for filing.* Unless an order or a rule of the Department specifically provides otherwise, any interested person may file a petition for reconsideration, of any interlocutory order issued by the Department which institutes a proceeding. Any party to a proceeding, unless an order or rule of the Department specifically provides otherwise, may file a petition for reconsideration, rehearing, or reargument of (1) final orders issued by the Department, or (2) an interlocutory order which defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department. Unless the time is shortened or enlarged by the Department, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument or shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If the petition is based, in whole or in part, on allegations as to the consequences which would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto which exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by the Office of the Documentary Services.

(c) *Successive petitions.* A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition which has been considered or denied by the Board, will not be entertained.

§ 302.38 Petitions for rulemaking.

Any interested person may petition DOT for the issuance, amendment, modification and repeal of any regulation, subject to the provisions of Part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.1 et seq.)

§ 302.39 Objections to public disclosure of information.

(a) *General.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of DOT to the public. (49 CFR 7.1 et seq.)

(b) *Information contained in paper to be filed.* Any person who objects to the public disclosure of any information contained in any paper filed in any proceeding, or in any application, report, or other document filed pursuant to the provisions of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the DOT thereunder, shall segregate, or request the segregation of, such information into a separate paper and shall file it, or request that it be filed, with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed, separately in a sealed envelope, bearing the caption of the enclosed paper, and the notation "Classified or Confidential Treatment Requested Under § 302.39." At the time of filing such paper, or when the objection is made by a person not himself filing the paper, application, report or other document, within five (5) days after the filing of such paper, the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (e) of this section, or in accordance with the procedure outlined in paragraph (d) of this section if objection is made by a Government department or a representative thereof. Notwithstanding any other provision of this section, copies of the filed paper and of the motion need not be served upon any other party unless so ordered by the DOT.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and lay representative of each party as the administrative law judge or the person before whom the deposition is being taken, as the case may be, shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation "Classified or Confidential Treatment Requested Under § 302.39 Testimony Given by (name of witness or deponent)." Within five (5) days after such testimony is given, the objecting person shall file a motion, except as hereinafter provided in paragraph (d) of this section, in accordance with the procedure outlined in paragraph (e) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the DOT.

(d) *Objection by Government departments or representative thereof.* In the case of objection to the public

disclosure of any information filed by or elicited from any United States Government department, or representative thereof, under paragraph (b) or (c) of this section, the department making such objection shall be exempted from the provisions of paragraphs (b), (c), and (e) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, or person representing said department, if it so desires, may file a memorandum setting forth the reasons on the basis of which it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

(e) *Form of motion to withhold information from public disclosure.* Subject to the exception of paragraph (d) of this section, no information covered by paragraphs (b) and (c) of this section need be withheld from public disclosure unless written objection to such disclosure is filed with the DOT in accordance with the following procedure:

(1) The motion shall be headed with the title and docket number of the proceeding and shall be signed by the objecting person, any duly authorized officer or agent thereof, or by counsel representing such person in the proceeding.

(2) The motion shall include (i) a description of the information sought to be withheld, sufficient for identification of the same; (ii) a statement explaining how and why the information falls within the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)–(9); and (iii) and a statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the interest of the public.

(3) Such motion shall be filed with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed.

If such motion relates to contracts, agreements, understandings, or arrangements an executed original copy and two copies of such motion shall be filed.

(f) *Motions referred to DOT.* The order of DOT containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which order shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the DOT 's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by DOT, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the DOT's order.

(g) *Objections in proceeding before the DOT.* Notwithstanding any of the provisions of this section, whenever the objection to disclosure of information shall have been made, in the first instance, before the DOT itself, the written motion of objection contemplated by paragraphs (b), (c), and (e) of this section shall not be necessary but may be submitted if the parties so desire or if DOT, in a particular case, shall so direct.

§ 302.40 Saving clause.

Repeal, revision or amendment of any Economic Regulation of the DOT shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

Subpart B—Rules Applicable to Enforcement Proceedings

§ 302.200 Applicability of this subpart.

(a) *In general.* This subpart contains the specific rules that apply to DOT proceedings to enforce the act and the rules, regulations, orders and other requirements issued by DOT. Subpart A of this part contains other rules that apply to these proceedings.

(b) *Informal complaints.* Informal complaints may be made in writing with respect to anything done or omitted to be done by any person in contravention of any provision of the act or any requirement established pursuant thereto without compliance with this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

§ 302.201 Formal complaints.

Any person may make a formal complaint to the Assistant General Counsel for Aviation Enforcement and Proceedings about any violation of the economic regulatory provisions of the act or of DOT's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The filing of a complaint shall result in a formal enforcement proceeding only if the Assistant General Counsel for Aviation Enforcement and Proceedings issues a notice instituting an enforcement proceeding as to all or part of the complaint under § 302.206(a) or the Deputy General Counsel does so under § 302.206(b). A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel for Aviation Enforcement and Proceedings. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.18.

§ 302.202 [Reserved]

§ 302.203 Insufficiency of formal complaint.

In any case where the Assistant General Counsel for Aviation Enforcement and Proceedings is of the opinion that a complaint does not sufficiently set forth the material required by any applicable rule, regulation or order of the DOT, or is otherwise insufficient, he or she may advise the party filing the same of the deficiency and require that any additional information be supplied by amendment.

§ 302.204 Third-party complaints.

(a) A third-party complaint, and any amendments thereto, submitted pursuant to § 302.201 shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel for Aviation Enforcement Proceeding.

(b) Within fifteen (15) days after the date of service of a third-party complaint, each person complained of shall file an answer in conformance with and subject to the requirements of § 302.207(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for Aviation Enforcement and Proceedings for good cause shown.

(c) A person complained against in a third-party complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served,

within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the complaint shall not excuse the filing of an answer.

(d) Motions to dismiss a third-party complaint shall not be fileable prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§ 302.205 Procedure when no enforcement proceeding is instituted.

(a) Within a reasonable time, but not more than 60 days, after an answer to a formal third-party complaint is filed, or such extension of that 60-day period as may be granted pursuant to § 302.206(b), the Assistant General Counsel for Aviation Enforcement and Proceedings shall either issue a notice instituting a formal enforcement proceeding in accordance with § 302.206(a) or issue a notice dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) A notice dismissing a complaint issued pursuant to paragraph (a) of this section shall become effective as a final order of DOT 30 days after service thereof.

§ 302.206 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel for Aviation Enforcement and Proceedings, there are reasonable grounds to believe that any provision of the Act, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by § 302.204 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel for Aviation Enforcement and Proceedings may issue a notice instituting a formal enforcement proceeding. The notice shall incorporate by reference a formal complaint submitted pursuant to § 302.201 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant. The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures which it may deem necessary or proper.

(b) The Assistant General Counsel for Aviation Enforcement and Proceedings may at any time move, upon a showing of good cause, for an extension of the time within which to act upon a third-party complaint. Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings has failed to act on a third-party complaint within 60 days of the date when the answer is due, or within such extension of that period as may have been granted, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute a proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(c) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§ 302.206a Assessment of civil penalties.

(a) Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in an enforcement proceeding, the Deputy General Counsel shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting an enforcement proceeding or in a separate document.

(b) Within 15 days after service of a notice proposing assessment of civil penalties, the respondent shall file a response specifically presenting any matters he intends to rely on in opposition to or mitigation of such civil penalties. The response may be contained in an answer filed under § 302.207.

(c) In any proceeding in which civil penalties are sought, the initial and final decisions shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

(Secs. 204, 901, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95–504; 72 Stat. 742, 783, 788, 92 Stat. 1705; (49 U.S.C. 1324, 1471, 1481))

§ 302.207 Answer.

(a) Within 15 days after the date of service of a notice issued pursuant to § 302.206, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.204. Any requests for extension of time for filing of answer to a complaint attached to or incorporated in a notice instituting an enforcement proceeding shall be filed with DOT in accordance with § 302.17.

(b) All answers shall conform to the requirements of § 302.8(a)(2) an shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the person complained of is without knowledge, in which case, his answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted.

§ 302.208 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Department, in its discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting an enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, in its discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order, provided that the DOT decisionmaker or administrative law judge may permit late filings of an answer for good cause shown.

§ 302.209 Reply.

The DOT decisionmaker (or the administrative law judge) may, in his or her its discretion, require or permit the filing of a reply in appropriate cases, otherwise no reply shall be filed.

§ 302.210 Parties.

The parties to an enforcement proceeding shall be the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, the respondent, any person whose formal complaint alleged violations that were later covered by the notice of enforcement, and any other person permitted to intervene under § 302.15.

§ 302.210a Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge, upon his or her own initiative, or upon motion of any party, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or

more enforcement proceedings which involve substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.211 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the DOT decisionmaker or the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.23.

§ 302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.

(a) At any time after answer has been filed, any party may file with DOT and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevent documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Service of such request and answering statement shall be made as provided in § 302.8. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement or any order entered therein, and shall not constitute an admission by him for any other purpose or be used against him in any other proceeding or action.

(b) At any time after answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within 7 days after service of the motion.

(c) Parties may petition the DOT decisionmaker to review action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.28.

§ 302.213 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge or the DOT decisionmaker shall give the parties reasonable written notice of the time and place of the hearings.

§ 302.214 Appearances by persons not parties.

With consent of the administrative law judge or the DOT decisionmaker, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with consent of the administrative law judge or the DOT decisionmaker, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be propounded to witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.215 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within 10 days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.216 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the act or any requirement thereunder found by DOT or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.217 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by the DOT decisionmaker. Proceedings on the motion shall be in accordance with § 302.18. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.218 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding in which an order of DOT has been issued pursuant to section 1002(c) of the Act, or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 1007, believes that changed conditions of fact or law, or the public interest, require that said order or judicial action be modified, or set aside, in whole or in part, such party may file with DOT a motion requesting that DOT take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. DOT shall dispose of the motion by such procedure as it deems appropriate.

(Sec. 1005, 72 Stat. 794, as amended; 49 U.S.C. 1485)

Subpart C—Rules Applicable to Mail Rate Proceedings

§ 302.300 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by DOT for foreign air transportation and air transportation between points in Alaska. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations, and orders of DOT.

§ 302.301 Parties to the proceeding.

The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the Postmaster General, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom DOT permits to intervene. (See § 302.15.)

Final Mail Rate Proceedings

§ 302.302 Participation by persons other than parties.

In addition to participation in hearings in accordance with § 302.14, persons other than parties may, within the time fixed for filing notice of objections to an order to show cause in a mail rate proceeding as provided in § 302.305, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

§ 302.303 Institution of proceedings.

Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the Postmaster General, or upon the issuance of an order by DOT.

(a) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rate, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(b) In any case where a carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the Department, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(c) All petitions, amended petitions, and documents relating thereto shall be served upon the Postmaster General by sending a copy to the Assistant General Counsel, Transportation, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the Postmaster General shall consist of a statement in the document that the person filing it has served a copy on the Assistant General Counsel, Transportation, as required by this section. The petition need not be accompanied by any further proof of service, but upon setting any petition down for public hearing, the Department will cause notice of such hearing to be given to such interested person as it deems appropriate in a particular case.

(d) Answers to petitions shall be filed within 20 days after service of the petition.

Procedure When an Order To Show Cause Is Issued

§ 302.304 Order to show cause.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT may issue an order directing the respondent to show cause why it should not adopt such provisional findings and conclusions, and such rates, as may be specified in the order to show cause.

§ 302.305 Objections and answer to order to show cause.

(a) Any person having objections to the provisional rates specified in such order shall file with the Department a notice of objection within ten (10) days after the date of service of such order.

(b) If such notice is filed as aforesaid, written answer and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause. The Department may specify different times for filing a notice of objection or an answer. An answer to an order to show cause shall contain specific objections, and exhibits in support thereof, and shall set forth the findings and conclusions, the rates, and the supporting exhibits which would be substituted for the corresponding items in the Statement of Provisional Findings and Conclusions, if such objections were found valid.

(c) A notice or answer filed by a person who is neither a party nor a person ultimately permitted to intervene shall be treated as a memorandum filed under § 302.302.

§ 302.306 Effect of failure to timely file notice and answer raising material issue of fact.

If no notice, or, if after notice, no answer is filed within the designated time, all parties shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision of the Department fixing rates, and, in such case, or if an answer timely filed raises no material issue of fact, the Department may thereupon, upon the basis of all of the documents filed in the proceeding, enter a final order fixing the fair and reasonable rate or rates as specified in the order to show cause.

§ 302.307 Procedure when material issue of fact is timely raised.

If an answer raising a material issue of fact is filed within the time designated in the Department's order, a prehearing conference and hearing shall be held unless waived by all parties. The issues shall be limited to those specifically raised by the answer, except that at the prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he deems necessary to a full and fair determination of a fair and reasonable rate. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.308 Evidence.

All direct evidence shall be in writing and shall be filed in exhibit form in advance of the hearing unless, for good cause shown, the administrative law judge otherwise directs.

Procedure When No Order To Show Cause Is Issued

§ 302.309 Hearing to be ordered.

When no order to show cause is to be issued by the Department, the Department will order a hearing before an administrative law judge similar to that provided for in §§ 302.307 and 302.308, except that the issues at such hearing shall be formulated initially at a prehearing conference.

Temporary Rate Proceedings

§ 302.310 Procedure for fixing temporary service and subsidy mail rates.

(a) At any time during the pendency of a proceeding for the determination of final mail rates, the Department, upon its own initiative, or on petition by the carrier whose rates are in issue or the Postmaster General, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

(b) Temporary service mail rates: The procedure for determining temporary mail rates involving an issue as to the service mail rates payable by the Postmaster General pursuant to section 406(c) of the Act shall be the same as for the determination of final mail rates, except that:

(1) Notice of objections to the Department's show cause order proposing temporary service mail rates must be filed by any party or petitioner for intervention within 8 days, and an answer within 15 days, of the time such order is served;

(2) Failure to file notice of objections within the 8-day period shall be deemed to be a waiver of all further procedural steps before final decision, including hearing and initial or tentative decision, and the proceeding will stand submitted to the DOT decisionmaker for final decision.

(3) In the absence of a convincing showing that it will result in substantial prejudice to any party or delay the proceeding, the administrative law judge shall require the parties to submit all their testimony in writing and shall closely limit cross-examination to the essential issues (bearing in mind the purpose and urgency of fixing temporary mail rates together with the fact that such temporary rates are subject to downward or upward adjustment upon the fixing of final rates), and shall in all other respects urgently expedite the proceeding.

Informal Mail Rate Conference Procedure

§ 302.311 Invocation of procedure.

Conferences between DOT employees, representatives of air carriers, the Post Office Department and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

§ 302.312 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers the Department has in the processing of rate cases not involving a rate conference. The employee function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employee's analyses and recommendations.

§ 302.313 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the Postmaster General, and the authorized DOT employees. No other person will attend unless the DOT employees deems his presence necessary in the interest of one or more purposes to be accomplished, and in such case his participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§ 302.314 Conditions upon participation.

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for 90 days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust; (2) shall not deal, directly or indirectly, for the account of himself, his immediate family, members of his firm or company, or as a trustee, in securities of the carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the Department; and (3) shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. The word "information", as used in paragraph (b) of this section, shall refer only to information obtained at the conference regarding the future course of action or position of the Department or its employees with respect to the facts or issues discussed at the conference.

(b) *Signed statement required.* Every representative of a carrier actually present at any conference shall sign a statement that he has read this entire instruction and promises to abide by it and advise any other participant to whom he discloses any confidential information of the restrictions imposed above. Every representative of the Postmaster General actually present at any conference shall, on his own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any carrier, which has had a representative at the conference, who deals either directly or indirectly for himself, his immediate family, members of his firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential every participant, as defined in this section, shall file a verified compliance report with the Documentary Services Division stating that he has complied in every respect with the conditions of this section, or if he has not so complied, stating in detail in what respects he has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include (1) any representative of any carrier and any representative of the Postmaster General actually present at the conference; (2) the carrier and the officers of any carrier which has had a representative at the conference; (3) the directors of any carrier, which has had a representative at the conference, the members of any firm of attorneys or consultants, which has had a representative at the conference, and the members of the Postmaster General's staff, who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.[4]

§ 302.315 Information to be requested from carrier.

With respect to the rate for the future period, the carrier will be requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment which will be required to perform the operations for a full future year. Full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the carrier's past experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the carrier shall be certified by a responsible officer.

§ 302.316 DOT analysis of data for submission of answers thereto.

After a careful analysis of these data, the DOT employees will, in most cases, send the carrier what might be termed a statement of exceptions showing areas

[4] Restrictions on disclosure of confidential information and dealing in air carrier securities are imposed upon the DOT employees pursuant to applicable law.

of differences. Where practicable, the carrier may submit its answer to these exceptions. Conferences will then be scheduled to work out a clear understanding and resolution of the issues and facts from the standpoint of sound ratemaking principles.

§ 302.317 Availability of data to Post Office Department.

The representatives of the Postmaster General shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the carrier, and a reasonable time shall be allowed to get acquainted with the facts and issues and to make any presentation deemed necessary. *Provided,* That in cases other than those involving an issue as to the service mail rates payable by the Postmaster General pursuant to section 406(c) of the Act or Reorganization Plan 10 of 1953, or those involving any period prior to October 1, 1953, representatives of the Postmaster General shall be furnished with copies of data under this provision only upon their written request.

§ 302.318 Post-conference procedure.

The rate conferences not being in the nature of proceedings, no briefs, or argument, or any formal steps, will be entertained by the Department. The form, content and time of the staff's presentation to the Department are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The Department will grant such requests whenever he or she deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the act and the rules of practice.

§ 302.319 Effect of conference agreements.

No agreements or understanding reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that rate conferences were held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that upon the filing of an answer by any party to the rate proceeding all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.23.

§ 302.320 Waiver of §§ 302.313 and 302.314.

After the termination of a mail rate conference hereunder, the carrier, whose rates were in issue, may petition the Department for a release from the obligations imposed upon it and all other persons by §§ 302.313 and 302.314. The Department will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the Department will grant or deny the request without assigning reasons therefor.

§ 302.321 Time of commencing and terminating conference.

At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conferences shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

Subpart D—Rules Applicable to Exemption Proceedings

§ 302.400 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings on applications for exemption orders pursuant to section 101(3) or section 416(b)(1) of the Act. It further provides for the granting of exemptions upon the Department's own initiative and for the granting of emergency exemptions. As far as is consistent with this subpart, the provisions of Subpart A of this part also apply to such proceedings. Proceedings for the issuance of exemptions by regulation shall remain subject to the provisions governing rule making. Additional requirements for applications for interim extension of fixed-term temporary route authorizations granted by exemption are set out in § 302.909. See also §§ 377.10(c) and 399.18 of this chapter.

§ 302.401 Filing of application.

(a) *Filing.* An application for exemption shall conform to the formal requirements of §§ 302.3 and 302.4. Such application shall be assigned a docket number and any additional documents filed in connection with such exemption shall be identified by the assigned docket number.

§ 302.402 Contents of application.

(a) *Title.* An application filed pursuant to this subpart shall be entitled "Application for Exemption".

(b) *Factual detail.* The application shall set forth the section or sections of the act, or the rule, regulation, term, condition, or limitation prescribed thereunder from which exemption is desired and shall state in detail the facts relied upon to establish that the enforcement of the provisions from which exemption is sought, is or would be an undue burden upon the applicant by reason of the limited extent of, or unusual circumstances affecting, the operations of such applicant and that enforcement of such provision is not in the public interest.

(c) *Supporting evidence.* The application shall be accompanied by a statement of economic data or other matters which the applicant desires the Department to officially notice, and by affidavits establishing such other facts as the applicant desires the Department to rely upon. Applications of air carriers for temporary route authority shall contain at least the following economic and operating data on an annual basis:

(1) Present and proposed schedules, by type of aircraft;

(2) Number of departures, planemiles, passengers and passenger-miles;

(3) Estimate of self-diversion or diversion from other carriers, if applicable;

(4) Anticipated operating revenues; and

(5) Estimate of impact of proposal on operating expenses which, in the case of local service carriers, should be computed according to Subpart K of this part.

In addition, for local service carriers the following:

(6) Estimate of allowance for return on investment and taxes, computed according to Subpart K of this part;

(7) Increase or decrease in subsidy requirements; and

(8) Increase or decrease in subsidy payments under the applicable class rate formula.

(d) *Record of service.* An application shall contain the names of the parties served as required by § 302.403, and a notice to such parties that they may, within 10 days of the date the application was filed, file and serve an answer in support of, or in opposition to, the application.

§ 302.403 Service of application.

(a) *Manner of service.* An application for exemption shall be served as provided by § 302.8.

(b) *Persons to be served.* Except in the case of an application for an exemption from sections 403 and 404 of the Act or an application for exemption which will permit the applicant to render irregular services only other than between specified points, a copy of an application shall be served on the following parties who shall be presumed to have an interest in the subject matter of the application:

(1) Any air carrier which is authorized to render regular service to any point involved in the application;

(2) Any person whose application for a certificate of public convenience and necessity, or for an exemption, authorizing regular service to or from any such point has been filed with, and which has not been finally disposed of by, the Department;

(3) The chief executive of any State, territory, or possession of the United States in which any such point is located: *Provided, however,* That if there be a State commission or agency having jurisdiction over transportation by air, service shall be made on such commission or agency, rather than the chief executive of the State;

(4) The chief executive of the city, town, or other unit of local government at any such point located in the United States or any territory or possession thereof;

(5) The DOT, commission, manager, or other body or individual having direct supervision over and responsibility for the management of the airport located in the United States and which is being used to serve such point at the time the application is filed; and

(6) Any commuter air carrier that operates under Part 298 of this chapter or other exemption authority, provides at least five round-trips per week between two or more points, one of which is involved in the application, and publishes schedules in the "Official Airline Guide," or in the "Air Cargo Guide," that include service to the point involved in the application.

EXCEPTION: Applications for exemption authority to serve a point outside North America need not be served on commuter air carriers.

(c) *Additional service of notice.* The Department may, in its discretion, order additional service made on such person or persons as the facts of the situation warrant.

§ 302.404 Posting of application.

The Department shall cause a copy of every application for exemption filed with it to be posted promptly on a public bulletin board at its principal offices in Washington, D.C.

§ 302.405 Dismissal of incomplete application.

(a) *Dismissal.* The Department may, on its own motion or the motion of any party in interest, dismiss an application for exemption which fails in any material respect to comply with the requirements of this part.

(b) *Additional data.* The Department may request the filing of additional data with respect to any application for exemption or any answer or reply filed by a party in interest in connection therewith.

§ 302.406 Answers to applications for exemptions.

Within ten (10) days after filing of an application for exemption, any party in interest may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the party believes the exemption should be granted or denied. The answer shall be accompanied by a statement of economic data or other matters which it is desired that the DOT decisionmaker officially notice, and by affidavits establishing such other facts as are relied upon.

§ 302.407 Reply.

Within 7 days after the last date for filing an answer under § 302.406, an applicant for exemption may file a reply to one or more answers.

§ 302.408 Request for hearing.

Although in the usual course of disposition of an application for exemption no formal hearing will be granted to the applicant or to a party in interest opposing such exemption, the DOT decisionmaker may, in his or her discretion order such proceeding set down for hearing. Any applicant, or any party in interest opposing an application, who desires to request a hearing on an application for exemption shall set forth in detail in his request the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application, and, to the extent that such request is dependent upon factual assertions, shall accompany such request by affidavits establishing such facts. In the event a hearing is ordered by the DOT decisionmaker, Subpart A of this part shall govern the proceedings.

§ 302.409 Exemptions on the Department initiative.

Where required by the circumstances and the public interest, the DOT decisionmaker may enter exemption orders on his or her own initiative.

§ 302.410 Emergency exemptions.

(a) *Applicability.* Where required by the circumstances and the public interest, the Department may, upon request or upon its own initiative, enter exemption orders pursuant to section 101(3) or section 416(b) of the Act or deny applications therefor, upon less than the normal period provided for filing answers (§ 302.406) and replies thereto (§ 302.407) and upon no notice. In particular proceedings the DOT decisionmaker may specify a lesser time within which answers and replies thereto may be filed and notify interested persons of this time period. Where the public interest so requires, the DOT decisionmaker may act without awaiting the filing of answers or replies thereto.

(b)(1) *Applications.* Applications for emergency exemption need not conform to the requirements of Subparts A and D of this part except that they must be in writing and must set forth, with detailed facts and evidence in support thereof, the grounds on which the exemption is requested. In addition, any applicant requesting such action shall state the reasons it deems adequate to justify departure from the normal procedures and shall state which air carriers have been notified in accordance with paragraph (c) of this section. The DOT decisionmaker, moreover, may require additional information from any applicant before acting on the application.

(2) The DOT decisionmaker, shall consider oral requests, including telephonic requests, for emergency exemption authority under this section in circumstances where time does not permit the immediate filing of a written application. All oral requests, however, must provide the information required by paragraph (b)(1) of this section, except that evidence in support thereof need not be tendered at the time such request is made. All oral requests must be confirmed by written application within three (3) days.

(c) *Notice.* Except where the DOT decisionmaker consents that no notice need be given, applicants for emergency exemption shall notify any air carrier

which is authorized to render route-type service between points or areas involved in the application that such request has been filed. Such notification shall be made in the same manner of communication, contain the same information, and be dispatched at the same time, as the application made with the Department.

Subpart E—Rules Applicable to Proceedings with Respect to Rates, Fares and Charges

§ 302.500 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT.

§ 302.501 Institution of proceedings.

A proceeding to determine rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by DOT.

§ 302.502 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the carrier against whose tariff provision the petition or complaint is filed.

§ 302.503 Dismissal of petition or complaint.

If DOT is of the opinion that a petition or complaint does not state facts which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.504 Order of investigation.

The Department on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and assigning the proceeding for hearing before an administrative law judge. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.505 Complaints requesting suspension of tariffs—answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 1002(j) of the Act shall fully identify the tariff and include reference (1) to the issued or posting date, (2) to the effective date, (3) to the name of the publishing carrier or agent, (4) to the DOT number, and (5) to specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 1002(j) of the Act, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by complainant, and within the time limits herein provided, a telegraphic complaint may be sent to the Department and to the carrier against whose tariff provision the complaint is made. Such a telegraphic complaint shall state the grounds relied upon, and must immediately be confirmed by complaint filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

(Secs. 204, 403, 404, 1002 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, 765, and 788, as amended (5 U.S.C. 553); secs. 204, 403, 1002; 72 Stat. 743, 758, 788 (49 U.S.C. 1324, 1373, 1482, as amended))

§ 302.506 Burden of going forward with the evidence.

At any hearing involving a change in a rate, fare, or charge for the transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rate fare, or charge, the burden of going forward with the evidence shall be upon the person proposing such change to show that the proposed changed rate, fare, charge, classification, rule, regulation or practice is just and reasonable, and not otherwise unlawful.

§ 302.508 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to § 302.505, with respect to tariffs which do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for DOT, in which event the period for filing shall be extended to the next successive day which is neither a Saturday, Sunday, nor holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.16.

Subpart F—[Reserved]

Subpart G—Rules Applicable to Adequacy of Service Petitions

§ 302.700 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to the adequacy of the service, equipment and facilities provided by a certificated air carrier at a duly authorized point. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations, and orders of the Department.

§ 302.701 Institution of proceedings.

A proceeding to determine the adequacy of the service, equipment and facilities being provided by a certificated air carrier at a duly authorized point may be instituted by the filing of a petition or complaint, or by the issuance of an order by the Department on its own initiative pursuant to section 1002 of the Act.

§ 302.702 Contents of petition.

If a petition or complaint is filed, it shall state the reason why the service, equipment or facilities complained of are inadequate and shall support such reasons with a full factual analysis. Within fifteen (15) days after the date of service of a petition or complaint, the respondent may file an answer thereto.

§ 302.703 Parties to the proceeding.

The parties to the proceeding shall be the person filing the petition or complaint, the air carrier or carriers whose service is being challenged, bureau counsel and any other person

whom the Department permits to intervene.

§ 302.704 Action on petition or complaint.

If the Department is of the opinion that a petition or complaint does not state facts which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing. If the air carrier complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, the Department shall investigate the matter complained of.

§ 302.705 Hearing.

In the event a hearing is ordered by the Department, Subpart A of this part shall govern the proceeding.

Subpart H—[Reserved]

Subpart I—Rules Applicable to Route Proceedings under Sections 401 and 402 of the Act

General Provisions

§ 302.901 Applicability.

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules (Parts 201 and 211 for the form of applications) and orders of DOT.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 768, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

Applications for Route Authority

§ 302.909 Renewal of fixed-term route authorizations granted by exemption.

(a) *Form of application.* An application for certificate authority to replace a fixed-term route authorization granted by exemption, filed pursuant to § 399.18 of this chapter, shall in all respects comply with the requirements of this part and of Part 201 of the Economic Regulations, except that the applicant shall additionally submit therewith exhibits which, in its judgment, establish a prima facie case for the relief requested, including a summary of the results of operations under the exemption and a forecast for the year immediately following its expiration.

(b) *Interim extension of exemption pending DOT action upon certificate application; application therefor.* If the applicant desires to avail himself of the provisions of the last sentence of section 9(b) of the Administrative Procedure Act (5 U.S.C. 558(c)) he shall incorporate in the application a request for extension of the exemption authorization pending determination of the certificate application, with a statement that he invokes the automatic extension provision of section 9(b) of the Administrative Procedure Act. Failure on the part of the applicant to incorporate such a request will be construed as a waiver of his rights under the cited provision of the Administrative Procedure Act. (See § 377.10(c) of this chapter.) The caption of the application shall indicate whether or not it asks for both certificate authorization and extension of the exemption authorization.

Initiation of Route Proceedings

§ 302.915 Initiation of route proceedings by DOT order.

(a) *Purpose and policy.* The purpose of this section is to establish a procedure for the initiation of proceedings involving particular routes or geographic areas, in addition to existing procedures under Subpart A, so that the Department may select the one best suited to the efficient and expeditious disposition of route proceedings.

(b) *Order instituting proceedings.* The Department may initiate a route proceeding by issuing an order of investigation or an order to show cause which, respectively, defines the scope of the issues in the proceeding, or consolidates pending applications and proceedings for simultaneous hearing, or institutes investigations under section 401(g) or 402(f) of the Act directed to the amendment of outstanding certificates of public convenience and necessity and foreign air carrier permits, and specifies other matters included in the proceeding.

(c) *Pleadings in response to Department order instituting proceedings.* Any person having a substantial interest may respond to the Department's order instituting a proceeding by filing with the Department a written answer, or a motion pursuant to § 302.12, or both, within the period of time specified in said order. Such answer or motion shall set forth all objections and proposals which such persons may have with respect to the geographic scope of the proceeding or the scope of the issues, as respectively defined in such order. Such answer or motion shall be in lieu of petitions for reconsideration of said order under § 302.37. Any such objection or proposal which is not set forth in such answer or motion shall be deemed to have been waived. Any person who fails to file a timely answer or motion in response to the Department's order shall also be deemed to have waived his right to have his own application consolidated or contemporaneously considered with those falling within the geographic scope of the proceeding or the scope of the issues therein, as respectively defined in said order: *Provided, however,* That where any further order of the Department adds to the geographic scope of a proceeding or the scope of the issues therein beyond that defined in the Department's order instituting such proceeding, failure to file an answer or motion addressed to the Department's first order shall not preclude the filing of a petition under § 302.37, or of a motion under § 302.12, addressed exclusively to the additional scope or issues.

(d) *Answers to motions.* Answers in support of or in opposition to motions as mentioned in paragraph (c) of this section may be filed within seven (7) days after service of such motions or within such other period as may be specified in the Department's order.

Conduct of Route Proceedings

§ 302.930 Evidence in route proceedings.

Route authority not specifically applied for. Applicants for certificate authority under section 401 of the Act may not introduce, in support of awards to them of such authority, evidence that does not support service to the points, routes, or areas specifically described in their applications.

Subpart J—Rules Applicable to Proceedings Involving Charter Air Carriers

§ 302.1001 Applicability.

This subpart sets forth procedural rules specifically applicable to certain proceedings involving charter air carriers. For information as to other applicable rules, reference should be made to Subparts A and B of this part, to the Federal Aviation Act of 1958, as amended, and to the substantive rules and orders of the Department. See especially Part 208 of this chapter (Economic Regulations).

§ 302.1002 Definition.

As used in this part, "charter air carrier" means a person holding operating authority issued pursuant to section 401(d)(3) or 417 of the Federal Aviation Act of 1958, as amended.

Immediate Suspension of Operating Authority

§ 302.1011 Rules governing proceedings.

Proceedings for suspension, modification or revocation of a charter air carrier certificate pursuant to section 401(n)(5) of the Act, or of special operating authorizations issued pursuant to section 417 of the Act, shall be governed by §§ 302.1012 to 302.1017 and, as to matters not provided for in said sections, by Subparts A and B of this part.

Note: Secs. 302.1012 to 302.1017 do not apply to proceedings for modification, suspension or revocation not initiated under, or by reference to, the provisions of section 401(n)(5) of the Act.

§ 302.1012 Order of suspension.

In any case in which the Department determines that the failure of a charter air carrier to comply with the provisions of paragraphs (q) or (r) of section 401(n) of the Act or regulations or orders of the Department thereunder requires, in the interest of the rights, welfare or safety of the public immediate suspension of such carrier's certificate or other operating authority as the case may be, the Department will issue, without notice or hearing, an order of suspension which will set forth:

(a) The duration of the suspension, which initially will be for not more than 30 days;

(b) The specific provision or provisions of section 401 (q) or (r), or of the regulations or orders of the Department thereunder with which the carrier has failed to comply together with the manner of such failure;

(c) A determination that such failure requires the immediate suspension, in whole or in part as the case may be, of the carrier's operating authority in the interest of the rights, welfare, or safety of the public;

(d) A statement that the order shall constitute a complaint instituting a formal economic proceeding on which a hearing shall be held to determine whether the charter air carrier's operating authority should be modified, suspended or revoked;

(e) A statement as to which attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings is to be made a party to the proceeding.

§ 302.1013 Answer of carrier.

(a) *Time for filing, and contents.* Within 7 days of service of the order of suspension, the carrier may file and serve on all parties an answer to the order of suspension. No objections or affirmative defenses not plainly raised in the answer may be raised subsequently in the proceeding, except if based on grounds of newly discovered evidence or supervening events. Late filing of an answer shall be permitted only for good cause shown.

(b) *Failure to file an answer.* In case of the carrier's failure to file and serve an answer to the order within the time and in the manner prescribed, the right to all further procedural steps before final decision, including hearing, briefs, and recommended and tentative decisions, shall be deemed waived, and the Department will proceed immediately to disposition of the case.

§ 302.1014 Motions.

(a) *Motions for termination of suspension and/or proceeding.* (1) The charter air carrier may at any time file and serve on all parties to the proceeding, a motion addressed to the Department asking that the suspension be lifted, on the ground (i) that suspension, pending completion of the proceeding, is not required in the interest of the rights, welfare or safety of the public; or (ii) that the carrier has come into compliance with the provision or provisions with which it had failed to comply. Such motions may be combined with a motion to terminate the proceeding. Such motions shall be made in lieu of petitions for reconsideration of the Department's initial order, or of motions to dismiss.

(2) Motions made pursuant to paragraph (a)(1) of this section will be submitted to the DOT decisionmaker for determination. The DOT decisionmaker may grant motions for termination of suspension in proper cases without waiting for expiration of the time for answers but parties may submit informal written or telegraphic statements of position on such motions which will be considered if received prior to DOT action. Such communications need not be served separately but shall be copied in full in a timely answer filed and served pursuant to the provisions of this part.

(b) *Motions directed to pleadings.* No motion for more definite statement shall be made but the substance thereof may be stated in the answer. The administrative law judge may permit or require a more definite statement or other amendment to any pleading at the hearing upon just and reasonable terms.

(c) *Motions for extension of time.* Substantial extensions of procedural dates shall be granted only when required in the interest of justice, unless the respondent air carrier stipulates that it will refrain from operating the suspended service until the Department's adjudication on the merits of the proceedings becomes final even though the Department has exhausted its emergency suspension power. The filing of motions for extension shall not operate to excuse failure of timely compliance with any procedural requirement.

(d) *Other motions.* The provisions of § 302.18 shall govern the above mentioned motions in respects not provided for in this section, and shall govern any other motions, except that answers to written motions shall be filed and served within 5 days of service of such motions.

§ 302.1015 Additional suspension.

Pending the completion of proceedings hereunder, the Department, upon motion or its own initiative, may further extend the period of suspension of the charter carrier's operating authority for an additional period or periods aggregating not more than 60 days.

§ 302.1016 Accelerated hearing.

The administrative law judge shall set the date of hearing not later than 15 days after the issuance of the DOT decisionmaker's suspension order. He may postpone the date of the hearing, or grant continuations of the hearing, only to the extent necessary in the interest of justice. The administrative law judge shall urgently expedite the proceeding and shall fix all procedural dates on the basis of maximum acceleration consistent with justice. Proposed findings and conclusions and supporting reasons shall be stated orally on the record. The delegation of § 302.27(a) shall not be applicable and the administrative law judge shall, upon termination of the hearing, make his initial decision orally on the record. Requests for a written initial decision may be granted on the same condition as substantial extensions of procedural dates (§ 302.1014(c)).

§ 302.1017 Final decision.

The parties may appeal from the initial decision by filing with the Department and serving upon all other parties a notice of appeal within two days after the rendering of the initial decision if it is made orally, or the service of a written initial decision, as the case may be. No exceptions shall be filed but within 10 days of the notice of appeal each party may file one brief (§ 302.31(c)) with the Department. The DOT decisionmaker will give three days' notice of oral argument, where granted. If no notice of appeal is filed, or if no brief is filed by the party or parties having filed a notice of appeal, within the times herein provided, the initial

decision shall without further proceedings become the final decision of the Department five days after expiration of the time for filing notice of appeal or brief, as the case may be unless the DOT decisionmaker has issued an order to review upon his or her own initiative.

Special Operating Authorizations

§ 302.1020 Application for special operating authorization.

(a) Any charter air carrier whose certificate is currently effective may file with the Department an application for special operating authorization under section 417 of the Act.

(b) The application shall identify the pair of points for which an authorization to provide service is requested and shall contain a detailed statement of the fact, relied upon to establish that the additional service is temporarily required in the public interest and can be provided by the applicant.

(c) The application shall specify:

(1) The type of service for which authority is requested (i.e., transportation of persons, property, and/or mail);

(2) The airports to be used;

(3) The number, type and capacity of aircraft to be used;

(4) The proposed frequency and time of flights;

(5) The inclusive dates of the proposed service, not to exceed a period of 30 days;

(6) The fares or rates to be charged; and

(7) The names of all air carriers (if any) certificated to provide scheduled service at any of the points involved.

(d) The application shall be accompanied by a statement of economic data or other matters that the applicant desires the Department to officially note, and affidavits establishing such other facts as the applicant wishes the Department to rely upon. The application and accompanying statement shall be verified by a person or persons having personal knowledge of the facts stated therein. It shall comply with the formal requirements of §§ 302.3 and 302.4.

§ 302.1021 Filing and service of application.

The application shall be filed not less than 30 days before the requested effective date thereof unless good cause for late filing is shown. Such applications shall be served upon all air carriers certificated to provide service at any of the points involved, and on such other persons as the Department may require, and proof of service shall accompany the application as provided in § 302.8.

§ 302.1022 Answer.

(a) Any air carrier certificated to provide service at any of the points involved may file, and serve on the applicant, an answer in protest within 10 days after the filing of the application or within such shorter time as the Board may fix by written or telegraphic notice.

(b) The answer shall contain a detailed statement of the facts relied upon to controvert any pertinent allegations of the application and shall be accompanied by a statement of economic data or other matters that the carrier desires the Department to officially note, and affidavits establishing such other facts as the respondent wishes the Department to rely upon. The answer shall be verified by a person or persons having personal knowledge of the facts stated therein.

(c) If the opposing carrier desires oral argument it shall include a request therefor in its answer.

§ 302.1023 Memoranda of interested persons.

Any interested person, other than an air carrier entitled to answer, may file a memorandum in support of, or in opposition to, an application for special authorization within the time permitted for the filing of answers. Such memoranda shall be verified by persons having personal knowledge of the facts stated therein.

§ 302.1024 Oral argument.

Requests for oral argument shall be filed no later than three days after the date permitted for the filing of answers. Oral argument will be granted only upon a showing that it will be in the interest of justice and will not unduly delay issuance of the special operating authorizations, taking into account the degree of emergency involved.

§ 302.1025 Issuance of special authorization.

If the Department finds that the application is duly filed and the statutory requirements are fulfilled, it may issue a special operating authorization to engage in air transportation between the respective points for a period not to exceed 30 days. The Department will attach such limitations and requirements to the authorization as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist without significant diversion of traffic from the holders of certificates for the route.

§ 302.1026 Issuance of special authorization on the Department's initiative.

The Department may, on its own initiative, issue to any charter air carrier a special operating authorization in accordance with § 302.1025.

§ 302.1027 Extension of authorization.

(a) The Department may extend a special operating authorization for an additional period or periods aggregating not more than 60 days upon its own initiative or upon the request of the charter air carrier.

(b) A request for extension shall be filed not later than 15 days before the expiration of the existing authorization and shall set forth facts to establish the continuing need for the service, updating the information required by § 302.1020, and a description of the services actually performed pursuant to the authorization. It shall be verified by a person having personal knowledge of the facts stated therein and shall be served upon all parties to the original authorization proceeding.

Note: Section 417(b)(3) of the Act provides in effect that the filing of an application for extension does not automatically extend the authorization. If the Department has not acted on the application by the time of expiration of the authorization, operations thereunder must cease.

(c) Any air carrier which is certificated to provide service at any of the points involved may file, and serve on the applicant, an answer in protest within 5 days after the filing of the request. Such answers shall be verified by persons having personal knowledge of the facts therein.

(d) Any interested person, other than an air carrier entitled to answer, may file a memorandum in support of or in opposition to the extension. Such memoranda shall be verified by persons having personal knowledge of the facts therein.

Subpart K–N—[Reserved]

Subpart O—Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation

Authority: Secs. 2, 204, 84 Stat. 772, 72 Stat. 743; 39 U.S.C. 5402, 49 U.S.C. 1324.

§ 302.1501 Applicability.

This subpart sets forth the rules applicable to certain contractual arrangements between the Postal Service and certificated air carriers for the transportation of mail by air entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772. Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than 5 percent, based on weight, of the international mail transported under any such contract may consist of letter mail. Any such contract is required by the statute to be filed with the Department not later than 90 days before its effective date, and unless the Department disapproves the contract not later than 10 days prior to its effective date, the contract automatically becomes effective.

§ 302.1502 Filing.

Any air carrier which is a party to a contract to which this subpart is applicable shall file eight copies of the contract in the Documentary Services Division, Department of Transportation, Washington, D.C. 20590, not later than 90 days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in § 302.1504 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the Secretary or other duly authorized officer of the filing carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§ 302.1503 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent:

(a) Estimates of the costs of performing the contract, and an explanation of the basis for the estimates which clearly sets forth the methodology involved in the assignment of direct and all allocated costs and the investment related thereto (including, where available and relevant, data as to costs of performing past contracts for the transportation of mail by air);

(b) Estimates of the effect of the contract upon such carrier's revenues, and an explanation of the basis for the estimates (including, where available and relevant, data as to effects upon revenues resulting from past contracts for the transportation of mail by air); and

(c) Estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§ 302.1504 Service.

A copy of each contract filed pursuant to § 302.1502, and a copy of all material and data filed pursuant to § 302.1503, shall be served upon each of the following persons:

(a) Each certified route air carrier, other than the contracting carrier, which is authorized to carry mail between any pair of points between which mail is to be transported pursuant to the contract;

(b) Each commuter air carrier (as defined in § 298.2 of Part 298 of this chapter) which serves between any pair of points between which mail is to be transported pursuant to the contract; and

(c) The Assistant General Counsel, Transportation, U.S. Postal Service, Washington, D.C. 20260.

§ 302.1505 Complaints.

Within 15 days of the filing of a contract, any interested person may file with the Department a complaint against the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to § 302.1504.

§ 302.1506 Answers to complaints.

Answers to the complaint may be filed within 10 days of the filing of the complaint, with service being made as provided in § 302.1505.

§ 302.1507 Further procedures.

(a) In any case where a complaint is filed, the Department shall issue either an order dismissing the complaint, or an order disapproving the contract, or such other order as may be appropriate. Any such order shall be issued not later than 10 days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the Department may issue an order directing the parties to the contract to show cause why the contract should not be disapproved, or such other order as may be appropriate. Unless otherwise specified by the Department, written answer to the order and supporting document shall be filed within 10 days of the date of service of the order to show cause. A final order containing the Department's determination as to whether the contract should be disapproved, shall be issued not later than 10 days prior to the effective date of the contract.

§ 302.1508 Petitions for reconsideration.

Except in the case of a Board determination to disapprove a contract, no petitions for reconsideration of any DOT determination pursuant to this subpart shall be entertained.

Subpart P—[Reserved]

Subpart Q—Expedited Procedures for Processing Licensing Cases

Authority: Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743,-754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 et seq., unless otherwise noted.

§ 302.1701 Applicability.

This subpart sets forth the rules applicable to proceedings on

(a) Applications for certificates of public convenience and necessity and renewals, amendments, modifications, suspensions and transfers of certificates under sections 401(d)(1), 401(d)(2), 401(d)(3), 401(g), and 401(h) of the Act;

(b) Applications under section 401(e)(7)(B) of the Act for the removal or modification of a term, condition, or limitation attached to a certificate; and

(c) Applications for foreign air carrier permits, and renewals, alterations, amendments, modifications, suspensions, and transfers of such permits under sections 402(c) and 402(f) of the Act.

§ 302.1702 Subpart A governs.

Except as modified by this Subpart, the provisions of Subpart A of this part continue to apply.

§ 302.1703 Filing of applications.

Any person may file an application of the type described in § 302.1701. Applications for foreign air carrier permits shall be filed as specified in § 211.2 of this chapter. The Department will publish in the **Federal Register** a weekly list of applications filed under this subpart.

§ 302.1704 Contents of applications.

(a) Applications under this subpart (including applications filed under § 302.1720(c) or conforming applications filed under § 302.1720(e) or § 302.1730(c)) shall indicate on the cover page how the applicant proposes that its application be processed (See § 302.1750). Certificate applications shall contain the information required by Part 201 of this chapter and foreign air carrier permit applications shall contain the information required by Part 211 of this chapter. Applications shall also include:

(1) A statement of economic data and other matters that the applicant desires the Department to notice officially;

(2) Written evidence establishing the facts that the applicant relies on to establish its fitness and to show that the grant of the relief requested is consistent with or required by the public convenience and necessity, or is in the public interest, as applicable; and

(3) The applicant's opening argument.

(b) Each application shall be accompanied by an Environmental Evaluation in conformity with Parts 312 and 313 of this chapter unless a waiver or exemption has been granted under § 312.6.

(c) Later filed competing applications shall conform to the base and forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) Applications shall include a list of the names and addresses of all persons that have been served.

§ 302.1705 Service of documents.

(a) *General requirements.*

(1) In certificate proceedings involving applications under section 401(g), 401(h), and 401(e)(7)(B) of the Act, all documents filed before the issuance of the order establishing further procedures (§ 302.1750) shall be served on the persons listed in paragraph (b) of this section for each point that is actually affected by the application, and on any other person who has filed a pleading in the docket.

(2) In certificate proceedings under section 401 of the Act involving the provision of cargo-only air service within the States of Alaska or Hawaii or foreign air transportation, all documents filed before the issuance of the order establishing further procedures (§ 302.1750) shall be served on the persons listed in paragraph (b) of this section for each point listed in the carrier's application or certificate, and on any other person who has filed a pleading in the docket.

(3) After the order establishing further procedures under § 302.1750 has been issued, documents need only be served on the persons listed in the service list accompanying the order.

(4) In foreign air carrier permit proceedings described in § 302.1701(c), applicants shall serve on the persons listed in paragraph (b) of this section and the U.S. Department of State a notice that such application has been filed and, upon request, shall promptly provide those persons with copies of the actual documents. All later documents shall be served on any person that has filed a pleading in the docket.

(b) *Persons to be served.* Documents shall be served for each point as described in paragraph (a) of this section, on the following persons:

(1) All air carriers certificated under section 401 of the Act and authorized to engage in the type of air transportation (scheduled or charter) applied for at one or more of the points;

(2) All other air carriers operating at least five flights per week to or from one of the points according to the "Official Airline Guide";

(3) The aviation regulatory agency of the State, territory or possession of the United States in which the point is located or, if there is no aviation regulatory agency, the Governor or other chief executive of the State, territory, or possession;

(4) The mayor or other chief executive of each city involved;

(5) The airport authority of each airport that the applicant proposes to serve; and

(6) In the case of an application sought to be consolidated, all persons served by the original applicant.

(c) *Additional service.* The Department may, in its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible.

(Secs. 204, 402, 1001, of the Federal Aviation Act as amended, 72 Stat. 743, 757, 788, 92 Stat. 1723, (49 U.S.C. 1324, 1372, 1481), Administrative Procedure Act, (5 U.S.C. 551 *et seq.*)

§ 302.1706 Computation of time.

All time periods prescribed in this subpart are stated in terms of calendar days. Intermediate Saturdays, Sundays and holidays shall be included in the computation. In all other respects, § 302.16 applies.

§ 302.1707 Verification.

The facts asserted in any pleading filed under this subpart shall be attested to by persons having knowledge of them and this attestation shall be stated in an affidavit in support of the pleading. Such persons shall be those who will appear as witnesses to substantiate the facts asserted if an oral hearing becomes necessary.

§ 302.1708 Joint pleadings.

Parties having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.1709 Definition of parties.

Notwithstanding the provisions of §§ 302.14 and 302.15, any person may participate in proceedings under this subpart. Petitions for leave to intervene are not required. Any person may become a party by filing a pleading in the docket before the issuance of the order establishing further procedures.

§ 302.1710 Economic data and other facts.

Whenever economic data and other facts are provided, such information shall include enough detail so that final results can be obtained, without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.1711 Continuances and extensions of time.

The procedures described in § 302.17 will apply to proceedings under this subpart. The filing deadlines in certificate proceedings will be strictly enforced and extensions will be granted only in extraordinary circumstances. Extensions in foreign air carrier permit cases will be granted for good cause shown.

§ 302.1712 Oral presentation; initial or recommended decision.

(a) *Cases to be decided on written submissions.* Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required.

(b) *Petitions for oral presentation or judge's decision.* Any party may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.1770 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs, including an estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision; and

(3) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(c) *Time for filing petitions.* Petitions for an oral hearing, oral argument, or a judge's decision shall be filed as soon as practicable, but in no event later than: (1) 52 days after the filing of the original application in proceedings governed by § 302.1720; (2) 35 days after the filing of the original application in proceedings governed by § 302.1730; and (3) 14 days after the due date for answers in proceedings governed by § 302.1740.

(d) *Stipulations.* Where a stipulation of disputed facts would eliminate the need for an oral presentation or judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.1713 Preliminary procedures for rejection or deferral of nonconforming applications.

Within 21 days after the filing of any application under this subpart (including an application which is sought to be consolidated or a conforming application), the DOT decisionmaker may, on behalf of the Department, (a) reject any application that does not comply with this subpart, or (b) defer further processing of the application until information necessary to process the application is submitted. Applications will not be processed, and the time periods contained in this subpart shall not begin to run, until the application is complete. In addition, the DOT decisionmaker may, on behalf of the Department, defer action on a foreign air carrier permit application for foreign policy reasons. Petitions for review of the staff action taken under this section may be filed in accordance with Subpart C of Part 385 of this chapter.

§ 302.1720 Procedures in certificate cases.

(a) *Applicability.* This section applies to the certificate cases described in § 302.1701(a).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person that wishes to support or oppose the application must file an answer indicating briefly that person's position, and serve that answer on all persons served with the application. The notice shall also state the due date for answers.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application filed under § 302.1701(a). Requests to modify the issues to be decided and to consolidate applications filed in other dockets, shall be filed as a "motion to modify scope." Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within 28 days after the original application is filed.

(d) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Answers to the original application shall be filed within 28 days after the filing of the original application. Answers to applications filed in accordance with paragraph (c) of this section shall be filed within 42 days after the filing of the original application.

(e) *Answers to motions to modify scope.* Any person may file an answer to a motion to modify scope within 42 days after the filing of the original application. Answers shall set forth the basis for the support of or opposition to the motion, including any economic data or other facts relied on. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and include the information prescribed in § 302.1704. Answers and applications shall not, however, propose the consideration of additional markets.

(f) *Order establishing further procedures.* Within 90 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1730 Procedures in restriction removal cases.

(a) *Applicability.* This section applies to the certificate cases described in § 302.1701(b).

(b) *Applications.* Each application to which this section applies shall be limited to a single city-pair market or a single restriction unless a waiver of this requirement has first been obtained under § 302.1790. All restriction removal applications (including conforming applications under paragraph (c) of this section) shall include a notice on the cover page that any person wishing to support or oppose the application must file an answer briefly describing its position, and serve a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Any application that does not conform with this paragraph will be rejected unless a waiver has been granted before the application is filed.

(c) *Conforming applications.* The issues in any proceeding under this section will be limited to those raised in the original application. Motions to modify the scope of the proceeding will not be entertained. Any person may file an application conforming to the scope of the proceeding within 14 days after the filing of the original application. Conforming applications are automatically consolidated. Nonconforming applications will be rejected under § 302.1713.

(d) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers to the original application shall be filed within 14 days after the filing of that application. Answers to conforming applications shall be filed within 28 days after the filing of the original application.

(e) *Order establishing further procedures.* Within 60 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1740 Procedures in foreign air carrier permit cases.

(a) *Applicability.* This section applies to the foreign air carrier permit cases described in § 302.1701(c).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Time limits shall be calculated from the date of filing with the Documentary Services Division. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall be filed within 28 days after the filing of the application and shall include any economic data, other facts, and argument upon which the person relies to support its position.

(d) *Executive departments.* The views of the Department of State and the Federal Aviation Administration's evaluation of the applicant's operational fitness shall be filed not later than the due date for answers to applications.

(e) *Order establishing further procedures.* As soon as possible after the date that answers are due, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1750 Disposition of applications—Orders establishing further procedures.

(a) *General requirements.* Within the time limits established in § 302.1720(f), § 302.1730(e), or § 302.1740(e), as applicable, the DOT decisionmaker will issue an order establishing further procedures in each case. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the office of the Assistant General Counsel for Aviation Enforcement and proceedings will participate as a party. With respect to all or any portion of each application, the DOT decisionmaker will take one of the following actions:

(1) Set the application for oral evidentiary hearing. In this event, all of the procedures set forth in §§ 302.1751 through 302.1755 will apply unless the DOT decisionmakers decides otherwise. The DOT decisionmaker may limit the scope of the issues to be decided in an oral evidentiary hearing. In that event, the procedures set forth in §§ 302.1751 through 302.1755 will apply to the oral evidentiary hearing phase of the case, and the DOT decisionmaker will indicate what procedures will be employed in deciding the other issues in the case.

(2) Dismiss the application. This action constitutes a final DOT order subject to judicial review. Petitions for reconsideration of such an order will be entertained. This option will not be used in restriction removal cases under § 302.1730.

(3) Announce that the Department has begun to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker will indicate which, if any, of the procedural steps set forth in §§ 302.1752 through 302.1756 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(4) Announce that the Department will decide the case by show cause procedures or issue an Order to Show Cause why the application should not be granted.

(b) *Additional evidence.* The order establishing further procedures may provide for the filing of additional evidence.

(c) *Petitions for reconsideration of an order establishing further procedures.* Petitions for reconsideration of an order establishing further procedures will not be entertained except to the extent that the order dismissed all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in § 302.1757 will be calculated from the date of the order reinstating the application.

§ 302.1751 Oral evidentiary hearing.

If the Department determines under § 302.1750(a) that an oral evidentiary hearing should be held, the application or applications will be set promptly for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures.

§ 302.1752 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) 14 days after the close of the oral evidentiary hearing established under § 302.1750(a)(1), unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) 14 days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the Department determines that some other period should be allowed.

§ 302.1753 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under § 302.1750(a)(1), the administrative law judge shall issue an initial or recommended decision within 150 days after the issuance of the order establishing further procedures unless:

(1) The Department, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than 30 days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under § 302.1750(a)(1), the administrative law judge shall issue an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) Unless exceptions are filed under § 302.1754 or the DOT decisionmaker issues an order to review on its own initiative, an initial decision shall become effective as the final order of DOT 30 days after it is served. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of § 302.27 shall be applicable.

§ 302.1754 Exceptions to administrative law judge's initial or recommended decision

(a) *Time for filing.* Within 14 days after service of any initial or recommended decision of an administrative law judge, any party may file exceptions to the decision with the Department.

(b) *Form and content of exception.* Exceptions shall comply with § 302.30(b).

(c) *Effect of failure to file timely and adequate exceptions.* The provisions of § 302.30(c) shall apply.

(d) *Review is automatic.* If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

§ 302.1755 Briefs before the Department.

The provisions of § 302.31 shall apply to briefs to the DOT decisionmaker, except that:

(a) In a case in which an initial or recommended decision has been issued and exceptions have been filed, any party may file a brief to the DOT decisionmaker in support of or in opposition to any exceptions. Such briefs shall be filed within 21 days after service of the initial or recommended decision.

(b) In a case in which in initial or recommended decision has been issued and no exceptions have been filed, briefs to the DOT decisionmaker shall not be filed unless the DOT decisionmaker has taken review on his or her own initiative and specifically provided for the filing of briefs to the DOT decisionmaker.

(c) In a case in which an initial or recommended decision will not be issued, briefs to the DOT decisionmaker may be filed only if specifically provided for in the order establishing further procedures, and only upon the issues specified in that order. Such briefs may be filed by any party within 21 days after the service date of the order establishing further procedures, unless that order established a different due date.

§ 302.1756 Oral argument before the DOT decisionmaker.

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be advised of the date and hour set for that argument and the amount of time allowed each party. The provisions of § 302.32(b) shall also apply.

§ 302.1757 Final decision of the Department.

In addition to the provisions of § 302.36, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under § 302.1750(a)(1), DOT will issue its final order within 90 days after the initial or recommended decision is issued. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section in the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President under section 801 of the Act.

(c) In the case of a certificate application that has been processed under § 302.1750(a)(3) or (4), the Department will issue its final order within 180 days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

§ 302.1758 Petitions for reconsideration.

The provisions of § 302.37 shall apply to petitions for reconsideration.

§ 302.1760 Internal procedures.

(a) In deciding which of the procedures set forth in § 302.1750 will be used for each case under this subpart, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Operations. That recommendation will be coordinated with the General Counsel and the Chief Administrative Law Judge, or their designees. If there is disagreement in that group, separate recommendations will be promptly submitted to the extent necessary to reflect their views.

(b) In deciding each case under this subpart on the merits, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Operations, and the Assistant General Counsel for International Law. If there is disagreement among these employees, separate recommendations will be promptly submitted to the extent necessary to reflect those views.

§ 302.1770 Criteria for use of oral evidentiary hearing procedures and assignment of a case to an administrative law judge.

The Department will assign applications made under §§ 302.1701, 302.1720 (c) and (e), 302.1730(c) and 302.1740 for consideration under the expedited procedures of this subpart and order the record presented directly to the DOT decisionmaker for final decision unless it determines that:

(a) Use of expedited procedures will prejudice a party;

(b) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(c) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

§ 302.1780 Standards for deciding cases in which expedited, simplified procedures are employed.

The standards employed in deciding cases under § 302.1750(a)(3) or (4) shall be the same as the standards applied in cases decided under § 302.1750(a)(1). These are the standards set forth in the Federal Aviation Act of 1958, as amended, as interpreted and expanded upon under the Act.

§ 302.1790 Waivers.

Upon the filing of a motion, the DOT decisionmaker or the Assistant General Counsel for International Law, as appropriate, may, on behalf of the Department, grant such waivers from the terms and limitations contained in this subpart as it shall find to be consistent with the public interest and the proper dispatch of DOT's business. Petitions for review of the staff action taken under this section may be filed in accordance with Subpart C of Part 385 of this chapter.

Appendix A—Index to Rules of Practice

ADEQUACY OF SERVICE PETITIONS.	§ 302.702
ADEQUACY OF SERVICE PROCEEDINGS	
Action on petition or complaint.	§ 302.704
Contents of complaint	§ 302.702
Contents of petition	§ 302.702
Hearing	§ 302.705
Institution of	§ 302.701
Parties	§ 302.703
ADMINISTRATIVE LAW JUDGES	
Actions after hearings	§ 302.27(b)
Arguments before	§ 302.25
Certification for decision	§ 302.22(d)
Definition	§ 302.22(a)
Delegation of authority	§ 302.27(a)
Exceptions	§ 302.27(a)
Interlocutory matters	§ 302.27(a)
Disqualification	§ 302.22(b)
Initial decision	
Answer in support or opposition.	§ 302.28(b)
Contents	§ 302.27(b)
Effect of	§ 302.27(c)
Expedited procedures—Licensing.	§ 302.1753
Incorporation by reference.	§ 302.28(a)(4)
Oral arguments	§ 302.28(a)(5)
Orders declining review.	§ 302.28(c)
Petitions for discretionary review.	§ 302.28
Scope	§ 302.27(a)
Powers	§ 302.22(c)
Prehearing report	§ 302.23(b)
Proposed findings and conclusions.	§ 302.27(b)
Recommended decision	§ 302.27(b)(1)
Expedited procedures—licensing.	§ 302.1753
Termination of authority	§ 302.22(c)
ADMISSIONS	
Enforcement proceeding	§ 302.212
Limitation on use	§ 302.212
AGREEMENTS (*see* Contracts)	
AMENDMENTS OF DOCUMENTS (*see* Documents)	
ANSWERS	
Applications for certificates.	§ 302.1720(d)
Applications for exemptions.	§ 302.406
Applications for foreign air carrier permits.	§ 302.1740(c)
Applications for restriction removal.	§ 302.1730(d)
Applications for special operating authorization.	§ 302.1022
Complaints against contract for transportation of mail by air.	§ 302.1506
Complaints concerning adequacy of service.	§ 302.702
Complaints requesting suspension of tariffs.	§ 302.505
Generally	§ 302.6

Motions, generally ..... § 302.18(c)
Motions to consolidate ..... § 302.12(c)
Notice instituting enforcement proceeding. §§ 302.207, 302.208
Orders instituting route proceedings. § 302.915(c)
Motions re orders instituting route proceedings. § 302.915(d)
Orders suspending operating authorization of charter carriers. § 302.1013
Petitions for discretionary review. § 302.28(b)
Petitions for final mail rates. § 302.303
Petitions for intervention.. § 302.15(c)(3)
Petitions for reconsideration. § 302.37a
Petitions for rule making.. § 302.38
APPEALS
Initial decision suspending charter air carriers' operating authority. § 302.1017
Law Judge's ruling..... § 302.18(f)
APPEARANCES
Generally ..... § 302.11
Application for admission to practice unnecessary. § 302.11(a)
Copy of transcript..... § 302.11(c)
Retention of counsel..... § 302.11(b)
Economic enforcement proceedings. § 302.214
APPLICATIONS
Admission to practice unnecessary. § 302.11(a)
Suspension from practicing before DOT. § 302.11(a)
Amendment..... § 302.5
Certificate authority to replace fixed-term route authorizations granted by exemption. § 302.909
Consolidation..... § 302.12
Exemptions..... §§ 302.401–405
Exemptions, emergency.... § 302.410(b), (c)
Expedited procedures—licensing. §§ 302.1703–1704, 302.1750
ARGUMENT
Before Law Judge..... § 302.25
Oral (*See* Oral Argument).
ATTENDANCE FEES AND MILEAGE. § 302.21
ATTORNEYS..... § 302.11(a), (b)
BRIEFS
Accompanying motions or answers. § 302.18(d)
Before DOT decision-makers. § 302.31
Before Law Judge..... § 302.26
Expedited procedures—licensing. §§ 302.1752, 302.1755
Failure to restate objections. § 302.31(b)
Filing time..... § 302.31(a)
Formal specifications of briefs. § 302.31(c)
Importance of thorough brief on appeal. § 302.31(b)
CERTIFICATE CASES
Expedited procedures—licensing. § 302.1720
CERTIFICATION
Documents..... § 302.4(b)
Record..... § 302.22(d), 27, 29
CHARGES (*See* Rates, Fares, and Charges)
CHARTER AIR CARRIERS—PROCEEDINGS
Additional suspension..... § 302.1015
Appeal from initial decision to suspend operating authority. § 302.1017
Final decision..... § 302.1017
Motion for termination of proceedings. § 302.1014(a)
Motion for termination of suspension. § 302.1014(a)
Order of suspension..... § 302.1012
Accelerated hearing..... § 302.1016
Answer of carrier..... § 302.1013
Rules governing proceedings. § 302.1011
CITATION OF RULES..... § 302.2
CIVIL PENALTIES..... § 302.206(a)
COMPLAINANTS—JOINDER. § 302.13
COMPLAINTS—JOINDER... § 302.13
COMPLAINTS
Adequacy of service..... §§ 302.700–705
Contracts for transportation of mail. § 302.1505
Enforcement proceedings. §§ 302.200–204
Joinder..... § 302.13
Rates, fares, and charges. §§ 302.501–508
Suspension of tariffs..... §§ 302.505–508
COMPUTATION OF TIME.. § 302.16
Expedited procedures—licensing. § 302.1706
CONSOLIDATION OF PROCEEDINGS. § 302.12
Answer to motion for..... § 302.12(c)
Enforcement proceedings. § 302.210(a)
Filing time..... § 302.12(b)
Initiation of..... § 302.12(a)
Severance of portions of application. § 302.12(d)
CONTRACTS
Transportation of mail by air. §§ 302.1501–1506
Complaint against contract. §§ 302.1505–1507
Data supporting contract. § 302.1503
Explanation of contract. § 302.1503
Filing of contract..... § 302.1502
Petition for reconsideration. § 302.1506
Service of contract..... § 302.1504
DECISIONS
Expedited procedures—licensing. §§ 302.1753–1754, 302.1757
Final..... § 302.36
Initial (*see* also Administrative Law Judge). Recommended..... § 302.27(b)(1)
Exceptions to ..... § 302.30
Suspension of charter air carrier's operating authority. § 302.1017
Tentative..... § 302.29
Exceptions to ..... § 302.30
DEFINITIONS
Administrative law judge. § 302.22(a)
Initial decision..... § 302.27(a)
Official responsibility ..... § 302.14
Private communication..... § 302.2(a)
Charter air carrier..... § 302.1002
DELEGATION OF AUTHORITY. § 302.27
DEPOSITIONS
Application by party for... § 302.20(b)
Criteria for order to issue. § 302.20(a)
Evidential status..... §§ 302.20(d), 302.20(h)
Objections to questions.... § 302.2(d)
Subscription by witness... § 302.20(e)
Who may order ..... § 302.20(e)
Written interrogatories..... § 302.20(f)
DISCRETIONARY REVIEW
Initial decisions ..... § 302.26
Answers in opposition or support. § 302.28(b)
Formal requirements ..... § 302.28(a)(3)
Grounds for ..... § 302.28(a)(2)
Orders declining review. § 302.28(c)
Oral arguments..... § 302.28(a)(5)
Petitions for..... § 302.28(a)(1)
Review proceedings..... § 302.28(d)
DISSOLUTION OF ENFORCEMENT ACTION. § 302.218
DOCUMENTS
Amendments ..... § 302.5
Leave of Department..... § 302.5
Timing of..... § 302.5
Answers (*see* Answers)....
Briefs..... § 302.3(b)
Date of..... § 302.8(b)
Dismissal..... § 302.5
Incorrect contents..... § 302.5
Power of Department..... § 302.5
Exhibits ..... § 302.4(f), (g)
Expedited procedures—licensing. § 302.1705
Filing..... § 302.3
Address..... § 302.3(a)
Date..... § 302.3(a)
Improper filing..... § 302.4e
General requirements..... § 302.4
Contents..... § 302.4(a)
Designation of person to receive service. § 302.4(c)
Signatures..... § 302.4(b)
Memoranda of opposition or support. § 302.6(c)
Number of copies..... § 302.3(c)
Objections to public disclosure. § 302.39(b)
Partial relevance of ..... § 302.24(h)
Presented at oral argument. § 302.32(b)
Proof of..... § 302.8(e)

Receipt after hearing..... § 302.24(j)
Responsive..... § 302.6
Retention..... § 302.7
Service..... § 302.8
By DOT..... § 302.8(a)(1)
By Parties..... § 302.8(a)(2)
Persons eligible for service. § 302.8(c)
Procedures ..... § 302.8(b)
Where ..... § 302.8(d)
Specifications
Printed ..... § 302.3(b)(2)
Reproductions..... § 302.3(b)(3)
Typewritten..... § 302.3(b)(1)
Table of contents..... § 302.3(d)
Unauthorized..... § 302.4(f)
ENFORCEMENT PROCEEDINGS
Complaints
Formal..... § 302.201
Informal..... § 302.200
Insufficiency of..... § 302.203
Third party ..... § 302.204
Generally ..... §§ 302.200–217
Evidence.....
Burden of going forward—hearings on a change in a rate, fare, or charge. § 302.506
Exhibits ..... § 302.24(f), (g)
Generally ..... § 302.24(b)
Objections to..... § 302.24(c)
Offers of proof ..... § 302.24(e)
Official notice ..... § 302.24(m)
Previous violations ..... § 302.216
Route proceedings..... § 302.930
EXAMINERS (*See* Administrative Law Judges)
EXCEPTIONS
Expedited procedures—licensing. § 302.1754
Law Judge's rulings..... § 302.24(d)
Recommended decisions.. § 302.30
Request for oral argument. § 302.32
Tentative decisions..... § 302.30
Waiver..... § 302.33
EXEMPTION—RENEWAL OF FIXED TERM ROUTE
Authorizations ..... § 302.909
EXEMPTION PROCEEDINGS
Application
Answers to ..... § 302.406
Contents of ..... § 302.402
Filing of ..... § 302.401
Incomplete ..... § 302.405
Posting of ..... § 302.404
Service of ..... § 302.403
Reply to answer ..... § 302.407
Emergencies ..... § 302.410
Exemption on DOT's initiative. § 302.409
Hearing request ..... § 302.408
Applicant ..... § 302.408
Opponent ..... § 302.408
EXHIBITS
Generally ..... § 302.24(f)
Records in other proceedings. § 302.24(i)
EXPEDITED PROCEDURES FOR PROCESSING LICENSING CASES. §§ 302.1701–1790
FARES (*See* Rates, Fares, and Charges)
FILING OF CONTRACTS OR AGREEMENTS REQUIRING
FILING OF DOCUMENTS... § 302.3
FINAL MAIL RATE PROCEEDINGS
Evidence..... § 302.308
Failure to raise timely material issue of fact. § 302.306
Institution of..... § 302.303
Participation by non-party persons. § 302.302
Prehearing conference and hearing. § 302.307
FOREIGN AIR CARRIER PERMIT CASES
Expedited procedures—licensing. § 302.1740
HEARINGS
Accelerated, on suspension of charter carriers' operating authority. § 302.1016
Adequacy of service..... § 302.705
Argument before Law Judge. § 302.25
Change in rate, fare, or charge. § 302.506
Consolidated (*see* Consolidation of Proceedings).
Designation of documents of partial relevance. § 302.24(h)
Enforcement proceedings. § 302.213
Evidence..... § 302.24(b), (c)
Expedited procedures—licensing. § 302.1751
Expedition of..... § 302.14(a)
Generally ..... § 302.24
Intervention ..... § 302.15
Notice..... § 302.24(a)
Offers of proof ..... § 302.24(e)
Official notice of facts in certain documents. § 302.24(m)
Participation by non parties. § 302.14(b)
Proposed findings and conclusions of party. § 302.26
Receipt of documents after hearing. § 302.24(j)
Records in other proceedings. § 302.24(i)
Request for, on application for exemption. § 302.408
Request for expedition..... § 302.14(a)
Shortened procedure ..... § 302.35
Transcripts..... § 302.24(k)(l)
INFORMAL MAIL RATE CONFERENCE
Commencement of..... § 302.321
Conditions upon participation. § 302.314
Compliance report ..... § 302.314(d)
Confidentiality..... § 302.314(a)
Signed statement..... § 302.314(b)
Data available to post office. § 302.317
Effect of conference agreements. § 302.319
Information furnished by carrier. § 302.315
Participants..... § 302.313
Post conference procedure. § 302.318
Release from certain obligations. § 302.320
Scope..... § 302.312
Staff analysis of data..... § 302.316
Termination of..... § 302.321
INITIAL DECISION (*See* Administrative Law Judge; Decisions)
INTERROGATORIES (*See* Depositions)
INTERVENTION
Generally ..... § 302.15
JOINDER OF COMPLAINTS OR COMPLAINANTS. § 302.13
JOINT PLEADINGS
Expedited procedures—licensing. § 302.1708
LAW JUDGE (*See* Administrative Law Judge)
LOCAL SERVICE CARRIER
Method for costing proposed changes in authorized operations. §§ 302.1101–1109
Aircraft depreciation expense. § 302.1106
Aircraft operating expense. § 302.1104
Compilation..... § 302.1109
Determination of expense involved in proposed operation change. § 302.1103
Prescribed cost estimates. § 302.1102
Return on investment and tax allowance. § 302.1107
Servicing expense ..... § 302.1105
MAIL TRANSPORTATION BY AIR (*See* Contracts)
MAIL RATE PROCEEDINGS. §§ 302.300–321
MEMORANDA CONCERNING APPLICATIONS BY CHARTER CARRIERS FOR SPECIAL OPERATING AUTHORIZATION. § 302.1023
MEMORANDA PERMITTED BY STATUTE AS RESPONSIVE DOCUMENTS. § 302.6(a)
MILEAGE FEES..... § 302.21
MODIFICATION OF ENFORCEMENT ACTION. § 302.218
MOTIONS (*See also* Petitions)
Answers to ..... § 302.18(c)
Appeals from rulings of law judges. § 302.18(f)
Briefs..... § 302.18(d)
Consolidation of proceedings. § 302.12
Continuances and extension of time. § 302.17
Disposition of..... § 302.18(e)
Effect of pendency..... § 302.18(g)
Expedition of case ..... § 302.14(a)

For suspension of operating authority pendente lite. § 302.217
For modification or dissolution of orders. § 302.218
Form and contents § 302.18(b)
Generally § 302.18
Oral arguments § 302.18(d)
Route proceedings, initiation of. § 302.915(c)
Substitution of parties § 302.10
Charter air carrier § 302.1014
Extension of time § 302.1014(c)
Termination of suspension of operating authorization. § 302.1014
To correct transcripts § 302.24(1)
To dismiss third party complaint. § 302.204
To disqualify DOT employee. § 302.18(a–1)
To file unauthorized documents. § 302.4(f)
To quash or modify subpena. § 302.19(f)
To whom motions addressed. § 302.18(a)
To withhold information from public disclosure. § 302.39(b), (e), (f)
NOTICE
OBJECTION TO PUBLIC DISCLOSURE OF INFORMATION. § 302.39
OFFERS OF PROOF § 302.24(e)
OFFICIAL NOTICE § 302.24(m)
ORAL ARGUMENTS
Before DOT decisionmakers. § 302.32
Filing of requests § 302.32(a)
Request for leave § 302.32(a)
Rules on documentary evidence. § 302.32(b)
Before Law Judges § 302.25
Expedited procedures—licensing. § 302.1756
Discretionary review § 302.28(a)(5)
Waivers § 302.33
ORDERS
Declining review of initial decisions. § 302.28(c)
Final § 302.36
Instituting route proceedings. § 302.915(b)
Instituting investigation of rates, fares, and charges. § 302.504
Show cause—mail rate proceedings. § 302.304
Answer § 302.305(b)
Non party memorandum. § 302.305(c)
Notice of objection § 302.305(a)
PARTIES
Adequacy of service proceedings. §§ 302.700–705
Appearances of § 302.11
Defined § 302.9
Enforcement proceedings. § 302.210
Expedited procedures—licensing. § 302.1709
Mail rate proceedings § 302.301
Substitution of § 302.10
PETITIONS
Adequacy of service § 302.702
Determination of rates, fares, or charges contents. § 302.502(a)
Dismissal § 302.503
Service § 302.502(b)
Discretionary review of initial decision. § 302.28
Waiver § 302.33
Informal mail rate conference. § 302.320
Institution of mail rate proceedings. § 302.303
Answers § 302.303(d)
Contents § 302.303(a)
Review of entire rate making unit. § 302.303(b)
Intervention § 302.15(c)
Reconsideration § 302.37
Contents § 302.37(b)
Expedited procedures—licensing. § 302.1750
Filing Time § 302.37(a)
Repetitive § 302.37(c)
Rulemaking § 302.30
Informal mail rate conference. § 302.320
Institution of mail rate proceedings. § 302.303
Answers § 302.303(d)
Contents § 302.303(a)
Review of entire rate making unit. § 302.303(b)
Intervention § 302.15(c)
Local service certificate. § 302.1306
Trunkline certificate § 302.1406
Reconsideration § 302.37
Contents § 302.37(b)
Filing time § 302.37(a)
Local service certificates. § 302.1315(d)
Repetitive § 302.37(c)
Trunkline certificates § 302.1415(d)
Rulemaking § 302.30
PREHEARING CONFERENCE. § 302.23
Economic enforcement proceeding. § 302.211
Purpose § 302.23(a)
Report of § 302.23(b)
Scope § 302.23(a)
PROCEEDINGS
Adequacy of service §§ 302.700–705
Consolidation of (*See* Consolidation) Contemporaneous Consideration (*See* Consolidation).
Economic enforcement §§ 302.200–217
Exemption §§ 302.400–410
Expedited procedures—licensing. §§ 302.1701–1700
Mail rate §§ 302.300–321
Rates, fares, and charges. §§ 302.500–508
Route §§ 302.901–930
Charter §§ 302.1001–1027
PROTESTS PERMITTED BY STATUTE AS RESPONSIVE DOCUMENTS. § 302.6(a)
PUBLIC DISCLOSURE OF INFORMATION
Generally § 302.39(a)
Objection to
By government § 302.39(d)
Documents § 302.39(b)
In proceeding before DOT. § 302.39(g)
Oral testimony § 302.39(c)
Answer § 302.207
Failure to answer § 302.302.206
Informal mail rate conference. § 302.320
Institution of mail rate proceedings. § 302.303
Answers § 302.303(d)
Contents § 302.303(a)
Review of entire rate making unit. § 302.303(b)
Intervention § 302.15(c)
Reconsideration § 302.37
Contents § 302.37(b)
Filing time § 302.37(a)
Repetitive § 302.37(c)
Rule making § 302.38
RATES, FARES, AND CHARGES—PROCEEDINGS
Burden of presenting evidence. § 302.506
Institution of § 302.501
Order of investigation § 302.504
Petition § 302.501
Contents § 302.502(a)
Dismissed § 302.503
Service § 302.502(b)
Suspension of tariffs § 302.505
Answers § 302.505
Complaints § 302.505
Time for filing complaint § 302.508
RECOMMENDED DECISIONS (*See* Decisions)
RECONSIDERATION, REHEARING, REARGUMENT (*See* Petitions for Reconsideration).
RECORD, CERTIFICATION. §§ 302.22(d), 302.27(a), 302.29(a)
REGULATIONS—EFFECTS OF REPEAL, ETC.
In Enforcement Proceedings. § 302.40
REPLIES
Answers generally § 302.6(b)
Answers to applications for exemptions. § 302.407
Answers to motions generally. § 302.18(c)
Restrictions, removal of § 302.1730
Answers to petitions for enforcement. § 302.209
REVIEW (*See* Discretionary Review)
ROUTE PROCEEDINGS
Expedited procedures §§ 302.1701–1790
Evidence § 302.930
Institution by DOT order. § 302.915
RULEMAKING PETITIONS. § 302.38
SAVING CLAUSE § 302.40

SERVICE
Generally § 302.8
SETTLEMENT OFFERS
Enforcement proceedings. § 302.215
Public disclosure § 302.215(b)
SHORTENED PROCEDURE. § 302.35
SHOW CAUSE ORDER (*See* Orders)
SPECIAL OPERATING AUTHORIZATION OF CHARTER AIR CARRIERS
Answer § 302.1022
Application § 302.1020(b), (c), (d)
Economic data statement. § 302.1020(d)
Issuance of § 302.1025
Extension of § 302.1027
On DOT's initiative § 302.1026
Memoranda of interested persons. § 302.1023
Oral argument § 302.1024
STANDARDIZED METHOD FOR COSTING PROPOSED CHANGES IN AUTHORIZED OPERATIONS OF LOCAL SERVICE CARRIERS. §§ 302.1101–1109
SUBPENAS
Easy availability of § 302.19(d)
For DOT employees § 302.19(g)
For documentary of tangible evidence. § 302.19(c)
For documentary evidence in possession of DOT or employees. § 302.19(g)
Irrelevant or unreasonable. § 302.19(d)
Issued by Law Judge § 302.19(e)
Motion to modify or quash. § 302.19(f)
Oral application for witness. § 302.19(b)
Review by DOT decisionmaker. § 302.19 (f), (g)
Service of § 302.19(f)
Staying of § 302.19(f)
SUSPENSION OF PRACTICE BEFORE DOT. § 302.11(a)
TARIFFS
Complaints requesting suspension. § 302.505
TEMPORARY RATE PROCEEDINGS. § 302.310
Fixing of temporary rates of compensation by Postmaster General. § 302.310(a)
Temporary service mail rates. § 302.310(b)
TENTATIVE DECISIONS (*See* Decisions)
TERMINOLOGY UTILIZED. § 302.2
TESTIMONY (*See* Witnesses)
TIME
Computation of
Generally § 302.16
Tariff complaints § 302.508
Continuances of § 302.17
Expedited procedures—licensing. §§ 302.1706, 302.1711
Extensions of § 302.17
VERIFICATION
Expedited procedures—licensing. § 302.1707
WAIVERS OF PROCEDURAL STEPS
Briefs § 302.33
Discretionary review of initial decisions. § 302.33
Exceptions to recommended decisions. § 302.33
Exceptions to tentative decisions. § 302.33
Expedited procedures—licensing. § 302.1790
Filing of proposed findings and conclusions. § 302.33
Oral arguments § 302.33
WITNESSES
Attendance fees and mileage. § 302.21
Cross-examination by nonparties. § 302.14(b)
Depositions § 302.20
Objections to public disclosure of testimony. § 302.39(c)
Subpenas § 302.19
VIOLATIONS—EVIDENTIAL STATUS IN ENFORCEMENT PROCEEDINGS. § 302.216

PART 305—RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS

Sec.
305.1 Applicability.
305.2 Definition.
305.3–305.4 [Reserved]
305.5 Initiation of investigation.
305.6 Appearance of witnesses.
305.7 Issuance of investigation subpenas.
305.8 [Reserved]
305.9 Rights of witnesses.
305.10 Nonpublic character of proceedings.
305.11 Procedures after investigation.
305.12 Motions to quash or modify an investigation subpena.

Authority: Secs. 202, 204, 411, 415, 1001, 1002, 1004, 1007, Pub. L. 85–726, as amended; 72 Stat. 742, 743, 770, 771, 788, 792, 796 (49 U.S.C. 1322, 1324, 1381, 1385, 1481, 1482, 1484, 1487; 5 U.S.C. 555, 556).

§ 305.1 Applicability.

The provisions of this part shall govern informal nonpublic investigations, as distinguished from formal investigations and adjudicatory proceedings, undertaken by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings with a view to obtaining information from any person. While the Department seeks and encourages voluntary cooperation and believes that it is in the best interest of all parties concerned, it will utilize the procedures provided by this part to compel the disclosure of information by any person where DOT wishes to determine whether such person, or any other person, has been or is violating any provisions of Title IV or sections 101(3), 1002, 1003, or 1108(b) of the Act, or any rule, regulation, order, certificate, permit, or letter or registration issued pursuant thereto by DOT and when the information appears to be relevant to the matter under investigation. This part shall not apply to employees or records of other agencies of the United States Government, the District of Columbia, or the several States and their political subdivisions.

§ 305.2 Definition.

For the purpose of, and as used in this part, the term "investigation" means a non-adjudicatory, informal nonpublic investigation for the purpose of determining whether formal enforcement action should be instituted with respect to alleged violations of law.

§§ 305.3—305.4 [Reserved]

§ 305.5 Initiation of investigation.

An investigation may be initiated by order of the Department. Attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings shall conduct such investigations pursuant to the provisions of this part and they shall be designated Investigation Attorneys. Investigation Attorneys and administrative law judges and the DOT decisionmaker are hereby authorized to exercise and perform their duties and functions under this part in accordance with the provisions of the Act and the rules and regulations of the Department.

§ 305.6 Appearance of witnesses.

Witnesses may be required to appear before any administrative law judge for the purpose of receiving their testimony or receiving from them documents or other data relating to any subject under investigation. Such testimony shall be mechanically or stenographically recorded, and a transcript thereof shall be made and incorporated in the record of the investigation.

§ 305.7 Issuance of investigation subpenas.

(a) Upon request of the Deputy General Counsel, the DOT decisionmaker, the chief administrative law judge or the administrative law judge designated to preside at the reception of evidence, may issue a subpena directing the person named therein to appear before a designated administrative law judge at a designated time and place to testify or to produce

documentary evidence relating to any matter under investigation, or both. Each such subpena shall briefly advise the person required to testify or submit documentary evidence of the purpose and scope of the investigation, and a copy of the order initiating the investigation shall be attached to the subpena.

(b) Witnesses subpenaed to appear shall be paid the fees and mileage prescribed in § 302.21 of the Rules of Practice (14 CFR 302.21). Service of such subpenas shall be made in accordance with the provisions of § 302.8 of the Rules of Practice (14 CFR 302.8).

§ 305.8 [Reserved]

§ 305.9 Rights of witnesses.

Any person required to testify or to submit documentary evidence shall be entitled to procure, on payment of lawfully prescribed costs, a copy of any document produced by such person and of his own testimony as stenographically reported. Any person compelled to testify or to produce documentary evidence may be accompanied, represented, and advised by counsel.

§ 305.10 Nonpublic character of proceedings.

Investigations shall be attended only by the witnesses and their counsel, the administrative law judge, the Investigation Attorney, other DOT personnel concerned with the conduct of the proceeding and the official stenographer. All orders initiating investigations, motions to quash or modify investigation subpenas, orders disposing of such motions, documents, and transcripts of testimony shall be part of the record in the investigation. Unless DOT determines otherwise, all orders initiating investigations which do not disclose the identity of the particular persons of firms under investigation shall be published in the **Federal Register.** Except as otherwise required by law, the remainder of the record of such proceedings shall constitute internal DOT documents which shall not be available to the general public. The use of such records in DOT proceedings subject to Part 302 of the Rules of Practice shall be governed by §§ 302.19(g) and 302.39 and by the law of evidence applicable to DOT proceedings.

§ 305.11 Procedures after investigation.

Upon completion of the investigation, where the Deputy General Counsel, determines that no corrective action is warranted, the investigation will be closed, and any documentary evidence obtained in the investigation will be returned to the persons who produced it. Where remedial action is indicated by the investigation, the Deputy General Counsel will proceed pursuant to Subpart B of Part 302 of the Rules of Practice or will take such other action as may be appropriate.

§ 305.12 Motions to quash or modify an investigation subpena.

Any person upon whom an investigation subpena is served may, within seven (7) days after such service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify such subpena with the administrative law judge who issued such subpena, or in the event the administrative law judge is not available, with the chief administrative law judge for action by himself or by the DOT decisionmaker. Such motions shall be made in writing in conformity with Rules 3 and 4 of the Rules of Practice (Part 302 of this subchapter); shall state with particularity the grounds therefor and the relief sought; shall be accompanied by the evidence relied upon and all such factual matter shall be verified in accordance with the provisions of Rule 202 of the aforesaid Rules of Practice. Written memoranda or briefs may be filed with the motions, stating the points and authorities relied upon. No oral argument will be heard on such motions unless the chief administrative law judge, the administrative law judge or the DOT decisionmaker directs otherwise. A subpena will be quashed or modified if the evidence whose production is required is nor reasonably relevant to the matter under investigation, or the demand made does not describe with sufficient particularity the information sought, or the subpena is unlawful or unduly burdensome. The filing of a motion to quash or modify an investigation subpena shall stay the return date of such subpena until such motion is granted or denied. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law judge denying a motion to quash a subpena. In such cases, the DOT decisionmaker may order that the return date of a subpena which he or she has elected to review be stayed pending DOT action thereon.

PART 310—INSPECTION AND COPYING OF DOT OPINIONS, ORDERS, AND RECORDS

Sec.
310.1 General.
310.2 Records available.
310.3 Exempted records.
Appendix A—Description and Location of Records Generally Available
Appendix B—Types of Records Generally Excluded From Availability

Authority: Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324; 81 Stat. 54; 5 U.S.C. 552.

§ 310.1 General.

The provisions of Part 7 of the regulations of the Office of the Secretary shall apply to the inspection and copying of DOT opinions, orders, and records under this chapter. (49 CFR Part 7)

§ 310.2 Records available.

For the guidance and convenience of the public, a list is attached to this part designated Appendix A, which describes various records which are available for inspection and copying. Records which do not fall within one of the described categories nevertheless may be open to inspection and copying. Conversely a record listed in Appendix A to this part may be withheld from general inspection and copying because all or part of it may be an exempted record. By way of example, records otherwise normally available may be exempted where they consist of docket materials withheld from public disclosure under § 302.39 of the Procedural Regulations in this chapter, certain carrier reports received on a confidential basis, or records relating to exempted personnel and classified matters. Exempted records are described in § 310.3.

§ 310.3 Exempted records.

(a) As used herein, "exempted records" include those records which, pursuant to 5 U.S.C. 552(b) or other applicable law or regulation, are not required to be made available generally for inspection or copying.

(b) Appendix B to this part lists various kinds of records which are "exempted records" and therefore may be excluded from public availability. Appendix B to this part is for the convenience and guidance of the public and is not an exhaustive listing; other records not listed therein may be subject to withholding as "exempted records." Any "exempted record" will be withheld from public disclosure only where it is determined that the release of the record would be inconsistent with the purpose of the exemption.

APPENDIX A—DESCRIPTION AND LOCATION OF RECORDS GENERALLY AVAILABLE

[NOTE: Any item may be withheld from disclosure if exempted, whether or not the item is listed herein]

Agreements filed under section 412 of Federal Aviation Act: Copies of, and filings and records in connection therewith.	(To be determined).

- Air freight forwarder applications and operating authorizations, and filings in connection therewith.
- Aircraft lease or purchase transactions under Part 299, Economic Regulations: Filings in connection therewith.
- Applications of foreign charter carriers for approval of charter flights, as required by specific Board Order.
- Blind sector applications: Part 216—Copies of applications and authorizations in connection therewith.
- Civil Aeronautics Board Manual: Instructions to staff and index thereof.
- Certification of Secretary of Civil Aeronautics Board.
- Charters: Requests for waivers of Board regulations.
- Civil penalty compromise records filed under Subpart H of the Board's rules of practice.
- Conferences between Civil Aeronautics Board and other persons, transcripts of.
- Consumer complaint files, as distinguished from investigation files.
- Contracts of the Civil Aeronautics Board: Contracts awarded; invitations to bid.
- Correspondence relating to items listed in Appendix A.
- Dockets and related material:
  - Agents: File showing agents designated for service under section 1005(b) of Federal Aviation Act.
  - Applications sent to the President under section 801 of Federal Aviation Act: Card record of.
  - Docket binders: Containing material of record in docketed proceedings, and correspondence in connection therewith.
  - Docket indexes: Listing by docket number, the filings in each docket and Board issuances in items.
    - By name of applicant or petitioner, each application, petition, etc. bearing a new docket number.
    - By name of city, applications for service to said city and disposition thereof.
    - By name of carrier and by docket number, a description of pending applications.
  - Documents served by Docket Section: Daily record of.
  - Oral arguments: List of, by date order.
  - Parties to individual docketed proceedings:
    - Lists of, with addresses.
- Flight schedules of air carriers.
- Foreign aircraft permits: Copies of applications (Form 272), permits, reports of cargo operations (Form 321), and other filings in connection therewith.
- Forms used in dealing with the public:
  - Copies of forms.
  - List of forms showing number and title.
- Inclusive tours: Tour prospectuses and other documents relating to inclusive tour charters under Part 378.
- International Air Transport Association (IATA) resolutions, minutes, and other IATA material.
- Mail compensation:
  - Air carrier claims for mail pay (Forms 398 and 545)
  - Carrier payments memoranda (instructions regarding billing).
  - Class rate information on Form 548 (local service carriers).
  - Monthly listings of summarized passenger loads by flight stages (Schedule T-6), except subsidy ineligible portion.
  - Summary of obligations and disbursements to air carriers (Form 470).
- Mileage records: Official Board records of mileages.
- Minutes of the Civil Aeronautics Board: Approved minutes of the Board on matters that are not pending.
- Opinions of the General Counsel
- Orders and Opinions of the Civil Aeronautics Board:
  - Copies of, including published bound volumes "Civil Aeronautics Board Reports."
  - Index of, by subject, summarizing action taken.
  - Index-Digest of opinions and precedential orders, and citation file.
  - Weekly summaries of orders.
- Overseas military personnel charter applications and authorizations, and filings in connection therewith.
- Policy Statements of the Civil Aeronautics Board; and index thereof.
- Postal Service: Contracts for the transportation of mail filed pursuant to 39 U.S.C. 5005.
- Public index.
- Published Board documents.
- Regulations of the Civil Aeronautics Board; Table of contents of codified regulations.
- Reports of air carriers and related material:
  - Accounting and reporting directives to supplement the Uniform System of Accounts and Reports.
  - ADP instruction directives to supplement Traffic and Capacity Data Collection ADP Manual.
  - Affiliates of air carriers, reports of ownership of stock and other interests under Part 245.
  - Air carrier Form 41 reports, consisting of various financial and statistical schedules filed at various frequencies by each certificated air carrier under Part 241.
  - Air carrier "on-time" reports (Form 438), and quarterly compilations by market and carrier.
  - Air carrier passenger origin-destination survey reports (Form 2787), domestic only. (Subject to prior staff use. Cost of separation and deletion of confidential international data for account of requestor.).
  - Air freight forwarder reports (Form 244).
  - Air taxi operator reports required by various Board orders.
  - Air taxi operators: Commuter air carrier reports of scheduled services (Form 298-C), except Schedule T-1.
  - Air taxi operators: Registration for exemption under Part 298 (Form 298-A).
  - Air taxi operators: Interests in and operations with large aircraft.
  - Carrier accounting plans of specified accounting and statistical procedures required to be filed by carriers under Part 241.
  - Carrier officers and directors reports of ownership of stock and other interests (Form 3mm).
  - Charter services performed for Military Airlift Command (Form 243).
  - Cooperative shippers association reports (Form 244A).
  - Extension of credit to political candidates report (Form 183).
  - Extensions of time for report filing.
  - Foreign air carriers reports of civil aircraft charters (Form 217).
  - Foreign indirect air carrier reports.
  - Freight loss and damage claims reports (Form 239).
  - Freight traffic and revenues in Puerto Rico market (Form T-94).
  - Insurance certificates and notices:
    - Air freight forwarders certificates of insurance (Form 350).
    - Air taxi operators certificates of insurance (Form 257) and standard endorsements (Form 252).
    - Supplemental air carriers: Certificates of insurance and endorsements (Forms 606, 607 and 608).
    - Notice of cancellation of insurance by insurer (Form 909A).
    - Notice of cancellation of insurance by carrier (Form 909B).
  - International Civil Aviation Organization statistical report (ICAO Form C).
  - Local service carrier summarized passenger loads by flight schedule (Schedule T-5), except subsidy ineligible portions.
  - MAC charter services reports, consisting of financial and statistical schedules (Form 243).
  - Magnetic tapes prepared by the Board from reports filed by air carriers.
  - Manual of ADP instructions for traffic and capacity data collection and related materials.
  - Manuals of air carrier accounts and reporting instructions prescribed by the Board.
  - Manual of instructions to air carriers for passenger origin-destination survey statistics and related materials.
  - National Air Carrier Association (NACA), commercial charter exchange activity, membership roster and flight data (Form 492).
  - Origin-destination survey of airline passenger traffic, domestic data and outputs.
  - Observations of the Director to air carriers, requesting or transmitting specific information to supplement or amplify reports.
  - Passengers denied confirmed space (Form 251).
  - Passenger origin-destination directives, to supplement Passenger O&D Manual.
  - Public accountants reports and reconciliation with Form 41 reports.
  - Reports of ownership of stock and other interests filed pursuant to Part 245, Subpart B.
  - Reports of a miscellaneous nature filed pursuant to Board order.
  - Scheduled all-cargo services report (Form 242).
  - Supplemental air carrier special reports, as required under § 385.17(j).
  - Unaccommodated passenger reports (Form 250).
  - Waivers of accounting and reporting requirements and record retention.

Route and service authorizations: "Book of Official CAB Airline Route Maps and Airport-to-Airport Mileages" (publication).	
Certificates of public convenience and necessity.	
Foreign air carrier permits.	
Historic and current records and indexes of points served, airports, dates of service inauguration, service deletions, suspensions and reinstatements, and Board actions affecting carrier service authorizations.	
Settlement documentation filed under Rule 215 of the Board's rules of practice.	
Statements of authorization for off-route charter trips by foreign air carriers (Part 212): Copies of applications for, filings in connection therewith and copies of authorizations.	
Study group charters: Tour prospectuses and other documents relating to study group charters under Part 373.	
Tariff matters:	
Agent matters:	
Alternate agents' affidavits as to disability of principal tariff publishing agent.	
Corporate tariff agents' designation of issuing officer.	
Powers of attorney (issued by carriers to tariff publishing agents).	
Tariff publishing instructions (from carriers to agents).	
Certifications of tariff publications and requests for copies.	
Concurrences (issued by carriers to tariff publishing carriers).	
Correspondence with carriers or agents requesting correction of Part 221 violations in tariffs.	
Free or reduced-rate transportation:	
Access to aircraft or free-transportation requests (SF 150).	
Application for, under § 223.8 of Economic Regulations.	
Carrier manuals containing instructions, rules, regulations and practices governing issuance and interchange of passes.	
Reports by carriers of free transportation of technical representatives of aircraft manufacturers (§ 223.2 (c), (d) of Economic Regulations).	
Postponed Board actions: Notices of, on tariffs filed on 45 days' notice, and not acted upon by Board 15 days prior to effective date, under § 399.36 of Policy Statements.	
Rejection notices.	
Special tariff permissions.	
Tariffs and tariff transmittal letters.	
Tariff embargo notices.	
Trade agreements filed under Part 225 of Economic Regulations. Waivers from Part 221 of Economic Regulations.	
Trade association manuals.	
Travel group charters: Filings and other documents relating to travel group charter filings under Part 372a (excluding names, addresses and phone numbers of TGC participants).	
Unpublished statistical compilations:	
Air carrier route miles statistics, quarterly compilations.	
Interim quarterly financial reports of air carriers: Selective summarization of balance sheet factors, first three quarters.	
International Civil Aviation Organization reports: Summarization of selected financial and statistical data.	
Votes of Board members: Final votes of Board members in Board proceedings.	

Appendix B—Types of Records Generally Excluded From Availability

The following list contains by way of example those records which are "exempted records" under this part. The examples of exempted records are listed according to the applicable subsections of 5 U.S.C. 552(b).

(1) *Documents classified pursuant to Executive Order No. 10501.* Classified minutes and classified exhibits in formal proceedings.

(2) *Personnel rules and practices.* Files pertaining to personnel.

Technical manuals and instructions pertaining to the audit of carrier accounts.

(3) *Material exempted by statute.* Matter which heretofore has been exempted from public disclosure under sections 902(f) and 1104 of the Federal Aviation Act, or by specific order will continue to be exempt. Such matters include carrier audit papers and correspondence relating thereto, and matters on which DOT has granted a motion for nondisclosure pursuant to § 302.39 of its rules of practice.

(4) *Trade secrets and commercial or financial information.* Past or future matter submitted in confidence but for which no formal request under § 302.39 of the rules of practice has been made and granted will be held in confidence to the extent deemed allowable. This provision refers solely to unpublished materials the disclosure of which would be inconsistent with the intent of the Freedom of Information Act. No assurance of withholding material is implied by this, however, and affected persons should formally request withholding under § 302.39 where they deem it necessary to protect their interests.

Examples of confidential matters under this subsection include: Carrier accounting manuals; local service carrier passenger loads by flight schedules (Schedule T–5, subsidy ineligible portion); origin-destination survey of airline passenger traffic (international); MAC charter rate information submitted in advance of MAC rate proceedings; on-line original and destination of traffic of commuter air carriers (Schedule T–1, Form 298–C); materials related to informal subsidy conferences; air carrier service segment data submitted under Part 241; air carrier or air carrier organization letters, information or views used in developing U.S. positions in international aviation matters; and names, addresses, and phone numbers of TGC participants listed in Travel Group Charter filings under Part 372a.

(5) *Inter/intra-agency memoranda.*

Copies of decisions awaiting Presidential action except as provided in § 399.101 of the DOT 's Policy Statements.

Notation, calendar, and for information memoranda.

Budget, management, program evaluation, records disposal, research planning and program files.

Internal memoranda on the Administrative Conference of the United States.

Staff analyses not published by DOT.

Files regarding requisitions, equipment, and space.

Memoranda regarding interagency committees.

Intergovernmental communications on loan guarantee matters.

Research and legislative reference files of the General Counsel.

Memoranda and studies regarding positions in international aviation matters.

Developmental files, research materials, and workpapers.

(6) *Invasion of personal privacy.* Correspondence and inquiries regarding personnel. Individual personnel files and records.

(7) *Law enforcement investigatory files.* Formal and informal internal investigatory files regarding alleged violations of the Federal Aviation Act or requirements thereunder; and names, addresses, and phone numbers of TGC participants listed in Travel Group Charter filings under Part 372a.

PART 310a—ACCESS TO SYSTEMS OF RECORDS—REGULATIONS AND EXEMPTIONS IMPLEMENTING THE PRIVACY ACT OF 1974

§ 310a.1 General.

The provisions of Part 10 of the regulations of the Office of the Secretary shall apply to the maintenance of an access to systems of records pertaining to individuals. (49 CFR Part 10)

PART 311—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL

§ 311.1 General.

The provisions of Part 8 of the regulations of the Office of the Secretary shall apply to the classification and declassification of national security information. (49 CFR Part 8)

PART 313—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Sec.

313.1 Purpose, scope, and authority.
313.2 Policy.
313.3 Definitions.
313.4 Major regulatory actions.
313.5 Energy information.
313.6 Energy statements.
313.7 Integration with environmental procedures.

Authority: Secs. 204, Pub. L. 85–726, as amended, 72 Stat. 743, 49 U.S.C. 1324. Pub. L. 94–163, 89 Stat. 940, 42 U.S.C. 6362(b).

§ 313.1 Purpose, scope, and authority.

(a) The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq., hereinafter "EPCA") authorizes and directs certain actions to conserve energy supplies through energy conservation programs and where necessary, the regulation of certain energy uses, and to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. In furtherance of these purposes, section 382 of EPCA requires several transportation regulatory agencies, including DOT, to submit a number of reports to the Congress with respect to energy conservation and efficiency, and where practicable and consistent with the exercise of DOT's authority under other law, to include in any major regulatory action a statement of its probable impact on energy efficiency and energy conservation. Section 382(b) of EPCA directs DOT to define the term "major regulatory action" by rule.

(b) Section 204(a) of the Federal Aviation Act of 1958, as amended (hereinafter "Act"), authorizes DOT to establish such rules, regulations, and procedures as are necessary to the exercise of its functions and are consistent with the purposes of the Act.

(c) The purpose of these regulations is to establish procedures and guidelines for the implementation of DOT's responsibility under EPCA to include in any major regulatory action taken by DOT a statement of the probable impact on energy efficiency and energy conservation.

(d) These regulations apply to all proceedings before DOT, as provided herein.

§ 313.2 Policy.

(a) *General.* It is the policy of DOT to view the conservation of energy and the energy efficiency improvement goals of EPCA as part of DOT's overall mandate, to be considered along with the several public interest and public convenience and necessity factors enumerated in section 102 of the Federal Aviation Act (49 U.S.C. 1302). To the extent practicable and consistent with DOT's authority under the Act and other law, energy conservation and efficiency are to be weighed in the decisionmaking process just as are DOT's traditional policies and missions.

(b) *Implementation.* Implementation of this policy is through the integration of energy findings and conclusions into decisions, opinions, or orders in proceedings involving a major regulatory action, as defined in this part.

(c) *Proceedings in progress.* The provisions of this part are intended primarily for prospective application. Proceedings in progress on the effective date of this part, in which an application has been docketed but no final decision made public, shall adhere to § 313.6(a) of this part, provided that the fair, efficient, and timely administration of DOT's regulatory activities is not compromised thereby. Nothing herein shall imply a requirement for new or additional hearings, a reopening of the record, or any other procedures which would tend to delay a timely decision in proceedings in progress.

(d) *Hearings.* Public hearings will not normally be held for the purpose of implementing EPCA, particularly in connection with proposed actions which do not require notice and hearing as a prerequisite to decision under the Act. Hearings may be ordered in exceptional circumstances where the proposed action is of great magnitude or widespread public interest and, in addition, presents complex issues peculiarly subject to resolution through evidentiary hearings and the process of cross examination.

§ 313.3 Definitions.

As used in this part: (a) "Act" means the Federal Aviation Act of 1958, as amended.

(b) "Energy efficiency" means the ratio of the useful output of services in air transportation to the energy consumption of such services.

(c) "Energy statement" is a statement of the probable impact of a major regulatory action on energy efficiency and energy conservation, contained in a decision, opinion, order, or rule.

(d) "EPCA" means the Energy Policy and Conservation Act.

(e) "Major regulatory action" is any decision by the DOT decisionmaker or administrative law judge requiring an energy statement pursuant to § 313.4 of this part.

(f) "NEPA" means the National Environmental Policy Act of 1969.

§ 313.4 Major regulatory actions.

(a) Any initial, recommended, tentative or final decision, opinion, order, or final rule is a major regulatory action requiring an energy statement, if it:

(1) May cause a near-term net annual change in aircraft fuel consumption of 10 million (10,000,000) gallons or more, compared to the probable consumption of fuel were the action not to be taken; or

(2) Is specifically so designated by DOT because of its precedential value, substantial controversy with respect to energy conservation and efficiency, or other unusual circumstances.

(b) Notwithstanding paragraph (a)(1) of this section, the following types of actions shall not be deemed as major regulatory actions requiring an energy statement:

(1) Tariff suspension orders under section 1002(j) of the Act, temporary suspensions under section 401(j) of the Act, emergency exemptions or temporary exemptions not exceeding 24 months under sections 101(3) or 416(b) of the Act and other proceedings in which timely action is of the essence;

(2) Orders instituting or declining to institute investigations or rulemaking, setting or declining to set applications for hearing, on reconsideration, or on requests for stay;

(3) Other procedural or interlocutory orders;

(4) Actions taken under delegated authority; and

(5) Issuance of a certificate where no determination of public convenience and necessity is required.

(c) Notwithstanding paragraph (a)(1) of this section, DOT may provide that an energy statement shall not be prepared in a proceeding which may result in a major regulatory action, if it finds that:

(1) The inclusion of an energy statement is not consistent with the exercise of DOT's authority under the Act or other law;

(2) The inclusion of an energy statement is not practicable because of time constraints, lack of information, or other unusual circumstances; or

(3) The action is taken under laws designed to protect the public health or safety.

§ 313.5 Energy information.

(a) It shall be the responsibility of applicants and other parties or participants to a proceeding which may involve a major regulatory action to submit sufficient information about the energy consumption and energy efficiency consequences of their proposals or positions in the proceeding to enable the administrative law judge or the DOT decisionmaker, as the case may be, to determine whether the proceeding will in fact involve a major regulatory action for purposes of this part, and if so, to consider the relevant energy factors in the decision and prepare the energy statement.

(b) In proceedings involving evidentiary hearings, the energy information shall be submitted at such hearings pursuant to DOT's usual procedural regulations and practices, under control of the administrative law judge or other hearing officer.

(c) In proceedings not involving evidentiary hearings, the energy

information shall be submitted at such time as other materials in justification of an application are submitted. Where an application itself is intended as justification for DOT action, the energy information shall be submitted with the application. In rulemakings not involving hearings, the energy information shall normally be submitted along with comments on the notice of proposed rulemaking, or as directed in any such notice or any advance notice.

§ 313.6 Energy statements.

(a) Each major regulatory action shall include, to the extent practicable, consideration of the probable impact of the action taken or to be taken upon energy efficiency and conservation. The administrative law judge or the DOT decisionmaker, as the case may be, shall normally make findings and conclusions about:

(1) The net change in energy consumption;

(2) The net change in energy efficiency; and

(3) The balance struck between energy factors and other public interest and public convenience and necessity factors in the decision.

(b) Energy findings and conclusions contained in any initial or recommended decision are a part of that decision and thus subject to discretionary review by DOT.

(c) In the case of orders to show cause initiated by DOT, energy findings and conclusions may be omitted if adequate information is not available. In such instances, the energy statement shall be integrated into the final decision.

§ 313.7 Integration with environmental procedures.

(a) In proceedings in which an environmental impact statement or a detailed environmental negative declaration is prepared by a responsible official pursuant to DOT's Procedural Regulations implementing the National Environmental Policy Act of 1969 (NEPA), the energy information called for by this Part may be included in that statement or declaration in order to yield a single, comprehensive document. In such instances, the procedures of DOT's NEPA regulations shall govern the submission of the energy information. However, it shall remain the responsibility of the administrative law judge or the DOT decisionmaker, as the case may be, to make the findings and conclusions required by § 313.6(a) of this part.

(b) A determination that a major regulatory action within the meaning of EPCA and this Part may be involved in a proceeding is independent from any determination that the proceeding is a "major Federal action significantly affecting the quality of the human environment" within the meaning of NEPA, and vice versa.

PART 314—EMPLOYEE PROTECTION PROGRAM

Subpart A—General

Sec.

314.1 Applicability.
314.2 Definitions.
314.3 Conformity with Subpart A of Part 302.
314.4 Information requirements.
314.5 Major contractions.
314.6 Qualifying dislocation.

Subpart B—Determination of Qualifying Dislocation

314.10 Beginning of proceeding.
314.11 Applications.
314.12 Answers.
314.13 Disposition of applications.
314.14 Show-cause order.
314.15 Oral proceedings.
314.16 Final determination.

Subpart C—Major Contractions

314.20 Regular monthly computation.
314.21 Advance determinations.
314.22 Notice of major contraction.

Authority: Secs. 204, 407, Pub. L. 85–726, as amended, 72 Stat. 743, 766, 49 U.S.C. 1324, 1377; sec. 43, Pub. L. 95–504, 92 Stat. 1750 (49 U.S.C. 1552).

Note.—The reporting requirements contained in Part 314 have been approved by the Office of Management and Budget under control number 3024–0053.

Subpart A—General

§ 314.1 Applicability.

Section 43 of the Airline Deregulation Act of 1978, Pub. L. 95–504, establishes an employee protection program. After a determination by DOT that an air carrier has undergone a qualifying dislocation, the Secretary of Labor gives financial assistance to certain employees of the carrier. This part sets out procedures for the Department to determine whether a qualifying dislocation has occurred.

§ 314.2 Definitions.

As used in this part:

"Bankruptcy" means an adjudication of bankruptcy under Title 11 of the United States Code.

"Carrier" means an air carrier that on October 24, 1978, held a certificate issued under section 401 of the Federal Aviation Act of 1958.

§ 314.3 Conformity with Subpart A of Part 302.

Except where they are inconsistent with this part, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

§ 314.4 Information requirements.

The Department may require any carrier to submit any information that it considers necessary to carry out its functions under this part.

§ 314.5 Major contractions.

A major contraction is a reduction by at least 7½ percent of the total number of full-time employees of an air carrier within a 12-month period, and includes an advance determination of major contraction as set forth in § 314.21. The method by which DOT determines whether a carrier has undergone a major contraction is set forth in Subpart C.

§ 314.6 Qualifying dislocation.

A qualifying dislocation is a bankruptcy or major contraction of a carrier, the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978.

Subpart B—Determination of Qualifying Dislocation

§ 314.10 Beginning of proceeding.

A proceeding to determine whether a bankruptcy or major contraction is a qualifying dislocation begins either with an application filed with the Department or an investigation on DOT's own initiative. Proceedings that begin with an application are governed by §§ 314.11 through 314.16. DOT-initiated proceedings are governed by §§ 314.14 through 314.16.

§ 314.11 Applications.

(a) *Who may file.* An application may be filed by an employee who has been deprived of employment or adversely affected with respect to compensation, or by a representative of one or more such employees.

(b) *Title and contents.* Applications shall be titled "Application for Determination of Qualifying Dislocation," and shall contain, with respect to at least one employee:

(1) Name and address of the employee;

(2) Number of years employed by carrier as of October 24, 1978;

(3) Name and address of the applicant, if different from paragraph (b)(1);

(4) Name of carrier-employer;

(5) Position held by employee immediately before being deprived of employment or adversely affected with respect to compensation;

(6) Date on which employee was deprived of employment or adversely affected with respect to compensation; and

(7) An explanation of the applicant's basis for claiming that a qualifying dislocation has occurred, including all supporting evidence available to the applicant.

(c) *Service.* The Department will serve a copy of each application on the affected carrier, the collective bargaining representatives of that carrier's employees, the Secretary of Labor, and any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

(Approved by the Office of Management and Budget under control number 3024–0053)

§ 314.12 Answers.

Any person may file an answer to an application within 15 days after the application is served.

§ 314.13 Disposition of applications.

(a) After the due date for answers, the Department will dismiss the application or begin an investigation to determine whether a qualifying dislocation has occurred.

(b) The Department will dismiss an application if it does not name an employee who, on October 24, 1978, had been employed by a carrier for at least 4 years.

(c) The Department will dismiss an application if the carrier has neither become bankrupt nor undergone a major contraction.

(d) The Department will dismiss an application even though the carrier has become bankrupt or undergone a major contraction, if it finds that the bankruptcy or major contraction clearly did not have as its major cause the change in regulatory structure provided by the Airline Deregulation Act.

(e) A DOT order dismissing an application will announce the reasons for the dismissal.

§ 314.14 Show-cause order.

When the Department makes a preliminary determination of whether the major cause of the bankruptcy or major contraction was the change in regulatory structure provided by the Airline Deregulation Act of 1978, it will issue an order announcing a tentative decision that a qualifying dislocation has, or has not, occurred. The order will direct all interested persons to show cause why the tentative decision should not be made final, and will allow 30 days for objections to be filed. The Department will publish a summary of the order in the **Federal Register** and serve a copy of the order on each of the following:

(a) The applicant and the applicant's representative, if any;

(b) The affected carrier;

(c) The collective bargaining representatives of the carrier's employees; and

(d) The Secretary of Labor;

(e) State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

§ 314.15 Oral proceedings.

The Department will provide for an oral evidentiary hearing, with notice published in the **Federal Register** and served on the persons listed in § 314.14, if there are material issues of decisional fact that cannot otherwise be adequately resolved. The DOT decisionmaker may in his or her discretion hear oral argument before making a final determination.

§ 314.16 Final determination.

The Department will publish in the **Federal Register** a summary of an order announcing its final determination and, within 3 business days after the determination, serve a copy of the order on the persons listed in § 314.14.

Subpart C—Major Contractions

§ 314.20 Regular monthly computation.

(a) The Department will monitor the number of full-time employees of each carrier, including employees deprived of employment because of a strike, as reported monthly by carriers in accordance with Part 241 of this chapter.

(b) The DOT does not require monthly reporting of the number of positions that are vacant as a result of terminations for cause and, except as set forth in paragraph (c)(3) of this section, will not account for those positions in computing major contractions. In the cases set forth in paragraphs (c)(1) and (c)(2) of this section, the DOT presumes that the number of employment positions vacant as a result of terminations for cause is small enough that accounting for them would not change the result.

(c) Each month, with respect to each carrier:

(1) If the carrier's current reported full-time employment level is 92 percent or less of any of the carrier's preceding 12 monthly levels, DOT will find that the carrier has undergone a major contraction.

(2) If the current reported level is 93 percent or more of each of the carrier's preceding 12 monthly levels, the Department will not find that the carrier has undergone a major contraction.

(3) If neither of the conditions described in paragraphs (c)(1) and (c)(2) of this section is present, the Department will ascertain by special report from the carrier, and add to the reported employment levels, the number of positions that were vacant in each of the relevant months as a result of terminations for cause. If the resulting figure for the current month in 92.5 percent or less of the resulting figure for any of the preceding 12 months, the Department will find that the carrier has undergone a major contraction. Otherwise, the Department will not make such a finding.

§ 314.21 Advance determinations.

(a) If circumstances indicate that a major contraction will occur, the Department may make an advance determination of a major contraction without waiting for the regular monthly computation set forth in § 314.20. The Department will consider whether to make an advance determination either on its own initiative or upon receipt of an application from an employee who has been deprived of employment or adversely affected with respect to compensation, or a representative of one or more such employees.

(b) An application under this section shall be titled "Application for Advance Determination of Major Contraction." It shall contain the information set forth in § 314.11 (b)(1) through (b)(6) and an explanation of the applicant's basis for claiming that a major contraction will occur, including all supporting evidence available to the applicant. A person may consolidate an application under this section with an application under § 314.11 for determination of a qualifying dislocation.

(c) The Department will terminate an advance determination of major contraction whenever it finds that the predicted major contraction has not occurred or will not occur.

§ 314.22 Notice of major contraction.

Upon finding a major contraction under §314.20, or making or terminating an advance determination under § 314.21, the Department will publish the finding in the **Federal Register** and send written notice of it to the persons listed in § 314.14.

PART 316—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

316.1 Purpose.
316.2 Applicability.
316.3 Notice of claim.
316.4 Interest, penalty charges, and collection fees.
316.5 Collection by offset.
316.6 Settlement of claims.
316.7 Referral for litigation.
316.8 Disclosure to consumer reporting agency.
316.9 DOT claims agent.

Authority: Secs. 204, 401, 402, 407, 416, Pub. L. 85–726, as amended, 72 Stat. 740, 754, 757, 758, 771; 49 U.S.C. 1324, 1371, 1372, 1377, 1386. Secs. 3 and 5, Pub. L. 89–308, as amended, 89 Stat. 308, 96 Stat. 1754–1758, 31 U.S.C. 3701–3719.

Note: The information collection requirements contained in this part have been approved by the Office of Management and Budget under number 3024–0070.

§ 316.1 Purpose.

This part implements the Federal Claims Collection Act, as amended by the Debt Collection Act and interpreted by the General Accounting Office and Department of Justice. It provides procedures under which the Department will collect claims owed to the United States arising from activities under its jurisdiction. The part further sets forth the procedures for the Department to determine and collect interest and other charges on those claims under the Debt Collection Act and for referral of unpaid claims for litigation.

§ 316.2 Applicability.

The part applies to all claims due the United States under the Federal Claims Collection Act as amended by the Debt Collection Act, arising from activities under the jurisdiction of the DOT under the responsibilities transferred to it by section 1601(b)(1) of the Federal Aviation Act of 1958, is amended, including amounts due the United States from fees, overpayments, fines, civil penalties, damages, interest, and other sources.

§ 316.3 Notice of claim.

(a) DOT will send a written notice to any person who owes payment to the United States under this part, stating the basis for the claim, the possible interest and penalty charges under this part for non-payment, additional consequences of non-payment, and the date full payment is due. That payment will normally be due 30 days from the date notice under this part is mailed. The notice of claim will be sent return receipt requested.

(b) If the claim is disputed, the debtor shall respond to the notice in writing and state whether and when full payment is to be made, and the reasons for non-payment. If full payment is not made by the date asked in the notice, the debtor shall also state the reasons for the inability to make full payment and how and when payments are to be made.

(c) If no response to the notice is received by the date asked in the notice, the Department may take further action under this part or under 4 CFR Parts 101–105, and the Federal Claims Collection Act, as amended. These actions may include reports to credit bureaus, contracts with collection agencies, revocation of licensing or offset of Federal salary or other administrative offset, as authorized in 31 U.S.C. 3701–3719.

§ 316.4 Interest, penalty fees, and collection charges.

(a) DOT will assess interest on unpaid claims. The interest rate used by the Department is set by the Secretary of the Treasury. DOT will further charge penalty fees of not more than 6 percent per year of the unpaid claim for failure to pay a part of a debt more than 90 days past due. DOT will also impose collection charges to cover the costs of processing and handling overdue claims, based on the costs incurred.

(b) Interest on debts will be charged and will run from the date the notice of claim is mailed if the amount of the debt is not paid within 30 days from that date. The Department may extend the 30-day period when in the public interest. Interest will be calculated only on the principal of the debt. The rate of interest charged is the rate in effect on the date from which interest begins to run. The rate will remain fixed for the duration of the indebtedness.

(c) The Department may waive interest, collection charges or penalty fees if it finds that:

(1) The debtor is unable to pay any significant sum within a reasonable period of time;

(2) Collection of interest or charges jeopardizes collection of the principal of the claim; or

(3) It is otherwise in the best interests of the United States, including, under such circumstances, where an offset or installment payment agreement is in effect.

§ 316.5 Collection by offset.

(a) Whenever feasible, DOT will collect claims under this part by means of administrative offset against obligations of the United States to the debtor. Collection by Federal salary will be under the procedures in 4 CFR Part 102.

(b) The Department will notify the debtor in writing of its intent to use offset procedures to collect the debt unless the debtor agrees to repayment. The Department will ask other Federal agencies to help in the offset whenever possible. The notice to the debtor shall also include the type and amount of the claim and an explanation of the debtor's rights for records and review under 31 U.S.C. 3716(a).

§ 316.6 Settlement of claims.

(a) DOT may not waive the principal of any debt owed the United States.

(b) DOT may settle claims not exceeding $20,000 by compromise at less than the principal of the claim if:

(1) The debtor shows an inability to pay the full amount within a reasonable time;

(2) The Government would be unable to enforce collection in full through litigation or administrative means within a reasonable time;

(3) The cost of collecting the full amount is not justified by the amount of the claim; or

(4) With respect to enforcement debts, DOT's enforcement policy would be served by settlement of the claim for less than the full amount.

§ 316.7 Referral for litigation.

Claims that cannot be settled under § 316.6 or for which collection action cannot be ended or suspended under 4 CFR Parts 103 and 104 will be referred to the General Accounting Office for litigation.

§ 316.8 Disclosure to consumer reporting agency.

DOT may disclose delinquent debts to consumer reporting agencies under the Federal Claims Collection Act, as amended. If, after a report has been made under this section, the status or amount of the claim substantially changes, DOT will notify the reporting agency in writing within 15 days of the change. Any request for verification information will be given to the reporting agency by the Department within 30 days of receipt of the request. Before disclosure to a reporting agency, the Department will obtain in writing a statement by the agency that it will comply with the Fair Credit Reporting Act and other applicable Federal statutes.

§ 316.9 DOT claims agent.

(a) The Assistant Secretary for Administration is the Claims Collection Agent for all claims under this part. The Assistant Secretary for Administration will take action as delegated under Part 385 of this chapter to carry out this part and the requirements of 4 CFR Parts 101–105.

(b) All action for the collection of claims under this part will be the responsibility of the Assistant Secretary for Administration. All DOT offices shall send documents supporting claims under this part to the Assistant Secretary for Administration for action. Delegated waivers or compromise under this part shall be with the concurrence

of the General Counsel. Any action taken by the Assistant Secretary for Administration under this Part involving air carriers receiving subsidy will be in consultation with the appropriate Office director(s).

PART 320—PROCEDURES FOR AWARDING JAPANESE CHARTER AUTHORIZATIONS

Subpart A—General Provisions

Sec.
320.1 Purpose.
320.2 Applicability.
320.3 Definitions and terminology.
320.4 Charter authorizations.
320.5 Related carriers counted as one.

Subpart B—Specific Procedures

320.10 Allocation.
320.11 Grandfather allotment.
320.12 Initial lottery.
320.13 Final order.
320.14 Transfer of charter authorizations.
320.15 Unused charter authorizations.
320.16 Reallocation of authorizations.
320.17 Notice of intent to use charter authorizations.
320.18 Report of charter authorizations used.

Authority: Secs. 204, 401, 407, 1102, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 766, 797 (49 U.S.C. 1324, 1371, 1377, 1502).

Subpart A—General Provisions

§ 320.1 Purpose.

This part sets out procedures governing the transfer or reallocation of authority to perform the charter flights authorized by the September 7, 1982, Memorandum of Understanding concerning bilateral aviation relations between the United States and Japan. That memorandum provides that each country's direct air carriers may perform 300 one-way charter flights between the two countries each year in accordance with country-of-origin rules. Charter authorizations were awarded in 1982 by grandfather allotments and initial lottery.

§ 320.2 Applicability.

This part applies to United States direct air carriers with respect to charter flights between the U.S. and Japan beginning on October 1, 1982.

§ 320.3 Definitions and terminology.

(a) "Authorization" means the authority to perform one of the 300 annual one-way charter flights between the United States and Japan authorized in the Memorandum of Understanding described in § 320.1.

(b) A charter authorization is "used" when the flight is performed.

(c) An "allocation year" runs from October 1 through September 30 and is used as a reference for reporting requirements and reallocation of forfeited authorizations.

§ 320.4 Charter authorizations.

(a) No charter flights between the United States and Japan shall be operated except in accordance with a charter authorization awarded or acquired under this part.

(b) A charter flight award obtained through the grandfather allotment or the initial lottery shall entitle the holder to authorizations for each of the three years beginning October 1, 1982, with the following exceptions:

(1) A charter flight authorization for an allocation year that has not been used by September 30 of that year will result in a penalty of a forfeiture of two charter flight authorizations for the remaining allocation years, as provided in § 320.15;

(2) A charter flight authorization obtained by request under § 320.15 shall be for one allocation year.

§ 320.5 Related carriers counted as one.

Two or more air carriers that are related will be considered as a single air carrier for the purposes of this part. One carrier is related to another carrier if it controls, is controlled by, or is under common control with the other carrier.

Subpart B—Specific Procedures

§ 320.10 Transfer of charter authorizations.

(a) Any air carrier holding a charter authorization awarded or acquired by it under this part may transfer it, for any consideration, to any other air carrier that meets the criteria set forth in § 320.12(a) as of the time of transfer.

(b) There shall be no penalty for the transfer of a charter authorization obtained in an initial lottery.

(c) An air carrier may transfer up to 10 percent of its grandfather authorizations for a given year without penalty. The base number shall not include any grandfather authorizations declined under § 320.11(c). A carrier's charter flight authorization for the remaining allocation years shall be reduced on a one-to-one basis for each flight beyond the 10 percent figure that it transfers.

(d) A transfer of a charter authorization shall not become effective until the transferring air carrier files a notice in duplicate with the DOT decisionmaker. The notice shall be labeled "Notice of Transfer of Japan Charter Authorization," and identify the transferred charter authorization by the flight authorization number(s) assigned under § 320.3(d). It shall be filed within 15 days after the date of the transaction, but in any event before departure of the authorized flight, whether the flight is performed by the transferee or by any subsequent transferee. The notice shall indicate the number of charter authorizations transferred and the date of the transaction, and shall be signed by both the transferor and the transferee.

(e) An air carrier that transfers a charter authorization to another carrier shall retain for at least 1 year after the conclusion of the allotment year for which it was awarded a record of the consideration received for the transfer.

(Approved by the Office of Management and Budget under control number 3024–0055)

§ 320.11 Unused charter authorizations.

(a) Any carrier that fails to use its charter flight authorization by September 30 of an allocation year shall be penalized in the remaining allocation years at the rate of two charter flight authorizations for each unused authorization. If this penalty results in a negative number, the carrier's allotment will be zero. The flight authorizations forfeited under this section shall be reallocated as provided in § 320.16.

(b) Notwithstanding paragraph (a) of this section, any carrier may without penalty return any of its allocated authorizations to the DOT.

For any subsequent year covered by this rule, until October 31, of that year.

(c) Returns shall be made by written notice to the Office of the Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, Washington, D.C. 20590, and shall be considered made as of the date the notice is received by that Office. The notice shall identify the air carrier and the number of authorizations returned, and shall be labeled "Return of Japan Charter Authorizations."

(d) The DOT decisionmaker reserves the right, on his or her own motion, to assess a forfeiture of authorizations on a carrier, and/or bar the carrier's requests for authorizations for a specified period, if he or she finds that the carrier has unreasonably requested and received authorizations without using them, or has transferred authorizations to another carrier that had no intention of operating under them.

§ 320.12 Reallocation of authorizations.

(a) Any authorizations forfeited under § 320.14 or §320.15, or returned to DOT under § 320.15(b), shall be reallocated according to the procedures of this section.

(b) The Department will maintain an up-to-date list of authorizations, outstanding authorizations returned, and the number currently available on

request. This information is available to the public.

(c) An eligible carrier, as defined in § 320.12(a), may request authorizations from the Office of the Assistant Secretary for Policy and International Affairs. Each authorization shall be for one allocation year. The request shall be in writing, and labeled, "Request for Japan Charter Authorizations."

(d) Except as provided in this paragraph and paragraph (e) of this section, a request for authorizations may be made at any time. A particular carrier may make more than one request during any calendar month, but the total number of authorizations requested during any month shall be not more than 30. Requests made before October 1 for the allocation year beginning on that date, or a year after that date, shall be included in that carrier's "October request(s)," and when the number of flights requested is equal to 30, that carrier may not make another such request until November 1.

(e) A carrier that has been assessed a penalty under § 320.14 or § 320.15 with respect to a given allocation year (beginning on or after October 1, 1983) shall not make a request for authorizations for a subsequent year until April 1 of the subsequent year.

(f) DOT will accept requests for authorizations continuously during business hours, beginning at 9:00 a.m. on the first business day of the Department following the last day of the turn-back period specified in § 320.15 (b)(1) and (b)(2). Requests will be filled from the pool of returned authorizations in the order they are received by the Office of the Assistant Secretary for Policy and International Affairs. If the requests at any time exceed the number of returned authorizations, a stand-by list will be established. However, all requests received on the above opening date will be considered as having been received simultaneously, and if they exceed the number of returned authorizations, their order will be established by random selection under procedures agreed to by the requestors or set forth in an order of the DOT decisionmaker.

(Approved by the Office of Management and Budget under control number 3024–0055)

§ 320.13 Notice of intent to use charter authorization.

An air carrier shall file in duplicate with the Office of the Assistant Secretary for Policy and International Affairs a notice of its intention to use a charter authorization at least 7 days before departure of the flight. The notice shall be labeled "Notice of Intent To Use Japan Charter Authorization," and include the flight authorization number(s).

(Approved by the Office of Management and Budget under control number 3024–0055)

§ 320.14 Report of charter authorizations used.

Within 15 days after any month in which an air carrier uses a charter authorization, it shall file in duplicate a report with the Office of the Assistant Secretary for Policy and International Affairs. The report shall be labeled "Report of Japan Charter Authorizations Used." It shall include identification numbers of the authorizations, flight itineraries, flight dates, aircraft type, and the number of passengers or cargo tons transported. Passenger and cargo figures may be aggregated for the month.

PART 323—TERMINATIONS, SUSPENSIONS, AND REDUCTIONS OF SERVICE

Sec.

323.1 Applicability.
323.2 Definitions.
323.3 Who shall file notices.
323.4 Contents of notices.
323.5 Time for filing notices.
323.6 General requirements for notices.
323.7 Service of notices.
323.8 Exemptions.
323.9 Objections to notices.
323.10 Time for filing objections.
323.11 Answers to objections.
323.12 General requirements for objections and answers.
323.13 DOT actions.
323.14 Temporary suspension authority for involuntary interruption of service.
323.15 Report to be filed after strikes.
323.16 Listings in schedule publications.
323.17 Delays in discontinuing service.
323.18 Carriers' obligations when terminating, suspending, or reducing air service.

Authority: Secs. 204, 401, 407, 411, and 419, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 766, 769, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1377, 1381, 1389.

§ 323.1 Applicability.

This part applies to certificated air carriers who terminate or suspend service to a point, or in a market, and to all air carriers who terminate, suspend, or reduce service below the level of essential air transportation under section 419 of the Act.

§ 323.2 Definitions.

As used in this part:

"Act" means the Federal Aviation Act of 1958, as amended.

"Certificated carrier" means a direct air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board (CAB) or DOT under section 401 of the Act, authorizing scheduled route service.

"Eligible point" means:

(1) Any point in the United States to which any certificated carrier was authorized under its section 401 certificate to provide service on October 24, 1978, whether or not such service was actually provided;

(2) Any point in the United States that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, inclusive, and that the CAB designated as an eligible point under the Act; or

(3) Any other point in Alaska or Hawaii that the CAB or DOT designated as an eligible point under the Act.

"Essential air transportation" means the level of air transportation determined by the CAB or DOT for any eligible point under section 419(a)(2) or 419(b)(4) of the Act.

"FAA-designated hub" means any airport serving a small, medium, or large air traffic hub listed in the Department of Transportation publication, "Airport Activity Statistics of Certificated Route Carriers."

"United States" includes the several States, the District of Columbia, and the several territories and possessions of the United States. "State" includes any of the individual entities comprising the United States.

§ 323.3 Who shall file notices.

(a) *Terminations, suspensions, or reductions by certificated carriers.* The notice described in § 323.4(a) shall be filed by any certificated carrier that intends to:

(1) Terminate or suspend all passenger air transportation that it is providing to any eligible point in the United States when that termination or suspension will leave no certificated carriers serving that point. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two points;

(2) Reduce passenger air transportation so that any eligible point receives less than the level of essential air transportation determined by CAB or DOT;

(3) Terminate or suspend all passenger air transportation that it is providing to any eligible point in the United States for which CAB or DOT has not issued an essential air service determination under either § 325.5 or § 325.7 of this chapter, when that termination or suspension will leave only one certificated carrier serving that point. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between two points;

(4) Reduce passenger air transportation to any eligible point in Alaska for which CAB or DOT has not determined the level of essential air transportation so that the service between that point and every other point served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average weekly number of round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between CAB or DOT and the State of Alaska; or

(5) Terminate, suspend, or reduce passenger air transportation at an eligible point for which CAB or DOT has issued, or is required to issue, an essential air transportation determination under section 419(a)(2) or section 419(b)(4) of the Act so that the total available seats of all the carriers linking that point to FAA-designated hubs will be reduced by 33 percent or more during a 90-day period. Service to a hub shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between two points.

(b) [Reserved]

(c) *Uncertificated carriers.* The notice described in §323.4(a) shall be filed by any uncertificated carrier that intends to terminate, suspend, or reduce:

(1) Air transportation so that any eligible point receives less than the level of essential air transportation determined by the CAB or DOT;

(2) Passenger air transportation to any eligible point for which CAB or DOT has not determined the level of essential air transportation, other than a point in Alaska, so that there is no FAA-designated hub from which the point receives at least two round trip flights per day, 5 days per week; or

(3) Passenger air transportation to any eligible point in Alaska, for which CAB or DOT has not determined the level of essential air transportation, so that the service between that point and every other point served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average number of weekly round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between CAB or DOT and the State of Alaska.

(d) For the purpose of this section, in ascertaining the level of air transportation being provided to a point or between two points, air transportation that has been the subject of a notice filed under this section shall be considered not in operation for the duration of the notice period.

(e) If a certificated carrier was, before October 24, 1978, granted authority to suspend air transportation, and that authority ends on a stated date, the carrier shall comply with the requirements of this part before continuing the suspension beyond that date.

(f) If a certificated carrier was, before October 24, 1978, granted authority to terminate or suspend air transportation, but has not suspended service, the carrier shall comply with the requirements of this part before terminating or suspending service.

§ 323.4 Contents of notices.

(a) The notice required under § 323.3 (a) and (c) shall contain:

(1) Identification of the carrier, including address and telephone number.

(2) Statement whether the carrier is a certificated carrier or an uncertificated carrier.

(3) Names of all other air carriers serving the point at the time of filing.

(4) Description of the service to be terminated, suspended, or reduced, including:

(i) Arrival and departure times at the affected points of the flights to be discontinued;

(ii) Aircraft type used,

(iii) Routes of the flights to be discontinued, and a statement of which routes, if any, will be left without nonstop or single-plane service from a certificated carrier by the intended change, and

(iv) Date of intended termination, suspension, or reduction of service.

(5) A statement whether CAB or DOT has determined the level of essential air transportation for the point, and

(i) If such a determination has been made, a statement whether the intended termination, suspension, or reduction will reduce air transportation to the point below the essential level; or

(ii) If such a determination has not been made, and the point is an eligible point, a statement whether the intended termination, suspension, or reduction reasonably appears to deprive the point of essential air transportation, and an explanation.

(6) If the point is an eligible point, the calendar date when objections are due under § 323.10.

(7) Proof of service upon all persons specified in § 323.7(a). The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(b) [Reserved]

(c) DOT may require any carrier filing notice to supply additional information.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.5 Time for filing notices.

(a) Except as specified by paragraph (b) of this section, a notice required by § 323.3 shall be filed at least:

(1) 90 days before the intended termination, suspension, or reduction, if it is filed by a certificated carrier or by an uncertificated carrier receiving compensation under section 419 of the Act for service to the point;

(2) 30 days before the intended termination, suspension, or reduction, if it is filed by an uncertificated carrier not receiving compensation under section 419 of the Act for service to the point.

(b) The notice required by §323.3(a)(3) shall be filed at least 30 days, and the notice required by § 323.3(a)(1) shall be filed at least 60 days, before the intended termination or suspension.

§ 323.6 General requirements for notices.

(a) Each notice filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in Subpart A of Part 302 of this chapter.

(b) Each notice filed under this part shall be titled to indicate the point(s) involved, and to indicate whether it is a 30-, 60-, or 90-day notice and whether it involves a termination, a suspension, or a reduction of air transportation.

§ 323.7 Service of notices.

(a) A copy of each notice required by § 323.3 shall be served upon:

(1) The chief executive of the principal city or other unit of local government at the affected point. The principal city is the one named, or previously named, in the section 401 certificate by virtue of which the point qualifies as an eligible point. For points in Alaska or Hawaii that are designated as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point.

(2) [Reserved]

(3) The State agency with jurisdiction over transportation by air in the State containing any community required to be served under paragraph (a)(1) of this section. If there is no such State agency,

the notice shall be sent to the governor of that State.

(4) The manager of, or other individual with direct supervision over and responsibility for, the airport at any community required to be served under paragraph (a)(1) of this section.

(5) The Postmaster General (marked for the attention of the Assistant General Counsel, Transportation), if the carrier filing the notice is authorized to transport United States mail to or from any community required to be served under paragraph (a)(1) of this section.

(6) Each air carrier providing scheduled service to a non–hub or FAA–designated small hub that is directly affected by the notice.

(7) The DOT Regional Office for the region in which the affected point is located.

(8) Any other person designated by DOT.

(b) [Reserved]

(c) Local communities, State agencies, and airport managers shall be served personally or by registered or certificated mail. All other persons may be served by ordinary mail.

§ 323.8 Exemptions.

Carriers are exempted from the following provisions of the Act or this part:

(a) Section 401(j) of the Act to the extent that that provision would otherwise require them to file a notice when terminating, suspending, or reducing service in foreign air transportation;

(b) Paragraphs (a)(1), (a)(3), and (a)(5) of § 323.3 to the extent that those provisions require them to file a notice when terminating or suspending the domestic leg of an international flight (fill-up service); and

(c) Sections 401(j) and 419 of the Act and all the provisions of this part to the extent that those provisions would otherwise require them to file a notice when terminating or suspending service at an eligible point at which they have been replaced under Part 326 of this chapter. This exemption shall apply only if the carrier terminates or suspends service on, or within 90 days after, the date that the new carrier begins service.

§ 323.9 Objections to notices.

(a) Any person may file an objection requesting DOT to prohibit any termination, suspension, or reduction of air transportation to an eligible point that is the subject of a notice filed under this part.

(b) Objections shall contain:

(1) Identification of the objector, including address and telephone number.

(2) A statement of DOT action requested.

(3) The schedules, routes, carriers, and aircraft types for all air transportation to the affected point other than that proposed to be terminated, suspended, or reduced.

(4) A suggested reasonable level of essential air transportation to the affected point.

(5) [Reserved]

(6) A justification of the suggested level of essential air transportation.

(7) Proof of service on the carrier filing the notice objected to, on all airport managers and State and local governments on whom the notice was filed, and any other person designated by DOT. The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(c) Objectors are strongly urged to include in their objections facts to support the suggested level of essential air transportation (e.g., traffic and enplanement data, other market studies, facts descriptive of the point's isolation or dependence on air transportation).

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.10 Time for filing objections.

(a) Objections shall be filed not later than:

(1) 12 days from the date of filing of a 30-day notice;

(2) 15 days from the date of filing of a 60-day notice; or

(3) 20 days from the date of filing of a 90-day notice.

(b) The Department may accept late-filed objections, upon motion, for good cause shown.

(c) Whenever a notice has been filed earlier than required under § 323.5, the Department may extend the time for filing an objection to that notice.

§ 323.11 Answers to objections.

(a) Any person may file an answer to an objection filed under this part.

(b) An answer must be filed not later than 7 business days after the filing of the objection to which it responds. Late-filed answers may be allowed, and extensions of filing time granted, by the Department for the same reasons as for objections.

(c) An answer may contain the same type of facts and discussion permitted for objections under this part, and must contain:

(1) Proof of service on the objector, on all persons on whom the objection was required to be served, and on any other person designated by the Department. The proof of service shall include the names and addresses of all persons served.

(2) Identification of the answering party, including address and telephone number.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.12 General requirements for objections and answers.

(a) Each objection and answer filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in Subpart A of Part 302 of this chapter.

(b) Each objection shall be titled "Objection to Termination, Suspension, or Reduction of Air Service," and shall identify the notice to which it responds. Each answer shall be titled "Answer to Objection to Termination, Suspension, or Reduction of Air Service," and shall identify the objection to which it responds.

§ 323.13 DOT actions.

(a) If an objection has been filed under this part, DOT will dispose of the objection by order.

(b) If no objection has been filed within the time allowed by § 323.10(a), DOT may:

(1) By order prohibit a termination, suspension, or reduction that reasonably appears to deprive any eligible point of essential air transportation;

(2) Issue a notice or a final order that it will take no action on a notice filed under § 323.3; or

(3) Take no action.

§ 323.14 Temporary suspension authority for involuntary interruption of service.

(a) Any air carrier may temporarily suspend service without filing a notice under § 323.3 for any interruption of service that the carrier cannot reasonably be expected to foresee or control, such as rules, standards, or other action, or inaction, of the Administrator of the Federal Aviation Administration or of a foreign government, emergency measures, strikes, weather conditions, construction work on airports, or disasters. However, the provisions of this paragraph shall apply to interruptions due to airport inadequacies only if the carrier is unable to serve the point through any airport convenient to the point with the type of equipment last regularly used to serve the point.

(b) In the case of an interruption of service caused by a strike, the carrier shall give immediate notice of the interruption to DOT. Suspension authority under this section due to a strike shall expire 90 days after employees return to work.

(c) If service to a point is interrupted for more than 3 consecutive days for reasons beyond the carrier's control other than a strike, the holder shall give notice to DOT within 3 days following the date of first interruption, setting forth the date of first interruption and a full statement of the reasons for the interruption.

(d) The notice required by paragraph (b) or (c) of this section shall be marked for the attention of the Director, Office of Essential Air Service.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.15 Report to be filed after strikes.

(a) Within 15 days following resumption of service after a strike, an air carrier shall file a report with DOT containing a list of all flights that were canceled, the date they were canceled, and the date service was resumed.

(b) The report shall be marked for the attention of the Director, Office of Essential Air Service.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.16 Listings in schedule publications.

Each air carrier filing a notice under paragraphs (a)(2), (a)(4), (a)(5), or (c) of § 323.3 shall continue to list the affected flights in all generally-distributed schedule publications in which the flight was listed before the notice. The listings shall continue until DOT permits the flights to be discontinued. The listings may include a notice stating that the flights are "to be discontinued as of (date) subject to government approval."

§ 323.17 Delays in discontinuing service.

If transportation that is the subject of a notice under this part is not discontinued within 90 days of the intended date stated in the notice, a new notice must be filed before the service may be discontinued. However, if DOT requires the carrier to provide service beyond the stated date, the carrier need not file a new notice if it discontinues the service within 90 days after DOT permits it to do so.

§ 323.18 Carriers' obligations when terminating, suspending, or reducing air service.

Any air carrier that terminates, suspends, or reduces air service, whether or not subject to the notice requirements of this part, shall make reasonable efforts to contact all passengers holding reservations on the affected flights to inform them of the flights' cancellation.

PART 324—PROCEDURES FOR COMPENSATING AIR CARRIERS FOR LOSSES

Sec.

324.1 Applicability.
324.2 Application for compensation for losses.
324.3 Procedures after receipt of application.
324.4 Informal conference procedures.
324.5 Participants in the conference.
324.6 Statement of confidentiality.
324.7 Post-conference procedure.
324.8 Effect of conference agreements.
324.9 Procedure for making advance payments.
324.10 Liability of carrier for excess payments.
324.11 Conformity with Subpart A of Part 302.

Authority: Secs. 204, 407, and 419 of Pub. L. 85–726, as amended, 72 Stat. 743, 766, 92 Stat. 1732, 49 U.S.C. 1324, 1377, 1389.

§ 324.1 Applicability.

This part applies to proceedings, under sections 419(a)(7)(B) and 419(a)(7)(C) of the Act, for compensating an air carrier for losses incurred in complying with a DOT or CAB order to continue service.

§ 324.2 Application for compensation for losses.

(a) To receive compensation for its losses incurred in complying with a DOT or CAB order to continue to provide essential air service, an air carrier shall file in the Documentary Services Division an application titled "Application for Compensation for Losses."

(b) The application may be filed after the first 30-day compulsory service period, but shall not be filed later than 90 days after the carrier is allowed to suspend, terminate, or reduce service. It shall include:

(1) The dates of the compulsory service period covered by the application.

(2) The amount of compensation that is sought.

(3) Detailed information as to traffic, revenues, and expenses during the compulsory service period, and any investments that were required to perform the operations during that period.

(4) Full support for all information.

(5) The assurances required by § 379.4 of this chapter.

(6) A certification by a responsible officer of the air carrier that the information submitted is true and accurate to the best of his or her knowledge.

(7) A statement acknowledging that any compensation paid in advance under § 324.9 or periodically under § 324.3 is subject to adjustment by DOT.

(c) All information supplied by an air carrier in its application is subject to verification by DOT and DOT authorized auditors.

(d) DOT may dismiss an application if it does not contain the information required by this section and may close the case if a complete application is not filed within 90 days after the prior application was dismissed.

(Approved by the Office of Management and Budget under control number 3024–0034)

§ 324.3 Procedures after receipt of application.

(a) When the application is received *before* the air carrier has been permitted to institute its intended suspension, termination, or reduction in service, the procedure is as follows:

(1) DOT will issue an order setting an interim rate of compensation to be paid periodically to the carrier. This amount will be subject to DOT's final adjustment after the carrier is allowed to suspend, terminate, or reduce service as it requested.

(2) If the carrier seeks an increase in the amount of the periodic payments, it must submit another application. DOT may revise the amount of the periodic payments on its own initiative in order to avoid paying excessive interim compensation.

(3) Within 90 days after the carrier is allowed to institute its suspension, termination, or reduction in service, it shall submit another application under § 324.2 so that DOT can make a final adjustment of that carrier's claim.

(b) When the application is received *after* the air carrier has been permitted to suspend, terminate, or reduce service, the procedure is as follows:

(1) If DOT finds the application adequate to support the compensation requested, it will issue a show-cause order proposing an amount of payment to the carrier.

(2) If DOT finds the application insufficient to support the compensation requested, it may seek more information. If DOT does not agree to the compensation requested, it will send the applicant a statement describing the areas in which it disagrees or finds the information presented insufficient, and will refer the matter to an informal conference under § 324.4.

(3) The applicant may file an answer to the statement of disagreement not later than 15 days after it is received.

(c) Any payment will be considered to be made on the first day that losses compensated by that payment were incurred.

§ 324.4 Informal conference procedures.

(a) When there is disagreement on the amount of compensation that should be paid, DOT will arrange a conference with representatives of the air carrier applicant for the purpose of understanding and resolving the issues and facts in proceedings under this part.

(b) The conference shall be limited to the discussion of, and possible agreement on, the fair and reasonable amount of compensation for losses that should be paid to the air carrier required to continue service under DOT order.

(c) When DOT takes public action on the matter, a written summary of the conference discussion will be filed in the Documentary Services Division and sent to the carrier involved.

§ 324.5 Participants in the conference.

Other than DOT's staff and representatives of the carrier whose losses are in issue, no person may attend unless DOT's staff considers their presence necessary to resolve one or more of the issues under discussion. In such case, their participation shall be limited to such specific issues. No person, however, is required to attend.

§ 324.6 Statement of confidentiality.

All persons in an informal conference, during the period of the conference and until DOT takes public action on the matter, shall strictly protect information obtained in the conference from disclosure except to DOT's and the applicant's concerned employees and counsel. All persons participating in the conference other than DOT staff shall sign a statement in which they agree to so protect the information.

§ 324.7 Post-conference procedure.

(a) If any pertinent issues are not resolved at the conference, the air carrier may request a hearing or the opportunity to submit a written or oral statement to the Department. DOT will grant the request if such action is needed for further clarification and understanding of the issues. Granting of the request will not, however, limit the rights that the carrier might otherwise have under the Act and the rules of practice.

(b) If the carrier has not previously received compensation under this part for providing essential service to the point involved in its application, DOT shall issue a show-cause order proposing an amount of payment to the carrier.

(c) If the carrier has been receiving advance payments under § 324.9 or periodic payments under § 324.3(a)(2), DOT shall issue a show-cause order proposing the final adjustment of the carrier's claim, setting forth DOT's tentative findings of the amount it owes the carrier or the amount the carrier owes DOT.

§ 324.8 Effect of conference agreements.

(a) No agreement or understanding on a rate of compensation that is reached in the conference shall be binding on DOT or any participant.

(b) The carrier will have the right to take other procedural steps, including requesting a hearing, as if no conference had been held.

§ 324.9 Procedure for making advance payments.

(a) At any time after a carrier is ordered to continue service, DOT may, upon its own initiative or on petition by the carrier, order advance payments for a carrier's future losses subject to adjustment upon determination of the final rate.

(b) A carrier's petition shall be titled "Petition for Advance Compensation for Losses."

(c) The carrier shall include with its petition, or will be required by DOT to submit, estimates of the information required under § 324.2(b) and a full explanation of why it needs compensation in advance. The explanation shall include evidence of the carrier's financial condition and cash-flow prospects which taken together establish the need for an immediate cash infusion in order for service to be continued.

(d) Carriers receiving payments under this section may, absent a filing under § 324.2 of this part, continue to receive the amount of compensation ordered by the CAB or DOT under paragraph (a) of this section. DOT may revise the amount of these payments in order to avoid paying the carrier excessive compensation.

(Approved by the Office of Management and Budget under control number 3024–0034)

§ 324.10 Liability of carrier for excess payments.

(a) If the payments to a carrier exceed the amount authorized by CAB or DOT in its final adjustment, the affected air carrier shall be liable for repayment of the amount of such excess.

(b) If the carrier fails to make the repayment under paragraph (a) of this section, any future payment due that carrier under this chapter shall be applied to such indebtedness or DOT shall use any other means authorized by law to ensure repayment.

(c) Compliance with the provisions of this section shall not deprive a carrier of any right it would otherwise have to contest DOT's final adjustment.

§ 324.11 Conformity with Subpart A of Part 302.

The provisions of Subpart A of Part 302 of this chapter, except for § 302.8 of this chapter and any other provisions that are inconsistent with this part, shall apply to proceedings under this part.

PART 325—ESSENTIAL AIR SERVICE PROCEDURES

Sec.
325.1 Purpose.
325.2 Applicability.
325.3 Definitions.
325.4 State and local participation.
325.5 Determinations and designations.
325.6 Periodic reviews.
325.7 Appeal of the determination or designation.
325.8 Informal conferences.
325.9 Oral arguments.
325.10 Modification of the designated level of essential air service.
325.11 Form of documents.
325.12 Service of documents.
325.13 Environmental evaluations and energy information not required.
325.14 Conformity with Subpart A of Part 302.

Authority: Secs. 204, 419, Pub. L. 85–726, as amended, 72 Stat. 743, 92 Stat. 1732; 49 U.S.C. 1324, 1389.

§ 325.1 Purpose.

The purpose of this part is to establish procedures to be followed in designating eligible points and in determining essential air transportation levels for eligible points, and in the appeals and periodic reviews of these determinations, under section 419 of the Act.

§ 325.2 Applicability.

This part applies to essential air service determinations for communities designated as eligible under section 419(a) of the Act and to eligible point designations and essential air service determinations for communities that qualify under section 419(b) of the Act. It applies to the gathering of data by the Department, and to the participation of State, local, and other officials and other interested persons in the designation and determination processes.

Note.—Criteria for designating eligible points under section 419(b) are contained in Part 270 of this chapter. Guidelines for deciding essential air service levels are contained in Part 398 of this chapter.

§ 325.3 Definitions.

As used in this part, "eligible point" means:

(a) Any point in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate issued by CAB under section 401 of the Act, to provide air service on October 24, 1978, whether or not such service was actually provided;

(b) Any point in the United States and the several territories and possessions of the United States that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, inclusive, and that has been designated as an eligible point under the Act; or

(c) Any other point in Alaska or Hawaii that has been designated as an eligible point under the Act.

§ 325.4 State and local participation.

(a) DOT, on a periodic basis, will send a questionnaire to each eligible point that is served by not more than one certificated air carrier, or is designated as an eligible point under section 419(b) of the Act, or for which DOT is reviewing its essential air service needs. The questionnaire will be addressed to:

(1) The chief executive of the principal city, or other unit of local government at the affected point, that is named or has been previously named in a qualifying section 401 certificate. For points in Alaska or Hawaii that are named DOT as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point;

(2) The individual or entity with direct supervision over and responsibility for the airport at the eligible point; and

(3) The State agency with jurisdiction over air transportation in the State containing the eligible point. If there is no such State agency, the questionnaire will be sent to the governor of that State.

(b) Within 60 days after receipt of the questionnaire, five copies of the response shall be filed in the Documentary Services Division, unless the Department specifies another date. If no response is received within the period, essential air service for that eligible point may temporarily be set at the minimum level prescribed in section 419(f) of the Act.

(c) Any other interested person may, during the 60-day response period, submit information relevant to the essential air service level of that eligible point by filing in the Documentary Services Division, five copies of a document titled with the name of the point involved.

(d) As necessary, the DOT may request additional information to supplement the questionnaire.

(Approved by the Office of Management and Budget under control number 3024–0037)

§ 325.5 Determinations and designations.

(a) Not later than October 24, 1979, after reviewing all information submitted, CAB issued determinations of the essential level of air service for eligible points that, on October 24, 1978, were served by not more than one direct air carrier holding a certificate under section 401 of the Act for scheduled service to the point.

(b) DOT will issue a determination of the essential level of air service for a point within 6 months after each of the following events:

(1) A notice is received that service to an eligible point will be reduced to only one carrier that holds a section 401 certificate;

(2) A point is designated as an eligible point under section 419(b) of the Act and either paragraph (c) of this section, paragraph (d) of this section, or § 325.7(e); or

(3) A review was conducted of essential air service of that point under § 325.6.

(c) Not later than January 1, 1982, CAB designated the communities described in § 270.2(a) and (b) as eligible points or as ineligible.

(d) After January 1, 1982, DOT may designate communities in Alaska or Hawaii as eligible points if they apply for such designation.

§ 325.6 Periodic reviews.

(a) The Department will start a periodic review of essential air service within 1 year of the date of the previous determination of essential air service for eligible points receiving subsidized service, within 2 years of the date of the previous determination for eligible points in Alaska, and within 3 years of the date of the previous determination for eligible points without subsidized air service.

(b) The review shall be conducted in accordance with the procedures in §§ 325.4, 325.5 and 325.7.

(c) The Department may review the designation under section 419(b) of a community as an eligible point to determine whether that point continues to meet the criteria in part 270 of this chapter.

§ 325.7 Appeal of the determination or designation.

(a) Any person objecting to an essential air service determination may within 60 days after its issuance file in the Documentary Services Division a document titled "Appeal of Essential Service Determination." The appeal shall:

(1) Contain specific objections to the essential air service determination, including support for all such objections;

(2) State how the essential air service determination departs from the guidelines in Part 398 of this chapter or what extraordinary factors justify deviating from those guidelines; and

(3) Describe the level of air service that the appellant believes is essential for that community.

(b) Any person objecting to the designation of a point as ineligible under section 419(b) of the Act may within 60 days after the designation is issued file in the Documentary Services Division a document titled "Appeal of Eligible Point Designation."

(c) The Department shall appoint an appeal panel consisting of three senior employees, to be drawn from the Office of Essential Air Service, the Office of the General Counsel, and the Asistant Secretary for Governmental Affairs. No office shall be represented on an appeal panel by more then one employee. The three-member panel will process the appeal and make a recommendation to the Assistant Secretary for Policy and International Affairs.

(d) An informal conference may be held, or more information may be requested, before the three-member panel makes its recommendation.

(e) The DOT decisionmaker shall decide the appeal after receiving a recommendation from the three-member panel.

(f) If no appeal is filed within the 60-day period, a determination or designation will become final, unless stayed by the Department.

(g) Pending the outcome of an "Appeal of Essential Service Determination," the essential air service for the eligible point involved shall be the level set by the determination issued under § 325.5.

(Approved by the Office of Management and Budget under control number 3024–0037)

§ 325.8 Informal conferences.

(a) If an appeal raises an issue that cannot be satisfactorily resolved on the basis of written submissions, the Department may order that an informal conference be held.

(b) The informal conference will be conducted by a senior DOT employee designated by the Assistant Secretary for Policy and International Affairs.

(c) Any interested person may attend the informal conference.

§ 325.9 Oral arguments.

If some appeals raise issues common to several communities so that expression of diverse viewpoints on these issues would help the Department dispose of them, the parties may be invited to participate in an oral argument at its offices in Washington, D.C.

§ 325.10 Modification of the designated level of essential air service.

(a) Any person may file with DOT a petition titled "Petition for Modification of Essential Air Service Level," asking to modify the essential air service level at a point.

(b) The petition shall identify the point affected, and specifically state the reasons why the petitioner believes the designated essential level is inadequate. It should contain any facts and arguments that support its requests, and describe the level of essential air service that should be substituted.

(c) Any person may, within 30 days after the filing of a petition for modification, file an answer to that petition titled "Answer to Petition for Modification."

(d) After review, the Department may seek more information and the procedures of §§ 325.5 and 325.7 will be followed.

(Approved by the Office of Management and Budget under control number 3024–0037)

§ 325.11 Form of documents.

All documents filed under this part shall be filed in the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and on their front page state:

(a) The title of the document;

(b) The name of the affected community;

(c) The name, address, and telephone number of a person who can be contacted for further information concerning the subject of the document; and

(d) In the case of a responsive document, the docket number of the document to which it responds.

§ 325.12 Service of documents.

Any person, except one filing individually as a consumer, who files a document under this part, including responses to the questionnaire, shall serve that document upon those listed in § 325.4(a) of this part and upon the following:

(a) The governor of the State in which the eligible point is located;

(b) Each air carrier providing scheduled service to the affected eligible point;

(c) In the case of a responsive document, the one who filed the document to which it responds; and

(d) The U.S. Postal Service, Assistant General Counsel, Transportation Division, Law Department, Washington, D.C. 20260.

§ 325.13 Environmental evaluations and energy information not required.

Notwithstanding any provision of Part 312 or Part 313 of this chapter, a person filing a petition or appeal under this part is not required to file an environmental evaluation or energy information with the application.

§ 325.14 Conformity with Subpart A of Part 302.

Except where they are inconsistent, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

PART 326—PROCEDURES FOR BUMPING SUBSIDIZED AIR CARRIERS FROM ELIGIBLE POINTS

Sec.

326.1 Purpose.
326.2 Definitions.
326.3 Application to bump an incumbent carrier.
326.4 Answers and replies to bumping applications.
326.5 Service of applications and answers.
326.6 DOT action.
326.7 Standards for decision.
326.8 Transition from the incumbent carrier to the applicant.
326.9 Conformity with Subpart A of Part 302.

Authority: Secs. 204, 401, 407, 419, and 1001, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 763, 766, 788, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1376, 1377, 1389, 1481.

§ 326.1 Purpose.

The purpose of this part is to establish procedures for an air carrier applying under section 419(a)(11) or (b)(8) of the Act to provide essential air transportation to an eligible point, where it would be displacing another carrier that is providing essential air transportation under a subsidy rate previously established under section 419 of the Act. This part applies even if the applicant is not applying for a subsidy for itself but is merely seeking to terminate the incumbent carrier's subsidy.

§ 326.2 Definitions.

As used in this part:

(a) "Applicant" means an air carrier that files a bumping application.

(b) "Bumping application" means an application by an air carrier proposing to provide essential air transportation at an eligible point and requesting the Department to terminate the subsidy paid to an incumbent carrier for providing essential air transportation at that eligible point. The application may also request a subsidy to provide essential air transportation to that point.

(c) "Eligible point" means:

(1) Any community in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate of public convenience and necessity issued by the Board under section 401 of the Act, to provide passenger air transportation on October 24, 1978, whether or not such service was actually provided;

(2) Any point in the United States and its several territories and possessions that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, that has been designated as eligible under the criteria in Part 270 of this chapter; or

(3) Any other point in Alaska or Hawaii that has been designated as an eligible point under Part 270 of this chapter.

(d) "Essential air transportation" means the level of air service that is guaranteed an eligible point under section 419 of the Act and the guidelines in Part 398 of this chapter.

(e) "Hub" means a point annually enplaning more than 0.05 percent of the total annual enplanements in the United States or listed as such by the Department of Transportation publication "Airport Activity Statistics of Certificated Route Carriers."

(f) "Incumbent carrier" means the air carrier serving an eligible point with subsidy at the time a bumping application is filed.

(g) "Subsidy under section 406" means payments made under section 406 of the Federal Aviation Act, Pub. L. 97–276, or any other appropriation act or continuing resolution that authorizes payments to air carriers based upon rate orders issued under section 406 of the Act.

§ 326.3 Application to bump an incumbent carrier.

(a) To replace an incumbent carrier at an eligible point, an air carrier shall file a bumping application in the Documentary Services Division.

(b) If the incumbent carrier is receiving its subsidy under section 406 of the Act, the application may be filed at any time after January 1, 1983.

(c) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the application may not be filed until the incumbent carrier has been serving the eligible point for at least 2 years.

(d) The application shall include:

(1) The name and address of the carrier filing the application;

(2) The name of the incumbent carrier;

(3) The name of the eligible point involved;

(4) Fitness information, as follows:

(i) If the applicant has already been found by the Department or CAB to be fit, willing, and able to provide scheduled service, it shall cite the most recent order establishing the finding.

(ii) If the applicant has not yet been found by the Department or CAB to be fit, willing, and able to provide a scheduled service, it shall include the fitness information required by Part 204 of this chapter to support such a finding. In making this showing, the applicant may incorporate by reference material submitted in a prior proceeding before the CAB or DOT.

(5) The information required by § 204.6(c) (2) and (3) of this chapter, even if the applicant is not seeking subsidy for itself;

(6) The service pattern proposed, including the hub and hubs to be served from the eligible point, the number of flights to be provided, whether the flights will be nonstop, and the type of aircraft to be employed. If the applicant is basing its application on improved service at the eligible point, it shall state how its proposed service represents an improvement over the incumbent carrier's service;

(7) If the applicant is seeking a subsidy, the assurances required by §§ 379.4 and 382.21 of this chapter;

(8) The earliest date or season that the applicant is prepared to begin service; and

(9) The availability of slots at the hub airport it proposes to serve.

(e) All information supplied by an air carrier in its application is subject to verification by DOT and DOT authorized auditors.

(Approved by the Office of Management and Budget under control number 3024–0063)

§ 326.4 Answers and replies to bumping applications.

(a) Any person may file an answer to an application filed under this part.

(b) To be considered by DOT, an answer should be filed not later than 30 days after the filing of the application to which it responds.

(c) An answer by the incumbent carrier may refute the fitness and reliability of the applicant to provide the essential air transportation, refute its ability to provide the service at the amount of compensation requested, deny that the applicant's proposed service represents a substantial improvement, and/or offer a counterproposal to that offered by the applicant. If the incumbent desires a hearing, it should request it at this time.

(d) An answer by representatives of the eligible point should state whether they consider the service pattern proposed by the applicant to be a substantial improvement in service and the reasons for their views.

(e) Any other carrier may submit a bumping application during the answer period. Such an application should include the information required by § 326.3(d).

(f) Any person may submit a reply to a counterproposal filed under paragraph (c) of this section or to another application filed under paragraph (e) of this section within 15 days of the end of the answer period.

(Approved by the Office of Management and Budget under control number 3024–0063)

§ 326.5 Service of applications and answers.

(a) The application shall be served upon:

(1) The chief executive of the principal city or other unit of local government of the eligible point. The principal city is the one named, or previously named, in the section 401 certificate by virtue of which the point qualifies as an eligible point. For points in Alaska or Hawaii that are named as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point.

(2) The agency of the State, territory, or possession with jurisdiction over transportation by air in the area containing the eligible point. If there is no such agency, the application shall be served on the Governor of the State, territory, or possession.

(3) The manager of, or other individual with direct supervision over and responsibility for, the airport at the eligible point.

(4) Each air carrier providing scheduled passenger service at the eligible point.

(5) The DOT Regional Office for the region in which the eligible point is located.

(6) Any other person designated by the Department.

(b) Answers to applications and replies to answers shall be served on the persons listed in paragraph (a) of this section, on the applicant, and on the person that filed the answer to which the reply is directed.

§ 326.6 Department action.

(a) After an application is filed under this part and the answer and reply period has elapsed, a rate conference will be held with the applicant or applicants and with the incumbent carrier, if it has filed a counter proposal, to determine the reasonableness of the compensation requested. One or more of the following actions may also be taken:

(1) A conference may be held with the eligible point concerned to determine its view on the relative merits of the present and proposed service pattern.

(2) Additional information may be requested.

(3) The application may be consolidated with the incumbent carrier's rate renegotiation proceeding if the incumbent's rate term is close to expiration.

(4) Additional service and subsidy proposals may be solicited.

(b) After the Department completes its reviews and conferences, and obtains any necessary information, it will take one or more of the following actions:

(1) Issue an order to show cause proposing to grant the application;

(2) Deny the application if the applicant fails to meet the criteria set forth in § 326.7;

(3) Set the application for an oral evidentiary hearing under the following circumstances:

(i) There are material facts in dispute;

(ii) These facts are of decisional significance; and

(iii) The Department finds that the disputed facts can best be resolved in an oral evidentiary hearing.

(4) Set the application for oral arguments before the Department.

§ 326.7 Standards for decision.

(a) DOT will not grant an application under this part unless;

(1) It finds, or previously found, that the applicant is fit, willing, and able to provide scheduled air transportation;

(2) It finds that the applicant will provide the essential air transportation at the eligible point in a reliable manner; and

(3) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the applicant shows by a preponderance of the evidence that its proposal will result in either of the following:

(i) A substantial improvement in the air service being provided the eligible point with no increase in subsidy; or

(ii) A substantial decrease in the amount of subsidy that will be required to provide essential air transportation at the eligible point.

(b) To be considered substantial, the proposed decrease in the amount of subsidy should be at least $50,000 per year or 10 percent of the incumbent carrier's subsidy rate, whichever is greater.

(c) In deciding whether a proposed service pattern represents a substantial

improvement in air service, DOT will consider the following factors:

(1) Which hub or hubs the applicant proposes to serve from the eligible point;

(2) The number of stops that the applicant will make between the designated hub and the eligible point;

(3) The size and type of aircraft, including whether they are pressurized, that the applicant intends to use at the eligible point;

(4) An increase in the number of flights or seats that the applicant proposes to provide at the eligible point, if:

(i) The increased frequencies are combined with a change in aircraft so as not to result in the Department paying a subsidy for more than essential air transportation; or

(ii) A petition has been filed under § 325.10 of this chapter to raise the eligible point's essential air transportation level.

(5) Service-related advantages held by the applicant such as computerized reservation systems or joint fares.

(d) In addition to the factors described above, the Department, in evaluating an application, will consider the following:

(1) The desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the eligible point involved;

(2) The experience of the applicant in providing scheduled air service in the vicinity of the eligible point involved;

(3) The relative efficiency of the aircraft that the competing carriers use or propose to use;

(4) The relative financial strength of the competing carriers;

(5) The time necessary for the applicant to begin providing the service it proposes;

(6) The performance of the incumbent carrier in serving the eligible point involved;

(7) The amount of time that the incumbent carrier was on the subsidy rate to question;

(8) The effect of granting the bumping application on other points in the incumbent carrier's system;

(9) The availability of slots for the applicant at the hub or hubs that it proposes to serve; and

(10) In Alaska, the experience of the applicant in providing scheduled air service, or significant patterns of nonscheduled air service under Part 298 of this chapter, in that State.

(e) In evaluating the standards described above, the Department will give great weight to the views of representatives of the eligible point involved.

§ 326.8 Transition from the incumbent carrier to the applicant.

(a) If an applicant is successful in its bid to replace an incumbent carrier and receive a subsidy for serving the eligible point, it shall notify DOT and the incumbent carrier of the date that it is prepared to begin service at the eligible point. It shall allow the incumbent 45 days to close down its operation at the eligible point, unless another date is agreed on.

(b) The incumbent carrier shall continue service at the eligible point until the successful applicant begins service there.

(c) The Department will continue to pay the subsidy to the incumbent carrier for at least 45 days after it grants the bumping application, unless the two carriers agree to a different date for the transfer of service. DOT will continue to pay the subsidy to the incumbent carrier thereafter until the successful applicant begins service at the eligible point.

§ 326.9 Conformity with Subpart A of Part 302.

Except where they are inconsistent, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

[FR Doc. 84-30193 Filed 11-20-84; 8:45 am]
BILLING CODE 4910-62-M

federal register

Wednesday
November 21, 1984

Part III

Environmental Protection Agency

40 CFR Part 723
Premanufacture Notification Exemptions; Exemptions for Polymers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 723

[OPTS-50033A; TSH-FRL 2439-1]

Premanufacture Notification Exemptions; Exemptions for Polymers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance for commercial purposes to submit a notice to EPA before manufacture or import begins. Section 5(h)(4) of TSCA authorizes the Administrator, upon application and by rule, to exempt any person from the provisions of section 5 if the Administrator determines that the chemical substance will not present an unreasonable risk of injury to health or the environment when manufactured, processed, distributed, used, or disposed of under the exemption. This rule grants a section 5(h)(4) exemption for persons who manufacture or import certain polymers. To ensure that these polymers will not present an unreasonable risk, EPA has included procedural safeguards and other conditions in the exemption.

DATES: This rule shall be promulgated for purposes of judicial review under section 19 of TSCA at 1 p.m. eastern daylight time on December 5, 1984. This rule is effective January 4, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-511, 401 M St., SW., Washington, D.C. 20460, Toll-free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: This rule exempts, under section 5(h)(4) of TSCA, manufacturers and importers of certain polymers from certain premanufacture notice (PMN) requirements. EPA has determined that these chemical substances will not present an unreasonable risk of injury to health or the environment under conditions of the exemption.

I. Background

Under section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes must notify EPA at least 90 days before manufacture or import begins. A new chemical substance is any substance that is not on the inventory of existing substances compiled by EPA under section 8(b) of TSCA.

The requirement to submit premanufacture notices (PMNs) for new chemical substances became effective on July 1, 1979, 30 days after the publication of the Initial Inventory. EPA issued the final Premanufacture Notice Requirements and Review Procedures in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of September 13, 1983 (48 FR 41132), the Agency clarified certain provisions of the rule, made a non-substantive amendment to the timing of the submission of the notice of commencement of manufacture, and stayed certain other provisions of the rule. Several of the stayed or amended provisions of the PMN Rule have been referenced in this exemption rule, and therefore are stayed or amended to the same extent. The rule became effective October 26, 1983. Since the beginning of the program in 1979, EPA has reviewed more than 4,000 notices.

Section 5(h)(4) of TSCA provides that the Administrator may, upon application and by rule, exempt a new chemical substance or category of new substances from any requirement of section 5 if he or she determines that the manufacture, processing, distribution, use, or disposal of the chemical substance(s) will not present an unreasonable risk of injury to human health or the environment.

This exemption was developed in response to petitions from the Chemical Manufacturers Association (CMA) and other industry trade groups. Notice of receipt of the petitions from CMA and others was published in the **Federal Register** of November 3, 1981 (46 FR 54688); the proposed exemption rule was published in the **Federal Register** of August 4, 1982 (47 FR 33924). The 60-day comment period on this proposal ended on October 4, 1982. EPA received 51 comments from trade associations, chemical manufacturers, environmental organizations, and other interested persons.

At the request of the Natural Resources Defense Council and other groups, a public hearing was held on November 1, 1982, in Washington, D.C. Seven organizations and individuals made oral comments on the proposal at the hearing. EPA reopened the public comment period at that time, extending it for 30 days, to give participants at the hearing an opportunity to answer questions from EPA on their comments on the proposal. Eleven organizations provided comments during the extended comment period.

EPA has summarized its response to the major public comments received during the rulemaking. This summary, together with copies of the public comments and a transcript of the hearing, is included in the public record.

A. Exemption Requests

On May 21, 1981, the Agency received a petition from CMA requesting exemptions for: (1) Site-limited intermediates; (2) chemical substances produced in quantities of 25,000 pounds or less per year; and (3) polymers whose precursor monomers are on the TSCA Chemical Substance Inventory. In addition, CMA requested an exemption that would authorize EPA to allow manufacture of new chemical substances if review was completed before the end of the 90-day PMN review period. CMA also requested that EPA promulgate a rule to establish procedures for processing individual section 5(h)(4) exemption applications. The Synthetic Organic Chemical Manufacturers Association (SOCMA) submitted a petition to exempt the same categories of substances on June 28, 1981. Six other trade associations submitted endorsements of the CMA petition.

Ashland Chemical Company submitted a petition on July 28, 1981 to exempt unsaturated polyester resins made from the list of acids, polyols, polyepoxides, and modifiers identified in their petition. On October 8, 1981, Cargill, Incorporated petitioned EPA to exempt (1) new polymers made by the substitution of a natural oil or mixture of oils, derived from natural sources, in polymers listed on the Inventory, and (2) alkyd and polyester resins whose monomers used a greater than two weight percent are on a list of Inventory-listed substances compiled by Cargill. Mobil Research and Development Corporation submitted a petition to exempt alkyd and polyester resins on April 7, 1982. Mobil included a list of starting materials for these resins, many of which appear on the Ashland and Cargill lists.

On June 22, 1982 the Kelco Division of Merck and Company submitted an exemption request for a class of substances that Kelco defined as "biosynthetic polysaccharide gums." The rule published with this notice addresses only polymers and responds to the CMA, Ashland, Mobil, and Cargill petitions. The Kelco petition has been considered separately.

B. Alternatives Proposed

In response to the petitions from CMA, EPA began separate rulemakings

for polymers and for site-limited intermediates and low volume chemicals. The rule issued today addresses polymers. A rule to exempt site-limited intermediates and low volume chemicals is still under consideration. At this time, EPA has decided not to begin rulemaking to allow manufacture of new chemical substances when review is completed before the 90-day period has expired because (1) it believes that the exemptions for site-limited intermediates, low volume chemicals, and polymers will substantially reduce or eliminate the need for such an exemption; and (2) there is a legal uncertainty as to whether the Act permits early manufacture as a general approach to PMN review either by rule or policy statement. In addition, because of limited resources, EPA has deferred consideration of section 5(h)(4) procedural rules.

In developing the exemption proposals for polymers, EPA considered five alternative approaches. These alternatives were discussed in the preamble to the proposed rule. EPA also considered several other alternatives identified in the comments on the proposal. These alternatives are summarized below.

Under Alternative 1, EPA would have denied CMA's exemption petition to exempt polymers and instead would have addressed individual petitions for exemption categories defined more narrowly in terms of exposure or chemical class. For example, EPA could have responded only to exemption petitions for polymers with certain toxicological characteristics. The Agency did not adopt this approach in the final rules because of the difficulty of identifying narrow classes of new chemical substances that, based solely on potential exposure or inherent toxicity, would not present an unreasonable risk and that, at the same time, would provide an economically useful exemption category. Other alternatives offer broader, more immediate relief and apply to a large number of categories and combinations of categories, while not presenting unreasonable risks.

Alternative 2 would have exempted all polymers made from monomers on the TSCA Chemical Substance Inventory without restrictions. EPA rejected this approach because it could not make the "no unreasonable risk" finding for all polymers manufactured from monomers on the Inventory. The hazard assessment performed in support of this rule illustrates that under some circumstances polymers manufactured under such an exemption may present significant risks to human health and the environment.

Under Alternative 3, EPA would have exempted all polymers which met certain criteria based on physical or chemical properties. For exemple, the Agency could establish a minimum number-average molecular weight or a criterion for maximum levels of residual monomers and other reactants for all exempt polymers. EPA did not adopt this approach because the criteria that would be necessary to support a "no unreasonable risk" finding vary with the specific reactants used as well as with the class of polymer being considered. To establish criteria that would be sufficient for an exemption for many classes of polymers would unnecessarily limit the applicability of the exemption. However, as described in Alternative 5, EPA did adopt a variation of this approach.

Alternative 4 would have exempted certain classes of polymers, such as polyolefins with or without chemical property criteria, and without EPA review of individual substances. This approach would have allowed EPA to focus its assessment of potentially exempt polymers on the specific characteristics of the polymers. However, the Agency has found that the existing data are generally too limited to identify economically useful categories of polymers that present low risks and to identify criteria appropriate to exempt these classes, particularly without EPA review. Again, EPA included a modification of this alternative in its final approach.

Alternative 5 is the approach the Agency adopted in the August 4, 1982 proposed exemption. Under this alternative, EPA would exclude from the exemption (1) certain categories of polymers for which the Agency had inadequate experience or data to judge their potential risks, and (2) certain categories of polymers for which there was concern for hazard sufficient to warrant EPA review under the full statutory provisions. EPA also proposed to exempt certain high molecular weight polymers and polyesters made from a list of reactants from all premanufacture notification requirements. Other polymers that were not excluded from exemption eligibility and had a number-average molecular weight of at least 1,000 would undergo a limited premanufacture review.

Based on comments received on the proposed polymer exemption rule, the Agency considered two more major alternatives for exemption polymers. First, some commenters suggested that a "qualified expert" provision, similar to that for the site-limited intermediate and low volume chemicals exemption, be incorporated into the polymer exemption rule. The "qualified expert" would evaluate each potentially eligible substance for toxicological properties. Such a provision might have provided a further level of protection and might have allowed EPA to eliminate some of the exclusion criteria or further shorten the length of the review period specified in the proposal. However, unlike the site-limited intermediate and low volume exemption, the polymer exemption is based in part on the inherent physical properties of polymers as a class. EPA believes that this characteristic limits the risks associated with substances under the exemption such that the broad overview of the risks of the substances that a qualified expert would provide is not necessary. The Agency believes its limited review of specific risk concerns is more effective and less burdensome than this proposed approach.

Second, many commenters stated that EPA should exempt without review the category of polymers approved for food use by the Food and Drug Administration (FDA) on the basis that their safety in food use renders them low risk chemicals in all circumstances. Many commenters also said that the exclusion criteria in the proposed exemption excludes from exemption eligibility many substances which are approved for food use and thus should be eligible for exemption. The Agency believes it cannot make the no unreasonable risk finding for food use polymers approved by FDA because the standards for review under the Food, Drug, and Cosmetic Act are different from those under TSCA and because substances manufactured outside the FDA restrictions may present significant risks. First, substances approved for food use are subject to specific use restrictions to ensure low risk which would be difficult to impose in a broad exemption under 5(h)(4). Typically, food-use approval includes restrictions on extractability and residual content which, if included in the section 5(h)(4) exemption, would limit its applicability. Second, polymers may be subject to a broad range of processing and use application that may present potential exposure and risk concerns not considered by FDA. Therefore, EPA has chosen not to exempt, as a class, polymers solely because they are approved for food use by FDA. However, many such polymers will be eligible for exemption under EPA's selected approach.

Many commenters also suggested specific classes of polymers that could be exempt. In addition, commenters identified many reactants that could be added to the polyester reactant list. EPA has not included these additional classes or reactants in the final exemption. Adequate review of their potential risk would have unduly delayed the promulgation of the final rule. In addition, inclusion of these classes and reactants in the final rule would not have allowed for adequate public comment. EPA will consider inclusion of these polymers or reactants in an amendment to this final rule or in separate rulemakings if exemption petitions that fully assess the potential risks associated with those substances are submitted.

This rule adopts the general approach described in Alternative 5: polymers which have a number-average molecular weight greater than 1,000 are exempt. Because this characteristic does not in itself eliminate or reduce to a reasonable level all concerns for risk that have been identified for polymers, the Agency has excluded from the exemption (1) certain polymers for which the Agency has inadequate experience or data to judge their potential risks, and (2) certain polymers for which there was a concern for hazard that could lead to potential risks and that EPA believes should be reviewed under the statutory 90-day review period. Second, the rule requires that all exempt polymers undergo a limited 21-day review prior to manufacture. Finally, the Agency has also allowed one exception to the molecular weight requirement. Polyesters made from a list of reactants for which the Agency has low concern are exempt even if their number-averaged molecular weight is less than 1,000.

The final rule and the Agency's reasons for adopting this approach are described in Units II through IV.

II. Final Exemption

A. Summary of the Rule

1. *Definition of exemption category.* To be considered for exemption, substances must meet the definition of polymer in the final rule. This definition ensures that exempt substances have the structural characteristics common to the category of substances on which EPA has based its no unreasonable risk finding.

2. *Classes of polymers ineligible for exemption.* Certain classes of polymers are ineligible for the exemption. These classes are (1) cationic polymers; (2) polymers that contain less than 32 percent carbon; (3) polymers that contain certain other elements; (4) polymers made from reactants that contain halogen atoms or cyano groups; (5) polymers that contain certain reactive functional groups that are intended or reasonably anticipated to undergo further reaction; (6) polymers that substantially degrade, decompose, or depolymerize; and (7) biopolymers, their synthetic equivalents, and modifications and derivatives of biopolymers.

3. *Polymers eligible for the exemption.* Polymers meeting the criteria listed above receive expedited premanufacture review by the Agency if they are: (1) Polyesters that are made from a specified list of reactants, or (2) polymers with a number-average molecular weight of greater than 1,000.

4. *General provisions.* To qualify for the exemption, manufacturers of exempt polymers must submit a limited premanufacture notice (PMN) 21 days before the date that manufacture begins. The limited PMN must contain manufacturer's identity, type of exemption, site of manufacture, chemical identity, number-average molecular weight, levels of residual monomers and other reactants and low molecular weight species contained in the polymer, identity of impurities, production volume, use information, generic chemical identity and use if these items are claimed confidential, any test data or other data concerning the polymer's health or environmental effects that are in the possession or control of the submitter, and a certification.

EPA may also extend the review period to a full 90 days if unresolved issues concerning toxicity or exposure remain at the end of the expedited review period. The manufacturer must then submit the additional information required under full premanufacture review. EPA may further extend the review period up to an additional 90 days under section 5(c) of TSCA. The Agency retains the authority to act under section 5(e) or 5(f) of TSCA during the review period.

Substances which have undergone expedited review will be added to the Inventory after receipt of a notice of commencement of manufacture or import. Substances added to the Inventory will be subject to the exclusion criteria, the applicable exemption conditions, and the weight percent of the residual monomers, reactants, and low molecular weight species reported in the notice.

The rule also establishes recordkeeping requirements for all exempt polymers. Additionally, the rule identifies procedures for determining that a substance is ineligible for exemption if the substance as manufactured does not meet the polymer definition or exemption conditions, or is excluded by the exclusion criteria.

In this preamble and under the rule, references to "manufacture" and "manufacturer" include "import" and "importer," respectively, as defined in the Premanufacture Notification Rule and as referenced in this rule.

B. Discussion of the Final Rule

The final rule adopts many of the provisions of the proposed rule published in the **Federal Register** of August 4, 1982 (47 FR 33924). The following sections discuss the differences between the final rule and the proposal, and clarify the provisions of the final rule.

1. *Definition of polymer, subunits, and reactant.* To identify the category of substances addressed in the exemption, the proposed rule defined the term "polymer." The proposal defined "polymer" as a chemical substance predominantly composed of molecules that contain at least two structural units derived from functioning monomers. The final rule modifies the definition of polymer in response to public comment; however, the meaning and purpose originally intended has been retained.

EPA received many comments suggesting modifications of the definition of "polymer." Several commenters stated that EPA should broaden the definition of polymer because it excludes substances commonly thought of as polymers. However, the Agency's review of the information submitted in PMNs to date (the PMN data base) indicates that few substances identified as polymers by PMN submitters do not meet the definition in the proposed rule. Some commenters also suggested that the other provisions of the rule (e.g., the 1,000 number-average molecular weight criterion) already limit the exemption to polymers, thus eliminating the need for the definition. However, if the definition were not retained, some substances (e.g., certain dyes), which are not considered polymers, would qualify for the exemption under the greater than 1,000 number-average molecular weight criteria. The Agency, therefore, has not broadened the definition of polymer, but has revised it to remove ambiguities in the proposed approach.

Some of the misunderstanding associated with EPA's approach to defining "polymer" resulted from the proposed rule's use of terms which have multiple meanings when used by polymer chemists. As a result, the Agency has developed a definition which does not rely on these terms.

First, EPA has replaced the term "functioning monomer" with the term "internal subunit," to eliminate the confusion surrounding the use of the term "functioning monomer." The term "subunit," which refers to the basic building blocks of a polymer, means an atom or group of associated atoms chemically derived from "reactant" substances. The term "internal subunit" means a "subunit" that is covalently linked to at least two other "subunits." Thus, an internal subunit cannot be a pendant group.

Second, the Agency has redefined the term "polymer" used in defining the category of substances which are potentially eligible for exemption. "Polymer" means a chemical substance that consists of at least a simple weight majority of "polymer molecules." A "polymer molecule" is a molecule of at least four covalently linked "subunits," which contains at least two "internal subunits." To form a polymer, polymer molecules must be distributed over a range of molecular weights. Differences in molecular weight among polymer molecules must be primarily attributable to differences in the number of "internal subunits," and not solely to changes in the number of pendant groups or similar subunits. Finally, a "polymer" cannot consist of less than a simple weight majority of "polymer molecules" with the same molecular weight. The definition for polyester has been revised to be consistent with this terminology.

Finally, in response to several comments, EPA also has included in the final rule a definition of reactant. This definition in consistent with the term as it has been used in reporting for the Inventory and premanufacture notification program. "Reactant" is defined as a chemical substance which is used intentionally in the manufacture of a polymer and which becomes part of the polymer composition. Reactants include monomers, chain transfer and crosslinking agents, monofunctional groups that act as modifiers, and other end groups that are not also monomers if they are incoporated into the polymer molecule.

In order to illustrate this terminology, EPA has developed the following example:

A "polymer" is manufactured from the starting materials phthalic anhydride, ethylene glycol, and 1-hexanol. The reaction product consists of various molecules distributed over a broad molecular weight range. Most of the reaction product molecules are "polymer molecules."

One of these "molecules" consists of seven "subunits" which are linearly connected. The seven "subunits" are chemically derived from three phthalic anhydride molecules, two ethylene glycol molecules, and two 1-hexanol molecules. The phthalate "subunits" are linked to the glycol "subunits" in an alternating order with each end terminated by a 1-hexanoxy "subunits." Thus, in this case the starting materials are "reactants" because they become part of the polymer composition.

In this molecule, the phthalate and glycol "subunits" are considered "internal subunits" because each of them is covalently bonded to two other "subunits." The "subunits" derived from 1-hexanol are not considered "internal subunits" because they are covalently linked to only one other "subunit." In other reaction product molecules, pendant "subunits" can be derived from 1-hexanol, ethylene glycol, or phthalic anhydride. However, "internal subunits" can only be derived from ethylene glycol and phthalic anhydride, because a subunit derived from 1-hexanol can covalently link to only one other molecule. Because this molecule contains five "internal subunits" and seven "subunits," it qualifies as a "polymer molecule," which must have at least two "internal subunits" out of a minimum of four subunits.

The reaction product molecules in this polymer differ primarily by the number and identity of "internal subunits." Some of the reaction product molecules are not "polymer molecules." For example, the linear combination of one molecule of 1-hexanol, linked to one molecule of phthalic anhydride, which is in turn linked to one molecule of ethylene glycol, is not a polymer molecule because it contains only one "internal subunit" and only three "subunits."

The minimum content for "polymer molecules" in a "polymer" is 50 weight percent; the remainder may consist of reaction products that have too few "subunits" or "internal subunits." Also, the polymer must consist of less than 50 weight percent of any molecules with the same molecular weight. In this example, the difference in the number of "internal subunits" derived from ethylene glycol and phthalic anhydride are primarily responsible for the differences in molecular weight among the "polymer molecules." The range of the total number of "internal subunits" is sufficiently broad that there is not 50 weight percent or more of any molecules with the same molecular weight.

2. *Substances ineligible for exemption.* The proposed rule excluded seven categories of polymers, regardless of whether they met the other conditions of the exemption. These polymers were excluded because of data indicating potential for adverse health and/or environmental effects because EPA lacked experience in reviewing them.

Several commenters supported EPA's approach of excluding categories of polymers from the exemption. However, many commenters stated that the exclusion criteria were too broad and had specific recommendations for changing each criterion. Some commenters suggested that these exclusions should apply only to those substances exempt from all premanufacture review requirements and not to those which are subject to expedited review.

The final rule retains the proposed approach of excluding certain polymers from the exemption. Such exclusions are an important component of EPA's finding that polymers manufactured under the terms of the exemption will not present an unreasonable risk. The Agency, however, has modified some of the exclusions based on public comments and additional analysis during the comment period, as described in unit II.B.2.a. through g.

EPA has not determined that the manufacture, processing, use, distribution in commerce or disposal of excluded polymers will present an unreasonable risk. The Agency has simply found that it cannot at this time make the no unreasonable risk finding for the categories of substances excluded from this exemption.

a. *Cationic polymer exclusion.* The proposed rule would have excluded from exemption polymers that are designed, intended, or reasonably anticipated to be soluble in water. This exclusion was developed because the Agency was concerned that water-soluble polymers could be widely distributed in the environment, resulting in a wide range of exposures that the Agency could not assess. In addition, EPA had toxicity concerns for some classes of polymers that are also water soluble.

Several commenters supported this exclusion and stated that the Agency should also exclude polymers that are water-extractable. Other commenters, however, stated that the exclusion was too broad and that water-soluble polymers are not necessarily toxic. Still other commenters stated that the one percent water solubility level proposed by the Agency would not be appropriate across a range of polymers because

polymers vary in toxicity. They also stated that for some polymers such a level is difficult to measure.

After further review of the literature, EPA has concluded that the exclusion of all water-soluble polymers is unnecessarily broad. The Agency also agrees that, in many cases, there is no direct correlation between high water solubility or high extractability in water and high exposure. EPA has revised its approach to exclude only cationic polymers for which it has identified is an aquatic toxicity concern.

The final rule excludes from exemption eligibility polymers that are cationic or that are reasonably anticipated to become cationic in the aquatic environment. Such polymers are typically used in drinking water treatment, municipal and industrial wastewater treatment, and petroleum recovery. As such, they have a high potential for release to the environment. The available literature demonstrates that some cationic polymers are highly toxic to fish and to other aquatic organisms. Although controlled use in water and wastewater treatment systems can limit exposure to these polymers, there is potential for such polymers to be used outside of these controlled conditions. EPA believes that a careful review of exposure conditions is necessary for cationic polymers, a review that often could not be completed within the expedited exemption review period. As a result, the Agency has excluded cationic polymers from exemption eligibility.

The rule defines "cationic polymer" as a polymer whose molecules contain one or more covalently bound "subunits" that bear net positive charge. Non-polymeric counterions alone, such as ammonium ions, are not covalently linked subunits of polymer molecules and therefore do not make an otherwise non-cationic polymer cationic. Examples of cationic polymers include quaternary ammonium polyelectrolytes and alkyl sulfonium or alkyl phosphonium polymers. The exclusion applies not only to cationics soluble in water, but also to cationics that are insoluble, such as water-dispersible polymers that are components of electrostatically-applied coatings. In addition, the rule excludes polymers that are not cationic as manufactured, but which are reasonably anticipated to become cationic in an aquatic environment. Examples of such polymers are those that contain aliphatic amine moieties. By "aquatic environment" EPA means water in a natural environment, usually having a pH between 5 and 8, as opposed to deionized water often used in the laboratory. The Agency believes that manufacturers can easily determine from the structure of the new substance, without costly testing, whether or not it may become cationic in an aquatic environment.

b. *Exclusion of polymers containing less than 32.0 percent carbon.* The proposed and the final rule exclude from exemption eligibility polymers with less than 32.0 weight percent of the atomic element carbon. The Agency proposed this exclusion because of lack of information and review experience concerning polymers that contain less than 32.0 percent carbon. By excluding such polymers, the Agency intends to limit availability of the exemption to the types of polymers that have been frequently reviewed in the PMN program.

Several commenters felt that the exclusion was arbitrary. Many commenters suggested that the carbon content level should be lowered from the proposed level to recognize the current commercial production of certain teflons and silicones. Other commenters stated that polymers of known low toxicity would be excluded.

EPA's review of the PMN data base found that only a very low percentage of polymers would be excluded. Consequently, this exclusion will provide an added safeguard and at the same time is not expected to have a significant impact on the availability of the exemption. EPA believes that polymers containing at least 32.0 percent carbon are typical of the vast majority of polymers in commerce. While polymers have been developed and are in use that contain less than 32.0 percent carbon, EPA does not have toxicity or exposure information to characterize the risks associated with low carbon content polymers. Therefore, without risk data or agency review experience, the Agency cannot make the no unreasonable risk finding for such polymers. EPA believes that the full 90-day review period will often be necessary to adequately assess the risks of polymers containing less than 32.0 weight percent carbon.

c. *Exclusion of polymers that contain certain elements.* The proposed rule excluded exemption eligibility polymers containing as an integral part of the polymer more than 0.10 weight percent of any atomic element other than hydrogen, carbon, nitrogen, oxygen, sodium, magnesium, aluminum, silicon, phosphorus, sulfur, potassium, calcium, titanium, iron, or tin. A polymer containing more than a total of 0.20 weight percent of any elements not listed above would also have been excluded. The proposed exclusion applied only to those elements intended or reasonably anticipated to be incorporated into the polymer composition. The Agency proposed this approach because there is a wide variety of polymers that could be made containing the excluded elements. Since the Agency has insufficient review experience or data on such polymers, EPA believes that full 90-day review will often be required. While several commenters stated that polymers of known low toxicity would be excluded by this approach, EPA's review of the PMN data base found that only a low percentage of polymers would be excluded by this provision.

Several commenters felt that these exclusions were arbitrary and suggested that certain elements should be added to the list of unrestricted elements. The Agency generally did not revise the exclusion based on these comments because EPA does not have sufficient review experience or data to exempt substances containing these elements on a categorical basis.

Another commenter suggested that the exclusion should limit even further the level of elements such as lead, beryllium, and cadmium that are known to be toxic to humans and the environment even at levels lower than the proposed permissible levels. The elemental exclusion was designed to restrict exemption eligibility to polymers which are similar in composition to those which have been reviewed in the PMN program. EPA's PMN review experience has indicated that polymers that are eligible for this exemption can be adequately reviewed within an expedited review period. In addition, EPA typically does not receive PMN's on polymers containing such elements. In addition, if an exempt polymer contains an eligible element at levels that present any unresolved issues about toxicity or exposure, the expedited review period will be extended and these risks will be addressed.

The final rule retains the basic approach of limiting the elemental content of polymers eligible for exemption with minor modifications that clarify the provision and better reflect Agency review experience. EPA's analysis of the PMN data base has shown that these modifications have negligible effect on the number of substances that would be eligible for exemption. The Agency believes it can adequately review the resulting eligible polymers in 21 days because of previous PMN review experience.

First, polymers that do not contain at least two of the following elements—hydrogen, carbon, nitrogen, silicon, sulfur and oxygen—are excluded from the exemption. According to the PMN data base, typical organic polymers have these elements as their primary constituents. In addition, many conventional polymers that have been reviewed in the PMN program also contain the atomic ions of sodium, magnesium, aluminum, potassium, and calcium as the monatomic counterions: Na^{+}, Mg^{+2}, Al^{+3}, K^{+} and Ca^{+2}. The final rule provides that polymers that contain these counterions as an integral part of the polymer composition may also be eligible for exemption.

Second, the Agency has reviewed polymers in PMN program that retain minor components chemically incorporated lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, and zirconium due to the use of catalysts, solvents, initiators, and other substances used in the manufacture of polymers. Since EPA has experience with polymers containing such minor components, the exclusion was modified so polymers that contain an individual or combined concentration of less than 0.20 weight percent of these minor elements would be eligible. Polymers that contain any other elements, except as impurities are ineligible for exemption.

As noted in the proposal, the elemental exclusion is intended to address only those elements intended or reasonably anticipated to be incorporated into the polymer composition, either because they were constituent elements in the monomers or reactants, or because the polymer was deliberately reacted to incorporate them (for example, if a solvent or catalyst was partially reacted with a polymer). EPA's analysis of PMN data demonstrated that the level of elements allowed in the final rule typically will not exclude polymers as a result of the use of such elements in catalysts, chain transfer agents, adjuvants, and similar reactive agents. Elements not on the list that are present in the final polymer in the form of impurities from catalysts, additives, adjuvants, and so forth are not considered "part of the polymer composition" and thus would not result in the exclusion of such polymers. However, such impurities must be reported in the PMN and will be considered by EPA when reviewing exempt polymers. If the presence of any such impurities present an unresolved issue concerning toxicity or exposure at the conclusion of the expedited review period, or if EPA believes that such impurities may cause significant risks, the review period will be extended so that the Agency thoroughly considers the need for regulatory action.

d. *Exclusion of polymers made from reactants containing halogen atoms or cyano groups.* Under the proposed rule, polymers that contain covalently bonded fluorine, chlorine, bromine, or iodine atoms or cyano groups would be excluded from the exemption. The intent of this exclusion was to exclude polymers that contain residual substances composed of halogen atoms or cyano groups. Significant toxicity concerns have been identified for certain halogen- and cyano-containing chemical substances. The final rule retains this approach with a minor modification to reflect EPA's risk concerns.

Several commenters supported EPA's exclusion of halogen- and cyano-containing polymers because of the documented risk concerns associated with some halogen- and cyano-containing reactants. However, many commenters stated that EPA should not extrapolate concern for several existing monomers to an entire class of polymers. One commenter said that halogen- and cyano-containing polymers are unreactive, unabsorbable, and insoluble that thus generally do not present risk. Several commenters suggested that the Agency establish a residual monomer limit instead of unconditionally excluding these polymers. Other commenters suggested that fluorine should not be on the list of excluded halogens, because the fluorine-carbon bond is more stable than the carbon bond with other halogens.

EPA's primary concern is not with the larger polymer molecules containing halogen atoms and cyano groups, but the low molecular weight species and residual material containing such atoms or groups that may be present in the polymer as manufactured. Information from the PMN data base and other sources demonstrates that polymers that contain halogen atoms and cyano groups may be produced in substantial volumes and used in many industrial and consumer applications with potential for significant exposure and release. Levels of residuals in these polymers can also vary widely. The Agency believes that it cannot make the no unreasonable risk finding for this class of polymers given the documented toxicity of unbound low molecular weight species containing vinyl chloride, vinyl bromide, and acrylonitrile contained in the polymer. Additionally, the documented concern for monomers such as vinylidene fluoride, vinyl fluoride, tetrafluoroethylene, and those containing perfluorinated alkyl groups supports the presence of fluorine on the exclusion list, even though the fluorinated polymer molecule itself may be unreactive. Finally, EPA does not have information to indicate that a given residual reactant level that is economically reasonable, such as the 0.1 percent level suggested by some commenters, would adequately limit the risks associated with halogen- and cyano-containing species of low molecular weight.

Upon further analysis, EPA has found that reactants that contain halogen atoms or cyano groups, but that do not result in the incorporation of such atoms or groups in the polymer, may be found in significant levels in the final polymer. The Agency believes that such residuals may cause adverse health and environmental effects. Therefore, the final rule broadens the proposed exclusion to exclude polymers made from reactants containing halogen atoms or cyano groups whether or not the halogen atom or cyano groups are incorporated into the polymer. In addition, since cyano groups may form during reactions even when they are not present in the reactants, the final rule excludes any polymer which contains cyano groups other than as impurities. This provision does not exclude polymers if non-reactants that contain halogen atoms or cyano groups (e.g., certain catalysts) are used in the manufacture of the ploymer and retained only as impurities. Potential risks associated with non-reactant impurities will be considered during the expedited review period. The final rule requires that the level of all reactant and non-reactant impurities, such as catalysts be reported in the limited PMN. If the presence of any such impurities presents an unresolved issue concerning toxicity or exposure at the conclusion of the expected review period, EPA would extend the review period to thoroughly consider the need for regulatory action.

Finally, some reactants that do not contain halogen atoms or cyano groups as their primary constitutents may contain very low levels of halogen atoms or cyano groups as trace impurities. This exclusion is not intended to exclude polymers made from reactants containing such trace impurities since EPA believes it can review the risks associated with trace impurities within the limited review period. If the levels of halogen atoms or cyano groups as impurities in the polymer are high enough to be known to or reasonably ascertainable by the

submitter, they must be identified in the limited PMN for EPA's review.

e. *Reactive functional group exclusion.* The proposed rule would have excluded polymers containing at a greater than one in 10,000 concentration certain reactive functional groups that are intended to further react to produce other polymers. This exclusion reflects the Agency's concern that such substances may react with the tissues or chemical constituents of living organisms and may increase the potential for absorption due to irritation as a result of their reactivitiy.

Many commenters agreed that it is reasonable to exclude polymers containing reactive functional groups. However, some stated that the proposed exclusion was too broad and that the list of permissible reactive functional groups should be expanded. The Agency has not obtained additional data adequate to mitigate its concerns and consequently the final rule returns this exclusion. The final rule slightly expands the scope of the exclusion to more fully address potential risks.

The final rule excludes not only polymers containing reactive functional groups that are intended to react to produce other polymers, but also those that are reasonably anticipated to react. Examples of excluded polymers are those that contain groups such as isocyanates, pendant acrylates and methacrylates, epoxides, acid anhydrides, acid halides, aldehydes, amines, phenols, thiophenols, sulfur acids and their reactive derivatives, aziridines, blocked isocyanates, imines, isothiocyanates, vinyl sulfones, halosilanes, alkoxysilanes, and 3- and 4-membered ring lactones and other reactive groups. EPA has added the "reasonably anticipated" language to address those situations where such groups are present to impart particular properties and can be expected to react but may not necessarily be intended to further react to form other polymers. Such groups would include groups capable of chelating metals, phenolic groups in phenol/formaldehyde type resins, or esters manufactured from an aromatic alcohol.

Consistent with the proposal, the final rule specifically states that polymers containing as reactive groups carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups, butenedioic groups, and those containing conjugated olefinic groups in naturally-occurring fats, oils, and carboxylic acids are not excluded from the exemption. These polymers generally lack reactivity in biological settings and therefore are eligible for exemption. EPA did not expand the list of non-excluded functional groups because it did not have sufficient information to support the addition of other groups. Polymers containing these groups and other reactive functional groups are excluded.

EPA has retained and clarified the equivalent weight criteria which allow low concentrations of reactive functional groups in the polymer molecule. Under the final rule, polymers may contain reactive functional groups if the weight of the polymer that is equivalent to one gram-formula weight of reactive functional groups is 10,000 grams or greater. As stated in the proposal, the Agency believes that this level ensures that each reactive functional group is substantially diluted by polymeric material, reducing the likelihood of exposure. EPA did not receive sufficient information to alter this level.

Several commenters stated that EPA should lower the maximum permissible equivalent weight of functional groups from 1 in 10,000 to 2 in 100 to be consistent with the rule for reporting polymers on the TSCA Chemical Substance Inventory. Polymers listed on the Inventory may be manufactured from additional reactants not included in the polymer identity if the composition of such reactants does not exceed 2.0 weight percent of the polymer (40 CFR Part 710). This "2 percent" rule was established to limit the reporting of minor modifications of polymers, but does not affect PMN information requirements. If a manufacturer submits a notice on a new polymer, the manufacturer must report the identity and composition of all monomers and other reactants regardless of their weight percent in the final polymer. The Agency assesses the risks associated with all monomers and reactants in the notice, even though some may be present at two weight percent or less.

The Agency believes that it is appropriate to apply a more stringent requirement for limiting reactive functional group content in polymers eligible for exemption. The 1 in 10,000 standard was applied in part to allow EPA to review eligible polymers in 21 days. Higher concentrations of reactive functional groups could raise a higher level of concern to the Agency. EPA believes that such concerns should be addressed in a full PMN review where potential toxicity and exposure can be addressed at the level of detail warranted for such polymers.

f. *Exclusion of polymers that degrade.* The proposed rule would have excluded from eligibility polymers that are designed to substantially degrade, decompose, or depolymerize. Examples of polymers that are intended to substantially degrade, decompose, or depolymerize include temporary protective layer coatings that are subject to rapid removal, certain kinds of time release media, propellants, and polymers whose degradation is intentionally accelerated in the environment. The final rule retains this exclusion with minor modification.

Several commenters supported this exclusion as reasonable and suggested that polymers that are reasonably anticipated to degrade, decompose, or depolymerize should also be excluded. Other commenters suggested either that such polymers not be excluded or, alternatively, that those made exclusively from carbon, hydrogen, oxygen, and nitrogen should not be excluded.

In over 1,200 PMN submissions on polymers, EPA has received and reviewed an extremely limited number of polymers that substantially degrade, decompose, or depolymerize. The Agency thus has little experience reviewing the mechanism by which breakdown may occur, the decomposition products that may result, and the potential uses of such polymers. Some of these polymers, however, are likely to degrade to low molecular weight species and/or residual reactants which present some of the major risks associated with such polymers. Even polymers made exclusively of carbon, hydrogen, nitrogen, and oxygen may decompose into products which are toxic, such as formaldehyde, phthalic acid, acrylonitrile, hydrogen cyanide, acetaldehyde, and p-dioxane. Because of the complexity of review necessary for many of these polymers and the lack of EPA review experience, the Agency did not believe that an expedited review period was sufficient to adequately characterize risk.

The final rule was revised to exclude also polymers that are "reasonably anticipated" to substantially degrade, decompose, or depolymerize. Thus, polymers that could substantially decompose after manufacture and use, even though they are not actually intended to do so, are excluded. Such polymers include certain pH-labile polyesters and structural analogues to polymers that are known to substantially degrade, decompose, or depolymerize.

Only those polymers designed or anticipated to substantially degrade, decompose, or depolymerize are excluded by this provision. The Agency acknowledged that essentially all polymers degrade or decomposed to a limited degree over times as typified by the normal fate of polymers in landfills or ordinary weathering of conventional paint layers. The exclusion is not intended to address such degradation. EPA believes the other provisions of the exemption adequately address concerns associated with low molecular weight species and residual monomers and reactants.

g. *Exclusion of biopolymers.* The proposed rule excluded from exemption eligibility biopolymers, synthetic equivalents of biopolymers, and derivatives and modifications of biopolymers if the biopolymer remains substantially intact. The biopolymer exclusion was developed because of the Agency's limited experience with biopolymers, the variety of substances within the class, and the potential wide range of novel uses for such polymers. Consequently, EPA cannot make a no unreasonable risk finding for biopolymers, their synthetic equivalents, and derivatives and modifications of them as a broad class.

Several commenters stated that the exclusion as proposed was too broad because there are many biopolymers which are not toxic, such as cellulose. Some commenters proposed categories of biopolymers that should be eligible for exemption. Other commenters suggested limiting the exclusion to those biopolymers which are biologically active. Another commenter supported the exclusion of biopolymers, stating that production of such polymers is a new area of polymer chemistry about which little is known. While EPA acknowledges that there are some biopolymers in commerce that may not present significant risks, the Agency cannot narrow the exclusion because of the general lack of EPA review experience.

This exclusion applies only to polymers that are directly produced by living or from once-living cells or cellular components. Therefore, petroleum does not meet the definition of a biopolymer because petroleum is not directly produced by living or from once-living cells. Consequently, polymers manufactured from petroleum are also not excluded from the exemption, because these polymers are not derivatives or modifications of a biopolymer. Natural oils are also not polymers, and therefore substances derived from them are not derivatives or modifications of a biopolymer.

EPA has included in the rule further clarifications of the terms "modification of a biopolymer" and "derivative of a biopolymer." Both modified biopolymers and derivatives of biopolymers contain recognizable remnants of a biopolymer in their structure so that the original biopolymer is substantially intact. A biopolymer is substantially intact if it contains at least two original adjacent repeating internal subunits that are not pendant units. A "modification of a biopolymer" is a polymer created by a non-additive chemical change or transformation such as oxidation, hydrolysis, thermal degradation, regeneration, or deacylation (e.g., acid-hydrolyzed amylopectin, thermal hydrolyzed starch, and regenerated callulose). A "derivative of a biopolymer" is a polymer created by an additive chemical change or transformation such as either formation, esterification, oxidation, boration, nitration or graft polymerization (e.g., methyl cellulose, borated caseins, palmitoyl derivatives of collagen, and cellulose nitrate).

3. *Exemption criteria.* The exemption criteria identify categories of polymers that the Agency believes present low risk. The criteria were developed based on the Agency's judgment concerning potential risks, its review experience, and the economic impact of the criteria. To provide additional safeguards, certain classes of polymers have been excluded when EPA had specific concerns for hazards, or when EPA had insufficient experience to allow the Agency to conduct an adequate review within an expedited review period.

Under the proposed approach, polyesters made from certain reactants, polymers of 20,000 number-average molecular weight or greater, and polymers with certain polydispersity criteria could be manufactured without any premanufacture review by EPA. Polymers over 1,000 number-average molecular weight would have been exempt after a 14-day expedited premanufacture review. In the final rule, EPA has modified certain criteria to reduce potential risks from polymers manufactured under the exemption. Following is an explanation of the modifications adopted in the final rule and the reasons for such modifications.

a. *Polyesters.* The proposed rule would have exempted from all premanufacture notice and review requirements polyesters made from a specified list of reactants. Residual content of certain of the reactants would have been limited to 1.0 percent to address EPA's concern about their toxicity.

Many commenters supported this approach. Commenters also generally agreed that residual content of high concern reactants should be limited. However, several commenters viewed the 1.0 percent level as too restrictive. Other commenters stated that the level was inadequate for more toxic precursors and identified reactants of high concern that they thought should be removed from the list.

Based on these comments and further analysis, EPA has adopted a revised approach to exempt certain polyesters in the final rule. First, EPA has removed from the list of eligible polyester reactants those reactants that were limited to 1.0 percent residual content in the proposed rule based on human or aquatic toxicity concerns. Second, the final rule requires expedited PMN review of those polyesters that are made from the revised list of reactants for which the Agency has low concern. Unlike other polymers that undergo expedited PMN review under the final rule, polyesters made from the specified list of reactants are not required to meet the minimum number average molecular weight criterion of 1,000 although they must meet the polymer definition and exclusion criteria.

EPA believes that the approach adopted in the final rule is necessary because it does not have enough information to make the no unreasonable risk finding for polyesters without review before manufacture. While EPA believes that the list of reactants contained in the final rule present low hazard potential, the Agency considers an expedited PMN review period to be necessary to assess risks associated with low molecular weight reaction products that may be present in an exempt polyester. In addition, because polyesters manufactured from the list of specified reactants are not required to meet a minimum number average molecular weight criteria, EPA believes it is appropriate to review actual reactant residual levels and potential exposure on a case-by-case basis. Given the generally low hazard for these reactants, EPA believes that an adequate review can be conducted on an expedited basis.

Finally, the Agency believes that it cannot review polyesters made from medium or high toxicity reactants within the limited expedited review period adopted in the final rule there may be a need to conduct a detailed exposure review to assess potential risks. The Agency agrees with commenters that a 1.0 percent residual reactant limit may be too restrictive in some cases and too lenient in others and therefore does not provide adequate risk protection. The document "Response to Comments" in the public record identified the reactants removed from the proposed list and EPA's reasons for removing them.

EPA has included three reactants on the list which were identified by petitioners as potential starting materials, but which are not on the TSCA Inventory. These new reactants are asterisked on the list of polyester reactants in the rule. The Agency included these reactants in its assessment and found that they are of low hazard concern. However, neither these reactants, nor a polyester made from these reactants, may be manufactured or imported until manufacturers submit a full PMN for the reactant and it is added to the Inventory after submission of a commencement of manufacture notice.

b. *Polymers with number-average molecular weight greater than 1,000.* The proposal and final rule exempt polymers with number-average molecular weight greater than 1,000 from certain premanufacture notice and review requirements. Substances with a molecular weight of 1,000 or less (other than polyesters made from the list of acceptable reactants) would not be eligible. Limiting the exemption to polymers with a number-average molecular weight of at least 1,000 is necessary because the Agency believes that as absolute molecular weight decreases, the likelihood that molecules will cross cell membranes significantly increases. Most commenters supported the proposed expedited review for such polymers.

The information available to the Agency indicates that as the number-average molecular weight of polymers decreases, the concentration of low molecular weight species in such polymers significantly increases. Such low molecular weight species may be more readily absorbed by biological organisms. The Agency believes that the 1,000 number-average molecular weight level reduces the amounts of readily absorbable low molecular weight species that may be present in such polymers. At the same time, the Agency also acknowledges that exempt polymers with number-average molecular weights in the low range may contain significant amounts of potentially absorbable low molecular weight species and unreacted residuals. However, the risk from polymers of greater than 1,000 number-average molecular weight is related not only to the amount of potentially absorbable low molecular weight species and residual reactants, but also to their toxicity. To limit potential toxicity concerns, the rule excludes certain specific polymers for which the Agency has such concerns or little review experience. Thus, EPA believes the combined effects of the 1,000 number average molecular weight criterion and the polymer exclusion categories sufficiently narrows risk concerns to allow adequate review within an expedited review period.

Finally, some commenters suggested that the molecular weight level should be raised to 5,000 molecular weight to limit the potential for gastrointestinal absorption. EPA believes that, while a higher molecular weight level such as 5,000 would provide further reduction of the amount of low molecular weight species, it would unnecessarily render a number of polymers ineligible. EPA has retained the 1,000 number-average molecular weight level not as a level that guarantees low absorption and potential risk, but as a level that narrows the Ageny's risk concerns to the degree that, along with the exclusion criteria, allows the Agency to review new polymers during the expedited review period.

c. *Polymers over 20,000 number-average molecular weight.* The proposed rule would have exempted polymers with number average molecular weights of 20,000 or greater without any EPA review. EPA considered several factors that led to the preliminary conclusion that polymers over 20,000 molecular weight present risks that are sufficiently low to preclude the need for case-by-case review. Polymers of this number-average molecular weight typically contain a majority of polymer molecules of a molecular weight above the range where they are likely to be absorbed. The lower absorption potential in these polymers limited the possibility that they may cause toxic effects upon exposure to them. Additionally, because of their structure, these substances are generally resistant to degradation, further reducing the potential for exposure to residual monomers and low weight species.

Many commenters supported this exemption criterion. Other commenters stated that the 20,000 number-average molecular weight level should be lowered to 5,000 arguing that this level would still ensure inertness, nonreactivity and low toxicity. However, other commenters noted that absorption may occur even at the 5,000 molecular weight level and therefore the molecular weight cutoff should not be lowered.

EPA has not included the 20,000 number-average molecular weight criterion in the final rule. The Agency continues to believe that, in general, polymers with number-average molecular weight greater than 20,000 are not absorbed and that low molecular weight species content is low. However, further analysis of the PMN data base has indicated that some polymers with molecular weights greater than 20,000 also contain high levels of unreacted low molecular weight species. EPA no longer believes that the available data adequately support the contention that polymers in the 20,000 number-average molecular weight range can be expected to have insignificant levels of unreacted species such as monomers and other reactants. For this reason the Agency has concluded that a finding of no unreasonable risk cannot be made without an expedited EPA review prior to manufacture.

Polymers that would have been eligible for the 20,000 number-average molecular weight criterion under the proposed rule are now eligible for exemption under the expedited review procedures in the final rule. EPA believes that the expedited review period will allow EPA to adequately review each polymer (including those with number average molecular weights greater than 20,000) and its low molecular weight species content on a case-by-case basis.

d. *Polymers with certain polydispersity.* EPA proposed a class of ploymers with certain polydispersity and molecular weight criteria to be exempt without review before manufacture. The polydispersity criterion would theoretically limit the amount of low molecular weight species that would be present in the polymer. Some commenters stated that the approach was too complex and costly and thus would provide little relief. Other commenters stated that polydispersity is an inadequate mechanism for limiting low molecular weight content. As a result of these comments, EPA has not included a polydispersity provision in the final rule. Substances that would have been eligible under the proposal for this exemption without review because they met the polydispersity criteria will still be eligible for expedited review.

4. *Data requirements and determination of eligibility.* Many commenters expressed concern about the amount of data that manufacturers would have to develop to determine that a substance was eligible for the exemption and to support information submitted in a limited PMN. Following is the clarification of a manufacturer's responsibilities in these areas.

EPA will review limited PMN's under the standard of section 5(d)(1)(A) of TSCA. This section states that information related to the submission must be provided to the extent that it is

"known to or reasonably ascertainable by the submitter." The Premanufacture Notification Rule (40 CFR 720.2(p)) defines known to or reasonably ascertainable information as "all information in a person's possession or control plus all information that a reasonable person similarly situated might be expected to possess, control, or know." This standard is flexible so that varying circumstances among submitters (such as low versus high volume manufacturers, manufacturers of specialty chemicals versus manufacturers of bulk feed stock chemicals) are taken into consideration. (The effective date of the definition of "possession or control" has been stayed by the PMN clarification 48 FR 41132).

EPA does not require that submitters perform analytical measurements of the physical and chemical properties of polymers solely for the purpose of providing information in limited PMN. Manufacturers may be able to determine compliance with the polymer definition, exclusion criteria, the exemption conditions, or to provide information required in the limited PMN, for example, low molecular weight species information, on some other basis. Such a basis may be using past experience by correlating observed or measured values of the properties of similar polymers to the polymer in question, using stoichiometric relationships based on knowledge of the starting materials and expected reactions, or using knowledge or process and purification steps.

If the information in question is related solely to that required in the limited PMN but not to eligibility, such as low molecular weight species information or use information, the submitter may indicate in the limited PMN that the information is not known or reasonably ascertainable if he or she cannot provide meaningful estimates for this information. In such cases, the submitter should be prepared to provide a rationale for why the information cannot be provided. Where EPA does not have sufficient information in the limited PMN to complete its risk assessment, it will make reasonable worst-case assumptions as needed.

Where the information in question is related to a submitter's determination the polymer meets the terms of the exemption (for example that the polymer has an average molecular weight of greater than 1,000), the Agency believes that the manufacturer's knowledge of the structure of the substance and nature of reactant and reaction process will generally be adequate to make the determination. However, there may be circumstances where the polymer is significantly different from previously manufactured polymers or where the value of a specific parameter approaches the level established in the exemption. In these cases, the Agency expects the manufacturer to take the steps necessary to ensure that the chemical is eligible. For example, a manufacturer may want to produce a low molecular weight polymer for which, either because of the variability in the nature of the production process, or because of the potential margin for error in the technique used to estimate molecular weight, the manufacturer is uncertain that the polymer will meet the 1,000 number-average molecular weight criterion to be eligible for the exemption. In such cases, it may be necessary to use an analytical method rather than past experience or an analytical method of greater certainty to determine molecular weight or to take process steps to ensure compliance with the exemption. A similar situation may occur when determining whether a polymer is excluded by its elemental content or content of reactive function groups. The Agency believes that, when the polymer is manufactured with properties near the parameters in the exemption, it is reasonable for the manufacturer to take a greater burden to demonstrate eligibility.

EPA believes that where intent or design determines eligibility (for example, certain substances "intended to further react" or "designed to degrade" or ineligible), this intention or design will be clear from the structure and intended use of the substance. In several provisions of the exemption, EPA also uses the standard of "reasonably anticipated" to describe eligibility requirements for the exemption. The Agency uses this phrase in cases where a determination must be made of the composition or a particular characteristic of the polymer. In using this phrase, EPA recognizes that there are circumstances in which a property may be imparted to a substance without specific intention or design. The final rule defines the phrase "reasonably anticipated" to mean that a knowledgeable person familiar with the nature of the precursors to the polymer, the type of reaction, the type of manufacturing process, the products produced in polymerization, the intended uses of the substance, or associated use conditions would expect such a composition or characteristic to occur. By using the term "reasonably anticipated," EPA is not requiring that costly analysis be undertaken. Rather, as with the term "reasonably ascertainable," all the information developed in bringing the substance to commercial production, and any other information a reasonable person similarly situated would know, must be considered in determining the substance's eligibility.

The Agency will apply these standards flexibly. For example, if because of an ambiguous feature in a substance's structure, EPA believes that the substance is likely to be cationic in a natural environment, the Agency will attempt to clarify the feature in the structure before using ineligibility procedures. Section 723.250(q) of the final rule requires manufacturers to maintain records documenting information provided in the limited PMN and information demonstrating that the new polymer is not excluded from the exemption. EPA expects that such records would provide an adequate explanation of the basis and rationale for the manufacture's determination of eligibility.

5. *Information requirements.* The final rule has adopted, with minor modifications, the information requirements outlined in the proposed rule for limited PMN's. Under the proposal limited PMN's would contain submitter identity, site of manufacture, chemical identity, type of exemption, number-average molecular weight, low molecular weight species and residual monomer and reactant content, production volume, descriptions of uses, generic information if chemical identity or uses are claimed as confidential, a certification, available test data and technical contact. The final rule has added synonyms, trade names, and impurities information; "other data" on health and environmental effects; and data on related chemicals.

Many commenters stated that the proposed notification requirements are not justified for substances which the Agency agrees are inherently non-toxic. Thus, notification under the exemption should only be to ensure that a substance meets the criteria for exemption. The Agency agrees that many polymers appear to be of low risk concern and that the polymer definition, exclusion criteria, and exemption categories will eliminate many high concern polymers from eligibility. However, as the risk assessment demonstrates, there are instances in which some members of the polymer class are capable of presenting significant risks. The information requirements of the limited PMN are critical to EPA's review of specific polymers during the abbreviated review period.

Other commenters stated that the proposed information requirements were insufficient for assessment of the risks associated with polymers. The Agency believes that the information in the limited PMN is sufficient for an adequate assessment of the new polymer, given the exclusions, exemption criteria, and generally low level of concern for polymer molecules. Additionally, polymers eligible for exemption are representative of polymers for which EPA has had PMN review experience. If EPA believes additional review is necessary after its initial 21-day assessment, the Agency will extend the review period and obtain the additional information required under full PMN review from the submitter. If the Agency still has insufficient information on the substance to evaluate health and environmental effects and the substance may present significant risks or exposures, the Agency will consider action under section 5(e). If EPA determines that there is a reasonable basis to conclude that the substance will present an unreasonable risk, it will consider action under section 5(f).

One commenter stated that molecular weight information is not needed because of the certification that the substance qualifies for the exemption. EPA believes this information is essential to its review of the risks associated with polymers. Some commenters also stated that it is unnecessarily burdensome to require information on low molecular weight species content. However, low molecular weight species content is one of the major risk concerns associated with polymers. Therefore, EPA believes such information is essential to assessment of risks during the expedited review. Additionally, EPA has found in full premanufacture review that submitters are typically able to provide this information without undue burden or cost.

Another commenter stated that a structural diagram is often impossible to provide for polymers and is unnecessary for EPA's risk assessment. Structure is a necessary component of the Agency's toxicity review. EPA requires only a representative structural diagram because in some cases it is not possible to wholly characterize a polymer's structure. Another commenter stated that a structural diagram is unnecessary to determine compliance. However, the Agency has found that this information is often essential to ascertain the identity of the new chemical substance.

In the proposed rule, manufacturers were not required to provide EPA with any information on impurities in the limited PMN. This information, however, is required in full premanufacture notices as part of the description of chemical identity. On several occasions impurities information has proved critical in the Agency's assessment of risks posed by a new chemical substance. Therefore, EPA believes that it is necessary to require information on impurities in the final exemption rule. Section 723.10(f)(2)(vii) of the final rule requires the manufacturer to identify impurities anticipated to be present in the exempt substance and their weight percent. EPA has also added the requirement that manufacturers submit trade names and synonyms related to the new polymer, consistent with the full premanufacture notification requirements. This information will allow the Agency to perform a more complete literature search on the new polymer within the 21-day review period. The final rule also has modified production volume information requirements to be consistent with full PMN review.

Many commenters stated that the information requirements for reactants are inconsistent with Inventory Reporting Rules because the Inventory Rules do not require monomers and other reactants used in the manufacture of a polymer at 2 weight percent or less to be reported as part of chemical identity information. However, § 720.45(a)(3) of the Premanufacture Notification Rules and the PMN form require the reporting of monomers or other reactants used at any weight percent. The submitter may then choose which, if any, of those monomers and reactants used at 2 weight percent or less are to be included as part of the identity of the polymer to be entered on the Inventory. The reporting of reactants at 2 weight percent or less, even though they might not be included in the description of the polymer, allows EPA to review the potential toxicity of minor components reported in the notice.

EPA has referenced the test data and other data requirements in the final Premanufacture Notification Rule (the PMN rule) (§ 720.50) to guide submitters on what test data and other data should be submitted with a limited PMN. Although the proposed rule did not include the requirement that manufacturers submit other data related to the health and environmental effects of the new substance and data on chemicals related to the new chemical substance, including impurities and byproducts, EPA believes that it is essential that manufacturers provide these data with the limited PMN given the limited time that EPA has to obtain and review information on the new polymer. Additionally, as previously stated, the risks associated with related chemicals are a major concern associated with new polymers (the requirements concerning § 720.50(c), data on related chemicals, have been stayed by the PMN clarification (48 FR 41132)).

One commenter stated that test data should be redefined to exclude data that have not been developed for the specific purpose of evaluating the health or evironmental effects of a new polymer. However, EPA believes that all test data and other data that may be relevant to its assessment of health and environmental effects, not simply test data specifically developed to evaluate those effects, are essential for an adequate assessment of the risks associated with the substance. Another commenter stated that manufacturers should be required to report the leaching rates of residual monomers. The Agency believes, however, that such information is necessary only after its initial assessment of the toxicity of the new polymer. EPA can obtain this information during the extended review period if necessary.

The final rule requires that submitters use the appropriate sections of the Premanufacture Notification form (EPA Form 7710-25, 48 FR 21755). This requirement will not place any additional burden on submitters since the information requirements in the exemption rule are identical to the corresponding requirements in the PMN rule. EPA believes that the standard format presented by the form is essential to completing its expedited review and to ensuring that proper confidentiality is maintained. Submitters must clearly indicate on the first page of the form that the notice is a limited PMN and whether the submission applies to the polyester or to the greater than 1,000 molecular weight exemption. Submitters of limited PMN must complete the following sections of Part I of the form: Certification; Section A—Submitter Identification; Section B.2—Chemical Identity Information—Polymers; Section B.3–6—Impurities, Synonyms, Trade Identification, Generic Chemical Name; Section C.1—Production Volume; Section C.2a(1) Description of Category of Use; Section C.2a(4)—Type of Use; Section C.2b—Generic Use Description. Submitters should also complete Part III—List of Attachments. Submitters should add to the certification a statement that the substance satisfies the polymer definition, the exclusion criteria, and the exemption criteria and

will be manufactured under the terms of the exemption. The "Instructions Manual for Premanufacture Notification," available from the TSCA Assistance Office, gives information on completing these sections of the form.

6. *Length of review period.* The proposed rule would have required that manufacturers notify EPA 14 calendar days before manufacturing a new chemical substance under the exemption. In the final rule, however, manufacturers are required to notify EPA 21 calendar days before manufacture begins. After carefully reviewing public comments and evaluating its experience in the premanufacture notice review process, the agency has concluded that 14 calendar days is not sufficient to ensure a substance is eligible for an expedited review; to assess potential toxicity of low molecular weight species and residual monomers and reactants, and to make a general assessment of exposure. Instead, 21 days is the minimum reasonable period in which EPA can adequately review the substance and, if necessary, inform the manufacturer that EPA has extended the review period.

EPA recognizes that one of the major benefits of this exemption is that it allows companies to respond more rapidly to market demand and to introduce new chemical substances more quickly into commerce. Although extending the review period from 14 to 21 calendar days may reduce this benefit to a cerain extent, EPA does not believe this impact will be substantial.

7. *Extension of the review period.* The proposed rule would have given EPA the authority to extend the 14-day review of a limited PMN for any period up to an additional 76 days for an aggregate period of 90 days. EPA would have retained the authority of section 5(c) of TSCA to further extend the review period by an additional 90 days.

Under the final rule, EPA will not extend the 21-day expedited review for any incremental periods less than a total of 90 days. Rather, the period will automatically be extended to 90 days if the Administrator determines that the polymer should be considered for regulatory action under sections 5(e) or 5(f) of the Act or that unresolved issues concerning toxicity or exposure require further review. Like the authority to extend the PMN review period under section 5(c), the authority to extend the exemption review will be delegated to the Director of the Office of Toxic Substances. Under the final rule EPA also retains the authority to use section 5(c) of TSCA to extend the review period an additional 90 days for good cause.

The authority to extend the review period is essential in cases for which the Agency has significant questions about the toxicity of the polymer based on the information available during expedited review. The extended review period allows the Agency to obtain additional information and perform additional review on the new polymer. Under the final rule, if EPA extends the review period, the manufacturer must either withdraw the PMN or must suspend the review period and submit additional information so that all the information required in a full PMN is provided. EPA will suspend the review period for any period up to 60 days. If EPA receives the additional information, the Agency will review the notice under the procedures in 40 CFR Part 720 as if it is a complete PMN. However, the initial 90-day review period will include the number of days that have elapsed in the limited review period. If the manufacturer withdraws the limited PMN, fails to suspend the review period, fails to submit the additional information within 60 days or submits incomplete information, within that period, he or she may not begin manufacture before submitting a full PMN and before the statutory review period is complete.

The automatic extension provided for in the final rule will eliminate the uncertainty and potential arbitrariness that could be associated with the proposed approach. This approach also eliminates a potential inequity. A substance may be reviewed for an extended period under the exemption and be placed on the Inventory with restrictions, while a similar substance that completed a full 90-day review would be placed on the Inventory without restriction. In this case, both substances would have essentially the same review time but would be treated differently with respect to Inventory listing. Finally, it is clear that the Agency only has sufficient time within the 21-day expedited review period to review the specific polymer as defined by the exemption category, exclusions, and residuals content. Under the final approach, when the review period is extended to the full 90 days the Agency will have sufficient time to review the specific use conditions for the polymer as it would be defined by placement on the Inventory without restrictions.

Additionally, EPA believes that such an approach will rarely result in a longer period of review. In most cases, the Agency would have required close to the additional 69 days to obtain additional data from the submitter and to analyze that data.

EPA will not extend the review period simply for speculative reasons. EPA may extend, for example, if an impurity in the polymer is an analog of a suspected carcinogen, but the significance of the analogy or the strength of the case against the analog might be open to question. In another instance, the review period may be extended because of serious unresolved issues concerning exposure (particularly exposure outside the control of the manufacturer) to a substance known or likely to be a serious hazard.

8. *Review of notices.* Many commenters requested clarification of EPA's exemption review procedures. EPA will generally follow the review procedures established in the final PMN Rule, with modifications appropriate for the shortened review period. The sections of the PMN rule relating to the review of limited PMN's have been referenced in the rule.

All notices will be received by the Office of Toxic Substances Document Control Officer and will be assigned to a Notice Manager. The Notice Manager will be the official Agency contact with the submitter and will also coordinate the expedited review. Each notice will be reviewed for completeness. The Agency has retained authority to act on errors in the notice and incomplete notices similar to that under full premanufacture review. EPA will publish a notice of receipt of the limited PMN in the Federal Register. The TSCA Inventory will be searched for the identity of each substance.

If the substance is on the Inventory, EPA will notify a submitter that neither a premanufacture notice nor a limited PMN must be submitted. Therefore, the substance may be manufactured without restriction, subject to other rules promulgated under TSCA.

After it has been reviewed for completeness, a chemist will review the notice to determine whether the polymer meets the criteria for exemption. If EPA determines that the substance is ineligible for the exemption, it will follow the procedures outlined in paragraph (q) of the Rule.

As stated in the proposal, EPA's review of the limited PMN will focus on the toxicity of the new polymer as manufactured for commercial purposes, and particularly on the residual reactants and low molecular weight species associated with the polymer. EPA will also make a general evaluation of exposure, given the information provided in the notice. The Notice Manager will contact the submitter if

there are errors in the notice, if EPA determines that the notice is incomplete, and if other questions arise during the review. Submitters may submit any information in addition to that required in the notice at any time during the Agency's review. Submitters may withdraw a limited PMN following paragraph (m) of the rule. Submitters may also suspend the review period, with EPA's consent, for limited periods of time but only during the extended review period.

If serious concerns regarding the potential health and environmental effects of the manufacture, processing, use, distribution, or disposal of the new polymer cannot be resolved before the end of the 21-day review period, EPA will extend the review period. The manufacturer must submit the additional information on the substance that is necessary to constitute a full PMN or withdraw the limited PMN. EPA will make reasonable worst case assumptions when information on exposure and toxicity is limited. The Agency will extend the 90-day review period under section 5(c) if it is considering action under section 5(e) or 5(f).

If the initial review period or any subsequent review period expires without notice of further extension from EPA, manufacture or import of the new substance may begin. However, the manufacturer must submit a notice of commencement of manufacture or import when manufacture or import begins under § 720.102 of the PMN rule as amended by the PMN clarification (48 FR 41132).

9. *Inventory.* Under the proposal, EPA would have added substances that had completed a limited PMN review to the TSCA Inventory without restrictions. Polymers exempt without EPA review would not have been added to the Imventory. The proposal also did not contain an approach for informing the public of the identity of substances manufactured under the exemption. The final rule not only specifies a 21-day limited PMN review period for all eligible polymers but also requires that all exempt polymers be listed on the Inventory with exclusion criteria, exemption category restrictions, and residual monomer and low molecular weight species content limitations.

Many commenters stated that once EPA has completed its review of an exempted substance it should be placed on the Inventory without restriction. To do otherwise would require frequent and unnecessary reporting of minor changes in composition.

EPA believes that it cannot make its no unreasonable risk finding unless it ensures that the exempt substance is manufactured under the terms of the exemption. EPA has based this finding in part on its ability to review risks of these chemical substances during the 21-day review period. An Agency determination made during the expedited review period that a polymer should be exempt and that no regulatory action is warranted is largely based on the fact that the polymer meets the exemption conditions. If such a polymer were added to the Inventory without restriction, it could be manufactured in a form or manner other than those which EPA reviewed and thus could potentially present an increased risk. To preserve the integrity of the no unreasonable risk finding for exempt polymers that complete expedited review without the review period being extended, EPA will list their identities on the Inventory with restrictions. The substance will be added to the Inventory when EPA receives a notice of commencement of manufacture. The Agency will list these substances on the Inventory qualified by the exclusion criteria. In addition, exempt polymers will be listed by monomer and reactant identity (in accordance with the inventory two percent rule), the maximum content of each residual monomer, the maximum content of molecular weight species below 500 and below 1,000 absolute molecular weight, and the minimum allowable number-average molecular, weight criteria, if applicable. Subsequent manufacturers of the polymer must comply with these criteria, or a new limited PMN or full PMN must be submitted. Substances for which the expedited review period is extended will be added to the Inventory without restriction when review is complete and a notice of commencement of manufacture is submitted, unless the Agency has taken action under sections 5(e) or 5(f). The extended review period will provide EPA with the opportuntiy to conduct a more detailed toxicity, use, and exposure assessment.

While manufacturers must report in the limited PMN all monomers and other reactants used to manufacture the polymer, manufacturers may choose which monomers or other reactants used at two weight percent or less should be included in the identity added to the Inventory. Following the Inventory Rules, other manufacturers may manufacture an exempt polymer made from the reactants listed on the Inventory for that polymer in any proportion provided that the polymer complies with the polymer definition, the exemption category, exclusion criteria, residual monomer restrictions, and low molecular weight species restrictions. A polymer may also be made from the same reactants and other reactants used at two percent or less. However, regardless of the proportion of the reactants in the polymer and the reactants used at less than two percent, the polymer must meet the exclusion criteria, the category criteria, and appropriate residual reactant and low molecular weight species restrictions identified on the Inventory. Otherwise, the manufacturer must submit a limited PMN or full PMN, as appropriate, before manufacture may begin. If a limited PMN is submitted for a polymer listed under an exemption category on the Inventory which broadens the definition of that polymer, and if EPA allows manufacture or import to begin, EPA will revise the restrictions, as appropriate. If a manufacturer submits a full PMN on a polymer listed as an exempt substance on the Inventory and EPA completes review of the PMN without taking action under sections 5(e) or 5(f), the Agency will, after receiving a notice of commencement or manufacture, replace the restricted description of the exempt substance with the unrestricted description in the full PMN.

10. *Notification of ineligibility.* Under the proposal, EPA would have the authority to determine that a substance is ineligible for exemption if it failed to meet the criteria for exemption (i.e., the polymer definition, the exclusion criteria, and the exemption conditions). The proposed rule established different procedures by which EPA would declare substances ineligible that had not yet been manufactured under the exemption and those that had been manufactured. The final rule has retained this basic division, but the procedures have been changed for the period after manufacture because of other changes in the rule.

Several commenters stated that EPA should not have the authority to determine that a substance is ineligible after the limited review period ends and before manufacture begins. The Agency believes that, where serious questions exist about whether a substance meets the terms of the exemption, the questions should be resolved before manufacture begins without elaborate procedures for obtaining manufacturers' objections. If EPA makes a determination that the substance is ineligible before manufacture of the substance begins, EPA will notifiy the manufacturer by telephone, and subsequently, by certified letter, that the substance is ineligible. The manufacturer has the option of (1) submitting another limited PMN if he or she makes the modifications necessary to resolve eligibility issues and identifies those modifications in the notice, or (2) complying with section 5(a)(1) of the Act and the Premanufacture Notification Rule by submitting a full PMN at least 90 days before manufacturing the substance.

After the manufacturer submits a notice of commencement of manufacture for an exempt polymer, EPA will enter the substance on the Inventory by the criteria and exclusions of the rule and the molecular weight and low weight species information supplied by the manufacturer. Although EPA believes that in most cases questions about the eligibility of a polymer will be raised in the limited review period EPA may, after manufacture begins, obtain additional information that calls into question the substance's eligibility. This could occur, for example, as a result of the Agency's TSCA inspections program. If EPA determines that the substance actually being manufactured does not comply with the description on the Inventory, and that the substance is not otherwise listed on the Inventory, the manufacturer would be in violation of section 5(a)(1) of TSCA. In effect, the company would be manufacturing the substance without having submitted a notice on that substance. As with any section 5 violation, EPA could bring an enforcement action against the manufacturer for the violation.

As in the proposal, EPA recognizes that it is possible for a manufacturer to diligently and in good faith attempt to comply with this exemption and still be in violation. For example, a manufacturer can determine that a substance meets the exemption criteria by relying on past experience with similar substances and making reasonable estimates. Subsequent testing of the substance might indicate that it does not meet one or more of the criteria which appear in the Inventory description. In the situation where the manufacturer has made a diligent, good faith effort to comply with the rule and EPA's guidance, EPA has concluded that the manufacturer should be allowed a short period of time to submit a full PMN under the PMN rule and to continue manufacture, processing, distribution in commerce, and use during the review of that PMN.

EPA has retained the basic approach of the proposal for treating manufacturers whose violations happened in spite of due diligence and good faith efforts to comply. Similar to the proposed rule, EPA will notify the manufacturer by telephone, followed by certified letter, that the Agency believes the substance does not comply with the Inventory description. The manufacturer will have the opportunity to submit objections to the determination or an explanation of its diligence and good faith in attempting to comply with the rule and the Inventory description, or both. The manufacturer must submit the objections or explanation within 15 days of receiving the written notification. EPA will review the submission and, within 15 days, notify the manufacturer of its final determination by telephone followed by certified letter.

Under the final rule, the manufacturer may continue commercial activity with the new polymer while EPA makes its final determination if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of the telephone notification and if the manufacturer submits written objections or an explanation. If the Agency brings an enforcement action in such instances, it will not levy a penalty for continuing commercial activities the days between the date of the first telephone notification and the date of its final determination. As with a substance that undergoes full premanufacture review, EPA could take action under section 7 of TSCA if it determined that continued commercial activity presented an imminent hazard to health or the environment.

Manufacturers not engaged in manufacture, processing, distribution in commerce, or use of the substance at the time of telephone notification may not begin manufacture until EPA makes its final determination. Many commenters stated that this approach discriminates against batch manufacturers as opposed to continuous manufacturers. However, the Agency believes it is inappropriate to allow companies to resume commercial activity with a chemical substance under the exemption after EPA has initially determined that the substance is in violation of the rule and the Inventory description.

EPA may bring an enforcement action if (a) no objections or explanations are filed, or (b) EPA concludes that the substance is in violation and the manufacturer did not act diligently and in good faith to comply with the rule and the Inventory description.

If EPA concludes that the manufacturer has acted with due diligence and in good faith, the manufacturer may continue manufacturing, processing, distributing in commerce, or using the substance if it submits a full PMN under the Premanufacture Notification Rule within 15 days of the final notification by the Agency. EPA believes that 15 days is adequate to submit a full PMN since the manufacturer will know of this possibility when EPA notifies it that the Agency believes the substance is ineligible. If such a manufacturer were to continue to manufacture, process, distribute in commerce, or use the substance without submitting a full PMN, EPA would bring an enforcement action. The manufacturer would also be in violation from the date of the Agency's final determination.

In determining whether a manufacturer exercised due diligence and good faith in attempting to comply with the rule and the Inventory description, the Agency would consider many factors, and decisions would be made on a case-by-case basis as an exercise of the Agency's discretion. For example, a manufacturer would not be considered to have exercised due diligence and to have acted in good faith if it: (1) Failed to consider information it knew concerning process chemistry or physical/chemical properties in determining eligibility, (2) deliberately falsified information in the limited PMN, or (3) knowingly altered production parameters after submitting the limited PMN so that the actual substance manufactured would not meet the Inventory description.

Several commenters stated that a 15-day period is not adequate to allow objections to be filed. However, the Agency intends to have prepared specific questions about the substance's eligibility so that a manufacturer familiar with the exemption criteria will be able to respond based on the analysis he or she has already performed. EPA believes that 15 days is adequate time for the manufacturer to submit objections and/or an explanation of its due diligence and good faith efforts to comply with the rule and the Inventory description.

11. *Recordkeeping.* In the final rule, the Agency modified the recordkeeping requirements for limited PMN's to include documentation of information in the notice; production volume during the first three years of manufacture; and the date of commencement of manufacture. The Agency agrees with commenters who stated that requirements should be no more burdensome than under the Premanufacture Notification Rule (40 CFR Part 720) and has modified the final exemption requirements to be consistent with them.

One commenter stated that recordkeeping requirements are unnecessary because the manufacturer certifies compliance, the information required is included in the exemption

notice, and the manufacturer could submit information to the Agency upon request. However, EPA believes that recordkeeping requirements are an essential component of an effective exemption enforcement program; documentation of information in the notice would be used by enforcement inspectors to determine compliance. (Such documentation would include data or supporting rationale concerning molecular weight, low molecular weight species, and impurities determinations, the bases for the production volume estimate and potential uses, etc.)

Several commenters stated that recordkeeping to demonstrate continuing compliance was unnecessary and so burdensome as to preclude use of the exemption. The Agency agrees that specific recordkeeping provisions that require documentation of continuing compliance may be overly burdensome and are not necessary. However, it is the responsibility of the manufacturer to ensure that the exempt polymer being manufactured complies with the Inventory listing, just as it would be when manufacturing any non-exempt chemical listed on the Inventory. The Agency believes that information manufacturers normally maintain and develop for purposes such as quality control, product specification data, and product evaluation will in many cases be useful in determining compliance. EPA expects that if conditions, such as reaction temperature or sources for feedstock change, manufacturers will take steps to determine the effect of such a change so as to ensure continued compliance with the exemption. If EPA discovers at a later date that the chemical being manufactured is not covered by the notice, or otherwise not on the Inventory, the submitter will be in violation of section 5.

12. *Confidentiality.* The final rule has retained essentially the same provisions for confidentiality as the proposed rule and the final premanufacture notice rule (§§ 720.80, 720.85, 720.87, and 720.90).

The confidentiality provisions in the final rule take into account various requirements under the Act, including the need to provide nonconfidential information to the public, to give EPA information it needs to respond to FOIA requests, and to allow persons to assert claims of confidentiality with minimum burden. In determining final confidentiality provisions, EPA also considered its experience with notices submitted under section 5(a)(1) of TSCA.

A person may assert a claim of confidentiality for any information submitted to EPA under this rule. To do so, submitters must clearly indicate on the limited PMN or attached document (e.g., by circling, underlining, or bracketing) the information that they wish to claim as confidential. Only the information claimed as confidential should be identified as confidential. A submitter should not simply stamp "confidential" on the page which contains a piece of confidential information.

The final rule requires that submitters provide a sanitized copy of the limited PMN in which all confidential information has been deleted. This requirement is especially essential for this exemption rule given the limited period of EPA reveiw. The final rule requires companies to develop generic descriptions if they claim chemical identity and use information confidential. The generic name and use information will be published in the **Federal Register** notice of receipt of the limited PMN. (See II.B.6. of this preamble.) The generic chemical identity will be published in an appendix to the TSCA Inventory. In some cases, companies may develop a generic name that EPA believes is more generic than necessary to protect confidential chemical identity. In this case, EPA will propose to the submitter a more specific name. If that name is unacceptable, the submitter must explain why EPA's name is not sufficiently generic to protect confidential chemical identity and propose an alternative. EPA will publish the submitter's alternative name if it is acceptable. Otherwise, EPA will put the generic name it devises on the Inventory Appendix, 30 days after giving notice to the submitter.

13. *Enforcement.* Several commenters stated that EPA should establish an exemption audit program. The exemption for polymers does not require a report such as the qualified expert's report required by the site-limited intermediate and low volume exemption. Review of the performance of the qualified expert was the main reason for establishing an audit program for the site-limited intermediate and low volume exemption. Therefore, EPA believes that an adequate enforcement program will preclude the need for a special audit program for this exemption. EPA intends to periodically inspect all companies which have made TSCA section 5 submissions, including exemptions. Those submitters with violations may be inspected more frequently.

To determine compliance with the exemption, the EPA inspector will focus on the information in the exemption notice and limited PMN and whether the substance actually produced is consistent with the Inventory description. For example, he or she may examine the techniques used to determine or estimate molecular weight or may review reaction materials used to ensure compliance with the exemption exclusion categories. If the initial inspection reveals a violation or significant questions about compliance, a follow-up investigation may be conducted. This may involve compliance monitoring for all exempt chemicals manufactured at the manufacturer's sites and interviews with employees.

III. Regulatory Analysis

To support the August 4, 1982 proposal, EPA prepared a risk assessment of polymers and an economic analysis of the various alternatives considered. These alternatives are summarized in unit I.C. of this preamble. After reviewing public comments on the risk assessment and the economic analysis, EPA revised these documents, modifying them where necessary to reflect changes in the final rule. The final documents are available in the public record of this rulemaking. The documents are summarized briefly below. This section also explains the basis for the Agency's finding that the manufacture, processing, use, distribution, and disposal of the polymers manufactured under the exemption will not present an unreasonable risk.

A. Summary of Risk Assessment

1. *Introduction.* The Agency originally considered an exemption rule for polymers because it is generally agreed within the Agency and the scientific community that many of these substances are of low concern due to their lack of reactivity and their molecular size. The hazard analysis for this rule provides the evaluation of information relevant to the Agency's conclusions that: (1) Polymers eligible for this exemption are generally of low concern, (2) sufficient uncertainty exists about this conclusion to warrant a limited Agency review of all exempt polymers, (3) sufficient information exists on the potential toxicity of several classes of polymers to warrant their exclusion from the exemption, and (4) certain additional polyesters of number-average molecular weight below 1000 can be exempt.

2. *Approach to risk analysis.* The first step the Agency took to confirm the assumption of the low risk of polymers was to identify and characterize the hazards associated with them. A relatively extensive literature search for information on the toxicity of major types of existing polymers revealed that such data is very limited. Review of the available data did not allow clear identification or characterization of hazards (or lack thereof) for existing polymers.

Because EPA could not make a finding of low concern for polymers based on knowledge of their hazard potential, the Agency attempted to confirm that certain polymers would be of low concern for risk because of their molecular weight. The selection of molecular weight as a risk-limiting criteria rests on two well-known and accepted principles of toxicology. The first principle states that in general, in order to cause an adverse health or ecological effect, other than direct contact effects, a chemical must first be absorbed by an organism. The second states that absorption of a chemical generally decreases with increasing molecular weight (size). Based on these two principles, the Agency reasoned that potential risks should generally be expected to decrease with increasing molecular weight.

3. *Molecular weight as a determinant of risk.* In its anaslysis of the use of molecular weight as a determinant of the risks associated with polymers, the Agency evaluated the relationship between toxicity and absorption and between absorption and molecular weight. It also considered the factors measured by the average molecular weight of polymers and the molecular weight limit above which absorption generally is not expected to occur.

a. *Toxicity/absorption.* For a chemical to elicit a toxic response within an organism, it must come into direct contact with the biological cells from which it elicits the response. Because all organisms are encased in protective membranes, a chemical must usually penetrate these membranes and be translocated to various parts of the organism to gain access to its target sites. Therefore, it can be reasoned that if a chemical cannot penetrate the protective membranes to gain access to a target site, it usually cannot elicit a response in the organism no matter what inherent potential it may have to do so. It can be further reasoned that if a chemical cannot elicit a response, it will generally not present a risk.

b. *Absorption/molecular weight.* The key factors which appear to determine absorbability of a chemical by an organism are its molecular weight and its lipophilicity. These are considered key factors because current evidence indicates that any chemical that penetrates a membrane does so by one or more of three possible mechanisms: (1) Passive diffusion through the spaces and pores of the membrane (dependent on molecular weight/size) or by dissolving in the lipoid material of the membrane (dependent on lipophilicity); (2) filtration through the spaces and pores in the membrane (dependent on molecular weight/size); and (3) specialized transport through systems which carry water-soluble substances across membranes by a lipid-soluble "carrier" molecule. As can be observed, the ability of a chemical to penetrate a membrane is dependent on its molecular weight/size. From this, the Agency reasoned that by increasing the molecular weight/size of a chemical, its absorption by an organism will generally be expected to decrease.

c. *The use of average molecular weight.* Analysis of absorption potential is usually made in terms of a single molecule of a given weight. However, polymers do not generally consist exclusively of molecules of one specific molecular weight. They are usually composed of homologous molecules spanning a range of molecular weights. As a result, the molecular weight of polymers can be best characterized by: (1) An average of the weight of the molecules making up the polymer, and (2) a measure of the distribution of weights, which is called polydispersity.

As polydispersity decreases in a polymer of a given average molecular weight, the distribution of molecular weights narrows, so that the amount of low molecular weight species in the polymer decreases. EPA has observed in the PMN data base that as molecular weight increases, polydispersity decreases. This indicates that as molecular weight increases, the importance of polydispersity as a parameter in characterizing polymer absorbability decreases. Although the amount of low molecular weight species may in some circumstances be significant, EPA believes that the average molecular weight of a polymer is a reasonable parameter to use when assessing the potential for absorbability. The Agency has chosen to use the number-average molecular weight of polymers for its assessment because the number-average is more sensitive than other measures of average weight to the amount of low molecular weight species in the polymer.

d. *The choice of a molecular weight criterion.* Because of limited data, known exceptions to the principle that as molecular weight increases absorption decreases, and the polydispersity of polymeric substances, it is not possible to identify any single molecular weight limit above which no absorption will take place. However, available data on the relationship between absorbability and molecular weight does suggest that substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin and that substances with molecular weights greater than 1,000 are generally not readily absorbed through the intact gastrointestinal (GI) tract. The relationship between absorption through the GI tract and molecular weight of somewhat more tenuous than it is for dermal absorption because other factors, such as active transport and metabolism, may play a key role in affecting absorption from the GI tract. Based on the above data, the Agency believes that except for polymers that contain significant quantities of low molecular weight substances, polymers will generally not be absorbed through the skin or GI tract to a significant extent.

4. *Limitations to approach.* The Agency recognizes that there are limitations to the general rule that high molecular weight substances will not be readily absorbed and therefore, will be of low concern. First, there are exceptions to the rule, and second, there may be potential toxicity due to toxic residual feedstocks or to formation of particulates.

a. *Exceptions.* There are known exceptions to the general principle that increasing molecular weight decreases absorbability. For example, high molecular polyester diamines are able to penetrate skin. Bovine serum albumin and bovine milk xanthine oxidase can be taken up by the GI tract. Possible explanations for these exceptions are that: (1) A polymer may cause irritation sufficient to disrupt the integrity of the membrane; (2) it may have unique physicochemical properties which enable it to be absorbed; or (3) it may have an appropriate steric configuration which enables it to be transported on one of the specialized transport systems.

b. *Residual feedstocks.* In some cases there may be a substantial amount of residual starting material in the final polymeric substance. These reactants are typically low molecular weight (i.e., absorbable), reactive substances. To the extent that reactivity combined with absorbability suggests potential hazards, the presence of residual reactants may present risk not addressed by risk analysis based on molecular weight. The Agency prepared a quantitative risk estimate for several residual monomers in different exposure scenarios. The risk estimates indicate that under certain conditions there may be potential for significant risk due to residual monomers.

c. *Particulates.* Another potential source of toxicity not covered by the

molecular weight approach is toxicity due to particulates. Some polymers may be in particulate form and as a result may upon inhalation present potential health risks due to development fibrosis of the lung or other pulmonary effects. Although the Agency's PMN review experience has demonstrated that exposure to polymer particulates is generally limited and therefore expected to be of low concern, there is still the potential for this hazard to occur.

d. *Oil-soluble polymers.* The molecular weight approach does not address some factors which may alter a polymer's typical potential to be absorbed. In particular, it does not address the fact that polymers could come in contact with oils which could extract both polymer molecules and residual materials which, if lipophilic, could be absorbed and bioaccumulate. Although few significant risk concerns in PMN review have resulted from the oil solubility of polymers, the potential for absorption and biomagnification does exist.

e. *Pyrolysis products of polymers.* Finally, the molecular weight approach does not address the potential toxicity of pyrolysis and combustion products of polymers. Polymers, like other substances, decompose in the presence of heat, releasing byproducts that, with significant exposure, may produce significant risk. Such decomposition is generally associated with accidental occurrences (e.g., fires) or process errors. (e.g. thermal degradation of a polymer due to excessive molding temperatures). Because pyrolysis and combustion products from polymers have not been well characterized and may vary with temperature and conditions, the Agency believes that these risks cannot generally be addressed within the scope of a broad exemption rule.

f. *Conclusion.* Based on the above analysis, the Agency believes that although exempt polymers are generally of low concern, there may be specific instances of concern, and therefore it is appropriate that all exempt polymers undergo a limited Agency review. Such a review is necessary for EPA to make the no unreasonable risk finding. This review allows the Agency to determine if any of the above concerns might apply to a given polymer. If these concerns do apply, the polymer should not be exempt from a more detailed EPA review.

5. *Exclusions.* Several classes of polymers have been excluded on the basis of information that suggests potential risk. The classes are cationic polymers, polymers manufactured from reactants containing halogen or cyano groups, and polymers containing certain reactive functional groups.

a. *Cationic polymers.* Review of data on polymers submitted under the PMN program revealed that certain cationic polymers, such as polyamines, are likely to be toxic to aquatic organisms even when their molecular weight is greater than 10,000.

b. *Polymers containing halogen or cyano groups.* There is sufficient concern regarding the toxicities of certain low molecular weight halogenated and cyanated monomers (e.g., vinyl bromide, vinyl chloride, and acrylonitrile) for the Agency to be unable to make a general finding of low risk for polymers made from such reactants.

c. *Polymers containing reactive functional groups.* Certain polymers containing reactive functional groups are intended to undergo further reaction to produce high molecular weight polymers. Because many of these groups are capable of reacting with tissues or other chemical constituents of living organisms, polymers containing such groups may be biologically active. Absorption of polymers with reactive groups is also plausible since reactive groups often cause sufficient irritation to disrupt normal cell membrane barriers and facilitate penetration. Because of the possibility of both absorption and reactivity with biological cells, polymers with reactive functional groups may be toxic.

For these reasons, the Agency believes that there is sufficient concern about the hazard potential of these three classes of polymers to exclude them from the exemption.

6. *Polyesters.* The polyester exemption, unlike the rest of the general polymer exemption, does not impose a minimum number-average molecular weight as a criterion for eligibility. The potential toxicity of residual reactants was addressed by limiting the reactants from which polyesters can be made under the exemption. A list of reactants that are commonly used in the manufacture of polyesters was evaluated for their potential toxicity. The evaluation was conducted by a panel of senior Agency scientists, who relied upon available scientific literature, information from other Federal agencies, knowledge of structure-activity principles, and general experience in identification and evaluation of hazardous substances. (This is the major hazard identification step in the normal PMN review process.) Under the exemption, polyesters may be made only from those reactants identified as presenting low concern in this review. These reactants are identified in § 723.250(e)(2) of the rule.

7. *Risk under exemption conditions.* There are several factors about polymers and the proposed exemption that reduce risks to human health and the environment presented by exempt polymers.

Many polymers are relatively unreactive and stable when compared to most other chemical substances. As a polymer's molecular weight increases, its potential to cause adverse health or ecological effects is generally reduced. This occurs because an increase in molecular weight generally reduces the rate of polymer absorption by biological systems. The Agency believes that these inherent properties of polymers, when combined with the provisions of this exemption, will significantly reduce the potential risks to human health and the environment that exempt polymers may present.

Under the exemption there are three main elements that will reduce risks: (1) The exemption criteria, (2) the expedited PMN and review provisions, and (3) the exclusion categories.

First, the exemption criteria will limit risk. Only polyesters manufactured from a list of low concern monomers are eligible for exemption without meeting the minimum number-average molecular weight criterion. Other polymers with a number-average molecular weight over 1,000 (if not otherwise excluded) would be exempt. EPA believes that this minimum number-average molecular weight, when combined with the exclusion categories and expedited review, sufficiently narrows potential risk concerns.

Second, certain polymers which may present significant risks or for which little is known about risk would be excluded from eligibility. For instance, polymers made from reactants that contain halogens or cyano groups would be excluded as a result of concerns for unreacted residuals. Polymers designed or reasonably anticipated to degrade or depolymerize would be excluded because EPA has limited review experience with such polymers. Cationic polymers, some of which are believed to present significant aquatic risks, are excluded. Other exclusions would similarly eliminate categories of polymers for which the Agency cannot make the finding of no unreasonable risk. Polymers that are not excluded must then meet the exemption criteria to be exempt.

Third, no polymers can be manufactured under this exemption without submission of a limited PMN to EPA at least 21 days prior to manufacture. The Agency believes that, with the above exemption exclusions and criteria, EPA will be able within the 21-day period to identify problematic substances requiring more extended review. If significant risk issues are raised, the Agency may extend the review period and may exercise its authority under sections 5(e) and 5(f).

EPA believes that the exemption exclusions, conditions, and notice and review procedures will reduce potential risks by excluding certain polymers for which the Agency has limited review experience and some polymers which may often have hazard concerns, and by providing the Agency an opportunity to review all polymers prior to manufacture. In addition, the Agency believes that there will be no increase in potential risks beyond what would have occurred if a full PMN review was conducted. Polymers that are eligible for this exemption are usually identified as having low risk potential early in PMN review and consequently are dropped from consideration before the 21st day of the review period.

B. Summary of Economic Analysis

1. *Introduction.* To perform the economic analysis of the polymer exemption, the Agency created a data base from a sample of about 500 polymer PMN's submitted in 1980 and 1981. This data base provides an overview of the Agency's recent experience with the PMN program. The Agency analyzed the PMN's in this data base to determine the types of polymers being submitted for review, their projected production volumes, their intended uses, and in some cases their potential toxicity. This information was used to estimate the number of new chemicals that would likely be eligible for an exemption.

The Agency also reviewed the current cost of PMN requirements for manufacturers of new polymers; it estimated the direct relief to industry, reflected in decreased reporting costs and decreased time in bringing a new chemical to the market, that would result from different exemption alternatives; and it estimated direct savings to EPA resulting from decreased PMN review costs. These figures were used to derive quantitative estimates of benefits.

In assessing benefits, EPA also considered nonquantifiable benefits, such as the potential for increase in chemical innovation due to the promulgation of a polymer exemption. Although the Agency could not attach specific figures to these benefits, they may be substantial. EPA's analysis of the impact on industry of its proposed PMN rules suggests that the nonquantifiable costs of the program may be greater than quantifiable costs. By extension, it appears reasonable to assume that the nonquantifiable benefits of an exemption may be greater than those that can be quantified.

The complete economic analyses can be found in the economic support document in the public file for this rulemaking.

2. *Current impact on PMN program.* As a baseline for its economic analysis, EPA estimated the annual direct costs of submitting PMN's on polymers. A review of the sample of 500 polymer PMN's indicates that about 49 percent of all PMN's submitted are for polymers. Using the current direct PMN reporting costs of $1,300 to $7,500 per PMN, EPA estimated the annual direct reporting costs for polymers to be between $.64 and $3.7 million. Besides these direct filing costs, industry is also faced with additional costs from the TSCA-imposed 90-day PMN review period (delay costs), from having to establish confidential business information claims, and from uncertainty as to whether EPA will take regulatory action. Considering all current PMN reporting costs, the annual reporting costs to submitters of polymer PMN's are estimated to be between $1.8 and $4.9 million.

3. *Benefits of the exemption.* The Agency estimated the number of new chemical substances that would be eligible for the exemption. From this base, EPA then calculated the annual net benefits of the exemption. These benefits include the indirect savings from the reduction of the 90-day delay. The costs of having to submit limited PMN's and the cost of the delay associated with expedited review are subtracted from the gross savings to obtain the net savings to industry. The polymer exemption would make about 216 substances eligible for limited reviews per year. However, we expect that some firms would continue to submit PMN's for all new polymers while others would take advantage of the exemption for only a portion of the new polymers they develop. The polymer exemption would thus result in the filing of about 85 to 216 limited PMN's per year; net benefits to industry would therefore be between $0.165 and $1.65 million per year. However, the Agency will expend approximately the same resources reviewing limited polymer PMN's as it now expends reviewing polymer PMN's; any savings in EPA resources due to the exemption are expected to be negligible.

In addition to the benefits which EPA has quantified, there are certain benefits which the Agency has examined qualitatively. Chief among these are the benefits of reduced uncertainty and of increased innovation for manufacturers of new chemical substances. The reduction in the length of the review period (from 90 to 21 days) would reduce the period of uncertainty about the outcome of EPA's review of the notice (whether the chemical would be manufactured, when, and under what restrictions, if any, etc.). Also, by reducing direct PMN filing costs and delay costs, the exemption will encourage chemical innovation. These reductions will mean that chemicals which formerly were not profitable to introduce would now be acceptable investments. The net value of this additional innovation would constitute additional benefits, both to the chemical industry and to society.

C. Finding of No Unreasonable Risk

1. *Statutory background.* Under section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, and disposal of the substance will not present an unreasonable risk of injury to health or the environment. Section 26(c) TSCA provides that any action authorized under TSCA for an individual chemical substance may be taken for a category of such substances.

The term "unreasonable risk" is not defined in TSCA. The legislative history indicates that determination of whether a risk is unreasonable requires a balancing of the probability and severity of harm from the substance or category of substances against the costs of the regulatory action to society. Because EPA's determination of the reasonableness of risk involves a consideration of factors such as environmental effects, use patterns, and market potential which are frequently difficult to define and quantify precisely, EPA must rely not only on the available data but also its professional judgment. Congress recognized that the implementation of the unreasonable risk standard "will vary depending on the specific regulatory authority which the Administrator seeks to exercise." [Legis. Hist. at 422]

2. *EPA's approach to making the no unreasonable risk finding.* To determine whether the category of substances manufactured under the exemption presents an unreasonable risk, the Agency should consider not only the inherent risks presented by the overall category of polymers, but also the extent to which specific exclusions or

adjustments of the overall category definition have mitigated such potential risks. EPA must then analyze the effect on risk of any further conditions imposed on the exemption. For example, manufacturers who intend to use the exemption must submit a PMN containing only limited information, which may affect the Agency's ability to identify risk. Because the effect of the exemption is to modify general PMN requirements, EPA should also compare the absolute risk posed by the exemption with the risks which would have resulted from the same substances if the substances had been subject to full notice submission requirements and minimum 90-day EPA review period.

Congress did not intend the section 5 review process to eliminate entirely all risk resulting from manufacture, processing distribution in commerce, use, and disposal or new chemical substances, nor is it possible to do so. While section 5 gives EPA the opportunity to review all new chemical substances, the Agency is authorized to ban such substances or otherwise control against risks only when it can show the substances will present an unreasonable risk of injury to health or the environment (section 5(f) of TSCA) or when there is insufficient information to evaluate the risks and EPA finds either that the manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk or that the substance will be produced in substantial quantities and will be released in substantial amounts or will result in significant or substantial human exposure (section 5(e) of TSCA). To the extent that certain risks presented by members of a category of substances would not have been regulated by EPA during a full PMN review, based on EPA's maximum exercise of its section 5 authorities, such risks could not be considered to be risks posed by an exemption rule.

There are two methods of calculating the benefits of the exemption which should be weighed in determining whether exempt substances will present an "unreasonable" risk. First, CPA can consider the benefits in a manner analogous to the way it would consider them if the Agency were evaluating a particular member of the category during the full PMN period. Under this approach the evaluation would focus on the benefits of the chemicals to society, and the extent to which any regulation of the substances necessary to address remaining risk concerns would reduce or eliminate such benefits. The basis for considering this type of benefits information is that Congress arguably did not intend to exempt from PMN requirements any substances which were likely to have been subject to control under section 5(e) or 5(f). EPA thus would not consider the reduced burden of the PMN or other benefits of reducing PMN requirements, because these costs would not be considered in making a regulatory decision on a PMN substance. One problem with focusing on the benefits of the substances in the category is that, while section 5(h)(4) clearly contemplates granting exemptions by category, it is difficult or impossible to predict accurately the nature of those benefits.

Under the second approach, EPA could consider benefits beyond those considered in an actual PMN review. As discussed in the proposed rule, a broader consideration of benefits would analyze, in addition to the benefits of the substances themselves, the reduction in the costs to society imposed by the full PMN requirements. There are strong arguments for taking such an approach in making a no unreasonable risk finding in the context of a 5(h)(4) exemption. The legislative history indicates that EPA's unreasonable risk consideration should include effects on society beyond the benefits of a substance. In addition, unlike the review of an individual PMN, the costs of PMN's for substances which would be addressed by this exemption have not already been paid. Such direct costs would include the cost of preparing and submitting the PMN, and the cost of the delay in the introduction of the benefits of a new chemical. In addition, economic analyses have indicated that reporting and delay costs may discourage the introduction of new chemicals. While elimination of these costs would not be a benefit that EPA would take into account in making an individual control decision on a new substance, they are real effects on society which result from EPA's exercise of its exemption authority and are thus appropriately considered in a section 5(h)(4) unreasonable risk finding for a category of substances.

3. *Application of no unreasonable risk factors.* Following is an explanation of EPA's consideration of the factors relevant to the finding of no unreasonable risk.

a. *Risks associated with exempt polymers.* As discussed in Unit III. A of the preamble, there are several characteristics about polymers as a category of substances and several elements of the proposed exemption that would significantly limit the risks to human health and the environment that exempt polymers may present. First, polymers are relatively unreactive and stable compared to other chemical substances and typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. Supporting these conclusions are the available, although limited, data and EPA's professional judgment and its experience in reviewing over 1,200 polymer PMN's. Second the exemption excludes polymers that are believed to present potential risk concerns as well as certain polymers about which little is known, Third, the exemption provisions include eligibility criteria that further limit potential risks. Finally, the exemption includes notice and review procedures that would allow EPA to exclude individual polymers from the exemption if unresolved issues concerning toxicity or exposure remain at the end of the 21-day review period or if EPA believes that it should consider regulatory action under section 5(e) or 5(f). The Agency believes that these factors provide reasonable assurances that exempt polymers will not present unreasonable risks to human health or the environment.

b. *Relative risks of expedited review and full PMN review.* In deciding whether to grant this exemption, EPA has carefully considered the potential decrease in the Agency's ability to identify risks in the exemption review process, compared with its ability to do so in full PMN review. Such additional risks could result from: (1) The inclusion of less information in the limited PMN, or (2) failure to recognize a problem in the 21-day review period that EPA would have recognized during the 90-day review period. EPA has several reasons for concluding that, in fact, the exemption review process would not result in any such increase in risk. First, as discussed above, EPA believes that the potential for significant risks among the class is reduced. Second, based on EPA's review experience, the information required to be submitted for limited PMN review, and the 21-day review period, will be sufficient to identify any problems that were likely to have been identified in a full PMN review. Under the present process for PMN's, EPA performs an initial review of all PMN substances to identify possible health or environmental effects. Within a few weeks after receipt of the notice, if EPA has any significant suspicions about a PMN substance, or if there are unresolved questions about toxicity, the chemical substance is referred for a more thorough review. For the vast majority of substances, for which no such issues are raised, little or no assessment occurs after this initial review. The experience of the PMN program to date is that very few polymeric substances are identified for more detailed assessment.

The review process for exempt polymers will be very similar to that now followed for PMN's. The limited PMN will contain information sufficient for EPA to evaluate those aspects of polymeric substances which could potentially cause effects of concern, primarily focusing on the presence of low molecular weight species, the toxicity of such species and general exposure conditions. If EPA did identify toxicity concerns during this 21-day review, the exemption rule would allow EPA to extend the review period, and conduct a full PMN review. EPA is confident that any such problems can be identified during the 21-day period. If no such problems are identified, there is virtually no chance that they would have been identified by EPA during a more extensive review.

There is one aspect of EPA's expedited review that in the abstract would not be equivalent to a full 90-day PMN review. Under section 5(a), when EPA receives a PMN, it publishes a notice in the Federal Register, seeking information on risks which may be presented by the substance. The 21-day review period under the exemption rule, would not be adequate to allow the submission by the public of information on the substance which was not available to EPA. EPA, however, does not believe that this problem is significant because the Agency very rarely receives comments in response to such notices. In addition, no information has ever been received from the public during the 90-day PMN review period which caused the Agency to reverse its initial evaluation of a polymer.

c. *Benefits.* It is impossible to quantify the total benefits which may accrue to society from the individual substances subject to this exemption. Uncertainty about benefits is inherent in any action under TSCA which deals with a category of substances whose structure and uses are unknown. However, it is clear that the field of polymer chemistry has been the source of many recent technological advances. In addition, it is obvious that a new polymer must present benefits to society by performing a new function, or performing an old function more efficiently or less expensively, or with less risk, or it would not have been developed or used. Therefore, EPA has concluded that the new polymers eligible for exemption, as a category and as individual substances, will present some significant benefits to society.

EPA has been able to quantify some of the benefits to society which will result from this exemption that do not depend on specific knowledge about the benefits of the individual substances. First, as is indicated above, manufacturers submitting notices under this exemption will incur reduced reporting costs. Second, for the vast majority of substances submitted under this exemption, for which the 21-day review period is not extended, there will be a potential for significant reduction in the delay in introducing new polymers. Manufacturers, and the general public, will be able to take advantage of the benefits of individual polymeric substances more quickly, including any increases in efficiency and decrease in cost.

Assuming that from 85 to 216 polymers a year would take advantage of the exemption, net benefits would be between $0.165 and $1.65 million annually. Of this amount, a significant portion consists of the savings in costs due to delay. The delay cost savings for polymers range from about $0.1 to $0.25 million annually. Total industry costs associated with the PMN program are presently estimated at $3.715 to $9.915 million annually. The final polymer exemption rule will therefore reduce the program cost to industry by about 4 to 17 percent.

4. *Conclusion.* As discussed above, a finding concerning the existence or absence of an unreasonable risk under section 5 requires a balancing of risks and benefits which result from a particular action. As explained above, EPA has determined that the risks likely to result from substances manufactured under this exemption are very low, based on the inherent properties of the category of substances considered for exemption, the conditions in the rule limiting the polymers eligible for the exemption, and the procedural safegrards EPA has included in the exemption, including the limited PMN, the 21-day review period, and the Agency's authority and intention to extend the review period if there are significant questions about the risks posed by the substance.

Under EPA's interpretation of section 5(h)(4), because the risks of the exemption are small, EPA could make a finding that the substances would not present an unreasonable risk even if the benefits of the exemption were small. However, EPA believes that there are substantial benefits to be considered. First, substances addressed by the rule have clear benefits to society. While these benefits are difficult to quantify, the Agency believes that they by themselves outweigh any risks which are presented by the exemption. In addition, the exemption will result in a reduction in PMN reporting costs for eligible polymers, reduction in the delay between submission of notices to EPA and commencement of manufacture, and increase in innovation because of lesser costs and lesser potential for regulatory delay. The fact that not all of these benefits are subject to precise quantification does not prevent EPA from considering them, because Congress recognized the limitations of quantitative solutions to such inherently judgmental decisions as "unreasonable risk". When these benefits are added to the benefits of the substances themselves, they even more strongly outweigh the risks posed by this exemption.

Finally, the Agency believes that it is prudent public policy to focus society's limited resources on chemical substances that have greater potential to present significant risks. Other regulatory bodies and society as a whole have largely recognized that polymers present limited risk potential and EPA has rarely identified significant risk concerns in reviewing PMN's on new polymers. The exemption of relatively low risk categories of substances, such as polymers, allows EPA to focus its attention on the review and control of chemical substances that may present more serious risks.

Given the above considerations, EPA has concluded that the manufacture, processing, distribution in commerce, use, and disposal of the substances eligible for this exemption will not, taking into account all the terms of the exemption, present and unreasonable risk of injury to health and the environment.

IV. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the Federal Register, as reflected in DATES in this notice. The effective date has, in turn, been calculated from the promulgation date.

V. Record

EPA has established a record of this final rulemaking (Docket Number: OPTS–50033A): the public version of this record is available for inspection in the OPTS Reading Room, Rm. E–107, 401 M St., SW, Washington, D.C. 20460 from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. Persons who do not have access to the record in the public reading room should contact Edward A. Klein, Director, TSCA Assistance Office (TS–799), at the above address for assistance.

The preamble to the proposed rule (47 FR 33896) lists items entered into the record through June 1982. The list below identifies items entered into the record after that date.

61. Adhesives Manufacturers Association (AMA), Letter to USEPA-OTS, August 13, 1981.

62. USEPA-OTS, Letter to AMA, September 14, 1981.

63. National Paint and Coatings Association, "Coatings Polymers: General Properties and Uses. A General Mortality Study of Production Workers in the Paint and Coatings Manufacturing Industry," October 22, 1981.

64. Cargill Incorporated Reasearch Department, "Cargill PMN Exemption Petition," November 13, 1981.

65. Shell Oil Company, Documents from CIBA-GEIGY and Shell supporting CMA proposed exemption for epoxy resins, February 3, 1982.

66. American Cyanamid Company, "Studies on Water Soluble Polymers (I)," July 19, 1982.

67. USEPA-OTS, "Methodology for Estimating Aquatic Safety with Minimal Data," August 1982.

68. USEPA-OTS, "Proposed Rule: Exemption of Certain Polymers from Premanufacturing Notification Requirements," August 4, 1982.

69. Comments after Proposed Rule (51 comments).

70. Public Meeting on Proposed PMN Exemptions (Six Exhibits), November 1, 1982.

71. A letter summarizing a conversation between E. Klein and J. Derbeck of Keller and Heckman, August 26, 1982.

72. USEPA/OTS, "Summary of Meeting with Burlin and Co., Inc.," September 14, 1982.

73. Tretolite Division, Petrolite Division, "Data on Cationic Polymers (II)," November 29, 1982.

74. American Cyanamid Company, "Toxicity Studies in Water Soluble Polymers," December 16, 1982.

75. Post Hearing Comments (10 comments).

76. USEPA-OTS, "Polymer Exemption Bibliography," October 1, 1982.

77. USEPA-OTS, "Technical Support Document: Risk Analysis of Polymers," July 12, 1983.

78. USEPA-OTS, "Economic Analysis of Final Section 5(h)(4) Polymer Exemption Rule," May 1983.

In accordance with section 19(a)(13) of the Act, the above lists together identify the complete rulemaking record. The public version of the record does not include confidential business information.

VI. Application of Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

This regulation does not satisfy any of the criteria for a major regulation described in Executive Order 12291; therefore, EPA has determined that a Regulatory Impact Analysis is not necessary. The annual impact of the rule on the economy will not exceed $100 million; instead it will provide substantial relief to the regulated industry. The rule will not burden any one particular geographic region and will not affect government agencies, except that it may slightly reduce the burden of PMN review for EPA. The exemption will not adversely affect the ability of domestic manufacturers to compete with foreign manufacturers, and it will encourage chemical innovation. EPA expects that the net effect of this exemption rule on the economy will be positive.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Also, the information requirements contained in this rule have been submitted to OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0012.

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA hereby certifies that this rule will not have a significant adverse economic impact on a substantial number of small businesses. Instead, it will provide relief from the present PMN requirements, which is likely to be particularly beneficial to small businesses. Since the exemption will reduce PMN filing costs and shorten production delays, small manufacturers will benefit from the rule. As stated in the document "Economic Analysis of TSCA section 5(h)(4) Exemptions: Polymers," the exemption will potentially benefit all manufacturers by reducing direct notification uncertainty, and delay costs associated with premanufacture review. Although it is difficult to determine the reduction in costs specific to small business, the exemption will not benefit large companies at the expense of small manufacturers, and may tend to improve small firms ability to compete and innovate by reducing their more critical direct costs.

Authority: Sec. 5, TSCA, 15 U.S.C. 2604.

List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Premanufacture notification exemption, Hazardous materials, Reporting and recordkeeping requirements.

Dated: November 9, 1984.

William D. Ruckelshaus,

Administrator.

PART 723—[AMENDED]

Therefore, 40 CFR Part 723 is amended by adding a new § 723.250 to Subpart B to read as follows:

§ 723.250 Polymers.

(a) *Purpose and scope.* (1) This section grants an exemption from certain of the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of certain polymers.

(2) To manufacture a new chemical substance under the terms of this section, a manufacturer must: (i) Determine that the substance meets the definition of polymer in paragraph (b)(12) of this section.

(ii) Determine that the substance is not specifically excluded by paragraph (d) of this section.

(iii) Ensure that the substance meets the exemption criteria of paragraph (e) of this section.

(iv) Submit a notice as required under paragraph (f) of this section.

(v) Comply with the recordkeeping requirements of paragraph (r) of this section.

(b) *Definitions.* In addition to the definitions under section 3 of TSCA, 15 U.S.C. 2602, the following definitions apply to this Part.

(1) "Act" means the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(2) "Administrator" and "environment," have the same meanings as in section 3 of the Act (15 U.S.C. 2602).

(3) "Biopolymer" means a polymer directly produced by living or once-living cells or cellular components.

(4) "Category of chemical substances" has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625).

(5) "Cationic polymer" means a polymer that contains one or more covalently linked subunits that bear a net positive charge.

(6) "Chemical substance," "Director," "EPA," "importer," "impurity," "Inventory," "known to or reasonably ascertainable," "manufacture," "manufacturer," "mixture," "new chemical substance," "person," "possession or control," "process," and "test data" have the same meanings as in § 720.3 of this chapter.

(7) "Internal subunit" means a subunit that is covalently linked to at least two other subunits. "Internal subunits" of polymer molecules are chemically derived from monomer molecules that have formed covalent links between two or more other subunits.

(8) "Monomer" means a chemical substance that has the capacity to form links between two or more other molecules.

(9) "Number-average molecular weight" means the arithmetic average (mean) of the molecular weight of all molecules in a polymer.

(10) "Polyester" means a chemical substance that meets the definition of polymer and whose polymer molecules contain at least two carboxylic acid ester linkages, at least one of which links internal subunits together.

(11) "Polymer" means a chemical substance that consists of at least a simple weight majority of polymer molecules but consists of less than a simple weight majority of molecules with the same molecular weight. Collectively, such polymer molecules must be distributed over a range of molecular weights wherein differences in molecular weight are primarily attributable to differences in the number of internal subunits.

(12) "Polymer molecule" means a molecule which includes at least four covalently linked subunits, at least two of which are internal subunits.

(13) "Reactive functional group" means an atom or associated group of atoms in a chemical substance that is intended or can reasonably be anticipated to undergo facile chemical reaction.

(14) "Reactant" means a chemical substance that is used intentionally in the manufacture of a polymer to become chemically a part of the polymer composition.

(15) "Reasonably anticipated" means that a knowledgeable person would expect a given physical or chemical composition or characteristic to occur based on such factors as the nature of the precursors used to manufacture the polymer, the type of reaction, the type of manufacturing process, the products produced in polymerization, the intended uses of the substance, or associated use conditions.

(16) "Subunit" means an atom or group of associated atoms chemically derived from corresponding reactants.

(c) *Applicability.* This section applies to manufacturers of new chemical substances that otherwise must submit a premanufacture notice to EPA under § 720.22 of this chapter. New substances are eligible for exemption under this section if they meet the definition of polymer in paragraph (b)(11) of this section, and the criteria in paragraph (e) of this section, and if they are not excluded from the exemption under paragraph (d) of this section.

(d) *Polymers that cannot be manufactured under this section*—(1) *Cationic polymers.* A polymer cannot be manufactured under this section if the polymer is a cationic polymer as defined under paragraph (b)(5) of this section or if the polymer is reasonably anticipated to become a cationic polymer in a natural aquatic environment (e.g., rivers, lakes).

(2) *Polymers containing less than 32.0 percent carbon.* A polymer cannot be manufactured under this section if the polymer contains less than 32.0 percent by weight of the atomic element carbon.

(3) *Elemental limitations.* (i) A polymer manufactured under this section must contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

(ii) A polymer cannot be manufactured under this section if it contains as an integral part of its composition, except as impurities, any elements other than the following:

(A) the elements listed in paragraph (d)(3)(i) of this section;

(B) Sodium, magnesium, aluminum, potassium, or calcium as the monatomic counterions Na^{+}, Mg^{+2}, Al^{+3}, K^{+}, or Ca^{+2};

(C) Less than 0.20 weight percent of any combination of the atomic elements lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, and zirconium.

(4) *Biopolymers.* A polymer cannot be manufactured under this section if the polymer is:

(i) A biopolymer as defined under paragraph (b)(3) of this section.

(ii) The synthetic equivalent of a biopolymer.

(iii) A derivative or a modification of a biopolymer if the initial biopolymer is substantially intact. A derivative of a biopolymer is a polymer that results from an additive chemical change of a biopolymer. A modification of a biopolymer is a polymer that results from a non-additive chemical change of a biopolymer. A derivative or a modification of biopolymer is substantially intact if it contains two or more internal subunits of a biopolymer in its structure.

(5) *Polymers manufactured from reactants containing halogen atoms or cyano groups.* A polymer cannot be manufactured under this section:

(i) If the polymer is manufactured from reactants containing, other than as impurities, fluorine, chlorine, bromine, or iodine atoms or cyano groups, or

(ii) If the polymer contains cyano groups other than as impurities.

(6) *Polymers containing reactive functional groups.* A polymer cannot be manufactured under this section if the polymer contains reactive functional groups that are intended or reasonably anticipated to undergo further reaction unless:

(i) The weight of the polymer that is equivalent to one gram-formula weight of reactive functional groups is 10,000 grams or greater.

(ii) The reactive functional groups are carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups, butenedioic acid groups; or conjugated olefinic groups in naturally-occurring fats, naturally-occurring oils, or naturally-occurring carboxylic acids.

(7) *Polymers which degrade, decompose, or depolymerize.* A polymer cannot be manufactured under this section if the polymer is designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

(e) *Exemption criteria.* To be manufactured under this section, the polymer must meet one of the following criteria:

(1) *Polymers over 1,000 number-average molecular weight.* The polymer has a number-average molecular weight greater than 1000.

(2) *Polyester polymers.* The polymer is a polyester as defined in paragraph (b)(10) of this section and is manufactured solely from one or more of the reactants in the following Table:

Table—List of Reactants From Which Polyesters May be Made

Monobasic Acids and Natural Oils

Benzoic acid (65–85–0)
Coconut oil (8001–31–8*)
Corn oil (8001–30–7*)
Cottonseed oil (8001–29–4*)
Dodecanoic acid (143–07–7)
Fatty acids, coco (61788–47–4*)
Fatty acids, linseed oil (68424–45–3*)
Fatty acids, safflower oil**
Fatty acids, soya (68308–53–2*)
Fatty acids, sunflower oil** (84625–38–7*)
Fatty acids, tall-oil (61790–12–3*)
Fatty acids, tall-oil conjugated**
Fatty acids, vegetable oil (61788–66–7*)
Heptanoic acid (111–14–8)
Hexanoic acid (142–62–1)
Hexanoic acid, 3,3,5-trimethyl- (3302–10–1)
Linseed oil (8001–26–1*)
Nonanoic acid (112–05–0)
Oils, *Cannabis*
Oils, anchovy
Oils, babassu palm
Oils, herring (68153–06–0*)
Oils, menhaden (8002–50–4*)
Oils, oiticica (8016–35–1*)
Oils, palm kernel (8023–79–8*)

Oils, perilla (68132-21-8*)
Oils, walnut (8024-09-7*)
Oils, sardine
Safflower oil (8001-23-8*)
Soybean oil (8001-22-7*)
Sunflower oil (8001-21-6*)
Tung oil (8001-20-5*)

Di and Tri Basic Acids and Anhydrides

1,2-Benzenedicarboxylic acid (88-99-3)
1,3-Benzenedicarboxylic acid (121-91-5)
1,4-Benzenedicarboxylic acid (100-21-0)
1,2,4-Benzenetricarboxylic acid (528-44-9)
Butanedioic acid (110-15-6)
2-Butenedioic acid (*E*) (110-17-8)
Decanedioic acid (111-20-6)
Hexanedioic acid (124-04-9)
Nonanedioic acid (123-99-9)

Polyols

1,3-Butanediol (107-88-0)
1,4-Butanediol (110-63-4)
1,4-Cyclohexanedimethanol (105-08-8)
1,2-Ethanediol (107-21-1)
1,6-Hexanediol (629-11-8)
1,3-Pentanediol, 2,2,4-trimethyl- (144-19-4)
1,2-Propanediol, (57-55-6)
1,3-Propanediol, 2,2-bis(hydroxymethyl)- (115-77-5)
1,3-Propanediol, 2,2-dimethyl- (126-30-7)
1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)- (77-99-6)
1,3-Propanediol, 2-(hydroxymethyl)-2-methyl- (77-85-0)
1,2,3-Propanetriol (56-81-5)
1,2,3-Propanetriol, homopolymer (25618-55-7)
2-Propen-1-ol, polymer with ethenylbenzene (25119-62-4)

Modifiers

Acetic acid, 2,2'-oxybis- (110-99-6)
1-Butanol (71-36-3)***
Cyclohexanol (108-93-0)
Cyclohexanol, 4,4,-(1-methylethylidene)bis- (80-04-6)
Ethanol, 2-(2-butoxyethoxy)- (112-34-5)
1-Hexanol (111-27-3)
Methanol, hydrolysis products with trichlorohexylsilane and trichlorophenylsilane (72318-84-4*)
1-Phenanthrenemethanol, tetradecahydro-1,4a-dimethyl-7-(1-methylethyl)- (13393-03-6)
Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)] bis[oxirane] (25036-25-3)
Siloxanes and Silicones, di-Me, di-Ph, polymers with Ph silsesquioxanes, methoxy-terminated (68440-65-3*)
Siloxanes and Silicones, di-Me, methoxy Ph, polymers with Ph silsesquioxanes, methoxy-terminated (68957-04-0*)
Siloxanes and Silicones, Me Ph, methoxy Ph, polymers with Ph silsesquioxanes, methoxy- and Ph-terminated (68957-06-2*)
Silsesquioxanes, Ph Pr (68037-90-1*)

* The * is used to designate chemical substances of unknown or variable composition, complex reaction products, and biological materials (UVCB). The CAS Registry Numbers for UVCB substances are not used in CHEMICAL ABSTRACTS and its indexes.

** These substances and polyesters made from them may not be manufactured until notices for them are submitted under sections 5(a)(1) or 5(h)(4) of TSCA.

*** These substances may not be used in a substance manufactured from fumaric or maleic acid because of potential risks associated with esters, which may be formed by reaction of these reactants.

(f) *Limited premanufacture notice*—The manufacturer must submit to the Administrator a limited premanufacture notice at least 21 calendar days prior to the date of manufacture. (1) *Notice form.* The information set forth in paragraph (f)(2) of this section must be submitted on the corresponding sections of Appendix A, 40 CFR Part 720 (EPA Form No. 7710-25) as identified below. The manufacturer must indicate clearly on the form that he or she is claiming an exemption from full premanufacture notice requirements under this section.

(2) *Contents of notice.* For substances exempt under paragraph (e) of this section the notice must include to the extent known to or reasonably ascertainable by the manufacturer:

(i) *Manufacturer's name.* This includes the name and address of the manufacturer and the name and telephone number of a technical contact. (Part I, Section A, Appendix A, 40 CFR Part 720).

(ii) *Type of exemption.* A designation of whether the manufacturer is claiming an exemption under paragraph (e) (1) or (2) of this section. (Identify on page 1 of the notice.)

(iii) *Site of manufacture.* (Except for chemical substances that are imported.) The name and address of the site or sites of manufacture. (Identify as an attachment to the notice.)

(iv) *Chemical identity.* (A) The identity (by chemical name and CAS Registry Number) and the maximum percent (by weight) of each reactant as defined in paragraph (b)(14) of this section, used at any weight percent to manufacture the polymer. The manufacturer must specify any reactants used at 2 weight percent or less that should be included as part of the polymer description on the Inventory. (Part I, Section B.2b, Appendix A, 40 CFR Part 720.)

(B) A representative structural diagram of the polymer, if possible. The notice must also indentify synonyms and trade names of the new polymer. (Part I, Sections B.2c, B.4, B.5, Appendix A, 40 CFR Part 720.)

(v) *Number-average molecular weight.* The number-average molecular weight, as defined under paragraph (b)(9) of this section, of the lowest molecular weight composition of the substance anticipated to be manufactured under the exemption and a description of the method used to determine the molecular weight. (Part I, Sections B.2a, Appendix A, 40 CFR Part 720.)

(vi) *Residual monomer and other reactants and low molecular weight species content.* (A) The maximum weight percent of each monomer or other reactant that will be present as residual in the polymer as manufactured for commercial purposes. (Part I, Sections B.2b, Appendix A, 40 CFR Part 720.)

(B) The total maximum weight percent of all material below 500 absolute molecular weight and below 1,000 absoulute molecular weight in any composition of the polymer that will be manufactured. (Part I, Section B.2a, Appendix A, 40 CFR Part 720.)

(vii) *Impurity information.* The identity, by chemical name and CAS Registry Number, and estimated maximum weight percent of each impurity anticipated to be present in the polymer as manufactured for commercial purposes. If there are unidentified impurities, the notice must include an estimate of their total weight percent. (Part I, Section B.3, Appendix A, 40 CFR Part 720.)

(viii) *Maximum annual production volume.* The maximum production volume during the first 12-month period of production and the maximum production volume for any consecutive 12-month period during the first three years of production. (Part I, Section C.1, Appendix A, 40 CFR Part 720.)

(ix) *Category of use.* A description of each use for which the polymer would be manufactured, including its function and application (e.g., spray adhesive in the manufacture of laminates). The description of use must also indicate whether the use in industrial, commercial, consumer, and/or site-limited. (Part I, Section C.2a(1)–(4), Appendix A, 40 CFR Part 720.)

(x) *Generic chemical identity and use.* If chemical identity or use information provided under this section is claimed as confidential under paragraph (g) of this section, the notice must provide a non-confidential description of this information which is only as generic as necessary to protect the confidentiality of the information. (Part I, Sections B.6, C.2b, Appendix A, 40 CFR Part 720.)

(xi) *Test data and other data.* Test data on the polymer in the possession or control of the manufacturer, a description of other data concerning the health and environmental effects of the polymer that are known to or reasonably ascertainable by the manufacturer, and a decription of data on related chemicals, as required in § 720.50 of this chapter. (Identify as an attachment to the notice.)

(xii) *Cetification.* A certification that:

(A) The notice includes all test data and other data required.

(B) The person submitting the notice intends to manufacture or import the polymer for a commercial purpose other than for research and development.

(C) All information provided in the notice is complete and truthful as of the date of submission.

(D) The new chemical substance meets the definition of polymer, is not specifically excluded from the exemption, and meets the conditions of the exemption. (Certification, Appendix A, 40 CFR Part 720, plus statement (xii)(D).)

(xiii) *List of Attachments.* The notice must include a list of attachments submitted with the notice. (Part III, Appendix A, 40 CFR Part 720.)

(g) *Notice Procedures.* The following sections of Part 720 of this chapter apply to the review and handling of notices under this section.

(1) Section 720.25 *Determining whether a chemical substance is on the Inventory.*

(2) Section 720.40 *General.* (Notice Form, Paragraphs (e) through (h)).

(3) Section 720.57 *Imports.*

(4) Section 720.62 *Notice that notification is not required.*

(5) Section 720.70 *Notice in the* **Federal Register.**

(6) Section 720.80 *General Provisions.*

(7) Section 720.85 *Chemical Identity.*

(8) Section 720.87 *Categories or proposed categories of uses of a new chemical substance.*

(9) Section 720.90 *Data from health and safety studies.*

(10) Section 720.95 *Public file.*

(11) Section 720.102 *Notice of commencement of manufacture or import.*

(h) *Notification of receipt of notice.* EPA will notify the manufacturer by telephone of the date on which the Agency received the notice. This acknowledgement does not constitute a finding by EPA that the notice, as submitted, is in compliance with this section. EPA will consider a person to have submitted the notice on the date the notice is received by the EPA Document Control Officer for the Officer of Toxic Substances.

(i) *Errors in the notice. (1) Within 10 calendar days or receipt of the notice, EPA may request that the manufacturer remedy errors in the notice.*

(2) In the request to correct the notice, EPA will explain the action which the manufacturer must take to correct the notice.

(3) If the manufacturer fails to correct the notice within eight days of receipt of the requests, EPA may determine that the notice is incomplete under paragraph (j) of this section.

(j) *Incomplete submissions.* (1) *A submission is not complete, and the notification period does not begin, if:*

(i) The wrong person submits the notice form.

(ii) The manufacturer does not sign the notice form.

(iii) Some or all of the information in the notice or the attachments are not in English, except for published scientific literature.

(iv) The manufacturer does not use the notice form.

(v) The manufacturer does not provide information that is required by paragraph (f)(2)(xi) of this section.

(vi) The manufacturer does not provide information required or indicate that is is not known to or reasonably ascertainable by the manufacturer.

(vii) The manufacturer does not submit a second copy of the submission with all confidential information deleted for the public file, as required by § 720.80(b)(2) of this chapter.

(viii) The manufacturer does not include any information required by section 5(b)(1) of the Act and pursuant to a rule promulgated under section 4 of the Act, as required by § 720.40(g) of this chapter.

(ix) The manufacturer does not submit data which the manufacturer believes show that the chemical substance will not present an unreasonable risk of injury to health or the environment, if EPA has listed the chemical substance under section 5(b)(4) of the Act, as required in § 720.40(h).

(2) If EPA determines that a submission is incomplete, the Director, or his or her delegate, will notify the manufacturer within 21 days of receipt that the submission is incomplete and that the notice review period will not begin or continue until EPA receives a complete notice.

(3) The notification that a submission is incomplete under paragraph (j)(2) of this section will include:

(i) A statement of the basis for EPA's determination that the submission is incomplete.

(ii) The requirements for correcting the incomplete submission.

(iii) Information on procedures under § 720.65(c)(4) of this chapter for filing objections to the determination or requesting modification of the requirements for completing the submission.

(4) If EPA determines that a submission is incomplete under this paragraph, it will follow the procedures outlined in § 720.65(c) (4) and (5) of this filing objections to this determination.

(k) *Review period.* The notice review period runs for 21 calendar days from the date the EPA Document Control Officer for the Office of Toxic Substances receives a complete limited premanufacture notice submitted according to paragraph (f) of this section, unless the period is extended under paragraph (l) of this section. If EPA determines that the notice is incomplete as specified in paragraph (j) of this section, the 21-day review period will not begin until a compete notice is submitted to the Agency Document Control Officer.

(l) *Extension of the review period.* (1) At any time during the review period specified in paragraph (k) of this section, EPA may extend the review period to a total of 90 days from the date of notice submission if the Administrator determines that the polymer should be considered for regulatory action under sections 5(e) or 5(f) of the Act or that unresolved issues concerning toxicity or exposure require further review.

(i) If the Administrator makes this determination, the Director or his or her designee will notify the manufacturer by telephone, followed by a letter, that the notice review period has been extended. The letter will explain the reasons for the extension.

(ii) On receipt of such notification, the manufacturer must withdraw the limited premanufacture notice or suspend the review period and submit the additional information on the substance necessary to constitute a full notice under Part 720 of this chapter. If the manufacturer suspends the review period, the manufacturer must submit the required additional information within 60 days of the date of telephone notification. If EPA receives the information, EPA will review the information following the procedures in Part 720 of this chapter, except that the review period identified in § 720.75(a) will be shortened by an amount equal to the days already elapsed in the review period under paragraph (k) of this section. If the manufacturer withdraws the limited notice or fails to suspend the review period or fails to submit complete additional information within 60 days, manufacture of the polymer may not begin until the manufacturer complies with section 5(a)(1) of the Act and Part 720 of this chapter.

(2)(i) At any time during the review period specified in paragraph (l)(1) of this section, EPA may determine that good cause exists to extend the notification period under section 5(c) of the Act. If EPA makes such a determination, the Director will:

(A) Notify the manufacturer by telephone followed by a letter, that EPA is extending the period for a specified length of time. The letter will specify the length of the extension and state the reasons for the extension; and

(B) Publish a notice in the Federal Register, which states that EPA is extending the review period and gives the reasons for the extension.

(ii) The extension under paragraph (l)(2)(i) of this section may be for a period of up to 90 days. If the extension is for less than 90 days, EPA may make additional extensions. However, the total period of extensions under paragraph (l)(2) of this section may not exceed 90 days for any notice.

(m) *Withdrawal of a notice by the manufacturer.* (1) A manufacturer may withdraw a notice during the notice review period specified in paragraph (k) or (l) of this section. A statement of withdrawal must be made in writing to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, 401 M Street, SW., Washington, D.C. 20460. The withdrawal is effective upon receipt of the statement by the Document Control Officer (OMB Control No. 2070–0012).

(2) If a manufacturer or importer who withdraws a notice later resubmits a notice for the same chemical sustance, a new notice review period begins.

(n) *Expiration of review period.* If the review period identified in paragraph (k) of this section expires without notification of extension by EPA, manufacture or import may begin under the terms of the exemption. The fact that EPA does not initiate regulatory action during the review period does not constitute EPA approval or certification of the substance, and does not mean that EPA may not take regulatory action on the substance in the future.

(o) *Inventory.* For any polymer for which the review period has expired under paragraph (k) of this section, and for which a notice of commencement of manufacture has been submitted under § 720.102 of this chapter, EPA will add the substance to the Inventory. The substance will be identified on the Inventory by:

(1) The name of each reactant used at greater than 2 percent by weight in the manufacture of the polymer and by those reactants used at 2 weight percent or less as identified under paragraph (f)(2)(iv) of this section.

(2) The criteria identified in paragraph (d) (1) through (7) of this section.

(3) The information provided in paragraph (f)(2)(vi) of this section.

(4) For substances exempt under paragraph (e)(1) of this section, the minimum permissible number-average molecular weight of 1,000.

(p) *Actions under sections 5(e) and 5(f) of the Act.* EPA will act under section 5(e) or 5(f) of the Act on a substance submitted under paragraph (e) of this section if the Agency determines that the statutory criteria for such action are met.

(q) *Notification of Ineligibility—(1) During the period from notice submission until commencement of manufacture.* If at any time between submission of a notice under paragraph (f) of this section and commencement of manufacture of the new chemical substance described in the notice, the Director determines that the new chemical substance does not meet the terms of this section, the Director or his or her designee will immediately notify the manufacturer by telephone, and subsequently by certified letter, that the substance does not meet the terms of this section and will explain the reasons for the determination. After receiving notice of such a determination, the manufacturer may not begin to manufacture the new chemical substance without complying with section 5(a)(1) of the Act and Part 720 of this chapter.

(2) *After commencement of manufacture.* (i)(A) If at any time after commencement of manufacture of a chemical substance which was the subject of a notice under paragraph (f) of this section, the Director determines that the chemical substance being manufactured does not comply with the identification entered on the Inventory under paragraph (o) of this section and that the substance is not otherwise on the Inventory, the Director or his or her designee will notify the manufacturer by telephone, and subsequently by certified letter, that EPA believes that the new chemical substance is being manufactured in violation of this section.

(B) The manufacturer may continue to manufacture, process, distribute in commerce, or use the chemical substance after receiving notification under paragraph (q)(2)(i)(A) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of telephone notification and if the manufacturer submits objections or an explanation under paragraph (q)(2)(ii) of this section. Manufacturers not manufacturing, processing, distributing in commerce, or using the chemical substance at the time of telephone notification may not begin such activity until EPA makes its final determination under paragraph (q)(2)(iii) of this section.

(C) If EPA brings an enforcement action under this section, the manufacturer will not be subject to penalty under section 15 of the Act for continuing commercial activity from the date of telephone notification under paragraph (q)(2)(i)(A) of this section through the date of notification under paragraph (q)(2)(iii) of this section.

(ii) A manufacturer which has received notice under paragraph (q)(2)(i) of this section may submit detailed objections to the determination or an explanation of its diligence and good faith efforts in attempting to comply with the terms of this section and with the identification of the substance on the Inventory, or both, within 15 days of receipt of the written notification.

(iii) The Director will consider any objections or explanation submitted under paragraph (q)(2)(ii) of this section, will make a final determination, and will notify the manufacturer of the final determination by telephone within 15 days of receipt of the objections or explanation, and subsequently by certified letter.

(iv) EPA may begin an enforcement action against the manufacturer if:

(A) The Director does not receive objections or an explanation within the 15 days specified in paragraph (q)(2)(ii) of this section.

(B) The Director determines, after considering the objections or explanation, that the chemical substance does not comply with the identification on the Inventory and is not otherwise on the Inventory and that the manufacturer did not act with due diligence and in good faith to comply with all of the terms of this section and with the identification of the substance on the Inventory.

(C) The Director makes the determination specified in paragraph (q)(2)(v) of this section, but the manufacturer continues manufacture of the new chemical substance without submitting a full notice under Part 720 of this Chapter as specified in paragraph (q)(2)(v) of this section.

(v) The Director may determine, after considering the explanation and objections, if any, that, while the chemical substance does not comply with the identification on the Inventory and is not otherwise on the Inventory, the manufacturer acted with due diligence and in good faith to comply with the terms of this section and the identification of the substance on the Inventory. If the Director makes such a determination, the manufacturer may continue manufacturing, processing, distributing in commerce, and using the new chemical substance if:

(A) It was actually manufacturing, processing, distributing in commerce, or using the chemical substance at the time it received the telephone notification specified in paragraph (q)(2)(i) of this section.

(B) It submits a full notice on the new chemical substance under section 5(a)(1) of the Act and Part 720 of this chapter within 15 days of receipt of the telephone notification under paragraph (q)(2)(iii) of this section. Such manufacture, processing, distribution in commerce, and use may continue unless EPA takes action under sections 5(e) or 5(f) of the Act.

(3) Action under this paragraph does not preclude action under sections 7, 15, 16, and 17 of the Act.

(r) *Recordkeeping.* (1) A manufacturer of a new polymer under paragraphs (e) (1) or (2), of this section must keep the records described in this paragraph for 5 years from the date of commencement of manufacture.

(2) The records must include the following to demonstrate compliance with the terms of this section:

(i) Records of production volume for the first 3 years of manufacture, the date of commencement of manufacture, and documentation of this information.

(ii) Documentation of any other information provided in the limited premanufacture notice, including:

(A) Information to demonstrate that the new polymer is not specifically excluded from the exemption.

(B) Information to demonstrate that the polymer meets the exemption criteria in paragraph (e) (1) or (2) of this section.

(3) The manufacturer must submit the records listed in paragraph (r)(2) of this section to EPA upon written request by the Director of the Office of Toxic Substances. The manufacturer must provide these records within 15 working days of receipt of this request. In addition, any person who manufactures a new chemical substance under the terms of this section, upon request of any officer or employee of EPA designated by the Administrator, must permit such person at all reasonable times to have access to and to copy these records.

(s) *Submission of information.* Information submitted to EPA under this section must be sent in writing to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E–401, 401 M St., SW., Washington, D.C. 20460.

(t) *Compliance.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) A person who manufactures or imports a new chemical substance before a notice is submitted and the notice review period expires is in violation of section 15 of the Act.

(3) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 or this rule is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by this section and section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Failure or refusal to permit entry or inspection as required by section 11 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(6) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirements of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(7) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of section 7 of this Act (15 U.S.C. 2606) or section 17 of this Act (15 U.S.C. 2616).

(u) *Inspections.* EPA will conduct inspections under section 11 of the Act to assure compliance with section 5 and this section, to verify that information submitted to EPA under this section is true and correct, and to audit data submitted to EPA under this section.

[FR Doc. 84-30427 Filed 11-20-84; 8:45 am]
BILLING CODE 6560-50-M

register

Wednesday
November 21, 1984

Part IV

Environmental Protection Agency

40 CFR Part 265

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Technical Amendment

federal

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SWH-FRL 2656-8]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Technical Amendment.

SUMMARY: The Environmental Protection Agency is today promulgating a technical amendment to the interim status standards for owners and operators of hazardous waste facilities. This amendment merely clarifies the existing interim status standards regarding the applicability of requirements to facilities whose interim status is terminated. Today's amendment does not change any substantive requirements.

DATE: These amendments are effective December 5, 1984.

ADDRESS: Background material relating to this amendment is maintained by the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket is available for viewing from 9:00 a.m. to 4:00 p.m., Monday thru Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424-9346 or 382-3000 in Washington, D.C.; or Libby Scopino in the Office of Waste Programs Enforcement, U.S. Environmental Protection Agency, Washington, D.C., (202) 475-6731.

SUPPLEMENTARY INFORMATION: EPA has promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.*, establishing a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260-265, 270, 271, and 124). Pursuant to Section 3005(a) of RCRA, the regulations require owners or operators of hazardous waste management facilities to have a permit.

Recognizing that EPA would not be able to issue permits to all hazardous waste management facilities at once, Section 3005(e) of RCRA provides that a hazardous waste management facility that meets certain requirements will be treated as having been issued a permit. EPA refers to such an owner or operator as one who has interim status.

Section 3004 of RCRA requires EPA to promulgate performance standards applicable to owners and operators of facilities that treat, store or dispose of hazardous wastes. These Section 3004 standards are independently enforceable national standards which are separable from the Section 3005 permit/interim status provisions. See 45 FR 33158 (May 19, 1980).

EPA promulgated both Part 264 general permitting standards and Part 265 interim status standards under the authority of Section 3004. EPA has, by regulation, limited the requirements for facilities with interim status to those found in 40 CFR Part 265. See 40 CFR 270.71(b). Pursuant to § 265.1 of the RCRA regulations, the standards in Part 265 apply "during the period of interim status." These standards apply to owners and operators of hazardous waste facilities who have fully complied with the interim status requirements, "until final administrative disposition of their permit application is made." (§ 265.1(b)).

The wording of § 265.1(b) implies that once a facility's interim status is terminated the facility would no longer have to meet the Part 265 interim status standards including the closure, post-closure and financial responsibility requirements. However, EPA has the statutory authority under Section 3004 to enforce the Part 265 standards at facilities which no longer have interim status. Some sections of the regulations clearly reflect that authority. For example, the provisions in § 265.112(c) and § 265.118(c) clearly require facilities whose interim status has been terminated to meet certain Part 265 closure and post-closure requirements. Section 265.112(c) requires that,

> The owner or operator must submit his closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. The owner or operator must submit his closure plan to the Regional Administrator no later than 15 days after:
>
> (1) *Termination of interim status* (except when a permit is issued to the facility simultaneously with termination of interim status; (emphasis added))
>
> (2) Issuance of a judicial decree or order under Section 3008 of RCRA to cease receiving wastes or close.

Clearly, § 265.112(c) envisioned that facilities would submit closure plans for approval subsequent to the termination of the facilities' interim status.

Further, many of the other substantive requirements of Part 265 are clearly stated to be applicable until final closure of the facility is certified. For instance, § 265.147(e) requires that liability insurance be maintained by the owner or operator of a facility until the certification of final closure is received by the Regional Administrator. A facility's interim status may be terminated prior to certification of final closure. In those instances, the Agency requires the facility whose interim status has been terminated to maintain liability insurance in spite of the language in § 265.1.

As stated above, EPA believes that it has both the statutory and regulatory authority to apply the Part 265 standards to those facilities whose interim status has been terminated. However, in order to clarify the Part 265 standards, the Agency is amending Section 265.1 to state specifically that the Part 265 requirements apply to an interim status facility until either a permit is issued under Section 3005 of RCRA or until all applicable Part 265 closure and post-closure responsibilities are fulfilled.

Good Cause Exception

This technical amendment is published without prior notice and comment because the Agency believes that such notice and comment is unnecessary pursuant to the good cause exception in the Administrative Procedures Act, 5 U.S.C. Section 553(APA). Today's amendment merely clarifies an existing Agency rule and as such is a routine, insignificant technical amendment. The impact of the amendment on the public is insignificant because the amendment does not impose any new substantive requirements. It merely codifies the already implied requirement that owners and operators of facilities whose interim status is terminated must comply with the applicable Part 265 standards until final closure and post-closure responsibilities are fulfilled.

Effective Date

RCRA Section 3010(b) provides that regulations and amendments to regulations under RCRA take effect six months from the date of promulgation. The purpose of this requirement is to allow sufficient lead time for regulated communities to prepare for compliance with major new regulations. Section 553(d) of the Administrative Procedures Act (APA) prohibits "publication or service of a substantive rule . . . less than 30 days before its effective date except for good cause."

For the amendment proposed today, EPA believes that an effective date six months or 30 days after promulgation would be unnecessary. These amendments simply clarify existing regulatory language and do not impose any new substantive requirements. Therefore, the Agency finds that there is good cause that this amendment be effective two weeks after publication.

Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There would be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

These amendments were submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any response to those comments are available for viewing at the Office of Solid Waste Docket, Room S269-C, U.S.E.P.A., 401 M Street, SW., Washington, D.C. 20460.

Paperwork Reduction Act

There is no recordkeeping or reporting burden associated with today's action.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that Federal Agencies prepare regulatory flexibility analyses assessing the impacts of proposed rules on entities such as small businesses, small organizations, and small governmental jurisdictions. Such an analysis is not required, however, when the head of an Agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities.

I find that today's proposal, if promulgated, would have no impact on small entities because it does not impose any additional substantive requirements. Accordingly, I certify that this amendment will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: October 25, 1984.

William D. Ruckelshaus,

Administrator.

PART 265—[AMENDED]

40 CFR Part 265 is amended as follows:

§ 265.1 [Amended]

1. Section 265.1 (a) is revised to read as follows:

(a) The purpose of this part is to establish minimum national standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

2. Section 265.1(b) is revised to read as follows:

(b) The standards of this part apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under Section 3005(e) of RCRA and § 270.10 of this Chapter until either a permit is issued under Section 3005 of RCRA or until applicable Part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by Section 3010(a) of RCRA and/or failed to file Part A of the permit application as required by 40 CFR 270.10 (e) and (g). These standards apply to all treatment, storage and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this Part or Part 261 of this Chapter.

Comment: As stated in Section 3005(a) of RCRA, after the effective date of regulations under that Section (i.e., Parts 270 and 124 of this Chapter), the treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.

(Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a), 6924, 6925)

[FR Doc. 84-29121 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

Reader Aids

Federal Register

Vol. 49, No. 226

Wednesday, November 21, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072.....1
44073–44192.....2
44193–44272.....5
44273–44442.....6
44443–44620.....7
44621–44740.....8
44741–44888.....9
44889–44984.....13
44985–45106.....14
45107–45408.....15
45409–45570.....16
45571–45732.....19
45733–45842.....20
45843–46096.....21

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
November 16, 1984..... 45733

Notice:
November 7, 1984..... 44741

Proclamations:
5270..... 44073
5271..... 44075
5272..... 44077
5273..... 44079
5274..... 44081
5275..... 44193
5276..... 44195
5277..... 44197
5278..... 45107
5279..... 45409
5280..... 45411
5281..... 45413

5 CFR

Ch. XIV, App. A..... 45843

Proposed Rules:
213..... 45588
831..... 45588
930..... 45444
1255..... 45751
2429..... 44902

7 CFR

2..... 44743
46..... 45735
210..... 45109
220..... 45109
225..... 45109
226..... 45109
301..... 44083
429..... 44443
441..... 44985
600..... 44743
729..... 44889
907..... 44199, 44757, 45415
910..... 44084, 44744, 44890, 45109, 45415
915..... 44447
928..... 44199
932..... 44447
944..... 44447
982..... 44745
984..... 44745
989..... 44745
1004..... 44986
1139..... 43943
1446..... 45109
1910..... 45416

Proposed Rules:
27..... 44902
52..... 43970
53..... 44724
54..... 44724, 44758
400..... 45444
420..... 44480
421..... 44476
424..... 44485
425..... 44490
432..... 44495
725..... 44103
800..... 45751
910..... 44299
971..... 45592
982..... 44500
984..... 44299
1007..... 44760
1464..... 44103
1772..... 45752–45754

8 CFR

238..... 44745
292..... 44084

9 CFR

50..... 44273
78..... 44987, 45110
81..... 44087, 45111, 45741
92..... 44088
97..... 45843
113..... 45845
114..... 45845
354..... 44091

Proposed Rules:
92..... 44501
381..... 44640

10 CFR

50..... 45112, 45114, 45571

Proposed Rules:
50..... 44645
71..... 44502
210..... 45445
605..... 44590

11 CFR

6..... 44091

12 CFR

204..... 44448
207..... 43946
220..... 43946
221..... 43946
224..... 43946
303..... 44746
308..... 44746
545..... 45846
563..... 45115, 45846
701..... 44993
795..... 44993

Proposed Rules:
5..... 45007
8..... 45102, 45592

13 CFR

105... 45742
120.. 44091

Proposed Rules:
107 44062

14 CFR
1 44422
27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417, 45743–45746
43 ..... 44602, 45418
71 ..... 44450, 45418, 45747
73 ..... 44096, 44451, 45418
91 44422
97 44990
255 44451
Proposed Rules:
Ch. I 44766
Ch. II 46006
39 ..... 45011, 45755
71 ..... 44104, 44650, 45011, 45166–45171, 45756, 45757
73 ..... 45011, 45168, 45169
75 45171

15 CFR
7 44622
Proposed Rules:
8c 45861
303 44651
320 ..... 44903, 45757

16 CFR
13 45115–45117
305 44200
455 45692
1700 44455
Proposed Rules:
300 44913
303 44913

17 CFR
1 45418
3 45418
33 44891
140 45418
145 45418
200 ..... 43950, 45847
240 45117
Proposed Rules:
1 44105
140 45015
144 45015
239 45172
274 45172

18 CFR
3 44273
157 44275
271 ..... 44201, 44993
274 44275
284 44275
341 44628
356 44628
360 44628
361 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273
Proposed Rules:
271 ..... 44217, 45174, 45175
430 44105

19 CFR
4 44867
6 44867
7 44867
10 44867
11 44867
12 44867
18 44867
19 44867
24 44867
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
162 44867
172 44867
174 44867
191 44867
Proposed Rules:
353 45593
355 45593

20 CFR
395 44277
404 ..... 43951, 44458, 45420

21 CFR
74 44096
178 44994
193 ..... 44458, 45123
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 45421
561 ..... 45124, 45848
573 ..... 44630, 45124
Proposed Rules:
146 44652
193 45869
450 44919
510 45593
511 44766

22 CFR
220 44631
Proposed Rules:
41 44920

23 CFR
140 45577

24 CFR
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44982

26 CFR
5h 43951
41 45849
48 45849
301 44460
Proposed Rules:
1 ..... 44300, 45449, 45450
41 ..... 44300, 44310, 44921
48 ..... 44300, 44310, 44921
51 45758
301 45452

27 CFR
9 ..... 44202, 44895
Proposed Rules:
4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR
2 44097
15 44995
511 44056
Proposed Rules:
545 44059

29 CFR
530 44262
1601 45424
1952 44202
2619 45129
Proposed Rules:
2617 44106
2640 45018
2648 45018

30 CFR
915 44206
917 44750
935 ..... 43952, 44461, 44996
Proposed Rules:
250 44924
816 45595
817 45595
855 45595
917 44653
920 43974
931 44769
938 43974

31 CFR
5 45578

33 CFR
100 ..... 45579, 45580, 45758
117 ..... 43953–43956, 44207, 44632, 45130, 45580
165 44632
Proposed Rules:
117 ..... 43975, 44925, 45596
126 45597
160 45597
165 44926

34 CFR
Proposed Rules:
Ch. VI 45834
76 45834
208 45834

36 CFR
Proposed Rules:
223 44109
291 45117
1121 44310

38 CFR
3 ..... 44099, 45130
Proposed Rules:
1 45870

39 CFR
10 45130
265 44286

40 CFR
52 ..... 44099, 44208, 44287, 44463, 44996
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 45292
180 ..... 44464–44467, 45132, 45849–45854
261 44978
265 46094
704 ..... 45133, 45425
707 45581
723 46066
761 44634
775 44997
Proposed Rules:
50 ..... 44770, 45871
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178, 45761–45765, 45872
53 45871
58 45871
81 ..... 43977, 45031
147 44111
152 45873
157 45873
158 45873
162 45873
170 45181
261 44718
271 ..... 44111, 44312, 44506, 45452, 45874
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 ..... 44218, 45598

716 ..... 44220, 45602
799 ..... 45606, 45610

41 CFR
50–201 45855
Ch. 101 44468
101–20 44469
101–41 44470
101–47 44471
Ch. 201 45748

42 CFR
36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR
Public Land Orders:
1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997
Proposed Rules:
3160 44655
3420 44221

44 CFR
64 ..... 44751, 45133
65 ..... 45134, 45135
67 45136
Proposed Rules:
67 45181

45 CFR
801 44473
Proposed Rules:
95 45617
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR
310 45857
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397
Proposed Rules:
67 45623

47 CFR
0 45582
2 ..... 44101, 44997
15 44210
25 44751
31 44289
43 44289
73 ..... 43957, 44101, 45139–45146, 45583–45587
74 45155
76 45431
Proposed Rules:
0 45454
1 45454
2 ..... 45766, 45875
73 ..... 44113, 44114, 45186, 45625, 45875
90 ..... 44223, 45454, 45875

48 CFR
Proposed Rules:
1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR
1 44102
171 45749
173 ..... 43963, 45749
175 45749
178 43965
179 43963
391 44210
392 44210
571 44899
575 44751
1160 45858
1165 45858
1168 45858
1181 45858
1182 45858
Proposed Rules:
23 44772
172 45627
173 45627
195 44928
542 45629
1102 44224

50 CFR
17 ..... 43965, 44753, 45160
258 44474
611 44757
620 44102
652 ..... 45164, 45859
663 ..... 44638, 44901
671 44757
676 44998
Proposed Rules:
17 ..... 44507, 44712, 45766, 45880–45887
222 44774
227 44774
611 44655
630 45888
672 44655
675 44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.



Just Released

Code of Federal Regulations

Revised as of July 1, 1984

Quantity	Volume	Price	Amount
_____	Title 32—National Defense (Parts 400–629) (Stock No. 022–003–95381–7)	$13.00	$_____
_____	Title 40—Protection of Environment (Parts 53–80) (Stock No. 022–003–95400–7)	18.00	_____
	Title 41—Public Contracts and Property Management (Chapter 18, Parts 1–52)		
_____	Parts 1–5 (Vol. I) (Stock No. 022–003–95414–7)	13.00	_____
_____	Parts 6–19 (Vol. II) (Stock No. 022–003–95415–5)	13.00	_____
_____	Parts 20–52 and Appendices (Vol. III) (Stock No. 022–003–95416–3)	13.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form **Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA* MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

VOL
49

ISS
226

NO
21

1984

UMI

11-23-84
Vol. 49 No. 227

federal register

Friday
November 23, 1984

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

11-23-84
Vol. 49 No. 227
Pages 46097-46332

federal register

Friday
November 23, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency
Authority Delegations (Government Agencies)
Transportation Department
Aviation Safety
Federal Aviation Administration
Commodity Futures
Commodity Futures Trading Commission
Customs Duties and Inspection
Customs Service
Education of Handicapped
Education Department
Elementary and Secondary Education
Education Department
Endangered and Threatened Species
Fish and Wildlife Service
Fisheries
National Oceanic and Atmospheric Administration
Food Ingredients
Food and Drug Administration
Grant Programs—Education
Education Department
Household Appliances
Consumer Product Safety Commission

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Investigations
International Trade Commission

Loan Programs—Business and Industry
Farmers Home Administration

Postal Service
Postal Service

Reporting and Recordkeeping Requirements
Federal Highway Administration

Housing and Urban Development Department

Securities
Securities and Exchange Commission

Security Measures
Energy Department

Contents

Federal Register
Vol. 49, No. 227
Friday, November 23, 1984

Agricultural Trade and Export Policy Commission
NOTICES
46179 Meetings

Agriculture Department
See Cooperative State Research Service; Farmers Home Administration; Soil Conservation Service.

Air Force Department
NOTICES
Meetings:
46190 Scientific Advisory Board

Arts and Humanities, National Foundation
NOTICES
Meetings:
46221 Design Arts Advisory Panel; correction
46221 Music Advisory Panel

Coast Guard
NOTICES
Committees establishment, renewals, terminations, etc.:
46232 Rules of the Road Advisory Council

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration.
NOTICES
Procurement:
46179 Commercial or industrial activities, performance; review schedule (OMB A-76 implementation); cancellation

Commodity Futures Trading Commission
RULES
Reports:
46116 General provisions; market surveillance data
NOTICES
46235 Meetings; Sunshine Act

Consumer Product Safety Commission
RULES
46108 Space heaters, unvented gas-fired; oxygen depletion safety shutoff systems; safety standards; revocation

Cooperative State Research Service
NOTICES
Meetings:
46179 Committee of Nine

Customs Service
RULES
Financial and accounting procedure:
46118 Administrative overhead charges
Vessels in foreign and domestic trade:
46118 Tonnage tax and light money payment
PROPOSED RULES
Customs bonds, merchandise entry, etc.:
46161 Submission of missing documents; filing time
Tariff classification of merchandise:
46163 Footwear known as rubber duckies; petition
46162 Operatic and theatrical costumes; petition

Defense Department
See Air Force Department.

Education Department
PROPOSED RULES
Elementary and secondary education:
46169 Magnet schools assistance program
Special education and rehabilitative services:
46252 Handicapped children education, assistance to States
46244 National Institute of Handicapped Research; innovation grants program, spinal cord injuries special projects, etc.
NOTICES
Meetings:
46190 Indian Education National Advisory Council

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions:
46240 FL, MO, and NY

Energy Department
See also Federal Energy Regulatory Commission.
RULES
Defense programs:
46097 Security interests, protective force personnel

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
46141 Vermont
NOTICES
46294 Carcinogen risk assessment; proposed guidelines
Environmental statements; availability, etc.:
46196 Agency statement; review and comment
46196 Agency statements; weekly receipts
46304 Exposure assessment; proposed guidelines
Meetings:
46194 Science Advisory Board
46314 Mutagenicity risk assessment; proposed guidelines
Toxic and hazardous substance control:
46324 Health assessment of suspect developmental toxicants; proposed guidelines; inquiry
Water pollution control:
46195 State water quality standards and criteria; availability of related documents

Farmers Home Administration
RULES
Loan and grant programs:
46097 Business and industrial loan program; filing and processing applications

Federal Aviation Administration
RULES
Airworthiness directives:
46105 Fokker
46106 Standard instrument approach procedures
PROPOSED RULES
46153–46155 Transition areas (3 documents)
NOTICES
Meetings:
46231 Aeronautics Radio Technical Commission (2 documents)

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
46149 Sweet corn

Federal Deposit Insurance Corporation
NOTICES
46235, 46236 Meetings; Sunshine Act (4 documents)

Federal Election Commission
NOTICES
46236 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
46191 Carolina Power & Light Co.
46191 Delmarva Power & Light Co.
46191 El Paso Electric Co.
46191, 46192 Florida Power Co. (2 documents)
46192 Idaho Power Co. (2 documents)
46192 Iowa-Illinois Gas & Electric Co.
46193 Maine Public Service Co.
46193 Niagara Mohawk Power Corp.
46193 Southern Natural Gas Co.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
46194 Occidental Geothermal, Inc., et al.

Federal Highway Administration
RULES
Motor carrier safety regulations:
46145 Driver's record of duty status; final rule and request for comments

Federal Home Loan Bank Board
NOTICES
46197 Agency information collection activities under OMB review
46236, 46237 Meetings; Sunshine Act (2 Documents)
Receiver appointments:
46197 American Savings & Loan Association, Inc., Knoxville, TN
46197 East Tennessee Federal Savings & Loan Association, Knoxville, TN
46197 John Sevier Savings & Loan Association of Sevierville, Inc.
46198 Knox Federal Savings & Loan Association, Knoxville, TN
46198 Savannah Savings and Loan Association, Savannah, TN

Federal Maritime Commission
PROPOSED RULES
Freight forwarders, independent ocean; licensing:
46174 Agreement filing; proceeding terminated
NOTICES
Freight forwarder licenses:
46198 Landry, C. Martin, et al.
46237 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
46198 California Commercial Bancshares, et al.
46198 Fidelcor, Inc., et al.
46199 RBC Holdings (USA) Inc., et al.
Federal Open Market Committee:
46200 Domestic policy directives
46237 Meetings; Sunshine Act

Federal Trade Commission
PROPOSED RULES
46156 Antacids, over-the-counter; advertising; proceeding terminated

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
46174 Inyo brown towhee
NOTICES
Pipeline rights-of-way applications:
46206 Louisiana

Food and Drug Administration
PROPOSED RULES
GRAS or prior-sanctioned ingredients:
46164 Enzyme-modified fats
NOTICES
Meetings:
46201 Sulfiting agents; reexamination of GRAS status

Health and Human Services Department
See also Food and Drug Administration; Health Care Financing Administration; National Institutes of Health.
NOTICES
46200 Agency information collection activities under OMB review

Health Care Financing Administration
NOTICES
Medicaid:
46201 State plan amendments, reconsideration; hearings; Arkansas

Housing and Urban Development Department
RULES
46140 Non-Federal governmental audit requirements
NOTICES
Grants; availability, etc.:
46203 Public housing homeownership demonstration; reporting and recordkeeping requirements

Immigration and Naturalization Service
NOTICES
46212 Mariel boatlift Cubans; registration requirements

Indian Affairs Bureau
NOTICES
46203 Alaska Native Claims Settlement Act; 1985 study draft report; hearings and inquiry; correction

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
PROPOSED RULES
Excise taxes:
46167 Heavy vehicle use tax; diesel fuel tax credits and refunds; correction

International Trade Administration
NOTICES
Antidumping:
46182 Carbon steel plate from West Germany
46180 Carbon steel wire rod from Argentina
46181 Carbon steel wire rod from Spain
Countervailing duties:
46182 Welded carbon steel pipe and tube products from Mexico
Meetings:
46180 Automated Manufacturing Equipment Technical Advisory Committee
Steel trigger price levels:
46183 Stainless steel round wire; first quarter, 1985

International Trade Commission
RULES
Import investigations:
46123 Unfair practices; trade import procedures
NOTICES
Import investigations:
46207, 46208 Glass construction blocks (4 documents)
46208 Glass tempering systems
46208 Indomethacin; deadline for receipt of motions for assessment of fees and costs

Interstate Commerce Commission
NOTICES
Motor carriers:
46209 Compensated intercorporate hauling operations; intent to engage in
Railroad operation, acquisition, construction, etc.:
46209 Akron & Barberton Belt Railroad Co.
46209 Cadillac & Lake City Railway Co.
Railroad services abandonment:
46211 Illinois Central Gulf Railroad Co.
Water carrier applications:
46210 Custom Fuel Services, Inc., et al.

Justice Department
See Immigration and Naturalization Service.

Labor Department
See also Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.
NOTICES
Meetings:
46212 Trade Negotiations and Trade Policy Labor Advisory Committee

Land Management Bureau
RULES
Public land orders:
46145 Montana
46144 Wyoming (2 documents)
NOTICES
Alaska native claims selection:
46203 Newtok Corp.
Exchange of public lands for private land:
46205 Colorado; correction
46203 Nevada
Meetings:
46204 Medford District Advisory Council
46205 Wild horse and burro gather, Nevada
Oil and gas leases:
46205 Wyoming
Sale of public lands:
46204 New Mexico
Survey plat filings:
46205 Oregon and Washington
Withdrawal and reservation of lands:
46204 Alaska

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
46212 Alabama By-Products Corp.

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
46206 Aminoil USA, Inc.

National Credit Union Administration
RULES
Federal credit unions:
46105 Loans and lines of credit to members; correction

National Institutes of Health
NOTICES
Meetings:
46202 Biotechnology Resources Review Committee
46202 Environmental Health Sciences Review Committee
46202 National Institute of Child Health and Human Development
46202 National Library of Medicine; Scientific Counselors Board
Recombinant DNA molecules research:
46256 Actions under guidelines
46266 Guidelines

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
46148 Ocean salmon off coasts of Washington, Oregon, and California; correction (2 documents)
PROPOSED RULES
Fishery conservation and management:
46177 Foreign fishing; permit fees, etc.

National Park Service
NOTICES
Meetings:
46206 Upper Delaware Citizens Advisory Council

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc.:
46213 Iowa
46213 Utah

Occupational Safety and Health Review Commission
NOTICES
46237 Meetings; Sunshine Act

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
46214 Gonzalo Camblor, M.D., P.C., et al.

Postal Service
RULES
Domestic Mail Manual:
46141 Special fourth class mail; changes in eligibility
NOTICES
46222 Domestic mail classification schedule; special fourth class mail
46237 Meetings; Sunshine Act

Securities and Exchange Commission
PROPOSED RULES
Securities
46156 Unlisted trading privileges in over-the-counter securities
NOTICES
46222–46231 Agency information collection activities under OMB review (18 documents)
Hearings, etc.:
46226 Consolidated Natural Gas Co. et al.
46225, 46227 Eastern Edison Co. et al. (2 documents)
Self-regulatory organizations; proposed rule changes:
46230 New York Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
46228 Boston Stock Exchange, Inc.
46229 Midwest Stock Exchange, Inc.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
46179 Mill-Horse Brook Watershed, CT

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission; various States:
46167 Indiana; comment period reopened and extension of time
46168 West Virginia

Textile Agreements Implementation Committee
NOTICES
Export visa requirements; certification, etc.:
46190 Haiti
46190 Mexico

Trade Representative, Office of United States
NOTICES
Import quotas and exclusions, etc.:
46222 Wine; tariff and nontariff barriers identification; inquiry

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration.
RULES
Organization, functions, and authority delegations:
46145 Maritime Administration and Research and Special Programs Administration; Chief Counsels

Treasury Department
See also Customs Service; Internal Revenue Service.
NOTICES
46232, 46233 Agency information collection activities under OMB review (2 documents)
46233 Privacy Act systems of records

Separate Parts in This Issue

Part II
46240 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part III
46244 Department of Education

Part IV
46252 Department of Education

Part V
46256 Department of Health and Human Services, National Institutes of Health

Part VI
46266 Department of Health and Human Services, National Institutes of Health

Part VII
46294 Environmental Protection Agency

Part VIII
46304 Environmental Protection Agency

Part IX
46314 Environmental Protection Agency

Part X
46324 Environmental Protection Agency

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1980 46097
Proposed Rules:
437 46149
10 CFR
1046 46097
12 CFR
701 46105
14 CFR
39 46105
97 46106
Proposed Rules:
71 (3 documents) 46153–46155
16 CFR
1212 46108
Proposed Rules:
451 46156
17 CFR
15 46116
17 46116
Proposed Rules:
240 46156
19 CFR
4 46118
24 46118
210 46123
Proposed Rules:
113 46161
141 46161
172 46161
175 (2 documents) 46162, 46163
21 CFR
Proposed Rules:
184 46164
24 CFR
44 46140
26 CFR
Proposed Rules:
41 46167
48 46167
30 CFR
Proposed Rules:
914 46167
948 46168
34 CFR
Proposed Rules:
280 46169
300 46252
350 46244
352 46244
358 46244
359 46244
39 CFR
111 46141
40 CFR
52 46141
43 CFR
Public Land Orders:
6578 46144
6579 46144
6580 46145
46 CFR
Proposed Rules:
510 46174
49 CFR
1 46145
395 46145
50 CFR
661 (2 documents) 46148
Proposed Rules:
17 46174
611 46177

Rules and Regulations

Federal Register
Vol. 49, No. 227
Friday, November 23, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Business and Industrial Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Business and Industrial (B&I) Loan Program regulations to provide for a change in administrative instructions to this subpart. This action is necessary because of a change in the form number of the management system card used with the Rural Community Facility Tracking System (RCFTS). The intended effect is to prescribe Form FmHA 2033–34, "Management System Card—Business and Industry," for use by FmHA State offices.

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Loan Specialist, Business and Industry Division, FmHA, USDA, 14th and Independence Avenue, S.W., Washington, D.C. 20250, Telephone: (202) 475–3811.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. The amended regulation replaces Form FmHA 2033–37, "Rural Community Facility Applicant/Borrower Definition," Form FmHA 2033–38, "Rural Community Facility and Funding Data," Form FmHA 2033–39, "Rural Community Facility Status Detail," Form 2033–40, "Rural Community Facility Fund Dispositions," and Form FmHA 2033–41, "Rural Community Facility Actual Verification of Employment and Users," with Form FmHA 2033–34, "Management System Card—Business and Industry." This form is completed by FmHA personnel and will be used for internal control purposes only. Therefore, this action is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

The Catalogue of Federal Domestic Assistance Number for Business and Industrial Loans is 10.422.

This program/activity is subject to the provisons of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983).

This final action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1980

Loan programs—business and industry, Rural development assistance, Rural areas.

PART 1980—GENERAL

Accordingly, Subpart E of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations is amended by revising "Administrative" paragraph B 2 in Section 1980.451 to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

Administrative

* * * * *

B. * * *

2. Will prepare Form FmHA 2033–34, "Management System Card—Business and Industry" in accordance with FmHA Instruction 2033–F. Form FmHA 2033–34 will be used as the resource document to input the necessary data via data terminal screens into the Rural Community Facility Tracking System (RCFTS). The RCFTS data structure consists of 3 sets: Applicant/Borrower (BOR), Facility (FAC), and Fund Request (FRQ) sets. There are multiple screens for the FAC and FRQ sets.

* * * * *

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Dated: October 11, 1984.

Neal Sox Johnson,
Acting Administrator, Farmers Home Administration.

[FR Doc. 84-30733 Filed 11-21-84; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

10 CFR Part 1046

Defense Programs; Physical Protection of Security Interests; General; Protective Force Personnel

AGENCY: Defense Programs, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting regulations which set forth medical and physical fitness qualification standards for protective force personnel. The purpose of the standards is to ensure that protective force personnel at DOE facilities can effectively perform their normal and emergency duties without undue hazard to themselves, fellow employees, the plant site and the general public. Generally, the rules require incumbent and applicant protective force personnel at government-owned facilities to meet certain medical and physical fitness qualification standards, including professionally developed and validated physical fitness standards for persons authorized to carry firearms pursuant to 42 U.S.C 2201(k) or other statutes.

EFFECTIVE DATE: December 24, 1984.

FOR FURTHER INFORMATION CONTACT:
Martin J. Dowd, Department of Energy, Defense Programs, DP 343, Germantown, Washington, D.C. 20545, (301) 353–4642
Barry Rich, Department of Energy, Defense Programs, DP 343.3

Germantown, Washington, D.C. 20545, (301) 353–4243
W. Mayo Lee, Department of Energy, Office of General Counsel, Room 6D–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6956.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Discussion of Comments
IV. Administrative Procedures

I. Background

On January 31, 1978 the Secretary of Energy issued Interim Management Directive 6102 (IMD) entitled "Physical Protection of Classified Matter and Information." The IMD included medical qualification standards for guards (unarmed protective force personnel) and medical and physical fitness qualification standards for security inspectors (armed protective force personnel). The physical fitness qualifications for security inspectors recommended in that document were withdrawn on March 25, 1980. To insure the accuracy and appropriateness of a physical fitness qualification standard, a private firm, Professional Management Associates (PMA), was retained by DOE to develop and validate physical fitness qualification standards for security inspectors. The medical qualification standards for all protective force personnel remained in effect.

On September 30, 1982 PMA submitted to DOE the professionally developed and validated study, *Physical Standards Validation Study*. The PMA study concluded that, at a minimum, the best and most accurate predicator of a security inspector's ability to perform "offensive combative" security duties was his or her ability to run one (1) mile in eight (8) minutes and thirty (30) seconds or less and to run a forty (40) yard prone to running dash in eight (8) seconds or less. In addition, the minimum qualification standard for "defensive combative" security inspectors was determined to be the ability to run one-half (0.5) mile in four (4) minutes and forty (40) seconds or less and a forty (40) yard prone to running dash in eight (8) and one-half (0.5) seconds or less.

On May 14, 1984 DOE issued a notice of proposed rulemaking (49 FR 20436) setting forth proposed medical and physical fitness qualification standards for contractor employed protective force personnel. The physical fitness qualification standards for security inspectors were those developed and validated by PMA. The medical standards for security inspectors and guards were developed by a team of highly qualified medical doctors and have been continuously applied to protective force personnel by DOE. Also, DOE proposed, that until security inspectors met the appropriate physical fitness qualification standard, they participate in a physical fitness training program to ensure that they were in good physical condition in order to meet the appropriate physical fitness qualification standard with no adverse impact.

DOE held four hearings in various parts of the country and accepted written comments on the proposed rule until June 13, 1984. In addition, to ensure that all interested parties had an opportunity to participate in the rulemaking process, DOE issued press releases and wrote letters to union officials representing protective force personnel to inform them of the proposed rules, to solicit their comments and to invite their participation in the rulemaking process.

II. Discussion

The nation-wide nuclear program administered by the Secretary of Energy principally is conducted at nuclear facilities owned by the federal government, but operated by private industry. Because of the nature of the material, equipment, data and personnel found at these facilities, each facility must be afforded a high degree of physical security. Such security is provided, in part, by the uninterrupted presence of privately employed security inspectors and guards. The security inspectors are the first line of human defense against terrorist or other assault on this nation's nuclear facilities, weapons, materials and technologies at these facilities. Even though the facilities are operated by contractors, the Secretary of Energy is ultimately responsible for the physical security of the facilities and the protection of the facilities' employees.

Recently, DOE has evaluated its security operations and concluded that the increasing threat of terrorist, paramilitary and other criminal as well as civil threatening activity requires that DOE strengthen its security capabilities. DOE believes the medical and physical fitness of protective force personnel is essential to its security operations, and thus to the country's common defense and security. Furthermore, DOE believes that its protective force personnel, and especially its security inspectors, must be in good physical condition in order to withstand terrorist or other adverse activities. Accordingly, DOE is today adopting minimum medical and physical fitness qualification standards for its protective force personnel.

The rules adopted today require the following:

1. Incumbent and applicant security inspectors and guards shall meet the applicable medical qualification standards set forth herein. Current waivers to the medical standards remain in effect and future waivers may be granted.

2. Incumbent and applicant security inspectors shall meet certain physical fitness qualification standards. The most exacting standard is for the "offensive combative" security inspectors and includes running a mile in eight (8) minutes and thirty (30) seconds or less and a forty (40) yard prone to running dash in eight (8) seconds or less. The qualification standard for the "defensive combative" security inspectors includes running one-half (0.5) mile in four (4) minutes and forty (40) seconds or less and a forty (40) yard prone to running dash in eight (8) and one-half (0.5) seconds or less.

3. Any incumbent security inspector who does not meet the applicable physical fitness standard within one year of the effective date of this rule shall not be employed in such position.

4. All applicant security inspectors shall meet the applicable physical fitness qualification test before being employed as a security inspector.

5. All security inspectors shall requalify under the applicable physical fitness standard at least once every twelve (12) months after his or her initial qualification. A security inspector who fails to requalify within thirty (30) days of the anniversary date must participate in a physical fitness training program. A security inspector must requalify within six (6) months of the anniversary date.

6. Beginning not later than one month after the effective date of this rule, any incumbent security inspector who has not qualified under the appropriate physical fitness qualification standard shall participate in a physical fitness training program. Security inspectors may enter the training program after it has begun at a point appropriate to their current medically certified physical fitness. However, once a security inspector enters the training program, he or she must complete the training program before attempting to meet the appropriate physical fitness qualification standard.

7. The maximum time period an incumbent security inspector has to meet the appropriate qualification standard is twelve (12) months from the effective date of this rule. For example, a security inspector has one month from the effective date of the rule to meet the appropriate standard. If the security inspector fails to meet the appropriate standard during this month, he or she shall participate in a physical fitness training program. The DOE designed training program takes almost 21 weeks to complete. At the end of the training program the security inspector has one month to meet the appropriate standard. If the security inspector fails to meet the appropriate standard during this testing period, he or she shall take additional physical fitness training. At the end of the second training program, the security inspector has one month to meet the appropriate standard. No additional training or retesting will be permitted.

8. Security inspectors shall be permitted a minimum of two (2) and a maximum of six (6) opportunities to meet the appropriate physical fitness qualification test during the appropriate testing time period.

9. All security inspectors shall obtain a medical certification as to their fitness prior to participation in the training program and to taking the physical fitness qualification test. All security inspectors shall take the physical fitness qualification standard test within thirty (30) days of being medically certified to take the test or within thirty (30) days of completing a physical fitness training program.

10. An incumbent security inspector who has met the physical fitness qualification standard within 3 months prior to the effective date of this rule may consider it his or her initial qualification.

DOE believes the adoption of these medical and physical fitness qualification standards will insure the fitness of its security force personnel, and consequently, will render its security operations more effective. Accordingly, DOE deems it in the interest of the common defense and security to adopt these standards.

III. Discussion of Comments

DOE held public hearings in Albuquerque, Livermore, Oak Ridge and Washington, D.C. and received written comments on these rules. Over thirty (30) interested parties testified at the hearings and over fifteen (15) written comments were received during the thirty (30) day comment period. Most of the comments concerned the physical fitness qualification standards for security inspectors. Generally, the oral and written comments may be divided into three areas: (1) The possible effects the physical fitness qualification standards will have on incumbent security inspectors; (2) the appropriateness of the methodology and conclusions of the PMA validation study; and, (3) suggested changes and additions to the rules.

First, many incumbent security inspectors objected to the physical fitness qualification standards being applied to them. They stated the qualification standards were not applicable to them when they were originally employed as security inspectors. Some commented that physical fitness was not a principal factor in their job performance and that experience and special training were more important factors in fulfilling their duties than physical fitness. Finally, several incumbent security inspectors elaborated on the possible economic consequences to them if they did not meet the appropriate qualification standard and were reassigned or dismissed. In conjunction with this, several commenters suggested that waivers be permitted or that a "grandfather provision" be added to these rules for incumbent security inspectors.

DOE appreciates the concerns of incumbent security inspectors who fear they may not be able to meet the minimum physical fitness qualification standards. However, DOE's paramount statutory responsibility is to provide for the security of its facilities, personnel, and ultimately the nation. Consequently, it is imperative that DOE insure that security inspectors have the degree of physical fitness necessary to protect and defend DOE facilities and personnel under all adverse circumstances. Thus, in light of the national security interests at stake in this matter, DOE is unable to accept the suggestion that incumbent personnel be granted waivers or that a "grandfather" provision be added to the physical fitness qualification standards rules for those security inspectors who are unable to satisfy the standards despite successful completion of the physical fitness training program or because of medical disqualifications.

The effect of granting waivers to the physical fitness qualification standard or adopting a "grandfather" provision would be to permit certain personnel who may not be physically fit the opportunity to remain in critical protective force personnel positions. An effective security operation requires that all protective force personnel be capable of responding in any of a multitude of emergency situations, and the failure or inability of even one inspector to perform adequately could have devastating consequences. Therefore, DOE believes it imperative in fullfilling its important task of protecting its facilities, employees, and other interests that no exceptions or waivers be granted to these physical fitness qualification standards for security inspectors.

DOE is making every effort to insure that incumbent security inspectors can meet the physical fitness qualification standards. To this end, DOE is requiring that all incumbent security inspectors, who do not qualify under the appropriate standards within one month of the effective date of the rules adopted today, participate in a physical fitness training program. After successful completion of the training program DOE believes that all incumbent security inspector personnel will be able to satisfy the appropriate physical fitness qualification standard. To accommodate security inspectors DOE is permitting them to enter the training program at a stage appropriate to the security inspector's current state of physical fitness as certified by a physician. However, once a security inspector enters the training program, the training program must be completed before the qualification standards test is given.

To protect the health and safety of its incumbent security inspectors, DOE is requiring certain medical certifications. The purpose of these requirements is twofold: DOE wants to insure that the risk of injury to security inspectors is kept at a minimum and that incumbent personnel are in the best physical condition possible before taking the qualification test. Thus, to protect security inspectors against forseeable injury, DOE is requiring that all security inspectors be medically certified as physically fit to participate in the training program, if necessary, and to take the applicable qualification standard test. Within thirty days of completing the physical fitness training program or being certified as medically fit to take the test, a security inspector must meet the applicable qualification standard. DOE does not want incumbent inspectors to delay meeting the applicable qualification standard once they are in top physical condition.

To accommodate incumbent security inspectors who are currently not in good physical condition DOE has developed a physical fitness training program. The program is designed to get incumbent personnel in good physical condition so they can meet the physical fitness qualification standards. The program begins with very basic or remedial training and is designed to gradually improve participants physical fitness. DOE recommends that its training program serve as a model for the individual training programs because it has been demonstrated to be successful

in getting incumbent security inspectors into the degree of physical fitness needed to meet the qualification standards.

DOE has protective force personnel at facilities in every region of the country. Consequently, there is disparity between facilities with respect to weather conditions, terrain, and the current physical condition of incumbent security inspectors. To accommodate these disparities DOE is permitting great flexibility regarding the training program and the taking of the qualification test. First, incumbent security inspectors are granted a one (1) month period (two months from publication) to qualify under the appropriate standard before remedial training is begun. Furthermore, security inspectors have a total time period of one year in which to meet the appropriate qualification standard. Second, DOE is not making its professionally developed training program mandatory. Thus, each facility will be allowed flexibility in developing a program designed specifically for its incumbent security inspectors, the local terrain and weather conditions. DOE believes the liberal time periods allowed under this rule coupled with the flexibility permitted in the training program will help ensure that all incumbent security inspectors are physically fit and can meet the appropriate qualification standard.

DOE agrees with commenters that experience and specialized training in weaponry and tactics are vital to the efficiency and effectiveness of its protective force personnel. DOE is continually training its protective force personnel in weaponry and tactics and making efforts to develop expertise and gain experience through participation in simulated emergency situations. DOE does not agree, however, that training, experience, and physical fitness are factors which may be ranked or prioritized and believe each is an essential element in its security operations. The effectiveness of DOE's protective force personnel depends on each individual operating at maximum efficiency at all times. For a security inspector to function at maximum efficiency he or she must be physically fit in addition to being properly trained.

Second, several commenters questioned the methodology and conclusions of the PMA validation study. With respect to methodology, several commenters stressed the need to cross-validate the results of the study for female employees; the allegedly small number of security inspectors used to develop the standards; the ages of the participants in the study relative to the ages of incumbent security inspectors; and the appropriateness of applying a uniform standard to all DOE facilities. Regarding the conclusions of the PMA study, commenters recommended that the physical fitness qualification standard be graduated to reflect age and sex. In other words, female and older security inspectors would be required to meet a different and more lenient qualification standard than younger males. In addition, commenters asserted that a qualification standard involving only running was not an accurate predictor of physical fitness.

First, several commenters stressed the need to cross-validate the results of the study for female employees. Cross-validation for females is not required and is only appropriate when:

1. The group in question has in fact been shown to be adversely impacted by a standard; *and*

2. There is a reason to suspect differential prediction.

There is no evidence of the qualification standards having an adverse impact on any particular group. Although it may be assumed that the average running ability for females is below the average running ability for males, it has not been shown that these particular standards have or will result in a disproportionate failure rate for females. For example, for incumbent "offensive combative" female security inspectors, there appears to be little reason to expect that their failure rate on the mile run will exceed the failure rate of incumbent males. By the same token, for "defensive combative" female incumbents, there appears to be little reason to expect a higher failure rate on the one-half (0.5) mile run than is experienced by their male counterparts. Furthermore, there appears to be no logical basis to suspect a differential prediction. In the absence of such a basis, cross-validation is not required.

Even though not required, the PMA study attempted cross-validation for both females and older males. This was done in keeping with the generally conservative nature of the study. Sufficient older males were available for cross-validation and that cross-validation showed even higher correlation for older males than for the population as a whole. Sufficient females were not available to achieve cross-validation for that subgroup. However, the females that remained in the study did show correlations in the proper direction.

Second, commenters criticized the small number of security inspectors used to develop the standards. For selecting a sample size for a research study, the size of the total population is less of a concern than the statistics to be employed in the research. For the statistics used in this study, a sample size of thirty (30) would generally be considered the minimum required. That figure was doubled for this study and a decision was made to try for a minimum of sixty (60). In fact, a total of 97 personnel were considered of which 69 completed all phases of the study. All of the personnel who participated in the study were not security inspectors. However, all were fully qualified auxiliary security personnel and, as such, had the medical qualifications, weapons training and other required relevant qualifications.

Third, commenters questioned the relative ages of the participants in the study to the ages of incumbent security inspectors. At the time the study was conducted, the average age of the national security force was estimated at approximately 43 years. The sample was selected based on this age and generally reflected the national average. In fact, older personnel were over represented in the sample.

Fourth, commenters questioned the appropriateness of applying a uniform standard to all DOE facilities. The purpose of Phase II of the study was to determine the appropriateness of a uniform standard. All site-specific duties were discarded and only those duties and conditions common to all sites were used. The acceptability of this commonality was reaffirmed at all site exit conferences and at the central task selection conference. Also it must be remembered that the standards are *not* based on routine duties that may or may not be site-specific. They are based on potential combative tactics that are appropriate to all facilities.

Fifth, some commenters recommended that the physical fitness qualification standard be graduated to reflect age and sex. This recommendation shows a misunderstanding of the basis of the standards. The standards are predictors of job performance. If job requirements are graduated based on age and sex, the physical standards could be graduated based on age and sex. If job requirements are not graduated based on age and sex, the physical standards should not be. There are no such distinctions between security inspectors' job requirements.

Sixth, some commenters asserted that a qualification standard involving only running was not an accurate measure of physical fitness. Running is considered one of several simple measures of general physical fitness and DOE knows of no one involved in sports medicine who would deny that running is one of several excellent measures of general physical fitness. Running was the measure chosen by the study because:

(1) It is one of several good measures;
(2) It is easily standardized and applied;
(3) It appears less likely than other methods to result in adverse impact; and
(4) It is more directly relatable to the common combative duties identified.

Thus, the "running" test is an accurate predictor of physical fitness and appropriate for this rule.

Third, several commenters offered suggestions regarding amendments or changes to the proposed rule. DOE accepts several of the suggested changes and is incorporating them into the final rule.

First, DOE accepts the suggestion offered by several commenters that the time period for meeting the physical fitness qualification standards be lengthened to twelve (12) months. This will permit security inspectors to participate in a physical fitness training program and do additional individual training before attempting to qualify. Also, it will permit DOE contractors to stagger the testing and to provide an opportunity for training and re-testing.

Second, DOE agrees with several suggestions that special response teams be established to respond to emergency situations. Currently, DOE is developing and training such teams at several of its facilities. DOE believes these teams will greatly enhance DOE's security capabilities and will be a valuable supplement to its current security organization. DOE stresses, however, that such special teams in no way lessen the need for an effective and efficient protective force personnel. As such teams are developed, however, it is probable that some of the "offensive combative" personnel may be redesignated as "defensive combative" personnel.

IV. Administrative Procedures

A. Review under Executive Order 12291

This Final Rule was reviewed under Executive Order 12291, 46 FR 12193, February 27, 1981. DOE has concluded that the rule is not a "major rule" under the Executive Order, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, this Final Rule was submitted to the Director of OMB for a 10-day review. The Director has concluded his review under that Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare a regulatory flexibility analysis for any final rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the **Federal Register**. This Final Rule deals with medical and physical fitness qualification standards for DOE protective force personnel, including guards and security inspectors. The economic impact on small businesses is negligible. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

C. Environmental Review

DOE has determined that this Final Rule is not a major Federal action with significant environmental impact and therefore does not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*)

D. Paperwork Reduction Act

The collection of information requirements in this Final Rule was submitted to the Office of Management and Budget in accordance with section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. *et seq.*, and procedures implementing that Act, 5 CFR 1320.1 *et seq.* The OMB control number is 1910-1800.

E. FERC Review

Pursuant to the requirements of the DOE Act, Section 404(a), DOE referred the Notice of Proposed Rulemaking to the FERC for review. FERC requested and DOE hereby clarifies that this Final Rule will not affect protective force personnel at FERC facilities and applies only to DOE contractor employed personnel at DOE facilities.

Lists of Subjects in 10 CFR Part 1046.

This is a new Part. Subjects include: Security Measures, Medical and physical fitness/qualification standards, Government contracts.

Authority: Atomic Energy Act, 68 Stat. 919, [42 U.S.C. 2011 *et seq.*]; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 [42 U.S.C. 7101 *et seq.*]

In consideration of the foregoing DOE adds a new Part 1046 to Chapter X, Title 10 of the Code of Federal Regulations.

Issued at Washington, D.C. this 15th day of November, 1984.

William W. Hoover,

Assistant Secretary for Defense Programs.

1. Part 1046 is added to 10 CFR Chapter X to read as follows:

PART 1046—PHYSICAL PROTECTION OF SECURITY INTERESTS

Subpart A—General

Sec.
1046.1 Purpose.
1046.2 Scope.
1046.3 Definitions.

Subpart B—Protective Force Personnel

1046.11 Medical and Physical Fitness Qualification Standards.
1046.12 Physical Fitness Training Program.
1046.13 Medical Certification.

Appendix A to Subpart B, Part 1046—Medical and Physical Fitness Qualification Standards.

Authority: [Sec. 2201, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*); Sec. 7151, Pub. L. 95-91, 91 Stat. 565, (42 U.S.C. 7101 *et seq.*)]

Subpart A—General

§ 1046.1 Purpose.

The purpose of this Part is to set forth Department of Energy, hereinafter "DOE," security policies and procedures regarding the physical protection of security interests.

§ 1046.2 Scope.

This Part applies to DOE contractor employees at Government-owned facilities, whether or not privately operated.

§ 1046.3 Definitions.

For the purposes of this Part:

Contractor. The term "contractor" includes subcontractors at all terms.

Defensive Combative Personnel. Security inspectors other than offensive combative personnel.

Designated Physician. An occupational medical physician who is recommended by the designated management supervisory official of the local DOE field office and authorized by the Medical Director, Office of Operational and Environmental Safety, Headquarters, to determine the medical

and physical condition of protective force personnel. When an occupational medical physician is not available, physicians who are not board-certified in occupational medicine may be recommended and authorized by the Medical Director as designated physicians for the purpose of this Part. Designated physicians need not be employed full-time, but contractually shall be responsible to DOE for performance of the medical functions required by this Part.

Facility. An educational institution, manufacturing plant, laboratory, office building or other area utilized by the DOE or its contractors or subcontractors for the performance of work under DOE jurisdiction.

Field Organization. Any organizational component of the DOE located outside the Washington, D.C. metropolitan area.

Guard. An unarmed individual who is employed for, and charged with, the protection of classified matter or Government property.

Medical Condition. General health, physical condition, and emotional and mental stability.

Offensive Combative Personnel. Security inspectors assigned to response force duties including pursuit and assault functions.

Protective Force Personnel. Guards and security inspectors assigned to protective details, who are employed to protect DOE security interests.

Security Inspector. A uniformed person who is authorized under section 161.k of the Atomic Energy Act of 1954, as amended, or other statutory authority, to carry firearms and to make arrests without warrants and who is employed for, and charged with, the protection of classified matter, special nuclear material, or other Government property.

Subpart B—Protective Force Personnel

§ 1046.11 Medical and Physical Fitness Qualification Standards.

(a) Except as provided in subparagraph (b) DOE contractors shall not employ as protective force personnel any individual who fails to meet the applicable medical and physical fitness qualification standards as set forth in Appendix A, to this Subpart, "Medical and Physical Fitness Qualification Standards."

(b)(1) Incumbent security inspectors have until (insert date 12 months from effective date of regulation) to meet the applicable physical fitness qualification standards.

(2) Current waivers to the medical qualification standards remain in effect and future waivers are permitted.

(c) Each security inspector shall meet the applicable medical and physical fitness qualification standards every twelve months after the initial qualification. Each guard shall meet the applicable medical standards every two (2) years after the initial qualification.

§ 1046.12 Physical Fitness Training Program.

(a) Beginning January 24, 1985, each incumbent security inspector, who has not met the applicable physical fitness qualification standard, shall participate in a DOE approved physical fitness training program. Once an incumbent security inspector has begun a physical fitness training program, it must be completed before the security inspector may take the applicable physical fitness qualification standards test. Once a physical fitness training program is completed, an incumbent security inspector has thirty (30) days to meet the applicable physical fitness qualification standards.

(b) An incumbent security inspector who fails to qualify within thirty (30) days of completing a physical fitness training program shall participate in an additional training program. Upon completion of the additional physical fitness training program the security inspector has thirty (30) days to meet the applicable physical fitness qualification standard. No additional training or time extension to meet the standards is permitted except for unusual circumstances as set forth in the Appendix, Paragraph G(2).

(c) A security inspector who fails to requalify within thirty (30) days after his or her yearly anniversary date of the initial qualification shall participate in a physical fitness training program. Security inspectors have a maximum of six (6) months from the anniversary date to requalify.

§ 1046.13 Medical Certification.

Each individual shall have a medical examination within thirty (30) days preceding participation in a physical fitness training program and the physical fitness qualification standards test, and a determination and written certification by a designated physician that there are no foreseeable medical risks as disclosed by the medical examination to the individual's participation in a physical fitness training program and the physical fitness qualification standards test.

Appendix A to Subpart B of Part 1046—Medical and Physical Fitness Qualification Standards

A. *Applicability.* This Appendix A to Subpart B of Part 1046 provides the minimum medical and physical fitness qualifications, criteria, and guides to be used by designated physicians and management supervisory officials in advising responsible DOE officials whether the medical and physical condition of protective force personnel to be employed by DOE contractors reasonably assures that they can effectively perform their normal and emergency duties without undue hazard to themselves, fellow employees, the plant site and the general public.

B. *Application of Medical and Physical Fitness Qualification Standards.*

(1) The standards in this Appendix are the minimum necessary to determine the medical and physical capability of protective force personnel to perform all normal and emergency duties effectively and safely.

(2) Security inspector applicants shall meet the applicable medical and physical fitness standards in this Appendix prior to assignment to security inspector duties.

(3) Incumbent security inspectors shall meet the applicable physical fitness standards in this Appendix within one year of the effective date of these standards and once every twelve months thereafter or shall be relieved of security inspector duties subject to the provisions in paragraph G below.

(4) Incumbent security inspectors shall meet the applicable medical standards prior to assignment to security inspector duties and annually thereafter, subject to the provisions of paragraph G below.

(5) Guards shall meet the applicable standards in this Appendix prior to assignment to guard duties and biennially thereafter, subject to the provisions of paragraph J below.

(6) The determination of whether or not the examinee meets the medical standards in this Appendix shall be made by a designated physician.

(7) The determination of whether or not the examinee meets the physical fitness standards in this Appendix shall be made by a designated management supervisory official in coordination with a designated physician.

(8) When a designated physician determines that special medical evaluations and practical performance tests are necessary in order for an examinee to demonstrate the examinee's abilities to perform all normal and emergency duties, a determination of the adequacy of performance shall be made by a designated physician.

(9) For those facilities where it is necessary to determine the medical qualification of security inspectors or security inspector applicants to perform special assignment security inspector duties which might require exposure to unusually high levels of stress or physical exertion, field office managers may develop more stringent medical qualification requirements or additional medical or physical tests as necessary for such determinations. All such additional qualification requirements shall be forwarded, with justification, for the approval of the Director of Safeguards and Security, Headquarters, prior to application and if approved, shall be implemented in the same manner that these qualification standards have been implemented.

(10) The provisions of DOE 5480.1A, ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION PROGRAM FOR DOE OPERATIONS, of 8–13–81, Chapter VIII, Part 4 apply for return to work after recovery from a temporarily disqualifying medical or surgical condition.

C. *Administrative Procedures and Requirements.*

(1) *Medical Confidentiality and Retention of Medical Reports.*

(a) The medical information and data on each employee or applicant shall be maintained as confidential, privileged medical information and shall not be released by a designated physician without the written consent and release of the employee or applicant, except as permitted or required by law.

(b) When an individual has been examined by a designated physician, all available history and test results should be retained by the responsible DOE or DOE contractor medical department, in accordance with DOE 5480.1A, Chapter VIII, Part 4, whether or not the individual completes the examination, and whether or not potentially disqualifying defects are recorded.

(2) *Change of Health Status of Protective Force Personnel.*

(a) It is the specific responsibility of protective force employees to report immediately to their supervisor any known or suspected change in their health which might impair their capacity for duty or the safe and effective performance of assigned job duties.

(b) Supervisory personnel have the responsibility to make a timely report to a designated physician on any behavorial and health changes and deterioration in work performance that is observed in protective force personnel under their jurisdiction. Examples of areas that may indicate medical and emotional problems include: incidents of ineptness, poor judgment, lack of physical or emotional stamina, social incompatibility, excessive absence, lateness, and a tendency to become accident prone.

(3) *Use of Corrective Devices.*

(a) When the use of corrective devices, such as eyeglasses and hearing aids, is required to enable an examinee to meet successfully medical qualification requirements, a determination shall be made by a designated line supervisory authority that the use of all such devices is compatible with all emergency and protective equipment that the examinee may be required to wear or use while performing his or her assigned job duties.

(b) It is incumbent upon cognizant field office management to exercise all reasonable and practicable effort to accommodate required emergency and protective equipment to the use of corrective devices, including the provision of equally effective alternate equipment if such is available.

(c) If eyeglasses are used, they shall be of the safety glass type.

D. *Security Inspector Medical Qualification Standards.*

(1) *General Qualifications.*

The examinee shall possess mental, sensorial, and motor skills as required to perform safely and effectively all assigned job duties. Such qualifications include:

(a) Mental alertness and reliable judgment;

(b) Acuity of senses and ability of expression sufficient to allow accurate communication by written, spoken, audible, visible, or other signals; and,

(c) Motor power, range of motion, neuromuscular coordination and dexterity.

(2) *Specific Minimum Qualifications.*

(a) *Head, Face, Neck, Scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(b) *Nose.* Ability to detect odor of products of combustion and of tracer and marker gases.

(c) *Mouth and Throat.* Capacity for clear and audible speech as required for effective communication on the job.

(d) *Ears.* Hearing loss in the better ear not to exceed 30 db average at 500, 1000, 2000 Hz with no level greater than 40 db in any of these frequencies (by ISO 1964 and ANSI 1969 audiometry). If a hearing aid is necessary, suitable testing procedures shall be used to assure auditory acuity equivalent to the above requirement.

(e) *Eyes. 1 Distant Visual Acuity.*

(*a*) Uncorrected acuity of no less than 20/200 in the better eye.

(*b*) Corrected acuity of at least 20/30 in the better eye and 20/40 in the other eye.

(*c*) If uncorrected distant vision in the better eye is not at least 20/40, security inspectors shall carry an extra pair of corrective lenses.

2 Near Visual Acuity. Corrected or uncorrected vision of at least 20/40 (14/28 Snellen) in the better eye.

3 Color Vision. Ability to distinguish red, green, and yellow. Special color vision testing and certification shall be required where fine color discrimination is critical to the safe or effective performance of assigned job tasks.

4 Peripheral Vision. Field of vision in the horizontal meridian shall not be less than a total of 140 degrees.

5 Depth Perception. Adequate depth perception as measured by stereopsis or demonstration in a practical operational test.

(f) *Cardiorespiratory.*

1 Respiratory. Capacity and reserve to perform physical exertion in emergencies at least equal to the demands of the job assignment, and ability to utilize respiratory protective filters and air supply masks when this emergency equipment is required by assigned job requirements.

2 Cardiovascular. Normal configuration and function. Capacity for exertion during emergencies. Normal resting pulse; regular pulse. Full symmetrical pulses in extremities and neck. Normotensive, with tolerance to rapid postural changes. If an examination reveals significant cardiac arrhythmia, murmur, enlargement, hypertension, hypotention, or other evidence of cardiovascular abnormality, an evaluation by a specialist in internal medicine or cardiology may be required and evaluated by a designated physician.

(g) *Abdomen and Viscera.* No clinically significant abnormalities.

(h) *Musculo-Skeletal.* Normal symmetrical structure, range of motion, and power.

(i) *Skin.* No significant abnormal intolerance to chemical, mechanical and other physical agents. Capability to tolerate use of personal protective covering and decontamination procedures when required by assigned job duties.

(j) *Endocrine/Nutritional/Metabolic.* Endocrine/nutritional/metabolic status adequate to meet the stresses and demands of assigned normal and emergency job duties. Ability to accommodate to changing work and meal schedules without potential or actual incapacity.

(k) *Hematopoietic.* Normal function.

(l) *Lymphatic.* Normal.

(m) *Neurological.* Normal central and peripheral nervous system function.

(n) *Mental and Emotional.* Normal mental status and an absence of neurotic or psychotic conditions which would affect adversely an ability to handle firearms safely or to act safely and effectively under normal and emergency conditions.

(o) *Laboratory.*

1 Hemogram. Freedom from clinically significant abnormalities of the formed elements of the blood that could reasonably be expected to affect the safe and effective performance of assigned duties.

2 Urinalysis. Absence of proteinuria and glycosuria unless the absence of a disqualifying systemic or genitourinary condition and the absence of significant microscopic abnormality has been demonstrated.

3 Other Studies. Any other medical investigative procedure, including electrocardiogram and chest x-ray, which a designated physician considers necessary for adequate medical evaluation.

E. *Security Inspector Medical Disqualification Standards.*

(1) *Freedom from Incapacity.* The examinee shall be free of any condition, habit, or practice which could reasonably be expected to result in sudden, subtle, or unexpected incapacitation.

(2) *Conditions for Medical Disqualification.* The presence of any of the following conditions shall disqualify the examinee from employment as a security inspector.

(a) *Respiratory.* Significant pulmonary pathology or decrease in pulmonary function which could interfere with the safe and effective performance of assigned job duties.

(b) *Cardiovascular*

1. Ischemic Heart Disease

2. Myocardial Infarction

3. Coronary Insufficiency

4. Angina Pectoris

5. Heart Failure

6. Significant Arrhythmia

7. Arterial Aneurysm

8. Significant Peripheral Vascular Insufficiency

9. Corrective Heart Surgery

10. Corrective Arterial or Great Vessel Surgery

11. Prosthetic Valve
12. Artificial Pacemaker

(c) *Endocrine/Nutritional/Metabolic.*

1 Any endocrine, nutritional, or metabolic condition that would not allow the examinee adequately to meet the stresses and demands of assigned normal or emergency job duties.

2 Inability to accommodate to changing work schedules or to a delay in meals without potential or actual incapacity.

3 Inability to tolerate prolonged use of wearing of protective garments such as respirator masks, air masks, or bullet-resistant garments.

4 Diabetes mellitus requiring the use of insulin. Uncontrolled diabetes, ketoacidosis, or diabetic coma within the previous 2 years.

5 Obesity of such degree that it would interfere with the safe and effective performance of normal and emergency job duties.

(d) *Skin.* Recurrent severe dermatitis or hypersensitivity to irritants or sensitizers sufficient to interfere with wearing required personal protective equipment or likely to be aggravated by or interfere with established or required decontamination procedures.

(e) *Hematopoietic Dysfunction.* Clinically significant hematopoietic disorders which may interfere with the safe and effective performance of assigned job duties.

(f) *Malignant Neoplasms.* Malignant neoplastic disease.

(g) *Neurological.*

1 History of epilepsy or other convulsive disorder.

2 History of any disturbance of consciousness or neurological disease or any other presently existing condition that may interfere with the safe and effective performance of assigned job duties.

(h) *Eyes.* Total blindness in one or both eyes.

(i) *Mental and Emotional.* An established history or clinical diagnosis of any of the following:

1 Any psychological or mental condition which could cause impaired alertness, judgment, or motor ability. A history of clinically significant emotiional or behavioral problems shall require thorough clinical evaluation which may include, but not necessarily be limited to, psychological testing and psychiatric evaluation.

2 Attempted suicide or an expressed threat of suicide.

3 A condition in which a person's intake of alcohol is sufficient to damage his or her physical health, job performance, personal functioning, or when alcohol has become a prerequisite to his or her daily functioning.

4 A condition in which a person is addicted to or dependent on drugs as evidenced by habitual use or a clear sense of need for the drug.

5 The use of prescribed or otherwise legally obtainable medication taken in such a dosage that a temporary delay in taking such medication might result in unacceptable incapacity. Examples of such medications are certain dosages or requirements for steroids, anticoagulants, antiarrhythmics, sedatives, and tranquilizers.

F. *Physical Fitness Standards for Security Inspectors.*

All persons authorized to carry firearms must meet a minimum standard of physical fitness. There are two categories for such person: Offensive Combative and Defensive Combative. Persons not authorized to carry firearms are exempt from these physical fitness standards.

(1) *Offensive Combative Standard* must be met by all security inspectors assigned to response force duties. The standard is a one (1) mile run with a maximum qualifying time of 8 minutes 30 seconds and a 40 yard prone-to-running dash with a maximum qualifying time of 8.0 seconds.

(2) *Defensive Combative Standard* must be met by all other security inspectors authorized to carry firearms. The standard is a one-half (0.5) mile run with a maximum qualifying time of 4 minutes 40 seconds and a 40 yard prone-to-running dash with a maximum qualifying time of 8.5 seconds.

(3) *Qualification* in the appropriate combative standard must be accomplished once every twelve months and under the supervision of the protective force training officer or other individual designated by the responsible DOE field office.

(4) *Medical Certification.* (a) Each individual who participates in a physical fitness training program to prepare to meet the physical fitness standards set forth in this Appendix shall first be certified by a designated physician that he or she is medically fit to participate in the program. This certification shall be obtained not more than 30 days prior to each individual entering the physical fitness training program.

(b) Before any individual takes the physical fitness standards test he or she shall first be certified by a designated physician that he or she is medically fit to take the physical fitness qualification test. This certification shall be obtained not more than 30 days before taking the physical fitness qualification test.

(c) Individuals who require less than 30 days training prior to actual testing to meet the physical fitness standards need only obtain a single medical certification.

(5) *Initial Qualification Time Limit.* Individuals authorized to carry firearms shall meet the applicable physical fitness standard by (insert date 12 months from date this rule is effective) and annually thereafter using the date of initial qualification as the anniversary date.

(6) *New Employees.* Individuals authorized to carry firearms who are employed after the effective date of this rule shall meet the applicable physical fitness standard prior to his or her initial assignment to duties which requires such individual to carry firearms.

(7) *Training Program.* Beginning (insert date one (1) month from date this rule is effective) until an incumbent security inspector meets the applicable physical fitness standards for initial qualification, he or she shall participate in a physical fitness training program.

(8) *Retraining.* Any security inspector who fails to qualify after the initial training program is completed or requalify shall participate in one additional physical fitness training program.

(9) *Retesting.* During each testing period a security inspector shall be permitted a maximum of six (6) and a minimum of two (2) opportunities to qualify or requalify before such security inspector must enter a training program or is removed from a security inspector position.

G. *Waiver of Security Inspector Medical Standards and Time Extension to Meet Physical Fitness Standards.*

(1) Waivers of elements of the medical standards of this Appendix may be granted for certain otherwise disqualifying medical or physical deficiencies by the cognizant field office management provided that:

(a) The DOE field organization authority, in consultation with a designated physician, determines that a certain medical or physical defect may be considered for waiver without compromising the intent of these medical standards to assure that all security inspectors are capable of safely and effectively performing all normal and emergency duties.

(b) The individual demonstrates by medical examination and/or practical test, as determined necessary by a designated physician, the ability to perform effectively and safely all routine and emergency duties.

(c) A statement of demonstrated ability must be prepared by a designated physician and must clearly (1) identify the individual, (2) state the nature and degree of the specific medical or physical defect, and (3) record the satisfactory medical evaluation and/or performance of the practical test required by a designated physician.

(d) Waivers shall be reviewed, revalidated, and reissued at intervals not to exceed one (1) year.

(e) Individuals who have been adversely affected by application of the standards may appeal the denial of waiver to the cognizant DOE safeguard and security field office for review within 60 days after the adverse action. Further evidence may be offered relating solely to the medical or physical fitness of the individual involved. Such individual may select a representative of his or her own choice to assist and/or appear in the individual's behalf in any appeal. After findings and a determination have been made at the field office level, such individual has a right to petition the Director of Safeguards and Security, DOE Headquarters, within 30 days of the field office's determination for a final determination based upon his or her review of the record of the case.

(2) There will be no waivers granted from the physical fitness standards set forth in Paragraph F above. However, time extensions not to exceed 6 months may be granted on a case-by-case basis for those individuals who, because of a temporary medical or physical condition as certified by a designated physician, are unable to satisfy the physical fitness standards within the required time period without suffering undue physical harm.

H. *Guard Medical Qualification Standards.*

(1) *General Qualifications.* The examinee shall possess mental, sensory, and motor skills as required to perform safely and effectively all assigned job duties. Such qualifications include:

(a) Mental alertness and reliable judgment.

(b) Acuity of senses and ability of expression sufficient to allow accurate communication by written, spoken, audible, visible, or other signals.

(c) Motor power, range of motion, neuromuscular coordination, and dexterity.

(2) *Specific Minimum Qualifications.*

(a) *Head, Face, Neck, and Scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(b) *Nose.* Ability to detect odor of products of combustion and of tracer or marker gases.

(c) *Mouth and Throat.* Capacity for clear and audible speech as required for effective communication on the job.

(d) *Ears.* Hearing loss not to exceed 30 db average at 500, 1000, and 2000 Hz in one ear (by ISO 1964 or ANSI 1969 audiometry).

(e) *Eyes.* Near and distant visual acuity, with or without correction of at least 20/40 in the better eye. One-eyed individuals may qualify.

I. *Guard Medical Disqualification Standards.*

(1) *Freedom from Incapacity.* The examinee shall be free of any condition, habit, or practice which could reasonably be expected to result in sudden, subtle, or unexpected incapacitation.

(2) *Conditions for Medical Disqualification.* The presence of any of the following conditions normally shall disqualify the examinee from employment as a guard:

(a) *Respiratory.* Significant pulmonary pathology or decrease in pulmonary function which could interfere with the safe and effective performance of assigned job duties.

(b) *Cardiovascular.*

1. Ischemic Heart Disease
2. Myocardial Infarction
3. Coronary Insufficiency
4. Angina Pectoris
5. Heart Failure
6. Significant Arrhythmia
7. Arterial Aneurysm
8. Significant Peripheral Vascular Insufficiency

(c) *Endocrine/Nutritional/Metabolic.*

1. Diabetes Mellitus. Uncontrolled diabetes, ketoacidosis, or diabetic coma within the previous two years.

2. Obesity. Obesity of such degree that it would interfere with the safe and effective performance of normal and emergency job duties.

(d) *Hematopoietic Dysfunction.* Clinically significant hematopoietic disorders which may interfere with the safe and effective performance of assigned job duties.

(e) *Malignant Neoplasms.* Malignant neoplastic disease.

(f) *Neurological.*

1. History of epilepsy or other convulsive disorder.

2. History of any disturbance of consciousness or neurological disease or any other presently existing condition that may interfere with the safe and effective performance of assigned job duties.

(g) *Mental and Emotional.* An established history or clinical diagnosis of any of the following:

1. Any psychological or mental condition which could cause impaired alertness, judgment, or motor ability. A history of clinically significant emotional or behavioral problems shall require thorough clinical evaluation which may include, but not necessarily be limited to, psychological testing and psychiatric evaluation.

2. Attempted suicide or an expressed threat of suicide.

3. A condition in which a person's intake of alcohol is sufficient to damage his or her physical health, job performance, personal functioning, or when alcohol has become a prerequisite to his or her daily functioning.

4. A condition in which a person is addicted to or dependent on drugs as evidenced by habitual use or a clear sense of need for the drug.

5. The use of prescribed or otherwise legally obtainable medication taken in such a dosage that a temporary delay in taking such medication might result in unacceptable incapacity. For example, certain dosages or requirements for steroids, anticoagulants, antiarrhythmics, sedatives, tranquilizers, etc.

J. *Waiver of Guard Medical Standards.* Waivers of elements of the medical standards of this Appendix may be granted for certain otherwise disqualifying medical or physical deficiencies by the cognizant field office management provided that:

(1) The DOE field organization authority, in consultation with a designated physician, determines that a certain medical or physical defect may be considered for waiver without compromising the intent of these medical standards to assure that all guards are capable of safely and effectively performing all normal and emergency duties.

(2) The individual demonstrates by medical examination and/or practical test, as determined necessary by a designated physician, the ability to perform effectively and safely all routine and emergency duties.

(3) A statement of demonstrated ability must be prepared by a designated physician and must clearly (1) identify the individual, (2) state the nature and degree of the specific medical or physical defect, and (3) record the satisfactory medical evaluation and/or of performance of the practical test required by a designated physician.

(4) Waivers shall be reviewed, revalidated, and reissued at intervals not to exceed two (2) years.

(5) Individuals who have been adversely affected by application of these medical standards may appeal the denial of waiver to the cognizant DOE safeguard and security field office for review within 60 days after the adverse action. Further evidence may be offered relating solely to the medical or physical fitness of the individual involved. Such individual may select a representative of his or her own choice to assist and appear in the individual's behalf in any appeal. After findings and a determination have been made at the field office level, such individual has a right to petition the Director of Safeguards and Security, DOE Headquarters within 30 days of the field office's determination, for a final determination based upon his or her review of the record of the case.

[FR Doc. 84-30758 Filed 11-21-84; 8:45 am]
BILLING CODE 6450-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loans to Members and Lines of Credit to Members

Correction

In FR Doc. 84-20276 beginning on page 30683 in the issue of Wednesday, August 1, 1984, make the following correction:

§ 701.21 [Corrected]

1. On page 30686, third column, § 701.21(c)(7)(ii)(B), first line, "January 15, 1986" should read "January 25, 1986".

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-31-AD; Amdt. 39-4944]

Airworthiness Directives; Fokker B.V. Model F27 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspections of various systems and equipment components on certain Fokker F27 series airplanes and modifications or repairs, as necessary, to correct unsafe conditions which may exist. This action is necessary to ensure proper operation of portable fire extinguishers, to ensure proper materials were used in fuel tank vent system sleeves, and to prevent leakage in the main and nose landing gear actuating rams.

EFFECTIVE DATE: December 7, 1984.

ADDRESSES: The applicable service information may be obtained from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands, or may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Anderson, Foreign Aircraft Certification Branch, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Netherlands Civil Aviation Department (RLD) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions that may exist on certain Fokker F27 airplanes. These may be corrected by incorporating four (4) separate service bulletins which affect portable fire extinguishers, fuel vent systems, and the main and nose landing gear actuators rams.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring accomplishment of the previously mentioned inspections and modifications was published in the **Federal Register** on May 21, 1984 (49 FR 21348). The comment period closed July 9, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. The one comment received was from the manufacturer which stated that Dunlop Service Bulletins 32–262 and 32–263, issued October 1983, are improvements over the Dunlop service bulletins referenced in Fokker Service Bulletin F27/32–143, dated May 22, 1981, which is part of the requirements of Paragraph C. of the proposed amendment. The FAA agrees that compliance with Dunlop Service Bulletins 36–262 and 36–263 may be an acceptable alternate means of compliance; accordingly, Paragraph C. of the AD has been revised to reflect this.

It is estimated that approximately 10 U.S. registered airplanes will be affected by this AD, that it will take approximately 25 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Replacement parts are estimated at $1,000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $20,000. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes as indicated in the applicability statement of each service bulletin listed below. Compliance is required within the time interval specified in each of the following paragraphs, unless already accomplished:

A. To assure proper operation of the portable fire extinguishers, within 90 days after the effective date of this AD, inspect the cartridge holders in accordance with Fokker Service Bulletin F27/26–18 dated September 28, 1981 (reference Walter Kidde Service Bulletin 26–20–240, revised April 28, 1981).

B. To assure that proper rubber sleeves have been installed in the fuel vent system, within 90 days after the effective date of this AD, inspect the fuel tank ventilation system in accordance with Fokker Service Bulletin F27/28–55 dated April 15, 1981. Replace unsatisfactory parts in accordance with the service bulletin.

C. To eliminate leakage from the fluid dampers in the main and nose landing gear actuating rams, within 180 days after the effective date of this AD, modify the actuating rams in accordance with Fokker Service Bulletin F27/32–143 dated May 22, 1981, or in accordance with Dunlop Service Bulletins 36–262 and 36–263 as an alternate means of compliance.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective December 7, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 41 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.— For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities since few, if any, Model F27 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on October 23, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–30803 Filed 11–21–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 97

[Docket No. 24331; Amdt. No. 1282]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA 430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Aviation safety, Standard Instrument Approaches.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective January 17, 1985*

Miami, OK—Miami Muni, VOR/DME–A, Amdt. 1
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 4, Orig.
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 17, Orig.
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 35, Orig.
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 22, Orig.
Houston, TX—Lakeside, VOR–A, Amdt. 4, Cancelled
Longview, TX—Gregg County, VOR or TACAN RWY 13, Amdt. 18
Longview, TX—Gregg County, VOR/DME or TACAN RWY 31, Amdt. 5
Longview, TX—Gregg County, VOR/DME or TACAN RWY 35, Amdt. 5

** * * Effective January 3, 1985*

Prattville, AL—Autauga County, VOR/DME–A, Orig.
Daytona Beach FL—Daytona Beach Regional, VOR RWY 16, Amdt. 16
Daytona Beach FL—Daytona Beach Regional, VOR RWY 34, Amdt. 3
Thomasville, GA—Thomasville Muni, VOR RWY 22, Amdt. 8
Thomasville, GA—Thomasville Muni, VOR/DME RWY 22, Amdt. 2
Greenville, KY—Muhlenberg County, VOR/DME–A, Amdt. 2
Natchez, MS—Hardy-Anders Field Natchez-Adams County, VOR/DME RWY 13, Orig.
Newburgh, NY—Stewart, VOR or TACAN RWY 27, Amdt. 2
White Plains, NY—Westchester County, VOR/DME or TACAN–A, Amdt. 2
Factoryville, PA—Seamans Fld, VOR–A, Orig.
Hilton Head Island, SC—Hilton Head, VOR/DME–A, Amdt. 7
Yankton, SD—Chan Gurney Muni, VOR RWY 13, Amdt. 5
Yankton, SD—Chan Gurney Muni, VOR RWY 31, Amdt. 3
Savannah, TN—Savannah-Hardin County, VOR/DME RWY 18, Amdt. 3

** * * Effective December 20, 1984*

Omaha, NE—Eppley Airfield, VOR RWY 32L, Amdt. 7

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective January 17, 1985*

Wichita, KS—Wichita Mid-Continent, LOC BC RWY 19L, Amdt. 13

** * * Effective January 3, 1985*

Daytona Beach, FL—Daytona Beach Regional, LOC BC RWY 24R, Amdt. 11
Lawrenceville, GA—Gwinnett County, LOC RWY 25, Orig.
Statesboro, GA—Statesboro Muni, LOC RWY 31, Orig.
Thomasville, GA—Thomasville Muni, LOC RWY 22, Orig.
Fayetteville, TN—Fayetteville Muni, SDF RWY 19, Orig.
Savannah, TN—Savannah-Hardin County, SDF RWY 18, Amdt. 1

** * * Effective December 20, 1984*

Gallup, NM—Gallup Municipal, LOC RWY 6, Amdt. 1
Abilene, TX—Abilene Muni, LOC BC RWY 17L, Amdt. 2
San Angelo, TX—Mathis Field, LOC BC RWY 21, Amdt. 11

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective January 17, 1985*

Miami, OK—Miami Muni, NDB RWY 17, Amdt. 1
Longview, TX—Gregg County, NDB RWY 13, Amdt. 12

** * * Effective January 3, 1985*

Daytona Beach, FL—Daytona Beach Regional, NDB RWY 6L, Amdt. 21
Thomasville, GA—Thomasville Muni, NDB RWY 22, Orig.
Thomasville, GA—Thomasville Muni, NDB RWY 22, Amdt. 3, Cancelled
Fayetteville, TN—Fayetteville Muni, NDB RWY 1, Amdt. 4, Cancelled
Fayetteville, TN—Fayetteville Muni, NDB RWY 19, Orig.
White Plains, NY—Westchester County, NDB RWY 16, Amdt. 19
Yankton, SD—Chan Gurney Muni, NDB RWY 31, Amdt. 1
Savannah, TN—Savannah-Hardin County, NDB RWY 18, Amdt. 1

** * * Effective December 20, 1984*

Lexington, KY—Blue Grass, NDB RWY 4, Amdt. 16

Omaha, NE—Eppley Airfield, NDB RWY 14R, Amdt. 21

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective January 17, 1985*

Wichita, KS—Wichita Mid-Continent, ILS RWY 1R, Amdt. 15
Houston, TX—Ellington Field, ILS RWY 17, Orig.
Houston, TX—Ellington Field, ILS RWY 35, Orig.
Longview, TX—Gregg County, ILS RWY 13, Amdt. 8

** * * Effective January 3, 1985*

Daytona Beach, FL—Daytona Beach Regional, ILS RWY 6L, Amdt. 25
Yankton, SD—Chan Gurney Muni, ILS RWY 31, Amdt. 1

** * * Effective December 20, 1984*

Lexington, KY—Blue Grass, ILS RWY 4, Amdt. 10
Lexington, KY)—Blue Grass, ILS RWY 22, Amdt. 7
Omaha, NE—Eppley Airfield, ILS RWY 14R, Amdt. 1
Omaha, NE—Eppley Airfield, ILS RWY 17, Orig.
Omaha, NE—Eppley Airfield, ILS RWY 32L, Amdt. 2
Abilene, TX—Abilene Muni, ILS RWY 35R, Amdt. 4
San Angelo, TX—Mathis Field Abilene Numi, ILS RWY 3, Amdt. 18

5. By amending § 97.31 RADAR SIAPS identified as follows:

** * * Effective January 3, 1985*

Daytona Beach, FL—Daytona Beach Regional, RADAR–1, Amdt. 5
Jacksonville, FL—Craig Muni, RADAR–1, Amdt. 4

** * *Effective December 20, 1984*

Lexington, KY—Blue Grass, RADAR–1, Amdt. 8

6. By amending §97.33 RNAV SIAPs identified as follows:

** * * Effective January 17, 1985*

Houston, TX—West Houston-Lakeside, RNAV RWY 15, Amdt. 2
Houston, TX—West Houston-Lakeside, RNAV RWY 33, Amdt. 2

** * * Effective January 3, 1985*

Thomasville, GA—Thomasville Muni, RNAV RWY 32, Amdt. 2
White Plains, NY—Westchester County, RNAV RWY 34, Amdt. 4

** * * Effective December 20, 1984*

Omaha, NE—Eppley Airfield, RNAV RWY 32L, Amdt. 4

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on November 16, 1984.

Kenneth S. Hunt,
Director of Flight Operations.

[FR Doc. 84–30815 Filed 11–21–84; 8:45 am]
BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1212

Revocation of Safety Standard Requiring Oxygen Depletion Safety Shutoff Systems (ODS) for Unvented Gas-Fired Space Heaters

AGENCY: Consumer Product Safety Commission.

ACTION: Revocation of rule.

SUMMARY: The Consumer Product Safety Commission is revoking its safety standard for unvented gas-fired space heaters, by a vote of 3–2, with Chairman Nancy Harvey Steorts and Vice Chairman Saundra Brown Armstrong dissenting.[1] The revocation is based on a Commission determination that the standard is not reasonably necessary to eliminate or reduce an unreasonable risk of injury or death from carbon monoxide poisoning associated with the heaters. Information received by the Commission shows the level of compliance with a voluntary standard that addresses the risk to be very high, and is likely to continue in the future, even if the standard is revoked. The mandatory requirements of the consumer product safety standard are therefore no longer needed.

DATES: The revocation will become effective on December 24, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald Medford, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Space Heater Standard

On September 17, 1980 the Commission issued a Safety Standard Requiring Oxygen Depletion Safety Shutoff Systems for Unvented Gas-Fired Space Heaters (16 CFR Part 1212) to eliminate or reduce the unreasonable risk of injury from carbon monoxide poisoning associated with these heaters [1].[2] The standard became effective on December 31, 1981, and is applicable to all unvented gas-fired space heaters manufactured or imported after that date [2].

The standard requires every heater subject to its requirements to be equipped with an oxygen depletion safety shutoff system (ODS or ODS device). The ODS must be capable of shutting off the gas supply to the heater when the oxygen in the surrounding atmosphere is reduced to a level below 18 percent.

In addition, the standard contains a compliance test and labeling requirements concerning safe operation, maintenance instructions, and information about symptoms of carbon monoxide poisoning. The required labeling must be on a permanent label which is either an integral part of the heater or on a plate marker affixed to the heater, and it must be conspicuous and legible when the heater is in its installed position.

When the Commission issued the space heater standard on a final basis, it also issued regulations applicable to manufacturers and importers who issue certificates of compliance with the standard. Such manufacturers and importers of the heaters must certify that their products comply with the standard, based upon a test of each heater or upon a reasonable testing program (section 14 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063).

B. Petition for Revocation

In October 1981, the Gas Appliance Manufacturers Association (GAMA) petitioned the Commission to revoke the heater standard [3]. In support of its request for revocation, GAMA asserted, among other things, that the latest revision of American National Standards Institute (ANSI) Standard Z21.11.2 required all unvented gas space heaters produced after December 31, 1981 to be equipped with an ODS device, in addition to complying with such other safety-related provisions as restrictions on carbon monoxide emissions and limits on surface temperatures.

The GAMA petition also stated that, if the Commission revoked its heater standard, a certification program conducted by the American Gas Association Laboratories would assure that all unvented gas space heaters produced after December 31, 1981 would be equipped with ODS devices. Finally, the GAMA petition stated that a revocation of the Commission standard would avoid all questions about possible preemption of state and local requirements for unvented gas space heaters.

By majority vote, the Commission denied the petition for revocation of the standard (one Commissioner voted to grant it). The denial letter to GAMA stated that the Commission could not conclude from information then available that the certification program conducted by the American Gas Association Laboratories would provide a level of protection to consumers equivalent to that afforded by the Commission's standard [4]. The letter added, however, that several Commissioners had indicated a willingness to reconsider revocation of the standard in the future [4].

C. Preemptive Effect of Heater Standard

As noted above, the Commission's heater standard applies to all unvented gas space heaters manufactured or imported after December 31, 1981. As that effective date approached, in late 1981, several state and local governments expressed concern about preemption of their requirements for unvented gas space heaters by the Commission's standard.

Some of these jurisdictions have laws or ordinances prohibiting the use of unvented gas space heaters in any residence. Others prohibit their use for certain kinds of residences or institutions, such as nursing homes, or for use in certain areas of a residence, such as sleeping quarters. Still other jurisdictions impose requirements on unvented gas space heaters in addition to the requirement that they be equipped with ODS devices [5,6,8].

The preemption provision of the CPSA provides:

> Whenever a consumer product safety standard under [the CPSA] is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard. CPSA, section 26(a); 15 U.S.C. 2075(a).

The effect of this provision is that states and local governments may not enforce requirements for unvented gas-fired space heaters that are intended to address the same risk of injury the Commission's standard addresses, unless the state or local requirements are identical to the Commission's requirements.

1. Applications for Exemption From Preemption

Section 26(c) of the CPSA provides that a state or local government may apply to the Commission for exemption from preemption of its requirements for a consumer product, and the Commission may "by rule" grant such applications if it finds that the state or local requirement:

> (1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this Act [the CPSA], and
> (2) does not unduly burden interstate commerce.

Between February and May 1982, the Commission received 23 applications from state and local governments requesting exemptions from preemption requirements concerning unvented gas space hearters [5,6].

The Commission continued to receive additional such applications, but its staff prepared a briefing package that addressed the factual and legal issues raised by the first 23 applications. The subsequent 23 applications received were substantially similar to the first 23, and it seemed likely that any Commission decision would be dispositive of all the preemption exemption applications [5].

2. Staff Analysis of Applications.

The staff briefing package on the first 23 applications, transmitted to the Commission on January 19, 1983, discussed the subject state and local requirements for unvented gas space heaters and the risk or risks of injury they were intended to address [5]. It contained information on: Deaths and injuries from carbon monoxide poisoning associated with unvented gas space heaters [10]; the scope of the state and local requirements under consideration and the risk or risks they are intended to address [9]; economic information concerning production and marketing of unvented gas space heaters [12]; and enforcement of requirements for unvented gas space heaters by state and local governments [11].

The briefing package also listed options available to the Commission with regard to the 23 applications and outlined the type of information needed to support each option. The options included:

(1) Advising certain applicants that their requirements are not preempted by the Commission's standard because they address hazards in addition to the risk of carbon monoxide poisoning addressed by the Commission's standard;

(2) Granting one or more of the applications;

(3) Denying one or more of the applications;

(4) Deferring a decision on the applications and initiating a proceeding to revoke the Commission's standard (a final revocation would eliminate its preemptive effect on non-identical state and local requirements) [5].

A majority of the staff recommended the fourth option and noted the following factors in support of it:

(1) The revision of ANSI Standard Z21.11.2 to require that unvented gas space heaters be equipped with ODS devices.

(2) The expectation that all unvented gas space heaters intended for residential use and manufactured or imported during 1983 would be equipped with ODS devices, and that approximately 95 percent of those heaters would comply with all requirements of the ANSI standard [5, 12].

3. Commission Decision on Applications

The Commission discussed the 23 preemption exemption applications at a meeting on March 30, 1983, and requested some additional information from the staff. The staff provided such information in a supplemental package dated May 18, 1983 [18].

The Commission considered the applications at a second meeting on May 26, 1983, and voted 3 to 2 to initiate a proceeding for the revocation of the Commission's standard [20].[3] This vote

---

[1] Copies of dissents and separate statements by the Commissioners are available from the Commission's Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6800.

[2] The numbers in brackets refer to the reference documents listed at the end of this notice. Requests for inspection of any of these documents should be made by calling the Office of the Secretary at (301) 492–6800.

[3] Chairman Nancy Harvey Steorts and Commissioner Edith Barksdale Sloan voted against this approach and issued individual statements setting forth their reasons. Commissioners Sam Zagoria and Terrence M. Scanlon issued individual statements of their reasons for voting to initiate the revocation proceeding. All four individual

was based on the preliminary belief that the revised ANSI Standard Z21.11.2 would be as effective as the Commission's standard in assuring that unvented gas space heaters are equipped with ODS devices and that the Commission's standard would no longer be needed to eliminate or reduce an unreasonable risk of injury from carbon monoxide poisoning associated with the heaters [21].

The Commission also voted to defer further consideration of the applications for exemption from preemption until it took final action in the revocation proceeding [20]. If a final rule to revoke the standard were to be issued, no further consideration of the applications would be necessary. The Commission noted that, until any final action revoked the standard, it remained in effect and preempts any non-identical state or local requirements for unvented gas heaters which are intended to address risks of injury from carbon monoxide poisoning.

D. Proposed Revocation

In October 1983 the Commission proposed to revoke its space heater standard [22]. Under section 9(h) of the CPSA (15 U.S.C. 2058(h)), a final revocation of a consumer product safety standard requires the Commission to make an affirmative finding that the standard is not "reasonably necessary to eliminate or reduce an unreasonable risk of injury," in this case from carbon monoxide poisoning associated with unvented gas space heaters.

The Commission made this finding, on a preliminary basis, in its October 1983 proposal. It noted that it had considered information about provisions of ANSI Standard Z21.11.2 which specify that unvented gas space heaters manufactured after December 31, 1981 must be equipped with ODS devices and meet other safety-related requirements; the high degree of compliance with the requirements of the ANSI standard by unvented gas space heaters manufactured or imported for residential use in 1983; and the likelihood that almost all unvented gas space heaters will continue to be equipped with ODS devices regardless of the existence of the Commission's standard.

The Commission also observed in its proposed revocation that, if it took final action to revoke the standard, unvented gas space heaters will continue to be "consumer products" subject to the Commission's jurisdiction under the CPSA. Section 15 of the CPSA (15 U.S.C. 2064) authorizes the Commission to require manufacturers, importers, distributors, and retailers of consumer products which present a "substantial product hazard" to give notification to the public and to take corrective action with regard to such a hazard, whether or not the products are subject to a consumer product safety standard.

If the Commission were to revoke the standard, and if at some time thereafter unvented gas space heaters without ODS devices or other means to prevent production of levels of carbon monoxide which could result in death or injury from carbon monoxide poisoning were manufactured or sold in the United States, the possibility would exist that the Commission could initiate a proceeding under provisions of section 15 of the CPSA. Such a proceeding could determine whether such heaters present a "substantial product hazard," and if so, whether notification to the public or corrective action, or both, were required to protect the public from that hazard.

In its proposed revocation of the space heater standard, the Commission addressed some more specific topics:

1. Impact on Small Entities

In accordance with section 605(b) of the Regulatory Flexibility Act (RFA, 5 U.S.C. 605(b)), the Commission certified in its proposed revocation **Federal Register** document that the proposal would not, if issued on a final basis, have a significant economic impact on a substantial number of small entities, including small businesses and small governmental jurisdictions. [22]. In that document the Commission set forth the following reasons for the certification:

Information available to the Commission indicated that as many as eleven firms may manufacture unvented gas space heaters, and that some of these firms may be "small businesses" as that term is used in the RFA. Four or five firms may import these appliances, and some of them may also be small businesses.

If the space heater standard were revoked, manufacturers and importers of unvented gas space heaters, including small businesses, would no longer be subject to the performance and labeling requirements of the standard, and would no longer be required by section 14 on the CPSA (15 U.S.C. 2063) to certify compliance with the requirements of the standard. However, those firms would be subject to requirements of any state or local jurisdictions which prohibit or restrict the sale of unvented gas space heaters.

The Commission had received information to the effect that all unvented gas space heaters manufactured or imported for residential use in 1983 were expected to be equipped with ODS devices, whether or not the standard were revoked. Additionally, the Commission had information indicating that approximately 95 percent of those heaters would comply with all requirements of ANSI Standard Z21.11.2 [12]. Consequently, revocation of the standard was not expected to result in any significant reduction of costs related to production and certification of unvented gas space heaters by manufacturers or importers, including small businesses.

Issuance of a final revocation would not, by itself, impose any requirements on any manufacturer or importer of unvented gas space heaters. However, such an action would allow states, counties, and cities that had enacted laws or ordinances concerning unvented gas space heaters before the effective date of the Commission's standard to resume their enforcement, without any possibility of preemption under the CPSA. In addition, any state or local jurisdiction would be free to enact such laws or ordinances without consideration of preemption by a Commission standard. Nevertheless, the Commission did not anticipate that elimination of the preemptive effect of its standard would have a signifcant economic impact on manufacturers or importers of unvented gas space heaters.

The Commission knew that some states and localities prohibited the use of unvented gas space heaters in any residence. Other jurisdictions were known to prohibit their use only in specified areas of a residence, or in certain types of residential buildings. Still others imposed additional requirements as well as specifying an ODS device. Because almost all of the unvented gas space heaters manufactured or imported in 1983 were expected to comply with all requirements of ANSI Standard Z21.11.2, additional requirements for such heaters in state or local laws were not expected to be a major deterrent to sales in those jurisdictions.

The Commission considered information about sales of unvented gas space heaters for the years 1977 through 1981, and estimates of sales for the 1982–83 heating season and for future years supplied by manufacturers. This information indicated that more unvented gas space heaters were sold in 1982 than in 1981, and that the trend of increasing sales was expected to continue in 1983 and into the near-term future [12,18]. After consideration of all available economic information, the

statements are available from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Commission concluded that the trend of increasing sales of unvented gas space heaters would probably continue, whether or not the consumer product safety standard were revoked.

The Commission also considered the economic impact which could result from revocation of the standard on those distributors and retailers of gas appliances which may be small businesses. Information available to the Commission indicated that most distributors and retailers of gas appliances generally had not stocked or sold unvented gas space heaters since December 31, 1981, in those jurisdictions which had banned their use in residences prior to the effective date of the Commission's standard. For those distributors and retailers that had stocked or sold unvented gas space heaters in jurisdictions which had previously banned their use, those products were believed to have accounted for only a small portion of their total sales of all gas-fired appliances. In all other jurisdictions, distribution and sale of unvented gas space heaters would not be significantly affected by revocation of the Commission's standard.

Some of the cities and counties which have requirements applicable to unvented gas space heaters, including some of those which have filed applications for exemption from preemption, are "small governmental jurisdictions" as that term is used in the RFA because they have populations of less than 50,000. The Commission anticipated that a final revocation, which would eliminate all questions about possible preemption of state and local requirements applicable to unvented gas space heaters, could have two economic consequences for small governmental jurisdictions:

(a) Because uncertainty about the preemptive effect of the standard, if any, on local requirements would be eliminated, costs of litigation brought by or against some small jurisdictions to resolve that issue would be avoided.

(b) Those jurisdictions which had refrained from enforcement of their requirements for unvented gas space heaters after the effective date of the Commission's standard, because they believed their requirements to be preempted, would incur additional costs if the Commission's standard were revoked and they resumed enforcement of their requirements.

However, the Commission did not believe that in either case, the cost savings from litigation avoided or the added costs incurred by resuming enforcement of local requirements, would be "significant" in their effect on the total resources of any of these small jurisdictions.

The Commission now affirms the finding it made in the preamble to the proposed revocation, that the revocation will not have a significant impact on a substantial number of small entities, including small businesses and small governmental jurisdictions.

2. Environmental Considerations

The Commission's environmental review provisions state at 16 CFR 1021.5(c)(1) that issuance, amendment, or revocation of a consumer product safety standard normally has little or no potential for affecting the human environment. For this reason, these provisions do not require an environmental assessment or an environmental impact statement for this proposed revocation. As stated in the proposed revocation **Federal Register** document, the Commission does not foresee any special or unsual circumstances surrounding the proposed revocation which could necessitate an environmental review [22]. Consequently, preparation of a draft environmental impact statement is not required.

3. Effective Date

Section 9(h) of the CPSA (15 U.S.C. 2058(h)) provides that a rule amending or revoking a consumer product safety standard will specify the effective date, which shall not exceed 180 days from the date of publication by the Commission of the final rule, unless the Commission finds, for good cause, that a later effective date is in the public interest. The Administrative Procedure Act (5 U.S.C. 553(d)) provides that a rule which relieves a restriction or grants an exemption may take effect immediately. The Commission expressed the view, in the proposed revocation **Federal Register** document, that a final revocation of the space heater standard could take effect immediately [22].

The Commission recognized that revocation of any existing standard has the potential to create some market disruption while production and marketing plans and other business activities are adjusted to meet new circumstances resulting from the revocation. Several manufacturers of unvented gas space heaters had advised the Commission that they have relied on the standard and its preemptive effect on non-identical state and local requirements in making business decisions. Nevertheless, the Commission expressed its belief that revocation of the space heater standard would be unlikely to result in any substantial degree of market disruption. As noted earlier, conformance to the ANSI standard by the unvented gas space heater industry is at a high level and the Commission did not foresee any significant effect on sales of the unvented gas space heaters resulting from a final decision in this proceeding, whether or not the standard was revoked.

In proposing the revocation, the Commission noted that establishment of a delayed effective date is one means of lessening potential market disruption by giving all affected parties opportunity to make appropriate adjustments before the revocation becomes effective. At the same time, the Commission noted the possibility that a delayed effective date could prolong uncertainty about enforceability of state or local requirements for unvented gas space heaters, or have other adverse effects.

Having no information that gave strong support to either a delayed or an immediate effective date for a final revocation, the Commission specifically solicited comments on that question. It gave notice that the effective date of any final rule revoking the standard for unvented gas space heaters could range from the date of publication to 180 days following publication of the final rule. The decision would be based on the Commission's evaluation of the public comments and other available information concerning the potential effects of various effective dates.

E. Public Comments

In its October 1983 proposed revocation, the Commission solicited written public comments on all the issues it raised.[4] The thirteen comments received [23–25] are discussed in this section, by issue, along with the Commission's responses to them. Summarizing and categorizing them, the Commission notes that seven of the comments express support for revocation, and five oppose it (one comment does not state a clear position). The thirteen comments included those submitted by five associations. Two of these are regional model code organizations, the International Conference of Building Officials (ICBO) [23] and the Southern Building Code Congress International (SBCCI) [26]; three came from the American Gas Association (AGA) [24], the Gas Appliance Manufacturers

[4] The Commission also provided an opportunity for oral presentation of data, views, and arguments concerning the proposed revocation. However, only one party expressed interest in making an oral presentation. Since there was no other interest, that party, the National LP-Gas Association, decided not to make an oral presentation [25].

Association (GAMA) [27], and the National LP-Gas Association (NLPGA) [25]. The remaining eight comments were submitted by the Lone Star Gas Company in Dallas [27]; the Alabama Liquefied Petroleum Gas Board [29]; Sourdillon, a French manufacturer of ODS's for unvented gas space heaters [30]; Sears, Roebuck and Co., a national retailer [31]; Ms. Lucinda B. Headrick, the mother of a 23-year-old student who died in a space heater incident [32]; the Attorney General of the State of New York [33]; the City of Mentor-on-the-Lake, Ohio [34]; and LSC, Inc., a manufacturer of home heating products [35].

1. General Support and Opposition

The NLPGA commented, in support of revocation, that it concurs with the Commission's conclusion that all unvented gas space heaters manufactured or imported for residential use in 1983 are expected to be equipped with ODS devices whether or not the standard is revoked [25]. Another supporting comment, from SBCCI, pointed out that its model code has required an ODS since December 1981 and that the 1982 edition of the Standard Gas Code "is adopted and enforced in some 17 states * * *" [26]. SBCCI made the further point that "[t]he level of compliance at the jobsite is assured by a cadre of trained inspectors whose number far exceeds that of CPSC inspectors" [26].

In opposition to revocation of the Commission's space heater standard, the Lone Star Gas Company claimed that revocation would result in restrictive state and local statutes that would prevent consumers from replacing older, hazardous unvented gas heaters [28]. In addition, Sourdillon has warned in its comment that there must be "legal backing of the voluntary standard" to assure that unsafe gas space heaters will not be imported into the United States [30].

The Commission's response to these comments is that it continues to believe that virtually all unvented gas space heaters marketed in this country in the future will have ODS's. The Commission has no reason to believe that it was incorrect in expecting all 1983 heaters to have them. Further, the Commission has no reason to believe that any 1984 heaters will not have ODS's. In response to the Lone Star comment, the Commission notes that it is difficult to predict the effect that state or local statutes would have on consumers' choices of replacement space heating sources.

The Commission's belief that space heaters will continue to have ODS's is based on a variety of reasons. Compliance with the ANSI standard is reinforced in many jurisdictions by state and local requirements that reference model building codes. These codes require that products such as unvented gas space heaters be "listed." A listed product must be certified by a recognized testing laboratory, such as AGA, as complying with the ANSI standard and listing provides the assurance that the product is suitable for the intended installation.

The primary certification process for compliance with the ANSI standard requires a visual inspection of the heater to determine whether it contains an ODS and test requirements to determine whether the ODS will function according to the requirements of the standard. This certification program requires periodic, unannounced inspections and it requires manufacturers to report all changes in product design. In those jurisdictions which require installation inspections prior to use or occupancy, state and local officials use the inspection procedures to enforce building codes, including the code requirements that the materials and equipment used (in this case space heaters) are listed.

Due to the low cost of the ODS's now being used, manufacturers are likely to continue using them. This is particularly true in light of the potential product liability consequences that would exist were they not used. The current ODS technology does not involve the addition of a separate component to sense oxygen depletion. Rather, that objective has been achieved by modifying the traditional pilot system to cause the flame to extinguish and the gas to shut off when the oxygen content of the air drops below a certain level. This modified pilot system costs only a few dollars more than the traditional pilot system, a very small percentage of the total cost of the unvented gas space heater. In view of the fact that the oxygen depletion sensor is a modification to an existing component of a heater rather than an added part, and that the cost of the modified part is relatively small, the Commission believes there will be little incentive for manufacturers to revert to the traditional pilot systems, once the mandatory ODS requirement is revoked.

2. Preemptive Effects of Revocation

Some public comments discussed the fact that a final revocation would eliminate the currently-existing preemptive effects of the Commission's space heater standard. To some commenters, that would be a positive result. NLPGA described a "legal nightmare," created by the Commission's standard, "for both small businesses and governmental jurisdictions which, if the rule is not revoked, can only be resolved through expensive and protracted legal proceedings" [25]. This comment supported revocation because it would end the "legal stalemate" in which some state and local jurisdictions persist in enforcing bans or other restrictions on space heaters despite the preemptive effects of the Commission's standard. SBCCI also supported revocation, in part because it would permit the prohibition of the heaters in some locations [26]. The Attorney General of the State of New York similarly wants state and local space heater requirements enforced [33]. He claimed that New York State and New York City have requirements, for the venting of space heaters, that are better than the Commission's standard.

Other commenters presented a different view of preemption. Lone Star opposed revocation in part because preemption allows consumers to upgrade older unvented gas-fired space heaters with new ones that have ODS's [28]. Similarly, Sears Roebuck expressed the position that local bans should not be permitted to come back into effect [31].

The preemptive effect of a regulatory action, whether it is issuance or revocation of a standard, is generally not a direct consideration of the Commission. Nevertheless, the Commission recognizes the importance of such effects to the industry and to state and local governments. The economic consequences of preemption—and the absence of it following a revocation—were discussed in section D(1) above and are further discussed in section E(3), immediately below.

3. Economic Issues

One economic issue raised by the comments concerns the effect of state and local statutes on the ability of producers and retailers of unvented gas-fired space heaters to sell these products in many areas. As noted above, this stems from the fact that a revocation of the Commission's standard would eliminate any preemptive effects on the enforcement of state and local requirements for space heaters.

GAMA commented that, because revocation of the standard" * * * will eliminate, at least for a time, markets which were planned for * * * unvented heaters, there will be an adverse economic impact" [27]. This adverse impact envisioned by GAMA would be from the difficulties and costs involved in maintaining an effective distribution system. GAMA also stated that a lack of consumer choice of unvented gas-fired equipment in some areas would be an adverse economic impact of the revocation. (As discussed in section E(5) below, GAMA noted that "a clear and concise statement concerning the safety of ANSI Z21.11.2 design certified unvented heaters could be useful in minimizing this adverse economic impact.")

On the same economic subject, Lone Star commented (as noted earlier) that restrictive state and local statutes would not allow many consumers to replace older, hazardous unvented heaters [28]. In addition, Sears commented that revocation would result in many different state or local requirements for space heaters which would present difficulties for national distribution and higher costs for consumers [13]. LSC, Inc. asserted that the existence of state and local regulations makes it difficult for a manufacturer to produce equipment that can be marketed throughout the country [35]. This manufacturer claimed that "[m]ost manufacturing companies will sooner withdraw a product from the market than to make very few for sale in hundreds of communities."

In response, the Commission notes that, at the time it proposed the revocation, it had no information indicating that unvented heaters had established a significant market in those jurisdictions with statutes against sales that were preempted by the standard [36]. While statistics are not kept by state, a GAMA official told the Commission staff in February 1984 that sales have increased in some areas that previously had restrictions, such as in the lower Mid-West, Pennsylvania, and West Virginia [36]. However, although the sale gain in 1983 was significant (approximately 15 percent over 1982), the great majority of sales probably was confined to the traditional marketing areas for unvented heaters, states in the South and Southeast [36]. The base of sale would therefore be likely to remain following revocation of the standard.

The Commission recognizes that differing state or local requirements for space heaters may create economic burdens and distribution problems, with the severity of such difficulties varying from case to case. Nevertheless, national retailers already market products for which sales are restricted in some areas [36]. This includes unvented heaters, even though the mandatory standard has been in effect. For example, Sears' 1984 Fall-Winter catalog offers unvented gas-fired heaters, but also includes an accompanying statement that they are not for sale in California, New York, Arizona and some other locations. [44]. Customers are advised to check local codes and check with the nearest Sears Catalog Selling Unit before ordering.

Distribution of unvented gas space heaters will of course be affected by the extent to which their market will be restricted. However, it appears to the Commission that most of the traditional marketing areas of the product will remain open to the sale of unvented heaters. At least for the near term, however, distribution problems resulting from differing state and local statutes are likely to be compounded for national retailers and their suppliers.

According to a GAMA official, the industry hopes to demonstrate the safety of current unvented heaters to state and local officials where sales of the product would be restricted [36]. This official has estimated that the entire process leading to state and local statutory changes could take three-to-five years [36].

Regarding the concern expressed by LSC, although states and localities may adopt differing requirements, those requirements mainly would restrict sales or installation in residences or specified areas of residences. Different state and local statutes should not be a significant factor in equipment design. Manufacturers will therefore not be faced with the necessity of producing products "in a custom fashion for each and every State and local authority," as feared by LSC.

4. Enforcement Activities

Sears Roebuck expressed a concern in its comments that deaths and/or injuries must occur for the Commission to take enforcement action against hazardous products under the provisions of section 15 of the Consumer Product Safety Act [31]. Ms. Headrick expressed in her comment a concern that not every space heater on the market would necessarily have an ODS [32]. She questioned how imports would be regulated and how consumers would be protected in towns and states that do not have strong requirements on space heaters [32].

The Commission continues to believe that virtually all space heaters on the market now have, and will continue to have, ODS devices [37]. The Commission's compliance staff continues to monitor the marketplace and has, to date, examined 19 different space heaters, from five domestic manufacturers and 14 importers [37]. All 19 of the heaters were equipped with an ODS that complies with the mandatory standard [37].

Concerning section 15 action, the Commission responds that reports of product-related deaths and injuries are not required for such action, as long as there is reason to believe that a product defect could cause deaths and injuries. Given the record compiled during the development of the mandatory standard on space heaters, the Commission's compliance staff would consider action under section 15 as soon as it discovered that heaters not equipped with an ODS were being sold in this country [37].

5. Risks Other Than Carbon Monoxide Poisoning

The GAMA comments included a request that this Federal Register preamble to the final revocation include a "history" of the Commission's evaluation of the ANSI Z21.11.2 voluntary standard [27]. More specifically, GAMA requested a statement to the effect that the Commission has found that all risks of imminent injury associated with the use of unvented heaters have been satisfactorily addressed in ANSI Z21.11.2. The purpose of such a statement would be to soften the impact that revocation will have on the gas heater industry's ability to compete fairly with other types of space, or zone, heaters.

The GAMA comments contain, as Attachment A, the "history" that it requested the Commission to adopt as its own [27]. This "history" attests to the long involvement of the Commission staff in ANSI Z21 activities in general and the space heater standard, Z21.11.2, in particular. It notes the significant modifications to the safety requirements in the standard, partially as a consequence of this involvement. In addition, the GAMA "history" states that the ANSI standard and its certification rule are superior to the Commission's standard because they adequately address all other associated risks of injury.

While the Commission staff certainly was involved in the development of the ANSI space heater standard, the Commission takes no official position on the nature of risks—other than carbon monoxide poisoning—presented by space heaters or on the extent to which the ANSI voluntary standard may address such risks. In particular, this proceeding is only concerned with the extent of compliance with the requirement that space heaters be equipped with ODS's. The Commission notes that the ANSI standard contains not only a requirement for an ODS device but also other provisions that

address the carbon monoxide poisoning risk.

6. Effective Date

The only two comments received on an appropriate effective date for a final revocation favored an immediate effective date. The NLPGA commented that it sees no justification for a delayed effective date and that one as long as 180 days following publication could have adverse effects [25]. It mentioned that business has been caught in the middle, between the Commission's preemptive standard and states and localities that continue to enforce their bans and other restrictions on space heaters. NLPGA therefore believes that an immediate effective date is needed to resolve legal questions without delay. NLPGA further noted that the effective date chosen will have no bearing on the number of units produced in 1984 because it would likely be after May 1984, which is beyond the end of the normal production season for space heaters.

The Attorney General for the State of New York commented that a delayed effective date would enable retailers and manufacturers to "flood the market with unsafe heaters under the pretext of protection by the federal rule" [33]. He noted, however, that New York believes its state and local laws protect consumers from dangers other than carbon monoxide poisoning and are not preempted by the CPSC standard, but that some manufacturers and retailers nevertheless sell unvented gas space heaters in the state.

After considering the two comments and other available information [36], the Commission has decided that an effective date 30 days after this publication of the final revocation is appropriate. This will prevent any unnecessary delay and minimize any continued confusion, while also providing a short period of adjustment for states or localities to "gear up" any space heater restrictions and for businesses to adjust to any such new market conditions. The Commission doubts that any heaters will "flood" onto the market during the 30-day period.

F. Additional Information

The Commission has also considered some issues and information not raised directly in the public comments:

1. Cabinet Heaters

Cabinet heaters are covered by the Commission's mandatory standard, but not by the ANSI voluntary standard. When the Commission proposed revocation of the space heater standard, it believed that there would be ANSI requirements for cabinet heaters in effect by the time a final revocation would become effective. However, the National Fire Protection Association (NFPA) recently decided not to accept a proposed Tentative Interim Amendment or a permanent amendment that would have allowed the use of liquid propane (LP) cylinders of the size used with cabinet heaters in residences [43]. Therefore, the ANSI requirements will not be put into effect [43]. The absence of ANSI requirements for cabinet heaters means that these products will not be certified by the American Gas Association as being equipped with an ODS.

Nevertheless, the Commission believes that safety implications probably do not arise from the lack of a voluntary requirement for an ODS on cabinet heaters, for a number of reasons: (a) The NFPA Code 58 that prohibits the use of LP cylinders greater than one pound in residences is referenced or adopted by 48 states according to a representative of the National LP Gas Association [43]. This effectively bans the use of these heaters in homes. (b) Sales data obtained by the Commission during compliance activities involving cabinet heaters indicate that fewer than 20,000 cabinet heaters have been imported for sale in the U.S. during the last four years [43]. In addition, the Commission understands that no former importer of cabinet heaters has any current plans to import any in the future [44]. (c) All cabinet heaters examined by the staff have been equipped with an ODS [37]. (d) Even in the absence of a voluntary standard, the Commission believes that cabinet heater manufacturers will continue to equip their heaters with an ODS since it is inexpensive and not worth the risk of product liability or an investigation by the Commission under section 15 of the CPSA [43]. (e) Unless and until a voluntary standard is developed, the Commission believes that there will be little or no market for cabinet heaters and consumer risk would therefore be expected to be low.

2. New Technology

The Commission's mandatory standard requires unvented gas-fired space heaters to be equipped with ODS devices. Such devices address the carbon monoxide risk in an effective and practical way, in accordance with state-of-the-art technology. However, technological development is continuing in this area and it is possible—even probable—that a better way to address the carbon monoxide poisoning risk will be available in the future.

The ODS, by measuring depletion of the oxygen supply in a room, indirectly measures the carbon monoxide level in that room. The Commission knows that some technological development is focusing on devices that would directly measure the carbon monoxide level. If devices become available that address the space heater carbon monoxide risk better than ODSs, they could not be used as replacement devices as long as a Commission standard required ODSs. The ANSI voluntary standard also requires ODS devices, but the Commission believes that it would be easier and faster to amend that voluntary standard than it would be to amend a mandatory Commission standard. Revocation of the mandatory standard, therefore, will eliminate the possibility that its design-restrictive approach of requiring ODSs would impede technological advances in space heater safety.

The Commission would not want a performance requirement (or modified design requirement) in the ANSI standard to permit the use of safety devices that provide less consumer protection than currently provided by the ODS. However, the Commission believes that a carefully-drafted amendment to the ANSI standard to make it less design restrictive—if and when justified by technological advances—could benefit consumers and the industry by permitting the use of better safety devices.

G. Applications for Exemption From Preemption

With the revocation of the Commission's space heater standard, the preemption provisions of section 26 of the Consumer Product Safety Act will no longer apply (as of the effective date of revocation). To the extent that any state or local requirements may have been preempted by the Commission's standard, such preemption will no longer exist. As a result, the applications for exemption from preemption (discussed in section C above) need not be considered any further. The Commission will notify every applicant of this conclusion by individual letter.

H. Conclusion

When the Commission proposed to revoke its space heater standard, available information indicated that virtually all unvented gas-fired space heaters then being manufactured or imported were equipped with ODS devices. The Commission also expressed its belief that the heaters would continue to have ODS's, even if the standard were revoked.

The Commission has now considered all of the public comments on its proposal, as well as some updated information. Specifically, the Commission's compliance staff has found that all of the 19 space heaters inspected to date were equipped with ODS devices that meet the mandatory standard.

The Commission notes that the ANSI voluntary standard for space heaters requires each of them to be equipped with an ODS. Further, AGA certification is based upon compliance with the ANSI standard and most distributors and dealers of gas appliances carry only AGA-certified appliances. Finally, the gas appliance industry has a history of strong compliance with voluntary standards. Although cabinet heaters are not currently covered by the ANSI standard or certified by AGA, the Commission believes that any marketed in this country would continue to be equipped with ODS devices (for the reasons enumerated in section F(1) above).

Based on all available information, the Commission continues to believe that virtually all unvented gas-fired space heaters marketed in this country will be equipped with ODS devices that meet the Commission's mandatory standard, whether or not that standard continues in effect. If any space heaters are marketed without ODS devices, the Commission would be able to initiate action against any that present a substantial product hazard due to carbon monoxide poisoning, under section 15 of the Consumer Product Safety Act. Therefore, the Commission finds that its unvented gas-fired space heater standard is not reasonably necessary to eliminate or reduce an unreasonable risk of injury or death from carbon monoxide poisoning associated with the heaters.

List of Subjects in 16 CFR Part 1212

Carbon monoxide, Consumer protection, Heaters, Household appliances, Labeling, Reporting and recordkeeping requirements.

In accordance with section 9(h) of the Consumer Product Safety Act, as amended by the Consumer Product Safety Amendments of 1981 (Pub. L. 92–573), as amended by Pub. L. 97–35, 15 U.S.C. 2058(h)) and the Administrative Procedure Act (5 U.S.C. 553), the Commission revokes the Safety Standard Requiring Oxygen Depletion Safety Shutoff Systems (ODS) for Unvented Gas-Fired Space Heaters (16 CFR Part 1212) by making the following change to Title 16 of the Code of Federal Regulations:

PART 1212—SAFETY STANDARD REQUIRING OXYGEN DEPLETION SAFETY SHUTOFF SYSTEMS (ODS) FOR UNVENTED GAS-FIRED SPACE HEATERS [REMOVED AND RESERVED]

Part 1212 is removed and reserved.

(Sec. 9(h), Consumer Product Safety Act, as amended by the Consumer Product Safety Amendments of 1981 (Pub. L. 92–573, as amended by Pub. L. 97–35, 15 U.S.C. 2058(h)) and 5 U.S.C. 553)

Effective date: December 24, 1984.

Dated: November 16, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of References

1. **Federal Register** notice, "Unvented Gas-Fired Space Heaters; Rules Requiring Oxygen Depletion Safety Shutoff Systems (ODS) and Proposed Stockpiling Rule"; September 18, 1980.
2. **Federal Register** notice, "Unvented Gas Fired Space Heaters; Extension of Effective Date"; June 3, 1981.
3. Letter from Stanley W. Schroeder, Gas Appliance Manufacturers Association, with attachments; October 1, 1981.
4. Letter from Sadye E. Dunn, Secretary, to Gas Appliance Manufacturers Association; March 18, 1982.
5. Staff briefing package, including transmittal memorandum, from Office of Program Management to Commission concerning 23 applications from state and local governments for exemption from preemption by the unvented gas space heater standard; January 19, 1983. (The tabs of this package are listed separately as items 6–17 below.
6. Applications from 23 state and local governments for exemption from preemption, supplemental submissions, and chronology of events associated with evaluation of 23 applications (Tab A); February 22 through July 2, 1981.
7. Letter from George H. Lawrence, American Gas Association to A.G.A. member companies and other interested organizations (Tab B); January 13, 1982.
8. Selected items of correspondence from Commission staff to applicants for exemption from preemption (Tab C); March 4, 1982, and May 21, 1982. Advisory Opinion No. 270 from Margaret A. Freeston, General Counsel's Office; September 12, 1978 (Tab C).
9. Evaluation of state and local requirements for unvented gas space heaters prepared by Directorate for Engineering Sciences (Tab D); December 3, 1982.
10. Memorandum from Bea Harwood and Charles A. Nichols, Epidemiology, concerning evaluation of applications for exemption from preemption (Tab E); January 4, 1983.
11. Memorandum from Wade Anderson and Don Early, Compliance, concerning comments on applications for exemption from preemption (Tab F); December 29, 1982.
12. Memorandum from Terrance R. Karels, Economics, concerning 23 applications for exemption from preemption (Tab G); October 4, 1982. Memorandum from Dale Ray, Economics, concerning prospects for continued use of ODS devices on unvented gas space heaters (Tab G); December 15, 1982.
13. Correspondence from manufacturer of unvented gas space heaters concerning applications by state and local governments for exemption from preemption (Tab H); October 5 through November 18, 1982.
14. Congressional correspondence regarding applications for exemption from preemption (Tab I); May 3, 1982 through August 18, 1982.
15. Letter from Daniel N. Myers, National L–P Gas Association concerning application for exemption from preemption submitted by Alabama Liquefied Petroleum Gas Board (Tab J); July 8, 1982. Letter from J. P. Langmead, Gas Appliance Manufacturers Association concerning preemption of state requirements for unvented gas space heaters by consumer product safety standard (Tab J); October 27, 1982.
16. Memorandum from Robert Poth, Compliance, on proposed revocation (Restricted) (Tab K); January 6, 1983.
17. Summary information sheet (Tab L); undated.
18. Memorandum from Douglas L. Noble, Program Management, transmitting updated information on applications for exemption from preemption; May 18, 1983.
19. Vote sheet from Alan Shakin, General Counsel's office, on 23 applications for exemption from preemption; January 28, 1983.
20. Tape and minutes of Commission meeting on proposed revocation; May 26, 1983.
21. News release announcing Commission vote on proposed revocation of unvented gas space heater standard; May 31, 1983.
22. Proposed revocation **Federal Register** document; 48 FR 45405; October 5, 1983.
23. Comment from International Conference of Building Officials; December 2, 1983.
24. Comment from the American Gas Association; December 5, 1983.
25. Comment from National L–P–Gas Association; December 2, 1983.
26. Comment from Southern Building Code Congress International, Inc.; October 28, 1983.
27. Comment from Gas Appliance Manufacturers Association; December 5, 1983.
28. Comment from Lone Star Gas Company; December 1, 1983.
29. Comment from Alabama Liquefied Petroleum Gas Board; November 18, 1983.
30. Comment from Sourdillon; November 24, 1983.
31. Comment from Sears, Roebuck and Co.; December 5, 1983.
32. Comment from Lucinda B. Headrick; December 1, 1983.
33. Comment from Attorney General of State of New York; December 2, 1983.
34 Comment from City of Mentor-on-the-Lake; January 6, 1984.
35. Comment from LSC Incorporated; November 22, 1983.
36. Memoranda from Charles Smith of Economic staff on analysis of comments on proposed revocation; March 7 and 28, 1984.

37. Memorandum from Liz Gomilla of Compliance staff on analysis of comments on proposed revocation; February 29, 1984.

38. Memorandum from Sidney Greenfield of Engineering staff on analysis of comments on proposed revocation; March 8, 1984.

39. Briefing paper prepared by Ron Medford of Program Management staff of final revocation of space heater standards, with transmittal memo to Commission; April 3, 1984.

40. Memorandum (Restricted) and vote sheet from Alan Shakin of Office of the General Counsel on final revocation of space heater standard; both dated April 13, 1984.

41. Tape of Commission briefing on final revocation of space heater standard; May 23, 1984.

42. Tape of Commission meeting on final revocation of space heater standard; July 11, 1984.

43. Supplemental briefing package and revised vote sheet on final revocation of space heater standard; August 9, 1984.

44. Tapes of Commission meetings on final revocation of space heater standard; August 14, 1984 and September 20, 1984.

[FR Doc. 84-30887 Filed 11-21-84; 8:45 am]
BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15 and 17

Reports; General Provisions; Adoption of Final Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("the Commission") has reviewed the data it currently receives for market surveillance from members of contract markets, futures commission merchants (FCMs), foreign brokers and individual traders. For a number of markets it has found that the growth in trading volume, open interest, and account size of individual traders enables the Commission to carry out its market surveillance programs with fewer reports.

Accordingly, as part of its efforts to eliminate unnecessary reporting, the Commission has adopted amendments to its reporting regulations under the Commodity Exchange Act, as amended ("Act"), to raise position levels in certain commodities at which Forms 103 and 40 must be filed by traders and series '01 reports and Form 102s must be filed by members of contract markets, FCMs and foreign brokers.

In addition, the Commission has determined to delete current § 17.00(a)(2) of its regulations which requires that an FCM report information concerning a special account for the business day preceding the day on which such account became first reportable. The Commission is also amending regulation § 15.00(b)(1)(ii) so that only persons with positions in excess of the reporting levels specified in § 15.03(b) file reports according to Part 19, rather than those holding positions equal to or in excess of such levels.

The overall effect of this final agency action is to alleviate a reporting burden on the public and to reduce the amount of paperwork processed by the Commission.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Associate Director, Market Surveillance Section, (202) 254-3310.

SUPPLEMENTARY INFORMATION:

Reporting levels are set in various commodities to ensure that the Commission receives adequate information to carry out its market surveillance programs, which include detection and prevention of market congestion and price manipulation and enforcement of speculative limits.[1]

Generally, Parts 17 and 18 of the regulations require reports from members of contract markets, FCMs or foreign brokers and traders, respectively, when a trader holds a "reportable position," i.e., the open positions held or controlled by the trader at the close of business in any one future of a commodity traded on any one contract market equal or exceed the quantities fixed by the Commission in § 15.03(a) of the regulations. See Rule § 15.00(b), 17 CFR 15.00(b) (1984).

Members of contract markets, FCMs and foreign brokers who carry accounts in which there are "reportable positions" of traders are required to identify such accounts on a Form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC Form 40 giving certain background concerning their trading in commodity futures and, on call by the Commission, must submit a Form 103 showing positions and transactions in the commodity specified in the call.

The level at which reports must be filed are determined by balancing the costs associated with providing and processing the data against the Commission's information needs for effective market surveillance. In this respect, trading volume, open interest, and position sizes of individual traders in the futures markets are periodically reviewed to determine whether the Commission can maintain effective surveillance of futures markets with fewer reports from members of contract markets, FCMs, foreign brokers and the trading public. In addition to reducing the burden on reporting entities, such modifications yield better data for surveillance purposes by sharpening the focus of the data collected. As part of this ongoing effort to reduce reporting burdens and to obtain better data, the Commission has determined that reporting levels should be raised for the following commodities: in oats from 200,000 bushels to 300,000 bushels; in soybean oil, soybean meal, sugar #11, and copper from 100 contracts to 150 contracts; in platinum, crude oil, and leaded gas from 25 contracts to 50 contracts; in three-month (13 week) U.S. Treasury bills, long-term U.S. Treasury notes, and three-month Eurodollar Time Deposit Rates from 50 contracts to 100 contracts; in long-term U.S. Treasury bonds from 150 contracts to 300 contracts; in the Standard and Poors 500 Stock Price Index from 100 contracts to 300 contracts; and in the AMEX Major Market Index from 25 contracts to 100 contracts.

In addition, the Commission is also deleting current § 17.00(a)(2) which requires that FCMs, clearing members, and foreign brokers report information concerning a special account for the business day preceding the first day on which such an account is first reportable.[2] This requirement appears to be an impediment to a number of firms which might otherwise report the information required by Rule 17.00 in machine readable form.[3] It is the Commission's experience that information supplied by firms on data processing media is more accurate and timely than that provided manually. Moreover, since the Commission periodically audits firms for compliance with its reporting requirements, it is no longer necessary to obtain the information required under Rule § 17.00(a)(2) on a routine basis.[4]

[1] The following commodities are those for which Commission speculative limits are in effect: wheat, grains (including oats, barley and flaxseed), corn soybeans, rye, eggs, cotton, and potatoes. 17 CFR Part 150 (1982).

[2] Special account is defined in Rule § 15.00(c) as any futures or options account in which there is a reportable position. 17 CFR 15.00(c) 1984.

[3] Commission Rule § 17.03 allows a firm to use data processing media to provide the information required unde Rule 17.00. 17 CFR 17.03 (1984).

The Commission is also amending Rule § 15.00(b)(1)(ii) to require that only persons with positions in excess of the quantity specified in Rule § 15.03(b) file reports in accordance with Part 19 of the Commission's regulations. Currently, persons with positions *equal to* or in excess of the quantities specified in Rule § 15.03(b) must file the reports specified in Part 19.

Reports filed pursuant to Part 19 of the regulations show details on commercial traders' fixed price cash commitments and are used by the Commission to check compliance with Federal speculative limits. The reporting levels specified in Rule § 15.03 at which a trader must file such reports correspond to the level of the Commission's speculative limits. However, speculative position limits permit speculators to hold positions equal to the specified level. Accordingly, the Commission is amending Rule § 15.00(b)(1)(ii) so that only traders with positions in excess of the speculative limits file reports pursuant to Part 19 of the regulations.

The Commission finds that its action to amend the regulations as discussed above relieves an existing burden and that the notice and other public procedures called for by 5 U.S.C. 553 are not required, 5 U.S.C. 553(b) (1976). The Commission, therefore, is adopting the amendments to Parts 15 and 17 effective December 5, 1984. The new reporting levels will, therefore, apply to positions held by traders as of the close of the markets on December 5, 1984.

The Regulatory Flexibility Act

As the Commission has not published a prior general notice of proposed rulemaking with respect to these amendments which are relief measures, the amendments are not "rules" as that term is defined in Section 3(a) of the Regulatory Flexibility Act ("RFA"), Pub. L. No. 96-354, 94 Stat. 1165 (5 U.S.C. 601(2)).[5]

Paperwork Reduction Act

The Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812 *et seq.* ("PRA"), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by PRA. 44 U.S.C. 3501 *et seq.* OMB control number 3038-0009 has previously been assigned to those regulations within Parts 15, 17, and 18 which impose collection of information and recordkeeping requirements.[6]

List of Subjects in 17 CFR Parts 15 and 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to its authority under Sections 4g, 4i, 5(b) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. Sections 6g, 6i, 7(b) and 12a(5) (1982), the Commission is amending Parts 15 and 17 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. Section 15.00 is amended by revising paragraph (b)(1)(ii) as follows:

§ 15.00 Definitions of terms used in Parts 15 to 21 of this chapter:

* * * * *

(b) "Reportable position" means:

(1) * * *

(ii) For the purposes of reports specified in Part 19, any open contract position in any one future or in all futures combined, either gross long or gross short, of any commodity on any one contract market, excluding positions against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market, which at the close of the market on the last business day of the week exceeds the quantity fixed in § 15.03(b) for reporting purposes for the particular commodity.

* * * * *

2. Section 15.03 is amended by revising paragraph (a) as follows:

§ 15.03 Quantities fixed for reporting.

(a) The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

Commodity:	
Wheat (bushels)	500,000
Corn (bushels)	500,000
Soybeans (bushels)	500,000
Oats (bushels)	300,000
Cotton (bales)	5,000
Soybean oil (contracts)	150
Soybean meal (contracts)	150
Live cattle (contracts)	100
Hogs (contracts)	50
Sugar No. 11 (contracts)	150
Sugar No. 12 (contracts)	100
Copper (contracts)	150
Gold (contracts)	200
Silver bullion (contracts)	100
Silver coins (contracts)	50
Platinum	25
No. 2 Heating oil (contracts)	50
Crude oil	50
Leaded gasoline	25
Long-term U.S. Treasury bonds (contract)	300
GNMA (contracts)	100
Three-month (13-week) U.S. Treasury bills (contracts)	100
Long-term U.S. Treasury notes (contracts)	100
Domestic certificates of deposit (contracts)	50
Three-month Eurodollar time deposit rates (contracts)	100
Foreign currencies (contracts)	100
Standard and Poor's 500 stock price index (contracts)	300
New York Stock Exchange composite index (contracts)	100
AMEX major market stock index	100
All other commodities (contracts)	25

* * * * *

PART 17—[AMENDED]

3. Section 17.00 is amended by removing paragraph (a)(2), by redesignating paragraph (a)(3) as (a)(2), and revising it as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(a) *Special Accounts*—Reportable Futures Positions, Delivery Notices, and Exchanges of Futures for Cash.

* * * * *

(2) A report covering the first day upon which a Special Account is no longer reportable in a particular future shall also be filed showing the following information.

(i) The position in such future in such account;

(ii) Exchanges of futures for physicals for the accounts in such future;

(iii) Delivery notices for such future issued for the account by the clearing organization of the contract market on which delivery will occur; and

(iv) Delivery notices for such future stopped by the account.

* * * * *

The foregoing amendments to Parts 15 and 17 are adopted effective December 5, 1984. The Commission finds that the foregoing action relieves a burden heretofore imposed and therefore that the notice and other public procedures called for by 5 U.S.C. 553 are not required.

Issued in Washington, D.C., on November 15, 1984, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84-30872 Filed 11-21-84; 8:45 am]
BILLING CODE 6351-01-M

[4] The Commission is also making conforming amendments to Rule § 17.00 by renumbering § 17.00(a)(3) as § 17.00(a)(2) and specifying the information which must be reported under the new Rule § 17.00(a)(2).

[5] That section defines the term "rules" as "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to Section 553(b) of this title * * *"

[6] See 44 U.S.C. 3502(4) (Supp. V. 1981) defining the term "collection of information."

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 84-232]

Customs Regulations Amendment Relating to Payment of Tonnage Tax and Light Money

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to require that in addition to the certificate on Customs Form 1002, a cash receipt on Customs Form 5104 will be provided by Customs as proof of payment when tonnage taxes and light money are paid to Customs by the master of a vessel. Both of these forms are then to be presented to Customs by the master upon each entry of the vessel during the tonnage year. The forms will establish the date of commencement of the tonnage year and insure against overpayment. This change is part of Customs continuing efforts to develop a system to improve control over its collection process.

EFFECTIVE DATE: December 24, 1984.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Robert Hamilton, Office of Financial Management and Program Analysis, (202-566-2596) and Thomas Davis, Office of Inspection and Control (202-566-5354).

Legal Aspects: Donald Reusch, Carriers, Drawback and Bonds Division (202-566-5706); Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Generally, unless exempted, the U.S. imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money," on all foreign vessels which enter U.S. ports (46 U.S.C. 121, 128). Section 4.23, Customs Regulations (19 CFR 4.23), currently provides that upon each payment of tonnage tax or light money, the district director shall give to the master of the vessel a certificate on Customs Form 1002. This certificate constitutes the official evidence of payment and is to be presented by the vessel master upon each entry during the tonnage year in order to establish the date of commencement of the tonnage year and to insure against overpayment.

As part of its continuing efforts to develop a system to improve control over its collection process, Customs is requiring that in addition to the Customs Form 1002, a cash receipt (Customs Form 5104) is to be provided by Customs as proof of payment when tonnage taxes and light money are paid by the master of a vessel. This additional form will provide further protection for the payer vessel while aiding Customs in safeguarding monies collected.

Executive Order 12291

It has been determined that this amendment is not a "major rule" within the criteria provided in § 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment because the rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is certified pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Inapplicability of Public Notice Requirement

Because this amendment merely implements a procedural protection requirement for the benefit of the master of the vessel who paid the tonnage taxes and light money, and because it imposes no additional duties or responsibilities on the public, it has been determined that good cause exists for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B).

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Imports, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Section 4.23 is revised to read as follows:

§ 4.23 Certificate of payment and cash receipt.

Upon each payment of tonnage tax or light money, the master of the vessel shall be given a certificate on Customs Form 1002 and the payer's receipt copy of the cash receipt (Customs Form 5104) upon which payment was recorded. This certificate, along with the payer's receipt copy of the Customs Form 5104, shall constitute the official evidence of such payment and shall be presented upon each entry during the tonnage year in order to establish the date of commencement of the tonnage year and to insure against overpayment. In the absence of the certificate and the payer's receipt copy of the Customs Form 5104, evidence of payment of tonnage tax shall be obtained from the district director to whom the payment was made.

(R.S. 251, as amended, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; (5 U.S.C. 301, 19 U.S.C. 66, 1202, 1624, 46 U.S.C. 2, 3, Gen. Hdnote 11, Tariff Schedules of the United States))

William von Raab,

Commissioner of Customs.

Approved: November 5, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-30719 Filed 11-21-84; 8:45 am]

BILLING CODE 4820-02-M

---

19 CFR Part 24

[T.D. 84-231]

Customs Regulations Amendments Relating to Administrative Overhead Charges

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for the inclusion of an administrative overhead charge of 15 percent of the identified costs of providing for reimbursable and overtime services, and various other services, performed by Customs officers. This charge will be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing the reimbursable and overtime services, and other services for the benefit of such parties. There will be no charge if the imposition of such charge is precluded by law; there is a formal accounting system for determining administrative overhead for a service; or the charge for administrative overhead for a service is

specifically provided for elsewhere in the Customs Regulations.

The purpose of this document is to enable Customs to recover an important cost element that is not currently factored into the assessment of these charges.

EFFECTIVE DATE: January 6, 1985. Fees for vessel services, container stations, and warehouses will be published at a later date. The effective date for those services will be at the time the fee schedule applicable thereto is revised and published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jim Kenny, Accounting Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2021).

SUPPLEMENTARY INFORMATION:

Background

Various statutes provide Customs with the administrative authority to charge fees to recover the costs of particular services rendered to parties-in-interest. For example, 19 U.S.C. 58a permits the Secretary of the Treasury to charge such fees as may be necessary to recover the costs of providing certain vessel services. The fees are to be consistent with the User Charges Statute (31 U.S.C. 9701). Section 4.98(a), Customs Regulations (19 CFR 4.98(a)), sets forth the specific services and bases for calculating each flat fee. Similarly, Customs charges and bills parties-in-interest for reimbursement in connection with services rendered by Customs officers or employees during regular hours (see § 24.17, Customs Regulations (19 CFR 24.17)), or on Customs overtime assignments under 19 U.S.C. 267 or 1451 (see § 24.16, Customs Regulations (19 CFR 24.16)). The bill covers full compensation and/or travel and subsistence of the Customs officer performing the service. However, except for a 10 percent administrative overhead charge applicable to the annual fee required of each warehouse proprietor granted the right to operate a warehouse facility under § 19.5, Customs Regulations (19 CFR 19.5), and preclearance of air travelers and their baggage under section 24.18, Customs Regulations (19 CFR 24.18), there is no administrative overhead charge factored into the cost of providing a particular service.

The "User Charges Statutes" provides that each service or thing of value provided by an agency to a person is to be self-sustaining to the extent possible. The head of an agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations so prescribed are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be fair and based on the costs to the Government, the value of the service or thing to the recipient, public policy or interest served, and other relevant facts. The statute does not affect a law prohibiting the determination and collection of charges and the disposition of those charges, and prescribing bases for determining charges, but a charge may be redetermined under the statute consistent with the prescribed bases.

In a report dated March 10, 1975, "Services For Special Beneficiaries: Costs Not Being Recovered," the General Accounting Office stated that the User Charges Statute authorizes Customs to include administrative overhead in the billings of parties-in-interest for all reimbursable services performed during normal, and outside normal, working hours. The Office of Management and Budget (OMB), has stated that in the absence of a formal accounting system for determining administrative overhead, no new accounting system should be established solely to determine this cost. The cost should be determined or estimated from the best available records of the agency. In the absence of a formal accounting system for determining the cost of the charge for administrative overhead, the Treasury Department recommended that its bureaus use 15 percent of the identified costs of providing the service.

Customs has no formal accounting system for determining the cost of the charge for administrative overhead for reimbursable and overtime service. Therefore, using 15 percent of the identified costs of providing the service is applicable. The identified costs to Customs are the actual salaries, including overtime and other expenses of Customs personnel providing the service.

In a decision of the Comptroller General on the matter of user charges for administrative costs of special and overtime Customs services (B-114898, 55 Comp. Gen. 456, November 13, 1975), the Comptroller General held that Customs generally has authority to impose user charges under the User Charges Statute for administrative overhead from parties-in-interest for reimbursable and overtime services provided by Customs in addition to amounts payable for compensation and expenses of Customs officers. The proviso in the User Charges Statute that nothing contained therein was to be deemed to repeal or modify existing statutes fixing the amount of any such fee, charge or price (language of statute prior to recodification of Title 31 by Pub. L. 97-258, September 13, 1982), was deemed by the Comptroller General to preclude the imposition of additional user charges under the User Charges Statute only to the extent that another statute expressly or by clear design constitutes the only source of assessments for a service.

On December 21, 1983, Customs published a document in the Federal Register (48 FR 56399) proposing to amend Part 24, Customs Regulations, (19 CFR Part 24), "Customs Financial and Accounting Procedure," by adding a new § 24.21 entitled "Administrative overhead charges" to provide for inclusion of an administrative overhead charge of 15 percent of the identified costs of providing for reimbursable and overtime services performed by Customs officers under §§ 24.17 and 24.16, Customs Regulations, respectively. This charge would be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing the reimbursable and overtime services for the benefit of such parties.

New § 24.21 also would provide for the inclusion of an administrative overhead charge of 15 percent of the identified costs of providing for various user-type services performed by Customs officers to parties-in-interest. These fees, whether billed or not, include, but are not limited to:

1. Section 4.98—Navigation fees for vessel services;

2. Section 19.5—Annual fee to operate, and fees to establish, alter, or relocate a warehouse facility; (An administrative overhead charge of 10 percent is currently assessed for the annual fee to operate a warehouse facility. Therefore, there would be only a 5 percent increase to that charge);

3. Section 19.40—Fee to establish container stations;

4. Section 24.12(a)(3)—Fee for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent;

5. Section 24.12(c)—Charge for storing merchandise in a Government-owned or rented building;

6. Section 24.13(f)—Charge for the sale of in-bond an in-transit seals;

7. Section 24.14(b)—Charge for the sale of Customs forms;

8. Section 24.18—Charge for preclearing aircraft in a foreign country; (An administrative overhead charge of 10 percent is currently assessed. Therefore, there would be only a 5 percent increase to that charge);

9. Section 111.12(a)(2)—Fee for issuing a customhouse broker's license;

10. Section 112.12(a)—Fee for designating a carrier or freight forwarder as a carrier of Customs bonded merchandise;

11. Section 112.22(a)(2)—Fee for issuing a Customs bonded cartman's license;

12. Section 133.3—Fee for recording of trademarks;

13. Sections 133.5(d), 133.6(b), 133.7(a)(3)—Fee for renewing, or recording a change in name of owner, or of ownership of, a trademark;

14. Section 133.13(b)—Fee for recording of trade name;

15. Section 133.33(b)—Fee for recording a copyright; and

16. Sections 133.35(b)(2), 133.36(b), 133.37(a)(3)—Fee for renewing, or recording a change in name of owner, or of ownership of, a copyright.

However, there would be no 15 percent charge if (1) imposition of such charge is precluded by law, such as administrative overhead costs associated with any inspection service required at airports of entry as a result of the operation of aircraft pursuant to Pub. L. 94–353, the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1741(e)); (2) there is a formal accounting system for determining administrative overhead for a service, in which case that system would be used for determining the cost of the charge for administrative overhead; or (3) the charge for administrative overhead for a service is specifically provided for elsewhere in the Customs Regulations.

Customs would not assess an administrative overhead charge of 15 percent for (1) traveling in a Government-owned vehicle on official travel at the request of a private party, or (2) carting merchandise in a Government-owned vehicle because fees relating to these areas are regulated by the Federal Property Management Regulations (see 41 CFR Part 101–7, Federal Travel Regulations).

The notice advised that the administrative overhead charge of 15 percent will result in the recovery of costs associated with the operation and depreciation of buildings and equipment, rent, postage, maintenance, and expenses associated with Customs management and supervision.

Commenters had until February 21, 1984, to submit comments. After careful consideration of the 11 comments received in response to the notice, and further review of the matter, Customs has determined to adopt the final rule as proposed. A discussion of the comments follows.

Discussion of Comments

Comment: The proposed rule is inconsistent with the requirements of the Independent Offices Appropriations Act (IOAA) (User Charges Statute, 31 U.S.C. 9701). All of the fees for administrative overhead charges proposed in the notice are invalid including the underlying "non-administrative" fee charged by Customs for preclearance services. Preclearance fees in force and proposed are *prima facie* unlawful.

Numerous court cases and other sources, such as federal agencies, are cited to support the position that the preclearance service primarily benefits the general public. It is argued that Customs has not calculated properly the cost basis for each fee assessed, and that Customs administrative overhead charged for preclearing aircraft is not based on what the administrative overhead costs actually are, but rather on a percentage of what the non-overhead costs are. It is claimed that The Report of March 10, 1975, of the General Accounting Office, and the opinion of the Comptroller General, *supra.*, relied on by Customs, were prepared before the controlling decisions of the federal appellate courts were rendered.

Response: Customs believes these claims are without merit.

Preclearance is the tentative examination and inspection of air travelers and their baggage at foreign places where United States Customs Service personnel are stationed for that purpose. At the specific request of an airline, travelers on a direct flight from a foreign place to the United States may be precleared prior to departure from that foreign place. A charge based on the excess cost to Customs of providing preclearance services is made to the airline. The reimbursable excess cost is the difference between (1) the cost of examining and inspecting air travelers and their baggage upon arrival in the United States, assuming no preclearance was provided, and (2) the cost of providing clearance for air travelers at the place of departure. The reimbursable excess cost is determined for each preclearance installation. The charge to each airline for preclearance service is its prorated share of the applicable excess cost prorated to the aircraft receiving such services during the specified billing period (see generally, 19 CFR 24.18).

It is clear that an airline is making a specific request for Customs officers to preclear air travelers and their baggage. The charge to each airline is its prorated share of the applicable excess cost prorated to the aircraft receiving such services. Therefore, there is a specific charge for a specific service to a specific airline.

An airline making a request for Customs preclearance services is an identifiable beneficiary. The recipient airline is receiving appropriate value because the fee charged by Customs to the airline does not exceed the cost of the service rendered. The fact that the public interest also may benefit does not preclude an airline from being assessed the full charge.

The formula for setting a fee, including an amount for administrative expenses, need not be rigid. The fee need bear only a reasonable relationship to the cost of the service rendered by Customs. Courts have approved OMB's position that (1) in the absence of a formal accounting system for determining administrative overhead, no new accounting system need be established to determine this cost; and (2) the cost is to be determined or estimated from the best available records.

The 1975 decision of the Comptroller General, discussed above, and the 1980 decision of the Comptroller General discussed below, are dispositive. No other federal agency commented on this proposal. Customs fees and the assessment of an administrative overhead charge of 15 percent of the identified costs of providing the services proposed are proper.

The legislative history to Pub. L. 95–410, the "Customs Procedural Reform and Simplification Act of 1978," clearly establishes that Congress intended that the general authority of the User Charges Statute shall be used as a means to determine the fees to be collected by Customs to recover its costs to furnish vessel services. An allowance for overhead costs is specifically mandated (House Report 95–621, 95th Cong., 1st Sess., at 28).

Comment: The proposed rule is inconsistent with international commitments and policies of the United States. The Customs proposal ignores the United States commitment to the objectives of the General Agreement on Tariffs and Trade (Article VIII), to limit fees assessed to the approximate cost of services rendered and to reduce the number and diversity of fees and charges.

Preclearance in Canada, Bermuda, and the Bahamas is established and governed by formal International Agreements. The "Agreement Between The Government Of The United States Of America And The Government of Canada On Air Transport Preclearance" (Preclearance Agreement) (Ottawa, May 8, 1974, TIAS 7825), is cited to support the principle that preclearance is to facilitate air travel.

It is claimed that Customs offers no explanation for the propriety of its proposal in light of section 6.55 of Annex 9 entitled "International Standards and Recommended Practices—Facilitation To The Convention On International Civil Aviation" (Convention), (61 Stat. 1180). Paragraph 6.55 provides that "Contracting States shall provide sufficient services of the public authorities concerned without charge to operators during working hours established by those authorities." No notice has been provided to the Council of the International Civil Aviation Organization pursuant to Article 38 of the Convention. Article 38 provides in part that any State ". . . which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard . . ."

Response: Customs believes that adoption of the proposal is not inconsistent with the General Agreement on Tariffs and Trade. Article VIII is intended to apply to the transit of merchandise internationally, rather than to preclearance of passengers and their baggage. Furthermore, Customs is implementing no new fees, but merely recalculating how existing fees are to be determined to recover the cost of a service. Article VIII contains no legal prohibition to Customs adoption of its proposal.

The Preclearance Agreement contains no prohibition to Customs preclearance procedure as set forth in section 24.18, Customs Regulations, nor the proposal to charge administrative overhead. Article VI of the Preclearance Agreement provides that an air carrier has the option to use either preclearance or post-clearance procedures. Article VII(b) provides that "The inspecting Party shall be responsible for the normal cost of its inspection personnel." Article VII(c) provides that "Any charges upon air carriers related to preclearance shall be based on participation at a particular airport location and shall be assessed in an equitable and non-discriminatory manner."

As noted above, an airline requests the preclearance service, and agrees to the conditions relative thereto. Airlines are not responsible for the normal cost of Customs inspection personnel. Airlines are charged only the reimbursable excess cost of the operation on a prorated basis, certainly an equitable and non-discriminatory approach. Customs also notes that Article IX provides for consultation concerning the interpretation, application, and modification of the Agreement and of its Annexes.

Customs believes that Convention is inapplicable here. Paragraph 6.55 of Annex 9 to the Convention does not state, nor imply that airlines have a right to free preclearance. The Preclearance Agreement controls. Even if applicable, however, the Convention must be read consistent with the Preclearance Agreement. The issue is not whether or not a service will be provided "without charge to operators during working hours," under section 6.55. The issue is whether or not under the Preclearance Agreement charges for normal costs or reimbursable excess costs upon airlines for preclearance are proper.

Assuming *arguendo* that Article 6.55 is applicable, Article 38 of the Convention provides the procedure for Customs to file a notice of any difference. Customs would not, after filing the appropriate notice, be prohibited from implementing these fees. Furthermore, Articles 84, 85, and 86 provide a mechanism for the settlement of disputes.

Comment: The proposed rule conflicts with the express direction of Congressional committees. A Decision of the Comptroller General (59 Comp. Gen. 389, B–196342, April 15, 1980), which cited many of the court cases discussed above, determined that pursuant to the User Charges Statute, Customs may continue to assess a user charge against airlines and recover that portion of its costs (including Treasury Enforcement Communications System) that are increased by its conducting passenger preclearance on foreign soil. It is claimed that the House Appropriations Committee in House Rep. No. 98–1090 rejects the Comptroller General's analysis and "eviscerates" the opinion.

Customs proposal is similar in nature to a previous Customs proposal to establish a schedule for commercial aircraft processing fees (47 FR 23182, May 27, 1982) and, therefore, Customs ignores the will of Congress. It is claimed that Committees from both the House and Senate directed Customs to refrain from attempting to assess the new user fees. Senate Report No. 97–547 (97th Cong. 2d Sess., 23), states:

> It is the intent of the Committee to defer the collection of Customs inspection and clearance user fees or charges on commercial aircraft until these and related issues are carefully analyzed and resolved by the Congress. For this reason, none of the funds appropriated in this bill shall be used to collect such fees and charges.

House Report No. 97–959 (97th Cong. 2d Sess., 11) states:

> It is the Committee's intention that none of the funds provided in this Act are to be used by the United States Customs Service to collect inspection and/or clearance fees on commercial aircraft as outlined in the proposed amendment to Part 6, Customs Regulations (19 CFR Part 6), adding a new section 6.26 establishing a schedule for commercial aircraft fees. For policy reasons, the Committee is not in agreement with this proposal, and directs that it be vacated.

Response: House Report No. 98–1090 (98th Cong. 2d Sess., 12) states:

> * * * In view of the fact that this system is used solely for law enforcement purposes and does not provide an identifiable benefit to airlines or the travelling public, the Committee feels that the cost should be borne by the Customs Service. Funds in the bill may be used for that purpose.

Although this language does not lend support to the 1980 opinion of the Comptroller General, Customs does not believe that this language negates that opinion. It is the position of the Customs Service that this regulation is supported by the decision of the Comptroller General.

The 1982 Senate and House reports stated only that none of the funds provided by the relevant act (for the fiscal year ending September 30, 1983) were to be used to collect inspection and clearance fees for commercial aircraft such as those proposed in 1982. The new proposal does not violate the referenced Congressional statements because that fiscal year has passed and the new fees are different from those proposed in 1982. The 1982 fees were new fees. This document merely adds a charge for administrative overhead to existing fees.

Comment: The notice violates section 2(a) of Executive Order 12291 in that the proposal should be based on "adequate information concerning the need for and consequences of proposed governmental action."

Response: Customs has carefully considered both the need for and consequences of the regulation and has determined that the regulatory action is appropriate.

Comment: Customs must—

1. Withdraw the notice of December 21, 1983;

2. Pursuant to section 4(e) of the Administrative Procedure Act (5 U.S.C. 553(e)), repeal section 24.18, Customs Regulations (19 CFR 24.18), which "unlawfully imposes costs on carriers for preclearance services;" and

3. Institute a new rulemaking proceeding to establish "a refund mechanism which will enable airlines and other companies to recover unlawful assessments made in contravention of IOAA."

Response: For the reasons discussed above, Customs has determined that the imposition of administrative overhead charges contained in this document is appropriate and within its authority.

Preclearance fees are assessed only against a carrier that has requested and received the services for which the fees are charged. Customs believes that the requesting carrier receives a special benefit.

Accordingly, Customs is not withdrawing the notice of December 21, 1983. Moreover, Customs does not believe that § 24.18, Customs Regulations (19 CFR 24.18), is contrary to its authority and therefore will not take any action to repeal such section or institute rulemaking proceedings to establish a refund mechanism with respect to fees collected pursuant to such section.

Comment: Foreign countries will be more inclined to levy similar and perhaps higher fees for customs services performed by their respective government entities.

Response: Customs disagrees. Implementation of this proposal is entirely consistent with its international obligations. It is unlikely to result in retaliation by other nations because Customs is simply redefining how it calculates the cost of existing fees, which are totally acceptable in the international community.

Comment: The 15 percent charge is too high and arbitrary; it is inflationary. A one to three percent charge, or a flat $2.00 charge, is appropriate.

Response: The Office of Management and Budget has established guidelines concerning the determination of administrative overhead where no formal accounting system exists. In the absense of such a system, the guidelines direct that no new system be developed solely to determine administrative overhead costs. Instead, administrative overhead costs are to be determined or estimated from the best available records of the agency. On this basis, the Treasury Department estimated such costs to be 15 percent of identified costs of providing services, and recommended that this figure be used by Treasury bureaus, including Customs. For these reasons, Customs does not believe that the 15 percent charge is excessive or arbitrary. Moreover, since it is projected that $6.7 million will be collected annually as administrative overhead charges, Customs does not believe such an amount will exert inflationary pressure on the economy.

Comment: The increased costs will be passed on to the consumer.

Response: It is Customs view that it is unlikely that there will be a full cost pass-through to consumers. In any event, the actual cost-pass-through will be negligible.

Comment: A 5 percent additional charge to the existing 10 percent administrative overhead charge for the warehouse operation program would mean an effective overhead charge of 15.5 percent. Therefore, any and all overhead fees should be applied against the base rate.

Response: The administrative overhead charge will not exceed 15 percent.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), (Regulatory flexibility Act, Pub. L. 96-354), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. It is estimated that the total impact of this document will reach $6.7 million. However, the economic impact is concentrated on large entities, and in any event, the costs to all businesses will be spread over many transactions. Thus, the impact is likely to be slight. Accordingly, the regulations are not subject to the regulatory analysis of 5 U.S.C. 604.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Lists of Subjects in 19 CFR Part 24

Customs duties and inspection, Imports Accounting.

Amendments to the Regulations

Part 24, Customs Regulations (19 CFR Part 24), is amended by adding a new § 24.21 entitled "Administrative overhead charges" in the table of contents, and the regulations as set forth below.

Approved: October 1, 1984.

Williams von Raab

Commissioner of Customs.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

§ 24.21 Administrative overhead charges.

(a) *Reimbursable and overtime services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing reimbursable and overtime services for the benefit of such parties under §§ 24.17 and 24.16, respectively, of this part. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service.

(b) *Other services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing various services for the benefit of such parties. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service. The fees, whether billed or not, include, but are not limited to:

(1) Navigation fees for vessel services in § 4.98;

(2) Annual fee to operate, and fees to establish, alter, or relocate a warehouse facility in §19.5;

(3) Fee to establish container stations in § 19.40;

(4) Fee for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent in § 24.12(a)(3);

(5) Charge for storing merchandise in a Government-owned or rented building in § 24.12(c);

(6) Charge for the sale of in-bond and in-transit seals in § 24.13(f);

(7) Charge for the sale of Customs forms in § 24.14(b);

(8) Charge for preclearing aircraft in a foreign country in § 24.18;

(9) Fee for issuing a customhouse broker's license in § 111.12(a)(2);

(10) Fee for designating a carrier or freight forwarder as a carrier of Customs bonded merchandise in § 112.12(a);

(11) Fee for issuing a Customs bonded cartman's license in § 112.22(a)(2);

(12) Fee for recording of trademarks in § 133.3;

(13) Fee for renewing, or recording a change in name of owner, or of ownership of, a trademark in §§ 133.5(d), 133.6(b), 133.7(a)(3);

(14) Fee for recording of trade name in § 133.13(b);

(15) Fee for recording a copyright in § 133.33(b); and

(16) Fee for renewing, or recording a change in name of owner, or of ownership of, a copyright in §§ 133.35(b)(2), 133.36(b), 133.37(a)(3);

(c) *No administrative overhead charge.* No additional charge for administrative overhead costs discussed in paragraphs (a) and (b) of this section shall be collected if (1) imposition of such charge is precluded by law; (2) there is a formal accounting system for determining administrative overhead for a service, in which case that system shall be used for determining the cost of the charge for administrative overhead; or (3) the charge for administrative overhead for a service is specifically provided for elsewhere in this chapter.

(R.S. 251, as amended (19 U.S.C. 66), 46 Stat. 759 (19 U.S.C. 1624); 97 Stat. 1051 (31 U.S.C. 9701))

[FR Doc. 84-30712 Filed 11-21-84; 8:45 am]
BILLING CODE 4820-02-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Revisions of Rules Pertaining to Investigations of Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Final rules.

SUMMARY: These rules revise part 210 of the Commission's Rules of Practice and Procedure governing investigations under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. Part 210 covers investigations of unfair practices in import trade. These final rules reflect public comment on proposed rules published on May 10, 1984, 49 FR 19830. The changes consolidate the rules pertaining to unfair trade practices investigations and clarify details or practice before the Commission.

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., or Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523-0311 or (202) 523-0189, respectively.

SUPPLEMENTARY INFORMATION: The Commission is authorized under 19 U.S.C. 1335 to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. The Commission also derives authority for this rulemaking from the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, which authorizes the adoption of certain procedures in an adjudicative proceeding when an agency does not preside over the evidentiary hearing.

These amendments to the Commission's rules clarify procedures and conform the rules to practices that have developed under section 337. The Commission has also consolidated the rules pertaining to section 337 investigations in Part 210.

Analysis of Public Comments on Proposed Rules

The Commission received comments on the proposed rules from the ITC Trial Lawyers Association, the Delegation of the Commission of the European Communities, and three law firms. Generally, these parties commented favorably on the proposed rules and made recommendations concerning additional changes that they believed desirable.

The following is a summary and analysis of the comments received. The analysis explains why suggested changes were accepted or rejected.

Section 210.6 Confidential business information defined and identified.

The Commission received a suggestion from one law firm that the Commission adopt a definition of confidential information in section 337 investigations that differs from the definition applied under § 201.6 of its rules. Under § 201.6 and proposed rule § 210.6 the Commission would accord information confidential treatment if it meets either of two criteria. The first criterion is whether the disclosure of the submitted information is likely to impair the government's ability to obtain such information in the future. The second criterion is whether the information qualifies as a trade secret. The firm contends that the first criterion should be eliminated from rule § 210.6 because pre-trial discovery practice and the availability of compulsory process sufficiently protect the Commission's interest in securing information in a section 337 investigation. The firm notes that there is less reliance on voluntary compliance with requests to provide information in a section 337 investigation than in other types of Commission investigations.

With regard to the second criterion, the submitted information's status as a trade secret, the firm suggests that the Commission define the term trade secret more broadly than the definition used in connection with exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and that the Commission adopt a procedure for notifying submitters when their documents are the subject of a request for release. At that time, the submitter could demonstrate whether the information qualifies for confidential treatment under exemption 4.

The Commission does not believe that the suggested changes are warranted for several reasons. First, the Commission is to a large extent dependent on voluntary compliance with discovery requests. Although compulsory process is available in section 337 investigations, the strict time constraints on the discovery process limit the feasibility of resorting repeatedly to compulsory process. Moreover, in instances involving receipt of information from foreign respondents, voluntary compliance is the most expeditious means of developing a complete record.

The Commission has adopted a definition of business confidential information consistent with that in the Freedom of Information Act. A submitter of information must establish that the information qualifies for business confidential treatment when it is submitted to the Commission. Thus it is unnecessary for the Secretary to the Commission to redetermine the confidential status of the information each time the Commission receives a request for release of the information. The Commission's current procedure has allowed reasonable access to information while protecting confidential information. Interpretation of the term "trade secret" has not posed difficulties in prior Commission investigations and broadening the interpretation would require the Commission to redetermine the status of the information if it is requested under the Freedom of Information Act. Thus, the Commission has decided against changing its definition of business confidential information.

Section 210.10 Commencement of proceedings.

The Delegation of the Commission of the European Communities (EC) commented on rule § 210.10 and suggested that the Commission should require service of the complaint upon the governments of the proposed foreign

respondents when the complaint is filed with the Commission. This practice would conform to that in the Commission's countervailing duty investigations.

The Commission agrees that it is desirable to serve the complaint on the government of each foreign country represented by a respondent. Such service could aid in providing notice to the parties and in facilitating discovery in the foreign country. However, the Commission believes that the appropriate time for such service is immediately after institution of the investigation, rather than when the complaint is filed. Section 210.10 has accordingly been revised to provide for the filing of one copy of the complaint for each foreign country represented by a proposed respondent named in the complaint. Section 210.13 has been amended to provide for service by the Commission of the complaint and notice of investigation on the government of each foreign country represented by a respondent to the investigation.

Section 210.12 Institution of investigation.

The Commission received a comment from a firm requesting clarification of the Commission's intent in modifying this rule. In addition, this comment suggests that the Commission formally adopt the concept that institution of an investigation may be denied if the complaint fails to state a claim upon which relief may be granted. The comment suggests language similar to that in rule 12(b)(6) of the Federal Rules of Civil Procedure. The comment also suggests that the Commission should issue a written decision when it votes not to institute an investigation for failure to state a claim and that this decision should be a final decision which has precedential value and is appealable under section 337(c). The firm also contends that any discretionary institution policy must be codified to avoid denial of due process, uncertainty in the law, and possible reversal in the courts.

The Commission's proposed amendment to its rule on institution of investigations is intended to clarify the current practice of basing its institution decision on more than simply filing the proper papers and reciting the elements of a violation of section 337. Included among the reasons why the Commission may determine not to institute an investigation is failure to state a cause of action cognizable under section 337.

The Commission does not believe that any benefit would accrue from adopting a rule similar to rule 12(b)(6) of the Federal Rules of Civil Procedure. The Commission has exercised its discretion in the area of institution with considerable restraint. The decision on institution of a particular investigation is frequently limited to the facts peculiar to that case and thus the action is of limited precedential value. Moreover, complainant is notified by letter of the reasons for the Commission's decision not to institute an investigation and may file an amended complaint.

The same firm suggests that the time for deciding whether to institute an investigation after receipt of a complaint should be extended to 60 days. The present time of 30 days is allegedly insufficient time for foreign respondents to "react" to a complaint and results in denial of those respondents' due process rights. It is said that lack of sufficient time to participate in the pre-institution phase of the investigation may have led the Commission to institute unwarranted investigations. The comment contends that little prejudice would accrue to complainants by the addition of 30 days to the present pre-institution period. The comment also argues that cases where time is of the essence could be adequately addressed by the temporary relief rules.

This comment misperceives the purpose underlying the pre-institution investigation and ignores the purpose of the stringent time limits in a section 337 investigation. The pre-institution investigation is for the purpose of determining if the complaint states a cause of action that is cognizable under section 337 and if there is a likelihood that information may be developed during an investigation that could support a claim of a violation of section 337. This is not an adversarial factfinding process. Such a process is conducted before the administrative law judges (ALJs), where appropriate mechanisms for discovery and other procedural rights exist. In addition, a major purpose of section 337 investigations is to accord expeditious relief where warranted. Extension of the pre-institution phase of an investigation would be contrary to this purpose. Finally, the Commission disagrees with the assertion that the temporary relief rules could address situations where time is critical. The time constraints applicable to motions for temporary relief already place substantial burdens on the parties and the time in such cases is better spent in actual investigation under formal procedures rather than in an informal investigation.

Section 210.20 The complaint.

The Commission received several comments on the proposed changes to this rule. One firm commented that the proposed changes appear to be advantageous if interpreted to mean that the list of various injury indicia are exemplary and that complainant is not required to submit information on all of these indicia if such information is not relevant to complainant's theory of injury. The comment suggests that the Commission clarify the intended effect of this rule in the explanatory notes.

The Commission's proposed amendment of this rule was intended to force complainant to clarify its allegations concerning injury and to facilitate evaluation of those allegations. The list of injury indicia set forth in § 210.20(a)(8) is exemplary in that the indicia are relevant to traditional injury theories under section 337.

The Commission has decided *sua sponte* to require that complainants provide the Tariff Schedules of the United States (TSUS) item number of the imported products in the complaint. This change is found in § 210.20(a)(3). It has also decided to amend § 210.20(a)(9)(iv) to specify that complaints must disclose rejected foreign patent applications in the complaint.

The Commission believes that knowledge of the TSUS item number of the imported products will facilitate evaluation of the extent of importation of the involved article and will be useful to the U.S. Customs Service in the event an exclusion order is issued. The Commission also believes that explicitly including rejected foreign patent applications under § 210.20(a)(9)(iv) will facilitate discovery on patent issues. The Commission has accordingly amended the appropriate subsections of this rule.

Another firm suggested that the Commission limit the requirement in rule § 210.20(c) that three copies of each license agreement and four copies of each cited technical reference be filed with the complaint to instances when copies of such documents are not attached as exhibits to the complaint. Problems have not arisen in the past over the interpretation of this requirement. The requirement of three (or four) copies means total copies rather than three (or four) copies of the required documents with each copy of the complaint.

Section 210.21 The response.

One firm commented that the proposed amendment to this rule requiring respondents to plead affirmative defenses with specificity in the response to the complaint places too great a burden on foreign respondents. The evidence supporting affirmative defenses such as patent invalidity and patent misuse is developed during the course of an investigation. This firm asserts that the response time allows such issues to be noticed in the response and nothing more.

The Commission recognizes that some of the specific evidence supporting affirmative defenses such as patent misuse must be developed during the course of an investigation. Respondents, however, are expected to engage in a preliminary evaluation of the viability of such defenses prior to filing their response. More than mere notice pleading is required in a response. There must be some reason given in support of the assertion that a particular defense is viable. In order to clarify the Commission's position on this requirement, the Commission has amended the rule in question to state that affirmative defenses shall be pled with as much specificity as possible.

The EC's comment on this rule suggested that the 20-day time limit for responses to the notice of investigation places too great a burden on respondents. The comment contends that either the 20-day time limit for a response to the complaint should be extended by regulation and not left to the discretion of the ALJ or the requirements pertaining to the nature of the response should be changed.

The Commission disagrees with the EC's assertion that the response period is inadequate to allow respondents to fulfill the Commission's requirements. Foreign respondents receive 10 days additional mailing time in filing their responses. In addition, the Commission notes the ALJs' liberal policy in granting requests for extensions of time in which to file responses if good cause is shown for such an extension. The Commission believes that procedural matters such as granting extension of times for filings should be left to the discretion of the ALJ because of the need for flexibility in these matters. Moreover, the ALJ is better able to evaluate the specific needs of a given situation.

Section 210.24 Motions.

The EC suggested that the Commission's rules conform the time limit for response to a motion for temporary relief to that for a response to the complaint. The Commission notes that the time period for responding to the complaint is identical to that for responding to a temporary relief motion accompanying the complaint. For a temporary relief motion filed after institution of the investigation, the response period is 10 days. In that situation, the shorter response period is adequate because the respondent already has notice of the investigation and may already have responded to the complaint and notice of investigation. Moreover, temporary relief motions require expedited procedures throughout the proceeding.

Section 210.25 Default.

The Commission received several comments on its proposed rule on default. One firm suggested that in default cases where complainant would be satisfied with issuance of a cease and desist order or a limited exclusion order, the Commission should issue such orders without a full adjudicative hearing. This would allegedly save complainant and the Commission's staff considerable time and expense.

The Commission believes that is in the public interest to require complainants to establish a *prima facie* of violation of section 337 in default cases even when a general exclusion order is not sought. Such a requirement provides a sounder basis for any Commission remedial action in the form of an exclusion order or cease and desist order.

One firm commented that the Commission should expressly include in § 210.25 on default authority by the ALJ to remove the requirement that defaulting respondents be served with discovery materials.

The Commission believes that the provision in § 210.25(a) that failure to take specified actions may be deemed to result in a waiver of the right to be served with documents in an investigation and the concomitant provision in § 210.25(b) authorizing the ALJ to take appropriate action under paragraph (a) upon a finding of default provides authority for the suggested action. The suggested amendment is therefore unnecessary.

Section 210.30 General provisions governing discovery.

The Commission received several suggestion from a firm regarding additional changes to the general discovery rule. The firm suggested that the Commission add the language "or other property" to § 210.30(a) which lists permissible discovery methods. This addition would conform the rule to the language contained in § 210.33 and clarify the full scope of the rule.

The Commission agrees that this change will clarify the rule and avoid possible confusion. Section 210.30 has been amended accordingly.

The same firm also contends that rule § 210.30(c) is not sufficiently specific because it does not include a quantitative limitation on discovery. The comment suggests a limitation of 15 interrogatories, including subparts, and 20 depositions. The number of interrogatories and depositions could be increased upon leave of the ALJ for good cause shown.

The EC also raised the issue of abuse of discovery and suggests that the Commission should provide the ALJ with additional guidelines on limits for discovery and the use of penalties for failure to cooperate in discovery.

The Commission considered and rejected a formal quantitative limitation on interrogatories and depositions. The ALJs, in practice, often place limits upon the number of interrogatories and depositions that may be used by the parties. A formal limit would likely result in frequent motions for leave to take additional discovery. The matter is best left to the discretion of the ALJs.

Proposals for amending the rules to allow the ALJ to award attorney's fees for abuse of discovery are beyond the scope of the present rulemaking. Such proposals will be addressed in a notice of proposed rulemaking which the Commission expects to issue in the near future.

Section 210.31 Depositions.

One firm suggested that the Commission allow use of a deposition of a third party other than an expert witness, if the deponent is located more than 100 miles from the place of the hearing.

The Commission believes that the value of having live testimony before the fact finder outweighs the burden of traveling more than 100 miles.

Section 210.37 Protective orders.

The ITC Trial Lawyers Association suggested a detailed procedure for hearing complaints regarding violations of protective orders, and codification of the requirement that the party responsible for disclosure notify the supplier of the information of the disclosure. Both the association and one law firm provided the Commission with a suggested procedure for determining whether sanctions for protective order violations are appropriate and for determining which available sanction should be applied.

The comments suggested that the Commission add a new subsection to § 210.37 on "penalty procedures." This subsection would provide for a hearing under the Administrative Procedure Act including the right to present argument and evidence. The firm states that the purpose of the rule would be to provide procedural safeguards and limit the Commission's discretion in applying a penalty. The suggested procedure

provides for an evidentiary hearing before an ALJ with certification of a recommended finding to the Commission. The Commission would be required to formally consider all mitigating circumstances and steps taken to remedy the violation. In addition, the suggested rule provides that the sanction must be consistent with the gravity of the violation.

The firm suggests that the Commission's rule needs two qualifications to prevent harassment of attorneys for technical reasons and to insure adequate due process in the consideration of sanctions. The firm suggests that the amended rule clearly state that the sanctions in the rule are for intentional and substantial breaches of the protective order. The firm asserts that mandatory sanctions may be inappropriate where, for example, a person fails to mark a motion confidential, but does mark the specific information confidential and has not distributed the motion to the public. The comment suggests that the Commission insert the words "intentionally and substantially" into the rule.

The Commission agrees that some procedure is necessary for determining the necessity of sanctions for violations of protective orders. However, in prior investigations, there have been few instances of such violations. The extensive proceedings and the formal limits on the ALJ's and the Commission's discretion suggested in the comments are unduly restrictive. The procedure anticipates problems that have not arisen. Accordingly, the Commission has amended § 210.37 by adding a provision that upon receipt of a motion requesting sanctions for violation of a protective order or upon his motion, the ALJ shall determine whether a sanction is necessary and if so shall determine the appropriate sanction and issue an initial determination under § 210.53(c) of these rules. An initial determination will also be issued under § 210.53(c) if the ALJ determines that no sanction is necessary.

The Commission agrees that specifically providing for notification to the submitter of business confidential information of a violation of a protective order from the party that has revealed the information would codify current practice and would clarify the rule. Section 210.37 has been amended accordingly.

Section 210.51 Termination of investigation.

One firm disagreed with the Commission's amendment which requires a statement in place of an affidavit stating that there are no other agreements concerning the subject matter of the investigation. The firm believes that the affidavit has more moral suasion than a statement and the inconvenience associated with obtaining an affidavit is more than offset by public policy considerations.

The Commission believes that a statement that there are no other agreements concerning the subject matter of the investigation is sufficient to protect the public interest. Moreover, the burden of obtaining an affidavit in many instances outweighs any additional moral suasion possibly resulting from such a requirement.

Section 210.54 Petition for review.

One firm suggests that the Commission amend the rules to allow the prevailing party to file a petition for review on the issues on which it did not prevail in its reply to the losing party's petition.

The Commission has rejected this suggestion because it would require the Commission to extend the period for determining whether to review an initial determination to allow a response to the reply. Each party presumably knows those issues on which it disagrees with the initial determination and can request review on that basis. Filing a conditional petition for review is preferred to extending the time for Commission action on the petitions. Such an extension could potentially deprive the Commission of adequate time to review the initial determination.

One firm made repeated suggestions that the Commission adopt rules and language similar to that in the Federal Rules of Civil Procedure. The Commission has decided against making such changes because the proposed rules closely reflect practice before the Commission and maintain flexibility in the Commission's rule making process. Adoption of the Federal Rules could lessen that flexibility.

Finally, the ITC Trial Lawyers Association suggested that the Commission should appoint a standing advisory committee such as exists for the Federal Rules of Civil Procedure which would continuously review the rules. The Commission's current rulemaking procedure provides for public comment and the Commission and the ALJs are receptive to receiving suggested changes in Commission procedures. Changes in the rulemaking procedure are beyond the scope of the current amendments.

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

19 CFR Part 210 is revised to read as follows:

Subchapter C—Investigations of Unfair Practices in Import Trade

PART 210—ADJUDICATIVE PROCEDURES

Sec.
210.1 Applicability of part.
210.2 General policy.

Subpart A—General Provisions

210.4 Definitions.
210.5 Written submissions.
210.6 Confidential business information defined and identified.
210.7 Computation of time, additional hearings, postponements, continuances, and extensions of time.
210.8 Service of process and other documents.

Subpart B—Commencement of Proceedings

210.10 Commencement of proceedings.
210.11 Action of Commission upon receipt of complaint.
210.12 Institution of investigation.
210.13 Service of complaint and notice of investigation.

Subpart C—Pleadings and Motions

210.20 The complaint.
210.21 The response.
210.22 Amendments to pleadings and notice of investigation.
210.23 Supplemental submissions.
210.24 Motions.
210.25 Default.
210.26 Intervention.

Subpart D—Discovery and Compulsory Process

210.30 General provisions governing discovery.
210.31 Depositions.
210.32 Interrogatories.
210.33 Request for production of documents and things and entry upon land.
210.34 Request for admission.
210.35 Subpoenas.
210.36 Failure to make discovery; sanctions.
210.37 Protective orders.

Subpart E—Prehearing Conferences and Hearings

210.40 Prehearing conferences.
210.41 General provisions for hearings.
210.42 Evidence.
210.43 Record.
210.44 In camera treatment of confidential information.

Subpart F—Determinations and Actions Taken

210.50 Summary determinations.
210.51 Termination of investigation.
210.52 Proposed findings and conclusions.
210.53 Initial determination.
210.54 Petition for review.
210.55 Commission review on its own motion.
210.56 Review by Commission.
210.57 Implementation of Commission action.
210.58 Commission action, public interest factor, and bonding.
210.59 Period for concluding Commission investigation.

Subpart G—Appeals

210.60 Petition for reconsideration.
210.61 Disposition of petition for reconsideration.
210.70 Interlocutory appeals.
210.71 Appeals of final determination to the United States Court of Appeals for the Federal Circuit.

Authority: Secs. 333 and 335 of the Tariff Act of 1930, 46 Stat. 699; 19 U.S.C. 1333 and 72 Stat. 680; 19 U.S.C. 1335.

§ 210.1 Applicability of part.

The rules in this part govern procedure relating to proceedings under section 337 of the Tariff Act of 1930 (88 Stat. 2053; 19 U.S.C. 1337), and Pub. L. 710, July 2, 1940 (54 Stat. 724, 19 U.S.C. 1337a). These rules are authorized by sections 333 and 335 of the Tariff Act of 1930 (46 Stat. 699; 19 U.S.C. 1333 and 72 Stat. 680; 19 U.S.C. 1335).

§ 210.2 General policy.

It is the policy of the Commission that, to the extent practicable and consistent with requirements of law, such proceedings shall be conducted expeditiously. In the conduct of such proceedings, the administrative law judge and counsel or other representative for each party shall make every effort at each stage of the proceedings to avoid delay.

Subpart A—General Provisions

§ 210.4 Definitions.

As used in this part—

(a) "Complainant" means a person who has filed a complaint with the Commission under this part;

(b) "Party" means each complainant and respondent in the investigation, the Commission investigative attorney, and each person permitted to intervene pursuant to § 210.26;

(c) "Commission investigative attorney" means, for purposes of a particular proceeding under section 337 of the Tariff Act, the attorney(s) designated to engage in investigatory activities with respect to the proceeding, in his (or their) capacity as investigator in the proceeding;

(d) "Administrative law judge" means the person appointed under section 3105 of title 5 of the United States Code presiding over the taking of evidence in an investigation under this part;

(e) "Respondent" means any person named in a notice of investigation issued under this part as allegedly violating section 337 of the Tariff Act.

§ 210.5 Written submissions.

(a) *Caption; names of parties:* Every submission shall contain a caption setting forth the name of the Commission, the title of the investigation, the docket number or investigation number assigned to the proceeding, if any, and, in the case of a complaint and response, the names of all or the primary parties to the proceeding.

(b) Submissions shall be filed in accordance with paragraph (c) of this section and § 201.8 of this chapter, paragraphs (a), (b), (c), and (e).

(c) *Number of copies.* Except as otherwise provided for in this part or by the Commission, the original and fourteen (14) true copies of each submission shall be filed with the Commission. While an investigation is before the presiding administrative law judge, the original and six (6) true copies of each submission shall be filed with the Commission Secretary.

(d) Service of submissions. Except as otherwise provided for in this part, or by the Commission or the administrative law judge, each submission filed by a party with the Commission shall be served on all other parties and in a manner provided for in § 201.16 of this chapter.

§ 210.6 Confidential business information defined and identified.

Confidential business information shall be defined in accordance with § 201.6(a) of this chapter and shall be identified and submitted in accordance with § 201.6(c) of this chapter.

§ 210.7 Computation of time, additional hearings, postponements, continuances, and extensions of time.

Unless otherwise ordered by the Commission or the administrative law judge, the computation of time, the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with § 201.14 of this chapter.

§ 210.8 Service of process and other documents.

Unless otherwise ordered by the Commission or the administrative law judge, the service of process and other documents shall be in accordance with § 201.16 of this chapter.

Subpart B—Commencement of Proceedings

§ 210.10 Commencement of proceedings.

(a) *Upon receipt of complaint.* A proceeding is commenced by filing with the Secretary to the Commission the original and fourteen (14) true copies of a complaint, plus one copy for each person named in the complaint as violating section 337 of the Tariff Act and one copy for the government of each foreign country of any person or persons so named.

(b) *Upon the initiative of the Commission.* The Commission may upon its initiative commence proceedings based upon any alleged violation of section 337 of the Tariff Act.

§ 210.11 Action of Commission upon receipt of complaint.

Upon receipt of a complaint filed pursuant to § 201.8 of this chapter and §§ 210.5, 210.10, and 210.20, the Commission shall take the following actions:

(a) *Examination of complaint.* The Commission shall examine the complaint for sufficiency and compliance with the applicable rules of this chapter.

(b) *Informal investigatory activity.* The Commission shall identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefor, and give attention to other preliminary matters.

§ 210.12 Institution of investigation.

Within thirty (30) days after receipt of a complaint or, in exceptional circumstances, as soon after such period as possible, the Commission shall determine whether the complaint is properly filed and, if so, shall vote on whether to institute an investigation. The complaint may be withdrawn as a matter of right before the Commission votes to institute an investigation. The investigation shall be instituted by notice published in the **Federal Register**. Such notice will define the scope of the investigation. If the Commission determines not to institute an investigation, the complaint shall be dismissed and the Commission shall notify the complainant in writing of its action with the reason(s) therefor.

§ 210.13 Service of complaint and notice of investigation.

Each respondent, including later named respondents, shall be served by the Commission with a copy of the complaint and any accompanying motion for temporary relief, and notice instituting the investigation upon institution of the investigation or as soon as possible after such respondents are named. The Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission considers appropriate, shall also be served with a copy of the complaint and any

accompanying motion for temporary relief, and notice instituting the investigation upon institution of the investigation. The government of each foreign country represented by a respondent shall also be served with a copy of the complaint and any accompanying motion for temporary relief, and notice instituting the investigation upon institution of the investigation. Service shall be effected upon institution of the investigation or as soon as possible after respondents are named.

Subpart C—Pleadings and Motions

§ 210.20 The complaint.

(a) *Contents of complaint.* In addition to conforming with the requirements of § 201.8 of this chapter and §§ 210.5(a), 210.5(b), and 210.5(c), the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name, address, and phone number of the complainant and any such officer, attorney, or agent given on the first page of the complaint;

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts;

(3) Describe specific instances of alleged unlawful importations or sales, including the Tariff Schedules of the United States item number of the articles allegedly imported;

(4) State, the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act;

(5) Include a statement as to whether or not the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, and, if so, include a brief summary of such litigation;

(6) Include a description of the domestic industry affected, including the relevant operations of any licensees, when an element of the complaint is the effect or tendency to destroy or substantially injure, or to prevent the establishment of, such a domestic industry, and a description of the trade and commerce affected when an element of the complaint is the effect or tendency to restrain or monopolize such trade and commere;

(7) Include a description of the complainant's business and his interests in the trade and commerce or domestic industry affected, and for an intellectual property-based complaint, include a showing that at least one complainant is the owner or exclusive licensee of the subject property;

(8) State a specific theory underlying the general allegation(s) regarding an effect or tendency to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to have the effect or tendency to restrain or monopolize trade and commerce in the United States. Include a statement of facts indicating the effect or tendency to substantially injure. Such a statement would normally include the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other data pertinent to the subject matter of the complaint which would support the allegation that—

(i) The effect or tendency of the importation or sales in question is to destroy or substantially injure an efficiently and economically operated industry in the United States; or

(ii) The effect or tendency of the importations or sales in question is to prevent the establishment of an efficiently and economically operated industry in the United States; or

(iii) The effect or tendency of the importations or sales in question is to restrain or monopolize trade and commerce in the United States;

(9) Include, when a complaint is based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letters patent—

(i) The identification of each U.S. letters patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. letters patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. letters patent;

(iv) When known, a list of each foreign patent, each foreign patent application (not already issued as a patent), and each foreign patent application that has been denied corresponding to each involved U.S. letters patent, with an indication of the prosecution status of each such foreign patent application;

(v) A nontechnical description of the invention of each involved U.S. letters patent;

(vi) A reference to the specific claims in each involved U.S. letters patent which allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act, or the process under which such article was produced;

(vii) A showing of any domestic production of the involved article or of any domestic utilization of the involved process allegedly covered by the above specific claims of each involved U.S. letters patent, and a showing that each person named as violating section 337 of the Tariff Act is importing and/or selling the article covered by, or produced under the involved process covered by, the above specific claims of each involved U.S. letters patent. The complainant shall make such showing by appropriate allegations, and, when practicable, by a chart which applies an exemplary claim of each involved U.S. letters patent to a representative involved domestic article or process and to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced; and

(viii) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act, or of the process utilized in producing such article, and, when a chart is furnished under paragraph (a)(9)(vii) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(10) Contain a request for relief sought. When the complaint contains a request for temporary relief pursuant to 19 U.S.C. 1337 (e) or (f), a separate motion for temporary relief shall accompany the complaint in accordance with § 210.24(e).

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, when practical and possible, the involved articles shall be submitted as exhibits—both the involved domestic article and that of each person named as violating section 337 of the Tariff Act.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letters patent the following:

(1) Three (3) copies of each license agreement arising out of each involved U.S. letters patent, except that, to the extent that a standard license agreement is used, three (3) copies of the standard license agreement and a list of the licensees operating under such agreement will suffice;

(2) One (1) certified copy of the Patent and Trademark Office file wrapper for each involved U.S. letters patent, plus three (3) additional copies thereof; and

(3) Four (4) copies of each patent and applicable pages of each technical reference mentioned in the file wrapper of each involved U.S. letters patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a federally registered trademark one (1) certified copy of the trademark registration.

(e) *Additional material to accompany each complaint based on a nonfederally registered trademark.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a nonfederally registered trademark the following:

(1) Information concerning prior attempts to register the alleged trademark.

(2) Information on the status of current attempts to register the alleged trademark.

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one (1) certified copy of the copyright registration.

§ 210.21 The response.

(a) *Time for response.* Respondents shall have twenty (20) days (unless otherwise ordered in the notice of investigation or by the administrative law judge) from the date of service of the complaint and notice of investigation within which to respond, in writing, to the complaint and the notice of investigation.

(b) *Contents of the response.* In addition to conforming to the requirements of § 201.8 of this chapter and § 210.5, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent, with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response. Each respondent shall respond to each allegation in the complaint and in the notice of investigation, and shall set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission, denial, or explanation of each fact alleged in the complaint and notice, or if the respondent is without knowledge of any such fact, a statement to that effect. Allegations of a complaint and notice not thus answered may be deemed to have been admitted. Each response shall include, when available, statistical data on the quantity and value of imports of the involved article in addition to a statement concerning the respondent's capacity to produce the subject article and the relative significance of the United States market to its operations. Affirmative defenses shall be pleaded with as much specificity as possible in the response. When the alleged unfair methods of competition and unfair acts are based upon the claims of a valid U.S. letters patent, the respondent is encouraged to make the following showing, when appropriate:

(1) If it is asserted in defense that the article imported or sold by respondent is not covered by, or produced under a process covered by, the claims of each involved U.S. letters patent, a showing of such noncoverage for each involved claim in each U.S. letters patent in question shall be made, which showing may be made by appropriate allegations and, when practicable, by a chart which applies the involved claims of each U.S. letters patent in question to a representative involved imported article of respondent or to the process under which such article was produced;

(2) Drawings, photographs, or other visual representations of the involved imported article of respondent or the process utilized in producing such article, and, when a chart is furnished under paragraph (b)(1) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(3) If the claims of any involved U.S. letters patent are asserted to be invalid or unenforceable, the basis for such assertion, including, when prior art is relied on, a showing of how the prior art renders each claim invalid or unenforceable, and a copy of such prior art.

(c) *Submission of article as exhibit.* At the time the response is filed, when practical and possible, the involved imported article shall be submitted as an exhibit.

§ 210.22 Amendments to pleadings and notice of investigation.

(a) *Amendment of complaint.* The complaint may be amended at any time prior to the institution of the investigation, and, after institution, may be amended for good cause shown upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation by a change in the scope of the investigation which results from such amendment.

(b) *By leave.* If and whenever disposition of the issues in an investigation on the merits will be facilitated, the administrative law judge, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to an investigation, may allow appropriate amendments to pleadings: Provided, however, that a motion for amendment of a complaint after the institution of an investigation shall be made to the administrative law judge, who shall grant the motion by filing with the Commission an initial determination, or shall deny the motion by issuing an order directing denial; the motion shall be decided according to the standards of paragraph (a) of this section. A motion for amendment of a notice of investigation shall be dealt with as provided for with respect to motions for amendment of a complaint.

(c) *Conformance to evidence.* When issues not raised by the pleadings or notice of investigation, but reasonably within the scope of the pleadings and notice, are considered during the taking of evidence by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings and notice. Such amendments of the pleadings and notice as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time, and shall be effective with respect to all parties who have expressly or impliedly or consented.

§ 210.23 Supplemental submissions.

The administrative law judge may, upon reasonable notice and such terms as are just, permit service of a supplemental submission setting forth transactions, occurrences, or events which have taken place since the date of the submissions sought to be supplemented and which are relevent to any of the issues involved.

§ 210.24 Motions.

(a) *Presentation and disposition.* (1) During the period between the institution of an investigation and the

assignment of the investigation to a presiding administrative law judge, all motions shall be addressed to the Chief Administrative Law Judge. During the time an investigation is before an administrative law judge, all motions therein shall be addressed to the administrative law judge.

(2) When an investigation is before the Commission, all motions shall be addressed to the Chairman of the Commission. A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent. All written motions shall be filed with the Commission Secretary and served upon each party.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses to motions.* Within ten (10) days after service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution the proposed respondent, shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Motions for extensions.* As a matter of discretion, the administrative law judge or the Commission may waive the requirements of this section as to motions for extension of time, and may rule upon such motions, ex parte.

(e) *Motion for temporary relief.* Requests for temporary relief pursuant to 19 U.S.C. 1337 (e) or (f) shall be made through a motion under § 210.24(e) (1) or (2).

(1) *Motion accompanying complaint.* A complaint requesting temporary relief pursuant to § 210.20(a)(10) shall be accompanied by a motion which sets forth complainant's request for temporary relief. The motion shall contain a detailed statement of specific facts bearing on:

(i) Complainant's probability of success on the merits;

(ii) Immediate and substantial harm to the domestic industry in the absence of the requested temporary relief;

(iii) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(iv) The effect, if any, that the issuance of the requested temporary relief would have on the public interest. The motion shall contain in addition a memorandum of points and authorities in support of the motion and affidavits executed by persons with knowledge of the facts specified in the motion. A motion for temporary relief accompanying a complaint shall be deemed filed on the date that the Commission institutes an investigation and shall be served with the complaint and notice of investigation in accordance with § 210.13. A motion for temporary relief accompanying a complaint shall be forwarded to the administrative law judge for decision in the form of an initial determination to be issued pursuant to § 210.53(b). A motion for temporary relief may be ruled upon without a hearing by the administrative law judge in accordance with § 210.50 and denied when the motion is not in substantial compliance with the requirements of this section.

(2) *Motions filed after institution of the investigation.* A motion for temporary relief may be filed after the institution of an investigation by the Commission. Such a motion shall contain a statement of specific facts, memorandum of points and authorities, and affidavits as required in § 210.24(e)(1), and a showing that extraordinary changed circumstances exist warranting temporary relief and that the moving party was not and with due diligence could not have been aware of the extraordinary changed circumstances at the time the complaint was filed.

(3) *Response to motion for temporary relief.* Any party may file a response to a motion for temporary relief. Responses shall be filed within twenty (20) days after the service of a motion accompanying the complaint and ten (10) days after service of a motion filed after the institution of an investigation, unless otherwise ordered by the adminstrative law judge. The response shall contain:

(i) A statement which sets forth with particularity any objection to the motion for temporary relief;

(ii) A statement which sets forth with specificity facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm, if any, to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that the issuance of the requested temporary relief would have on the public interest;

(iii) A memorandum of points and authorities in opposition to the motion;

(iv) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response.

§ 210.25 Default.

(a) *Definition of default.* Failure of a respondent to take actions including but not limited to the following: File a response to the complaint and notice pursuant to § 210.21 within the time provided, respond to a motion for summary determination, respond to a motion which materially alters the scope of the notice of investigation, or appear at a hearing before the administrative law judge on the issue of violation of section 337, may be deemed to constitute a waiver of the respondent's right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

(b) *Procedure for determining default.* If a respondent has failed to respond or appear as enumerated in paragraph (a) of this section, the administrative law judge upon motion or his own initiative shall order such respondent to show cause why it should not be found in default. If the respondent fails to show cause why it should not be found in default, the administrative law judge may make any orders appropriate to paragraph (a) of this section.

(c) Relief against a respondent in default. The Commission shall issue relief against a respondent found to be in default if:

(1) The record developed by the administrative law judge establishes a prima facie case of violation of section 337 or reason to believe there is a violation of section 337;

(2) A remedy exists which is appropriate for the violation found to exist; and

(3) The public interest as defined in 19 U.S.C. 1337 (e) and (f) does not preclude such relief.

In their consideration of whether a prima facie case has been presented, the administrative law judge and the Commission may draw appropriate adverse inferences as provided in § 210.36 against a respondent in default with respect to those issues for which complainant has made a good faith but unsuccessful effort to obtain evidence.

§ 210.26 Intervention.

Any person desiring to intervene in an investigation under this part shall make written application in the form of a motion setting forth a sufficient basis therefor. Such application shall have attached to it a certificate showing service thereof upon each party to the investigation in accordance with the provisions of § 201.16 of this chapter. A similar certificate shall be attached to the answer filed by any party with respect to the application showing service of such answer upon the applicant and all other parties. The Commission, or the administrative law judge by initial determination, may permit the intervention of such person to such extent and upon such terms as may be deemed proper under the circumstances.

Subpart D—Discovery and Compulsory Process

§ 210.30 General provisions governing discovery.

(a) *Discovery methods.* The parties to an investigation may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; interrogatories; production of documents or things for inspection and other purposes; requests for admissions; and entry upon land or other property.

(b) *Scope of discovery.* Unless otherwise ordered by the administrative law judge, a party may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearings if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Limitations on discovery.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in § 210.53 relating to initial determinations of whether there is reason to believe there is, or whether there is, a violation of section 337 of the Tariff Act.

(d) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement his response with respect to any question directly addressed to—

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty to seasonably amend a prior response if he obtains information upon the basis of which—

(i) He knows that the response was incorrect when made; or

(ii) He knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

§ 210.31 Depositions.

(a) *When depositions may be taken.* After the date of publication in the **Federal Register** of the notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. Leave of the administrative law judge must be obtained only if the complainant seeks to take a deposition prior to the expiration of twenty (20) days after the date of service of the complaint and notice of investigation.

(b) *Persons before whom depositions may be taken.* Depositions may be taken before a person having power to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *Notice of examination.* A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation of not less than ten (10) days if the deposition is to be taken within the United States, and not less than fifteen (15) days if the deposition is to be taken elsewhere. The administrative law judge may designate a shorter or longer time. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A notice may provide for the taking of testimony by telephone, but the administrative law judge may, on motion of any party, require that the deposition be taken in the presence of the deponent. The parties may stipulate in writing, or the administrative law judge may upon motion order, that the testimony at a deposition be recorded by other than stenographic means. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(d) *Taking of deposition.* Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. Evidence objected to shall be taken subject to the objections, except that privileged communications and subject matter need not be disclosed. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, after which the deposition shall be subscribed by the deponent (unless the parties by stipulation waive signing or the deponent is ill or cannot be found or refuses to sign) and certified by the person before whom the deposition was taken. If the deposition is not subscribed by the deponent, the person administering the oath shall state on the record such fact and the reasons therefor. When a deposition is recorded by stenographic means, the stenographer shall certify on the transcript that the witness was sworn in the stenographer's presence and that the transcript is a true record of the testimony of the witness. When a deposition is recorded by other than stenographic means and is thereafter transcribed, the person transcribing it shall certify that the person heard the witness sworn on the recording and that the transcript is a correct writing of the recording. Thereafter, that person shall forward one (1) copy to each party who was present or represented at the taking of the deposition.

(e) *Depositions of nonparty officers or employees of the Commission or of other Government agencies.* A party desiring to take the deposition of an officer or employee of the Commission other than the Commission investigative attorney, or of an officer or employee of another Government agency, or to obtain documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall proceed by written motion to the administrative law judge for leave to apply for a subpoena under § 210.35(c). Such a motion shall be granted only upon a showing that the information expected to be obtained thereby is within the scope of discovery permitted by § 210.30(b) and cannot be obtained without undue hardship by alternative means.

(f) *Filing of deposition.* The party taking the deposition shall file one (1) copy thereof with the Commission investigative attorney, and shall give prompt notice of such filing to all other parties.

(g) *Admissibility of depositions.* The fact that a deposition is taken and filed with the Commission investigative attorney as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the investigation. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such investigation upon which a determination may be based. Objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(h) *Use of depositions.* A deposition may be used as evidence against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any desposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness.

(2) The deposition of a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the administrative law judge finds—

(i) That the witness is dead; or

(ii) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the oral testimony of witnesses at a hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

§ 210.32 Interrogatories.

(a) *Scope; use at hearing.* Any party may serve upon any other party written interrogatories to be answered by the party served. Interrogatories may relate to any matters which can be inquired into under § 210.30(b), and the answers may be used to the extent permitted by the rules of evidence.

(b) *Procedure.* (1) Interrogatories may be served upon any party after the date of publication in the **Federal Register** of the notice of investigation.

(2) Parties answering interrogatories shall repeat the interrogatories being answered immediately preceding the answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within ten (10) days after the service of the interrogatories. The administrative law judge may allow a shorter or longer time. The party submitting the interrogatories may move for an order under § 210.36(a) with respect to any objection to or other failure to answer an interrogatory.

(3) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or a later time.

(c) *Option to produce records.* When the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specifications provided shall include sufficient detail to permit the interrogating party to identify readily the documents from which the answer may be ascertained.

§ 210.33 Request for production of documents and things and entry upon land.

(a) *Scope.* Any party may serve on any other party a request: (1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 210.30(b).

(b) *Procedure.* (1) The request may be served upon any party after the date of publication in the **Federal Register** of the notice of investigation. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within ten (10) days after the service of the request. The administrative law judge may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under § 210.36(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

(c) *Persons not parties.* This rule does not preclude issuance of an order against a person not a party to permit entry upon land.

§ 210.34 Request for admission.

(a) *Form, content, and service of request for admission.* Any party may serve on any other party a written request for admission of the truth of any matters relevant to the investigation and set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter as to which an admission is requested shall be separately set forth. The request may be served upon a party whose complaint is the basis for the investigation after the date of publication in the **Federal Register** of the notice of investigation. The request may be served upon any other party at any time twenty (20) days after the date of service of the complaint and notice of investigation, unless leave of the administration law judge is obtained to serve the request at an earlier date.

(b) *Answers and objections to requests for admissions.* A party answering a request for admission shall repeat the request for admission immediately preceding his answer. The matter may be deemed admitted unless, within ten (10) days after service of the request, or within such shorter or longer time as the administrative law judge may allow, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter as to which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known to, or readily obtainable by him, is insufficient to enable him to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request on that ground alone; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) *Sufficiency of answers.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this part.

(d) *Effect of admissions; withdrawal or amendment of admission.* Any matter admitted under this rule may be conclusively established unless the administrative law judge on motion permits withdrawal "or amendment" of the admission. The administrative law judge may permit withdrawal or amendment when the presentation of the issues of the investigation will be subserved thereby and the party who obtained the admission fails to satisfy the administrative law judge that withdrawal or amendment will prejudice him in maintaining his position on the issues of the investigation. Any admission made by a party under this rule is for the purpose of the pending investigation only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

§ 210.35 Subpoenas.

(a) *Application for issuance of a subpoena—(1) Subpoena ad testificandum.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge.

(2) *Subpoena duces tecum.* An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) *Use of subpoena for discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

(c) *Application for subpoenas for nonparty Commission records or personnel or for records or personnel of other Government agencies—(1) Procedure.* An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Commission, or requiring the appearance of an official or employee of the Commission (other than the Commission investigative attorney), or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship by alternative means.

(2) *Ruling.* Such applications shall be ruled upon by the administrative law judge. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) *Motion to limit or quash.* Any motion to limit or quash a subpoena shall be filed within ten (10) days after service thereof, or within such other time as the administrative law judge may allow.

(e) *Ex parte rulings on applications for subpoenas.* Applications for the issuance of subpoenas pursuant to the

provisions of this section may be made ex parte, and, if so made, such applications and rulings thereon shall remain ex parte unless otherwise ordered by the administrative law judge.

§ 210.36 Failure to make discovery; sanctions.

(a) *Motion for order compelling discovery.* A party may apply to the administrative law judge for an order compelling discovery, upon reasonable notice to other parties and all persons affected thereby.

(b) *Failure to comply with order compelling discovery.* If a party or an officer or agent of a party fails to comply with an order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena, the administrative law judge, for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite failure to comply, may take such action in regard thereto as is just, including, but not limited to, the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party.

(2) Rule that for the purposes of the investigation the matter or matters concerning the order or subpoena issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or agent, or documents, or other material, in support of his position in the investigation;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown; and

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken or rule by initial determination that a determination in the investigation be rendered against the party, or both. Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the initial determination of the administrative law judge. It shall be the duty of the parties to seek, and that of the administrative law judge's, to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If in the administrative law judge's opinion such relief would not be sufficient, the administrative law judge shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

§ 210.37 Protective orders.

(a) *Issuance of protective order.* Upon motion by a party or by the person from whom discovery is sought or by the administrative law judge on his own initiative, and for good cause shown, the administrative law judge may make any order which may appear necessary and appropriate for the protection of the public interest or which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the administrative law judge;

(6) That a deposition, after being sealed, be opened only by order of the Commission or the administrative law judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or the administrative law judge. If the motion for a protective order is denied, in whole or in part, the Commission or the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(b) *Unauthorized disclosure of information.* If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further disclosure of such information by the party or the recipient of such information.

(c) *Violation of protective order.* Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined by the Commission or the administrative law judge to have violated the terms of the protective order may be subject to one or more of the following penalties:

(1) An official reprimand by the Commission;

(2) Disqualification from or limitation of further participation in a pending investigation;

(3) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;

(4) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction where the individual is licensed to practice;

(5) Sanctions as enumerated in § 210.36, or such other action as may be appropriate.

Such sanctions may be imposed upon the filing of a motion by a party or upon the administrative law judge's own motion. The administrative law judge shall allow the parties to make written submissions and if warranted present oral argument. The administrative law judge shall grant or deny a motion for sanctions by filing with the Commission an initial determination pursuant to § 210.53(c).

Subpart E—Prehearing Conferences and Hearings

§ 210.40 Prehearing conferences.

(a) *When appropriate.* The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with him for one or more conferences to consider any or all of the following:

(1) Simplification and clarification of the issues;

(2) Scope of the hearing;

(3) Necessity or desirability of amendments to pleadings, subject, however, to the provisions of § 210.22;

(4) Stipulations and admissions of either fact or the content and authenticity of documents;

(5) Expedition in the discovery and presentation of evidence, including, but not limited to, restriction of the number

of expert, economic, or technical witnesses; and

(6) Such other matters as may aid in the orderly and expeditious disposition of the investigation, including disclosure of the names of witnesses and the exchange of documents or other physical exhibits which will be introduced in evidence in the course of the hearing.

(b) *Subpoenas.* Prehearing conferences may be convened for the purpose of accepting returns on subpoenas duces tecum issued pursuant to the provisions of §210.35(a)(2).

(c) *Reporting.* In the discretion of the administrative law judge, prehearing conferences may or may not be stenographically reported and may or may not be public.

(d) *Order.* The administrative law judge may enter in the record an order which recites the results of the conference. Such order shall include the administrative law judge's rulings upon matters considered at the conference, together with appropriate direction to the parties. The administrative law judge's order shall control the subsequent course of the hearing, unless modified to prevent manifest injustice.

§ 210.41 General provisions for hearings.

(a) *Purpose of hearings.* Unless otherwise ordered by the Commission: (1) An opportunity for a hearing shall be provided in each investigation under section 337 of the Tariff Act to take evidence and hear argument for the purpose of determining whether there is a violation of section 337 of the Tariff Act.

(2) Except as provided under § 210.24(e)(1), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act.

(b) *Public hearings.* All hearings in investigations under this part shall be public unless otherwise ordered by the administrative law judge.

(c) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the administrative law judge.

(d) *Rights of the parties.* Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(e) *Presiding official.* An administrative law judge shall preside over each hearing unless the Commission shall otherwise order.

§ 210.42 Evidence.

(a) *Burden of proof.* The proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable.

(c) *Information obtained in investigations.* Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by the Commission investigative attorney when necessary in connection with investigations and may be offered in evidence by the Commission investigative attorney.

(d) *Official notice.* When any decision of the administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(e) *Objections.* Objections to evidence shall be made in timely fashion and shall briefly state the grounds relied upon. Rulings on all objections shall appear in the record.

(f) *Exceptions.* Formal exception to an adverse ruling is not required.

(g) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of what he expects to prove by the answer of the witness, or the administrative law judge may in his discretion receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained with the record so as to be available for consideration by any reviewing authority.

§ 210.43 Record.

(a) *Definition of the record.* The record shall consist of all pleadings, the notice of investigation, motions and responses, and other documents and things properly filed with the Secretary in accordance with § 210.5(b), in addition to all orders, notices, and initial determinations of the administrative law judge, orders and notices of the Commission, hearing and conference transcripts, evidence admitted into the record, and any other items certified into the record by the administrative law judge or the Commission.

(b) *Reporting and transcription.* Hearings shall be reported and transcribed by the official reporter of the Commission under the supervision of the administrative law judge, and the transcript shall be a part of the record.

(c) *Corrections.* Corrections of the transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections ordered by the administrative law judge or agreed to in a written stipulation signed by all counsel and parties not represented by counsel and approved by the administrative law judge shall be included in the record, and such stipulations, except to the extent that they are capricious or without substance, shall be approved by the administrative law judge. Corrections shall not be ordered by the administrative law judge except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the official reporter by furnishing substitute typed pages, under the usual certificate of the reporter, for insertion in the transcript. The original uncorrected pages shall be retained in the files of the Commission.

(d) *Certification of record.* The record shall be certified to the Commission by the administrative law judge upon his filing of an initial determination or at such earlier time as the Commission may order.

§ 210.44 In camera treatment of confidential information.

(a) *Definition.* Except as hereinafter provided and consistent with § 210.37 of this part, documents and testimony made subject to in camera orders are not made a part of the public record, but are kept confidential in an in camera record, and only counsel before the Commission, authorized Commission personnel, other Government personnel authorized by the Commission, and court personnel concerned with judicial review shall have access thereto. The right of the administrative law judge, the Commission, and reviewing courts to disclose in camera data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* The administrative law judge shall have authority to order documents or oral testimony offered in evidence, whether admitted or rejected, to be placed in camera.

(c) *Part of confidential record.* In camera documents and testimony shall constitute a part of the confidential record of the Commission.

(d) *References to in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall

make an attempt in good faith to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of in camera data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "Business Confidential", which shall be placed in camera and become a part of the confidential record.

(e) *Motions to declassify.* Any party may move to declassify confidential documents. All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the Chief Administrative Law Judge or such administrative law judge as he may designate.

Subpart F—Determinations and Actions Taken

§ 210.50 Summary determinations.

(a) *Motions for summary determinations.* Any party may move with any necessary supporting affidavits for a summary determination in his favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after twenty (20) days following the date of service of the complaint and notice instituting the investigation, and any other party, or a respondent, may so move at any time after the date of publication in the **Federal Register** of the notice of investigation. Any such motion by any party, however, must be filed at least thirty (30) days before the date fixed for any hearing provided for in § 210.41.

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may, within ten (10) days after service of the motion, file opposing affidavits. The administrative law judge may in his discretion or may at the request of any party set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be rendered if the pleadings and any depositions, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

(c) *Affidavits.* Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The administrative law judge may permit affidavits to be supplemented or opposed by depositions or further affidavits. When a motion for summary determination is made and supported as provided in this rule, a party opposing the motion may not rest upon mere allegations or denials in his pleading; his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of fact for hearing. If no such response is filed, a summary determination, if appropriate, shall be rendered.

(d) *Refusal of application for summary determination; continuances and other orders.* Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present facts essential to justify his opposition, the administrative law judge may refuse the application for summary determination or may order a continuance to permit affidavits to be obtained or depositions or other discovery to be had or make such other order as is appropriate, and a ruling to that effect shall be made a matter of record.

(e) *Order establishing facts.* If on motion under this rule a summary determination is not rendered upon all the allegations or for all the relief asked and a hearing is necessary, the administrative law judge shall make an order specifying the facts that appear without substantial controversy and directing further proceedings in the investigation. The facts so specified shall be deemed established.

(f) *Order of summary determination.* An order of summary determination shall constitute an initial determination of the administrative law judge under § 210.53 of this part.

§ 210.51 Termination of investigation.

(a) *Motions for termination.* Any party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents.

(b) *Settlement by licensing or other agreement.* (1) An investigation before the Commission may be terminated as provided in paragraph (a) of this section on the basis of a licensing or other agreement entered into between the complainant (all of the complainants if there is more than one) and one or more of the respondents. A motion for termination by such parties shall contain copies of the licensing or other agreement and any agreements supplemental thereto and a statement that there are no other agreements, written oral, expressed or implied, between such parties concerning the subject matter of the investigation. If the licensing or other agreement contains confidential business information within the meaning of section 201.6 of the Commission's rules, a copy of the agreement with such information deleted shall accompany the motion.

(2) The motion, licensing or other agreement and any agreements supplemental thereto, shall be certified by the administrative law judge to the Commission with an initial determination regarding the motion for termination. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents. The Commission shall promptly publish a notice in the **Federal Register** stating that an initial determination has been received terminating the respondent or respondents in question on the basis of a licensing or other agreement, that nonconfidential versions of the initial determination and the agreement are available for inspection in the Office of the Secretary, and that interested persons may submit written comments concerning termination of the respondents in question within ten (10) days of the date of publication of the notice in the **Federal Register.** An order of termination based upon such licensing or other agreement shall not constitute a determination as to violation of section 337 of the Tariff Act.

(c) *Consent order settlement.* An investigation before the Commission may be terminated as provided in paragraph (a) of this section on the basis of a consent order settlement under § 211.20(b) of this chapter. An order of termination based upon such a settlement shall not constitute a determination as to violation of section 337 of the Tariff Act.

(d) *Effect of termination.* Except as provided in paragraphs (b) and (c) of this section, an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.56(c), and an order of termination issued by the administrative law judge shall constitute an initial determination under § 210.53.

§ 210.52 Proposed findings and conclusions.

At the time a motion for summary determination under § 210.50(a) or a motion for termination under § 210.51(a) is made, or when it is found that a party is in default under § 210.25, or at the close of the reception of evidence in any hearing held pursuant to this part or within a reasonable time thereafter fixed by the administrative law judge, any party may file proposed findings of fact and conclusions of law, together with reasons therefor and, when appropriate, briefs in support thereof with the administrative law judge for his consideration. Such proposals shall be in writing, shall be served upon all parties in accordance with § 210.8, and shall contain adequate references to the record and authorities relied on.

§ 210.53 Initial determination.

(a) *On issues concerning permanent relief.* Except as may otherwise be ordered by the Commission, within nine (9) months, or within fourteen (14) months in a more complicated case, of the date of publication in the **Federal Register** of the notice of investigation, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether there is a violation of section 337 of the Tariff Act.

(b) *On issues concerning temporary relief.* Except as may be otherwise ordered by the Commission, within four (4) months of the date of publication in the **Federal Register** of the notice of investigation, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether there is reason to believe there is a violation of section 337 of the Tariff Act.

(c) *On motions for summary determination, termination, finding of default, intervention, amendment to complaint or notice, more complicated designation, suspension, or sanctions for violation of a protective order.* Following the filing of a motion for summary determination pursuant to § 210.50, motion for termination pursuant to § 210.51, motion for a finding of default pursuant to § 210.25, a motion for intervention pursuant to § 210.26, motion to amend the complaint or notice of investigation pursuant to § 210.22, motion to designate the investigation as "more complicated" pursuant to § 210.59, or motion to suspend the investigation pursuant to § 210.58, the administrative law judge shall grant such motions by filing with the Commission an initial determination, or shall deny such motions by issuing an order directing denial. Following a motion for a sanction for violation of a protective order pursuant to § 210.37 the administrative law judge shall grant or deny such motion by filing with the Commission an initial determination.

(d) *Contents.* The initial determination shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law or discretion presented in the record; and a statement that pursuant to § 210.53(h) of these rules the initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to § 210.54, or the Commission pursuant to § 210.55 orders on its own motion a review of the initial determination or certain issues therein.

(e) *Notice to and advice from departments and agencies.* The Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate shall be served with a copy of the initial determination. The Commission shall consider comments, limited to issues raised by the record, the initial determination, and the petitions for review, received from such agencies when deciding whether to initiate review or the scope of review. The Commission shall allow such agencies twenty (20) days after the service of an initial determination filed pursuant to § 210.53(a) or ten (10) days after the service of an initial determination filed pursuant to § 210.53 (b) or (c) to submit their comments.

(f) *Initial determination made by the administrative law judge.* The initial determination shall be made and filed by the administrative law judge who presided over the investigation, except when that person is unavailable to the Commission.

(g) *Reopening of proceedings by the administrative law judge.* At any time prior to the filing of the initial determination, the administrative law judge may reopen the proceedings for the reception of additional evidence.

(h) *Effect.* An initial determination filed pursuant to § 210.53(a) shall become the determination of the Commission forty-five (45) days after the service thereof on the parties, unless the Commission, within forty-five (45) days after the date of such service shall have ordered review of the initial determination or certain issues therein pursuant to § 210.54(b) or § 210.55, or by order shall have changed the effective date of the initial determination. An initial determination filed pursuant to § 210.53 (b) or (c) shall become the determination of the Commission thirty (30) days after the date of service of the initial determination, unless the Commission, within thirty (30) days after the date of such service shall have ordered review of the initial determination or certain issues therein pursuant to § 210.54(b) or § 210.55.

(i) *Notice of determination.* In the event an initial determination becomes the determination of the Commission, the parties shall be notified thereof by the Secretary.

§ 210.54 Petition for review.

(a) *The petition and responses.* (1) Any party to an investigation may request a review by the Commission of an initial determination by filing with the Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in default. A petition for review of an initial determination filed pursuant to § 210.53(a) shall be filed within ten (10) days after the service of the initial determination. A petition for review of an initial determination filed pursuant to § 210.53 (b) or (c) shall be filed within five (5) days after the service of the initial determination, except that a party or proposed respondent who has not responded to the motion before the administrative law judge pursuant to § 210.24(c) may be deemed to have consented to the relief requested and may not petition for review of the issues raised in the subject motion. A petition for review shall:

(i) Identify the party seeking review;

(ii) Specify the issues upon which review of the initial determination is sought:

(A) A finding or conclusion of material fact is clearly erroneous;

(B) A legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or

(C) The determination is one affecting Commission policy.

(iii) Set forth a concise statement of the facts material to the consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy.

(2) Any issue not raised in the petition for review filed pursuant to this rule will be deemed to have been abandoned and

may be disregarded by the Commission in reviewing an initial determination.

(3) Any party may file a response to the petition for review within five (5) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which the party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53(a) within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53 (b) or (c) within thirty (30) days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall decide whether to grant a petition for review, based upon the petition and response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. The standards for granting review of an initial determination are set forth in paragraph (a)(1)(ii) of this section.

(3) The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition for review shall be served by the Secretary on all parties, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

§ 210.55 Commission review on its own motion.

Within the time provided in § 210.53(h), the Commission on its own initiative may order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. The standards for granting review of an initial determination are set forth in § 210.54(a)(1)(ii). In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has directed review on its own initiative shall be served by the Secretary on all parties, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

§ 210.56 Review by Commission.

(a) *Briefs and Oral Argument.* In the event the Commission orders review of an initial determination the parties may be requested to file review briefs concerning the issues on review at a time, and of a size and nature set forth in the notice of review. The parties within the time provided for filing the review briefs may submit a written request for a hearing to present oral argument before the Commission, which the Commission in its discretion may grant or deny. The Commission shall grant the request when at least one of the participating Commissioners votes in favor of the request.

(b) *Scope of review.* Only the issues set forth in the notice of review, and all subsidiary issues therein, will be considered by the Commission.

(c) *Determination on review.* On review the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge and make any findings or conclusions which in its judgment are proper based on the record in the proceeding.

(d) *Time limit for review of initial determinations concerning temporary relief.* In the event the Commission orders of an initial determination concerning temporary relief filed pursuant to § 210.53(b), such review shall be completed within sixty (60) days from the date review is ordered, unless the Commission orders otherwise.

§ 210.57 Implementation of Commission action.

(a) *Service of Commission determination upon the parties.* A Commission determination pursuant to § 210.56(c) or a termination on the basis of a licensing or other agreement or consent settlement pursuant to § 210.51 (b) and (c), respectively, shall be served upon each party to the investigation.

(b) *Publication and transmittal to the President.* A Commission determination that there is a violation of section 337, or that there is reason to believe that there is such a violation, together with the action taken, relative to such determination, or Commission action pursuant to Subparts B and C of Part 211 of this chapter shall be immediately (1) published in the **Federal Register**, and (2) transmitted to the President together with the record upon which the action is based.

(c) *Enforceability of Commission action.* Unless otherwise specified, any Commission action, other than an exclusion order, shall be enforceable upon receipt by the affected party of notice of such action. An exclusion order shall be enforceable upon receipt of notice thereof by the Secretary of the Treasury.

(d) *Finality of affirmative Commission action.* If the President does not disapprove for policy reasons such Commission action within a period of sixty (60) days beginning on the day after delivery of a copy of such Commission action is delivered to the President, or if the President notifies the Commission before the close of such period that he approves such Commission action, then such Commission action shall become final on the day after the close of such period, or the day on which the President notifies the Commission of his approval, as the case may be.

(e) *Duration.* Final Commission action shall remain in effect as provided in Subpart C of Part 211 of this chapter.

§ 210.58 Commission action, public interest factor, and bonding.

(a) During the course of each proceeding under this part when an investigation has been instituted, the Commission shall—

(1) Consider what action (exclusion of articles from entry, exclusion of articles from entry under bond, or cease and desist order), if any, it should take, and, when appropriate, take such action;

(2) Consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate, concerning the subject matter of the complaint and the effect its actions (exclusion of articles from entry, exclusion of articles from entry except under bond, cease and desist order) under section 337 of the Tariff Act shall have upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers;

(3) Determine the amount of bond pursuant to section 337(e) or section 337(g)(3) of the Tariff Act, taking into consideration, among other things, the amount which would offset any competitive advantage resulting from

the alleged unfair methods of competition and unfair acts enjoyed by persons benefiting from the importation of the articles in question; and

(4) Receive submissions from the parties, other interested persons, Government agencies and departments, and the public, with respect to the subject matter of paragraphs (a)(1), (a)(2), and (a)(3) of this section, which submissions shall be served upon the parties and be available to the public in the Office of the Secretary. The Commission will consider motions for oral argument or, when necessary, for a hearing with respect to the subject matter of this section.

(b) Unless otherwise ordered by the Commission, or permitted by this subsection, the administrative law judge shall not take evidence or other information or hear arguments from the parties and other interested persons with respect to the subject matter of paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section. However, with regard to settlements by agreement or consent order under § 210.51 (b) and (c), the parties may file statements regarding the impact of the proposed settlement on the public interest, and the administrative law judge may in his discretion hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. With respect to initial determinations concerning temporary relief issued pursuant to § 210.53(b), the parties may present oral or documentary evidence regarding the impact of the requested temporary relief on the public interest, submit rebuttal evidence, and conduct such cross-examination as may be required for a full and true disclosure of the facts, and the presiding officer shall thereafter in his initial determination make appropriate findings regarding the effect, if any, that the issuance of the requested temporary relief would have on the public interest, although no discovery may be compelled with respect to issues relating solely to the public interest.

§ 210.59 Period for concluding Commission investigation.

Each investigation instituted under this part shall be concluded and a final order issued no later than twelve (12) months after the date of publication in the **Federal Register** of the notice instituting the investigation, except that the Commission may designate the investigation as a "more complicated" investigation and require that it be concluded no later than eighteen (18) months after the date of publication in the **Federal Register** of the notice of investigation. A "more complicated" investigation refers to an investigation which is of an involved nature owing to the subject matter, difficulty in obtaining information, the large number of parties involved or other significant factors. The Commission shall publish its reasons for designating the investigation as a "more complicated" investigation in the **Federal Register**. For purposes of the 12-month and 18-month periods prescribed by this section, there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

Subpart G—Appeals

§ 210.60 Petition for reconsideration.

Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a petition for reconsideration of such determination or any action ordered to be taken thereunder, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments. Any party desiring to oppose such a petition shall file an answer thereto within five (5) days after service of the petition upon such party. The filing of a petition for reconsideration shall not stay the effective date of the determination or action ordered to be taken thereunder or toll the running of any statutory time period affecting such determination or action ordered to be taken thereunder unless specifically so ordered by the Commission.

§ 210.61 Disposition of petition for reconsideration.

The Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 210.70 Interlocutory appeals.

Rulings by the administrative law judge on motions may not be appealed to the Commission prior to the administrative law judge's issuance of his initial determination except in the following circumstances:

(a) *Appeals without leave of the administrative law judge.* The Commission may, in its discretion, entertain interlocutory appeals when a ruling of the administrative law judge:

(1) Requires the disclosure of the Commission records or requires the appearance of Government officials pursuant to § 210.35(c); or

(2) Denies an application for intervention pursuant to the provisions of §210.28. Appeals from such a ruling may be sought by filing an application for review, not to exceed fifteen (15) pages, with the Commission within five (5) days after notice of the administrative law judge's ruling. Answer thereto may be filed within five (5) days after service of the application for review. The application for review should specify the person or party taking the appeal, designate the ruling or part thereof from which appeal is being taken, and specify the reasons and present arguments as to why review is being sought. The Commission may, upon its own motion, enter an order staying the return date of an order issued by the administrative law judge pursuant to § 210.35(c) or an order placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues which will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

(b) *Appeals with leave of the administrative law judge.* Except as previously provided in paragraph (a) of this section, applications for review of a ruling by the administrative law judge may be allowed only upon request made to the administrative law judge and upon a determination by the administrative law judge in writing, with justification in support thereof, (1) that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and (2) that either an immediate appeal from the ruling may materially advance the ultimate completion of the investigation or subsequent review will be inadequate remedy. Applications for review in writing, not to exceed fifteen (15) pages, may be filed within five (5) days after notice of the administrative law judge's determination. Answer thereto may be filed within five (5) days after service of the application for review. Thereupon, the Commission may, in its discretion, permit an appeal.

Commission review, if permitted, shall be confined to the application for review and answer thereto, without oral argument or further briefs, unless otherwise ordered by the Commission.

(c) *Investigation not stayed.* Application for review hereunder shall not stay the investigation before the administrative law judge unless the administrative law judge or the Commission shall so order.

§ 210.71 Appeals of final determination to the United States Court of Appeals for the Federal Circuit.

Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f) of section 337 of the Tariff Act may appeal such determination to the United States Court of Appeals for the Federal Circuit.

Issued: November 15, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30524 Filed 11-21-84; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 44

[Docket No. R-84-1131; FR-1813]

Non-Federal Governmental Audit Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements general audit requirements for those entities that receive financial assistance from HUD. Entities covered include State and local governments, public housing agencies, Indian tribal governments and Indian housing authorities, and any of their subdivisions.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steven A. Switzer, Assistant Inspector General for Audit, Office of Inspector General, Department of Housing and Urban Development, Room 8282, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6342. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 30, 1983, the Department published an interim rule (48 FR 57483) which established audit requirements for recipient organizations that receive financial assistance from HUD. Recipient organizations include State and local governments, public housing agencies, Indian tribal governments and Indian housing authorities, and any of their subdivisions. The audit requirements were in accordance with OMB Circular A-102, Attachment P—"Audit Requirement".

OMB Circular A-102, Attachment P—"Audit Requirements", set forth uniform guidelines for the organization-wide audit of State and local governmental and Indian tribal recipients of Federal assistance. These recipient organizations, as well as subrecipients, will develop their own procedures to arrange for the independent audit of their financial statements, including operations. The audits include financial and compliance elements on an organization-wide basis, rather than on a grant-by-grant basis. Audits that meet the prescribed requirements are to be accepted by all Federal awarding agencies. Any audit work conducted by a Federal agency must build on, but not duplicate, the audit work already done. With respect to particular programs, OMB may grant an exception to these audit requirements. Any exceptions to the Circular's audit requirements will be included in the particular program regulation.

The regulations are general in nature and are intended to apply to recipient organizations that received Federal assistance from HUD either directly or indirectly. They define the type of recipient governmental organization that may conduct the prescribed independent audit, define the type of audit to be conducted, and reserve HUD's right to conduct a specific audit where necessary.

No public comments were received during the comment period which ended on February 28, 1984. Therefore, the Department adopts the interim rule as final.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The regulations impose no new requirements on recipient organizations. They promote simplification and uniformity in the auditing process and reduce to a great extent the necessity for overlapping audit procedures by a variety of Federal governmental agencies.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule was listed as number 265 in the Department's most recent Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15910, 15958) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

There is no Catalog of Federal Domestic Assistance program number applicable to this rule.

List of Subjects in 24 CFR Part 44

Audit requirements—non-federal governmental entities, Reporting and recordkeeping requirements.

Accordingly, 24 CFR is amended by revising Part 44 to read as follows:

PART 44—NON-FEDERAL GOVERNMENTAL AUDIT REQUIREMENTS

Sec.

44.1 Purpose.
44.2 Definitions.
44.3 OMB audit report requirements.
44.4 HUD audits.
44.5 Submission of Audit Report.

Authority: Sec. 7(d) HUD Act, 42 U.S.C. 3535(d).

§ 44.1 Purpose.

These regulations establish general audit requirements for recipient organizations in accordance with OMB Circular A-102, Attachment P,—"Audit Requirements".

§ 44.2 Definitions.

"Recipient organization" means a State department or agency, a local government, an Indian tribal government, or a subdivision of any of these entities that receives Federal assistance as defined by Attachment P from HUD, either directly, or indirectly as a subrecipient. This term also includes public housing agencies and Indian housing authorities.

§ 44.3 OMB audit report requirements.

Unless the Office of Management and Budget (OMB) makes an exception, each recipient organization shall comply with the audit and other requirements of Attachment P, including any amendments to those requirements prescribed by future OMB action. If OMB grants an exception from Attachment P coverage, the exception will be published in the regulations governing that HUD program.

§ 44.4 HUD audits.

The Secretary or an authorized representative shall have access to all books, accounts, records, reports, files and other papers or property of a recipient organization pertaining to Federal assistance supplied by HUD to the Recipient Organization for the purpose of making specific surveys, audits, examinations, excerpts and transcripts. These HUD audits shall be conducted in accordance with procedures specifically denominated in other parts of this Title, where applicable.

§ 44.5 Submission of Audit Report.

To comply with the provisions of Attachment P, an audit report shall be submitted to the Federal cognizant agency as defined in the Circular and as assigned by OMB, within the time established by the cognizant agency. Federal cognizant agency audit responsibilities are contained in the Cognizant Audit Agency Guidelines developed by the Federal Inspectors General under Attachment P.

Dated: November 13, 1984.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 84-30464 Filed 11-21-84; 8:45 am]

BILLING CODE 4210-32-M

POSTAL SERVICE

39 CFR Part 111

Special Fourth-Class Mail; Final Regulations Implementing Changes in Eligibility for Special Fourth-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Effective November 25, 1984, postal regulations will be changed to implement new eligibility requirements for special fourth-class mail. These final regulations permit mailers to mail books consisting of at least 8 printed pages and to mail computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media at the special fourth-class rates. Formerly, books including supplements, had to contain 24 pages or more (at least 22 of which were printed), and computer-readable media were not eligible for the special rates.

EFFECTIVE DATE: 12:01 a.m. on November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins at (202) 245-4749.

SUPPLEMENTARY INFORMATION: On November 14, 1984, the Governors of the Postal Service approved a recommended decision of the Postal Rate Commission revising section 400.021 of the Domestic Mail Classification Schedule, which defines the types of materials that may be mailed at the special fourth-class rates. On the same date, the Board of Governors determined that the approved changes will take effect at 12:01 a.m. on November 25, 1984. A notice of these changes is published separately in this issue of the **Federal Register**.

As a result of this decision, mailers may now mail books, including books issued to supplement other books, of at least 8 printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books at the special fourth-class rates. In addition, computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media may be mailed at the special fourth-class rates.

Prior to this change books, including supplements, had to contain 24 pages or more (at least 22 of which were printed) to qualify for the special fourth-class rates, and computer-readable media were not eligible for these rates. Accordingly, this rule change constitutes a relaxation and extension of the rules. For these reasons, and in order to permit mailers to avail themselves of the benefits of these rule changes on the effective date prescribed by the Board of Governors, the Postal Service believes that its usual practice of extending an opportunity for notice and comment on these rule changes is unnecessary in this instance. Compare 5 U.S.C. 553(c).

For the above reasons, the Postal Service hereby adopts the following final regulations as amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1

PART 111—[AMENDED]

Chapter 7—Fourth-Class Mail

* * * * *

720 Classification

* * * * *

724 What May Be Mailed at Special Fourth-Class Rates

* * * * *

724.1 General Description

* * * * *

1. Amend 724.1a to read as follows:

a. Books, including books issued to supplement other books, of at least 8 printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books. Advertising includes paid advertising and the publishers' own advertising in display, classified, or editorial style.

* * * * *

2. Insert a new 724.1i to read as follows:

i. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

List of Subjects in 39 CFR Part 111

Postal Service.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401(a), 403, 3625)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-30753 Filed 11-21-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. A-1-FRL-2713-8]

Approval and Promulgation of Implementation Plans, Vermont; Table of EPA Approved Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is publishing a table which summarizes approval actions already taken to incorporate Vermont Air Polution regulations into the State Implementation Plan (SIP). The intended effect of this action is to make it easier to identify those Vermont Air Pollution regulations, or portions thereof, which have been approved by EPA and made part of the federally-approved SIP.

EFFECTIVE DATE: This action will be effective January 22, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., S.W., Washington, D.C., Office of the Federal Register, 1100 L St., N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Beth Clark, (617) 223–5130).

SUPPLEMENTARY INFORMATION: Since the State of Vermont initially submitted its State Implementation Plan (SIP) to EPA in 1972, there have been numerous revisions to the plan. These revisions included changes to almost every regulation. The table which is being codified today at 40 CFR 52.2381 identifies those Vermont regulations which are part of the federally-approved SIP. The table also provides the date on which EPA took action to revise each regulation. Where only part of a regulation is federally approved, it is indicated in the comments section of the table. We are publishing this table in today's **Federal Register**, and making it part of the Code of Federal Regulations to assist the public in identifying those Vermont regulations or portions thereof, which are federally approved. We intend to revise this table each time we approve a revision to the Vermont SIP. The table published today has been developed primarily for informational purposes. It does not have any independent regulatory effect. The actual federally-approved Vermont SIP is incorporated by reference at 40 CFR 52.2370. To the extent that this table codified at 40 CFR 52.2381 conflicts with 40 CFR 52.2370, 40 CFR 52.2370 governs.

EPA is publishing this table without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 22, 1984.

Final Action: EPA is publishing a table of federally-approved Vermont Air Pollution regulations at 40 CFR 52.2381.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Authority: Sec. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the State of Vermont was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 2, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart UU—Vermont

1. Section 52.2381, is added as follows:

§ 52.2381 EPA—Approved Vermont State Regulations.

The following table identifies the state regulations which have been submitted to and adopted by EPA as revisions to the Vermont State Implementation Plan. This table is for informational purposes only and does not have any independent regulatory effect. To determine regulatory requirements for a specific situation consult the plan identified in § 52.2370. To the extent that this table conflicts with §§ 52.2370, 52.2370 governs.

TABLE 52.2381.—EPA-Approved Regulations

[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date Approved by EPA	Federal Register Citation	Section 52.2370	Comments and unapproved sections
Chapter 5 Air Pollution Control					
Subchapter I Definitions					
Section 5–101 Definitions	12/10/72	5/31/72	37 FR 10899	(b)	
	12/10/72	5/14/73	38 FR 12713	(c)(3)	
	11/19/73	3/22/76	41 FR 11819	(c)(5)	
	12/16/74	1/21/76	41 FR 3085	(c)(4)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	All of 5–101 (1–42) approved.
	8/12/76	4/16/82	47 FR 16331	(c)(16)	Related to wood-fired boilers.
	3/24/79	1/30/80	45 FR 6781	(c)(9)	Related to PSD
	11/4/79	2/19/80	45 FR 10775	(c)(10)	All of 5–101 (1–42) approved.
	11/3/81	2/10/82	47 FR 6014	(c)(15)	
Subchapter II Prohibitions					
Section 5–201 Open burning prohibited	12/10/72	5/31/72	37 FR 10899	(b)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
Section 5–202 Permissible open burning	12/10/72	5/31/72	37 FR 10899	(b)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
Section 5–203 Procedures for local authorities to burn natural wood	12/10/72	5/31/72	37 FR 10899	(b)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	

TABLE 52.2381.—EPA-Approved Regulations—Continued

[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date Approved by EPA	Federal Register Citation	Section 52.2370	Comments and unapproved sections
Section 5–211 Prohibition of visible air contaminants	12/10/72	5/31/72	37 FR 10899	(b)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	5–211 (1)(2) approved.
	8/12/76	4/16/82	47 FR 16331	(c)(16)	5–211 (3) not approved.
Section 5–221 Prohibition of potentially polluting materials in fuel	12/10/72	5/31/72	37 FR 10899	(b)	
	3/16/75	1/8/82	47 FR 948	(c)(14)	Except 5–221(c) (i) and (ii). Includes Moran Sta. Bubble Approval.
	7/12/76	2/4/77	42 FR 6811	(c)(6)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
Section 5–231 Prohibition of particulate matter	12/10/72	5/31/72	37 FR 10899	(b)	
	12/10/72	5/14/73	38 FR 12713	(c)(3)	
	11/19/73	3/22/76	41 FR 11819	(c)(5)	Regarding incinerators.
	12/16/74	1/21/76	41 FR 3085	(c)(4)	Regarding combustion contaminants.
	7/12/76	2/4/77	42 FR 6811	(c)(6)	Regarding incinerators asphalt plants.
	3/14/77	8/2/78	43 FR 33918	(c)(7)	Regarding wood processing plants.
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
	8/12/76	4/16/82	47 FR 16331	(c)(16)	Except Cersosimo Lumber, Rutland Plywood, Moran Sta.
	11/13/81	12/10/82	47 FR 6014	(c)(15)	Repealed 5–231 (4).
		11/25/83	48 FR 38235	(c)(17)	Approved for Cersosimo Lumber.
Section 5–241 Prohibition of nuisance and odor	12/10/72	5/31/72	37 FR 10899	(b)	
	11/19/73	3/22/76	41 FR 11819	(c)(5)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
Section 5–251 Control of nitrogen oxides emissions	12/10/72	5/31/72	37 FR 10899	(b)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
	3/25/79	2/19/80	45 FR 10775	(c)(10)	
	11/4/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–252 Control of sulfur dioxide emissions	7/12/76	2/4/77	42 FR 6811	(c)(6)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
	11/4/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–261 Control of hazardous air contaminants	11/3/81	2/10/82	47 FR 6014	(c)(15)	
Subchapter III Ambient Air Quality Stds					
Section 5–301 Scope	12/10/72	5/31/72	37 FR 10899	(b)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–302 Sulfur dioxide primary	12/10/72	5/31/72	37 FR 10899	(b)	
	7/12/76	2/4/77	42 FR 6811	(c)(6)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–303 Sulfur dioxide (secondary)	12/10/72	5/31/72	37 FR 10899	(b)	
	7/12/76	2/4/77	42 FR 6811	(c)(6)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–304 TSP (primary)	12/10/72	5/31/72	37 FR 10899	(b)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–305 TSP (secondary)	12/10/72	5/31/72	37 FR 10899	(b)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–306 Carbon monoxide primary/secondary	12/10/72	5/31/72	37 FR 10899	(b)	
	11/19/73	3/22/76	41 FR 11819	(c)(5)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–307 Ozone primary/secondary	12/10/72	5/31/72	37 FR 10899	(b)	
	12/16/74	1/21/76	41 FR 3085	(c)(4)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–308 Lead (primary/secondary)	11/3/81	2/10/82	47 FR 6014	(c)(15)	
Subchapter IV Operations/Procedures					
Section 5–401 Classification of air contaminant sources	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–402 Written reports when requested	12/10/72	5/31/72	37 FR 10899	(b)	
	12/10/72	5/14/73	38 FR 12713	(c)(3)	
	11/19/73	3/22/76	41 FR 11819	(c)(5)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	5–402(1) only.
Section 5–403 Circumvention	12/10/72	5/31/72	37 FR 10899	(b)	
Section 5–404 Methods for sampling and testing of sources	12/10/72	5/31/72	37 FR 10899	(b)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
	3/24/78	2/19/80	45 FR 10775	(c)(10)	
Section 5–405 Required air monitoring	12/10/72	5/31/72	37 FR 10899	(b)	
	3/24/79	1/30/80	45 FR 6781	(c)(9)	For PSD Plan.
	3/24/79	2/19/80	45 FR 10775	(c)(10)	For NSR Plan.
Section 5–406 Required air modeling	3/24/79	1/30/80	45 FR 6781	(c)(9)	For PSD Plan.
	3/24/79	2/19/80	45 FR 10775	(c)(10)	For NSR Plan.
Subchapter V Review of new air contaminant sources					
Section 5–501 Review of construction or modification of air contaminant sources.	12/10/72	5/31/72	37 FR 10899	(b)	
	12/10/72	5/14/73	38 FR 12713	(c)(3)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
	3/24/79	1/30/80	45 FR 6781	(c)(9)	
	11/4/79	2/19/80	45 FR 10775	(c)(10)	
	11/3/81	2/10/82	47 FR 6014	(c)(15)	
Section 5–502 Major stationary sources and major modifications	3/24/79	1/30/80	45 FR 6781	(c)(9)	Except 5–501(3).
	11/4/79	2/19/80	45 FR 10775	(c)(10)	Do.
	11/3/81	2/10/82	47 FR 6014	(c)(15)	
Subchapter VII Motor vehicle emissions					
Section 5–701 Removal of control devices	12/10/72	5/31/72	37 FR 10899	(b)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–702 Excessive smoke emissions from motor vehicles	12/10/72	5/31/72	37 FR 10899	(b)	
	3/24/79	2/19/80	45 FR 10775	(c)(10)	
Section 5–801 Effective date	3/24/79	1/30/80	45 FR 6781	(c)(9)	
Table 1.—Process weight standards	12/10/72	5/31/72	37 FR 10899	(b)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	
Figure 1.—Fuel-burning equipment	12/10/72	5/31/72	37 FR 10899	(b)	
	7/12/76	2/4/77	42 FR 6811	(c)(6)	
	1/25/78	12/21/78	43 FR 59496	(c)(8)	

TABLE 52.2381.—EPA-Approved Regulations—Continued

[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date Approved by EPA	FEDERAL REGISTER Citation	Section 52.2370	Comments and unapproved sections
Table 2.—PSD increments	3/24/79	1/30/80	45 FR 6781	(c)(9)	
Table 3.—Levels of significant impact for nonattainment areas	3/24/79	2/19/80	45 FR 10775	(c)(10)	
	11/4/79	2/19/80	45 FR 10775	(c)(10)	
	11/3/81	2/10/82	47 FR 6014	(c)(15)	

[FR Doc. 84-29447 Filed 11-21-84; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6578

[W-34993]

Wyoming; Withdrawal of Public Lands for Castle Gardens Recreation Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 110 acres of public land from surface entry and mining for 20 years to protect the recreational and aesthetic values as well as the capital investment of the Castle Garden Recreation site. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–772–2089.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under mineral leasing laws, to protect a Bureau of Land Management recreation site.

Sixth Principal Meridian

T. 46 N., R. 89 W.,
Sec. 15, S½NE¼NW¼,NE¼SE¼ NW¼NW¼,S½SE¼NW¼NW¼, E½NW¼SW¼NW¼,NE¼SW¼ NW¼,N½SE¼SW¼NW¼, SE¼SE¼SW¼NW¼,SE¼NW¼. N½NE¼SW¼.

The area described contains 110 acres in Washakie county.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

November 14, 1984.

[FR Doc. 84-30857 Filed 11-21-84; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6579

[W-83358]

Wyoming; Partial Revocation of Stock Driveway Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 1,533.10 acres of public land withdrawn for stock driveway purposes. The lands are needed for expansion of the communities of Rawlins and Wamsutter. Except for 35 acres in a Recreation and Public Purposes lease, the lands will be opened to surface entry but have been and remain open to mining and mineral leasing.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82001, 307–772–2089.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of June 20, 1918, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian, Wyoming

T. 21 N., R. 87 W.,
Sec. 4, lots 1–4, S½N½;
Sec. 20, N½SE¼NE¼, S½S½NE¼, NW¼NW¼, S½NW¼, S½.
T. 22 N., R. 87 W.,
Sec. 32.
T. 20 N., R. 94 W.,
Sec. 34, NE¼NE¼NW¼NW¼,S½NE¼ NW¼NW¼,NW¼NW¼NW¼NW¼, S½NW¼NW¼NW¼,SW¼NW¼ NW¼,NW¼SW¼NW¼,S½SW¼N W¼,N½NW¼SW¼,N½S½N W¼SW¼,S½SW¼NW¼SW¼.

The area described contains 1,533.10 acres in Carbon and Sweetwater Counties, Wyoming.

2. The following described lands are presently in Recreation and Public Purposes lease W–67920 and are closed to the general public land laws, including the United States mining laws:

T. 20 N., R. 94 W.,
Sec. 34, N½NW¼SW¼,N½S½ NW¼SW¼,S½SW¼NW¼SW¼.

3. At 10 a.m. on December 20, 1984, the lands described in paragraph one except those described in paragraph two shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 20, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: November 14, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-30859 Filed 11-21-84; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6580

[M-41958]

Montana; Partial Revocation of Powersite Reserve No. 24

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes Secretarial Order dated February 13, 1922, which withdrew lands for powersite purposes. This action will permit consummation of a pending 120-acre Forest Service exchange. These lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA–214–Montana, it is ordered as follows:

1. Secretarial Order dated February 13, 1922, is hereby revoked insofar as it affects the following described lands.

Principal Meridian

T. 34 N., R. 21 W.,
Sec. 13, S½SW¼;
Sec. 24, NE¼NE¼.

The area contains 120 acres in Flathead County.

2. At 9 a.m. on December 20, 1984, the lands will be opened to such forms of disposition as may by law be made of national forest lands.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

November 14, 1984.

[FR Doc. 84-30858 Filed 11-21-84; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–198]

Organization and Delegation of Powers and Duties; Redelegation From the General Counsel to the Chief Counsels of the Maritime and Research and Special Programs Administrations

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment redelegates to the Chief Counsels of the Maritime Administration (MarAd) and the Research and Special Programs Administration (RSPA) authority delegated to the General Counsel by the Department of Justice to approve the sufficiency of title to land acquired for the use of their respective agencies. This authority has previously been redelegated to all other DOT agency chief counsels; at the time of that redelegation, MarAd was not part of DOT and RSPA did not exist.

DATES: This amendment is effective November 23, 1984. The delegations are effective August 13, 1981 as to MarAd, and September 23, 1977 as to RSPA.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–50, Department of Transportation, Washington, DC (202) 426–4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

By delegation from the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, the General Counsel of DOT has authority to approve the legal sufficiency of the title to land being acquired for DOT use. To facilitate the exercise of this authority, the General Counsel redelegated this authority to each DOT agency chief counsel with respect to that official's own agency. At that time, MarAd was part of the Department of Commerce and RSPA did not exist as a separate organization within DOT. This amendment delegates to these two agencies' chief counsels the same authority exercised by the other chief counsels in DOT, effective as of the date that each was organized within DOT.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

PART 1—[AMENDED]

In consideration of the foregoing, Section 3 of Appendix A of Part 1 of Title 49, Code of Federal Regulations, is amended by, in the third paragraph of that section, which begins "The Chief Counsels of the," deleting "and" after "Urban Mass Transportation Administration" and inserting "Maritime Administration, and Research and Special Programs Administration" before the period after "St. Lawrence Seaway Development Corporation".

Authority: 49 U.S.C. 322; delegation from the Department of Justice.

Issued in Washington, DC, on November 7, 1984.

Jim J. Marquez,

General Counsel.

[FR Doc. 84-30868 Filed 11-21-84; 8:45 am]
BILLING CODE 4910-62-M

Federal Highway Administration

49 CFR Part 395

[BMCS Docket No. MC–99–1; Amdt. No. 83–13]

Driver's Record of Duty Status

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule with request for comments.

SUMMARY: To comply with the opinion of the United States Court of Appeals for the District of Columbia Circuit, the FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSR) to (1) reinstate the 12 hour in lieu of the present 15 consecutive hour limitation in the 100-mile radius exemption provision from the requirement to prepare driver's records of duty status, and (2) reinstate the 7 data items previously deleted from the recordkeeping requirement of the driver's record of duty status. Additionally, comments for further consideration of these changes are being requested.

DATES: This rule is effective November 23, 1985. Comments must be received by January 31, 1984.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted, preferably in triplicate, to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426–9767, or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA, by a final rule in BMCS Docket No. MC–99; Amdt. No. 83–6, Driver's Logs, published in the Federal Register on November 28, 1982 (47 FR 53383),

revised the FMCSR with respect to the recordkeeping requirements of the driver's log by eliminating the following seven items:

(1) Total mileage today;
(2) Name of co-driver;
(3) Home terminal address;
(4) Total hours (as found at far right edge of grid);
(5) Shipping document number(s), or name of shipper and commodity;
(6) Origin; and
(7) Destination or turnaround point.

In addition, the 100-mile exemption provision of the recordkeeping requirement was revised by substituting "15 consecutive hours" for the original "12 hours" as the time during which the driver must return to the point of dispatch.

Also changed in the final rule of November 26, 1982 were the provisions (1) permitting motor carriers to use any form with the grid; (2) allowing the use of any 24 hour period; and (3) reducing the retention period of the driver's record of duty status for the motor carrier from 1 year to 6 months and from 30 days to 8 days for the driver.

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, on March 2, 1983, petitioned the United States Court of Appeals for the District of Columbia Circuit to review and set aside the final rule which amended § 395.8 of the FMCSR by revamping the logkeeping requirements. The petitioner contended that:

(a) The changes in the logbook system are arbitrary, capricious and withouta rational basis in that they represent a significant erosion of the FHWA Motor Carrier Safety authority and enforcement effectiveness.
(b) The changes in the logbook requirements are not supported by the rulemaking record in this proceeding.
(c) The public was not adequately afforded an opportunity to comment on the logbook system changes in that the Final rule differs in serious and material respects from the originally proposed rule.

The Court, in its opinion of June 12, 1984, concluded in part:

We therefore uphold the agency's modification of the recordkeeping requirement to permit drivers to use their own forms. However, the agency has failed to demonstrate that it engaged in reasoned decisionmaking or that it had any basis at all for its decision to omit the seven items of information and expand the exemption from the recordkeeping requirement. For this reason, we hold that the agency acted arbitrarily and capriciously in adopting the new rules to the extent that they omit the seven items of information from the recordkeeping requirement and to the extent that they expand the exemption from the recordkeeping requirement. (United States Court of Appeals for the District of Columbia Circuit No. 82-1228 (International Brotherhood of Teamsters v. United States and American Trucking Associations, Inc.). No. 82-1228, slip op. at 18 (D.C. Cir. June 12, 1984)).

As required by the Court's decision, the FMCSR is being amended by reinstating the omitted seven items and the 100-mile exemption provision is amended by reinstating the "12 hour" requirement.

Those driver's logs and driver's duty status records that have been revised to conform to the current rule that was vacated by the Court will be required to have the additional seven items added thereto by any legible method, i.e., handwritten, typed, printed, or stamped.

The Court specifically stated that the FHWA had failed to adequately justify in the administrative record that the seven omitted items of information were unnecessary for law enforcement purposes. The Court also pointed out that the administrative record lacked an explanation of how the 50 percent reduction in driver's log preparation was calculated. Since the basis for the Court's decision centered on the lack of justification for the change of policy as opposed to the policy change itself, the FHWA is specifically requesting input and data from the public in order to determine if such justification can be demonstrated and documented for future possible revisions to the driver's record of duty status.

The central question concerns the actual utility of the seven items of information. One view expressed is that the seven items serve as a legitimate purpose in determining whether a driver is in compliance with the hours of service requirements. Conversely, it can be argued that the seven items constitute recorded information of little value. For example, the data entry "*Total Mileage Today*" will reveal information identical to the entry *"Total Miles Driving Today"* unless there is more than one driver on the vehicle. The data entries "*Origin*" and "*Destination*" can provide an immediate indication of the vehicle's travel or travel plan for a particular day. However, this same information can be determined by a close examination of the location of duty status changes shown in the *"Remarks"* portion of the "*Graph Grid*" section of the driver's record of duty status. The "*Total Hours*" summary of time worked in each duty status column makes it easy to determine at a glance if the record reveals an hours of service violation. The same determination can be made counting the actual hours recorded in each duty status column. Therefore, in light of the Court's criticism and in order for the administrative record to be as complete as possible for providing a basis for future possible rulemaking, the FHWA is requesting comments which justify retention or elimination of the driving record duty status or any individual item of information or combination of items required by the driving record of duty status.

After promulgation of the 100-mile radius driver exemption in 1980, the FHWA received petitions for rulemaking from the Private Truck Council of America, Inc. and Continental Group, Inc. Both petitions requested that the 50-mile radius driver exemption be restored as an option. The petitioners indicated that many drivers who were previously exempt from log preparation were now required to prepare the logs due to the 12-hour limitation established in the 1980 rule. The FHWA realized that the 1980 change in the exemption had, in fact, created the burden indicated by the petitioners. Thus, we requested comments on those petitions in the notice of proposed rulemaking (NPRM) of February 22, 1982 (47 FR 7702). The majority of comments received were favorable to the proposed change.

Comments are requested regarding the availability of records maintained by motor carriers generally, for use by Federal and State enforcement personnel to ascertain if, under a 100-mile, 15 consecutive hour exemption rule:

(1) Drivers were on duty during the time they were performing services for the motor carrier or shipper, or were off duty;

(2) The drivers did not drive in excess of 10 hours during the time they were on duty;

(3) There are adequate records maintained by the motor carriers to insure that the drivers were not in violation of (1) and/or (2) above.

Comments are also requested on whether the 50-mile radius exemption should be reinstated as an option rather than change the current 100 mile/12 hour provision to the 100-mile/15 consecutive hour provision.

The final rule published in the **Federal Register** on November 26, 1982 (47 FR 53383) (BMCS Docket No. MC-99; Amdt. No. 81-6) was determined to be a major regulatory reduction action under Executive Order 12291 and significant under the DOT's regulatory policies and procedures. This determination was based on projected cost savings which would result from the reduction in requirements for maintaining the driver's record of duty status. This rulemaking action is reinstating

requirements which existed prior to the November 26, 1982 final rule as mandated by the United States Court of Appeals. For this reason, this rulemaking action is considered a major rule under Executive Order 12291 and a significant regulation under the regulatory policies and procedures of the Department of Transportation.

A regulatory evaluation and regulatory flexibility analysis was prepared for the final rule published in the **Federal Register** on November 26, 1982. It is available for review in the public docket. A copy may be obtained by contacting Mr. Neill L. Thomas at the address provided above under the heading "For Further Information Contact." Since this evaluation addressed the impacts of the provisions which the Court mandated reinstated, a separate regulatory evaluation is not necessary for this rulemaking action. The regulatory flexibility analysis had determined that small trucking operations would derive little tangible savings from the rulemaking issued on November 26, 1982. Therefore, to revert to the status quo will not appreciably affect the operations of the small trucking industry. For these reasons and under the criteria of Regulatory Flexibility Act (Pub. L. 96-354), it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities.

Since the amendments in this document merely comply with the judicial mandate of the United States Court of Appeals for the District of Columbia, public comment is unnecessary. Therefore, the FHWA finds good cause to make the amendments final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedures Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information since the judicial mandate provides for no administrative discretion. A comment period is being provided for further consideration of rulemaking action.

Information collection requirements contained in this regulation (§ 395.8) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2125-0016.

In view of the above, § 395.8 of the FMCSR is being amended by reinstating that portion of the final rule vacated by the Court.

List of Subjects in 49 CFR Part 395

Motor carriers—driver's hours of service, Reporting and recordkeeping requirements.

PART 395—HOURS OF SERVICE OF DRIVERS

In consideration of the foregoing, Title 49 Code of Federal Regulations, Subtitle B, Chapter III, Part 395 is amended as set forth below.

1. Section 395.8(d) is amended by adding seven additional items thereto, so that this paragraph will now read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(d) The following information must be included on the form in addition to the grid:

(1) Date;
(2) Total miles driving today;
(3) Truck or tractor and trailer number;
(4) Name of carrier;
(5) Driver's signature/certification;
(6) 24-hour period starting time (e.g. midnight, 9:00 a.m., noon, 3:00 p.m.);
(7) Main office address;
(8) Remarks;
(9) Total mileage today;
(10) Name of co-driver;
(11) Home terminal address;
(12) Total hours (far right edge of grid);
(13) Shipping document number(s), or name of shipper and commodity;
(14) Origin; and
(15) Destination or turnaround points.

2. Section 395.8(f) is amended by revising paragraph (5) and adding paragraphs 11 through 15 thereto, as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(f) The driver's activities shall be recorded in accordance with the following provisions:

* * * * *

(5) Vehicle identification. The carrier's vehicle number or State and license number of each truck, truck tractor and trailer operated during that 24-hour period shall be shown on the form containing the driver's duty status record.

* * * * *

(11) Total mileage today. Total mileage today shall be that mileage traveled while driving, on duty not driving, and resting in a sleeper berth, as defined in § 395.2(g) during the day covered by the record of duty status.

(12) Home terminal. The driver's home terminal address shown shall be that at which the driver normally reports for duty.

(13) Total hours. The total hours in each duty status: off duty other than in a sleeper berth; off duty in a sleeper berth; driving, and on duty not driving, shall be entered to the right of the grid, the total of such entries shall equal 24 hours.

(14) Shipping document number(s), or name of shipper and commodity shall be shown on the driver's record of duty status.

(15) Origin and destination. The name of the place where a trip begins and the final destination or farthest turn-around point shall be shown. If the trip requires more than 1 calendar day, the record of duty status for each day shall show the original and final destination. If a driver departs from and returns to the same place on any day, the destination shall be indicated by entering the farthest point reached followed by the words "and return".

3. Section 395.8(l)(1)(ii) and (iii) are revised to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(l) *Exemptions(1)* 100-air mile radius driver. A driver is exempt from the requirements of this section if:

(i) * * *

(ii) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 hours;

(iii) At least 8 consecutive hours off duty separate each 12 hours on duty;

* * * * *

(49 U.S.C. 3102; 49 CFR 1.48)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.)

Issued on: November 14, 1984

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 84-30663 Filed 11-21-84; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 40899-4135]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

Correction

In FR Doc. 84-28714, beginning on page 43679 in the issue of Wednesday, October 31, 1984, make the following corrections:

1. On page 43683, in § 661.3(b), the sixth line of the second column should have read "48°29'44"N. lat., 125°00'06" W. long.;" and in the third column, in paragraph (d), nineteenth line from the bottom of the page, "Ancorhynchus" should have read "Oncorhynchus".

2. On page 43685, footnote 2, referenced in § 661.6(d)(1) should have appeared at the bottom of the first column as follows:

[2] Dash (—) means a long flash of light.".

3. On page 43688, in the Appendix, fourteenth line of the third column, "a" should have read "or".

BILLING CODE 1505-01-M

---

50 CFR Part 661

[Docket No. 40899-4135]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects a section number in the final rule which implements the framework amendment for the commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California, that was published on October 31, 1984, 49 FR 43679.

FOR FURTHER INFORMATION CONTACT: Dr. T.E. Kruse, 206-526-6150; or Mr. E.C. Fullerton, 213-548-2575.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-28714, appearing on page 43681, column 3, under the response to comment 22, line 3, "Section 611.20(a)" is corrected to read "Section 661.20(a)."

Dated: November 16, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

[FR Doc. 84-30598 Filed 11-21-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 227
Friday, November 23, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 437

[Docket No. 1436S]

Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) revising the insurance period in certain counties; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Department Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Comment Date: Written comments, data, and opinions on this proposed rule must be submitted not later than December 24, 1984, to be sure of consideration.

ADDRESS: Written comment on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor corrections to language and format, the principal changes in the sweet corn policy are:

1. Section 1.a.—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. Section 5.—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. Section 7.e.—Change the end of the insurance period in certain counties in Washington and Oregon to more closely conform to the normal harvest period in that location.

5. Section 9.d.—Effective for the 1986 and succeeding crop years allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. Section 9.e.—Add a new subsection to clarify the effect of untimely harvest on total production to be counted.

7. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

8. Section 17.g.—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

9. In addition to the policy changes FCIC also proposes to eliminate the codification of Appendix A. All FCIC service offices in the United States will be able to advise a producer if sweet

corn insurance is offered in a particular county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the Federal Register. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 437

Crop insurance, Sweet corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), effective for the 1985 and succeeding crop years, to read as follows:

PART 437—SWEET CORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

437.1 Availability of sweet corn crop insurance.
437.2 Premium rates, production guarantees, levels of coverage, and prices for computing indemnities.
437.3 OMB control numbers.
437.4 Creditors.
437.5 Good faith reliance on misrepresentation.
437.6 The contract.
437.7 The application and policy.

Authority: Secs. 506, 516, Pub.L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 437.1 Availability of sweet corn crop insurance.

Insurance shall be offered under the provisions of this subpart on sweet corn in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 437.2 Premium rates, production guarantees, levels of coverage, and prices for computing indemnities.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sweet corn which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 437.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 437) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

§ 437.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 437.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sweet corn insurance contract, whenever: (a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000,000, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 437.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sweet corn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 437.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the sweet corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sweet corn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sweet Corn Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sweet Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) Sweet corn not being timely harvested, unless it is determined that, due to unusual weather conditions, a substantial number of acres of sweet corn in the area were ready for harvest at the same time;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(3) The failure to follow recognized good sweet corn farming practices;

(4) The impoundment of water by any governmental, public or private dam or reservoir project; or

(5) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be canning and freezing sweet corn; grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be sweet corn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured sweet corn at the time of planting.

d. We do not insure any acreage:

(1) Of sweet corn not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage.);

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to sweet corn, and such acreage was not replanted;

(5) Initially planted after the final planting date contained in the actuarial table;

(6) Of volunteer sweet corn;

(7) Planted to a type or variety of sweet corn not established as adapted to the area or excluded by the actuarial table;

(8) Planted for the development or production of hybrid seed or for experimental purposes; or

(9) Planted with a crop other than sweet corn.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good sweet corn irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good sweet corn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price(s) will, for the purpose of this contract, be treated as a contract under which you have the share in the crop.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sweet corn in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sweet corn planted in the county. This report must be submitted annually on or designated by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the sweet corn policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceed .80 no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the sweet corn is planted and ends at the earliest of:

a. Total destruction of the sweet corn;
b. Harvest;
c. Final adjustment of a loss;
d. The date by which sweet corn acreage should have been harvested; or
e. The following dates of the calendar year in which the sweet corn is normally harvested:

(1) Benton, Clackamas, Columbia, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties, Oregon; and Clark and Cowlitz Counties Washington...October 20;

(2) All other Washington Counties..... October 10;

(3) All other Oregon counties and all other states..... September 20.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the sweet corn on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sweet corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined. A representative sample of the

unharvested sweet corn (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(3) If you are going to claim an indemnity on any unit which is not to be harvested or on which harvest has been discontinued, notice must be given not later than 48 hours:

(a) Before the time harvest would normally start; or

(b) After discontinuance of harvest.

If such notice is not given or if unharvested acreage is not left intact, the appraisal on such acreage will be the production guarantee.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the sweet corn on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the sweet corn which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sweet corn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the need of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sweet corn on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sweet corn to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and Not on the actual information determined. All production from insurable acreage, whether or nor reported as insurable will count against the production guarantee.

e. The total production (Tons) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sweet corn farming practices:

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause:

(c) Any appraised production on unharvested acreage.

(2) If any acreage of sweet corn is not timely harvested the production to count will be the greater of the:

(a) Appraised production; or

(b) Dollar amount received from the processor divided by the processor's base contract price per ton.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested sweet corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you have elected to exclude hail and fire as insured causes of loss and the sweet corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sweet corn is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set-off are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sweet corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sweet corn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the sweet corn is normally grown and is designated by the calendar year in which the sweet corn is normally harvested.

d. "Harvest" means the removal of the ears and husks from the stalks for the purpose of delivery to the processor.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the sweet corn or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of sweet corn in the county on the date of planting for the crop year:

(1) in which you have 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share of reported by or for your spouse or child or any member of your household to be your bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time or our receipt of the written notice.

Approved by the Board of Directors on August 16, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: November 15, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-30665 Filed 11-21-84; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AAL-14]

Proposed Designation of Huslia, AK, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to lower the base of controlled airspace in the vicinity of Huslia, AK, Airport to 700 feet above the surface so that aircraft conducting flight under instrument flight rules (IFR) would have exclusive use of that airspace when the visibility is less than 3 miles and thereby enhancing the safety of such operations. This proposed action will change the airport status from VFR to IFR.

DATE: Comments must be received on or before January 7, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-14, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the FAA Rules Docket, Office of the Regional Counsel, Third Floor, Module F, Federal Building U.S. Courthouse, 701 C Street, Anchorage, Alaska.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 701 C Street, Anchorage AK.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Procedures and Airspace Specialist, (AAL-536), Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513, telephone (907) 271-5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AAL–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 701 C Street, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations, Procedures, and Airspace Branch, Air Traffic Division, Alaskan Region, 701 C Street, Box 14, Anchorage, AK 99513, or by calling (907) 271–5902. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the base of controlled airspace at 700 feet above the surface in a rectangular area 37 statute miles by 14 statute miles over the Huslia, AK, Airport. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Huslia, AK [New]

That airspace extending upward from 700-feet above the surface within 9.5 miles northwest and 4.5 miles southeast of the 028° radial from the Huslia VOR (lat. 65°42'24.41" N., long. 156°22'04.67" W.) extending from the VOR to 18.5 miles northeast of the VOR; and within 4.5 miles southeast and 9.5 miles northwest of the 208° radial from the Huslia VOR extending from the VOR to 18.5 miles southwest of the VOR.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Anchorage, Alaska, on November 13, 1984.

Franklin L. Cunningham,

Director, Alaskan Region.

[FR Doc. 84–30617 Filed 11–21–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 84–AAL–10]

Proposed Designation of Selawik, AK, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to lower the base of controlled airspace in the vicinity of Selawik, AK, Airport to 700 feet above the surface so that aircraft conducting flight under instrument flight rules (IFR) would have exclusive use of that airspace when the visibility is less than 3 miles and thereby enhancing the safety of such operations. This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before January 7, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84–AAL–10, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the FAA Rules Docket, Office of the Regional Counsel, Third Floor, Module F, Federal Building U.S. Courthouse, 701 C Street, Anchorage, Alaska.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 701 C Street, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Procedures and Airspace Specialist, (AAL–536), Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513, telephone (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AAL–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Regional Air Traffic Division, Third Floor, Module B, Federal Building U.S. Courthouse, 701 C Street, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the federal Aviation Administration, Manager, Operations, Procedures, and Airspace Branch, Air Traffic Division, Alaskan Region, 701 C Street, Box 14, Anchorage, AK 99513, or by calling (907) 271–5902. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the base of controlled airspace at 700 feet above the surface 37 statute miles long by 14 statute miles wide over the Selawik, AK, Airport. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR 71) as follows:

Selawik, AK [New]

That airspace extending upward from 700-feet above the surface within 9.5 miles north and 4.5 miles south of the 079° radial from the Selawik VOR (lat. 66°36'02.11" N, long. 159°59'10.81" W) extending from the VOR to 18.5 miles east of the VOR; and within 9.5 miles south and 4.5 miles north of the 266° radial from the Selawik VOR to 18.5 miles west of the VOR.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in anchorage, Alaska, on November 13, 1984.

Franklin L. Cunningham,

Director, Alaskan Region.

[FR Doc. 84–30618 Filed 11–21–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 84–ACE–11]

Proposed Alteration of Transition Area, Lawrence, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Lawrence, Kansas, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Lawrence, Kansas Muncipal Airport utilizing the Topeka, Kansas VORTAC as a navigational aid.

DATES: Comments must be received on or before December 28, 1984.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Lawrence, Kansas. To enhance airport usage an additional instrument approach procedure to the Lawrence, Kansas Municipal Airport is being established utilizing the Topeka VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of the transition area at Lawrence, Kansas, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by altering the following transition area:

Lawrence, Kansas

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Lawrence Municipal Airport (latitude 39°00'41"N; longitude 95°12'56"W); within 2 miles each side of the Topeka, Kansas VORTAC 116° radial, extending from the 5-mile radius area to 13 miles SE of the VORTAC; and within 3 miles each side of the 318° bearing from Lawrence Municipal Airport, extending from the 5-mile radius to 8 miles NW of the airport, counter-clockwise within the 5-mile radius area to within 2 miles each side of the 145° bearing from Lawrence Municipal Airport, exending from the 5-mile radius to 9 miles SE of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)).

Issued in Kansas City, Missouri, on November 8, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84–30816 Filed 11–21–84; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 451

Advertising for Over-the-Counter Antacids

AGENCY: Federal Trade Commission.

ACTION: Termination of proposed rulemaking proceeding.

SUMMARY: The Federal Trade Commission (Commission) has terminated its rulemaking concerning advertising for over-the-counter antacids (TRR No. 215–56). 43 FR 38851 (Aug. 31, 1978).

The record does not adequately support the rulemaking staff's contention that antacid advertisements are deceptive, since they do not appear to represent that antacids are safe for everyone. Nor does the record establish that antacid advertising is unfair, since the evidence of likely substantial injury to consumers is problematic. Without a clear demonstration that antacid advertising is deceptive or unfair, the predicate for a rule regulating such advertising fails.

FOR FURTHER INFORMATION CONTACT: Wallace S. Snyder, Associate Director for Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (Telephone (202) 376–8617).

SUPPLEMENTARY INFORMATION: On July 27, 1984, the Commission unanimously voted to terminate its rulemaking proceeding concerning advertising for over-the-counter antacids. The purpose of the rulemaking was to determine whether health risk warnings similar to those the Food and Drug Administration requires on antacid package labels, should also be required in advertisements.

In evaluating whether a proposed industry-wide trade regulation rule was warranted, the Commission examined the record closely to determine whether it demonstrated: (1) That unfair or deceptive practices were prevalent; (2) that the proposed remedy would likely solve the perceived problems; and (3) that the benefits of the proposed rule would outweigh its costs. After reviewing the record, the Commission concluded that the rulemaking should be terminated.

The record does not adequately support the rulemaking staff's contention that antacid advertisements are deceptive, since they do not appear to represent that antacids are safe for everyone. Nor does the record establish that antacid advertising is unfair, since the evidence of likely substantial injury to consumers is problematic. Without a clear demonstration that antacid advertising is deceptive or unfair, the predicate for a rule regulating such advertising fails.

The Commission is committed to protecting consumers from misleading claims that may injure their health. At the same time, however, the Commission must ensure that its actions—particularly industry-wide rules—are based on sound evidence demonstrating that consumers will benefit. Because the rulemaking record does not meet this test, the Commission has terminated this rulemaking proceeding.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84–30998 Filed 11–21–84; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–21498; File No. S7–37–84]

Unlisted Trading Privileges in Over-the-Counter Securities

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of public comments.

SUMMARY: In light of the recent developments in the national market system and the request by two national securities exchanges to trade certain over-the-counter securities, the Commission is soliciting comment on the appropriateness of granting exchanges unlisted trading privileges in over-the-counter securities.

DATE: Comments to be received by January 15, 1984.

ADDRESSES: All comments should be submitted in triplicate and addressed to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. All comments should refer to File No. S7–37–84, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William W. Uchimoto, Esq., (202) 272–2409, Room 5193, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Summary

In the Securities Acts Amendments of 1975 ("1975-Amendments"),[1] Congress directed the Commission to facilitate the development of a national market system ("NMS") for securities, consistent with certain objectives, including "fair competition * * *

[1] Pub. L. 94–29, 89 Stat. 97 (June 4, 1975).

between exchange markets and markets other than exchange markets."[2] The 1975 Amendments also authorized the Commission to grant unlisted trading privileges ("UTP") to exchanges in unlisted over-the-counter ("OTC") securities subject to making certain findings.[3] The Commission, to date, generally has deferred extending to exchanges UTP in OTC stocks pending progress on the development of the NMS. The Commission believes that, in view of developments in the NMS to date, it is now appropriate to review whether exchanges should be granted UTP in OTC stocks as a general matter. This release discusses the background of UTP in OTC stocks and recent exchange comments and proposals with respect to such privileges, including an application by two exchanges for UTP in certain OTC stocks.[4] To aid the Commission in its consideration of whether UTP in OTC stocks should be granted at this time, the Commission solicits comment on both the general issue of whether UTP in OTC stocks should be granted to exchanges at this time, and on specific questions to be addressed before the grant of such privileges.

I. Background of UTP

An exchange can obtain the ability to trade a security on its floor in one of two ways. Either the issuer of the security could list the security on the exchange, or the exchange could apply to the Commission for UTP in a security. An issuer's consent is not required for an exchange to trade the issuer's security pursuant to UTP, although the issuer may petition the Commission for termination of the exchange's UTP. While the New York ("NYSE") and American ("Amex") Stock Exchanges primarily trade stocks that are listed on their exchanges, the majority of the stocks traded on regional exchanges are NYSE and Amex listings traded on a UTP basis. For almost 50 years, the Commission has encouraged multiple trading of listed stocks by liberally granting exchange applications for UTP in stocks listed on another securities exchange.[5]

By contrast, the Commission historically has granted UTP in OTC stocks infrequently. As originally adopted in 1934, the Act prohibited any unlisted trading of OTC stocks on exchanges, but authorized the Commission to extend UTP pending completion of a Commission study mandated by Congress. Following that study, the 1936 amendments to the Act empowered the Commission to grant UTP in OTC stocks for those issues that were either subject to disclosure and other requirements "substantially equivalent" to those imposed on listed companies by the Act, or as to which the Commission determined that the public interest and the protection of investors would best be served by such an extension of UTP.[6] At that time, OTC securities were not subject to the periodic reporting requirements of Section 12 of the Act; consequently, because of the wide disparity in disclosure requirements between listed and unlisted stocks, the Commission rarely exercised its authority to grant UTP in OTC stocks.

In 1964, the Act was amended to extend basic reporting and disclosure requirements to virtually all publicly traded companies, reducing the disclosure disparities between OTC and listed stocks. At the same time, however, the 1964 amendments repealed Section 12(f)(3) thereby removing the Commission's authority to grant UTP in OTC stocks.

In the early 1970's, the Commission, Congress, and the securities industry began considering the possibility of a National Market System for securities. In connection with National Market System discussions, Congress again reviewed the role of UTP in OTC stocks. The Securities Industry Study,[7] which served as a basis for the 1975 Amendments, concluded that exchange trading of OTC securities "would be an important step toward the goal of a national market system in which investors in any particular security obtain the optimum benefits of both the 'auction' and 'dealer' system which are feasible in a security having its particular trading characteristics." The Study also believed, however, that attention must be given to such trading's "potential impact on the OTC market and on the present system by which securities are 'listed' on exchanges." In particular, the Study noted that exchange off-board trading restrictions[8] could disrupt existing patterns of dealing in an OTC stock granted UTP by precluding exchange members from continuing to make an OTC market in that stock. The Study, however, envisioned that in an NMS, exchange members would be free to trade any security off-board.

In the 1975 Amendments, Congress directed the Commission to facilitate the establishment of an NMS, including review of whether off-board trading restrictions should be removed; concurrently, Congress reinstated the Commission's authority to grant UTP in OTC stocks.[9] The legislative history of the 1975 Amendments generally echoed the conclusions regarding the role of UTP in OTC stocks in the developing NMS reached by the Securities Industry Study.[10] The Senate Report stated that

> in the context of a national market system, there is little or no justification for an issuer to deprive securities holders of the advantages of exchange trading. The protections inherent in exchange-type trading should be afforded to investors in all securities with suitable characteristics and should not be dependent upon the decision of corporate management to list.[11]

Accordingly, the Senate Report viewed "unlisted trading as appropriate to a[n NMS] in which all market makers and brokers are permitted to deal freely with one another without unnecessary

[2] Section 11A(a)(1)(C)(ii) of the Securities Exchange Act of 1934 ("Act").

[3] Section 12(f)(1)(C) of the Act.

[4] Letter to Linda Waning, Division of Market Regulations, SEC, from Joseph Raferty, Vice President and Corporate Secretary, BSE, dated August 22, 1984 ("BSE Letter"); and letter to Linda Waning, Division of Market Regulation, SEC, from Robin Tengroth, Senior Listing Representative, Listing/Membership Department, MSE, dated October 29, 1984 ("MSE Letter").

[5] *See* Werner, *Adventure in Social Control of Finance: The National Market System for Securities*, 7 COLUM. L. REV. 1233, 1249 (1975); and approval of MSE UTP application to trade 910 securities listed on the NYSE, Securities Exchange Act Release No. 16422 (December 12, 1979), 18 SEC Docket 1323.

[6] *See* Section 12(f)(3) of the Act as amended in 1936. In addition, to preserve the economic viability of the then New York Curb Exchange (predecessor to the Amex) and some of the regional exchanges, the 1936 amendments to the Act permitted the continued trading of unlisted stocks by those exchanges by grandfathering in securities that were traded unlisted before March 1, 1934. In 1934, the New York Curb Exchange, the second largest exchange, was trading 1,689 unlisted securities and only 374 that were listed. Indeed, as recently as 1945, a majority of stocks traded on that exchange were unlisted, and today 34 are traded on an unlisted basis.

[7] *See* Senate Subcomm. on Securities, Comm. on Banking, Housing and Urb. Affs., Securities Industry Study, S. Doc. No. 13, 93rd Cong., 1st Sess. (1973) ("Securities Industry Study").

[8] Off-board trading restrictions are rules adopted by various exchanges that prohibit member firms from executing orders as principal in the OTC market in stocks listed on the exchange. For a discussion of a Commission initiative that removes these restrictions on certain exchange traded securities, see discussion accompanying note 16, *infra*.

[9] For an extensive discussion of the effect of the 1975 Amendments on the Commission's UTP authority, see Parker and Becker, *Unlisted Trading Privileges*, 14 Rev. Sec. Reg. 853 (1981).

[10] *See* Senate Comm. on Banking, Housing, Urb. Affs., Report to Accompany S. 249: Securities Acts Amendments of 1975, S. Rep. No. 75, 94th Cong., 1st Sess. 31 (1975) ("Senate Report").

[11] *Id.* at 19.

regulatory constraints such as the NYSE's [off-board trading rule.]"[12]

Despite this general endorsement of UTP in OTC stocks, the Senate Report was concerned that "[u]ntil substantial progress has been made toward the development of such a national market system, the ability of an exchange to commence unlisted trading in an OTC security might well decrease rather than increase competition."[13]

To protect against these negative effects, Congress provided in Section 12(f)(2) of the Act that the Commission, after notice and hearing and prior to approving a UTP application, find "that the extension of unlisted trading privileges . . . [for listed and unlisted stocks be] consistent with the maintenance of fair and orderly markets and the protection of investors." More importantly, with respect to UTP applications for stocks trading only in the OTC market, Congress in Section 12(f)(2) required that the Commission specifically consider the "public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system." That provision also expressly provides that UTP in OTC stocks should not be granted: "if any rule of the national securities exchange . . . would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists."

Since 1975, the Commission has maintained a relatively restrictive policy of granting UTP in OTC stocks pending progress in the development of the NMS, with minor exceptions. An exception was made in 1981 for a reported security,[14] that was listed and traded on the Pacific Stock Exchange, Inc. ("PSE") prior to its issuer delisting from the PSE.[15] The Commission noted that the grant of UTP under such circumstances would preserve existing competition among exchange and third market makers and result in a trading environment that would permit exchange specialists to continue to compete with OTC market makers in previously listed securities in much the same way that OTC market makers are permitted to compete with exchange specialists in newly listed securities subject to Rule 19c-3 under the Act ("Rule 19c-3 Securities").[16] In this regard, the PSE had waived all off-board trading restrictions with respect to PRI, therefore, eliminating any barriers to competition for their member firms.

In making this exception, the Commission emphasized that PRI was a reported security so that current quotation and last sale information was available from both exchange and OTC markets.[17] The Commission believed that this information would increase competition, reduce fragmentation and facilitate Commission serveillance of trading in PRI.

While the Commission's PRI decision recognizes a limited circumstance in which the Commission will grant UTP in OTC stocks, the Commission has discussed the possibility of granting such privileges more generally in the context of Rule 11Aa2-1 ("NMS Securities Rule") under the Act.[18] In the release proposing the NMS Securities Rule,[19] the Commission stated that it would be appropriate to evaluate whether exchanges should be granted UTP in OTC stocks designated as NMS Securities provided existing exchange off-board trading restrictions were removed from those securities.[20] Moreover, the Commission stated that, although it anticipated considering UTP for NMS Securities, it was "concerned that the necessary technical elements to ensure fair competition and the protection of investors be in place before UTP for OTC securities is granted."[21] Specifically, the Commission stated that it would not grant UTP in NMS Securities until it evaluated: "(1) the effects of transaction reporting on NMS Securities; (2) the effects of an automated interface between the enhanced NASDAQ facilities and the ITS; and (3) the effects of trading exchange-traded securities in an environment free of off-board trading restrictions."[22]

II. Exchange Comments With Respect to UTP in OTC/NMS Securities

The BSE and MSE have submitted applications for UTP on some of the most actively traded OTC NMS Securities.[23] Notice of these applications will be published in the Federal Register.[24] In addition, in connection with several other matters before the Commission at this time, various exchanges have raised the issue of UTP in OTC stocks. On April 30, 1984, in response to a petition submitted by the NASD, the Commission issued a release soliciting comment on proposed amendments to the NMS Securities Rule whose primary effect would be to increase substantially the number of securities eligible for designation as

[12] *Id.* at 30.

[13] *Id.*

[14] A reported security is a security reported in the consolidated transaction reporting system that is traded on the NYSE or Amex, a security traded on another exchange that substantially meets either the NYSE or Amex listing standards, or an OTC security designated as an NMS Security pursuant to Rule 11Aa2-1 under the Act (see *infra* note 18).

[15] *See* Securities Exchange Act Release No. 17584 (February 27, 1981). The exception was made for the common stock of Pacific Resources, Inc. ("PRI").

[16] Rule 19c-3 under the Act precludes exchange off-board trading restrictions from applying to reported securities that were listed on an exchange after April 26, 1979. Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125.

[17] The Commission has approved UTP applications in other OTC reported securities. *See* Order Approving MSE and BSE UTP Applications in the common stock of Bally Park Place, Securities Exchange Act Release No. 19621 (March 21, 1983); and Order Approving Philadelphia Stock Exchange, Inc. ("Phlx") UTP Application in the common stock of Central Jersey Industries, Securities Exchange Act Release No. 19824 (March 22, 1983). The Commission has denied exchange UTP applications in OTC stocks that were delisted from the exchange that were not reported securities. *See* Denial of PSE UTP Application in the common stock of Xonics, Inc., Securities Exchange Act Release No. 19809 (March 17, 1983); and Denial of PSE UTP Application in the common stock of Triton Group Limited, Securities Exchange Act Release No. 20084 (August 15, 1983).

[18] The NMS Securities Rule was adopted on February 17, 1981. *See* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("NMS Securities Release"). The rule designates certain categories of actively traded OTC stocks as qualified for trading in an NMS. OTC securities designated as NMS Securities are "reported" securities, subject, among other things, to the Commission's last sale reporting rule. Rule 11Aa3-1 under the Act. The Rule employs a two-tiered approach to determine which OTC securities are designated as NMS Securities. Tier 1, which became effective on April 1, 1982, automatically requires that the most actively traded OTC securities be designated as NMS Securities. In additional, Tier 2, which became effective on February 8, 1983, permits issuers of less actively traded OTC securities to become NMS designated if the issuers so elect.

[19] Securities Exchange Act Release No. 15938 (June 15, 1979), 44 FR 36912.

[20] Under current Commission rules, NMS Securities granted UTP would not be subject to off-board trading restrictions. Those securities would be subject to the provisions of Rule 19c-3 under the Act, which removes off-board trading restrictions on, among other things, "any reported security . . . as to which [UTP] on [an] exchange" has been extended since April 26, 1979.

[21] NMS Securities Release, *supra* note 18, 46 FR at 14004.

[22] *Id.*

[23] BSE Letter, *supra* note 4, and MSE Letter, *supra* note 4. In a subsequent submission, the BSE indicated that whether it actually will trade these stocks, if permitted, depends on whether the Commission authorizes the BSE to trade options on these stocks. Letter to Richard G. Ketchum, Director Division of Market Regulation, SEC, from Charles J Mohr, Chairman and Chief Executive Officer, BSE, dated October 1, 1984.

[24] Securities Exchange Act Release No. 21498 (November 16, 1984); and Securities Exchanges Act Release No. 21497 (November 16, 1984).

NMS Securities.[25] In commenting on the proposed amendments, the Amex, BSE, MSE, and Phlx advocated Commission extension of UTP on OTC/NMS Securities.[26]

The exchanges' comments generally advocated that UTP be granted in Tier 1 securities in order to further the NMS objective of intermarket competition. The Amex, in particular, argued that granting UTP in Tier 1 securities[27] would create competition across markets and thus would "certainly be desirable in terms of removing impediments to the NMS." The Amex argued that granting UTP in Tier 1 securities would be consistent with the considerations set forth in Section 12(f)(2) of the Act.[28] In this regard, the Amex said that present Tier 1 trading volume requirements satisfy the considerations of public trading activity and the fair and orderly character of that trading required in Section 12(f)(2) of the Act. In addition, the Amex said that the absence of any negative impact arising from OTC trading of listed stocks pursuant to Rule 19c-3 suggests that "unfettered competition" resulting from UTP in OTC stocks would not have an adverse effect on the existing markets for Tier 1 securities. Moreover, in response to Section 12(f)(2)'s requirements that UTP in an OTC stock not result in unfair competition arising from application of exchange off-board trading restrictions, the Amex argued that a grant of UTP in OTC stocks would not "unreasonably impair" an OTC dealer's ability to "solicit or effect transactions" in the securities or "unreasonably restrict competition" between OTC dealers and specialists because Rule 19c-3 would preclude an exchange from imposing its off-board trading restrictions on these securities.[29]

The Amex also argued that there has been ample time to evaluate the three regulatory initiatives alluded to by the Commission in the NMS Securities Release so that UTP can be granted for Tier 1 securities.[30] In this regard, the Amex pointed to Commission and NASD observations that last sale reporting, the interface between the Intermarket Trading System ("ITS") and the Computer Assisted Execution System ("CAES"),[31] and removal of off-board trading in the Rule 19c-3 context have either benefitted or at least not harmed the markets for the securities subject to these initiatives. The Amex, therefore, advocated that the Commission announce a general policy to grant UTP in Tier 1 securities.[32]

Several exchanges, including the Amex and the BSE, stated that Tier 1 securities essentially should be traded through NMS facilities pursuant to NMS-type rules, *e.g.*, trading through the ITS-CAES interface pursuant to trade-through, net confirmation, and short sale rules.[33] The Phlx Comment Letter believed that the grant of UTP in NMS Securities "will encourage the NASD to improve its limit order protection rules so as to provide the level of protection contained in exchange, * * * act as an incentive for further and enhanced linkage of the auction and over-the-counter dealer markets [and] * * * advance the applicaiton of the short sale rule to transactions in all qualified securities."[34]

Moreover, the MSE argued that it was "anomalous for the Commission to be considering granting options trading to exchanges in OTC securities and not to extend trading rights to the underlying securities."[35] The MSE also stated that "NAS media coverage and their own publicity explaining the success of their equity market demonstrates they no longer need to be protected by the Commission." The MSE concluded that to allow exchanges to "more fairly compete," the Commission "should amend the [NMS Securities] Rule to allow NMS Securities to concurrently be listed or traded under unlisted trading privileges on an exchange."[36]

III. Discussion and Request for Comment

The Commission believes that the time is ripe to reexamine Commission policy with respect to extending exchanges UTP in OTC securities. In recent years, the quality and dimension of the OTC market have improved dramatically. These changes are due in part to the increased availability of market information on the most actively-traded OTC issues. With the nationwide disclosure of firm quotations on a real-time basis through NASDAQ starting in 1971, the dissemination to the investing public of the NASDAQ best bid and offer in 1980 and last sale reporting in NASDAQ/NMS Securities commencing in early 1982, the OTC market has succeeded in attracting and

[25] *See* Securities Exchange Act Release No. 20902 (April 30, 1984), 49 FR 19314. On November 16, 1984, the Commission approved amendments to the Rule reflecting those proposed by the NASD.

[26] *See* letter to George A. Fitzsimmons, Secretary, SEC, from Robert J. Birnbaum, President, Amex, dated July 16, 1984 ("Amex Comment Letter"); letter to George A. Fitzsimmons, Secretary, SEC, from Charles J. Mohr, Chairman and Chief Executive Officer, BSE, dated August 10, 1984 ("BSE Comment Letter"); letter to George A. Fitzsimmons, Secretary, SEC, from Kenneth I. Rosenblum President, MSE, dated August 8, 1984 ("MSE Comment Letter"); and letter to George A. Fitzsimmons, Secretary, SEC, from Nicholas A. Giordano, President, Phlx, dated August 7, 1984 ("Phlx Comment Letter"). The Amex and the PSE also discussed UTP in OTC stocks in response to the Commission's soliciation of comments on the NASD and exchange proposals to trade standardized options on OTC stocks. *See* Securities Exchange Act Release No. 20853 (April 12, 1984), 49 FR 15291. The Amex and the PSE opposed any proposals that would permit an OTC market maker to trade both the option and the underlying OTC stock ("side-by-side trading"). Both exchanges believed that, if the Commission approved side-by-side trading, the exchanges would be at a severe competitive disadvantage in seeking to trade options on those same OTC stocks unless the Commission granted exchanges UTP to trade the stocks. *See* letter to George A. Fitzsimmons, Secretary, SEC, from Richard O. Scribner, Executive Vice President, Legal and Regulatory Affairs, Amex, dated July 27, 1984 ("Amex Options Comment Letter"); and letter to George A. Fitzsimmons, Secretary, SEC, from Jim Gallagher, President, PSE, dated July 11, 1984 ("PSE Options Comment Letter").

[27] The Amex also urged the abolition of Tier 2 because, in its view, an issuer should not have the choice of having its security designated as an NMS Security. Amex Comment Letter, *supra* note 26 at 21-45.

[28] *See* text between notes 13 and 14, *supra*.

[29] *See* note 16, *supra*.

[30] *See* discussion accompanying notes 21 and 22, *supra*.

[31] CAES is an enhancement to the NASD's Automated Quotation ("NASDAQ") System that links OTC market makers and that provides an order routing and execution capability. The ITS-CAES interface is a computer link between the exchange and OTC markets operated by the NASD and seven national securities exchanges. Presently, only Rule 19c-3 Securities may be traded through that interface.

[32] Though not representing the Amex, Dritz Goldring Wohlreich Inc. ("Dritz"), an Amex specialist firm, separately urged the Commission to permit exchange competition for order flow in OTC securities that are eligible for exchange listing. Dritz believed that "[i]n cases where there are very many market makers in a NASDAQ stock, a specialist on one or more Exchange would perhaps be insignificant but certainly would not hurt the market place in those securities. In other circumstances where there may be several market makers in a particular stock, it might be a significant improvement by having that stock traded under the auction process." Dritz recommended that such trading "be set forth for a pilot program in order to test the operation and effectiveness of the plan." Letter to John Shad, Chairman, SEC, from Michael A. Dritz, President, Dritz Goldring Wohlreich, Inc., dated February 29, 1984.

[33] Amex Comment Letter, *supra* note 26 at 47-63; and BSE Comment Letter, *supra* note 26 at 3.

[34] Phlx Comment Letter, *supra* note 26 at 2. The Phlx also stated that it would not apply its off-board trading restrictions to OTC securities that it traded on a UTP basis.

[35] MSE Comment Letter, *supra* note 26 at 5.

[36] *Id.* On September 7, 1984, the NASD submitted a comment letter to the Commission in response to the exchange comment letters, especially the Amex letter. Letter to Shirley E. Hollis, Acting Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated September 7, 1984 ("NASD Comment Letter"). In response to the Amex's argument with respect to the extension of UTP in Tier 1 securities and the application of the short sale and price protection rules to these securities, the NASD stated that "[t]hese arguments are irrelevant to the issue before the Commission, have previously been considered and deferred by it [footnote omitted] and will become relevant only if considered in connection with other wide ranging issues regarding market structure such as removal of exchange off-board trading restrictions."

retaining record numbers of issuers and investors. At present, there are 4,079 securities quoted in the NASDAQ system, and over 440 registered market makers. There also are 1,102 OTC securities designated as NMS Securities.

During this time, the Commission, the industry and the public have witnessed competitive opportunities emerge for concurrent exchange and OTC trading of Rule 19c–3 Securities. Commission monitoring has disclosed that concurrent OTC and exchange trading of Rule 19c–3 Securities, including trading of these securities through the ITS–CAES interface, has not had any significant adverse effects on the markets for Rule 19c–3 Securities.[37]

In light of these developments, and the issues raised by several exchanges with respect to OTC–UTP, including the BSE's and MSE's request, the Commission believes that it is appropriate to review at this time whether a change in the Commission's UTP policy with respect to OTC stocks is warranted. The Commission is not now taking a position on whether UTP in OTC stocks is appropriate for all OTC stocks or any particular subset thereof. Rather, the Commission is soliciting general comment on this matter. As well as soliciting general comments on this area, the Commission requests comment on particular questions raised by the prospect of UTP in OTC stocks.

First, do commentators believe that it would be "consistent with the maintenance of fair and orderly markets and the protection of investors" to generally permit exchanges to receive UTP in OTC stocks? Moreover, would a general grant of UTP in such stocks to exchanges at this time be consistent with the specific considerations set forth in Section 12(f)(2)?[38]

Second, should the grant of UTP in OTC stocks to an exchange be subject to conditions regarding off-board trading restrictions? Section 12(f)(2) of the Act, as well as Rule 19c–3 under the Act, would require exchanges to waive their off-board trading restrictions on any OTC stock upon which they receive UTP.[39] The Commission also has consistently indicated that the intent of Section 12(f)(2) would appear to only be met where the exchange requesting UTP waives its off-board trading restrictions for all securities. Commentators are requested to address, however, whether the objectives of Section 12(f)(2) and an NMS would best be achieved by conditioning the grant of UTP in OTC stocks on the waiver of off-board trading restrictions by all exchanges trading OTC stocks.[40]

Third, in addition to the standards and considerations required by Section 12(f)(2), do commentators believe that there has been a sufficient opportunity to evaluate the effects of (1) transaction reporting on OTC/NMS Securities; (2) the ITS/CAES interface; and (3) off-board trading in Rule 19c–3 Securities, so as to predict the benefits and possible harms of permitting exchanges to trade OTC securities on a more widespread basis? In this regard, commentators are requested to evaluate the potential benefits and harms associated with exchange trading of OTC securities, both in terms of the considerations set out in Section 12(f)(2) of the Act or any other considerations that commentators deem relevant.

Fourth, the Commission considers quotation and transaction reporting as fundamental elements of an NMS and critical to efficient trading of securities in both the exchange and OTC markets. The Commission, therefore, preliminarily believes that if UTP in OTC stocks is to be granted, it should be limited, certainly as an initial matter, to reported securities, with quotations and last sale reports disseminated through a consolidated reporting system. In this respect, the Commission notes that several exchanges have advocated UTP in Tier 1 securities. Two exchanges also have requested UTP in OTC stocks which will underlie options, in the event that the Commission permits side-by-side trading of options on OTC stocks by NASDAQ market makers. Other possible groups of OTC stocks on which UTP might be available could include all NMS Securities,[41] or all NMS Securities that meet the applicant exchange's listing standards. The Commission requests commentators who favor the granting of UTP for OTC securities to address which securities should appropriately be subject to such applications.

Finally, comment is requested on the facilities that should be utilized for reporting and executing transactions in the event UTP in OTC stocks were granted. At present, exchange-traded reported securities are reported in the Consolidated Quote and Tape Systems and quotations and last sales in OTC/NMS Securities are reported through NASD facilities. Accordingly, comment is requested on how consolidated reporting for OTC stocks subject to UTP can most fairly and efficiently be accomplished. If exchanges are permitted to trade OTC securities, should it be a condition for granting UTP that such securities to be included in a linkage such as ITS–CAES or should inclusion await the development of a significant market share by the exchange? Commentators also may wish to address whether those securities should be subject to rules and trading facilities that now generally are applicable to listed securities?[42] For example, should exchange traded OTC securities be subject to a short sale rule[43] or trade-through rule?[44]

Interested persons are invited to submit written data, views and arguments regarding this matter by January 15, 1985. Persons desiring to submit comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. S7–37–84.

Copies of the submission which are filed with the Commission, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

(Secs. 6, 11A, 12(f) of the Securities and Exchange Act of 1934 (15 U.S.C. 78f, 78k, 78l))

[37] *See* SEC, *A Monitoring Report on Rule 19c–3 under the Securities Exchange Act of 1934*, Securities Exchange Act Release No. 18662 (August 25, 1981); and Securities Exchange Act Release No. 20074 (August 12, 1983), 48 FR 36250. The Commission notes that, if anything, the market fragmentation concerns raised by some commentators for Rule 19c–3 would be less where UTP were granted in OTC securities, since the net effect would be to add one additional market to an existing multiple market maker system.

[38] *See* text between notes 13 and 14, *supra*.

[39] *See* note 18, *supra*.

[40] In the event such a condition extended only to the requesting exchange, any exchange would be able to retain its off-board trading restrictions, of course, by not seeking UTP in OTC stocks.

[41] At present, paragraph (b)(3)(ii) of the NMS Securities Rule requires the termination of a security's NMS designation if that security is listed or admitted to UTP on an exchange. Should UTP be granted in NMS Securities, the Commission will propose amending the NMS Securities Rule so that a security's NMS designation will not be terminated if it becomes admitted to UTP on an exchange.

[42] Indeed, in the NMS Securities Release, the Commission discussed whether OTC/NMS Securities should be included in additional NMS facilities and initiatives. *See* NMS Securities Release, *supra* note 18, 46 FR at 14000.

[43] *See* Rule 10a–1 under the Act.

[44] A trade-through rule would prohibit one market from executing an order at a price inferior to quotations displayed by another market. Trading of listed stocks through ITS currently is governed by a trade-through rule adopted as part of the ITS Plan and by each of the participating members.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements.

By the Commission.

Dated: November 16, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 30736 Filed 11–21–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 113, 141, and 172

Proposed Customs Regulations Amendments Relating to Time Allowed To Submit Missing Documents

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Customs is considering amending its regulations relating to the time period allowed to submit missing documents required at the time entry or entry summary documents are filed in connection with the importation of merchandise. Consideration is being given to reducing the time period for providing various unavailable documents from the present 6 months, to 60 days.

Significant backlogs have occurred as a result of the extended submission period. It is thought that reducing the permissible time period to 60 days will aid in reducing the backlog and will produce more consistent disposition in processing the entries, without imposing any significant additional burden on importers.

This notice invites public comment with respect to the merits of the proposal.

DATE: Comments must be received on or before January 22, 1985.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Herb Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5307).

SUPPLEMENTARY INFORMATION:

Background

Section 484(a), Tariff Act of 1930, as amended by section 102 of the "Customs Procedural Reform and Simplification Act of 1978" (19 U.S.C. 1484(a)), provides that entry of imported merchandise shall be made by filing the documentation necessary to enable Customs to determine whether the merchandise may be released from Customs custody. The documentation necessary to classify and appraise merchandise and to verify statistical information must be filed at the time prescribed by regulations, either when entry is made, or at any time within 10 working days thereafter.

Part 141, Customs Regulations (19 CFR Part 141), provides procedures for the entry of merchandise and the presentation of the necessary entry documentation. One of the conditions set forth in § 141.91, Customs Regulations (19 CFR 141.91), which must be met by an importer that is unable to provide the required invoice at the time the entry or entry summary documentation is filed, is the filing of a bond. The bond provides, as a condition of its satisfaction, for the production of any missing invoices, declarations, certificates, or other documents required in connection with the entry of imported merchandise, in the form and within the time limits required by regulations.

Part 113, Customs Regulations (19 CFR Part 113), sets forth the general requirements applicable to Customs bonds. Section 113.42, Customs Regulations (19 CFR 113.42), provides that except where another period is fixed by law or regulation, a 6-month period from the date of the transaction is allowed for the production of a document for which a bond or stipulation is given. The regulation also gives the district director of Customs authority to grant an extension. Pursuant to § 113.43(a), Customs Regulations (19 CFR 113.43(a)), extensions may be obtained for the production of documents mentioned in § 113.42, by filing a written application. Extensions may be granted for one additional 2-month period. The 6-month period for submission of a required invoice is also stated in § 141.91(d), Customs Regulations (19 CFR 141.91(d)), the provision which details the conditions under which an incomplete entry or entry summary may be accepted. The invoice must be submitted within 6 months after the date of the filing of the entry or entry summary.

Part 172, Customs Regulations (19 CFR Part 172), contains provisions relating to the giving of notice of liquidated damages incurred under the terms of any bond posted with Customs, the filing of petitions for relief from liquidated damages incurred, and the consideration of such petitions. Section 172.22(b), Customs Regulations (19 CFR 172.22(b)), provides conditions under which the bond charge for the production of missing invoices may be cancelled by the district director of Customs upon payment of $25 as liquidated damages. The second of those conditions is the production of the missing document within 6 months after the date the entry or entry summary is required to be filed.

Customs recently completed a national audit of its fines, penalties and forfeitures process, during which the various time periods and extensions permitted by its regulations to provide bonds for, and to submit documents not available at the time of entry or entry summary filing, were analyzed. One recommendation emerging from that audit was to reduce the time permitted for such filing from 6 months, to 60 days.

Customs believes that reducing the 6-month time period stated in §§ 113.42, 141.91 and 172.22(b) to 60 days will serve to reduce the on-going backlog of entries pending action, speed-up the processing of entries, and produce more consistency in the regulations. A 60-day period is already provided for production of country of origin certificates, evidence of direct shipment, and warehouse entries (19 CFR §§ 10.173, 10.174, and 141.61, respectively).

Given today's communication technology, with electronic transmission of documentation, etc., Customs does not believe that shortening the time period would impose any significant burden on the importing community. The current 6-month period has been effective for over 100 years (Article 334, Customs Regulations (1874)), and does not reflect the realities of modern business. Perhaps most important, however, is the fact that many of the bondable documents required, are needed to substantiate free or reduced-duty entry. The delays currently experienced in processing the entry documents and collecting the payment of proper duties are not in keeping with sound management and fiscal policies.

Customs realizes that circumstances arise from time to time which might make it impossible to meet a 60-day deadline for production of documents. Therefore, the discretionary authority given to the district director to grant extensions is not being amended.

This notice invites public comment with respect to the merits of this proposal before any further action is taken.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to

Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC. 20229.

Executive Order 12291

This proposal is not a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Lists of Subjects in 19 CFR Parts 113, 141, and 172

Customs duties and inspection, Imports.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); section 624, 46 Stat. 759 (19 U.S.C. 1624).

Proposed Amendments to the Regulations

It is proposed to amend Parts 113, 141, and 172, Customs Regulations (19 CFR Parts 113, 141 and 172), as set forth below:

PART 113—CUSTOMS BONDS

§ 113.42 [Amended]

1. It is proposed to amend § 113.42 by removing the words "6 months", and inserting in their place, the words, "60 days."

§ 113.43 [Amended]

2. It is proposed to amend the first sentence of § 113.43(a) by removing the parenthetical phrase "(other than an invoice or document which must be produced within 2 months, as provided in § 141.61(e) of this chapter)." Further, in the same sentence, it is proposed to remove the words "6 months" and insert, in their place, the words "60 days."

PART 141—ENTRY OF MERCHANDISE

§ 141.91 [Amended]

It is proposed to amend § 141.91(d) by removing the words "6 months" and inserting, in their place, the words "60 days."

PART 172—LIQUIDATED DAMAGES

§ 172.22 [Amended]

It is proposed to amend § 172.22(b) by removing the words "6 months" and inserting, in their place, the words "60 days."

William von Raab,

Commissioner of Customs.

Approved: November 5, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-30717 Filed 11-21-84; 8:45 am]

BILLING CODE 4820-02-M

---

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Operatic and Theatrical Costumes

AGENCY: Customs Service, Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party with respect to the tariff classification of operatic and theatrical costumes rented to certain U.S. opera and theater companies. The petitioner contends that the articles are currently incorrectly classified under a duty-free provision of the Tariff Schedules of the United States (TSUS), and should be reclassified under a provision of the TSUS which carries a duty rate. This document invites comments with respect to the correctness of the current classification of the imported articles.

DATE: Comments must be received on or before January 22, 1985.

ADDRESS: Comments (preferably in triplicate) may be submitted to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Thomas Lindmeier, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to the tariff classification of operatic and theatrical costumes imported for the use of certain opera and theater companies in the United States. The costumes are rented by the U.S. companies for the duration of a particular production, and then returned to the foreign exporter.

The described articles are currently classified under the provision for "Articles imported for the use of any public library, any other public institution, or any nonprofit institution established for educational, scientific, literary, or philosophical purposes, or for the encouragement of the fine arts: Regalia," in item 851.30, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), free of duty. The petitioner contends that these articles are properly classifiable under one of the dutiable provisions of Schedule 3, TSUS, for wearing apparel.

The petitioner claims that past Customs rulings do not support the use of item 851.30, TSUS, for the duty-free importation of the costumes. The petitioner states that these rulings apply item 851.30, TSUS, specifically to situations in which: (1) The costumes are the property of the non-profit institution using them; (2) only a nominal admission fee to defray expenses will be charged; or (3) the performers using the costumes are not reimbursed for their services. They cannot be used, therefore, in any commercial activity.

The petitioner contends that the imported articles in question are not the property of the non-profit institution using them, but remain the property of the foreign exporter. The petitioner further contends that the imported costumes are often used by opera companies that handsomely reimburse the performers and charge admission prices which are more than nominal. Petitioner also alleges the certain theatrical companies using the costumes are organized for the purpose of making a profit for their backers, not merely covering expenses related to the production. For these reasons, the petitioner concludes that the importation of these costumes under the duty-free provision of item 851.30, TSUS, is a misapplication of this provision.

Headnote 2 of Part 4, Schedule 8, TSUS, provides that "regalia," as used in item 851.30, TSUS, "embraces only such insignia of rank or office, emblems, or other articles as may be worn upon the person or borne in the hand during the public exercises of the institution." In view of this limitation, Customs believes that the petition raises the larger issue of whether, Customs previous administrative rulings notwithstanding, theatrical costumes can be considered "regalia" at all. In order for the matter raised by the petitioner to be properly analyzed, Customs believes that the present inquiry should be broadened to include the latter issue.

Comments

Pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the classification issue. The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority: This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. Angelus,

Acting Commissioner of Customs.

Approved: November 5, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-30715 Filed 11-21-84; 8:45 am]

BILLING CODE 4820-02-M

---

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Unfinished Duck-Type Footwear

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party with respect to the tariff classification of unfinished duck-type footwear. The petitioner contends that the articles are currently incorrectly classified under a provision of the Tariff Schedules of the United States (TSUS) which has a low duty rate and entitles the articles to duty-free treatment under the Generalized System of Preferences (GSP), if they are imported from a beneficiary developing country. The petitioner believes that the articles should be reclassified under either of two provisions of the TSUS, both of which carry a higher duty rate and do not entitle the articles to duty-free treatment under the GSP. This document invites comments with respect to the correctness of the current classification of the imported articles.

DATE: Comments must be received on or before January 22, 1985.

ADDRESS: Comments (preferably in triplicate) may be submitted to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Donald Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to the tariff classification of imported unfinished duck-type footwear. The articles, in their imported condition, consist of gum rubber rolled soles to which heels of the same material have been attached. The interiors of the footwear possess heel counters and textile linings, as well as vamps, boxed toes, quarters, molded portions of the uppers, shanks, and formed in-steps. The articles are fully and permanently lasted and they have been manufactured to the point that their shoe sizes, both as to length and width, have been established. The unfinished footwear is completed in the U.S. by having the remaining portion of the upper stitched to it and, in some cases, an insole inserted.

The described articles are currently classified under the provision for "Articles not specially provided for, of rubber or plastics: Other: Parts of Footwear," in item 774.50, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1201), at 7.3 percent duty rate. Articles classified under this provision are eligible for duty-free treatment under this provision are eligible for duty-free treatment under the Generalized System of Preference (GSP), if imported from a beneficiary developing country.

The petitioner contends that the unfinished footwear is properly classifiable under the provision for "Footwear which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics: Hunting boots, galoshes, rainwear, etc. (con.): * * * Other," in item 700.53, TSUS, which carries a duty rate of 37.5 percent. In the alternative, the petitioner contends that the imported articles are correctly classifiable under the residual provision for "Other footwear: * * * Other" in item 700.95, TSUS, which has a duty rate of 12.5 percent. The imported articles are not eligible for GSP treatment under these two tariff classifications.

Customs current classification of the imported articles under the provision for other articles not specially provided for, of rubber or plastics, parts of footwear, is based upon past Customs rulings wherein unfinished footwear susceptible to more than one tariff classification in its contemplated finished condition, had been classified under the provision for parts of footwear according to component material of chief value, rather than as finished footwear under other provisions of the TSUS. In these rulings, Customs stated that General Interpretative Rule 10(h), TSUS, which provides that "unless the context requires otherwise, a tariff description for an article covers such article whether assembled or not assembled and whether finished or not finished", was not applicable in cases in which the imported article was not susceptible of proper classification. The unfinished footwear in these cases, in their contemplated finished condition, would be classifiable under different tariff provisions, depending upon the nature of the finishing operation, *i.e.*, whether it resulted in the imported article being

made into a shoe, boot, slipper, *etc.* The footwear was therefore deemed not susceptible of proper classification in its condition as imported and, consequently, the unfinished principle of General Interpretative Rule 10(h), TSUS, was inapplicable.

The petitioner claims that despite the fact that the imported articles could be finished into articles which would fall into different footwear classification provisions, depending upon the nature of the finishing operation, the imported articles should nevertheless be classifiable under tariff provisions for finished footwear, in accordance with long-recognized statutory and judicial principles of Customs jurisprudence. The petitioner states that the exclusion of the unfinished footwear from the purview of General Interpretative Rule 10(h) and its classification under a tariff provision for parts of footwear, which disregards the finishing operation altogether, is unwarranted and unjustified.

The petitioner further claims that since more than one tariff provision could embrace the duck-type unfinished footwear after the finishing operation, General Interpretative Rule 10(d), TSUS, becomes applicable in determining under which of the competing tariff provisions the imported footwear should be classified. Under this rule, in part, if two or more tariff descriptions are equally applicable to an article, the article is subject to duty under the description for which the original statutory rate is highest. Petitioner states that of all the finished footwear tariff provisions, item 700.53, TSUS, carries the highest original statutory duty rate of 75 percent for column 2 countries and 37.5 percent for column 1 countries. Therefore, item 700.53, TSUS, must be the footwear provision under which the imported unfinished duck-type footwear is classifiable.

In the alternative, the petitioner argues that if Customs were to reject classification of the imported articles as finished footwear under any of the specific footwear provisions contained in items 700.05 through 700.90, TSUS, because they potentially satisfy more than one specific footwear classification provision, they would qualify for classification under item 700.95, TSUS, the residual footwear classification provision. Petitioner contends that this is mandated by Headnote 1 of Subpart A, Part 1, Schedule 7, TSUS, which provides that all footwear, including unfinished footwear, by operation of General Interpretative Rule 10(h), must be classified in Subpart A, Part 1 of Schedule 7, TSUS, which covers items 700.05 through 700.95, with exceptions for footwear with permanently attached skates or snowshoes, hosiery, and imported knit footwear.

Comments

Pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the classification issue. The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority: This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: November 5, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-30716 Filed 11-21-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 82N-0239]

Enzyme-Modified Fats; Proposed Affirmation of Gras Status

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, and enzyme-modified refined beef fat are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency.

DATE: Comments by January 22, 1985.

ADDRESS: Comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of enzyme-modified fats has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, and enzyme-modified refined beef fat.

Enzyme-modified fats are fats derived from milk, butterfat, chicken fat, and beef fat that are rendered usable as food-flavoring ingredients through enzymatic action. Enzymatically produced flavors are common to many types of food and may either impair or enhance palatability. The development of a rancid flavor in milk from spontaneous lipolysis of milk is a well-known example of undesirable enzymatic action. Conversely, controlled lipolysis of fats may produce compounds that intensify or complement desirable food flavors.

Lipolytic enzymes, which are used in lipolysis, are widely distributed in nature. They are found in bacteria, fungi, and plants as well as in the tissues and fluids of various animals. Among these enzymes are the pregastric esterases that have been found in the saliva, salivary glands, and other oral tissues of a number of mammalian species. Lipolytic enzymes are especially active in the hydrolysis of triglycerides containing short-chain fatty acids. The commercially desirable flavor from milk fat originates largely from the release of volatile fatty acids by lipolytic enzymes.

A wide range of lipolytic enzymes are employed to modify fats. Industry surveys show that domestic enzyme-modified milk powder and enzyme-modified butterfat are produced almost exclusively using pregastric esterase enzymes. Food-grade lipolytic enzymes, used in the preparation of enzyme-modified animal fats, are described in the Food Chemicals Codex, 3d Ed., pp. 107-110, 1981. In a 1960 opinion letter, FDA stated that food use of lipolytic powders derived from the tongue of the kid, lamb, and calf is GRAS.

In the 1960 opinion letter on lipolytic powders, FDA also stated that enzyme-modified milk powder and enzyme-modified butterfat are GRAS when the modified butterfat does not contain hydroxylated lecithin. In addition, in 1964, FDA stated that enzyme-modified edible fats are GRAS.

In 1971, the National Academy of Science/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which enzyme-modified edible fats are used and the levels of usage. The 1971 NAS/NRC survey showed that enzyme-modified milk powder and enzyme-modified butterfat are used as flavors in such items as chocolate-flavored products, low-fat milk products, bakery products, confectionary products, dairy product analogs, sauces, and snack items. In 1975, an NAS/NRC survey reported that 1,400,000 kilograms (kg) of enzyme-modified whole milk powder and 120,000 kg of enzyme-modified butterfat were used in food. These usage figures correspond to an average per capita consumption of about 18 milligrams per capita per day of enzyme-modified whole milk powder and 1.5 milligrams per capita per day for enzyme-modified butterfat. The total per capita intake of free fatty acid from enzyme-modified whole milk powder and from enzyme-modified butterfat would be about 0.28 milligram per day. In comparison, the average daily consumption of milk, butter, cheese, and ice cream in 1977 was reported by the U.S. Department of Agriculture to be 344 grams per capita. The total per capita intake of free fatty acids from these foods would thus be about 53.2 milligrams per day.

No use information was reported in the NAS/NRC survey on enzyme-modified chicken fat or enzyme-modified beef fat.

Enzyme-modified edible fats were the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 173 abstracts was reviewed, and 55 particularly pertinent reports from the literature survey have been summarzied in a scientific literature review.

Information from the scientific literature review has been summarized in a report to FDA by the Select Committee on GRAS Substances (the Select Committee), which is composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). The members of the Select Committee have carefully evaluated all the available safety information on enzyme-modified fats.[1] In the Select Committee's opinion:

> The whole milk powder and butterfat which are utilized in the preparation of the enzyme-modified products are commonly consumed foodstuffs. The animal tissues used for the production of lipolytic enzyme preparations must comply with Federal meat inspection requirements.
>
> The major products of the lipolytic action on whole milk powder and butterfat are small amounts of butyric, caproic, caprylic and capric acids together with some mono- and di-glycerides and glycerol. The estimated per capita intake of C_4-C_{10} fatty acids from enzyme-modified milk powder and butterfat is 0.26 mg/day. All these compounds are found in many commonly consumed foodstuffs, often in far greater amounts than in the products flavored with enzyme-modified fats. In addition to the free fatty acids in commonly consumed foodstuffs, relatively large amounts of these acids are liberated during normal digestion of the triglycerides in these foods. The amount of volatile fatty acids absorbed from normal diets is many times that contributed by food flavored with the enzyme preparations. Each of these acids has been administered to animals at levels several orders of magnitude greater than this without ill effects.
>
> Medium-chain length triglycerides have been widely employed clinically in malabsorptive disorders. These are readily hydrolyzed in the gastrointestinal tract to yield far greater quantities of caprylic, caproic, and capric acids than are present in enzyme-modified milk powder and butterfat.
>
> The Select Committee has no information concerning the method employed in the lipolytic modification of beef or chicken fat, the products resulting from such action, or the commercial utilization of this process.

[1] "Evaluation of the Health Aspects of Enzyme-Modified Fats as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, pp. 10-14, 1981. In the past, the agency presented verbatim the Select Committee's discussion of the biological data it reviewed. However, because the Select Committee's report is available at the Dockets Management Branch and from the National Technical Information Service, and because it represents a significant savings to the agency in publication costs, FDA has decided to discontinue presenting the discussion in the preamble to proposals that affirm GRAS status in accordance with current good manufacturing practice.

However, the major products of this treatment would presumably be free long-chain fatty acids, especially palmitic, stearic, oleic, and linoleic acids. Each of these acids is found in the free state, or produced during digestion, of many commonly consumed foodstuffs constituting a substantial portion of the normal diet. It is unlikely that the additional fatty acids liberated by the enzymatic processes would constitute more than a small fraction of their total intake by the consumer.[2]

The Select Committee concludes that no evidence in the available information on enzyme-modified milk powder and on enzyme-modified butterfat demonstrates, or suggests resonable grounds to suspect, a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future.[3]

The Select Committee also concludes that no evidence in the available information on enzyme-modified steam-rendered chicken fat and enzyme-modified refined beef fat demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when these substances are used at levels that are now current or that might reasonably be expected in the future.[4]

FDA has undertaken its own evaluation of the available information on enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, and enzyme-modified refined beef fat and concurs with the conclusion of the Select Committee. The agency therefore concludes that no change in the current GRAS status of these ingredients is justified. Therefore, the agency proposes to affirm as GRAS the use of enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, and enzyme-modified refined beef fat.

FDA is proposing to affirm the GRAS status of enzyme-modified refined beef fat and enzyme-modified steam-rendered chicken fat even though no information is available on their current use in food. The agency agrees with the Select Committee that the action of lipolytic enzymes on beef fat and chicken fat in the preparation of these enzyme-modified flavors will produce nontoxic free fatty acids, which are consumed in foodstuffs in the normal diet, and that the additional fatty acids consumed as a result of the use of enzyme-modified refined beef fat and enzyme-modified steam-rendered chicken fat would constitute a very small fraction of the total daily intake of

[2] *Ibid.*, p. 16.
[3] Ibid., p. 15.
[4] Ibid., p. 16.

fatty acids by consumers. The agency therefore concludes that if these ingredients are made in accordance with the method of manufacture specified in the regulation, their use as flavoring agents is safe and may be affirmed as GRAS.

A wide range of lipolytic enzymes can be used to prepare enzyme-modified fats. Therefore, the agency is proposing to permit the use of any appropriate GRAS enzyme in the preparation of enzyme-modified butterfat, enzyme-modified milk powder, enzyme-modified steam-rendered chicken fat, and enzyme-modified refined beef fat.

Because no food-grade specifications exist for these ingredients at the present time, the agency will work with the Committee on Codex Specifications of the National Academy of Sciences to develop acceptable specifications for these ingredients. If acceptable specifications are developed, the agency will incorporate them into this regulation at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if these commercial enzyme-modified fats comply with the description in the proposed regulation and are of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

FDA is not proposing to include in the GRAS affirmation regulation for these enzyme-modified fats the categories and the levels of use reported in the NAS/NRC 1971 survey for these ingredients. Both FASEB and the agency have concluded that a large margin of safety exists for the use of these substances, and that a reasonably foreseeable increase in the level of consumption of these substances will not adversely affect human health. Therefore, the agency is proposing to affirm the GRAS status of these ingredients when they are used at current good manufacturing practice levels in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of these substances is based on the evaluation of currently known uses, the proposed rule sets forth the technical effect that FDA evaluated.

Copies of the scientific literature review on enzyme-modified edible fats and the report of the Select Committee are available for review at the Dockets Management Branch (address above) and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price [1]
Enzyme-modified edible fats (scientific literature review).	PB 297-768	A02	$7.50
Enzyme-modified edible fats (Select Committee report).	PB 82 108571	A03	7.50

[1] Price subject to change.

The proposed action does not affect the current use of enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, or enzyme-modified refined beef fat for pet food or animal feed.

The agency has determined pursuant to 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substances covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 184 be amended by adding new § 184.1287, to read as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

§ 184.1287 Enzyme-Modified fats.

(a) Enzyme-modified refined beef fat, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, and enzyme-modified milk powder are prepared from refined beef fat, butterfat, steam-rendered chicken fat, or milk powder, respectively, with enzymes that are generally recognized as safe (GRAS) for this use. The lipolysis is maintained at a temperature that is optimal for the action of the enzyme until appropriate acid development is attained. The ezymes are then inactivated. The resulting product is then concentrated or dried.

(b) FDA is developing food-grade specifications for these enzyme-modified ingredients in cooperation with the National Academy of Sciences. In the interim, the ingredients must be of purity suitable for their intended use.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food with no limitation other than current good manufacturing practice. The affirmation of these ingredients as generally recognized as safe (GRAS) as a direct human food ingredients is based upon the following current good manufacturing conditions of use:

(1) The ingredients are used as flavoring agents and adjuvants as defined in § 170.3(o)(12) of this chapter.

(2) The ingredients are used in food at levels not to exceed current good manufacturing practice.

The agency is unaware of any prior sanction for the use of these ingredients in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above would constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food Drug and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before January 22, 1985 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office

above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30634 Filed 11-21-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 41 and 48

[LR-31-83]

Heavy Vehicle Use Tax; Credits and Refunds of the Tax on Diesel Fuel; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the **Federal Register** publication beginning at 49 FR 44300, November 6, 1984, of the proposed regulations relating to the imposition of tax on the use of heavy vehicles and relating to credits and refunds of the tax imposed on the sale of diesel fuel.

EFFECTIVE DATES: The proposed amendments that are the subject of these corrections are to be effective after June 30, 1984, except as otherwise provided. These corrections are to be effective with respect to the same dates.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1984, the **Federal Register** published proposed amendments to the Excise Tax Regulations (26 CFR Part 41) under sections 4481, 4482, and 4483 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 513 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424, 96 Stat. 2177) and sections 901, 902, and 903 of the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984) (Pub. L. 98–369, 98 Stat. 1003). The document also contained proposed amendments to the Excise Tax Regulations (26 CFR Part 48) under section 6427 (b)(2) of the Code relating to an exemption from the tax imposed by section 4041 of the Code in the case of fuel used in certain buses, and under section 6427 (g) of the Code relating to a credit or refund to original purchasers of diesel-powered automobiles and light trucks. These last two amendments were proposed to conform the regulations to sections 911 (b) and 915 of the Tax Reform Act of 1984, respectively.

Need for Correction

As published, the notice of proposed rulemaking incorrectly includes the language "and requests to speak at the public hearing" in two locations. These errors appear on page 44300, in the first sentence under the heading "**DATES**", immediately following the language "Written comments" and preceding the language "must be delivered or mailed by December 6, 1984"; and in the first sentence under the heading "**ADDRESS**", immediately following the language "Send comments" and preceding the word "to".

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which was the subject of FR Doc. 84–29182, is corrected as follows:

Paragraph 1. On page 44300, in the first sentence under the heading "**DATES**", the language "and requests to speak at the public hearing" is removed immediately following the language "Written comments" and preceding the language "must be delivered or mailed by December 6, 1984".

Paragraph 2. On page 44300, in the first sentence under the heading "**ADDRESS**", the language "and requests to speak at the public hearing" is removed immediately following the language "Send comments" and preceding the word "to".

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-30454 Filed 11-21-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: On May 29, 1984, the Indiana Department of Natural Resources submitted to OSM a proposed amendment consisting of modifications to the Indiana regulations pertaining to procedures to be followed in conducting administrative hearings pursuant to the Indiana Administrative Adjudication Act, IC–4–22–1.

OSM published a notice in the **Federal Register** on June 26, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 CFR 26106). The public comment period ended July 26, 1984. During its review of Indiana's proposed amendment, OSM identified several concerns relating to the proposed provisions. OSM notified Indiana of its concerns and in letters dated October 25, and November 5, 1984, Indiana responded by submitting additional information and explanation concerning its proposed amendment. Accordingly OSM is reopening and extending the comment period for 15 days on Indiana's proposed amendment and explanatory information. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional information.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. on December 10, 1984, will not necessarily be considered in the Director's decision to approve or disapprove the proposed program modifications.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. McNabb, Director, Indiana Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 269–2000.

Copies of the Indiana program, the proposed amendment, and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment from OSM's Indianapolis Field Office listed below.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana. Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION: Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071–32106).

On May 29, 1984, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. OSM announced receipt of the amendment and initiated a public comment period on June 26, 1984 (49 FR 26106). The public comment period ended on July 26, 1984. A public hearing scheduled for July 23, 1984, was not held because no one expressed a desire to present testimony.

During the review of the Indiana's proposed amendment, OSM identified the following concerns:

1. The proposed Indiana rules 310 IAC 0.5–1–8(a) and 0.5–1–9(c) appeared contradictory as to requirements for filing of a response to an amended claim. OSM requested clarification.

2. Indiana's proposed rule 310 IAC 0.5–1–14(a) seemed to be less inclusive than Federal rule 43 CFR 4.1110 with regard to persons to be permitted to intervene in an action. Federal rules say that a person with a statutory right or who has an interest that is or *may be* adversely affected by the outcome of a proceeding must be granted intervention. The State rule would require the hearing officer to permit intervention to a person with a statutory right or where the person *will be* affected under the Administrative Adjudication Act.

3. Proposed Indiana rule 310 IAC 0.5–1–16 does not authorize the filing of a petition seeking award of costs and expenses as does Federal rule 43 CFR 4.1290. Also, 310 IAC 0.5–1–16 is not explicit as to whether awards may be made against the permittee or the State. Finally, Indiana's proposed rules for eligibility of award at 310 IAC 0.5–1–16(a)(2) may be more restrictive than the Federal rules.

OSM notified Indiana of these concerns in a letter dated September 17, 1984, and Indiana responded in letters dated October 25, and November 5, 1984, by submitting additional information on and explanation of its proposed amendment.

The full text of the proposed program amendment and the additional material are available for review at the locations listed above under **"ADDRESSES"**. Accordingly, the Director, OSM, is not seeking public comments on the adequacy of the State's submissions. The public comment period is hereby extended to December 10, 1984. All comments should be submitted to the location shown above under **ADDRESSES** in order to be considered by the Director in his decision on the program amendment.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: November 17, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84–30730 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

West Virginia Permanent Regulatory Program; Review of State Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: OSM is reopening the period for review and comment on an amendment submitted by the State of West Virginia to its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Specifically, OSM is reopening the comment period to allow the public sufficient time to consider and comment on modifications submitted by West Virginia on October 30, 1984, to an amendment which was originally submitted by the State on March 30, 1984, and was intended to satisfy the remaining fifteen conditions of approval imposed by the Secretary on the State's permanent program. The proposed amendment contains revisions to the State's surface mining and coal refuse disposal regulations which are intended to satisfy preliminary findings made by OSM on August 21, 1984, concerning the State's initial amendment. Also, the amendment contains revised civil penalty assessment procedures which were developed by the State to identify assessable and non-assessable violations and to satisfy concerns raised by OSM regarding the State's implementation of its approved civil penalty system.

This notice sets forth the times and locations that the West Virginia program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on December 24, 1984 will not necessarily be considered. A public hearing on the proposal will be held from 7:00 p.m. to 9:00 p.m. on December 17, 1984, at the OSM Charleston Field Office listed below under **ADDRESSES**. Any person interested in making an oral written presentation at the hearing should contact Mr. John Heider at the OSM Charleston Field Office by the close of business on or before the fifth day prior to the hearing. If no one has contacted Mr. Heider to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Heider, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Attention: West Virginia Administrative Record.

See **SUPPLEMENTARY INFORMATION** for addresses where copies of the West Virginia program amendment and administrative record on the West Virginia program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendent by contacting the OSM Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: John Heider, Acting Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION: Copies of the West Virginia program amendment, the West Virginia program and the administrative record on the West Virginia program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, D.C. 20240. Telephone: (202) 343–7896

West Virginia Department of Natural Resources, Room 630, Building 3, 1800 Washington Street, East, Charleston, West Virginia 25305. Telephone: (304) 348–5100

In addition, copies of the amendment are available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505. Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 119 Appalachian Drive, Beckley, West Virginia 25801. Telephone: (304) 255–5265

The West Virginia program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5915–5956).

On March 30, 1984, West Virginia submitted an amendment to OSM which was intended to satisfy the remaining fifteen conditions of approval concerning auger mining, coal refuse disposal, blasting, transfer of wells, permit approval, revegetation, suspension or revocation of permits, stabilization of rills and guilles, subsidence, Mine Safety and Health Administration (MSHA) approval of permit applications and exemption for coal extraction incident to a government-financed highway or other construction (Administrative Record No. WV 587).

On May 8, 1984, OSM announced in the **Federal Register** receipt of the amendment, procedures for public comment and an opportunity for a public hearing (49 FR 19525–19527). A public hearing scheduled for May 28, 1984, was not held because no one requested the hearing. The public comment period ended on June 7, 1984.

Following the public comment period, on August 21, 1984, OSM provided the State a list of deficiencies found in the amendment. West Virginia was given an opportunity to submit proposed emergency rule changes, policy statements, clarifying legal opinions or other evidence proving that the State's proposed modifications were no less effective than the Federal requirements (Administrative Record No. WV 593).

On October 30, 1984, West Virginia submitted modifications to its initial amendment of March 30, 1984. The proposed amendment consists of revisions to the State's surface mining and coal refuse disposal regulations and modifications to its permit addendum form and its approval letter for coal exploration involving the removal of more than 250 tons. In addition, the State provided OSM a copy of its revised civil penalty procedures which included a Code of Violations for determining assessable and non-assessable violations (Administrative Record No. 601).

Although the State's civil penalty system was approved by the Secretary on November 16, 1983 (47 FR 52034–52054), West Virginia has not fully implemented its approved system. As a result, approximately 4,200 violations had not been reviewed by the State for civil penalty assessment as of June 30, 1984. On June 7, 1984, OSM notified West Virginia of its concern regarding the State's failure to implement its approved civil penalty system. A meeting was held on June 29, 1984, to discuss the concerns raised in the June 7th letter and several meetings were held subsequent to the initial meeting which resulted in the State's submission of its revised civil penalty procedures (Administrative Record Nos. WV 588, 589, 590, 602, 603 and 604).

In accordance with the provisions of 30 CFR 732.17, OSM is now seeking comments from the public on the adequacy of the proposed revisions to West Virginia's initial amendment of March 30, 1984. Because the Director of OSM finds that the scope of the proposed amendment has been expanded beyond that of the initial amendment, a 30 day public comment has been provided and a public hearing will be held upon request to receive comments on the proposed amendment.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: November 17, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84–30731 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

34 CFR Part 280

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Magnet Schools Assistance Program. The program is authorized by Title VII of the Education for Economic Security Act (Pub. L. 98–377). The purpose of these proposed regulations is to ensure that awards effectively facilitate the ability of local educational agencies (LEAs) to establish and operate magnet schools that are part of approved desegregation plans and that are designed to bring together students from different social, economic, ethnic, and racial backgrounds.

DATES: Comments must be received on or before January 7, 1985.

ADDRESS: Comments should be addressed to M. Patricia Goins, Division of Educational Support, U.S. Department of Education (Room 2007, FOB–6), 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: M. Patricia Goins. Telephone: (202) 245–7965.

SUPPLEMENTARY INFORMATION:

Overview of the Magnet Schools Assistance Program

Title VII of the Education for Economic Security Act (Act) authorizes the Magnet Schools Assistance Program for fiscal years 1984, 1985, and 1986.

The purpose of the magnet schools program is to (1) provide financial assistance to eligible LEAs to enable those agencies to establish and operate magnet schools; (2) meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools; (3) encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students; and (4) encourage the development of courses of instruction within magnet schools that will substantially

strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending those schools. The Act defines a magnet school as "a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds."

Summary of Major Provisions of the Proposed Regulations

An LEA may establish eligibility for assistance in several ways. Based on Section 702(1) of the Act, the NPRM provides that an LEA is eligible for assistance if it received $1,000,000 less under Chapter 2 of the Education Consolidation and Improvement Act in fiscal year 1982 than it received in the preceding year under the Emergency School Aid Act (ESAA). In addition, an LEA is eligible for assistance if it has a desegregation plan that was ordered by a court or by a State agency or official of competent jurisdiction, or that is approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964. An LEA may submit a desegregation plan for the Secretary's approval with its application. Technical assistance in developing a desegregation plan is available from the Department's Office for Civil Rights.

The NPRM also implements the statutory requirement that each magnet school assisted under this program must be part of an approved desegregation plan. An LEA that is eligible for assistance based on its loss of $1,000,000 under Chapter 2 may meet this requirement by showing that its magnet school(s) is part of a plan that established the LEA's eligibility under ESAA, if the LEA is continuing to implement the plan. If the LEA is no longer implementing the plan, it must submit a new plan to the Secretary for approval. An LEA that is eligible for assistance based on having an approved desegregation plan, as described in the preceding paragraph, may meet this requirement by showing that the magnet school(s) for which it seeks assistance is part of its approved desegregation plan.

Section 708 of the Act directs the Secretary in approving applications to give special consideration to (1) the recentness of the implementation of the approved plan or modification of the plan; (2) the proportion of minority group children involved in the approved plan; (3) the need for assistance based on the expense or difficulty of effectively carrying out an approved plan and the program or projects for which assistance is sought; and (4) the degree to which the program or project for which assistance is sought affords promise of achieving the purposes of the Magnet Schools Assistance Program. Section 280.32 implements the special consideration requirements contained in the Act by proposing additional points to be awarded based on the four special consideration factors. The Secretary particularly invites public comment on § 280.32(a) of the proposed regulations, which describes the special consideration the Secretary proposes to give to the recentness of implementation by an LEA of its approved desegregation plan or modification. The Secretary is interested in receiving comments on the proposed categories of recentness of the plan or plan modification—not more than five years, more than five but not more than ten years, more than ten but not more than fifteen, and more than fifteen years—and on the number of special consideration points associated with each category.

Originally, the Act contained a provision (Section 711(b)) that required the Secretary to implement a bypass if an LEA did not provide for the participation in magnet schools programs on an equitable basis of children and staff of private nonprofit elementary and secondary schools. Congress has since amended the Act by deleting this provision. Therefore, these proposed regulations do not contain requirements relating to the participation children and staff of private schools.

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79 apply to this program.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

The small entities affected by this program are LEAs. The regulations do not impose burdensome reporting or recordkeeping requirements and will not have a significant economic impact on the limited number of LEAs affected.

Paperwork Reduction Act of 1980

The information collection requirements contained in § 280.20 of these proposed regulations will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

A copy of any comments that concern *only* information collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue NW., Washington, D.C., 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2007, FOB–6, 400 Maryland Avenue SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Education Department, Elementary and secondary education, Grant programs-education, Magnet schools.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. The citation is the appropriate section of the Act (Title VII of the Education for Economic Security Act, Pub. L. 98–377).

(Catalog of Federal Domestic Assistance number 84.165, Magnet Schools Assistance Program.)

Dated: November 16, 1984.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 280 to read as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

Subpart A—General

Sec.

280.1 What is the Magnet Schools Assistance Program?
280.2 Who is eligible to apply for a grant?
280.3 What regulations apply to this program?
280.4 What definitions apply to this program?

Subpart B—What Types of Projects Does the Secretary Assist under This Program?

280.10 What types of projects does the Secretary assist?

Subpart C—How Does One Apply for a Grant?

280.20 How does one apply for a grant?

Subpart D—How Does the Secretary Make a Grant?

280.30 How does the Secretary evaluate an application?
280.31 What selection criteria does the Secretary use?
280.32 How is special consideration given to applicants?

Subpart E—What Conditions Must Be Met by a Grantee?

280.40 What are the limitations on allowable costs?

Subpart F—May a State Reduce Aid to an LEA that Receives a Grant under This Program?

280.50 May a State reduce the amount of aid it gives to an LEA?

Authority: Title VII of the Education for Economic Security Act, Pub. L. 98–377, 98 Stat. 1299–1302 (20 U.S.C. 4051–4062), unless otherwise noted.

Subpart A—General

§ 280.1 What is the Magnet Schools Assistance Program?

The Magnet Schools Assistance Program provides grants to eligible local educational agencies (LEAs) for use in magnet schools that are part of an approved desegregation plan and that are designed to bring students from different social, economic, ethnic, and racial backgrounds together. The purposes of the program are to—

(a) Provide financial assistance to eligible LEAs to enable them to establish and operate magnet schools;

(b) Meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools;

(c) Encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students; and

(d) Encourage the development of courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending these schools.

(Section 703)

§ 280.2 Who is eligible to apply for a grant?

An LEA is eligible to receive assistance under this part if the LEA—

(a) Received $1,000,000 less under Chapter 2 of the Education Consolidation and Improvement Act (ECIA) in fiscal year 1982 than it received in fiscal year 1981 under the Emergency School Aid Act (ESAA);

(b) Is implementing a plan undertaken pursuant to a final order of a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, and the order requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of that agency; or

(c) Adopted and is implemented on a voluntary basis—or will, if assistance is made available to it under this part, adopt and implement—a plan that has been approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in its schools.

(Section 702)

§ 280.3 What regulations apply to this program?

The following regulations apply to the Magnet Schools Assistance Program:

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

(b) The regulations in this Part 280.

(Sections 701–712)

§ 280.4 What definitions apply to this program?

(a) *Definitions in EDGAR:* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Elementary school
Local educational agency
Nonprofit
Secondary school
State

(b) *Definitions that apply to this program:* The following definitions also apply to this part:

"Act" means Title VII of the Education for Economic Security Act, Pub. L. 98–377.

"Implementation date" means the date of the first change in the enrollment of a school as a result of the plan or a modification of the plan, or, in the case of a plan for the desegregation of minority group segregated faculty, the first reassignment of a faculty member as a result of the plan or a modification of the plan.

"Magnet school" means a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

"Minority group" means the following:

(1) American Indian or Alaskan Native. A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(2) Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Korea, the Philippine Islands, and Samoa.

(3) Black (Not of Hispanic Origin). A person having origins in any of the black racial groups of Africa.

(4) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

"Special curriculum" means a course of study embracing subject matter or a teaching methodology that is not generally offered to students of the same age or grade level in the same LEA, as the students to whom the special curriculum is offered in the magnet schools. This term does not include—

(1) A course of study or a part of a course of study designed solely to provide basic educational services to handicapped students or to students of limited English-speaking ability;

(2) A course of study or a part of a course of study in which any student is

unable to participate because of his or her limited English-speaking ability;

(3) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited financial resources; or

(4) A course of study or a part of a course of study that fails to provide for a participating student's meeting the requirements for completion of elementary or secondary education in the same period as other students enrolled in the applicant's schools.

(Sections 701–712)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 280.10 What types of projects does the Secretary assist?

(a) The Secretary funds applications proposing projects for planning and conducting programs in magnet schools that are part of an approved desegregation plan and that are designed to bring students from different social, economic, ethnic, and racial backgrounds together. For the purposes of this part, an approved desegregation plan is—

(1) A desegregation plan described in § 280.2 (b) or (c); or

(2) A plan that the applicant used to establish its eligibility under section 606(a)(1) of the ESAA and that the applicant is continuing to implement.

(b) The Secretary assists projects that include one or more of the following:

(1) Courses of academic instruction offered at magnet schools.

(2) Courses of instruction in magnet schools offering secondary education or vocational education that are designed to increase the tangible and marketable skills of secondary school students and vocational school students.

(3) Purchase of books, materials, and equipment, including computers, that contribute directly to academic excellence and the purposes of this part.

(4) Payment or subsidization of the compensation of elementary and secondary school teachers in magnet schools who are certified or licensed by the State and who are necessary to carry out the courses of instruction for which assistance is sought.

(c) In addition to the activities described in paragraph (b) of this section, a project may include planning activities subject to the restrictions in § 280.40(a).

(Section 706)

Subpart C—How Does One Apply for a Grant?

§ 280.20 How does one apply for a grant?

(a) Each eligible LEA that desires to receive assistance under this part shall submit an annual application to the Secretary.

(b) In its application, the LEA shall certify that it agrees to—

(1) Use funds made available under this part for the purposes specified in section 703 of the Act;

(2) Employ teachers in the courses of instruction assisted under this part who are certified or licensed by the State to teach the subject matter of the courses of instruction;

(3) Provide assurances that the LEA will not engage in discrimination based upon race, religion, color, or national origin in the hiring, promotion, or assignment of employees of the agency or other personnel for whom the agency has any administrative responsibility;

(4) Provide assurances that the LEA will not engage in discrimination based upon race, religion, color, or national origin in the mandatory assignment of students to schools or to courses of instruction within schools of the agency except to carry out the approved plan;

(5) Provide assurances that the LEA will not engage in discrimination based upon race, religion, color, or national origin in designing or operating extracurricular activities for students; and

(6) Provide such other assurances as the Secretary determines necessary to carry out the provisions of this part.

(c) The application must contain information necessary to enable the Assistant Secretary for Civil Rights to determine whether the assurances contained in paragraphs (b) (3), (4), and (5) of this section will be met.

(d) The application must include a copy of—

(1) The LEA's approved desegregation plan; or

(2) The desegregation plan the LEA is submitting for approval.

(Section 707)

Subpart D—How Does the Secretary Make a Grant?

§ 280.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this part on the basis of the criteria in § 280.31 and the special consideration factors in § 280.32.

(b) The Secretary awards up to 100 points for the extent to which an application meets the criteria described in § 280.31. The maximum possible points for each complete criterion are indicated in parentheses after the heading for that criterion.

(c) The Secretary then awards up to 40 additional points based upon the special consideration factors in § 280.32.

(Sections 701–712)

§ 280.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) An effective plan of management that ensures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purposes of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iv) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Quality of project design.* (35 points)

(1) The Secretary reviews each application for information that shows the quality of the project design.

(2) The Secretary looks for information that shows—

(i) The extent to which the design of the magnet school(s) is likely to bring students from different social, economic, ethnic, and racial backgrounds together;

(ii) Evidence of applicability to classroom use and age-level of students, of the applicant's materials, programs, or approaches;

(iii) The applicant's and the staff's experience in and knowledge of curriculum development and desegregation strategies; and

(iv) How the magnet school(s) is designed to address a diversity of learning approaches that are—

(A) Appropriate to the students who will be enrolled in the magnet school(s);

(B) Designed to address gains not only in students' knowledge, but also in their skills; and

(C) Designed to encourage parental involvement in the project.

(d) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Sections 701–712)

§ 280.32 How is special consideration given to applicants?

(a) *How special consideration is given.* In addition to the points awarded under § 280.31, the Secretary gives special consideration to the factors listed in paragraphs (b) through (e) of this section. The maximum number of points awarded for each factor is stated in parentheses.

(b) *The recentness of the implementation of the approved desegregation plan.* (10 points)

(1) The Secretary reviews each application to determine the recentness of the implementation date of the approved desegregation plan or modification of the plan.

(2) The Secretary determines the recentness of the plan by assigning each application to one of the following categories:

(i) Applications based on plans or modifications of plans with implementation dates not more than five years before the July 1 that follows the deadline date for applications. (10 points)

(ii) Applications based on plans or modifications of plans with implementation dates more than five years but not more than ten years before the July 1 that follows the deadline date for applications. (7 points)

(iii) Applications based on plans or modifications of plans with implementation dates more than ten years but not more than fifteen years before the July 1 that follows the deadline date for applications. (4 points)

(iv) Applications based on plans or modifications of plans with implementation dates more than fifteen years before the July 1 that follows the deadline date for applications. (0) points)

(c) *Involvement of minority group children.* (10 points)

(1) The Secretary gives special consideration to the proportion of minority group children involved in the approved desegregation plan.

(2) The Secretary determines the percentage that represents a comparison of the number of minority group children involved in the applicant's approved desegregation plan to the number of minority group children enrolled in the applicant's schools.

(3) The Secretary awards one point for each ten percentage points the applicant receives under paragraph (c)(2) of this section.

(d) *Need for assistance.* (10 points)

The Secretary reviews each application to determine the need for assistance based on the incremental expense of operating an approved plan (expressed as a percentage increase in an LEA's operating budget) or the difficulty of effectively carrying out such a plan and the program or projects for which assistance is sought.

(e) *Degree of achievement.* (10 points)

The Secretary reviews each application to determine the degree to which the program or project for which assistance is sought affords promise of achieving the purposes as listed in § 280.1.

(Section 708)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 280.40 What are the limitations on allowable costs?

An LEA that receives assistance under this part may not—

(a) Expend more than 10 percent of the funds received in any fiscal year for planning;

(b) Use funds for consultants or transportation;

(c) Use funds for any activity that does not augment academic improvement; or

(d) Use funds for any course of instruction the substance of which the LEA determines is secular humanism.

(Sections 709 and 710(b))

Subpart F—May a State Reduce Aid to an LEA That Receives a Grant Under This Program?

§ 280.50 May a State reduce the amount of aid it gives to an LEA?

(a) Except as provided in paragraph (b)(1) of this section, a State shall not reduce the amount of State aid with respect to the provision of free public education or the amount of assistance received under Chapter 2 of the ECIA in any school district of any LEA within the State because of assistance made or to be made available to the LEA under this part.

(b)(1) A State may reduce assistance received under Chapter 2 if the amount of assistance is attributable to section 577(3) of the ECIA (as in effect prior to August 11, 1984), but only to the extent the amount is so attributable.

(2) The Secretary may waive the prohibition against the reduction of assistance received under Chapter 2 and permit such a reduction if the State demonstrates that the assistance under Chapter 2 is not necessary to the LEA.

(Section 701(c))

[FR Doc. 84-30638 Filed 11-21-84; 8:45 am]
BILLING CODE 4880-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Docket No. 84-29]

Licensing of Ocean Freight Forwarders; Discontinuance of Proceeding

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of Proceeding.

SUMMARY: The Federal Maritime Commission has determined to discontinue this proceeding in light of the recent enactment of certain amendments to the Shipping Act, 1916, which renders the proceeding unnecessary. Freight forwarder agreements relating to the foreign commerce of the United States are no longer subject to the requirements of that Act.

DATES: Discontinuance effective November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: By Notice published in the **Federal Register** on August 29, 1984 (49 FR 34253), the Commission proposed to reinstate the requirement provided for in 46 CFR 510.36 (1983) to require ocean freight forwarders operating in the foreign commerce of the United States to file their agreements with the Commission pursuant to section 15, Shipping Act, 1916, 46 U.S.C. 814. The comment period on this proposal is scheduled to expire on December 29, 1984.

H.R. 5833, Pub. L. No. 98-595, 98 Stat. 3130 (1984) which was recently enacted into law, amends the Shipping Act, 1916 to remove such freight forwarder agreements from the filing and approval requirements of that Act. That action renders this proceeding unnecessary. Accordingly, the proceeding is discontinued.

By the Commission.

Francis G. Hurney,

Secretary.

[FR Doc. 84-30639 Filed 11-21-84; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Designate the Inyo Brown Towhee as Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Inyo brown towhee to be a threatened species. This action is being taken because the entire population of this species is confined to a very limited habitat that has already been altered to some extent and could further be adversely impacted by future changes in land use. The Inyo brown towhee occurs in the Argus Mountains, Inyo County, California. Critical habitat is included in this proposed rule. The rule would provide protection under the Endangered Species Act for this bird. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 22, 1985. Public hearing requests must be received by January 7, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director (SE), U.S. Department of the Interior, Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White, Chief, Division of Endangered Species, Region 1, Fish and Wildlife Service, U.S. Department of the Interior, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131; FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Inyo brown towhee (*Pipilo fuscus eremophilus*) is a medium-sized (7-7½ inch) sparrow-like songbird, one of several recognized subspecies of the brown towhee (*Pipilo fuscus*). This subspecies was described in 1935 from specimens taken in the Argus Mountains. This one is particularly significant because it is completely isolated from the other subspecies geographically and has become adapted to a rigorous desert environment not fully duplicated within the range of the species. It is a yearlong resident of its limited habitat, all of which is included within the confines of a circle approximately 11 miles in diameter. Nesting occurs in dense vegetation at springs and along water courses, and the birds forage for seeds and insects in open areas adjacent to the riparian scrub.

The population is estimated to include less than 175 individuals. It is not known if the population level is changing, but the species is vulnerable to changes in its habitat that could occur from overgrazing, export of water, mining, or recreational activities. Recent studies of the Inyo brown towhee were done by Bart Cord and Joseph R. Jehl, Jr., under contract to the Bureau of Land Management; the results were reported in *Western Birds* 10:131-156, 1979. Mills *et al.* (1982) and WESTEC (1983) provide more recent data on the towhee.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; a revision was published October 1, 1984; 49 FR 38900-38912) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Inyo brown towhee are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Inyo brown towhee is restricted within its range to the proximity of dense riparian vegetation (particularly arroyo willow, *Salix lasiolepis*). Such vegetation is limited in extent naturally in the arid Mojave Desert, but can be further restricted by decreases in water supply needed to support the vegetation, or by events that destroy or degrade the existing vegetation. Animal grazing (particularly by feral burros), mining, water exporting, and recreational activities could be the cause of these changes in habitat. Destruction of some portions of the habitat has been documented in the past and is continuing at the present time. Feral burros have already had some impact at some springs by grazing and trampling of the vegetation. The total range of the Inyo brown towhee is very small, and the ecosystem is fragile; hence, the species could be extirpated rather quickly, if current uses change. Some 100-175 adult towhees are scattered over a tiny area in the Argus Mountains.

The total available habitat is on the order of 2700 acres. The effective population size for this bird has not been determined, but for most avian species the number is about 100. Any lower population level would invite genetic and other problems upon this isolated bird, including extinction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this subspecies is known to exist at this time.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* The bulk (est. 2670 acres) of the habitat is administered by the Bureau of Land Management and U.S. Navy, and at least, in part, these agencies can control the use of lands under their jurisdiction. Designating the species as threatened will be a supportive measure that will open up additional options for protection and management. No other Federal or State laws or regulations otherwise protect the habitat of this bird. A tiny portion (31 of the 2700 acres) is in private ownership and not subject to public management.

E. *Other natural or manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific information available, regarding the past, present, and future threats faced by this bird in determining to propose this rule. Based on this evaluation, the preferred action is to list the Inyo brown towhee as threatened. The only immediate threats to the continued existence of this species is localized destruction of habitat by feral burros; otherwise, there is only the long-term potential loss of the very limited habitats that it requires.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protections, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

In section 4(a)(3), the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is proposed to be designated for the Inyo brown towhee to include approximately 2,700 acres of riparian scrub habitat near springs and streams on, and in the vicinity of, the China Lake Naval Weapons Center, Argus, Mountains, Inyo County, California. Proposed critical habitat lies in the vicinity of the following: Margaret Ann Springs, Snooky Spring, Ruby Spring, Quail Spring, Benko Spring, Moscow Spring, Bainter Spring, Indian Joe Spring, Great Falls Basin, Mountain Springs Canyon, and a number of unnamed springs. The areas proposed as critical habitat satisfy all known criteria for the ecological, behavioral, and physiological requirements of the subspecies. The riparian scrub habitat provides sufficient cover for nesting, roosting, and escaping from predators, and also provides a source of food.

Subsection 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private), which may adversely modify such habitat or may be affected by such designation. Actions that could adversely affect critical habitat for this species are removal, thinning, or destruction of riparian vegetation. Specific activities that could cause the above are:

(1) Water diversion or substantially increased water use for mining, recreation, grazing, or any other use;

(2) Grazing by domestic livestock or feral burros;

(3) Mechanical brush clearing for any purpose; or

(4) Damage to vegetation from recreational vehicles.

If the Inyo brown towhee is listed, any of these actions occurring on land under Federal jurisdiction will require Section 7 consultation if there is a potential impact on the Inyo brown towhee or its critical habitat. In addition, any actions on non-Federal lands that are subject to Federal approval, funding, or other action will also require Section 7 consultations between the Federal agency and the Service, if the proposed activities may affect a listed species.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will reevaluate the geographic critical habitat designations at the time of the final rule, after considering all additional relevant information obtained at the time of the final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species, which are initiated by the Service following listing. The protection required by Federal agencies and taking and harm prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an activity may affect a listed species, the Federal agency must enter into consultation with the Service.

Preliminary contact with the Bureau of Land Management and U.S. Navy has not revealed current or proposed programs that would adversely affect critical habitat for this species. These agencies are planning a cooperative program to preserve and manage Inyo brown towhee habitat within their areas of jurisdiction. Programs authorized in the future that might impact critical habitat would be livestock grazing, water exporting, human recreation, and mining. Consultation with the Fish and Wildlife Service on such issues as they arise would probably result in identification of alternatives; whereby towhee habitat could be protected without curtailment of the proposed program.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general

prohibitions that apply to all threatened wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce this species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, zoological exhibition, educational purposes, and incidental take or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since the towhee is a migratory bird (50 CFR Part 10), no commercial trade is allowed, and no hardship permits would be expected in this case.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to the Inyo brown towhee;

(2) The location of any additional populations of the Inyo brown towhee and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts of the Inyo brown towhee; and

(5) Any foreseeable economic and other impacts resulting from the proposed critical habitat.

Final promulgation of the regulations on the Inyo brown towhee will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Cord, B., and J.R. Jehl, Jr. 1979. Distribution, biology and status of a relict population of Brown Towhee (*Pipilo fuscus eremophilus*). Western Birds 10:131–156.

Mills, S.G., S. Sutherland, and F.W. Reichenbacker. 1982. Vertebrate survey of selected riparian habitats on the China Lake Naval Weapons Center. Preliminary report prepared for S.W. Carothers and Associates.

WESTEC Services Inc. 1983. Biological resource survey of Mountain Springs Canyon on the Naval Weapons Center, NWC TP 6424.

Author

The primary authors of this proposed rule are Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Region 1, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–6131) and Dr. Kathleen E. Franzreb, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/440–2791).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
Towhee, Inyo brown	*Pipilo fuscus eremophilus*	U.S.A. (CA)	Entire	T	17.95(b)	NA	

3. It it further proposed to amend § 17.95(b) by adding critical habitat of the Inyo brown towhee in alphabetical order as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.* * * *

* * * * *

Inyo brown towhee (*Pipilo fuscus eremophilus*)

California. Inyo County; lands within and adjacent to the China Lake Naval Weapons Center, identified as follows:

(1) Approximately 2 miles of streambed and ⅛ mile on either side of the wash from Margaret Ann Spring to Snooky Spring including those areas of the wash in T23S R42E Sections 3, 4, and 10. (Map location A)

(2) T23S R42E SW¼NE¼ Section 8. (Map location B)

(3) T23S R42E NW¼NW¼ Section 20. (Map location C)

(4) Approximately 2 miles of streambed and ¼ mile on either side of the wash from Ruby Spring (TR23S R42E Section 22) southeast to the boundary between Sections 25 and 26 including those areas of the wash in T23S R42E Sections 22, 23, and 28. (Map location D)

(5) T24S R42E SW¼NE¼ Section 28. (Map location E)

(6) A circle ¼ mile in radius with Benko Spring as the center within T23S R42E Sections 34 and 35. (Map location F)

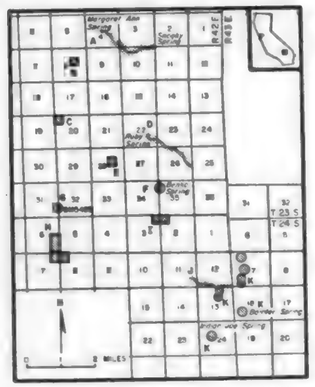
(7) A circle ¾ mile in radius with bench mark 5485 in TR23S R42E Section 31 as the center and lying within T23S R42E Sections 31 and 32. (Map location G)

(8) T24S R42E E½SE¼ Section 6, NE¼NE¼ Section 7 and NW¼NW¼ Section 8. (Map location H)

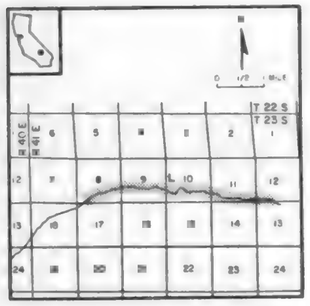
(9) T24S R42E NW¼NW¼ Section 2 and NE¼NE¼ Section 3. (Map location I)

(10) Approximately 1.8 miles of streambed and ⅛ mile on either side of the wash commencing from the western edge of T24S R42E E½ Section 11 to the eastern boundary of Section 12. (Map location J)

(11) Circles with ¼ mile radii around every spring in T24S R43E Section 7 (4 springs) and Bainter Spring in Section 16, and in T24S R42E Section 13 (2 springs) and Indian Joe Spring in Section 24. (Map location K)



(12) Approximately 5 miles of streambed and ⅛ mile on either side of the wash commencing from the south border of Section 8 to the SE corner of SW¼ Section 12 including those areas within T23S R41E Sections 8, 9, 10, 11, 12, 13, 14, and 17. (Map location L)



Major constituent element: riparian scrub vegetation.

* * * * *

Dated: September 24, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–30460 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41037–4137]

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to amend the foreign fishing regulations: (1) To establish the 1985 foreign fishing permit application fee; and (2) to waive the surcharge for the Fishing Vessel and Gear Damage Compensation Fund (FVGDC) in 1985. Comments are requested on the proposed 1985 permit application fee. This action complies with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act.

EFFECTIVE DATE: Comments must be received on or before December 24, 1984.

ADDRESS: Send comments to John D. Kelly, National Marine Fisheries Service, 3300 Whitehaven St. NW., Rm 414, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John D. Kelly 202–634–7432.

SUPPLEMENTARY INFORMATION: NOAA is publishing the fee schedule for 1985 in two segments. This is referred to as the first segment and concerns foreign fishing permit application fees. The other or second segment proposed new poundage fees, and has been published in a separate action (49 FR 40615, October 17, 1984).

Permit Fees

Since December 15, 1980, NMFS has determined foreign fishing permit application fees annually by estimating the cost of processing an application during that fee year (45 FR 82267, December 15, 1980). NMFS has estimated costs of processing applications in 1985. The estimated costs used to develop the proposed 1985 permit application fee are as follows:

Department of State

Salaries	$30,000
Duplicating	600
Mailing	700
Computer	3,500
Travel	1,200
Total	36,000

Department of Commerce

Salaries	$32,000
Computer	20,000
Printing form	200
Federal Register	22,848
Total	75,048
Grand total	111,048

The total estimated cost of processing each permit application in 1985 is $101. This total is apportioned by application by estimating that 1,100 applications will be received in 1985. NMFS is rounding the average unit cost to $101 per application. Foreign applicants would pay the $101 but no surcharge for each application in 1985 (see below). Applicants for 1985 permits should pay this amount pending the final rule. NOAA will bill for additional permit fees or credit to future fees any differences in the amounts paid if the final permit fee is different from the $101 fee proposed.

Surcharge

The Assistant Administrator for fisheries, NMFS had determined that the Fishing Vessel and Gear Damage Compensation Fund established by the Fishermen's Protective Act (22 U.S.C. 1980(10)(f)) is sufficiently capitalized to pay any claims in 1985. Capitalization of the fund is derived from a surcharge on the foreign fishing fees imposed under section 204(b)(10) the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) NOAA proposes to maintain the surcharge at zero percent, effectively waiving the surcharge in 1985 as it was in 1984. Therefore, no change is proposed for § 611.22(b) by this notice. NOAA reserves the right to modify the surcharge at a later date if unanticipated claims occur.

Classification

NOAA has prepared a draft regulatory impact review initial regulatory/ flexibility analysis (RIR/ IRFA) that discusses the economic consequences and impacts of the proposed regulations. Copies of the RIR/ IRFA are available at the above address. Based on the RIR/IRFA the Administrator, NOAA, has determined

that the proposed regulations do not constitute a major rule under E.O. 12291, and that the proposed rules comply with the requirements of Section 2.

These regulations will not have a significant impact on a substantial number of small entities, because the only impacts are on foreign entities. The costs to foreign vessels and their owners will be slightly increased, but the increases are only 0.27 percent of the total fishing fees projected to be paid in 1985 to the United States. The General Counsel of the Department of Commerce has certified this to the Small Business Administration.

This action does not constitute a major Federal action significantly affecting the quality of the human environment. These amendments are programmatic functions with no potential for environmental impacts under the National Environmental Policy Act.

These proposed rules have no information collection provisions, for purposes of the Paperwork Reduction Act, 44 U.S.C. 3510 *et seq.*

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: November 15, 1984.

Anthony J. Calio,

Deputy Administrator, NOAA.

PART 611—[AMENDED]

For the reasons stated in the preamble above, 50 CFR 611.22 is proposed to be amended as follows:

1. The authority citation for Part 611 is a follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 611.22 is amended by revising paragraph (a)(1)(i) as follows:

§ 611.22 Fees Schedule for foreign fishing.

(a) * * *

(1) *Permit application fees.* (i) Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $101 per vessel, plus the surcharge if required under paragraph (b) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, made out to Department of Commerce, NOAA must be sent to: Division Chief, Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, N.W. Room 414 Washington, D.C. 20235. The permit fee payment must be accompanied by a list of the vessels for which payment is made.

* * * * *

[FR Doc. 84-30599 Filed 11-21-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 227
Friday, November 23, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGRICULTURAL TRADE AND EXPORT POLICY COMMISSION

Meeting

The Agricultural Trade and Export Policy Commission, an independent Commission established pursuant to Pub. L. 98-412, will hold its first meeting at 8:30 a.m. on November 30, 1984 in Room 2172 of Rayburn House Office Building, Independence Avenue NW., Washington, DC.

The meeting is expected to consider organizational business including the election of a Chairman and other officers of the Commission, the adoption of rules for Commission procedures, and discussion of matters including the placement of offices and staff and the financing of Commission activities. The meeting is open to the public.

Dr. Kenneth L. Bader,

Member.

[FR Doc. 84-30827 Filed 11-21-84; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.
Date: December 4-5, 1984.
Time: 12:00 noon-4:00 p.m., December 4. 8:00 a.m.-12:00 noon, December 5.
Place: Breckenridge King's Inn, 9600 Natural Bridge Road, St. Louis, Missouri 63134

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. Estel H. Cobb, Recording Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 209 West Auditors Building, Washington, D.C. 20251; telephone: 202/447-4329.

Done at Washington, D.C., this 15th day of November 1984.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 84-30732 Filed 11-21-84; 8:45 am]

BILLING CODE 3410-22-M

Soil Conservation Service

Mill-Horse Brook Watershed, CT

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mill-House Brook Watershed, Windham and New London Counties, Connecticut.

FOR FURTHER INFORMATION CONTACT: Philip H. Christensen, State Conservationist, Soil Conservation Service, 16 Professional Park Road, Storrs, CT 06268, telephone (203) 429-9361.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Philip H. Christensen, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention. The planned works of improvement include the installation of a main floodwater diversion conduit system and a secondary floodwater diversion conduit system, construction of an earth dike around a sewage pumping station, and floodproofing of an industrial building.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests of the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Philip H. Christensen.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: November 15, 1984.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Philip H. Christensen,

State Conservationist.

[FR Doc. 84-30864 Filed 11-21-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Cancellation of Cost Comparison Review Scheduled for Commercial or Industrial Activity Performed by Government Personnel in the Office of the Secretary

November 19, 1984.

AGENCY: Ofice of the Secretary, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Cost Comparison Review of the Department's Design and Graphics Division scheduled to be performed pursuant to Office of Management and Budget (OMB) Circular A-76 and Department of Commerce Administrative Order 201-41 and previously announced in the Federal Register on October 1, 1984 (49 FR 38694), is cancelled.

No invitation for bids or request for proposals will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Marc J. Bloom, Office of Administrative Services Operations, Office of the Assistant Secretary for Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202) 377–5263.

Hugh L. Brennan,

Director for Procurement and Administrative Services.

[FR Doc. 84-30725 Filed 11-21-84; 8:45 am]

BILLING CODE 3510-03-M

International Trade Administration

Automated Manufacturing Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held December 13, 1984, at 9:30 a.m., Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export control applicable to automated manufacturing equipment or technology.

Agenda

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Discussion of the MCTL implementation project.
5. Discussion of the 1985 annual plan.
6. New Business.
7. Action items underway.
8. Action items due at meeting.

Executive Session

9. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377–4217. For further information or copies of the minutes contact Margaret A. Cornejo, (202) 377–2583.

Dated: November 19, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-30709 Filed 11-21-84; 8:45 am]

BILLING CODE 3510-25-M

[A-357-007]

Antidumping Duty Order; Carbon Steel Wire Rod From Argentina

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

SUMMARY: In separate investigations concerning carbon steel wire rod (wire rod) from Argentina, the United States Department of Commerce (the Department) and the United International Trade Commission (the ITC) determined that wire rod from Argentina is being sold at less than fair value and that sales of wire rod from Argentina are materially injuring a United States industry. Additionally, although the Department found that "critical circumstances" did exist with respect to wire rode from Argentina, the ITC found that "critical circumstances" did not exist. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of wire rod from Argentina made on or after May 8, 1984, the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

Since the ITC made a negative finding regarding "critical circumstances" under section 735(b)(4)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(b)(4)(A), the suspension of liquidation previously ordered 90 days retroactive from the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the **Federal Register**, is no longer in effect. Therefore, Customs officials will be directed to terminate any retroactive suspension of liquidation, release any bond or other security and refund any cash deposit, and liquidate all entries or warehouse withdrawals for consumption of wire rod from Argentina made before May 8, 1984.

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20330; telephone: (202) 377–0161.

SUPPLEMENTARY INFORMATION: The merchandise covered by this investigation is carbon steel wire rod which is currently classifiable under item number 607.17 of the *Tariff Schedules of the United States*.

In accordance with section 733 of the Act, on May 8, 1984, the Department published its preliminary determination that there was reason to believe or suspect that wire rod from Argentina was being sold at less that fair value (49 FR 19547). On September 27, 1984, the Department published its final determination that these imports were being sold at less than fair value and that "critical circumstances" existed with respect to wire rod from Argentina (49 FR 38170).

On November 5, 1984, in accordance with section 735(d) of the Act 19 U.S.C. 1673(d)), the ITC notified the Department that such importations are materially injuring a United States industry. The ITC made a negative determination regarding "critical circumstances".

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of wire rod from Argentina.

These antidumping duties will be assesed on all unliquidated entries of wire rod entered, or withdrawn from warehouse, for consumption on or after May 8, 1984, the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimate weighted-average antidumping duty margins as noted below:

Manufacturer/producer/exporter	Weighted-average
Acindar Industria Argentina de Aceroe S.A.	119.11
All other manufacturers/producers/exporters	119.11

This determination constitutes an antidumping order with respect to wire rod from Argentina, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulatons (19 CFR 353.48).

Dated: November 15, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30644 Filed 11-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-008]

Antidumping Duty Order; Carbon Steel Wire Rod From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Order.

SUMMARY: In separate investigations concerning carbon steel wire rod (wire rod) from Spain, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that wire rod from Spain is being sold at less than fair value, except with respect to Forjas Alavesas, S.A. (FASA), and that sales of wire rod from Spain are materially injuring a United States industry. Additionally, although the Department found that "critical circumstances" did exist with respect to wire rod from Spain, the ITC found that "critical circumstances" did not exist. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of wire rod from Spain, except with respect to FASA, made on or after May 8, 1984, the date on which the Department published its "Preliminary Determination of Sales At Less Than Fair Value" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse for consumption, made on or after the date of publication of this antidumping duty order in the **Federal Register**.

Since the ITC made a negative determination regarding "critical circumstances" under section 735(b)(4)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(b)(4)(A), the suspension of liquidation previously ordered 90 days retroactive from the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the **Federal Register**, is no longer in effect. Therefore, Customs officials will be directed to terminate any retroactive suspension of liquidation, release any bond or other security and refund any cash deposit, and liquidate all entries or warehouse withdrawals for consumption of wire rod from Spain made before May 8, 1984.

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–2830).

SUPPLEMENTARY INFORMATION: The merchandise covered by this investigation is carbon steel wire rod which is currently classifiable under item number 607.17 of the *Tariff Schedules of the United States*.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on May 8, 1984, the Department published its preliminary determination that there was reason to believe or suspect that wire rod from Spain, except with respect to FASA, was being sold at less that fair value (49 FR 19547). On September 27, 1984, the Department published its final determination that these imports were being sold at less than fair value and that "critical circumstances" exist with respect to wire rod from Spain (49 FR 38173).

On October 25, 1984, the Department published its amended final determination of sales at less than fair value (49 FR 42969).

On November 5, 1984, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations are materially injuring a United States industry. The ITC made a negative determination regarding "critical circumstances".

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of wire rod from Spain, except with respect to FASA. These antidumping duties will be assessed on all unliquidated entries of wire rod entered, or withdrawn from warehouse, for consumption on or after May 8, 1984, the date on which the Department published its "Preliminary Determination of Sales At Less Than Fair Value" notice in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimates Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporter	Weighted-average margins percent
Nueva Montana Quijano, S.A. (NMQ)	41.25
Empresa Nacional Siderurgica, S.A. (Ensidesa)	34.62
Forjas Alavesas, S.A. (FASA)	[1]1.12
All other manufacturers/producers/exporters	[illegible]

[1]Exports of wire rod produced by FASA are hereby excluded from this determination since the dumping margins on wire rod produced and exported by FASA were *de minimis*.

This determination constitutes an antidumping order with respect to wire rod from Spain, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services,

Import Administration, for copies of the update list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Dated: November 15, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30643 Filed 11-23-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-018]

Carbon Steel Plate From the Federal Republic of Germany (FRG); Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for the respondent in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A); and, that we have determined to postpone our final determination as to whether sales of carbon steel plate from the FRG have occurred at less than fair value, until not later than February 21, 1985.

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitutional Avenue, NW., Washington, D.C. 20230; telephone (202) 377-0186.

SUPPLEMENTARY INFORMATION: On the basis of a decision by the Court of International Trade reversing and remanding an earlier recission of notice of initiation, the Department of Commerce published on May 22, 1984, notice in the **Federal Register** (49 FR 21556) that it was re-initiating an antidumping investigation to determine whether carbon steel plate from the FRG was being, or was likely to be, sold at less than fair value. On October 9, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 39591). The notice stated that if this investigation proceeded normally we would make our final determination by December 14, 1984.

On October 26, 1984, counsel for respondent A.G. der Dillinger Huttenwerke requested that we extend the period for the final determination until February 21, 1985, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination.

Dillinger is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than February 21, 1985.

This notice is published pursuant to section 735(d) of the Act.

Dated: November 19, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30642 Filed 11-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-407]

Initiation of Countervailing Duty Investigations; Welded Carbon Steel Pipe and Tube Products From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating countervailing duty investigations to determine whether manufacturers, producer, or exporters in Mexico of welded carbon steel pipe and tube products, as described in the "Scope of Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigations proceed normally, we will make our preliminary determinations on or before January 18, 1985.

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377-5414.

SUPPLEMENTARY INFORMATION:

Petition

On October 25, 1984, we received a petition from the Committee on Pipe and Tube Imports filed on behalf of the U.S. welded carbon steel pipe and tube products industries. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of welded carbon steel pipe and tube products receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the "Act"), 19 U.S.C. 1303. On November 6, 1984, counsel for petitioners submitted a letter amending the petition to establish separate committees to be the petitioner for the three groups of pipes and tubes. These three separate committees are considered to be three separate petitioners in these investigations.

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303(a)(1) and (b) of the Act apply to these investigations. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this merchandise cause or threaten to cause material injury to a U.S. industry.

Initiation of Investigations

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on welded carbon steel pipe and tube products, and we have found that the petition meets the requirements.

Therefore, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters in Mexico of welded carbon steel pipe and tube products, as described in the "Scope of Investigations" section of this notice, receive bounties or grants. If our investigations proceed normally, we will make our preliminary determinations by January 18, 1985.

Scope of Investigations

The products covered by these investigations fall into three major groups:

(1) Certain small diameter circular welded carbon steel line pipe. Small diameter circular welded carbon steel line pipe with an outside diameter of 0.375 inch or more but not over 16 inches in outside diameter and with a wall thickness of not less than .055 inch are currently classified in the Tariff Schedules of the United States Annotated (TSUSA) under items 610.3208 and 610.3209. These products are produced to various API specifications for line pipe, most notably API-5L or API5X.

The Committee on Pipe and Tube Imports notes in the petition that its subcommittee represents only 30% of domestic production of this product group. While we are initiating an investigation on this group based on the petition and petitioner's representations, we are soliciting further information from the petitioner and the rest of the domestic industry producing this product to confirm that the CPTI subcommittee on line pipe has standing to file the petition on this product group.

(2) Certain light-walled rectangular welded carbon steel pipes and tubes. Rectangular (including square) welded carbon steel pipes and tubes having a wall thickness of less than 0.156 inch are currently classified under TSUSA item 610.4926. This product, commonly referred to in the industry as mechanical or structural tubing, is generally produced to ASTM specifications A-500 or A-513.

(3) Certain small diameter circular welded carbon steel pipes and tubes. Small diameter circular welded carbon steel pipes and tubes, with an outside diameter of 0.375 inch or more but not over 4.5 inches and with a wall thickness of not less than 0.065 inch, are currently classified under TSUSA items 610.3231, 610.3241, 610.3242, 610.3243, 610.3252 and 610.3254. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications most notably A-120 and A-135.

Allegations of Bounties or Grants

The petition alleges that producers, manufacturers, or exporters in Mexico of welded carbon steel pipe and tube products receive benefits under a number of programs that constitute bounties or grants. We will initiate countervailing duty investigations on the following allegations:

- Preferential Loans under the Fund for the Promotion of Export of Mexican Manufactured Products (FOMEX).
- Preferential Federal Tax Credits Through Certain Certificates of Fiscal Promotion (CEPROFI)
- Preferential Pricing of Inputs used for Export
- Article 94 Loans
- National Fund for Industrial Development (FONEI)
- Development Funds Administered by National Financiera, S.A. (NAFINSA):

a. Fund for Medium and Small Businesses (FOGAIN);

b. Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN);

c. National Preinvestment Fund for Studies and Projects (FONEP)

- Regional Energy Discounts
- Accelerated Depreciation
- Import Duty Reductions and Exemptions
- Preferential State Investment Incentives
- Fondo Nacional de Fomento Industrial (FOMIN)
- Government Financed Technology Development
- The Mexican Institute of Foreign Trade (IMCE)
- Bancomext Loans
- Port Facilities
- Preferential Vessel, Freight, Terminal & Insurance Benefits
- Profide
- FONEP Funding for Feasibility Studies. In our final affirmative countervailing duty determination on bars and shapes from Mexico (49 FR 32887) we found that FONEP funding for feasibility studies is not countervailable because it is not targeted to a specific industry, to a group of industries, or to companies located in specific regions of the country.

Petitioners alleged an additional practice: subsidized steel inputs to welded carbon steel pipe and tube products. We are not initiating on this allegation because petitioners failed to provide evidence that any subsidy on Mexican steel bestows a competitive benefit on welded carbon steel pipes and tubes, nor did they provide evidence that subsidies to Mexican steel have a significant effect on the cost of manufacturing or producing welded carbon steel pipe and tube products in Mexico.

In previous final affirmative countervailing duty determinations involving various products from Mexico, we determined that certain programs did not confer bounties or grants. Allegations concerning two of these programs are included in the current petition. Because the petition presents no new evidence or changed circumstances with respect to these programs, we will not initiate countervailing duty investigations on the following allegation:

- Certificates of Fiscal Promotion (CEPROFI) Granted for Wage Increases and for Investment in New Mexican-Made Capital Goods. In our final affirmative countervailing duty determination on portland hydraulic cement and cement clinker from Mexico (48 FR 43063), we found that certain types of CEPROFI benefits, specifically CEPROFI tax credits for wage increases and for investment in new Mexican-made capital goods, are not countervailable because they are not targeted to a specific industry, to a group of industries, or to companies located in specific regions of the country.

Dated: November 14, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30645 Filed 11-21-84; 8:45 am]

BILLING CODE 3510-DS-M

Stainless Steel Round Wire; Announcement of First Quarter 1985 Monitoring Prices

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Announcement of the first quarter 1985 monitoring price levels for imports of stainless steel round wire products.

SUMMARY: The Department of Commerce announces that base prices for first quarter 1985 monitor prices of stainless steel round wire products will decline 0.4 percent from their fourth quarter 1984 base price levels. Size extra prices for stainless steel round wire will increase an average of 2.2 percent from their fourth quarter levels. The change in the yen/dollar exchange rate is the major factor in the decline in base prices. Changes in labor costs accounted for much of the increase in size extra prices. The Department uses these prices to monitor the prices of stainless steel wire and cold-drawn round bar under 0.703 inches in diameter for possible initiation of antidumping or countervailing duty investigations if unfair sales of these products appear to be injuring domestic producers. Each quarter the Department reviews Japanese steel production and delivery

costs and revises monitoring prices accordingly. The first quarter monitoring price applies to stainless steel round wire products and round stainless steel drawn bars in sizes under 0.703 inches in diameter exported to the United States on or after January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Michael C. Fecha or Marielle M. Hoffman, Agreements Compliance Division, Import Administration, Room 3709, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1102.

SUPPLEMENTARY INFORMATION: Import price monitoring procedures for stainless steel round wire are the same as those published in the Trigger Price Procedures Manual (46 FR 49928). Japanese stainless steel wire manufacturers agreed to supply cost of production and transportation information necessary to monitor the import prices. Commerce uses Special Summary Steel Invoices to monitor imports of stainless steel round wire and small cold-drawn bar under 0.703 inches in diameter. In computing the invoice price for comparison to the monitoring price, Commerce will use a 13.0 percent annual rate (1.083 percent per month) when interest must be adjusted and the actual rate is not known. For its calculation of monitoring price levels, the yen/dollar exchange rate the Department uses to convert Japanese steel producers' yen denominated production cost to dollars is the average of the 36 months preceding the calculation and publication of the quarter's monitoring price levels. The exchange rate used in the Department's fourth quarter 1984 production cost estimate is 240 yen to the dollar (the yen/dollar exchange rate average for August 1981 through September 1984).

Other Charges

Monitoring prices are an estimate of the Japanese stainless steel wire manufacturers' cost of production plus the cost of transporting to the United States and handling in the United States. Each monitoring price includes ocean freight, insurance, interest and handling as well as the base price and extras. The Ocean freight, handling and interest are shown for each of the major importing regions: Pacific Coast, Atlantic Coast, Gulf Coast and the Great Lakes. All prices are shown in U.S. dollars per metric ton.

The interest component of the delivery charge reflects the current level of prime interest rate. Handling and ocean freight charges remain unchanged. The extras shown define the coverage in terms of sizes, grades, and qualities.

The following rules apply to product coverage and extras:

(1) If a product fails to fit the general description because the cost of producing that product varies substantially from the cost of producing the product described in the heading, the product is not covered.

(2) If a product is covered by a grade which is not in the base coverage and for which no grade extra is listed, the product is not covered.

(3) If a product has a size specification that falls above the largest size specification shown or below the smallest size specification shown, it is not covered.

(4) If a product has a size specification that falls between two size specifications listed, it is covered and the size specification with the higher dollar value is to be used unless otherwise noted on the page.

(5) If a product embodies extras other than size or grade which are not listed, the product is covered. In those cases, the base monitoring price plus any applicable extras listed will be applied.

A list of stainless steel round wire and cold-drawn bar products subject to price monitoring and the applicable base prices and extras are contained in the Appendix to this notice.

Dated: November 17, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

BILLING CODE 3510-DS-M

APPENDIX

1ST QUARTER 1985 MONITORING PRICES PER METRIC TON

STAINLESS STEEL ROUND WIRE

ROUND STAINLESS STEEL DRAWN BARS
IN SIZES UNDER 0.703 INCHES

AISI Categories 23 and 16

Charges to CIF	Ocean Freight	Handling	Interest
Pacific Coast	$117	$9	2.5%
Gulf Coast	145	[illegible]	3.2%
Atlantic Coast	145	4	3.2%
Great Lakes	190	4	4.0%

Interest = F.O.B. monitoring base price including size extra times interest factor.

Insurance = 1% of base price + extras + ocean freight.

Extras ($/M.T.):

1. Annealed Wire - Group I
   A. Base Prices Including Grade Extras
   B. Size by Grade Group
   C. Small Bar Size Extras
2. Hard/Spring Wire - Group II
   A. Base Prices Including Grade Extras
   B. Size by Grade Group
3. Soft/Intermediate Wire - Group III
   A. Base Prices Including Grade Extras
   B. Size by Grade Group
4. Coating
5. Finish
   A. Centerless Ground
   B. Centerless Ground and Polished
6. Diameter Tolerance
7. Straightening and Cut-to-Length
   A. Size Range
   B. Length
8. Packaging

Note: This coverage applies to stainless steel round wire and stainless steel bar under 0.703 inches produced by drawing. Bar, in these sizes, if produced by hot rolling, is not covered by published prices.

1. Group I - Annealed Wire: Soft wire in which there is no further cold drawing after the last annealing treatment. This wire is made by annealing in open fired furnaces or molten salt followed by pickling, which produces a clean gray matte finish. It is also made with a bright finish by annealing wet, oil or grease-drawn wire in a protective atmosphere, and is sometimes described as bright annealed wire.

A. Grades	Base Price
301	1,696
302	1,650
303	1,742
304	1,696
305	1,857
310	3,122
314	3,582
316	2,432
316-L	2,593
317	2,892
317-L	3,053
304-L	1,857
17-4PH*	2,013
308	1,834
308-L	1,995
309	2,340
309-L	2,501
321	1,995
302 HQ (18-19LW)**	1,811
347	2,294
384	2,248
409	1,374
410	1,075
416	1,075
420	1,121
430	1,121
430-F	1,328
434	1,420
434-A	1,236
446	1,696
17-17PH	2,616

* May also be designated as type 630 or as UNS 17400
**May also be designated as type 302 CU and as 306

GROUP I - ANNEALED WIRE (Continued)

B. Size *	Grade Group		
	300 Series & 17-7PH	400 Series	17-4PH 15-5PH
.574" - .703"	343	433	343
.501" - .573"	343	433	343
.500"	350	433	350
.375" - .499"	379	447	379
.3125" - .374"	386	447	386
.250" - .312"	423	447	423
.234" - .249"	472	469	472
.216" - .233"	493	486	493
.200" - .215"	564	505	564
.185" - .199"	612	552	612
.170" - .184"	620	564	620
.155" - .169"	649	586	649
.142" - .154"	678	668	678
.128" - .141"	690	766	689
.113" - .127"	751	814	690
.099" - .112"	855	911	692
.086" - .098"	909	999	698
.076" - .085"	970	1,047	735
.067" - .075"	1,004	1,103	874
.058" - .066"	1,064	1,225	986
.051" - .057"	1,113	1,281	1,038
.044" - .050"	1,164	1,354	1,087
.038" - .043"	1,242	1,400	1,166
.033" - .037"	1,342	1,560	1,267
.030" - .032"	1,390	1,665	1,390
.027" - .029"	1,485		1,485
.024" - .026"	1,589		1,589
.021" - .023"	1,733		1,733
.019" - .020"	1,811		1,811
.018"	1,891		1,891
.017"	1,937		1,937
.016"	1,966		1,966
.015"	2,015		2,015

*All intermediate sizes to take next higher price.

GROUP I - ANNEALED WIRE (Continued)

Size *	Grade Group		
	300 Series & 17-7PH	400 Series	17-4PH 15-5PH
.014"	2,170	--	2,170
.013"	2,292	--	2,292
.012"	2,343	--	2,343
.011"	2,447	--	2,447
.010"	2,608	--	2,608
.009"	2,761	--	2,761
.008"	3,055	--	3,055
.0075"	3,213	--	3,213
.007"	3,446	--	3,446
.0065"	3,879	--	3,879
.006"	4,328	--	4,328
.00575"	4,732	--	4,732
.0055"	5,645	--	5,645
.00525"	5,738	--	5,738
.005"	5,927	--	5,927
.00475"	6,017	--	6,017
.0045"	6,304	--	6,304
.00425"	6,734	--	6,734
.004"	7,354	--	7,354
.00375"	15,235	--	15,235
.0035"	17,675	--	17,675
.00325"	20,360	--	20,360
.003"	23,023	--	23,023
.0027"	24,999	--	24,999
.0025"	26,156	--	26,156
.002"	31,913	--	31,913

*All intermediate sizes to take next higher price.

C. Small Bar*: Small cold-drawn bar in wire gauges is to be priced using these size extras:

Size Range**	Grade Group		
	300 Series & 17-7PH	400 Series	17-4PH 15-5PH
.574" - .703"	280	233	280
.501" - .573"	317	269	317
.500"	317	269	317
.375" - .499"	317	269	317
.3125" - .374"	369	316	369
.250" - .312"	480	432	480
.234" - .249"	480	432	480
.216" - .233"	507	465	507
.185" - .215"	507	465	507

*Annealing and pickling is included in base material cost. Size extras include cost of straightening and cut-to-length.

**Intermediate sizes to take next higher price.

2. Group II - Hard/Spring Wire: Wire drawn in several drafts as required to produce the high tensile strengths needed for such products as spring wire.

A.

Grades	Base Price
301	1,696
302	1,650
303	1,742
304	1,696
305	1,857
310	3,122
314	3,582
316	2,432
316-L	2,593
317	2,892
317-L	3,053
321	1,995
17-4PH*	2,013
17-7PH**	2,616
308	1,834
308-L	1,995
309	2,340
309-L	2,501
302 HQ (18-19LW)***	1,811
347	2,294
384	2,248
409	1,374
410	1,075
416	1,075
420	1,121
430	1,121
430-F	1,328
434	1,420
434-A	1,236
446	1,696

*May also be designated as type 630 or UNS 17400
**May also be designated as type 631 or UNS 17700
***May also be designated as type 302 CU or 306

GROUP II - HARD/SPRING WIRE (Continued)

B.

Size *	Grade Group 300 Series & 17-7PH
Over .375"	710
.3125" - .374"	710
.2500" - .312"	710
.234" - .249"	710
.216" - .233"	710
.200" - .215"	710
.185" - .199"	710
.170" - .184"	710
.155" - .169"	710
.142" - .154"	714
.128" - .141"	714
.113" - .127"	714
.099" - .112"	719
.086" - .098"	797
.076" - .085"	855
.067" - .075"	928
.058" - .066"	1,030
.051" - .057"	1,239
.044" - .050"	1,424
.038" - .043"	1,502
.033" - .037"	1,648
.030" - .032"	1,735
.027" - .029"	1,090
.024" - .026"	2,280
.021" - .023"	2,503
.019" - .020"	2,800
.018"	3,388
.017"	3,679
.016"	3,772
.015"	3,859
.014"	4,039
.013"	4,185
.012"	4,482
.011"	5,730
.010"	5,881
.009"	6,109
.008"	6,318

*All intermediate sizes to take next higher price.

3. Group III - Soft/Intermediate Wire: Wire drawn one or more drafts after annealing as required to produce minimum strength or hardness. The properties can be varied between soft temper and those approaching spring temper wire. Wire in this temper is usually produced in a variety of dry-drawn tempers. Cold-heading wire belongs in this group.

A.

Grades	Base Price
301	1,696
302	1,650
302 (302HQ, 18-9LW)	1,811
303	1,742
304	1,696
305	1,857
310	3,122
314	3,582
316	2,432
316-L	2,593
317	2,892
317-L	3,052
321	1,995
17-4PH*	2,013
308	1,834
308-L	1,995
309	2,340
309-L	2,501
347	2,294
384	2,248
409	1,374
410	1,075
416	1,075
420	1,121
430	1,121
430-F	1,328
434	1,420
434-A	1,236
446	1,696

*May also be designated as type 630 or UNS 17400

GROUP III - SOFT/INTERMEDIATE WIRE (Continued)

B. Size *

	Grade Group		
	300 Series & 17-7PH	400 Series	17-4PH 15-5PH
Over .375"	603	471	603
.3125" - .374"	603	471	603
.2500" - .312"	603	471	603
.2340" - .249"	656	515	656
.2160" - .233"	656	515	656
.200" - .215"	656	515	656
.185" - .199"	710	559	710
.170" - .184"	710	559	710
.155" - .169"	710	593	710
.142" - .154"	787	656	787
.128" - .141"	787	769	787
.113" - .127"	841	824	841
.099" - .112"	948	933	948
.086" - .098"	1,045	1,011	1,045
.076" - .085"	1,094	1,060	1,094
.067" - .075"	1,210	1,152	1,210
.058" - .066"	1,312	1,307	1,312
.051" - .057"	1,356	1,478	1,356
.044" - .050"	1,410	1,497	1,410
.038" - .043"	1,531	1,604	1,531
.033" - .037"	1,628	1,711	1,628
.030" - .032"	1,740	1,876	1,740
.027" - .029"	1,900		1,900
.024" - .026"	2,046		2,046
.021" - .023"	2,207		2,207
.019" - .020"	2,357		2,357

*All intermediate sizes to take next higher price.

4. Coating: Material that is uncoated or coated with lime (or equivalent to lime) and/or soap will carry no extra. Other coatings require an appropriate extra where additional costs are involved. Metallic coatings include copper, nickel, and lead. Non-metallic coatings include plastics, molybdenum disulfide, etc.

Size Range	Metallic		Non-metallic
	Copper	Nickel	
Over .154"	116	35	29
.099" - .154"	174	35	29
.063" - .098"	232	47	38
.041" - .062"		72	57
.030" - .040"		99	76
.025" - .029"		99	76
.020" - .024"		135	109
.015" - .019"		177	143
.010" - .014"		210	173

Finish

Size Ranges *	Centerless Ground	Centerless Ground and Polished
.595" - .703"	506	635
.501" - .594"	506	635
.500"	559	706
.375" - .499"	570	730
.3125" - .374"	570	730
.250" - .3124	570	730
.234" - .249"	876	1,065
.216" - .233"	876	1,065
.200" - .215"	971	1,182
.185" - .199"	1,135	1,371
.170" - .184"	1,335	1,588
.155" - .169"	1,600	1,870
.142" - .154"	1,864	2,135
.128" - .141"	2,194	2,464
.113" - .127"	2,747	2,041
.093" - .112"	5,594	6,158

*Intermediate sizes to take next higher price.

These extras are applicable to all grades listed.

Straightening and cut-to-length extras are included in the above finish extras.

Diameter Tolerance

Standard: AISI or JIS Specification

	Extra
Standard	Base
Not less than 1/2 standard	99
Closer than 1/2 to 1/4 standard	25% of size extra
Closer than 1/4 standard	50% of size extra

7. Straightening and Cut-to-Length: Use the sum of the appropriate extras from A and B below to form the total extra.

A.

Size Range	Extras
.595" - .703"	105
.501" - .594"	105
.500"	105
.375" - .499"	133
.3125" - .374"	133
.170" - .3124"	239
.099" - .169"	598
.051" - .098"	1,729
.032" - .050"	1,994

B.

Length	
Under 12"	93
12" to under 18"	60
18" to under 24"	60
24" to under 30"	40
30" to under 36"	40
36" to under 48"	40
48" to under 60"	40
60" to under 72"	40
72" to under 120"	33
120" to under 168"	33
168" to under 192"	33
192" to under 216"	33
216" to under 240"	33
240" to under 264"	26
264" to under 288"	26
288" to 316"	26

8. Packaging

Bundle	26
Wooden Boxes	88
Fibre Drums	81
Coil Carriers	26
Spools	
Sizes under .020"	157
Both Spools and Wooden Boxes	
Sizes .020" and greater	88
Sizes under .020"	247

[FR Doc. 84-30871 Filed 11-21-84; 8:45 am]
BILLING CODE 3510-DS-C

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Officials To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Exported From Haiti

November 19, 1984.

On March 6, 1980 a letter dated March 3, 1980 was published in the Federal Register (45 FR 14617), which established an export visa requirement for cotton, wool and man-made fiber textile products subject to the terms of the bilateral agreement of April 2, 1982 between the Governments of the United States and Haiti. The Government of Haiti has informed the Government of the United States that the officials listed below, are authorized to issue export visas, effective on December 1, 1984. This list supersedes all such lists published previously.

Jacques Lionel Desir
Alfred Auguste
Jean Daniel Elie
Jean-Claude Decime
Demesmin Dorsainville
Jean-Baptiste Matellus

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30710 Filed 11-21-84; 8:45 am]
BILLING CODE 3510-DR-M

Changes in Officials Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

November 19, 1984.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, the Government of Mexico has notified the United States Government that eight additional officials are authorized to issue export visas for the textile and apparel products subject to the terms of the the bilateral agreement. The purpose of this notice is to advise the public of this change. The following is a complete list of officials of the Government of Mexico who are currently authorized to issue export visas:

Tomas Rodriquez Weber
Julia Medina Medina
Ruben Resendiz Perez
Cecilio Gutierrez Chavez
Azael Noe Cisneros Lara
Miguel Angel Rivera Villasenor
Jose Manuel Martinez Ayala
Carlos Perez Iglesias
Alirio Jose del Angel Liscano
Jose H. Delgado Gonzalez
Hugo H. Villarrael Pena
Saturnino Lopez Hidalgo
Gildardo Valenzo Miranda
Hector Hernandez Hernandez
Arnulfo Pulgarin Soto
Miguel Franco Gutierrez
Hector Palacios Gavira
Domingo Yorio Saqui
Carlos F. Ostos O.
Hose M. Marrufo Rejon
Jorge Jure Cejin
Hermenegildo Gervantes Martinez
Francisco Lastra Bastar
Adan Ravelero Vazquez
Gerardo Solis Laredo
Ernesto B. Ascencio Esparza
Jose Luis Ferretis Martinez
Rogelio Lopez Lucio
Jorge Luis Robles Contreras
Alma Rosa Curiel Montiel
Arguimiro Reyes Genis
Delfino Gonzalez Munoz
Serafin Martinez Cruz
Javier Inzunza Angulo
Bolivar Hernandez Garza
Maria Margarita Aparicio Hernandez
Hedilberto Cobos Rodriguez
Jose Serralta Hernandez
Enrique Cisneros Tevera
Marco A. Abente Aramburo
Ana Amelia Cortazar Navarrete
Jose Ramon Buenrostro Mendoza
Roberto Pareyon Torreblanca
Miguel Velazco Bustamante
Rogelio Sada Madero
Laura Ramirez Dominguez

Effective Date: December 1, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30711 Filed 11-21-84; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 13, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on Advance Air-Vehicle Surveillance and Warning Technologies will meet at the Pentagon on December 12 (9:00 a.m.–4:30 p.m.) and December 13 (9:00 a.m.–4:30 p.m.) 1984 to review surveillance technologies and system concepts for application to air-vehicle detection systems.

This meeting will involve classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-30862 Filed 11-21-84; 8:45 am]
BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the full Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: December 12–13, 1984, 9:00 A.M. until conclusion of business each day.

ADDRESS: Seattle-Sheraton Hotel, Sixth & Pike, P.O. Box 2906, Seattle, Washington 98111, 206/621–9000.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street, N.W., Washington, D.C. 20004 (202)/376–8882).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) Election of Officers
(2) Chairman's Report
(3) Executive Director's Report
(4) Action on previous minutes
(5) Committee discussions and reports
(6) Review of NACIE's FY' 85 budget
(7) Plans for future NACIE activities
(8) Regular Council business
(9) Public Testimony
(10) On-site visits to Seattle area (December 13, 1984)

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 425 13th Street, N.W., Suite 326, Washington, D.C. 20004, from the hours of 8:00 a.m. to 4:30 p.m.

Dated: November 15, 1984. Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 84-30543 Filed 11-21-84; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER77-485-000]

Carolina Power & Light Co.; Compliance Filing

November 16, 1984.

Take notice that on November 2, 1984, Carolina Power and Light Company (CP&L) submitted for filing its compliance report pursuant to the Commission's Order issued July 20, 1984.

CP&L states that the last of its sales-for-resale customers to pay the surcharge amounts did so on October 19, 1984. Therefore, in accordance with the Commission's July 20 Order, this report details the principal and interest owed by each customer, the total amount paid CP&L and the payment date.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 28, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30620 Filed 11-21-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER81-504-007]

Delmarva Power & Light Co.; Compliance Report

November 16, 1984.

Take notice that on November 5, 1984, Delmarva Power and Light Company (Delmarva) submitted for filing its compliance report pursuant to the Commission's letter order, dated February 2, 1983.

Delmarva states that the compliance report contains cost of service study and compliance rates are applicable to the Municipalities of Milford, New Castle, Newark, Middletown, Clayton and Smyrna pursuant to the terms of the Stipulation between Delmarva Power and Light Company and these Municipalities.

The Stipulation provided in part that the final compliance rates for these six affected Customers were to be established after final decisions were rendered in Docket Nos. ER78–414 and ER80–363. The Commission Orders in these two Dockets have been appealed on certain issues and are, thus, not as yet "final". However, the issues on appeal are not at issue in Docket No. ER81–504 and would not have any impact on the compliance rates in this Docket. Therefore, the Company has decided to proceed towards the completion of this Docket by filing the requisite compliance cost of service study and compliance rates.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 28, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30621 Filed 11-21-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES85-5-000]

El Paso Electric Co.; Amended Application

November 16, 1984.

Take notice that on November 9, 1984, El Paso Electric Company ("Applicant"), filed an amended application with the Commission pursuant to Section 204 of the Federal Power Act seeking authority to increase from $75 million to $150 million principal amount of pollution control revenue bonds proposed to be issued to finance the costs of acquisition and construction of pollution control facilities at or related to the Palo Verde Nuclear Generating Station.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 26, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30822 Filed 11-21-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-111-000]

Florida Power Corp.; Filing

November 16, 1984.

The filing company submits the following:

Take notice that on November 9, 1984, Florida Power Corporation (Florida Power) tendered for filing Service Schedule X providing for extended economy interchange service between Florida Power and the City of Lakeland. Florida Power states that Service Schedule X is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and the City of Lakeland designated as Florida Power's Rate Schedule FERC No. 92.

Florida Power requests that Service Schedule X be permitted to become effective November 7, 1984, and therefore requests waiver of the sixty day notice requirement.

Copies of this filing have been served upon the City of Lakeland and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30823 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-112-000]

Florida Power Corp.; Filing

November 16, 1984.

The filing Company submits the following:

Take notice that on November 9, 1984, Florida Power Corporation (Florida Power) tendered for filing Service Schedule X providing for extended economy interchange service between Florida Power and the City of Gainesville. Florida Power states that Service Schedule X is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and the City of Gainesville designated as Florida Power's Rate Schedule FERC No. 88.

Florida Power requests that Service Schedule X be permitted to become effective November 7, 1984, and therefore requests waiver of the sixty day notice requirement.

Copies of this filing have been served upon the City of Gainesville and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30824 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-107-000]

Idaho Power Co., Filing

November 16, 1984

The filing Company submits the following:

Take notice that on November 7, 1984, Idaho Power Company (Idaho) tendered for filing a Service Agreement between Idaho and Western Area Power Association, covering the sale of nonfirm energy under Idaho's 1st Revised FERC Electric Tariff, Volume No. 1.

Idaho requests an effective date of September 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30825 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-108-000]

Idaho Power Co.; Filing

November 16, 1984.

The filing Company submits the following:

Take notice that on November 7, 1984, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1976, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume 1 (Supersedes Original Volume No. 1) during September, 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 24
Sierra Pacific Power Company—Supplement 31
Portland General Electric Company—Supplement 28
Southern California Edison Company—Supplement 22
San Diego Gas & Electric Company—Supplement 16
Washington Water Power Company—Supplement 23
Los Angeles Water & Power Company—Supplement 19
City of Burbank—Supplement 18
City of Glendale—Supplement 18
City of Pasadena—Supplement 18
Pacific Gas and Electric Company—Supplement 3
Western Area Power Administration—Supplement 1

Idaho requests an effective date of September 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30826 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-110-000]

Iowa-Illinois Gas and Electric Co.; Filing

November 16, 1984.

The filing Company submits the following:

Take notice that on November 8, 1984, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing a First Amendment (dated October 1, 1984) to Louisiana Transmission Operating Agreement of May 27, 1983, between Iowa-Illinois, Iowa Power and Light Company (Iowa Power), Iowa Public Service Company (Public Service), Central Iowa Power Cooperative (Central Iowa), Interstate Power Company (Interstate), City of Tipton, Iowa (Tipton), City of Harlan, Iowa (Harlan), and City of Waverly, Iowa (Waverly), proposed to be effective on acceptance for filing; and assignments for Capacity Schedule (dated October 1, 1984) between Iowa-Illinois, Iowa Power, Public Service, Central Iowa, Interstate, Tipton, Harlan, Waverly, and City of Eldridge, Iowa (Eldridge) pursuant to Article IV of the Louisa Transmission Operation Agreement, proposed to the effective October 13, 1983.

Iowa-Illinois states the First Amendment clarifies that (a) to the extent ownership in Louisa Transmission differs from ownership in Louisa Generating Station, certain costs and responsibilities will be shared by the owners of Louisa Transmission and not Louisa Generating Station; and (b) generator transformer rewinding will be considered maintenance and not replacement.

Iowa Illinois further states that the Assignments for Capacity Schedule is made pursuant to Article IV of the Louisa Transmission Operating Agreement and permits Eldridge to utilize the line segment of Louisa Transmission from Substation 93 to Substation 92 as a scheduling path for Eldridge's generation from Louisa Generating Station. The Assignments for Capacity Schedule is in the form of Exhibit II to the Louisa Transmission Operating Agreement.

Iowa-Illinois states that no new facilities are required to effectuate these Rate Schedule Supplements.

Iowa-Illinois requests waiver of the notice requirements so as to permit an effective date for Assignments for Capacity Schedule of October 13, 1983. The other jurisdictional parties concur in this request in their respective Certificates of Concurrence included in the filing. The proposed effective date reflects the in-service date of Louisa Generating Station and is also the effective date of the Louisa Transmission Operating Agreement.

Iowa-Illinois states a copy of the filing has been mailed to each of the respective parties, the Iowa State Commerce Commission, the Illinois Commerce Commission, the Minnesota Public Utilities Commission and the South Dakota Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (1.8 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30827 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-89-000]

Maine Public Service Co.; Filing

November 16, 1984.

The filing Company submits the following:

Take notice that on October 29, 1984, Maine Public Service Company (Maine) tendered for filing a Notice of Termination of Rate Schedule FPC No. 4 and Rate Schedule FPC No. 9. Maine requests an effective date of October 31, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30828 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-109-000]

Niagara Mohawk Power Corp., Filing

November 16, 1984.

The filing Company submits the following:

Take notice that on November 7, 1984, Niagara Mohawk Power Corporation (Niagara) Tendered for filing proposed rate schedules to increase charges for delivery of power and energy to industrial customers receiving Replacement and/or Expansion Power, such power and energy being purchased by Niagara from the Power Authority of the State of New York (Power Authority). The source of generation is the Niagara Project, which is owned and operated by the Power Authority.

Niagara presently has on file an agreement with PASNY dated February 10, 1961, for among other services, supplying and transmitting power and energy from PASNY's Niagara project over Niagara's transmission facilities to PASNY's municipal and cooperative customers and certain industrial customers of Niagara.

The proposed rate schedules revise the charges for the delivery of power and energy and affect only those industrial customers receiving Replacement and/or Expansion Power. An effective date of January 5, 1985 is proposed.

Copies of the filing were served upon the parties listed in the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of filing and are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30829 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-000]

Southern Natural Gas Co.; Request Under Blanket Authorization

November 16, 1984.

Take notice that on October 25, 1984, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85-59-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap which will be used for delivery of natural gas to Mississippi Valley Gas Company (MVG), an existing customer, for resale under the certificate issued in Docket No. CP82-406-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to construct and operate a sales tap having an estimated

cost of $1,500, which cost is to be borne by MVG. Southern states that the proposed sales tap would be designated as Southern's Tap No. 7257 and would be located at Mile Post 2.853 on Southern's Onward-Vicksburg second loop line in Sharkey County, Mississippi. Southern further states that the construction of the proposed sales tap would enable MVG to sell gas to certain residential customers who currently are not being supplied with natural gas.

Southern asserts that deliveries through the proposed facilities would be from Southern's general system supply. Southern further asserts that it is currently authorized to sell and deliver to MVG an aggregate contract demand of 97,084 Mcf of gas per day. Southern indicates that the maximum quantity of natural gas MVG is entitled to take at Tap No. 7257 is 2,275 Mcf per year. Souther concludes that the total volumes to be delivered through the subject sales tap are *de minimis* and would not result in MVG's receiving volumes greater than its certificated entitlements.

Southern states that as permitted by its FERC Gas Tariff, deliveries at the proposed tap would be consolidated for billing purposes with deliveries at Southern's Deer Creek Natural Gas District delivery point. Southern further states ths gas would be sold at the commodity charge specified in its Rate Schedule OCD–1, which charge is currently $3.47322 per Mcf.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30830 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF 81-7-000]

Application of Occidental Geothermal, Inc. and Santa Fe International Corporation for Determination That a Change in Ownership Will Not Result in Revocation of Qualifying Status and Request for Expedited Determination

(November 20, 1984)

On November 16, 1984, Occidental Geothermal, Inc. 5000 Stockdale Highway, Bakersfield, California and Santa Fe International Corporation, 1000 South Fremont Avenue, Alhambra, California 91802, filed with the Federal Energy Regulatory Commission ("Commission") an Application of Occidental Geothermal, Inc. and Santa Fe International Corporation for Determination that a Change in Ownership will not Result in Revocation of Qualifying Status and Request for Expedited Determination pursuant to § 292.207(d)(2) of the Commission's rules asking that the Commission determine that sale of all capital stock of Occidental Geothermal, Inc., to Santa Fe International Corporation will not result in revocation of the qualifying facility status of the facility under § 292.207(d)(1) of the Commission's rules. The facility is located in Lake County, California and has a power production capacity of 80 megawatts and generates electric power solely through utilization of geothermal steam.

Occidental Geothermal, Inc. is an indirect, wholly-owned subsidiary of Occidental Petroleum Corporation. Santa Fe International Corporation is an indirect, wholly-owned subsidiary of Kuwait Petroleum Corporation, which is owned in turn by the government of Kuwait.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with § 385.209 and § 385.214 of this chapter. All such petitions or protests must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 84-30941 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL 2723-2]

Science Advisory Board Environmental Effects, Transport and Fate Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a one-day meeting of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board will be held on December 11, 1984, at Marie Antoinette Hotel, 827 Rue Toulouse, New Orleans, Louisiana 70112, in Conference Room "Directoire". The meeting will start at 8:00 a.m. and adjourn at approximately 4:00 p.m.

The principal purposes of the meeting will be: (1) Finalization the Committee's study on the incineration of liquid hazardous chemicals at sea and on land; (2) status reports from the Water Quality Criteria Subcommittee and the Dioxin Subcommittee will be discussed briefly.

Draft copies of the Incineration Report will be available to the public at this meeting but not prior to the meeting. If you wish to have a copy of the report mailed to you after the meeting date, please contact Dr. Douglas B. Seba, Executive Secretary, Environmental Effects, Transport and Fate Committee, at (202) 382–2552 or by mail to: Science Advisory Board (a–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The meeting will be open to the public. Any member of the public wishing to attend should contact Dr. Douglas B. Seba. Those wishing to obtain information or submit comments to the Committee should contact Dr. Terry F. Yosie, Director, Science Advisory Board (202) 382–4126 or Dr. Douglas Seba, by close of business December 4, 1984.

Dated: November 14, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84-30714 Filed 11-21-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL 2723-1]

Availability of State Adopted Water Quality Standards and Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of numerous documents dealing with state adopted water quality standards and water quality criteria available to the public. Copies of these documents may be obtained by written requests to the name and address listed below.

FOR FURTHER INFORMATION CONTACT: Jewell Grubbs, Standards Branch (WH–585), Environmental Protection Agency, 401 M Street, SW., Washington, D.C 20460.

SUPPLEMENTARY INFORMATION: Each of the available documents is listed below with a brief description.

1. Water Quality Standards Regulation, 48 FR 51400, Nov. 8, 1983.

This regulation revises and consolidates in a new Part 131 the regulations codified in 40 CFR Parts 120 and 35 (1983) that govern the development, review, revision and approval of Water Quality Standards under Section 303 of the Clean Water Act (the Act).

2. Water Quality Standards Handbook, December, 1983.

The handbook consists of the guidance prepared by EPA to assist states in implementing the revised Water Quality Standards Regulation (48 FR 51400, November 8, 1983). The handbook provides a general description of the overall standards setting process, information on general program administrative policies and procedures, and a description of analyses which may be used in determining appropriate uses and criteria.

3. Water Quality Standards Program Fact Sheet, November 1983.

This is one page document outlining briefly the water quality standards regulation.

4. Questions and Answers on: Water Quality Standards, December, 1983.

This document consists of non-technical general information on the water quality standards program, most useful for people just trying to get a basic understanding of the program.

5. State Water Quality Standards for Toxics, October 1984.

This is a summary of information on current state-adopted and EPA approved standards for toxic pollutants plus an indication of projected state plans involving the inclusion of criteria for toxic pollutants in state standards.

6. Summary of Water Quality Standards Promulgation Actions.

This document consists of the date, type of action and **Federal Register** reference number of the state water quality standards that have been promulgated by EPA.

7. Technical Support Manual: Waterbody Surveys and Assessments For Conducting Use Attainability Analyses: Volume I, November 1983.

This manual provides additional guidance and detail on conducting use attainability analyses and supplements Chapter 3 of the Water Quality Standards Handbook, (EPA, December 1983).

8. Technical Support Manual: Waterbody Surveys and Assessments For Conducting Use Attainability Analyses: Volume II: Estuarine Systems, November 1983.

This manual deals with the unique characteristics of estuarine systems and supplements the Technical Support Manual: Water Body Surveys and Assessments for Conducting Use Attainability Analyses (EPA, November 1983)

9. Technical Support Manual: Waterbody Surveys and Assessments For Conducting Use Attainability Analyses: Volume III: Lake Systems, November 1984.

This manual discusses the unique characteristics of lake systems and supplements the Technical Support Manual: Water Body Surveys and Assessments For Conducting Use Attainability Analyses: Volume I, (EPA, November 1983)

10. Water Quality Standards Criteria Summaries, A Compilation of State/Federal Criteria, December 1980.

These summaries contain the state-adopted and EPA approved criteria for 27 different water quality parameters. These documents were most recently published in 1980. An updated summary of changes occurring since 1980 is also available. Summaries are available for:

Acidity-Alkalinity (pH), Antidegradation, Arsenic, Bacteria, Cadmium, Chromium, Copper, Cyanide, Definitions Designated Uses, Dissolved Oxygen, Dissolved Solids, General Provisions/Freedoms, General Toxic Substances, Intermittent Streams, Iron, Lead, Mercury, Mixing Zones, Nitrogen-Ammonia/Nitrate/Nitrite, Organics, Other Elements, Pesticides, Phosphorus, Temperature, Turbidity, and Zinc.

11. A Listing of the Dates of State Adoption and EPA Approval of State Water Quality Standards from 1977 Through 1983.

This document is a listing of the dates in which the states adopted their Water Quality Standards and the date of EPA's subsequent approval of these standards.

12. Water Quality Criteria Documents, FR 45 79318, November 28, 1980.

This is the **Federal Register** which summarizes the criteria developed for the 65 toxic pollutants or pollutant categories which were published pursuant to section 304(a)(1) of the Clean Water Act. Also an errata (June 9, 1981) is included. However, the 65 individual documents may be purchased from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703–487–4650).

13. Ambient Water Quality Criteria Documents, 49 FR 4531 February 7, 1984.

This is a series of nine draft documents containing proposed ambient water quality criteria for the protection of aquatic life and its uses. They address ammonia, arsenic, cadmium, chlorine, chromium, copper, cyanide, lead and mercury. Also included in this group is a summary of revisions to the document entitled "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and its Uses". The final criteria recommendations will be provided instead of draft proposals immediately when such final criteria are published.

14. Recalculation of State Toxic Criteria, November, 1983.

In an effort to assist the States in developing site-specific ambient water quality criteria, EPA has published a series of protocols as guidance documents. This is one of those protocols. The Recalculation Procedure modifies the National Water Quality Criteria to reflect local resident species compositions.

15. Water Quality Health Effects Criteria For Marine and Fresh Recreational Waters.

This document provides guidance on ambient indicator bacterial densities which provide various levels of protection from risks of gastro-intestinal disease from swimming in sewage polluted waters, 49 FR 21987, May 24, 1984.

Each of the above documents may be obtained separately or as a group. If requesting individual documents, please specify exactly which document(s) you are requesting. Since all of the documents are not stored in Washington, D.C., there may be a 4 to 6 week delay in filling some requests. Multiple copies for groups are available for most of the documents. Also some of these documents are periodically updated; if updated material is available at the time of request, we will send it.

Dated: November 14, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 84-30707 Filed 11-21-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2724-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed November 13, 1984 through November 16, 1984 Pursuant to 40 CFR 1506.9:

EIS No. 840519, DSuppl, HUD HI, Kaka'ako Community Development Plan, Makai Area, Mortgate Insurance, Grants and Rental Housing subsidies, City and County of Honolulu, Due: January 7, 1985, Contact: Frank Johnson (808) 546-3133.

EIS No. 840520, Draft, IBR, ND, Dunn-Nokota Methanol Project, Water Supply Contract Approval, Lake Sakakawea, Dunn County, Due: January 12, 1985, Contact: Eley Denson, Jr. (406) 657—6558.

EIS No. 840521, Draft, FAA, CA. John Wayne Airport, Airfield Improvements, Orange County, Due: January 7, 1985, Contact: Daniel Frickle (714) 834-5550.

EIS No. 840522, Final, BLM, OR, John Day Resource Area, Resource Management Plan, Hermey and Grant Counties, Due: December 31, 1984, Contact: Malcolm Shrode (503) 573-5241.

EIS No. 840523, Draft, AFS, NC, Nantahale and Pisgah National Forests Land and Resource Management Plan, Due: February 21, 1985, Contact: John Alcock (404) 881-4177.

EIS No. 840524, Draft, OSM, TN, Tennessee Federal Program, Surface Coal Mining Operations, Comprehensive Impacts, Permits, Due: January 18, 1985 Contact: Mark Boster (202) 343-5854.

EIS No. 840525 Final, SCS, KS, South Fork Watershed Flood Control Plan, Butler, Chase, and Greenwood Counties, Due: December 24, 1984, Contact: John Tipple (913) 823-4565.

EIS No. 840526, Final, FHA Adopted from SCS, NC, Moss Neck Watershed Protection and Flood Prevention, Robeson County, Due: December 24, 1984, Contact: Peter Smith (202) 447-1053.

EIS No. 840527 Final, FHW, MI, Edgewood Boulevard Improvements, Between Logan and Cedar Streets, Ingham County, Due: December 24, 1984, Contact: Thomas Fort (517) 377-1879.

Amended Notices

EIS No. 840447, Draft, SCS, MD, Goldsboro Watershed Multipurpose Plan, Caroline County, Due: December 3, 1984, Published FR: 10-5-84—Review extended.

EIS No. 840484, Draft, AFS, UT, WY, Wasatch-Cache National Forest Land and Resource Management Plan, Due: February 8, 1985, Published FR: 11-9-84—Incorrect Due Date.

EIS No. 840494, Final NPS, FL, Loxahatchee River Wild and Scenic River Study, Designation, Beach and Martin Counties, Due: December 24, 1984, Published FR 11-9-84—Review period reestablished.

EIS No. 840463, Draft, FWS, CT, RI, VT, NH, MA, ME, New England Rivers Atlantic Salmon, Restoration, Due: January 31, 1985, Published FR: 10-19-84—Review extended.

Dated: November 19, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-30761 Filed 11-21-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2724-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 5, 1984 through November 9, 1984 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. DR-BLM-J65114-WY, Rating EC2, Buffalo Resource Area, Resource Management Plan, WY. SUMMARY: EPA is concerned that the revised DEIS does not respond adequately to our concerns. EPA believes that BLM should further assess proposed land management practices and impacts on water quality, and that the alternatives presentation should be developed more completely.

ERP No. D-CDB-C89022-NY, Rating LO, Norstar Plaza Development, UDAG, NY. SUMMARY: EPA belives the overall project will not result in significant adverse impacts to the environment. Additional information was requested concerning air emissions from mechanical devices in order to ascertain the need for a PSD permit, and floodplain protection measures and sources of cooling water.

ERP No. D-USN-K40148-CA, Rating LO, Port Chicago Highway, Main Street and Waterfront Road, Explosive Safety Closure, Naval Weapons Station, CA. SUMMARY: EPA had no objections to the project as proposed.

Final EISs

ERP No. F-AFS-J65096-UT, Uinta Nat'l Forest, Land/Resource Management Plan, UT. SUMMARY: EPA expressed no objection to the DEIS, supplemental DEIS and Forest Plan. EPA indicated its interest in continuing to work with the Forest Service on forest water quality management issues.

ERP No. F-AFS-J65120-CO, White River Nat'l Forest, Land/Resource Management Plan, CO. SUMMARY: EPA believes the Forest Service's Plan is environmentally acceptable and implementable.

ERP No. F-AFS-K65048-00, Pacific Southwest Region, Management Standards, Guidelines and Planning Goals, CA, HI, Guam and US Territories. SUMMARY: The FEIS adequately addressed the issues EPA had raised on the project's DEIS.

ERP No. F-AFS-L01004-ID, Sunbeam Mtn. Gold/Silver Mine and Milling Operation Plan, Challis Nat'l Forest, ID. SUMMARY: The project is an open pit gold mine using a vat leach cyanidation process to extract gold. EPA does not support the Forest Service preferred alternative which involves neutralizing the residual cyanide in the spent ore with a strong oxidizing agent, probably chlorine, instead of lining the tailing pond. EPA's major concerns involve disposing of the chlorinated wastewater, ground water impacts, compliance with NSPS and wetlands mitigation.

ERP No. F-BLM-G65037-NM, Roswell Resource Area, Rangeland Management Plan, NM. SUMMARY: The FEIS adequately responds to our comments on the DEIS and no new issues of concern have been identified regarding the proposed action.

ERP No. F-BLM-K65104-CA, Coast/Valley Planning Area, Resource Management Plan, CA. SUMMARY: EPA asked that BLM include EPA, Region 9, in scoping activities for the Coast/Valley Resource Area. EPA requested that it be advised of all NEPA activities for oil and gas leasing, minerals leasing and grazing activities that may impact wetlands or riparian communities, and that BLM commit to all appropriate mitigation measures in the Record of Decision.

ERP No. F-IBR-J05016-UT, Diamond Fork Power System, Central Utah Project, Expansion, UT. SUMMARY: The FEIS adequately addressed EPA concerns on the DEIS. Although the preferred Plan in the FEIS is different from that in the DEIS, no significant difference in environmental impacts is noted.

Amended Notices. The following comments were prepared during the week of October 29, 1984 through November 2, 1984 and should have appeared in the **Federal Register** Notice published on November 16, 1984.

Draft EISs

ERP No. D-BLM-K03012-00, Rating EC2, Celeron/All American and Getty Pipeline Construction, NM, CA, TX, AZ. SUMMARY: EPA requested further information regarding the environmental impacts of instream pipeline construction, the treatment of hydrostatic test water, and requested clarificaton for several air quality analyses. EPA supported the commitment to various mitigation measures, including a requirement for detailed hydrogeologic investigations.

ERP No. D-COE-L35010-AK, Rating EC2, Auke Bay Breakwater and Marina Developments, Permits, AK. SUMMARY: EPA requested additional environmental analyses on potential environmental impacts of the proposed breakwater and related marina developments. Because the marina developments have a significant potential to produce increased automobile traffic and parking problems, a screening level analysis of the proposal's impacts on ambient air quality should be included. Alternatives to dredging and filling proposed for the Fisherman's Bend Marina expansion were not evaluated. An alternatives analysis is required by 40 CFR 230.10(a). The FEIS should also evaluate possible means of mitigating the adverse impacts of the proposed filling of intertidal habitat in accordance with the EPA Region 10, Section 404 Mitigation Policy.

ERP No. D-SFW-K64008-HI, Rating EC2, Hawaiian Islands Nat'l Wildlife Refuge (HINWR) Management Plan, HI. SUMMARY: EPA supports the designation of the HINWR, but has concerns about possible water quality, problems if appropriate refuge boundaries are not selected. A major concern is protection of coral reef water quality and EPA suggested consideration of an alternative that would establish refuge boundaries at the 100 fathom contour. EPA also recommended coordination with the COE on the need for Section 404 permits.

Final EISs

ERP No. F-COE-A11068-00, New Army Light Infantry Division, Stationing of Seventeenth Active Component, AL, AK, CA, KY, NY, TN, WA, Guam. SUMMARY: Issues raised by EPA were adequately addressed in the FEIS, except for a request for more details on mitigating wetland impacts and how necessary environmental and social service facilities will be provided.

ERP No. F-COE-A11064-00, New Army Light Infantry Division, Stationing of Eighteenth Active Component, AL, AK, CA, KY, NY, TN, WA, Guam. SUMMARY: Same as F-COE-A11063-00 above.

Dated: November 19, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-30762, Filed 11-21-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 84-656]

Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans

Date: November 19, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Richard Pickering, Office of Policy and Economic Research. Phone: 202-377-6770.

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-30700 Filed 11-21-84; 8:45 am]

BILLING CODE 6720-01-M

American Savings and Loan Association, Inc.; Knoxville, TN; Notice of Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. section 1729(c)(1)(B) (i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for American Savings and Loan Association, Inc., Knoxville, Tennessee on November 16, 1984.

Dated: November 16, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-30701 Filed 11-21-84; 8:45 am]

BILLING CODE 6720-01-M

East Tennessee Federal Savings and Loan Association, Inc., Knoxville, TN; Notice of Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners Loan Act, 12 U.S.C. section 1464(d)(6)(A) (1982), appointed the Federal Savings and Loan Insurance Corporation as sole receiver for East Tennessee Federal Savings and Loan Association, Inc. Knoxville, Tennessee, on November 16, 1984.

Dated: November 16, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-30704 Filed 11-21-84; 8:45 am]

BILLING CODE 6720-01-M

The John Sevier Savings and Loan Association of Sevierville, Inc.; Sevierville, TN; Notice of Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section

406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. section 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for The John Sevier Savings and Loan Association of Sevierville, Inc., Sevierville, Tennessee, on November 16, 1984.

Dated: November 16, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-30703 Filed 11-21-84; 8:45 am]

BILLING CODE 6720-01-M

Knox Federal Savings and Loan Association; Knoxville, TN; Notice of Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owner's Loan Act of 1933, 12 U.S.C. 5(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Knox Federal Savings and Loan Association, Knoxville, Tennessee, on November 16, 1984.

Dated: November 16, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-30705 Filed 11-21-84; 8:45 am]

BILLING CODE 6720-01-M

Savannah Savings and Loan Association; Savannah, TN; Notice of Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. section 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Savannah Savings and Loan Association, Savannah, Tennessee, on November 16, 1984.

Dated: November 16, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-30702 Filed 11-21-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

C. Martin Landry, 2819 Quincannon Lane, Houston, TX 77043

E.D.R. International, Inc., 301 West Park Drive, #206, Miami, FL 33172. Officer: Eduardo Del Riego, Sole Officer

Nilda A. Valles dba N.A.V.E., 14003 Merry Meadow, Houston, TX 77049

Catello Joseph Montagna, 1327 West 170th Street, Gardena, CA 90247

Ghaleb Paul Ghannoum, 21483 Crozier Avenue, Boca Raton, FL 33428

Dated: November 19, 1984.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30720 Filed 11-21-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; California Commercial Bancshares, et al.

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activies will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanies by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 13, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *California Commercial Bancshares,* Santa Anna California; to purchase certain assets and assume certain liabilities of Mission Hills Mortgage Corporation, Tustin, California, thereby engaging in mortgage banking activities, including the origination, selling and servicing of real estate secured loans.

2. *Sanwa Bank, Ltd.* Osaka, Japan; to acquire Continental Illinois Leasing Corporation, Chicago, Illinois, and Cobak Corporation, Chicago, Illinois, thereby engaging in the making, acquiring and servicing of loans or other extensions of credit, primarily in connection with equipment and personal property financing and the leasing of personal property and equipment.

Board of Governors of the Federal Reserve System, November 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30691 Filed 11-21-84; 8:45 am]

BILLING CODE 6210-01-M

Fidelcor, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holdling companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street,. Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.,* Rosemont, Pennsylvania; to engage *de novo* through its subsidiary, Fedelcor Life Insurance Company, Phoenix, Arizona, in underwriting as reinsurer, credit life and accident and health insurance related to retail installment contracts which Fidelity Bank, N.A. (survivor of the merger between Fidelity Bank and Southeast National Bank, both subsidiaries of Fidelcor, Inc.) purchases from dealers located in the States of Maryland, Ohio, Delaware, Pennsylvania, and New Jersey.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dunlap Iowa Holding Co.,* Dunlap, Iowa; to engage *de novo* in the making, acquiring and servicing of loans and other extensions of credit for the company's account, in the countries of Harrison, Monona, Shelby, and Crawford in the State of Iowa.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.,* Minneapolis, Minnesota; to engage *de novo* through its subsidiary, First Bank System Community Development Corporation, Minneapolis, Minnesota, to make a debt investment in the Worthington Student Housing Project, Worthington, Minnesota, designed primarily to promote community welfare through the development of low-income housing in the State of Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Provident Bancorp, Inc.,* Dallas, Texas; to engage *de novo* through its subsidiary, Provident Mortgage Corporation, Dallas, Texas, in initiating and servicing residential and commerical mortgages for sale to investors or in the secondary mortgage market.

Board of Governors of the Federal Reserve System, November 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30692 Filed 11-21-84; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; RBC Holdings (USA) Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *RBC Holdings (USA) Inc.,* New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Royal Bank and Trust Company, New York, New York.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.,* Columbus, Ohio; to merge with the following bank holding companies: Carroll County Financial Corporation, Temple, Georgia (75 percent of the voting shares), thereby indirectly acquiring Bank of Carroll County, Temple, Georgia; F&M Bancshares, Inc., Leslie, Georgia (100 percent of the voting shares), thereby indirectly acquiring Farmers & Merchants Bank, Leslie, Georgia; Southwest Georgia Financial Corporation, Moultrie, Georgia (49 percent of the voting shares), thereby indirectly acquiring Moultrie National Bank, Moultrie, Georgia; and West Georgia Financial Corporation, Tallapoosa, Georgia (75 percent of the voting shares), thereby indirectly acquiring West Bank of Tallapoosa, Georgia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peoples Bancshares of Antigo, Inc.,* Antigo, Wisconsin; to become a bank holding company by acquiring at least 90 percent of the voting shares of The Peoples' Bank, Antigo, Wisconsin.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Capital Bank Corporation,* Frankfort, Kentucky; to acquire at least 80 pecent of the voting shares of United Bank & Trust Company, Versailles, Kentucky.

E. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Phillips Insurance Agency,* Newport, Minnesota; to acquire at least 52.50 percent of the voting shares of Dodgeville State Bank, Dodgeville, Wisconsin.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Amcorp Financial, Inc.,* Ardmore, Oklahoma; to become a bank holding company by acquiring 80 pecent of the voting shares of American National Bank, Ardmore, Oklahoma.

2. *Crown Bancshares, Inc.,* Kansas City, Missouri; to acquire 1.2 pecent of the voting shares of Merchants Bancorporation, Topeka, Kansas, thereby indirectly acquiring additional

shares of The Merchants National Bank of Topeka, Topeka, Kansas.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Southwest Bank Holding Company*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of The Southwest of Dallas, Dallas, Texas.

Board of Governors of the Federal Reserve System, November 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30885 Filed 11-21-84; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of October 2, 1984

In accordance with § 217.5 of its rule regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on October 2, 1984.[1]

The information reviewed at this meeting suggests that the expansion in economic activity slowed appreciably in the third quarter from a strong pace earlier in the year. In August, industrial production rose only slightly and gains in nonfarm payroll employment moderated further; retail sales and housing starts declined for the second month in a row. The civilian unemployment rate was unchanged in August at 7.5 percent. Information on outlays and spending plans suggests slower expansion in business fixed investment, following exceptionally rapid growth in recent quarters. Since the beginning of the year, average prices and the index of average hourly earnings have risen more slowly than in 1983.

In August the monetary aggregates expanded at relatively slow rates, but data available for September suggested some strengthening. From the fourth quarter of 1983 through September, M1 apparently grew at a rate close to the midpoint of the Committee's range for 1984, M2 at a rate somewhat below the midpoint of its longer-run range, and M3 at a rate near the upper limit of its range. Growth in total domestic nonfinancial debt appears to be continuing at a pace above the Committee's monitoring range for the year, reflecting large government borrowing along with relatively strong private credit growth. Interest rates generally have fallen somewhat further since the August meeting of the Committee.

Over the past month, the foreign exchange value of the dollar against a trade-weighted average of major foreign currencies has fluctuated widely under often volatile market conditions, reaching a new high in the latter part of September; since then the dollar has declined somewhat. The merchandise trade deficit rose sharply to a record high rate in the July-August period.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at the July meeting to reaffirm the ranges for monetary growth that it had established in January: 4 to 8 percent for M1 and 6 to 9 percent for both M2 and M3 for the period from the fourth quarter of 1983 to the fourth quarter of 1984. The associated range for total domestic nonfinancial debt was also reaffirmed at 8 to 11 percent for the year 1984. It was anticipated that M3 and nonfinancial debt might increase at rates somewhat above the upper limits of their 1984 ranges, given developments in the first half of the year, but the Committee felt that higher target ranges would provide inappropriate benchmarks for evaluating longer-term trends in M3 and credit growth. For 1985 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1984 to the fourth quarter of 1985, of 4 to 7 percent for M1, 6 to 8½ percent for M2, and 6 to 9 percent for M3. The associated range for nonfinancial debt was set at 8 to 11 percent.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

In the implementation of policy in the short run, the Committee seeks to maintain the lesser degree of restraint on reserve positions sought in recent weeks. This action is expected to be consistent with growth in M1, M2, and M3 at annual rates of around 6, 7½, and 9 percent, respectively, during the period from September to December. A somewhat further lessening of restraint on reserve positions would be acceptable in the event of significantly slower growth in the monetary aggregates, evaluated in relation to the strength of business expansion and inflationary pressures, domestic and international financial market conditions, and the rate of credit growth.

Conversely, greater restraint might be acceptable in the event of substantially more rapid monetary growth and indications of significant strengthening of economic activity and inflationary pressures. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 8 to 12 percent.

By order of the Federal Open Market Committee, November 14, 1984.

Normand R.V. Bernard,

Assistant Secretary.

[FR Doc. 84-30890 Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

[1] The Record of Policy Actions of the Committee for the meeting of October 2, 1984 is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Nomember 16, 1984.

Public Health Service

National Institutes of Health

Subject: Collection and Evaluation of Human Tissues and Cells—(0925-0152) Extension No Change
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Authorization for the Social Security Administration to Obtain Account Records From a Financial Institution-Extension No Change—SSA-4641 (0960-0293)
Respondents: Financial Institutions
Subject: Reporting Changes that Affect Your Social Security Payments—Revision SSA-1425EV-(0960-0073)
Respondents: Beneficiaries
OMB Desk Officer: Robert J. Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearnace Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503.

ATTN: (name of OMB Desk Officer)

Dated: November 16, 1984.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-30889 Filed 11-21-84; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 81N-0314]

Sulfiting Agents; Reexamination of Gras Status; Closed Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming closed meeting of the ad hoc Review Panel on the Reexamination of the GRAS Status of Sulfiting Agents (the ad hoc Review Panel) convened by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). The ad hoc Review Panel will meet in executive session to consider information received from the public at an open meeting on November 29, 1984, as announced in the **Federal Register** of October 25, 1984 (49 FR 42984).

DATE: The closed meeting will be held on November 30, 1984.

ADDRESS: The closed meeting will be held at the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Sue Ann Anderson, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 1984 (49 FR 27994), FDA announced that FASEB had formed an ad hoc Review Panel to reexamine the GRAS status of the use of sulfiting agents (potassium metabisulfite, sodium bisulfite, sodium metabisulfite, potassium bisulfite, sodium sulfite, and sulfur dioxide) as direct human food ingredients. In the **Federal Register** of October 25, 1984 (49 FR 42984), FDA announced the availability of the tentative report of the ad hoc Review Panel and the opportunity for public comments at an open meeting scheduled for Thursday, November 29, 1984, 9 a.m., at the Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD.

The ad hoc Review Panel will meet in closed session on November 30, 1984, to consider comments received at the November 29 open meeting.

This meeting is being announced as required by 21 CFR 14.15(b)(1).

Dated: November 16, 1984.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30892 Filed 11-19-84; 10:27 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of the Disapproval of an Arkansas State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on January 8, 1985, in Dallas, Texas, to reconsider our decision to disapprove Arkansas State Plan Amendment 84-3

CLOSING DATE: Request to participate in the hearing as a party must be received by December 10, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Arkansas State Plan Amendment 84-3.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Arkansas's request to revise its Medicaid plan for payment of inpatient hospital services violates section 1902(a)13(A) of the Social Security Act.

Section 1902(a)(13)(A) of the Social Security Act requires that States make payment for inpatient hospital services through the use of rates which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

The proposed amendment, effective for inpatient hospital service provided on or after February 13, 1984, would reduce the current interim payment rates developed under the Medicare reasonable cost principles by 20 percent, and would establish the reduced amounts as prospective rates with no retrospective settlement. Although the State furnished the assurance statement as required by 42 CFR 447.253(b)(1)(i) that the proposed payment rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers, HCFA has determined that the assurance is unacceptable and the proposed State plan transmittal number 84-3, is not in accordance with the Federal statutory requirements of section 1902(a)(13)(A).

The notice to Arkansas announcing an administrative hearing to reconsider our disapproval of the State Plan Amendment reads as follows:

Mr. Curtis L. Ivery,
Commissioner, Division of Social Services, Arkansas Department of Human Services, Seventh and Main Streets, P.O. 1437, Little Rock, AR 72203.

Dear Mr. Ivery: This is to advise you that your request for reconsideration of the decision to disapprove the Arkansas State Plan Amendment 84-3 was received on October 22, 1984. You have requested a reconsideration of the disapproval of whether this plan amendment, which would amend the Arkansas inpatient hospital reimbursement plan, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on January 8, 1985, at 10 a.m., in the 23rd Floor Conference Room, 1200 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the

Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: November 16, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84–30846 Filed 11–21–84; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee (BRRC), Division of Research Resources (DRR), December 7, 1984, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland 20205.

This meeting will be open to the public December 7 from 9:00 a.m. to approximately 12:00 noon during which time there will be comments by the Director, DRR, a presentation by the Chairperson, BRRC, on the Mass Spectrometry Task Force Report, and an Evaluation of the Small Grants for Pilots Projects Program by the Executive Secretary, BRRC. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:00 p.m. to adjournment on December 7 for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, MD 20205, (301) 496–5545, will provide summaries of meetings and rosters of committee members.

Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B–41, National Institutes of Health, Bethesda, MD 20205, (301) 496–5411, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health.)

Dated: November 9, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–30839 Filed 11–21–84; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Board of Scientific Counselors, NICHD; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 7, 1984, in Building 31, Room 2A52. This meeting will be open to the public from 9:00 a.m. to 12 noon on December 7 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 7 from 1:00 p.m. to 4:30 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NICHD, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members. Dr. Arthur Levine, Scientific Director, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–2133, will furnish substantive program information.

Dated: November 9, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–30838 Filed 11–21–84; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Environmental Health Sciences Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on Dec. 10–11, 1984, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public from 9:00 a.m. to approximately 10:30 a.m. on Dec. 10, for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 10:30 a.m., Dec. 10, to adjournment on Dec. 11, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Carol Shreffler, Executive Secretary, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–514–7826), will provide summaries of meeting, rosters of committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: November 9, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–30840 Filed 11–21–84; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Board of Scientific Counselors, NLM; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Libary of Medicine, January 7 and January 8, 1985, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 4:00 p.m. on January 7, 1985, and 8:30 a.m. to 4:00 p.m. on January 8, 1985 for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 7, 1985, from approximately 4:00 p.m. to 5:00 p.m. for consideration of personnel qualifications and performance of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Mr. Earl Henderson, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: November 9, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–30837 Filed 11–21–84; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–84–1434; FR–2029]

Public Housing Homeownership Demonstration, Announcement of OMB Control Number

AGENCY: Office of the Secretary, HUD.

ACTION: Announcement of OMB control number.

SUMMARY: On October 25, 1984 (49 FR 43028), the Department of Housing and Urban Development published in the **Federal Register** a notice of fund availability and solicitation of applications from Public Housing Agencies and Indian Housing Agencies in consort with units of general local governments and public and Indian housing tenant groups and associations to participate in a Public Housing Homeownerhsip Demonstration. The document stated that the information collection requirements contained in the notice had been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. It also stated that the OMB control number, when assigned, would be announced by separate notice in the **Federal Register**. The purpose of this notice is to announce the OMB control number for the Public Housing Homeownership Demonstration.

FOR FURTHER INFORMATION CONTACT: Harold D. Williams, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8132, Washington, D.C. 20410, Phone: (202) 755–5561 (This is not a toll-free number).

Accordingly, the information collection requirements contained in the Public Housing Homeownership Demonstration notice of fund availability and solicitation of applications have been approved under OMB control number 2528–0113.

Dated: November 19, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84–30757 Filed 11–21–84; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Alaska Native Claims Settlement Act 1985 Study Draft Report

Correction

In FR Doc. 84–29426 appearing on page 44680 in the issue of Thursday, November 8, 1984, make the following correction: In the second column, DATES, number 5. "December 27, 1984". should read "December 3, 1984".

BILLING CODE 1505–01–M

Bureau of Land Management

[F–14904–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance (DIC) under the provisions of sec. 12(a) and sec. 12(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Newtok Corporation, for approximately 1.95 acres. The lands involved are within U.S. Survey No. 4042, Alaska.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in THE TUNDRA DRUMS. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until December 24, 1984 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84–30884 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–JA–M

[N–30967]

Realty Action; Exchange of Public and Private Lands in Elko County, NV

November 13, 1984.

The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian

T. 34 N., R. 60 E.,
Sec. 4, lots 3, 4;
Sec. 24, W½SW¼.
T. 35 N., R. 62 E.,
Sec. 32, E½.

The areas described above aggregate 481.05 acres.

In exchange for these lands the United States will acquire the following described private lands within the Humboldt National Forest from Loyd and Alta Sorenson.

Mount Diablo Meridian

T. 35 N., R. 61 E.,
Sec. 29, E½;
Sec. 33.

The areas described above aggregate 960 acres.

The purpose of the exchange is to acquire higher mulitple use value lands. In addition, the exchange would provide lands needed in support of a Federal program within an area of the Humboldt National Forest that is currently difficult to manage because of fragmented ownership patterns. The exchange is consistent with both agencies' land use planning and the public interest will be served by completing the exchange. The

above described lands have been appraised and their values determined to be equal.

Patent, when issued, will reserve to the United States a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945. Mineral Estates will be transferred with public and private lands.

The patent will be subject to:

1. All valid existing rights.

2. Those rights for powerline purposes which have been granted to Wells Rural Electric Company, its successors or assigns by Permit No. Nev–058476 under the Act of March 4, 1911, 36 Stat. 1253; 43 U.S.C. 961, as amended.

3. Range Improvement Fence 1021.

The disposal of the E½, section 32, T. 35 N., R. 62 E., MDM will result in the reduction of the grazing preference of Dr. Blair Johns by 22 AUM's and Mr. Robert Peltier by 6 AUM's. Both permittees were notified by letter's dated March 10 and 11, 1982 respectively, that these reductions would be necessary.

Publication of this notice in the Federal Register will segregate the subject lands from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon the issuance of patent or two years from the date of this notice or upon publication of a Termination of Segregation.

Further information concerning the exchange including the environmental assessment is available for review at the Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada.

For a period of 45 days from the date of first publication interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, NV 89801.

Dated: November 13, 1984.

Maris Good,

Acting District Manager.

[FR Doc. 84–30708 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–HC–M

[F–82011]

Proposed Transfer of Jurisdiction and Opportunity for Public Meeting, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides an opportunity for public comment pursuant to a proposed transfer of jurisdiction of lands from the Department of the Air Force to the Department of the Navy for the continued use as a Radio Relay Site on 6.31 acres located near Tin City, Alaska. The lands will continue to remain closed to the mining and mineral leasing laws.

EFFECTIVE DATE: Date of publication; comments must be received February 21, 1985.

ADDRESS: Comments and meeting requests should be sent to: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271–5060.

On August 18, 1983, the Department of the Navy, filed an application to transfer the jurisdiction of the following described land from the Department of the Air Force. The lands will remain withdrawn from settlement, sale, location, or entry under the general public land laws, including the mining and mineral leasing laws, subject to valid existing rights:

Kateel River Meridian

A tract of land located on the Seward Peninsula, 2nd Judicial Area, Territory of Alaska, more specifically described as follows: Beginning at a point, from which the point of intersection of latitude 65°35'01.579" N., longitude 167°56'25.790" W., bears North 220 feet, thence West, 175 feet; North, 482 feet to a point on the south boundary of the Champion Lode Claim; S. 82°12' E., 372 feet along the boundary to a point identical with the southeast corner of said claim; N. 29°40' E., 78 feet along the boundary; East, 193 feet; South, 500 feet; West, 425 feet to the point of beginning.

The area described contains approximately 6.31 acres located near Tin City, Alaska.

The purpose of the transfer is for the continued use as a Radio Relay Site by the Department of Navy.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed transfer may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed transfer. All interested persons who desire a public meeting for the purpose of being heard on the proposed transfer must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the transfer is approved prior to that date.

The segregation of the lands in connection with the transfer of jurisdiction application shall not affect administrative jurisdiction over the lands.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 84–30654 Filed 11–34–84; 8:45 am]

BILLING CODE 4310–JA–M

Las Cruces District Office; New Mexico Realty Action—Direct and Modified Competitive Sale of Public Land in Sierra County, NM

AGENCY: Bureau of Land Management (BLM) Las Cruces District, Interior.

ACTION: Notice of Cancellation of Realty Action—Direct and Modified Competitive Sale of Public Land in Sierra County, New Mexico.

SUMMARY: The Notice of Realty Action Direct and Modified Competitive Sales in Sierra County, New Mexico, published in the **Federal Register**, Volume 49, No. 135 on July 12, 1984 is cancelled as it pertains to parcel numbers LC 001, 002, 003, 004, and 006. Cancellation is necessary because no bids were offered by the preference right holders. Waivers of the 2 year notice for cancellation of grazing privileges were not signed by the preference right holders, and the 2 year notification period has not expired. Parcel No. LC 005 was sold in accordance with the July 12, 1984 Notice. All the terms specified in the Notice remain applicable to that parcel.

DATE: November 30, 1984.

ADDRESS: Bureau of Land Management, Las Cruces District Office, 317 N. Main, Santa Teresa Bldg., P.O. Box 1420, Las Cruces, NM 88004.

Daniel C.B. Rathbun,

District Manager.

[FR Doc. 84–30652 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–FB–M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held December 19, 1984.

On December 19, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include only: a discussion of the Medford District's Supplemental Environmental Impact Statement on timber, and decision whether or not to make formal comment.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board between 9:00 a.m. and 9:30 a.m. on December 19, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by December 18, 1984. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the district office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: November 8, 1984.

Hugh R. Shera,

District Manager.

[FR Doc. 84–30653 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–33–M

[W–84153]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

November 15, 1984.

Pursuant to the provisions of Pub. L. 31–245 and Title 43 Code of Federal Regulations, Section 3108.2–1(c), and Pub. L. 97–451, a petition for reinstatement of oil and gas lease W–84153 for lands in Campbell County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the new lease terms for rentals and royalties at rates of $5.00 per acre, and 16⅔ percent, respectively.

The lessees have paid the required $500.00 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice.

The lessees having met all the requirements for reinstatement of the leases as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W–84153 effective June 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 84–30651 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–22–M

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 6 S., R. 48 E.,

Accepted October 19, 1984 and officially filed October 24, 1984.

T. 14 S., R. 8 W.,
T. 15 S., R. 8 W.,

The above-listed plats were accepted October 12, 1984 and officially filed October 24, 1984.

T. 33 S., R. 3 E.,

Accepted and officially filed November 2, 1984.

T. 11 S., R. 27 E.,
T. 13 S., R. 27 E.,

The above-listed plats were accepted October 26, 1984 and officially filed November 2, 1984.

Washington

T. 8 N., R. 16 E.,
T. 9 N., R. 16 E.,

The above-listed plats were accepted November 9, 1984 and officially filed November 13, 1984.

The above-listed plats represent dependent resurveys, subdivisions, and corrective dependent resurveys.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 15, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–30649 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–33–M

[C–34320]

Realty Action—Exchange, Public Lands in Routt County Colorado; Correction

This document corrects a Notice of Realty Action published June 1, 1984 (49 FR 22891).

The legal description of the lands identified as suitable for disposal by exchange (column 2, page 22891) incorrectly identifies land as being situated in Sec. 34, T. 4 N., R. 84 W., Sixth Principal Meridian, while these subdivisions are actually located in Sec. 32, T. 4 N., R. 84 W., Sixty Principal Meridian.

Number 3 of the "terms and conditions applicable to the exchange" (column 3, page 22891), incorrectly included land in the SE1/4SE1/4, Section 28, T. 4 N., R. 84 W., Sixth Principal Meridian. This land is not a part of the exchange, and is deleted from the Notice.

William J. Pulford,

District Manager.

[FR Doc. 84–30648 Filed 11–21–84; 8:45 am]

BILLING CODE 4310–JB–M

Wild Horse and Burro Gathering; Hearing

Notice is hereby given in accordance with Pub. L. 92–195, as amended by Pub. L. 94–579, and Pub. L. 95–514, two public hearings will be held on December 18 and 19, 1984. The public hearing on December 18 will begin at 7:30 P.M. at the Humboldt County Fairgrounds, Winnemucca, Nevada. The public hearing on December 19 will begin at 7:30 P.M. in the Pershing County Community Center, 810 Sixth Street, Lovelock, Nevada 89419.

The agenda for the meeting will include: (1) Implementation of the Winnemucca District's approved Land Use Plans for reducing wild horse and burro populations to management levels; (2) the use of helicopters and motorized vehicles when conducting wild horse and burro gatherings.

The hearing is open to the public. Interested persons may make oral statements to the hearing moderator or file written statements for management consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, by December 12, 1984. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the hearing moderator.

Summary minutes of the hearing will be maintained in the Winnemucca District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: November 16, 1984.

Robert J. Neary,

Acting District Manager.

[FR Doc. 84-30967 Filed 11-21-84; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Louisiana; Application; Natural Gas Pipeline Right-of-Way

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that under section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185), as amended by Pub. L. 93-153, Exxon Corporation, U.S.A., has applied for right-of-way for a 2½ inch pipeline that will cross lands of the Catahoula National Wildlife Refuge in La Salle Parish, Louisiana, described as follows:

Louisiana Meridian

T. 6 N., R. 4° E.

Sections 8 and 17

Beginning at a point on the west line of Section 17, T. 6 N., R. 4° E.; said point being southerly 1,019.4 feet from the Bureau of Land Management monument situated at the Northwest corner of Section 17 (Southwest corner of Section 8); thence: N. 42°00' E., 616.1 feet; N. 41°44' E., 1,144.0 feet; N. 41°50' E., 1,340.0 feet; N. 59°45' E., 527.0 feet; N. 24°11' E., 181.0 feet; N. 22°31' W., 116.2 feet; to a terminal point at an existing battery.

The pipeline will cross 3,924.3 feet of the Catahoula National Wildlife Refuge.

The purpose of the notice is to inform the public that the United States Fish and Wildlife Service is currently considering the merits of approving this application.

DATE: Interested persons desiring to comment on this application should do so within thirty (30) days following the date of publication of this notice.

ADDRESS: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

Dated: November 15, 1984.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 84-30955 Filed 11-21-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Aminoil USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Aminoil USA has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 3582 and 4228, Blocks 146 and 133, respectively, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Chenier, Louisiana.

DATE: The subject DOCD was deemed submitted on November 15, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Emile H. Simoneaux, Jr.; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plan, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 15, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-30856 Filed 11-21-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Upper Delaware National Scenic and Recreational River; Citizens Advisory Council Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: December 14, 1984, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y 12764-0159.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: November 15, 1984.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 84-30734 Filed 11-21-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Westerald A. G.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 19, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTRACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176

By order of the Commission.

Issued: November 19, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30747 Filed 11-21-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: J. Weck GmbH & Co. and Glashaus, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 19, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: November 19, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30748 Filed 11-21-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Sholton Associates.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 19, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in

confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: November 19, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30749 Filed 11-21-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-167]

Certain Glass Construction Blocks; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Glass Masonry, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 19, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: November 19, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30750 Filed 11-21-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-171]

Certain Glass Tempering Systems; Issuance of Exclusion Order

AGENCY: International Trade Commission.

ACTION: Issuance of a limited exclusion order.

SUMMARY: The Commission has issued a limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0079.

SUPPLEMENTARY INFORMATION: The presiding officer issued an initial determination (ID) on August 15, 1984, in which she determined that there has been a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation or sale of certain glass tempering systems including frictionally driven oscillating roller hearth furnaces which infringe claim 1 of U.S. Letters Patent 3,994,711. On September 17, 1984, the Commission issued a notice that it had determined not to review the ID (49 FR 37858). Therefore, a violation of section 337 exists in the unauthorized importation or sale of certain glass tempering systems including frictionally driven oscillating roller hearth furnaces which infringe claim 1 of U.S. Letters Patent 3,994,711, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The Commission has determined that a limited exclusion order is the appropriate remedy in this investigation and that the public interest factors enumerated in section 337(d) do not preclude the issuance of such an order. Pursuant to section 337(g), the Commission has determined that 50 percent of the entered value of the articles concerned is the appropriate bond applicable to infringing glass tempering systems entered during the 60-day Presidential review period.

Copies of the Commission's Action and Order, its Opinion, the public version of the presiding officer's ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: November 16, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30746 Filed 11-21-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-183]

Certain Indomethacin; Deadline for Receipt of Motions for Assessment of Fees Costs

AGENCY: International Trade Commission.

ACTION: Establishment of deadline for receipt of motions of respondents requesting costs, fees, and other sanctions against complainant Merck.

SUMMARY: The U.S. International Trade Commission hereby gives notice that the deadline for receipt of motions of respondents requesting that costs, fees, and other sanctions be imposed against complainant Merck is 14 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–1693.

SUPPLEMENTARY INFORMATION: On October 3, 1984, respondent Lederle Laboratories filed a Motion For a Prima Facie Determination of Abuse of Commission Process by Merck and for Institution of Ancillary Proceedings for the Assessment of Lederle's Fees and Costs Against Merck. Subsequent to Lederle's motion, respondents Chelsea Laboratories, Mylan Pharmaceuticals, Inc., S.S.T. Corporation, Fabbrica Italiana Sintetici S.p.A., and GYMA Laboratories of America, Inc., filed similar motions requesting recovery of their costs and fees from Merck.

The Commission has determined that it will accept motions from other respondents requesting that costs, fees, and other sanctions be imposed against complainant Merck until 14 days after publication of this notice in the Federal Register.

The Commission will accept comments on Lederle's motion from other government agencies until 14 days after publication of this notice in the Federal Register.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: November 15, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30626 Filed 11-21-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30585]

Akron & Barberton Belt Railroad Company–Exemption; 49 U.S.C. 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval the acquisition of trackage rights by the Akron & Barberton Belt Railroad Company over an 8.7-mile line of the Consolidated Rail Corporation near Rittman, OH, subject to employee protective conditions.

DATES: Exemption effective on November 16, 1984. Petitions to reopen must be filed by December 13, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30585 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: W.A. Frederick, Jr., P.O. Box 712, Barberton, OH 44203

FOR FURTHER INFORMATION CONTACT: Louise E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 15, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Sterrett concurred with a separate expression. Vice Chairman Andre would find that the exemption also promotes the rail transportation policies goal of expeditious decisions. Commissioner Strenio notes Commissioner Sterrett's concern and withholds judgment on the labor protection issue. Commissioner Gradison did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-30622 Filed 11-21-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30530]

Cadillac & Lake City Railway Company—Stock Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Cadillac and Lake City Railway Company from the requirements of 49 U.S.C. 11301 for the issuance of not exceeding 90,848 additional shares of $1 par value voting preferred stock and not exceeding 20,000 additional shares of $10 par value common stock.

DATES: The exemption will be effective on December 24, 1984. Petitions for reconsideration must be filed by December 13, 1984 and petitions for stay must be filed by December 3, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30530 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Clifford F. Lenten, 121 East Pikes Avenue, Suite 335, Colorado Springs, CO 80903

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 15, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-30614 Filed 11-21-84; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice, as required by 49 U.S.C. 10524(b)(1), that the named corporation intends to provide or to use compensated intercorporate hauling operations as authorized in 49 USC 10524 (b).

1. Beatrice Companies, Inc. (formerly Beatrice Foods Co.), Two North LaSalle Street, Chicago, IL 60602.
2. List of wholly-owned subsidiaries and respective states of incorporation.

Name of corporation	State of incorporation
Advance Cheese Co., Inc	Delaware.
Allison Manufacturing Co	Do.
Almay, Inc	Do.
Arizona Sparkling Bottled Water, Inc	Arizona.
Arrowhead Drinking Water Co	Delaware.
Arrowhead Puritas Waters, Inc	California.
Aunt Nellie's Foods, Inc	Wisconsin.
Avis, Inc	Delaware.
Beatrice Bakery, Inc	Do.
Beatrice Cheese, Inc	Do.
Beatrice Dairy Products, Inc	Do.
Beatrice Financial Services, Inc	Do.
Beatrice Foods Co	Do.
Beatrice Foodservice & Ingredients, Inc	Do.
Beatrice Foods International Co	Do.
Beatrice Grocery Products, Inc	Do.
Beatrice Home Products, Inc	Do.
Beatrice Leather, Inc	Do.
Beatrice Meats, Inc	Do.
Beatrice Prepared Foods, Inc	Do.
Beatrice Public Refrigerated Services, Inc	Oregon.
Beatrice Specialty Apparel, Inc	Delaware.
BEFCO International Services, Inc	Do.
Be-Kan, Inc	Do.
Berliner & Marx, Inc	New York.
BFC International Limited	Delaware.
BG Marketing Corp	Do.
Bloomfield Industries, Inc	Do.
Blue Coach Foods, Inc	Do.
Brillion Iron Works, Inc	Massachusetts.
Bryco, Inc	Delaware.
The Buckingham Corp	Do.
Cal-Compack Foods, Inc	Do.
Callard & Bowser (U.S.A.) Inc	New York.
BDCB Leasing Co	Iowa.
BDD Leasing Co	Do.
CCLA Communications, Inc	California.
CCLA Leasing Co	Do.
CCMA Leasing Co	Delaware.
CCMR Leasing Co	Illinois.
CCO Leasing Co	Nebraska.
Certified Transportation Co., Inc	California.
Coca-Cola Bottling Co. of Cedar Rapids	Iowa.
Coca-Cola Bottling Co. (Dubuque, IA)	Do.
Coca-Cola Bottling Co. of Honolulu, Inc	Hawaii.
Coca-Cola Bottling Co. of Los Angeles	California.
The Coca-Cola Bottling Co. of Madison/Rockford	Illinois.
The Coca-Cola Bottling Co. of of Mid-America	Delaware.
Coca-Cola Bottling Company of Omaha	Nebraska.

Name of corporation	State of incorporation
Meadow Gold Dairy (formerly Community Creamery).	Montana.
Converter's Ink Co	Delaware.
Cryogenic Associates, Inc	Do.
Cudahy Foods, Inc	Do.
Culligan International Co	Do.
Custom Technologies Corp	Do.
Danalon Florida, Inc	Do.
Danalon Texas, Inc	Do.
Day-Timers, Inc	Do.
Delaware Rambo Leasing Corp	Do.
Diamond Head Beverages, Inc	Hawaii.
Dn-Print Foils, Inc	Delaware.
Peter Eckrich and Sons, Inc	Do.
Edger Packing Co., Inc	Wisconsin.
ERM Uniform Corp	New York.
Escast, Inc	Illinois.
Eschem, Inc	Delaware.
Esmark, Inc	Do.
Estech, Inc	Do.
Estronics, Inc	Do.
Federal Stampings, Inc	Minnesota.
Fiberite Corp	Delaware.
James J. Gallery, Inc	Massachusetts.
Great Bear Spring Co	Delaware.
Halena, Inc	Do.
Halston Enterprises, Inc	Do.
Honey Creek Provisions Co	Ohio.
Hunt-Wesson Foods, Inc	Delaware.
Imperial Oil and Grease Co	Do.
Industrial Glass Co., Inc	Florida.
International Jensen, Inc	Delaware.
International Playtex, Inc	Do.
Jan-U-Wine Foods, Inc	California.
Jhirmack Enterprises, Inc	Do.
Kaawa Farms, Ltd	Hawaii.
E.W. Kneip, Inc	Delaware.
KSS Transportation Corp	New Jersey.
LaChoy Foods Products Co	Delaware.
The Lackawanna Leather Co., Inc	New Jersey.
LNP Corp	Delaware.
LouverDrape, Inc	California.
Manlecados Payco, Inc	Delaware.
Market Forge Co	Do.
Martha White Foods, Inc	Tennessee.
Max Factor & Co	Delaware.
Melamine Plastics Corp	Minnesota.
Milky Way Products Co	Delaware.
Minnesota Valley Engineering, Inc	Do.
National Wax Co	Illinois.
Northeast Cold Storage Corp	Massachusetts.
Ozarka Drinking Water Co	Delaware.
PEC, Inc	Do.
Pepes Snacks, Inc	Do.
Pfister & Vogel Tanning Co., Inc	Do.
Playtex Texas	Do.
Polyvinyl/Permuthane Co	Do.
Poultry Foods Industries, Inc	Arkansas.
Quality Beverages, Inc	California.
Rusty Jones, Inc	Delaware.
Samsonite Corp	Colorado.
Samsonite Furniture Co	Delaware.
Sanna, Inc	Do.
Schwarz Leather Corp	Do.
Skyline Dairy, Inc	Do.
Stahl Chemical Co	Do.
STP Corp	Do.
Strongheart Products, Inc	Do.
Swift & Co	Do.
Swingster Marketing Co	Do.
Swissrose International, Inc	New Jersey.
Talby-Nason Company, Inc	Delaware.
Taylor Freezer Co	Do.
Tecneron Graphic Arts, Inc	Do.
Thoro System Products, Inc	Do.
Tindle Mills, Inc	Missouri.
Tropicana Feed Corp	Florida.
Tropicana of New York, Inc	New York.
Tropicana Transportation Corp	Delaware.
Tropicana Products, Inc	Florida.
United Can Co	Delaware.
Washington Manufacturing Co., Inc	Do.
Waterloo Industries, Inc	Iowa.
Webcraft Games, Inc	New Jersey.
Webcraft Technologies, Inc	Delaware.
Wellman Dynamics Corp	Do.
Wells Manufacturing Co., Inc	Do.
Weskem, Inc	Nebraska.
World Dryer Corp., Inc	Delaware.
Zero Transport, Inc	Florida.

CULLIGAN INTERNATIONAL COMPANY SUBSIDIARIES

Name of corporation	State of incorporation
Arrowhead Industrial Water, Inc	Delaware.
Culligan Dayton, Inc	Ohio.
Culligan Desplaines Valley Water Conditioning, Inc.	Illinois.
Culligan Distribution Services, Inc	Iowa.
Culligan Dutchess-Putman Water Conditioning, Inc.	New York.
Culligan Peninsula Industrial Water Conditioning Co.	California.
Culligan Soft Water Service of Santa Barbara, Inc.	Do.
Culligan Soft Water Service of Whittier, Inc	Do.
Culligan Water Conditioning, Inc	Wisconsin.
Culligan Water Conditioning of Battle Creek, Inc.	Michigan.
Culligan Water Conditioning of Butler, Inc	Pennsylvania.
Culligan Water Conditioning of Greater Detroit, Inc.	Michigan.
Culligan Water Conditioning of Greater Pittsburgh, Inc.	Pennsylvania.
Culligan Water Conditioning of Houston, Inc	Texas.
Culligan Water Conditioning of the Inland Empire.	California.
Culligan Water Conditioning of Orange County.	Do.
Culligan Water Conditioning of South Bend, Inc.	Indiana.
Culligan Water Conditioning of Tidewater, Inc	Virginia.
Culligan Water Conditioning of Tippecanoe County, Inc.	Indiana.
Everpure, Inc	Nevada.
Greater Chicago Culligan Water Conditioning, Inc.	Illinois.
Greater Kansas Culligan Water Conditioning, Inc.	Kansas.
Indiana Soft Water Service, Inc	Indiana.
St. Louis Soft Water Service, Inc	Missouri.

1. The parent corporation and address of principal office: Jones Oil Company, Inc., 1627 W. Highland Avenue, Selma, Alabama 36701.

2. Wholly owned subsidiaries which will participate in the operations, and states of incorporation: (i) J3 TRKING Company, Inc.—Alabama.

1. Parent corporation and address of principal office: The Ohio Art Company, P.O. Box 111, 726 East High Street, Bryan, OH 43506.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Trinc Company, P.O. Box 754, 727 East Wilson Street, Bryan, Ohio 43506, an Ohio Corporation

(ii) Strydel, Inc., P.O. Box 604, Ellis Street, Stryker, Ohio 43557, an Ohio Corporation

1. Parent corporation and address of principal office: The Southland Corporation, 2828 North Haskell Avenue, Dallas, Texas 75221.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

(i) Petro-Chemical Transportation, Inc. (Texas), P.O. Box 1399, Victoria, Texas 77901

(ii) Petro-Chemical Transport, Inc. (Texas), P.O. Box 1399, Victoria, Texas 77901

(iii) Foremost Petroleum Company of Texas, Inc. (Texas), P.O. Box 719, 2828 North Haskell Avenue, Dallas, Texas 75221

(iv) Southland Fuels, Inc. (Texas), P.O. Box 719, 2828 North Haskell Avenue, Dallas, Texas 75221

(v) CITGO Petroleum Corporation (Delaware), One Warren Place, 6102 S. Yale Blvd., Tulsa, Oklahoma 74102

1. Parent corporation and address of principal office: Waverly Gravel & Ready-Mix Co., Inc., d.b.a. Shell Rock Sand and Gravel, Shell Rock, IA 50670.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Brent Industries, Inc., (an Iowa corporation)

(ii) Iowa Sands Trucking, Ltd. (an Iowa corporation)

James H. Bayne,

Secretary.

[FR Doc. 84-30818 Filed 11-21-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30586]

Custom Fuel Services, Inc.—Purchase—Ohio Barge Line, Inc., and Mon-Valley Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed acquisition of water carrier operating authority and other assets under 49 U.S.C. 11343.

SUMMARY: By application under 49 U.S.C. 11343, Custom Fuel Services, Inc. (Custom), proposes to acquire the water carrier operating authority and other assets of Ohio Barge Line, Inc. (Ohio), a regulated water carrier operating under Permit No. W-406 and subnumbers thereunder. Custom will also acquire certain operating assets of Mon-Valley Transportation Company (Mon-Valley), an exempt water carrier. Custom is a non-carrier subsidiary of Ingram Industries, Inc., a regulated water carrier holding authority in Permit No. W-353 (Sub-No. 3). Ohio and Mon-Valley are subsidiaries of United States Steel Corporation (U.S. Steel). An application for the temporary acquisition by Custom of the operating rights and other assets of Ohio and Mon-Valley has been filed.

DATE: Comments are due December 24, 1984.

ADDRESSES: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423, and

Petitioners' representatives;

(2) Michael F. Morrone (for Custom), Keller and Heckman, 1150 17th Street, N.W., Suite 1000, Washington, D.C. 20036, (202) 457-1100.

(3) Wayne L. Emery (for Ohio and Mon-Valley), 600 Grant Street, Room 1589, Pittsburgh, PA 15230, (412) 433-2698.

Comments should refer to Finance Docket No. 30586.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: The transaction embraces the transfer of all of Ohio's interstate operating authority in Permit No. W-406 and subnumbers thereunder authorizing the transportation, as a contract carrier, (A) in non-self-propelled vessels with the use of separate towing vessels in the transportation of general commodities, and by towing vessels in the performance of general towage, (1) between ports and points along the Arkansas and Cumberland Rivers; the Gulf Intracoastal Waterways; the Illinois Waterway, including points in northern Indiana by way of Lake Michigan; and the Kanawha, Kentucky, Allegheny, Mississippi, Monongahela, Ohio, Red, Tennessee, and Verdigris Rivers and their tributary waterways; (2) between ports and points on the Allegheny River, between ports and points along the Allegheny River, on the one hand, and, on the other, ports and points on the Arkansas and Cumberland Rivers, the Gulf Intracoastal Waterways, the Illinois Waterway, including points in northern Indiana by way of Lake Michigan, the Kanawha, Kentucky, Mississippi, Monongahela, Ohio, Red, Tennessee, and Verdigris Rivers and the their tributary waterways; (3) between ports and points along the Tennessee River and its tributary waterways (including the Barkely Canal), and between ports and points along the Tennessee River, and its tributary waterways, on the one hand, and, on the other, ports and points on the Arkansas and Cumberland Rivers, the Gulf Intracoastal Waterways, the Illinois Waterway, including points in northern Indiana by way of Lake Michigan, the Kanawha, Kentucky, Mississippi, Monongahela, Ohio, Red, and Verdigris Rivers and their tributary waterways; and (B) in non-self-propelled vessels, with the use of towing vessels, of (1) refractories, from Newell, WV, to ports and points along the Illinois Waterway, the Mississippi and Ohio Rivers, and the Gulf Intracoastal Waterways, under continuing contracts with Globe Refractories, Inc., of Newell, WV; (2) iron and steel articles, between points along the Red River; and between points along the Red River, on the one hand, and, on the other, points in (3), (4), (5), and (6) below; (3) iron and steel articles, blocking, cement, coke and coke breeze or dust, ferro manganese, fire clay, flouorospar, pig iron, pig tin, scrap iron or steel, slag, spraying oil, spiegeleisen, sulphate of ammonia, sulphur, tin or terne plate, new barges, derrick boats, construction and erection materials and equipment, false work, and lock gates, between ports and points along the Monongahela, Ohio, Cumberland and Kanawha Rivers, the Mississippi River below its junction with the Ohio River, the Gulf Intracoastal Waterways, the Kentucky River below and including Beattyville, KY, the Port Allen section of the Gulf Intracoastal Waterway, and between ports and points along the Arkansas-Verdigris Waterway project below and including Catoosa, OK, and between ports and points along the Arkansas-Verdigris Waterway project below and including Catoosa, OK, on the one hand, and, on the other, ports and points along the Monongahela, Ohio, Cumberland and Kanawha Rivers, the Mississippi River below its junction with the Ohio River, the Gulf Intracoastal Waterways, the Kentucky River below and including Beattyville, KY, and the Port Allen section of the Gulf Intracoastal Waterway; (4) coal, between ports and points along the Ohio and Monongahela River, between ports and points along the Arkansas-Verdigris Waterway project below and including Catoosa, OK, and between points and ports along the Arkansas-Verdigris Waterway project below and including Catoosa, OK, on the one hand, and, on the other, points and ports along the Ohio and Monongahela Rivers; (5) manganese ore, from Mobile, AL and New Orleans, LA, to points and ports along the Ohio and Monongahela Rivers, between points and ports along the Arkansas-Verdigris Waterway below and including Catoosa, OK; between ports and points along the Arkansas-Verdigris Waterway below and including Catoosa, OK, on the one hand, and, on the other, Mobile, AL and New Orleans, LA; and (6) iron and steel articles, between ports and points on the Illinois Waterway (including points in northern Indiana by way of Lake Michigan), the Monongahela, Ohio, Cumberland, and Kanawha Rivers, the Mississippi River below its confluence with the Illinois Waterway, the Gulf Intracoastal Waterways, the Kentucky River below and including Beattyville, KY, and the Arkansas-Verdigris Waterway at or below Catoosa, OK.

Custom will also acquire from Ohio a total of 12 towboats and 472 barges, miscellaneous equipment, real estate, and structures used in conducting its business. Custom will acquire from Mon-Valley 3 additional towboats, 42 barges and certain equipment and structural improvements used in conducting its operations. The parties propose that Custom succeed to the contracts between Ohio and Mon-Valley and their parent, U.S. Steel.

The parties have filed an application for temporary authority under 49 U.S.C. 11349 seeking approval of the transfer of ownership of the above assets pending the Commission's consideration of the permanent application under 49 U.S.C. 11343-11344.

James H. Bayne,

Secretary.

[FR Doc. 84-30819 Filed 11-21-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 122X)]

Illinois Central Gulf Railroad Company—Abandonment Exemption—West Feliciana Parish, LA; Revised Notice

AGENCY: Interstate Commerce Commission.

ACTION: Corrected Notice of Exemption

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Illinois Central Gulf Railroad Company of 1.1 miles of track in West Feliciana Parish, LA, subject to standard labor protective conditions.

DATE: This exemption shall be effective on December 24, 1984. Petitions to stay must be filed by December 3, 1984. Petitions for reconsideration must be filed by December 13, 1984

ADDRESSES: Send pleadings referring to Docket No. AB-43 (Sub-No. 122X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative, John H. Doeringer, 233 N. Michigan Avenue, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 16, 1984

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 30815 Filed 11-21-84; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Registration of Mariel Cubans

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of registration.

SUMMARY: Notice is hereby given that under the authority of section 265(b), the Attorney General requires the registration of all persons born in Cuba or nationals of Cuba who are not now United States citizens and who:

(a) Arrived in the United States between April 15, 1980 and October 10, 1980 (the "Mariel Boatlift"),

(b) Have been given the Immigration designation "Cuban/Haitian Entrant-(Status Pending)", and

(c) Have not subsequently become lawfully admitted permanent residents of the United States.

Individuals required to register must file Form I-104 in accordance with the instructions on that form in the period between December 3, 1984 and December 31, 1984.

DATE: Date of registration: December 3, 1984 to December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy or F. Gerard Heinauer, Immigration Examiners, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, (202) 633-3320.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act, as amended, allows the Attorney General, upon ten days notice, to require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered, to notify the Attorney General of their current addresses and furnish additional information as the Attorney General may require. The authority to act in immigration matters is delegated by the Attorney General to the Commissioner of the Immigration and Naturalization Service. The individuals in the group described were registered in the period from April 15, 1980 to October 10, 1980, but have not been required to update that registration since October 31, 1981. The Service intends to resume the processing of applications filed by individuals in the group described for permanent resident benefits under the 1966 Cuban Adjustment Act.

The Service will update its system of records with the data provided in the registration. In addition to address, the required form contains the following information:

1. Name.
2. Country of Citizenship.
3. Date of Birth.
4. Date of Arrival in U.S.
5. Name of Present Sponsor.
6. Address of Sponsor.
7. Name and Nationality of Sponsor.
8. Number and Nationality of Children.
9. Number of Children Residing with Applicant.

Forms required in this registration will be available on or about November 30, 1984 from voluntary agencies participating with the Service in this effort. Local affiliates will be encouraged to participate by the following national organziations:

1. American Council for Nationalities Service.
2. Church World Service.
3. Cuban-American National Foundation.
4. International Rescue Committee.
5. Lutheran Immigration and Refugee Service.
6. U.S. Catholic Conference Migration and Refugee Service.
7. World Relief.

Registration forms will not generally be available at Service District offices. Individuals in remote areas where no voluntary agencies are participating in this program may obtain a form by sending a stamped, self-addressed envelope to: Immigration and Naturalization Service, Director, Outreach Program, Room 6230, 425 I Street, NW., Washington, D.C. 20536.

Registrants will return the registration forms to any voluntary agency participating in the program. There is no fee for submitting the registration form.

Section 265, I&N Act (8 U.S.C. 1305).

Dated: November 19, 1984.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 84-30713 Filed 11-21-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 11, 1984, 9:30 a.m., Rm. S4215 A & B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. 20210

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565, November 16, 1984.

Signed at Washington, D.C., this 16th day of November 1984.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 84-30736 Filed 11-21-84; 8:45 am]

BILLING CODE 4510-28-M

Mine Safety and Health Administration

[Docket No. M-84-239-C]

Petition for Modification of Application of Mandatory Safety Standard; Alabama By-Products Corp.

Alabama By-Products Corporation, P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.1714-2(e)(3) (self-contained self-rescue devices; use and location requirements) to its Chetopa Mine (I.D. No. 01-00323) located in Jefferson County, Alabama; its Mary Lee No. 1 Mine (I.D. No. 01-00515), Gorgas No. 7 Mine (I.D. No. 01-00340), Mary Lee No. 2 Mine (I.D. No. 01-00821), and SEGCO No. 1 Mine (I.D. No. 01-00347), all located in Walker County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that an operator may not obtain permission to place self-contained self-rescuers (SCSRs) more than 25 feet away from miners on mantrips into and out of the mine.

2. A track and trolley material and mantrip haulage system is used along the mainlines, while rubber tired material and mantrip haulage is used in room entries.

3. As an alternate method in lieu of requiring miners to wear and carry SCSRs aboard mantrips, petitioner proposes to cache the SCSRs at designated storage locations along mantrip travelways so that the devices are readily accessible to personnel riding mantrips.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 24, 1984. Copies of the petition are available for inspection at that address.

Dated: November 16, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-30731 Filed 11-21-84; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Iowa State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa plan and the adoption of Subpart J of Part 1952 containing the decision.

The Iowa plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated August 15, 1984 from Walter H. Johnson, Deputy Commissioner of Labor to Roger A. Clark, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to: Servicing of Single Piece and Multi-piece Rim Wheel 29 CFR 1910.177 as published in the **Federal Register** (49 FR 4350 dated February 3, 1984); Occupational Noise Exposure: Hearing Conservation Amendment: Corrections, as published in the **Federal Register** (48 FR 29687 dated June 28, 1983); Hazard Communication 29 CFR 1910.1200 as published in the **Federal Register** (48 FR 53340 dated November 25, 1983); Revocation of Advisory and Repetitive Standards as published in the **Federal Register** (49 FR 5321 dated Feburary 10, 1984); Commercial Diving Operations 29 CFR 1910.441 (removed) as published in the **Federal Register** (49 FR 881 dated January 6, 1984). These standards which are contained in Chapter 88 of the Code of Iowa (1983) were promulgated after public comment requested on February 22, 1984, hearing held on April 9, 1984 and resolution adopted by the Iowa Bureau of Labor on July 12, 1984 pursuant to Chapter 17a, Iowa Code. The standards were effective on September 5, 1984 and notice of their adoption was published by the State on August 1, 1984.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, Room 3476, 200 Constitution Avenue, NW., Washington, DC 20210; Office of the Regional Administrator, OSHA, Room 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Iowa Bureau of Labor, 307 E. 7th Street, Des Moines, Iowa 50319.

4. *Public participation.* Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective November 23, 1984.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Kansas City, Missouri, this 24th day of September 1984.

Roger A. Clark,

Regional Administrator.

[FR Doc. 84-30737, Filed 11-21-84; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision. The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

3. Commission order adopting and designating an effective date.

4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and 1953.23) require that States respond

to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the State prior to Federal review and approval. By letter dated June 6, 1984, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's removal of advisory and repetitive provisions of General Industry Standards (29 CFR Part 1910: Revocation of Advisory and Repetitive Standards, 49 FR 5318, February 10, 1984). The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63–46–1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State standards for 29 CFR Part 1910: Revocation of Advisory and Repetitive Standards were amended and adopted by the Industrial Commission of Utah, Archives File Number 7148, on May 11, 1984, (effective June 15, 1984) pursuant to Title 35–8–6, Utah Code, annotated 1953. The State revocation of advisory and repetitive standards is substantially identical to the Federal standards action with the exception that the State retained § 1910.28(p)(1), which specifies that an interior hung scaffold should be hung or suspended from the roof structure or substantial ceiling beams.

2. *Decision.* The above State standards have been reviewed and compared with the relevant Federal standards and OSHA has determined that the State standards are at least as effective as the comparable Federal standards, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between Utah's Revocation of Advisory and Repetitive Standards and the comparable Federal standards action are minimal and that the standards are thus substantially identical. OSHA therefore approves the standards in question. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSHA Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N–3613, 200 Constitution Ave., NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The Standards were adopted in accordance with the procedural requirements of State law which permitted public comments, and further public participation would be repetitious.

This decision is effective June 29, 1984 (Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed in Denver, Colorado, this 29th day of June, 1984.

Byron R. Chadwick,

Regional Administrator.

[FR Doc. 84–30738, Filed 11–21–84; 8:45 am]

BILLING CODE 4510–26–M

Office of Pension and Welfare Benefit Programs

[Application No. D–5007 et al.]

Proposed Exemptions, Profit Sharing Plan and Trust Agreement for Employees of Gonzalo Camblor, MD, DC, et al.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for complete statement of the facts and representations.

Profit-Sharing Plan and Trust Agreement for Employees of Gonzalo Camblor, M.D., P.C. (the Plan) Located in Atlanta, Georgia

[Application No. D–5007]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase by the Plan of a participation in a promissory note of the SmithKline Corporation from Dr. Gonzalo Camblor, under the terms described in this notice of pendency, and the personal guarantee by Dr. Camblor of the payment of the Plan's participation in the note, provided the Plan pays no more than the fair market value of the participation on the date of its acquisition.[1]

Summary of Facts and Representations

1. The Employer is a partner in Cobb Pathologists, a general partnership engaged in the practice of medicine along with F. Norman Bowles, M.D., P.C. and Alan I. Jacobson, M.D., P.C. The Plan is a defined contribution profit-sharing plan. Dr. Camblor, who is the sole shareholder and sole employee of the Employer, is the only participation in the Plan. The Plan currently has assets of approximately $300,000.

2. Dr. Camblor is the holder of a promissory note from SmithKline Corporation dated November 3, 1981 in the principal amount of $311,310. The note bears interest at the rate of 10% per annum, and all interest and principal are due and payable on November 3, 1986.

3. Dr. Camblor now proposes to sell a participation in the note to the Plan. The proposed investment by the Plan in the note will represent 24.9% of the assets of the Plan on the date of the purchase. The note participation will be purchased at a price which will provide the Plan with a rate of return which equals the greater of 13½% or 3½ points above the 30 month Certificate of Deposit rate of Trust Company Bank, an unrelated commercial bank located in Atlanta, Georgia, as of the date of the Plan's acquisition of the participation. There will be no fees or commissions paid in connection with the purchase.

4. The promissory note in which the participation is being purchased was issued by a public corporation and is guaranteed by a standby letter of credit issued by the Girard Bank and held by Philadelphia National Bank as transfer agent. In addition, the payment of the Plan's participation in the note will be personally guaranteed by Dr. Camblor. Dr. Camblor represents that in the event another employee becomes eligible to participate in the Plan, a separate account will be established for that participant so that Dr. Camblor is the only Plan participant who will ever be affected by this transaction.

5. The plan's independent trustee is the Georgia State Bank (the Bank) of Atlanta, Georgia. Mr. Elyea D. Carswell, Jr., Trust Officer of the Bank, has represented that the discounted price that the Plan will pay in order to purchase the participation will provide the plan with a rate of return at least as high as that which would be received by a commercial lender purchasing the note participation.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria contained in section 4975(c)(2) of the Code because: (1) The transaction will involve 24.9% of the Plan's assets; (2) the terms of the participation to the Plan are at least as high as those obtainable in an arm's-length transaction with an unrelated party according to the Plan's independent fiduciary; and (3) Dr. Camblor is the sole participant in the Plan to be affected by the transaction, and he desires that the transaction be consummated by the Plan.

Notice to Interested Persons: Because Dr. Camblor is the sole shareholder of the Employer and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Gray H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a tole-free number.)

[1] Since Dr. Camblor is the sole stockholder of Gonzalo Camblor, M.D., P.C. (the Employer) and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Coldevin B. Carlson, M.D., P.S. Money Purchase Pension Plan (the Plan) Located in Seattle, Washington

[Application No. D–5416]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of certain artwork by the Plan to Dr. and Mrs. Coldevin B. Carlson (the Carlsons), who are disqualified persons with respect to the Plan, provided the purchase price is not less than the fair market value of the artwork on the date of sale.

Since Dr. Coldevin B. Carlson (Dr. Carlson) is the sole shareholder of Coldevin B. Carlson, M.D., P.S. (the Plan Sponsor) and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a money purchase profit sharing plan with one participant, Dr. Carlson. Dr. Carlson is also the sole shareholder and the sole employee of the Plan Sponsor, and the trustee of the Plan. As of May 31, 1983, the Plan had total assets of $21,564. The Plan Sponsor is a professional service corporation which provides medical services to the general public.

2. On April 12, 1980, the Plan purchased a Miro lithograph for $1,360 and a James A. Whistler etching for $680 and on September 17, 1980, the Plan purchased an antique Georgian sideboard for $2,000 (collectively, the Assets). The Assets were purchased by the Plan at the direction of and for the account of Dr. Carlson pursuant to the self-directed account investment provisions of the Plan. The Assets have been stored at Dr. Carlson's home and place of business since their purchase.[2]

3. The Assets were acquired by the Plan so that they would appreciate in value and could ultimately be disposed of at a substantial gain to the Plan. However, as a result of general market conditions, the applicant represents that the Assets have not appreciated as rapidly as originally anticipated. The applicant proposes that the Assets be sold to the Carlsons. The Carlsons will purchase the Assets for their total fair

[2] The Internal Revenue Service has made a determination that the storing of the Assets at the home of Dr. Carlson and at his place of business constitutes a prohibited transaction. The applicant represents that excise taxes imposed as a result of the maintenance of the Assets at the home and place of business of Dr. Carlson for calendar years 1980, 1981 and 1982 have been paid. The applicant further represents that any additional excise tax which may be due will be paid within 60 days of the granting of this proposed exemption.

market value of $6,450. The purchase price will be paid in cash.

4. Independent appraisals of the Assets have been performed by companies regularly engaged in the purchase and sale of items similar to or identical to the Assets. The Original Graphics Gallery located in Seattle, Washington has established the fair market value of the Miro lithograph at $2,200 and the fair market value of the James A. Whistler etching at $1,100 as of December 21, 1983. Bob Alsin Antiques of Bellevue, Washington has determined that the fair market value of the Georgian sideboard is at $3,150 as of November 2, 1983.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 4975(c)(2) of the Code because:

(1) The Plan will receive fair market value for the Assets;

(2) The purchase price will be paid in cash; and

(3) The Plan trustee has determined that the proposed transaction is in the interests of and protective of the Plan and its participant and beneficiary.

Notice to Interested Persons

Because Dr. Carlson is the sole shareholder of the Plan Sponsor and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to other persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of the notice of proposed exemption.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Duriron Company, Inc. Pension Trust for Salaried Employees (the Plan) Located in Dayton, Ohio

[Application No. D–5423]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the continued leasing by the Plan, beyond June 30, 1984, of certain real property to Duriron Company, Inc. (the Employer), the sponsor of the Plan and a party in interest with respect to the Plan; and (2) the possible sale of the Property by the Plan to the Employer pursuant to a right of first refusal or put option, provided that the terms and conditions of the transactions are no less favorable to the Plan than those which could be obtained by the Plan in similar transactions with an unrelated party.

Effective Date: If granted, this exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which had 923 participants and net assets of approximately $17,578,336 as of December 31, 1983. The trustee (the Trustee) of the Plan is Chase Manhattan Bank, N.A. The Plan is administered by a pension and insurance committee, members of which are appointed by the board of directors of the Employer. Portions of the Plan's portfolio are managed by Tallasi Management Company, Inc., the Trustee and American Fletcher National Bank (the Bank). The Bank is a national banking association with its principal place of business at 101 Monument Circle, Indianapolis, Indiana. Apart from acting as investment manager with respect to a portion of the Plan's assets, the Employer and the Bank are not related in any manner. The Employer represents that it conducts no banking business with the Bank. The Bank has been appointed to act as an independent fiduciary for the Plan with respect to the subject transactions.

2. Among the assets of the Plan is a parcel of improved real property (the Property) located at 445 Findlay Street, Dayton, Ohio. The Property, which was contributed to the Plan by the Employer in 1967, comprises part of the Plan's portfolio which is managed by the Bank. The Property consists of approximately 3.485 acres and is situated between the Employer's manufacturing facility and property owned by Consolidated Rail Corporation, an unrelated party. Other than one small storage building, the Property is used primarily to provide parking facilities for employees of the Employer. As of March 1, 1984, the Property constituted approximately 1.02% of the Plan's net assets.The Plan also holds 21,085 shares of Employer common stock valued at $295,190 as of December 31, 1983.[3] The applicant represents that the combined value of the Property and the Employer common stock comprise approximately 2.7% of the Plan's net assets.

3. Coincident with its acquisition, the Plan leased the Property to the Employer for an initial term of twenty years with three ten-year renewal options. The rental under the initial lease (the 1967 Lease) was set at $18,000 per year for the initial twenty-year term and at $12,000 per year for all renewals. The 1967 Lease, which was triple net, provided the Employer with a right of first refusal in the event that the Property was offered for sale. On May 1, 1984, the 1967 Lease was renegotiated and revised (the Revised Lease). The applicant represents that both the 1967 Lease and the Revised Lease were exempt, until June 30, 1984, from the prohibited transaction provisions of the Act pursuant to section 414(c)(2) of the Act.[4]

4. The Revised Lease is a triple net lease which has an initial term of three years (the unexpired initial term of the 1967 Lease) with three renewal options of ten years each. The Bank, as the independent fiduciary for the Plan, must approve the exercise of any renewal option. The Employer is responsible for all taxes, assessments, insurance, utilities, repairs and maintenance on the entire term of the Revised Lease and any renewals thereunder. The Employer is required to provide, at its own expense, both liability and casualty insurance on the Property, and additionally to indemnify and hold the Plan harmless from any loss, cost or expense of any kind and from any liability to any person due to damage resulting from the occupancy of the Property by the Employer or from any failure of the Employer to comply with the lease provisions, absent the consequences of any tortious or negligent act by the Plan or its agents. Rental during the first three years of the Revised Lease is $18,000 per year, which is the amount determined to be the fair market rental value of the Property in an appraisal made on March 1, 1984 by Philip J. Magin, Jr., M.A.I., S.R.P.A., of the Magin Realty Company, Dayton, Ohio. Mr. Magin, who is independent of the Employer, also appraised the fair market value of the Property at $180,000 as of March 1, 1984. Based on these appraised values, the Plan will receive a rate of return on the Property of approximately 10% per annum. Rental payments for each renewal term will be determined by independent appraisals of the fair market rental value of the Property performed as of the first day of each renewal period. All such appraisals will be made by an M.A.I. appraiser selected by the Bank as the independent fiduciary for the Plan. Additionally, independent appraisals by an M.A.I. appraiser selected by the Bank are required to be performed after the first five years of each renewal term to re-determine the fair market rental value of the Property. If the fair market rental value differs from the rent then being paid, the rent for the remainder of that renewal term will be adjusted to the appraised fair market rental value as of the first day of the sixth year of that renewal term.

5. The Revised Lease contains a put option pursuant to which the Trustee, if directed by the Bank, may require the Employer to purchase the Property for cash at its then-current appraised fair market value as determined by an independent M.A.I. appraiser selected by the Bank if (a) the Employer fails to exercise any of its renewal options, (b) the Property is partially condemned, (c) the Plan is liquidated, (d) all three renewal options have been exercised and have expired, or (e) the Employer is in default under the Revised Lease and that default has not been cured within 90 days.

6. The terms of the Revised Lease provide also that the Employer may purchase the Property for cash at its fair market value as determined by an independent M.A.I. appraiser selected by the Bank if (a) the Bank, as the independent fiduciary for the Plan, directs the Trustee to offer the Property for sale, or (b) all three renewal options have been exercised and have expired and the Bank determines that the sale of the Property would be in the Plan's best interest. The Revised Lease states that if one year lapses after the Employer fails to exercise its right under (a) above and the Trustee has not sold the Property, the Bank must direct the Trustee to reoffer the Property to the Employer at its then-current appraised fair market value.

7. The Bank, on or prior to June 18, 1984, reviewed the Plan's financial statements, needs for liquidity and diversification and all terms and conditions of the Revised Lease, including the Employers's right of first refusal and the Plan's put option. Based on its review, the Bank states that the Revised Lease is protective of the Plan and in the best interest of the Plan because the Property will produce regular and periodic cash income to the Plan in an amount determined to be the fair market rental value of the Property by an independent M.A.I. appraiser; because the Plan will have a ready purchaser for the Property at its appraised fair market value if the Plan elects to sell the Property; and because the holding and leasing of the Property is consistent with the cash flow needs of the Plan. The Bank states further that, after consideration of all options available to the Plan with respect to the Property, the Bank believes that the most appropriate course of action for the Plan with respect to the Property is to lease it to the Employer under these terms and conditions. Pursuant to an investment management agreement, the Bank has been given full authority to and represents that it will discharge all discretionary duties and fiduciary responsibilities relating to the Revised Lease, including the exercise or waiver of any options granted to the Plan under the Revised Lease and the enforcement on behalf of the Plan of the Revised Lease according to its terms.

8. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act because: (1) the Property represents only approximately one percent of the Plan's assets; (2) the Revised Lease has been approved and will be monitored and enforced by the Bank, as an independent fiduciary for the Plan; (3) the rental rate under the Revised Lease has been determined to be the fair market rental value by an independent M.A.I. appraiser and the rental will be readjusted at least every five years over the term of the lease according to reappraisals made by a qualified M.A.I. appraiser selected by the Bank; (4) the Revised Lease is a triple net lease; and (5) the put option in the Revised Lease will provide the Plan with a purchaser for the Property at its appraised fair maket value should the Bank determine that the Plan should sell the Property.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

William E. Tassock, P.C. Pension Plan (the Plan) Located in Portland, Oregon

[Application No. D–5425]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the September 10, 1980 purchase by the Plan of a parcel of real property located at 1824 S.W. Main Street, Portland, Oregon (the Property) from Mr. William E. Tassock for $40,000 in cash, provided such amount was not greater than the fair market value of the Property on the date of the sale.[5]

Effective Date: If the proposed exemption is granted, it will be effective September 10, 1980.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with one participant, Mr. Tassock. As of September 10, 1980, the Plan had total assets of approximately $160,240. Mr. Tassock, who is the sole shareholder of the Employer, is also the sole trustee of the Plan.

2. The Property consists of an entire apartment unit which comprises the downstairs unit of a duplex. Mr. Tassock acquired the Property from unrelated persons. He acquired a 25% interest from the Archdiocese of Portland on January 31, 1979, another 25% interest from the Shriners Hospital for Crippled Children on August 10, 1979, and in March, 1980, a 50% interest from the daughter of LaVerne Whitmore, who acquired the interest from her father's estate.

3. On September 10, 1980, Mr. Tassock sold the Property to the Plan, together with the lessor's interest in a certain lease with Mr. Lloyd Hickock, an unrelated person, which paid the lessor $500 per month. The Plan's interest in the Property was recorded with the recorder of Multnomah County, Oregon. Mr. Tassock as trustee for the Plan believed the transaction to be a good income-producing investment for the Plan.

4. The Plan paid $40,000 cash for the Property. Mr. Clyde M. Buettner, an independent real estate appraiser in Portland, Oregon, has appraised the Property as having had a fair market value of $40,000 as of the last quarter of 1980.

5. In summary, the applicant represents that the subject transaction satisfied the criteria of section 4975(c)(2) of the Code because: (1) the transaction involved less than 25% of the Plan's assets; (2) the Plan paid the fair market value for the Property as determined by an independent appraiser; and (3) Mr. Tassock is the only participant in the Plan to be affected by this transaction.

[3] The applicant represents that the Employer common stock held by the Plan constitutes "qualifying employer securities" within the meaning of section 407(d)(1) of the Act. The Department is expressing no opinion herein as to the applicability of section 407(d)(1) to the Stock.

[4] The Department is expressing no opinion as to the applicability of section 414(c)(2) of the Act to the 1967 Lease or to the Revised Lease.

[5] Since Mr. Tassock is the sole stockholder of William E. Tassock, P.C. (the Employer) and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

and as Plan trustee he determined that the transaction was appropriate for the Plan and in the Plan's best interest.

Notice to Interested Persons: Because Mr. Tassock is the sole stockholder of the Employer and the sole participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the publication of this notice in the Federal Register.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bass Investment Limited Partnership (the Partnership) Located in Fort Worth, Texas

[Application No. D–5634]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, effective July 9, 1984, to the purchase or sale of securities between the Partnership and employee benefit plans (the Plans) with respect to which the Partnership is a party in interest, provided that the terms of the transactions are at least as favorable to the Plans as the terms generally available in arm's-length transactions between unrelated parties. The Equitable Life Assurance Society (Equitable) is the limited partner in the Partnership.

Effective Date: If granted, this exemption will be effective July 9, 1984.

Summary of Facts and Representations

1. Equitable is a mutual life insurance company organized under the laws of the State of New York. It is the third largest life insurance company in the United States, having total assets as of December 31, 1983, of approximately $44 billion. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for thousands of employee benefit plans subject to the Act.

Equitable maintains several pooled separate accounts in which pension, profit sharing and thrift plans participate, and has single customer separate accounts and direct investment advisory arrangements pursuant to which it or one of its affiliates manages all or a portion of the assets of a number of large plans. As well, Equitable has established a pension investment consulting service, EPIC, which provides generic investment advice, but no specific recommendations as to the retention of any particular asset manager or the purchase or sale of any particular investment on behalf of a plan.

2. Equitable is currently attempting to diversify the range of investments in its general account portfolio and certain other portfolios to enhance the return on investments of these portfolios without significantly increasing their risk profiles. In this regard, Equitable has for many years been interested in investing in the high-risk, high-yield securities market. In this regard, Equitable, in conjunction with individuals and entities associated with Drexel Burnham Lambert, Inc. (Drexel) and Bass Brothers Enterprises (Bass Brothers) have formed the Partnership. The applicant represents that Equitable's interest in the Partnership will be allocated to its general account and to Separate Account No. 9, its guaranteed contract separate account.[6] The applicant states that it is possible that in the future a part of Equitable's limited partnership interest in the Partnership will be transferred to Equitable Variable Life Insurance Company (EVLICO), a wholly-owned subsidiary of Equitable.

3. The Partnership was organized as a limited partnership under Texas law and commenced operations on July 9, 1984. The duration of the Partnership will be approximately ten years, although the term of the Partnership may be extended upon the mutual consent of the partners. Equitable will also have the option of terminating the Partnership after three years and each year thereafter if the Partnership's investment performance has not satisfied certain minimum standards. Equitable (and to a certain extent, EVLICO) will hold a 90% equity interest in the Partnership as the sole limited partner. The remaining 10% equity interest will be held by BMA Limited parthership (BMA) which is comprised of individuals and entities from Bass Brothers and Drexel. Drexel is an international investment banking and securities firm with considerable experience in the high-risk, high-yield bond market, and Bass Brothers is an investment management group. BMA will be the general partner of the Partnership. Equitable will participate in 70% of the profits of the partnership as a limited partner, and BMA will participate in the remaining 30%.

4. The Partnership has a initial capitalization of approximately $500 million, of which $300 million will be equity capital and $200 million will be non-recourse bank debt. Equitable, as the sole limited partner, will contribute $270 million of the initial equity capital and BMA will contribute $30 million. The funding of the loans to the Partnership will not involve assets held by the banks' trust departments on behalf of employee benefit plans.

5. BMA, as general partner of the Partnership, will have overall management responsibility for the investment of the Parthership's assets. However, Equitable will possess some limited authority with respect to the partnership's investments. In this regard, without Equitable's prior approval, the investment of the Partnership's assets will be subject to several restrictions and limitations. Additionally, a senior investment professional from Equitable will consult with the general partner on a frequent and regular basis. The Parthership will also conduct quarterly meetings with Equitable to review investment activity and long-range strategies.

6. The Partnership's investment objective will be to achieve long-term capital growth by investing in debt instruments which offer the opportunity for premium current return or significant capital appreciation. The Partnership will also invest in, but to a lesser extent, equity securities. The investment objective of the Partnership is premised in the belief that the "quoted" prices for the securities of a particular issuer may be depressed to a greater extent than warranted by the apparent financial condition of the issuer. For example, the Partnership may invest in debt securities that are in default or with respect to which issuers are not making required interest or sinking fund payments. Although such investments may involve substantial risk-taking by the Partnership, any potential investment risk will be offset by the Partnership's acquistion of investments at prices low enough to provide an adequate return on the investment even in the event of liquidation. The applicant estimates that the Market for these securities now totals approximately $40 billion (par value).

[6] Separate Account No. 9 is a "guaranteed contract separate account" maintained in connection with guaranteed investment contracts issued by Equitable. The applicant represents that the account satisfies certain requirements so that the assets in the account do not constitute plan assets.

7. The applicant seeks an exemption to allow Plans to sell or purchase securities to or from the Partnership. Because Equitable owns a more than 50% interest in the Partnership, the Partnership may be a party in interest with respect to Plans to which Equitable is a party in interest. Accordingly, the purchase or sale of securities between any such Plan and the Partnership may involve a violation of the prohibited transaction provisons of the Act. The applicant states that securities may be acquired by the Partnership from a nominee or a financial institution which is acting on behalf of another party, or from or through a broker/dealer making it virtually impossible to identify the party which is actually selling the securities.[7]

8. With respect to sales of securities, a Plan may hold bonds issued by a company that is suffering severe financial hardship. Because the Plan may not want to continue to hold bonds that involve a high risk of default, the Plan may sell the bonds to the partnership. Such a transaction may be effected through a broker/dealer or through a privately-negotiated transaction. With regard to purchases of securities by Plans from the partnership, the applicant states that the investment by Plans in high-yield, high-risk investment opportunities, when consistent with the Plan's investment objectives and after appropriate considerations by Plan fiduciaries, may be appropriate and suitable Plan investments.[8]

9. The applicant requests relief only from section 406(a) of the Act with respect to the transactions. In this regard, neither Equitable (and its affiliates) nor any other party affiliated with the Partnership will use any discretionary authority it may have with respect to a Plan to cause the Plan to engage in a transaction with the Partnership. The Applicant represents that any purchase or sale of securities between a Plan and the Partnership will be authorized by a fiduciary of the Plan who is totally unrelated to the Partnership, Equitable or any of their affiliates. Further, the applicant represents that with respect to Plans for which Equitable or an affiliate provides investment consulting services, no recommendations would be made that a Plan should or should not engage in a transaction with the Partnership.

10. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act as (1) fiduciaries totally unrelated and independent of Equitable, the Partnership or any of their affiliates will have sole and exclusive discretion with regard to a decision to engage in a transaction with the Partnership; (b) transactions with the Partnership may allow Plans to acquire and dispose of high-yield, high-risk securities when deemed appropriate; and (c) the Plans will deal with the Partnership on terms no less favorable to the Plans than those terms available with an unrelated party.

For Further Information Contact; Mr. Daivd Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Mountain View Medical Clinic, Ltd.—Michael J. Lipson, M.D., Defined Benefit Pension Plan; Mountain View Medical Clinic, Ltd.—Genaro Licosati, M.D., Defined Benefit Pension Plan; Mountain View Medical Clinic, Ltd.—John W. Curtin, M.D.; Defined Benefit Pension Plan; Mountain View Medical Clinic, Ltd.—Donald M. Taylor, M.D., Defined Benefit Pension Plan; and Mountain View Medical Clinic, Ltd.—Charles L. Levison, M.D., Defined Benefit Pension Plan (collectively, the Plans) Located in Phoenix, Arizona

[Application No. D–5640]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the continued leasing by the Plans, beyond June 30, 1984, of certain improved real property (the Property) in which the Plans own undivided interests, to Mountain View Clinic, Ltd. (the Employer), a party in interest with respect to the Plans, provided that the terms of the transaction are no less favorable to the Plans then those obtainable in an arm's length transaction with an unrelated party.

Effective Date: If granted, the exemption will be effective October 10, 1984.

Summary of Facts and Representations

1. The Plans are defined benefit pension plans with one participant each. The combined assets of the Plans, as of January 31, 1984, were approximately $2,570,491. The trustee of each Plan and the person responsible for the investment of each Plan's assets is the sole participant in each Plan.[9] The Employer and sponsor of the Plans is an Arizona corporation in which each of the participants of the Plans owns a 20% interest.

2. The Property was originally owned by the Mountain View Medical Clinic, Ltd. Employees Profit Sharing Plan (the Profit Sharing Plan) which was adopted October 28, 1968. The Profit Sharing Plan was terminated on August 24, 1979, and the assets of the Profit Sharing Plan were merged into the Mountain View Medical Clinic, Ltd. Restated Employees Retirement Plan (the Retirement Plan). The Retirement Plan was a money purchase pension plan which specifically provided for the maintenance of fully vested separate accounts with respect to the assets merged from the Profit Sharing Plan. In July, 1983, the Retirement Plan was terminated and merged into the Mountain View Medical Clinic, Ltd. Pension Plan (the Pension Plan). The Pension Plan was a defined benefit pension plan which was subsequently divided into five separate defined benefit pension plans (the Plans as defined herein) for the purpose of maintaining separate funding standard accounts and permitting independent investment discretion. Undivided interests in the assets of the Pension Plan were distributed to the Plans in the following percentages:

(a) Mountain View Medical Clinic, Ltd.—Michael J. Lipson, M.D., Defined Benefit Pension Plan, 9%

[7] The Conference Report accompanying the Act (House of Representatives Report No. 93–1280, 93d Congress 2d Session, pg. 307) states that, "in general, it is expected that a transaction will not be a prohibited transaction (under either the labor or tax provisions) if the transaction is an ordinary "blind" purchase or sale of securities through an exchange where neither buyer nor seller (nor the agent of either) knows the identity of the other party involved."

Accordingly, in this proposed exemption the Department is not proposing exemptive relief for such transactions.

[8] The Department expresses no opinion herein whether a Plan's investment in securities acquired from the Partnership would be consistent with the Provisions of Part 4 of Title I of the Act. As well the department is not proposing relief herein for prohibited transactions which may result from the holding of securities by Plans after purchase thereof from the Partnership. In this regard, the holding of equity or debt securities by a Plan of a Plan sponsor or affiliate which is not statutorily exempt under the Act would not be provided relief by this exemption.

[9] The sponsor of the Plans and the sole participant and trustee of each Plan represent that new plans will be created for any employees of the Plan sponsor who become eligible to participate in a plan. No additional employees of the Employer will become participants in the five Plans requesting the exemption.

(b) Mountain View Medical Clinic, Ltd.—Genaro Licosati, M.D., Defined Benefit Pension Plan, 29%

(c) Mountain View Medical Clinic, Ltd.—John W. Curtin, M.D., Defined Benefit Pension Plan, 24.5%

(d) Mountain View Medical Clinic, Ltd.—Donald M. Taylor, M.D., Defined Benefit Pension Plan, 7%

(e) Mountain View Medical Clinic, Ltd.—Charles L. Levison, M.D., Defined Benefit Pension Plan, 30.5%

3. The Property is a parking lot which had been partially paved prior to July, 1973, when it was leased by the Mountain View Medical Clinic, Ltd. Employees Profit Sharing Plan to the Employer pursuant to a written lease (the 1973 Lease) dated July 9, 1973 and expiring on July 8, 1978. The Property has been used continuously as a parking lot for employees and patients of the Employer. Under the 1973 Lease, the Employer was responsible for maintenance of the improvements, the payment of utility charges, taxes and assessments, and for maintaining public liability insurance in addition to paying monthly rental of $390. At the expiration of the 1973 Lease term on July 8, 1978, the parties orally agreed to extend the lease. In April, 1979, the portion of the Property which had been unpaved was paved at the Employer's expense. The Employer, which has continued to pay monthly rent of $390 and to perform its obligations under the lease in a timely manner, represents that the leasing arrangements were exempt, until June 30, 1984, under section 414(c)(2) of the Act.[10]

4. The requested exemption would permit the Plans to continue, after June 30, 1984, to lease the Property to the Employer. The Property consists of a 21,008 square foot parcel located at the northeast corner of Indian School Road and 45th Place in Phoenix, Arizona. The Property has been appraised at $273,000 as of July 27, 1984 by Wendell L. Montandon, M.A.I., an appraiser with Winius Montandon, Inc., 2302 East Magnolia St., Phoenix, Arizona, who stated that he has no personal interest or bias with respect to the Property or the parties involved. Mr. Montandon stated also that the fair market rental value of the Property, as of September 17, 1984, was $30,030 per annum. The applicants state that based upon the fair market value of the assets of each Plan as of January 31, 1984, no Plan had an undivided interest in the Property which constituted more than 16% of the assets of such Plan.

5. The new lease (the Lease) is a triple net lease which was executed on October 10, 1984, and was made effective from July 1, 1984 through June 30, 1994.[11] The Lease may be renewed by the Employer, if it has not defaulted under the Lease, for three additional periods of five years each. The initial rent is $32,760 per year, payable in monthly installments of $2,730, representing a return to the Plan of 12% per annum on the fair market value of the Property as of September 17, 1984. The Lease requires adjustments to the rental rate on every fifth anniversary so that the rent will equal or exceed the fair market rental value of the Property as determined at that time by a qualified appraiser who is not related to the Employer or any of its principals. In no event, however, will the rental rate be less than $2,730 per month.

6. In summary, the applicants represent that the proposed transaction satisfy the criteria set forth in section 408(a) of the Act because (a) the initial rent payable under the Lease exceeds the fair market rental value of the Property as determined by an unrelated M.A.I. appraiser; (b) the Lease requires adjustments to the rental rate on every fifth anniversary of the Lease so that the rent will equal or exceed the fair rental value of the Property as determined at the time by a qualified, unrelated appraiser; (c) the Plans will pay no expenses relating to the Property; and (d) the individuals who are the trustees and sole participants of each of the respective Plans believe the proposed transaction is in the best interest of the Plans and their beneficiaries.

Notice to Interested Persons: Because each of the participants in these Plans is the sole participant in each Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after publication of the notice in the Federal Register.

For Further Information Contact: Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

[10] The Department expresses no opinion as to the applicability of section 414(c)(2) of the Act with respect to the leasing of the Property by the Plans to the Employer.

[11] Since July 1, 1984, and until October 10, 1984, the Employer continued to pay rental to the Plan of $390 per month. As a condition of the exemption, the Employer represents that it will pay to the Plan the difference between the rental actually paid and the fair market rental value for the period between July 1, 1984 and October 10, 1984, in addition to paying, within 60 days from the date of a grant of an individual exemption by the Department, any excise taxes applicable under section 4975(a) of the Code for that period.

RWL Radiological Consultants, Inc. Pension Plan (the Pension Plan) and RWL Radiological Consultants, Inc. Retirement Plan (the Retirement Plan; Collectively, the Plans) Located in Texarkana, Arkansas

[Application Nos. D–5707 and D–5708]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of certain real property (the Property) by the Plans to Dr. Ray W. Leavelle, a party in interest with respect to the Plans, for cash in an amount which is the greater of (1) the fair market value of the Property on the date of sale, or (2) the total cost of acquisition and holding the Property by the Plans through the date of sale.

Summary of Facts and Representations

1. The Pension Plan and the Retirement Plan are a money purchase plan and a defined benefit plan, respectively, each of which has three participants. As of August 31, 1983, the Plans had total combined assets of approximately $291,304. Dr. Ray W. Leavelle (Dr. Leavelle) is the trustee and decisionmaker with respect to the investments of both Plans, and is also the sole shareholder of RWL Radiological Associates, Inc. (the Employer).

2. The Plans purchased the Property from an unrelated party on May 11, 1983, as an investment. The purchase price, which was $212,000, was paid in cash. There are no encumbrances on the Property. The Property is located in Little River County, Arkansas. The Property, which is in a rural area and is primarily farmland, consists of two tracts, one of which is a 459.56 acre unimproved tract and the other of which is a two-acre tract improved by a small house. The applicant represents that the Property has been held strictly for investment purposes and that no other use of any type has been or is being made of the Property since it has been held by the Plans. The applicant represents further that no costs have been incurred by the Plans and no income has been produced for the Plans while holding the Property. The Property currently constitutes approximately 73% of the Plans' assets based on its cost to the Plans.[12]

3. The Property was appraised on June 5, 1984 by Mr. Jim Freeman, a fee appraiser since 1973 and an associate of P. M. Brown Realtors, Inc., Texarkana, Texas. Mr. Freeman and P. M. Brown Realtors, Inc. are independent of Dr. Leavelle and the Employer. Mr. Freeman determined the fair market value of the Property, as of June 4, 1984, to be $165,000.

4. The application states that farmland in Arkansas has declined in value generally and is likely to continue to decline in value in the foreseeable future, and therefore that it would be in the best interest of the Plans to sell the Property and reinvest the proceeds in more profitable and secure investments. Dr. Leavelle has offered to purchase the Property from the Plans for the greater of $212,000 or the Plans' total costs incurred in the acquisition of and holding of the Property. The Plans will incur no real estate commissions or fees in connection with the proposed sale. Dr. Leavelle, as the trustee of the Plan, represents that the purchase price will totally indemnify the Plans for any costs incurred relating to the Property and that the proposed sale is in the best interest of the Plans because the Property, which was purchased strictly as an investment, constitutes a large percentage of the Plans' assets and has declined in value by 22% during the past year.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) the sale will be a one-time transaction for cash; (b) the Property will be sold at a price which ensures that the Plans will not sustain a loss on their investment and expenditures in connection with the acquisition and holding of the Property; (c) the Plans will not pay any real estate commissions or fees in connection with the proposed sale; (d) the proposed sale will enable the Plans to dispose of a non-income producing asset which has declined in value and to reinvest the proceeds of the sale in more liquid and secure investments; and (e) Dr. Leavelle, as the trustee of the Plans, represents that the proposed sale is in the best interest of the Plans and their participants and beneficiaries.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

[12] In this proposed exemption the Department expresses no opinion as to whether the acquisition of the Property violated any provision of Part 4 of Title I of the Act.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and bneneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of November, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–30734 Filed 11–21–84; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Orchestra Section) to the National Council on the Arts will be held on December 3, 1984, from 9:00 a.m. to 6:00 p.m., December 4–5, 1984, from 9:00 a.m. to 9:30 p.m., and December 6, 1984 from 9:00 a.m. to 5:00 p.m. in Room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 6, 1984, from 10:30 a.m. to 12:30 p.m., to discuss policy and guidelines.

The remaining sessions of the meeting on December 3, 1984, 9:00 a.m. to 6:00 p.m., December 4–5, 1984, from 9:00 a.m. to 9:30 p.m., December 6, 1984 from 9:00 a.m. to 10:30 a.m. and December 6, 1984, from 12:30 p.m. to 5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1985, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

Dated: November 15, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–30861 Filed 11–22–84; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel (Fellowships Section); Meeting

Correction

In FR Doc. 84–30324 beginning on page 45821 in the issue of Tuesday, November 20, 1984, make the following correction to the heading of the document in the

first column of page 45821: Remove "Chapter VI—Office of Postsecondary Education, Department of Education" and insert in its place the agency name as set forth above.

BILLING CODE 1505-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Tariff and Nontariff Barriers to (or Other Distortions of) Trade in United States Wine; Public Comments

AGENCY: Office of the United States Trade Representative, Executive Office of the President.

ACTION: Notice requesting written comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is soliciting written comments on the status of trade in United States wine from representatives of the wine and grape products industries in the United States.

The Trade and Tariff Act of 1984 (the "Act") was signed into law on October 30, 1984. Title IX of that Act, the Wine Equity and Expansion Act of 1984, provides USTR with specific responsibilities to respond to problems that Congress has found are facing the U.S. wine industry. Among these responsibilities are: (1) the designation of major wine trading countries and (2) the development and coordination of reports on wine trade.

Section 906 of the Act provides that USTR must consult with representatives of the wine and grape products industries in the United States before (1) identifying tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries and (2) developing reports on wine trade.

Consultation is additionally required with respect to appropriate Presidential action under the Trade Act of 1974. Such consultation with be pursued at the appropriate time after the completion of reports pursuant to Section 905.

In order to begin the consultation process required by section 906 before identifying tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries, USTR seeks written comments from representatives of the wine and grape products industries in the United States. Such comments should contain the views of industry representatives on the status of U.S. wine in international trade supported by specific information regarding any tariff or nontariff barriers (or other distortions of trade) of which industry representatives are aware that affect the trade of U.S. wine.

DATE: Written comments should be received by December 15, 1984. Twenty copies of the submission must be provided.

ADDRESS: Written coments should be submitted to Carolyn Frank, (Secretary, Trade Policy Staff Committee), Office of the United States Trade Representative, Room 500, 600 17th Street, NW., Washington, D.C. 20506, (202) 395–3487.

FOR FURTHER INFORMATION CONTACT:

Ellen Terpstra, (Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs and Commodity Policy), Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506, (202) 395–5006.

Alexander Platt (Associate General Counsel), Office of the United States Trade Representative, Room 423, 600 17th Street, NW., Washington, D.C. 20506, (202) 395–7305.

Dated: November 19, 1984.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 84-30720 Filed 11-21-84; 8:45 am]

BILLING CODE 3195-01-M

POSTAL SERVICE

Domestic Mail Classification Schedule Changes for Special Fourth Class Mail

On May 18, 1984, the Postal Service filed, pursuant to Chapter 36, Title 39, United States Code, a request with the Postal Rate Commission for recommended decisions on changes to the Domestic Mail Classification Schedule to permit computer-readable media containing prerecorded information, and books containing at least eight printed pages to be mailed as special fourth-class mail. An explanation and an invitation to participate in Commission Docket No. MC84–1 was published in the **Federal Register** by the Postal Rate Commission on June 5, 1984 (49 FR 23265–66).

On October 23, 1984, the Postal Rate Commission issued an Opinion and Recommended Decision in Docket No. MC84–1. The Commission recommended adoption of a settlement by the parties, which followed the Postal Service proposal with one minor modification to allow guides or scripts prepared solely for use with computer-readable media containing prerecorded information to be mailed as special fourth-class mail.

On November 14, 1984, the Governors of the Postal Service decided to approve the Commission's recommended decision, and to order the recommended changes into effect on a permanent basis, pursuant to 39 U.S.C. 3625. The Board of Governors concurrently determined that these changes would become effective at 12:01 a.m. on November 25, 1984. (The Governors' Decision, the Record of the Commission's hearings, and the Commission's Recommended Decision may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Governor's Decision and the Commission's Opinion and Recommended Decision are available for inspection in the Library at Headquarters, United States Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260–1641.)

In accordance with these actions by the Governors and the Board of Governors, the Postal Service hereby gives notice that the following classification changes become effective at 12:01 a.m., November 15, 1984.

1. Section 400.021(a) of the Domestic Mail Classification Schedule has been fully revised to read as follows:

a. Books, including books issued to supplement other books, of at least 8 printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notation, and containing no advertising matter other than incidental announcements of books;

2. A new section 400.021(j) of the Domestic Mail Classification Schedule is added to read as follows:

j. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

(39 U.S.C. 3625)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-30752 Filed 11-21-84; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 62
No. 270–166

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 62 (17 CFR 250.62) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally prohibits the solicitation of authorization, regarding any security of a regulated company in connection with any reorganization subject to Commission approval.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30673 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Family of Form U–1
No. 270–128

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form U–1 (17 CFR 250.101; 250.20(c)(e)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally provides for the legal record upon which most determinations are made pursuant to the Public Utility Holding Company Act of 1935.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirely E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30674 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 26
No. 270–78

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 26 (17 CFR 250.26) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires that registered holding companies and their subsidiaries shall conform to the requirements of Regulation S–X (17 CFR Part 210), shall make and keep variable books, accounts, and records, and that every registered system shall identify in its Form U5S (17 CFR 5S) the chart of accounts used by it for each subsidiary.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30675 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 29
No. 270–169

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 29 (17 CFR 250.29) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires that reports made to stockholders and state commissions must be filed with the Commission.

Submit comments to OMB Desk Officer: Ms. Katie Lewin (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30676 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 95
No. 270–74

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 95 (17 CFR 205.95) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires affiliated and nonaffiliated service companies to disclose service, sales and construction contracts with registered holding companies.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30677 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 1(a)(b)
No. 270–168

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 1(a)(b) (17 CFR 205.1(a)(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires filing of a notification of registration with the Commission of any holding company or any person proposing to become a holding company and a statement of registration, within a reasonable time after filing.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory

Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30678 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 7(d)
No. 270-75

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 7(d) (17 CFR 250.7) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires companies that lease certain properties to registered holding companies to certify their status for exemption purposes.

Submit comments to OMB Dest Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30679 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 45
No. 270-164

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 45 (17 CFR 250.45) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires Commission approval of all intra-system loans or extensions of credit.

Submit comments to OMB Desk Officer: Ms. Katie Lewin (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30680 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Office: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Form U-13-60
No. 270-79

Notice is hereby given that pursant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form U-13-60 (17 CFR 250.93, 256(a)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires uniformity of accounting systems and record retention by service companies.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30681 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Officer of Management and Budget

Agency Clearance Office: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 44
No. 270-162

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 44 (17 CFR 250.44) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally prohibits sales of utility securities or any utility assets owned by a registered holding company, except pursuant to a declaration notifying the Commission of such sale.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30682 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 3
No. 270-77

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 3 (17 CFR 250.3) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally permits a bank which is also a public utility holding company to claim exemption from the Public Utility Company Act of 1935.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30683 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Form U-6B-2
No. 270-81

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB

approval Form U-6B-2 (17 CFR 250.20(d) and 250.47(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally is necessary to provide basic information relating to securities issued, sold, reissued or guaranteed pursuant to an exemption from Section 6(a) of the Act.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30684 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 88
No. 270-80

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 88 (17 CFR 250.88) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires mutual or subsidiary service companies to file their capital structure, services rendered, method of allocation and organizational structure.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30685 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 83
No. 270-82

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 83 (17 CFR 250.83) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires regulated subsidiaries to file for an exemption from certain provisions of the Public Utility Holding Company Act of 1935 when dealing with foreign affiliates.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30686 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 2
No. 270-83

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 2 (17 CFR 250.2) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally permits a public utility holding company to claim exemption from the Public Utility Holding Company Act of 1935.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30687 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

From Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 71
No. 270-161

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 71 (17 CFR 250.71(a)(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires that any person employed or retained by a regulated company file a statement with the Commission before presenting, advocating or opposing any matter affecting a regulated company, before Congress, the Commission and the Federal Power Commission (now the Federal Energy Regulatory Commission).

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30688 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 42
No. 270-163

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 42 (17 CFR 250.42) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally prohibits registered holding companies or subsidiaries thereof from acquiring, retiring, or redeeming securities of which it is the issuer unless authorized by Commission order.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory

Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

[FR Doc. 84-30690 Filed 11-21-84; 8:45 am]

BILLING CODE 6010-01-M

Consolidated Natural Gas Co., et al.; Proposal by Associated Companies To Transfer Oil and Gas Properties

In the matter of Consolidated Natural Gas Company; 100 Broadway, New York, New York, 10005; CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania, 15244; The Peoples Natural Gas Company, Two Gateway Center, Pittsburgh, Pennsylvania, 15222.

[Release No. 23481; 70-6791]

November 16, 1984.

Consolidated Natural Gas Company ("CNG"), a registered holding company and its subsidiaries, CNG Deveopment Company ("CNGD") and the The Peoples Natural Gas Company ("Peoples"), have filed with this Commission post-effective amendments to its proposal under Sections 6(a), 7, 9(a), 10, 12(c) and (f), and 13(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 43, 49(d), 86, 87, 90 and 91 thereunder.

CNGD was organized to engage in oil and natural gas exploration in the Applachian Region (HCAR No. 22845, February 7, 1983). For that purpose, and by post-effective amendment the applicants-declarants seek authority for CNGD to acquire approximately 143,000 acres of unoperated oil and gas leasehold and fee properties from Peoples.

On May 31, 1984, CNG, CNGD and Peoples entered into an agreement whereby Peoples would transfer as a dividend-in-kind to CNG all of its right, title and interest in the subject oil and gas properties, and CNG would subsequently transfer such properties to CNGD in return for common stock of CNGD, as follows:

First, Peoples proposes to transfer to CNG as a dividend-in-kind all of its right, title and interest in said properties, based on the net book value therof as of May 31, 1984, estimated to be $735,368. Simultaneously, CNG will transfer the same properties to CNGD in consideration for CNGD common stock, $100 par value, at par. CNGD will also issue to CNG as part of the transaction, additional shares, including any fraction thereof, for cash so as to round the aggregate number of shares being issued up to the nearest ten. Thus an aggregate of 7,353 shares, having a total par value of $735,300, will have been issued based on the May 31, 1984 net book value. Any amount paid by CNG in excess over the exact net book value of the properties ($68.00 at May 31, 1984) will be an addition to the working capital of CNGD.

The proposal and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 31, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if orderd, and will receive a copy of any notice or order issued in this matter. After said date the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30740 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23482; 70-7030]

Eastern Edison Co. and Montaup Electric Co.; Proposal for Pollution Control Financing; Exeption From Competitive Bidding

November 16, 1984.

Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, Massachusetts 02403, an electric utility subsidiary of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup") P.O. Box 2333, Boston, Massachusetts, 02107, a subsidiary of Eastern, have filed a proposal with this Commission pursant to Sections 6, 7, 9, 10, 12(b), 12(c), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2), 45(b)(1), 50(a)(3), and 50(a)(5).

Eastern proproses to borrow the proceeds from the sale of up to $13 million pollution control bonds ("Bonds") to be issued by the Industrial Development Authority of the State of New Hampshire ("Issuer"), and evidence its obligation to repay the funds by an unsecured note ("Note"). The proceeds will be used to purchase debentures ("Debentures") of Montaup. The financial terms of the Note and the Debentures including their interest rates and repayment dates will be the same as the terms of the Bonds. Montaup will use the funds to finance its portion of the cost of constructing pollution control and sewage facilities ("Facilities") at Unit 1 of the Seabrook nuclear power station. (Montaup has a 2.89989% joint ownership interest in Unit 1).

The Bonds will be issued under an indenture of trust ("Indenture") between the Issuer and State Street Bank and Trust Company as trustee ("Trustee"). Pursuant to a financing agreement ("Financing Agreement") between the Issuer and Eastern, the Issuer will loan to Eastern the proceeds of the Bonds, and Eastern will agree to make payments corresponding to the amounts needed to pay the principal, interest and premium, if any, on the Bonds as they become due. The Bonds will not be general obligations of the Issuer or State of New Hampshere. Eastern will pay the fees of the Issuer and Trustee.

The Bonds will have a variable interest rate and mature in 30 years or may be accelerated. Interest will be payable quarterly in arrears unless the bonds are converted to a fixed interest rate. The variable interest rate shall be determined by a remarketing agent. ("Remarketing Agent"), expected to be Citibank, N.A., and shall not exceed 20% per annum. If the variable interest rate cannot be established, the Remarketing Agent shall establish it at 65% of the yield of 13-week United States Treasury Bills. If the Remarketing Agent fails to establish the variable interest rate, it shall be deemed to be 60% of the prime lending rate of the Trustee.

Each bondholder will have the option its Bonds to the Trustee on at least 7 days' prior notice. Pursuant to a remarketing agreement ("Agreement"), the Remarketing Agent, upon notice of a bondholder's intention to present its Bonds for purchase, shall be obligated to use its best efforts to secure repurchasers. The proceeds from a resale will be used to pay tendering bondholders the principal amount of the Bonds plus accrued interest. If the Remarketing Agent in unable to secure a purchaser prior to the date on which the Bonds are tendered the Trustee may draw upon a letter of credit ("Letter of Credit"). For its services, the Remarketing Agent will be paid for each Bond remarketed $0.25 per $1,000 principal amount to .125% of the outstanding prinipal amount of the Bonds per annum, plus out-of-pocket expenses.

On a one-time basis, the Bonds may be automatically converted from a

variable to a fixed interest rate upon the termination of the Letter of Credit or at Eastern's request. At the time of the conversion the fixed rate shall be determined by the Remarketing Agent and Eastern will consider the necessity of procuring a Letter of Credit or alternate credit arrangements for the remaining term of the Bonds. If the Bonds are to be converted, this application-declaration will be amended to seek the Commission's approval of the fixed interest rate.

So long as the Bonds have a variable interest they will be redeemable, at the election of the Issuer (pursuant to the direction of Eastern), in whole or in part, at a price of 100% of the principal plus accrued interest, on any interest payment date, and provided that the Trustee has given bondholders 25 to 40 days prior notice. The Trustee will draw on the Letter of Credit for the funds required to redeem the Bonds. If converted to a fixed interest rate, the Bonds will be redeemable at the election of the Issuer (pursuant to the direction of Eastern) in whole or in part between 103% and 100% of the principal amount plus accrued interest. If certain extraordinary events occur after conversion to a fixed interest rate, the Bonds may be redeemed in whole and not in part, at Eastern's option, with accrued interest but without premium.

Under certain circumstances (i.e. the Letter of Credit or substitute credit arrangements are terminated or the Bonds are converted to a fixed interest rate) Eastern may purchase all or portion of the Bonds drawing on the Letter of Credit to do so.

Eastern's obligations under the Financing Agreement are to be secured by an irrevocable Letter of Credit issued by Citibank, N.A. ("Bank") in favor of the Trustee in the principal amount of the Bonds, plus four months' interest up to an assumed maximum 20 percent interest rate. Pursuant to a separate agreement ("Reimbursement Agreement"), Eastern will agree to pay the Bank all amounts drawn under the Letter of Credit as well as certain fees and expenses. The Letter of Credit will terminate five years from the date of issuance but may be extended for a period of one to three years. When terminate, (unless Eastern has arranged alternatively) the Bonds must be redeemed except those which the holders have elected to retain and those which the Company has elected to purchase. Upon the issuance of the letter of credit, Eastern will pay the Bank a one-time fee equal to ⅛ of 1% per annum on the maximum amount available to be drawn for the period from December 1, 1984 to the date of the issuance of the Letter of Credit. So long as the Letter of Credit remains outstanding, Eastern will be obligated to pay a letter of credit commission at a rate of 0.60% per annum payable quarterly.

Eastern requests that with respect to its borrowings under the Financing Agreement a finding be made by the Commission that competitive bidding is inappropriate.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 10, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues or law of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis

Acting Secretary.

[FR Doc. 84-30745 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23483; 70-7037]

Eastern Edison Co. and Montaup Electric Co.; Proposed Transactions Related to Financing Pollution Control Facilities

November 16, 1984.

Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, Massachusetts, 02403, a public-utility subsidiary of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts, 02107, a generating subsidiary of Eastern, have filed a proposal with this Commission pursuant to Sections 6, 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

The companies seek authority to engage in a series of transactions in order to finance the cost of acquiring, constructing, and installing certain air and water pollution control and sewage disposal facilities (the "Facilities") in connection with Unit 3 of the Millstone nuclear power station located in Waterford, Connecticut. Montaup has a 4.01 percent joint ownership interest in said Unit 3 including the Facilities. It is intended that the Connecticut Development Authority (the "Issuer") will issue its pollution control revenue demand bonds ("Bonds"), the proceeds of which will be borrowed by Eastern pursuant to a Loan Agreement with the Issuer. The principal amount of the bonds will not exceed $12,000,000. Eastern proposes to issue an unsecured note (the "Note") to evidence its obligation to repay the funds borrowed. The proceeds of the Bonds borrowed from the Issuer will be used by Eastern in the proposed acquisition of Debentures of Montaup ("Debentures"). The financial terms of the Note and the Debentures, including their interest rates and repayment dates, will be the same as the terms of the Bonds.

The Bonds will be of a kind generally known as "Variable Rate Demand Bonds" or "Low Floater Bonds." The Bonds will mature in thirty years and may be accelerated in certain circumstances. The short-term variable interest rate will be determined by a remarketing agent (the "Remarketing Agent") appointed pursuant to the terms of the Indenture and shall be equal to, taking into account relevant market factors, that rate, not in excess of 20% per annum, which would result, as nearly as practicable, in the market value of the Bonds being 100% of their principal amount. Each bondholder will have the option of tendering to the tender agent (the "Tender Agent") appointed pursuant to the Indenture any multiple of $100,000 principal amount of the Bonds for purchase.

A remarketing agreement (the "Remarketing Agreement") between Eastern, the Issuer, and the Remarketing Agent will obligate the Remarketing Agent, upon receiving notice of a bondholder's intention to present its Bonds for purchase, to use its best efforts to secure purchasers for the Bonds being tendered. The proceeds from any such purchases of Bonds are to be used to pay to tendering bondholders the principal amount of the Bonds being tendered plus accrued interest. The Remarketing Agent will continue to seek purchasers for Bonds which are not remarketed prior to their tender. If the Remarketing Agent is unsuccessful in securing a purchaser for tendered Bonds prior to the date on which they are tendered, the Letter of Credit described below may be drawn upon for the funds

required to pay the tendering bondholders the principal and accrued interest on the tendered Bonds. Eastern will pay the Remarketing Agent for each Bond remarketed a fee of $0.25 per $1,000 principal amount, but not more than one-eighth of one percent of the outstanding principal amount of the Bonds per annum, and for out-of-pocket expenses. Also, the Loan Agreement will obligate Eastern to pay the fees and charges of the Issuer and the Trustee.

On a one-time basis, the Bonds may be automatically converted from the short-term variable interest rate to a long-term fixed or variable interest rate upon the termination of the Letter of Credit or Eastern may request at any time that the Bonds be converted from the short-term variable interest rate to a long-term fixed or variable interest rate. At the time of the conversion, Eastern will consider the necessity of procuring a Letter of Credit or alternative credit arrangements for the remaining term of the Bonds. The long-term fixed or variable interest rate on the Bonds shall be determined by the Remarketing Agent at the time of the conversion and shall be equal to that rate, having due regard to prevailing market conditions, which would be the interest rate which would result as nearly as practicable in the market value of the Bonds being 100% of their principal amount. Such long-term fixed or variable interst rate would be subject to further Commission approval.

In order to obtain the benefit of high quality bond ratings for the Bonds, Eastern's obligations under the Loan Agreement are to be secured by an irrevocable letter of credit ("Letter of Credit") to be issued by Citibank, N.A. (the "Bank") in favor of the Trustee in the principal amount of the Bonds, plus an amount which would cover four months' interest on the Bonds up to an assumed maximum 20 percent interest rate. Pursuant to a separate agreement with the Bank (the "Reimbursement Agreement"), Eastern will agree to pay to the Bank all amounts that are drawn under the Letter of Credit as well as certain fees and expenses. The Letter of Credit will terminate five years from the date of issuance but at the request of Eastern may be extended from time to time at the option of the Bank for a period of one to three years. When the Letter of Credit terminates, unless Eastern has arranged for an alternative letter of credit, the Bonds must be redeemed except those Bonds which the holders have elected not to have redeemed and those which the company has elected to purchase. Eastern will pay the Bank a one-time fee equal to ½ of 1 percent per annum on the maximum amount available to be drawn under the Letter of Credit for the period from December 1, 1984, to the date of the issuance of the Letter of Credit. So long as the Letter of Credit remains outstanding, Eastern will be obligated to pay to the Bank a letter of credit commission at a rate of 0.80 percent per annum on the amount available to be drawn under the Letter of Credit.

Eastern has requested an exception from competitive bidding under Rule 50(a)(5) with respect to the borrowings from the Issuer under the Loan Agreement.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 10, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30744 Filed 11-21-84: 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21496]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 16, 1984.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 thereunder, for unlisted trading privileges ("UTP") in the following stocks:

Allied Bancshares, Inc.
Common Stock, $1 Par Value
Altos Computer
Common Stock, No Par Value
American Greetings Corp.
Common Stock—Class A, $1 Par Value
American International Group, Inc.
Common Stock, $2.50 Par Value
American National Insurance Co.
Common Stock, $1 Par Value
American Solar King Corp.
Common Stock, No Par Value
American Surgery Centers Corp.
Common Stock, $.001 Par Value
Apollo Computer, Inc.
Common Stock, $.02 Par Value
Apple Computer, Inc.
Common Stock, No Par Value
Betz Laboratories, Inc.
Common Stock, $.01 Par Value
CPT Corp.
Common Stock, $.05 Par Value
California Federal Savings & Loan Association
Common Stock, $1 Par Value
Chi-Chi's, Inc.
Common Stock, $.01 Par Value
Chubb Group Corp.
Common Stock, $1 Par Value
Color Tile, Inc.
Common Stock, $1 Par Value
Comdial Corp.
Common Stock, $.01 Par Value
Convergent Technologies, Inc.
Common Stock, No Par Value
Coors (Adolph) Co.
Common Stock—Class B, No Par Value
Diasonics, Inc.
Common Stock, No Par Value
Digital Switch Corp.
Common Stock, $.01 Par Value
Diversifoods, Inc.
Common Stock, $.01 Par Value
Farmers Group, Inc.
Common Stock, $1 Par Value
First Bank System, Inc.
Common Stock, $2.50 Par Value
First Executive Corp.
Common Stock, $2 Par Value
Fremont General Corp.
Common Stock, $1 Par Value
Graphic Scanning Corp.
Common Stock, $.01 Par Value
Home Health Care of America, Inc.
Common Stock, No Par Value
ISC Systems Corp.
Common Stock, No Par Value
Intel Corp.
Common Stock, No Par Value
Intergraph Corp.
Common Stock, $.10 Par Value
Jerrico, Inc.
Common Stock, No Par Value
Kemper Corp.
Common Stock, $5 Par Value
MCI Communications Corp.
Common Stock, $.10 Par Value
Mack Trucks, Inc.
Common Stock, $1 Par Value
Micom Systems, Inc.
Common Stock, No Par Value

Multimedia, Inc.
Common Stock, $1 Par Value
Network Systems Corp.
Common Stock, $.02 Par Value
Nike, Inc.
Common Stock—Class B, No Par Value
Nordstrom, Inc.
Common Stock, No Par Value
ONYX+IMI, Inc.
Common Stock, No Par Value
PNC Financial Corp.
Common Stock, $5 Par Value
Pacific Telecom Inc.
Common Stock, No Par Value
Philadelphia Savings Fund Society
Common Stock, $1 Par Value
Pic 'N' Save Corp.
Common Stock, $.08⅓ Par Value
Pioneer Hi-Bred International, Inc.
Common Stock, $1 Par Value
Price Company
Common Stock, No Par Value
Quotron Systems, Inc.
Common Stock, $.10 Par Value
Roadway Services, Inc.
Common Stock, No Par Value
Safeco Corp.
Common Stock, $5 Par Value
St. Paul Companies, Inc.
Common Stock, $1.50 Par Value
Seagate Technology
Common Stock, No Par Value
Sensormatic Electronics Corp.
Common Stock, $.01 Par Value
Servicemaster Industries, Inc.
Common Stock, $1 Par Value
Service Merchandise Co., Inc.
Common Stock, $.50 Par Value
Shared Medical Systems Corp.
Common Stock, $.01 Par Value
Sykes Datatronics, Inc.
Common Stock, $.10 Par Value
Tandem Computers, Inc.
Common Stock, $.02½ Par Value
Tandon Corp.
Common Stock, $.01 Par Value
Tele-Communications, Inc.
Common Stock, Class A, $1 Par Value
Telecom Plus International, Inc.
Common Stock, $.01 Par Value
Televideo Systems, Inc.
Common Stock, $.01 Par Value
Tom Brown, Inc.
Common Stock, $.10 Par Value
Trust Co. of Georgia
Common Stock, $5 Par Value
Western Digital Corp.
Common Stock, $.10 Par Value
Wyman-Gordon Co.
Common Stock, $1 Par Value
Yellow Freight Systems, Inc.
Common Stock, $1 Par Value

These securities currently are traded exclusively in the over-the-counter ("OTC") market.[1] These securities also have been designated as National Market System ("NMS") Securities pursuant to Rule 11Aa2-1 under the Act. The Commission has sought comment on a number of issues regarding UTP for NMS Securities in a companion to this release.[2] Commentators should refer to that release for further discussion of the questions raised by this action.

Interested persons are invited to submit written data, views and arguments regarding this matter by January 15, 1984. Persons desiring to submit comments should file three copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. In order to approve the application, the Commission must find, after notice and opportunity for hearing, that the extension of UTP pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for the extension of UTP to the security not listed and registered on a national securities exchange, the Commission shall, among other matters, take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.[3]

For the Commission, by the Division of Market regulations, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30730 Filed 11-21-84: 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21497]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 16, 1984.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(C) of the Securities and Exchange Act of 1934 ("Act") and Rule 12f-1 thereunder, for unlisted trading privileges ("UTP") in the following stocks:

Minstar, Inc.
Common Stock, $.10 Par Value
MCI Communications, Inc.
Common Stock, $.10 Par Value
Intel Corporation
Capital Stock, No Par Value
Intergraph Corporation
Common Stock, $.10 Par Value
Digital Switch Corporation
Common Stock, $.10 Par Value
Apple Computer, Inc.
Common Stock, No Par Value
Chi Chi's
Common Stock, $.10 Par Value
Southland Financial
Common Stock, $1 Par Value
Sovran Financial Corporation
Common Stock, $5 Par Value
Diversifoods, Inc.
Common Stock, $1.50 Par Value
Millipore Corporation
Common Stock, $1 Par Value
Jerrico, Inc.
Common Stock, No Par Value
Convergent Technologies
Common Stock, No Par Value
Equitorial Communications
Common Stock, No Par Value
United Virginia Bankshares
Common Stock, $5 Par Value
Sensormatic Electric
Common Stock, $.01 Par Value
Tandon Corporation
Common Stock, $.01 Par Value
Seagate Technology
Common Stock, No Par Value
Tandem Computers, Inc.
Common Stock, $.025 Par Value
Pabst Brewing Company
Common Stock, No Par Value
Coors, Adolph B.
Common Stock, No Par Value
Avantek, Inc.
Common Stock, No Par Value
Genetic Systems
Common Stock, $.01 Par Value
Service Merchandise
Common Stock, $1 Par Value

These securities currently are traded exclusively in the over-the-counter ("OTC") market. These securities also have been designated as National Market System ("NMS") Securities pursuant to Rule 11Aa2-1 under the Act. The Commission has sought comment on a number of issues regarding UTP for NMS Securities in a companion to this release.[1] Commentators should refer to

---

[1] In a subsequent submission, the BSE indicated that, if the Commision grants its application, it intends to trade these stocks only if the Commission also authorizes the BSE to trade options on these stocks. Letter to Richard G. Ketchum, Director, Division of Market Regulation, SEC, from Charles J. Mohr, Chairman and Chief Executive Office, BSE, dated October 1, 1984.

[2] Securities Exchange Act Release No. 21498 (November 16, 1984) ("OTC-UTP Issues Release").

[3] The Commission also will consider comments raised in response to matters raised in the OTC-UTP Issues Release.

[1] Securities Exchange Act Release No. 21498 (November 16, 1984) ("OTC-UTP Issues Release").

that release for further discussion of th questions raised by this action.

Interested persons are invited to submit written data, views and arguments regarding this matter by January 15, 1984. Persons desiring to submit comments should file three copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. In order to approve the application, the Commission must find, after notice and opportunity for hearing, that the extension of UTP pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for the extension of UTP to the security not listed and registered on a national securities exchange, the Commission shall, among other matters, take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.[1]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30743 Filed 11-22-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21494; File No. SR-NYSE-84-34]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to: a Proposed Increase in the Following Fees and Charges: Regulatory Oversight Services (Rule 129); New York Stock Exchange Guide; Capital Management; FOCUS Feedback; Rule Interpretation Handbook; Registered Person Annual Maintenance Fee; Branch Office Registration Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 8, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Schedule of Proposed Increases in Fees and Charges (effective January 1, 1985).

Additions italicized; deletions [bracketed].

	Current	Proposed
Fee per $1,000 gross revenue (FOCUS) [1]	[$0.25]	$0.35
Minimum annual fees for:		
Carrying firms and specialists	[1,000]	2,000
Introducing firms	1,000	1,000
Members and firms not dealing with the public	180	180

[1] As reported in the FOCUS report.
FOCUS: financial and operational combined uniform single report.

	Current	Proposed
New York Stock Exchange Guide.	[$5 to $40]	*$6.25 to $50*

	Current	Proposed
Capital management fee:		
Minimum submission	[$25.00 per]	*$50.00 per.*
Key record cost	[$0.11 per]	*$0.25 per.*
Singular issues	[$0.25 per]	*$0.30 per.*
Multiple issues	[$0.50 per]	*$0.60 per.*
Combination	[$0.125 per]	*$0.15 per.*

	Current	Proposed
Focus feedback	[$150]	*$200*
Rule interpretation handbook	[100]	*300*
Registered person annual maintenance fee	[11]	*20*
Branch office registration fee	[75]	*100*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The primary purpose of the proposed rule change is to continue to recover a portion of the cost of Financial and Operational ("FINOPS") and Sales Practice regulatory services.

The revenues generated from the Regulatory Services Oversight, Capital Management and FOCUS Feedback fees are used exclusively to defray FINOPS expenses, while the revenues from the New York Stock Exchange Guide and Rule Interpretation Handbook are used primarily for such purpose. As pointed out in previous filings, the cost of FINOPS services has increased over the years, and the Exchange's fees have been insufficient to cover such expenses. It should be noted that with the proposed fee change there still be a projected to the Exchange's FINOPS regulation. It is anticipated that FINOP revenues for 1984 will be approximately $10.037 million, or $2 million below the 1984 forecast submitted in connection with previous 19b-4 filings (SR-NYSE-84-6 and SR-NYSE-84-7—See letter dated February 27, 1984 from Mr. James E. Buck to Mr. Richard T. Chase, and attachments thereto).

The revenues generated by the Registered Person Annual Maintenance Fee and the Branch Office Registration Fee are used to defray the expenses of Sales Practice regulatory services. The Sales Practices area has long been subsidized by other revenue sources. The estimated losses for Sales Practice regulation in 1984 are $5.4 million, and in 1985 (including the proposed increase) are $4.3 million. There have been no recent rate increases in the Sales Practice area in the face of continued losses. Increases in projected expenses are anticipated because of continuing demands in the area. The purpose of the proposed rate increases is to begin the process of recapturing the costs of this activity.

(2) *Statutory Basis.* The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. It is also consistent with the Exchange's self-regulatory responsibilities as provided in Section 6(b)(1) and 6(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change received from Members, Participants or Others

The Exchange has not formally solicited written comments regarding this proposed change, and no unsolicited written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 14, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 16, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30755 Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission also will consider comments raised in response to matters raised in the OTC-UTP Issues Release.

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Rule 24
No. 270-129.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 24 (17 CFR 250.24) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) which generally requires that certificates be filed with the Commission within 10 days, or such other time period as specified by order after the consummation of any authorized transaction, that such transaction has been carried out in accordance with terms and conditions of the Commission Order.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: November 9, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30699. Filed 11-21-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 153—Airborne VOR Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 153 on Airborne VOR Equipment to be held on December 12-14, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fourth Meeting Held on August 6-7, 1984; (3) Consideration of Proposed Changes to the Fifth Draft of the Committee Report on Minimum Operational Performance Standards for Airborne VOR Equipment; (4) Consideration of Comments Received from the European Organization for Civil Aviation Electronics; (5) Review of the First Draft of the Committee Report on Minimum Performance Standards for Instrument Landing System (ILS) Airborne Localizer Equipment; (6) Review Progress on Drafting the Committee Report on Minimum Operational Performance Standards for Instrument Landing System (ILS) Airborne Glide Slope Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on November 9, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-30802 Filed 11-21-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 152—Digital Avionics Software; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 152 on Digital Avionics Software to be held on December 10-11, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fourth Meeting Held on June 5-7, 1984; (3) Consideration of Comments Received on the Second Draft of the Committee Report on Software Considerations in Airborne Systems and Equipment Certification; and (4) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square,

1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0288. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on November 9, 1984.

Karl F. Bierach,
Designated Officer.

[FR Doc. 84-30801 Filed 11-21-84; 8:45 am]
BILLING CODE 4910-13-M

Coast Guard

[CGD 84-084]

Rules of the Road Advisory Council; Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Rules of the Road Advisory Council. This Council was established under the Inland Navigational rules Act of 1980 (Pub. L. 96-591; 94 Stat. 3434; 33 U.S.C. 2073) to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to the Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (72 COLREGS). In June 1985, seven vacancies will occur on the 21-member Council. The seven new appointments will then be made by the Secretary of Transportation. The Coast Guard will make recommendations to the Secretary from all applications received, including those on file as of February 15, 1984. Under the Inland Navigational Rules Act, the Council members are to be chosen to include a "balanced representation insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety, (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry, (3) individuals with interest in maritime law, and (4) Federal and State officials with responsibility for vessel and port safety."

Those applicants who applied for the seven vacancies of June 1984 will also be considered for the seven vacanices of June 1985, so they need not apply again.

Since its establishment, the Council has met twice a year at various sites in the continental United States. Members are currently entitled to receive per diem in lieu of subsistence, as well as to be reimbursed for travel expenses, in accordance with current regulations.

On October 30, 1984, the President signed a bill extending the Authorization for the Council to September 30, 1990. Seven new appointments made during 1985 will expire three years from date of appointment.

DATE: Requests for applications should be received no later than January 15, 1985, and must be completed and returned to the Coast Guard no later than February 15, 1985.

ADDRESS: Persons interested in applying should write to Commandant (G-NSR-3), U.S. Coast Guard Headquarters, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Commander G. R. Siddall, Executive Director, Rules of the Road Advisory Council (G-NSR-3), Room 1406, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593; (202) 245-0108.

Dated: November 15, 1984.

T. J. Wojnar,
Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84-30728 Filed 11-21-84; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 16, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0539
Form Number: RC-C 1-582-A
Type of Review: New collection—Addendum to OMB approved RC-C 1-582
Title: Supplemental Information for Treasury Enforcement Agent Applications
OMB Number: 1545-0704
Form Number: IRS Form 5471 and Schedules M, N and O
Type of Review: Revision
Title: Information Return with Respect to a Foreign Corporation
OMB Number: 1545-0416
Form Number: IRS Form 5302
Type of Review: Revision
Title: Employee Census
OMB Number: 1545-0274
Form Number: IRS Form 2163
Type of Review: Revision
Title: Employment-Reference Inquiry
Clearance Officer: Garrick Shear (202) 566-6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of Alcohol, Tobacco, and Firearms

OMB Number: 1512-0162
Form Number: ATF F 3067 (5310.9)
Type of Review: Extension
Title: Inventory-Manufacturer of Tobacco Products
Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,
Departmental Reports Management Office.

[FR Doc. 84-30819 Filed 11-21-84; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 16, 1984.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0861
Form Number: IRS Form 8271
Type of Review: Revision
Title: Investor Reporting of Tax Shelter Register Number
OMB Number: None
Form Number: IRS Forms 8288 and 8288-A
Type of Review: New
Title: U.S. Withholding Tax Return and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests
Clearance Officer: Garrick Shear (202) 566-6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph P. Maty,
Department Reports, Management Office.

[FR Doc. 84-30835 Filed 11-21-84; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

Privacy Act of 1974; Amendment to System of Records

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of amendment to system of records and additional routine uses.

SUMMARY: The Department of the Treasury, Office of the Secretary, is amending the privacy notice for a system of records previously published under the system name of "Treasury Payroll/Personnel Information System. Treasury/OS.002", at 46 FR 16464 (March 12, 1981). This amendment reflects a change in the System's name to "Treasury Payroll Information System" which embraces two separate components, a personnel records system (PERMITS Application) and a payroll component (Treasury Payroll Information System). The amendment also adds three new users of the system and makes other editorial changes to clarify the notice. Finally, the amended notice adds new routine uses and disclosure policies pursuant to the Debt Collection Act of 1982.

DATE: Comments must be received no later than December 24, 1984. If no comments are received, the new revised notice will become effective December 24, 1984.

ADDRESS: Comments may be sent to: Department of the Treasury, Director of Personnel, Room 7115, 1201 Constitution Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Office of Personnel (TPIS), 1201 Constitution Avenue NW., Room 7329, Washington, DC 20220, (202) 566-4720.

Dated: November 15, 1984.

Joseph E. Bishop,
Deputy Assistant Secretary (Administration) for Operations.

Treasury/OS 002

SYSTEM NAME:

Treasury Payroll Information System.

SYSTEM LOCATION:

ICC Building, 1201 Constitution Avenue, NW., Room 7329, Washington, D.C. 20220 and a contractor data processing facility, Johnstown Computing Resources Inc., located at 90 Lulay Street, Johnstown, PA 15904.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and Former data on all employees of the (1) Treasury except Internal Revenue Service (2) Executive Offices of the President; (3) Federal Emergency Management Agency; (4) Federal Trade Commission; (5) National Gallery of Art; (6) National Labor Relations Board; (7) Farm Credit Administration; (8) Commodities Futures Trading Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are two basic components to the system, a personnel component (PERMITS Application) and a payroll component (Treasury Payroll Information System), which provide current, year-to-date and historical data on the individuals covered by the system. The separate files in the system consist of payroll records, personnel records and Time and Attendance records. Information contained in these records include such data as:

(1) Employee identification and status data such as name, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service.

(2) Employee date data such as service computation date for leave, date probationary period began, date of performance rating, and date of within-grade increases.

(3) Position and pay data such as position identification number, pay plan, grade, step, salary and pay basis, occupational series, position skill codes, organization location and accounting classification codes.

(4) Payroll data such as earnings, e.g., overtime and night differential; deductions, e.g., Federal, State and Local Taxes, Bonds and Allotments; and Time and Attendance Data.

(5) Tables of data for editing, reporting and processing personnel any pay actions. These include Nature of Action Codes, Civil Service Authority Codes, Standard Remarks, Signature Table, Position Title Table, Financial Organization Table and Salary Table.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of Personnel Management Manual, 50 U.S.C. App. 1705-1707; 31 U.S.C. and Departmental Circulars 145 and 830. The Department of Treasury, Fiscal Requirement Manual; 5 U.S.C. 301; FPM Letter 298-10, Office of Personnel Management; Federal Personnel Manual (Chaper 713 Subchapter 3A).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

These records and information in these records may be used:

(1) To furnish the Internal Revenue Service and other jurisdictions which are authorized to tax the employee's compensation, with wage and tax information in accordance with a withholding agreement with the Department of Treasury pursuant to 5 U.S.C., 5516, 5217 and 5520;

(2) To furnish the Office of Personnel Management with data to update the Central Personnel Data File and other statistical reports as required;

(3) To furnish another federal agency information to effect interagency salary offset; to furnish another federal agency information to effect interagency administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services.

(4) To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureaus' hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit.

(5) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence,

including disclosures to opposing counsel in the course of litigation or settlement negotiations or criminal law proceedings.

(6) To disclose information to foreign governments in accordance with formal or informal international agreements.

(7) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(8) To provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to civil and criminal proceedings.

(9) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

(10) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982: Debt information concerning a Government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, microfiche and hard copy print out. Disbursement records are stored at Federal Records Center.

RETRIEVABILITY:

Records are retrieved generally by social security number or position identification number within a bureau and region. Secondary identities are used to assure accuracy of data accessed, such as name and date of birth.

SAFEGUARDS:

Entrance to data center is restricted to only those employees whose work requires them to be there for the system to operate. ID cards are verified to insure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel officers and are subject to the same privacy controls as other personnel documents of like sensitivity.

RETENTION AND DISPOSAL:

The Treasury Payroll Information System master file is kept on magnetic tape. Hard copies of reports are kept for a period of up to 3 years. Additional payroll data is maintained on microfiche. Employee records are retained in automated form as long as the employee is active on the system (separated employee records are maintained in an "inactive" status within PERMITS for five years). The master file is purged of inactive payroll records on a yearly basis. Files are purged in accordance with Treasury Directives Manual TD 80–05.5 "Records Disposition Schedule".

SYSTEM MANAGER AND ADDRESS:

Director of Personnel, Department of the Treasury, Room 7115, 1201 Constitution Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are identified in this system or gain access to records maintained in the system must submit a request containing the following elements: (1) Identify the record system; (2) Identify the category and types of records sought; (3) Provide at least two items of secondary identification (date of birth), employee identification number and date of employment or similar information. Address inquiries to Chief, Disclosure Branch (see access below).

RECORD ACCESS PROCEDURE:

Chief, Disclosure Branch, Department of the Treasury, Room 5423—Main Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

(See access above)

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record, supervisors, and non-Federal sources such as private employers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-30736 Filed 11-21-84; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 227
Friday, November 23, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Commodity Futures Trading Commission	1
Federal Deposit Insurance Corporation	2–5
Federal Election Commission	6
Federal Home Loan Bank Board	7, 8
Federal Maritime Commission	9
Federal Reserve System	10
Occupational Safety and Health Review Commission	11
Postal Service	12

1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 44259.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Tuesday, November 27, 1984.

CHANGES IN THE MEETING: The meeting has been cancelled.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84-30888 Filed 11-20-84; 3:45 pm]

BILLING CODE 6351-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice is Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, November 26, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discusion agenda.

Disposition of minutes of previous meetings.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Washington Savings Bank, Hoboken, New Jersey, an insured mutual savings bank, for consent to transfer certain assets to Haven Savings and Loan Association, Hoboken, New Jersey, a non-FDIC-insured institution in consideration of the assumption of the liability to apy deposits made in the Secaucus Branch of Washington Savings Bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those banks:

Memorandum and Resolution re: Mineral Bank of Nevada, Las Vegas, Nevada

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegatged by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 332 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," which amendments will govern insured banks' direct and indirect involvement in insurance brokerage and underwriting, real estate brokerage and underwriting, securities brokerage, EDP services, or travel services.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: November 19, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-30908 Filed 11-20-84; 12:10 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, November 26, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance and for consent to exercise trust powers:

Federated Bank & Trust Company, a proposed new bank to be located at 10 Foster Avenue, Gibbsboro, New Jersey.

Application for Federal deposit insurance and for consent to exercise full trust powers:

Bear Stearns Trust Company, a proposed new bank to be located at 28 West State Street, Trenton, New Jersey.

Application for Federal deposit insurance and for consent to exercise limited trust powers:

Merrill Lynch Bank and Trust Company, a proposed new bank to be located at Merrill Lynch Corporate Campus, Princeton Forrestal Center, Plainsboro Township, New Jersey.

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: November 19, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-30809 Filed 11-20-84; 12:11 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, November 19, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Applications pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involving dishonesty or a breach of trust as a director, officer, or employee of an insured bank (names of persons and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii))).

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: November 19, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-30808 Filed 11-20-84; 3:39 pm]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Saturday, November 17, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First American Banking Company, Pendleton, Oregon, which was closed by the Superintendent of Banks for the State of Oregoan on Friday, November 16, 1984; (2) accept the bid for the transaction by Inland Empire Bank, Hermiston, Oregon, an insured State nonmember bank; and (3) approve the application of Inland Empire Bank, Hermiston, Oregon, for consent to purchase certain assets of and to assume the liability to pay deposits made in First American Banking Company, Pendleton, Oregon, and for consent to establish the two offices of First American Banking Company as branches of Inland Empire Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 19, 1984.

Federal Deposit Insurance Corporation.

[FR Doc. 84-30807 Filed 11-21-84; 3:39 pm]

BILLING CODE 6714-01-M

6

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 27, 1984.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, November 29, 1984.

PLACE: 1325 K Street, NW., Washington, DC. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft advisory opinion #1984–33, Thomas F. Kelley, III, on behalf of National Restaurant Association PAC
Draft Advisory Opinion #1984–52, Marty Russo, Member of Congress
Petition for rulemaking filed by the National Council of Farmer Cooperatives—11 CFR § 114.1(e)
Finance Committee report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-30793 Filed 11-20-84; 10:59 am]

BILLING CODE 6715-01-M

7

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49, No. 233, page 45522, November 16, 1984.

PLACE: Board Room, Sixth Floor, 1700 G. St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATON: Ms. Gravlee (202–377–6677).

CHANGES IN THE MEETING: The open meeting scheduled for November 30, at 2:30 p.m., will now begin at 4:00 p.m.

John F. Ghizzoni,

Assistant Secretary.

No. 101, November 20, 1984.

[FR Doc. 84-30880 Filed 11-20-84; 3:58 pm]

BILLING CODE 6720-01-M

8

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 9:00 a.m. (Mtn. Time) on December 13, 1984, and 9:00 a.m. (Mtn. Time) on December 14, 1984.

PLACE: Inn of Loretto.

STATUS: Federal Savings and Loan Advisory Council open meeting.

CONTACT PERSON FOR MORE INFORMATION: Crista G. Martin (202–377–6294).

MATTERS TO BE CONSIDERED: The Federal Savings and Loan Advisory Council will be considering how S&Ls can be Profitable while Concentrating on Housing Finance, 12/13; Increasing the S&L Industry's Capital, Interest Rate—Credit Risk, and Interstate Activity, 12/13; and Modernization and Decentralization of the Federal Home Loan Bank System. The papers and recommendations resulting from this research will be presented to the Bank Board at a FSLAC Council Meeting in December.

John F. Ghizzoni,

Assistant Secretary.

No. 102, November 20, 1984.

[FR Doc. 84-30881 Filed 11-20-84; 3:58 pm]

BILLING CODE 6720-01-M

9

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—November 28, 1984.

PLACE: Hearing Room One—1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Informal Docket No. 1441: Union Carbide Corp.—Battery Division v. Waterman Steamship Corp.—Consideration of the record.

Portion closed to the public:

1. Docket No. 84–15: Dr. Ethel M. Hepner v. The Peninsular and Oriental Steamship Navigation Company—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-30819 Filed 11-20-84; 11:41 am]

BILLING CODE 6730-01-M

10

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 28, 1984.

PLACE: Marriner S. Eccles Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 20, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-30879 Filed 11-20-84; 3:58 pm]

BILLING CODE 6210-01-M

11

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 13, 1984.

PLACE: Suite 316, 1825 K Street, NW., Washington, DC.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634–4015.

Dated: November 20, 1984.

Earl R. Ohman, Jr.,

Acting General Counsel.

[FR Doc. 84-30806 Filed 11-20-84; 12:11 pm]

BILLING CODE 7600-01-M

12

POSTAL SERVICE BOARD OF GOVERNORS

Notice of vote to close meeting.

At its meeting on November 13, 1984, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for December 11, 1984, in Washington, D.C. The meeting will involve: (1) a continuation of the discussion of strategies and positions in connection with possible continued collective bargaining negotiations, pursuant to chapter 12 of title 39 United States Code, involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which expired in July 1984; and (2) further consideration of the Postal Rate Commission's September 7, 1984, Recommended Decision in Docket No. R84–1, the omnibus rate case.

The meeting is expected to be attended by the following persons: Governors Babcock, Camp, McKean, Peters, Ryan, Sullivan and Voss; Postmaster General Bolger; Deputy Postmaster General Finch, Secretary to the Board Harris; General Counsel Cox; Senior Assistant Postmasters General Coughlin and Morris; and Counsel to the Governors Califano.

As to the first of these agenda items, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of

the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

As to the second agenda item, the Board is of the opinion that public access to the discussions would be likely to disclose information that will become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirements of the Goverment in the Sunshine Act, because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(3), (9)(B) and (1) of title 5 and sections 410(c)(3) and (4) of title 39, United States Code, and sections 7.3(c), (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84-30878 Filed 11-20-84; 3:58 pm]

BILLING CODE 7710-12-M

federal register

Friday
November 23, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

VOL
49
ISS
227
NO
23
1984
UMI

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order, 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Florida: FL81–1167	Feb. 13, 1981.
Missouri:	
MO84–4097	Oct. 5, 1984.
MO84–4062	Oct. 12, 1984.
New York:	
NY81–3034	June 5, 1984.
NY84–3005	Mar. 2, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Florida: FL83–1031(FL84–1022)	Apr. 22, 1983.

Signed at Washington, D.C. this 16th day of November 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #FL81-1187 - MOD. #1
(46 FR 12405 - February 13, 1981)
Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Sarasota, & Sumter Counties, Florida

CHANGE:

DESCRIPTION OF WORK TO: Heavy Construction excluding Sewer & Water Treatment Plant construction projects in Hillsborough County only

	Basic Hourly Rates	Fringe Benefits

DECISION NO. MO84-4062 - MOD. # 1
(49 FR 40149 - October 12, 1984)
Boone, Cooper and Howard Counties, Missouri

CHANGE:
Power Equipment Operators:
Cooper and Howard Cos.:

	Basic Hourly Rates	Fringe Benefits
Group 1	$16.91	3.00
Group 2	16.56	3.00
Group 3		
(a)	11.50	3.00
(b)	14.66	3.00
(c)	12.30	3.00
(d)	14.91	3.00
Group 4	17.16	3.00
Group 5	16.81	3.00
Group 6	17.41	3.00
Group 7		
(a)	16.76	3.00
(b)	16.51	3.00
(c)	14.51	3.00
Group 8	17.91	3.00
Group 9	17.41	3.00

*Note:
Vacation Fund of $1.05 plus 6.35 supplemental dues included in basic hourly rate

DECISION NO. MO84-4097 - MOD. #1
(49 FR 39434 - October 5, 1984)
Pettis and Saline Cos., Missouri

CHANGE:
Power Equipment Operators:
Cooper and Howard Cos.:

	Basic Hourly Rates	Fringe Benefits
Group 1	$16.91	3.00
Group 2	16.56	3.00
Group 3		
(a)	11.50	3.00
(b)	14.66	3.00
(c)	12.30	3.00
(d)	14.91	3.00
Group 4	17.16	3.00
Group 5	16.81	3.00
Group 6	17.41	3.00
Group 7		
(a)	16.76	3.00
(b)	16.51	3.00
(c)	14.51	3.00
Group 8	17.91	3.00
Group 9	17.41	3.00

*Note:
Vacation Fund of $1.05 plus 6.35 supplemental dues included in basic hourly rate

DECISION NO. NY81-3034 - MOD. #7
(46 FR 30271 - June 5, 1981)
ONEIDA COUNTY, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS (BUILDING):		
Remainder of County:		
Laborers	10.64	2.70+d
Pipelayer, mortar mixer, Motor buggy (walk behind), Walk behind power high lift	10.79	2.70+d
Blasters, form setters, and motor buggy (rider type)	11.14	2.70+d
Wagon drill operator	11.04	2.70+d

DECISION NO. NY84-3005 - MOD. #1
(49 FR 7911 - March 2, 1984)
ALBANY, COLUMBIA, GREENE, FULTON, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY, SCHOHARIE & WASHINGTON COUNTIES, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS	16.12	2.485+3%+j
Light commercial (40 tons or less of air conditioning and/or heating; shopping centers - 20 tons or less of air conditioning per store; ventilation for kitchen hoods)	10.48	.30
Multiple family housing units where each individual family apartment is individually conditioned by a separate and independent unit or system	10.48	.30

[FR Doc. 84-30806 Filed 11-21-84; 8:45 am]
BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: FLORIDA COUNTY: HILLSBOROUGH
DECISION NUMBER: FL84-1022 DATE: Date of Publication
Supersedes Decision Number FL83-1031, dated April 22, 1983, in 48 FR 17502.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS - Including Sewer & Water treatment plant construction projects (excluding single family homes and apartments projects up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & HEATING MECHANICS	$ 8.06	
ASBESTOS WORKERS/HEAT & FROST INSULATORS/ MECHANICAL INSULATORS	9.54	
BOILERMAKERS	16.20	3.375
BRICK & BLOCK MASONS	9.54	
BRICK & BLOCK MASONS' TENDERS	5.63	
CARPENTERS: ACOUSTICAL CEILING MECHANICS	9.16	
CARPENTERS (INCLUDING CABINET MAKERS, BATHROOM STALLS & OTHER MISCELLANEOUS FIXTURES)	9.34	1.14
CARPET LAYERS/INSTALLERS	7.50	
CEMENT MASONS/CONCRETE FINISHERS	9.40	
CONCRETE LABORERS	8.00	
DRYWALL FINISHERS & TAPERS	9.04	
DRYWALL HANGERS/MECHANICS & METAL STUD WORKERS	9.80	
ELECTRICIANS (INCLUDING LOW VOLTAGE TECHNICIANS)	7.78	.31
ELEVATOR CONSTRUCTORS: MECHANICS	14.455	3.00+a
HELPERS	10.12	3.00+a
PROBATIONARY HELPERS	7.23	
GLAZIERS	8.27	
INSULATION INSTALLERS (BATT & BLOWN)	5.00	
IRONWORKERS	11.52	2.95
LABORERS: UNSKILLED	5.72	
LANDSCAPE	4.00	
LATHERS	10.00	
LAWN SPRINKLER SYSTEMS INSTALLERS	5.34	
LINEMEN	11.50	3.75% +.45%
MARBLE, TILE, TERRAZZO WORKERS	9.94	
MARBLE, TILE & TERRAZZO FINISHERS (HELPERS)	5.80	
MILLWRIGHTS	15.55	2.72
PAINTERS	7.43	
PEST CONTROLLERS (EXTERMINATORS)	4.87	
PILEDRIVERMEN	12.54	1.35
PIPEFITTERS (Excluding Air Conditioning and Heating work)	16.96	3.30
PIPELAYERS	5.88	
PLUMBERS	8.65	
PLASTERERS	9.38	
STUCCO WORKERS	5.50	
ROOFERS	8.19	
ROOFERS' KETTLEMEN	7.92	
SHEET METAL WORKERS (INCLUDING DUCT INSTALLERS)	10.06	
SOFT FLOOR LAYERS & RESILIENT FLOOR MECHANICS	8.66	
SPRINKLER FITTERS	11.04	2.20
TRUCK DRIVERS	5.48	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
POWER EQUIPMENT OPERATORS: BACKHOE	7.51	
BULLDOZER	7.14	
CONCRETE PUMP	8.47	
CRANE, DERRICK, DRAGLINE	16.31	3.105
FRONT END LOADER	7.35	
HOIST	16.31	3.105
MOTOR GRADER	7.88	
ROLLER	6.50	
SCRAPPER - PAN	7.36	
SHOVEL	8.08	
TRACTOR	6.50	

SEE PAGE 2 FOR FOOTNOTE 'A'

FOOTNOTES

a. SEVEN PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, Christmas Day; VACATION PAY CREDIT: Employer contributes 8% of regular hourly rate for employee with 5 years or more of service and 6% for employee with 6 months to 5 years of service.

OL
9

SS
27

NO
2 3

984

MI

federal register

Friday
November 23, 1984

Part III

Department of Education

34 CFR Parts 350, 352, 358, and 359
National Institute of Handicapped Research Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 350, 352, 358, and 359

National Institute of Handicapped Research; Proposed Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the National Institute of Handicapped Research (NIHR). These amendments will implement certain changes to Titles II and III of the Rehabilitation Act of 1973 made by Pub. L. 98–221, the Rehabilitation Amendments of 1984.

DATE: Comments must be received on or before January 7, 1985.

ADDRESSES: Comments should be addressed to: Betty Jo Berland, National Institute of Handicapped Research, Department of Education, 400 Maryland Avenue, N.W., Switzer Building, Room 3078, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland. Telephone: (202) 732–1139; deaf or hearing impaired individuals may call (202) 732–1198 for TTY services.

SUPPLEMENTARY INFORMATION: The National Institute of Handicapped Research (NIHR), created under Title II of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602, carries out a variety of research and related activities under that statutory authority. On September 10, 1981, the Secretary published final program regulations governing many of those activities (46 FR 45300), and on March 12, 1984 and June 18, 1984, revised those regulations (49 FR 9324, 24978). The Secretary now proposes regulations to implement changes to the Act affecting NIHR made by Pub. L. 98–221, the Rehabilitation Amendments of 1984, enacted on February 22, 1984.

The amendments to the Act authorize a new program of innovation grants under section 204(b)(13) to test new concepts and innovative ideas; demonstrate research results of high potential benefits; purchase prototype aids and devices for evaluation; develop unique rehabilitation training curricula; and respond to special initiatives of the Secretary. These proposed amendments to the regulations would implement this new program authority and include rules to establish eligibility requirements, provide criteria for evaluation of applications, and provide a method for selection of successful applicants.

The Act, as amended, further provides that regulations and administrative procedures with respect to financial assistance under the Innovation Grants program be expedited to the maximum extent possible. The proposed regulations simplify the selection criteria for reviewing applications under this program, and permit periodic peer review and award of funds within a fiscal year to ensure more timely funding of innovative projects under the program.

The Act was also amended to provide that Research and Training Centers (RTCs) need not necessarily be terminated at the conclusion of the project period. These proposed regulations establish criteria and procedures to enable the Secretary to decide whether to continue without competition a specific RTC grant at the conclusion of the funding period.

In adopting this provision, the Congress provided for those exceptional circumstances in which it would be a major disadvantage to discontinue funding a particular RTC. It is the Secretary's understanding that this provision is meant to be invoked only in unusual circumstances, and that competition remains the principal means of obtaining financial assistance under this program.

In addition, the legislation transfers authority for the conduct of the special projects and demonstrations program for spinal cord injuries from the Rehabilitation Services Administration (RSA) to NIHR. These proposed amendments to the regulations include provisions, with selection criteria, to implement that program in NIHR.

A summary of the proposed regulations follows.

Part 350—Handicapped Research: General Provisions

The Secretary amends §§ 350.1, 350.3, 350.20, 350.30, 350.34, and 350.40 so that appropriate provisions of Part 350, generally applicable to NIHR programs, apply to the new Innovation Grants program and to the Special Projects and Demonstrations for Spinal Cord Injuries program recently transferred to NIHR.

Part 352—Handicapped Research: Rehabilitation Research and Training Centers

The Secretary amends § 352.10(c) to authorize grantees to use grant funds for faculty support and to require grantees to give priority to the training of students preparing to be rehabilitation personnel. These provisions implement amendments to section 204(b)(1) of the Act made by section 123(a) of Pub. L. 98–221.

A new § 352.33 permits the Secretary to renew a Rehabilitation Research and Training Center grant without competition at the end of the project period on the basis of specified criteria. This section implements a provision added to section 204(b)(1) of the Act by section 123(a) of Pub. L. 98–221

Part 358—Handicapped Research: Innovation Grants Program

Subpart A—General

Sections 358.1–358.4 describe the purpose of the Innovation Grants program and incorporate provisions of Part 350 relating to eligibility, applicable regulations, and definitions. The Secretary proposes that § 75.217 (c)–(e) of the Education Department General Administrative Regulations (EDGAR) not apply to the Innovation Grants Program. Those provisions describe how the Secretary normally selects applications for new grants under the Department's discretionary programs and provide for the creation of a rank ordering of applications based solely on the evaluations of those applications by groups of experts. The Secretary believes that a rank ordering is unnecessary and would be unworkable as applied to the Innovation Grants Program, since applications will be reviewed, and awards made, throughout the fiscal year as provided in proposed § 358.31. While the Secretary proposes to exempt this program from the rank ordering requirements of § 75.217 (c)–(e), the remaining provisions of those regulations have been incorporated into § 358.31.358.

Subpart B—What Kinds of Activities Does the Secretary Support Under This Program?

Section 358.10 describes specific types of projects and activities that may be supported under the Innovation Grants program.

Subpart D—How Does the Secretary Make a Grant?

Section 358.30 incorporates the peer review procedures of §§ 350.30–350.32.

Sections 358.31–358.33 describe how the Secretary invites applications, the selection criteria used by the peer review panel and the Secretary, and additional factors the Secretary considers in selecting grantees.

Part 359—Handicapped Research: Special Projects and Demonstrations for Spinal Cord Injuries

Subpart A—General

Sections 359.1–359.4 describe the purpose of the program, identify eligible applicants, and incorporate provisions of Part 350 relating to regulations and definitions.

Subpart B—What Kinds of Activities Does the Secretary Support Under This Program?

Section 359.10 describes specific types of projects and activities that may be supported under this program.

Section 359.11 describes certain activities that each grantee must carry out.

Subpart D—How Does the Secretary Make a Grant?

Section 359.30 incorporates the peer review procedures of §§ 350.30–350.32.

Section 359.31 describes the selection criteria by which the Secretary and the peer review panel review applications.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The application and reporting requirements are not burdensome, and no other costs are imposed on small entities.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3072, Switzer Building, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Paperwork Reduction Act of 1980

The information collection requirements contained in these proposed regulations (§§ 358.31 and 358.32) will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

A copy of any comments that *only* concern information collection requirements should be sent to the Office of the Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

List of Subjects

34 CFR Part 350

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped.

34 CFR Part 352

Education, Educational research, Grant programs—education, Handicapped, Manpower training programs, Vocational rehabilitation.

34 CFR Part 358

Education, Educational research, Grant programs—education, Handicapped, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 359

Education, Educational research, Grant programs—education, Handicapped, Vocational rehabilitation.

Citation of Legal Authority: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: November 16, 1984.

T.H. Bell,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Parts 350 and 352 and adding new Parts 358 and 359 as follows:

PART 350—HANDICAPPED RESEARCH: GENERAL PROVISIONS

1. In § 350.1, paragraph (b) is revised to read as follows:

§ 350.1 Handicapped research.

* * * * *

(b) The Secretary awards financial assistance through nine types of programs:

(1) Research and demonstration projects (34 CFR Part 351).

(2) Research grants for establishment and operation of rehabilitation research and training centers (34 CFR Part 352).

(3) Research grants for establishment and operation of rehabilitation engineering centers (34 CFR Part 353).

(4) Research grants for establishment and operation of model training centers (34 CFR Part 354).

(5) Knowledge dissemination and research utilization projects (34 CFR Part 355).

(6) Research fellowships (34 CFR Part 356).

(7) Field-initiated research projects (34 CFR Part 357).

(8) Innovation Grants projects (34 CFR Part 358).

(9) Special Projects and Demonstrations for Spinal Cord Injuries (34 CFR Part 359).

(Secs. 200 and 204; 29 U.S.C. 760 and 762)

2. In § 350.3, paragraphs (a) and (c) are revised to read as follows:

§ 350.3 What regulations apply to these programs?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR), established in title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs), except as noted in 34 CFR 352.33 and 358.3.

(3) Part 77 (Definitions that Apply to Department Programs); and

(4) Part 78 (Education Appeal Board).

* * * * *

(c) The regulations in 34 CFR Parts 351, 352, 353, 354, 355, 357, 358, or 359, as appropriate; and

* * * * *

3. Section 350.20 is revised to read as follows:

§ 350.20 What are the application procedures for these programs?

An applicant for assistance under 34 CFR Parts 351, 352, 353, 354, 355, 357, 358, or 359, shall submit a copy of its application to the State rehabilitation agency for comment in accordance with

the procedures in EDGAR, 34 CFR 75.155–75.159.

(Secs. 204(c) and 306(i); 29 U.S.C. 762(c) and 766(a))

4. Section § 350.30 is revised to read as follows:

§ 350.30 To whom does the Secretary refer an application?

The Secretary refers each application for a grant under the Handicapped Research Programs to a peer review panel established by the Secretary. Peer review panels review applications for the Secretary on the basis of selection criteria described in 34 CFR 350.34, 358.32 or 359.31, as appropriate.

(Sec. 202(c); 29 U.S.C. 761a(c))

5. The heading of § 350.34 is revised to read as follows, and the table of contents of Part 350 is amended accordingly.

§ 350.34 What selection criteria does the Secretary use in reviewing applications under Parts 351, 352, 353, 354, 355, and 357?

* * * * *

6. Section 350.40 paragraph (b) is revised to read as follows:

§ 350.40 What are the matching requirements?

* * * * *

(b)(1) The Secretary may make grants to pay for part or all of the costs of the following activities:

(i) Establishment and support of Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, and Model Training Centers.

(ii) Research and other special projects and demonstrations concerned with spinal cord injury.

(iii) Research projects concerned with end-stage renal disease, telecommunications, rehabilitation of handicapped children and handicapped individuals who are aged sixty or older, attracting and retaining rehabilitation professionals in rural areas, producing and distributing captioned video cassetts for deaf individuals, and innovative methods of providing services for handicapped children and their parents.

(iv) Joint projects with other Federal agencies and private industry.

(v) Research to test new concepts and innovative ideas.

(vi) International programs of research, demonstration, training, exchange of experts, and technical assistance.

(2) The Secretary determines at the time of the award whether the grantee must pay a portion of the project or center costs.

(Sec. 304; 29 U.S.C. 762)

PART 352—HANDICAPPED RESEARCH: REHABILITATION RESEARCH AND TRAINING CENTERS

7. In § 352.10, paragraph (c) is amended by adding at the end thereof two sentences to read as follows:

§ 352.10 What types of centers are authorized under this program?

* * * * *

(c) * * * Grantees may also use grant funds for faculty support for teaching of rehabilitation related courses of study for credit and other courses offered by the institutions of higher education affiliated with the Center. Each grantee shall give priority to training of students preparing to be rehabilitation personnel.

* * * * *

8. A new § 352.33 is added to read as follows, and the table of contents of Part 352 is amended accordingly:

§ 352.33 May the Secretary renew a Research and Training Center grant without competition?

(a) Notwithstanding the provisions of EDGAR, 34 CFR 75.253(d), the Secretary may renew a Rehabilitation Research and Training Center (RTC) grant without competition at the end of the project period if—

(1) The RTC is performing work in an area of continued high priority to the Secretary and is working on long-range solutions to rehabilitation problems;

(2) The RTC has submitted to the Secretary, not later than 15 months before the end of its project period, a formal request for renewal without competition;

(3) The Secretary has determined, on the basis of available documentation, and site visits by NIHR staff where necessary, that the RTC can make a significant contribution to knowledge in rehabilitation;

(4) The RTC has submitted to the Secretary no later than six months before the expiration of its current project period a proposal for the activities to be conducted during the period for which funding is being requested;

(5) An independent peer review panel has conducted an on-site review of activities and written or material products of the Center, has reviewed the proposal for the new project period, and has made a recommendation to the Secretary on whether the Center should be continued; and

(6) The Secretary has determined, on the basis of the above factors, that to discontinue the work of the Center would result in an irretrievable loss of potential advances in knowledge and of substantial prior investment, and would be contrary to the interests of the Government.

(b) A noncompetitive award may be for a period up to 60 months. No Center may be renewed for more than 60 months beyond its original project period without competition.

(Sec. 204(b)(1); 29 U.S.C. 762(b)(1))

9. A new Part 358 is added to read as follows:

PART 358—HANDICAPPED RESEARCH: INNOVATION GRANTS PROGRAM

Subpart A—General

Sec.

358.1 What is the Innovation Grants program?
358.2 Who is eligible for assistance under this program?
358.3 What regulations apply to this program?
358.4 What definitions apply to this program?
358.5–358.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

358.10 What types of projects are authorized under this program?
358.11–358.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

358.30 How is peer review conducted under this program?
358.31 How does the Secretary select applications for new grants?
358.32 What selection criteria does the Secretary use in reviewing applications under this program?
358.33 What are the priorities for funding under this program?
358.34 What is the maximum amount of a grant for any fiscal year?
358.35–358.39 [Reserved]

Authority: Section 204(b)(13) of the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended (29 U.S.C. 762(b)(13)), unless otherwise noted.

Subpart A—General

§ 358.1 What is the Innovation Grants program?

This program is designated to provide financial support to projects that—

(a) Test new concepts and innovative ideas;

(b) Demonstrate research results of high potential benefits;

(c) Purchase and evaluate prototype aids and devices;

(d) Develop unique rehabilitation training curricula; and

(e) Respond to special initiatives of the Secretary, including projects to conduct feasibility, planning, and evaluation studies, conferences, and other activities to disseminate specific research findings.

(Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§ 358.2 Who is eligible for assistance under this program?

The agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Sec. 204; 29 U.S.C. 762)

§ 358.3 What regulations apply to this program?

The regulations references in 34 CFR 350.3 apply to this program, except for 34 CFR 75.217(c)–(e).

(Sec. 204; 29 U.S.C. 762)

§ 358.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

§§ 358.5–358.9 [Reserved]

Subpart B—What Kind of Activities Does the Secretary Assist Under This Program?

§ 358.10 What types of projects are authorized under this program?

The Innovation Grants program provides financial assistance for the following types of projects:

(a) Research, demonstration, and related activities to test new concepts and innovative ideas in rehabilitation of disabled individuals or to demonstrate research results of high potential benefits.

(b) Research, demonstration, and related activities which are responsible to special initiatives of the Secretary, are unique or innovative, or could not be carried out in a timely manner under the institution's other programs.

(c) Projects to purchase and evaluate prototype aids and devices, or to demonstrative innovative approaches to producing, testing, marketing, and distributing selected aids and devices.

(d) Projects to develop and test unique rehabilitation training curricula, including training for rehabilitation—related research as well as any rehabilitation-related services.

(e) Research, demonstration, or development projects, feasibility studies, planning activities, evaluation studies, dissemination of information, conferences, surveys or statistical analyses, or policy studies in areas concerned with improved rehabilitation, especially those which offer timely opportunities for high potential benefit or which must be conducted expeditiously if their potential benefits are to be realized.

(Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§§ 358.11–358.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 358.30 How is peer review conducted under this program?

(a) The Secretary may, at any time, convene a peer review panel to review an application received in response to an application notice.

(b) Peer review is conducted under this program in accordance with 34 CFR 350.30—350.32, using the selection criteria in § 358.32.

(Secs. 202(e) and 204(b)(13); 29 U.S.C. 761a(e) and 762(b)(13))

§ 358.31 How does the Secretary select applications for new grants?

(a) After the peer review panel evaluates an application, the Secretary reviews and selects an application on the basis of—

(1) Scientific and technical merit, in accordance with the selection criteria in § 358.32;

(2) The priorities in § 358.33, if appropriate; and

(3) Any other requirement that applies to the selection of applications for new grants.

(b) In selecting an application for a new grant, the Secretary may consider the following:

(1) The information in the application.

(2) The evaluation of the application by the peer review panel.

(3) Any other information relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants.

(c)(1) The Secretary may, at any time, select an application for funding under this part.

(2) If the Secretary does not select an application for funding when it is reviewed under this section, the Secretary may select it for funding at a later date in the same fiscal year.

(Secs. 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

(Approved by the Office of Management and Budget under control number 1820–0027)

§ 358.32 What selection criteria does the Secretary use in reviewing applications under this program?

The Secretary uses the criteria in this section to evaluate applications under this program. The maximum score for all the criteria is 100 points.

(a) *Importance of the project (40 points).* The Secretary reviews each application to determine to what degree the proposed activity will address a significant need of the target population and will meet the purposes of this part.

(b) *Project design or methodology (30 points).* The Secretary reviews each application to determine to what degree the underlying hypothesis or conceptual model is sound; the project design is likely to achieve the desired objectives; and the evaluation plan is appropriate.

(c) *Plan of operation (30 points).* The Secretary reviews each application to determine the extent to which the qualifications and background of the key personnel, the management and financial plan, and the capability and resources of the applicant organization demonstrate that the applicant will be able to carry out the proposed project.

(Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§ 358.33 What are the priorities for funding under this program?

The Secretary may give priority to applications that have been awarded a rating of 60 points or more under § 358.32 and meet one or both of the following conditions:

(a) The proposed project represents a unique opportunity to conduct research, demonstrate, evaluate, disseminate, train, or prepare for advances in knowledge to improve rehabilitation services to disabled persons.

(b) The proposed project is particularly pertinent to rehabilitation needs at that time and is likely to contribute important knowledge in a timely manner.

(Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§ 358.34 What is the maximum amount of a grant for any fiscal year?

The maximum amount of a grant under this program for any fiscal year is $50,000.

(Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§§ 358.35–358.39 [Reserved]

10. A new Part 359 is added to read as follows:

PART 359—HANDICAPPED RESEARCH: SPECIAL PROJECTS AND DEMONSTRATIONS FOR SPINAL CORD INJURIES

Subpart A—General

Sec.

359.1 What is the Special Projects and Demonstrations for Spinal Cord Injuries program?
359.2 Who is eligible for assistance under this program?
359.3 What regulations apply to this program?
359.4 What definitions apply to this program?
359.5—359.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Sec.
359.10 What types of projects are authorized under this program?
359.11 What activities must each recipient carry out under this program?
359.12—359.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

359.30 How is peer review conducted under this program?
359.31 What selection criteria does the Secretary use in reviewing applications under this program?
359.32—359.39 [Reserved]

Authority: Section 311(a) of the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended (29 U.S.C. 777a), unless otherwise noted.

Subpart A—General

§ 359.1 What is the Special Projects and Demonstrations for Spinal Cord Injuries program?

This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation, of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

(Sec. 311(a); 29 U.S.C. 777a(a))

§ 359.2 Who is eligible for assistance under this program?

Public and other nonprofit agencies and organizations are eligible to apply for assistance under this program.

§ 359.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Sec. 202(i)(1) and 311(a); 29 U.S.C. 761a(i)(1) and 777a(a))

§ 359.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Sec. 202(i)(1) and 311(a); 29 U.S.C. 761a(i)(1) and 777a(a))

§§ 359.5–359.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 359.10 What types of projects are authorized under this program?

This program provides assistance for demonstration projects that—

(a) Provide comprehensive rehabilitation services to individuals with spinal cord injuries; and

(b) Conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

(Sec. 311(a) of the Act; 29 U.S.C. 777a(a))

§ 359.11 What activities must each recipient carry out under this program?

Each recipient, whether administering a project separately under this part or in coordination with other activities supported under Title II of the Act, shall—

(a) Establish a multidisciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with spinal cord injuries, including emergency medical services, acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow up and health maintenance. The system must be established on an appropriate geographical basis that reflects patterns of patient flow, and must be administered in close coordination with similar programs of the Veterans Administration, the National Institutes of Health, and other public and private agencies and institutions;

(b) Demonstrate and evaluate both the service and cost benefits of a regional service system to those individuals with spinal cord injuries who might be served within that system;

(c) Establish within the system a rehabilitation research environment for the achievement of new knowledge leading to the reduction and treatment of complications arising from spinal cord injury and the development of new techniques of medical management and rehabilitation;

(d) Demonstrate and evaluate the development and application of improved methods and equipment essential to the care, management, and rehabilitation of individuals with spinal cord injury;

(e) Demonstrate methods of community outreach and education for individuals with spinal cord injury in areas such as housing, transportation, recreation, employment, and other community activities; and

(f) Participate as directed by the Secretary in national studies of the benefits of a spinal cord injury service system by contributing to a national database and by other means as required by the Secretary.

(Sec. 311(b); 29 U.S.C. 777a(b))

§§ 359.12–359.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 359.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance wth 34 CFR 350.30—350.32, using the selection criteria in § 359.31.

(Secs. 202(e) and 311(a); 29 U.S.C. 761a(e) and 777a(a))

§ 359.31 What selection criteria does the Secretary use in reviewing applications under this program?

The Secretary uses the criteria in this section to evaluate applications under this program. The maximum score for all the criteria is 100 points.

(a) *Project design (20 points.)* The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined; and

(4) The outcomes are likely to benefit the defined target population.

(b) *Service comprehensiveness (20 points).* The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope, and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to severely handicapped individuals within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of operation (15 points).* The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(d) *Quality of key personnel (10 points).* The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in § 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Adequacy of resources (10 points).* The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/cost effectiveness (10 points).* The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(g) *Dissemination/utilization (5 points).* The Secretary reviews each application to determine to what degree—

(1) There is a clearly defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

((h) *Evaluation plan (10 points).* The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(Secs. 202(e) and 311(a); 29 U.S.C. 761a(e) and 777a(a))

§§ 359.32–359.39 [Reserved]

[FR Doc. 84–30533 Filed 11–21–84; 8:45 am]
BILLING CODE 4000-01-M

VOL
49
SS
227
NO
23
1984
MI

federal register

Friday
November 23, 1984

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 300

Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Assistance to States for Education of Handicapped Children program authorized by Part B of the Education of the Handicapped Act (EHA–B). These proposed regulations would establish procedures for disapproval of a State plan under Section 613(c) of the EHA–B.

DATES: Comments must be received on or before February 21, 1985.

ADDRESS: Comments should be addressed to: Dr. Wendy M. Cullar, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3086), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Clair. Telephone: (202) 732–1101.

SUPPLEMENTARY INFORMATION: Pub. L. 94–142, enacted on November 29, 1975, substantially revised Part B of the Education of the Handicapped Act (20 U.S.C. 1401, 1411 et seq.). Part B authorizes formula grants to States and, through States, to local educational agencies and intermediate educational agencies to assist them in the education of handicapped children. The purposes of the Act, as amended by Pub. L. 94–142, are: to ensure that a free appropriate public education is made available to all handicapped children, to ensure that the rights of handicapped children and their parents are protected, to assist States and localities to provide for the education of handicapped children, and to assess and ensure the effectiveness of efforts to educate those children.

In order to receive assistance under the EHA–B, section 613(a) of the Act requires a State to submit, and have approved, a State plan. Under section 613(c) of the EHA–B, the Secretary is required to approve a State plan which meets the requirements of the Act and to disapprove a State plan which does not. The Secretary may not "finally disapprove" a State plan until the State has been given reasonable notice and an opportunity for a hearing. Section 616(b) provides a right to judicial review of the final decision of the Secretary.

If the Secretary determines that a State plan should be disapproved, it will be necessary to advise the affected State of its opportunity for a hearing and the exact procedures, including timelines, to be followed. Currently, these procedures and timelines are not established, either in the EHA–B statute or regulations, or in the Education Department General Administrative Regulations (EDGAR) provision (34 CFR 76.202) generally applicable to the disapproval of plans submitted under the Department's State-administered programs.

These proposed regulations are consistent with the procedures that were in effect for the disapproval of the EHA–B State plans prior to the promulgation of EDGAR in 1980. *See* 45 CFR 121a.580–121a.583; 42 FR 42499–42500 (August 23, 1977). Additional provisions of these proposed regulations that were not included in the EHA–B regulations are consistent with the Education Appeal Board rules governing show cause hearings (34 CFR 78.27–78.28). These proposed regulations clarify the procedures to be followed, the rights of the parties, and the duties of the hearing official or panel. The Secretary believes that these proposed regulations will ensure that hearings under these provisions are conducted in a manner consistent with the procedures followed by the Department in similar proceedings.

A summary of the proposed regulations follows:

- Section 300.580 (*Opportunity for a hearing*) is removed because the cross-referenced sections under paragraphs (a) and (b) of this section were revoked in 1980. Section 300.589(g) is also amended to reflect the removal of § 300.580.
- Proposed §§ 300.581—300.586 describe the notice, opportunity for hearing, and judicial review provisions and contain the following information:

1. Proposed § 300.581 (Disapproval of a State plan) states that the Secretary must provide the State with written notice and an opportunity for a hearing before disapproving a State plan.

2. Proposed § 300.582 (Content of notice) describes the content of the written notice and the procedures for sending the notice to the State educational agency.

3. Proposed § 300.583 (Hearing Official or Panel) describes how the Secretary appoints the hearing official or panel and includes an impartiality requirement for those officials. It also describes the circumstances under which a hearing may proceed before the Education Appeal Board.

4. Proposed § 300.584 (Hearing procedures) describes the scope of authority of the hearing official or panel; procedures to be followed during the hearing; and the rights of the parties.

5. Proposed § 300.585 (Initial decision; final decision) provides procedures for reaching and issuing a decision after the hearing.

6. Proposed § 300.586 (*Judicial review*) provides procedures for a State dissatisfied with the Secretary's decision to seek judicial review. These procedures are specified in Section 616(b)(1) of the EHA–B.

- Section 300.589 (*Waiver of requirement regarding supplementing and supplanting with Part B funds*) is amended by removing the cross-reference to §§ 300.580–300.583 as the authority for a hearing under this section. Hearing procedures relating to waivers of the non-supplanting requirement would be determined on a case-by-case basis, as needed.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that those proposed regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered small entities under the Regulatory Flexibility Act. The proposed procedures will not impose any additional burden on small entities.

Paperwork Reduction Act of 1980

These proposed regulations do not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3631 (Switzer Building), 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education, Education of handicapped, Equal education opportunity, Grant program-education, Privacy, Private schools, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children)

Dated: November 16, 1984.

T.H. Bell,

Secretary of Education.

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

The Secretary proposes to amend Part 300 of Title 34 of the Code of Federal Regulations as follows:

1. The table of contents of Part 300 is amended by adding headings for new sections 300.580–300.586 and 300.589, to read as follows:

* * * * *

Subpart E—Procedural Safeguards

* * * * *

Department Procedures

Sec.

300.580 [Reserved]
300.581 Disapproval of a State plan.
300.582 Content of notice.
300.583 Hearing Official or Panel.
300.584 Hearing procedures.
300.585 Initial decision; final decision.
300.586 Judicial review.
300.587–300.588 [Reserved]
300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

* * * * *

§ 300.580 [Removed and reserved]

2. Section 300.580 is removed and that section is reserved.

3. New §§ 300.581–300.586 are added to read as follows:

§ 300.581 Disapproval of a State plan.

Before disapproving a State plan, the Secretary gives the State educational agency written notice and an opportunity for a hearing.

(20 U.S.C. 1413(c))

§ 300.582 Content of notice.

(a) In the written notice, the Secretary—

(1) States the basis on which the Secretary proposes to disapprove the State plan; and

(2) Advises the State educational agency that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval.

(b) The Secretary sends the written notice to the State educational agency by certified mail with return receipt requested.

(20 U.S.C. 1413(c))

§ 300.583 Hearing Official or Panel.

(a) If the State educational agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of the program under this part, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(c) If the State has an appeal pending with the Education Appeal Board on a matter arising out of the same State plan, or on the same issue arising from a prior plan, the State may contest the disapproval of its plan before the Education Appeal Board in accordance with 34 CFR Part 78.

(20 U.S.C. 1413(c))

§ 300.584 Hearing procedures.

(a)(1) If the Hearing Official or Panel determines that oral testimony would not materially assist the resolution of the case, each party must be given an opportunity to present its arguments—

(i) In whole or part in writing; or

(ii) In an informal conference before the Hearing Official or Panel.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(b) If the Hearing Official or Panel determines that oral testimony would materially assist the resolution of the case, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf;

(2) An opportunity to cross-examine witnesses either orally or with written questions; and

(3) An opportunity to obtain a record of the proceedings.

(20 U.S.C. 1413(c))

§ 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision which addresses each of the points in the notice sent by the Secretary to the State educational agency under § 300.582.

(b) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary within a specified reasonable time.

(c) The initial decision of the Hearing Official or Panel is the final decision of the Secretary unless, within 25 days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel in writing that the decision is being reviewed.

(d) The Secretary may accept, reject or modify the initial decision of the Hearing Official or Panel.

(e) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being reviewed.

(f) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments or oral arguments by the parties.

(20 U.S.C. 1413(c))

§ 300.586 Judicial review.

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60 days after notice of that action, file a petition for review with the United

States court of appeals for the circuit in which the State is located.

(20 U.S.C. 1416(c)(1))

§§ 300.587 and 300.588 [Removed and Reserved]

4. Sections 300.587 and 300.588 are reserved.

5. In § 300.589, paragraph (g) is revised to read as follows:

§ 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

* * * * *

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

[FR Doc. 84-30254 Filed 11-21-84; 8:45 am]
BILLING CODE 4000-01-M

federal register

Friday
November 23, 1984

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions Under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth actions taken by the Director, National Institutes of Health (NIH), under the June 1983 NIH Guidelines for Research Involving Recombinant DNA Molecules (48 FR 24556).

EFFECTIVE DATE: November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205, (301) 469–8051.

SUPPLEMENTARY INFORMATION: One major action under the NIH Guidelines for Research Involving Recombinant DNA Molecules is being promulgated today. This proposed action was published for comment in the Federal Register of April 24, 1984 (49 FR 17672), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 1, 1984. In accordance with Section IV–C–1–b of the NIH Guidelines, these actions have been found to comply with the Guidelines and to present no significant risk to health or the environment.

Part I of this announcement provides background information on the action. Part II provides a summary of the action of the Director, NIH.

Following this announcement, there appears in a separate section of the Federal Register the revised NIH Guildelines for Research Involving Recombinant DNA Molecules. These revised Guidelines differ from the previous version of the Guidelines promulgated on June 1, 1983 (48 FR 24556), by incorporating within them: the changes in the Guidelines which were recommended at the RAC meeting of September 19, 1983, and promulgated on November 23, 1983 (48 FR 53056); the changes recommended at the RAC meeting of February 6, 1984, and promulgated on April 25, 1984 (49 FR 17844); and the changes in the Guidelines which were recommended at the RAC meeting of June 1, 1984, some of which were promulgated in the Federal Register of September 13, 1984 (49 FR 36052); and the change in the Guidelines which is promulgated in this announcement. Minor editorial modifications have also been introduced into the document.

I. Decision on Actions Under Guidelines

Proposal to Amend Appendix G of the Guidelines, Physical Containment

The booklet, *Classification of Etiologic Agents on the Basis of Hazard* (U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333), has served since 1969 as a general reference for laboratory activities utilizing infectious agents. The fourth edition of that booklet (July 1974) was included in the 1978 version of the NIH Guidelines for Research Involving Recombinant DNA Molecules and has since been a part of those Guidelines as Appendix B.

Now an "Interagency Working Group" constituted by the Centers for Disease Control (CDC) and the NIH has prepared a new set of guidelines for laboratory research with etiologic agents. These new guidelines are entitled *Biosafety in Microbiological and Biomedical Laboratories*. The CDC/NIH guidelines designate four categories of biosafety levels for laboratory operation: Biosafety Levels 1, 2, 3, and 4. These levels are comparable to the P1, P2, P3, and P4 containment levels described in the NIH Guidelines for Research Involving Recombinant DNA Molecules.

The CDC/NIH Interagency Working Group proposed that RAC consider recommending a revision of the description of the P levels in the NIH Guidelines so that these descriptions would correspond to the biosafety levels set forth in the document *Biosafety in Microbiological and Biomedical Laboratories*.

The changes necessary to effect this change were published in the Federal Register of April 24, 1984 (49 FR 17672), for thirty days of public comment. One comment was received from Mr. C. Searle Wadley and Dr. John H. Keene of Abbott Laboratories of North Chicago, Illinois. Mr. Searle and Dr. Keene wrote that:

> • • • acceptance of these proposed amendments will serve to unify the concepts of potential biohazards with regard to both recombinant and nonrecombinant organisms. Since RDNA experimentation in many instances involves the use of microorganisms, the proposed changes in the terminology of containment levels will result in a consistency of language which is extremely important.

The RAC discussed this proposed modification of the NIH Guidelines at its June 1, 1984, meeting. During the discussion, it was noted that the proposed modifications would not substantively change that portion of the Guidelines dealing with physical containment, Appendix G. It would, however, establish a commonality of language between the Guidelines and the safety standards for other microbiological research.

Several questions concerning the exact language of the proposed modifications to Appendix G were raised by RAC. It was pointed out that the language of proposed Appendix G–II–B–3–a–(1) referred to "harvesting infected tissues from animals or eggs," while the language in Appendix G–II–C–3–a referred to "harvesting of tissues or fluids from experimental animals and embryonate eggs." It was asked why the word "infected" is not used in the Appendix G–II–C specification even though appendix G–II–C specifications refer to the more stringent BL3 level of containment while Appendix G–II–B specifications refer to the BL2 level of containment. A second question concerned the monitoring of the efficacy of the UV irradiation required in specification appendix G–II–D–2(1). A third question was whether "chewing" is considered to be "eating." Finally it was asked whether the specification for use of self-closing doors could be met by use of spring-loaded doors or whether they had to be electrical.

Discussions with the authors of the proposed modifications of the language of Appendix G led to the following conclusions:

The word "infected" had been inadvertently omitted from the language of Appendix G–II–C–3–a and will be added to that language as part of this decision. The word "eating" is used to convey the idea of introducing materials into the mouth: the specifications against "eating" include a prohibition against chewing gum, putting pencils or fingers in the mouth, sucking on candies or lozenges, etc. Doors may be made "self-closing" by use of hydraulic or electrical devices or by being spring-loaded. The intent is to ensure that the door closes automatically. Self-closing doors are also a fire containment measure. The specification in Appendix G–II–D–2–(1) refers to use of UV irradiation in BL4 high containment facilities. In such a carefully monitored situation, UV irradiation has been proven effective in minimizing aerosol exposure within animal facilities.

By a vote of twenty in favor, none opposed, and no abstentions, the RAC recommended approval of the proposed modifications. I accept this recommendation and the Guidelines will be modified as published for public comment in the Federal Register of April 24, 1984, with the addition of the word "infected" in Appendix G–II–C–3–a, and minor editorial changes.

II. Summary of Actions

Amendment of Appendix G of the Guidelines, Physical Containment

In order to modify Appendix G so that the description of containment levels corresponds to the language of the guidelines for research with etiologic agents entitled *Biosafety in Microbiological and Biomedical Laboratories*, the following modifications are introduced into the NIG Guidelines for Research Involving Recombinant DNA Molecules:

1. Section II, Containment

a. In Section II, wherever the terms "P1, P2, P3, P4" appear the term "BL1" (for Biosafety Level 1) is substituted for the term "P1;" the term "BL2" (for Biosafety Level 2) is substituted for "P2;" the term "BL3" (for Biosafety Level 3) is substituted for "P3;" and the term "BL4" (for Biosafety Level 4) is substituted for "P4."

b. The fourth sentence of the first paragraph of Section II, *Containment*, is deleted. That sentence read as follows:

"Four levels of physical containment, which are designated as P1, P2, P3, and P4 are described in Appendix G."

c. The following language is substituted for the fourth sentence of the first paragraph of Section II, *Containment:*

"Four biosafety levels are described in Appendix G. These biosafety levels consist of combinations of laboratory practices and techniques, safety equipment, and laboratory facilities appropriate for the operations performed and the hazard posed by agents and for the laboratory function and activity:"

2. Section III, Guidelines for Covered Experiments

In Section III, wherever the terms "P1, P2, P3, and P4" appear the term "BL1"is substituted for the term P1;" the term "BL2" is substituted for "P2;" the term "BL3" is substituted for "P3;" and the term "BL4" is substituted for "P4."

3. Section IV, Roles and Responsibilities

a. In Section IV, wherever the terms "P1, P2, P3, and P4" appear the term "BL1" is substituted for the term "P1;" the term "BL2" is substituted for "P2;" the term "BL3" is substituted for "P3;" and the term "BL4" is substituted for "P4."

b. Section IV–C–4, *Other NIH Components*, is modified to read as follows:

"IV–C–4. *Other NIH Components.* Other NIH components shall be responsible for certifying maximum containment level (BL4) facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary."

4. Appendix C, Exemptions Under III–D–5

The second paragraphs of Appendix C–II, *Experiments Involving E. coli K–12 Host–Vector Systems*, Appendix C–III, *Experiments Involving Saccharomyces cerevisiae Host–Vector Systems* are modified to read as follows:

"For these exempt experiments BL1 containment conditions are recommended."

5. Appendix D, Actions Taken Under Guidelines

In Appendix D, whenever the terms "P1, P2, P3, P4" appears the term "BL1" is substituted for the term "P1;" the term "BL2" is substituted for "P2;" the term "BL3" is substituted for "P3;" and the term "BL4" is substituted for "P4."

6. Appendix F, Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates

In Appendix F, whenever, the terms "P1, P2, P3, P4" appear the term "BL1" is substituted for the term "P1;" the term "BL2" is substituted for "P2;" the term "BL3" is substituted for "P3;" and the term "BL4" is substituted for "P4."

7. Appendix G, Physical Containment

a. The fourth sentence of the second paragraph of Appendix G–I, *Standard Practices and Training*, is modified to read:

"If a research group is working with a known pathogen for which there is an effective vaccine, the vaccine should be available to all workers."

b. The third paragraph of Appendix G–I, *Standard Practices and Training*, is modified to read:

"The 'Laboratory Safety Monograph' and *Biosafety in Microbiological and Biomedical Laboratories* [2] booklets describe practices, equipment, and facilities in detail."

c. In Appendix G–II, *Physical Containment Levels*, wherever the terms "P1, P2, P3, P4" appears the term "BL1" is substituted for the term "P1;" the term "BL2" is substituted for "P2;" the term "BL3" is substituted for "P3;" and the term "BL4" is substituted for "P4."

d. The third sentence of the second paragraph of Appendix G–II, *Physical Containment Levels*, is footnoted and would read as follows:

"It should be emphasized that the descriptions and assignments of physical containment detailed below are based on existing approaches to containment of pathogenic organisms [2]."

e. The fourth sentence of the second paragraph of Appendix G–II, *Physical Containment Levels*, is modified to read:

"The National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our BL2, BL3, and BL4 levels [3]."

f. Appendix G–II–A, *P1 Level*, is deleted and the following language is substituted for Appendix C–II–A:

"Appendix G–II–A. *Biosafety Level 1 (BL1) [13].*

"Appendix G–II–A–1. *Standard Microbiological Practices.*

"Appendix G–II–A–1–a. Access to the laboratory is limited or restricted at the discretion of the laboratory director when experiments are in progress.

"Appendix G–II–A–1–b. Work surfaces are decontaminated once a day and after any spill of viable material.

"Appendix G–II–A–1–c. All contaminated liquid or solid wastes are decontaminated before disposal.

"Appendix G–II–A–1–d. Mechanical pipetting devices are used; mouth pipetting is prohibited.

"Appendix G–II–A–1–e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

"Appendix G–II–A–1–f. Persons wash their hands after they handle materials involving organisms containing recombinant DNA molecules, and animals, and before leaving the laboratory.

"Appendix G–II–A–1–g. All procedures are performed carefully to minimize the creation of aerosols.

"Appendix G–II–A–1–h. It is recommended that laboratory coats, gowns, or uniforms be worn to prevent contamination or soiling of street clothes.

"Appendix G–II–A–2. *Special Practices.*

"Appendix G–II–A–2–a. Contamination materials that are to be decontaminated at a site away from the laboratory are placed in a durable leadproof container which is closed before being removed from the laboratory.

"Appendix G–II–A–2–b. An insect and rodent control program is in effect.

"Appendix G–II–A–3. *Containment Equipment.*

"Appendix G–II–A–3–a. Special containment equipment is generally not required for manipulations of agents assigned to Biosafety Level 1.

"Appendix G–II–A–4. *Laboratory Facilities.*

"Appendix G–II–A–4–a. The laboratory is designed so that it can be easily cleaned.

"Appendix G–II–A–4–b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

"Appendix G–II–A–4–c. Laboratory furniture is sturdy. Spaces between benches, cabinets, and equipment are accessible for cleaning.

"Appendix G–II–A–4–d. Each laboratory contains a sink for hand-washing.

"Appendix G–II–A–4–e. If the laboratory has windows that open, they are fitted with fly screens."

g. The following language is substituted for Appendix G–II–B, *P2 Level:*

"Appendix G–II–B. *Biosafety Level 2 (BL2) [14].*

"Appendix G–II–B–1. *Standard Microbiological Practices.*

"Appendix G–II–B–1–a. Access to the laboratory is limited or restricted by the laboratory director when work with organisms containing recombinant DNA molecules is in progress.

"Appendix G–II–B–1–b. Work surfaces are decontaminated at least once a day and after any spill of viable material.

"Appendix G–II–B–1–c. All contaminated liquid or solid wastes are decontaminated before disposal.

"Appendix G–II–B–1–d. Mechanical pipetting devices are used; mouth pipetting is prohibited.

"Appendix G–II–B–1–e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

"Appendix G–II–B–1–f. Persons wash their hands after handling materials involving organisms containing recombinant DNA molecules, and animals, and when they leave the laboratory.

"Appendix G–II–B–1–g. All procedures are performed carefully to minimize the creation of aerosols.

"Appendix G–II–B–1–h. Experiments of lesser biohazard potential can be carried out concurrently in carefully demarcated areas of the same laboratory.

"Appendix G–II–B–2. *Special Practices.*

"Appendix G–II–B–2–a. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leakproof container which is closed before being removed from the laboratory.

"Appendix G–II–B–2–b. The laboratory director limits access to the laboratory. The director has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory.

"Appendix G–II–B–2–c. The laboratory director establishes policies and procedures whereby only persons who have been advised of the potential hazard and meet any specific entry requirements (e.g., immunization) enter the laboratory or animal rooms.

"Appendix G–II–B–2–d. When the organisms containing recombinant DNA molecules in use in the laboratory require special provisions for entry (e.g., vaccination), a hazard warning sign incorporating the universal biohazard symbol is posted on the access door to the laboratory work area. The hazard warning sign identifies the agent, lists the name and telephone number of the laboratory director or other responsible person(s), and indicates the special requirement(s) for entering the laboratory.

"Appendix G–II–B–2–e. An insect and rodent control program is in effect.

"Appendix G–II–B–2–f. Laboratory coats, gowns, smocks, or uniforms are worn while in the laboratory. Before leaving the laboratory for nonlaboratory areas (e.g., cafeteria, library, administrative offices), this protective clothing is removed and left in the laboratory or covered with a clean coat not used in the laboratory.

"Appendix G–II–B–2–g. Animals not involved in the work being performed are not permitted in the laboratory.

"Appendix G–II–B–2–h. Special care is taken to avoid skin contamination with organisms containing recombinant DNA molecules; gloves should be worn when handling experimental animals and when skin contact with the agent is unavoidable.

"Appendix G–II–B–2–i. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

"Appendix G–II–B–2–j. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution should be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles should not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needle and syringe should be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

"Appendix G–II–B–2–k. Spills and accidents which result in overt exposures to organisms containing recambinant DNA molecules are immediately reported to the laboratory director. Medical evaluation, surveillance, and treatment are provided as appropriate and written records are maintained.

"Appendix G–II–B–2–l. When appropriate, considering the agen(s) handled, baseline serum samples for laboratory and other at-riak personnel are collected and stored. Additional serum specimens may be collected periodically, depending on the agents handled or the function of the facility.

"Appendix G–II–B–2–m. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read instructions on practices and procedures and to follow them.

"Appendix G–II–B–3. *Containment Equipment.*

"Appendix G–II–B–3–a. Biological safety cabinets (Class I or II) (see Appendix G–III–12) or other appropriate personal protective or physical containment devices are used whenever:

"Appendix G–II–B–3–a–(1). Procedures with a high potential for creating aerosols are conducted [15]. These may include centrifuging, grinding, blending, vigorous skaking or mixing, sonic disruption, opening containers of materials whose internal pressures may be different from ambient pressures, inoculating animals intranasally, and harvesting infected tissues from animals or eggs.

"Appendix G–II–B–3–a–(2). High concentrations or large volumes of organisms containing recombinant DNA molecules are used. Such materials may be centrifuged in the open laboratory if sealed heads or centrifuge safety cups are used and if they are opened only in a biological safety cabinet.

"Appendix G–II–B–4. *Laboratory Facilities.*

"Appendix G–II–B–4–a. The laboratory is designed so that it can be easily cleaned.

"Appendix G–II–B–4–b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

"Appendix G–II–B–4–c. Laboratory furniture is sturdy and spaces between benches, cabinets, and equipment are accessible for cleaning.

"Appendix G–II–B–4–d. Each laboratory contains a sink for hand-wishing.

"Appendix G–II–B–4–e. If the laboratory has windows that open, they are fitted with fly screens.

"Appendix G–II–B–4–f. An autoclave for decontaminating laboratory wastes is available."

h. The following language is substituted for Appendix G–II–C, *P3 Level.*

"Appendix G–II–C. *Biosafety Level 3 (BL3) [16].*

"Appendix G–II–C–1. *Standard Microbiological Practices.*

"Appendix G–II–C–1–a. Work surfaces are decontaminated at least once a day and after any spill of viable material.

"Appendix G–II–C–1–b. All contaminated liquid or solid wastes are decontaminated before disposal.

"Appendix G–II–C–1–c. Mechanical pipetting devices are used; mouth pipetting is prohibited.

"Appendix G–II–C–1–d. Eating, drinking, smoking, storing food, and applying cosmetics are not permitted in the work area.

"Appendix G–II–C–1–e. Persons wash their hands after handling materials involving organisms containing recombinant DNA molecules, and animals, and when they leave the laboratory.

"Appendix G–II–C–1–f. All procedures are performed carefully to minimize the creation of aerosols.

"Appendix G–II–C–1–g. Persons under 16 years of age shall not enter the laboratory.

"Appendix G–II–C–1–h. If experiments involving other organisms which require lower levels of containment are to be conducted in the same laboratory concurrently with experiments requiring BL3 level physical containment, they shall be conducted in accordance with all BL3 level laboratory practices.

"Appendix G–II–C–2. *Special Practices.*

"Appendix G–II–C–2–a. Laboratory doors are kept closed when experiments are in progress.

"Appendix G–II–C–2–b. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leakproof container which is closed before being removed from the laboratory.

"Appendix G–II–C–2–c. The laboratory director controls access to the laboratory and restricts access to persons whose presence is required for program or support purposes. The director has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory..

"Appendix G–II–C–2–d. The laboratory director establishes policies and procedures whereby only persons who have been advised of the potential biohazard, who meet any specific entry requirements (e.g., immunization), and who comply with all entry exist procedures enter the laboratory or animal rooms.

"Appendix G–II–C–2–e. When organisms containing recombinant DNA molecules or experimental animals are present in the laboratory or containment module, a hazard warning sign incorporating the universal biohazard symbol is posted on all laboratory and animal room access doors. The hazard warning sign identifies the agent, lists the name and telephone number of the laboratory director or other responsible person(s), and indicates any special requirements for entering the laboratory, such as the need for immunizations, respirators, or other personal protective measures.

"Appendix G–II–C–2–f. All activities involving organisms containing recombinant DNA molecules are conducted in biological safety cabinets or other physicial containment devices within the containment module. No work in open vessels is conducted on the open bench.

"Appendix G–II–C–2–g. The work surfaces of biological safety cabinets and other containment equipment are decontaminated when work with organism containing recombinant DNA molecules is finished. Plastic-backed paper toweling used on nonperforated work surfaces within biological safety cabinets facilitates clean-up.

"Appendix G–II–C–2–h. An insect and rodent control program is in effect.

"Appendix G–II–C–2–i. Laboratory clothing that protects street clothing (e.g., solid front or wrap-around gowns, scrub suits, coveralls) is worn in the laboratory. Laboratory clothing is not worn outside the laboratory, and it is decontaminated before being laundered.

"Appendix G–II–C–2–j. Special care is taken to avoid skin contamination with contaminated materials; gloves should be worn when handling infected animals and when skin contact with infectious materials is unavoidable.

"Appendix G–II–C–2–k. Molded surgical masks or respirators are worn in rooms containing experimental animals.

"Appendix G–II–C–2–l. Animals and plants not related to the work being conducted are not permitted in the laboratory.

"Appendix G–II–C–2–m. Laboratory animals held in a BL3 area shall be housed in partial-containment caging systems, such as Horsfall units [11], open cages placed in ventilated enclosures, solid-wall and -bottom cages covered by filter bonnets, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors.

Note.—Conventional caging systems may be used, provided that all personnel wear appropriate personal protective devices. These shall include, at a minimum, wrap-around gowns, head covers, gloves, shoe covers, and respirators. All personnel shall shower on exit from areas where these devices are required.

"Appendix G–II–C–2–n. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

"Appendix G–II–C–2–o. Vacuum lines are protected with high efficiency particulate air (HEPA) filters and liquid disinfectant traps.

"Appendix G–II–C–2–p. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution should be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles should not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needle and syringe should be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

"Appendix G–II–C–2–q. Spills and accidents which result in overt or potential exposures to organisms containing recombinant DNA molecules are immediately reported to the laboratory director. Appropriate medical evaluation, surveillance, and treatment are provided and written records are maintained.

"Appendix G–II–C–2–r. Baseline serum samples for all laboratory and other at-risk personnel should be collected and stored. Additional serum specimens may be collected periodically, depending on the agents

handled or the function of the laboratory.

"Appendix G–II–C–2–s. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read instructions on practices and procedures and to follow them.

"Appendix G–II–C–2–t. *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified can be conducted in the BL3 laboratory using containment equipment specified for the BL2 level of physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified can be conducted in the BL3 laboratory using containment equipment specified for the BL4 level of physical containment. Alternative combination of containment safeguards are shown in Table 1.

"Appendix G–II–C–3. *Containment Equipment.*

"Appendix G–II–C–3–a. Biological safety cabinets (Class I, II, or III) (see Appendix G–III–12) or other appropriate combinations of personal protective or physical containment devices (e.g., special protective clothing, masks, gloves, respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals) are used for all activities with organisms containing recombinant DNA molecules which pose a threat of aerosol exposure. These include: manipulation of cultures and of those clinical or environmental materials which may be a source of aerosols; the aerosol challenge of experimental animals; and harvesting infected tissues or fluids from experimental animals and embryonate eggs, and necropsy of experimental animals.

"Appendix G–II–C–4. *Laboratory Facilities.*

"Appendix G–II–C–4–a. The laboratory is separated from areas which are open to unrestricted traffic flow within the building. Passage through two sets of doors is the basic requirement for entry into the laboratory from access corridors or other contiguous areas. Physical separation of the high containment laboratory from access corridors or other laboratories or activities may also be provided by a double-doored clothes change room (showers may be included), airlock, or other access facility which requires passage through two sets of doors before entering the laboratory.

"Appendix G–II–C–4–b. The interior surfaces of walls, floors, and ceilings are water resistant so that they can be easily cleaned. Penetrations in these surfaces are sealed or capable of being sealed to facilitate decontaminating the area.

"Appendix G–II–C–4–c. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

"Appendix G–II–C–4–d. Laboratory furniture is sturdy and spaces between benches, cabinets, and equipment are accessible for cleaning.

"Appendix G–II–C–4–e. Each laboratory contains a sink for hand-washing. The sink is foot, elbow, or automatically operated and is located near the laboratory exit door.

"Appendix G–II–C–4–f. Windows in the laboratory are closed and sealed.

"Appendix G–II–C–4–g. Access doors to the laboratory or containment module are self-closing.

"Appendix G–II–C–4–h. An autoclave for decontaminating laboratory wastes is available preferably within the laboratory.

"Appendix G–II–C–4–i. A ducted exhaust air ventilation system is provided. This system creates directional airflow that draws air into the laboratory through the entry area. The exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from the occupied areas and air intakes. Personnel must verify that the direction of the airflow (into the laboratory) is proper. The exhaust air from the laboratory room can be discharged to the outside without being filtered or otherwise treated.

"Appendix G–II–C–4–j. The HEPA-filtered exhaust air from Class I or Class II biological safety cabinets is discharged directly to the outside or through the building exhaust system. Exhaust air from Class I or II biological safety cabinets may be recirculated within the laboratory if the cabinet is tested and certified at least every twelve months. If the HEPA-filtered exhaust air from Class I or II biological safety cabinets is to be discharged to the outside through the building exhaust air system, it is connected to this system in a manner (e.g., thimble unit connection [12]) that avoids any interference with the air balance of the cabinets or building exhaust system."

i. The following language is substituted for Appendix G–II–D, *P4 Level.*

"Appendix G–II–D. *Biosafety Level 4 (BL4).*

"Appendix G–II–D–1. *Standard Microbiological Practices.*

"Appendix G–II–D–1–a. Work surfaces are decontaminated at least once a day and immediately after any spill of viable material.

"Appendix G–II–D–1–b. Only mechanical pipetting devices are used.

"Appendix G–II–D–1–c. Eating, drinking, smoking, storing food, and applying cosmetics are not permitted in the laboratory.

"Appendix G–II–D–1–d. All procedures are performed carefully to minimize the creation of aerosols.

"Appendix G–II–D–2. *Special Practices.*

"Appendix G–II–D–2–a. Biological materials to be removed from the Class III cabinets or from the maximum containment laboratory in a viable or intact state are transferred to a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container which is removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose.

"Appendix G–II–D–2–b. No materials, except for biological materials that are to remain in a viable or intact state, are removed from the maximum containment laboratory unless they have been autoclaved or decontaminated before they leave the facility. Equipment or material which might be damaged by high temperatures or steam is decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

"Appendix G–II–D–2–c. Only persons whose presence in the facility or individual laboratory rooms is required for program or support purposes are authorized to enter. The supervisor has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory. Access to the facility is limited by means of secure, locked doors; accessibility is managed by the laboratory director, biohazards control officer, or other person responsible for the physical security of the facility. Before entering, persons are advised of the potential biohazards and instructed as to appropriate safeguards for ensuring their safety. Authorized persons comply with the instructions and all other applicable entry and exit procedures. A logbook signed by all personnel, indicates the date and time of each entry and exit. Practical and effective protocols for emergency situations are established.

"Appendix G–II–D–2–d. Personnel enter and leave the facility only through the clothing change and shower rooms. Personnel shower each time they leave the facility. Personnel use the airlocks to enter or leave the laboratory only in an emergency.

"Appendix G–II–D–2–e. Street clothing is removed in the outer clothing change room and kept there. Complete laboratory clothing, including under garments, pants and shirts or jumpsuits, shoes, and gloves, is provided and used by all personnel entering the facility. Head covers are provided for personnel who do not wash their hair during the exit shower. When leaving the laboratory and before proceeding into the shower area, personnel remove their laboratory clothing and store it in a locker or hamper in the inner change room.

"Appendix G–II–D–2–f. When materials that contain organisms containing recombinant DNA molecules or experimental animals are present in the laboratory or animal rooms, a hazard warning sign incorporating the universal biohazard symbol is posted on all access doors. The sign identifies the agent, lists the name of the laboratory director or other responsible person(s), and indicates any special requirements for entering the area (e.g., the need for immunizations or respirators).

"Appendix G–II–D–2–g. Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility retrieve the materials by opening the interior doors or the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility.

"Appendix G–II–D–2–h. An insect and rodent control program is in effect.

"Appendix G–II–D–2–i. Materials (e.g., plants, animals, and clothing) not related to the experiment being conducted are not permitted in the facility.

"Appendix G–II–D–2–j. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral part of unit) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Needless should not be bent, sheared, replaced in the needle sheath or guard, or removed from the syringe following use. The needle and syringe should be placed in a puncture-resistant container and decontaminated, preferably by autoclaving before discard or reuse. Whenever possible, cannulas are used instead of sharp needles (e.g., gavage).

"Appendix G–II–D–2–k. A system is set up for reporting laboratory accidents and exposures and employee absenteeism and for the medical surveillance of potential laboratory-associated illnesses. Written records are prepared and maintained. An essential adjunct to such a reporting surveillance system is the availability of a facility for quarantine, isolation, and medical care of personnel with potential or known laboratory associated illnesses.

"Appendix G–II–D–2–l. Laboratory animals involved in experiments requiring BL4 level physical containment shall be housed either in cages contained in Class III cabinets or in partial containment caging systems (such as Horsfall units [11]), open cages placed in ventilated enclosures, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors that are located in a specially designed area in which all personnel are required to wear one-piece positive pressure suits.

"Appendix G–II–D–2–m. *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified can be conducted in the BL4 facility using containment equipment requirements specified for the BL3 level of physical containment. Alternative combinations of containment safeguards are shown in Table I.

"Appendix G–II–D–3. *Containment Equipment.*

"Appendix G–II–D–3–a. All procedures within the facility with agents assigned to Biosafety Level 4 are conducted in the Class III biological safety cabinet or in Class I or II biological safety cabinets used in conjunction with one-piece positive pressure personnel suits ventilated by a life support system.

"Appendix G–II–D–4. *Laboratory Facilities.*

"Appendix G–II–D–4–a. The maximum containment facility consists of either a separate building or a clearly demarcated and isolated zone within a building. Outer and inner change rooms separated by a shower are provided for personnel entering and leaving the facility. A doubledoored autoclave, fumigation chamber, or ventilated airlock is provided for passage of those materials, supplies, or equipment which are not brought into the facility through the change room.

"Appendix G–II–D–4–b. Walls, floors, and ceilings of the facility are constructed to form a sealed internal shell which facilitates fumigation and is animal and insect proof. The internal surfaces of this shell are resistant to liquids and chemicals, thus facilitating cleaning and decontamination of the area. All penetrations in these structures and surfaces are sealed. Any drains in the floors contain traps filled with a chemical disinfectant of demonstrated efficacy against the target agent, and they are connected directly to the liquid waste decontamination system. Sewer and other ventilation lines contain HEPA filters.

"Appendix G–II–D–4–c. Internal facility appurtenances, such as light fixtures, air ducts, and utility pipes, are arranged to minimize the horizontal surface area on which dust can settle.

"Appendix G–II–D–4–d. Bench tops have seamless surfaces which are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

"Appendix G–II–D–4–e. Laboratory furniture is of simple and sturdy construction, and spaces between benches, cabinets, and equipment are accessible for cleaning.

"Appendix G–II–D–4–f. A foot, elbow, or automatically operated hand-washing sink is provided near the door of each laboratory room in the facility.

"Appendix G–II–D–4–g. If there is a central vacuum system, it does not serve areas outside the facility. In-line HEPA filters are placed as near as practicable to each use point or service cock. Filters are installed to permit in-place decontamination and replacement. Other liquid and gas services to the facility are protected by devices that prevent backflow.

"Appendix G–II–D–4–h. If water fountains are provided, they are foot operated and are located in the facility corridors outside the laboratory. The water service to the fountain is not connected to the backflow-protected distribution system supplying water to the laboratory areas.

"Appendix G–II–D–4–i. Access doors to the laboratory are self-closing and lockable.

"Appendix G–II–D–4–j. Any windows are breakage resistant.

"Appendix G–II–D–4–k. A double-doored autoclave is provided for decontaminating materials passing out of the facility. The autoclave door which opens to the area external to the facility is sealed to the outer wall and automatically controlled so that the outside door can only be opened after the autoclave "sterilization" cycle has been completed.

"Appendix G–II–D–4–l. A pass-through dunk tank, fumigation chamber, or an equivalent decontamination method is provided so that materials

and equipment that cannot be decontaminated in the autoclave can be safely removed from the facility.

"Appendix G–II–D–4–m. Liquid effluents from laboratory sinks, biological safety cabinets, floors, and autoclave chambers are decontaminated by heat treatment before being released from the maximum containment facility. Liquid wastes from shower rooms and toilets may be decontaminated with chemical disinfectants or by heat in the liquid waste decontamination system. The procedure used for heat decontamination of liquid wastes is evaluated mechanically and biologically by using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes from the shower room are decontaminated with chemical disinfectants, the chemical used is of demonstrated efficacy against the target or indicator microorganisms.

"Appendix G–II–D–4–n. An individual supply and exhaust air ventilation system is provided. The system maintains pressure differentials and directional airflow as required to assure flows inward from areas outside of the facility toward areas of highest potential risk within the facility. Manometers are used to sense pressure differentials between adjacent areas maintained at diafferent pressure levels. If a system malfunctions, the manometers sound an alarm. The supply and exhaust airflow is interlocked to assure inward (or zero) airflow at all times.

"Appendix G–II–D–4–o. The exhaust air from the facility is filtered through HEPA filters and discharged to the outside so that it is dispersed away from occupied buildings and air intakes. Within the facility, the filters are located as near the laboratories as practicable in order to reduce the length of potentially contaminated air ducts. The filter chambers are designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. Coarse filters and HEPA filters are provided to treat air supplied to the facility in order to increase the lifetime of the exhaust HEPA filters and to protect the supply air system should air pressures become unbalanced in the laboratory.

"Appendix G–II–D–4–p. The treated exhaust air from Class I and II biological safety cabinets can be discharged into the laboratory room environment or the outside through the facility air exhaust system. If exhaust air from Class I or II biological safety cabinets is discharged into the laboratory the cabinets are tested and certified at 6-month intervals. *The treated exhaust air from Class III biological safety cabinets is discharged, without recirculation through two sets of HEPA filters in series, via the facility exhaust air system.* If the treated exhaust air from any of these cabinets is discharged to the outside through the facility exhaust air system, it is connected to this system in a manner (e.g., thimble unit connection [12] that avoids any interference with the air balance of the cabinets or the facility exhaust air system.

"Appendix G–II–D–4–q. A specifically designed suit area may be provided in the facility. Personnel who enter this area wear a one-piece positive pressure suit that is ventilated by a life support system. The life support system includes alarms and emergency backup breathing air tanks. Entry to this area is through an airlock fitted with airtight doors. A chemical shower is provided to decontaminate the surface of the suit before the worker leaves the area. The exhaust air from the suit area is filtered by two sets of HEPA filters installed in series. A duplicate filtration unit, exhaust fan, and an automatically starting emergency power source are provided. The air pressure within the suit area is lower than that of any adjacent area. Emergency lighting and communication system are provided. All penetratins into the internal shell of the suit area are sealed. A double-doored autoclave is provided for decontaminating waste materials to be removed from the suit area."

j. The following modifications are made in Appendix G–III, *Footnotes and References of Appendix G*:

(1) The second footnote in Appendix G–III, *Footnotes and References of Appendix G is deleted.* The following language is substituted:

"2. Biosafety in Microbiological and Biomedical Laboratories, 1st Edition (March 1984) U.S. Department of Health and Human Services. Public Health Service. Centers for Disease Control, Atlanta, Georgia 30333, and National Institutes of Health, Bethesda, Maryland 20205."

(2) The following language is added to the end of Appendix G–III–12:

"National Sanitation Foundation Standard 49. 1976. Class II (Laminar Flow) Biohazard Cabinetry. Ann Arbor, Michigan."

(3) The following footnotes are added to Appendix G–III:

"13. Biosafety Level 1 is suitable for work involving agents of no known or minimal potential hazard to laboratory personnel and the environment. The laboratory is not separated from the general traffic patterns in the building. Work is generally conducted on open bench tops. Special containment equipment is not required or generally used. Laboratory personnel have specific training in the procedures conducted in the laboratory and are supervised by a scientist with general training in microbiology or a related science (see Appendix G–III–2).

"14. Biosafety Level 2 is similar to Level 1 and is suitable for work involving agents of moderate potential hazard to personnel and the environment. It differs in that: (1) laboratory personnel have specific training in handling pathogenic agents and are directed by competent scientists; (2) access to the laboratory is limited when work is being conducted; and (3) certain procedures in which infectious aerosols are created are conducted in biological safety cabinets or other physical containment equipment (see Appendix G–III–2).

"15. Office of Research Safety, National Cancer Institute, and the Special Committee of Safety and Health Experts. 1978. 'Laboratory Safety Monograph: A Supplement to the NIH Guidelines for Recombinant DNA Research.' Bethesda, Maryland, National Institutes of Health.

"16. Biosafety Level 3 is applicable to clinical, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents which may cause serious or potentially lethal disease as a result of exposure by the inhalation route. Laboratory personnel have specific training in handling pathogenic and potentially lethal agents and are supervised by competent scientists who are experienced in working with these agents. All procedures involving the manipulation of infectious material are conducted within biological safety cabinets or other physical containment devices or by personnel wearing appropriate personal protective clothing and devices. The laboratory has special engineering and design features. It is recognized, however, that many existing facilities may not have all the facility safeguards recommended for Biosafety Level 3 (e.g., access zone, sealed penetrations, and directional airflow, etc.). In these circumstances, acceptable safety may be achieved for routine or repetitive operations (e.g., diagnostic procedures involving the propagation of an agent for identification, typing, and susceptibility testing) in laboratories where facility features satisfy Biosafety Level 2 recommendations provided the recommended 'Standard Microbiological Practices,' 'Special Practices,' and 'Containment Equipment' for Biosafety Level 3 are rigorously followed. The decision to implement this modification of Biosafety Level 3 recommendations should be made only by the laboratory director (see Appendix G–III–2)."

k. Table I and Table II of Appendix G are deleted and the following table is substituted.

TABLE 1.—POSSIBLE ALTERNATIVE COMBINATIONS OF PHYSICAL AND BIOLOGICAL CONTAINMENT SAFEGUARDS

Classification of physical and biological containment	Alternate physical containment			Alternate biological containment
	Laboratory facilities	Laboratory practices	Containment equipment	
BL3/HV2	BL3	BL3	BL3	HV2
	BL3	BL3	BL4	HV1
BL3/HV1	BL3	BL3	BL3	HV1
	BL3	BL3	BL2	HV2
BL4/HV1	BL4	BL4	BL4	HV1
	BL4	BL4	BL3	HV2

8. Appendix H. *Shipment*

a. Wherever the terms "Pl, P2, P3, P4" appear, the term "BL1" is substituted for the term "P1;" the term "BL2" is substituted for "P2;" the term "BL3" is substituted for "P3;" and the term "BL4" is substituted for "P4."

b. Appendix H–III of Appendix H, *Shipment,* is modified to read as follows:

Appendix H–III. Information on packaging and labeling of etiologic agents is shown in Figures 1, 2, and 3. Additional information on packaging and shipment is given in the 'Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research,' available from the Office of Recombinant DNA Activities and in 'Biosafety in Microbiological and Biomedical Laboratories' (see Appendix G–III–2)."

9. Appendix K, Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules.

a. Wherever the terms "Pl, P2, P3, P4" appear, the term "BL1" is substituted for the term "P1;" the term "BL2" is substituted for the term "P2;" the term "BL3" is substituted for "P3;" and the term "BL4" is substituted for "P4."

b. Wherever the terms "Pl–LS, P2–LS, P3–LS, P4–LS" appear, the term "BL1–LS" (for Biosafety Level 1—large-Scale) is substituted for term "P1–LS;" the term "BL2–LS" is substituted for "P2–LS;" and the term "BL3–LS" is substituted for "P3–LS."

Dated: November 15, 1984.

James B. Wyngaarden, M.D.,

Director, National Institutes of Health.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalogue of Federal Domestic Assistance are affected.

[FR Doc. 84-30941 Filed 11-21-84; 8:45 am]

BILLING CODE 4140-01-M

OL
9
SS
27
NO
23
984
MI

federal register

Friday
November 23, 1984

Part VI

Department of Health and Human Services

National Institutes of Health

Guidelines for Research Involving Recombinant DNA Molecules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Guidelines For Research Involving Recombinant DNA Molecules

November 1984.

These NIH guidelines supersede earlier versions and will be in effect until further notice.

Table of Contents

I. Scope of the Guidelines
- I–A. Purpose
- I–B. Definition of Recombinant DNA Molecules
- I–C. General Applicability
- I–D. General Definitions

II. Containment

III. Guidelines for Covered Experiments
- III–A. Experiments that Require RAC Review and NIH and IBC Approval Before Initiation
- III–B. Experiments that Require IBC Approval Before Initiation
- III–B–1. Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents) as Host-Vector Systems
- III–B–2. Experiments in Which DNA from Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents) is Cloned in Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems
- III–B–3. Experiments Involving the Use of Infectious Animal or Plant Viruses or Defective Animal or Plant Viruses in the Presence of Helper Virus in Tissue Culture Systems
- III–B–4. Recombinant DNA Experiments Involving Whole Animals or Plants
- III–B–5. Experiments Involving More than 10 Liters of Culture
- III–C. Experiments that Require IBC Notice Simultaneously with Initiation of Experiments
- III–D. Exempt Experiments

IV. Roles and Responsibilities
- IV–A. Policy
- IV–B. Responsibilities of the Institution
- IV–B–1. General Information
- IV–B–2. Membership and Procedures of the IBC
- IV–B–3. Functions of the IBC
- IV–B–4. Biological Safety Officer
- IV–B–5. Principal Investigator (PI)
- IV–B–5–a. PI—General
- IV–B–5–b. Submissions by the PI to NIH
- IV–B–5–c. Submissions by the PI to the IBC
- IV–B–5–d. PI Responsibilities Prior to Initiating Research
- IV–B–5–e. PI Responsibilities During the Conduct of the Research
- IV–C. Responsibilities of NIH
- IV–C–1. Director
- IV–C–1–a. General Responsibilities of the Director, NIH
- IV–C–1–b. Specific Responsibilities of the Director, NIH
- IV–C–2. Recombinant DNA Advisory Committee
- IV–C–3. Office of Recombinant DNA Activities
- IV–C–4. Other NIH Components
- IV–D. Compliance
- V. Footnotes and References of Sections I–IV

VI. Voluntary Compliance
- VI–A. Basic Policy
- VI–B. IBC Approval
- VI–C. Certification of Host-Vector Systems
- VI–D. Requests for Exemptions and Approvals
- VI–E. Protection of Proprietary Data

Appendix A. Exemptions Under III–D–4

Appendix B. Classification of Microorganisms on the Basis of Hazard
- Appendix B–I. Classification of Etiologic Agents
- Appendix B–I–A. Class 1 Agents
- Appendix B–I–B. Class 2 Agents
- Appendix B–I–B–1. Bacterial Agents
- Appendix B–I–B–2. Fungal Agents
- Appendix B–I–B–3. Parasitic Agents
- Appendix B–I–B–4. Viral, Rickettsial, and Chlamydial Agents
- Appendix B–I–C. Class 3 Agents
- Appendix B–I–C–1. Bacterial Agents
- Appendix B–I–C–2. Fungal Agents
- Appendix B–I–C–3. Parasitic Agents
- Appendix B–I–C–4. Viral, Rickettsial, and Chlamydial Agents
- Appendix B–I–D. Class 4 Agents
- Appendix B–I–D–1. Bacterial Agents
- Appendix B–I–D–2. Fungal Agents
- Appendix B–I–D–3. Parasitic Agents
- Appendix B–I–D–4. Viral, Rickettsial, and Chlamydial Agents
- Appendix B–II. Classification of Oncogenic Viruses on the Basis of Potential Hazard
- Appendix B–II–A. Low-Risk Oncogenic Viruses
- Appendix B–II–B. Moderate-Risk Oncogenic Viruses
- Appendix B–III. Class 5 Agents
- Appendix B–III–A. Animal Disease Organisms Which are Forbidden Entry into the United States by Law
- Appendix B–III–B. Animal Disease Organisms and Vectors Which are Forbidden Entry into the United States by USDA Policy
- Appendix B–III–C. Organisms Which may not be Studied in the United States Except at Specified Facilities
- Appendix B–IV. Footnotes and References of Appendix B

Appendix C. Exemptions Under III–D–5
- Appendix C–I. Recombinant DNAs in Tissue Culture
- Appendix C–II. Experiments Involving *E. coli* K–12 Host-Vector Systems
- Appendix C–III. Experiments Involving *Saccharomyces cerevisiae* Host-Vector Systems
- Appendix C–IV. Experiments Involving *Bacillus subtilis* Host-Vector Systems
- Appendix C–V. Footnotes and References of Appendix C

Appendix D. Actions Taken Under the Guidelines

Appendix E. Certified Host-Vector Systems

Appendix F. Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates
- Appendix F–I. General Information
- Appendix F–II. Containment Conditions for Cloning of Toxic Molecule Genes in *E. coli* K–12
- Appendix F–III. Containment Conditions for Cloning of Toxic Molecule Genes in Organisms Other than *E. coli* K–12
- Appendix F–IV. Specific Approvals

Appendix G. Physical Containment
- Appendix G–I. Standard Practices Training
- Appendix G–II. Physical Containment Levels
- Appendix G–II–A. Biosafety Level 1 (BL1)
- Appendix G–II–A–1. Standard Microbiological Practices
- Appendix G–II–A–2. Special Practices
- Appendix G–II–A–3. Containment Equipment
- Appendix G–II–A–4. Laboratory Facilities
- Appendix G–II–B. Biosafety Level 2 (BL2)
- Appendix G–II–B–1. Standard Microbiological Practices
- Appendix G–II–B–2. Special Practices
- Appendix G–II–B–3. Containment Equipment
- Appendix G–II–B–4. Laboratory Facilities
- Appendix G–II–C. Biosafety Level 3 (BL3)
- Appendix G–II–C–1. Standard Microbiological Practices
- Appendix G–II–C–2. Special Practices
- Appendix G–II–C–3. Containment Equipment
- Appendix G–II–C–4. Laboratory Facilities
- Appendix G–II–D. Biosafety Level 4 (BL4)
- Appendix G–II–D–1. Standard Microbiological Practices
- Appendix G–II–D–2. Special Practices
- Appendix G–II–D–3. Containment Equipment
- Appendix G–II–D–4. Laboratory Facilities
- Appendix G–III. Footnotes and References of Appendix G

Appendix H. Shipment

Appendix I. Biological Containment
- Appendix I–I. Levels of Biological Containment
- Appendix I–I–A. HV1
- Appendix I–I–A–1. EK1
- Appendix I–I–A–2. Other HV1
- Appendix I–I–B. HV2
- Appendix I–II. Certification of Host-Vector Systems
- Appendix I–II–A. Responsibility
- Appendix I–II–B. Data to be Submitted for Certification
- Appendix I–II–B–1. HV1 Systems Other than *E. coli* K–12
- Appendix I–II–B–2. HV2 Systems
- Appendix I–III. Footnotes and References of Appendix I

Appendix J. Federal Interagency Advisory Committee on Recombinant DNA Research
- Appendix J–I. Federal Interagency Advisory Committee
- Appendix J–II. Footnote of Appendix J

Appendix K. Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules
- Appendix K–I. Selection of Physical Containment Levels
- Appendix K–II. BL1–LS Level
- Appendix K–III. BL2–LS Level
- Appendix K–IV. BL3–LS Level

Appendix L. Release into the Environment of Certain Plants
- Appendix L–I. General Information
- Appendix L–II. Criteria Allowing Review by the RAC Plant Working Group Without the Requirement for Full RAC Review
- Appendix L–III. Specific Approvals

I. Scope of the Guidelines

I–A. Purpose. The purpose of these Guidelines is to specify practices for constructing and handling: (i) Recombinant DNA molecules and (ii) organisms and viruses containing recombinant DNA molecules.

I–B. Definition of Recombinant DNA Molecules. In the context of these Guidelines, recombinant DNA molecules are defined as either: (i) Molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules that result from the replication of those described in (i) above.

Synthetic DNA segments likely to yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent) shall be considered as equivalent to their natural DNA counterpart. If the synthetic DNA segment is not expressed *in vivo* as a biologically active polynucleotide or polypeptide product, it is exempt from the Guidelines.

I–C. General Applicability. The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an Institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an Institution that can and does assume the responsibilities assigned in these Guidelines.

The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

I–D. General Definitions. The following terms, which are used throughout the Guidelines, are defined as follows:

I–D–1. "Institution" means any public or private entity (including Federal, State, and local government agencies).

I–D–2. "Institutional Biosafety Committee" or "IBC" means a committee that: (i) Meets the requirements for membership specified in Section IV–B–2, and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in Sections IV–B–2 and IV–B–3.

I–D–3. "NIH Office of Recombinant DNA Activities" or "ORDA" means the office within NIH with responsibility for: (i) Reviewing and coordinating all activities of NIH related to the Guidelines, and (ii) performing other duties as defined in Section IV–C–3.

I–D–4. "Recombinant DNA Advisory Committee" or "RAC" means the public advisory committee that advises the Secretary, the Assistant Secretary for Health, and the Director of the NIH concerning recombinant DNA research. The RAC shall be constituted as specifed in Section IV–C–2.

I–D–5. "Director, NIH" or "Director" means the Director of the NIH or any other officer or employee of NIH to whom authority has been delegated.

II. Containment

Effective biological safety programs have been operative in a variety of laboratories for many years. Considerable information, therefore, already exists for the design of physical containment facilities and the selection of laboratory procedures applicable to organisms carrying recombinant DNAs (*3–16*). The existing programs rely upon mechanisms that, for convenience, can be divided into two categories: (i) A set of standard practices that are generally used in microbiological laboratories, and (ii) special procedures, equipment, and laboratory installations that provide physical barriers which are applied in varying degrees according to the estimated biohazard. Four biosafety levels (BL) are described in Appendix G. These biosafety levels consist of combinations of laboratory practices and techniques, safety equipment, and laboratory facilities appropriate for the operations performed and the hazard posed by agents and for the laboratory function and activity. BL4 provides the most stringent containment conditions, BL1 the least stringent.

Experiments on recombinant DNAs by their very nature lend themselves to a third containment mechanism—namely, the application of highly specific biological barriers. In fact, natural barriers do exist which limit either: (i) The infectivity of a *vector* or *vehicle* (plasmid or virus) for specific hosts, or (ii) its dissemination and survival in the environment. The vectors that provide the means for replication of the recombinant DNAs and/or the host cells in which they replicate can be genetically designed to decrease by many orders of magnitude the probability of dissemination of recombinant DNAs outside the laboratory. Further details on biological containment may be found in Appendix I.

As these three means of containment are complementary, different levels of containment appropriate for experiments with different recombinants can be established by applying various combinations of the physical and biological barriers along with a constant use of the standard practices. We consider these categories of containment separately in order that such combinations can be conveniently expressed in the Guidelines.

In constructing these Guidelines, it was necessary to define boundary conditions for the different levels of physical and biological containment and for the classes of experiments to which they apply. We recognize that these definitions do not take into account all existing and anticipated information on special procedures that will allow particular experiments to be carried out under different conditions than indicated here without affecting risk. Indeed, we urge that individual investigators devise simple and more effective containment procedures, and that investigators and IBCs recommend changes in the Guidelines to permit their use.

III. Guidelines for Covered Experiments

Part III discusses experiments involving recombinant DNA. These experiments have been divided into four classes:

III–A. Experiments which require specific FAC review and NIH and IBC approval before initiation of the experiment;

III–B. Experiments which require IBC approval before initiation of the experiment;

III–C. Experiments which require IBC notification at the time of initiation of the experiment;

III–D. Experiments which are exempt from the procedures of the Guidelines.

IF AN EXPERIMENT FALLS INTO BOTH CLASS III–A AND ONE OF THE OTHER CLASSES, THE RULES PERTAINING TO CLASS III–A MUST BE FOLLOWED. If an experiment falls into Class III–D and into either Class III–B or III–C as well, it can be considered exempt from the requirements of the Guidelines.

Changes in containment levels from those specified here may not be instituted without the express approval of the Director, NIH (see Sections IV–C–1–b–(1), IV–C–1–b–(2), and subsections).

III–A. Experiments that Require RAC Review and NIH and IBC Approval

Before Initiation. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, the publication of the proposal in the **Federal Register** for thirty days of comment, review by the RAC, and specific approval by NIH. The containment conditions for such experiments will be recommended by RAC and set by NIH at the time of approval. Such experiments also require the approval of the IBC before initiation. Specific experiments already approved in this section and the appropriate containment conditions are listed in Appendices D and F. If an experiment is similar to those listed in Appendices D and F, ORDA may determine appropriate containment conditions according to case precedents under Section IV–C–1–b–(3)–(g).

III–A–1. Deliberate formation of recombinant DNAs containing genes for the biosynthesis of toxic molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diptheria toxin, *Shigella dysenteriae* neurotoxin). Specific approval has been given for the cloning in *E. coli* K–12 of DNA containing genes coding for the biosynthesis of toxic molecules which are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Containment levels for these experiments are specified in Appendix F.

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L.

III–A–3. Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire it naturally (*2*), if such acquisition could compromise the use of the drug to control disease agents in human or veterinary medicine or agriculture.

III–A–4. Deliberate transfer of recombinant DNA or DNA derived from recombinant DNA into human subjects (*21*). The requirement for RAC review should not be considered to preempt any other required review of experiments with human subjects. Institutional Review Board (IRB) review of the proposal should be completed before submission to NIH.

III–B. Experiments that Require IBC Approval Before Initiation. Investigators performing experiments in this category must submit to their IBC, prior to initiation of the experiments, a registration document that contains a description of: (i) The source(s) of DNA; (ii) the nature of the inserted DNA sequences; (iii) the hosts and vectors to be used; (iv) whether a deliberate attempt will be made to obtain expression of a foreign gene, and, if so, what protein will be produced; and (v) the containment conditions specified in these Guidlelines. This registration document must be dated and signed by the investigator and filed only with the local IBC. The IBC shall review all such proposals prior to initiation of the experiments. Requests for lowering of containment for experiments in this category will be considered by NIH (see Section IV–C–1–b–(3)).

III–B–1. Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents (1) as Host-Vector Systems.

III–B–1–a. Experiments involving the introduction of recombinant DNA into Class 2 agents can be carried out at BL2 containment.

III–B–1–b. Experiments involving the introduction of recombinant DNA into Class 3 agents can be carried out at BL3 containment.

III–B–1–c. Experiments involving the introduction of recombinant DNA into Class 4 agents can be carried out at BL4 containment.

III–B–1–d. Containment conditions for experiments involving the introduction of recombinant DNA into class 5 agents will be set on a case-by-case basis following ORDA review. A U.S. Department of Agriculture (USDA) permit is required for work with Class 5 agents (*18, 20*).

III–B–2. Experiments in Which DNA from Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 agents (1) is Cloned in Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems.

III–B–2–a. Recombinant DNA experiments in which DNA from Class 2 or Class 3 agents (*1*) is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment. Recombinant DNA experiments in which DNA from Class 4 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes can be performed at BL2 containment after demonstration that only a totally and irreversibly defective fraction of the agent's genome is present in a given recombinant. In the absence of such a demonstration, BL4 containment should be used. Specific lowering of containment to BL1 for particular experiments can be approved by the IBC. Many experiments in this category will be exempt from the guidelines (see Sections III–D–4 and III–D–5). Experiments involving the formation of recombinant DNAs for certain genes coding for molecules toxic for vertebrates require RAC review and NIH approval (see Section III–A–1) or must be carried out under NIH specified conditions as described in Appendix F.

III–B–2–b. Containment conditions for experiments in which DNA from Class 5 agents is transferred into nonpthogenic prokaryotes or lower eukaryotes will be determined by ORDA following a case-by-case review. A USDA permit is required for work with Class 5 agents (*18, 20*).

III–B–3. Experiments Involving the Use of Infectious Animal or Plant Viruses or Defective Animal or Plant Viruses in the Presence of Helper Virus in Tissue Culture Systems.

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions which permit a productive infection. In such cases, serious consideration should be given to raising the physical containment by at least one level.

Note.—Recombinant DNA molecules which contain less than two-thirds of the genome of any eukaryotic virus (all virus from a single Family(*17*) being considered identical (*19*) may be considered defective and can be used in the absence of helper under the conditions specified in Section III–C.

III–B–3–a. Experiments involving the use of infectious Class 2 animal viruses (*1*) or defective Class 2 animal viruses in the presence of helper virus can be performed at BL2 containment.

III–B–3–b. Experiments involving the use of infectious Class 3 animal viruses (*1*) or defective Class 3 animal viruses in the presence of helper virus can be carried out at BL3 containment.

III–B–3–c. Experiments involving the use of infectious Class 4 viruses (*1*) or defective Class 4 viruses in the presence of helper virus may be carried out under BL4 containment.

III–B–3–d. Experiments involving the use of infectious Class 5 (*1*) viruses or defective Class 5 viruses in the presence of helper virus will be determined on a case-by-case basis following ORDA review. A USDA permit is required for work with Class 5 pathogens (*18, 20*).

III–B–3–e. Experiments involving the use of infectious animal or plant viruses or defective animal or plant viruses in the presence of helper virus not covered by Sections III–B–3–a, III–B–3–b, III–B–3–c, or III–B–3–d may be carried out under BL1 containment.

III–B–4. Recombinant DNA Experiments Involving Whole Animals or Plants.

III–B–4–a. DNA from any source except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to BL1 and appropriate to the organism under study (*2*). It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A USDA permit is required for work with Class 5 agents. (*18, 20*)

III–B–4–b. For all experiments involving whole animals and plants and not covered by Section III–B–4–a, the appropriate containment will be determined by the IBC (*22*).

III–B–5. Experiments Involving More Than 10 Liters of Culture. The appropriate containment will be decided by the IBC. Where appropriate, Appendix K, *Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules*, should be used.

III–C. Experiments that Require IBC Notice Simultaneously with Initiation of Experiments. Experiments not included in Sections III–A, III–B, III–D, and subsections of these sections are to be considered in Section III–C. All such experiments can be carried out at BL1 containment. For experiments in this category, a registration document as described in Section III–B must be dated and signed by the investigator and filed with the local IBC at the time of initiation of the experiment. The IBC shall review all such proposals, but IBC review prior to initiation of the experiment is not required. (The reader should refer to the policy statement in the first two paragraphs of Section IV–A.)

For example, experiments in which all components derive from non-pathogenic prokaryotes and non-pathogenic lower eukaryotes fall under Section III–C and can be carried out at BL1 containment.

Caution: Experiments Involving Formation of Recombinant DNA Molecules Containing no more than Two-Thirds of the Genome of any Eukaryotic Virus. Recombinant DNA molecules containing no more than two-thirds of the genome of any eukaryotic virus (all viruses from a single Family (*17*) being considered identical (*19*)) may be propagated and maintained in cells in tissue culture using BL1 containment. For such experiments, it must be shown that the cells lack helper virus for the specific Families of defective viruses being used. If helper virus is presented, procedures specified under Section II–B–3 should be used. The DNA may contain fragments of the genome of viruses from more than one Family but each fragment must be less than two-thirds of a genome.

III–D. Exempt Experiments. The following recombinant DNA molecules are exempt from these Guidelines and no registration with the IBC is necessary:

III–D–1. Those that are not in organisms or viruses.

III–D–2. Those that consist entirely of DNA segments from a single nonchromosomal or viral DNA source though one or more of the segments may be a synthetic equivalent.

III–D–3. Those that consist entirely of DNA from a prokaryotic host including its indigenous plasmids or viruses when propagated only in that host (or a closely related strain of the same species) or when transferred to another host by well established physiological means; also, those that consist entirely of DNA from an eukaryotic host including its chloroplasts, mitochondria, or plasmids (but excluding viruses) when propagated only in that host (or a closely related strain of the same species).

III–D–4. Certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodicaly revised by the Director, NIH, with advice of the RAC after appropriate notice and opportunity for public comment (see Section IV–C–1–b–(1)–(c)). Certain classes are exempt as of publication of these revised Guidelines. This list is in Appendix A. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland 20205.

III–D–5. Other classes of recombinant DNA molecules if the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment (see Section IV–C–1–b–(1)–(c)). Certain classes are exempt as of publication of these revised Guidelines. The list is in Appendix C. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland 20205.

IV. Roles and Responsibilities

IV–A. Policy. Safety in activities involving recombinant DNA depends on the individual conducting them. The Guidelines cannot anticipate every possible situation. Motivation and good judgment are the key essentials to protection of health and the environment.

The Guidelines are intended to help the Institution, Institutional Biosafety Committee (IBC), Biological Safety Officer (BSO), and Principle Investigator (PI) determine the safeguards that should be implemented. These Guidelines will never be complete or final, since all conceivable experiments involving recombinant DNA cannot be foreseen. Therefore, *it is the responsibility of the Institution and those associated with it to adhere to the intent of the Guidelines as well as to their specifics.*

Each Institution (and the IBC acting on its behalf) is responsible for ensuring that recombinant DNA activities comply with the Guidelines. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level.

The following roles and responsibilities constitute an administrative framework in which safety is an essential and integral part of research involving recombinant DNA molecules. Further clarifications and interpretations of roles and responsibilities will be issued by NIH as necessary.

IV–B. Responsibilities of the Institution.

IV–B–1. General Information. Each Institution conducting or sponsoring recombinant DNA research covered by these Guidelines is responsible for ensuring that the research is carried out in full conformity with the provisions of the Guidelines. In order to fulfill this responsibility, the Institution shall:

IV–B–1–a. Establish and implement policies that provide for the safe conduct of recombinant DNA research and that ensure compliance with the Guidelines. The Institution as part of its general responsibilities for implementing the Guidelines may establish additional procedures as necessary to govern the Institution and its components in the discharge of its responsibilities under the Guidelines. This may include: (i) Statements formulated by the Institution for general implementation of the Guidelines, and (ii) whatever additional precautionary steps the Institution may deem appropriate.

IV–B–1–b. Establish an IBC that meets the requirements set forth in Section IV–B–2 and carries out the functions detailed in Section IV–B–3.

IV–B–1–c. If the Institution is engaged in recombinant DNA research at the BL3 or BL4 containment level, appoint a BSO, who shall be a member of the IBC

and carry out the duties specified in Section IV–B–4.

IV–B–1–d. Require that investigators responsible for research covered by these Guidelines comply with the provisions of Section IV–B–5 and assist investigators to do so.

IV–B–1–e. Ensure appropriate training for the IBC chairperson and members, the BSO, PIs, and laboratory staff regarding the Guidelines, their implementation, and laboratory safety. Responsibility for training IBC members may be carried out through the IBC chairperson. Responsibility for training laboratory staff may be carried out through the PI. The Institution is responsible for seeing that the PI has sufficient training but may delegate this responsibility to the IBC.

IV–B–1–f. Determine the necessity in connection with each project for health surveillance of recombinant DNA research personnel, and conduct, if found appropriate, a health surveillance program for the project. [The "Laboratory Safety Monograph" (LSM) discusses various possible components of such a program—for example, records of agents handled, active investigation of relevant illnesses, and the maintenance of serial serum samples for monitoring serologic changes that may result from the employees' work experience. Certain medical conditions may place a laboratory worker at increased risk in any endeavor where infectious agents are handled. Examples given in the LSM include gastrointestinal disorders and treatment with steroids, immunosuppressive drugs, or antibiotics. Workers with such disorders or treatment should be evaluated to determine whether they should be engaged in research with potentially hazardous organisms during their treatment or illness. Copies of the LSM are available from ORDA.]

IV–B–1–g. Report within 30 days to ORDA any significant problems with and violations of the Guidelines and significant research-related accidents and illnesses, unless the institution determines that the PI or IBC has done so.

IV–B–2. Membership and Procedures of the IBC. Institution shall establish an IBC whose responsibilities need not be restricted to recombinant DNA. The committee shall meet the following requirements:

IV–B–2–a. The IBC shall comprise no fewer than five members so selected that they collectively have experience and expertise in recombinant DNA technology and the capability to assess the safety of recombinant DNA research experiments and any potential risk to public health or the environment. At least two members shall not be affiliated with the Institution (apart from their membership on the IBC) and shall represent the interest of the surrounding community with respect to health and protection of the environment. Members meet this requirement if, for example, they are officials of State or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community. The BSO, mandatory when research is being conducted at the BL3 and BL4 levels, shall be a member (see Section IV–B–4).

IV–B–2–b. In order to ensure the competence necessary to review recombinant DNA activites, it is recommended that: (i) The IBC include persons with expertise in recombinant DNA technology, biological safety, and physical containment; (ii) the IBC include, or have available as consultants, persons konwledgeable in institutional commitments and policies, applicable law, standards of professional conduct and practice, community attitudes, and the environment; and (iii) at least one member be from the laboratory technical staff.

IV–B–2–c. The Institution shall identify the committee members by name in a report to ORDA and shall include relevant background information on each member in such form and at such times as ORDA may require.

IV–B–2–d. No member of an IBC may be involved (except to provide information requested by the IBC) in the review or approval of a project in which he or she has been or expects to be engaged or has a direct financial interest.

IV–B–2–e. The Institution, who is ultimately responsible for the effectiveness of the IBC, may establish procedures that the IBC will follow in its initial and continuing review of applications, proposals, and activities. (IBC review procedures are specified in Section IV–B–3–a.)

IV–B–2–f. Institutions are encouraged to open IBC meetings to the public whenever possible, consistent with protection of privacy and proprietary interests.

IV–B–2–g. Upon request, the Instituiton shall make available to the public all minutes of IBC meetings and any documents submitted to or received from funding agencies which the latter are required to make available to the public. If comments are made by members of the public on IBC actions, the Institution shall forward to NIH both the comments and the IBC's response.

IV–B–3. Functions of the IBC. On behalf of the Institution, the IBC is responsible for:

IV–B–3–a. Reviewing for compliance with the NIH Guidelines recombinant DNA research as specified in Part III conducted at or sponsored by the Institution, and approving those research projects that it finds are in conformity with the Guidelines. This review shall include:

IV–B–3–a–(1). An independent assessment of the containment levels required by these Guidelines for the proposed research, and

IV–B–3–a(2). An assessment of the facilities, procedures, and practices, and of the training and expertise of recombinant DNA personnel.

IV–B–3–b. Notifying the PI of the results of their review.

IV–B–3–c. Lowering containment levels for certain experiments as specified in Section III–B–2.

IV–B–3–d. Setting containment levels as specified in Section III–B–4–d and III–B–5.

IV–B–3–e. Reviewing periodically recombinant DNA research being conducted at the Institution to ensure that the requirements of the Guidelines are being fulfilled.

IV–B–3–f. Adopting emergency plans covering accidental spills and personnel contamination resulting from such research.

Note—Basic elements in developing specific procedures for dealing with major spills of potentially hazardous materials in the laboratory are detailed in the LSM. Included are information and references on decontamination and emergency plans. NIH and the Centers for Disease Control are available to provide consultation and direct assistance, if necessary, as posted in the LSM. The Institution shall cooperate with the State and local public health departments reporting any significant research-related illness or accident that appears to be a hazard to the public health.

IV–B–3–g. Reporting within 30 days to the appropriate institutional official and to ORDA any significant problems with or violations of the Guidelines and any significant research-related accidents or illnesses unless the IBC determines that the PI has done so.

IV–B–3–h. The IBC may not authorize initiation of experiments not explicitly covered by the Guidelines until NIH (with the advice of the RAC when required) established the containment requirement.

IV–B–3–i. Performing such other functions as may be delegated to the IBC under Section IV–B–1.

IV–B–4. Biological Safety Officer. The Institution shall appoint a BSO if it engages in recombinant DNA research at the BL3 or BL4 containment level. The officer shall be a member of the IBC, and his or her duties shall include (but need not be limited to):

IV–B–4–a. Ensuring through periodic inspections that laboratory standards are rigorously followed;

IV–B–4–b. Reporting to the IBC and the Institution all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses of which the BSO becomes aware unless the BSO determines that the PI has done so;

IV–B–4–c. Developing emergency plans for dealing with accidental spills and personnel contamination and investigating recombinant DNA research laboratory accidents;

IV–B–4–d. Providing advice on laboratory security;

IV–B–4–e. Providing technical advice to the PI and the IBC on rsearch safety procedures.

Note—See LSM for additional information on the duties of the BSO.

IV–B–5. Principal Investigator (PI). On behalf of the Institution, the PI is responsible for complying fully with the Guidelines in conducting any recombinant DNA research.

IV–B–5–a. PI—General. As part of this general responsibility, the PI shall:

IV–B–5–a(1). Initiate or modify no recombinant DNA research requiring approval by the IBC prior to initiation (see Sections III–A and III–B) until that research or the proposed modification thereof has been approved by the IBC and has met all other requirements of the Guidelines;

IV–B–5–a–(2). Determine whether experiments are covered by Section III–C and follow the appropriate procedures;

IV–B–5–a–(3). Report within 30 days to the IBC and NIH (ORDA) all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses;

IV–B–5–a–(4). Report to the IBC and to NIH (ORDA) new information bearing on the Guidelines;

IV–B–5–a–(5). Be adequately trained in good microbiological techniques;

IV–B–5–a–(6). Adhere to IBC-approved emergency plans for dealing with accidential spills and personel contamination; and

IV–B–5–a–(7). Comply with shipping requirements for recombinant DNA molecules. (See Appendix H for shipping requirements and the LSM for technical recommendations.)

IV–B–5–b. Submissions by the PI to NIH. The PI shall:

IV–B–5–b–(1). Submit information to NIH (ORDA) in order to have new host-vector systems certified;

IV–B–5–b–(2). Petition NIH with notice to the IBC for exemptions to these Guidelines;

IV–B–5–b–(3). Petition NIH with concurrence of the IBC for approval to conduct experiments specified in Section III–A of the Guidelines;

IV–B–5–b–(4). Petition NIH for determination of containment for experiments requiring case-by-case review;

IV–B–5–b–(5). Petition NIH for determination of containment for experiments not covered by the Guidelines.

IV–B–5–c. Submissions by the PI to the IBC. The PI shall:

IV–B–5–c–(1). Make the initial determination of the required levels of physicial and biological containment in accordance with the Guidelines;

IV–B–5–c–(2). Select appropriate microbiological practices and laboratory techniques to be used in the research;

IV–B–5–c–(3). Submit the initial research protocol if covered under Guidelines Sections III–A, III–B, or III–C (and also subsequent changes—e.g., changes in the source of DNA or host-vector system) to be IBC for review and approval or disapproval; and

IV–B–5–c–(4). Remain in communication with the IBC throughtout the conduct of the project.

IV–B–5–d. PI Responsibilities Prior to Initiating Research. The PI is responsible for:

IV–B–5–d–(1). Making available to the laboratory staff copies of the protocols that describe the potential biohazards and the precautions to be taken;

IV–B–5–d–(2). Instructing and training staff in the practices and techniques required to ensure safety and in the procedures for dealing with accidents; and

IV–B–5–d–(3). Informing the staff of the reasons and provisions for any precautionary medical practices advised or requested, such as vaccinations or serum collection.

IV–B–5–e. PI Responsibilities During the Conduct of the Research. The PI is responsibile for:

IV–B–5–e–(1). Supervising the safety performance of the staff to ensure that the required safety practices and techniques are employed;

IV–B–5–e–(2). Investigating and reporting in writing to ORDA, the BSO (where applicable), and the IBC any significant problems pertaining to the operation and implementation of containment practices and procedures;

IV–B–5–e–(3). Correcting work errors and conditions that may result in the release of recombinant DNA materials;

IV–B–5–e–(4). Ensuring the integrity of the physical containment (e.g., biological safety cabinets) and the biological containment (e.g., purity and genotypic and phenotypic characteristics).

IV–C. Responsibilities of NIH.

IV–C–1. Director. The Director, NIH, is responsible for: (i) Establishment the NIH Guidelines for Research Involving Recombinant DNA Molecules, (ii) overseeing their implementation, and (iii) their final interpretation.

The Director has responsibilities under the Guidelines that involve ORDA and RAC. ORDA's responsibilities under the Guidelines are administrative. Advice from the RAC is primarily scientific and technical. In certain circumstances, there is specific opportunity for public comment with published response before final action.

IV–C–1–a. General Responsibilities of the Director, NIH. The responsibilities of the Director shall include the following:

IV–C–1–a–(1). Promulgating requirements as necessary to implement the Guidelines;

IV–C–1–a–(2). Establishing and maintaining the RAC to carry out the responsibilities set forth in Section IV–C–2. The RAC's membership is specified in its charter and in Section IV–C–2;

IV–C–1–a–(3). Establishing and maintaining ORDA to carry out the responsibilities defined in Section IV–C–3; and

IV–C–1–b–(4). Maintaining the Federal Interagency Advisory Committee on Recombinant DNA Reseach established by the Secretary, HEW (now HHS), for advice on the coordination of all Federal programs and activities relating to recombinant DNA including activities of the RAC (see Appendix J).

IV–C–1–b. Specific Responsibilities of the Director, NIH. In carrying out the responsibilities set forth in this section, the Director or a designee shall weigh each proposed action through appropriate analysis and consultation to determine that is complies with the Guidelines and presents no significant risk to health or the environment.

IV–C–1–b–(1) Major Actions. To execute major actions the Director must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RAC meeting citing the major actions will be published in the **Federal Register** at least 30 days before the meeting, and the Director will also publish the proposed actions in the **Federal Register** for comment at least 30

days before the meeting. In addition, the Director's proposed decision, at his discretion, may be published in the Federal Register for 30 days of comment before final action is taken. The Director's final decision, along with response to the comments, will be published in the Federal Register and the *Recombinant DNA Technical Bulletin*. The RAC and IBC chairpersons will be notified of this decision:

IV–C–1–b–(1)–(a). Changing containment levels for types of experiments that are specified in the Guidelines when a major action is involved;

IV–C–1–b–(1)–(b). Assigning containment levels for types of experiments that are not explicitly considered in the Guidelines when a major action is involved;

IV–C–1–b–(1)–(c). Promulgating and amending a list of classes of recombinant DNA molecules to be exempt from these Guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes or otherwise do not present a significant risk to health or the environment;

IV–C–1–b–(1)–(d). Permitting experiments specified by Section III–A of the Guidelines;

IV–C–1–b–(1)–(e). Certifying new host-vector systems with the exception of minor modifications of already certified systems (the standards and procedures for certification are described in Appendix I–II–A. Minor modifications constitute, for example, those of minimal or no consequence to the properties relevant to containment); and

IV–C–1–b–(1)–(f). Adopting other changes in the Guidelines.

IV–C–1–b–(2). Lesser Actions. To execute lesser actions, the Director must seek the advice of the RAC. The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin*:

IV–C–1–b–(2)–(a). Interpreting and determining containment levels upon request by ORDA;

IV–C–1–b–(2)–(b). Changing containment levels for experiments that are specified in the Guidelines (see Section III);

IV–C–1–b–(2)–(c). Assigning containment levels for experiments not explicitly considered in the Guidelines;

IV–C–1–b–(2)–(d). Revising the "Classification of Etiologic Agents" for the purpose of these Guidelines (*1*).

IV–C–1–b–(3). Other Actions. The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin*:

IV–C–1–b–(3)–(a). Interpreting the Guidelines for experiments to which the Guidelines specifically assign containment levels;

IV–C–1–b–(3)–(b). Setting containment under Section III–B–1–d and Section III–B–3–d;

IV–C–1–b–(3)–(c). Approving minor modifications of already certified host-vector systems (the standards and procedures for such modifications are described in Appendix I–II);

IV–C–1–b–(3)–(d). Decertifying already certified host-vector systems;

IV–C–1–b–(3)–(e). Adding new entries to the list of molecules toxic for vertebrates (see Appendix F);

IV–C–1–b–(3)–(f). Approving the cloning of toxin genes in host-vector systems other than *E. coli* K–12 (see Appendix F); and

IV–C–1–b–(3)–(g). Determining appropriate containment conditions for experiments according to case precedents developed under Section IV–C–1–b–(2)–(c).

IV–C–1–b–(4). The Director shall conduct, support, and assist training programs in laboratory safety for IBC members, BSOs, PIs, and laboratory staff.

IV–C–2. Recombinant DNA Advisory Committee. The Recombinant DNA Advisory Committee (RAC) is responsible for carrying out specified functions cited below as well as others assigned under its charter or by the Secretary, HHS, the Assistant Secretary for Health, and the Director, NIH.

The committee shall consist of 25 members, including the chair, appointed by the Secretary or designee, at least fourteen of whom shall be selected from authorities knowledgeable in the fields of molecular biology or recombinant DNA research or in scientific fields other than molecular biology or recombinant DNA research, and at least six of whom shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from Federal agencies shall serve as non-voting members. Nominations for the RAC may be submitted to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 3B10, Bethesda, MD 20205.

All meetings of the RAC will be announced in the Federal Register, including tentative agenda items, 30 days in advance of the meeting with final agendas (if modified) available at least 72 hours before the meeting. No items defined as a major action under Section IV-C-1-b-(1) may be added to an agenda after it appears in the Federal Register.

The RAC shall be responsible for advising the Director, NIH, on the actions listed in Section IV-C-1-b-(1) and IV-C-1-b-(2).

IV-C-3. The Office of Recombinant DNA Activities. ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH including Institutions, BSOs, PIs, Federal agencies, State and local governments and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the Director, NIH, including those authorities described in Section IV-C-1-b-(3). In addition, ORDA shall be responsible for the following:

IV-C-3-a. Reviewing and approving IBC membership;

IV-C-3-b. Publishing in the Federal Register:

IV-C-3-b-(1). Announcements of RAC meetings and agendas at least 30 days in advance;

Note.—If the agenda for an RAC meeting is modified, ORDA shall make the revised agenda available to anyone upon request at least 72 hours in advance of the meeting.

IV-C-3-b-(2). Proposed major actions of the type falling under Section IV-C-1-b-(1) at least 30 days prior to the RAC meeting at which they will be considered; and

IV-C-3-b-(3). The NIH Director's final decision on recommendations made by the RAC.

IV-C-3-c. Publishing the *Recombinant DNA Technical Bulletin*; and

IV-C-3-d. Serving as executive secretary of the RAC.

IV-C-4. Other NIH Components. Other NIH components shall be responsible for certifying maximum containment (BL4) facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary.

IV-D. Compliance. As a condition for NIH funding of recombinant DNA research, Institutions must ensure that such research conducted at or sponsored by the Institution, irrespective of the source of funding, shall comply with these Guidelines. The policies on noncompliance are as follows:

IV-D-1. All NIH-funded projects involving recombinant DNA techniques must comply with the NIH Guidelines. Noncompliance may result in: (i) Suspension, limitation, or termination of financial assistance for such projects and of NIH funds for other recombinant DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV-D-2. All non-NIH funded projects involving recombinant DNA techniques conducted at or sponsored by an Institution that receives NIH funds for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in: (i) Suspension, limitation, or termination of NIH funds for recombinant DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV-D-3. Information concerning noncompliance with the Guidelines may be brought forward by any person. It should be delivered to both NIH (ORDA) and the relevant Institution. The Institution, generally through the IBC, shall take appropriate action. The Institution shall forward a complete report of the incident to ORDA, recommending any further action.

IV-C-4. In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with the Guidelines, applicable DHHS and Public Health Service procedures shall govern.

See Appendix J for information on the Federal Interagency Advisory Committee on Recombinant DNA Research.

IV-D-5. Voluntary Compliance. Any individual, corporation, or institution that is not otherwise covered by the Guidelines is encouraged to conduct recombinant DNA research activities in accordance with the Guidelines through the procedures set forth in Part VI.

V. Footnotes and Reference of Sections I–IV

(*1*) The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th Edition, July 1974; U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may revise the classification for the purposes of these Guidelines (see Section IV–C–1–b–(2)–(d)). The revised list of organisms in each class is reprinted in Appendix B to these Guidelines.

(*2*) In Part III of the Guidelines, there are a number of places where judgments are to be made. In all these cases the principal investigator is to make the judgment on these matters as part of his responsibility to "make the initial determination of the required levels of physical and biological containment in accordance with the Guidelines" (Section IV–B–5–o–(1)). In the cases falling under Sections III–A, –B or –C, this judgment is to be reviewed and approved by the IBC as part of its responsibility to make "an independent assessment of the containment levels required by these Guidelines for the proposed research" (Section IV–B–3–a–(1)). If the IBC wishes, any specific cases may be referred to ORDA as part of ORDA's functions to "provide advice to all within and outside NIH" (Section IV–C–3), and ORDA may request advice from the RAC as part of the RAC's responsibility for "interpreting and determining containment levels upon request by ORDA" (Section IV–C–1–b–(2)–(a)).

(*3*) *Laboratory Safety at the Center for Disease Control* (Sept. 1974). U.S. Department of Health, Education and Welfare Publication No. CDC 75–8118.

(*4*) *Classification of Etiologic Agents on the Basis of Hazard* (4th Edition, July 1974). U.S. Department of Health, Education and Welfare. Public Health Service. Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

(*5*) *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (Oct. 1974). U.S. Department of Health, Education and Welfare Publication No. (NIH) 75–790.

(*6*) *National Institutes of Health Biohazards Safety Guide* (1974). U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health. U.S. Government Printing Office, Stock No. 1740–00383.

(*7*) *Biohazards in Biological Research* (1973). A. Hellman, M. N. Oxman, and R. Pollack (ed.) Cold Spring Harbor Laboratory.

(*8*) *Handbook of Laboratory Safety* (1971). 2nd Edition. N. V. Steere (ed.). The Chemical Rubber Co., Cleveland.

(*9*) Bodily, J. L. (1970). *General Administration of the Laboratory*, H. L. Bodily, E. L. Updyke, and J. O. Mason (eds.), Diagnisitic Procedures for Bacterial, Mycotic and Parasitic Infections. American Public Health Association, New York, pp. 11–28.

(*10*) Darlow, H. M. (1969). *Safety in the Microbiological Laboratory*. In J. R. Norris and D. W. Robbins (ed.), Methods in Microbiology. Academic Press, Inc., New York, pp. 169–204.

(*11*) *The Prevention of Laboratory Acquired Infection* (1974). C. H. Collins, E. G. Hartley, and R. Pilsworth. Public Health Laboratory Service, Monograph Series No. 6.

(*12*) Chatigny, M. A. (1961). *Protection Against Infection in the Microbiological Laboratory: Devices and Procedures*. In W. W. Umbreit (ed.). Advances in Applied Microbiology. Academic Press, New York, N.Y. 3:131–192.

(*13*) *Design Criteria for Viral Oncology Research Facilities* (1975). U.S. Department of Health, Education and Welfare, Public Health Service, National Institutes of Health, DHEW Publication No. (NIH) 75–891.

(*14*) Kuehne, R. W. (1973). *Biological Containment Facility for Studying Infectious Disease*. Appl. Microbiol. 26–239–243.

(*15*) Runkle, R. S., and G. B. Phillips (1969). *Microbial Containment Control Facilities*. Van Nostrand Reinhold, New York.

(*16*) Catigny, M. A., and D. I. Clinger (1969). *Contamination Control in Aerobiology*. In R. L. Dimmick and A. B. Akers (eds.). An Introduction to Experimental Aerobiology. John Wiley & Sons, New York, pp. 194–263.

(*17*) As classified in the Third Report of the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, R. E. F. Matthews, Ed. Intervirology 12 (129–296) 1979.

(*18*) A USDA permit, required for import and interstate transport of pathogens, may be obtained from the Animal and Plant Health Inspection Service, USDA, Federal Building, Hyattsville, MD 20782.

(*19*) I.e., the total of all genomes within a Family shall not exceed two-thirds of the genome.

(*20*) All activities, including storage of variola and whitepox, are restricted to the single national facility (World Health Organization (WHO) Collaborating Center for Smallpox Research, Centers for Disease Control, in Atlanta).

(*21*) Section III–A–4 covers only those experiments in which the intent is to modify stably the genome of cells of a human subject. Other experiments involving recombinant DNA in human subjects such as feeding of bacteria containing recombinant DNA or the administration of vaccines containing recombinant DNA are not covered in Section III–A–4 of the Guidelines.

(*22*) For recombinant DNA experiments in which the intent is to modify stably the genome of cells of a human subject, see Section III–A–4.

VI. Voluntary Compliance

VI–A. Basic Policy. Individuals, corporations, and institutions not otherwise covered by the Guidelines are encouraged to do so by following the standards and procedures set forth in Parts I–IV of the Guidelines. In order to simplify discussion, references hereafter to "institutions" are intended to encompass corporations, and individuals who have no organizational affiliation. For purposes of complying with the Guidelines, an individual intending to carry out research involving recombinant DNA is encouraged to affiliate with an institution that has an IBC approved under the Guidelines.

Since commerical organizations have special concerns, such as protection of proprietary data, some modifications and explanations of the procedures in Parts I–IV are provided below, in order to address these concerns.

VI–B. IBC Approval. ORDA will review the membership of an institution's IBC and where it finds the IBC meets the requirements set forth in Section IV–B–2 will give its approval to the IBC membership.

It should be emphasized that employment of an IBC member solely for purposes of membership on the IBC does not itself make the member an institutionally affiliated member for purposes of Section IV–B–2–a.

Except for the unaffiliated members, a member of an IBC for an institution not otherwise covered by the Guidelines may participate in the review and approval of a project in which the

member has a direct financial interest so long as the member has not been and does not expect to be engaged in the project. Section IV–B–2–d is modified to that extent for purposes of these institutions.

VI–C. Certification of Host-Vector Systems. A host-vector system may be proposed for certification by the Director, NIH, in accordance with the procedures set forth in Appendix I–II–A.

In order to ensure protection for proprietary data, any public notice regarding a host-vector system which is designated by the institution as proprietary under Section VI–E–1 will be issued only after consultation with the institution as to the content of the notice.

VI–D. Requests for Exemptions and Approvals. Requests for exemptions or other approvals required by the Guidelines should be requested by following the procedures set forth in the appropriate sections in Parts I–IV of the Guidelines.

In order to ensure protection for proprietary data, any public notice regarding a request for an exemption or other approval which is designated by the institution as proprietary under Section VI–E–1 will be issued only after consultation with the institution as to the content of the notice.

VI–E. Protection of Proprietary Data. In general, the Freedom of Information Act requires Federal agencies to make their records available to the public upon request. However, this requirement does not apply to, among other things, "trade secrets and commercial and financial information obtained from a person and privileged or confidential." 18 U.S.C. 1905, in turn makes it a crime for an officer or employee of the United States or any Federal department or agency to publish, divulge, disclose, or make known "in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, [or] processes * * * of any person, firm, partnership, corporation, or association." This provision applies to all employees of the Federal Government, including special Government employees. Members of the Recombinant DNA Advisory Committee are "special Government employees."

VI–E–1. In submitting information to NIH for purposes of complying voluntarily with the Guidelines, an institution may designate those items of information which the institution believes constitute trade secrets, privileged, confidential commercial, or financial information.

VI–E–2. If NIH receives a request under the Freedom of Information Act for information so designated, NIH will promptly contact the institution to secure its views as to whether the information (or some portion) should be released.

VI–E–3. If the NIH decides to release this information (or some portion) in response to a Freedom of Information request or otherwise, the institution will be advised; and the actual release will not be made until the expiration of 15 days after the institution is so advised except to the extent that earlier release in the judgment of the Director, NIH, is necessary to protect against an imminent hazard to the public or the environment.

VI–E–4. Presubmission Review.

VI–E–4–a. Any institution not otherwise covered by the Guidelines, which is considering submission of data or information voluntarily to NIH, may request presubmission review of the records involved to determine whether if the records are submitted NIH will or will not make part or all of the records available upon request under the Freedom of Information Act.

VI–E–4–b. A request for presubmission review should be submitted to ORDA along with the records involved. These records must be clearly marked as being the property of the institution on loan to NIH solely for the purpose of making a determination under the Freedom of Information Act. ORDA will then seek a determination from the HHS Freedom of Information Officer, the responsible official under HHS regulations (45 C.F.R. Part 5) as to whether the records involved (or some portion) are or are not available to members of the public under the Freedom of Information Act. Pending such a determination the records will be kept separate from ORDA files, will be considered records of the institution and not ORDA, and will not be received as part of ORDA files. No copies will be made of the records.

VI–E–4–c. ORDA will inform the institution of the HHS Freedom of Information Officer's determination and follow the institution's instructions as to whether some or all of the records involved are to be returned to the institution or to become a part of ORDA files. If the institution instructs ORDA to return the records, no copies or summaries of the records will be made or retained by HHS, NIH, or ORDA.

VI–E–4–d. The HHS Freedom of Information Officer's determination will represent that official's judgement at the time of the determination as to whether the records involved (or some portion) would be exempt from disclosure under the Freedom of Information Act if at the time of the determination the records were in ORDA files and a request were received for them under the Act.

Appendix A—Exemptions Under Section III–D–4

Section III–D–4 states that exempt from these Guidelines are "certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the RAC after appropriate notice and opportunity for public comment (see Section IV–C–1–b–(1)–(c)). Certain classes are exempt as of publication of these revised Guidelines. The list is in Appendix A."

Under Section III–D–4 of these Guidelines are recombinant DNA molecules that are: (1) composed entirely of DNA segments from one or more of the organisms within a sublist and (2) to be propagated in any of the organisms within a sublist.

(Classification of *Bergey's Manual of Determinative Bacteriology*, 8th edition. R.E. Buchanan and N.E. Gibbons, editors. Williams and Wilkins Company: Baltimore, 1974.)

Sublist A

1. Genus *Escherichia*
2. Genus *Shigella*
3. Genus *Salmonella* (including *Arizona*)
4. Genus *Enterobacter*
5. Genus *Citrobacter* (including *Levinea*)
6. Genus *Klebsiella*
7. Genus *Erwinia*
8. *Pseudomonas aeruginosa, Pseudomonas putida* and *Pseudomonas fluorescens*
9. *Serratia marcescens*
10. *Yersinia enterocolitica*

Sublist B

1. *Bacillus subtilis*
2. *Bacillus licheniformis*
3. *Bacillus pumilus*
4. *Bacillus globigii*
5. *Bacillus niger*
6. *Bacillus nato*
7. *Bacillus amyloliguefaciens*
8. *Bacillus aterrimus*

Sublist C

1. *Streptomyces aureofaciens*
2. *Streptomyces rimosus*
3. *Streptomyces coelicolor*

Sublist D

1. *Streptomyces griseus*
2. *Streptomyces cyaneus*
3. *Streptomyces venezuelae*

Sublist E

1. One way transfer of *Streptococcus mutans* or *Streptococcus lactis* DNA into *Streptococcus sanguis.*

Sublist F

1. *Streptococcus sanguis*
2. *Streptococcus pneumoniae*
3. *Streptococcus fascalis*
4. *Streptococcus pyogenes*
5. *Streptococcus mutans*

Appendix B—Classification of Microorganisms on the Basis of Hazard

Appendix B–I, Classification of Etiologic Agents. The original reference for this classification was the publication *Classification of Etiological Agents on the Basis of Hazard*, 4th edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. For the purposes of these Guidelines, this list has been revised by the NIH(*1*).

Appendix B–I–A Class 1 Agents. All bacterial, parasitic, fungal, viral, rickettsial, and chlamydial agents not included in higher classes.

Appendix B–I–B. Class 2 Agents.

Appendix B–I–B–1. Bacterial Agents.

Acinetobacter calcoaceticus
Actinobacillus—all species
Aeromonas hydrophila
Arizona hinshawii—all serotypes
Bacillus anthracis
Bordetella—all species
Borrelia recurrentis, B. vincenti
Campylobacter fetus
Campylobacter jejuni
Chlamydia psittaci
Chlamydia trachomatis
Clostridium botulinum, Cl. chauvoei, Cl. haemolyticum, Cl. histolyticum, Cl. novyi, Cl. septicum, Cl. tetani
Corynebacterium diphtheriae, C. equi, C. haemolyticum, C. pseudotuberculosis, C. pyogenes, C. renale
Edwardsiella tarda
Erysipelothrix insidiosa
Escherichia coli—all enteropathogenic, enterotoxigenic, enteroinvasive and strains bearing KI antigen
Haemophilus ducreyi, H. influenzae
Klebsiella—all species and all serotypes
Legionella pneumophila
Leptospira interrogans—all serotypes
Listeria—all species
Moraxella—all species
Mycobacteria—all species except those listed in Class 3
Mycoplasma—all species except Mycoplasma mycoides and *Mycoplasma agalactiae*, which are in Class 5
Neisseria gonorrhoeae, N. meningitidis
Pasteurella—all species except those listed in Class 3
Salmonella—all species and all serotypes
Shigella—all species and all serotypes
Sphaerophorus necrophorus
Staphylococcus aureus
Streptobacillus moniliformis
Streptococcus pneumoniae
Streptococcus pyogenes
Treponema carateum, T. pallidum, and *T. pertenue*
Vibrio cholerae
Vibrio parahemolyticus
Yersinia enterocolitica

Appendix B–I–B–2. Fungal Agents.

Actinomycetes (includiang *Nocardia* species, *Actinomyces* species, and *Arachnia propionica*)(*2*)
Blastomyces dermatitidis
Cryptococcus neoformans
Paracoccidioides braziliensis

Appendix B–I–B–3. Parasitic Agents.

Endamoeba histolytica
Leishmania sp.
Naegleria gruberi
Schistosoma mansoni
Toxoplasma gondii
Toxocara canis
Trichinella spiralis
Trypanosoma cruzi

Appendix B–I–B–4. Viral, Rickettsial, and Chlamydial Agents.

Adenoviruses—human—all types
Coche Valley virus
Coxsackie A and *B viruses*
Cytomegaloviruses
Echoviruses—all types
Encephalomyocarditis virus (*EMC*)
Flanders virus
Hart Park virus
Hepatitis-associated antigen material
Herpes viruses—except *Herpesvirus simiae* (*Monkey B virus*) which is in Class 4
Corona viruses
Influenza viruses—all types except A/PR8/34, which is in Class 1
Langat virus
Lymphogranuloma venereum agent
Measles virus
Mumps virus
Parainfluenza virus—all types except Parainfluenza virus 3, SF4 strain, which is in Class 1
Polioviruses—all types, wild and attenuated
Poxviruses—all types except *Alastrim, Smallpox*, and *Whitepox* which are Class 5 and *Monkey pox* which depending on experiments is in Class 3 or Class 4
Rabies virus—all strains except *Rabies street virus* which should be classified in Class 3
Reoviruses—all types
Respiratory syncytial virus
Rhinoviruses—all types
Rubella virus
Simian viruses—all types except *Herpesvirus simiae* (*Monkey B virus*) and *Marburg virus* which are in Class 4
Sindbis virus
Tensaw virus
Turlock virus
Vaccinia virus
Varicella virus
Vesicular stomatitis virus(*3*)
Vole rickettsia
Yellow fever virus, 17D vaccine strain

Appendix B–I–C–. class 3 Agents.

Appendix B–I–C–1. Bacterial agents.

Bartonella—all species
Brucella—all species
Francisella tularensis
Mycobacterium avium, M. bovis, M. tuberculosis
Pasteurella multocide type *B* ("buffalo" and other foreign virulent strains)(*3*)
Pseudomonas mallei(*3*)
Pseudomonas pseudomallei(*3*)
Yersinia pestis

Appendix B–I–C–2. Fungal Agents.

Coccidioides immitis
Histoplasma capsulatum
Histoplasma capsulatum var. *duboisii*

Appendix B–I–C–3. Parasitic Agents.

None.

Appendix B–I–C–4. Viral, Rickettsial, and Chlamydia Agents.

Monkey pox, when used *in vitro*(*4*)
Arboviruses—all strains except those in Class 2 and 4 (*Arboviruses* indigenous to the United States are in Class 3 except those listed in Class 2. *West Nile* and *Semliki Forest* viruses may be classified up or down depending on the conditions of use and geographical location of the laboratory.)
Dengue virus, when used for transmission or animal inoculation experiments
Lymphocytic choriomeningitis virus (LCM)
Rabies street virus
Rickettsia—all species except *Vole rickettsia* when used for transmission nor animal inoculation experiments
Yellow fever virus—wild, when used *in vitro*

Appendix B–I–D–. Class 4 Agents.

Appendix B–I–D–1. Bacterial Agents.

None.

Appendix B–I–D–2. Fungal Agents.

None.

Appendix B–I–D–3. Parasitic Agents.

None.

Appendix B–I–D–4. Viral, Rickettsial, and Chlamydial Agents.

Ebola fever virus
Monkey pox, when used for transmission or animal inoculation experiments(*4*)
Hemorrhagic fever agents, including *Crimean hemorrhagic fever*, (*Congo*), *Junin*, and *Machupo* viruses, and others as yet undefined
Herpesvirus simiae (*Monkey B virus*)
Lassa virus
Markburg virus
Tick-borne encephalitis virus complex, including *Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever*, and *Central European encephalitis viruses*
Venezuelan equine encephalitis virus, epidemic strains, when used for transmission or animal inoculation experiments
Yellow fever virus—wild, when used for transmission or animal inoculation experimetns

Appendix B–II. Classification of Oncogenic Viruses on the Basis of Potential Hazard (5).

Appendix B–II–A. Low-Risk Oncogenic Viruses.

Rous sarcoma
SV–40
CELO
AD7–5V40
Polyoma
Bovine papilloma
Rat mammary tumor
Avian leukosis
Murine sarcoma
Mouse mammary tumor
Rat leukemia
Hamster leukemia
Bovine leukemia
Dog sarcoma
Mason-Pfizer monkey virus
Marek's
Guinea pig herpes
Lucke (Frog)
Adenovirus
Shope fibroma
Shope papilloma

Appendix B–II–B. Moderate-Risk Oncogenic Viruses.

Ad2–SV40
FeLV
HV Saimiri
EBV
SSV–1
GaLV
HV ateles
Yaba
FeSV

Appendix B–III. Class 5 Agents.

Appendix B–III–A. Animal Disease Organisms Which are Forbidden Entry into the United States by Law.

Foot and mouth disease virus.

Appendix B–III–B. Animal Disease Organisms and Vectors Which are Forbidden Entry into the United States by USDA Policy.

African horse sickness virus
African swine fever virus
Besnoitia besnoiti
Borna disease virus
Bovine infectious petechial fever
Camel pox virus
Ephemeral fever virus
Fowl plague virus
Goat pox virus
Hog cholera virus
Louping ill virus
Lumpy skin disease virus
Nairobi sheep disease virus
Newcastle disease virus (Asiatic strains)
Mycoplasma mycoides (contagious bovine pleuropneumonia)
Mycoplasma agalactiae (contagious agalactia of sheep)
Rickettsia ruminatium (heart water)
Rift valley fever virus
Rinderpest virus
Sheep pox virus
Swine vesicular disease virus
Teschen disease virus
Trypanosoma vivax (Nagana)
Trypanosoma evansi
Theileria parva (East Coast fever)
Theileria annulata
Theileria lawrencei
Theileria bovis
Theileria hirci
Vesicular exanthema virus
Wesselsbron disease virus
Zyonema

Appendix B–III–C. Organisms Which may not be Studied in the United States Except at Specified Facilities.

Small pox [4]
Alastrim [4]
White pox [4]

Appendix B–IV—Footnotes and References of Appendix B

(1) The original reference for this classification was the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. For the purposes of these Guidelines, this list has been revised by the NIH.

(2) Since the publication of the classification in 1974(1), the *Actinomycetes* have been reclassified as bacterial rather than fungal agents.

(3) A USDA permit, required for import and interstate transport of pathogens, may be obtained from the Animal and Plant Health Inspection Service, USDA, Federal Building, Hyattsville, MD 20782.

(4) All activities, including storage of variola and whitepox, are restricted to the single national facility [World Health Organization (WHO) Collaborating Center for Smallpox Research, Centers for Disease Control, in Atlanta].

(5) *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (October 1974). U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75–790.

(6) U.S. Department of Agriculture, Animal, and Plant Health Inspection Service.

Appendix C—Exemptions Under Section III–D–5

Section III–D–5 states that exempt from these Guidelines are "Other classes of recombinant DNA molecules if the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment finds that they do not present a significant risk to health or the environment (see Section IV–C–1–b–(1)–(c)). Certain classes are exempt as of publication of these revised Guidelines."

The following classes of experiments are exempt under Section III–D–5 of the Guidelines:

Appendix C–I. Recombinant DNAs in Tissue Culture. Recombinant DNA molecules derived entirely from non-viral components (that is, no component is derived from a eukaryotic virus) that are propagated and maintained in cells in tissue culture are exempt from these Guidelines with the exceptions listed below.

Exceptions.

Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from Class 3, 4, or 5 organisms(1) or cells known to be infected with these agents.

Experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Appendix C–II. Experiments Involving E. coli K–12 Host-Vector Systems. Experiments which use *E. coli* K–12 host-vector systems, with the exception of those experiments listed below, are exempt from these Guidelines provided that: (i) the *E. coli* host shall not contain conjugation proficient plasmids or generalized transducing phages, and (ii) lambda or lambdoid or Ff bacteriophages or nonconjugative plasmids(2) shall be used as vectors. However, experiments involving the insertion into *E. coli* K–12 of DNA from prokaryotes that exchange genetic information(3) with *E. coli* may be performed with any *E. coli* K–12 vector (e.g., conjugative plasmid). When a nonconjugative vector is used, the *E. coli* K–12 host may contain conjugation-proficient plasmids either autonomous or integrated, or generalized transducing phages.

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale (LS) fermentation experiments BL1–LS physicial containment conditions are recommended. However, following review by the IBC of appropriate data for a partcular host-vector systemn, some latitude in the application of BL1–LS requirements as outlined in Appendix K–II–A through K–II–F is permitted.

Exceptions.

Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from Class 3, 4, or 5 organisms(1) or from cells known to be infected with these agents may be conducted under containment conditions specified in Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval (see Section III–B–5).

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertegrates (see Appendix F).

Appendix C–III. Experiments Involving Saccharomyces cerevisiae Host-Vector Systems. Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines provided that laboratory strains are used.

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale fermentation experiments BL1–LS physicial containment conditions are recommended. However, following review by the IBC or appropriate data for a particular host-vector system some latitute in the application of BL1-LS requirements as outlined in Appendix K–II–A through K–II–F is permitted

Exceptions.

Experiments described in Section III–A which reqire specific RAC review and NIH approval before initiation of the experiment.

Experiments involving Class 3, 4, or 5 organisms(1) or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval (see Section III–B–5).

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Appendix C–IV. Experiments Involving Bacillus subtilis Host-Vector Systems. Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-7} can be used for cloning DNA with the exception of these experiments listed below. Indigenous *Bacillus* plasmids and phages whose host-range does not include *Bacillus cereus* or *Bacillus anthracis* may be used as vectors.

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale fermentation experiments BL1–LS physicial containment conditions are recommended. However, following reivew by the IBC of appropriate data for a particular host-vector system, sopme latitude in the application of BL1–LS requirements as oulined in Appendix K–II–A through K–II–F is permitted.

Exceptions.

Experiments described in Section III–A which require specific RAC review and approval before initiation of the experiment.

Experiments involving Class 3, 4, or 5 organisms (1) or cells known to be infected with these agents may be conducted under containment conditions specified by Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval (see Section III–B–5).

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Appendix C–V—Footnotes and References of Appendix C

(1) The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th edition, July 1974; U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may revise the classification for the purposes of these Guidelines (see Section IV–C–1–b–(2)–(d)). The revised list of organisms in each class is reprinted in Appendix B to these guidelines.

(2) A subset of non-conjugative plasmid vectors are also poorly mobilizable (e.g., pBR322, pBR313). Where practical, these vectors should be employed.

(3) Defined as observable under optimal laboratory comditions by transformation, transduction, phage infection, and/or conjugation with transfer of phage, plasmid, and/or chromosomal genetic information. Note that this definition of exchange may be less stringent than that applied to exempt organisms under Section III–D–4.

Appendix D—Actions Taken Under the Guidelines

As noted in the subsections of Section IV–C–1–b–(1), the Director, NIH, may take certain actions with regard to the Guidelines after the issues have been considered by the RAC. Some of the actions taken to date include the following:

Appendix D–I. Permission is granted to clone foot and mouth disease virus in the EK1 host-vector system consisting of *E. coli* K–12 and the vector pBR322, all work to be done at the Plum Island Animal Disease Center.

Appendix D–II. Certain specified clones derived from segments of the foot and mouth disease virus may be transferred from Plum Island Animal Disease Center to the facilities of Genentech, Inc., of South San Francisco, California. Further development of the clones at Genentech has been approved under BL1 + EK1 conditions.

Appendix D–III. The Rd strain of *Hemophilus influenzae* can be used as a host for the propagation of the cloned Tn 10 tet R gene derived from *E. coli* K–12 employing the non-conjugative *Haemophilus* plasmid, pRSF0885, under BL1 conditions.

Appendix D–IV. Permission is granted to clone certain subgenamic segments of foot and mouth disease virus in HV1 *Bacillus subtilis* and *Saccharomyces cerevisiae* host-vector systems under BL1 conditions at Genentech, Inc., South San Francisco, California.

Appendix D–V. Permission is granted to Dr. Ronald Davis of Stanford University to field test corn plants modified by recombinant DNA techniques under specified containment conditions.

Appendix D–VI. Permission is granted to clone in *E. coli* K–12 under BL1 physical containment conditions subgenomic segments of rift valley fever virus subject to conditions which have been set forth by the RAC.

Appendix D–VII. Attenuated laboratory strains of *Salmonella typhimurium* may be used under BL1 physical containment conditions to screen for the *Saccharomyces cerevisiae* pseudouridine synthetase gene. The plasmid YEp13 will be employed as the vector.

Appendix D–VIII. Permission is granted to transfer certain clones of subgenomic segments of foot and mouth disease virus from Plum Island Animal Disease Center to the laboratories of Molecular Genetics, Inc., Minnetonka, Minnesota, and to work with these clones under BL1 containment conditions. Approval is contingent upon review of data on infectivity testing of the clones by a working group of the RAC.

Appendix D–IX. Permission is granted to Dr. John Sanford of Cornell University to field test tomato and tobacco plants transformed with bacterial (*E. coli* K–12) and yeast DNA using pollen as a vector.

Appendix D–X. Permission is granted to Drs. Steven Lindow and Nickolas Panopoulos of the University of California, Berkeley, to release under specified conditions *Pseudomonas syringae* pv. *syringae* and *Erwinia herbicola* carrying *in vitro* generated deletions of all or part of the genes involved in ice nucleation.

Appendix E—Certified Host-Vector Systems

(See also Appendix I.)

While many experiments using *E. coli* K–12, *Saccharomyces cerevisiae* and *Bacillus subtilis* are currently exempt from the Guidelines under Section III–D–5, some derivatives of these host-vector systems were previously classified as

HV1 or HV2. A listing of those systems follows:

Appendix E–1. Bacillus subtilis.

HV1. The following plasmids are accepted as the vector components of certified *B. subtilis* HV1 systems: pUB110, pC194, pS194, pSA2100, pE194,pT127, pUB112, pC221, pC223, and pAB124. *B. subtilis* strains RUB 331 and BGSC 1S53 have been certified as the host component of HV1 systems based on these plasmids.

HV2d. The asporogenic mutant derivative of *Bacillus subtilis*, ASB 298, with the following plasmids as the vector component: pUB110, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124.

Appendix E–II. Saccharomyces cerevisiae.

HV2. The following sterile strains of *Saccharomyces cerevisiae*, all of which have the ste-VC9 mutation, SHY1, SHY2, SHY3, and SHY4. The following plasmids are certified for use: Ylp1, YEp2, YEp4, Ylp5, YEp6, YRp7, Yep20, YEp21, YEp24, Ylp25, Ylp26, Ylp27, Ylp28, Ylp29, Ylp30, Ylp31, Ylp32, and Ylp33.

Appendix E–III. Escherichia coli.

EK2 Plasmid Systems. The *E. coli* K–12 strain chi–1776. The following plasimids are certified for use: pSC101, pMB9, pBR313, pBR322, pDH24, pBR325, pBR327, pGL101, pHB1. The following *E. coli/S. cerevisiae* hybrid plasmids are certified as EK2 vectors when used in *E. coli* chi–1776 or in the sterile yeast strains, SHY1, SHY2, SHY3 and SHY4: Ylp1, YEp2, YEp4, Ylp5, YEp6, YRp7, YEp20, YEp21, YEp24, Ylp25, Ylp26, Ylp27, Ylp28, Ylp29, Ylp30,Ylp31, Ylp32, Ylp33.

EK2 Bacteriophage Systems. The following are certified EK2 systems based on bacteriophage lambda:

Vector	Host
λgt*WES*λB°	DP50*supF*
λgt*WES*λB°	DP50*supF*.
λgt2I*vir*λB°	*E. coli* K–12
λgtALO.λB	DP50*supF*
Charon 3A	DP50 or DP50*supF*
Charon 4A	DP50 or DP50*supF*
Charon 16A	DP50 or DP50*supF*.
Charon 21A	DP50*supF*
Charon 23A	DP50 or DP50*supF*.
Charon 24A	DP50 or DP50*supF*

E. coli K–12 strains chi–2447 and chi–2281 are certified for use with lambda vectors that are certified for use with strain DP50 or DP50*supF* provided that the su⁻ strain not be used as a propagation host.

Appendix E–IV. Neurospora crassa.

HV1. The following specified strains of *Neurospora crassa* which have been modified to prevent aerial dispersion:

Inl (inositolless) strains 37102, 37401, 46316, 64001, and 89601.

Csp–1 strain UCLA37 and csp–2 strains FS 590, UCLA101 (these are conidial separation mutants).

Eas strain UCLA191 (an "easily wettable" mutant).

Appendix E–V. Streptomyces.

HV1. The following *Streptomyces* species: *Streptomyces coelicolor, S. lividans, S. parvulus,* and *S. griseus.* The following are accepted as vector components of certified *Streptomyces* HV1 systems: *Streptomyces* plasmids SCP2, SLP1.2, pIJ101, actinophage phi C31, and their derivatives.

Appendix E–VI. Pseudomonas putida.

HV1. Pseudomonas putida strain KT2440 with plasmid vectors pKT262, pKT263, and pKT264.

Appendix F—Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates

Appendix F–I. General Information. Appendix F specifies the containment to be used for the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. The cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, *Shigella dysenteriae* neurotoxin) is covered under Section III–A–1 of the Guidelines and requires RAC review and NIH and IBC approval before initiation. No specific restrictions shall apply to the cloning of genes if the protein specified by the gene has an LD_{50} of 100 micrograms or more per kilogram of body weight. Experiments involving genes coding for toxic molecules with an LD_{50} of 100 micrograms or less per kilogram body weight shall be registered with ORDA prior to initiating the experiments. A list of toxic molecules classified as to LD_{50} is available from ORDA. Testing procedures for determining toxicity of toxic molecules not on the list are available from ORDA. The results of such tests shall be forwarded to ORDA which will consult with the RAC Working Group on Toxins proior to inclusion of the molecules on the list (see Section IV–C–1–b–(2)–(e)).

Appendix F–II. Containment Conditions for Cloning of Toxic Molecule Genes in E. coli K–12.

Appendix F–II–A. Cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} in the range of 100 nanograms to 1000 nanograms per kilogram body weight (e.g., abrin, *Clostridium perfringens* epsilon toxin) may proceed under BL2 + EK2 or BL3 + EK1 containment conditions.

Appendix F–II–B. Cloning of genes for the biosynthesis of molecules toxic for vertebrates that have an LD_{50} in the range of 100 micrograms per kilogram body weight may proceed under BL1 + EK1 containment conditions (e.g., *Staphylococcus aureus* alpha toxin, *Staphylococcus aureus* beta toxin, ricin, *Pseudomonas aeruginosa* exotoxin A, *Bordatella pertussis* toxin, the lethal factor of *Bacillus anthracis*, the *Pasteurella pestis* murine toxins, the oxygen-labile hemolysins such as streptolysin O, and certain neurotoxins present in snake venoms and other venoms)

Appendix F–II–C. Some enterotoxins are substantially more toxic when administered enterally than parenterally. The following enterotoxins shall be subject to BL1 + Ek1 containment conditions: cholera toxin, the heat labile toxins of *E. coli, Klebsiella,* and other related proteins that may be identified by neutralization with an antiserum monospecific for cholera toxin, and the heat stable toxins of *E. coli* and of *Yersinia enterocolitica.*

Appendix F–III. Containment Conditions for Cloning of Toxic Molecule Genes in Organisms Other than E. coli K–12. Requests involving the cloning of genes coding for molecules toxic for vertebrates in host-vector systems other than *E. coli* K–12 will be evaluated by ORDA which will consult with the Working Group on Toxins (see Section IV–C–1–b–(3)–(f)).

Appendix F–IV. Specific Approvals.

Appendix F–IV–A. Permission is granted to clone the Exotoxin A gene of *Pseudomonas aeruginosa* under BL1 conditions in *Pseudomonas aeruginosa* and in *Pseudomonas putida.*

Appendix F–IV–B. The pyrogenic exotoxin type A (Tox A) gene of *Staphylococcus aureus* may be cloned in an HV2 *Bacillus subtilis* host-vector system under BL3 containment conditions.

Appendix F–IV–C. Restriction fragments of *Corynephage Beta* carrying the structural gene for diphtheria toxin may be safely cloned in *E. coli* K–12 in high containment Building 550 at the Frederick Cancer Research Facility. Laboratory practices and containment equipment are to be specified by the IBC. If the investigators wish to proceed with the experiments, a prior review will be conducted to advise NIH whether the proposal has sufficient scientific merit to justify the use of the NIH BL4 facility.

Appendix F–IV–D. The genes coding for the *Staphylococcus aureus* determinants, A, B, and F, which may be implicated in toxic shock syndrome may be cloned in *E. coli* K–12 under BL2 + EK1 conditions. The *Staphylococcus aureus* strain used as the donor is to be alpha toxin minus. It is suggested that, if possible, the donor *Staphylococcus aureus* strain should lack other toxins with LD_{50}s in the range of one microgram per kilogram body weight such as the exfoliative toxin.

Appendix F–IV–E. Fragments F–1, E–2, and F–3 of the diphtheria toxin gene (tox) may be cloned in *E. coli* K–12 under BL1 + EK1 containment conditions and may be cloned in *Bacillus subtilis* host-vector systems under BL1 containment conditions. Fragment F–1 and fragment F–2 both contain: (i) some or all of the transcriptional control elements of *tox;* (ii) the signal peptide; and (iii) fragment A (the center responsible for ADP-ribosylation of elongation factor 2). Fragment F–3 codes for most of the non-toxic fragment B of the toxin and contains no sequences coding for any portion of the enzymatically-active fragment A moiety.

Appendix F–IV–F. The gene(s) coding for a toxin (designated LT-like) isolated from *E. coli* which is similar to the *E. coli* heat labile enterotoxin (LT) with respect to its activities and mode of action but is not neutralized by antibodies against cholera enterotoxin or against LT from human or porcine *E. coli* strains, and sequences homologous to the *E. coli* LT-like toxin gene may be cloned under BL1 + EK1 conditions.

Appendix F–IV–G. Genes from *Vibrio fluvialis, Vibrio mimicus,* and non 0–1 *Vibrio cholerae,* specifying virulence factors for animals, may be cloned under BL1 + EK1 conditions. The virulence factors to be cloned will be selected by testing fluid induction in suckling mice and Y–1 mouse adrenal cells.

Appendix F–IV–H. The intact structural gene(s) of the Shiga-like toxin from *E. coli* may be cloned in *E. coli* K–12 under BL3 + EK1 containment conditions.

E. coli host-vector systems expressing the Shiga-like toxin gene product may be moved from BL3 + BL2 containment conditions provided that: (1) the amount of toxin produced by the modified host-vector systems be no greater than that produced by the positive control strain 933 *E. coli* 0157H7, grown and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.

Nontoxinogenic fragments of the Shiga-like toxin structural gene(s) may be moved from BL3 + EK1 to BL2 + EK1 containment conditions or such nontoxic fragments may be directly cloned in *E. coli* K–12 under BL2 + EK1 conditions provided that the *E. coli* host-vector systems containing the fragments do not contain overlapping fragments which together would encompass the Shiga-like toxin structural gene(s).

Appendix F–IV–I. A hybrid gene in which the gene coding for the melanocyte stimulating hormone (MSH) is joined to a segment of the gene encoding diphtheria toxin may be safely propagated in *E. coli* K–12 under BL4 containment in high containment building 550 at the Frederick Cancer Research Facility. If the investigators wish to proceed with the experiment, a prior review will be conducted to advise NIH whether the proposal has sufficient scientific merit to justify the use of the NIH BL4 facility. Before any of the strains may be removed from the BL4 facility, data on their safety shall be evaluated by the Working Group on Toxins and the working group recommendation shall be acted upon by NIH.

Appendix F–IV–J. The gene segment encoding the A subunit of cholera toxin of *Vibrio cholerae* may be joined to the transposons Tn5 and Tn5–131 and the A-subunit:Tn5–131 hybrid gene cloned in *E. coli* K–12 and *V. cholerae* under BL1 containment conditions.

Appendix G—Physical Containment

Appendix G–I. Standard Practices and Training. The first principle of containment is a strict adherence to good microbiological practices(*1–10*). Consequently, all personnel directly or indirectly involved in experiments on recombinant DNAs must receive adequate instruction (see Sections IV–B–1–e and IV–B–5–d). This shall, as a minimum, include instructions in aseptic techniques and in the biology of the organisms used in the experiments so that the potential biohazards can be understood and appreciated.

Any research group working with agents with a known or potential biohazard shall have an emergency plan which describes the procedures to be followed if an accident contaminates personnel or the environment. The PI must ensure that everyone in the laboratory is familiar with both the potential hazards of the work and the emergency plan (see Sections IV–B–3–d and IV–B–5–e). If a research group is working with a known pathogen for which there is an effective vaccine, the vaccine should be made available to all workers. Where serological monitoring is clearly appropriate, it shall be provided (see Section IV–B–1–f).

The "Laboratory Safety Monograph" and *Biosafety in Microbiological and Biomedical Laboratories(2)* booklets describe practices, equipment, and facilities in detail.

Appendix G–II. Physical Containment Levels. The objective of physical containment is to confine organisms containing recombinant DNA molecules and thus to reduce the potential for exposure of the laboratory worker, persons outside of the laboratory, and the environment to organisms containing recombinant DNA molecules. Physical containment is achieved through the use of laboratory practices, containment equipment, and special laboratory design. Emphasis is placed on primary means of physical containment which are provided by laboratory practices and containment equipment. Special laboratory design provides a secondary means of protection against the accidental release of organisms outside the laboratory or to the environment. Special laboratory design is used primarily in facilities in which experiments of moderate to high potential hazards are performed.

Combinations of laboratory practices, containment equipment, and special laboratory design can be made to achieve different levels of physical containment. Four levels of physical containment, which are designated as BL1, BL2, BL3, and BL4, are described. It should be emphasized that the descriptions and assignments of physical containment detailed below are based on existing approaches to containment of pathogenic organisms(*2*). The National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our BL2, BL3, and BL4 levels(*3*).

It is recognized that several different combinations of laboratory practices, containment equipment, and special laboratory design may be appropriate for containment of specific research activities. The Guidelines, therefore, allow alternative selections of primary containment equipment within facilities that have been designed to provide BL3 and BL4 levels of physical containment. The selection of alternative methods of primary containment is dependent, however, on the level of biological containment provided by the host-vector system used in the experiment. Consideration will also be given by the Director, NIH, with the advice of the RAC to other combinations which achieve an equivalent level of containment (see Section IV–C–1–b–(2)–(b)).

Appendix G–II–A. Biosafety Level 1 (BL1) (13).

Appendix G–II–A–1. Standard Microbiological Practices.

Appendix G–II–A–1–a. Access to the laboratory is limited or restricted at the discretion of the laboratory director when experiments are in progress.

Appendix G–II–A–1–b. Work surfaces are decontaminated once a day and after any spill of viable material.

Appendix G–II–A–1–c. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G–II–A–1–d. Mechanical – pipetting devices are used; mouth pipetting is prohibited.

Appendix G–II–A–1–e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

Appendix G–II–A–1–f. Persons wash their hands after they handle materials involving organisms containing recombinant DNA molecules, and animals, and before leaving the laboratory.

Appendix G–II–A–1–g. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–A–1–h. It is recommended that laboratory coats, gowns, or uniforms be worn to prevent contamination or soiling of street clothes.

Appendix G–II–A–2. Special Practices.

Appendix G–II–A–2–a. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leakproof container which is closed before being removed from the laboratory.

Appendix G–II–A–2–b. An insect and rodent control program is in effect.

Appendix G–II–A–3. Containment Equipment.

Appendix G–II–A–3–a. Special containment equipment is generally not required for manipulations of agents assigned to Biosafety Level 1.

Appendix G–II–A–4. Laboratory Facilities.

Appendix G–II–A–4–a. The laboratory is designed so that it can be easily cleaned.

Appendix G–II–A–4–b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–A–4–c. Laboratory furniture is sturdy. Spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–A–4–d. Each laboratory contains a sink for hand-washing.

Appendix G–II–A–4–e. If the laboratory has windows that open, they are fitted with fly screens.

Appendix G–II–B. Biosafety Level 2 (BL2)(14).

Appendix G–II–B–1. Standard Microbiological Practices.

Appendix G–II–B–1–a. Access to the laboratory is limited or restricted by the laboratory director when work with organisms containing recombinant DNA molecules is in progress.

Appendix G–II–B–1–b. Work surfaces are decontaminated at least once a day and after any spill of viable material.

Appendix G–II–B–1–c. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G–II–B–1–d. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G–II–B–1–e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

Appendix G–II–B–1–f. Persons wash their hands after handling materials involving organisms containing recombinant DNA molecules, and animals, and when they leave the laboratory.

Appendix G–II–B–1–g. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–B–1–h. Experiments of lesser biohazard potential can be carried out concurrently in carefully demarcated areas of the same laboratory.

Appendix G–II–B–2. Special Practices.

Appendix G–II–B–2–a. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leakproof container which is closed before being removed from the laboratory.

Appendix G–II–B–2–b. The laboratory director limits access to the laboratory. The director has the final responsibility for assessing each circumstances and determining who may enter or work in the laboratory.

Appendix G–II–B–2–c. The laboratory director establishes policies and procedures whereby only persons who have been advised of the potential hazard and meet any specific entry requirements (e.g., immunization) enter the laboratory or animal rooms.

Appendix G–II–B–2–d. When the organisms containing recombinant DNA molecules in use in the laboratory require special provisions for entry (e.g., vaccination, a hazard warning sign incorporating the universal biohazard symbol is posted on the access door to the laboratory work area. The hazard warning sign identifies the agent, lists the name and telephone number of the laboratory director or other responsible person(s), and indicates the special requirement(s) for entering the laboratory.

Appendix G–II–B–2–e. An insect and rodent control program is in effect.

Appendix G–II–B–2–f. Laboratory coats, gowns, smocks, or uniforms are worn while in the laboratory. Before leaving the laboratory for nonlaboratory areas (e.g., cafeteria, library, administrative offices), this protective clothing is removed and left in the laboratory or covered with a clean coat not used in the laboratory.

Appendix G–II–B–2–g. Animals not involved in the work being performed are not permitted in the laboratory.

Appendix G–II–B–2–h. Special care is taken to avoid skin contamination with organisms containing recombinant DNA molecules; gloves should be worn when handling experimental animals and when skin contact with the agent is unavoidable.

Appendix G–II–B–2–i. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

Appendix G–II–B–2–j. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution should be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles should not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needle and syringe should be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix G–II–B–2–k. Spills and accidents which result in overt exposures to organisms containing recombinant DNA molecules are immediately reported to the laboratory director. Medical evaluation, surveillance, and treatment are provided as appropriate and written records are maintained.

Appendix G–II–B–2–l. When appropriate, considering the agent(s) handled, baseline serum samples for laboratory and other at-risk personnel are collected and stored. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility.

Appendix G–II–B–2–m. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read instructions on practices and procedures and to follow them.

Appendix G–II–B–3. Containment Equipment.

Appendix G–II–B–3–a. Biological safety cabinets (Class I or II) (see Appendix G–III–12) or other appropriate personal protective or physical containment devices are used whenever:

Appendix G–II–B–3–a–(1). Procedures with a high potential for creating aerosols are conducted(*15*). These may include centrifuging, grinding, blending, vigorous shaking or mixing, sonic disruption, opening containers of materials whose internal pressures may be different from ambient pressures, inoculating animals intranasally, and harvesting infected tissues from animals or eggs.

Appendix G–II–B–3–a–(2). High concentrations or large volumes of organisms containing recombinant DNA molecules are used. Such materials may be centrifuged in the open laboratory if sealed heads or centrifuge safety cups are used and if they are opened only in a biological safety cabinet.

Appendix G–II–B–4. Laboratory Facilities.

Appendix G–II–B–4–a. The laboratory is designed so that it can be easily cleaned.

Appendix G–II–B–4–b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–B–4–c. Laboratory furniture is sturdy and spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–B–4–d. Each laboratory contains a sink for hand-washing.

Appendix G–II–B–4–e. If the laboratory has windows that open, they are fitted with fly screens.

Appendix G–II–B–4–f. An autoclave for decontaminating laboratory wastes is available.

Appendix G–II–C. Biosafety Level 3 (BL3)(16).

Appendix G–II–C–1. Standard Microbiological Practices.

Appendix G–II–C–1–a. Work surfaces are decontaiminated at least once a day and after any spill of viable material.

Appendix G–II–C–1–b. All contaiminated liquid or solid wastes are decontaminated before disposal.

Appendix G–II–C–1–c. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G–II–C–1–d. Eating, drinking, smoking, storing food, and applying cosmetics are not permitted in the work area.

Appendix G–II–C–1–e. Persons wash their hands after handling materials involving organisms containing recombinant DNA molecules, and animals, and when they leave the laboratory.

Appendix G–II–C–1–f. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–C–1–g. Persons under 16 years of age shall not enter the laboratory.

Appendix G–II–C–1–h. If experiments involving other organisms which require lower levels of containment are to be conducted in the same laboratory concurrently with experiments requiring BL3 level physical containment, they shall be conducted in accordance with all BL3 level laboratory practices.

Appendix G–II–C–2. Special Practices.

Appendix G–II–C–2–a. Laboratory doors are kept closed when experiments are in progress.

Appendix G–II–C–2–b. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leakproof container which is closed before being removed from the laboratory.

Appendix G–II–C–2–c. The laboratory director controls access to the laboratory and restricts access to persons whose presence is required for program or support purposes. The director has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory.

Appendix G–II–C–2–d. The laboratory director establishes policies and procedures whereby only persons who have been advised of the potential biohazard, who meet any specific entry requirements (e.g., immunization), and who comply with all entry and exit procedures enter the laboratory or animal rooms.

Appendix G–II–C–2–e. When organisms containing recombinant DNA molecules or experimental animals are present in the laboratory or containment module, a hazard warning sign incorporating the universal biohazard symbol is posted on all laboratory and animal room access doors. The hazard warning sign identifies the agent, lists the name and telephone number of the laboratory director or other responsible person(s), and indicates any special requirements for entering the laboratory, such as the need for immunizations, respirators, or other personal protective measures.

Appendix G–II–C–2–f. All activities involving organisms containing recombinant DNA molecules are conducted in biological safety cabinets or other physical containment devices within the containment module. No work in open vessels is conducted on the open bench.

Appendix G–II–C–2–g. The work surfaces of biological safety cabinets and other containment equipment are decontaminated when work with organisms containing recombinant DNA molecules is finished. Plastic-backed paper toweling used on nonperforated work surfaces within biological safety cabinets facilitates clean-up.

Appendix G–II–C–2–h. An insect and rodent control program is in effect.

Appendix G–II–C–2–i. Laboratory clothing that protects street clothing (e.g., solid front and wrap-around gowns, scrub suits, coveralls) is worn in the laboratory. Laboratory clothing is not worn outside the laboratory, and it is decontaminated before being laundered.

Appendix G–II–C–2–j. Special care is taken to avoid skin contamination with contaminated materials; gloves should be worn when handling infected animals and when skin contact with infectious materials is unavoidable.

Appendix G–II–C–2–k. Molded surgical masks or respirators are worn in rooms containing experimental animals.

Appendix G–II–C–2–l. Animals and plants not related to the work being conducted are not permitted in the laboratory.

Appendix G–II–C–2–m. Laboratory animals held in a BL3 area shall be housed in partial-containment caging systems, such as Horsfall units (*11*), open cages placed in ventilated enclosures, solid-wall and -bottom cages covered by filter bonnets, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet in radiation lamps and reflectors.

Note.—Conventional caging systems may be used provided that all personnel wear appropriate personal protective devices. These shall include at a minimum wrap-around gowns, head covers, gloves, shoe covers, and respirators. All personnel shall shower on exit from areas where these devices are required.

Appendix G–II–C–2–n. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

Appendix G–II–C–2–o. Vacuum lines are protected with high efficiency particulate air (HEPA) filters and liquid disinfectant traps.

Appendix G–II–C–2–p. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and

diaphragm bottles. Only needle-locking syringes and disposable syringe-needle units (i.e., needle is integral to the syringe) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution should be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles should not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needle and syringe should be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix G–II–C–2–q. Spills and accidents which result in overt or potential exposures to organisms containing recombinant DNA molecules are immediately reported to the laboratory director. Appropriate medical evaluation, surveillance, and treatment are provided and written records are maintained.

Appendix G–II–C–2–r. Baseline serum samples for all laboratory and other at-risk personnel should be collected and stored. Additional serum specimens may be collected periodically depending on the agents handled or the function of the laboratory.

Appendix G–II–C–C–2–s. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read instructions on practices and procedures and to follow them.

Appendix G–II–C–2–t. Alternative Selection of Containment Equipment. Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment then that specified can be conducted in the BL3 laboratory using containment equipment specified for the BL2 level of physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified can be conducted in the BL3 laboratory using containment equipment specified for the BL4 level of physical containment. Alternative combination of containment safeguards are shown in Table 1.

Appendix G–II–C–3. Containment Equipment.

Appendix G–II–C–3–a. Biological safety cabinets (Class I, II, or III) (see Appendix G–III–12) or other appropriate conbinations of personal protective or physical containment devices (e.g., special protective clothing, masks, gloves, respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals) are used for all activities with organisms containing recombinant DNA molecules which pose a threat of aerosol exposure. These include: Manipulation of cultures and of those clinical or environmental materials which may be a source of aerosols; the aerosol challenge of experimental animals; and harvesting infected tissues or fluids from experimental animals and embryonate eggs, and necropsy of experimental animals.

Appendix G–II–C–4. Laboratory Facilities.

Appendix G–II–C–4–a. The laboratory is separated from areas which are open to unrestricted traffic flow within the building. Passage through two sets of doors is the basic requirement for entry into the laboratory from access corridors or other contiguous areas. Physical separation of the high containment laboratory from access corridors or other laboratories or activities may also be provided by a double-doored clothes change room (showers may be included), airlock, or other access facility which requires passage through two sets of doors before entering the laboratory.

Appendix G–II–C–4–b. The interior surfaces of walls, floors, and ceilings are water resistant so that they can be easily cleaned. Penetrations in these surfaces are sealed or capable of being sealed to facilitate decontaminating the area.

Appendix G–II–C–4–c. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–C–4–d. Laboratory furniture is sturdy and spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–C–4–e. Each laboratory contains a sink for hand-washing. The sink is foot, elbow, or automatically operated and is located near the laboratory exit door.

Appendix G–II–C–4–f. Windows in the laboratory are closed and sealed.

Appendix G–II–C–4–g. Access doors to the laboratory or containment module are self-closing.

Appendix G–II–C–4–h. An autoclave for decontaminating laboratory wastes is available preferably within the laboratory.

Appendix G–II–C–4–i. A ducted exhaust air ventilation system is provided. This system creates directional airflow that draws air into the laboratory through the entry area. The exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from the occupied areas and air intakes. Personnel must verify that the direction of the airflow (into the laboratory) is proper. The exhaust air from the laboratory room can be discharged to the outside without being filtered or otherwise treated.

Appendix G–II–C–4–j. The HEPA-filtered exhaust air from Class I or Class II biological safety cabinets is discharged directly to the outside or through the building exhaust system. Exhaust air from Class I or II biological safety cabinets may be circulated within the laboratory if the cabinet is tested and certified at least very twelve months. If the HEPA-filtered exhaust air from Class I or II biological safety cabinets is to be discharged to the outside through the building exhaust air system, it is connected to this system in a manner (e.g., thimble unit connection (12) that avoids any interference with the air balance of the cabinets or building exhaust system.

Appendix G–II–D. Biosafety Level 4 (BL4).

Appendix G–II–D–1. Standard Microbiological Practices.

Appendix G–II–D–1–a. Work surfaces are decontaminated at least once a day and immediately after any spill of viable material.

Appendix G–II–D–1–b. Only mechanical pipetting devices are used.

Appendix G–II–D–1–c. Eating, drinking, smoking, storing food, and applying cosmetics are not permitted in the laboratory.

Appendix G–II–D–1–d. All procedures are perfomred carefully to minimize the creation of aerosols.

Appendix G–II–D–2. Special Practices.

Appendix G–II–D–2–a. Biological materials to be removed from the Class III cabinets or from the maximum containment laboratory in a viable or intact state are transferred to a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container which is removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose.

Appendix G–II–D–2–b. No materials, except for biological materials that are to remain in a viable or intact state, are removed from the maximum containment laboratory unless they have been autoclaved or decontaminated before they leave the facility. Equipment or material which might be damaged by high temperatures or steam is decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix G–II–D–2–c. Only persons whose presence in the facility or

individual laboratory rooms is required for program or support purposes are authorized to enter. The supervisor has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory. Access to the facility is limited by means of secure, locked doors; accessibility is managed by the laboratory director, biohazards control officer, or other person responsible for the physical security of the facility. Before entering, persons are advised of the potential biohazards and instructed as to appropriated safeguards for ensuring their safety. Authorized persons comply with the instructions and all other applicable entry and exit procedures. A logbook signed by all personnel indicates the date and time of each entry and exit. Practical and effective protocols for emergency situations are established.

Appendix G–II–D–2–d. Personnel enter and leave the facility only through the clothing change and shower rooms. Personnel shower each time they leave the facility. Personnel use the airlocks to enter or leave the laboratory only in an emergency.

Appendix G–II–D–2–e. Street clothing is removed in the outer clothing change room and kept there. Complete laboratory clothing, including undergarments, pants, and shirts or jumpsuits, shoes, and gloves, is provided and used by all personnel entering the facility. Head covers are provided for personnel who do not wash their hair during the exit shower. When leaving the laboratory and before proceeding into the shower area, personnel remove their laboratory clothing and store it in a locker or hamper in the inner change room.

Appendix G–II–D–2–f. When materials that contain organisms containing recombinant DNA molecules or experimental animals are present in the laboratory or animal rooms, a hazard warning sign incorporating the universal biohazard symbol is posted on all access doors. The sign identifies the agent, lists the name of the laboratory director or other responsible person(s), and indicates any special requirements for entering the area (e.g., the need for immunizations or respirators).

Appendix G–II–D–2–g. Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility retrieve the materials by opening the interior doors or the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility.

Appendix G–II–D–2–h. An insect and rodent control program is in effect.

Appendix G–II–D–2–i. Materials (e.g., plants, animals, and clothing) not related to the experiment being conducted are not permitted in the facility.

Appendix G–II–D–2–j. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral part of unit) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Needles should not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needle and syringe should be placed in a puncture-resistant container and decontaminated, preferably by autoclaving before discard or reuse. Whenever possible, cannulas are used instead of sharp needles (e.g., gavage).

Appendix G–II–D–2–k. A system is set up for reporting laboratory accidents and exposures and employee absenteeism and for the medical surveillance of potential laboratory-associated illnesses. Written records are prepared and maintained. An essential adjunct to such a reporting-surveillance system is the availability of a facility for quarantine, isolation, and medical care of personnel with potential or known laboratory associated illnesses.

Appendix G–II–D–2–l. Laboratory animals involved in experiments requiring BL4 level physical containment shall be housed either in cages contained in Class III cabinets or in partial containment caging systems (such as Horsfall units (11)), open cages placed in ventilated enclosures, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors that are located in a specially designed area in which all personnel are required to wear one-piece positive pressure suits.

Appendix G–II–D–2–m. Alternative Selection of Containment Equipment. Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified can be conducted in the BL4 facility using containment equipment requirements specified for the BL3 level of physical containment. Alternative combinations of containment safeguards are shown in Table I.

Appendix G–II–D–3. Containment Equipment.

Appendix G–II–D–3–a. All procedures within the facility with agents assigned to Biosafety Level 4 are conducted in the Class III biological safety cabinet or in Class I or II biological safety cabinets used in conjunction with one-piece positive pressure personnel suits ventilated by a life-support system.

Appendix G–II–D–4. Laboratory Facilities.

Appendix G–II–D–4–a. The maximum containment facility consists of either a separate building or a clearly demarcated and isolated zone within a building. Outer and inner change rooms separated by a shower are provided for personnel entering and leaving the facility. A double-doored autoclave, fumigation chamber, or ventilated airlock is provided for passage of those materials, supplies, or equipment which are not brought into the facility through the change room.

Appendix G–II–D–4–b. Walls, floors, and ceilings of the facility are constructed to form a sealed internal shell which facilitate fumigation and is animal and insect proof. The internal surfaces of this shell are resistant to liquids and chemicals, thus facilitating cleaning and decontamination of the area. All penetrations in these structures and surfaces are sealed. Any drains in the floors contain traps filled with a chemical disinfectant of demonstrated efficacy against the target agent, and they are connected directly to the liquid waste decontamination system. Sewer and other ventilation lines contain HEPA filters.

Appendix G-II-D-4-c. Internal facility appurtenances, such as light fixtures, air ducts, and utility pipes, are arranged to minimize the horizontal surface area on which dust can settle.

Appendix G-II-D-4-d. Bench tops have seamless surfaces which are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G-II-D-4-e. Laboratory furniture is of simple and sturdy construction, and spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G-II-D-4-f. A foot, elbow, or automatically operated hand-washing sink is provided near the door of each laboratory room in the facility.

Appendix G-II-D-4-g. If there is a central vacuum system, it does not serve areas outside the facility. In-line HEPA filters are placed as near as practicable to each use point or service cock. Filters are installed to permit in-place decontamination and replacement. Other liquid and gas services to the facility are protected by devices that prevent backflow.

Appendix G-II-D-4-h. If water fountains are provided, they are foot operated and are located in the facility corridors outside the laboratory. The water service to the fountain is not connected to the backflow-protected distribution system supplying water to the laboratory areas.

Appendix G-II-D-4-i. Access doors to the laboratory are self-closing and lockable.

Appendix G-II-D-4-j. Any windows are breakage resistant.

Appendix G-II-D-4-k. A double-doored autoclave is provided for decontaminating materials passing out of the facility. The autoclave door which opens to the area external to the facility is sealed to the outer wall and automatically controlled so that the outside door can only be opened after the autoclave "sterilization" cycle has been completed.

Appendix G-II-D-4-l. A pass-through dunk tank, fumigation chamber, or an equivalent decontamination method is provided so that materials and equipment that cannot be decontaminated in the autoclave can be safely removed from the facility.

Appendix G-II-D-4-m. Liquid effluents from laboratory sinks, biological safety cabinets, floors, and autoclave chambers are decontaminated by heat treatment before being released from the maximum containment facility. Liquid wastes from shower rooms and toilets may be decontaminated with chemical disinfectants or by heat in the liquid waste decontamination system. The procedure used for heat decontamination of liquid wastes is evaluated mechanically and biologically by using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes from the shower room are decontaminated with chemical disifectants, the chemical used is of demonstrated efficacy against the target or indicator microorganisms.

Appendix G-II-D-4-n. An individual supply and exhaust air ventilation system is provided. The system maintains pressure differentials and directional airflow as required to assure flows inward from areas outside of the facility toward areas of highest potential risk within the facility. Manometers are used to sense pressure differentials between adjacent areas maintained at different pressure levels. If a system malfunctions, the manometers sound an alarm. The supply and exhaust airflow is interlocked to assure inward (or zero) airflow at all times.

Appendix G-II-D-4-o. The exhaust air from the facility is filtered through HEPA filters and discharged to the outside so that it is dispersed away from occupied buildings and air intakes. Within the facility, the filters are located as near the laboratories as practicable in order to reduce the length of potentially contaminated air ducts. The filter chambers are designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. Coarse filters and HEPA filters are provided to treat air supplied to the facility in order to increase the lifetime of the exhaust HEPA filters and to protect the supply air system should air pressures become unbalanced in the laboratory.

Appendix G-II-D-4-p. The treated exhaust air from Class I and II biological safety cabinets can be discharged into the laboratory room environment or the outside through the facility air exhaust system. If exhaust air from Class I or II biological safety cabinets is discharged into the laboratory the cabinets are tested and certified at 6-month intervals. *The treated exhaust air from Class III biological safety cabinets is discharged, without recirculation through two sets of HEPA filters in series, via the facility exhaust air system.* If the treated exhaust air from any of these cabinets is discharged to the outside through the facility exhaust air system, it is connected to this system in a manner (e.g., thimble unit connection [12]) that avoids any interference with the air balance of the cabinets or the facility exhaust air system.

Appendix G-II-D-4-q. A specially designed suit area may be provided in the facility. Personnel who enter this area wear a one-piece positive pressure suit that is ventilated by a life-support system. The life-support system includes alarms and emergency backup breathing air tanks. Entry to this area is through an airlock fitted with airtight doors. A chemcial shower is provided to decontaminate the surface of the suit before the worker leaves the area. The exhaust air from the suit area is filtered by two sets of HEPA filters installed in series. A duplicate filtration unit, exhaust fan, and an automatically starting emergency power source are provided. The air pressure within the suit area is lower than that of any adjacent area. Emergency lighting and communication systems are provided. All penetrations into the internal shell of the suit area are sealed. A double-doored autoclave is provided for decontaminating waste materials to be removed from the suit area.

TABLE 1.—POSSIBLE ALTERNATE COMBINATIONS OF PHYSICAL AND BIOLOGICAL CONTAINMENT SAFEGUARDS

Classification of physical and biological containment	Alternate physical containment			Alternate biological containment
	Laboratory facilities	Laboratory practices	Containment equipment	
BL3/HV2	BL3	BL3	BL3	HV2
	BL3	BL3	BL4	HV1
BL3/HV1	BL3	BL3	BL3	HV1
	BL3	BL3	BL3	HV2
BL4/HV1	BL4	BL4	BL4	HV1
	BL4	BL4	BL3	HV2

Appendix G–III—Footnotes and References of Appendix G.

(*1*) Laboratory Safety at the Center for Disease Control (Sept. 1974). U.S. Department of Health Education and Welfare Publication No. CDC 75–8118.

(*2*) *Biosafety in Microbiological and Biomedical Laboratories*, 1st Edition (March 1984). U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, and National Institutes of Health, Bethesda, Maryland 20205.

(*3*) *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (Oct. 1974). U.S. Department of Health, Education and Welfare Publication No. (NIH) 75–790.

(*4*) *National Institutes of Health Biohazards Safety Guide* (1974). U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health. U.S. Government Printing Office, Stock No. 1740–00383.

(*5*) *Biohazards in Biological Research* (1973). A. Hellman, M. N. Oxman, and R. Pollack (ed.) Cold Spring Harbor Laboratory.

(*6*) *Handbook of Laboratory Safety* (1971). 2nd Edition. N.V. Steere (ed.). The Chemical Rubber Co., Cleveland.

(*7*) Bodily, J. L. (1970). *General Administration of the Laboratory*. H. L. Bodily, E. L. Updyke, and J. O. Mason (eds.), Diagnostic Procedures for Bacterial, Mycotic and Parasitic Infections. American Public Health Association, New York, pp. 11–28.

(*8*) Darlow, H .M. (1968). *Safety in the Microbiological Laboratory*. In J. R. Norris and D. W. Robbins (ed.), Methods in Microbiology. Academic Press, Inc., New York, pp. 169–204.

(*9*) *The Prevention of Laboratory Acquired Infection* (1974). C. H. Collins, E. G. Hartley, and R. Pilsworth. Public Health Laboratory Service, Monograph Series No. 6.

(*10*) Chatigny, M. A. (1961). *Protection Against Infection in the Microbiological Laboratory: Devices and Procedures*. In W. W. Umbreit (ed.). Advances in Applied Microbiology. Academic Press, New York, N.Y. 3:131–192.

(*11*) Horsfall, F. L., Jr., and J. H. Baner (1940). *Individual Isolation of Infected Animals in a Single Room*. J. Bact. *40*, 569–550.

(*12*) Biological safety cabinets referred to in this section are classified as *Class I, Class II,* or *Class III* cabinets. A *Class I* is a ventilated cabinet for personnel protection having an inward flow of air away from the operator. The exhaust air from this cabinet is filtered through a high-efficiency particulate air (HEPA) filter. This cabinet is used in three operational modes: (1) With a full-width open front, (2) with an installed front closure panel (having four 8-inch diameter openings) without gloves, and (3) with an installed front closure panel equipped with arm-length rubber gloves. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater.

A *Class II* cabinet is a ventilated cabinet for personnel and product protection having an open front with inward air flow for personnel protection, and HEPA filtered mass recirculated air flow for product protection. The cabinet exhaust air is filtered through a HEPA filter. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. Design and performance specifications for *Class II* cabinets have been adopted by the National Sanitation Foundation, Ann Arbor, Michigan. A *Class III* cabinet is a closed front ventilated cabinet of gas-tight construction which provides the highest level of personnel protection of all biohazard safety cabinets. The interior of the cabinet is protected from contaminants exterior to the cabinet. The cabinet is fitted with arm-length rubber gloves and is operated under a negative pressure of at least 0.5 inches water guage. All supply air is filtered through HEPA filters. Exhaust air is filtered through two HEPA filters or one HEPA filter and incinerator before being discharged to the outside environment. National Sanitation Foundation Standard 49. 1976. Class II (Laminar Flow) Biohazard Cabinetry. Ann Arbor, Michigan.

(*13*) Biosafety Level 1 is suitable for work involving agents of no known or minimal potential hazard to laboratory personnel and the environment. The laboratory is not separated from the general traffic patterns in the building. Work is generally conducted on open bench tops. Special containment equipment is not required or generally used. Laboratory personnel have specific training in the procedures conducted in the laboratory and are supervised by a scientist with general training in microbiology or a related science (see Appendix G–III–2).

(*14*) Biosafety Level 2 is similar to Level 1 and is suitable for work involving agents of moderate potential hazard to personnel and the environment. It differs in that: (1) Laboratory personnel have specific training in handling pathogenic agents and are directed by competent scientists; (2) access to the laboratory is limited when work is being conducted; and (3) certain procedures in which infectious aerosols are created are conducted in biological safety cabinets or other physical containment equipment (see Appendix G–III–2).

(*15*) Office of Reseach Safety, National Cancer Institute, and the Special Committee of Safety and Health Experts. 1978. "Laboratory Safety Monograph: A Supplement to the NIH Guidelines for Recombinant DNA Research." Bethesda, Maryland, National Institutes of Health.

(*16*) Biosafety Level 3 is applicable to clinical, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents which may cause serious or potentially lethal disease as result of exposure by the inhalation route. Laboratory personnel have specific training in handling pathogenic and potentially lethal agents and are supervised by competent scientists who are experienced in working with these agents. All procedures involving the manipulation of infectious material are conducted within biological safety cabinets or other physicial containment devices or by personnel wearing appropriate personal protective clothing and devices. The laboratory has special engineering and design features. It is recognized, however, that many existing facilities may not have all the facility safeguards recommended for Biosafety Level 3 (e.g., access zone, sealed penetrations, and directional airflow, etc.). In these circumstances, acceptable safety may be achieved for routine or repetitive operations (e.g., diagnostic procedures involving the propagation of an agent for identification, typing, and susceptibility testing) in laboratories where facility features satisfy Biosafety Level 2 recommendations provided the recommended "Standard Microbiological Practices," "Special Practices," and "Containment Equipment" for Biosafety Level 3 are rigorously followed. The decision to implement this modification of Biosafety Level 3 recommendations should be made only by the laboratory director (see Appendix G–III–2).

Appendix H—Shipment

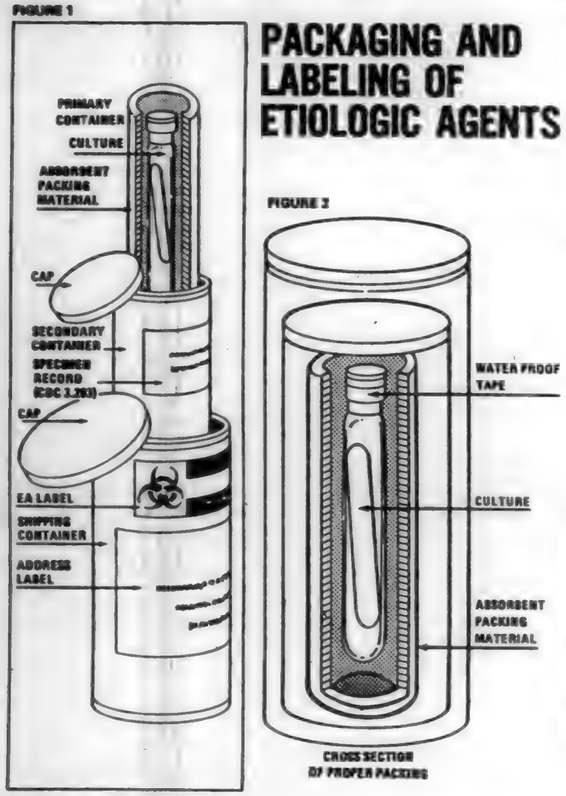
Recombinant DNA molecules contained in an organism or virus shall be shipped only as an etiologic agent under requirements of the U.S. Public Health Service, and the U.S. Department of Transportation (Section 72.3, Part 72, Title 42, and Sections 173.386–.388, Part 173, Title 49, U.S. Code of Federal Regulations (CFR)) as specified below:

Appendix H–I. Recombinant DNA molecules contained in an organism or virus requiring BL1, BL2, or BL3 physical containment, when offered for transportation or transported, are subject to all requirements of Section 72.3(a)-(e), Part 72, Title 42 CFR, and Sections 173.386–.388, Part 173, Title 49 CFR.

Appendix H–II. Recombinant DNA molecules contained in an organism or virus requiring BL4 physical containment, when offered for transportation or transported, are subject to the requirements listed above under Appendix H–I and are also subject to Section 72.3(f), Part 72, Title 42 CFR.

Appendix H–III. Information on packaging and labeling of etiologic agents is shown in Figures 1, 2, and 3. Additional information on packaging and shipment is given in the "Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research," available from the Office of Recombinant DNA Activities and in *Biosafety in Microbiological and Biomedical Laboratories* (see Appendix G–III–2).

FIGURE 1



PACKAGING AND LABELING OF ETIOLOGIC AGENTS

FIGURE 2

The Interstate Shipment of Etiologic Agents (42 CFR, Part 72) was revised July 21, 1980 to provide for packaging and labeling requirements for etiologic agents and certain other materials shipped in interstate traffic.

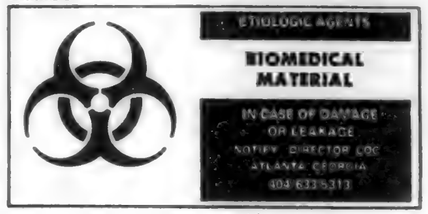
Figures 1 and 2 diagram the packaging and labeling of etiologic agents in volumes of less than 50 ml. in accordance with the provisions of subparagraph 72.3 (a) of the cited regulation. Figure illustrates the color and size of the label, described in subparagraph 72.3 (d) (1 - 5) of the regulations, which shall be affixed to all shipments of etiologic agents.

For further information on any provision of this regulation contact:

Centers for Disease Control
Attn: Biohazards Control Office
1600 Clifton Road
Atlanta, Georgia 30333

Telephone: 404–329-3883
FTS–236-3883

FIGURE 3



Appendix I—Biological Containment

(See also Appendix E.)

Appendix I–I. Levels of Biological Containment. In consideration of biological containment, the vector (plasmid, organelle, or virus) for the recombinant DNA and the host (bacterial, plant, or animal cell) in which the vector is propagated in the laboratory will be considered together. Any combination of vector and host which is to provide biological containment must be chosen or constructed so that the following types of "escape" are minimized: (i) survival of the vector in its host outside the laboratory, and (ii) transmission of the vector from the propagation host to other nonlaboratory hosts.

The following levels of biological containment (HV, or *Host-Vector*, systems) for prokaryotes will be established; specific criteria will depend on the organisms to be used.

Appendix I–I–A. HV1. A host-vector system which provides a moderate level of containment. *Specific system* are:

Appendix I–I–A–1. EK1. The host is always *E. coli* K–12 or a derivative thereof, and the vectors include nonconjugative plasmids (e.g., pSC101, Co1E1, or derivatives thereof(*1–7*)) and variants of bacteriophage, such as lambda(*8–15*). The *E. coli* K–12 hosts shall not contain conjugation-proficient plasmids, whether autonomous or integrated, or generalized transducing phages.

Appendix I–I–A–2. Other HV1. Hosts and vectors shall be, at a minimum, comparable in containment to *E. coli* K–12 with a non conjugative plasmid or bacteriophage vector. The data to be considered and a mechanism for approval of such HV1 systems are described below (Appendix I–II).

Appendix I–I–B. HV2. These are host-vector systems shown to provide a high level of biological containment as demonstrated by data from suitable tests performed in the laboratory. Excape of the recombinant DNA either via survival of the organisms or via transmission of recombinant INA to other organisms should be less than $\frac{1}{10}$ G58 under specified conditions. Specific systems are:

Appendix I–I–B–1. For EK2 host-vector systems in which the vector is a plasmid, no more than one in 10^9 host cells should be able to perpetuate a cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment, either by survival of the original host or as a consequences of transmission of the cloned DNA fragment.

Appendix I–I–B–2. For EK2 host-vector systems in which the vector is a phage, no more than one in 10^6 phage particles should be able to perpetuate a cloned DMA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment either: (it) as a prophage (in the inserted or plasmid form) in the laboratory host used for phage propagation or (ii) by surviving in natural environments and transferring a cloned DNA fragment to other hosts (or their resident prophages).

Appendix I–II. Certification of Host-Vector Systems.

Appendix I–II–A. Responsibility. HV1 systems other than *E. coli* K–12 and HV2 host-vector systems may not be designated as such until they have been certified by the Director, NIH. Application for certification of a host-vector system is made by written application to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland 20205.

Host-vector systems that are proposed for certification will be reviewed by the RAC (see Section IV–C–1–b–(1)–(e)). This will first involve review of the data on construction, properties, and testing of the proposed host-vector system by a working group composed on one or more members of the RAC and other persons chosen because of their expertise in evaluating such data. The committee will then evaluate the report of the working group and any other available information at a regular meeting. The Director, NIH, is responsible for certification after receiving the advice of the RAC. Minor modifications of existing certified Host-vector systems where the modifications are of minimal or no consequence to the properties relevant to containment may be certified by the Director, NIH, without review by the RAC (see Section IV–C–1–b–(3)–(c)).

When new host-vector systems are certified, notice of the certification will be sent by ORDA to the applicant and to all IBCs and will be published in the *Recombinant DNA Technical Bulletin.* Copies of a list of all currently certified host-vector systems may be obtained from ORDA at any time.

The Director, NIH, may at any time rescind the certification of any host-vector system (see Section IV–C–1–b–(3)–(d)). If certification of a host-vector system is rescinded, NIH will instruct investigators to transfer cloned DNA into a different system or use the clones at a higher physical containment level unless NIH determines that the already constructed clones incorporate adequate biological containment.

Certification of a given system does not extend to modifications of either the host or vector component of that system. Such modified systems must be independently certified by the Director, NIH. If modifications are minor, it may only be necessary for the investigator to submit data showing that the modifications have either improved or not impaired the major phenotypic traits on which the containment of the system depends. Substantial modifications of a certified system require the submission of complete testing data.

Appendix I–II–B. Data to be Submitted for Certification.

Appendix I–II–B–1. HV1 Systems Other than E. coli K–12. The following types of data shall be submitted, modified as appropriate for the particular system under consideration: (i) a description of the organism and vector; the strain's natural habitat and growth requirements; its physiological properties, particularly those related to its reproduction and survival and the mechanisms by which it exchanges genetic information; the range of organisms with which this organism normally exchanges genetic information and what sort of information is exchanged; and any relevant information on its pathogenicity or toxicity; (ii) a description of the history of the particular strains and vectors to be used, including data on any mutations which render this organism less able to survive or transmit genetic information; and (iii) a general description of the range of experiments contemplated with emphasis on the need for developing such an HV1 system.

Appendix I–II–B–2. HV2 Systems. Investigators planning to request HV2 certification for host-vector systems can obtain instructions from ORDA concerning data to be submitted(*14–15*). In general, the following types of data are required: (i) description of construction steps with indication of source, properties, and manner of introduction of genetic traits; (ii) quantitative data on the stability of genetic traits that contribute to the containment of the system; (iii) data on the survival of the host-vector system under nonpermissive laboratory conditions designed to represent the relevant natural environment; (iv) Data on transmissibility of the vector and/or a cloned DNA fragment under both permissive and nonpermissive conditions; (v) data on all other properties of the system which affect containment and utility, including information on yields of phage or plasmid molecules, ease of DNA isolation, and ease of transfection or transformation; and (vi) in some cases, the investigator may be asked to submit data on survival and vector transmissibility from experiments in which the host-vector is fed to laboratory animals and human subjects. Such *in vivo* data may be required to confirm the validity of predicting *in vivo* survival on the basis of *in vitro* experiments.

Data must be submitted in writing to ORDA. Ten to twelve weeks are normally required for review and circulation of the data prior to the meeting at which such data can be considered by the RAC. Investigators are encouraged to publish their data on the construction, properties, and testing of proposed HV2 systems prior to consideration of the system by the RAC and its subcommittee. More specific instructions concerning the type of data to be submitted to NIH for proposed EK2 systems involving either plasmids or bacteriophage in *E. coli* K–12 are available from ORDA.

Appendix I–III—Footnotes and References of Appendix I

(*1*) Hershfield, V., H. W. Boyer, C. Yanofsky, M. A. Lovett, and D. R. Helinski (1974). *Plasmid ColEl as a Molecular Vehicle for Cloning and Amplification of DNA.* Proc. Nat. Acad. Sci. USA *71*, 3455–3459.

(*2*) Wensink, P. C., D. J. Finnegan, J. E. Donelson, and D. S. Hogness (1974). *A System for Mapping DNA Sequences in the Chromosomes of Drosophila Melanogaster.* Cell *3*, 315–335.

(*3*) Tanaka, T., and B. Weisblum (1975). *Construction of a Colicin E1–R Factor Composite Plasmid In Vitro: Means for Amplification of Deoxyribonucleic Acid.* J. Bacteriol. *121*, 354–362.

(4) Armstrong, K. A., V. Hershfield, and D. R. Helinski (1977). *Gene Cloning and Containment Properties of Plasmid Col E1 and Its Derivatives, Science 196*, 172–174.

(5) Bolivar, F., R. L. Rodriguez, M. C. Betlach, and H. W. Boyer (1977). *Construction and Characterization of New Cloning Vehicles: I. Ampicillin-Resistant Derivative of pMB9.* Gene *2*, 75–93.

(6) Cohen, S. N., A. C. W. Chang, H. Boyer, and R. Helling (1973). *Construction of Biologically Functional Bacterial Plasmids in Vitro.* Proc. Natl. Acad. Sci. USA *70* 3240–3244.

(7) Bolivar, F., R. L. Rodriguez, R. J. Greene, M. C. Batlach, H. L. Reyneker, H. W. Boyer, J. H. Crosa, and S. Falkow (1977). *Construction and Characterization of New Cloning Vehicles: II. A Multi-Purpose Cloning System.* Gene *2*, 95–113.

(8) Thomas, M., J. R. Cameron, and R. W. Davis (1974). *Viable Molecular Hybrids of Bacteriophage Lambda and Eukaryotic DNA.* Proc. Nat. Acad. Sci. USA *71*, 4579–4583.

(9) Murray, N. E., and K. Murray (1974). *Manipulation of Restriction Targets in Phage*

Lambda to Form Receptor Chromosomes for DNA Fragments. Nature *251*, 476–481.

(10) Rambach, A., and P. Tiollais (1974). *Bacteriophage Having EcoRI Endonuclease Sites Only in the Non-Essential Region of the Genome.* Proc. Nat. Acad. Sci., USA *71*, 3927–3930.

(11) Blattner, F. R., B. G. Williams, A. E. Blechs, K. Denniston-Thompson, H. E. Faber, L. A. Furlong, D. J. Gunwald, D. O. Kiefer, D. D. Moore J. W. Shumm, E. L. Sheldon, and O. Smithies (1977). *Charon Phages; Safer Derivatives of Bacteriophage Lambda for DNA Cloning.* Science *196*, 163–169.

(12) Donoghue, D. J., and P. A. Sharp (1977). *An Improved Lambda Vector: Construction of Model Recombinants Coding for Kanamycin Resistance,* Gene *1*, 209–227.

(13) Leder, P., D. Tiemeier and L. Enquist (1977). *EK2 Derivatives of Bacteriophage Lambda Useful in the Cloning of DNA from Higher Organisms: The ??????? WES System.* Science *196*, 175–177.

(14) Skalka, A. (1978). *Current Status of Coliphage, EK2 Vectors.*

(15) Szybalski, W., A. Skalka, S. Gottesman, A. Campbell, and D. Botstein (1978). *Standardized Laboratory Tests for EK2 Certification.* Gene *3*, 36–38.

Appendix J—Federal Interagency Advisory Committee on Recombinant DNA Research

Appendix J–I. Federal Interagency Advisory Committee. The Federal Interagency Advisory Committee on Recombinant DNA Research advises the Secretary of the Department of Health and Human Services, the Assistant Secretary for Health, and the Director, National Institutes of Health, on the coordination of those aspects of all Federal programs and activities relating to recombinant DNA research. The committee provides for communication and exchange of information necessary to maintain adequate coordination of such programs and activities. The committee is responsible for facilitating compliance with a uniform set of guidelines in the conduct of this research in the public and private sectors and, where warranted, to suggest administrative or legislative proposals.

The Director of the NIH, or his designee, serves as chairman, and the committee includes representation from all Departments and Agencies whose programs involve health functions or responsibilities as determined by the Secretary.

Departments and agencies which have representation on this committee as of December 1980 are:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Environmental Protection Agency
Executive Office of the President
Department of Health and Human Services
Office of the Assistant Secretary for Health
Centers for Disease Control
Food and Drug Administration
National Institutes of Health
Department of the Interior
Department of Justice
Department of Labor
National Aeronautics and Space Administration
National Science Foundation
Nuclear Regulatory Commission
Department of State
Department of Transportation
Arms Control and Disarmament Agency
Veterans Administration

At the second meeting of the committee on November 23, 1976, all of the Federal agencies endorsed the Guidelines, and Departments which support or conduct recombinant DNA research agreed to abide by the Guidelines(*1*).

Appendix J–II.—Footnote of Appendix J

(*1*) Minutes of the first eight meetings of the Federal Interagency Advisory Committee on Recombinant DNA Research are reproduced in *Recombinant DNA Research, Volume 2, Documents Relating to "NIH Guidelines for Research Involving Recombinant DNA Molecules," June 1976—November 1977.*

Appendix K—Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules

This part of the Guidelines specifies physical containment guidelines for large-scale (greater than 10 liters of culture) research or production involving viable organisms containing recombinant DNA molecules. It shall apply to large-scale research or production activities as specified in Section III–B–5 of the Guidelines.

All provisions of the Guidelines shall apply to large-scale research or production activities with the following modifications:

- Appendix K shall replace Appendix G when quantities in excess of 10 liters of culture are involved in research or production.
- The institution shall appoint a Biological Safety Officer (BSO) if it engages in large-scale research or production activities involving viable organisms containing recombinant DNA molecules. The duties of the BSO shall include those specified in Section IV–B–4 of the Guidelines.
- The institution shall establish and maintain a health surveillance program for personnel engaged in large-scale research or production activities involving viable organisms containing recombinant DNA molecules which require BL3 containment at the laboratory scale. The program shall include: preassignment and periodic physical and medical examinations; collection, maintenance and analysis of serum specimens for monitoring serologic changes that may result from the employee's work experience; and provisions for the investigation of any serious, unusual or extended illnesses of employees to determine possible occupational origin.

Appendix K–I. Selection of Physical Containment Levels. The selection of the physical containment level required for recombinant DNA research or production involving more than 10 liters of culture is based on the containment guidelines established in Part III of the Guidelines. For purposes of large-scale research or production, three physical containment levels are established. These are referred to as BL1–LS, BL2–LS, and BL3–LS. The BL–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL1 containment at the laboratory scale. (The BL1–LS level of physical containment is recommended for large-scale research or production of viable organisms for which BL1 is recommended at the laboratory scale such as those described in Appendix C.) The BL2–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL2 containment at the laboratory scale. The BL3–LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL3 containment at the laboratory scale. No provisions are made for large-scale research or production of viable organisms containing recombinant DNA molecules which require BL4 containment at the laboratory scale. If necessary, these requirements will be established by NIH on an individual basis.

Appendix K–II. BL1–LS Level.

Appendix K–II–A. Cultures of viable orgainsms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessel used for the propagation and growth of cultures) or other primary containment equipment (e.g., biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to reduce the potential for escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system or other primary containment equipment provided all physical containment requirements specified in Appendix G–II–A of the Guidelines are met.

Appendix K–II–B. Culture fluids (except as allowed in Appendix K–II–C) shall not be removed from a closed system or other primary containment equipment unless the viable orgainsms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–II–C. Sample collection from a closed system, the addition of materials to a closed system, and the transfer of culture fluids from one closed system to another shall be done in a manner which minimizes the release of aerosols or contamination of exposed surfaces.

Appendix K–II–D. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to minimize the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–II–E. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be efffective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–II–F. Emergency plans required by Section IV–B–3–f shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–III. BL2–LS Level.

Appendix K–III–A. Cultures of viable organisms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessel used for the propagation and growth of cultures) or other primary containment equipment (e.g., Class III biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to prevent the escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system or other primary containment equipment provided all physical containment requirements specified in Appendix G–II–B of the Guidelines are met.

Appendix K–III–B. Culture fluids (except as allowed in Appendix K–III–C) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–III–C. Sample collection from a closed system, the addition of materials to a closed system, and the transfer of cultures fluids from one closed system to another shall be done in a manner which prevents the release of aerosols or contamination of exposed surfaces.

Appendix K–III–D. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to prevent the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–III–E. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–III–F. Rotating seals and other mechanical devices directly associated with a closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to HEPA filters or through other equivalent treatment devices.

Appendix K–III–G. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules and other primary containment equipment used to contain operations involving viable organisms containing recombinant DNA molecules shall include monitoring or sensing devices that monitor the integrity of containment during operations.

Appendix K–III–H. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be tested for integrity of the containment features using the organism that will serve as the host for propagating recombinant DNA molecules. Testing shall be accomplished prior to the introduction of viable organisms containing recombinant DNA molecules and following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

Appendix K–III–I. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be permanently identified. This identification shall be used in all records reflecting testing, operation, and maintenance and in all documentation relating to use of this equipment for research or production activities involving viable organisms containing recombinant DNA molecules.

Appendix K–III–J. The universal biohazard sign shall be posted on each closed system and primary containment equipment when used to contain viable organisms containing recombinant DNA molecules.

Appendix K–III–K. Emergency plans required by Section IV–B–3–f shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–IV. BL3–LS Level.

Appendix K–IV–A. Cultures of viable organisms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessels used for the propagation and growth of cultures) or other primary containment equipment (e.g., Class III biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to prevent the escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system provided all physical containment requirements specified in Appendix G–II–C of the Guideliness are met.

Appendix K–IV–B. Culture fluids (except as allowed in Appendix K–IV–C) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–IV–C. Sample collection from a closed system, the addition of materials to a closed system, and the transfer of culture fluids from one closed system to another shall be done in a manner which prevents the release of aerosols or contamination of exposed surfaces.

Appendix K–IV–D. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration to prevent the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–IV–E. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–IV–F. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be operated so that the space above the culture level will be maintained at a pressure as low as possible, consistent with equipment design, in order to maintain the integrity of containment features.

Appendix K–IV–G. Rotating seals and other mechanical devices directly associated with a closed system used to contain viable organisms containing recombinant DNA molecules shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to HEPA filters or through other equivalent treatment devices.

Appendix K–IV–H. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules and other primary containment equipment used to contain operations involving viable organisms containing recombinant DNA molecules shall include monitoring or sensing devices that monitor the integrity of containment during operations.

Appendix K–IV–I. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be tested for integrity of the containment features using the organisms that will serve as the host for propagating the recombinant DNA molecules. Testing shall be accomplished prior to the introduction of viable organisms containing recombinant DNA molecules and following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

Appendix K–IV–J. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be permanently identified. This identification shall be used in all records reflecting testing, operation, and maintenance and in all documentation relating to the use of this equipment for research production activities involving viable organisms containing recombinant DNA molecules.

Appendix K–IV–K. The universal biohazard sign shall be posted on each closed system and primary containment equipment when used to contain viable organisms containing recombinant DNA molecules.

Appendix K–IV–L. Emergency plans required by Section IV–B–3–f shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–IV–M. Closed systems and other primary containment equipment used in handling cultures of viable organisms containing recombinant DNA molecules shall be located within a controlled area which meets the following requirements:

Appendix K–IV–M–1. The controlled area shall have a separate entry area. The entry area shall be a double-doored space such as an air lock, anteroom, or change room that separates the controlled area from the balance of the facility.

Appendix K–IV–M–2. The surfaces of walls, ceilings, and floors in the controlled area shall be such as to permit ready cleaning and decontamination.

Appendix K–IV–M–3. Penetrations into controlled area shall be sealed to permit liquid or vapor phase space decontamination.

Appendix K–IV–M–4. All utilities and service or process piping and wiring entering the controlled area shall be protected against contamination.

Appendix K–IV–M–5. Hand-washing facilities equipped with foot, elbow, or automatically operated valves shall be located at each major work area and near each primary exit.

Appendix K–IV–M–6. A shower facility shall be provided. This facility shall be located in close proximity to the controlled area.

Appendix K–IV–M–7. The controlled area shall be designed to preclude release of culture fluids outside the controlled area in the event of an accidental spill or release from the closed systems or other primary containment equipment.

Appendix K–IV–M–8. The controlled area shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential. If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of the direction of air movement or shall be equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the controlled area shall not be recirculated to other areas of the facility. The exhaust air from the controlled area may be discharged to the outdoors without filtration or other means for effectively reducing an accidental aerosol burden provided that it can dispersed clear of occupied buildings and air intakes.

Appendix K–IV–N–. The following personnel and operational practices shall be required:

Appendix K–IV–N–1. Personnel entry into the controlled area shall be through the entry area specified in Appendix K–IV–M–1.

Appendix K–IV–N–2. Persons entering the controlled area shall exchange or cover their personal clothing with work garments such as jumpsuits, laboratory coats, pants and shirts, hear cover, and shoes or shoe covers. On exit from the controlled area the work clothing may be stored in a locker separate from that used for personal clothing or discarded for laundering. Clothing shall be decontaminated before laundering.

Appendix K–IV–N–3. Entry into the controlled area during periods when work is in progress shall be restricted to those persons required to meet program or support needs. Prior to entry all persons shall be informed of the operating practices, emergency procedures, and the nature of the work conducted.

Appendix K–IV–N–4. Persons under 18 years shall not be permitted to enter the controlled area.

Appendix K–IV–N–5. The universal biohazard sign shall be posted on entry doors to the controlled area and all internal doors when any work involving the organism is in progress. This includes periods when decontamination procedures are in progress. The sign posted on the entry doors to the controlled area shall include a statement of agents in use and personnel authorized to enter the controlled area.

Appendix K–IV–N–6. The controlled area shall be kept neat and clean.

Appendix K–IV–N–7. Eating, drinking, smoking, and storage of food are prohibited in the controlled area.

Appendix K–IV–N–8. Animals and plants shall be excluded from the controlled area.

Appendix K–IV–N–9. An effective insect and rodent control program shall be maintained.

Appendix K–IV–N–10. Access doors to the controlled area shall be kept closed, except as necessary for access, while work is in progress. Serve doors leading directly outdoors shall be sealed and locked while work is in progress.

Appendix K–IV–N–11. Persons shall wash their hands when leaving the controlled area.

Appendix K–IV–N–12. Persons working in the controlled area shall be trained in emergency procedures.

Appendix K–IV–N–13. Equipment and materials required for the management of accidents involving viable organisms containing recombinant DNA molecules shall be available in the controlled area.

Appendix K–IV–N–14. The controlled area shall be decontaminated in accordance with established procedures following spills or other accidental release of viable organisms containing recombinant DNA molecules.

Appendix L—Release Into the Environment of Certain Plants

Appendix L–1. General Information. Appendix L specifies conditions under which certain plants as specified below, may be approved for release into the environment. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, review by the RAC Plant Working Group, and specific approval by NIH. Such experiments also require the approval of the IBC before initiation. Information on specific experiments which have been approved will be available in ORDA and will be listed in Appendix L–III when the Guidelines are republished.

Experiments which do not meet the specifications of Appendix L–II fall under Section III–A and require RAC review and NIH and IBC approval before initiation.

Appendix L–II. Criteria Allowing Review by the RAC Plant Working Group Without the Requirement for Full RAC Review. Approval may be granted by ORDA in consultation with the Plant Working Group without the requirement for full RAC review (IBC review is also necessary) for growing plants containing recombinant DNA in the field under the following conditions:

Appendix L–II–A. The plant species is a cultivated crop of a genus that has no species known to be a noxious weed.

Appendix L–II–B. The introduced DNA consists of well-characterized genes containing no sequences harmful to humans, animals, or plants.

Appendix L–II–C. The vector consists of DNA: (i) From exempt host-vector systems (Appendix C); (ii) from plants of the same or closely related species; (iii) from nonpathogenic prokaryotes or nonpathogenic lower eukaryotic plants; (iv) from plant pathogens only if sequences resulting in production of disease symptoms have been deleted; or (v) chimeric vectors constructed from sequences defined in (i) to (iv) above. The DNA may be introduced by any suitable method. If sequences resulting in production of disease symptoms are retained for purposes of introduciang the DNA into the plant, greenhouse-grown plants must be shown to be free of such sequences before such plants, derivatives, or seed from them can be used in field tests.

Appendix L–II–D. Plants are grown in controlled access fields under specified conditions appropriate for the plant under study and the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and for further preventing plants containing recombinant DNA from becoming established in the environment. Review by the IBC should include an appraisal by scientists knowledgeable of the crop, its production practices, and the local geographical conditions. Procedures for assessing alterations in and the spread of organisms containing recombinant DNA must be developed. The results of the outlined tests must be submitted for review by the IBC. Copies must also be submitted to the Plant Working Group of the RAC.

Appendix L–III. Specific Approvals. As of publication of the revised Guidelines, no specific proposals have been approved. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland 20205.

Dated: November 15, 1984.

James B. Wyngaarden, M.D.,

Director, National Institutes of Health.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 84–30886 Filed 11–21–84; 8:45 am]

BILLING CODE 4140–01–M

federal register

Friday
November 23, 1984

Part VII

Environmental Protection Agency

Proposed Guidelines for Carcinogen Risk Assessment; Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2706-4]

Proposed Guidelines for Carcinogen Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Guidelines for Carcinogen Risk Assessment and Request for Comments.

SUMMARY: The U.S. Environmental Protection Agency is proposing Guidelines for Carcinogen Risk Assessment (Guidelines). These Guidelines are proposed for use within the policy and procedural framework provided by the various statutes that EPA administers to guide Agency analysis of carcinogenicity data. We solicit public comment and will take public comment into account in revising these Guidelines. These Guidelines will be reviewed by the Science Advisory Board in meetings now tentatively scheduled for April 1985.

These proposed Guidelines were developed as part of a broad guidelines development program under the auspices of the Office of Health and Environmental Assessment (OHEA), located in the Agency's Office of Research and Development. Consonant with the role of OHEA's Carcinogen Assessment Group (CAG) as the Agency's senior health committee for carcinogenicity assessment, the Guidelines were developed by an Agency-wide working group chaired by the Chairman of CAG.

DATE: Comments must be postmarked by January 22, 1985.

ADDRESS: Comments may be mailed or delivered to: Dr. Robert McGaughy, Carcinogen Assessment Group (RD–689), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Robert McGaughy, Telephone: 202–382–5952.

SUPPLEMENTARY INFORMATION: This is the first proposed revision of the 1976 Interim Procedures and Guidelines for the Health Risk Assessment of Suspected Carcinogens (**Federal Register** 41:21402–21405, 1976). This revision incorporates concepts and approaches to carcinogen assessment that have been developed during the last eight years. These proposed revised Guidelines describe salient principles for evaluating the nature and magnitude of the cancer hazard from suspect carcinogens and general framework to be followed in developing analyses of carcinogenic risk.

These Guidelines were sent to 36 scientists in the field of carcinogenesis from universities, environmental groups, industry, labor, and governmental agencies. We have decided to delay incorporating suggestions from the 26 reviewers who submitted comments into the Guidelines published here until comments submitted during this public comment period are received.

References and supporting documents used in the preparation of these Guidelines as well as comments received are available for inspection and copying at the Public Information Reference Unit (202–382–5926), EPA Headquarters Library, 401 M Street SW., Washington, DC, between the hours of 8:00 and 4:30 p.m.

Dated: November 9, 1984.

William D. Ruckelshaus,

Administrator.

Contents

I. Introduction
II. Hazard Identification (Qualitative Risk Assessment)
A. Overview
B. Elements of Hazard Identification
1. Physical-Chemical Properties and Routes and Patterns of Exposure
2. Structure-Activity Relationships
3. Metabolic and Pharmacokinetic Properties
4. Toxicologic Effects
5. Short-Term Tests
6. Long-Term Animal Studies
7. Human Studies
C. Weight of Evidence
D. Guidance for Quantitative Assessment
E. Summary and Conclusion
III. Dose-Responsive Assessment, Exposure Assessment, and Risk Characterization
A. Dose-Responsive Assessment
1. Selection of Data
2. Choice of Mathematical Extrapolation Model
3. Equivalent Exposure Units Among Species
B. Exposure Assessment
C. Risk Characterization
1. Options for Numerical Risk Estimates
2. Concurrent Exposure
3. Summary of Risk Characterization
IV. Appendix EPA Classification System for Evidence of Carcinogenicity From Human Studies and From Animal Studies
V. References

I. Introduction

This is the first revision of the 1976 Interim Procedures and Guidelines for Health Risk Assessments of Suspected Carcinogens (U.S. EPA, 1976; Albert et al., 1977). The impetus for this revision is the need to incorporate into these Guidelines the concepts and approaches to carcinogen risk assessment that have been developed during the last eight years. The purpose of these Guidelines is to promote quality and consistency of carcinogen risk assessments within the EPA and to inform those outside the EPA about its approach to carcinogen risk assessment. These Guidelines emphasize the broad but essential aspects of risk assessment that are needed by the experts in the various disciplines required (e.g., toxicology, pathology, pharmacology, and statistics) for carcinogen assessment. Guidance is given in general terms since the science of carcinogenesis is in a state of rapid advancement, and overly specific approaches may rapidly become obsolete.

These Guidelines describe the general framework to be followed in developing an analysis of carcinogenic risk and some salient principles to be used in evaluating the quality of data and in formulating judgments concerning the nature and magnitude of the cancer hazard from suspect carcinogens.

A summary of the current state of knowledge in the field of carcinogenesis and a statement of broad scientific principles of carcinogen risk assessment, which was developed by the Office of Science and Technology Policy (OSTP, 1984), forms an important basis for these Guidelines; the format of these Guidelines is similar to that proposed by the National Research Council (NRC) of the National Academy of Sciences in a report entitled "Risk Assessment in the Federal Government" (NRC, 1983).

These Guidelines are to be used within the policy framework already provided by applicable EPA statutes and do not alter such policies. These Guidelines provide general directions for analyzing and organizing available data. They do not imply that one kind of data or another is a prerequisite for regulatory action to control, prohibit, or allow the use of a carcinogen. The analysis of carcinogenic risks will be carried out independently from considerations of the socioeconomic consequences of regulatory action.

Regulatory decisionmaking involves two components: Risk assessment and risk management. Risk assessment defines the adverse health consequences of exposure to toxic agents; risk management combines the risk assessment with the directives of the enabling regulatory legislation, together with socioeconomic, technical, political, and other considerations, to reach a decision as to whether or how much to control future exposure to the suspected toxic agents.

Risk assessment includes one or more of the following components: hazard identification, dose-response assessment, exposure assessment, and risk characterization (NRC, 1983).

Hazard identification is a qualitative risk assessment, dealing with the process of determining whether exposure to an agent has the potential to increase the incidence of cancer. For purposes of these Guidelines, malignant and benign tumors are used in the evaluation of the carcinogenic hazard. The hazard identification component qualitatively answers the question of how likely an agent is to be a human carcinogen.

Traditionally, quantitative risk assessment has been used as an inclusive term to describe all or parts of dose-response assessment, exposure assessment, and risk characterization. Quantitative risk assessment can be a useful general term in some circumstances, but the more explicit terminology is usually preferred. The dose-response assessment defines the relationship between the dose of an agent and the probability of induction of a carcinogenic effect. This component usually entails an extrapolation from the generally high doses administered to experimental animals or exposures noted in epidemiologic studies to the exposure levels expected from human contact with the agent in the environment; it also includes considerations of the validity of these extrapolations.

The exposure assessment identifies populations exposed to the agent, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the agent.

In risk characterization, the outputs of the exposure assessment and the dose-response assessment are combined to estimate quantitatively some measure of the carcinogenic risk. As part of risk characterization, a summary of the strengths and weaknesses in the hazard identification, dose-response assessment, exposure assessment, and the public health risk estimates are presented. Major assumptions, scientific judgments, and, to the extent possible, estimates of the uncertainties embodied in the assessment are also presented, distinguishing clearly between fact, assumption, and science policy.

II. Hazard Identification (Qualitative Risk Assessment)

A. Overview

The qualitative assessment or hazard identification part of risk assessment contains a review of the relevant biological land chemical information bearing on whether or not an agent may pose a carcinogenic hazard. Since chemical agents seldom occur in a pure state and are often transformed in the body, the review should include information on contaminants, degradation products, and metabolites.

Studies are evaluated according to sound biological and statistical considerations and procedures. These have been described in several publications (Interagency Regulatory Liaison Group, 1979; OSTP, 1984; Peto et al., 1980; Mantel, 1980; Mantel and Haenszel, 1959; Interdisciplinary Panel on Carcinogenicity, 1984; National Center for Toxicological Research, 1981; National Toxicology Program, 1984; U.S. EPA, 1983a; 1983b; 1983c). Results and conclusions concerning the agent, derived from different types of information, whether indicating positive or negative responses, are melded together into a weight-of-evidence determination. The strength of the evidence supporting a potential human carcinogenicity judgment is developed in a weight-of-evidence stratification scheme.

B. Elements of Hazard Identification

1. Physical-Chemical Properties and Routes and Patterns of Exposure

Parameters relevant to carcinogenesis, including physical state, physical-chemical properties, and exposure pathways in the environment should be described.

2. Structure-Activity Relationships

This section should summarize relevant structure-activity correlations that support the prediction of potential carcinogenicity.

3. Metabolic and Pharmacokinetic Properties

This section should summarize relevant metabolic information. Information such as whether the agent is direct-acting or requires conversion to a reactive carcinogenic (e.g., an electrophilic) species, metabolic pathways for such conversions, macromolecular interactions, and transport in, fate in, and excretion from the body as well as species differences in metabolism should be discussed.

4. Toxicologic Effects

Toxicologic effects other than carcinogenicity (e.g., suppression of the immune system, endocrine disturbances, organ damage), which are relevant to the evaluation of carcinogenicity, should be summarized. Prechronic and chronic toxicity evaluations, as well as other test results, may yield information on target organ effects, pathophysiological reactions, and preneoplastic lesions that bear on the evaluation of carcinogenicity. Dose-response and time-to-response analyses of these reactions may also be helpful.

5. Short-Term Tests

Tests for point mutations, numerical and structural chromosome aberrations, DNA damage/repair, and *in vitro* transformation provide supportive evidence of carcinogenicity and may give information on potential carcinogenic mechanisms. A range of tests from each of the above end points helps to characterize an agent's response spectrum.

Short-term *in vivo* and *in vitro* tests that can give indication of initiation and promotion activity may also provide supportive evidence for carcinogenicity.

6. Long-Term Animal Studies

Criteria for the technical adequacy of animal carcinogenicity studies have been published (e.g., U.S. Food and Drug Administration, 1982; Interagency Regulatory Liaison Group, 1979; National Toxicology Program, 1984; OSTP, 1984; U.S. EPA, 1983a; 1983b; 1983c; Feron et al., 1980; Mantel, 1980) and should be used to judge the acceptability of individual studies.

The strength of the evidence that an agent is carcinogenic increases with the increase in number of tissue sites affected by the agent; the increase in number of animal species, strains, and sexes showing a carcinogenic response; the occurrence of clear-cut dose-response relationships as well as a high level of statistical significance of the increased tumor incidence is treated with respect to control groups; the dose-related shortening of the time-to-tumor occurrence or time to death with tumor, and a dose-related increase in the proportion of tumors that are malignant.

Long-term animal studies at or near the maximum tolerated dose level (MTD) are used to ensure an adequate power for the detection of carcinogenic activity. Negative long-term animal studies at exposure levels above the MTD or partial lifetime exposures at the MTD may not be acceptable because of toxicity, or if animal survival is so impaired that the sensitivity of the study is significantly reduced below that of a conventional chronic animal study at the MTD. Positive studies at levels above the MTD should be carefully reviewed to ensure that the responses are not due to factors which do not operate at exposure levels below the MTD. Evidence indicating that high-dose testing produces tumor responses by indirect mechanisms that may be

unrelated to effects at lower does should be dealt with on an individual basis.

The mechanism of the carcinogenic responses under conditions of the experiment should be reviewed carefully as it relates to the relevance of the evidence to human carcinogenic risks (e.g., the occurrence of bladder tumors in the presence of bladder stones and injection site sarcomas). Interpretation of animal studies is aided by the review of target organ toxicity and other effects (e.g., changes in the immune and endocrine systems) that may be noted in prechronic or other toxicological studies. Time and dose-related changes in the incidence of preneoplastic lesions may also be helpful in interpreting animal studies.

Historical control data are often valuable and could be used along with concurrent control data in the evaluation of carcinogenic responses. For the evaluation of rare tumors, even small tumor responses may be significant compared to historical data. In the case of tumors with relatively high spontaneous rates, a response that is significant with respect to the experimental control group becomes questionable if the historical control data indicate that the experimental control group had an unusually low background incidence.

Agents that are positive in long-term animal experiments and also show evidence of promoting or cocarcingenic activity in specialized tests should be considered as complete carcinogens unless there is evidence to the contrary. Agents that show positive results in special tests for initiation, promotion, or cocarcingenicity and no indication of tumor response in well-conducted and well-designed long-term animal studies should be dealt with on an individual basis.

There are widely diverging scientific views (OSTP, 1984; Ward et al. 1979a; 1979b; Tomatis, 1977; Nutrition Foundation, 1983) about the validity of mouse liver tumors when such tumors occur in strains with high spontaneous background incidence and when they constitute the only tumor response to an agent. These Guidelines take the position that the mouse-liver-only tumor response, when other conditions for a classification of "sufficient" evidence in animal studies are met, should be considered as "sufficient" evidence of carcinogenicity with the understanding that this classification could be changed to "limited" if warranted when a number of factors such as the following are observed: The occurrence of tumors only in the highest dose group and/or only at the end of the study; no substantial dose-related increase in the proportion of tumors that are malignant; the occurrence of tumors that are predominately benign, showing no evidence of metastases or invasion; no dose-related shortenipg of the time to the appearance of tumors; negative or inconclusive results from a spectrum of short-term tests for mutagenic activity; the occurrence of excess tumors only in a single sex.

Positive carcinogenic responses in one species/strain/sex are not generally negated by negative results in other species/strain/sex. Replicate negative studies that are essentially identical in all other respects to a positive study may indicate that the positive results are spurious.

Evidence for carcinogenic action should be based on the observation of statistically significant tumor responses in specific organs or tissues. Appropriate statistical analysis should be performed on data from long-term studies to help determine whether the effects are treatment-related or possibly due to chance. These should at least include a statistical test for trend, including appropriate correction for differences in survival. The weight to be given to the level of statistical significance (the p-value) and to other available pieces of information is a matter of overall scientific judgment. A statistically significant excess of tumors of all types in the aggregate, in the absence of a statistically significant increase of any individual tumor type should be regarded as minimal evidence of carcinogenic action unless there are persuasive reasons to the contrary.

7. Human Studies

Epidemiologic studies provide unique information about the response of humans who have been exposed to suspect carcinogens. Descriptive epidemiologic studies are useful in generating hypotheses and providing supporting data, but can rarely be used to make a causal inference. Analytical epidemiologic studies of the case-control or cohort variety, on the other hand, are especially useful in assessing risks to exposed humans.

Criteria for the adequacy of epidemiologic studies are well recognized and include factors such as the proper selection and characterization of exposed and control groups, the adequacy of duration and quality of follow-up, the proper identification and characterization of confounding factors and bias, the appropriate consideration of latency effects, and the valid ascertainment of the causes of morbidity and death.

The strength of the epidemiologica evidence for carcinogenicity depends on the magnitude, specificity, and statistical significance of the response and increases rapidly with the number of adequate studies which show the same results on populations exposed to the same agent under different conditions.

It should be recognized that epidemiologic studies are inherently capable of detecting only comparatively large increases in the relative risk of cancer. Negative results from such studies cannot prove the absence of carcinogenic action; however, negative results from a well-designed and conducted epidemiologic study that contains usable exposure data can serve to define upper limits of risk which are useful if animal evidence indicates that the agent is potentially carcinogenic.

C. Weight of Evidence

Evidence of possible carcinogenicity in humans comes primarily from two sources: Long-term animal tests and epidemiologic investigations. Results from these studies are supplemented with information from short-term tests, pharmacokinetic studies, comparative metabolism studies, structure-activity relationships, and other relevant toxicologic studies. The question of how likely an agent is to be a human carcinogen should be answered in the framework of a weight-of-evidence judgment. Judgments about the weight of evidence involve considerations of the quality and adequacy of the data and the kinds of responses induced by a suspect carcinogen. There are three major steps to characterizing the weight of evidence for carcinogenicity: (1) Characterization of the evidence from human studies and from animal studies individually, (2) combination of the characterizations of these two types of data into a final indication of the overall weight of evidence for human carcinogenicity, and (3) evaluation of all supportive information to determine if the overall weight of evidence should be modified.

A system for stratifying the weight of evidence is recommended, and EPA has developed a scheme (see the Appendix). The EPA scheme is modeled after the classification system developed by the International Agency for Research on Cancer (IARC, 1982). In the IARC classification method, the evidence that an agent produces cancer in humans is divided into three categories: Sufficient, limited, and inadequate. A similar characterization of evidence is provided for animal data.

The EPA classification system is, in general, an adaptation of the IARC approach for classifying the weight of evidence for human data and animal data. The EPA classification system for the characterization of the overall weight of evidence for carcinogenicity (animal, human, and other supportive data) includes: Group A—Carcinogenic to Humans; Group B—Probably Carcinogenic to Humans; C—Possibly Carcinogenic to Humans; Group D—Not Classifiable as to Human Carcinogenicity; and Group E—No Evidence of Carcinogenicity for Humans.

In addition, the following modifications of the IARC approach have been made for classifying human and animal studies. For human studies: (1) The observation of a statistically significant association between an agent and life-threatening benign tumors in humans is included in the evaluation of risks to humans. (2) A "no evidence" category is added. This category indicates that no association was found between exposure and increased risk of cancer in well-conducted, well-designed, independent analytical epidemiologic studies. For animal studies: (1) An increased incidence of combined benign and malignant tumors will be considered to provide sufficient evidence of carcinogenicity if the other criteria defining the "sufficient" category of evidence are met. Benign and malignant tumors will be combined unless the benign tumors are not considered to have the potential to progress to the associated malignancies of the same morphologic type. (2) An increased incidence of benign tumors alone as "limited" evidence of carcinogenicity is added. (3) Under specific circumstances, such as the production of neoplasms that occur with high spontaneous background incidence, the evidence may be decreased to "limited" if warranted (e.g., there are widely diverging scientific views regarding the validity of the mouse liver tumors as an indicator of potential human carcinogenicity when this is the only response observed, even in replicated experiments, in the absence of other short-term evidence). (4) A "no evidence" category is also added. This operational category would include substances for which there is no increased incidence of neoplasms in at least two well-designed and well-conducted animal studies of adequate power and dose in different species.

D. Guidance For Quantitative Assessment

The qualitative evidence for carcinogenesis should be discussed for purposes of guiding the dose-response assessment. The guidance should be given in terms of the appropriateness and limitation of specific studies as well as pharmacokinetic considerations that should be factored into the dose-response assessment. The appropriate method of extrapolation should be factored in when the experimental route of exposure differs from that occurring in humans.

Agents that are judged to be in the EPA weight-of-evidence stratification Groups A and B would be regarded as suitable for quantitative risk assessments. The appropriateness of quantifying the risks from agents in Group C, specifically those agents that are at the boundary of Groups C and D, would be judged on a case-by-case basis. Agents that are judged to be in Groups D and E would generally not have quantitative risk assessments.

E. Summary and Conclusion

The summary should present all of the key findings in all of the sections of the qualitative assessment and the interpretive rationale that forms the basis for the conclusion. Uncertainties in the evidence as well as factors that may affect the relevance of the chronic animal study to humans should be discussed. The conclusion should present both the weight-of-evidence rankng and a description that brings out the more subtle aspects of the evidence that may not be evident from the ranking alone.

III. Dose-Response Assessment, Exposure Assessment, and Risk Characterization

After data concerning the carcinogenic properties of a substance have been collected, evaluated, and categorized, it is frequently desirable to estimate the likely range of excess cancer risk associated with given levels and conditions of human exposure. The first step of the analysis needed to make such estimations is the development of the likely relationship between dose and response (cancer incidence) in the region of human exposure. This information on dose-response relationships is coupled with information on the nature and magnitude of human exposure to yield an estimate of human risk. The risk-characterization step also includes an interpretation of these estimates in light of the biological, statistical, and exposure assumptions and uncertainities that have arisen throughout the process of assessing risk.

The elements of dose-response assessment are described in section III.A. Guidance on human exposure assessment is provided in another EPA document (U.S. EPA, 1984); however, section III.B. of these Guidelines includes a brief description of the specific type of exposure information that is necessary for use in carcinogenic risk assessment. Finally, in section III.C. there is a description of the type of information and its interpretation necessary for accurately characterizing risk and the degree to which it can be known.

It should be emphasized that calculation of quantitative estimates of cancer risk does not require that an agent be a human carcinogen. The likelihood that an agent is a human carcinogen is a function of the weight of evidence, as this has been described in the hazard identification section of these Guidelines. It is nevertheless important to present quantitative estimates, appropriately qualified and interpreted, in those circumstances in which there is likelihood that the agent is a human carcinogen. Appropriately qualified quantitative estimates of risk, together with estimates of their uncertainty, are useful in cost-benefit analyses, in setting regulatory priorities, and for evaluating residual risks associated with the application of regulatory controls.

It should be emphasized in every quantitative risk estimation that the results are uncertain. The uncertainties due to experimental and epidemiologic variability as well as uncertainty in the exposure assessment can be important. There are major uncertainties in extrapolating both from animals to humans and from high to low doses. There are important species differnces in uptake, metabolism, and organ distribution of carcinogens, as well as species and strain differences in target site susceptibilty. Humen populations are variable with respect to genetic constitution, diet, occupational and home environment, activity patterns, and other cultural factors. Risk estimates should be presented together with the associated hazard assessment (section III.C.3.) to ensure that there is an appreciation of the weight of evidence for carcinogenicity that underlies the quantitative risk estimates.

A. Dose-Response Assessment

1. Selection of Data

As indicated in section II.D. guidance needs to be given by the individuals doing the qualitative assessment (toxicologists, pathologists, pharmacologists, etc.) to the statisticans doing the quantitative assessment as to the appropriate data to be used in the dose-response assessment. This is determined by the quality of the data, its relevance to human modes of exposure, and other technical details.

If available, estimates based upon human epidemiologic data are preferred. If adequate exposure data exist in a well-designed and conducted negative epidemiologic study, an upper-bound estimate of risk should be used in preference to higher risks estimated from animal data. In the absence of human data, data from a species that responds most like humans should be used, if information to this effect exists. Where, for a given agent, several studies are available which may involve different animal species, strains, and sexes, at several doses and by different routes of exposure, the following approach to selecting the data sets is used. The tumor incidence data are separated according to organ site and tumor type. All biologically and statistically acceptable data sets are presented. The range of the risk estimates is identified with due regard to biological relevance (particularly in the case of animal studies) and appropriateness of route of exposure. Because it is possible that human sensitivity is as high as the most sensitive responding animal species, in the absence of evidence to the contrary, the biologically acceptable data set from long-term animal studies showing the greatest sensitivity should generally be given the greatest emphasis, again with due regard to biological and statistical considerations.

When the exposure route in the species from which the dose-response information is obtained differs from the route occurring in environmental exposures, uncertainties about the dose delivered to the target organs from different exposure media should be explicitly considered, and the assumptions should be carefully stated.

Where two or more significantly elevated tumor sites or types are observed in the same study, extrapolations may be conducted on selected sites or types. These selections will be made on biological grounds. To obtain a total estimate of carcinogenic risk, animals with one or more tumor sites or types showing significantly elevated tumor incidence should be pooled and used for extrapolation; if the tumor sites or types are occurring idependently, this procedure is the same as summing the risks from the several kinds of statistically significant tumors. The pooled estimates will generally be used in preference to risk estimates based on single sites or types.

Benign tumors should generally be combined with malignant tumors for risk estimates unless the benign tumors are not considered to have the potential to progress to the associated malignancies of the same morphologic type. However, the contribution of the benign tumors to the total risk should be indicated.

2. Choice of Mathematical Extrapolation Model

Since risks at low exposure levels cannot be measured directly either by animal experiments or by epidemiologic studies, a number of mathematical models have been developed to extrapolate from high to low dose. However, different extrapolation models may fit the observed data reasonably well but may lead to large differences in the projected risk at low doses.

No single mathematical procedure is recognized as the most appropriate for low-dose extrapolation in carcinogenesis. When relevant biological evidence on mechanism of action exists, the models or procedures employed should be consistent with the evidence. However, when data and information are limited, as is the usual case given the high degree of uncertainty associated with the selection of a low-dose extrapolation model, specific guidance on model selection is necessary to provide a desirable degree of consistency in risk assessments. The choice of low-dose extrapolation models should be consistent with current understanding of the mechanisms of carcinogenesis and not solely on goodness of fit to the observed tumor data. Although mechanisms of the carcinogenesis process are largely unknown, at least some elements of the process have been elucidated, e.g., linearity of tumor initiation. In further support of a linear model, it has been shown that, if a carcinogenic agent acts by accelerating the same stages of the carcinogenic process that lead to the background occurrence of cancer, the added effect of the carcinogen at low dose is virtually linear. Thus, a model that is linear at low dose is plausible.

The linearized multistage model procedure for low-dose extrapolation (U.S. EPA, 1980) is therefore recommended in most cases unless there is evidence on carcinogenesis mechanisms or other biological evidence that indicates the greater suitability of an alternative extrapolation model, or there is statistical or biological evidence that excludes the use of the linearized multistage model.

It should be emphasized that the linearized multistage model leads to a plausible upper limit to the risk which is consistent with some mechanisms of carcinogenesis. However, such an estimate does not necessarily give a realistic prediction of the risk. In certain cases, the linearized multistage model cannot be used successfully with the observed data as, for example, when the data are nonmonotonic or flatten out at high doses. In these cases it may be necessary to make adjustments to the procedure to achieve low-dose linearity.

When pharmacokinetic or metabolism data are available, or when other substantial evidence on the mechanistic aspects of the carcinogenesis process exists, a different low-dose extrapolation model might be considered more appropriate on biological grounds. When a different model is chosen, the risk assessment should clearly discuss the nature and strength of the evidence that lead to the choice. In most cases, considerable uncertainty will remain concerning response at low doses; therefore, an upper-limit risk estimate using the linearized multistage model should also be presented.

3. Equivalent Exposure Units Among Species

Low-dose risk estimates derived from laboratory animal data extrapolated to humans are complicated by a variety of factors that differ among species and potentially affect the response to carcinogens. Included among these factors are differences between humans and experimental test animals with respect to life span, body size, genetic variability, population homogeneity, existence of concurrent disease, pharmacokinetic effects such as metabolism and excretion patterns, and the exposure regimen.

The usual approach for making interspecies comparisons has been to use standardized scaling factors. Commonly employed standardized dosage scales include mg per kg body weight per day, ppm in the diet or water, mg per m^2 body surface area per day, and mg per kg body weight per lifetime. In the absence of comparative toxicological, physiological, metabolic, and pharmacokinetic data for a given suspect carcinogen, the extrapolation of body weight to the 0.67 power is considered to be appropriate.

B. Exposure Assessment

In order to obtain a quantitative estimate of the risk, the results of the dose-response assessment must be combined with an estimate of the exposures to which the populations of interest are likely to be subject. While the reader is referred to the Proposed Guidelines for Exposure Assessment (U.S. EPA, 1984) for specific details, it is important that the cancer risk assessor and the decision-maker have an appreciation of the impact of the strengths and weaknesses of exposure assessment on the overall cancer risk assessment process.

At present there is no single approach to exposure assessment that is appropriate for all cases. On a case-by-case basis, appropriate methods are selected to match the data on hand and the level of sophistication required (e.g., preliminary assessment using crude data and worst case assumptions versus a final assessment using extensive monitoring data). The assumptions, approximations, and uncertainties need to be clearly stated because, in some instances, these will have a major effect on the risk assessment.

In general, the magnitude, duration, and frequency of exposure provide fundamental information for estimating the concentration of the carcinogen to which the organism is exposed. These data are generated from monitoring information, modeling results, and/or reasoned estimates. An appropriate treatment of exposure should consider the potential for exposure via ingestion, inhalation, and dermal penetration from relevant sources of exposures. Where feasible, an attempt should be made to assess the dose to the target organ, either through experimental evidence or reasonable assumptions and modeling.

Special problems arise when the human exposure situation of concern suggests exposure regimens, e.g., route and dosing schedule, which are substantially different from those used in the relevant animal studies. Unless there is evidence to the contrary in a particular case, the cumulative dose received over a lifetime, expressed as average daily exposure prorated over a lifetime, is recommended as the appropriate measure of exposure to a carcinogen. That is, the assumption is made that a high dose of a carcinogen received over a short period of time is equivalent to a coresponding low dose spread over a lifetime. This approach becomes more problematical as the exposures in question become more intense but less frequent, especially when there is evidence that the agent has shown dose-rate effects.

An attempt should be made to assess the level of uncertainty associated with the exposure assessment which is to be used in a cancer risk assessment. This measure of uncertainty should be included in the risk characterization (section III.C.) in order to provide the decision-maker with a clear understanding of the impact of this uncertainty on any final quantitative risk estimate.

C. Risk Characterization

1. Options for Numerical Risk Estimates

Depending on the needs of the individual program offices, numerical estimates can be presented in one or more of the following three ways.

a. Unit Risk—Under an assumption of low-dose linearity, the unit cancer risk is the excess lifetime risk due to a continuous constant lifetime exposure of one unit of carcinogen concentration. Typical exposure units include ppm or ppb in food or water, mg/kg/day by ingestion, or ppm or ug/m^3 in air.

b. The Dose Corresponding to a Given Level of Risk—This approach can be useful, particularly when using nonlinear extrapolation models where the unit risk would differ at different dose levels.

c. Individual and Population Risks—Risk may be characterized either in terms of the excess individual lifetime risks or the excess number of cancers produced per year in the exposed population or both.

Irespective of the options chosen, the degree of precision and accuracy in the numerical risk estimates currently do not permit more than one significant figure to be presented.

2. Concurrent Exposure

In characterizing the risk due to concurrent exposure to several carcinogens, the risks are combined on the basis of additivity unless there is specific information to the contrary. Interactions of cocarcinogens, promoters, and inititators with known carcinogens should be considered on a case-by-case basis.

3. Summary of Risk Characterization

Whichever method of presentation is chosen, it is critical that the numerical estimates not be allowed to stand alone, separated from the various assumptions and uncertainties upon which they are based. The risk characterization should contain a discussion and interpretation of the numerical estimates that affords the risk manager some insight into the degree to which the quantitative estimates are likely to reflect the true magnitude of human risk, which generally cannot be known with the degree of quantitative accuracy reflected in the numerical estimates. The final risk estimate will be generally rounded to one significant figure and will be coupled with the EPA classification of the qualitative weight of evidence. For example, a lifetime individual risk of 2×10^{-4} resulting from exposure to a "possible human carcinogen" (Group C) should be designated as:

2×10^{-4} [C]

This bracketed designation of the qualitative evidence should be included with all numerical risk estimates (i.e., unit risks, which are risks at a specified concentration, or concentrations corresponding to a given risk). Agency statements, such as Federal Register notices, briefings, and action memoranda, frequently include numerical estimates of carcinogenic risk. It is recommended that whenever these numerical estimates are used, the qualitative weight-of-evidence classification should also be included.

IV. Appendix—EPA Classification System for Evidence of Carcinogenicity From Human Studies and From Animal Studies (Adapted From IARC)

A. Assessment of Evidence for Carcinogenicity From Studies in Humans

Evidence of carcinogenicity from human studies comes from three main sources:

1. Case reports of individual cancer patients who were exposed to the agent(s).

2. Descriptive epidemiologic studies in which the incidence of cancer in human populations was found to vary in space or time with exposure to the agent(s).

3. Analytical epidemiologic (case-control and cohort) studies in which individual exposure to the agent(s) was found to be associated with an increased risk of cancer.

Three criteria must be met before a causal association can be inferred between exposure and cancer in humans:

1. There is no identified bias which could explain the association.

2. The possibility of confounding has been considered and ruled out as explaining the association.

3. The association is unlikely to be due to chance.

In general, although a single study may be indicative of a cause-effect relationship, confidence in inferring a causal association is increased when several independent studies are concordant in showing the association, when the association is strong, when there is a dose-response relationship, or when a reduction in exposure is followed by a reduction in the incidence of cancer.

The degrees of evidence for carcinogenicity* from studies in humans are categorized as:

1. Sufficient evidence of

*For purpose of public health protection, agents associated with life-threatening benign tumors in humans are included in the evaluation.

carcinogenicity, which indicates that there is a causal relationship between the agent and human cancer.

2. Limited evidence of carcinogenicity, which indicates that a causal interpretation is credible, but that alternative explanations, such as chance, bias, or confounding, could not adequately be excluded.

3. Inadequate evidence, which indicates that one of two conditions prevailed: (a) There were few pertinent data, or (b) the available studies, while showing evidence of association, did not exclude chance, bias, or confounding.

4. No evidence, which indicates that no association was found between exposure and an increased risk of cancer in well-designed and well-conducted independent analytical epidemiologic studies.

5. No data, which indicates that data are not available.

B. Assessment of Evidence for Carcinogenicity From Studies in Experimental Animals

These assessments are classified into five groups:

1. Sufficient evidence† of carcinogenicity, which indicates that there is an increased incidence of malignant tumors or combined malignant and benign tumors§: (a) In multiple species or strains; or (b) in multiple experiments (preferably with different routes of administration or using different dose levels); or (c) to an unusual degree with regard to incidence, site or type of tumor, or age at onset. Additional evidence may be provided by data on dose-response effects, as well as information from short-term tests or on chemical structure.

2. Limited evidence of carcinogenicity, which means that the data suggest a carcinogenic effect but are limited because: (a) The studies involve a single species, strain, or experiment; or (b) the experiments are restricted by inadequate dosage levels, inadequate duration of exposure to the agent, inadequate period of follow-up, poor survival, too few animals, or inadequate reporting; or (c) an increase in the incidence of benign turmors only.

3. Inadequate evidence, which indicates that because of major qualitative or quantitative limitations, the studies cannot be interpreted as showing either the presence or absence of a carcinogenic effect.

4. No evidence, which indicates that there is no increased incidence of neoplasms in at least two well-designed and well-conducted animal studies in different species.

5. No data, which indicates that data are not available.

The categories "sufficient evidence" and "limited evidence" refer only to the strength of the experimental evidence that these agents(s) are carcinogenic and not to the power of their carcinogenic action.

C. Categorization of Overall Evidence

Group A—Human Carcinogen

This category is used only when there is sufficient evidence from epidemiologic studies to support a causal association between exposure to the agent(s) and cancer.

Group B—Probable Human Carcinogen

This category includes agents for which the evidence of human carcinogenicity from epidemiologic studies ranges from almost "sufficient" to "inadequate." To reflect this range, the category is divided into higher (Group B1) and lower (Group B2) degrees of evidence. Usually, category B1 is reserved for agents for which there is at least limited evidence of carcinogenicity to humans from epidemiologic studies. In the absence of adequate data in humans, it is reasonable, for practical purposes, to regard agents for which there is sufficient evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans. Therefore, agents for which there is inadequate evidence from human studies and sufficient evidence form animal studies would usually result in a classification of B2.

In some cases, the known chemical or physical properties of an agent and the results from short-term tests allow its transfer from Group B2 to B1.

Group C—Possible Human Carcinogen

This category is used for agents with limited evidence of carcinogenicity in animals in the absence of human data. It includes a wide variety of evidence: (a) Definitive malignant tumor response in a single well-conducted experiment, (b) marginal tumor response in studies having inadequate design or reporting, (c) benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity, and (d) marginal responses in a tissue known to have a high and variable background rate.

In some cases, the known physical or cehmical properties of an agent and results from short-term tests allow a transfer from Group C to B2 or from Group D to C.

Group D—Not Classified

This category is used for agent(s) with inadequate animal evidence of carcinogenicity.

Group E—No Evidence of Carcinogenicity for Humans

This category is used for agent(s) that show no evidence for carcinogenicity in at least two adequate animal tests in different species or in both epidemiologic and animal studies.

V. References

Albert, R.E., Train, R.E., and Anderson, E. 1977. Rationale developed by the Environmental Protection Agency for the assessment of carcinogenic risks. J. Natl. Cancer Inst. 58:1537–1541.

Feron, V.J., Grice, H.C., Griesemer, R., Peto R., Agthe, C., Althoff, J., Arnold, D.L., Blumenthal, H., Cabral, J.R.P., Della Porta, G., Ito, N., Kimmerle, G., Kroes, R., Mohr, U., Napalkov, N.P., Odashima, S., Page, N.P., Schramm, T., Steinhoff, D., Sugar, J., Tomatis, L., Uehleke, H., and Vouk, V. 1980. Basic requirements for long-term assays for carcinogenicity. In: Long-term and short-term screening assays for carcinogens: a critical appraisal. IARC Monographs, Supplement 2. Lyon, France: International Agency for Research on Cancer, pp 21–83.

Interagency Regulatory Liaison Group (IRLG). 1979. Scientific basis for identification of potential carcinogens and estimation of risks. J. Natl. Cancer Inst. 63:245–267.

Interdisciplinary Panel on Carcinogenicity. 1984. Criteria for evidence of chemical carcinogenicity. Science 225:682–687.

International Agency for Research on Cancer (IARC). 1982. IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, Supplement 4. Lyon, France: International Agency for Research on Cancer.

Mantel, N. 1980. Assessing laboratory evidence for neoplastic activity. Biometrics 36:381–399.

Mantel, N., and Haenszel, W. 1959. Statistical aspects of the analysis of data from retrospective studies of disease. J. Natl. Cancer Inst. 22:719–748.

National Center for Toxicological Research (NCTR). 1981. Guidelines for statistical tests for carcinogenicity in chronic bioassays. NCTR Biometry Technical Report 81–001. Available from: National Center for Toxicological Research.

National Research Council (NRC). 1983. Risk assessment in the Federal government: managing the process. Washington, D.C.: National Academy Press.

National Toxicology Program. 1984. Report of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation of the National Toxicology Program, Board of Scientific Counselors. Available from: U.S. Government Printing Office, Washington, D.C. 1984–421–132:4726.

Nutrition Foundation. 1983. The relevance of mouse liver hepatoma to Human carcinogenic risk: a report of the International Expert Advisory Committee to the Nutrition Foundation. Available from: Nutrition Foundation. ISBN 0–935368–37–x.

Office of Science and Technology Policy (OSTP). 1984. Chemical carcinogens: review of the science and its associated principles. Federal Register 49:21595–21661.

Peto, R., Pike, M., Day, N., Gray, R., Lee, P., Parish, S., Peto, J., Richard, S., and Wahrendorf, J. 1980. Guidelines for simple, sensitive, significant tests for carcinogenic effects in long-term animal experiments. In: Monographs on the long-term and short-term screening assays for carcinogens: a critical appraisal. IARC Monographs, Supplement 2. Lyon, France: International Agency for Research on Cancer, pp. 311–426.

Tomatis, L. 1977. The value of long-term testing for the implementation of primary prevention. In: Origins of human cancer. Hiatt, H.H., Watson, J.D., and Winstein, J.A., eds. Cold Spring Harbor Laboratory, pp. 1339–1357.

U.S. Environmental Protection Agency (U.S. EPA). 1976. Interim procedures and guidelines for health risk economic impact assessments of suspected carcinogens. Federal Register 41:21402–21405.

U.S. Environmental Protection Agency (U.S. EPA). 1980. Water quality criterial documents; availability. Federal Register 45:79318–79379.

U.S. Environmental Protection Agency (U.S. EPA). 1983a. Good laboratory practices standards—toxicology testing. Federal Register 48:53922.

U.S. Environmental Protection Agency (U.S. EPA). 1983b. Hazard evaluations: humans and domestic animals. Subdivision F. Available from: NTIS, Springfield, VA. PB 83–153916.

U.S. Environmental Protection Agency (U.S. EPA). 1983c. Health effects test guidelines. Available from: NTIS Springfield, VA. PB 83–232984.

U.S. Environmental Protection Agency (U.S. EPA). 1984. Proposed guidelines for exposure assessment.

U.S. Food and Drug Administration (U.S. FDA). 1982. Toxicological principles for the safety assessment of direct food additives and color additives used in food. Available from: Bureau of Foods, U.S. Food and Drug Administration.

Ward, J.M., Griesemer, R.A., and Weisburger, E.K. 1979a. The mouse liver tumor as an endpoint in carcinogenesis tests. Toxicol. Appl. Pharmacol. 51:389–397.

Ward, J.M. Goodman, D.G., Squire, R.A. Chu, K.C., and Linhart, M.S. 1979b. Neoplastic and nonneoplastic lesions in aging (C57BL/6N x C3H/HeN)F_1 (B6C3F_1) mice. J. Natl. Cancer Inst. 63:849–854.

† Under specific circumstances, such as the production of neoplasms that occur with high spontaneous background incidence, the evidence may be decreased to "limited" if warranted (e.g., there are widely diverging scientific views regarding the validity of the mouse liver tumor as an indicator of potential human carcinogenicity when this is the only response observed, even in replicated experiments in the absence of short-term or other evidence).

§ Benign and malignant tumors will be combined unless the benign tumors are not considered to have the potential to progress to the associated malignancies of the same morphologic type.

[FR Doc. 84–30724 Filed 11–21–84; 8:45 am]
BILLING CODE 6560–50–M

OL
9

SS
27

NO
23

984

MI

federal register

Friday
November 23, 1984

Part VIII

Environmental Protection Agency

Proposed Guidelines for Exposure Assessment; Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2706-5]

Proposed Guidelines for Exposure Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Guidelines for Exposure Assessment and Request for Comments.

SUMMARY: The U.S. Environmental Protection Agency is proposing Guidelines for Exposure Assessment (Guidelines). These Guidelines are proposed for use within the policy and procedural framework provided by the various statutes which EPA administers to guide Agency analysis of exposure data. We solicit public comment and will take public comment into account in revising these Guidelines. These Guidelines will be reviewed by the Science Advisory Board in meetings now tentatively scheduled for April 1985.

These proposed Guidelines were developed as part of a broad guidelines development program under the auspices of the Office of Health and Environmental Assessment (OHEA), located in the Agency's Office of Research and Development. Consonant with the role of OHEA's Exposure Assessment Group (EAG) as the Agency's senior health committee for exposure assessment, the Guidelines were developed by an Agency-wide working group chaired by the Director of EAG.

DATE: Comments must be postmarked by January 22, 1985.

ADDRESSES: Comments may be mailed or delivered to: Dr. James W. Falco, Exposure Assessment Group (RD–689), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. James W. Falco, Telephone: 202–475–8909.

SUPPLEMENTARY INFORMATION: Preliminary drafts of these Guidelines were sent out for review to 15 scientists and engineers in the field of exposure assessment within government, universities in the United States and abroad, and the private sector. Comments received from these reviews, generally favorable, were taken into account in developing the Guidelines proposed here.

In addition, as a result of the reviews, four areas requiring further research were identified as follows:

(1) Development of Mathematical Model Selection Criteria.

A large number of mathematical models are used to estimate a wide variety of parameters needed for estimating exposures. Guidance in the form of selection criteria are needed to ensure that the most appropriate mathematical model is used for each exposure parameter estimate.

(2) Development of Guidance for Analysis of Metabolism Data.

Guidance is needed to provide appropriate consideration of metabolism data in the calculation of whole body dose and in the extrapolation of whole organism dose from one species to another.

(3) Definition of the Relationship Between Exposure Assessment and Epidemiology.

Guidance is needed to ensure that pertinent parameters of exposure are measured in prospective epidemiologic studies. Methods providing the best estimates of exposure for retrospective and historical epidemiologic studies must be defined.

(4) Development of Methods to Relate Exposures Measured by Personal Monitoring to Source Contributions.

Guidance is needed to establish methods to relate exposures as measured by personal monitoring to controllable sources and to discriminate among possible sources and between background and anthropogenic sources.

It is the Agency's intent to revise the Guidelines periodically to incorporate the results obtained in the four research areas defined above as they become available.

In addition to the publication of the Guidelines, the Agency also will provide technical support documents that contain detailed technical information needed to implement the Guidelines. Two of these technical reports entitled "Development of Statistical Distribution or Ranges of Standard Factors Used in Exposure Assessments" and "Methodology for Characterization of Uncertainty in Exposure Assessments" are currently available. Technical reports for the four new guideline areas described above will be available at the time of publication of the corresponding guideline section. These technical support documents will be revised periodically to reflect improvements in exposure assessment methods and new information or experience.

Support documents used in the preparation of these Guidelines as well as comments received are available for inspection and copying at the Public Information Reference Unit (202–382–5926), EPA Headquarters Library, 401 M Street S.W., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

Dated: November 9, 1984.

William D. Ruckelshaus,

Administrator.

Contents

I. Introduction
II. General Guidelines and Principles
A. Exposure and Dose
B. Decision Path to Determine Scope of the Assessment
C. Uncertainty
III. Organization and Contents of an Exposure Assessment
A. Overview
B. Detailed Explanation of Outline
1. Executive Summary
2. Introduction
3. General Information
4. Sources
5. Exposure Pathways and Environmental Fate
6. Monitored or Estimated Concentration Levels
7. Exposed Populations
8. Integrated Exposure Analysis
9. References
10. Appendexes

I. Introduction

These Guidelines provide the Agency with a general approach and framework for carrying out human or nonhuman exposure assessments for specified pollutants. The Guidelines have been developed to assist future assessment activities and encourage improvement in those EPA programs that require, or could benefit from the use of exposure assessments. The Guidelines are procedural. They should be followed to the extent possible in instances where exposure assessment is a required element in the regulatory process or where exposure assessments are carried out on a discretionary basis by EPA management to support regulatory or programmatic decisions.

This document, by laying out a set of questions to be considered in carrying out an exposure assessment, should help avoid inadvertent mistakes of omission. EPA recognizes that gaps in data will be common, but the Guidelines will nevertheless serve to assist in organizing the data that are available, including any new data developed as part of the exposure assessment. It is understood that exposure assessments may be performed at many different levels of detail depending on the scope of the assessment.

These Guidelines should also promote consistency among various exposure assessment activities that are carried out by the Agency. Consistency with respect to common physical, chemical, and biological parameters, with respect to assumptions about typical exposure situations, and with respect to the characterization of uncertainty of estimates, will enhance the comparability of results and enable the Agency to improve the state-of-the-art of exposure assessment over time through the sharing of common data and experiences.

It is recognized that the main objective of an exposure assessment is to provide reliable data and/or estimates for a risk assessment. Since a risk assessment requires the coupling of exposure information and toxicity or effects information, the exposure assessment process should be coordinated with the toxicity/effects assessment. This document provides a common approach to format, which should simplify the process of reading and evaluating exposure assessments and thereby increase their utility in assessing risk.

As the Agency performs more exposure assessments, the Guidelines will be revised to reflect the benefit of experience.

II. General Guidelines and Principles

A. Exposure and Dose

Exposure has been defined by Committee E–47, Biological Effects and Environmental Fate, of the American Society for Testing and Materials, as the contact with a chemical or physical agent. The magnitude of the exposure is determined by measuring or estimating the amount of an agent available at the exchange boundaries, i.e., lungs, gut, skin, during some specified time. Exposure assessment is the determination or estimation (qualitative or quantitative) of the magnitude, frequency, duration, and route of exposure. Exposure assessments may consider past, present, and future exposures with varying techniques for each phase, i.e., modeling of future exposures, measurements of existing exposure, and biological accumulation for past exposures. Exposure assessments are generally combined with environmental and health effects data in performing risk assessments.

In considering the exposure of a subject to a hazardous agent, there are several related processes. The contact between the subject of concern and the agent may lead to the intake of some of the agent. If absorption occurs, this constitutes an uptake (or an absorbed dose) which then may lead to health effects. When biological tissue or fluid measurements indicate the presence of a chemical, exposures can be estimated from these data. Presence of a chemical in such biological samples is the most direct indication that an exposure has occurred. The route of exposure generally impacts the overall exposure and should be considered in performing risk assessments.

B. Decision Path to Determine Scope of the Assessment

The first step in preparing an exposure assessment should be the circumscription of the problem at hand to minimize effort by use of a narrowing process. A decision logic path that describes this process is shown in Figure 1. As illustrated in Figure 1, the preliminary assessment and the in-depth assessment are two major phases in this logic path.

The preliminary assessment phase should commence by considering what risk is under study and what law might regulate the exposure to the agent. Within this framework, a preliminary data base should be compiled from readily available scientific data and exposure information based on manufacturer, processor, and user practices. Next, the most likely areas of exposure (manufacuring, processing, consumer, distribution, disposal, ambient, water and food, etc.) should be identified. Since a complete data search has not been conducted, well-identified assumptions and order of magnitude estimates are used to further narrow the exposure areas of concern.

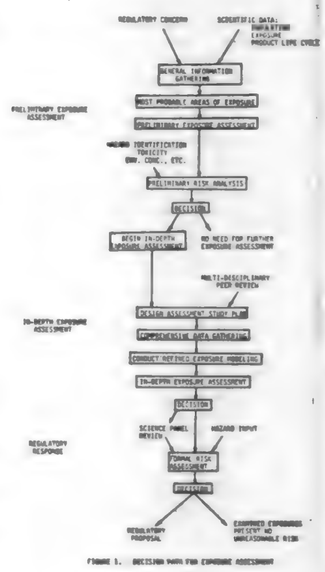


FIGURE 1. DECISION PATH FOR EXPOSURE ASSESSMENT

Data from this preliminary exposure assessment can then be coupled with toxicity information to perform a preliminary risk analysis. As a result of this analysis, a decision will be made that either an in-depth exposure assessment is necessary or that there is no need for further exposure information. The organization and contents of an in-depth exposure assessment are given in the following section.

In assembling the information base for either a preliminary assessment or a more detailed assessment, its adequacy should be ascertained by addressing the following considerations:

—Availability of information in every area needed for an adequate assessment;
—Quantitative and qualitative nature of the data;
—Reliability of information;
—Limitations on the ability to assess exposure.

C. Uncertainty

Exposure assessments are based on monitoring data, simulation model estimates, and assumptions about parameters used in approximating actual exposure conditions. Both data and assumptions contain varying degrees of uncertainty which influence the accuracy of exposure assessments. An evaluation of these uncertainties is important when the assessment is the basis for regulatory action.

The uncertainty analyses performed will vary depending on the scope of the assessment, the quantity and quality of monitoring data collected, and the type and complexity of mathematical models used. A discussion of the types of analysis used for quantifying uncertainties in exposures is presented in the next section.

III. Organization and Contents of an Exposure Assessment

A. Overview

A suggested outline for an exposure assessment document is given in Exhibit 1. The five major topics to be addressed within most exposure assessments are as follows: Source(s); Exposure Pathways; Monitored or Estimated Concentration Levels and Duration; Exposed Population(s); and Integrated Exposure Analysis. These five topics are appropriate for exposure assessments in general, whether the assessments are of global, national, regional, local, site-specific, workplace-related, or other scope. The topics are appropriate for exposure assessments on new or existing chemicals and radionuclides.

They are also applicable to both single media and multimedia assessments. Since exposure assessments are performed at different levels of detail, the extent to which any assessment contains items listed in Exhibit 1 depends upon its scope. The outline is a guide to organize the data whenever they are available.

B. Detailed Explanation of Outline

1. Executive Summary

The "Executive Summary" should be written so that it can stand on its own as a miniature report. Its main focus should be on a succinct description of the procedures used, assumptions employed, and summary tables or charts of the results. A brief discussion of the uncertainties associated with the results should be included.

2. Introduction (Purpose and Scope)

This section should state the intended purpose of the exposure assessment and identify the agent being investigated, the types of sources and exposure routes included, and the populations of concern.

Exhibit 1.—Suggested Outline for an Exposure Assessment

1. EXECUTIVE SUMMARY
2. INTRODUCTION
   - a. Purpose
   - b. Scope
3. GENERAL INFORMATION
   - a. Identity
     - (1) Molecular formula and structure, CAS number, TSL number
     - (2) Description of technical grades, contaminants, additives
     - (3) Other identifying characteristics
   - b. Chemical and Physical Properties
4. SOURCES
   - a. Characterization of Production and Distribution
     - (1) Production and processing
     - (2) Distribution in commerce
   - b. Uses
   - c. Disposal
   - d. Summary of Environmental Releases
5. EXPOSURE PATHWAYS AND ENVIRONMENTAL FATE
   - a. Transport and Transformation
   - b. Identification of Principal Pathways of Exposure
   - c. Predicting Environmental Distribution
6. MONITORED OR ESTIMATED CONCENTRATION LEVELS
   - a. Summary of Monitoring Data
   - b. Estimation of Environmental Concentrations
   - c. Comparison of Concentration Estimates with Monitoring Data
7. EXPOSED POPULATIONS
   - a. Human Populations (Size, Location, and Habits)
     - (1) Population size and characteristics
     - (2) Population location
     - (3) Population habits
   - b. Nonhuman Populations (where appropriate)
     - (1) Population size and characteristics
     - (2) Population location
     - (3) Population habits
8. INTEGRATED EXPOSURE ANALYSIS
   - a. Calculation of Exposure
     - (1) Identification and characterization of the exposed populations and critical elements of the ecosystem
     - (2) Pathways of exposure
   - b. Human Dosimetry and Monitoring
   - c. Development of Exposure Scenarios and Profiles
   - d. Evaluation of Uncertainty
9. REFERENCES
10. APPENDICES

3. General Information

a. *Identity.* (1) Molecular formula and structure, synonyms, Chemical Abstract Service number, Toxic Substance List number.

(2) Description of technical grades, contaminants, additives.

(3) Other identifying characteristics.

b. *Chemical and Physical Properties.* This subsection should provide a summary description of the chemical and physical properties of the agent. Particular attention should be paid to the features that would affect its behavior in the environment. Examples of factors to be included are molecular weight, density, boiling point, melting point, vapor pressure, solubility, pK_a, partition coefficients, and half-lives.

4. Sources

The points at which a hazardous substance is believed to enter the environment should be described, along with any known rates of entry. Points of entry may be indoors as well as outdoors, and environments include indoor settings such as offices as well as outdoor environments. A detailed exposure assessment should include a study of sources, production, uses, destruction/disposal, and environmental release of a substance. The studies should include a description of human activities with respect to the substance and the environmental releases resulting from those activities. It should account for the controlled mass flow of the substance from creation to destruction and provide estimates of environmental releases at each step in this flow. Seasonal variations in environmental releases should also be examined. All sources of the substances should be accounted for with the sum of the uses, destruction, and the environmental releases. The environmental releases can be described in terms of geographic and temporal distribution and the receiving environmental media, with the form identified at the various release points.

a. *Characterization of Production and Distribution.* All sources of the substance's release to the environment, consistent with the scope of the assessment, should be included, such as production, extraction, processing, imports, stockpiles, transportation, accidental/incidental production as a side reaction, and natural sources. The sources should be located, and activities involving exposure to the substance should be identified.

b. *Uses.* The substance should be traced from its sources through various uses (with further follow-up on the products made to determine the presence of the original material as an impurity), exports, stockpile increases, etc.

c. *Disposal.* This subsection should contain an evaluation of disposal sites and destruction processes, such as incineration of industrial chemical wastes, incineration of the substance as part of an end-use item in municipal waste, landfilling of wastes, biological destruction in a secondary wastewater treatment plant, or destruction in the process of using the end product. Hazardous contaminants of the substance may be included, and products containing the substance as a contaminant may be followed from production through destruction/disposal.

d. *Summary of Environmental Releases.* Estimates should be made of the quantities of the substances released to the various environmental media. Sources of release to the environment include production, use, distribution/transport, natural sources, disposal, and contamination of other products. Environmental releases should be presented at a reasonable level of detail. Extremely detailed exposure estimates would attempt to specify the following information for each significant emission source: Location, amount of the substances being released as a function of time to each environmental medium, physical characteristics of the emission source, and the physical and chemical form of the substance being released. Evaluation of the uncertainties associated with the emission estimates should be given. A detailed discussion of procedures for estimating uncertainty is presented in section 8.d.

5. Exposure Pathways and Environmental Fate

The exposure pathways section should address how a hazardous agent moves from the source to the exposed population or subject. For a less detailed assessment, broad generalizations on environmental pathways and fate may be made. In the absence of data, e.g., for new substances, fate estimates may have to be predicted by analogy with data from other substances. Fate estimates may also be made by using models and/or monitoring data and laboratory-derived process rate coefficients. At any level of detail, certain pathways may be judged insignficiant and not pursued further.

For more detailed assessments involving environmental fate, the sources analysis described previously should provide the amount and rate of emissions to the environment, and possibly the locations and form of the emissions. The environmental pathways and fate analysis follows the substance from its point of initial environmental release, through the environment, to its ultimate fate. It may result in an estimation of the geographic and temporal distribution of concentrations of the substance in the various contaminated environmental media.

a. *Transport and transformation.* The substance, once released to the environment, may be transported (e.g., convected downstream in water or on suspended sediment, through the atmosphere, etc.) or physically transformed (e.g., volatilized, melted, absorbed/desorbed, etc.); may undergo chemical transformation such as photoysis, hydrolysis, oxidation, reduction; may undergo biotransformation such as biodegradation; or may accumulate in one or more media. Thus, the environmental behavior of a substance should be evaluated before exposures are assessed. Factors that should be addressed include:

- How does the agent behave in air, water, soil, and biological media? Does it bioaccumulate or biodegrade? Is it absorbed or taken up by plants?
- What are the principal mechanisms for change or removal in each of the environmental media.
- Does the agent react with other compounds in the environment?
- Is there intermedia transfer? What are the mechanisms for intermedia transfer? What are the rates of the intermedia transfer or reaction mechanisms?
- How long might the agent remain in each environmental medium? How does its concentration change with time in each medium?
- What are the products into which the agent might degrade or change in the environment? Are any of these degradation products ecologically or biologically harmful? What is the environmental behavior of the harmful products?
- Is a steady-state concentration distribution in the environment, or in specific segments of the environment, achieved? If not, can the nonsteady-state distribution be described?
- What is the resultant distribution in the environment—for different media, different types or forms of the agent, for different geographical areas; at different times or seasons?

b. *Identification of Principal Pathways of Exposure.* The principal pathway analysis should evaluate the sources, locations, and types of environmental releases, together with environmental behavioral factors, to determine the significant routes of human and environmental exposure to the substance. Thus, by listing the important characteristics of the environmental release (entering media, emission rates, etc.) and the agent's behavior (intermedia transfer, persistence, etc.) after release to each of the entering media, it should be possible to follow the movement of the agent from its initial release to its subsequent fate in the environment. At any point in the environment, human or environmental exposure may occur. Pathways that result in major concentrations of the agent and high potential for human or environmental contact are the principal exposure pathways.

c. *Predicting Environmental Distribution.* Models may be used to predict environmental distributions of chemicals. Many modeling estimates of environmental distribution of chemicals are based in part on monitoring data. In predicting environmental distributions of chemicals, available monitoring data should be considered.

In this section an estimation is made, using appropriate models, of representative concentrations of the agent in different environmental media, and its time-dependence in specific geographical locations (e.g., river basins, streams, etc.).

6. Monitored or Estimated Concentration Levels

a. *Summary of Monitoring Data.* Monitoring data are used to identify releases (source terms) and, in the exposure pathways and fate assessments, to quantitatively estimate both release rates and environmental concentrations. Some examples of uses of monitoring data are: Sampling of stacks of discharge pipes for emissions to the environment; testing of products for chemical or radionuclide content; testing of products for chemical or radioactive releases; sampling of appropriate points within a manufacturing plant to determine releases from industrial processes or practices; and sampling of solid waste for chemical or radionuclide content. These data should be characterized as to accuracy, precision, and representativeness. If actual environmental monitoring data are unavailable, concentrations can be estimated by various means, including the use of fate models (see previous section) or, in the case of new chemicals, by analogy with existing chemicals.

The analysis of monitoring data should be considered a complement to environmental pathway and fate analysis for the following reasons: For most pollutants, particularly organic and new chemicals, monitoring data are limited; analysis of monitoring data does not often yield relationships between environmental releases and environmental concentration distribution in media or geographic locations that have not been monitored; analysis of monitoring data does not provide information on how and where biota influence the environmental distribution of a pollutant; and monitored concentrations may not be traceable to individual sources that EPA can regulate. Monitoring data are, however, a direct source of information for exposure analysis and, furthermore, they can be used to calibrate or extrapolate models or calculations to assess environmental distribution.

b. *Estimation of Environmental Concentrations.* Concentrations of agents should be estimated for all environmental media that might contribute to significant exposures. Generally, the environmental concentrations are estimated from monitoring data, mathematical models, or a combination of the two.

The concentrations must be estimated and presented in a format consistent with available dose-response information. In some cases an estimate of annual average concentration will be sufficient, while in other cases the temporal distribution of concentrations may be required. Future environmental concentrations resulting from current or past releases may also be projected. In some cases, both the temporal and geographic distributions of the concentration may be assessed. Moreover, if the agent has natural sources, the contribution of these to environmental concentrations may be relevant. These "background" concentrations may be particularly important when the results of tests of toxic effects show a threshold or distinctly nonlinear dose-response.

The uncertainties associated with the estimated concentrations should be evaluated by an analysis of the

uncertainties of the model parameters and input variables. When the estimates of the environmental concentrations are based on mathematical models, the model results should be compared to available monitoring data, and any significant discrepancies should be discussed. Reliable, analytically-determined values should be given precedence over estimated values whenever significant discrepancies are found.

7. Exposed Populations

Populations selected for study may be done *a priori*, but frequently the populations will be identified as a result of the sources and fate studies. From an analysis of the distribution of the agent, populations convected and subpopulations (i.e., collections of subjects) at potentially high explosure can be identified, which will then form the basis for the populations studied. Subpopulations of high sensitivity, such as pregnant women, infants, chronically ill, etc., may be studied separately.

In many cases, exposed populations can be described only generally. In some cases, however, more specific information may be available on matters such as the following:

a. *Human Populations. (1) Population size and characteristics (e.g., trends, sex/age distribution)*

(2) Population location

(3) Population habits—transportation habits, eating habits, recreational habits, workplace habits, product use habits, etc.

b. *Nonhuman Populations (where appropriate).* (1) Population size and characteristics (e.g., species, trends)

(2) Population location

(3) Population habits

Census and other survey data may be used to identify and describe the population exposed to various contaminated environmental media. Depending on the characteristics of available toxicological data, it may be appropriate to describe the exposed population by other characteristics such as species, race-age-sex distribution, and health status.

8. Integrated Exposure Analysis

The integrated exposure analysis combines the estimation of environmental concentrations (sources and fate information) with the description of the exposed population to yield exposure profiles. Data should be provided on the size of the exposed populations; duration, frequency, and intensity of exposure; and routes of exposure. Exposures should be related to sources.

For more detailed assessments, the estimated environmental concentrations should be considered in conjunction with the geographic distribution of the human and environmental populations. The behavioral and biological characteristics of the exposed populations should be considered and the exposures of populations to various concentration profiles should be estimated.The results can be presented in tabular or graphic form, and an estimate of the uncertainty associated with them should be provided.

a. *Calculations of Exposure. The calculation of exposure involves two major aspects:*

(1) Identification of the Exposed Population and Critical Elements of the Ecosystem.

The estimate of environmental concentrations also should give the geograhical areas and environmental media contaminated. The stated purpose of the assessment should have prescribed the human and environmental subjects for which exposures are to be calculated. If the subjects are not listed, the contaminated geographical areas and environmental media can be evaluated to determine subject populations. The degree of detail to be used in defining the exposed population distribution depends on the concentration gradient over geographic areas.

(2) Identification of pathways of exposure.

(a) Identification and description of the routes by which the substances travel from production site, through uses, through environmental releases/sources, through transport and fate processes, to the target population.

(b) Quantitative estimates of the amounts of the chemical following each exposure pathway. Such estimates allow the various pathways to be put in the perspective of relative importance.

From the geogrpahic and tempral distribution of environmental concentrations, the exposed population, the behavioral characteristics, and the critical elements of the ecosystem, exposure distributions can be estimated. The results of exposure calculation should be presented in a format that is consistent with the requirements of the dose-response functions which may later be used in a risk assessment. For example, when health risks caused by exposure over extended durations are considered, average daily exposure over the duration of exposure usually is calculated. When lifetime risks are considered, average daily exposure over a lifetime usually is calculated. In contrast, when health risks caused by exposures over short durations are considered, exposure rates are calculated over short time intervals to ensure that peak risks are defined. Many exposure assessments are based on the average exposure occurring over the exposure period. The range of possible exposures is usually divided into intervals, and the exposures within each interval are counted. The reuslts can be presented in a tabular form or as a histogram.

The population residing in a specific geographic area may be exposed to a substance from several exposure routes. For each exposure route, exposure of individuals in these populations may be determined by summing the contribution of all sources to the exposure route. When exposures involve more than one exposure route, the relative amounts of a substance absorbed is usually route dependent. Consequently, total absorbed dose estimates must account for these differences. Because EPA regulates sources of releases, the contribution to exposures from each type of source being considered should be displayed. Exposure estimates should be presented for each significant exposure route (i.e., those routes consistent with the regulatory purpose), and the results should be tabulated in such a way that total externally applied and absorbed dose can be determined.

b. *Human Dosimetry and Monitoring.* Biological monitoring of human body fluids and tissues for substances or their metabolites can be used to estimate current or past exposure to chemicals. When analytical methods are available, chemicals that have been absorbed into the body can be measured in body tissue and fluid. Such measurements can be used to estimate exposure. However, the substances to which humans are exposed are highly variable in the degree to which they leave in the body reliable indicators of exposure. Furthermore, although a compound may be relatively easy to detect in body tissue, for some compounds, attributing body burdens to specific environmental releases may be difficult because of limited ability to obtain environmental monitoring data.

c. *Development of Exposure Scenarios and Profiles.* Depending on the scope of the exposure assessment, the total exposure may be fractionated into one or more "exposure scenarios" to facilitate quantification. As an example, Table 1 lists seven very broad scenarios: Occupational, Consumer, Transportation, Disposal, Food, Drinking Water, and Ambient. For each of the scenarios, the major topics necessary to quantify exposure include sources, pathways, monitoring, and population characteristics. Investigation of only one scenario may be necessary for the scope of some assessments. For example, a pesticide application exposure assessment may consider the occupational scenario which would address the exposure to applicators and populations in the vicinity of the site. An exposure assessment around a hazardous waste site may focus on the disposal scenario. The exposure assessment also may consider other scenarios. The more extensive and comprehensive the scope, the more scenarios are usually involved.

TABLE 1. EXPOSURE ASSESSMENT NEEDS FOR VARIOUS EXPOSURE SCENARIOS

Exposure scenario	Source needs	Fate needs	Population characteristics needs	Monitoring needs
Occupational (chemical production)	Site/plant locations in-plant/on-site materials balance.	Physical and chemical properties models.	Workers, families, population around sites/plants.	In-plant/on-site releases, ambient levels surrounding site/plants, human monitoring.
Consumer (direct use of chemical or inadvertant use).	Consumption rates, distribution pattern amounts in products.	Physical and chemical properties, shelf life release rates, models.	Consumers	Levels in products releases.
Transportation/storage/spills	Patterns of distribution and transportation; models for spills.	Physical and chemical properties, environmental fate models.	Storage, transportation workers, general population in area.	Releases, ambient levels.
Disposal (include incineration, landfill).	Materials balance around disposal method, efficiency, releases to environment.	Fate within disposal process; environmental fate of releases; models.	Workers at site of disposal, general population around site.	Releases, levels at various points within process, ambient levels.
Food	Food chain, packaging, additives	Food chain models, fate during preparation or processing of food.	General population, nonhumen population.	Levels in food, feedstuff; food chain sampling.
Drinking water	Groundwater, surface water, distribution system.	Leech rates from pipes, chlorination processes, fate in water; models.	General population	Levels in drinking water, (groundwater, surface water, treatment plants.
Ambient	Releases to environment; air, land, water.	Environmental fate models	General population, nonhuman population.	Ambient Air, water, soil, etc.; human monitoring.

It will usually be advantageous in performing an exposure assessment to identify exposure scenarios, quantify the exposure in each scenario, and then integrate the scenarios to estimate total exposure. In this "integrated exposure analysis," summation of independent exposures from different scenarios (keeping exposure routes separate) often will result in a breakout of exposure by subpopulations, since the individual scenarios usually treat exposure by subpopulation. Therefore, the integration of the scenarios, or integrated exposure analysis, will often result in an exposure profile.

For each exposed subpopulation, exposure profiles should include the size of the group, the make-up of the group (age, sex, etc.), the source of the agent, the exposure pathways, the frequency and the intensity of exposure by each route (dermal, inhalation, etc.), duration of exposure, and the form of the agent when exposure occurs. Assumptions and uncertainties associated with each scenario and profile should be clearly discussed.

d. *Evaluation of Uncertainty.* (1) *Introduction.* Often an exposure assessment progresses through several stages of refinement. The purpose of these Guidelines is to present methods appropriate for characterization of uncertainty for assessments at various stages of refinement, from assessments based upon limited initial data to those based upon extensive data.

The appropriate method for characterizing uncertainty for an exposure assessment depends upon the underlying parameters being estimated, the type and extent of data available, and the estimation procedures utilized. The uncertainty of interest is always with regard to the population characteristic being estimated. For example, when the population distribution of exposures is being estimated, characterization of uncertainty addresses the possible differences between the estimated distribution of exposure and the true population distribution of exposure.

An exposure assessment quantifies contact of a substance with affected population members (human or nonhuman subjects). The measure of contact (e.g., environmental level of absorbed dose) depends upon what is needed to predict risk. An integrated exposure assessment quantifies this contact via all routes of exposure (inhalation, ingestion, and dermal) and all exposure pathways (e.g., occupational exposure, exposure from consumption of manufactured goods, etc.). The exposed population generally is partitioned into subpopulations such that the likely exposure of all members of a subpopulation is attributable to the same sources. The exposure for each member of a subpopulation is then the sum of exposures over a fixed set of sources and pathways. The measured or estimated exposures for members of a subpopulation are ideally used to estimate the subpopulation distribution of exposure or characteristics thereof. However, a lack of sufficient information sometimes precludes estimation of the subpopulation distributions of exposure and only summary measures of this distribution, such as the mean, minimum, maximum, etc., are estimated. In each case characterization of uncertainty for the exposure assessment primarily addresses limitations of the data and the estimation procedures. The proportions of the population members in the individual subpopulations are usually estimated and can be used (by combining estimated distributions for the subpopulations) to estimate the distribution of exposure for the total population. Uncertainty concerning the sizes of the subpopulations should be addressed by discussing limitations of the data and estimation methods as well as by tabulating confidence interval estimates for the population sizes whenever possible.

(2) *Assessments Based Upon Limited Initial Data.* The initial exposure assessment for a substance may be based upon limited data for exposure and/or input variables for an exposure prediction model (i.e., an equation that expresses exposure as a function of one or more input variables). These data might be either extant data or data produced by an initial small-scale study. The initial limited data frequently are insufficient to permit estimation of the entire distribution of exposure. Instead, summary measures of this distribution, such as the mean, minimum, and maximum, are usually estimated.

If the assessment is based upon measured exposures, the methods used to characterize uncertainty depend mainly upon whether or not the data result from a probability sample for which the probability of inclusion is known for each sample member. Characterization of uncertainty for an assessment based upon a probability sample of exposures is discussed later in section 8.d. (5). If the measured exposures are not based upon a probability sample, acknowledgement

that no strictly valid statistical inferences can be made beyond the units actually in the sample is one aspect of the characterization of uncertainty. If inference procedures are implemented, the assumptions upon which these inferences are based (e.g., treatment of the sample as if it was a simple random sample, or assumption of an underlying model) should be explicitly stated and justified. The data collection methods and inherent limitations of the data should also be discussed.

An initial exposure assessment also may be based upon limited data, such as estimated ranges, for input variables for an exposure prediction model. The exposure prediction model would be derived from a postulated exposure scenario that describes the pathways from sources to contact with population members. If the data were only sufficient to support estimates of the ranges of the input variables, the exposure assessment might be limited to a sensitivity analysis. The purpose of the sensitivity analysis would be to identify influential model input variables and develop bounds on the distribution of exposure. A sensitivity analysis would estimate the range of exposures that would result as individual model input variables were varied from their minimum to their maximum possible values with the other input variables held at fixed values, e.g., their midranges. The overall minimum and maximum possible exposures usually would be estimated also. For an exposure assessment of this type, the uncertainty would be characterized by describing the limitations of the data used to estimate plausible ranges of model input variables and by discussing justification for the model. Justification of the model should include a description of the exposure scenario, choice of model input variables, and the functional form of the model. Sensitivity to the model formulation also can be investigated by replicating the sensitivity analysis for plausible alternative models.

If the maximum possible exposure estimated by the sensitivity analysis presented no significant health risk, there might be no need to refine the assessment. If both the minimum and maximum exposures presented a potentially significant health risk, it would be known that the exposure scenario represented a significant health problem without refining the assessment. When the minimum exposure estimate does not present a potentially significant health risk and maximum dose, then greater importance is placed on choosing a summary parameter of the exposure distribution (e.g., the mean or percentile) as the basis for a regulatory decision. Refining the exposure assessment to estimate the distribution of exposure permits selection of any summary parameter (minimum, maximum, mean, or percentile, etc.) as the basis for regulatory decision.

The sensitivity analysis can be enhanced by computing the predicted exposures that result from all possible input variable combinations. If each input variable has only a finite set of possible values, the set of all possible combinations of the input variables can be formed, and the predicted exposure can be computed for each combination. These exposure predictions can be used to form a distribution of exposures by counting the number of occurrences of each exposure level or interval of exposures. This is equivalent to estimating the distribution of exposures that results from treating all input variable combinations as equally likely. This procedure can also be applied by discretizing continuous input variables and representing them by equally-spaced points. In the limit, as the equal spaces become small and the number of points becomes large, the distribution of exposure that results from counting occurrences of exposure levels is equivalent to estimating the distribution of exposures that results from statistically-independent, continuous input variables with uniform distributions on the estimated ranges. This estimated distribution of exposure values can be produced by the methods of mathematical statistics or Monte Carlo simulation. The Monte Carlo method consists of randomly generating input variate values and using these to compute corresponding exposure levels, generating an exposure distribution via many iterations. Interpretation of statistics based upon this exposure distribution would be in terms of the equally likely input variable combinations. For example, the 95th percentile of this distribution would be the exposure level exceeded by only 5% of the exposures resulting from treating all combinations of input variable values as equally likely. Although this distribution of exposures cannot be interpreted as an estimate of the population distribution (unless the input variables actually are statistically independent and uniformly distributed), it provides additional information for making regulatory decisions. Characterization of uncertainty would include a discussion of limitations of the data and justification for the model as discussed above. Sensitivity to model formulation could also be investigated by estimating the distribution of exposure that results from using the same uniform input variable distributions with plausible alternative models and comparing the estimated percentiles.

(3) *Assessments Based Upon Subjective Estimates of Input Variable Distributions.* If a model has been formulated that expresses exposure as a function of one or more input variables, the methods of mathematical statistics or Monte Carlo simulation can be used to estimate the population distribution of exposure from an estimate of the joint distribution of the model input variables. Ideally model input variables should be represented by empirically validated probability distributions. In some cases, it may be possible to formulate an estimate of the joint distribution of model input variables from discussions with subject-matter experts (e.g., via histograms for statistically-independent input variables). The estimated population distribution of exposure will be equivalent to the distribution discussed in section 8. d. (2) for equally likely combinations of input variable values only when the input variable distributions supported are independent uniform distributions. When qualitative knowledge of input variable distributions is ued to estimate the population distribution of exposure, uncertainty is characterized by discussing justification for the presumed model and input variable distributions. Alternative models and/or alternative input variable distributions also should be discussed. Sensitivity to these alternatives can be investigated by estimating the distributions of exposure that result from plausible alternatives and comparing the percentiles of the estimated exposure distributions. All available data, even if data are limited, should be used to validate the presumed input variable distributions and the predicted distribution of exposure.

(4) *Assessments Based Upon Data for Model Input Variables.* The exposure assessment based upon an estimate of the joint probability distribution for model input variables can be refined by collecting sample survey data for model input variables for a sample of population members. The population distribution of exposure can then be estimated by computing the expected exposure for each sample member based upon the model. These expected exposures can be used to directly compute confidence interval estimates for percentiles of the exposure distribution. Alternatively, the sample survey data can be used to compute joint confidence interval estimates for percentiles of the input variable distribution, which can then be used to generate confidence interval estimates for percentiles of the exposure distribution. In either case, the interval estimates for percentiles of the exposure distribution are a useful quantitative characterization of uncertainty.

Characterization of uncertainty for the exposure assessment would contain a thorough discussion of limitations of the data and justification for the model used to compute expected exposures. The design of the sample survey used to produce the data base should also be discussed. If a probability sample were not used, the lack of a probability sample would be an additional source of uncertainty. Any assumptions used in computing the confidence interval estimates, such as independence of model input variables, should be explicitly stated and justified. Sensitivity to model formulation can be investigated by estimating the distribution of exposure for plausible alternative models and comparing the estimated percentiles, if sample survey data have been collected for the input variables of the alternative models. Appropriate available data for exposure should be used to validate the predicted distribution of exposure. If specific probability distributions have been presumed for any model input variables, the data for these variables should be used to test for goodness of fit for these distributions.

(5) *Assessments Based Upon Data for Exposure.* A major reduction in the uncertainty associated with an exposure assessment can be achieved by directly measuring the exposure for a sufficiently large sample of members of the affected population. This reduction in uncertainty is achieved by eliminating the use of a model to predict exposure. The measured exposure levels can be used to directly estimate the population distribution of exposure and confidence interval estimates for percentiles of the exposure distribution. Direct confidence interval estimates also can be computed for other characteristics of the exposure distribution, such as the mean exposure.

These confidence interval estimates are then the primary characterization of uncertainty for the exposure assessment. Limitations of the data and design of the sample survey used to collect the data also should be discussed. If the sample was not a probability sample, this would again be an additional source of uncertainty.

(6) *Summary.* A summary of the primary methods recommended for characterizing uncertainty in exposure assessments is presented in Table 2. Virtually all exposure assessments, except those based upon measured exposure levels for a probability sample of population members, rely upon a model to predict exposure. The model may be any mathematical function, simple or complex, that expresses an individual's exposure as a function of one or more input variables. Whenever a model that has not been validated is used as the basis for an exposure assessment, the uncertainty associated with the exposure assessment may be substantial. The primary characterization of uncertainty is at least partly qualitative in this case, i.e., it includes a description of the assumptions inherent in the model and their justification. Plausible alternative models should be discussed. Sensitivity of the exposure assessment to model formulation can be investigated by replicating the assessment for plausible alternative models.

TABLE 2.—SUMMARY OF PRIMARY METHODS FOR CHARACTERIZING UNCERTAINTY FOR EXPOSURE ASSESSMENTS

Type and extent of date	Population characteristic being estimated	Primary methods for characterizing uncertainty	
		Qualitative methods	Quantitative methods
Measured exposures for a large sample of population members.	Distribution of exposure	1. Limitations of the survey design and measurement techniques.	1. Confidence interval estimates for percentiles of the exposure distribution. 2. Goodness of fit for exposure models, if any have been postulated.
Measured exposures for a small sample of population members.	Summary parameter(s) of the exposure distribution, e.g., mean or a percentile.	1. Limitations of the survey design and measurement techniques.	1. Confidence interval estimates for the summary parameter(s). 2. Goodness of fit for exposure models, if any have been postulated.
Measured model input variables for a large sample of population members.	Distribution of exposure	1. Limitations of the survey design and measurement techniques. 2. Validity of the exposure model	1. Confidence interval estimates for percentiles of the exposure distribution. 2. Goodness of fit for input variable distribution functions, if any have been postulated. 3. Estimated distribution of exposure based upon alternative models.
Estimated distributions of model input variables.	Distribution of exposure	1. Validity of the exposure model 2. Limitations of the data or other basis for the input variable distributions.	1. Confidence interval estimates for percentiles of the exposure distribution. 2. Goodness of fit for input variable distributions, if input variable data are available. 3. Estimated distribution of exposure based upon alternative models.
Limited data for model input variables	Minimum, maximum, and range of the exposure distribution.	1. Limitations of the data 2. Validity of the exposure model	If input variable data are very limited, e.g., some extent data collected for other purposes, quantitative characterization of uncertainty may not be possible.

When an exposure assessment is based upon directly measured exposure levels for a probability sample of population members, uncertainly can be greatly reduced and described quantitatively. In this case, the primary sources of uncertainty are measurement errors and sampling errors. The effects of these sources of error are measured quantitatively by confidence interval estimates of percentiles of the exposure distribution. Moreover, the sampling errors can be limited by taking a large sample.

Whenever the latter is not feasible, it is sometimes possible to obtain at least some data for exposure and model input variables. These data should be used to assess goodness of fit of the model and/or presumed distributions of input variables. This substantially reduces the amount of quantitative uncertainty for estimation of the distribution of exposure and is strongly recommended. It is recognized, however, that it may not be feasible to collect such data.

9. References

The references should contain a listing of all reports, documents, articles, memoranda, contacts, etc. that have been cited in the report.

10. Appendices

The appendices may contain such items as memoranda and letters that are not readily accessible, other tables of monitoring data, detailed lists of emission sources, detailed tables of exposures, process flow diagrams, mathematical model formulations, or any other item that may be needed to describe or document the exposure assessment.

[FR Doc. 84-30723 Filed 11-21-84; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
November 23, 1984

Part IX

Environmental Protection Agency

Proposed Guidelines for Mutagenicity Risk Assessment; Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2706-6]

Proposed Guidelines for Mutagenicity Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Guidelines for Mutagenicity Risk Assessment and Request for Comments.

SUMMARY: The U.S. Environmental Protection Agency is proposing Guidelines for Mutagenicity Risk Assessment (Guidelines). These Guidelines are proposed for use within the policy and procedural framework provided by the various statutes that EPA administers to guide Agency analysis of mutagenicity data. We solicit public comment and will take public comment into account in revising these Guidelines. These Guidelines will be reviewed by the Science Advisory Board in meetings now tentatively scheduled for April 1985.

These proposed Guidelines were developed as part of a broad guidelines development program under the auspices of the Office of Health and Environmental Assessment (OHEA), located in the Agency's Office of Research and Development. Consonant with the role of OHEA's Reproductive Effects Assessment Group (REAG) as the Agency's senior health committee for mutagenicity assessment, the Guidelines were developed by an Agency-wide working group chaired by the REAG.

DATES: Comments must be postmarked by January 22, 1985.

ADDRESSES: Comments may be mailed or delivered to: Dr. David Jacobson-Kram, Reproductive Effects Assessment Group (RD–689), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. David Jacobson-Kram, Telephone: 202–382–7330.

SUPPLEMENTARY INFORMATION: Public comments received as a result of the proposed guidelines for Mutagenicity Risk Assessment, which was published in the **Federal Register** [45(221):74984–74988) on November 13, 1980, have been addressed. The guidelines published here reflect the suggestions that were provided during that initial comment period. A new draft of these Guidelines, taking into account the earlier public comments, was recently sent for review to approximately 14 scientists in the field of chemical mutagenesis within government, universities in the United States, and the private sector. Comments received from these reviews, generally favorable, were also taken into account in developing the Guidelines proposed here.

References and supporting documents used in the preparation of these Guidelines as well as comments received are available for inspection and copying at the Public Information Reference Unit (202–382–5926), EPA Headquarters Library, 401 M Street, SW, Washington, DC, developing the Guidelines proposed here.

Dated: November 9, 1984.

William D. Ruckelshaus,

Administrator.

Contents

I. Introduction
II Comments Received From the **Federal Register** Publication of the Proposed 1980 Guidelines and Agency Responses to These Comments
A. Comments on the Introduction
B. Concepts Relating to Heritable Genetic Risk
C. Testing Systems
D. Weight-of-Evidence Approach
E. Quantitative Assessement of Results
III. Proposed Guidelines
A. Introduction
1. Concepts Relating to Heritable Mutagenic Risk
2. Test Systems
B. Qualitative Assessment (Hazard Identification)
1. Mutagenic Activity
2. Chemical Interactions in the Mammalian Gonad
3. Weight-of-Evidence Determination
C. Quantitative Assessment
1. Dose-Response
2. Exposure Assessment
3. Risk Characterization
IV. References

I. Introduction

On November 13, 1980, the U.S. Environmental Protection Agency (EPA) published purposed guidelines for Mutagenicity Risk Assessment (*1*) and solicited comments on those guidelines. The proposed guidelines of 1980 described the procedures that the Agency would follow to evaluate the genetic risks associated with the exposure of humans to chemical mutagens. These procedures incorporated a weight-of-evidence approach that considered the quality and adequacy of all the available data on a chemical substance in order to make qualitative, and, where possible, quantitative evaluations of mutagenic potential. The Agency stated that mutagenicity risk assessments prepared pursuant to the proposed guidelines would be utilized within the requirements and constraints of the applicable statutes that the Agency administers to arrive at regulatory decisions concerning mutagenicity.

The current proposed Guidelines address the comments received in response to the Agency's proposed mutagenicity risk assessment guidelines and provide the basis for the Agency's risk assessments for mutagenicity. These Guidelines, which adopt the general approach set forth in the 1980 proposal, reflect additional changes made in response to the comments and to new scientific information generated since the time of the proposal.

The current proposed Guidelines reflect changes made in response to the public comments to the proposed guidelines of 1980. These changes dealt primarily with the section addressing the weight-of-evidence approach. This section has been expanded to define "sufficient," "suggestive," and "limited" evidence for potential human germ-cell mutagenicity and to include two categories of evidence, "sufficient" and "suggestive" for chemical interaction with the gonads. Also, in the quantitative assessment section, the dominant skeletal and dominant cataract tests have been added to the list of systems for possible use in estimating the magnitude of genetic risks. Other minor changes have been made in the text for clarification.

A draft of the current proposed Guidelines was submitted for review to individuals from industry, educational institutions, enivornmental groups, and other government agencies. These reviews were useful in revising the Guidelines.

The Agency has not attempted to provide in the current proposed Guidelines a detailed discussion of the mechanisms of mutagenicity or of the various test systems that are currently in use to detect mutagenic potential. Background information on mutagenicity and mutagenic test systems is available in "Identifying and Estimating the Genetic Impact of Chemical Environmental Mutagens," National Academy of Sciences (NAS) Committee on Chemical Environmental Mutagens (*2*), as well as in other recent publications(*3, 4*).

For the information of the reviewer, Chapter II discusses the comments that were received in response to the proposed guidelines of 1980 and the Agency's responses to those comments. The current proposed Guidelines for Mutagenicity Risk Assessment, for which comments are currently invited, are described in Chapter III. The Agency anticipates that, as methods for mutagenicity risk assessment are

refined, and more information becomes available in the area of mutagenicity, revisions to these Guidelines may be desirable or necessary.

II. Comments Received From the Federal Register Publication of the Proposed 1980 Guidelines and Agency Responses to These Comments

As stated in the Introduction, the current Guidelines are being proposed to encourage further public comment. For the information of the reviewer, a summary of the public comments received in response to the proposed guidelines of 1980 and the Agency responses to those comments are presented here.

A total of 34 comments were received, 17 from manufacturers of regulated products, eight from associations, four from individuals, three from educational institutions, and one each from a private consulting laboratory and a government agency. Many responses noted that the proposed guidelines of 1980 were timely and appropriate and praised the Agency for initiating procedures for scientific evaluation of mutagenicity data. Other commenters felt that the proposed guidelines were "premature." Various reasons were given for this position: (1) The mechanisms by which mutations occur are not understood; (2) the data bases for many mutagenicity tests are limited, and hence the tests have not been validated; (3) the Agency should wait until the EPA Gene-Tox Program is completed; and (4) epidemiologic studies have failed to document chemically-induced mutations in humans.

It is the opinion of the Agency that there is a need for mutagenicity guidelines because various statutes administered by the Agency provide the authority to regulate chemicals on the basis of mutagenicity. The purpose of the current proposed Guidelines is to promote Agency-wide consistency in the evaluation of mutagenicity data. In response to the specific concerns enumerated above relating to the issue of prematurity, the Agency has concluded that the comments do not provide an adequate basis for delaying the development of mutagenicity guidelines. Specifically, with regard to the first comment that the mechanisms by which mutations occur are not understood, the Agency does not believe that a full understanding of all aspects of these mechanisms is necessary to evaluate the mutagenic potential of chemicals in the environment. Additionally, the comment ignores the extensive body of data on specific chemical DNA adducts, repair processes, and mutational expression that enable description of the mutational process in specific physiochemical terms (*2*).

With regard to the second comment, the Agency agrees that the data bases for many mutagenicity tests are limited; however, the Agency does not agree that the validity of a test is a function of the size of the data base. Validity is the extent to which a test measures the particular biological end point of interest and should not be confused with sensitivity, the proportion of known mutagens that are positive in a system, or specificity, the proportion of nonmutagens that are negative. Hence, a mutagenesis assay is validated when its ability to detect a heritable genetic change is demonstrated.

In response to the third comment, the Agency does not believe it is necessary to wait for completion of the Gene-Tox Program before issuing guidelines for evaluating mutagenicity data. The Agency acknowledges that future scientific developments can be expected to affect the methods for the evaluation of mutagenicity data. Such developments may stem from phase II of the Gene-Tox Program (which focuses on test applications) as well as from other collaborative activities in basic and applied research. However, the Agency believes that the current Guidelines, as written, can accommodate new information.

With respect to the fourth comment, the Agency does not agree that the failure to identify a chemical as a known human mutagen is justification for not proposing guidelines to evaluate mutagenicity data. Despite the difficulty in translating changes in mutation rate to alterations in disease frequency, the NAS Committee on Chemical Environmental Mutagens has concluded that the net effect of an increase in mutation rate is harmful because almost all mutants with any detectable effect are deleterious (*2*).

A. Comments on the Introduction

Many commenters on the proposed guidelines of 1980 were critical of the statement, "Since the prospect of curing most heritable diseases caused by mutagens in the near future is unlikely, minimizing exposure to mutagens is among the best available means to protect against further deterioration of the human gene pool." At the present time there is no direct evidence in humans that heritable diseases are being caused by chemical mutagens, and there is no evidence of deterioration of the gene pool. This sentence has been deleted.

Several commenters objected to the statement; "Mutations are largely recognized as being deleterious," and pointed out that many mutations are silent or have no effect. In the current proposed Guidelines, this sentence has been changed to read, "It is generally recognized that most mutations that are phenotypically expressed are in some ways deleterious to the organism carrying them."

One commenter requested an explanation of how mutagenicity guidelines would be administered and requested a statement indicating requirements for genetic toxicology testing in premarket manufacturing notices. The Agency believes that the language in the current proposed Guidelines clearly states that they will be used to assess risks associated with human exposure to chemical mutagens. Requirements for genetic toxicology testing are the responsibility of the appropriate Agency office.

B. Concepts Relating to Heritable Genetic Risk

One commenter objected to the definition of a mutagen because it was not limited to stable and heritable alternations in the DNA. The Agency agrees that the ultimate end point of concern for the purpose of the current proposed Guidelines is heritable and stable mutation. For gene mutations, heritability is an obvious and necessary component, since all tests used to detect gene mutations actually detect mutant cells or organisms that are descendants of the treated cells. The same is not always true for certain cytogenetic end points, such as chromatid breaks, etc., which may be detected in the same cell generation in which they occur. Since these latter end points provide information relevant to heritable mutation, they will be considered in any mutagenicity assessment. As a result, the Agency feels that the general definition of a mutagen as used in these Guidelines is appropriate.

C. Testing Systems

One commenter felt that most cytogenetic end points that are routinely evaluated (e.g., chromosome breaks, micronuclei) are not transmitted, and therefore, are not germane to the issue of heritable mutation. The Agency disagrees. Although it is clear that cells that carry such aberrations generally do not reproduce, other related aberrations (i.e., balanced translocations, inversions, small duplications, and deficiencies) are compatible with cell survival in germ cells and can be transmitted. Additionally, there is no evidence indicating that the non-transmissible aberrations occur by

mechanisms different from transmissible aberrations.

Several commenters requested that the Agency establish minimal criteria by which assays are to be judged for use in risk assessment determinations. The Agency believes that to list a specific set of criteria that must be met for each assay before the Agency evaluates data would be overly restrictive and inappropriate. Data generated in any system that measures or correlates with a true genetic end point may provide some useful information. The Agency believes that the general protocols and criteria for data evaluation established by the expert committees of the Phase-I Gene-Tox Program as well as other sources provide sufficient guidance for those planning to conduct mutagenicity tests.

D. Weight-of-Evidence Approach

Several commentes suggested that the weight-of-evidence section required clarification of the phrase, "positive response in any two different point mutation test systems," because this phrase may be subject to various interpretations. The Agency agrees that the section as proposed may have been subject to misinterpretation. Therefore, the current proposed Guidelines define sufficient evidence of potential human mutagenicity to include positive responses in any two different gene mutation test systems (one of which utilized mammalian cells) or positive responses in two different somatic cytogenetic tests (one of which utilizes mammalian cells), coupled with sufficient evidence of germ-cell interaction in both caes. Alternatively, the combination of a positive finding in one mammalian gene mutation assay and one mammalian cytogenetics test and sufficient evidence of germ-cell interaction also provides sufficient evidence of potential human mutagenicity. The demostration of heritable effects induced in mammalian germ cells is by itself sufficient evidence for mutagenicity.

Many commenters objected to the criterion that considers a chemical mutagen a potential human germ-cell mutagen if there is "evidence for the presence of the test substance and/or its matabolites in mammalian gonadal organs." First, they pointed out that the presence of a chemical in the testis or ovary does not necessarily mean it has reacted with germ-cell DNA. Such studies are generally performed with radiolabeled chemicals, and it is possible that metabolism of the compound could result in incorporation of the radiolabel into normal cellular macromolecules. The Agency recognizes the shortcomings in the various criteria used to determine whether a mutagen interacts with germ-cell DNA. As a result, in the current Guidelines, two categories of such evidence have been adopted. Sufficient evidence that a mutagen interacts in the mammalian gonad will be the demonstration that an agent interacts with germ-cell DNA or other chromatin constituents, or that it induces such end points as unscheduled DNA synthesis, sister chromatid exchange (SCE), or chromosomal aberrations in germinal cells. Suggestive evidence will include advese gonadal effects following acute, subchronic, or chronic toxicity testing or adverse reproductive effects, such as decreased fertilization index, reduced sperm count, or abnormal sperm morphology.

One commenter suggested that the Agency develop a scale of weighting tests which would place more emphasis on test systems more relevant to human beings. The Agency has explored the possibility of developing such a scale and has concluded that the assignment of fixed values for each test system could be overly simplistic and might not allow for the consideration of such variables as dose range, route of exposure, and magnitude of respone. The Agency believes that the scheme in the current proposed Guidelines, which generally gives greater weight to mammalian rather than submammalian assays and to germ cell rather than somatic cell data, is currently the most appropriate way to evaluate the information from a variety of systems.

E. Quantitative Assessment of Results

Several commenters expressed the opinion that it is not possible to quantitatively express the risk of genetic disease from exposure to a chemical, and therefore no attempt should be made to do so. The Agency does not suggest that it is necessarily possible to generate a numerical estimate of the genetic risk that will result from exposure to any particular chemical. It is well-recognized and documented that the mutational component of certain categories of human genetic disease is not known. However, mutagenicity data have been used to generate semi-quantitative estimates of the impact of ionizing radiation on genetic disease(*5, 6*). The current proposed Guidelines state the Agency's commitment to utilize existing relevant mutagenicity data to give some estimate of potential human mutagenicity. All such estimates will include a careful delineation of the assumptions and uncertainties associated with the assessment.

Many commenters objected to the use of "linear or nonthreshold models" for low-dose extrapolation on point mutation rates. The Agency acknowledges that linearity and the presence or absence of a threshold are separate issues. The Agency will strive to use the most appropriate extrapolation model for risk analysis and will be guided by the available data in this selection. However, it is anticipated that for whole-animal germ-cell assays, few dose points will be available to define a dose-response function. In these situations there is a theoretical basis for a linear, nonthreshold extrapolation provided that no major germ-cell killing (and thus possible cell selection) has occurred(*2, 7*).

One commenter suggested that for quantitative risk it is more appropriate to rely on tests for structural chromosomal aberrations than on gene mutations, particularly since many diseases can be more readily associated with an identifiable chromosome abnormality. The Agency agrees that associations between diseases and specific chromosomal changes can be estimated. This concept is well documented and has been discussed at length in the NAS report(*2*). However, similar estimates can be made for gene mutations, and such techniques have been used for some time for effects of ionizing radiation(*5, 6*). Because the spectrum of mutational effects induced by different chemicals is known to be variable, the Agency believes that it is necessary to perform estimates on all end points.

One commenter objected to the omission of the dominant skeletal and cataract mutation systems for quantitative risk assessment. The Agency recognizes that these dominant mutation systems do have relevance in the preparation of quantitative risk assessment along with specific-locus test systems. The current proposed Guidelines have been modified to include both types of tests.

III. Proposed Guidelines

A. Introduction

This section describes the procedures that the U.S. Environmental Protection Agency will follow in evaluating the potential genetic risk associated with human exposure to existing industrial chemicals and to pesticides. The central purpose of the health risk assessment is to provide a judgment concerning the weight of evidence that an agent is a potential human mutagen with respect to transmitted genetic changes, and, if so, how great an impact it is likely to have on public health. Regulatory decision making involves two components: Risk assessment and risk management. Risk assessment estimates the potential adverse health consequences of exposure to toxic chemicals; risk management combines the risk assessment with the directives of the enabling regulatory legislation—together with socioeconomic, technical, political, and other considerations—to reach a decision as to whether or how much to control future exposure to the chemnicals. The issue of risk management will not be dealt with in these Guidelines.

Risk assessment is comprised of the following components: Hazard identification, dose-response assessment, exposure assessment, and risk characterization(*8*). Hazard identification is the qualitative risk assessment, dealing with the inherent toxicity of a chemical substance. The qualitative mutagenicity assessment answers the question of how likely an agent is to be a human mutagen. The three remaining components comprise quantitative risk assessment, which provides a numerical estimate of the public health consequences of exposure to an agent. The quantiative mutagenicity risk assessment deals with the question of how much mutational damage is likely to be produced by exposure to a given agent under particular exposure scenarios.

In a dose-response assessment, the relationship between the dose of a chemical and the probability of induction of an adverse effect is defined. The component generally entails an extrapolation from the high goses administered to experimental animals or noted in some epidemiologic studies to the low exposure levels expected from human contact with the chemical in the environment.

The exposure assessment identifies populations exposed to toxic chemicals, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the chemcials. This component is developed independently of the other components of the mutagenicity assessment and is addressed in separate Agency guidelines(*9*).

In risk characterization, the outputs of the exposure assessment and the dose-response assessment are combined to estimate quantitatively the mutation risk, which is expressed as either esimated increase of generic disease per generation or per lifetime, or the fractional increase in the assumed background mutation rate of humans. In each step of the assessment, the strengths and weaknesses of the major assumptions need to be presented, and the nature and magnitude of uncertainties need to be characterized.

The procedures set forth in these Guidelines will ensure consistency in the Agency's scientific risk assessments for mutagenci effects. The necessity for a consistent approach to the evaulation of mutagenic risk from chemical substances arises from the authority conferred upon the Agency by a number of statutes to regulate potential mutagens. As appropriate, these Guidelines will apply to statutes administered by the Agency, including the Federal Insecticide, Fungicide, and Rodenticide Act; the Toxic Substances Control Act; the Clean Air Act; the Federal Water Pollution Control Act; the Safe Drinking Water Act; the Resource Conservation and Recovery Act; and the Comprehensive Environmental Response, Compensation, and Liability Act. Because each statute is administered by separate offices, a consistent Agency-wide approach for performing risk assessments is desirable.

The mutagencity risk assessments prepared pursuant to these Guidelines will be utilized within the requirements and constraints of the applicable statutes to arrive at regulatory decisions concerning mutagenicity. The standards of the applicable statutes and regulations may dictate that additional considerations (e.g., the economic and social benefits associated with use of the chemical substance) will come into play in reaching appropriate regulatory decisions.

The Agency is concerned with the risk associated with both germ-cell mutations and somatic cell mutations. Mutations carried in germ cells are inherited by future generations and may contribute to genetic disease, whereas mutations occurring in somatic cells may be implicated in the etiology of several disease states, including cancer. These Guidelines, however, are only concerned with genetic damage as it relates to germ-cell mutations. The use of mutagenicity test results in the assessment of carcinogenic risk is described in the proposed Guidelines for Carcinogen Risk Assessment(*10*).

As a result of the progress in the control of infectious diseases, increases in average human life span, and better procedures for identifying genetic disorders, a considerable heritable genetic disease burden has been recognized in the human population. It is estimated that at least 10% of all human disease is related to specific genetic states, such as abnormal composition, arrangement, or dosage of genes and chromosomes(*2, 6, 11*). Such genetic diseases can lead to structural or functional health impairments. These conditions may be expressed *in utero*; at the time of birth; or during infancy, childhood, adolescence, or adult life; they may be chronic or acute in nature. As a result, they often have a severe impact upon the affected individuals and their families in terms of physical and mental suffering and economic losses, and upon society in general, which often becomes responsible for institutional care of severely affected individuals. Some examples of genetic conditions are Down's and Klinefelter's syndromes, cystic fibrosis, hemophilia, sickle cell anemia, and achondroplastic dwarfism. Other commonly recognized conditions that are likely to have a genetic component include hypercholesterolemia, hypertension, pyloric stenosis, glaucoma, allergies, several types of cancer, and mental retardation. These disorders are only a few of the thousands that are at least partially genetically determined(*12*).

Estimation of the fraction of human genetic disease that results from new mutation is difficult, although in certain specific cases insights are available(*13*). It is clear that recurring mutation is important in determining the incidence of certain genetic conditions, such as some chromosomal aberration syndromes (e.g., Down's) and rare dominant and X-linked recessive diseases (e.g., achondroplasia and hemophilia A). For other single-factor conditions (e.g., sickle-cell anemia and color blindness) and certain multifactorial conditions (e.g., pyloric stenosis), the contribution of new mutations to disease frequency is probably very small. However, it is generally recognized that most mutations that are phenotypically expressed are in some ways deleterious to the organism receiving them. Adverse effects may be manifested at the biochemical, cellular, or physiological levels of organization. Although mutations are the building blocks for further evolutionary change of species, it is believed that increases in the mutation rate above the spontaneous level could lead to an accumulation of deleterious mutations in the human population and, to a varying extent, an increased frequency of expressed genetic disease.

Life in our technological society results in exposure to many natural and synthetic chemicals. Some have been shown to have mutagenic activity in mammalian and submammalian test systems, and thus may have the potential to increase genetic damage in the human population. Chemicals exhibiting mutagenic activity in various

test systems have been found distributed among foods, tobacco, drugs, food additives, cosmetics, industrial compounds, pesticides, and consumer products. As our knowledge of genetics and disease etiology increases, and techniques for detecting mutations in human beings improve, we may become aware of chemically-induced human genetic effects. The extent to which exposure to natural and synthetic environmental agents may have increased the amount of genetic damage in the present human population and contributed to the mutational "load" that will be transmitted to future generations is unknown at this time. However, for the reasons cited above, it seems prudent to limit exposures to potential human mutagens.

1. Concepts Relating to Heritable Mutagenic Risk

For the purposes of these Guidelines, a mutagen is considered a chemical substance or mixture of substances that can induce alterations in the DNA of either somatic or germinal cells. The mutagenicity of physical agents (e.g., radiations) is not addressed here. There are several mutagenic end points of concern to the Agency. These include point mutations (i.e., submicroscopic changes in the base sequence of DNA) and structural or numerical chromosome aberrations. Structural aberrations include deficiencies, duplications, inversions, and translocations, whereas numerical aberrations are gains or losses of whole chromosomes (e.g., trisomy, monosomy) or sets of chromosomes (haploidy, polyploidy).

It is conceivable that only one or a few molecules of an active compound may be sufficient to cause certain types of heritable changes in DNA. Mutagenic effects may also come about through mechanisms other than chemical alterations of DNA. Among these are interference with normal DNA synthesis, or induction of DNA misrepair, DNA methylation, abnormal nuclear division processes, or lesions in non-DNA targets (e.g., protamine, tubulin).

The best evidence that an agent induces heritable mutations in human beings would be epidemiologic data indicating a strong association between chemical exposure and a heritable response. Such data do not exist at this time because any specific mutation is a rare event, and only a small fraction of the estimated thousands of human genes and conditions are currently useful as markers in estimating mutation rates. Human genetic variability, small numbers of offspring per individual, and long generation times further complicates such studies. In addition, only dominant mutations, some sex-linked recessive mutations, and certain chromosome aberrations can be detected in the first generation after their occurrence. Conditions caused by autosomal recessive mutations (which appear to occur more frequently than dominants) or by interaction of multiple factors may go unrecognized for many generations. Therefore, in the absence of human germ-cell data, it is appropriate to rely on data from experimental animal systems.

Despite species differences in metabolism, DNA repair, and other physiological processes affecting chemical mutagenesis, the virtual universality of DNA as the genetic material and of the genetic code provides a rationale for using various nonhuman test systems to predict the intrinsic mutagenicity of test chemicals. Additional support for the use of nonhuman systems is provided by the observation that chemicals causing genetic effects in one species or test system frequently cause similar effects in other species or systems. There also exists evidence that chemicals can induce genetic damage in somatic cells of exposed humans. For example, high doses of mutagenic chemotherapeutic agents have been shown to cause chromosomal abnormalities(*14*), sister chromatid exchange(*14*), and, quite probably, point mutations in human lymphocytes exposed *in vivo*(*15*). While these results are not in germ cells, they do indicate that it is possible to induce mutagenic events in human cells *in vivo*. Furthermore, a wide variety of different types of mutations have been observed in humans including numerical chromosome aberrations, translocations, base-pair substitutions, and frameshift mutations. Although the cause of these mutations is uncertain, it is clear from these observations that the human germ-cell DNA is subject to the same types of mutational events that are observed in other species and test systems.

Certain test systems offer notable advantages: Cost; anatomical, histological, and/or metabolic similarities to humans; suitability for handling large numbers of test organisms; a large data base; and a basis for characterizing genetic events(*10*).

2. Test Systems

Many test systems are currently available that can contribute information about the mutagenic potential of a test compound with respect to various genetic end points. These tests have recently been evaluated through the EPA Gene-Tox Programs and the results of Phase I have been published(*4*). The Agency's Office of Pesticides and Toxic Substances has published various testing guidelines for the detection of mutagenic effects(*16, 17*).

Test systems for detecting point mutations include those in bacteria, eukaryotic microorganisms, higher plants, insects, mammalian somatic cells in culture, and germinal cells of intact mammals (e.g., the mouse specific-locus test). Positive results in a mouse germinal gene-mutation test argue strongly that a chemical is a potential human mutagen because such tests demonstrate that the mutations occur in mammalian germinal cells and are transmitted to the next generaton. However, because large numbers of offspring must usually be generated, it is not expected that many chemicals will be tested using these systems. To obtain data on a large number of environmental chemicals, it will be necessary to rely on other tests to identify and characterize hazards from gene mutations.

Test systems for detecting structural chromosome aberrations have been developed in a variety of organisms including higher plants, insects, fish, birds, and several mammalian species. Many of these assays can be performed *in vitro* or *in vivo*, and in either germ or somatic cells. Procedures available for detecting structural chromosome aberrations in mammalian germ cells include measurement of heritable translocations or dominant lethality, as well as direct cytogenetic analyses of germ cells and early embryos in rodents.

Some chemicals may cause numerical chromosome changes (i.e., aneuploidy) as their sole mutagenic effect. These agents may not be detected as mutagens if evaluated only in tests for DNA damage, gene mutations, or chromosome breakage and rearrangement. Therefore, it is important to consider tests for changes in chromosome number in the total assessment of mutagenic hazards. Although tests for the detection of variation in the chromosome number are still at an early stage of development, systems exist in such diverse organisms as fungi, Drosophila, mammalian cells in culture, and intact mammals (e.g., mouse X-chromosome loss assay). Nondisjunction and chromosome lagging are recognized sources of numerical aberrations. Aneuploidy can also arise from chromosome breakage and reunion followed by segregation(*18*). The mechanmisms by which nondisjunction occurs are not well understood. However, proteins (e.g., spindle apparatus), rather than DNA, may be the target molecules for at least some mechanisms of induced nondisjunction.

Other end points that provide information bearing on the mutagenicity of a chemical can be detected by a variety of test systems. Such tests measure DNA damage in eukaryotic or prokaryotic cells, unscheduled DNA synthesis in mammalian somatic and germ cells, mitotic recombination and gene conversion in yeast, and sister-chromatid exchange in mammalian somatic and germ cells. Results in these assays are useful because the induction of these end points often correlates positively with the potential of a chemical to induce mutations.

In general, for all three end points (i.e., point mutations and numerical and structural aberrations) the Agency will place greater weight on tests conducted in germ cells than in somatic cells, on tests performed *in vivo* rather than *in vitro*, in eukaryotes rather than prokaryotes, and in mammalian species rather than in submammalian species. Formal numerical weighting systems have been developed(*19*); however, the Agency has concluded that these do not readily accommodate such variables as dose range, route of exposure, and magnitude of response.

The Agency anticipates that from time to time data from chemically-exposed human beings will be available (e.g., cytogenetic markers in peripheral lymphocytes). When possible, the Agency will use such data in conjunction with other studies for the purpose of performing risk assessments.

The test systems mentioned previously are not the only ones that will provide evidence of mutagenicity or related DNA effects. These systems are enumerated merely to demonstrate the breadth of the available techniques for characterizing mutagenic hazards, and to indicate the types of data that the Agency will consider in its evaluation of mutagenic potential of a chemical agent. Most systems possess certain limitations that must be taken into account. The selection and performance of appropriate tests for evaluating the risks associated with human exposure to any suspected mutagen will depend on sound scientific judgment and experience, and may necessitate consultation with geneticists familiar with the sensitivity and experimental design of the test system in question. In view of the rapid advances in test methodology, the Agency expects that both the number and quality of the tools for assessing genetic risk to human beings will increase with time. The Agency will closely monitor developments in mutagenicity evaluation and will refine its risk assessment scheme as better test systems become available.

B. Qualitative Assessment (Hazard Identification)

The assessment of potential human germ-cell mutagenic risk is a multistep process. The first step is an analysis of the evidence bearing on a chemical's ability to induce mutagenic events, while the second step involves an analysis of its ability to produce these events in the mammalian gonad. All relevant information is then integrated into a weight-of-evidence scheme which presents the strength of the information bearing on the chemical's potential ability to produce mutations in human germ cells. For chemicals demonstrating this potential, one may decide to proceed with an evaluation of the quantitative consequences of mutation following expected human exposure.

For hazard identification, it is clearly desirable to have data from mammalian germ-cell tests, such as the mouse specific-locus test for point mutations and the heritable translocation or germ-cell cytogenetic tests for structural chromosome aberrations. It is recognized, however, that in most instances such data will not be available, and alternative means of evaluation will be required. In such cases the Agency will evaluate the evidence bearing on the agent's mutagenic activity and the agent's ability to reach and interact with or affect the mammalian gonadal target. When evidence exists that an agent possesses both these attributes, it is reasonable to deduce that the agent is a potential human germ-cell mutagen.

1. Mutagenic Activity

In evaluating chemicals for mutagenic activity, a number of factors will be considered: (1) Genetic end points (e.g., gene mutations, structural or numerical chromosomal aberrations) detected by the test systems, (2) sensitivity and predictive value of the test systems for various classes of chemical compounds, (3) number of different test systems used for detecting each genetic end point, (4) consistency of the results obtained in different test systems and different species, (5) aspects of the dose-response relationship, and (6) whether the tests are conducted in accordance with appropriate test protocols agreed upon by experts in the field.

The array of mutagenicity tests available will be reviewed within the following qualitative perspective: greater weight will be attributed to tests conducted in germ cells than in somatic cells, to studies in mammalian cells than in submammalian cells, and to studies in eukaryotic cells than in prokaryotic cells.

2. Chemical Interactions in the Mammalian Gonad

Evidence for chemical interaction in the mammalian gonad spans a range of different types of findings. Each chemical under consideration needs to be extensively reviewed since this type of evidence may be part of testing exclusive of mutagenicity per se (e.g., reproduction, metabolism, and mechanistic investigations). Although it is not possible to classify clearly each type of information that may be available on a chemical, two possible groups are illustrated.

Sufficient evidence of chemical interaction is given by the demonstration that an agent interacts with germ-cell DNA or other chromatin constituents, or that it induces such end points as unscheduled DNA synthesis, sister-chromatid exchange, or chromosomal aberrations in germinal cells. Positive results in a mammalian germ-cell mutation study also demonstrate the action of the chemical in the gonadal target cells.

b. *Suggestive evidence* will include the finding of adverse gonadal effects following acute, subchronic, or chronic toxicity testing, or findings of adverse reproductive effects, which are consistent with interaction with germ cells.

3. Weight-of-Evidence Determination

The evidence for a chemical's ability to produce mutations and to interact with the germinal target are integrated into a weight-of-evidence judgment that the agent may pose a hazard as a potential human germ-cell mutagen. All information bearing on the subject, whether indicative of potential concern or not, must be evaluated. Whatever evidence may exist from humans must also be factored into the assessment.

Information available will vary greatly from chemical to chemical because there are many mutagenicity test systems, and there has been no systematic attempt to develop information on all chemicals of concern. The responses noted for different tests may also vary from chemical to chemical since often one does not find consistent positive or negative results across all tests. Chemicals may show positive effects for some end points in some test systems, but negative responses in others. Each review must take into account the limitations in the testing and in the types of responses that may exist.

To provide guidance as to the categorization of the weight of evidence, a classification scheme is presented to illustrate, in a simplified sense, the strength of the information bearing on the potential for human germ-cell mutagenicity (Table 1). It is not possible to illustrate all potential combinations of evidence, and considerable judgment must be exercised in reaching conclusions. The factors illustrated in Table 1 and discussed previously in sections 1, 2, and 3 must all be considered in making an assessment of mutagenicity. In addition, certain responses in tests that do not measure well-defined mutagenic end points (e.g., SCE induction in mammalian germ cells) or germ-cell tests in higher eukaryotes (e.g., Drosophila tests) may provide a basis for raising the weight of evidence from one category to another.

Sufficient evidence for potential human germ-cell mutagenicity would include cases in which positive responses are demonstrated in a mammalian germ-cell test. Also, in general, sufficient evidence exists when there is confirmed mutagenic activity in other test systems (positive responses in at least two different test systems, at least one of which is in mammalian cells), and there is sufficient evidence for germ-cell interaction as defined above.

Suggestive evidence encompasses a weight-of-evidence category between sufficient and limited that includes cases in which there is some evidence for mutagenic activity and for interaction with germ cells.

Limited evidence for potential human germ-cell mutagenicity exists when evidence is available only for mutagenicity tests (other than mammalian germ cells) or only for chemical interactions in the gonad.

Table 1.—Classification of Weight of Evidence for Potential Human Germ-Cell Mutagenicity [a]

1. *Sufficient* evidence exists when positive responses are demonstrated in:
   a. at least one *in vivo* mammalian germ-cell mutation test, or
   b. at least two point mutation tests (at least one in mammalian cells) plus sufficient evidence that the chemical interacts with mammalian germ cells, or
   c. least two structural chromosome aberration tests (at least one in mammalian cells) plus sufficient evidence that the chemical interacts with mammalian germ cells, or
   d. one gene mutation assay in mammalian cells and one structural chromosome aberration test in mammalian cells and sufficient evidence for chemical interaction with mammalian germ cells.

2. *Suggestive* evidence exists in those cases in which there are positive data for both mutagenic activity and evidence for chemical interactions in the gonad, but the evidence is less than sufficient. This category is potentially large and heterogeneous in nature and ranges from almost sufficient to essentially limited.

3. *Limited* evidence denotes a situation in which the evidence is limited to information on mutagenic activity or to evidence of chemical reactivity in the target.

[a] Takes into consideration the extent, quality, and consistency of responses bearing on an agent's ability to product mutagenic events and to interact with the mammalian gonadal target. Nonmutagenic test responses (e.g., SCE in germ cells) may help to elevate evidence of mutagenicity from one category to another.

Designation of evidence as limited does not preclude the use of such information to set priorities for further testing or to support a case for potential carcinogenicity.

Although definitive proof of nonmutagenicity is not possible, it seems appropriate that a chemical could be classified operationally as not a human germ-cell mutagen, if it gives negative responses in those test systems that together fulfill the criteria (i.e., all relevant end points) for sufficient evidence of a potential human germ-cell mutagen, providing that all assays have been properly performed. Test systems used to define a negative should be capable of detecting weak responses (adequate statistical power) and should be appropriate for the chemical or class of chemicals under investigation.

Negative evidence of chemical interaction in the gonad in the presence of evidence of mutagenic activity may still signal some concern in regard to somatic effects(*10*). Other combinations of relevant information will most likely require case-by-case evaluation. It may also be possible to operationally define a chemical as not being a human germ-cell mutagen based on negative results from other assays which provide information about mutagenicity and/or interaction with germ-cell chromatin.

C. Quantitative Assessment

The preceding section addressed primarily the processes of hazard identification, i.e., the determination of whether a substance is a potential germ-cell mutagen. Often, no further data will be available, and judgments will need to be based on mainly qualitative criteria. For quantitative risk assessment, further information is required, namely, determination of the heritable effect per unit of exposure (dose-response) and the relationship between mutation rate and disease incidence. Dose-response information is combined with anticipated levels and patterns of human exposure in order to derive a quantitative assessment (risk characterization).

1. Dose-Response

Two approaches to obtaining dose-response data are available. One approach requires experimental data on germinal mutations induced in intact mammals. Several test systems may provide such information, e.g., the mouse heritable translocation, dominant skeletal, dominant cataract, and specific-locus tests. Although the dominant skeletal and cataract assays have the advantage of measuring dominant mutations, the heritability of observed effects has not been clearly demonstrated. The experimental data on induced mutation frequency are usually obtained at exposure levels much higher than those that will be experienced by human beings. An assessment of human risk is obtained by extrapolating the induced mutation frequency or the observed phenotypic effect downward to the approximate level of anticipated human exposure.

The Agency will strive to use the most appropriate extrapolation models for risk analysis and will be guided by the available data and mechanistic considerations in this selection. However, it is anticipated that for tests involving germ cells of whole mammals, few dose points will be available to define dose-response functions. In these situations certain theoretical considerations will apply(*20*). For point mutations, linear extrapolations with no threshold may be used as a conservative approximation, provided the results allow one to rule out major germ-cell selection. For structural chromosome rearrangements such as heritable translocations, linear extrapolation of the experimental data is thought to overestimate the risks at low levels of exposure and use of a multiple-hit model is more appropriate.

The second experimental approach for quantitative assessment of genetic risk uses molecular dosimetry data from intact mammals in conjunction with mutagenicity and dosimetry data from other validated test systems(*21*). The intact mammal is used primarily for relating the exposure level for a given route of administration of a chemical to germ-cell dose, i.e., the level of mutagen-DNA interactions. This information is then used in conjunction with results obtained from mutagenicity test systems in which the relationship between the induction of mutations and chemical interactions with DNA can be derived.

Using mutagen-DNA interactions as the common denominator, a relationship can be constructed between mammalian exposure and the induced mutation frequency. The amount of DNA binding induced by a particular chemical agent may often be determined at levels of anticipated human exposure. This approach is still experimental and its application involves many unknowns, such as possible differences between mammalian germ cells and cells of the reference system with regard to types of genetic damage induced and magnitude of repair.

For some mutagenic events, DNA may not necessarily be the critical target. Interaction of chemicals with other macromolecules, such as tubulin, which is involved in the separation of chromosomes during nuclear division, can lead to chromosomal nondisjunction. At present, general approaches are not available for dose-response assessments for these types of mutations. Ongoing research should provide the means to make future assessments on chemicals causing aneuploidy.

2. Exposure Assessment

The exposure assessment identifies populations exposed to toxic chemicals, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the chemicals. This component is developed independently of the other components of the mutagenicity assessment(*9*).

3. Risk Characterization

In performing mutagenicity risk assessments, it is important to consider each genetic end point individually. For example, although certain chemical substances that interact with DNA may cause both point and chromosomal mutations, it is expected that the ratio of these events may differ for individual chemicals and between doses for a given chemical. Furthermore, transmissible chromosomal aberrations appear to be inducible with higher frequencies in meiotic and postmeiotic germ-cell stages, which have a brief life span, than in spermatogonial stem cells, which can accumulate genetic damage throughout the reproductive life of an individual. For these reasons, when data are available, the Agency, to the best extent possible, will assess risks associated with all genetic end points.

Any risk assessment should clearly delineate the strengths and weaknesses of the data, the assumptions made, the uncertainties in the methodology, and the rationale used in reaching the conclusions, e.g., similar or different routes of exposure and metabolic differences between humans and test animals. When possible, quantitative risk assessments should be expressed in terms of the estimated increase of genetic disease per generation or per lifetime, or the fractional increase in the assumed background spontaneous mutation rate of humans(*5*). Examples of quantitative risk estimates have been published (*6, 22*); these examples may be of use in performing quantitative risk assessments for mutagens.

IV. References

(*1*) U.S. Environmental Protection Agency. 1980. Mutagenicity risk assessment: proposed guidelines. Federal Register 45 (221): 74984–74988.

(*2*) Committee on Chemical Environmental Mutagens. 1982. Identifying and estimating the genetic impact of chemical environmental mutagens. Washington, DC: National Academy Press.

(*3*) Committee 1 Final Report. 1983. Screening strategy for chemicals that are potential germ-cell mutagens in mammals. Mutat. Res. 114: 117–177.

(*4*) A complete reference of all Gene-Tox publications is available from the TSCA Industry Assistance Office (TS–794), Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, DC 20460.

(*5*) Committee on the Biological Effects of Ionizing Radiation. 1980. The effects on populations of exposure to low levels of ionizing radiation. National Academy of Sciences. Washington, DC: National Academy Press.

(*6*) United Nations Scientific Committee on the Effects of Atomic Radiation. 1977. Sources and effects of ionizing radiation. Report of the General Assembly, 32nd Session. Supplement No. 40(A/32/40). United Nations, New York.

(*7*) Ehling, U.H., D. Averback, P.A. Cerutti, J. Friedman, H. Greim, A.C. Kolbye, and M.L. Mendelsohn. 1983. Review of the evidence for the presence or absence of thresholds in the induction of genetic effects by genotoxic chemicals. Mutat. Res. 123:281–341.

(*8*) Committee on the Institutional Means for the Assessment of Risks to Public Health. 1983. Risk assessment in the Federal government: managing the process. Commission on Life Sciences, National Research Council. Washington, DC: National Academy Press.

(*9*) U.S. Environmental Protection Agency. 1984. Proposed guidelines for exposure assessment. Office of Health and Environmental Assessment.

(*10*) U.S. Environmental Protection Agency. 1984. Proposed guidelines for carcinogen risk assessment. Office of Health and Environmental Assessment.

(*11*) Flamm, W.G. 1977. DHEW Report on approaches to determining the mutagenic properties of chemicals: risk to future generations. J. Environ. Pathol. Toxicol. 1:301–352.

(*12*) McKusick, V.A. 1978. Mendelian inheritance in man: catalogs of autosomal dominant, autosomal recessive and x-linked phenotypes. Baltimore, MD: Johns Hopkins University Press.

(*13*) Crow, J.F., and C. Denniston. 1981. The mutation component of genetic damage. Science 212:888–893.

(*14*) Musilova, J., K. Michalova, and J. Urban. 1979. Sister chromatid exchanges and chromosomal breakage in patient treated with cytostatics. Mutat. Res. 67:289–294.

(*15*) Strauss, G.H., and R.J. Albertini. 1979. Enumeration of 6-thioguanine-resistant peripheral blood lymphocytes in man as a potential test for somatic cell mutations arising *in vivo*. Mutat. Res. 61:353–379.

(*16*) U.S. Environmental Protection Agency. 1983. Health effects test guidelines. Office of Toxic Substances. EPA 560/6/82–001. Available from: NTIS, Springfield, VA.

(*17*) U.S. Environmental Protection Agency. November 24, 1982. Pesticides registration; proposed data requirements. Federal Register 47: 53192–53203.

(*18*) Parker, D.R., and J.H. Williamson. 1974. Some radiation effects on segregation in Drosophila. Genetics 78:163–171.

(*19*) Russell, L.B., C.S. Aaron, F. de Serres, W.M. Generoso, K.L. Kannan, M. Shelby, J. Springer, and P. Voytek. Evaluation of existing mutagenicity bioassays for purposes of genetic risk assessment. Mutat. Res. in press.

(*20*) Ehrenberg L., E. Moustacchi, and S. Osterman-Golkar. 1983. Dosimetry of genotoxic agents and dose-response relationships of their effects. Mutat. Res. 123:121–179.

(*21*) Lee, W.R. 1979. Dosimetry of chemical mutagens in eukaryote germcells. In: A. Hollaender and F.J. de Serres, eds. Chemical mutagens: principles and methods for their detection, Vol. 5. New York: Plenum Press, pp. 177–202.

(*22*) Ehling, U.H., and A. Neuhauser. 1979. Procarbazine-induced specific-locus mutations in male mice. Mutat. Res. 59:245–258.

[FR Doc. 84–30722 Filed 11–21–84; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
November 23, 1984

Part X

Environmental Protection Agency

Proposed Guidelines for the Health Assessment of Suspect Developmental Toxicants and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2706-7]

Proposed Guidelines for the Health Assessment of Suspect Developmental Toxicants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Guidelines for the Health Assessment of Suspect Developmental Toxicants and Request for Comments.

SUMMARY: The U.S. Environmental Protection Agency is proposing Guidelines for the Health Assessment of Suspect Developmental Toxicants (Guidelines). These Guidelines are proposed for use within the policy and procedural framework provided by the various statutes that EPA administers to guide Agency analysis of developmental toxicity data. We solicit public comment and will take public comment into account in revising these Guidelines. The Guidelines will be reviewed by the Science Advisory Board in meetings now tentatively scheduled for April 1985.

These proposed Guidelines were developed as part of a broad guidelines development program under the auspices of the Office of Health and Environmental Assessment (OHEA), located inthe Agency's Office of Research and Development. Consonant with the role of OHEA's Reproductive Effects Assessment Group (REAG) as the Agency's senior health committee for developmental toxicity assessment, the Guidelines were developed by an Agency-wide working group chaired by the REAG.

DATE: Comments must be postmarked by January 22, 1985.

ADDRESSES: Comments may be mailed or delivered to: Dr. Carole A. Kimmel, Reproductive Effects Assessment Group (RD–689), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Carole A. Kimmel, telephone: 202–382–7331.

SUPPLEMENTARY INFORMATION: A preliminary draft of the Guidelines was sent for review to approximately 20 scientists in the field of developmental toxicology within government, universities in the United States, and the private sector. Comments received from these reviewers, generally favorable, were taken into account in developing the Guidelines proposed here.

References and supporting documents used in the preparation of these Guidelines as well as comments received are available for inspection and copying at the Public Information Reference Unit (202–382–5926), EPA Headquarters Library, 401 M Street, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

Dated: November 9, 1984.

William D. Ruckelshaus,

Administrator.

Contents

I. Introduction
II. Definitions and Terminology
III. Qualitative Assessment (Hazard Identification of Developmental Toxicants)
A. Conventional Developmental Toxicology Protocols: End Points and Their Interpretation
1. End Points of Maternal Toxicity
2. End Points of Developmental Toxicity
3. Overall Evaluation of Maternal and Developmental Toxicity
B. Functional Teratology
C. Short-Term Testing in Developmental Toxicity
1. *In Vivo* Mammalian Teratology Screen
2. *In Vitro* Teratology Screens
3. Application
D. Pharmacokinetics
E. Human Studies
F. Comparisons of Molecular Structure
G. Weight-of-Evidence Determination
IV. Quantititative Assessment
A. Dose-Response Assessment
B. Exposure Assessment
C. Risk Characterization
V. References

I. Introduction

These Guidelines describe the procedures that the U.S. Environmental Protection Agency will follow in evaluating potential developmental toxicity associated with human exposure to environmental toxicants. In the past, the Agency has sponsored conferences and issued publications which addressed issues related to such evaluations(*1, 2, 3*). These publications provided some of the scientific basis for these risk assessment Guidelines, and testing guidelines have provided protocols designed to determine the potential of a test substance to induce structural and/or other abnormalities in the developing conceptus. The Agency's authority to regulate substances that have the potential to interfere adversely with human development is derived from a number of statutes which are implemented through multiple offices within the Agency. Because many different offices evaluate developmental toxicity, there is a need for intra-agency consistency in the approach to assess these types of effects. The procedures described here will promote consistency in the Agency's assessment of developmental toxic effects.

Approximately 50% of human conceptuses fail to reach term(*3, 4*); approximately 3% of newborn children are found to have one or more significant congenital malformations at birth, and, by the end of the first postnatal year, about 3% more are found to have serious developmental defects (*5, 6*). It is estimated that 20% of human congenital malformations are caused by mutations, 10% are attributable to known environmental factors, and the remainder result from unknown causes (*7*).

Numerous agents have been shown to be developmental toxicants in animal test systems(*8*). Several of them have also been shown to be the cause of adverse developmental effects in humans, including alcohol, aminopterin, busulfan, chlorobiphenyls, diethylstilbestrol, isotretinoin, organic mercury, thalidomide, and valproic acid (*9, 10, 11, 12*). Exposure to agents affecting development generally results in multiple manifestations (malformation, functional impairment, altered growth, and/or lethality). Therefore, assessment efforts should encompass a wide array of adverse developmental end points such as spontaneous abortions, stillbirths, malformations, and other adverse functional physical changes that occur postnatally.

The developmental toxicity assessments prepared pursuant to these Guidelines will be utilized within the requirements and constraints of the applicable statutes to arrive at regulatory decisions concerning developmental toxicity. These Guidelines provide a general format for analyzing and organizing the available data for conducting risk assessments. The Guidelines do not change any statutory or regulatory prescribed standards for the type of data necessary for regulatory action. Moreover, risk assessment is just one component of the regulatory process and defines the adverse health consequences of exposure to a toxic agent. The other component, risk management, combines risk assessment with the directives of the enabling regulatory legislation together with socio-economic, technical, political, and other considerations to reach a decision as to whether or how much to control future exposure to the suspected toxic agent. The issue of risk management will not be addressed in these Guidelines.

The National Research Council(*13*) has defined risk assessment as being comprised of some or all of the following components: hazard identification, dose-response assessment, exposure assessment, and risk characterization. In general, the process of assessing the risk of human developmental toxicity may be adapted to this format. However, due to special considerations in assessing developmental toxicity, which will be discussed later in these Guidelines, it is not always appropriate to follow the exact standards as defined for each component.

Hazard identification is the qualitative risk assessment in which all available experimental animal and human data are used to determine if an agent is likely to cause developmental toxicity. In considering developmental toxicity, these Guidelines will address not only malformations, but also fetal wastage, growth alteration, and functional abnormalities that may result from developmental exposure to environmental agents.

The dose-response assessment defines the relationship of the dose of an agent and the occurrence of developmental toxic effects. According to the National Research Council(*13*), this component would usually include the results of an extrapolation from high doses administered to experimental animals or noted in epidemiologic studies to the low exposure levels expected for human contact with the agent in the environment. However, since at present there is no mathematical extrapolation model that is generally accepted for developmental toxicity, the Agency, for the most part, continues to use safety factors and margins of safety, which will be discussed in these Guidelines.

The exposure assessment identifies populations exposed to the agents, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the agent.

In risk characterization, the exposure assessment and the dose-response assessment are combined to estimate some measure of the risk of developmental toxicity. As part of risk characterization, a summary of the strengths and weaknesses in each component of the assessment are presented along with major assumptions, scientific judgments, and, to the extent possible, estimates of the uncertainties.

II. Definitions and Terminology

The Agency recognizes that there are differences in the use of terms in the field of developmental toxicology. For the purposes of these Guidelines the following definitions and terminology will be used.

Developmental Toxicology—The field dealing with the induction of adverse effects on the developing organism occurring up to the time of puberty. The manifestations of developmental toxicity include: (1) Death of the developing organism, (2) structural abnormality (teratogenicity), (3) altered growth, and (4) functional deficiency.

Embryotoxicity and Fetotoxicity—Any toxic effect on the conceptus as a result of prenatal exposure; the distinguishing feature between the terms is the period during which the insult occurred. The terms, as used here, include malformation, altered growth, and *in utero* death.

Altered Growth—A significant alteration in fetal or neonatal organ or body weight. Body weight may or may not be accompanied by a change in crown-rump length and/or in skeletal ossification. Altered growth can be induced at any stage of development, may be reversible, or may result in a permanent change.

Functional Teratology—The field dealing with the causes, mechanisms, and manifestations of alterations or delays in functional competence of the organism or organ system following exposure to an agent during critical periods of development either pre- or postnatally.

Malformations and Variations—A malfunction is usually defined as a permanent structural deviation which generally is incompatible with or severely detrimental to normal postnatal survival or development. A variation is usually defined as a divergence beyond the usual range of structural constitution but which may not have as severe an effect on survival or health as a malformation. Distinguishing between variations and malformations is difficult since there exists a continuum of responses from the normal to the extreme deviant. There is no generally accepted classification of malformations and variations. Other terminology that is often used but no better defined, includes anomalies, deformations, and aberrations.

III. Qualitative Assessment (Hazard Identification of Developmental Toxicants)

Developmental toxicity studies provide a number of end points that are useful for evaluating the potential of an agent to produce adverse outcomes of pregnancy. The four types of effects on the conceptus that may be produced by *in utero* exposure to toxicants include death, structural abnormality, altered growth, and functional deficits. Of these, the first three effects are measured in the conventional developmental toxicity (teratogenicity) protocol (discussed below), while functional deficits are seldom evaluated in routine assessments of environmental agents. This section will discuss the format and analysis of conventional studies as well as the use of data from other types of studies, including functional studies, short-term tests, and pharmacokinetics.

A. Conventional Developmental Toxicology Protocols: End Points and Their Interpretation

The most commonly used protocol for assessing developmental toxicity involves the administration of a test substance to pregnant animals (usually mice, rats, or rabbits) during the period of major organogenesis, evaluation of maternal responses throughout pregnancy, and examination of the dam and the uterine contents just prior to term(*2, 3, 14, 15*). Other protocols may use exposure periods of one to a few days to investigate periods of particular sensitivity for induction of anomalies in specific organs or organ systems(*16*). Fetuses alive at maternal sacrifice are thoroughly evaluated for alterations in morphological development. Because the relationship of maternal and fetal toxicity is important in assessing the developmental toxicity of an agent, dose-response data are important. Ideally, study designs should include a high dose, which produces some maternal toxicity (i.e., a level that produces marginal but significantly reduced body weight or weight gain during pregnancy up to a level that produces no more than 10% maternal mortality), a low dose, which demonstrates a no observed effect level (NOEL) for maternal and/or fetal effects, and at least one intermediate dose level. Test animals should be selected based on considerations of species, strain, age, weight, and health status, and should be randomized to dose groups in order to reduce bias and provide a basis for performing valid statistical tests. Replication of the study is desirable and strengthens the confidence of data interpretation.

The next two sections discuss individual end points of maternal and developmental toxicity, respectively, as measured in the conventional developmental toxicity study. The third section deals with the integrated evaluation of all data including the relative effects of exposure on maternal animals and their offspring.

1. End Points of Maternal Toxicity

A number of end points that may be observed as indicators of maternal toxicity are listed in Table 1. Maternal

mortality is an obvious end point of maternal toxicity; however, a number of other end points can be observed which may give an indication of the subtle effects of the agent. For example, in well-conducted studies the end point, percent pregnant, indicates the general fertility rate of the animal stock used and is an important indicator of toxic effects if treatment begins prior to implantation.

Table 1.—End Points of Maternal Toxicity

Mortality
Percent Pregnant (includes all litters with implants)
Body Weight
  Treatment days (at least first, middle, and last treatment days) Sacrifice day
Body Weight Change
  Throughout Gestation
  During treatment (including increments of time within treatment period)
  Post-treatment to sacrifice
  Corrected maternal (body weight change throughout gestation minus gravid uterine weight or litter weight at sacrifice)
Organ Weights (in cases of suspected specific organ toxicity)
  Absolute
  Relative to body weight
Food and Water Consumption (where relevant)
Clinical Signs (on days of treatment and at sacrifice)
  Daily weight changes during treatment
  Types and incidence of clinical signs

Body weight and the change in body weight are viewed collectively as indicators of maternal toxicity for most species, although these end points may not be as useful in rabbits, because body weight changes in rabbits are not good indicators of pregnancy status. Body weight changes may provide more information than a daily body weight measured during treatment or during gestation. Changes in weight during treatment could occur that would not be reflected in the overall weight change throughout gestation, because of compensatory weight gain that may occur following treatment but before sacrifice. For this reason, changes in weight during treatment can be examined as another indicator of maternal toxicity.

Changes in maternal body weight corrected for gravid uterine weight at sacrifice may indicate whether the effect is primarily maternal or fetal. For example, there may be a signficant reduction in weight gain throughout gestation and in gravid uterine weight, but no change in corrected maternal weight gain which would indicate primarily an intrauterine effect. Conversely, a change in corrected weight gain and no change in gravid uterine weight suggests primarily maternal toxicity and little or no intrauterine effect. An alternate estimate of maternal weight change during gestation can be obtained by subtracting the sum of the weights of the fetuses. However, this weight does not include the uterine tissue, placental tissue, or the amniotic fluid.

Changes in other end points should also be determined. For example, changes in relative and absolute organ weights may be signs of maternal effect when an agent is suspected of causing specific organ toxicity. Food and water consumption data are useful, especially if the agent is administered in the diet or drinking water. The amount ingested (total and relative to body weight) and the dose of the agent (relative to body weight) can then be calculated, and changes in food and water consumption with treatment can be evaluated along with changes in body weight and body weight gain. Consumatory data are also useful when an agent is suspected of affecting appetite, water intake, or excretory function. Clinical signs of toxicity may also be used as indicators of maternal toxicity. Daily body weight changes during treatment along with clinical observations may be useful in describing the profile of maternal toxicity.

2. End Points of Developmental Toxicity

Because the maternal animal and not the conceptus is the individual treated during gestation, statistical analysis of the data should consider both the individual fetus and the litter. Table 2 indicates the way in which fetal and litter end points can be expressed.

Table 2.—End Points of Developmental Toxicity

All litters

No. implantation sites/dam
No. corpora lutea (CL)/dam*
Percent Preimplantation loss
No. and percent live fetuses/litter
No. and percent resorptions/litter
No. and percent litters with resorptions
No. and percent late fetal deaths/litter
No. and percent nonlive (late fetal deaths + resorptions) implants/litter
No. and percent litters with nonlife implants
No. and percent affected (nonlive + malformed) implants/litter
No. and percent with affected implants
No. and percent litters with total resorptions

Litters with live fetuses

No. and percent litters with live fetuses
No. and percent live fetuses/litter
No. males/litter
No. females/litter
No. ratio/litter
Mean ($\bar{x}$) fetal body weight/litter
Mean ($\bar{x}$) male body weight/litter
Mean ($\bar{x}$) female body weight/litter
No. and percent externally malformed fetuses/litter
No. and percent viscerally malformed fetuses/litter
No. and percent skeletally malformed fetuses/litter
No. and percent malformed fetuses/litter
No. and percent litters with malformed fetuses
No. and percent malformed males/litter
No. and percent malformed females/litter
No. and percent fetuses with variations/litter
No. and percent litters having fetuses with variations
Types and incidence of individual malformations
Types and incidence of individual variations
Individual fetuses and their malformations and variations (grouped according to litter and dose)

* Only when treatment begins prior to implantation. May be difficult in mice.

When treatment begins prior to implantation, an increase in preimplatation loss could indicate an adverse effect either on the developing blastocyst or on the process of implantation itself. Further studies would be necessary to determine the cause and extent of this type of effect.

The number of live fetuses per litter, based on all litters, includes any litters that have no live implants. On the other hand, total nonlive implants (postimplantation loss), is a combination of the end points, resorptions, and late fetal deaths. An increased incidence per litter for any of the end points indicating postimplantation loss would be considered a significant toxic effect to the conceptus. The number of litters showing an increased incidence for these end points is less useful than incidence per litter, because a litter is counted whether it has one or all resorbed, dead, or nonlive implants.

A statistically significant increase in postimplantation loss following exposure to an agent is a severe form of developmental toxicity, but there is considerable interlitter variability in the incidence of postimplantation loss(*17*). If a statistically significant increase is found after exposure to an agent, the data may be compared not only with concurrent controls, but also with recent historical control data. If a given study control group exhibits an unusually high or low incidence of postimplantation loss compared to historical controls, then scientific judgment would have to be used to determine the adequacy of the studies for risk assessment purposes.

The end point for affected implants (i.e., the combination of nonlive and

malformed conceptuses) given an indication of the total intrauterine response to an agent and sometimes reflects a better dose-response relationship than each taken individually. This is especially true at the high end of the dose-response curve in cases where most implants die *in utero*. In such cases, the malformation rate may appear to decrease because only unaffected fetuses have survived to term. If the incidence of prenatal death or malformation is unchanged, then the incidence of affected implants will not provide any additional information.

The number of live fetuses per litter, based on those litters that have one or more live fetuses, may be unchanged even though the incidence of nonlive in all litters is increased. This could occur either by an increase in the number of litters with no live fetuses or by an increase in the number of implants per litter. A decrease in the number of live fetuses per litter should be accompanied by an increase in the incidence of nonlive implants per litter, unless the implant numbers differ among dose groups.

The sex ratio per litter, as well as the body weights of males and females, can be examined to determine whether or not one sex is preferentially affected by the agent. However, this is an unusual occurrence.

A change in fetal body weight is a sensitive indicator of developmental toxicity, in part because it is a continuous variable. In some cases, fetal weight reduction may be the only indicator of developmental toxicity; if so, there is always a question remaining as to whether weight reduction is a permanent or transitory effect. When fetal weight reduction is the only indicator of developmental toxicity, data from the two-generation reproduction study(*3*) may be useful for evaluating these parameters. Ideally, follow-up studies to evaluate postnatal viability, growth, and survival through weaning should be conducted. There are other factors that should be considered in the evaluation of fetal weight changes. For example, in polytocous animals, fetal weight is usually inversely correlated with litter size, and the upper end of the dose-response curve may be confounded by smaller litters and increased fetal weight. Additionally, the average body weight of male fetuses is greater than that of female fetuses in the more commonly used laboratory animals.

Live fetuses should be examined for external, visceral, and skelatal malformations. If only a portion of the litter is examined, then it is preferable that those to be examined be selected on a random basis from each litter. The incidence of individual types of malformations and variations gives an indication of the types of developmental deviations produced by a particular agent. A listing of individual malformations and variations by fetus gives an indication of the pattern of developmental deviations. The incidence of external, visceral, and skeletal malformations gives an indication of which systems may be specifically affected. A significant increase in the incidence of particular malformations or of the total number of fetuses malformed per treated litter as compared with controls indicates a teratogenic effect. If variations are significantly increased in a dose-related manner, these should also be evaluated as a possible indication of developmental toxicity. The Interagency Regulatory Liaison Group noted that dose-related increases in spontaneously occurring defects are as relevant as dose-related increases in any other developmental toxicity end points(*18*). The number and percentage of litters with malformed fetuses are more reliable indicators of developmental toxicity than the number of litters with resorptions, since malformations do not occur frequently in controls. The data on the incidence of individual types of malformations and variations should be examined for significant changes which may be masked if the data on all malformations and variations are pooled. This information can also be used for comparison with historical control data. Appropriate historical control data are helpful in interpretation of major malformations, especially those that normally occur at a low incidence when seen in an individual study apparently unrelated to dose.

3. Overall Evaluation of Maternal and Developmental Toxicity

As discussed previously, individual end points are evaluated in developmental toxicity studies, but an integrated evaluation must be done considering all maternal and developmental end points in order to interpret the data fully. The overall interpretation usually consists of the evaluation of maternal toxicity and the dose levels at which it occurs, then the evaluation of developmental toxicity and the levels at which these end points occur. In general, an agent that produces changes in any of the four major classes of developmental toxicity at a dose that is minimally toxic or not toxic to the maternal animal is considered to have selective developmental effects. However, when effects are produced at maternally toxic doses by agents to which adult human exposure may occur at toxic levels (e.g., smoking, alcohol, solvents), these developmental effects should no be ignored.

Approaches for ranking agents for their selective developmental toxicity are being developed; Schardein(*9*) has reviewed several of these. Of current interest are approaches that develop ratios relating an adult toxic dose to a developmental toxic dose(*18, 20, 21*). Ratios near unity indicate that developmental toxicity occurs only at doses producing maternal toxicity; as the ratio increases, there is a greater likelihood of developmental effects occurring without maternal manifestations. Although further exploration and validation are necessary, such approaches may ultimately help in identifying those agents that pose the greatest threat and should be given priority for further testing(*22*).

B. Functional teratology

Developmental effects, which are inducible by exogenous agents, are not limited to death, structural abnormalities, and altered growth. Rather, it has been demonstrated in a number of instances that subtle alterations in the functional competence of an organ or a variety of organ systems may result from exposure during critical developmental periods that may occur between conception and puberty. Often, these functional defects are observed at dose levels below those at which gross malformations are evident(*23*). Much of the early work in this field was related to behavioral evaluations, and the term "behavioral teratology" became prominent in the mid 1970s. Less work has been done on other functional systems, but sufficient data have accumulated to indicate that the cardiopulmonary, immune, endocrine, digestive, urinary, and reproductive systems are subject to alterations in functional competence. Hence the term "functional teratology" has been applied to this general area.

The variety of systems and end points that may be evaluated is too extensive to discuss here(*24*). (*25*). At present no standard testing procedures are routinely used, and this has led to apparent discrepancies in the outcome of certain studies. Some attempts to standardize and evaluate procedures are being made(*26*). The determination of functional competence often involves highly specialized training and equipment and is not generally practical for routine test procedures. Therefore, these approaches may have their greatest application in determining the nature of a suspected alteration in terms

of its biological significance and dose-response relationship.

The means for appropriate interpretation of data from functional teratology studies is not always clear due to the lack of knowledge about the toxicological significance of specific functional alterations. However, several general concepts have arisen from the research to date which may be useful in designing studies and evaluating data.

1. Several aspects of study design are similar to those used in standard developmental toxicity studies (e.g., a dose-response approach with the highest dose producing minimal overt maternal or fetal toxicity, number of litters large enough for adequate statistical power, randomization of animals to dose groups, litter generally considered the statistical unit, etc.).

2. Replication of a study strengthens the confidence of data interpretation.

3. Use of a pharmacological challenge may aid in evaluating function and "unmasking" effects not otherwise detectable, particularly in the case of organ systems that are endowed with a reasonable degree of functional reserve capacity.

4. Choice of functional tests with a moderate degree of background variability may be more useful in detecting effects of agent exposure than tests based on functional systems with low variability that may be impossible to disrupt without being life-threatening. Butcher et al.(*27*) have discussed this with relation to behavioral end points.

5. A battery of functional tests is often necessary to evaluate fully the functional competence of any given system; these tests may need to be conducted at several ages to account for maturational changes.

6. Critical periods for the disruption of functional competence may include both the prenatal period to the time of puberty, and the effect is likely to vary depending on the time of exposure.

Although interpretation of functional data may be difficult at present, there are at least two days in which the data from these studies may be useful for risk assessment purposes. First, these studies can be used to indicate whether or not an agent has the potential to cause functional alterations, and whether these effects occur at doses lower than those that produce other forms of toxicity. Second, if the agent in question is already in the environment, the functional data may be used for focusing on organ systems to evaluate in exposed human populations.

C. Short-Term Testing in Development Toxicity

The need for developmental toxicity screens has arisen from the large number of agents in or entering the environment and the increased interest in reducing the number of animals used in and the expense of testing. Currently, two approaches are being considered for their applicability in the overall testing process: an *in vivo* mammalian screen and a variety of *in vitro* systems. Neither approach is seen at this time as replacing current *in vivo* developmental toxicity testing. Rather, they are being considered for their usefulness in assigning priorities for further, more extensive testing.

1. *In Vivo* Mammalian Teratology Screen

An *in vivo* approach developed by Chernoff and Kavlock(*28*) uses the pregnant mouse and it designed to reduce the resources required for precliminary indication of developmental toxicity. This approach is based on the hypothesis that a prenatal insult, which results in altered development, will be manifested postnatally as reduced viability and/or impaired growth. In general, the test substance is administered over the period of major organogenesis at a single dose level that will elicit some degree of maternal toxicity. After birth, the pups are counted and weighed on days 1 and 3. End points that are considered in the evaluation include: general maternal toxicity (including survival and weight gain), litter size, viability and weight of the offspring, and gross malformations. Basic priority categories for further testing have also been suggested: (1) Agents that induce perinatal death should receive highest priority, (2) agents inducing perinatal weight changes should be ranked lower in priority, and (3) agents inducing no effect should receive the lowest priority(*29*). The major goal of this test is to predict the potential for developmental toxicity of an agent in the species utilized. It does not increase the ability to extrapolate risk to other species, including humans. Additional studies to evaluate the validity of this approach as a screen for developmental toxicity are currently being carried out, and a system for giving a numerical ranking to the results has been suggested to prioritize agents for further testing(*29, 30*).

2. *In Vitro* Teratology Screens

Test systems that fall under the general heading of "*In vitro*" include any system that employs a test subject other than the intact pregnant mammal. These systems have long been used to assess events associated with normal and abnormal development, but only recently have they been considered for their potential as screens in testing (*31, 32, 33*). Many of these systems are now being evaluated for their ability to predict the developmental toxicity of various agents. This validation process requires certain considerations in study design, including defined end points for toxicity and an understanding of the system's ability to handle various test agents(*32, 34*). A list of agents for use in these validation studies has been developed(*35*).

3. Application

When the validity of a screening system is established, it may be used to set priorities for further, more comprehensive *in vivo* testing. In many cases, a battery of two or more screening systems may be needed, employing tests with end points that collectively represent several embryologic processes. In addition, many of these systems can be applied in an attempt to answer specific questions of a dose-response, target-organ, or mechanistic nature. *In vitro* approaches may aid in establishing the effective dose that reaches the target tissue. Either the *in vivo* or *in vitro* short-term approaches may be useful in addressing structure-activity relationships and the synergistic-antagonistic potential of chemical interactions. Thus, pertinent information can be derived from these approaches and may be useful in the assessment of potential risk.

D. Pharmacokinetics

Extrapolation of data between species can be aided considerably by the availability of data on the pharmacokinetics of a particular agent in the species tested and, if possible, in humans. Information on half-lives, placental metabolism and transfer, and concentrations of the parent compound and metabolites in the maternal animal and conceptus may be useful in predicting risk for developmental toxicity. Such data may also be helpful in defining the dose-response curve, developing a more accurate comparison of species sensitivity including that of humans (*36, 37*), determining dosimetry at target sites, and comparing pharmacokinetic profiles for various dosing regimens or routes of exposure.

Pharmacokinetic studies in developmental toxicology are most useful once a developmental toxic effect has been produced in a give species with a particular agent. Pharmacokinetic data for risk assessment in developmental toxicology ideally should be derived from pregnant females at the stage when developmental insults occur. Often the only data available are from males, nonpregnant females, or from pregnant females at a time unrelated to the event of interest (e.g., pharmacokinetic analyses done during the fetal period when malformations were induced early in organogenesis). The correlation of pharmacokinetic and developmental toxicity data may be useful in determining the contribution of specific pharmacokinetic parameters to the effects observed (*38*).

E. Human Studies

Because of the ethical considerations involved, little human testing has been or is likely to be done. Therefore, dose-effect developmental toxicity data from humans are generally not available. Human epidemiologic studies may provide the best information for assessing human risk and would reduce the problems in species-to-species extrapolation. However, interpretation of epidemiologic data must account for confounding factors, such as maternal age, parity, multiple exposures to environmental agents, difficulty in obtaining accurate estimates of exposure levels in the environment, insufficient data on background incidence of certain developmental end points, etc. When human data are available, they can be used with other supporting animal data to assess human risk.

F. Comparisons of Molecular Structure

Comparisons of the chemical or physical properties of an agent with those of known developmental toxicants may provide some indication of a potential for developmental toxicity. Such information may be useful in priority-setting of Agents for testing or for further evaluation when only minimal data are available.

G. Weight-of-Evidence Determination

Information available from studies discussed previously, whether indicative of potential concern or not, must be evaluated and factored into the assessment. The types of data may vary from chemical to chemical, and certain types of data may be more relevant than other types of data in performing developmental toxicity assessments. Therefore, all data pertinent to developmental toxicity should be examined in the determination of a chemical's potential to cause developmental toxicity in humans. Whatever evidence may exist from humans must also be factored into the assessment.

IV. Quantitative Assessment

Risk assessment involves the description of the nature and often the magnitude of potential human risk, including a description of any attendant uncertainty. In the final phase of the risk assessment, the outputs of the qualitative evaluation, the dose-response, and the exposure data are combined to give qualitative and/or quantitative estimates of the developmental toxicity risk. As part of the risk assessment, a summary of the strengths and weaknesses of the hazard identification, dose-response assessment, exposure assessment, and the risk characterization are presented. Major assumptions, scientific judgments, and, to the extent possible, estimates of the uncertainties in the assessment are also presented.

A. Dose-Response Assessment

Because human dose-effect data usually are not available, other methods have been used in developmental toxicology for estimating exposure levels that are unlikely to produce adverse effects in humans. The dose-response assessment is usually based upon the evaluation of tests performed in laboratory animals. Two approaches frequently employed involve the use of safety factors and margins of safety, which in some respects are conceptually similar. However, they are computed differently and are often used in different regulatory situations. The choice of approach is dependent upon many factors, including the statute involved, the situation being addressed, the data base used, and the needs of the decision-maker.

The safety factor approach is intended to derive a calculated exposure level that is unlikely to cause any developmental toxic responses in humans. The size of the safety factor will vary from agent to agent and will require the exercise of scientific judgment(*3, 39*), taking into account interspecies differences, the nature and extent of human exposure, the slope of the dose-response curve, and the severity of the developmental effects observed at exposure levels below maternal toxicity in the test species. The safety factor selected is then divided into the NOEL obtained from the most appropriate and/or sensitive mammalian species examined to obtain an acceptable exposure level. Currently, there is no one laboratory animal species that can be considered most appropriate for predicting risk to humans(*9*). Each agent should be considered on a case-by-case basis.

The margin of safety approach derives a ratio of the NOEL from the most sensitive species to the estimated human exposure level from all potential sources(*40*). The adequacy of the margin of safety is then considered, based upon the weight of evidence, including quality of data, number of species affected, dose-response relationships, and other factors such as benefits of the agent.

As discussed earlier, the preferred study design for a developmental toxicity study includes a minimum of three doses: a high dose that produces minimal maternal toxicity, at least one intermediate dose, and a low dose that demonstrates a NOEL. Nevertheless, there may be circumstances in that there is a need to perform a risk assessment based on the results of a study in which a NOEL could not be identified, but, rather, in which the lowest dose administered caused some marginally significant effect(s). This lowest dose could be identified as the lowest observed effect level (LOEL). In circumstances where a LOEL can be identified, it may be appropriate to apply an additional safety factor. The magnitude of this additional factor is dependent upon scientific judgment. In some instances, additional studies may be needed to strengthen the confidence in this additional safety factor.

B. Exposure Assessment

The results of the dose-response assessment are combined with an estimate of human exposure in order to obtain a quantitative estimate of risk. The proposed Guidelines for Exposure assessment are being developed separately and will not be discussed in any detail here. In general, the exposure assessment describes the magnitude, duration, schedule, and route of exposure. This information is developed from monitoring data and from estimates based on modeling of environmental exposures. Unique considerations relevant to developmental toxicity are duration and period of exposure as related to stage of gestation (i.e., critical periods), and the fact that a single exposure may be sufficient to produce adverse developmental effects (i.e., chronic exposure is not necessary for developmental toxicity to be manifested).

C. Risk Characterization

There are numerous uncertainties associated with the toxicological and exposure components of risk assessment that in the past have often not been

readily apparent or consistently presented. The presentation of any qualitative or quantitative risk assessment for developmental toxicity should be accompanied by statements concerning the quality of the data, resolving power of the studies, number of end points examined, selection of doses, replication of the data, the number of species examined, pharmacokinetic considerations, and any other factors that affect the quality and precision of the assessment. The presentation of any numerical estimate should be sufficiently qualified as to the assumptions used and the accuracy of the estimates.

In the assessment of developmental toxicity, statistical considerations require special attention. For example, the power of a study (i.e., the ability to demonstrate an effect), is limited by the sample size used in the study, the background incidence of the end point observed, and the variability in the incidence of the end point. As an example, Nelson and Holson(*41*) have shown that the number of litters needed to detect a 5 or 10 percent change was dramatically lower for fetal weight (a continuous variable with low variability) than for resorptions (a binomial response with high variability). With the current recommendation in testing protocol being 20 rodents per dose group(*1, 3*), it is possible to detect an increased incidence of malformations in the range of 5 to 12 times above control levels, an increase of 3 to 6 times the *in utero* death rate, and a decrease of 0.15 to 0.25 times the fetal weight. Thus, even within the same study, the ability to detect a change in fetal weight is much greater than for the other end points measured. Consequently, for statistical reasons only, changes in fetal weight are often observable at doses below those producing other signs of developmental toxicity.

At present, there is no mathematical model that is generally used for estimating developmental toxicity responses below the applied dose range. This is due primarily to the lack of understanding of the biological mechanisms underlying developmental toxicity, intra/interspecies differences in the types of developmental events, the influence of maternal effects on the dose-response curve, and whether or not a threshold exists below which no effect will be produced by an agent. The assumption of a threshold is based largely on the biological rationale that the embryo is known to have some capacity for repair of the damage or insult(*42*), and that most developmental deviations are probably multifactorial in nature(*43*). However, the existence of a no effect level cannot be proven statistically.

Discussions of risk extrapolation procedures have noted that further work is needed to improve mathematical tools for developing estimates of potential human developmental risk(*39, 44*). Gaylor(*45*) has suggested an approach for controlling risk that combines the use of mathematical models for low-dose estimation of risk with the application of a safety factor based on a preselected level of allowable risk. This approach is similar to approaches proposed for carcinogenesis, but does not preclude the possibility of a threshold, and may provide a more quantitative approach to controlling risk. For the present, the Agency will continue to use safety factors and margins of safety as described above, where applicable. However, more appropriate models will be sought and applied if considered acceptable.

These Guidelines summarize the procedures that the U.S. Environmental Protection Agency will follow in evaluating the potential for agents to cause developmental toxicity. These Guidelines will be reviewed and updated as advances are made in the field, since it is evident that our ability to evaluate and predict human developmental toxicity is imprecise. Further studies that delineate the mechanisms of developmental toxicity and pathogenesis, provide comparative pharmacokinetic data, and elucidate the functional modalities that may be altered by exposure to toxic agents will aid in the interpretation of data and interspecies extrapolation. These types of studies, along with further evaluation of the relationship between maternal and fetal toxicity and the concept of a threshold in developmental toxicity, will provide for the development of improved mathematical models to more precisely assess risk.

V. References

(*1*) U.S. Environmental Protection Agency. 1982. Health effects test guidelines, Chapter II. Specific organ/tissue toxicity-teratogenicity. Office of Toxic Substances. Available from: NTIS, Springfield, VA. PB82-112084.

(*2*) U.S. Environmental Protection Agency. 1980. Assessment of risks to human reproduction and to development of the human conceptus from exposure to environmental substances, pp. 99–116. Available from: NTIS, Springfield, VA. DE82-007897.

(*3*) U.S. Environmental Protection Agency. 1982. Pesticides registration; proposed data requirements. Federal Register 47:53192–53203.

(*4*) Hertig, A.T. 1967. The overall problem in man. In: K. Benirschke, ed. Comparative aspects of reproductive failure. New York, NY: Springer-Verlag, pp. 11–41.

(*5*) McKeown, T., and R.C. Record. 1963. Malformations in a population observed for five years after birth. In: G.E.W. Wolstenholme and C.M. O'Conner, eds., Ciba Foundation symposium on congenital malformations. Boston, MA: Little Brown, pp. 2–16.

(*6*) Mellin, G.W., and M. Katzenstein. 1964. Increased incidence of malformations-change. J. Am. Med. Assoc. 187:570–573.

(*7*) Wilson, J.G. 1977. Embryotoxicity of drugs in man. In: J.G. Wilson and F.C. Fraser, eds. Handbook of teratology. New York, NY: Plenum Press, pp. 309–355.

(*8*) Shepard, T.H. 1980. Catalog of teratogenic agents. Third Edition. Baltimore, MD: Johns Hopkins University Press.

(*9*) Schardein, J.L. 1983. Teratogenic risk assessment. In: H. Kalter, ed. Issues and reviews in teratology, Vol. 1. New York, NY: Plenum Press, pp. 161–214.

(*10*) Shepard, T.H. 1984. Teratogens: an update. Hosp. Pract., Jan., pp. 191–200.

(*11*) Brown, N.A., and S. Fabro. 1983. The value of animal teratogenicity testing for predicting human risk. Clin. Obstet. Gynecol. 26:467–477.

(*12*) Kimmel, C.A., J.F. Holson, C.J. Hogue, and G.L. Carlo. 1984. Reliability of experimental studies for predicting hazards to human development. NCTR Technical Report for Experiment No. 6015. NCTR, Jefferson, Arkansas.

(*13*) Committee on the Institutional Means for the Assessment of Risks to Public Health. 1983. Risk assessment in the Federal government: managing the process. Commission on Life Sciences, National Research Council. Washington, DC: National Academy Press, pp. 17–83.

(*14*) Food and Drug Administration. 1966. Guidelines for reproduction and teratology of drugs. Bureau of Drugs.

(*15*) Food and Drug Administration. 1970. Advisory Committee on Protocols for Safety Evaluations. Panel on Reproduction Report on Reproduction Studies in the Safety Evaluation of Food Additives and Pesticide Residues. Toxicol. Appl. Pharmacol. 16:264–205.

(*16*) Symposium on effects of radiation and other deleterious agents on embryonic development. 1954. J. Cell. Comp. Physiol. 43 (suppl. 1).

(*17*) Woo, D.C., and R.M. Hoar. 1979. Reproductive performance and spontaneous malformations in control Charles River rats. A joint study for MARTA. Teratology 19:54A.

(*18*) Interagency Regulatory Liaison Group. 1981. Report of the Developmental Toxicity End Points Workgroup. Workshop on Reproductive Toxicity Risk Assessment. Rockville, MD, September 21–23.

(*19*) Johnson, E.M. 1981. Screening for teratogenic hazards: nature of the problem. Annu. Rev. Pharmacol. Toxicol. 21:417–429.

(*20*) Johnson, E.M., and B.E.G. Gabel. 1983. An artificial embryo for detection of abnormal developmental biology. Fund. Appl. Toxicol. 3:243–249.

(*21*) Fabro, S., G. Schull, and N.A. Brown. 1982. The relative teratogenic index and teratogenic potency: proposed components of developmental toxicity risk assessment. Teratogenesis Carcinog. Mutagen. 2:61–76.

(*22*) Johnson, E.M. 1984. A prioritization and biological decision tree for developmental toxicity safety evaluations. J. Am. Coll. Toxicol. 3:141–147.

(*23*) Rodier, P.M. 1978. Behavioral teratology. In: J.G. Wilson and F.C. Fraser, eds., Handbook of teratology, Vol. 4. New York, NY: Plenum Press, pp. 397–428.

(*24*) Buelke-Sam, J., and C.A. Kimmel. 1979. Development and standardization of screening methods for behavioral teratology. Teratology 20:17–29.

(*25*) Kavlock, R.J., and C.T. Grabowski, eds. 1983. Abnormal functional development of the heart, lungs, and kidneys: approaches to functional teratology. Prog. Clin. Biol. Res., Vol. 140. New York, NY: Alan R. Liss, Inc.

(*26*) Kimmel, C.A., J. Buelke-Sam, J. Adams, L.W. Reiter, T.J. Sobotka, and H.A. Tilson. 1982. Design considerations in the evaluation of standardized methods in a behavioral teratology study. Teratology 25:54A.

(*27*) Butcher, R.E., V. Wooten, and C.V. Vorhees. 1980. Standards in behavorial teratology testing: test variability and sensitivity. Teratogenesis Carcinog. Mutagen. 1:49–61.

(*28*) Chernoff, N., and R.J. Kavlock. 1982. An *in vivo* teratology screen utilizing pregnant mice. J. Toxicol. Environ. Health 10:541–550.

(*29*) Brown, J.M. 1984. Validation of an *in vivo* screen for the determination of embryo/fetal toxicity in mice. SRI International. EPA contract no. 68–01–5079.

(*30*) Schuler R., B. Hardin, R. Niemeyer, G. Booth, K. Hazelden, V. Piccirillo, and K. Smith. 1984. Results of testing fifteen glycol ethers in a short-term, *in vivo* reproductive toxicity assay. Environ. Health. Perspect., in press.

(*31*) Wilson, J.G. 1978. Survey of *in vitro* systems: their potential use in teratogenicity screening. In: J.G. Wilson and F.C. Fraser, eds. Handbook of teratology, Vol. 4. New York, NY: Plenum Press, pp. 135–153.

(*32*) Kimmel, G.L., K. Smith, D.M. Kochhar, and R.M. Pratt. 1982. Overview of *in vitro* teratogenicity testing: aspects of validation and application to screening. Teratogenesis Carcinog. Mutagen. 2:221–229.

(*33*) Brown, N.A., and S.E. Fabro. 1982. The *in vitro* approach to teratogenicity testing. In: K. Snell, ed. Developmental toxicology. London, England: Croom-Helm, pp. 31–57.

(*34*) Kimmel, G.L. 1984. *In vitro* tests in screening teratogens: considerations to aid the validation process. In: M. Morris, ed. Prevention of physical and mental congenital defects, Part A. New York, NY: Alan R. Liss, Inc., in press.

(*35*) Smith, M.R., G.L. Kimmel, D.M. Kochhar, T.H. Shepard, S.P. Spielberg, and J.G. Wilson. 1983. A selection of candidate compounds for *in vitro* teratogenesis test validation. Teratogenesis Carcinog. Mutagen. 3:461–480.

(*36*) Wilson, J.G., W.J. Scott, E.J. Ritter, and R. Fradkin. 1975. Comparative distribution and embryotoxicity of hydroxyurea in pregnant rats and rhesus monkeys. Teratology 11:169–178.

(*37*) Wilson, J.G., E.J. Ritter, W.J. Scott, and R. Fradkin. 1977. Comparative distribution and embryotoxicity of acetylsalicylic acid in pregnant rats and rhesus monkeys. Toxicol. Appl. Pharmacol. 41:67–78.

(*38*) Kimmel, C.A., and J.F. Young. 1983. Correlating pharmacokinetics and teratogenic end points. Fund. Appl. Toxicol. 3:250–255.

(*39*) Hogan, M.D., and D.G. Hoel. 1982. Extrapolation to man. In: A.W. Hayes, ed. Principles and methods of toxicology. New York, NY: Raven Press, pp. 711–731.

(*40*) Chitlik, L.D., Q.Q. Bui, G.J. Burin, and S.C. Dapson. 1984. Standard evaluation procedures for teratology studies (Draft). Toxicology Branch, Hazard Evaluation Division, Office of Pesticide Programs, U.S. Enironmental Protection Agency.

(*41*) Nelson, C.J., and J.F. Holson. 1978. Statistical analysis of teratogenic data: problems and advancements. J. Environ. Pathol. Toxicol. 2:187–199.

(*42*) Wilson, J.G. 1973. Environment and birth defects. New York, NY: Academic Press, pp. 30–32.

(*43*) Fraser, F.C. 1977. Relation of animal studies to the problem in man. In: J.G. Wilson and F.C. Fraser, eds. Handbook of teratology, Vol. 1. New York, NY: Plenum Press, pp. 75–95.

(*44*) Environmental Health Criteria 30. 1984. Principles for evaluating health risks to progeny associated with exposure to chemicals during pregnancy. pp. 111–114. World Health Organization, Geneva, Switzerland.

(*45*) Gaylor, D.W. 1983. The use of safety factors for controlling risk. J. Toxicol. Environ. Health 11:329–336.

[FR Doc. 84-30721 Filed 11-21-84; 8:45 am]
BILLING CODE 3560-50-M

Reader Aids

Federal Register
Vol. 49, No. 227
Friday, November 23, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072.....1
44073–44192.....2
44193–44272.....5
44273–44442.....6
44443–44620.....7
44621–44740.....8
44741–44888.....9
44889–44984.....13
44985–45106.....14
45107–45408.....15
45409–45570.....16
45571–45732.....19
45733–45842.....20
45843–46096.....21
46097–46332.....23

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
November 16, 1984.....45733
Notice:
November 7, 1984.....44741
Proclamations:
5270.....44073
5271.....44075
5272.....44077
5273.....44079
5274.....44081
5275.....44193
5276.....44195
5277.....44197
5278.....45107
5279.....45409
5280.....45411
5281.....45413

5 CFR

Ch. XIV, App. A.....45843
Proposed Rules:
213.....45588
831.....45588
930.....45444
1255.....45751
2429.....44902

7 CFR

2.....44743
46.....45735
210.....45109
220.....45109
225.....45109
226.....45109
301.....44083
429.....44443
441.....44985
600.....44743
729.....44869
907.....44199, 44757, 45415
910.....44084, 44744, 44890, 45109, 45415
915.....44447
928.....44199
932.....44447
944.....44447
982.....44745
984.....44745
989.....44745
1004.....44986
1139.....43943
1446.....45109
1910.....45416
1980.....46097
Proposed Rules:
27.....44902
52.....43970
53.....44724
54.....44724, 44758
400.....45444
420.....44480
421.....44478
424.....44485
425.....44490
432.....44495
437.....46149
725.....44103
800.....45751
910.....44299
971.....45592
982.....44500
984.....44299
1007.....44760
1464.....44103
1772.....45752–45754

8 CFR

238.....44745
292.....44064

9 CFR

50.....44273
78.....44987, 45110
81.....44087, 45111, 45741
92.....44088
97.....45843
113.....45845
114.....45845
354.....44091
Proposed Rules:
92.....44501
381.....44640

10 CFR

50.....45112, 45114, 45571
1046.....46097
Proposed Rules:
50.....44645
71.....44502
210.....45445
605.....44590

11 CFR

6.....44091

12 CFR

204.....44448
207.....43946
220.....43946
221.....43946
224.....43946
303.....44746
308.....44746
545.....45846
563.....45115, 45846
701.....44993, 46105
795.....44993
Proposed Rules:
5.....45007
8.....45102, 45592

12 CFR

105 45742
120 44091

Proposed Rules:

107 44062

14 CFR

1 44422
27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417, 45743–45746, 46105
43 ..... 44602, 45418
71 ..... 44450, 45418, 45747
73 ..... 44096, 44451, 45418
91 44422
97 ..... 44990, 46106
255 44451

Proposed Rules:

Ch. I 44766
Ch. II 46006
39 ..... 45011, 45755
71 ..... 44104, 44650, 45011, 45166–45171, 45756, 45757, 46153–46155
73 ..... 45011, 45168, 45169
75 45171

15 CFR

7 44622

Proposed Rules:

8c 45861
303 44651
320 ..... 44903, 45757

16 CFR

13 45115–45117
305 44200
455 45692
1212 46108
1700 44455

Proposed Rules:

300 44913
303 44913
451 46156

17 CFR

1 45418
3 45418
15 46116
17 46116
33 44891
140 45418
145 45418
200 ..... 43950, 45847
240 45117

Proposed Rules:

1 44105
140 45015
144 45015
239 45172
240 46156
274 45172

18 CFR

3 44273
157 44275
271 ..... 44201, 44993
274 44275
284 44275
341 44628
356 44628
360 44628
361 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273

Proposed Rules:

271 ..... 44217, 45174, 45175
430 44105

19 CFR

4 ..... 44867, 46118
6 44867
7 44867
10 44867
11 44867
12 44867
18 44867
19 44867
24 ..... 44867, 46118
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
162 44867
172 44867
174 44867
191 44867
210 46123

Proposed Rules:

113 46161
141 46161
172 46161
175 ..... 46162, 46163
353 45593
355 45593

20 CFR

395 44277
404 ..... 43951, 44458, 45420

21 CFR

74 44096
178 44994
193 ..... 44458, 45123
361 44459
430 44460
436 44460
442 44460
510 ..... 44265, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 45421
561 ..... 45124, 45848
573 ..... 44630, 45124

Proposed Rules:

146 44652
184 46164
193 45869
450 44919
510 45593
511 44766

22 CFR

220 44631

Proposed Rules:

41 44920

23 CFR

140 45577

24 CFR

44 46140
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44982

26 CFR

5h 43951
41 45849
48 45849
301 44460

Proposed Rules:

1 ..... 44300, 45449, 45450
41 ..... 44300, 44310, 44921, 46167
48 ..... 44300, 44310, 44921, 46167
51 45758
301 45452

27 CFR

9 ..... 44202, 44895

Proposed Rules:

4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR

2 44097
15 44995
511 44056

Proposed Rules:

545 44059

29 CFR

530 44262
1601 45424
1952 44202
2619 45129

Proposed Rules:

2617 44106
2640 45018
2648 45018

30 CFR

915 44206
917 44750
935 ..... 43952, 44461, 44996

Proposed Rules:

250 44924
816 45595
817 45595
855 45595
914 46167
917 44653
920 43974
931 44769
938 43974
948 46168

31 CFR

5 45578

33 CFR

100 ..... 45579, 45580, 45758
117 ..... 43953–43956, 44207, 44632, 45130, 45580
165 44632

Proposed Rules:

117 ..... 43975, 44925, 45596
126 45597
160 45597
165 44926

34 CFR

Proposed Rules:

Ch. VI 45834
76 45834
208 45834
280 46169
300 46252
350 46244
352 46244
358 46244
359 46244

36 CFR

Proposed Rules:

223 44109
291 45117
1121 44310

38 CFR

3 ..... 44099, 45130

Proposed Rules:

1 45870

39 CFR

10 45130
111 46141
265 44286

40 CFR

52 ..... 44099, 44208, 44287, 44463, 44996, 46141
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 45292
180 ..... 44464–44467, 45132, 45849–45854
261 44978
265 46094
704 ..... 45133, 45425
707 45581
723 46066
761 44634
775 44997

Proposed Rules:

50 ..... 44770, 45871

51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178, 45761–45765, 45872
53 45871
58 45871
81 ..... 43977, 45031
147 44111
152 45873
157 45873
158 45873
162 45873
170 45181
261 44718
271 ..... 44111, 44312, 44506, 45452, 45874
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 ..... 44218, 45598
716 ..... 44220, 45602
799 ..... 45606, 45610

41 CFR

50–201 45855
Ch. 101 44468
101–20 44469
101–41 44470
101–47 44471
Ch. 201 45748

42 CFR

36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR

Public Land Orders:

1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997
6578 46144
6579 46144
6580 46145

Proposed Rules:

3160 44655
3420 44221

44 CFR

64 ..... 44751, 45133
65 ..... 45134, 45135
67 45136

Proposed Rules:

67 45181

45 CFR

801 44473

Proposed Rules:

95 45617
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR

310 45857
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397

Proposed Rules:

67 45623
510 46174

47 CFR

0 45582
2 ..... 44101, 44997
15 44210
25 44751
31 44289
43 44289
73 ..... 43957, 44101, 45139–45146, 45583–45587
74 45155
76 45431

Proposed Rules:

0 45454
1 45454
2 ..... 45766, 45875
73 ..... 44113, 44114, 45186, 45625, 45875
90 ..... 44223, 45454, 45875

48 CFR

Proposed Rules:

1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR

1 ..... 44102, 46145
171 45749
173 ..... 43963, 45749
175 45749
178 43965
179 43963
391 44210
395 46145
392 44210
571 44899
575 44751
1160 45858
1165 45858
1168 45858
1181 45858
1182 45858

Proposed Rules:

23 44772
172 45627
173 45627
195 44928
542 45629
1102 44224

50 CFR

17 ..... 43965, 44753, 45160
258 44474
611 44757
620 44102
652 ..... 45164, 45859
661 46148
663 ..... 44638, 44901
671 44757
676 44998

Proposed Rules:

17 ..... 44507, 44712, 45786, 45880–45887, 46174
222 44774
227 44774
611 ..... 44655, 46177
630 45888
672 44655
675 44655

LIST OF PUBLIC LAWS

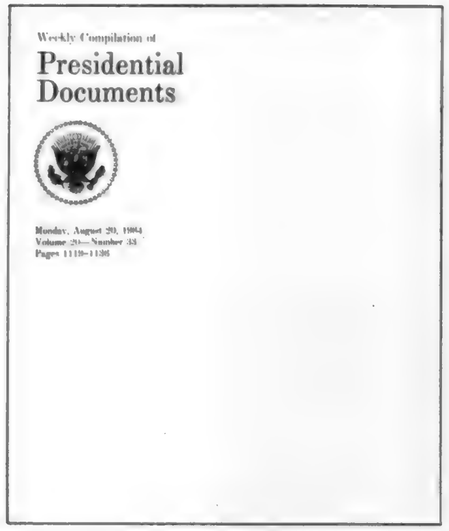
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of Ronald Reagan



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President and of nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by Office of the Federal Register, National Archives and Records Service, General Services Administration

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.
☐☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

Credit Card Orders Only
Total charges $ _____
Fill in the boxes below.

Customer's Telephone Nos.
Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

ENTER MY SUBSCRIPTION FOR 1 YEAR TO: WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)
@ $80.00 Domestic; @ $75.00 Foreign
@ $101.00 if Domestic first-class mailing is desired.

PLEASE PRINT OR TYPE

Company or Personal Name
Additional address/attention line
Street address
City State ZIP Code
(or Country)

For Office Use Only

Quantity	Charges
____ Publications	____
____ Subscription	____
Special Shipping Charges	____
International Handling ..	____
Special Charges	____
OPNR	____
____ UPNS	
____ Balance Due	
____ Discount	
____ Refund	882

VOL
49

ISS
227

NO
23

1984

UMI

OL
9
SS
28
NO
26
984
MI

11-26-84
Vol. 49 No. 228

federal register

Monday
November 26, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D C 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

(ISSN 0097-6326)

SECOND CLASS NEWSPAPER

11-26-84
Vol. 49 No. 228
Pages 46333-46526

federal register

Monday
November 26, 1984

Selected Subjects

Administrative Practice and Procedure
Social Security Administration
Air Carriers
Civil Aeronautics Board
Animal Drugs
Food and Drug Administration
Authority Delegations (Government Agencies)
Justice Department
Chemicals
Environmental Protection Agency
Communications Common Carriers
Federal Communications Commission
Crop Insurance
Federal Crop Insurance Corporation
Customs Duties and Inspection
Customs Service
Education
Veterans Administration
Exports
Animal and Plant Health Inspection Service
Government Contracts
Immigration and Naturalization Service
Grain
Federal Grain Inspection Service

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Hazardous Waste
Environmental Protection Agency

Motor Vehicle Safety
National Highway Traffic Safety Administration

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Radio Broadcasting
Federal Communications Commission

Railroads
Interstate Commerce Commission

Seizures and Forfeitures
Animal and Plant Health Inspection Service

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

Uranium
Nuclear Regulatory Commission

Contents

Federal Register
Vol. 49, No. 228
Monday, November 26, 1984

ACTION
NOTICES
Senior Executive Service:
46450 Bonus awards schedule
46450 Performance Review Board; membership

Agency for International Development
NOTICES
Meetings:
46511 Voluntary Foreign Aid Advisory Committee

Agriculture Department
See Animal and Plant Health Inspection Service; Farmers Home Administration; Federal Crop Insurance Corporation; Federal Grain Inspection Service.

Animal and Plant Health Inspection Service
RULES
46335 Forfeiture procedures
46333 Phytosanitary export certificates; list of area offices, etc.; interim

Arts and Humanities, National Foundation
NOTICES
Grants; availability, etc.:
46514 Museum services; general operating support program

Blind and Other Severely Handicapped, Committee for Purchase from
NOTICES
46458 Procurement list, 1985; additions and deletions (2 documents)
46458 Procurement list, 1985; establishment; correction

Centers for Disease Control
NOTICES
Meetings:
46494 Video display terminals, study of reproductive outcome in women

Civil Aeronautics Board
RULES
Air carriers:
46347 Computer reservation systems
NOTICES
46451 Agency information collection activities under OMB review (2 documents)
46452 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
46451 Frontier Holdings Inc., et al. prehearing conference cancelled
46451 Houston-London Case
46451 Royalcoach Airlines

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
46452 Maryland

Coast Guard
PROPOSED RULES
Pollution:
46440 Segregated ballast, dedicated clean ballast and crude oil washing on tank vessels; early approval of alterations, etc.

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Commodity Futures Trading Commission
NOTICES
46524 Meetings; Sunshine Act (4 documents)

Copyright Royalty Tribunal
NOTICES
46458 Jukebox royalty fees; distribution proceeding

Customs Service
RULES
Articles conditionally free, subject to a reduced rate, etc.:
46363 Articles imported for handicapped persons
NOTICES
Customhouse broker license cancellation, suspension, etc.:
46523 Lisoni, Ferruccio M.

Defense Department
See Navy Department; Uniformed Services University of the Health Sciences.

Education Department
NOTICES
Education Appeal Board hearings:
46459 Claim compromise; Mississippi Department of Education
Grants; availability, etc.:
46462 Disadvantaged students program, special services
46460 Law-related education program
46462 Upward bound program

Energy Department
See Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Toxic substances:
46373 Isopropylamine and ethylamine distillation residues; significant new uses
PROPOSED RULES
Air quality implementation plans:
46442 Visibility new source review and monitoring strategy; extension of time
Air quality implementation plans; approval and promulgation; various States:
46442 Maine; correction

Air quality implementation plans; delayed compliance orders:
46443 Florida; correction
Hazardous waste program authorizations:
46443 District of Columbia
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
46443 Tolerance petitions; processing fees; correction

NOTICES
46481 Agency information collection activities under OMB review
Air quality; prevention of significant deterioration (PSD):
46484 Permit approvals
Toxic and hazardous substances control:
46483 Premanufacture exemption applications
46482 Premanufacture notices receipts

Farmers Home Administration

NOTICES
46450 Natural resource management guide; meeting (2 documents)

Federal Communications Commission

RULES
Common carrier services:
46378 Customer premises telephone equipment, detariffing procedures, etc. (second computer inquiry), and nonregulated activities of telephone carriers
46383 MTS and WATS market structure, etc.; access charges
Television stations; table of assignments:
46386 California

PROPOSED RULES
Radio stations; table of assignments:
46444 Maryland
Television stations; table of assignments:
46446 Nevada
46447 South Carolina
46448 Texas

NOTICES
46485 Agency information collection activities under OMB review
Hearings, etc.:
46485 Enigma Corp. et al.

Federal Crop Insurance Corporation

RULES
Crop insurance; various commodities:
46341 Barley
46346 Potatoes
46337 Tung nuts; CFR Part removed
46337 Wheat

PROPOSED RULES
Crop insurance; various commodities:
46393 Apples
46395 Potatoes
46400 Soybean
46405 Tobacco
46409 Tomatoes

Federal Energy Regulatory Commission

RULES
Electric utilities (Federal Power Act):
46351 Rate of return on common equity; generic determination; rehearing denied
Natural gas companies (Natural Gas Act):
46353 Btu measurement adjustments; refund procedures; rehearing granted and denied in part

NOTICES
Hearings, etc.:
46475 Alabama-Tennessee Natural Gas Co. (2 documents)
46463 American Electric Power Service Corp.
46475 ANR Pipeline Co.
46464 Arkansas Louisiana Gas Co.
46464 Atlantic City Electric Co.
46475 Colorado Interstate Gas Co.
46465 Consolidated Edison Co. of New York, Inc.
46465 Florida Power Corp.
46465, 46466 Gas Gathering Corp. (2 documents)
46466 Idaho Power Co.
46466 Joint Ypsilanti Recreation Organization
46478 Kansas Gas & Electric Co.
46476 Lawrenceburg Gas Transmission Corp.
46476 Locust Ridge Gas Co.
46467 Michigan Gas Storage Co. (2 documents)
46468 Montana-Dakota Utilities Co.
46468, 46469 Montaup Electric Co. (4 documents)
46476 Northern Border Pipeline Co.
46469–46471 Northern Natural Gas Co. (5 documents)
46477 Northwest Alaskan Pipeline Co.
46477 Pacific Interstate Offshore Co.
46476 Pacific Power & Light Co.
46480 Texas Gas Exploration Corp.
46479 Texas Gas Transmission Corp. et al.
46477 Transcontinental Gas Pipeline Corp.
46471 United Gas Pipe Line Co.
46481 Western Gas Interstate Co. et al.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
46473 Texasgulf, Inc.
46474 TGS Associates (2 documents)
46474 Union Village Hydroelectric Co.

Federal Grain Inspection Service

RULES
Grain standards:
46347 Corn, sorghum, and soybeans; correction

PROPOSED RULES
46414 Weighing provisions and procedures

Federal Home Loan Bank Board

NOTICES
46487 Agency information collection activities under OMB review

Federal Reserve System

NOTICES
46491, 46492 Agency information collection activities under OMB review (2 documents)
Bank holding company applications, etc.:
46491 American Fletcher Corp. et al.
46493 Banco Colpatria, S.A., et al.
46493 Bankers Trust New York Corp.
46494 Heritage Group, Inc.
46492 Fleet Financial Group, Inc.
46492 Lincoln Bancshares, Inc., et al.
Federal Reserve Bank services; fee schedules and pricing principles:
46488 Definitive securities safekeeping and noncash collection service; inquiry

Fish and Wildlife Service

NOTICES
46508 Endangered and threatened species permit applications

Food and Drug Administration

RULES
Animal drugs, feeds, and related products:
46371 Sulfadimethoxine with ormetoprim

NOTICES
Animal drugs, feeds, and related products:
46495 Suldixine tablets, sudine tablets, and symbio injection; approval withdrawn; correction
Food for human consumption:
46494 Green beans, canned; identity standard deviation; market testing permit; correction
Medical devices; premarket approval:
46495 American Medical Optics

Health and Human Services Department

See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Social Security Administration.

Health Care Financing Administration

NOTICES
Medicare:
46495 Hospital inpatient operating costs; schedule of limits; wage index
46501 Organization, functions, and authority delegations

Health Resources and Services Administration

NOTICES
Grants; availability, etc.:
46505 Health professions students loan repayment program; discontinuation
46505 Nursing student loan repayment program; discontinuation

Immigration and Naturalization Service

RULES
Transportation line contracts:
46347 America West Airlines, Inc.

Interior Department

See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.

International Development Cooperation Agency

See Agency for International Development.

International Trade Administration

NOTICES
Antidumping:
46452 Anhydrous sodium metasilicate from France
46453 Pig iron from Canada
46454 Polychloroprene rubber from Japan
46455 Potassium chloride from Spain; termination

Interstate Commerce Commission

RULES
Railroad car service orders:
46392 Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; track use by various railroads

NOTICES
Motor carriers:
46511 Finance applications
Railroad operation, acquisition, construction, etc.:
46511 New England Southern Railroad Co., Inc.
Railroad services abandonment:
46512 Baltimore & Ohio Railroad Co. et al.
46511 Seaboard System Railroad, Inc., et al.

Justice Department

See also Internal Revenue Service; Parole Commission; Prisons Bureau.

RULES
Organization, functions, and authority delegations:
46371 Assistant Attorney General, Antitrust Division; cooperative research ventures

NOTICES
Pollution control; consent judgments:
46513 District of Columbia

Labor Department

See Pension and Welfare Benefit Programs Office.

Land Management Bureau

NOTICES
Exchange of public lands for private land:
46508 Oregon

Minerals Management Service

NOTICES
Environmental statements; availability, etc.:
46509 Hawaiian exclusive economic zone/OCS cobalt-rich manganese crusts recovery; inquiry; extension of time

National Aeronautics and Space Administration

NOTICES
Meetings:
46514 Advisory Council

National Credit Union Administration

NOTICES
46524 Meetings; Sunshine Act

National Highway Traffic Safety Administration

RULES
Motor vehicle safety standards:
46386 Lamps, reflective devices, and associated equipment; rear yellow turn signal photometrics license plate lamp requirements, etc.

National Oceanic and Atmospheric Administration

NOTICES
Meetings:
46455 International Whaling Commission

National Park Service

PROPOSED RULES
Alaska national park system units:
46441 Cabin use, etc.; comment period reopened

NOTICES
Concession contract negotiations:
46510 Moser's Food Market
Environmental statements; availability, etc.:
46510 Big Thicket National Preserve, TX

National Technical Information Service
NOTICES
Patent licenses, exclusive:
46456 Cetus Corp.

Navy Department
NOTICES
Meetings:
46459 Naval Research Advisory Committee (2 documents)

Nuclear Regulatory Commission
PROPOSED RULES
46428 Operators licenses
Source material, domestic licensing:
46418 Uranium mill tailings; conformance to EPA standards
46425 Uranium mill tailings; ground water protection, etc.
NOTICES
Applications, etc.:
46515 Commonwealth Edison Co.
46516 Connecticut Yankee Atomic Power Co.
46519 Houston Lighting & Power Co. et al.
46519 Northern States Power Co.
Environmental statements; availability, etc.:
46521 Westinghouse Electric Corp.
Meetings:
46521, 46522 Reactor Safeguards Advisory Committee (2 documents)

Oceans and Atmosphere, National Advisory Committee
NOTICES
46513 Meetings

Parole Commission
NOTICES
46524 Meetings; Sunshine Act

Pension and Welfare Benefit Programs Office
NOTICES
Meetings:
46513 Employee Welfare and Pension Benefit Plans Advisory Council; date and location change

Prisons Bureau
NOTICES
Meetings:
46513 Advisory Corrections Council

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.
46510 Dunn-Nakota Methanol Project, North Dakota

Social Security Administration
RULES
Social security benefits, etc.:
46365 Expedited appeals process; reopening and revising determinations and decisions
NOTICES
46506, 46507 Organization, functions, and authority delegations (2 documents)

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
46372 Colorado

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
46456 China
46456 Mexico

Transportation Department
See Coast Guard; National Highway Traffic Safety Administration.

Treasury Department
See also Customs Service.
NOTICES
Organization, functions, and authority delegations:
46522 Public Debt Commissioner

Uniformed Services University of the Health Sciences
NOTICES
46524 Meetings; Sunshine Act

Veterans Administration
PROPOSED RULES
Vocational rehabilitation and education:
46441 Dependents education; time limits for processing claims
NOTICES
46523 Agency information collection activities under OMB review

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
353 46333
356 46335
407 46337
418 46337
419 46341
422 46346
810 46347
Proposed Rules:
408 46393
422 46395
431 46400
436 46405
438 46409
800 46414

8 CFR
238 46347

10 CFR
Proposed Rules:
40 (2 documents) 46418, 46425
50 46428
55 46428

14 CFR
255 46347

18 CFR
37 46351
154 46353

19 CFR
10 46363

20 CFR
404 46365
410 46365
416 46365
422 46365

21 CFR
556 46371
558 46371

28 CFR
0 46371

30 CFR
906 46372

33 CFR
Proposed Rules:
157 46440

36 CFR
Proposed Rules:
13 46441

38 CFR
Proposed Rules:
21 46441

40 CFR
721 46373
Proposed Rules:
52 (2 documents) 46442
65 46443
180 46443
271 46443

47 CFR
31 46378
69 46383
73 46386
Proposed Rules:
73 (4 documents) 46444–46448

49 CFR
571 46386
1033 46392

Rules and Regulations

Federal Register
Vol. 49, No. 228
Monday, November 26, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 84-329]

Phytosanitary Export Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Phytosanitary Export Certification" regulations by deleting the list of specific locations for inspectors available for issuing phytosanitary certificates for the export of plants and plant products, and providing, instead, a list of area offices where such information can be obtained. This document also amends the regulations by providing that phytosanitary certificates for the export of terrestrial plants protected by the Endangered Species Act of 1973, as amended, (Act) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) shall only be issued at the port where the plant is to be exported. These amendments are necessary to adequately inform the public of where services pertaining to the issuance of phytosanitary export certificates can be obtained, and to administratively consolidate the enforcement responsibilities of the Department of Agriculture under the Act and Convention with the issuance of phytosanitary export certificates.

EFFECTIVE DATE: November 26, 1984. Written comments must be received on or before January 25, 1985.

ADDRESS: Written comments concerning this document must be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Don R. Thompson, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663 Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

Title 7, Code of Federal Regulations, Part 353 (7 CFR Part 353), captioned "Phytosanitary Export Certification" (regulations), states that inspectors of Plant Protection and Quarantine (PPQ) authorized to issue phytosanitary certificates for export of plant and plant products are stationed at certain locations. Section 353.3 lists those locations. This document amends § 353.3 of the regulations by deleting the listing of specific locations for inspectors and providing, instead, a list of area PPQ offices where information concerning the availability of an inspector to issue phytosanitary export certificates can be obtained.

Section 102 of the Organic Act of September 21, 1944, as amended [7 U.S.C. 147a(e)], authorizes the Secretary of Agriculture to promulgate regulations as deemed necessary to provide for the inspection and certification of plants and plant products being offered for export according to the phytosanitary requirements of the foreign country to which the plants and plant products may be exported. The regulations, prior to the effective date of this document, had designated 74 locations where inspectors could be contacted concerning their availability to issue phytosanitary certificates for export of plants and plant products. Presently, there are approximately 200 locations where inspectors are available for issuing the phytosanitary certificates of export on plants and plant products. Further, these locations change frequently because of reallocation of manpower to new areas.

Therefore, in order to provide the public with a way of obtaining a current, up-to-date list of locations where inspectors are available to provide inspections and issue phytosanitary certificates of export, § 353.3 of the regulations is amended by deleting the specific listing of locations where inspectors are located for plants and plant products and, instead, providing a list of addresses of area PPQ offices where this information can be obtained. Specifically, the following area offices, and the States or territories serviced by the area offices, where inspectors are available to issue phytosanitary export certificates on plants and plant products are listed in new § 353.3 as follows:

	States
NORTHEAST REGION	
Area I—Hartford, CT: Suite 303, 1 Hartford Square West, Hartford, CT 06106.	CT, MA, ME, NH, RI, VT.
Area II—Jamaica, NY: J.F. Kennedy International Airport, International Arrivals Building, Room 2315, Jamaica, NY 11430.	NY (JFKIA).
Area III—New York, NY: Federal Building, Room 1747, 26 Federal Plaza, New York, NY 10278.	New York City area, NJ.
Area IV—Philadelphia, PA: William Green, Jr., Federal Building, Room 9452, 6th and Arch Streets, Philadelphia, PA 19106.	DE, PA.
Area V—Oak Brook, IL: Suite 38, 1010 Jorie Boulevard, Oak Brook, IL 60521.	WI, MN, IL, IN, OH, MI.
Area VI—Albany, NY: Suite 503, 80 Wolf Road, Albany, NY 12205.	NY.
Area VII—Chevy Chase, MD: Suite 300, 1 Park North, 5550 Friendship Boulevard, Chevy Chase, MD 20815.	MD, VA, WV.
SOUTHEASTERN REGION	
Area I—Jacksonville, FL: Suite 129, 4080 Woodcock Drive, Jacksonville, FL 32207.	FL, GA.
Area II—Miami, FL: FAA and NWS Building, P.O. Box 59-2647 AMF, Miami, FL 33159.	Miami area.
Area III—Gulfport, MS: 3505 25th Avenue, P.O. Box 13, Gulfport, MS 39502.	AL, KY, MS, TN.
Area IV—Wilmington, NC: Rural Route 6, Box 53, Wilmington, NC 28405.	NC, SC.
Area V—San Juan, PR: Federal Office Building, Room 208, C. Chardon Avenue, Hato Rey, PR 00918.	PR, VI.
SOUTH CENTRAL REGION	
Area I—Uvalde, TX: Suite 202, 200 East Nopal Street, P.O. Box 5160, Uvalde, TX 78801.	TX, MN.
Area II—San Antonio, TX: Federal Building, Room B-201, 727 East Durango, San Antonio, TX 78206.	TX, OK.

	States
Area III—Slidell, LA: Slidell Towers, Room 205, 520 Old Spanish Trail, Slidell, LA 70458.	LA, AR.
Area IV—Jefferson City, MO: Suite K-2, 915 Southwest Boulevard, Jefferson City, MO 65101.	MO, IA, NE, KS.
WESTERN REGION	
Area I—Honolulu, HI: Prince Jonah Kuhio Kalanianaole Federal Building, Room 4117, 300 Ala Moana Boulevard, P.O. Box 50002, Honolulu, HI 96850.	HI.
Area II—Seattle, WA: 3112 Federal Building, 915 Second Avenue, Seattle, WA 98174.	WA, OR, AK.
Area III—Oakland, CA: Room 450, 1515 Clay Street, Oakland, CA 94612.	CA.
Area IV—Phoenix, AZ: Room 201, 522 North Central Avenue, Phoenix, AZ 85004.	AZ, NV.
Area V—Denver, CO: Suite 102, 7100 West 44th Avenue, Wheat Ridge, CO 80033.	CO, ND, SD, MT, ID, WY, UT.

A footnote (number 1) is added to the title of § 353.3 to explain that telephone numbers for area offices are listed in local telephone directories.

This document also amends § 353.3 of the regulations by providing that phytosanitary certificates for the export of terrestrial plants protected by the Endangered Species Act of 1973, as amended (referred to below as Act; 16 U.S.C. 1531 *et seq.*), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (referred to below as Convention; MIAS 8249; 27 U.S.C. 1087) and listed in 50 CFR 17.12 or 23.23 shall be issued only at the port where the plant is to be exported.

Specifically, the United States Department of Agriculture is responsible for enforcing provisions of the Act and Convention pertaining to the importation, exportation, or reexportation of terrestrial plants listed in 50 CFR 17.12 and 23.23. On October 25, 1984, the Department published in the **Federal Register** a document captioned "Endangered Species Regulations Concerning Terrestrial Plants". (See 49 FR 42907–42918.) This document established, effective (30 days after publication), enforcement regulations pertaining to the importation, exportation, or reexportation of terrestrial plants protected by the Act and Convention. These regulations require, among other provisions, that terrestrial plants listed in 50 CFR 17.12 and 23.23 and offered for export be presented at a port designated for export in 50 CFR Part 24 or, if allowed by USDI, at a nondesignated port for validation of certain shipping and other documentation required by the Act and Convention for the exportation of such plants.

Therefore, in order to consolidate for administrative efficiency the responsibilities of the Department under the Act, the Convention, and 7 U.S.C. 147a in the inspection, issuance, and validation of documents accompanying terrestrial plants listed in 50 CFR 17.12 and 23.23 and offered for export, this document amends 7 CFR 353.3 by providing that inspectors authorized to issue phytosanitary export certificates for terrestrial plants listed in 50 CFR 17.12 and 23.23 shall be available only at the port where such terrestrial plants are offered for export. Such ports are generally listed as designated ports in 50 CFR Part 24. However, in limited situations as allowed by USDI in 50 CFR Part 24, they can be exported at nondesignated ports. The following are designated ports of export listed in 50 CFR Part 24:

(1) Any terrestrial plant offered for export and listed in 50 CFR Part 17 or 23:

Nogales, AZ
Los Angeles, CA
San Diego, CA
San Francisco, CA
Miami, FL
Honolulu, HI
New Orleans, LA
Hoboken, NJ (Port of New York)
Jamaica, NY
San Juan, PR
Brownsville, TX
El Paso, TX
Laredo, TX
Seattle, WA

(2) Any plant of the family Orchidaceae (orchids) offered for export and listed in 50 CFR Part 17 or 23:

Hilo, HI
Chicago, IL

(3) Roots of American ginseng (*Panax quinquefolius*) offered for export and listed in 50 CFR 23.23:

Atlanta, GA
Chicago, IL
Baltimore, MD
St. Louis, MO
Milwaukee, WI

(4) Any plant listed in 50 CFR 17.12 or 23.23 and offered for exportation to Canada:

Detroit, MI
Buffalo, NY
Rouses Point, NY
Blaine, WA

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. The Department's regulations implementing the Act and the Convention were published in the **Federal Register** on October 25, 1984 and will take effect on November 26, 1984. In order to ensure that this amendment can be implemented at the same time the enforcement regulations under the Act and Convention are implemented, and to reduce potential confusion to exporters over the revised export procedures, immediate action must be taken.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action notifies individuals of the availability of inspectors to issue phytosanitary export certificates and provides that such certificates on terrestrial plants listed in 50 CFR 17.12 or 23.23 shall only be issued at certain ports of export. The listing of area offices is merely for informational purposes and is a nonsubstantive amendment. The requirement that plants listed in 50 CFR 17.23 or 23.23 be inspected and exported through designated ports is required by the Act and the Convention and, as such, this action will have no effect on entities, large or small, that request phytosanitary certificates on plants listed in 50 CFR 17.12 or 23.23 and offered for export since it imposes no additional or different requirements on such entities.

Therefore, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 353

Agricultural commodities, Exports, Plant diseases, Plant pests, Plants (agriculture).

PART 353—PHYTOSANITARY EXPORT CERTIFICATION

Accordingly, § 353.3 in 7 CFR Part 353 is revised as follows:

§ 353.3 Where service is offered.[1]

(a) Information concerning the location of inspectors who may issue phytosanitary export certificates for products, except as provided in paragraph (b), may be obtained by contacting one of the following offices:

	States
Northeast Region	
Area I—Hartford, CT: Suite 303, 1 Hartford Square West, Hartford, CT 06106.	CT, MA, ME, NH, RI, VT.
Area II—Jamaica, NY: J.F. Kennedy International Airport, International Arrivals Building, Room 2315, Jamaica, NY 11430.	NY (JFKIA).
Area III—New York, NY: Federal Building, Room 1747, 26 Federal Plaza, New York, NY 10278.	New York City area, NJ.
Area IV—Philadelphia, PA: William Green, Jr., Federal Building, Room 9452, 6th and Arch Streets, Philadelphia, PA 19106.	DE, PA.
Area V—Oak Brook, IL: Suite 38, 1010 Jorie Boulevard, Oak Brook, IL 60521.	WI, MN, IL, IN, OH, MI.
Area VI—Albany, NY: Suite 503, 80 Wolf Road, Albany, NY 12205.	NY.
Area VII—Chevy Chase, MD: Suite 300, 1 Park North, 5550 Friendship Boulevard, Chevy Chase, MD 20815.	MD, VA, WV.
Southeastern Region	
Area I—Jacksonville, FL: Suite 129, 4080 Woodcock Drive, Jacksonville, FL 32207.	FL, GA.
Area II—Miami, FL: FAA and NWS Building, P.O. Box 59-2647 AMF, Miami, FL 33159.	Miami area.
Area III—Gulfport, MS: 3505 25th Avenue, P.O. Box 13, Gulfport, MS 39502.	AL, KY, MS, TN.
Area IV—Wilmington, NC: Rural Route 6, Box 53, Wilmington, NC 28405.	NC, SC.
Area V—San Juan, PR: Federal Office Building, Room 206, C. Chardon Avenue, Hato Rey, PR 00918.	PR, VI.
South Central Region	
Area I—Uvalde, TX: Suite 202, 200 East Nopal Street, P.O. Box 5180, Uvalde, TX 78801.	TX, NM.
Area II—San Antonio, TX: Federal Building, Room B-201, 727 East Durango, San Antonio, TX 78206.	TX, OK.
Area III—Slidell, LA: Slidell Towers, Room 205, 520 Old Spanish Trail, Slidell, LA 70458.	LA, AR.
Area IV—Jefferson City, MO: Suite K-2, 915 Southwest Boulevard, Jefferson City, MO 65101.	MO, IA, NE, KS.
Western Region	
Area I—Honolulu, HI: Prince Jonah Kuhio Kalanianaole Federal Building, Room 4117, 300 Ala Moana Boulevard, P.O. Box 50002, Honolulu, HI 96850.	HI.
Area II—Seattle, WA: 3112 Federal Building, 915 Second Avenue, Seattle, WA 98174.	WA, OR, AK.
Area III—Oakland, CA: Room 450, 1515 Clay Street, Oakland, CA 94612.	CA.
Area IV—Phoenix, AZ: Room 201, 522 North Central Avenue, Phoenix, AZ 85004.	AZ, NV.
Area V—Denver, CO: Suite 102, 7100 West 44th Avenue, Wheat Ridge, CO 80033.	CO, ND, SD, MT, ID, WY, UT.

[1] Telephone numbers for area offices are listed in local telephone directories.

(b) Inspectors who may issue phytosanitary export certificates for terrestrial plants offered for export and listed in 50 CFR Part 17 or 23 are available only at a port designated for export in 50 CFR Part 24, or at a nondesignated port if allowed by the United States Department of the Interior pursuant to section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1538). The following locations are designated in 50 CFR Part 24 as ports for export of terrestrial plants listed in 50 CFR Part 17 or 23;

(1) Any terrestrial plant offered for export and listed in 50 CFR Part 17 or 23:

Nogales, AZ
Los Angeles, CA
San Diego, CA
San Francisco, CA
Miami, FL
Honolulu, HI
New Orleans, LA
Hoboken, NJ (Port of New York)
Jamaica, NY
San Juan, PR
Brownsville, TX
El Paso, TX
Laredo, TX
Seattle, WA

(2) Any plant of the family Orchidaceae (orchids) offered for export and listed in 50 CFR Part 17 or 23:

Hilo, HI
Chicago, IL

(3) Roots of American ginseng (*Panax quinquefolius*) offered for export and listed in 50 CFR 23.23:

Atlanta, GA
Chicago, IL
Baltimore, MD
St. Louis, MO
Milwaukee, WI

(4) Any plant listed in 50 CFR 17.12 or 23.23 and offered for exportation to Canada:

Detroit, MI
Buffalo, NY
Rouses Point, NY
Blaine, WA

(Sec. 102, 58 Stat. 735, as amended; 7 U.S.C. 147a (7 CFR 2.17, 2.51, 371.2(c)))

Done at Washington, D.C., this 19th day of November 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-30830 Filed 11-23-84; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 356

[Docket No. 83-343]

Procedures Relating to Forfeiture

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations relating to forfeiture by extending the forfeiture procedures in Part 356 to terrestrial plants and other property subject to forfeiture and seized by USDA in violation of the Lacey Act Amendments of 1981. This document is necessary in order to advise the public of the procedures used by USDA when seeking forfeiture of terrestrial plants or other property seized in violation of the Lacey Act Amendments of 1981.

EFFECTIVE DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

SUPPLEMENTARY INFORMATION:

Background

This document amends Part 356 of Title 7, Code of Federal Regulations (7 CFR Part 356), captioned "Forfeiture Procedures," by extending the forfeiture procedures in Part 356 to property subject to forfeiture and seized by the United States Department of Agriculture (referred to below as USDA) in violation of the Lacey Act Amendments of 1981

(Pub. L. 97–79; 16 U.S.C. 3371 *et seq.*; referred to below as the Amendments).

The Amendments provide, among other things, provisions for the forfeiture of fish, wildlife, plants, and other property which have been seized in violation of the Lacey Act. The Amendments were enacted for the purpose of providing more effective enforcement of State, Federal, foreign, and Indian tribal laws intended to protect and conserve species of fish, wildlife, and plants. The USDA is responsible for administering the provisions of the Amendments which pertain to importation, exportation, and reexportation of certain terrestrial plants including obtaining forfeiture on terrestrial plants and other property seized in violation of the Amendments.[1]

Section 5(a)(1) of the Amendments (16 U.S.C. 3374(a)(1)), provides, in applicable part, that any plant imported, exported, or attempted to be imported or exported in violation of the Amendments or regulations issued thereunder shall be subject to forfeiture. Such plants are subject to forfeiture, notwithstanding any culpability requirements for a civil penalty assessment or criminal conviction.

Section 5(a)(2) of the Amendments (16 U.S.C. 3374(a)(2)) also provides, in applicable part, that all vessels, vehicles, aircraft and other equipment used to aid in the importation or exportation of plants involving a criminal violation of the Amendments and for which a felony conviction has been obtained shall be subject to forfeiture if (a) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting party or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of the Amendments and (b) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase plants. Further, section 5(b) of the Amendments (16 U.S.C. 3374(b)) requires that the forfeiture provisions of the Customs laws (19 U.S.C. 1602 through 1624) be applied to seizures incurred and forfeiture obtained pursuant to the Lacey Act.

Prior to the publication of this document, the forfeiture procedures in Part 356 were applicable only to plants, equipment, means of conveyance, and other property subject to forfeiture and seized by USDA in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The forfeiture procedures in Part 356 were developed in accordance with the provisions of the Customs laws found in 19 U.S.C. 1602 through 1624, and contain provisions for appraisement, judicial forfeiture of property valued at greater than $10,000, administrative forfeiture for property valued at $10,000 or less, bonded release, storage of property, remission or mitigation of forfeiture, return procedures, and filing of documents.

The forfeiture procedures in Part 356 are consistent with the forfeiture procedures required by the Amendments to be used on articles subject to forfeiture and seized by USDA in violation of the Amendments. Therefore, in order to make the forfeiture procedures in Part 356 applicable to articles subject to forfeiture and seized by USDA in violation of the Amendments, this document amends § 356.1 and the authority section of Part 356 to extend the forfeiture procedures in Part 356 to property subject to forfeiture and seized by USDA in violation of the Amendments. In addition, a new footnote (number 2) is added to § 356.1 which restates, for informational purposes, sections 5(a)(1) and 5(a)(2) of the Amendments to explain the conditions that must be met in order to initiate forfeiture proceedings against vessels, vehicles, aircraft, and other equipment used to aid in the importation or exportation of plants in a criminal violation of the Amendment for which a felony conviction has been obtained. The footnote also explains that plants seized for violations of the Amendments are subject to forfeiture regardless of whether a civil penalty assessment or criminal conviction has been obtained.

Executive Order and Regulatory Flexibility Act

These regulations relate to internal agency management, and therefore, pursuant to 5 U.S.C. 553, good cause is found for making these regulations effective less than 30 days after publication in the **Federal Register**. Further, since these regulations relate to internal agency management, they are exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–351, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 356

Imports, Exports, Plants (Agriculture), Seizures and Forfeitures, Endangered and Threatened Species, Lacey Act.

PART 356—FORFEITURE PROCEDURES

Accordingly, Part 356 of Chapter III of Title 7 CFR is amended as follows:

1. The Authority section in Part 356 is revised to read as follows:

Authority: Sec. 11(f) as amended, 87 Stat. 897(f) as amended (16 U.S.C. 1540(f)); Section 5, 95 Stat. 1076 (16 U.S.C. 3374); 7 CFR 2.17, 2.51, 371.2(c).

2. Section 356.1 is revised to read as follows:

§ 356.1 Property subject to forfeiture procedures.

This part sets forth procedures relating to the forfeiture of any plant, equipment, means of conveyance or other property [1] seized under the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*) or the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*),[2] in possession (actual or constructive) of the United States Department of Agriculture, and subject to forfeiture under these Acts because of activities pertaining to the importation, exportation, or reexportation of terrestrial plants.

(Sec. 5, 95 Stat. 1076 (16 U.S.C. 3374); 7 CFR 2.17, 2.51, 371.2(c).

[1] Section 2(g) of the Amendments (16 U.S.C. 3371(g)) defines "Secretary", in relevant part, to mean ". . . the Secretary of the Interior or the Secretary of Commerce; . . . except that with respect to the provisions of this Act which pertain to the importation or exportation of plants the term means the Secretary of Agriculture."

[1] Under section 11(e)(4) of the Endangered Species Act ("Act"; 16 U.S.C. 1540(e)(4)) any such equipment and means of conveyance would be subject to forfeiture upon conviction of a criminal violation pursuant to section 11(b)(1) of the Act (16 U.S.C. 1540(b)(1)); however, such a plant may be subject to forfeiture regardless of whether a criminal conviction is obtained.

[2] Under section 5(a)(2) of the Lacey Act Amendments of 1981 (16 U.S.C. 3374(a)(2)) USDA has authority to initiate forfeiture proceedings against all vessels, vehicles, aircraft, and other equipment used to aid in the importation or exportation of plants in a criminal violation of the Lacey Act Amendments of 1981 for which a felony conviction has been obtained if (a) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting part or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of the Lacey Act Amendments of 1981, and (b) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase plants. However, under section 5(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3474(a)(1) plants seized for violations of the Amendments are subject to forfeiture regardless of whether a civil penalty assessment or criminal conviction is obtained.

Done at Washington, D.C., this 19th day of November 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 30828 Filed 11–23–84; 8:45 am]

BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 407

Tung Nut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Revocation.

SUMMARY: Because of low participation and extremely high losses, Federal Crop Insurance Corporation (FCIC), withdrew insurance for Tung Nuts effective with the 1971 crop year. FCIC has not had a Tung Nut Insurance Program since then. The intended effect of this action is to revoke Part 407 of Title 7 CFR. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 477–3325.

SUPPLEMENTARY INFORMATION: On January 16, 1965, FCIC published a regulation in the **Federal Register** (30 FR 566) prescribing procedures for insuring Tung Nuts (7 CFR Part 407) effective with the 1965 crop year. In 1970, it was determined that the program was no longer feasible due to lack of participation and extremely high losses. For these reasons, FCIC cancelled all contracts under the program effective with the 1971 crop year. While the Corporation recognizes the need of tung nut growers for insurance, a different type of program must be developed before the Corporation can again offer Tung Nut Crop Insurance.

FCIC has determined that this action is not a significant rule and does not require regulatory analysis under Executive Order 12291 or Departmental Regulation 1512–1 (December 15, 1983). This action is a matter of internal Agency procedure and is exempt from publication for notice and comment.

List of Subjects in 7 CFR Part 407

Crop insurance, Tung nuts.

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby revokes, removes and reserves 7 CFR Part 407.

Done in Washington, D.C. on July 17, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: November 15, 1984.

[FR Doc. 84–30796 Filed 11–23–84; 8:45 am]

BILLING CODE 3410–05–M

---

7 CFR Part 418

[Doc. No. 1327S; Amdt. No.1]

Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Wheat Crop Insurance Regulations (7 CFR Part 418), effective for the 1985 and succeeding crop years by: (1) Changing the end of insurance period date in Alaska to September 25; (2) eliminating the "7-day residue" provision; (3) clarifying specific quality standards stated in the policy; (4) changing the term "mature production" back to "harvested production;" (5) providing that all Michigan counties have a cancellation/termination date of September 30, Walworth and Faulk Counties, South Dakota have a cancellation/termination date of April 15, and Matanuska-Susitna County, Alaska have a cancellation date of October 31; and (6) adding "failure of irrigation water supply after planting due to unavoidable cause" as an insured cause of loss. The intended effect of this rule is to update the provisions of the contract for insuring wheat, clarify terminology, add another cause of loss, provide for a different insurance period in Alaska to conform with current farming practices, and change cancellation/termination dates in certain Areas.

EFFECTIVE DATE: December 26, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation No. 1512–1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under that memorandum. The sunset review date established for these regulations is February 1, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million; or (b) major increases in costs of prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this final rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, June 8, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 23848, to amend the Wheat Crop Insurance Regulations (7 CFR Part 418), effective for the 1985 and succeeding crop years, as follows:

1. Section 7—Change end of insurance period date in Alaska to September 25.

2. Section 8—Eliminate the "7-day residue" provision.

3. Section 9e(2)—State the specific quality standards, replacing the grade designation (e.g.; U.S. No. 4) contained in current policies, which informs the insured as to factors involved in quality determinations.

4. Section 9e(3)—Change "mature production" back to "harvested production" because of procedural problems in loss adjustment.

5. Section 15d—Provide that all Michigan counties now have a cancellation/termination date of

September 30, and Walworth and Faulk Counties, South Dakota of April 15, Matanuska-Susitna County, Alaska will now have a cancellation date of October 31.

The public was invited to submit written comments, data, and opinions on this proposed rule for 30 days after publication in the Federal Register, but none were received. It has been determined that the provisions of the proposed rule published on June 8, 1984, should be adopted as a final rule.

List of Subjects in 7 CFR Part 418

Crop insurance, Wheat.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Wheat Crop Insurance Regulations (7 CFR Part 418), effective for the 1985 and succeeding crop years, in the following instances:

1. The Authority Citation for 7 CFR Part 418 is:

Authority: Secs. 506, 516, Pub.L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 418.7(d) is amended and the policy therein revised to read as set forth below:

§ 418.7 The application and policy.

* * * * *

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37; 400.38), and may be amended from time to time for subsequent crop years. The provisions of the Wheat Crop Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Wheat—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Cause of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of irrigation water supply after planting due to unavoidable causes;

unless those causes are expected, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good wheat farming practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservior project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be wheat planted for harvest as grain, grown on insured acreage, and for which a guarantee and premium rate are provided by the acturial table.

b. The acreage insured for each crop year will be wheat planted on insurable acreage as designated by the acturial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured wheat at the time of planting.

d. We do not insure any acreage:

(1) Where the farming practices carried out are not in accordance with the farming practices for which the premium rate have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed and it is practical to replant to wheat but such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table unless you agree in writing on our form to coverage reduction;

(5) Of volunteer wheat;

(6) Planted to a type or variety of wheat not established as adapted to the area or excluded by the actuarial table; or

(7) Planted with a crop other than wheat.

e. Where insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good wheat irrigation practice; and

(2) Any loss of production caused by failure to carry out a good wheat irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation published under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of wheat in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any wheat planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determine on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	85	85	85	80	80
.81 to 1.00	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	101	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	316
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years." (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse if you die;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but not premium reduction under section 5a will be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches when the wheat is planted except that, in counties with an April 15 cancellation date, insurance of fall planted wheat attaches on April 16 following planting, if there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the wheat;

(2) Combining, threshing, or removal from the field;

(3) Final adjustment of a loss; or

(4) The date shown below of the calendar year in which wheat is normally harvested:

(a) Alaska.....September 25;
(b) All other states..... October 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period harvest, the wheat on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the wheat and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined. A representative sample of the unharvested wheat (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(3) In addition to the notice required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the wheat on the unit;

(b) Harvest of the unit; or

(c) The date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the wheat which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the wheat on the unit;

(2) Harvest of the unit; or

(3) The date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of wheat on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of wheat to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Mature wheat production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.5 percent; or

(2) mature wheat production which, due to insurable causes, has a test weight of less than 53 pounds per bushel or, as determined by a licensed grain grader in accordance with the Official United States Grain Standards, contains more than 10 percent kernel damage, more than 12 percent shrunken kernels; more than 6 green garlic bulblets or an equivalent of dry or partly dry garlic bulblets in a 1000-gram sample; or is smutty or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured wheat by the price per bushel of U.S. No. 2 wheat; and

(b) Multiplying the result by the number of bushels of such wheat.

The applicable price for No. 2 wheat will be the local market price on the earlier of the day the loss is adjusted or the day the insured wheat is sold.

(3) Any harvested production from other crops growing in the wheat will be counted as wheat on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good wheat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of wheat becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(6) We may determine the amount of production of any unharvested wheat on the basis of field appraisals conducted after the end of the insurance period.

(7) When you have elected to exclude hail and fire as insured causes of loss and the wheat is damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI–78, "Request To Exclude Hail and Fire".

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the wheat is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer will be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all wheat produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both the payment under such other program and set off were approved.

d. The cancellation and termination dates are:

State and county	Cancellation date	Termination date for indebtedness
All Alaska counties except Matanuska-Susitna; Atmore, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota: Daniels, Roosevelt, Sheridan and Valley Counties, Montana; New Hampshire; North Dakota; Carson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas and Bon Homme Counties, South Dakota and all South Dakota counties lying north and east thereof; Vermont; and Transpadeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin and all Wisconsin counties lying north and west thereof.	Apr. 15	Apr. 15.
Nebraska	Sept. 15	Sept. 15.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt and San Miguel Counties, Colorado and all other South Dakota counties.	do	Nov. 30.
All other Colorado counties, Kansas, New Mexico, Oklahoma, and Texas.	Aug. 31	Aug. 31.
Connecticut, Plymouth, Cherokee, Sioux, Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware and Dubuque Counties, Iowa and all Iowa counties lying north thereof; Massachusetts, all other Montana counties, New York, Rhode Island and Wyoming.	Sept. 30	Nov. 30.
Matanuska-Susitna County, Alaska; Arizona; California; Idaho; Nevada; Oregon; Utah and Washington.	Oct. 31	Oct.
All other Iowa counties; all other Wisconsin counties; and all other states.	Sept. 30	Sept. 30.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by May 31 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of wheat crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding wheat insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the wheat is normally grown and is designated by the calendar year in which the wheat is normally harvested.

d. "Harvest" means the completion of combining or threshing of wheat on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "Tenant" means a persons who rents land from another person for a share of the wheat or a share of the proceeds therefrom.

j. "Unit" means all insurable acreage of wheat in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the wheat on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on July 11, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: November 15, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-30791 Filed 11-23-84; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 419

[Doc. 1343S; Amdt. No. 1]

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Barley Crop Insurance Regulations (7 CFR 419), effective for the 1985 and succeeding crop years by: (1) Changing the end of insurance period date in Alaska to September 25; (2) eliminating the "7-day residue" provision; (3) clarifying specific quality standards stated in the policy; (4) changing the term "mature production" to "harvested production;" (5) adding the failure of irrigation water supply after planting because of an unavoidable cause as an insured cause of loss; and (6) providing procedures for insuring malting barley grown under contract. The intended effect of this rule is to update the provisions of the contract for insuring barley, clarify terminology, add another cause of loss, provide for a different insurance period in Alaska to conform with current farming practices, and provide for insurance to be offered on malting barley grown under contract.

EFFECTIVE DATE: December 26, 1984.

FOR FURTHER INFORMATION CONTACT: Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1521–1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, July 10, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 28061, proposing to amend the Barley Crop Insurance Regulations (7 CFR 419), effective for the 1985 and succeeding crop years, as follows:

1. Section 1—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss.

2. Section 7—Change the date for the end of insurance period in Alaska to September 25.

3. Section 8—Eliminate the 7-day residue provision.

4. Section 9e(2)—Clarify specific quality standards stated in the policy. This replaces the grade designation (e.g.; U.S. No. 4) contained in current policies and states the specific factors which are involved in quality determinations.

5. Section 9e(3)—Change "mature production" to "harvested production" to clarify terminology.

In addition, to provide that malting barley grown under contract may be insurable, FCIC adds a new subsection to the Barley Crop Insurance Regulations (7 CFR 419.8) to provide procedures for such insurance.

The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but, none were received. Therefore, the proposed rule as published is hereby adopted as final.

List of Subjects in 7 CFR Part 419

Crop insurance; Barley.

Final Rule

PART 419—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1985 and succeeding crop years, in the following instances:

1. The authority for 7 CFR Part 419 is:

Authority: Secs. 508, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 419.7(d) is amended to read:

§ 419.7 The application and policy.

* * * * *

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Barley Crop Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Barley—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply after planting due to unavoidable causes:

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good barley farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be barley planted for harvest as grain, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table. A mixture of barley with either oats or wheat or both planted for harvest as grain may also be insured if provided for by the actuarial table. The production from such mixture will be considered as barley on a weight basis.

b. The acreage insured for each crop year will be barley planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured barley at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed and it is practical to replant to barley but such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table unless you agree in writing on our form to coverage reduction;

(5) Of volunteer barley;

(6) Planted to a type or variety of barley not established as adapted to the area or excluded by the actuarial table; or

(7) Planted with a crop other than barley except as provided in section 2a.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good barley irrigation practice; and

(2) Any loss of production caused by failure to carry out a good barley irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of barley in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any barley planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

(Percent adjustments for favorable continuous insurance experience)

	Number of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	60	60	60	55	50
.21 to .40	100	100	95	95	90	90	85	80	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	90	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.00	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

(Percent adjustments for unfavorable insurance experience)

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	108	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	108	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse if you die;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches when the barley is planted except that in counties with an April 15 cancellation date, insurance on fall planted barley will attach April 16 following planting, provided there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the barley;

(2) Combining, threshing, or removal from the field;

(3) Final adjustment of a loss; or

(4) The date shown below of the calendar year in which the barley is normally harvested:

(a) Alaska.....September 25; and
(b) All other states..... October 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the barley on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the barley and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined. A representative sample of the unharvested barley (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(3) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the barley on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the barley which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the barley on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of barley on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of barley to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Mature barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.5 percent; or

(2) Mature barley production which, due to insurable causes, has a test weight of less than 40 pounds per bushel or, as determined by a Federal or State licensed grain grader in accordance with the Official United States Grain Standards, contains less than 85 percent sound barley; more than 8 percent damaged kernels; more than 35 percent thin barley; or more than 5 percent black barley; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of such barley by the price per bushel of U.S. No. 2 barley; and

(b) Multiplying the result by the number of bushels of such barley.

The applicable price for No. 2 barley will be the local market price on the earlier of the day the loss is adjusted or the day such barley was sold.

(3) Any harvested production from other crops growing in the barley will be counted as barley on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good barley farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of barley becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(6) We may determine the amount of production of any unharvested barley on the basis of field appraisals conducted after the end of the insurance period.

(7) When you have elected to exclude hail and fire as insured causes of loss and the barley is damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI–78, "Request To Exclude Hail And Fire".

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the barley is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such violence will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all your rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to Farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all barley produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both the payment under such other program and set off have been approved.

d. The cancellation and termination dates are:

State and county	Cancellation date	Termination date for indebtedness
New Mexico, except Taos County; Oklahoma and Texas.	Aug. 31	Aug. 31.
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado counties lying south and east thereof and Kansas.	Aug. 31	Nov. 30.
Arkansas, Louisiana, Missouri, Illinois, Indiana, New Jersey, Ohio, Pennsylvania, and all states lying south and east thereof.	Sept. 30	Sept. 30.
Connecticut, Massachusetts and New York.	Sept. 30	Nov. 30.
Arizona, California, and Clark and Nye Counties, Nevada.	Oct. 31	Nov. 30.
All other Colorado counties; all other Nevada counties; Taos County, New Mexico and all other States.	Apr. 15	Apr. 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by May 31 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purpose of barley crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding barley insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the barley is normally grown and will be designated by the calendar year in which the barley is normally harvested.

d. "Harvest" means the completion of combining or threshing of the barley on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "Tenant" means a person who rents land from another person for a share of the barley or a share of the proceeds therefrom.

j. "Unit" means all insurable acreage of barley in the county on the date of planting for the crop year:

(1) in which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the barley on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

3. 7 CFR Part 419 is amended by adding a new subsection to read as follows:

§ 419.8 Malting barley option.

(a) Notwithstanding the provisions of subsection (d)9c and e of the policy found at § 419.7, an insured producer may, upon submission and approval by the Corporation of a Malting Barley Option Amendment, elect to insure all insurable acreage in which the insured has a share which is grown under contract or agreement with a company in the business of buying Malting Barley: *Providing* (1) all acreage of malting barley in the county in which the insured has a share and which is grown under the contract or agreement which is executed by both parties before the acreage report, must be insured, and (2) the Malting Barley Option Amendment will be applicable only for the crop year for which it is submitted. A new Amendment must be submitted for each subsequent crop year.

(b) For those insureds who elect to insure malting barley under the Malting Barley Option Amendment, all provisions of the Barley crop insurance policy will apply, except those in conflict with the Amendment. The terms of the Amendment are:

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

FCI– (3–84)

Barley Crop Insurance Policy

Malting Barley Option Amendment

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____ Tax _____

It is hereby agreed that a signed Malting Barley Option Amendment will be submitted to us on or before the final date for accepting applications for each crop year you wish to insure your malting barley under this Amendment and upon our approval, the following terms and conditions will apply:

(1) You must have a Federal Crop Insurance Barley Policy (Basic Policy) in force.

(2) All acreage of malting barley in the county in which you have a share grown under contract or agreement (contract) with a company in the business of buying Malting Barley (company) must be insured under this Amendment. All other barley acreage will be insured under the terms of the basic policy. The contract must be executed and binding on both the insured and the company before the acreage report is due.

(3) Failure to submit an Amendment for the crop year will result in your barley being insured under the terms of the basic policy.

(4) Your production guarantee will be based on your actual production history of malting barley.

(5) In lieu of section 9c of the basic policy, the indemnity will be determined on each unit by:

a. Multiplying the number of bushels of malting barley under contract (not to exceed your production guarantee) by your price election for malting barley;

b. Adding to that product the amount obtained by subtracting from your production guarantee the number of bushels under contract, if any, and multiplying that remainder by your price election for other barley;

c. Subtracting from this product, the dollar amount obtained by multiplying the number of bushels of malting barley to count by your price election for malting barley plus the dollar amount obtained by multiplying the number of bushels of barley that does not qualify as Malting Barley to count by your price election for barley under the basic policy;[1] and

d. Multiplying this result by your share.

(6) In lieu of section 9e of the basic policy, the production to count for any acreage designated for malting barley will be adjusted as follows:

a. Any mature production which is not eligible for quality adjustment under subsection (6)(b) will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.0 percent;

[1] To determine Malting Barley to count and Barley to count see subsection 9e of the basic policy.

b. Any mature harvested malting barley production, or any appraised production which, due to insurable causes, has a test weight of less than 48 pounds per bushel or as determined by a Federal or State licensed grain grader in accordance with the Official United States Grain Standards, contains less than 95 percent suitable malting types; less than 93 percent sound barley; more than 10 percent thin barley; or more than 2 percent black barley; or is smutty, garlicky, or ergoty shall be adjusted by:

(1) Dividing the value of such barley by the contract price; and

(2) Multiplying the results by the number of bushels of harvested or appraised production.

(7) If a fixed contract price is not included in your contract with the company, prior to the time the acreage report is due, we will determine the contract price.

(8) Notwithstanding the provision of section 17j of the basic policy, we may agree that insurable acreage grown under the provisions of this amendment will be designated as separate unit(s).

(9) Your premium rate for malting barley will be set by the actuarial table.

(10) All provisions of the basic policy not in conflict with this amendment are applicable.

(11) The price election is $—— per bushel. The coverage level election will be the election under your basic barley.

Insured's Signature ——————
Date ——————
Corporation Representative's Signature and code number ——————
Date ——————

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring barley under the Barley Crop Insurance Regulations (7 CFR Part 419). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the option to insure malting barley, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, administrative tribunal or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security number is voluntary and no adverse actions will result from failure to do so. Furnishing the information, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested other than the Social Security Number may result in rejection of the option for insuring malting barley, and subsequent denial of any claim for indemnity which may be filed under such option, or may substantially delay acceptance of the Malting Barley Option, and any subsequent claim for indemnity.

Done in Washington, D.C., on September 10, 1984.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Dated: November 15, 1984.

Approved by:

Edward Hews,
Acting Manager

[FR Doc. 84-30782 Filed 11-23-84; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 422

[Amdt. No. 3; Doc. No. 1647S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1984 and succeeding crop years, to provide procedures for insuring potatoes planted with non-certified seed in those counties where such potatoes are produced. The intended effect of this rule is to amend the potato crop insurance policy to provide coverage for non-certified seed potatoes in certain counties where such insurance is offered.

EFFECTIVE DATE: December 26, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1 (December 15, 1983). This action does not constitute a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, July 9, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 27950, to amend the Potato Crop Insurance Regulations to provide for insurance coverage on acreage planted with non-certified seed potatoes. The present potato crop insurance policy does not provide for coverage on any acreage planted with non-certified seed potatoes. The potato crop insurance program was expanded to include several counties in Colorado for the 1984 crop year. Since potato acreage in Colorado is normally planted with non-certified seed potatoes, it became necessary to amend the potato crop insurance regulations to provide for insurance coverage on such acreage. The public was given thirty days in which to submit comments, data, and opinions on the proposed rule, but none were received. The proposed amendment is hereby adopted as final rule.

List of Subjects in 7 CFR Part 422

Crop insurance; Potatoes.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 422 is:

Authority: 506, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 422.7(d) is amended to read as follows:

§ 422.7 The application and policy.

* * * * *

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR § 400.37, § 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Potato Insurance Policy for the 1984 and succeeding crop years are as follows:

Potato Crop Insurance Policy

* * * * *

2. * * *

(b) * * *

(1) Planted with non-certified seed, except where otherwise provided by the actuarial table, * * *

* * * * *

Done in Washington, D.C., on October 11, 1984.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,
Acting Manager.

Dated: November 15, 1984.

[FR Doc. 84-30795 Filed 11-23-84; 8:45 am]
BILLING CODE 3410-08-M

Federal Grain Inspection Service

7 CFR Part 810

Revision to the U.S. Standards for Corn, U.S. Standards for Sorghum, and U.S. Standards for Soybeans

Correction

In FR Doc. 84-24082 beginning on page 35743 in the issue of Wednesday, September 12, 1984, make the following correction.

§ 810.557 [Corrected]

On page 35744, in § 810.557, in the table, in the third column, the fourth line under "Total (percent)" should have read "15.0" instead of "5.0".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts with Transportation Lines; Addition of America West Airlines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the name of America West Airlines, Inc.

EFFECTIVE DATE: October 25, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048 .

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into agreement with America West Airlines, Inc. to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilities processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [AMENDED]

Section 238.4 is amended by adding the name America West Airlines, Inc. under "At Calgary."

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: November 19, 1984.

Andrew J. Carmichael, Jr.,
Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-30834 Filed 11-23-84; 8:45 am]
BILLING CODE 4410-10-M

CIVIL AERONAUTICS BOARD

14 CFR Part 255

[Economic Regs. ER-1396; Amdt. No. 3 to Part 255, Docket: 41696]

Carrier-Owned Computer Reservations Systems

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is adopting amendments to its CRS rules that require airline computer reservations system vendors to disclose current display and edit criteria and weights, connect points, and data base update procedures and formats to all interested persons. The Board is also adopting amendments governing operation of computer systems by airlines to forbid the release of computer-generated data on a carrier's international flights without the consent of that carrier. The CAB changes are made at the Board's own initiative, to ensure that CRS's do not provide unfair competitive advantages to their owners or other airlines.

DATES: *Adopted:* November 9, 1984; *Effective:* November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Robert D. Young (202) 673-6060, Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205 or George S. Baranko (202) 673-6011, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: In ER-1385, 49 FR 32450, August 15, 1984, we adopted comprehensive rules governing the operation of computerized reservations systems by airlines. Among other things, the rules preclude use of carrier identity factors (bias) to order flight displays, forbid unjustly discriminatory CRS access prices, require the disclosure of display criteria, and require the distribution of sales data generated by a CRS to carriers participating in that system.

In EDR-476, 49 FR 35507, September 10, 1984, we proposed two modifications which we believed would improve the operation of our rules. First, we proposed to require vendors to disclose criteria for selection and display of information to any interested person, not just airlines and agents.

We have received comments on this proposal from American Airlines, Inc., Continental Airlines, Inc., the Regional Airline Association (RAA), Trans World Airlines, Inc., United Airlines, Inc., and USAir, Inc. Reply comments were filed

by Delta Air Lines, Inc. and Pan American World Airways, Inc.

We are adopting the rule as proposed. No party has offered good reasons why it should not be adopted and we are confident it will result in significant benefits to the public.

In EDR-476 we also proposed to limit the information CRS vendors must disclose to participating carriers. American, Pan Am and USAir commented on this proposal as well. In addition, Air France, Air New Zealand, British Airways, KLM Royal Dutch Airlines and Viacao Aerea Rio-Grandense (Varig) filed comments. Reply comments were filed by Japan Airlines Company, Ltd. and Lufthansa German Airlines (jointly), Northwest Airlines, Inc., Sabena Belgian World Airlines and Swiss Air Transport Company, Ltd.

While we are adopting the rule essentially as proposed, we find that it must be more carefully explained and its application clarified. As is more fully explained below, the rule will prohibit a CRS vendor from disclosing the international marketing data of any carrier without its consent.

Disclosure of Edit and Display Criteria to Interested Persons

Only TWA and Delta opposed our proposal to require CRS vendors to disclose, edit and display criteria to any interested person, not just subscribers and participating carriers. In their view the need was to distribute the information to any prospective participants in such systems, i.e., travel agents or air carriers, but not to any other interested persons.

Our difficulty with this approach is that it would be far less beneficial to the public than the rule we have proposed. While the benefits of enabling non-participating carriers and prospective subscribers to compare systems would be achieved, other benefits we identified would be lost. Specifically, our proposal would expand the number of persons monitoring CRS practices and increase the probability of having abuses of CRS power brought to the attention of the monitoring agency. In addition, our rule would permit consumer groups to compare the service of the various CRS's, make recommendations on the best systems, and enhance public familiarity with these systems so that consumers may better judge the quality of service rendered. Moreover, neither TWA nor Delta attempted to demonstrate that disclosure to any interested person would be costly or a significant additional burden to CRS vendors.

Most of the comments we received related to an alternative disclosure requirement that would have required CRS owners to distribute information on display criteria and format rules to all participating carriers and subscribing agents, rather than only to those that request it, as currently required. American and Delta opposed the proposal as unduly burdensome. Requiring CRS vendors to mail notice of any minor change in display or editing criteria would involve a massive distribution, since there are more than 8,600 travel agency subscribers and participating carriers. Such a process would be costly and, in all likelihood, the vast majority of subscribers would quickly discard this information.

Moreover, American indicated that it intends to make the information readily available to anyone with access to a SABRE set, which includes almost all major air carriers, by means of a single SABRE entry. This CRS display will be dated so that carriers will be able to note when changes in the information occurred. In its comments United indicates that it too plans to distribute information through its CRS. It was not opposed to full distribution so long as disclosure through its CRS is adequate.

Only Continental and RAA indicated support for a universal disclosure provision. Both parties' positions were based upon the view that it would be more of a burden on carriers and agents to initiate requests than for CRS vendors to provide for universal disclosure.

We will not require universal disclosure at this time. Information on display criteria might be useful to all participating carriers and subscribers, but supporters of this alternative have not shown that all will be equally interested. A rule that requires disclosure only to persons who request information assures that CRS vendors are required to disclose the information only to those that are truly interested.

Likewise, proponents of the alternative have not convinced us that a disclosure-on-request rule will put an unfair burden on subscribers and participating carriers. As we noted in ER-1385, these persons are free to make requests for continuous updating of information on displays. ER-1385 at 27. Indeed, such a request for continuous updating might be incorporated into subscriber or participation contracts. In these circumstances we will not impose further burdens on vendors by requiring them to provide their display information without regard to the interest of the recipient.

The only other matter that has been raised with respect to our disclosure rule is USAir's comment that the word "points" should be changed to "flights" in § 255.4(c)(3)(iii). Actually, the word "flights" was used in our initial CRS rule. The change to the "points" in EDR-476 was inadvertent and the rule will be revised as USAir suggests.

Disclosure of International Marketing Data

Our proposal to preclude CRS vendors and participating carriers from releasing marketing, booking and sales data they generate or receive relating to international operations of any carrier, absent authorization to do so, generated substantial opposition. Much of it is based upon an inadvertent implication in the preamble that the proposed rule would give U.S. carriers marketing information on foreign carriers, but allow U.S. carriers to prohibit CRS vendors from giving foreign carriers marketing data concerning their services. The text of the proposal, however, was written more broadly. It provided that any carrier would be free to preclude the release of data pertaining to its international operations.

Air France, Air New Zealand, Varig, JAL, Lufthansa, and Swissair indicated that they oppose any interpretation of the rule that would allow a U.S. flag carrier, but not a foreign flag carrier, to preclude CRS vendors from distributing its marketing data without its consent. Most of these carriers maintained that they are neither more nor less entitled to the data than are U.S. carriers, and that U.S. carriers are not disadvantaged in their countries, contrary to the sweeping assertions to that effect in EDR-476. They viewed our proposal as an affirmative attempt to handicap them in their competition with U.S. carriers. However, they indicated that if the rule were interpreted to allow any carrier to preclude the release of its information relating to international service, they would generally support it.

We did not intend, in the rule as proposed, to disadvantage foreign carriers vis-a-vis their U.S. competitors. The suggestion to the contrary in the preamble was due to an editorial error. The text of the proposals, however, properly stated the intended result. It provided that the obligation to distribute marketing information on domestic services extends only to participating U.S. carriers and that any carrier may preclude the release of information on its foreign operations to another carrier without its consent.

This result strikes a suitable balance between the need to protect U.S. carriers from significant disavantage and the need to ensure basic fairness in

dealing with foreign carriers. U.S. carriers are at a disadvantage in marketing their services in some foreign countries. These problems have been the subject of discussions between the U.S. and certain governments for some time. Some have been raised in other proceedings. *See* ATC Exhibit 118 in Docket 36595. For example, certain foreign carriers assert that because travel agents in their countries use multiaccess systems (MAARS), there is no potential for them to gain an informational advantage over their U.S. competitors. MAARS systems are basically switches that allow the user to see the internal systems of each of the carriers participating in that system. In principle, the user will book reservations in the internal system of the carrier providing transportation.

The practice, however, may be quite different. Because virtually all carriers include information on the services of other carriers in their systems for interlining and other purposes, a user may "camp", i.e., make all its reservations, in the system of just one carrier. That has sometimes occurred with Tymshare's MAARS system, which is used here. When this happens the carrier whose system is used will have good information on the number of bookings an agent is making on its competitors. Therefore, while the quality of information the foreign carrier has on its U.S. competitors will vary from case to case, and in some instances it may not be very good at all, we are confident that our concern that U.S. carriers may be disadvantaged is warranted. We reject, then, the assertions of British Airways, KLM, Sabena and several other carriers that there is no basis for our proposal.

There is a clear potential for disadvantaging U.S. flag carriers if we make the marketing information available to foreign carriers. Foreign carriers will gain valuable marketing data relating to the U.S. market, in measures that are vastly disproportionate to their participation in CRS systems and any competitive disadvantage they may face if the information is not disclosed. Given the absence of any reciprocal obligation to disclose marketing data generated in their own countries, the conclusion that U.S. carriers could be harmed is inescapable. These considerations are at work in §§ 241.19-6 and 399.10 of our regulations (CFR Title 14) that restrict foreign carrier access to other types of U.S. carrier marketing data. The parallel we drew to those regulations is, therefore, appropriate. The assertion of various commenters that our rules are only based on the fact that foreign carriers do not contribute data, and therefore should not benefit from the end result, gives our rules an unjustifiably narrow focus.

We do not intend, despite the urging of TWA and Pan Am, to use CRS regulation as a means to resolve foreign market access issues. We also reiterate our previous statements that these proceedings are not to be turned into a weapon to redress complaints of U.S. carriers against foreign carriers.

Rather, we seek first to prevent competitive abuses of CRS vendor market power, and second, having adopted general rules to achieve the first objective, to ensure that our rules do not themselves distort competition. British Airways suggests that our basic marketing data rule is broader than necessary to achieve our first objective. It maintains that if CRS ownership allows carriers an unfair advantage over competitors because of access to information on the markets the carriers serve, the solution is to require the CRS vendor to release marketing data in the markets where it competes.

The weakness of this approach is that CRS-generated information does not cover only the markets currently served by the vendor. It also gives the vendor information on other markets, allowing the CRS vendor to assess entry opportunities. Furthermore, sources of interline traffic may be revealed. Given the wide variety of possible uses of such data, the only solutions open to us are either precluding CRS vendors from generating such information or placing everyone on an equal footing by requiring its release. Having determined that precluding the generation or use of such information is not feasible, *see* EDR-466C, 49 FR 11644, March 27, 1984 at 35, the solution is to require disclosure.

In light of the potential harm to U.S. carriers and the need to ensure even-handed treatment for foreign carriers, we find that the best resolution is to prevent the disclosure of CRS generated marketing data in foreign air transportation without the concerned carrier's consent. This approach generally ensures that neither U.S. nor foreign carriers gain a competitive advantage because of access to sensitive marketing information. The only instance where this may not be true is where a carrier competes with a CRS vendor carrier in an international market. In that case, the CRS vendor will have information on the other carrier, but the reverse will not be true. If the carrier does not enjoy a comparable advantge in its home country, there will be some imbalance in the relative positions of the carriers.

Given the fact that the two largest CRS carriers do not compete extensively in international markets, this situation will be relatively rare. In addition, under our rule, the vendor will have access only to information from its own system. We therefore conclude that this concern does not justify abandoning our proposal.

Moreover, our rule does not deny foreign carriers due process or equal protection as British Airways maintains. U.S. and foreign carriers will be treated in the same way under our rule. Neither will gain information on any other carrier's international operations without the other carrier's consent. As to information on purely domestic operations, foreign carriers have no basis to claim an entitlement to that information. Foreign carriers do not contribute to the generation of information on purely domestic services and have no legitimate competitive need for that information.

American argued, *inter alia*, that our rule will increase the burden of compliance by requiring addition programming and data processing. Currently it plans to produce a single itinerary tape. If our rule becomes effective it will have to produce several.

While the possibility of imposing a hardship on CRS vendors is of concern to us, American's general allegations that it will be more burdensome is not sufficient to forestall our rule. American made no efforts to quantify the cost of compliance and has not even alleged that the cost will be substantial. Moreover, none of the other CRS vendors have indicated that they share American's concerns.

American also asserted that we should not adopt the proposed rule because it will reduce the market for sales data and increase its price. While its assertions may be true, they do not provide a basis for not going forward. The sales data rule was never intended to provide an additional revenue source for vendors. Rather, the requirement that CRS vendors make marketing available to other carriers is only necessary because CRS carriers have the ability to gain an unfair advantage over their competitors. The ability to increase revenues by charging for the data is an unintended byproduct.

American argued further than our rule is unenforceable. Apparently it believes that marketing data on U.S. markets could be passed to foreign carriers by a commuter or other friendly carrier. In fact, such conduct might be difficult for a governmental agency to police.

However, our rule as clarified prohibits any release of a carrier's international data without consent. Each carrier will therefore have some degree of control over the dissemination of its international data. Sections 241.19–6 and 399.10 of our rules (CFR, Title 14) are susceptible to the same circumvention, yet no enforcement problems have arisen with respect to those provisions. Of course, should instances of such conduct come to our attention, we could take enforcement action, and affected carriers, both CRS vendors and the carriers whose data are passed, retain their rights to seek an injunction or damages in the courts.

To summarize how this rule should operate: First, as explained above, the intent is that domestic marketing information not be available to foreign carriers. For the reasons already set forth, the various foreign carrier requests that it be made available to them are denied.

Second, both U.S. flag and foreign carriers should be free to preclude the release of data concerning their international operations. Consequently, we are denying TWA's request that we not allow foreign carriers to prevent release of their data. Insofar as Air France's proposed changes would clarify this intent, we are adopting them.

Third, the rule contemplates that CRS vendors will not indirectly disclose international marketing information, by, for example, disclosing the total sales in an international market, plus the sales of one of the two carriers providing service.

Fourth, the rule does not specifically preclude CRS vendors from using other carriers' international marketing data. At the same time, however, it does not sanction their use of it. In fact, our findings in ER–1385 suggest that such use may constitute an unfair method of competition. The rule does not preclude a carrier providing international service from pursuing such a claim or seeking judicial or administrative relief. Similarly, the rule does not address the issue of whether a carrier may obtain its own data relating to its international operations. While we believe that CRS vendors will generally have to make the basic data available for billing verification, it is basically a matter of contract.

Paperwork Reduction Act

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. Those requirements have been submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB and to the Board. Comments sent to OMB should be addressed to: Office of Information and Regulatory Affairs, ATTN: Desk Office for Civil Aeronautics Board, Office of Management and Budget, Washington, D.C. 20503.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96–354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analysis for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

In EDR–476, we undertook an initial regulatory flexibility analysis, and we tentatively concluded that the rule if adopted would not have a significant economic impact on a substantial number of small entities. No one has challenged the analysis or our tentative conclusions. We are adopting the rule proposed in EDR–476 without material modification. We therefore certify that this rule will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Review

Executive Order 12291, dated February 17, 1981, requires every executive agency to prepare a Regulatory Impact Analysis for every "major rule," as defined in the Executive Order.

As an independent agency, the Civil Aeronautics Board is not required to comply with E.O. 12291. Because of the importance of this rule and its expected transfer to the Department of Transportation in connection with the sunset of the Board, we have voluntarily examined whether the proposed rule constitutes a major rule, and we have determined that it does not.

In EDR–476, we tentatively concluded that this rule would not likely meet the definition of a major rule within the meaning of the Executive Order. No one has challenged this tentative conclusion, and we adopt it as final.

Effective Date

In EDR–476, we stated our intention of putting this rule into effect at the same time as the comprehensive rule. We concluded that this would be desirable so as to minimize disruption for CRS vendors; and to prevent duplicative reprogramming. No one has objected to this time schedule if the Board goes forward with the rule. We accordingly find that there is good cause to make the rule effective on less than 30 days' notice. Therefore, we will make the rule effective on November 26, 1984.

List of Subjects in 14 CFR Part 255

Air carriers, Air transportation-foreign, Consumer protection, Travel agents.

PART 255—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 255, *Carrier-Owned Computer Reservations Systems*, as follows:

1. The authority for this amendment is:

(Secs. 102, 204, 404, 411, 419, 1102 Pub. L. 85–726 as amended, 72 Stat. 740, 743, 760, 769, 797; Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502)

2. Section 255.4, *Display of information*, is amended by removing in paragraphs (b)(2), (c)(3) (i), (ii), (iii), (iv) and (d)(2) the phrase "to all subscribers and participating carriers" where it appears, and substituting the phrase "to any person," so that it would read as follows:

§ 255.4 Display of information.

* * * * * *

(b) * * *

(2) System vendors shall provide to any person upon request the current criteria used in ordering flights for the primary displays and the weight given to each criterion.

(c) * * *

(3) System vendors shall provide to any person upon request current information on:

(i) All connecting points used for each market;

(ii) All criteria used to select connecting points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion in paragraphs (c)(3) (ii) and (iii) of this section.

(d) * * *

(2) Each system vendor shall provide to any person upon request all current data base update procedures and data formats.

(Approved by the Office of Management and Budget under control number 3024–0075)

3. Section 255.8, *Marketing information*, is revised to read as follows:

§ 255.8 Marketing information.

(a) With the exception of marketing, booking, and sales data relating to the international operations of any carrier, each system vendor shall make available to all U.S. participating carriers on non-discriminatory terms all marketing, booking, and sales data relating to U.S. carriers that it elects to generate from its system.

(b) System vendors and participating carriers shall not release marketing, booking, and sales data they generate or receive relating to international operations of any carrier, absent authorization to do so by the carrier.

(Approved by the Office of Management and Budget under control number 3024–0075)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-30808 Filed 11-23-84; 1:05 pm]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM80-36-001, et al.]

Generic Determination of Rate of Return on Common Equity for Electric Utilities

November 21, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing.

SUMMARY: By this order, the Commission denies rehearing of Order No. 389. The Commission also clarifies the manner in which the benchmark rates will apply to individual cases after the initial two-year advisory period.

In Order No. 389, the Commission established procedures for determining benchmark rates of return on common equity for electric utilities and for using the benchmark rates in setting allowed rates of return in individual wholesale rate cases.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8015.

I. Introduction

The Federal Energy Regulatory Commission (Commission) has received three requests for rehearing of Order No. 389.[1] [2] This order denies rehearing but grants a request for clarification.[3]

II. Background

On July 18, 1984, the Commission issued a final rule establishing new generic procedures for determining allowed rates of return on common equity for the jurisdictional operations of electric utilities.[3] The rule provides for annual proceedings to determine the average cost of common equity for the jurisdictional operations of electric utilities and a method to update this cost quarterly until the next annual proceeding. These cost of common equity estimates would be used to establish benchmark rates of return on common equity for use in individual wholesale electric rate proceedings.

The benchmark rates of return from the first two annual proceedings will serve only an advisory role in individual rate cases. However, beginning with the third annual proceeding, the benchmark rates will be given the status of a rebuttable presumption. That is, the benchmark rate will be the presumed just and reasonable rate of return for the wholesale operations of all electric utilities filing for rate changes before the Commission. The final rule states three situations in which the benchmark could be rebutted: First, where a particular utility is significantly more or less risky than average; second, where parties settle on a different rate of return; and third, where the Commission determines that a finding of undue discrimination, such as in a situation of price squeeze, requires that a different rate of return be allowed.

III. Issues on Rehearing

We are unpersuaded by petitioners that we should change our rule. The criticisms raised are, in general, misplaced on based upon misunderstandings of the rule. Except as otherwise discussed below, we believe that our final rule adequately deals with the issues raised by petitioners.

A. Generic Determination of Rate of Return

The first issue on rehearing is the allegation that the rule is in conflict with the *Hope* and *Bluefield* court cases.[4] Rhode Island argues that these cases require that the Commission give each utility a rate of return that reflects a weighing and balancing of numerous factors specific to the company and the circumstances under which it filed for a change in rates. It argues that requiring that a significantly different risk be established in order that a company obtain a rate of return different from the benchmark conflicts with these Supreme Court decisions. In addition, Allegheny asserts that the rule conflicts with these court decisions because (1) the procedures are biased in favor of rates of return that are likely to overcompensate utilities and penalize consumers and (2) there is no opportunity for consumers to provide utility specific facts justifying a rate of return lower that the generic rate.

The Commission disagrees. The Commission believes it has established procedures which allow sufficient flexibility to take utility specific information into consideration in arriving at reasonable rates of return on common equity and thereby setting rates that meet the standards of *Hope* and *Bluefield*. First, the final rule merely establishes a procedural framework for generating a benchmark rate of return and using that rate in individual rate cases. The Commission has not established any specific rate of return in this final rule. That will be done in the annual proceedings and in the individual rate cases. Second, Allegheny's allegation of bias toward high rates of return is not supported by reference to any specific portions of the rule. The goals of both the current case-by-case approach and the rule's generic approach are the same: to set allowed rates of return on common equity equal to the cost of common equity. If the procedural bias to which Allegheny refers is based on its view that the rule sets the benchmark rate of return equal to the industry rather than jurisdictional average cost of common equity, we note below that it misreads the rule. Third, the rule provides an opportunity for parties to present evidence on why particular companies may warrant a

---

[1] Order No. 389, 49 FR 29046 (July 25, 1984).

[2] The pleadings were filed by: (1) Allegheny Electric Cooperative, Inc., North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Oglethorpe Power Corporation, Old Dominion Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., South Mississippi Electric Power Association, Southern Maryland Electric Cooperative, Inc., and Wolverine Electric Cooperative (Docket No. RM80-36-001) (Allegheny); (2) Edison Electric Institute (Docket No. RM80-36-002) (EEI); and (3) Attorney General of the State of Rhode Island (Docket No. RM80-36-003) (Rhode Island). Rhode Island also requested leave to intervene out of time. Intervention is not necessary in order to request rehearing of a rulemaking. Thus, Rhode Island's motion is unnecessary.

[3] On September 17, 1984, the Commission issued an "Order Granting Rehearing Solely for the Purpose of Further Consideration" which tolled the period for consideration of the issues raised on rehearing. 49 FR 37056 (September 21, 1984).

[4] *Bluefield Waterworks and Improvement Company v. Public Service Commission*, 262 U.S. 679 (1923); *FPC v. Hope Natural Gas Company*, 320 U.S. 591 (1944).

rate of return different from the benchmark rate. Accordingly, we believe that the concern with the *Hope* and *Bluefield* standards are better addressed in the annual proceedings and in individual rate cases where the presumption can be rebutted, not in the Commission's final rule in this docket.

Further, as we stated in the Notice,[5] section 403(c) of the Department of Energy Organization Act [6] gives us specific authority to use informal rulemaking procedures to set rates under the Federal Power Act. We also indicated that there is ample precedent for using generic procedures for rate of return by other regulatory agencies, including the Civil Aeronautics Board and the Interstate Commerce Commission. Further, the court decisions on this issue were thoroughly reviewed in the 1980 Commission Staff Study.[7] This review, which included the cases cited by petitioners, concluded that the Commission can use generic procedures for the rate of return issue. We continue to believe that this analysis is legally sound.

B. Burden of Proof

The second issue raised by petitioners is that the rule arguably shifts the burden of proof from the filing utility to ratepayers if the latter claim that the benchmark rate is too high. Allegheny notes that the Federal Power Act places the burden of proof on the utility filing with respect to any change in rates.

It should be emphasized that nothing in the final rule shifts the ultimate burden of proof imposed on the filing utility by section 205 of the Federal Power Act. The final rule establishes a presumption that the average cost of capital represents a reasonable rate of return. A utility proposing a rate of return above the benchmark rate has the burden of going forward with evidence and ultimately proving that this higher rate is justified. In contrast, another party seeking to argue that the benchmark is too high need only meet a "burden of going forward" with evidence that tends to rebut the benchmark's applicability. Once this burden of going forward is met, however, the filing utility retains the ultimate burden of proving that the benchmark rate is justified.

C. Overcompensation

Two criticisms of the final rule by Allegheny are related.[8] First, Allegheny claims that the rule is biased in favor of high rates of return that overcompensate utilities. Allegheny cities a study by staff ("Staff Comments"), submitted in this docket on December 22, 1982, which estimated that allowed rates of return in six wholesale rate cases during 1981 and 1982 would have been 3 to 4 percentage points higher under the Commission's original generic rate of return proposal. Second, Allegheny argues that a rule which relies on an industry average benchmark will overcompensate the wholesale operations of utilities which they claim are less risky. Allegheny claims that an industry average benchmark which is based on total company market indicators will not adequately reflect differences in policies between the FERC and State commissions, for example, as regards the treatment of CWIP. Allegheny also argues that there currently are some significant differences in risk, and cost of capital, between utilities related to their relative exposure to nuclear power programs.

Under such circumstances, it is alleged that use of an industry average will confer significant windfall benefits on those utilities with little or no nuclear exposure where risk is less than average.

The Commission finds these criticisms misplaced. Again, these issues are more properly addressed in the annual proceedings and in individual rate cases. As stated above, the intent of the rule is not to increase, or decrease, the rates of return that we allow utilities. The Staff study cited by Allegheny evaluated one specific method of setting generic rates of return, a method which the Commission has not adopted. Allegheny points to nothing in the rule which would automatically lead to a bias in allowed rates of return. Ultimately, the benchmark rates of return derived in the annual proceedings will serve, at most, as rebuttable presumptions that can be disputed in individual proceedings. With regard to the concern that the Commission will set the benchmark at the level of the industry average cost of capital and thereby reflect nonjurisdictional risks leading to biased results, Allegheny is directed to the Notice for the first annual proceeding.[9] There the Commission requests that participants address the issue of the "average cost of common equity for the *jurisdictional* operations of electric utilities" (emphasis added). The Commission also requested that participants specify any assumptions that are needed to relate the estimated cost to the jurisdictional cost.

D. Clarification of "Benchmark in Effect at Time of Filing"

EEI asks the Commission to clarify the time period for application of benchmark rates to individual cases. What is the "benchmark rate of return in effect at the time a rate schedule is filed" (§ 35.6.(a))? Is it the rate which has been identified in the most recent benchmark quarterly adjustment prior to the date of filing? Or is it a rate which applies to the date of filing but which is not announced until a date subsequent to the date of filing?

The applicable rate for individual cases is the most recently determined rate prior to the filing, i.e., the benchmark actually *in effect* when the rate is filed. One of the benefits the Commission anticipates from the rule is a reduction in uncertainty. We previously concluded that this would best be achieved by the benchmark rate being known by all parties at the beginning of each proceeding as the above procedure would do. While the specifics of this procedure will be established in the annual proceedings, the Commission expects something like the following course of events. During the first month after a calendar quarter, the Commission will publish a benchmark rate based on common equity cost data for that quarter. This rate would then be put in effect and applied to rate filings made during the following three months. For example, using data from January through March, the Commission would determine, in April, a benchmark rate that would be put in effect and made applicable to all filings made during May through July. In July, a benchmark would be determined that would be applicable to filings made during August through October, and so on.

E. Additional Proceedings

Finally, EEI suggests that the Commission commit itself to evaluating and reconsidering the rule before letting the presumption become effective after the second annual proceeding. Specifically, EEI recommends that the rule be modified so that the presumption would not become effective until after the Commission completes a comprehensive evaluation of the rule's procedures and the results obtained during the advisory period. It also proposes that this evaluation include an opportunity for public participation.

We see no reason at this time to adopt EEI's suggestion that we commit to some formal review of the working of the rule prior to making it binding. The annual proceedings provide an ongoing opportunity for the Commission to evaluate how the procedures are working. Further, the Commission can always initiate such a review on its own motion or on a motion by some other party if sufficient justification exists at some future time. It seems inappropriate to burden the process with additional, and potentially unnecessary, regulatory hurdles. After all, one of the primary motivating forces behind this rule has been our desire to streamline the regulatory process.

For the above reasons, the Commission denies rehearing. By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30930 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[5] Notice of Proposed Rulemaking, Generic Determination of Rate of Return on Common Equity for Electric Utilities ("Notice"), Docket No. RM80-36-000, issued August 26, 1982, 47 FR 38,332 (August 31, 1982).

[6] 42 U.S.C. 7173(c) (1982).

[7] *Establishing the Rate of Return on Equity for Wholesale Electric Sales: Potential Regulatory Reforms* (December 15, 1980) ("Commission Staff Study").

[8] Allegheny also argues that the Commission should repeal its rules on tax normalization and construction work in progress. Obviously, such action is outside the scope of this proceeding.

[9] Notice of Proposed Rulemaking, Generic Determination of Rate of Return on Common Equity for Public Utilities, Docket No. RM84-15-000, issued July 18, 1984, 47 FR 29987, (July 25, 1984)

18 CFR Part 154

[Order No. 399-A; Docket Nos. RM84-6-003 through 014]

Refunds Resulting From Btu Measurement Adjustments

Issued: November 20, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting in Part and Denying in Part Rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting rehearing of Order No. 399, 49 FR 37735 (Sept. 26, 1984), which implements a decision of the United States Court of Appeals for the District of Columbia by establishing procedures for refunding overcharges resulting from Btu measurement adjustments (Btu refund). The Commission received eleven petitions for rehearing. The Commission is granting rehearing to require offsets of the Btu refund and costs permitted under section 110 of the Natural Gas Policy Act of 1978 and to allow first sellers to request a waiver of a portion of the refund corpus, in certain circumstances. The Commission is denying rehearing in all other respects.

EFFECTIVE DATE: The reporting requirements in ordering paragraphs F, G, and H of this order are effective on January 25, 1985. The effective date for §§ 154.38(h)(3) (vi), (vii), and (viii) of the Commission's regulations is extended until January 25, 1985. If OBM's approval and control number have not been received before that date the Commission will temporarily suspend the effective date. The effective date of the deadline for payment by large first sellers and the repeal of the reporting requirements in ordering paragraphs E, F, and G of Order No. 399 is January 20, 1984. The remaining changes made by this order are effective December 26, 1984.

FOR FURTHER INFORMATION CONTACT: Darrell Blakeway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-5096.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting rehearing of Order No. 399,[1] which implemented *Interstate Natural Gas Association of America* v. *Federal Energy Regulatory Commission (INGAA)*.[2] The Commission received eleven petitions for rehearing.[3] For the reasons discussed below, the Commission is granting rehearing to require offsets of the refund amounts and costs permitted under section 110 of the Natural Gas Policy Act of 1978 (NGPA) and to allow first sellers to request a waiver of a portion of the refund corpus, in certain circumstances, if that corpus is uncollectible from certain parties. The Commission is denying rehearing in all other respects.

II. Background

On September 20, 1984, the Commission issued Order No. 399 (the Btu refund rule) which implemented the decision of the United States Court of Appeals for the District of Columbia Circuit in *INGAA*.[4] Order No. 399 requires all first sellers to make the refunds resulting from the court-ordered adjustment in the method used to measure the energy content of natural gas (i.e., British thermal unit or Btu). First sellers and pipelines are, under Order No. 399, permitted to choose the method for payment of the refund. However, Order No. 399 prohibits offsets of this refund by production-related costs permitted under section 110 of the Natural Gas Policy Act (NGPA). In addition, the rule requires pipelines to pass through refunds in a lump-sum cash payment to those customers actually overcharged. It also requires pipelines to file refund reports with the Commission describing those refunds received and those refunds still outstanding.

Eleven petitioners request rehearing of Order No. 399. On October 24, 1984, the Commission granted rehearing for the limited purpose of further consideration.[5] In addition, the deadline for refunds by large first sellers was extended from November 5, 1984, until ten days after the issuance of the rehearing order. The deadline for small first sellers remains May 3, 1985.

Petitioners argue that the Commission erred in prohibiting offsets of the Btu refund amounts by production-related costs authorized by contract under section 110 of the NGPA (section 110 costs). For the reasons discussed below, the Commission is granting rehearing on this issue and is modifying the refund procedures to require a limited offset of prior-incurred section 110 costs and Btu refunds. The Commission also finds that it has the discretion to waive a portion of the refund that is uncollectible in certain circumstances. In addition, the Commission also concludes that section 110 allowances must be measured under the wet rule. Clarification is also provided to require that an operator designated by a large first seller must pay that large first seller's portion of the refund by the first refund deadline.

Petitioners also raise several substantive issues concerning the refund procedures and whether refunds are required. After careful consideration of these issues, the Commission finds that the petitioners' arguments are without merit. Although the petitioners restate comments and agruments already considered and addressed in the final

[1] 49 FR 37735 (Sept. 26, 1984) (issued Sept. 20, 1984).

[2] 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1016 (1984).

[3] Petitions were filed by the Producers (Mobil Oil Corp., *et al.*), Consolidated Gas Transmission Corp., Kerr-McGee Corp., Panhandle Eastern Pipeline Co. and Trunkline Gas Co. (filing jointly), Mesa Petroleum Co., (a division of Tenneco, Inc.), Southern California Gas Co. and Pacific Lighting Gas Supply Co., (filing jointly), Pitts Oil Co., Sage Energy Co. and Clayton W. Williams, Jr., Co. (filing jointly), Mississippi Chemical Corp., and Inland Ocean, Inc.

[4] In INGAA, the court concluded that charges for gas must be determined by measurement of Btu's under wet conditions rather than the "as delivered" basis as promulgated by the Commission. *See* Order Denying Rehearing and Clarifying Order No. 93, 46 FR 24537 (May 1, 1981) (Order No. 93-A).

[5] 49 FR 43543 (Oct. 30, 1984).

rule, the Commission believes that further explanation of the reasons for its decision will be beneficial.

III. Discussion

A. Refunds are Due

Pitts Oil Company, Sage Energy Company and Clayton W. Williams, Jr., Company assert that the Commission erred in its conclusion that refunds are legally required and that, because of this error, the Commission failed to consider the equitable considerations that weigh against requiring refunds. The Commission disagrees.

In Order No. 399, the Commission ordered refunds under the *INGAA* decision. To do otherwise may have effectively sanctioned ceiling prices higher than the maximum lawful prices prescribed by the NGPA.

In *Consumers Federation of America* v. *FPC*,[6] the court offered guidance to the Commission in evaluating the complex and difficult questions associated with a refund process under the Natural Gas Act:

> In matters of prospective and retroactive effect, *there are large questions of equity and public interest—both for agencies and for courts. While full refund under an invalid order is a sound basic rule, it may be offset, at least in part, by the lack of a mechanism to restore the full status quo ante* * * * [and] the fact that consumers may have had the benefit of some increase in supply that would not have [otherwise] been forthcoming * * *.[7]

That guidance is applicable here.

There are substantial equitable considerations that support a discretionary order of refunds. First, because the Commission promulgated the dry rule, revenues that first sellers collected for their gas exceeded the revenues that they would have received if those revenues had been calculated using the wet rule. Those excess revenues were paid by consumers through higher gas prices at the retail level. Consequently, the Commission believes that fairness and equity require that consumers benefit through a refund of those overcharges. Second, the Commission's order promulgating the dry rule was strongly contested from the day it was first explicitly announced. First sellers who relied on that interpretation knew (or should have known) that their entitlement to the financial benefits from the application of the dry rule would be contingent upon a favorable adjudication by the courts. Many first sellers participated extensively in the litigation that ultimately resulted in the dry rule being struck down. The Commission defended its adoption of the dry rule vigorously. The Commission's position, as well as that of first sellers, was decisively rejected by the United States Court of Appeals, and the Commission's petition for certiorari was denied by the Supreme Court. Having lost that dispute, the first sellers cannot reasonably conclude that they are nevertheless entitled to retain the economic benefits they would have enjoyed had they prevailed.

B. Interest is Required

Pitts Oil Company and other petitioners argue that the Commission erred by requiring first sellers to pay interest on the refund amounts due. They note that the imposition of interest is discretionary and argue that requiring interest is inequitable.

The Commission is not persuaded that equity favors a general waiver of the interest requirement although it does acknowledge that waivers may be appropriate in specific cases. Specifically, interest charges reflect a reimbursement to the rightful owner of the value of the use of funds held by first sellers. Fairness to consumers dictates that first sellers pay interest on the Btu refund amounts owned. The rule uses the Commission's existing regulations for calculating interest because these regulations balance the interests of sellers and purchasers.

C. Section 110 Offsets

The Commission permits first sellers to retroactively collect certain production-related costs authorized by contract under section 110 of the NGPA (section 110 costs).[8] In their comments on the interim rule in this proceeding, several commenters proposed that the Commission permit first sellers and pipelines to offset Btu refunds and section 110 costs. Several commenters opposed the allowance of an offset.

In Order No. 399, the Commission decided that first sellers may not offset Btu refunds with section 110 costs. Essentially, the Commission thought that permitting such offsets would complicate the Btu refund process, undermine contract disputes, and prevent the Btu refunds from reaching as many of the customers actually overcharged as possible. For these reasons, the Commission believed that it was more appropriate to segregate the payment of the Btu refunds from the collection of section 110 costs.

Eight petitioners again raise the issue of offsetting Btu refunds with section 110 costs and argue that the Commission erred by prohibiting an offset.[9] Generally, the petitioners assert that, when the practical considerations on which the Commission's decision is based are examined, none provides sufficient reason for prohibiting offsets.

The petitioners also argue that the Commission failed to consider the effects of prohibiting offsets on the natural gas market. Specifically, petitioners assert that many pipelines have not paid the section 110 costs owed to producers. First, sellers argue that payment for past due section 110 costs will not be made until after decontrol on January 1, 1985, and that the amounts in question will be subsumed within the amounts paid for decontrolled gas because of price bargaining. In contrast, pipelines argue that, because section 110 costs are flowed through to future customers under the purchased gas adjustment clause, payment of the section 110 costs will cause a sizable increase in rates at a time when the gas market is particularly vulnerable to the price effects of deregulation. Both first sellers and pipelines agree that these potential market distortions are mitigated by permitting offsets of section 110 costs and Btu refund amounts, and, therefore, consumers benefit.

The Commission believes petitioners' arguments have merit and consequently, for the reasons discussed *infra*, will require the offsets under certain carefully circumscribed conditions. Before discussing our reasons in depth, however, the Commission wishes to emphasize four main points:

1. The Commission is ordering refunds with interest at prime based on its reading of the implicit mandate of the *INGAA* case.

2. The Commission is requiring an offset of only those *legitimate* production-related costs described in its Order No. 94 series. Parties may still protest any section 110 costs which they believe are not properly offset or are still outstanding.

3. The Commission believes that principles of cost incurrence suggest that amounts owed consumers from Btu adjustments and amounts consumers owe for 110 costs can best be settled through an offset procedure that matches those customers' liabilities and entitlements. In other words, intergenerational inequities are minimized through an offset procedure.

4. The Commission believes that offsetting legitimate section 110 costs against Btu refunds before January 1, 1985, will aid in its continuing effort to minimize the distortions to the market price of gas by requiring that gas costs will be less encumbered by prior-incurred charges. As a result, buyers may better exercise their discretion in seeking the least cost gas supply, thus sending proper signals to the wellhead to reflect market-based prices. *See* discussion of Order Nos. 380 and 380–A (Minimum Bill Rule), *infra*.

The reasons for ordering refunds with interest are discussed under Part III A and B, *supra*. The other three will be discussed seriatim.

Section 110 Costs, Order Nos. 94, et al. The Commission's implementation of its statutory authority under section 110 allows only certain described amounts to be collected by first sellers from pipeline purchasers.[10] Before a first seller may collect production-related costs, there must be express contractual authority allowing the collection. This requirement assures that the production activity is, in fact, being performed and that only amounts necessary to recover the costs of the activity may be collected.

The Commission at first allowed individual applications for these costs. In recognition of the likely burden of this procedure, and in order to remove any unwarranted delay in first sellers receiving section 110 adjustments, the Commission subsequently provided self-implementing rules. However, "mindful of the potential for abuse inherent in any self-implementing regulatory scheme," it warned that field audits would ensure that sellers adhere to the rules.[11]

The typical transaction under the Commission's section 110 rules consists of: The parties' determination of express contractual authorization, performance of the service, submission of a description of charges, billing for the charges, and collection of payments.[12] The purchaser may dispute the charges and ask the first seller to validate the proposed charges before making payment.[13] The written description requires a showing by well or by completion location as to the amount and type of production-related service.[14] First sellers must retain records to identify amounts collected and the basis for their collection.

In issuing its section 110 rules, the Commission also required that payments for certain section 110 costs be collected in installments between March 7, 1983, and December 31, 1984. However, the Commission is aware from the public hearing in this proceeding and other filings that many production-related costs have not yet been paid.[15]

It is in the context of those section 110 rules that the Commission finds the opportunity to better serve the public interest by providing an offset procedure for the timely payment of both the Btu refunds and the collection of legitimate section 110 costs. Before discussing the reasons for availing itself of this opportunity, the Commission wishes to emphasize that the offset procedure does *not* affect the *amount of refunds* owed pursuant to the *INGAA* decision. The offset procedure is a mechanism for accomplishing the refund.[16] Refunds are due and the Commission does not intend to allow the offset procedure to be used to bargain away or escape liability for refunds. Indeed, the Commission is requiring pipelines to report the information provided to them by first sellers to justify section 110 costs under reports mandated in Order No. 94–A *et al.*, and the reports due under Order No. 399, as discussed *infra*.

There are several dockets that present issues relating to the failure to comply, or the impossibility of complying, with the Commission's prescribed schedule for payment of past due section 110 costs.

Mobil Oil Corporation filed a complaint on August 28, 1984 (Docket No. GP84–50–000) alleging a massive failure on the part of the vast majority of the interstate pipelines to pay section 110 costs on the installment required by the regulations.

On September 7, 1984, Transcontinental Gas Pipe Line Corporation filed a petition setting forth a pipeline's view of this situation (Docket No. GP84–53–000) and requesting the Commission to extend the schedule for paying section 110 costs so that it may pay them in 12 monthly installments beginning after verification of the invoice and ending no later than June 30, 1986.

Also, on September 7, 1984, the Indicated Producers (Shell, Citgo, Gulf, Mitchell, Mobil, Sun, Texaco, and Union Oil) filed a petition (Docket No. GP84–51–000) alleging that most interstate pipelines are arbitrarily refusing to pay the section 110 costs, and that the practice is so widespread as to amount to a defiance of the legitimate processes of the Commission. The Producers urged the Commission to direct the pipelines to offset the section 110 costs against the Btu refund payments or to order the pipelines to pay the section 110 costs within 30 days after receipt of billings from a producer. Tennessee Gas

---

[6] 515 F.2d 347 (D.C. Cir. 1975).

[7] 515 F.2d at 359 (emphasis supplied).

[8] 18 CFR 271.1104(e) (1984). *See generally*, Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act, 48 FR 5152 (Feb. 3, 1983) (Order No. 94–A) (Final Rule and Order On Rehearing of Order No. 94); 48 FR 24039 (May 31, 1983) (Order No. 94–C) (Order Denying Rehearing and Denying Petitions for Stay); 49 FR 565 (Jan. 5, 1984) (Order No. 94–E) (Clarification of Order No. 94). *See also*, Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978, and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978, 48 FR 5166 (Feb. 3, 1983) (Interim Rule); 48 FR 44495 (Sept. 29, 1983) (Order No. 334) (Final Rule and Order Granting in Part and Denying in Part Rehearing of Interim Rule); 49 FR 56 (Jan. 3, 1984) (Order No. 334–A) (Order Denying Application for Rehearing of Order No. 334 and Denying Requests for Stay of Order No. 334).

[9] Pennzoil Co., Mesa Petroleum Co., Pogo Producing Co., Consolidated Gas Transmission Corp., Tennessee Gas Pipeline Co., Kerr-McGee Corp., Pitts Oil Co., Sage Energy Co., and Clayton W. Williams, Jr., Co.

[10] Section 110 of the NGPA provides in pertinent part:

> [A] price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under [Title I] if such first sale price exceeds the maximum lawful price to the extent necessary to recover—
>
> * * * any costs of compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or other similiar costs, borne by the seller and allowed for, by rule or order, by the Commission. Section 110(a)(2). *See* note 8, *supra*, at 7; *see also* Regulations Implementing Section 110 of the Natural Gas Policy Act, and Establishing Policy Under the Natural Gas Act, 48 FR 5190 (Feb. 3, 1983) (Order No. 94–B) (Docket No. RM80–47–003) (issued Jan. 24, 1983); Order Denying Rehearing and Denying Stay of Order No. 94–B, 48 FR 24051 (May 31, 1983) (Order No. 94–D) (Docket Nos. RM80–47–003, *et al.*) (issued May 24, 1983); 49 FR 565 (Jan. 5, 1984) (Clarification of Final Rule) (Docket No. RM80–47–002) (issued Dec. 28, 1983) (Order No. 94–E); Regulations Implementing Refund Procedures under Subpart K of Part 271 for Production-Related Costs, 48 FR 44492 (Sept. 29, 1983) (Order No. 333) (Docket No. RM83–6–000); 48 FR 44495 (Sept. 29, 1983) (Final Rule and Order Granting in Part and Denying in Part Rehearing of Interim Rule) (Docket Nos. RM80–73–000, *et al.*) (issued Sept. 27, 1983) (Order No. 334); 49 FR 56 (Jan. 3, 1984) (Order No. 334–A) (Order Denying Application for Rehearing of Order No. 334 and Denying Requests for Stay of Order No. 334) (Docket Nos. RM80–73–004, *et al.* and RM80–74–004, *et al.*) (issued Dec. 27, 1983).

[11] 48 FR 5152, 5160 (Feb. 3, 1983). The Commission stressed that the collection of an amount not so authorized would be a statutory pricing violation with potential civil and criminal penalties under sections 504(b)(6). *See also* 48 FR 5152, 5170 (Feb. 3, 1983). The Commission established a Production-Related Costs Board that focused primarily on the obligation of sellers to justify any section 110 allowance in response to staff audits. The procedure allows a resolution of disputes on the amount of refunds that may be due if the seller collects unauthorized amounts. A complaint filed pursuant to § 385.206 activates the Board if an allowance is thought to be charged, collected or otherwise not paid in violation 18 CFR 271.1104. Any person or party can so file.

[12] *Id.* at 5161–62.

[13] *Id.* at 5162.

[14] 18 CFR 271.1104(f) (1984).

[15] Tr. 46, 66, 92, 117–119, 125–126. In the matter of: Refunds Resulting From Btu Measurement Adjustments. Docket No. RM84–6–000, Public Hearing of May 24, 1984.

[16] *See* Cities Service Gas Co. v. FPC, 535 F.2d 1276, 1290 (D.C. Cir. 1976); Belco Petroleum Corp. v. FERC, 589 F.2d 680, 686 (D.C. Cir. 1978).

Pipeline Company filed a pleading in response to the Indicated Producers' Motion, supporting their request for offsets, and moving that the petition in Docket No. GP84-51-000 be consolidated with Mobil's Complaint (Docket No. GP84-50-000) and the petitions for rehearing of the Btu rule (Docket Nos. RM84-6-001, *et al.*), i.e., the instant proceeding.

The Commission will address the issues raised in the other proceedings in due course. However, to the extent the pleadings assert uncontested facts, the Commission will rely on them to conclude that (for whatever reasons) substantial portions of first sellers' bills for previously unrecovered section 110 costs have not yet been paid, and will probably not be paid before January 1, 1985.

Principle of Matching Cost Incurrence. Order No. 399 expressed concern that the Btu refunds would not reach the customers actually overcharged if offsets were allowed. However, requiring the offset mechanism would come closer to matching the customers who are entitled to Btu refunds with the customers who received the benefits or caused the incurrence of section 110 costs.

While Btu refunds are owing for gas delivered from December 1978 through December 1983, payments under the "dry" rule for that five year period were, for the most part, collected from gas customers in 1982 and 1983, through purchase gas adjustment clauses (PGA) after Order No. 93 became final and effective in late 1981.[17] Order No. 399 required that those customers actually overcharged in 1982 and 1983 were to receive the Btu refund amounts. The retroactive section 110 costs that first sellers and some pipelines seek to offset are for services rendered in 1980, 1981, 1982, and *early 1983*. Under Order Nos. 94 *et al.*, the Commission directed that payment of certain section 110 costs incurred prior to March 1983 be passed on to customers in equal installments, prior to January 1, 1985. Payment of section 110 costs was allowed on a current basis beginning in March 1983. As a result, the customers who will pay for section 110 costs incurred before March 1983, may not be the same customers who incurred the costs. As a practical matter, most pipelines did not begin paying the costs on a current basis in the spring of 1983. In fact, testimony in the public hearing on May 24, 1984, indicated that, at that time, some pipelines had still paid *no* production-related costs.[18] Consequently, for purposes of ordering and discussing the offset, prior-incurred section 110 costs will constitute any costs properly owed on gas received on or before January 19, 1984,[19] where such costs have not been paid to first sellers prior to the issuance of this order.

The concern here should not be that these dates are different but rather to what extent customers who may be intitled to refunds because they were billed in that time period left the pipeline systems during 1982, 1983, or 1984. Simply put, if a customer was purchasing from a given pipeline during all three years (1982–84), and that pipeline was obligated to pay section 110 costs to its first sellers, that customer both paid for gas measured on a dry basis and was liable for section 110 costs. Therefore, the offset will leave that customer whole.

The fact that the volumes purchased by that customer may have fluctuated over the period is not troublesome.[20] Current regulatory methods involve designing rates on a test period basis. That method allows rates to be charged on the assumption that there will be a reasonable relationship between costs incurred and revenues collected. Any closer matching would require a major departure from the Commission's current regulatory scheme.

Further, if system-wide volumes drop, the unit costs of individual services will increase. The aggregate impact on a given customer will depend on the change in that customer's load relative to the total volumes moved by the system. Such subtleties are impossible to balance precisely. The assumption is that, although these fluctuations will work to the benefit of the customer part of the time, and to its detriment other times, over time the balance is equitable.

Consequently, for purposes of considering the impact of an offset, variations in gas takes by particular customers do not militate against the offset.[21] Also, changes in customers of local distribution companies are not a sufficient basis for rejecting the offset.

With an offset mechanism, the Commission is concerned that customers who left the system after Btu charges were passed through in 1982 and 1983 may be denied Btu refund benefits to which they would otherwise be entitled under Order No. 399. However, the data does not suggest this is a major problem.[22] Although the Commission decided to pass through section 110 costs incurred from 1980 to 1983 to customers on the system in 1983 and 1984, it would nonetheless be more equitable for these prior-incurred costs to be borne, as nearly as possible, by the customers who benefited from the service. Indeed, the Commission did not intend that prior-incurred section 110 costs be passed through to customers after January 1, 1985. Since, to date, many pipelines have not passed on these costs onto their customers, it would seem that this prospect is imminent. The offset mechanism will, at least, reduce the amount of section 110 costs which must be passed through to customers after January 1, 1985. The longer the pass through of section 110 costs is delayed, the greater will be the disparities between those who pay the costs and those who benefited from them. This intergenerational effect is significantly aggravated in the case of prior incurred costs by the increased ability of partially supplied customers to shift their load from one pipeline-supplier to another pursuant to Order

[17] *See* Rules Generally Applicable to Regulated Sales of Natural Gas, 45 FR 48077 (July 23, 1980) (Order No. 93); Order Denying Rehearing and Clarifying Order No. 93, 46 FR 24537 (May 1, 1981) (Order No. 93–A); Order Vacating Partial Stay and Amending Regulations, 47 FR 814 (Jan. 6, 1982) (issued Dec. 24, 1981).

[18] Tr. at 80, 82, 117, 119, 125–6, 134, 166–7, and 174–6, In the Matter of: Refunds Resulting From Btu Measurement Adjustments, Docket No. RM84-6-000, Public Hearing of May 24, 1984.

[19] On January 19, 1984, the Commission rescinded the dry rule. 49 FR 3072 (Jan. 25, 1984). Thus, choosing this date results in congruous end dates.

[20] Prior to Order No. 380, minimum bills encouraged stable takes.

[21] Available data collected by the Energy Information Agency from FERC Form No. 2 indicate that, for the years 1980–1983, customers' purchases tended to drop, albeit in rough proportion to each other. This probably in large part reflects conservation practices and economic recession effects.

[22] For example, according to data compiled by the Energy Information Administration (EIA) from FERC Form 2 reports submitted by the interstate pipelines, no customer left Columbia's system in 1982, and only one customer, Roy Proffitt, left in 1983. This customer bought 56,137 Mcf of gas from Columbia in 1982 whose total 1982 sales for resale in that year amounted to 928,422,406 Mcf. No customer left ANR's system in 1982, and only two customers left in 1983: Town of Home, whose 1982 purchases from ANR were 2,120 Mcf and Texas Eastern Transmission which purchased 377,000 Mcf in the same year. This is a total of 379,120 Mcf out of ANR's total 1982 sales for resale of 548,418,527 Mcf. (Tetco, however, appears to have bought gas from ANR only in 1982. It does not appear as a purchaser in 1980, 1981, or 1983.) In 1982, only two customers left the Trunkline system, and none in 1983: Houston Texas Pipeline, which bought 288 Mcf in 1981 and Tennessee Gas Pipeline, which bought 13 Mcf in the same year, a total of 311 Mcf out of Trunkline's total sales for resale of 499,230,584 Mcf. EIA does not have these data for Transco's 1981 sales for resale. However, no customers left the system in 1983. It can readily be seen that the customers dropping off of these various systems account for a negligible percentage of each pipeline's total sales for resale. (EIA has just begun to compile disaggregated sale for resale data as submitted in the Form 2 reports and not all of the data have as yet been verified.)

Nos. 380 and 380–A.[23] The offset achieves a closer matching of those who benefited from the section 110 costs with those who will be required to pay them.

Under Order Nos. 94–A, *et al.*, the customers who will pay for section 110 costs may not be exactly the same customers who caused the incurrance of those costs. This occurs because of the dynamic nature of each customer's demand requirement over time. Nonetheless, if these costs can be recovered now through an immediate offset, the likelihood is greater that those customers who pay the costs are those customers who actually caused their incurrance. Hence, there would be less intergenerational inequity if immediate offset is implemented.

It is clear, therefore, from the aspect of intergenerational equity that immediate offset provides a far superior result then would occur if immediate offset were not permitted. Because immediate offset provides for a closer association between cost causation and cost responsibility it is clear that an offset is the most efficient and equitable method for distributing Btu refunds and ensuring the prompt collection of already incurred section 110 costs.

Impending Partial Decontrol at the Wellhead. In adopting the offset mechanism for accomplishing the Btu refund, the Commission is also considering the public interest in the context of current economic circumstances and in the context of current statutory and regulatory schemes.

On the first of January, 1985, the Natural Gas Policy Act mandates that the price of the large portion of flowing natural gas be deregulated at the wellhead. The purpose of the deregulation is to solve a serious and recurrent problem which had existed in the natural gas market for years. That problem was the inability of the interstate market to achieve a balance between supply and demand. In order to achieve that balance in the newly deregulated marketplace, the market price should be as "pure" as possible, i.e., undistorted by costs unassociated with *current* supply. Only through a "pure" market price can the competitive marketplace foster the goals Congress intended well-head deregulation to achieve.

The Commission has been concerned for some time that the price of gas reflected in the purchase gas adjustment filings of pipelines reflect as nearly as possible the cost of gas at the wellhead. As discussed *supra*, the Commission tailored the Order No. 94–A series to insure that production-related costs which accrued as a result of gas sold during previous periods did not distort the price of gas after January 1, 1985.

Specifically, Order No. 94–A was concerned with:

> * * * prevent[ing] any large scale economic dislocations that may result from any one seller or group of sellers attempting to recover the allowances for prior costs in one lump sum or a few large payments.[24]

On January 24, 1983, the impact of decontrol on the collection of generic allowances was uncertain. Consequently, the collections were to be made

> under a schedule of payments that ensure[d], as nearly as possible, that the amounts would be paid in equal installments.[25]

As noted above, these payments have not, for the most part, occurred. Some pipelines have passed on prior-incurred production-related costs to their customers; others have not. To the extent that prior-incurred production-related costs are still unpaid, the Commission is faced now with the prospect of having those costs appear as incremental increases in the cost of gas after January 1, 1985. The Commission had intended to avoid this result.

The Commission understands that the aggregate of the producers' claims for section 110 costs may approximate the aggregate of the producers' liabilities for Btu refunds. Thus, the offsets will spare consumers from potentially large rate increases in early 1985 and will avoid the transmittal of false expectations about future natural gas prices by the relatively painless method of using their Btu refund credits as an offset. The gas producers will be able to settle their long-past due accounts for section 110 services rendered and their liability for Btu refunds without disrupting current or future natural gas prices. The pipelines will be able to match these accounts with first sellers and consumers and enter the era of decontrol and enhanced competition without the burden of attempting to pass through producers' bills for services rendered years ago.

The Commission's concern with this issue is evidenced by a filing of Tennessee Gas Pipeline Company in Docket No. RP85–3–000, dated October 3, 1984, for a procedure to permanently revise its FERC Gas Tariff PGA provisions to establish an extraordinary gas subaccount to record amounts in excess of $1 million which Tennessee would be required to pay for gas supplies as a result of Commission or court action. Under this proposal, Tennessee would calculate individual customer surcharges based on Tennessee's sales to that customer during the period to which the extraordinary payment pertained. Tennessee's two justifications for this proposal were that radical changes in purchase patterns will occur for some of its customers since the period to which the retroactive charges apply and that the recovery of such large retroactive payments through the current PGA mechanism would result in a distortion of the current gas markets. In support of its proposal, Tennessee noted Columbia Gas Transmission, a pipeline customer, purchased approximately 14 percent of the gas sold by Tennessee to jurisdictional customers during August 1980–1983, compared to only seven percent in the first six months of 1984. Use of the normal Account 191 mechanism to recover Order No. 94–A retroactive payments would allow customers with relatively declining purchases to bear *less than* their "fair share," and require customers with relatively higher purchases to bear *more than* their "fair share."

Consolidated Gas Transmission Corporation intervened in support of Tennessee's proposal with this qualification:

> While Movant supports Tennessee's proposed methodology, the simplest and most efficient approach to this problem is to permit pipelines to offset Order No. 94 payments against Order No. 93 refunds received from producers.[26]

Another intervenor, Niagara Mohawk Power Corporation, expressed concern that absent the direct billing mechanism, its customers "would be paying a share of the retroactive costs properly attributable to past sales to Columbia's customers. The retroactive costs are decidedly different than normal refunds

[23] Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Bill Provisions, 49 FR 22778 (June 1, 1984) (Order No. 380); Order Denying Rehearing ad Granting in Part Applications for Stay, 49 FR 31289 (Aug. 6, 1984); Order Denying Rehearing and Granting Clarification, 49 FR 43635 (Oct. 31, 1984) (Order No. 380–B); Order on Rehearing Reaffirming Application of Rule to Minimum Take Provisions and Denying Requests for Waiver, 49 FR 43825 (Oct. 31, 1984) (Order No. 380–C). *See also*, Natural Gas Pipeline Company of America, 28 F.E.R.C. ¶ 61,174 at 61,332 at n.15 (1984): "* * * we fully anticipate that companies with more than one supplier will "shop" for the cheapest source of supply. But we also must be aware of the potential effects of such swinging on those gas purchasers who lack these competitive advantages."

[24] 48 FR 5152, 5169 (Feb. 3, 1983).

[25] *Id.* at 5169.

[26] Motion of Consolidated Gas Transmission Corporation for Leave to Intervene in Support of Direct Billing Proposal in Docket No. RP85–3–000 at page 3.

that would be flowed through in PGA filings." [27]

On November 5, 1984, in Docket No. RM85–14, Natural Gas Pipeline Company of America (Natural) filed a petition for authority to institute a special, one-time, lump sum billing procedure to recover from Natural's customers retroactive payments for "production-related costs" paid by Natural to producers by December 31, 1984. Natural proposes to recover approximately $140 million in retroactive payments from its customers 15 days after the latter of February 1, 1985, or the date on which both the Docket No. RP83–68 and South Georgia refunds have been made. Natural asserts that, because approximately $120 million is owed its customers in these proceedings and another $60 million in Btu refunds will be refunded to its customers, its customers would have sufficient funds to make this payment. Natural's justification for this approach is similar to that offered by Tennessee.

In anticipation of statutory changes on January 1, 1985, considerable negotiation will occur between pipelines and producers and between producers and end users. This contract price negotiation should result in a relatively undistorted market price for gas. To the extent that historical costs are allowed to be included in these contract price negotiations and will be reflected in the base price from which these negotiations stem, consumers will be ill-served. The Commission's concern is that without an offset, legitimate production-related gas costs incurred in the past would not be paid by customers in the system during the period of incurrence, but rather would be paid by present and future customers who received no economic benefits. Those costs, while authorized under the Order No. 94–A series and owed under contracts, are nonetheless inappropriate signals to the market in 1985, and, therefore, inconsistent with the Commission's goal of achieving a balance in supply and demand through the workings of a competitive market at the wellhead.

The Commission's attempts to work toward an undistorted market price for gas at the wellhead is reflected in the Order Nos. 380 and 380–A which removed variable costs from pipelines' minimum commodity bills. Prior to Order No. 380, minimum commodity bills insured pipelines that their customers would pay for a minimum amount of gas and system capacity regardless of their needs and whether or not cheaper gas was available.

By removing the variable costs from minimum commodity bills, Order Nos. 380 and 380–A significantly changed the bases for purchasing decisions across the industry. Essentially, the economic penalty for changing suppliers was substantially reduced. Consequently, partially supplied customers and customers with alternate fuel capability are much freer to make purchasing decisions based on price, and, in fact, have probably done so.

The data to demonstrate this phenomenon are not yet available. However, in seeking a stay from the court of the Commission's Order No. 380, the "Minimum Bill Rule," [28] the pipelines acknowledged that proof of switching before the fact was impossible, but they assured the court that "it is overwhelmingly likely that purchasers of gas *will* 'swing' a substantial amount of their purchasers away from their current pipeline suppliers, next contract year, if freed from contractual obligations by [Order No. 380]." [29] The Court denied the stay applications by Order of September 19, 1984, and refused to rehear its denial by Order of October 18, 1984. Thus, Order No. 380 is in effect and minimum bill tariff provisions are unenforceable as to variable costs.

The Commission's methodology for accomplishing refunds is carefully weighed in light of this new purchasing freedom. If production-related costs are flowed through the PGAs, it is entirely possible that partially-supplied customers will be able to avoid those charges by changing suppliers. Indeed, the fact that PGA periods are staggered among pipelines further increases the opportunity for such avoidance. It is not the Commission's intent that the combined effects of its decisions should inadvertently or purposely result in full requirements customers bearing the brunt of prior charges because they cannot leave the system.

The Commission is concerned, therefore, that one result of forbidding an offset would be that captive or full requirements customers may shoulder more than their proper share of the burden of prior costs incurred on the system. The Commission believes that when most of the distortion is taken out of future PGAs (which distortion has resulted from prior Commission approval of certain costs), the threat that partially supplied customers may leave the system will be greatly reduced and this should better protect full requirements customers. The offset mechanism, the Commission believes, will help prevent the possibility of partially supplied customers escaping liability of their share of past section 110 costs.

First sellers have the option of pursuing their contract rights at law in order to collect the costs owed to them and/or to engage in settlement negotiations with the pipelines over the issue of what costs are owed. Arguments are raised that, because of current market conditions, any amounts resulting from such negotiations or litigation resulting in production-related costs being paid to the producer would likely be paid by pipeline shareholders rather than consumers. Specifically, the argument is that the marketplace would not bear the increase in price at the burner tip which would result from the inclusion of these costs. If that were the case, the pipeline shareholders would have to pay the costs themselves or lose markets.

If the Commission, on the other hand, requires Btu refunds to be offset by production-related costs, it is not the shareholders who would bear the costs but rather the consumers which originally caused their incurrence. As a matter of equity, then, the question is whether the offset procedure would work to the detriment of consumers. In response, it is important to note that the production-related costs here are costs which have actually been incurred for past periods and which are authorized under the Commission's regulations. Consumers have had the benefit of the services and should bear the costs associated with those services.

To the extent market restraints exist and shareholders must subsidize production-related costs which occur either outside of or over and above the offset, consumers have only rightfully been compensated for their pipelines' unfortunate market position. Either way, it would seem that the rights of the consumers are being carefully protected.

Calculation of the Offset. The Commission recognizes that the dollar amount of production-related costs owed under numerous pipeline first

[27] Petition to Intervene of Niagara Mohawk Power Corporation in Docket No. RP85–3–000 at page 3.

[28] *See* Note 23, *supra*, at 19.

[29] Suggestion for Rehearing of the Order of September 19, 1984, Denying Motion for Stay and Suggestion for Rehearing En Banc, filed September 16, 1984, by ANR Pipeline Company in Wisconsin Gas Company, *et al.* v. FERC, D.C. Cir. No. 84–1358 *et al.*, at 4. *See also* the Motion of Great Lakes Transmission Company for Stay Pending Review of Federal Energy Regulatory Commission Orders Invalidating Previously Approved Tariff Provision, filed August 13, 1984, in Wisconsin Gas Company v. FERC, at p. 22 ("Natural [Gas Pipeline Co.] has advised Great Lakes that it is not planning to take any volumes for the remainder of the contract year.").

sellers' contracts remains in dispute. [30] This issue is of great concern to the Commission in allowing and fashioning an offset procedure. Only legitimate production-related costs should be offset against the Btu refunds.

Presumably, certain amounts of production-related costs which pipelines and the first sellers have resolved have been or are being paid under existing payment agreements. However, if certain undisputed costs have not been recovered or are not presently being recovered consistent with a Commission approved mechanism, they must be offset against the Btu refund.

If collection of past production-related costs were the only goals of the offset, it would be best achieved by allowing producers to offset the full amount of production-related costs claimed. However, the pipelines claim that the production-related costs appear to be overstated for any number of different reasons. [31] To the extent there is validity to any of the pipeline's reasons for not paying the full amount, allowing full offset would understate the Btu refunds.

This procedure does not attempt to resolve all production-related cost issues. This leaves pipelines and purchasers free to dispute the costs in a proceeding which the Commission has designed specifically to deal with these costs. One purpose of this proceeding is to assure that only legitimate production-related costs are offset from Btu refunds. The Commission will order further Btu refunds if it finds that production-related costs have been overstated for purposes of the offset.

In light of all these considerations, the Commission will extend the deadline for large first sellers to make Btu refunds to the pipelines until December 31, 1984, and to offset all of their unpaid and undisputed billings for section 110 costs rendered before January 19, 1984, the date the Commission rescinded the "dry" rule and reinstated the "wet" rule. Therefore, the amount refunded by a first seller shall be the difference between the Btu refund amount as calculated under Order Nos. 399, *et seq.* and the unpaid but undisputed billings for section 110 costs.

Procedures. The Commission stated in Order No. 399 that permitting offsets will complicate the Btu refund process. On reconsideration, however, and in the light of expected market conditions and compelling equities, the Commission has devised administrative mechanisms for requiring legitimate section 110 costs to be paid by means of offsetting Btu refund obligations. These procedures are not unduly complicated and assure that the Commission and interested consumers will have sufficient information concerning the offset transactions to identify any section 110 costs that have been improperly paid or any undercredited Btu refund amounts. The ability of interested parties to monitor payments of section 110 costs should not be affected by whether those payments are made by checks from the pipelines or by credits for Btu refund obligations owed to the pipelines. The standing and opportunity of consumers to protest the payment of section 110 costs and their recovery by pipelines through PGA clauses will not be affected by whether such payments are made by cash or by offset.

In Order No. 399, refunds were due by the first seller either on November 5, 1984, in the case of large first sellers, and on May 3, 1985, in the case of small first sellers. [32]

Pipelines had to file refund reports by December 18, 1984, for the first set of refunds they received (or should have received) on November 5, 1984, and by June 17, 1984, for the refunds due by May 3, 1985. A final refund report was due on January 5, 1967, to cover refunds made after May 3, 1985. These reports were to identify the first sellers who had made refunds, and those who had not, the amounts received or due, broken down by seller into principal and interest, and reasons for non-payment, where applicable.

A revised § 154.38(h) [33] covered the pass-through of the Btu refund amounts by interstate pipelines, and related reporting requirements. This revised section essentially required the pipeline to identify those customers who actually paid the Btu overcharges, the amounts they paid, and then to refund that amount plus interest to the overcharged customer, regardless of whether that customer was still on the pipeline's system.

Based on the Commission's decision to require first sellers and purchasers to offset the Btu refunds with undisputed amounts owing retroactively under section 110 of the NGPA, the refund, reporting and pass-through requirements need modification. There are several reasons for this.

First, while the Btu refund amounts due by a first seller should be readily ascertainable, once the volumes of gas sold are agreed upon, the section 110 cost allowances may not be so easily determined. The section 110 cost allowances will vary, depending on such factors as length of gathering lines, actual costs incurred in providing services, and specific contractual arrangements. Therefore, in requiring the offset, the Commission will recognize and make provision for offsets in which both Btu refunds and section 110 cost allowances are sums certain.

The second concern is over the actual or implied pass-through of the retroactive section 110 costs. When a pipeline attempts to pass section 110 costs through in its PGA, intervenors and Commission staff have an opportunity to scrutinize and object to the imposition and level of these costs. [34] When a pipeline offsets, it would not have to reflect the amounts of the section 110 costs offset in its PGA, since it is not attempting to pass them through. Thus, the parties which might otherwise seek to challenge these amounts would be left without a convenient forum in which to challenge section 110 costs, even though they are directly affected by the offset (since it eliminates a refund they would otherwise have received). The Commission therefore believes that it must provide a mechanism by which the pipeline's customers, Commission staff, and other interested parties can review and challenge the section 110 costs for

[30] Order No. 399 noted that the Commission's section 110 rules are pending on appeal, while the Btu refund obligation arises as the result of a court decision. The concern is that the producer's claims for section 110 costs are subject to modification or extinguishment by the courts, while their liabilities to make the Btu refunds have been finally established by the courts. Thus, the producers are asking to offset an inchoate or contingent claim against a final, adjudicated liability.

Nevertheless, under the schedule prescribed by the Commission, collection of the section 110 costs should be completed by December 31, 1984, long before the Fifth Circuit decision is expected to be rendered in the pending appeal of Texas Eastern. Texas Eastern Tranmission Corp. v. FERC, Docket No. 83–4360 (5th Cir. 1984). The Commission has refused to stay its section 110 rules. The Fifth Circuit has not granted a stay. The Commission's collection schedule and deadline were not appealed. So unless the pipelines meet the December 31 payment date, or the deadline for paying is extended, the retroactive section 110 charges are due and payable even though they are still subject to judicial review. The mere fact that the rule is pending judicial review does not mean all production-related costs are in dispute.

[31] In response to the producer's pleas for prompt payment of their claims, various pipelines recited instances where claims for section 110 allowances were clearly in error. Delivery distances were found to be inaccurate. Charges were billed for periods when wells were not producing. Explicit contractual authority did not exist for certain claims. However, the "massive failure" of the pipelines to pay any substantial part of the billings from producers for section 110 allowances is not based on pipeline claims that the bills from producers, in general, are not lawfully owed.

[32] Small first sellers were required to notify pipelines by November 5, 1984, of their intent to defer payments of refunds until May 3, 1985. The deadline for notification is extended by this order to December 31, 1984.

[33] 18 CFR 154.38(h) (1984).

[34] *See* notes 8 and 10, *supra* at 7–11.

past periods, where the costs are not part of the PGA or a pipeline's rate case.

Therefore, in summary, for Btu refunds, the Commission is requiring the same reports required in Order No. 399 from intrastate and interstate pipelines. Where section 110 costs are offset against the Btu refund, interstate pipelines must include in their reports all the information required in section 271.1104(f) concerning section 110 costs. To ensure that first sellers and pipelines have agreed to the section 110 cost allowances that offset the Btu refund, pipelines must file a first seller concurrence statement as part of their reports. These reports are detailed in ordering paragraphs F, G, and H.

D. Lump-sum Cash Payments by Pipelines

Panhandle Eastern Pipe Line Company and Trunkline Gas Company request that the Commission eliminate the automatic and mandatory requirement that pipelines make lump-sum cash refunds to those customers actually overcharged. Instead, petitioners state that the Commission should pass the refunds through using the pipelines' PGA mechanism. They argue that, by failing to pass these refunds through a pipeline's PGA the Commission is foregoing an opportunity for significant rate reductions and market preservation. In addition, they argue that matching the Btu refunds to those customers actually overcharged is not possible and that there is no reason to believe that the PGA mechanism will produce inequitable results.

The Commission carefully considered these arguments in the final rule and on rehearing and is retaining the requirement that interstate pipelines must make lump-sum cash payments to those customers actually overcharged for those Btu refund amounts not offset under the procedures established in this order.

The Commission recognizes that the Btu refund might temporarily disrupt the current gas market regardless of the payment method used. Since decontrol of a large proportion of gas supplies takes place at the end of this year, the Commission has sought to limit that disruption. A lump-sum cash payment is less disruptive to the gas market than the use of the PGA because a cash payment to past customers does not adjust current prices and will consequently not send false price signals to current gas customers. In any event, the Commission believes that the offset procedures established in this order will alleviate most of these petitioners' concerns.

E. Btu Measurement Adjustments to Section 110 Charges

Southern California Gas Company and Pacific Lighting Gas Supply Company point out that some first sellers have been paid for section 110 costs and allowances that are expressed in terms of cents-per-MMBtu measured under the dry rule. They request that Order No. 399 be amended to require refunds from first sellers if they have recovered costs that exceed the maximum section 110 allowances under the Commission's regulations, recalculated under the wet rule. Although these costs may be included in calculating the section 110 costs to be offset with Btu refunds, the Commission is not establishing procedures in this order to refund those costs.

The Commission agrees with the petitioners that, if payments of section 110 costs, recalculated with reference to the wet rule, have exceeded the maximum allowable costs under the Commission's regulations, refunds are in order. Although the court decision that gave rise to this proceeding [35] did not speak to section 110 allowances, it would be administratively inconvenient for the Commission and the regulated industries to utilize a different Btu measurement under section 110 than in the other sections of the NGPA. Thus, the Commission directs the pipelines and first sellers to review the section 110 billings, paid and unpaid, to ensure that they do not exceed the maximum allowances, determined with reference to the wet rule.

The Commission will not, however, require that any refunds that are due from first sellers, as a result of recalculating section 110 costs under the wet rule, be made in conjunction with the refunds required in this proceeding. These refunds can be made in due time, without imposing any additional burdens of calculating and reporting on those affected by the stringent deadlines in this proceeding. However, first sellers and pipelines may include these refunds when implementing the offset procedures established in this order.

F. Direct Sales

Mississippi Chemical Corporation asks that the Commission reconsider its decision not to provide procedures for flowing the Btu refunds through to direct sale customers of interstate pipelines. Since rates to direct sale customers are established by contract and are not subject to Commission approval, any entitlement of direct sale customers to a portion of the Btu refunds received by the pipelines depends on the terms of their contracts. The direct sales are not first sales under the NGPA.[36] Neither are they sales for resale under the Commission's Natural Gas Act jurisdiction.[37] The Commission believes that it lacks jurisdiction to require these pipelines to pass the Btu refunds on to their direct sales customers. The Commission also believes that direct sales customers are capable of enforcing their rights arising from their contracts with interstate pipelines by means of negotiation or in the courts. Accordingly, while the Commission recognizes that refunds to direct sales customers may be delayed or never made, there is no recourse that the Commission can provide.

G. Refunds by Operators Designated by Large First Sellers

The Commission wants to avoid confusion over when operators designated by large first sellers must make refunds. Hence, an operator designated by a large first seller must pay the large first seller's portion of the refund on the deadline for payment by large first sellers—regardless of whether the operator itself is a large or small first seller. In addition, a large first seller must remit its portion of the refund obligation to its designated operator who is a small first seller on or before the date the refund must be paid to the pipeline. The Commission is specifically requiring these first sellers to make the refunds with other large first sellers because large first sellers should not be allowed to take advantage of a deferral that was designed to prevent cash flow problems for small first sellers.

H. Extension of the Deadline For Payment by Large First Sellers

The Producer group and other petitioners complain that compliance with the deadline for payment by large first sellers is an unreasonable hardship, and that the Commission acted arbitrarily by not permitting first sellers to spread out the payment of the Btu refunds. Specifically, petitioners state that the time period between the issuance of the final rule and the refund deadline is too short to ensure the computation and execution of accurate refunds and will cause unnecessary cash flow problems. They argue that these problems were made worse by the failure of the Commission to require

[35] *INGAA, supra*, note 2, at 1.

[36] *See* 15 U.S.C. 3301(21) (1982). Pipelines' sales of gas are not first sales except sales of gas produced by the pipeline. Public Service Comm'n of New York v. Mid-Louisiana Gas Co., 103 S. Ct. 3024 (1983).

[37] 15 U.S.C. 717(b) (1982).

pipelines to furnish the information necessary to calculate the Btu refunds in a timely fashion and the prospect that the Commission might permit an offset of section 110 costs and the Btu refund.

Petitioners also argue that any alternate relief from this burden was foreclosed by the Commission's statement in Order No. 399, that it "expects few applications" under section 502(c) of the NGPA and "is not inclined to grant them unless the applicant's claim for relief is supported by compelling reasons." Except to the extent that the deadline for payment by large first sellers is extended to December 31, 1984, to implement the offset mechanism, the Commission denies petitioners' requests.

First sellers have had sufficient time to prepare for the payment of this refund. *INGAA* was decided approximately a year ago. The Commission issued its interim rule on May 3, 1984. This rule established the refund procedures that were adopted with minor changes by Order No. 399 and it also stopped pipelines from unilaterally collecting the refunds owed by first sellers through billing adjustments. Any uncertainty over whether the final rule would permit offsets of section 110 cost should not have stopped first sellers from calculating the refunds owed. These calculations would have to be made even if the Commission had permitted an offset procedure.

The Commission is troubled that some pipelines have failed to cooperate with first sellers in determining the amount of Btu refunds owed. This fact does not support across-the-board extensions of the refund deadlines.[38] In any event, those first sellers who have diligently sought cooperation should seek relief under NGPA section 502(c) if a pipeline has not cooperated in determining the amounts owed. In those individual cases, the Commission will, if appropriate, fashion a remedy to meet the needs of the parties.

I. Royalty Payments

Several petitions for rehearing were received on the obligation of first sellers to pay refunds on behalf of royalty interest owners. For example, Inland Ocean, Inc., (Inland) asserts that it may be unable to recover from its royalty interest owners and working interest owners their attributable portion of the Btu refund. Since there are bankruptcies and deaths associated with some royalty owners, Inland contends that it is virtually impossible to obtain refunds in many cases. Inland argues that equitable considerations would justify consideration of these factors and that the Commission should permit some form of equitable relief under section 502(c). In contrast, Pennzoil argues that the Commission should defer the royalty interest portion of the refund until that portion is paid by the royalty interest owner. In addition, Pitts Oil and other petitioners argue the Commission should waive the refund attributable to royalty interest owners.

In Order No. 399, the Commission addressed the problems first sellers may have in recovering refunds from royalty owners. Though sympathetic, the Commission found it could not relieve the first seller of any refund obligation because to do so would sanction a price in excess of the NGPA ceiling price. Upon reconsideration, the Commission believes it has the discretion to waive a portion of the first seller's refund obligation, if it is demonstrated that the refund is uncollectible.[39] Although that order makes first sellers guarantors of the refund corpus paid to other parties, i.e., royalty owners or working intereat owners, it may be impossible for a first seller to recoup all of these refunds. The Commission may consider requests for a waiver on a case-by-case basis.[40]

Mesa Petroleum states that they have received a letter from the Commission of Public Lands and Farm Loans of the State of Wyoming. According to Mesa, that letter represents a final statement by the State of Wyoming concerning the payment of gas royalties calculated on a "dry" basis and that Wyoming will begin lease cancellation proceedings for those leases that do not pay royalties on a dry basis.

The Commission has reviewed the letter sent by the State of Wyoming which Mesa attached as Appendix A to their comments. The letter raises a number of issues regarding the scheme of Federal regulation of the gas industry which are of concern to the Commission. However, without further clarification and development of those issues, the Commission is unable to comment further.

III. Paperwork Reduction Act

The refund reports required under Ordering Paragraphs Nos. F, G, H of this order and §§ 154.38(h)(3) (vi), (vii), and (viii) of the Commission's regulations are information collection requirements that are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and OMB's regulations, 5 CFR Part 1320 (1984). Comments on these provisions should be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission). Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Darrell D. Blakeway, (202) 357–8696).

IV. Effective Date

The Commission incorporates the reasoning and findings in the interim rule that good cause exists under the Administrative Procedure Act (APA), 5 U.S.C. 553(b) (1982), for finding that a Notice of Proposed Rulemaking is unnecessary, impracticable and contrary to the public interest.

The Commission considered making this entire rule effective upon issuance. However, as a substantive matter, it makes little difference whether the entire rule is effective immediately or 30 days after publication in the **Federal Register**, because first sellers and pipelines are on notice that offsets will be required by December 31, 1984. Therefore, as provided under the APA, 5 U.S.C. 553(d) (1982), this rule is effective 30 days after publication in the **Federal Register**, except as follows. For good cause, under § 553(d) of the APA, the Commission makes effective immediately: (1) An extension to December 31, 1984, of all refunds by large first sellers; (2) repeal of the reporting requirements established in ordering paragraphs E, F, and G of Order No. 399, and (3) the requirements to file refund reports established in this order. By making the extension of the refund deadline and the rescission of the reporting requirements established in Order No. 399 effective upon issuance of this order, the Commission will reduce the burden on first sellers and pipelines by removing unnecessary requirements. Consequently, the Commission is revoking the requirements of its earlier stay, 49 FR 43543 (Oct. 30, 1984), that refunds by large first sellers would be due 10 days after issuance of this order. The refund reports established in this rule are information collection requirements under the Paperwork Reduction Act and are subject to OMB approval. Accordingly, the refund

[38] The Commission reminds the pipelines that, although the first sellers are liable for the refunds, pipelines have an obligation under the Natural Gas Act as part of prudent management to ensure that first sellers pay these refunds promptly and properly.

[39] Consumer Federation of America v. FPC, 515 F.2d 347 (D.C. Cir. 1975).

[40] To the extent a filing fee exists for such a waiver, the Commission is waiving this filing fee.

reporting requirements (set forth in Ordering paragraph Nos. F, G, and H of this rule and §§ 154.38(h) (vi), (vii), and (viii) of the Commission's regulations) will become effective January 25, 1985. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date of the refund reporting requirements.

V. Conclusion

To the extent petitioners raise other issues, the Commission believes that those issues were considered previously and were fully addressed in Order No. 399.

The Commission orders:

(A) Any first seller that collected revenues in excess of the product of (a) the applicable maximum lawful price established by the NGPA, and (b) the quantities of MMBtu's determined on the basis of § 270.204 of the Commission regulations, shall refund any such excess revenues. This refund shall be paid in full by December 31, 1984, unless the first seller is a small first seller, i.e., a first seller that sold a total of ten million Mcf or less of gas, in both the interstate and intrastate markets, during 1983. A small first seller must pay the refunds in full by May 3, 1985, but, to qualify for this extension, he must notify in writing, by December 31, 1984, any pipeline to which he owes refunds that he is a small first seller. To the extent that revenues for gas sold in a first sale under the NGPA are less than or equal to the level of revenues based on the product of (a) and (b), and are contractually authorized, no refunds are due.

(B) All first sellers may defer payment of that portion of the Btu refund attributable to royalty interest owners until the first seller receives payment from the royalty interest owner or November 5, 1986, whichever occurs first. First sellers deferring the portion of Btu refunds attributable to royalty interest owners must notify pipelines of the deferral by the date that the first seller would otherwise be required to make the refund.

(C) Any filing fee applicable to a request for a waiver, as described herein, is waived.

(D) The parties to the first sale transaction may choose the method of payment of this refund. If the parties cannot agree to a method, payment shall be by a lump-sum cash payment. However, to the extent that a pipeline-purchaser and first seller agree on an amount of section 110 allowances owed by the pipeline to the first seller, such amount shall be offset against the amount of the Btu refund due to the pipeline. No amounts owing under section 110 which accrued after January 19, 1984, or which the pipeline disputes, may be used to offset any Btu refund amounts.

(E) Interest on Btu refunds shall be calculated in accordance with § 154.102 (c) and (d) of the Commission's regulations, except that the interest obligation for money paid into escrow is that interest which accrued in the escrow account on the amount required to be refunded. Interest on section 110 allowance retroactive payments shall be calculated pursuant to the contract under which such allowances were charged and collected.

(F) By February 15, 1985, interstate and intrastate pipelines shall file a refund report with the Commission detailing: (1) Those first sellers who made refunds, and the refund amounts that the pipeline has received, separately stated for each first seller, and indicating the principal amount and interest; and (2) those first sellers who have not made refunds, and the refund amounts due but not received by the pipeline, for each first seller, separately stating the principal amount and interest due from each first seller, and the reason for nonpayment, and (3) in the case where Btu refund amounts have been offset by section 110 allowances for past periods owed to the first sellers by the pipelines, and where the offsets are made under paragraph (D) above, the refund report should identify the first sellers who have applied offsets to satisfy Btu refunds, the amount Btu refunds due, for each first seller, stating separately the principal and interest, and a statement of concurrence on the Btu refund due and the section 110 offset amount. For interstate pipelines using the offset mechanism, the following information must also be supplied:

(a) The amount of section 110 allowances applied to the Btu refund obligations which are agreed to by both the pipeline and first seller, and

(b) on a well by well or completion location basis, the amount per MMBtu of section 110 charges which have been applied to a Btu refund obligation, the specified production-related services for which the charge is made, and the contractual provisions expressly authorizing the section 110 charge.

Of those first sellers who are small first sellers as defined in this order, only those who have paid in full need to be identified. Intrastate pipelines shall also file a copy of the report with the State regulatory agency having jurisdiction over such pipeline.

(G) By June 17, 1985, intrastate and interstate pipelines shall file a refund report containing the information described in paragraph (F), with respect to refunds not previously identified in the prior refund report. Intrastate pipelines shall also file this report with the State regulatory agency having jurisdiction over such pipeline.

(H) By January 5, 1987, intrastate and interstate pipelines shall file a refund report with the Commission detailing: (1) Those first sellers who have made refunds after May 3, 1985, and the refund amounts received from these sellers separately stating the principal and interest received; and (2) those first sellers who have not made refunds or refunds in full, the refund amounts not made by each first seller, separately stating the principal and interest due from each first seller, and the reason for non-payment. Intrastate pipelines shall file a copy of this report with the State regulatory agency having jurisdiction over such pipeline.

(I) The reporting requirements established in ordering paragraphs E, F, and G of Order No. 399 are rescinded.

(J) The regulations in Part 154, Subchapter E, Chapter I, Title 18, *Code of Federal Regulations* are amended as set forth below.

By the Commission. Chairman O'Connor dissented in part as to Part III. C. Commissioner Sousa dissented in part as to Part III. C. Commissioner Richard dissented in part as to Part III. I. with a separate statement attached.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. The authority citation for Part 154 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C., 1–27 (1976).

2. Section 154.38(h)(2) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(h) *Pipeline recovery of Btu measurement adjustments.* * * *

(2) * * * Btu refunds shall be reduced by section 110 costs which have been offset in accordance with Order No. 399–A.

* * * * *

§ 154.38 [Amended]

3. Section 154.38(h)(3)(vi) is amended by removing the words "December 18, 1984." and adding, in their place, the words "February 15, 1985".

Refund Resulting From Btu Measurement Adjustments

[Docket No. RM84–6–003, *et al.*]

Issued: November 20, 1984.

Richard, Commissioner, *dissenting* in part.

I strongly agree with my two colleagues as to the offset procedure. I must, however, regrettably dissent as to that portion of the Order not allowing an upfront mechanism dealing with a waiver of *uncollectible* royalty and working interest dollars. My dissent is concerned with the timing of any waiver, as set out in Part III. I.

I believe that the Commission should consider those limited circumstances (less than five percent of the total) where a first seller *cannot recover* the amounts passed through to working interest or royalty owners. In this case the first seller acting as a conduit never received the benefit of the monies received from consumers.

It is without question that no refund mechanism will ever completely restore the full status *quo ante*. At best, the Commission can establish a refund procedure which fairly balances questions of equity and the public interest and which substantially complies with court ordered refunds in *INGAA*. In establishing that mechanism, the Commission must consider the relevant factors, the practical consequences in making the refund determination, and strike a balance between the comparative benefits and losses.[1]

This is not to say someone should not be held liable for the overcharges. However, it is to say that not every decision invalidating an agency order should be given full retroactive effect. The Commission should recognize that difficulties associated with the refund process are due, in part, to our erroneous interpretation of the NGPA that the Court corrected. First sellers have relied on that erroneous interpretation. Now the Commission is faced with the responsibility of undoing a pricing practice that has been in effect for over six years. In so doing, it should consider the public interest and the equities of all those affected by the refund process. Consumers are entitled to credits based on the overcharge plus the prime interest rate. Those parties that received the benefit of the overcharge are the ones required to fund the credit. My concern is with those amounts uncollectable by first sellers who never received the benefit of their collection from consumers.

In line with my earlier dissent, I would establish two procedures by which first sellers may seek relief from their uncollectible royalty and working interest refund obligations. Neither of these procedures would be available if these parties and the first seller are under a contractual relationship regarding any well from which gas is or will be flowing. If the first seller is paying royalties or working interest amounts to these interests on flowing gas, then the Commission would presume the firt seller may collect the refund amounts through billing adjustments.[2]

I would limit the first procedure to small first sellers. [3] As stated in the final rule, the Commission is concerned that these sellers may experience cash flow problems in making refund payments as well as financial in their pursuance.

We should recognize that in some cases, refunds from royalty and working interest owners simply cannot be obtained. In these cases, I recommended the establishment of a waiver procedure by which small first sellers may notify the Commission of such impossibility on or before the deadline for making such payments. This procedure is available only if the total refund from a particular interest is less than or equal to $100. Receipt of the notification by the Commission will constitute a waiver of the refund and does not require issuance of any document by the Commission, i.e., it will be self-implementing. However, in order to encourage the collection, notification must be made under oath signed by the first seller and must be served on the pipeline. The affidavit should further state the owner qualifies as a small first seller, the amount of the refund owed, why the refund is uncollectible, what steps the first seller has taken to collect the refund, and that such steps were made in good faith to obtain the refund, but that it is impossible to obtain the refund. The following examples illustrate several situations where it may be impossible to collect the refund:

1. The royalty owner has died and his estate has closed.

2. The royalty owner is bankrupt and the bankruptcy proceeding has closed.

3. The royalty owners cannot be located with proof that reasonable steps were undertaken to locate.

4. The applicable state Statute of Limitations prohibits legal action against the royalty owner to obtain such refunds.

The Commission audit division would review these submissions. Submissions containing false or incorrect statements or those that do not fully justify the impossibility of collecting the refunds would be dealt with under the Commission's enforcement authority.

Finally, some refunds may not qualify for the waiver procedures described above because it still may not be cost effective for the first seller to pursue the refund. Since extraordinary situations may exist for both large and small first sellers, a second procedure would be available to any first seller.

Accordingly, for these interest owner refunds exceeding $100, the first seller should first make a good faith effort to obtain the refund from the interest owner. If the refund is unobtainable a first seller may file for a section 502(c) adjustment of the refund liability explaining why it would not be cost effective to pursue the refund. Such application would be filed in accordance with Subpart K of Part 385 of the Commission's regulation and be filed with the Commission and the pipeline no later than the final due date of the refund. The filing of such application would suspend the obligation to make the refund payment until such time as the Commission acts on that application.

I agree with the majority's waiver of the $6000 filing fee for section 502(c) applications.

I believe these procedures outlined above comply with the court's decision in INGAA, and also balance the competing interests of administrative burdens and practicalities associated with obtaining refunds with equity and the public interest. Since my colleagues think otherwise, I respectfully dissent from that portion of the decision dealing with the timing of the waiver issue.

Oliver G. Richard III,

Commissioner.

[FR Doc. 84–30917 Filed 11–23–84; 8:45 am]

BILLING CODE 6717–01–M

[1] See FPC v. Tennessee Gas Co., 371 U.S. 145, 155 (1962); Public Service Commission v. FPC, 329 F.2d 242, 250 (D.C. Cir. 1964), *cert. denied*, 377 U.S. 963 (1964); Wisconsin Electric Power Co. v. FERC, 602 F.2d 452, 457 (D.C. Cir. (1979)).

[2] Questions of contractual authority to make adjustments should be resolved by the individual parties to the contract.

[3] *See* 49 FR 37735, 37737–8 (Sept. 26, 1984). Small first sellers are first sellers of gas who have sold a total 10 million Mcf (10 Bcf) or less of gas in both the intrastate and interstate markets in 1983. As a matter of course, cash flow problems are much more likely to exist in the case of small producers than large ones. For over seven years, I have followed the issue of who drills the most *exploratory* wells and I am convinced that consistently independent producers *do* drill at least 80% of those wells each year. My upfront waiver is largely to remove any cloud over the financial statement of the producer. Internally generated funds are less available for drilling new wells to this class of producer.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 84–233]

Elimination of Duty on Articles Imported for Physically or Mentally Handicapped Persons

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document finalizes an interim amendment to the Customs Regulations to provide a procedure for the duty-free treatment of imported articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons. Many articles for the blind, and some for other handicapped individuals, already are entitled to duty-free entry under existing law. This document implements a new law which expands duty-free treatment to include articles specially designed or

adapted for use by other handicapped persons.

EFFECTIVE DATE: December 26, 1984.

FOR FURTHER INFORMATION CONTACT: Herbert Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5307) or Richard Seppa or Frank Creel, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202–377–1660).

SUPPLEMENTARY INFORMATION:

Background

The Agreement on the Importation or Educational, Scientific and Cultural Materials, known as the Florence Agreement, is an international agreement providing for duty-free trade among its signatories in specified categories of articles. These categories are: (1) Books, publications, and documents; (2) works of art and collector's pieces; (3) visual and auditory materials; (4) scientific instruments and apparatus; and (5) articles for the blind.

A Protocol to the Florence Agreement, the Nairobi Protocol, broadens the scope of the Florence Agreement to include the duty-free entry of several categories of articles. One new category of articles includes materials specially designed for the education, employment, and social advancement of physically or mentally handicapped persons. Thus, the Protocol is intended to accord duty-free treatment to articles not only for the blind, but for all other handicapped persons without regard to the source of their affliction. The Educational, Scientific, and Cultural Materials Importation Act of 1982, Pub. L. 97–446, is the enactment which makes the international obligations of the Nairobi Protocol part of U.S. domestic law.

Many articles for the blind, and some for other handicapped individuals, already are entitled to duty-free entry under existing statutes. Items 828.10 and 826.20, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), provide for the duty-free entry of articles for the blind. Legislation implementing the Protocol expands coverage to encompass other articles which are specially designed or adapted for use by other handicapped individuals. Consequently, Part 4 of Schedule 9, TSUS, has been amended by inserting item numbers 960.10, 960.12, and 960.15, "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons."

The articles added by these new provisions became eligible for duty-free treatment on February 11, 1983. Eligibility ends August 11, 1985. During this period, the duty-free treatment of these articles will be reviewed by the President. Because the legislation became effective on February 11, 1983, and articles have been entered duty-free since that date, an interim Customs Regulations amendment was published as T.D. 84–17 in the Federal Register on January 12, 1984 (49 FR 1482), and it became effective on that date. Instructions regarding the duty-free treatment of theses articles were issued to Customs field officers by memoranda dated February 22, and July 13, 1983. As noted, items 829.10 and 826.20, TSUS, already provide permanent duty-free treatment for those articles classified in new items 960.10 and 960.12, TSUS, on a temporary basis. Therefore, there is no time limit applicable to duty-free treatment of these particular articles.

T.D. 84–17, the interim amendment, provided the procedure for the duty-free treatment of imported articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons other than articles solely for the blind. That document discussed the rationale behind the amendment and stated general guidelines and an example to illustrate the legislative intent.

Discussion of Comments

In response to the interim regulation, two comments were received. One commenter stated that operational criteria governing the importation of articles for the handicapped as envisioned in item 960.15, TSUS, should be spelled out in detail in the regulation to afford adequate guidance to Customs ports to determine duty-free treatment of the imported articles.

Customs believes that detailed guidelines in the regulations would be inappropriate. Guidelines, as suggested, could not be inclusive of all possible situations and might be construed to eliminate duty-free treatment for some articles not included in the guidelines. Existing procedures to ensure uniformity in classification should serve item 960.15, TSUS, imports as well as other imports. A vigorous program of verifying these imports has been instituted to assist in complying with item 960.15, TSUS, criteria.

The commenter also stated that the regulations should emphasize that every International Trade Administration Form ITA–362P, "Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty under Pub. L. 97–446 (other than Articles for the Blind)", should be presented to Customs with all information completed.

Customs has issued instructions to its personnel throughout the U.S. to assure the completeness and accuracy of the data required on ITA–362P forms. This information though, would be inappropriate for incorporation in regulations.

The other commenter felt that Customs should allow the same bonding-for-missing document procedure for Form ITA–362P as it does for the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) importers.

Customs believes that, unlike GSP or CBI documents which must be obtained from an overseas source, Form ITA–362P is available at all Customs ports and may be duplicated by importers or their agents. The ITA–362P is a simple form which provides to Customs, information available and necessary for an importer or agent to file an entry summary. This form may be completed within a few minutes and there is no reason that it cannot be filed with the entry summary.

Executive Order 12291

Because the amendment does not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory impact analysis prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment because it has not had a significant economic impact on a substantial number of small entities nor imposed, or otherwise caused, a significant increase in the reporting, recordkeeping, or other compliance burdens since February 11, 1983.

Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The International Trade Administration, U.S. Department of Commerce, submitted Form ITA–362P, to the Office of Management and Budget for approval. The form was approved and its OMB approval number is 0625–0118, which expires March 31, 1985.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from the Department of Commerce and other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports.

Amendment to the Regulations

In Part 10, Customs Regulations (19 CFR Part 10), the new center heading and new § 10.182 as added on January 12, 1984 (49 FR 1482) are made final and reprinted without change to read as set forth below.

William von Raab,
Commissioner of Customs.

Approved: November 5, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE ETC.

Articles Specially Designed or Adapted for Use by Handicapped Persons Other Than Articles Solely for the Blind

§ 10.182 Articles specially designed or adapted for use by handicapped persons other than articles solely for the blind.

(a) Articles specially designed or adapted for use by handicapped persons other than articles solely for the blind which are claimed to be entitled to free entry under temporary tariff item 960.15, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), may be admitted free of duty by Customs upon the submission of an International Trade Administration Form ITA–362P, "Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty under Pub. L. 97–466 (other than Articles for the Blind)", which provides specified information about the articles to be imported.

(b) The requirement for Form ITA–362 P is limited to merchandise entered under item 960.15, TSUS. This form may not be treated, in accordance with § 141.66 of this chapter, as a missing document. A bond may not be given to Customs for the production of this form at the time of entry. Form ITA–362 P must be presented with the entry summary or with the entry when the entry summary is filed at the time of entry. A duty-free entry summary will be rejected and appropriate estimated duties required if Form ITA–362 P is not presented at the time the entry summary is filed. The effective period for duty-free treatment of these articles extends until August 11, 1985, unless extended by the President.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 (5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1624))

[FR Doc. 84-30718 Filed 11-23-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, 416, and 422

Federal Old-Age, Survivors, and Disability Insurance Benefits, Black Lung Benefits, Supplemental Security Income for the Aged, Blind and Disabled, and Organization and Procedures; Reopening and Revising Determinations and Decisions Expedited Appeals Process

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations make five unrelated changes in our rules on when a determination or decision affecting someone's rights under programs administered by the Social Security Administration may be reopened and revised. The programs are Old-Age, Survivors, and Disability Insurance, Black Lung Benefits (Part B), and Supplemental Security Income for the Aged, Blind, and Disabled. Most of the changes expand the exceptions to the time limits on reopening. Two of the changes are to take into account legislative changes. The other three changes add long-standing policies to the regulations.

In addition, we are making the time limit for appealing a determination or decision on benefit rights to a Federal district court pursuant to the "expedited appeals process," the same as the time limits for other appeals of our determinations or decisions. This change allows slightly more time to appeal under the "expedited appeals process" and makes the rules on appeals more consistent.

The regulatory changes affect 20 CFR 404.927, 404.988, 410.629e, 410.672, 416.1427, and 422.210, and add new sections 404.991a, 404.996, 410.675a, and 416.1491.

EFFECTIVE DATES: These amendments are effective November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking (NPRM) was published on August 3, 1983 at 48 FR 35135–35140.

Background

These final regulations affect the Old-Age, Survivors, and Disability Insurance program under title II of the Social Security Act, the Supplemental Security Income program under title XVI of the Social Security Act, and Part B of the Black Lung Benefits program under title IV of the Federal Mine Safety and Health Act of 1977.

The Social Security Act and the Federal Mine Safety and Health Act of 1977 have no provisions on reopening and revising determinations and decisions. Our existing regulations which provide for reopening and revising determinations and decisions within specified time limits (or at any time with regard to certain matters) are based on general rulemaking authority granted the Secretary under these Acts. We believe that we and the individual to whom the determination or decision applies should be able to rely on its correctness and, at some point, the finality of the determination or decision. Therefore, current regulations provide that when a determination or decision is made with respect to entitlement to, eligibility for, the amount of, or the actual payment of benefits, it is generally final and binding upon us and the individual unless there is a timely appeal. However, there are special circumstances set out in current regulations which may permit reopening and revising of a determination or decision which is otherwise final.

Under current regulations, a determination or decision we make about a person's rights under title II or XVI of the Social Security Act or under part B of title IV of the Federal Mine Safety and Health Act of 1977 may be reopened (1) within 12 months of the date of the notice of the initial determination for any reason, (2) within 4 years (2 years for title XVI) of the date of that notice if we find good cause as defined in our regulations, or (3) at any time under certain exceptions spelled out in the regulations. Most of the final regulatory changes involve adjustments to the existing lists of exceptions to the time limits for reopening. The final regulations also change the starting date for the running of the time limit for filing a civil action in a Federal district court under the "expedited appeals process" to conform with our other rules on

appealing administrative determinations and decisions.

The Final Regulations

(1) Changes to Take Account of Legislation

(A) *Conviction of a Felony.* Effective October 1, 1980, section 5 of Pub. L. 96–473 restricts the use of felony-related and prison-related impairments in determining disability under title II of the Social Security Act where the individual is convicted of a felony committed after October 19, 1980. This law provides that any impairment, or aggravation of a preexisting impairment, that occurs during the commission of a felony for which the individual is subsequently convicted may never be used in establishing disability. Further, any impairment, or increase in severity of a preexisting impairment, that occurs while an individual is confined to a penal institution for conviction of a felony will be disregarded in determining disability for benefits payable (but not for establishing a period of disability for disabled workers) for as long as the person is confined. Section 5 also prohibits payment of title II worker's disability or childhood disability benefits to a person confined to a penal institution for conviction of a felony committed at any time who is not actively and satisfactorily participating in an appropriate court-approved rehabilitation program. (This prisoner nonpayment provision was expanded by section 339 of Pub. L. 98–21, to cover all categories of monthly insurance benefits payable under section 202 or 223 of the Social Security Act (old-age benefits, widow's and widower's benefits, etc.), effective with benefits payable for months beginning on or after May 1, 1983. The vocational rehabilitation exception continues to apply for qualified persons whose entitlement to benefits is based on disability.) Finally, section 5 of Pub. L. 96–473 prohibits payment of title II student benefits to a person confined for conviction of a felony committed after October 19, 1980.

If we make a determination or decision awarding benefits to a person based on a felony-related impairment and the person is subsequently convicted of the felony, the conviction provides a basis for reopening and revising the determination or decision in order to exclude the felony-related impairment from consideration in determining disability. Under existing regulations, the determination or decision in this case may be reopened within 4 years of the date of the notice of the initial determination. However, if the conviction occurs more than 4 years after the date of the notice of the initial determination, our existing regulations on reopening prevent retroactive correction of the determination or decision. Also, when we make a determination or decision applying any one of the prisoner provisions due to the person's conviction of a felony, the person may, in the meantime, be appealing his or her conviction. If the conviction is overturned on appeal, that action provides a basis for reopening the determination or decision, which under current regulations is permitted only within 4 years after the date of the notice of the initial determination. Our existing regulations prevent retroactive correction of the determination or decision if the conviction is overturned after the expiration of the 4-year time limit for reopening.

The final regulations revise section 404.988(c) (which lists the exceptions to the time limits for reopening) by adding a new subparagraph to cover the prisoner provisions. The revision permits reopening and revision at any time of a determination or decision that is incorrect because of a person's conviction of a crime that affects benefit rights or because the person's conviction has been overturned on appeal.

(B) *Deemed Wages for Certain Persons Interned During World War II.* Section 231 of the Social Security Act provides deemed wage credits for title II benefit purposes to persons who were interned in the United States during World War II at a place operated by the Government of the United States for the internment of United States citizens of Japanese ancestry. However, these deemed wages are not provided if the person's period of internment is credited toward a benefit which is determined by any agency of the United States to be payable under another Federal law or under a system set up by that agency. Effective October 1, 1978, Pub. L. 95–382 amended the Civil Service Retirement Act to grant credit for that internment toward Civil Service pensions. If we award Social Security benefits based on deemed wage credits for the period of internment, and we learn more than 4 years after the date of the notice of our initial determination that a Civil Service pension is payable based on internment, our existing regulations on reopening determinations or decisions prevent correcting the determination or decision in order to retroactively remove the wage credits for Social Security benefit purposes. Similarly, our existing regulations prevent correcting the determination or decision, if we learn after the expiration of the 4-year period that we erroneously denied someone the wage credits because we were erroneously informed that a Civil Service pension was payable based on this internment.

The final regulations add a new subparagraph to paragraph (c) of section 404.988 to permit reopening at any time if either our granting or our denying of wage credits for internment is discovered to be incorrect because of information regarding the crediting of that internment toward a benefit payable under another Federal law or system.

(2) Changes to Add Long-Standing Policies to the Regulations

(A) *Late Completion of Timely Investigation.* We may revise a determination or decision after the applicable time limit for reopening expires if the revision is made as the result of an investigation which we began before the applicable time limit expired. We may begin the investigation into the possibility of changing the determination or decision either based on a request by an individual or by an action on our part. We may complete consideration and actually change the determination or decision after the time limit has run.

Where in title II and Black Lung cases we begin an investigation within the time limit but the applicable time limit for reopening subsequently lapses, we may revise the determination or decision if we have diligently pursued the investigation to its conclusion. "Diligently pursued" means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if we conclude the investigation and, if necessary, revise the determination or decision within 6 months from the date we began the investigation. The investigation is a process of gathering facts after a determination or decision had been reopened to determine if a revision of the determination or decision is applicable. The revision may be favorable or unfavorable for the beneficiary or claimant. Where we have not diligently pursued the investigation, we will not revise the determination or decision when the result will be unfavorable for the individual. Where the result will be favorable for the beneficiary or claimant, we will revise the determination or decision even if we have not diligently pursued the investigation. This requirement of diligent pursuit has not been applied to title XVI cases in the past. However, our experience has shown that there is really no basis for a difference in the title II, Black Lung, and title XVI programs in this respect. Therefore, we believe that this policy should also be extended to title XVI cases to make the rules under the three programs consistent.

The final regulations add new §§ 404.991a, 410.675a, and 416.1491 to provide that if we reopen a determination or decision before the end of the time limit for doing so but do not complete our investigation before the end of the time limit, we may revise the determination, or decision if we have diligently pursued the investigation, regardless of whether the revision is favorable or unfavorable to the beneficiary or claimant. If we reopen a determination or decision before the end of the time limit for doing so but do not diligently pursue the investigation, and do not complete it until after the end of the time period, we will not make any revision that is unfavorable to the individual. If the revision would be favorable to the beneficiary or claimant, we will make it.

(B) *Increase in Future Benefits Where Time Limit for Reopening Expires.* If, more than 4 years after the date of the notice of the initial determination of his or her benefit amount, a title II beneficiary submits new evidence that establishes different earnings or a different date of birth, for example, and the difference means that his or her benefits should be higher, our existing regulations prevent reopening the determination or decision concerning his or her benefit amount. However, our policy is to make the increase, but only with respect to benefits payable after the new evidence was submitted. (If the new evidence received after the 4-year period of limitation for reopening would lead to a decrease in benefits, we take no action.) This policy, which is subject to the statutory limitations on correction of earnings records, has never been in the regulations.

The final regulations add a new section 404.996 to provide that if we learn, more than 4 years after the date of the notice of the initial determination, that benefits should be higher or should be paid for additional months, we will make the correction but only for future benefits. Any revision is also subject to the statutory limitation for correcting earnings records.

(C) *Location or Identification of Body.* If we deny a title II or Black Lung claim for survivor's benefits because the worker's death cannot be established, but the death is later established by location or identification of the body, the denial may be reopened though more than 4 years have elapsed since the date of the notice of the intitial determination. However, this exception to the 4-year time limit for reopening is not in our regulations.

The final regulations revise §§ 404.988(c)(4) and 410.672(c)(4), which now provide that a determination or decision denying survivors's benefits because the worker's death was not proven may be reopened at any time if death is later established by reason of the worker's unexplained absence from his or her residence for a period of 7 years. The revision permits, in addition, reopening at any time if death is established by location or identification of the body.

(3) Change in Time Limit for Filing Action in Federal District Court Under Expedited Appeals Process

The time limit for appealing our determination or decision at each of the three administrative levels of appeal and for filing a civil action in Federal district court is 60 days after the date the claimant receives the notice of the determination or decision that he or she wishes to appeal. The title II and title XVI regulations require that the notice be mailed and define the date notice is received as five days after the date on the notice unless the claimant shows that it was not received in this time period. The "expedited appeals process" permits the claimant to go directly to a Federal district court without first completing the administrative review process if we agree with the claimant that the only factor preventing a determination or decision favorable to the claimant is a provision in the law that the claimant believes is unconstitutional. Under our present regulations, the time limit for going to court is 60 days after the date our authorized representative signs an agreement to use the "expedited appeals process."

To make the time limit for going to court under the "expedited appeals process" consistent with the time limits for other administrative levels of appeals, the final regulations revise §§ 404.927, 410.629e, 416.1427, and 422.210(c) so that the time limit for filing a civil action in Federal district court is 60 days from the date the claimant receives notice (a signed copy of the agreement will be mailed to the claimant and will constitute notice) of our signing of the agreement to use the "expedited appeals process."

Comments Received Following Publication of a Notice of Proposed Rulemaking

In order to obtain the public's views and comments before proceeding with these amendments, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 3, 1983 (48 FR 35135–35140). The public was invited to submit comments pertaining to the proposed amendments within a period of 60 days from the date of the publication of the notice. The comment period closed on October 3, 1983. We received comments from three non-profit organizations. Each source commented on one or more provisions of the regulations. For ease of comprehension, we have condensed, summarized or paraphrased the comments and have grouped them according to the subject and issues raised. We have tried, to the extent possible, to present the comments and our responses in the order in which the regulations are organized.

Late Completion of Timely Investigation

Comment: Several comments were made that the regulations should be revised to indicate that, where we have not diligently pursued an investigation and revision would be favorable to the beneficiary, we "will revise," rather than "may revise," the determination or decision.

Response: We are adopting this comment. Sections 404.991a(b), 410.675a(b), and 416.1491(b) were revised to reflect this change in the final regulations.

Comment: Several comments were made that we should more clearly define "diligent pursuit".

Response: We are not adopting this comment. We believe the definition of "diligent pursuit" as stated is clear. This is the definition that has been in our operating procedures and we have not experienced any problems implementing the concept of diligent pursuit using this definition.

Comment: A commenter suggested that a minimum time period should be established within which the typical investigation should be concluded. Within that time frame a presumption would be made that the investigation was diligently pursued. The burden to show otherwise would be on the individual. Conversely, where the investigation took longer than the established time frame, the burden would be on us to demonstrate that the investigation was diligently pursued. The recommended time frame was 6 months.

Response: We are adopting the suggestion that we set a time frame by providing in these final regulations that diligent pursuit will be presumed to have been met if we conclude the investigation and revise the determination or decision within 6 months from the date we begin the investigation. We believe that establishing such a time frame would tend to simplify case processing, as most investigations are completed within 6 months. Also, as the commenter indicated, the established time frames would diminish possible litigation. Sections 404.991a, 410.675a, and 416.1491 were revised to reflect this change.

Comment: One commenter stated that initiating an investigation without first making a finding of good cause is in conflict with the current regulations in that the proposed regulations seem to be extending the 4-year rule merely by commencing an investigation. Another commenter indicated the need for a definition of the term "investigation".

Response: We do not agree that there is a conflict with current regulations. The 4-year time period (2-year time period for title XVI) for reopening is not being extended by the commencement of the investigation. The investigation is not being conducted to determine if good cause exists. The investigation is necessary to decide if the determination or decision is to be revised after it has been reopened because good cause was found to exist. Anf if revision is applicable, the investigation is necessary to make sure the revision is complete and accurate. As the current regulations indicate, a determination or decision may be reopened within 4 years (2 years for title XVI) if good cause exists. The investigation referred to in the proposed regulations occurs after a finding that there is good cause for reopening.

For example, an individual files a written request for reopening within, but near the end of, the 4-year period (2-year period for title XVI) for reopening indicating a prior determination was incorrect. The individual submits new evidence to support his request. Based on the request and the evidence, we determine that good cause exists to reopen the determination or decision. At this point in time we may not have enough evidence to decide if revision of the determination or decision is applicable. An investigation is initiated to secure additional evidence in order to decide if revision is in order and, if so, the nature and the extent of the revision. If by the time the investigation was concluded the 4-year (2 years for title XVI) time period had expired, we would still be able to revise the determination or decision, subject to the rules regarding diligent pursuit.

We agree that there is a need to define more precisely the nature of the investigation. Proposed §§ 404.991a, 410.675a and 416.1491 were revised to explain that the investigation is a process of gathering facts *after* a determination or decision has been reopened to determine if a revision of the determination or decision is applicable.

Comment: One commenter stated that we should send a notice to any individual affected when we initiate an investigation.

Response: We are not adopting this comment. Generally, claimants know when we are making an investigation because we usually contact them for information. However, if as a result of an investigation we revise our previous determination or decision (whether it be favorable or unfavorable to the claimant), we send the person a notice as required by current regulations informing him or her of the basis of the revised determination or decision, its effect and the right to appeal.

Increase in Future Benefits Where Time Period for Reopening Expires

Comment: One commenter stated that proposed section 404.996 should be amended to provide that unless the claimant was at fault for the prior date of birth or earnings determination, the favorable revision and resultant increase should be retroactive to the date of the initial determination.

Response: We are not adopting this comment. In these situations the appeals period has expired (or the person has exhausted his or her appeal rights) and we cannot reopen on the basis of good cause because more than 4 years have elapsed since the date of the notice of the initial determination. However, it has been a long-standing policy that if new and material age or earnings evidence is submitted after the 4-year time period for reopening, we would recompute the claimant's benefits based on the new evidence and pay the new, higher amount prospectively. This policy was based on Social Security Ruling 66–30 (C.B. 1966, p. 95), which established the principle of making prospective corrections in these types of situations. This principle is based on the fact that, although the regulations preclude reopening, they do not bar current relief. This policy is equitable to the claimant and to the Social Security Trust Fund. Also, we want to emphasize the point that fault is not involved. When the determinations or decisions concerning age and/or earnings were made, they were made based on the evidence in the file and were correct based on that evidence. The only new factor involved in these cases is the introduction of new and material evidence after 4 years. There is no fault on either the individual's part or our part.

Expedited Appeals Process

Comment: One commenter stated that the signed copy of the expedited appeals process agreement should be sent to the claimant by registered mail.

Response: We are not adopting this comment. It is not any more necessary to send this notice by registered mail than any other notice. It would be unreasonable to expect us to start sending notices by registered mail. This would be a prohibitive and unnecessary expense.

Regulatory Procedures

Executive Order No. 12291

These regulations do not meet any of the criteria for a major regulation as that term is defined in E.O. 12291 because they result in negligible program and administrative costs and savings. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no additional reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations do not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivors Insurance; 13.806 Black Lung Benefits-Special Benefits for Disabled Coal Miners; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-age, survivors and disability insurance.

20 CFR Part 410

Administrative practice and procedure, Black lung benefits, Death benefits, Disabled, Miners.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental security income (SSI).

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (government agencies), Social security.

Dated: July 25, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: October 22, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

Parts 404, 410, 416, and 422 of 20 CFR are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart J of Part 404 reads as follows:

Authority: Secs. 205 and 1102 of the Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 405 and 1302).

§ 404.927 [Amended]

2. Section 404.927 is amended by changing "60 days after the date the agreement is signed" to read "60 days after the date you receive notice (a signed copy of the agreement will be mailed to you and will constitute notice) that the agreement has been signed".

3. Paragraphs (c)(4), (c)(8), and (c)(9) of § 404.988 are revised and new paragraphs (c)(10) and (c)(11) are added to § 404.988 to read as follows:

§ 404.988 Conditions for reopening.

* * * * *

(c) * * *

(4) Your claim was denied because you did not prove that the insured person died, and the death is later established—

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

* * * * *

(8) It is wholly or partially unfavorable to a party, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made;

(9) It finds that you are entitled to monthly benefits or to a lump sum death payment based on the earnings of a deceased person, and it is later established that: (i) You were convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or (ii) if you were subject to the juvenile justice system, you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony;

(10) It either—

(i) Denies the person on whose earnings record your claim is based deemed wages for internment during World War II because of an erroneous finding that a benefit based upon the internment has been determined by an agency of the United States to be payable under another Federal law or under a system established by that agency; or

(ii) Awards the person on whose earnings record your claim is based deemed wages for internment during World War II and a benefit based upon the internment is determined by an agency of the United States to be payable under another Federal law or under a system established by that agency; or

(11) It is incorrect because—

(i) You were convicted of a crime that affected your right to receive benefits or your entitlement to a period of disability; or

(ii) Your conviction of a crime that affected your right to receive benefits or your entitlement to a period of disability is overturned.

4. New § 404.991a is added to read as follows:

§ 404.991a Late completion of timely investigation.

We may revise a determination or decision after the applicable time period in § 404.988(a) or § 404.988(b) expires if we begin an investigation into whether to revise the determination or decision before the applicable time period expires. We may begin the investigation either based on a request by you or by an action on our part. The investigation is a process of gathering facts after a determination or decision has been reopened to determine if a revision of the determination or decision is applicable.

(a) If we have diligently pursued the investigation to its conclusion, we may revise the determination or decision. The revision may be favorable or unfavorable to you. "Diligently pursued means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if we conclude the investigation and if necessary, revise the determination or decision within 6 months from the date we began the investigation.

(b) If we have not diligently pursued the investigation to its conclusion, we will revise the determination or decision if a revision is applicable and if it will be favorable to you. We will not revise the determination or decision if it will be unfavorable to you.

5. New § 404.996 is added to read as follows:

§ 404.996 Increase in future benefits where time period for reopening expires.

If, after the time period for reopening under § 404.988(b) has ended, new evidence is furnished showing a different date of birth or additional earnings for you (or for the person on whose earnings record your claim was based) which would otherwise increase the amount of your benefits, we will make the increase (subject to the limitations provided in section 205(c)(4) and (5) of the Act) but only for benefits payable after the time we received the new evidence. (If the new evidence we receive would lead to a decrease in your benefits, we will take no action if we cannot reopen under § 404.988.)

PART 410—[AMENDED]

6. The authority citation for Subpart F of Part 410 reads as follows:

Authority: Secs. 413(b), 426(a), 507, and 508, 83 Stat. 794; 30 U.S.C. 923(b), 936(a), 956, and 957.

7. Section 410.629e is revised to read as follows:

§ 410.629e Expedited appeals process; effect of agreement.

The agreement described in § 410.629d, when signed, shall constitute a waiver by the parties and the Secretary with respect to the need of the parties to pursue the remaining steps of the administrative appeals process, and the period for filing a civil action in a district court of the United States, as provided in section 205(g) of the Social Security Act, shall begin as of the date of receipt of notice by the party (parties) that the agreement has been signed by the authorized representative of the Secretary. Any civil action under the expedited appeals process must be filed within 60 days after the date of receipt of notice (a signed copy of the agreement will be mailed to the party (parties) and will constitute notice) that the agreement has been signed by the Secretary's authorized representative. For purposes of this section, the date of receipt of notice of signing shall be presumed to be 5 days after the date of

the notice, unless there is a reasonable showing to the contrary.

8. Section 410.672(c)(4) is revised to read as follows:

§ 410.672 Reopening initial, revised or reconsidered determinations of the Administration and decisions of an Administrative Law Judge or the Appeals Council; finality of determinations and decisions.

* * * * *

(c) * * *

(4) The death of the individual on whose account a party's claim was denied for lack of proof of death is established—

(i) By reason of an unexplained absence from his or her residence for a period of 7 years (see § 410.240(g)(2)); or

(ii) By location or identification of his or her body; or

* * * * *

9. New § 410.675a is added to read as follows:

§ 410.675a Late completion of timely investigation.

The Administration may revise a determination or decision after the applicable time period in § 410.672(a) or § 410.672(b) expires if the Administration begins an investigation to determine whether to revise the determination or decision before the applicable time period expires. The Administration may begin the investigation based either on a request by the party or an action by the Administration. The investigation is a process of gathering facts after a determination or decision has been reopened to determine if a revision of the determination or decision is applicable.

(a) If the Administration has diligently pursued the investigation to its conclusion, the Administration may revise the determination or decision. The revision may be favorable or unfavorable to the party. "Diligently pursued" means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the Administration concludes the investigation and if necessary, revises the determination or decision within 6 months from the date the Administration begins the investigation.

(b) If the Administration has not diligently pursued the investigation to its conclusion, the administration will revise the determination or decision if a revision is applicable and if it will be favorable to the party. The Administration will not revise the determination or decision if it will be unfavorable to the party.

as amended, 79 Stat. 330, 331; sec. 5 of Reorganization Plan No. 1 of 1968, 82 Stat. 1850; 42 U.S.C. 405, 421, 1302, 1395ff, and 1395hh. Sec. 422.203(a) is also issued under sec. 413(b) of title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 794; 30 U.S.C. 923(b).

PART 416—[AMENDED]

10. The authority citation for Subpart N of Part 416 reads as follows:

Authority: Secs. 1102, 1631(c), and 1633 of the Social Security Act, 49 Stat. 647, 86 Stat. 1475, 86 Stat. 1478 (42 U.S.C. 1302, 1383, and 1383b).

§ 416.1427 [Amended]

11. Section 416.1427 is amended by changing "60 days after the date the agreement is signed" to read "60 days after the date you receive notice (a signed copy of the agreement will be mailed to you and will constitute notice) that the agreement has been signed".

12. New § 416.1491 is added to read as follows:

§ 416.1491 Late completion of timely investigation.

We may revise a determination or decision after the applicable time period in § 416.1488(a) or § 416.1488(b) expires if we begin an investigation into whether to revise the determination or decision before the applicable time period expires. We may begin the investigation either based on a request by you or by an action on our part. The investigation is a process of gathering facts after a determination or decision has been reopened to determine if a revision of the determination or decision is applicable.

(a) If we have diligently pursued the investigation to its conclusion, we may revise the determination or decision. The revision may be favorable or unfavorable to you. "Diligently pursued" means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if we conclude the investigation and if necessary, revise the determination or decision within 6 months from the date we begin the investigation.

(b) If we have not diligently pursued the investigation to its conclusion, we will revise the determination or decision if a revision is applicable and if it will be favorable to you. We will not revise the determination or decision if it will be unfavorable to you.

PART 422—[AMENDED]

13. The authority citation for Subpart C of Part 422 reads as follows:

Authority: Secs. 205, 221, 1102, 1869, and 1871, 53 Stat. 1368 as amended, 68 Stat. 1091,

§ 422.210 [Amended]

14. Section 422.210(a) is amended by changing "§§ 404.916e" to read "§§ 404.924" and "416.1424d" to read "416.1224".

15. Section 422.210(c) is revised to read as follows:

* * * * *

(c) *Time for instituting civil action.* Any civil action described in paragraph (a) of this section must be instituted within 60 days after the Appeals Council's notice of denial of request for review of the presiding officer's decision or notice of the decision by the Appeals Council is received by the individual, institution, or agency, except that this time may be extended by the Appeals Council upon a showing of good cause. For purposes of this section, the date of receipt of notice of denial of request for review of the presiding officer's decision or notice of the decision by the Appeals Council shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary. Where pursuant to the expedited appeals procedures an agreement has been entered into under 42 CFR 405.718c, a civil action under section 205(g) of the Act must be commenced within 60 days from the date of the signing of such agreement by, or on behalf of, the Secretary, except where the time described in the first sentence of this paragraph (c) has been extended by the Secretary upon a showing of good cause. Where pursuant to the expedited appeals procedures an agreement has been entered into under §§ 404.926, 410.629d, or 416.1426 of this chapter, a civil action under section 205(g) of the Act must be commenced within 60 days after the date the individual receives notice [a signed copy of the agreement will be mailed to the individual and will constitute notice] of the signing of such agreement by, or on behalf of, the Secretary, except where the time described in this paragraph (c) has been extended by the Secretary upon a showing of good cause.

[FR Doc. 84-30888 Filed 11-23-84; 8:45 am]

BILLING CODE 4150-11-M

Food and Drug Administration

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Sulfadimethoxine, Ormetoprim

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc., providing for the manufacture of a premix containing 113.5 grams of sulfadimethoxine and 22.7 grams of ormetoprim per pound. The premix is intended for the manufacture of medicated feed for use in the control of furunculosis in salmonids (trout and salmon). In addition, FDA is establishing tolerances for sulfadimethoxine and for ormetoprim in salmonids.

EFFECTIVE DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Charles Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, is the sponsor of NADA 125–933 for Romet™-30 (sulfadimethoxine 113.5 grams (25 percent) and ormetoprim 22.7 grams (5 percent) per pound). This product is a premix for use in the manufacture of medicated feed for the control of furunculosis in salmonids (trout and salmon) caused by *Aeromonas salmonicida*. The application is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. Additionally, the regulations are amended to establish a tolerance for sulfadimethoxine and for ormetoprim in salmonids.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 556

Animal drugs, Foods, Residues.

21 CFR Part 558

Animal drugs, Animal Feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. Part 556 is amended:

a. By revising § 556.490 to read as follows:

§ 556.490 Ormetoprim.

A tolerance of 0.1 part per million is established for negligible residues of ormetoprim in the edible tissues of chickens, turkeys, ducks, and salmonids.

b. By revising § 556.640(a) to read as follows:

§ 556.640 Sulfadimethoxine.

* * * * *

(a) In the uncooked edible tissues of chickens, turkeys, cattle, ducks, and salmonids at 0.1 part per million (negligible residue).

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

2. Part 558 is amended in § 558.575 by revising paragraph (b) and by adding new paragraphs (c)(3) and (e)(5) to read as follows:

§ 558.575 Sulfadimethoxine, ormetoprim.

* * * * *

(b) *Approvals.* (1) Premix levels containing 25 percent of sulfadimethoxine and 15 percent of ormetoprim granted to No. 000004 in § 510.600(c) of this chapter for conditions of use in paragraph (e)(1), (2), (3), and (4) of this section.

(2) Premix levels containing 25 percent of sulfadimethoxine and 5 percent of ormetoprim granted to No. 000004 in § 510.600(c) of this chapter for conditions of use in paragraph (e)(5) of this section.

(c) * * *

(3) Finished feed for salmonids not less than 85 percent nor more than 115 percent of either ormetoprim or sulfadimethoxine.

* * * * *

(e) * * *

(5) *Salmonids*—(i) *Amount.* 50 milligrams of active ingredients per kilogram of body weight per day.

(ii) *Indications of use.* For the control of furunculosis in salmonids (trout and salmon) caused by *Aeromonas salmonicida* strains susceptible to sulfadimethoxine and ormetoprim combination.

(iii) *Limitations.* Administer for 5 consecutive days; withdraw 42 days before release as stocker fish or slaughter.

Effective date. November 26, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 16, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-30804 Filed 11-23-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1077–85]

Delegation of Authority Under the National Cooperative Research Act of 1984

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: The National Cooperative Research Act of 1984 provides persons engaging in joint research and development ventures with the opportunity to reduce their potential liability for damages under the antitrust laws, provided they file a timely notice concerning the organization and objectives of their venture with the Attorney General and the Federal Trade Commission. The Attorney General or Federal Trade Commission must then publish a notice in the Federal Register that identifies the parties to the venture and describes generally the area of planned activity of the venture. Due to the antitrust-related nature of these notice and publication functions, the Attorney General has delegated his

authority under the Act to the Assistant Attorney General, Antitrust Division.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Roger B. Andewelt, Deputy Director of Operations, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Room 3214, Washington, D.C. 20530. Telephone (202) 633-3544.

SUPPLEMENTARY INFORMATION: This order is an internal delegation of authority. It is being published and placed in the Code of Federal Regulations for the general information of the public. This order is not a rule within the meaning of either Executive Order 12291, section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organization and functions (government agencies), Intergovernmental relations.

PART 0—[AMENDED]

By virtue of the authority vested in me, as Attorney General, by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Part 0 of Title 28 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Part 0 reads as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510 unless otherwise noted.

§ 0.41 [Amended]

2. Section 0.41 is amended by adding the following new paragraph (k):

* * * * *

(k) Acting on behalf of the Attorney General with respect to section 6 of the National Cooperative Research Act of 1984, Pub. L. 98-462, 98 Stat. 1815 (1984).

Dated: November 16, 1984.

William French Smith,

Attorney General.

[FR Doc. 84-30948 Filed 11-23-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Extension of Deadline for Submission of Program Amendments to the Colorado Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Colorado to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA and Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an extension until March 4, 1985, to submit a proposed blaster certification program.

EFFECTIVE DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Hagen, Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87102; Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9468). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Colorado's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On February 6, 1984, Colorado advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an additional six months to develop and adopt a blaster certification program.

The Director of the Colorado Department of Natural Resources, Mined Land Reclamation Division, the regulatory authority for Colorado's program, advised OSM that the State would require the additional time in order to work out an agreement with another State agency that would administer the blaster certification program. He also stated that Colorado would like to promulgate regulations governing a blaster training program concurrently with the promulgation of other modifications to the program which the State intends to make as a result of modifications in the Federal regulations under SMCRA. In accordance with the State's request, the Director extended the deadline for Colorado to submit a proposed blaster training program until September 4, 1984 (49 FR 18296).

On August 3, 1984, the State requested a second extension for an additional six months. The State indicated that an additional six months would be necessary to allow them to develop an adequate program.

On September 24, 1984, OSM published notice in the Federal Register of its proposal to grant Colorado an additional six months to submit a blaster training program (49 FR 37426). Public comment on this proposal was sought for 30 days ending October 24, 1984. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director is extending the deadline for Colorado to submit a proposed blaster training program until March 4, 1985. This extension will allow the Colorado Department of Natural Resources, Mined Land Reclamation Division, to work out an agreement with another State agency to administer the blaster training and certification program and to coordinate the development of the program with the development of other proposed regulatory modifications to the Colorado program which are necessary as a result of changes to the Federal regulations.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Director has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1984.

John D. Ward

Acting Director, Office of Surface Mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 906—COLORADO

30 CFR Part 906 is amended by revising § 906.16 to read as follows:

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17, Colorado is required to submit for OSM's approval the following proposed program amendments by the date specified.

(a) By March 4, 1985, Colorado shall submit for OSM's approval

(1) rules governing the training, examination and certification of blasters and

(2) a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84-30897 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50503A; FRL-2558-11]

Significant New Use of Chemical Substances; Isopropylamine, Distillation Residues, and Ethylamine, Distillation Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), to require persons to notify EPA at least 90 days before manufacturing, importing, or processing isopropylamine distillation residues (CAS No. 79771-08-7) and ethylamine distillation residues (CAS No. 79771-09-8) for use in metalworking fluids. These substances were the subject of premanufacture notices P-80-289 and P-80-290, respectively. EPA believes that these substances may react with nitrosating agents in metalworking fluids to form carcinogenic nitrosamines and that use of the contaminated metalworking fluids could result in significant human exposure to nitrosamines.

DATES: These regulations shall be promulgated for the purposes of judicial review at 1:00 p.m. eastern time on December 10, 1984. This rule is effective February 8, 1985.

FOR FURTHER INFORMATION CONTACT: Edward Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), Washington, D.C. (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is generally subject to the some statutory requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which is interpreted at 40 CFR Part 720 published in the Federal Register of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5 (b)(1) and (d)(1), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5 (e) and (f). If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the Federal Register its reasons for not taking action.

Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs are subject to TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127 and 127.28, published in the Federal Register of August 1, 1983 (48 FR 34734). The EPA policy in support of these requirements appears at 40 CFR Part 707 published in the Federal Register of December 13, 1983 (49 FR 55462).

II. Applicability of General Provisions

EPA has promulgated general provisions under 40 CFR Part 721, Subpart A which are applicable to SNURs and were published in the Federal Register of September 5, 1984 (49 FR 35011). These general provisions will apply to this SNUR without change except as discussed in this preamble. Interested persons should refer to that document for a detailed discussion of the general provisions.

The general provisions governing SNUR reporting were promulgated subsequent to the proposal of this rule in the Federal Register. Therefore, this final rule is structurally different from its proposal format because the non-substantive and procedural matters are now contained in Subpart A to Part 721. Because the reformatting of this rule is a non-substantive change, reproposal is not required.

III. Summary of This Rule

The chemical substances subject to this rule are identified by chemical name and by Chemical Abstracts Service (CAS) number as isopropylamine distillation residues (CAS No. 79771-08-7) and ethylamine distillation residues (CAS No. 79771-09-8). They were the subject of PMNs P-80-289 and P-80-290. EPA is designating use in metal working fluids as a significant new use of the substances.

IV. Background

On August 24, 1983 (48 FR 38502), the Agency proposed a SNUR for two chemical substances which were the subject of PMNs P-80-289 and P-80-290. EPA proposed that use in metalworking fluids be designated as a significant new use of both substances. The background of each PMN, the reasons for proposing the SNUR, and supporting information are set forth in the preamble to the proposed rule.

The notice submitter stated that these substances would be used as corrosion inhibitors for oil well service lines and secondary recovery recirculating water systems. EPA did not find that the specific uses of the two substances may

present an unreasonable risk to health or the environment and allowed the substances to enter commercial production. However, EPA is concerned that these substances could also be used as corrosion inhibitors in metalworking fluids and during this use could come into contact with nitrosating agents resulting in the formation of nitrosamines. The Agency is concerned that these nitrosamines would present carcinogenic risks to the large number of workers potentially using the metalworking fluids.

EPA received a notice of commencement of manufacture from the notice submitter on February 25, 1981, and the two substances were added to the TSCA Chemical Substance Inventory.

EPA received comments from three persons on the proposed SNUR. The major issues that were raised are discussed in this preamble.

V. Findings

For the reasons set forth in the preamble to the proposed rule and further discussed in this preamble, the Agency has concluded that use of these two substances in metalworking fluids would be a significant new use. When used in metalworking fluids, these two substances may be exposed to nitrosating agents, in particular nitrites, which would convert the amines into nitrosamines, many of which are known or suspected carcinogens in animals. Exposure to workers in this use could be substantial and would be different from exposures to workers in the uses of these two substances described in the PMNs. The risk of cancer in these workers contributes to the finding that the use is significant. No commenter presented any information relevant to the risks of these substances in the significant new use, and EPA has obtained no new information to change its basic risk concerns. Accordingly, the Agency is promulgating this final rule.

One commenter stated that the Agency has not demonstrated "significant risk" and indicated that EPA must quantify such risk to issue a SNUR. The Agency believes that such an approach is not required by TSCA nor intended by Congress. Section 5 of TSCA was specifically designed to address situations where more data are needed. Consequently, the Agency commonly uses qualitative risk assessments where sufficient data are lacking to conduct a quantitative risk assessment. If the Agency reasonably concludes that a use may have some significant adverse health or environmental impact there is sufficient justification for issuing a SNUR.

VI. Designation of a Significant New Use

To determine what would constitute a significant new use of these chemical substances, EPA considered relevant information about the toxicity of the two substances and likely exposures associated with possible uses, including the four factors listed in section 5(a)(2) of TSCA. In particular, EPA focused on the following factors: (1) The intended use of the two substances; (2) the current markets for distillation residue amines; (3) potential uses for the two substances; (4) the potential exposures to nitrosamines inadvertently formed from use in metalworking fluids; and (5) the potential risks associated with exposures to the two substances and their N-nitroso derivatives. Based on these considerations, EPA has decided to define "use in metalworking fluids" as a significant new use of the two substances. A detailed discussion of EPA's analysis of exposure and risk in this use is contained in the preamble to the proposed rule (48 FR 38502).

EPA also considered defining the significant new use as "use in metalworking fluids that contain nitrosating agents." This approach would be parallel in construction to a recently published immediately effective proposed rule under sections 5(f) and 6(a) of TSCA, which prohibits the addition of nitrosating agents to two new chemical substances when used in metalworking fluids (49 FR 2762, January 23, 1984). This approach to the SNUR would be more narrow in that a significant new use notice would only be required in specific situations where a person actually intended to use the two substances with nitrosating agents. The Agency did not adopt this approach because users who are not manufacturers or processors are not limited by a SNUR. They may add nitrites to these two substances without notice to either EPA or their suppliers. Under the recent section 6 rule, it would be unlawful for any of these persons, including distributors and users to take actions which would result in the addition of nitrosating agents to the substance regulated under section 6(a).

One commenter stated that the identified nitrosamines of concern are possible byproducts of the use of the two substances in the presence of other chemicals, and thus the Agency's concern is narrower than the defined significant new use. Therefore, the commenter suggested that, "use in metalworking fluids" may not be appropriate as the significant new use in this case. Furthermore, the commenter suggested that the use of SNUR authority may not be appropriate where the identified concern is a possible byproduct of the significant new use. Section 5 gives the Agency the authority to consider risks associated with the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance. Byproducts associated with such activities are clearly included within the scope of EPA's TSCA authority. In fact, section 5(d)(1) of TSCA specifically requires that byproducts associated with the manufacture, processing, use, or disposal of a chemical substance be reported to EPA. EPA believes that this demonstrates that Congress intended EPA to consider byproducts when determining the need for regulation. In the present case, EPA wants to review the use of these substances in situations where both carcinogenic or potentially carcinogenic byproducts resulting from a use can form and significant exposure can occur.

EPA adopted the significant new use definition "use in metalworking fluids" because EPA's analysis shows the metalworking fluids are likely to contain nitrites and other nitrosating agents or to have nitrites or other nitrosating agents added during use in machine shops. In connection with EPA's continuing examination of the problem of nitrosamines in metalworking fluids, EPA has determined that nitrosating agents, in particular nitrites, are frequently added to metalworking fluid concentrates by formulators ("processors" under TSCA) for their corrosion inhibiting properties. In addition, EPA has determined that nitrosating agents, such as nitrites, are commonly available to workers in machine shops and are routinely added to metalworking fluids during use, particularly to restore the corrosion inhibiting properties of a fluid that has been used for some time. Thus, EPA would be concerned about the use of these substances in metalworking fluids even if the formulators did not add nitrosating agents during formulation since nitrosating agents could also be added during use.

VII. Alternatives

In the proposed SNUR, EPA considered other possible approaches: A section 8(a) rule, a section 6 rule, and taking no action.

For the reasons discussed in the proposed rule, EPA has elected to proceed with the promulgation of a SNUR for the significant new use of P-80-289 and P-80-290.

One commenter supported the use of SNUP authority in this case rather than

section 8(a), section 6, or no action. However, the commenter believes that, whenever possible, the Agency should first institute a section 8(a) reporting rule to determine whether the activity of concern is one which is already occurring. Another commenter supported the use of section 8(a) in this case to gather the needed information rather than use SNUR authority, since the substances may have been used in metalworking fluids during the two to three year interval between the PMN submission and the proposal of the SNUR. The Agency believes that the use of SNUR authority rather than issuing a section 8(a) reporting rule makes better sense in this case. If EPA were informed in a section 8(a) reporting rule about the use of these substances by someone for the significant new use, the Agency could not take immediate action under section 5(e) as it can under a SNUR. By issuing a SNUR, the Agency believes it can protect human health while allowing innovation.

EPA considered taking action under section 6 to regulate use of these substances in metalworking fluids. If further information were submitted to EPA in a SNUR notice which supported EPA's concerns about nitrosamine formation, EPA could regulate the use of these substances in metalworking fluids in an appropriate manner, such as under section 5(f) of TSCA. EPA recently issued an immediately effective section 6(a) proposed rule under the authority of section 5(f) of TSCA for two new chemical substances, one of which will be used as a corrosion inhibitor in metalworking fluids (49 FR 2762). In this situation EPA had sufficient information on formation of a nitrosamine which is a known carcinogen.

One commenter stated that the Agency did not comply with section 9 of TSCA, specifically the referral to the Occupational Safety and Health Administration of the workplace hazards associated with these substances. Section 9 does not apply to SNURs. A referral under section 9 of TSCA occurs only when the Agency makes a finding that an activity "presents or will present an unreasonable risk." The Agency does not make such a finding in a SNUR rulemaking.

VIII. Persons Subject to SNUR Notice Requirements

Section 721.5 of the general SNUR provisions requires persons to submit a SNUR notice to EPA before they manufacture, import, or process a substance subject to a SNUR for a significant new use. EPA has decided to require manufacturers, importer, and processors to submit notices for this SNUR. Thus § 721.5 will apply to this SNUR without change.

EPA made this decision for several reasons. First, manufacturers, importers, and processors are likely to have information relevant to EPA's analysis of the significant new use should it be developed. Second, determining who should report between two or more parties is likely to be subjective in this significant new use situation and thus not susceptible to a clear standard in the rule. Third, the knowledge of manufacturers, importers, and processors that a significant new use has been developed is likely to vary.

In making this decision, EPA considered the manner in which the significant new use might be developed. For example, in some cases a manufacturer or importer might decide to market these two substances to formulators of metalworking fluids without having specific customers in mind at the time. In that situation, the manufacturer or importer must submit a SNUR notice. Since there would be no identified processors in that case, only the manufacturer or importer would submit a notice. EPA would evaluate the use based on the information submitted by the manufacturer or importer. If there were insufficient information about risks, either because of the lack of test data or because exposure information was missing, EPA could prohibit or limit the new use under section 5(e). Any processor later purchasing the substances from that manufacturer or importer for use in metalworking fluids would have to submit a SNUR notice in turn, prior to such processing, unless EPA amended the SNUR as a result of the manufacturer's or importer's SNUR notice.

In another situation, a manufacturer or importer might market the substances for uses other than in metalworking fluids and notify its customers of the SNUR. A processor who purchased the two substances from that manufacturer or importer might decide to develop the metalworking fluid use without informing the manufacturer or importer. In that instance only the processor would submit the notice because only the processor would intend the significant new use. If the processor informed the manufacturer or importer of the intended significant new use, the manufacturer or processor would also be required to submit a notice.

There are likely to be situations where, for the same transaction, both the manufacturer or importer and the processor/customer jointly develop the significant new use. In that situation or in any other situation where both have knowledge of the significant new use, both would be obligated to submit a notice because both would intend the significant new use. However, to avoid two potentially duplicative notices on the same transaction, EPA had determined that § 721.10(b) of the general provisions apply to allow manufacturers, importers, and processors in this situation to submit one joint SNUR notice or to submit separate notices each containing the information known to or reasonably ascertainable by the respective party. A detailed discussion of joint notice procedures appears in the preamble to the Subpart A promulgation (49 FR 35011).

Another approach EPA considered was to require only the person who actively develops and markets the substances for the significant new use to submit a SNUR notice because this person is likely to know the most about exposure from the significant new use and to have the most information about the market potential for the substance in the new use. The other party or parties technically subject to the notice requirements would at least initially be excused from this responsibility. One commenter supported this approach. EPA rejected this approach because it is not the best means for ensuring complete and accurate reporting. EPA has determined that each party might have information necessary to evaluate the risks of the new use. EPA believes that allowing a joint submission when both parties intend the new use relieves any additional burdens that might result and reduces the need for EPA to use section 5(e) to obtain additional necessary risk information.

IX. Applicability to Uses Which May Have Occurred Before Promulgation of the Final Rule

The chemical substances subject to this SNUR were added to the Inventory before the proposal. Thus, they could have been manufactured or processed for use in metalworking fluids before promulgation of this final rule.

Several commenters stated that the significant new use may not actually be a "new" use because two to three years have elapsed since the original PMN submission and the actual proposal of this SNUR. However, no one has indicated in response to the proposal that they were using the two substances in metalworking fluids. Therefore, the Agency has no evidence that this use is currently ongoing. As to uses that may have occurred since the proposal of this SNUR, EPA has decided that the intent

of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for EPA to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, even if the substances were manufactured, imported, or processed between proposal and promulgation of this rule for the significant new use, such activities may not continue after the effective date of this rule. Any such person must cease such activity until it has complied with all SNUR notice requirements. One commenter disagreed with this approach. EPA recognizes that this interpretation may disrupt commercial activities of persons who began manufacture or processing for a "significant new use" during the proposal period; however, no commenters indicated that the significant new use had begun during the comment period on this particular rule. Further, the Agency believes that manufacturers and processors were given adequate notice of this interpretation by the terms of the proposal.

One commenter stated that the best way to avoid business disruptions for persons who may have been planning to commercialize the substances for the significant new use are (1) the Agency should have a formal SNUR policy that alerts persons to this possibility; (2) the Agency should not allow two to three years to elapse between the PMN submission and the promulgation of a SNUR; and (3) the Agency should not make the SNUR effective upon proposal. The Agency believes that, since over 3,000 substances have been submitted in PMNs, the best way to formalize its SNUR policy is through developing individual SNURs and receiving public comment on the SNURs. It is true that two to three years have elapsed between the submission of PMNs on these substances and this SNUR; however, the Agency may regulate any substance under a SNUR at any time. This is especially true if test data show that a substance that previously completed PMN review is potentially hazardous in a particular use. Finally, the Agency is not, in most cases, proposing immediately effective SNURs. Rather, most SNURs will be effective only after an opportunity for comment.

X. Procedures for Informing Persons of the Existence of This Significant New Use Rule

EPA will publish information concerning this final SNUR in the TSCA Chemicals-in-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA will also use the TSCA Chemical Substance Inventory to inform persons of the existence of this final SNUR through footnotes by the chemical identities of the two substances subject to this SNUR. The footnotes will refer to an Inventory Appendix which will give a **Federal Register** or CFR citation of this SNUR. Commenters supported the use of all available means of informing persons of the existence of SNURs.

EPA recognizes that some processors may not know the identities of substances they process and therefore may not know they are required to submit a SNUR notice. The Agency believes this is unlikely in cases such as this, where the chemical substances are not confidential. Nevertheless, EPA has decided on a strategy to ensure that processors are aware that substances are subject to a SNUR. This strategy is reflected in § 721.5 of the general SNUR provisions which provides among other things, that manufacturers, importers, and processors must submit a SNUR notice if they distribute these substances in commerce unless they inform their customers in writing that the substances are subject to this SNUR and maintain records to verify such notification. Even if a manufacturer, importer, or processor provides such information to a customer, if the manufacturer, importer, or processor has reason to believe that the customer is processing the substances for the significant new use before submitting a SNUR notice, the manufacturer, importer, or processor must either submit a SNUR notice to EPA or cease sales to the customer for that use and report the matter to EPA enforcement authorities.

Some commenters stated that EPA should not hold manufacturers responsible if their customers fail to comply with SNUR requirements where the manufacturer did not know that the customer intended to process the substance for a significant new use. Instead of this approach, one commenter suggested that only processors should be responsible for complying with SNUR requirements. The Agency believes that the scheme it has selected in § 721.5 allows the greatest flexibility to manufacturers, importers, and processors of these substances, and is therefore less burdensome and is fair to all parties concerned. A detailed discussion of § 721.5 and the reasons for adopting it appears in 49 FR 35011.

XI. Reporting Form

As discussed in the proposal, and consistent with § 721.10 of the general provisions, the Agency will require SNUR notice submitters to use the PMN form published in the **Federal Register** of May 13, 1983 (48 FR 21722). However, for the purposes of this rule, EPA is interested only in gathering information concerning the actual significant new use and formulations employed in the use of these substances. Therefore, the rule requires that submitters only complete those sections of the form dealing with the chemical identity, the submitter identity, and the specific use. In addition, any health and safety data relating to these substances must be attached. Therefore, submitters must complete Parts I and III of the form as it appears in Appendix A to 40 CFR Part 720. The submitter may also provide information related to anticipated exposure to fluids in actual machinery operation. This information can be provided in Part II, B of the form. SNUR notices will be processed like PMNs according to the premanufacture notice procedures published in the **Federal Register** of May 13, 1983 (48 FR 21722), and appearing at 40 CFR Part 720.

XII. Exemptions to Reporting Requirements

The Agency has promulgated exemptions to SNUR reporting requirements under § 721.19 of the general SNUR provisions. In the case of these two substances, the terms of § 721.19 apply without change.

Section 721.19 adds four exemptions to those originally included in the proposed rule. The reasons for those additional exemptions are discussed in the **Federal Register** of September 5, 1984 (49 FR 35011). For this rule, EPA decided to exempt persons who manufacture, import, or process the substances only as impurities because such persons are less likely to know the identity of impurities and because EPA believes the risks potentially posed by such impurities, based on current concerns, are not significant. EPA has also exempted persons who import or process the substances as part of an article because EPA believes articles cannot be used as metalworking fluids and because the substances would not be available in articles to react to form nitrosamines.

EPA has also exempted persons from the rule when they manufacture or process the substances solely for export and label the substances in accordance with section 12(a)(1)(B) of TSCA. However, such persons must notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). EPA is not concerned about worker exposure during manufacture, import, or processing of the substances. Rather, EPA is concerned about workers who may be exposed to metalworking fluids containing the substances. Section 12(a) of TSCA exempts substances manufactured, processed, or distributed in commerce solely for export from regulation under section 5(a)(2) unless EPA finds that the activities will present an unreasonable risk of injury to health or the environment in the United States. In this case, if the use of these substances will occur outside the United States, EPA is not immediately concerned. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus persons would be exempt from reporting under this SNUR if a person manufactures (the term manufacture includes import) or processes the substances solely for export from the United States under the following restrictions: (1) There is no use of the substances in the U.S., other than in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacturer, or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed these substances both for export and for use in the United States, such manufacture and processing would not be "solely for export" because some manufacture or processing would be for use in the United States.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 which was published in the **Federal Register** of May 13, 1983 (48 FR 21722) including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

XIII. Test Data and Other Information

EPA recognizes that under TSCA section 5 a person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in the person's possession or control and to describe any other data known to or reasonably ascertainable by that person. However, in view of the potential health risk that may be posed by the significant new use of these two substances, EPA encourages possible SNUR notice submitters to test the substances under various simulated use conditions to identify and quantify the level of nitrosamines formed in metalworking fluids. Consideration should be given to pH and temperatures during use and any other factors that might influence nitrosamine formation. If a SNUR notice is submitted for use in metalworking fluids without such test data, EPA may take action under section 5(e).

As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate the significant new use of the two substances. During prenotice consultation, EPA will also discuss information that will be particularly useful to the Agency in reviewing these substances. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances.

XIV. Economic Analysis

The Agency evaluated the potential costs of establishing significant new use reporting requirements for these two substances and the potential costs of the section 8(a) alternative. This evaluation is summarized in the preamble to the proposed rule. The complete economic analysis of this rule and other regulatory options is included in the rulemaking record and is available for public review.

XV. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so-called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in "DATES" in this document. The effective date has, in turn, been calculated from the promulgation date.

XVI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50503A).

The record includes basic information considered by the Agency in developing this rule. The record now includes the following:

1. The PMNs for these substances.
2. The **Federal Register** notice of receipt of the PMNs.
3. The proposed SNUR for these substances.
4. The economic support document for the proposed SNUR.
5. The notice of commencement of manufacture for these substances.
6. Public comments on the proposal.
7. Comments from OMB and EPA's response.
8. The 21 references listed in the preamble to the proposed rule.

A public version of this record from which confidential business information is deleted is available to the public in the OPTS Public Information Office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, located in Rm. E–107, 401 M St., SW., Washington, D.C.

XVII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. Even if EPA received 25 SNUR notices, and each submitter performed the recommended testing, the direct cost of the rule would be under $1 million. In addition, because of the nature of the rule and the substances subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this rule may encourage

innovation in safe chemical substances or highly beneficial uses.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial even if the significant new use were developed by small companies. EPA expects to receive few SNUR notices for the substances. With these data, EPA would be able to evaluate the risks posed by the substances in this use and, if necessary, take action to control those risks. Therefore, even if all SNUR notices are submitted by small businesses, only a few small businesses will be directly affected by the rule. In addition, the cost of the testing that may be encouraged by this rule should not have a major impact on a small business that may want to use these substances in metalworking fluids.

C. Paperwork Reduction Act

The information reporting requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0012.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: November 8, 1984.

William D. Ruckelshaus,

Administrator.

PART 721—[AMENDED]

Therefore, Chapter I of Title 40 is amended as follows:

1. By alphabetically adding the definition for "metalworking fluid" to § 721.3 to read as follows:

§ 721.3 Definitions.

* * * * *

"Metalworking fluid" means a liquid of any viscosity or color containing intentionally added water and used in metal machining operations for the purpose of cooling, lubricating, or rust inhibition.

* * * * *

2. By adding a new § 721.170 to read as follows:

§ 721.170 Isopropylamine distillation residues and ethylamine distillation residues.

(a) *Chemical substances and significant new use subject to reporting.* (1) The following chemical substances referred to by their Chemical Abstracts Service (CAS) register numbers and chemical names are subject to reporting under this section for the significant new use identified in paragraph (a)(2) of this section: CAS No. 79771–06–7, isopropylamine distillation residues, and CAS No. 79771–09–96, ethylamine distillation residues.

(2) The significant new use is use in metalworking fluids.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Notice Requirements and Procedures.* Section 721.10 applies to this section, except persons submitting a notice must complete only Parts I and III of the notice form.

(2) [Reserved].

(Sec. 5, Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604))

(Approved by the Office of Management and Budget Under—OMB control number 2070–0012)

[FR Doc. 84–30639 Filed 11–23–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 31

[CC Docket No. 81–893; FCC 84–547]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry); and Amendment of the Commission's Rules To Provide for Nonregulated Activities of Telephone Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule (Fifth Report and Order).

SUMMARY: This action requires a separate set of books for nonregulated activities of telephone carriers. These accounting changes are prescribed in order to implement the Commission's *Computer II* decision which required carriers to account for nonregulated activities in separate books of account when those activities are not conducted through a separate subsidiary. This action will establish specific below-the-line accounts on the regulated books to identify costs associated with nonregulated activities and will eliminate some unnecessary rules.

EFFECTIVE DATE: May 27, 1985.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau (202) 634–1861.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 31

Telephone, Uniform System of Accounts, Communications common carriers, Reporting and recordkeeping requirements.

Fifth Report and Order

In the matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry) amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies, to provide for nonregulated activities; CC Docket No. 81–893.

Adopted: November 9, 1984.
Released: November 20, 1984.

By the Commission.

I. Introduction

1. In the Notice of Proposed Rulemaking (NPRM) in Docket 81–893 released June 21, 1983, 48 FR 29891 (1983), the Commission proposed to revise Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies (USOA), to establish provisions to account for carriers' nonregulated activities in separate books of account. These revisions were proposed to implement the Commission's decision in Docket 20828, *Second Computer Inquiry (Computer II)*,[1] that nonregulated activities should be accounted for in separate books of account by carriers who do not conduct these activities through a separate subsidiary. Of course, if a carrier established a subsidiary to conduct nonregulated activities, it would establish a separate set of books for the subsidiary as a separate legal entity. Based on our analysis of the comments received in this proceeding, we have decided to adopt, with some minor modifications, the accounting changes proposed in the NPRM.

2. The NPRM also sought comments as to what allocation procedures and controls should be established to ensure that nonregulated activities receive a fair share of a company's joint and common costs. Although several parties commented in this area, these comments do not provide an adequate record to permit us to decide to what extent we should prescribe such procedures and controls. Accordingly, we are deferring the question of allocations to another NPRM which we will issue in the near future.

II. Background

3. In the *Computer II* decision the Commission allowed telephone carriers other than AT&T (and after divestiture, the Bell Operating Companies) to offer enhanced services and customer premises equipment (CPE) on a nonregulated basis without establishing a separate subsidiary. In doing so, however, the Commission decided that carriers conducting these nonregulated activities should account for them in separate books of account.[2]

4. The accounting proposed for telephone carriers in this proceeding was based on similar accounting proposed for record carriers in a Notice of Proposed Rulemaking in Docket 82–678, 47 FR 44781, released October 4, 1982. Subsequently, this accounting was adopted with minor changes in the *Report and Order* in Docket 82–678 on September 9, 1983, FCC 83–398.

III. Proposed Revisions

5. As indicated in the NPRM, our objectives in proposing separate books of account for nonregulated activities were to: (1) Assure availability for regulatory purposes of data which are not distorted by nonregulated activities; (2) establish specific accounts to identify account balances associated with nonregulated activities; (3) allow maximum latitude for carriers in establishing their accounting systems for nonregulated activities; (4) identify accounts affected by deregulation and establish instructions for transfers from prescribed accounts to the accounts for nonregulated activities; [3] (5) provide for recording joint transactions and any necessary allocations between the regulated entity and its nonregulated activities; and (6) monitor the scope of nonregulated activities and any potential for adverse impacts on regulated services.

6. To achieve these objectives, we proposed to establish on the regulated books two new accounts for nonregulated activities, as asset account entitled "Nonregulated investment" and a profit and loss account entitled "Income from nonregulated activities." We also proposed to modify the existing accounts used in accounting for nonregulated activities to conform them to the new accounting requirements. Under the proposal, the new investment account would include the investment in physical property for other than the regulated activities, receivables representing the nonregulated portion of expenses incurred by the regulated activities, payables representing costs incurred by the nonregulated activities for the regulated business, and the net income or loss of the nonregulated activities for each month. The proposed profit and loss account would be used to record the monthly net income or loss of the nonregulated activities at the same time that it is included in the investment account. The nonregulated entity would maintain its own books of account.

IV. Summary of Comments

7. Interested parties were invited to file comments on our proposal on or before August 1, 1983, and reply comments on or before August 22, 1983. Comments and/or reply comments on the above proposals were received from Arthur Andersen & Co.; Virginia State Corporation Commission (Virginia); Rural Telephone Coalition (RTC); Colorado Public Utilities Commission (Colorado); Central Telephone Company (Centel); GTE Service Corporation (GTE); United Telephone Systems, Inc. (United); State of California and the Public Utilities Commission of the State of California (California); Independent Data Communications Manufacturers Association, Inc. (IDCMA); Staff of the Michigan Public Service Commission (Michigan); North American Telephone Association (NATA); New York State Department of Public Service (New York); Southern New England Telephone Co. (SNET); American Telephone and Telegraph Company (AT&T); Public Service Commission of Wisconsin (Wisconsin); Kentucky Public Service Commission (Kentucky); and Idaho Public Utilities Commission (Idaho).

8. The respondents raised three major issues. These issues are (1) Whether the Commission should require separate books of account for nonregulated activities, (2) if separate books of account are required, whether the Commission should prescribe a detailed accounting system for the nonregulated activities, and (3) to what extent the nonregulated activities should be reported to the Commission and disclosed to the public.

9. *Separate books of account.* Only one respondent, Arthur Andersen and Co., opposes the establishment of a separate set of books for nonregulated activities as proposed. It states that the separation proposed by the Commission would cause confusion and added clerical cost and is unnecessary to meet the Commission's stated objectives. It argues that the nonregulated costs can be isolated by segregating the amounts within the existing below-the-line accounts. Centel also comments on the use of existing below-the-line accounts, although it does not oppose the establishment of a separate set of books per se. Centel's concern is that some of the independent companies, particularly the smaller ones, may not have enough nonregulated business to justify the expense of establishing a separate set of books for those activities. Therefore, Centel urges the Commission to allow carriers the option of using existing below-the-line accounts or establishing a separate set of books for nonregulated activities.

10. None of the remaining respondents disagree with the proposal to establish separate books of account for the provision of nonregulated services. Of these respondents, nine specifically support our proposal to establish below-the-line summary accounts on the regulated books to reflect the regulated entities investment in and the operating results of the nonregulated activities. These respondents generally support the need to account for the nonregulated activities separately from the regulated activities as a means of meeting the primary objective of this proceeding, which is to ensure that the Commission

[1] Amendment § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. denied sub nom.* Louisiana Pub. Serv. Comm'n v. FCC, 103 S. Ct. 2109 (1983).

[2] We note that the Telecommunications Industry Advisory Group (TIAG), an advisory committee established to assist the Commission in rewriting the Uniform System of Accounts (USOA) for telephone companies (CC Docket No. 78–196), forwarded to the Commission on May 31, 1984, an accounting system recommendation which is less comprehensive in its accounting for nonregulated activities and does not include the concept of separate books of account. In effect, this constitutes a recommendation to reconsider a basic *Computer II* policy. In our original charge to the TIAG for an accounting system recommendation, we did not envision entertaining recommendations for substantive changes in basic policy and do not believe that it would be appropriate to consider such changes in the context of accounting system revision. The accounting established herein is premised on our existing *Computer II* policies and, thus, will be reflected in our forthcoming design of a revised USOA.

[3] The accounting for proceeds from the sale of CPE under regulation, the valuation of CPE supporting assets (including land and buildings) transferred to nonregulated activities by the Independents, and the treatment of embedded CPE owned by the Independents and tariffed with this Commission rather than the state commissions was addressed in a separate Order.

has data available for regulatory purposes that are not distorted by nonregulated activities. In its reply comments, IDCMA states that Arthur Andersen and Co.'s position that separate books are unnecessary is an untimely request for reconsideration of *Computer II*.

11. *Accounting system for nonregulated activities.* We received a number of comments indicating that the Commission should go beyond the proposed summary accounts and prescribe a detailed system of accounts to be used in accounting for nonregulated activities in a separate set of books. They contend that a detailed prescription of accounts is necessary to safeguard against the potential for cross subsidization, particularly in those instances involving the joint use of plant and personnel, and to ensure an easily auditable system. New York, for instance, recommends that we prescribe specific accounts in which to accumulate major groups of nonregulated costs by business activity. California and IDCMA argue that if carriers are allowed to use plant and employees jointly in both regulated and nonregulated activities, the accounting system must be detailed, precise and auditable. NATA proposes a highly structured system of accounts for nonregulated activities and sets forth in considerable detail the accounts that it believes should be prescribed.

12. Several other respondents, on the other hand, support the Commission's proposal to permit the carriers flexibility in establishing the nonregulated accounting system. They state that flexibility for the nonregulated accounting is necessary to avoid undue burdens on the carriers, particularly the smaller ones.

13. *Reporting and disclosure of nonregulated activities.* The disclosure of the nonregulated activities of the carriers was addressed by three respondents. NATA states that financial reporting requirements should be imposed for nonregulated activities as an aid to enforcement of the accounting provisions. It suggests a detailed balance sheet and income statement be filed for the nonregulated activities. GTE and SNET, on the other hand, are concerned that the proposed accounting and the Commission's current rules will disclose information which they consider proprietary. GTE states that the Commission should not adopt the proposed summary accounts for nonregulated activities because they would disclose the investment and operating results of those activities. It recommends, therefore, that the Commission accommodate the accounting within the existing accounts and defer establishing new accounts to the project to rewrite the USOA, Docket 78–196, 88 FCC 2d (1981). SNET's concern about disclosure focuses on the supplemental annual report for noncarrier operations required under the provisions of § 43.21(b) of the Commission's Rules and Regulations.[4] It requests that the provisions in Section 43.21(b) be waived or eliminated in this proceeding.

14. *Other issues.* Finally, the respondents raised several other issues. First, AT&T recommends that, when plant is used in both regulated and nonregulated activities, the entire investment be recorded in the regulated accounts with the nonregulated entity being charged an appropriate allocation of the cost of the investment (*e.g.*, depreciation) plus a return on the investment. SNET also recommends that shared costs first be recorded on the regulated books with appropriate amounts subsequently allocated to the nonregulated activities. Second, RTC seeks refinement to ensure that companies' operations that are currently recorded in account 103, "Miscellaneous physical property," but subject to some degree of regulation (*e.g.*, cable television investments) are not confused with nonregulated activities. Third, New York indicates that it is unclear whether the Commission intends to apply its accounting proposal to all independents, and argues that we should not attempt to fashion accounting for those independents not subject to our accounting rules.

Discussion

15. *Separate books of account.* In the NPRM we proposed that carriers account for all investments, revenues, and expenses of nonregulated activities in separate books of account when a separate legal entity is not established for those activities. As proposed, the regulated books would reflect only the net investment and net income or loss of nonregulated activities in below-the-line accounts. The primary objective of our proposal was to ensure that the Commission had data available for regulatory purposes that are not distorted by nonregulated activities.

16. Arthur Andersen and Co. argues that it is not necessary to establish separate books of account for nonregulated activities. It states that the nonregulated activities can be isolated by segregating the amounts within a carrier's existing (below-the-line) accounts. We agree that nonregulated activities can be accounted for within existing accounts. In fact, in CC Docket 79–105, 86 FCC 2d 885 (1981), and in CC Docket 82–681, FCC 83–457, released November 2, 1983, we prescribed the use of existing accounts as interim accounting for detariffed CPE until the rules were revised to provide for a separate set of books for nonregulated activities.

17. As stated previously, we made the decision to require a separate set of books for nonregulated activities under *Computer II*. Arthur Andersen and Co.'s comments provide no new information that was not considered in our *Computer II* decision. Accordingly, we agree with IDCMA that Arthur Andersen and Co. has submitted an untimely request for reconsideration. We will, however, consider Arthur Andersen and Co.'s arguments as supportive of Centel's request that we waive the accounting rules for small companies.

18. Centel's comment that some small carriers might not generate enough nonregulated business to warrant the cost of establishing separate books of account raises a valid concern. We do not believe, however, that this concern warrants adopting Centel's recommendation that carriers be allowed an option of using existing accounts or establishing a separate set of books.

19. To address this concern, we have considered establishing a standard which would provide automatic exemption from the separate books requirement for carriers with insignificant nonregulated activities. We have decided not to do so, however, because we have no basis for establishing such a standard. Accordingly, we have decided to adopt our proposal and to address individual carrier problems on a case by case basis. Carriers that believe that this requirement is unnecessary and unduly burdensome should request a waiver as provided for in Section 1.3 or our Rules.

20. *Accounting system for nonregulated activities.* New York, NATA, Michigan and California indicate that the Commission should prescribe a detailed accounting system for the nonregulated activities. They believe a detailed system is necessary to safeguard against cross subsidization and to ensure that the nonregulated activities are auditable.

21. After reviewing the comments, we find that the accounts we proposed are sufficient to meet our regulatory needs. These proposed accounts will isolate the nonregulated activities on the regulated books. Moreover, all transactions between the regulated activity and the nonregulated activities will be recorded in Account 108, "Nonregulated investments," which will provide a clear audit trail for review of these transactions and should insulate the regulated accounts from distortion by the nonregulated activities. The actual separate set of books to be established will be left to the companies. This approach gives the companies flexibility to develop their own nonregulated accounting system, and at the same time, provides an audit trail on the regulated books. These results are consistent with our stated objectives in this proceeding.[5]

22. *Reporting and disclosure or nonregulated activities.* NATA believes that the Commission should require detailed financial reporting for nonregulated operations as an aid to enforcing the prescribed accounting separations for regulated and nonregulated activities. As discussed at para. 13, SNET and GTE, on the other hand, believe that detailed data for nonregulated activities should not be reported and that disclosure of such data would cause them competitive harm.

23. We have carefully considered the comments concerning the reporting and disclosure of nonregulated activities and have decided not to require detailed reporting for those activities. We did not propose detailed reporting for nonregulated activities, and more importantly it has not been our intent to have that information disclosed. Moreover, we are not convinced that reporting of nonregulated data is needed to achieve our objective that regulated data not be distorted, and that regulated activities not cross-subsidize nonregulated activities. In addition to accounting prescribed herein, we plan to meet that objective through the allocation procedures and controls, and through our audits of the carriers' accounts. If in the future we find that allocation procedures and audits are insufficient to assure undistorted regulatory data or find a need for additional information, we will consider the use of additional reporting requirements as a further control. Accordingly, we have decided not to adopt detailed reporting as recommended by NATA.

24. The reporting requirement of § 43.21(b) has been in place for over twenty years and was implemented so that the Commission would receive information on AT&T's operating divisions that conducted common carrier related activities, such as AT&T's General Department. This provision was not intended to be applicable to the post *Computer II* nonregulated activities conducted in today's competitive environment which are subject to accounting rules adopted in this Report and Order. Accordingly, we are waiving § 43.21(b) to the extent that it would require carriers to file a supplemental annual report for nonregulated activities recorded in the new below-the-line summary accounts. The balances in these accounts, however, will be included in the carriers' reports and disclosed. Disclosure of those accounts was clearly contemplated by objective 2 as set forth in paragraph 5 above.

25. *Other Issues.* AT&T and SNET have raised questions concerning the manner in which joint costs should be recorded. We generally agree that the common costs should be recorded on the regulated books and that allocations should be made for the nonregulated portions. The specific allocation procedures are not being prescribed at this time. As previously indicated we will soon address cost allocations in another NPRM. Meanwhile, carriers are required to allocate costs to nonregulated activities on a fully distributed costing basis and shall maintain records for costs and usage to support their allocations. These allocations will be subject to increased audit review by this Commission in the future.

26. We have reviewed RTC's concern that we define our accounts in such a way as to distinguish activities considered by some to be subject to regulation (*e.g.* cable television investment) from the nonregulated activities we are concerned with. For accounting purposes, regulated activities of subject carriers are all common carrier telecommunications products and services subject to the tariff filing requirements contained in Title II of the Communications Act of 1934, as amended, and telecommunications products and services tariffed by the state commissions.[6] The activities described by RTC do not meet our definition of regulated services.

27. Finally, New York's concern that we might be prescribing accounting in this area for all independents is unfounded. In the Notice of Inquiry in this Docket, we envisioned that state regulatory commissions would oversee the appropriate accounting separation for carriers subject exclusively to their jurisdictions.

28. *Amendments.* Based on the foregoing, we are establishing a new below-the-line investment account 108, "Nonregulated investments," to record nonregulated activities. Account 108 will include the permanent investment, a receivable for all costs, including taxes, incurred on behalf of the nonregulated activities and a payable for all costs incurred by the nonregulated activities on behalf of the regulated activity and the monthly profit or loss from the nonregulated operations. Account 317, "Income from nonregulated activities," will include only the net of total revenues and total expenses with an offsetting entry to account 108.

29. Other miscellaneous changes are necessary to substitute the use of account 108 for account 103, and account 124, "Merchandise and materials held for sale or lease on a detariffed basis," and to remove nonregulated amounts from accounts 315, "Income from miscellaneous physical property," or 316, "Miscellaneous income," as established in Docket 79–105, and Docket 82–681. These Dockets established interim accounting to be used for nonregulated sale or lease transactions. Since this Order establishes the final accounting for nonregulated activities, this interim accounting is no longer necessary.

IV. Regulatory Flexibility Act

30. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the above discussion sets forth the purpose of these amendments. Further, we certify that these accounting changes can be readily implemented by all

---

[4] Section 43.21(b) provides as follows: Each communication common carrier that has separate departments or divisions for the conduct of its common carrier operations and its noncarrier activities, shall file with the Commission a supplemental annual report with respect to its common carrier operations, exclusively, and a supplemental annual report applicable only to its noncarrier operations. Each such report shall be prepared on the basis of the accounting performed for the respective departments prior to elimination of intracompany items and shall be accompanied by a statement of consolidation and eliminations or other explanation showing how the consolidated report submitted in compliance with paragraph (a) of this section was developed. Each such supplemental report shall be completed in its entirety wherever applicable to the respective departments, except that any schedule or statement that would be an exact duplicate of the corresponding schedule or statement in the consolidated report may be omitted from the supplemental report if proper annotation is made.

[5] However, we are in no way attempting to preclude the states from exercising their long standing right to require side records to meet their regulatory objectives.

[6] Telephone companies may, under certain circumstances, construct cable systems and offer the facilities to cable operators under state tariffs. In such cases, the revenues and expenses would be included in accounts for regulated activities.

carriers subject to Part 31 without significant economic impact.

V. Ordering Clauses

31. Accordingly, it is ordered, that under the authority contained in Sections 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j) and 220, Part 31, *Uniform System of Accounts for Class A and Class B Telephone Companies*, of the Commission's Rules is amended as set forth in the attached Appendix to be effective May 27, 1985, provided however, that any carrier may, at its option, adopt these changes effective no earlier than January 1, 1985.

32. It is further ordered, that the Secretary shall, pursuant to Section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. 220(i) cause this *Fifth Report and Order* to be served on each state commission having jurisdiction over intrastate communications service.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 31, "Uniform System of Accounts For Class A and Class B Telephone Companies," is amended as follows:

1. Section 31.01–3, "Definitions," is amended to add new paragraphs (x) and (cc), and to redesignate the old items (x) –(aa) as (y)–(bb), and to redesignate old items (bb) –(kk) as (dd) –(mm).

§ 31.01–3 Definitions.

* * * * *

(x) " Nonregulated activities" refers to those activities of a subject telephone company which are not common carrier telecommunications products and services subject to the tariff requirements contained in Title II of the Communications Act of 1934, as amended, and common carrier telecommunications products and services tariffed by the state commissions.

* * * * *

(cc) "Regulated telephone service" refers to those activities of subject telephone companies that are subject to the tariff filing requirements of Title II of the Communications Act of 1934, as amended, and common carrier telecommunications products and services tariffed by the state commissions.

2. Section 31.100:1, "Telephone plant in service," is revised to read as follows:

§ 31.100:1 Telephone plant in service.

This account shall include the original cost of the company's property used in regulated telephone service or shared with nonregulated activities at the date of the balance sheet as classified under accounts 201 to 277, inclusive. (Note also §§ 31.2–20, 31.2–21, 31.106 and 31.524.)

3. Section 31.103, "Miscellaneous physical property," is revised to read as follows:

§ 31.103 Miscellaneous physical property.

This account shall include the company's investment in physical property other than property the investment in which is includible in accounts 100:1, "Telephone plant in service," 100.2, "Telephone plant under construction," 100.3, "Property held for future telephone use," 100:4 "Telephone plant acquisition adjustment," and 106, "Nonregulated investments." It shall include the company's investment in regulated telephone property retired and held for sale.

4. Section 31.2–20 "Purpose of telephone plant accounts," is revised by adding the following after item (d):

§ 31.2–20 Purpose of telephone plant accounts.

* * * * *

(d) * * *

(See also § 31.106.)

5. Section 31.106, "Nonregulated investments," is added to read as follows:

§ 31.106 Nonregulated investments.

(a) This account shall include all of the carrier's investment in physical property, both in service and in stock, together with related allowance for depreciation that is used or held entirely for other than regulated communication services. It shall include the amount of all assessments for the construction of public improvements levied against nonregulated physical property utilized in nonregulated operations. This account shall include, as a receivable, costs including taxes incurred on behalf of nonregulated operations, and, as a payable, costs incurred by the nonregulated business on behalf of regulated operations. This account shall reflect net income or loss on nonregulated activity.

(b) This account shall be subdivided as follows:

106:01 Permanent investment
106:02 Receivable/payable
106:03 Current net income or loss.

6. Section 31.122, "Materials and Supplies," paragraph (a) and Note E are revised and (e) is added, as follows:

§ 31.122 Materials and supplies.

(a) This account shall include the cost (consideration being given to the adjustments outlined in paragraphs (b), (c) and (d), and Notes A, B, C, D and E) of unappropriated material and supplies held solely for use in regulated communications services or shared with nonregulated activities (including plant supplies, unissued small tools, fuel, stationery and other supplies) and of material and articles of the company in process of manufacture for supply stock. (See also Note E to this account.)

* * * * *

(e) This account shall be subdivided as follows:

122:01 Materials held solely for use in the carrier's operations or shared with nonregulated activities.
122:02 Materials in process of conversion
122:03 Undistributed supply expenses.

Note E: This account shall not include items in stock which are includible in account 231, "Station apparatus," or account 106, "Nonregulated investments." Materials in stock that are normally used for the repair of regulated station apparatus shall be includible in account 605, "Installations and repairs of station equipment," if company-held, and in this account if in stock and held by others.

§ 31.124 [Removed]

7. Section 31.124 is removed.

8. Section 31.231, "Station apparatus," is amended to revise paragraph (a) as follows:

§ 31.231 Station apparatus.

(a) This account shall include the original cost of station apparus, including small private branch exchanges installed for customers' use. (Note also accounts 221, 235 and 262.) This account shall also include the cost of materials in stock which are normally used as station apparatus or additions, thereto, as distinguished from items normally used for repair purposes. (Note also accounts 106, 221, 235 and 262.) Items included in this account which are normally used as station apparatus shall remain herein until finally disposed of or until used in such manner as to be includible in other accounts.

* * * * *

9. Section 31.232, "Station connections—inside wiring," is amended by revising Note A as follows:

§ 31.232 Station connections—inside wiring.

* * * * *

Note A: Costs charged to this account prior to October 1, 1981, in connection with inside cabling are restricted to cables used in section installations instead of wires, such as those that run from wall outlets or floor terminals to the station apparatus, and to cables used in installing small private branch exchanges. (See also accounts 106, 221, 235, 262 and 317.) The cost of wires or cabling used in installing equipment includible in account 234, "Large private branch exchanges," shall be included in that account and shall not be included in whole or in part in account 232. (See also accounts 106, 221, and 262.) The cost of riser and distributing cables, including associated cross-connection boxes, terminals, distributing frames, etc., is chargeable to account 242:1, "Aerial cable."

* * * * *

§ 31.234 [Amended]

10. Note E of Section 31.234 is removed.

§ 31.235 [Amended]

11. Note B of Section 31.235 is removed.

§ 31.241 [Amended]

12. Section 31.241, "Pole lines," is amended by removing the Note.

§ 31.242:1 [Amended]

13. Note C of Section 31.242:1 is removed.

§ 31.242:2 [Amended]

14. Note F of Section 31.242:2 is removed.

§ 31.242:3 [Amended]

15. Note C of Section 31.242:3 is removed.

§ 31.243 [Amended]

16. Note B of Section 31.243 is removed.

§ 31.244 [Amended]

17. Note C of Section 31.244 is removed.

18. Section 31.3–30, "Purpose of income accounts," is revised as follows:

§ 31.3–30 Purpose of income accounts.

The income accounts (300 to 380, inclusively) are designed to show as nearly as practicable for each calendar year the total operating revenues; the total operating expenses; the income and other operating taxes of the company; the income from securities owned; the net income from property not used in the company's communication operations; amounts accrued for interest costs; credits from interest charged to construction; miscellaneous income, expenses, and taxes; rents from and for operating property; profit or loss from nonregulated activities; and extraordinary and delayed income credits and charges. The net balance in the income accounts shall be cleared to account 400, "Balance transferred from income accounts."

19. Section 31.316, "Miscellaneous income," is revised to read as follows:

§ 31.316 Miscellaneous income.

This account shall include all items not provided for elsewhere, properly credited to income.

Items

(Note § 31.01–8)

Fees collected in connection with the exchange of coupon bonds for registered bonds.

Profits from the telephone operations of other companies realized by the company under contract.

Profits realized on the sale of temporary cash investments.

20. Section 31.317, "Income from nonregulated activities," is added as follows:

§ 31.317 Income from nonregulated activities.

(a) This account shall be used by those companies who, according to our rules, can engage in offering customer premises equipment, and enhanced services and other nonregulated activities without establishing a separate subsidiary for that purpose.

(b) All revenues and expenses (including taxes) incurred in these nonregulated activities shall be recorded on separate books of account for such operations. [Only the net of the total revenues and total expenses shall be recorded in this account.]

21. Section 31–6–60, "Purpose of operating expense accounts," is revised by designating the text as paragraph (a) and adding paragraph (b).

§ 31.6–60 Purpose of operating expense accounts.

* * * * *

(b) Expenses incurred by a carrier on behalf of its nonregulated operation should be charged directly to that operation where possible. Expenses incurred by a carrier on behalf of its nonregulated operation and initially charged to its regulated operation should be transferred monthly to account 106, "Nonregulated Investment," and a separate subclass shall be established for the credits to the appropriate expense accounts for amounts transferred to nonregulated activities. Note also §§ 31.106 and 31.6–62.)

§ 31.6–61 [Amended]

22. Section 31.6–61, "Cost of repairs," is revised to remove the Note to paragraph (b).

[FR Doc. 84-30803 Filed 11-23-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 78–72; Phase I; FCC 84–545]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: As part of the third reconsideration of the *Access Charge Order*, CC Docket No. 78–72, (Phase I), 93 FCC 2d 241 (1983), the Commission adopted an amendment to § 69.303(c) of the Commission's Rules, altering the allocation of Category 5 station equipment investment between the switched access and special access categories. Pursuant to the access charge plan, exchange carrier investment in plant and equipment used to originate or terminate interstate telecommunications is recovered through access tariffs reflecting the cost of providing interstate access to the local switched network or to private connections provided by exchange carriers. The amended rule requires exchange carriers to allocate Category 5 station equipment investment based on the relative number of equivalent lines in use, but excludes from that allocation formula special access lines that are exempt from the special access surcharge as provided in § 69.115(e) of the Commission's Rules. Thus, private lines that do not terminate in Category 5 station equipment are not counted for the purposes of determining the allocation.

EFFECTIVE DATE: This Order will be effective November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mary L. Brown or Thomas J. Sugrue, Policy and Program Planning Division (202) 632–9342.

List of Subjects in 47 CFR Part 69

Access charges, Cost allocation, Communications common carriers.

Memorandum Opinion and Order

In the matter of MTS and WATS Market Structure, CC Docket No. 78–72, Phase I.

Adopted: November 8, 1984.
Released: November 14, 1984.

By the Commission.

1. In the *Third Report and Order* in this docket [*Access Charge Order*],[1] we

[1] *MTS and WATS Market Structure*, CC Docket No. 78–72, Phase I, 93 FCC 2d 241 (1983), *modified on reconsideration*, FCC 83–356, 48 FR 32213, 94 RR2d 615 (released August 22, 1983) (*First Reconsideration Order*), *further modified on reconsideration*, FCC 84–24, 49 FR 7926, 50 RR2d 753 (released February 15, 1984) (*Second Reconsideration Order*), *aff'd in part, remanded in*

Continued

adopted rules governing the process by which local telephone companies are to recover the costs of their facilities and services used in the origination or termination of interstate and foreign telecommunications.[2] Since that time we have twice amended these "access charge" rules in orders on reconsideration. In response to the *Second Reconsideration Order*, numerous parties have petitioned for further reconsideration of these rules. One of the issues raised in this third reconsideration round concerns the allocation of Category 5 station equipment investment between the switched and special access categories. Because of actions we are taking today with respect to the special access tariffs, immediate resolution of this issue is necessary to allow exchange carriers to file revised tariffs that properly reflect the costs associated with the various types of private lines.

2. In our companion order in the access tariff proceeding,[3] we find the proposed special access tariffs unlawful and direct the exchange carriers to file revised tariffs by December 3, 1984, with a scheduled effective date of January 17, 1985. We do not anticipate acting on all the issues raised in the third reconsideration round in this docket (*i.e.* No. 78–72) before the revised tariffs must be filed. Accordingly, we have split the third reconsideration in this docket into two parts. The first part of the reconsideration, embodied in this Order, addresses the issue of the allocation of Category 5 station equipment costs to the special access category. The second part will address the remainder of the issues raised in the third reconsideration round.

I. Further Reconsideration Petitions

3. Western Union argues that § 69.303(c) of the access charge rules results in an improper assignment of Category 5 station equipment [4] costs to specialized private lines (such as telex lines) that makes no use of that equipment.[5] Pursuant to the rule, investment in Category 5 station equipment is apportioned between the special access and common line elements on the basis of the relative number of equivalent lines in use.[6] Western Union asserts that since § 69.303(a) of the rules directly assigns the cost of Category 2 private line station equipment to special access, specialized private lines are already bearing the cost of associated station equipment, and a proportional assignment of message equipment investment based on a count of those same lines is improper. As a result, it argues, the special access revenue requirement is being inflated through the over-assignment of station equipment investment.

4. Western Union further asserts that this result does not reflect our original intent in promulgating § 69.303(c) in the *Access Charge Order*. The rule at that time divided investment in Category 5 station equipment between the common line and dedicated access elements. The dedicated access category included WATs access lines and private lines that terminate in a PBX, a key system, or similar equipment.[7] Thus, under the original § 69.303(c), investment in Category 5 station equipment was to be allocated only to those lines that actually use such equipment. Furthermore, at that time the special access category included only those private lines that were connected to equipment that was used exclusively for private line services (*i.e.*, that could not be used for message telephone services). The investment in this "Category 2" station equipment [8] was, and still is, directly assigned to the special access element under § 69.303(a). When in the *First Reconsideration Order* we eliminated dedicated access as a separate category and merged it into special access,[9] we amended § 69.303(c) by simply substituting the term "special access" for "dedicated access" in the allocation provisions of that rule. Western Union complains that by this substitution we (perhaps inadvertently) have made private lines that make no use of message station equipment subject to an allocation of the costs of that equipment. It asks us to restrict the private lines counted for the purposes of the apportionment in § 69.303(c) to those lines originating or terminating in Category 5 equipment.

5. Dow Jones supports Western Union's arguments and suggests that one solution to the problems would be to limit the special access lines subject to § 69.303(c) to those lines subject to the $25 special access surcharge.[10] AT&T and SBS also support Western Union's position.[11] Pacific objects to the proposed rule change on the grounds that: (i) Special access is often a close substitute for message service and should bear the cost of message equipment; and (ii) in any event, the problem is a temporary one because station equipment is being phased out of the separations process.[12] Pacific also

---

part, Nat'l Assn. of Regulatory Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *petition for cert. pending*, 53 U.S.L.W. 3070 (filed July 18, 1984).

[2] The separations rules govern the apportionment of local telephone company investment and expense between the interstate and the intrastate jurisdictions. These rules are set out in Part 67 of the Commission's Rules. *See Amendment of Part 67 and Establishment of a Joint Board*, CC Docket No. 80–286 (Decision and Order), FCC 83–564, 49 FR 7934 (released February 15, 1984).

[3] *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I and Phase II, Part I, FCC 84———, adopted November 8, 1984.

[4] Under the separations rules, Category 5 station equipment includes all station equipment not specifically assigned to other categories, *i.e.*, equipment that is not used to provide teletypewriter exchange, private line, station identification, or wideband services. Section 67.131 of the Commission's Rules. Thus, Category 5 includes ordinary message station equipment, as well as station equipment used jointly for both special services and message telephone services (*e.g.* PBXs and keysets). *Id.* at § 67.151(b)(3). While the current separations rules provide that "surrogate" customer premises equipment and inside wiring are treated separately from Category 5 equipment (*see* § 67.151(a)(1), (2)), the access charge rules provide for the apportionment of such investment among access elements pursuant to the formula governing Category 5 investment provided in § 69.303(c). *See* §§ 69.303(d) (surrogate CPE), 69.401(b) (inside wiring). Accordingly, for purposes of our discussion here, Category 5 station equipment includes surrogate CPE and inside wiring connected to equipment used (wholly or in part) for message telephone service.

[5] Western Union Petition at 3–4. On January 24, 1984, after the close of the pleading cycle in the second reconsideration round and shortly before we adopted the *Second Reconsideration Order*, Western Union submitted a Petition for Clarification and/or Further Rulemaking in this docket, asking us to clarify or amend § 69.303(c) along the lines it has suggested in its petition in this third reconsideration round. Dow Jones & Company, Inc. and Pacific Bell and Nevada Bell submitted responsive pleadings. In its reconsideration petition, Western Union referenced this rulemaking petition in its argument that § 69.303(c) should be amended. Accordingly, since we are continuing to refine our access charge rules through the reconsideration process, we have elected to treat the rulemaking petition as part of Western Union's petition for reconsideration and incorporate it and the responsive pleadings into the record of this reconsideration round.

[6] Equivalent lines are computed on the basis of bandwidth. For example, a special access line having twice the bandwidth of a normal voice line would be counted as two lines. *See* § 69.303(c) of the Commission's Rules.

[7] *First Reconsideration Order* at para. 50. The term "dedicated access line" was defined as "a WATS access line or a private line that does not terminate in customer premises equipment that is used exclusively for a particular interexchange carrier." *Access Charge Order* at App. A.

[8] *See* § 67.152(b) of the Commission's Rules.

[9] The original access charge plan included usage-sensitive end user charges up to a maximum, and the dedicated access line charge was used to establish that maximum. When we eliminated end-user usage charges in the *First Reconsideration Order*, there no longer was a need for a maximum end-user charge, and we therefore decided to eliminate the dedicated access category and combine it with the special access category. *First Reconsideration Order* at para. 52.

[10] Dow Jones (Rulemaking) Comments at 1–6 Dow Jones proposal would have the effect of eliminating from the § 69.303(c) allocation formula those private lines that are not connected to equipment capable of being used for message telephone services. *See* § 69.115(e) of the Commission's Rules.

[11] AT&T Opposition at 22; SBS Petition at 12–15.

[12] Pacific (Rulemaking) Opposition at 4–5.

questions whether the Commission should consider proposals to change the rule because the issue was not raised in the second reconsideration round pleadings.

II. Discussion

6. Because Western Union asks us to reconsider a provision of the access charge rules promulgated in the *First Reconsideration Order*, we must initially address the procedural status of its petition. As we explained in the *Second Reconsideration Order*, in order to bring finality to our decision making process and to eliminate uncertainty, we adopted § 1.429(i) of our rules, which provides:

> The Commission may grant [a] petition for reconsideration in whole or in part or may deny the petition . . . Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstances, a second petition for reconsideration may be dismissed by the staff as repetitious.

47 CFR 1.429(i). We relied on this rule in the *Second Reconsideration Order* to deny requests that we reconsider certain aspects of the access charge plan adopted in the *Access Charge Order* that the *First Reconsideration Order* left intact. But as we recognized in the *Second Reconsideration Order*, § 1.429(i) is permissive and not mandatory.[13] It authorizes us to deny such requests as untimely and repetitious, but does not compel us to do so if we find that on balance it would better serve the public interest to address those requests on their merits. In the present case, we elect to address the request for reconsideration made by Western Union because of the substantial policy issues it raises regarding the apportionment of net investment between special and switched access.

7. We conclude that the arguments raised by Western Union and others that the formula in § 69.303(c) results in an inappropriate allocation of costs to special access are meritorious.[14] That formula allocates investment in Category 5 station equipment based on the relative numbers of switched lines and private lines, including in the latter category private lines that do not terminate in Category 5 station equipment. We agree with Western Union that as a result there is an over-allocation of investment in Category 5 station equipment to special access, which raises the special access revenue requirement. We also agree that this result is not consistent with our intent in originally promulgating the rules for the apportionment of station equipment investment in § 69.303. Accordingly, we will adopt the suggestion of Dow Jones and revise the § 69.303(c) formula to provide that only those lines to which the special access surcharge applies should be counted for the purpose of allocating investment in Category 5 station equipment.[15]

8. We recognize that in our *First Reconsideration Order*, we declined to amend § 69.303(c) to reflect the changes made here.[16] We gave three reasons for that decision. First, we stated the problem was simply a transitional one because the interstate CPE costs would gradually disappear over four years pursuant to the CPE phaseout plan.[17] Second, we indicated that even if we were to limit the private lines included in the § 69.303(c) allocation process to those that use Category 5 equipment, the result would not be a precise cost-causational allocation because, for example, many end users with private line connected to a PBX may not have used a telephone company PBX for years. Third, we indicated that under our special access rules exchange carriers could solve the problem by not assessing users or specialized private line services the costs of unrelated Category 5 station equipment. However, we no longer find these reasons convincing for maintaining the rule in its present form. With respect to our last reason, we now know that the exchange carriers have not solved the problem under their proposed special access tariffs.[18] And the parties have persuaded us that neither the transitional nature of the problem, nor the fact that as a practical matter no rule will achieve a perfect match between costs and customers, is a good reason not to amend the rule to achieve a better match for that transition, particularly one that is consistent with our initial intent in promulgating the rule in the *Access Charge Order*. Accordingly, we will amend § 69.303(c), as indicated above, so that special access lines that do not utilize Category 5 station equipment do not have to bear its costs.[19]

III. Ordering Clauses

9. Accordingly, it is hereby ordered, that pursuant to 47 U.S.C. 154(i) and (j), 201, 202, 203, 205, 218, 403 and 405 and 5 U.S.C. 553, the *Second Reconsideration Order* adopted in this proceeding is modified to the extent set forth in this *Memorandum Opinion and Order*.

10. It is further ordered, that the petitions for further reconsideration or clarification of § 69.303 of the Commission's Rules are granted to the extent set forth in this *Memorandum Opinion and Order*, and are otherwise denied.

11. It is further ordered, that the Petition for Clarification and/or Further Rulemaking submitted by Western Union, together with its associated, responsive pleadings, is incorporated as part of the record in this reconsideration round.

12. It is further ordered, That Part 69 of the Commission's rules is amended as set forth in Appendix A, effective on the day following publication in the **Federal Register**. We find good cause for requiring an effective date earlier than thirty days following publication in the **Federal Register**. This good cause arises from the need for telephone companies to file tariffs for special access services by December 3, 1984, to be effective on or before January 17, 1985, that are based on the access charge rules as revised by this Memorandum Opinion and Order.

(Secs. 154 (i) and (j), 201, 202, 47 U.S.C 154)

---

[13] *Second Reconsideration Order* at 140.

[14] But we do not agree with certain arguments raised by SBA concerning § 69.303(c). SBS questions "whether the Commission intended for . . . [the] surcharge on special access lines to be in addition to the new rule allocating station equipment investment to special access . . . or in lieu of this allocation process." SBS Petition at 12. SBS states that the surcharge alone should satisfy the Commission's concerns about private lines that terminate in a PBX or PBX-like device, and it asks the Commission to clarify its intent in this regard. The short answer to SBS' request for clarification is that it was our intent that both rules apply to special access lines. The rules serve different purposes—allocation of station equipment costs among different types of lines that use that equipment and recovery of local network costs from private lines with the capacity to "leak" interstate traffic into the local exchange. Neither rule is a substitute for the other.

[15] Western Union indicates that while it would prefer a broader exemption, the Dow Jones proposal would provide an acceptable solution. Western Union (Rulemaking) Reply at 5–6. And Pacific, while opposing any amendment to 69.303(c), states that if a change is to be made, it supports the Dow Jones proposal. Pacific (Rulemaking) Opposition at 5–6.

[16] *First Reconsideration Order* at para. 53.

[17] *See* Amendment of Part 67 (Decision and Order), CC Docket No. 80-286, 99 FCC 2d 1, *as modified*, 99 FCC 2d 52 (1982).

[18] Western Union (Rulemaking) Petition at 4.

[19] The amended rule appears at Appendix A. The mechanism for recovering these costs appears in *Special Access Tariff Order* at paras. 69–70. In that Order, we direct that the costs allocated to the special access tariff element, pursuant to § 69.303(c), be recovered by charges on those lines subject to the special access surcharge.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

Section 69.303 is amended by revising paragraph (c) to read as follows:

§ 69.303 Station equipment.

* * * * *

(c) Investment in all other station equipment shall be apportioned between the Special Access and Common Line elements on the basis of the relative number of equivalent lines in use, as provided herein. Each interstate or foreign Special Access line, excluding lines designated in § 69.115(e), shall be counted as one or more equivalent lines where channels are of higher than voice bandwidth, and the number of equivalent lines shall equal the number of voice capacity analog or digital channels to which the higher capacity is equivalent. Local exchange subscriber lines and WATS access lines shall be multipled by the interstate separations factor for non-traffic sensitive plant to determine the number of equivalent local exchange subscriber lines and the number of equivalent WATS access lines.

[FR Doc. 84-30800 Filed 11-23-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-1236; RM-4370]

TV Broadcast Station in Ventura, CA; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Stephen J. Mewhort, assigns UHF TV Channel 41 to Ventura, California, as that community's second local television allocation.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television Broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, Television Broadcast Stations, (Ventura, California) MM Docket No. 83-1236, RM-4370.

Adopted: Oct. 29, 1984.
Released: November 9, 1984.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 53721, published November 29, 1983, proposing the assignment of UHF TV Channel 41 to Ventura, California, as that community's second local television allocation, at the request of Stephen J. Mewhort ("petitioner"). Petitioner and Romauldo Achoa both filed comments stating their intention to apply for the channel, if assigned. Opposing comments were filed by California Broadcasting Corporation ("CBC").

2. Ventura (population 74,474),[1] in Ventura County (population 529,174)[2], is located in southern California, approximately 90 kilometers (55 miles) northwest of Los Angeles. UHF Television Channel 16 (two applications pending), is currently assigned to Ventura.[3]

3. CBC is one of two mutually exclusive applicants for use of Channel 16 at Ventura. CBC bases its opposition to the assignment of Channel 41 on two grounds. First, it states that an applicant for Channel 41 would face "virtually insurmountable site limitations." Secondly, it states that the Commission now has pending before it a petition for rule making (RM-3975)[4] submitted by the Sheriff's Department of Los Angeles County, California, requesting the reassignment of Channel 16 to Los Angeles County for public safety use and the consequent substitution of Channel 28 or 27 at Ventura.

4. CBC urges the Commission to defer action in the instant proceeding pending a final ruling in RM-3975, in order to protect the applicants for use of Channel 16 at Ventura. CBC's engineering studies indicate Channel 41 would be one of the few channels, and perhaps the only channel, available for substitution for Channel 16 at Ventura.

5. The Commission's proposal to reassign Channel 19 to Los Angeles County, California, for public safety use (see fn. 4) nullifies the possible need to delete Channel 16 from Ventura. Therefore, Channel 16 remains available at Ventura for the competing applicants.

6. Channel 41 can be sited in Ventura, or in its immediate environs, in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. As there is no site restriction, it should be assumed that city grade service can be provided to Ventura. Thus, we see no impediment to the assignment of Channel 41 at this time. Therefore, after careful consideration of the points raised by CBC, we have concluded that the opposition is not valid.

7. In view of the foregoing, we believe the public interest would be served by assigning UHF TV Channel 41 to Ventura, California, as that community's second local television allocation.

8. Since the proposal is within 400 kilometers (250 miles) of the U.S.-Mexican border, we have received concurrence of the Mexican government.

9. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 15, 1985, the TV Table of Assignments, § 73.606(b) of the Rules, is amended for the following community:

City	Channel No.
Ventura, California	16+, and 41+.

10. It is further ordered, that this proceeding is terminated.

11. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-30804 Filed 11-23-84; 8:45 am]
BILLING CODE 6712-01-M

[1] Population figure is taken from the 1984 Rand McNally Atlas.

[2] Population figures were extracted from the 1980 U.S. Census, unless otherwise indicated.

[3] California Broadcasting Corp. was awarded the permit for Channel 16 in an *Initial Decision*. That proceeding has been remanded by the Commission's Review Board for further proceedings.

[4] *Notice of Proposed Rule Making*, GEN Docket No. 84-902, issued September 1984, proposes to allow the Los Angeles County Sheriff's Department to use Channel 19 for public safety land mobile use.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83-12; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule adopts changes in rear yellow turn signal photometrics, license plate lamp requirements, minimum headlamp mounting heights, and test grids for stop, turn, parking and tail lamps. The primary purpose of the amendments is to bring the requirements in Federal Motor Vehicle Safety Standard No. 108 closer to those of the Economic Commission for Europe of the United Nations (ECE). The amendments will permit cost savings without adversely affecting safety. A notice of proposed rulemaking on this subject was published on August 1, 1983.

DATES: Effective date: December 26, 1984.

ADDRESS: Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Kent Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590; (202-426-2154).

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979 (Pub. L. 96-39) imposes certain obligations upon the United States. Under Title IV, Technical Barriers to Trade (Standards) Federal agencies may not engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States. Agencies shall, in developing standards, take into consideration international standards and shall, if appropriate, base the standards on international standards unless it is not appropriate for safety (19 U.S.C. 2532(2)(B)(i)).

Differences exist between Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, and many of the requirements of the ECE. Some of these differences could be removed or lessened without any adverse effect on traffic safety. This would relieve both American and European vehicle manufacturers of some extra cost of designing and building vehicles for sale both in this country and Europe. It could also provide an opportunity to increase safety. Accordingly, as contemplated by the Trade Agreements Act, NHTSA proposed on August 1, 1983, several amendments to Standard No. 108 to bring its requirements closer to those of the ECE (48 FR 34784).

The first change proposed was a lower minimum value for the photometrics in yellow rear turn signal lamps. The current Federal requirement is for a minimum of 200 candela (cd) and a maximum of 750 cd; by contrast, the minimum in ECE Regulation No. 6 is 40 cd and the maximum is 200 cd. During a meeting of the Brussels Working Group of Europe (GTB), it was recommended that the United States lower its minimum to 130 cd and that ECE raise its maximum to 350 cd. Tests conducted by the SAE have shown that a value of 130 cd for a yellow lamp is as effective as a rear red turn signal lamp (lamps of both colors are allowed by Standard No. 108) with an output of 80 cd. Standard No. 108 specifies a minimum of 80 cd for rear red turn signals. Since this value has been adequate for motor vehicle safety, NHTSA believes that the proposed value of 130 cd for yellow rear turn signals would not have an adverse effect on safety.

It appears also that the differing ECE and U.S. requirements for license plate lamps might be easily harmonized by adopting the latest SAE referenced standard on this item of equipment. Currently, Standard No. 108 specifies the physical and photometric relationship between the lamp or lamps, the plate and its holder but does not specify the point of measurement establishing the relationship. A similar requirement is contained in ECE Regulation No. 4, except that a specific point of measurement is included. SAE Standard J587f, "License Plate Lamps (Rear Registration Plate Lamps)," which was revised in 1981, clarifies the point of measurement of the incident light upon the plate in a manner identical to that of the ECE requirement. NHTSA therefore proposed the incorporation of the revised version of J587 into Standard No. 108.

NHTSA also proposed a reconsideration of differences in the minimum mounting height of headlamps. Standard No. 108 does not allow headlamps to be lower than 24 inches, measured from the road surface to the center of the lamp. The corresponding requirement in ECE Regulation No. 48 is 500 mm (19.7 inches) measured from the ground to the lower edge of the illuminating surface of the lamp. NHTSA proposed a harmonizing value of 22 inches, measured from the road surface to the center of the lamp, except that the distance from the ground to the lower edge of the illuminating surface of the lamp shall not be less than 19.7 inches.

The preamble to the proposal commented that there had been several studies of the effects that changes in mounting height have on seeing distances. The results from one of these studies suggested that mounting height has essentially no effect on seeing distance. The study presented the results from a series of experiments conducted by General Motors. The experiments consisted of asking observers to count the number of simulated pedestrians that were visible using a variety of headlamp configurations. The configurations differed on the basis of the type of headlamp and mounting height.

The results from another study, however, suggested that mounting height has a more definite effect on seeing distance. This study reported on a series of experiments performed by General Electric. In those experiments, the observers were riding in an automobile traveling at 40 mph. The observers were instructed to signal when they could see a target resting by the side of the road. The time of the signal and the speed of the automobile were used in estimating the distance to the target when it was first seen by the observer.

GE conducted experiments with an experimental headlamp having photometrics differing from most production lamps. These experiments showed a loss in seeing distance, but the GM experiments showed very little difference when the 24 inch height was reduced to as low as 18 inches.

To aid the agency in assessing the issue of seeing distance, the agency requested commenters to discuss the safety implications of this issue and the possible reasons for the conflict between the studies.

NHTSA also proposed certain changes regarding stop, tail, turn signal, and parking lamps in the interests of harmonization. Photometrics today are measured under Standard No. 108 at 27 different test points on stop, tail, turn signal, and parking lamps. If all 27 points equal or exceed the required minimum, the lamp complies. ECE Regulation No. 7 also measures light output at discrete test points, the principal difference being that there are only 19 test points. There are fewer intermediate test points in the European method. NHTSA believes that the 8 test points in question could be deleted as sharp discontinuous changes in candlepower output across a lens surface do not occur in practice.

Alternatively, the 27 test points are separated under Standard No. 108 into 7 groups or "zones" and minima are established for each zone. If photometrics at a test point fall below the minimum, the lamp will nevertheless comply if the overall reading for the zone equals or exceeds the minimum value required for that zone.

When using the pattern of seven zones that is currently specified in

Standard No. 108, with the 19 test points that were proposed, two zones have only a single point and two other zones have only two points. This small number of points in a zone tends to reduce the value of allowing an average over several points in lieu of meeting the minimum at each point. To avoid this difficulty, NHTSA proposed that only five zones be used. These five zones, using 19 points, and a corresponding table of values for each zone, expressed as a sum of the percentages of the minimum value at H–V, are presented in proposed Figure 1c. This change in the pattern of zones is necessary when the number of test points is changed from 27 to 19.

There is also a difference in the method of presentation of the distribution of minimum values over the surface of the lamp which NHTSA also proposed to harmonize. In Standard No. 108, the distributions are given in four different tables whereas ECE uses a common grid, along with a graphical and numerical representation of the location of the test points. ECE values are expressed as percentages of the minimum H–V value. It was proposed that Standard No. 108's values be expressed in this fashion also. NHTSA decided that the least confusing way of adopting the test grid would be to substitute the pertinent portions of the text of the four SAE standards in question for the provisions currently incorporated by reference.

Comments were received from 18 motor vehicle manufacturers, motor vehicle associations, lighting equipment manufacturers, and interested related organizations such as the Insurance Institute for Highway Safety and the Department of California Highway Patrol.

All commenters discussing the proposed reduction in minimum rear yellow turn signal candela supported it. Several, however, recommended adopting SAE values for lamps containing two and three compartments. (The agency had proposed 160 cd and 180 cd respectively, whereas the corresponding SAE values are 150 and 175.) NHTSA agrees with these recommendations. The differences between NHTSA and SAE values arose from calculations in rounding off extrapolations from the single compartment value. If it is desired to maintain the ratio of 1.6:1, for example, the exact value for two compartment lamps is 152. NHTSA chose to propose 160 cd whereas the SAE adopted 150 cd. The SAE value is a mathematically correct way of rounding off the value, and is closer to the desired ratio. Accordingly, proposed Figure 1b is adopted with the revised values. The Notice erroneously proposed a maximum of 900 candela for both two and three compartmented yellow rear turn signal lamps; the proper figure for the three compartment lamp that should have been proposed was 1050 cd, and Figure 1b as adopted corrects the error.

In commenting on the proposed adoption of the license plate lamp revision of SAE J587, it was pointed out that the version of August 1981 was never widely disseminated and never appeared in an SAE Handbook, whereas a version dated October 1981 has been. Only a minor editorial change distinguished the two versions. Therefore, Standard No. 108 is being amended to adopt the later version. In amending Tables I and III to specify J587 October 1981, the agency has taken the opportunity to correct erroneous footnotes and delete outdated ones. NHTSA wishes to clarify that, in accordance with paragraph S5.1 of Standard No. 108, the SAE J575 tests cross-referenced in SAE J587 are those of SAE J575e.

Similarly, a typographical error in proposed Figure 1b is corrected where the first two test points given in the proposal were "20U, 20D". The Figure adopted (Figure 1a) gives the correct ones: "10U, 10D", as well as adopting specific percentages of minima for turn signal, stop, parking, and tail lamps.

Comments were varied on the proposed reduction in mounting height. Four commenters, California Highway Patrol, Insurance Institute for Highway Safety, K–D Lamp Co., and the Auto Club of Southeast Ohio disagreed with the proposal. The principal ground of objection was the opinion that the reduction would have an adverse effect on seeing ability. Nine commenters, including the major motor vehicle manufacturers agreed with the proposal in principle, but there was a split of opinion as to the preferred method of measurement. Three supported NHTSA's proposed dual method of measurement of 22 inches from lamp center to the roadway surface but not less than 19.7 inches to the lower edge of the illuminating surface (equivalent to the European metric method of expression). The remaining six commenters thought that the dual method was unnecessarily redundant, three supporting the 22-inch measurement, and the other three, the European method.

The agency has given considerable attention to the mounting height comments, and reviewed all of the data relevant to this issue, particularly comments to the docket. Ford, GM and MVMA each reported upon their analytic studies of the effect of mounting height on seeing distance. Ford stated that its CHESS model, which evaluates headlamp performance, showed that "there is no significant change in the overall performance of a headlamp when its height is changed from 24 inches to 22 inches. Though there is a very small decrement in seeing distance as represented by a minuscule drop in the percentage of delineation detected . . . this is compensated in the overall performance by a similarly small decrement in the percent of drivers discomforted" due to less glare with a lower mounted headlamp.

GM's comments included a short analysis of the effect of a 2 inch reduction in headlamp mounting height. GM's analysis considered the theoretical change in seeing distance by calculating where the light would strike the road with a mounting height of 24 inches (229.5 feet) and a height of 22 inches (210.4 feet). According to the GM's calculation, the 2 inch reduction in mounting height would theoretically cause the "seeing light" at the photometric test point of 0.5° down, 1.5° right to strike the pavement 19.1 feet closer to the car.

However, according to GM, since the illumination of the light on the target is proportional to the inverse square of the distance between the light source and the target, the light striking the pavement at the point closer to the car would be brighter. Since the driver's ability to detect the target is dependent on the quantity of light falling on it, there is an intermediate distance where the light coming from the lamp at the 22-inch mounting height will have the same brightness as the lamp mounted at 24 inches does at 229.2 feet. GM calculations showed this to be at 224.5 feet down the road and, therefore, GM contends that a better estimate of the change in seeing distance would be a decrease of only 4.7 feet (229.2 feet −224.5 feet).

MVMA conducted a series of computations utilizing the UMTRI computer program. MVMA found seeing distance reductions between 2.19 and 4.86 percent (approximately 4 to 10 feet) when using current headlamp designs. MVMA concluded that "the small variation of a few percent in threshold seeing distance attendant to a reduction in the headlamp mounting height will not alter driver safety." No other commenters provided new experimental data or analyses.

The agency has determined that the reduction in seeing distance that is attributable to a reduction of minimum mounting height to 22 inches would not have a significant effect upon safety. Other factors occurring on the road could have the same or greater effect on headlamp performance. These could include loading a vehicle with passengers, fuel or cargo unevenly so as to lower the rear of the car, thus raising the angle of headlamp aim. At distances of 210–230 feet, the effect of changing the headlamps aim could be far greater than the effect of lowering headlamp height by two inches. Further, as Ford illustrated with the CHESS model, a possible beneficial effect upon safety would be the concomitant reduction in glare that a lower mounting height presents. Therefore, NHTSA has decided to adopt the proposal for a reduction in minimum mounting height.

The remaining issue, therefore, is the method by which the mounting height should be measured. After due consideration of the comments, NHTSA has decided that measuring the mounting height from the road surface to the center of the lens is the most reasonable approach. In comments to the NPRM docket on headlamp mounting height, Ford urged adoption of the 2-inch reduction in mounting height, but opposed adding a limit to the height of the bottom edge of a headlamp. Ford states that "there is no safety need to justify such a limitation on the height of the bottom edge of a headlamp when the center is specified; it is unnecessarily design restrictive; and, practically, the pendulum impact test of Part 581 of Title 49 of the Code of Federal Regulations, the Bumper Standard effectively limits the height of the bottom edge of a headlamp." The Bumper Standard specifies a pendulum impact test along a vehicle's front surface at any height from 16 to 20 inches above the ground, with no damage permitted to any lamp or reflective device except license plate lamps. However, the impact test pendulum has a relatively flat, 4.5-inch-high by 16-inch-wide surface, and headlamps could conceivably be recessed within a vehicle's bumper area and protected from pendulum impact. Several current vehicles have parking and turn signal lamps recessed within the bumper, which illustrates this point. Therefore, NHTSA does not believe that the Bumper Standard effectively establishes a lower limit for headlamp mounting height.

The Department of California Highway Patrol (CHP) also commented on headlamp mounting height. CHP showed by example the inequity of the ECE method of measuring minimum headlamp height. CHP states that a potentially high performance headlamp with a 7-inch vertical dimension would be required to have its center at 23.2 inches according to ECE regulations. On the other hand, it would permit the center of a less powerful 3.25 inch high GM-proposed sealed beam unit to be only 21.3 inches above the ground, or 1.9 inches lower. CHP further stated that the proposed regulation would allow the smaller headlamps that had the lesser photometric performance to be mounted lower, providing a potentially greater reduction in seeing distance in comparison to the larger headlamps. Since the NPRM would not allow the center of a headlamp to be mounted lower than 22 inches, a less powerful 3.25-inch-high lamp could only be mounted at 22 inches rather than the 21.3 inches calculated by the CHP. However, as the CHP noted, the more powerful and taller headlamp would be required to have its center at 23.2 inches. Therefore, the taller headlamp would have to be mounted at a higher height and would be unfairly penalized if the ECE method were adopted in conjunction with a center of lens to roadway mounting height of 22 inches. Accordingly, this notice adopts a new minimum headlamp mounting height of 22 inches measured from the center of the lens to the road surface.

Comments to the docket on the proposed test grid amendments centered on three issues: the reduction of the number of test points from 27 to 19, the reduction of the number of zonal groups from 7 to 5, and the method of expressing the intensity of light at each test point as a percentage of the minimum H–V value.

Those commenters addressing the issue of the reduction of test points supported the agency's proposal, and the amendment is adopted. Consequently, the agency will test photometrics of stop, tail, turn signal, and parking lamps on the basis of the 19 test points. While there was general agreement that the number of zones be reduced from seven to five, there was a difference of opinion as to the merits of zones proposed by NHTSA, and those under consideration by the SAE in its proposed J586. Lighting equipment manufacturers generally favored the NHTSA scheme, while motor vehicle manufacturers preferred the SAE design. According to the motor vehicle manufacturers, the SAE zones consist of grouped test points with similar intensities. For example, the SAE's Zone 1 for stop lamps contains four test points with intensities of 16, 10, 10, and 16 candela, whereas NHTSA's Zone 2 for stop lamps contained three test points of 8, 8, and 28 candela. Ford Motor Co. stated that a more even pattern of light output will result from grouping points of similar intensities, and that on a grouping of test points with dissimilar intensities, a small variation in intensity of test points with higher nominal value of intensities can substantially alter the zonal sum. NHTSA has concurred with this recommendation and, to insure a more even pattern of light output, is adopting the SAE zone proposals.

However, the majority of comments were addressed to the third issue, the proposal to establish test point intensity values based on a percentage of the H–V test point value. Of the thirteen comments received, only one was in full agreement. Two disagreed with the proposal. The remaining comments varied. Commenters basically agreed with the concept of a percentage approach but recommended that the test point values not be lower than current SAE values. It was pointed out that the NHTSA proposal adopting European rules would, in fact, lead to candela values for many of the test points that are lower than current minima required by Standard No. 108. One commenter recommended that the agency delay final rulemaking until the SAE approach on intensity values is reviewed.

The agency has carefully reviewed these comments. In reexamining the ECE and proposed NHTSA test grids, 15 common test points were found. In comparing values, NHTSA found that those for parking lamps would remain the same, but that lower values than are required at present would exist at all 15 test points for stop, tail, and turn signal lamps.

Although adoption of the proposal would come closest to achieving harmonization by using both the European test grid and the percentage values at the H–V point, the agency has concluded that this approach would not be in the interest of motor vehicle safety. Instead, it has adopted percentage values that are equivalent to those presently existing in Standard No. 108 for the four lamps in question. This will achieve a measure of harmonization, while insuring that the present level of lighting safety in the United States is not affected, and represents, the agency believes, a reasonable compromise.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full

regulatory evaluation is required. However, a final regulatory evaluation has been prepared and has been placed in the docket. The rule would impose no additional requirements but would permit manufacturers greater flexibility in design of motor vehicles and lighting equipment. The agency cannot predict the extent to which the manufacturers would utilize that flexibility.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The amendment should have no effect on the human environment since the weight and quantity of materials used in the manufacture of head lamps is not changed. No impact on safety is anticipated.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and lighting equipment, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles and lighting equipment will be minimally impacted.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

§ 571.108 [Amended]

In consideration of the foregoing 49 CFR 571.108, *Lamps, Reflective Devices, and Associated Equipment*, is amended as set forth below.

1. Paragraph S4.1.1.11 is revised to read:

S4.1.1.11 A parking lamp, tail lamp, stop lamp, or turn signal lamp shall meet the minimum percentage specified in Figure 1a of the corresponding minimum allowable value specified in Figure 1b. The maximum candlepower output of each stop, turn signal, tail and parking lamp shall not exceed that prescribed in Figure 1b. The values specified in Figure 1a and Figure 1b are substituted for those specified in Table I of the following SAE Standards: J222 *Parking Lamps*, J585e *Taillamps* (at H or above), J586c *Stop Lamps*, and J588e *Turn Signal Lamps*.

2. Paragraph S4.1.1.12 is revised to read:

S4.1.1.12 A parking lamp, taillamp, stop lamp or turn signal lamp is not required to meet the minimum photometric value at each test point specified in this standard if the sum of the percentages of the minimum candlepower measured at the test points is not less than that specified for each group listed in Figure 1c.

3. The references to "Figure 1" in paragraphs S4.3.1.1 and S4.3.1.7 are changed to "Figure 1c".

4. Figure 1 is removed and new Figures 1a, 1b, and 1c are added as follows:

Test points (deg)		Turn signal	Stop	Parking	Tail
10U, 10D	5L, 5R	20	20	20	20
	20L, 20R	12.5	12.5	10	15
5U, 5D	10L, 10R	37.5	37.5	30	40
	V	87.5	87.5	70	90
	10L, 10R	80	50	35	80
H	5L, 5R	100	100	80	100
	V	100	100	100	100

Figure 1a.—Required percentages of minimum candlepower of Figure 1b.

TABLE I—REQUIRED MOTOR VEHICLE LIGHTING EQUIPMENT

* Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses, of 80 or More Inches Overall Width

Item	Multipurpose passenger vehicles, trucks, and buses	Trailers	Applicable SAE standard or recommended practice
Headlamps	2 white, 7-inch, Type 2 headlamp units; or 2 white, 5¾-inch, Type 1 headlamp units and 2 white 5¾-inch, Type 2 headlamp units; or 2 white Type 2A headlamp units and 2 white Type 1A headlamp units.	None	J580a, June 1968; J579a, August 1965; J571d June 1976; and J566, January 1960.
	2 white headlamps: Type 2B1 or Type 2D1; or 4 white headlamps: 2 each Type 1C1 and Type 2C1, or Type 1A1 and Type 2A1.		J580b, February 1974; J579c, December 1974, J571d, June 1976, J1132, January 1978.
Taillamps [3]	2 red	2 red	J585e, September 1977.
Stoplamps [3]	2 red	2 red	J586c, August 1970.
License plate lamp [1]	1 white	1 white	J587 October 1981
Reflex reflectors	4 red; 2 amber	4 red; 2 amber	J594f, January 1977.
Side marker lamps	4 red; 2 amber	2 red; 2 amber	J592e, July 1972.
Backup lamp [1]	1 white	None	J593c, February 1968.
Turn signal lamps [3]	2 red or amber; 2 amber	2 red or amber	J588e, September 1970.
Turn signal operating unit [3]	1	None	J589, April 1964.
Turn signal flasher	1	None	J590b, October 1965.
Vehicular hazard warning signal operating unit.	1	None	J910, January 1966.
Vehicular hazard warning signal flasher.	1	None	J945, February 1966
Identification lamps.	3 amber; 3 red	3 red	J592e, July 1972
Clearance lamps	2 amber; 2 red	2 amber, 2 red	J592e, July 1972.
Intermediate side marker lamps [4]	2 amber	2 amber	J592e, July 1972
Intermediate side reflex reflectors. [4]	2 amber	2 amber	J594f, January 1977

[1] See S4.1.1.10. [2] See S4.1.1.11–12. [3] See S4.5.6. [4] See S4.1.1.3.

Lamp	Lighted Sections 1	2	3
Stop	80/300	95/385	110/420
Tail	2/18	3.5/20	5.0/25
Parking	4.0		
Red turn signal	80/300	95/380	110/420
Yellow turn signal rear	130/750	150/900	175/1050
Yellow turn signal front	200/	240/	275/
Yellow turn signal front [1]	800/	800/	8857

[1] Values shall apply when the optical axis (filament center) of the front-turn signal is at a spacing less than 4 inches (10 centimeters) from the lighted edge of the headlamp unit providing the lower beam, or from the lighted edge of any additional lamp installed as original equipment or used in lieu of the lower beam.

Figure 1b.—Minimum and maximum allowable candlepower values.

Group and test points	Turn signal	Stop	Parking	Tail
1 10U–5L, 5U–20L, 5D–20L, 10D–5L	65	65	80	70
2 5U–10L, H–10L, 5D–10L	125	125	75	120
3 H–5L, 5U–V, H–V, 5D–V, H–5R	475	475	420	460
4 5U–10R, H–10R, 5D–10R	125	125	75	120
5 10U–5R, 5U–20R, 5D–20R, 10D–5R	65	65	80	70

Figure 1c.—Sum of the percentages of grouped minimum candlepower.

5. Tables I and III, and the entry "Headlamps" in Tables II and IV are revised as follows:

TABLE II.—Location of Required Equipment—Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses, of 80 Inches or More Overall Width

Item	Multipurpose passenger vehicles, trucks, and buses	Trailers	Height above road surface measured from center of item on vehicle at curb weight
Col. 1	Col. 2	Col. 3	Col. 4
Headlamps	On the front, each type at the same height, 1 on each side of the vertical centerline; as far apart as practicable.	Not required	Not less that 22 in (55.9cm).

TABLE III—REQUIRED MOTOR VEHICLE LIGHTING EQUIPMENT

All Passenger Cars and Motorcycles, and Multipurpose Passenger Vehicles, Trucks, and Buses, of Less Than 80 Inches Overall Width

Item	Passenger cars, multipurpose passenger vehicles, trucks, and buses	Trailers	Motorcycles	Applicable SAE standard or recommended practice
Headlamps	2 white, 7-inch, Type 2 headlamp units, or 2 white, 5¾-inch, Type 1 headlamp units or 2 white, 5¾-inch, Type 2A headlamp units and 2 white Type 1A headlamp units.			J580a, June 1968, J579a, August 1965, J571d, June 1976 and J566, January 1960.
	2 white headlamps: Type 2B1 or Type 2D1; or 4 white headlamps: 2 each Type 1C1 and Type 2C1, or Type 1A1 and Type 2A1.			J580b, February 1974; J579c, December 1974; J571d, June 1976; J1132, January 1978.
			1 white	J584, April 1964 and J566, January 1960.
Taillamps [3]	2 red	2 red	1 red	J585e, September 1977.
Stoplamps [3]	2 red	2 red	1 red	J586c, August 1970.
High-mounted stoplamp.	1 red, for passenger cars only	Not required	Not required	J186a, September 1977.
License plate lamp [1].	1 white	1 white	1 white	J587, October 1981.
Parking lamps [4]	2 amber or white	None	None	J222, December 1970.
Reflex reflectors	4 reds; 2 amber	4 red; 2 amber	3 red; 2 amber	J594f, January 1977.
Intermediate side reflex reflectors [4].	2 amber	2 amber	None	J594f, January 1977.
Intermediate side marker lamps [4].	2 amber	2 amber	None	J592e, July 1972.
Side marker lamps.	2 red; 2 amber	2 red; 2 amber	None	J592e, July 1972.
Backup lamp	1 white	None	None	J593c, February 1968.
Turn signal lamps [3].	2 red or amber; 2 amber	2 red or amber	2 amber; 2 red or amber.	J588e, September 1970.
Turn signal operating unit. [3] [4].	1	None	1	J589, April 1964.
Turn signal flasher.	1	None	1	J590b, October 1965.
Vehicular hazard warning signal operating unit.	1	None	None	J910, January 1966.
Vehicular hazard warning signal flasher.	1	None	None	J945, February 1966.

[1] See S4.1.1.10. [2] See S4.1.1.11–12. [3] See S4.5.6. [4] See S4.1.1.5. [5] See S4.1.1.3.

TABLE IV.—LOCATION OF REQUIRED EQUIPMENT ALL PASSENGER CARS AND MOTORCYCLES, AND MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES OF LESS THAN 80 INCHES OVERALL WIDTH

Item	Passenger cars, multipurpose passenger vehicles, trucks, trailers, and buses	Motorcycles	Height above road surface measured from center of item on vehicle at curb weight
Col. 1	Col. 2	Col. 3	Col. 4
Headlamps	On the front, each type at the same height, 1 on each side of the vertical centerline; as far apart as practicable.	On the front, on the vertical centerline, except that if two are used they shall be symetrically disposed about the vertical centerline.	Not less than 22 in. (55.9cm).

Because of the importance of implementing the policy of the Trade Agreements Act, it is hereby found for good cause shown than an effective date earlier than 180 days after issuance is in the public interest, and the amendments are effective 30 days after publication in the Federal Register.

The engineer and lawyer primarily responsible for this rule are Ken Rutland and Taylor Vinson, respectively.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50).

Issued on: November 15, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-30436. Filed 11-23-84; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 2 To Fourteenth Revised Service Order No. 1474.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 98–254, this order authorizes various railroads to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., November 30, 1984, and continuing in effect until 11:59 p.m., January 15, 1985, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M.F. Clemens, Jr. (202) 275–1559.

Decided: November 16, 1984.

Upon further consideration of Fourteenth Revised Service Order No. 1474 (49 FR 33270 and 39162) and good cause appearing therefor:

§ 1033.1474 [Amended]

It is ordered, § 1033.1474 Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee).

Fourteenth Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., January 15, 1985, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., November 30, 1984.

This action is taken under authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 98–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

James H. Bayne,

Secretary.

[FR Doc. 84-30617 Filed 11-23-84; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 49, No. 228

Monday, November 26, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 408

[Docket No. 1249S; Amdt. No.1]

Eastern United States Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Eastern United States Apple Crop Insurance Regulations (7 CFR Part 408), effective for the 1985 and succeeding crop years, by expanding the Apple Fresh Fruit Option Amendment contained therein to provide the insured producer with a quality provision for the type of apples insured under the amendment. The intended effect of this rule is to offer a proposal for insurance coverage with a quality provision under certain circumstances when the apples do not grade U.S. No. 1 or do not grade 80 percent fancy or better under U.S. Department of Agriculture standards. The authority for promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than December 26, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under that memorandum. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action: (1) Is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In order to provide an apple fresh fruit option amendment to insured producers who wish to insure quality, not currently in the policy for insuring apples under 7 CFR Part 408, FCIC proposes to revise the amendment found in 7 CFR 408.8 to include options A and B for election by Eastern Apple policyholders that wish to insure quality in the insured apple crop. These changes will provide the producers a quality provision for the type of apples they produce. The proposed changes under the Fresh Fruit Option Amendment are:

1. Make the selection of the option amendment applicable to all of the insured's apples intended for both the fresh-market and for processing.

2. Emphasize that any adjustment for quality must be made prior to harvest of the apples.

3. Explain the significance of selecting Option A or B. An insured has three choices:

(a) Loss adjustment according to the Policy for all apples;

(b) Loss adjustment according to Option A for all apples; or

(c) Loss adjustment according to Option A for all apples intended for processing and Option B for all apples intended for the fresh-market.

4. Option A offers for both processing and fresh-market apples the same quality adjustment procedure which last year was available only for fresh-market apples.

5. Option B offers a new quality adjustment procedure for apples intended for fresh-market. Major provisions of this option include:

(a) Reductions in harvested production for increments above 20% of the harvested production not grading Fancy or better due to hail damage.

(b) Counts as 100% cull production, apples knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples.

(c) Counts as production, 30% of all cull production.

(d) Applies no reduction in grade to any apple grading less than U.S. Fancy due solely to size, russeting, or color.

(e) Excludes from appraised production apples knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

6. Changed this option amendment to a continuous contract which may only be cancelled by following specified procedures.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register** All written comments made pursuant to this action will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, U.S. Department of Agriculture, Washington, D.C. 20250.

during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 408

Crop insurance, Apples.

Proposed Rule

PART 408—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Eastern United States Apples Crop Insurance Regulations found at 7 CFR Part 408, effective for the 1985 and succeeding crop years in the following instances:

1. The Authority citation for 7 CFR Part 408 is:

Authority: Secs. 508, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1508, 1516).

2. 7 CFR 408.8(b) is revised to read as follows:

§ 408.8 Eastern U.S. apple fresh fruit option.

(a) • • •

(b) For those insureds who elect to insure apples under the Apple Fresh Fruit Option Amendment, all provisions of the Eastern U.S. Apple crop insurance policy will apply, except those provisions in conflict with the amendment as set forth below:

FCI–506
(Rev. 8/84)

U.S. Department of Agriculture, Federal Crop Insurance Corporation, Fresh Fruit Option Amendment

Insured's name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

It is hereby agreed that a signed Fresh Fruit Option Amendment indicating your selection of a quality option will be submitted to us on or before the final date for accepting applications for the initial crop year you wish to insure your apples under this amendment and upon our approval, the following terms and conditions will apply.

1. You must have a Federal Crop Insurance Eastern U.S. Apple Policy (basis policy) in force.

2. You must insure all the acreage of apples in the county in which you have a share regardless of the intended use (fresh-market or processing).

3. In addition to section 8 of the policy, grading of the fruit must be done by us prior to harvest or NO quality adjustment will be made.

4. Separate line entries according to intended use (fresh-market or processing) must be included on the acreage report.

5. Your apples intended for processing will be insured under the quality provisions of Option A only.

6. Your apples intended for fresh-market will be insured under the quality provisions of either Option A or Option B whichever you select.

7. If you select Option A only, Option A will apply to all of your apples intended for processing and fresh-market.

8. If you select Option B (or both options), Option B will apply to all of your apples intended for fresh-market and Option A will apply to all of your apples intended for processing.

9. You must select either Option A or Option B.

———Option A

In addition to section 9(e) and in lieu of section 17] of the Eastern U.S. Apple Policy, your production to count for any acreage designated for processing and/or fresh-market will be adjusted when your apples are damaged by hail to the extent that such apples will not grade U.S. No. 1 (processor grade). The adjustment factor (not to exceed 1) will be the ratio of the average market price (received by you or determined by us, whichever is larger), for your damaged production to the average market price for U.S. No. 1 (processor grade) apples. There will be no adjustment for quality if the apples do not grade U.S. No. 1 because of size, color or russeting.

———Option B

a. In lieu of sections 9e(1), 9e(2), 17g and 17j of the Eastern U.S. apple Policy, the total production to be counted for a unit must include all harvest and appraised production as follows:

Harvested apple production which, due to hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

(1) Production with 21 through 40 percent not grading U.S. Fancy or better will be reduced 2 percent for each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

(2) Production with 41 thru 50 percent not grading U.S. Fancy or better will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent. The difference between the reduced production and the total production will be considered cull production.

(3) Production with 51 thru 64 percent not grading U.S. Fancy or better will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

(4) Production with 65 percent or more not grading U.S. Fancy or better will be considered 100 percent cull production.

b. Apples which are knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples will be considered 100% cull production.

c. 30 percent of all cull production, as determined above, will be counted as production. No reduction in grade will be applied to any apple grading less than U.S. Fancy due solely to shape, russeting or color.

d. Appraised production to be counted must include:

(1) Potential production lost due to uninsured causes and failure to follow recognized good apple management practices;

(2) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent.

e. Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(1) harvested;

(2) Further damaged by an insured cause; or

(3) Is, in whole or part, apples knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

10. Your premium rate for Eastern U.S. Apples under the option elected by you will be established by the actuarial table.

11. All provisions of the Eastern U.S. Apple Crop Insurance Policy not in conflict with this amendment are applicable.

12. All determinations under this amendment will be made by us.

13. This amendment may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

Insured's signature _____
Date _____
Corporation Representative's signature and Code number _____
Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring apples under the Eastern U.S. Apple Crop Insurance Regulations (7 CFR Part 408). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the option to insure apples, determine the correct premium and indemnity, and, to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture Agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, administrative tribunal or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security Number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security Number, is also voluntary; however, failure to furnish the correct, complete information requested other than the Social Security Number may result in rejection of the option for insuring apples and subsequent denial of any claim for indemnity which may be filed under such option or may substantially delay acceptance of the option for insuring applies and any subsequent claim for indemnity.

Approved by the Board of Directors on July 12, 1984.

Dated: November 15, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-30809 Filed 11-23-84; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 422

[Doc. No. 1422S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the definition of unit to encompass the entire ASCS farm serial number; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512–1 requiring review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Comment date: Written comments, data, and opinions on this proposed rule must be submitted not later than December 28, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 30, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the potato policy and in the certified seed potato option amendment are:

1. Section 1.a.—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 2.d.(1)—Add a provision for reference to the actuarial table to allow the Corporation to offer insurance coverage on acreage planted with non-certified seed in certain specified areas.

3. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1988 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

4. Section 5.—Remove the provisions for the transfer of insurance experience and for premium computation when insurance has not been continuous. Deletion of the premium adjustment table eliminates the requirement for these sections.

5. Section 7.—Add provisions for insurance in California, Alaska, Maine, Massachusetts, New York, Pennsylvania and Florida. This allows different planting periods to be identified by the actuarial table for different areas.

6. Section 9.d.—Effective for the 1986 crop year allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce indemnities when acres are underreported and will reduce the complexity of calculations.

7. Section 15.c.—Add a clause to cancel the contract if production history is not furnished on or before the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control.

8. Section 15.e.—Add provisions for California and change certain Florida counties to more accurately reflect harvest practices.

9. Section 17.g.—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

10. Section 17.j.—Add a definition of "Planting Period" to clarify its use in the policy.

11. Changes in the Certified Seed Potato Option Amendment include:

(a) providing limits for winter test reading of elite or high grade foundation potatoes;

(b) broadening the reference to seed potato certifying agencies;

(c) providing that insurable acreage grown under the certified seed potato option amendment may be designated as separate units(s); and

(d) providing that a claim for indemnity must be submitted within 10 days after an insured grower receives records from the certifying agency.

12. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. Federal crop insurance for potatoes has been expanded into almost all counties in which potatoes are produced. FCIC service offices will be able to advise a producer if potato insurance is offered in any county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1985 and succeeding crop years, to read as follows:

PART 422—POTATO CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

422.1 Availability of potato crop insurance.
422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
422.3 OMB control numbers.
422.4 Creditors.
422.5 Good faith reliance on misrepresentation.
422.6 The contract.
422.7 The application and policy.
422.8 Certified Seed Potato Option.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 422.1 Availability of potato crop insurance.

Insurance shall be offered under the provisions of this subpart on potatoes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for potatoes which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 422.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 422) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 422.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 422.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the potato insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 422.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the potato crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service offices.

§ 422.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the potato crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a potato contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop year is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Potato Insurance Policy for the

1985 and succeeding crop year are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato—Crop Insurance Policy

(This is a continuous contact. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are expected, excluded, or limited by the actuarial table of section 9e(5).

b. We will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the potatotes have been placed in storage;
(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
(3) The failure to follow recognized good potato farming practices;
(4) The impoundment of water by any governmental, public or private dam or reservoir project; or
(5) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be potatoes planted for harvest as certified seed stock or for human consumption, which are grown on insured acreage, and for which we provide a guarantee and premium rate in the actuarial table.

b. The acreage insured for each crop year will be potatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured potatoes at the time of each planting period.

d. We do not insure any acreage:

(1) Planted with non-certified seed except where provided by the actuarial table;
(2) Which does not meet the rotation procedures required by the actuarial table;
(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(4) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(5) Which is destroyed, it is practical to replant to potatoes, and such acreage was not replanted;
(6) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;
(7) Of volunteer potatoes;
(8) Planted to a type or variety of potatoes not established as adapted to the area or excluded by the actuarial table;
(9) Planted with another crop; or
(10) Planted for the development or production of hybrid seed or for experimental purposes.

e. Where insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good potato irrigation practice at the time of planting; and
(2) Any loss of production caused by failure to carry out a good potato irrigation practice, except failure of the water supply from an unavoidable cause occuring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter, spring and summer-planted potatoes in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any potatoes planted in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit for each planting period the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-half percent (1–½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the potato policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;
(2) The premium reduction will not increase because of favorable experience;
(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;
(4) Once the loss ratio is .80 no further premium reduction will be applicable; and
(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches when the potatoes are planted (in California and Florida insurance attaches when the potatoes are planted in each planting period).

b. Insurance ends at the earliest of:

(1) Total destruction of the potatoes on the unit;
(2) Harvesting or removal from the field;
(3) Final adjustment of a loss;
(4) The following dates of the calendar year in which potatoes are normally harvested:

(a) Connecticut, Delaware, Idaho, Maine, Maryland, Massachusetts, New York, Oregon, Pennsylvania and Washington..... October 31;
(b) Alaska..... October 1;
(c) All other states except California and Florida..... October 15.

(d) California and Florida, the dates established by the actuarial table for each planting period.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the potatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the potatoes and given written consent. We will not consent to another use until it is too late to replant for that planting period. You must notify us when such acreage has been put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A respresentative sample of the unharvested potatoes (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the potatoes on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. We must be given the opportunity to inspect any harvested production on any unit for which you have given notice of probable loss if such production will not be delivered directly to a processing plant.

c. You must obtain written consent from us before you destroy any of the potatoes which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the potatoes on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of potatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of potatoes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable will count against guarantee.

e. The total production (hundred weight) to be counted for a unit will include all harvested marketable and appraised production except if potatoes are marketed or stored without an acceptable inspection, the production to count will be 90 percent of the gross weight so marketed or stored.

(1) The extent of any loss may be determined at the time the potatoes are placed in storage or delivered to a processor.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good potato farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than the guarantee for any acreage from which the harvested production is disposed of without our prior written consent and such disposition prevents accurate determination of marketable potatoes; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of potatoes becomes general in the county for the planting period;

(b) harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested potatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) When you elect to exclude hail and fire as insured causes of loss and the potatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the potatoes are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount, of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an idemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop years, only on our prescribed form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all potatoes produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contact.

15. Life of contact: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any corp year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not finish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancelation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Deparment of Agriculture will be the date both such payment and set-off are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Manatee, Hardee, Highlands, Okeechobee and St. Lucie Counties, Florida, and all Florida counties lying south thereof.	Sept. 30.
Contra Costa, San Joaquin, Calaveras and Alpine Counties, California and all California counties lying south thereof.	Nov. 30.
All other Florida counties	Dec. 31.
All other California Counties and all other states.	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue if force through the crop year and terminate at the end thereof. Death of a partner in partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

(1) June 30 prior to the cancellation date for counties with a September 30 cancellation date;

(2) September 30 preceding the cancellation date for counties with an November 30, or December 31 cancellation date; or

(3) December 31 preceding the cancellation date for counties with an April 15 cancellation date.

Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning or terms.

For the purposes of potato crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding potato insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the potatoes are normally grown and will be designated by the calendar year in which the spring-planted potatoes are normally harvested.

d. "Harvest" means the digging of potatoes on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the acturial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premiums(s).

h. "Marketable potatoes" means potatoes acceptable for use as certified seed or for human consumption and which meet the standards for sale through market outlets for the area and as may be further defined by the actuarial table.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Planting Period" means potatoes planted within the dates specified by the actuarial table, as fall-planted, winter-planted, spring-planted or summer-planted.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the potatoes or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of potatoes in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than the potatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share of the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the constuction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If your disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

§ 422.8 Certified seed potato option amendment.

(a) Notwithstanding the provisions of § 422.7(d)(9)(e) of this part, an insured producer may, upon submission and approval of a Certified Seed Potato Option Amendment elect to insure all of the insurable acreage of potatoes grown for certified seed in which the insured has share, under the provisions of the Certified Seed Potato Option Amendment. To be eligible for this amendment: (1) insurance must be in effect under the provisions of the potato policy; (2) all potatoes grown for seed must be insured; (3) the insured must be a certified seed producer having acceptable production records; and (4) the management practices required for the production of certified seed potatoes as stated in the amendment must be met. The Certified Seed Potato Option Amendment shall be applicable only for one crop year. A new amendment must be submitted for each subsequent crop year.

(b) For those insureds who elect to insure potatoes under this Amendment, all provisions of the Potato crop insurance policy shall apply except those in conflict with the amendment. The terms of the amendment are:

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy—Certified Seed Potato Option Amendment

Insured's Name _____
Address _____
Contract No. _____
Corp Year _____
Identification No. _____
SSN _____ Tax _____

When you submit this Amendment each crop year on or before the final date for accepting applications and we approve such amendment, your insurable acreage of potatoes grown for certified seed will be insured. Provided:

1. You are currently insured under the potato insurance program;

2. All potatoes which are grown for certified seed on insurable acreage are insured;

3. You are a person whose potatoes have qualified as certified seed potatoes for the previous five years, after initial approval, you will be exempt from this requirement in subsequent crop years provided you continue to insure your certified seed potatoes under this amendment;

4. You furnish us with acceptable records of your certified seed potato acreage and production for at least the previous 5 years;

5. Potatotes for seed are not grown on the same land on which potatoes have been grown more than 2 years out of every 4;

6. Elite or high-grade foundation seed potatoes or seed potatoes having a winter test reading of not more than 3 percent common virus are used in planting; and

7. Your acreage insured for certified seed production is managed in accordance with standard practices and procedures required for certification as prescribed by the certifying agency and applicable state regulations regarding seed potato certification.

Your production guarantee and premium rate will be provided by the actuarial table for certified seed potatotes. If, due to insurable causes occurring within the insurance period, potato production will not qualify as certified seed on any insured certified seed potato acreage within a unit. We will pay you one dollar ($1.00) per cwt., times your production guarantee for such acreage, times your share. Any production which will not qualify as certified seed because of your failure to carry out the standard practices and procedures required for certification will be considered lost due to uninsured causes.

Insurable acreage grown under the provisions of this amendment may be designated as a separate unit(s).

Any claim for indemnity on a unit must be submitted to us on our form no later than 10 working days after you receive your records from the certification agency.

All provisions of the potato policy not in conflict with this amendment will be applicable.

All determinations regarding the provisions of this amendment will be made by us.

This amendment is not continuous. A new amendment must be submitted each crop year to take advantage of the certified seed potato option.

The insured estimates that the Certified Seed Potato Acreage for the ——— crop year will be ———.

Insured's Signature ———

Date ———

Corporation Representative's Signature and Code No. ———

Date ———

Field Actuarial Office Approval ———

Date ———

Following is the Privacy Act Statement found on the reverse side of the Certified Seed Potato Option Amendment:

Collection of Information and Data (Pricacy Act)

The following statements are made in accordance with the Pricacy Act of 1974 (5 U.S.C. 552(a)).:

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring potatoes under the Potato Crop Insurance Regulations (7 CFR Part 442). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the option to insure certified seed potatoes, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, and in response to orders of a court, or administrative tribunal as evidence in the course of litigation. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security number, is also voluntary, however, failure to furnish the correct, complete information requested except the Social Security Number may result in rejection of the option for insuring certified seed potatoes, and/or subsequent denial of any claim for indemnity which may be filed under such option. The failure to supply correct, complete information may substantially delay acceptance of the Certified Seed Potato Option Amendment, and/or any subsequent claim for indemnity.

Done in Washington, D.C. on August 10, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: November 15, 1984.

Approved by:

Edward Hews,

Acting Management.

FR Doc. 84-30780 Filed 11-23-84; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 431

[Docket No. 1433S]

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1985 and succeeding crop years, to provide for (1) removing the Premium Adjustment Table; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share, or practice is underreported; (4) changing the method of crediting replanting payments; and, (5) deleting Appendix A to this part. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512–1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Comment Date:* Written comments, data, and opinions on this proposed rule must be submitted not later than December 26, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation No. 1512–1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merrit W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investiment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title-Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the policy for insuring soybeans are:

1. Section 1.a.—Add the failure of the irrigation water supply due to unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 6—Specify that the replanting payment will be applied to the payment of the premium only if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made, the replanting payment will be applied to payment of the billed premium. This is a change from the previous practice of applying the replanting payment to the outstanding premium in all cases.

3. Section 9.d.—Effective for the 1986 and succeeding crop years, allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported, and will reduce the complexities of calculations.

4. Section 9—Delete the requirement that any replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

In addition to the policy changes, FCIC also proposes to remove the codification of Appendix A. Federal crop insurance for soybeans has been expanded into almost all counties. The FCIC service office will be able to advise a producer if soybean insurance is offered in any county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 431

Crop insurance, Soybeans.

Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et. seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1985 and succeeding crop years, to read as follows:

PART 431—SOYBEAN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

431.1 Availability of soybean crop insurance.
431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
431.3 OMB control numbers.
431.4 Creditors.
431.5 Good faith reliance on misrepresentation.
431.6 The contract.
431.7 The application and policy.

Authority: Secs. 508, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 431.1 Availability of soybean crop insurance.

Insurance shall be offered under the provisions of this subpart on soybeans in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for soybeans which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 431.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 431) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 431.4 Creditors.

An interest of a person in an insured crop existing by virture of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 431.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the soybean insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 431.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the soybean crop as

provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 431.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the soybean crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a soybean contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Soybean Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Soybean—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
(2) The failure to follow recognized good soybean farming practices;
(3) The impoundment of water by any governmental, public or private dam or reservoir project; or
(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be soybeans which are planted for harvest as beans, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be soybeans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured soybeans at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed, it is practical to replant to soybeans, and such acreage was not replanted;
(4) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;
(5) Of volunteer soybeans;
(6) Planted to a type or variety of soybeans not established as adapted to the area or excluded by the actuarial table;
(7) Planted with a crop other than soybeans; or
(8) Of a second soybean crop following a soybean crop harvested in the same crop year.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good soybean irrigation practice at the time of planting; and
(2) Any loss of production caused by failure to carry out a good soybean irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Unless otherwise provided in the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation; but, if such insured acreage is destroyed and replanted, whether in the same manner or by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage and not as acreage put to another use.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of soybeans in the county in which you have a share;
b. The practice; and
c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any soybeans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the

premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the soybean policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;
(2) The premium reduction will not increase because of favorable experience;
(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;
(4) Once the loss ratio exceeds .80 no further premium reduction will be applicable; and
(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the soybeans are planted and ends at the earliest of:

a. Total destruction of the soybeans;
b. Combining, threshing or removal from the field;
c. Final adjustment of a loss; or
d. The date immediately following planting as follows:

(1) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas and Virginia.....December 20;
(2) All other states.....December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant soybeans damaged due to any insured cause (To quality for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit);

(b) During the period before harvest, the soybeans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the soybeans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested soybeans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the soybeans on the unit;
(b) Harvest of the unit; or
(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the soybeans on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the soybeans which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the soybeans on the unit;
(2) Harvest of the unit; or
(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of soybeans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and
(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;
(2) Subtracting therefrom the total production of sobyeans to be counted (see section 9e);
(3) Multiplying the remainder by the price election; and
(4) Multiplying this result by your share.

d. If the information reported by you under Section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from the insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature soybean production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent.

(2) Mature soybean production which, due to insurable causes:

(a) Has a test weight of less than 49 pounds per bushel; or

(b) Is of distinctly low quality, as determined by a grain grader licensed under the Federal Grain Inspection Service or under the United States Warehouse Act will be adjusted by:

(i) Dividing the value per bushel of such soybeans by the price per bushel of U.S. No. 2 soybeans; and

(ii) Multiplying the result by the number of bushels of such soybeans.

The applicable price for No. 2 soybeans will be the local market price on the earlier of the day the loss is adjusted or the day such soybeans were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of soybeans becomes general in the county;
(b) Harvested; or
(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested soybeans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you have elected to exclude hail and fire as insured causes of loss and the soybeans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. A replanting payment may be made on any insured soybeans replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;
(b) Initially planted prior to the date we determine resonable; or
(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed 3 bushels multiplied by the price election, the product of which is multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately

g. You must not abandon any acreage to us.

h. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisons of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

i. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the soybeans are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. [Recovery of loss from a third party.]

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to reserve any such rights. If we pay you for your loss then your right of recovery at our option will belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all soybeans produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) if deducted from an indemnity will be the date you sign the claim; or

(2) if deducted from payment under another program administered by United States Department of Agriculture will be the date both such payment and set-off are approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Wharton and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states.	Apr. 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of soybean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding soybean insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the soybeans are normally grown and will be designated by the calendar year in which the soybeans are normally harvested.

d. "harvest" means the completion of combining or threshing of soybeans on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Replanting" means performing the cultural practices necessary to replant insured acreage to soybeans.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the soybeans or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of soybeans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the soybeans on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on August 10, 1984.

Dated: November 15, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-30794 Filed 11-23-84; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 436

[Doc. No. 1437S]

Tobacco (Guaranteed Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Tobacco (Guaranteed Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the definition of unit to encompass the entire ASCS farm serial number; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than December 26, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the tobacco policy are:

1. Section 1.a.—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. Section 5.—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. Section 9.d.—Effective for the 1986 and succeeding crop years, allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

6. Section 17.b.—Add a definition for the term "ASCS" to clarify its use in the definition of the term "Unit".

7. Section 17.d.—Change the definition for the term "County" to be consistent with other marketing quota crop policies.

8. Section 17.j.—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

9. Section 17.n.—Change the definition of the term "Unit" to conform to a single ASCS farm serial number. No further division will be allowed. This change will reduce the problem of transferring production from one unit to another.

10. In addition to the policy changes FCIC also proposes to eliminate the codification of Appendix A. All FCIC service offices will be able to advise a producer where tobacco insurance is offered.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday, through Friday.

List of Subjects in 7 CFR Part 436

Crop insurance, Tobacco (guaranteed plan)

Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Tobacco (Guaranteed Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1985 and succeeding crop years, to read as follows:

PART 436—TOBACCO (GUARANTEED PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

436.1 Availability of the guaranteed plan of tobacco crop insurance.
436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
436.3 OMB control numbers.
436.4 Creditors.
436.5 Good faith reliance on misrepresentation.
436.6 The contract.
436.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 436.1 Availability of the guaranteed plan of tobacco crop insurance

Insurance shall be offered under the provisions of this subpart on tobacco in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tobacco which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 436.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 436) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 436.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 436.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto. Request for relief under the provision must be requested in writing by the insured.

§ 436.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tobacco crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 436.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tobacco crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tobacco contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General

Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Guaranteed Plan) Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be tobacco of the type shown as insurable in the actuarial table, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(5) Planted to tobacco of a discount variety under the provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table; or

(7) Tobacco planted for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tobacco irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tobacco irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause. Insurance will not attach on an irrigated basis on acreage otherwise insurable on such basis unless it is designated as irrigated at the time the acreage is reported.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantee will be reduced by 35 percent for any unharvested acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1988 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. April 30 following the normal harvest period.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs. Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested

for period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco is completed on the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the value per pound by the market price per pound; and

(b) Multiplying the product by the number of pounds of such tobacco.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraisal in excess of 35 percent of the production guarantee for all other unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of producton of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(5) If you elect to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due as if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the preivous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set off are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract Changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you will be deemed to have elected. All contract changes will be available at your office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of guaranteed tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown, by the actuarial table; and

(2) Any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

d. "Crop year" means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

e. "Harvest" means: The completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acres shown by the actuarial table is cut or primed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

i. "Market price" means the average price determined for the applicable type of tobacco. Such price will be the:

(1) Average price for the preceding crop year for any unit which is not to be harvested; or

(2) The average price for the current crop year for any unit or part thereof which is harvested.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. "Planting" means transplanting the tobacco plant from the bed to the field.

l. "Service office" means the office servicing your contract as shown on the application for insurance for such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on August 16, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: November 15, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84–30799 Filed 11–23–84; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 438

[Docket No. 1453S]

Canning and Processing Tomato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Canning and Processing Tomato Crop Insuance Regulations (7 CFR Part 438), effective for the 1985 and succeeding crop years. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512–1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than December 26, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insuance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review data established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals; small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the policy for insuring canning and processing tomatoes are:

1. Section 1.a.—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with goods loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. Section 5.—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. Section 9.d.—Effective for the 1986 and succeeding crop years, allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

6. Section 17.g.—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

In addition to the policy changes FCIC also proposes to eliminate the codification of Appendix A. Federal crop insurance for canning and processing is presently limited to a few counties where commerical production of canning and processing tomatoes is a major agricultural pursuit. The FCIC service offices in these counties will be able to advise producers if this insurance is offered in their location.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 438

Crop insurance, Canning and processing tomato.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Canning and Processing Tomato Crop Insurance Regulations (7 CFR Part 438), effective for the 1985 and succeeding crop years, to read as follows:

PART 438—CANNING AND PROCESSING TOMATO CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

438.1 Availability of tomato crop insurance.
438.2 Premium rates, production guarantees, levels of coverage, and prices at which indemnities shall be computed.
438.3 OMB control numbers.
438.4 Creditors.
438.5 Good faith reliance on misrepresentation.
438.6 The contract.
438.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 438.1 Availability of tomato crop insurance.

Insurance shall be offered under the provisions of this subpart on tomatoes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 438.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which idemnities shall be computed for tomatoes which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 438.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 438) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 438.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 438.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tomato insurance contract, whenever.

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an idemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 438.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tomato crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 438.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tomato crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tomato contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Canning and Processing Tomato Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Canning and Processing Tomato Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good tomato farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project;

(4) Failure to market the tomatoes when such failure is not due to an insurable cause; or

(5) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be tomatoes which are planted for harvest as canning or processing tomatoes, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be tomatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tomatoes at the time of planting.

d. We do not insure any acreage:

(1) Which is not grown under a contract with a canner or processor or excluded from the canner or processor contract for, or during, the crop year (the contract must be executed and effective before you report your acreage);

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to tomatoes, but such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(6) Of volunteer tomatoes;

(7) Planted to a type or variety of tomatoes not established as adapted to the area or excluded by the actuarial table; or

(8) Planted for the development or production of hybrid seed or for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tomato irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tomato irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure of breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of tomatoes in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tomatoes planted in the county. This report must be submitted

annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantees are progressive by periods as designated by the actuarial table.

c. Any acreage of tomatoes damaged to the extent that growers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though the tomatoes continue to be cared for. The production guarantee for such acreage will be the guarantee designated by the actuarial table for the period in which such destruction occurs. The final stage guarantee will apply only to harvested acreage.

d. Coverage level 2 will apply if you have not elected a coverage level.

e. You may change the coverage level and price election on or before the closing date for submitting application for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the tomato policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceed .80 no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tomatoes are planted and ends at the earliest of:

a. Total destruction of the tomatoes;

b. Harvest or removal from the field;

c. Final adjustment of a loss; or

d. The following dates of the calendar year in which tomatoes are normally harvested:

(1) California	October 20
(2) All other states	October 10

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tomatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tomatoes and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested tomatoes (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) If an indemnity is to be claimed on any unit notice must be given immediately.

(a) When harvest would normally start if any acreage on the unit is not to be harvested;

(b) After discontinuance of harvest on the unit;

(c) If you are unable to deliver production to the canner or processor; or

(d) When harvest is completed on the unit.

(5) In addition to the notices otherwise required (unless notice has been given under subsection (4) above,) if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earlier of:

(a) Total destruction of the tomatoes on the unit; or

(b) The calendar date for the end of the insurance period.

b. The tomato vines on any hand harvested acreage must not be destroyed until inspected by us if an indemnity is to be claimed on the unit.

c. You must obtain written consent from us before you destroy any tomatoes which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tomatoes on the unit and that any loss of production has been directly caused by one or more of the insured caused during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tomatoes to be counted [see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and suceeding crop years results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

e. The total production (tons) to be counted for a unit will include all harvested and appraised production.

(1) All tomato production marketed and any tomato production which does not meet the quality requirements of the canner or processor contract due to not being timely marketed will be considered production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tomato farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent, or damaged solely by an uninsured cause;

(c) For acreage which does not qualify for the final period guarantee, any amount of appraised and harvested production in excess of the difference between the final period guarantee and the guarantee applicable to such acreage will be counted, except that all appraised production lost due to uninsured causes will be counted.

(3) Our appraisal on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested tomatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you have elected to exclude hail and fire as insured causes of loss and the tomatoes are damaged by hail or fire, appraisals will be made in accordance with

Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tomatoes are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your fight to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tomatoes produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set-offs are approved.

e. The cancellation and termination dates are:

State	Cancellation and termination dates
California	Feb. 15.
All other States	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other countries. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of canning and processing tomato crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tomato insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the tomatoes are normally grown and will be designated by the calendar year in which the tomatoes are normally harvested.

d. "Harvest" or "harvested" as to any insured acreage not deemed to have been destroyed earlier, means severance of tomatoes from the vines and delivery of such tomatoes under your contract with a canner or processor.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the tomatoes or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of tomatoes in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be

divided according to applicable guidelines on file in your service office or by written agreement with us. Units as herein defined will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on August 16, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: November 15, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-30000 Filed 11-23-84; 8:45 am]

BILLING CODE 3410-08-M

Federal Grain Inspection Service

7 CFR Part 800

Weighing Provisions and Procedures

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) reviewed and proposes to revise the regulations under the United States Grain Standards Act (Act), as amended, concerning Weighing Provisions and Procedures to condense certain language and reorganize the text to facilitate the use of the regulations. The proposal would establish provisions for applying additives to grain for the purpose of controlling insects, reducing dust, and identifying grain.

DATE: Comments must be submitted on or before January 25, 1985.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Management Branch, FGIS, USDA, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382-1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section 3504(h) of that Act, the previously approved information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Agriculture, Room 3201, NEOB, Washington, D.C. 20503.

Regulatory Review

The review of the regulations concerning Weighing Provisions and Procedures (7 CFR 800.95-800.103) included a determination of continued need for and consequences of the regulations. The objective of the review was to ensure that the regulations are serving their intended purposes, the language is clear, and the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, however, proposes to amend:

1. Section 800.95, *Methods and order of performing weighing services*, by:

(a) Clarifying the procedures for performing weighing services by specifying who may perform approved weighing services.

(b) Removing the provisions for weighing bulk grain, sacked grain, and conducting reviews of weighing because these provisions duplicate provisions already covered in §§ 800.46, 800.77, 800.129, 800.131, and in FGIS instructions.

(c) Combining §§ 800.95(b) and 800.95(c) and renumbering as § 800.95(b) to simplify the regulation.

2. Section 800.96, *Weighing procedures*, by:

(a) Removing the general Class X and Class Y weighing provisions in § 800.96(a) because these provisions duplicate provisions already covered in §§ 800.95 and 800.77.

(b) Incorporating provisions for weighing inbound and outbound grain into §§ 800.96(a) and 800.96(b) that are presently covered by §§ 800.96(b)(4)(ii) and 800.103(d)(1).

(c) Reorganizing and clarifying the remaining paragraphs contained in this section, presently designated as §§ 800.96 (b), (c), and (d), concerning spills, commingled carriers, and losses of identity; and renumbering as §§ 800.96 (c)(1), (c)(4), and (c)(5).

(d) Incorporating provisions for dust which are presently covered by § 800.103(d)(2)(ii) and renumbering as § 800.96(c)(3).

(e) Incorporating provisions for applying additives presently covered by § 800.103(c) and renumbering as § 800.96(c)(2) for the purpose of controlling insects, suppressing dust, identifying grain, and any other purpose deemed necessary by the Administrator. Presently, FGIS does not allow the application of additives, other than insecticides under certain conditions, to inbound grain before weighing or outbound grain after weighing because such material may alter the weight or condition of the grain. For several years, the grain industry has sought permission to apply additives, such as water, mineral oil, and insecticides, to grain during receiving and shipping operations. There are three primary uses proposed by the industry for additive applications:

(1) *Control of Insects.* Spraying water-based insecticides on grain received into an elevator appears to be an effective, economical means of controlling infestation. Additionally, many foreign buyers require that grain be sprayed with an insecticide during loading into export vessels.

(2) *Dust Suppression.* Industry research has shown that spraying grain with either a water- or mineral oil based additive may significantly reduce dust emissions. The suppression of dust maybe vital both in preventing elevator explosions and in reducing atmospheric pollution of the areas surrounding elevators.

(3) *Identification.* Some foreign buyers have required that grain sold to their country be sprayed with a nontoxic dye so as to identify the grain. The application of this dye is often a contingent of sale and without it the buyer will not purchase the grain

The Food and Drug Administration (FDA) investigated the effect that additives have upon grain. FDA determined that mineral oil- and water-based additives are safe. Additionally, research conducted by and for FGIS found no conclusive evidence that mineral oil- and water-based additives are detrimental to grain quality.

Since additives have been deemed to be safe and since there is an apparent need for such additives, FGIS proposes to allow additives for certain purposes to be applied to grain provided that all FDA and other Federal and State regulations are complied with by the elevator. Presently, the regulations limit the use additives to insecticides. This proposal will expand upon the use of additives for certain purposes. FGIS will report all incidences or suspected incidences of illegal additive application to the appropriate authorities. To ensure that all parties are made aware of additive applications, and any effect they may have on the weight of the grain, the FGIS instructions implementing the proposed regulation will require that the following statement will be shown on official certificates issued by the Service: "Applicant states (*type of additive*) applied to grain (*before or after*) sampling and weighing to (*purpose of the application*)." No statement will be shown when additives are applied prior to sampling and weighing outbound grain or after sampling and weighing inbound grain. The restrictions in § 800.103(c)(2) as to applying insecticides prior to outbound weighing will be deleted as unnecessary. This proposed change affects § 800.88, Loss of identity, which deals with the effect of an application of additives from an official inspection standpoint. Conforming changes will be proposed in a separate rulemaking action.

3. Section 800.97, *Weighing of bulk grain in containers, land carriers, and barges in single lots* by:

(a) Revising the title to accommodate the proposed changes in the regulations.

(b) Revising § 800.97(a) to include weighing grain loaded or unloaded from any carrier and simplifying the language to promote greater understanding of the regulation.

(c) Condensing and combining the procedures for weighing grain currently contained in §§ 800.97(b), 800.97(d), 800.97(e)(1), 800.99(c), and 800.99(d)(3) and renumbering as §§ 800.97(b)(1), 800.97(b)(2), and 800.97(b)(3).

(d) Clarifying § 800.97(c), revising the heading, and renumbering as § 800.97(c)(1).

(e) Simplifying § 800.97(e)(2) and renumbering as § 800.97(c)(2).

(f) Removing 800.97(f) because this information is not necessary in the regulatory text and is already covered in FGIS instructions.

(g) Incorporating and clarifying the provisions for certificating shiplot grain that are now in §§ 800.99(d)(1), 800.99(d)(2), and 800.99(d)(4).

4. Section 800.98, *Weighing of grain in combined lots*, by:

(a) Revising the title for clarity and consistency.

(b) Simplifying the language of § 800.98(a) to promote greater understanding of the regulation.

(c) Removing the application procedures for weighing during loading or unloading and recertification in §§ 800.98 (b)(1) and (b)(2) because they duplicate provisions already covered in § 800.116 and in the FGIS Weighing Handbook.

(d) Reorganizing, clarifying, and renumbering the specific weighing and certification procedures to promote a better understanding of the regulations.

5. Section 800.99, *Weighing of shiplot grain in single lots*, by:

(a) Revising the title to reflect the proposed changes.

(b) Removing the weighing and certification procedures for shiplot grain presently contained in §§ 800.99(a), 800.99(c), and 800.99(d) and combining these procedures with those procedures established for other carriers in § 800.97 to simplify the regulations.

(c) Removing the application procedures for shiplot grain in § 800.99(b) because they duplicate those already covered by § 800.116.

(d) Incorporating the checkweighing provisions by level of service presently contained in § 800.101 and renumbering as § 800.99(a).

(e) Incorporating, clarifying, and condensing the official weight sample provisions for checkweighing sacked grain, with the exception of § 800.100(a) which is duplicative, presently contained in §§ 800.100(b), 800.100(c), 800.100(d), 800.100(e), and 800.100(f) and renumbering as §§ 800.99(b), 800.99(c), 800.99(d), 800.99(e), and 800.99(f).

(f) Incorporating the official checkweighing sampling provisions by kind of movement presently contained §§ 800.102(a), 800.102(b), 800.102(c), and 800.102(d) and renumbering as §§ 800.99(g)(1), 800.99(g)(2), 800.99(g)(3), and 800.99(g)(4).

6. Section 800.100, *Official weight sample provisions for checkweighing sacked grain*, by removing the requirements contained in §§ 800.100(a), 800.100(b), 800.100(c), 800.100(d), 800.100(e), and 800.100(f), with the exception of § 800.100(a), and including in §§ 800.99(b), 800.99(c), 800.99(d), 800.99(e), and 800.99(f).

7. Section 800.101, *Checkweighing sampling provisions by level of service*, by removing and including in § 800.99(a).

8. Section 800.102, *Official checkweighing sample provisions by kind of movement*, by removing the provisions and including in § 800.99(g).

9. Section 800.103, *Restricted weighing activities*, by:

(a) Removing the provisions for misusing and modifying equipment contained in §§ 800.103(a) and 800.103(b) because they duplicate provisions already covered in §§ 802.9(b) and 802.9(j).

(b) Removing the provisions for adding insecticide contained in §§ 800.103(c) and including in § 800.96(c)(2).

(c) Removing the provisions for processing weighed grain contained in § 800.103(d) and including in §§ 800.96(a), 800.96(b), 800.96(c)(2), and 800.96(c)(3).

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, grain, and export.

PART 800—WEIGHING PROVISIONS AND PROCEDURES

Accordingly, it is proposed that 7 CFR Part 800 of the regulations be amended as follows:

1. Section 800.95 would be revised to read:

§ 800.95 Methods and order of performing weighing services.

(a) *Methods.* All Class X or class Y weighing, checkweighing, checkloading, stowage examination, and other weighing services will be performed by official personnel or approved weighers using approved weighing equipment and according to procedures prescribed in the regulations and the instructions.

(b) *Order of service.* Weighing services will be performed, to the extent practicable, in the order in which requests are received. Official personnel must mark or stamp the date received on each written request for service. Precedence will be given to requests for weighing required by sections 5(a)(1) or 5(a)(2) of the Act.

2. Section 800.96 would be revised to read:

§ 800.96 Weighing procedures.

(a) *Inbound.* Inbound grain that is to be weighed must be routed directly from the carrier and cannot be cleaned, dried, or otherwise processed to remove or add other grain or material en route. Except as noted in paragraph (c) of this section, the identity of an inbound lot shall be considered lost when a portion of the lot is transferred or otherwise removed prior to weighing or a portion of grain or other material is added to the lot prior to weighing. When loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for the lot.

(b) *Outbound.* Outbound grain that has been weighed must be routed directly from the scale to the carrier and cannot be cleaned, dried, or otherwise processed to remove or add other grain or material en route. Except as noted in paragraph (c) of this section, the identity of an outbound lot will be considered lost if a portion of the lot is transferred or otherwise removed from the lot after weighing or a portion of grain or other material is added to the lot after weighing. When loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for the lot.

(c) *Exceptions*—(1) *Spills.* (i) *Outbound.* (A) *Replaced.* If a spill occurs in handling and loading of outbound grain and the spilled grain is retrieved, or is replaced in kind, and is loaded on board during the loading operations, the weight certificate will show the weight of the grain that was physically loaded on board. Upon request of the applicant, an additional certificate may be issued by the agency or the field office to show the weight of the additional grain that was used to replace a spill.

(B) *Not replaced.* If a spill occurs in the handling and loading of outbound grain and the spilled grain is not retrieved or is not replaced during the loading operation, the weight certificate will show the weight of the grain that was actually weighed, minus the estimated amount of the grain that was spilled. Upon request of the applicant, and additional certificate may be issued showing the estimated amount of grain that was spilled. The applicant may, upon rquest, have the total amount that was weighed shown on the weight certificate with the estimated amount of the spilled grain noted.

(ii) *Inbound.* If a spill occurs in the handling of inbound grain and the grain is not retrieved and weighed, the weight certificate shall show the weight of the grain that was actually unloaded from the carrier and a statement regarding the spill as prescribed in the instructions.

(2) *Additives.* If additives are applied during loading to outbound grain after weighing or during unloading to inbound grain before weighing for the purpose of insect control, dust control, identification, or other purposes determined by the Administrator to be in the interest of orderly marketing of grain, the weight certificate shall show the actual weight of the grain loaded into or unloaded from the carrier and a statement showing the type and purpose of the additive application.

(3) *Dust.* If airborne dust is removed during the handling of grain it shall not be considered to be a removal of material.

(4) *Commingled carriers.* If grain from two or more identified carriers becomes mixed, (i) the combined weight of the grain will be shown in the "Net Weight" block of one certificate with all carrier identification shown in the identification of carrier section of the certificate, or (ii) upon request of the applicant, a certificate will be issued for each carrier with the "Net Weight" block crossed out, and with the total combined weight unloaded and the identification of the other carrie(s) shown in the "Remarks" section.

(5) *Unremoved grain.* If, after unloading an inbound carrier, there is sound grain remaining in the carrier that could have been removed with reasonable effort, the weight certificate will show the weight of the grain that was actually unloaded from the carrier and a statement regarding the grain remaining in the carrier.

3. Section 800.97 would be revised to read:

§ 800.97 Weighing grain in containers, land carriers, barges, and shiplots.

(a) *General.* The weighing of grain loaded or unloaded from any carrier will be conducted according to this section and the instructions.

(b) *Procedure*—(1) *General.* If grain in a carrier is offered for inspection or weighing service as one lot, the grain will be weighed and certificated as one lot. The identification of the carrier shall be recorded on the scale tape or ticket and the weight certificate.

(2) *Sacked grain.* If sacked grain is offered for weighing and the grain is not fully accessible, the request for weighing service shall be dismissed.

(3) *Part lots.* If a portion of an inbound lot of grain is unloaded and a portion is left in the carrier because it is not uniform in quality or condition, or the lot is unloaded in other than a reasonably continuous operation, the portion that is removed and the portion remaining in the carrier shall be considered as part lots and shall be weighed and certificated as part lots.

(c) *Certification of trucklots, carlots, and bargelots*—(1) *Basic requirement.* One official certificate will be issued for the weighing of the grain in each truck, trailer, truck/trailer(s) combination, railroad car, barge, or similarly sized carrier. These requirements shall not be applicable to grain weighed as a combined lot under § 800.98. Requirements of this paragraph may be waived by an agency or field office upon a showing of good cause by an interested party.

(2) *Part-lot weight certificate.* A part-lot weight certificate will show (i) the weight of the portion that is unloaded and (ii) the following statement: "Part-lot: The net weight stated herein reflects a partial unload."

(d) *Certification of shiplot grain*—(1) *Basic requirement.* The certificate will show (i) if applicable, a statement that the grain has been loaded aboard with other grain, (ii) the official weight, (iii) the stowage or other identification of the grain, and (iv) other information required by the regulations and the instructions.

(2) *Common stowage*—(i) *Without separation.* If bulk grain is offered for weighing as it is being loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the weight certificate for the grain in each lot shall show that the lot was loaded aboard with other grain or another commodity without separation and the relative location of the grain.

(ii) *With separation.* If separations are laid between adjacent lots, the weight certificates shall show the kind of material used in the separations and the location of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph shall not be applicable to the first lot in a stowage area unless a second lot has been loaded, in whole or in part, in the stowage area before issuing the official weight certificate for the first lot.

(3) *Official mark.* If the grain is officially weighed in a reasonably continuous operation, upon request by the applicant, the following statement may be shown on the weight certificate: "Loaded under continuous official weighing."

(Approved by the Office of Management and Budget under control number 0580-0003)

4. Section 800.98 would be revised to read:

§ 800.98 Weighing grain in combined lots.

(a) *General.* The weighing of bulk or sacked grain loaded aboard, or being loaded aboard, or unloaded from two or more carriers as a combined lot shall be conducted according to this section and the instructions.

(b) *Weighing procedure*—(1) *Single lot weighing.* Single lots of grain that are to be weighed as a combined lot shall be weighed in one location. The grain loaded into or unloaded from each carrier or container must be weighed in accordance with procedures prescribed in the instructions. In the case of sacked grain, a representative weight sample must be obtained from the grain in each carrier or container unless otherwise specified in the instructions.

(2) *Recertification.* Grain that has been weighed and certificated as two or more single lots may be recertificated as a combined lot provided that (i) the grain in each single lot has been weighed in one location, (ii) the original weight certificates issued for the single lots have been or will be surrendered to the appropriate agency or field office, (iii) the official personnel who performed the weighing service for the single lots and the official personnel who are to recertificate the grain as a combined lot determine that the weight of the grain in the lots has not since changed and, in the case of sacked grain, that the weight samples used as a basis for weighing the single lots were representative at the time of the weighing.

(3) *Grain uniform in quality.* An applicant may request that grain be weighed and certificated as a combined lot whether or not the grain is uniform in quality for the purposes of inspection under the Act.

(c) *Certification procedures*—(1) *General.* Each certificate for a combined-lot Class X or Class Y weighing service shall show the identification for the "Combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. The identification and any seal information for the carriers may be shown on the reverse side of the weight certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(2) *Recertification.* If a request for a combined-lot Class X or Class Y weighing service is filed after the grain in the single lots has been weighed and certificated, the combined-lot weighing certificate shall show: (i) The date of weighing the grain in the combined lot (if the single lots were weighed on different dates, the latest of the dates shall be shown); (ii) a serial number, other than the serial numbers of the weight certificates that are to be superseded; (iii) the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the weight of the grain in the combined lot; (v) a completed statement showing the identification of any superseded certificate as follows: "This combined-lot certificate supersedes certificates Nos. ——, dated ——"; and (vi) if at the time of issuing the combined-lot weight certificate the superseded certificates are not in the custody of the agency or field office, the statement "The superseded certificates identified herein have not been surrendered" shall be clearly shown, in the space provided for remarks, beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the agency or field office, the superseded certificates shall be clearly marked "Void."

(3) *Part lot.* If a part of a combined lot of grain in inbound carriers is unloaded and a part is left in the carriers, the grain that is unloaded shall be weighed and certificated in accordance with the provisions in § 800.97(b)(3).

(4) *Official mark.* When grain is weighed as a combined lot in one continuous operation, upon request by the applicant, the following statement shall be shown on the weight certificate: "Loaded under continuous official weighing," or "Loaded under continuous official inspection and weighing."

(5) *Further combining.* After a combined-lot weight certificate has been issued, there shall be no further combining and no dividing of the certificate.

(6) *Limitations.* No combined-lot weight certificate shall be issued (i) for any weighing service other than as described in this section or (ii) which shows a weight of grain different from the total of the combined single lot.

5. Section 800.99 would be revised to read:

§ 800.99 Checkweighing sacked grain.

(a) *General.* Each checkweighing service performed on a lot of sacked grain to determine the weight of the grain shall be made on the basis of one or more official weight samples obtained from the grain by official personnel according to this section and the instructions.

(b) *Representative sample.* No official weight sample shall be considered to be representative of a lot of sacked grain unless the sample is of the size prescribed in the instructions and has been obtained and weighed according to the instructions.

(c) *Protecting samples and data.* Official personnel and other employees of any agency or the Service shall protect official weight samples and data from manipulation, substitution, and improper and careless handling which might deprive the samples and sample data of their representativeness.

(d) *Restriction on weighing.* No Agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the Agency. Upon good cause shown by the Agency, the Administrator may grant an exception to this rule on a case-by-case basis.

(e) *Equipment and labor.* Each applicant for weighing services shall provide the necessary labor for obtaining official weight samples and place them in a position for weighing and shall supply suitable weighing equipment approved by the Service.

(f) *Disposition of official weight samples.* In weighing sack grain in lots, the grain in the official weight samples shall be returned to the lots from which the samples were obtained.

(g) *Provisions by kinds of service.* (1) *"IN" movements.* Each checkweighing on an "IN" movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest in the carrier or during unloading in accordance with procedures prescribed in the instructions.

(2) *"OUT" movements (export).* Each checkweighing of sacked export grain shall be based on an official weight sample obtained as the grain is being loaded aboard the final carrier, as the

grain is being sacked, or while the grain is at rest in a warehouse or holding facility in accordance with the instructions.

(3) *"OUT" movements (other than export).* Each checkweighing of an "OUT" movement of nonexport sacked grain shall be based on an official weight sample obtained from the grain as the grain is being loaded in the carrier or container, or while the grain is at rest in the carrier and container, or while the grain is at rest in a warehouse or holding facility, or while the grain is being sacked in accordance with procedures prescribed in the instructions.

(4) *"LOCAL" weighing.* Each checkweighing of a "LOCAL" movement of sacked grain shall be based on an official weight sample obtained while the grain is at rest or while the grain is being transferred in accordance with procedures prescribed in the instructions.

§§ 800.100–800.103 [Removed]

6. Sections 800.100, 800.101, 800.102, and 800.103 would be removed.

(Pub. L. 94–582, 90 Stat. 2869, as amended (7 U.S.C. 71 *et seq.*))

Dated: November 8, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84-30879 Filed 11-23-84; 8:45 am]

BILLING CODE 3410-EN-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

Uranium Mill Tailing Regulations; Conforming NRC Requirements to EPA Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the disposal of uranium mill tailings. The proposed rule changes are intended to conform existing NRC regulations to the regulations published by the Environmental Protection Agency for the protection of the environment from these wastes. This action is being taken to comply with the legislative mandate set out in the Uranium Mill Tailings Radiation Control Act and the NRC Authorization Act for FY 1983.

DATE: The comment period expires on January 10, 1985. Comments received after this date will be considered if it is practical to do so but assurance of consideration may not be given except for comments received on or before this date.

ADDRESSES: Mail comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to Room 1121, 1717 H Street NW, Washington, DC between 8:15 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Robert Fonner, Office of the Executive Legal Director, telephone (301) 492–8692, or Kitty S. Dragonette, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4300.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC or Commission) is proposing modifications to its regulations for the purpose of conforming them to generally applicable requirements recently promulgated by the Environmental Protection Agency (EPA). These new EPA requirements are contained in Subparts D and E of 40 CFR Part 192 (48 FR 45926; October 7, 1983), are applicable to the management of uranium and thorium byproduct material, and became effective for NRC and Agreement State licensees and license applicants on December 6, 1983. The action proposed herein would modify previously existing regulations of the Commission to conform them to the new EPA requirements, and would incorporate certain of the new EPA requirements into the Commission's regulations. The affected Commission regulations are contained in Appendix A to 10 CFR Part 40, which was promulgated in final form on October 3, 1980 (45 FR 65521).

The modifications to Commission regulations proposed herein will incorporate within NRC regulations some of the new EPA requirements. The action that the Commission will take with respect to the remainder of these new EPA requirements is the subject of an Advanced Notice of Proposed Rulemaking (ANPRM), which requests comment on that subject, also issued this day. These new EPA requirements were developed and issued by EPA pursuant to section 275b. of the Atomic Energy Act (42 U.S.C. 2022), as added by section 206 of Pub. L. 95–604, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Under section 18(a) of Pub. L. 97–415, the Nuclear Regulatory Commission Authorization Act for fiscal years 1982 and 1983, the Commission was directed to conform its regulations to EPA's with notice and opportunity for public comment. Today's proposal addresses that responsibility.

Previous Actions

In keeping with section 18(a) of the NRC Authorization Act, the Commission suspended portions of its October 3, 1980 mill tailings regulations after notice and opportunity for public comment (48 FR 35350; August 4, 1983). As required by the Act, this suspension terminated automatically April 1, 1984. Those portions of the Commission's regulations which were suspended were those that were determined to be in conflict or inconsistent with EPA's proposed requirements. More specifically, the suspended portions were those that would require a major commitment or major action by licensees which would be unnecessary if: (1) The EPA proposed standards were promulgated in final form without modification, and (2) the Commission's regulations were modified to conform to the EPA standards. The objective of the suspension was to avoid a situation where a licensee or applicant might make a major commitment or take a major action which would be unnecessary or ill-advised after subsequent rulemaking to modify permanently the existing regulations on the basis of EPA's final standards.

The final EPA standards are very similar to those that were proposed. Nevertheless, the Commission has reconsidered the appropriateness of changes to Appendix A to 10 CFR Part 40 in light of the new EPA standards, and the need for additional supporting documentation. The changes proposed today are more modest than the previous suspension.

Scope of This Proposal

In addition to conforming its existing regulations to new EPA standards, under the provisions of the UMTRCA, the Commission has a further legislated responsibility: it must establish general requirements, for the management of byproduct material, with EPA concurrence, which are, to the maximum extent practicable, at least comparable to requirements applicable to the management of similar hazardous material regulated by the EPA under the Solid Waste Disposal Act (SWDA), as amended. The Commission deliberated as to how best to deal with these related rulemaking needs and decided on the course of action resulting in this proposal and the accompanying ANPRM. This proposal addresses all the changes to the existing Commission regulations in Appendix A to 10 CFR Part 40 that can be legally promulgated without additional supporting documentation. Other changes to the Commission's regulations for mill tailings management resulting from the EPA standard are the subject of the accompanying ANPRM.

The content of these two rulemakings also may be characterized in terms of the need for EPA concurrence, although that was not the deciding factor. This proposal consists of modifications not requiring EPA concurrence, including conforming changes to existing NRC rules and incorporation of EPA requirements not deriving from the SWDA. Those modifications that are the subject of the ANPRM accompanying this proposal deriving from the SWDA require EPA concurrence pursuant to section 84 of the Atomic Energy Act. Modifications addressed in the ANPRM include: (1) Incorporation into NRC regulations of SWDA requirements already imposed by the EPA, (2) any further modifications to NRC regulations necessary to establish SWDA-comparable requirements as called for by the UMTRCA, and (3) any further modifications needed to address prescriptive provisions that were suspended prior to April 1, 1984 but not proposed for modification by this action. This course of action was chosen to allow the Commission to both conform its regulations to EPA's and incorporate non-SWDA provisions in a prompt and orderly manner and deal with the complex of SWDA requirements and issues in a separate, comprehensive and unified rulemaking.

Content of This Proposal

The new EPA requirements in 40 CFR Part 192, (48 FR 45926) included by reference several sections from 40 CFR Part 264, promulgated by the EPA pursuant to authority provided by the Resource Conservation and Recovery Act (RCRA), which modified the SWDA. These SWDA (or RCRA) requirements imposed under 40 CFR Part 192 are addressed in the ANPRM accompanying this proposal. The few conforming changes to NRC's existing Appendix A regulations made necessary by these newly imposed SWDA requirements are addressed in this document, as are conforming changes and other changes necessary to reflect and incorporate the non-SWDA elements of EPA's new requirements. These non-SWDA provisions include requirements to—

(1) Adhere to applicable requirements in 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations" for uranium byproduct material, and essentially the same requirements for thorium byproduct material;

(2) Adhere to applicable requirements in 40 CFR Part 440, "Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory."

(3) Maintain releases of radon to the atmosphere during operations as low as is practicable;

(4) Close disposal areas so as to provide reasonable assurance of effective control for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years;

(5) Limit average post-closure releases of radioactive radon gas to no more than 20 picocuries per square meter per second (pCi/m²-s); and

(6) Set limits for residual concentrations of radioactive radium left in soil, above background, in onsite areas not subject to the closure requirements for longevity and radon release control.

Proposed Modifications and Rationale

In accordance with the above, the Commission proposes the following modifications to Appendix A to 10 CFR Part 40:

1. Introduction

(a) In the second sentence of the third paragraph, change "amendability" to "amenability."

Reason: This change corrects a typographical error.

(b) Delete the fourth paragraph in its entirety.

Reason: This change deletes an information submittal requirement which was established in connection with implementation of the original Appendix A criteria. The due date originally set for submittals is past. A new due date for revised submittals is not considered necessary.

(c) Add the following paragraph at the end: "Licensees or applicants may propose alternatives to the specific requirements in this Appendix. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meteorology. The Commission may find that the proposed alternatives meet the Commission's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of this Appendix and the standards promulgated by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E."

Reason: The flexibility to propose alternatives to the Commission's and EPA standards was included in Pub. L. 97–415 changes to the AEA. The added paragraph paraphrases the language in Section 84c. The added paragraph explicitly acknowledges the legislative intent and provides licensees and applicants the opportunity to propose alternatives as a routine licensing matter. Licensees would have to provide a site specific rationale to enable the Commission to make the required finding. This generic approach was taken instead of modifying individual criteria to provide flexibility. A generic approach avoids the chance of not identifying all areas where flexibility may be needed and preserves the existing support for Appendix A. Administratively, alternatives are easier to process under an explicit provision than exceptions to rules.

2. Criterion 1

(a) In the first paragraph delete the phrase "* * * for thousands of years * * *" and insert "* * * *."

Reason: The thousands of years language conflicts with the 40 CFR 192.32(b) standard of design of control measures to be effective for 1,000 years.

(b) In the second listed item of the first paragraph, delete the word "usable."

Reason: Both 40 CFR 264.221 and 40 CFR 264.92, which are included by reference in 40 CFR 192.32(a), require isolation of contaminants from all qualities of groundwater, not just usable groundwater sources.

3. Criterion 3

(a) Delete the modifiers "high quality" for groundwater in the second sentence of the second paragraph.

Reason: The EPA standards require protection of all qualities of groundwater, not just high quality sources.

4. Criterion 4

(a) Revise paragraph (a) by deleting "maximum possible flood" and inserting "Probable Maximum Flood."

Reason: Probable Maximum Flood reflects the appropriate hydrologic terms for a design basis and the original intent of the provision when Appendix A was promulgated.

5. Criterion 5

(a) In the first paragraph, delete the first two sentences beginning "Steps shall be taken * * *" and ending

"potential uses." and the phrase " * * * in order to accomplish this objective." in the third sentence.

Reason: The EPA groundwater protection standards referenced in 40 CFR 192.32(a) do not permit any seepage to groundwater.

(b) In the first listed item under the first paragraph beginning with "Installation of * * *" delete the words "low permeability" as a characteristic of bottom liners.

Reason: The EPA groundwater protection standard referenced in 40 CFR 192.32(a) requires a liner that prevents migration of wastes out of the impoundment into the adjacent soil and groundwater. Low permeability implies that some migration is allowed.

(c) In the second paragraph beginning "Where groundwater impacts * * *" delete the phrase "to its potential use before milling operations began to the maximum extent practicable."

Reason: The EPA standard in 40 CFR 192.33, by referencing 40 CFR 264.100, requires a corrective action program to restore groundwater to standards established under 40 CFR 264.92–264.94. This standard is essentially a nondegradation standard. Restoration of groundwater quality only to the extent necessary to restore its potential use is inconsistent with EPA standard.

(d) Delete in its entirety the third paragraph beginning "While the primary method of protecting groundwater shall be isolation * * *" and ending "* * * from current or potential uses."

Reason: The EPA standards for groundwater protection in 40 CFR 192.32(a) protect groundwater primarily on the basis of background-level concentration limits for harzardous constitutents, and not in terms of current or potential uses. The deleted sentence allowed consideration of tailings in contact with groundwater. The EPA standard permits no seepage to groundwater.

(e) In the first sentence of the fifth paragraph beginning "This information shall be gathered * * *" delete the word "usable" where it modifies "groundwater."

Reason: The EPA standard in 10 CFR 192.32(a) does not distinguish between "usable" and nonusable acquifers. The groundwater protection standard applies universally to acquifers of any quality or potential use.

6. Criterion 6

(a) Delete the first sentence in entirety, beginning with "Sufficient earth cover * * *" and ending with "* * * meter per second.", and in its place insert "In cases where waste byproduct material is to be permanently disposed, an earthen cover shall be placed over tailings or wastes at the end of milling operations and the waste disposal area shall be closed in accordance with a design [1] which shall provide reasonable assurance of control of radiological hazards to: (i) Be effective for one thousand years, to the extent reasonably achievable, and, in any case, for at least 200 years, and (ii) limit releases of radon-222 from uranium byproduct materials, and radon-220 from thorium byproduct materials, to the atmosphere so as to not exceed an average [2] release rate of 20 picocuries per square meter per second (pCi/m^2s)."

Reason: The change replaces previous Commission requirements for minimum cover thickness and post-closure radon control with the EPA standards for longevity and radon control. The EPA standard in 40 CFR 192.32(b) for environmental protection after closure specifies that the control method must provide reasonable assurance that releases of radon-222 do not exceed 20 picocuries per square meter per second, rather than 2 picocuries. Under the EPA standard the thickness of cover will be a function of longevity and radon release and will be determined based on meeting the 20 value instead of 2. The three meter minimum precriptive requirement was developed to achieve a 2 picocurie emanation rate based on the assumed typical soil conditions.

(b) Add to Criterion 6 the following two footnotes which accompany the revised first sentence: footnote: (1) "The standard applies to design. Monitoring for radon after installation of an appropriately designed cover is not required," and footnote (2) "This average shall apply to the entire surface of each disposal area over periods of at least one year, but short compared to 100 years. Radon will come from both uranium byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from byproduct materials to the atmosphere."

Reason: This change fully incorporates the EPA radon control standard.

(c) In the fifth sentence of the first paragraph, replace "non-soiled" with "non-soil," and replace the words "to reduce tailings covers to less than three meters" with the words "as cover materials."

Reason: The first change corrects a typographical error. The second is an editorial change to be consistent with the deletion of the three meter minimum requirement as discussed in (a) above.

(d) At the end of Criterion 6, add a new paragraph to read: "The design requirements in this Criterion for longevity and control of radon releases shall apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which, as a result of byproduct material does not exceed the background level by more than: (i) 5 picocuries per gram (pCi/g) of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface, and (ii) 15 pCi/g of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface."

Reason: This change incorporates the EPA requirements for site cleanup outside the actual disposal area, in areas where the longevity and radon control closure standards are not applicable (see 40 CFR 192.32(b)(2) and 192.41).

7. Criterion 8

(a) At the end of the first full paragraph, add a new sentence to read "During operations and prior to closure, radiation doses from radon emissions from surface impoundments shall be kept as low as is practicable."

Reason: This change incorporates the EPA requirement imposed under 40 CFR 192.32(a)(4).

(b) Following the third full paragraph of Criterion 8, just before Criterion 8A, insert the following two new paragraphs:

"Milling operations producing or involving thorium byproduct material shall be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public as a result of exposure to the planned discharge of radioactive materials, radon-220 and its daughters excepted, to the general environment."

"Uranium and thorium byproduct materials shall be managed so as to conform to the applicable provisions of Title 40 of the Code of Federal Regulations, Part 440, Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory, as codified on January 1, 1983."

Reason: These new paragraphs incorporate EPA requirements imposed under 40 CFR 192.41(d) and 40 CFR 192.32(a)(3), respectively.

8. Criteria 2, 7, 9, 10, 11, and 12 are not affected by the new EPA standards or editorial changes and no modification is proposed for any portion of those criteria.

Commission Authority and Responsibility

Section 84c. of the Atomic Energy Act state that: A Licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this act. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275.

The Commission historically has had the authority and responsibility to regulate the activities of persons licensed under the Atomic Energy Act of 1954, as amended. Consistent with that authority and in accordance with section 84c. of that Act, the Commission has the discretion to review and approve site specific alternatives to standards promulgated by the Commission and by the Administrator of the Environmental Protection Agency. In the exercise of this authority, Section 84c. does not require the Commission to obtain the concurrence of the Administrator in any site specific alternative which satisfies Commission requirements for the level of protection for public health, safety, and the environment from radiological and nonradiological hazards at uranium mill tailing sites. As an example, the Commisson need not seek concurrence of the Administrator is case-by-case determinations of alternative concentration limits and delisting of hazardous constitutents for specific sites. It should be understood that the proposed conforming regulations deal with the exercise of the Commission's responsibility and authority under the Atomic Energy Act of 1954, solely as regards uranium mill tailings sites and have no broader connotation.

The Commission believes that licensee proposals for alternatives can be an important and effective way to help deal with the problems associated with implementing the new EPA standards. The Commission expects that it may require several years to have its conforming regulations fully in place. It expects to use the flexibility provided by section 84 in the interim to consider and approve alternative proposals from licensees. Section 84c. provides NRC sufficient authority to independently approve alternatives so long as the Commission can make the required determination.

Impact of the Proposed Amendments

The Commission's action in proposing these modifications to its regulations in Appendix A to 10 CFR Part 40 is to conform them to the new EPA standards. These changes are for the purpose of avoiding conflicts and inconsistencies, and for clarifying previously existing language so as to be compatible with the new requirements. The action proposed here by the Commission is a consequence of previous actions taken by the Congress and the EPA, and is legally mandated in section 275b(3) of the Atomic Energy Act of 1954, as amended.

Commission action in this case is essentially nondiscretionary in nature, and for purposes of environmental analysis, rests upon existing environmental and other impact evaluations in the following documents: (1) "Final Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Ore Processing (40 CFR Part 192)," Volumes 1 and 2, EPA 520/1–83–008–1 and 2, September 1983, and (2) "Regulatory Impact Analysis of Final Environmental Standards for Uranium Mill Tailing at Active Sites," EPA 520/1–83–010, September 1983, both prepared in support of Subparts D and E of 40 CFR Paret 192, and (3) "Final Generic Environmental Impact Statement on Uranium Milling," NUREG–0706, September 1980, prepared in support of Appendix A of 10 CFR Part 40. The Commission believes that these supporting analyses for the new EPA standards and the existing Commission regulations provide a more than adequate environmental review for the standards addresed herein, and that no additional impact analysis is warranted by the conforming actions proposed herein. The EPA engaged in and completed a NEPA process with full consideration of environmental concerns, and for the purposes of this rulemaking action, can be viewed as the lead agency.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0020.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not, if promulgated, have a significant economic impact upon a substantial number of small entities. Therefore, we have not performed a Regulatory Flexibility Analysis. The basis for this finding is that of the licensed uranium mills, only one qualifies as a small entity. Almost all the mills are owned by large corporations. Three of the mills are partly-owned by companies that could qualify as small businesses, according to the Small Business Administration generic small entity definition of 500 employees. However, under the Regulatory Flexibility Act, a small business is one that is independently owned and operated. Since these three mills are not independently owned they do not qualify as small entities.

List of Subjects in 10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is proposing the following amendments to 10 CFR Part 40.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Section 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10,92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§ 40.25 (c) and (d) (3) and (4), 40.28(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Appendix A—[Amended]

2. Appendix A to Part 40 is revised to read as follows:

Appendix A to Part 40—Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content

Introduction

Every applicant for a license to possess and use source material in conjunction with uranium or thorium milling, or byproduct material at sites formerly associated with such milling, is required by the provisions of § 40.31(h) to include in a license application proposed specifications relating to milling operations and the disposition of tailings or wastes resulting from such milling activities. This appendix establishes technical, financial, ownership, and long-term site surveillance criteria relating to the siting, operation, decontamination, decommissioning, and reclamation of mills and tailings or waste systems and sites at which such mills and systems are located. As used in this appendix, the term "as low as is reasonably achievable" has the same meaning as in § 20.1(c) of 10 CFR Part 20 of this chapter.

In many cases, flexibility is provided in the criteria to allow achieving an optimum tailings disposal program on a site-specific basis. However, in such cases the objectives, technical alternatives and concerns which must be taken into account in developing a tailings program are identified. As provided by the provisions of § 40.31(h) applications for licenses must clearly demonstrate how the criteria have been addressed.

The specifications shall be developed considering the expected full capacity of tailings or waste systems and the lifetime of mill operations. Where later expansions of systems or operations may be likely (for example, where large quantities of ore now marginally uneconomical may be stockpiled), the amendability of the disposal system to accommodate increased capacities without degradation in long-term stability and other performance factors shall be evaluated.

Licensees or applicants may propose alternatives to the specific requirements in this Appendix. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meteorology. The Commission may find that the proposed alternatives meet the Commission's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of this Appendix and the standards promulgated by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E.

I. Technical Criteria

Criterion 1—In selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites, the following site features, which will determine the extent to which a program meets the broad objective of isolating the tailings and associated contaminants from man and the environment for 1,000 years, thereafter, without ongoing active maintenance shall be considered:

- Remoteness from populated areas;
- Hydrologic and other natural conditions as they contribute to continued immobilization and isolation of contaminants from groundwater sources; and
- Potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

The site selection process shall be an optimization to the maximum extent reasonably achievable in terms of these features.

In the selection of disposal sites, primary emphasis shall be given to isolation of tailings or wastes, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits, such as minimization of transportation or land acquisition costs. While isolation of tailings will be a function of both site and engineering design, overriding consideration shall be given to siting features given the long-term nature of the tailings hazards.

Tailings shall be disposed of in a manner that no active maintenance is required to preserve conditions of the site.

Criterion 2—To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations shall be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

Criterion 3—The "prime option" for disposal of tailings is placement below grade, either in mines or specially excavated pits (that is, where the need for any specially constructed retention structure is eliminated).

The evaluation of alternative sites and disposal methods performed by mill operators in support of their proposed tailings disposal program (provided in applicants' environmental reports) shall reflect serious consideration of this disposal mode. In some instances, below grade disposal may not be the most environmentally sound approach, such as might be the case if a groundwater formation is relatively close to the surface or not very well isolated by overlying soils and rock. Also, geologic and topographic conditions might make full below grade burial impracticable: for example, bedrock may be sufficiently near the surface that blasting would be required to excavate a disposal pit at excessive cost, and more suitable alternative sites are not available. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes of associated exposed embankments shall be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it must be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the tailings from natural erosional forces.

Criterion 4—The following site and design criteria shall be adhered to whether tailings or wastes are disposed of above or below grade.

(a) Upstream rainfall catchment areas must be minimized to decrease erosion potential and the size of the Probable Maximum Flood which could erode or wash out sections of the tailings disposal area.

(b) Topographic features should provide good wind protection.

(c) Embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long-term stability. The broad objective should be to contour final slopes to grades which are as close as possible to those which would be provided if tailings were disposed of below grade; this could, for example, lead to slopes about 10 horizontal to 1 vertical (10h:1v) or less steep. In general, slopes should not be steeper than about 5h:1v. Where steeper slopes are proposed, reasons why a slope less steep than 5h:1v would be inpracticable should be provided, and compensating factors and conditions which make such slopes acceptable should be identified.

(d) A full self-sustaining vegetative cover shall be established or rock cover employed to reduce wind and water erosion to negligible levels.

Where a full vegetative cover is not likely to be self-sustaining due to climatic or other conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The NRC will consider relaxing this requirement for extremely gentle slopes such as those which they may exist on the top of the pile.

The following factors shall be considered in establishing the final rock cover design to avoid displacement of rock particles by

human and animal traffic or by natural process, and to preclude undercutting and piping:

- Shape, size, composition, and gradation of rock particles (excepting bedding material average particles size shall be at least cobble size or greater);
- Rock cover thickness and zoning of particles by size; and
- Steepness of underlying slopes.

Individual rock fragments shall be dense, sound, and resistant to abrasion, and shall be free from cracks, seams, and other defects that would tend to unduly increase their destruction by water and frost actions. Weak, friable, or laminated aggregate shall not be used.

Rock covering of slopes may not be required where top covers are very thick (on the order of 10m or greater); impoundment slopes are very gentle (on the order of 10 h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and, there is negligible drainage catchment area upstream of the pile and good wind protection as described in points (a) and (b) of this Criterion.

Furthermore, all impoundment surfaces shall be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed shall be well protected with substantial rock cover (rip rap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain shall be evaluated to assure that there are not ongoing or potential processes, such as gully erosion, which would lead to impoundment instability.

(e) The impoundment shall not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand. As used in this criterion, the term "capable fault" has the same meaning as defined in section III(g) of Appendix A of 10 CFR 100. The term "maximum credible earthquake" means the earthquake which cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(f) The impoundment, where feasible, should be designed to incorporate features which will promote deposition. For example, design features which promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized; the object of such a design feature would be to enhance the thickness of cover over time.

Criterion 5—The following shall be considered:

- Installation of bottom liners (Where synthetic liners are used, a leakage detection system shall be installed immediately below the liner to ensure major failures are detected if they occur. This is in addition to the groundwater monitoring program conducted as provided in Criterion 7. Where clay liners are proposed or relatively thin, in-situ clay soils are to be relied upon for seepage control, tests shall be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continous exposure of clay to tailings solutions. Tests shall be run for a sufficient period of time to reveal any effects if they are going to occur (in some cases deterioration has been observed to occur rather rapidly after about nine months of exposure)).
- Mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the tailings impoundment.
- Dewatering of tailings by process devices and/or in-situ drainage systems (At new sites, tailings shall be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head for seepage, unless tests show tailings are not amenable to such a system. Where in-situ dewatering is to be conducted, the impoundment bottom shall be graded to assure that the drains are at a low point. The drains shall be protected by suitable filter materials to assure that drains remain free running. The drainage system shall also be adequately sized to assure good drainage).
- Neutralization to promote immobilization of toxic substances.

Where groundwater impacts are occurring at an existing site due to seepage, action shall be taken to alleviate conditions that lead to excessive seepage impacts and restore groundwater quality. The specific seepage control and groundwater protection method, or combination of methods, to be used must be worked out on a site-specific basis. Technical specifications shall be prepared to control installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, shall be established to assure the specifications are met.

In support of a tailings disposal system proposal, the applicant/operator shall supply information concerning the following:

- The chemical and radioactive characteristics of the waste solutions.
- The characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This shall include detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations shall be determined.

This information shall be gathered from borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to groundwater. The information gathered on boreholes shall include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability shall not be determined on the basis of laboratory analysis of samples alone; a sufficient amount of field testing (e.g., pump tests) shall be conducted to assure actual field properties are adequately understood. Testing shall be conducted to allow estimating chemi-sorption attenuation properties of underlying soil and rock.

- Location, extent, quality, capacity and current uses of any groundwater at and near the site.

Furthermore, steps shall be taken during stockpiling of ore to minimize penetration of radionuclides into underlying soils; suitable methods include lining and/or compaction of ore storage areas.

Criterion 6—In cases where waste byproduct material is to be permanently disposed an earthen cover shall be placed over tailings or wastes at the end of milling operations and, the waste disposal area shall be closed in accordance with a design[1] which shall provide reasonable assurance of control of radiological hazards to: (i) Be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years, and (ii) limit releases of radon-222 from uranium byproduct materials, and radon-220 from thorium byproduct materials, to the atmosphere so as to not exceed an average[2] release rate of 20 picocuries per square meter per second (pCi/m^2s). In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances shall not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer shall not be taken into account in determining the calculated radon exhalation level. If non-soil materials are proposed as cover materials, it must be demonstrated that such materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term time intervals.

Near surface cover materials (i.e., within the top three meters) shall not include waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

The design requirements in this criterion for longevity and control of radon releases shall apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land, averaged

[1] The standard applies to design. Monitoring for radon after installation of an appropriately designed cover is not required.

[2] This average shall apply to the entire surface of each disposal area over periods of at least 1 year, but short compared to 100 years. Radon will come from both uranium byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from uranium byproduct materials to the atmosphere.

over areas of 100 square meters, which, as a result of byproduct material does not exceed the background level by more than: (i) 5 picocuries per gram (pCi/g) of radium–226, or, in the case of thorium byproduct material, radium–228, averaged over the first 15 centimeters (cm) below the surface, and (ii) 15 pCi/g of radium–226, or, in the case of thorium byproduct material, radium–228, averaged over 15-cm thick layers more than 15 cm below the surface.

Criterion 7—At least one full year prior to any major site construction, a preoperational monitoring program shall be conducted to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, an operational monitoring program shall be conducted to measure or evaluate compliance with applicable standards and regulations; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.

Criterion 8—Milling operations shall be conducted so that all airborne effluent releases are reduced to levels as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source. Notwithstanding the existence of individual dose standards, strict control of emissions is necessary to assure that population exposures are reduced to the maximum extent reasonably achievable and to avoid site contamination. The greatest potential sources of offsite radiation exposure (aside from radon exposure) are dusting from dry surfaces of the tailing disposal area not covered by tailings solution and emissions from yellowcake drying and packaging operations. During operations and prior to closure, radiation doses from radon emissions from surface impoundments of uranium or thorium byproduct materials shall be kept as low as is practicable.

Checks shall be made and logged hourly of all parameters (e.g., differential pressures and scrubber water flow rates) which determine the efficiency of yellowcake stack emission control equipment operation. It shall be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action shall be taken when performance is outside of prescribed ranges. Effluent control devices shall be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack. Drying and packaging operations shall terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions shall be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations shall cease as soon as practicable. Operations may not be re-started after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and re-starts shall be reported to the appropriate NRC regional office as indicated in Criterion 8A, in writing, within 10 days of the subsequent restart.

To control dusting from tailings, that portion not covered by standing liquids shall be wetted or chemically stablized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if tailings are effectively sheltered from wind, such as may be the case where they are disposed of below grade and the tailings surface is not exposed to wind. Consideration shall be given in planning tailings disposal programs to methods which would allow phased covering and reclamation of tailings impoundments since this will help in controlling particulate and radon emissions during operation. To control dusting from diffuse sources, such as tailings and ore pads where automatic controls do not apply, operators shall develop written operating procedures specifying the methods of control which will be utilized.

Milling operations producing or involving thorium byproduct material shall be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyriod, and 25 millirems to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials, radon–220 and its daughters excepted, to the general environment.

Uranium and thorium byproduct materials shall be managed so as to conform to the applicable provisions of Title 40 of the Code of Federal Regulations, Part 440, "Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory," as codified on January 1, 1983.

Criteria 8A—Daily inspections of tailings or waste retention systems shall be conducted by a qualified engineer or scientist and documented. The appropriate NRC regional office as indicated in Appendix D of 10 CFR Part 20, or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, shall be immediately notified of any failure in a tailings or waste retention system which results in a release of tailings or waste into unrestricted areas, and/or of any unusual conditions (conditions not contemplated in the design of the retention system) which if not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

II. Financial Criteria

Criterion 9—Financial surety arrangements shall be established by each mill operator prior to the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements shall be based on Commission-approved cost estimates in a Commission-approved plan for: (1) Decontamination and decommissioning of mill buildings and the milling site to levels which would allow unrestricted use of these areas upon decommissioning, and (2) the reclamation of tailings and/or waste disposal areas in accordance with technical criteria delineated in Section I of this Appendix. The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the milling operation, decommissioning and tailings reclamation, and evaluates alternatives for mitigating these impacts. The surety shall also cover the payment of the charge for long-term surveillance and control required by Criterion 10. In establishing specific surety arrangements, the licensee's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work. In order to avoid unnecessary duplication and expense, the Commission may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other Federal or state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities. The licensee's surety mechanism will be reviewed annually by the Commission to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of surety liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability shall be retained until final compliance with the reclamation plan is determined. This will yield a surety that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance could be provided with a surety instrument which is written for a specified period of time (e.g., 5 years) yet which must be automatically renewed unless the surety notifies the beneficiary (the Commission or the State regulatory agency) and the principal (the licensee) some reasonable time (e.g., 90 days) prior to the renewal date of their intention not to renew. In such a situation the surety

requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief period of time to allow at least 60 days for the regulatory agency to collect.

Proof of forfeiture must not be necessary to collect the surety so that in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Financial surety arrangements generally acceptable to the Commission are:

(a) Surety bonds;
(b) Cash deposits;
(c) Certificates of deposit;
(d) Deposits of government securities;
(e) Irrevocable letters or lines of credit; and
(f) Combinations of the above or such other types of arrangements as may be approved by the Commission. However, self insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a state or Federal agency), will not satisfy the surety requirement since this provides no additional assurance other than that which already exists through license requirements.

Criterion 10—A minimum charge of $250,000 (1978 dollars) to cover the costs of long-term surveillance shall be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license.

If site surveillance or control requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater than those specified in Criterion 12 (e.g., if fencing is determined to be necessary), variance in funding requirements may be specified by the Commission. In any case, the total charge to cover the costs of long-term surveillance shall be such that, with an assumed 1 percent annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site surveillance. The total charge will be adjusted annually prior to actual payment to recognize inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics.

III. Site and Byproduct Material Ownership

Criterion 11—

A. These criteria relating to ownership of tailings and their disposal sites become effective on November 8, 1981, and apply to all licenses terminated, issued, or renewed after that date.

B. Any uranium or thorium milling license or tailings license shall contain such terms and conditions as the Commission determines necessary to assure that prior to termination of the license, the licensee will comply with ownership requirements of this criterion for sites used for tailings disposal.

C. Title to the byproduct material licensed under this Part and land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any such byproduct material, or is essential to ensure the long term stability of such disposal site, shall be transferred to the United States or the State in which such land is located, at the option of such State. In view of the fact that physical isolation must be the primary means of long-term control, and Government land ownership is a desirable supplementary measure, ownership of certain severable subsurface interests (for example, mineral rights) may be determined to be unnecessary to protect the public health and safety and the environment. In any case, however, the applicant/operator must demonstrate a serious effort to obtain such subsurface rights, and must, in the event that certain rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to either an NRC general or specific license prohibiting the disruption and disturbance of the tailings. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, the Commission may take into account the status of the ownership of such land, and interests therein, and the ability of a licensee to transfer title and custody thereof to the United States or a State.

D. If the Commission subsequent to title transfer determines that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State will not endanger the public health, safety, welfare, or environment, the Commission may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions provided in these criteria. If the Commission permits such use of such land, it will provide the person who transferred such land with the right of first refusal with respect to such use of such land.

E. Material and land transferred to the United States or a State in accordance with this Criterion shall be transferred without cost to the United States or a State other than administrative and legal costs incurred in carrying out such transfer.

F. The provisions of this Part respecting transfer of title and custody to land and tailings and wastes shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in this Part, the licensee shall enter into arrangements with the Commission as may be appropriate to assure the long-term surveillance of such lands by the United States.

IV. Long-Term Site Surveillance

Criterion 12—The final disposition of tailings or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections shall be conducted by the government agency retaining ultimate custody of the site where tailings, or wastes are stored to confirm the integrity of the stabilized tailings or waste systems and to determine the need, if any, for maintenance and/or monitoring. Results of the inspection shall be reported to the Commission within 60 days following each inspection. The Commission may require more frequent site inspections if, on the basis of a site-specific evaluation, such a need appears necessary due to the features of a particular tailings or waste disposal system.

Dated at Washington, DC, this 20th day of November 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-30946 Filed 11-23-84; 8:45 am]
BILLING CODE 7590-01-M

10 CFR Part 40

Uranium Mill Tailings Regulations; Ground Water Protection and Other Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering further amendments to its uranium mill tailings regulations. The future rulemaking proceeding for which this notice is issued is primarily intended to incorporate ground water protection provisions and other requirements established by the Environmental Protection Agency for similar hazardous wastes into NRC regulations. This action is necessary to make NRC requirements similar to EPA standards as required by provisions of the Uranium Mill Tailings Radiation Control Act.

DATE: The comment period expires January 25, 1985. Comments received after this date will be considered if it is practical to do so but assurance of consideration may not be given except as to comments received on or before this date.

ADDRESSES: Mail comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or deliver comments to Room 1121, 1717 H Street NW, Washington, DC between 8:15 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Robert Fonner, Office of Executive Legal Director, telephone (301) 492–8692, or Kitty S. Dragonette, Division of Waste Management, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, telephone (301) 427-4300.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has today proposed modifications to its existing mill tailings regulations in Appendix A to 10 CFR Part 40 for the purpose of conforming them to generally applicable standards promulgated by the Environmental Protection Agency (EPA) on September 30, 1983 (see 48 FR 45926; October 7, 1983). This advance notice of proposed rulemaking (ANPRM) announces that the Commission is considering proposing further modifications to its regulations in 10 CFR Part 40, to satisfy certain provisions of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), and requests public comments on pertinent issues and questions.

On October 7, 1983, the EPA published generally applicable standards for the management of uranium and thorium byproduct material. The standards were developed by the EPA in a manner to satisfy the provisions of section 275 of the Atomic Energy Act, as amended, that for nonradiological hazards, the standards "* * * shall provide for the protection of human health and the environment consistent with the standards required under Subtitle C of the Solid Waste Disposal Act, as amended, which are applicable to such hazards." To achieve this goal the EPA included within its requirements published October 7, 1983, selected provisions from its regulations issued under the Solid Waste Disposal Act (SWDA) by cross referencing the SWDA provisions. These specific provisions are now in effect and the NRC is considering undertaking a rulemaking which would clarify its regulations by including within them those SWDA requirements selected by the EPA for application to uranium and thorium mill tailings.

The rulemaking under consideration would also be intended to satisfy a requirement placed upon the NRC under section 84 of the Atomic Energy Act of 1954, as amended, to "* * * insure that the management of any byproduct material * * * is carried out in such manner as conforms to general requirements established by the Commission, with the concurrence of the (EPA) Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended." The rulemaking under consideration, which is the primary subject of this ANPRM, would then incorporate within NRC regulations elements of EPA's SWDA requirements already imposed by EPA, and establish any further requirements necessary for the NRC to have SWDA-comparable standards as called for by Section 84 of the Atomic Energy Act of 1954, as amended.

The Commission considered further revisions to Appendix A to conform it to the physical stability aspects of the EPA standard, but did not propose them. The EPA standard requires that the final cover design provide reasonable assurance of effective control "for one thousand years, to the extent reasonably achievable, and in any case, for at least 200 years." The EPA's numerical longevity standard takes a different approach to stability than do the NRC requirements. In Appendix A, the NRC established numerous prescriptive requirements for specific design features in order to assure stability without active maintenance for an indefinite period of time following closure. The EPA rule sets a performance standard for a limited time period. In addition, the preamble to the EPA standard and the supporting environmental evaluation indicate that the EPA consciously considered the acceptability of relying on active maintenance to provide stability following closure, and did not prohibit it. Rather, the EPA standard requires that, for nonradiological hazards the need for active maintenance only be minimized. NRC's Appendix A flatly prohibits any planned reliance on active maintenance.

The Commission requests comments on whether it should delete or modify additional provisions of Appendix A including prescriptive requirements for specific design features which may not be necessary to meet the EPA standard. The prescriptive requirements in question include those for minimizing upstream drainage area, siting where there is good wind protection, relatively flat slopes, mandatory vegetative or rock cover, cobble size rock, high quality rock cover, and rock armoring. The Commission also considered deleting the prohibition on reliance on active maintenance, modifying Criterion 3 mandating below grade disposal as the prime option, and deleting the requirement for background radium concentrations in cover materials. Relief from these retained provisions is available through case-by-case proposals by licensees as noted in proposed additions to the Introduction of Appendix A of 10 CFR 40. The Commission seeks comment on whether this is sufficient flexibility in view of the Commission's intent to consider alternative proposals as routine licensing actions.

I. Background on the Ground Water Issue

The SWDA requirements imposed by the EPA in its rule published October 7, 1983 (48 FR 45926) were described by the EPA in that Notice as follows:

"Consistent with the standards EPA issued under the SWDA for hazardous wastes (47 FR 32274–32388, July 26, 1982) the standard for tailings piles has two parts: (1) A 'primary' standard that requires use of a liner designed to prevent migration of hazardous substances out of the impoundment, and (2) a 'secondary' ground water protection standard requiring, in effect, that any hazardous constituents that leak from the waste not be allowed to degrade ground water. The primary standard applies to new portions of new or existing waste depositories. The secondary standard applies to new and existing portions, the point of compliance being at the edge of the waste impoundment. The specific hazardous substances and concentrations (i.e., background levels) that define noncompliance with the secondary standard at each site will be established for uranium mill tailings by NRC and Agreement States. The SWDA rules, however, permit alternate concentration limits to be established when they will not pose "* * *a substantial present or potential hazard to human health or the environment" as long as the alternate concentration limit is not exceeded. The rule also allow (sic) 'hazardous constituents' to be exempted from coverage by the permit based on the same criterion. EPA determines the alternate concentration standard or exemption under the SWDA; EPA's concurrence would be required under the proposed standards for tailings."

The EPA went on to further describe the primary standard, primarily consisting of the liner design requirements, and clarify the secondary standard, by saying:

"The primary standard, 40 CFR 264.221, can usually be satisfied only by using liner materials (such as plastics) that can retain all wastes. Exemptions permitting use of other liner materials (such as clay) that may release water or small quantities of other substances or, in some cases, permitting no liner may be granted only if migration of hazardous constituents into the ground water or surface water would be prevented indefinitely * * *."

"Under these standards, all new waste storage areas (whether new waste facilities or expansions of existing piles) are subject to the primary standard—the liner requirement. If new wastes are added to an existing pile, however, the pile must comply with the secondary standard—the hazardous constituent concentration standards for health and environmental protection. Whether for a new or existing pile, if the secondary standards are found not to be satisfied and subsequent corrective actions fail to achieve compliance in a reasonable time, the operator must cease depositing waste on that pile."

Also in its October 7, 1983 Notice, the EPA stated that "EPA's responsibilities to establish standards under section 206 of UMTRCA are carried out through adoption of all or part of the following sections of the SWDA regulations:

i. Subpart F:
40 CFR 264.92 Ground water protection standard
40 CFR 264.93 Hazardous constituents
40 CFR 264.94 Concentration limits
(These three sections are modified and adopted as § 192.32(a)(2))
40 CFR 264.100 Corrective action program
(This section is modified and adopted as § 192.33)
ii. Subpart G:
40 CFR 264.111 Closure performance standard
(This section is adopted as part of § 192.32(b)(1))
iii. Subpart K:
40 CFR 264.221 Design and operating requirements for surface impoundments
(This section is modified and adopted as § 192.32(a)(1))"

"NRC's responsibilities under UMTRCA are to implement EPA's standard and to "* * *insure that the management of any byproduct material * * * is carried out in such a manner as * * * conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the SWDA, as amended.' EPA will insure that NRC's regulations satisfy these admonitions through its concurrence role. Relevant SWDA regulations are those embedded in Subparts A (except Section 264.3), B, C, D, E, F, G, H, and K. Examples of areas which NRC must address in discharging these responsibilities involve functions under the six sections listed immediately above which are incorporated into these EPA standards, and the following sections of the SWDA regulations:

i. Subpart F:
40 CFR 264.91 Required programs
40 CFR 264.95 Point of compliance
40 CFR 264.96 Compliance period
40 CFR 264.97 General ground water monitoring requirements
40 CFR 264.98 Detection monitoring program
40 CFR 264.99 Compliance monitoring program
ii. Subpart G:
40 CFR 264.117 Post-closure care and use of property
iii. Subpart K:
40 CFR 264.226 Monitoring and inspection (of impoundment liners), as applicable
40 CFR 264.228 Closure and postclosure care, as applicable."

The above quotations from the EPA's October 7, 1983 Notice serve to clarify the substance of EPA's standards, the respective agency responsibilities under the UMTRCA, and the nature and scope of the rulemaking the NRC is herein considering undertaking. The NRC has reviewed the language quoted and, with the exception of the jurisdictional concerns discussed in the following section, believes it to be factually correct and a fair representation of the issues addressed.

II. Commission Authority and Responsibility

Section 84c. of the Atomic Energy Act states that: A Licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this act. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275.

The Commission historically has had the authority and responsibility to regulate the activities of persons licensed under the Atomic Energy Act of 1954, as amended. Consistent with that authority and in accordance with section 84c. of that Act, the Commission has the discretion to review and approve site specific alternatives to standards promulgated by the Commission and by the Administrator of the Environmental Protection Agency. In the exercise of this authority, section 84c. does not require the Commission to obtain the concurrence of the Administrator in any site specific alternative which satisfies Commission requirements for the level of protection for public health, safety, and the environment from radiological and nonradiological hazards at uranium mill tailings sites. As an example, the Commission need not seek concurrence of the Administrator in case-by-case determinations of alternative concentration limits and delisting of hazardous constituents for specific sites. It should be understood that the proposed conforming regulations deal with the exercise of the Commission's responsibility and authority under the Atomic Energy Act of 1954, solely as regards uranium mill tailings sites and have no broader connotation.

The Commission believes that licensee proposals for alternatives can be an important and effective way to help deal with the problems associated with implementing the new EPA standards. The Commission expects that it may require several years to have its conforming regulations fully in place. It expects to use the flexibility provided by section 84 in the interim to consider and approve alternative proposals from licensees. Section 84c. provides NRC sufficient authority to independently approve alternatives so long as the Commission can make the required determination.

III. Issues for Public Comments

The NRC requests public comment on the general question of how best to proceed to fulfill its responsibilities under the Atomic Energy Act, with respect to establishing SWDA-comparable requirements for the management of mill tailings, to the maximum extent practicable. In this context, comments are requested on choices and decisions the NRC must make concerning issues and actions that are within its discretion. Comments on the basic value, validity, lawfulness, or appropriateness of the EPA's SWDA regulations, the SWDA, or the UMTRCA are not requested.

A. Tentative NRC Approach for Ground Water Protection

The NRC has developed a tentative approach to place SWDA-comparable requirements in its regulations, based on planning and development efforts conducted to date. This approach is tentative, and is made a part of this public announcement so efforts spent in providing public comment might be better guided. It involves the development of additions to NRC regulations (either a block insert at the end of 10 CFR Part 40 or perhaps by creation of a new Part 41) which would contain the entire set of SWDA-comparable requirements.

The additions would be organized in terms of design, operating, closure, and post-closure requirements, and would to the fullest extent feasible, be a complete statement of the requirements without reference to EPA requirements in Title 40 of the Code of Federal Regulations. In this way, the requirements could be stated in a self-contained, unified manner in one place. Coverage would include at least the SWDA requirements already imposed by EPA (40 CFR 264.92–94, 264.100, 264.111, and 264.221), and appropriate portions of the SWDA requirements mentioned by the EPA explicitly as "examples of areas which NRC must address" (these include 40 CFR 264.95–99, 264.117, 264.226, and 264.228).

The rulemaking being considered for proposal by the NRC may include most of Subpart F (40 CFR 264.90–100), due to the close relationship and interdependency of the separate provisions, and because all but 40 CFR 264.90, "Applicability," is either imposed or mentioned as an example by the EPA.

The remainder of the EPA's SWDA regulations, including Subpart A (except § 264.3), B, C, D, E, F, G, H, and K would be reviewed in developing a proposal to determine which of those requirements would need to be incorporated in NRC regulations to establish NRC requirements which are to the maximum extent practicable, at least comparable to the EPA's SWDA requirements for similar hazardous material.

In developing this proposal the NRC would distinguish between substantive requirements and EPA's procedural permitting requirements because it does not believe the UMTRCA mandate requires the NRC to adopt any portion of the procedural permitting aspects of EPA's regulations. The NRC's established procedures for licensing, inspection, and enforcement would be used with respect to implementation.

B. Issues and Questions

The NRC seeks public input with respect to all aspects of the question of how best to fulfill its responsibilities under section 275 and 84 of the Atomic Energy Act of 1954, as amended, for protection of ground water. The NRC also seeks public comment with respect to the following issues and questions (In providing public comment, commenters are requested to provide the basis in fact for any opinions offered or assertions made):

(1) Should the SWDA-comparable requirements to be placed in NRC regulations be explicitly restated to precisely duplicate EPA's language, or should substantive requirements be paraphrased?

(2) Should all of Subpart F be included? What should not be included?

(3) What should be included in a listing of hazardous constituents for mill tailings to replace the 375-item long list in Appendix VIII to 40 CFR Part 261 referenced in 40 CFR 264.93? Should constituents not usually present or not present above trace levels be included? What criteria should be applied to decide what constituents should be included?

(4) The NRC must establish SWDA-comparable requirements to the maximum extent practicable. In this context, what is practicable given current practice and the current state of technology?

(5) Should NRC retain the basic sequence embodied in Subpart F where licensees who detect ground water contamination progress through a graduated scale of action, from detection monitoring, through compliance monitoring, and on to corrective action, with significant time delays allowed between steps while plans and programs are being developed, reviewed, and implemented? Would it be advisable, practicable or appropriate to require, for example, that all NRC licensees have approved compliance monitoring programs that are automatically activated and implemented when needed?

(6) Should the basic SWDA scheme for the timing and duration of a "compliance" period, a "closure" period, and a "post-closure care" period be maintained? What modifications, deletions, additions should be made?

(7) To what extent, how, and under what conditions should leak detection systems under single-liner impoundments be allowed to fulfill the requirements for a detection monitoring program that otherwise requires a monitoring well in the uppermost aquifer?

(8) How detailed should NRC's regulations be, and what should and should not be required in areas such as well construction, sampling and sample analysis, determinations of annual average and seasonal background concentrations, minimum detection levels, statistical treatment of data and determinations of statistically significant differences, recordkeeping and reporting, quality assurance, etc.?

(9) To what extent must the NRC provide supporting environmental impact analyses considering the nature of the requirements under consideration, some of which have already been imposed by EPA and are effective? If supporting enviromental evaluations are needed for SWDA-comparable rule changes except for the requirements already imposed by the EPA, should the NRC continue to proceed with only a single rulemaking to establish a complete set of SWDA-comparable requirements?

(10) Is the flexibility cited in the proposed addition to the Introduction of Appendix A 10 CFR Part 40 sufficient or should the NRC develop and support additional modifications to conform to the physical stability aspects of the EPA standard?

List of Subjects in 10 CFR Part 40

Government contracts, Hazardous material—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

Dated at Washington, DC, this 20th day of November 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-30967, Filed 11-23-84; 8:45 am]

BILLING CODE 7590-01-M

---

10 CFR Parts 50 and 55

Operator's Licenses and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to (1) clarify the regulations for the issuance of licenses to operators and senior operators; (2) revise the requirements and scope of written examinations and operating tests for operators and senior operators, including a requirement for a simulation facility; (3) codify procedures for the administration of requalification examinations; and (4) describe the form and content for operator license applications. The proposed rule is necessary to meet NRC responsibilities under section 306 of the Nuclear Waste Policy Act of 1982.

DATE: Comment period expires February 25, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver written comments to Room 1121, 1717 H Street NW., Washington, DC.

Copies of the regulatory analysis, the supporting statement for the Office of Management and Budget clearance of the information collection requirements, the other documents and material discussed in this notice, and any comments received may be examined at the NRC Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: D. Beckham, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–4868.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 107 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2137), requires the Nuclear Regulatory Commission to prescribe uniform conditions for licensing individuals as operators of production and utilization facilities and to determine the qualifications of these individuals and to issue licenses to such individuals. The regulations implementing these requirements are set out in Part 55 of Chapter 1, Title 10 of the Code of Federal Regulations. To assist licensees and others, the Commission has also issued regulatory guides and generic letters which provide guidance on acceptable methods of meeting these regulatory requirements.

The Commission has become increasingly aware of the need to update its operator licensing regulations and related regulatory guides. These revisions are needed to clarify the extent to which simulators should be used in training and in licensing examinations and to reflect upgraded requirements for licensed operator selection, training, and requalification program resulting from the accident at TMI–2. Although the Commission has been actively engaged in investigating these matters, the schedule for completing these activities was further accelerated by the enactment on January 7, 1983, of the Nuclear Waste Policy Act of 1982, Pub. L. 97–425. Section 306 of that act (42 U.S.C. 10226, 96 Stat. 2201 at 2282–2283) directs the NCR to establish simulator training requirements for applicants for operator licenses and for operator requalification programs, requirements governing NRC administration of requalification examinations, and requirements for operating tests at civilian nuclear power plant simulators.

The proposed revisions would improve the operator licensing process. If adopted these revisions should achieve the following objectives:

1. Improve the safety of nuclear power plant operations by improving the operator licensing process and examination content;

2. Provide the NRC with an improved basis for administering operator licensing examinations and conducting operating tests; and,

3. Respond to the specific direction given by Congress in section 306, Nuclear Waste Policy Act of 1982, Pub. L. 97–425, to promulgate regulations and guidance in the area of examinations.

II. Proposed Actions

This section summarizes the proposed modifications to 10 CFR Part 55 on operators' licenses and 10 CFR 50.74 as a conforming amendment.

10 CFR Part 55—Operators' Licenses

This section describes the changes which have been made to 10 CFR Part 55 to improve examination content, operating test administration, the license application process and several other provisions.

1. *Written Examination* (10 CFR 55.41 and 55.43). Currently written examinations for operators and senior operators are based on the lists of topics in §§ 55.21 and 55.22, respectively. The examinations are developed from information that is available within NRC and received from the facility licensee such as training materials, operating manuals, and technical specifications. Under the proposed changes, examination content, in addition to being developed from sources currently used, would be based on the results of a systematic analysis which the facility licensee or license applicant is expected to perform under the Institute of Nuclear Power Operations (INPO) accreditation and the learning objectives derived from that analysis. The content of the examination would also be developed from information supplied by the facility licensee to the NRC and from information available within NRC.

The use of the systematic analysis information in written examinations would follow the implementation of INPO accreditation at a facility. It is expected that two years would be needed for a licensee or license applicant to complete the systematic analysis and to provide the resulting learning objectives to NRC for use as part of the basis for developing the content of examinations. Meanwhile, the Commission would develop examinations by using the topics in new §§ 55.41 and 55.43, information from industry task analyses, experts and studies in the field, and information from the facility licensees and from within NRC.

For those facilities not expected to complete a systematic analysis under INPO accreditation (i.e., test and research reactors), the Commission would develop examinations using the topics in proposed §§ 55.41 and 55.43, as appropriate to the facility, and information from the facility licensee and experts in the field.

2. *Operating Tests* (10 CFR 55.45). Operating tests currently conducted by NRC include an oral walkthrough in all plants and a simulator examination (detailed in Generic Letter 82–18, dated October 12, 1982)[1] in plants with a plant-referenced simulator. The operating tests require an understanding of twelve items, such as pre-start-up procedures, for the facility. The proposed revisions to § 55.23 (now § 55.45) would require the candidate to demonstrate an understanding of and the ability to perform the actions necessary to accomplish thirteen items based upon the previous twelve plus the individual's team-dependent and time-critical behaviors. The purpose of this requirement is to provide a performance-based operating test. In addition to the required plant walkthrough the proposed amendments would require the operating test to be partially administered in a simulation facility, which may include the plant, a plant-referenced simulator, or another simulation device, alone or in combination, if approved by the Commission after application has been made by the facility licensee. The application process would include an initial application, an annual report and a subsequent application every four years. Initial and subsequent applications would include descriptions

[1] NUREG-series documents and other correspondence referenced are available for public inspection and copying for a fee in the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

of the simulation facility and of the performance tests conducted in support of the application. Information about one type of simulation facility acceptable for this purpose, and a description of performance tests are contained in Regulatory Guide 1.149. The requirement for Commission approval of simulation facilities would ensure that uniform examinations are conducted at all facilities.

For test and research reactors, the proposed requirements in § 55.45 would apply as appropriate to the facility.

Until full compliance with these provisions is reached, NRC would continue to use the procedures outlined in Generic Letter No. 82-18 regarding the use of simulators for initial, replacement and requalification examinations. In addition, the use of the term "simulator" in Appendix A to Part 55 is continued in proposed § 55.59 until proposed new § 55.45(b) is implemented.

The intent of the proposed changes to § 55.45 is to improve operating tests by increasing their uniformity and by adding a requirement for a performance based criterion. To the same end, it is intended that simulation facilities used for the conduct of operating tests meet minimum standards while minimizing the burden to utilities for acquisition and upgrading of such simulation facilities. Therefore, NRC is specifically interested in comments on § 55.45, as indicated in the section of this notice titled "Invitation to Comment."

3. *Administration of Operating Tests Before Initial Criticality* (10 CFR 55.31 and 55.45) Present § 55.25, "Administration of operating test prior to initial criticality," commonly referred to as "cold licensing," has been deleted in the proposed revisions to Part 55. However, the requirements in existing § 55.25 are now incorporated into proposed new §§ 55.31 and 55.45. Specifically, existing § 55.25 (a), (b) and (c) taken together would be replaced by proposed § 55.31(a) (1), (3) and (4) taken together and NRC Form 398; and existing § 55.25(d) would be replaced by proposed § 55.45(b)(2). The intention of the proposed revisions is not to relax the cold licensing examination requirements in any way. The proposed provisions for operating tests, including the simulation facility, would strengthen the entire licensing process. Further, the finding by the Commission that there is an immediate need for the applicant's services and, therefore, for a cold license and that the applicant has had extensive actual operating experience at a comparable reactor or has satisfactorily completed a "cold" license training program accepted by the NRC would be, under the proposed requirements, part of the evaluation of the application for an operator's license.

4. *How to Apply* (10 CFR 55.31). Since applicants currently use NRC Form 398, "Personal Qualification Statement—Licensee," to apply for a license, new § 55.31 has been revised to delete the redundant detailed description of the content of the application and instead directs the candidate to use that form.

5. *Medical Requirements* (10 CFR 55.33(a)(1), 55.57(c)(1), and Subpart C). The specific language in § 55.11(a)(1) would be replaced by the provisions in proposed Subpart C. The proposed revision would change the process for meeting medical requirements. Currently, a medical doctor submits the results of the candidate's examination to the Commission. The proposed rule would require that the results of the candidate's medical examination be provided to the facility licensee or applicant, which would then certify to the Commission that the candidate is in good health as required in § 55.33(a)(1). Licensees and applicants would maintain the results of current medical examinations and provide these to the Commission upon request. Moreover, the notification of disability would be made in 30 days under the proposed changes rather than 15 days as now required. (One example of a medical examination acceptable to the Commission is described in Regulatory Guide 1.134, "Medical Evaluation of Nuclear Facility Personnel Requiring Operator Licenses.")

In July 1983, KMC, Inc. petitioned the Commission (PRM-55-1) "to simplify the procedure for the review of the medical status of applicants for operator- . . . licenses." KMC stated that the current procedures require that a detailed medical history and results of the applicant's medical examination by a licensed physician be sent to the Commission. The petitioner requested that the Commission amend its regulations to permit designated medical examiners, as defined in ANSI-N546-1976, to certify that the applicant has been examined (using the guidance contained in ANSI N546-1976 as endorsed by Regulatory Guide 1.134) and that the applicant's general health and physical condition is not such as might cause operational errors. Under the petitioner's request the use of the current NRC Form 396 would be discontinued for utility operators and detailed medical records would be retained by the licensee's designated medical examiner.

Proposed Subpart C to Part 55 responds to the KMC, Inc. petition. NRC grants its request, in part, by eliminating the requirement to submit, in usual cases, medical information for an applicant for an operator's license directly to the NRC. Instead, a certification to NCR about compliance with the health requirements in proposed § 55.33(a)(1) would be made by the facility licensee. KMC, Inc. has proposed that a certification be submitted by the medical designee of the facility licensee. It is the intent of the proposed Subpart C—Medical Requirements—to have the facility licensee certify to the Commission that the applicant has been examined by a licensed medical practitioner and that the applicant's medical condition and general health are not such as might adversely affect the performance of licensed operator job duties or cause operational errors endangering the public health and safety. Guidance about one acceptable standard against which to conduct the medical examination would be contained in proposed revisions to NRC Regulatory Guide 1.134. That guide endorses ANSI/ANS 3.4-1983 with some exceptions.

For the usual case, that is, when an applicant meets the health requirements, licensee certification to the Commission (based on the recommendation of a licensed medical practitioner) would be all that is needed. However, it is the intent of the proposed regulations to have all unusual cases presented to the Commission with medical evidence to support a conditional license or an exception to the health and medical requirements. Moreover, in cases of disability, the individual operator would be required to immediately cease licensed duties when the facility licensee becomes aware of the operator's incapacitation. Before the operator could resume licensed duties, the facility licensee would be required to provide medical certification, including supporting medical evidence, that the individual again meets licensing health requirements.

6. *Special Senior Operator Licenses* (10 CFR 55.51(b)). A new § 55.51(b) is proposed which would codify in the Commission's regulations two types of special senior operator licenses which are currently issued by NRC. The Special "Fuel Handler" license would authorize senior operators to meet the staffing requirements of 10 CFR 50.54(m)(2)(iv) for supervision of fuel alterations, including fuel loading and transfer. The special "Instructor" license would certify the technical competence of individuals, who are not routinely engaged in operating a facility, to train other individuals to operate a facility.

7. *Conditions of license* (10 CFR 55.53(e)). Guidance about one interpretation of § 55.53(e) acceptable to the Commission, particularly the phrase "actively performing the functions of an operator or senior operator," is contained in NRC Regulatory Guide 1.8, "Personnel Qualifications and Training for Nuclear Power Plants."

8. *Conditions of license* (10 CFR 55.53(f) and 10 CFR 50.74). To keep the Commission informed of the status of licensed operators, senior operators and special senior operators, a new condition is proposed. Within 30 days of the events set out in the proposed conditions of license, § 55.53(f), the Commission would be notified. Under § 55.53(f), the individual licensee would notify the Commission unless the facility licensee has notified the Commission under a parallel provision in Part 50, proposed as new § 50.74. Under both proposed new provisions to the regulations, § 55.53(f) and § 50.74, the Commission would be notified of changes such as permanent reassignment, termination, disability or illness, or any other condition, including conviction of crimes, which could affect the performance of an operator's duties.

9. *Integrity of examinations and tests* (10 CFR 55.49). As proposed, new § 55.49 would provide that any applicant or licensee who engages in activities that compromise the integrity of an examination or test conducted under the regulations in this part may be guilty of a crime. This provision is added to make explicit that actions such as cheating will not be tolerated. The issue of test integrity is specific to the validity of the examination for its intended purpose, i.e., to test that individual at that time. Conversations after the administration of the examination are not intended to be included.

10. *Expiration* (10 CFR 55.55). Unless renewed, each license would now expire after five years instead of the current two years. This change would reduce facility licensees' and NRC paperwork and streamline the renewal process. Moreover, the license would expire when the facility licensee determines and notifies the NRC in accordance with § 50.74 that the individual no longer needs to maintain licensed status. The purpose of this provision is to permit the facility licensee to determine the suitability of an operator for licensed duties or the need for continued licensed status.

11. *Renewal of licenses* (10 CFR 55.57). Several conforming changes are proposed for § 55.57 in order to make the provisions for license renewal compatible with the change in the length of the license term. Proposed § 55.57(c)(2)(ii) would require the successful completion of an annual requalification program. A facility licensee would be required to obtain NRC approval of its requalification program. However, under the proposed amendments the type of requalification program which would be acceptable for license renewal could either be a requalification program developed by the facility licensee using the systems approach to training under an INPO accreditation program or an alternative requalification program developed from the items listed in § 55.59(c). It is expected that submittal of an INPO accreditation letter would be sufficient to obtain NRC approval of this requirement.

A new § 55.57(b)(4) is proposed that would, in part, base renewal of the license on a finding by the Commission that the licensee's past performance has been satisfactory. In making its finding, information such as Notices of Violation or Letters of Reprimand in the licensee's docket would be evaluated by the Commission.

12. *Requalification requirements* (10 CFR 55.59). Licensees would continue to be required to successfully complete an annual requalification program approved by the Commission. Under proposed § 55.59(a)(2), either the licensee would have to pass a requalification examination and operating test administered by the Commission or the Commission could accept certification by the license of the nuclear power plant that the licensed operator or senior operator had successfully completed the approved requalification program. These changes would replace current § 55.33(c)(2)(ii), continue the annual requalification programs, and codify NRC's current practice of active participation in and audit of facility requalification programs.

The proposed revisions are intended to incorporate in the body of the regulations the current requalifications program requirements for research and test reactors and non-reactor facilities since they are not expected to participate in INPO accreditation programs; therefore, proposed new § 55.59(c)(7) tracks the provisions of Part 55, Appendix A(7).

13. *Enforcement* (10 CFR 55.71). Except for a change in format, proposed § 55.71 tracks the provisions of existing § 55.50.

III. Regulatory Analysis

The regulatory analysis describes the values (benefits) and impacts (costs) of implementing the proposed regulations and guidance for operator licensing. The accuracy of these estimates in the regulatory analysis is limited by the lack of extensive data on human performance improvement associated with an improved licensing process. Where possible, quantitative measures were qualitatively compared to related information from other sources for verification. The full text of the regulatory analysis on these proposed amendments is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from D. Beckham, Telephone: (301) 492-4868.

IV. Implementation Schedule

Within 120 days after promulgation of the final rule, licensees would have to submit a plan for NRC review and approval for compliance with the provisions of § 55.45(b)(1) which covers the use of simulation facilities. One acceptable example of the content of a plan for § 55.45(b)(1) is described in Regulatory Guide 1.149.

V. Invitation to Comment

Comments concerning the content, level of detail specified, and the implementation of the proposed amendments are encouraged. Suggestion of alternatives other than those described in this notice and estimates of costs for implementation are encouraged.

Since the intent of the proposed changes to § 55.45 is to increase the uniformity of operating tests by establishing minimum standards for their conduct while minimizing the burden to utilities for acquisition and upgrading of facilities to be used for the partial conduct of such tests, the NRC is particulary interested in receiving comments on the following matters related to § 55.45:

1. Is the process specified for application for approval of a simulation facility by a facility licenee reasonable and efficient?

2. What scope and level of detail should be required in an application for approval of a simulation facility?

3. Is the proposed requirement for complete performance testing every four years with annual testing of 25 percent of the total a reasonable balance between the burden on the facility licensee and the increased assurance of performance capability of the simulation facility?

4. How should the selection be made of the 25 percent of performance tests to be conducted annually?

5. Is the guidance in Regulatory Guide 1.149 concerning the criteria that NRC will use in its approval of a simulation facility clear and reasonable?

6. Is the term "simulation facility" (as defined in § 55.4) satisfactory clear, comprehensive and distinctive?

Regulatory Guides

In addition to the propsoed rule, three proposed Regulatory Guides have been revised to provide guidance on acceptable methods of implementing the proposed revisions to the regulations. Comments concerning these Regulatory Guides are encouraged. The two proposed guides on which public comment is requested now are:

1. Regulatory Guide 1.149—Nuclear Power Plant Simulation Facilities for Use in Operator License Examinations (Revised)
2. Regulatory Guide 1.134—Medical Evaluation of Nuclear Facility Personnel Requiring Operator Licenses (Revised)

The proposed guide on which public comment will be requested shortly is:

Regulatory Guide 1.8—Personnel Qualification and Training for Nuclear Power Plants (Revised).

INPO Documents

This preamble refers to the INPO Accreditation Program as described in *The Accreditation of Training in the Nuclear Power Industry.*

The Regulatory Guides 1.134 and 1.149 and the description of the INPO Accreditation Program are available in the NRC Public Document Room, 1717 H Street NW., Washington, D.C. Single copies of the Regulatory Guides may be obtained from D. Beckham, telephone: (301) 492–4868.

Regulatory Guide 1.8 will be available shortly in the NRC Public Document Room. Single copies of Regulatory Guide 1.8 may be obtained, when available, from D. Beckham, telephone: (301) 492–4855.

VI. Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

VII. Paperwork Reduction Act Statement

This proposed rule would amend information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if adopted will not have a significant economic impact on a substantial number of small entities. The proposed conforming amendment to 10 CFR Part 50 and the proposed revision of 10 CFR Part 55 affect primarily the companies that own and operate light water nuclear power reactors, and the vendors of those reactors. They also affect individuals licensed as operators at these companies. Neither the companies that own and operate reactors nor these individuals fall within the scope of the definition of "small entity" set forth in section 501(b) of the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

IX. List of Subjects

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 55

Manpower training programs, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, notice is hereby given that the NRC is proposing to revise 10 CFR Part 55 and to amend 10 CFR Part 50 to conform as follows:

1. 10 CFR Part 55 is revised to read as follows:

PART 55—OPERATORS' LICENSES

Subpart A—General Provisions

Sec.
- 55.1 Purpose.
- 55.2 Scope.
- 55.3 License requirements.
- 55.4 Definitions.
- 55.5 Communications.
- 55.6 Interpretations.
- 55.7 Additional requirements.
- 55.8 Information collection requirments: OMB approval. [Reserved]

Subpart B—Exemptions

- 55.11 Specific exemptions.
- 55.13 General exemptions.

Subpart C—Medical Requirements

Sec.
- 55.21 Medical examination.
- 55.23 Certification.
- 55.25 Incapacitation due to disability or illness.
- 55.27 Documentation.

Subpart D—Applications

- 55.31 How to apply.
- 55.33 Disposition of an initial application.
- 55.35 Re-applications.

Subpart E—Written Examinations and Operating Tests

- 55.41 Written examination: Operators.
- 55.43 Written examination: Senior Operators and special senior operators.
- 55.45 Operating tests.
- 55.47 Waiver of examination and test requirements.
- 55.49 Integrity of examinations and tests.

Subpart F—Licenses

- 55.51 Issuance of licenses.
- 55.53 Conditions of licenses.
- 55.55 Expiration.
- 55.57 Renewal of licenses.
- 55.59 Requalification.

Subpart G—Modification and Revocation of Licenses

- 55.61 Modification and revocation of licenses.

Subpart H—Enforcement

- 55.71 Violations.

Authority: Secs. 107, 161, 182 (sec. 55.31(b)), 234, 68 Stat. 939, 948, as amended, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2282); secs. 201, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Sections 55.41, 55.43, 55.45 and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273) §§ 55.3, 55.21, 55.49 and 55.53 are issued under sec. 161i, 68 Stat 949, as amended (42 U.S.C. 2201(i)); and §§ 55.23, 55.25 and 55.53(f) are issued under sec. 161o, 88 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 55.1 Purpose.

The regulations in this part (a) establish procedures and criteria for the issuance of licenses to operators, senior operators and special senior operators of facilities licensed pursuant to the Atomic Energy Act of 1954, as amended, or section 202 of the Energy Reorganization Act of 1974, as amended, and Part 50 of this chapter, and (b) provide for the terms and conditions upon which the Commission will issue these licenses.

§ 55.2 Scope.

The regulations in this part apply to—

(a) Any individual who manipulates the controls of any facility licensed pursuant to Part 50 of this chapter;

(b) Any individual who instructs an individual about the way to manipulate the controls of any facility licensed pursuant to Part 50 of this chapter, and

(c) Any individual designated by a facility licensee to be responsible for directing any licensed activity of a licensed operator.

§ 55.3 License requirements.

A person must be authorized by a license issued by the Commission to perform the function of an operator, a senior operator, or a special senior operator as defined in this part.

§ 55.4 Definitions.

As used in this part:

"Act" means the Atomic Energy Act of 1954, including any amendments to the Act.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Controls" when used with respect to a nuclear reactor means apparatus and mechanisms the manipulation of which directly affects the reactivity or power level of the reactor. "Controls" when used with respect to any other facility means apparatus and mechanisms, the manipulation of which could affect the chemical, physical, metallurgical, or nuclear process of the facility in a manner that would affect protection of health and safety against radiation.

"Facility" means any production facility or utilization facility as defined in Part 50 of this chapter. In cases for which a license is issued for operation of two or more facilities, "facility" means all facilities identified in the license.

"Facility licensee" means an applicant for or holder of a license for a facility.

"Licensee" means individual licensed operator, senior operator or special senior operator.

"Manipulate a control" means to manipulate a control of a facility, direct an individual to manipulate a control, or instruct an individual how to manipulate a control.

"Operator" means any individual licensed under this part to manipulate a control of a facility.

"Plant-referenced simulator" means a simulator modeling the systems of the reference plant which the operator interfaces in the control room, including operating consoles, and which permits use of the reference plant's procedures. a plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient and accident conditions to which the simulator has been designed to respond.

"Reference plant" means the specific nuclear power plant and unit from which a simulation facility's control room configuration, system control arrangement and data base are derived.

"Senior operator" means any individual licensed under this part to direct the licensed activities of licensed operators.

"Simulation facility" means one or more of the following components, alone or in combination, used for the partial conduct of operating tests for operators, senior operators, special senior operators, and candidates: (1) The plant, (2) a plant-referenced simulator, (3) another simulation device.

"Special Senior Operator" means any individual who holds a license issued under this part which is limited to the following activities:

(1) Instruction on manipulation of the controls of a facility;

(2) Alteration of the core of a nuclear power unit, including fuel loading and transfer.

"United States", when used in a geographical sense, includes Puerto Rico and all territories and possesions of the United States.

§ 55.5 Communications.

(a) Except as provided under a regional licensing program identified in paragraph (b) of this section, any communication or report concerning the regulations in this part and any application filed under these regulations may be submitted to the Commission as follows:

(1) By mail addressed to—Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) By delivery in person to the Commission offices at—

(i) 1717 H Street NW., Washington, D.C. or

(ii) 7920 Norfolk Avenue, Bethesda, Maryland.

(b) (1) The Commission has delegated to the Regional Administrators of Regions I, II, III, IV, and V authority and responsibility pursuant to the regulations in this part for the issuance and renewal of licenses for operators, senior operators and special senior operators of nuclear reactors licensed under 10 CFR Part 50 and located in these regions.

(2) Any application filed under the regulations in this part involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region I and any inquiry, communication, information, or report relating to matters subject to the regulations in this part and involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region I must be submitted by mail or in person to the Regional Administrator, Region I, U.S. Nuclear Regulatory Commission, 631 Park Avenue, King of Prussia, Pennsylvania 19406. The Regional Administrator of Region I or the Administrator's designee will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

(3) Any application filed under the regulations in this part involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region II and any inquiry, communication, information, or report relating to matters subject to the regulations in this part and involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region II must be submitted by mail or in person to the Regional Administrator, Region II, U.S. Nuclear Regulatory Commission, 101 Marietta Street, Suite 2900, Atlanta, Georgia 30303. The Regional Administrator of Region II or the Administrator's designee will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

(4) Any application filed under the regulations in this part involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region III and any inquiry, communication, information, or report relating to matters subject to the regulations in this part and involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region III must be submitted by mail or in person to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. The Regional Administrator of Region III, or the Administrator's designee, will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

(5) Any application filed under the regulations in this part involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region IV and any inquiry, communication, information, or report relating to matters subject to the regulations in this part and involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region IV must be submitted by mail or in person to the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive,

Suite 1000, Arlington, Texas 76011. The Regional Administrator of Region IV or the Administrator's designee will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

(6) Any application filed under the regulations in this part involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region V and any inquiry, communication, information, or report relating to matters subject to the regulations in this part and involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region V must be submitted by mail or in person to the Regional Administrator, Region V, U.S. Nuclear Regulatory Commission, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596. The Regional Administrator of Region V or the Administrator's designee will transmit to the Director of Nuclear Reactor Regulation any matter that is not within the scope of the Regional Administrator's delegated authority.

§ 55.6 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 55.7 Additional Requirements.

The Commission may, by rule, regulation, or order, impose upon any licensee such requirements, in addition to those established in the regulations in this part, as it deems appropriate or necessary to protect health and to minimize danger to life or property.

§ 55.8 Information collection requirements: OMB approval. [Reserved]

Subpart B—Exemptions

§ 55.11 Specific exemptions.

The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest.

§ 55.13 General exemptions.

The regulations in this part do not require a license for an individual who, under the direction and in the presence of a licensed operator or senior operator, manipulates the controls of—

(a) A research or training reactor as part of the individual's training as a student in a nuclear engineering course; or

(b) A facility as a part of the individual's training to qualify for an operator license under this part.

Subpart C—Medical Requirements

§ 55.21 Medical examination.

An applicant for a license shall have a medical examination by a licensed medical practitioner that meets the requirements of § 55.33(a)(1). A licensee shall have a medical examination every two years.

§ 55.23 Certification.

An authorized representative of the facility licensee shall complete and sign NRC Form 396, "Certification of Medical Examination by Facility Licensee," available from Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and submit it to the appropriate Regional Administrator as specified in § 55.5(b).

(a) NRC Form 396 shall state that a licensed medical practitioner has—

(1) conducted the medical examination of the applicant as required in § 55.21; and

(2) determined that the applicant's medical condition and general health are not such as might cause operational errors endangering public health and safety.

(b) When the certification requests a conditional license based on medical evidence, the medical evidence shall be submitted to the Commission in full detail and the Commission will make a determination in accordance with § 55.33.

§ 55.25 Incapacitation due to disability or illness.

If, during the term of the license, the licensee develops epilepsy, diabetes, hypertension, cardiac disease, fainting spells, defective hearing or vision, or any other physical or mental condition that might cause impaired judgment or motor coordination, the licensee shall immediately cease licensed activities and notify the Commission within 30 days. Before resumption of licensed duties, the facility licensee must provide medical certification to the Commission of the individual's ability to perform licensed operator duties. The certification shall be on Form 396 (as described in § 55.23) and shall conform with § 55.33(a)(1)(ii).

§ 55.27 Documentation.

The results of medical qualifications data, current test results and each operator's, senior operator's, or special senior operator's medical history must be documented and maintained by the facility licensee and provided to the Commission upon request. The facility licensee shall retain this documentation while an individual performs the functions of an operator, senior operator, or special senior operator and may dispose of it two years after that individual ceases to perform that function.

Subpart D—Applications

§ 55.31 How to apply.

(a) The applicant shall—

(1) Complete NRC Form 398, "Personal Qualification Statement—Licensee," available from Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

(2) File an original and two copies of NRC Form 398, together with the information required in paragraphs (a)(3), (4) and (5) of this section, with the appropriate Regional Administrator;

(3) Submit a written request from an authorized representative of the facility licensee by which the applicant will be employed that the operating test be administered to the applicant;

(4) Provide evidence that the applicant has learned to operate the appropriate controls competently and safely and of the facility licensee's need for an operator, a senior operator, or a special senior operator to perform assigned duties. An authorized representative of the facility licensee may certify this evidence on NRC Form 398. This certification must include details on courses of instruction administered by the facility licensee and describe the nature of the training received at the facility, and for reactors, the startup and shutdown experience received; and

(5) Provide certification by the facility licensee of medical condition and general health on NRC Form 396, to comply with §§ 55.21, 55.23 and 55.33(a)(1). Special senior operators not involved in the manipulation of controls are not required to provide this certification.

(b) The Commission may at any time after the application has been filed, and before the license has expired, require further information under oath or affirmation in order to enable it to determine whether to grant or deny the application or whether to revoke, modify, or suspend the license.

(c) An applicant whose application has been denied because of a medical condition or genreal health may submit a further medical report at any time as a supplement to the application.

(d) Each application and statement must contain complete and accurate disclosure as to all matters required to be disclosed. The applicant must sign statements, other than the matters required by paragraphs (a) (3), (4), and (5) of this section.

§ 55.33 Disposition of an initial application.

(a) *Requirements for the approval of an initial application.* The Commission will approve an initial application for a license pursuant to the regulations in this part, if it finds that—

(1) *Health.* The applicant's medical condition and general health are not such as might adversely affect the performance of assigned operator job duties or cause operational errors endangering public health and safety. The Commission will base its finding upon the certification by the facility licensee as detailed in § 55.23.

(i) A medical diagosis or medical history of epilepsy, diabetes, hypertension, cardiac disease, fainting spells, defective hearing or vision, or any other physical or mental condition that might cause impaired judgment or motor coordination may constitute sufficient cause for denial of an application.

(ii) If a condition specified in paragraph (a)(1)(i) of this section exists, the facility licensee shall provide medical evidence and certify to the Commission that the condition can be controlled with proper medication to the extent that the individual will not lapse into coma or unconscious state or be unable to exercise good judgment while performing assigned operator job duties.

(2) *Written examination and operatiang test.* The applicant has passed the requisite written examination and operating test in accordance with §§ 55.41 or 55.43 and 55.45. These examinations and tests determine whether the applicant for an operator's license has learned to operate a facility competently and safely, and additionally, in the case of a senior operator, whether the applicant has learned to direct the licensed activities of licensed operators competently and safely.

In the case of a special senior operator, the written examination or operating test, or both will be administered to determine whether the applicant has learned to perform the functions authorized by the special senior operator license.

(3) *License applicability.* The applicant's services as a licensed operator, senior operator or special senior operator will be utilized on the facility for which the applicant seeks a license.

(b) *Conditional license.* If an applicant's vision, hearing, and general medical condition do not meet the minimum standards normally considered necessary, the Commission may approve the application and include conditions in the license to accommodate the medical defect. The Commission will consider the recommendations and supporting evidence of the facility licensee and of the examining physician (provided on NRC Form 396) in arriving at its decision.

§ 55.35 Re-applications.

(a) An applicant whose application for a license has been denied because of failure to pass the written examination or operating test, or both, may file a new application two months after the date of denial. The application must be submitted on NRC Form 398 and include a statement signed by an authorized representative of the facility licensee by whom the applicant will be employed that states in detail the extent of the applicant's additional training since the denial and certifies that the applicant is ready for re-examination. An applicant may file a third application six months after the date of denial of the second application, and may file further successive applications two years after the date of denial of each prior application. Each successive application must be submitted on NRC Form 398 and include a statement of additional training.

(b) An applicant who has passed either the written examination or operating test and failed the other may request in a new application on NRC Form 398 to be excused from re-examination on the portions of the examination or test which the applicant has passed. The Commission may in its discretion grant the request, if it determines that sufficient justification is presented under all the circumstances.

Subpart E—Written Examinations and Operating Tests

§ 55.41 Written examination: Operators.

(a) *Content.* The written examination for an operator will contain a representative selection of questions on the knowledge, skills, and abilities needed to perform licensed operator job duties. The knowledge, skills and abilities will be identified in part from information in the Final Safety Analysis Report, operating manuals, facility license and license amendments, Licensee Event Reports, the learning objectives derived from a systematic analysis performed by each facility licensee and contained in its training program, and other materials requested from the facility licensee by the Commission.

(b) *Implementation.* The written examination for an operator for a facility will sample the following items, to the extent applicable to the facility,—

(1) Fundamentals of reactor theory, including fission process, neutron multiplication, source effects, control rod effects, criticality indications, reactivity coefficients, and poison effects.

(2) General design features of the core, including core structure, fuel elements, control rods, core instrumentation, and coolant flow.

(3) Mechanical components and design features of the reactor primary system.

(4) Secondary coolant and auxiliary systems that affect the facility.

(5) Facility operating characteristics during steady state and transient conditions, including coolant chemistry, causes and effects of temperature, pressure and reactivity changes, effects of load changes, and operating limitations and reasons for these operating characteristics.

(6) Design, components, and functions of reactivity control mechanisms and instrumentation.

(7) Design, components, and functions of control and safety systems, including instrumentation, signals, interlocks, failure modes, and automatic and manual features.

(8) Components, capacity, and functions of reserve and emergency systems.

(9) Shielding, isolation, and containment design features, including access limitations.

(10) Administrative, normal, abnormal and emergency operating procedures for the facility.

(11) Purpose and operation of radiation monitoring systems, including alarms and survey equipment.

(12) Radiological safety principles and procedures.

(13) Procedures and equipment available for handling and disposal of radioactive materials and effluents.

(14) Principles of heat transfer thermodynamics and fluid mechanics.

§ 55.43 Written examination: Senior operators and special operators.

(a) *Content.* The written examination for a senior operator will contain a representative selection of questions on the knowledge, skills, and abilities

needed to perform licensed senior operator or special senior operator job duties. The knowledge, skills and abilities will be identified in part from information in the Final Safety Analysis Report, operating manuals, facility license and license amendments, Licensee Event Reports, the learning objectives derived from a systematic analysis performed by each facility licensee and contained in its training program, and other materials requested from the facility licensee by the Commission.

(b) *Implementation.* The written examination for a senior operator for a facility will sample the following items and on the items specified in § 55.41, to the extent applicable to the facility—

(1) Conditions and limitations in the facility license.

(2) Facility operating limitations in the technical specifications and their bases.

(3) Facility licensee procedures required to obtain authority for design and operating changes in the facility.

(4) Radiation hazards that may arise during normal and abnormal situations including maintenance activities and various contamination conditions.

(5) Assessment of facility conditions and selection of appropriate procedures during normal, abnormal and emergency situations.

(6) Procedures and limitations involved in initial core loading, alterations in core configuration, control rod programming, and determination of various internal and external effects on core reactivity.

(7) Fuel handling facilities and procedures.

In the case of a special senior opeator, the written examination will be limited to items in § 55.41 and in § 55.43 applicable to the purpose of the license.

§ 55.45 Operating tests.

(a) *Content.* The operating tests administered to applicants for operator and senior operator licenses in accordance with paragraph (b)(1) of this section are generally similar in scope. The scope of operating tests for special senior operators will be determined as appropriate to the purpose of the license. The content will be identified, in part, from information in the Final Safety Analysis Report, operating manuals, facility license and license amendments, Licensee Event Reports, learning objectives derived from a systematic analysis performed by each facility licensee and contained in its training program, and other materials requested from the facility licensee by the Commission. The operating test, to the extent applicable to the facility, requires the applicant to demonstrate and understanding of and the ability to perform the actions necessary to accomplish a comprehensive sample of the following:

(1) Perform pre-start-up procedures for the facility, including operation of those controls associated with plant equipment that could affect reactivity.

(2) Manipulate the console controls as required to operate the facility between shutdown and designated power levels.

(3) Identify annunciators and condition-indicating signals and perform appropriate remedial action where appropriate.

(4) Identify the instrumentation systems and the significance of facility instrument readings.

(5) Observe and safely control the operating behavior characteristics of the facility.

(6) Perform control manipulations required to obtain desired operating results during normal, abnormal, and emergency situations.

(7) Safely operate the facility's heat removal systems, including primary coolant, emergency coolant, and decay heat removal systems, and identify the relation of the proper operation of these systems to the operation of the facility.

(8) Safely operate the facility's auxiliary and emergency systems, including operation of those controls associated with plant equipment that could affect reactivity or the release of radioactive materials to the environment.

(9) Demonstrate or describe the use and function of the facility's radiation monitoring systems, including fixed radiation monitors and alarms, portable survey instruments, and personnel monitoring equipment.

(10) Demonstrate knowledge of and ability to perform as low as reasonably achievable (ALARA) procedures to reduce excessive levels of radiation and to guard against personnel exposure.

(11) Demonstrate knowledge of the emergency plan for the facility, including the operator's or senior operator's responsibility to decide whether the plan should be executed and the duties under the plan assigned.

(12) Demonstrate willingness and ability to assume the responsibility associated with the safe operation of the facility.

(13) Demonstrate team-dependent and time-critical behaviors associated with safe operation of the facility.

(b) *Implementation.* (1) Administration—The operating tests will be administered in a plant walkthrough and in a simulation facility, as defined in § 55.4, which the Commission has approved for use.

(2) Schedule—Within 120 days after the effective date of this part, each facility licensee shall propose to the Commission, for review and approval, a plan by which the simulation facility will be developed and an application submitted for its use. In no case shall the non-plant walkthrough portion of the operating test be administered on other than an approved simulation facility after three years from the effective date of this part.

(3) Application for, and Review and Approval of, Simulation Facilities—

(i) Not later than 180 days prior to the date when the facility licensee seeks approval for use of a simulation facility, it shall submit to the Commission an initial application for the simulation facility, in accordance with the plan prepared pursuant to paragraph (b)(2) of this section and approved by the Commission. This initial application shall include as a minimum:

(A) A complete description of the simulation facility proposed for use and, if applicable, a statement identifying which of the components of the simulation facility are to be used for each part of the operating test.

(B) A complete description and documentation of the performance tests conducted as part of this application, and the results of such tests.

(C) A detailed schedule for the conduct of 25 percent of all performance tests per year for the subsequent four years.

(ii) After Commission review of the initial application, it will either approve the simulation facility for use, which approval will be valid for four years, except as described in paragraph (b)(3)(xii) of this section, or it will inform the facility licensee of reasons for its refusal to grant approval.

(iii) The Commission will approve a simulation facility if it finds that it and its proposed use are appropriate for the facility licensee's reference plant.

(iv) If the facility licensee initially fails to obtain approval for its simulation facility, the Commission will continue to conduct operating tests for the facility licensee's reference plant, as defined in § 55.4, in the same manner in which such tests were conducted before its submittal of its initial application. In no case shall this paragraph affect compliance with paragraph (b)(2) of this section.

(v) Annually, not later than 60 days after the anniversary of its submittal of the initial application in accordance with paragraph (b)(3)(i) of this section, the facility licensee shall submit a report to the Commission which states that, to the best of its knowledge, its simulation facility remains appropriate for use. This report must include, minimum:

(A) Any changes proposed to be made to the simulation facility, its components or its use, or any such changes made since the last report or application.

(B) Any changes proposed to be made to the reference plant, if such changes would require changes to the simulation facility, or any such changes made since the last report or application.

(C)(*1*) A statement that the applicable performance tests specified in the last application have been conducted, a statement of the results of these tests and, if required by these results, a description of changes required to be made to the simulation facility and a schedule for the implementation of these changes.

(*2*) The data collected for use in preparation of the annual report, including documentation of the performance tests conducted and the results of such tests, must be maintained by the facility licensee, and made available to the Commission upon request in accordance with paragraph (b)(3)(xii) of this section, until the Commission has approved the simulation facility in accordance with paragraph (b)(3)(viii) of this section. The annual report, as specified in this paragraph, need not be submitted on the fourth anniversary of an initial or subsequent application.

(vi) Not less than 180 nor more than 210 days before the expiration of a facility licensee's existing approval, it shall inform the Commission if it intends to apply for approval for a subsequent four year period.

(vii) If the facility licensee has stated its intention to apply for subsequent approval in accordance with paragraph (b)(3)(vi) of this section, it shall, not less than 120 days before the expiration of its existing approval, apply for subsequent approval. The application for subsequent approval must include, as a minimum:

(A) Any changes proposed to be made to the simulation facility, its components or its use, or any of these change made since the last report or application.

(B) Any changes proposed to be made to the reference plant if these changes would require changes to the simulation facility, or any of these changes made since the last report or application.

(C) A complete description and documentation of all performance tests conducted since the last application, the results of such tests and, if required by those results, a description of changes required to be made to the simulation facility and a schedule for the implementation of these changes.

(D) A detailed schedule for the conduct of 25 percent of all performance tests per year for the subsequent four years.

(viii) After Commission review of the application for subsequent approval, it will either approve the simulation facility, which approval will be valid for four years, except as described in paragraph (b)(3)(xii) of this section, or it will inform the facility licensee of reasons for its refusal to grant approval.

(ix) The Commission will approve a simulation facility if it finds that it and its proposed use are appropriate for the facility licensee's reference plant.

(x) If the facility licensee subsequently fails to obtain approval for its simulation facility, of if the Commission withdraws its approval in accordance with paragraph (b)(3)(xii) of this section, the Commission will cease to conduct operating tests for that facility licensee's reference plant.

(xi) If the Commission ceases to conduct operating tests for a facility licensee's reference plant, the facility licensee may again apply for approval at any time in accordance with this section.

(xii) The Commission may, at any time after a facility licensee has submitted an initial application for approval, conduct an inspection of the simulation facility and/or audit any of the documents and records associated with the application, operation, and performance of the simulation facility, including performance tests, and/or may cause any of these performance tests to be conducted for its inspection and review. As a result of these inspection and/or audit, the Commission may withdraw its approval of the simulation facility for good cause provided that it informs the facility licensee of the reasons for these withdrawal of approval.

§ 55.47 Waiver of examination and test requirements.

(a) On application, the Commission may waive any or all of the requirements for a written examination and operating test, if it finds that the applicant—

(1) Has had extensive actual operating experience at a comparable facility, as determined by the Commission, within two years prior to the date of application;

(2) Has discharged his or her responsibilities competently and safely and is capable of continuing to do so; and

(3) Has learned the operating procedures for and is qualified to operate competently and safely the facility designated in the application.

(b) The Commission may accept as proof of the applicant's past performance a certification of an authorized representative of the facility licensee or of a holder of an authorization by which the applicant was previously employed. The certification must contain a description of the applicant's operating experience, including an approximate number of hours the applicant operated the controls of the facility, the duties performed, and the extent of the applicant's responsibility.

(c) The Commission may accept as proof of the applicant's current qualifications a certification of an authorized representative of the facility licensee or of a holder of an authorization where the applicant's services will be utilized.

§ 55.49 Integrity of examinations and tests.

Applicants or licensees shall not engage in any activity that compromises the integrity of any application, test or examination required by this part.

Subpart F—Licenses

§ 55.51 Issuance of Licenses.

(a) *Operator and senior operator licenses.* If the Commission determines that an applicant for an operator license, a senior operator license or a special senior operator license meets the requirements of the Act and its regulations, it will issue a license in the form and containing any conditions and limitations it considers appropriate and necessary.

(b) *Special senior operator licenses.* The Commission may issue a special senior operator license. A special senior operator license is subject to the provisions of § 55.53 (a), (b), (c), (d), (f), (g), and (i).

§ 55.53 Conditions of licenses.

Each license contains and is subject to the following conditions whether stated in the license or not:

(a) Neither the license nor any right under the license shall be assigned or otherwise transferred.

(b) The license is limited to the facility for which it is issued.

(c) The license is limited to those controls of the facility specified in the license.

(d) The license is subject to, and the licensee shall observe, all applicable rules, regulations, and orders of the Commission.

(e) If the Commission determines that a licensee has not been actively performing the functions of an operator or senior operator for a period of four

months or longer, the license shall not be permitted to resume activities authorized by a license issued under this Part, until the licensee demonstrates to the Commission satisfactory knowledge and understanding of facility operation and administration. The Commission may accept as evidence for this requirement a certification by an authorized representative of the facility licensee by which the licensee has been employed.

(f) Unless the facility licensee has notified the Commission of a change of status under § 50.74 of this chapter, the licensee shall notify the Commission within 30 days of the following:

(1) Permanent reassignment from the position for which the facility licensee has certified the need for the licensed operator, senior operator, or special senior operator under § 55.33(a)(3);

(2) Termination by the facility licensee;

(3) Disability or illness as described in § 55.25; or

(4) Any other condition, including conviction of a crime, which affects or could affect the performance of operator, senior operator or special senior operator duties.

(g) The licensee shall complete an annual requalification program as described by § 55.59.

(h) The licensee shall have a biennial medical examination.

(i) The licensee shall comply with any other conditions that the Commission may impose to protect health or to minimize danger to life or property.

§ 55.55 Expiration.

(a) Each operator license, senior operator license, and special senior operator license shall expire five years after the date of issuance, upon termination, or upon determination by the facility licensee that the licensed individual no longer needs to maintain a license.

(b) If a licensee files an application for renewal or an upgrade of an existing license on NRC Form 398 at least 30 days before the expiration of the existing license, it shall not expire until disposition of the application for renewal or for an upgraded license has been finally determined by the Commission. Filing by mail or telegram will be deemed to be complete at the time the application is deposited in the mail or with a telegraph company.

§ 55.57 Renewal of licenses.

(a) The applicant for renewal of a license shall—

(1) Complete and sign NRC Form 398 and include the number of the license for which renewal is sought.

(2) File an original and two copies of NRC Form 398 with the appropriate Regional Administrator specified in § 55.5(b).

(3) Provide written evidence of the applicant's experience under the existing license, including for operator, senior operators and special senior operators, if appropriate, the approximate number of hours that the licensee has operated the facility;

(4) Provide a statement by an authorized representative of the facility licensee that during the effective term of the current license the applicant has satisfactorily completed the annual requalification-program for the facility for which operator, senior operator or special senior operator license renewal is sought.

(5) Provides evidence that the applicant has discharged the license responsibilities competently and safety. The Commission may accept as evidence of the applicant's having met this requirement a certificate of an authorized representative of the facility licensee or holder of an authorization by which the licensee has been employed.

(b) The license will be renewed if the Commissioin finds that—

(1) The medical condition and the general health of the licensee continue to be sufficient so as not to cause operational errors that endanger public health and safety. The Commission will base this finding upon the certification by the facility licensee as described in § 55.23.

(2) The licensee has—

(i) Been actively and extensively engaged as an operator or as a senior operator under the existing license, has discharged the responsibilities of an operator or senior operator competently and safely, and is capable of continuing to do so.

(ii) Successfully completed an annual requalification program that has been reviewed and approved by the commission as required by § 55.59.

(iii) Passed the annual requalification examinations and operating tests as required by § 55.59.

(3) There is a continued need for a licensee to operate, or for a senior operator to direct operators, or for a special senior operator to perform assigned duties at the facility designated in the application.

(4) The past performance of the licensee has been satisfactory to the Commission.

§ 55.59 Requalification

(a) *Annual requalification requirements.* Each licensee shall annually—

(1) Successfully complete a requalification program developed by the facility licensee that has been reviewed and approved by the Commission.

(2) Pass a requalification examination and an operating test administered by the Commission. In lieu of the requalification examination and operating tests, the Commission may accept certification by the facility licensee that the licensee has successfully completed the approved requalification program identified in paragraph (a)(1) of this section.

(b) *Additional training.* If the requirements of paragraphs (a), (1) and (2) of this section are not met, the Commission may require the licensee to complete additional training and to submit evidence to the Commission of successful completion of this training.

(c) *Requalification program requirements.* A facility licensee shall have a requalification program reviewed and approved by the Commission. The requalification program shall be developed using a systems approach to training or the following requirements:

(1) *Schedule.* The requalification program must be conducted for a continuous period not to exceed two years, and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs.

(2) *Lectures.* The requalification program must include preplanned lectures on a regular and continuing basis throughout the license period in those areas where annual operator and senior operator written examinations indicate that emphasis in scope and depth of coverage is needed in the following subjects:

(i) Theory and principles of operation.

(ii) General and specific plant operating characteristics.

(iii) Plant instrumentation and control systems.

(iv) Plant protection systems.

(v) Engineered safety systems.

(vi) Normal, abnormal, and emergency operating procedures.

(vii) Radiation control and safety.

(viii) Technical specifications.

(ix) Applicable portions of Title 10, Chapter I, Code of Federal Regulations.

(3) *On-the-job training.* The requalification program must include on-the-job training so that:

(i) Each licensed operator of a production or utilization facility manipulates the plant controls and each licensed senior operator either manipulates the controls or directs the activities of individuals during plant control manipulations during the term of the licensed operator's or senior operator's license. For reactor operators and senior operators, these manipulations must consist of the following control manipulations and plant evolutions where applicable to the plant design. Items (A) through (L) in this paragraph shall be performed annually; all other items shall be performed on a two-year cycle. However, the requalification programs shall contain a commitment that each individual shall perform or participate in a combination of reactivity control manipulations based on the availability of plant equipment and systems. Those control manipulations which are not performed at the plant may be performed on a simulator. The use of the Technical Specifications should be maximized during the simulator control manipulations. Senior operator licensees are credited with these activities if they direct or evaluate control manipulations as they are performed.

(A) Plant or reactor startups to include a range that reactivity feedback from nuclear heat addition is noticable and heatup rate is established.

(B) Plant shutdown.

(C) Manual control of steam generators or feedwater or both during startup and shutdown.

(D) Boration and or dilution during power operation.

(E) Any significant (≥10 percent) power changes in manual rod control or recirculation flow.

(F) Any reactor power change of 10 percent or greater where load change is performed with load limit control or where flux, temperature, or speed control is on manual (for HTGR).

(G) Loss of coolant, including:

(*1*) Significant PWR steam generator leaks

(*2*) Inside and outside primary containment

(*3*) Large and small, including leak-rate determination

(*4*) Saturated Reactor Coolant response (PWR).

(H) Loss of instrument air (if simulated plant specific).

(I) Loss of electrical power (and/or degraded power sources).

(J) Loss of core coolant flow/natural circulation.

(K) Loss of condenser vacuum.

(L) Loss of service water if required for safety.

(M) Loss of shutdown cooling.

(N) Loss of component cooling system or cooling to an individual component.

(O) Loss of normal feedwater or normal feedwater system failure.

(P) Loss of feedwater (normal and emergency).

(Q) Loss of protective system channel.

(R) Mispositioned control rod or rods (or rod drops).

(S) Inability to drive control rods.

(T) Conditions requiring use of emergency boration or standby liquid control system.

(U) Fuel cladding failure or high activity in reactor coolant or offgas.

(V) Turbine or generator trip.

(W) Malfunction of an automatic control system which affects reactivity.

(X) Malfunction of reactor coolant pressure/volume control system.

(Y) Reactor trip.

(Z) Main steam line break (inside or outside containment).

(AA) A nuclear instrumentation failure.

(ii) Each licensed operator and senior operator has demonstrated satisfactory understanding of the operation of all apparatus and mechanisms and knows the operating procedures in each area for which the operator or senior operator is licensed.

(iii) Each licensed operator and senior operator is cognizant of facility design changes, procedures changes, and facility license changes.

(iv) Each licensed operator and senior operator reviews the contents of all abnormal and emergency procedures on a regularly scheduled basis.

(v) A simulator may be used in meeting the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this section, if it reproduces the general operating characteristics of the facility involved and the arrangement of the instrumentation and controls of the simulator is similar to that of the facility involved. If the simulator or simulation device is used to administer operating tests for a facility, as provided in § 55.45(b)(1), the device approved to meet the requirements of § 55.45(b)(1) must be used for credit to be given for meeting the requirements of § 55.59(c)(3)(i) (G through AA).

(4) *Evalution.* The requalification program must include:

(i) Annual written examinations which determine areas in which retraining is needed to upgrade licensed operator and senior operator knowledge.

(ii) Written examinations which determine licensed operators' and senior operators' knowledge of subjects covered in the requalification program and provide a basis for evaluating their knowledge of abnormal and emergency procedures.

(iii) Systematic observation and evaluation of the performance and competency of licensed operators and senior operators by supervisors and/or training staff members, including evaluation of actions taken or to be taken during actual simulated abnormal and emergency procedures.

(iv) Simulation of emergency or abnormal conditions that may be accomplished by using the control panel of the facility involved or by using a simulator. Where the control panel of the facility is used for simulation, the actions taken or to be taken for the emergency or abnormal condition shall be discussed; actual manipulation of the plant controls is not required. If a simulator is used in meeting the requirements of paragraph (c)(4)(iii) of this section, it shall accurately reproduce the operating characteristics of the facility involved and the arrangement of the instrumentation and controls of the simulator shall closely parallel that of the facility involved. After the provisions of § 55.45(b)(1) have been implemented at a facility, the approved device must be used to comply with this paragraph.

(v) Provisions for each licensed operator and senior operator to participate in an accelerated requalification program where performance evaluations conducted pursuant to paragraphs (c)(3)(i) through (iv) of this section clearly indicate the need.

(5) *Records.* (i) The facility licensee shall maintain records documenting the participation of each licensed operator and senior operator in the requalification program. The records must contain copies of written examinations administered, the answers given by the licensee, and the results of evaluations and documentation of any additional training administered in areas in which an operator or senior operator has exhibited deficiencies. The facility licensee shall retain these records until the operator's or senior operator's license is renewed.

(ii) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period.

(iii) If there is a conflict between the Commission's regulations in this part, and any license condition, or other written Commission approval or authorization pertaining to the retention period for the same type of record, the retention period specified for these records by the regulations in this part shall apply unless the Commission, pursuant to § 55.11, grants a specific

exemption from this record retention requirement.

(6) *Alternative training programs.* The requirements of this section may be met by requalification programs conducted by persons other than the facility licensee if the requalification programs are similar to the program described in paragraphs (c) (1) through (5) of this section and the alternative program has been approved by the Commission.

(7) *Applicability to research and test reactors and non-reactor facilities.* To accommodate specialized modes of operation and differences in control, equipment, and operator skills and knowledge, the requalification program for each licensed operator and senior operator of a research reactor or test reactor or of a non-reactor facility shall conform generally but need not be identical to the requalification program outlined in paragraphs (c) (1) through (6) of this section. Significant deviations from the requirements of paragraphs (c) (1) through (6) of this section will be permitted only if supported by written justification and approved by the Commission.

Subpart G—Modification and Revocation of Licenses

§ 55.61 Modification and revocation of licenses.

(a) The terms and conditions of all licenses are subject to amendment, revision, or modification by reason of rules, regulations, or orders issued in accordance with the Act or any amendments thereto.

(b) Any license may be revoked, suspended, or modified, in whole or in part—

(1) For any material false statement in the application or any statement of fact required under section 182 of the Act,

(2) Because of conditions revealed by the application or statement of fact or any report, record, inspection or other means that would warrant the Commission to refuse to grant a license on an original application,

(3) For willful violation of, or failure to observe any of the terms and conditions of the Act, or the license, or of any rule, regulation, or order of the Commission, or

(4) Any conduct determined by the Commission to be a hazard to safe operation of the facility.

Subpart H—Enforcement

§ 55.71 Violations.

(a) An injunction or other court order may be obtained prohibiting any violation of any provision of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) Any regulation or order issued under these Acts.

(b) A court order may be obtained for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act for violation of—

(1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act;

(2) Section 206 of the Energy Reorganization Act of 1974;

(3) Any rule, regulation, or order issued under these Acts;

(4) Any term, condition, or limitation of any license issued under these Acts; or

(5) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act.

(c) Any person who willfully violates any provision of the Atomic Energy Act or any regulation issued under the Act, including the regulations in this Part, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment, or both, as provided by law.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

2. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939, (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50–100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

3. Immediately following § 50.73, "Licensee Event Report System," a new § 50.74 is added as a conforming amendment to read as follows:

§ 50.74 Notification of change in operator, senior operator or special senior operator status.

Each licensee shall notify the Commission in accordance with § 50.4 of this chapter within 30 days of the following in regard to a licensed operator, senior operator or special senior operator:

(a) Permanent reassignment from the position for which the licensee has certified the need for a licensed operator or senior operator under § 55.33(a)(3) of this chapter;

(b) Termination of any operator, senior operator or special senior operator;

(c) Disability or illness as described in § 55.25 of this chapter; or

(d) Any other condition, including conviction of a crime, which affects or could affect the performance of an operator's, senior operator's or special senior operator's duties.

Dated at Washington, DC, this 16th day of November 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-30660 Filed 11-23-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 82-28]

Segregated Ballast, Dedicated Clean Ballast and Crude Oil Washing on Tankships of 20,000 DWT or More But Less Than 40,000 DWT Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; supplemental information.

SUMMARY: The Coast Guard is in the process of preparing final rules which will require existing tankships of at least 20,000 DWT but less than 40,000 DWT to have either segregated ballast (SBT), dedicated clean ballast (CBT) or crude oil washing (COW) when they reach 15 years of age. The regulations, as proposed in 49 FR 2998 (January 24, 1984), will implement 46 U.S.C. 3705(c) and 3706(d) which require vessels to be so equipped beginning January 1, 1986. This notice responds to inquiries concerning a delayed compliance date and early approvals of alterations to bring vessels into compliance.

FOR FURTHER INFORMATION CONTACT:
LCDR Jeffrey G. Lantz, Project Officer. (202) 426–4431.

SUPPLEMENTARY INFORMATION:

Issues:

The Final Rule is being administratively reviewed and the Coast Guard expects it to be published in early 1985. This will give owners of tankships that will be 15 years old on January 1, 1986 a lead time of approximately nine to twelve months to comply with the regulations. The Coast Guard has received a number of inquiries concerning the possible extension of the compliance date, so that vessel owners would have a longer period of time to comply with the regulations after they become final. A number of requests have also been received for the Coast Guard to review the plans and calculations of alterations to tankships installing either SBT or CBT to meet the draft and trim requirements proposed in 33 CFR 157.10c.

Action:

The Coast Guard has adopted the following policy concerning these two issues:

1. The Coast Guard is not planning to grant any extensions to the compliance date. The law is very specific in that the affected tankships must comply by January 1, 1986 or when they reach 15 years of age, whichever is later.

2. The Coast Guard will review plans and calculations from vessel owners who wish to submit them before the regulations become final. However, early submissions for the installation of CBT or SBT will only be reviewed for compliance with the draft and trim requirements of 33 CFR 157.09(b). These are the existing draft and trim requirements which all new tankships and larger existing tankships are required to meet. These are also the same standards referred to in proposed 33 CFR 157.10c(b) for crude oil carriers and proposed 33 CFR 157.10c(c) for product carriers. The Coast Guard realizes that proposed 33 CFR 157.10c(d) contains a provision by which relief from these draft and trim requirements will be granted for those vessels which exceed them by 10% or more. Since this is a departure from the existing draft and trim standards and has not undergone full administrative review, submissions with the intent to qualify a vessel for the draft and trim relief must wait for the regulations to become final. The Coast Guard requests that all submittals made before the regulations become final be sent to the cognizant field technical office.

Dated: November 19, 1984.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 84-30729 Filed 11-23-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Reopening of the comment period.

SUMMARY: On April 3, 1984, the National Park Service published in the **Federal Register** (49 FR 13160), proposed rulemaking in accordance with the Alaska National Interest Lands Act (ANILA) that provides relatively comprehensive regulations concerning cabins and other structures on National Park System lands in Alaska. The public comment period was open until June 4, 1984. On June 1, 1984, a notice was published in the **Federal Register** (49 FR 22835) extending the public comment period to August 3, 1984. Because of requests to provide additional comments on the proposed rulemaking, this notice reopens the comment period on that rulemaking.

DATES: The National Park Service will accept, until January 10, 1985, all written comments received on the proposed rulemaking.

ADDRESS: Comments should be addresseed to: Alaska Regional Director, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT:
Roger J. Contor, Alaska Regional Director, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503. Telephone (907) 271–4196.

SUPPLEMENTARY INFORMATION: There is continuing widespread public interest in this rulemaking. In an effort to ensure maximum public involvement, the National Park Service is reopening the comment period until January 10, 1985.

Dated: November 9, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-30943 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 21

Dependents' Education; Time Limits for Processing Claims

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: This regulation proposes to clarify that a claim will be considered abandoned if an eligible child either fails to submit requested evidence or fails to report for required counseling (for reasons not beyond his or her control) within 1 year of the date of request for evidence or date of scheduled counseling appointment, as the case may be. This change would also clarify that claims processing time is no longer considered by the VA (Veterans Administration) to determine the period of eligibility for receiving dependents' educational assistance.

DATES: Comments must be received on or before December 24, 1984. It is proposed to make this regulation effective the date of final approval.

ADDRESSES: Send written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 3, 1985. Anyone visiting Central Office in Washington, DC for the purpose of inspecting any of these comments will be received by the Central Office Veterans Services Unit in room 132.

Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT:
June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. (202–389–2092).

SUPPLEMENTARY INFORMATION: Section 21.3032, Title 38, Code of Federal Regulations is proposed to be amended to eliminate all implications that the VA computes processing time for claims for dependents' educational assistance. Time limits for completing claims are stated in the amended regulation without reference to processing time.

The VA has determined that this proposed regulation is not a major rule

as that term is defined by Executive Order 12291, entitled "Federal Regulation." The annual effect on the economy will be less than $100 million. The proposal will not result in any major increases in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this proposal affects individual benefit recipients. The proposal will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulation is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 13, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is proposing to amend 38 CFR Part 21 as set forth below:

In § 21.3032, paragraph (a) is revised as follows:

§ 21.3032 Time limit.

(a) *Completion of claim*—(1) *Failure to furnish requested information.* The Veterans Administration will consider a claim to be abandoned when the Veterans Administration requests evidence in connection with a claim, and the parent, guardian or eligible person does not furnish the evidence within 1 year of the request. After the expiration of 1 year, the Veterans Administration will not take further action unless a new claim is received.

(2) *Failure to complete required counseling.* When an eligible person delays counseling required by § 21.4105 for 12 or more months, for other than a reason beyond his or her control, the Veterans Administration will consider the claim to be abandoned.

(3) *Reopening a claim.* Where an application has been considered abandoned under paragraph (a) (1) or (2) of this section, the Veterans Administration will consider any subsequent communication from the parent, guardian or eligible person requesting a program of education to be a new application. The date of application in these cases is the date of receipt of the subsequent communication. (38 U.S.C. 3003(a))

* * * * *

[FR Doc. 84-30986 Filed 11-23-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2671-5]

Approval and Promulgation of Implementation Plans; Maine—Particulate Emissions Standards

Correction

In FR Doc. 84-24497 beginning on page 36661 in the issue of Wednesday, September 19, 1984, make the following corrections:

On page 36661, in the second column, Table I contained several typographical errors and is corrected to read as follows:

Table I—Particulate Emission Limits for Existing Sources

Source category	Design capacity (MM Btu/hr)	SIP emission limit (lbs particulate/MM Btu)	Proposed revision (lbs particulate/MM Btu)
1. Oil, gas, petroleum burning	Less than 150.	0.30 or greater [1].	0.20.
	150 or greater.	0.30	0.20.
2. Coal burning	Less than 50.	0.30 or greater [1].	0.30.
	50 or greater.	0.30	0.08.
3. Wood burning (wood, bark, chips, sawdust, pulp mill sludge, forest products including those with oil firing (specified))	Less than 150.	0.30 or greater [1].	0.30 or greater [1].
	150 or greater.	0.30	0.30.

[1] A sliding scale is used to determine emission limits for sources rated at less than 150 million Btu per hour.

BILLING CODE 1505-01-M

---

40 CFR Part 52

[AD-FRL-2724-7]

State Implementation Plans for Visibility Comment Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; public comment period extension.

SUMMARY: This notice extends the initial public comment period for the State implementation plans for visibility new source review and monitoring strategy, proposed rulemaking, scheduled to close on November 23, 1984. The public comment period will now end on December 24, 1984. The public hearings and supplementary and rebuttal period dates remain unchanged.

DATE: Comment period extended to December 24, 1984.

FOR FURTHER INFORMATION CONTACT: Janet C. Metsa, Office of Air Quality Planning and Standards, Control Programs Development Division (MD-15), EPA, Research Triangle Park, NC 27711, (919) 541-5540.

SUPPLEMENTARY INFORMATION: On October 23, 1984, in 49 FR 42670, EPA proposed State implementation plans for visibility protection for 34 deficient States. This action met, in part, a settlement agreement with the Environmental Defense Fund, Inc., *et al.* In the proposal notice, EPA stated that the initial comment period would end 30 days from the date of publication, November 23, 1984. Public hearings were scheduled in Washington, D.C. on December 4, 1984, and in Denver, Colorado, on December 6, 1984. The supplementary comment and rebuttal period was scheduled to end on January 6, 1985. Several industrial representatives requested that EPA extend the initial comment period to allow sufficient time for appropriate comments. The EPA is granting the requests. The initial comment period will now end on December 24, 1984. The public hearing dates and supplementary comment and rebuttal period remain unchanged. The settlement schedule (see 49 FR 20647) also remains unchanged by this action.

Dated: November 20, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84-30985 Filed 11-23-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 65

[Docket No. DCO-IV-8404; A-4-FRL-2688-2]

State and Federal Administrative Orders Permitting a Delay in Compliance with State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Florida Department of Environmental Regulation to Arnold Cellophane Corp.

Correction

In FR Doc. 84-26579 beginning on page 39583 in the issue of Tuesday, October 9, 1984, make the following correction on page 39584: In the first column, in the second complete paragraph, in the ninth line, "shall be" should read "shall not be".

BILLING CODE 1505-01-M

---

40 CFR Part 180

[OPP-30072; FRL 2583-3]

Procedural Regulations; Proposed Tolerance Processing Fees

Correction

In FR Doc. 84-28715 beginning on page 39698 in the issue of Wednesday, October 10, 1984, make the following corrections:

1. On page 39699, in the table, in the second column the first entry should read "$10,000". In the third column, the first entry should read "(a) Same".

2. In the third column, eighth line, "exemption" should have read "exemption".

3. In the fourth column eighth line, "5,00" should have read "5,000".

4. Footnote 1 appearing in the third column, should have appeared on the corresponding line of the fourth column.

5. In the second column, the entry beginning "(h) Each" and ending "commodities", should have appeared as the corresponding entry in the third column.

6. In the third column, in the last line, "Same" should have read "(i) Same".

§ 180.33 [Corrected]

7. On page 39702, in § 180.33(d), third column, seventh line, "nenew" should have read "renew".

BILLING CODE 1505-01-M

---

40 CFR Part 271

[SW-3-RL-2724-5]

District of Columbia: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on the District of Columbia's Application for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: The District of Columbia has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the District's application and has made the tentative decision that the District's hazardous waste management program satisfies all of the requirements necessary to qualify for Final Authorization. Thus, EPA tentatively intends to grant Final Authorization to the District to operate its program in lieu of the Federal program. The District's application for Final Authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATE: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for December 27, 1984. EPA reserves the right to cancel the public hearing if significant public interest in a hearing is not communicated to EPA by telephone or in writing by December 19, 1984. EPA will determine by December 21, 1984 whether there is significant interest to hold the public hearing. The District will participate in the public hearing held by EPA on this subject if a hearing is to be held. All written comments on the District's Final Authorization application must be received by the close of business on December 27, 1984.

ADDRESSES: Copies of the District's Final Authorization application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying:

Department of Consumer and Regulatory Affairs, Pesticides and Hazardous Waste Management Branch, 5010 Overlook Ave., SW, Rm. 112, Washington, DC 20032. Contact: Mr. Angelo Tompros, (202) 767–8414;

Environmental Protection Agency, 6th and Walnut Street, Curtis Building, Philadelphia, Pennsylvania 19106. Contact: Diane McCreary, (215) 597–0580;

U.S. Environmental Protection Agency, Headquarters Library, PM–211A, 401 M Street, SW., Washington, DC 20460, (202) 382–5926.

Written comments on the application and written or telephoned communication of interest in EPA's holding a public hearing on the District's application must be sent to: Wayne S. Naylor, Program Manager, State Programs Section, U.S. EPA Region III, 6th and Walnut Street, Philadelphia, Pennsylvania 19106, (215) 597–7239.

† If you wish to find out whether or not EPA will hold a public hearing on the District's application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after December 21, 1984 the EPA contact person listed below, or telephone Mr. Angelo Tompros, Chief, Pesticides and Hazardous Waste Management Branch, 5010 Overlook Ave., SW; Washington, DC 20032 (202) 767–8422.

If significant public interest is expressed, EPA will hold a public hearing on the District's application for Final Authorization on Thursday, December 27, 1984 at 1:00 p.m. at the Blue Plains Sewage Treatment Plant, 5000 Overlook Ave., SW., Room #318, Washington, D.C. 20032.

FOR FURTHER INFORMATION CONTACT: Wayne S. Naylor, Program Manager, State Programs Section, U.S. EPA Region III, 6th and Walnut Street, Philadelphia, Pennsylania 19106, (215) 597–7239.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "Interim Authorization", is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42

U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to Interim Authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263, and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities), and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks. Phase II B covers permitting of incinerator facilities, and Phase II C addresses permitting of landfills, surface impoundments, waste piles, and land treatment facilities. By statute, all Interim Authorizations expire on January 26, 1985, unless Congress extends the date. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received Final Authorization, as described below.

The second type of authorization is a "Final" (permanent) Authorization that is granted by EPA if the Agency finds that the State program is (1) "equivalent" to the Federal program, (2) consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained Interim Authorization in order to qualify for Final Authorization. EPA regulations for Final Authorization appear at 40 CFR §§ 271.1–271.23.

B. The District of Columbia

The District received Interim Authorization, Phase I and Phase II, Components A and B on November 22, 1983. On March 1, 1984, the District submitted a draft application for Final Authorization.

An "informal" official application for Final Authorization was submitted on August 10, 1984. Prior to submission of the application to EPA, the District solicited public comments and held a public hearing on July 15, 1984. The District did not receive any written or oral comments. EPA's comments on the "informal" official application were forwarded to the District on September 14, 1984. The comments primarily requested the District to revise the Program Description to clarify the District's compliance and enforcement management procedures. In addition, the Corporation Counsel was requested to provide the date the amendments to the regulations became effective and further clarification in the areas of interim status availability, variance authority, and citizen intervention. An official application dated October 23, 1984, including a revised Corporation Counsel's Statement and a revised Program Description was submitted to EPA.

EPA has reviewed the District's application, and has tentatively determined that the District's program meets all of the requirements necessary to qualify for Final Authorization. Consequently, EPA tentatively intends to grant Final Authorization to the District of Columbia. Copies of the District's application are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

In making its final decision, EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny Final Authorization to the District of Columbia. EPA expects to make a final decision on whether or not to approve the District's program by January 25, 1984, and will give notice of it in the **Federal Register**. EPA's final decision whether to approve the District's program will be based, in part, on the District's ability to maintain the current level of performance and fulfill the commitments included in the Memoradum of Agreement. The notice will include a summary of the reasons for the Final Determination and a response to all major comments.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(B), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the District's program, thereby elminating duplicative requirements for handlers of hazardous wastes in the District. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Executive Order 12291, Section 3.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: November 2, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84-30830 Filed 11-23-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-1043; RM-4730]

FM Broadcast Stations in Cambridge and Salisbury, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign Channel 232A to Cambridge, Maryland, as that community's second FM allocation, in response to a petition filed by Philip G. D'Adamo. The assignment requires a channel substitution and modification of the license at Salisbury, Maryland, to accommodate the proposal.

DATES: Comments must be filed on or before January 7, 1985, and reply comments on or before January 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making and Order to Show Cause

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Cambridge and Salisbury, Maryland); MM Docket No. 84–1043 RM–4730.

Adopted: October 29, 1984.
Released: November 16, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making making filed by Philip D'Adamo ("petitioner"), requesting the assignment of FM Channel 232A to Cambridge, Maryland, as that community's second FM allocation. Petitioner indicated an interest in applying for the channel, if assigned.

2. Channel 232A can be assigned to Cambridge in compliance with the minimum distance separation requirements of the rules provided Channel 232A is deleted from Salisbury, Maryland. Channel 232A in Salisbury is presently licensed to Station WICO. Thus we shall propose the substitution of Channel 248A [1] for existing Channel 232A at Salisbury. The proposed substitution of Channel 248A can be accomplished in compliance with the minimum distance separation requirements.

3. Whenever an existing license is ordered to switch frequencies in order to accommodate a new assignment, we require that the proponent of the new assignment make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. Petitioner has stated that he understands that it would be the responsibility of the successful applicant for Channel 232A in Cambridge, Maryland, to reimburse WICO for its reasonable costs in changing frequency.

4. In view of the fact that the proposed assignment could provide a second FM service at Cambridge, Maryland, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules as follows:

City	Channel No.	
	Present	Proposed
Cambridge, MD	252A	232A, 252A.
Salisbury, MD	232A, and 288A	248A, 255A,[1] and 288A.

[1] Channel 255A has been proposed for Salisbury, Maryland, in the Omnibus proceeding (Docket 84-231).

5. It is ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, Prettyman Broadcasting, Co., the licensee of Station WICO, Salisbury, Maryland, shall show cause why its license should not be modified to specify operation on Channel 248A in lieu of Channel 232A.

6. Pursuant to § 1.87 of the Commission's rules, Prettyman Broadcasting, Co. may, not later than January 7, 1985, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, Prettyman Broadcasting, Co. may, not later than January 7, 1985, file a written statement showing with particularity who its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Prettyman Broadcasting, Co. to furnish additional information, designate the matter for hearing, or issue, without further proceedings, as *Order* modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Prettyman Broadcasting, Co. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. It is further ordered, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following: Prettyman Broadcasting, Co., Box 909, Salisbury, Maryland 21801.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before January 7, 1985, and reply comments on or before January 22, 1985, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner as follows: Mr. Philip G. D'Adamo, P.O. Box 24, East New Market, Maryland 21631.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which the Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also relate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See §1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a

[1] The petitioner listed FM Channel 221A as the Channel to substitute for Channel 232A in Salisbury. However, a staff engineering study revealed that Channel 221A in Salisbury would be short spaced to a pending proposal to assign Channel 221A to Fenwick Island, Delaware (MM Dkt 84-786).

different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties may be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW, Washington, D.C.

[FR Doc. 84-30699 Filed 11-23-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-1046; RM-4815]

TV Broadcast Station in Winchester, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 27 to Winchester, Nevada, as that community's first television assignment, in response to a petition filed by Brown Resources, Inc.

DATES: Comments must be filed on or before January 7, 1985, and reply comments on or before January 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subject in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rulemaking

In the matter of amendment of section 73.606(b), table of assignments, television broadcast stations. (Winchester, Nevada); MM Docket No. 84-1046 RM-4815.

Adopted: October 29, 1984.
Released: November 16, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Brown Resources, Inc. ("petitioner") requesting the assignment of UHF Television Channel 33 to Winchester, Nevada, as that community's first television broadcast service. [1] The petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Winchester (population 19,728) [2] in Clark County (population 463,087) is located in southern Nevada approximately 9 kilometers (6 miles) southwest of Las Vegas, Nevada.

3. UHF Televison Channel 27 can be assigned to Winchester, Nevada in compliance with the minimum distance separation requirements of Section 73.610 and Section 73.698 of the Commission's Rules.

4. Since the proposed assignment could provice a first local television broadcast service to Winchester, the Commission believes it appropriate to propose amendmending the Television Table of Assignments, Section 73.606(b) of the Commission's Rules, for the community listed below:

City	Channel No.	
	Present	Proposed
Winchester, NV		27-

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continued interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before January 7, 1985 and reply comments on or before January 22, 1985, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner as follows: Brown Resources, Inc., c/o David E. Brown, P.O. Box 13320, Houston, Texas 77019.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§ 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[1] The assignment of Channel 33 would be short spaced to the proposed Channel 33 to Las Vegas, Nevada (RM-4793). We have substituted Channel 27 for consideration at Winchester.

[2] Population figures were extracted from the 1980 U.S. Census.

[FR Doc. 84-30691 Filed 11-23-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-1044; RM-4820]

TV Broadcast Station in Myrtle Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign UHF television Channel 32 to Myrtle Beach, South Carolina, as that community's second commercial television service, in response to a petition filed by Moore Broadcast Industries, Inc.

DATES: Comments must be filed on or before January 7, 1985, and reply comments on or before January 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations. (Myrtle Beach, South Carolina); MM Docket No. 84-1044, RM-4820.

Adopted: October 29, 1984.
Released: November 16, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Moore Broadcast Industries, Inc. ("petitioner"), proposing the assignment of UHF Channel 32 to Myrtle Beach, South Caroline, as that community's second commercial television service. Petitioner states that it will apply for the channel, if assigned as proposed.

2. Myrtle Beach (population 18,446),[1] in Horry County (population 101,419), is located on the South Carolina coast, approximately 150 kilometers (90 miles) northeast of Charleston. Currently, it is served by Station WCSE-TV (Channel 43).

3. Channel 32 can be assigned to Myrtle Beach consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules provided the transmitter is restricted to an area 14.8 miles southwest of the community to avoid short-spacing to unused Channel *32 in High Point, North Carolina, and WUNJ-TV (Channel 39), Wilmington, North Carolina.

4. In view of the above, we believe the petitioner's proposal warrants consideration since the proposed television assignment could provide Myrtle Beach with its second commercial television service. Accordingly, the Commission proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Myrtle Beach, SC	43+	32, and 43+.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note. A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before January 7, 1985, and reply comments on or before January 22, 1985, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner as follows: Ronald M. Moore, President, Moore Broadcast Industries, Inc., P.O. Box 3348, Greenwood, South Carolina 29646.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530. However, members of the public should note that

[1] Population figures were extracted from the 1980 U.S. Census.

from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the committees involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 84-30899 Filed 11-23-84; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 84-1045; RM-4827]

Television Broadcast Station in Llano, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 14 to Llano, Texas, in response to a petition filed by Llano Broadcasting Company. The proposal could provide a first UHF television service to that community.

DATES: Comments must be filed on or before January 7, 1985, and reply comments on or before January 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rulemaking

In the matter of amendment of section § 73.606(b), table of assignments, television broadcast stations. (Llano, Texas); MM Docket No. 84-1045, RM-4827.

Adopted: October 29, 1984.
Released: November 16, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Llano Broadcasting Company ("petitioner"), requesting the assignment of UHF Television Channel 14 to Llano, Texas, as that community's first television broadcast service. The petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Llano (population 3,071),[1] seat of Llano County (population 10,144), is located in south central Texas approximately 110 kilometers (70 miles) northwest of Austin, Texas.

3. Channel 14 can be assigned to Llano, Texas, in conformity with the minimum distance separation requirements of Section 73.610 of the Commission's Rules. Since Llano, Texas is located within 320 kilometers (199 miles) of the U.S.-Mexican border, the proposed assignment requires concurrence of the Mexican government.

4. In order to provide a first local broadcast service to Llano, the Commission believes it appropriate to propose amending the Television Table of Assignments, Section 73.606(b) of the Commission's Rules as follows:

City	Channel No.	
	Present	Proposed
Llano, TX		14-

5. The Commission's authority to institute rule making proceedings,

[1] Population figures are from the 1980 U.S. Census.

showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continued interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before January 7, 1985, and reply comments on or before January 22, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Roy R. Russo, Jill Johnson-Pennington, Cohn and Marks, 1333 New Hampshire Avenue NW., Washington, D.C. 20036 (Counsel for Llano Broadcasting Company).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504, and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), and 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules. IT IS PROPOSED TO AMEND the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 84-30900 Filed 11-23-84; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 228
Monday, November 26, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Members of Performance Review Board

AGENCY: ACTION.

ACTION: Revision of list of Performance Review Board Positions.

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Veronica D. Trietsch, Director of Personnel, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 20525, (202) 634–9281.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of the 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more performance review boards to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the appointing authority concerning the performance of the senior executive.

The positions listed below will serve as members on the ACTION Performance Review Board.

1. Deputy Director, ACTION, Chairman.
2. Associate Director for the Office of Domestic Operations, ACTION.
3. Assistant Director for the Office of Compliance, ACTION.
4. Executive Officer, ACTION.
5. Assistant Director for the Office of Financial Affairs Comptroller, ACTION.
6. Deputy General Counsel, ACTION.
7. Assistant Director for Performance Management, Office of Personnel Management.

Issued in Washington, D.C. on November 20, 1984.

Thomas W. Pauken,
Director, ACTION.

[FR Doc. 84–30884 Filed 11–23–84; 8:45 am]
BILLING CODE 4050–01–M

Schedule for Awarding Senior Executive Service; Performance Awards; (Bonuses)

AGENCY: ACTION.

ACTION: Notice.

SUMMARY: Notice is hereby given of the schedule for awarding Senior Executive Service Bonuses.

FOR FURTHER INFORMATION CONTACT: Veronica D. Trietsch, Director of Personnel, ACTION 806 Connecticut Avenue, NW., Washington D.C. 20525, (202) 634–9281.

SUPPLEMENTARY INFORMATION: Office of Personnel Management Guidelines require that each agency publish a notice in the **Federal Register** of the agency's schedule for awarding Senior Executive Service Bonuses at least 14 days prior to the date on which the awards will be paid.

Schedule for Awarding Senior Executive Service Bonuses

ACTION intends to award Senior Executive Service Bonuses for the performance rating cycle of August 1, 1983 through July 31, 1984 with payouts before December 31, 1984.

Issued in Washington, D.C. on November 20, 1984.

Thomas W. Pauken,
Director, ACTION

[FR Doc. 84–30885 Filed 11–23–84; 8:45 am
BILLING CODE 6050–01–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Columbia, Missouri, is announcing a Public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 18, 1984, 10:00 a.m. to 12:00 noon.

Comments must be received no later than January 17, 1984.

ADDRESSES: Meeting location at Meeting Room B&C, FmHA, 555 Vandiver Drive, Columbia, Missouri 65201.

Written comments and further information will be addressed to: State Director, FmHA, 555 Vandiver Drive, Columbia, Missouri 65201 (314–875–5248).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Missouri State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Missouri. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 19, 1984.

David J. Howe,
Director, Program Support Staff.

[FR Doc. 84–30895 Filed 11–23–84; 8:45 am]
BILLING CODE 3410–07–M

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Richmond, Virginia, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 20, 1984, 2:00 p.m. to 4:00 p.m.

Comments must be received no later than January 19, 1985.

ADDRESSES: Meeting location at ASCA Conference Room, 7th Floor, Federal Building, Richmond, Virginia.

Written comments and further information will be addressed to: State Director, FmHA, Post Office Box 10106, Richmond, Virginia 23240 (804–771–2723).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Virginia State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Virginia. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 19, 1984.

David J. Howe,
Director, Program Support Staff.

[FR Doc. 84–30896 Filed 11–23–84; 8:45 am]
BILLING CODE 3410–07–M

CIVIL AERONAUTICS BOARD

Announcement of Proposed Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35)

Agency clearance officer from whom a copy of the collection of information and supporting documents is available: Robin A. Caldwell (202) 673–5922.

Amendment

Title of the Collection of Information: Carrier-Owned Computer Reservation Systems.

Agency Form Number: None.

How Often the Collection of Information Must Be Filed: Information is to be disclosed upon request.

Who is Asked or Required to Report: Air carriers that operate computer reservation systems.

Estimate of Number of Annual Responses: 240.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 60.

Robin A. Caldwell,
Chief, Information Management Division, Office of Comptroller.

November 14, 1984.

[FR Doc. 84–30887 Filed 11–23–84; 8:45 am]
BILLING CODE 6320–01–M

Form 298–A; Air Taxi Operator and Commuter Air Carrier Registration and Amendments Under Part 298 of the Economic Regulations of the Civil Aeronautics Board

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of CAB Form 298–A, Air Taxi Operator and Commuter Air Carrier Registration and Amendments under Part 298 of the Economic Regulations of the Civil Aeronautics Board.

DATE: November 14, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Chief, Special Authorities Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5088.

SUPPLEMENTARY INFORMATION: Agency Clearance Officer from Whom a copy of the Information Collection and Supporting Documents is available: Robin A. Caldwell (202) 673–5922.

How often the Collection of Information Must Be Filed: On occasion.

Who is Asked or Required to File: Air taxi operators and commuter air carriers.

Estimate of Number of Annual Responses: 2,400.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 1,200.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84–30909 Filed 11–23–84; 8:45 am]
BILLING CODE 6320–01–M

[Docket 42224 and 42254]

Complaint of Frontier Holdings Inc., Against Continental Air Lines, Inc., and Complaint of Western Air Lines, Inc., Against Continental Air Lines, Inc.; Cancellation of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled proceeding which had been scheduled to be held before the undersigned Chief Administrative Law Judge on November 23, 1984, is hereby cancelled.

Dated at Washington, D.C., November 19, 1984.

Elias C. Rodrigues,
Chief Administrative Law Judge.

[FR Doc. 84–30888 Filed 11–23–84; 8:45 am]
BILLING CODE 6320–01–M

[Docket 42603]

Houston-London Case; Hearing

Notice is hereby given that a hearing in the above-entitled matter will commence on December 10, 1984, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., November 15, 1984.

John M. Vittone,
Administrative Law Judge.

[FR Doc. 84–30886 Filed 11–23–84; 8:45 am]
BILLING CODE 6320–01–M

[Docket 42291]

Royalcoach Airlines; Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be be held on November 27, 1984 at 9:30 a.m. (local time) in Room 1027, Universal Bulding, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., November 14, 1984.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 84–30889 Filed 11–23–84; 8:45 am]
BILLING CODE 6320–01–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed: Week Ended November 9, 1984

Subpart Q Applications

The due date for answers conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Nov. 7, 1984	42510	North Canada Air Ltd. d/b/a Norcanair, c/o W.H.R. Field, Hangar 3, Mobile 3, Saskatoon, Saskatchewan, Canada S7L 5X4. Application of North Canada Air Ltd. d/b/a Norcanair pursuant to section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit allowing scheduled air service for the transportation of passengers, freight, express, and mail as required between Canada and the United States of America and in particular, between Regina, Saskatchewan, Canada, and Minneapolis/St. Paul, Minnesota, U.S.A. Answers may be filed by December 5, 1984.
Nov. 9, 1984	42514	Barrow Air, Inc., c/o Bill Miller, Bill Miller Associates, Suite 301, 1341 G Street, NW., Washington, DC. 20005. Application of Barrow Air, Inc. pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity for an indefinite term to engage in unrestricted interstate air transportation of persons, property and mail within the State of Alaska between and among the terminal point Atqasuk, Alaska the three intermediate points listed in Exhibit B (Proposed Service Area) and the terminal point Wain wright, Alaska. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 7, 1984.
Do	42516	Cacos Caribbean Airways Limited, c/o Howard B. Silberberg, 1489 Chain Bridge Road, Suite 202, McLean, Virginia 22101. Application of Cacos Caribbean Airways Limited pursuant to section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit to engage in transportation of property and mail in non-scheduled and charter operations between the terminal point or points in the Turks & Cacos Islands and the co-terminal points Ft. Lauderdale and Miami, Florida. Answers may be filed by December 7, 1984.
Nov. 5, 1984	42504	Gemma Air Taxi, Inc., c/o Bill Miller, Bill Miller Associates, Suite 301, 1341 G Street, NW., Washington, DC. 20005. Supplemental Material to the Application of Gemma Air Taxi, Inc. for a certificate of public convenience and necessity for interstate air transportation. Answers may be filed by December 3, 1984.
Do	42542 42543	Pegasus Airlines, Inc., c/o Morris R. Garfinkle, Galland, Kharasch, Morse & Garfinkle, 1054 Thirty-first Street, NW., Washington, DC. 20007. Response to Order 84-10-99 with respect to the Application of Pegasus Airlines, Inc. for a certificate of public convenience and necessity under section 401(d)(1) to engage in interstate/overseas and foreign scheduled air transportation. Answers may be filed by December 3, 1984.
Nov. 9, 1984	42528	Turks Air Limited, c/o Thomas Conlon, Tigert & Roberts, Suite 770, 600 Maryland Avenue, SW., Washington, DC. 20024. Amendment No. 1 to the Application of Turks Air Limited for a Foreign Air Carrier Permit. (Additional Information) Answers may be filed by December 7, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-30899 Filed 11-23-84; 8:45 am]
BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Maryland Advisory Committee; United States Commission on Civil Rights Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m., on December 18, 1984, at the Baltimore Human Relations Commission, Conference Room, 100 North Eutaw Street, Baltimore, Maryland 21201. The purposes of the meeting are to discuss plans for the 1984–85 program, update civil rights monitoring activities, and develop a meeting schedule.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Mid-Atlantic Regional Office at (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 20, 1984.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 84-30943 Filed 11-23-84; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-098]

Anhydrous Sodium Metasilicate From France; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of antidumping duty order on anhydrous sodium metasilicate from France. The Review covers the one known exporter of this merchandise to the United States and the period January 1, 1983, through December 31, 1983. The review indicates the existence of no dumping margins during the period.

As a result of the review, the Department has preliminarily determined not to assess antidumping duties on sales during the period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (377–5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (FR 49 43733) the final results of its last administrative review of the antidumping duty order on anhydrous sodium metasilicate from France [46 FR 1667, January 7, 1981) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. Anhydrous sodium metasilicate is currently classifiable under item 421.3400 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French anhydrous sodium metasilicate to the United States, Rhone-Poulenc S.A., and the period January 1, 1983, through December 31, 1983.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, delivered price with deductions, where applicable, for foreign inland freight, ocean freight, marine insurance, customs duties, customs brokerage charges, and wharfage. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, deliverd price with adjustments, where applicable, for foreign inland freight, and differences in packing and credit costs. No other adjustments were claimed or allowed

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margins exist for Rhone-Poulenc S.A. for the period January 1, 1983, through December 31, 1983.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess dumping duties on all appropriate entries.

Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in section 353.48(b) of the Commerce Regulations, on any shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.

November 16, 1984.

[FR Doc. 84-30861 Filed 11-23-84; 8:45 am]
BILLING CODE 3510-DS-M

[A-122-020]

Pig Iron From Canada; Preliminary Results of Administrative Review of Antidumping Finding and Intent To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding and intent to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on pig iron from Canada. The review covers the six known manufacturers and/or exporters of this merchandise to the United States and generally the period July 1, 1982, through June 30, 1983. The review indicates the existence of no dumping margins during the period of review.

As a result of the review, the Department has preliminarily determined not to assess dumping duties on sales during the period of review. The Department intends to revoke the finding with respect to Canadian pig iron manufactured and exported by Stelco, Inc.

Interested parties are invtied to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Helen Askins or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 47041) a tentative determination to revoke in part the antidumping finding on pig iron from Canada (36 FR 13780, July 24, 1971). On September 26, 1983, the Department published in the **Federal Register** (48 FR 43704) the final results of its last administrative review of the antidumping finding and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machine parts. Such merchandise is currently classifiable under items 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated.

The review covers the six known manufacturers and/or exporters of Canadian pig iron to the United States and generally the period July 1, 1982, through June 30, 1983.

Three firms did not ship Canadian pig iron to the United States during the period. The estimated antidumping duties cash deposit rates for those firms will be the most recent rate for each firm.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. mill price. No adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to be used as a basis of comparison. Home market price was based on the f.o.b. mill price. We denied

a claimed adjustment for freight equalization because the expense was not included in the home market price. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Intent To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminary determine that the following margins exist:

Manufacturer/exporter	Period	Margin (per-cent)
Abex Industries Limited	07/01/82 to 06/30/83.	[1] 0
Algoma Steel Corporation, Ltd.	07/01/82 to 06/30/83.	0
Dofasco Inc.	07/01/82 to 06/30/83.	8
Philip Brothers (Canada) Ltd.	07/01/82 to 06/30/83.	[1] 7.30
Stelco Inc./Hickman Williams Canada, Ltd.	07/01/82 to 06/30/83.	[1] 0
Stelco, Inc.	07/01/82 to 10/17/83.	0

[1] No shipments during the period.

As a result of our review we intend to revoke the finding on pig iron from Canada with respect to merchandise manufactured and exported to the United States by Stelco, Inc. Stelco had *de minimis* margins during the period July 1, 1981, through June 30, 1982, and made all sales at not less than fair value during the period July 1, 1982, through October 17, 1983, the date of our tentative determination to revoke in part with regard to Stelco. As provided for in § 353.54(e) of the Commerce Regulations, Stelco has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances as specified in the written agreement. If the finding is revoked with respect to Stelco, it shall apply to all unliquidated entries of pig iron manufactured and exported to the United States by Stelco, Inc. and entered, or withdrawn from warehouse, for consumption on or after October 17, 1983.

Interested parties may submit written comments on these preliminary results and intent to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall intruct the Customs Service not to assess antidumping duties on all appropriate entries.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. We shall not require a cash deposit for any future entries from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 17, 1983, and who is unrelated to any reviewed firm. These deposit requirements are effective for all shipments of Canadian pig iron entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, intent to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

November 16, 1984.

[FR Doc. 84-30859 Filed 11-23-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-046]

Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On September 12, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on polychloroprene rubber from Japan. The review covers the six known manufacturers and/or exporters of this merchandise to the United States and the period December 1, 1982, through November 30, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in our preliminary results of review.

EFFECTIVE DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35820) the preliminary results of its last administrative review of the antidumping finding on polychloroprene rubber from Japan (38 FR 35393, December 6, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 446.1521 and 446.2000 of the Tariff Schedules of the United States Annotated. The review covers the six known Japanese manufacturers and/or exporters of this merchandize to the United States and the period December 1, 1982, through November 30, 1983.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exist for the period December 1, 1982, through November 30, 1983:

Manufacturer/exporter	Margin (percent)
Denki Kagaku Kogyo, K.K.	[1] 0
Denki Kagaku Kogyo, K.K./Kosi Sangyo Co., Ltd.	[1] 55
Mitsui Bussan K.K.	[1] 0
Showa Neoprene, K.K.	0
Showa Neoprene, K.K./Hosi Sangyo Co., Ltd.	[1] 0
Suzugo Corporation	[1] 55
Toyo Soda Manufacturing Co., Ltd.	[1] 0
Toyo Soda Manufacturing Co., Ltd./Hosi Sangyo Co., Ltd.	[1] 0

[1] No shipments during the period.

The Department shall instruct the Customs Service not to assess dumping duties on all appropriate entries.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margins shall be required on future shipments from these firms. The Department shall not require a cash deposit of estimated antidumping duties for future entries from a new exporter not covered in this or prior reviews, whose first shipments of polychloroprene rubber occurred after November 30, 1983 and who is unrelated to any reviewed firm. These deposit requirements are effective for all shipments of Japanese polychloroprene rubber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administration review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

November 15, 1984.

[FR Doc. 84-30860 Filed 11-23-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-404]

Potassium Chloride From Spain; Termination of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 8, 1984, counsel for AMAX Chemicals, Inc. and Kerr-McGee Chemical Corporation withdrew their antidumping petition, filed on March 29, 1984, on potassium chloride from Spain. Based on the withdrawal, we are terminating the antidumping investigation.

EFFECTIVE DATE: November 8, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Case History

On March 29, 1984, we received a petition filed by AMAX Chemicals Inc., Lakeland, Florida, and Kerr-McGee Chemical Corporation, Oklahoma City, Oklahoma, on behalf of the U.S. producers of potassium chloride who represent a major portion of that industry. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Spain are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Act.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and inititated such an investigation on April 18, 1984 (49 FR 18005). On May 14, 1984, the ITC determined that there is a reasonable indication that imports of potassium chloride from Spain are materially injuring a U.S. industry (49 FR 21813).

We presented a questionnaire concerning the allegations to Comercial de Potasas, S.A., (COPSA), the only known Spanish exporter of potassium chloride, in Madrid, on May 7, 1984, and requested a response by June 6, 1984. On June 14, 1984 we received a response from COPSA. Additional information was received on July 10, 1984. Based on information contained in the response we preliminarily determined that potassium chloride from Spain was being sold in the United States at less than fair value (49 FR 35848). The estimated weighted-average margin was 43.65 percent. In accordance with section 773(a) of the Act, we conducted a verification of the correctness of the response through examination of source documents on September 11, 1984, in New York, N.Y. and on September 24 through September 26, 1984 in Madrid, Spain.

Our notice of preliminary determination provided interested parties an opportunity to submit views orally and in writing. We did not hold a public hearing, because none of the interested parties requested a hearing.

Scope of Investigation

The product covered by this investigation is potassium chloride, currently provided for under item 480.5000 of the *Tariff Schedules of the United States Annotated*. Since COPSA is the sole Spanish exporter of this merchandise we limited our investigation to this one firm. We investigated 100 percent of sales of this merchandise by COPSA to the United States during the period October 1, 1983, through March 31, 1984.

Withdrawal of Petition

On November 8, 1984, counsel for petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 734(a) of the Act, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have notified all parties to the investigation of petitioners' withdrawal and our intention to terminate, and we have consulted with the International Trade Commission. We have determined that termination of this case is in the public interest.

For these reasons, we are terminating our investigation of potassium chloride from Spain.

Dated: November 16, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30862 Filed 11-23-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of meetings.

SUMMARY: NOAA makes use of an Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participation on the Committee and a tentative schedule of meetings and other important dates.

DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Becky Rootes or Dean Swanson, Office of International Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235. Phone: (202) 634-7303.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Administrator of NOAA. The U.S. Commissioner to the IWC has primary responsibility with the Secretary of State for the preparation and negotiation of United States positions on international issues concerning whaling and for all matters involving the IWC.

He is assisted by the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC which is held in the summer. The major purpose of the preparatory meetings is to provide for participation in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of United States policy concerning whaling, and such participation is and shall continue to be a prerequisite to the establishment of United States negotiating positions for IWC meetings.

Because the meetings discuss United States negotiating positions, the substance of the meetings must be kept confidential. For example, proposed positions papers that may be circulated at a meeting for discussion cannot be removed from the meeting site and must be collected at the close of each meeting.

Any United States citizen with an identifiable interest in United States whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation. Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of United States negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings, including those of the IWC and deadlines for the preparation of position papers during 1985 is as follows:

March 1—Interagency Committee Meeting to initiate preparations for the July IWC meetings. Any subcommittees that may be required to address specific issues will be constituted. Interested persons who are unable to attend are welcome to submit comments and recommendations to the U.S. Commissioner for consideration at the meeting or anytime thereafter. Such submissions should be sent to: Dr. John V. Byrne, United States Commissioner to the International Whaling Commission, Oregon Stae University, Corvallis, Oregon 97331, with a copy to Becky Rootes or Dean Swanson at the address above.

March 15—Nominations for the United States Delegation to the July IWC meetings are due to the U.S. Commissioner. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

April 22—(approximate date) Anticipated Interagency Committee meeting following receipt of the preliminary agenda for the June IWC meetings which is due to be circulated by the IWC Secretariat on or before April 7. The meeting will review the preliminary agenda and proposed additions to this agenda, all of which will be available at the meeting. The date and location for this meetings will be confirmed as soon as the preliminary agenda is received.

April 29—Forward United States agenda changes to the IWC Secretariat.

May 10—Draft position papers due to the U.S. Commissioner.

May 10–July 14—Prenegotiations.

May 17—Due date for circulation of the provisional agenda by the IWC Secretariat. This "second draft" of the agenda reflects any additions submitted by member countries and stands until considered by the Commission at the opening session of its Annual Meeting.

June 14—Revised position papers due to the U.S. Commissioner.

June 28—Final Interagency Committee Meeting to consider United States position papers and discuss arrangements for the Delegation's work.

June 29–July 10—Annual Meeting of the Scientific Committee, Bournemouth, U.K.

July 11–13—Technical Committee subcommittee and working group meetings (on aboriginal subsistence need for whaling, infractions, humane killing, and such other meetings as may be scheduled), and preliminary meetings of the Finance and Administration Committee.

July 14—Meeting of the United States Delegation, site to be determined, Bournemouth, U.K.

July 15–19—37th Annual Meeting of the IWC, Bournemouth, U.K. Persons who would like to be included in these meetings may contact Becky Roots or Dean Swanson at the address or telephone number provided above to obtain meeting times and locations.

Dated: November 19, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 84-30884 Filed 11-23-84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Cetus Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cetus Corporation, having an office in Emeryville, California 94608, an exclusive right to practice the inventions embodied in U.S. Patents No. 4,356,117, No. 4,359,457, No. 4,397,843 and No. 4,440,747 and U.S. Patent Applications Serial No. 6–350,222, Serial No. 6–399,257 and Serial No. 6–456,401 all relating Ricin Anti T-Cell Monoclonal Antibody Conjugates. The patent rights in these inventions are being assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84-30885 Filed 11-23-84; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton Textile Products From the People's Republic of China

November 20, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA) under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 27, 1984. For further information contact Jane Corwin, International Trade Specialist (202/377–4212).

Background

A CITA directive establishing import limits for specified categories of cotton, wool and man-made fiber textile products, including Category 347/348, produced or manufactured in the People's Republic of China, and exported during the twelve-month period which began on January 1, 1984, was published in the **Federal Register** on December 22, 1983 (48 FR 56626). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, and following agreement in consultations, carryforward in the amount of 91,798 dozen is being applied to the 1984 agreement year limit for this category. The amount of carryforward used this year will be deducted from the limit established for Category 347/348 in 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 20, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which established levels or restraint for certain specified categories of cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1984.

Effective on November 27, 1984, the directive of December 19, 1983 is hereby further amended to adjust the previously established level of restraint for Category 347/348 to 2,019,547 dozen [1] under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983.[2]

[1] The level has not been adjusted to account for any imports exported after December 31, 1983.

[2] The Agreement provides, in part, that (a) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (b) the specific limits for certain categories may be increased for carryforward, and (c) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30886 Filed 11-23-84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

November 20, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 27, 1984. For further information contact Ann Fields, International Trade Specialist (202) 377–4212.

Background

The Governments of the United States and Mexico have exchanged notes amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as extended, to establish new designated consultation levels for Categories 433, 443, and 604 and amend the specific limits for trousers in Categories 347/348 and 647/648, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1984. The letter published below to the Commissioner of Customs makes the foregoing adjustments under the terms of the amended bilateral agreement. The limits for Category 347/348 and its sublimits are being further adjusted to include flexibility in the form of carryover, partial carryforward and swing, increasing the overall limit to 1,046,392 dozen and each of the sublimits to 629,143 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 20, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 9, 1983, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exporting during 1984.

Effective on November 27, 1984, the directive of December 9, 1983, as amended, is hereby further amended to include the following adjusted restraint limits for the indicated categories:

Category	Adjusted 12-month restraint limits [1]
347/348	1,046,212 dozen of which not more than 629,143 dozen shall be in Category 347 and not more than 629,143 dozen shall be in Category 348.
443	8,000 dozen.
647/648	1,386,200 dozen of which not more than 831,720 dozen shall be in Category 647 and not more than 831,720 dozen shall be in Category 648.

[1] The restraint limits have not been adjusted to account for imports exported after December 31, 1983.

Also effective on November 27, 1984, the directive of December 9, 1983 is further amended to establish the following restraint limits for wool and man-made fiber textiles and textile products in Categories 433 and 604, produced or manufactured in Mexico and exported during 1984:

Category	12-month restraint limit [1]
433	9,000 dozen.
604	3,950,000 pounds of which not more than 1,000,000 pounds shall be in TSUSA 310.5049.

[1] The restraint limits have not been adjusted to account for imports exported after December 31, 1983.

Textile products in Categories 433 and 604 pt.[1] which have been exported to the United States prior to January 1, 1984 shall not be subject to this directive.

Textile products in Categories 433 and 604 pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484 (a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

[1] In Category 604, all T.S.U.S.A. numbers except 310.5049.

exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30883 Filed 11-23-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Establishment; Correction

In FR Doc. 84-27673 appearing at page 41195 in the issue for Friday, October 19, 1984, make the following corrections:

1. On page 41200, first column, under CLASS 7510, Binder, Looseleaf, Three Ring (IB), the second line reading "7510-00-889-3494" should read under "Binder, Looseleaf, Three Ring (SH)".

2. On page 41203, first column, under CLASS 8105, Coin Bags, delete the fifth and sixth line reading "8105-00-NSH-0007 50% of Gov't requirements".

3. On page 41205, third column, under U.S. Postal Service Items, Pocket, Imitation Leather reading "(IB)" should read "(SH)".

4. On page 41209, first column, mid-way down under Smithsonian Institution, third line should read "1111 North Capitol Street, NE.".

5. On page 41209, second column, the tenth line from the bottom, should read "400 7th Street SW., Washington, D.C.".

C. W. Fletcher,

Executive Director.

[FR Doc. 84-30881 Filed 11-23-84; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped..

EFFECTIVE DATE: November 26, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 27, June 29 and July 9, 1984, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 18152, 49 FR 26790 and 49 FR 27969) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and to provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1985:

U.S. Postal Service Items

Dividers, Steel: P.S. Item No. 124-C-114; P.S. Item No. 124-C-234; P.S. Item No. 124-R-54; P.S. Item No. 124-R-114.
(Requirements for USPS Western and Southern Regions only)

SIC 7349

Janitorial Service, United States Mission to the United Nations, 799 United Nations Plaza, New York.

C.W. Fletcher,

Executive Director.

[FR Doc. 84-30853 Filed 11-23-84; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: December 26, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons and opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 5345

Strap, Webbing: 5340-00-286-6895

Class 6515

Bag, Tube Feeding: 6515-00-481-2049

Class 7510

Envelope, Transparent, 7510-00-687-2864
(Requirements for GSA Regions 7, 8, 9 and 10 only)

Class 7930

Cleaning Compound: 7930-00-177-5217, 7930-00-940-7036, 7930-00-958-6033

SIC 7349

Janitorial/Custodial, U.S. Court of Appeals and Post Office, 7th and Mission Street, San Francisco, California

Janitorial/Custodial, Social Security Complex Woodlawn Annex and Supply Buildings 6401 Security Boulevard Baltimore, Maryland

SIC 7389

Commissary Shelf Stocking and Custodial Service Plattsburgh Air Force Base, New York

Commissary Shelf Stocking and Custodial Service Randolph Air Force Base, Texas.

C.W. Fletcher,

Executive Director.

[FR Doc. 84-30852 Filed 11-23-84; 8:45 am]

BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 84-2]

1983 Jukebox Royalty Distribution Proceeding

In accordance with 17 U.S.C. 116(c)(3), the Copyright Royalty Tribunal (Tribunal) declares the existence of a controversy concerning the distribution of the 1983 jukebox royalties.

After examining the claims to 1983 jukebox royalties, voluntary agreements, and motions to distribute of the claimants, the Tribunal has determined to make, partial distribution of the 1983 jukebox royalties on December 20, 1984. The Tribunal has concluded that partial distribution of the jukebox royalties provides an appropriate balance between the mandate of the Copyright Act for prompt distribution of royalties not in controversy and the obligation of the Tribunal to protect the rights of all claimants. The Tribunal is restricting partial distribution to those claimants who have received royalties in previous jukebox royalty distributions. Our partial distribution allocation does not limit or prejudge our disposition of claims in the 1983 proceeding.

It is therefore ordered that Italian Book Corporation receive 95% of their negotiated agreement and that 95% of the remainder of the 1983 royalty fund be distributed to the designated common agent of the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, on December 20, 1984.

The Tribunal subsequently will determine if evidentiary hearings will be conducted in this proceeding.

Dated: November 19, 1984.

Edward W. Ray,

Chairman.

[FR Doc. 84-30812 Filed 11-23-84; 8:45 am]

BILLING CODE 1410-13-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice it hereby given that the Naval Research Advisory Committee (NRAC) Mid-Depth Sea Floor Technology Panel will meet on 13-14 December 1984, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The agenda will include technical briefings on the stragetic implications of exploring mid-depth ocean topography for naval operations. The first session will commence at 9:30 a.m. and terminate at 10:30 a.m. on 13 December 1984. The second session will commence at 10:30 a.m. and terminate at 3:30 p.m. on 13 December 1984. The third and final session will commence at 8:30 a.m. and terminate at 4:15 p.m. on 14 December. The first session on 13 December will be open to the public. The remaining two sessions on 13 and 14 December will be closed to the public.

The purpose of the meeting is to examine the strategic implications of exploring mid-depth ocean topography for naval operations, and the utility of currently demonstrated technology for utilizing sea floor topography. The open session will consist of opening remarks relating to the task of the panel and a discussion of the topics to be studied. The remaining sessions of the meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening the 2nd and 3rd sessions of the meeting. The Secretary of the Navy, therefore, has determined in writing that the public interest requires that the 2nd and 3rd sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number: (202) 696-4870.

Dated: November 19, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-30831 Filed 11-23-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Underwater Systems Center (NUSC) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on 11-12 December, 1984, at the Naval Underwater System Center, Newport, Rhode Island. The agenda will include technical briefings by NUSC departments which will allow the team to make a thorough evaluation of the scientific, technical and engineering health of the activity. Sessions of the meeting will commence at 8:30 A.M. and terminate at 4:30 P.M. on 11 and 12 December 1984. The entire meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NUSC. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. The Secretary of the Navy, therefore, has determined in writing that the public interest requires that the entire meeting be closed to the public because it will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number: (202) 696-4870.

Dated: November 19, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-30832 Filed 11-23-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Compensatory Education Programs; Intent To Compromise Claim

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim.

SUMMARY: Notice is given that the Secretary intends to compromise a claim against the Mississippi Department of Education now pending before the Education Appeal Board, Docket No. 2-(134)-84 (31 U.S.C. 3711; 20 U.S.C. 1234a(f)).

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before January 10, 1985.

ADDRESSES: Comments should be addressed to Ms. Kay Rigling, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4087, FOB-6), Washington, D.C. 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit conducted by the Office of Inspector General in the U.S. Department of Education. The auditors examined programs under Title I of the Elementary

and Secondary Education Act of 1965 (20 U.S.C. 2701 *et seq.*) as administered by the Mississippi Department of Education (SEA) and as implemented by selected local educational agencies (LEAs) during the period from July 1980 through February 1982.

Under Title I, Federal funds were provided to LEAs, through SEAs such as the Mississippi Department of Education, for programs "which contribute[d] particularly to meeting the special educational needs of educationally deprived children" in areas with high concentrations of children from low-income families (20 U.S.C. 2701). Title I funds could be used only to provide supplemental educational services to children who were both educationally deprived and resided in specified low-income areas. SEAs had the responsibility for administering the Title I program. In order to participate in Title I, an SEA had to provide assurances that Title I funds would be used only for projects that met all the Title I requirements and that had been approved by the SEA.

During the course of the audit, the auditors discovered that one LEA—Holmes County—had charged to its Title I project the costs of services that benefited other progarms and cost objectives. For example, the auditors found that the LEA charged a greater percentage of its central office administrative costs to the Title I project than was warranted by the number of Title I personnel comprising the central office staff. Likewise, the LEA charged the total salaries of a central office receptionist and a printer to the Title I project even though they provided services that benefited all central office programs and operations. The auditors also found that the LEA paid an excessive cost for newspapers used in Title I reading classes and that the LEA charged the Title I project for consultant services that primarily benefited the LEA as a whole. Based on these findings, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) notified the SEA in a final determination letter dated September 29, 1983 that the SEA had to repay $44,433 for the misexpenditure of Title I funds by the Holmes County LEA.

In partial resolution of the claim, the Holmes County LEA used local funds to restore $27,144 to the LEA's Fiscal Year 1982 Title I project, thereby satisfying all but $17,289 of the $44,433 claim. The SEA appealed the balance to the Education Appeal Board (EAB), but no proceedings have yet occurred.

To resolve the balance of the claim, the SEA has offered to repay to the Department $10,664. When this amount is added to the $27,144 of local funds that the LEA restored to its Title I project, the SEA and LEA will have account for $37,808 of $44,433, or 85 percent of the original claim.

The Secretary proposes to accept the SEA's offer and to compromise the remaining claim of $17,289 to $10,664. Given the substantial amount that the SEA and LEA will have accounted for, and the cost of litigating the claim through the appeal process, the Secretary has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Assistant Secretary is satisfied that the practice which resulted in the claim has been corrected and will not recur. This proposed compromise will not adversely affect any other audit proceeding currently pending before the EAB.

For further information: The public is invited to comment on the Secretary's intent to compromise this claim. Additional information may be obtained by writing to Ms. Kay Rigling at the address given at the beginning of this notice.

(31 U.S.C. 3711; 20 U.S.C. 1234a(f))

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies and No. 84.012, Educationally Deprived Children—State Administration)

Dated: November 20, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-30873 Filed 11-23-84; 8:45 am]

BILLING CODE 4000-01-M

Law-Related Education Program; Application Notice for New Project for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Application Notice for New Projects for Fiscal Year 1985.

Applications are invited for new projects under the Law-Related Education Program.

Authority for this program is contained in section 583(b)(4) of the Education Consolidation and Improvement Act of 1981 (ECIA), as amended by Pub. L. 98-312.

This program issues awards to State educational agencies, local educational agencies, and other public and nonprofit private agencies, organizations, and institutions.

The purpose of law-related education is to enable non-lawyers, including children, youth, and adults to be more informed citizens concerning the law, the legal process, the legal syatem, and the fundamental principles upon which these are based.

Law-related education may include a variety of learning approaches in subject areas such as: Fundamental legal principles and the values on which they are based; the Bill of Rights and other constitutional law; the role and limits of law in a democratic society both past and present; the Federal, State, and local lawmaking process; the role of law in avoiding and resolving conflicts; development and administration of specific rules of law by Federal, State, or local governments and examination in a general or theoretical way of how rules of governance are developed and administered; the administration of the criminal, civil, and juvenile justice systems; and issues of authority, freedom, enforcement, and punishment.

(20 U.S.C. 3851)

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by January 30, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center. Attention: 84.123, Law-Related Education Program, Washington, D.C. 20202.

An application must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education. If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (a) A private metered postmark; br (b) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

(Approved by OMB under control number 1810-0507)

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center.

Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information and program priorities: Final regulations governing grants under the Law-Related Education Program were published in the **Federal Register** (49 FR 23594) on June 6, 1984. The regulations list three examples of types of projects that can be supported with grant awards. These examples are listed in 34 CFR 241.10(a) through 241.10(c) of the final regulations.

The regulations also permit the Secretary to select one or more of the project types for priority. For Fiscal Year 1985, the Secretary has selected for priority projects that support the institutionalization of existing model law-related education programs in elementary and secondary school classrooms as described in 34 CFR 241.10(a).

In addition to the points awarded under the selection criteria listed in 34 CFR 241.31, the Secretary will award up to 10 points to an application on the basis of the proportion of the proposed project activities that address the selected priority.

Projects supported under this program will be for a period of one year.

Intergovernmental review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsivenes to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States which have established a process, designated a single point of contact, and have selected this program for review:

State

Arizona	New Mexico
Arkansas	New York
California	North Carolina
Connecticut	North Dakota
Delaware	Ohio
District of Columbia	Oklahoma
Florida	Oregon
Hawaii	Pennsylvania
Illinois	South Carolina
Indiana	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Maine	Vermont
Michigan	Virginia
Missouri	Washington
Montana	Wisconsin
Nebraska	Wyoming
Nevada	Northern Mariana Islands
New Hampshire	
New Jersey	

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by April 1, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, 400 Maryland Avenue SW., Washington, D.C. 20202.

(Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available funds: It is expected that $2,000,000 will be available under Law-Related Education for Fiscal Year 1985.

Pursuant to a Congressional directive in the conference report accompanying the Department's Fiscal Year 1985 appropriation act (which is incorporated by reference in the 1985 continuing resolution), the Department plans to use Fiscal Year 1985 Law-Related Education funds to support 1984 projects that have not received the full amount of their funding commitments due to the freeze on Fiscal Year 1984 funds imposed as a result of ongoing litigation in *United States* v. *Board of Education of the City of Chicago*. At such time as the Fiscal Year 1984 funds are released by the District Court, accounting adjustments will be made so that 1985 grants can be awarded using Fiscal Year 1985 funds.

It is estimated that the Department will award 25 grants for Fiscal Year 1985. Funds will be used to support one national project and an estimated twenty-four additional State-wide, regional and system-wide projects.

Approximately 10 percent of the available funds will be reserved for contracts for specific activities in law-related education outside of the grant competition under these regulations. If the Secretary decides not to award any contracts, the 10 percent will be added to the available funds for grants. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be ready for mailing on *December 14, 1984*. The program information package may be obtained by writing to the U.S. Department of Education, Division of Educational Support, Law-Related Education Program, Mail Stop 6264, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any

paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(1) Regulations governing the Law-Related Education Program in 34 CFR Part 241, published in the **Federal Register** on June 6, 1984 (49 FR 23594).

(2) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information, contact the Law-Related Education Program, Division of Educational Support, U.S. Department of Education, Mail Stop 6264, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472–7960.

(20 U.S.C. 3851)

(Catalog of Federal Domestic Assistance No 84.123, Law-Related Education Program)

Dated: November 20, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-30872 Filed 11-23-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Special Services for Disadvantaged Students Program; Application Notice for Noncompeting Continuation Awards for Fiscal Year 1985

Applications are invited for noncompeting continuation awards under the Special Services for Disadvantaged Students Program.

Authority for this program is contained in sections 417A and 417D of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1b)

The Secretary awards grants under this program to institutions of higher education only. The purpose of the award is to allow applicants to carry out projects designed to provide supportive services to disadvantaged students who are pursuing programs of postsecondary education.

Closing date for transmittal of applications: To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by January 18, 1985.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84:042 (Special Services for Disadvantaged Students), Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturdays, Sundays, and Federal holidays.

Available funds: The Department of Education Appropriation Act, 1985, appropriated $174,940,000 for the Special Programs for the Disadvantaged. Of this amount, it is anticipated that $70.3 million will be available for 664 noncompeting continuation awards under the Special Services Program in fiscal year 1985, an increase of 4.5 percent over the fiscal year 1984 allocation. In proposing a fiscal year 1985 budget, grantees are urged to stay within a 4.5 percent increase over their approved fiscal year 1984 budgets.

Application forms: Application forms for noncompeting continuation awards are expected to be ready for mailing no later than November 30, 1984. They are mailed routinely to currently funded projects. If a grantee does not receive the forms by December 14, 1984 the grantee should telephone the Special Services Branch of the Division of Student Services at (202) 245–2165.

Applications must be prepared and submitted in accordance with instructions and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. The Secretary strongly urges that applicants submit only information that is requested.

(Approved under OMB Control Number 1840–0017)

Applicable regulations: Regulations applicable to noncompeting continuation awards are:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78, and especially 34 CFR 75.253; and

(b) Regulations for the Special Services for Disadvantaged Students Program in 34 CFR Part 646.

Further information: For further information contact the Special Services Branch, Division of Student Services, U.S. Department of Education, (L'Enfant Plaza Station, P.O. Box 23772, Washington, D.C. 20026–3772). Telephone: (202) 245–2165.

(20 U.S.C. 1070d, 1070d, 10703–1b)

(Catalog of Federal Domestic Assistance Number: 84.042—Special Services for Disadvantaged Students Program)

Dated: November 19, 1984.

Edward M. Elmendorf,

Asistant Secretary for Postsecondary Education.

[FR Doc. 84-30875 Filed 11-23-84; 8:45 am]

BILLING CODE 4000-01-M

Upward Bound Program; Application Notice for Noncompeting Continuation Awards for Fiscal Year 1985

Applications are invited for noncompeting continuation awards under the Upward Bound Program.

Authority for this program is contained in sections 417A and 417C of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1a)

The Secretary is authorized to make grants under this program to institutions of higher education, public and private agencies and organizations, and, in exceptional cases, to secondary schools.

The purpose of the grant awards is to permit applicants to carry out projects designed to generate in participants the skills and motivation necessary for success in education beyond high school.

Closing date for transmittal of applications: To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by January 18, 1985.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Room 5673, ROB#3, Attention: 84.047 (Upward Bound), Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available funds: The Department of Education Appropriation Act, 1985, appropriated $174,940,000 for the Special Programs for the Disadvantaged. Of that amount, it is anticipated that approximately $73.9 million will be available for noncompeting continuation awards under the Upward Bound Program in fiscal year 1985, a 4.5 percent increase over the fiscal year 1984 allocation. In proposing a fiscal year 1985 budget, grantees are urged to stay within a 4.5 percent increase over their approved fiscal year 1984 budgets.

Application forms: Application forms for noncompeting continuation awards are expected to be ready for mailing no later than December 5, 1984. They are mailed routinely to currently funded projects. If a grantee does not receive the forms by December 19, 1984 the grantee should telephone the Education Outreach Branch of the Division of Student Services at (202) 245–2165.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. The Secretary strongly urges that applicants submit only information that is requested. (OMB No. 1840–0550)

Applicable regulations: Regulations applicable to noncompeting continuation awards are:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78, and especially 34 CFR 75.253; and

(b) Regulations governing the Upward Bound Program in 34 CFR Part 645.

Further information: For further information contact the Education Outreach Branch, Division of Student Services, U.S. Department of Education, Post Office Box 23773, Washington, D.C. 20026–3772. Telephone: (202) 245–2165.

(20 U.S.C. 1070d, 1070d–1a)

(Catalog of Federal Domestic Assistance Number: 84.047—Upward Bound Program)

Dated: November 19, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-30874 Filed 11-23-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER85-114-000]

American Electric Power Service Corp.; Filing

November 19, 1984.

The filing Company submits the following:

Take notice that on November 9, 1984, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Ohio Power Company (OPCO) and agreement dated June 1, 1984 between OPCO and the City of Dover, Ohio (Dover).

Dover is a Municipal Corporation of the State of Ohio and owns and operates an electric utility system in the city of Dover and presently is a patron of American Municipal Power-Ohio, Inc. (AMP-Ohio). AMP-Ohio is a not-for-profit organization existing under the laws of the State of Ohio for the benefit of municipal electric systems in Ohio which are patrons of AMPO-Ohio, including Dover. This Agreement was entered into for the purpose of establishing facilities for the delivery of Power and Energy between OPCO and Dover. The facilities provided for in this agreement will enable Dover to utilize the services, subject to the existing rates, presently in effect between AMP-Ohio and OPCO, due to Dover's standing as a patron of AMP-Ohio.

This agreement does not revise any rates between the parties.

AEP requests an effective date of December 1, 1984, which is the expected completion date of these facilities, or the date of approval or acceptance for filing by the Commission, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the City of Dover, Ohio and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this

filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30764 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-54-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application

November 19, 1984.

Take notice that on October 24, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-54-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for an existing industrial customer, International Paper Company (Industrial Customer), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has instituted a transportation program for various of its existing large industrial customers called the ECOSHARE Plan. Applicant indicates that the ECOSHARE plan was developed as part of a settlement in a general retail rate increase proceeding at the Arkansas Public Service Commission involving Applicant's Rate Schedule No. 4. it is stated that under the ECOSHARE program instead of buying all its plant requirements from Applicant, the customer may purchase spot gas from other suppliers which would be transported by Applicant to the customer's plant. It is further stated that Applicant would continue to sell a substantial part of the plant's gas requirements and that the total volume of gas delivered by Applicant to the plant, including both transported volumes and sales volumes, may not exceed the maximum daily quantity of gas specified in Applicant's Arkansas Public Service Commission Rate Schedule No. 4 service agreement covering the plant. It is said that Applicant under the ECOSHARE progrm has the option to purchase for its own system supply 50 percent of the spot gas arranged for by the large industrials.

Specifically, Applicant proposes to transport on a firm basis natural gas for Industrial Customer from six delivery points in Pope County, Arkansas, two delivery points in Johnson County, Arkansas, three delivery points in Pontotoc County, Oklahoma, and one delivery point in Custer County, Oklahoma, to Industrial Customer's Pine Bluff, Arkansas, industrial plant. Applicant also requests blanket authorization for the addition and deletion of delivery points as necessary. The transportation service for Industrial Customer is proposed for a term ending on May 1, 1987.

Applicant proposes to charge Industrial Customer, $0.3484 per million Btu for gas (i) delivered directly into Applicant's gathering facilities from a well already connected to Applicant's system or (ii) from a well whose production is and continues to be committed to the supply of Applicant's system but which is released temporarily by Applicant so that it can be sold directly to Industrial Customer. Applicant proposes to charge Industrial Customer $0.5338 per million Btu for gas delivered into Applicant's gathering facilities from a well not connected to the gathering system. It is said that these charges are based on the methodology and billing determinants used in designing rates to recover the transmission, storage and gathering costs in Applicant's presently effective FERC Gas Rate Schedule Nos. X-26 and G-2. Applicant indicates that volumes transported under the ECOSHARE Program would mean reduced sales volumes and that Applicant's proposed transportation rates are designed to continue to recover Applicant's unit systemwide transmission, storage and gathering costs associated with transporting a portion of a plant's requirements instead of selling that gas to the plant. It is also indicated that under Applicant's Arkansas Public Service Commission Rate Schedule No. 4, the ECOSHARE transportation service may be terminated unless Applicant's costs are fully recoverable by it and are not required to be credited to Account 191.

Applicant states that the ECOSHARE transportation program offers opportunities to alleviate take-or-pay supply arrangements on its system, while at the same time benefiting the industrial customer involved, the producer involved and the other customers on Applicant's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intevene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30765 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-115-000]

Atlantic City Electric Co.; Filing

November 19, 1984.

The filing Company submits the following:

Take notice that on November 9, 1984, Atlantic City Electric Company (Atlantic) tendered for filing on behalf of the City of Vineland a second Supplemental Agreement dated June 1, 1981, to the original Atlantic City Electric Company-City of Vineland Interconnection Agreement as heretofore amended and supplemented. The primary purpose of the second Supplemental Agreement is to bring the Interconnection Agreement into conformance as nearly as possible with provisions of the Pennsylvania-New Jersey-Maryland Interconnection Agreement to which Atlantic was added as a signatory on June 1, 1981. Included within the Supplemental Agreement are provisions for interest payments on past due amounts, provisions for regulating capacity requirements previously adopted but not yet included, the recognition of an escalation factor to adjust administrative charges under the agreement and to insert references to the PJM Agreement in place of the references to the Philadelphia Electric agreement which terminated on May 31, 1981.

The parties state that no new facilities will be installed nor will existing facilities be modified in connection with these changes. The filing party has requested a waiver of any otherwise applicable Rules and Regulations not already compiled with in order to permit these changes to become effective June 1, 1981.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30767 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-116-000]

Consolidated Edison Co. of New York, Inc.; Filing

November 19, 1984.

The filing Company submits the following:

Take notice that on November 13, 1984, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a supplement (the "Supplement") to its Rate Schedule FERC No. 61, an agreement to provide transmission service to the Connecticut Light and Power Company and Western Massachusetts Electric Company, the companies for the Northeast Utilities system (the "NU Companies"). The Supplement increases the transmission charge from 2.6 mills to 2.7 mills per kilowatthour for interruptible transmission of power and energy purchased by the NU Companies from Pennsylvania Power & Light Company. The Supplement would increase annual revenues from jurisdictional service during Period I by $46,335.80.

Con Edison requests an effective date of September 15, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon the NU Companies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30787 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-113-000]

Florida Power Corp.; Filing

November 19, 1984.

The filing Company submits the following:

Take notice that on November 9, 1984, Florida Power Corporation (Florida Power) tendered for filing Service Schedule X providing for extended economy interchange service between Florida Power and Seminole Electric Cooperative, Inc. Florida Power states that Service Schedule X is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and Seminole Electric Cooperative, Inc. designated as Florida Power's Rate Schedule Ferc No. 97.

Florida Power requests that Service Schedule X be permitted to become effective November 7, 1984, and therefore, requests waiver of the sixty day notice requirement.

Copies of this filing have been served upon Seminole Electric Cooperative, Inc. and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30788 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-64-000]

Gas Gathering Corp.; Application

November 19, 1984.

Take notice that on October 24, 1984, Gas Gathering Corporation (Applicant), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP85-64-000 an application pursuant to section 7(c) of the Natural Gas for permission and approval to abandon a transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on May 5, 1980, the Commission issued a certificate in Docket No. CP79-501 authorizing Applicant to transport up to 2,000 Mcf of natural gas per day on behalf of Transcontinental Gas Pipe Line Corporation (Transco). Applicant states it was authorized to transport gas produced by Energy Corporation of America, Inc., from its Iberville Land Company Well No. 5 in the Happytown Field, St. Martin Parish, Louisiana, to Transco at its Sherburne meter station in Pointe Coupee Parish, Louisiana. Applicant states that the supply of gas from Iberville Land Company Well No. 5 is now depleted to the extent that continuance of service is unwarranted.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person

wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30769 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-65-000]

Gas Gathering Corp.; Application

November 19, 1984.

Take notice that on October 24, 1984, Gas Gathering Corporation (Applicant), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP85-65-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on May 20, 1983, the Commission issued a certificate in Docket No. CP83-90-000 authorizing Applicant to transport up to 5,000 Mcf of natural gas per day, on a best-efforts basis, for United Gas Pipe Line Company (United). Applicant states that it receives gas from Davis Oil Company (Davis) near the latter's St. Martin Land Company Well No. 1 in St. Martin Parish, Louisiana, and redelivers equivalent volumes, less shrinkage, to Transcontinental Gas Pipe Line Corporation at its Sherburne meter station in Pointe Coupee Parish, Louisiana, for United's account. Applicant states that Davis has not delivered any gas for transportation since November of 1983 and it now appears that the supply is depleted to the extent that continuance of service is unwarranted.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30770 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-11-000]

Idaho Power Co.; Application

November 19, 1984.

Take notice that on November 8, 1984, Idaho Power Company (the "Applicant") filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act seeking an Order authorizing the Applicant to (a) finance a portion of the cost of construction of the Applicant's 50% undivided interest in certain pollution control facilities at the North Valmy Power Plant through loan agreements with Humboldt County, Nevada (the "County"), which will provide for the issuance by the County of not to exceed $56,200,000 aggregate principal amount of pollution control revenue bonds and the loan of the proceeds to the Applicant and (b) the assumptioin of liability or guarantor of the principal of, interest on and premium, if any, on the Bonds of the County. The proposed issuance date for the Bonds is on or after December 20, 1984.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 7, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30771 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5334-001]

Joint Ypsilanti Recreation Organization; Application for Approval to Develop Project Lands

November 19, 1984.

Take notice that Joint Ypsilanti Recreation Organization, Licensee for the Ford Lake Project, FERC No. 5334, in Washtenaw County, Michigan, filed on July 12, 1984, an application for authorization to develop certain lands, designated as the North Bay Reclamation Project, located at the upper end of the reservoir adjacent to the inlet of the Huron River near the city of Ypsilanti. The lands involved are proposed to be developed in 3 phases, which includes, among other things, the following:

Phase I: Creating approximately 11.75 acres of wetlands, filling 1.5 acres of islands and shoreline, dredging 8.7 acres of channel area to depths of 9 feet to 12 feet, and constructing three foot bridges between the islands. This phase of the work would require filling and dredging approximately 53,300 cubic yards of material and lowering the impoundment level approximately 5.8 feet. This work is designed to enhance the fish and wildlife habitat, increase shoreline fishing opportunities, and offset the loss of lake surface area resulting from the dredging proposed in phase II.

Phase II: Dredging of approximately 250,000 cubic yards of material from the central area of the North Bay, and constructing a confinement area of approximately 15.5 acres for depositing the dredge spoil. This phase of work would require constructing a containment dike from naturally occurring sand and gravel. This work is designed to create sufficient water depth to increase water oriented activities, such as conoeing, fishing, and sailboating.

Phase III: Constructing an access road and filling approximately 2 acres of land along the north shoreline of the North Bay. This phase of the work is considered to be in the conceptual stage. A study is currently being conducted to assess the feasibility of this improvement and any future impacts on the North Bay.

Correspondence with the Licensee should be directed to: Mr. Kenneth R. Oscarson, Orchard, Hiltz and McCliment, Inc., 34935 Schoolcraft Road, Livonia, Michigan 48150

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1983). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 28, 1984.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 203 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the second paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30772 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-29-000]

Michigan Gas Storage Co.; Request Under Blanket Authorization

November 19, 1984.

Take notice that on October 15, 1984, Michigan Gas Storage Company (Storage Company) 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85-29-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Dow Corning Corporation (Dow) under the certificate issued in Docket No. CP84-451-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Storage Company proposes to provide transportation for up to 4,500 Mcf of gas per day on an interruptible basis pursuant to a transportation agreement dated October 12, 1984, between Storage Company and Dow. Storage Company explains that the term of the authorization as herein sought is from the date automatic authorization expires or such later date as the Commission finds appropriate, through termination of authorization as provided by Subpart F of Part 157 of the Regulations or termination of the transportation agreement, whichever occurs first.

Storage Company states it would receive the gas from Panhandle Eastern Pipe Line Company (Panhandle) at various existing points of interconnection between Panhandle and Storage Company (provided that such points of interconnection are downstream from Storage Company's South Lyon measuring station in Oakland County, Michigan) or such other points as the parties might hereafter agree to. It is explained that the gas would then be redelivered to Consumers Power Company (Consumers) at existing interconnections between the facilities of Consumers and Storage Company. It is submitted that Dow is the end-use customer of Consumers which is supplied by Storage Company and that the end-use of the gas is for boiler fuel at Dow's Midland Plant.

In addition, Storage Company requests flexible authority to add or delete sources of supply or receipt/delivery points. Any changes in source or receipt/delivery points are intended to be on behalf of the same end-user at the same end-user location and within the maximum daily and annual volumes authorized in this docket, it is submitted.

Furthermore, Storage Company agrees that within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points to file all pertinent information required.

It is stated that the transportation rate for this service is based upon Storage Company's T-3 tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30773 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-79-000]

Michigan Gas Storage Co.; Request Under Blanket Authorization

November 19, 1984.

Take notice that on October 31, 1984, Michigan Gas Storage Company (Michigan Gas), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85-79-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR

157.205) for authorization to transport on an interruptible basis up to 1,965 Mcf of gas per day for Simpson Paper Company (Simpson) under the certificate issued in Docket No. CP84-451-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Michigan Gas states that pursuant to a gas transportation agreement dated October 30, 1984, between Simpson and Michigan Gas that it receives gas from Panhandle Eastern Pipe Line Company (Panhandle) at various interconnections in Oakland County, Michigan, and transports and redelivers such gas to Consumers Power Company (Consumers) for the ultimate delivery to Simpson for its end use at its Vicksburg, Michigan, paper plant.

Michigan Gas proposes to charge Simpson 3.68 cents per million Btu of gas transported pursuant to Michigan Gas' Rate Schedule T-3. Michigan Gas states it would not charge an added incentive charge for the proposed transportation service.

Additionally, Michigan Gas requests flexible authority to add and/or delete sources of gas supply and agrees to certain filing requirements in the implementation of such flexible authority. Michigan Gas asserts that any changes in gas suppliers would be on behalf of the same end-user at the same location and would be within the maximum daily volume authorized.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30774 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-71-000]

Montana-Dakota Utilities Co.; Request Under Blanket Authorization

November 19, 1984.

Take notice that on October 29, 1984, Montana-Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP85-71-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain sales taps under the authorization issued in Docket No. CP83-1-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

MDU proposes to abandon five sales taps located on its natural gas transmission system in Carbon and Yellowstone Counties, Montana. However, MDU states that service would continue to be provided to the affected customers through MDU's existing distribution system in Laurel, Montana, which is being expanded to serve additional customers. It is stated that the abandonment of the sales taps would have no effect upon existing rates and no impact upon MDU's peak-day and annual requirements. MDU further states that since such sales taps would be abandoned on its existing transmission right-of-way, there would be no significant adverse impact on the environment.

Any person or the commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30775 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-117-000]

Montaup Electric Co.; Filing

November 19, 1984.

The filing Company submits the following:

Take notice that on November 13, 1984, Montaup Electric Company (Montaup) tendered for filing an amendment of the Unit Sales Contract between Montaup and Newport Electric Corporation (Newport) for the sale of capacity and energy from Canal Unit No. 2 (FERC Rate Schedule No. 71). The amendment extends this unit sale for a two-year period beginning November 1, 1984. Newport's entitlement percentage for the first year will be 1.7123% (10 mw) and 0.8562% (5 mw) for the second year. The capacity charge is $4.48 per kilowatt per month. Attachment A provides the cost justification for this figure.

Montaup requests an effective date of November 1, 1984, and therefore requests waiver of the Commission's notice requirements.

According to Montaup copies of the filing have been served upon the Massachusetts Department of Public Utilities and Newport.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30776 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-118-000]

Montaup Electric Co.; Filing

November 19, 1984.

The filing Company submits the following:

Take notice that on November 13, 1984, Montaup Electric Company (Montaup) tendered for filing an amendment to the May 1, 1983 contract between Montaup and Newport Electric Corporation (Newport) for the sale of

Contract Demand Services (FERC Rate Schedule No. 76). By mutual agreement, Contract Demand Service for the 1984-85 power year beginning November 1, 1984 has been reduced from 45 mw to 40 mw.

Montaup requests an effective date of November 1, 1984, and therefore requests waiver of the Commission's notice requirements.

According to Montaup copies of the filing have been served upon the Massachusetts Department of Public Utilities and Newport.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30777 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-119-000]

Montaup Electric Co.; Filing

November 19, 1984.

The filing Company submits the following:

Take notice that on November 13, 1984, Montaup Electric Company (Montaup) tendered for filing a contract between Montaup and the Massachusetts Municipal Wholesale Electric Company (MMWEC) for the sale of capacity and energy from Canal Unit No. 2. The term of the contract is for two years beginning November 1, 1984 and ending October 31, 1986. MMWEC's entitlement percentage will be as follows:

Capability period	Percent entitlement
Nov. 1, 1984 to Apr. 30, 1985	8.562 (50 mw)
May 1, 1985 to Oct. 31, 1985	5.137 (30 mw)
Nov. 1, 1985 to Apr. 30, [illegible]	8.562 (50 mw)
May 1, 1986 to Apr. 31, 1986	5.137 (30 mw)

Montaup requests an effective date of November 1, 1984, and therefore requests waiver of the Commission's notice requirements.

According to Montaup copies of the filing have been served upon the Massachusetts Department of Public Utilities and MMWEC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30778 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-120-000]

Montaup Electric Co.; Filing

November 19, 1984.

The filing Company submits the following:

Take notice that on November 13, 1984, Montaup Electric Company (Montaup) tendered for filing a contract between Montaup and Hingham Municipal Lighting Plant (Hingham) for the sale of capacity and energy from Canal Unit No. 2. The term of the contract is for one year beginning November 1, 1984 and ending October 31, 1985. Hingham's entitlement percentage will be 0.3425% (2 mw).

Montaup requests an effective date of November 1, 1984, and therefore requests waiver of the Commission's notice requirements.

According to Montaup copies of the filing have been served upon the Massachusetts Department of Public Utilities and Hingham.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30779 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-56-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

November 19, 1984.

Take notice that on October 24, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-56-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Cosden Oil and Chemical Company (Cosden), under the certificate issued in Docket No. CP82-401-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the proposed transportation service would be performed pursuant to a transportation agreement (agreement), dated August 10, 1984. The agreement provides for the transportation of up to 3,000 Mcf of natural gas per day on behalf of Cosden for use at its oil refinery located near Big Spring, Texas, it is submitted.

Northern states it would transport the volumes from an interconnection between Northern and Colorado Interstate Gas Company, located in Moore County, Texas, to an interconnection between Northern and Wester Transmission Company, located in Martin County, Texas.

Northern states further it would charge Cosden a transportation rate of 13.63 cents per Mcf of gas, an initial added incentive rate of 2.5 cents per Mcf subject to increase, and the Gas Research Institute funding unit of 1.25 cents per Mcf.

Northern proposed to provide this transportation service for a term of not to extend beyond June 30, 1985.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30780 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-61-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

November 19, 1984

Take notice that on October 25, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-61-000 an application, as supplemented October 29, 1984, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to modify a small volume measuring station used for sales to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), to accommodate increased sales to a rural customer of Peoples, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern requests authority to modify one delivery point for the delivery of gas to Peoples for resale to Henry Gaalswyck, who operates a farm in Martin County, Minnesota. Northern indicates that Mr. Gaalswyck has expanded his crop drying operations and requires an increase in peak day supplies from 200 Mcf of gas to 400 Mcf. Northern states that to accommodate this increase, it would be required to upgrade the measuring facilities from a Rockwell 5000 meter to a Rockwell 10000 meter which would permit increased hourly deliveries from 8 Mcf of gas to 24 Mcf. Northern also indicates that the $2,914 facility modification would be financed by Peoples making to Northern a contribution in aid of construction for the full $2,914 cost.

Northern also indicates that the increased volumes would not change Peoples' existing entitlement from Northern.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30781 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-62-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

November 19, 1984.

Take notice that on October 25, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-62-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to add an additional point of delivery of natural gas to Wisconsin Gas Company (Wisconsin Gas) under authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to construct and operate tap and other appurtenant facilities in Monroe, Wisconsin, for the purpose of establishing a new delivery point ot serve Ft. McCoy, a U.S. Army reserve training center. Ft. McCoy has contracted with Wisconsin Gas, a current customer of Northern, for natural gas service to accommodate its residential and office heating needs, it is stated. Northern states that the estimated peak day and annual gas requirements of Ft. McCoy in the fifth year would be 518 Mcf and 58,000 Mcf, respectively. These quantities would be served within Wisconsin Gas' firm entitlement and would be delivered according to Northern's Rate Schedule CD-1, it is asserted. Northern estimated that the cost to construct the proposed facilities would be $35,937.00.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30782 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-72-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

November 19, 1984.

Take notice that on October 24, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-72-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign certain volumes of natural gas from one delivery point to another delivery point for its customer, Northern States Power Company (NSP), under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to reassign 25,600 Mcf per day of the contract demand gas volumes currently delivered to NSP at the St. Paul, Minnesota, Town Border Station to another existing delivering point to NSP at the Lake Elmo, Minnesota, Town Border Station (Lake Elmo TBS). Applicant states that it presently transports, by displacement, up to 25,600 Mcf of vaporized liquefied natural gas (LNG) per day for NSP which is delivered at the Lake Elmo TBS pursuant to Applicant's currently effective Rate Schedule T-13. Applicant further states that by implementing the proposed reassignment it would seek Commission authorization to cancel the NSP transportation service under Rate Schedule T-13. It is stated that the reassigned volumes would be used to replace the discontinued vaporized LNG transportation service, thereby saving NSP transportation charges associated with the transportation service.

It is indicated that the total contract demand to be delivered to NSP would not change under the subject proposal and that the proposal would not change Applicant's peak day and annual deliveries. It is further indicated that no new facilities would be required for the proposal.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30783 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-80-000]

Northern Natural Gas Co. Division of InterNorth, Inc.; Request Under Blanket Authorization

November 19, 1984.

Take notice that on December 31, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-80-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point to accommodate natural gas delivery to Wisconsin Power & Light Company (WPL) under its certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes the construction and operation of one large volume measuring station for its utility customer, WPL. It is stated that the WPL would use volumes delivered through the measuring station to serve the Badger Ordnance Ammunitions plant (Badger Ordnance) and the Bluff View Acres housing addition both located in Sauk County, Wisconsin. Northern estimates the cost to construct the subject facilities is $159,720.

It is stated that Badger Ordnance manufactures powder for ammunition and would use the natural gas for space heating and process gas. The estimated peak day and annual gas requirements of Badger Ordnance for the fifth year are 960 Mcf and 100,000 Mcf, respectively. It is further stated that Bluff View Acres would use the gas for residential heating. The estimated peak day and annual gas requirements of Bluff View Acres for the fifth year are 150 Mcf and 16,000 Mcf, respectively.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to ber authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30784 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-105-000]

United Gas Pipe Line Co.; Application

November 19, 1984.

Take notice that on November 11, 1984, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP 85-105-000 an application pursuant to section 7(c) of the Natural gas Act for a certificate of public convenience and necessity authorizing Applicant to institute a special sales program to alleviate take-or-pay exposure and provide rate relief for the customers on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that over the past years, it has experienced a decline in its sales volume, with no upturn currently in sight. It is said that from 1,062,000,000 Mcf of natural gas in 1981, the sales level fell to 865,000,000 Mcf in 1982 and to 586,000,000 Mcf in 1983. Applicant's projections show a further drop in sales to 550,000,000 Mcf in 1984. It is asserted that this decline in sales is attributable to a variety of factors, including (1) reduced demand due to economic conditions, weather conditions, and conservation; (2) reduced purchases by interstate pipeline customers as they reduce purchases from Applicant and thus reduce their own take-or-pay exposures; and (3) increased competition from other gas suppliers.

It is said that the drop in Applicant's sales has an adverse impact on Applicant and its customers because of increased take-or-pay exposure and that as Applicant's sales decline, its exposure under take-or-pay provisions of existing producer contracts increases. Applicant estimates that its take-or-pay exposure for 1982 through 1984, after giving effect to various settlements, is likely to be in excess of $900 million.

Applicant contends that the loss of markets that Applicant has experienced is only partially reflected in its currently effective rates determined by a settlement recently approved by the Commission in Docket No. RP82-57. The settlement, it is said, established rates for two periods. Applicant states for the first settlement rate period, October 1, 1982, through September 30, 1983, rates

were calculated on an imputed sales volume of 700,000,000 Mcf, whereas actual sales were 640,000,000 Mcf. Applicant states further that the same imputed sales level underlies rates for the second rate period, an open-ended period that commenced October 1, 1983, but the worsening trend of Applicant's sales suggests that Applicant would fall even further behind in recovering its costs. Applicant asserts that its Form No. 16 for September 1984 shows a sales volume of 562,000,000 Mcf of gas for the 12 months ended August 31, 1984, and a projected sales volume of 523,000,000 Mcf for the 12 months ended August 31, 1985.

Applicant, it is said, has undertaken a number of measures to counteract the drop in its sales and the resulting increase in its take-or-pay exposure and shortfall in its cost recovery. Applicant states it has been involved in ongoing negotiations with producers to reach accommodation on price, take-or-pay and rate-of-take provisions in its gas purchase contracts. Applicant states further that as part of this effort, it has entered into arrangements with some of its suppliers allowing them to sell excess deliverability to alternative markets on a short-term basis, in connection with which Applicant had provided transportation service. It is said that during August 1984, such arrangements authorized producers to sell over 9,000,000 Mcf of gas otherwise under contract to Applicant. It is further said that Applicant has undertaken steps to cut its costs, with the reductions in such costs being passed on to its customers in the form of lower rates. Applicant asserts, for example, that over the past 18 months, Applicant has reduced its Rate Schedule DG–S demand charge from $11.28 to $6.13, a reduction of 46 percent, and its Rate Schedule DG–S commodity rate from $4.04 per Mcf to $3.31 per Mcf, a reduction of 18 percent. Applicant asserts further that effective June 1, 1984, Applicant instituted a special discount rate for its jurisdictional sales and during August 1984 sold 1,900,000 Mcf of gas pursuant to this rate. It is said that even with these measures, total throughput on Applicant's system continues to be depressed, and its take-or-pay exposure continues to mount.

Applicant states that in order to address the problem further, Applicant needs a program which authorizes applicant to compete in the markets that the Commission has detemined to be marginal and permits Applicant the rate flexibility to do so. It is said that such a program and the additional sales that Applicant has the opportunity to make under it are necessary in order for Applicant to be in a position to offer its suppliers the increased levels of purchases that appear necessary to obtain meaningful reductions in its purchased gas costs. It is further said that the need for action is particularly urgent at this time in light of the approaching decontrol of large quantities of wellhead supplies on January 1, 1985, and the proliferation of producer special marketing programs, which have increased the level of competition for gas markets.

Applicant states that it seeks authority to institute a special sales program (SSP) to remain in effect through December 31, 1985, aimed at increasing Applicant's sales and enhancing its competitiveness in the gas market. The program, it is said, is designed to benefit Applicant's existing customers both by providing take-or-pay relief and by providing revenue credits to Account No. 191 for gas sold under the program. It is said that the program would also provide a means of ensuring higher takes to producers, allowing Applicant to maintain and acquire gas supplies for its customers' future use.

Applicant states that the major elements of the program are blanket authorization to make interruptible on-system and off-system salel subject to certain market and rate conditions. Applicant states that in formulating the program, Applicant has incorporated features from the Commission's orders authorizing off-system sales and producer special marketing programs on such points as eligible markets, rates, and reporting requirements, all as set out below.

A. *Eligible Markets.* Applicant proposes to make SSP sales to customers on its system to serve requirements in excess of any customer's currently authorized maximum daily quantity (MDQ). It is maintained that under existing programs, such as its special discount rate, Applicant already has substantial price flexibility in providing service up to a customer's MDQ and that the SSP would enable Applicant to meet any incremental demand of the customers on its system.

For off-system sales, Applicant proposes to sell gas under the SSP to the marginal markets to which the Commission has authorized sales under producer special marketing programs. Thus, subject to the conditions described below, Applicant seeks authority to sell gas to any willing interstate pipeline, Hinshaw pipeline, local distribution company or end-user that desires to purchase gas under the program. Applicant states that as with the special marketing programs already authorized by the Commission, sales to distributors or end-users that are served directly or indirectly by any pipeline (provided that no tariff provision prevents the sale) would be limited to new loads not previously served by natural gas or to requirements that are being or would otherwise be served by

(1) Alternative fuels,

(2) Producer direct sales arrangements,

(3) Gas made available under industrial sales programs or other similar sales programs,

(4) Gas sold by pipelines under special discount rates or in off-system sales,

(5) Propane or synthetic natural gas, or

(6) Interruptible sales service schedules.

Applicant states that in its orders on special marketing programs, the Commission has determined that the above-described markets are open to competition and that sales to such markets should be permitted on a self-implementing basis.

B. *Rates and Revenue Crediting.* Applicant proposes to charge negotiated rates for its sales under the SSP, subject to revenue crediting for all sales and to a ceiling rate for sales for resale. To the extent Applicant incurs third-party transportation charges in delivering gas to an SSP customer, it proposes to add such charges to the sales rate to that customer. In addition, Applicant proposes to collect the Gas Research Institute surcharge in connection with all sales to which such surcharge is applicable.

Applicant states that it is not proposing a minimum rate for its SSP sales, but instead, it has designed the program so that SSP sales are assumed to recover Applicant's actual cost of gas for the month in which the sale is made. Applicant proposes to exclude from the total gas costs used to compute Account No. 191 an amount computed by multiplying the actual weighted average cost of gas for the month by the volume of SSP sales. It is asserted that this has the effect of assuring that the SSP customers, which are expected to be predominantly customers that were not previously served by Applicant and that may not remain on the system after the expiration of this short-term program, would neither receive the benefit of the negative surcharges built up during prior periods nor contribute to creation of surcharges affecting Applicant's future rates to traditional customers. Under this procedure, Applicant states, it alone would be at risk for any underrecovery of gas costs. In addition, Applicant proposes to credit to a non-interest-bearing subaccount of Account No. 191 five cents per Mcf of SSP sales. Applicant contends that as a result of this procedure, the cost of gas sold under the SSP would be recovered solely from SSP customers, and Applicant's existing customers would receive future reductions in rates equivalent to five cents for each Mcf of SSP sales.

Applicant states that the revenue crediting is intended to be a fixed obligation no matter what the price in a particular SSP transaction and that Applicant would not knowingly enter into a SSP contract at a rate that is less than its costs, *i.e.*, weighted average cost of gas plus variable costs plus the cost of crediting to Account No. 191 five cents per Mcf of gas sold hereunder. However, Applicant submits it does intend to be as competitive as the circumstances permit. Applicant states that today's market conditions might require Applicant in certain instances to offer a fixed rate over a given period of time which when viewed after the fact may prove to be below its costs and that if this would occur, only Applicant's shareholders would bear the consequences. It is maintained that there would be no reduction in the benefits Applicant's existing customers realize under the program. Applicant submits that on the other hand, to the extent Applicant is able to generate revenues under the program, net of crediting and recovery of its variable costs Applicant assumed in its rate settlement, which is based on an imputed sales volume of 700,000,000 Mcf of gas per year.

For sales for resale under the SSP, Applicant proposes a ceiling rate equivalent to its rate computed at its system average load factor for sales to large distribution companies in the rate zone in which delivery to the customer is made by Applicant. Applicant states that this ceiling is meant to assure that within the framework of negotiated rates under the SSP, there is a regulated maximum for sales to resale customers.

C. *Transportation.* Applicant intends to rely upon existing programs under section 7 of the Natural Gas Act and section 311 of the Natural Gas Policy Act of 1978 (NGPA) for the transportation of SSP gas by third parties to customers that are located off Applicant's system. To the extent that transportation to any SSP customer may be restricted because of the system-supply condition under Part 284 of the Commission's regulations, Applicant asks that such condition be waived so that SSP gas may be moved to any eligible purchaser.

D. *Facilities.* Applicant does not seek authorization to construct or operate any additional facilities in this application.

E. *Incremental Pricing.* So that it may compete on an equal footing with sales by producers under special marketing programs, Applicant asks that it be granted a limited-term exemption from the incremental pricing rules of Title II of the NGPA with regard to sales under the SSP. It is asserted that such an exemption is necessary to prevent or alleviate special hardship, inequity or unfair distribution of burdens and that absent an exemption, Applicant would be placed at an unfair disadvantage in competing with procedures for sales to certain customers in marginal gas markets. It is submitted that as a result, Applicant and its customers would be denied the rate and take-or-pay benefits otherwise available under the SSP.

F. *Reporting Requirements.* Applicant proposes to submit monthly reports containing information similar to that required for the monthly reports under special marketing programs to keep the Commission and interested parties advised of progress under SSP. Applicant would include in such reports the name of each purchaser under the program, the volumes of gas sold in each transaction, the price for each sale, a description of the eligibility requirements applicable to each sale, and a description of the transportation arrangements for delivering the gas to the purchaser. In addition, should the Commission deem it beneficial, Applicant states that it would participate in periodic status conferences with the Commission Staff and interested parties to review the operation of the program.

Any person desiring to be heard or to protest with reference to said application should on or before December 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure hearing provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30788 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-183-001]

Texasgulf, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 19, 1984.

On October 25, 1984, Texasgulf, Inc., (Applicant), P.O. Box 30321, Raleigh, North Carolina, 27622–0321, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Phosphate Operation plant on N.C. Highway 306, six miles north of Aurora, North Carolina. The facility will consist of 15 sulphuric acid plant waste heat recovery units and an extraction steam turbine-generator. Extracted steam will be used to evaporate water from 30% phosphoric acid to produce 54% phosphoric acid. The net electric power production capacity of the facility will be 40 MW. The primary energy source will be waste heat from sulphuric acid plant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C.

20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30785 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-463-001]

TGS Associates; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 19, 1984.

On October 24, 1984, TGS Associates, (Applicant), 1419 Broadway, Suite 415, Oakland, California 94612 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 24 MW Dixie Central Power project will be located in Churchill County, Nevada. The facility will use a flash steam turbine, or a binary cycle or both to generate electric power from a liquid dominated geothermal resource as a primary energy source. The facility will also include the construction of a 225-miles, 230 kV transmission line that will connect the Dixie Central project in Dixie Valley Nevada to Southern California Edison's Bishop Central substation at Bishop, California. This transmission line will be shared with TGS Associates' Spring Creek Power Project. Docket No. QF84-462-001.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street , N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed wihin 30 days after the date of publication of this notice and must be served on the applicant. Proteats will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30786 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-462-001]

TGS Associates; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 19, 1984.

On October 24, 1984, TSG Associates, (Applicant), 1419 Broadway, Suite 415, Oakland, California, 94612 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 24 MW Spring Creek Power project will be located in Churchill County, Nevada. The facility will use a flash steam turbine, or a binary cycle or both to generate electric power from a liquid dominated geothermal resource as a primary energy source. The facility will also include the construction of a 225-miles, 230 kV transmission line that will connect the Spring Creek project in Dixie Valley Nevada to Southern California Edison's Bishop Central substation at Bishop, California. This transmission line will be shared with TSG Associates' Dixie Central Power Project, Docket No. QF84-463-001.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30786 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-53-000]

Union Village Hydroelectric Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 19, 1984.

On October 22, 1984, Union Village Hydroelectric Company (Applicant), of 26 State Street, Montpelier, Vermont 05602 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 1000 kW hydroelectric facility (P-7208) will be located on the Ompompanoosuc River near Thetford, Vermont.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30788 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-128-001]

Alabama-Tennessee Natural Gas Co.; Revised Compliance Filing

November 20, 1984.

Take notice that on November 15, 1984, Alabama Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing Substitute Forty-Fifth Revised Sheet No. 3-A as part of its FPC Gas Tariff, Third Revised Volume No. 1. This tariff sheet is proposed to become effective September 14, 1984, and Alabama-Tennessee requests that there be granted any necessary waivers of the Commission's Regulations to accomplish this proposed effective date.

Alabama-Tennessee states that the purpose of the revised tariff sheet is to adjust Alabama-Tennessee's rates as a result of a correction made to the Base Tariff Rates in Alabama-Tennessee's filing on September 13, 1984, in Docket No. RP84-128-000.

Substitute Forty-Fifth Revised Sheet No. 3-A provides for the following rates:

Rate schedule	Rates after current adjustment (cents)
G-1	
Demand	
D_1	6.60
D_2	04.94
Commodity	DB.54
Gas	350.10
SG-1	
Commodity	20.50
Gas	391.30
I-1	
Commodity	16.64
Gas	568.81

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further pleading. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30931 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-76-003]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 20, 1984.

Take notice that on November 9, 1984, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) submitted revised tariff sheets designated as follows:

Substitute First Revised Sheet Nos. 4, 7, 9, 13, 17 and 21

Such tariff sheets are proposed to become effective as of October 31, 1984. Alabama-Tennessee requests a waiver of any Commission Regulations required to make the above-designated tariff sheets effective as of October 31, 1984, which is the date after the expiration of the suspension of the original tariff sheets by the Commission's order of May 30, 1984

Alabama-Tennessee states that such substitute revised tariff sheets are submitted pursuant to the requirements of the Commission's order of September 12, 1984 and the letter order issued October 31, 1984 by the Director, Office of Pipeline and Producer Regulation, requiring the elimination of specified variable costs from the minimum bill provisions of the tariff.

Alabama-Tennessee states that copies of this filing have been served upon its jurisdictional customers and State Commissions of Alabama, Mississippi, and Tennessee.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 27, 1984. Protests should be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30932 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-48-002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 20, 1984.

Take notice that on November 14, 1984, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Twenty-Third Revised Sheet No. 7, to be effective November 1, 1984, to reflect the elimination of Order No. 399 refunds and support for the Gas Arctic Northern Border refund in compliance with the Commission's order issued on October 31, 1984.

Copies of this filing were served upon ANR's customers and interested state commissions

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30933 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-32-003]

Colorado Interstate Gas Co.; Proposed Change in Rates Under Purchased Gas Adjustment Clause Provision

November 20, 1984.

Take notice that Colorado Interstate Gas Company (CIG), on November 13, 1984, tendered for filing proposed changes in its FERC Gas Tariff, Original

Volume No. 1. The proposed changes would increase the demand rate under CIG's jurisdictional rate schedules by 44 cents per Mcf and decrease the commodity rate by 4.19 cents per Mcf. This filing reflects a net annual decrease in purchased gas costs of approximately $.5 million.

The filing was made to enable CIG to reflect in its rates, pursuant to Section 21 of CIG's FERC Gas Tariff, Original Volume No. 1, net decreased purchased gas costs it will experience as the result of rate filings made by certain of its pipeline suppliers.

CIG requests that the instant filing be made effective on December 1, 1984.

Copies of the filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30834 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-138-001]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

November 20, 1984.

Take notice that on November 13, 1984 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing one (1) substitute revised gas tariff sheet to its FERC Gas Tariff First Revised Volume No. 1, to become effective September 13, 1984:

Substitute Thirty-fourth Revised Sheet No. 4

Lawrenceburg states that it originally filed Thirty-fourth Revised Sheet No. 16 in order to comply with Commission Order No. 380 issued May 25, 1984 which required that purchased gas costs be stated separately in all pipeline sales tariffs. In that initial filing Lawrenceburg apparently went beyond the requirements of Order No. 380 by separating its Rate Schedule CDS-1 demand charge into "Purchased Gas" and "Other" costs components. The instant filing was made, according to Lawrenceburg for the sole purpose of reflecting Rate Schedule CDS-1 Demand Charges as a single line item.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30835 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-16-003, RP84-21-004, RP85-15-000, and RP84-86-001]

Locust Ridge Gas Co.; Motion for Withdrawal

November 20, 1984.

Take notice that on November 15, 1984, Locust Ridge Gas Company (Locust Ridge) tendered for filing a Motion For Withdrawal Of Certain Pleading Pending Submission Of Stipulation And Agreement. Locust Ridge states that on November 13, 1984, an agreement in principle was reached between Locust Ridge and the Federal Energy Regulatory Commission Staff which would resolve all issues in Docket Nos. RP84-86-000 and RP85-15-000.

Specifically, Locust Ridge moves to withdraw the following:

(1) The October 10, 1984 "Motion by Locust Ridge Gas Company For Reconsideration Of Order And Request For Stay Pending Action On This Motion" concerning the October 15, 1984 Order Denying Rehearing;

(2) Alternate B Tariff Sheets in the October 25, 1984 Compliance Filing of Revised Tariff Sheets in Docket No. RP84-86; and

(3) The October 29, 1984 rate filing in Docket No. RP85-15-000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30836 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-25-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 20, 1984.

Take notice that Northern Border Pipeline Company (Northern Border) on November 16, 1984, tendered for filing the following to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 105.

Northern Border indicates that the instant filing is made to establish a new depreciation methodology for its pipeline system. It is stated that the implementation of the proposed change will result in levelizing the transportation charges through October 31, 1996, to Northern Natural Gas Company, Division of InterNorth, Inc., Panhandle Eastern Pipe Line Company and United Gas Pipe Line Company (U.S. Shippers) under Original Volume No. 1 of its FERC Gas Tariff. It is projected that the levelization proposal will reduce the cost of service allocated among the U.S. Shippers by approximately $83 million during the contract year from November 1, 1984, to October 31, 1985.

Northern Border bases its filing upon applications made by Pan-Alberta Gas, Ltd. with the National Energy Board of Canada, by Northwest Alaskan Pipeline Company with the Economic Regulatory Administration and the Commission and by Northern Border with the Commission. If approved, these filings would extend the life of the export, import, sales and transportation authorizations through October 1996, as well as the obligation of the U.S. Shippers under their Service Agreements with Northern Border.

In view of these filings, it is stated that the levelization approach will reasonably match system utilization and the obligations of its U.S. Shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30837 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-5-001]

Northwest Alaskan Pipeline Co.; Tariff Changes

November 20, 1984.

Take notice that on November 16, 1984, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-0900, tendered for filing in Docket No. RP85-5-001 the following revised tariff sheet:

Substitute Fourteenth Revised Sheet No. 5
Substitute Fifteenth Revised Sheet No. 5

Northwest Alaskan states that it has been provided with revised estimates of the demand charges from its Canadian supplier, Pan-Alberta Gas Ltd. ("Pan-Alberta") affecting four gas sales tariffs with its purchasers, Northern Natural Gas Company, a Division of InterNorth Inc. ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle"), United Gas Pipe Line Company ("United"), and Pacific Interstate Transmission Company ("PIT"). The revised estimate included in Substitute Fourteenth Revised Sheet No. 5 provides for a reduction in the cost previously included in Fourteenth Revised Sheet No. 5. Northwest Alaskan requested that the Commission grant any waiver of its regulations that it may deem necessary in order that Substitute Fourteenth Revised Sheet No. 5 may become effective November 1, 1984, as proposed. The revised estimate of demand charges included in Substitute Fifteenth Revised Sheet No. 5 are being submitted for filing and acceptance pursuant to the amended purchase agreements between Northern, Panhandle, United and PIT, and Rate Schedules X-1, X-2, X-3 and X-4 to become effective January 1, 1985.

A copy of this filing is being served on Northwest Alaskan's customers. Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30838 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-24-000]

Pacific Interstate Offshore Co.; Proposed Change in Rate

November 20, 1984.

Take notice that Pacific Interstate Offshore Company (PIOC) on November 15, 1984, tendered for filing as part of its FERC Gas Tariff, Volume No. 1, First Revised Sheet No. 4.

The reason for submittal of the second year rate filing is to comply with Commission order dated June 21, 1983, requiring, in part, PIOC "to file revised rates to be effective during the second and third year of the initial three-year period, which revised rates shall reflect in the sales rate for such years the latest available deliverability estimates". This proposed change is submitted in compliance therewith.

Copies of the filing were served upon the Company's sole purchaser under its FERC Gas Tariff, Pacific Lighting Gas Supply Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before Nov. 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30839 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-137-012]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

November 20, 1984.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on November 15, 1984, tendered for filing Substitute Thirty-Third Revised Sheet No. 52 to its FERC Gas Tariff, Original Volume No. 2. The sheet is proposed to be effective on November 1, 1984 and was filed to comply with the Commission Order dated October 18, 1984 which accepted Transco's Advance Payment Rate Reduction filed September 17, 1984 subject to Transco's revising the originally filed tariff sheet to reflect the correct purchased gas cost. Transco states that since this portion of the subject tariff sheet refers to charges which are excluded in computing the customer's transportation rate, the change being made in the instant filing has no impact on the rate Transco originally proposed to charge in its September 17, 1984 filing.

Transco further states that copies of the instant filing have been mailed to each of its customers, and State Commissions and other parties to Docket No. RP83-137.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30940 Filed 11-23-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER80-259-004]

Kansas Gas and Electric Co.; Notice of Compliance Filing

November 19, 1984.

Take notice that on October 29, 1984, Kansas Gas and Electric Company (KG&E) submitted for filing its revised compliance filing.

Included in KG&E's revised compliance filing are the following:

(1) Compliance cost of service.

(2) Workpapers for the cost of service.

(3) Rate design derivation for Rate Schedule PWM.

(4) Rate design derivation for Service Schedule A.

(5) Revenue calculations for the 12 months ended December 31, 1980 (Period II) for full requirements municipals (Rate Schedule PWM) and the partial requirements municipals (Service Schedule A).

(6) Rate Schedule PWM-1080 and the Fuel Adjustment Clause Rider FAPWM-500.

(7) Compliance Amendments and the Fuel Adjustment Clause Rider FAGM-580.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, on or before December 4, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 84-30525 Filed 11-23-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-687-000]

Pacific Power and Light Co.; Order Accepting Rate for Filing, Subject to Refund or Adjustment, Ordering Summary Disposition and Directing Adjustments and Refunds, Noting Intervention, and Establishing Hearing Procedures

(Issued: November 16, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On September 18, 1984, PacifiCorp, doing business as Pacific Power and Light Company (PP&L), tendered for filing a revised Appendix 1 for the State of Montana,[1] together with the Bonneville Power Administration's (BPA's) determination of PP&L's Average System Cost (ASC) for the State of Montana and a summary of the company's objections to BPA's adjustments to its ASC, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)[2] and the Commission's implementing regulations. The filing, as adjusted by BPA in accordance with the final ASC methodology,[3] reflects an increase in PP&L's ASC for exchange sales in the State of Montana for the exchange period beginning on February 28, 1984. PP&L has contested several of BPA's adjustments to PP&L's proposed ASC rate, including: the development of the footnote 13 labor ratio; the functionalization of regulatory commission expenses, stockholder expenses, and the Washington generation tax; the determination of the effective date; and three alleged computational errors.

Notice of PP&L's filing was published in the **Federal Register** with comments due on or before October 9, 1984. 45 FR 38,352. BPA filed a timely notice of intervention which raises no specific issues.[4]

Discussion

Under Rule 214(a)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), BPA's timely notice of intervention serves to make it a party to this proceeding.

PP&L asserts that BPA improperly adjusted PP&L's footnote 13 labor ratio to assign general labor costs to distribution/other. Our preliminary review indicates that BPA correctly implemented the ASC methodology. Footnote 13 stipulates that the wage and salary ratio will be based on the ratios of production, transmission, and distribution/other functions included in the test period. However, PP&L introduced an intermediate step in calculating footnote 13 by first allocating general labor costs to production, transmission, and distribution using footnote 24. BPA adjusted footnote 13 to allocate general labor costs directly to distribution/other. In PP&L's prior ASC docket, Docket No. ER84-622-000, 29 FERC ¶ 61,082 (1984), the Commission determined that the introduction of an intermediate step in developing footnote 13 was inconsistent with the ASC methodology. Accordingly, we shall deny PP&L's adjustment to the footnote 13 labor ratio.

PP&L objects to BPA's functionalization of regulatory commission expenses entirely to distribution/other, stating that the bulk of the company's regulatory commission expenses at the retail level relate to its production and transmission system. PP&L initially functionalized regulatory commission expenses using a combination of direct analysis and footnote 13 (which allocates costs on the basis of labor ratios). PP&L states, however, that it now supports the use of footnote 24 (which allocates costs on the basis of operations and maintenance expenses and plant ratios). The ASC methodology requires that commission expenses be functionalized in accordance with footnote 19, which assigns all regulatory expenses to distribution/other, unless the utility demonstrates that a different treatment is appropriate. In functionalizing all of PP&L's regulatory expenses to distribution/other, BPA stated that PP&L had failed to demonstrate that any regulatory expenses were allocable to production or transmission. The functionalization of regulatory expenses is an outstanding issue in several ASC proceedings pending before the Commission, which involve Pacific Northwest utilities other than PP&L.[5] We will therefore also set this issue for hearing with respect to PP&L.

PP&L objects to BPA's exclusion of stockholder expenses on the basis that these expenses are not related to "resources" and, therefore, are not includable in the exchange. PP&L asserts that stockholder expenses are incurred in keeping the investor informed concerning the company's financial condition, the current course of events, and the future prospects of the company. PP&L contends that these expenditures ensure that potential funds are available to build new plant and, consequently, are resource-related costs. This issue parallels that raised in Docket No. ER84-622-000, where the Commission determined that BPA's exclusion of stockholder expenses from PP&L's ASC was improper because such costs are incurred to help maintain the utility's stability and health and thus relate to all of the operating functions of the utility. Accordingly, PP&L will be directed to revise its ASC in this docket to include stockholder expenses and BPA will be ordered to reimburse PP&L for the difference between the rate, as amended here, and the rate as adjusted by BPA.

PP&L objects to BPA's functionalization of the Washington generation tax to distribution/other. BPA determined that the generation tax is actually the Montana portion of the company's Washington Business and Occupational Tax which has always been excluded from the ASC. PP&L, however, states that the tax is based on the value of energy generated in Washington for export through its transmission system and that the tax should be functionalized as a production-related cost. The tax issue presented here is identical to the tax issue which was set for hearing in *Puget Sound Power & Light Company*, Docket No. ER82-448-000, *et al.* We shall therefore order that the Washington generation tax issue be set for hearing.

PP&L objects to BPA's determination that the effective date for payment under the proposed rate should be February 28, 1984. The Montana Public Service Commission established an effective date of February 6, 1984, for the retail rates which generated the ASC rate in this proceeding. PP&L states that the revised retail tariff sheets which it filed with the Montana Commission were to be "effective February 6, 1984, with meter readings on and after February 24, 1984." PP&L filed its ASC with BPA on February 28, 1984. The ASC methodology and the contracts executed by BPA require that a utility file its revised ASC with BPA within five working days following the commencement of an exchange period.[6]

PP&L apparently believes that the five day deadline in the ASC is triggered by the meter reading rate, rather than the effective date established by the state commission. We find no merit to PP&L's argument. The February 6, 1984, effective date was explicitly set by the state commission and meters read by PP&L on February 24, 1984, necessarily reflected consumption prior to February 24. State commissions often permit utilities to refer to meter reading dates as well as effective dates as an administrative convenience to avoid the necessity of prorating a bill whose consumption spans two rate periods.[7] This is no way makes the date which has been used for convenient billing implementation the effective date of the rate. The Commission finds that BPA appropriately determined that PP&L's submittal of the revised ASC was untimely, and, in accordance with the ASC methodology, correctly set the effective date as the date the untimely filing was made, February 28, 1984.[8] We, therefore, shall deny PP&L's request to adjust the effective date for its ASC rate for the State of Montana.

Finally, PP&L alleges that BPA made three computational errors in developing the BPA-adjusted ASC rate. Our review confirms that BPA erred: (1) In its calculation of intangible plant pursuant to BPA's revised footnote 24; (2) in its refunctionalization of Account No. 931 to reflect BPA's revised footnote 24; and (3) in its addition in deriving the unamortized leasehold balances on Schedule 1. The combined impact of these errors excluded about $13,000 in allowable test year ASC costs. We shall direct PP&L to correct these errors and require BPA to reimburse PP&L accordingly.

The Commission orders:

(A) PP&L's requests for adjustments of BPA's determination regarding the development of the footnote 13 labor ratio and the effective date of the ASC rate are hereby denied.

(B) PP&L is hereby directed to revise its ASC to correct BPA's computational errors and to functionalize stockholder expenses pursuant to footnote 24, as discussed in the body of this order. PP&L shall file such revised ASC within thirty (30) days of the date of ths order.

(C) BPA is hereby ordered to reimburse PP&L for the difference between the filed ASC rate and the rate as revised to reflect the summary disposition directed above, plus accrued interest, within thirty (30) days of the date on which PP&L files its revised ASC.

PP&L's revised ASC rate is hereby accepted for filing, as adjusted by summary disposition, to become effective as of February 28, 1984, subject to refund or adjustment.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 5 and 9 of the Northwest Power Act and section 402(a) of the Department of Energy Organization Act of 1978, and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act and the Northwest Power Act (18 CFR, Chapter I), a public hearing shall be held for the limited purpose of considering PP&L's objections to BPA's treatment of regulatory commission expenses and its Washington generation tax.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure. The presiding administrative law judge shall transmit with his recommended decision the record to the Joint State Board convened in the Commission's July 25, 1984 order (28 FERC ¶ 61,143).

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Pacific Power & Light Company (Docket No. ER84-687-000) Rate Schedule Designation

Designation and Description

Supplement No. 37 to Supplement No. 3 to Pacific Power & Light Company/Bonneville Power Administration Service Agreement under Pacific Northwest Electric Power Planning and Conservation Act FERC Electric Tariff Original Volume No. 1 (Supersedes Supplement No. 30 to Supplement No. 3)—Revised ASC for Montana Jurisdiction with BPA Report

[FR Doc. 84-30928 Filed 11-23-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP85-26-000 and CP85-45-000]

Texas Gas Transmission Corp. and ANR Pipeline Co.; Requests Under Blanket Authorization

November 19, 1984.

Take notice that on Octoer 12, 1984, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in

[1] *See* Attachment for rate schedule designation

[2] 16 U.S.C. 839.

[3] Docket No. RM81-41-000, Order No. 337, Sales of Electric Power to Bonneville Power Administration, Methodology and Filing Requirements, 48 FR 46,970 (October 17, 1983)

[4] Although not reiterated in BPA's notice of intervention, BPA's position is effectively reflected in its report on, and adjustments to, PP&L's proposed ASC rate.

[5] *See, e.g., Puget Sound Power and Light Company*, Docket No. ER84-196-000; *Montana Power Company*, Docket No. ER84-26-000; and *Idaho Power Company*, Docket No. ER83-712-000.

[6] An exchange period is defined as the period of time during which a particular set of the utility's retail rate schedules are in effect.

[7] In this proceeding, for example, all readings from February 24, 1984, are billed at the new rate without proration for any consumption which might have occurred prior to February 6, 1984.

[8] Under the ASCE methodology, PP&L could have requested that BPA excuse the untimely filing on the basis that delay was unavoidable. However, PP&L did not attempt to make such a showing either with BPA or in its objections filed in the instant docket.

Docket No. CP85-36-000 and that on October 18, 1984, as supplemented on October 29, 1984 ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48423, filed in Docket No. CP85-45-000 reqnests pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Vulcan Chemicals, a division of Vulcan Materials Company (Vulcan), under the certificates issued in Docket Nos. CP82-407-000 (Texas Gas) and CP82-480-000 (ANR), all as more fully set forth in the requests which are on file with the Commission and open to public inspection.

Texas Gas and ANR, hereinafter jointly referred to as Applicants, indicate that by assignment dated February 14, 1984, Vulcan has acquired the rights of Seagull Louisiana Intrastate Pipeline Company (SLIPCO) to purchase gas from Sandefer Oil and Gas, Inc., Aikman Petroleum, Inc. and Snyder Partners (Producers) for use as boiler fuel for process steam and other uses at Vulcan's Geismar, Louisiana, plant. It is further indicated by Applicants that SLIPCO entered into a December 23, 1983, gas purchase contract with the Producers. In order for Vulcan to use the gas at its Geismar plant, Applicants herein propose to transport 5,000 Mcf of gas per day and up to 1,825,000 Mcf of gas per year on behalf of Vulcan.

Specifically, Texas Gas proposes to transport gas on behalf of Vulcan pursuant to the terms of an April 25, 1984, transportation agreement which provides for Texas Gas to receive the gas for the account of Vulcan at a proposed point of interconnection between Texas Gas and SLIPCO in Iberia Parish, Louisiana, to a point of interconnection between Texas Gas and Texas Gas Exploration Corporation's processing plant near Eunice, Louisiana, for further transportation. It is explained that Texas Gas would transport the gas on behalf of Vulcan for a term extending to June 30, 1985, or until the expiration of the term of any experimental transportation program set up by the Commission in Order No. 234-B. Texas Gas would charge Vulcan the rate provided in Texas Gas' Rate Schedule T-SL/Z-SL as filed with the Commission for the proposed service, it is stated. The proposed transportation service would be rendered through the use of Texas Gas' existing facilities and would not require the construction of any new facilities, it is further stated.

ANR proposes to transport gas on behalf of Vulcan pursuant to the terms of an August 22, 1984, transportation agreement. ANR proposes to receive the gas from Texas Gas at a point of existing interconnection of the systems of ANR and Texas Gas near Eunice and to deliver equivalent volumes of gas to Acadian Gas Pipeline system (Acadian) for Vulcan's account at an existing interconnection between ANR and Acadian near Franklin, Louisiana. ANR states that it would charge Vulcan 5.1 cents per dt equivalent for all gas tendered to ANR and delivered to Acadian for Vulcan's account; it is further stated that this rate is based on ANR's Rate Schedule EUT-1 on file in ANR's FERC Gas Tariff. It is indicated that no facilities would be constructed to provide the transportation service.

Applicants further indicate that Acadian and Bayou Industrial Gas Corporation would render further transportation service for Vulcan. In addition, Applicants indicate that they would undertake certain filing requirements to implement their requests for "flexible authority" as to sources of gas and/or receipt and delivery points. Specifically, Applicants propose to file, within 30 days of the addition or deletion of any gas suppliers and/or any receipt/delivery points, the following information:

1. A copy of the gas purchase contracts between the seller and Vulcan;

2. A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price;

3. A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

4. A statement that the gas is not committed or dedicated within the meaning of NGPA Section 2(18);

5. The location of the receipt/delivery points being added or deleted. For deletions provide the name of the producer/supplier;

6. Where an intermediary participates in the transaction between the seller and Vulcan, the information required by Section 157.209(c)(2)(ix) of the Commission's Regulations; and

7. The identity of any other pipeline involved in the transportation.

In addition, ANR states that it would file any amendment to its transportation agreement with Vulcan adding or deleting points of receipt or points of delivery.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to either request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the particular request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30827 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-36-000]

Texas Gas Exploration Corp; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

November 19, 1984.

Take notice that on November 9, 1984, Texas Gas Exploration Corporation (TGEC) of P.O. Box 4328, Houston, Texas 77210-4326, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. Sections. 717(c) and 717(f), and Part 157 of the Federal Energy Regulatory Commission's Regulation, 18 CFR 157, requesting that the Commission issue a Blanket Limited-Term Certificate of Public Convenience and Necessity authorizing Applicant to conduct a short term spot sales marketing program called the TGEC Special Marketing Transactions Program (SMART). The certificate would: (1) Authorize the sale of natural gas by Applicant for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in SMART; and (5) confer pre-granted abandonment authorization for the transportation service under the requested certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Under SMART, Applicant will sell on a spot basis natural gas qualifying for the secs. 102, 103, 107 and 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3433. Authorization is requested to sell contractually committed gas only.

Applicant will fully comply with the uniform conditions set forth in the *Order Amending Certificates of Public Convenience and Necessity, Extending Limited-Term Abandonments and Establishing Procedures* issued September 26, 1984, in Docket No. CI83-269-000, *et al.*

Applicant claims that SMART will further the Commission's objectives in approving regulatory authorization for special marketing programs utilizing spot sales by: (1) Recapturing markets lost to alternative energy sources and encouraging the development of new natural gas markets and reserves; (2) retention of existing natural gas markets; (3) promoting competitive prices for gas while controlling the detrimental impact such competition may have on established markets; and (4) assuring that gas sold under SMART is equally accessible to all pipelines and potential customers.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before November 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30828 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-623-000 etc.]

Western Gas Interstate Co. and Public Service Company of New Mexico; Change of Time for Informal Technical Conference

November 19, 1984.

In the matter of Western Gas Interstate Company, Docket Nos. CP84-623-000 and Public Service Company of New Mexico, Docket Nos. CP84-679-000, CP84-679-001, CP84-680-000, CP84-681-000, CP84-682-000, and CP84-683-000.

Take notice that the informal, technical conference previously scheduled for 10:00 a.m. on November 27, 1984 in the above-captioned matter to discuss various aspects of the proposals submitted by Western Gas Interstate Company and by Public Service Company of New Mexico will be convened at 11:00 a.m. on that day. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

All interested parties and the Commission Staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene or Notice of Intervention in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

For further information contact Kenneth L. Glick / Robert A. Wolfe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-5597.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30829 Filed 11-23-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2723-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street SW., Washington, D.C. 20460, telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Pesticides Programs

- Title: EDB Products: Claim for Indemnification and Request for Federal Disposal (EPA #1231).

Abstract: EPA is requesting that holders of suspended EDB pesticide products file claim forms for indemnification and Federal disposal. EPA will use the information to document the claimants' requests for indemnification.

Respondents: Holders of suspended EDB pesticide products.

- Title: Pesticides Report for Pesticide-Producing Establishments (EPA #0160).

Abstract: EPA requires manufacturers of pesticide products, ingredients and devices to register with the Agency and provide an annual report on the types and amounts of pesticides produced. The Agency uses this information for regulatory oversight.

Respondents: Manufacturers of pesticide products.

* * * * *

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street SW., Washington, D.C. 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, D.C. 20503.

Dated: November 16, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-30835 Filed 11-23-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51546; FRL-2723-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of eighteen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 85–130, 85–131, 85–132 and 85–133—February 6, 1985.
PMN 85–134—February 10, 1985.
PMN 85–135, 85–136, 85–137, 85–138, 85–139 and 85–140—February 11, 1985.
PMN 85–141, 85–142, 85–143, 85–144, 85–145, 85–146 and 85–147—February 12, 1985.

Written comments by:

PMN 85–130, 85–131, 85–132 and 85–133—January 7, 1985.
PMN 85–134—January 11, 1985.
PMN 85–135, 85–136, 85–137, 85–138, 85–139 and 85–140—January 12, 1985.
PMN 85–141, 85–142, 85–143, 85–144, 85–145, 85–146 and 85–147. January 13, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51546]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460 (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 85–130

Manufacturer. Synthron, Incorporated.
Chemical. (G) Tetrabromobisphenol A—aromatic tertiary amine salt.
Use/Production. (S) Industrial catalyst and latent co-hardener for epoxy resin molding powders, powder coating and epoxy sealants and adhesives. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 3 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. At .2%=3 kg/batch released to water. Disposal by publicly owned treatment works (POTW) and biological holding pond.

PMN 85–131

Manufacturer. Synthron, Incorporated.
Chemical. (G) Tetrabromobisphenl A—aromatic tertiary amine salt.
Use-Production. (S) Industrial catalyst and latent co-hardener for epoxy resin molding powers, power coating and epoxy sealant and adhesives. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 3 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. at .2%=3 kg/batch released to water. Disposal by POTW and biological holding pond.

PMN 85–132

Manufacturer. Confidential.
Chemical. (G) Organosilicone copolymer.
Use/Production. (S) Silicone gum for production of silicone rubber and silicone gel for production of electronic potting material. Prod. range: Confidential.
Toxicity Data. Acute oral: (Male and female) >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Mild, Eye—Moderate.
Exposure. Manufacture and processing: dermal, a total of 17 workers.
Environmental Release/Disposal. 0.5 to 1.0 kg and 1 to 2 quart released. Disposal by incineration and landfill.

PMN 85–133

Manufacturer. Ethyl Corporation.
Chemical. (G) Aliphatic olefin.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. No data submitted.
Environmental Release/Disposal. Confidential.

PMN 85–134

Manufacturer. Confidential.
Chemical. (S) Further clarification needed.
Use/Production. (G) Automobile tire manufacturer. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 85–135

Manufacturer. Ashland Chemical Company.
Chemical. (G) Substituted cyclopentadiene.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–136

Manufacturer. Confidential.
Chemical. (G) Substituted alpihatic terminated poly (dimethylsiloxane).
Use/Production. (G) component of formulations for open, non-dispersive use. Prod. range: 10,000–25,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 20 workers.
Environmental Release/Disposal. 0.25 to 2.0 kg released to land. Disposal by landfill.

PMN 85–137

Importer. Ciba-Geigy Corporation.
Chemical. (G) Polyamic acid ester.
Use/Import. (G) Contained use, electronic insulation. Import range: Confidential.
Toxicity Data. Acute oral: (Male and female) >2,500 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames Test: Non-mutagenic.
Exposure. Processing: dermal.
Environmental Release/Disposal. No release.

PMN 85–138

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted titanocene.
Use/Import. (G) Contained use, electronic insulation. Import range: Confidential.
Toxicity Data. Acute oral: (Male and female) >5,000 mg/kg.
Exposure. Processing: dermal.
Environmental Release/Disposal. No release.

PMN 85–139

Manufacturer. Confidential.
Chemical. (G) Complex polyester.

Use/Production. (S) Industrial resin used as binder in an industrial topcoat finish. Prod. range: 5,000–8,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 19 workers, up to 4 hrs/da, up to 7 da/yr.
Environmental Release/Disposal. 5 to 16 kg/batch released to land. Disposal by incineration and approved landfill.

PMN 85–140

Manufacturer. Confidential.
Chemical. (G) Functional copolymer of styrene with acrylate and methacrylate monomers.
Use/Production. (G) Industrial coating polymer resin. Prod. range: 100,000–200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 38 workers, up to 8 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. 5 to 95 kg/batch released to land. Disposal by incineration and approved landfill.

PMN 85–141

Manufacturer. Confidential.
Chemical. (G) Polyester acrylate.
Use/Production. (G) UV-curable resin for clear finishes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

PMN 85–142

Manufacturer. Confidential.
Chemical. (G) Aromatic epoxy ester.
Use/Production. (G) UV-curable resin for clear finishes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

PMN 85–143

Importer. Confidential.
Chemical. (G) Iron complex of a substituted phenyl azo.
Use/Import. (S) Dye intermediate. Import range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Processing: dermal, a total of 1 worker, up to 1 hr/day, up to 2 da/yr.
Environmental Release/Disposal. No release.

PMN 85–144

Manufacturer. Confidential.
Chemical. (G) Salt of substituted butyl acetate.
Use/Production. (G) Consumer article component—contained use. Prod. range: 10 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: dermal, a total of 11 workers, <1 hr/day, up to 30 da/yr.
Environmental Release/Disposal. Less than 0.02 kg released to water. Disposal by POTW.

PMN 85–145

Manufacturer. Confidential.
Chemical. (G) Substituted pyridinium salt.
Use/Production. (G) Consumer article component—contained use. Prod. range: 15,000–20,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: dermal, a total of 31 workers, <1 hr/day, to <250 da/yr.
Environmental Release/Disposal. Less than 5.00 kg released to water with less than 2.50 kg to land. Disposal by POTW and approved licensed chemical landfill.

PMN 85–146

Manufacturer. Confidential.
Chemical. (G) Biphenyl,3,3'-dichloro-4-(substituted azo)-4'-((((phenylamino)carbonyl)2-oxoprop-1-yl)azo)-.
Use/Production. (G) Open—non-dispersive. Prod. range: 3,000–3,600 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: a total of 12 workers, up to 2 hrs/day, up to 15 da/yr.
Environmental Release/Disposal. Less than 1 lb/batch released to water. Disposal by on site NPDES biological treatment facility.

PMN 85–147

Manufacturer. Confidential.
Chemical. (G) Biphenyl,3,3'-dichloro-4-(substituted azo)-4'-((((phenylamino)carbonyl)2-oxoprop-1-yl)azo)-.
Use/Production. (G) Open—non-dispersive. Prod. range: 3,000–3,600 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: a total of 12 workers, up to 2 hrs/day, up to 15 da/yr.
Environmental Release/Disposal. Less than 1 lb/batch released to water. Disposal by on site NPDES biological treatment facility.

Dated: November 19, 1984.

Linda A. Travers,
Acting Director, Information Management Division.

[FR Doc. 84–30636 Filed 11–23–84; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–59176; FRL–2723–5]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: December 11, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–59176]" and the specific TME number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–4201, 401 M Street SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 85–5

Close of Review Period. December 28, 1984.

Manufacturer. Confidential.

Chemical. (G) Oxazolidine.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. Acute oral: Rate—3,730 mg/kg, Mouse—>3,200 mg/kg; Acute dermal: Rabbit—5.04 mL/kg, Guinea pig—>20 mL/kg; Irritation: Skin—Moderate, Eye—Moderate; Inhalation: >145 parts per million ppm/6h.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

TME 85–7

Close of Review Period. December 29, 1984.

Manufacturer. Phillips Petroleum Company.

Chemical. (G) A titanium complex compound.

Use/Production. (S) Used as a plastic manufacturing catalyst. Prod. range: Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 4 workers, up to 8 hrs/shift.

Environmental Release/Disposal. Release to water. Disposal by incineration, landfill and wastewater treatment works.

Dated: November 19, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–30837 Filed 11–23–84; 8:45 am]

BILLING CODE 6560–50–M

[A–6–FRL–2723–7]

Region 6; Approval of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. *PSD–TX–627*—Phillips Chemical Company; Echo Carbon Black plant located off Highway 1130, approximately one mile northeast of Orange, Orange County, Texas; this permit authorizes the modification of the plant by the installation of two 63 MW Btu/hr reactor gas fired boilers and a 10 MW steam electric generator: issued on July 3, 1984.

2. *PSD–TX–454M–1*—Dal-Tex Cement Company; coal-fired cement manufacturing plant located approximately 2 miles northeast of Midlothian, Ellis County, Texas; PSD–TX–454M-1 modifies PSD–TX–454 to: (1) Raise the allowable NO_x emission limitation from 200 lbs/hr to 1090 lbs/hr; (2) reduce the SO_2 emissions from 1085 lbs/hr and 4040 tons/yr to 693 lbs/hr and 2580 tons/yr for the kiln stack with raw mill running and from 1808 lbs/hr and 1190 tons/yr to 1155 lbs/hr and 759 tons/yr for the kiln stack with raw mill down; and (3) in conjunction with the above SO_2 emission reduction, a new special provision was added to limit the sulfur content of the raw material used in clinker products to a maximum of 1.25% by weight measured as sulfur trioxide; issued on July 12, 1984.

3. *PSD–LA–515*—Air Products and Chemicals, Inc.; chemical plant located in the Michoud Industrial Park off IH–510 in New Orleans, Orleans Parish, Louisiana; this permit authorizes the construction of a combustion gas turbine-waste heat boiler cogeneration facility at the existing plant; issued on July 20, 1984.

4. *PSD–LA–519*—Air Products and Chemicals, Inc.; this permit authorizes the construction of a SYNGAS plant to be located near Geismar, Ascension Parish, Louisiana: issued on July 20, 1984.

5. *PSD–TX–489*—International Paper Company; pulp and paper mill located on FM Road 3129, approximately 15 miles south of Texarkana, Cass County, Texas; this permit authorizes the modification of the No. 1 boiler by adding coal firing capability; issued on July 27, 1984.

6. *PSD–LA–177M–1*—Southwestern Electric Power Company; coal-fired steam electric generating facility located on Highway 84, approximately ½ mile southwest of Naborton, DeSoto Parish, Louisiana; PSD–LA–117M–1 modifies PSD–LA–117 by changing the emission monitoring procedures; issued on August 1, 1984.

7. *PSD–TX–494M–1*—Mid Plains Pipeline Company Inc.; natural gas plant located on U.S. Highway 84, approximately 10 miles northwest of Post, Garza County, Texas; PSD–TX–494M–1 modifies PSD–TX–494 to: (1) Increase the throughput from 1500 MCFD to 2850 MCFD, and (2) install two additional compressors and one generator with a total engine horsepower of 650; issued on August 30, 1984.

8. *PSD–LA–524*—Placid Oil Company; Black Lake Field, Compressor Station A, located off Louisiana Highway 1226, approximately 5 miles southwest of Goldonna, Natchitoches Parish, Louisiana; this permit authorizes the installation of a 4000 HP compressor engine at Station A; issued on September 7, 1984.

9. *PSD–LA–525*—Placid Oil Company; Black Lake Field, Compressor Station B, located off Louisiana Highway 1226, approximately 7 miles southwest of Goldonna, Natchitoches Parish, Louisiana; this permit authorizes the installation of a 4000 HP compressor engine at Station B; issued on September 7, 1984.

10. *PSD–LA–526*—Placid Oil Company; Black Lake Field, Compressor Station C, located off Louisiana Highway 1226, approximately 8 miles southwest of Goldonna, Natchitoches Parish, Louisiana; the permit authorizes the installation of a 4000 HP compressor engine at Station C; issued on September 7, 1984.

11. *PSD–LA–291S–1*—Vista Chemicals Company (formerly owned by Conoco); a linear alkyl benzene facility located off the Houston River Road in Westlake, Calcasieu Parish, Louisiana; PSD–LA–291S–1 modifies and supersedes PSD–LA–291 to allow the company to fire fuel oil and increase the firing rate of two heaters; issued on September 13, 1984.

12. *PSD–LA–523*—BASF Wyandotte Corporation; chemical production facility located on the east bank of the Mississippi River in Geismar, Ascension Parish, Louisiana; this permit authorizes the construction of a combined cycle combustion gas turbine-waste heat boiler cogeneration facility at the existing plant; issued on September 13, 1984.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these permits is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals within 60 day of (date of publication of notice). Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Documents pertaining to these permits are available for public inspection upon request during regular business hours at the following location: Environmental Protection Agency, Region 6, Air and Waste Management Division, 1201 Elm Street, InterFirst Two Building, Dallas, Texas 75270.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Dated: November 13, 1984.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 84–30841 Filed 11–23–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Requirements Approved by OMB

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, Agency Clearance Officer, (202) 632–7513.

OMB No. 3060–0019

Title: Application for a Radio Station License or Modification Thereof Under Part 23 or 25
Form No.: FCC 403

The approval on FCC 403 has been extended through 9/30/87. The December 1983 edition with the previous expiration date of 9/30/84 will remain in use until updated forms are available.

OMB No. 3060–0029

Title: Application for New Broadcast Station License (Commercial or Noncommercial)
Form No.: FCC 302

A revised application form FCC 302 has been approved for use through 9/30/87. The August 1984 edition with an OMB expiration date of 5/31/85 will remain in use until revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

OMB No. 3060–0034

Title: Application for Construction Permit for Noncommercial Educational Broadcast Station
Form No.: FCC 340

A revised application form FCC 340 has been approved for use through 9/30/87. The January 1983 edition with an OMB expiration date of 9/30/85 will remain in use until revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

OMB No. 3060–0059

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference
Form No.: FCC 740

A revised statement form FCC 740 has been approved for use through 10/31/87. The current edition of the form is dated October 1984 and was implemented effective November 1, 1984. All previous editions are obsolete.

OMB No. 3060–0090

Title: Registration of Canadian Radio Station Licensee and Application for Permit to Operate in the United States
Form No.: FCC 410

The approval on FCC 410 has been extended through 9/30/87. The May 1982 edition with the previous expiration date of 9/30/84 will remain in use until updated forms are available.

Willian J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–30892 Filed 11–23–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket Nos. 84–1030, et al; File Nos. BRT–840522KH, et al]

Enigma Corp., U.S.A. Communications Division, et al; Hearing Designation Order

In the matter of Applications of

Enigma Corporation, U.S.A. Communications Division.	MM Docket No. 84–1030, File No. BPCT–840522KH.
Horizon Community Broadcasters, Ltd.	MM Docket No. 84–1031, File No. BPCT–840710KG.
Inter American Broadcasting Company.	MM Docket No. 84–1032, File No. BPCT–840711KE.
Victory Media, Inc	MM Docket No. 84–1033, File No. BPCT–840711KF.
Johnson Broadcasting, Inc	MM Docket No. 84–1034, File No. BPCT–840711KI.
Louise Brunson	MM Docket No. 84–1035, File No. BPCT–840711KO.

For Construction Permit for New Television Station, Katy, Texas.

Adopted: October 24, 1984.
Released: November 5, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 51, Katy, Texas.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Since we have not received a determination from the Federal Aviation Administration that the proposed tower height and location of each of the applicants would not consitute a hazard to air navigation, an issue regarding this matter will be specified.

4. The information supplied by Enigma Corporation, U.S.A. Communications Division (Enigma) for the tower height above ground level and above mean sea level does not agree with the information submitted to the Federal Aviation Administration. Enigma will be required to submit a clarifying amendment.

5. Section II, Item 3(a), FCC Form 301, inquires whether the applicant is in compliance with the provisions of section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments. Enigma's response indicates that it may not be in compliance with section 310 of the Act. Enigma will be required to submit clarification of its response to the presiding Administrative Law Judge within 20 days after this Order is released.

6. Section V–C, Item 15 FCC Form 301, requires the prediction of coverage as prescribed in § 73.684 of the Commission's Rules. Enigma's contour distances are not calculated in accordance with § 73.684. For example, the application indicates a Grade B distance of 50 miles with a maximum effective radiated power (ERP) of 55kW and heights above average radial elevation of 586 to 601 feet. Use of the § 73.684 procedure would result in a Grade B contour of about 27 miles. Further, the contour map submitted as Exhibit E–1 in response to V–C, Item 10 does not show complete contours and does not show a scale of miles. Finally, the HAAT given in V–C, Item 5 (721 feet) is inconsistent with the 8 radial heights given in V–C, Item 15 (586 to 601

feet). Accordingly, Enigma will be required to submit an amendment to the presiding Administrative Law Judge within 20 days after this Order is released.

7. Since grant of Enigma's application would constitute a major environmental action as defined by § 1.1305(a) of the Commission's Rules, Enigma is required to submit the environmental impact information described in § 1.1311. Accordingly, Enigma will be required to file, within 20 days of release of this Order, its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Television Branch, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

8. The proposed antenna for Horizon is to be mounted on the tower of AM radio station KEYH, Fort Bend, Texas. Consequently, any grant of a construction permit to Horizon will be conditioned to ensure that KEYH's radiation pattern is not adversely affected by the construction of the proposed station. We further note with respect to Horizon's application, that the coordinates submitted for Station KEYH are different from the coordinates we have in our records for KEYH. Accordingly, Horizon will be required to file a correcting amendment.

9. Louise Brunson's application indicates, in response to Section II, Item 5(a), FCC Form 301, that the applicant is a general partnership, but Table I, Section II, page 2, of the Form shows that Louise Brunson is a 51% general partner and that information on the "limited partners" would be supplied at a later date. Thus, it cannot be determined whether the applicant is a geneal partnership or a limited partnership. If it is a general partnership, Section II, Item 5(a), FCC Form 301, requires that all information be furnished for all the general partners. If it is a limited partnership, § 73.3514(a) of the Commission's Rules requires the applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 55 R.R. 2d 1484 (1984), the Commission stated that, henceforth, limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and "if the limited partner is not involved in any material respect in the business or operation of the station." *Id.* at 1485. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Ms. Brunson can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributed interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1490. Accordingly, Ms. Brunson will be required either to state that the limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interests.

10. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. We have no evidence that Louise Brunson has published the required local notice. To remedy this deficiency, Ms. Brunson will be required to file a certification of compliance with the presiding Administrative Law Judge within 20 days after this Order is released.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory findings that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. If a final environmental impact statement is issued with respect to Enigma Corporation, U.S.A. Communications Division which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment.

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That Enigma Corporation, U.S.A. Communications Division shall submit a clarification of its response to Section II, Item 3(a), FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

14. It is further ordered, That Enigma Corporation, U.S.A. Communications Division shall submit appropriate amendments or clarifications as required by paragraphs 4 & 6, *supra*, to the presiding Administrative Law Judge within 20 days after this Order is released.

15. It is further ordered, That Horizon Community Broadcasters, Ltd., shall file a amendment clarifying the coordinates of its transmitter site, as discussed in Paragraph 8 of this Order, with the presiding Administrative Law Judge within 20 days after this Order is released.

16. It is further ordered, That § 1.1317 of the Commission's Rule IS WAIVED to the extent indicated herein. Within 20 days after the release of this Order, Horizon Community Broadcasters, Ltd., shall submit an environmental narrative statement as required by § 1.1311 of the Rules to the presiding Administrative Law Judge, with a copy to the Chief, Video Services Division.

17. It is further ordered, That, in the event of a grant of the application of Horizon Community Broadcasters, Ltd., the construction permit shall be conditioned as follows:

During installation of the antenna authorized herein, AM station KEYH, Fort Bend, Texas, shall determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point values within authorized limits. Upon completion of the installation, common point impedance measurements on the AM array shall be made and a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

18. It is further ordered, That, Louise Brunson shall file certification with the presiding Administrative Law Judge within 20 days after this Order is released that she has or will comply with § 73.3580 of the Commission's Rules.

19. It is further ordered, That Louise Brunson shall amend her application to establish whether the applicant is a general partnership or a limited partnership and shall furnish the information required in accordance with Paragraph 9 of this Order, within 20 days of the date of release of this Order.

20. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

21. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-30691 Filed 11-23-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 84-560]

Financial Data Reporting System

Dated: November 20, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of Change in Reporting Requirements.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has requested Office of Management and Budget approval, pursuant to 5 CFR 1320.12 pertaining to clearance of information requests, of the following changes in the financial reporting requirements for institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions"):

(a) Extension without revision of monthly reporting by insured institutions on FHLBB Form 107 Monthly Report, OMB No. 3068–0017, and its supplement (FHLBB Form 107A; OMB No. (HUD) 063–R–1263) through July 1985 (covering June 1985 data).

(b) Substitution of a reduced monthly reporting requirement (see accompanying form) for all insured institutions beginning August 1985 (covering information for July 1985).

(c) Deferral of implementation of a sample monthly survey (FHLBB Form 1312; OMB No. 3068–0506) from January 1985 until August 1985 (covering data for July 1985) and a small reduction in the number of data items to be reported in the survey.

The Board has asked for OMB approval of the paperwork aspects of these changes. Public comments should be directed to: Office of Management and Budget, Office of Information and regulatory Affairs, Washington, D.C. 20503. Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Francis M. Dorer, Deputy Director, Office of Examinations and Supervision (202–377–6369) or Richard C. Pickering, Deputy Director, Office of Policy and Economic Research (202–377–6770), Federal Home Loan Bank Board.

SUPPLEMENTARY INFORMATION: In October 1983, when the Board modified its financial reporting requirements to provide for detailed financial reporting by insured institutions quarterly rather than semiannually, it had planned to eliminate monthly reporting by insured institutions except for a small sample of institutions which would provide information to serve as the basis for national estimates to be used for industry-wide monitoring and for general statistical purposes (on FHLBB Form 1312) and specialized reports to be required from those institutions with special supervisory problems. At that time, the Board believed that the condition of individual institutions would not change sufficiently between quarterly reports to make monthly surveillance necessary.

The subsequent experience of the Board with a substantially deregulated savings industry in a rapidly changing economic environment, however, has clearly demonstrated that the conditions of individual firms can deteriorate so seriously in a three-month period as to make the potential drain on the resources of the FSLIC fund sharply larger than if the condition had been detected earlier. A principal way such deterioration has occurred is rapid growth by means of broker-originated deposits and/or borrowing, and use of these funds for large acquisition of risky, poorly underwritten loans and investments.

The Board feels it would be derelict in its responsibility for the provision of a sound system of economical home financing and for protecting the resources of the FSLIC if it permits developments of the type described to go undetected between quarterly reporting dates. The proposed universal monthly report, therefore, has been specifically designed to detect deteriorating situations with a minimum of reporting. As indicated on the accompanying form, only 23 data items are being requested, plus 17 simple yes/no questions.

Temporary extension of the longer current monthly report is required while the proposed new monthly reporting system is being implemented to avoid a hiatus in monitoring capabilities. The

form is being changed to avoid duplicate reporting in it and on the new proposed universal monthly report. Both reports will be implemented at the

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.

[FR Doc. 84-30871 Filed 11-23-84; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0533]

Fee Schedules for Federal Reserve Bank Services; Request for Comment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for Comment.

SUMMARY: The Board of Governors is requesting public comment on proposed revisions to the fee structures for the Federal Reserve's definitive securities safekeeping and noncash collection service.

DATE: Comments must be received by December 28, 1984.

ADDRESS: Comments, which should refer to Docket No. R-0533, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Gerald D. Manypenny, Manager (202/452-3954) or Donna A. DeCorleto, Senior Analyst (202/452-3956), Division of Federal Reserve Bank Operations; or Gilbert T. Schwartz, Associate General Counsel (202/452-3625); or Daniel L. Rhoads, Attorney (202/452-3711), Legal Division Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In September 1983, the Board approved fee schedules for the definitive securities safekeeping and noncash collection service. 48 F.R. 4467 (September 29, 1983). The fees were established to provide a matching of costs, excluding the Private Sector Adjustment Factor ("PSAF"), and revenues by the end of the third quarter of 1984. Preliminary data indicate that this goal was virtually met. However, in order to achieve a matching of costs, including the PSAF, that certain changes in the current fee structure may be necessary. Accordingly, the Board proposes to adopt the following changes:

Definitive Securities Safekeeping—Two structural changes are proposed for the definitive securities safekeeping activity.

The first proposed change, the introduction of a reregistration fee, would enable Reserve Banks to recover the cost of sending a registered security to a transfer agent for reregistration. Securities delivered to the Reserve Bank are generally registered in the name of the former owner and must be reregistered in the name of the new owner. The costs of sending a security to a transfer agent and related recordkeeping have been increasing as the number of registered securities increases. It is proposed that all Reserve Banks offering the service would institute a reregistration fee.

The second proposed pricing structure modification in definitive securities safekeeping is the addition, on an optional basis, of a fee to differentiate the higher cost of safekeeping coupon bearing securities as compared with registered securities. Safekeeping coupon bearing securities is more costly since maturing coupons must be clipped twice yearly. Registered securities do not incur these expenses because they generally have no coupons.

This proposed fee would be based on the par value of the bearer securities rather than number of pieces. The par value of coupon bearing securities is believed to be an appropriate measure for three reasons: (1) Par value pricing closely approximates the number of pieces involved since most bearer municipal securities are in $5,000 denominations; (2) depository institutions typically keep track of their holdings in terms of par value rather than number of pieces. Therefore, using par value as a basis for assessing this fee would minimize reconcilement costs for depository institutions; and (3) par value pricing appers to be consistent with private sector practice. Three Reserve Banks propose to adopt this option in 1985 (New York, Cleveland, and Dallas); a fourth Reserve Bank (Philadelphia) proposes to adopt it by altering its account maintenance fee. At this time the remaining Reserve Banks providing definitive securities safekeeping do not intend to adopt this option.

Proposed fees for 1985, incorporating the proposed structural modifications, and current fees are shown in Schedule 1.

Noncash Collection—Three structure changes are proposed in noncash collection: (1) an optional return item fee; (2) the addition of a mixed deposit option on a permanent basis; and (3) for Reserve Banks not choosing the mixed deposit program, the option of setting different city and country collection fees.

The return item fee would be charged for any coupon deposit that is returned to the depositor as uncollectible. Noncash return items are costly due to the high labor and security costs involved with handling them. Charging separately for return items parallels the practice in most parts of the country. All Reserve Banks except Atlanta propose to adopt this option.

The second proposed structure change would be to adopt the noncash mixed deposit program on an optional basis. The mixed deposit program, implemented by four Reserve Banks on a pilot basis, offers a depository institution the opportunity to deposit all of its coupons in one mixed deposit. This reduces the need for depositors to pre-sort coupons into items payable in-district versus items payable out-of-district. The four Reserve Banks now participating in the pilot (Cleveland, Atlanta, St. Louis, and Dallas) plan to adopt this option.

The final proposed structure change would give Reserve Banks not participating in the mixed deposit program the option of charging a higher fee to recover the additional costs of collecting items payable at country endpoints. These additional costs reflect added handling and preparation expenses associated with these items. At this time only the New York Reserve Bank plans to adopt this option.

Proposed fees for 1985, which incorporate the proposed revisions to the fee structure, and current fees are shown in Schedule II.

The Board believes that the proposed modifications to the definitive securities safekeeping and noncash collection fee schedules will enable the Federal Reserve System to recover fully the costs of providing this service, including PSAF, in 1985. Further, the Board believes that the options provided Reserve Banks by these proposals will permit the Reserve Banks greater flexibility in meeting the needs of depository institutions and responding to local market conditions.

By order of the Board of Governors of the Federal Reserve System, November 20, 1984.
William W. Wiles,
Secretary of the Board.

BILLING CODE 6210-01-M

SCHEDULE I

1985 PRICE SCHEDULE
DEFINITIVE SAFEKEEPING

	DEPOSITS 1984	DEPOSITS 1985	WITHDRAWALS 1/ 1984	WITHDRAWALS 1/ 1985	RECEIPTS/ISSUES 1-400 1984	RECEIPTS/ISSUES 1-400 1985	RECEIPTS/ISSUES 400+ 1984	RECEIPTS/ISSUES 400+ 1985	PURCHASES AND SALES 1984	PURCHASES AND SALES 1985	RE-REGISTRATIONS 1985 1/	PAR VALUE 1985 2/
BOSTON	12.50	12.50	12.50	12.50	2.80	2.90	2.10	2.20	15.00	15.00	12.50	-----
NEW YORK	35.50	35.50	35.50	35.50	5.35	5.35	4.75	4.75	23.00	23.00	35.50	0.0050
PHILADELPHIA 3/	15.00	16.00	15.00	16.00	3.00	3.25	2.00	2.25	19.00	20.00	20.00	-----
CLEVELAND	15.00	15.00	15.00	15.00	2.25	2.00	1.75	1.50	25.00	25.00	15.00	0.0050
RICHMOND	15.00	15.00	15.00	15.00	1.50	1.95	1.00	1.45	20.00	20.00	15.00	-----
ATLANTA 4/	0.00	0.00	5.00	5.00	* see below		* see below		N/A	N/A	5.00	-----
CHICAGO	11.00	11.00	11.00	11.00	3.00	3.50	2.75	2.75	19.00	21.00	11.00	-----
DETROIT 5/	11.00	11.00	11.00	11.00	2.00	2.25	1.75	2.00	N/A	N/A	11.00	-----
ST. LOUIS	8.00	10.00	8.00	10.00	1.25	1.50	0.90	0.90	N/A	N/A	10.00	-----
MINNEAPOLIS	8.00	8.00	8.00	8.00	1.40	1.40	0.75	0.75	10.00	10.00	8.00	-----
KANSAS CITY	15.00	15.00	15.00	15.00	1.50	2.50	1.25	2.25	20.00	20.00	15.00	-----
DALLAS	10.00	10.00	10.00	10.00	2.75	2.25	2.50	2.00	26.50	26.50	10.00	0.0080

1/ ACTUAL SHIPPING COSTS ADDITIONAL.

2/ APPLIED TO COUPON BEARING SECURITIES ONLY; FEE PER $1,000 PAR VALUE.

3/ PHILADELPHIA IS PROPOSING A $2.25 FEE FOR ALL REGISTERED SECURITIES. THIS IS TO RECOGNIZE THE LOWER HANDLING COSTS OF REGISTERED SECURITIES VERSUS BEARER SECURITIES.

4/ ATLANTA 1-500 RECEIPTS @ $2.50 IN 1984/85, 500-1000 @ $2.00 IN 1984/85, AND 1000+ @ $1.50 IN 1984/85.

5/ DETROIT PILOT 1-100 RECEIPTS PRICED AT @ $3.00 1984/85, OVER 100 RECEIPTS @ $2.25 IN 1984 AND $2.50 IN 1985 INCLUDING COLLECTION OF COUPONS.

SCHEDULE II

1985 PRICE SCHEDULE
NONCASH COLLECTION
(FOR BANKS NOT OFFERING A MIXED DEPOSIT PRODUCT)

	LOCAL COUPONS			ADD-ON FEE FOR INTERDISTRICT COUPONS		POSTAGE & INSURANCE		RETURN ITEMS	BOND REDEMPTIONS AND SALES 1/	
	LOCAL	CITY	COUNTRY							
	1984	1985	1985	1984	1985	1984	1985	1985	1984	1985
BOSTON	2.00	2.00	2.00	2.55	2.75	1.00	1.00	3.00	12.50	12.50
NEW YORK	2.50	2.75	4.00	2.75	2.75	0.50	0.75	10.00	35.50	35.50
PHILADELPHIA	2.90	2.90	2.90	2.55	2.85	1.00	1.00	10.00	15.00	20.00
RICHMOND	2.00	2.00	2.00	2.50	3.50	1.00	1.00	5.00	20.00	20.00
CHICAGO 2/	3.50	3.50	3.50	2.75	2.75	.70/ 1.70	.70/ 1.70	10.00	11.00	11.00
DETROIT	2.50	2.50	2.50	2.60	3.00	1.00	1.00	10.00	11.00	11.00
MINNEAPOLIS 3/	2.50	2.50	2.50	2.70	3.00	0.60	0.60	10.00	8.00	8.00
KANSAS CITY	3.20	3.50	3.50	2.50	3.50	1.00	1.00	10.00	15.00	20.00
SAN FRANCISCO	4.00	5.00	5.00	N/A	N/A	1.00	1.00	10.00	35.50	35.50

(FOR BANKS OFFERING A MIXED DEPOSIT PRODUCT)

	LOCAL COUPONS FROM IN-DISTRICT OFI'S				LOCAL COUPONS FROM OUT-OF-DISTRICT OFI'S				INTER-DISTRICT COUPONS				RETURN ITEMS	BOND REDEMPTIONS AND SALES 1/	
	CITY		COUNTRY		CITY 4/		COUNTRY 4/		FINE SORT		MIXED				
	1984	1985	1984	1985	1984	1985	1984	1985	1984	1985	1984	1985	1985	1984	1985
CLEVELAND	2.25	2.75	2.75	3.00	3.00	3.25	3.00	3.50	2.75	4.00	3.75	5.00	10.00	15.00	15.00
ATLANTA	1.75	1.75	2.50	2.50	1.40	2.40	1.40	3.15	2.75	2.75	3.75	3.75	0.00	7.50	7.50
ST. LOUIS	2.00	3.25	2.00	3.25	2.00	3.25	2.00	3.25	2.75	3.25	3.25	3.25	10.00	10.00	10.00
DALLAS	2.75	3.00	2.75	3.00	2.10	3.50	2.10	3.50	2.75	3.25	3.75	4.50	10.00	15.00	20.00

1/ ACTUAL SHIPPING COSTS ADDITIONAL.

2/ CHICAGO - POSTAGE AND INSURANCE $.70 LOCAL, $1.70 INTERDISTRICT.

3/ MINNEAPOLIS - 12TH DISTRICT COUPONS $4.00; BONDS $8.00.

4/ PLUS POSTAGE AND INSURANCE.

[FR Doc. 84-30860 Filed 11-23-84; 8:45 am]
BILLING CODE 6210-01-C

Agency Forms Under Review by OMB

November 19, 1984.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

Date: Comments must be received within fifteen working days of the date of publication in the Federal Register.

Address: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Judith McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

For further information contact: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

Request for Extension, Without Revision

1. Report title: Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debts Previously Contracted

Agency form number: FR 4006
OMB Docket number: 7100–0129
Frequency: Annually
Reporters: Bank Holding Companies
Small businesses are not affected.

General description of report: This report is mandatory (12 U.S.C. 1843(c)(2), 1844(c)); confidential treatment of the report may be requested.

Bank holding companies that acquire assets in satisfaction of debts previously contracted are required by the Board to submit an annual report outlining the efforts made to date to effect divestiture of the assets, as well as a description and valuation of assets divested and those to be divested.

Board of Governors of the Federal Reserve System, November 20, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-30855 Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

American Fletcher Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulations Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21 (a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Fletcher Corporation*, Indianapolis, Indiana; to engage through a *de novo* office of its subsidiary, American Fletcher Mortgage Company, Inc., Indianapolis, Indiana, in making first mortgage loans on 1–4 family residences for sale to other investors. These activities would be conducted from an office located in Lexington, Kentucky, serving the State of Kentucky. Comments on this application must be received not later than December 6, 1984.

2. *Central of Illinois, Inc.*, Sterling, Illinois; to engage *de novo* through its subsidiary, Illini Life Insurance Company, Phoenix, Arizona, in the underwriting, as reinsurer of credit life, health, and accident insurance for extensions of credit made by the two banking subsidiaries of Central of Illinois, Inc.

3. *Lincoln Bancorp*, Reinbeck, Iowa; proposes to engage *de novo* through its subsidiary, Lincoln Lease Corp. in leasing personal and real property. Comments on this application must be received not later than December 7, 1984

Board of Governors of the Federal Reserve System, November 20, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-30857 Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

Fleet Financial Group, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices," Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1984.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Davidge & Company, Washington, D.C. thereby engaging in investment advisory activities including the provision of investment advisory services and portfolio investment advice to individuals, endowment funds and employee benefit plans in Washington, D.C.

Board of Governors of the Federal Reserve System, November 20, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-30856 Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

Lincoln Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 17, 1984.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Lincoln Bancshares, Inc.*, Stanford, Kentucky; to become a bank holding company by acquiring 84.418 percent of the voting shares of Lincoln County National Bank, Stanford, Kentucky.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Sun Banks, Inc.*, Orlando, Florida; to acquire 24.9 percent of the voting shares of Peoples Bank of Lakeland, Lakeland, Florida.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bosshard Banco, Ltd.*, Bangor, Wisconsin; to acquire 95.6 percent of the voting shares of Intercity State Bank, Schofield, Wisconsin.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Merchandise Bancorporation*, Topeka, Kansas; to acquire 44 percent of the voting shares of Kansas Bank Systems, Inc., Manhattan, Kansas, thereby indirectly acquiring Kansas State Bank of Manhattan, Manhattan, Kansas.

Board of Governors of the Federal Reserve System, November 20, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-30858 Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

November 20, 1984.

Background

On July 30, 1984 the Board of Governors of the Federal Reserve System published for comment (49 FR 30317) a proposal establishing guidelines regarding capital adequacy for State member banks and bank holding companies and a proposed supporting regulation establishing procedures for requiring compliance with capital requirements. The board set a 60-day comment period which ended on September 24, 1984. During the comment period, the Board received about 90 comments from banks, trade associations, other government agencies, and others. (Docket number R-0526)

Contained in the proposed regulation—Subpart D of Part 263—Rules of Practice for Hearings (12 CFR 263)—is a provision, § 263.38(a), that OMB regards as an information collection for purposes of the Paperwork Reduction Act. This information collection is being reviewed for Paperwork Act clearance under OMB delegated authority (5 CFR 1320.9).

DATE: Any additional comments on this information requirement must be received within fifteen business days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to Docket number R-0526, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Judith McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the documentation—the information collection requirement provision in the proposed regulation, the request for clearance (SF 83), and the supporting statement—that will be placed into OMB's public docket files, once final approval under delegation has been granted, may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statisitcs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

Request for Approval to Implement the Following Information Collection

1. Report title: Capital Improvement Plan (§ 263.38(a) of proposed Subpart D of Part 263—Rules of Practice for Hearings (12 CFR Part 263))
Agency form number: N/A
OMB Docket number: To be assigned.
Frequency: One time.
Reporters: State member banks and bank holding companies. Small businesses are affected.

General description of report: This information collection is mandatory (12 CFR 263.38(a)) and is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

Any state member bank or bank holding company not in compliance with the Board's Capital Adequacy Guidelines on the date that this regulation becomes effective shall, within 90 days, submit to the appropriate Federal Reserve Bank for review a plan describing the means and the time schedule by which the institution shall achieve the required minimum level of capital.

Board of Governors of the Federal Reserve System, November 20, 1984.

William Wiles,

Secretary of the Board.

[FR Doc. 30946- Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

Banco Colpatria, S.A., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

November 20, 1984.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 17, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Banco Colpatria, S.A.*, Bogota, Columbia, *Banpatria USA Inc.*, Miami, Florida, and *Colpatria Sociedad Columbiana De Capitalizacion, S.A.*, Bogota, Columbia; to become a bank holding company by acquiring 99 percent of the voting shares of Metropolitan National Bank, Miami, Florida (a *de novo* bank).

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lewis Banshares, Inc.*, Sioux Falls, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Armour, South Dakota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Founders Bancorporation, Inc.*, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Commerce Bancshares, Inc., Oklahoma City, Oklahoma, thereby indirectly acquiring Commerce Bank, The Village, Oklahoma.

2. *Fremont Bank Corporation*, Canon City, Colorado; to acquire at least 67 percent of the voting shares of Centennial Bank of Blende, Pueblo, Colorado.

3. *OCI Bancshares, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of CNB Financial Corporation, Kansas City, Kansas, thereby indirectly acquiring Commercial National Bank, Kansas City, Kansas.

4. *Industrial Bancshares, Inc.*, Kansas City, Kansas; to acquire 31 percent of the nonvoting Class A shares, and 27 percent of the nonvoting Class B shares of OCI Bancshares, Inc., Kansas City, Kansas, the proposed parent of CNB Financial Corporation, Kansas City, Kansas, thereby indirectly acquiring Commercial National Bank, Kansas City, Kansas.

5. *Mission Bancshares, Inc.*, Mission, Kansas; to acquire 46 percent of the nonvoting Class A shares, and 37 percent of the nonvoting Class B shares of OCI Bancshares, Inc., Kansas City, Kansas, the proposed parent of CNB Financial Corporation, Kansas City, Kansas, thereby indirectly acquiring Commerical National Bank, Kansas City, Kansas.

6. *Valley View Bancshares, Inc.*, Overland Park, Kansas; to acquire 13 percent of the nonvoting Class A shares, and 27 percent of the nonvoting Class B shares of OCI Bancshares, Inc., Kansas City, Kansas, which proposes to acquire CNB Financial Corporation, Kansas City, Kansas, thereby indirectly acquiring Commercial National Bank, Kansas City, Kansas.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Brazos Valley Bancshares, Inc.*, Bryan, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Western National Bank, Bryan, Texas.

2. *Texam Bancshares, Inc.*, Bridge City, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Bridge City State Bank, Bridge City, Texas, and Peoples State Bank, Shepherd, Texas.

Board of Governors of the Federal Reserve System, November 20, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-30945 Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

Bankers Trust New York Corp; Proposal To Execute and Clear Futures on a Municipal Bond Index and To Provide Futures Advisory Services

Bankers Trust New York Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §§ 225.23(a) (2) and (3) of

the Board's Regulation Y (12 CFR 225.23(a) (2) and (3)), for permission to execute and clear futures contracts on a municipal bond index on major commodities exchanges for nonaffiliated persons, and to provide advice with respect to futures and options that the Board has permitted futures commission merchant ("FCM") subsidiaries of bank holding companies to execute and clear. These activities would be performed through the applicant's FCM subsidiary, BT Futures Corp., through offices in New York, New York, Chicago, Illinois, Los Angeles, California, Dallas and Houston, Texas, and London, England, serving customers in the United States and abroad.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously approved of the provision of advisory services with respect to futures and options where the underlying financial products are bullion, foreign exchange, U.S. government securities, or money market instruments. *J.P. Morgan & Co., Incorporated,* 70 Federal Reserve Bulletin 780 (1984). The Board has not previously approved the proposed execution and clearance of futures contracts on a municipal bond index or the provision of related advisory services. Applicant believes that these activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto. In Applicant's opinion, the brokerage of municipal bond index futures and advisory services with respect thereto are similar to the brokerage of financial futures and the provision of futures advisory services previously approved by the Board. Applicant also believes that the proposed activities are similar to municipal securities activities performed by banks.

Interested persons may express their views on whether the proposed activities of executing and clearing futures contracts on a municipal bond index and of providing advice thereon are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 14, 1984.

Board of Governors of the Federal Reserve System, November 20, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-30944 Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

Heritage Group, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 2, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois (30690)

1. *Heritage Group, Inc.,* Woodridge, Illinois; to acquire 90.9 percent of the voting shares of Bank of Lemont, Lemont, Illinois.

Board of Governors of the Federal Reserve System, November 21, 1984.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 84-30988 Filed 11-23-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Open Meeting; Video Display Terminal Reproductive Outcome Study

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: December 17, 1984
Time: 9:30 a.m.–4:00 p.m.
Place: Conference Room C, HIOSH, 5555 Ridge Avenue, Cincinnati, Ohio 45213
Purpose: To discuss the protocol for an epidemiologic study of adverse reproductive outcomes among women using video display terminals. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Teresa Schnorr, Ph.D., Division of Safety, Hazard Evaluations, and Field Studies, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephones: FTS: 684–4481, Commercial: 513/684–4481.

Dated: November 14, 1984.

Donald R. Hopkins, M.D.,

Acting Director, Centers for Disease Control.

[FR Doc. 84-30942 Filed 11-23-84; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 84P-0281]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

Correction

In FR Doc. 84-24874 beginning on page 36925 in the issue of Thursday, September 20, 1984, make the following correction:

On page 36926, first column, second complete paragraph, eighth line, insert the following after the word "introduced":
"or caused to be introduced".

BILLING CODE 1505-01-M

Suldixine Tablets ™, Sudine ® Tablets, Symbio ® Injection; Withdrawal of Approval of NADA'S

Correction

In FR Doc. 84-24869 appearing on page 36924 in the issue of Thursday, September 20, 1984, make the following correction:

In the first column, in the fourth line from the bottom, insert the following before the word "Injection": "Tablets, and NADA 13-527 for Symbio ® (sulfadimethoxine).

BILLING CODE 1505-01-M

[Docket No. 84M-0353]

American Medical Optics; Premarket Approval of American Medical Optics' Model YAG-100 Ophthalmic Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of American Medical Optics' YAG–100 Ophthalmic Laser, sponsored by American Medical Optics, Irvine, CA. After reviewing the recommendation of the Ophthalmic Devices Panel (formerly the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel), FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by December 26, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On April 11, 1983, American Medical Optics, Irvine, CA 92714, submitted to FDA an application for premarket approval of the American Medical Optics' YAG–100 Ophthalmic Laser. American Medical Optics' YAG–100 Ophthalmic Laser is indicated for discission of the posterior capsule of the eye (posterior capsulotomy). The application was reviewed on November 17, 1983, by the then Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. (On April 24, 1984, the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel was terminated. Concurrently, FDA established the Ophthalmic Devices Panel (see 49 FR 17446; April 24, 1984).) On September 27, 1984, FDA approved the application by letter to the sponsor from the Director, Office of Device Evaluation, Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 26, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30905 Filed 11-23-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-276-FN]

Medicare Program; Reissuance of the Wage Index in the 1981 Schedule of Limits on Hospital Per Diem Inpatient General Routine Operating Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice affirms the use of the wage index that was used to calculate the 1981 schedule of limits on hospital per diem inpatient general routine operating costs, which was issued on June 30, 1981 (46 FR 33637), and September 30, 1981 (46 FR 48010). The 1981 wage index was reissued for public comment on February 17, 1984 (49 FR 6175).

EFFECTIVE DATE: This notice is effective December 26, 1984. It applies to cost reporting periods beginning on or after July 1, 1981, and cost reporting periods ending after September 30, 1981, as well as cost reporting periods beginning on or after October 1, 1981, and before October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Maureen McGrath, 301–594–7373.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** on February 17, 1984 (49 FR 6175), we described for public comment a change in the types of data that were used to calculate the wage index that was contained in the notices on the schedule of limits on hospital per diem inpatient general routine operating costs applicable to cost reporting periods beginning on or

after July 1, 1981, and for cost reporting periods ending after September 30, 1981. As issued, the February 17, 1984, notice does not affect the cost limits for cost reporting periods beginning on or after October 1, 1982, because the limits for those cost reporting periods are governed by the notices published in the **Federal Register** on September 30, 1982 (47 FR 43298), and August 30, 1983 (48 FR 39426).

The proposed notice published February 17, 1984, reissued the wage index that was originally issued as part of the schedule of limits contained in notices published on June 30, 1981 (46 FR 33637), and September 30, 1981 (46 FR 48010). The latter notice contained adjustments to the limits required by section 2143 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, enacted on August 13, 1981).

We reissued the 1981 wage index for public comment as the result of the April 29, 1983, decision of the United States District Court for the District of Columbia in the case of *District of Columbia Hospital Association, et al.* vs. *Heckler, et al.* (No. 82–2520 DDC). The District Court held that the 1981 schedule of hospital cost limits was invalid insofar as the schedule incorporated or was formulated by using a wage index that was calculated by excluding Federal Government hospital wage data. The court held that exclusion of Federal Government hospital wage data without having published the schedule for public comment constituted a failure to comply with the Administrative Procedure Act (APA) (5 U.S.C. 553). The February 17, 1984, proposed notice was intended to remedy the rulemaking deficiencies perceived by the District Court and to validate use of the 1981 schedule of hospital cost limits by bringing the wage index contained in the 1981 schedule of limits into compliance with the APA.

II. Public Comments

In response to the February 17, 1984, proposed notice, we received comments from four hospital associations, an Indian health center, a major insurance company and a law firm representing a hospital association and its members. We received six comments favoring the exclusion of Federal hospital wage data in the calculation of the wage index. These commenters agreed that we should exclude Federal hospital wage data to improve the accuracy of the wage index. Two commenters favored the inclusion of Federal hospital wage data in the calculation of the wage index. A summary of these comments and our responses follow.

Comment—Two commenters suggested that we provide an appeals mechanism for those hospitals in areas where the exclusion of Federal hospitals from the wage index calculation produces a wage index factor that does not adequately reflect labor market forces.

Response—The rationale for excluding Federal hospital wage data from the wage index calculation is that Federal wages do not reflect the local labor market forces. If the Federal hospital wage data reflected the area's labor market, the index factor for an area would not be strongly affected by the exclusion of the Federal wage data.

A national system of cost limits presupposes that the same basic methodology will be applied to all hospitals. Therefore, in determining a wage index to be used by all hospitals, the exclusion of Federal hospital wage data must be applied to all calculations of wage factors contained in the wage index. However, we believe it important to note that if an individual hospital in an area can demonstrate that its percentage of labor costs varies by more than ten percent from the percentage used to calculate the limits, an exception can be granted under our regulations in 42 CFR 405.460(f)(8).

In addition, it should be noted that under the existing appeals procedures, a hospital, in all instances, may protest any intermediary determination through administrative and judicial review proceedings.

Comment—One hospital association commented that the use of the Standard Metropolitan Statistical Area (SMSA/Non-SMSA) classification system does not reflect the hospital's local labor market.

Response—Since the inception of the cost limits in 1974, we have used SMSAs as the definition of urban areas because nationally accepted objective standards were needed. This method of classifying hospitals has been open for public comment since that time. The definition of SMSA was developed by the Executive Office of Management and Budget (EOMB) using population criteria and other standards such as the degree of economic and social integration among potientially qualifying counties. Currently, we know of no other nationally recognized classification system suitable for use in a national payment system. Also, we wish to note that the wage index is not intended to reflect the specific wages of one hospital but is intended to reflect general trends in the local economy.

Comment—Two commenters suggested that since including Federal hospital wage data changes the wage index factors only for a few areas, a notice of progam reimbursement should be issued only when a hospital has successfully appealed its wage index.

Response—Including Federal hospital wage data would affect a large number of areas because the national average wage would be increased by including Federal hospital wage data; however, areas without a Federal hospital will still have the same average wage. When the national average is divided by the area average, a lower index factor will result. It is our estimate that approximately 234 areas would receive lower wage index factors if Federal hospital wages were included in the wage index calculation.

Comment—One hospital association recommended that the methodology used for developing the wage index should continue to be studied.

Reponse—As part of our continuity efforts to refine the wage index methodology used under the prospective payment system for inpatient hospital services, we have asked each short term acute care Medicare participating hospital to complete a hospital wage survey. We hope to be able to use the information received from this survey to assess the effect of some of the technical deficiencies in the current wage index (for example, area differences in the use of part time employees) in order to determine how to develop an improved wage index methodology.

Comment—One commenter requested that we clarify whether the use of appropriate wage index values for some areas is due to a change in the Bureau of Labor Statistics (BLB) confidentiality requirements.

Reponse—The BLS supply us with data on wages and numbers of employees that are used to calculate the wage index. Because of BLS's confidentiality requirements, BLS could not disclose actual data for areas that included fewer than three reporting units. A reporting unit need not have been a single hospital. A reporting unit was (and is currently) defined by BLS as the smallest unit for which data are recorded on the employer's contribution report. For example, two facilities in the same area owned by one employer could have appeared as one reporting unit. Therefore, because of BLS's confidentiality requirements, we used approximate rather than actual index values for 26 areas. These approximate values are identified by asterisks in table I–A.

Comment—One commenter believes that we should include Federal hospital wage data in the calculation of the wage index because of problems associated with averaging hospital wages in developing the wage index.

Reponse—The hospital wage index is designed to recognize relative differences in wage levels across the United States that reflect conditions present in local economies. The wage index is not intended to recognize the employment practices of any one institution. The reason for excluding Federal hospital wage data from the calculation of the wage index is not because of an averaging problem. We exclude Federal hospital wage data because the wages paid by a Federal hospital do not reflect the local economy since Federal wages are based primarily on national pay scales. If non-Federal hospitals are paying wages similar to Federal hospitals, this will be reflected in the area's reported quarterly hospital wages. However, if only one hospital in the area is paying high wages, the area's average will reflect this. It is possible that the hospital paying these higher costs is incurring unreasonable costs that are out of line with the costs of similar institutions. The cost limits have been established to prevent paying for costs that are unnecessary in the efficient delivery of health care services. It is our belief that wages that are out of line with similar institutions may be an indication that the hospital paying these higher wages is not being run as efficiently as other institutions in the area.

Comment—One hospital association suggested that we eliminate the lowest wage index factor in an area on a weighted average basis because Federal hospitals tend to be large and reflect a greater weight in the averaging process.

Reponse—By excluding Federal hospital wage data from the calculation of the wage index factors, we have already eliminated the effect Federal hospital wages have on an area's average and on the national average.

Comment—One commenter recommended that we use a facility-specific wage index.

Reponse—The cost limits are based on a national system of classifying hospitals in bed size groupings and the limits are set at a percent of the mean labor-related costs and mean nonlabor costs of each peer comparison group. The cost limits are used as a measure of a hospital's reasonable costs. Establishing a facility-specific index recognizes that all the wages paid at a hospital are part of its reasonable costs. A hospital may be paying wages that are unreasonable when compared to wages paid by similar providers. Recognizing these unreasonable costs as reasonable would be a violation of our responsibility to pay only those costs necessary for the efficient delivery of health care services.

Comment—One hospital association was of the opinion that eliminating Federal hospital wage data from the calculation of the wage index will lower reimbursement to facilities located around the Federal hospital.

Reponse—The elimination of Federal hospital wage data from the calculation of the wage index does not automatically result in lower reimbursement amounts to facilities around the Federal hospital. If a hospital's costs are under the limit, then the hospital will be reimbursed in full for its costs. We believe that the elimination of Federal hospital wage data from the calculation of the wage index gives hospitals a financial incentive to control costs within the allowed limit amount. It is our belief that the cost limits, as currently determined, more accurately reflect a hospital's reasonable costs than the use of cost limits that are artificially inflated by the use of a wage index factor that overstates the wages actually paid by hospitals in certain locales. Of course, as indicated above, if hospitals located in the same area as a Federal hospital are paying wages similar to those paid by the Federal hospital, then the index will reflect this.

Comment—A law firm representing a hospital association and its members commented that the proposed notice of February 17, 1984, is invalid under the APA because it is retroactive rulemaking.

Response—We do not consider this notice to be retroactive in nature, since as a practical matter hospitals could only have relied on the notice published on June 30, 1981, and September 30, 1981, in determining their respective cost limits for cost reporting periods beginning on or after July 1, 1982, and for cost reporting periods ending after September 30, 1981, and beginning on or after October 1, 1981. Moreover, there is substantial legal authority which permit's an agency a rule which covers an earlier period of time when it is reasonable to do so. The United States District Court for the District of Columbia did not rule that excluding Federal hospitals was an invalid methodology, but rather that we had not solicited public comments prior to making a change in methodology. At the time of the hearing, the plaintiffs in the case requested an order from the court to prevent the Secretary from republishing a wage index that excluded Federal hospital wage data. The court declined to do this. Therefore, we do not believe the ruling from the court precludes us from reissuing a wage index that excludes Federal hospital wage data. By issuing a proposed notice and final notice, we are correcting the procedural defect of not soliciting public comments before m aking a change in methodology. At the same time, we are not causing undue hardship to any hospital because there were no other published limits available for a hospital to use at the time of the original publication of the June 30 and September 30, 1981, notices. Each hospital knew in advance of its cost reporting period what its cost limit would be for this period. Givern these circumstances and the public interest in ensuring that only those costs necessary in the efficient delivery of services be reimbursed, we believe this notice is valid.

Comment—One commenter recommended that the wage index published in the proposed notice be used for hospitals unless a hospital specifically requests a computation of its routine cost limit using a wage index that include Federal hospital wage data.

Response—The system of cost limits is to be uniformly applied to all hospitals. The use of a wage index excluding Federal hospital data for one group of hospitals and a wage index including Federal hospital data for another group would result in a two-tiered system. The use of a two-tiered system would be contrary to the principle of uniformity. In addition, it is our belief that those hospitals that would request a recomputation of the wage index to include Federal hospital wage data would be those hospitals that have exceeded the cost limits for the particular cost reporting period. As previously dicussed, the cost limits are used to establish the reasonable and necessary costs for delivering efficient health care services. Recomputing the limits for those hospitals that exceeded the limits would violate the statutory requirement that we pay only those costs that are reasonable and necessary for the efficient delivery of needed health care services.

Even though only a limited number of hospitals are adversely affected by the exclusion of Federal hospital wage data, a significant amount of Medicare reimbursement is involved for each individual hospital that is affected. Since it is our belief that Federal hospital wage data do not reflect the conditions of local economies, allowing a recomputation of the wage index including Federal hospital wage data for those hospitals requesting it would result in our allowing these hospitals additional reimbursement for costs that

were not necessary in the efficient delivery of needed health care services. It would not be equitable to those hospitals that operated efficiently under the limits, for us to reward hospitals that exceeded the cost limits because they operated inefficiently.

Comment—One commenter stated that the change in the wage index does not permit hospitals sufficient time to adjust to the methodology change.

Response—We consider the change that was made to the wage index a minor technical change. It is our belief that hospitals were put on notice of this change on June 30, 1981 (46 FR 33637), when we first published the schedule of limits applicable to the affected period. The cost limits are effective at the beginning of a hospital's cost reporting period. Thus, a hospital has twelve months in which to adjust its routine inpatient operating costs to the published limits in order to receive full reimbursement for its Medicare costs. Since there were no other published limits for the affected period, the only notice a hospital could have relied on in determining its limit was the June 30, 1981, notice.

By republishing the same wage index at this time, we are correcting the procedural defect perceived by the court; that is, the failure to provide for a comment period.

Comment—One commenter noted that in a comparison of BLS data using only Federal hospital wage data for five SMSAs, there were variations in the average monthly wages reported to BLS for the Federal hospitals in each SMSA. For example, the data indicated high monthly wages in the San Francisco-Oakland, CA SMSA and low monthly wages in the Norfolk-Virginia Beach-Portsmouth, VA–NC SMSA. From this comparison, the commenter concludes that Federal hospitals do not necessarily use national wage scales.

Response—The difference in the monthly wages reported for the Federal hospitals in the SMSAs noted is not necessarily due to Federal hospitals paying local wages. We have always acknowledged that there are some technical deficiencies in the wage index that make it a less than perfect source for a wage index adjuster. For example, the data do not account for variations in hospital occupational mix, differences in the proportion of part-time employees, variations in overtime utilization, length of the work week, and differences in reporting compliance. Any one of these reasons could account for the discrepancy in average monthly wages.

We obtained the average monthly wages for the same five SMSAs but excluded Federal hospital wage data. In all five SMSAs the average monthly wages excluding Federal hospital wage data were lower than the average monthly wages for the Federal hospitals. In the Norfolk-Virginia Beach-Portsmouth, VA–NC SMSA the average monthly wage for Federal hospitals was $1,175.48 versus an average monthly wage of $865.77 not including any Federal hospitals. In the San Francisco-Oakland, CA SMSA, the average monthly wage for Federal hospitals was $1,564.75 versus an average monthly wage of $1,151.75 not including any Federal hospitals. Our comparison appears to prove our theory that Federal hospitals are not paying local wages. If the Federal hospitals were paying local wages, the average monthly wage for Federal hospitals would be the same figure as the average monthly wage not including Federal hospitals for the same SMSA.

Comment—A law firm commented that HCFA does not differentiate between urban and suburban locations within an SMSA. The commenter believes that a differentiation between urban and suburban would improve the accuracy of the wage index.

Response—In principle, using a wage index that differentiates urban (that is, "core") from suburban (that is, "ring") counties could provide a more precise wage index. However, it is our belief that the adoption of such a measure at this time is not feasible due to certain limitations of the BLS data used to construct the wage index. Although BLS data are the best data currently available that were compatible with a national payment system, it is important to note that, as previously explained, the data do contain certain technical deficiencies. The BLS data do not account for differences in the proportion of part-time employees, area difference in occupational mix, variations in overtime utilization, length of the work week, and differences in reporting compliance. The current use of aggregated BLS data from all non-Federal hospitals within a specified SMSA mitigate the effect of these uncontrolled variables, particularly in large metropolitan areas with many hospitals. It is our belief that disaggregating the data into "core-ring" indexes would only magnify the inherent limitations of the BLS data and increase the potential for distortion, particularly in areas with few hospitals. The use of a "core-ring" urban wage index merits further study. However, pending the development of a data base which overcomes the technical limitations of the BLS data, we believe further wage index refinements must be deferred.

We would like to emphasize that a provider's location in an SMSA or non-SMSA has been used as a classification criterion for cost limit purposes continuously since 1974. The definitions of SMSA and New England County Metropolitan Area (NECMA) were developed by EOMB. Effective June 30, 1983, the definition of SMSA was replaced by Metropolitan Statistical Area (MSA). We do not independently determine when an area qualifies as an MSA. Rather, this determination is made by EOMB.

We believe this classification system is the only one currently available that meets the requirements of a national payment program. The SMSA (now MSA) classification is a widely accepted statistical standard developed for use by Federal agencies in the production, analysis, and publication of data on metropolitan areas. The standards were developed with the aim of producing definitions that are as consistent as possible for all SMSAs nationwide.

Comment—One Indian Health Service area representative recommended that HCFA use the general wage index for the area in which the Federal hospital is located to reimburse the Federal hospital. The commenter noted that most Indian Health Service hospitals are located in rural areas. The commenter pointed out that Indian Health Service hospitals are paid under the prospective payment system for inpatient hospital services using a wage index that is approximately 63 percent higher than the national average wage data.

Response—As stated previously, we believe Federal hospital wage data do not reflect the conditions within a local economy. Since Indian Health Service hospitals do not serve the general population of an area, and exist as a unique health care delivery system, they were included under the prospective payment system for inpatient hospital services using a single index value applicable to all Indian Health Service hospitals and specifically computed to be representative of the wage experience in the Indian Health Service system.

We wish to point out that the prospective payment system for inpatient hospital services is inherently different from the Medicare cost limits applicable in prior years in that the prospective rate determines the actual Medicare payment. Under the prior cost limit system payment was based on the costs incurred up to a maximum amount allowed by the cost limit. Because we considered it important that Indian Health Service hospitals have the opportunity to participate in the prospective payment system for inpatient hospital services, and since they operate under a central administration, we established a single uniform wage index value for the Indian Health Service. Although the comment we received is in fact directed at an aspect of the prospective payment system for inpatient hospital services rather than the wage index issued for comment, we note that the essence of the commenter's statement is that wages in Indian Health Service hospitals will generally exceed those in the surrounding area. We believe this comment from the Indian Health Service adds weight to our conclusion that wage levels in Federal hospitals are not usually representative of local wage conditions.

III. Changes in Response to Public Comments

We have decided not to recalculate the 1981 wage index to include data from Federal Government hospitals. Therefore, this notice affirms the exclusion of Federal Government hospital data from the wage index. It is our belief that the exclusion of Federal hospital data improves the accuracy of the wage index so that the index correctly reflects actual differences in wages from one area to another area. The wage index serves to reflect area-by-area differences in the labor related component of hospital costs. The more accurate the wage index, the more accurately it reflects these area-by-area differences and thus, ultimately, the more accurate are the cost limits. We conclude that the exclusion of Federal Government hospital data improves the accuracy of the wage index because most Federal hospitals characteristically employ physicians and other high salaried professionals whose salaries are based on national rather than local wage scales. This factor tends to overstate the average hospital wage in areas with Federal institutions as compared to areas without such Federal facilities. Since the purpose of the wage index is to reflect area-by-area differences in the labor-related component of hospital costs, the exclusion of Federal hospital data better enables the wage index to reflect accurately area-by-area labor related costs.

In summary, we believe that the exclusion of Federal hospital data from the wage index reflects actual hospital experience. We wish to note that the data used to develop the wage index were supplied by BLS and are the most reliable data available. All hospitals are required under State unemployment compensation laws to report these data. However, if we discover that we or BLS have made an error based on data received from hospitals that result in an incorrect wage index for any area, we will publish corrected indexes and will direct the Medicare intermediaries to recalculate the limits for affected hospitals. However, BLS has advised us that it is unable to correct any inaccuracies in the wage index that may result from a hospital's failure to report the required wage data.

It should be noted that from the time the original schedule of limits was published in the June 30, 1981, notice BLS has advised us of various reporting errors in the wage and employment data. In addition, as noted earlier, on June 19, 1981, EOMB announced the designation of new MSAs and NECMAs, as well as other revisions in metropolitan classifications based on the results of the 1980 census. We have issued instructions to the intermediaries advising them of these changes. However, in those situations where the corrected data resulted in a lower wage index for an area, we continued to use the higher wage index. The wage indexes that are shown in Tables I–A and I–B reflect the corrections that have been made since June 30, 1981.

IV. Regulatory Impact Statement

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for rules that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires us to prepare and publish a regulatory flexibility analysis for certain rules unless the Secretary certifies that the rules will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, we consider all hospitals to be small entities.) Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, show that the agency issuing the rules has examined alternatives that might minimize burden or otherwise ensure the rules to be cost-effective.

We have determined that this notice does not meet the criteria of either E.O. 12291 or the Regulatory Flexibility Act. We considered two alternatives:

- To republish an area wage index with values calculated as published in 1981 with no change in methodology; or
- To publish an area wage index with values recalculated to incorporate Federal hospitals in the base data.

We found that if we included Federal hospitals in the area wage index determinations, we would have to recalculate both urban and rural national average hospital wage levels, as well as the means used to determine the per diem limits for each group (published as Tables I and II in the 1981 notices). This would affect the limit for every hospital subject to the limits, although only to a relatively small degree. The limits for some groups would increase, while the limits for other groups would decrease.

We determined that if we were to publish recalculated index values the net effect on overall program expenditures would be relatively small, due to the tendency of increases and decreases in group limits and index values to cancel each other out in the aggregate. A change of the area wage index to incorporate Federal hospitals in the base data would have the primary effect of redistributing marginal advantages and disadvantages. For each particular hospital, the effect of including Federal hospitals in the index data would be the result of multiplying the hospital's recalculated per diem limit for the hospital's group by the hospital's recalculated area wage index value. If both the group mean used to derive the limit applicable to a particular hospital, and the index value for that hospital were to increase or decrease, the effect of the recalculations would of course be compounded. If the change in the limit and the index were in opposite directions, however, they would tend to cancel each other out.

Including Federal hospital wage data would benefit only those few hospitals located in areas with Federal hospital employees, which would have higher index values as a result, and generally would disadvantage all those hospitals not located in such areas. Many Medicare participating hospitals could be adversely affected, since about 234 areas would have lower wage index values. However, the impact on the majority of individual hospitals would be relatively small.

In the aggregate, the reissuance of an area wage index excluding Federal hospitals will—

- Generally affect the annual Medicare revenues of individual hospitals by small amounts, compared to their total revenues;
- Have little net effect on aggregate hospital revenue from Medicare;
- Be more cost beneficial to hospitals as a whole;

• Have little or no effect on costs or prices; and

• Result in a smaller net disadvantage to hospitals as a whole.

In conclusion, the use of the wage index methodology as initially published in 1981 does not meet any of the criteria for identifying a major rule under E.O. 12291, and we have determined that this notice is not a major rule and that a regulatory impact analysis is not required. In addition, the Secretary certifies under section 5 U.S.C. 605(b) of the Regulatory Flexibility Act, that this notice will not result in a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is not required.

B. Paperwork Burden

This notice contains no information collection requirements and, therefore, is not subject to review by EOMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

VI. Wage Index Tables

TABLE I-A.—WAGE INDEX FOR URBAN AREAS

SMSA area	Wage index
Abilene, TX	0.8485
Akron, OH	1.0417
Albany, GA	.8586
Albany-Schenectady-Troy, NY	.9624
Albuquerque, NM	1.0009
Alexandria, LA	[1]8218
Allentown-Bethlehem-Easton, PA-NJ	1.0580
Altoona, PA	1.0219
Amarillo, TX	.9233
Anaheim-Santa Ana-Garden Grove, CA	1.2115
Anchorage, AK	1.2461
Anderson, IN	.9612
Anderson, SC	[illegible]
Ann Arbor, MI	[1]1.2446
Anniston, AL	.8400
Appleton-Oshkosh, WI	1.0124
Asheville, NC	.9678
Athens, GA	[1]8612
Atlanta, GA	.9182
Atlantic City, NJ	1.0174
Augusta, GA-SC	.9237
Austin, TX	.9658
Bakersfield, CA	1.1223
Baltimore, MD	1.1696
Bangor, ME	[1]9239
Baton Rouge, LA	.8913
Battle Creek, MI	1.0229
Bay City, MI	1.1238
Beaumont-Port Arthur-Orange, TX	.9538
Bellingham, WA	[1]1.0124
Benton Harbor, MI	[1]8569
Billings, MT	[2]*.9568
Biloxi-Gulfport, MS	.8143
Binghamton, NY-PA	.9769
Birmingham, AL	.9658
Bismarck, ND	[1]9118
Bloomington, IN	*.9481
Bloomington-Normal, IL	[1]8913
Boise City, ID	.9834
Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH	[1]1.1277
Bradenton, FL	*.8631
Bremerton, WA	[illegible]
Bridgeport-Stamford-Norwalk-Danbury, CT	[illegible]
Brownsville-Harlingen-San Benito, TX	1.1847
Bryan-College Station, TX	.9312
Buffalo, NY	.8377
Burlington, NC	.9926
Burlington, VT	.8699
Canton, OH	[1]9441
Casper, WY	.9447
Cedar Rapids, IA	[1]1.0506

TABLE I-A.—WAGE INDEX FOR URBAN AREAS—Continued

SMSA area	Wage index
Champaign-Urbana-Rantoul, IL	1.1197
Charleston-North Charleston, SC	[illegible]
Charleston, WV	[illegible]
Charlotte-Gastonia, NC	[illegible]
Charlottesville, VA	[1]1.0943
Chattanooga, TN-GA	[illegible]
Chicago, IL	[1]1.2061
Chico, CA	[1]1.0327
Cincinnati, OH-KY-IN	[1]1.0819
Clarksville-Hopkinsville, TN-KY	[illegible]
Cleveland, OH	1.1957
Colorado Springs, CO	[illegible]
Columbia, MO	1.1712
Columbia, SC	[illegible]
Columbus, GA-AL	9021
Columbus, OH	1.1184
Corpus Christi, TX	[illegible]
Cumberland, MD-WV	[illegible]
Dallas-Fort Worth, TX	[illegible]
Danville, VA	[illegible]
Davenport-Rock Island-Moline, IA-IL	[1]9695
Dayton, OH	1.1084
Daytona Beach, FL	[illegible]
Decatur, IL	[illegible]
Denver-Boulder, CO	1.0960
Des Moines, IA	[illegible]
Detroit, MI	[illegible]
Dubuque, IA	[illegible]
Duluth-Superior, MN-WI	[illegible]
Eau Claire, WI	.9806
El Paso, TX	.8714
Elkhart, IN	[1]8372
Elmira, NY	[illegible]
Enid, OK	[1]8785
Erie, PA	.9852
Eugene-Springfield, OR	.9839
Evansville, IN-KY	[illegible]
Fargo-Moorhead, ND-MN	[illegible]
Fayetteville, NC	[illegible]
Fayetteville-Springdale, AR	.7997
Flint, MI	1.1919
Florence, AL	.8056
Florence, SC	[illegible]
Fort Collins, CO	.8353
Fort Lauderdale-Hollywood, FL	1.0506
Fort Myers, FL	.9591
Fort Smith, AR-OK	.8699
Fort Wayne, IN	[1]9885
Fort Walton Beach, FL	[illegible]
Fresno, CA	1.1265
Gadsden, AL	[illegible]
Gainesville, FL	[illegible]
Galveston-Texas City, TX	1.0607
Gary-Hammond-East Chicago, IN	1.1564
Glen Falls, NY	[illegible]
Grand Forks, ND-MN	[illegible]
Grand Rapids, MI	[illegible]
Great Falls, MT	[illegible]
Greeley, CO	*.8512
Green Bay, WI	[illegible]
Greensboro-Winston-Salem-High Point, NC	.9232
Greenville-Spartanburg, SC	[illegible]
Hagerstown MD	[illegible]
Hamilton-Middleton, OH	1.0620
Harrisburg, PA	1.0534
Hartford-New Britain-Bristol, CT	[1]1.1601
Hickory, NC	[2]8454
Honolulu, HI	1.1645
Houston, TX	[illegible]
Huntington-Ashland, WV-KY-OH	.9270
Huntsville, AL	.8593
Indianapolis, IN	[1]1.0519
Iowa City, IA	[1]1.1780
Jackson, MI	[1]1.0173
Jackson, MS	[illegible]
Jacksonville, FL	[illegible]
Jacksonville, NC	[illegible]
Jamestown [illegible]	[illegible]
Jersey City, NJ	1.1180
Johnson City-Kingsport-Bristol, TN-VA	[illegible]
Johnstown, PA	1.0445
Joplin, MO	[illegible]
Kalamazoo-Portage, MI	1.1625
Kankakee, IL	[illegible]
Kansas City, MO-KS	[illegible]
Kenosha, WI	[illegible]
Killeen-Temple, TX	.8868
Knoxville, TN	.9180
Kokomo, IN	[1]9846
La Crosse, WI	*.9016

TABLE I-A.—WAGE INDEX FOR URBAN AREAS—Continued

SMSA area	Wage index
Lafayette, LA	.8622
Lafayette-West Lafayette, IN	.9141
Lake Charles, LA	[illegible]
Lakeland-Winter Haven, FL	[illegible]
Lancaster, PA	1.0674
Lansing-East Lansing, MI	1.0811
Laredo, TX	*.8569
Las Cruces, NM	*.9129
Las Vegas, NV	1.1864
Lawrence, KS	*.9193
Lawton, OK	*.8377
Lewiston-Auburn, ME	*.8899
Lexington-Fayette, KY	[illegible]
Lima, OH	.9692
Lincoln, NE	.9259
Little Rock-North Little Rock, AR	[illegible]
Long Branch-Asbury Park, NJ	[illegible]
Longview, TX	[illegible]
Lorain-Elyria, OH	[illegible]
Los Angeles-Long Beach, CA	[illegible]
Louisville, KY-IN	[illegible]
Lubbock, TX	[illegible]
Lynchburg, VA	[illegible]
Macon, GA	.8637
Madison, WI	1.0257
Manchester-Nashua, NH	[1]9441
Mansfield, OH	[illegible]
McAllen-Pharr-Edinburg, TX	[illegible]
Medford, OR	*.9068
Melbourne-Titusville-Cocoa, FL	[illegible]
Memphis, TN-AR-MS	1.0371
Miami, FL	[illegible]
Midland, TX	*.9141
Milwaukee, WI	1.0060
Minneapolis-St. Paul, MN-WI	[illegible]
Mobile, AL	[illegible]
Modesto, CA	[illegible]
Monroe, LA	[illegible]
Montgomery, AL	[illegible]
Muncie, IN	*.9862
Muskegon-Norton Shores-Muskegon Heights MI	.9698
Nashville-Davidson, TN	[illegible]
Nassau-Suffolk, NY	[illegible]
New Bedford-Fall River, MA	[illegible]
New Brunswick-Perth Amboy-Seyreville NJ	[illegible]
New Haven-Waterbury-Meriden, CT	[illegible]
New London-Norwich, CT	[illegible]
New Orleans, LA	[illegible]
New York, NY-NJ	[illegible]
Newark, NJ	[illegible]
Newark, OH	[illegible]
Newburgh-Middletown, NY	[illegible]
Newport News-Hampton, VA	[illegible]
Norfolk-Virginia Beach-Portsmouth, VA-NC	[illegible]
Northeast Pennsylvania	[illegible]
Ocala, FL	[illegible]
Odessa, TX	[illegible]
Oklahoma City, OK	.9252
Olympia, WA	[illegible]
Omaha, NE-IA	[illegible]
Orlando, FL	[illegible]
Owensboro, KY	[illegible]
Oxnard-Simi Valley-Ventura, CA	[illegible]
Panama City, FL	[illegible]
Parkersburg-Marietta, WV-OH	[illegible]
Pascagoula-Moss Point, MS	[illegible]
Paterson-Clifton-Passaic, NJ	[illegible]
Pensacola, FL	[illegible]
Peoria, IL	[illegible]
Petersburg-Colonial Heights-Hopewell, VA	[illegible]
Philadelphia, PA-NJ	[illegible]
Phoenix, AZ	[illegible]
Pine Bluff, AR	*.7997
Pittsburgh, PA	[illegible]
Pittsfield, MA	[illegible]
Portland, ME	[illegible]
Portland, OR-WA	[illegible]
Portsmouth-Dover-Rochester, NH-ME	[illegible]
Poughkeepsie, NY	[illegible]
Providence-Warwick-Pawtucket, RI	[illegible]
Provo-Orem, UT	[illegible]
Pueblo, CO	[illegible]
Racine, WI	[illegible]
Raleigh-Durham, NC	[illegible]
Rapid City, SD	[illegible]
Reading, PA	[illegible]
Redding, CA	[illegible]
Reno, NV	[illegible]
Richland-Kennewick, WA	[illegible]

TABLE I-A.—WAGE INDEX FOR URBAN AREAS—Continued

SMSA area	Wage index
Richmond, VA	.9252
Riverside-San Bernadino-Ontario, CA	1.1729
Roanoke, VA	[illegible]
Rochester, MN	[illegible]
Rochester, NY	1.0653
Rockford, IL	[1]1.0222
Rock Hill, SC	[illegible]
Sacramento, CA	[1]1.2231
Saginaw, MI	1.1279
St. Cloud, MN	.8680
St. Joseph, MO	.9749
St. Louis, MO-IL	.9977 (*.9975)
Salem, OR	1.1083
Salinas-Seaside-Monterey, CA	[illegible]
Salisbury-Concord, NC	[1]1.0368
Salt Lake City-Ogden, UT	.8550
San Angelo, TX	.8364
San Antonio, TX	.9509
San Diego, CA	[1]1.1426
San Francisco-Oakland, CA	1.3153
San Jose, CA	1.3055
Santa Barbara-Santa Maria-Lompoc, CA	[1]1.0628
Santa Cruz, CA	[1]1.0985
Santa Rosa, CA	1.4037
Sarasota, FL	.9835
Savannah, GA	[illegible]
Seattle-Everett, WA	1.0600
Sharon, PA	[illegible]
Sheboygan, WI	[illegible]
Sherman-Denison, TX	.8277
Shreveport, LA	[illegible]
Sioux City, IA-NE	[illegible]
Sioux Falls, SD	[illegible]
South Bend, IN	[illegible]
Spokane, WA	1.0921
Springfield, IL	[1]1.0230
Springfield, MO	[illegible]
Springfield, OH	[illegible]
Springfield-Chicopee-Holyoke, MA	[1]1.0285
State College, PA	[1]1.1034
Steubenville-Weirton, OH-WV	[illegible]
Stockton, CA	[illegible]
Syracuse, NY	[illegible]
Tacoma, WA	[1]1.0558
Tallahassee, FL	[illegible]
Tampa-St. Petersburg, FL	[illegible]
Terre Haute, IN	[illegible]
Texarkana-TX-Texarkana, AR	[illegible]
Toledo, OH-MI	[illegible]
Topeka, KS	[illegible]
Trenton, NJ	1.1708
Tucson, AZ	[illegible]
Tulsa, OK	[illegible]
Tuscaloosa, AL	[illegible]
Tyler, TX	[illegible]
Utica-Rome, NY	[illegible]
Vallejo-Fairfield-Napa, CA	[illegible]
Victoria, TX	[illegible]
Vineland-Millville-Bridgeton, NJ	[illegible]
Visalia-Tulare-Porterville, CA	[illegible]
Waco, TX	[illegible]
Washington, DC-MD-VA	[illegible]
Waterloo-Cedar Falls, IA	[illegible]
Wausau, WI	[illegible]
West Palm Beach-Boca Raton, FL	[illegible]
Wheeling, WV-OH	[illegible]
Wichita, KS	[illegible]
Wichita Falls, TX	[illegible]
Williamsport, PA	[illegible]
Wilmington, DE-NJ-MD	[illegible]
Wilmington, NC	[illegible]
Worcester-Fitchburg-Leominster, MA	[illegible]
Yakima, WA	[illegible]
York, PA	[illegible]
Youngstown-Warren, OH	[illegible]
Yuba City, CA	[illegible]

TABLE I-B.—WAGE INDEX FOR RURAL AREAS

Non-SMSA area	Wage index
Alabama	[illegible]
Alaska	1.5579
Arizona	[illegible]
Arkansas	[illegible]
California	1.2415
Colorado	[illegible]
Connecticut	[1]1.1817
Delaware	1.0370
Florida	[illegible]
Georgia	.9463
Hawaii	[1]1.3452
Idaho	[illegible]
Illinois	[illegible]
Indiana	[illegible]
Iowa	[illegible]
Kansas	[illegible]
Kentucky	[illegible]
Louisiana	.9216
Maine	.9926
Maryland	1.1028
Massachusetts	1.1722
Michigan	[1]1.1535
Minnesota	[illegible]
Mississippi	.8751
Missouri	.9156 (*.9151)
Montana	[illegible]
Nebraska	[illegible]
Nevada	1.0790
New Hampshire	[1]1.1301
New Jersey	[illegible]
New Mexico	1.0073
New York	1.0327
North Carolina	.9917
North Dakota	.9045
Ohio	[illegible]
Oklahoma	.9111
Oregon	1.0673
Pennsylvania	[1]1.1371
Rhode Island	[illegible]
South Carolina	[illegible]
South Dakota	[2]8237
Tennessee	[illegible]
Texas	.8979
Utah	[2]8552
Vermont	.9993
Virginia	[illegible]
Washington	1.0485
West Virginia	[2]1.0123
Wisconsin	[illegible]
Wyoming	1.0402

[1] Not Applicable. All of Rhode Island is classified as urban
[2] Recomputed wage index lower than the published index.
[3] Revised wage index based on corrected reporting data from BLS.

[illegible] Approximate value for area.
[illegible] Effective 6/19/81 no longer qualified as an SMSA.
[illegible] Effective 6/19/81 newly designated SMSA.
[illegible] Effective 6/19/81 New and revised NECMA.
[illegible] Recomputed wage index in parentheses based on corrected reporting data from BLS resulting in lower than published index. Higher wage index used to compute the limit.
[illegible] Revised wage index based on corrected reporting data from BLS.

(Secs. 1102, 1814(b), 1861(v)(1), 1886(a), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh; and 42 CFR 405.460))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program)

Dated: September 21, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: October 30, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-30916 Filed 11-23-84; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

November 9, 1984.

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register,** Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981, **Federal Register,** Vol. 48, No. 3, pp. 512–516, dated Wednesday, January 5, 1983, **Federal Register,** Vol. 48, No. 198, pp. 46434–46448, dated Wednesday, October 12, 1983, **Federal Register,** Vol. 49, No. 133, pp. 28112–28122, dated July 10, 1984, **Federal Register,** Vol. 49, No. 164, pp. 33342–33343, dated August 22, 1984, and **Federal Register,** Vol. 49, No. 174, pp. 35246–35247, dated September 6, 1984) is amended to reflect the organizational changes described below:

• Change the organizational title of the Office of Financial Management Services, Office of Management and Budget (OMB), Office of the Associate Administrator for Management and Support Services (OAAMSS), to the Office of Financial Management and Administrative Systems (OFMAS) to more accurately describe the functions currently assigned to that Office. The functional statement is also amended to reflect the addition of the administrative systems responsibilities. The new responsibilities were formerly assigned to the Bureau of Support Services (BSS) which was abolished on August 14, 1984 (see **Federal Register,** Vol. 49, No. 164, pp. 33342–33343, dated August 22, 1984).

• Revise the functional statement for the Division of Budget, OFMAS, OMB, OAAMSS, to reflect the addition of the responsibility for determining the cost impact of all proposed program and demonstration waivers.

• Change the organizational title of the Division of Financial Systems, OFMAS, OMB, OAAMSS, to the Division of Administrative Systems to more accurately reflect the current responsibilities of the Division. The functional statement is also amended to reflect to the changes.

• Add new Divsion of Medicare Operations Support in the Office of Administrative Services, OMB, OAAMSS. The new Division will be responsible for data entry and data handling activities related to a variety of bill, query, enrollment, and premium billing correspondence and transactions. These functions were formerly performed by BSS.

• Amend the functional statement for the Division of National Cost Estimates, Office of Financial and Actuarial Analysis, OAAMSS, to more accurately describe the responsibilities of the Division.

• Amend all of office and division level functional statements in the Bureau of Data Management and Strategy, OAAMSS, to reflect the

addition of new functions from the recently abolished BSS. The functional statements have been revised to provide a more accurate description of the current functional responsibilities.

The specific amendments to the Federal Register are as follows:

• Section FH.20.A.2. Office of Financial Management Services (FHA1) is amended by changing the organizational title and replacing the functional statement with an updated statement. The new Section FH.20.A.2. reads as follows:

"2. Office of Financial Management and Administrative Systems (FHA1)

"Provides financial and accounting services, leadership, and policy direction for HCFA's financial management program including preparation, justification, and execution of the HCFA budget and financial and manpower management policies and activities. Provides applications software support to HCFA with respect to personnel managment systems, financial management systems, administrative systems, and management information systems."

• Section FH.20.A.2.a. Division of Budget (FHA15) is amended by deleting the functional statement and replacing it with a new statement to read as follows:

"a. Division of budget (FHA15).

"Consolidates, prepares, and executes HCFA's budget and operates HCFA's budget system. Serves as the central information point for all budgetary matters including interagency agreements impacting on HCFA's funding and transfer of funds to and from other agencies. Provides advice on reporting of program and financial data necessary for the presentation and defense of budget requests. Provides advice, guidance, and assistance to HCFA components in the development of budget justification materials and analysis including current services budgeting and other budgetary principles required by the Office of the Secretary, HHS, the Office of Management and Budget, and the Congress. Provides technical direction to HCFA regional components on all budgetary matters. Develops budget control systems necessary to insure that appropriate measures are in place to prevent violations of the Anti-Deficiency Act. Maintains and monitors an allotment and allowance system sufficient to pinpoint responsibility and accountability for Federal funds. Provides staff expertise in the review and analysis of budgetary, operational, legislative, or regulatory proposals by HCFA operating components. Reviews these proposals to determine fiscal impact on, and consistency with, HCFA Departmental management and programmatic objectives. Develops financial management policy as it relates to HCFA's programmatic objectives. Certifies the cost impact of all proposed program and demonstration waivers. Reviews financial data and makes recommendations as to the effectiveness of the waiver and potential termination or nonrenewal actions. Directs the allocation of HCFA's staffing resources among HCFA components, issues employment ceilings, and directs HCFA's manpower management system. Assures the validity of cost allocation data and monitors adherence to financial management policies among HCFA components."

• Section FH.20.A.2.c. Division of Financial Systems (FHA13) is amended by deleting the organizational title and the functional statement and replacing them with a new organzational title and functional statement. Section FH.20.A.2.c. now reads as follows:

"c. Division of Administrative Systems (FHA13)

"Provides applications software support to HCFA headquarters including personnel management systems, financial management systems, general administrative systems, and managment information systems. Provides applications software support to HCFA regional offices in administrative management systems. Provides applications software support services to other HCFA components in the development of administrative systems including those utilizing microcomputer technology. Executes macro design and evaluation of prototype administrative systems."

• Section FH.20.A.3. is amended to add a new division to the Office of Administrative Services. The new division is the Division of Medicare Operations Support (FHA53). Section FH.20.A.3.c. reads as follows:

"c. Division of Medicare Operations Support (FHA53)

"Provides a data entry and data handling capability for the Office of Management and Budget to control, examine, audit, investigate, process, and release a variety of correspondence, bill, query, enrollment, and premium billing transactions. Receives and resolves data errors from the Automated Data Processing (ADP) systems and prepares corrective data for reentry into the automated systems. Maintains microfilm files for search and microprint services. Provides a focus and liaison for budget and ADP planning activities, as well as matters relating to resource accounting and responding to requests for data from offsite components. Provides an operations analysis capability within the Division."

• Section FH.20.B.3. Division of National Cost Estimates (FHG3) is amended by deleting the functional statement and replacing it with a new statement to read as follows:

"3. Division of National Cost Estimates (FHG3)

"Monitors prices, utilization, and costs of health care and analyzes their impact on HCFA programs and the implications for the national economy. Develops and conducts studies to estimate, project, and analyze national and State health expenditures and the financial and enrollment experience of private health insurance. Prepares cost estimates of proposed national health initiatives by applying a highly technical, multidisciplinary approach. Synthesizes the results of economic and actuarial studies relating to estimating factors such as the interaction between supply and demand or the influences of cost sharing on costs. Develops and establishes methodologies for analyzing health care financing problems. Provides cost estimates for specific health areas such as capital, technology, and malpractice. Provides technical microanalyses for Administrator or Department initiatives (such as prospective payment and cost containment) in response to requests of Congressional members, Governors, and health provider groups which includes calculating the economic effect of the proposal on the health industry, determining growth in health expendutures, and determining cost shifts between providers."

• Section FH.20.D. Bureau of Data Management and Strategy (FHE) is amended by deleting all of the office and division level functional statements and organizational titles and replacing them with new functional statements and organizational titles. The Bureau statement remains unchanged. Sections FH.20.D.2. and FH.20.D.3. are deleted in their entirety and replaced by new materials. The new section FH.20.D. reads as follows:

"1. Program Support Staff (FHE–1)

"Directs the development and control of a comprehensive Bureau-wide management and organization development program which includes automated and manual support systems for: workplanning, training, internal financial management, management analysis, human resources management and accounting, regulations and executive secretariat coordination and control, and the full range of administrative guidance, procedures, and services required to efficiently and

effectively manage the Bureau. Provides information and advice to the Bureau Director and Deputy Bureau Director on complex and sensitive management issues in which the Bureau's functioning is interdependent with other HCFA Bureaus and Offices. Develops, implements, and maintains a Bureau-wide financial management program to support Automated Data Processing (ADP) operations.

"2. Office of Statistics and Data Management (FHE2)

"Directs the development, maintenance, and publication of HCFA program statistical information. Designs and manages systems and computer programs to establish and maintain HCFA statistical files and produce information from these files. Disseminates HCFA program data through a variety of media including published notes and bulletins, annual program statistical series, and an executive data compendium. Provides health statistical information in response to inquiries on HCFA Programs and other national experience. Develops special purpose statistical data bases for supporting HCFA responsibilities in areas such as cost containment, impact analysis of proposals for program changes, and special research and evaluation studies.

"a. Division of Data Development (FHE21)

"Designs, implements, maintains, and ensures the continuing operation of large-scale computer systems to prepare health insurance data files for use in statistical, policy, and actuarial information retrieval systems. Extracts health care data necessary to support HCFA activities from HCFA, Social Security Administration, and other health-related sources. Develops programs to array data in accordance with general specifications developed within HCFA. Develops and maintains file management systems, data storage techniques, file documentation libraries, and information retrieval systems. Develops standards for and monitors the quality and reliability of statistical and actuarial data received and produced in the Office of Statistics and Data Management. Ensures the quality and integrity of program statistical data by advising and consulting on data collection policy and procedures, forms design, and forms clearance with other HCFA components requiring program data. Monitors and improves the accuracy and completeness of information obtained from HCFA contractors and other sources prior to the compilation of statistical data. Performs statistical data quality reviews for consistency and accuracy. Arranges for necessary revisions in source records due to legislation or changes in administrative operations. Provides technical services in the development of common data element definitions and other data standards. Provides advisory and consultative services in the development and use of medical terminology and coding systems and in the evaluation, development, and operation of automated medical coding systems.

"b. Division of Systems Development and Statistical Programming (FHE23)

"Provides sophisticated computational and statistical services, mathematical modeling, simulation systems analysis, and statistical programming. Designs systems configurations, data bases, and software packages for scientific applications and special purpose information retrieval and processing in support of projects undertaken by HCFA. Processes and disseminates nonrecurring technical documents and information. Operates and maintains the Hospital Cost Report Information System which provides a national data base for all Medicare hospital cost reports.

"c. Division of Information Analysis (FHE24)

"Disseminates statistical data, estimates, analyses, and related information on health-related programs in response to questions from legislators, program administrators, policymakers, researchers, and health planners in the public and private sectors. Maintains a data library including publications, computer output, microfilm, and machine-readable data files. Prepares statistical reports for external publications and management reports on HCFA programs and related areas. Maintains data systems, conducts information services, and supports policy analysis for the Federal End-Stage Renal Disease program.

3. Office of Information Resources Management (FHE4)

"Serves as the focal point for the planning and evaluation of HCFA's information systems and data standards development including coding conventions. Develops and assures compliance with HCFA's long-range and short-range information plans and processes. Determines, through coordination with other components, information needed by HCFA to carry out its functions. Determines and assures compliance with internal HCFA Automated Data Processing (ADP) policies, standards, and procedures including information systems planning, capacity planning, systems approval, data base management, office automation, security, and privacy. Provides systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with Departmental and HCFA policies, standards, and information plans. Accomplishes macro design and evaluation of prototype information systems in coordination with other HCFA components, as necessary. Develops and maintains an inventory of HCFA's information systems, files, and data elements. Works with various components throughout the health care industry in the development of concepts, plans, and policy to improve the efficiency and effectiveness of information management. Coordinates and provides liaison on policy, planning, and standards for information systems and program data within HCFA and between HCFA and other governmental agencies and nongovernmental groups (e.g., American Medical Association, American Hospital Association). Formulates and excutes the HCFA ADP common expense budget in conjunction with the Agency budget process administered by the Office of Management and Budget. Develops, coordinates, and directs the HCFA ADP systems security program including the systems security program for Medicare contractors.

a. Division of Information Systems Management (FHE41)

"Develops and assures compliance with HCFA's long-range and short-range Automated Data Processing (ADP) program information plans and processes. Determines and assures compliance with HCFA ADP policies. Accomplishes macro design and evaluation of prototype program information systems. Determines and assures compliance with HCFA ADP policies for information systems approval. Provides systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with Departmental and HCFA policies, standards, and information plans. Develops, implements, and maintains a HCFA-wide resources management program to fund and support ADP operations. Plans, budgets, and controls for the acquisition of all HCFA ADP, data communications (DC), microcomputer (MC), and word processing (WP) systems and equipment. Formulates and executes the HCFA ADP common expense budget and the Information Technology System plan and budget in conjunction with Agency-wide budgetary submissions to HHS. Performs the Agency-wide

capacity planning function to ensure that future ADP requirements are met through various sources and that necessary procurement actions are identified and scheduled for phased procurement. Negotiates and administers agreements and provides liaison at the management level between HCFA, the Social Security Administration, and other external organizations for the provision of ADP and DC capacity and support services. Coordinates and provides liaison on information systems policy, planning, and standards within HCFA and between HCFA and other governmental agencies and nongovernmental groups. Plans and evalutes systems development activities to ensure state of the art application of ADP, DC, MC, and WP technology.

"b. Division of Data Administration (FHE43)

"Determines and assures compliance with HCFA's Automated Data Processing policies in the areas of data base management and office automation. Develops and maintains an inventory of HCFA's information systems, files, and data elements. Coordinates and provides liaison on program data policy, planning, and standards within HCFA and between HCFA and other governmental agencies and nongovernmental groups (e.g., American Medical Association, American Hospital Association). Works with various components throughout the health care industry in the development of concepts, plans, and policies to improve the efficiency and effectiveness of information management. Serves as the focal point for the planning and evaluation of HCFA's data standards development including coding conventions.

"4. Office of Health Program Systems (FHE5)

"Designs, develops, implements, and maintains Automated Data Processing (ADP) and telecommunications systems and software, data files and formats, and manual procedures required to support the Agency's programmatic mission from operational, program management, and quality control aspects. Establishes and maintains a national file of eligible Medicare beneficiaries. Establishes and maintains a history of Medicare benefit utilization. Integrates entitlement and information from other programs (e.g., Medicaid, Veterans Administration) into Medicare files. Receives and responds to queries regarding beneficiary entitlement and benefit and deductible status from a nationwide network of Medicare fiscal agents. Provides program data or information to other authorized requestors. Maintains systems that support certification of providers of service in the Medicare and Medicaid programs. Determines fiscal accountability for group health organizations. Prepares billings for and receives and processes ADP records for Medicare premium remittances from third party payors and beneficiaries. Prepares a variety of program managment reports (e.g., workloads, processing times) for distribution throughout the Agency, Department, and Medicare fiscal agents. Provides ADP support to the Agency for quality control systems, fraud and abuse detection systems, and beneficiary and provider overpayment systems. Consults with central and regional office components and other government agencies to define programmatic ADP system performance requirements. Negotiates, reviews, and approves systems designs. Consults with Bureau of Data Management and Strategy components to define ADP and teleprocessing resource requirements and provides input to the budget planning and procurement processes. Insures awareness of and compliance with government-wide and local security and privacy requirements within the Office.

"a. Division of Beneficiary and Provider Systems (FHE51)

"Designs and implements both the clerical and Automated Data Processing (ADP) operating policies, procedures, systems, and instructions for: development and maintenance of a master file of all individuals eligible for Medicare benefits (including Railroad Retirement annuitants), enrollment of beneficiaries, issuance of identification cards, posting of benefit utilization data, responding to utilization queries from intermediaries and carriers, issuance of notices of benefit utilization, accounting controls for reconciliation and audit of providers and carriers, determination, billing, and collection of health insurance premium liability from third party entities and direct paying beneficiaries, and the determination and reconciliation of the payment liability for group health plans. Furnishes a variety of management data for review, appraisal, and planning purposes and assists other HCFA systems components in developing and interpreting the data. Provides technical services to the office programming personnel and to the Office of Management and Budget's staff resolving electronic exceptions and correspondence. Provides an office focus and liaison for budget and ADP planning activities, as well as matters relating to systems security, resource accounting, systems documentation, and requests for data from offsite components.

"b. Division Program Management Systems (FHE52)

"Designs, develops, and implements a wide variety of Automated Data Processing (ADP) and telecommunications systems in support of HCFA program management functions including: workload and operating systems, Supplemental Medical Insurance physician and laboratory payment information systems, fraud and abuse detection systems, operational support systems, beneficiary and provider overpayment systems, provider certification and billing data including an on-line query and reply subsystem, accounting controls for reconciliation and audit of providers and carriers, and the Medicare and Medicaid Quality Control systems. Providers technical support to HCFA regional offices in program management systems areas. Provides technical and state of the art expertise in the use of current program data bases for the design and development of new systems which support HCFA program management objectives.

"5. Office of Computer Operations (FHE6)

"Directs the management, operation, maintenance of, and establishes workload planning and controls for: HCFA's Automated Data Processing (ADP) and data communications (DC) facilities and equipment and microcomputer (MC) and word processing (WP) equipment. Implements and administers comprehensive ADP/DC/MC/WP support systems for the Agency. Provides technical assistance and consultation to all HCFA components regarding solutions to ADP/DC/MC/WP equipment and support software problems including system design, selection, procurement, technical evaluation, security, utilization, and operations. Controls ADP/DC/MC/WP resources including cost estimates, planning and scheduling of expenditures, inventory, purchase, lease, and maintenance of ADP/DC/MC/WP hardware, software, and services. Provides technical review and approval for purchase, lease, and maintenance for all ADP/DC/MC/WP equipment and systems throughout HCFA. Develops budget estimates and spending plans for activities managed by the Office of Computer Operations (OCO) including those with Agency-wide scope in conjunction with the Agency budget process administered by the Office of Management and Budget. Provides technical evaluation and liaison related to ADP/DC/MC/WP procurement actions. Provides analyses, installation, modification, and maintenance of operating systems, micro and minicomputers, and WP and DC systems software for all HCFA components. Manages systems software and software products including data base management systems, graphics, program generators and statistical analysis packages, personal computer packages, and office automation systems. Monitors ADP/DC/MC/WP equipment utilization, capacity, and performance and makes available the necessary reports for all levels of management. Prepares long-term technical and operational plans for solutions to HCFA ADP/DC/MC/WP mission needs and requirements. Advises the Bureau and HCFA executive staff on ADP/DC/MC/WP issues and concerns and represents HCFA in dealings with Federal and non-Federal agencies and organizations on the full Agency-wide range of OCO functions including hardware systems plans and ADP/DC/MC/WP acquisition and utilization.

"a. Division of ADP Operations (FHE61)

"Manages, operates, and maintains HCFA's Computer Center. Establishes workload planning and controls and schedules work to be processed. Coordinates the resolution of hardware and software problems with appropriate vendors. Notifies, reviews, approves, schedules, implements, and coordinates Computer Center system changes. Develops and maintains problem resolution logs to rapidly identify the extent of problems within the systems. Monitors operation performance and informs appropriate technical staff of system abnormalities and failures. Recommends and implements changes to improve resource availability and performance. Provides the necessary operational data to advise the Office Director and other HCFA officials concerning Automated Data Processing operations and on matters concerning data communications. Provides liaison with other HCFA components, other Federal agencies, and private organizations concerning HCFA Computer Center operations and data communications functions.

"b. Division of User Support (FHE62)

"Supports the Office Director in the role as the principal focal point for coordinating matters relating to the acquisition and use of approved Automated Data Processing (ADP) hardware with HCFA as required in Section 1-10-50 of the HHS ADP Systems Manual. Serves as the Agency focal point, as required by Public Law 96-511, for coordinating controlling, and approving component requests for the acquisition of ADP hardware equipment, supplies, and services. Provides ADP liaison between HCFA users and ADP suppliers. Negotiates and administers agreements with the Social Security Administration and other external organizations for the provision of ADP hardware capacity and support services. Develops, implements, and maintains management systems to provide outside organizations with information concerning HCFA ADP hardware operations. Provides consultative support to develop local and distributed processing applications utilizing micro and minicomputers, personal computers, and word processing equipment to ensure compatibility within the Agency. Develops, analyzes, evaluates, and controls simulation and benchmark studies to determine the impact of new equipment and software on operating systems or applications. Evaluates computer performance and provides resource utilization reports and management to ensure effective and efficient ADP systems."

Dated: November 9, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84-30820 Filed 11-23-84; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Discontinuation of the Acceptance of Applications for the Repayment of Educational Loans for Failure To Complete Studies

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of the Discontinuation of the Acceptance of Applications for the Repayment of Educational Loans for Failure to Complete Studies.

SUMMARY: This Notice announces that, until further notice the Department of Health and Human Services will no longer accept applications for repayment of all or part of educational loans from former health professions students who failed to complete a course of study leading to their first professional degrees, in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy or podiatry, as authorized under section 741(*l*) of the PHS Act. This decision is based on the fact that Federal funds are not available for the repayment of these loans.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT: Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-48, Rockville, Maryland 20857 (telephone 301 443-4540).

SUPPLEMENTARY INFORMATION: Under section 741(*l*) of the PHS Act the Secretary is authorized to repay all or part of a health professions student's outstanding loans if the applicant: failed to complete such studies leading to his/her first professional degree; is in exceptionally needy circumstances; is from a low-income or disadvantaged family; and has not resumed, or cannot reasonably be expected to resume, the study of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy or podiatry within 2 years following the date upon which he/she terminated the studies.

Applications will no longer be accepted for the repayment of these health professions loans due to the lack of funds for this purpose. Should funds become available for such loan repayment in the future, eligible applicants will be notified by publication of a Notice in the **Federal Register.**

(*Catalog of Federal Domestic Assistance* No. 13.342, Health Professions Student Loan Program)

Dated: November 19, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 84-30846 Filed 11-23-84; 8:45 am]

BILLING CODE 4165-15-M

Discontinuation of the Acceptance of Applications for the Repayment of Educational Loans for Failure to Complete Studies

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of the Discontinuation of the Acceptance of Applications for the Repayment of Educational Loans for Failure to Complete Studies.

SUMMARY: This Notice announces that, until further notice the Department of Health and Human Services will no longer accept applications for repayment of all or part of educational loans from former nursing students who failed to complete a course of study leading to a diploma in nursing, an associate degree in nursing, a bachelor's degree in nursing or equivalent degree, or a graduate degree in nursing, as authorized under section 836(j) of the PHS Act. This decision is based on the fact that Federal funds are not available for the repayment of these loans.

Nursing schools and students are, therefore, advised that repayment of loans for failure to complete studies is no longer available.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT: Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-48, Rockville, Maryland 20857 (telephone 301 443-4540).

SUPPLEMENTARY INFORMATION: Under section 836(j) of the PHS Act, the Secretary is authorized to repay all or part of a nursing student's outstanding loans if the applicant: Failed to complete the nursing studies with respect to which the loan was made; is in exceptionally needy circumstances; is from a low-income or disadvantaged family; and has not resumed, or cannot reasonably be expected to resume, his/her nursing studies within 2 years following the date upon which he/she terminated the studies.

Applications will no longer be accepted for the repayment of these nursing loans due to the lack of funds for this purpose. Should funds become available for such loan repayment in the future, eligible applicants will be notified by publication of a Notice in the **Federal Register.**

(*Catalog of Federal Domestic Assistance* No. 13.304, Nursing Student Loan Program)

Dated: November 19, 1984.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 84-30845 Filed 11-23-84; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA).

Notice is given that Chapter SY as published in the **Federal Register** on October 5, 1984 is amended to add three Logical Application Groups (LAGs) and three division-level subcomponents and their functions under the various offces within the Office of Information Systems (OIS). OIS has responsibility for SSA-wide administrative, management and statistical information (AMSI) systems throughout the systems development life cycle in accordance with Software Engineering Technology (SET). To accomplish their mission, OIS is consolidating administrative, management and statistical information systems application areas into three groups which are logically related in terms of the business process which they support and the information needed for the successful accomplishment of those processes. These groups are titled LAGs and constitute the highest-level grouping for the management of information systems planning and development activities needed to carry out SSA's Systems Modernization Plan (SMP). The LAGs will develop, maintain and enhance AMSI application systems in order to meet the needs of the Agency as expressed in the SMP. The LAG concept will enable OIS to better coordinate systems projects, reduce the amount of systems overlap and more closely evaluate and coordinate systems requirements and machine capabilities with program needs and requirements. Functionally, the LAGs will deal with the SET definition of the Systems Life Cycle for Human Resources, External Affairs/Communications, Earnings/Enumerations, Program Benefits, Quality, Financial/Physical Resources, Planning/Policy and Procedures and Workload Management.

The changes are as follows:

Section SY.10 The Office of Information Systems—(Organization)

Amended by adding the following subcomponents:

Under Subsection D., The Office of Information Systems Development (SYA), add:

1. Logical Application Group I (SYA1).
2. Logical Application Group II (SYA2).
3. Logical Application Group III (SYA3).

Under Subsection E., The Office of Information Systems Management and Technology (SYB), add:

1. The Division of Information Resource Management (SYB1).
2. The Division of Information Systems Technology (SYB2).
3. The Division of Information Systems Integration (SYB3).

Section SY.20 The Office of Information Systems Development—(Function)

Amend by adding the following material:

At the conclusion of Subsection D., The Office of Information Systems Development (SYA), add: "The Office includes the following components and functions:

1. *Logical Application Group I* (SYA1): Logical Application Group (LAG) I is responsible for the design, development, coordination and implementation of new administrative, management and statistical information (AMSI) application systems and enhancements to existing AMSI application sytems. Projects would include such logical application groupings as human resources, external affairs/communications and earnings/enumerations. Specific systems needs are defined through functional requirements/specifications developed in conjunction with user components within SSA. The LAG implements SSA's new information architecture for assigned applications groupings. The work is national in scope, affects all SSA components and is integral to the satisfactory completion of the Systems Modernization Plan (SMP).

2. *Logical Application Group 2* (SYA2): LAG II is responsible for the design, development, coordination and implementation of new AMSI application systems and enhancements to existing AMSI application systems. Projects would include such logical application groupings as program benefits and quality. Specific systems needs are defined through functional requirements/specifications developed in conjunction with user components within SSA. The LAG implements SSA's new information architecture for assigned applications groupings. The work is national in scope, affects all SSA components and is integral to the satisfactory completion of the SMP.

3. *Logical Application Group 3* (SYA3): LAG III is responsible for the design, development, coordination and implementation of new AMSI application systems and enhancements to existing AMSI application systems. Projects would include such logical application groupings as financial/physical resources, planning/policy and procedure and workload management. Specific systems needs are defined through functional requirements/specifications developed in conjunction with user components within SSA. The LAG implements SSA's new information architecture for assigned applications groupings. The work is national in scope, affects all SSA components and is integral to the satisfactory completion of the SMP."

At the conclusion of Subsection E., The Office of Information Systems Management and Technology (SYB), add: "The Office includes the following components and functions:

1. *The Division of Information Resource Management* (SYB1):

a. Identifies workload control, production and resource reporting requirements for all levels of SSA's management and recommends agencywide management information policies.

b. Coordinates with other SSA components, as well as State Agencies the planning and development of the administrative, management and statistical (AMSI) systems.

c. Directs and coordinates AMSI activities including statistical and management analyses of information.

d. Conducts continuing audits of AMSI systems development activity and recommends improvements.

e. Coordinates the use of Software Engineering Technology (SET) for AMSI systems development throughout SSA.

f. Maintains an inventory of AMSI application software systems.

g. Coordinates and tracks operating budget for the Office of Information Systems (OIS).

h. Directs the analysis of existing management information reporting statistics.

i. Establishes policy for security of AMSI systems and ensures implementation of the policy within OIS.

2. *The Division of Information Systems Technology* (SYB2):

a. Plans hardware, applications software and data communications integration for SSA AMSI computing needs.

b. Initiates hardware, applications software and data communications acquisition for AMSI needs.

c. Responsible for security of all AMSI hardware, software and data communications.

d. Directs research and development activities in areas relating to AMSI data communications including Local Area Networks (LAN).

e. Reviews requirements documentations for the acquisition of all hardware, software and data communication facilities for AMSI systems and coordinates acquisition planning with the Office of System Operations and the Office of System Integration.

f. Assists end users in the operations of their AMSI shared-logic computers where appropriate, and provides training and technical advice on the administration and operation of these computers.

g. Operates an Information Center and Maintains a "help desk" as a central point of contact for end user computing.

h. Assists users in developing Office Automation requirements and procurement justifications and provides consultative technical services to users on Office Automation.

3. *The Division of Information Systems Integration* (SYB3):

a. Responsible for the logical structure of all data bases maintained by OIS.

B. Defines all entities of AMSI data architecture, establishes AMSI data architecture and data base standards and monitors adherence to those standards.

c. Acts as consultant on logical data base design (data architecture) with respect to particular data content and relationships among data entities and attributes.

d. Reviews and approves functional requirements and specifications developed by OIS for data base applications.

e. Coordinates all AMSI data bases and administers all data bases directly under OIS control.

f. Monitors the day-to-day activity of the AMSI data basis, maintains data dictionary for all AMSI data bases, and is responsible for the timeliness, reliability and efficiency of AMSI data bases.

g. Manages data base backup and recovery activities relating to AMSI operations.

Dated: November 14, 1984.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 84-30876 Filed 11-23-84; 8:45 am]

BILLING CODE 4190-11-M

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA).

Notice is hereby given that Chapter SU as published in the **Federal Register** on January 4, 1983 (48 FR 337-343) and August 15, 1983 (48 FR 36904-36908) is amended to provide for the abolition of the Division of Software Modernization (SUE1) in the Office of Software Improvement and Engineering OSIE), Office of System Integration (OSI) and the establishment of three Logical Application Groups (SUE 3, 4, 5) at the division level. Having completed Phase I, or the "survival phase" of the Systems Modernization Plan (SMP), several functional realignments are necessary in OSIE to more effectively deal with the work environment and systems design requirements of Phase II, or the "Transition to State-of-the-Art" phase of the SMP. To accomplish this goal, OSI is consolidating systems design functions into three groups constituting the highest-level grouping of activities for the management of computerized systems planning and development. These groups are titled Logical Application Groups (LAGs). On the basis of functional requirements provided by the Office of System Requirements (OSR), the LAGs will design or modify automated data processing (ADP) systems to meet the needs of the Agency as expressed in the SMP. These automated systems are grouped into related general application areas. This realignment will enable OSI to better coordinate systems projects, reduce the amount of systems overlap and more closely evaluate and coordinate systems requirements and machine capabilities with program needs and requirements.

Functionally, the LAGs will deal with automated systems design projects for Enumeration and Earnings, Program Benefits and External Information Exchanges.

The changes are as follows:

Section SU.10 The Office of System Integration—(Organization) Amend

Subsection G. The Office of Software Improvement and Engineering (SUE) by deleting 1. The Division of Software Modernization (SUE1) in its entirety. In its place, add the following subcomponents:

1. Logical Application Group I—Enumeration and Earnings SUE3);
2. Logical Application Group II—Program Benfits (SUE4) and
3. Logical Application Group III—External Information Exchange (SUE5).

Subsection G.2. The Division of Data Administration (SUE2) should be renumbered as G.4.

Section SU.20 The Office of System Integration—(Function)

Under Subsection G. The Office of Software Improvement and Engineering (SUE) delete all of 1. The Division of Software Modernization (SUE1). In its place add:

1. *Logical Application Group I—Enumeration and Earnings* (SUE3): LAG I is responsible for the design, development, coordination and implementation of new or redesigned software to meet SSA's automated data processing needs in the broad area of Enumeration and Earnings. Projects would include such areas as enumeration, earnings, quality assurance and employer identification. Specific systems needs are defined through functional specifications provided by the Office of System Requirements (OSR). Systems design projects are national in scope, affect all SSA components, and are integral to the satisfactory completion of the SSA Systems Modernization Plan (SMP).

2. *Logical Application Group II—Program Benefits* (SUE4): Lag II is responsible for the design, development, coordination and implementation of new or redesigned software to meet SSA's automated data processing needs in the broad area of Program Benefits. Projects would include such areas as interactive development, claims control, eligibility/entitlement, pay/computations and debt management. Specific systems needs are defined through functional specifications provided by OSR. Systems design projects are national in scope, affect all SSA components, and are integral to the satisfactory completion of the SMP.

3. *Logical Application Group II—External Information Exchange* (SUE5): Lag III is responsible for the design, development, coordination and implementation of new or redesigned software to meet SSA's automated data processing needs in the broad area of External Information Exchange. Projects would include such areas as notices, inquiries, data exchange and government affairs. Specific systems needs are defined through functional specifications provided by OSR. Systems design projects are national in scope, affect all SSA components, and are integral to the satisfactory completion of the SMP.

Subsection G.2. The Division of Data Administration (SUE2) should be renumbered as G.4.

Dated: November 14, 1984.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 84-30807 Filed 11-23-84; 8:45 am]

BILLING CODE 4190-11-M

Fish and Wildlife Service

Endangered Species; Receipt of Application for Permit; Herman J. Correia, Jr., et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT No. 685350

Applicant: Herman J. Correia, Jr., Tiverton, RI

The applicant requests a permit to purchase in interstate commerce one pair of nene geese (*Branta scandvicensis*) from Walter Sturgeon, Durham, NH, for enhancement of propagation.

AFP No. 2656BM

Applicant: Los Angeles Zoo, Los Angeles, CA

The applicant requests a permit to import one male and two female pileated gibbons (*Hylobates pileatus*) from the Bangkok Zoo, Thailand for enhancement of propagation.

PRT No. 686251

Applicant: Laboratory For Comparative Biochemistry, San Diego, CA

The applicant requests a permit to import twelve eggs and twelve hatchling leatherback sea turtles (*Dermochelys coriacea*) taken from the wild in Mexico for scientific research.

PRT No. 683271

Applicant: George Miksch Sutton Avian Research Center, Inc., Bartlesville, OK

The applicant requests to amend their application to collect eggs from bald eagle (*Haliaeetus leucocephalus*) nests in FL, to include: Take of up to 35 eggs annually; take of any eggs laid in the wild in OK, temporarily substituting eagles hatched at their facility from FL eggs, and later resubstituting OK young; and, take blood samples from eagles held in captivity, for scientific research and enhancement of propagation.

PRT No. 686492

Applicant: Frank M. Thompson, Inc., Bradenton, FL

The applicant requests a permit to export one capitive-born female margay (*Felis Weidii*) to the Scottish National Zoological Park, Edinburgh, Scotland, for enhancement of propagation.

PRT No. 685967

Applicant: William Gruenerwald, Colorado Springs, CO

The applicant requests a permit to import one pair of captive-born Somali wild asses (*Equus africanus somalicus*), from the Basel Zoo, Switzerland, for enhancement of propagation.

PRT No. 686150

Applicant: Ralph Heath, Suncoast Seabird Sanctuary, Inc., St. Petersburg, FL

The applicant requests a permit to export 20 permanently crippled brown pelicans (*Pelecanus occidentalis*) to the Jurong Bird Park, Singapore, for public display and enhancement of propagation.

Document and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service at the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT/APP number when submitting comments.

Date: November 19, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-30807 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 37857]

Realty Action for Exchange of Public Land; Harney and Grant Counties, OR

The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

	Acres
T. 13 S., R. 28 E., W.M.:	
Sec. 17: SE¼	160.00
Sec. 18: Lots 3 & 4	108.71
Sec. 19: E½NE¼, Lot 1	80.00
Sec. 20: N½N½, SW¼NE¼, SW¼NW¼	240.00
Sec. 22: S½SE¼	80.00
Sec. 29: SW¼SW¼, SW¼SE¼	80.00
Sec. 30: Lots 3 & 4, SE¼NW¼, NE¼SE¼	169.50
Sec. 31: SW¼SW¼	57.32
Sec. 32: SE¼NW¼, E½SE¼	120.00
Sec. 33: W½NE¼, SE¼NE¼, E½NW¼, NE¼SE¼	240.00
Sec. 34: NW¼NE¼	40.00
Total	1,396.53
T. 18 S., R. 31 E., W.M.:	
Sec. 22: SE¼SW¼, SW¼SE¼	80.00
Sec. 26: N¼NE¼, SW¼NE¼, W½, SW¼SE¼	680.00
Total	360.00
T. 19 S., R. 31 E., W.M.:	
Sec. 2: Lots 1 thru 4 inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼, SE¼SE¼	646.80
Sec. 11: N½, N½S½, S½SW¼, SW¼SE¼	600.00
Sec. 13: E½SW¼, SW¼SW¼, W½SE¼, SE¼SE¼	360.00
Sec. 14: W½NE¼, NW¼, N½SW¼, NW¼SE¼	360.00
Sec. 24: All	640.00
Sec. 25: W½NE¼, SE¼NE¼, W½, SE¼	600.00
Total	2,986.80
Total Acreage	4,846.53

The lands described have not been identified for any higher priority values than the lands to be received, their disposal is consistent with other land use objective, and is not inconsistent with any other resource value allocations.

In exchange for these lands the United States will acquire the following described land from Edward Hines Lumber Co., Inc.:

	Acres
T. 16 S., R. 27 E., W.M.: Sec. 22: NW¼	160.00
Total	160.00
T. 19 S., R. 29 E., W.M.: Sec. 36: All	640.00
Total	640.00
T. 20 S., R. 29 E., W.M.:	
Sec. 16: S½	320.00
Sec. 20: SE¼NE¼, SE¼	200.00
Sec. 21: S½NW¼, NE¼SW¼, NW¼SE¼	160.00
Total	680.00
T. 20 S., R. 28 E., W.M.:	
Sec. 33: SE¼SW¼, S½SE¼	120.00
Sec. 34: SW¼SW¼	40.00
Sec. 36: E½	320.00
Total	480.00
T. 21 S., R. 28 E., W.M.:	
Sec. 24: SW¼	160.00
Sec. 25: NW¼, N½SW¼, W½SE¼	320.00
Sec. 36: All	640.00
Total	1,120.00
T. 21 S., R. 29 E., W.M.:	
Sec. 22: W½NE¼	80.00
Sec. 31: SW¼SW¼	40.00[illegible]
Total	120.00
T. 22 S., R. 28 E., W.M.: Sec. 1: NE¼	160.00
Total	160.00
T. 22., R. 29 E., W.M.:	
Sec. 6: W½NW¼	80.00
Sec. 7: W½NW¼, SW¼NW¼	120.00
Total	200.00
T. 21 S., R. 31 E., W.M.: Sec. 14: NE¼NE¼	80.00
Total	80.00
Total Acreage	3,800.00

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management and to improve the timber management program of the corporation. The public lands that will be exchanged are relatively small parcels located in the vicinity of Silvies, Oregon. The corporation intends to manage the acquired lands with its existing timber lands for timber production. The corporation land that will be exchanged will provide legal access to isolated tracts of public land and will be managed for multiple use along with the surrounding public lands.

The exchange has been discussed with State of Oregon and Harney and Grant County officials and no objections were raised. The exchange is consistent with Bureau of Land Management land use plans and the public interest will be well served by making the exchange.

The lands described above will be exchanged in conjunction with a larger exchange between the U.S. Department of Agriculture, Forest Service, and Edward Hines Lumber Co., Inc. The fair market value of the lands involved in the combined exchange are approximately equal. Full equalization of values will be achieved by payment by either party of funds in an amount not to exceed 25 percent of the total value of the combined public lands to be transferred out of Federal ownership. It is planned that all mineral rights will be transferred with the surface estate.

The public lands to be transferred from the United States will be subject to the following terms and conditions:

1. The public lands will be subject to valid, existing rights including any right-of-way, easements, and leases of record.

2. The patent will include a reservation to the United States for rights-of-way for ditches and canals under the Act of August 30, 1890.

Publication of this notice in the **Federal Register** segregates the public lands, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

Detailed information concerning the exchange, including the environmental assessment and the record of public discussions, is available for review at the Malheur National Forest Office, 139 NE. Dayton St., John Day, Oregon.

For a period of 45 days, interested parties may submit comments to the Burns District Manager at the BLM, Burns District Office, 74 South Alvord, Burns, OR 97720. Any adverse comments will be evaluated by the Oregon State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

Dated: November 14, 1984.

Thomas R. Thompson,

Associate District Manager.

[FR Doc. 84-30797 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Extension of Call for Information to Delineate Areas of Interest for Preparation of an Environmental Impact Statement on the Exploration for and Possible Recovery of Cobalt-Rich Manganese Crusts in the Hawaiian Exclusive Economic Zone/Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of Call for Information.

SUMMARY: The Minerals Management Service (MMS) on behalf of the joint Federal/State of Hawaii Task Force on August 28, 1984 (49 FR 34099), issued a Call for Information to delineate areas of interest to be addressed in an environmental impact satement (EIS) on the exploration for and possible recovery of cobalt-rich manganese crust in the Exclusive Economic Zone/Outer Continental Shelf (EEZ/OCS) surrounding the Hawaiian Archipelago. This Call period expired October 29, 1984. The MMS, based on recently acquired data suggesting significant resource potential, hereby extends the Call period for an additional 90 days.

DATE: Comments and information in response to this request should be postmarked or hand delivered no later than February 25, 1985.

ADDRESS: Comments and information may be mailed or delivered to Program Director, Office of Strategic and International Minerals, Minerals Management Service, 11 Golden Shore, Suite 260, Long Beach, California 90802. All information submitted will be treated in the same manner as that announced in the original Call on August 28, 1984.

FOR FURTHER INFORMATION OR FOR COPIES OF CALL FOR INFORMATION MAP CONTACT: Dr. John C. Wiltshire, Department of Planning and Economic Development, Post Office Box 2359, Honolulu, Hawaii 96804; telephone (808) 548–6262; or Mr. Robert G. Paul, Office of Strategic and International Minerals, Minerals Management Service, 11 Golden Shore, Suite 260, Long Beach, California 90802; telephone (213) 548–2901.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior, MMS, in conjunction with the State of Hawaii, is considering the potential economic and environmental impacts resulting from the recovery of cobalt-rich manganese crusts found in the EEZ/OCS surrounding the Hawaiian Archipelago. Following the MMS announcement in the **Federal Register** on March 5, 1984, of the intent to prepare an EIS on exploration and possible recovery of cobalt-rich manganese crusts and public hearings at Honolulu on April 30, 1984, and at Hilo on May 1, 1984, to assist in determining the scope of the EIS, the MMS on August 28, 1984, issued a Call for Information to delineate areas of interest to be addressed in an EIS. Concurrent with these activities, the University of Hawaii conducted field studies funded

by MMS to assess the manganese crust potential in the study area. Samples obtained in the western and central Hawaiian Ridge and from seamounts in the outer EEZ/OCS area have been analyzed and preliminary results substantiate thick crust occurrences and promising cobalt content. Further sophisticated chemical and physical analyses are required to confirm these preliminary results, and therefore, the MMS will extend the Call period for 90 days to allow for publication of test results and comments and other expressions of interest by the public. The draft preliminary results will be made available by the MMS to interested parties as soon as possible upon request to the address listed herein. The final report by the University of Hawaii including comprehensive analyses will be available after April 1, 1985. The remaining instructions from the original Call published August 28, 1984, including Purpose of the Call for Information, Use of the Information, Description of the Area, and other isntructions, remain intact.

Dated: November 13, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84-30801 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Extend Concession Permit; Moser's Food Market

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession permit with Moser's Food Market, authorizing it to continue to provide grocery and gasoline sales and services for the public at C&O Canal National Historical Park, Maryland, for a period of two (2) years from January 1, 1985, through December 31, 1986.

This permit extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the extension of the permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782, for information as to the requirements of the proposed permit.

Dated: November 15, 1984.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 84-30869 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Analysis for the Purpose of Drilling the Hankamer et al. No. 1 Exploratory Well; Rio Bravo Oil Co.; Big Thicket National Preserve, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Rio Bravo Oil Company a Plan of Operations for the purpose of drilling the Hankamer et al. No. 1 Exploratory Well within the Jack Gore Baygall/Neches Bottom Unit of Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 8185 Eastex Freeway, Beaumont, Texas; and the Jefferson County Courthouse, in Beaumont, Texas. Copies of the documents are available from the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: November 19, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-30850 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Dunn-Nokota Methanol Project; Public Hearing on Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental impact statement for the sale of water under an industrial water service contract with the Nokota Company. This statement (DES 84-62) concerning the Dunn-Nokota Methanol Project was made available to the public on November 13, 1984.

The draft environmental impact statement covers impacts of producing 86,940 barrels per stream day of methanol from 43,153 net short tons per stream day of lignite coal. Water would be supplied from Lake Sakakawea in the amount of 16,800 acre-feet annually. Project facilities include plant and mine sites and water and product pipelines.

A public hearing will be held in Bismarck, North Dakota, at the Holiday Inn on January 8, 1985, from 8:00 a.m. until 12:00 noon, and in Dunn Center, North Dakota, at the Dunn Center Community Center on January 8, 1985, at 2:30 p.m., to receive views and comments from interested organizations or individuals relating to the environmental impacts of this project. Oral statements at the hearing will be limited to a period of 15 minutes. Speakers will not be allowed to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to make comment have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible and any scheduled speaker not present when called will lose his or her position in the scheduled order, and his or her name will be recalled at the end of the scheduled speakers. Requests for presentation will be accepted up to 4 p.m., on January 4, 1985, and any subsequent request will be handled on a first-come, first-served basis following the scheduled presentation.

Organizations or individuals desiring to present their statement at the hearing should contact Mr. Eley P. Denson, Jr., Regional Environmental Affairs Officer, Bureau of Reclamation, P.O. box 2553, Billings, Montana 59103, telephone (406) 657-6558, and announce his or her intention to participate. Written comments from those unable to attend, and from those wishing to supplement their oral presentation at the hearing should be sent on or before January 23, 1985, so that they can be included in the hearing record.

Dated: November 19, 1984.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 84-30811 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Meeting; Advisory Committee on Voluntary Foreign Aid

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the Advisory Committee on Voluntary Foreign Aid (ACVFA) which will be held in the Loy Henderson International Conference Room, Department of State, Washington, D.C., December 3–4, 1984. To enter building, use C Street (Diplomatic Enterance) between 21st and 23rd Streets, NW., Washington, D.C.

Monday, December 3, 1984: 8:30 a.m.—ACVFA Business Sesson (Members only). 9:00 a.m.—Registration. 10:00 a.m.—12:30 p.m.—Introduction and opening remarks; plenary session on the theme *Allocating Limited Resources for Maximum Impact;* Two Panel Discussions: "Public Sector Perspectives on Resource Allocation" and "Private Sector Perspectives on Resource Allocation". 12:30 p.m.—Lunch. 1:45—3:15 p.m. and 3:30—5:00 p.m.—Concurrent Workshops on: Health, Energy and Renewable Natural Resources, Literacy, Education and Training, Agriculture, and Disaster Preparedness and Relief. 5:00 p.m.—Reception.

Tuesday, December 4, 1984: 8:30 a.m.—Registration. 9:00 a.m.—Reports from the Workshops and Discussion. 10:30 a.m.—Coffee Break. 10:45 a.m.—Policy Implications. 12:00—ACVFA Business Meeting and Adjournment.

The meeting is open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee, in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in thirty (3) copies.

There will be AID representatives at the meeting. Those desiring further information may call (703) 235–2708, or contact by mail, the Advisory Committee on Voluntary Foreign Aid, Room 227, SA–8, Agency for International Development, Washington, D.C., 20523.

Dated: November 14, 1984.

Julia Cheng Bloch,

Assistant Administrator Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 84-30883 Filed 11-23-84; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30574]

New England Southern Railroad Co. Inc.; Exemption From 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10901 the proposal of New England Southern Railroad Co. Inc., to sublease a certain rail line in Chicopee, Hampden County, MA.

DATES: This exemption is effective on November 23, 1984. Petitions to reopen must be filed by December 17, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30574 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;
(2) Petitioner's Representative: Keith G. O'Brien, 1729 H Street, NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7254.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 15, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-30830 Filed 11-23-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-111)]

Seaboard System Railroad, Inc.; Abandonment in Anderson County, SC; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc., to abandon its 11.86 mile rail line between milepost AKH-543.21 near Iva and milepost AKH-555.07 near Anderson in Anderson County, SC.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." An offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-30821 Filed 11-23-84; 8:45 am]

BILLING CODE 7035-01-M

[Vol. OP4-F-720

Motor Carriers; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to the applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Secretary.

Please Direct Status Inquiries About the Following to Branch Four at (202) 275-7669.

Volume No. OP4-F-720

Decided: November 16, 1984.

By the Commission.

MC-F-15958, Frank M. Henry (Petitioner) (46 Public Square, P.O. Box 1007, Wilkes-Barre, PA 18773)—Continuance in Control—National Coach Works, Inc. (National) (Hall Industrial Drive, P.O. Box 820, Spotsylvania County, VA 22553). Filed October 18, 1984. Representative: L. C. Major, Jr., P.O. Box 11278, Alexandria, VA 22312. Petitioner seeks authority to continue in control of National. National has concurrently applied for authority to transport passengers and their baggage in charter and special operations service between points in the U.S., including AK, but excluding HI in No. MC-179067. Petitioner owns all of the outstanding capital stock of Frank Martz Coach Company (Martz), an interstate motor common carrier of passengers (No. MC-3600). Martz owns all of the capital stock of Gold Line, Inc., also an interstate motor common carrier of passengers (No. MC-108452). Petitioner also owns all of the capital stock of White Transit Company, an intrastate passenger carrier in Pennsylvania, which in turn controls Price Bus Company, Inc. (Price) (No. MC-17751) and Gulf Coast Motor Line, Inc. (No. MC-85819) both of which are interstate motor common carrier of passengers. Laurel Lines Transportation Company, an intrastate passenger carrier in Pennsylvania, is controlled by Petitioner through Price. Petitioner controls a passenger broker, Martz Travel, Inc. (No. MC-130768).

Note.—This notice does not purport to be a complete description of the operating rights of the carriers involved.

[FR Doc. 84-30814 Filed 11-23-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-97X); Docket No. AB-69 (Sub-19X)]

The Baltimore and Ohio Railroad Co., Western Maryland Railway Co. and the Baltimore and Cumberland Valley Rail Road Extension Co.; Abandonment and Discontinuance of Service, in Cumberland and Franklin Counties, PA; Exemption

The Baltimore and Ohio Railroad Company (B&O), Western Maryland Railway Company (WM) and the Baltimore and Cumberland Valley Rail Road Extension Company (B&CV), have filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights.*[1] The line involved is that portion of B&CV's line between stations 1698+42 and 1795+80.5, a distance of approximately 1.84 miles in Cumberland and Franklin Counties, PA. B&O and WM seek to discontinue service and B&CV to abandon the line.

Applicants have certified (1) That no local traffic has moved over the lines for at least 2 years and that overhead traffic is not moved over the lines, (2) that no formal complaint filed by a user of rail service on the lines (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Pennsylvania has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment or discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on December 26, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by December 6, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 17, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representatives:

Rene J. Gunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201.
Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 19, 1984.

[1] Service and trackage rights discontinuances were added to the exemption provisions of 49 CFR Part 1152, Subpart F by Ex Parte No. 274 (Sub-No. 8A), *Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights),* 1 I.C.C. 2d 55. A petition for reconsideration filed May 10, 1984, requests a provision that a complaint filed with any United States District Court regarding cessation of service would preclude application of the exemption. The petition is being treated as a petition to reopen the proceeding, and in a decision served October 2, 1984, the Commission requested comments on the proposal.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-30973 Filed 11-23-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree Lodging Pursuant to Clean Air Act; District of Columbia

In accordance with Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *The District of Columbia* (the District) Civil Action No. 84-3224 was lodged on October 31, 1984, with the United States District Court for the District of Columbia.

This case arises under the Clean Air Act wherein the United States filed the complaint to enjoin the District from operating its municipal incineration facility known as Solid Waste Reduction Center No. 1, in Northeast Washington, from violating the particulate matter and visible emission limits set in the District's State Implementation Plan (the SIP) as set forth in 20 D.C.M.R. sections 502 and 600. The proposed decree requires the District to comply with the SIP by (1) permanently shutting down two incinerators; (2) modifying and rehabilitating four of its existing incinerators; and (3) installing a visible emission monitoring system. The decree also imposes a penalty for past violations, stipulated penalties for future violations, and requires funding of an environmentally beneficial project.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The District of Columbia,* D.J. Ref. 90-5-2-1-602.

The proposed decree may be examined at the office of Assistant United States Attorney Rebecca Ross, Esquire, 3rd and Constitution Avenue, NW., Room 2816, Washington, D.C. 20001; and at the Region III Office of the Environmental Protection Agency, attention: Margaret Cardamone, Esquire, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1714, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 10530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, include a check in the amount of $2.60 ($0.10) per page reproduction charge payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-30982 Filed 11-23-84; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

Advisory Corrections Council; Meeting

Notice is hereby given that the Advisory Corrections Council in accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) will meet on November 30, 1984, at the Metropolitan Correctional Center, San Diego, California.

The purpose of the meeting is to discuss the Comprehensive Crime Control Act of 1984 and other correctional issues.

Signed at Washington, D.C., 19th day of November 1984.

Gerald Farkas,

Acting Director.

[FR Doc. 30833- Filed 11-23-84; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Further Change of Date and Place of Meeting

The meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans, rescheduled for December 5, 1984, a notice of which was previously published on page 44333 in the **Federal Register** on Tuesday, November 6, 1984 (FR Doc. 84-29126) has been changed to 10:00 a.m., December 4, 1984, in Guild Hall, Georgetown Marbury House, 3000 M Street, NW., Washington, D.C.

The purpose of the meeting is to hold a working session of the National Pension Forum of the ERISA Advisory Council. The National Pension Forum, constituted by the Secretary of Labor, is a bipartisan, coordinated effort between the Labor Department and varied constituencies to examine the Department's history and effectiveness in administering ERISA. The objective of the National Pension Forum is to draft a report for the Secretary of Labor concerning the discharge by the Department of Labor of its obligations under Title I of ERISA, together with suggestions for future administrative and legislative changes in the areas of regulations, enforcement, research and ERISA jurisprudence.

Individuals or organizations wishing to submit written statements on any aspect of ERISA should send 50 copies to Edward F. Lysczek, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room S4522, 200 Constitution Avenue, NW., Washington, D.C. 20210. Papers will be accepted and included in the record of the meeting if received on or before November 30, 1984.

Signed at Washington, D.C., this 20th day of November 1984.

Robert A. G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84-30829 Filed 11-23-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Partially Closed Meeting

November 20, 1984.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that a portion of the National Advisory Committee on Oceans and Atmosphere (NACOA) meeting on December 10-12, 1984, to take place in Washington, DC will be closed. The portion of the meeting to be closed will be the afternoon session on December 10, 1984 and will be held at the Military Sealift Command, 4228 Wisconsin Avenue, NW., Washington, DC. All other sessions of the meeting will be held at 2001 Wisconsin Avenue, NW. in Rooms 416 and B-100. The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local government was established by Congress by Pub. L. 95-63, on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an

annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress. The tentative agenda is as follows:

Monday, December 10, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

Plenary

9:00 a.m.–9:30 a.m.
- Introductory Remarks

9:30 a.m.–11:30 a.m.
- Guest Speakers:
  John H. McElroy, Assistant Administrator for Environmental Satellite, Data, and Information Service, NOAA
  Shelby G. Tilford, Director, Earth Science and Applications Division, NASA

Topic: Future Satellite Plans

A. Application to Meteorologic and Oceanic Research and Services
B. Data and Information Flow to Users

11:30 a.m.–12:30 p.m.
- NACOA Panel Structure

12:30 p.m.–1:30 p.m.—Lunch
Military Sealift Command, 4228 Wisconsin Avenue, NW., Washington, DC

Panel Meetings

2:00 p.m.–5:30 p.m.
- Shipbuilding
  Chairman: Don Walsh

Closed Session
Discussion by Department of Defense concerning program plans and policy conclusions regarding national sealift and shipbuilding
2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 & B–100, Washington, DC

1:30 p.m.–5:00 p.m.
- Living Resources
  Chairman: Charles Black, Room B–100

Topic: North Atlantic Fur Seal Treaty

Speakers: None
3:00 p.m.–5:00 p.m.
- Exclusive Economic Zone
  Chairman: Lee Gerhard, Room 416

Topic: Work Session

Speakers: TBA
5:30 p.m.—Recess

Tuesday, December 11, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 & B–100, Washington, DC

8:30 a.m.–12 Noon—Plenary
8:30 a.m.–10:30 a.m.
- Presentation by Panel Chairman, North Atlantic Fur Seal Treaty

10:30 a.m.–12 Noon
- Panel Reports
- Other Business

12:00 Noon–1:00 p.m.—Lunch
1:00 p.m.–4:30 p.m.—Panel Meetings
- Atmospheric Affairs, Chairman: S. Fred Singer, Room B–100

Topic: Acid Rain

Speakers: TBA
- Federal/State Relations
  Chairman: John Norton Moore, Room 416

Topic: Coastal Zone Management Consistency

Speakers: TBA
4:30 p.m.—Adjourn Regular Meeting

Wednesday, December 12, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

9:00 a.m.–12:30 p.m.—Panel Meeting
- Shipbuilding
  Chairman: Don Walsh

Topic: Work Session

Speakers: None
12:30 p.m.—Adjourn

The public is welcome to the open sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. With respect to the closed panel session from 2:00 p.m.–5:30 p.m. on Monday, December 10, the Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 16, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be disclosed during this closed session should be exempt from the provisions of the Act relating to open meetings and public participation therein, because it will be considered within the purview of 5 U.S.C. 552b(c)(1), i.e., to discuss matters that are authorized to be kept secret in the interest of national defense.

A copy of the determination to close a portion of this meeting is available for public inspection and copying in the Central Reference & Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230, area code 202/377–3271.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653–7818.

Dated: November 20, 1984.

Steven N. Anastasion,

Executive Director.

[FR Doc. 84–30910 Filed 11–23–84; 8:45 am]

BILLING CODE 3510–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84–90]

NASA Advisory Council, Space and Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Planning Committee.

DATE: Date and time: December 13, 1984, 8:30 a.m to 5 p.m.

ADDRESS: Johns Hopkins University, Room 308 Rowland Hall, Homewood Campus, 34th and Charles Streets, Baltimore, MD 21218.

FOR FURTHER INFORMATION CONTACT: Dr. H. Warren Moos, Department of Physics and Astronomy, Johns Hopkins University, 34th and Charles Streets, Baltimore, MD 21218, (301) 338–7337.

SUPPLEMENTARY INFORMATION: The Planning Committee, chaired by the Space and Earth Science Advisory Committee Chairman, Dr. Louis Lanzerotti, will meet to discuss future activities of the Space and Earth Science Advisory Committee for the next 18–24 months, including scheduling, meetings, etc. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including the Planning Committee members.)

Type of meeting: Open.

Dated: November 19, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management, and Information Programs Division, Office of Management.

[FR Doc. 84–30824 Filed 11–23–84; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services; General Operating Support Program

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Grant Application Notice for Fiscal Year 1985

This grant application announcement applies only to the General Operating Support Program (GOS).

Applications are invited by the Institute of Museum Services (IMS) for General Operating Support (GOS) awards under 45 CFR Part 1180 for Fiscal Year 1985.

Nature of Program: IMS makes awards under the GOS Program to museums to maintain, increase, or improve museum services. The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions. Section 206 of the Museum Services Act, Title II of Pub. L. 94–462, as amended, contains authority for this program. (20 U.S.C. 965)

Deadline Date for Transmittal of Applications: An application for a new grant must be mailed or hand-delivered by January 15, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Room 609, Washington, D.C. 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S. Postal Service.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program Information: Program information is contained in the following: final regulations published on June 17, 1983 in **Federal Register** Vol. 48, No. 118, pages 27727–27734; amendments published on April 10, 1984 **Federal Register** Vol. 49, No. 70., pages 14108–14111 and on June 15, 1984 **Federal Register** Vol. 49, No. 117, pages 24731–24733; notice of proposed rulemaking published on October 5, 1984 **Federal Register** Vol. 49, No. 195, pages 39346–39349; and in the application forms and accompanying instructions in the Application Package. See paragraph on *Application Form*.

Available Funds: An appropriation for the Institute of Museum Services for Fiscal Year 1985 is contained in the FY 1985 Continuing Resolution, Pub. L. 98–473, Department of the Interior and Related Agencies. This Act appropriates $21,560,000 for the IMS for Fiscal Year 1985, $16,623,000 of which is expected to be available for GOS grants.

It is anticipated that no museum will receive more than $75,000 under the Act for Fiscal Year 1985 and that most museums which are funded will receive a smaller amount. (45 CFR 1180.9). In addition, IMS normally does not make grants for more than 10 percent of a museum's most recently completed fiscal year's actual non-federal operating income. (See 45 CFR 1180.16(b)).

Application Forms: IMS is mailing application forms and program information in an Application Packet to museums and other institutions on its mailing list. Applicants may obtain Application Packets by writing to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506.

Applicable Regulations: Final regulations for the General Operating Support grant program were published in the **Federal Register** on June 17, 1983 FR Vol. 48, No. 118., pages 27727–27734. Amendments to these regulations were published in the **Federal Register** on April 10, 1984 FR Vol. 49, No. 70., pages 14108–14111 and on June 15, 1984 FR Vol. 49, No. 117 pages 24731–24733. The National Museum Services Board has approved the issuance of proposed amendments to regulations published in the **Federal Register** on Oct. 5, 1984 FR Vol. 49, No. 195 pages 39346–39349. These proposed amendments are expected to apply to the Fiscal Year 1985 GOS competition.

The regulations as amended implement the Museum Service Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the General Operating Support and Museum Assessment programs for museums and remove unneeded provisions. As revised, the regulations published on June 17, 1983 will apply to the award of grants for Fiscal Year 1985.

FOR FURTHER INFORMATION CONTACT: Kristine Ramaekers, Program Officer, Institute of Museums Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506. Telephone: (202) 786–0539.

(Catalog of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: November 16, 1984.

Susan E. Phillips,

Director, Institute of Museum Services.

[FR Doc. 84–30842 Filed 11–23–84; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its January 27, 1977 application of the Zion Nuclear Power Sation, Unit Nos. 1 and 2, located in Zion, Illinois. The proposed amendments would have revised the provisions in the Technical Specifications for the Zion Station to permit operation of the Zion Units with three reactor coolant loops. The Commission issued a Notice of Consideration of Issuance of the Amendments in the **Federal Register** on October 3, 1983 (48 FR 45163). By letter dated October 24, 1984, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its application for the proposed amendments. The Commission has considered the licensee's October 24, 1984 request and has determined that permission to withdraw the January 27, 1977 application for amendments should be granted.

For further details with respect to this action, see (1) the application for amendments dated January 27, 1977; (2) the licensee's letter dated October 24, 1984, withdrawing the application for license amendments; and (3) our letter dated November 15, 1984. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmans Avenue, Zion, Illinois 60099.

Daniel G. McDonald,

Acting Chief, Operating Reactors Branch No 1, Division of Licensing.

[FR Doc. 84–30912 Filed 11–23–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co., (Haddam Neck Plant); Exemption

I

The Connecticut Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR-61 which authorizes operation of the Haddem Neck Plant. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility consists of one pressurized water reactor at the licensee's site located in Middlesex County, Connecticut.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this exemption request. Specifically, Subsection III.G.2 requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated non-safety circuits or redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles of fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

III

By letters dated March 1, July 16, and December 15, 1982 as supplemented by letters dated January 31, March 30, April 22, November 4, December 7 and December 21, 1983, the licensee requested exemptions from the requirements of Section III.G of Appendix R, to the extent that it requires physical separation and/or fire protection systems to protect redundant trains of safe shutdown related cable and equipment. The acceptability of the exemption requests for each of the eight fire areas is addressed below. More details are contained in the NRC staff's related Safety Evaluation dated November 14, 1984, which is included herein by reference. This Safety Evaluation and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, D.C. 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Service Building Control Room (Fire Zone One S-1)

The control room is not in compliance with Section III.G.2 because of the absence of a complete fixed fire suppression system and the lack of adequate physical separation between redundant shutdown divisions. It is not in compliance with III.G.3 because of the absence of an alternate shutdown capability that is physically and electrically independent of the control room.

We had several concerns with the level of fire safety in the control room. These concerns are:

1. A fire outside the control room may result in damage to safe shutdown systems inside the room;

2. A fire inside the control room, but located away from the main and auxiliary control panels, may cause damage to safe shutdown systems in those panels;

3. A fire near or within the main or auxiliary control panels could damage redundant shutdown systems before being extinguished; and

4. A fire located anywhere in the control room could generate products of combustion in such quantities as to advesely affect habitability to a significant degree.

The control room is completely enclosed by reinforced concret shielding walls. All openings are protected by fire rated doors, dampers or penetration seals. Also, in all other plant locations, redundant safe shutdown divisions are separated and protected so that one division will remain free of fire damage. We therefore have reasonable assurance that a fire that occurs outside of the control room will affect only one shutdown division within the control room, and because the control room is a separate fire area from the rest of the plant, a fire that occurs anywhere else in the plant will not endanger control room operators.

The fire hazard within the control room is low. In-situ combustible materials consist mainly of paper and plastics. Additional combustibles include cable insulation within the control panels and small quantities of anticipated transient combustibles. The quantity, nature and distribution of the in-situ combustibles is such that if a fire were to occur, it would not propagate quickly or extend over a large area of the control room. The hazards associated with transient combustible materials will be further mitigated to a limited extend by the shift inspections and the licensee's administrative controls. While these measures by themselves are not enough to ensure that additional accumulations of combustible materials will not occur, they will reduce the probability of having transient combustibles accumulate. Because the control room is continuously manned and because a fire detection system is present in the areas outside of the normal line of sight of the operators, we expect that any fire would be detected in its incipient stages. This early fire warning capability, coupled with the portable fire fighting equipment in the room, provides us with reasonable assurance that a fire will be discovered and suppressed before reaching a significant magnitude.

We conclude that a fire located away from the control panels will not pose a direct threat to safe shutdown systems in the panels.

Because of the limited spatial separation between redundant shutdown divisions in either the auxiliary panels or the main control console, a fire at or within the panels has the potential for damaging both divisions. Protection against this threat will be achieved by the installation of ramps around these control panels, which will channel any flammable liquids away from them, and floor seals. These measures, plus the previously mentioned administrative controls and the need to keep the space around the panels free of obstruction for operator access, will help preclude accumulations of combustibles to a significant degree.

If a fire should occur at, near, or within the panels, it is possible that the fire or fire suppression activities, such as the discharge of a portable fire extinguisher, may cause a loss of function of a portion of the main control board or auxiliary control panels. If such a consequence resulted, safe shutdown conditions could still be achieved and maintained via the alternate shutdown capability described in our November 14, 1984 Safety Evaluation.

Within the main control board, the licensee has committed to provide an automatic halon fire suppression system. The suppression system also has the capability for manual activation if the operators become aware of a fire before automatic actuation. Based on the above evaluation, we conclude that any potential fire that occurs within the main control board will be rapidly detected and either automatically or manually suppressed before serious damage occurs.

Local fire damage to the panels is also possible. It is our opinion that, because of the limited nature of the fire hazards and the level of fire protection in the control room, the maximum level of damage that we would expect to occur is the complete loss of two adjacent panels in the main control console or one enclosed auxiliary control panel. The licensee has demonstrated that safe shutdown can be achieved if a fire caused a loss of function to the entire main control console or the entire ten-panel auxiliary control boards. We find this acceptable.

Our remaining concern is on the effects of a fire on control room habitability. Because the achievement of safe shutdown after a fire in the control room is dependent on some undamaged safe shutdown systems in the room, fire effects have to be limited so that safe shutdown can be achieved and maintained if control room evacuation becomes necessary for a period of time.

Because of the limited fire hazards in the control room, the existing fire protection and the added fire protection proposed by the licensee, including an automatic fire suppression system in the main control console, the effects of a fire in the control room would not be serious enough to cause long term evacuation. It is our judgment that control room habitability would be reestablished within one hour after evacuation became necessary, with reliance upon the manual smoke removal system, portable exhaust fans, and self-contained breathing apparatus. As described in the November 14, 1984 Safety Evaluation, the licensee has demonstrated that safe shutdown can be achieved and maintained if either the control room remained habitable during a fire or if evacuation became necessary for at least one hour. We therefore have reasonable assurance that under all credible fire scenarios for the control room, the capability to achieve and maintain safe shutdown conditions will not be lost.

Based on the above evaluation, we conclude that the existing fire protection with the proposed modifications will provide the level of fire protection required by Section III.G. Additional modifications would not significantly increase fire safety of the plant. Therefore, the staff has determined that an exemption from Section III.G.2 and III.G.3 of Appendix R to 10 CFR Part 50, for the control room should be granted.

Service Building Switchgear Room (Fire Area S-8)

The technical requirements of Section III.G to the extent that it requires 20 feet separation between redundant trains of safe shutdown equipment without intervening combustible materials are not met because of the presence of metal clad switchgear and control cabinets, and non-safety related cabling which is located between redundant safety divisions. There are two concerns within this area: (1) Safe shutdown equipment located on the floor; and (2) safe shutdown cabling located at various heights above the floor. The fire exposure threat to both the cabling and equipment is represented by the metal enclosed switchgear and control cabinets and the overhead cable tray and conduit system. The combustible material associated with the switchgear and cabinets, which would contribute to a potential fire, are insignificant. The cabling has been coated with a fire retardant. The fire retardant is not considered as a fire barrier, but it does reduce the ease of ignition of the insulation and will retard both the rate of burning and the rate at which fuel is contributed by the insulation.

A fire, if one should occur in this room, would be slow in developing by virture of th elimited amount, isolated location, and reduced flammability of the combustible material in the area. The presence of a smoke detection system will provide reasonable assurance of early fire awareness and response by operating technicians and fire brigade members. This, considered in association with the automatic fire suppression system and the physical separation and protection of the safe shutdown components, achieves a sufficient level of defense-in-depth. We agree with the licensee that the proposed modifications, along with the existing area-wide fire detection and suppression systems, are fufficient to provide a level of protection equivalent to Section III.G.2 of Appendix R, with exception of the presence of intervening combustible materials.

It is our judgment, based on assessment of the proposed modifications; the location of redundant shutdown systems; our collective knowledge and experience of fires involving electrical equipment; the presence of an early fire warning detection system; the presence of an automatic fire suppression system and other fire protection features of the plant; that the fire exposure hazard represented by the previously identified combustible materials is not significant.

Based on our evaluation, we conclude that the existing system with the licensee's proposed modification will provide reasonable assurance that one safe shutdown division will be free of fire damage and will achieve an acceptable level of fire proteciton equivalent to that provided by Section III.G.2. Therefore, the licensee's request for exemption for the Building Switchgear Room should be granted.

Primary Plant Containment Cable Vault (Fire Area R-1)

The technical requirements of Section III.G.2 are not met because redundant cabling for safe shutdown is separated by less than twenty feet. However, the requirements of Appendix R represent an aggregate, comprising active and passive components. In this area, the licensee has provided sufficient active protection in the form of a complete smoke detection system and an automatic fire suppression system. Passive protection is achieved by physical separation of the redundant instrumentation cabling by locating them on opposite sides of the cable vault and enclosing them in conduit. The remaining shutdown cabling will be separated from their redundant counterparts by a complete one-hour fire rated barrier that conforms with the technical requirements of Section III.G.2.c of Appendix R. The cabling has been coated with a fire retardant which reduces the ease of ignition of the insulation and retards both the rate of burning and the rate at which fuel would be contributed to a potential fire. In addition, because the combustible cabling is located above the safety related conduit system, and the ceiling is high in relation to the conduit system, a hot gas layer resulting from a potentially unsuppressed cable fire should not affect the redundant shutdown cables in the conduit system. Therefore, the cabling in this area does not represent a significant fire exposure and the existing active and passive fire protection features provide adequate defense-in-depth.

Although the non-safety-related cabling is combustible, it does not represent a significant fire exposure to both shutdown divisions because of the

physical separation and protection of the shutdown cabling as described above.

Based on our evaluation, we conclude that the existing fire protection with proposed modifications will provide reasonable assurance that one safe shutdown division will be free of fire damage and will achieve an acceptable level of fire protection equivalent to that provided by Section III.G.2. Therefore, the licensee's request for exemption for fire area R–1 should be granted.

Primary Plant Auxiliary Feedwater Pump Room (Fire Area R–5)

The technical requirements of Section III.G.2 are not met because of the absence of a complete fire suppression system.

The fire protection requirements of Appendix R represent an aggregate, comprising active and passive components designed to assure that a capability exists, after a fire, to safely shutdown the plant. Active protection will be provided in the form of a complete area wide fire detection system. This will provide reasonable assurance of early fire awareness and response by the fire brigade members. Passive protection will be provided in the form of 21 feet separation between pumps. Because of the separation and the limited amount of combustibles in the area, an automatic fire suppression system is not necessary to preclude damage to the redundant pump and its related components. These considerations, together with the additional margin of safety provided by the availability of a third pump under limited circumstances, give us reasonable assurance that safe shutdown can be achieved.

Based on our evaluation, we conclude that the existing fire protection, together with the proposed modifications, will provide an acceptable level of fire protection equivalent to that provided by the technical requirements of Section III.G.2. Therefore, the licensee's request for exemption for the Primary Plant Auxiliary Feedwater Pump Room should be granted.

Screenwell Pumphouse Pump Motor Room (Fire Area p1/p2)

The technical requirements of Section III.G.2 are not met because of the absence of a complete fire suppression system, the lack of adequate physical separation between the service water pumps and the lack of alternate shutdown capability independent of the area. Because the service water pumps are located in a single fire area, we were concerned that they might all be vulnerable to damage from an exposure fire of significant magnitude within the room.

On the lower level of the Screenwell Pumphouse Pump Motor Room, the only potentially vulnerable shutdown components are the power cables for the service water pumps. Cable runs for pumps A&D will be completely enclosed in a one-hour fire rated barrier.

The amount of combustible material on this level is negligible. Because of this, any potential fire would not be of significant magnitude or duration. Because of the early fire warning capability in the area and the anticipated time delay associated with the arrival of the fire brigade, it is our judgment that complete fire extinguishment would occur within a half hour. Therefore, the one hour fire barrier around the cables would provide sufficient passive protection until the fire was extinguished by the plant fire brigade.

On the upper level, the only vulnerable shutdown systems are the four service water pumps and short lengths of related power cable. The fire hazard is represented by the ignition of transient combustibles and a fire involving diesel fuel from the diesel powered fire pump. The fire pump is completely protected by an automatic fire suppression system. The area around the pump is provided with a one foot high dike and a separate drainage system to confine and channel spilled diesel fuel away from the service water pumps. The diesel fuel storage tank is located within a different fire area. Therefore, a fire in the diesel fuel storage tanks room will not affect the service water pumps. We find this protection acceptable.

Protection against a potential fire involving transient combustibles is provided in the form of a curb/dike so located as to separate service water pumps A&B from pumps C&D. In addition, the licensee proposes to install an automatic "water-curtain" fire suppression system around the four pumps and between pumps A/B and C/CD Upon activation, water will be discharged in a "curtain" pattern so that the effects of an exposure fire will not damage the pumps.

The curb/dike and fire suppression system combination will also provide reasonable assurance that if a fire occurred at one of the service water pumps, at least two pumps would remain undamaged.

Based on the above evaluation, we conclude that the existing fire protection with the proposed modifications will provide an acceptable level of fire protection equivalent to that provided by the technical requirements of Section III.G.2. Therefore, the licensee's request for exemption from Section III.G.2 of Appendix R to 10 CFR Part 50 for the Screenwell Pumphouse Pump Motor Room should be granted.

Service Water Pump Cable Duct Bank

The underground configuration of service water pump cables will provide reasonable assurance that at least one division will be free of fire damage and available for safe shutdown. Except at the manhole, a fire would not originate and propagate so as to simultaneously affect the cables in all four underground conduits.

The realistic fire scenario that could be postulated to occur at the manhole is a flammable liquid spill with ignition. The licensee's proposal to enclose one set of redundant cables in a one-hour fire rated barrier represents an acceptable level of fire protection to assure that the protected cable is free of damage until the arrival of the fire brigade or until the fire burns itself out. Because of the limited access to the manhole and the limited amount of combustible materials within it, the installation of a fire detection and suppression system would not significantly enhance the level of fire safety beyond that achieved by the licensee's proposed alternate protection.

Based on our evaluation, we conclude that the existing fire protection with proposed modifications will provide a level of fire protection equivalent to that provided by the technical requirements of Section III.G.2. Therefore, the licensee's request for exemption from the Service water Pump Cable Duct Bank should be granted.

Charging Pump Pits (Fire Areas A3/A4)

The technical requirements of Section III.G.2 are not met in these areas because the three-hour fire rated wall does not completely separate the redundant charging pumps.

The fire load in the charging pump pits and the adjoining corridor area is low. This means that if a fire should occur, we would not expect it to propagate to any significant degree. Fire damage caused by convective and radiant heat would therefore be insignificant.

The wall separating the two charging pumps extends from floor to ceiling and is shaped like a "T." Therefore, most damaging effects from a fire would tend to be channeled away from the openings of either charging pump pit.

Because of the smoke detection system in the area, a fire would be discovered early, assuring the timely arrival of the plant fire brigade. Although some time delay is expected before eventual fire extinguishment, we have reasonable assurance that the existing fire wall will prevent at least one charging pump and its related cable from sustaining any fire damage.

Based on our evaluation, we conclude that the licensee's existing fire protection with proposed modifications will achieve a level of fire protection equivalent to that provided by the technical requirements of Section III.G.2. Therefore, the licensee's request for exemption for the charging pump pits should be granted.

RHR Pump and Heat Exchanger Area (Fire Areas A–14/A–15/A–18/A–19)

The technical requirements of Section III.G.2 are not met in these areas because the three-hour fire rated wall does not completely separate the redundant shutdown components.

The in-situ fire load is negligible and because of the limited accessibility to the area, we would not expect any significant quantities of transient combustibles to accumulate in these areas. Any postulated fire would not, therefore, propagate to any significant degree. Because of the large floor-to-ceiling distance, heat and smoke would rise into the ceiling area which would act as a heat sink. Therefore, the damaging effects of convective heat from a fire would be dissipated in the ceiling area. The existing reinforced concrete walls between the components would effectively prevent any heat caused by a fire near one component from damaging components that are located on the other side of the wall.

Because of the smoke detection system in the areas, any fire would be discovered rapidly. This would assure the timely response of the plant fire brigade. Although some time delay is expected before eventual fire extinguishment, we have reasonable assurance that the existing fire wall will prevent components from at least one shutdown division from sustaining any fire damage.

Based on our evaluation, we conclude that the licensee's existing fire protection with proposed modifications will achieve an acceptable level of fire protection equivalent to that provided by the technical requirements of Section III.G.2. Therefore, the licensee's request for exemption for the RHR Pumps and Heat Exchangers Area should be granted.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest and hereby grants an exemption from the requirements of Subsection III.G.2 of Appendix R to 10 CFR Part 50 to the extent discussed in Section III above.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this Exemption will not result in any significant environmental impact (49 FR 41125, October 19, 1984).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 14th day of November 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-30913 Filed 11-23-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–498 OL; 50–499 OL]

Houston Lighting & Power Company, et al., (South Texas Project, Units 1 and 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of November 13, 1984, oral argument on the pending appeal of the Citizens Concerned About Nuclear Power, Inc. (CCANP) will be held at *9:30 a.m. on Thursday, December 13, 1984, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

For the Appeal board.

Dated: November 19, 1984.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 84-30914 Filed 11-23-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–263]

Northern States Power Co., (Monticello Nuclear Generating Plant); Exemption

I

The Northern States Power Company (NSP/licensee) is the holder of Facility Operating License No. DPR–22 (the license) which authorizes operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota, at steady state reactor core power levels not in excess of 1670 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On July 11, 1983, the Commission published a revised Section 10 CFR 50.54 regarding shift staffing requirements for nuclear power plants. The revised § 50.54 became effective on January 1, 1984. In accordance with § 50.54(m)(3) of the Commisison's regulations, the NRC staff, by letter dated December 30, 1983, approved for the Monticello plant the extension of the effective date of the rule from January 1, 1984 to February 1, 1984 when the plant began an extended outage.

Section 50.54(m)(2)(iii) of the revised rule requires that:

When a nuclear power unit is in an operational mode other than cold shutdown or refueling, as defined by the unit's technical specifications, each licensee shall have a person holding a senior operator license for the nuclear power unit in the control room at all times.

In a letter dated September 29, 1983, and supplemented by letter dated March 23, 1984, Northern States Power Company described its plans for modifying the shift supervisor's office at the Monticello plant, and requested that the office be considered as part of the control room for the purpose of meeting the requirements of the new shift staffing rule. The proposed modifications to the office are to be accomplished during the present extended outage. We are treating this matter as an exemption request from the licensee.

III

The shift supervisor's office is located immediately adjacent to the control room, but outside the previously defined control room boundary. Access to the control room from the supervisor's office is through a security door equipped with a card reader lock. A key to the door is immediately available to the shift supervisor in the event of failure of the card reader. As part of the proposed modification, the licensee plans to install card reader locks on the other doors to the shift supervisor's office such that access to the ofice can be controlled.

An intercom system exists between the main control room and the shift supervisor's office and there are normal telephone communications between the two areas. In addition, the licensee plans to provide the following in the shift supervisor's office to enhance the information available in that area:

a. A computer alarm cathode ray tube (CRT) which displays numerous plant alarm conditions.

b. A computer parameter display CRT which normally displays such items as power level, reactor pressure and generator output.

c. A camera in the main control room connected to a CRT in the shift supervisor's office, which displays a panoramic view of the main control panels.

d. Recorders for reactor pressure, reactor water level, reactor power, and drywell pressure.

e. An annuniciator panel to specifically annunciate reactor level (outside normal limits), reactor pressure (outside normal limits), reactor scram, and drywell pressure (outside normal limits).

f. A common annunciator to annunciate all front panel alarms.

We have evaluated the modifications described by the licensee and we agree that, with these modifcations, the shift supervisor's office is adequate to satisfy the underlying purpose of the rule. We do, however, require that the key to the security door between the shift supervisor's office and the control room be kept immediately available in the office in the event of failure of the card reader.

We had some concern regarding the licensee's intended use of the Senior Reactor Operator (SRO) in the control room. The intent of the rule is that, while the SRO may move about the control room area, most of his time should be spent in that portion of the control room where there is direct and prompt access to information on current plant conditions and where the operator at the controls can be supervised. It can be inferred from the licensee's September 29, 1983 letter that the SRO would be spending most of his time in the shift supervisor's office rather than in the control room. This would be contrary to the intent of the rule and, hence, unacceptable. We also had questions regarding the circumstances under which the SRO assigned to the control room area would move to the control panel and whether the shift supervisor's office is located within the controlled ventilation boundary. We discussed these matters with representatives of the licensee and, on March 23, 1984, the licensee submitted a letter containing additional information related to this request.

The March 23, 1984 letter stated that the shift supervisor's office is within that portion of the administration building that is served by the emergency filtration treatment system. Normal ventilation to this area is interrupted upon detection of high radiation levels or toxic gases at the ventiliation intake and the area is pressurized by the emergency filtration trains to prevent infiltration of radioactive material.

The March 23, 1984 letter also pointed out that annunciation of the front panel alarms will provide early warning of impending problems to the shift supervisor's office. Upon receipt of an alarm, the shift supervisor will have sufficient CFT and recorded displays to assess whether or not his presence is required in the control room. In addition, he will respond to the control room if requested by the control room operator and he will proceed immediately to the control room upon receipt of any of the following:

a. Reactor level (outside normal limits)

b. Reactor pressure (outside normal limits)

c. Reactor scram

d. Drywell pressure (outside normal limits)

The March 23, 1984 letter committed that an SRO will be present in the control room or in the shift supervisor's office at all times during plant operation. Further, an SRO will actually be in the control room more than 50% of the time. Thus, the SRO will be spending most of his time in the control room where there is direct and prompt access to information on current plant conditions and where he can supervise the operator at the controls.

We have evaluated the information furnished by the licensee and we conclude that, subject to the condition that the key to the security door between the shift supervisor's office and the control room be kept immediately available in the office, and further subject to the satisfactory installation of the instrumentation and other equipment noted in this evaluation, the planned modifications to the shift supervisor's office and the plans for control of SRO in the control room are sufficient to meet the intent of the rule. They are, therefore, acceptable.

We require, however, that the licensee's administrative procedures include requirements that:

- The SRO spend at least some minimum time each hour in the control panel area so as to maintain a continuing awareness of plant status.
- The SRO must be present in the control panel area during initial startup and approach to power, recovery from an unplanned or unscheduled shutdown, or significant reduciton in power, and immediately following notification of an unplanned plant transient.
- The SRO must be present in the control panel area at all times during a declared plant emergency.

We do, however, want to better understand how this arrangement will work in practice. We, therefore, require that the licensee submit a report at the end of one year of operation (following restart from the refueling outage) which provides an evaluation of operations using the shift supervisor's office as a part of the control room. The report should include data on such matters as:

- The approximate response time of the SRO from the office to the panel area.
- The number of times SRO assistance in the panel area was requested by a control operator.
- The number of times the SRO proceeded to the panel area on his own initiative in response to alarms received in the shift supervisor's office.
- For each plant emergency or significant off-normal event, describe the location in the plant and the ongoing activities of both the Shift Supervisor and the other senior reactor operator at the onset of the emergency or off-normal event, and the immediate response actions of each.
- The percentage of time actually spent in the panel area by an SRO.
- Such other matters as the licensee deems relevant and of interest.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest, and hereby granted the following exemptions with respect to the requirements of § 50.54 of 10 CFR Part 50:

The shift supervisor's office shall be considered to be part of the control room at the Monticello Nuclear Generating Plant for purposes of meeting the requirements of 10 CFR 50.54(m)(2)(iii). *Provided* the following conditions are met:

1. The key to the security door between the shift supervisor's office and the control room must be immediately available in the shift supervisor's office, and

2. The licensee must submit a report to the NRC one year after resuming operation from the present outage providing information described in Section III of this report.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (49 FR 45085).

Dated at Bethesda, Maryland this 14th day of November, 1984.

For the Nuclear Regulatory Commisison.

Frank J. Miraglia,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-30915 Filed 11-23-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-87]

Westinghouse Electric Corp., Nuclear Training Reactor; Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-119

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-119 for the Westinghouse Electric Corporation Nuclear Training Reactor located in Zion, Illinois.

The amendment will renew the operating license until January 28, 2002, in accordance with the licensee's application dated December 18, 1981, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the **Federal Register** on January 29, 1982, at 47 FR 4372.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, dated November 1, 1984 the Commission concludes that renewal of the license will not result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

Summary of Environmental Impacts as Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since January 28, 1972. The environmental impacts associated with the continued operation of the facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of the Westinghouse reactor for an additional 18 years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) The expected consequences of a broad spectrum of postulated credible accidents have been considered, emphasizing those likely to cause loss of integrity of fuel-element cladding. The staff performed conservative analyses of the most serious credible accidents and determined that the calculated potential radiation doses in unrestricted areas are small fractions of 10 CFR Part 20 guidelines;

(c) The radiological effluent control systems ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA); and

(d) The licensee's technical specifications, which provide limiting conditions for the operation of the facility, are such that there is a high degree of assurance that the facility will be operated safely and reliably.

For further details with respect to this proposed action, see the application for license renewal dated December 18, 1981, as supplemented, the Environmental Assessment, and the Safely Evaluation Report prepared by the staff (NUREG-1083).

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Copies of NUREG-1083 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 84-30916 Filed 11-23-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology and Criteria will hold a meeting on December 12, 1984, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, December 12, 1984–4:00 p.m. until the conclusion of business

The Subcommittee will discuss the NRC Staff's draft report on the use of the proposed safety goals over the trial two-year period.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the

scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 20, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-30810 Filed 11-23-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on December 11, 1984, Room 1046, 1717 H Street, NW, Washington, DC.

Portions of this meeting dealing with the proposed NRC Research budget for FY 1986 will be closed. Such discussions, if held in public session, might result in the premature disclosure of information which would in turn frustrate the Commission's ability to implement the affected programs effectively.

The agenda for subject meeting shall be as follows:

Tuesday, December 11, 1984—8:30 a.m. until the conclusion of business

The Subcommittee will review the status of Human Factors Research in preparation for the next Committee report to the Congress on reactor safety research. The Subcommittee will also discuss some of the results produced from the NRR Human Factors Program Plan.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their respective consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 19, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-30811 Filed 11-23-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[No. 160-3]

Delegation of Authority To Provide Relief for Loss, Theft, Destruction, Mutilation, or Defacement of Obligations, to Provide Requirements for Indemnity Bonds, and To Grant Relief for Interest Coupons Attached to an Obligation

By virtue of the authority vested in the Secretary of the Treasury under 31 U.S.C. 321(b), and by virtue of the authority delegated to me as Fiscal Assistant Secretary by Treasury Department Order No. 101-5, I hereby delegate to the Commissioner of the Public Debt the authority prescribed under 31 U.S.C. 3125 to do the following:

(1) Provide relief for the loss, theft, destruction, mutilation, or defacement of an obligation identified by number and description.

(2) Prescribe the form, amount, and surety or security requirements for an indeminity bond required as a condition of relief if the obligation is payable to bearer or assigned so as to become payable to bearer and is not proven clearly to have been destroyed.

(3) Provide relief for interest coupons claimed to have been attached to an obligation upon a determination that the coupons have not been paid and have been destroyed or will not become the basis of a valid claim against the Government.

The authority delegated above may be redelegated by the Commissioner of the Public Debt.

I hereby ratify and confirm any actions heretofore taken by the Commissioner of the Public Debt or his delegates in exercise of the authority previously delegated to them pertaining to this subject matter.

This Order supersedes the authorities shown on the attachment to this Order.

Dated: November 13, 1984.

Carole Jones Dineen,

Fiscal Assistant Secretary.

Authorities Superseded by Department of the Treasury Order No. 160-3

Dated: November 13, 1984.

Replacement of Lost Securities

Delegation to the Commissioner of the Public Debt from the Secretary of the Treasury, dated April 26, 1949.

Delegation to the Assistant Chief in Charge, Division of Loans and Currency, Chicago Branch, from the Fiscal Assistant Secretary, dated June 1, 1950.

Delegation to the Chief, Division of Loans and Currency from the Secretary of the Treasury, dated April 21, 1952.

Memorandum to Miss Crawford from Mr. Dean, dated September 7, 1956.

Delegation to the Manager, Claims Section, from the Fiscal Assistant Secretary, dated September 8, 1952.

Memorandum to Miss Crawford from Mr. Dean, dated September 10, 1956.

Delegation to the Commissioner of the Public Debt from the Fiscal Assistant Secretary, dated December 3, 1956.

Delegation to Mr. Thompson from Mr. Peyton, dated December 20, 1956.

Delegation to the Commissioner of the Public Debt from the Fiscal Assistant Secretary, dated July 20, 1962.

Redelegation to the Deputy Commissioner in Charge of the Chicago Office from the Commissioner of the Public Debt, dated July 20, 1962.

Memorandum to Mr. Stephenson from Mr. Merritt, dated August 10, 1966.

Memorandum to Mr. McGeoghegan from Mr. Hintgen, dated November 1, 1972.

Memorandum to Director, Division of Transactions & Rulings from the Acting Assistant Commissioner, dated February 20, 1975.

Memorandum to Miss Aanerud from Mr. Gardner dated March 26, 1975.

Approval of Bonds of Indemnity

Delegation to the Commissioner of the Public Debt from the Secretary of the Treasury, dated April 26, 1949.

Delegation to the Commissioner of the Public Debt and the Chief, Division of Loans and Currency from the Fiscal Assistant Secretary, dated December 17, 1951.

Delegation to the Chief, Division of Loans and Currency from the Secretary of the Treasury, dated April 21, 1952.

Authorization to Wiley M. Fuller and Arthur P. Coe from the General Counsel, dated August 29, 1952.

Delegation to Manager, Claims Section, from the Fiscal Assistant Secretary, dated September 8, 1952.

Delegation to the Commissioner of the Public Debt from the Fiscal Assistant Secretary, dated May 9, 1955.

Delegation to the Acting Commissioner of the Public Debt from the Fiscal Assistant Secretary, dated August 4, 1955.

Treasury Department Order No. 164-1 signed by the Acting Secretary of the Treasury, dated March 28, 1958.

Treasury Department Order No. 177-18 signed by the Acting Secretary of the Treasury, dated March 7, 1960.

Memorandum to W.T. Heffelfinger from the Acting Secretary of the Treasury, dated March 7, 1960.

Memorandum to Miss Palen from Mr. Coe, dated August 8, 1960.

Memorandum to W.T. Heffelfinger from the Fiscal Assistant Secretary, dated September 13, 1960.

Memorandum to Mr. Stephenson from Mr. Merritt, dated September 13, 1960.

Memorandum to the Commissioner of the Public Debt from the Fiscal Assistant Secretary, dated January 4, 1962.

Memorandum to Mr. Stephenson from Mr. Merritt, dated January 4, 1962.

Memorandum to the Chief, Division of Loans and Currency from the Commissioner of the Public Debt, dated July 27, 1962.

Memorandum to the Director, Division of Transactions & Rulings from the Acting Assistant Commissioner, dated February 20, 1975.

[FR Doc. 84-30484 Filed 11-23-84; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 84-234]

Customhouse Broker's License; Cancellation With Prejudice of Customhouse Broker's License No. 2693

Pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the Customs Regulations, as amended (19 CFR 111.51(b)), notice is hereby given that customhouse broker's license No. 2693 of Ferruccio M. Lisoni is cancelled with prejudice.

William von Raab,

Commissioner of Customs.

[FR Doc. 84-30847 Filed 11-23-84; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filed out; (5) Who will be required or asked to report; (6) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20530, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 16, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Department of Veterans Benefits
2. Application for Home Loan Guaranty
3. VA Form 26-1802a
4. On occasion
5. Individuals or households; Businesses or other for profit
6. 145,000 responses
7. 108,750 hours
8. Not applicable

[FR Doc. 84-30823 Filed 11-23-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 228
Monday, November 26, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Commodity Futures Trading Commission	1–4
National Credit Union Administration	5
Parole Commission	6
Uniformed Services University of the Health Sciences	7

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 7, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84–30921 Filed 11–20–84; 4:20 pm]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 14, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84–30922 Filed 11–20–84; 4:20 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 21, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: December 28, 1984.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84–30923 Filed 11–20–84; 4:20 am]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 28, 1984.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84–30924 Filed 11–20–84; 4:20 pm]

BILLING CODE 6351–01–M

5

NATIONAL CREDIT UNION ADMINISTRATION

Notice of change in subject of meeting.

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting on November 15, 1984 include an additional item, which was closed to public observation: Special Assistance to Prevent Liquidation Under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

The Board voted unanimously to add this item to the closed agenda.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meeting.
2. Appeal Challenging Preliminary Determination of Insurability of a Share Certificate.

Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 11:00 a.m., in the Ala Moana Americana Hotel, Honolulu, Hawaii.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84–30858 Filed 11–21–84; 12:23 pm]

BILLING CODE 7535–01–M

6

PAROLE COMMISSION

Pursuant To The Government In The Sunshine Act Pub. L. 94–409 (5 U.S.C. 552b).

AGENCY HOLDING MEETING: U.S. Parole Commission, National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters).

TIME AND DATE: Tuesday, November 27, 1984—2:00 p.m.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately four cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: November 21, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84–30992 Filed 11–21–84; 2:17 pm]

BILLING CODE 4410–01–M

7

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 45829, November 20, 1984.

TIME AND DATE: 8:00 a.m., November 19, 1984.

PLACE: Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under 5 U.S.C. 552b(e)(3) Government in the Sunshine Act.

MATTERS CONSIDERED:

8:00 Meeting—Board of Regents

(1) Approval of Minutes—September 10, 1984; (2) Faculty Appointments; (3) Report—Associate Dean for Operations: (a) Budget, (b) Program Budget Decision 079 and University Response, (c) Construction Update; (4) Report—President, USUHS: (a) Graduate Program: (1) Certification of Graduate Students, (2) Continuing Medical Education (CME) Program; (b) F. Edward Hebert School of Medicine: (1) Reciprocal Training Programs, (2) Memoranda of Understanding with United Kingdom, (3) Institutional Profile; (c) Henry M. Jackson Foundation for the Advancement of Military Medicine—Letters to House and Senate Leadership; (d) Report on Audit Report; (e) Informational Items; (5) Comments by Members, Board of Regents; (6) Comments by Chairman, Board of Regents.

Regent members Olch, Mayer, Cavazos, Coleman, Lambird, Hill, Peterson, O'Rourke, and Luhrs determined by unanimous recorded vote that the meeting of November 19, 1984 be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time. 5 U.S.C. 552b(e)(1). A record of the meeting is available for review.

New Business

Scheduled Meetings: January 18, 1985.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295–3049.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–30874 Filed 11–21–84; 12:23 pm]

BILLING CODE 3810–01–M

Reader Aids

Federal Register

Vol. 49, No. 228

Monday, November 26, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072.....1
44073–44192.....2
44193–44272.....5
44273–44442.....6
44443–44620.....7
44621–44740.....8
44741–44888.....9
44889–44984.....13
44985–45106.....14
45107–45408.....15
45409–45570.....16
45571–45732.....19
45733–45842.....20
45843–46096.....21
46097–46332.....23
46333–46526.....26

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
November 16, 1984.....45733

Notice:
November 7, 1984.....44741

Proclamations:
5270.....44073
5271.....44075
5272.....44077
5273.....44079
5274.....44081
5275.....44193
5276.....44195
5277.....44197
5278.....45107
5279.....45409
5280.....45411
5281.....45413

5 CFR

Ch. XIV, App. A.....45843

Proposed Rules:
213.....45568
831.....45568
930.....45444
1255.....45751
2429.....44902

7 CFR

2.....44743
46.....45735
210.....45109
220.....45109
225.....45109
226.....45109
301.....44083
353.....46333
356.....46335
407.....46337
418.....46337
419.....46341
422.....46346
429.....44443
441.....44985
600.....44743
729.....44889
810.....46347
907.....44199, 44757, 45415
910.....44084, 44744, 44890, 45109, 45415
915.....44447
928.....44199
932.....44447
944.....44447
982.....44745
984.....44745
989.....44745
1004.....44986
1139.....43943
1446.....45109
1910.....45416
1980.....46097

Proposed Rules:
27.....44902
52.....43970
53.....44724
54.....44724, 44758
400.....45444
408.....46363
420.....44480
421.....44476
422.....46395
424.....44485
425.....44490
431.....46400
432.....44485
436.....46405
437.....46149
438.....46409
725.....44103
800.....45751, 46414
910.....44299
971.....45592
982.....44500
984.....44299
1007.....44760
1464.....44103
1772.....45752–45754

8 CFR

238.....44745, 46347
292.....44064

9 CFR

50.....44273
78.....44987, 45110
81.....44087, 45111, 45741
92.....44088
97.....45843
113.....45845
114.....45845
354.....44091

Proposed Rules:
92.....44501
381.....44640

10 CFR

50.....45112, 45114, 45571
1046.....46097

Proposed Rules:
40.....46418, 46425
50.....44645, 46428
55.....46428
71.....44502
210.....45445
605.....44590

11 CFR

6.....44091

12 CFR

204.....44448
207.....43946

220.....43946
221.....43946
224.....43946
303.....44746
308.....44746
545.....45846
563.....45115, 45846
701.....44993, 46105
795.....44993

Proposed Rules:
5.....45007
6.....45102, 45592

13 CFR
105.....45742
120.....44091

Proposed Rules:
107.....44062

14 CFR
1.....44422
27.....44422
29.....44422
39.....44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417, 45743–45746, 46105
43.....44602, 45418
71.....44450, 45418, 45747
73.....44096, 44451, 45418
91.....44422
97.....44990, 46106
255.....44451, 46347

Proposed Rules:
Ch. I.....44766
Ch. II.....46006
39.....45011, 45755
71.....44104, 44650, 45011, 45166–45171, 45756, 45757, 46153–46155
73.....45011, 45168, 45169
75.....45171

15 CFR
7.....44622

Proposed Rules:
8c.....45861
303.....44651
320.....44903, 45757

16 CFR
13.....45115–45117
305.....44200
455.....45692
1212.....46108
1700.....44455

Proposed Rules:
300.....44913
303.....44913
451.....46156

17 CFR
1.....45418
3.....45418
15.....46116
17.....46116
33.....44891
140.....45418
145.....45418
200.....43950, 45847
240.....45117

Proposed Rules:
1.....44105
140.....45015
144.....45015
239.....45172
240.....46156
274.....45172

18 CFR
3.....44273
37.....46351
154.....46353
157.....44275
271.....44201, 44993
274.....44275
284.....44275
341.....44628
356.....44628
360.....44628
361.....44628
375.....44273, 44275
381.....44273, 44275
385.....44273, 44275
389.....44273

Proposed Rules:
271.....44217, 45174, 45175
430.....44105

19 CFR
4.....44867, 46118
6.....44867
7.....44867
10.....44867, 46363
11.....44867
12.....44867
18.....44867
19.....44867
24.....44867, 46118
54.....44867
101.....44867
112.....44867
113.....44867
114.....44867
123.....44867
125.....44867
127.....44867
132.....44867
133.....44867
134.....44867
141.....44867
142.....44867
144.....44867
145.....44867
146.....44867
147.....44867
148.....44867
151.....44867
162.....44867
172.....44867
174.....44867
191.....44867
210.....46123

Proposed Rules:
113.....46161
141.....46161
172.....46161
175.....46162, 46163
353.....45593
355.....45593

20 CFR
395.....44277
404.....43951, 44458, 45420, 46365
410.....46365
416.....46365
422.....46365

21 CFR
74.....44096
178.....44994
193.....44458, 45123
361.....44459
430.....44460
436.....44460
442.....44460
510.....44285, 45123
520.....44894
522.....45123
529.....45420
540.....44749, 45420, 45421
546.....45422
556.....45421, 46371
558.....46371
561.....45124, 45848
573.....44630, 45124

Proposed Rules:
146.....44652
184.....46164
193.....45869
450.....44919
510.....45593
511.....44766

22 CFR
220.....44631

Proposed Rules:
41.....44920

23 CFR
140.....45577

24 CFR
44.....46140
205.....45125
207.....44750, 45125
213.....45125
220.....45125
221.....45125
232.....45125
236.....45125
250.....45125
255.....44750
300.....45128
511.....44066
905.....44285
965.....44982

26 CFR
5h.....43951
41.....45849
48.....45849
301.....44460

Proposed Rules:
1.....44300, 45449, 45450
41.....44300, 44310, 44921, 46167
48.....44300, 44310, 44921, 46167
51.....45758
301.....45452

27 CFR
9.....44202, 44895

Proposed Rules:
4.....44217, 45018
5.....44921
55.....44922
178.....44922
240.....44217

28 CFR
0.....46371
2.....44097
15.....44995
511.....44056

Proposed Rules:
545.....44059

29 CFR
530.....44262
1601.....45424
1952.....44202
2619.....45129

Proposed Rules:
2617.....44106
2640.....45018
2648.....45018

30 CFR
906.....46372
915.....44206
917.....44750
935.....43952, 44461, 44996

Proposed Rules:
250.....44924
816.....45595
817.....45595
855.....45595
914.....46167
917.....44653
920.....43974
931.....44769
938.....43974
948.....46168

31 CFR
5.....45578

33 CFR
100.....45579, 45580, 45758
117.....43953–43956, 44207, 44632, 45130, 45580
165.....44632

Proposed Rules:
117.....43975, 44925, 45596
126.....45597
157.....46440
160.....45597
165.....44926

34 CFR

Proposed Rules:
Ch. VI.....45834
76.....45834
208.....45834
280.....46169
300.....46252
350.....46244
352.....46244
358.....46244
359.....46244

36 CFR

Proposed Rules:
13.....46441
223.....44109
291.....45117
1121.....44310

38 CFR
3.....44099, 45130

Proposed Rules:
1.....45870
21.....46441

39 CFR
10.....45130

111.....46141
265.....44286

40 CFR
52.....44099, 44208, 44287, 44463, 44996, 46141
60.....44633, 45424
61.....44633
81.....45131
86.....44740
124.....45292
144.....45292
146.....45292
147.....45292
180.....44464–44467, 45132, 45849–45854
261.....44978
265.....46094
704.....45133, 45425
707.....45581
721.....46373
723.....46066
761.....44634
775.....44997

Proposed Rules:
50.....44770, 45871
51.....44770, 44878
52.....43976, 43977, 44110, 44505, 44927, 45178, 45761–45765, 45872, 46442
53.....45871
58.....45871
65.....46443
81.....43977, 45031
147.....44111
152.....45873
157.....45873
158.....45873
162.....45873
170.....45181
180.....46443
261.....44718
271.....44111, 44312, 44506, 45452, 45874, 46443
406.....44928
407.....44928
408.....44928
409.....44928
411.....44928
422.....44928
424.....44928
426.....44928
431.....44928
432.....44928
439.....44928
712.....44218, 45598
716.....44220, 45602
799.....45606, 45610

41 CFR
50–201.....45855
Ch. 101.....44468
101–20.....44469
101–41.....44470
101–47.....44471
Ch. 201.....45748

42 CFR
36.....44288
400.....45431
403.....44472
405.....44472
441.....45431

43 CFR

Public Land Orders:
1821.....44473
6547 (corrected by PLO 6577).....44997
6577.....44997
6578.....46144
6579.....46144
6580.....46145

Proposed Rules:
3160.....44655
3420.....44221

44 CFR
64.....44751, 45133
65.....45134, 45135
67.....45136

Proposed Rules:
67.....45181

45 CFR
801.....44473

Proposed Rules:
95.....45617
201.....45558
205.....45558
206.....45558
225.....45558
232.....45558
233.....45558
234.....45558
235.....45558
237.....45558

46 CFR
310.....45857
500.....44362
501.....44362
502.....44362
503.....44362
504.....44362
505.....44362
538.....45364
572.....45320
580.....45364
585.....45397
587.....45397

Proposed Rules:
67.....45623
510.....46174

47 CFR
0.....45582
2.....44101, 44997
15.....44210
25.....44751
31.....44289, 46378
43.....44289
69.....46383
73.....43957, 44101, 45139–45146, 45583–45587, 46386
74.....45155
76.....45431

Proposed Rules:
0.....45454
1.....45454
2.....45766, 45875
73.....44113, 44114, 45186, 45625, 45875, 46444–46448
90.....44223, 45454, 45875

48 CFR

Proposed Rules:
1480.....45187
1803.....45194
1804.....45194
1805.....45194
1812.....45194
1813.....45194
1814.....45194
1815.....45194
1816.....45194
1817.....45194
1825.....45194
1827.....45194
1831.....45194
1832.....45194
1835.....45194
1842.....45194
1844.....45194
1845.....45194
1852.....45194

49 CFR
1.....44102, 46145
171.....45749
173.....43963, 45749
175.....45749
178.....43965
179.....43963
391.....44210
395.....46145
392.....44210
571.....44899, 46386
575.....44751
1033.....46392
1160.....45858
1165.....45858
1168.....45858
1181.....45858
1182.....45858

Proposed Rules:
23.....44772
172.....45627
173.....45627
195.....44928
542.....45629
1102.....44224

50 CFR
17.....43965, 44753, 45160
258.....44474
611.....44757
620.....44102
652.....45164, 45859
661.....46148
663.....44638, 44901
671.....44757
676.....44998

Proposed Rules:
17.....44507, 44712, 45766, 45880–45887, 46174
222.....44774
227.....44774
611.....44655, 46177
630.....45888
672.....44655
675.....44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783–3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0–45	13.00	Jan. 1, 1984
46–51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53–209	13.00	Jan. 1, 1984
210–299	13.00	Jan. 1, 1984
300–399	7.50	Jan. 1, 1984
400–699	13.00	Jan. 1, 1984
700–899	13.00	Jan. 1, 1984
900–999	14.00	Jan. 1, 1984
1000–1059	12.00	Jan. 1, 1984
1060–1119	9.50	Jan. 1, 1984
1120–1199	7.50	Jan. 1, 1984
1200–1499	13.00	Jan. 1, 1984
1500–1899	6.00	Jan. 1, 1984
1900–1944	14.00	Jan. 1, 1984
1945–End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1–199	13.00	Jan. 1, 1984
200–End	9.50	Jan. 1, 1984
10 Parts:		
0–199	14.00	Jan. 1, 1984
200–399	12.00	Jan. 1, 1984
400–499	12.00	Jan. 1, 1984
500–End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1–199	9.00	Jan. 1, 1984
200–299	14.00	Jan. 1, 1984
300–499	9.50	Jan. 1, 1984
500–End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1–59	13.00	Jan. 1, 1984
60–139	13.00	Jan. 1, 1984
140–199	7.00	Jan. 1, 1984
200–1199	13.00	Jan. 1, 1984
1200–End	7.50	Jan. 1, 1984
15 Parts:		
0–299	7.00	Jan. 1, 1984
300–399	13.00	Jan. 1, 1984
400–End	12.00	Jan. 1, 1984
16 Parts:		
0–149	9.00	Jan. 1, 1984
150–999	9.50	Jan. 1, 1984
1000–End	13.00	Jan. 1, 1984
17 Parts:		
1–239	14.00	Apr. 1, 1984
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1–399	7.50	Apr. 1, 1984
400–499	13.00	Apr. 1, 1984
500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1984
100–169	12.00	Apr. 1, 1984
170–199	12.00	Apr. 1, 1984
200–299	4.25	Apr. 1, 1984
300–499	14.00	Apr. 1, 1984
500–599	13.00	Apr. 1, 1984
600–799	6.00	Apr. 1, 1984
800–1299	9.50	Apr. 1, 1984
1300–End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0–199	8.00	Apr. 1, 1984
200–499	14.00	Apr. 1, 1984
500–699	6.00	Apr. 1, 1984
700–1699	12.00	Apr. 1, 1984
1700–End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0–1.169	14.50	Apr. 1, 1984
§§ 1.170–1.300	10.00	Apr. 1, 1984
§§ 1.301–1.400	7.50	Apr. 1, 1984
§§ 1.401–1.500	13.00	Apr. 1, 1984
§§ 1.501–1.640	12.00	Apr. 1, 1984
§§ 1.641–1.850	12.00	Apr. 1, 1984
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	13.00	Apr. 1, 1984
30–39	9.00	Apr. 1, 1984
40–299	14.00	Apr. 1, 1984
300–499	9.50	Apr. 1, 1984
500–599	8.00	[1] Apr. 1, 1980
600–End	5.50	Apr. 1, 1984
27 Parts:		
1–199	13.00	Apr. 1, 1984
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0–99	14.00	July 1, 1984
100–499	6.50	July 1, 1984
500–899	14.00	July 1, 1984
900–1899	7.50	July 1, 1984
1900–1910	15.00	July 1, 1984
1911–1919	5.50	July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	7.00	July 1, 1983
200–699	5.50	July 1, 1984
700–End	13.00	Oct. 1, 1984
31 Parts:		
0–199	8.00	July 1, 1984
200–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	9.00	July 1, 1983
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
*400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1983
*200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	15.00	July 1, 1983
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
*0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	7.50	July 1, 1983
100–149	9.50	July 1, 1984
150–189	6.50	July 1, 1983
190–399	13.00	July 1, 1984
400–424	6.50	July 1, 1983
425–End	13.00	July 1, 1983
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	7.00	July 1, 1983
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
*18, Vol. I, Parts 1–5	13.00	July 1, 1984
*18, Vol. II, Parts 6–19	13.00	July 1, 1984
*18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1983
61–399	7.50	Oct. 1, 1983
400–End	17.00	Oct. 1, 1983
43 Parts:		
1–999	9.00	Oct. 1, 1983
1000–3999	14.00	Oct. 1, 1983
4000–End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1–199	9.00	Oct. 1, 1983
200–499	6.00	Oct. 1, 1983
500–1199	12.00	Oct. 1, 1983
1200–End	9.00	Oct. 1, 1983
46 Parts:		
1–40	9.00	Oct. 1, 1983
41–69	9.00	Oct. 1, 1983
70–89	5.00	Oct. 1, 1983
90–139	9.00	Oct. 1, 1983
140–155	8.00	Oct. 1, 1983
156–165	9.00	Oct. 1, 1983
166–199	7.00	Oct. 1, 1983
200–399	12.00	Oct. 1, 1983
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	12.00	Oct. 1, 1983
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48	1.50	[2] Sept. 19, 1983
49 Parts:		
1–99	7.00	Oct. 1, 1983
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	12.00	Oct. 1, 1983
400–999	13.00	Oct. 1, 1983
1000–1199	12.00	Oct. 1, 1983
1200–1299	12.00	Oct. 1, 1983
1300–End	7.50	Oct. 1, 1983
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1984 CFR set	550.00	1984
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected),* the *Federal Register Index,* or both.

LSA • List of CFR Sections Affected

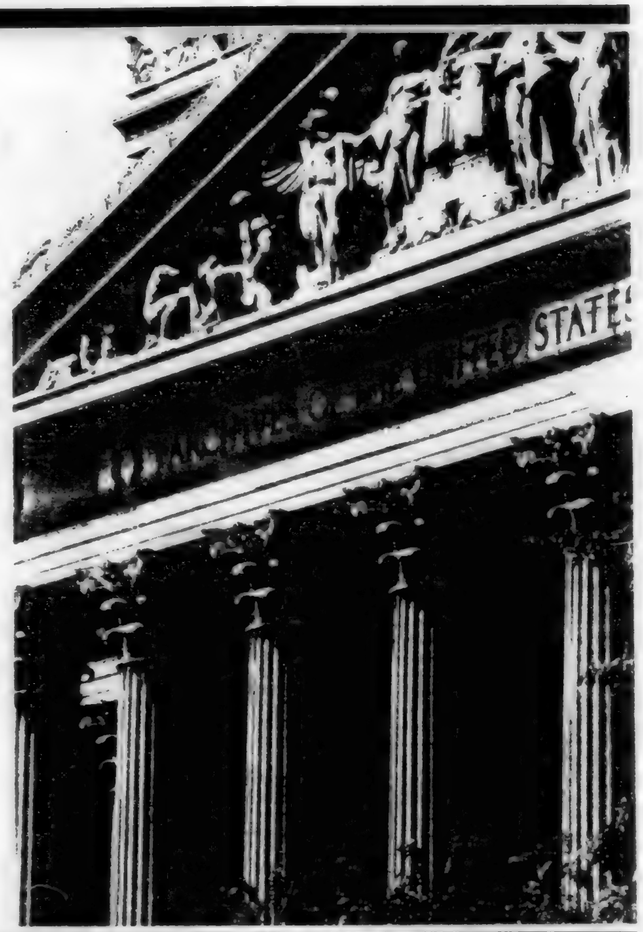
The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$20.00 per year

Federal Register Index

The Index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$22.00 per year

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.



Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.
☐☐☐☐☐☐☐–☐
Order No._____

MasterCard and VISA accepted.

Credit Card Orders Only
Total charges $_____
Customer's Telephone Nos.
Area Code Home | Area Code Office
Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
Expiration Date Month/Year ☐☐☐☐
Charge orders may be telephoned to GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please enter the subscription(s) I have indicated:

___ **LSA** List of CFR Sections Affected $20.00 a year domestic; $25.00 foreign

___ **Federal Register Index** $22.00 a year domestic; $27.50 foreign

PLEASE PRINT OR TYPE
Company or Personal Name
Additional address/attention line
Street address
City State ZIP Code
(or Country)

For Office Use Only

Quantity	Charges
___ Publications	
___ Subscription	
Special Shipping Charges	
International Handling	
Special Charges	
OPNR	
___ UPNS	
___ Balance Due	
___ Discount	
___ Refund	

882

VOL
49

ISS
228

NO
26

1984

UMI

OL
9

SS
29

NO
27

984

MI

11-27-84
Vol. 49 No. 229

federal register

Tuesday
November 27, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106
100

Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

Federal Register
(ISSN 0097-6326)

SECOND CLASS NEWSPAPER

OL
9

SS
29

NO
27

984

MI

11-27-84
Vol. 49 No. 229
Pages 46527-46698

federal register

Tuesday
November 27, 1984

Selected Subjects

Administrative Practice and Procedure
Federal Trade Commission

Aircraft
Federal Aviation Administration

Bridges
Coast Guard

Credit Unions
National Credit Union Administration

Fisheries
National Oceanic and Atmospheric Administration

Household Appliances
Conservation and Renewable Energy Office

Investment Companies
Securities and Exchange Commission

Loan Programs—Housing and Community Development
Veterans Administration

Marketing Agreements
Agricultural Marketing Service

Meat Inspection
Food Safety and Inspection Service

Navigation (Water)
Coast Guard

Organization and Functions (Government Agencies)
Packers and Stockyards Administration

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Securities
Securities and Exchange Commission

Small Business
Small Business Administration

Surface Mining
Surface Mining Reclamation and Enforcement Office

Contents

Federal Register
Vol. 49, No. 229
Tuesday, November 27, 1984

Administrative Conference of United States
NOTICES
Meetings:
46564 Plenary Session

Agricultural Marketing Service
RULES
46527 Lemons grown in Arizona and California

Agriculture Department
See Agricultural Marketing Service; Food Safety and Inspection Service; Packers and Stockyards Administration.

Air Force Department
NOTICES
46579 Agency information collection activities under OMB review

Army Department
NOTICES
46579, 46580 Agency information collection activities under OMB review (3 documents)

Centers for Disease Control
NOTICES
Meetings:
46596 Mine Health Research Advisory Committee (NIOSH)

Coast Guard
RULES
Drawbridge operations:
46547 Washington
Navigation aids:
46547 Light list printing cycle publication schedule
PROPOSED RULES
Ports and waterways safety:
46562 Humboldt Bay, CA; regulated navigation area
46560 San Francisco Bay, CA, etc.; regulated navigation area

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration.

Conservation and Renewable Energy Office
RULES
Consumer products:
46533 Dishwashers; test procedures

Defense Department
See also Air Force Department; Army Department; Navy Department.
NOTICES
46577, 46578 Agency information collection activities under OMB review (2 documents)
Meetings:
46577 DIA Scientific Advisory Committee
46588 Science Board task forces (2 documents)

Drug Enforcement Administration
NOTICES
Environmental statements; availability, etc.:
46599 Canabis eradication program on Federal lands, etc.
Registration applications, etc.; controlled substances:
46599 Philadelphia Seed Co.

Education Department
NOTICES
Grants; availability, etc.:
46582 College housing program; prepayment discount
46581 International research and studies program
Meetings:
46583 Women's Educational Programs National Advisory Council

Employment and Training Administration
NOTICES
Adjustment assistance:
46601 Colintino Rose Fish Co. et al.
Federal-State unemployment compensation program:
46600 State certifications

Energy Department
See also Conservation and Renewable Energy Office; Federal Energy Regulatory Commission.
NOTICES
46696 Emerging clean coal technologies; program announcement requesting information
Environmental statements; availability, etc.:
46584 Hanford Site, Richland, WA
International atomic energy agreements; civil uses; subsequent arrangements:
46586 European Atomic Energy Community and Spain
46585 Sweden and European Atomic Energy Community

Environmental Protection Agency
NOTICES
Air pollution; standards of performance for new stationary sources, etc.:
46594 Connecticut, Maine, New Hampshire, Rhode Island, and Massachusetts; authority delegation

Federal Aviation Administration
PROPOSED RULES
Airworthiness standards:
46670 Rotorcraft regulatory review program; powerplant requirements

Federal Communications Commission
PROPOSED RULES
Radio services, special:
46563 Private land mobile services; public safety channel allocation, Los Angeles, Calif.; correction
NOTICES
46628 Meetings; Sunshine Act

Federal Emergency Management Agency
NOTICES
46595 Agency information collection activities under OMB review

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
46542 Hydroelectric power projects; annual charges for use of government dams and other structures; effective date and reporting and recordkeeping requirements
NOTICES
Hearings, etc.:
46586 Alabama Municipal Electric Authority (3 documents)
46586 American Petrofina Co. of Texas et al.
46587, 46588 Boston Edison Co. (2 documents)
46589 Burt Dam Associates
46589 China Flat Co.
46589 Colorado Interstate Gas Co.
46589 Conway Ranch Partnership
46590 CP National
46590 Dayton Power & Light Co. (2 documents)
46590 Delmarva Power & Light Co.
46590 Great Northern Hydro Corp.
46591 Montana-Dakota Utilities Co.
46591 Northern Border Pipeline Co.
46592 Northern Natural Gas Co.
46591 Northeast Utilities Service Co.
46592 Otter Tail Power Co.
46593 Pacific Hydropower Co.
46593 Pacific Power & Light Co.
46593 Westchester Resco Co.
46593 Witt Oil Production, Inc.

Federal Maritime Commission
NOTICES
46595 Agreements filed, etc.
Freight forwarder license:
46595 Blue Star Shipping Corp. et al.

Federal Reserve System
NOTICES
46628 Meetings; Sunshine Act

Federal Trade Commission
PROPOSED RULES
Procedure and practice rules:
46554 Briefing cross appeals, brief format, and service of process

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
46530 Italian sausage, cooked, and curing agents

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
46564 Hawaii; extension of time

General Services Administration
NOTICES
46596 Privacy Act; systems of records

Health and Human Services Department
See Centers for Disease Control.

Interior Department
See also National Park Service; Surface Mining Reclamation and Enforcement Office.
NOTICES
Meetings:
46597 Indian Reservation Economies, Presidential Commission

International Trade Administration
NOTICES
Countervailing duties:
46564 Oil country tubular goods from Argentina
46570 Oil country tubular goods from Brazil

International Trade Commission
NOTICES
46629 Meetings; Sunshine Act

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
46598 Burlington Northern Railroad Co.

Justice Department
See also Drug Enforcement Administration.
NOTICES
Pollution control; consent judgments:
46599 Pennwalt Corp.

Labor Department
See also Employment and Training Administration; Maritime Administration.
NOTICES
46599 Agency information collection activities under OMB review

Maritime Administration
NOTICES
Meetings:
46611 Maritime Advisory Committee; cancellation

National Credit Union Administration
RULES
Federal credit unions:
46541 Fees paid by Federal credit unions
46540 Loans to members and lines of credit to members
46536 Membership; interpretive ruling and policy statement
PROPOSED RULES
Federal credit unions:
46552 Share, share draft, and share certificate accounts

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
46549 Tanner crab off Alaska; interim
NOTICES
Meetings:
46576 New England Fishery Management Council
46577 North Pacific Fishery Management Council

National Park Service
NOTICES
Historic places National Register; pending nominations:
46597 Connecticut et al.

Meetings:
46597 San Antonio Missions Advisory Commission

Navy Department
NOTICES
Environmental statements; availability, etc.:
46580 Puget Sound Area, Wash.; carrier battle group homeporting
Patent licenses, exclusive:
46580 Hampshire Instruments, Inc.

Nuclear Regulatory Commission
NOTICES
46628 Meetings; Sunshine Act

Packers and Stockyards Administration
RULES
46527 Organization and functions

Research and Special Programs Administration
NOTICES
Hazardous materials; inconsistency rulings, etc.:
46632 New York, Michigan, and Vermont

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
46558 Pricing of redeemable securities for distribution, redemption, and repurchase
Securities:
46556 Direct participation program interests exemption; broker-dealer credit extensions
NOTICES
46601-46603 Agency information collection activities under OMB review (8 documents)
Hearings, etc.:
46603 Associated Natural Gas Co.
46604 Blackstone Valley Electric Co.
46605 Seven Star Partners, Ltd.
46629 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
46606 New York Stock Exchange, Inc.

Small Business Administration
PROPOSED RULES
Small business investment companies:
46553 Marketable securities; clarification
NOTICES
Applications, etc.:
46608 Camden Investments, Inc.
46608 Monsey Capital Corp.
46609 Round Table Capital Corp.
46609 Sovran Funding Corp.
46610 Trendwest Capital Corp.
Disaster loan areas:
46610 Texas
46610 Intergovernmental review of agency programs and activities

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
46542 Pennsylvania

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
46577 Korea

Transportation Department
See Coast Guard; Federal Aviation Administration; Research and Special Programs Administration.

Treasury Department
NOTICES
46627 Agency information collection activities under OMB review
Notes, foreign-targeted Treasury:
46613 H-1990 series
Notes, Treasury
46610 G-1990 series

Veterans Administration
RULES
Loan guaranty:
46548 Interest rates.

Separate Parts in This Issue

Part II
46632 Department of Transportation, Research and Special Programs Administration

Part III
46670 Department of Transportation, Federal Aviation Administration

Part IV
46696 Department of Energy, Office of Fossil Energy

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
910 46527

9 CFR
204 46527
318 46530
319 46530

10 CFR
430 46533

12 CFR
Ch. VII 46536
701 (2 documents) 46540, 46541

Proposed Rules:
701 46552

13 CFR
Proposed Rules:
107 46553

14 CFR
Proposed Rules:
1 46670
27 46670
29 46670
33 46670

16 CFR
Proposed Rules:
3 46554
4 46554

17 CFR
Proposed Rules:
240 46556
270 46558

18 CFR
11 46542

30 CFR
938 46542

33 CFR
72 46547
117 46547

Proposed Rules:
165 (2 documents) 46560, 46562

38 CFR
36 46548

47 CFR
Proposed Rules:
2 46563
73 46563
90 46563

50 CFR
671 46549

Rules and Regulations

Federal Register
Vol. 49, No. 229
Tuesday, November 27, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 491; Lemon Reg. 490 Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 260,000 cartons during the period November 25–December 1, 1984, and increases the quantity of lemons that may be shipped to 220,000 cartons during the period November 18–24, 1984. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (Lemon Regulation 491) becomes effective November 25, 1984, and the amendment (Lemon Regulation 490) is effective for the period November 18–24,1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on November 20, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.791 is added to read as follows:

§910.791 Lemon Regulation 491.

The quantity of lemons grown in California and Arizona which may be handled during the period November 25, 1984, through December 1, 1984, is established at 260,000 cartons.

2. Section 910.790 Lemon Regulation 490 is revised to read as follows:

§ 910.790 Lemon Regulation 490.

The quantity of lemons grown in California and Arizona which may be handled during the period November 18, 1984, through November 24, 1984, is established at 220,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 21, 1984.

Thomas R. Clark,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–31142 Filed 11–23–84; 1:04 pm]
BILLING CODE 3410–02–M

Packers and Stockyards Administration

9 CFR Part 204

Organization and Functions

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This document amends Part 204, Chapter II of 9 CFR to update and clarify the organization and functions of the Packers and Stockyards Administration and to change the delegations of authority.

EFFECTIVE DATE: November 27, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Smith, Deputy Administrator (202) 447–7083.

SUPPLEMENTARY INFORMATION: Changes in language have been made to provide a clearer, more concise explanation of the Agency's organization and functions. Section 204.2, Organization, is amended to reflect the closing of the Springfield, Illinois, regional office and reassignment of the States in that region to the Indianapolis, Indiana, and South St. Paul, Minnesota, regional offices.

Section 204.3, Delegation of Authority, is amended to remove the special delegations of authority to the branches. The Division Directors continue to have full authority to administer the provisions of the Packers and Stockyards Act pertaining to their respective functional areas and responsibilities (including the power of redelegation) except certain specific reservations contained in paragraph (g) of § 204.3. Further, the delegation to the Regional Supervisors is expanded to include specific authority to determine

when a bond is inadequate under § 201.30(f) of this chapter and to require the appropriate bond.

List of Subjects in 9 CFR Part 204

Organization and functions (Government agencies), Delegation of authority (Government agencies), Requests for records and information.

Authority: 5 U.S.C. 552.

Done at Washington, D.C. the 21st day of November, 1984.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

Accordingly, Part 204, Chapter II, Title 9 of the Code of Federal Regulations is revised as set forth below:

PART 204—ORGANIZATION AND FUNCTIONS

Public Information

Sec.

204.1 Introduction.
204.2 Organization.
204.3 Delegation of authority.
204.4 Public inspection and copying.
204.5 Indexes.
204.6 Requests for records.
204.7 Appeals.

Authority: 5 U.S.C. 552.

Public Information

§ 204.1 Introduction.

The Packers and Stockyards Administration hereby describes its central and field organization; indicates the established places at which, and methods whereby, the public may secure information; directs attention to the general course and method by which its functions are channeled; and sets forth the procedures governing the availability of opinions, orders, and other records in the files of said Administration.

§ 204.2 Organization.

(a) The Packers and Stockyards Administration consists of a headquarters office located in the South Building of the U.S. Department of Agriculture in Washington, D.C., and 12 regional offices. The Washington headquarters office is organized to include the Office of the Administrator and two Divisions, the Packer and Poultry Division and the Livestock Marketing Division.

(b) *Office of the Administrator.* This office has overall responsibility for administering the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*), for enforcement of the Truth-in-Lending Act (15 U.S.C. 1601–1665) with respect to any activities subject to the Packers and Stockyards Act and for executing assigned civil defense and defense mobilization activities. These responsibilities include formulation of current and long-range programs relating to assigned functions; execution of the policies and programs administered by the Packers and Stockyards Administration; review and evaluation of program operations for uniform, effective, and efficient administration of the Packers and Stockyards Act; and maintenance of relations and communications with producer and industry groups.

(1) *Administrator.* The Secretary of Agriculture has delegated responsibility for administration of the Packers and Stockyards Act to the Administrator who is responsible for the general direction and supervision of programs and activities assigned to the Packers and Stockyards Administration except such activities as are reserved to the Judicial Officer (32 FR 7468). The Administrator reports to the Assistant Secretary for Marketing and Inspection Services.

(2) *Deputy Administrator.* The Deputy Administrator assists the Administrator in the overall responsibility for the general direction and supervision of programs and activities assigned to the Packers and Stockyards Administration.

(3) *Assistant to the Administrator.* The Assistant to the Administrator participates with the Administrator and Deputy Administrator in the development and analysis of policies and programs, and directs the management support services and related activities of the Packers and Stockyards Administration.

(4) *Director, Industry Analysis Staff.* The Director of the Industry Analysis Staff participates with the Administrator and Deputy Administrator in the development and analysis of policies and programs and directs economic studies of structure and performance of the livestock, meat, and poultry marketing, processing, and wholesaling industries. The results of these studies are used to provide economic advice to the Administrator in developing overall policy on antitrust matters and effects of practices or impediments in the marketing system. The Director works closely with the Directors of the Packer and Poultry and the Livestock Marketing Divisions in connection with investigations to provide economic advice and expert testimony in trials and administrative hearings. The Director also coordinates activities and works closely with the Federal Trade Commission and Justice Department in studying the effects of mergers and antitrust matters in the livestock, meat packing and poultry industries.

(c) *Packer and Poultry Division.* This Division carries out the enforcement of the provisions of the Packers and Stockyards Act relating to packers and live poultry dealers and handlers. The responsibilities and functions include: Determination of applicability of the provisions of the Act to individual packer and poultry operations; surveillance of these operations; investigation of complaints; initiation of formal proceedings, when warranted, to correct illegal practices; and maintenance of working relationships with the meat packer and poultry industries. These responsibilities and functions are accomplished with programs and activities directed through the Livestock Procurement Branch, Meat Merchandising Branch, and Poultry Branch. The Division Director participates with the Administrator and Deputy Administrator in the development and evaluation of policies and programs to fulfill the Agency's responsibilities and functions. The Director implements and directs the policies and programs pertaining to the Packer and Poultry Division through the three branches.

(d) *Livestock Marketing Division.* This Division enforces those provisions of the Packers and Stockyards Act relating to stockyard owners, market agencies, and dealers. The responsibilities and functions include: determination of the applicability of the jurisdiction, bonding, financial and trade practice provisions of the Act to individual operations; supervision of the installation, maintenance, and testing of scales; surveillance and investigations of stockyards, market agencies, and dealers; initiation of formal proceedings, when warranted, to correct illegal practices; and maintenance of working relationships with producer and industry groups. These responsibilities and functions are accomplished with programs and activities directed through the Financial Protection Branch, Marketing Practices Branch, and Scales and Weighing Branch. The Division Director participates with the Administrator and Deputy Administrator in the development and evaluation of policies and programs to fulfill the Agency's responsibilities and functions. The Director implements and directs the policies and programs pertaining to the Livestock Marketing Division through the three branches.

(e) *Field Services.* (1) The field services of the Packers and Stockyards Administration is divided into 12 regional offices. These offices are responsible for supervision of operations of stockyard companies, market agencies, dealers, packers and live poultry dealers and handlers to assure compliance with the Act. They formulate recommendations relating to the enforcement of the Act; receive and investigate complaints, including reparation complaints; audit books, records, and reports of persons subject to the Act; conduct investigations to determine the existence of and develop evidence of unfair, deceptive, and discriminatory trade practices; prepare investigative reports and recommend corrective action; assist in the prosecution of cases; review applications for registration and rate changes for accuracy and compliance; and maintain relationships with producers, the trade, States and other groups interested in the welfare of the livestock, meat packing, and poultry industries concerning enforcement of the Act.

(2) The addresses and the States covered by these offices, which are under regional supervisors, are as follows:

Atlanta—Room 338, 1720 Peachtree Street, NW., Atlanta, Georgia 30309 (Alabama, Florida, Georgia, South Carolina)
Bedford—Turnpike Road, Box 101E, Bedford, Virginia 25423 (District of Columbia, Delaware, Maryland, North Carolina, Virginia, West Virginia)
Denver—208 Livestock Exchange Building, Denver, Colorado 80216 (Colorado, Montana, New Mexico, Utah, Wyoming)
Fort Worth—Room 8A36, Federal Building, 819 Taylor Street, Fort Worth, Texas 76102 (Oklahoma, Texas)
Indianapolis—Room 434 Federal Building and U.S. Courthouse, 46 E. Ohio Street, Indianapolis, Indiana 46204 (Illinois, Indiana, Kentucky, Michigan, Ohio)
Kansas City—828 Livestock Exchange Building, Kansas City, Missouri 64102 (Kansas, Missouri)
Lawndale—15000 Aviation Boulevard, Room 2W6, P.O. Box 6102, Lawndale, California 90261 (Arizona, California, Hawaii, Nevada)
Memphis—Room 459, Federal Building, 167 Main Street, Memphis, Tennessee 38103 (Arkansas, Louisiana, Mississippi, Tennessee)
North Brunswick—825 Georges Road, Room 303, North Brunswick, New Jersey 08902 (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont)
Omaha—909 Livestock Exchange Building, Omaha, Nebraska 68107 (Iowa, Nebraska)
Portland—6370 S.W. Greenburg Road, Suite E, Portland, Oregon 97223 (Alaska, Idaho, Oregon, Washington)
South St. Paul—208 Post Office Building, Box 8, South St. Paul, Minnesota 55075 (Minnesota, North Dakota, South Dakota, Wisconsin)

§ 204.3 Delegation of Authority.

(a) *Deputy Administrator.* Under the direction of the Administrator, the Deputy Administrator is hereby delegated authority to perform all the duties and exercise all the functions and powers which are now or which may hereafter be, vested in the Administrator (including the power of redelegation).

(b) *Division Directors.* The Directors of the Industry Analysis Staff, the Livestock Marketing Division, and the Packer and Poultry Division, under administrative and technical direction of the Administrator and the Deputy Administrator, are hereby individually delegated authority, in connection with the respective functions assigned to each of said organizational units in § 204.2 to perform all the duties and to exercise all the functions and powers which are now, or which may hereafter be, vested in the Administrator (including the power of redelegation) except such authority as is reserved to the Administrator and Deputy Administrator under paragraph (g) of this section.

(c) *Regional Supervisors.* (1) The Regional Supervisors of the Packers and Stockyards Administration are hereby individually delegated authority under the provisions of section 402 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 222), to issue special orders pursuant to the provisions of section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)), and, with respect thereto, to issue notices of default provided for in section 10 of the Federal Trade Commission Act (15 U.S.C. 50); to notify persons deemed to be subject to the bonding requirements in 7 U.S.C. 204 of their obligations to file bonds or trust fund agreements in conformity with regulations issued under this chapter including authority to determine that a bond is inadequate under § 201.30(f) of this chapter and to give notice to the person of the amount of bond required; to notify persons deemed to be subject to the reporting requirements in § 201.97 of this chapter of their obligations to file annual reports; and to grant reasonable requests for extensions of 30 days or less for the filing of such annual reports.

(2) The Regional Supervisors are hereby individually delegated authority, when there is reason to believe that there is a question as to the true ownership of livestock sold by any person, to disclose information relating to such questionable ownership to any interested person.

(d) *Investigative employees.* All employees of the Packers and Stockyards Administration assigned to or responsible for investigations in the enforcement of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), or the enforcement of the Truth-in-Lending Act (15 U.S.C. 1601–1665), with respect to any activities subject to the Packers and Stockyards Act, are hereby individually delegated authority under the Act of January 31, 1925, 43 Stat. 803, 7 U.S.C. 2217, to administer to or take from any person an oath, affirmation, or affidavit whenever such oath, affirmation, or affidavit is for use in any prosecution or proceeding under or in the enforcement of the aforementioned Acts. This authority may not be redelegated and will automatically expire upon the termination of the employment of such employees with the Packers and Stockyards Administration.

(e) *Concurrent authority.* No delegation prescribed herein shall preclude the Administrator or Deputy Administrator from exercising any of the powers or functions or from performing any of the duties conferred upon them, and any such delegation is subject at all times to withdrawal or amendment by the Administrator or Deputy Administrator or the Division Director responsible for the function involved.

(f) *Prior delegations.* All prior delegations and redelegations of authority relating to any function or activity covered by these delegations of authority shall remain in effect except as they are inconsistent herewith or are hereafter amended or revoked. Nothing herein shall affect the validity of any action heretofore taken under prior delegations or redelegations of authority or assignment of functions.

(g) *Reservations of authority.* It is hereby reserved to the Administrator and Deputy Administrator authority with respect to proposed rulemaking and final action for the issuance of regulations (§ 201.1 of this chapter *et seq.*), rules of practice governing proceedings (§ 202.1 of this chapter *et seq.*), and statements of general policy (§ 203.1 of this chapter *et seq.*), and the issuance of moving papers as prescribed in the rules of practice governing formal adjudicatory administrative proceedings instituted by the Secretary (7 CFR Part 1, Subpart H, § 1.133); and the authority to make final determinations in accordance with the provisions of 7 CFR Part 1, Subpart A, as to the availability of official records and information made or obtained in connection with the administration of the Packers and Stockyards Act which are considered exempt from disclosure under § 204.7 of this part. Further, authority to issue subpenas (7 U.S.C. 222 and 15 U.S.C. 49) is reserved to the Administrator and Deputy Administrator.

§ 204.4 Public inspection and copying.

(a) Facilities for public inspection and copying of the indexes and materials required to be made available under 7 CFR 1.2(a) will be provided by the Packers and Stockyards Administration during normal hours of operation. Requests for this information should be made to the Freedom of Information Act Officer, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250.

(b) Copies of such materials may be obtained in person or by mail. Applicable fees for copies will be charged in accordance with the regulations prescribed by the Director of Information, Office of Governmental and Public Affairs, USDA.

§ 204.5 Indexes.

Pursuant to the regulations in 7 CFR 1.4(b), the Packers and Stockyards Administration will maintain and make available for public inspection and copying current indexes of all material required to be made available in 7 CFR 1.2(a). Notice is hereby given that publication of these indexes is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of publication.

§ 204.6 Requests for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a). Authority to make determinations regarding initial requests in accordance with 7 CFR 1.4(c) is delegated to the Freedom of Information Act Officer of the Packers and Stockyards Administration. Requests should be submitted to the FOIA Officer at the following address: Freedom of Information Act Officer (FOIA Request), Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250.

(b) The request shall identify each record with reasonable specificity as prescribed in 7 CFR 1.3.

(c) The FOIA Officer is authorized to receive requests and to exercise the authority to (1) make determination to grant requests or deny initial requests; (2) extend the administrative deadline; (3) make discretionary release of exempt records; and (4) make determinations regarding charges pursuant to the fee schedule.

§ 204.7 Appeals.

Any person whose request under § 204.6 of this part is denied shall have the right to appeal such denial in accordance with 7 CFR 1.3(e). Appeals shall be addressed to the Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

[FR Doc. 84-31030 Filed 11-26-84; 8:45 am]
BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 318 and 319

[Docket No. 81-035F]

Cooked Italian Sausage and Curing Agents in Italian Sausage

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the standard of identity and composition for Italian sausage by allowing the addition of curing agents to Italian sausage and requiring that such product be prominently labeled as "cured." It also allows Italian sausage to be smoked and requires that the terms "smoked" and "cooked" be prominently displayed in the product name. This rule clarifies the definition of cooked Italian sausage to reflect the amount of water content allowed in that product. It also clarifies the restriction that antioxidants are only permitted for use in "fresh" (uncured) Italian sausage. This amendment is necessary because many producers of Italian sausage have found the current definition of cooked Italian sausage to be confusing.

EFFECTIVE DATE: January 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Hibbert, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 milion or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of Unites States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the promulgation of this final rule will result in no additional costs to the Government or to any segment of the public. This rule merely clarifies the existing regulation and amends the standard to conform with present industry practice; it formalizes the practices of 65 plants producing cooked Italian sausage, 13 plants producing cured Italian sausage, and 23 plants producing both cooked and cured Italian sausage. The limitation of antioxidants to "fresh" Italian sausage will not adversely affect the industry due to the fact that antioxidants are now being used only in "fresh" Italian sausages. Permitting the preparation of a "smoked" Italian sausage simply allows processors the option of producing such a product.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). There will be no economic impact on small entities since the effect of this rule will be limited to clarification of the existing regulation and amendment of the standard to conform with present industry practice. There are 797 plants which produce Italian sausage products, 65 of which produce cooked Italian sausage, 13 which produce cured Italian sausage products, and 23 which produce both cooked and cured Italian sausages. Antioxidants are used in "fresh" Italian sausage only and not in cured Italian sausages. Allowing the preparation of a "smoked" Italian sausage gives processors the option of producing such a product; it imposes no new regulatory requirement on industry.

Background

On July 14, 1972, the Department published a proposal in the **Federal Register** (37 FR 13803) to establish standards of identity and composition for Italian sausage. After consideration of the comments received in response to the proposed standards, and upon a review of products labeled "Italian Style Sausage" and "Italian Brand Sausage," a final rule establishing a standard of composition for Italian sausage products was published in the **Federal Register** on January 19, 1976 (41 FR 2629).

In developing the standard for Italian sausage, primary consideration was given to: (1) Species of meat used, (2) fat content of the meat, (3) spices and flavorings normally used, and (4) trichinae control.

While the use of curing agents in this type product was mentioned in the comments on the proposed standard, no information was received indicating the relative significance of cured Italian sausage as compared to uncured Italian sausage. It appeared that cured Italian sausage was produced only in very small amounts and was not a common type of Italian sausage. Thus, no provision was made in the standard for cured Italian sausage. Since the standard was published, the Food Safety and Inspection Service (FSIS) has learned from a variety of sources, that the use of sodium nitrite and potassium nitrite in "Italian Sausage" is a common and longstanding practice of domestic producers, some as long as 50 or 60 years. It was also learned that these two substances are traditional ingredients of this product as made in Northern Italy and Sicily.

The Federal meat inspection regulations currently permit the use of antioxidants in Italian sausage, but antioxidants are not used in cured Italian sausages and are not permitted in most other cured sausage products. This rule will amend the chart in 9 CFR 318.7(c)(4) under the class of substance "Antioxidants and oxygen interceptors" to clarify that antioxidants are permitted only in "fresh" (uncured) Italian sausage.

Many firms have long produced a precooked Italian sausage. This type of product was provided for in the standards for Italian sausages at 9 CFR 319.145 (a), (b), and (c). Cooked Italian sausage is specifically addressed in 9 CFR 319.145(c), which states generally that if Italian sausage products are cooked by the producer, determination of compliance with the standards of composition found in paragraphs (a) and (b) of § 319.145 shall be based upon the uncooked product. This means that the product before cooking must comply with all requirements for Italian sausage contained in 9 CFR 319.145 (a) and (b). Producers of Italian sausage apparently have not understood whether the limit on water content contained in 9 CFR 319.145(b)(2) applied to the cooked or the uncooked product.

It is intended that all requirements contained in 9 CFR 319.145 (a) and (b), including the limit on water content contained in § 319.145(b)(2), be met prior to the product being cooked. To clarify this intent, the Agency is amending 9 CFR 319.145(c) to specifically state that all the requirements of § 319.145 (a) and (b), including the water content limits of § 319.145(b)(2), are to be complied with prior to the product being cooked.

FSIS published a proposal in the **Federal Register** on September 20, 1982 (47 FR 41397), to amend 9 CFR 319.145 to permit addition of the curing agents of sodium nitrite and potassium nitrite to Italian sausage. The amount of curing agent allowed would be regulated by the requirements in 9 CFR 318.7(c)(4).

Those products containing the curing agent will be required to prominently display on the label the term "cured" in the product name in the same size and style of lettering as the other words in the product name.

The proposed regulation also requires that cooked Italian sausage products be prominently labeled with the term "cooked" in the product label in the same size and style of lettering as the other words in the product name. FSIS also proposed to amend the Italian sausage standard to allow for "smoked" Italian sausages, giving processors the option of producing such sausages. The word "unsmoked" was therefore proposed to be deleted from the definition of Italian sausage in 9 CFR 319.145(a), and 319.145(c) was proposed to be amended to state that the requirements of § 319.145 (a) and (b), including the water content of § 319.145(b)(2), are to be met prior to the product being smoked.

The comment period closed on November 19, 1982; the Agency received 41 comments on the proposal to allow curing agents in Italian sausage. In addition to those 41 comments, the October 1982 edition of "Nutrition Intelligence" (published by Manning, Selvage, and Lee, Inc., 1750 Pennsylvania Ave., NW., Washington, DC 20006) contained comments on the proposal.

The majority of comments addressed 4 major issues:

1. The addition of curing agents to Italian sausage.
2. The addition of antioxidants to Italian sausage.
3. The amount of added water in cooked Italian sausage.
4. Labeling of cooked, cured, or smoked Italian sausage.

1. Cured Italian Sausage

Thirty comments were received addressing the addition of curing agents to Italian sausage.

Twenty comments were from consumers who oppose the addition of cures or any additives to Italian sausage. Four of these were from California, and they discussed the possible threat of nitrosamine formation in cured Italian sausage. The group consisted of one M.D., a Public Health Nutritionist, and two Registered Dietitians. The doctor and one dietitian included a list of references.

The Agency is aware of concerns regarding nitrosamine formation in cured products. On October 18, 1977, the Department published in the **Federal Register** (42 FR 55626) a notice requesting data on whether nitrates and/or nitrites used in the production of cured products result in the formation of carcinogenic nitrosamines during ordinary processing and/or preparation of products intended for human consumption. The notice stated that "The administrator has determined that nitrates and nitrites as currently used in manufacturing cured meat products have the potential of interacting with components of the meat to form carcinogenic nitrosamines. As a result, he has established a program for obtaining from the industry information required to resolve definitive questions about the safety of the continued use of nitrites and nitrates in such products." This notice established a deadline of October 18, 1978, for submission of data pertaining to cooked sausages.

The Department received and reviewed data on the occurrence of nitrosamines in cured sausages and concluded that nitrosamines were not found in cooked, cured sausages. Because "Cured Italian Sausage" is not heated to the degree that bacon is before eating, the formation of nitrosamines was not expected. Data reviewed by the Department substantiates the belief that "Cured Italian Sausage" presents no danger to the consumer of nitrosamine ingestion. When cures are added to Italian sausage, the product will be labeled "Cured Italian Sausage." This will highlight the difference between cured and uncured sausage so that the consumer may choose between them.

2. Antioxidants

Twelve comments were received relating to the use of antioxidants in Italian sausage.

One comment from a manufacturer supported the proposed limitation of antioxidants to fresh Italian sausage only. Two trade associations supported the use of antioxidants in cooked Italian sausage. The proposal intended to clarify that antioxidants would be allowed only in "fresh" Italian sausage. The use of the word "fresh" in this case means "uncured" and not "uncooked." Italian sausages made without curing agents must comply with the standard before cooking. The standard allows use of antioxidants in the uncured ("fresh") product; uncured Italian sausage (cooked or uncooked) may contain antioxidants.

3. Added Water

Thirteen comments were received relating to the water limitation in Italian sausage. Nine comments from industry requested 10 percent added water in cooked Italian sausage; two trade associations supported this request. One company proposed a standard of 3 percent added water in Italian sausage instead of 3 percent water at formulation. The industry comments favoring 10 percent added water based their comments on the standard for some cooked sausage which allows 10 percent added water.

The Department notes that cooked sausages prepared under the standard (9 CFR 319.180) are always sold in the cooked form. The product by nature is a fully cooked, ready-to-eat product; these are not marketed to the consumer in an uncooked state. Fresh sausages, on the other hand, are commonly offered uncooked and the consumer must fully cook the product. Precooked sausages of this variety have been offered to the consumer as a "convenience food" needing only to be browned or warmed before serving. The addition of 10 percent water to cooked Italian sausage products would greatly alter their physical characteristics as compared to the product cooked at home. The requirement that the cooked product meet the standard for the uncooked product assures consumers of a similar consistency in the finished sausage no matter whether it is cooked at home or at the plant.

The term "Italian sausage" traditionally refers to an uncooked, uncured sausage. The intent of the original "Italian Sausage" regulation in 1976 was to preserve the "fresh" identity of the product. Current meat inspection regulations and labeling policy require that cooked cured sausage with up to 10 percent added water be labeled "Cooked Sausage with Italian Seasoning." Cooked, uncured sausages containing up to 10 percent added water may be labeled with descriptive names such as "Cooked Sausage made with Pork," "Cooked Sausage made with Beef," "Smoked Sausage made with Pork," or "Cooked Sausage made with Beef and Pork." This policy sets a distinction in the marketplace whereby the consumer is able to distinguish between the traditional product and a water added product. This is the same procedure followed for all precooked sausages normally sold uncooked and limited to 3 percent water on formulation; the regulation is consistent with previous regulations and policies.

4. Labeling

Ten comments were received from industry and trade associations regarding the labeling of Italian sausage. They proposed that the terms "Cooked," "Cured," and "Smoked" be reduced to ½ the type size of the primary type because the name "Cured Smoked Hot Italian Sausage" could become too long. They also proposed that the terms be used as qualifiers placed before, behind, above, or below the name "Italian sausage."

The Department believes that the terms "Cooked," "Cured," and "Smoked" should be in the same type size as the primary product label to adequately inform the consumer that a product so treated is different from "Italian Sausage." If these terms were reduced in size, the consumer might not notice the difference when comparing several items in a display counter. These terms must be of the same size and style as "Italian Sausage," but they need not appear on the same line. The product name may be spread over two or three lines so long as the terms in the name are still contiguous, such as "Cooked, Cured Hot Italian Sausage."

5. Miscellaneous

A flavor manufacturer commented that liquid smoke should be allowed in Italian sausage in accordance with Standards and Labeling Policy Memo #040, and that the product be labeled as "smoked." Policy memo #040 allows products to be labeled as "smoked" which have been exposed to a vapor of natural liquid smoke. The transformation of liquid smoke into a vapor by mechanical means (mist, fog, or gas) results in products that, after analyses of processing procedures and product sampling, possess the same smoke characteristics as products resulting from the traditional smoking process. The Department agrees that Policy Memo #040 would apply to Italian Sausage as well as to other products.

A sausage manufacturer commented that the words "Italian" and "Sausage" should be allowed to be separated such as in "Italian Smoked Sausage" instead of "Smoked Italian Sausage."

The Department observes that the standard name of the product is "Italian sausage." Processes which are applied to Italian sausage modify it but do not change it. It still remains an Italian sausage which has been smoked, cooked, or cured, not a smoked sausage which has been made "Italian," or a cooked sausage which has been made "Italian," or a cured sausage which has been made "Italian." Therefore, the words "Italian" and "Sausage" remains together in the final rule as proposed.

Additional comments were made in "Nutritional Intelligence," a monthly newsletter. They questioned why the Agency was proposing to allow the addition of nitrites to a product before releasing a position paper on two National Academy of Sciences nitrite documents.

This rulemaking is primarily a housekeeping matter related to existing industry practices. It is separate from more general considerations of the safety aspects of nitrites.

After careful consideration of the available data and the comments received, the Department has determined that the proposal should be published as a final rule.

For the reasons set out in the preamble, Part 318 and Part 319 (Subpart E) of Title 9, Code of Federal Regulations, are amended as set forth below.

Indexing Terms: As required by 1 CFR 18.20, following are the index terms for this regulation:

List of Subjects

9 CFR Part 318

Food additives, Meat inspection, Preparation of Products, Meat and poultry products.

9 CFR Part 319

Standards of identity, Meat and meat food products, Meat inspection, Food labeling.

1. The authority citation for Parts 318 and 319 are to read to follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended, (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended, (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise stated.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

§ 318.7 [Amended]

2. The chart following § 318.7(c)(4) is amended under the class of substance "Antioxidants and oxygen interceptors" for the products "Fresh pork sausage, brown and serve sausages, Italian sausage products, pregrilled beef patties, and fresh sausage made from beef or beef and pork," by adding the word "fresh" before "Italian sausage products" to read: "Fresh pork sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, and fresh sausage made from beef or beef and pork."

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. Section 319.145 is amended by removing the words "uncured" and "unsmoked" from the first sentence of paragraph (a); by adding a new paragraph (a)(4); and by revising all of paragraph (c). The amended and revised portions of § 319.145 read as follows:

§ 319.145 Italian sausage products.

(a) Italian sausage products are cured or uncured sausages containing at least 85 percent meat, or combination of meat and fat, with the total fat content constituting not more than 35 percent of the finished product. * * *

* * * * * *

(4) Italian sausage products made in conformance with the provisions of paragraphs (a) (1), (2), and (3) of this section, and with paragraphs (b) and (c) of this section, may contain sodium nitrite or potassium nitrite in amounts not to exceed those allowed in the chart following § 318.7(c)(4), provided that such products are labeled with the word "cured" in the product name, such as "Cured Italian Sausage." The word "cured" shall be displayed on the product label in the same size and style of lettering as other words in the product name.

* * * * *

(c) If Italian sausage products are cooked or smoked, determination of compliance with the provisions of paragraphs (a) and (b) of this section shall be based on the uncooked or unsmoked product. The product before cooking or smoking shall contain no more than 3 percent water as specified in paragraph (b)(2) of this section. Product which is cooked shall be labeled with the word "cooked" in the product name, such as "Cooked Italian Sausage" or "Cooked Cured Italian Sausage." Product which is smoked shall be labeled with the word "smoked" in the product name, such as "Smoked Italian Sausage" or "Smoked Cured Italian Sausage." The words "cooked" and "smoked" shall be displayed on the product label in the same size and style of lettering as other words in the product name.

Done at Washington, D.C. on September 26, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-31021 Filed 11-26-84; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-82-130]

Energy Conservation Program for Consumer Products; Test Procedures for Dishwashers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends its test procedures for dishwashers by revising the definition of water heating dishwashers, and by making a few other related changes. Test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act. Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

EFFECTIVE DATE: December 27, 1984.

FOR FURTHER INFORMATION CONTACT:
Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-113.1, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9127; or
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION:

A. Background

On October 1, 1977, Section 301 of the Department of Energy Organization Act (DOE Act) (Pub. L. 95-91) transferred the functions of the Federal Energy Administration (FEA) concerning the energy conservation program for consumer products to the Department of Energy (DOE). The energy conservation program for consumer products was established by the FEA pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619). Among other program elements, section 323 of EPCA, as amended, requires that standard methods of testing be prescribed for covered products, including dishwashers. Test procedures for dishwashers appear at Appendix C to Subpart B of 10 CFR Part 430.

Test procedures for dishwashers were first published on August 8, 1977. (42 FR 39964, August 8, 1977). Subsequently, three manufacturers of dishwashers that use 120 °F inlet water requested DOE to exclude their dishwashers from the prescribed test procedures.

The Hobart Corporation (Hobart) filed an application for exception with the DOE Office of Hearings and Appeals (OHA) on September 5, 1979, for its Model KD-19 dishwasher. OHA granted an exception to Hobart on February 26, 1980. Norris Industries (Norris) applied to the Assistant Secretary for Conservation and Renewable Energy for a test waiver on November 5, 1980. The Secretary granted the waiver for Norris' LER series dishwashers (46 FR 35719, July 10, 1981). The General Electric Company (GE) applied for a test waiver for its "T" series dishwasher on November 6, 1981. The Secretary granted a waiver to GE for its "T" series dishwasher on May 28, 1982. (47 FR 33543, May 28, 1982). As required by § 430.27(h) on March 3, 1983, DOE amended the dishwasher test procedures so as to eliminate the need for continuation of the test procedure waivers. (48 FR 9202, March 3, 1983).

After the publication of the March 1983 rule, two dishwasher manufacturers, GE and Hobart, commented to DOE that their dishwashers which are designed to operate with 120 °F inlet water would not comply with the definition of water heating dishwashers because they do not provide internal water heating in the rinse phase of the normal cycle. Subsequently, DOE proposed to amend the water heating dishwasher definition. (49 FR 23142, June 4, 1984). A public hearing was held on June 21, 1984.

B. Discussion

1. *Heated Rinse Cycle.* The June 1984 notice proposed amendments to the definition of a water heating dishwasher to delete the requirement for internal water heating in "at least one rinse phase of the normal cycle." DOE included this requirement in the March 1983 final rule based on comments received on the May 1982 proposed rule. In commenting on the May 1982 proposed rule, Design and Manufacturing Corporation (D&M), Sears Roebuck and Co. (Sears) and Whirlpool Corporation (Whirlpool) stated that at least one rinse phase must be thermostatically controlled. As discussed above, the test procedures for

dishwashers were amended to include test procedures for water heating dishwashers in order to eliminate the need for continuation of the test procedure waivers.[1] After publication of the March 1983 final rule, both GE and Hobart commented to DOE that their water heating dishwashers do not comply with the definition.

GE and Hobart agreed with the June 1984 proposal (GE, No. 12, at 2; and Hobart, No. 15, at 1).[2]

Whirlpool and Thermador/WasteKing (WasteKing) recommended that the requirement for a heated rinse not be changed in order to assure satisfactory dishwashing performance. (Whirlpool, No. 14, at 1; and WasteKing, No. 16, at 1). Whirlpool found in testing dishwashers with 120 °F water, which was theromostatically heated to 140 °F in only one wash phase, that the drying performance had degraded in comparison to dishwashers with 140 °F water in all fill phases. (Whirlpool, 5–21/1). WasteKing stated that its test results support Whirlpool's.

In responding to these comments by Whirlpool and WasteKing, GE cited the March 1983 final rule in which the Department concluded that manufacturers should be allowed to determine, for themselves, whether the dishwashing performance for water heating dishwashers is acceptable. (March 3, 1983, 48 FR 9204). *See* GE, No. 12, at 2.

Hobart also stated that the manufacturer should be allowed to design a dishwasher which it believes will satisfy to performance requirements of its customers. Hobart illustrated manufacturer responsiveness by citing how an earlier design of its KitchenAid dishwasher had been redesigned in order to meet consumer demands for a quicker drying period. *See* Hobart, No. 15, at 1, 2. Based on all the relevant information, including review of these comments, DOE continues to believe that manufacturers should be free as much as possible to design products to satisfy their customers' requirements. Accordingly, today's final rule does not include a requirement for a heated rinse. This position is further supported by the two waivers which have been granted in this regard.

2. *Inlet Water Temperature.* GE and Maytag proposed that the definition of water heating dishwasher be changed to include language stating that the manufacturer recommends a nominal inlet water temperature of 120 °F. (GE, 6–21/2; and Maytag, No. 13, at 2). Maytag recommended the change so as to assure that energy consumption claims would accurately reflect the energy use of the dishwasher as recommended by the manufacturer and used by the consumer. GE also recommended that a water heating dishwasher is one "that the manufacturer recommends is able to operate at a nominal inlet water temperature of 120 °F ° ° ° " *See* GE, 6–21/2.

Hobart also commented that while the definition may be adequate for dishwashers currently distributed in the United States, it may need to be modified for an inlet water supply of less than 120 °F as future designs change. (Hobart, No. 15, at 2). Specifically, Hobart cited European dishwashers "which are designed to be plumbed to cold water and ° ° ° employ thermostatic internal water heating but with a 230 VAC power source." Subsequent to the close of the comment period of this rulemaking, DOE received a petition for test procedure waiver for this type of dishwasher.[3]

DOE has reviewed these comments and agrees with each. Today's final rule amends the definition of water heating dishwasher to include the language that the manufacturer directs that nominal inlet water temperature of 120 °F should be used. However, Hobart's comments regarding dishwashers designed to be plumbed to cold water will be addressed in a separate rulemaking action since it is an issue outside of this rulemaking.

3. *Wash Water Temperature.* Whirlpool (Whirlpool 6–18/1, No. 14 at 1, and No. 14a, at 1, 2) proposed that the test procedure require the temperature of the circulating water to reach 140 °F in the thermostatically controlled phases. Whirlpool contends that this is necessary to ensure adequate performance, and as a safeguard against inadequate water heating. Whirlpool recommended "that the water temperature be measured in the lower rack at a height of six inches above the bottom of this rack within a 12 inch diameter, centered in the lower dishrack". To support this proposal Whirlpool cited its test results where a competitor's water heating dishwasher was only able to attain 135 °F in the wash cycle, and several dishwasher detergent manufacturers, recommendations that the water temperature be at least 140 °F. Based upon dishwasher detergent manufacturers' recommendations for 140 °F water temperature, Whirlpool believes the test procedure should include a temperature requirement for the circulating water. In addition, Whirlpool believes this requirement is necessary since its test results of a competitor's dishwasher show that the competitor's dishwasher is not able to provide the recommended 140 °F water temperature.

GE, WasteKing and Hobart each rejected Whirlpool's proposal. (GE, No. 12, at 2; Hobart, No. 15, at 2; and WasteKing, No. 16, at 2). GE states that this is a performance issue which, in the March 1983 final rule, DOE left to manufacturers to determine. Hobart also took the position that the level to which a dishwasher heats the water should be left to the manufacturer. WasteKing rejected Whirlpool's proposal, commenting that its dishwasher design does not heat the main body of water directly and does not control water temperature. Rather, the dishwasher generates steam to heat the dishes and indirectly heats the water. WasteKing's heating control mechanism does not guarantee the exact temperature of the water during circulation. Furthermore, this proposal was raised in response to DOE's May 1982 notice and rejected by DOE in the March 1983 final rule. *See* 48 FR 9203, March 3, 1983. In addition, DOE raised the WasteKing design as possibly not meeting the Whirlpool proposal at the June 1984 public hearing and requested that Whirlpool comment on the WasteKing design vis-a-vis its proposal for measuring the temperature of the heated circulating water. Whirlpool agreed to this request. (*See* Whirlpool 6–21/1). However, in its written response Whirlpool did not respond to this request.

DOE continues to believe, as in the March 1983 final rule, that a requirement to heat water to a specified minimum temperature is unnecessarily restrictive in the test procedure and could exclude steam dishwashers from the water heating dishwasher category. Therefore, today's final rule does not include a requirement of a rise to a specified temperature for water heated by a water heating dishwasher.

[1] OHA granted an exception to Hobart on February 28, 1980, for its KD–19 dishwasher. The Secretary granted a waiver to GE for its "T" series dishwasher on May 28, 1982. Neither the KD–19 dishwasher or the "T" series dishwasher provide internal water heating in the rinse phase of the normal cycle.

[2] Comments on the rulemaking were given docket numbers. Citations to the comments provide the docket numbers, unless the comment was submitted as part of an oral presentation, in which case the citation is to the date and the numerical order of the presentation.

[3] On August 20, 1984, DOE received a petition for a test procedure waiver from ANDI Co. for its Favorit Model 283 and 285 dishwashers. These dishwashers are manufactured in Germany and operate on an electrical supply of 240 volts and are intended to use cold water input only.

4. *Test Load.* Whirlpool and Hobart recommended that a minimum number of eight place settings be specified for testing water heating dishwashers. (Whirlpool, No. 14, at 1; Hobart, No. 15, at 3). Hobart states that Association of Home Appliance Manufacturers (AHAM) Standard DW–1, referenced in Section 2.6.2 of the DOE dishwasher test procedures, is discretionary as to test load size and could affect test results.[4] Hobart goes on to state that test loads vary depending on which laboratory is conducting the testing. The test load ranges from eight place settings (generally used by Procter and Gamble) to 12 place settings (generally used for the AHAM test for full sized units). WasteKing agrees that the size of the test load should be added to the specification. (WasteKing, No. 16, at 2). However, WasteKing does not propose a test load size.

GE commented that such a provision is redundant because under the Federal Trade Commission (FTC) labeling program, standard dishwashers have a capacity of eight or more place settings while compact dishwashers have a capacity of less than eight place settings. (GE, No. 12, at 3). GE further states that since the current test procedures require the use of a dish load in accordance with AHAM Standard DW–1, they believe that the "requirement of a minimum of eight place settings is already established for 'standard' dishwashers." GE infers that all water heating dishwashers are standard dishwashers.[5]

DOE agrees that standard sized water heating dishwashers should be tested with eight place settings in order to eliminate any test variability due to the size of the test load. However, DOE believes that a requirement to test water heating dishwashers with a minimum of eight place settings would be too restrictive since compact water heating dishwashers could be manufactured at a later date. DOE believes this amendment will standardize the testing and provide flexibility in the test procedure if compact water heating dishwashers were manufactured at a later date.

5. *Thermostatically Controlled Heating.* The June 1984 notice proposed retaining the requirement that water heating dishwashers be thermostatically controlled. Whirlpool, Hobart and WasteKing all commented in support of this proposal (Whirlpool, 6–21/1, No. 14 at 2, and No. 14a at 3; Hobart, No. 15, at 2; and WasteKing, No. 16, at 1). Maytag's proposed definition supports retaining the requirement for thermostatically controlled heating. *See* Maytag, No. 13, at 2.

In the June 1984 proposal, DOE asserted that "a key distinction between water heating dishwashers and other dishwashers is a control that shuts off the internal heater(s) after the water has been heated to a certain level." *See* 49 FR 23143, June 4, 1984. GE rejected DOE's assertion, claiming that this is a "restrictive and unnecessary design requirement", and that there is no certain water temperature level to be achieved. Rather, GE believes the temperature achieved is determined by the manufacturer in order to achieve acceptability of washing performance. (GE, 6–21/2).

Whirlpool contended that due to long pipe runs from the water heater to the dishwasher, the temperature of the water entering the dishwasher is reduced and that it is a hit or miss proposition as to what the heated water temperature in the dishwasher will be if one depends on a fixed time delay for water heating. Hobart, in its Final Arguments concerning its application for exception with the DOE Office of Hearings and Appeals for its KD–19 dishwasher (*see* Hobart, Final Argument, filed with DOE OHA, Case DEE–4459), stated that water heated to 120 °F in the water heater may be as low as 90 °F at the point of use. In addition, data submitted by Whirlpool in its Statement of Objections demonstrated that during the winter in certain areas of the country, the temperature may be lower than 90 °F. (See Whirlpool, Statement of Objection, filed with DOE, OHA, Case DEE–4459). Hobart commented on the June 1984 proposal that the thermostat provides "an assured environment to either raise the water temperature or avoid heating it more than necessary," and that this cannot be duplicated by mechanical timers.

GE states that for water heating dishwashers the amount of additional heating and the means to achieve it should depend upon the manufacturer's specification, and should not be a part of any standardized test procedure. GE further claims that its dishwashers using mechanical timer delay achieve excellent results. By knowing the characteristics of the dishwasher model, GE asserts that it is simply a matter of design to provide sufficient delay to assure excellent performance (GE, No. 12, at 3). Even if thermostatic controls were to provide greater control over the energy use performance of water heating dishwashers, DOE agrees with GE that water heating dishwashers should not be defined to require a restrictive design requirement such as thermostatic controls. As discussed above, DOE believes the market place should determine whether the dishwasher performance is acceptable, not the DOE test procedure. DOE accepts GE's arguments that a manufacturer should not be unnecessarily restricted by a standardized test method as to which design alternatives to consider. Thus, in today's final rule, DOE is deleting the requirement for thermostatic controls.[6]

3. *Miscellaneous.* The June 1984 notice proposed a new section (§ 2.7) to make clear which testing provisions applied to water heating dishwashers. In addition, DOE proposed certain minor technical and editorial changes in the June 1984 proposed rule.

Specifically, the parameter for the machine electrical energy consumption was proposed to be changed from "Me" to "M" in § 3.2.2. In § 4.2.1, the parameter for the per cycle water energy consumption using gas-heated water or oil-heated water was proposed to be changed from "We" to "Wg". Finally, in § 4.3.2, the parameter for the per cycle machine electrical energy consumption was proposed to be changed from "m" to "M".

D&M, Hobart, and Whirlpool commented in favor of each of the proposed changes. (D&M, No. 11, at 1; Hobart, No. 15, at 2; and Whirlpool, 6–21/1). GE also approved the inclusion of § 2.7 in the test procedure. (GE, 6–21/2). Accordingly, DOE is adopting these proposed provisions in today's final rule.

C. Environmental, Regulatory Impact, and Small Entity Impact Reviews

1. *Environmental Review.* The Department has reviewed today's final rule in accordance with the National Environmental Policy Act of 1969

[4] AHAM standard DW–1 does not specify the number of place settings required; rather, it allows the testing facility to determine the number of place settings to be used.

[5] As Hobart stated (Hobart, No. 15, at 2) the current definition of water heating dishwashers may need to be modified as dishwashers are introduced into the market place that are designed to be plumbed to cold water. Likewise, there may be water heating dishwashers manufactured at some future date with a capacity of less than eight place settings. DOE believes that for compact water heating dishwashers, the number of place settings to be tested should be the capacity specified by the manufacturer.

[6] If a manufacturer were to recommend that the inlet water temperature be increased above 120 °F in order to achieve acceptable performance levels, then DOE believes the product would not meet the definition of water heating dishwater. This product should be tested, for the purpose of energy efficiency/use claims, with a nominal water temperature of 140 °F.

(NEPA) (42 U.S.C. 4321 et seq.), the Council of Environmental Quality Regulations implementing the procedural provisions of NEPA (40 CFR Part 1500 et seq.), and the Department's own NEPA guidelines (45 FR 20694, March 28, 1980, as amended by 47 FR 7976, February 23, 1982) to determine if an environmental assessment (EA) is required.

Today's final rule serves only to standardize the measurement of energy usage for dishwashers. The action of prescribing these revised test procedures will not result in any environmental impacts. Because it is clear that today's final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, DOE has determined that neither an EA nor an EIS is required.

2. *Regulatory Impact Review.* The final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines a major rule as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

This final rule would only make minor changes in the test procedures for dishwashers. Therefore, DOE has determined that this final rule does not come within the definition of a major rule.

In accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the final rule was submitted to OMB for review without a regulatory impact analysis. This rule has been reviewed by OMB in accordance with the procedures applicable to rules other than major rules.

3. *Small Entity Impact Review.* The Regulatory Flexibility Act (Pub. L. 96-354) requires that an agency prepare a final regulatory analysis to be available at the time the final rule is published. This requirement does not apply if the agency "certifies that the final rule will not have a significant economic impact on a substantial number of small entities."

This rule only affects manufacturers of dishwashers. There are not a substantial number of small entities that manufacture dishwashers. Moreover, the changes made would not have significant economic impacts. The changes clarify testing requirements and would not change the current testing burdens.

Therefore, pursuant to section 605(b), DOE certifies that this final rule would not have a "significant economic impact on a substantial number of small entities."

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 95-619; Department of Energy Organization Act, Pub. L. 95-91).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C. October 25, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Appendix C—[Amended]

1. Appendix C to Subpart B of Part 430 is amended by revising § 1.6 to read as follows:

* * * * *

1.6 "Water heating dishwasher" means a dishwasher for which the manufacturer recommends operation at a nominal inlet water temperature of 120 °F and which can operate at that inlet temperature by providing internal water heating in at least one wash phase of the normal cycle.

* * * * *

2. Appendix C to Subpart B of Part 430 is amended by revising section 2.6.2 to read as follows:

* * * * *

2.6.2 Dishwashers to be tested at a nominal 120 °F inlet water temperature. The dishwasher shall be tested on normal cycle and the truncated normal cycle with a test load of eight place settings plus six serving pieces as specified in section 6.1.1 of AHAM Standard DW-1. If the capacity of the dishwasher, as stated by the manufacturer is less than eight place settings than the test load shall be that capacity.

* * * * *

3. Appendix C to Subpart B of Part 430 is amended by adding a new section 2.7 to read as follows:

* * * * *

2.7 Testing requirements. Provisions in this Appendix pertaining to dishwashers which operate with a nominal inlet temperature of 120 °F shall apply only to water heating dishwashers.

* * * * *

4. Section 3.2.2 to Appendix C to Subpart B of Part 430 is amended by removing the term "Me" for the machine electrical energy consumption and inserting in its place the term "M".

5. Section 4.2.1 to Appendix C to Subpart B of Part 430 is amended by removing the term "We" for per cycle water energy consumption and inserting in its place the term "Wg".

6. Section 4.3.2 to Appendix C to Subpart B of Part 430 is amended by removing the term "m" for the per cycle machine electrical consumption and inserting in its place the term "M".

[FR Doc. 84-30979 Filed 11-26-84; 8:45 am]
BILLING CODE 6450-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Interpretive Ruling and Policy Statement 84-1; Membership in Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement (IRPS 84-1).

SUMMARY: This IRPS addresses field of membership policy for Federal credit unions (FCU's). It updates two prior IRPS (82-3 and 83-2), includes NCUA's new policy on granting FCU membership to senior citizens and retirees and sets forth the Standard FCU Bylaws which affect field of membership. Field of membership policy is based on Section 109 of the FCU Act, 12 U.S.C. 109, which states that FCU membership "shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district."

EFFECTIVE DATE: November 15, 1984.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Director, Department of Legal Services, or Hattie Ulan, Staff Attorney, at the above address, or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: In September of 1983, the National Credit Union Administration Board (Board) directed that a comprehensive study of the Board's deregulation of the field of membership policy be conducted. As a result of the study, the Board concluded that a revised IRPS should be developed and published to all Federal credit unions consisting of a concise statement of the recent changes in field of membership policy. Section 109 of the FCU Act, 12 U.S.C. 1759, limits FCU membership to "groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district." Prior to April 1982, section 109 was interpreted by NCUA narrowly. The deregulation of field of membership policy essentially began in April 1982. The NCUA Board now interprets the FCU Act more broadly regarding field of membership. The primary intent of the newly expanded field of membership policy and the essential basis for all changes in the policy since April 1982 is to provide credit union service to new groups—to people who do not presently have credit union service available to them.

This new policy statement (IRPS 84-1) combines the two previous policy statements, IRPS 82-3 and IRPS 83-2, sets out modifications which have been made since their publication, incorporates several unwritten policies which address field of membership, and sets forth the new policy on service to senior citizens and retirees. Several of the recommendations made in the field of membership policy study are also incorporated in the new policy statement. Two bylaw provisions which affect field of membership are also addressed in the new IRPS. IRPS 82-3 and IRPS 83-2 are cancelled as of the effective date of IRPS 84-1. The Chartering and Organizing Manual for Federal Credit Unions (Manual), which was revised in 1980, is superseded to the extent that it conflicts with this IRPS. All other portions of the Manual remain in effect. The Manual is being updated to reflect the current field of membership policy. It will be published in the near future.

IRPS 84-1 is divided into four major sections. The first section is entitled *Purchase of Loans of Liquidating Credit Unions Under section 107(14).* This section appeared as part of IRPS 82-3. The Board's policy has not changed in this area. FCU's may offer membership services to members of liquidating credit unions whose loans the FCU has purchased pursuant to section 107(14) of the FCU Act, 12 U.S.C. 1757(14). IRPS 82-3 also addressed FCU purchase of notes of liquidating credit unions for investment value pursuant to section 107(13) of the FCU Act. This section is deleted from the new IRPS since it does not concern field of membership policy. FCU's retain the authority to purchase notes of liquidating credit unions pursuant to section 107(13) of the FCU Act. The aggregate balances of such notes may not exceed five percent of the purchasing credit union's total shares and undivided earnings according to section 107(13). This limitation does not apply to the purchase of loans when membership services are offered under section 107(14).

The second section of the IRPS is entitled *Bylaws Affecting Field of Membership.* The "once a member, always a member" Bylaw (Article II, section 5 of Standard Federal Credit Union Bylaws) has been in effect since 1968 and has not been changed. With this Bylaw, if an FCU board of directors so resolves, members can retain affiliation with their FCU even though they are no longer within the field of membership. The Bylaw defining immediate families (Article XVIII, section 2(a) of the Standard Federal Credit Union Bylaws) was deregulated in 1983. FCU's that wish to serve immediate family members must first ascertain that the field of membership provision of the FCU's charter includes family members. If family members are not included, the FCU may apply to the appropriate regional director for a charter amendment. The FCU then has three basic choices in defining family members. 1. The FCU may utilize Article XVIII, section 2(a) of the standard form of FCU bylaws, which defines members of their immediate families to mean "grandparents, parents, husband, wife, children, grandchildren, brothers and sisters living under the same roof and in the same household." 2. The FCU may adopt one of the standard Bylaw amendments set out in NCUA Letter No. 56 (April 10, 1981). These standard amendments expand the definition of immediate families. 3. The FCU may choose to narrow or expand this definition by adopting a standard bylaw amendment, in accordance with the procedures set out in NCUA Letter No. 73 (February 2, 1983), that allows the FCU's board of directors to develop its own definition of the term "members of their immediate families."

In general, family members of anyone within the field of membership may join the FCU. There is, however, an exception to this policy. When dealing with a student group, immediate family members, however defined, extends only to students who have established membership themselves (i.e., family members may join the credit union only if the student has joined). This policy emphasizes that FCU's should not add student groups merely to include the student's parents in the field of membership.

The third section of the IRPS is entitled *Multiple Group Charters.* This is the area of field of membership policy that has undergone the most change since deregulation of field of membership began. As previously indicated, section 109 of the FCU Act provides that FCU membership shall be limited to groups having a common bond of occupation or association or to groups within a well defined neighborhood, community or rural district. The Board interprets the first part of this provision to allow more than one occupational or associational group to be included in the field of membership of a Federal credit union, on the condition that each group has its own occupational or associational common bond. Accordingly, two types of multiple group charters exist pursuant to section 109 of the FCU Act, those involving occupational and/or associational groups and those involving community based groups. Occupational and/or associational multiple group charters are addressed first.

Prior to 1982, multiple group charters and mergers were limited to either occupational *or* associational groups (a multiple group of occupational *and* associational groups could not exist). Multiple groups were further limited in that the common bonds within the multiple group had to be similar. IRPS 82-3 deregulated field of membership so that it was no longer necessary to limit multiple groups to either the associational or occupational type. A multiple group now could be made up of both associational and occupational groups. The requirement for similar common bonds was also eliminated at that time. As indicated above, the requirement that each group have its own common bond remains intact. The regional directors have been delegated the authority by the board to grant or deny this type of multiple group charter.

Five additional requirements must be met before this type of multiple group charter or charter amendment will be granted. These are listed in the IRPS. The first three criteria appeared in IRPS 82-3 and have not changed. The fourth criteria has been established to avoid overlaps in fields of membership. The fifth criteria was a part of IRPS 83-2 and has been slightly modified.

An overlap exists when a group is eligible for membership in two or more credit unions. The fourth criteria requires that if the group requesting service is already eligible for membership in another credit union, they must provide justification as to why they no longer desire that service. Policy requires that every effort be made to avoid an overlap situation. Ideally, a group should be eligible for membership in only one credit union. (However, it is recognized that an individual may be eligible for membership in a number of credit unions.) FCU's are encouraged to work out overlap problems internally. If a resolution of the problem is not reasonably forthcoming, and other circumstances warrant an overlap, then an overlap may be permitted. Circumstances to be considered are the nature of the problems, efforts to resolve the problems, financial impact on the credit union, the desires of the groups, and if applicable, the opinions of the state credit union supervisor and other interested parties. Although the fourth criteria is a new requirement for the granting of multiple group charters, NCUA policy on overlaps is unchanged. The addition of the fourth criteria will alert the regional directors to possible overlap situations before they occur.

The fifth criteria for a multiple group charter states that all of the groups must be within the operational area of the home or a branch office of the FCU. The definition of branch office as stated in IRPS 83-2 has been clarified. The policy on justification for adding new groups within the area of a branch office has been slightly modified. Under IRPS 83-2, the addition of a new group could not be used to justify a proposed branch office. A proposed branch office could only be justified on the basis of the current field of membership. This policy has been modified in IRPS 84-1 by changing the requirement that groups be within the well-defined area of *an existing branch office* to a requirement that they be within the operational area of a *branch office*. An FCU can now include new groups as partial justification for a proposed branch office if the proposed branch office will also improve credit union service to the existing field of membership. The new group alone is not enough to justify a proposed branch office. The current field of membership must comprise a significant portion of the total field of membership to be served initially by the proposed branch office. The old policy has been modified for two reasons. In many cases, it effectively denied convenient credit union service to existing fields of membership. In addition, it was difficult to enforce. The requirement that new groups be within the "operational area" of the home or a branch office is substituted for the previous requirement that they be within a "well-defined area" of such an office. Since the limitation is not necessarily a geographic one, operational rather than well-defined area seems more appropriate. As stated in the IRPS, "operational area" shall mean an area surrounding the home or a branch office that can reasonably be served by the applicant credit union as determined by the regional director. The operational area limitation should help to ensure that groups receive service from FCU's, not merely become a part of the field of membership.

One additional issue involving operational area needs to be addressed: the corporate headquarters issue. Under prior policy, when a corporate headquarters was located within the well-defined area of an FCU, the entire employee group could be included in the field of membership. When a majority of employees worked within the operational area but the corporate headquarters was not within the area, the group was not eligible for membership. This inconsistency has been corrected. The new policy is as follows: When either the corporate headquarters is located or a simple majority of employees work within the operational area, the employee group is eligible to be added to the field of membership. It should be noted that these groups will now be treated as any other group in a multiple group charter application and are subject to the five criteria set out above.

The second type of multiple group charter exists when any portion of the group charter to be approved, the combined field of membership is limited to a well-defined neighborhood, community or rural district, as determined by the regional director. The well-defined neighborhood, community or rural district is mandated by section 109 of the FCU Act. Pursuant to delegated authority, if the population of the proposed well-defined neighborhood, community or rural district is under 35,000, the charter decision is made by the regional director. If the population exceeds 35,000, the charter must be approved by the NCUA Board. This population policy also applies whenever a community-based FCU proposes to expand its boundaries. If the population of the proposed expanded community exceeds 35,000, the charter must be approved by the NCUA Board. The policy does not apply when occupational or associational groups outside of the community are added to the field of membership without expansion of boundaries. The regional director will make the determination, regardless of population. Occupational or associational groups outside the community may be added, however, only if they are within an area such that, when combined with the community, the resulting larger area *could be* considered for a community-based charter.

The regional directors are now authorized to remove new groups added to a credit union if those groups are not being satisfactorily served. This does not include the authority to cut off membership rights of someone who has established membership with the FCU. They would retain their membership through the "once a member, always a member" Bylaw. If an FCU does not have the "once a member, always a member" Bylaw, it may be added before any groups are removed. Removal of groups should reflect the current policy to provide credit union service to new groups—not simply to include new groups within a credit union's field of membership.

One last problem related to multiple group chartering is cross-regional mergers and expansions. Since the field of membership policy has been broadened, more cross-regional mergers and expansions is as follows. No cross-regional mergers and expansions have taken place. The policy on approval and control of cross-regional merger or expansion will be authorized without the approval of all regional directors affected. In terms of administrative and operational control, the location of the continuing credit union in the case of a merger, or the home office in the case of an expansion, is controlling. That region will monitor and control the merged or expanded FCU and, of course, continue to examine the FCU once the merger or expansion is completed.

The last section of the IRPS addresses credit union service to senior citizens and retirees. On October 17, 1983, (See 48 FR 48830, dated October 21, 1983) the NCUA Board issued a request for comments for the second time on whether or not credit union services should be extended to retirees. Two hundred and fifty-one commenters responded to the second request. The overwhelming majority of the commenters (189) were in favor of expanding credit union service. Of those 189, 117 were in favor of offering such service to all retirees, regardless of prior credit union membership. Seventy-two commenters favored a more limited expansion. These 72 were fairly equally

divided between favoring service to retirees with prior credit union membership and to those with membership or eligibility for membership in a "like sponsor" credit union. Those that preferred the "like sponsor" option believed that such a requirement would maintain a common bond within each credit union. Fifty commenters were opposed to any extension of credit union service to retirees. The most frequent reason given for the opposition to the extension of service to retirees related to concerns about expansion of the common bond.

Having considered this issue further, the Board believes that none of the specific policies previously proposed concerning senior citizens and/or retirees provides an acceptable solution. On the one hand, legitimate concern has been expressed that simply authorizing Federal credit unions to serve all senior citizens and retirees in their area may not meet the statutory requirement of an occupational or associational common bond. (Community-based credit unions may, of course, already serve all senior citizens and retired persons in the community, and thus, service by community credit unions is not at issue.) On the other hand, the more limited proposals do not serve the important public policy goal of providing maximum opportunity for senior citizens and/or retired persons to obtain basic financial services as conveniently and economically as possible. The NCUA Board is committed to the notion that Federal credit unions can and should play an important part in fulfilling this obligation. The public comment record on this issue shows that Federal credit unions agree.

Accordingly, the Board has determined to formally state a policy of encouraging Federal credit unions to bring associations of senior citizens and/or retired persons within their fields of membership, and *to sponsor and assist* in the formation of such associations where they do not exist. The Board would hope that implementation of such a policy will become an important credit union initiative, with as little red tape and government interference as possible.

To facilitate the carrying out of this policy, the Board has taken the following important steps. First, the Board has determined that in the case of senior citizens and retiree associational groups, an exception will be created to standard associational chartering policy: the standard rule is that a primary purpose of the formation of an association may not be to provide credit union membership to the association members. That rule will not apply in the case of charter amendments to add senior citizens and/or retiree groups. In addition, the provisions of Section II, Chapter 4 of the NCUA Chartering Manual, concerning associational groups, will not apply to charter amendments to add senior citizens and/or retiree groups. These provisions, which include for example the requirement that a constitution, bylaws and financial statement be filed with NCUA as part of the application for an associational group charter, are in large part directed at determining the economic feasibility of the credit union and are of less concern when considering the addition of an associational group to an established credit union. Also, such provisions would interfere with the goal of facilitating formation of senior citizens and/or retiree associations and providing credit union services to these groups, with a minimum of bureaucracy and red tape. Details concerning the formation of these associations will be left to the sponsors and association members. Once an association has been formed, it can be expeditiously processed by the NCUA regional office for addition to an FCU's field of membership pursuant to the normal procedures for multiple group charter amendments. The NCUA Board believes that sponsoring and assisting in the formation of senior citizen and retiree groups by Federal credit unions is in the public interest. Senior citizens and retirees have always been an important segment of the credit union population, especially in their capacity as volunteers. It is the Board's belief that increased FCU accessibility to senior citizens and retirees will benefit the credit union industry as well as provide a needed service to a greater number of people who do not presently have credit union service available to them.

IRPS 84-1—MEMBERSHIP IN FEDERAL CREDIT UNIONS

I. Purchase of Loans of Liquidating Credit Unions Under Section 107(14)

Section 107(14) of the FCU Act, 12 U.S.C. 1757(14), authorizes FCU's to purchase assets and to assume liabilities of other credit unions, subject to regulations of the Board. The Board interprets this provision to authorize it to allow FCU's to provide customer services to members whose loans are purchased or whose share accounts are assumed pursuant to the provision. In cases of liquidation it is especially important, in order to protect the interests of the National Credit Union Share Insurance Fund, to utilize this authority. Accordingly, it shall be the policy of the Board that an FCU which purchases the loans of a liquidating credit union may offer full membership rights and services to the borrowers whose loans it has purchased. In cases where the borrower is converted to membership status, section 107(14) shall be considered the operative provision and the five percent limit of section 107(13) shall not apply.

II. Bylaws Affecting Field of Membership

Two of the Standard Federal Credit Union Bylaws (Bylaws) apply to field of membership policy. Section 5 of Article II of the Bylaws is the "once a member, always a member" Bylaw. It provides that the board of directors of each FCU may resolve that members who are no longer within the field of membership may retain membership if they meet reasonable minimal standards set by their board of directors. The second Bylaw affecting field of membership is section 2(a) of Article XVIII. This is the definition of immediate families. Not all FCU's include immediate family members within their field of membership. To be included, "members of their immediate families" must appear in section 5 of the FCU's charter. A standard Bylaw amendment to section 2(a) of Article XVIII allows FCU's adopting it flexibility in defining "members of their immediate families." With this Bylaw amendment, each FCU may define for itself the phrase "members of their immediate families."

III. Multiple Group Charters

In connection with new charters, charter amendments, conversions and mergers, the Board has delegated to the regional directors the authority to approve FCU fields of membership including more than one distinct group. The regional directors also have the authority to remove new groups added to a credit union if those groups are not being satisfactory served. In all cases of disapproval of a multiple group charter application or removal of a group, the regional director will advise the applicant of the reason(s) for disapproval or removal and of the right to appeal the decision to the NCUA Board. Pursuant to section 109 of the FCU Act, 12 U.S.C. 1759, the Board has recognized two types of multiple group fields of membership. The first type involves groups that have common bonds of occupation or association. The second type covers groups any portion of which is community based. The two types of multiple groups are addressed separately.

Occupational or Associational Based

In order for this type of multiple group charter to be approved, each occupational or associational group that becomes a part of the larger group must have its own common bond. Five additional criteria must be satisfied before a regional director can approve a multiple group charter.

1. All affected groups have requested service from the applicant;
2. The applicant can provide credit union service to each group;
3. The application is economically feasible and advisable;
4. The applicant indicates whether affected groups are eligible for membership or are being served by any other credit union. If groups are eligible for membership or are being served by another credit union, they must provide justification why they no longer desire that eligibility or continued service.
5. All of the groups must be within the operational area of the home or a branch office of the Federal credit union. Operational area is an area surrounding the home or a branch office that can be reasonably served by the applicant as determined by the regional director. A branch office means any office of a Federal credit union where an employee accepts payment on shares and disburses loans. For purposes of this definition, disbursing loans includes making advances on lines of credit but does not include extensions of overdraft protection credit.

Community Based

In order for this type of multiple group charter to be approved, the combined field of membership is limited to a well-defined neighborhood, community or rural district, as mandated by section 109 of the FCU Act. Any group or individual that is within the defined neighborhood, community or rural district, unless specifically excluded in the credit union charter, is eligible for membership in the community FCU. The approval of the NCUA Board is required if the population of the area exceeds 35,000. Should a group outside of the well-defined neighborhood, community or rural district seek to attain membership, that group must be geographically situated so that it and the community FCU are also within a more broadly defined well-defined neighborhood, community or rural district. The larger area must constitute a geographical area that could statutorily be established as a community credit union. Once it is determined that the larger defined area exists, two options are available. The first option is that a larger defined area will become the boundary for the community FCU. All groups and individuals within the larger defined area will now be eligible for membership. Under the first option, NCUA Board approval is required if the larger defined area's populations exceeds 35,000. The second option is that only groups seeking membership will be added to the community charter. The FCU boundaries will not be expanded to include all groups in the community charter. Under this second option, the five criteria set out under *Occupational or Associational Based* must be met.

IV. Service to Senior Citizens and/or Retirees

Pursuant to section 109 of the Federal Credit Union Act, senior citizen and/or retiree organizations may be added to Federal credit union fields of membership in compliance with the Multiple Group Charter policy set out above. The definitions of senior citizen and/or retiree are left to each individual organization. Federal credit unions may sponsor or assist in the formation of senior citizen and/or retiree organizations in their operational area. Section II, Chapter 4 of the Chartering and Organizing Manual for Federal Credit Unions does not apply to senior citizen and/or retiree organizations that wish to join an established Federal credit union. Such organizations may be formed with a primary purpose of providing eligibility for FCU service to the organizations and their members.

The NCUA Board finds that compliance with the above guidelines will result in fields of membership that meet the membership requirements of section 109 of the FCU Act, 12 U.S.C. 1759.

IRPS 82-3 and IRPS 83-2 are hereby cancelled and superseded by this interpretive ruling and policy statement.

List of Subjects in 12 CFR Part 701

Credit unions.

Dated November 15, 1984.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84-30989 Filed 11-26-84; 8:45 am]

BILLING CODE 7535-01-M

---

12 CFR Part 701

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: In order to conform its rules and regulations to a recent amendment to the Federal Credit Union Act (12 U.S.C. 1751 et. seq.) the NCUA Board has revised § 701.21(f) (12 CFR 701.21(f)). The revised rule now authorizes Federal credit unions ("FCU's") to make home improvement loans to their members with maturities of up to 15 years.

EFFECTIVE DATE: December 28, 1984.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Director, Department of Legal Services, or Steven Bisker, Assistant General Counsel, at the above address. Telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: Section 107(5)(A)(ii) of the FCU Act (12 U.S.C. 1757(5)(A)(ii)) was recently amended by the Housing and Community Development Technical Amendments Act of 1984, Pub. L. 98-440, October 4, 1984. The amendment authorizes FCU's to make loans "for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member" with maturities of up to 15 years. Prior to this amendment the maximum maturity for these types of loans was 12 years (unless the loan was secured by a second trust on the dwelling). The new law does not require that a second trust be taken in order to grant a home improvement loan with a 15 year maturity.

Since § 701.21(f) merely lists the types of loans expressly authorized by the Act with maturities of up to 15 years, the Board is promulgating this as a final rule to amend the list to include the newly enacted authority to offer home improvement loans with 15 year maturities.

The Board finds that notice and comment is unnecessary since the rule simply restates the authority to make such loans expressed in the Act.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because the rule will increase their management flexibility and reduce their paperwork burdens. A Regulatory Flexibility Analysis is, therefore, not required.

Financial Regulation Simplification Act

The final rule implements an amendment to the FCU Act that reduces burdens and limitations on FCU's. The NCUA Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable and unnecessary in this instance for the reasons set forth in the preamble above.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Home improvement loans.

(12 U.S.C. 1757, 1766(a), and 1789(a)(11))

By the National Credit Union Administration Board on the 15th day of November, 1984.

Rosemary Brady,

Secretary of the Board.

Accordingly, the NCUA rules and regulations are amended as follows:

1. Section 701.21(f) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(f) *15 Year Loans.* Notwithstanding the general 12 year maturity limit on loans to members, a Federal credit union may make loans with maturities of up to 15 years in the case of (1) a loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, (2) a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and (3) a loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

* * * * *

[FR Doc. 84-30980 Filed 11-26-84; 8:45 am]

BILLING CODE 7535-01-M

---

12 CFR Part 701

Fees Paid by Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board has determined that a change in the record date of total assets used in determining a Federal credit union's (FCU's) operating fee will improve the manner in which the fees are assessed and paid. This rule changes the record date from December 31 to June 30. The fee assessment (payment) date has also been amended to conform with the recently amended share insurance regulation (§ 741.5). The rule now provides that payment must be made not later than January 31 (required by the prior rule) or as directed by the Board (new amendment). In addition, a subsection of the rule that is no longer relevant has been deleted.

EFFECTIVE DATE: December 26, 1984.

ADDRESS: National Credit Union Administration, 1776 G St., NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Director, or Steven R. Bisker, Assistant General Counsel, Department of Legal Services at the above address. Telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: Prior to this amendment to § 701.6, the January operating fee assessment was based upon an FCU's total assets as of December 31 of the preceding year. Under the former system the Board had to determine its fee schedule by projecting the estimated total assets of all FCU's since such asset information was not available to the Board prior to the payment date for the fee assessment (not later than January 31). In order to meet the payment deadline, each FCU calculated its fee assessment based upon a fee schedule approved by the Board each November and then remitted the fee to the Agency. FCU's did not receive payment billings from the Agency. Often, errors occurred in the fee because of the use of incorrect financial information and/or faulty computations.

The change in the record date of total assets to June 30 allows the Board ample time to review each FCU's financial reports (the semiannual Financial and Statistical report for the period ending June 30) and correct any errors that may exist. More importantly, the Board will now be able to establish a fee schedule based upon actual asset amounts instead of estimates. FCU's will not be saved from making payments that in the past may have been higher than were actually needed to meet the expenses of NCUA in carrying out its responsibilities under the FCU Act. Further, the Board will now calculate the fee and will provide a billing statement to each FCU. The staff time saved by NCUA and all FCU's under the new procedure will further help to keep the operating fee to a minimum.

This rule also revises § 701.6 by adding a new provision which authorizes the Board to establish a specific date for FCU's to pay their operating fee. The amendment conforms this section to the recently revised share insurance rule (§ 741.5(d)). This change will enable the Board to bill FCU's for both the yearly operating fee and share insurance premium at the same time. This too should help to cut down on staff processing time for NCUA and all FCU's.

These revisions to § 701.6 are being promulgated as a final rule. For the reasons stated above, the Board finds that notice and comment are impracticable, unnecessary, and contrary to the public interest.

Lastly, § 701.6(d)—Calendar Year 1979 Operating Fee, is no longer needed since it was relevant only to fees for calendar year 1979. The Board has, therefore, deleted this provision of the rule.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions because the rule increases their management flexibility and reduces their paperwork burdens.

Financial Regulation Simplification Act

Since this rule reduces burdens and delay would cause unnecessary harm, the NCUA Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable. The NCUA Board has, however, considered most of these policies, as set forth in the preamble above.

List of Subjects in 12 CFR Part 701

Credit unions, Operating fees.

(12 U.S.C. 1755, 1766(a), 1789(a)(11))

By the National Credit Union Administration Board on the 15th day of November, 1984.

Rosemary Brady,

Secretary Of The Board.

PART 701—[AMENDED]

§ 701.6 [Amended]

Accordingly, § 701.6 is amended as follows:

1. Section 701.6(a) is amended by deleting the date "December 31" and inserting in its place the date "June 30" where it appears in this paragraph.
2. Section 701.6(a) is further amended by adding after "not later than January 31 of each calendar year" the provision, "or as otherwise directed by the Board."
3. Section 701.6(b) is amended by deleting "January 31 of" in the second sentence and by deleting "on January 31 of" in the penultimate sentence and by adding "in" after "operating fee" in that sentence.
4. Section 701.6(d) is removed in its entirety.

[FR Doc. 84-30981 Filed 11-26-84; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket Nos. RM83-13-000, 001, 002, 003, 004 and 005]

Annual Charges for Use of Government Dams and Other Structures

November 20, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of effective date and OMB control number for final rule.

SUMMARY: On May 24, 1984, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM83-13-000, 49 FR 22770 (June 1, 1984) setting annual charges under section 10(e) of the Federal Power Act for hydroelectric projects which use Government dams or other structures. On August 23, 1984, 49 FR 33859 (August 27, 1984), the Commission granted rehearing in part of the final rule. This notice sets forth the OMB control number for the information collection requirements set forth in the Commission's August 23 order on rehearing and the effective date of this requirement.

EFFECTIVE DATE: The information collection requirement in 18 CFR 11.22(d) is effective November 13, 1984.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (Supp. IV 1980) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320, require that OMB approve certain information collection requirements imposed by agency rule. On October 18, 1984, OMB approved the information collection requirement in 18 CFR 11.22(d) and issued control number 1902-0136 for that rule. Therefore, the rule is in effect as of November 13, 1984.

The following technical change is made in FR Doc. 84-22612, appearing on page 33862 of the issue of August 27, 1984

§ 11.22 [Amended]

1. On page 33862, column 3, "(Information collection requirements approved by the Office of Management and Budget under Control Number 1902-0136)" is added at the end of the text of § 11.22(d).

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31057 Filed 11-26-84; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Amendments to the Pennsylvania Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 938 by approving an amendment to the Pennsylvania permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment pertains to anthracite coal mining operations. The Federal regulations at 30 CFR 938.15 are amended to incorporate into the Pennsylvania Permanent Program the amendments being approved.

EFFECTIVE DATE: The approval of these program amendments is effective on November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd St., Suite L-4, Harrisburg, Pennsylvania 17101. Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register notice (47 FR 33050).

II. Submission of Program Amendment

By a letter dated March 30, 1984, Pennsylvania submitted to OSM pursuant to 30 CFR 732.17, a revision to its approved program pertaining to standards for mining anthracite coal. In the amendment, Pennsylvania proposed to amend its regulations at Subchapters A, B, C, D, and F of Chapter 88, Title 25.

On April 30, 1984, (49 FR 18313) OSM published a notice in the Federal Register announcing receipt of the amendment and soliciting public comments on such amendment. The public comment period closed May 30, 1984. No one expressed an interest in the hearing scheduled for May 25, 1984, and therefore, the hearing was not held.

On September 21, 1984, OSM and Pennsylvania discussed certain concerns about implementation and oversight activities for anthracite coal mining operations. However, no new information pertaining to the amendment was received at this meeting; therefore, the public comment period was not re-opened.

III. Director's Findings

Finding 1

The Director finds that the proposed changes to Pennsylvania's regulations streamline its provisions pertaining to anthracite operations. Many of the changes are intended to clarify references and remove old references that are now not relevant. To facilitate immediate implementation of these changes and to avoid confusion as to what regulations are in effect, the Secretary is making this rule effective immediately.

The Director also notes that Part 820 of 30 CFR of the permanent regulatory program contains special performance standards for anthracite mines in the Commonwealth of Pennsylvania. Section 529(a) of SMCRA requires that changes in the State's regulation of anthracite mining be reflected in OSM's regulations. The environmental protection provisions in force on August 3, 1977, in that State for anthracite mining were adopted by OSM and incorporated into 30 CFR Part 820 in accordance with section 529 of SMCRA (44 FR 15449, March 13, 1979). On October 12, 1982, OSM published a final rule adopting and incorporating into 30 CFR Part 820 revisions to the Pennsylvania statutes and regulations concerning anthracite mining that were approved by OSM pursuant to 30 CFR Part 732 (47 FR 44943).

The Director finds that the changes submitted by Pennsylvania to Chapter 88 meet the intent and purpose of section 529 of SMCRA and are sufficient to meet the purposes of SMCRA. The Director, therefore, finds that no additional regulations are necessary to meet the purposes of SMCRA. Each change is discussed by subchapter briefly below.

Subchapter A

1. Section 88.1 Definitions

"Access Roads"—The definition was added to replace "Type B Road" which has been deleted (consistent with the OSM approved definition in Chapter 87).

"Coal Bank"—The deletion of the words "those existing" was for clarification purposes.

"Common use roads"—The definition was added to replace "Type C Road" which has been deleted (consistent with the DER's nomenclature for mine roads).

"Haul Road"—The definition was added to replace "Type A Road" which has been deleted (consistent with the OSH approved definition in Chapter 87).

"Moist bulk density"—The definition deleted since the term is not used in the performance standards for anthracite coal and therefore serves no purpose.

"Permit Area"—The change was made to clarify that Chapter 88 covers all types of mining activities (surface mining, underground mining, coal bank removal and restoration, coal processing, and coal refuse disposal).

"Spoil"—The change makes the definition of spoil consistent with the definition of spoil pile in the SMCRA of Pennsylvania.

"Type A and Type B Road"—These definitions have been deleted and replaced by "Haul Road" and "Access Road" to be consistent with the approved definitions in Chapter 87.

"Type C Road"—The definition has been deleted and replaced by the term "Common Use Road". The definition for common use road is essentially the same as the previous definition for "Type C" road.

2. Section 88.21

This section was revised to clarify the regulation and remove old § 88.21(b) which was improperly placed under this section (refer to § 88.23(b) for proper placement).

Section 88.23

Section 88.23(b) was revised to clarify that it is the obligation of the applicant to take the initiative to obtain information from the appropriate Federal or State Agency. The Department is willing to provide relevant and available information, but cannot compel other State and Federal agencies to provide such information.

3. Section 88.24

This section was rewritten for clarification and precision. The revision adds the requirements for the description of the structure within the proposed permit area and its relationship to the structure of the general area and requirements for the location, identification and status of other mining within or adjacent to the proposed permit area.

4. Section 88.25

Editorial and clarification.

5. Section 88.26

Section 88.26(b)(2) combines the original paragraphs (2) and (3).

Section 88.26(b)(2)(v) limits the analysis of water samples to total iron rather than total and dissolved iron.

6. Section 88.28

As written § 88.28 would have required the applicant to submit all information required by Section (1)-(4) even if only precipitation data was requested. The amendment will give the Department the necessary authority to request the specific climatology information when needed without requiring the applicant to provide unnecessary information.

7. Section 88.30

The revision clarifies the requirements for pre-mining environmental resource information of section 4(a)(2)(A) and 4(1) of the Surface Mining Conservation and Reclamation Act pertaining to land use, productivity and post-mining land use capabilities.

8. Section 88.31

Revisions are editorial and serve as clarification.

9. Section 88.42

DER deleted the requirement that operators furnish the anticipated annual and total production of coal since such information is subject to several variable factors (weather, coal market etc.). DER believes this information is not necessary for an environmental assessment of the permit application. The Director finds that this revision is consistent with section 529(a) of SMCRA and that no additional regulations are necessary to meet the purposes of SMCRA.

10. Section 88.44

DER stated that, due to the nature of anthracite mining, it would be extremely difficult to plan the sequence for more than five years. Therefore, DER revised § 88.44 to provide that a permit expire after five years and if further mining is planned a new plan must be submitted with a permit renewal.

11. Section 88.44(a)(13)

The revision provides that if air pollution collection and control facilities are needed, they must be part of the operation plans.

12. Section 88.45

The amendment deletes unnecessary information requirements and retains the necessary authority for DER to develop appropriate applications for blasting activities.

13. Section 88.46

Editorial in nature for clarification purposes.

14. Section 88.48

Editorial for clarification.

15. Section 88.53(c)(d)

Clarification to denote which criteria should apply to the proposed impoundment. The revision specifies in (e) and (f) that Coal waste-dams or embankments may be constructed and will be under the requirements of subchapter (C).

16. Section 88.60

The amendment to the application in § 88.60 for haul roads, access roads and other transportation facilities reflects the corresponding amendment to the environmental performance standard for these facilities (see §§ 88.138-88.150).

Subchapter B

1. Section 88.82

Non-substantive editorial change for clarification and cross reference.

2. Sections 88.83, 88.84, 88.85

The amendment removes the distinction between temporary and permanent openings and includes all the necessary standards in one section. Regardless of whether openings to the subsurface (i.e., exploration holes, bore holes, underground mine openings, etc.) are temporary or permanent, they must be handled in a manner that does not adversely affect the surface and ground waters of the area or create a health or safety hazard.

3. Section 88.86

Editorial and clarification.

4. Section 88.90

Since DER does not have a program to qualify laboratories for soil testing, the phrase "by a qualified laboratory" is deleted. The amendment to § 88.90 also clarifies that the results of tests are to be submitted to the Department.

5. Section 88.91

Paragraph (a): The amendment incorporates the positive standard "prevent to the maximum extent possible" and deletes redundant language in the definition of "hydrologic balance."

Paragraph (c): The amendment deletes the general listing of practices to prevent pollution which are covered in detail by other performance standards in the Chapter.

6. Section 88.92

The addition reflects the need to meet the requirements of several existing Pennsylvania regulations. The deletion is an editorial change to correct a misprint in the *Pennsylvania Bulletin.*

7. Section 88.93

Sullivan County was deleted and is covered by Chapter 87. Additionally, editorial changes were made to correct a misprint in the *Pennsylvania Bulletin.* This section, as it appears now, is what OSM approved originally and is how the original should have been printed.

8. Section 88.95

The amendment deletes the requirement of specific design criteria of the diversion. The amendment does retain the requirements for performance standards, including the requirement that any diversion shall be designed, constructed and maintained using current engineering practices to pass safely the peaks run-off from a precipitation event with a two-year recurrence interval for temporary diversions and ten-year recurrence interval for permanent diversion. The Director finds that this is consistent with section 529(a) of SMCRA and that no additional regulations are necessary to meet the purposes of SMCRA.

9. Section 88.96

The amendment incorporates the standard "prevent to the maximum extent possible" rather than the "minimize to the maximum extent possible"; incorporates the erosion and sediment control requirements of Chapter 102; and deletes the listing of sediment control practices already contained in Chapter 102.

10. Section 88.97

Editorial change for clarification.

11. Section 88.98

The amendment deletes the arbitrary standard for a waiver from the required use of sedimentation ponds (e.g., the disturbed drainage area within the total disturbed area is small).

Paragraph (c): This paragraph was changed to show that the requirements of Chapter 102 must be met while deleting the repetitiveness of listing those requirements in Chapter 88.

12. Section 88.99

Editorial and clarification.

13. Section 88.101

Editorial.

14. Section 88.102

Clarification of the applicable design criteria for dams, ponds, embankments, and impoundments.

15. Section 88.103

Clarification of the applicable design criteria for coal processing waste dams and embankments.

16. Section 88.104

Since equivalent standards for preventing the contamination or pollution of ground water area are contained in § 88.100 and § 88.119, the amendment deletes the additional reference to these standards.

17. Section 88.105

Paragraph (b) incorporates the positive standard "prevent to the maximum extent possible" disturbance to the prevailing hydrologic balance.

18. Section 88.106

Editorial for clarification.

19. Section 88.108

The amendment recognizes that certain facilities that are to remain after mining may be in acceptable condition and need not be renovated if the renovation would cause more environmental harm than benefit.

20. Section 88.110, 88.111, 88.112

Regardless of where excess spoil is disposed, the disposal area must achieve certain minimum standards for site selection, design, construction, stability, environmental impact and reclamation. Consequently, the amendment removes the distinction between head-of-hollow fills, valley fills and durable rock fills pertaining to design criteria, but retains the necessary standards applicable to the excess spoil disposal site. The Director finds that this is consistent with section 529(a) and that no additional regulations are necessary to meet the purposes of SMCRA.

21. Section 88.115

Present regulations do not allow, under any circumstances, the removal of backfilling equipment unless all backfilling and leveling have been completed and released by the Department. The revised amendment recognizes that there are limited circumstances under which backfilling equipment may be temporarily removed prior to completion of backfilling and grading.

22. Section 88.116

Editorial change to establish consistency with language of the SMCRA.

23. Section 88.117

Establishes consistency with language of the SMCRA.

24. Section 88.118

The amendment recognizes that the swell factor of the spoil may result in minor increases in grade in comparison to premining conditions.

25. Section 88.119

Clarification only.

26. Section 88.122

The amendment provides flexibility in the operator's schedule as to when seeding and planting will be accomplished within the first desirable period of planting. The Director finds that this is consistent with section 529(a) of SMCRA.

27. Section 88.125

The amendment allows for more flexibility in planting for wildlife habitat by providing for reduction of the extent of woody species planting on site specific cases. The Director finds that this is consistent with section 529(a) of SMCRA. In addition, paragraph (b) was deleted since performance standards for commercial forestland are included in § 88.129.

28. Section 88.127

Editorial and clarification.

29. Section 88.129

The section was revised to implement and be consistent with the changes made in § 88.124(b).

30. Section 88.130

Paragraph (a)—The deleted phrase was removed since it appeared to imply that the Department was obligated to approve a proposed revegetation technique. The Department reserves the right to approve, request changes, or deny revegetation plans after reviewing the plan.

31. Section 88.134

Editorial and clarification.

32. Section 88.135

Clarification only.

33. Section 88.138–88.149

The revisions to §§ 88.138–88.149 delete detailed design requirements considered by appropriate technical personnel in the design of these facilities while retaining the necessary level of performance to be achieved. The amendment also removes the design requirements for truck traffic which is more appropriately a concern of the operator. The Director finds that this is consistent with section 529(a) of SMCRA and that no additional regulations are required to meet the purposes of this Act.

34. Section 88.150

The term "common use roads" is used to reflect the new definitions of roads in § 88.1.

C. Subchapter C

1. Section 88.182

Same explanation as § 88.82

2. Section 88.184

Same explanation as § 88.90.

3. Section 88.186

Paragraph (c) deletes the general listing of practices which are covered in detail by the other performance standards in the chapter.

4. Section 88.187

(1) The revision clarifies the reference and makes this section consistent with § 88.92.

5. Section 88.188

Sullivan County is deleted from the listing in Chapter 88 but is covered by Chapter 87.

6. Section 88.190

Same justification as § 88.95.

7. Section 88.191

Same justification as § 88.96.

8. Section 88.192

Same justification as § 88.97.

9. Section 88.193

Subsection (b) is revised to correct a misprint.

10. Section 88.194

Paragraph (b) is changed to show that the requirements of Chapter 102 must be met and the previous paragraphs (c) and (d), which listed the requirements of Chapter 102 in Chapter 88, are deleted.

11. Section 88.195

Editorial and clarification.

12. Section 88.197

Same explanation as § 88.102

13. Section 88.198

Same explanation as § 88.108.

14. Section 88.200

Same explanation as § 88.104.

15. Section 88.202

Same explanation as § 88.106.

16. Section 88.210

Same explanation as § 88.122.

17. Section 88.212

Paragraph (e): Revision to clarify the type of required pH test.

Paragraph (g): The Department does not have a program to qualify laboratories for soil testing; therefore, the phrase "by a qualified laboratory" is deleted and replaced by "using standard methods approved by the Department".

18. Section 88.123

Same explanation as § 88.125.

19. Section 88.215

Explanation and clarification.

20. Section 88.217

The section was revised to be consistent with and to implement the changes made in § 88.213(b).

21. Section 88.231–88.242

Same explanation as §§ 88.138–88.149.

22. Section 88.243

Same explanation as § 88.150.

D. Subchapter D

1. Section 88.282

Editorial and clarification.

2. Section 88.286

Same explanation as §§ 88.83, 88.84, and 88.85.

3. Section 88.286

Editorial and clarification.

4. Section 88.290

Same explanation as § 88.90.

5. Section 88.291

The amendment incorporates the positive standard "prevent to the maximum extent possible". The amendment deletes the general listing of practices to prevent pollution which are covered in detail by the other performance standards in the Chapter.

6. Section 88.292

Editorial.

7. Section 88.293

Sullivan County was deleted from Chapter 88 and is covered by Chapter 87.

8. Section 88.295

Same explanation as § 88.95.

9. Section 88.296

Same explanation as § 88.96.

10. Section 88.297

Editorial and clarification.

11. Section 88.298

Paragraph (a) is revised for clarification. Paragraph (c) is reworded for clarification and to correct a reference. Paragraph (d) is changed to state that the requirements of Chapter 102 must be met; the repetitive listing of those requirements is deleted.

12. Section 88.299

Clarification only.

13. Section 88.301

The revision adds paragraph (7) requiring that the impoundment must be suitable for the approved postmining land use.

14. Section 88.302

Same explanation as § 88.102.

15. Section 88.303

Same explanation as § 88.103.

16. Section 88.304

Same explanation as § 88.104

17. Section 88.305

Same explanation as § 88.105.

18. Section 88.306

Same explanation as § 88.106.

19. Section 88.308

Same explanation as § 88.108.

20. Section 88.310

Clarification.

21. Section 88.312

Redrafted for clarification purposes.

22. Section 88.315

Paragraph (c) is added to maintain the approximate original contour standard for active surface mines where coal refuse disposal may be permitted. Paragraph (d) is added as a protection

against a major source of fires under past practices in refuse disposal.

23. Section 88.316

Same explanation as § 88.315(d).

24. Section 88.319

Incorporated into other sections of Chapter 88.

25. Section 88.320

Incorporated into other sections of Chapter 88.

26. Section 88.321

The added provision references the regulatory standard for handling noncoal wastes. The deleted provision is covered under other sections of Chapter 88.

27. Section 88.323

Same explanation as § 88.122.

28. Section 88.326

Same explanation as § 88.125

29. Section 88.328

Editorial change.

30. Section 88.330

The section is revised to implement and be consistent with § 88.336(b).

31. Section 88.332

Rewritten for clarification and to require that requests for temporary cessation be in writing.

32. Section 88.335–88.346

Same explanation as §§ 88.138–88.149.

33. Section 88.88.347

Same explanation as § 88.150.

F. Subchapter F

1. Section 88.482

The definition for "Permit Area" was revised for clarification.

2. Section 88.491

Paragraph (i)(13) corrected a previous misprint.

3. Section 88.492

In Paragraph (d)(4) the word was *coal* added for clarification. The other changes under § 88.492 are editorial and clarify references.

Finding 2

The Director finds that condition (d) pertaining to prime farmland and anthracite mining operations has not been addressed in this Pennsylvania proposal. The Director finds that Pennsylvania is required to satisfy condition (d) as imposed in the Federal Register on July 30, 1982 (47 FR 33050). The time in which to satisfy the condition was extended in the Federal Register dated October 12, 1984, to November 30, 1984 (49 FR 40025).

IV. Public Comments

1. Pursuant to section 503(b) of SUCRA and 30 CFR 732.17(a)(10)(i), comments were solicited from various Federal agencies on the proposed state permanent program amendments. Of those agencies invited to comment, comments were received from the following agencies: The United States Department of Agriculture, Soil Conservation Service (SCS) and the United States Environmental Protection Agency (EPA).

The EPA by its letter dated June 1, 1984, offered no comment on the proposed revisions.

The SCS by its letter dated May 25, 1984, offered the comment that "overall the engineering design standards are adequate." Additionally, the SCS comments that it would be beneficial if § 88.95 provided for permanent diversions to be left in place where needed for long-term erosion control.

Subchapter B, at § 88.95(g) provides that "when no longer needed the diversion shall be regraded to blend with the natural contours and drainage pattern * * *." This section provides other minimun standards for diversions designed to protect the hydrologic balance. Chapter 87, Surface Mining of Coal, and Chapter 89, Underground Mining of Coal and Coal Preparation Facilities distinguishes clearly between temporary and permanent diversions. Chapter 88 addresses anthracite coal mining operations in addition to the types of mining addressed in Chapters 88 and 89. Therefore, OSH believes that Pennsylvania provides for permanent diversions.

The SCS also said that it believes revised PA § 88.138(f) is very good if it also includes road cuts and fills. OSH agrees with the commenter and believes that the Pennsylvania regulation provides adequate protection by providing that "any disturbed area adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion".

The commenter indicated that its comments on Subchapter B also apply to the revisions for Subchapters C and D. The responses to the comments for Subchapter B are also intended to apply to the applicable comments for Subchapters C and D.

Approval of Program Amendments

Accordingly, the revisions to Chapter 88 of Title 25 submitted by Pennsylvania on March 30, 1984, are hereby approved pursuant to 30 CFR 732.17.

The Federal regulations at 30 CFR 938.15 are amended to indicate approval of these program amendments. The approval of the amendments to the Pennsylvania program are effective November 27, 1984.

Additional Findings

1. *Compliance with the National Environmental Policy Act:* Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental document need be prepared on this rulemaking as State program decisions are exempt from compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any new requirements; rather, it ensures that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 938 is amended as set forth herein.

Dated: November 19, 1984.

John D. Ward,

Acting Director, Office of Surface Mining.

PART 938—PENNSYLVANIA

Accordingly, Part 938 of Title 30 is amended as follows:

* * * * *

30 CFR 938.15 is amended to add paragraph (f):

§ 938.15 Approval of Amendment to State Regulatory Program.

* * * * *

(f) The following amendments are approved effective November 27, 1984:

Subchapters A, B, C, D and F of chapter 88 of Title 25 as submitted to OSM by Pennsylvania on March 30, 1984.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation act of 1977 (30 U.S.C. 1201 *et. seq.*).

[FR Doc. 84–30006 Filed 11–26–84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 72

[CGD 84–034]

Light List Printing Cycle

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the publication schedule of Light List Volume V, Mississippi River System, to provide for a biennial printing. The current regulations require that each volume of the Light List be published annually. This action is in response to requests from the marine industry which note that the small number of yearly changes to aids to navigation on the Mississippi River System does not justify a yearly reprint of Light List Volume V.

EFFECTIVE DATE: December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker, Marine Information Branch, U.S. Coast Guard, (202) 426–9566.

SUPPLEMENTARY INFORMATION: On Monday, August 13, 1984, the Coast Guard published a notice of proposed rulemaking in the Federal Register for these regulations (49 FR 32228). Interested persons were requested to submit comments. One comment was received and while the commenter's suggestion has been adopted, no change to the rule is necessary.

Basis and Purpose

The Light List Volume V, Mississippi River System, provides a comprehensive listing of the official names, locations, characteristics, and general descriptions of all aids to navigation maintained by or under the authority of the U.S. Coast Guard on the Mississippi River System. The Coast Guard currently publishes all Light Lists annually to incorporate any changes which have occurred during the preceding twelve months. At the Coast Guard/Marine Industry Aids to Navigation Workshops in St. Louis and Memphis in October 1983, many mariners requested that Volume V of the Light Lists be published biennially. The Cost Guard concurs with this suggestion since there has been, on an average, only 350 changes (including editorial changes) made to Volume V at each annual printing. All other Light Lists will continue to be published annually since more than 2,000 changes are made to each of the other volumes at every annual printing. The slight number of changes made to aids to navigation on the Mississippi River System during a twelve month period does not fairly justify the cost and inconvenience to mariners of the annual printing. The slight changes which do occur are immediately noted in the Local Notice to Mariners, therefore a biennial publication schedule will not affect navigational safety on the Mississippi River System. The revised publication schedule will however result in savings to those mariners who are required to have a current Light List onboard while transiting the river system. Section 164.33 of Title 33 Code of Federal Regulations, require all self-propelled vessels of 1,600 or more gross tons to have a corrected copy of the Light List onboard for the area of transit.

Discussion of Comments

One comment suggested that the cover reflect both years that the Light List Volume V will be in effect and not just the year of issue. The commenter noted the requirement that mariners carry an up-to-date Light List and suggested that listing both years on the cover would avoid any possible confusion. The Coast Guard agrees and will include both years on the outside cover, in addition to listing the next expected printing date on the title page.

Drafting Information

The principal persons involved in drafting this rulemaking are Mr. Frank Parker, Project Manager, Marine Information Branch, and Lieutenant Dave Shippert, Project Attorney, Office of the Chief Counsel.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The number of yearly changes made annually to Light List Volume V does not warrant annual publication. This final rule will result in a small savings to both the mariner and the Coast Guard. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 72

Government publications, Notice to Mariners and Light Lists, Navigation (water).

PART 72—[AMENDED]

In consideration of the foregoing, the Coast Guard amends Part 72 of Title 33 Code of Federal Regulations, revising § 72.05–1 introductory text of paragraph (a) to read as follows:

§ 72.05–1 Purpose.

(a) The Coast Guard publishes the following Light Lists annually, with the exception of Volume V, which is published biennially, covering the waters of the United States, its territories and possessions:

* * * * *

(14 U.S.C. 93; 49 U.S.C. 108; 49 CFR 1.46))

Dated: November 21, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84–31009 Filed 11–26–84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD13 84–11]

Drawbridge Operation Regulations; East Fork Hoquiam River at Hoquiam, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Grays Harbor County Department of Public Works, the Coast Guard is adding regulations governing the Panhandle Bridge across the East Fork Hoquiam River, mile 0.7, at Hoquiam, Washington, by requiring that advance notice of openings be given. This proposal is being made because of a steady decrease in the level of boating activity on the waterway and because no requests have been made to open the draw since 1982. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on December 27, 1984.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: On August 2, 1984, the Coast Guard published proposed rule (49 FR 30976) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a Public Notice dated August 16, 1984. In each notice interested persons were given until September 17, 1984 to submit comments.

Drafting Information: The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Aubrey W. Bogle, project attorney.

Discussion of Comments: The proposed rule provided that the bridge need not open for the passage of vessels. Only one response was received to the **Federal Register** and Coast Guard notices. The response was from a local towboat company and expressed concerns about the proposed closure of the bridge. Comments indicated a desire on the part of the towboat company for assurance that the bridge would open for navigation in the future. Although only one waterway user responded to the notice of the proposed change, the Coast Guard feels that their concerns are significant. Limited access past the bridge could be maintained with negligible cost to the bridge owner if the operating machinery was kept in working condition and the bridge was opened only upon advance notification. The bridge owner was so advised and had no objections to requirements for maintenance of machinery and advance notification for openings. Accordingly, the final rule was changed to provide that the bridge shall open on signal if at least 48 hours notice is given.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The East Fork Hoquiam River is not currently used for commercial navigation, therefore no navigation interests would be affected by the regulation. The bridge owner would be affected only to the extent that the bridge operating machinery be maintained and a person be designated to open the draw upon 48 hours advance notice. Due to the low level of usage of the waterway, this is viewed as having a minimal economic impact on the bridge owner. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations: In consideration of the foregoing, Part 117 of Title 33 Code of Federal Regulations, is amended by adding a new § 117.1047(e) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.1047 Hoquiam River.

* * * * *

(e) The draw of the Grays Harbor County highway bridge across the East Fork Hoquiam River, mile 0.7, shall open on signal if at least 48 hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: November 9, 1984.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 84-31002 Filed 11-26-84; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311(a), (b), and (c) and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: November 20, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charge the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date. (38 U.S.C. 1819(f))

(1) Effective November 21, 1984, 15 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective November 21, 1984, 14½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective November 21, 1984, 14½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 12½ per centum per annum, effective November 21, 1984, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 12½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 12¾ per centum per annum, effective November 21, 1984, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 12¾ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective November 21, 1984, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 14 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 12½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 14 percent per annum. (38 U.S.C. 1811 (d)(1) and (2)(A))

* * * * *

[FR Doc. 84-31010 Filed 11-26-84; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule:

SUMMARY: NOAA issues an emergency rule under section 305(e) of the Magnuson Fishery Conservation and Management Act to set season opening dates for the 1984/1985 Tanner crab fishery. This rule is necessary to make the dates effective promptly as requested by the fishing industry and the North Pacific Fishery Management Council in response to the best available socioeconomic and biological information. This action is intended to promote an orderly fishery that is consistent with the needs of the industry.

DATES: Sections 671.21(a) and (c) and 671.26(a), (c)(2), (d)(2), (e)(2), and (f)(2) are suspended from noon, local time, November 27, 1984, until noon, local time, February 25, 1985. Sections 671.21 (d) and (e) are effective at noon, local time, November 27, 1984, until noon, local time, February 25, 1985.

ADDRESS: Requests for copies of the environmental assessment prepared for this action should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Biologist, Kodiak Field Office, NMFS), 907-486-3298.

SUPPLEMENTARY INFORMATION: The fishery management plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP) was developed by the North Pacific Fishery Management Council (Council) and approved and implemented by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), under

the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was published in the **Federal Register** on May 16, 1978 (43 FR 21170).

Section 671.26 establishes four vessel registration areas: A (Southeastern), E (Prince William Sound), H (Cook Inlet), and J (Westward); and districts within those areas. Registration by area provides an important information base for instituting conservation measures and for dispersing the fleet. The registration areas generally conform to the biological boundaries of the stocks within each area. The function of registration is to limit the number of areas in which a vessel may operate and to determine the size and capacity of the fleet that will be operating in a given area. The districts were established for purposes of better monitoring the fishery to conserve small units of crab stocks. Section 671.26 also defines criteria for setting fishing season opening and closing dates. These dates are established by the Council during joint meetings with the Alaska Board of Fisheries (Board), usually in March of each year. At these joint meetings, testimony is received from the fishing industry concerning any proposed season dates. At the March 1984 joint meeting, a series of dates was adopted by both the Board and the Council based on the status of crab stocks and needs of the industry. The Board and the Council met during September 1984 to consider changes in these season dates. Although specific dates were not considered for two registration areas—E and H—the Council requested the Director, Alaska Region, NMFS (Regional Director) to initiate action that would make all dates established under the FMP consistent with those established for State of Alaska waters.

Although November 1 is generally considered the start of the "biologically safe" period when Tanner crab are not in a breeding or soft-shell condition, other factors are also considered by Board and Council when they decide upon season dates.

The opening dates in the districts (Table I) were determined on the basis of socioeconomic as well as biological factors as follows:

TABLE I.—SEASONS FOR THE COMMERCIAL TANNER CRAB FISHERY OFF THE COAST OF ALASKA

Registration area/District	1983/84 season dates	1984/85 season opening dates
A—Southeastern:		
Southeast	Dec. 1 to May 1	Feb. 10.
Yakutat	Feb. 1 to May 15	Jan. 15.
E—Prince William Sound:		
Western	Nov. 15 to May 31	Jan. 5.
Eastern	Nov. 15 to May 31	Jan. 5.
Hinchinbrook	Nov. 15 to May 31	Jan. 5.
H—Cook Inlet:		
Southern	Dec. 1 to Apr. 30	Nov. 1.
Central	Dec. 1 to May 31	Nov. 1.
Kamishak Bay	Dec. 1 to May 31	Nov. 1.
Barren Islands	Dec. 1 to May 31	Nov. 1.
Outer	Dec. 1 to May 31	Nov. 1.
Eastern	Dec. 1 to May 31	Nov. 1
J—Westward:		
Kodiak (all sections except Semidi Island)	Feb. 10 to Apr. 30	Jan. 15.
Semidi Island	Feb. 10 to May 15	Jan. 15.
South Peninsula	Feb. 14 to May 15	Jan. 15.
Chignik	Feb. 14 to May 15	Jan. 15.
Eastern Aleutians	Feb. 15 to June 15	Jan. 15.
Western Aleutians	Nov. 10 to June 15	Nov. 10.
Bering Sea:		
[Chionoecetes bairdi]	Feb. 15 to June 15	Jan. 15.
[Chionoecetes opilio]	Feb. 15 to Aug. 1	Jan. 15.

Registration Area A, Southeast District—A starting date simultaneous with that for Registration Area J (January 15) was considered rather than any earlier date, in order to prevent "pulse fishing" by vessels stopping to fish in the Southeast District of Registration Area A before moving to the more Traditional grounds in Registration Area J. However, the later date February 10 was selected, because meat recovery would be much better.

Yakutat District—January 15 was selected, concurrent with Registration Area J, to prevent pulse fishing.

Registration Area E, all districts—January 5 was set to coincide with the start of the red king crab fishery to avoid unnecessary discard and mortality of Tanner crab.

Registration Area H, all districts—November 1, an earlier starting date, was set to allow fishing before the onset of inclement weather.

Registration Area J, all districts except the Western Aleutians—Most discussion at the joint Council-Board meeting concerned possible effects that the El Nino phenomenon might have on the fishery. El Nino has been held responsible for waters becoming warmer earlier in late winter or early spring, causing Tanner crab to "go off the bite" as they undergo maturation more rapidly. When this condition occurs, they are less likely to enter crab pots in search of food, thus causing catches per unit of effort to decrease during the fishing season. Hence, the Council and the Board determined that an earlier starting date, balanced against the need to maximize meat recovery, was desirable. January 15 was selected as the optimal date.

Western Aleutians—In this district, Tanner crab are harvested as bycatches in the king crab fishery. The season opening is made to coincide with the start of the king crab season, to avoid unnecessary discard and mortality of Tanner crab.

The Council, on reviewing the proposed season dates and approving those considered necessary for the conservation and management of Tanner crab, recognized the need to make Federal dates consistent with those set by the Board for State of Alaska waters in order to avoid the following problems: (1) Burdens on State and Federal agencies in attempting to enforce seasons in the fishery conservation zone that are not concurrent with the adjacent territorial sea, (2) burdens on the State in funding and conducting dockside sampling programs, (3) incomparable data resulting from non-concurrent sampling periods, (4) confusion in the fishing industry as to what areas may be fished during different seasons.

The Secretary of Commerce (Secretary) concurs with the Council's finding that it is necessary to make the fishing seasons consistent, and finds that an emergency will exist unless such an action is undertaken promptly to establish those seasons consistent with Alaska's seasons and to avoid split seasons in the same geographic areas (vessel registration areas) for the reasons set forth above. Therefore, he establishes the season opening dates set out in Table I above, under section 305(e) of the Magnuson Act, effective for a period of 90 days from the publication of this emergency rule.

Classification

The Assistant Administrator has determined that this rule is necessary to respond to an emergency and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator prepared an environmental assessment for this rule and concluded that no significant impact on the human environment will result from its implementation. You may obtain a copy of the environmental assessment from the Regional Director at the address above.

The Assistant Administrator also finds, under 5 U.S.C. 553(b) and (d) of the Administrative Procedure Act, that the imminence of the season openings and the concerns described above make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment, or to delay for 30 days the effective date of this emergency rule.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by Alaska's Office of Management and Budget under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 671

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: November 21, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

PART 671—[AMENDED]

For reasons set forth in the preamble, 50 CFR Part 671 is amended as follows:

1. The authority citation for Part 671 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 671.21 Optimum yield.

2. In § 671.21, paragraphs (a) and (c) are suspended until February 25, 1985.

New paragraphs (d) and (e) are added to read as follows:

* * * * *

(d) *Optimum yields and season opening dates.* The OY and season opening date for Tanner crab for each Federal registration area/district is set forth in Table II. These specifications of optimum yield are effective for the fishing year beginning November 1, 1984. All season dates in this paragraph are inclusive. Time periods begin at 12:00 noon on the dates specified, based on local time zones.

TABLE II.—OPTIMUM YIELDS (MILLIONS OF POUNDS) OF TANNER CRAB STOCKS AND FISHING SEASON OPENING DATES IN THE FISHING DISTRICTS OF REGISTRATION AREAS OFF ALASKA [1]

Registration area/District	Optimum yield	1984/85 season opening dates
A—Southeastern:		
Southeast	1.0 to 3.0	Feb. 10.
Yakutat	0.1 to 1.0	Jan. 15.
E—Prince William Sound:		
Western	1.5 to 3.5	Jan. 5.
Eastern		Jan. 5.
Hinchinbrook		Jan. 5.
H—Cook Inlet:		
Southern	1.5 to 3.0	Nov. 1.
Central		Nov. 1.
Kamishak Bay		Nov. 1.
Barren Islands		Nov. 1.
Outer		Nov. 1.
Eastern		Nov. 1.
J—Westward:		
Kodiak	11.0 to 33.0	Jan. 15.
South Peninsula	2.0 to 6.0	Jan. 15.
Chignik	0.5 to 5.0	Jan. 15.
Eastern Aleutians	0.1 to 2.0	Jan. 15.
Western Aleutians	0.1 to 2.0	Nov. 10 [2]
Bering Sea:		
[Chionoecetes bairdi]	5.0 to 28.5	Jan. 15.
[Chionoecetes opilio]	20.0 to 130.0 [2]	Jan. 15.

[1] Catches of Tanner crab in a State of Alaska registration area or district will be considered part of the optimum yield specified for the contiguous Federal registration area or district of the same name.

[2] This range represents the domestic annual harvest.

[3] Although this date is not changed, it is included for consistency.

(e) *Field orders.* Except as provided in § 671.21(b), if the Regional Director determines that the optimum yield for a particular species of Tanner crab in any geographic area specified in Table II will be reached, the Secretary will issue a field order pursuant to § 671.27(a) prohibiting fishing for that particular species of Tanner crab by vessels of the United States in the applicable geographic area from the effective date of the field order.

§ 671.26 Size and Sex Restrictions.

3. In § 671.26, paragraphs (a), (c)(2), (d)(2), (e)(2) and (f)(2) are suspended until February 25, 1985.

[FR Doc. 84-31040 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 229
Tuesday, November 27, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Share, Share Draft, and Share Certificate Accounts

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: Certain states have recently enacted laws and promulgated regulations that attempt to regulate disclosures, funds availability, and service fees relating to deposit accounts and similar accounts including Federal credit union ("FCU") share, share draft, and share certificate accounts. The NCUA Board believes it is necessary to formally state its position on such regulation. The proposed amendment clarifies the NCUA Board's intention in previously deregulating FCU activities in this area and expressly provides that, to the extent state law may be applicable to FCU's, it is preempted.

DATE: Comments are due by December 26, 1984.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Director, Department of Legal Services, or Steven Bisker, Assistant General Counsel, at the above address. Telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: On April 27, 1982, § 701.35 of the NCUA Rules and Regulations was substantially deregulated. The rule previously dictated much of the terms and conditions, including disclosures, governing Federal credit union share, share draft and share certificate accounts. In deregulating, the NCUA Board intended to place the responsibility for determining the terms and conditions of such accounts on each FCU's board of directors. Recently, however, several states (e.g., New York, California, Connecticut) have enacted laws or promulgated regulations requiring disclosures and purporting to specify the form and content of FCU disclosures regarding deposit availability and service fees charges and, in some cases, purporting to establish time periods in which drafts (checks, etc.) deposited into an FCU account must be credited and available for withdrawal. While the Board believes that these state laws are in conflict with its deregulation of such activity and are therefore preempted, in order to clarify its position the Board is proposing this amendment to § 701.35.

It is the Board's belief that the problems of funds availability and service fees that may be encountered by depositors of some financial institutions generally do not arise in Federal credit unions. FCU's are required, pursuant to NCUA's rules and regulations (*See*, §§ 701.35(b) and 740.2) to accurately represent the terms and conditions of share, share draft, and share certificate accounts. Further, unlike other financial institutions, FCU's are controlled by their membership. Therefore, if an FCU's board of directors institutes policies which the members find objectionable and refuses to change such policies, the members have the ability to replace those directors through the election process.

It should be noted that the issue of disclosure of funds availability policies has been a subject of Congressional scrutiny in recent months. If, and when, Federal legislation is enacted, further amendments to § 701.35 may be necessary. However, for the present, the Board, by way of this amendment, intends to make clear its position on state regulation of these activities.

The proposed rule expressly provides that FCU's are authorized to determine, free from state regulation, the types of disclosures, fees or charges, time for crediting of deposited funds, and all other matters associated with the establishment, maintenance or closing of a share, share draft, or share certificate account. However, it is not the Board's intent by proposing this rule to otherwise alter or affect the terms, conditions, etc. of any contracts or agreements that presently exist between an FCU and its members.

Since there are states where the state law is presently in effect, and purportedly applicable to FCU's, it is necessary to expedite this rule to alleviate the uncertain position that FCU's in those states find themselves in. The Board has therefore provided for a 30 day rather than a 60 day comment period.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the proposed amended rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions because the rule would increase their management flexibility and reduce their paperwork burdens. A Regulatory Flexibility Analysis is, therefore, not required.

Financial Regulation Simplification Act

Since the proposed rule would reduce burdens and delay would cause unnecessary continuance of such burdens, the NCUA Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable. The NCUA Board has, however, addressed most of these policies, as set forth in the preamble above.

List of Subjects in 12 CFR Part 701

Credit unions, Share, drafts, Share certificates, Funds availability, Service fees.

(12 U.S.C. 1757, 1766(a), and 1789(a)(11)

By the National Credit Union Administration Board on the 15th day of November, 1984.

Rosemary Brady,
Secretary of the Board.

PART 701—[AMENDED]

Accordingly, NCUA proposes to amend it existing rules and regulations as follows:

1. It is proposed that two new paragraphs (c) and (d) be added to § 701.35 to read as follows:

§ 701.35 Share, share draft, and share certificate accounts.

(c) A Federal credit union is empowered to determine the types of disclosures, fees or charges, time for crediting of deposited funds, and all other matters, not inconsistent with this section, affecting the opening, maintaining or closing of a share, share draft or share certificate account. To the extent that state law attempts to regulate such activity, it is preempted. Nothing herein is intended, however, to allow a Federal credit union to unilaterally amend or modify its contract with a member unless it has previously reserved the right to do so.

(d) For purposes of this section "state law" means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[FR Doc. 84-30982 Filed 11-26-84; 8:45 am]
BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Rev. 6, Amdt. 2]

Small Business Investment Companies; Computation of Net Gain in Marketable Securities

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: On September 30, 1983, SBA adopted a regulation (§ 107.303(b)) permitting Small Business Investment Companies to include, in their computation of "Private Capital" for the purpose of determining their respective overline limits, net unrealized gains in the value of marketable portfolio securities. SBIC's and their industry trade association have raised questions concerning the propriety of including "restricted securities" in the computation of net gain in marketable securities. This amendment clarifies the meaning of "marketable securities" by excluding any securities which are restricted in any manner or form from the definition set forth in § 107.303(b)(1). If adopted as a final rule, this amendment will be effective as of the date it was published as a proposed regulation.

DATE: Comments must be received on or before December 27, 1984.

ADDRESS: Written comments, in duplicate, are to be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert G. Lineberry, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, (202) 653–6846.

SUPPLEMENTARY INFORMATION: The purpose of the proposed rule is clarification of the term: Marketable Securities. SBA defines Marketable Securities to mean only securities that are readily saleable at any time, free of any legal restrictions, and that otherwise meet the terms of § 107.303(b)(1) of these regulations. The proposed rule implements section 308(a) of the Small Business Investment Act, which generally forbids SBICs to invest more than 20 percent of their Private Capital in any one Small Concern, without SBA approval. The existing regulation allows SBICs to include in their computation of Private Capital, for purposes of that restriction only, unrealized gain on Marketable Securities.

Section 107.303(a) of these regulations generally forbids an SBIC from investing in any one Small Concern, an amount in excess of twenty percent of its Private Capital; in the case of Licensee's under section 301(d) of the Small Business Investment Act of 1958, this overline limit is thirty percent. Section 107.303(b) permits an SBIC to increase the base from which its overline limit is computed, by including in Private Capital the net amount of unrealized gain on its holdings of Marketable Securities, as defined in § 107.303(b)(1).

An SBIC that uses unrealized gain for the purpose of increasing its overline limit, and that makes financings based on the increased limit, is obliged to respond to a decline in the price of its Marketable Securities, either by increasing the amount of its paid-in capital or by divesting itself of the excess investment. SBA is aware of the difficulties an SBIC might face in obtaining new capital or in divesting itself of the excess investment. It was anticipated that an SBIC would be able to rely on the liquidity of its holdings of Marketable Securities as a method of complying with the regulatory requirement of § 107.303(b)(6). In the context of this requirement, the definition of Marketable Securities could not embrace securities held by an SBIC if the SBIC's right to sell them at any time was limited in any way. Accordingly, the regulation is to be amended to make it clear that securities that cannot themselves be readily sold are not "Marketable Securities," even if other securities of the same class or series are readily saleable.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

For the purposes of Executive Order 12291, effective February 17, 1981, SBA hereby certifies that this rule is not a "major rule" as defined by section 1(b) of the Executive Order. This rule will not have an annual effect on the economy of $100 million or more: nor will it result in a major increase in costs or prices for consumers, individuals industries, Federal, state, or local government agencies or geographic regions, or significant adverse effects on competition, employment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

SBA further certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant impact upon a substantial number of small entities. The proposed rule will directly affect only SBICs, and only a very small percentage of SBICs: Those SBICs that have a net unrealized gain in the value of Marketable Securities and wish to make investments in amounts that otherwise would exceed their overline limits. The effect on Small Concerns will be indirect. This rule will increase the amount of financial assistance that can be extended to Small Concerns by those SBICs directly affected by the rule. The number of such Small Concerns and the amount of increased Financial assistance that may be made available to them is impossible to estimate. However, any economic impact on small entities will not be significant.

Compliance With the Paperwork Reduction Act

The proposed amendment to 13 CFR Part 107 contains no reporting or recordkeeping requirements. Therefore, it is not subject to the review and clearance provisions of the Paperwork Reduction Act of 1980, 5 U.S.C. 3501 *et seq.*

Lists of Subjects in 13 CFR Part 107

Investment companies, loan programs/business, small business.

PART 107—[AMENDED]

Accordingly, Part 107, Chapter I of Title 13, Code of Federal Regulations is proposed to be amended by revising § 107.303(b)(1). As revised § 107.303(b)(1) would read as follows:

§107.303 Overline limitation.

* * * * * * *

(b) * * *

(1) "Marketable securities" means readily salable securities that are traded on a regulated stock exchange, or that are listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or that have, at a minimum, at least three market makers as defined in section 3(a)(38) of the Securities Exchange Act

of 1934 [15 U.S.C. 78c(a)(38)] one of which has offices in at least ten states.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 30, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-31014 Filed 11-26-84; 8:45 am]

BILLING CODE 6025-01-M

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Organization, Procedures and Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: The Federal Trade Commission proposes to amend its Rules of Practice to streamline the briefing of cases involving cross appeals from an administrative law judge's initial decision and to conform its rules regarding the length and format of briefs and service of process more closely to the Federal Rules of Appellate Procedure.

DATE: Written comments must be received on or before January 11, 1985.

ADDRESS: Send comments to the Secretary, Federal Trade Commission, 6th & Pennsylvania Ave., NW., Washington, D.C. 20580. Comments will be available for public inspection in Room 130 at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, (202) 523-3521, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Under Commission Rule § 3.52, when cross appeals from an administrative law judge's decision are filed, each party is permitted to file an appeal brief, an answering brief, and a reply brief. Thus, in a case with one respondent, there may be as many as six briefs filed. Rule 28 of the Federal Rules of Appellate Procedure allows a maximum of four briefs in cases involving two parties—an opening brief filed by appellant, an answering brief filed by appellee, which includes its response to appellant's brief as well as its argument in support of its own cross appeal, a reply filed by appellant and an additional reply by appellee limited to issues raised by its cross appeal.

The Commission believes that the present rule has led to excessive, duplicative briefing and that it would be appropriate to streamline briefing procedures by amending the rule to make it more closely resemble Fed. R. App. P. 28. For purposes of briefing cross appeals, the proposal designates as an appellant any respondent to whom the administrative law judge has directed an order to cease and desist; and it designates as appellant complaint counsel if the initial decision dismisses the complaint as to all respondents.

The Commission also proposes to amend its rules with respect to the form and length of briefs. The amended rule would require that, except for footnotes and quoted material within the text, all briefs submitted in typewritten form must be double-spaced between each line of text. To eliminate disparity between the effective length of a printed brief and that of a typewritten brief, the proposal allows for approximately twenty-five percent more pages for a typewritten brief than for a printed brief. Additional pages are allowed for cross appeals.

Finally, the Commission proposes (1) to amend Rule 4.4 to provide that service by mail is complete on mailing, as provided by Fed. R. App. P. 25, and to provide that, in adjudicative proceedings under Part III of the rules, service be made on both the Secretary of the Commission and the appropriate supervisor of complaint counsel in the case; and (2) to amend Rule 4.3 to provide that when service is made by mail, three days should be added to the time periods prescribed by the rules, as provided by Fed. R. App. P. 26(c).

List of Subjects

16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice.

16 CFR Part 4

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Act.

For these reasons, Part 3, Subpart F, § 3.52, Part 4, §§ 4.3—4.4 of Chapter I of Title 16, *Code of Federal Regulations*, are proposed to be amended as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. Section 3.52 is amended by redesignating paragraphs (f), (g) and (h) as (h), (i) and (j), revising paragraphs (a) through (e), and adding new paragraphs (f) and (g) to read as follows:

§ 3.52 Appeal from initial decision.

(a) *Who may file; notice of intention.* Any party to a proceeding may appeal an initial decision to the Commission by filing a notice of appeal with the Secretary within 10 days after service of the initial decision. The notice shall specify the party or parties against whom the appeal is taken and shall designate the initial decision and order or part thereof appealed from. If a timely notice of appeal is filed by a party, any other party may thereafter file a notice of appeal within 5 days after service of the first notice, or within 10 days after service of the initial decision, whichever period expires last.

(b) *Appeal brief.* The appeal shall be in the form of a brief, filed within 30 days after service of the initial decision, and shall contain, in the order indicated, the following:

(1) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A concise statement of the case;

(3) A specification of the questions intended to be urged;

(4) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(5) A proposed form of order for the Commission's consideration instead of the order contained in the initial decision.

The brief shall not, without leave of the Commission, exceed 60 pages, if printed, or 75 pages, if typewritten, exclusive of pages containing the table of contents, tables of authorities and any addendum containing statutes, rules and regulations.

(c) *Answering brief.* Within 30 days after service of the appeal brief, the appellee may file an answering brief, which shall contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto, as well as arguments in response to the appellant's appeal brief. However, if the appellee is also cross-appealing, its answering brief shall also contain its arguments as to any issues the party is raising on cross appeal, including the points of fact and law relied upon in support of its position on each question, with specific page references to the record and legal or other material on which the party relies in support of its cross appeal, and a proposed form of order for the Commission's consideration instead of the order contained in the initial decision. If the appellee does not cross-appeal, its answering brief shall not, without leave of the Commission, exceed 60 pages, if printed, or 75 pages, if typewritten. If the appellee cross-appeals, its brief in answer and on cross appeal shall not, without leave of the Commission, exceed 105 pages, if printed, or 130 pages, if typewritten. The page limitations of this paragraph are exclusive of pages containing the table of contents, tables of authorities and any addendum containing statutes, rules and regulations.

(d) *Reply brief.* Within 7 days after service of the appellee's answering brief, the appellant may file a reply brief, which shall be limited to rebuttal of matters in the answering brief and shall not, without leave of the Commission, exceed 60 pages, if printed, or 75 pages, if typewritten. However, if the appellee has cross-appealed, any appellant who is the subject of the cross appeal may, within 30 days after service of such appellee's brief, file a reply brief, which shall be limited to rebuttal of matters in the appellee's brief and shall not, without leave of the Commission, exceed 75 pages, if printed, or 95 pages, if typewritten. If the appellee has cross-appealed, any party who is the subject of the cross appeal, other than an appellant may, within 30 days after service of the appellee's brief, file a reply brief which shall be limited to rebuttal of matters raised by the appellee's cross appeal with respect to the party and shall not, without leave of the Commission, exceed 60 pages, if printed, or 75 pages, if typewritten. The appellee who has cross-appealed may, within 7 days after service of a reply to its cross appeal, file an additional brief, which shall be limited to rebuttal of matters in the reply to its cross appeal and shall not, without leave of the Commission, exceed 30 pages, if printed, or 40 pages, if typewritten. No further briefs may be filed except by leave of the Commission.

(e) *Form of briefs.* Briefs may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs produced by the standard typographic process shall be bound in volumes having pages 6⅛ by 9¼ inches and type matter 4⅛ by 7⅛ inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double-spacing between each line of text. Footnotes and quoted material within the text may be single-spaced.

(f) *Signature.* (1) The original of each brief filed shall have a hand-signed signature by an attorney of record for the party, or in the case of parties not represented by counsel, by the party itself, or by a partner if a partnership, or by an officer of the party if it is a corporation or an unincorporated association.

(2) Signing a brief constitutes a representation by the signer that he or she has read it, that to the best of his or her knowledge, information, and belief, the statements made in it are true, and that it is not interposed for delay. If a brief is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the brief had not been filed.

(g) *Designation of appellant in cases involving cross appeals.* In a case involving an appeal by complaint counsel and one or more respondents, any respondent who has filed a timely notice of appeal and as to whom the administrative law judge has issued an order to cease and desist shall be deemed an appellant for purposes of paragraphs (b), (c), and (d) of this section. In a case in which the administrative law judge has dismissed the complaint as to all respondents, complaint counsel shall be deemed the appellant for purposes of paragraphs (b), (c), and (d) of this section.

* * * * *

PART 4—RULES OF PRACTICE MISCELLANEOUS RULES

By revising § 4.2 (d)(2) to read as follows:

§ 4.2 Requirements as to form, and filing of documents other than correspondence.

* * * * *

(d) * * *

(2) Briefs filed on an appeal from an initial decision shall be in the form prescribed by § 3.52(e).

By adding § 4.3 paragraph (c) to read as follows:

§ 4.3 Time.

* * * * *

(c) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him or her and the paper is served by mail, 3 days shall be added to the prescribed period.

By revising paragraphs (a)(3), (b) and (c) of § 4.4 to read as follows:

§ 4.4 Service.

(a) *By the Commission.*

* * * * *

(3) All other documents may be served by any method specified in paragraph (a)(1) of this section or by first-class mail and shall be deemed served on the day of personal delivery or the day of mailing.

* * * * *

(b) *By other parties.* Service of documents by parties other than the Commission shall be by delivering copies thereof as follows: Upon the Commission, by personal delivery or delivery by first-class mail to the Office of the Secretary of the Commission and, in adjudicative proceedings under Part III of the Commission's Rules of Practice, to the Assistant Director in the Bureau of Competition, the Associate Director in the Bureau of Consumer Protection, or the Director of the Regional Office of complaint counsel. Upon a party other than the Commission or Commission counsel, service shall be by personal delivery or delivery by first-class mail. If the party is an individual or partnership, delivery shall be to such individual or a member of the partnership, if a corporation or unincorporated association, to an officer or agent authorized to accept service of process therefor. Personal service includes handing the document to be served to the individual, partner, officer, or agent; leaving it at his or her office with a person in charge thereof, or, if there is no one in charge or if the office is closed or if the party has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Documents shall be deemed served on the day personal service or the day of mailing.

(c) *Proof of service.* Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed.

By direction of the Commission, date November 15, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-30098 Filed 11-26-84; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21495; File No. S7-36-84]

Exemption of Certain Direct Participation Program Interests From Sections 7(c) and 11(d)(1)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is soliciting comment on a rule which would exempt the securities of certain direct participation programs from those provisions of sections 7(c) and 11(d)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), which currently prohibit broker-dealers from arranging extensions of credit to investors to purchase securities. The proposed exemptive rule would allow broker-dealers, subject to certain conditions, to participate in public offerings of securities of direct participation programs that provide for mandatory installment payments. Currently, sections 7(c) and 11(d)(1) prohibit the public sale of securities that provide for mandatory installment payments by investors. The Commission does not believe that permitting payments on an installment basis in the public sale of direct participation programs presents the kind of abuse that sections 7(c) and 11(d)(1) were designed to prohibit, provided that certain conditions are met.

DATE: Comments must be received on or before January 22, 1985.

ADDRESSES: Interested persons should submit three copies of their comments to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Kathryn V. Natale, Office of Chief Counsel, Division of Market Regulation, (202) 272-2848.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is soliciting comment on proposed Rule 3a12-9 which would, pursuant to section 3(a)(12) of the Exchange Act, deem interests in certain direct participation programs [1] to be exempted securities for purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Exchange Act.[2] If adopted, the new rule would permit broker-dealers to participate in a public offering of securities of direct participation programs that provides for mandatory payments on an installment basis, provided that certain conditions are met. Currently, Regulation T, promulgated by the Board of Governors of the Federal Reserve System ("Board") under section 7 of the Exchange Act, and section 11(d)(1) of the Exchange Act are interpreted to prohibit broker-dealers from participating in public offerings of interests in direct participation programs with mandatory installment payment features.[3] An effect of this prohibition has been to encourage the use of private placements for sales of interests in direct participation programs with mandatory installment payment features or encourage the use of voluntary installment features in public offerings. Rule 3a12-9, if adopted, would not require that direct participation program securities be sold on a mandatory installment basis. It would, however, provide an alternative to sales that require the investor immediately to pay the entire purchase price. The rule would permit the timing and amount of payments to be coordinated with the program's capital needs. The rule in no way affects the treatment of installment payments under the Securities Act of 1933.[4]

The Commission is proposing Rule 3a12-9 in part as a response to a recommendation made by the National Association of Securities Dealers, Inc., ("NASD") to provide relief from the credit restrictions in this area.[5] The NASD argues that permitting broker-dealers to participate in public offerings of direct participation programs with installment payment features will encourage federal registration of these offerings and thus provide additional investor protection. The NASD also argues that the concerns that led the Congress to adopt section 7(c) do not arise in the context of installment sales of direct participation programs. The NASD points out that the regulatory oversight of direct participation programs by the NASD and the states has been substantially increased over the past decade, and that the federal tax laws now address certain abuses associated with the sale of some direct participation programs.[6] The NASD's regulations address investor suitability, due diligence by members, the accuracy and adequacy of disclosure and the amount and form of underwriting compensation. Separate state regulatory guidelines for the registration of direct participation programs have been adopted by the North American Securities Administrators Association, Inc. ("NASAA"), a voluntary organization comprised of state securities regulatory agencies. The guidelines, among other things, establish standards regulating sponsors and impose investor suitability requirements. While the NASAA continuously re-evaluates and updates its registration guidelines, it should be noted that its guidelines currently prohibit assessments, installment payments or other deferred payments for non-specified property programs.

For a number of reasons that are fully discussed in its letter, the NASD believes that it would be appropriate to exempt, without conditions, broker-dealers that participate in public offerings of direct participation program interests with mandatory installment payment features from the credit restrictions. Alternatively, the NASD suggested that certain conditions could be imposed on such offerings. While the Commission believes that some or all of the NASD's suggested conditions may be necessary to assure investor protection, and, therefore, has included certain conditions in the rule, the Commission also solicits comment on whether it would be appropriate to entirely exempt direct participation program interests from the credit restrictions when sold on an installment basis.

Proposed Rule 3a12-9 would apply to interests in direct participation programs that, pursuant to a bona fide business plan which is fully described in the registration statement filed under the Securites Act of 1933, do not require the full purchase price from the investor at the outset of the operation.[7] An example of such a program would be an oil and gas program that requires one installment to cover drilling and another to facilitate the development of productive wells. The term "business development plan" is defined in paragraph (b)(2) of the rule to mean a specific plan of the program's anticipated economic development and the amounts of future capital contributions to be required. Disclosure of the bona fide business plan would provide investors with material information concerning the program and alert them to their responsibility to make deferred payments. The rule would also require that the installment feature of the plan bear a direct relationship to the cash needs and program objectives described in the business plan. The Commission solicits comment on the "bona fide business plan" limitation. In particular, commentors are requested to address whether the definition of the term "bona fide business plan" should be expanded to specifiy the type of information that must be provided. Finally, the Commission requests comment regarding the ability to accurately estimate, over a period, capital needs for all types of unspecified property programs.

As proposed, the rule also would require that the issuer register the securities under section 12(g) of the Exchange Act and that the securities remain so registered until all of the mandatory payments have been made. A reporting requirement was suggested in the NASD proposal.

The Commission also solicits comment on whether additional limitations should be included in the rule to address potential leverage and suitability concerns. The NASD's proposal suggested that the following additional conditions might be appropriate: (1) That not less than 35% of the purchase price of the direct participation program be paid within a twelve-month period from the date the investor is admitted as a limited partner; and (2) that the total purchase price of the program interest be discharged in a period of three years from the date the investor is admitted as a limited partner in a non-specified program or five years in the case of a specified property program.[8] The Commission solicits comment on whether the rule should distinguish between specified and non-specified programs in areas other than the maximum amount of time in which the full purchase price must be paid as suggested by the NASD, and whether it would be appropriate to limit application of the rule to specified programs. The Commission also seeks comment on whether other limitations would be appropriate such as a minimum investment size, investor accreditation standards and minimum down payment.[9]

In its recommendation, the NASD asked for clarification on the applicability of section 11(d)(1) of the Exchange Act to intrastate offerings. The Commission currently interprets section 11(d)(1) to apply to intrastate offerings. There is nothing in the legislative history of section 11(d)(1) to suggest that the rule should not apply to intrastate offerings. In addition, because an intrastate offering generally constitutes a distribution of a new issue of securities within the meaning of section 11(d)(1), a person who transacts business in securities both as a broker and a dealer would be subject to its prohibitions. The Commission solicits comment on whether it would be appropriate to provide an express exemption from the arranging provisions of Regulation T and section 11(d)(1) for intrastate offerings.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed Rule 3a12-9. The Analysis notes that the objective of deeming interests in certain direct participation programs to be exempted securities for purposes of the arranging provisions of sections 7(c) and 11(d)(1) is to enhance investor protection by encouraging federal registration of offerings in direct participation program interests with installment features. The Analysis states that the proposed rule would require that the issuer register the securities under section 12(g) of the Exchange Act and that the securities remain so registered until the total purchase price of the program security has been paid. The Analysis also states that this proposal is being made with the concurrence of the staff of the Board.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Kathryn V. Natale, Esq., Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2848.

---

[1] The term "direct participation program" refers to an investment medium that provides direct flow-through tax consequences to its investors. These programs take the form of limited partnerships and include, but are not limited to, oil and gas programs, real estate programs, agricultural programs and cattle programs.

[2] Section 3(a)(12) defines "exempted securities" to include such other securities: As the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any [one] or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

[3] *See, e.g.*, Securities Credit Transactions Handbook, 5-606.31 (Staff Op. September 30, 1983) (Installment payments are not permissible under Regulation T where the investor will incur a "substantial economic penalty" for non-payment of the installments). In March of 1972, the Board concluded that the sale by a broker-dealer of a publicly offered tax shelter program with installment features constitutes an "arranging" for the extension of credit in violation of Regulation T. 12 CFR 220.124. In July of 1972, the Board staff indicated that the March interpretation related only to publicly offered programs which were not exempt from registration with the SEC. Securities Credit Transactions Handbook section 5-551. In 1975, the Board amended Regulation T, among other things, to except from the arranging prohibition those private offerings exempt from SEC registration pursuant to section 4(2) of the Securities Act of 1933 ("1933 Act"). 12 CFR 220.7(a). Because the prohibitions of section 11(d)(1) of the Exchange Act would have rendered an exemption for intrastate offerings ineffective, the staffs of the Board and the Commission concluded that an express exemption from Regulation T for intrastate offerings was inappropriate.

[4] Since direct participation interests often are offered on an "all or none" or "part or none" basis, questions arise whether such interests can be considered sold for purposes of Rule 10b-9 under the Exchange Act when the investor does not make any, or makes a minimal, down payment. Rule 10b-9 imposes disclosure requirements on certain "all or none" or "part or none" offerings. The staff of the Commission has permitted interests in direct participation programs with installment payment features to be considered sold for Rule 10b-9 purposes in cases where the subscriber makes a specified initial contribution; the balance of the purchase price is evidenced by a recourse note; and the offering materials adequately disclose the effects of the installment payment feature on the program's proceeds and operations. Under Rule 15c2-4, which addresses the handling of investor funds in contingent offerings, investors' funds may not be forwarded to the partnership until the required minimum number of securities has been sold (as evidenced by the requisite initial cash contributions and recourse notes) by the specified date. The Commission therefore solicits comment on the application of Rules 10b-9 and 15c2-4 to "all or none" or "part or none" offerings with installment payment features that would be permitted by proposed Rule 3a12-9.

[5] Letter dated April 26, 1983 to Robert S. Plotkin, Assistant Director of the Board, from Frank J. Wilson, Executive Vice President, NASD, which is publicly available in File No. S7-36-84.

[6] *See, e.g.*, the Economic Recovery Tax Act of 1981 and the Tax Equity and Fiscal Responsibility Act of 1982. Legislative efforts in this area are ongoing. *See, e.g.*, New York Times, June. 5, 1984, Section D, at 1.

[7] The term "direct participation program" is defined to mean a program financed through the sale of securities other than margin securities (as defined in 12 CFR 220.2(o)) that provides direct flow-through tax consequences to investors. The exclusion of margin securities takes into account the fact that interests in some direct participation programs are listed and traded on a national securities exchange and, therefore, are margin securities. The Commission believes that it would not be appropriate to permit securities that may already be sold on credit to be sold on an installment basis.

[8] Under the NASD proposal, a specified property program would be defined as a program in which 80% of the amount of money available for investment is allocated to specific properties. A non-specified program would be one in which less than 80% is so allocated.

[9] It would appear that, absent specific exemptive relief, sales of program securities in compliance with Rule 3a12-9, if adopted, would be subject to the disclosure requirements of Rule 15c2-5 under the Act. 17 CFR 240.15c2-5. Disclosure and Other Requirements when Extending Credit in Certain Transactions. Paragraph (b) of that rule exempts any credit extended or loan arranged subject to and made in compliance with Regulation T. If program securities are exempt from Regulation T when sold on an installment basis by operation of Rule 3a12-9, it would seem that the exemption in Rule 15c2-5 is unavailable. The Commission believes that the information required to be disclosed by Rule 15c2-5 would generally be disclosed in the prospectus in any event so that compliance with the Rule would not be burdensome. Nevertheless, the Commission solicits comment on whether, if it determines to adopt Rule 3a12-9, it should amend Rule 15c2-5 to provide an express exemption for credit extended or loans arranged in compliance with Rule 3a12-9.

Statutory Basis

Proposed Rule 3a12–9, would be adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(a)(12), 7(c), and 11(d)(1) and 23 [15 U.S.C. 78c(a)(12), 78g, 78k, and 78w].

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment

PART 240—AMENDED

On the basis of the above discussion and analysis, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adding § 240.3a12–9 as follows:

§ 240.3a12–9 Exemption of certain direct participation program interests from the arranging provisions of sections 7(c) and 11(d)(1).

(a) Direct particpation program securities sold on a basis whereby the purchase price is paid to the issuer in a series of mandatory installments shall be deemed to be exempt securities for the purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Act provided that:

(1) The securities are registered under the Securities Act of 1933;

(2) The issuer registers the securities under section 12(g) of the Exchange Act and the securities remain registered under that section until the total purchase price of the security is paid; and

(3) The mandatory installment payments bear a direct relationship to the cash needs and program objectives described in a business development plan disclosed in the registration statement filed with the Commission pursuant to the Securities Act of 1933.

(b) For purposes of this rule:

(1) "Direct participation program" shalll mean a program financed through the sale of interests in securities other than margin securities (as defined in 12 CFR 220.2(o)) that provides direct flow-through tax consequences to its investors and created pursuant to a contractual agreement between and among investors as in a limited partnership: *Provided, however,* That the term "direct participation program" does not include real estate investment trusts, Subchapter S corporate offerings, tax qualified pension and profit sharing plans pursuant to sections 401 and 403(a) of the Internal Revenue Code ("Code"), tax shelter annuities pursuant to section 403(b) of the Code, individual retirement plans under section 408 of the Code, and any company, including separate accounts, registered pursuant to the Investment Company Act of 1940.

(2) "Business development plan" shall mean a specific plan of the program's anticipated economic development, and the amounts of future capital contributions to be required, in the form of deferred payments, at specified times or upon the occurrence of certain events.

By the Commission.

November 16, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30879 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

---

17 CFR Part 270

[Release No. IC–14244; File No. S7–39–84]

Pricing of Redeemable Securities for Distribution, Redemption, and Repurchase

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment a rule and rule amendment under the Investment Company Act of 1940 relating to the pricing of redeemable securities by investment companies. Specifically, the proposals would limit the days on which pricing might be required to customary United States business days, and would provide that an investment company will not have suspended the right of redemption if it prices a redemption request by computing net asset value pursuant to the amended rule. The proposals, if adopted, would simplify and clarify pricing requirements primarily for funds with portfolio securities trading on foreign markets.

DATE: Comments must be received by January 28, 1985.

ADDRESS: Three copies of all comments should be submitted to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–39–84. All comments received will be available for public inspection in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jay Gould, Esq., Office of Disclosure Policy and Adviser Regulation, (202) 272–2107, 450 Fifth Street, NW., Room 5130, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a proposed amendment to rule 22c–1(b) [17 CFR 270.22c–1] and a new rule 22e–2 [17 CFR 270.22e–2] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*]. The amendment to rule 22c–1(b) would require investment companies subject to its provisions to compute the current net asset value of their redeemable securities at least every weekday (Monday through Friday) except for: (i) Days which are customary United States business holidays that are stated in the prospectus, (ii) days on which no security is tendered for redemption and no customer order is received, or (iii) days when the degree of trading in the investment company's portfolio securities is such that the current net asset value of the investment company's redeemable securities will not be affected by changes in the value of the portfolio securities. New rule 22e–2 would simply apply the pricing provisions of amended rule 22c–1 to the section 22(e) requirement regarding the honoring of redemption requests. Proposed rule 22e–2 would make it clear that an investment company would not be required to price redemption requests on days on which pricing would not be required under rule 22c–1.

Background

Rule 22c–1(b), as amended in 1979, requires investment companies issuing redeemable securities to compute the net asset value of shares (i) not less frequently than once daily on each day (other than days when no order to purchase or sell is received and no tender for redemption is made) in which there is a sufficient degree of trading in the investment company's portfolio securities that the current net asset value of the fund's redeemable securities might be materially affected by changes in the value of the portfolio securities, and (ii) at such specific time during the day as determined by a majority of the board of directors of the investment company no less frequently than annually.[1]

Rule 22c–1 was originally adopted in 1968 to require forward pricing of investment company redeemable securities.[2] The rule requires that an open-end investment company, for purposes of sales, redemptions and repurchases of its redeemable securities, give investor orders the next computed price of the net asset value after receipt of the order. Prior to adoption of rule 22c–1, investor orders to purchase and redeem could be executed at a price

[1] 17 CFR 270.22c–1(b).

[2] ICA Release No. 5519 (October 16, 1968); 33 FR 16331 (November 7, 1968).

computed before receipt of the order, allowing investors to lock-in a low price in a rising market and a higher price in a falling market. The forward pricing provision of rule 22c–1 was designed to eliminate these trading practices and the dilution to fund shareholders which occurred as a result of backward pricing.

Under the rule as originally adopted, current net asset value was to be computed at least once every day at the close of the New York Stock Exchange. In 1979, the rule was amended to unlink the pricing of investment company shares from New York Stock Exchange trading days and eliminate the requirement that pricing be done at a specific time.[3] As amended the rule gave the boards of directors of investment companies responsibility for establishing the time for pricing, and permitted an investment company to compute current net asset value at a time which is most appropriate for its particular investment portfolio.[4]

In amending the rule in 1979, the Commission intended that investors receive a fair and accurate valuation of their securities so that they could take appropriate trading action on every day in which there is a "significant degree of trading" in the portfolio securities. As the Commission has interpreted the amended rule, an investment company is not required to keep its administrative offices open on Saturdays, Sundays, and holidays but it must accept investor orders every day mail is delivered and price its redeemable securities as of the day such orders are received.

Proposed Amendment to Rule 22c–1(b)

The proposed amendment to 22c–1(b) would establish customary United States business days as the days on which an investment company, at a minimum, must price its redeemable securities provided customer orders are received [5] and there is significant trading in the fund's portfolio securities. Specifically, the amendment would permit a fund to limit its business days to Monday through Friday, exclusive of customary United States business holidays that are disclosed in the prospectus.

As discussed above, currently, an investment company whose portfolio securities trade on Saturday, for example, must segregate mail received on Saturday from other mail and determine whether the trading in the fund's portfolio securities on Saturday might have materially affected the fund's net asset value. If so, Saturday net asset value must be computed and Saturday orders must be processed at that price. The same procedures must be followed where trading in the fund's portfolio securities occurs on a business holiday in the United States on which mail is delivered.

Members of the investment company industry have argued that this requirement imposes an administrative and financial burden on investment companies and their transfer agents or pricing services which is not justified by the limited benefits derived by investors. The rule permits investment companies to keep their admimistrative offices closed on Saturday and, accordingly, does not require that investment companies receive wire or telephone transactions on Saturday. Even if funds were open on Saturday, the Federal Reserve wire transfer system is closed on Saturday as are transfer agents, pricing services and other investment company support organizations. In addition, investor orders received in Saturday's mail generally do not reflect an attempt to act on Saturday's trading activity.

Because the arguments made by investment companies appear to have merit, the Commission has decided to propose an amendment to Rule 22c–1. The proposed amendment would permit an investment company to give investor orders received in Saturday's mail the next computed price on Monday. This arrangement would give all investors equal opportunity to place orders with the fund, while permitting funds to limit pricing to customary business days. The amendment also would eliminate the need to price on holidays on which mail is delivered.

An investment company's pricing practices must be disclosed in its prospectus. Because the United States business holidays observed by funds may vary somewhat, the rule would require specific disclosure in the prospectus of the holidays on which the fund will not price its redeemable securities.[6] Also, to the extent that a fund's pricing practices may limit investor access to the fund on days when significant trading in the fund's portfolio securities may occur, the Commission would expect the fund to explain the consequences of its pricing practices in it prospectus.

It should be noted that, although the rule amendment would permit funds to eliminate segregated pricing of orders received on Saturdays and holidays, it would not require them to do so. Also, if the rule amendment is adopted, the Commission will re-examine it from time to time if the increasingly international character of the securities markets results in longer trading days, additional trading days in United States markets, or other changes that may affect the operation of the rule.

Proposed Rule 22e–2

Section 22(e) of the Investment Company Act provides that an investment company may not suspend the right of redemption, or postpone payment upon redemption for more than seven calendar days after tender of redemption, except in limited circumstances. These circumstances are when the New York Stock Exchange is closed other than on normal closing days or when trading is restricted, in emergencies where it is not reasonably practicable to calculate net asset value, and where ordered by the Commission for the protection of shareholders. The staff has interpreted section 22(e) generally to require investment companies to honor a redemption request received on any day the New York Stock Exchange is open.

To clarify the application of the general pricing requirements of rule 22c–1 to the pricing of redemption requests pursuant to section 22(e), proposed rule 22e–2 states that a fund does not violate section 22(e) if it honors redemption requests by pricing them in accordance with the pricing requirements of rule 22c–1.[7] Thus, an investment company

[3] ICA Release No. 10827 (August 13, 1979), 44 FR 48659 [August 20, 1979].

[4] For example, because substantially all money market trading occurs in the morning, most money market funds compute net asset value at noon.

[5] Investment companies will be expected to comply with the long-standing staff position with regard to when an order to purchase or redeem is "received." Arguments have sometimes been made that where the fund itself is closed for business, an order has not been "received" even though the postal service has delivered the order to the fund's place of business or transfer agent. The staff has historically not accepted that argument, but has taken the position that if a fund is unable, due to emergency conditions such as snowstorms or power failures, to complete the mechanical process of pricing on a day on which it would normally be required to do so under Rule 22c–1, the price for that day may be calculated subsequently and applied to sales, redemptions and repurchases that were in fact received in the mail or otherwise on that same day. Similarly, if a fund decided to close its business operations for a local holiday or for other comparable reasons, the fund would be expected to later calculate net asset value for that day and apply that price to orders that were received that day.

[6] Open-end management companies would disclose their pricing practices and holiday closings in Part A of Form N1–A.

[7] A fund whose portfolio securities trade on several foreign exchanges or on one or more foreign exchanges in addition to a domestic market may continue to rely on the Division's no-action position

Continued

can postpone calculating a price for redemption purposes on any day on which pricing is not required under rule 22c–1. This means, for example, that an investment company would not violate section 22(e) of the Act if it did not calculate a price for redemption purposes on a day where the primary trading market for the investment company's portfolio securities was closed, and the degree of trading in the investment company's other portfolio securities was not significant enough to trigger the pricing requirement of rule 22c–1. It should be noted, however, that an investment company would violate section 22(e) (and section 22(c)) and rule 22c–1 of the Act if it failed to price a redemption request with respect to a day where the degree of trading in its portfolio securities was such that pricing under rule 22c–1 would be required even though there was no trading in a substantial portion of the investment company's portfolio securities because the foreign exchange on which those securities trade was closed. New Rule 22e–2 codifies a staff position maintaining the principle of forward pricing established by rule 22c–1.[6]

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposals

Accordingly, Part 270 of Chapter II, Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. Paragraph (b)(1) of § 270.22c–1 is revised to read as follows:

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

* * * * *

(b) For the purposes of this section: (1) The current net asset value of any such security shall be computed no less frequently than once daily, Monday through Friday, at such specific time during the day that a majority of the board of directors of the investment company determines no less frequently than annually. However, the current net asset value of such securities need not be determined on (i) days in which the degree of trading in the investment company's portfolio securities is such that the current net asset value of the investment company's redeemable securities will not be materially affected by changes in the value of the portfolio securities, (ii) days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company, or (iii) customary United States business holiday as specifically disclosed in the prospectus; * * *

* * * * *

2. By adding § 270.22e–2 to read as follows:

§ 270.22e–2 Pricing of redemption requests when foreign exchange on which investment company trades is closed but the New York Stock Exchange is open.

An investment company shall not be deemed to have suspended the right of redemption if it honors a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of rule 22c–1. (§270.22c–1)

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendment to rule 22c–1 and proposed rule 22e–2. The analysis notes that the proposed amendment and proposed rule would have the principle effect of allowing investment companies whose portfolio securities trade primarily on foreign exchanges to maintain customary United States business days while preserving forward pricing of investor orders. The objective of the proposed amendment and proposed rule is to reduce operating costs to investment companies while still providing investors with access to the fund and forward pricing for all transactions.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jay Gould, Esq., Office of Disclosure Policy and Adviser Regulation, Securities and Exchange Commission (202) 272–2107, 450 Fifth Street, NW., Washington, D.C. 20549.

Statutory Authority

The Commission is proposing the amendments to rule 22c–1 pursuant to sections 22(c) (15 U.S.C. 80a–22(c)) and section 38(a) (15 U.S.C. 80a–37(a)) of the Investment Company Act of 1940.

The Commission is proposing rule 22e–2 pursuant to sections 6(c) (15 U.S.C. 80a–6(c)), 22(e) (15 U.S.C. 80a–22(e)) and 38(a) (15 U.S.C. 80a–37(a)) of the Investment Company Act of 1940.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

November 21, 1984.

[FR Doc. 84–31022 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

in *Putnam Growth Fund and Putnam International Equities Fund, Inc.*, (pub. avail. February 23, 1981) with regard to the limited circumstances under which a fund may use a previous closing price to calculate current net asset value. Under *Putnam*, if the foreign exchange on which a portfolio security is principally traded is closed at the time a fund computes its current net asset value, then the fund may use the previous closing price on the foreign exchange to calculate the value of the security, except when an event has occured since the time the value was established that is likely to have resulted in a change in such value. If an event does occur which will affect the value of portfolio securities after the market has closed, the fund must, to the best of its ability, determine the fair value of the securities, as of the time pricing is done under Rule 22c–1, by using appropriate indicia of value which, in certain cases, may include the opening price at which trading in the securities next begins.

[6] Nomura Capital Fund of Japan, Inc., Nomura Index Fund of Japan, Inc. (pub. avail. January 20, 1984).

DEPARTMENT OF TRANSPORTATION
Coast Guard
33 CFR Part 165
[CGD 12 84–05]

Regulated Navigation Area; San Francisco Bay and its Tributaries inland to and including the Ports of Sacramento, CA and Stockton, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a Regulated Navigation Area to include the waters of San Francisco Bay inland to and including the port areas of Sacramento, CA and Stockton, CA. The purpose of this regulation would be to prescribe certain operational guidelines and procedures to be observed by vessels transiting this area carrying designated quantities of Certain Dangerous Cargoes. These safety procedures would be established to minimize the potential for a vessel casualty which could result in an accidental release or detonation of these cargoes.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Comments should be mailed or hand delivered to Marine Safety Division, Twelfth Coast Guard District, Government Island, Building 54–B, Room 250, Alameda, CA 94501. The comments will be available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William F. Walker, Marine Safety Division, Twelfth Coast Guard District, Government Island, Alameda, CA 94501 (415) 437–3465.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD12 84–05] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The proposed rules may be revised in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LCDR William F. Walker, project officer, Twelfth Coast Guard District Marine Safety Division, and CDR William Bissell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of the Proposed Rule

Certain commodities have been identified that would create an unacceptable public safety hazard if released. Carriage of these cargoes is regulated by the Coast Guard. The Commander, Twelfth Coast Guard District is responsible for implementing these regulations, and under 33 CFR 165.11 has the authority to regulate vessel traffic within the Twelfth Coast Guard District. The Captain of the Port San Francisco Bay (COTP) enforces these regulations for the San Francisco Bay Area, including its inland tributaries.

The presence of a vessel transporting Certain Dangerous Cargoes within the San Francisco Bay Area with its dense population, valuable industrial complex and fragile ecological system presents a potential hazard because of the possibility of a collision, grounding or other accidental damage. The consequences of such an event, especially in the narrower reaches of the bay or near one of the bridges, are considered serious enough to justify special treatment for these vessels to reduce the potential of a hazardous occurrence.

The substance of these regulations is derived from Captain of the Port San Francisco Bay Public Notice 2–82 issued 13 December 1982. Certain provisions of that notice relating to restricting movements of vessels carrying explosives to daylight hours and restricting movements of vessels during periods of reduced visibility and at night have been relaxed in these rules. Certain other provisions relating to internal Coast Guard policy considerations such as the escort of affected vessels and provisions for communications with the escorted vessel have been omitted and will be the subject of a revised COTP Public Notice.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Its economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. For the past year, these restrictions have been in force via COTP Public Notice 2–82 issued 13 December 1982 without negative comments having been received. Additionally, these rules relax two restrictions contained in the COTP Public Notice. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, by adding a new § 165.1201 to read as follows:

§ 165.1201 San Francisco Bay and tributaries—regulated navigation area.

(a) The following is a Regulated Navigation Area—The navigable waters of San Francisco Bay from the line of demarcation, as described in 33 CFR 80.1250, inland to and including the port areas of Stockton, CA and Sacramento, CA and all connecting rivers and tributaries.

(b) *Definitions.* As used in this section:

(1) "Carried in bulk" means a commodity that is loaded or carried on board a vessel without containers or labels and received or handled without mark or count.

(2) "Certain Dangerous Cargoes" means those cargoes described in 33 CFR 160.203.

(3) "Designated Quantities" of Certain Dangerous Cargoes means:

(i) More than 100 short tons (NEC) of class A explosives aboard self-propelled vessels; or

(ii) More than 5 short tons (NEC) of class A explosives aboard non self-propelled vessels; or

(iii) More than 2000 short tons of oxidizing materials or blasting agents; or

(iv) Any amount of other Certain Dangerous Cargoes carried in bulk.

(4) "COTP" means Captain of the Port, San Francisco Bay.

(5) "Net Explosive Content (NEC)" means 40 percent of the gross weight of an explosive load unless otherwise demonstrated.

(c) *Waivers.* (1) The COTP may, upon written request, except as allowed in paragraph (3) of this paragraph, waive any regulation in this section if it is found that the proposed operation can be conducted safely under the terms of that waiver.

(2) Each written request for a waiver must state the need for the waiver and describe the proposed operation.

(3) Under unusual circumstances due to time considerations, a person may orally request a waiver from the COTP provided that a written request is submitted within five working days after the oral request.

(4) The COTP may, at any time, terminate any waiver issued under this subsection by providing written notice to the affected parties.

(d) *Regulations.* (1) The owner, master, agent or person in charge of a vessel entering or operating within this Regulated Navigation Area carrying designated quantities of Certain Dangerous Cargoes shall:

(i) Provide the COTP with 24 hours advance notice of any vessel movement.

(ii) Proceed only when visibility exceeds one nautical mile. Upon encountering reduced visibility, all vessels shall proceed to a safe anchorage as directed by the COTP.

(iii) Adhere to the Vessel Traffic Separation Scheme except as permitted by COTP or Vessel Traffic Service San Francisco.

(iv) Restrict speed of advance through the water to 12 knots or less. Vessel Traffic Service may authorize higher speeds when necessary to avoid unfavorable passing or meeting situations.

Authority: (33 U.S.C. 1223 and 1231; 49 CFR 1.46; and 33 CFR 1.05–1(g)(4)).

Dated: November 21, 1984.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.

[FR Doc. 84-31005 Filed 11-26-84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD12 84-06]

Regulated Navigation Area; Humboldt Bay, CA and Approach Channel

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a Regulated Navigation Area to include the waters of Humboldt Bay, CA and its approach channel. The purpose of this regulation would be to prescribe certain operational guidelines and procedures to be observed by vessels transiting this area carrying dangerous cargoes. These safety procedures would be established to minimize the potential for a vessel casualty which could result in an accidental release of these potentially hazardous cargoes.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Comments should be mailed or hand delivered to Marine Safety Division, Twelfth Coast Guard District, Building 54–B, Room 250, Alameda, CA. 94501. The comments will be available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William F. Walker, Marine Safety Division, Twelfth Coast Guard District, Government Island, Alameda, CA 94501, (415) 437–3465.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD12 84–06] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The proposed rules may be revised in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LCDR William F. Walker, project officer, Twelfth Coast Guard District Marine Safety Division, and CDR William Bissell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of the Proposed Rule

Certain commodities have been identified that would create an unacceptable public safety hazard if released. Carriage of these cargoes is regulated by the Coast Guard. The Commander, Twelfth Coast Guard District is responsible for implementing these regulations and under 33 CFR 165.11 has the authority to regulate vessel traffic within the Twelfth Coast Guard District. The Captain of the Port San Francisco Bay (COTP) enforces these regulations within Humboldt Bay and its approach channel.

Of major concern in Humboldt Bay is the transit of vessels towing barges across the often hazardous Humboldt Bay Bar and the approach channel. This area of concern becomes progressively more acute in the case of barges carrying oil (and its derivatives), or Certain Dangerous Cargoes in bulk, which include chlorine. A serious marine casualty involving one of these barges could result in the accidental release of these cargoes which could pose a significant threat to the environment and the public in the surrounding area. These regulations are intended to prescribe operational guidelines and procedures to be followed by the owners, masters, agents, or persons in charge of such towing vessels to minimize the potential for such a marine casualty.

The substance of these regulations is derived from Captain of the Port San Francisco Bay Public Notice 3–82 issued 15 December 1982. The provision of that notice requiring two additional assist tugs has been relaxed. Other provisions dealing with internal Coast Guard policy matters such as weather evaluation criteria, operations of Coast Guard escort craft, and communications procedures have been omitted from the rules and will be the subject of a revised COTP Public Notice on the subject.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be minimal since for some time, the generally accepted practice of the towing industry in this area has been to require two additional assist tugs to aid vessels towing barges laden with these hazardous cargoes while crossing the Bar. Captain of the Port Public Notice 3–82 formalized the existing industry practice for all such vessel transits. Comments received subsequent to the issuance of this Notice questioning the need for two assist tugs have been considered and have provided the impetus for relaxing these rules. Accordingly, a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

PART 165—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, by adding a new § 165.1202 to read as follows:

§ 165.1202 Humboldt Bay and approach channel—regulated navigation area.

(a) The following is a Regulated Navigation Area—The navigable waters of Humboldt Bay, entrance channel thereto and the waters within a 1000 yard radius of the seaward end of the entrance channel's south jetty.

(b) *Definitions.* As used in this section:

(1) "Carried in bulk" means a commodity that is loaded or carried on board a vessel without containers or labels and received or handled without mark or count.

(2) "Certain Dangerous Cargoes" means those cargoes described in 33 CFR 160.203.

(3) "COTP" means Captain of the Port, San Francisco Bay.

(4) "Insurance wire" means an auxiliary towing rig suitable in size and configuration to be used to safely hook up to and maneuver a barge upon failure of the main tow wire.

(c) *Waivers.* (1) The COTP may, upon written request, except as allowed in paragraph (3) of this paragraph, waive any regulation in this section if it is found that the proposed operation can be conducted safely under the terms of that waiver.

(2) Each written request for a waiver must state the need for the waiver and describe the proposed operation.

(3) Under unusual circumstances due to time considerations, a person may orally request a waiver from the COTP provided that a written request is submitted within five working days after the oral request.

(4) The COTP may, at any time, terminate any waiver issued under this subsection by providing written notice to the affected parties.

(d) *Regulations.* The owner, master, agent or person in charge of a vessel towing a barge carrying oil or oil derivative products entering or operating within this Regulated Navigation Area shall:

(1) Provide the COTP with 24 hours advance notice of any vessel movement; and

(2) Obtain permission from COTP prior to entry; and

(3) During the transit of a barge carrying Certain Dangerous Cargoes, in particular chlorine, in addition to the above:

(i) Provide on scene one additional towing vessel of adequate size and horsepower to assist during the transit; and

(ii) Provide an insurance wire streamed off the stern of the barge.

Authority: (33 U.S.C. 1223 and 1231; 49 CFR 1.46; and 33 CFR 1.05–1(g)(4)).

Dated: November 21, 1984.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.

[FR Doc. 84-31006 Filed 11-26-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84-902; RM-3975]

Frequency Reallocation Making Additional Portions of the 470–512 MHz Band Available for Police Use in Los Angeles County; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule correction.

SUMMARY: In FR Doc. 84–30495, in the issue of Wednesday, November 21, 1984, on page 45875, a typographical error appeared in the heading which referred to the docket number of this proceeding, concerning *Frequency Reallocation to Make Additional Portions of the 470–512 MHz Band Available for Police Use in Los Angeles County*, as Gen. Docket No. 84–904. *The correct docket number should read: Gen. Docket No. 84–902.*

FOR FURTHER INFORMATION CONTACT: Don Precure, (202) 653–8170.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-30802 Filed 11-26-84; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 229
Tuesday, November 27, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thurday, December 6, 1984 at 1:30 p.m. and Friday, December 7, 1984 at 9:30 a.m. in The Amphitheater of the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C.

The Conference will consider proposed recommendations on the following subjects:

1. Preemption of state regulation by federal agencies.
2. Release of confidential information under protective orders in antidumping and countervailing duty proceedings.
3. Administrative settlement of tort and other mometary claims against the Government.

In addition, there will be a general discussion of issues in administrative law reform in the next four years.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., Suite 500, Washington, D.C. 20037, telephone (202) 254-7020.

Dated: November 21, 1984.

Richard K. Berg,
General Counsel.

[FR Doc. 84-31201 Filed 11-26-84; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44-84]

Foreign-Trade Zone 9, Honolulu, HI; Application for Subzone at Dole Pineapple Plant, Honolulu; Extension of Record

The period for comments on the above case involving a special-purpose subzone for the pineapple cannery and can making facility of Dole Processed Food Company in Honolulu, Hawaii (49 FR 40068, 10/12/84) is extended to December 4, 1984, to allow interested parties to submit and review new information.

Comments are invited in writing during this period. Submissions shall include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, Room 1529, Washington, D.C. 20230.

Dated: November 19, 1984.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 30859 Filed 11-26-84; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[C-357-403]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Oil Country Tubular Goods From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods (OCTG). The net bounty or grant is determined to be 0.9 percent *ad valorem*. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of oil country tubular goods from Argentina that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the notice of our preliminary determination and to require a cash deposit on this product in the amount equal to the net bounty or grant.

EFFECTIVE DATE: November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Stuart Keitz; Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0160 or 377-1769.

SUPPLEMENTARY INFORMATION:

Final Determination and Order

Based upon our investigation, we determine that certain benefits constituting bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods. For purposes of this investigation, the following program is found to confer a bounty or grant:

- Post-Financing of Exports Under Circular OPRAC 1-9

We determine the net bounty or grant to be 0.9 percent.

Case History

On June 13, 1984, we received a petition from the Lone Star Steel Company, and the CF&I Steel Corporation filed on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Argentina of oil country tubular goods received, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1984, we initiated such an investigation, and on July 3, 1984, we initiated such an investigation (49 FR 28289). We stated that we expect to issue a preliminary determination by September 6, 1984. On August 3, 1984, LTV Steel Company entered this proceeding as a co-petitioner with Lone Star Steel Company and CR&I Steel Corporation.

Argentina is not a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore, section 303 of the Act applies to this investigation. The merchandise being investigated is dutiable. Therefore, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Argentina in Washington, D.C., on July 13, 1984. On August 17, 1984, we received responses to the questionnaire.

On September 6, 1984, we preliminarily determined that benefits constituting bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods (49 FR 28289). A hearing was requested and took place on October 17, 1984. We received briefs from the parties to the proceeding on October 10, 11 and 31.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. This investigation covers both finished and unfinished oil, country tubular goods.

The provisions of the *Tariff Schedules of the United States, Annotated (TSUSA)* covering all steel pipe and tube, including oil country tubular goods, were changed as of April 1, 1984. We have reviewed the classification of steel pipe and tube by the U.S. Customs Service and determined that our original listing of the products subject to this investigation should be amended. As a result of the changes mentioned above, oil country tubular goods now comprise TSUSA item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

Dalmine Siderca S.A.I.C. (Dalsid) is the sole exporter of this product to the United States during the period for which we are measuring bounties or grants, April 1983 through March 1984.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order", which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufactures, producers, or exporters in Argentina of OCTG under the following program.

Post-Financing of Exports Under Circular OPRAC 1-9

On September 24, 1982, the Central Bank of Argentina established a post-financing program for exports under Circular OPRAC 1-9. OPRAC 1-9 loans are granted for up to 30 percent of the peso equivalent of the foreign currency in which the export transaction was paid. The term of the loan is 180 days. The interest rate charged on OPRAC 1-9 loans is the regulated rate used by commercial banks, as established by Central Bank Regulations. The system of financing is through the Central Bank of Argentina, which delegates the responsibility for granting the loans to intermediary banks. Dalsid received loans under the OPRAC 1-9 program.

To determine if the loans to Dalsid provided under the OPRAC 1-9 program constitute a bounty or grant, we compared the rate of interest charged on the OPRAC 1-9 loans, with the national average commercial rate for short-term borrowing, as required in the Subsidies Appendix.

In June 1982, the Central Bank of Argentina restructured the banking and financial system. All outstanding short-term loans were refinanced under a regulated interest rate, which is set monthly by the Central Bank. During this period banks were also allowed to lend a portion of their deposits at an unregulated rate, known as the tasa libre.

For purposes of the preliminary determination, we used as our benchmark a weighted-average of the regulated rate, the unregulated rate and the rates tied to the wholesale price index. During verification we discovered that the loans tied to the wholesale price index (WPI) are really variable rate long-term loans, and we now believe that it would not be appropriate to use the WPI rate in any sort of a weighted-average.

For the purpose of this final determination, we have used as our benchmark a weighted average of the various forms of comparable short-term borrowing available from Argentine banks as the national average commerical rate for short-term borrowing. Given the particular characteristice of the Argentine economy and financial system during the period of review, we feel that there is no single comparable instrument that we can use as a short-term benchmark. Given this situation, we think that a weighted average of the regulated, unregulated and acceptance lending rates, best reflects a comparable national average short-term interest rate. During the period for which we are measuring bounties or grants, various short-term borrowing rates were available from Argentine banks. From April 1983 to July 1983 the regulated and unregulated rates were in effect. Beginning August 1, 1983, funds were no longer lent at the unregulated rate. For the months of August and September, when only the regulated rate was in effect, we are using this rate alone as the benchmark. In October, 1983 the acceptance rate (aceptaciones) came into use in Argentina. With this rate, a cash rich firm and a cash poor firm are matched together by the banks. The banks endorse these agreements and act as intermediaries for the transaction. The terms for acceptance loans are for up to 90 days. From October, 1983 to March, 1984 the basis for the weighted average is the regulated rate and the acceptance rate:

Because the amount of credit that can be extended by Argentine banks is closely controlled by the government, two types of extra-bank lending have come into practice in Argentina. While not illegal, these forms of borrowing are not monitored or regulated by the government in any way, and thus no official government statistics on the lending rates or on the size of the credit pools exist. One type of extra-bank loan, known as Bonex repurchase agreements, involves a loan agreement which is guaranteed by the sale and repurchase of Argentine government dollar-denominated bonds. The other type of extra-bank loan is guaranteed by a post-dated check. Both forms of borrowing are for very short periods, normally two to seven days.

In calculating a weighted-average benchmark, we have included the regulated rate, the unregulated rate and the acceptance rate, because we felt that these rates best represent the most comparable alternative instuments to OPRAC 1–9 borrowing. We have not included the Bonex repurchase rates or rates on loans guaranteed by post-dated checks, because the terms of these loan are for very short periods, and thus would not be a likely source of borrowing to finance 180-day export transactions.

Using this weighted average as a benchmark, we calculate a bounty or grant on exports of 0.9 percent *ad valorem*.

II. Programs Determined Not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Argentina of OCTG under the following programs.

A. Reembolso—Tax Rebate on Exports

The reembolso program was established in 1971. It authorized a refund, by cash payment on export, of taxes "that bear directly or indirectly" on exported products and/or their component raw materials for the purpose of promoting exports. The amount of the reimbursement is equal to a fixed percentage of the f.o.b. value of the exported merchandise. This percentage varies by product. Dalsid participates in the reembolso program.

Under the Act, the non-excessive rebate of indirect taxes levied at the final stage, and of prior stage cumulative indirect taxes borne by inputs that are physically incorporated into the final product, is not considered a subsidy. With respect to such non-VAT rebates, in order to determine whether a cash payment on exports is a *bona fide* rebate of indirect taxes, we examine whether: (1) The program involved operated for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

The reembolso program is designed to refund taxes that "bear directly or indirectly on exported products." We view taxes borne by a product as indirect, and taxes on, for example, income as direct.

Based on our review of the total tax incidence which the reembolso is designed to rebate, we are satisfied that the reembolso operates "for the purpose of rebating indirect taxes," and that it meets our first test.

In 1980, the Value Added Tax was established (Law 22.294/80) and in 1981, certain minor taxes were suspended (Law 22.374/81). As a result of these modifications to the Argentine tax system, the government in 1983 reviewed the incidence of taxes on oil country tubular goods in order to reevaluate the levels of the reembolso. In reviewing the studies on fiscal incidence of taxes, the government selected Dalsid as representative of the oil country tubular goods industry, as it is the only Argentine firm producing these products. In conjuction with the more general study conducted in 1978, this review provides a sufficient basis for our final determination that there is a clear link between eligibility for the reembolso and indirect taxes paid.

In the questionnaire response, the government of Argentina provided us with data form its most recent analysis of the tax incidence on oil country tubular goods. This analysis, which was completed in 1983, shows that the taxes levied on oil country tubular goods, which the reembolso is designed to rebate, total 25.1 percent of the f.o.b. value of the exports. Six categories are included in the analysis: Domestic raw material inputs, imported raw material inputs, transformation costs, labor, taxes paid directly, and export taxes.

In calculating the allowable tax incidence in the domestic and imported raw material categories, we only included those indirect taxes levied at prior stages of production that apply to physically incorporated inputs.

During verification we verified the total amount of Dalsid's purchases of physically incorporated inputs for OCTG production which allowed us to determine that the proportion comprised of physically incorporated inputs is correct.

In the domestic raw material category, we determined that 6.2 percent of the tax incidence claimed is allowed. For purposes of the preliminary determination, we did not allow the tax incidence claimed on gas. However, during verification we determined that Dalsid used the Midrex process for the reduction of iron. In our countervailing duty investigation of *Carbon Steel Wire Rod* from Argentina, 47 FR 42393 (Sept. 27, 1982) we determined that the firm under investigation also used the Midrex process. In conjunction with that investigation, we found that a portion of natural gas used in the reduction process meets our physical incorporation test. Therefore, of the total 6.5 tax incidence claimed for domestic raw materials, we are allowing 6.2 percent. For the imported raw materials, we allowed 0.6 percent. We verified that the government has reasonably calculated and documented the tax incidence on the physically incorporated raw materials, and has demonstrated a clear link between such tax incidence and the rebate paid on export, thus meeting our third test.

Regarding taxes paid on the transformation costs, we are including those indirect taxes paid on materials used in transforming the raw materials into oil country tubular goods, which meet our standard for physical incorporation. Taxes on energy, equipment and services do not meet this standard. Thus of the 8.9 percent claimed, 1.5 percent is allowed.

The taxes on labor, which total 1.2 percent, are direct taxes. We have, therefore, disallowed this amount.

The export taxes paid on oil country tubular goods, which include foreign exchange and stamp taxes, also are allowable because these taxes are all final stage indirect taxes: The rate of each tax and its incidence is calculated. The total incidence of the taxes in this category is 2.5 percent.

In the response three taxes were included in the category of the taxes paid directly on oil country tubular goods. We verified that the Provincial Law 9226 and the Municipal Tax Law 1423/79 refer to indirect taxes actually paid by Dalsid, at the final stage on oil country tubular goods. At verification we requested more information concerning the Emergency Tax (Law 22915), which we preliminarily disallowed. We were given copies of the law which instituted a 20 percent tax to cover budgetary shortfalls in Argentina. Respondents claim that this tax is a surtax based on both direct and indirect taxes. We do not have enough information to determine the portion of the surtax based only on indirect taxes. For this reason, we are not allowing the Emergency Tax. In the category of final stage taxes paid directly on OCTG, we are satisfied that two of the three taxes listed are indirect taxes and meet our third test. Applying this standard, we determine that of the 5.4 percent tax incidence claimed, 0.8 percent is allowable and 4.6 percent is not.

Of the total 25.1 percent tax incidence calculated in the reembolso study, we have allowed 11.6 percent.

Since July 5, 1982, the reembolso for oil country tubular goods has been 10 percent (Resolution ME 8/82). Because the reembolso does not exceed the total allowable indirect taxes of 10 percent, we determine that the reembolso does not confer a bounty or grant on oil country tubular goods.

B. Import Duty Exemptions on Raw Materials

Argentine tariff law authorizes import duty exemptions on raw materials when there is no domestic production or insufficient domestic production to meet domestic demand, and when importation will not interfere with the market for domestic production. On its face the program is not limited to a specific enterprise or industry or group of enterprises or industries, but rather is available to any industry facing inadequate local supply of raw materials. However, because nominal general availability is not necessarily sufficient to prevent a program from being a domestic subsidy, we preliminarily determined the program to be countervailable. Neither Dalsid nor the government of Argentina had provided enough information about the program to establish that the benefits were not limited to a specific industry or group of industries.

At verification we requested documentation to determine whether the exemptions are limited to a specific industry or group of industries. We verified that a number of firms in a wide variety of industries were exempted from import duties on raw materials. Thus, we determine that import duty exemptions on raw materials are not limited to a specific industry or group of industries.

C. Government Loan Guarantees

Petitioners alleged that the Argentine OCTG industry may have benefited from preferential loan guarantees provided by the Banco Nacional de Desarrollo (National Development Bank or BANADE).

BANADE is a state-owned financial institution that extents credit to Argentine companies for the purchase of locally made capital goods, and provides loan guarantees to Argentine companies wishing to purchase capital goods abroad and needing foreign currency loans to do so.

At verification we found that BANADE financing was made available to all industries in every province of Argentina. None of the criteria laid out in BANADE regulations is industry- or region-specific.

III. Programs Determined Not To Be Used

We determine that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation, "were not used by the manufacturers, producers, or exporters in Argentina of OCTG.

A. Medium- and Long-Term Loans Under Law 22.510 and Under Decrees 989/81 and 1894/83

Petitioners alleged that the Argentine OCTG industry may have benefited from preferential medium- and long-term loans under Law 22.510 and under Decree 989/81 and 1894/83.

We verified that Dalsid did not receive any loans under Law 22.510. Regarding Decree 1894/83, we verified that this decree only applies to state enterprises, provinces and municipalities. Dalsid does not fit into any of these categories.

Decree 989/81 was cancelled by decree 169/82, but we verified that Dalsid never received any benefits from 989/81.

B. Capital Tax Exemptions Under Decrees 5038/61 and 548/81

Petitioners alleged that the Argentine OCTG industry received preferential capital tax exemptions.

We verified that Dalsid pays the capital tax and does not receive any exemption under Decrees 5038/61 and 548/81.

C. Subsidized Raw Material Inputs Under Decree 619

Petitoners alleged that the Argentine OCTG industry may have benefited from subsidized raw material inputs under Decree 619, which provides that the Argentine government may subsidize industries supplying basic inputs, such as oil residue coal, electricity, and natural gas to the steel industry.

We verified that Dalsid did not receive benefits under Decree 619. The National Direction of Industrial Control administers Decree 619 and other tax benefits. After reviewing information from that agency, we determined that Dalsid did not use Decree 619.

D. Government Trade Promotion Programs

Petitioners alleged that the Argentine OCTG industry benefited from trade promotion programs which are funded by the government of Argentina and are designed to increase participation of Argentine companies in international trade fairs and trade missions.

We verified that the government of Argentina had not organized trade fairs in which Dalsid participated.

E. Additionol Reembolso for Exports From Southern Argentine Ports

Petitioners alleged that the Argentine OCTG industry received additional rebates of taxes through the reembolso program for exports from southern Argentine ports.

We verified that the only companies eligible for this additional reembolso are those located south of the Colorado River. Since Dalsid is located north of this river, it could not avail itself of this program.

F. Exemption From Stamp Tax Under Decree 186/76

Petitioners alleged that the Argentine OCTG industry received an exemption from paying stamp taxes, which is authorized under Decree 186/76.

We verified that Dalsid is not exempted from paying stamp taxes under Decree 186/76.

G. Preferential Exchange Rates for Steel Industry Imports

Petitioners alleged that the Argentine OCTG industry benefited from preferential exchange rates in place under Argentine law for imports of machinery, parts, raw material, fuels, and other products used or installed in steel plants.

On October 29, 1982, the Central Bank established a single exchange rate. While in Argentina, we verified that only one exchange rate existed during our period of investigation.

H. Price Premiums From Argentine Government Purchases of Argentine-Produced Steel

Petitioners alleged that the Argentine OCTG industry may have benefited from price premiums paid by the Argentine government on its purchases of Argentine-produced steel products.

During verification, we determined that government enterprises actually paid less than private companies for the same Argentine-produced steel products.

IV. Programs Determined To Have Been Suspended

A. Pre-Financing of Exports Under Circular OPRAC 1–1

Petitioners alleged that the Argentine OCTG industry benefited from preferential short-term loans for pre-financing of exports under Circular OPRAC 1–1. Circular OPRAC 1–1 instituted a pre-financing program for Argentine exports as an alternative to the Circular RF 153 program for pre-financing of exports through dollar-indexed peso loans. This program was initiated on August 21, 1981, and terminated on March 31, 1982. Under Circular OPRAC 1–1, loans could not exceed one year, and firms receiving

OPRAC 1–1 loans could not also receive Circular RF–153 loans.

We verified that the Circular OPRAC 1–1 program was terminated on March 31, 1982 and that Dalsid had no Circular OPRAC 1–1 loans outstanding during the period for which we were measuring bounties or grants.

B. Benefits Under the "Argentine Steel Industry Development Contribution Fund"

Petitioners alleged that the Argentine OCTG industry benefits from the "Argentine Steel Industry Development Contribution Fund," a fund which earmarks certain import surcharge taxes for steel industry development.

This fund was eliminated by law 22.374 on January 10, 1981. Dalsid did not benefit from this fund during our period of measuring bounties or grant. We also verified that Dalsid did not, in the past 15 years, receive benefits from this fund.

Comments by Petitioners

Comment 1. Because it supplied its annual reports in Spanish, without translations, petitioners allege that Dalsid did not cooperate with Department of Commerce (DOC) procedure.

DOC Position. Pursuant to § 355.39(d) of Commerce Regulations (19 CFR 355.39), all responses to requests for information must be in English and in the form requested unless such requirement is waived. In this case there were no existing translations and the DOC did not need to have the reports translated.

Comment 2. Petitioners argue that DOC erred by choosing a benchmark interest rate for OPRAC 1–9 that does not accurately reflect the true cost of short-term commercial borrowing in Argentina. Petitioners argue that at least 30 percent of total short-term credit in Argentina consists of non-bank loans at unregulated rates after August 1, 1983, and that the DOC should use a national average commercial rate, which includes non-bank interest rates.

DOC Position. See the "Analysis of Programs" section of this notice.

Comment 3. Petitioners argue that all reembolso rebates [of indirect taxes] received by Dalsid on its exports of OCTG are countervailable because the government of Argentina did not prove that the incidence of indirect taxes on OCTG is clearly linked to the amount of rebate which the reembolso provides for OCTG.

DOC Position. DOC verified (1) that the reembolso program operates for the purpose of rebating indirect taxes; (2) that there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) that the government has reasonably calculated and documented the actual tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on exports.

Comment 4. Petitioners allege that DOC failed to assess on an item-by-item basis whether the imported items in the reembolso program were physically incorporated.

DOC Position. Part of our verification process consisted of determining that those imported raw materials are physically incorporated into the final product as claimed in the reembolso study. Dalsid claimed that iron ore and iron alloys are physically incorporated. We verified this claim and allowed Dalsid its claim for the indirect taxes associated with these items.

Comment 5. Under the input categories of domestic raw materials and transformation costs, petitioners argue that certain items are not physically incorporated, and that certain taxes, such as those for the fund on electricity consumption and the North Hydroelectric fund appear to apply to goods not physically incorporated.

DOC Position. We verified that a portion of gas claimed in the domestic raw material category does become physically incorporated in the Midrex iron reduction process, and we have allowed only this portion of the gas. It was also verified that certain inputs claimed under the transformation cost category (such as paint, grease and a portion of electrodes) also meet our standard for physical incorporation. We verified that such taxes as those on electricity consumption and the North Hydroelectric fund are borne by physically incorporated inputs.

Comment 6. Petitioners argue that certain taxes paid directly by the OCTG industry are not clearly stipulated to be indirect taxes and therefore, absent such information, should be considered as direct taxes.

DOC Position. The DOC verified that the municipal tax and the taxes under Provincial Law 9226 79, are indirect taxes levied on the final stage of OCTG production and are actually paid by Dalsid. The Emergency Tax is a surtax on all direct and indirect taxes paid by Dalsid. Because of a lack of information concerning this tax, we have disallowed this portion of the taxes paid directly.

Comment 7. Petitioners argue that import duties paid by suppliers should not be an allowable rebate because they are paid by suppliers and are not borne by the product.

DOC Position. The DOC verified that import duties on inputs into goods purchased from Dalsid's suppliers are indeed indirect prior stage taxes borne by the goods purchased by Dalsid.

Comment 8. Petitioners allege that Table C, Annex 7 of the response shows an indirect tax incidence of 11.9% on scrap, without an explanation.

DOC Position. On November 6, 1984, respondents amended the response filed by the government of Argentina on August 17, 1984. In this amendment, each indirect tax corresponding to scrap is listed.

We verified that Dalsid pays the indirect taxes borne by scrap.

Comment 9. Petitioners allege that because the reembolso information provided by respondents does not include allowances for fixed costs and inland transportation, the proportion of allowable indirect taxes on OCTG is overstated.

DOC Position. DOC verified the percentage of f.o.b. value accounted for by inputs, by examining invoices of OCTG inputs actually purchased by Dalsid. We determined that the percentage of the f.o.b. value which is comprised of variable costs (upon which the indirect taxes are levied) and final stage taxes, total 99.5 percent. Petitioners' contention that fixed costs and inland freight should account for some portion of the f.o.b. value of OCTG is not born out by Dalsid's actual cost experience. Petitioners work the calculation backwards, by imposing a share within the f.o.b. value which represents fixed costs and inland freight, without regard to whether fixed costs are actually being covered by each shipment.

Comment 10. Petitioners allege that the government of Argentina may direct suppliers of raw materials to set preferential prices for targeted industries and that DOC erred in not initiating an investigation on whether any subsidy on the production of an input flows down to the production of the end product if the purchaser buys the input from an unrelated supplier.

DOC Position. We did not investigate petitioners' allegation that OCTG producers in Argentina have benefited subsidized inputs, *i.e.*, upstream subsidies. As explained in our "Notice of Initiation of a Countervailing Duty Investigation" (49 FR 28289), petitioners did not provide sufficient evidence to warrant an investigation of these claims.

Since our decision not to initiate on the upstream subsidy allegations in this case, the Trade and Tariff Act of 1984 (TTA) has come into force. We have determined that there is nothing in the upstream subsidies provisions of the TTA that would cause us to change our earlier conclusions.

Comment 11. Petitioners allege that regarding input purchases for OCTG from related suppliers, Dalsid only provides information about scrap purchases.

DOC Position. We verified that the only suppliers related to Dalsid are those listed in the response, and that the only raw material input purchased from these related suppliers is scrap. However, when a firm under investigation purchases the same input from related and unrelated suppliers, it is our practice to compare the prices paid to each type of supplier. In this situation, we need not compare the prices that Dalsid's related supplier charges to customers other than Dalsid, with what Dalsid paid. We verified that Dalsid pays the same prices to both related and unrelated suppliers for its scrap purchases.

Comment 12. Petitioners contend that import duty exemptions on raw materials and BANADE guarantees are countervailable even if they are generally available, citing the Court of International Trade's decision in *Bethlehem Steel Corp.* v. *United States*, 7 CIT———, Slip OP. 84–67 (June 8, 1984).

DOC Position. In *Bethlehem*, the courts broad opinion that the Department cannot apply a rule that "generally available" benefits are not subsidies is dictum. The Department continues to interpret the language in section 771(5)(B) of the Act that the term subsidy includes "domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries. . . ." to mean that benefits broadly or "generally" available do not constitute countervailable bounties or grants. In this case we determine that the exemption from certain programs is "generally available."

Comment 13. Petitioners argue that even if one accepts the notion that generally available benefits are not countervailable, programs such as import duty exemptions on raw materials and capital goods and BANADE guarantees should be examined for the pattern of disbursement to determine if OCTG producers or exporters as a group benefit disproportionately.

DOC Position. Concerning import duty exemptions on capital goods, in the final affirmative countervailing duty determination on cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006) DOC determined that import duty exemptions on capital goods were not countervailable because such exemptions were not limited to a specific industry or group of industries. DOC verified that import duty exemptions on raw materials and BANADE guarantees are, indeed, generally available.

Comment 14. Petitioners argue that although the multiple exchange rate system was abolished prior to the period of investigation, DOC erred in not investigating precisely what machinery or capital goods Dalsid may have purchased while the dual rates were in effect. They allege that Dalsid would continue to receive benefits from such purchases, which should be treated as grants and allocated over time.

DOC Position. Under the multiple exchange rate regime that was in effect from July through December 1981, and July through November 1982, only exporters of certain specified goods were eligible for the higher rate of exchange on their export operations. In no case were firms eligible to receive a higher rate of exchange for their purchases of imported inputs.

Comment 15. Petitioners allege that no information was given concerning price premiums for Agentine Government purchases of Argentine-produced steel.

DOC Position. At verification, we reviewed invoices which pertained to sales to government enterprises and private companies. The sales covered the same product and the transactions took place on roughly the same date. In each case, the government-owned company paid less than the private company.

Comment 16. Petitioners allege that in the response Dalsid did not state whether it had participated in trade shows, nor did Dalsid provide information about its trade missions.

DOC Position. It is stated in Argentine Government response that Dalsid does not participate in trade shows organized by the Argentine Government.

The GAO provided a calendar of trade fairs for 1983 and 1984 for DOC officials. Dalsid did not appear in either of the listings.

Respondent's Comments

Comment 1. Respondents argue that DOC should use Dalsid's own commercial experience as the short-term benchmark to measure benefits under the OPRAC 1–9 program, because the administrative burden of calculating a company-specific benchmark, when only one firm is under investigation, is not great.

DOC Position. We believe that the use of a national average interest rate as the commercial benchmark for short-term loans captures the benefit to the companies with sufficient accuracy. We believe that the weighted average of comparable short-term interest rates best represents what a firm would have to pay for short-term borrowing if it did not have access to OPRAC 1–9 financing. Further, we attempt to establish policy guidelines that apply across all cases. While the burden of calculating company-specific short-term benchmarks may not be great in this particular case because only one firm is involved, it is likely that this will not always be the case.

Comment 2. Respondents argue that information made available to DOC at verification demonstrates that import duty exemptions on raw materials are not limited to a specific industry or group of industries, and are therefore not a countervailable benefit.

DOC Position. We agree, and have reversed our preliminary finding that import duty exemptions constitute bounties or grants.

Comment 3. Respondents argue that the DOC erred in not allowing the portion of indirect taxes levied on gas which is rebated under the reembolso program.

DOC Position. We agree. Under the Midrex process for iron reduction, 75% of the gas used in the process becomes physically incorporated into the final product. We have therefore allowed this amount of the portion claimed.

Verification

In accordance with section 776(a) of the Act, we verified the date used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of Dalsid's operations and records.

Administration Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). A public hearing was held on October 17, 1984. In accordance with the Department's regulations (19 CFR 355.34(a)), all written views have been received and considered. The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The net bounty or grant for duty deposit purposes is 0.9 percent *ad valorem*. We are directing the United States Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise entered or

withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

Dated: November 20, 1984.

William T. Archey,

Acting Assistant Secretary.

[FR Doc. 84-31041 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-403]

Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods. The net subsidy is 24.97 percent *ad valorem* for Confab, 25.24 percent *ad valorem* for Mannesmann, and 11.35 percent *ad valorem* for Persico. We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of oil country tubular goods from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after September 12, 1984, and to require a cash deposit or bond on entries of these products in the amount equal to the net subsidy.

EFFECTIVE DATE: November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5050 or 377-1769.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Working Capital Financing for Exports (Resolutions 674 and 882)
- Export Financing Under the CIC-CREGE 14-11 Circular
- IPI Export Credit Premium
- Export Profits Exemption from Corporate Income Tax
- Funding for Expansion Through IPI Tax Rebates

We determine the net subsidy to be 24.97 percent *ad valorem* for Confab, 25.24 percent *ad valorem* for Mannesmann, and 11.35 percent *ad valorem* for Persico.

Case History

On June 13, 1984, we received a petition from the Lone Star Steel Company of Dallas, Texas, and the CF&I Steel Corporation of Pueblo, Colorado, on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of oil country tubular goods receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1984, we initiated such an investigation (49 FR 28290). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, the petition was amended and the LTV Steel Company of Cleveland, Ohio became co-petitioner.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On July 30, 1984, the ITC determined that there is a reasonable indication that these imports are materially injuring, or threatening material injury to, a U.S. industry (49 FR 31782).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C., on July 13, 1984. On August 17, 1984, we received a response to the questionnaire. On September 12, 1984, we published our preliminary determination that benefits constituting subsidies within the meaning of the countervailing duty law were being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods (49 FR 35827).

At the request of both petitioners and respondents, we held a hearing on October 24, 1984, to allow the parties an opportunity to address the issues arising in the investigation. Both petitioners and respondents filed briefs discussing these issues before and after the hearing.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. This investigation covers both finished and unfinished oil country tubular goods.

The provisions of the *Tariff Schedules of the United States, Annotated (TSUSA)* covering all steel pipe and tube, including oil country tubular goods, were changed as of April 1, 1984. We have reviewed the classification of steel pipe and tube by the U.S. Customs Service and determined that our original listing of the products subject to this investigation should be amended. As a result of the changes mentioned above, oil country tubular goods now comprise TSUSA item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

There are three known producers and exporters in Brazil of oil country tubular goods to the United States. We have received information from the government of Brazil regarding Confab Industrial S.A. (Confab), Mannesmann S.A. and Mannesmann Commercial S.A. (Mannesmann), and Persico-Pizzamiglio S.A. (Persico). The period for which we are measuring subsidization ("the review period") is calendar year 1983.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigation. These principles are described in the Subsidies Appendix attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Petitioners have alleged that both Mannesmann and Persico are uncreditworthy. As we have determined that no long-term loans or loan guarantees are being provided to these companies on terms that are inconsistent with commercial considerations, their creditworthiness is of only secondary importance in this investigation. Because no long-term loan benchmarks are required, creditworthiness only figures into the calculation of the discount rate for firms receiving benefits that are treated as grants. Persico did not receive any such benefits. Therefore our creditworthiness analysis has been limited to Mannesmann.

Based upon our review of Mannesmann's financial statements, we found Mannesmann to have been profitable in all but two of the last six fiscal years; in the first half of 1984, the company returned to profitability. Cash flow generated from operations exceeded interest and principal payments in all years, except 1979. In general, the financial position of the company has been favorable. Therefore, we determine Mannesmann to be creditworthy.

For purposes of this determination, we are calculating an *ad valorem* subsidy rate for each company because of the material differences in the programs under which subsidies were received and in the subsidy rates of each company. We allocated the benefits received by each respondent in 1983 over the total sales value or export value, as appropriate, of each respondent.

Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods under the following programs.

A. Preferential Working Capital Financing for Exports (Resolutions 674 & 882)

Resolution 882 financing, administered by the Carteira do Comércio Exterior (CACEX) of the Banco do Brasil, is a form of short-term lending of working capital to purchase inputs for the production of goods destined for export. On January 1, 1984, Resolution 882 superseded Resolution 674, under which such financing was previously granted. Eligibility for 674/882 financing is determined on the basis of past exports or an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports.

Following CACEX approval of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation. Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue and loans incurred as a result of their use must be repaid within 18 months of that date.

During the review period, the interest rate ceiling on loans obtained under the program was raised from 40 to 60 percent. Resolution 882 changed the interest rate to full monetary correction plus three percent, the interest and principal being payable in one lump sum at the expiration of the loan. Confab, Mannesmann, and Persico have participated in the program. Since 674/882 financing is contingent on export performance, and provides funds to participants at interest rates lower than those available from commercial sources, we determine that this program confers an export subsidy.

In our investigation of Certain Carbon Steel Products from Brazil [Final Affirmative Countervailing Duty Determinations (49 FR 17988)], we used an interest rate reflecting compensating balances as our benchmark. Since that determination, we have gathered information that Brazilian banks do not uniformly require compensating balances of their customers. In many cases, because banks lend only to a few favored clients, they do not require compensating balances since their clients maintain a sufficient volume of business overall. Moreover, when compensating balances are required, the size and terms of the requirement may vary widely.

While the Department has stated in the Subsidies Appendix its preference for using effective rates, we do this only when we have sufficient information to calculate an effective rate. Because there is no evidence of a uniform requirement for compensating balances and no publication gives a definitive measure of the extent to which compensating balances are actually used, we have determined not to use compensating balances in calculating our benchmark interest rate. Therefore, we are using the minimum nominal discount rate of accounts receivable, which does not reflect compensating balances, as published in *Analise/Business Trends*, as our benchmark in calculating the subsidy.

Moreover, in earlier cases where we have used the nominal discount rate of accounts receivable, we used an uncompounded rate as our benchmark for Resolution 674 loans. We now feel that this rate is inappropriate, since compounding is necessary in order to equate the charges on a 30-day loan with an annual loan. Accordingly, we compounded the benchmark described above in our calculations.

To calculate the benefit, we compared the interest rates charged with the appropriate benchmark and applied the difference to the principal amounts, based on the dates interest was paid. We allocated the benefit over the total value of all exports by each company under investigation, and calculated a subsidy rate of 13.08 percent *ad valorem* for Confab, 6.19 percent *ad valorem* for Mannesmann, and 4.56 percent *ad valorem* for Persico.

B. Export Financing Under the CIC-CREGE 14-11 Circular

Under its CIC-CREGE 14-11 circular ("14-11"), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. In addition to requiring exchange contracts, the Banco do Brasil requires that these loans be fully secured by collateral in the form of tangible property. The bank normally requires that the value of collateral equal at least 130 percent of the amount of the loan. The bank also charges a commission on all such loans.

All exporters of manufactured products with production cycles of less than 180 days may apply for these loans. The maximum level of eligibility is based on the value of the applicant's exports in the previous year. Companies receiving Resolution 882 loans have a maximum eligibility of 10 percent. All others have a maximum eligibility of 15 percent.

Although this program does in certain aspects appear to operate on a purely commercial basis, the government of Brazil has not supplied sufficient data to support its assertion that commissions,

exchange contract requirements and collateral requirements serve to raise the effective cost of these laons to a level of comparability with those on short-term loans from other commercial sources. Without such data, we must compare unadjusted nominal rates on 14–11 loans with our short-term benchmark interest rate, *i.e.*, the nominal discount rate of accounts receivable, as the best information available. This comparison shows that the nominal interest rate on 14–11 loans is below the benchmark.

Confab and Persico both obtained loans under this program. To calculate the benefit, we compared the interest rates charged with the appropraite benchmark and applied the difference to the principal amounts, based on the dates interest was paid. We then allocated the benefit over the total value of each company's exports, which resulted in a subsidy rate of 0.38 percent *ad valorem* for Confab and 1.04 percent *ad valorem* for Persico.

C. IPI Export Credit Premium

Brazilian exporters of manufactured products are eligible for a tax credit on the Impôsto sôbre Produtos Industrializados (Industrialized Products Tax, or IPI). The IPI export credit premium has been found to confer a benefit in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981, in accordance with Ministry of Finance "Portaria" (Notice) No. 270 (amended by Portaria No. 252 on November 29, 1982).

Subsequent to April 1, 1981, this credit premium was partially phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). The government of Brazil reduced the benefit from 15 percent to 14 percent on March 31, 1982; from 14 percent to 12.5 percent on June 30, 1982; and from 12.5 percent to 11 percent on September 30, 1982.

We divided the credits earned in 1983 by each respondent over the value of each company's exports of oil country tubular goods in that year, and calculated a net subsidy of 10.5 percent *ad valorem* for Confab, 10.87 percent *ad valorem* for Mannesmann, and 5.75 percent *ad valorem* for Persico.

D. Export Profits Exemption From Corporate Income Tax

Under Decree-Laws 1158 and 1721, exporters of oil country tubular goods are eligible for an exemption from income tax of a portion of profits attributable to export revenue. Confab and Mannesmann S.A. took an exemption from income tax payable in 1983 on a portion of export profits earned in 1982. We multiplied that portion by the nominal corporate tax rate, and allocated the benefit over the total value of 1983 exports to calculate a subsidy rate of 1.06 percent *ad valorem* for Confab and 1.27 percent *ad valorem* for Mannesmann.

E. Funding for Expansion Through IPI Tax Rebates

Decree-Law 1547, enacted in April 1977, provides funding for capital investment in approved expansion projects in the Brazilian steel industry through a rebate of the IPI, a value-added tax imposed on domestic sales. The IPI tax is an indirect tax and, as such, is passed on to the consumer. A steel company collects this tax on sales as an agent for the government, and does not pay the tax itself. Decree-Law 1547 is a mechanism by which a steel company is permitted to collect funds due the government and then receive a 95 percent tax rebate. The program does not involve the rebate of payments made from the company's own funds.

Originally, the IPI tax applied to all domestic sales transactions. In 1979, the value-added tax was eliminated except for producers in 14 industry sectors, including tobacco, automobiles, spirits and alcohol, ceramics, rubber, and steel. The tax rate is different for each of the specified industry sectors; for steel products, the value-added tax is 5 percent.

A Brazilian steel company may deposit 95 percent of the net IPI tax due in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects. When rebated to the firms, they constitute reserves that must eventually be converted into subscribed capital. Mannesmann received benefits under this program from 1977 to 1983.

Under the terms of Resolution 68–77 issued by the Conselho de Não-Ferrosos e Siderurgia (CONSIDER), which implements Decree-Law 1547, IPI tax rebates are payable only on basic steel products and certain fabricated steel products such as seamless steel pipes; the CONSIDER resolution excludes welded steel pipes. Mannesmann received IPI tax rebates as a manufacturer of both basic steel products and seamless steel pipe, which includes oil country tubular goods. Confab and Persico, which manufacture neither basic steel products nor seamless steel pipes but only welded steel pipes, received no benefits under this program.

In order to calculate the benefit attributable to this program, we treated the total IPI rebates received in each year as a grant. For the discount rate, we used the weighted cost of capital formula explained in the Subsidies Appendix. We weight-averaged the debt and equity variables in the formula by Mannesmann's respective debt-to-total-capitalization and equity-to-total-capitalization ratios. Using our grant methodology for rebates received through 1983, we calculated an *ad valorem* subsidy rate of 6.91 percent for Mannesmann.

II. Program Determined Not To Confer Subsidies

Government Guarantees on Long-Term Loans

Petitioners allege that the respondents have benefited from certain government guarantees on foreign-currency loans. In its response, the government of Brazil stated that the Banco Nacional do Desenvolvimento Econômico e Social (BNDES) guaranteed a number of foreign-currency loans issued to Persico under Resolution 63 of the Banco Central do Brasil (BCB).

At cerification, we found no evidence that Resolution 63 loan guarantees are provided on an industry-specific or region-specific basis. Moreover, we examined in detail Persico's long-term loans and ascertained that the loan guarantees, for which Persico paid a fee, did not have any bearing on the interest rate and terms of the guaranteed loans, and that the loan guarantees were made on terms not inconsistent with commercial considerations. Accordingly, we determine that government loan guarantees bestowed no countervailable benefits to the products under investigation.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters in Brazil of oil country tubular goods did not use the following programs, listed in our notice of "Initiation of a Countervailing Duty Investigation; Oil Country Tubular Goods from Brazil" (49 FR 28290)

A. Exemption of IPI Tax and Customs Duties on Imported Equipment

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

Decree-Law 1726 repealed this program in 1979. Subsequently, no new projects were eligible for these benefits. However, companies whose projects were approved prior to the repeal still receive these benefits pending completion of the project.

We verified that neither Confab, Mannesmann, nor Persico received any benefits under this program during the review period. Therefore, we determine that this program was not used by the producers of the products under investigation.

B. Accelerated Depreciation for Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that none of the respondents availed itself of this program during the review period. Therefore, we determine that this program was not used by the producers of the products under investigation.

C. Resolution 330 of the Banco Central do Brasil (BCB)

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of oil country tabular goods would be eligible for financing under this program. However, we verified that neither Confab, Mannesmann, nor Persico had participated in this program during the review period. Accordingly, we determine that this program was not used.

D. The BEFIEX Program

The Comissão para a Concessão de Benefícios Fiscais a Programas Especiais de Exportação (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs, approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72–1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years;
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

At verification, we ascertained that none of the respondents had received benefits through this program. Accordingly, we determine that this program was not used during the review period.

E. The PROEX Program

Petitioners allege that short-term credits for exporters were established under the Programa de Financiamento à Produção para a Exportação (PROEX), previously referred to as the Apôio à Exportação program. We verified that none of the respondents availed itself of this program during the review period. Therefore, we determine that this program was not used by the producers of the products under investigation.

F. Incentives for Trading Companies

Petitioners allege that the respondents distribute their export sales through such intermediaries as trading companies, and that under Resolution 643 of the BCB, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 882. We verified that the respondents were ineligible for participation in this program, because such participation is precluded by receipt of Resolution 674/882 financing. Accordingly, we determine that this program was not used during the review period.

G. Construction of a Port for the Steel Industry

Petitioners allege that Brazil's Third National Development Plan (1980–85) provides for the construction of a port at Praia Mole designed mainly for the export of steel products and the imports of coal.

In its response, the government of Brazil indicated that the Praia Mole facility is located at Ponta Tubarao near Vitoria in the state of Espirito Santo. Its purpose is to allow the Companhia Siderurgica de Tubarão (CST) and Açcominas to import coal and export iron ore and steel. We also verified that none of the respondents used the Praia Mole port for the exportation of oil country tubular goods during the review period. Accordingly, we determine this facility was not used by the producers of the products under investigation.

H. The CIEX Program

Decree-Law 1428 authorized the Comissão para Incentivos à Exportação (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. We verified that the CIEX program had been superseded by the BEFIEX program, and that the respondents did not receive any benefits under the CIEX heading during the review period. Accordingly, we determine that this program was not used by the producers of the products under investigation.

I. Resolution 68 (FINEX) Financing

Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportação (FINEX) to extend dollar-denominated loans to both exporters and foreign buyers of Brazilian goods.

Although we verified that none of the respondents received any direct benefits under this program during the review period, we were unable to verify whether any U.S. importer received Resolution 68 financing. If such financing were available, we believe it would confer an export subsidy on oil country tubular goods. Since we have no factual evidence on the record of the level of Resolution 68 financing made available to U.S. importers of oil country tubular goods. We cannot determine to what extend, if at all, this program was used. We intend to investigate this matter further in any administrative review that may occur under section 751 of the Act.

J. Local Tax Incentives

Petitioners allege that the respondents benefited from certain unspecified local tax measures and incentives in Brazil. In its response, the government of Brazil states that it knows of no local tax measures that would benefit the respondents. At verification, we saw no evidence that any such local tax incentives existed or that the respondents had received any such incentives. Therefore, we determine that this program was not used by the producers of the products under investigation.

Petitioners' Comments

Comment 1. Petitioners argue the Department's benchmark interest rate for preferential short-term loans should

reflect an alleged requirement by Brazilian banks that certain customers maintain compensating balances as a condition of trade bill discounting. Petitioners cite the fact that Mannesmann, in its response to the Department's antidumping questionnaire with respect to the subject merchandise, stated it maintains compensating balances as a condition of trade bill discounting. Therefore, petitioners believe that the Department should use the national average discount rate when determining its benchmark, as it did in *Certain Carbon Steel Products from Brazil* (49 FR 17988).

DOC Position. We agree (*see* the discussion of the benchmark interest rate in the "Analysis of Programs" section of this notice). Furthermore, whether or not Mannesmann maintains compensating balances as a condition of trade bill discounting is irrelevant to our choice of benchmark, because we do not use company-specific benchmarks for short-term preferential loans.

Comment 2. Petitioners claim the Department acted improperly in taking into account program-wide changes in interest rates for Resolution 674 loans, thereby comparing 1984 interest rates to a benchmark rate. According to the petitioners, the Department should have used the interest rates actually paid in 1983 on these loans and compared those with the average discount rate for 1984.

DOC Position. For purposes of our preliminary determination, we followed our practice of taking into account program-wide changes occurring after the review period but prior to the preliminary, such as the enactment of Resolution 882. We have now learned that another program-wide change has occurred. At approximately the same time as our preliminary determination, the Banco do Brasil issued Resolution 950 which changes, *inter alia*, the interst applicable to Resolution 882 loans. We have not had sufficient opportunity to analyze the impact of that change.

Given that the program-wide change enacted prior to our preliminary determination has been superseded in turn, we have decided for our final determination not to take into account the effects of Resolution 882. Therefore we have compared the interest rates charged under Resolution 674 to the benchmark for the review period in order to arrive at the benefit arising from this short-term export financing.

Comment 3. Petitioners contend that the Department should determine whether OCTG producers have benefited from upstream subsidies through their purchases of subsidized inputs.

DOC Position. We did not investigate petitioners' allegation that OCTG producers in Brazil have benefited from subsidized inputs, *i.e.*, upstream subsidies. As explained in our notice of "Initiation of a Countervailing Duty Investigation: Oil Country Tubular Goods from Brazil" (49 FR 28290), petitioners did not provide sufficient evidence to warrant an investigation of these claims.

Since our decision not to initiate on the upstream subsidy allegations in this case, the Trade and Tariff Act of 1984 (TTA) has come into force. We have determined that there is nothing in the upstream subsidies provisions of the TTA that would cause us to change our earlier conclusions.

Comment 4. Petitioners contend that BNDES and FINAME financing are countervailable even if they are generally available, citing the Court of International Trade's decision in *Bethlehem Steel Corp.* v. *United States*, 7 CIT ——, Slip Op. 84–67 (June 8, 1984).

DOC Position. We do not consider generally available programs to be countervailable. Petitioners' reliance on *Bethlehem* is misplaced, as the Court in that case upheld our determination that a generally available tax benefit is not countervailable. The Court's further comments on general availability are pure *dicta* and do not affect the Court's earlier approval of our general availability test in *Carlisle Tire and Rubber Co.* v. *United States*, 564 F. Sup. 834 (1983).

Comment 5. Petitioners further contend that BNDES and FINAME loans are not generally available, citing BNDES annual reports which allegedly reveal that its funds are channeled to particular sectors targeted by the government. Furthermore, the financial statements of the respondents show that they have received BNDES and FINAME financing. Consequently, the Department should investigate the financial assistance respondents have received from these programs and countervail any benefits provided under the programs.

DOC Position. When this case was initiated, we dismissed the allegation that BNDES and FINAME loans are not generally available because of evidence in the record of prior Brazilian cases, including *Certain Carbon Steel Products from Brazil* (49 FR 17988), that the opposite was true. In their pre-hearing brief filed on October 17, 1984, after the verification had taken place, petitioners cited certain excerpts from a BNDES annual report they allege constitute evidence that BNDES and FINAME loans are targeted and not generally available. We believe the actual meaning of these excerpts is unclear. In any event, this information was supplied at too late a date for us to act upon it. We will take this allegation into account in any administrative review that may occur under section 751 of the Act.

Comment 6. Petitioners disagree with the Department's determination that Mannesmann is creditworthy, because the company's financial statements indicate that Mannesmann has experienced negative operating income. Petitioners contend the Department must consider Mannesmann's cash flow position and examine its financial history in order to determine the company's creditworthiness.

DOC Position. We consider several economic and financial measurements in determining whether a company is creditworthy. Mannesmann has operated at a profit and experienced a favorable rate of return on equity, except in 1979 and 1983. Cash flow was positive in all years except 1979. The adverse performance in 1983 was caused in part by a maxi-devaluation of the cruzeiro. Mannesmann's financial statements are presented in accordance with generally accepted accounting principles and practices.

Comment 7. Petitioners allege that Confab has received subsidies for the development of calculation methods, manufacturing processes, and materials for application in production lines through the FUNTEC program. Petitioners contend the Department should countervail any subsidies which Confab received under this program.

DOC Position. We disagree. The petition contained no allegations concerning this program. Petitioners brought this program to our attention in its pre-hearing brief filed on October 17, 1984, after the verification had taken place and only a month before this final determination. We will take this allegation into account in any administrative review that may occur under section 751 of the Act.

Comment 8. Petitioners allege that the FINEP program provides subsidized financing to encourage the development of high technology. Confab's 1983 Annual Report states that it has received financing under FINEP. Accordingly, the Department should countervail any subsidies which Confab has received from this program.

DOC Position. See response to Comment 7 above.

Comment 9. Petitioners contend that the Department erred in calculating its benchmark for short-term loans by taking an arithmetic mean of the monthly discount rates and then calculating the effective annual interest rate based on that number. Petitioners argue that we should have calculated the effective annual interest rate for all of 1983 (including compensating balances) and then taken an arithmetic mean.

DOC Position. We disagree. Petitioners have not convinced us that their method is better than the method we have employed.

Respondents' Comments

Comment 1. Respondents argue that the Department must take the phased reduction of the IPI export credit premium into account in calculating the subsidy rate for this program in its final determination.

DOC Position. We cannot take into account program-wide changes that have not yet been implemented. When the phaseout of the IPI export credit premium actually takes place, we will take it into account in any administrative review that may occur under section 751 of the Act.

Comment 2. Respondents contend the Department failed to recognize the time value of money by not discounting the IPI export credit premium to reflect the delay between the date a credit is earned and the date it is actually received.

DOC Position. Under section 771(6)(B) of the Act, an offset is allowed for "any loss in the value of the subsidy resulting from its deferred receipt if the deferral is mandated by Government order." In the case of the IPI export credit premium, no such government mandate exists. Delays in a company's receipt of IPI credits are purely administrative, frequently the result of a company's tardy application for the benefit. No offset is allowed in such a case.

Comment 3. Counsel for the government of Brazil contends, with respect to IPI tax rebates under Decree-Law 1547, that the value-added tax or IPI is not generally applicable in Brazil and that the rebate of this tax does not confer a countervailable benefit.

DOC Position. We disagree. Although the same amount of IPI tax is applied to all steel products, only companies producing certain priority products and whose expansion projects are government-approved may receive the rebates. Fabricators of steel products, such as welded pipe and tube manufacturers who purchase coil, are not eligible for the rebates. Therefore, the rebates are not generally available and constitute a benefit to selected producers.

Comment 4. Respondents argue that since IPI tax rebates under Decree-Law 1547 are paid only on goods sold in the domestic market, no products exported to the United States benefit from the rebate and therefore no subsidy is conferred.

DOC Position. We are countervailing these rebates because receipt thereof is tied to investment in government-approved projects. Although the amount of rebate any firm receives may increase along with domestic sales, the existence of domestic sales does not guarantee that a rebate will be received.

Comment 5. Counsel of Mannesmann contends that the government of Brazil's equalization of the steel companies' tax liability in a manner that encourages them to invest in and modernize their plants is not a reason for viewing Decree-Law 1547 as a subsidy mechanism, and cites in support of this contention Article 14 of the Subsidies Code, which recognizes that domestic subsidies in developing countries should be countervailed only where the nature of the net benefit is clear and "unless nullification or impairment of tariff concessions or other GATT obligations is found to exist as a result of such subsidy."

DOC Position. The Subsidies Code, including Article 14, does not preclude us from assessing countervailing duties against domestic subsidies, when the products benefiting from those subsidies are causing material injury to a domestic industry.

Comment 6. Counsel for Mannesmann also claims that government intervention in the economy is not *per se* a countervailable subsidy and cites Article 11 section 3 of the Subsides Code in support of this view.

DOC Position. We agree; however, government intervention that benefits exports over domestic sales, or selected industries or firms within an economy, may confer a countervailable subsidy and does in this case.

Comment 7. Respondents claim the Department has overstated the benefit from the income tax exemption for export earnings by using the nominal tax rate as opposed to the effective tax rate applicable to the respondents. brazilian tax law allows corporations to invest 26 percent of taxes owed into certain specified corporations of funds. Respondents argue this provision results in an effective reduction of the corporate income tax rate, which decreases the benefit from the income tax exemption.

DOC Position. We disagree. We could only consider an adjustment if these tax provisions resulted in a lower benefit. In this case, the amount a company invests does not decrease the amount of the tax exemption available for export revenue. Therefore, no offset is appropriate.

Comment 8. Respondents argue that the department erred in valuing the subsidy arising from the income tax exemption for export earnings on the basis of export sales rather than total sales. Because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefit accrues to the entire operations of the firm and not just to exports. Further, an income tax exemption calculated on this basis does not affect the price of the exported product only; rather, it must have a general effect on all prices, both domestic and export.

DOC Position. We disagree. When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitable to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenue instead of total revenue.

Comment 9. Counsel for the government of Brazil argues the CIC-CREGE 14–11 circular is not a government program and, therefore, does not bestow a government subsidy on the exportation of oil country tubular goods. Respondents argue further that the CIC–CREGE 14–11 program is consistent with commercial considerations, since the costs of the program are covered by charges payable by the recipients; therefore, under Annex A of the subsidies Code, paragraphs (j) and (k), this program does not confer a subsidy.

DOC Position. We disagree. Our determination that the CIC–CREGE 14–11 program provides countervailable benefits is based on (1) the fact that under Brazilian law the Banco do Brasil, which administers this program, acts as the government of Brazil's financial agent, and (2) respondents' failure to demonstrate that the program does not provide preferential loans to exporters. Our uniform practice has been to calculate a subsidy provided under a preferential loan program by comparing the preferential rate to the benchmark interest rate, rather than to the cost of the funds to the lender.

As previously stated in our notice of "Final Affirmative Countervailing Duty Determination" regarding *Ceramic Title from Mexico* (47 FR 20012), "[r]egardless of what effects the Illustrative List of Export Subsidies may have on U.S. law otherwise, the uniform past practice on this issue in comparison with the legislative history of the Trade Act requires us to calculate the bounty or

grant provided under a preferential loan program on the basis of a comparison between the preferential rate and the commercially available rate rather than on the basis of a comparison with the cost of funds to the government."

Comment 11. Respondents claim that the Department, in calculating the subsidy benefit deriving from preferential short-term loans, inappropriately used a benchmark based on the 1983 national average discount rates of accounts receivable as published in *Analise/Business Trends*. Counsel contends that the 1982 interest rates in effect on the date of the loan should be used in calculating the benchmark instead.

DOC Position. We have amended our calculations by using the 1982 benchmark for loans taken out in 1982 and the 1983 benchmark for loans taken out in 1983.

Comment 12. Respondents contend that the Impôsto sôbre Operações Financeiras (IOF) is an indirect tax on the production of goods for export, that the exemption of loans under Resolution 674 from this tax is not a subsidy, and that if we determine that Resolution 674 financing provides a subsidy, we should not consider this exemption as part of that subsidy.

DOC Position. We disagree. The fact that the IOF is an indirect tax paid on domestic financial transactions is irrelevant. Since we are considering the discounting of a cruzeiro-denominated receivable, a transaction upon which the IOF is paid, as the commercial alternative to Resolution 674 loans, it is entirely appropriate that we include the exemption of Resolution 674 loans from the IOF as part of the subsidy in order to measure the full benefit provided under this program.

Comment 13. Respondents contend the Department improperly used an arithmetic mean rather than a weighted-average mean to establish its average benchmark, which does not reflect commercial reality because it fails to relate specific discount rates to specific loans.

DOC Position. We disagree. We have calculated the national average commercial short-term benchmark rate in such a way that it can be used as a benchmark throughout the period of investigation, because the loans we are examining were taken out throughout the period. Calculating the average benchmark by weighing each of the rates by the volume of loans taken out at that rate could lead to understating the value of the preferential loans.

Comment 14. Respondents argue that the Department, in its preliminary determination, improperly compared an annualized benchmark with loans of less than one year in valuing the subsidy benefit received from preferential short-term loans.

DOC Position. We disagree. For purposes of the preliminary determination, we adjusted the benefit to reflect the actual duration of each loan. We see no reason to modify our calculations for purposes of this final determination.

Comment 15. Respondents contend the Department should take into account in its final determination Resolution 950 of the Banco Central do Brasil, which changed the interest rate applicable to Resolution 882 loans from monetary correction plus three percent to monetary correction plus 10–15 percent. Counsel claims this would be consistent with our policy to recognize program-wide changes occurring after the period of investigation but prior to our preliminary determination.

DOC Position. See response to Petitioner's Comment 2

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making our final determinations.

Suspension of Liquidation

In accordance with section 703(d) of the Act, on September 12, 1984, we instructed the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Brazil (49 FR 35827). As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended and the Customs Service shall require an *ad valorem* cash deposit or bond for each such entry of this merchandise as follows:

Manufacturer/producer/exporter	*Ad valorem* rate (percent)
Confab Industrial S.A.	24.97
Mannesmann S.A. or Mannesmann Comercial S.A.	25.24
Persico-Pizzamiglio S.A.	11.35
All Other Manufacturers/Producers/Exporters	22.41

This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening material injury to, a U.S. industy within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on oil country tubular goods from Brazil entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

William T. Archey,

Acting Assistant Secretary for Trade Administration.

November 20, 1984.

[FR Doc. 84-31042 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting and Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The New England Fishery Management Council will convene a public meeting and a public hearing.

Public Meeting: Discuss reports of the enforcement, foreign fishing, and groundfish oversight committees; reports on the Mid-Atlantic Council meeting, the Anchorage conference, Chairmen's planning session, Federal assistance programs, and other fishery management and administrative matters.

Public Hearing: Discuss and consider the redefinition of the portion of the New England area to which the 200,000 bushel surf clam quota will apply.

The meeting will convene on December 11, 1984 at 10 a.m. and will adjourn at approximately 2 p.m. The hearing will convene also on December 11, 1984 at approximately 11:30 a.m. and will adjourn at approximately noon.

The meeting and hearing will take place at the King's Grant Inn, Danvers, MA. For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Rte. 1), Saugus, MA 01906; telephone: (617) 231–0422.

Dated: November 20, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-31037 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska Groundfish Plan Team has tentatively scheduled a public meeting for December 13–14, 1984, in Juneau, AK, at the Regional Office of the National Marine Fisheries Service, Room 461, beginning at 11 a.m. on December 13. The Team will review and prioritize 1985 management proposals for the Gulf of Alaska. A conference call may be used instead of this meeting if, due to the number and variety of proposals, a team meeting is not warranted. For further information, contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK; telephone: (907) 274–4563.

Dated: November 15, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-31038 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Restraint Limit for Certain Man-Made Fiber Apparel Products, Produced or Manufactured in the Republic of Korea

November 20, 1984

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 20, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea provides for 10 percent shift between the parts of Category 640, i.e., man-made fiber dress shirts in Category 640–D and man-made fiber shirts, other than dress shirts in Category 640–O, produced or manufactured in Korea and exported during 1984. Under the terms of the bilateral agreement, as amended, and at the request of the Government of the Republic of Korea, shift in the amount of 227,459 dozen is being applied to increase the limit for Category 640–O to 2,615,450 dozen. The limit for Category 640–D is being decreased by 227,459 dozen to 3,539,214 dozen to account for the shift.

A description of the textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 20, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 13, 1983, which established import restraint limits on certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during 1984.

Effective on November 20, 1984, the directive of December 13, 1984 is hereby further amended to include the following amended restraint limits for man-made fiber textile products in parts of Category 640:

Category	Amended 12-mo restraint limit[1]
640–D[2]	3,539,214 dozen.
640–O[3]	2,615,450 dozen.

[1] The restraint limits have not been adjusted to reflect any imports exported after December 31, 1983.

[2] In Category 640, only TSUSA numbers 379.3130, 379.3342, 379.9535, 379.9540, 379.9660.

[3] In Category 640, all TSUSA numbers in the category except those listed in footnote 2 above.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30987 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows.

DATE: 10 December 1984, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Major Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on future initatives in emergency planning.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-30985 Filed 11-26-84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Reference Contact Letter; DIS FL 4

The Defense Investigative Service (DIS) is responsible for conducting personnel security investigations (PSI's) to determine an individual's suitability for a position of trust. This form is used to contact references not readily available for interview so that an appointment may be made to personally interview the reference to elicit information concerning the loyalty, character, and reliability of the person being investigated to determine his or her suitability for such a position.

Individuals

Responses 22,500

Burden hours 1,800

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Office, WHS/DIOR, Room IC535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred A. Schonert, Defense Investigative Service, Administrative Services Division, V0240, 1900 Half Street, SW, Washington, DC 20324–1700, telephone (202) 693–0881.

Patricia H. Means, .

OSD Federal Register Liaison Officer, Department of Defense.

November 20, 1984.

[FR Doc. 84–30994 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems will meet in closed session on 3–4 January 1985 in the Pentagon, Arlington, Virginia and on 28–29 January 1985 at Strategic Air Command, Omaha, Nebraska.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue their study on how to hold Soviet imprecisely located targets at risk.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–30971 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Chemical Warfare and Biological Defense; Meetings

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Chemical Warfare and Biological Defense will meet in closed session on 20–21 December 1984 at the ANSER Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review progress in chemical warfare and biological defense since the 1980 DSB Summer Study on Chemical Warfare and Changes in the chemical/biological threat environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, 1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–30970 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if Applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

DIS Courtesy Letter; DIS FL 2a and 2b

The Defense Investigative Service (DIS) is responsible for conducting personnel security investigations (PSI's) to determine an individual's suitability for a position of turst. This form is sent to references interviewed by the agent as a follow-up device to ascertain the professionalism and integrity of the investigator workforce. The information collected serves to identify problem areas, the investigation of which may lead to administrative, disciplinary, or additional training actions.

Individuals

Response 12,000

Burden hours 1,200

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred A. Schonert, Defense Investigative Service, Administrative Services Division, V0240, 1900 Half street, SW, Washington, DC 20324–1700, telephone (202) 693–0881.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 20, 1984.

[FR Doc. 84–30995 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

AFROTC Preapplicant Questionnnaire (AFROTC Form 61)

The questionnaire is needed to gather information necessary to identify potentially qualified applicants for an AFROTC scholarship. By serving as an initial screening device, this questionnaire will enable the Air Force to lower the number of scholarship application booklets being printed from 400,000 to 50,000. This will result in an estimated annual savings of $66,000.

High School Students or Graduates between the Ages of 16 and 21

Responses 40,000

Burden hours 4,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 10535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Major J.D. Hogan, HQ USAF/MPPE, The Pentagon, Washington, DC 20330–5060, telephone (202) 695–0318.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 20, 1984.

[FR Doc. 30989 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Need Assessment Survey

Opinions and attitudes of soldier's dependents toward the facilities and services provided on the military base at Panama will be surveyed. Survey results will be used to improve base facilities and services.

Individuals or households

Responses 500

Burden hours 100

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM–ADI, Room 1D667, The Pentagon, Washington, DC 20301, telephone (202) 695–5111.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense..

[FR Doc. 84–30986 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

International Military Student Information, DD Form 2339

Information required by U.S. Military Schools in advance of and during attendance to assure integration of International Military Students into U.S. Military Academic environment.

Individuals

Responses 15,000

Burden hours 7,500

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM–ADI, Room 1D667, The Pentagon, Washington, DC 20301, telephone (202) 695–5111.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–30987 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the use to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for the US Army Health Professions Scholarship Program, DA Form 4628

The application for the US Army Health Professions Scholarship Program is part of the information reviewed in the competitive selection process.

Individuals

Responses 2,000

Burden hours 2,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM–ADI, Room 1D667, The Pentagon, Washington, DC 20301, telephone (202) 695–5111.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer. Department of Defense.

[FR Doc. 84-30866 Filed 11-26-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Proposed U.S. Navy Carrier Battle Group Homeporting in the Puget Sound Area, Washington State; Public Hearing and Availability of the Draft Environmental Impact Statement (EIS)

The U.S. Navy pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (43 CFR Part 1500), has prepared and filed with the U.S. Environmental Protection Agency, a draft Environmental Impact Statement (DEIS) for the proposed Carrier Battle Group homeporting in the Puget Sound Area, Washington. The DEIS has been distributed to various Washington state and local agencies, Federal agencies, affected Indian tribal organizations, interest groups, media, interested individuals and public libraries. Copies of the DEIS may also be viewed during weekdays (12:00 noon—6:00 p.m.) in the lobby of the Snonomish County Administration Building, 3001 Rockefeller Avenue, Everett, Washington through January 14, 1985.

A public hearing to inform the pubic of the study's findings and to solicit comments on the Navy's proposed homeport facility will be held at the following location:

Snonmish County Administration Building Auditorium, 3001 Rockefeller Avenue, Everett, Washington

Dates and Times: Tuesday, December 14, 1984, 7:00 p.m. to approximately 12:30 A.M.

The hearing will be chaired by the U.S. Navy in accordance with the National Environmental Policy Act, Council of Environmental Quality regulations.

The U.S. Navy will apply for construction permits following the decision by the Secretary of the Navy on the proposed action. All interested parties are invited and urged to be present or represented at this meeting. This includes representatives of Federal and non-Federal agencies; commericial, business, industrial, transportation, and utilities agencies; civic, ecological, and environmental groups, fish and wildlife organizations; interested and concerned citizens and other interests. All parties will be afforded full opportunity to express their views, but in order to allow all an opportunity to speak, statements will be limited to 8 minutes. If longer statements are to be presented, they should be delivered in writing either at the hearing or mailed to the office listed below and summarized at the public hearing.

Commander
Naval Base, Seattle
Code 02 Homeporting Office
Seattle, WA 98115

Oral statements will be heard and transcribed by a stenographer, but for accuracy of record all statements should be submitted in writing. All statements, both oral and written, will become part of the official record on this study.

The public hearing will be reported verbatim. Copies of the transcript of the proceedings may be purchased from the Navy. The cost of a copy will correspond directly to the number of pages enclosed within the transcript.

Final decision on the proposed plans will be made only after full consideration is given to the views of responsible agencies, groups and citizens.

Written statements will be accepted until December 21, 1984.

Questions concerning this pubic notice may be directed to Mr. Ed Likjanowicz at 206–526–3073/4/5.

Dated: November 20, 1984.

William F. Roos, Jr.,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 84-31000 Filed 11-26-84; 8:45 am]

BILLING CODE 3810-AE-M

Hampshire Instruments, Inc.; Intent To Grant Limited Exclusive Patent License

The Department of the Navy hereby gives notice of intent to grant to Hampshire Instruments, Inc., a corporation of the State of New York, a revocable, nonassignable, limited exclusive license for ten (10) years to practice the Government-owned invention described in U.S. Patent No. 4,184,078 entitled "Pulsed X-Ray Lithography" issued January 15, 1980; inventors: David J. Nagel and Martin C. Peckerar.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of Naval Research (Code 302), Arlington, VA 22217.

For further information concerning this notice, contact: Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 305), Ballston Tower No. 1, 800 N. Quincy Street, Arlington, VA 22217, Telephone No. (202) 696–4005.

Dated: November 21, 1984.

Dennis Gonzalez,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Oficer.

[FR Doc. 84-31009 Filed 11-26-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

International Research and Studies Program; Application Notice for New Awards and for Noncompeting Continuations for Fiscal Year 1985

Applications are invited for new awards and for noncompeting continuation awards under the International Research and Studies Program for Fiscal Year (FY) 1985.

Authority for this program is contained in section 605(a) of Title VI of the Higher Education Act of 1965, as amended (20 U.S.C. 1125(a)).

The International Research and Studies Program provides funds to qualified public and private agencies, organizations, institutions, and individuals to conduct research designed to improve and strengthen instruction in modern foreign languages, area studies, and other related fields needed to provide full understanding of the places in which those languages are commonly used.

Closing dates for transmittal of applications: 1. An application for a NEW grant must be mailed or hand delivered by January 25, 1985. (84.017A)

2. An application for a NONCOMPETING CONTINUATION grant, to be assured of consideration for funding, should be mailed or hand delivered by February 15, 1985. If an application is late, the Secretary may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it. (84.107B)

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, *Attention:* 84.017A or 84.017B, International Research and Studies Program, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Eligible applicants: for the International Research and Studies Program eligible applicants include public and private agencies, organizations, and institutions, as well as individuals.

Program information: Continuation awards. Information regarding the continuation of a noncompeting award is contained in the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253.

Program information: New awards. Applications for new awards will be evaluated in accordance with the selection criteria contained in the regulations for this program (34 CFR 660.31 through 660.35). New projects may be proposed for a period of from one to three years. An applicant requesting support for more than one year must provide a budget breakdown and proposed scope of work for each additional year.

Funding priorities: The regulations governing the International Research and Studies Program (34 CFR 660.34) provide for the establishment of funding priorities by the Secretary in any given year. For FY 1985, the Secretary has established funding priorities for new awards for research in the following areas:

(1) The use of computers for improving foreign language instruction.

(2) Foreign language acquisition.

(3) Improved teaching methodologies for foreign languages.

(4) Foreign language proficiency testing.

(5) Instructional materials development for uncommonly taught languages.

In preparing an application in the area of instructional materials development for uncommonly taught languages, applicants for new awards should consult the report, *A Survey of Material Development Needs in the Less Commonly Taught Languages in the United States,* published by the Center for Applied Linguistics, 3520 Prospect Street, NW. Washington, D.C. 20007. Telephone: (202) 298–9292. The Secretary consults this report in determining priorities for instructional materials development for uncommonly taught languages. The report is also available through the Educational Resources Information Clearinghouse (ERIC), Telephone: (202) 254–5500.

Available funds: It is anticipated that approximately $1,500,000 will be available for the International Research and Studies Program in FY 1985. In addition, it is expected that approximately $60,000 in funds from the Fiscal Year 1984 special foreign currency appropriation, which are available until expended, will be available for this program in Fiscal Year 1985. These funds could support approximately 25 new grants and 10 noncompeting continuation awards at an average cost of $45,000.

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be available for mailing by December 5, 1984. They may be obtained by writing to the Center for International Education, Office of Postsecondary Education, U.S. Department of Education, (Room 3923, ROB–3), Mail Stop 3308, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package.

(Approved under Office of Management and Budget Control Number 1840–0068)

The program information package is intended to aid applicants applying for

assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

The Secretary urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the International Research and Studies Program, 34 CFR Parts 655 and 660.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further information: For further information contact Robert R. Dennis, Program Manager, International Research and Studies Program, Center for International Education, (Room 3928, ROB-3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-9425.

(20 U.S.C. 1125)

(Catalog of Federal Domestic Assistance No. 84-017, International Research and Studies Program)

Dated: November 20, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-30850 Filed 11-26-84; 8:45 am]

BILLING CODE 4000-01-M

College Housing Program; Closing Date for Transmittal of Proposals for a Prepayment Discount Under the College Housing Program

Educational institutions that have outstanding college housing loans and that wish to apply for a prepayment discount under the College Housing Program are invited to submit a proposal for a discount to the Secretary of Education.

This program is authorized under Title IV of the Housing Act of 1950 (12 U.S.C. 1749–1749d). Under section 306 of the Department of Education Organization Act (Pub. L. 96–88), administration of the College Housing Program was transferred from the Secretary of Housing and Urban Development to the Secretary of Education (20 U.S.C. 3446).

Section 306 of the Department of Education Appropriation Act, 1985 amended section 402(c) of the Housing Act of 1950 to allow the Secretary to accept, prior to October 1, 1985, discounted prepayments on outstanding loans.

Closing Date for Transmittal of Proposals

Proposals must be mailed or hand delivered in accordance with the following schedule:

By 4:30 PM on closing date of	For interest rate in the month of
December 28	December 1984
January 16	January 1985
February 13	February 1985
March 13	March 1985
April 17	April 1985
May 15	May 1985
June 12	June 1985
July 17	July 1985
August 14	August 1985
September 18	September 1985.

Prepayment must be made by close of business (COB) on the last business day of the month if the institution wishes to use the interest rate for that month in the proposal. Further information about prepayments is included under "Supplemental Information".

Proposals Delivered by Mail

A proposal sent by mail must be addressed to the U.S. Department of Education, Attention: Division of Grants and Loans Management, L'Enfant Plaza, P.O. Box 23471, Washington, DC 20026.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If a proposal is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

Institutions should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Institutions are encouraged to use registered or at least first-class mail.

Each late applicant will be notified that its proposal will not be considered in that month. Unless the institution notifies the U.S. Department of Education of its intent to withdraw from the discount program, the proposal will be considered during the following month.

Proposals Delivered by Hand

A proposal that is hand delivered must be taken to the U.S. Department of Education, Division of Grants and Loan Management, Room 3671, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturday, Sunday or Federal Holidays. Proposals will not be accepted after 4:30 p.m. on the closing date.

Program Information

This limited invitation is solely for prepayment of outstanding college housing loans. The applicable regulations specify requirements for prepayment of outstanding loans and for determining the actual amount that must be prepaid under a formula. The Secretary determines whether to award a discount based on these requirements, including the requirement, that the discount be in the best financial interests of the Government.

Supplemental Information

There is no standard form for a proposal. However, a proposal for a prepayment discount should be submitted and signed by an authorized official of the institution, should reflect the information necessary for the Secretary to award a discount under the applicable regulations, and should also contain the following information—

- If the institution intends to use funds on deposit in reserve accounts that were established for the building originally financed by the loan or for loan payments, it must also request that the Department grant the institution permission to use such funds for prepayment;
- For loans that are evidenced by bonds issued under a trust indenture (or similar instrument), a statement that the trustee under the indenture (or similar instrument) has verified the outstanding balance of the loan to be discounted;
- The exact date the institution will submit its prepayment to the Secretary; and,
- The construction project number for the loan and a description of the building financed by the loan.

The Department encourages each institution that proposes to submit a discounted prepayment for loans that are evidenced under a trust indenture (or similar instrument) to consult directly with the trustee institution with respect to the execution of appropriate forms for releasing or cancelling mortgages or liens that secure payment of the loan. In addition, to the extent that several loans are evidenced by the issuance of one bond under a trust indenture, an institution that wishes to prepay only one of the loans should seek the advice of the trustee as to the appropriate documents and forms for separating the loans for prepayment pruposes. The Department anticipates that separating loans for prepayment purposes will necessitate the execution of collateral documents such as a supplemental to an indenture. All appropriate forms that the Department might require a Trustee, as bondholder, to execute should be submitted with the proposal.

Each institution that submits a proposal should calculate the amount it must prepay under the formula reflected in the applicable regulations. The Department encourages prepayment directly to the Department of Treasury by electronic transfer but will accept prepayment by a certified check to the Federal Reserve Bank in Richmond, Virginia. Institutions are advised that full prepayment is required. Applicable interest rates for prepaying college housing loans are determined by the certified Treasury interest rate for the month in which the prepayment is made. If an institution wishes to use a Treasury interest rate for any given month, the institution has until 4:45 PM Eastern Standard Time on the last business day of that month to submit its prepayment.

No partial payments may be used to receive a prepayment discount under the legislation. Institutions that do not prepay in full or undercalculate the prepayment do so at the risk of rejection of the proposal. If time and resources permit, the Secretary notifies institutions that have submitted underpayments.

The Secretary reviews all prepayment calculations done by institutions. If an institution overcalculates and submits an overpayment, the overpaid amount will be returned to the institution unless the institution wishes the Secretary to apply the overpaid amount to other indebtedness to the Department. Once a proposal has been tentatively accepted, the Department will execute an agreement with the institution. The agreement would principally reiterate the statutory and regulatory requirements for a prepayment discount; however, it is possible that terms of the agreement may vary from institution to institution depending on the particular facts involved.

Applicable Regulations

The final regulations applicable to discounted prepayments of College Housing Loans (34 CFR 614.63) were published in the July 17, 1984 issue of the **Federal Register.** (49 FR 29018–29022).

This program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to intergovernmental review requirements imposed by section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. The objective of these requirements and Executive Order 12372, which implements these requirements, is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Further Information: For further information contact John K. Uchima, Chief, Loan Management Branch, Division of Grants and Loan Management, Department of Education, P.O. Box 23471, Washington, D.C. 20026. Telephone: (202) 755-1843.

(12 U.S.C. 1749–1749d)

(Catalog of Federal Domestic Assistance No. 84.142 College Housing program)

Dated: November 21, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-31120 Filed 11-26-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of meeting of the National Advisory Council on Women's Educational Programs Executive Committee. The agenda will include planning Council activities for the upcoming forums on women in non-traditional fields and personnel matters. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend and that a portion of the meeting will be closed.

DATE: December 3, 1984, 7:30 p.m. to 8:00 p.m. open session; closed from 8:00 p.m. until business is completed.

ADDRESS: The meeting will be held at the Chase Park Plaza Hotel, Kingshighway at Lindell Blvd., St. Louis, MO 63108.

FOR FURTHER INFORMATION CONTACT: Sally Todd, Deputy Director, National Advisory Council on Women's Educational Programs, 425 13th Street, NW., Suite 416, Washington, D.C., 20004, (202) 376-1038.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on December 3, 1984, from 7:30 p.m. to 8:00 p.m. to open session, and from 8:00 p.m. until business is completed the meeting will be closed. The agenda will include planning Council activities for the upcoming forums on women in non-traditional fields. The Executive Committee will meet in closed session at 8:00 p.m. to discuss personnel matters and continue until business is completed. These discussions would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b (c) of Title 5 U.S.C.

The public is being given less than fifteen days notice of this closed session due to difficulty of arranging the meeting because of the unavailability of some Executive Committee members. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs. A summary of the activities of the closed sessions and related matters which

would be informative to the public consistent with the policy of section 552b (c) of Title 5 U.S.C. will be available to the public within 14 days of the meeting at the Council's office, 425 13th Street, NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C. on November 23, 1984.

Sally A. Todd,

Acting Executive Director.

[FR Doc. 84-31153 Filed 11-26-84; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement on a Process Facility Modifications Project for Existing Chemical Processing Facilities at the Hanford Site Near Richland, Washington

AGENCY: Department of Energy.

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS) pertaining to a planned Process Facility Modifications (PFM) Project for the existing chemical processing facilities at the Hanford Site near Richland, Washington.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an EIS, in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA), to provide environmental input into the decision to construct and operate additional spent nuclear fuel disassembly and dissolution facilities at the Hanford Site near Richland, Washington. These facilities would modify the existing chemical processing facilities at the Hanford Site to provide additional nuclear fuel chemical processing capabilities. These additional capabilities are required for the processing of spent Fast Flux Test Facility (FFTF) fuel and other DOE-owned fuel. FFTF fuels are clad in stainless steel which is virtually insoluble in conventional solvents and must be removed or breached mechanically prior to dissolution of the fuel. This modification effort is called the "Process Facility Modifications Project." This action will provide improved capability for recovering plutonium (Pu) and uranium (U) for national defense and for research and development activities. Because it is not weapons grade, the Pu obtained from processing FFTF fuels in the PFM will be added to other Pu or will be processed further to meet DOE requirements. The PFM project (Project No. 84-D-135) was authorized by Congress based on recommendations from the Armed Services Committees.

The purpose of this NOI is to present pertinent background information on the proposed scope and content of the EIS and to solicit comments and suggestions for consideration in its preparation. Agencies, organizations, and individuals desiring to submit comments or suggestions for consideration in the preparation of this EIS are invited to do so. No public scoping meeting is scheduled; should DOE determine after it reviews public comments in response to this Notice of Intent that a scoping meeting is appropriate, one will be scheduled. Upon completion of the draft EIS, the document will be made available to the public for review; comments received will be used in preparing the final EIS. Written comments or suggestions on the scope of the EIS may be submitted to:

Mr. Roger K. Heusser, Director, Materials Processing Division, DP-132, GTN, U.S. Department of Energy, Washington, DC 20545, Telephone: (301) 353-5496

For general information of DOE's EIS process, contact:

Office of Environmental Compliance, Office of the Assistant Secretary for Policy, Safety, and Environment, U.S. Department of Energy, ATTN: Dr. Robert Stern, PE-25, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 252-4600

DATE: Written comments postmarked within 30 days of publication of this NOI in the **Federal Register** will be considered in the preparation of the EIS.

Background Information: The capability for processing spent FFTF and other DOE-owned fuels is necessary to recover the Pu and U for national defense and for research and development activities. FFTF fuels currently are not amenable to processing in existing facilities in the United States due to their cladding material, size, and other technical and economic considerations. FFTF fuel will be available for processing in the early 1990's. By this time, the existing chemical processing facilities could be modified to be capable of processing these fuels.

The PFM would modify the existing chemical processing facilities to provide the capability for processing FFTF and other DOE-owned fuels. The proposed modifications would encompass the initial phases of fuel processing, including fuel element disassembly, segmentation, dissolution, and feedstock preparation. The dissolved fuel then would enter the existing chemical process just prior to the first solvent extraction cycle. Because the existing chemical processing facilities will be utilized in processing the FFTF and other DOE-owned fuel, the EIS's on the operation of the existing chemical processing facilities and waste management will serve as principal references in the preparation of this EIS. These referenced EIS's are: (1) "Operation of PUREX and Uranium Oxide Plant Facilities," February 1983 (DOE/EIS-0089); (2) "Double-Shell Tanks For Defense High-Level Waste Storage," April 1980, DOE/EIS-0063); and (3) "Waste Management Operations, Hanford Reservation, Richland, Washington," December 1975 (ERDA-1538). This EIS will analyze and evaluate the environmental impacts of constructing and operating the PFM, and the alternatives thereto, as well as mitigating actions to minimize potential environmental impacts from the proposed action. Environmental impacts analyzed in DOE/EIS-0089, DOE/EIS-0063, and ERDA-1538 that are not affected by the proposed action will not be reevaluated in this EIS. The EIS will contain, however, sufficient information to evaluate whether such impacts already discussed in DOE/EIS-0089, DOE/EIS-0063, and ERDA-1538 will be affected.

Proposed Action: The proposed action is to construct and operate the PFM to enable recovery of Pu and U from DOE-owned fuels (including stainless steel-clad fuels). Construction of the PFM is assumed to start in FY 1986. The PFM could be operational in FY 1992.

Stainless steel cladding is virtually insoluble in conventional solvents and must be removed or breached mechanically prior to dissolution of the fuel. In the PFM, the fuel would be segmented mechanically, thus exposing the fuel on the cut segment ends to the dissolver solution; the exposed fuel would be dissolved from the fuel segments; and the resulting solution would be transferred to the existing chemical processing facilities for chemical separation, purification, and conversion of the contained Pu and U to solid form. In addition to these steps, the proposed action also includes onsite transportation to the fuel; fuel receipt and interim storage at the PFM; mechanical disassembly of the fuel assembly into elements as required; and post-dissolution treatment, interim storage, blending of the dissolver solution, waste handling and off-gas treatment.

Identification of Environmental Issues: The following issues will be analyzed for the proposed action and alternatives during the preparation of the EIS. This list is intended neither to be all-inclusive nor a predetermination of the impacts:

- Effects on the general population from emissions of radiologic and nonradiologic releases caused by normal operations
- Magnitude of exposure of operating personnel to radiologic and nonradiologic releases during normal operations
- Offsite (general population) effects resulting from potential accidents
- Effect on air and water quality and other environmental consequences during construction and normal operations
- Applicable regulations and guidelines
- Incremental differences in environmental impacts between operation of the existing chemical processing facilities with and without the proposed modifications
- Cumulative effects of operations at the Hanford Site, including changes in support operations
- Construction impacts
- Onsite and offsite transportation impacts of products and irradiated fuel
- Decontamination and decommissioning
- Short-term versus long-term land use
- Irretrievable and irreversible commitment of resources
- Socioeconomic impacts to surrounding communities
- Mitigation measures

Alternatives to the Proposed Action: The reasonable alternatives which will be addressed in the EIS include:

Process fuel at the Savannah River Plant in South Carolina

This alternative will analyze shipping the irradiated fuels for processing and separation, purification and conversion of Pu and U to solid form. The only other facility capable of processing irradiated fuel containing significant quantities of Pu now operating in the United States is located at the DOE Savannah River Plant (SRP), Aiken, South Carolina. The SRP also would require modifications comparable to the proposed action to process FFTF-type fuels.

Process fuel in other existing facilities

This alternative will analyze the use of one or more other existing facilities to provide part or all of the capability required for processing the fuel. This alternative will include facilites not designed for nuclear fuel processing but which could be modified to achieve the mission objectives.

No action

The no-action alternative is a "no change" alternative. Discharged FFTF spent fuel would be stored for eventual disposal without recovery of its Pu and U.

Related NEPA Documentation: NEPA documents are being prepared for another activity at Hanford that is related to, but is not within the scope of the PFM. This EIS is on "Disposal of Hanford High-Level and Transuranic Wastes." The NOI for this EIS was published in the **Federal Register** on April 1, 1983 (48 FR 14029). This EIS will provide environmental input into the decision to select and implement a Hanford site-wide final disposal strategy for high-level and TRU wastes generated as a result of national defense and research activities at Hanford.

Comments and Scoping: All interested parties are invited to submit written comments or suggestions to be considered by DOE in preparing this EIS. Written comments or suggestions on the scope of the EIS may be submitted to Mr. Roger K. Heusser (address given above). Written comments postmarked within 30 days of the publication of this Notice of Intent will be considered in the preparation of this EIS. Comments postmarked after that date will be considered to the extent practicable. Those who wish to receive a copy of the draft EIS for review and comment when it is issued also should notify Mr. Heusser. Those seeking further information on the proposal or the EIS process should contact Dr. Robert Stern (address given above).

Copies of background documents currently planned to be used in preparing the EIS are available for inspection at the following DOE offices:

Public Reading Room, Room E-190, 1000 Independence Avenue, SW., Washington, DC 20585

Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439

Chicago Operations and Regional Office, 175 West Jackson Boulevard, Chicago, IL 60604

Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401

Nevada Operations Office, 2753 South Highland Drive, Las Vegas, NV 89114

Albuquerque Operations Office, National Atomic Museum, 2358 Wyoming Avenue, Kirtland Air Force Base East, Albuquerque, NM 87715

Oak Ridge Operations Office, Federal Building, 200 Administration Road, Oak Ridge, TN 37830

Richland Operations Office, Federal Building, 825 Jadwin Avenue, Richland, WA 99352

Energy Information Center, 215 Freemont Street, San Francisco, CA 94105

Savannah River Operations Office, Federal Building, 211 York Street, NE, Aiken, SC 29801

Regional Energy/Environmental Information Center, Denver Public Library, 1357 Broadway, Denver, Colorado 80210

Dated at Washington, D.C., the 16th of November, 1984, for the United States Department of Energy.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84-31094 Filed 11-26-84; 8:45 am]
BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/SW(EU)-129, for the transfer of 550 Kilograms of uranium, enriched to 3.8% in U-235, from Kernkraftwerk Philippsburgh GmbH, in the Federal Republic of Germany to ASEA-ATOM, in Sweden, for conversion from UF_6 and fuel fabrication.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 16, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-31061 Filed 11-26-84; 8:45am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Spain

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Spain Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/SP(EU)-4, 26,405.9 Kilograms of uranium, containing 871.395 Kilograms of uranium-235 (3.3% enrichment), from British Nuclear Fuels, Ltd., in the United Kingdom, to Spain, for use in the ASCO-1 power reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 16, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-31060 Filed 11-26-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 6889-001]

Alabama Municipal Electric Authority; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Alabama Municipal Electric Authority, Permittee for the proposed Gainesville Hydro Project No. 6889, has requested that its preliminary permit be terminated. The permit was issued on May 11, 1983, and would have expired April 30, 1985. The project would have been located on the Tombigbee River near Gainesville, Greene County, Alabama. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 25, 1984, and the preliminary permit for Project No. 6889 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31028 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6890-001]

Alabama Municipal Electric Authority; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Alabama Municipal Electric Authority, Permittee for the proposed Coffeeville Hydro Project No. 6890, has requested that its preliminary permit be terminated. The permit was issued on July 29, 1983, and would have expired June 30, 1985. The project would have been located on the Tombigbee River near Coffeeville, Clarke County, Alabama. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 25, 1984, and the preliminary permit for Project No. 6890 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31029 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6891-002]

Alabama Municipal Electric Authority; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Alabama Municipal Electric Authority, Permittee for the proposed William Bacon Oliver Lock and Dam Hydro Project No. 6891, has requested that its preliminary permit be terminated. The permit was issued on July 8, 1983, and would have expired June 30, 1986. The project would have been located on the Black Warrior River in Tuscaloosa County, Alabama. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 25, 1984, and the preliminary permit for Project No. 6891 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31030 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-41-000]

American Petrofina Co. of Texas and Petrofina Delaware, Inc.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Blanket Limited-Term Partial Abandonment Authorization

November 20, 1984.

Take notice that on November 13, 1984, American Petrofina Company of Texas (APCOT) and Petrofina Delaware, Incorporated (PDI), P.O. Box 2159, Dallas, Texas 75221 (either or both of whom are referred to herein as "Fina"), filed an application pursuant to section 7 of the Natural Gas Act (NGA) and section 311 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 717f, 3371 (1982), and Parts 157 and 284, of the Commission's Regulations, 18 CFR Parts 157, 284 (1983), requesting blanket limited-term partial abandonment authorization and a blanket limited-term certificate of public convenience and necessity authorizing the Fina Spot Market Gas Sales Program (FinaGas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval of the requested blanket authorization and certificate would (1) permit the limited-term partial abandonment of certain sales of gas by Fina and its working interest co-owners in interstate commerce for resale; (2) authorize certain sales of gas in interstate commerce for resale by Fina and its working interest co-owners; (3) confer pre-granted abandonment authorization for sales made pursuant to the requested certificate; (4) permit the transportation of gas pursuant to certificate or authorization by any transportation or distribution company able and willing to participate in FinaGas; (5) confer pre-granted abandonment authorization for transportation conducted pursuant to the requested certificate; and (6) waive the reporting requirements of §§ 157.24, 157.25, and 157.30 of the Commission's Regulations, 18 CFR 157.24, 157.25, 157.30 (1983).

Fina proposes to sell on the spot market certain volumes of gas qualifying for prices higher than the maximum lawful price prescribed under section 109 of the NGPA. To be eligible for sale in FinaGas, the volumes must be owned by Fina or by Fina's working interest co-owners and must be contractually committed to an interstate pipeline purchaser under a long-term contract containing take-or-pay provisions. On behalf of itself and such co-owners, Fina will seek temporary releases of eligible volumes from the various pipeline purchasers. All volumes released, sold, and delivered in FinaGas will be credited against the releasing pipeline's take-or-pay obligation.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before November 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31043 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-705-000]

Boston Edison Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motions to Reject, Denying Motion for Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued: November 21, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On September 27, 1984, Boston Edison Company (Boston Edison) submitted for filing a proposed two-step increase in its rates for full requirements service to the Towns of Concord, Norwood, and Wellesley, Massachusetts (Towns), and for partial requirements contract demand service to the Town of Reading, Massachusetts (Reading).[1] Step A of the proposed rates would increase revenues to Boston Edison by about $2.2 million (5.7%), based on the 12 month test period ending on September 30, 1985. Step B would provide an additional increase in revenues of about $750,000, representing a total increase of approximately $3 million (7.0%). The company requests that the Step A rates become effective on November 27, 1984, and the Step B rates become effective on November 28, 1984. However, in the event that the Commission suspends the Step A and Step B rates for the same period, Boston Edison requests that the Step A rates be deemed withdrawn.

Boston Edison's filing also includes rate schedule supplements which reflect the termination, as of March 1, 1985, of the provision of a 1980 settlement agreement that wholesale rate increases may not become effective sooner than the company's retail rate increases.[2] The company states that it gave its customers notice of its intent to terminate that provision on January 13, 1984, and proposes that the supplements become effective as of November 27, 1984.

Notice of Boston Edison's filing was published in the **Federal Register**, with comments due on or before October 23, 1984. 49 FR 41090. The Towns and Reading filed timely motions to intervene. Both the Towns and Reading request rejection of the filing on the basis of alleged deficiencies. The Towns allege a failure to provide cost support for the company's proposed computational errors in the filing as well as improper accountings for fuel charges. Claiming that Boston Edison has, in the past, improperly included terminal charges for fuel for the Mystic Generating Station in Account No. 151, rather than Account No. 152, Reading also requests that the Commission institute an investigation of this issue. Alternatively, both the Towns and reading request maximum suspension of the proposed rates.[3]

The Towns further request summary dismissal of four items included in the company's proposed rates: (1) The Pilgrim Stabilizing Line, which the Towns claim is related to the carrying charges for the Pilgrim 2 abandonment costs disallowed in Docket No. ER82-625-000; (2) allegedly unsupported amounts for depreciation expense and decommissioning allowance; (3) donations, which the Towns claim are traditionally below-the-line expenses; and (4) an allegedly unsupported amount associated with nuclear outage amortization. In further support of their request for maximum suspension, the Towns allege that the multiple step nature of the proposed increase is merely an attempt to circumvent the Commission's suspension policy. The Towns also allege price squeeze.

Boston Edison responded to the pleadings of the Towns and Reading by answer filed on November 7, 1984. The company opposes the requests for rejection or summary dismissal and for a five month suspension of its proposed rates, denying the claims of filing deficiencies, the cost of service

[1] *See* Attachment for rate schedule designations.

[2] The provision, which was incorporated into Boston Edison's rate schedules by a letter order accepting the 1980 settlement between the company and its customers, in Docket No. ER79-216, would have been automatically renewed, absent notice of termination. We note that Boston Edison's most recent retail rate increase became effective on June 29, 1984. Thus, the instant filing is in conformance with the existing provision.

[3] In support of their request for a five month suspension, the Towns raise several cost of service issues, including: (1) The amount of Pilgrim 2 abandonment costs; (2) nuclear fuel disposal costs; (3) claimed depreciation charges; (4) Period II operation and maintenance expenses; (5) cash working capital allowance; (6) the claimed extraordinary property loss related to Edgar Station; (7) the increase in decommissioning costs; (8) the purchase of Canadian nuclear power; (9) allocation of transmission costs; and (10) the proposed rate of return on common equity. Reading raises issues, including: (1) Income tax expense; (2) rate of return on equity; (3) calculation of cash working capital; (4) the amount and amortization of spent nuclear fuel disposal costs; (5) the increase in wages; and (6) adjustment for the Pilgrim outage.

allegations, and the Towns' allegation of price squeeze. Boston Edison further argues that its two-step rate filing format is now standard Commission policy and has been approved by the courts. With respect to Reading's request for an investigation regarding fuel charges for the Mystic Generating Station, Boston Edison contends that its proposed rate design change does not warrant a five month suspension.

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make the Towns and Reading parties to this proceeding.

Notwithstanding the customers' challenges to the sufficiency of the cost support supplied by Boston Edison, we find that the company's submittal substantially complies with the Commission's filing requirements. We further find that the matters raised by the Towns in connection with their request for summary disposition and Reading's allegations of computational errors and improper fuel charges present issues of law or fact most appropriately resolved in the context of an evidentiary hearing. Accordingly, we shall deny the intervenor's request for rejection or summary disposition.

Our preliminary review of Boston Edison's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. In the instant proceeding, our review suggests that the Step A rates may not produce substantially excessive revenues. Accordingly, we shall suspend the Step A rates for one day, to become effective, subject to refund, on November 28, 1984. By contrast, our preliminary review indicates that the Step B rates may produce substantially excessive revenues. Accordingly, we shall suspend these rates for five months, to become effective, subject to refund, on April 28, 1985.[4]

[4] With respect to the Towns' opposition to a two-step increase, we find that Boston Edison's submittal substantially complies with our regulations. Furthermore, the Commission has permitted such phased rate filings on a number of occasions.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the Towns.

The Commission Orders:

(A) The intervenors' motions to reject are hereby denied.

(B) The Towns' motion for summary disposition is hereby denied.

(C) Boston Edison's submittal is hereby accepted for filing; the Step A rates are suspended for one day, to become effective on November 28, 1984, subject to refund; the Step B rates are suspended for five months, to become effective on April 28, 1985, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Boston Edison's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

BOSTON EDISON COMPANY RATE SCHEDULE DESIGNATIONS

[Docket No. ER84-705-000]

Designation and other party	Description
Town of Concord	
(1) Supplement No. 13 to Rate Schedule FPC No. 47 (Supersedes Supplement No. 5).	Revises § 3.4
(2) Supplement No. 14 to Rate Schedule FPC No. 47 (Supersedes Supplement No. 12).	Rates S-8, Step A.
(3) Supplement No. 15 to Rate Schedule FPC No. 47.	Rate S-8, Step B
Town of Norwood	
(4) Supplement No. 12 to Rate Schedule FPC No. 48 (Supersedes Supplement No. 4 as supplemented).	Revises § 3.4
(5) Supplement No. 13 to Rate Schedule FPC No. 48 (Supersedes Supplement No. 11).	Rate S-8, Step A.
(6) Supplement No. 14 to Rate Schedule FPC No. 48.	Rate S-8, Step B
Town of Wellesly	
(7) Supplement No. 13 to Rate Schedule FPC No. 51 (Supersedes Supplement No. 5)	Revises § 3.4.
(8) Supplement No. 14 to Rate Schedule FPC No. 51 (Supersedes Supplement No. 12)	Rate S-8, Step A
(9) Supplement No. 15 to Rate Schedule FPC No. 51.	Rate S-8, Step B
Town of Reading	
(10) Eighth Revised Sheet No. 1 and Seventh Revised Sheet No. 2 to Exhibit B of FPC Electric Tariff, Original Volume No. 1 (Supersedes Seventh Revised Sheet No. 1 and Sixth Revised Sheet No. 2).	Contract Demand, Service, Step A
(11) Ninth Revised Sheet No. 1 and Eighth Revised Sheet No. 2 to Exhibit B of FPC Electric Tariff, Original Volume No. 1 (Supersedes Eighth Revised Sheet No. 1 and Seventh Revised Sheet No. 2).	Contract Demand, Service, Step B

[FR Doc. 84-31031 Filed 11-26-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-122-000]

Boston Edison Co.; Cancellation

November 20, 1984.

The filing Company submits the following:

Take notice that on November 14, 1984, Boston Edison Company (Edison) tendered for filing a notice of cancellation of Rate Schedule FPC No. 26 between Edison and Connecticut Light and Power Company (CL&P).

Edison requests an effective date of November 16, 1984, and therefore requests waiver of the Commission's sixty notice requirement.

According to Edison a copy of this filing has been served upon Connecticut Light and Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31044 Filed 11-26-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 7477-000]

Burt Dam Associates; Suspending 120-Day Period for Action on Small Hydro Exemption

November 21, 1984.

Burt Dam Associates filed an application for exemption for the proposed Burt Dam Project No. 7477, to be located on the Eighteenmile Creek, in Niagara County, New York. The application was filed pursuant to section 408 of the Energy Security Act of 1980 and § 4.101 et seq. of the Commission's regulations.

Additional time is necessary for action on the application in order to ensure full consideration of all information and comments that have been received. The 120-day period for Commission action is suspended pursuant to 18 CFR 4.105(b)(5)(iv).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31032 Filed 11-26-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 7116-001]

China Flat Co.; Surrender of Preliminary Permit

November 21, 1984.

Take notice that China Flat Company, Permittee for the proposed Kirkham Creek Project No. 7116, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 3, 1983, and would have expired on April 30, 1984. The project would have been located on Kirkham Creek, near the town of Willow Creek, in Humboldt County, California.

China Flat Company filed its request on September 27, 1984, and the surrender of its permit for Project No. 7116 is deemed accepted effective 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31033 Filed 11-26-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP85-70-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

November 20, 1984.

Take notice that on October 26, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-70-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on behalf of Cosden Oil and Chemical Company (Cosden) under the certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport for Cosden up to 3,000 Mcf of gas per day on a best-efforts basis from supplies in Natrona County, Wyoming, to an existing interconnection of the facilities of CIG and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) in Moore County, Texas. CIG indicates that Northern would then transport the gas to Westar Transmission Company for transportation to Cosden's plant.

CIG estimates that the annual volume, peak day volume and average day volumes would be 1,000,000 Mcf, 3,000 Mcf and 3,000 Mcf, respectively. CIG states that the end-user would use the gas for process furnances and fuel gas in the manufacture of chemicals. CIG indicates it would charge Cosden a transportation charge of 36.08 cents per Mcf plus a 2-cent per million Btu added incentive charge. CIG states that the transportation charge is CIG's systemwide transportation rate based upon the settled cost-of-service in Docket No. RP82-54-000 and as stated in CIG's Rate schedule AIC-1.

CIG has submitted a letter from Westar indicating that it has sufficient capacity to transport the gas without detriment to its other customers. CIG states that the proposed transportation would be rendered through the use of its existing facilities. CIG also submitted a statement indicating that the sales price of $2.70 per million Btu does not exceed the maximum lawful price provisions of the Natural Gas Policy Act of 1978 and that the gas was not committed or dedicated to interstate commerce on November 8, 1978.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31045 Filed 11-26-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 7067-001]

Conway Ranch Partnership; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Conway Ranch Partnership, Permittee for the proposed Mill Creek Project No. 7067, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 29, 1983, and would have expired on December 31, 1984. The project would have been located on Mill Creek, near Lee Vining, in Mono County, California.

Conway Ranch Partnership filed its request on September 24, 1984, and the surrender of its permit for Project No. 7067 is deemed accepted effective 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31034 Filed 11-26-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-98-000]

CP National; Filing

November 20, 1984.

Take notice that on November, 1984, CP National submitted for filing a notice of cancellation for Rate Schedule FPC–1. This rate schedule expired by its own terms on December 31, 1966, and CP national does not intend to extend the terms of the contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31048 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-122-000]

Dayton Power and Light Co.; Filing

November 20, 1984.

The filing Company submits the following:

Take notice that on November 14, 1984, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Versailles (Versailles), Ohio.

The proposed Agreement allows Versailles to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Versailles.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective December 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31047 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-124-000]

Dayton Power and Light Co.; Filing

November 20, 1984.

The filing Company submits the following:

Take notice that on November 14, 1984, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Minster (Minster), Ohio.

The proposed Agreement allows Minster to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Minster.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective December 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisson and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31046 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-125-000]

Delmarva Power & Light Co.; Filing

November 20, 1984.

The filing Company submits the following:

Take notice that on November 14, 1984, Delmarva Power & Light Company (Delmarva) tendered for filing Fourth Revised Leaf No. 38, to Delmarva's FERC Electric Transmission Service Rate Schedules 56, 58, 59, 60, 64 and 65.

Delmarva states that the revised tariff leaf incorporates changes to increase the "monthly contracted demands" under "Section G" for the six resale customers of the Company who are taking service under these Transmission Service Rate Schedules.

Delmarva requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31049 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6796-001]

Great Northern Hydro Corp.; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Great Northern Hydro Corporation, Permittee for the St. Regis Hydro Station Project No. 6796, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 6796 was issued on August 26, 1983, and would have expired on January 31, 1985. The project would have been located on the St. Regis River in Franklin County, New York. The Permittee states that the project is no longer feasible.

Great Northern Hydro Corporation filed the request on April 6, 1984, and the surrender of the preliminary permit for Project No. 6796 is effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31035 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-121-000]

Montana-Dakota Utilities Co.; Filing

November 20, 1984.

The filing company submits the following:

Take notice that on November 13, 1984, Montana-Dakota Utilities Company (MDU) tendered for filing Supplement 11, dated May 28, 1971; Supplement 12, dated July 7, 1971; Supplement 13, dated April 26, 1972; Supplement 14, dated November 21, 1977; Supplement 15, dated September 28, 1978; Supplement 16, dated March 12, 1979; Supplement 17, dated June 16, 1980; and Supplement 18, dated August 19, 1983; to its Interconnection Agreement, dated November 21, 1956, with United States Department of Energy, Western Area Power Administration.

MDU requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the supplements be made effective as of the date shown in each agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31050 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-90-000]

Northeast Utilities Service Co., Filing

November 20, 1984.

Take notice that on November 2, 1984, Connecticut Light and Power Company (CL&P) submitted for filing notices of termination for the following rate schedules:

CL&P's Rate Schedule FPC No. 21
CL&P's Rate Schedule FPC No. 41
CL&P's Rate Schedule FPC No. 69

CL&P's Rate Schedule FPC No. 21 provided for transmission service in connection with purchases made under CL&P's Rate Schedule FPC No. 22 which was terminated effective on April 27, 1966. Transmission service under CL&P's Rate Schedule FPC No. 21 ended with the termination of CL&P's Rate Schedule FPC No. 22. CL&P hereby requests that CL&P's Rate Schedule FPC No. 21 be terminated effective as of April 27, 1966, the date on which service under that rate schedule ended.

CL&P's Rate Schedule FPC No. 41 provided for transmission service in connection with an agreement for purchases of power from New Brunswick, Canada which terminated on June 30, 1975. Transmission service under CL&P's Rate Schedule FPC No. 41 ended with the termination of the New Brunswick purchase agreement. CL&P hereby requests that CL&P's Rate Schedule FPC No. 41 be terminated effective as of June 30, 1975, the date on which service under that rate schedule ended.

CL&P's Rate Schedule FPC No. 69 provided for a termination date of October 31, 1974. CL&P hereby requests that CL&P Rate Schedule FPC No. 69 be terminated effective as of October 31, 1974, the date on which the rate schedule ended in accordance with its own terms.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31051 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-124-009]

Northern Border Pipeline Co.; Petition to Amend

November 21, 1984.

Take notice that on November 16, 1984, Northern Border Pipeline Company (Petitioner), 224 South 108th Avenue, Omaha, NE 68154, filed in Docket No. CP78–124–009, a petition to amend pursuant to section 7(c) of the Natural Gas Act and Section 9 of the Alaskan Natural Gas Transportation Act of 1976, the Commission's orders issued April 28, 1980, and June 20, 1980, in Docket No. CP78–124 authorizing an extension in the term of its currently authorized transportation services on behalf of certain importers of Canadian natural gas through October 31, 1996, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by orders issued April 28 and June 20, 1980, the Commission authorized it to construct and operate interstate pipeline facilities and to transport up to 600,000 Mcf of natural gas per day for Northern Natural Gas Company, Division of InterNorth Inc., Panhandle Eastern Pipe Line Company and United Gas Pipe Line Company (U.S. Shippers). It is stated that the gas transported on behalf of the U.S. Shippers is imported from Canada. Petitioner states that its currently existing authorization to transport extends through October 31, 1988. Petitioner further states that (1) on July 25, 1984, Pan-Alberta Gas Ltd. (Pan-Alberta) requested of the National Energy Board of Canada (NEB) an extension of the term of its export authorizations to the U.S. Shippers through October 31, 1996, rather than October 31, 1992, as is currently authorized; and (2) Northwest Alaskan Pipeline Company (Northwest Alaskan) filed applications with the Commission and with the Economic Regulatory Administration for authorization to extend the term of its import authorization from October 31, 1992 to October 31, 2001, or, in the alternative, through October 31, 1996, which would correspond with the term of the export authorization sought from the NEB. Petitioner requests an extension of the term of its authorization to transport these imported volumes through October 31, 1996, to correspond with the extensions of term requested by Pan-Alberta and Northwest Alaskan.

Petitioner states that it believes that the Commission's approval of its requested extension of term would be the foundation upon which a meaningful

reduction in its cost of service to the U.S. Shippers may be implemented. Petitioner has filed a separate docket, Docket No. RP85–25–000, to effectuate this so-called meaningful reduction, principally through a rescheduling of its depreciation expenses to reflect the proposed extension of term through October 31, 1996.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31027 Filed 11–26–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–73–000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

November 20, 1984.

Take notice that on October 29, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP–85–73–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation of natural gas by Applicant for Northern States Power Company (NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it transports 25,600 Mcf of vaporized liquefied natural gas (LNG) per day during the winter season from NSP's Wescott plant to the Lake Elmo, Minnesota Town Border Station No. 1B (Lake Elmo TBS). Such transportation service, it is stated, is reflected in Rate Schedule T–13 of Applicant's FERC Gas Tariff, Original Volume No. 2, and was authorized May 24, 1977, in Docket No. CP75–128. It is further indicated that the transportation volumes have been used to meet NSP's firm and small volume customers' requirements during the winter season.

Applicant avers that it has entered into an agreement with NSP to reassign a portion of NSP's contract demand from the St. Paul, Minnesota, Town Border Station No. 1P, where it is no longer required, to the Lake Elmo TBS. As a result of the shift in contract demand, it is explained that the transportation of the revaporized LNG to the Lake Elmo TBS is no longer required. Applicant therefore proposes to abandon such transportation service. Applicant further explains that it has concurrently filed a request pursuant to § 157.205 of the Commission's Regulations to implement thr transfer of contract demand to the Lake Elmo TBS.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31052 Filed 11–26–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–95–000]

Otter Tail Power Co.; Filing

November 20, 1984.

Take notice that on November 2, 1984, Otter Tail Power Company (Otter Tail) submitted notices for the following rate schedules:

FPC Electric Tariff, Orig. Vol. No. 1
Rate Schedule No. 128
Rate Schedule No. 165

FPC Electric Tariff, Orig. Vol. No. 1 was a schedule that was filed on September 10, 1947. The schedule provided rates for wholesale power sales to REC's and Municipals. This schedule has not been in effect for many years and therefore Otter Tail is requesting cancellation of the schedule.

Rate Schedule No. 128 is an interconnection agreement between Minnesota Power and Otter Tail Power Company that was effective on August 20, 1963. The original expiration date was December 31, 1982. Supplement No. 2 to this agreement filed by Minnesota Power on September 23, 1969 extended the expiration date to March 31, 1990, so no action is required of Schedule No. 128.

Rate Schedule No. 165 is an interconnection agreement with Mountrail Electric Cooperative Inc. and Otter Tail Power Company. This agreement was filed on June 24, 1971 and had an effective date of February 15, 1971. Date of expiration was February 15, 1981.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31053 Filed 11–26–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–94–000]

PacifiCorp, Doing Business as Pacific Power & Light Co.; Filing

November 20, 1984.

Take notice that on November 2, 1984, PacifiCorp, during business as Pacific Power & Light Company (PacifiCorp) submitted for filing a notice of cancellation. PacifiCorp states that Rate Schedule FERC No. 207, effective date of March 1, 1981 and filed with the Commission on September 1, 1981 by Pacific Power & Light Company, has expired by its own terms and is to be cancelled.

Notice of the proposed cancellation has been served upon the Washington Water Power Company and Washington Utilities and Transportation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31054 Filed 11–26–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8054–001]

Pacific Hydropower Co.; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Pacific Hydropower Company, Permittee for the proposed Starview Water Power Project No. 8054, requested by letter dated October 1, 1984, that its preliminary permit be terminated. The preliminary permit was issued on August 3, 1984, and would have expired on July 31, 1986. The project would have been located on the Yaak River in Lincoln County, Montana.

The Permittee filed the request on October 1, 1984, and the preliminary permit for Project No. 8054 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31036 Filed 11–26–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES85–13–000]

Westchester Resco Co.; Application

November 20, 1984.

Take notice that on November 15, 1984, Westchester Resco Company, ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") seeking authority pursuant to section 204 of the Federal Power Act to incur liability for the payment of up to $42,000,000 of Industrial Development Bonds to be issued by the County of Westchester Industrial Development Agency ("Agency"), which will be used by the Agency for the refinancing of the Agency's outstanding $31,500,000 Letter of Credit Bonds (Westchester Resco Company Project—1982 Series A) and for financing a portion of certain costs (not to exceed $10,500,000) associated with the solid waste disposal, resource recovery and electric generating facilities located in the City of Peekskill, New York.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 5, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31055 Filed 11–26–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA85–3–000]

Witt Oil Production, Inc.; Petition for Adjustment

Issued November 20, 1984.

On October 1, 1984, Witt Oil Production, Inc. (Witt) filed with the Federal Energy Regulatory Commission a petition for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Rules 1101 through 1104 of the Commission's rules.[1]

Witt seeks to be excused from a portion of the refund obligations required by a May 3, 1984, interim rule issued by the Commission to implement the decision of *Interstate Natural Gas Association of America* v. *FERC*[2] which vacated Commission Order Nos. 93 and 93A. Witt states that the refunds are due from a well which is plugged and no longer producing any income. Additionally, several of the working interest owners are bankrupt. Accordingly, Witt states that it cannot collect all the funds necessary to satisfy the refund obligation.

Subpart K of Part 385 of the Commission's rules sets out the procedures that apply to this adjustment proceeding. Any person who wishes to participate in this proceeding shall file a petition to intervene in accordance with Subpart K. All such petitions must be filed within 15 days after this notice is published in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31056 Filed 11–26–84; 8:45 am]

BILLING CODE 6717–01–M

[1] 15 U.S.C. 3301, 3412(c) and 18 CFR 385.1101 through 1104 (1984), respectively.

[2] 716 F.2d 1 (D.C. Cir. 1983), *cert. den.*, U.S. (March 19, 1984).

ENVIRONMENTAL PROTECTION AGENCY

[A-1-FRL-2723-8]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs); States of Connecticut, Maine, New Hampshire, Rhode Island, and Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources, (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs). The EPA hereby notifies the public that it has delegated authority over certain New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) to the State Air Pollution Agencies in Region I. This notice announces delegations granted since February 14, 1983. In addition, the above listed States' delegation agreements provide that authority over future revisions to previously delegated standards will automatically be redelegated to the State agency. In addition, these state delegation agreements provide for automatic delegation of new standards. These delegations do not create any new regulatory requirements affecting the public. The effect of the delegations is to shift primary program responsibility for the affected NSPS and NESHAPS source categories from EPA to State governments. Some States do not have full authority over the programs; limitations are noted where appropriate.

DATES: Effective immediately.

ADDRESSES: Applications and/or reports required under all NSPS/NESHAPs source categories for which EPA has delegated authority to respective states should be addressed to:

State of Connecticut: Division of Air Compliance, Department of Environmental Protection, 165 Capitol Avenue, Hartford, Connecticut 06115.

State of Maine: Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, Maine 04333.

State of Massachusetts: Massachusetts Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, Boston, Massachusetts 02108.

State of New Hampshire: New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

State of Rhode Island: Rhode Island Department of Environmental Management, 204 Cannon Building, 75 Davis Street, Providence, Rhode Island 02908.

FOR FURTHER INFORMATION CONTACT: Thomas A Elter, EPA Region I, Air Management Division, J.F. Kennedy Federal Building, Boston, MA 02203. Telephone (617) 223–4877.

SUPPLEMENTARY INFORMATION: The States of Region I were delegated authority over the General Provisions of the New Source Performance Standards and various source categories in letters from EPA dated September 30, 1980. These letters established a mechanism of automatic delegation of new standards when specifically requested by the States. In accordance with this mechanism, requests for delegation were submitted to EPA and subsequently granted by the Regional Administrator Michael R. Deland.

Delegations for each State are listed below:

State of Connecticut

Limitations: None; full enforcement delegated.

Delegations: NSPS Subparts:
Effective date: April 3, 1984.
WW—Beverage Can Surface Coating.
XX—Bulk Gasoline Terminals.
VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
RR—Pressure Sensitive Tape and Label Surface Coating Operations.

State of Maine

Limitations: None; full authority delegated.

Delegations: NSPS Subparts:
Effective date: April 25, 1984.
WW—Beverage Can Surface Coating.
XX—Bulk Gasoline Terminals.
VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
RR—Pressure Sensitive Tape and Label Surface Coating Operations.

Commonwealth of Massachusetts

Limitations: None; full authority delegated.

Delegations: NSPS Subparts:
Effective date: October 1, 1984.
XX—Bulk Gasoline Terminals.
WW—Beverage Can Surface Coating.
RR—Pressure Sensitive Tape and Label Surface Coating Operations.

State of New Hampshire

Limitations: None; full authority delegated.

Delegations: NSPS Subparts:
Effective date: February 14, 1983.
KK—Lead Acid Battery Manufacturing.
EE—Surface Coating of Metal Furniture.
QQ—Graphic Arts—Publication Rotogravure.
Effective date: May 5, 1984.
RR—Pressure Sensitive Tape and Label Surface Coating Operations.
WW—Beverage Can Surface Coating.
XX—Bulk Gasoline Terminals.
VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
Effective Date: July 18, 1984.
HHH—Synthetic Fiber Production Facilities.
GGG—Equipment Leaks of VOC in Petroleum Refineries.
LL—Metallic Mineral Processing Plants.
NESHAPs Subparts:
Effective date: July 18, 1984.
J—National Emission Standards for Equipment Leaks (Fugitive Emission Sources) of Benzene.
V—Equipment Leaks (Fugitive Emission Sources) of Volatile Hazardous Air Pollutants.

State of Rhode Island

Limitations: Administrative delegation, only.

Delegations: NSPS Subparts:
Effective date: September 11, 1984.
EE—Surface Coating of Metal Furniture.
LL—Metallic Mineral Processing Plants.
QQ—Graphic Arts: Publication Rotogravure.
RR—Pressure Sensitive Tape and Label Surface Coating Operations.
SS—Industrial Surface Coating: Large Appliances.
TT—Metal Coil Surface Coating.
VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
WW—Beverage Can Surface Coating.
XX—Bulk Gasoline Terminals.
GGG—Equipment Leaks of VOC in Petroleum Refineries.
HHH—Synthetic Fiber Production Facilities.
NESHAPs Subparts:
Effective date: September 11, 1984.
J—National Emission Standards for Equipment Leaks of Benzene.
V—National Emission Standard for Equipment Leaks.

Effective immediately, all applications, reports, and other correspondence required under these NSPS and NESHAPs standards should be sent to the above State addresses, and to the EPA.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 111(c) and 112(d) of the Clean Air Act, 42 U.S.C. 7411(c) and 7412(d))

Dated: October 19, 1984.

Michael R. Deland,

Regional Administrator.

[FR Doc. 30840 Filed 11–26–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0009

Title: Disaster Assistance Registration Form (Test)

Abstract: Form used to apply for disaster assistance benefits. Filled out by FEMA interviewers only in Presidentially-declared major disasters. (See supporting statement.)

Type of respondents: Individuals or Households

Number of respondents: 20,000

Burden hours: 13,333

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: November 19, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84–30855 Filed 11–26–84; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
312	Blue Star Shipping Corporation, 701 SE. 24th Street, Ft. Lauderdale, FL 33316.	Nov. 1, 1984.
2769	Queen's Maritime, Ltd., 238 Montevista Lane, Daly City, CA 94015.	Nov. 2, 1984.
2586	Intership, Inc., 2216 Coral Way, Miami, FL 33145.	Nov. 3, 1984.
1753	Earl R. Seuls & Associates, 10910 La Cienega Blvd., Inglewood, CA 90304.	Nov. 5, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–30851 Filed 11–26–84 8:45 am]

BILLING CODE 5733–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 221–004165–001.
Title: Savannah Terminal Agreement.
Parties:
Georgia Ports Authority (Authority)
Hapag Lloyd A.G. (HL)
Intercontinental Transport, BV (ICT)
Compagnie General Maritime (CGM)
Synopsis: Agreement No. 221–004165–001 amends the basic agreement between the Authority and HL by making the agreement applicable to ICT and CGM. The leased premises are located at the Authority's Garden City Terminal, Savannah, Georgia. The premises consist of paved acreage containing container parking slots assigned to the parties of the agreement. The parties have requested a shortened review period for the agreement.

Agreement No.: 202–007540–043.
Title: U.S. Atlantic & Gulf/Southeastern Caribbean Conference.
Parties:
Concorde/Nopal Lie
Puerto Rico Maritime Management, Inc. (PRMSA)
Sea-land Service, Inc.
Shipping Corporation of Trinidad and Tobago, Inc. (SCOTT)
Synopsis: The purpose of this modification is to delete from the geographic scope of the agreement, United States Atlantic Coast ports in the range from West Palm Beach, Florida to and including Key West, Florida. The amendment provides that it will not become effective until the Florida/Caribbean Lines Association agreement becomes effective, and the parties to that agreement file a tariff with the Commission.

Agreement No.: 202–010414–004.
Title: PRC–USA Eastbound Rate Agreement.
Parties:
American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.
Waterman Steamship Corp.
Synopsis: The proposed amendment would eliminate the agreement's current neutral body policing provisions as of the end of the current calendar year and would add new provisions authorizing the retention of a neutral body policing authority if requested by a member line.

Agreement No.: 202–010637–002.
Title: North Europe/U.S. Atlantic Conference.
Parties:
Atlantic Container Line (G.I.E.)
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.
Synopsis: The modification revises article 3 of the basic agreement by adding the names, addresses and nationality of two new members, i.e., Compagnie Generale Maritime ("CGM") and Intercontinental Transport (ICT) BV. The parties have requested a shortened review period for the agreement.

Agreement No.: 207–010680.
Title: Forest Product Carriers (International) Joint Service Agreement.
Parties:
Mitsui O.S.K. Lines Ltd.
The East Asiatic Company Ltd. A/S

Synopsis: The proposed agreement would establish a joint service between the parties for the carriage of forest products, neobulk and project cargoes in the trade between ports on the Pacific Coast of the United States and Western Canada, and ports in the United Kingdom, Europe, Scandinavia and the Baltic Sea and inland points from such ports.

Agreement No.: 224–010681

Title: New Orleans Terminal Agreement.

Parties:

The Board of Commissioners of the Port of New Orleans (Board)

Coordinated Caribbean Transport, Inc. (CCTI)

Synopsis: Agreement No. 224–010681 provides for the lease by the Board to CCTI to tracts of land and mooring area at the Jourdan Road Terminal, New Orleans. CCTI will conduct at the premises, its business of transporting and handling containerized, breakbulk and RO/RO cargoes, and other activities related to vessels controlled by them or affiliated companies. The term of the agreement is for 5 years, with the option of 5 additional 1-year extensions. The parties have requested a shortened review period for the agreement.

Agreement No.: 217–010683.

Title: Transnave/Ecuadorian Line Cross Space Charter and Rationalization Agreement.

Parties:

Transportes Navieros Ecuatorianos—Transnave Ecuadorian Line, Inc.

Synopsis: The agreement covers the trade between Miami and points on the Gulf Coast of the United States and ports and points in Ecuador, Panama and other areas of South and Central America, Mexico and the Caribbean. The agreement would permit the parties to cross charter vessel space, to lease or sublease between themselves container and other equipment, to rationalize and coordinate sailings and to enter into joint use agreements for terminal facilities, stevedoring and other shoreside services.

By Order of the Federal Maritime Commission.

Dated: November 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-31083 Filed 11-26-84; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1984

AGENCY: General Services Administration.

ACTION: Notification of new routine use.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to propose a new routine use for the General Services Administration's system of records, Travel Charge Card Program, GSA/GOVT–3. The routine use will permit the disclosure of information from this system of records to GSA contract travel agents assigned to participating agencies for billing of transportation and accommodations of Federal employees on travel.

DATES: Any interested party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The routine use will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Heibert, GSA Privacy Act Officer, telephone (202) 535–7647.

SUPPLEMENTARY INFORMATION: One agency has voiced a problem with using the Travel Charge Card Program system of records. Instead of the contract charge card company billing the employee, they will bill the travel agent who in turn will bill the agency. For the travel agent to receive the money, they require the traveling employee's social security number, charge card number, and any other needed information. Presently there is no provisions for this information to be disclosed. GSA proposes to add a new routine use to the system of records in order that such identifying information can be released.

The following routine use will be added to GSA's system of records, Travel Charge Card Program GSA/GOVT–3. The current notice of this system was published on September 29, 1983, in 48 FR 44655 thru 44657.

GSA/GOVT–3

SYSTEM NAME:

Travel Charge Card Program.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

i. To disclose information to GSA contract travel agents assigned to participating agencies for billing of travel expenses.

* * * * *

Dated: November 19, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84-30952 Filed 11-26-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee, X-Ray Surveillance Subgroup; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

X-Ray Surveillance Subgroup of the Mine Health Research Advisory Committee

Date: December 13, 1984.

Time: 9:00 a.m. to 4:30 p.m.

Place: Second Floor, Amfac Hotel, 1380 Bayshore Highway, Burlingame, California 94010.

Purpose: This Committee subgroup is charged with determining if the Committee should recommend to NIOSH that the Institute conduct the entire x-ray surveillance program for coal miners. If so, the subgroup is to consider what criteria should be met to justify the initiation and continuation of this program by NIOSH in terms of factors such as participation rate, detection rate of disease, and transfer rate to less dusty jobs. Other issues, such as quality of films and linkage of the surveillance program with a compensation program, may also be discussed.

Viewpoints and suggestions from manufacturers of x-ray equipment, industry, labor, academia, other government agencies, and any other interested parties are invited. Interested parties wishing to participate in the meeting are requested to contact Dr. Roy Fleming at the address below in order to be assured appropriate time for presentation. Four copies of the text of the presentation should be provided to the subgroup chairperson, Dr. Nicholas Sargent, University of Southern California, School of Medicine, Department of Radiology, 1200 North State Street, Los Angeles, California 90033, prior to or at the subgroup meeting.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, MHRAC, NIOSH, CDC, Building 1, Room 305, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Phone: (404) 329–3343.

The Mine Health Research Advisory Committee (MHRAC) was established by the Federal Mine Safety and Health Act of 1977. The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research. The subgroup, composed of members of the MHRAC, will provide a report to the full Committee at a future meeting and will give a status report on its activities to the NHRAC at the next meeting.

Dated: November 19, 1984.

Donald R. Hopkins,

Acting Director, Centers for Disease Control.

[Doc. 84-30972 Filed 11-26-84; 8:45 am]

BILLING CODE 4160-19-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Presidential Commission on Indian Reservation Economies

AGENCY: Presidential Commission on Indian Reservation Economies, Interior.

ACTION: Notice of Briefing Sessions on Final Report.

SUMMARY: The Presidential Commission on Indian Reservation Economies announces the forthcoming briefing sessions at which time the Commission will review its findings and recommendations in connection with its final report.

December 10, 1984 (Monday)

Radisson St. Paul, 11 East Kellogg Boulevard, St. Paul, Minnesota 55101

Lincoln Plaza Hotel, 4445 North Lincoln, Oklahoma City, Oklahoma 73105

December 12, 1984

Seattle Marriott Hotel, Sea-Tac, 3201 S. 176 Street, Seattle, Washington 98188

Scottsdale Hilton, 6333 N. Scottsdale Road, Scottsdale, Arizona 85253

The proposed agenda for each briefing will be as follows:

8:30–9:30 AM—Registration

9:30–12 Noon—Briefing of Commission Findings and Recommendations

12:00–1:00 PM— Recess for Lunch

1:00–3:30 PM—Continuation of Commission Findings and Recommendations

This notice is intended to notify the general public of their opportunity to attend.

FOR FURTHER INFORMATION CONTACT: Erci Rudert, Deputy Director, Presidential Commission on Indian Reservation Economies, 1717 H Street, Northwest, Suite 765, Washington, D.C. 20006. Telephone (202) 653–2436.

SUPPLEMENTARY INFORMATION: The Presidential Commission on Indian Reservation Economies was created by Executive Order 12401 on January 14, 1983, and amended by Executive Order 12442 on September 21, 1983. The purpose of the Commission is to promote the development of a strong private sector economy on Federally recognized Indian reservations. Upon completion of its work, the Commission will submit its final report to the President and the Secretary of the Interior.

Eric Rudert,

Deputy Director, Presidential Commission on Indian Reservation Economies.

[FR Doc. 84-31101 Filed 11-26-84; 8:45 am]

BILLING CODE 4310-02-M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:00 p.m., Friday, December 14, 1984, at the Federal Building, Room A–206, 727 E. Durango Boulevard, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95–629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

—Introduction of Recently Appointed Advisory Commission Chairperson and Members

—Introduction of Remaining Members

—Minutes of Previous Meeting

—Comments by Chairperson and Designation of Committee Appointments

—Park Operations Update

—Los Compadres Update

—Archdiocesan Report

—City Report

—Open Remarks

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206, telephone (512) 229–6009.

Minutes of the meeting be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: November 16, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[Doc. 84-31008 Filed 11-26-84; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 17, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 12, 1984.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Hartford County

Hatford, *Asylum-Trumbull-Pearl Streets Historic District (Hartford Downtown MRA)*, Roughly bounded by Asylum, Main, Trumbull and S. Pearl Sts.

Hartford, *B.P.O. Elks Lodge (Hartford Downtown MRA)*, 34 Prospect St.

Hartford, *Batterson Block (Hartford Downtown MRA)*, 26–28 High St.

Hartford, *Capitol Building (Hartford Downtown MRA)*, 402–418 Asylum St.

Hartford, *First Banking Building (Hartford Downtown MRA)*, 50 State St.

Hartford, *Footguard Hall (Hartford Downtown MRA)*, Footguard and High Sts.

Hartford, *Hartford Club (Hartford Downtown MRA)*, 46 Prospect St.
Hartford, *Hartford Times Building (Hartford Downtown MRA)*, 10 Prospect St.
Hartford, *Judd and Root Building (Hartford Downtown MRA)*, *175–189 Allyn St. and 5–23 High St.*
Hartford, *Main Street Historic District No. 1 (Hartford Downtown MRA)*, Roughly bounded by Talcott, Market, Kinsley, Main, Asylum and Pratt Sts.
Hartford, *Main Street Historic Distric No. 2 (Hartford Downtown MRA)*, W. Main, N. Central Row, E. Prospect Sts., and N. Atheneum Sq.
Hartford, *Stone Bridge (Hartford Downtown MRA)*, 500 Main St.

Litchfield County

Winchester vicinity, *Gilbert Clock Factory*, Wallens St.

Windham County

Putnam, *Israel Putnam School*, School and Oak Sts.

INDIANA

Marion County

Indianapolis, *Jackson Building*, 419–425 E. Washington St.

LOUISIANA

Rapides Parish

Gardner, *Hope (Frank Dunnam House) (Neo-Classical Architecture Of Bayou Rapides TR)*, Off Hwy 121 and Mill Race Rd.

NEBRASKA

Banner County

Harrisburg vicinity, *Hampton, C. C., Homestead*

Dodge County

Uehling vicinity, *Uehling, Frank, Barn*, Off U.S. 77

Hall County

Grand Island, *Hotel Yancey (The)*, 123 N. Locust St.

Jefferson County

Diller, *People's State Bank*, NE 103

Saline County

Wilber vicinity, *Telocvicna Jednota Sokol (Brush Creek Hall)*,

Seward County

Garland *Germantown State Bank Building*, Main St.

NEW HAMPSHIRE

Belknap County

Meredith, *Meredith Public Library*, 50 Main St.
New Hampton, *Dana Meeting House*, Dana Hill Rd.

Cheshire County

Westmoreland, *High Tops School*, Reynolds and River Rds.

Grafton County

Ashland, *St. Mark's Episcopal Church*, 6–8 Highland St.
Holderness, *Holderness Inn*, Rt. 3

Hillsborough County

Antrim, *Flint Estate (The)*, Old Keene and Old Center Rd.
Bedford, *Bedford Town Hall*, 70 Bedford Center Rd.
Nashua, *Nashville Histroic District*, Roughly bounded by Nashua River, Merrimack River, and Rt. 3
New Ipswich, *New Ipswich Town Hall*, Main St.

Rockingham County

Exeter, *Exeter Waterfront Commercial Historic District*, Roughly along Chestnut St., Chestnut Hill Ave., Water, Franklin, Pleasant, and High Sts.
Hampton Falls vicinity, *Unitarian Church*, Exeter Rd.
Portsmouth, *Porter, General, House*, 32–34 Livermore St.

South Dakota

Bon Homme County

Tabor, *St. Wenceslaus Catholic Church and Parish House*, Yanktown and Lidice Sts.
Tyndall, *Bon Homme County Courthouse*, Walnut and Washington Sts.
Tyndall, *Carnegie Public Library of Tyndall*, State and Main Sts.

Union County

Beresford, *Reedy, J. W., House*, 309 N. 2nd.

TENNESSEE

Giles County

Pulaski, *Hewitt, Austin, Home*, 322 E. Washington St.

Maury County

Mt. Pleasant, *Breckenridge Hatter's Shop*, N. Main St.

Moore County

Tullahoma vicinity, *Ledfords Mill*, Ledford Mill Rd.

WISCONSIN

Sauk County

Reedsburg, *Chicago and North Western Depot (Reedsburg MRA)*, Railroad St.
Reedsburg, *City Hotel (Reedsburg MRA)*, 125 Main St.
Reedsburg, *Hackett, Edward M., House (Reedsburg MRA)*, 612 E. Main St.
Reedsburg, *Harris, Abner L., House (Reedsburg MRA)*, 228 N. Pine St.
Reedsburg, *Main Street Commercial Historic District (Reedsburg MRA)*, roughly bounded by N. Park, S. Park, N. Walnut, and S. Walnut Sts. on Main
Reedsburg, *Park Street Historic District (Reedsburg MRA)*, On N. Park St. roughly bounded by 6th, Locust, N. Pine and Main Sts.
Reedsburg, *Reedsburg Brewery (Reedsburg MRA)*, 401 N. Walnut St.
Reedsburg, *Reedsburg Woolen Mill Office (Reedsburg MRA)*, 26 Main St.
Reedsburg, *Riggert, William, House (Reedsburg MRA)*, 547 S. Park St.
Reedsburg, *Stolte, William, Jr., House (Reedsburg MRA)*, 432 S. Walnut St.
Reedsburg, *Stolte, William, Sr., House (Reedsburg MRA)*, 444 S. Walnut St.

Walworth County

Whitewater, *East Wing (Old Main)*, University of Wisconsin

The 15-day commenting period for the following property is to be waived in order to assist the building's preservation funding.

OHIO

Franklin County

Columbus, *Welsbach Building*, 116–118 E. Chestnut St.

[FR Doc. 84-30880 Filed 11-26-84; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30563]

Burlington Northern Railroad Co., Trackage Rights Exemption, Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the modification of a trackage rights agreement permitting Burlington Northern Railroad Company to operate over 21.74 miles of track of the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, between Appleton and Ortonville, MN, subject to standard employee protective conditions.

DATES: This exemption will be effective on December 27, 1984. Petitions for reconsideration must be filed by December 17, 1984. Petitions for stay must be filed by December 7, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30563 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's Representatives: Douglas J. Babb, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free 424–5403.

Decided: November 15, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-30877 Filed 11-26-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Pennwalt Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 12, 1984, a proposed consent decree in *United States* v. *Pennwalt Corporation*, Civil Action No. C 84–0055(J) was lodged with the United States District Court for the Western District of Kentucky. The complaint alleged violations of the Clean Water Act by Pennwalt due to its failure to meet the requirements of its NPDES permit. The complaint sought injunctive relief and civil penalties.

The consent decree provides that Pennwalt will pay a civil penalty of $50,000 and will perform work to come into compliance with its NPDES permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed the Assistant Attorney General of the Land and Natural Resources Division, DOJ, Washington, D.C. 20530, and should refer to *U.S.* v. *Pennwalt*, D.J. Ref. 90–5–1–1–2064.

The proposed consent decree may be examined at the office of the United States Attorney, 211 U.S. Post Office & Courthouse Bldg., 601 W. Broadway, Louisville, KY 40202 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, 10th & Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General.

[FR Doc. 84-30991 Filed 11-26-84; 8:45 am]
BILLING CODE 4451-01-M

Drug Enforcement Administration

Importers of Controlled Substances; Registration

By Notice dated August 13, 1984, and published in the **Federal Register** on August 21, 1984 (49 FR 33186), Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Lancaster County, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 19, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-30993 Filed 11-26-84; 8:45 am]
BILLING CODE 4410-09-M

Supplement to Draft Environmental Impact Statement on the Eradication of Cannabis on Federal Lands in the Continental United States

The Department of Justice, Drug Enforcement Administration (DEA), will prepare a supplement to the Draft Environmental Impact Statement on the Eradication of Cannabis on Federal Lands and Intermingled Forests and Rangelands in the Continental United States.

DEA published a notice in the **Federal Register** on July 5, 1984 (49 FR 27645) that a draft Environmental Impact Statement (EIS) on the Eradication of Cannabis on Federal Lands and Intermingled Forests and Rangelands in the Continental United States had been prepared and was available for public comment. The notice provided for a 45-day public review and comment period, which was subsequently extended until September 10, 1984 (49 FR 34316).

Since the draft EIS was made available to the public, DEA has received new information. In response to this new information, DEA will prepare a supplement to the draft EIS. The supplement is expected to be filed with the U.S. Environmental Protection Agency on or about February 8, 1985 and released to the public for a 45-day review and comment period. Copies of the supplement to the draft EIS will be distributed to the same parties that received the draft EIS. Other copies are available upon request from Thomas G. Byrne, Chief, Cannabis Investigations Section, Operations Division, Drug Enforcement Administration, U.S. Department of Justice, Washington, D.C. 20537, (202) 633–1271.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-30994 Filed 11-26-84; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comments on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Office of Pension and Welfare Benefit Programs
Proposed Exemption and Alternative Method of Compliance for Annual Reporting of Certain Investments
1210–0016
Annually
Businesses of other for-profit; non-profit institutions; small businesses or organizations
1,150 responses; 2,897,425 burden hours

The proposal will provide an alternative method of compliance with the annual report requirements for employee benefit plans which invest in pooled entities that are considered to be holding plan assets.

Extension

Mine Safety and Health Administration
Ventilation Tests and Examinations in Underground Coal Mines
1219–0008
Daily/weekly
Businesses or other for profit; small businesses or organizations
2,075 respondents; 5,836,464 hours

Standards require that records be kept of certain tests and examinations which are required to be performed to monitor the ventilation system in underground coal mines. The information is used to insure that the integrity of the ventilation system is being maintained and that a safe working environment is being provided the miners.

Signed at Washington, D.C. this 20th day of November 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–31079 Filed 11–26–84; 8:45 am]

BILLING CODE 4510–32–M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Certification Relating to Reduced Credits Under the Federal Unemployment Tax Act for 1984; Certification

Section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA) provides for the repayment, through reduced credits, of outstanding balances of repayable advances made to States under Title XII of the Social Security Act. States that meet specific criteria under subsections (f) or (g) of section 3302 may have the credit reduction limited or not applied. The certification to the Secretary of the Treasury of States subject to the credit reduction for 1984 and States that qualify for credit reduction relief is published below.

Dated: November 20, 1984.

Frank C. Casillas,

Assistant Secretary for Employment and Training.

U.S. Department of Labor

November 13, 1984.

Honorable Donald T. Regan,
Secretary of the Treasury, Washington, D.C. 20220

Dear Secretary Regan: This is to verify the States which have an outstanding balance of repayable advances under Title XII of the Social Security Act and the status of the States with regard to the reduction in credit provisions of section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA).

Employers in 17 States are subject to a reduction in FUTA offset credit for taxable year 1984:

Colorado
Connecticut
District of Columbia
Illinois
Iowa
Louisiana
Michigan
Minnesota
New Jersey
Ohio
Pennsylvania
Puerto Rico
Texas
Vermont
Virgin Islands
West Virginia
Wisconsin

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) added a new subsection (f) to section 3302 of FUTA which under certain conditions limits the FUTA tax credit reduction in 1984 to an amount which does not exceed the greater of 0.6 percent of wages subject to FUTA or the percentage reduction that was in effect for the preceding taxable year.

To qualify for a full cap in taxable year 1984, a State must have taken no action in the 12 months ending September 30, 1984, unless required under State law in effect before August 13, 1981, which has resulted or will result in:

(1) A reduction in the State's unemployment tax effort;

(2) A net decrease in the solvency of the State unemployment compensation system;

and, further, that:

(3) The State unemployment tax rate for the calendar year equals or exceeds the average benefit cost ratio for calendar years in the five-calendar year period ending with calendar year 1983; and

(4) The outstanding balance of advances to the State on September 30 of calendar year 1984 was not greater than the outstanding balance for such State on September 30, 1981.

I have determined that under these criteria four States qualify for the full cap and are subject to reduced FUTA credits for 1984 as follows:

	Percent
Connecticut	0.7
New Jersey	[illegible]
Puerto Rico	[illegible]
Vermont	0.6

Section 512(a) of the Social Security Amendments of 1983 (Pub. L. 98–21) added a new paragraph (8) to section 3302(f) of FUTA which under certain conditions partially limits the FUTA tax credit reduction in 1984.

(5) If a State meets the requirements of (1) and (2), and (3) or (4), above the reduction in credits otherwise applicable to employers in the State for 1984 is reduced by 0.1 percentage point, but not below the higher of 0.6 percent and the rate for the prior year.

(6) If a State meets the requirements of (1) and (2) above, and also meets the requirements of section 1202(b)(8)(B) of the Social Security Act for 1984, the reduction in credits otherwise applicable to employers in the State for 1984 is reduced by 0.2 percentage points, but not below the higher of 0.6 percent and the rate for the prior year.

I have determined that under these criteria seven States qualify for a partial cap and are subject to reduced FUTA credits for 1984 as follows:

	Percent
District of Columbia	1.1
Illinois	0.8
Michigan	0.7
Minnesota	[illegible]
Ohio	0.7
Pennsylvania	[illegible]
West Virginia	0.7

I have determined that four States are not affected by the full or partial cap and are subject to reduced FUTA credits for 1984 as follows:

	Percent
Iowa	0.3
Louisiana	[illegible]
Texas	0.3
Virgin Islands	0.9

Section 272 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) amended Section 3302 of the Internal Revenue Code of 1954 by adding subsection (g) which gives a State the option of repaying on or before November 9 a portion of its outstanding loans each year through transfer of a specified amount from its account in the Unemployment Trust Fund (UTF) to the Federal Unemployment Account (FUA) in the UTF. The transfer to FUA would be in lieu of a reduced credit in the Federal tax paid by the employers in the State. The State must meet the following criteria in order to avoid the offset credit reduction:

(7) Repay all loans for the one-year period ending on November 9, plus the additional tax due by reason of the reduced credit appliable to tax year 1984;

(8) Have or will have sufficient funds remaining after the transfer to pay benefits for at least three months from November 1 of the same year without receiving another title XII advance; and

(9) Have taken action by amendment of the State law, after the date of the first advance taken into account, to increase the net solvency of its UI system, and such net increase equals or exceeds the potential additional taxes for such taxable year.

I have determined that under these criteria two States qualify and are thus not subject to reduced FUTA credits for 1984 as follows:

Colorado
Wisconsin

Finally, I have determined that the State of Montana has an outstanding balance of Title XII advances as of November 10, 1984, but is not subject to reduced FUTA credits for 1984.

Sincerely,

Carolyn M. Golding,

Director, Unemployment Insurance Service

[FR Doc. 84–31078 Filed 11–26–84; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance: Colintino Rose Fish Co., Inc. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 12, 1984—November 16, 1985.

In order for an affirmative determination to be made and certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,353; Colintino Rose Fish Co., Inc., Fort Bragg, CA
TA–W–15,428; Owens-Illinois, Inc., Wayne, NJ Plant
TA–W–15,426; Ladish Co., Forging Div., Cudahy, WI
TA–W–15,424; Kaiser Steel Corp., Fontana Fabrication Plant, Fontana, CA
TA–W–15,405; Oscar Schmidt, Div. of Fretted Industries, Union, NJ
TA–W–15,434; Bath Iron Works Corp., Shipyard, Bath, ME
TA–W–15,414; General Electric Co., Linton, IN

Affirmative Determinations

TA–W–15,370; Wefferling-Berry & Co., Millburn, NJ

A certification was issued covering all workers separated on or after June 14, 1983.

TA–W–15,362; Equitable Handbag Co., Inc., New Brunswick, NJ

A certification was issued covering all workers separated on or after June 12, 1983 and before November 5, 1984.

TA–W–15,310; Papst Mechatronic Corp., Middletown, RI

A certification was issued covering all workers separated on or after April 9, 1983 and before July 15, 1984.

TA–W–15,514; Star Kist Foods, Inc., Terminal Island, CA

A certification was issued covering all workers related to the production of the processing and canning of tuna fish on or after October 12, 1983.

TA–W–15,463; The Lima Electric Co., Inc., Greenville, AL

A certification was issued covering all workers separated on or after April 1, 1984.

TA–W–15,336; Chein Industries, Inc., Burlington, NJ

A certification was issued covering all workers separated on or after May 15, 1983 and before December 31, 1983.

TA–W–15,436; Casey Manufacturing Co., Casey, IL

A certification was issued covering all workers separated on or after August 17, 1983.

TA–W–15,445; Robinson Manufacturing Co., Robinson, IL

A certification was issued covering all workers separated on or after August 17, 1983.

TA–W–15,446; SMS Shoes, Greenup, IL

A certification was issued covering all workers separated on or after August 17, 1983.

TA–W–15,440; Greenup Manufacturing Co., Greenup, IL

A certification was issued covering all workers separated on or after August 13, 1983.

TA–W–15,438; Ettelbrick Shoe Co., Greenup, IL

A certification was issued covering all workers separated on or after August 13, 1983.

TA–W–15,329; Maine Woods Shoe Co., Div. of Bennett Industries, Livermore Falls, ME

A certification was issued covering all workers separated on or after January 1, 1984.

TA–W–15,318; American China Co., Williamstwon, WV

A certification was issued covering all workers separated on or after January 1, 1984 and before June 30, 1984.

TA–W–15,331; Roots Div., Dresser Industries, Inc., Connersville, IN

A certification was issued covering all workers separated on or after May 9, 1983 and before March 31, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 12, 1984—November 16, 1984. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated November 20, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 84–31077 filed 11–26–84; 8:45 am]

BILLING CODE 4510–30–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, and Information

Services, 450 5th Street NW., Washington, D.C. 20549.

Extension

Rule 24f-2 [17 CFR 270.24f-2]
File No. 270-131

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 24f-2 which allows for the registration of an indefinite number of certain investment company securities under the Securities Act of 1933.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84-31028 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Rule 24f-1 [17 CFR 270.24f-1]
File No. 270-130

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approved Rule 24f-1 which permits certain investment companies which have inadvertent oversales of their shares to register such shares.

Comments should be submitted to OBM Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31024 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission; Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Rule 0-2 [17 CFR 275.0-2], File No. 270-214
Form 4-R [17 CFR 279.4], File No. 270-214
Form 5-R [17 CFR 279.5], File No. 270-214
Form 6-R [17 CFR 279.6], File No. 270-214
Form 7-R [17 CFR 279.7], File No. 270-214

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB Approval Rule 0-2, consent to service of process to be furnished by non-resident investment advisers and by non-resident general partners or managing agents of investment advisers; and Forms 4-R, 5-R, 6-R and 7-R, irrevocable appointment of agent for service of process, pleadings and other papers, by individual non-resident investment advisers, corporation non-resident investment advisers, partnership non-resident investment advisers and non-resident general partners of investment advisers, respectively.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84-31025 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Form 2-E [17 CFR 239.201]
File No. 270-222

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form 2-E under the Securities Act of 1933, report pursuant to Rule 609 of Regulation E for small business investment companies.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84-30980 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Form N-54A [17 CFR 274.53]
File No. 270-182
Form N-54C [17 CFR 274.54]
File No. 270-184
Form N-6F [17 CFR 274.15]
File No. 270-185

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N-54A, notification of election to be subject to Sections 55 through 65 of the Investment Company Act of 1940; Form N-54C, notification of withdrawal of election to be subject to Sections 55 through 65 of the Investment Company Act of 1940; and Form N-6F, notice of intent to elect to be subject to Sections 55 through 65 of the Investment Company Act of 1940.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

November 15, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30981 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street NW., Washington, D.C. 20549.

Extension

Form N-8A [17 CFR 274.10]
File No. 270-135

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N-8A, notification of registration under the Investment Company Act of 1940.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirely E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84-30982 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Form N-17D-1 [17 CFR 274.200]
File No. 270-231

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N-17D-1, report filed by small business development companies (SBIC) registered under the Investment Company Act of 1940 and an affiliated bank, with respect to investments by the SBIC and the bank.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84-30983 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension

Rules 8b-1 through 8b-32 [17 CFR 270.8b-1 through 8b-32]
File No. 270-135

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rules 8b-1 through 8b-32, a family of rules under Section 8(b) which provides standard instructions to guide persons when filing registration statements under the Investment Company Act of 1940.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84-30984 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From:

Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Form N-17D-1 [17 CFR 274.200]
File No. 270-231

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N-17D-1, report filed by small business development companies (SBIC) registered under the Investment Company Act of 1940 and an affiliated bank, with respect to investments by the SBIC and the bank.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84-30985 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23485; 70-6811]

Associated Natural Gas Co.; Proposal to Issue and Sell Unsecured Short-Term Notes

November 19, 1984.

Associated Natural Gas Company ("Associated"), 40 West Park Street, Blytheville, Arkansas 72315, a gas utility subsidiary or Arkansas Power & Light Company, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its proposal with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 and Rule 50(a)(2) thereunder.

By orders dated December 15, 1982 and December 8, 1983 (HCAR Nos. 22780 and 23157), Associated was authorized to make unsecured, short-term borrowings from Farmers Bank & Trust Co., Blytheville, Arkansas ("Bank"), from time to time through December 8, 1984, in an aggregate principal amount not to exceed $3 million at any one time outstanding.

Associated now proposes to effect a similar transaction commencing on the effective date of this amended proposal ("Effective Date"). To effect such borrowings, Associated proposes to issue and sell to the Bank its unsecured promissory notes ("Notes") payable not more than 270 days from the date of issuance and which may be renewed from time to time but to mature not later than one year from the Effective Date. The Notes will bear interest, payable monthly at maturity, on the unpaid principal amount thereof at a rate per annum equal to the prime commercial loan rate (11.75% as of November 19, 1984) of The Chase Manhattan Bank (N.A.), New York, New York, from time to time in effect, with adjustments to be made effective on the first business day of the month next followig the month in which any change in such rate occurs. Such rate will not exceed the maximum rate of interest chargeable to corporate borrowers under applicable laws. The Notes will, at the option of Associated, be repayable in whole or in part, at any time without premium or penalty. Associated will not be required to maintain compensating balances with the Bank or to pay any commitment fees based upon the unused portion of its line of credit with the Bank.

The proceeds to be received from the issuance and sale of the Notes will be used by Associated to meet its working capital requirements, for the payment, in part, of construction expenditures and for other corporate purposes. Associated currently intends to repay the $3 million of borrowings proposed herein from the proceeds of permanent financing or with funds that might otherwise become available to Associated.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 13, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified

of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30866 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23487; (70-7047)]

Blackstone Valley Electric Co; Proposal for Pollution Control Financing; Exception From Competitive Bidding

November 20, 1984.

Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O Box 1111, Lincoln, Rhode Island, 02865, an electric utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed a proposal with this Commission pursuant to sections 6, 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2) and 50(a)(5).

Blackstone proposes to borrow the proceeds from the sale of up to $7,500,000 electric facilities revenue demand bonds ("Bonds") issued by the Rhode Island Industrial Facilities Corporation ("Issuer"), to finance the cost of reconstruction of a hydro electric generation facility on the Blackstone River in Pawtucket, Rhode Island, at an existing site ("Facilities").

The Bonds will be issued under an indenture of trust ("Indenture") between the Issuer and a bank as trustee ("Trustee"). Pursuant to a loan agreement ("Loan Agreement") between the Issuer and Blackstone, the Issuer will loan the proceeds of the Bonds, and Blackstone will agree to make payments corresponding to the amounts needed to pay the principal, interest and premium on the Bonds as they become due. The Bonds will not be general obligations of the Issuer or State of Rhode Island. Blackstone will pay the fees of the Issuer and Trustee.

The Bonds will have a variable interest rate and mature in 30 years or may be accelerated. Interest will be payable quarterly in arrears unless the bonds are converted to a fixed interest rate. The variable interest rate shall not exceed 20% per annum determined by a remarketing agent ("Remarketing Agent"), appointed pursuant to the terms of the Indenture. If the variable interest rate cannot be established, the Remarketing Agent shall establish it at 65% of the yield of 13-week United States Treasury Bills. If the Remarketing Agent fails to establish the variable interest rate, it shall be deemed to be 60% of the prime lending rate of the Trustee.

Each bondholder will have the option of tendering its Bonds to the Trustee on at least 7 days' prior notice. Pursuant to a remarketing agreement ("Agreement"), the Remarketing Agent, upon notice of a bondholder's intention to present its Bonds for purchase, shall be obligated to use its best efforts to secure repurchasers. The proceeds from a resale will be used to pay tendering bondholders the principal amount of the Bonds plus accrued interest. If the Remarketing Agent is unable to secure a purchaser prior to the date on which the Bonds are tendered the Trustee may draw upon a letter of credit ("Letter of Credit") to pay the tendering bondholders. For its services, the Remarketing Agent will be paid for each Bond remarketed $0.25 per $1,000 principal amount up to one eighth of one percent of the outstanding principal amount of the Bonds per annum, plus out-of-pocket expenses.

On a one-time basis, the Bonds may be automatically converted from a variable to a fixed interest rate upon the termination of the Letter of Credit or at Blackstone's request. At the time of the conversion the fixed rate shall be determined by the Remarketing Agent and Blackstone will consider the necessity of procuring a Letter of Credit or alternative credit arrangements for the remaining term of the Bonds. If the Bonds are to be converted, this proposal will be amended to seek the Commission's approval of the fixed interest rate.

So long as the Bonds have a variable interest rate they will be redeemable, at the election of the Issuer (pursuant to the direction of Blackstone), in whole or in part, at a price of 100% of the principal plus accrued interest, on any interest payment date, and provided that the Trustee has given bondholders 25 to 40 days prior notice. The Trustee will draw on the Letter of Credit for the funds required to redeem the Bonds. If converted to a fixed interest rate, the Bonds will be redeemable at the election of the Issuer (pursuant to the direction of Blackstone) in whole or in part between 103% and 100% of the principal amount plus accrued interest. If certain extraordinary events occur after conversion to a fixed interest rate, the Bonds may be redeemed in whole and not in part, at Blackstone's option, with accrued interest but without premium.

Under certain circumstances Blackstone may purchase all or a portion of the Bonds drawing on the Letter of Credit to do so.

Blackstone's obligations under the Financing Agreement are to be secured by an irrevocable Letter of Credit issued by Citibank, N.A. ("Bank") in favor of the Trustee in the principal amount of the Bonds, plus four months' interest up to an assumed maximum 20 percent interest rate. Pursuant to a separate agreement ("Reimbursement Agreement"), Blackstone will agree to pay the Bank all amounts drawn under the Letter of Credit as well as certain fees and expenses. The Letter of Credit will terminate five years from the date of issuance but may be extended for a period of one to three years. When terminated (unless Blackstone has arranged alternatively) the Bonds must be redeemed except those which the holders have elected to retain and those which the Company has elected to purchase. Upon the issuance of the Letter of Credit, Blackstone will pay the Bank a one-time fee equal to ½ of 1% per annum on the maximum amount available to be drawn for the period from December 1, 1984 to the date of the issuance of the Letter of Credit. So long as the Letter of Credit remains outstanding, Blackstone will be obligated to pay a letter of credit commission at a rate of 0.80% per annum payable quarterly.

Blackstone requests that with respect to its borrowings under the Financing Agreement a finding be made by the Commission that competitive bidding is inappropriate.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 14, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31026 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14242; 812-5849]

Seven Star Partners, Ltd.; Application for an Order Granting Exemption

November 19, 1984.

Notice is hereby given that Seven Star Partners, Ltd. ("Applicant"), 180 Park Avenue North, Suite 2-B, Winter Florida, 32789, a Florida limited partnership, filed an application on September 20, 1984, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting Applicant from all provisions of the Act and rules and regulations thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant statutory provisions.

Applicant represents that it was formed primarily for the purpose of participating in the distribution of seven designated motion pictures (the "Pictures") through the acquisition of a limited partnership interest in Warner Bros. Seven Distributing Company, a California limited partnership (the "Venture"). Allen J. Schwalb is the general partner of Applicant ("General Partner"), and Warner Bros. Distributing Corporation ("Warner") is the general partner of the Venture, and will contribute the Pictures to the Venture as its capital contribution.

Applicant states that it intends to offer a minimum of 25 and a maximum of 200 units of limited partnership interest (the "Units") pursuant to Regulation D promulgated under the Securities Act of 1933 ("Securities Act") at a price of $240,000 per Unit (the "Offering"). The total purchase price per Unit is payable, generally speaking, through a "subscription capital contribution" of $88,000, and an "additional capital contribution" of $152,000. The former is to be payable either entirely in cash; or, $40,000 in cash and $48,000 (plus interest and a loan fee of $7,780 per Unit) by delivery of an irrevocable, transferable, standby letter of credit satisfactory to the General Partner and Central Penn National Bank of Philadelphia, Pennsylvania ("Central Penn") (the "Letter of Credit"), which is to secure principal and interest in the same amount under a loan from Central Penn to each investor-limited partner who provides a letter of credit (the "Subscription Loan"). The additional capital contribution of $152,000 per Unit is to be payable through the proceeds of a loan from Bank of America, Los Angeles, California (the "Loan"), under which each investor-limited partner will be primarily liable for a proportionate amount of the principal, interest thereon, and related costs, expenses and charges. The maximum aggregate principal amount of the Loan would thus be $30,400,000.

Applicant represents that the Units will be offered through Applicant and various members of the National Association of Securities Dealers ("NASD"). Each investor will receive a private placement memorandum fully describing the Offering, prepared in accordance with Regulation D. Applicant will file with the Commission a Notice of Sales of Securities pursuant to Regulation D or section 4(6), on Form D, relating to the sale of the Units.

Applicant represents further that it will only sell Units to investors who have a net worth (exclusive of house, furnishings and automobiles) of at least $400,000 per Unit purchased (or $250,000 if a half Unit is purchased), and taxable income for federal income tax purposes subject to tax at the 50% marginal rate.

Applicant states that the purpose of the Venture is to own, distribute and exploit the Pictures. Warner, as the general partner of the Venture, must use the funds contributed by Applicant to distribute and exploit the Pictures. Warner will contribute to the Venture all of its right, title and interest in and to each Picture necessary to exploit the Pictures in all media in the United States in perpetuity (to the extend owned by Warner). Applicant's contribution to the Venture will be used primarily to fund certain advertising and releasing costs incurred by the Venture in connection with the Pictures. All of the Pictures are scheduled to be released between August and December of 1984.

Applicant states that although the First Amended and Restated Certificate and Agreement of Limited Partnership of the Venture ("Venture Agreement") contains no requirements concerning how Warner should advertise or release the Pictures, or how much of the Venture's assets Warner shall expend with respect to any Picture, Warner, as the general Partner of the Venture, has a fiduciary duty to exercise its business judgment in good faith, and Applicant expects that Warner will distribute the Pictures in accordance with the customary standards and practices of Warner and the motion picture industry.

Warner, which with its predecessors has been engaged in the production and distribution of motion pictures for more than 60 years, is responsible for the day-to-day operation of the Venture, having sole and complete authority to make all decisions as to the distribution and exploitation of the Pictures. Warner, however, is obligated to devote only such time to the Venture as it, in its sole discretion, determines to be necessary and appropriate, and Applicant is entitled to participate in certain major decisions regarding the Venture's business. In particular, Warner would need Applicant's consent to revise the Venture Agreement or to dispose of substantially all of the Venture's assets.

Applicant represents that it will be entitled to allocations of items of gross income and gain measured by certain percentages of adjusted gross receipts of the Pictures, as well as by certain fixed amounts. "Adjusted Gross Receipts" is defined as "gross receipts" (as defined, in turn, in the Venture Agreement) from all United States media and (after January 31, 1986) from foreign media, minus off-the-tops (i.e., checking and collection charges, taxes, residuals and certain dues, assessments and contributions payable to trade associations and other industry groups) and agreed third-party participations. Applicant will be allocated 99 percent of all items of Venture loss and deductions (unless other limited partners are admitted to the Venture, in which case the allocations will be adjusted proportionately) attributable to the Venture's cash expenditures (primarily advertising expenses and the management fee payable to Warner), until Applicant has been allocated an amount of loss and deduction equal to its capital contribution (in excess of any cash distribution made by the Venture in 1984). Warner is allocated 100 percent of all items of deduction attributable to depreciation of the Pictures and amortization of the positive release prints (other than any such amortization allocable to Applicant, which occurs in certain circumstances), and all other deductions not allocated to Applicant.

Applicant states that the investment tax credit on the Pictures and positive release prints thereof will be allocated between Warner, and Applicant and any other limited partners proportionately in accordance with their respective amounts at risk in the Venture on the date of initial release of each Picture, pursuant to applicable Treasury Regulations.

Applicant represents that all items of Applicant's income, gain, loss and deduction will be allocated 98 percent to limited partners and 2 percent to the General Partner, with the exception of certain special allocations. Items of credit of the Applicant will be allocated 98 percent, or the maximum permitted by law, if different, to limited partners, and the balance to the General Partner. All items allocated to limited partners as a group generally will be allocated among them in accordance with the respective number of Units owned by each. In the event that all limited partners are not admitted on the same date, the allocations per Unit for 1984 may differ depending on admission dates.

Applicant further states that distributions of available cash (as defined in the First Amended and Restated Certificate and Agreement of Limited Partnership of Seven Star Partners, Ltd. ("Partnership Agreement") will be made by Applicant beginning in 1985. Distributions will generally be made 98 percent to limited partners and 2 percent to the General Partner, with the exception of permitted distributions made in return of capital, and distributions, the proceeds of which must be used to make payments of principal and interest under the Loan. It is expected that all or substantial portions of such cash distributions in 1985, 1986, and 1987 will be used to make payments of principal under the Loan. In addition, the limited partners will be entitled to receive distributions in 1984, as a return of capital, in an amount equal in the aggregate to the 1984 interest on the Loan, which will be used to make a payment of interest on the Loan. No sums retained by the Venture or distributed to Applicant will be reinvested in any other investment.

Applicant concedes that it may be classified as an investment company as defined in Section 3(a) of the Act, but submits that it is part of a unique business arrangement of a type that Congress did not intend to be regulated pursuant to the Act, and that therefore its exemption from the Act would be appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Unlike securities held by traditional investment companies, it is asserted that Applicant's interest in the Venture will not be liquid, mobile, or readily negotiable. It is further asserted that, in fact, Applicant's interest cannot be sold for at least one year from the date of the completion of the Offering, and if it is sold, the proceeds derived from the sale will be distributed to Applicant's limited partners and not reinvested, as Applicant would be wound-up and dissolved. In addition, it is contended that, unlike traditional investment companies, Applicant will have no discretion with regard to investing the net proceeds raised in the Offering and will not be able to make any other investments. The use and application of the proceeds derived from the Offering and the proceeds to be derived from the business of the Venture, or from the sale of Applicant's interest in the Venture, have been prescribed by the Partnership Agreement and the Venture agreement. Finally, it is submitted that Applicant will participate directly in the business of distributing motion pictures in addition to its primary business engagement consisting of its interest in the Venture.

Applicant contends that investors in Applicant will be amply protected without application of the provisions of the Act to Applicant by: (a) full disclosure in the private placement memorandum for the Offering of all aspects of their investment; (b) suitability standards for prospective investors established by Applicant; (c) limitations on the discretion of the General Partner and Warner; (d) rights of limited partners provided under the Partnership Agreement and federal law; and (e) reporting requirements imposed on Applicant and Warner.

Applicant also submits that its exemption from the Act pursuant to Section 6(c) would be consistent with the purposes and policies underlying the Act and that it is necessary as a practical matter, because the requirements of the Act as applied to Applicant would be onerous, and, in fact, would result in withdrawal of the Offering, thus denying investors an opportunity, subject to the risk of loss, to derive an economic benefit by investing in the motion picture business.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 14, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30987 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21499; SR-NXSE-84-33]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change

November 19, 1984.

I. Introduction

On October 10, 1984, the New York Stock Exchange ("NYSE") 11 Wall Street, New York, New York, 10005, filed with the Securities and Exchange Commission a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder. Generally, the proposed rule change would permit NYSE listed companies to act as both transfer agent and register for their own securities, subject to similar conditions as unaffiliated banks and trust companies. The Commission published notice of the proposed rule change in Securities Exchange Act Release No. 21403 [1] and received comment letters from the Stock Transfer Association (the "STA") and the Corporate Transfer Agent Association (the "CTAA") supporting the proposed rule change.[2] As discussed below, the Commission is approving the proposed rule change.

II. Description

The proposed rule change modifies NYSE's securities listing standards to permit NYSE listed companies to act in a dual capacity as transfer agent and registrar for their own securities or to appoint qualified organizations (not just unaffiliated banks and trust companies [3]) to act in a dual capacity as transfer agent and registrar.[4] Under the proposed rule change, entities acting in a dual capacity as transfer agent and registrar would be required to perform these functions separately, establish appropriate internal controls to assure the separation of functions, and subject those controls to an annual independent audit. In addition, the proposed rule change would continue to require transfer agents and registrars for NYSE listed securities to agree to comply with NYSE rules, particularly NYSE Rule 496.[5]

III. Discussion

The NYSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act. Specifically, the NYSE believes that the proposed rule change should result in significant operational efficiencies and cost savings for listed companies. The NYSE notes, for example, that eliminating the independent registrar requirement should eliminate issuer and transfer agent expense for separate registrar facilities and reduce securities certificate handling problems that occur during the transfer and registration processes. Finally, the NYSE believes that the proposed rule change reflects recent changes in auditing standards, improved securities transfer performance and the development of corporate governance policies that guard against securities overissuances.

The STA and the CTAA submitted comment letters to the Commission concerning the proposed rule change. Those letters supported the proposed rule change and urged Commission approval. The CTAA stated that there is no longer any need for an independent registrar because of in-house audit controls, examination and review of those controls by independent accountants, and direct regulation of registered non-bank transfer agents. The STA noted that the proposed rule change would promote the economical and efficient transfer of securities and provide entities that act as transfer agents for their own securities with the same capabilities afforded bank transfer agents that perform transfer and registrar functions for other NYSE listed securities. At the same time, however, the STA recognized that entities providing transfer and registrar functions must separate those functions internally, establish sufficient internal accounting controls to assure their separation and subject those controls to an annual review by independent auditors.

The Commission agrees with the NYSE, the STA and the CTAA; as discussed below, the Commission is approving the proposed rule change. The proposed rule change represents the first modification of NYSE rules affecting transfer agents and registrars since the passage of the Securities Acts Amendments of 1975,[6] which authorized direct federal regulation of transfer agents.[7] Notwithstanding direct federal regulation of transfer agents and registrars, the Commission believes that because exchanges are obligated to maintain the operational and financial integrity of the markets for listed securities issues, exchanges appropriately may adopt rules to assure safe and efficient securities transfers. Thus, the Commission believes that the NYSE may establish standards affecting transfer agents for listed securities through rules affecting listed companies, provided those standards are consistent with section 6 of the Act and the scheme of federal transfer agent regulation established in section 17A of the Act.[8]

The Commission recognizes the NYSE's longstanding interest in preventing securities overissuances. As the Commission noted in Securities Exchange Act Release No. 19142,[9] substandard transfer agent performance, such as overissuing securities, can lead to significant financial loss, market confusion and trading suspensions.[10] Indeed, the NYSE's independent registrar requirement grew out of overissuances that occurred in the 1800's and that continued uncorrected for many years because of inadequate transfer agent internal controls.[11]

The Commission believes the NYSE's proposed requirements are reasonably designed to prevent overissuances. Although the proposed rule change would permit listed companies to act in a dual capacity, the proposed rule change appears well designed to prevent overissuances. Separating the transfer and resistrar functions internally should provide a routine check on each certificate issuance. Establishing internal controls and independently evaluating those controls on an annual basis should provide added confidence to the transfer process.

Moreover, the Commission belives that the NYSE's requirements are consistent with, and appropriately supplement, federal transfer agent regulation.[12] Since 1975, the Commission has adopted minimum standards governing transfer and registrar functions designed to ensure the prompt, safe and accurate transfer of ownership in corporate and other securities.[13] Direct federal regulation of

---

[1] 49 FR 41305 (October 22, 1984).

[2] Letter from Joseph Poggio, President, Stock Transfer Association, Inc. to the Commission (November 2, 1984); Letter from Peter Descovich, President, Corporate Transfer Agent Association, to the Commission (November 8, 1984).

[3] Currently, the NYSE permits only banks and trust companies that are not affiliated with the issuer to act as both transfer agents and registrars for NYSE listed securities.

[4] The proposed rule change would permit listed companies to retain independent registrars, but would expand the universe of potentially qualified organizations to include any registered transfer agent. Thus, non-bank, non-issuer transfer agents would be eligible to act as either the independent registrar or the transfer agent and registrar for a NYSE listed issue.

[5] Rule 496 requires transfer agents, among other things, to maintain certain minimum insurance coverage; have a minimum amount of capital; maintain a facility in Manhattan south of Chambers Street for delivery and pick-up of securities certificates; and transfer, register and make available for pick-up all routine items within 48 hours of receipt of those items.

[6] Pub. L. 94-29, 89 Stat. 97 (1975). The Commission commends the NYSE for reexamining its rules affecting transfer agents and registrars and for modifying those rules to reflect regulatory and other changes that have materially affected or improved the securities transfer and registration processes. To this end, the Commission encourages other exchanges to reexamine and, if necessary, update their rules concerning transfer agents and registrars.

[7] Prior to 1975, the federal government did not directly regulate transfer agent activity with a view to assuring prompt and accurate securities transfers on a national basis. As a result, the NYSE established certain requirements affecting transfer agents and registrars that the NYSE believes would ensure efficient transfer of NYSE listed securities.

[8] The Commission recognizes that some NYSE transfer agent standards may establish time frames for completing securities transfers that are stricter than the time frames specified in Commission rules. The NYSE time frames were established prior to 1975 and are not part of this proposed rule change. Thus, the Commission is not addressing those time frames or other aspects of NYSE Rule 496. The Commission understands that the NYSE and transfer agent industry representatives are reexamining NYSE Rule 496 requirements in light of regulatory and operational changes affecting transfer agents. The Commisison supports those discussions.

[9] 47 FR 47268, 47270 n. 5 (October 25, 1982).

[10] *Id. See* Securities Exchange Act Release No. 18100 (September 17, 1981) (trading suspension in stock of Lewis Energy Corporation when possibility of substantial overissuance occurred).

[11] *See, e.g., New York and New Haven Railway v. Schuyler*, 34 N.Y. 30 (1865).

[12] For example, the proposed ruled change would require NYSE listed companies that perform transfer agent functions to obtain an independent evaluation of their internal accounting controls if they also elect to act as registrars, even though those companies woud be exempt from the internal accounting control report requirement of Rule 17Ad-13. *see* 17 CFR 240.17Ad-13(d)(1)(i). Given the NYSE's interest in preventing overissuances, the Commission believes the NYSE may appropriately require more extensive independent review of those controls than the minimum requirements set forth in Commission rules.

[13] *See* 17 CFR 240.17Ad-1 through 17 CFR 240.17Ad-14. For example, rule 17Ad-2 requires transfer agents to turnaround 90 percent of all routine items they receive for transfer each month within three business days. In addition, Rule 17 Ad-10 requires recordkeeping transfer agents to maintain accurate issuer security holder records and to update those records promplty to reflect transfers, purchases, redemptions and issuances of securities. Moreover, Rule 17Ad-12 establishes a

transfer agents, among other things, has substantially lessened the possibilities of securities overissuances and other errors. For example, Rule 17Ad–10 requires transfer agents to exercise diligent and continuous attention to resolving record differences that may result in securities overissuances. In addition, Rule 17Ad–11 requires transfer agents with aged record differences in excess of certain thresholds to report those record differences to issuers and, in some cases, the appropriate regulatory authority. Finally, Rule 17Ad–10(g) requires transfer agents that cause an overissuance after September 1983 to buy in securities equal to the amount of the over-issuance.

The Commission also believes that the proposed rule change will result in significant operational efficiences and cost savings for listed companies, consistent with the requirements of Section 17A of the Act. By eliminating the need for independent registrars for listed issues, the proposed rule change should permit issuers and their agents to streamline the securities transfer process and to eliminate several expenses associated with maintaining an independent registrar. For example, listed companies could eliminate fees they currently pay for independent registrar services and for shipping certificates between the transfer agent's and registrar's offices. Similarly, eliminating the independent registrar requirement should reduce the risk of lost or stolen certificates during the transfer process.

The Commission believes that the proposed rule change fosters cooperation and coordination among persons engaged in the clearing, settling and processing of securities transactions, consistent with the requirements of section 17A of the Act. First, the proposed rule change permits one entity to perform all aspects of the transfer process. Second, the proposed rule change should increase the number of NYSE listed securities that are processed through Transfer Agent Custodian ("TAC") programs. TAC programs involve sophisticated links between depositories and transfer agents that, among other things, reduce certificate handling and time-consuming data entry in connection with certificate processing, thereby expediting the entire transfer process.[14] To participate in these programs, however, transfer agents must be able to issue certificates on extremely short notice. The Commission understands that by eliminating the outside registrar and streamlining the certificate issuance process in response to the proposed rule change, several listed companies that perform their own transfer agent functions will be able to participate in the Depository Trust Company's TAC program.[15]

The Commission notes finally that the proposed rule change eliminates disparate treatment among banks, issuers and others that perform transfer and registrar functions for NYSE listed securities. Current NYSE listing standards permit only unaffiliated banks and trust companies to act as both transfer agent and registrar for NYSE listed securities, provided those organizations meet certain capital, insurance and audit requirements.[16] Under the proposed rule change, however, issuer and other non-bank transfer agents will be permitted to act as transfer agents and registrars in a dual capacity for NYSE listed issues, provided they meet similar conditions. Thus, the proposed rule change helps further the goal of equal regulation.

IV. Conclusion

For the reasons stated above, the Commission finds the proposed rule change consistent with the Act, particularly sections 6(b)(5) and 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–84–33) be and hereby is appproved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30089 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

general requirement that transfer agents safeguard securities and funds relating to their transfer agent activity. Finally, Rule 17Ad–13 requires certain transfer agents to obtain an independent report concerning the adequacy of the transfer agent's system of internal accounting control.

[14] For example, The Depository Trust Company ("DTC") operate a TAC program known as Fast Automated Securities Transfer ("FAST"). Under that program, the transfer agent safekeeps one or more balance certificates reflecting DTC's securities position in a particular issue. Thus, the depository can reduce the number of certificates held in its vault and transfer turnaround can be automated and expedited. In fact, users can effect customer name transfer through the TAC program on a same day basis.

[15] *See* Securities and Exchange Commission, Report of the Division of Market Regulation 1984 Securities Processing Roundtable, 38–39 (May 1984).

[16] The NYSE adopted its current policy in 1971. Prior to 1971, NYSE rules required that the registrar function for NYSE listed securities be performed independent of the transfer agent, whether the transfer agent was the issuer or an independent bank or trust company.

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0349]

Camden Investments, Inc.; Issuance of a Small Business Investment Company License

On September 6, 1984, a notice was published in the **Federal Register** (35281) stating that an application has been filed by Camden Investments, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)) for a license as a small business investment company.

Interested parties were given until close of business October 5, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09–0349 on November 7, 1984, to Camden Inivestments, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 15, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–31015 Filed 11–26–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5474]

Monsey Capital Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Monsey Capital Corporation, 125 Route 59, Monsey, New York 10952, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1984).

The officers, directors and shareholders of the Applicant are as follows:

Name and address	Title or relationship	Pct of ownership
Shmuel a Myski, 4 Fern Court, Monsey, New York 10952.	president, director & general manager.	0
Chaim Zev Weiss, 10 Elyon Road, Monsey, New York 10952.	Secretary, treasurer & director.	0
Jack G. Klein, 78 Rupert Avenue, Staten Island, New York 10314.	Director	50

Name and address	Title or relationship	Pct of ownership
Keren Hachesed of Monsey, Inc., 4 Stauvelt Road, Monsey, New York 10952.		50

The Applicant will begin operations with a capitalization of $1,000,000 and will conduct its operations principally in the State of New York.

As an SBIC licensed to operate under section 301(d) of the Act, the Applicant will provide financial and management assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Monsey, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 10, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–31018 Filed 11–26–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–0262]

Round Table Capital Corp.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Round Table Capital Corporation (Round Table), 601 Montgomery Street, San Francisco, California 94111, a Federal Licensee under the Samll Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of conflict of interest transaction.

Round Table proposes a $175,000 equity investment as the sole limited partner in Harlan Limited Partnership (Harlan), 601 Montgomery Street, Suite 500, San Francisco, California 94111. Mr. James F. Harlan would be the general partner. Harlan would be created solely for the purpose of purchasing a Shakey's Pizza Restaurant in Martinez, California and converting and operating the same as a Round Table Pizza Restaurant.

The conflict of interest arised because Mr. Harlan is currently a senior vice president of Round Table Franchise Corporation, another subsidiary of Round Table Pizza, Inc., parent of Round Table. Thus, Mr. Harlan is deemed as an Associate of Round Table under § 107.3(c) of SBA Rules and Regulations. Because Mr. Harlan is a control person of Harlan, Harlan is considered an Associate of Round Table. Therefore, the proposed transaction falls within the purview of § 107.903(b)(3) of the Regulations and requires prior written approval of SBA.

Notice is hereby given that any person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC. 20416.

A copy of this notice will be published in a newspaper of general circulation in the San Francisco and Martinez, California areas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: November 20, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–31019 Filed 11–26–84; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 03/03–0176]

Sovran Funding Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations governing SBIC's [13 CFR 107.102 (1984)] under the name of Sovran Funding Corporation, Sovran Center, One Commercial Place, Norfolk, Virginia 23510 for a license to operate in the State of Virginia under the provisions of the Small Business Investment Act of 1958 (Act) as amended, (15 U.S.C. 661 *et seq.*).

The applicant will begin operations with private capital of $5,000,000.

The officers, directors and stockholders of the applicant are:

John B. Bernhardt, Sovran Financial Corp., One Commercial Place, Norfolk, Virginia 23510—Director
Page D. Cranford, Sovran Financial Corp., One Commercial Place, Norfolk, Virginia 23510—Vice President and Secretary
David A. King, Jr., Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—President (General Manager) and Director.
Jerome O. Guyant, Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—Director
L. Ralph Hicks, Jr., Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—Director
Robert M. Schonk, Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—Treasurer
C. Lee Wilkinson, Jr., Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—Director

The applicant will be wholly owned by Sovran Financial Corporation. Both are located at One Commercial Place, Norfolk, Virginia 23510.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the new company, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit to SBA in writing, relevant comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Norfolk area.

(Catalog of Federal and Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 15, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–31017 Filed 11–26–84; 8:45 am]

BILLING CODE 8025–01–M

[License No. 10/10-0185]

Trendwest Capital Corp.; Issuance of a Small Business Investment Company License

On May 30, 1984, a notice was published in the **Federal Register** (49 FR 22585) stating that an application has been filed by Trendwest Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business June 29, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 10/10-0185 on November 9, 1984, to Trendwest Capital Corporation to operate as a small business investment company.

Dated: November 15, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31010 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2173; Amendment No. 2]

Disaster Loan Areas; Texas

The above numbered declaration (49 FR 44258) and amendment No. 1 (49 FR 45516) are amended in accordance with the amendment to the President's declaration of October 30, 1984, to include Precinct four in Harris County as an adjacent area in the State of Texas as a result of damage from severe storms, high winds, and flooding beginning on or about October 19, 1984. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on December 31, 1984, and for economic injury until the close of business on July 30, 1985.

(Catalog of Federal Domestic Assistance Programs No. 59002 and 59008)

Dated: November 19, 1584.

Willis W. Allred, III,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-31013 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in Casper, Wyoming, during fiscal year 1985. Currently, there are 36 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be received for a period of 60 days from the date of publication of this notice.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie L. Albertson (202) 653-6768.

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, Specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been estblished under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The relevant proposal developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the relevant proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDA Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must endure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that list of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: November 19, 1984.

James C. Sanders,

Administrator.

Address of Proposed SBDC and Proposal Developer

Dr. Lloyd Loftin, President, Casper Community College, 125 College Drive, Casper, Wyoming 82601. (307) 268-2548

[FR Doc. 84-31012 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maritime Advisory Committee; Cancellation of Meeting

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: A previous notice (49 FR 43610, October 30, 1984) announced a meeting of the Maritime Advisory Committee on November 30, 1984. The meeting is cancelled. Notice will be published once a new meeting is scheduled.

By Order of the Maritime Administrator.

Dated: November 21, 1984.
Murray A. Bloom,
Assistant Secretary.
[FR Doc. 84-30975 Filed 11-26-84; 8:45 am]
BILLING CODE 4810-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series—No. 37-84]

Treasury Notes of February 15, 1990, Series G-1990

Washington, November 16, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,750,000,000 of United States securities, designated Treasury Notes of February 15, 1990, Series G-1990 (CUSIP No. 912827 RP 9). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated December 3, 1984, and will bear interest from that date, payable on a semiannual basis on August 15, 1985, and each subsequent 6 months on February 15, and August 15 until the principal becomes payable. They will mature February 15, 1990, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. After January 12, 1985, the Treasury may issue, through the Federal Reserve Bank of New York, as fiscal agent of the United States, additional amounts of the securities offered in this circular in exchange for equal par amounts of the Foreign-Targeted Treasury Notes of February 15, 1990, Series H-1990 (CUSIP No. 912827 RQ 7). Such exchanges must be conducted in accordance with Section 10 of Department Circular, Public Debt Series—No. 38-84 dated November 15, 1984.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 28, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 27, 1984, and received no later than Monday, December 3, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Monday, December 3, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, November 29, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, December 3, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,
Fiscal Assistant Secretary.
[FR Doc. 84-30983 Filed 11-26-84; 8:45 am]
BILLING CODE 4810-40-M

[Department Circular, Public Debt Series No. 38-84]

Foreign-Targeted Treasury Notes of February 15, 1990, Series H-1990

(Washington, D.C., November 15, 1984.

Section 1. Invitation for Tenders

1.1. Introduction. The Secretary of the Treasury, pursuant to the authority granted him by Chapter 31 of Title 31, United States Code, invites tenders for up to $1,000,000,000 of United States securities designated Foreign-Targeted Treasury Notes of February 15, 1990, Series H-1990 (CUSIP No. 912827 RQ7) (collectively the "Notes", individually a "Note"). The Notes will be auctioned in the United States on November 28, 1984, by competitive bidding only. Payment must be made as set forth below in United States dollars. The stated interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described in Section 6.7.

1.2 Targeted Nature of the Notes. Treasury will sell the Notes only to Bidders as defined in Section 2.1. Bidders must acquire the Notes only for themselves or on behalf of, or for sale or other transfer to, United States Aliens as defined in Section 2.19 or foreign branches of United States Financial Institutions. In addition, any transfers by Bidders after January 12, 1985, to Qualified Holders as defined in Section 2.15 that are United States Persons must be consistent with the tax certification described in Section 11.2.

1.3. Transfer Restrictions. Before January 13, 1985, the Notes may not be sold or transferred to a United States Person as defined in Section 2.20, other than a foreign branch of a United States Financial Institution. Each Bidder for the Notes must certify on the tender form for the Notes that it will not sell, contract to sell, or otherwise transfer the Notes to a United States Person, other than a foreign branch of a United States Financial Institution, before January 13, 1985. Each Bidder further agrees that, if it sells, contracts to sell, or otherwise transfers the Notes before January 13, 1985, it will confirm to such purchaser or transferee in writing that (i) there is a restriction on sale or other transfer to

United States Persons other than foreign branches of United States Financial Institutions and (ii) that such confirmation is required to be given to any subsequent purchaser or transferee that acquires the Notes before January 13, 1985. The transfer restriction of this Section 1.3 is in addition to the tax certification of a Bidder described in Section 11.2. As described in Section 11.2, the Bidder must certify that, as of the date of issuance, Notes acquired by the Bidder will not be owned by a United States Person, other than a foreign branch of a United States Financial Institution, and that the Notes are not being acquired on behalf of such a person, or for offer to resell or for resale to such a person. This tax certification requirement is independent of the transfer restriction of this Section 1.3.

1.4 Tax Treatment. The Notes are subject to United States federal income tax as provided in the Internal Revenue Code as defined in Section 2.8. Interest on the Notes paid to a United States Alien is not subject to United States federal income tax if the conditions of sections 871(h) or 881(c) of the Internal Revenue Code and the regulations related thereto are satisfied. The discussion in Section 11 is only a summary of the currently applicable tax requirements. The tax consequences of holding the Notes derive solely from the Internal Revenue Code and regulations now or hereafter promulgated thereunder.

Section 2. Definitions

The following terms, whenever used and capitalized in this offering circular, shall hae the meanings set forth below.

2.1. Bidder. (i) A United States Alien, other than an individual, or (ii) a foreign branch of a United States Financial Institution.

2.2. Definitive Notes. Notes (as defined in Section 1.1) evidenced by a certificate that is inscribed with the name of the Registered Owner.

2.3. Domestic Notes. Companion securities sold at auction on November 28, 1984, and designated Treasury Notes of February 15, 1990, Series G–1990 (CUSIP No. 912827 RP 9).

2.4. Exchange Adjustment. As defined in Section 10.3.

2.5. Financial Institution. A securities clearing organization, a bank, or other financial institution, other than an International Financial Organization, that holds customers' securities in the ordinary course of its trade or business, within the meaning of section 871(h)(4)(B) of the Internal Revenue Code.

2.6. FRB NY. The Federal Reserve Bank of New York, located at 33 Liberty Street, New York, New York.

2.7. Holding Institution. A Financial Institution or an International Financial Organization that has a book-entry account with FRB NY.

2.8. Internal Revenue Code. The United States Internal Revenue Code of 1954, as amended from time to time (Title 26 of the United States Code).

2.9. International Account. A book-entry account of a Holding Institution with FRB NY for which records are maintained by FRB NY that specifically identify a foreign Financial Institution, a foreign branch of a United States Financial Institution, or an International Financial Organization. A United States branch of a foreign Financial Institution may not establish an International Account. A United States subsidiary of a foreign Financial Institution may establish an International Account in accordance with the requirements of the first sentence of this Section 2.9.

2.10. International Financial Organization. A central bank or monetary authority of a foreign government or a public international organization of which the United States is a member that is characterized as a foreign corporation for United States federal income tax purposes to the extent that such central bank, authority, or organization holds Notes solely for its own account and is exempt from United States federal income tax under sections 892 or 895 of the Internal Revenue Code.

2.11. Note or Notes. As defined in Section 1.1.

2.12. Payment Guarantee. A guarantee of payment to Treasury for an amount equal to 5 percent of the par amount of Notes for which a tender is submitted by or on behalf of Bidder.

2.13. Paying Institution. A Financial Institution that has a reserve, clearing, or othe dollar account with FRB NY and that has been designated on the tender form to pay for the Notes or an International Financial Organization designated to pay for Notes for which it is the Registered Owner.

2.14. Primary Dealer. A dealer on the list of reporting dealers published by FRB NY.

2.15. Qualified Holder. Before January 13, 1985, a United States Alien or a foreign branch of a United States Financial Institution and after January 12, 1985, a United States Alien or a United States Person.

2.16. Registered Owner. The Financial Institution or International Financial Organization specifically identified on the records of FRB NY maintained for an International Account, or, for Notes held in a book-entry account other than an International Account, the Holding Institution, or, for a Definitive Note, the person whose name is inscribed on the Note and recorded on the books of FRB NY.

2.17. Secretary. The Secretary of the United States Department of the Treasury, the legal successor of the Secretary, and delegates of the Secretary or such legal successor.

2.18. Treasury. The United States Department of the Treasury.

2.19. United States Alien. A corporation, partnership, individual, or fiduciary that for United States federal income tax purposes, as to the United States (including its territories, possessions, all areas subject to its jurisdiction and the Commonwealth of Puerto Rico), is a foreign corporation, a nonresident alien individual, a nonresident alien fiduciary of a foreign estate or trust; a foreign partnership one or more of the members of which is, for United States federal income tax purposes, a foreign corporation, a nonresident alien individual, or a nonresident alien fiduciary of a foreign estate or trust; or an International Financial Organization.

2.20. United States Person. A citizen, national, or resident of the United States; a corporation, partnership, or other entity created or organized in or under the laws of the United States or any political subdivision thereof; or an estate or trust that is subject to United States federal income tax regardless of the source of its income.

2.21. United States-Related Person. A United States Person, a controlled foreign corporation within the meaning of section 957(a) of the Internal Revenue Code, or a foreign corporation 50 percent or more of whose gross income from all sources for the three-year period ending with the close of the taxable year preceding the subject payment was effectively connected with the conduct of a trade or business in the United States.

2.22. Withholding Agent. The United States Person that would be required to deduct and withhold United States federal income tax from interest on the Notes under sections 1441(a) or 1442(a) of the Internal Revenue Code if such interest were not portfolio interest within the meaning of sections 871(h) and 881(c) of the Internal Revenue Code.

Section 3. Fiscal Agent as Registrar

3.1. Fiscal Agent as Registrar. FRB NY is designated to act on behalf of Treasury as the exclusive fiscal agent and, as such, registrar for this issue. FRB NY is authorized to receive tender forms and payment, issue the Notes, maintain

and service securities accounts, pay principal and interest, conduct exchange and conversion transactions, redeem the Notes at maturity and otherwise act as necessary in its capactiy as fiscal agent.

Section 4. Description of the Notes

4.1. The Notes will be issued as direct obligations of the United States of America. The Notes will be issued in book-entry form on December 3, 1984, and will bear interest in accordance with the accrual formula for Notes paying annual interest set forth at Attachment D, payable on an annual basis on February 15, 1986, and on February 15 of each subsequent year through the maturity date. The Notes will mature on February 15, 1990, and are not subject to call or redemption prior to maturity. After January 12, 1985, the Notes may be converted to Definitive Notes as described in Section 9. Interest and principal on the Notes will be paid in United States dollars in accordance with the procedures set forth in Sections 8.5 and 9.3. After January 12, 1985, the Notes will be acceptable to secure deposits of public monies of the United States.

4.2. Transfer and Exchange. Ownership of the Notes is transferable as provided in Sections 8 and 9. The Notes may be exchanged for Domestic Notes as provided in Section 10. If the applicable requirements of Section 11 have been complied with, after January 12, 1985, the Notes may be acquired and owned by a United States Person and Domestic Notes acquired in exchange for the Notes may be acquired and owned by either a United States Alien or a United States Person.

4.3. No Gross-up. There will be no future increase in payments to offset any changes in tax requirements affecting these Notes.

4.4. Denominations. Definitive Notes will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts.

4.5. Governing Regulations. Treasury's general regulations governing United States securities (Part 306 of Title 31 of the Code of Federal Regulations) apply to the Notes offered in this offering circular, except as otherwise provided herein.

4.6. Long Coupon. There will be no interest payment on February 15, 1985, for the interest accrual period on the Notes from December 3, 1984, to February 15, 1985. Interest earned during this period will be added to the annual coupon payable on February 15, 1986, and paid on that date. The amount of interest earned from December 3, 1984, to February 15, 1985, will be determined using the day count conventions (as defined in Attachment D) for securities paying annual interest. Application of these conventions means that the amount of interest earned during the first interest accrual period will be computed by multiplying the amount of the regular annual coupon by the fraction $^{73}/_{360}$.

Section 5. Domestic Notes

5.1. Domestic Auction. On November 28, 1984, Treasury also will auction Domestic Notes that will be issued on the same day as the Notes and will have the same maturity date and stated interest rate as the Notes. After January 12, 1985, the Notes may be exchanged for Domestic Notes in accordance with the procedures set forth in Section 10.

Section 6. Bidding and Sale Procedures

6.1. Bidders. Tender forms may be submitted only by or on behalf of Bidders. Individuals may not be Bidders. A syndicate must be comprised only of Bidders to be considered a Bidder. Tender forms may be submitted by an agent of a Bidder if the identity of the Bidder is disclosed.

6.2. Tender Submission. Bids must be submitted on the prescribed tender form and must be received at FRB NY, First Floor, before 1:00 p.m. New York time, Wednesday, November 28, 1984. Persons submitting tender forms will receive time-stamped receipts. Beginning at 1:00 p.m. New York time on November 28, 1984, bids are irrevocable. A sample tender form is set forth at Attachment A. Tender forms may be obtained at FRB NY and at Treasury offices in Washington, D.C.

6.3. Payment Instructions. Bidders are required to make arrangements to pay for the Notes before submitting a bid. Each Bidder must designate a Paying Institution on the tender form. Except as set forth below, each Paying Institution must advise FRB NY no later than 12:00 noon New York time on November 27, 1984, that it has agreed to serve as a Paying Institution for a named Bidder. That advice must be given in the form set forth at Attachment B to this offering circular. The Attachment B notice is not required if (i) the Bidder and its designated Paying Institution are the same legal entity or (ii) the Paying Institution is submitting the tender form as agent for a Bidder, and if the signature of the authorized signer of the Paying Institution on the tender form is on file with FRB NY as an authorized signature of the Paying Institution. The Paying Institution may withdraw or modify its agreement to serve as Paying Institution by notifying FRB NY in accordance with Attachment B. The withdrawal of a Paying Institution after a bid has been accepted does not relieve the Bidder of its obligation to pay for the Notes in funds available to Treasury at FRB NY no later than 9:00 a.m. New York time on December 3, 1984. FRB NY will retain paying instructions on file and, if not revoked by the Paying Institution, Bidders may use such instructions in subsequent auctions of Treasury foreign-targeted securities.

6.4. Payment Guarantees. A Payment Guarantee is required unless (i) the Bidder and its designated Paying Institution are the same legal entity or (ii) the Bidder is a foreign branch (not a subsidiary) of a Primary Dealer. A Payment Guarantee may be provided by a Paying Institution or by a Primary Dealer. If the Payment Guarantee is provided by a Paying Institution or a Primary Dealer that is signing the tender form, it must be provided on the tender form. If the Payment Guarantee is provided by a Paying Institution that is not signing the tender form, it must be provided in a letter in the form of Attachment C. If the Payment Guarantee is provided by a Primary Dealer that is not signing the tender form, it must be submitted in a letter in the form of Attachment C. Payment Guarantees in the form of Attachment C must be received by FRB NY no later than 12:00 noon New York time on November 27, 1984. In addition to any other remedies available to the Secretary, the amount of this Payment Guarantee is subject to forfeiture in the Secretary's sole discretion if full payment for the Notes is not made in funds available to Treasury at FRB NY no later than 9:00 a.m. New York time on December 3, 1984. FRB NY will retain Payment Guarantees on file and, if not revoked by the Paying Institution or Primary Dealer providing the Payment Guarantee, Bidders may use such Payment Guarantee in subsequent auctions of Treasury foreign-targeted securities.

6.5. Minimum Bid. The par amount of the bid must be stated on each tender form. Multiple bids by a single Bidder are permitted. Each bid, however, must be submitted on a separate tender form. All bids must be in multiples of $1,000,000 and the aggregate amount bid at the lowest yield by each Bidder must be at least $50,000,000. A bid must show the annual yield for which it is submitted to two decimals, e.g., 7.10%, based on an annual interest payment. Fractions may not be used.

6.6. Maximum Awards. A Bidder, whether bidding individually or as a member of one or more syndicates, will not be awarded Notes with a par value

in excess of $350,000,000. A syndicate will not be awarded Notes in excess of $500,000,000. If a Bidder submits one or more bids with a total par value in excess of such maximum awards, the excess (starting at the highest yield bid) will be disregarded for purposes of the prorated calculations referred to in Section 6.8. A syndicate must disclose: (i) The identity of any syndicate member that is submitting one or more other bids (either individually or as a member of another syndicate) if that member's total bids exceed $350,000,000, and (ii) the amount of Notes included in the syndicate bid for such disclosed syndicate member. Apart from such disclosures, the identity of syndicate members other than the head of the syndicate need not be disclosed.

6.7. Interest Rate and Price of Notes. The stated interest rate established in the auction of the Domestic Notes also will be applied to the Notes. That rate of interest, payable on an annual basis, will be paid on all of the Notes. Based on such interest rate, the price for each accepted yield (on an annual payment basis) will be determined and each successful Bidder will be required to pay the price equivalent to the yield bid. Price calculations will be based on a 360-day year using the formula set forth at Attachment D for Treasury notes paying annual interest. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923. The determinations of the Secretary shall be final.

6.8. Announcement of Auction Results. On November 28, 1984, a public announcement of the amount and yield range of accepted bids for the Notes will be made by 5:00 p.m. New York time or as soon thereafter as possible. Bids for the Notes at yields equal to or greater than the highest accepted yield in the auction of the Domestic Notes (adjusted to an annual payment basis) will not be accepted. Subject to the limitations and reservations set forth in this Section 6, bids will be accepted starting with those at the lowest yield through successively higher yields until the total par amount of Notes offered has been awarded. Bids at the highest accepted yield will be prorated on a percentage basis, if necessary, taking into account the maximum award limitations of Section 6.6. For example, assume that in a $1 billion offering, bids totaling $900 million have been accepted and that three Bidders have submitted bids totaling $250 million at the next yield above those already accepted. Each of the three Bidders would then receive 40% ($100,000,000 divided by $250,000,000) of the amount of its bid at that yield.

6.9. Notification to Bidders. FRB NY will mail to each successful Bidder notification that its bid has been accepted. This notification will contain the confirmation described in Section 11.3. Copies of the written notification also will be available for pick-up by each successful Bidder and by its Paying Institution (and its Holding Institution, if different) at FRB NY, First Floor, by 12:00 noon New York time on November 29, 1984.

6.10. Reservations. It is the intent of the Secretary to issue $1,000,000,000 of the Notes. The Secretary expressly reserves the right to accept or reject any or all of the bids in whole or in part. If acceptable bids of less than $500,000,000 are submitted, no bids will be accepted. The Secretary's action under this Section 6.10 is final.

Section 7. Payment for Notes

7.1. Payment. Payment for the Notes will be made on December 3, 1984, by FRB NY debiting the account of each successful Bidder's Paying Institution.

Section 8. Book-Entry Notes

8.1. Notes Held in Book-Entry Form. On the books of FRB NY, Notes may be held only by a Holding Institution. Before January 13, 1985, Notes may be held only in a Holding Institution's International Account. After January 12, 1985, Notes may be held in any book-entry account of a Holding Institution. Holding Notes in an account other than an International Account may affect the certifications required for tax purposes. See Section 11. A Holding Institution that has more than one available book-entry account with FRB NY may have more than one International Account. Each Bidder must identify on its tender form a Holding Institution with an International Account.

8.2. Transfer of Book-Entry Notes. Before January 13, 1985, FRB NY will transfer the Notes only between International Accounts. After January 12, 1985, the Notes may be transferred between any book-entry accounts of any Holding Institutions.

8.3. Book-Entry System. Book-entry records at FRB NY will reflect the aggregate holdings of Notes of each Holding Institution by account. The Holding Institution, and each subsequent holder in the chain to the ultimate beneficial owner, will have the responsibility of establishing and maintaining accounts for its customers. FRB NY will be responsible only for maintaining the book-entry accounts in its system, effecting transfers on its books, and ensuring that payments are made to the Holding Institution identified in its book-entry system. With respect to the Notes, FRB NY will act upon instructions of the Holding Institution holding the Notes.

8.4. FRB NY as Fiscal Agent. FRB NY acts as fiscal agent of Treasury. All other holders in the chain between FRB NY and the ultimate beneficial owner act as agents of the beneficial owner or as agents of intermediary Financial Institutions and not as agents of Treasury.

8.5. Payment of Interest and Principal. Interest on Notes in book-entry form will be paid on the interest payment date, and Notes will be redeemed at par on the maturity date. Funds for interest or redemption payments will be credited to the Holding Institution. In the case of a Holding Institution that is an International Financial Organization, interest and redemption payments will be made at a foreign office of such International Financial Organization. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other day on which Treasury in Washington, D.C. or FRB NY is not open for business, the interest or principal is payable (without additional interest) on the next day that both the Treasury in Washington, D.C. and FRB NY are open for business.

Section 9. Definitive Notes

9.1. Definitive Notes. After January 12, 1985, book-entry Notes held at FRB NY may be converted to Definitive Notes. Each Definitive Note will contain on its face the following legend: "This obligation has been sold at original issuance in accordance with procedures reasonably designed to ensure that it will be sold only to a person that is not a United States person, other than a foreign branch of a United States financial institution, pursuant to sections 871(h) and 881(c) of the Internal Revenue Code of 1954, as amended."

9.2. Requests for Conversion to Definitive Notes. The request for conversion of book-entry Notes to Definitive Notes may be made to FRB NY only by a Holding Institution and must provide the name and address of the Registered Owner. The Registered Owner of a Definitive Note may be the beneficial owner or an entity (other than an International Financial Organization) holding the Note on behalf of a beneficial owner. Upon receipt of the appropriate certification, as described in Section 11, FRB NY will deliver the Definitive Note either over the counter or via registered mail in accordance with the instructions provided by the Holding Institution submitting the request for a Definitive Note.

9.3. Payment of Interest and Principal. Interest and maturity payments will be made by check payable to the Registered Owner or by credit to the reserve, clearing, or other dollar account of a Financial Institution that is the Registered Owner, if that Financial Institution maintains such an account with FRB NY. Interest and maturity payments will be mailed or credited on the date such payments are due. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other day on which Treasury in Washington, D.C. or FRB NY is not open for business, the interest or principal is payable (without additional interest) on the next day that both the Treasury in Washington, D.C. and FRB NY are open for business. Definitive Notes will be redeemed by FRB NY at par upon presentment by the Registered Owner or by a Holding Institution on behalf of the Registered Owner on or after the maturity date. Notes will not accrue interest after the maturity date.

9.4. Conversion to Book-Entry Form. A Registered Owner may convert a Definitive Note to book-entry form by submitting the Definitive Note to FRB NY through a Holding Institution. The signature of the Registered Owner must be guaranteed by the Holding Institution or certified by: (1) A United States diplomatic or consular representative; (2) a manager, assistant manager or other officer of a foreign branch of a bank or trust company incorporated in the United States, its territories or possessions, or the Commonwealth of Puerto Rico; or (3) a notary public or other officer authorized to administer oaths, provided that the official position and authority of any such officer is certified by a United States diplomatic or consular representative under seal of office. An International Financial Organization may convert a Definitive Note to book-entry form by submitting the Definitive Note, duly executed by an authorized official of such International Financial Organization, to FRB NY.

9.5. Transfer of Ownership. Ownership of Definitive Notes may be transferred by assignment. In order to reflect the change of ownership on the books of FRB NY, assigned Definitive Notes must be submitted for reregistration to FRB NY, together with the name and address of the new Registered Owner. The signatures of all assignors must be guaranteed by an institution that at the time of transfer is eligible to serve as a Paying Institution or certified by an individual who may certify signatures for purposes of Section 9.4 above.

9.6. Closed-Book Periods. Transactions involving Definitive Notes will not be accepted by FRB NY during closed-book periods. Such transactions include conversions between book-entry and Definitive Notes and changes in the registration of Definitive Notes. Books for Definitive Notes will be closed for one calendar month prior to and ending on an interest payment date and the maturity date. The Definitive Note books will be reopened on the next day that FRB NY is open for business following an interest payment date. No conversions or changes in registration will be allowed after the maturity date. During periods when the books for Definitive Notes are open, conversions and changes in registration of Definitive Notes generally will be processed by FRB NY within one week of receipt.

9.7. No Fees Imposed. FRB NY will not impose any fee for the issuance, transfer, exchange or redemption of Definitive Notes.

Section 10. Exchange for domestic notes

10.1. Exchange Provision. After January 12, 1985, Notes issued under this offering circular may be exchanged for Domestic Notes. Definitive Notes or Notes in book-entry form may be exchanged at FBR NY for an equal par amount of Domestic Notes in either book-entry or definitive form. Exchanges of Domestic Notes for Notes will not be permitted.

10.2. Taxation. Upon exchange for Domestic Notes, the holder of such Domestic Notes will be required to comply with the tax requirements (including certification requirements) applicable to Domestic Notes. See also Section 11.

10.3 Adjustment Upon Exchange. At the time of the exchange of Notes for Domestic Notes, an adjustment will be made for the difference between the present value of the Notes based on the formula in Attachment D for Treasury notes paying annual interest and the present value of the Notes based on the formula in Attachment D for Treasury notes paying semiannual interest. This net adjustment consists of the Exchange Adjustment and accrued interest, if applicable. As used in this offering circular, "Exchange Adjustment" means the difference in the present values of the Notes resulting from applying the formulas in Attachment D, after adjusting for the difference in accrued interest. In determining present values, the future payments of interest and principal will be discounted by using the weighted average yield of the Notes at the time of auction in applying the annual formula and by using the semiannual equivalent of that yield in applying the semiannual formula. Calculation of the present values will be made using the formulas shown in Attachment D hereto. In the event the present value of the Notes based on semiannual interest payments exceeds the present value of the Notes based on annual interest payments, the holder must pay to Treasury an amount equal to the excess before the exchange will be processed. In the event the present value of the Notes based on the annual interest payments exceeds the present value of the Notes based on the semiannual interest payments, the holder will receive on the exchange an amount equal to the excess. The net adjustment will not reflect or take into account any market-based factor.

10.4 Closed-Book Periods. Exchange transactions involving Notes or Domestic Notes in definitive form will not be accepted during closed-book periods that will be in effect during the period of one calendar month prior to and ending on an interest payment date and the maturity date. Exchange transactions involving only Notes and Domestic Notes in book-entry form may not be accepted on the day on which FBR NY is open for business preceding an interest payment date and the maturity date. The registration books for Notes and Domestic Notes in definitive form will be reopened on the first day following an interest payment date on which FRB NY is open for business. Except for the closed-book periods, exchange transactions involving only book-entry securities normally will be processed within one day; all other exchange transactions normally will be processed within one week of receipt by FBR NY. No exchanges will be allowed after the maturity date of the Notes.

Section 11. United States Taxation

11.1 Taxation of Interest and Principal to United States Aliens. Payments of interest and principal on the Notes to a United State Alien will not be subject to withholding of United States federal income tax if the Withholding Agent receives an effective certificate under Sections 11.4, 11.5, 11.6, or 11.7, and the other requirements described in the applicable section are satisfied. Failure to satisfy the requirement described in this Section 11.1 may result in imposition of a withholding tax.

11.2 Certification at Initial Issuance. A Bidder will be required to provide a written certification on the tender form that, as of the date of issuance, none of the Notes acquired by the Bidder will be beneficially owned by a United States

Person, other than a foreign branch of a United States Financial Institution, or is being acquired on behalf of such a person, or for offer to resell or for resale to such a person. This certification is in addition to and not limited by the transfer restriction in Section. 1.3. A certification made by a clearing organization must be based on such statements provided to the clearing organization by its member organizations. (Alternatively, a member organization of a clearing organization may provide the written certification directly to FBR NY.)

11.3. Confirmations. FBR NY will include a confirmation in the notification described in Section 6.9 that it is understood that the purchaser represents that it is not a United States Person or that if it is a United States Person it is a foreign branch of a United States Financial Institution. If the sale is to a dealer, the confirmation will state that the dealer is required to send a similar confirmation to its purchaser. Financial Institutions buying on behalf of or for resale to others are considered to be dealers and will be required to send confirmations to their customers.

11.4 Interest Certification: Financial Institutions. A Withholding Agent may make a payment of interest on a Note at an address outside of United States to a Registered Owner that is a Financial Institution without withholding United States federal income tax if(i) the Withholding Agent does not have actual knowledge that the beneficial owner of the Note is a United States Person (other than a foreign branch of a United States Financial Institution), (ii) the Note was sold in accordance with the precedures described in Sections 11.2 and 11.3, and (iii) the Financial Institution provides a certificate to the Withholding Agent in writing that states that the beneficial owner of the Note is not a United States Person (other than a foreign branch of a United States Financial Institution). No particular form is required for the certificate. If the Financial Institution does not hold Notes for a beneficial owner that is a United States Person (other than a foreign branch of a United States Financial Institution), a single certificate may be provided with respect to all of the Notes held by the Financial Institution. If a Financial Institution that is a Registered Owner transfers a Note and ceases to be the Registered Owner of such Note, then, except as described in Section 11.10, the Financial Institution will not be required to provide a certificate under this Section 11.4 with respect to such Note (unless the Financial Institution subsequently becomes the Registered Owner of the Note). Interest will be considered paid to a Registered Owner outside the United States if the Note is either recorded in a Holding Institution's International Account and interest is credited for that account or interest on a Definitive Note is delivered to the holder outside the United States.

11.5. Interest Certification: Clearing Organizations. A certificate described in Section 11.4 may be provided by a Financial Institution acting in its capacity as a clearing organization only if the clearing organization has received such a certificate from the member organization to which the interest is paid.

11.6. Interest Certification For Beneficial Owners That Are United States Persons. A Withholding Agent may make a payment of interest on a Note to a Registered Owner that is a Financial Institution at an address outside the United States without withholding United States federal income tax if the Withholding Agent receives an effective statement, as described below, from the Financial Institution (relating to beneficial ownership by certain United States Persons), and, if the Financial Institution is not a United States-Related Person, the Withholding Agent makes the information returns described in Section 11.9. If the Financial Institution is a United States-Related Person, the statement must be signed under the penalties of perjury by an authorized representative of the Financial Institution and must state that the institution has received from the beneficial owner a certificate, as described below, and that the institution will make such information returns and otherwise comply with information reporting required under the Internal Revenue Code. If the Financial Institution is not a United States-Related Person, the statement must be signed under penalties of prejury by an authorized representative of the Financial Institution and must state (i) that the institution has received from the beneficial owner a certificate, as described below, or (ii) that it has received from another Financial Institution a similar statement that it, or another Financial Institution acting on behalf of the beneficial owner, has received a certificate, as described below, from the beneficial owner. In the case of multiple Financial Institutions between the beneficial owner and the person otherwise required to withhold, this statement must be given by each Financial Institution to the one above it in the chain. The certificate from the beneficial owner must (i) be signed by the beneficial owner under penalties of perjury, (ii) provide the name and address of the beneficial owner, (iii) provide the United States taxpayer identification number and state that it is the beneficial owner's correct number, and (iv) state that the beneficial owner is not subject to backup withholding due to notified payee underreporting. This certificate may be provided on Internal Revenue Service Form W–9 or a substitute form that is substantially similar to a Form W–9. No particular form is required for the statement provided by the Financial Institutions. However, the statement must provide the name and address of the beneficial owner, and a copy of the Form W–9 or substitute form must be attached.

11.7. Interest Certification In Other Cases. A Withholding Agent may make a payment of interest on a Note to a Registered Owner without withholding United States federal income tax if (i) the Withholding Agent does not have actual knowledge that the beneficial owner of the Note is a United States Person (other than a foreign branch of a United States Financial Institution), and if (ii) the Withholding Agent receives a certificate from the Registered Owner that (A) is signed by the beneficial owner under penalties of perjury, (B) certifies that such owner is not a United States Person, or in the case of an individual, that he is neither a citizen nor a resident of the United States, and (C) provides the name and address of the beneficial owner. The statement may be made, at the option of the Withholding Agent, on Internal Revenue Service Form W–8 or on a substitute form that is substantially similar to a Form W–8. A Withholding Agent also may make a payment of interest to a United States Alien Registered Owner without withholding United States federal income tax if an appropriate statement is provided to the Withholding Agent by a Financial Institution. In such case the statement must describe the obligation, be signed under penalties of perjury by an authorized representative of the Financial Institution and state (i) that the Financial Institution has received from the beneficial owner a Form W–8 or substitute form, or (ii) that it has received from another Financial Institution a similar statement that it, or another Financial Institution acting on behalf of the beneficial owner, has received the Form W–8 or substitute form from the beneficial owner. In the case of multiple Financial Institutions between the beneficial owner and the Withholding Agent, this certificate must be given by each Financial Institution to the one above it in the chain. No particular form is required for the statement provided by the Financial Institutions. However, the statement must provide the name and address of the beneficial owner, and a copy of the Form W–8 or a substitute form provided by the beneficial owner must be attached. The certification procedures of this Section 11.7 may be used in lieu of the procedures in Section 11.4 with respect to a payment of interest outside the United States on a Note registered in the name of a Financial Institution.

11.8. Prospective Determination. Any determination by the Secretary with respect to certification requirements pursuant to section 871(h)(4) of the Internal Revenue Code will be published and will be effective only with respect to payment of interest made more than one month after the publication of such a determination.

11.9. Certain Information Reporting. A Withholding Agent that receives a statement described in Section 11.6 from a Financial Institution that is not a United States-Related Person must make an information return on Internal Revenue Service Form 1099 of the payment with respect to which the statement (and accompanying certificate) is required for the calendar year in which the payment is made. The return should be completed as though the payment were made to the beneficial owner of the income. A Withholding Agent that receives a certificate described in Section 11.7 must make an information return on Internal Revenue Service Form 1042S of the payment with respect to which the certificate is required for the calendar year in which the payment is made. The certificate received with respect to the payment shall be attached to the Form 1042S required to be filed with respect to the payment.

11.10. Timing of Certificates at Interest Payments. The certificates or statements described in Section 11.4 through 11.7 are required to be received by the Withholding Agent within the 90-day period prior to the interest payment date. However, if a certificate is received less than 30 days before that date, the Withholding Agent, in its discretion, may withhold tax. If the information provided on a certificate described in Section 11.4 or 11.5 changes within the 90-day period prior to the interest payment date, the person providing the statement must inform the Withholding Agent (or clearing organization) within 30 days of such change. For example, if during the 90-day period, but subsequent to furnishing a certificate, beneficial ownership of a Note is transferred to a United States Person, the person furnishing the certificate described in Section 11.4 or 11.5 is required to amend its certificate within 30 days of the transfer to inform the Withholding Agent that the obligation is being held by a United States Person. Except as provided in this Section 11.10, a certificate described in Section 11.4 or 11.5 does not have to be amended if Notes are transferred from one Financial Institution to another Financial Institution. If the information on a certificate described in Section 11.6 or 11.7 changes, the beneficial owner must notify the Withholding Agent, or a Financial Institution acting on behalf of the beneficial owner, within 30 days. The Financial Institution must promptly inform the Withholding Agent (or a Financial Institution holding an interest in the Notes on its behalf) of such notice if the Financial Institution has been informed by the beneficial owner or if it has actual knowledge of such changes.

11.11. Retention of Certificates. The Withholding Agent is required to retain the written certifications for a period of four years after the close of the calendar year in which they were, respectively, obtained.

11.12. Information Reporting and Backup Withholding. Neither information reporting under section 6049 of the Internal Revenue Code nor backup withholding will apply to interest paid on a Note to a United States Alien if (i) the conditions of Section 11.1 are satisified, (ii) the payor of the interest does not have actual knowledge that the payee is a United States Person, and (iii) if the payor is a United States-Related Person acting as a custodian, nominee or other agent of the payee, the payor has documentary evidence in its records that the payee is not a United States citizen or resident. Neither information reporting under section 6045 of the Internal Revenue Code nor backup withholding will apply to payments of principal made outside the United States on a Note to a United States Alien (i) if the payor of the principal is not a United States-Related Person; or (ii) if the payor is a United States-Related Person acting as a custodian, nominee or other agent of the payee, the payor does not have actual knowledge that the payee is a United States Person (other than a foreign branch of a United States Financial Institution) and has documentary evidence in its records that the payee is not such a person. Principal will be considered paid to a Registered Owner outside the United States if either the Note is recorded in a Holding Institution's International Account and principal is credited for that account, or principal on a Definitive Note is delivered to the holder outside the United States.

11.13. Original Issue Discount. The Secretary shall determine whether the Notes will be considered issued with original issue discount within the meaning of section 1273(a)(1) of the Internal Revenue Code. In the event the Notes are issued with original issue discount, that fact and the amount of the discount will be announced in an Internal Revenue Service publication. See also Section 11.15. A United States Alien described in Section 11.2 that is a holder of a Note will not be subject to United States federal income tax and no withholding of United States federal income tax will be required as a consequence of the Note having original issue discount if the conditions of Section 11.1 are satisfied with respect to stated interest on the Note. A holder of a Note that is a United States Person generally will be required to include in income the portion of the original issue discount allocable to each day during the year on which the Note is held. Any such income will increase such holder's tax basis for the Note, and any gain or loss on a sale of the Note, determined by comparing the amount realized in such sale with the holder's basis, as so adjusted, generally will be capital gain or loss.

11.14. Taxation of Gains to United States Aliens. A holder of a Note that is a United States Alien will not be subject to the United States federal income tax and no witholding of United States federal income tax will be required with respect to any gain realized on the sale, redemption or exchange of the Note provided such gain is not effectively connected with a United States trade or business, and further provided that: (i) If such United States Alien is a nonresident alien individual, such individual is not present in the United States for a total of 183 days or more during the taxable year in which such gain is realized, is not subject to tax under section 877 of the Internal Revenue Code as an expatriate of the United States and is not treated as a resident of the United States for the taxable year in which the gain is recognized under sections 6013(g) or 6013(h) of the Internal Revenue Code; or (ii) if such United States Alien holder is a foreign corporation, such foreign corporation will not have a past or present status as a personal holding company with respect to the United States or as a corporation which accumulates earnings to avoid United States federal income tax.

11.15. Exchange for Domestic Notes. A holder of a Note will not recognize gain or loss on the exchange of a Note for a Domestic Note under the procedures in Section 10. Upon the exchange, a holder will be considered to have received interest accrued on the Note up to the time of the exchange and to have paid to Treasury the Exchange Adjustment amount. (Actual payments will be only of the net amount. See Section 10.3.) The amount of the Exchange Adjustment will be considered an increase in the original issue price (which will reduce original issue discount, if any, with respect to the Note).

11.16. Federal Estate Taxation of United States Aliens. Any Note held by an individual who at the time of his death is not a citizen of or domiciled in the United States will not be included in the decedent's gross estate for purposes of United States federal estate tax at the time of such individual's death if interest paid on the Note to the individual at the time of his death would not have been subject to withholding of United States federal income tax because the conditions described in Section 11.1 are satisfied but without regard to whether a certificate or statement described in Section 11 has been received by the Withholding Agent since the last interest payment.

11.17. State and Local Taxation. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States or any local taxing authority, except for: (i) a non-discriminatory franchise or other nonproperty tax instead of a franchise tax imposed on a corporation, or (ii) an estate or inheritance tax. See section 3124 of Title 31 of the United States Code.

Section 12. Sanctions

12.1. Sanctions. In the Secretary's sole discretion, any person found to be in violation of any requirements or provision set forth in this offering circular may be excluded from bidding for or purchasing some or all future issues of Treasury foreign-targeted securities and may be subject to such other sanctions as determined by the Secretary.

Section 13. General Provisions

13.1. Applicable Law. The law governing all matters relating to the terms and conditions of the Notes is the federal law of the United States.

13.2. Modifications. The Secretary may supplement or amend provisions of this offering circular governing the offering if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such future changes will be promptly provided.

13.3. Monthly Information. The Secretary will publish the total amount of Notes outstanding in the Monthly Statement of the Public Debt.

13.4. Listing. The Notes will be listed on the New York Stock Exchange as of December 3, 1984.

13.5. Eligibility for Clearance. The Notes will be eligible for clearance on Euro-Clear and CEDEL.

13.6. Headings. The headings of sections and subsections in this offering circular are inserted, for convenience of reference only and shall not be deemed to be part of this offering circular.

13.7. Attachments Incorporated. Attachments A through D and any terms and conditions set forth therein are incorporated as part of this offering circular.

13.8. Waiver. The Secretary reserves the right, in his discretion, to waive any provision or provisions of this offering circular.

13.9. Sale in the United States. The Notes are offered for sale only in the United States. Resale or reoffering of the Notes outside the United States is authorized only when such resale or reoffering complies with the securities laws and other applicable laws of jurisdictions in which such resale or reoffering occurs. Bidders and their agents are responsible for ensuring compliance with the laws of such jurisdictions.

Carole Jones Dinsen,

Fiscal Assistant Secretary.

BILLING CODE 4810-40-M

TENDER FOR 5- YEAR 2- MONTH FOREIGN - TARGETED TREASURY NOTES OF FEBRUARY 15, 1990, SERIES H - 1990

IMPORTANT — ONLY COMPETITIVE TENDERS WILL BE ACCEPTED AND MUST BE RECEIVED BY THE FEDERAL RESERVE BANK OF NEW YORK BEFORE 1:00 P.M. NEW YORK TIME ON NOVEMBER 28, 1984.

To: Federal Reserve Bank of New York
Fiscal Agent of the United States
33 Liberty Street
New York, New York 10045

The undersigned offers to purchase the above-described Notes in the amount indicated below and agrees to make payment therefor at FRB NY in accordance with the provisions of the official offering circular (Department Circular, Public Debt Series No. 38-84). The definitions in the official offering circular apply to this tender form.

The total par amount bid at the lowest yield must be at least $50,000,000. Par amount bid for must be a multiple of $1,000,000. Bidders may submit multiple bids but each bid must be submitted on a separate tender form.

COMPETITIVE TENDER

PAR AMOUNT	ANNUAL YIELD
$.....(United States dollars) (maturity value)	..... *(Yield must be expressed to two decimal places, for example, 7.10%)*

☐ Check here if this is a syndicate bid.

DELIVERY AND PAYMENT INSTRUCTIONS

Issue book-entry Notes to be held at FRB NY in an International Account of .....

.....
(Name and Address of Holding Institution)

Payment for Notes awarded will be made through.....
(Name and Address of Paying Institution)

☐ By charge to reserve account; ☐ By charge to clearing account; ☐ By charge to other dollar account

Authorization for such charge must be on file with FRB NY in accordance with the provisions of the official offering circular. If otherwise eligible, the Holding Institution and the Paying Institution may be, but do not have to be, the same.

Bid may be submitted only by or on behalf of Bidders as defined in the official offering circular. If the tender form is submitted by a United States Person, other than a foreign branch of a United States Financial Institution, it must be acting solely as agent for a disclosed Bidder.

TENDER FORM IS SUBMITTED BY: (Please print or type)

NAME.....

ADDRESS.....

CITY.....STATE....ZIP CODE.....

COUNTRY.....

AREA CODE..... TELEPHONE NUMBER.....

If acting as agent, Bidder must be identified below. If Bidder is a syndicate, the head of the syndicate must be identified below.

NAME.....

ADDRESS.....

.....

BIDS WILL BE CONSIDERED ONLY IF THE REVERSE SIDE IS COMPLETED AND EXECUTED

CERTIFICATIONS AND GUARANTEE

1. **WE HEREBY CERTIFY** that (i) as of December 3, 1984, none of the Notes awarded to us will be beneficially owned by a United States Person, other than a foreign branch of a United States Financial Institution, and (ii) none of the Notes awarded to us is being acquired on behalf of a United States Person, other than a foreign branch of a United States Financial Institution, or for offer to resell or for resale to such a person.

2. **WE FURTHER CERTIFY** that we will not sell, contract to sell, or otherwise transfer Notes issued to us to a United States Person, other than a foreign branch of a United States Financial Institution, until after January 12, 1985. We further agree that if we sell, contract to sell, or otherwise transfer a Note before January 13, 1985, we will confirm to such purchaser or transferee in writing that (i) there is a restriction on sale or other transfer to United States Persons other than foreign branches of United States Financial Institutions and (ii) that such confirmation is required to be given to any subsequent purchaser or transferee that acquires the Note before January 13, 1985. We understand that this certification is independent of, and that any transfer must be consistent with, the certification of the preceding paragraph.

3. If this is a syndicate bid, **WE FURTHER CERTIFY** that, except as identified below, no syndicate member is bidding for Notes in excess of $350,000,000, either through this syndicate, individually, or through another syndicate. (Supply below the identity of any syndicate bidders whose total bids are in excess of $350,000,000 and the amount of Notes included in this syndicate bid for each such member.)

_____

_____

☐ Check here if entity submitting the bid is eligible to and does hereby guarantee payment to Treasury, in accordance with the terms of the official offering circular, of an amount equal to 5% of the Notes for which the tender is submitted. If this box is not checked, a payment guarantee in the form specified in the official offering circular must have been submitted previously to FRB NY unless the Bidder is exempt from such guarantee requirement.

If this tender form is submitted by an agent for a Bidder, the above certifications are made by the agent on behalf of, and are binding on, that principal.

TENDER IS SUBMITTED BY: _____

AUTHORIZED SIGNATURE: _____

NAME AND TITLE OF AUTHORIZED SIGNER: _____

DATE: _____

INSERT THIS TENDER FORM IN ENVELOPE MARKED "TENDER FOR FOREIGN - TARGETED TREASURY NOTES"

Attachment B

[Letterhead of Paying Institution]

Federal Reserve Bank of New York
33 Liberty Street, Room 835
New York, New York 10045
Attn: Mr. Stuart Zorfas
Chief, Securities Department

Gentlemen:

1. We hereby authorize you to debit our (reserve, clearing, or other dollar) account in an amount not to exceed $_____ as payment for United States Treasury securities targeted to foreign investors ("Securities") awarded to (name Bidder). Terms used herein shall have the same meaning as set forth in the official offering circular applicable to the Securities.

2. We retain the right to modify or withdraw this authority. We understand that any such modification or withdrawal must be in writing and must be delivered to FRB NY. We understand that, unless restricted to a specific auction, this letter will be retained by FRB NY and, until modified or withdrawn, may be used by (name Bidder) to pay for any Securities purchased by (name Bidder).

3. We further understand that any Securities paid for by a debit to our (reserve, clearing, or other dollar) account will be issued to our International Account. (This sentence is not required if the Paying Institution signing this letter is willing to permit the Securities paid for under this authorization to be issued to another Holding Institution's International Account.)

4. The following signature(s) is (are) a specimen of the authorized signature(s) which will appear on the tender form submitted by (name Bidder):

_____
(Authorized Signature of Bidder or Bidder's Agent)

_____
(Name of Authorized Signer)

_____
(Title of Authorized Signer)

ATTACH SEPARATE SHEET FOR ADDITIONAL SIGNATURES

_____
(Name of Paying Institution)

By: _____
(Authorized Signature)

_____
(Name of Authorized Signer)

_____
(Title of Authorized Signer)

_____
(Date)

Receipt Acknowledged:

_____
FRB NY

TERMS AND FORM OF THIS LETTER MAY NOT BE ALTERED EXCEPT AS INDICATED IN PARAGRAPH 3

Attachment C

[Letterhead of Guarantor]

Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045
Attn: Mr. Stuart Zorfas
Chief, Securities Department

Gentlemen:

This is to advise you that we guarantee payment to Treasury of an amount equal to 5% of the par amount, but not in excess of $_____ of any United States Treasury securities targeted to foreign investors ("Securities") for which _____ bids.
(name of Bidder)

We acknowledge that this guarantee may not be withdrawn during any period between the deadline for submission of bids for Securities and payment for those Securities.

_____
(Name of Guarantor)

By: _____
(Authorized Signature)

_____
(Name and Title of Authorized Signer)

_____
(Date)

Receipt Acknowledged

_____
FRBNY

TERMS AND FORM OF THIS LETTER MAY NOT BE ALTERED

Attachment D

Formulas for Calculating the Present Value (Price Plus Accrued Interest) And Yield to Maturity of Treasury Notes Paying Annual Interest 1/

Case A: Calculations during an initial "short" interest period for Treasury notes with long coupons

$$(P+A) = \frac{(r"/360)(C)(v) + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r"-r)/360](C)$

Case B: Calculations during the first "regular" interest period for Treasury notes with long coupons (for use beginning with the first coupon frequency date 2/)

$$(P+A) = \frac{(r"/360)(C) + C + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r"/360) + (360-r)/360](C)$

Case C: Calculations during an initial "short" period for Treasury notes with short first coupons

$$(P+A) = \frac{(r"/360)(C) + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r"-r)/360](C)$

Case D: Calculations when the coupon paid on the next coupon frequency date is a regular coupon

$$(P+A) = \frac{C + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(360-r)/360](C)$

where:

P = Price in decimals.
A = Accrued interest from original issue date or last interest payment date to valuation date.
r = Days from valuation date to next coupon frequency date calculated on a 360 days per year basis from and including the day following the valuation date up to and including the next coupon frequency date. A full month will be counted as thirty days and a date occurring on the thirty-first calendar day of a month shall be the same as the first calendar day of the following month. If the valuation date falls on a coupon frequency date then r will be defined to be equal to 360.
f = r/360
r" = Days from the original issue date of the security to the first coupon frequency date of the security calculated using the same conventions used in calculating r.
i = Interest rate (yield to maturity), expressed in decimals and based on annual interest payments.
C = Regular annual coupon, payable annually.
n = Number of full annual periods from valuation date to maturity except that if the valuation date occurs on a coupon frequency date n will be one less than the number of full annual periods remaining to maturity.
$v = 1/(1+i)$
$v^n = 1/(1+i)^n$
$a_{\overline{n}|} = (1-v^n)/i = v + v^2 + v^3 + \ldots\ldots\ldots\ldots + v^n$ = present value of 1 per period for n periods.

1/ These formulas are specifically intended only for use with the foreign-targeted notes described in this offering circular.

2/ A coupon frequency date is a coupon payment date except for a note with an initial long coupon in which case there is no payment on the first coupon frequency date.

Note: The day count conventions used for determining short and long coupon and accrued interest and for discounting over partial periods for targeted Notes do not conform to regular Treasury practice for domestic securities. The conventions for the targeted Notes assume that each month has thirty days and that a date occurring on the thirty-first calendar day of a month is the same as the first calendar day of the following month. Unlike the convention for corporate bonds in the United States, the last day of February is not defined to be the thirtieth day of the month. Thus, application of these rules results in three days between February 28th and March 1st and zero days between March 31st and the first of April. Similarly, a strict application of these rules leads to 181 days between September 30th and March 31st.

Formulas for Calculating the Present Value (Price Plus Accrued Interest) And Yield to Maturity of Treasury Notes Paying Semiannual Interest 1/

Case A: Calculations during an initial "short" interest period for Treasury notes with long coupons

$$(P+A) = \frac{(r''/s)(C/2)(v) + (C/2)a_{\overline{n}|} + 100v^n}{(1+i/2)^f}$$

and $A = [(r''-r)/s](C/2)$

Case B: Calculations during the first "regular" interest period for Treasury notes with long coupons (for use beginning with the first coupon frequency date 2/)

$$(P+A) = \frac{(r''/s")(C/2) + (C/2) + (C/2)a_{\overline{n}|} + 100v^n}{(1+i/2)^f}$$

and $A = [(r''/s") + (s-r)/s](C/2)$

Case C: Calculations during an initial "short" period for Treasury notes with short first coupons

$$(P+A) = \frac{(r''/s)(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{(1+i/2)^f}$$

and $A = [(r''-r)/s](C/2)$

Case D: Calculations when the coupon paid on the next coupon frequency date is a regular coupon

$$(P+A) = \frac{C/2 + (C/2)a_{\overline{n}|} + 100v^n}{(1+i/2)^f}$$

and $A = [(s-r)/s](C/2)$

where:

P = Price in decimals.
A = Accrued interest from original issue date or last interest payment date to valuation date.
r = Exact number of days from valuation date to next coupon frequency date.
r" = Exact number of days from the original issue date to the first coupon frequency date.
f = r'/180 where r' is the number of days from the valuation date to the next coupon frequency date calculated on a 360 days per year basis from and including the day following the valuation date up to and including the next coupon frequency date. A full month will be counted as thirty days and a date occurring on the thirty-first calendar day of a month shall be the same as the first calendar day of the following month. If the valuation date falls on a coupon frequency date then f will be defined to be equal to one.
s = Exact number of days in the current semiannual period. On a coupon frequency date s is the exact number of days to the next coupon frequency date.
s" = Exact number of days in the semiannual period containing the issue date.
i = Interest rate (yield to maturity), expressed in decimals and based on semiannual interest payments.
C = Regular annual coupon, payable semiannually.
n = Number of full semiannual periods from valuation date to maturity except that if the valuation date occurs on a coupon frequency date n will be one less than the number of full semiannual periods remaining to maturity.
$v = 1/(1+i/2)$
$v^n = 1/(1+i/2)^n$
$a_{\overline{n}|} = (1-v^n)/(i/2) = v + v^2 + v^3 + \ldots\ldots\ldots\ldots + v^n$ = present value of 1 per period for n periods.

1/ These formulas will only be used for making calculations involved in exchanging targeted registered issues for companion regular Treasury issues.

2/ A coupon frequency date is a coupon payment date except for a note with an initial long coupon in which case there is no payment on the first coupon frequency date.

Note: The day count conventions used for pricing domestic Treasury notes in making exchange calculations do not conform to regular Treasury practice for domestic securities. The conventions assume that each month has thirty days and that a date occurring on the thirty-first calendar day of a month is the same as the first calendar day of the following month. Unlike the convention for corporate bonds in the United States, the last day of February is not defined to be the thirtieth day of the month. Thus, application of these rules results in three days between February 28th and March 1st and zero days between March 31st and the first of April. Similarly, a strict application of these rules leads to 181 days between September 30th and March 31st (but note the definition of f above).

SAMPLE EXCHANGE VALUES FOR A HYPOTHETICAL 5-YEAR NOTE DATED 12/ 3/1984 AND MATURING 2/15/1990

DATES OF EXCHANGE	11.375% ANNUAL COUPON @ 11.45% ANN	11.375% SEMIANNUAL COUPON @ 11.14% S/A	ACCRUED INTEREST	EXCHANGE ADJUSTMENT	NET ADJUSTMENT (TO TREASURY) TO INVESTOR
1/14/85	P= 99.520134 A= 1.295486 P+A=100.821620	P=100.793646 A= 1.298234 P+A=102.091880	(.002748)	(1.267512)	(1.270260)
2/15/85	P= 99.492191 A= 2.275000 P+A=101.767191	P=100.762021 A= 2.287364 P+A=103.049385	(..012364)	(1.269830)	(1.282194)
2/28/85	P= 99.480592 A= 2.685764 P+A=102.166356	P=100.757728 A= 2.695859 P+A=103.453587	(.010095)	(1.277136)	(1.287231)
8/15/85	P= 99.473004 A= 7.962500 P+A=107.435504	P=100.814372 A= .000000 P+A=100.814372	7.962500	(1.341368)	6.621132
12/31/85	P= 99.666960 A= 12.259722 P+A=111.926682	P=100.763227 A= 4.265625 P+A=105.028852	7.994097	(1.096267)	6.897830
10/15/87	P= 99.715801 A= 7.583333 P+A=107.299134	P=100.447621 A= 1.885530 P+A=102.333151	5.697803	(.731820)	4.965983
8/31/88	P= 99.751255 A= 6.193056 P+A=105.944311	P=100.306535 A= .494565 P+A=100.801100	5.698491	(.555280)	5.143211

FIGURES MERELY ILLUSTRATE EXCHANGE VALUE COMPUTATIONS AND ARE NOT INTENDED TO APPLY TO THE NOTES OFFERED IN THIS CIRCULAR.

[FR Doc. 84-30884 Filed 11-26-84; 8:45 am]
BILLING CODE 4810-40-C

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 21, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Numver: 1545–0677
Form Number: IRS Form 599–5–325
Type of Review: Revision
Title: Personnel Processing Masterform

OMB Number: 1545–0158
Form Number: IRS Form 3491
Type of Review: Extension
Title: Consumer Cooperative Exemption Application (For Exemption from Filing Forms 1096 & 1099–PATR)

OMB Number: 1545–0609
Form Number: IRS Forms 1285C, 1285(SC) and 1285(DO)
Type of Review: Extension
Title: Problem Resolution Program Followup Letter

Clearance Officer: Garrick Shear (202) 566–6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,
Departmental Reports Management Officer.

[FR Doc. 84-31087 Filed 11-26-84; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 229

Tuesday, November 27, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Communications Commission	1
Federal Reserve System	2
International Trade Commission	3
Nuclear Regulatory Commission	4
Securities and Exchange Commission	5

1

FEDERAL COMMUNICATIONS COMMISSION

November 20, 1984

Additional Item To Be Considered at Open Meeting, Wednesday, November 21st

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 A.M., Wednesday, November 21, 1984 at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—9—Title: Second Report and Order, General Docket No. 80-112. Summary: The Commission will consider adopting rules to allow the use of lotteries for the selection of Multichannel Multipoint Distribution Service licensees.

The prompt and orderly conduct of Commission business requires that less than 7-days notice by given consideration of this additional item.

Action by the Commission November 20, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this item may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254-7674.

William J. Tricarico

Secretary, Federal Communications Commission.

[FR Doc. 84-31116 Filed 11-23-84; 10:25 am]

BILLING CODE 6712-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 3, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31175 Filed 11-23-84; 2:55 pm]

BILLING CODE 6210-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 26, December 3, 10, and 17, 1984

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed

MATTERS TO BE CONSIDERED:

Week of November 26

Tuesday, November 27

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 3

Tentative

Monday, December 3

2:00 p.m.
Discussion/Possible Vote on Severe Accident Policy Statement (Public Meeting)

Wednesday, December 5

10:00 a.m.
Discussion of Indian Point Order (Public Meeting) (if needed)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, December 6

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 10

Tentative

Monday, December 10

1:00 p.m.
Discussion of Adjudication Matters Related to Catawba-1 (Closed—Ex. 10) (if needed)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Catawba-1 (Public Meeting)

Tuesday, December 11

10:00 a.m.
Staff Follow-up to 11/15 DOE Briefing on High Level Waste Program (Public Meeting)
2:00 p.m.
Year End Budget Review (Public Meeting)

Thursday, December 13

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, December 14

10:00 a.m.
Discussion of 1985 Policy and Planning Guidance (Public Meeting)
2:00 p.m.
Briefing and Discussion on the Hearing Process (Public Meeting)

Week of December 17

Tentative

Monday, December 17

10:00 a.m.
Discussion of Material False Statements—Policy Options (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, December 18

9:00 a.m.
Discussion of Adjudication Matters Related to Byron-1 (Closed—Ex. 10)
10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Byron-1 (Public Meeting)
2:00 p.m.
Discussion/Possible Vote on Proposed Amendments to 10 CFR Part 2 (Public Meeting)

Thursday, December 20

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "UCS Proposed Correction Regarding Its Status on Management Issues in TMI-1 Restart Proceeding" (Public Meeting) was held on November 15.

Discussion of Management-Organization and Internal Personnel Matters scheduled for November 19, *postponed.*

Briefing by OI (Closed—Ex. 5 & 7) was held on November 21.

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording) (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: November 21, 1984.

George T. Mazuzan,

Office of the Secretary.

[FR Doc. 31190 Filed 11-23-84; 3:59]

BILLING CODE 7590-01-M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 26, 1984, at 450 Fifth Street, NW., Washington, D.C.

Closed meetings will be held on Tuesday, November 27, 1984, at 10:00 a.m. and on Thursday, November 29, 1984, following the 3:15 p.m. open meeting. Open meetings will be held on Tuesday, November 27, 1984, at 2:30 p.m. and on Thursday, November 29, 1984, at 2:30 p.m. and 3:15 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox and Peters voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 27, 1984, at 10:00 a.m., will be:

Formal order of investigation.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Freedom of Information Act requests.

The subject matters of the closed meeting scheduled for Thursday, November 29, 1984, following the 3:15 p.m. open meeting, will be:

Oral argument discussions.

The subject matter of the open meeting scheduled for Tuesday, November 27, 1984, at 2:30 p.m., will be:

1. Consideration of whether to propose for public comment an amendment to General Instruction D to Form 13F which would simplify procedures for managers requesting confidential treatment for open risk arbitrage positions. For further information, please contact Susan P. Hart at (202) 272-2098.

2. Consideration of whether to issue a release adopting an industry guide and rules relating to disclosures about reserves and reserving practices of property-casualty insurance underwriters. For further information, please contact Dorothy Walker or Jeremiah Harrington at (202) 272-2130.

The subject matter of the open meeting scheduled for Thursday, November 29, 1984, at 2:30 p.m., will be:

Oral argument in an appeal by Bruce Paul from the decision of an administrative law judge. For further information, please contact William S. Stern at (202) 272-7400.

The subject matter of the open meeting scheduled for Thursday, November 29, 1984, at 3:15 p.m., will be:

Oral argument in an appeal by Hammon Capital Management Corporation, a registered investment adviser, and Gabe Hammon, its president, from the decision of an administrative law judge. For further information, please contact Herbert V. Efron at (202) 272-7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers (202) 272-2091.

Shirley E. Hollis,

Acting Secretary.

November 21, 1984.

[FR Doc. 84-31152 Filed 11-23-84; 12:39 p.m.]

BILLING CODE 8010-01-M

5

UNITED STATES INTERNATIONAL TRADE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 44974 (11-13-84).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 28, 1984.

CHANGES IN THE MEETING: Addition of agenda items as follows:

2. Investigation 751-TA-9 (Drycleaning Machinery From West Germany)—briefing and vote.

3. Service Awards Recognition.

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes and Lodwick determined by unanimous vote that Commission business requires the change in subject matter by addition of the agenda items, affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Rohr did not participate in the vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[FR Doc. 84-31216 Filed 11-23-84; 4:31 pm]

BILLING CODE 7020-02-M

OL
9

SS
29

NO
27

984

MI

federal register

Tuesday
November 27, 1984

Part II

Department of Transportation

Research and Special Programs Administration

Hazardous Materials; Inconsistency Rulings IR-7 Through IR-15

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Nos. IRA-20 Through IRA-27 and IRA-30]

Hazardous Materials; Inconsistency Rulings IR-7 Through IR-15

General Preamble

I. *Introduction:* The Materials Transportation Bureau (MTB) announces rulings as to the consistency of regulations or actions taken by the following States, local governments, or political subdivisions, with the Hazardous Materials Transportation Act (HMTA) or the Hazardous Materials Regulations (HMR) adopted thereunder:

IR-7. State of New York; Letter from Governor's Designated Representative Advising Suspension of Spent Fuel Shipments (Docket IRA-20).

IR-8. State of Michigan; Radioactive Materials Transportation Regulations of the State Fire Safety Board and the Department of Public Health (Docket IRA-21).

IR-9. State of Vermont; Letter from Governor Concerning Highway Shipment of Spent Fuel through Vermont (Docket IRA-22).

IR-10. State of New York; New York State Thruway Authority Restrictions on the Transportation of Radioactive Materials (Docket IRA-23).

IR-11. State of New York; Ogdensburg Bridge and Port Authority, Radioactive Materials Transportation Rules (Docket IRA-24).

IR-12. State of New York; St. Lawrence County Local Law Regulating the Transportation of Radioactive Materials Through the County (Docket IRA-25).

IR-13. State of New York; Thousand Islands Bridge Authority Restrictions on the Transport of Radioactive Materials (Docket IRA-26).

IR-14. State of New York; Jefferson County Local Legislative Stipulation Regulating Radioactive Materials Transportation through the County (Docket IRA-27).

IR-15. State of Vermont; Rules for the Transportation of Irradiated Reactor Fuel and Nuclear Waste (Docket IRA-30).

II. *Applicable Federal Requirements:* Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 *et seq.*); and the Hazardous Materials Regulation (HMR) (49 CFR Parts 170–179).

III. *Issue Date:* November 20, 1984.

IV. *General summary:* Each ruling identified in Section I above, represents the opinion of the MTB concerning whether the regulations or other specified actions of the entities identified therein are consistent, in whole or in part, with the HMTA or the HMR. Each ruling was initiated and is issued under 49 CFR 107.201–107.209.

V. *For further information contact:* Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (Telephone: (202) 755–4972).

VI. *Procedural summary:* The information, discussion, and citations provided in Sections I–X of this General Preamble constitute a part of each of the nine Rulings identified in Section I. Where information or statements in the General Preamble address a specific Ruling, that information is relevant only to that Ruling. This General Preamble includes a discussion of statutory preemption under the HMTA; a description of the Federal routing regulations; a chronology of the events leading up to the issuance of these inconsistency rulings; and a brief discussion of the comments received. It is followed by the nine inconsistency rulings, each of which represents a separate administrative proceeding.

VII. *General authority and preemption under the HMTA:* With certain exceptions, the HMTA imposes obligations to act only on the Secretary of Transportation. Obligations are imposed on members of the public only by substantive regulations issued under the HMTA. Known as the Hazardous Materials Regulations (HMR), they are codified at 49 CFR Parts 170–179, and mostly predate the HMTA. The HMR previously were authorized by the Explosives and other Dangerous Articles Act (18 U.S.C. 831–835), which was repealed in 1979 (Pub. L. 96–129, November 30, 1979). The HMTA was enacted on January 3, 1975 and the HMR were reissued under its authority, effective January 3, 1977 (41 FR 39175, September 9, 1976). Subsequent amendments to the HMR have been issued under the authority of the HMTA and with the preemptive effect granted by that Act.

The HMR apply to persons who offer hazardous materials for transportation in commerce (shippers), those who transport the materials in commerce (carriers), and those who manufacture and retest the packagings and other containers intended for use in the transportation of the materials in commerce. The scope of transportation activity affected includes the packaging of shipments of hazardous materials, package markings (to show content) and labeling (to show hazard), vehicle placarding (to show hazard), handling procedures, such as loading and unloading requirements, routing, care of vehicle and lading during transportation, and the preparation and use of shipping papers to show the identity, hazard class and amount of each hazardous material being shipped. The HMR also require carriers to report in writing to DOT any unintentional release of a hazardous material during transportation.

The HMTA at section 112(a) (49 U.S.C. 1811(a)) preempts "... any requirement of a State or political subdivision therof, which is inconsistent with any requirement set forth in (the HMTA) or regulations issued under (the HMTA)." This express preempting provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any State or local action. The HMTA preempts only those State and local requirements that are "inconsistent."

Absent Federal occupation of the field, a State may take certain measures, in the exercise of its police power, to safeguard the health, safety and welfare of its citizens. Section 112(a) of the HMTA provides that such State (or local) action may not be inconsistent with the HMTA or the regulations issued thereunder. The legislative history of this provision indicates that Congress intended it "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." (S. Rep. No. 1192, 93d Cong. 2d Sess. 37(1974)).

In 49 CFR Part 107, the Materials Transportation Bureau (MTB) has published procedures which implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings. At the time that these procedures were published, MTB observed that "(t)he determination as to whether a State or local requirement is consistent or inconsistent with the Federal statute or Federal regulations is traditionally judicial in nature." (41 FR 38167, September 9, 1976). There are two principal reasons for providing an administrative forum for such a determination. First, an inconsistency ruling provides an alternative to litigation for a determination of the relationship between Federal requirements and those of a State or political subdivision thereof. Second, if a State or political subdivision requirement is found to be inconsistent, such a finding provides the basis for application to the Secretary of Transportation for a determination as to whether preemption will be waived (49 U.S.C. 1811(b); 49 CFR 107.215–107.225).

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption will be considered. A Federal court may find a non-Federal requirement not statutorily preempted, but, nonetheless, preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, the Department of Transportation does not make such determinations.

Given the judicial character of the inconsistency ruling proceeding, MTB has incorporated into it case law criteria for determining the existence of conflicts:

(1) Whether compliance with both the (non-Federal) requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the (non-Federal) requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act. (49 CFR 107.209(c)).

The first criterion, commonly called the "dual compliance" test, concerns those non-Federal requirements which are incongruous with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, in a sense, subsumes the first and concerns those non-Federal rules that, regardless of conflict with a Federal requirement, stand as "an obstacle to the accomplishment and execution of the (HMTA) and the regulations issued under the (HMTA)." In determining whether a non-Federal requirement presents such an obstacle, it is necessary to look at the full purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the MTB's regulatory program.

In enacting the HMTA, Congress recognized that the Department's efforts in hazardous materials transportation regulation lacked coordination by being divided among the various transportation modes, and lacked completeness because of gaps in the Department's authority, most notably in the area of manufacturing and preparation of packagings used to transport these materials. (S. Rep. No. 1192, 93d Cong., 2d Sess. 1–2, 7–9 (1974).) In order to "protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 U.S.C. 1801), Congress consolidated and expanded the Department's regulatory and enforcement authority.

There is a longstanding Federal-State relationship in the field of highway transportation safety which recognizes the legitimacy of State action taken to protect persons and property within the State, even where such action impacts upon interstate commerce. However, certain areas of transportation safety demand a strong, predominant Federal role. In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation and, by enactment of the HMTA, gave the Department the authority to promulgate such standards. While the HMTA did not totally preclude State or local action in this area, it is the MTB's opinion that Congress intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible State or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

There are certain areas where the need for national uniformity is so crucial and the scope of Federal regulation is so pervasive that it is difficult to envision any situation where State or local regulation would not present an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder. Cargo containment systems is one area where the MTB believes this to be true. The HMR contain extensive requirements for the packagings necessary for safe transportation of hazardous materials. MTB has studied specific commodities and determined what type of container must be used to move them, as well as, where appropriate, what types of accessories are required, what types of construction tests must be satisfactorily performed, and what other steps must be taken to ensure the integrity of the container. Uniform standards in this area ensure safe, efficient interstate transportation. State and local governments may not issue requirements which differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations.

Another area where MTB perceives the Federal role to be exclusive is that of hazard warning systems, including the hazard class definitions on which these systems are based. MTB has thoroughly considered this subject and has issued regulations on marking and labeling of packages and placarding of vehicles in order to communicate the hazards of the materials contained therein. The effectiveness of these systems depends to a large degree on educating the public, especially emergency response personnel. Recognizing the special needs of emergency response personnel, MTB has developed and distributed hundreds of thousands of copies of its "Hazardous Materials Emergency Response Guidebook" (DOT P 5800.2) which provides instructions, based on the hazard warning systems, for initial actions to be taken in the event of an accident involving hazardous materials. Among other efforts to widely disseminate information on its systems, MTB conducts and supports educational programs, sponsors demonstration projects, and distributes informational literature. Additional, different hazard warning requirements imposed by States or localities detract from the Federal systems and may confuse those to whom the Federal systems are meant to impart information.

Despite the dominant role that Congress contemplated for Departmental standards, there are certain aspects of hazardous materials transportation that are not amenable to exclusive nationwide regulation. One example is traffic control. Although the Federal Government can regulate in order to establish certain national standards promoting the safe, smooth flow of highway traffic, maintaining this in the face of short-term disruptions is necessarily a predominantly local responsibility. Another aspect of hazardous materials transportation that is not amenable to effective nationwide regulation is the problem of safety hazards which are peculiar to a local area. To the extent that nationwide regulations do not adequately address an identified safety hazard because of unique local conditions, State or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard. The mere claim of uniqueness, however, is insufficient to insulate a non-Federal requirement from the preemption provisions of the HMTA.

Moreover, even when there is an unquestionably unique local safety hazard, a State or local government may not resolve the problem by effectively exporting it to another jurisdiction. (*Kassel* v. *Consolidated Freightways*, 450 U.S. 662, 1981.) For example, in a previous inconsistency ruling dealing with a hazardous materials routing rule issued by the City of Boston (IR-3, 46 FR 18918, March 26, 1981), MTB stated that

consistency with the HMTA requires a State or local government to "act through a process that adequately weighs the full consequences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." (46 FR 18922).

Section 112(b) of the HMTA (49 U.S.C. 1811(b)) authorizes the Secretary of Transportation to waive preemption of an inconsistent non-Federal requirement upon finding that such requirement:

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of (the HMTA) or of regulations issued under (the HMTA) and

(2) Does not unreasonably burden commerce.

These criteria apply to the question of whether Federal preemption of an inconsistent non-Federal rule should be waived. They are irrelevant to the issue of whether a non-Federal rule is inconsistent. Therefore, to the extent that comments submitted as part of an inconsistency proceeding address these criteria, they are, as stated in the notice initiating this proceeding, premature and have not been considered in the development of the nine rulings published herein.

VIII. Federal routing regulations: On January 19, 1981, the Department issued a final rule entitled, "Radioactive Materials; Routing and Driver Training Requirements," commonly known by its docket number, HM–164. In relevant part, HM–164 provided that highway carriers of "large quantity" radioactive materials (such as spent nuclear fuel) are required to use "preferred routes," which are defined as Interstate System highways or alternative highway routes designated by the States that provide an equal or greater level of safety as compared with the Interstate System (49 CFR 177.825(b)).

The term "large quantity" was subsequently changed to "highway route controlled quantity" in a Final Rule published on March 10, 1983 under docket number HM–169. The revision was necessary to ensure the compatibility of the HMR with the latest revised international standards for transport of radioactive materials. While there are some differences between the old values for "large quantity" and the new values for "highway route controlled quantity", the differences are relevant to the following inconsistency rulings only insofar as the challenged non-Federal rules have incorporated by reference the definition of "large quantity" in 49 CFR 173.389 which was deleted by HM–169.

In addition to the routing rules, HM–164 contained an Appendix A to Part 177 of the HMR which set forth the Department's views regarding the preemptive effects of the routing rules. The Appendix provides that the Department generally regards State and local requirements to be inconsistent if they:

- Prohibit the highway transport of large quantity radioactive materials without providing for an alternative highway route for the duration of the prohibition;
- Require additional or special personnel, equipment, or escort;
- Require additional or different shipping paper entries, placards, or other hazard warning devices;
- Require filing route plans or other documents containing information that is specific to individual shipments;
- Require prenotification;
- Require accident or incident reporting other than as immediately necessary for emergency assistance; or
- Unnecessarily delay transportation.

Appendix A is not a regulation which imposes obligations to act. It is the Department's interpretation of the general premptive effect of its regulation on State and local requirements. It was not intended to replace the two-prong test for determining the inconsistency of an existing State or local rule. Rather, it was intended to advise State and local governments contemplating rulemaking action as to the likelihood of such actions being deemed inconsistent. Therefore, while references to Appendix A are not determinative in these rulings, they serve to illustrate the basis for the Departmental policy set forth therein.

IX. Background and chronology: Nuclear Assurance Corporation (NAC), under a contract with Atomic Energy of Canada, Ltd. (AECL), arranges for the transportation of spent nuclear fuel from Chalk River, Ontario, to a U.S. Department of Energy (DOE) facility at Savannah River, South Carolina. AECL has a contract with DOE for reprocessing nuclear fuel which is part of an overall agreement between the United States and Canada for the assured supply of enriched uranium for Canadian research reactors. In the process of arranging for the transportation of spent fuel, NAC has encountered a variety of State and local transportation regulations which have impacted its routing options.

NAC's description of these regulations and their impacts is as follows:

Until 1979, the spent fuel was shipped to the DOE reprocessing facility by truck entering the U.S. by way of the Ogdensburg (NY) Bridge across the St. Lawrence River. In 1980, the Ogdensburg Bridge and Port Authority adopted rules and regulations which banned shipments of radioactive materials. Concurrently, St. Lawrence County, at the foot of the bridge, enacted a ban on commercial spent fuel shipments. The bridge authority has since amended its rules to incorporate the provisions of the St. Lawrence County Law.

Subsequently, in 1981 and 1982, NAC requested and received Nuclear Regulatory Commission (NRC) approval for five routes entering the U.S. in Michigan, New York and Vermont. After the Michigan route was approved, rules governing the transportation of radioactive materials were adopted by both the Michigan State Fire Safety Board and Department of Public Health. NAC alleges that the rules established packaging, planning, information and equipment requirements more stringent than those required by Federal agencies for spent fuel shipments. Moreover, NAC asserts that the net effect of the Michigan requirements was to prevent spent fuel shipments from entering Michigan by way of the approved routes.

As a result of the Michigan requirements, a ban by the New York Thruway Authority, and a permit requirement based on substantial insurance coverage imposed by the Thousand Islands Bridge Authority and incorporated in a Jefferson County (NY) Resolution on regulating the transport of radioactive materials, NAC turned to the use of a land crossing in Vermont. This route was used without incident for eight of eleven planned shipments. However, when confidential information regarding transport schedules was released, the Governor of Vermont called upon NAC to interrupt the series of shipments in order to preclude possible civil action. Shortly thereafter, NAC was notified by the Governor that Vermont did not intend to permit further through shipments of spent fuel "until such time as the responsible Federal agencies establish(ed) and enforce(d) a uniform national policy regarding such shipments."

Following the prohibition in Vermont, NAC established a sixth route through New York. This route was intended to accomplish the remaining three shipments in the series. Prior to NAC's use of this route, however, the Governor of New York directed his representative to send a notice advising NAC to suspend spent fuel shipments through New York "pending development of a policy applied uniformly, nationwide, covering transportation of radioactive materials."

As a result of the actions described above, NAC was forced to halt shipments of spent fuel from Canada. Therefore, in October of 1982, NAC filed separate applications for inconsistency rulings seeking preemption of: (1) the regulations of the Michigan State Fire Safety Board and Department of Public Health affecting radioactive materials transportation; (2) the radioactive materials transportation ban on the New York State Thruway; (3) the suspension order issued by letter of the Governor of Vermont; and (4) the suspension order issued by letter of the representative of the Governor of New York.

NAC did not seek inconsistency rulings with regard to the applicable regulations of the Ogdensburg Bridge and Port Authority, St. Lawrence County, the Thousand Islands Bridge Authority, or Jefferson County. However, the aggregate effect of all these regulations has been to significantly affect the ability of carriers, such as NAC, to transport radioactive materials in accordance with the nationally uniform system of highway routing which the Department sought to achieve by promulgation of regulations under HM–164. Therefore, the Department has elected, in accordance with 49 CFR 107.209(b), to consider the issue of inconsistency with regard to these regulations, notwithstanding that application for a ruling has not been filed under 49 CFR 107.203. Under the same authority, the Department initiated a ninth inconsistency proceeding concerning the radioactive materials transportation regulations which the Vermont Agency of Transportation adopted shortly after initiation of the above-described proceedings.

X. *Public comment:* A public notice and invitation to comment on Docket Nos. IRA–20 through IRA–27 was published in the **Federal Register** on May 12, 1983 (48 FR 21496). A similar notice inviting comment on Docket No. IRA–30 and reopening the comment period on the other eight dockets was published on August 4, 1983 (48 FR 35550). Comments were received from twenty parties including Federal, State and local government agencies, private industry, public interest groups and private citizens. Where appropriate in IR's 7–15, these comments as well as prior administrative decisions are discussed.

Although the above-described invitations for comment repeatedly directed that comments be restricted to the stated issues, many commenters chose to ignore the question of inconsistency, or to touch upon it only tangentially. Such comments contained lengthy, but irrelevant, discourses on either the need to ensure the free flow of interstate commerce without regard to the role of State and local governments, or the need to suspend all transportation of radioactive materials until the allegedly inadequate Federal safety standards are revised. Those comments which addressed only the question of interstate commerce ignored the essential question of the proper role of State and local governments in hazardous materials transportation safety which the two-prong test is designed to address. Since the HMTA does not preclude all State and local actions, but only those which are inconsistent, comments which failed to address the issue of State and local government action are necessarily irrelevant and have not been considered in these proceedings. Those comments which took issue with the adequacy of the Federal safety standards ignored the fundamental purpose of these proceedings, that is, the determination of whether certain identified State and local requirements are inconsistent with the Federal regulations now in effect. Concern over the adequacy of existing Federal regulations may be properly expressed through the Department's established procedures for submission of petitions for rulemaking (49 CFR 106.31). Inconsistency ruling proceedings are not the appropriate forum for consideration of such matters. Therefore, comments concerning the adequacy of the Federal regulations now in effect are irrelevant to these proceedings and have not been considered.

Issued in Washington, D.C. on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–7—New York State; Letter From Governor's Designated Representative Advising Suspension of Spent Fuel Shipments

Applicant: Nuclear Assurance Corporation (IRA–20).

Non-Federal rule affected: Letter dated October 7, 1982, from the New York Governor's Designated Representative advising Nuclear Assurance Corporation to suspend certain proposed shipments of spent nuclear fuel.

Mode affected: Highway.

Ruling: The letter from the Governor's Designated Representative dated October 7, 1982, constitutes a State requirement. It is not found to be inconsistent with the HMTA or the regulations issued thereunder.

I. Background

By letter dated October 8, 1982, Nuclear Assurance Corporation (NAC) applied for an administrative ruling on the question of whether a letter issued by the Designated Representative of the Governor of New York constitutes a State order which is inconsistent with the Hazardous Materials Transportation Act (HMTA) or the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted pursuant to 49 U.S.C. 1811(a). The complete text of the letter is as follows:

October 7, 1982.

Nuclear Assurance Corporation,
24 Executive Park West, Atlanta, Georgia 30329

You are hereby advised to suspend proposed shipments of spent fuel rods through New York State from Chalk River, Canada via two non-interstate routes in the urban areas of Albany-Schenectady-Troy and Binghampton pending development of a policy applied uniformly, nationwide, covering transportation of radioactive materials.

[Signed]

Donald A. DeVito,
Governor's Designated Representative.

NAC contended that the requirements imposed by the Governor's Designated Representative were inconsistent with the intent and language of both the HMTA and the HMR. Specific reference was made to certain sections of the HMR which deal with highway routing of radioactive materials.

Pursuant to 49 CFR 107.205(a), the Governor's Designated Representative submitted comments on behalf of the State of New York regarding NAC's application for an inconsistency ruling. The State contended that its position was fully consistent with the HMTA and the HMR.

II. Analysis

A. Is the Letter From the Governor's Designated Representative a State Requirement?

Under section 112(a) of the HMTA any State requirement which is inconsistent with the HMTA or the regulations issued thereunder is preempted. Before one can reach the question of inconsistency, it is first necessary to determine whether the alleged conflict involves a State requirement.

The Governor's Designated Representative is the individual who is authorized to receive advance notification of nuclear waste shipments through the State of New York (10 CFR 73.37(f)). In the instant case, NAC provided the Governor's Designated

Representative with advance notification of certain spent fuel shipments. Responding to this advance notification, on October 7, 1982, the Governor's Designated Representative issued the letter quoted above advising NAC to suspend proposed shipments via the specified non-Interstate routes which NAC had intended to use.

By telex of the same date, the Governor of New York informed the U.S. Secretary of Transportation that New York considered the proposed shipments to be in conflict with Federal regulations and that the notification to NAC to suspend the shipments had been made on his authorization.

By letter dated November 9, 1982, the Governor's Designated Representative submitted a response to NAC's application for an inconsistency ruling in which reference was made to "the October 7, 1982 New York *State Order* suspending proposed shipments of spent fuel rods through New York State from Chalk River, Canada via non-interstate routes." (Emphasis added.)

It is clear from the foregoing that the State intended, by issuance of the October 7 letter, to order NAC to suspend the proposed shipments. It is equally clear, as one commenter pointed out, that NAC's failure to comply with the letter would likely result in sanctions imposed by the State.

In addition to New York's intent that the letter constitute a "State Order", the letter must also be considered such by the provisions of the HMR. In Appendix A to 49 CFR, Part 177, a "routing rule" is defined as "any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo." The letter from the Governor's Designated Representative effectively restricts the movement by public highway of motor vehicles containing a specific hazardous material and was issued because of the hazardous nature of that material. Thus, the letter satisfies the HMR's definition of a State routing rule.

On the basis of the foregoing, I conclude that the letter from the Governor's Designated Representative is a State requirement within the meaning of the HMTA.

B. Is the State Requirement Inconsistent?

(1) *Dual Compliance Test.* The State requirement under consideration in this docket amounts to a ban on the use of two non-Interstate highways for transporting spent nuclear fuel. As described in the Preamble, the HMR require motor carriers of spent nuclear fuel to operate over "preferred routes", i.e., an Interstate System highway for which an alternative route has not been designated or a State-designated alternate route. (49 CFR 177.825(b).) New York has not designated any alternate preferred routes. Thus, on its face, the State's refusal to allow spent fuel shipments on non-Interstate routes would appear to be consistent with the Federal rule, since the Federal requirement prescribing use of an Interstate highway may be met without conflicting with the State requirement prohibiting use of the non-Interstate highway.

In support of its contention that the State requirement is inconsistent, NAC has offered a number of arguments based on the exceptions to the use of preferred routes contained in the HMR. NAC first cites 49 CFR 177.825(a) which states:

> (a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. . . . This requirement does not apply when—
> (1) There is only one practicable highway route available, considering operating necessity and safety, or
> (2) The motor vehicle is operated on a preferred highway . . . .

Relying on § 177.825(a)(1), NAC argues that, because of the New York State Thruway's ban on spent fuel transportation, the proposed route is the only "practicable highway route available, considering operating necessity and safety."

The proposed route involves entering New York State at Champlain via Interstate 87 and proceeding south to Albany. Because I–87 south of Albany is part of the New York State Thruway, which bans spent nuclear fuel shipments, NAC proposed to travel approximately ten miles on a non-Interstate route in order to connect from Interstate 87 to Interstate 88. The proposed route would then follow Interstate 88 west to Binghamton where avoidance of the Thruway would once again necessitate travel over a non-Interstate route for approximately fourteen miles to access Interstate 81 and proceed south into Pennsylvania.

Section 177.825(a) applies to all motor vehicles carrying radioactive material for which placarding is required. Not all placarded shipments contain highway route controlled quantity radioactive materials (as defined in 49 CFR 173.403(l)). Those which do, such as carriers of spent nuclear fuel, are required by § 177.825(b) to operate over preferred routes except in the case of certain allowable deviations. NAC contends that such a deviation is allowable in the instant case and cites § 177.825(b)(2)(iii):

> b. . . .
> (2) When a deviation from a preferred route is necessary (including emergency deviation, to the extent time permits), routes shall be selected in accordance with paragraph (a) of this section. A motor vehicle may deviate from a preferred route under any of the following circumstances:
> (i) . . .
> (ii) . . .
> (iii) To the extent necessary to pick up, deliver or transfer a highway route controlled quantity package of radioactive materials.

The threshold question, of course, is whether NAC's proposed deviations are necessary. NAC contends that they are necessary if it is to deliver the shipment from Chalk River, Ontario, to Savannah River, South Carolina, while complying with both the Federal requirement that it operate "over preferred routes selected to reduce time in transit" (49 CFR 177.825(b)) and the State requirement that it not operate over the New York State Thruway. The State contends that the deviation is not necessary because another route exists which is entirely Interstate. The referenced route involves entering Vermont via Interstate 91 and proceeding south through Vermont, Massachusetts and Connecticut to access Interstate 84 in New York. (NAC had used this route in the past but ceased use upon receipt of a letter from the Governor of Vermont advising suspension of the shipments. That letter is the subject of Inconsistency Ruling IR–9 published herewith.)

Both arguments are flawed by reliance on the same assumption, to wit, that the New York State Thruway ban on spent fuel shipments is a valid restriction. As demonstrated in Inconsistency Ruling IR–10 published herewith, the restriction is inconsistent with the HMTA and, therefore, preempted. Since the Thruway ban is preempted, there is no necessity to redirect spent fuel shipments either onto non-Interstate routes in New York or onto Interstate routes in other states. And since the deviation is not necessary, NAC may not select a route in accordance with § 177.825(a)(1).

Finally, NAC cites section III of Appendix A to Part 177 which states:

> A State routing rule which applies to large quantity radioactive materials is inconsistent with Part 177 if—
> 1. It prohibits transportation of large quantity radioactive materials by highway between any two points without providing an alternate route for the duration of the prohibition;

The State requirement under consideration does not prohibit the transportation of spent fuel between two points. It merely underscores the Federal rule that such transportation shall take place on preferred routes. There are a number of preferred routes in the State of New York. As a practical matter, these routes were closed to NAC by a variety of State and local restrictions and NAC properly chose to comply with these restrictions pending determination of their inconsistency. The *de facto* closure of the preferred routes, however, is not resolved by abandoning the Federal rule requiring their use, but by determining the validity of the State/local restrictions involved.

On the basis of the foregoing, I find that no incongruity exists between the subject State order and the Federal rules on highway routing of radioactive materials. Not only is it possible to comply with both rules, but the State rule, is, in effect, an order to comply with the Federal rule. I, therefore, find that, under the dual compliance test, no inconsistency exists between the State and Federal requirements.

(2) *Obstacle Test.* In view of my previous finding that the State rule under consideration in this proceeding amounts to a requirement that the Federal rule be complied with, I find that it presents no impediment to the accomplishment and execution of the HMTA or the regulations issued thereunder.

III. Ruling

For the foregoing reasons, I find that the letter of October 7, 1982, from the Designated Representative of the Governor of New York to NAC is a State requirement which is not inconsistent with the HMTA or the regulations issued thereunder.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–8—State of Michigan; Radioactive Materials Transportation Regulations of the State Fire Safety Board and the Department of Public Health

Applicant: Nuclear Assurance Corporation (IRA–21).

Non-Federal rules affected: Rules 1–10 (Sections R29.551–R29.560) of the Rules of the Michigan State Fire Safety Board; and Rules 1–10 (Sections R325.5801–R325.5810) of the Rules of the Michigan Department of Public Health.

Modes affected: Highway, Rail, Water.

Ruling: Rules 3 through 6 and sections of Rules 1, 7 and 10 of the radioactive materials transportation regulations of both the Michigan State Fire Safety Board and the Michigan Department of Public Health are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with 49 U.S.C. 1811(a).

I. Background

By letter dated October 13, 1982, Nuclear Assurance Corporation (NAC) applied for an administrative ruling on the question of whether the radioactive materials transportation regulations of the State of Michigan are inconsistent with and thus preempted by the HMTA or the HMR. The State rules are codified in two parallel sets of ten enumerated rules at §§ R29.551–R29.560 of the State Fire Safety Board (SFSB) Rules and §§ R325.5801–R325.5810 of the Department of Public Health (DPH) Rules.

NAC contended that the SFSB and DPH rules are inconsistent with the HMTA and the HMR issued thereunder. The SFSB and DPH, in a joint response commenting on NAC's application, contended that their rules were reasonable and necessary to ensure compliance with Federal and State safety regulations and to ensure adequate and timely emergency response.

II. Analysis

This proceeding concerns the radioactive materials transportation regulations of the SFSB and DPH. They were published in their entirety as Appendices A and B respectively to the public notice and invitation to comment which appeared in the May 12, 1983, **Federal Register** (48 FR 21503–21505). The rules are considered in consecutive order below.

Rule 1 (SFSB § R 29.551; DPH § R 325.5801)

Rule 1 sets forth a number of definitions, none of which were challenged in NAC's application. However, in view of MTB's most recent inconsistency rulings regarding the exclusive Federal role in hazard class definition (IR–5, IR–6), I consider it necessary to address the possible inconsistency of one of the given definitions.

SFSB Rule 1(d) (DPH Rule 1(e)) defines "radioactive material" as "irradiated reactor fuel and radioactive wastes that are large quantity radioactive materials as defined in 49 CFR 173.389(b)."

At the time Rule 1 was adopted, § 173.389(b) of the HMR defined "radioactive material" as "any material or combination of materials which spontaneously emit ionizing radiation", but excluding "material in which the estimated specific activity is not greater than 0.002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed".

By adoption of a Final Rule which became effective July 1, 1983 (Docket No. HM–169; 48 FR 10218), MTB deleted all of § 173.389 and added a new Subpart I to Part 173 entitled "Radioactive Materials". As defined in § 173.403(y) "radioactive material" means "any material having a specific activity greater than 0.002 microcuries per gram".

Clearly, the SFSB/DPH definition of "radioactive material" differ significantly from the Federal definition now in effect.

In IR–6, MTB gave notice that it considered the Federal role in the definition of hazard classes to be exclusive:

> The key to hazardous materials transportion safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulation. This is precisely the situation which Congress sought to preclude when it enacted the preemption provision of the HMTA.

On the basis of the precedent established by IR–5 and IR–6, I find the definition of "radioactive material" in Rule 1 to be inconsistent. Throughout the remainder of this inconsistency ruling, the Michigan rules are interpreted as if the term "highway route controlled quantity radioactive material" had been substituted for the term "radioactive material".

Rule 2 (SFSB § R 29.552; DPH § 325.5802)

Although their language differs, the SFSB and DPH versions of Rule 2 have essentially the same meaning. In both cases, the rule enables the agency to grant exemptions from the requirements of the rules. NAC did not challenge this rule and, since it imposes no obligation to act, the issue of inconsistency does not arises.

Rule 3 (SFSB § R 29.553; DPH § R 325.5803)

Rule 3 requires that application for approval to transport highway route

controlled quantity radioactive material in Michigan be submitted not less than 15 days before the date of planned shipment. The application must be submitted in duplicate through the Operations Division of the State Police for immediate forwarding to the SFSB and DHP. Compliance with Rule 3 is a criterion for transportation approval under Rule 5. Because the application requirements are inextricably linked with the approval process, Rule 3 is considered together with Rule 5 below.

Rule 4 (SFSB § R 29.554; DPH § R 325.5804)

Rule 4 sets forth communications equipment requirements for shipments of highway route controlled quantity radioactive material being transported by highway, railway and waterway. Communications capability is an element of physical security, and Appendix A to 49 CFR, Part 177, sets forth as Departmental policy the opinion that a State transportation rule is inconsistent with Part 177 if it conflicts with the physical security of the Nuclear Regulatory Commission [NRC] at 10 CFR, PART 73, or equivalent requirements approved by MTB. This is based on the requirement in 49 CFR 173.22 that shippers of irradiated reactor fuel provide physical protection in compliance with a plan established under the NRC requirements or equivalent requirements approved by MTB. The requirements for each mode are addressed separately below.

Highway Shipments—Rule 4 forbids the highway transportation of radioactive materials unless the transporting vehicle or an escort vehicle "is equipped with continuous 2-way communications by radiotelephone or other means acceptable to the state fire marshall with land-based stations familiar with, and capable of assisting in" implementing emergency plans. The NRC regulations require shippers (whether by highway, rail or water) to establish a single, continuously staffed communcations center which shipment escorts are to call at least every two hours. In addition to this general NRC requirement, highway shippers must ensure that:

> Escorts have the capability of communicating with the communications center, local law enforcement agencies, and one another, through the use of:
> (i) A citizens band (CB) radio available in the transport vehicle and in each escort vehicle;
> (ii) A radiotelephone or other NCR-approved equivalent means of two-way voice communications available in the transport vehicle or in an escort vehicle committed to travel the entire route; and
> (iii) Citizens band (CB) radio and normal local law enforcement agency radio communcations in any local law enforcement agency mobile units used for escort purposes. (10 CFR 73.3(c)(3).)

Since the HMR require highway transporters to comply with the NRC requirments or their equivalent approved by MTB, these are the standards with which the SFSB/DHP requirements will be compared for consistency.

With regard to the "dual compliance" test, I find that compliance with the Federal rule would place a shipper in violation of the State rule. The communications equipment required by the Federal rules is incapable of ensuring the "continuous two-way communications" required by the State rule because of the existence of radiotelephone dead zones. At least one commenter suggested that "continuous two-way communications" may not, in fact, be technologically possible.

Even assuming that continuous communication could be achieved through the use of special equipment, the Michigan rule fails the "obstacle" test. MTB addressed this issue directly in the section-by-section analysis of HM–164:

> The existence of State or local requirements for special equipment may effective by dictate the continuous use of the equipment in all jurisdictions. Varying requirements between jurisdictions pose additional problems that may necessitate equipment changes and delays in route, or avoidance of an otherwise desirable route. (48 FR 5314.)

Were transporters required to change the means and/or frequency of communication each time they entered a different jurisdiction, the overall reliability of the communication system would be seriously jeopardized. Thus, shipments would be subject, not only to the minor delays inherent in system changeover, but also to potentially significant delays necessary to restore communications capability. It is axiomatic that equipment changes pose a greater risk of system breakdown than does maintenance of a single system. And an increased risk of communications breakdown constitutes a serious degradation of physical protection safeguards. The SFSB/DPH rule, therefore, impedes the Congressional purposes of increased safety and regulatory uniformity which underlay enactment of the HMTA.

Rail Shipments—For rail shipments of radioactive materials, Rule 4 requires the transporting vehicle to be "equipped with communications equipment acceptable to the State fire marshal." The NRC regulations for rail shipments require that:

> Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications, which shall be available on the train. (10 CFR 73.37(d)(3).)

Since Rule 4 provides no indication of the minimum level of communications capability which would be acceptable to the State fire marshal, it is not possible to determine whether compliance is possible with both the Federal and State rule. I am, therefore, unable to make a finding under the "dual compliance" test.

Under the "obstacle" test, however, it is possible to reach a definite conclusion. As shown above, State rules requiring special equipment pose an obstacle to the two major Congressional purposes underlying the HMTA. Even greater, then, is the obstacle posed by a State rule which sets no specific requirements but leaves the matter wholly to the discretion of a State official. For this reason and those stated in the discussion of highway shipments *supra*, the Rule 4 equipment requirements for rail shipments constitute an obstacle to the accomplishment and execution of the HMTA.

Water Shipments—Rule 4 sets the same standards for water as for rail shipments, i.e. that the vessel be "equipped with communications equipment acceptable to the State fire marshal." The NRC regulations for shipments by vessel require that:

> Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications. (10 CFR 73.37(e)(3).)

As was discussed in connection with rail shipments *supra*, a State rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce is inconsistent with the dual objectives Congress sought to achieve by enacting the HMTA.

Rule 5 (SFSB § 29.555; DPH § R 325.5805)

Rule 5 sets forth the criteria for SFSB and DPH approval of applications to transport highway route controlled quantity radioactive material in Michigan. Since the rule prohibits transportation of radioactive materials without the written approval of both the DPH and the State fire marshal, it constitutes a routing rule in the form of a permit requirement.

Section II of Appendix A to 49 CFR, Part 177, defines "routing rule" as follows:

> "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects . . .

The SFSB/DPH rules restrict the movement of radioactive material by public highway by denying access to those shipments which have not obtained written approval. Moreover, this restriction has the effect (as in the case of NAC) of redirecting such shipments to other jurisdictions. And the rules apply because of the nature of the cargo. For these reasons, the SFSB/DPH rules constitute a State routing rule within the meaning of the HMR.

Under HM–164, the Federal rule requires shipments of highway route controlled quantity radioactive material to operate over "preferred routes selected to reduce time in transit, except that an Interstate System bypass or beltway around a city shall be used when available." The term "preferred route" is defined as an Interstate System highway or an alternate route selected by a State routing agency in accordance with DOT guidelines. Because the State of Michigan has not applied these guidelines to designate any alternate preferred routes, the preferred routes in Michigan are the Interstate System highways.

The State and Federal rules having been identified, the question at issue is whether the State rule is consistent.

(1) *Dual Compliance Test.* A carrier which complied fully with the SFSB/DPH rules, thereby obtaining the necessary written approvals, could transport highway route controlled quantity radioactive material via preferred routes in Michigan, and thereby be in compliance with the Federal requirement as well. Consequently, application of the "dual compliance" test reveals that it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the SFSB/DPH rules. Therefore, those rules cannot be deemed inconsistent on the basis of that test.

(2) *Obstacle Test.* Under the "obstacle" test, however, I reach a different conclusion.

MTB first addressed the issue of State transportation permit requirements in an inconsistency ruling dealing with a Rhode Island regulation governing the transportation of liquefied energy gases. (IR–2, 44 FR 75566, Dec. 20, 1979.) In that ruling, it was stated that:

> A permit may serve several legitimate State police power purposes, and the bare requirement . . . that a permit be applied for and obtained is not inconsistent with federal requirements. However, a permit itself is inextricably tied to what is required in order to get it. Therefore, the permit requirement . . . must be considered together with the application requirements . . . (44 FR at 75570,1.)

The same reasoning applies here.

Rule 5 sets forth several criteria which must be satisfied before approval is granted to transport highway route controlled quantity radioactive material in Michigan. Each is discussed separately below.

Rule 5(a) requires fulfillment of the application requirements of Rule 3. For discussion purposes, the application requirements can be broken down into three categories: information, documentation and certification.

Information—Rule 3 requires applicants to submit the following information as part of the application to transport highway route controlled radioactive material in Michigan:

> (a) The proposed route of travel, specifying all of the following:
> (i) Each road or rail to be used by route number, name, or other identification.
> (ii) Each major bridge to be traversed.
> (iii) Each waterway to be traversed for transport by vessel.
> (iv) The reasons for the choice of the proposed route of travel from the site of origin to the receiver of the radioactive material, including the designation of alternative routes and the reasons for the selection of the proposed route and the rejection of alternative routes.
> (b) The proposed means of conveyance.
> (c) The names, addresses, and emergency telephone numbers of the shipper, carrier, and receiver of the radioactive material, including the individual to contact for current shipment information.
> (d) A description of the shipment as specified in the provisions of 49 C.F.R. § 172.203(d).
> (e) The estimated date and time of all of the following, as applicable:
> (i) The departure of the radioactive material from the site of origin.
> (ii) The arrival of the radioactive material at the Michigan boundary or at its final destination if the destination is within Michigan.
> (iii) The departure of the radioactive material from Michigan.

With the exception of Rules 3 (a)(iv), (b) and (e)(iii), all of the above information is required to be provided in advance to the Commanding Officer of the Michigan State Police Operations Division, who is the Governor's Designated Representative for receipt of advance notification of nuclear waste shipments. The requirement is set forth as part of the NRC physical protection regulations (10 CFR 73.37(f)). The NRC regulations were not promulgated under the HMTA. However, § 173.22(c) of the HMR requires shippers of highway route controlled quantity radioactive materials to comply with a physical protection plan established under the requirements of the NRC or equivalents approved by MTB. This section of the HMR was adopted as part of HM–164. In the preamble to HM–164, MTB took administrative notice of the fact that NRC was in the process of establishing prenotification requirements and stated:

> Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local prenotification requirements are not consistent with Part 177. (46 FR 5314,5.)

The absence to date of prenotification requirements in the HMR cannot be construed as an abdication of the field, because MTB has taken several administrative actions regarding prenotification. In the process of promulgating HM–164, MTB received numerous comments urging adoption of a national prenotification regulation. For the reasons stated in the preamble to that rulemaking, MTB declined to do so. That preamble, which discussed the Congressional directive to NRC to establish prenotification requirements, also described MTB's sponsorship of a study by the Puget Sound Council of Governments (PSCOG) to examine the efficacy of prenotification for certain materials. The PSCOG report has since been completed (*Analysis of Prenotification: Hazardous Materials Study, Final Report*, May 4, 1981) and was relied on in an inconsistency ruling (IR–6, 48 FR 760, January 6, 1983) which found a Covington, Kentucky, prenotification ordinance to be inconsistent. MTB has also sponsored a number of emergency response demonstration projects involving State, city and regional governments. Most recently, MTB awarded a contract to Battelle Northwest Laboratories to perform a comprehensive evaluation of prenotification. In view of the above, MTB has clearly demonstrated its intent to occupy the field of prenotification, to the exclusion of requirements adopted by State and local governments.

In its discussion of Rhode Island's permit application requirement in IR–2, MTB noted that, to the extent the State required the same information as appeared on the DOT shipping paper, the State rule was redundant and "(r)edundancy does not further

transportation safety and represents the type of multiplicity that the HMTA intended to make unnecessary." (44 FR 75571.) Of the above-described information requirements of the SFSB/DPH rules, only one (Rule 3 (d), proper shipping description) is required to be shown on the DOT shipping papers. All of the items except (a)(iv), (b) and (c)(iii) are rquired by the NRC prenotification regulations which MTB has recognized as currently providing an adequate standard of national applicability. If shippers could satisfy both the State and the Federal requirements by the same action, then the issue of redundancy would not arise, for the result would be the same as if Michigan had adopted the Federal rules. That is not the case, for the SFSB/DPB rules require additional, separate submissions. To the extent that they require multiple submissions of information which is required by DOT's shipping paper regulations or which other Federal regulations already require to be submitted to the State, the SFSB/DPH rules are redundant, do not further transportation safety and represent the type of multiplicity which Congress sought to preclude by enacting the HMTA. To the extent that they require transporters to provide safeguards information to officials other than the Governor's designated representative, the SFSB/DPH rules create the potential for conflict with the Federal rules on physical security.

Different issues are raised by the three items of information required by the SFSB/DPH rules but not by the Federal rules. Rule 3(a)(iv) calls for a description and justification of the proposed and alternate routes from origin to destination, regardless of what proportion of the route involves Michigan. The logical inference drawn from this requirement is that the State seeks to second-guess carriers' route selections. The standards to be used in selecting highway routes for transportation of radioactive materials are set forth at 49 CFR 177.825. When promulgating those rules, MTB recognized that States were in a better position to know local road conditions. Therefore, HM-164 established a process by which States could apply this knowledge to designate alternate routes which provide an equal or greater level of safety than Interstate System highways. Michigan has yet to avail itself of this process. If there are valid safety reasons why certain preferred routes should not be used in Michigan, then it is incumbent on Michigan to designate safer alternative routes by using the process DOT has designed for this purpose. State approval of route selections on a shipment-by-shipment basis completely undercuts the primary purpose of national uniformity underlying adoption of HM-164. Rule 3(a)(iv), therefore, fails the "obstacle" test and is, accordingly, inconsistent.

Rule 3(b) requires submission of the proposed means of conveyance. This is implicit in the route selection. (A shipment which will proceed over identified waterways is obviously not being conveyed by train.) Since both the State and the Federal rules call for the State to receive a complete route description, this item is redundant, serves no safety purpose and merely contributes to the type of multiplicity which the HMTA was meant to eliminate. It therefore constitutes an obstacle to the Congressional objective of regulatory uniformity underlying the HMTA.

Rule 3(e)(iii) requires submission of the date and time of the shipment's departure from Michigan. While this is not required by the DOT shipping paper requirements or the NRC prenotification requirements, it is like Rule 3(b) in that it is easily determined from the information which is required to be submitted. With knowledge of the time of entry and the routes and distances to be covered, the time of departure is easily calculated. And, in the event of a schedule change of more than six hours, the NRC regulations require that the State receive a revised notification. Therefore, like Rule 3(b), this item is redundant, serves no safety purpose and merely contributes to the type of multiplicity which the HMTA was meant to eliminate. Accordingly, it constitutes an obstacle to the Congressional objective of regulatory uniformity underying the HMTA.

Documentation—Rule 3 requires submission of the following documentation as part of the application for approval to transport highway route controlled quantity radioactive material in Michigan:

(g) Copies of any required NRC approval of the proposed route of travel and any other NRC licensing action specific to the shipment, such as an import license or a license to transport.

(h) A copy of the emergency plan for the carrier which describes procedures to be taken in an emergency to eliminate or minimize the radiation exposure of the public. The plan shall include a provision for notification of the state police operations division upon implementation of the plan.

(i) For transport over a major bridge or on a vessel, provisions to submit the proposed recovery plan to the department for approval before beginning recovery efforts.

Rule 3(g) calls for the submission of copies of all NRC approvals and licenses related to the shipment for which transportation approval is being sought. Presumably, the purpose of this requirement is to enable the State to ensure that NRC regulations have been complied with. This a valid concern. However, the chosen manner of resolving this concern raises the possibility of a new kind of risk. Shipment—specific information of the sort included in route plans and licenses is required to be protected against unauthorized disclosure. The NRC regulations (10 CFR 73.21) set forth specific requirements for the protection of safeguards information. The HMR impose physical security requirements in § 177.825(e). By requiring hard copies of these documents to be distributed to two State agencies, the Michigan rules greatly increase the possibility that the information contained therein will be disclosed to an extent sufficient to compromise the physical security of the shipment. The assurances sought by the State could be obtained without the risk of disclosure through the simple expedient of contacting the NRC upon receipt of advance notification of a shipment. The requirement contained in Rule 3(g) adds to the existing paperwork burden on radioactive materials transportation, subjects applicants to potential liability for violation of NRC and/or DOT regulations on protection of safeguards information, and increases the potential for outside interference with shipments. Since the primary objective of the HMTA is to protect the Nation against the risks inherent in hazardous materials transportation, a State rule which increases those risk necessarily poses an obstacle to the accomplishment and execution of the HMTA.

Rule 3(h) calls for applicants to develop and submit a copy of a plan describing procedures to be followed in the event of an emergency to protect the public from radiation exposure. Response to transportation emergencies is necessarily site-specific:

> Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and State planning and preparation, when an accident does occur, response is, of necessity, a local responsibility. (IR-2, 44 FR 75568.)

In HM-164, MTB addressed the Federal responsibility for reducing the likelihood of emergencies by requiring not only that such materials be transported over those routes which have been demonstrated to offer the highest safety levels, but also that the drivers of such shipments receive, and carry certification of, written training on: (1) the HMR concerning radioactive materials; (2) the properties and hazards of radioactive materials being transported; and (3) procedures to be followed in case of an accident or other emergency. (49 CFR 177.825(d).) Drivers are also required to carry a route plan which includes the telephone numbers to access emergency assistance in each State to be entered. (49 CFR 177.825(c).)

It is not clear whether the plan required by Rule 3(h) is meant to describe standard procedures to be taken in the event of an emergency or whether it is meant to be tailored to the specific characteristics of the points to be traversed in Michigan. If the former is intended, then applicants can comply merely by submitting a copy of the materials used in the drivers' training course. Such materials are readily available to the State and their submission as part of an application for transportation approval would contribute little to State/local emergency preparedness. If the plan is meant to be tailored to the specific characteristics of the route in Michigan, then the effect of the requirement is to shift the burden of emergency preparedness planning from State and local governments to the carriers. Emergency preparedness is necessarily a continuing process which is predominantly concerned with the site-specific characteristics of a given locale. It is an innately governmental responsibility. Therefore, if Rule 3(h) requires only the submission of standard guidance documents, it is an unnecessary paperwork burden which Michigan has failed to demonstrate addresses any local safety problem requiring its imposition. In addition, State and local emergency preparedness efforts may be adversely affected by reliance on the false assumptions that such documents are sufficient guidance in the event of an emergency. If, on the other hand, the requirement is meant to provide Michigan with a blueprint covering every possible contingency that could arise in the State, then it imposes an unrealistic burden on carriers. Such planning requires indepth knowledge of available emergency services equipment and personnel, demographics, geography and other site-specific factors. No carrier-developed plan could be an adequate substitute for an integrated, on-going State/local system of emergency response preparedness. It is for this reason that the HMR require transporters of highway route controlled quantity radioactive material to comply with a physical protection plan, in accordance with NRC standards or MTB-approved equivalents, which requires them to make arrangements with local law enforcement agencies along their routes for response to an emergency or a call for assistance.

Finally, were Michigan's requirement found to be consistent with the HMTA, then any State could impose additional planning requirements on transportation of highway route controlled quantity radioactive material. The resulting multiplicity of varying and possible conflicting State planning requirements would completely undermine the radioactive materials routing requirements of the HMR. The provisions of HM-164 retained for the States a defined role in the designation of preferred routes. That role does not include the prohibition of interstate transportation pending approval of State-required emergency plans.

For the foregoing reasons, I find that Rule 3(h) constitutes an obstacle to the accomplishment and execution of the HMTA and is therefore inconsistent therewith.

Rule 3(i) sets forth additional provisions to be included in the emergency plan required by Rule 3(h) when transportation is intended to take place over a major bridge or by vessel. Since the requirement of a plan has been found to be inconsistent, additional provisions to that plan need not be considered, because each component thereof would be inconsistent.

Certifications—Rule 3 requires submission of the following certifications as part of the application for approval to transport highway route controlled quantity radioactive material in Michigan:

(f) Attestation to the fact that the vehicle has been inspected within a period of 6 months prior to the date of the proposed shipment for compliance with the provisions of 49 C.F.R. § 396 or Act No. 300 of the Public Acts of 1949, as amended, being § 257.1 et seq. of the Michigan Compiled Laws, by a law enforcement agency acceptable to the state fire marshal, and that evidence of such inspection shall be carried in the vehicle.

* * * * *

(j) A certification that the shipment will be in compliance with these rules and all applicable state and federal statutes, rules, and regulations governing the shipment.

Rule 3(f) requires an applicant to attest that the transport vehicle has been inspected in accordance with Federal or State law. Safety inspection of vehicles is a legitimate State activity and this proceeding will not address the specific requirements of Michigan's inspection laws. The narrower question involved herein is whether the requirement for a written attestation to the fact of compliance is a legitimate precondition to transportation approval. Under the cited Federal regulations on vehicle inspection (49 CFR, Part 396), motor carriers are required to maintain copies of each vehicle inspection report and to provide a copy to be carried on the power unit of the vehicle. Within the HMR, § 177.804 requires compliance with Part 396. Since Michigan apparently considers this record-keeping requirement adequate for transporters of all other hazardous materials, the basis for requiring additional attestation by transporters of highway route controlled quantity radioactive material is not clear. It thus appears that the requirement merely imposes another redundant paperwork burden which serves no apparent safety purpose.

Rule 3(j) requires applicants for transportation approval to certify that the shipment will be in compliance with all applicable Federal and State rules. The HMR requires shippers to make such a certification on the shipping papers which accompany each shipment of hazardous materials. (49 CFR 172.204.) As was stated in IR-2:

> No matter what the form, any State or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations. (44 FR 75571.)

Accordingly, Rule 3(j) is inconsistent with the HMR.

The application requirements of Rule 3 (parts a-j) have a cumulative effect which is greater than the "obstacle" presented by any one part individually. That effect is the redirection of radioactive materials shipments into other jurisdictions by transporters seeking to avoid the administrative burden and planning delays inherent in complying with Michigan's application procedure. Like the New York State Thruway ban which is the subject of IR-10, the Michigan application process results in the diversion of such shipments into other jurisdictions, thereby increasing total distance and time in transit. In other words, overall exposure to the risks of radioactive materials transportation is increased and exported. For all of the foregoing reasons, the application procedures of Rule 3 which constitute the approval criteria of Rule 5(a) are an obstacle to the accomplishment and execution of the HMTA's dual purposes of increased transportation safety and national uniformity in safety regulation.

Rule 5(b) of the SFSB rules requires that the application submitted under Rule 3 be approved in writing by the DPH. Since the application has been found to be inconsistant with the

HMTA, written approval of the application is also inconsistant. This issue is addressed in more detail under Rule 6 below.

Rule 5(c) of the SFSB rules (DPH Rule 5(b)) requires certification of compliance with all applicable Federal and State rules. This repeats the application requirement at Rule 3(j). Whether set forth as an approval criterion or an application requirement, this certification is a redundancy, as it requires applicants to provide the same certification as is required to appear on the DOT shipping paper, and is accordingly inconsistent.

Rule 5(d) of the SFSB rules (DPH Rule 5(c)) establishes as a criterion for transportation approval that the emergency plan required to be submitted under Rule 3(h) be acceptable to the State fire marshall and DHP respectively. As was demonstrated in the discussion of Rule 3(h) *supra*, that requirement constitutes and obstacle to the accomplishment and execution of the HMTA. Whether set forth as an approval criterion or an application requirement, the planning requirement described in Rule 3(h) is inconsistent.

Rule 5(e) of the SFSB (DPH Rule 5(d)) requires that:

> A certificate of compliance for the container has been issued by the NRC, and the container has been tested and approved for hypothetical accident conditions pursuant to the provisions of 10 CFR § 71.36.

If the purpose of this requirement is to ensure that Federal standards have been met, then it reflects a basic misunderstanding of the Federal regulations on transportation containers for highway route controlled quantity radioactive material. The NRC issues certificates of compliance, not for containers, but for container designs. Moreover, the cited NRC regulations at 10 CFR 71.36 do not require that each container be tested and approved for hypothetical accident conditions. Rather, the rules require that each container be constructed in accordance width a design approved by the NRC as meeting the necessary design criteria including, *inter alia*, the ability to meet the standards for hypothetical accident conditions. The HMR incorporate the NRC requirements in § 173.416. The exclusive Federal role in hazardous materials containment systems has long been established. In IR–2, MTB stated:

> The Hazardous Materials Regulations contain extensive requirements for the packagings necessary for the safe transportation of hazardous materials. The MTB has looked at specific commodities and determined what type of containers must be used to move them, including, where appropriate, what types of accessories are required, what types of construction tests must be satisfactorily performed, etc. Uniform standards in this area insure safe, efficient interstate transportation. State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations. (44 FR 75568.)

The need to ensure the integrity of spent fuel shipping containers is of such paramount importance that it is difficult to conceive any situation where regulation by Michigan, or by any other State or local government, would not pose an obstacle to the accomplishment and execution of the HMTA. Because it imposes additional packaging standards, SFSB Rule 5(e) (DPH Rule 5(d)) is inconsistent.

Rules 5(f) and (g) of the SFSB (DPH Rules 5(e) and (f)) require containers intended for transport via a major bridge or waterway to be subjected to physical testing under standards which exceed the NRC's standards for hypothetical accident conditions. Unlike Rule 5(e) which relied on the NRC standards in its requirement of additional testing, these rules establish independent test standards to be applied only to those containers to be used over major bridges or on waterways in Michigan. The joint SFSB/DPH comment on this proceeding offered the following justification of the additional testing requirements:

> Michigan is unique. Although normal transport conditions and some accident scenarios are adequately addressed in the Federal packaging tests and regulations for radioactive material, the tests and regulations do not address serious accidents which may occur on "major bridges" as designated by the Michigan rules. The Federal packaging rules are inadequate to deal with such extreme conditions, and such accidents were not considered when the packaging regulations were developed. (SFSB/DPH letter dated Nov. 29, 1982, pp 2–3.)

In other words, Michigan apparently has taken the position that, when a State finds Federal safety regulations inadequate to meet local conditions, it may, on its own determination, regulate to overcome the perceived Federal inadequacy. This completely undermines the regulatory system mandated by the HMTA. Congress recognized that rules of national applicability would not always meet unique local conditions. It was for this reason that the HMTA did not preempt all State or local rules, but only those that were inconsistent. Furthermore, Congress recognized that there could be valid safety reasons for permitting certain inconsistent State or local rules to coexist with their Federal counterparts, and authorized the Department of Transportation to waive preemption in certain circumstances.

In implementing its regulatory authority under the HMTA, MTB has sought to ensure the flexibility necessary to respond to changing conditions. Recognizing that practical experience in applying the regulations can point out the need for change, MTB adopted procedures in 49 CFR, Part 106, whereby "(a)ny interested person may petition the Director to establish, amend, or repeal a regulation." (49 CFR 106.31.) With specific regard to the establishment of highway routes for radioactive materials, MTB had the authority to require the use of the Interstate System without exception. However, the recognition of the wide variety of local conditions and the States' experience in responding to these conditions, MTB adopted a rule which enabled States to apply safety guidelines to their unique local condiations, and, if justified, designate alternative routes.

In view of the foregoing, Michigan's defense of its additional container test requirements must be rejected. If, as alleged, the Federal regulations are inadequate to deal with the "extreme conditions" found in Michigan, the State has recourse to three (possibly concurrent) alternatives to the imposition of independent requirements:

1. Concede inconsistency and apply for a waiver of preemption pursuant to 49 CFR 107.215.
2. File a petition for rulemaking pursuant to 49 CFR 106.31.
3. Designate alternate preferred routes pursuant to 49 CFR 177.825.

Nothing in Michigan's response justifies departure from MTB's established position that the regulation of cargo containment systems is an exclusive Federal function.

On the basis of the foregoing, I find that the application requirements and approval criteria of Rules 3 and 5 are an obstacle to the accomplishment and execution of the HMTA and the HMR are are, therefore, inconsistent.

Rule 6 (SFSB § R29.556; DPH § R325.5806)

Rule 6 states that approval shall be granted in writing before shipment of the radioactive materials and shall include any conditions or limitations as determined necessary by the State fire marshal and DPH. Previously in this ruling it was determined that both the application requirements and the approval criteria set forth in the SFSB and DPH rules are inconsistent with the HMTA and, therefore, preempted. Those

sections dealt with the form of the State approval process, but did not address the question of whether the approval process itself, regardless of form, may be inconsistent with the HMTA. That issue is addressed now.

As was noted in IR–2, a permit requirement may serve several legitimate State police power purposes. For example, a State may require operators to obtain a permit when they intend to transport loads of a size or weight which exceeds the limits established for all traffic. Such a requirement represents a legitimate exercise of the State's responsibility to maintain the integrity of the roadbed and to prevent disruption of the flow of traffic. Such requirements apply equally to all vehicles, regardless of the nature of the cargo being transported.

In the instant case, Michigan has imposed a requirement to obtain State approval in writing (in effect, a permit) which applies only to those parties wishing to transport highway route controlled quantity radioactive material in Michigan. This requirement is based on a presumption that Michigan has the authority to control, and ultimately, to prohibit this form of interstate commerce.

Michigan asserts that this authority stems from the State's public safety power; that radioactive materials transportation poses higher risks in Michigan than elsewhere; and that the State has a duty to protect the public from those risks. This argument fails to recognize that, in enacting the HMTA, Congress granted to the Secretary of Transportation, and not to the States, the authority to designate as hazardous those materials whose transportation poses an unreasonable risk and to issue regulations to protect the Nation adequately against those risks. Generally, in the absence of Departmental involvement in a safety issue, States and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) Traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists, for a State of local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

For all of the foregoing reasons, I find Michigan's requirement of written approval to transport highway route controlled quantity radioactive material in Michigan to be inconsistent with the HMTA and the regulations issued thereunder.

Rule 7 (SFSB § R29.557; DPH § R325.5807)

Rule 7 states that "(u)nless otherwise specified in the approval notification, the carrier, driver, or operator transporting radioactive material shall notify the operations division of the department of state police" of certain information to be described below. The requirement of a written notification of approval has been found to be inconsistent with the HMTA. Therefore, to the extent that Rule 7 implies an ability to impose requirements other than those specifically set forth, it is inconsistent with the HMTA.

Rule 7(a) requires transporters to notify the Operations Division of the Department of State Police of any schedule change that differs by more than six hours from the schedule information previously furnished. The HMR rely on the notification requirements contained in the NRC standards for physical protection. Included in those standards at 10 CFR 73.37(f)(4) is the requirement that a licensee notify the Governor or the Governor's Designee of any schedule change that differs by more than six hours from the schedule information previously furnished. In Michigan, the Governor's Designee is the Commanding Officer of the Operations Division of the Department of State Police. Thus, Rule 7(a) and the Federal rule are identical. Since one action satisfies both rules, the issue of redundancy does not arise. This differs from the prenotification requirements of Rule 3 which called for submission of the same information required by NRC but in different form and to different parties. The practical effect of Rule 7(a) is the same as if Michigan had adopted 10 CFR 73.37(f)(4). Therefore, no inconsistency exists.

Rule 7(b) requires transporters to notify the Operations Division of the Department of State Police of any incident causing delay in the transport of radioactive material in Michigan. The HMR require transporters of highway route controlled quantity radioactive material to operate in compliance with a physical-protection plan as required by NRC regulations (10 CFR 73.37) or MTB-approved equivalent. The NRC regulations require shipment escorts to make calls to the communications center at least every two hours to advise of the status of the shipment. The communications center required by NRC regulations must be "staffed continuously by at least one individual who will monitor the progress of the spent fuel shipment and will notify the appropriate agencies in the event a safeguards emergency should arise."

Any shipment delay of more than six hours must be reported under SFSB/DPH Rule 7(a) and 10 CFR 73.37(f)(4). Delays of less than six hours may be caused by a variety of factors ranging from a safeguards emergency to simple traffic delay. Since the planned schedule necessarily projects estimated times of arrival, a certain margin is built into the schedule. Rule 7(b) does not define "incident" or "delay" and this vagueness prevents a clear understanding of the circumstances in which notification is required. Clearly, the State of Michigan has a legitimate interest in knowing of shipment delays which could stem from or result in safeguards emergencies. The Federal regulations are designed to ensure that they receive such notice. No showing has been made of any safety problem unique to Michigan which requires carriers to report normal transportation delays of less than six hours. Therefore, were Michigan's requirement allowed to stand, any State could impose its own additional reporting requirements. This type of multiplicity impedes the Congressional objective of national uniformity in hazardous materials safety regulation. Therefore, I find Rule 7(b) to be an obstacle to the accomplishment and execution of the HMTA.

Rule 7(c) requires transporters to notify the Operations Division of the Department of State Police of any implementation of the emergency plan submitted under Rule 3(h). Since Rule 3(h) has been found to be inconsistent, it follows that Rule 7(c) is also inconsistent. Preemption of Rule 7(c), however, does not deprive Michigan of

notification of transportation emergencies as this is ensured by the NRC physical protection regulations set forth at 10 CFR 73.37.

Rule 8 (SFSB § R 29.558; DPH § R 325.5808)

Rule 8 sets forth the standards of confidentiality to be applied to radioactive materials shipment schedule information. The requirements set forth herein are the same as set forth in the NRC regulations (10 CFR 73.21, 73.37) on which the HMR rely. Accordingly, no inconsistency exists.

Rule 9 (SFSB § R 29.559; DPH § R 325.5809)

Rule 9 states that shipments of highway route controlled quantity radioactive material may be inspected by the State Fire Marshal and/or the DPH for compliance with applicable State and Federal statutes, rules, and regulations. It should be noted that State statutes, rules, and regulations governing radioactive materials transportation are "applicable" only if they are not inconsistent with the HMTA. Having noted this distinction, I find that Rule 9 constitutes a valid exercise of the State's inherent police powers. Ensuring that transport vehicles do not threaten public health and safety has long been recognized as a legitimate State function. Far from being an obstacle to the accomplishment of the HMTA, State enforcement of Federal and consistent State regulations concerning hazardous materials transportation safety is a critical element of a regulatory system of national applicability. MTB has long sought to foster a Federal/State partnership in hazardous materials transportation safety and, to this end, has developed and implemented the State Hazardous Materials Enforcement Development Program, in which Michigan participates, to provide States with the financial and technical assistance in the enforcement of a nationally uniform system of hazardous materials transportation safety regulation. Therefore, to the extent that enforcement is directed only to those requirements not found inconsistent, I find that Rule 9 is consistent with the HMTA and the regulations issued thereunder.

Rule 10 (SFSB § R 29.560; DPH § R 325.5810)

Rule 10 incorporates by reference the following sections of the Code of Federal Regulations:

(a) 10 CFR 71.36;
(b) 49 CFR 172.203(d); and
(c) 49 CFR 173.389(b).

Rules 10(1)(a) and (b) incorporate by reference Federal regulations which are currently in effect. Therefore, there is no question as to their consistency.

Rule 10(1)(c) incorporates by reference a regulation which was deleted from the HMR effective July 1, 1983. As stated previously in this ruling, consistency in the definition of hazardous materials is essential to the effectiveness of a regulatory system of national applicability. Therefore, for the reasons set forth in the discussion of Rule 1, I find Rule 10(1)(c) to be inconsistent with the HMTA and the regulations issued thereunder.

III. Ruling

For the foregoing reasons, I find that the radioactive materials transportation rules of the Michigan State Fire Safety Board (SFSB) and the Michigan Department of Public Health (DPH) constitute a regulatory scheme which in many aspects is inconsistent with the HMTA and the regulations issued thereunder. Specifically, I find that the following SFSB rules are inconsistent and thus preempted: Rule 1(d)/R29.551(d); Rule 3/R29.553; Rule 4/R29.554; Rule 5/R29.555; Rule 6/R29.556; Rule 7(b–c)/R29.557(b–c); and Rule 10(1)(c)/R29.560(1)(c). I find the following DPH rules to be inconsistent and thus preempted: Rule 1(e)/R325.5801(e) Rule 3/R325.5803; Rule 4/R325.5804; Rule 5/R325.5805; Rule 6/R325.5806; Rule 7(b–c)/R325.5807(b–c); and Rule 10(1)(c)/R325.5810(1)(c).

The following SFSB rules are not preempted: Rule 1(a–c)/R29.551(a–c); Rule 2/R29.552; Rule 7(a)/R29.557(a); Rule 8/R29.558; Rule 9/R29.559; and Rule 10(1)(a–b) and (2)/R29.560(1)(a–b) and (2). The following DPH rules are not preempted: Rule 1(a–d,f)/R325.5801 (a–d,f); Rule 2/R325.5802); Rule 7(a)/R325.5807(a); Rule 8/R325.5808; Rule 9/R325.5809; and Rule 10(1)(a–b) and (2)/R325.5810(1)(a–b) and (2).

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–9—State of Vermont; Letter From Governor Concerning Highway Shipment of Spent Fuel Through Vermont

Applicant: Nuclear Assurance Corporation (IRA–22).

Non-Federal rule affected: Letter dated October 8, 1982, from the Governor of Vermont advising Nuclear Assurance Corporation to suspend spent fuel shipments through Vermont.

Mode affected: Highway

Ruling: The letter from the Governor of Vermont dated October 8, 1982, does not constitute a State requirement within the meaning of the Hazardous Materials Transportation Act (HMTA). Therefore, the issue of inconsistency with the HMTA does not arise.

I. Background

By letter dated October 14, 1982, Nuclear Assurance Corporation (NAC) applied for an administrative ruling on the question of whether a letter sent to it by the Governor of Vermont constitutes a State requirement which is inconsistent with, and thus preempted by, the HMTA or the HMR. The complete text of the letter is as follows:

October 8, 1982.

Nuclear Assurance Corporation,
24 Executive Park West, Atlanta, Georgia 30329

This is to advise you that the State of Vermont does not intend to permit any further shipments of spent fuel through Vermont until such time as the responsible federal agencies establish and enforce a uniform national policy regarding such shipments. Vermont will not be placed at a disadvantage because of actions in other states which ban or have the effect of banning shipments in violation of applicable federal law. More specifically, Vermont may not be used as a route until the federal Department of Transportation and the Nuclear Regulatory Commission fulfill their legal responsibilities with respect to any statutes, regulations or ordinances in the states of Michigan and New York that are inconsistent with preemptive federal law and have the effect of forcing shipments through this state.

Since you stopped shipments through Vermont on September 3, 1982, Vermont Secretary of Transportation Tom Evslin has written to Drew Lewis, Secretary of the U.S. Department of Transportation, expressing our strong concerns regarding the unfair impact on Vermont resulting from the actions of these other states. We are confident now that Mr. Lewis and other responsible federal officials understand the serious nature of the issue and plan to take necessary action to remedy the inequities that now exist.

I must advise you that if you were to plan shipments through Vermont in the meantime, I would seek all legal remedies available to me to stop the shipments, including an immediate injunction.

I hope I have clearly stated my position on this matter. If you should have any questions, I would expect to hear from you immediately.

Sincerely,

[Signed]

Richard A. Snelling,
Governor

NAC contended that the requirements imposed by the Governor's letter were inconsistent with the HMTA and the HMR. Specific reference was made to certain sections of the HMR which deal with highway routing of radioactive materials.

Pursuant to 49 CFR 107.205(a), the State of Vermont submitted comments regarding NAC's application for an inconsistency ruling. The State asserted that the Governor's letter was not a State requirement within the meaning of the HMTA, but a mere notice of intent to seek equitable relief at some time in the future.

II. Analysis

A. Is the Governor's Letter a State Requirement?

Section 112(a) of the HMTA holds that any State requirement which is inconsistent with the HMTA or the regulations issued thereunder is preempted. Before one can reach the issue of inconsistency, it is first necessary to determine whether the alleged conflict involves a State requirement.

Unlike the letter which is the subject of inconsistency ruling IR–7, the letter from the Governor of Vermont is not held out as a "State Order". Neither the letter itself, nor any related writings from the State, point to any intent that the letter assume the weight of law whether from executive authority or otherwise. The letter makes no indication of present restraints being placed on NAC's right to ship spent fuel through Vermont. Admittedly, the letter contains forceful language stating that "Vermont may not be used as a route until" the responsible Federal agencies deal with the inconsistent regulations of other states. However, subsequent language clearly demonstrates that this is not an enforceable State requirement. As stated therein: "I must advise you that if you were to plan shipments through Vermont in the meantime, I would seek all legal remedies available to me to stop the shipments, including an immediate injunction." Had the letter been intended as a State requirement, reference would have been made to immediate enforcement action rather than recourse to equitable remedies. Because the Governor's letter did not impose presently exercisable restrictions on the transportation of spent fuel by NAC, it must be accepted as no more than that which Vermont claims, a notice of intent to seek equitable relief.

NAC had been engaged in transporting spent fuel through Vermont via preferred routes that satisfied both the Department's transportation safety regulations and the physical protection requirements of the Nuclear Regulatory Commission. No suggestion has been made that NAC performed in any manner not in compliance with applicable laws and regulations. Upon receipt of the Governor's letter, NAC chose to suspend activities in Vermont until the issue was resolved. This was a matter of business judgment. Nothing prevented NAC from continuing its planned shipments until such time as Vermont sought, and ultimately obtained, an injunction. While continuation of the planned series of shipments might have been imprudent, it would not have constituted a violation of any State law, order or regulation.

On the basis of the foregoing, I conclude that the October 8, 1982, letter to NAC from the Governor of Vermont is not a State requirement within the meaning of the HMTA.

B. Is the Letter Inconsistent?

Section 112(a) of the HMTA preempts any State requirement which is inconsistent with the HMTA or the regulations issued thereunder. Because the Governor's letter which is the subject of this proceeding has been found not to be a State requirement within the meaning of the HMTA, the question of inconsistency does not arise.

III. Ruling

For the foregoing reasons, I find that the letter of October 8, 1982, from the Governor of Vermont to NAC is not a State requirement within the meaning of the HMTA and therefore is not subject to preemption under that Act.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–10—New York State Thruway Authority Restrictions on the Transportation of Radioactive Materials

Applicant: Nuclear Assurance Corporation (IRA–23).

State rule affected: Section 102.1(q) of the Rules and Regulations of the New York State Thruway Authority (Chapter III, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York).

Mode affected: Highway.

Ruling: Section 102.1(q) of the Rules and Regulations of the New York State Thruway Authority is inconsistent with the HMTA and the regulations issued thereunder and is, therefore, preempted.

I. Background

By letter dated October 20, 1982, Nuclear Assurance Corporation (NAC) applied for an administrative ruling on the question of whether the prohibition on transportation of radioactive materials over facilities operated by the New York State Thruway Authority (NYSTA) is inconsistent with, and thus preempted by, the HMTA or the HMR. The prohibition is contained in section 102.1(q) of Chapter III, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York:

Part 102. Limitations on Use of the Thruway System

102.1 Prohibited uses of the Thruway.

Use of the Thruway system and entry thereon is prohibited at all times, with the noted exceptions:

* * * * *

(q) Vehicles carrying radioactive materials except under such procedures as may be adopted by the authority board, and as thereafter amended, from time to time, by the department of operations with the approval of the chairman.

II. Analysis

A. Dual Compliance Test

The NYSTA rule being challenged by NAC prohibits use of the Thruway system to "vehicles carrying radioactive materials except under such procedures as may be adopted by the authority board." The procedures adopted by the NYSTA apparently involve the case-by-case consideration of requests to use the Thruway. In its response to NAC's application for an inconsistency ruling, NYSTA stated its position on radioactive shipments as:

Apart from certain operational requirements which can easily be met, radioactive shipments will be permitted on the Thruway when we are properly indemnified for any exposure. (NYSTA letter dated July 1, 1983, p. 1.)

In practice, NYSTA has usually granted approval for shipments of low level radioactive materials but, with the recent exception of certain shipments of spent fuel which a Federal District Court ordered removed from New York, NYSTA has historically denied the use of the Thruway to vehicles transporting highway route controlled quantity radioactive material (e.g. spent nuclear fuel).

The Federal routing rule which carriers of highway route controlled quantity radioactive material must follow is set forth at § 177.825(b) of the HMR (49 CFR 177.825(b)). It requires such carriers to:

. . . ensure that the vehicle operates over preferred routes selected to reduce time in transit, except that an Interstate System bypass or beltway around a city shall be used when available.

The section then defines "preferred route" as:

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section, and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Shipments of Large Quantity Radioactive Materials".

The State of New York has not designated any alternate preferred routes. Therefore, the preferred routes in New York are Interstate System highways. The New York State Thruway, although financed by construction bonds, has been designated a part of the Interstate System of highways with the exception of that segment of Interstate 87 between Suffern and Newburgh. With the exception of that segment, therefore, the New York State Thruway is a preferred route as defined in § 177.825(b)(1).

Consequently, under the "dual compliance" test, the question at issue is: Is it possible for NAC to comply with both the Federal and the NYSTA rules? NAC sought to transport spent nuclear fuel from Chalk River, Ontario to Savannah River, South Carolina. For the purposes of this ruling, the routes it identified involved entering the United States at a point in New York State and proceeding south to Pennsylvania. As shown below, each of these routes involved operating over a portion of the Thruway and was thus blocked by the NYSTA rule.

1. I–81 south to Syracuse, east on I–90 (Thruway) approximately seven miles to connect with I–481 and then proceeding south on I–81 to Pennsylvania.

2. I–87 south to Newburgh, then west on I–84 to Pennsylvania. I–87 between Albany and Newburgh is part of the Thruway.

3. I–87 south to I–90, west on I–90 (Thruway) to I–88, southwest to I–81, then south to Pennsylvania.

In making its route selection, however, NAC is not limited to consideration of a New York entry only and, by necessity, must examine each of the routes available to it for entry at the Canadian border. As demonstrated in IR–8 and IR–15, it may choose entry points in Michigan or Vermont, utilizing preferred routes in those States. NAC is not required by HM–164 (nor has any showing been made that it is required under Canadian law) to enter the U.S. at the New York/Canadian border. By selecting a preferred route which begins in the U.S. in either Michigan or Vermont, NAC could comply with the NYSTA restrictions by avoiding the facilities subject to their jurisdiction, and at the same time comply with the broad Federal standard regarding operation over preferred routes. Therefore, on the narrow question of whether it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the NYSTA rules, I find in the affirmative. The NYSTA rule cannot be deemed inconsistent on the basis of the dual compliance test.

B. Obstacle Test

Under the "obstacle" test, the question at issue is whether section 102.1(q) of the Rules and Regulations of the NYSTA presents an obstacle to Congress' dual purposes in enacting the HMTA.

The HMTA authorizes the Secretary of Transportation to promulgate regulations in furtherance of the purpose of the Act, "to protect the Nation adequately against the risks . . . inherent in the transportation of hazardous materials. . ." The Federal rules on highway routing of radioactive materials were issued under this authority. The preamble to the Final Rule (46 FR 5298; hereinafter referred to as HM–164) stated that, while exhaustive studies revealed "that the public risks in transporting (radioactive) materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions on the highway mode of transportation", MTB believed "that these currently low risks will be further minimized by the adoption of driver training requirements and provisions of a method for selecting the safest available highway routes for carriers of large quantity radioactive materials." (46 FR 5299).

Since one objective of HM–164 was to further the Congressional goal of hazardous materials transportation safety, it is necessary to examine the safety impacts of the NYSTA rule. As described above, the practical effect of the NYSTA rule is to redirect shipments of highway route controlled quantity radioactive material into adjoining states. By doing so, the NYSTA has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If the NYSTA could impose such restrictions on the availability of highway routes to vehicles engaged in the transportation of radioactive materials, then any political subdivision of a State could do so. As has been stated with regard to similar State and local requirements, the proliferation of independently enacted restrictions would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA.

The NYSTA rule is not based upon any finding that transportation of highway route controlled quantity radioactive materials over the Thruway would present an unacceptable safety risk. Rather, as clearly stated in the NYSTA's response to NAC's application, such transportation is considered to present an unacceptable financial risk. (". . . radioactive shipments will be permitted on the Thruway when we are properly indemnified for any exposure." NYSTA letter of July 1, 1983.) By denying use of the Thruway to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification, the NYSTA rule directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported. For this reason, the NYSTA rule necessarily poses an obstacle to the accomplishment of the Congressional objective of enhancing hazardous materials transportation safety.

The second Congressional objective purpose in enacting the HMTA was to prevent a patchwork of varying and conflicting State and local regulations. This goal of national uniformity in hazardous materials transportation safety regulation was balanced by the recognition of valid State and local interests in this area. In order to maintain this balance when promulgating HM–164, the Department incorporated into the rule a procedure whereby States, in consultation with local governments, could designate routes other than Interstate System highways as preferred routes. As set forth in the HMR, States may require vehicles containing highway route controlled quantity radioactive material to operate over routes other than Interstate System highways so long as those alternate routes are selected in accordance with specified DOT guidelines and they are designated as alternate preferred routes by a State routing agency as defined in 49 CFR 171.8. The NYSTA is not a State routing agency.

The NYSTA rule thus stands as a repudiation of the Department's rule of national applicability on highway routing of radioactive materials. It effectively blocks the use of Interstate System highways without ensuring the availability of alternate preferred routes. It is clearly an obstacle to the accomplishment of the Congressional goals of increased safety and national uniformity in hazardous materials transportation regulation.

In its response to NAC's application, the NYSTA contended that its rule did not prohibit the interstate transportation of radioactive materials through New York. Shipments proceeding south on Interstate 91 through Vermont and Massachusetts to Interstate 84 in Connecticut could proceed on Interstate 84 across the southeastern corner of New York and into Pennsylvania. While this may be so, it does not change the fact that the NYSTA rule severely curtails New York's exposure to radioactive materials shipments at the expense of neighboring jurisdictions.

The Supreme Court has consistently held this kind of State rule to violate the Commerce Clause of the Constitution. See, e.g., *Kassell* v. *Consolidated Freightways Corporation of Delaware*, 450 U.S. 662 (1981), wherein the Supreme Court stated that "a State cannot constitutionally promote its own parochial interests by requiring safe vehicles to detour around it."

While the Department has no authority to rule on Commerce Clause issues, its administrative rulings on preemption under the HMTA have followed Supreme Court rulings in this area. Applying this to the instant case leads inexorably to the conclusion that, if any one State may use insurance requirements to deflect interstate carriers of hazardous materials into other jurisdictions, then all States may do so. The logical result would be, if not a total cessation of a Congressionally recognized form of interstate transportation then the very patchwork of varying and conflicting State and local regulations which Congress sought to preclude.

On the basis of the foregoing, I conclude that the NYSTA rule impedes Congress' dual purposes in enacting the HMTA.

III. Ruling

For the foregoing reasons, I find that section 102.1(q) of the Rules and Regulations of the New York State Thruway Authority is inconsistent with the HMTA and the regulations issued thereunder and, in accordance with 49 U.S.C. 1811(a), is preempted.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–11—Ogdensburg Bridge and Port Authority; Ogdensburg, New York; Radioactive Materials Transportation Rules

Applicant: Department of Transportation (IRA–24).

Non-Federal rule affected: Sections 5701.3, 5702.1, 5702.2, and 5702.3 of the Rules and Regulations Governing the Operation of the Ogdensburg-Prescott International Bridge (Chapter LXV, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York).

Mode affected: Highway.

Ruling: To the extent that they affect the interstate transportation of other than highway route controlled quantity radioactive material, §§ 5701.3, 5702.1, 5702.2, and 5702.3 of the Rules and Regulations Governing the Operation of the Ogdensburg-Prescott International Bridge are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted undr 49 U.S.C. 1811(a).

No determination is made as to the consistency of §§ 5701.3, 5702.1, 5702.2 and 5702.3 insofar as they affect the transportation of highway route controlled quantity radioactive material.

I. Background

The Ogdensburg Bridge and Port Authority (OBPA) is a public benefit corporation of the State of New York which operates a number of transportation facilities including the Ogdensburg-Prescott International Bridge (Ogdensburg, New York-Prescott, Ontario). The OBPA administers and develops its facilities as an independent, self-supporting agency.

The rules governing operation over the Ogdensburg Bridge are set forth in Chapter LXV, Title 21, Official Compilation of the Codes, Rules and Regulations of the State of New York. In September of 1981, the OBPA adopted amended rules governing the transportation of radioactive materials. The amended rules are set forth in §§ 5701.3 and 5702.1-5702.3. Essentially, the rules: incorporate the provisions of St. Lawrence County Local Law No. 10 (see IR–12); require prior approval by the OBPA of insurance coverage and/or indeminification provisions; and reserve to the OBPA the right to specify the time of crossing, to provide any escort deemed necessary and to obtain full compensation for the costs associated with the clearance and crossing of radioactive materials

Shortly after the OBPA adopted the amended rules, the Department's Final Rule, hereinafter referred to as HM–164 (46 FR 5298), regarding the highway routing of radioactive materials went into effect. It set forth general routing requirements for placarded shipments of radioactive materials and specific routing requirements for large quantity radioactive material. A subsequent rulemaking (48 FR 10218) which became effective July 1, 1983, deleted the term "large quantity" and substituted the term "highway route controlled quantity." Whether a highway shipment of radioactive materials is required to comply with the specific routing requirements depends on whether it constitutes a highway route controlled quantity.

As codified at 49 CFR 177.825, HM–164 requires motor carriers of highway route controlled quantity radioactive material to operate over "preferred routes", i.e., Interstate System highways or alternate routes designated by a State routing agency in accordance with DOT guidelines. Such carriers may deviate from preferred routes only when necessitated by the conditions set forth in § 177.825(d)(2). The Ogdensburg Bridge is not part of an Interstate System highway; the State of New York has not designated any non-Interstate highways as alternate preferred routes; and the Department is not aware of any circumstances which currently require transporters of highway route controlled quantity radioactive material to operate over the Ogdensburg Bridge. Therefore, irrespective of the OBPA rules, at the present time, transportation of highway route controlled quantity radioactive material over the Ogdensburg Bridge would constitute a violation of the HMR. While acknowledging this fact, the Department also recognize that transportation of highway route controlled quantity radioactive material across the Ogdensburg Bridge and through adjacent St. Lawrence County has occurred without incident prior to the adoption of HM–164 and that this route could receive consideration as a possible alternate preferred route in this area of New York at such time as the State choose to designate preferred routes. On this basis, the Department initiated this inconsistency proceeding, in accordance with 49 CFR 107.209(b), on the issue of whether the OBPA rules would be inconsistent with the HMTA, and therefore preempted, if the Ogdensburg Bridge were designated as

part of a preferred route. Accordingly, on May 12, 1983, the Department published a notice and invitation to comment in the **Federal Register** (48 FR 21496).

In response to the public notice, comments were received from ten parties. The New York State Department of Law submitted a comment urging that this proceeding be dropped because the issue presented was hypothetical. Citing the Department's acknowledgement that, at the present time transportation across the Bridge of highway route controlled quantity radioactive material would constitute a violation of the HMR, the State argued that, since the State has not indicated any intention to designate the Ogdensburg Bridge as a preferred route, this proceeding concerns "an issue which is not now, and may never become, ripe for decision." This point is persuasive and, upon consideration, is dispositive of this proceeding insofar as highway route controlled quantity radioactive material is concerned.

However, as asserted in the comment submitted by Federal Express Corporation, and subsequently confirmed by Departmental analysis, the effect of the OBPA rules is not limited to highway route controlled quantity radioactive material. By imposing additional requirements on the transportation of radioactive materials which are not required to operate solely on preferred routes, the OBPA rules present issues which are not hypothetical or speculative. Therefore, the Department has determined that issuance of an inconsistency ruling with regard to the radioactive materials transportation rules of the OBPA is appropriate at this time.

II. Analysis

The following determination of whether any or all of the radioactive materials transportation rules of the OBPA are inconsistent with the HMTA or the HMR, is based on the two-prong test described in MTB's procedural regulations and discussed in the General Preamble.

The radioactive materials transportation rules of the OBPA appeared in their entirety as Appendix C to the public notice and invitation to comment which was published in the **Federal Register** on May 12, 1983. The rules consist of four sections which are addressed in consecutive order below.

§ 5701.03—Permit Requirement

Section 5701.3 sets forth the following requirements:

§ 5701.3. Vehicles requiring special permits or escorts. No vehicle falling within any of the following categories shall be permitted to use the facilities unless a special permit therefor is issued by the Authority Employee in charge, and, if required as a condition of such permit, a special escort is provided and fees, including consulting engineering services if required, therefor paid, in advance, viz:

* * * * *

(f) Vehicles which are transporting or have recently carried explosives, radioactive materials or other dangerous commodities and show any evidence or residue of such materials or commodities.

* * * * *

In determining whether or not special permits should be issued or, if issued, what conditions should apply thereto, such Authority Employee in charge may confer with the Authority's consulting engineers, counsel and/or whatever other specialist or regulatory agencies he may consider appropriate in the circumstances, but such determination in any given situation shall be the sole and exclusive judgment of such Authority Employee in charge and final and binding upon all persons. Application for a special permit shall be made at least 48 hours in advance of the proposed crossing. If permission is granted, the Authority shall specify the time of the crossing.

Section 5701.3 prohibits the highway transportation of radioactive materials without a permit issued by the Authority Employee in charge, and therefore constitutes a routing rule in the form of a permit requirement. The term "routing rule" is defined in the HMR in Appendix A to Part 177 as follows:

"Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effect. . . .

With regard to other than highway route controlled quantity radioactive material, § 5701.3 restricts such transportation by denying access to those carriers which, although in compliance with the HMR, have not obtained a permit issued by the Authority Employee in charge. Moreover, this restriction creates the likelihood of such shipments being diverted to other jurisdictions. And the restriction applies because of the hazardous nature of the cargo. For these reasons, § 5701.3 constitutes a local routing rule within the meaning of the HMR.

MTB first addressed the issue of local transportation permits for transport of radioactive materials in IR–1 (43 FR 16954, April 20, 1978) which dealt with § 175.111 of the New York City Health Code. That regulation required a certificate of Emergency Transport for each shipment in or through the city of identified quantities of radioactive material. In that ruling, MTB concluded that the local permit requirement was not inconsistent because there was no identifiable requirement in the text of the HMTA or HMR which provided a basis for a finding of inconsistency. Having reached this conclusion, MTB announced its intent to commence rulemaking to consider the need for routing requirements under the HMTA for highway carriage of radioactive materials. In view of this announcement, MTB added that permit requirement similar to that of New York City "may face a necessary future harmonization with rulemaking that results from the inquiry MTB intends to undertake." (43 FR 16958.)

The planned inquiry alluded to in IR–1 resulted in the promulgation of HM–164 and this proceeding represents the "necessary future harmonization with rulemaking" to be faced by jurisdictions which adopted requirements similar to those in the New York City ordinance. Several commenters argued that HM–164 was invalid as a result of the District Court holding in *City of New York* v. *DOT*, 539 F. Supp. 1237 (1982). However, that decision was reversed on appeal to the Second Circuit Court of Appeals (715 F. 2d 732, August 10, 1983) and on February 27, 1984, the Supreme Court dismissed the city's appeal from the Circuit Court ruling. Therefore, the present case differs from that presented in IR–1, in that there is now an identifiable Federal requirement that provides a standard against which a State/local requirement can be compared for consistency.

Transporters of other than highway route controlled quantity radioactive material are subject to the Federal routing requirements set forth in § 177.825(a) of the HMR.

(a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population density and activities, time of day and day of week during which transportation will occur. In performance of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—

(1) There is only one practicable highway route available, considering operating necessity and safety, or

(2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

Section 5701.2 imposes a further restraint on route selection by requiring transporters to obtain a permit to cross the Ogdensburg Bridge. This

requirement is based on a presumption that the OBPA has the authority to control, and ulimately, to prohibit this form of interstate commerce.

The OBPA is a creature of the State of New York. As such, it cannot be imbued with greater authority than resides in the parent State. The extent to which States and the political subdivisions may regulate the highway routing of radioactive materials has been thoroughly addressed in the inconsistency rulings published herewith. As stated in IR–6:

Generally, in the absence of departmental involvement in a safety issue, States and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

In the course of developing the regulations promulgated under HM–164, DOT gave specific consideration to the subcategory of radioactive materials affected by the OBPA rules (i.e, other than highway route controlled quantity radioactive material) and selected the above-quoted general guidelines as the appropriate regulatory measure, as opposed to the possible alternatives of no regulation at all or a regulation mandating the use of preferred routes. In other words, DOT selected and implemented a level of requirements based on a comparative assessment of the risks presented by shipments of different quantities of radioactive materials. In doing so, DOT performed the duty imposed on it by the HMTA and, having satisfied all of the procedural requirments of the HMTA and the Administrative Procedure Act, established a rule which is national in its scope and application. This rule does not eliminate risk. That is not possible. What the rule does accomplish is to provide an orderly and predictable regimen for the transportation of other than highway route controlled quantity radioactive material, a regimen which presents a low and equitably distributed level of risk from transportation that is far outwighed by the societal benefits derived from that transportation. While a community may legitimately seek to further reduce its exposure to the risk inherent in the transportation of these materials, it may not do so by exporting that risk, albeit a low one, to its neighbors. Such an approach not only frustrates the equitable distribution of risk which the Federal rule sought to achieve, but also impedes the accomplishment and execution of the HMTA's objective of regulatory uniformity. For these reasons, such an approach is clearly inconsistent with the HMTA and the HMR.

The OBPA permit requirements in § 5701.3 is such an approach. By restricting access to the international crossing at the Ogdensburg Bridge, the requirement redirects shipments of other than highway route controlled quantity radioactive material into adjoining jurisdictions. In bringing about this result, the OBPA has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If the OBPA could impose such restrictions on the availbility of highway routes to vehicles engaged in the transportation of radioactive materials, then any political subdivision of a State could do so. As has been stated with regard to similar State and local requirements, the proliferation of independently enacted restrictions would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA. The OBPA rules, moreover, have the added dimension of restricting international commerce.

On the basis of the foregoing, I find that § 5701.3 of the OBPA rules, to the extent that it affects the transportation of other than highway route controlled quantity radioactive material, is inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. 1811(a).

§ 5702.1—Incorporation of Local Law

Section 5702.1 prohibits passage over the Ogdensburg Bridge by any vehicle which has not satisfied the requirements of St. Lawrence County Local Law No. 10 Regulating the Transportation of Radioactive Materials through St. Lawrence County. St. Lawrence County Local Law No. 10 is the subject of a separate inconsistency ruling (IR–12, published herewith) and has been determined to be inconsistent to the extent that it affects the transportation of other than highway route controlled quantity radioactive material. Therefore, on the basis of the analysis contained in IR–12, I find § 5702.1 of the OBPA rules to be inconsistent to the extent that it affects the transportation of other than highway route controlled quantity radioactive material.

§ 5702.2—Indemnification

Section 5702.2 of the radioactive materials transportation rules of the OBPA sets forth the following requirements concerning indemnification:

§ 5702.2. In addition to the Certificate of Emergency Transportation, responsible state or federal agencies and the carrier shall submit for Authority's prior approval evidence of proper insurance coverage and/or and acceptable indemnification and hold harmless agreement.

Unlike the Vermont rule on insurance coverage which is considered in IR–15, the OBPA rule does not quantify "proper insurance coverage." Therefore, comparison with Federal requirements on financial responsibility is not possible. Instead, § 5702.2 is comparable to the requirement of the New York State Thruway Authority (NYSTA) which was the subject of IR–10. In that ruling, MTB stated:

The NYSTA rule is not based upon any finding that transportation of highway route controlled quantity radioactive material over the Thruway would present an unacceptable safety risk. Rather, as clearly stated in the NYSTA's response to NAC's application, such transportation is considerd to present an unacceptable financial risk. ("... radioactive shipments will be permitted on the Thruway when we are properly indemnified for any exposure." NYSTA letter of July 1, 1983.) By denying use of the Thruway to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification, the NYSTA rule directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported. For this reason, the NYSTA rule necessarily poses an obstacle to the accomplishment of increased hazardous materials transportation safety.

The same reasoning applies to § 5702.2 of the OBPA rules and, on that basis, I find § 5702.2 to be inconsistent to the extent that it affects the transportation of other than highway route controlled quantity radioactive material.

Because § 5702.2 has been determined to impose a requirement which impedes

the accomplishment of the HMTA, it is not necessary to address the fact that the section imposed an obligation to act, not only on the carrier, but also on Federal agencies. Nevertheless, it should be noted that, regardless of the nature of the requirement imposed, any attempt by a political subdivision of a State to impose an obligation to act on the Federal government would be subject to the strictest scrutiny in connection with both statutory and Constitutional preemption.

§ 5702.3—Additional Requirements

Section 5702.3 of the radioactive materials transportation rules of the OBPA imposes the following additional requirements:

> § 5702.3. As a condition of the special permit or escort set forth in 5701.3, the Authority shall specify the time of crossing, provide escort if deemed necessary and be fully compensated for any and all costs associated with the clearance and crossing of the radioactive materials.

Previously in this ruling, the requirement for advance approval by OBPA to transport other than highway route controlled quantity radioactive material across the Ogdensburg Bridge was found to be inconsistent. Since § 5702.3 imposes additional requirements which transporters must satisfy before a permit will be issued, it constitutes an integral part of the inconsistent regulatory scheme and is, therefore, also inconsistent to the extent that it affects the interstate transportation of other than highway route controlled quantity radioactive material.

III. Ruling

For the foregoing reasons, I find that, to the extent they affect the interstate transportation of other than highway route controlled quantity radioactive material, §§ 5701.3, 5702.1, 5702.2, and 5702.3 of the Rules and Regulations Governing the Operation of the Ogdensburg-Prescott International Bridge are inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. 1811(a). No determination is made as to the consistency of §§ 5701.3, 5702.1, 5702.2, and 5702.3 insofar as they affect the transportation of highway route controlled quantity radioactive material.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–12—St. Lawrence County, New York; Local Law Regulating the Tansportation of Radioactive Materials Through St. Lawrence County

Applicant: Department of Transportation (IRA–25).

Non-Federal rule affected: St. Lawrence County Local Law No. 10 for the year 1980.

Mode affected: Highway.

Ruling: To the extent that they affect the interstate transportation of other than highway route controlled quantity radioactive material, Sections 2 through 6 of Local Law No. 10 are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under 49 U.S.C. 1811(a). No determination is made as to the consistency of Sections 2 through 6 of Local Law No. 10 insofar as they affect the transportation of highway route controlled quantity radioactive material.

I. Background

On August 11, 1980, the St. Lawrence County Board of Legislators adopted Local Law No. 10 for the year 1980 (hereinafter referred to as "Law No. 10"), which was duly published in accordance with § 24 of the County Law of the State of New York. Law No. 10 established the requirement that any party seeking to transport certain specified quantities of radioactive materials within St. Lawrence County must obtain a Certificate of Emergency Transport.

St. Lawrence County lies at the foot of the international bridge linking Ogdensburg, New York, and Prescott, Ontario. Thus, any restriction on transportation in St. Lawrence County imposes an equal restriction on international transportation over the Ogdensburg Bridge.

The Department of Transportation issued a Final Rule, hereinafter referred to as HM–164 (46 FR 5298), regarding the highway routing of radioactive materials which become effective February 1, 1982. It set forth general routing requirements for placarded shipments of radioactive materials and specific routing requirments for large quantity radioactive material. A subsequent rulemaking (48 FR 10218) which became effective July 1, 1983, deleted the term "large quantity" and substituted the term "highway route controlled quantity."

As codified at 49 CFR 177.825, HM–164 require motor carriers of highway route controlled quantity radioactive material to operate over "preferred routes", i.e., Interstate System highways or alternate routes designated by a State routing agency in accordance with DOT guidelines. Such carriers may deviate from preferred routes only when necessitated by the conditions set forth in § 177.825(b)(2). No Interstate System highways rune through St. Lawrence County; the State of New York has not designated any non-Interstate highways as alternate preferred routes; and the Department is not aware of any circumstances which currently require transporters of highways route controlled quantity radioactive material to operate over non-preferred routes in St. Lawrence County. Therefore, irrespective of local regulation, at the present time, transportation of high route controlled quantity radioactive material through St. Lawrence County would constitute a violation of the HMR. While acknowledging this fact, the Department also recognized that transportation of highway route controlled quantity radioactive material across the Ogdensburg Bridge and through St. Lawrence County had occurred without incident prior to the adoption of HM–164 and that this route could receive consideration as a possible alternate preferred route in this area of New York such time as the State chooses to designate preferred routes. On this basis, the Department initiated this inconsistency proceeding, in accordance with 49 CFR 107.209(b), on the issue of whether Law No. 10 would be inconsistent with the HMTA, and therefore preempted, if non-Interstate System highways in St. Lawrence County were designated as part of a preferred route. Accordingly on May 12, 1983, the Department published a notice and invitation to comment in the **Federal Register** (48 FR 21496).

In response to the public notice, comments were received from eleven parties. The New York State Department of Law submitted a comment urging that this proceeding be dropped because this issue presented was hypothetical. Citing the Department's acknowledgement that, at the present time, through transportation of highway route controlled quantity radioactive material would constitute a violation of the HMR, the State argued that, since the State has not indicated any intention to designate a preferred route through St. Larence County, this proceeding concerns "and issue that is not now, and may never become, ripe for decision." This point is persuasive and, upon consideration, is dispositive of this proceeding insofar as highway route controlled quantity radioactive material is concerned.

However, as asserted in the comment submitted by Federal Express Corporation, and subsequently confirmed by Department analysis, the effect of Law No. 10 is not limited to highway route controlled quantity radioactive material. By imposing additional requirements on the transportation of radioactive materials which are not required to operate solely on preferred routes, Law No. 10 presents issues which are not hypothetical or speculative. Therefore, the Department has determined that issuance of an inconsistency ruling with regard to Law No. 10 is appropriate at this time.

II. Analysis

Law No. 10, which apeared in its entirety as Appendix D to the public notice and invitation to comment, consists of seven sections which are addressed in consecutive order below.

Section 1 of Law No. 10 sets forth the following policy statements:

> Section 1: The St. Lawrence County Legislature hereby regulates the transportation of nuclear materials specified below in or through St. Lawrence County for the purpose of protecting the health and safety of residents until such time as adequate information is made available by Federal and State agencies responsible for radioactive materials to prepare an adequate emergency response plan.

The HMTA does not preempt all State and local regulation of hazardous materials tranportation safety, only those regulations which are inconsistent. Therefore, the mere statement of intent to regulate is not inconsistent with the HMTA. Since Section 1 imposes no obligation to act on any party, no problem arises under the "dual compliance"test. With regard to the "obstacle" test, the statement of intent indicates a role for local government which does not exceed that intended by the framers of the HMTA. Accordingly, Section 1 is consistent with the HMTA.

Section 2 of Law No 10 identifies certain classes of radioactive materials for which a transportation permit is required:

> Section 2: A Certificate of Emergency Transport issued by the St. Lawrence County Emergency Services Coordinator-Civil Defense Director shall be required for such shipment of any of the following materials:
>
> 1. Plutonium isotopes in any quantity exceeding 2 grams, or 20 curies.
>
> 2. Uranium enriched in the isotope U235 exceeding 20 percent of the total uramium content in quantities where the U235 content exceeds one kilogram.
>
> 3. Any actinides (elements with atomic number 89 or greater) the activity of which exceeds 20 curies.
>
> 4. Spent reactor fuel elements or mixed fission products associated with such spent fuel elements whose activity exceeds 20 curies.
>
> 5. Any quantity of radioactive material specified as a "large quantity" by the Nuclear Regulatory Commission in 10 CFR Part 71 and as amended entitled "Packaging of Radioactive Materials for transport", with the exception of Co–60 used for medical radiation therapy or medical research.

The hazard classes identified in subsections 1–5 of Section 2 have no direct counterparts in the HMR. Each subsection encompasses a group of materials, not all of which are highway route controlled quantity radioactive material as defined in 49 CFR 173.403(l). This raises two issues which are relevant to the question of inconsistency: hazard class definition and regulatory effect.

In prior inconsistency rulings, MTB has given notice that it considers the Federal role in definition of hazard classes to be exclusive. (IR–5, 47 FR 51991; IR–6, 48 FR 760; IR–8 and IR–15, published herewith.) As stated in IR–5, which dealt with a New York City ordinance regulating compressed gases:

> The HMR are, in and of themselves, a comprehensive and technical set of regulations which occupy approximately 1000 pages of the Code of Federal Regulations. . . . For the City to impose additional requirements based on differing hazard class definition adds another level of complexity to this scheme. Thus, shippers and carriers doing business in the City must know not only the classification of hazardous materials under the HMR and the regulatory significance of those classifications, but also the City's classifications and their significance. Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompanying decrease in overall public safety (47 FR 51994.)

By imposing additional requirements on a subgroup of radioactive materials, St. Lawrence County has, in effect, created a new hazard class. If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety. As stated in IR–6:

> The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulation. This is precisly the situation which Congress sought to preclude when it enacted the preemption provision of the HMTA (49 U.S.C. 1811). (48 FR 784.)

On the basis of the foregoing, I find that the hazard class definitions set forth in Section 2 of Law No. 10 constitute an obstacle to the accomplishment of Congressional objectives of enhanced safety and regulatory uniformity underlying enactment of the HMTA and adoption of the HMR.

The regulatory effect of the hazard classes defined in Section 2 is to impose a permit requirement on a number of radioactive materials, some of which are highway route controlled quantity and some not. This distinction is critical to a determination of whether Law No. 10 is inconsistent with the HMTA.

Since Section 2 prohibits the highway transportation of certain radioactive materials without a permit issued by the St. Lawrence County Civil Defense Diretor—Emergency Services Coordinator, it constitutes a routing rule in the form of a permit requirement. The term "routing rule" is defined in the HMR in Appendix A to Part 177 as follows:

> "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. . . .

With regard to other than highway route controlled quantity radioactive material, Law No. 10 restricts such transportation by denying access to those shipments which, although in compliance with the HMR, have not obtained a Certificate of Emergency transport. Moreover this restriction creates the likelihood of such shipments being diverted to other jurisdictions. And the restriction applies because of the hazardous nature of the cargo. For these reasons, Law No. 10 constitutes a local routing rule within the meaning of the HMR.

MTB first addressed the issue of local permits for transport of radioactive materials in IR–1 (43 FR 16954, April 20, 1978) which dealt with § 175.111 of the New York City Health Code. That regulation required a Certificate of Emergency Transport for each shipment in or through the city of the same materials identified in Section 2 of Law No. 10. In that ruling, MTB concluded: "There is not any identifiable

requirement in the text of the HMTA or in regulations issued thereunder that provides a basis for a finding of inconsistency with § 175.111." (43 FR 16957.) Having reached this conclusion, MTB stated:

> The legal validity of § 175.111 is still subject to serious doubt. . . . New York City and any other jurisdictions which have, or are contemplating, similar ordinances, should also bear in mind the fact that § 175.111 may be preempted by the Commerce Clause of the United States Constitution, or by the Atomic Energy Act of 1954 and regulations issued thereunder. . . . Finally, whatever the ultimate legal fate of § 175.111, such provisions may face a necessary future harmonization with rulemaking that results from the inquiry MTB intends to undertake. (43 FR 16958.)

The planned inquiry alluded to in IR–1 resulted in the promulgation of HM–164 and this proceeding represents the "necessary future harmonization with rulemaking" to be faced by jurisdictions which adopted ordinances similar to § 175.111 of the New York City Health Code. Several commenters argued that HM–164 was invalid as a result of the District Court holding in *City of New York* v. *DOT*, 539 F. Supp. 1237 (1982). However, that decision was reversed by the Second Circuit Court of Appeals (715 F. 2d 732, August 10, 1983) and on February 27, 1984, the Supreme Court dismissed the city's appeal from the Circuit Court ruling. Therefore, the present case differs from that presented in IR–1, in that there is now an identifiable Federal requirement that provides a standard against which a State or local rule may be compared for consistency.

Transporters of other than highway route controlled quantity radioactive material are subject to the Federal routing requirements set forth in § 177.825(a) of the HMR:

> (a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population desity and activities, time of day and day of week during which transportation will occur. In performance of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—
>
> (1) There is only one practicable highway route available, considering operating necessity and safety, or
>
> (2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

Section 2 of Law No. 10 imposes a further restraint on route selection by requiring transporters to obtain a local permit. This requirement is based on a presumption that St. Lawrence County has the authority to control, and ultimately, to prohibit this form of interstate commerce.

In its comments on this proceeding, the St. Lawrence County Board of Legislators asserts that this authority stems from the "fundamental function of local government" to protect the lives and property of it citizens; that its attempts at emergency response planning were hampered by a lack of information; and that its regulation was necessary to ensure adequate emergency response preparedness. Nothing in this argument points to any safety problem unique to St. Lawrence County. Therefore, if the argument is sustained with regard to Law No. 10, equal authority must be conceded to every local jurisdiction in the Nation. And this would lead directly to the proliferation of independent State and local restrictions on the highway transportation of radioactive materials which prompted the Department to adopt HM–164.

In other inconsistency rulings published herewith, radioactive materials routing rules in the form of shipment-specific permit requirements were determined to be inconsistent *per se*. As stated in IR–8:

> Generally, in the absence of Departmental involvement in a safety issue, States and, to the extent authorized by State Law, local governments, may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists for a state or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

In the course of developing the regulations promulgated under HM–164, DOT gave specific consideration to the subcategory of radioactive materials affected by Law No. 10 (i.e., other than highway route controlled quantity radioactive material) and selected the above-quoted general guidelines as the appropriate regulatory measure, as opposed to the possible alternatives of no regulation at all or a regulation mandating the use of preferred routes. In other words, DOT selected and implemented a level of requirements based on a comparative assessment of the risks presented by shipments of different quantities of radioactive materials. In doing so, DOT performed the duty imposed on it by the HMTA and, having satisfied all of the procedural requirements of the HMTA and Administrative Procedure Act, established a rule which is national in its scope and application. This rule does not eliminate the risk. That is not possible. What the rule does accomplish is to provide an orderly and predictable regimen for the transportation of other than highway route controlled quantity radioactive material, a regimen which presents a low and equitably distributed level of risk from transportation that is far outweighed by the societal benefits derived from that transportation. While a community may legitimately seek to further reduce its exposure to the risk inherent in the transportation of these materials, it may not do so by exporting that risk, albeit a low one, to its neighbors. Such an approach not only frustrates the equitable distribution of risk which the Federal rule sought to achieve, but also impedes the accomplishment and execution of the HMTA's objective of regulatory uniformity. For these reasons, such an approach is clearly inconsistent with the HMTA and the HMR.

The permit requirement in Section 2 of Law No. 10 is such an approach. By restricting access to highways in St. Lawrence County, the requirement redirects shipments of other than highway route controlled quantity radioactive material into adjoining jurisdictions. In bringing about this result, St. Lawrence County has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If St. Lawrence County could impose such restrictions on the availability of its highways to vehicles engaged in the interstate transportation of radioactive materials, then any local jurisidiction could do so. This would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA.

On the basis of the foregoing, I find Section 2 of Law No. 10, to the extent that it affects the interstate transportation of other than highway route controlled quantity radioactive material, to be inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. 1811(a).

Sections 3 through 6 of Law No. 10 set forth additional provisions related to the permit required by Section 2:

Section No.	Subject
3	Application procedure.
4	Approval criteria.
5	Expiration of the permit.
6	[illegible]

All of these provisions implement the permit requirement which has been determined to be inconsistent to the extent that if affects the transportation of other than highway route controlled radioactive material. It, therefore, follows that the provisions for administration and enforcement of the inconsistent requirement are also inconsistent. On this basis, I find that Sections 3 through 6 of Law No. 10, to the extent that they affect the interstate transportation of other than highway route controlled quantity radioactive material, are inconsistent with the HMTA and the HMR and, therefore, preempted.

Section 7 of Law No. 10 sets forth certain exemptions from the requirements of Law No. 10. Since this imposes no obligation to act, the issue of inconsistency does not arise.

III. Ruling

For the foregoing reasons, I find that, to the extent they affect the interstate transportation of other than highway route controlled quantity radioactive material, Sections 2 through 6 of Law No. 10, are inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. 1811(a). No determination is made as to the consistency of Sections 2 through 6 of Local Law No. 10 insofar as they affect the transportation of highway route controlled quantity radioactive material.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–13—Thousand Island Bridge Authority; Restrictions on the Transport of Radioactive Materials

Applicant: Department of Transportation (IRA–26).

Non-Federal rule affected: Sections 5503.2 and 5503.3 of Chapter LXIII, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York.

Mode affected: Highway.

Ruling: To the extent that it affects the transportation of radioactive materials, § 5503.3 of the rules governing operation of the Thousand Islands Bridge is inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with 49 U.S.C. 1811(a).

I. Background

The Thousand Islands Bridge Authority (TIBA) is responsible for the operation and maintenance of the Thousand Islands Bridge, an international crossing which links Collins Landing, New York, and Ivy Lea, Ontario and which constitutes a part of Interstate Highway I–81. By letter dated March 22, 1982, the TIBA applied to the Department of Transportation for a non-preemption determination regarding its rules and regulations governing the shipment of radioactive materials across the Thousand Islands Bridge. As set forth at 49 CFR 107.215(b)(4), any application for a non-preemption determination must contain an express acknowledgement by the applicant that the rule in question is inconsistent with the HMTA or the regulations issued thereunder. Such acknowledgement is not required if the rule has been determined inconsistent by a court of competent jurisdiciton or in an inconsistency ruling issued under 49 CFR 107.209. Neither of these exceptions applied to the rules governing the Thousand Islands Bridge. Therefore, when the TIBA, upon direct request, declined to acknowledge the inconsistency of the rules for which it had requested a non-preemption determination, the Department suspended action on the matter.

The question of whether the rules governing radioactive materials transportation across the Thousand Islands Bridge are inconsistent with the HMTA resurfaced in October of 1982. In a letter to the Department, Nuclear Assurance Corporation cited "a permit requirement for an arbitrary, but substantial insurance coverage at the Thousand Islands Bridge" as one of several factors restricting the availability of routes for transporting spent nuclear fuel from Chalk River, Ontario, to a reprocessing facility at Savannah River, South Carolina. Therefore, notwithstanding that application for an inconsistency ruling had not been filed, the Department elected, in accordance with 49 CFR 107.209(b), to issue an administrative ruling on the question of whether or not the radioactive materials transportation rules of the TIBA are inconsistent with the HMTA or the regulations issued thereunder.

On May 12, 1983, a public notice and invitation to comment was published in the **Federal Register** (48 FR 21496). Comments were received from ten parties. One commenter, the New York State Department of Law, urged that this proceeding be dismissed "because the issue presented is hypothetical, and no determination is necessary at this time", as no carrier had applied for an inconsistency ruling or otherwise indicated a wish to use a route across the Thousand Islands Bridge. This comment arises from the misapprehension that the Department may issue inconsistency rulings only upon the direct application of a party claiming to have been affected by an allegedly inconsistent State or local rule. The HMTA does not support this interpretation. The preemption provision at section 112(a) states clearly that any State or local requirement which is inconsistent is preempted. No reference of any kind is made to a need for third party involvement. The procedural regulations adopted by MTB to implement section 112 are explicit on this matter:

> (b) Notwithstanding that application for a ruling has not been filed under § 107.203, the Associate Director for HMR, on his own initiative, may issue a ruling as to whether a particular State or political subdivision requirement is inconsistent with the Act or the regulations issued under the Act. (49 CFR 107.209.)

The Department clearly has authority to issue an inconsistency ruling *sua sponte*. Furthermore, as part of an Interstate System highway, the Thousand Islands Bridge is a preferred route for the highway transportation of highway route controlled quantity radioactive materials. Whether or not carriers have recently indicated a wish to use the bridge is irrelevant to the question of whether the TIBA rules are inconsistent. While this may be relevant in a non-preemption proceeding which involves consideration of the extent to which an inconsistent rule affects interstate commerce, the argument is premature in the context of an inconsistency proceeding.

The comment that this issue is hypothetical may, therefore, be dismissed as without merit. Where appropriate in the subsequent analysis of the TIBA regulations, other comments

and previous administrative decisions will be discussed

II. Analysis

The radioactive materials transportation regulations of the TIBA, which are the subject of this ruling, are contained §§ 5503.2 and 5503.3 of Chapter LXIII, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York:

5503.2. Types of vehicles excluded. Vehicles loaded in such a manner or with such materials or so constructed or equipped as possibly to endanger persons or property or likely to render the use of the facilities unsafe, shall be excluded from use of the facilities, and the transportation of any such vehicle is hereby prohibited. Without limiting the foregoing, the following types of vehicles come within the meaning of this section and shall be denied use of the facilities:

* * * * * *

(n) vehicles which would be excluded from passage without a special permit or escort, under section 5503.3 of this Part, and for which no such permit has been issued or no such escort provided:

* * * * * *

5503.3 Vehicles requiring special permits or escorts. (a) No vehicle falling within any of the following categories shall be permitted to use the facilities unless a special permit therefor is issued by the authority employee in charge and, if required as a condition of such permit, a special escort is provided and fees therefor paid, viz:

* * * * * *

(6) vehicles transporting explosives, radioactive materials or other dangerous commodities; and

(7) vehicles which have recently carried explosives, radioactive materials or other dangerous commodities and show any evidence of residue of such materials or commodities.

(b) In determining whether or not such special permit should be issued or, if issued, what conditions should apply thereto, such authority employee in charge may confer with the authority's consulting engineers, counsel and-or whatever other specialists or regulatory agencies he may consider appropriate in the circumstances, but such determination in any given situation shall be the sole and exclusive judgment of such authority employee in charge and final and binding upon all persons.

Although the TIBA regulations affect the transportation of many hazardous materials, only their effect on radioactive materials transportation will be considered in this ruling.

Subsection 5503.2(n) of the TIBA rules prohibits passage over the Thousand Islands Bridge by any vehicle which has failed to obtain a permit or provide an escort under the terms of § 5503.3. MTB first addressed the issue of State transportation permit requirements in an inconsistency ruling dealing with a Rhode Island regulation governing the transportation of liquefied energy gases. (IR–2, 44 FR 75566, Dec. 20, 1979.) In that ruling, MTB acknowledged that "(a) permit may serve several legitimate State police power purposes, and the bare requirement * * * that a permit be applied for and obtained is not inconsistent with federal requirements." (44 FR 75570.) For example, a State may require operators to obtain a permit when they intend to transport loads of a weight or size which exceeds the limits established for all traffic. Such requirements represent a legitimate exercise of the State's responsibility to maintain the intergrity of the roadway and to prevent disruption of the flow of traffic. Moreover, such requirements apply equally to all vehicles, regardless of the nature of the cargo being transported. The same standards apply when a state delegates responsibility for a portion of its transportation system to a political subdivision like the TIBA. (See 49 CFR 107.201(b) for definition of "political subdivision.") Therefore, the mere statement of intent to require a permit is not inconsistent with the HMTA.

Since subsection 5503.2(n) of the TIBA rules imposes a permit requirement but does not describe the actions necessary to obtain that permit, no finding is possible under the dual compliance test. With regard to the obstacle test, the imposition of a permit requirement is not, by itself, beyond the scope of State/local authority recognized by the HMTA. For the foregoing reasons, subsection 5503.2(n) of the TIBA rules is not inconsistent with the HMTA or the regulations issued thereunder.

Section 5503.3 of the TIBA rules describes the radioactive materials shipments for which a permit is required and the process by which such permits may be granted. As set forth in subsection 5503.3(a)(6) and (7), the permit requirement applies to vehicles which are carrying radioactive materials or have recently carried radioactive materials and show any evidence of residue of such materials. This includes an extremely broad range of vehicles which are subject to different degrees of regulation under the HMR. The TIBA permit requirement applies to: vehicles transporting highway route controlled quantity radioactive material, such as spent nuclear fuel; vehicles transporting shipments which are not highway route controlled quantity radioactive material but for which placarding is required, such as used gloves and gowns from hospital radiotherapy facilities; vehicles transporting limited quantities of radioactive materials for which no placarding is necessary, such as home smoke detectors and tritium backlighted watches; and empty vehicles which have recently carried any of the foregoing and retain trace quantities of radiation which, though detectable by sensitive equipment, pose no hazard in transportation.

Because § 5503.3 prohibits the highway transportation of radioactive materials without a permit issued by the TIBA employee in charge, it constitutes a routing rule in the form of a permit requirement. The term "routing rule" is defined in the HMR in Appendix A to Part 177 as follows:

"Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. * * *

The TIBA rule restricts the movement of radioactive materials by public highway by denying access to those shipments which have not obtained prior approval. Moreover, the restriction has the effect of redirecting such shipments to other jurisdictions. And the rules apply because of the nature of the cargo. For these reasons, the permit requirement constitutes a local routing rule within the meaning of the HMR.

MTB first addressed the issue of local transportation permits for transport of redioactive materials in IR–1 (43 FR 16954, April 20, 1978) which dealt with § 175.111 of the New York City Health Code. That regulation required a certificate of Emergency Transport for each shipment in or through the city of identified quantities of radioactive material. In that ruling, MTB concluded that the local permit requirement was not inconsistent because there was no indentifiable requirement in the text of the HMTA or HMR which provided a basis for a finding of inconsistency. Having reached this conclusion, MTB announced its intent to commence rulemaking to consider the need for routing requirements under the HMTA for highway carriage of radioactive materials. In view of this announcement, MTB added that permit requirements similar to that of New York City "may face a necessary future harmonization with rulemake that results from the inquiry MTB intends to undertake." (43 FR 16958).

The planned inquiry alluded to in IR–1 resulted in the adoption of a Final Rule on the highway routing of radioactive materials (46 FR 5298, hereinafter referred to as "HM–164") and this proceeding represents the "necessary future harmonization with rulemaking"

to be faced by jurisdictions which adopted requirements similar to those in the New York City Ordinance. Several commenters argued that HM–164 was invalid as a result of the District Court holding in *City of New York* v. *DOT*, 539 F. Supp. 1237 (1982). However, that decision was reversed by the Second Circuit Court of Appeals (715 F. 2d 732, August 10, 1983) and on February 27, 1984, the Supreme Court dismissed the city's appeal from the Circuit Court ruling. Therefore, the present case differs from that presented in IR–1, in that there is now a Federal requirement that provides a standard against which a State/local requirement can be compared for consistency.

HM–164 established different routing requirements for different kinds of radioactive materials shipments. The most stringent requirements were applied to shipments of "highway route controlled quantity radioactive material", such as spent nuclear fuel. As codified at 49 CFR 177.825(b), HM–164 requires transporters of such shipments to operate over preferred routes, i.e. Interstate System highways or alternate routes designated by a State in consultation with local authorities. The Thousand Islands Bridge is part of an Interstate System highway and the State of New York has not designated any alternate preferred routes. Therefore, the Thousand Islands Bridge is part of a preferred route.

Under HM–164, vehicles transporting a shipment of radioactive materials which is not a highway route controlled quantity, but which must be placarded, are required to operate either over preferred routes or over routes selected to minimize radiological risk. The standards are codified at 49 CFR 177.825(a):

(a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population density and activities, time of day and day of week during which transportation will occur. In performance of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—

(1) There is only one practicable highway route available, considering operating necessity and safety, or

(2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

Shipments of other than highway route controlled quantity radioactive material for which placarding is not required are not subject to specific routing requirements under the HMR. However, such shipments are subject to the general requirements of 49 CFR 177.853 that all shipments of hazardous materials be transported without unnecessary delay.

In comparing the routing rules of the TIBA and the HMR, the first criterion for determining inconsistency is the "dual compliance" test. A carrier which complied fully with the TIBA rule and obtained the necessary permit could transport radioactive materials across the Thousand Islands Bridge and thereby also be in compliance with the Federl requirement for using preferred routes. Consequently, on the narrow question of whether it is physically possible for a transporter of radioactive materials to comply with both the HMR and the TIBA rule, I find in the affirmative. The permit requirement contained in § 5503.3 of the TIBA rules cannot be deemed inconsistent on the basis of the "dual compliance" test.

Under the "obstacle" test, however, I reach a different conclusion, for this test considers factors which go beyond the narrow question of whether compliance with both the Federal and the local rule is possible.

As described above, the HMR impose certain requirements on the highway routing of radioactive materials. The TIBA rules impose a further restraint on route selection by requiring transporters to obtain a permit to cross the Thousand Islands Bridge. This requirement is based on a presumption that the TIBA has the authority to control, and ultimately, to prohibit this form of interstate commerce.

The TIBA is a creature of the State of New York. As such, it cannot be imbued with greater authority than resides in the parent State. The extent to which States and their political subdivisions may regulate the highway routing of radioactive materials has been thoroughly addressed in the inconsistency ruling published herewith. As stated in IR–8:

"Generally, in the absence of departmental involvement in a safety issue, State and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

In its comments of this proceeding, the TIBA offered the following argument in support of its permit requirement:

The Federal Department of Transportation has chosen *Interstate* routes due to the fact that design standards afford a high degree of *safety* given the fact there is direction traffic (four lanes), meets various standards with respect to sight clearance, and there are limited access to and from this type of highway system.'

However, the Thousand Islands Bridge system which was opened in 1938, is only two lanes, which does not meet Interstate requirements and carries a heavy volume of traffic, appears to have been placed under the Department of Transportation's criteria as meeting the standards. If there is any inconsistency, it is for the DOT to include the Thousand Islands Bridge in an approved route, bearing in mind its physical limitations. (TIBA letter dated June 30, 1983, p. 5.)

In other words, the TIBA apparently has taken the position that, when a political subdivision of a State finds Federal safety regulations inadequate to meet local conditions, it may, on it own determination, regulate to overcome the perceived Federal inadequacy. This completely undermines the regulatory system mandated by the HMTA. Congress recognized that rules of national applicability would not always meet unique local conditions. It was for this reason that the HMTA did not preempt all State or local rules, but only those that were inconsistent. Furthermore, Congress recognized that there could be valid safety reasons for permitting certain inconsistent State or local rules to coexist with their Federal counterparts, and authorized the Department of Transportation to waive preemption in certain circumstances.

In implementing it regulatory authority under the HMTA, MTB has sought to ensure the flexibility necessary to respond to changing conditions. Recognizing that practical experience in applying the regulations can point out the need for change, MTB adopted procedures in 49 CFR, Part 106, whereby "(a)ny interested person may petition the director to establish, amend, or repeal a regulation." (49 CFR 106.31.)

With specific regard to the establishment of highway routes for radioactive materials, MTB had the authority to require the use of the Interstate System without exception. However, in recognition of the wide variety of local conditions and the States' experience in responding to these conditions, MTB adopted a rule which enabled States, in consultation with local authorities, to apply safety guidelines to their unique local conditions and, if justified, designate alternate routes.

In view of the foregoing, the TIBA's justification of its permit reqirement must be rejected. If, as alleged, the Thousand Islands Bridge is inadequate for use as part of a preferred route, then the TIBA should seek State action to designate an alternate preferred route. Nothing in the TIBA's response justifies deviation from the established procedure for State designation of alternate routes.

When promulgating HM–164, MTB sought to balance the HMTA's dual objectives of enhanced safety and regulatory uniformity. The permit requirement in § 5503.3 impedes both objectives. By restricting access to the international crossing at the Thousand Islands Bridge, the requirement redirects shipments of radioactive materials into adjoining jurisdictions.

By causing the diversion of radioactive materials shipments, the TIBA has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If the TIBA could impose such restrictions on the availability of highway routes to vehicles engaged in the transportation of radioactive materials, then any political subdivison of a State could be so. As has been stated with regard to similar State and local requirements, the proliferation of independently enacted restrictions would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA. The TIBA rules, moreover, have the added dimension of restricting international commerce.

For the foregoing reasons, I find that the radioactive materials transportation permit requirement contained in § 5503.3 of the TIBA rules constitutes an impediment to the execution and accomplishment of the HMTA and the regulations issued thereunder. Consequently, I find it to be inconsistent and, therfore, preempted under 49 U.S.C. 1811(a).

Section 5503.3 of the TIBA rules also authorizes the employee in charge to require a special escort and the payment of fees therefor as a condition of the permit to transport radioactive materials. That permit requirement having been deemed inconsistent, it follows that the additional conditions attached thereto are also inconsistent.

In the public notice and invitation to comment on this proceeding, a form entitled "Application for Permit to Transport Nuclear Materials via the Thousand Islands Bridge" was presented as Appendix E. (48 FR 21505.) That form imposed a variety of requirements for information, documentation, certification, and indemnification. However, the application requirements contained therein are not included in the codification of the TIBA rules. Moreover, § 5503.3(b) of the TIBA rules delegates to the TIBA employee in charge, the sole and exclusive judgment to determine whether or not a permit should be issued and, if so, under what conditions. Thus, it would appear that the number of preconditions on use of the Thousand Islands, Bridge by transporters of radioactive materials is limited only by the imagination of the TIBA employee in charge. However, for purposes of this ruling, it is not necessary to identify all application procedures. Since the requirement for a permit has been found to be inconsistent, the application procedures by which that requirement would be administered, are also inconsistent.

III. Ruling

For the foregoing reasons, I find that, to the extent if affects the transportation of radioactive materials, § 5503.3 of the rules govering operation of the Thousand Island Bridge (Chapter LXIII, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York) is inconsistent with the HMTA and the regulations issued thereunder and, therefore, preempted.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–14—Jefferson County, New York; Local Legislative Stipulation Regulating Radioactive Materials Transportation through Jefferson County

Applicant: Department of Transportation (IRA–27).

Non-Federal rule affected: Resolution No. 81 Regulating the Transport of Radioactive Materials Through Jefferson County.

Mode affected: Highway.

Ruling: Resolution No. 81 Regulating the Transport of Radioactive Materials Through Jefferson County is inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with 49 U.S.C. 1811(a).

I. Background

By letter dated May 13, 1982, the Jefferson County, New York, Board of Supervisors notified the Department of Transportation of its adoption of Resolution No. 81 Regulating the Transport of Radioactive Materials Through Jefferson County. Resolution No. 81 imposed a number of conditions under which radioactive materials would be allowed to travel through Jefferson County.

Jefferson County lies at the foot of the international bridge linking Ivy Lea, Ontario, with Collins Landing, New York, and connecting with Interstate Route I–81. Thus, any restriction on transportation in Jefferson County imposes an equal restriction on international transportation which may operate over the Thousand Island Bridge and Interstate Route I–81.

The Department was on notice of Resolution No. 81 at a time when it was initiating administrative rulings on the consistency of several State and local restrictions on radioactive materials transportation, including the permit requirement of the Thousand Islands Bridge Authority which is incorporated by reference in Resolution No. 81. Because of this direct connection, the Department elected, in accordance with 49 CFR 107.209(b), to initiate an inconsistency proceeding on the issue of whether Resolution No. 81 is inconsistent with the HMTA or the HMR, and thus preempted. Accordingly, on May 12, 1983, the Department published a notice and invitation to comment in the **Federal Register** (48 FR 21496).

In response to that notice, comments were received from nine parties. One commenter, the New York State Department of Law, urged that this proceeding be dismissed "because the issue presented is hypothetical, and no determination is necessary at this time", as no carrier had applied for an inconsistency ruling or otherwise indicated a wish to use a route through Jefferson County. This comment arises from the misapprehension that the Department may issue inconsistency rulings only upon the direct application of a party claiming to have been affected by an allegedly inconsistent State or local rule. The HMTA does not support this interpretation. The premption provision at section 112(a) states clearly that any State or local requirement which is inconsistent is preempted. No reference of any kind is made to a need for third party involvement. The procedural regulations adopted by MTB to implement section 112 are explicit on this matter:

> (b) Notwithstanding that application for a ruling has not been filed under § 107.203, the Associate Director for HMR, on his own initiative, may issue a ruling as to whether a particular State or political subdivision requirement is inconsistent with the Act or the regulations issued under the Act. (49 CFR 107.209.)

The Department clearly has authority to issue an inconsistency ruling *sua sponte*. Furthermore, Jefferson County contains an Interstate System highway, I–81, which is a preferred route for the highway transportation of highway route controlled quantity radioactive material. Whether or not carriers have recently indicated a wish to use this route is irrelevant to the question of whether Resolution No. 81 is inconsistent. While this may be relevant in a non-preemption proceeding which involves consideration of the extent to which an inconsistent rule affects interstate commerce, the argument is premature in the context of an inconsistency proceeding.

The comment that this issue is hypothetical may, therefore, be dismissed as without merit.

II. Analysis

Resolution No. 81 was published in its entirety as Appendix F to the **Federal Register** notice of May 12, 1983. Its operative provisions are contained in the following excerpted paragraph:

> Now, therefore, Be It Resolved, That the Jefferson County Board of Supervisors does hereby put the United States Department of Transportation and Nuclear Regulating Commission on notice that the transport of radioactive waste through and within Jefferson County is conditioned on compliance with the following provisions: That 24 hour prior notification of said transport be duly given to appropriate Jefferson County officials; that front and rear escort service be provided; that said transport only be made during the six month period from May thru October; that no movement of said material be made on holidays or during periods of inclement weather; and that the permit system as promulgated by the Thousand Islands Bridge Authority regulating the movement of radioactive materials through the Bridge System be recognized and fully adhered to by the Federal Government and/or agents thereof.

Before proceeding with an examination of the specific conditions set forth therein, it is first necessary to determine what kinds of shipments are subject to those conditions. The language of Resolution No. 81 is not clear on this point. The title and introductory paragraphs refer to the transport of "radioactive materials", but the transport restrictions quoted above are imposed on "radioactive waste." These wastes are a subgroup of all radioactive materials. Neither do these terms reflect different degrees of hazard, as each includes materials which span the full range of transportation risk and are subject to appropriately varying degrees of safety regulation under the HMR.

Resolution No. 81 refers to "recent pronouncements by federal officials identify(ing) Interstate 81 as a route for the transport of such materials." From this, it is possible to infer that Resolution No. 81 was intended to place additional requirements on those materials which the Federal rules require to proceed via Interstate System highways.

The Federal rules adopted under HM–164 require carriers of highway route controlled quantity radioactive material to operate over "preferred routes," i.e., an Interstate System highway or an alternate route selected by a State routing agency in accordance with DOT guidelines. The State of New York has not designated any alternate preferred routes. Therefore, the preferred route which carriers of highway route controlled quantity radioactive material are required to use when operating in Jefferson County is I–81.

Since Resolution No. 81 appears to reflect concern over such materials as are required to use I–81, and since HM–164 requires shipments of highway route controlled quantity radioactive material to operate over Interstate System highways, this administrative ruling will interpret Resolution No. 81 as if the term "highway route controlled quantity radioactive material" had been used instead of the terms "radioactive materials" and "radioactive waste" respectively.

The first of the five substantive provisions of Resolution No. 81 is "(t)hat 24 hour prior notification of said transport be duly given to appropriate Jefferson County officials." Appendix A to Part 177 of the HMR sets forth the Department's policy position that a local transportation rule is inconsistent if it requires prenotification. This policy was substantiated by application of the two-prong test for inconsistency in connection with the prenotification requirements of Michigan and Vermont in inconsistency rulings IR–8 and IR–15, respectively, published herewith.

With regard to the "dual compliance" test, the HMR do not contain an express prohibition of prenotification. Therefore, it is possible for carriers to provide the 24-hour advance notice required by Resolution No. 81 and still remain in compliance with the HMR. The prenotification requirement of Resolution No. 81 cannot be deemed inconsistent on the basis of the "dual compliance" test.

Under the "obstacle" test, however, a different conclusion is reached. While the HMR do not contain an express requirement for prenotification, § 173.22(c) of the HMR requires shippers of highway route controlled quantity radioactive materials to comply with a physical protection plan established under the requirements of the Nuclear Regulatory Commission (NRC) or equivalents approved by MTB. The NRC requirements for advance notification are contained in the physical protection standards at 10 CFR 73.37 and require transporters to provide a minimum of four days advance notification of shipments to the Governor or the Governor's Designated Representative. Local jurisdictions receive notification from the Governor's Designee. The requirement that transporters comply with the NRC requirements or MTB-approved equivalents was adopted as part of HM–164. In the preamble to that rulemaking, MTB took administrative notice of the fact that the NRC was in the process of establishing prenotification requirements and stated:

> Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local prenotification requirements are not consistent with Part 177. (46 FR 5314, 5.)

The absence to date of prenotification requirements in the HMR cannot be construed as an abdication of the field, because MTB has taken several administrative actions regarding prenotification. In the process of promulgating HM–164, MTB received numerous comments urging adoption of a national prenotification regulation. For the reasons stated in the preamble to that rulemaking, MTB declined to do so. That preamble, which discussed the Congressional directive to NRC to establish prenotification requirements, also described MTB's sponsorship of a study by the Puget Sound Council of Governments (PSCOG) to examine the efficacy of prenotification for certain materials. The PSCOG report has since been completed (*Analysis of*

Prenotification: Hazardous Materials Study, Final Report, May 4, 1981) and was relied on in an inconsistency ruling (IR–8, 48 FR 760, January 6, 1983) which found a Covington, Kentucky, prenotification ordinance to be inconsistent. MTB has also sponsored a number of emergency response demonstration projects involving State, city and regional governments. Most recently, MTB awarded a contract to Battelle Northwest Laboratories to perform a comprehensive evaluation of prenotification. In view of the above, MTB has clearly demonstrated its intent to occupy the field of prenotification, to the exclusion of requirements adopted by State and local governments.

Resolution No. 81 does not provide Jefferson County with any advance notification not already provided for under Federal regulation. What it requires is that shippers of highway route controlled quantity radioactive materials provide advance notice directly to Jefferson County instead of relying on the designated representative of the Governor of New York to provide the information to affected jurisdictions. If Jefferson County could impose such a requirement, then every political subdivision of every State along the shipment route could impose such a requirement. As stated in a previous inconsisency ruling, "(r)edundancy does not further transportation safety and represents the type of multiplicity that the HMTA intended to make unnecessary." (IR–2, 44 FR 75571.) It was for this reason that Appendix A to Part 177 sets forth the Department's opinion that local prenotification requirements are inconsistent. As stated in the section-by-section analysis of Appendix A, which was published as part of HM–164, the Department underlined the seriousness of its concern with redundant regulations by stating that "(p)renotification requirements by State and local governments, if found to be necessary, will be established in a nationally uniform manner." (46 FR 5314.)

On the basis of the foregoing, I conclude that the prenotification requirement of Resolution No. 81 is an obstacle to the accomplishment of the Congressional objective of regulatory uniformity underlying enactment of the HMTA. Accordingly, I find it to be inconsistent and, therefore, preempted.

The second of the substantive provisions imposed by Resolution No. 81 is "that front and rear escort services be provided" for shipments of highway route controlled quantity radioactive material.

As discussed previously, the HMR require transporters of highway route controlled quantity radioactive material to comply with a physical protection plan in accordance with NRC standards or MTB-approved equivalents. The NRC standards require highway shipments to be accompanied by front and rear escorts. Since the Federal and local requirements are identical, and the same action satisfies both, the issue of redundancy does not arise. In effect, the escort requirement of Resolution No. 81 amounts to an adoption of the NRC physical protection standards on which the HMR rely. This being the case, the local requirement poses no inconsistency under either the "dual compliance" or the "obstacle" test.

The next two substantive provisions of Resolution No. 81 are closely related and will be considered together. They require "that said transport only be made during the six month period from May thru October" and "that no movement of said material be made on holidays or during periods of inclement weather."

The inclusion of these provisions subjects Resolution No. 81 to interpretation as a routing rule. As set forth in Appendix A to Part 177:

> "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. Traffic controls are not included if they are not based on the nature of the cargo, such as truck routes based on vehicles weight or size, nor are emergency measures.

By prohibiting the transportation of highway route controlled quantity radioactive material during more than half of the year, Resolution No. 81 "significantly restricts" the movement of such materials by public highway. Moreover, it applies because of the nature of the cargo. Therefore, it must be considered a "routing rule" within the meaning of the HMR.

Appendix A to Part 177 sets forth the Department's opinion that a local routing rule in inconsistent if it prohibits or otherwise affects transportation on routes authorized by the HMR or authorized by a State routing agency in a manner consistent with the HMR. Interstate route I-81 in Jefferson County is a route authorized by the HMR. Resolution No. 81 prohibits use of that route for more than half of the year. However, while the Department's policy statement, is relevant to consideration of Resolution No. 81, it is not determinative of the inconsistency thereof. Such determination must be based on the two-prong test contained in the MTB's procedural regulations and discussed in the General Preamble.

Consequently, under the "dual compliance" test, the question at issue is: It is possible for a carrier of highway route controlled quantity radioactive material to comply with both the HMR and Resolution No. 81? Jefferson County lies at the foot of the Thousand Islands Bridge which links New York and Canada. In selecting a highway route to or from Canada, however, a carrier is not limited to consideration of a crossing at the Thousand Islands Bridge. As demonstrated in IR–8, IR–10 and IR–15, it may choose border crossings in Michigan, Vermont, or elsewhere in New York, utilizing preferred routes at those points. Carriers are not required by HM–164 (nor has any showing been made that they are required under Canadian law) to cross the international border via the Thousand Islands Bridge. By selecting a border crossing using a preferred route in Michigan, Vermont or elsewhere in New York, a carrier could comply with the Jefferson County requirement (to operate only during clement weather on non-holidays in the months of May through October) by avoiding the county altogether, and at the same time comply with the broad Federal standard regarding operation over preferred routes. Therefore, on the narrow question of whether it is physically possible for a carrier of highway route controlled quantity radioactive material to comply with both the HMR and Resolution No. 81, I find in the affirmative. The local routing rule cannot be deemed inconsistent on the basis of the "dual compliance" test.

The second criterion for determining inconsistency is the "obstacle test" which requires consideration of the extent to which the local rule impedes the accomplishment and execution of the HMTA and the regulations issued thereunder. As stated previously, the principal Congressional objectives underlying enactment of the HMTA were safety enhancement and regulatory uniformity. When promulgating HM–164, MTB sought to balance these objectives. Under the authority of the HMTA, MTB could have established an inflexible requirement that carriers of highway route controlled quantity radioactive material operate over Interstate System highways. However, MTB recognized that the States were more knowledgeable about local road conditions. For the reason, HM–164 included a process by which States, in consultation with local governments, could apply this knowledge to designate alternate routes which provide an equal or greater level of safety than Interstate System highways.

The objectives of the HMTA and the regulations issued thereunder having been identified, the effects of Jefferson County's routing rule may now be examined. Resolution No. 81 prohibits transportation of highway route controlled quantity radioactive material in Jefferson County: (1) During the six-month period from November through April; (2) on holidays; and (3) during inclement weather. (While not critical to the following analysis, the vagueness of the terms "holiday" and "inclement" should be noted. Which holidays—Federal, State or County? Inclement according to whom, in comparison to what?) Presumably, the rationale for these restrictions is that weather conditions and holiday traffic render transportation unsafe at these times.

Weather, traffic and road conditions are all reflected in accident rates and transit time and the HMR require carriers of highway route controlled quantity radioactive materials to consider these factors in selecting routes. For example, if available information demonstrated a higher accident rate during the winter months, a carrier would be required to consider this as a constant. As for short-term adverse weather conditions, carriers of radioactive materials, like all highway users, are subject to a State's inherent power to control traffic. Similarly, chronic highway conditions are inherent in considerations of accident rates and transit times. As for short-term degradation of highway conditions, all highway users are subject to State's inherent power to control traffic.

The above discussion of weather traffic and road conditions is not meant to indicate the such factors are not directly relevant to the development of routing rules. It was precisely because MTB recognized the possibility of chronic problems of portions of the Interstate System of highways, that HM–164 provided for designation of alternate preferred routes by a State routing agency. The State of New York has not yet chosen to designate alternate preferred routes. This does not mean that Jefferson County may take independent action. If Jefferson County could impose a partial ban on radioactive materials transportation, then any political subdivision could do so, and the resulting proliferation of varying and possibly conflicting regulations would completely undercut the Congressional objective of regulatory uniformity as implemented through HM–164.

The restrictions imposed by Resolution No. 81 may be completely justifiable on the basis of local conditions, but this does not justify their unilateral imposition by Jefferson County. Under HM–164, such restrictions could be imposed by a State routing agency but only if an alternate route were designated for the duration of the prohibition. The reasons for placing such authority at the State level were articulated clearly in the preamble to HM–164.

> Local jurisdictions are inherently limited in perspective with respect to establishing routing requirements. While the Department recognizes that local governments are accountable only to their own citizens, such a limited accountability has some undesirable effects. For example, a routing restriction in one community may have adverse safety impacts on surrounding jurisdictions. Also, some communities in determining that they do not have the appropriate expertise or manpower to perform a routing analysis, may find attractive the option of completely prohibiting the transport of radioactive materials through their jurisdictions. This has already happened in some cases. Uncoordinated and unilateral local routing restrictions place on carriers of radioactive materials would simply not be conducive to safe transportation. There is a clear need for national uniformity and consistency. (46 FR 5301).

In its comments on this proceeding, Jefferson County cited "its undeniable obligation to provide for and maintain the public safety of its citizens." (Letter dated July 5, 1983, p. 2.) While in no way denying that such an obligation exists, this ruling must take issue with the manner in which Jefferson County has chosen to fulfill its obligation. By adoption of HM–164, MTB established a nationally uniform system for the designation of transportation routes for highway route controlled quantity radioactive material. Resolution No. 81 was adopted in a manner that completely disregards the nationally uniform regulatory system created by HM–164.

As stated previously, when promulgating HM–164, MTB sought to balance the HMTA's dual objectives of enhanced safety and regulatory uniformity. The transport ban of Resolution No. 81 impedes both objectives. By restricting access to preferred routes in Jefferson County, it redirects shipments of highway route controlled quantity radioactive material into adjoining jurisdictions.

By causing the diversion of radioactive materials shipments, Jefferson County has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If Jefferson County could impose such restrictions on the availability of its highways to vehicles engaged in the interstate transportation of radioactive materials, then any local jurisdiction could do so. This would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA.

For the foregoing reasons, I conclude that the provisions of Resolution No. 81 which prohibit transportation of highway route controlled quantity radioactive material during certain periods constitute an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder. Accordingly, I find them to be inconsistent and, therefore, preempted.

The last of five substantive requirements imposed by Resolution No. 81 is "that the permit system as promulgated by the Thousand Islands Bridge Authority regulating the movement of radioactive materials through the Bridge System be recognized and fully adhered to by the Federal Government and/or agents thereof." The permit system of the Thousand Islands Bridge Authority is the subject of a separate inconsistency ruling (IR–13, published herewith) and has been determined to be inconsistent with the HMTA and the HMR and, therefore, preempted. For the reasons set forth in IR–13, I find the incorporation of the permit system in Resolution No. 81 to be inconsistent and, therefore, preempted.

Because the provision has been found to be inconsistent, it is not necessary to address the fact that it imposed an obligation to act on the Federal Government. Nevertheless, it should be noted that, regardless of the nature of the requirement imposed, any attempt by a political subdivision of a State to impose an obligation to act on the Federal Government would be subject to the strictest scrutiny in connection with both statutory and Constitutional preemption.

In summary, of the five substantive provisions of Resolution No. 81, all but one are inconsistent. However, as drafted, Resolution No. 81 must be considered in its entirety. The Resolution does not lead itself to the severance of individual provisions. Therefore, while noting that the requirement for front and rear escorts is not inconsistent, this ruling considers the effect of Resolution No. 81 as a whole.

III. Ruling

For all of the foregoing reasons, I find Jefferson County Resolution No. 81 Regulating the Transport of Radioactive Materials Through Jefferson County to be inconsistent with the HMTA and the

regulations issued thereunder and, therefore, preempted under 49 U.S.C. 1811(a).

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–15—State of Vermont; Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste

Applicant: Department of Transportation (IRA–30).

Non-Federal rule affected: Rules I–IX of the Vermont Agency of Transporation regulation entitled "Transporation of Irradiated Reactor Fuel and Nuclear Waste; Approval, Monitoring."

Modes affected: Highway, Rail, Water.

Ruling: Rules I (e), III (D) (3–4), III (E–L) and IV through VII of the radioactive materials transportation regulations of the Vermont Agency of Transportation are inconsistent with the Hazardous Materials Transporation Act and the Regulations issued thereunder and, therefore, preempted.

I. Background

On May 12, 1983, the Department issued a public notice and invitation to comment on the inconsistency of various State and local rules on the transportation of radioactive materials in Michigan, New York and Vermont. (48 FR 21496.) During the comment period on that notice, the State of Vermont adopted new rules governing the transportation of irradiated reactor fuel and nuclear waste. The impact of these rules on radioactive materials routing options and the question of whether these rules are inconsistent with the HMTA were questions of direct relevance to those being addressed in the on-going inconsistency preceedings. Therefore, the Department, pursuant to 49 CFR 107.209(b), elected to initiate an inconsistency proceeding on the question of whether the Vermont rules are inconsistent with the HMTA or the regulations issued thereunder.

On August 4, 1983, a public notice and invitation to comment was published in the **Federal Register** (48 FR 35550). Three comments were received. Where appropriate, these comments and previous administrative decisions will be discussed in this ruling.

II. Analysis

Rule I. Definitions

Rules I sets forth a number of definitions, only one of which need be addressed for possible inconsistency

(e) "RADWAS" means irradiated reactor fuel and radioactive wastes that are large quantity redioactive materials as define in 49 CFR 173.389(b), or after July 1, 1983, highway route controlled quantities as defined in the latest amended section of 49 CFR 173.403.

It should be noted that the acronym RADWAS is not synonymous with the term "highway route controlled quanity radioactive material"; rather, it defines a subset of that group. In other words, the Vermont regulations do not apply to all highway route controlled quantity radioactive material, but only to highway route controlled quantity shipments of irradiated reactor fuel or nuclear waste. This presents two issues which relate to the question of consistency with the HMR: nomenclature and regulatory effect.

IN prior inconsistency rulings, MTB has given notice that it considers the Federal role in definition of hazard classes to be exclusive. (IR–5, 47 FR 51991; IR–6, 48 FR 760; IR–8, published herewith.) As stated in IR–5 which dealth with a New York City ordinance regulating compressed gases:

The HMR are, in and of themselves, a comprehensive and technical set of regulations which occupy approximately 1000 pages of the Code of Federal Regulations . . . . For the City to impose additional requirements based on differing hazard class definitions adds another level of complexity to this scheme. Thus, shippers and carriers doing business in the City must know not only the classifications of hazardous materials under the HMR and the regulatory significance of those classifications, but also the City's classifications and their significance. Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompaning decrease in overall public safety. (47 FR 51994.)

By imposing additional requirements on a subgroup of highway route controlled quanity radioactive material to be known as RADWAS, Vermont has created a new hazard class. If every State were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusing of regulatory requirements would lead ineluctably to the increased likelihood of reduced compliance with the HMR nd subsequent decrease in public safety.

In view of the foregoing, I find that the definition of "RADWAS" contained in Rule I (e) of the Vermont regulation is inconsistent with the HMR. Throughout the remainder of this inconsistency ruling, the Vermont rules will be interpreted as if the term "highway route controlled quantity radioactive material" had been substituted for the acronym "RADWAS".

Rule II. Carrier's Responsibility

Rule II sets forth the intent of the Vermont regulations and the carrier's responsibility thereunder as follows:

The intent of this regulation is to establish a procedure for monitoring and regulating the transportation of RADWAS in the State in order to protect the public health consistent with national transportation policy. Nothing in these regulations or any directives issued under authority thereof shall release a carrier of any responsibility for the safe transportation of RADWAS in the State.

Both the HMTA and the regulatory system promulgated thereunder recognize the right of States to regulate hazardous materials transportation so long as the State requirements are consistent with the Federal scheme. Thus, the statement of intent in Rule II reflects the State role outlined by Congress in the HMTA. The intent that the Vermont rules coexist with, rather than supplant, the Federal regulations is further supported by the explicit statement that the Vermont rules do not release carriers of any other responsibility for safe transportation.

Since Rule II imposes no requirement to act upon any party, no problem arises under the "dual compliance" test. With regard to the "obstacle" test, the statement of intent is identical to the State role intended by the HMTA. Thus, Rule II poses no obstacle to the accomplishment and execution of the HMTA. Accordingly, Rule II is consistent with the HMTA.

Rule III. Application; procedure; content; and

Rule IV. Transportation approval; criteria

Rules III and IV set forth the criteria to be satisfied before the State Secretary of Transportation will grant written approval to transport highway route controlled quantity radioactive material in Vermont. Since the rule prohibits such transportation without the written approval of the Secretary, it constitutes a routing rule in the form of a permit requirement.

Section II of Appendix A to 49 CFR Part 177, defines "routing rule" as follows:

"Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. . . .

The Vermont regulation restricts the movement of radioactive materials by public highway by denying access to those shipments which have not obtained written approval. Moreover, this restriction has the effect of redirecting such shipments to other jurisdictions. And the regulation applies because of the nature of the cargo. For these reasons, the Vermont regulation constitutes a State routing rule within the meaning of the HMR.

The Federal rule which carriers of highway route controlled quantity radioactive material must follow is set forth at section 177.825(b) of the HMR (49 CFR 177.825(b)). It requires such carriers to operate over "preferred routes selected to reduce time in transit, except that an Interstate System bypass or beltway around a city shall be used when available." The term "preferred route" is defined as an Interstate System highway or an alternate route selected by a State routing agency in accordance with DOT guidelines. The State of Vermont has designated preferred routes in accordance with the HMR. They are:

Interstate 89—Total Length
Interstate 91—Total Length
Interstate 93—Total Length
Interstate 189—Total Length
VT 100 and VT 8 between Readsboro and the Massachusetts line in Stamford (includes Deerfield River road in Readsboro).
VT 142 between Vernon and the Massachusetts line in the Town of Vernon.

The State and Federal rules having been identified, the question at issue is whether the routing rule imposed by Vermont's permit requirement is consistent with the HMTA or the regulations issued thereunder.

A carrier which complied fully with the Vermont regulation, thereby obtaining the necessary written approval, could transport radioactive materials via preferred routes in Vermont and thereby be in compliance with the Federal requirements as well. Consequently, on the narrow question of whether it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the Vermont rules, I find in the affirmative. The State rule cannot be deemed inconsistent on the basis of the "dual compliance" test.

Under the "obstacle" test, however, I reach a different conclusion, for this considers factors which go beyond the narrow question of whether compliance with both the State and Federal rules is physically possible.

MTB first addressed the issue of State transportation permit requirements in an inconsistency ruling dealing with a Rhode Island regulation governing the transportation of liquefied energy gases. (IR–2, 44 FR 75586, Dec. 20, 1979.) In that ruling, it was stated that:

A permit may serve several legitimate State police power purposes, and the bare requirement . . . that a permit be applied for and obtained is not inconsistent with federal requirements. However, a permit itself is inextricably tied to what is required in order to get it. Therefore, the permit requirement . . . must be considered together with the application requirements . . . (44 FR at 75570, 1.)

This line of reasoning was subsequently applied in IR–8 (published herewith), the inconsistency ruling holding Michigan's radioactive materials transport permit requirement to be inconsistent, which stated that "in the absence of an express waiver of preemption, no authority exists for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo." There being many similarities between the Michigan and Vermont rules, frequent reference will be made to IR–8.

Rule IV of the Vermont regulation sets forth three criteria which must be satisfied before approval is granted to transport highway route controlled radioactive material in Vermont. Each is discussed separately below.

Rule IV(A) requires fulfillment of the application requirements of Rule III. For discussion purposes, the application requirements can be broken down into four categories: information, documentation, certification and indemnification.

Information—Rule III requires submission of the following information as part of the application for approval to transport highway route controlled quantity radioactive material in Vermont:

(A) The proposed route of travel in Vermont, specifying all of the following:
(1) Each road to be used by route number, name, or other identification.
(2) Each railroad or waterway to be utilized.
(B) The names, addresses, and emergency telephone numbers of the shipper, carrier, and receiver of the RADWAS, specifiying the individual to contact for current shipment information.
(C) A description of the shipment as specified in the provisions of 49 CFR 172.203(d).
(D) the estimated date and time of all of the following for each shipment as applicable:
(1) The departure of the RADWAS from the site of origin.
(2) The arrival of the RADWAS at the Vermont boundary and its final destination if the destination is within Vermont.
(3) Scheduled stop(s) in Vermont and reason(s) therefore.
(4) The departure of the RADWAS from Vermont.
* * * * *
(K) A certificate giving the point of origin and point of destination of the shipment and stating that the route to be used is the shortest and most direct, or if not so, then stating the explicit reason(s) that the proposed route was chosen.

With the exception of Rules III (D) (3–4) and (K), all of the above information concerning spent fuel shipments is specifically required by Federal regulation to be provided in advance to the Vermont Secretary of Transportation, who is the Governor's Designee for receipt of advance notification of nuclear waste shipments. The requirement is set forth as part of the NRC regulations on physical protection of irradiated reactor fuel in transit (10 CFR 73.37). The NRC regulations were not promulgated under the HMTA. However, § 173.22(c) of the HMR requires shippers of highway route controlled quantity radioactive material to comply with a physical protection plan established under the requirements of the NRC or equivalents approved by MTB. This section of the HMR was adopted as part of HM–164, wherein MTB took administrative notice of the fact that the NRC was in the process of establishing prenotification requirements and stated:

Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local prenotification requirments are not consistent with Part 177. (48 FR 5314, 5.)

The absence to date of prenotification requirements in the HMR cannot be construed as an abdication of the field, because MTB has taken several administrative actions regarding prenotification. In the process of promulgating HM–164, MTB received numerous comments urging adoption of a national prenotification regulation. For the reasons set forth in the preamble to that rulemaking, MTE declined to do so. That preamble, which discussed the Congressional directive to NRC to establish prenotification requirements, also described MTB's sponsorship of study by the Puget Sound Council of Governments (PSCOG) to examine the efficacy of prenotification for certain materials. The PSCOG report has since been completed (*Analysis of Prenotification: Hazardous Materials*

Study, Final Report, May 4, 1981) and was relied on in an inconsistency ruling (IR–6, 48 FR 760, January 6, 1983) which found a Covington, Kentucky, prenotification ordinance to be inconsistent. MTB has also sponsored a number of emergency response demonstration projects involving State, city and regional governments. Most recently, MTB awarded a contract to Battelle Northwest Laboratories to perform a comprehensive evaluation of prenotification. In view of the above, MTB has clearly demonstrated its intent to occupy the field of prenotification, to the exclusion of requirements adopted by State and local governments.

Of the above-described information requirements of the Vermont regulation, all except (D) (3–4) and (K) are required by the NRC prenotification regulations which MTB has recognized as currently providing an adequate standard of national applicability. To the extent that they impose prenotification requirements identical to those of the NRC regulations, the Vermont rules amount to an effective adoption of the Federal prenotification scheme on which the HMR rely and, therefore, pose no inconsistency. This is easily distinguished from the conclusion reached in IR–8 regarding virtually identical information requirements imposed by the Michigan State Fire Safety Board and Department of Public Health. In that case, the State rules required submission of the same information, but to different parties, thus creating regulatory redundancy, in addition to potential conflict with the NRC regulations on access to safeguards information.

Different issues are raised by the three items of information required by the Vermont regulation but not by the Federal rules. Vermont Rule III (K) requires transporters to certify that the proposed route from origin and destination is the shortest and most direct and, if it is not, then to explain the reason(s) for its selection. The HMR do not require highway route controlled quantity shipments of radioactive materials to proceed by the "shortest and most direct" route. As codified at 49 CFR 177.825, HM–164 requires carriers to operate over preferred routes selected to reduce (not minimize) time in transit. When promulgating HM–164, MTB recognized that States were in a better position to know local road conditions. Therefore, the Final Rule established a process by which States, in consultation with local governments, could apply this knowledge to designate alternate routes which provide an equal or greater level of safety than Interstate System highways. As noted above, Vermont has utilized this process to designate preferred routes. This is the extent to which States may act in designating transportation routes for interstate shipments of highway route controlled radioactive material. In IR–8, a Michigan rule requiring transporters to describe and justify their proposed routes and rejected alternates was found to be inconsistent on the grounds that "State approval of route selections on a shipment-by-shipment basis completely undercuts the primary purpose of national uniformity underlying adoption of the highway routing rule." This applies equally to Vermont Rule III (K). By imposing route selection criteria which exceed those established by the HMR, Rule III (K) presents an obstacle to the accomplishment and execution of the HMTA and the regulations promulgated thereunder. This application requirement is related to the approval criterion set forth in Rule IV (C) and is discussed at greater length below.

Rules III(D) (3) and (4) require transporters to submit shipment-specific information not expressly required by Federal regulations. Section (3) requires advance notification of scheduled stop(s) in Vermont and the reason(s) therefor. Section (4) requires advance notification of the estimated date and time of departure of the shipment from Vermont. While it is possible to argue that this information is deducible from that which the Federal rules require to be provided to the State, the issue presented here is not one redundancy but of multiplicity. Under the provisions of its regulation, Vermont seeks to prohibit the transportation of highway route controlled quantity radioactive material on the basis of a transporter's failure to provide information required only by the State of Vermont. If each State were empowered to prohibit interstate transportation of radioactive materials until all of its additional information requirements were satisfied, the result would be to effectively nullify the nationally uniform system of highway routing which was established by adoption of HM–164. The provisions of HM–164 retained for the States a defined role in the designation of preferred routes to be used by all carriers of highway route controlled quantity radioactive material. That role does not include the selective prohibition of interstate transportation for failure to comply with independent State information requirements.

Documentation—Rule III requires submission of the following documentation as part of the application for approval to transport highway route controlled quantity radioactive material in Vermont:

> (F) Copies of any required NRC approval of the proposed route of travel and any other NRC licensing action specific to the shipment, such as an import license or a license to transport.
>
> (G) A copy of an emergency plan which describes procedures to be taken by the carrier in an emergency to eliminate or minimize the radiation exposure of the public.
>
> • • • • • •
>
> (I) A copy of the certificate of compliance for the container issued by the NRC, as evidence the container has been approved for hypothetical accident conditions pursuant to the provisions of 10 CFR 71.36.
>
> • • • • • •

Rule III(F) is identical to Michigan Rule 3(g) which was examined in IR–8. The Michigan rule was found to be inconsistent because it required transporters to submit copies of shipment-specific documents to two agencies, neither of which was the Governor's Designee for receipt of advance notification under the NRC regulations, thereby greatly increasing the possibility of the information being disclosed to an extent sufficient to compromise the physical security of the shipment. This reasoning does not apply to the Vermont rule which requires submission of the documents to the State Secretary of Transportation, who is the Governor's Designee for receipt of advance notification. Therefore, the Vermont rule does not present the same potential for breach of security as does the inconsistent Michigan rule.

The Vermont rule, nevertheless, poses a problem which, although not discussed in IR–8, is equally relevant to the Michigan rule. The purpose of requiring submission of copies of NRC approvals and licenses is, obviously, to ensure that transporters of highway route controlled quantity radioactive material operate in compliance with NRC regulations. This is a valid State concern. Nevertheless, the legitimacy of the State's interests does not justify its imposition of an inconsistent routing rule in the form of a permit requirement. There are other, less cumbersome methods by which Vermont could obtain the desired assurances. For example, the State could make procedural arrangements with NRC whereby, upon receipt of the minimum four days advance notification of shipment, the Governor's Designee could obtain telephonic or electronic confirmation that the shipment is in conformance with all NRC licensing requirements.

Rule III(G) requires transporters to develop and submit an emergency plan describing procedures to be taken by the carrier in an emergency to eliminate or minimize radiation exposure of the public. Response to transportation emergencies is necessarily site/specific:

> Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and State planning and preparation, when an accident does occur, response is, of necessity, a local responsibility. (IR–2, 44 FR 75568.)

In HM–164, MTB addressed the Federal responsibility for reducing the likelihood of emergencies by requiring not only that such materials be transported over those routes which have been demonstrated to offer the highest safety levels, but also that the drivers of such shipments receive, and carry certification of, written training on: (1) The HMR concerning radioactive materials; (2) the properties and hazards of the radioactive materials being transported; and (3) procedures to be followed in case of an accident or other emergency. (49 CFR 177.825(d).) Drivers are also required to carry a route plan which includes the telephone numbers to access emergency assistance in each State to be entered. (49 CFR 177.825(c).) Since the HMR requires drivers to be trained in emergency procedures, transporters could comply with the Rule III(G) merely by submitting a copy of the materials used in the drivers' training course. Such materials are readily available to the State and their submission as part of an application for transportation approval would contribute little to State/local emergency preparedness. If the purpose of this requirement is to ensure that vehicle operators are aware of proper emergency procedures, then the requirement is redundant, as HM–164 addressed this in its imposition of driver training requirements.

Rule III(I) requires submission of the NRC certificate of compliance for the shipping container as evidence that the container has been approved for hypothetical accident conditions pursuant to the provisions of 10 CFR 71.36. The stated purpose of this requirement reflects a basic misunderstanding of the Federal regulations on transportation containers for highway route controlled quantity radioactive material. The NRC issues certificates of compliance, not for containers, but for container designs. Moreover, the cited NRC regulations at 10 CFR 71.36 do not requires that each container be tested and approved for hypothetical accident conditions. Rather, the rules require that each container be constructed in accordance with a design approved by the NRC as meeting the necessary design criteria including, *inter alia*, the ability to meet the standards for hypothetical accident conditions. The HMR incorporate the NRC requirements at 49 CFR 173.416.

Even if this provision is interpreted as requiring advance submission of a copy of the NRC certificate of compliance for the container design, it still presents a conflict with the HMTA's objective of national uniformity in safety regulation. Just as was discussed in connection with Rule III(F) *supra*, ensuring that transporters comply with NRC regulations is a valid State concern. But the legitimacy of the State's interest does not justify it requiring, a a precondition to the use of preferred routes, the advance submission of documents which the NRC regulations require licensees to obtain and to maintain extensive records of.

None of the documentation requirements of the Vermont application procedure relate to any transportation safety risk which is unique to Vermont. It therefore follows that if Vermont may deny access to preferred routes for failure to submit copies of certain documents, then any State (and possibly any jurisdiction) may also do so. The resulting multiplicity of requirements that would result if each State were empowered to prohibit interstate transportation of radioactive materials until all of its additional documentation requirements were satisfied, would effectively nullify the nationally uniform system of highway routing which was established by adoption of HM–164. For these reasons, I find that Rules III (F) and (I) constitute an obstacle to the Congressional objective of regulatory uniformity underlying the HMTA and are, therefore, inconsistent.

Certification—Rule III requires submission of the following certifications as part of the application for approval to transport highway route controlled quantity radioactive material in Vermont:

> (E) Certification that the vehicle has been inspected in compliance with the provisions of 49 CFR 396.
>
> • • • • • •
>
> (H) A Certification that the shipment will be in compliance with these rules and all applicable state and federal statutes, rules, and regulations governing the shipment, including but not limited to Parts 172, 173 and 177 of 49 CFR and Parts 71 and 73 of 10 CFR.
>
> • • • • • •

Rule III(E) requires transporters of highway route controlled quantity radioactive material to certify that the transport vehicle has been inspected in accordance with Federal law. It does not appear that Vermont requires such certifications from other highway transporters of hazardous materials. Presumably, existing vehicle inspection regulations are adequate to ensure the proper maintenance of such vehicles. It thus appears that the requirement merely imposes another redundant paperwork burden which serves no apparent safety purpose and which, if adopted by all States, would result in precisely the type of multiplicity which Congress sought to preclude by enacting the HMTA.

Rule III(H) requires applicants for transportation approval to certify compliance with all applicable Federal and State Rules. The HMR requires shippers to make such a certification on the shipping papers which accompany each shipment of hazardous materials. (49 CFR 172.204.) As was stated in IR–2:

> No matter what the form, any State or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations. (44 FR 75571.)

Therefore, for the same reasons set forth in connection with similar provisions of the Michigan rules considered in IR–8, Rule III(H) is inconsistent with the HMR.

Like the information and documentation requirements discussed *supra*, the certification requirements of the Vermont regulation relate to no transportation safety risk which is unique to Vermont. Therefore, if Vermont may prohibit access to preferred routes for failure to submit certain certifications, then any State may do so. As stated previously, such regulatory multiplicity would render HM–164 meaningless. Because they constitute an obstacle to the Congressional objective of regulatory uniformity underlying the HMTA, Rules III (E) and (H) are inconsistent therewith.

Indemnification—Rule III requires transporters to secure insurance and pay a fee as preconditions for approval to transport highway route controlled quantity radioactive material in Vermont:

> (J) A certificate that a bond or insurance acceptable to the Secretary has been posted to cover all types of damages caused by release of the shipped RADWAS materials, and in no event shall such bond or insurance be for less than Five Million Dollars ($5,000,000) total damages.
>
> • • • • • •
>
> (L) A cashier's check in the amount of $1,000.00 payable to Treasurer, State of Vermont for *each* proposed shipment. When moved as a group, two or more vehicles,

railcars or barges will be considered one shipment for the purpose of this subsection.

Rule III(J) establishes $5 Million as the minimum level of financial responsibility for transporters of highway route controlled quantity radioactive material.

Motor carriers of highway route controlled quantity radioactive material are required to meet the minimum levels of financial responsibility set forth in the Federal Motor Carrier Safety Regulations at 49 CFR, Part 387. By rulemakings dated June 11, 1981 (46 FR 30974), June 28, 1983 (48 FR 29698), and July 2, 1984 (49 FR 27288), the Federal Highway Administration established a phased-in schedule of minimum levels of financial responsibility: July 1, 1981, $1,000,000; January 1, 1985, $5,000,000.

The HMR require transporters to comply with the Federal Motor Carrier Safety Regulations. (49 CFR 177.804.) At the present time, the Vermont regulation establishes a higher minimum level of financial responsibility than does the Federal rule.

Indemnification for nuclear transportation accidents, however, is not limited to the carrier's public liability insurance. As discussed in the preamble to HM–164:

> If the origin or destination of the radioactive material is an idemnified facility such as a nuclear power plant, the provisions of the Price-Anderson Act (42 U.S.C. 2210) assure a source of funds to cover certain personal injury and property damage claims. The law extends to persons other than the licensee such as the carrier, who may be liable for an accident. Insurance coverage up to $560 million per accident is provided by a combination of licensee private insurance policies and indemnity agreements between the licensees and the NRC. (46 FR 5304.)

In the course of promulgating HM–164, MTB examined the issue of indemnification and concluded that Federal law provided adequate coverage. State adoption of higher insurance coverage requirements can operate as barriers to transportation. This was addressed in IR–10 (published herewith), which dealth with a New York State Thruway Authority (NYSTA) policy allowing radioactive materials on the Thruway only when there was proper indemnification:

> By denying use of the Thruway to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification, the NYSTA rule directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported.

In the absence of a clear showing that the transportation of highway route controlled quantity radioactive material in Vermont poses a financial risk which exceeds the level of indemnification provided by Federal law, Rule III (J) poses an obstacle to the nationally uniform system of highway routing established under the HMTA. Because it impedes the Congressional objective of regulatory uniformity underlying the HMTA, Rule III (J) is inconsistent therewith.

Rule III (L) requires payment of a fee of $1,000 for each proposed shipment of higway route controlled radioactive material. Presumably, this fee is to reimbuse the State for the cost of the State Monitoring Team which Rule VII requires to accompany each shipment. In its comments on this proceeding, Vermont asserted that the fee is reasonable and that the deployment of trained State personnel to accompany shipments is necessitated by the fact that response groups in the communities along Vermont's preferred routes are predominately voluntary and subject to high turnover, and therefore have difficulty maintaining the skills and equipment needed to respond to nuclear transportation emergencies. Following this line of reasoning, one would expect Vermont to impose similar requirements on shipments of other hazardous materials which pose a potential for extraordinary transportation emergencies. On the basis of both shipment frequency and accident history, spent nuclear fuel poses a much lower risk of transportation accident than do any number of common chemicals, the containment of which could also be expected to exceed the capacity of local groups to respond.

The discriminatory application of the fee notwithstanding, Vermont's claim of uniqueness can be challenged on other grounds. The transportation of spent nuclear fuel in Vermont poses no safety risk which is not present in any other jurisdiction. It is Vermont's limited capacity for emergency response which is alleged to be unique. However, this is the result of the State's deliberate decision, as reflected in its transportation regulations, to field a completely independent response team, rather than to rely on available Federal resources. An extensive network of emergency assistance has been developed and is maintained by the Federal Government precisely because no individual State could be expected to maintain the necessary depty and breath of expertise in this specialized area of contingency response. By requiring transporters to pay a fee, Vermont seeks to transfer the financial burden of its decision to replicate Federal efforts and this has two foreseeable impacts relevant to highway routing of radioactive materials—one direct and one indirect.

The immediate and direct result of Vermont's transport approval fee is to cause transporters to redirect shipments away from Vermont whenever possible. Such diversion onto less direct routes would reduce Vermont's exposure to the risks of radioactive materials transportation at the expense of neighboring jurisdictions by increasing total transport time and, therefore, overall exposure to risk. Thus Vermont's requirement has precisely that effect on other States from which it sought to insulate itself, that is, being used as the path of least resistance "to avoid more difficult regulatory terrain." (Vermont comments on IRA–30, September 15, 1983.)

The foreseeable indirect effect of Vermont's imposition of a transport approval fee is to encourage other States to take similar action. The proliferation of escalating fees, as States sought to finance elaborate response systems and/or to reduce their exposure to radioactive materials transportation, would amount to a system of internal tariff barriers which would completely undermine HM–164 by forcing transporters to select routes on the commercial basis of reduced cost rather than the safety basis of reduced time in transit.

In view of these impacts, the transport approval fee imposed by Vermont Rule III (L) presents an obstacle to the accomplishment and execution of the HMTA as implemented through the adoption of HM–164 and is, therefore, inconsistent.

In summary, the indemnification provisions of Rule III, like the information, certification and documentation provisions discussed above, relate to no safety risk which is unique to Vermont. If Vermont could impose such preconditions upon access to preferred routes, any State could do so. This would lead to the type of regulatory balkánization which Congress sought to preclude by enacting the HMTA. Therefore, I find that the application requirements in Sections (D) (3–4) and (E) through (L) of Rule III, as reflected in the approval criterion of Rule IV (A), constitute an obstacle to the accomplishment and execution of the HMTA and the regulations promulgated thereunder.

The second criterion for transport approval is set forth at Rule IV (B) and requires that the plan required to be submitted under Rule III (G) be acceptable to the State Secretary of Transportation. As was demonstrated in the discussion of Rule III (G) *supra*, that requirement constitutes an obstacle to the accomplishment and execution of the HMTA. Since the application requirement of Rule III (G) has been found to be inconsistent, it follows that the approval criterion of Rule IV (B) is also inconsistent.

The third criterion for transport approval is set forth at Rule IV (C) and concerns the standards to be applied in approving a transporter's choice of route from origin to destination:

> (C) If the proposed route from origin to destination is not the shortest and most direct, the route has been determined to be acceptable by the Secretary after consultation with the Commissioners of Health and Public Safety on the health, safety and security aspects of the proposal. Avoidance or circumvention of one or more jurisdictions which have precluded or restricted shipments of radioactive materials shall not constitute an acceptable reason for approval of a route through Vermont which is not the shortest and most direct.

In the discussion of Rule III (K) *supra*, the requirement for submission of a justification for the selection of a transport route which is not the shortest and most direct was determined to be inconsistent and, therefore, preempted. It therefore follows that Rule IV (C) is also inconsistent. Nevertheless, because the rule provides Vermont's rationale for its imposition, additional discussion is warranted on the matter.

Vermont's interest in the reasons behind a transporter's route selection reflects the concern that Vermont was being subjected to a disproportionate share of exposure to the risks inherent in radioactive materials transportation; that this had resulted from the diversion into Vermont of shipments which had encountered bans or other significant restrictions in States along the route selected to reduce time in transit (i.e., the route required by HM–164); and that Vermont was being penalized for complying with the Federal routing scheme while other jurisdictions continued to enforce their inconsistent regulations. The Department shares Vermont's concern over the subversion of HM–164 by inconsistent State and local regulations. The fact situation which gave rise to the issuance of inconsistency rulings IR–7 through IR–15 involved precisely the cause and effect of concern to Vermont. The shipper, Nuclear Assurance Corporation, in attempting to transport spent nuclear fuel from Ontario to South Carolina, encountered a variety of inconsistent State and local restrictions which prevented the use of routes through New York and Michigan. Recourse was subsequently made to a route through Vermont. The route was not selected because it reduced time in transit, but because it was the last available alternative.

In view of the validity of Vermont's concern, its requirement for approval of route selections would seem, on first impression, to be consistent with the HMTA by ensuring compliance with the intent of HM–164. On closer examination, however, the flaws in this reasoning became apparent. First of all, good intentions notwithstanding, the immediate effect of the requirement is to contribute yet another impediment to the interstate transportation of radioactive materials. Additionally, by operating on its own determination that the regulations of another State or local government are unjustified, Vermont is effectively usurping the Federal responsibility for determining inconsistency. For these reasons, as well as those discussed in connection with Rule III (K) supra, the route approval criterion set forth in Rule IV (C) is inconsistent with the HMTA and the MHR.

Preemption of the requirement for State approval of the proposed route does not, however, deprive Vermont of means to redress its grievances. No shipper certification, is necessary to determine whether a proposed route is the most direct. The NRC regulations require licensees to provide the State with a minimum of four days advance notice of the route a shipment will follow. Reference to a standard road atlas should immediately reveal whether a proposed route appears to be unnaturally skewed through Vermont. Should this be the case, two avenues are open to Vermont: (1) application to MTB for an inconsistency ruling on the State or local regulation(s) which appear to have caused a diversion of traffic into Vermont and (2) petition to a Federal District Court to permanently enjoin the State or local jurisdiction from enforcing a routing rule which is inconsistent with the HMTA and therefore preempted.

In summary, Rules III and IV constitute a State routing rule in the form of a permit requirement. Such a requirement is inconsistent with the HMTA. As stated in IR–8:

> Generally, in the absence of Departmental involvement in a safety issue, States and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) traffic control or emergency restrictions which effect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

Rule V. Approval Notification

Rule V states that approval shall be granted in writing and shall indicate any conditions or limitations pertaining thereto. The requirement of prior State approval to transport radioactive materials via perferred routes has been found to be inconsistent, not only in this proceeding, but also in other inconsistency rulings published herewith. Therefore, to the extent that Rule V designates the form such approval shall take, it is also inconsistent.

Rule VI. Transporter notification of Changes

Rule VI sets forth the following requirements:

> Unless otherwise specified in the approval notification, the carrier, driver, or operator transporting RADWAS shall notify the Secretary or his designee of the following not less than 4 hours prior to beginning movement in the States:
>
> (A) Any schedule change that differs by more than 1 hour from the schedule information previously funished.
>
> (B) Any incident or situation anticipated to cause a delay in the transport of the RADWAS through Vermont.

The requirement for obtaining State transportation approval has been determined to be inconsistent with the HMTA. Therefore, to the extent that Rule VI implies an ability to impose requirements other than those specifically set forth, it is inconsistent with the HMTA.

Rule VI(A) requires transporters to notify the State Secretary of Transportation of any schedule change that differs by more than one hour from the schedule information previously furnished. The HMR rely on the notification requirements contained in the NRC standards for physical protection. Included in those standards

at 10 CFR 73.37(f)(4) is the requirement that a licensee notify the Governor or the Governor's Designee of any schedule change that differs by more than six hours from the schedule information previously furnished. In Vermont, the Governor's Designee is the State Secretary of Transportation.

Rule VI(B) requires transporters to notify the State Secretary of Transportation of any incident or situation anticipated to cause a delay in transportation through Vermont. The HMR require transporters of radioactive materials to operate in compliance with a physical protection plan as required by NRC regulations (10 CFR 73.37) or MTB-approved equivalent. The NRC regulations require shipment escorts to make calls to the communications center at least every two hours to advise of the status of the shipment. The communications center required by NRC regulations must be "staffed continuously by at least one individual who will monitor the progress of the spent fuel shipment and will notify the appropriate agencies in the event a safeguards emergency should arise."

Any schedule change or shipment delay of more than six hours must be reported under 10 CFR 73.37(f)(4). Delays of less than six hours may be caused by a variety of factors ranging from a safeguards emergency to simple traffic delay. Since the planned schedule necessarily projects estimated times of arrival, a certain margin is built into the schedule. Rule VI(A) would reduce this margin from six hours to one. Rule VI(B) would reduce it even further by requiring notification of any circumstance which could be anticipated to cause any degree of delay in the estimated travel time through Vermont. Clearly, the State of Vermont has a legitimate interest in knowing of shipment delays which could stem from or result in safeguards emergencies. The Federal regulations ensure that they receive such notice. No showing has been made of any safety problem unique to Vermont which requires carriers to report normal transportation delays of less than six hours. Therefore, were Vermont's requirements allowed to stand, any State could impose its own additional reporting requirements. This was the basis for finding inconsistency in IR–6 with regard to similar requirements imposed by the State of Michigan. The multiplicity of differing notification requirements impedes the Congressional objective of national uniformity in hazardous materials transportation safety regulation.

A further problem is presented by the requirement in Rule VI that transporters provide the required notification "not less than 4 hours prior to beginning movement in the State". If a shipment which had proceeded to a point within four hours of entry into Vermont were to encounter some circumstance resulting in a schedule change of one hour or the anticipation of any delay in Vermont, then, in order to comply with the requirement of at least four hours advance notification, the shipment would have to stop short of the Vermont border and wait out the clock. The HMR at 49 CFR 177.853 require that all shipments of hazardous materials be transported with unnecessary delay. This was the basis for finding a Rhode Island transportation permit requirement to be inconsistent in IR–2:

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation. (44 FR 75571.)

In view of the foregoing, Rule VI impedes both the safety and uniformity objectives of the HMTA. Accordingly, I find Rule VI to be inconsistent with the HMTA.

Rule VII. Monitoring

Rule VII sets forth the following requirements:

(A) Each motor vehicle shipment of RADWAS shall be monitored by:
(1) a leading State Police vehicle occupied by at least one law enforcement officer;
(2) a vehicle occupied by State Monitoring Team personnel; and
(3) a trailing State Police vehicle occupied by at least one law enforcement officer.
(B) Each shipment by railcar or barge through or in the state shall be accompanied as directed by the Secretary.
(C) The ranking state police officer accompanying the shipment shall be the authority to modify the conditions of the approval in response to weather, accident or exigent circumstances which may affect the safety of the shipment. Any modification which will result in a delay of more than two hours in the time of departure of the shipment from Vermont shall be approved by the Secretary or his designee.

With regard to Rules VII (A) and (B), it is difficult to determine whether an obligation to act is being imposed on the transporter or the State Agency of Transportation. In other words, if a shipment arriving at the Vermont border is not met by the State officials assigned to monitor its progress, must the shipment stop and wait for them in order to ensure compliance with Rule VII? If this is the intended effect, then the requirement imposes a degree of delay which is incongruous with the safety objective of reducing time in transit. As stated in IR–2:

> Given that the materials are hazardous and that their transport is not risk-free, it is an important safety aspect of the transportation that the time between loading and unloading be minimized. (44 FR 75571.)

Therefore, to the extent that Rules VII (A) and (B) impose an obligation to act upon transporters of radioactive materials, they are inconsistent with the HMTA.

Rule VII(C) is a delegation of authority to modify the conditions of the written approval to transport radioactive materials in Vermont. Since the underlying requirement for obtaining prior State approval has been determined to be inconsistent, provisions for modifying the conditions of that approval need not be considered, because each element thereof would be inconsistent.

Rule VIII. Schedule information, confidentiality

Rule VIII sets forth the standards of confidentiality to be applied to radioactive materials shipment schedule information. The requirements set forth herein are the same as set forth in the NRC regulations (10 CFR 73.21, 73.37) on which the HMR rely. Accordingly, no inconsistency exists.

Rule IX. Transport inspection

Rule IX states that shipments of radioactive materials may be inspected by State personnel for compliance with applicable State and Federal statutes, rules and regulations. It should be noted that State statutes, rules, and regulations governing radioactive materials transportation are "applicable" only if they are not consistent with the HMTA. Having noted this distinction, I find that Rule IX constitutes a valid exercise of the State's inherent police powers. Ensuring that transport vehicles do not threaten public health and safety has long been recognized as a legitimate State function. Far from being an obstacle to the accomplishment of the HMTA, State enforcement of Federal and consistent State regulations on hazardous materials transportation is a critical element of a regulatory system of national applicability. MTB has sought to foster a Federal/State partnership in hazardous materials transportation safety and, to this end, has developed and implemented the State Hazardous Materials Enforcement Development Program, in which Vermont participates, to provide States with the financial and technical assistance necessary for enforcement of a nationally uniform system of hazardous materials transportation safety regulation. For these reasons, I find Rule IX to be consistent with the HMTA and the regulations thereunder.

III. Ruling

For the foregoing reasons, I find that the radioactive materials transportation rules of the Vermont Agency of Transportation constitute a regulatory scheme which in many aspects is inconsistent with the HMTA and the regulations issued thereunder. Specifically, I find the following rules to be inconsistent and thus preempted under 49 U.S.C. 1811(a): Rules I(e), III(D)(3–4), III(E–L) and IV through VIII.

The following rules are not preempted: Rules I(a–d), I(f–g), II, III(A–C), III(D)(1–2), VIII, and IX.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84–30869 Filed 11–26–84; 8:45 am]
BILLING CODE 4910–60–M

OL
9
SS
29
NO
2 7
984
MI

federal register

Tuesday
November 27, 1984

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33
Airworthiness Standards; Rotorcraft Regulatory Review Program Notice No. 3; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33

[Docket No. 24337; Notice No. 84-19]

Airworthiness Standards; Rotorcraft Regulatory Review Program Notice No. 3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice pertains primarily to the powerplant requirements for rotorcraft. This notice is based on a number of proposals discussed at the Rotorcraft Regulatory Review Conference held December 10–14, 1979, in New Orleans, Louisiana, and the Rotorcraft Regulatory Review Conference held August 18–20, 1980, in Washington, D.C. It includes additional proposals derived from previously issued Special Conditions and from an ongoing FAA review of Parts 1, 27, 29, and 33 for needed clarification, correction, or safety-related changes. These proposals arise out of the phenomenal growth of the rotorcraft industry and the recognition by both government and industry that updated safety standards are needed. These proposals attempt to recognize the need for a high level of safety in the design requirements for rotorcraft while removing or modifying existing rules which invoke unnecessary compliance burdens.

DATES: Comments must be received on or before March 26, 1985.

ADDRESSES: Comments related to this proposal should be mailed to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24337; 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. Comments delivered must be marked "Docket No. 24337." Comments may be inspected in Room 916 between 8:30 a.m. and 4 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wilbur F. Wells, Regulations Program Management (ASW-111), Aircraft Certification Division, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2551.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting written data, views, or arguments as they may desire, including comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice. Communications should identify the regulatory docket and be submitted in duplicate to the address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped post card on which the following statement is made: "Comments on Docket No. 24337." The post card will be date/time stamped, and returned to the commenter.

For convenience, each proposal in this notice is numbered separately. When submitting comments, please refer to proposals by these numbers and by the section of the FAR to which they relate.

Availability of This Notice

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On January 15, 1979, the FAA gave notice of its Rotorcraft Regulatory Review Program and invited all interested persons to submit proposals for consideration during its forthcoming Rotorcraft Regulatory Review Conference, Notice 79-1 (44 FR 3250; January 15, 1979). In that notice, the FAA announced that it would prepare a conference agenda containing a compilation of the proposals submitted and other information on the conference arrangements.

In Notice 79-1A (44 FR 12685; March 8, 1979), the FAA extended the period for submission of proposals relating to Notice 79-1 to May 31, 1979. This action was in response to a Helicopter Association of America (HAA) letter dated February 12, 1979, which stated that they did not have sufficient manpower to translate the members' comments into constructive proposals and justifications within the time allotted. This action was further supported by a letter from the United Kingdom Civil Aviation Authority (CAA) dated February 14, 1979, which stated that staffing limitations prevented anything more than a broad survey of the proposals. They requested an extension of 90 days.

In light of these comments, the FAA concluded that it was in the public interest to encourage a thorough review of the regulations and that good cause existed for extending the date for submitting proposals.

The FAA received 613 proposals in response to Notice 79-1, of which 569 were placed on the conference agenda. The remaining 44 proposals were excluded because they fell outside the scope of the review program or for other reasons outlined in Notice 79-1. A separate printing of six other proposals inadvertently omitted from the compilation was distributed at the conference.

On October 22, 1979, the FAA announced that the Rotorcraft Regulatory Review Conference would be held in New Orleans, Louisiana, December 10-14, 1979, and that the conference agenda and compilation of proposals were available (Notice 79-1B; 44 FR 60747 October 22, 1979).

Subsequently, by Notice 79-1C (44 FR 67136; November 23, 1979), the FAA announced a change in the agenda for the Rotorcraft Regulatory Review Conference to divide the specialty areas into three rather than four separate sessions. Over 155 persons attended the conference which convened on December 10, 1979, remaining in session until each proposal had been discussed. A transcript of those discussions is in Docket Number 18689. However, this document is only limited use due to the poor quality of the transcription.

On March 24, 1980, the FAA received a letter from the Helicopter Association of America and the Aerospace Industries Association of America, Inc., requesting a meeting to present material to the FAA to assure themselves that the industry logic was understood by the Rotorcraft Regulatory Review Team. The FAA gave careful consideration to the request and determined it would be in the best interest of all concerned to provide the requested meeting and that all interested persons should be afforded the same opportunity to listen to and comment on the industry logic. Accordingly, Notice 79-1D (45 FR 43202; June 26, 1980) announced a Rotorcraft Regulatory Review Conference which was held August 18-20, 1980, in Washington, D.C. A copy of the transcript of this meeting has been placed in Docket Number 18689.

This notice pertains to the rotorcraft certification rules in Parts 27 and 29 and related sections in Parts 1 and 33, as they apply to powerplant installation, rotor drive mechanisms, combustion equipment and associated systems, appliances, and instruments.

An appendix at the end of this notice includes a list of conference proposals which the FAA proposes to withdraw. The reasons for withdrawal are specified in the appendix. The proposal numbers in this appendix and the reference proposals listed with the explanatory notes in this notice pertain to the proposal numbering assigned for presentation to the Rotorcraft Regulatory Review Conference in New Orleans, Louisiana, in 1979.

Preliminary Economic Impact Evaluation

A preliminary economic evaluation has been prepared to provide a basis for the finding required by the Regulatory Flexibility Act and as directed by the applicable requirements of section 2 of Executive Order 12291 (46 FR 13193; February 19, 1981) and by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This evaluation consists of a detailed study of each proposal in this notice to derive and correlate the potential benefits and the potential costs to be expected if these proposals become rules.

This study disclosed that most of these proposals were found to incur negligible benefits or costs, usually because the proposal either reflects current practice or it clarifies, simplifies, or corrects existing rules. Proposals in this category are listed in Table I and the basis for this categorization is documented in the Regulatory Evaluation filed in the docket for this notice.

A second group of proposals listed in Table II includes significant cost items primarily as certification costs to the rotorcraft manufacturers; however, these proposals pertain to or provide safety standards for optional equipment or ratings. No economic analysis has been prepared for these proposals since it may be assumed that these equipment items, installations, or ratings will only be introduced into any model rotorcraft after industry-generated forcasts show that costs can be offset by the benefits to be expected. Notwithstanding this view, comments from the public are solicited regarding both the economic aspects and the extent of qualification suggested by these proposals.

A third group of proposals listed in Table III is identified as also incurring significant potential costs. For these proposals, the analysis of costs and of the assumed benefits (derived from assumed safety improvements and a corresponding reduction in accidents) fails to show that including these proposals is justified. These proposals are deferred for further study and may appear in subsequent notice, if justified by revised economic data.

TABLE I

Proposal No.	Regulation (FAR)	Subject	Evaluation
3-1	1.1	30-Minute rating	Definition.
3-2	1.2	Definition	Definition.
3-4	27.361(a)	Design Torque Limitations	Current practice.
3-5	27.833	Combustion heaters	Current practice.
3-6	27.859(c) thru (m)	Combustion heaters	Current practice.
3-7	27.901(c)	Powerplant installation	Current practice.
3-8	27.903(a), (b)	Powerplant cooling fans	Negligible Costs.
3-9	27.923(c), (d), (j)	Drive system tests	Negligible Costs.
3-10	27.927(b)	Drive systems	Clarification.
3-11	27.954	Fuel system lightning protection	Current practice.
3-12	27.955	Fuel flow requirements	Current practice.
3-13	27.961	Fuel system hot weather tests	Current practice.
3-14	27.963(b), (f)	Fuel tank safety	Current practice.
3-15	27.969	Fuel expansion space	Negligible savings.
3-16	27.971	Fuel tank sump	Negligible costs.
3-17	27.975	Fuel tank vent arrangement	Current practice.
3-18	27.991	Fuel pump	Current practice.
3-19	27.993(f)	Fuel system lines and fittings	Negligible costs.
3-20	27.997	Fuel strainer	Current practice.
3-21	27.999	Fuel system drains	Current practice.
3-22	27.1011	Engine oil systems	Clarification.
3-23	27.1019	Oil strainer contamination indicator	Negligible savings.
3-24	27.1027	Transmission oil systems	Current practice.
3-25	27.1041	Powerplant cooling	Current practice.
3-26	27.1045	Powerplant cooling	Clarification.
3-27	27.1091	Engine induction system	Negligible savings.
3-28	27.1093	Engine ice and snow protection	Negligible savings.
3-29	27.1141	Powerplant valves	Current practice.
3-30	27.1143	Engine controls	Clarification.
3-31	27.1163	Powerplant accessories	Negligible savings.
3-32	27.1189	Flammable fluid shutoff valves	Current practice.
3-33	27.1193(f)	Cowling retention	Current Practice.
3-34	27.1305(l), (m), (q), (s)	Powerplant instruments	Negligible savings.
3-35	27.1337	Magnetic chip detectors	Negligible costs.
3-36	27.1521(g), (h)	Powerplant limitations	Clarification.
3-37	27.1549(e)	Powerplant instrument markings	Current practice.
3-38	29.45(c)	Powerplant instrument error	Clarification.
3-40	29.361(a), (b)	Design torque limitations	Negligible costs.
3-41	29.549(e)	Fuselage structural loads	Clarification.
3-42	29.901(b)(2), (b)(6)	Powerplant installation	Negligible costs.
3-43	29.903(a), (b)(2), (c)(3)	Powerplant installation	Clarification.
3-44	29.908(a), (c)	Powerplant cooling fans	Negligible costs.
3-45	29.923(a) thru (h), (k)(1)	Drive system tests	Clarification.
3-46	29.927(c), (d), (f)	Drive system tests	Clarification.
3-47	29.954	Fuel system lightning protection	Current practice.

TABLE I—Continued

Proposal No.	Regulation (FAR)	Subject	Evaluation
3-49	29.955	Fuel flow requirements	Current practice.
3-50	29.961	Fuel system hot weather tests	Current practice.
3-50	29.963(b), (M	Fuel tank safety	Negligible costs
3-51	29.967(f)	Fuel tank installation requirements	Clarification.
3-52	29.969	Fuel expansion space arrangements	Negligible savings.
3-53	29.971	Fuel tank sump	No cost.
3-54	29.975	Fuel tank vent arrangement	Current practice.
3-55	29.991	Fuel pumps	Current practice.
3-56	29.993	Fuel system lines and fittings	Negligible costs.
3-57	29.997	Fuel strainer	Current practice.
3-58	29.999	Fuel system drains	Current practice.
3-60	29.1011	Engine oil systems	Clarification.
3-61	29.1019(a)	Oil strainer contamination indicator	Negligible savings.
3-62	29.1027	Transmission oil systems	Current practice.
3-63	29.1041	Powerplant cooling	Clarification.
3-64	29.1043	Powerplant cooling	Clarification.
3-67	29.1093	Engine ice and snow protection	Current practice.
3-68	29.1141	Powerplant valves	Current practice.
3-69	29.1143	Engine controls	Clarification.
3-70	29.1163	Powerplant accessories	Current practice.
3-71	29.1181	Designated fire zones	Definition.
3-72	29.1185(e), (f)	Flammable fluid shutoffs	Current practice.
3-73	29.1193(f)	Powerplant cowling retention	Current practice.
3-74	29.1305(a)(4), (a)(17), (a)(20), (a)(21), (a)(23)	Powerplant instruments	Negligible costs.
3-75	29.1337(e)	Magnetic chip detectors	Negligible costs.
3-76	29.1521(f), (g)	Powerplant limitations	No cost.
3-77	29.1549(e)	Powerplant instrument markings	Current practice.
3-78	29.1557(c)	Markings and placards	Negligible costs.

TABLE II.—PROPOSALS FOR OPTIONAL RATINGS OR EQUIPMENT

Proposal No.	Regulation (FAR)	Subject
3-3	27.67(a)(2), (a)(3), (b).	Continuous OEI Power.
3-9	27.923(d), (e), (g), (k).	Continuous OEI Power.
3-14	27.963(g)	Cabin Fuel Tanks.
3-36	27.1521(i)	Continuous OEI Power.
3-38	29.67(a)(2), (a)(3), (b).	Continuous OEI Power.
3-45	29.923(k)(2)	Continuous OEI Power.
3-59	29.1001	Fuel Jettisoning System.
3-65	29.1045(a)(4), (c).	Continuous OEI Power.
3-66	29.1047(a)	Continuous OEI Power.
3-75	29.1521(h)	Continuous OEI Power.
3-79	33.7(c)	Continuous OEI Power.
3-80	33.87(d)	Continuous OEI Power.

The appearance of a proposal number in both Table I and Table II indicates some aspects of the proposal exists in either category.

TABLE III.—PROPOSALS DEFERRED FOR FURTHER ECONOMIC STUDY

Proposal No.[1]	Regulation (FAR)	Subject
103	27.964	Fuel Cell Crashworthiness.
284	29.903	Engine Rotor Containment.
303	29.927	Overrunning Clutch Test.
316	29.964	Fuel Cell Crashworthiness.
356	29.1306	Engine Failure Warning.

[1] For Table III only, proposal numbering agrees with numbering assigned to the proposal as presented to the New Orleans Rotorcraft Regulatory Review, December 1979.

Trade Impact

Since certification rules are applicable to both foreign and domestic manufacturing selling in the U.S., there will be no competitive advantage to either. Because of the large U.S. market, foreign manufacturers are likely to certificate their rotorcraft to U.S. rules and because of the negligible cost of the proposals, U.S. manufacturers will not be at a disadvantage in foreign markets.

Regulatory Flexibility Analysis

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) the proposed rule, at promulgation, will not have a significant economic impact on a substantial number of small entities.

The FAA estimates that there will be six new helicopters certificated by the year 2000. Of these, one is expected to be certificated by one of five small (less than 1,500 employees) firms. Since the FAA's criterion for a substantial number of small entities is at least 11, it is apparent that a substantial number of small entities will not be impacted. In addition the FAA expects the economic impact to be negligible.

List of Subjects

14 CFR Part 1

Airmen, Flights, Balloons, Parachutes, Aircraft pilots, Pilots, Transportation, Agreements, Kites, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Tires, Rotorcraft.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 33

Engines, Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendments

Accordingly, it is proposed to amend Parts 1, 27, 29, and 33 of the Federal Aviation Regulations (14 CFR Parts 1, 27, 29, and 33) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

3–1. By amending § 1.1 by adding the definition of "Rated continuous OEI power," after the definition of "Public aircraft," and by revising the definitions of "Rated '30-minute power' " and "Rated '2½-minute power' " to read as follows:

§ 1.1 General definitions.

* * * * *

"Rated continuous OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33, and limited in use to the time required to complete the flight after the failure of one engine of a multiengine rotorcraft.

* * * * *

"Rated 30-minute OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under statis conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 and limited in use to a period of not more than 30 minutes after the failure of one engine of a multiengine rotorcraft.

"Rated 2½-minute OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33, and limited in use to a period of not more than 2½ minutes after the failure of one engine of a multiengine rotorcraft.

* * * * *

Explanation: This proposal will accomplish three objectives as follows:

(a) A definition of a new continuous one-engine-inoperative (OEI) power rating is added. This definition is needed to recognize and facilitate the use of this new rating. See the explanation for revised § 27.67.

(b) The existing definitions of "2½-minute power" and "30-minute power" should be revised to read "2½-minute OEI power" and "30-minute OEI power" in order to make these definitions consistent with the new continuous OEI power definition and to more closely relate the name of these power ratings with their intended usage; i.e., with one engine inoperative. Conference Proposal No. 3 suggested that the title of the new (proposed) continuous OEI rating be "intermediate contingency." This was rejected in favor of "continuous OEI" to clarify both the time frame (continuous) and the usage (OEI) for this rating, as well as to parallel the nomenclature used in existing OEI ratings.

(c) The conditions for establishing the 2½-minute OEI power and the 30-minute OEI power are revised by this proposal to eliminate terms such as "maximum" for horsepower and rotation speed. This change is needed to recognize the concept that "maximum" and "rated" horsepower, rotation speed, etc., need not be identical.

In addition a phrase would be added to the definition of "Rated 2½-minute power" and "Rated 30-minute power" to state clearly the operational limit on the use of these ratings, i.e., after failure of one engine of a multiengine rotorcraft. This change is needed to avoid the misconception that these ratings can be used anytime the operator desires. This unlimited usage could be unsafe since the qualification program for these ratings is limited to a degree associated with the very low frequency of occurrence of actual engine failure on a multiengine rotorcraft.

Ref: Proposals 2, 3, 14, 15, 95, 96, 167, 168, 169, 288, 292, 296, 331, 332, 333, 334, 335, 336, 394, 395, 414, 415, 419, and 420; Committee II.

3–2. By amending § 1.2 by adding the definition of "OEI" after the definition of "NOPT" as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"OEI" means one engine inoperative.

* * * * *

Explanation: The term "OEI," meaning one engine inoperative, has become widespread in the aircraft industry to designate the operational situation involving failure of an engine on a multiengine rotorcraft. This proposal merely adopts standard industry terminology for this condition.

Ref: Proposals 2, 3, 14, 15, 95, 96, 167, 168, 169, 288, 292, 296, 331, 332, 333, 334, 335, 336, 394, 395, 414, 415, 419, and 420; Committee II.

PART 27—AIRWORTHINESS STANDARDS; NORMAL CATEGORY ROTORCRAFT

3–3. By amending § 27.65 by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 27.67 Climb: One engine inoperative.

* * * * *

(b) The critical engine inoperative and the remaining engines at either—

(1) Maximum continuous power and, for helicopters for which certification for the use of 30-minute OEI power is requested, at 30-minute OEI power; or

(2) Continous OEI power for helicopters for which certification for the use of continuous OEI power is requested.

Explanation: This proposal is one of a series of revisions to Parts 1, 27, 29, and 33 in response to industry needs expressed in numerous proposals submitted for consideration at the Rotorcraft Regulatory Review Conference. Notwithstanding some detail deviations, these proposals generally were directed at creating a new continuous one-engine-inoperative (OEI) rotorcraft power rating. Under this concept, rotorcraft could be certificated with a continuous OEI rating instead of the current 30-minute OEI rating. As with the 30-minute OEI rating, the continuous OEI rating would be eligible for use only in the event of an engine failure, but not time limited, as is the case for the 30-minute OEI rating. Originally, the 30-minute rating was adequate for the relatively short route structure of first generation helicopter air carrier service. Industry needs for the new "continuous OEI rating" were generated primarily by the extensive operation of helicopters serving the distant offshore petroleum drilling and servicing activities. Many, if not most, of these activities involved dispatching helicopters on route structures which precluded a planned landing within 30 minutes in the event of an engine failure. This situation has been addressed by the European helicopter industry by creating a rating essentially identical to this proposed continuous OEI rating except that it was identified as an "intermediate contingency" rating. Without a similar rating, FAA-approved helicopters will suffer a distinct economic disadvantage.

Representations from the industry have been made that this continuous OEI rating could be established at a higher power than available from normal maximum continuous ratings (but less than the power associated with the 30-minute OEI rating) without adversely affecting safety. This concept is contingent on the special testing outlined in these proposals and the limitations on the use of this rating. As with the 30-minute OEI rating, the use of continuous OEI power would be limited to the duration and frequency of occurrence associated with continued safe flight to its destination after failure of one engine on multiengine rotorcraft.

Conference attendees from all phases of rotorcraft-related activities agree with the concept of a continuous OEI rating. However, one conferee questioned the feasibility of devising adequate powerplant instrument markings to reflect the various ratings. This comment was, in part, the primary reason for the FAA's decision to limit use of the OEI ratings to the 30-minute OEI rating or the continuous OEI rating, but not both, plus the 2½-minute rating, if requested, on any model rotorcraft.

In addition, this proposal would revise the existing term "30-minute power" to "30-minute OEI power" to agree with the revision to the term proposed for § 1.1. See the explanation and proposals for § 1.1.

Ref: Proposals 2, 3, 14, 15, 95, 96, 97, 167, 168, 169, 288, 291, 292, 296, 331, 332, 333, 334, 335, 336, 394, 395, 399, 414, 415, 419, and 420; Committee II.

3–4. By revising § 27.361 to read as follows:

§ 27.361 Engine torque.

(a) For turbine engines, the limit torque may not be less than the highest of—

(1) The mean torque for maximum continuous power multiplied by 1.25;

(2) The torque required by § 27.923;

(3) The torque required by § 27.927;

(4) The torque imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming); or

(5) The torque imposd by power excursions associated with fuel control malfunction, and by inadvertent or abnormal control motions to be expected in service.

(b) For reciprocating engines, the limit torque may not be less than the mean torque for maximum continuous power multiplied by—

(1) 1.33, for engines with five or more cylinders; and

(2) Two, three, and four, for engines with four, three, and two cylinders, respectively.

Explanation: Conference discussions suggest that the current definition for limit torque for turbine engines may not be adequate since the maximum installed engine torque to be expected in service may be considerably higher than the torque for maximum continuous power multiplied by 1.25. This proposal would set forth additional criteria to ensure that the critical torque value is considered.

Ref: Proposal 46; Committee I.

3–5. By adding a new § 27.833 to read as follows:

§ 27.833 Heaters.

Each combustion heater must be approved.

Explanation: This proposal relocates a requirement in § 27.859(c) which pertains to heater approval and establishes it as new § 27.833. It is further generalized to make it applicable to all combustion heaters by deleting the words "gasoline-operated." Both these actions and the following proposals for changing § 27.859 are in response to an industry proposal to upgrade the combustion heaters standards in Part 27 to agree with combustion heater standards in Part 29.

Ref: Proposal 87 as revised by alternate proposal from HAA/AIA; Committee I.

3–6. By amending § 27.859 by revising paragraph (c) and by adding new paragraphs (d) through (k) to read as follows:

§ 27.859 Heating systems.

* * * * *

(c) *Combustion heater fire protection.* Except for heaters which incorporate designs to prevent hazards in the event of fuel leakage in the heater fuel system, fire within the ventilating air passage, or any other heater malfunction, each heater zone must incorporate the fire protection features of the applicable requirements of §§ 27.1183, 27.1185, 27.1189, 27.1191, and be provided with—

(1) Approved, quick-acting fire detectors in numbers and locations ensuring prompt detection of fire in the heater region.

(2) Fire extinguisher systems that provide at least one adequate discharge to all areas of the heater region.

(3) Complete drainage of each part of each zone to minimize the hazards resulting from failure or malufunction of any component containing flammable fluids. The drainage means must be—

(i) Effective under conditions expected to prevail when drainage is needed; and

(ii) Arranged so that no discharged fluid will cause an additional fire hazard.

(4) Ventilation, arranged so that no discharged vapors will cause an additional fire hazard.

(d) *Ventilating air ducts.* Each ventilating air duct passing through any heater region must be fireproof.

(1) Unless isolation is provided by fireproof valves or by equally effective means, the ventilating air duct downstream of each heater must be fireproof for a distance great enough to ensure that any fire originating in the heater can be contained in the duct.

(2) Each part of any ventilating duct passing through any region having a flammble fluid system must be so constructed or isolated from that system that the malfunctioning of any component of that system cannot introudce flammable fluids or vapors into the ventilating airstream.

(e) *Combustion air ducts.* Each combustion air duct must be fireproof for a distance great enough to prevent damage from backfiring or reverse flame propagation.

(1) No combustion air duct may connect with the ventilating airstream unless flames from backfires or reverse burning cannot enter the ventilating airstream under any operating condition, including reverse flow or malfunction of the heater or its associated components.

(2) No combustion air duct may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(f) *Heater control: General.* There must be means to prevent the hazardous accumulation of water or ice on or in any heater control component, control system tubing, or safety control.

(g) *Heater safety controls.* For each combustion heater, safety control means must be provided as follows:

(1) Means independent of the components provided for the normal continuous control of air temperature, airflow, and fuel flow must be provided for each heater to automatically shut off the ignition and fuel supply of that heater at a point remote from that heater when any of the following occurs:

(i) The heat exchanger temperature exceeds safe limits.

(ii) The ventilating air temperature exceeds safe limits.

(iii) The combustion airflow becomes inadequate for safe operation.

(iv) The ventilating airflow becomes inadequate for safe operation.

(2) The means of complying with paragraph (g)(1) of this section for any individual heater must—

(i) Be independent of components serving any other heater, the heat output of which is essential for safe operation; and

(ii) Keep the heater off until restarted by the crew.

(3) There must be means to warn the crew when any heater, the heat output of which is essential for safe operation, has been shut off by the automatic means prescribed in paragraph (g)(1) of this section.

(h) *Air intakes.* Each combustion and ventilating air intake must be located so that no flammable fluids or vapors can enter the heater system—

(1) During normal operation; or

(2) As a result of the malfunction of any other component.

(i) *Heater exhaust.* Each heater exhaust system must meet the requirements of §§ 27.1121 and 27.1123.

(1) Each exhaust shroud must be sealed so that no flammable fluids or hazardous quantities of vapors can reach the exhaust systems through joints.

(2) No exhaust system may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(j) *Heater fuel systems.* Each heater fuel system must meet the powerplant fuel system requirements affecting safe heater operation. Each heater fuel system component in the ventilating airstream must be protected by shrouds so that no leakage from those components can enter the ventilating airstream.

(k) *Drains.* There must be means for safe drainage of any fuel that might accumulate in the combustion chamber or the heat exchanger.

(1) Each part of any drain that operates at high temperatures must be protected in the same manner as heater exhausts.

(2) Each drain must be protected against hazardous ice accumulation under any operating condition.

Explanation: An industry proposal to expand the Part 27 combustion heater installation safety requirements to be equivalent in all respects to those prescribed by Part 29 was discussed with complete agreement at the New Orleans conference. This included requirements for new systems such as fire detectors and fire extinguishers not previously deemed necessary for light rotorcraft. However, actual practice has been to incorporate into the heater unit itself certain design features, such as fuel line shrouds and explosive containment. In effect, this will exempt the heater installation from extensive fire protection features, including the fire detector and the fire extinguisher requirements. It is realistic to assume that future combustion heater installation design practice will follow this convention, thus the burden of the new detector and extinguisher requirements in this proposal will be minimal to nonexistent. However, to assure that new and innovative combustion heater designs incorporate adequate safety, this proposal presents expanded safety requirements which agree, in most respects, with Part 29, in accordance with the industry proposal.

Ref: Proposal 87; Committee I.

3–7. By amending § 27.901 by revising paragraph (b)(1); by removing the word "and" after the semicolon in (b)(2); by removing the period in (b)(3) and inserting a semicolon in its place; by removing the period in (b)(4) and inserting "; and" in its place; and by adding a new paragraph (b)(5) to read as follows:

§ 27.901 Installation.

* * * * *

(b) * * *

(1) Each component of the installation must be constructed, arranged, and installed to ensure its continued safe operation between normal inspections or overhauls for the range of temperature and altitude for which approval is requested;

* * * * * *

(5) Design precautions shall be taken to minimize the possibility of incorrect assembly of components and equipment essential to safe operation of the rotorcraft, except where operation with the incorrect assembly can be shown to be extremely improbable.

* * * * * *

Explanation: This proposal would revise § 27.901(b)(1) to include effects of temperature extremes and high altitude into the qualification program. Various commenters at the Regulatory Review Conference indicated compliance with this proposal was obtained within the framework of existing rules, TSO requirements, and in some cases, function and reliability testing. However, the proposal would provide a basis for organized and consistent application of environmental qualification aspects. New § 27.901(b)(5) would require design features to minimize incorrect assembly of items such as fluid system check valves, control components, fasteners, etc., if incorrect assembly could be hazardous to future operation. Typically, these design features would involve asymmetric end fittings on components and wiring, unequal lengths of control rods, color coding, etc. Assemblies, which, if incorrectly installed, would preclude elementary operation of the rotorcraft, should not require special design precautions. An exclusionary phrase is included to recognize this concept.

Ref: Proposals 93, 276, and 279; Committee II.

3–8. By amending § 27.903 by revising paragraphs (a), (b), and (b)(3) and by adding new paragraph (b)(4) to read as follows:

§ 27.903 Engines.

(a) *Engine type certification.* Each engine must have an approved type certificate. Reciprocating engines for use in helicopters must be qualified in accordance with § 33.49(d) or be otherwise approved for the intended usage.

(b) *Engine or drive system cooling fan blade protection.* If an engine or rotor drive system cooling fan is installed, there must be a means to protect the rotorcraft and allow a safe landing if a fan blade fails. This must be shown by showing that:

(1) * * *

(2) * * *

(3) Each fan blade can withstand an ultimate load of 1.5 times the centrifugal force resulting from operation limited by the following:

(i) For fans driven directly by the engine—

(A) The terminal engine r.p.m. under uncontrolled conditions; or

(B) An overspeed limiting device.

(ii) For fans driven by the rotor drive system, the maximum rotor drive system rotational speed to be expected in service, including transients.

(4) Unless a fatigue evaluation under § 27.571 is conducted, it must be shown that cooling fan blades are not operating at resonant conditions within the operating limits of the rotorcraft.

Explanation: Section 33.49(d) of Part 33 sets forth a special test program required for reciprocating engines to make them eligible for use in helicopters. This requirement should be added to Part 27 to ensure that reciprocating engines used in helicopters are properly qualified. The first part of this proposal would accomplish this.

The safety standards for engine cooling fans would be revised to include rotor drive system cooling fans in order to ensure that these fans are properly qualified, since current Part 27 does not include qualification standards for these fans. A separate overspeed test is included for rotor drive system cooling fans since the overspeed conditions applicable to these fans may be different from those applicable to engine driven fans. Since cooling fans may be subjected to vibratory loads and fan failures from these loads have occurred, a new paragraph is added to assure consideration of this aspect.

Ref: Proposal 94; Committee II.

3–9. By amending § 27.923 by revising paragraphs (c), (d), (e), and (j) and by adding new paragraph (k) to read as follows:

§ 27.923 Rotor drive system and control mechanism tests.

* * * * * *

(c) A 60-hour part of the test prescribed in paragraph (b) of this section must be run at not less than maximum continuous torque and the maximum speed for use with maximum continuous torque. In this test, the main rotor controls must be set in the position that will give maximum longitudinal cyclic pitch change to simulate forward flight. The auxiliary rotor controls must be in the position for normal operation under the conditions of the test.

(d) A 30-hour or, for rotorcraft for which the use of either 30-minute OEI power or continuous OEI power is requested, a 25-hour part of the test prescribed in paragraph (b) of this section must be run at not less than 75 percent of the maximum continuous torque and the minimum speed for use with 75 percent of maximum continuous torque. The main and auxiliary rotor controls must be in the position for normal operation under the conditions of the test.

(e) A 10-hour part of the test prescribed in paragraph (b) of this section must be run at not less than takeoff torque and the maximum speed for use with takeoff torque. The main and auxiliary rotor controls must be in the normal position for vertical ascent. For multiengine helicopters for which the use of 2½-minute OEI power is requested, 12 runs during the 10-hour test must be conducted as follows:

(1) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(2) Each run must consist of at least one period for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

* * * * *

(j) For multiengine rotorcraft for which the use of 30-minute OEI power is requested, five runs must be made at 30-minute OEI torque and the maximum speed for use with 30-minute OEI torque, in which each engine, in sequence, is made inoperative and the remaining engine(s) is run for a 30-minute period.

(k) For multiengine rotorcraft for which the use of continuous OEI power is requested, five runs must be made at continuous OEI torque and the maximum speed for use with continuous OEI torque in which each engine, in sequence, is made inoperative and the remaining engine(s) is run for a 1-hour period.

Explanation: This rule was revised by Amendment 27–12, effective May 2, 1977 (42 FR 15034; March 17, 1977), to include tests for "30-minute" power and "2½-minute" power. However, the degree of added testing was minimal and intended to be basically a demonstration that the rotor drive system could absorb the torque of engines operating at 2½-minute and 30-minute OEI power. This was justified in the preamble of that amendment on the basis that these ratings were not incorporated into the performance standards and no performance credit is realized from their use. Subsequently, Amendment 27–14, effective March 1, 1978 (43 FR 2324; January 16, 1978), revised §§ 27.67 and 27.75, and Amendment 27–16, effective December 1, 1978 (43 FR 50578; October 30, 1978), revised § 27.79 to allow performance credit for one-engine-inoperative ratings. No corresponding changes to § 27.923 were provided to assure continued airworthiness of the drive system components under this usage. This proposal would correct that deficiency by appropriate extensions of the test requirements for the 2½-minute OEI and 30-minute OEI ratings. Additionally, this proposal adds test requirements for a new continuous OEI rating (to correspond with new performance rule changes associated with this rating). To minimize the burden of testing associated with the 30-minute OEI or the continuous OEI ratings, the run time required by § 27.923(d) would be reduced to 25 hours, if such ratings are requested.

Editorial changes would clarify the torque and speed requirements for given test conditions and, where applicable, to delete the term "engine" to avoid the implication that a test must be conducted at a specified percent of "engine" power when the declared "rotorcraft" power is being addressed. The terms "30-minute power" and "2½-minute power" are being revised to "30-minute OEI power" and "2½-minute OEI power," respectively, to agree with the revised terminology in proposed § 1.1.

Ref: Proposals 95, 96, and 97; Committee II.

3–10. By amending § 27.927 by revising paragraph (b)(3) to read as follows:

§ 27.927 Additional tests.

* * * * *

(b) * * *

(3) The tests prescribed in this paragraph must be conducted on the rotorcraft at the maximum rotational speed intended for the power condition of the test and the torque must be absorbed by the rotors to be installed, except that other ground or flight test facilities with other appropriate methods of torque absorption may be used if the conditions of support and vibration closely simulate the conditions that would exist during a test on the rotorcraft.

* * * * *

Explanation: The test condition of paragraph (b)(3) of this section is not adequately defined without a reference to the rotational speed to be used during the test. A reference to "maximum rotational speed" would, accordingly, be added to complete the definition of this test.

Ref: None.

3–11. By adding a new § 27.954 to read as follows:

§ 27.954 Fuel system lightning protection.

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; or

(c) Corona and streamering at fuel vent outlets.

Explanation: A number of lightning strikes to rotorcraft have been reported. This proposal would adopt for Part 27 essentially the same lightning strike protection for rotorcraft fuel systems as is currently required by Parts 23 and 25 for fixed-wing aircraft fuel systems.

Conference proposals in this area would have limited application of the requirement for lightning protection to rotorcraft certificated for instrument flight; however, lightning strikes can occur during visual flight rules flight in the vicinity of clouds. Also, it would not be appropriate to approve fuel system configurations with unusal operational restrictions, i.e., VFR only. A corresponding change proposed for Part 29 and Proposal 2–14 of Notice No. 2 of the Rotorcraft Regulatory Review (47 FR 37806; August 26, 1982) would require lightning protection for airframe components other than fuel systems.

Ref; Proposals 99, 306, and 307; Committee II.

3–12. By revising § 27.955 to read as follows:

§ 27.955 Fuel flow.

(a) *General.* The fuel system for each engine must be shown to provide the engine with at least 100 percent of the fuel required under each operating and maneuvering condition to be approved for the rotorcraft including, as applicable, the fuel required to operate the engine(s) under the test conditions required by § 27.927. Unless equivalent methods are used, compliance shall be shown by test during which the following provisions are met:

(1) The fuel pressure, corrected for critical accelerations, must be within the limits specified by the engine type certificate data sheet.

(2) The fuel level in the tank may not exceed that established as the unusable fuel supply for that tank under § 27.959, plus the minimum additional fuel necessary to conduct the test.

(3) The fuel head between the tank outlet and the engine inlet must be critical with respect to rotorcraft flight attitudes.

(4) The critical fuel pump (for pump-fed systems) is installed to produce (by actual or simulated failure) the critical restriction to fuel flow to be expected from pump failure. (Ref. § 27.991.)

(5) Critical values of engine rotation speed, electrical power, or other sources of fuel pump motive power shall be applied.

(6) Critical values of fuel properties which adversely affect fuel flow shall be applied.

(7) The fuel filter required by § 27.997 shall be blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 27.1305(q), plus the contamination to be expected from full fuel tankage of the rotocrcraft using fuel contaminated to the degree expected in normal service.

(b) *Fuel transfer systems.* If normal operation of the fuel system requires fuel to be transferred to an engine feed tank, the transfer must occur automatically via a system which has been shown to maintain the fuel level in the engine feed tank within acceptable limits during flight or surface operation of the rotorcrafts.

(c) *Multiple fuel tanks.* If an engine can be supplied with fuel from more than one tank, the fuel system must, in addition to having appropriate manual switching capability, be designed to prevent interruption of fuel flow to that engine, without attention by the flightcrew, when any tank supplying fuel to that engine is depleted of usable fuel during normal operation, and any other tank that normally supplies fuel to the engine alone contains usable fuel.

Explantion: This proposal would reorganize and restate the engine fuel flow requirements and would add the following new system design and performance requirements:

1. Adequate fuel flow would be required for engine overtorque or power excursions to be expected from governor-controlled engines as defined by § 27.927. This aspect of the proposal would make the fuel system performance requirements consistent with other proposed rules and existing rules that require structural qualification for high-power transients.

2. Rotorcraft vertical accelerations associated with maneuvers would be required to be considered. This aspect could be significant for suction feed systems supplying fuel to engines which cannot tolerate momentary fuel flow interruptions. Critical rotorcraft flight attitudes, fuel properties, and minimum fuel pump performance would also have to be considered to assure that adequate fuel is available.

3. The quantity of fuel allowed in the tank during fuel flow testing is restated to avoid misinterpretation.

4. The pump redundancy requirements of existing § 27.955(a)(3) are clarified and restated to assure that appropriate failure modes are considered and to delete unnecessarily restrictive wording regarding methods of compliance.

5. Amendment 27–9 prescribes fuel filter design requirements which introduced the concepts of minimum filter capacity (§ 27.997(d)), and an indicator to signal the crew when the filter capacity is being approached (§ 27.1305(q)). However, the corresponding adverse effect on fuel flow by fuel contaminates collecting on the filter was not addressed. This proposal would rectify that inconsistency by specifying fuel system performance under conditions of fuel contamination. Both military and civil specifications exist to define the degree of contamination to be expected.

6. Other new requirements in this proposal provide design standards for transfer fuel tanks and for fuel systems which supply fuel to the engine from more than one tank. These standards require that, for normal operation, all fuel intended for an engine would be automatically fed to that engine. Manual override of automatic switching devices would also be required. These provisions would alleviate crew workload associated with fuel system management.

Ref: None.

3–13. By revising § 27.961 to read as follows:

§ 27.961 Fuel system hot weather operation.

Each suction lift fuel system and other fuel systems with features conducive to vapor formation must be shown by test to operate satisfactorily (within certification limits) when using fuel at a temperature of 110 °F under critical operating conditions, including if applicable, the engine operating conditions defined by § 27.927(b)(1) and § 27.927(b)(2).

Explanation: Certain fuel systems could be demonstrated to be "free from vapor lock" as required by this rule but still not satisfactory with respect to the engine pump inlet requirements thus possibly resulting in excessive wear from pump cavitation erosion. This proposed change would set forth a more generalized requirement compatible with the capability of the engine pump to accept fuel with entrained vapor. The term "critical operating conditions" may not, in some cases, have been interpreted to include the overtorque conditions to be expected with derated or governor-controlled engines as defined in § 27.927. A phrase is added to ensure consideration of these conditons.

Ref: None.

3–14. By amending § 27.963 by redesignating existing paragraphs (b), (c), and (d) as (c), (d), and (e), respectively; and by adding new paragraphs (b), (f) and (g) to read as follows:

§ 27.963 Fuel tanks: General.

* * * * *

(b) Under emergency landing conditions, each fuel tank and its installation must be designed or protected to retain fuel without leakage under the following ultimate inertia forces relative to surrounding structure:

(1) Upward—1.5g.
(2) Forward—6.0g.
(3) Sideward—4.0g.
(4) Downward—8.0g.

* * * * *

(f) The maximum exposed surface temperature of any component in the fuel tank shall be less, by a safe margin as determined by the Administrator, than the lowest expected autoignition temperature of the fuel or fuel vapor in the tank. Compliance with this requirement must be shown under all operating conditions and under all failure or malfunction conditions of all components inside the tank.

(g) Each fuel tank installed in personnel compartments must be isolated by fume proof and fuel proof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosure shall provide necessary protection for the tank and be adequate to withstand loads and abrasions to be expected in personnel compartments.

Explanation: The higher load factors proposed by new paragraph (b) will provide better assurance that fuel tanks will retain their contents in the event of an otherwise survivable crash, thus reducing the possibility of extremely hazardous postcrash fuel fires.

It is essential to establish under all conditions of operation, including failure and malfunction conditions, that ignition sources do not exist nor can be created which can cause explosions inside fuel tanks. New paragraph (f) woud provide requirements to ensure such explosions will not occur. No pertinent requirements or safety standards exist in this part applicable to fuel tanks installed in passenger compartments. New paragraph (g) would provide standards to ensure that such fuel tanks would be installed safely.

Ref: Proposals 102, 313, and 314; Committee II.

3–15. By revising § 27.969 to read as follows:

§ 27.969 Fuel tank expansion space.

Each fuel tank or each group of fuel tanks with interconnected vent systems must have an expansion space of not less than 2 percent of the tank capacity. It must be impossible to fill the fuel tank expansion space inadvertently with the rotorcraft in the normal ground attitude.

Explanation: This proposal would alleviate an unnecessary requirement that each tank in an interconnected group of tanks must have its own expansion space. Adequate, effective fuel expansion space in one tank or in a special expansion tank is acceptable.

Ref: Proposals 104 and 318; Committee II.

3–16. By revising § 27.971 to read as follows:

§ 27.971 Fuel tank sump.

(a) Each fuel tank must have a drainable sump with an effective capacity in any ground attitude to be expected in service of 0.25 percent of the tank capacity or 1/16 gallon, whichever is greater, unless—

(1) The fuel system has a sediment bowl or chamber that is accessible for preflight drainage and has a minimum capacity of 2 ounces for every 20 gallons of fuel tank capacity; and

(2) Each fuel tank outlet is located so that in any ground attitude to be expected in service, water will drain from all parts of the tank to the sediment bowl or chamber.

(b) Each sump, sediment bowl, and sediment chamber drain required by this section must comply with the drain provisions of § 27.999(b) of this part.

Explanation. This proposal introduces finite minimum values for fuel tank sump capacity and authorizes an appropriately sized and located fuel sediment bowl as an alternative if a sump is not provided. This change would bring this rule into alignment with existing § 23.971 for fuel systems in light fixed-wing aircraft as well as into alignment with current design practice. In addition, this proposal would require the sump to be effective in any ground attitude expected in service. These requirements are needed to ensure that the contents of the sump are not ingested into the engine fuel system and that adequate sump space is available in the event the rotorcraft is serviced while parked on uneven surfaces to be expected with off-airport or off-heliport sites.

Ref: Proposal 105; Committee II.

3–17. By amending § 29.975 by designating existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 27.975 Fuel tank vents.

* * * * *

(b) The venting system shall be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing or ground operation unless such an event is extremely remote.

Explanation: This proposal is intended to require designs which reduce the fuel system postcrash fire hazards by locating or routing fuel tank vent systems to minimize the possibility that fuel will spill to an ignition source via the vent system if the rotorcraft rolls over during landing or ground operation. This proposal is one of a series of proposals intended to improve fuel system crash protection.

Ref: Proposal 305; Committee II.

3–18. By revising § 27.991 to read as follows:

§ 27.991 Fuel pumps.

Compliance with § 27.955 shall not be jeopardized by failure of—

(a) Any one pump except pumps that are approved and installed as parts of a type certificated engine; or

(b) Any component required for pump operation except, for engine driven pumps, the engine served by that pump.

Explanation. This proposal would delete unnecessary definitions and detail design requirements in favor of a succinct objective statement requiring pump redundancy. The rule is further extended to require consideration of failure of any pump motivation device such as a generator, for electrically driven pumps. A complementary change to delete the requirements of existing § 27.955(a)(3) is included in this notice.

Ref: None.

3–19. By amending § 27.993 by adding a new paragraph (f) to read as follows:

§ 27.993 Fuel system lines and fittings.

* * * * *

(f) Flammable fluid lines must be constructed and routed to withstand the inertia loads of § 27.963 without hazardous leakage.

Explanation: Flammable fluid line failures resulting in fire during a survivable crash constitute a significant avoidable hazard. This change would require designs of flammable fluid systems to be resistant to failures under these crash conditions. This change is consistent with concurrent changes to the fuel tank structural requirements of § 27.963.

Ref: Proposals 106 and 321; Committee II.

3–20. By amending § 27.997 by revising both the introductory text and paragraph (d) to read as follows:

§ 27.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of the first fuel system component which is susceptible to fuel contamination, including the fuel metering device or an engine positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

* * * * *

(d) Provide a means to remove from the fuel any contaminant which would jeopardize the flow of fuel through rotorcraft or engine fuel system components required for proper rotorcraft fuel system or engine fuel system operation.

Explanation: This proposed change would assure that the required fuel filter is located in the fuel system to protect all components in the system needing protection rather than just the fuel metering device or a positive displacement pump. In addition, paragraph (d) is revised to limit its scope to providing adequate filtration, since the capacity aspect of the filter (as related to the effective contaminate collection area) is addressed by corresponding proposals to revise §§ 27.955 and 27.1305.

Ref: Proposal No. 107; Committee II.

3–21. By amending § 27.999 by revising paragraphs (a) and (b)(2) to read as follows:

§ 27.999 Fuel system drains.

(a) There must be at least one accessible drain at the lowest point in each fuel system to completely drain the system with the rotorcraft in any ground attitude to be expected in service.

(b) * * *

(2) Have manual or automatic means to assure positive closure in the off position; and

* * * * *

Explanation: This proposal would complement the proposed change to § 27.971 to assure that other fuel system components are properly drained with the rotorcraft resting on uneven terrain. This may be significant for rotorcraft being operated from unimproved ground sites. In addition, this proposal would revise paragraph § 27.999(b)(2) to clarify the existing requirement for a positive locked drain valve. A spring loaded valve, which provides a positive force against a seal, has been found to be satisfactory on many past certifications, and would be acceptable under the proposed wording.

Ref: Proposal 105; Committee II.

3–22. By revising the title of § 27.1011 as follows:

§ 27.1011 Engines: General.

* * * * *

Explanation: A new § 27.1027, proposed in this notice, provides comprehensive lubrication system requirements for transmissions and drive systems. Existing § 27.1011, entitled "General.", should therefore be retitled "Engines: General." to reflect clearly that it applies to engine lubrication systems and not to transmission or drive system lubrication systems.

Ref: None.

3–23. By amending § 27.1019 by revising paragraph (a)(3) to read as follows:

§ 27.1019 Oil strainer or filter.

(a) * * *

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate a means to indicate contamination before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

* * * * *

Explanation: The existing requirement for "an indicator that will indicate" contamination is unduly restrictive. This proposal would substitute the words "a means to indicate" to allow a wider range of methods to provide compliance.

Ref: Proposals 108 and 327; Committee II.

3–24. By adding a new § 27.1027 following existing § 27.1021 to read as follows:

§ 27.1027 Transmissions and gear boxes: General.

(a) Pressure lubrication systems for transmissions and gearboxes must comply with the engine oil system requirements of §§ 27.1011, 27.1013 (except paragraph (c)), 27.1015, 27.1017, 27.1021, and 27.1337(d).

(b) Each pressure lubrication system must have an oil strainer or filter through which all of the lubricant flows and must—

(1) Be designed to remove from the lubricant any contaminant which may damage transmission and drive system components or impede the flow of lubricant to a hazardous degree;

(2) Be equipped with a means to indicate collection of contaminants on the filter or strainer at or before opening of the bypass required by paragraph (b)(3) of this section; and

(3) Be equipped with a bypass constructed and installed so that—

(i) The lubricant will flow at the normal rate through the rest of the system with the strainer or filter completely blocked; and

(ii) The release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flowpath.

(c) For each lubricant tank or sump outlet supplying lubrication to rotor drive systems and rotor drive system components, a screen to prevent entrance into the lubrication system of any object that might obstruct the flow of lubricant from the outlet to the filter required by paragraph (a)(1) of this section. The requirements of paragraph (a)(1) do not apply to screens installed at lubricant tank or sump outlets.

(d) Splash type lubrication systems for rotor drive system gearboxes must comply with §§ 27.1021 and 27.1337(d).

Explanation: Existing requirements for lubrication systems are engine oriented and are not, in all instances, appropriate for transmissions and drive systems. This proposal would set forth design requirements directly applicable to transmission and gearbox oil systems and omit unnecessary engine related requirements.

Ref: None.

3–25. By amending § 27.1041 by revising paragraph (a) to read as follows:

§ 27.1041 General.

(a) Each powerplant cooling system must be able to maintain the temperatures of powerplant components within the limits established for these components under critical surface (ground or water) and flight operating conditions for which certification is required, and after normal shutdown. Powerplant components to be considered include engines, rotor drive system components, auxiliary power units, and the cooling or lubricating fluids used with these components.

* * * * *

Explanation: This proposal would provide clarification and definition of powerplant components required to be considered when evaluating the performance of the powerplant cooling systems and arrangements. It is needed to avoid extensive interpretation or extrapolation of the existing rule to apply to powerplant components not specifically listed by the existing rule.

Ref: Proposal 109; Committee II.

3–26. By amending § 27.1045 by revising paragraph (c)(1) to read as follows:

§ 27.1045 Cooling test procedures.

* * * * *

(c) * * *

(1) The temperatures stabilize or 5 minutes after the occurrence of the highest temperature recorded, as appropriate to the test condition;

* * * * *

Explanation: For some cooling tests such as climb cooling, component or system temperatures cannot be expected to stabilize, as required by the current rule. This proposal would introduce into this section alternate criteria for cooling tests, applicable to cooling parameters which cannot be expected to stabilize.

Ref: Proposal 111; Committee II.

§ 27.1091 [Amended]

3–27. By amending § 27.1091 by removing paragraph (d) in its entirety and by redesignating paragraph (e) as paragraph (d).

Explanation: This proposal would delete rules which specify a test condition which may be meaningless or not critical for a specific helicopter design. Further, existing § 27.1091(e)(2) provides an adequate rule for evaluating the location of engine air inlets with respect to foreign object ingestion.

Ref: Proposal 112; Committee II.

3–28. By amending § 27.1093 by revising paragraph (b)(1) to read as follows:

§ 27.1093 Induction system icing protection.

* * * * *

(b) *Turbine engines.*

(1) It must be shown that each turbine engine and its air inlet system can operate throughout the flight power range of the engine (including idling)—

(i) Without accumulating ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power under the icing conditions specified in Appendix C of Part 29 of this Chapter; and

(ii) In snow, both falling and blowing, without adverse effect on engine operation, within the limitations established for the rotorcraft.

* * * * *

Explanation: This proposal would revise and clarify (by rewording and rephrasing) existing § 27.1093(b). This change is needed because the phrasing and paragraphing of existing paragraph (b) and its subparagraphs imply that the phrase, "within the limitations established for the rotorcraft," in (b)(1) applies equally to (b)(1)(i) and (b)(1)(ii). This implication was not intended by Amendments 27–12 and 27–9 which, respectively, introduced the requirements for consideration of inlet components when evaluating atmospheric ice and the (optional) requirements for demonstrating flight into snow. This proposal, by still further rewording and rephrasing, will restate these requirements in their original context.

The reference to Appendix C of Part 25 would be changed to Appendix C of Part 29. This change is needed to ensure that any changes made to the icing criteria for rotorcraft, reflected by Appendix C of this Part, will automatically apply to powerplants required to comply with this Part.

Ref: None.

3–29. By amending § 27.1141 by revising introductory text of paragraph (c) to read as follows:

§ 27.1141 Powerplant controls: General.

* * * * *

(c) Controls of powerplant valves required for safety must have—

* * * * *

Explanation: This proposal would remove from consideration any powerplant valves not required for safety. In addition, it would extend the applicability of the rule to powerplant valves controlled at locations other than in the cockpit, such as used in automatic fuel transfer systems, single point refueling panels, flow switches, etc.

Ref: Proposal 341; Committee II.

3–30. By amending § 27.1143 by revising paragraphs (a) and (c) and introductory texts of paragraphs (b) and (d) to read as follows:

§ 27.1143 Engine controls.

(a) There must be a separate power control for each engine.

(b) Power controls must be grouped and arranged to allow—

* * * * *

(c) Each power control must provide a positive and immediate responsive means of controlling its engine.

(d) If a power control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

* * * * *

Explanation: This proposal would replace the terms "throttle control" and "thrust control," which are peculiar to certain engines, with the more general term "power control." This change is needed to avoid misunderstandings and possible equivalent safety findings when turboshaft engines are employed in rotorcraft. A similar change is proposed for § 29.1143.

Ref: Proposals 116 and 343; Committee II.

3–31. By amending § 27.1163 by revising paragraph (b) to read as follows:

§ 27.1163 Powerplant accessories.

* * * * *

(b) Unless other means are provided, torque limiting means must be provided for accessory drives located on any component of the transmission and rotor drive system to prevent damage to these components from excessive accessory load.

Explanation: A strict interpretation of existing § 27.1163(b) would require torque limiting means for accessory drives to be included with the transmission and drive system rather than in the accessory itself. This proposed amendment would allow flexibility in the method of compliance. In addition, the proposal is generalized to assure protection from accessory overtorque for any part of the transmission and drive system.

Ref: Proposal 117; Committee II.

3–32. By amending § 27.1189 by revising paragraph (c) to read as follows:

§ 27.1189 Shutoff means.

* * * * *

(c) Each shutoff valve and its control must be designed, located, and protected to function properly under any condition likely to result from an engine fire.

Explanation: The existing rule would not preclude attaching shutoff valves directly to the remote side of firewalls, although this condition could jeopardize valve function due to heat transfer through the wall in the event of an engine fire. This proposed revision would allow design flexibility as well as assure proper valve function under engine fire conditions. A similar change is proposed for § 29.1189.

Ref: Proposal No. 119; Committee II.

3–33. By amending § 27.1193 by adding a new paragraph (f) to read as follows:

§ 27.1193 Cowling and engine compartment covering.

* * * * *

(f) A means of retaining each openable or readily removable panel, cowling, or engine or rotor drive system covering must be provided to preclude hazardous damage to rotors or critical control components in the event of structural or mechanical failure of the normal retention means, unless such failure is extremely improbable.

Explanation: Conventional cowl fasteners subject to frequent operation by line maintenance personnel are known to fail due to wear and vibration. This proposal is intended to require special provisions to preclude panels, cowling, and covers from entering or interfering with rotors or controls in the event of a failure in the retention means.

Ref: Proposal 120; Committee II.

3–34. By amending § 27.1305 by revising paragraphs (l), (m), (q), and (s) to read as follows:

§ 27.1305 Powerplant instruments.

* * * * *

(l) A low fuel warning device for each fuel tank which feeds an engine. This device must—

(1) Provide a warning to the flightcrew when approximately 10 minutes of usable fuel remains in the tank; and

(2) Be independent of the normal fuel quantity indicating system.

(m) Means to indicate to the flightcrew the failure of any fuel pump installed to show compliance with § 27.955.

* * * * *

(q) An indicator for the fuel filter required by § 27.997 to indicate the occurrence of contamination of the filter at the degree established by the applicant in compliance with § 27.955.

* * * * *

(s) An indicator to indicate the functioning of any selectable or controllable heater used to prevent ice clogging of fuel system components.

Explanation: This proposal would extend the low fuel warning device requirements of paragraph (l) to include all tanks which can feed an engine. Since this would apply to "last use" tanks as well as initial or interim use tanks, an earlier warning of inpending fuel exhaustion is appropriate and flexibility for the designer to optimize this time increment is provided. The existing requirement for considering the most adverse fuel feed situation would be deleted since it is redundant with the term "usable fuel." A requirement for the low fuel warning device to be separate from the normal fuel quantity indicating system is included since inaccurate or malfunctioning fuel quantity indicating systems are a major contributor to fuel exhaustion power loss events.

Paragraph (m) would be revised to provide to the crew direct information on the pump failure situation and alleviate the need for equivalent safety findings when the emergency fuel pumps are operated continuously as back-up pumps or transfer pumps. Paragraph (q) would be revised to apply to all rotorcraft and is reworded to allow the applicant to establish an indicator setting compatible with other fuel system parameters involved with establishing compliance with § 27.995. Paragraph (s) would be revised to avoid the requirement for annunciating the function of completely automatic fuel heater devices which do not require crew attention.

Ref: Proposals 122 and 124; Committee II.

3–35. By amending § 27.1337 by adding a new paragraph (e) to read as follows:

§ 27.1337 Powerplant instruments.

* * * * *

(e) Rotor drive system transmissions and gearboxes utilizing ferromagnetic materials shall be equipped with chip detectors designed to indicate or reveal the presence of ferromagnetic particles resulting from damage or excessive wear. Chip detectors shall—

(1) Incorporate means to indicate the accumulation of ferromagnetic particles on the magnetic poles; or

(2) Be readily removable for inspection of the magnetic poles for metallic chips. Means shall be provided to prevent loss of lubricant in the event of failure of the retention device for removable chip detector components.

Explanation: This proposal would add a requirement for installation of ferromagnetic chip detectors in transmissions and gearboxes. These chip detectors are needed to intercept impending failure of ferromagnetic components in transmissions and gearboxes.

Ref: Proposal 125; Committee II.

3–36. By amending § 27.1521 by adding new paragraphs (g), (h), and (i) to read as follows:

§ 27.1521 Powerplant limitations.

* * * * *

(g) *Two and one-half-minute OEI power operation.* Unless otherwise authorized, the use of 2½-minute OEI power shall be limited to multiengine, turbine-powered rotorcraft for not longer than 2½ minutes after failure of an engine. The use of 2½-minute OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(h) *Thirty-minute OEI power operation.* Unless otherwise authorized, the use of 30-minute OEI power shall be limited to multiengine, turbine-powered rotorcraft for not longer than 30 minutes after failure of an engine. The use of 30-minute OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(i) *Continuous OEI power operation.* Unless otherwise authorized, the use of continuous OEI power shall be limited to multiengine, turbine-power rotorcraft for continued flight after failure of an engine. The use of continuous OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

Explanation: These proposed new paragraphs would set forth powerplant limitations associated with OEI ratings applicable only to multiengine, turbine-powered rotorcraft. These paragraphs are needed to assure that the appropriate parameters are recognized as limitations under § 27.1583(b). See proposed changes to §§ 1.1, 1.2, 27.67, and 29.1521 for further explanations.

Ref: None.

3–37. By amending § 27.1549 by adding a new paragraph (e) to read as follows:

§ 27.1549 Powerplant instruments.

* * * * *

(e) For multiengine rotorcraft, each OEI limit or range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section.

Explanation: This proposal would prescribe rules to ensure that the OEI limits, which are rarely used in the course of flight operations, are adequately marked on powerplant instruments to enable the crew to quickly and accurately set and monitor power during the emergency situation related to engine failure. Although originally proposed as a change to § 29.1549, this proposal is equally applicable to Part 27 rotorcraft.

Ref: Proposal 399; Committee II.

PART 29—AIRWORTHINESS STANDARDS TRANSPORT CATEGORY ROTORCRAFT

3–38. By amending § 29.45 by revising the introductory text of paragraph (c) to read as follows:

§ 29.45 General.

* * * * *

(c) The available power must correspond to engine power adjusted for powerplant instrument error, not exceeding the approved power, less—

* * * * *

Explanation: Powerplant instrument error can result in power settings which may not produce the rotorcraft performance needed for safety. This proposal is needed to assure that this error is accounted for.

Ref: Proposal 283; Committee II.

3–39. By amending § 29.67 by revising paragraphs (a)(2)(i), (a)(3)(i), and (b) to read as follows:

§ 29.67 Climb: one engine inoperative.

(a) * * *

(2) * * *

(i) The critical engine inoperative and the remaining engines at—

(A) Maximum continuous power;

(B) Thirty-minute OEI power (for helicopters for which certification for the use of 30-minute OEI power is requested); or

(C) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested);

* * * * *

(3) * * *

(i) The critical engine inoperative and the remaining engines at—

(A) Maximum continuous power and at 30-minute OEI power (for helicopters for which certification for use of 30-minute OEI power is requested); or

(B) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested);

* * * * *

(b) For multiengine Category B helicopters meeting the requirements for category A in § 29.79, the steady rate of climb (or descent) must be determined at the speed for the best rate of climb (or minimum rate of descent) with one engine inoperative and the remaining engine at either—

(1) Maximum continuous power and at 30-minute OEI power (for helicopters for which certification for the use of 30-minute OEI power is requested); or

(2) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested).

Explanation: See the explanation and proposal for §§ 1.1 and 27.67.

Ref: Proposals 2, 3, 14, 15, 95, 96, 97, 167, 168, 169, 288, 291, 292, 296, 331, 332, 333, 334, 335, 336, 394, 395, 399, 414, 415, 419, and 420; Committee II.

3–40. By revising § 29.361 to read as follows:

§ 29.361 Engine torque.

The limit engine torque may not be less than the following:

(a) For turbine engines, the highest of—

(1) The mean torque for maximum continuous power multiplied by 1.25;

(2) The torque required by § 29.923;

(3) The torque required by § 29.927;

(4) The torque imposed by sudden engine stoppage due to malfunction or

structural failure (such as compressor jamming); or

(5) The torque imposed by power excursions associated with fuel control malfunction or by inadvertent or abnormal control motions to be expected in service.

(b) For reciprocating engines, the mean torque for maximum continuous power multiplied by—

(1) 1.33, for engines with five or more cylinders; and

(2) Two, three, and four, for engines with four, three, and two cylinders, respectively.

Explanation: See the explanation for proposed § 27.361.

Ref: Proposal 48; Committee I.

3–41. By amending § 29.549 by revising paragraph (e) to read as follows:

§ 29.549 Fuselage and rotor pylon structures.

* * * * *

(e) If approval for the use of 2½-minute OEI power is requested, each engine mount and adjacent structure must be designed to withstand the loads resulting from a limit torque equal to 1.25 times the mean torque for 2½-minute OEI power combined with 1g flight loads.

Explanation: This proposal would merely revise the term "2½-minute power" to "2½-minute OEI power" to agree with the proposed change to § 1.1.

Ref: None.

3–42. By amending § 29.901 by revising paragraph (b)(2); by adding new paragraph (b)(6); and by revising introductory text of paragraph (c) to read as follows:

§ 29.901 Installation.

* * * * *

(b) * * *

(2) Each component of the installation must be constructed, arranged, and installed to ensure its continued safe operation between normal inspections or overhauls for the range of temperature and altitude for which approval is requested.

* * * * *

(6) Design precautions shall be taken to minimize the possibility of incorrect assembly of components and equipment essential to safe operation of the rotorcraft, except where operation with the incorrect assembly can be shown to be extremely improbable.

(c) For each powerplant and auxiliary power unit installation, it must be established that no single failure or malfunction or probable combination of related secondary failures will jeopardize the safe operation of the rotorcaraft except that—

* * * * *

Explanation: For an explanation of the revision to paragraph (b)(2) and new paragraph (b)(6), see the explanation for § 27.901.

Paragraph (c) is revised to replace the words "or probable combination of failures" with the words "or probable combination of related secondary failures." A concern expressed at the conference was that interpretation of the existing words could lead to a proliferation of endless failure modes and effect analyses. This change is intended to alleviate this by limiting the area of concern to related secondary failures.

Ref: Proposals 276 and 279; Committee II.

3–43. By amending § 29.903 by revising paragraph (a); by revising paragraph (b)(2); by removing the "or" at the end of paragraph (c)(1); by removing the period at the end of (c)(2) and replacing it with "; or"; and by adding a new paragraph (c)(3) to read as follows:

§ 29.903 Engines.

(a) *Engine type certification.* Each engine must have an approved type certificate. Reciprocating engines for use in helicopters must be qualified in accordance with § 33.49(d) or be otherwise approved for the intended usage.

(b) * * *

(2) Require immediate action, other than normal pilot action with primary flight controls, by any crewmember to maintain safe operation.

(c) * * *

(3) Engine restart capability must be established throughout a flight envelope to the rotorcraft.

* * * * *

Explanation: For an explanation of the change to paragraph (a) see the explanation for § 27.903(a). The proposed change to paragraph (b)(2) would clarify the crew action to be expected in event of an engine failure. This clarification is needed since the integration of powerplant controls and flight controls on most rotorcraft may result in confusion regarding this concept. New paragraph (c)(3) is intended to require the means to restart any engine required by paragraph (c) to be effective across a flight envelope appropriate to the rotorcraft. This is needed since the current requirement for restart capability could be interpreted to apply to an extremely limited part of the flight envelope, and thus not provided the safety intended by paragraph (c).

Ref: Proposals 282 and 285; Committee II.

3–44. By amending § 29.908 by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 29.908 Cooling fans.

* * * * *

(a) *Category A.* For cooling fans installed in Category A rotorcraft, it must be shown that a fan blade failure will not prevent continued safe flight either because of damage caused by the failed blade or loss of cooling air.

* * * * *

(c) *Failure evaluation.* Unless a fatigue evaluation under § 29.571 is conducted, it must be shown that cooling fan blades are not operating at reasonant conditions within the operating limits of the rotorcraft.

Explanation: This proposed change to paragraph (a) would require safe operation, including adequate cooling, following a cooling fan failure. This change is needed since the existing rule would accept fan failure modes which could result in hazards to the rotorcraft from fan fragmentation or from loss of cooling air to critical powerplant components.

New paragraph (c) would require determination that cooling fans which are not part of the rotor drive system are safe from failure to be expected if fan blade resonant conditions exist within the operating range. This change is needed to ensure proper fatigue evaluation of fans which by location or definition may not be included in other fatigue tests or evaluations.

Ref: Proposals 281 and 287; Committee II.

3–45. By amending § 29.923 by revising paragraphs (a)(1), (a)(3) (introductory text), (a)(3)(ii), (b), introductory text of (c), (d) through (h), and (k) to read as follows:

§ 29.923 Rotor drive system and control mechanism tests.

(a) * * *

(1) Ten-hour test cycles shall be used, except that the test cycle shall be entended to include the OEI test of paragraphs (b)(2) and (k), if OEI ratings are requested.

(2) * * *

(3) The test torque and speed must be—

(i) * * *

(ii) Absorbed by the rotors to be approved for the rotorcraft.

(b) *Endurance tests, takeoff run.* The takeoff run must be conducted as follows:

(1) Except as prescribed in paragraph (b)(2) of this section, the takeoff run must consist of 1 hour of alternate runs of 5 minutes each at takeoff torque and the maximum speed for use with takeoff torque, and 5 minutes each at as low an engine idle speed as practicable. The engine must be declutched from the rotor drive system, and the rotor brake, if furnished and so intended, must be applied during the first minute of the idle run. During the remaining 4 minutes of the idle run, the clutch must be engaged so that the engine drives the rotor at the minimum practical r.p.m. The engine and the rotor drive system must be accelerated at the maximum rate. When declutching the engine, it must be decelerated rapidly enough to allow the operation of the overrunning clutch.

(2) For helicopters for which the use of 2½-minute OEI rating is requested, the takeoff run must be conducted as prescribed in paragraph (b)(1) of this section, except for the third and sixth runs for which the takeoff torque and the maximum speed for use with takeoff torque are prescribed in that paragraph. For these runs, the following apply:

(i) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(ii) Each run must consist of at least one period, for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at the 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

(c) *Endurance tests; maximum continuous run.* Three hours of continuous operation at maximum continuous torque and the maximum speed for use with maximum continuous torque must be conducted as follows:

* * * * *

(d) *Endurance tests; 90 percent of maximum continuous run.* One hour of continuous operation at 90 percent of maximum continuous torque and the maximum speed for use with 90 percent of maximum continuous torque must be conducted.

(e) *Endurance tests; 80 percent of maximum continuous run.* One hour of continuous operation at 80 percent of maximum continuous torque and the minimum speed for use with 80 percent of maximum continuous torque must be conducted.

(f) *Endurance tests; 60 percent of maximum continuous run.* Two hours or, for helicopters for which the use of either 30-minute OEI power or continuous OEI power is requested, 1 hour of continuous operation at 60 percent of maximum continuous torque and the minimum speed for use with 60 percent of maximum continuous torque must be conducted.

(g) *Endurance tests; engine malfunctioning run.* It must be determined whether malfunctioning of components such as the engine fuel or ignition systems, or whether unequal engine power can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, 1 hour of which must be included in each cycle, and the remaining hours of which must be accomplished at the end of the 20 cycles. If no detrimental condition results, an additional hour of operation in compliance with paragraph (b) of this section must be conducted in accordance with the run schedule of paragraph (b)(1) without consideration of paragraph (b)(2).

(h) *Endurance tests; overspeed run.* One hour of continuous operation must be conducted at maximum continuous torque and the maximum power-on overspeed expected in service, assuming that speed limiting devices, if any, function properly.

* * * * *

(k) *Endurance tests; OEI torque.*—(1) 30-minute OEI run: For rotorcraft for which the use of 30-minute OEI torque is requested, a run at 30-minute OEI torque and the maximum speed for use with 30-minute OEI torque must be conducted as follows: For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for a 30-minute period.

(2) Continuous OEI run: For rotorcraft for which the use of continuous OEI torque is requested, a run at continuous OEI torque and the maximum speed for use with continuous OEI torque must be conducted as follows: For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for 1 hour.

(3) The number of periods prescribed in paragraph (k)(1) or (k)(2) of this section may not be less than the number of engines, nor may it be less than two.

* * * * *

Explanation: These proposed changes include editorial changes, additional testing needed to qualify the rotor drive system for a new continuous OEI rating, and clarification of the torque and r.p.m. relation for the various power ratings involved in this test, as follows.

Paragraph (a)(1) would be revised to require the test cycle to be extended beyond 10 hours if OEI rating tests are to be included in the test program. This change is needed to maintain the cyclic aspect of the test if OEI ratings are included.

Paragraph (a)(3) would be revised to include speed as a part of the test. This change is needed because the term torque by itself does not adequately define the test.

Paragraph (a)(3)(ii) is revised for clarity.

Paragraph (b)(2), (f), and (k) would be revised to add the test requirements for the new continuous OEI rating and retain as an alternate the 30-minute OEI rating tests for those applicants who may request this rating. This change is needed to provide a regulatory test basis for qualifying the rotor drive system for optional OEI ratings.

Paragraph (g) would be revised to delete the inferred requirement for repeating the 2½-minute OEI runs if the takeoff run must be reconducted. This change is needed since additional testing for the 2½-minute rating is unnecessary for safety.

Additional revisions are proposed for § 29.923(b), (c), (d), (e), (f), (h), and (k) to clarify the power parameter words to ensure that appropriate torque and rotational speeds are used during the tests.

Ref: Proposals 288, 291, 292, and 298; Committee II.

3–46. By amending § 29.927 by revising paragraphs (c), (d) (introductory text), (d)(2), and by adding new paragraph (f) to read as follows:

§ 29.927 Additional tests.

* * * * *

(c) *Lubrication system failure.* For lubrication systems, the function of which is required for operation of the rotor drive system, the following apply:

(1) *Category A.* It must be shown by tests that each rotor drive system, where the probable failure of any element could result in the loss of lubricant, is capable of continued operation, although not necessarily without damage, for a period of at least 30 minutes at a torque and rotational speed prescribed by the applicant for continued flight, after indication to the flightcrew of the loss of lubricant.

(2) *Category B.* It must be shown by tests that the rotor drive system is capable of operating under autorotative conditions, although not necessary without damage, for 15 minutes after indication to the flightcrew of the loss of lubricant.

(d) *Overspeed test.* The rotor drive system must be subjected to 50 overspeed runs, each 30±3 seconds in duration, at not less than the higher of the rotational speed to be expected from an engine control failure or 105 percent

of the maximum rotational speed, including transients, to be expected in service. These runs must be conducted as follows:

(1) * * *

(2) Acceleration and deceleration must be accomplished in a period not longer than 10 seconds (except where maximum engine acceleration rate will require more than 10 seconds), and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

* * * * * *

(f) Each test prescribed by this section must be conducted without intervening disassembly and, except for the lubrication system failure test required by paragraph (c), each part tested must be in a serviceable condition at the conclusion of the test.

Explantation: This proposed revision would impose more realistic rotor drive system lubricant failure considerations for Category A rotorcraft and clarify the test requirement for Category B rotorcraft. The overspeed run required by this section would be revised to delete the existing 120 percent overspeed test and to introduce test speed requirements related to the overspeed to be expected from operational situations which may occur in service. The overspeed test procedures would be revised to accommodate slower engine acceleration rates to be expected from certain engines.

The objectives of the tests prescribed by paragraphs (a) thru (d) of this section may not be met if intervening disassembly were allowed or, except for paragraph (c), if parts were rendered unserviceable by the test. New paragraph (f) is added to control this facet.

Ref: Proposals 297, 300, and 325; committee II.

3–47. By adding a new § 29.954 to read as follows:

§ 29.954 Fuel system lightning protection.

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; and

(c) Corona and streamering at fuel vent outlets.

Explanation: See the explanation for proposed § 27.954.

Ref: Proposals 99, 306, and 307; Committee II.

3–48. By revising § 29.955 to read as follows:

§ 29.955 Fuel flow.

(a) *General.* The fuel system for each engine must provide the engine with at least 100 percent of the fuel required under all operating and maneuvering conditions to be approved for the rotorcraft, including, as applicable, the fuel required to operate the engines under the test conditions required by § 29.927. Unless equivalent methods are used, compliance shall be shown by test during which the following occur:

(1) The fuel pressure, corrected for accelerations (load factors), must be within the limits specified by the engine type certificate data sheet.

(2) The fuel level in the tank may not exceed that established as the unusable fuel supply for that tank under § 29.959, plus that necessary to conduct the test.

(3) The fuel head between the tank and the engine must be critical with respect to rotorcraft flight attitudes.

(4) The fuel flow transmitter, if installed, and the critical fuel pump (for pump-fed systems) shall be installed to produce (by actual or simulated failure) the critical restriction to fuel flow to be expected from component failure (Ref. § 29.991).

(5) Critical values of engine rotational speed, electrical power, or other sources of fuel pump motive power shall be applied.

(6) Critical values of fuel properties which adversely affect fuel flow are applied during demonstrations of fuel flow capability.

(7) The fuel filter required by § 29.997 is blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 29.1305(a)(17), plus the contamination to be expected from full fuel tankage of the rotorcraft, using fuel contaminated to the degree expected in normal service.

(b) *Fuel transfer system.* If normal operation of the fuel system requires fuel to be transferred to another tank, the transfer must occur automatically via a system which has been shown to maintain the fuel level in the receiving tank with acceptable limits during flight or surface operation of the rotorcraft.

(c) *Multiple fuel tanks.* If an engine can be supplied with fuel from more than one tank, the fuel system, in addition to having appropriate manual switching capability, must be designed to prevent interruption of fuel flow to that engine, without attention by the flightcrew, when any tank supplying fuel to that engine is depleted of usable fuel during normal operation and any other tank that normally supplies fuel to that engine alone, contains usable fuel.

Explanation: See the explanation for § 27.955.

Ref: Proposal 100; Committee II.

3–49. By revising § 29.961 to read as follows:

§ 29.961 Fuel system hot weather operation.

Each suction lift fuel system and other fuel systems conducive to vapor formation must be shown to operate satisfactorily (within certification limits) when using fuel at the most critical temperature for vapor formation under critical operating conditions expected in service.

Explanation: See the explanation for § 27.961. Existing § 29.961 contains both general and detail requirements which are to some extent redundant, are not necessarily critical, and could arbitrarily require hot fuel flight tests of systems which are not subject to failure due to hot fuel vapor formations. These details of testing are more appropriately covered by advisory material than by rule. This proposal would substitute a simple, succinct statement of the basic requirement.

Ref: None.

3–50. By amending § 29.963 by revising paragraph (b) and by adding a new paragraph (e) to read as follows:

§ 29.963 Fuel tanks: General.

* * * * * *

(b) Under emergency landing conditions, each fuel tank and its installation must be designed or protected to retain fuel without leakage when subjected to the following ultimate inertia forces relative to the surrounding structure:

(1) Upward—1.5g.

(2) Forward—6.0g.

(3) Sideward—4.0g.

(4) Downward—8.0g.

* * * * * *

(e) The maximum exposed surface temperature of all components in the fuel tank shall be less by a safe margin, than the lowest expected autoignition temperature of the fuel or fuel vapor in the tank. Compliance with this requirement must be shown under all operating conditions and under all normal or malfunction conditions of all components inside the tank.

Explanation: Revised paragraph (b) of this proposal is one of several proposals intended to improve the fuel system crashworthiness of rotorcraft. This proposal would increase the forward, sideward, and downward load factors to be used in designing fuel tank support structure. The 1.5g upward load factor in current § 29.561 would be retained. Proposed paragraph (e) is intended to require assurance that there is no possibility that hot spots or ignition points sufficient to ignite fuel or fuel vapors can be created by normal operation or by malfunction of equipment, such as pumps, quantity indicating systems, motor or solenoid valves, etc., installed inside fuel tanks.

Ref: Proposals 313 and 314; Committee II.

§ 29.967 [Amended]

3–51. By amending § 29.967 by removing paragraph (f).

Explanation: Paragraph (f) is redundant to § 29.963(b).

Ref: None.

3–52. By revising § 29.969 to read as follows:

§ 29.969 Fuel tank expansion space.

Each fuel tank or each group of fuel tanks with interconnected vent systems must have an expansion space of not less than 2 percent of the tank capacity. It must be impossible to fill the fuel tank expansion space inadvertently with the rotorcraft in the normal ground attitude.

Explanation: See the explanation for proposed § 27.969.

Ref: Proposals 104 and 318; Committee II.

3–53. By amending § 29.971 by revising paragraph (c) to read as follows:

§ 29.971 Fuel tank sump.

* * * * * *

(c) Each fuel tank must allow drainage of hazardous quantities of water from each part of the tank to the sump with the rotorcraft in any ground attitude to be expected in service.

* * * * * *

Explanation: This proposal would require fuel tank sumps to be designed or arranged to collect water or other contaminants in the tank with the rotorcraft in any expected ground attitude. This change is needed since the existing requirement for consideration of "normal ground attitude" may result in inadequate sump drainage in some ground attitudes.

Ref: Proposal 319; Committee II.

3–54. By amending § 29.975 by removing the word "and" after the semicolon in paragraph (a)(5); by removing the period at the end of paragraph (a)(6)(ii) and inserting "; and" in its place; and by adding a new paragraph (a)(7) to read as follows:

§ 29.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(7) The venting system shall be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing or ground operations, unless a rollover is shown to be extremely remote.

* * * * * *

Explanation: See the explanation for § 27.975.

Ref: Proposals 103, 305, 314, and 316; Committee II.

3–55. By revising § 29.991 to read as follows:

§ 29.991 Fuel pumps.

(a) Compliance with § 29.955 shall not be jeopardized by failure of—

(1) Any one pump except pumps that are approved and installed as parts of a type certificated engine; or

(2) Any component required for pump operation except the engine served by that pump.

(b) The following fuel pump installation requirements apply:

(1) When necessary to maintain the proper fuel pressure—

(i) A connection must be provided to transmit the carburetor air intake static pressure to the proper fuel pump relief valve connection; and

(ii) The gauge balance lines must be independently connected to the carburetor inlet pressure to avoid incorrect fuel pressure readings.

(2) The installation of fuel pumps having seals or diaphragms that may leak must have means for draining leaking fuel.

(3) Each drain line must discharge where it will not create a fire hazard.

Explanation: See the explanation for § 27.991.

Ref: None.

3–56. By amending § 29.993 by adding a new paragraph (f) to read as follows:

§ 29.993 Fuel system lines and fittings.

* * * * * *

(f) Flammable fluid lines must be constructed and routed to withstand the inertia loads of § 29.963 without hazardous leakage.

Explanation: See the explanation for proposed § 27.993.

Ref: Proposals 106 and 321; Committee II.

3–57. By amending § 29.997 by revising the introductory text and paragraph (d) to read as follows:

§ 29.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of the first fuel system component which is susceptible to fuel contamination, including the fuel metering device or an engine positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

* * * * * *

(d) Provide a means to remove from the fuel any contaminant which would jeopardize the flow of fuel through rotorcraft or engine fuel system components required for proper rotorcraft or engine fuel system operation.

Explanation: See the explanation for proposed § 27.997.

Ref: Proposal 322; Committee II.

3–58. By amending § 29.999 by revising paragraphs (a) and (b)(2) to read as follows:

§ 29.999 Fuel system drains.

(a) There must be at least one accessible drain at the lowest point in each fuel system to completely drain the system with the rotorcraft in any ground attitude to be expected in service.

(b) * * *

(2) Have manual or automatic means to ensure positive closure in the off position; and

* * * * * *

Explanation: See the explanation for proposed § 27.999.

Ref: Proposal 322; Committee II.

3–59. By adding a new § 29.1001 after § 29.999 to read as follows:

§ 29.1001 Fuel jettisoning.

If a fuel jettisoning system is installed, the following apply:

(a) Fuel jettisoning must be demonstrated to be safe in all normal flight regimes, including partial power descent and emergency descent, except that takeoff, hover, and in-ground-effect maneuvers may be excluded provided appropriate limitations are prescribed.

(b) In showing compliance with paragraph (a) of this section, it must be shown that—

(1) The fuel jettisoning system and its operation are free from fire hazard;

(2) The fuel discharges clear of any part of the rotorcraft;

(3) Fuel vapors do not enter any part of the rotorcraft; and

(4) Controllability of the rotorcraft remains satisfactory throughout the fuel jettisoning operation.

(c) Means must be provided to automatically prevent jettisoning fuel to below the level required for an all-engine climb at maximum continuous power from sea level to 5,000 feet altitude and thereafter allow cruise for

30 minutes at engine power for maximum range.

(d) The controls for any fuel jettisoning system must be designed to allow flight personnel (minimum crew) to safely interrupt fuel jettisoning during any part of the jettisoning operation.

(e) Fuel jettisoning system must be designed to comply with the powerplant installation requirements of § 29.901(c).

(f) An auxiliary fuel jettisoning system which meets the requirements of paragraphs (a), (b), (d), and (e) of this section may be installed to jettison additional fuel provided it has separate and independent controls.

Explanation: This proposed rule provides design and test standards for optional fuel jettisoning systems. These systems have been found useful in reducing the operating weight of rotorcraft to facilitate unplanned landings or other critical maneuvers.

Ref: Proposal 323 and 324; Committee II

§ 29.1011 [Amended]

3–60. By amending § 29.1011 by revising the section heading to read "Engine: General."; by removing existing paragraph (b), and by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d), respectively.

Explanation: A new § 29.1027, proposed in this notice, provides comprehensive oil system requirements for transmissions and drive systems. Existing § 29.1011 would be retitled "Engine: General." and paragraphs (b), (b)(1), and (b)(2), which pertain to the trasmission and drive system, are deleted from this section and reinstated in new § 29.1027.

Ref: None.

3–61. By amending § 29.1019 by revising paragraph (a)(3) to read as follows:

§ 29.1019 Oil strainer or filter.

(a) * * *

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate a means to indicate contamination before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

* * * * *

Explanation: See the explanation for proposed § 27.1019.

Ref: Proposals 108 and 327; Committee II.

3–62. By adding a new § 29.1027 after § 29.1025 to read as follows:

§ 29.1027 Transmission and gearboxes: General.

(a) The oil system for components of the rotor drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure—

(1) Operation with any engine inoperative; and

(2) Safe autorotation.

(b) Pressure lubrication systems for transmissions and gearboxes must comply with the engine oil system requirements of §§ 29.1011, 29.1013, 29.1015, 29.1017, 29.1021, 29.1023, and 29.1337(d). In addition, the system must have—

(1) An oil strainer or filter through which all the lubricant flows, and must—

(i) Be designed to remove from the lubricant any contaminant which may damage transmission and drive system components or impede the flow of lubricant to a hazardous degree; and

(ii) Be equipped with a bypass constructed and installed so that—

(A) The lubricant will flow at the normal rate through the rest of the system with the strainer or filter completely blocked; and

(B) The release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flowpath;

(iii) Be equipped with a means to indicate collection of contaminants on the filter or strainer at or before opening of the bypass;

(2) For each lubricant tank or sump outlet supplying lubrication to rotor drive systems and rotor drive system components, a screen to prevent entrance into the lubrication system of any object that might obstruct the flow of lubricant from the outlet to the filter required by paragraph (b)(1) of this section. The requirements of paragraph (b)(1) do not apply to screens installed at lubricant tank or sump outlets.

(c) Splash type lubrication systems for rotor drive system gearboxes must comply with §§ 29.1021 and 29.1337(d).

Explanation: See the explanation for proposed § 27.1027.

Ref: None.

3–63. By amending § 29.1041 by revising paragraphs (a) and (c) to read as follows:

§ 29.1041 General.

(a) The powerplant and auxiliary power unit cooling provisions must be able to maintain the temperatures of powerplant components, engine fluids, and auxiliary power unit components and fluids within the temperature limits established for these components and fluids, under ground, water, and flight operating conditions, for which certification is requested, and after normal engine or auxiliary power unit shutdown, or both.

* * * * *

(c) Except for ground-use-only auxiliary power units, compliance with paragraphs (a) and (b) of this section must be shown by flight tests in which the temperatures of selected powerplant component and auxiliary power unit component, engine, and transmission fluids are obtained under the conditions prescribed in those paragraphs.

Explanation: This change would revise paragraph (a) to add a phrase to make clear that the powerplant cooling tests requirements must correspond to the conditions for which certification is requested. Paragraph (b) would be revised to exempt ground-use-only auxiliary power units from a requirement for flight cooling tests. These changes are needed to avoid the inappropriate connotation in the existing rule that "ground-use-only" auxiliary power units must demonstrate adequate cooling in flight.

Ref: Proposal 328; Committee II.

3–64. By amending § 29.1043 by adding a new paragraph (a)(5) to read as follows:

§ 29.1043 Cooling tests.

(a) * * *

(5) For the purposes of the cooling tests, a temperature is "stabilized" when its rate of change is less than 2° F per minute.

* * * * *

Explanation: This proposal would provide a definition of the term "stabilized" as used in subsequent rules pertaining to powerplant cooling testing. This definition agrees with the definition of "stabilized" used in other parts of this subchapter. This proposal is needed to define more clearly the cooling test requirements and to eliminate prolonged and unnecessary extension of cooling tests which may occur if test parameters continue to change slightly during the cooling test.

Ref. Proposal 330; Committee II.

3–65. By amending § 29.1045 by revising paragraph (c) to read as follows:

§ 29.1045 Climb cooling test procedures.

* * * * *

(c) Each operating engine must—

(1) For helicopters for which the use of 30-minute OEI power is requested, be at 30-minute OEI power for 30 minutes, and then at maximum continuous power (or at full throttle when above the critical altitude);

(2) For helicopters for which the use of continuous OEI power is requested, be at continuous OEI power (or at full throttle when above the critical altitude); and

(3) For other rotorcraft, be a maximum continuous power (or at full throttle when above the critical altitude).

* * * * *

Explanation: This is part of a series of proposals related to introduction of a new "continuous OEI" rating. This proposal introduces into the climb cooling test procedure an alternate test for climb cooling similar to that prescribed for "30-minute OEI power" except that "continuous OEI power" is prescribed. This alternate test is needed because the existing cooling test requirements are not adequate to ensure safe operation with "continuous OEI power." See proposed § 27.67.

Ref: See the proposals for § 1.1; Committee II.

3–66. By amending § 29.1047 by removing the words "at least" from the end af the introductory text of paragraph (a)(4) and by revising paragraphs (a)(4)(i) and (a)(4)(ii) to read as follows:

§ 29.1047 Takeoff cooling test procedures.

(a) * * *

(4) * * *

(i) Thirty minutes, if 30-minute OEI power is used; or

(ii) At least 5 minutes after the occurrence of the highest temperature recorded, if continuous OEI power or maximum continuous power is used.

* * * * *

Explanation: See the explanation for proposed §§ 27.67 and 29.1045.

Ref: See the proposals for § 1.1; Committee II.

3–67. By amending § 29.1093 by revising paragraph (b)(1) to read as follows:

§ 29.1093 Induction system icing protection.

* * * * *

(b) *Turbine engines.*

(1) It must be shown that each turbine engine and its air inlet system can operate throughout the flight power range of the engine (including idling)—

(i) Without accumulating ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power under the icing conditions specified in Appendix C of this part; and

(ii) In snow, both falling and blowing, without adverse effect on engine operation, within the limitations established for the rotorcraft.

* * * * *

Explanation: This proposal would revise and clarify (by rewording and rephrasing) existing paragraph (b). This change is needed because the phrasing and paragraphing of existing paragraph (b) and its subparagraphs imply that the phrase "within the limitations established for the rotorcraft" in (b)(1) applies equally to (b)(1)(i) and (b)(1)(ii). This implication was not intended by Amendments 29-13 and 29-10 which, respectively, introduced the requirements for considering inlet components when evaluating atmospheric ice and the (optional) requirement for demonstrating flight into snow. This proposal, by further rewording and rephrasing, would restate these requirements in their original context.

The reference to Appendix C of Part 25 would be changed to Appendix C of Part 29. See the explanation for § 27.1093.

Ref: None.

3–68. By amending § 29.1141 by revising the introductory text of paragraph (f) to read as follows:

§ 29.1141 Powerplant controls: General.

* * * * *

(f) Controls of powerplant valves required for safety must have—

* * * * *

Explanation: See the explanation for proposed § 27.1141.

Ref: Proposal 341; Committee II.

3–69. By revising § 29.1143 to read as follows:

§ 29.1143 Engine controls.

(a) There must be a separate power control for each engine.

(b) Power controls must be arranged to allow ready synchronization of all engines by—

(1) Separate control of each engine; and

(2) Simultaneous control of all engines.

(c) Each power control must provide a positive and immediate responsive means of controlling its engine.

(d) Each fluid injection control other than fuel system control must be in the corresponding power control. However, the injection system pump may have a separate control.

(e) If a power control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shutoff position.

Explanation: See the explanation for § 27.1143.

Ref: Proposals 343 and 116; Committee II.

3–70. By amending § 29.1163 by revising paragraph (d) to read as follows:

§ 29.1163 Powerplant accessories.

* * * * *

(d) Unless other means are provided, torque limiting means must be provided for accessory drives located on any component of the transmission and rotor drive system to prevent damage to these components from excessive accessory load.

Explanation: See the proposal and explanation for § 27.1163.

Ref: Proposal No. 117; Committee II.

3–71. By amending § 29.1181 by adding a new paragraph (b) to read as follows:

§ 29.1181 Designated fire zones: regions included.

* * * * *

(b) Each designated fire zone must meet the requirements of §§ 29.1183 through 29.1203.

Explanation: Adoption of Amendment 29–3 (33 FR 956; January 26, 1968) which revised paragraph (a) of this rule inadvertently dropped paragraph (b). This proposal would reinstate the original paragraph (b). This change is needed to emphasize the correlation between the fire zone definition and the areas of the rotorcraft which require fire protection.

Ref: None.

3–72. By amending § 29.1189 by revising paragraphs (e) and (f) to read as follows:

§ 29.1189 Shutoff means.

* * * * *

(e) Each shutoff valve and its control must be designed, located, and protected to function properly under any condition likely to result from fire in a designated fire zone.

(f) Except for ground-use-only auxiliary power unit installations, there must be means to prevent inadvertent operation of each shutoff and to make it possible to reopen it in flight after it has been closed.

Explanation: See the proposal and explanation for § 27.1189(c). Paragraph (f) is revised to exempt ground-use-only auxiliary power unit shutoff devices from the requirement for a guarded

control since no flight safety objective is involved.

Ref: Proposals 347 and 348; Committee II.

3–73. By amending § 29.1193 by adding a new paragraph (f) to read as follows:

§ 29.1193 Cowling and engine compartment covering.

* * * * *

(f) A means of retention for each openable or readily removable panel, cowling, or engine or rotor drive system covering must be provided to preclude hazardous damage to rotors or critical control components in the event of—

(1) Structural or mechanical failure of the nomal retention means, unless such failure is extremely improbable; or

(2) Fire in a fire zone, if such fire could adversely affect the normal means of retention.

Explanation: See the explanation for § 27.1193. In addition, the fire protection associated with the transport category rotorcraft requirements of §§ 29.1193 and 29.1195 could be compromised if engine cowling retention failed under fire conditions. Proposed paragraph (f)(2) would require means of cowl retention to prevent loss of cowl elements in the event of engine fire.

Ref: Proposal 349; Committee II.

3–74. By amending § 29.1305 by revising paragraphs (a)(4), (a)(17), (a)(19), (b)(2), (c)(1), and (c)(2); by adding new paragraphs (a)(20) through (a)(23); by removing the word "and" at the end of (a)(18); and by removing (c)(3) as follows:

§ 29.1305 Powerplant instruments.

* * * * *

(a) * * *

(4) A low fuel warning device for each fuel tank which feeds an engine. This device must—

(i) Provide a warning to the crew when approximately 10 minutes of usable fuel remains in the tank; and

(ii) Be independent of the normal fuel quantity indicating system.

* * * * *

(17) An indicator for the filter required by § 29.997 to indicate the occurrence of contamination of the filter to the degree established in compliance with § 29.955;

* * * * *

(19) An indicator to indicate the functioning of any selectable or controllable heater used to prevent ice clogging of fuel system components;

(20) An individual fuel pressure indicator for each engine, unless the fuel system which supplies that engine does not employ any pumps, filters, or other components subject to degradation or failure which may adversely affect fuel pressure at the engine;

(21) A means to indicate to the flightcrew the failure of any fuel pump installed to show compliance with § 29.955;

(22) Warning or caution devices to signal to the flightcrew when ferromagnetic particles are detected by the chip detector required by § 29.1337(e); and

(23) For auxiliary power units, an individual indicator, warning or caution device, or other means to advise the flightcrew that limits are being exceeded, if exceeding these limits can be hazardous, for—

(i) Gas temperature;

(ii) Oil pressure; and

(iii) Rotor speed.

(b) * * *

(2) An independent fuel pressure warning device for each engine or a master warning device for all engines with provision for isolating the individual warning device from the matter warning device; and

* * * * *

(c) * * *

(1) An individual oil pressure indicator for each engine; and

(2) Fire warning indicators, when fire detection is required.

Explanation: For the revisions to paragraphs (a)(4), (a)(17), and (a)(19), see the explanation for corresponding changes in proposed § 27.1305. New paragraph (a)(20) combines into one rule without substantative change the existing identical requirements for fuel pressure indicators currently in paragraphs (b)(2) and (c)(2) and further modifies the applicability of this requirement to only those fuel systems with devices or components which, in the event of failure or degradation, could adversely affect fuel pressure at the engine. The applicability change in (a)(20) is needed since fuel pressure gauges have little or no significant value when used in gravity or suction feed fuel systems.

New paragraph (a)(21) would require a warning device to indicate the failure of any fuel pump required for adequate fuel flow to the engine. This change is needed to alert the flightcrew that fuel flow and engine operation is now dependent on the emergency system and to institute precautionary operating procedures.

New paragraph (a)(22) would require a cockpit signal in the event ferromagnetic particles are detected by the chip detector required by new § 29.1337(d). For explanation of this change, see the explanation for § 29.1337(d).

New paragraph (a)(23) would require powerplant instruments or warning devices for auxiliary power units installed in rotorcraft. This change is needed to provide the flightcrew with information or warning devices needed to avoid possible unsafe operating conditions which may be expected with auxiliary power units.

The changes to paragraphs (b)(2) and (c)(2) are needed to coordinate the change to (a)(20).

Ref: Proposals 354, 355, 356, 357, and 360; Committee II.

3–75. By amending § 29.1337 by adding a new paragraph (e) to read as follows:

§ 29.1337 Powerplant instruments.

* * * * *

(e) Transmission gearboxes utilizing ferromagnetic materials shall be equipped with chip detectors designed to indicate the presence of ferromagnetic particles resulting from damage or excessive wear within the gearbox. Each chip detector shall—

(1) Be designed to provide a signal to the indicator required by § 29.1305(a)(22) when ferromagnetic particles exist in the vicinity of the detector; and

(2) Be provided with a means to allow crewmembers to check, in flight, the function of each detector electrical circuit and signal.

Explanation: This proposal would require rotorcraft transmission gearboxes to be equipped with chip detector systems which detect ferromagnetic particles and signal their presence to the flightcrew. This proposal is required to alert the flightcrew to impending failure of these gearboxes as indicated by small metallic chips or fragments which may break away from excessively loaded gears, bearings, or other components in the gearbox. The FAA realizes that not all failures will be detected by magnetic chip detectors. Thus, the proposed rule does not include extensive performance requirements. However, these devices have been found to be a relatively inexpensive and effective method of detecting most impending mechanical failures in gearboxes.

Ref: Proposal 125; Committee II.

3–76. By amending § 29.1521 by revising introductory texts of paragraphs (f) and (g) and by adding a new paragraph (h) to read as follows:

§ 29.1521 Powerplant limitations.

* * * * *

(f) *Two and one-half-minute OEI power operation.* Unless otherwise authorized, the use of 2½-minute OEI power shall be limited to multiengine, turbine-powered rotorcraft for not longer than 2½ minutes after failure of an engine. The use of 2½-minute OEI power must also be limited by—

* * * * *

(g) *Thirty minute OEI power operation.* Unless otherwise authorized, the use of 30-minute OEI power shall be limited to multiengine, turbine-powered rotorcraft for not longer than 30 minutes after failure of an engine. The use of 30-minute OEI power must also be limited by—

* * * * *

(h) *Continuous OEI power operation.* Unless otherwise authorized, the use of continuous OEI power shall be limited to multiengine, turbine-powered rotorcraft for continued flight after failure of an engine. The use of continuous OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value shown during the type tests.

(2) The maximum allowable gas temperature;

(3) The maximum allowable torque; and

(4) The maximum allowable oil temperature.

Explanation: Proposed changes to paragraphs (f) and (g) would introduce the term OEI. See the explanations for §§ 1.1 and 1.2. In addition, these paragraphs are revised to state clearly the limitations associated with the 2½-minute and 30-minute ratings, including the concepts involved in the original justification of these ratings. New paragraph (h) would set forth in a similar manner the limitations associated with a new continuous OEI power rating. This new paragraph would assure proper recognition of this rating in the rotorcraft flight manual. See the proposal for § 29.67 for further explanation.

The introductory term "unless otherwise authorized" in each of the OEI rating definitions is intended to facilitate the use of these ratings for use in OEI training activities when appropriate qualification testing or other adequate safety measures have been accomplished.

Ref: Proposals 394 and 395; Committee II.

3–77. By amending § 29.1549 by removing the work "and" at the end of paragraph (c); by removing the period at the end of paragraph (d) and inserting "; and " in its place; and by adding a new paragraph (e) to read as follows:

§ 29.1549 Powerplant instruments.

* * * * *

(e) For multiengine rotorcraft, each one-engine-inoperative limit or range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section.

Explanation: See the proposal and explanation for § 27.1549(e).

Ref: Proposal 399; Committee II.

3–78. By amending § 29.1557 by revising paragraph (c)(1)(iii) to read as follows:

§ 29.1557 Miscellaneous markings and placards.

* * * * *

(c) * * *

(1) * * *

(iii) For turbine-engine-powered rotorcraft, the permissible fuel designations, except that if impractical, this information may be included in the rotorcraft flight manual and the fuel filler may be marked with an appropriate reference to the flight manual; and

* * * * *

Explanation: This proposal would allow the use of flight manual listings of designated fuels in lieu of decals and placards at the fuel filler opening as required by the existing rule. This change is needed because in some instances, the list of designated fuels is so extensive as to be impractical to place the decal or placard in the space available.

Ref: Proposal 400; Committee II.

PART 33—AIRWORTHINESS STANDARDS—AIRCRAFT ENGINES

3–79. By amending § 33.7 by removing the word "and" from the end of (c)(1)(v); by redesignating (c)(1)(vi) as (c)(1)(vii); and adding a new (c)(1)(vi) to read as follows:

§ 33.7 Engine ratings and operating limitations.

* * * * *

(c) * * *

(1) * * *

(vi) Rated continous OEI power; and

* * * * *

Explanation: This proposed change is part of a series of changes to create a new continuous one-engine-inoperative rating for multiengine rotorcraft. See the explanation for § 33.87.

Ref: Proposals 414 and 415; Committee II.

3–80. By amending § 33.87 by redesignating paragraph (e) as (f) without change; by revising paragraphs (a) (introductory text), (b) (introductory text), (b)(2), (c), (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5); by revising paragraph (d) and redesignating it as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 33.87 Endurance test.

(a) *General.* Each engine must be subjected to an endurance test that includes a total of 150 hours of operation and, depending upon the type and contemplated use of the engine, consists of one of the series or runs specified in paragraphs (b), (c), (d), (e), or (f) of this section. The following test requirements apply:

* * * * *

(b) *Engines other than certain helicopter engines.* For each engine except a helicopter engine for which a rating is desired under paragraph (c), (d), or (e) of this section, the applicant must conduct the following runs:

* * * * *

(2) *Rated maximum continuous and takeoff power and thrust.* Thirty minutes at—

(i) Rated maximum continuous power and thrust during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power and thrust during ten of the twenty-five 6-hour endurance test cycles.

* * * * *

(c) *Helicopter engines for which a 3-minute OEI power rating is desired.* For each helicopter engine for which a 30-minute OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff and idling.* One hour of alternate 5-minute periods at rated takeoff power and at idling power. The developed powers at takeoff and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. During any one period, the rotor speed and power may be controlled manually while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented power rating. In changing the power setting after each period, the power-control level must be moved in the manner prescribed in paragraph (c)(5) of this section.

(2) *Rated 30-minute OEI power.* Thirty minutes at rated 30-minute OEI power.

(3) *Rated maximum continuous power.* Two hours at rated maximum continuous power.

(4) *Incremental cruise power.* Two hours at the successive power-lever positions corresponding with not less than 12 approximately equal speed and time increments between maximun continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the amount of running conducted while being subjected to the peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(5) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than one second, except that if different regimes of control operations are incorporated necessitating scheduling of the power control lever motion in going from one extreme position to the other, a longer period of time is acceptable, but not more than 2 seconds.

* * * * *

(d) *Helicopter engines for which a continuous OEI rating is desired.* For each helicopter engine for which a continous OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff and idling.* One hour of alternate 5-minute periods at rated takoff power and at idling power. The developed powers at takeoff and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. During any one period the rotor speed and power may be controlled manually while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented power rating. In changing the power setting after each period, the power-control lever must be moved in the manner prescribed in paragraph (c)(5) of this section.

(2) *Rated maximum continuous and takeoff power.* Thirty minutes at—

(i) Rated maximum continuous power during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power during ten of the twenty-five 6-hour endurance test cycles.

(3) *Rated continuous OEI power.* One hour at rated continuous OEI power.

(4) *Rated maximum continuous power.* One hour at rated maximum continuous power.

(5) *Incremental cruise power.* Two hours at the successive power lever positions corresponding with not less than 12 approximately equal speed and time increments between maximum continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the amount of running conducted while being subjected to the peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(6) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than 1 second, except that if different regimes of control operations are incorporated necessitating scheduling of the power control lever motion in going from one extreme position to the other, a longer period of time is acceptable, but not more than 2 seconds.

(7) *Starts.* One hundred starts, of which 25 starts must be preceded by at least a 2-hour engine shutdown. There must be at least 10 false engine starts, pausing for the applicant's specified minimum fuel drainage time, before attempting a normal start. There must be at least 10 normal restarts with not longer than 15 minutes since engine shutdown. The remaining starts may be made after completing the 150 hours of endurance testing.

(e) *Helicopter engines for which the 2½-minute OEI power rating is desired.* For each helicopter engine for which a 2½-minute OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff, 2½-minute OEI, and idling.* One of alternate 5-minute periods at rated takeoff power and at idling power except that, during the third and sixth takeoff power periods, only 2½ minutes need be conducted at rated takeoff power and the remaining 2½ minutes must be conducted at rated 2½-minute OEI power. The developed powers at takeoff, 2½-minute OEI, and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. The applicant may, during any one period, control manually the rotor speed and power while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented rating. In changing the power setting after or during each period, the power-control lever must be moved in the manner prescribed in paragraph (d)(6) of this section.

(2) The tests required in paragraphs (b)(2) through (b)(6), or (c)(2) through (c)(6), or (d)(2) through (d)(6) of this section, as applicable, except that in one of the 6-hour test sequences, the last 5 minutes of the 30 minutes at takeoff power test period of (b)(2), or of the 30 minutes at 30-minute OEI power test period of (c)(2), or of the 1 hour at continuous OEI power test period of (d)(3), must be run at 2½-minute OEI power.

* * * * *

Explanation: These changes incorporate the endurance test requirements associated with the proposed rotorcraft engine rating of "continuous OEI power." This OEI rating is proposed in addition to the existing 30-minute OEI and 2½-minute OEI ratings. It should be noted that the proposals presented at the Rotorcraft Regulatory Review for the continuous OEI rating were not entirely consistent in that this rating was proposed by one group as a replacement for the existing 30-minute OEI rating and by two other groups as an additional rating. The explanation given for the latter discusses the proposal's intent to remove the 30-minute limit for the (en route) contingency rating.

Comments are specifically invited on this proposal which, in substance, provides test schedules for rotorcraft turbine engines which are to be qualified for a 2½-minute OEI rating, to also be qualified with and without the limited en route OEI ratings covered under § 33.87 (c) and (d). Additionally, the proposal incorporates editorial changes to more accurately and clearly specify the requirements and deletes all references to "thrust" in § 33.87 (c) and (d) since the term is not applicable to turboshaft engines. The proposal essentially represents a consolidation of engine oriented proposals related to OEI ratings discussed at the Rotorcraft regulatory Review Conference held in December 1979.

Ref: Proposals 419 and 420; Committee II.

Appendix—Miscellaneous Proposals Significantly Revised or Removed From Further Consideration

Based on the FAA's review of the discussions at the Rotorcraft Regulatory Review conference and further evaluations in context with agency policy, the following proposals presented at the conference are removed from consideration or significantly revised for the reasons set forth below:

Proposal No.[1]	FAR Section	Proponent
9, 159, and 416	27/29.45/33.8	Aerospatiale Helicopter Div.
63 and 222	27/29.607	Pratt & Whitney of Canada, Ltd.
94 and 281	27/29.903	A.E.C.M.A.
97 and 293	27/29.923	Aerospatiale Helicopter Div.
98 and 301	27/29.927	Aerospatiale Helicopter Div.
100	27.955	FAA.
103	27.[illegible]	FAA.
	(Proposed).	
101 and 309	27/29.989	HAI and AIA.
113 and 339	27/29.1093	A.E.C.M.A.
114 and 338	27/29.1093	FAA.
115 and 340	27/29.1121	A.E.C.M.A.
118	27.1189	HAI and AIA
44 and 200	27/29.309	A.E.C.M.A.
222	29.863	HAI and AIA.
271	29.901	HAI and AIA
277	29.901	HAI and AIA.
278	29.901	HAI and AIA.
280	29.901	A.E.C.M.A.
283	29.903	FAA.
284	29.903	CAA (UK)
286	29.907	CAA (UK).
289	29.923	HAI and AIA
290	29.923	HAI and AIA.
293	29.923	Aerospatiale Helicopter Div.
294	29.923	FAA
295	29.923	A.E.C.M.A.
298	29.927	CAA (UK)
299	29.927	HAI and AIA.
301	29.927	Aerospatiale Helicopter Div.
302	29.927	FAA.
304	29.931	CAA (UK).
305	29.951	HAI and AIA.
308	29.[illegible]	Pratt & Whitney of Canada, Ltd
310	29.961	HAI and AIA.
315	29.963	FAA.
316	29.964	FAA.
	(Proposed).	
317	29.965	HAI and AIA.
326	29.1013	DOT, Australia
329	29.1041	A.E.C.M.A.
337	29.1049	A.E.C.M.A.
342	29.1143	CAA (UK).
345	29.1181	HAI and AIA
346	29.1183	HAI and AIA.
350	29.1203	FAA.
355	29.1305	HAI and AIA.
358	29.1305	FAA.
361	29.1305	Aerospatiale Helicopter Div.
362	29.1305	A.E.C.M.A.
363	29.1305	FAA.
378	29.1337	CAA (UK).

[1] This number corresponds to the number assigned to the proposal as presented to the New Orleans Rotorcraft Regulatory Review, December 1979.

Proposals 9, 159, and 416. These proposals would have amended §§ 27.45, 29.45, and 33.8 to specify that engine and rotorcraft performance must reflect "aging loss" or loss associated with engine power deterioration during the normal life of the engine. This concept is already addressed, in part, by Proposal No. 2–4 in Notice No. 2 (47 FR 37806; August 26, 1982) which would require provisions for a pretakeoff engine power check. This check would be based on the power specified under Part 33 for an airworthy engine which may have deteriorated to the overhaul limit. As a second concept, engines may, in some instances, be operated safely beyond the overhaul life with still further deterioration of power. Procedures and performance associated with this concept should be addressed on an individual engine/aircraft basis upon application by interested parties and not be included in rules since such operation itself is not required for safety.

Proposals 44 and 200. These proposals would have revised §§ 27.309 and 29.309, respectively, by adding a new paragraph listing the design transmission mean torque for turbine engines as a limitation on the rotorcraft. Other existing rules in Parts 27 and 29 adequately express or define this limitation and additional rules under §§ 27.309 and 29.309 are not required.

Proposals 63 and 222. These proposals would have amended §§ 27.607 and 29.607 to clearly eliminate any conception that the dual locking requirements for certain fasteners could be interpreted to apply to engine components approved under Part 33. Advisory circular material provides this clarification and further rulemaking toward this objective is inappropriate.

Proposals 94 and 281. These proposals would have required engine cooling fans to be free of resonant vibrations at normal operating conditions. These proposals were accepted with an exclusionary phrase to exempt cooling fans which are evaluated for vibratory loads under another rule.

Proposals 97 and 293. These proposals would have authorized bench tests or other special tests in lieu of full scale rotorcraft tests to qualify the rotor drive system for the critically high powers associated with one-engine-inoperative conditions. The FAA recognizes that conducting these tests constitutes a problem during hot weather when the power available from the engines may be low. However, the use of alternate tests methods or facilities should be based on a case-by-case evaluation which considers details of the test facility and the relative torque or power levels under consideration. Approval, if appropriate, could be made under equivalent safety concepts. A rule change is not required.

Proposals 98 and 301. These proposals were similar to Proposals 97 and 293 in that they would have authorized alternate test methodology in lieu of full-scale helicopter tests for certain high-power test conditions that may be difficult to obtain by using the installed engines. As noted above, this situation should be addressed on a case-by-case basis which considers all pertinent details. The arbitrary conservatisms suggested by the proposed rule may not always be adequate or appropriate.

Proposals 99 and 308. These proposals are included in the notice as proposed except the exclusionary phrase "for which certification for instrument operation is requested" is deleted. Lightning strikes must be expected during VFR as well as IFR operations.

Proposal 100. This proposal which constituted a detailed rewrite of existing fuel flow test requirements was withdrawn by its proponent and replaced with a revised proposal prepared by industry conferees. This revised proposal was not accepted verbatim but was used extensively in a subsequent FAA-developed proposal included as Items 3–14 and 3–50 of this notice.

Proposals 101 and 309. This proposal would have revised §§ 27.959 and 29.959 to specify that analytical (rather than test) methods shall be used to determine unusable fuel in fuel tanks. It would further limit the analysis to steady state flight regimes. The existing rule does not preclude analysis where such methods are valid; however, full-scale flight test methods are often necessary to evaluate unusable fuel in most fuel tank configurations. The proposal is unnecessary since analysis may be used when proven.

Proposals 103 and 305. These proposals were withdrawn by the proponents at the New Orleans Conference in favor of alternate proposals developed at the conference. Parts of these alternate proposals related to fuel spillage through fuel tank vents and to fuel tank structural strength are included in this notice as Items 3–14, 3–17, 3–50, and 3–54. The parts of these proposals that would require a fuel tank

drop test to demonstrate a measure of crashworthiness are being held out-of-notice pending development of favorable data to justify the cost and weight penalties associated with tanks capable of surviving this test.

Proposal 110. This proposal would provide for correcting a typographical error as it appears in at least one printing of § 27.1045(b)(1)(ii). This error does not exist in the Code of Federal Regulations; therefore, it can be corrected by administrative action which does not require rulemaking.

Proposal 111. Both existing § 27.1045(c)(1) and the revised words offered by Proposal 111 assume a powerplant component temperature response characteristic which may exist for a particular test or with a particular rotorcraft configuration. Still further rewording is now proposed in Item 3–26 which is generalized to consider a wider range of temperature response characteristics.

Proposals 113 and 339. Proposals 113 and 339 suggested that for rotorcraft not to be approved for flight into icing conditions, the engine air induction system could be approved with a limited icing qualification program, or no qualification program at all, if a 50 °F minimum operating temperature limit is applied. Proponents of these concepts note that relaxing of these types would enable use of sand or dust filters to avoid engine deterioration in warm climates. The limited icing qualification program, suggested by the proponent, i.e., level flight icing cloud penetration, is inappropriate since escape from inadvertent icing encounters likely will require climb or descent and assurance of satisfactory engine performance during these maneuvers is an appropriate requirement. Basic operating limitations on the rotorcraft that would clearly preclude deliberate or inadvertent icing encounters, such as the 50 °F minimum operating temperature limitation suggested by a proponent, could be applied without rule change. One proponent suggested that a determination of the efficiency of the ice protection system should be required. While information on this aspect may be useful, it would exceed the requirements for minimum airworthiness. These proposals further advocated exempting rotorcraft from the ground icing requirements if approval for flight icing was not requested. Current operating rules allow rotorcraft to be dispatched under VFR into forecast icing with no minimum visibility limitations and without equipment necessary for flight into icing. These rotorcraft will be dispatched into airport pretakeoff ground control procedures and will be expected to queue for takeoff with other airplanes. Thus, exposure to ground icing must be expected.

Proposals 114 and 338. These proposals were withdrawn by the proponent for further study.

Proposals 115 and 340. These proposals would have revised §§ 27.1121(d) and 29.1121(b), which require isolation or shielding of engine exhaust components from ignition sources, to limit their application to exhaust system components outside of fire zones. This proposal was not included since fires in any location including fire zones may be hazardous and other existing rules require designs to preclude fires and hazards of fires in areas outside of fire zones.

Proposal 118. This proposal would have extended the exemption from the oil system shutoff requirements now in § 29.1189 to Part 27 Rotorcraft. Amendment 27–20 (49 FR 6850; February 23, 1984) accomplishes this objective, therefore this proposal is not included.

Proposal 271. This proposal would have revised § 27.863(b)(1) to delete the phrase "and means of detecting leakage." The proposal was withdrawn by the proponent after assurance that the FAA was not interpreting this phrase as a basis for requiring sophisticated, expensive electronic flammable fluid leak detectors throughout an aircraft.

Proposal 277. This proposal would have reduced the required evaluation considerations of § 29.901(c) to single failure concepts only. The reduced level of safety associated with this change cannot be accepted; however, revised wording of the rule has been drafted for this notice to avoid an unintended proliferation of various failure combinations which might be argued with the existing wording.

Proposal 278. This proposal would have exempted components already approved under this subpart from consideration in the failure analysis required by § 29.901(c). Examples of these components would be engines approved under Part 33 and equipment items accepted as being in compliance with appropriate Technical Standard Order. Since the objective of § 29.901(c) is to identify and preclude approval of any powerplant installation device, component, system, or arrangement if failure could be hazardous, exemption of any components could seriously jeopardize the effectiveness of the rule.

Proposal 280. This proposal would have reduced the area of considerations for the fault analysis required by § 29.901(c) to only engines and auxiliary power units. The proponent is concerned that under the existing rule, major rotorcraft drive system component failure must be considered. The rule does, in fact, require consideration of drive system components; however, proper evaluation of these items under § 29.571 should provide a basis for subsequent exemption from § 29.901(c) as authorized by § 29.901(c)(1).

Proposal 283. Paragraph (a) of this proposal has been introduced as Item No. 2–33 of Notice 2 of the Rotorcraft Regulatory Review Program. Paragraph (b), with changes, is included as Item No. 3–39 of this notice.

Proposal 284. The first part of this proposal, which pertains to protection in the event of an engine rotor failure, is deferred for further study. The second part of the proposal, which requires considering possible engine case burn-through, was not included because service data do not indicate a problem in this area for Part 29 rotorcraft.

Proposal 286. This proposal would require precertification development of finite data describing vibration characteristics of the rotorcraft to assist subsequent inservice evaluation of possible excessive vibrations which may develop. Such information would be useful for some rotorcraft and, if needed for safety, may be required under existing § 29.1529 and presented as an item in the "Instructions for Continued Airworthiness" section of the rotorcraft's maintenance manual.

Proposal 289. This proposal would have authorized limited torque and speed trade-offs in the § 29.923 endurance test to facilitate achieving test parameters without jeopardizing the health of the engine used in the test. Such procedure, if acceptable, should be considered and justified on a case-by-case basis and approved as equivalent safety. A revision to the rules for this concept is not appropriate.

Proposal 290. This proposal would have prescribed finite test parameter adjustments to address the asymmetric torque to be expected due to tolerances in the torque sharing device usually provided with multiengine rotorcraft. This condition may vary widely in magnitude and in effect among engine/rotorcraft configurations which may be developed and a specific rule covering this aspect may not be appropriate. Asymmetric testing, where needed, can be negotiated under § 29.927(a).

Proposals 293 and 299. These proposals would have authorized configuration deviations and power adjustments to the tests prescribed by § 29.923. These changes, if justified, should be considered as equivalent safety findings, and approved on a case-by-case basis.

Proposal 294. This proposal was withdrawn by the proponent.

Proposal 298. This proposal would have set forth a test intended to substantiate the fatigue aspects of gears, shafts, and gearboxes used in the rotor drive system. This aspect is already addressed in § 29.571 and further specific testing is not required.

Proposal 299. This proposal would have limited the speed to be used in the overspeed test of § 29.927(d) to a speed associated with the speed limiting device installed to protect the engine against the hazards of overspeed. This proposal is inappropriate since this speed is related to protection of the engine and this section is intended to qualify the rotor drive system. However, the existing rule may impose unnecessarily severe test conditions. A new proposal developed after FAA review is included as Item No. 3–46 to alleviate this condition.

Proposal 301. This proposal would have permitted the overtorque tests of § 29.927(b) to be limited to convenient test values provided a 10 percent overtorque test is accomplished using bench test facilities. Concern was expressed regarding the capability of the engine to withstand the mechanical stresses involved. It would not be appropriate to set forth regulatory criteria for what essentially would be an equivalent safety finding. This aspect should be addressed on a case-by-case basis with each combination of configuration and rating. Also, full assurance of the capability of the remaining engine(s) to tolerate the overtorque is needed to assure compliance with § 29.903(b).

Proposal 302. This proposal was withdrawn by the proponent.

Proposal 303. This proposal would have required special tests to qualify free-wheeling clutches used in rotor drive systems. The proposal was withdrawn by the proponent pending development of economic data to justify the cost of the qualification testing suggested by the proposal.

Proposal 304. This proposal would have listed finite values of rotor drive system overspeed to be considered in conducting whirlmode evaluations. The existing rule, which does not limit the range of investigation, is adequate.

Proposal 306. This proposal would have required the fuel flowmeter to be designed to not impede fuel flow in the event of maximum fuel contamination. Since § 29.997 requires filters to protect flowmeters and other fuel system components from contaminants, this proposal was not included. However, the existing requirement for fuel flowmeters to be "blocked" is not an appropriate requirement for all types of flowmeters and, accordingly, a generalized failure mode requirement is included in a revision to § 29.955 in this notice..

Proposal 310. This proposal properly recognizes that the "full fuel tank" requirement in existing § 29.961 does not represent the critical condition for hot fuel tests. This is recognized by a proposed change to § 29.961 that specifies that the test should be conducted under "critical operating conditions" which, for most systems, would include the low fuel condition addressed by this proposal.

Proposal 315. This proposal, which would have ensured that fuel tank explosions do not occur as a result of electrical malfunctions within a fuel tank, is withdrawn by the proponent in favor of a similar requirement in Proposal 313 which is included as proposed new paragraph (e) in § 29.963 in this notice.

Proposal 316. This proposal, which would have required improved crashworthiness of fuel tanks and fuel systems, was withdrawn by the proponent. See the comments in this appendix for Proposals 103 and 305.

Proposal 317. This proposal would provide for an alternative vibration frequency to be used when vibration testing fuel tanks to be used in turbine-powered rotorcraft. Existing § 29.965(d)(3)(i) contains provisions for testing with alternative frequencies if appropriate.

Proposal 326. This proposal, which would have excluded oil systems which are not subject to fires in a fire zone from the shutoff valve protection requirements of § 29.1013, was not included since the intent of the proposal was accomplished by a revision to § 29.1189 in Amendment 29.22 (49 FR 6850; February 23, 1984).

Proposal 329. This proposal, which would have required design provisions to ensure separation of engine inlets to avoid simultaneous clogging, was not included since the intent of this proposal is covered by existing § 29.903(b).

Proposal 337. This proposal, which would have required powerplant hover cooling tests to be continued until temperatures (of components and fluids) are stabilized, is not included since the existing requirements to continue the test until "5 minutes after the occurrence of the highest temperature record," is more appropriate for the flight condition involved.

Proposal 342. This proposal, which would have prescribed directional criteria for powerplant control motions, was not included since existing § 29.779(a) provides an adequate basis for requiring appropriate motions for powerplant controls.

Proposal 346. A part of this proposal would have added the term "components" to the list of items in a fire zone which may be excluded from compliance with this section if such components are part of a type certificated engine. This aspect was not included because certain engines eligible for installation in Part 29 rotorcraft, but certificated under obsolete certification rules, may include non-fire-resistant flammable fluid components. A second part of the proposal would have excluded lines, fittings, and components included as parts of TSO-qualified auxiliary power units from compliance with this section. This exclusionary phrase cannot be accepted because it would delegate responsibility for critical fire protection aspects to standards other than those specified in the certification basis for the aircraft.

Proposal 350. This proposal, which would prescribe detail criteria for installation of fire detector systems, was withdrawn by the proponent since the intent of the proposal can be achieved by application of other existing rules.

Proposal 355. This proposal, in part, would authorize a fuel flowmeter as an alternate to the fuel pressure indicator required by current rules. A detailed review of this concept and study of additional data submitted to support this contention disclosed that fuel flowmeters provide valuable information related to flight planning, as related to fuel consumption aspects, but do not necessarily supply information on airframe fuel sysem deterioration, as would be detected by a fuel pressure indicator. Since only this latter aspect is appropriate as an airworthiness requirement, authorization for this substitution has not been included. Another part of this proposal would have substituted the word "caution" in place of the word "warning" in existing § 29.1305(b)(2). Since fuel pressure loss can, in some instances, be indicative of an engine power loss, a warning is deemed necessary.

Proposal 358. This proposal, which would have required an engine failure warning device for certain rotorcraft, is being deferred pending further study and development of data which may justify the costs associated with development, qualification, and installation of this device.

Proposal 361. This proposal would have added a requirement for "a total

torque indication of all engines" to the list of required powerplant instruments in § 29.1305. A review of certification programs and service histories does not reflect a need for this instrument.

Proposal 362. This proposal would have deleted the requirement for gearbox oil pressure and temperature warning devices from the general list of instruments in paragraph (a) of § 29.1305 and added these same requirements into paragraphs (b) and (c) for Category A and Category B rotorcraft, respectively. This proposal was not included since the existing rules adequately state the requirements for these warning devices. In addition, the proposal would have deleted the existing requirement in paragraph (a)(14) for an engine tachometer for certain engines. Further studies of engine operating requirements indicate that certain hazardous conditions can exist undetected in rotorcraft not equipped with this tachometer. Therefore this proposal was not included.

Proposal 363. This proposal, which would add a requirement for a chip detector indicator, was withdrawn by the proponent in favor of indentical Proposal 360, which has been included in this notice.

Proposal 378. The first part of this proposal would have revised § 29.1305 to add specific requirements for independent operating systems for engine and transmission instruments required by this section. Subsequent FAA review of existing applicable rules indicated that adequate separation of operating system is covered, where applicable, by existing regulations. The second part of this proposal would require redundant power sources for mandatory engine and transmission instruments, if loss of power to these instruments could jeopardize continued safe flight. Existing rules pertaining to failures and hazards due to failures are adequate to ensure continued safe flight. Additional requirements for duplication of power sources to certain powerplant instruments are unnecessary.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423, and 1424); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Note.—This document does not impose requirements that would result in any significant burden on the aviation community. Furthermore, this proposal, if adopted, is not likely to result in an annual effect on the economy of $100 million or more or a major increase in costs for consumers, industry, or federal, state, or local governments. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business in the United States. For the reasons stated earlier I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. In addition, it has been determined that the proposal does not involve a major proposal under Executive Order 12291 and is not significant under DOT Regulatory Policies (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, on October 10, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-30802 Filed 11-26-84; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
November 27, 1984

Part IV

Department of Energy

Office of Fossil Energy

Program Announcement; Information Regarding Emerging Clean Coal Technologies; Notice

DEPARTMENT OF ENERGY

Office of Fossil Energy

Program Announcement; Information Regarding Emerging Clean Coal Technologies

AGENCY: Office of Fossil Energy.

ACTION: Program Announcement for Information Regarding Emerging Clean Coal Technologies.

SUMMARY:

Introduction

The United States Department of Energy (DOE), Office of Fosil Energy (FE), is issuing this announcement in response to Pub. L. 98-473, House Joint Resolution 648, making Continuing Appropriations for Fiscal Year 1985. DOE is responding to section 321 of that Act by hereby soliciting Statements of Interest and Informational Proposals. DOE expects to analyze the information submitted and to prepare a report to Congress by April 15, 1985. It should be emphasized that DOE has no resources to fund any of the proposed activities, does not anticipate funding any proposals that are submitted, and cannot reimburse submitters for any expenses they may incur in responding to this announcement. Respondents are referred to Pub. L. 98-473 for further information.

Examples of emerging clean coal technolgies include, but are not limited to the following:

(1) Advanced coal preparation and cleaning;

(2) Limestone injection multistage burners (LIMB);

(3) Fue gas desulfurization processes that produce only dry discharges;

(4) Regenerable flue gas desulfurization;

(5) Furnace retrofit of in-boiler sulfur control technology;

(6) Atmospheric fluidized bed combustion systems of a size appropriate to the electric utility market;

(7) Repowering applications of a pressurized fluidized bed in a large oil-fired boiler;

(8) Phosphoric acid fuel cell systems using coal-derived gas;

(9) Coal-fired gas turbines in second-generation combined-cycle systems; and

(10) Low cost, easily replicable, sources of fuel gas for multimarkets.

Objective

The objective of this announcement is to request Statements of Interest and Information Proposals from the privates sector for information regarding emerging clean coal technologies to allow for the Departmental submission of a report to Congress no later than April 15, 1985, which:

- Analyzes the information contained in such Statement of Interest and [Informational] Prosposals,
- Assesses the potential usefulness of each emerging clean coal technology for which a Statement of Interest or Informational Proposal has been received, and
- Identifies the extent to which Federal incentives, including financial assistance, will accelerate the commercial availability of these technologies.

Statements of Interest and Informational Proposals

Statements of Interest and Informational Proposal submitted under this announcement shall propose project employijng at least one emerging clean coal technology, shall be limited to a total of fifty (50) 8½" × 11" doublespaced pages, and shall include:

(1) A discription of the technology to be employed and of the overall project;

(2) A comparison of the proposed project with any similar project or facility in existence;

(3) The proposed ownership of the project facility;

(4) The projected capital, operating, and testing cost and a schedule for construction and testing of the project facility;

(5) The characteristics of the coal to be used;

(6) The emissions reductions to be achieved by the facility;

(7) The proposed financing of the project, including a statement of any cost sharing or incentives, including any financial assistance, that should be provided by the Federal Government and the justification for such incentives;

(8) A statement of the project economics which identifies the assumptions used; and

(9) A plan which outlines the uses for the products of the proposed facility.

Proprietary Information

If proprietary information is provided by a submitted which constitutes a trade secret, proprietary commercial or financial information, or confidential personal information, it will be treated in confidence, to the extent permitted by law, provided this information is clearly marked by the submitter with the term "Confidential Proprietary Information" and provided appropriate page numbers are inserted into the legend set forth below which must be placed on the submission cover sheet. The Government will limit dissemination of such information to within official channels. Any other legend may be unacceptable to the Government and will not be binding on the Government.

Notice Re Restriction on Disclosure and Use of Data

This submission includes data that shall not disclosed outside the Government and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to analyze information contained in this submission. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets (insert numbers or other identification of sheets).

Each sheet of data the submitter wishes to restrict must be marked with the following legend: "Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this submission."

Number of Copies Required and Marking of Submission

Each submission should be provided in one (1) original and nine (9) copies, and should clearly identify itself as a submission under this announcement by carrying the following legend on its face page:

This submission is provided in response to the DOE Program Announcement for Information Regarding Emerging Clean Coal Technologies.

Submission Preparation Costs

The Department is under no obligation to pay for any costs associated with the preparation of Statements of Interest or Informational Proposals.

Availability of Appropriations and Intent to Award

Funds are not available for support of submissions received under this announcement. Further, the Department does not intend to enter into contract awards with interested parties; rather, submissions are to be used solely for the purpose of analysis and report to Congress.

DATE: The deadline date for receipt of submissions at the addresses identified below is 3:30 p.m., e.s.t., on January 18, 1985.

ADDRESSES: Mailed submissions should be addressed to: Deputy Director for Coal Utilization, Advanced Conversion and Gasification; Fossil Energy, U.S. Department of Energy; FE-20, GTN; Washington, D.C. 20545.

Hand-delivered submissions should be brought Monday through Friday, except Federal holidays, between the hours of 8:30 a.m. to 3:30 p.m., to: North Lobby, U.S. Department of Energy, MD

Route 118; Germantown, Maryland.
ATTN: Fossil Energy, FE-20.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack S. Siegel, Deputy Director for Coal Utilization, Advanced Conversion and Gasification, Department of Energy, FE-20, GTN, Washington, D.C. 20545, (301) 353-3965.

Issued in Washington, D.C., November 15, 1984.

Donald L. Bauer,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 84-31082 Filed 11-26-84; 8:45 am]
BILLING CODE 6450-01-M

Reader Aids

Federal Register
Vol. 49, No. 229
Tuesday, November 27, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072	1
44073–44192	2
44193–44272	5
44273–44442	6
44443–44620	7
44621–44740	8
44741–44888	9
44889–44984	13
44985–45106	14
45107–45408	15
45409–45570	16
45571–45732	19
45733–45842	20
45843–46096	21
46097–46332	23
46333–46526	26
46527–46698	27

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
November 16, 1984 45733
Notices:
November 7, 1984 44741
Proclamations:
5270 44073
5271 44075
5272 44077
5273 44079
5274 44081
5275 44193
5276 44195
5277 44197
5278 45107
5279 45409
5280 45411
5281 45413

5 CFR

Ch. XIV, App. A 45843
Proposed Rules:
213 45588
831 45588
930 45444
1255 45751
2429 44902

7 CFR

2 44743
46 45735
210 45109
220 45109
225 45109
226 45109
301 44083
353 46333
356 46335
407 46337
418 46337
419 46341
422 46346
429 44443
441 44985
600 44743
729 44889
810 46347
907 ..... 44199, 44757, 45415
910 ..... 44084, 44744, 44890, 45109, 45415, 46527
915 44447
928 44199
932 44447
944 44447
982 44745
984 44745
989 44745
1004 44986
1139 43943
1446 45109
1910 45416
1980 46097

Proposed Rules:
27 44902
52 43970
53 44724
54 ..... 44724, 44758
400 45444
408 46393
420 44480
421 44476
422 46395
424 44485
425 44490
431 46400
432 44495
436 46405
437 46149
438 46409
725 44103
800 ..... 45751, 46414
910 44299
971 45592
982 44500
984 44299
1007 44760
1464 44103
1772 45752–45754

8 CFR

238 ..... 44745, 46347
292 44084

9 CFR

50 44273
78 ..... 44987, 45110
81 ..... 44087, 45111, 45741
92 44058
97 45843
113 45845
114 45845
204 46527
318 46530
319 46530
354 44091

Proposed Rules:
92 44501
381 44640

10 CFR

50 ..... 45112, 45114, 45571
430 46533
1046 46097

Proposed Rules:
40 ..... 46418, 46425
50 ..... 44645, 46428
55 46428
71 44502
210 45445
605 44590

11 CFR

6 44091

12 CFR
Ch. VII 46536
204 44448
207 43946
220 43946
221 43946
224 43946
303 44746
308 44746
545 45846
563 ..... 45115, 45846
701 ..... 44993, 46105, 46540, 46541
795 44993
Proposed Rules:
5 45007
8 ..... 45102, 45592
701 46552

13 CFR
105 45742
120 44091
Proposed Rules:
107 ..... 44062, 46553

14 CFR
1 44422
27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417, 45743–45746, 46105
43 ..... 44602, 45418
71 ..... 44450, 45418, 45747
73 ..... 44096, 44451, 45418
91 44422
97 ..... 44990, 46106
255 ..... 44451, 46347
Proposed Rules:
Ch. I 44766
Ch. II 46006
1 46670
27 46670
29 46670
33 46670
39 ..... 45011, 45755
71 ..... 44104, 44650, 45011, 45166–45171, 45756, 45757, 46153–46155
73 ..... 45011, 45168, 45169
75 45171

15 CFR
7 44622
Proposed Rules:
8c 45861
303 44651
320 ..... 44903, 45757

16 CFR
13 45115–45117
305 44200
455 45692
1212 46108
1700 44455
Proposed Rules:
3 46554
4 46554
300 44913
303 44913
451 46156

17 CFR
1 45418
3 45418
15 46116
17 46116
33 44891
140 45418
145 45418
200 ..... 43950, 45847
240 45117
Proposed Rules:
1 44105
140 45015
144 45015
239 45172
240 ..... 46156, 46556
270 46558
274 45172

18 CFR
3 44273
11 46542
37 46351
154 46353
157 44275
271 ..... 44201, 44993
274 44275
284 44275
341 44628
356 44628
360 44628
361 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273
Proposed Rules:
271 ..... 44217, 45174, 45175
430 44105

19 CFR
4 ..... 44867, 46118
6 44867
7 44867
10 ..... 44867, 46363
11 44867
12 44867
16 44867
19 44867
24 ..... 44867, 46118
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
162 44867
172 44867
174 44867
191 44867
210 46123
Proposed Rules:
113 46161
141 46161
172 46161
175 ..... 46162, 46163
353 45593
355 45593

20 CFR
395 44277
404 ..... 43951, 44458, 45420, 46365
410 46365
416 46365
422 46365

21 CFR
74 44096
178 44994
193 ..... 44458, 45123
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 ..... 45421, 46371
558 46371
561 ..... 45124, 45848
573 ..... 44630, 45124
Proposed Rules:
146 44652
184 46164
193 45869
450 44919
510 45593
511 44766

22 CFR
220 44631
Proposed Rules:
41 44920

23 CFR
140 45577

24 CFR
44 46140
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44982

25 CFR
5h 43951
41 45849
48 45849
301 44460
Proposed Rules:
1 ..... 44300, 45449, 45450
41 ..... 44300, 44310, 44921, 46167
48 ..... 44300, 44310, 44921, 46167
51 45758
301 45452

27 CFR
9 ..... 44202, 44895
Proposed Rules:
4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR
0 46371
2 44097
15 44995
511 44056
Proposed Rules:
545 44659

29 CFR
530 44262
1601 45424
1952 44202
2619 45129
Proposed Rules:
2617 44106
2640 45018
2648 45018

30 CFR
906 46372
915 44206
917 44750
935 ..... 43952, 44461, 44996
938 46542
Proposed Rules:
250 44924
816 45595
817 45595
855 45595
914 46167
917 44653
920 43974
931 44769
938 43974
948 46168

31 CFR
5 45578

33 CFR
72 46547
100 ..... 45579, 45580, 45758
117 ..... 43953–43956, 44207, 44632, 45130, 45580 46547
165 44632
Proposed Rules:
117 ..... 43975, 44925, 45596
126 45597
157 46440
160 45597
165 ..... 44926, 46560, 46562

34 CFR
Proposed Rules:
Ch. VI 45834
76 45834
208 45834
280 46169
300 46252
350 46244
352 46244
358 46244
359 46244

36 CFR
Proposed Rules:
13 46441
223 44109
291 45117
1121 44310

38 CFR
3 ..... 44099, 45130
36 46548
Proposed Rules:
1 45870
21 46441

39 CFR
10 45130
111 46141
265 44286

40 CFR
52 ..... 44099, 44208, 44287, 44463, 44996, 46141
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 45292
180 ..... 44464–44467, 45132, 45849–45854
261 44978
265 46094
704 ..... 45133, 45425
707 45581
721 46373
723 46066
761 44634
775 44997
Proposed Rules:
50 ..... 44770, 45871
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178, 45761–45765, 45872, 46442
53 45871
58 45871
65 46443
81 ..... 43977, 45031
147 44111
152 45873
157 45873
158 45873
162 45873
170 45181
180 46443
261 44718
271 ..... 44111, 44312, 44506, 45452, 45874, 46443
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 ..... 44218, 45598
716 ..... 44220, 45602
799 ..... 45606, 45610

41 CFR
50–201 45855
Ch. 101 44468
101–20 44469
101–41 44470
101–47 44471
Ch. 201 45748

42 CFR
36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR
Public Land Orders:
1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997
6578 46144
6579 46144
6580 46145
Proposed Rules:
3160 44655
3420 44221

44 CFR
64 ..... 44751, 45133
65 ..... 45134, 45135
67 45136
Proposed Rules:
67 45181

45 CFR
801 44473
Proposed Rules:
95 45617
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR
310 45857
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397
Proposed Rules:
67 45623
510 46174

47 CFR
0 45582
2 ..... 44101, 44997
15 44210
25 44751
31 ..... 44289, 46378
43 44289
69 46383
73 ..... 43957, 44101, 45139–45146, 45583–45587, 46386
74 45155
76 45431
Proposed Rules:
0 45454
1 45454
2 ..... 45766, 45875, 46563
73 ..... 44113, 44114, 45186, 45625, 45875, 46444–46448 46563
90 ..... 44223, 45454, 45875 46563

48 CFR
Proposed Rules:
1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR
1 ..... 44102, 46145
171 45749
173 ..... 43963, 45749
175 45749
178 43965
179 43963
391 44210
395 46145
392 44210
571 ..... 44899, 46386
575 44751
1033 46392
1160 45858
1165 45858
1168 45858
1181 45858
1182 45858
Proposed Rules:
23 44772
172 45627
173 45627
195 44928
542 45629
1102 44224

50 CFR
17 ..... 43965, 44753, 45160
258 44474
611 44757
620 44102
652 ..... 45164, 45859
661 46148
663 ..... 44638, 44901
671 ..... 44757, 46549
676 44998
Proposed Rules:
17 ..... 44507, 44712, 45766, 45880–45887, 46174
222 44774
227 44774
611 ..... 44655, 46177
630 45888
672 44655
675 44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.

OL
9

SS
29

NO
27

984

MI



Just Released

Code of Federal Regulations

Revised as of July 1, 1984

Quantity	Volume	Price	Amount
_____	Title 33—Navigation and Navigable Waters (Part 200-End) (Stock No. 022-003-95387-6)	$13.00	$_____
_____	Title 38—Pensions, Bonuses, and Veterans' Relief (Parts 0-17) (Stock No. 022-003-95395-7)	14.00	_____
_____	Title 40—Protection of Environment (Parts 81-99) (Stock No. 022-003-95401-5)	14.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form **Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐-☐

Order No._____

VISA* MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the Code of Federal Regulations publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

VOL
49
ISS
229

27

1984

UMI

OL
9
SS
30
NO
8
984
MI

11-28-84
Vol. 49 No. 230

federal register

Wednesday
November 28, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D C 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106
100

U.S.MAIL
Postage and Fees Paid
U S Government Printing Office
375

SECOND CLASS NEWSPAPER

Federal Register
(ISSN 0097-6326)

SECOND CLASS NEWSPAPER

11-28-84
Vol. 49 No. 230
Pages 46699-46868

federal register

Wednesday
November 28 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency
Aviation Safety
Federal Aviation Administration
Banks
Federal Deposit Insurance Corporation
Chemicals
Environmental Protection Agency
Federal Home Loan Banks
Federal Home Loan Bank Board
Fisheries
National Oceanic and Atmospheric Administration
Government Procurement
National Science Foundation
Grant Programs—Education
Education Department
Hazardous Materials
Environmental Protection Agency
Marketing Agreements
Agricultural Marketing Service
Motor Vehicles
National Highway Traffic Safety Administration
Occupational Safety and Health
Occupational Safety and Health Administration

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Pesticides and Pests
Environmental Protection Agency

Postal Service
Postal Service

Price Support Programs
Commodity Credit Corporation

Railroad Retirement
Railroad Retirement Board

Securities
Securities and Exchange Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Contents

Federal Register
Vol. 49, No. 230
Wednesday, November 28, 1984

The President
PROCLAMATIONS
46701 Epidermolysis Bullosa Awareness Week, National (Proc. 5283)
46699 Home Care Week, National (Proc. 5282)

Executive Agencies

Agricultural Marketing Service
RULES
46703 Limes grown in Florida
46704 Spearmint oil produced in Far West

Agriculture Department
See also Agricultural Marketing Service.; Commodity Credit Corporation; Federal Crop Insurance Corporation; Federal Grain Inspection Service.
NOTICES
46774 Agency information collection activities under OMB review

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
46775 Wisconsin

Coast Guard
NOTICES
46860 Inland navigation rules, changes

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
RULES
Loan and purchase programs:
46705 Grain price support

Copyright Office, Library of Congress
NOTICES
46829 Cable compulsory license, low power television stations; policy decision
46838 Privacy Act; systems of records

Defense Department
See Engineers Corps.

Education Department
PROPOSED RULES
Educational research and improvement:
46761 Discretionary program
46755 Excellence in education program; implementation
NOTICES
46789 Agency information collection activities under OMB review

Energy Department
See Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
46789 Sacramento River Deep Water Ship Channel, CA

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
46742 New Jersey
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
46739 Acephate
Pesticides; tolerances in foods and animal feeds:
46736 Pirimiphos-methyl
Toxic substances:
46739 Chemical information rules; automatic reporting; addition
46741 Health and safety data reporting; submission of lists and copies of studies
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
46767 Florida
46767 Illinois
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
46768 Camphor
46769 Methyl esters of fatty acids
Toxic substances:
46770 Polychlorinated biphenyls (PCBs); use in electrical transformers; correction
46770 Polychlorinated biphenyls (PCBs); use in electrical transformers; hearing date changed
NOTICES
Pesticide programs:
46804 Special local need registrations; voluntary cancellations; correction
Pesticides; temporary tolerances:
46805 Pirimiphos-methyl (2 documents)
Toxic and hazardous substances control:
46806, 46807 Premanufacture exemption approvals (2 documents)
46804 Premanufacture notices receipts; correction

Federal Aviation Administration
RULES
Airworthiness standards:
46866 Utility and acrobatic category airplanes, normal
46726 Control zones
46727 Transition areas
PROPOSED RULES
Air traffic operating and flight rules:
46749 Two-way radio communications failure procedure
46746 Colored Federal airways
46748 Control zones
46746, 46747 Transition areas (2 documents)
NOTICES
Exemption petitions:
46860 Florida Aircraft Leasing Corp. et al.

Organization and functions:
46860 Philadelphia, PA
46860 Wilmington, DE

Federal Communications Commission
NOTICES
46807 Agency information collection activities under OMB review

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
46703 Apple

Federal Deposit Insurance Corporation
RULES
Unsafe and unsound banking practices:
46709 Insured nonmember banks; securities subsidiaries
NOTICES
46863 Meetings; Sunshine Act (2 documents)

Federal Energy Regulatory Commission
RULES
Bonneville Power Administration:
46727 Electric power sales methodology; rehearing
NOTICES
Hearings, etc.:
46791 Algonquin Gas Transmission Co.
46791 Boston Edison Co.
46792 Columbia Gas Transmission Corp. et al.
46792 Consolidated Gas Supply Corp.
46793 Emerson Falls Hydro Associates
46794, 46795 Kelley, Ravenscroft & Chenoweth (4 documents)
46796 Michigan Power Co.
46797 Midwestern Gas Transmission Co.
46797 North Fork Power Co.
46798 Northern Border Pipeline Co.
46798 Northern Natural Gas Co.
46798 Northern States Power Co. et al.
46800 Southwest Gas Corp.
46800 Southwestern Public Service Co.
46801 Tooele County
Natural gas companies:
46793 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
46790 Acme Fence & Iron
46791 Bio-Energy Corp.
46792 Bridgewater Hydroelectric Partnership
46792 Columbus Mills Dam Hydroelectric Project
46793 Drapery Manufacturing, Inc.
46793 Fayette Manufacturing Corp.
46794 Harris Energy, Inc.
46794 Hitch Enterprises
46795 MARMAC Power Corp.
46795 Marshfield Brook Hydroelectric Co.
46796 Methanol Production Corp.
46797 Mitex, Inc.
46799 Olson, Richard J.
46800 Swift Creek Power Co., Inc.
46800 Texasgulf Chemicals Co.

Federal Grain Inspection Service
NOTICES
Agency designation actions:
46775 Alaska, Arkansas, and Tennessee
46774 Illinois, Indiana, and Wyoming

Federal Home Loan Bank Board
RULES
Federal home loan bank system:
46725 Flood disaster protection, nondiscrimination requirements
NOTICES
Applications, etc.:
46808 Mutual Home Federal Savings & Loan Association of Grand Rapids, MI
46863 Meetings; Sunshine Act

Federal Home Loan Mortgage Corporation
NOTICES
46864 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
46809 Jarvis International Freight, Inc.
46808 Tariffs, inactive; cancellation

Federal Procurement Policy Office
NOTICES
46862 Federal Acquisition Regulation system: Small business set asides; rule of two; inquiry; extension of time

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
46809 Emmetsburg Bank Shares, Inc., et al.
46810 NBD Bancorp, Inc.

Hearings and Appeals Office, Energy Department
NOTICES
46801 Special refund procedures; implementation and inquiry

Interior Department
See also Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office.
NOTICES
46810 Agency information collection activities under OMB review

International Trade Administration
NOTICES
Countervailing duties:
46776 Oil country tubular goods from Korea

International Trade Commission
NOTICES
Import investigations:
46815 Amorphous metal alloys and articles
46814 Amoxicillin trihydrate and its salts from Spain
46815 Aramid fiber
46816 Barbed wire and barbless wire strand from Argentina, Brazil, and Poland
46817 Calcium hypochlorite from Japan
46817 Foam earplugs
46818 Potassium chloride from East Germany, Spain and U.S.S.R.

46818 Shoe stiffener components
46819 Softballs and polyurethane cores
46819 Stretch wrapping apparatus and components
46820 Woodworking machines
46864 Meetings; Sunshine Act

Interstate Commerce Commission
NOTICES
Rail carriers:
46820 State intrastate rail rate authority; Indiana
Railroad services abandonment:
46820 Baltimore & Ohio Railroad Co.

Justice Department
NOTICES
Pollution control; consent judgments:
46822 Okolona Sewer Construction District et al.
46820 Regulatory Flexibility Act; plan for periodic review of rules

Labor Department
See Mine Safety and Health Administration; Occupational Safety and Health Administration.

Land Management Bureau
NOTICES
46810 Agency information collection activities under OMB review
Environmental statements; availability, etc.:
46811 Circle Cliffs Tar Sands Resource Area, UT
Exchange of public lands for private land:
46811 Montana
Sale of public lands:
46812 California
Withdrawal and reservation of lands:
46812 Alaska
46812 Colorado

Legal Services Corporation
NOTICES
46864 Meetings; Sunshine Act

Library of Congress
See Copyright Office, Library of Congress.

Management and Budget Office
See Federal Procurement Policy Office.

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
46822 B&J Coal Co., Inc.
46823 Black River Mining Co.
46823 Buffalo Ridge Coal Co., Inc.
46823 Canada Coal Co., Inc.
46824 Central Ohio Coal Co.
46824 Consolidation Coal Co. (3 documents)
46825 Double L Coal Corp.
46825 Garber Coal Co.
46825 H.A.T. Coal Co.
46826 KRK Coal Co.
46826 Mid-Continent Resources, Inc.
46826 Mount Calvery Coal Co., Inc.
46827 Sandy Fork Mining Co., Inc.
46827 Thac West Mining, Inc.
46827 Twin Oak Coal Co.
46828 U.S. Steel Mining Co., Inc. (2 documents)

Minerals Management Service
PROPOSED RULES
46754 Outer Continental Shelf minerals and right-of-way management; issuance of leases; existing joint bidding requirements, "subsidiary" defined
NOTICES
Outer Continental Shelf; development operations coordination:
46813, 46814 Exxon Co., U.S.A. (2 documents)
46813 Taylor Energy Co.
46814 Texaco U.S.A.

National Capital Planning Commission
NOTICES
Senior Executive Service:
46831 Performance Review Board; membership

National Highway Traffic Safety Administration
PROPOSED RULES
46770 Fuel economy standards passenger automobile average; model year 1987 and beyond

National Oceanic and Atmospheric Administration
PROPOSED RULES
Foreign fishing:
46771 Pacific Coast groundfish

National Science Foundation
RULES
46743 Acquisition regulations

Nuclear Regulatory Commission
NOTICES
46834, 46835 Agency information collection activities under OMB review (2 documents)
Applications, etc.:
46832 Florida Power & Light Co.
46832 Northern States Power Co.
46833 Public Service Electric & Gas Co. et al.
46833 Toledo Edison Co. et al.

Occupational Safety and Health Administration
RULES
Health and safety standards:
46737 Cotton dust; ring spinning operations, stay of effecive date

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
46844 Demand Forecasting Advisory Committee
Power plan amendments:
46835 Conservation and electric power plan

Postal Service
RULES
Domestic Mail Manual:
46738 Postage meters, testing; additional specifications
NOTICES
46845, 46846 Privacy Act; systems of records (2 documents)

Railroad Retirement Board
RULES
46728 Retirement annuities; reporting requirements of employers, and creditability of compensation, service, and military service, etc.
NOTICES
46848 Railroad unemployment insurance account; determination

Securities and Exchange Commission
PROPOSED RULES
Securities:
46750 Annuity contract or optional annuity contract, definition
NOTICES
Hearings, etc.:
46848 American Electric Power Co., Inc.
46849 Eastern Edison Co., et al.
46849 System Fuels, Inc., et al.
46850 Toronto-Dominion Holdings (U.S.A.), Inc.
46852 Transok, Inc.
46853 UNITIL Corp.
46854 Yankee Atomic Electric Co.
Self-regulatory organizations; proposed rule changes:
46856 American Stock Exchange, Inc.
46854 Midwest Clearing Corp. et al.
46857 Midwest Stock Exchange, Inc.
46855 Pacific Securities Depository Trust Co.
46855 Pacific Stock Exchange, Inc.
46857-46859 Philadelphia Stock Exchange, Inc. (3 documents)
Self-regulatory organizations; unlisted trading privileges:
46856 Midwest Stock Exchange
46857 Pacific Stock Exchange

Small Business Administration
NOTICES
Applications, etc.:
46859 Advent Industrial Capital Co. Ltd. Partnership
46859 Wisconsin MESBIC, Inc.

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission; various States:
46755 Wyoming; hearing, etc.

Textile Agreements Implementation Committee
NOTICES
46786 Bilateral agreement negotiations during 1985; inquiry
Cotton, wool, and man-made textiles:
46786 Philippines
46787 Singapore
46787 Thailand
46788 Uruguay

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.

Separate Parts in This Issue

Part II
46866 Department of Transportation, Federal Aviation Administration

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5282 46699
5283 46701

7 CFR
408 46703
911 46703
985 46704
1421 46705

12 CFR
337 46709
523 46725
528 46725

14 CFR
23 46866
71 (2 documents) 46726, 46727
Proposed Rules:
71 (4 documents) 46746–46748
91 46749

17 CFR
Proposed Rules:
230 46750

18 CFR
35 46727
301 46727

20 CFR
209 46728
210 46728
211 46728
212 46728
220 46728
222 46728
250 46728

21 CFR
193 46736
561 46736

29 CFR
1910 46737

30 CFR
Proposed Rules:
256 46754
950 46755

34 CFR
Proposed Rules:
750 46755
755 46761

39 CFR
111 46738

40 CFR
180 46739
271 46742
712 46739
716 46741
Proposed Rules:
52 (2 documents) 46767
81 46767
180 (2 documents) 46768, 46769
761 (2 documents) 46770

48 CFR
Ch. 25 46743

49 CFR
Proposed Rules:
531 46770

50 CFR
Proposed Rules:
663 46771

Federal Register
Vol. 49, No. 230
Wednesday, November 28, 1984

Presidential Documents

Title 3—

The President

Proclamation 5282 of November 26, 1984

National Home Care Week, 1984

By the President of the United States of America

A Proclamation

Home care services, which are rapidly gaining acceptance throughout the Nation, allow the physically and mentally impaired who do not require skilled nursing home care to remain in their own homes, or to stay with their families, instead of being moved to an institution. Home care provides individualized support services to permit maximum independence for those in need of assistance.

Progress in medical science and the generally rising level of health care from birth are contributing to a greater number of people living longer. A corollary to this advance is an increase in chronic illnesses of the aged that require care over an extended period of time. Home care provides the assistance needed to help older Americans to maintain independence despite such illness. All Americans should commend those individuals who provide personal and health care in the home. Their skill and caring make the lives of those they serve fuller and more meaningful.

To give special recognition to the importance of home care services, the Congress, by Senate Joint Resolution 237, has designated the week of November 25, 1984, through December 1, 1984, as "National Home Care Week," and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 25 through December 1, 1984, as National Home Care Week, and I call upon all Government agencies, interested organizations, community groups, and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-31300
Filed 11-26-84; 2:26 pm]
Biling code 3195-01-M

Presidential Documents

Proclamation 5283 of November 26, 1984

National Epidermolysis Bullosa Awareness Week, 1984

By the President of the United States of America

A Proclamation

Epidermolysis Bullosa, or "EB," is a group of hereditary disorders in which the skin forms blisters after minimal injury or even simple pressure. Symptoms of the disease can resemble severe burns and can be very painful and debilitating. Mucous membranes of the mouth, eye, and gastro-intestinal tract may be affected and lead to scarring, malnutrition, anemia, and even premature death.

As many as 25,000 to 50,000 Americans, mostly children, may suffer from EB. The disease can disable people physically because of the pain and anguish it causes, and it also places a severe financial burden on many families.

Basic research is just beginning to reveal the underlying causes of EB. New research findings and new approaches to diagnosis and treatment are needed to eliminate this affliction. The Federal government and private voluntary organizations have developed a strong and enduring partnership committed to EB research in order to reduce or eliminate the disease and its painful consequences.

The Congress, by Senate Joint Resolution 201, has designated the week of November 25 through December 1, 1984, as "National Epidermolysis Bullosa Awareness Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 25 through December 1, 1984, as National Epidermolysis Bullosa Awareness Week. I urge the people of the United States and educational, philanthropic, scientific, medical and health care organizations and professionals to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-31301
Filed 11-26-84; 2:27 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 230
Wednesday, November 28, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 408

[Docket No. 1762S]

Eastern U.S. Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: Under the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the closing date for accepting applications for Eastern U.S. Apple Crop Insurance Regulations (7 CFR Part 408), effective for the 1985 crop year. This action is necessary because of a delay in processing the issuance of an amended Fresh Fruit Option to provide the insured producer with a quality provision for the type of apples insured under this option when such apples do not grade U.S. No. 1 or do not grade 80 percent fancy or better under USDA standards. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date and to comply with the provisions of the Eastern U.S. Apple Crop Insurance Regulations with respect to the authority of the Manager, FCIC, to extend closing dates.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in the Eastern U.S. Apple Crop Insurance Regulations (7 CFR Part 408), the closing date for accepting applications is November 20. Because of a delay in processing an amendment to the Fresh Fruit Option to such regulations effective for the 1985 and succeeding crop years, FCIC is extending the closing date for accepting applications through the close of business on December 31, 1984, effective for the 1985 crop year only.

The amendment in question provides a fresh fruit option amendment to insured growers who wish to insure quality, not presently contained in the policy for insuring apples under 7 CFR Part 408, when the apples do not grade U.S. No. 1 or do not grade 80 percent fancy or better under U.S. Department of Agriculture standards.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that the closing date for accepting applications for apple crop insuance under the provisions of 7 CFR Part 408 is extended, effective for the 1985 crop year only, through the close of business on December 31, 1984.

Dated: November 20, 1984.

Done in Washington, D.C., on November 19, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 84-31111 Filed 11-27-84; 8:45 am]
BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 911

[Lime Reg. 43, Amdt. 3]

Limes Grown in Florida; Amendment of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule would raise the minimum grade requirements for fresh shipments of seedless limes grown in Florida, and for seedless limes imported into the United States, from the current U.S. Combination, Mixed Color, of 60 percent U.S. No. 1 and 40 percent U.S. No. 2, to a modified U.S. Combination, Mixed Color, of 75 percent U.S. No. 1 and 25 percent U.S. No. 2. The minimum diameter requirement for such limes would remain at 1⅞ inches. Such action is necessary to assure the shipment of limes of acceptable quality in the interest of producers and consumers.

EFFECTIVE DATES: December 3, 1984 through January 31, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Acting Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Florida lime regulation is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The regulation applicable to limes grown in Florida is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by grade and size under Florida Lime Regulation 43 (49 FR 25243). This regulation, which is effective on a continuing basis, requires seedless limes for fresh shipment to: (1) Grade at least U.S. Combination, Mixed Color; (2) meet a minimum juice content of 42 percent by volume; and (3) have a minimum diameter of 1⅛ inches. This amendment would increase minimum quality requirements applicable to fresh shipments of Florida seedless limes by requiring such shipments to grade a modified U.S. Combination, Mixed Color, with the stipulation that 75 percent of the limes, by count, grade at least U.S. No. 1 and 25 percent of the limes grade at least U.S. No. 2. The current grade requirement is U.S.

Combination, Mixed Color, (60 percent of the limes, by count, grade at least U.S No. 1 and 40 percent of the limes grading U.S. No. 2). This action was unanimously recommended by the Florida Lime Administrative Committee at a public meeting on October 10, 1984.

Florida Persian seedless limes are marketed throughout the year, with peak production during the summer months. At that time, market prices and grower returns tend to be low. Traditionally, the winter market for Florida seedless limes has been strong. However, current prices for such limes are weak due to the availability of large volumes of lesser quality limes in the market place. Such limes have poor retail acceptance, which has a price-depressing effect on shipments of better quality fruit. The specified increase in the percentage of U.S. No. 1 grade fruit in fresh shipments is designed to stimulate consumer demand, result in greater sales volume of limes of preferred quality and improve grower returns.

During the five previous years, fresh shipments of Florida limes have trended upward from 755,337 bushels in 1978–79 to 1,286,127 bushels in 1983–84. The 1984–85 crop of Florida limes is expected to approach record levels. Approximately 50 percent of the Florida lime crop is utilized in processing. Thus, ample supplies of better quality limes should be available to meet fresh market requirements. The amendment of grade requirements is necessary to make available to consumers better quality seedless limes and to improve grower returns.

This amendment would be effective through January 31, 1985. At that time the requirement applicable to seedless limes would revert to U.S. Combination, Mixed Color, (60 percent of the limes, by count, grade at least U.S. No. 1 and 40 percent grading U.S. No. 2). The resumption of lower grade requirements reflects the prospective grade composition of the Florida seedless lime crop at that time.

Under section 8e of the act, whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, grade requirements for imported seedless limes would also change to conform to the grade requirements for domestic shipments of seedless Florida limes. It is hereby found that this regulation will tend to effectuate the declared policy of the act.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared policy of the act. Moreover: (1) Shipment of the current crop of limes grown in Florida is underway; (2) the amendment to the Florida lime regulation was recommended by the committee following discussion at a public meeting on October 10, 1984, at which there were no opposing views; (3) Florida lime handlers have been apprised of these requirements for Florida limes; (4) the lime import requirements are mandatory under section 8e of the act and they should be effective for the specified period; (5) the grade requirements for imported limes are the same as those for Florida limes; and (6) at least three days notice of this import regulation is provided, the minimum prescribed by section 8e of the act.

List of Subjects in 7 CFR Part 911

Marketing Agreements and Orders, Florida, Limes.

PART 911—[AMENDED]

Section 911.344 Lime Regulation 43 (49 FR 25243) is amended by revising paragraph (a)(2), to read as follows:

§ 911.344 Florida Lime Regulation 43.

(a) * * *

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Mixed Color: *Provided*, That stem length shall not be considered a factor of grade; *Provided further*, That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42 percent by volume specified in the U.S. Standards for Persian (Tahiti) limes, if they meet the minimum size requirements specified in paragraph (a)(3) of this section, and if they are handled in containers other than those authorized in Section 911.329; and *Provided further*, that during the period December 3, 1984 through January 31, 1985, no handler shall ship such limes to destinations outside the production area unless they grade at least U.S. Combination, Mixed Color, with the stipulation that stem length shall not be a factor of grade and at least 75 percent, by count, of the limes in the lot grade at least U.S. No. 1 and 25 percent, by count, of the limes grade at least U.S. No. 2.

* * * * * *

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Dated: November 23, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-31191 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 985

Spearmint Oil Produced in the Far West; Establishment of Salable Quantities and Allotment Percentages for the 1985–86 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from, or handled for, producers by handlers during the 1985–86 marketing year which begins June 1, 1985. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions. The proposal was recommended by the Spearmint Oil Administrative Committee which works with USDA in administering the order.

EFFECTIVE DATE: June 1, 1985 through May 31, 1986.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the October 4, 1984, issue of the **Federal Register** (49 FR 39166), and interested persons were afforded an opportunity to submit written comments. No comments were received.

The salable quantity and allotment for each class of spearmint oil are established in accordance with the provisions of Marketing Order No. 985, regulating and handling of spearmint oil produced in the Far West, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The salable quantities and allotment percentages were recommended by the Spearmint Oil Administrative Committee, which works with the USDA in administering the order.

The salable quantity percentage established for each class of spearmint oil for the 1985–86 marketing year beginning June 1, 1985, are based upon the following estimates and recommendations of the Committee:

(1) "Class 1" Oil (Scotch Spearmint).

(A) Estimated carryin on June 1, 1985—23,783 pounds.

(B) Estimated trade demand (domestic and export) for the 1985–86 marketing year, based on an average of producer sales for 1980–81, 1981–82 and 1983–84—781,248 pounds.

(C) Recommended desirable carryout on May 31, 1986—100,000 pounds.

(D) Salable quantity required from 1985 production—857,465 pounds.

(E) Total allotment based for "Class 1" Oil—1,625,127 pounds.

(F) Computed allotment percentage—52.8 percent.

(G) The Committee's recommendation for the salable quantity—861,317 pounds.

(H) Recommended allotment percentage—53 percent.

(2) "Class 3" Oil (Native Spearmint).

(A) Estimated carryin on June 1, 1985—50,000 pounds.

(B) Estimated trade demand (domestic and export) for the 1985–86 marketing year based on an average of sales for the past four years averaged with the handler estimates for 1985–86—909,876 pounds.

(C) Recommended desirable carryout on May 31, 1986—75,000 pounds.

(D) Salable quantity required from 1985 production—934,876 pounds.

(E) Total allotment bases for "Class 3" Oil—1,793,085 pounds.

(F) Computed allotment percentage—52.1 percent.

(G) The Committee's recommendation for the salable quantity—932,404 pounds.

(H) Recommended allotment percentage—52 percent.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to his/her allotment base for the applicable class.

When the order was established in 1980, producer stocks of spearmint oil were very large and producer prices severely depressed. Volume regulations in effect under the order since that time have aided in reducing these burdensome stocks and in creating a more stable market for each class of oil. The objective of the Committee's recommendations for 1985–86 is to balance supplies with needs to maintain a stable market for each class of 1985-crop oil and promote orderly marketing. The Committee's recommendations are based on expectations of continued strong sales of spearmint oil during the 1985–86 marketing year.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee, and other available information, it is found that to establish a salable quantity and allotment percentage for each class of oil, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 985

Agricultural Marketing Service; Marketing Agreements and Orders, Spearmint Oil.

PART 985—[AMENDED]

Therefore, a new § 985.205 is added under Subpart—Salable Quantities and Allotment Percentages to read as follows: (The following provisions will not be published in the Code of Federal Regulations.)

§ 985.205 Salable quantities and allotment percentages—1985–86 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins June 1, 1985, shall be as follows:

(a) "Class 1" Oil—a salable quantity of 861,317 pounds, and an allotment percentage of 53 percent.

(b) "Class 3" Oil—a salable quantity of 932,404 pounds, and an allotment percentage of 52 percent.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 21, 1984.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 84-31141 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

[Amdt. 3]

General Regulation Governing Price Support for the 1978 and Subsequent Crops; Grains and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the **Federal Register** on September 4, 1984, (49 FR 34833) is adopted as a final rule. This final rule amends the regulations at 7 CFR Part 1421 with respect to: (1) The reconcentration of warehouse-stored loan commodities; (2) loan interest rates; (3) producer eligibility for commodity loans; and (4) the assessment of liquidated damages. This final rule also removes obsolete references to annual commodity supplements, provides forgiveness provisions with respect to certain producer violations, and authorizes compensation to be made available to rice producers who are required by CCC to deliver rice to a warehouse beyond the producer's customary delivery point.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agriculture Stabilization and Conservation Service, U.S. Department of Agricultural, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447–8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0087 and 0560–0040.

This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are: Title—Commodity Loans and Purchases; Number—10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 46 FR 29115 (June 24, 1983).

Proposed Rule

A rule proposing to amend the General Regulations Governing Price Support for the 1978 and Subsequent Crops was published in the Federal Register on September 4, 1984, at 49 FR 34833. The proposed rule provided for a 30-day comment period. The comment period was limited to 30 days because producers are currently obtaining loans with respect to 1984-crop commodities and the proposed changes made by these regulations are applicable to 1984-crop commodities. No comments were received with respect to the provisions contained in the proposed rule.

The rule proposed to amend the regulations at 7 CFR Part 1421 by: (1) Removing obsolete references to annual commodity supplements; (2) incorporating provisions for reconcentration of warehouse-stored loan commodities; (3) revising the interest rate to be assessed on unsettled loans; (4) revising a producer's eligibility for commodity loans when eligible and ineligible commodities have been commingled; (5) incorporating liquidated damages to be assessed producers for (a) unauthorized disposition of farm-stored loan collateral, (b) failure to deliver farm-stored commodity by the delivery date specified by CCC on the commodity delivery notice, (c) failure to repay a loan on a farm-stored commodity, for which a marketing authorization was issued, when delivery of the commodity to the buyer is completed; (6) incorporating county committee authority to forgive violations as required by the Agriculture and Food Act of 1981; and (7) including rice as an eligible commodity for which producers will be compensated for the delivery of the commodity beyond the producer's customary delivery point.

Amendment to the Proposed Rule

It has been determined that a technical revision should be made with respect to the provisions of the proposed rule. It is not believed that this change is of such significance as to warrant further public comment. Section 1421.17(i) of the proposed rule provided that a county committee may waive some or all applicable penalties or liquidated damages imposed on producers who sample, turn, move, or replace farm-stored loan collateral in violation of law or regulation if the county committee determines that: (1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity and (2) the violation did not result in harm or damage to the right or interest of any person or government agency. The county committee is required to furnish a copy of its determination to the Administrator, ASCS, and the State Committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or State Committee within sixty days from the date the determinations are received, such determination is considered to have been approved. In developing and publishing that proposed rule, a provision for the Administrator's designee to disapprove county committee determinations was inadvertently omitted. Accordingly, § 1421.17(i) is revised to provide that if the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State Committee within sixty days from the date the determinations are received, such determination is considered to have been approved.

Revisions have also been made in § 1421.17 (h) and (i) of the proposed rule to correct typographical errors.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Surety bonds, Warehouses.

PART 1421—(AMENDED)

Final Rule

Accordingly, the regulations at 7 CFR Part 1421 are amended by revising "Subpart—General Regulations Governing Price Support for the 1978 and Subsequent Crops" as follows:

1. The authority citation for 7 CFR Part 1421 is revised to read:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended 1072 (15 U.S.C. 714b, 714c). Secs. 101, 105B, 107B, 201, 301, 401, 405, 63 Stat. 1051, as amended, 95 Stat. 1227, as amended, 95 Stat. 1221, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1444d, 1445b–1, 1446, 1447, 1421, 1425).

2. The table of contents to Subpart—General Regulations Governing Price Support for the 1978 and Subsequent Crops is amended by adding § 1421.29 as follows:

* * * * *

1421.29 Paperwork Reduction Act assigned numbers.

* * * * *

3. Section 1421.1 is revised to read as follows:

§ 1421.1 General statement.

This subpart contains the regulations which set forth the general requirements with respect to price support for the 1978 crop and each subsequent crop of barley, corn, flaxseed, oats, rice, rye, sorghums, soybeans, farm-stored peanuts, farm-stored flue-cured tobacco, and wheat. Price support shall be made available for a particular crop of a commodity based upon the level of support which is determined and announced annually by the Secretary. Farm storage loans will be evidenced by notes and secured by security agreements. In certain cases, chattel mortgages or financing statements will be filed. Warehouse storage loans will be evidenced by notes and security agreements and secured by the pledge of warehouse receipts representing an eligible commodity stored in approved warehouse storage. A producer may sell to CCC any or all of an eligible commodity which is not security for a price support loan by delivering to CCC the commodity or the warehouse receipts representing the commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

4. In § 1421.9, paragraph (b) is revised to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit: *Provided, however,* That warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.18(c).

* * * * *

5. In § 1421.12, paragraph (b) is revised to read as follows:

§ 1421.12 Interest rate.

* * * * *

(b) Price support loans which have been repaid by the maturity date or the original required settlement date for called loans shall bear interest at the same rate of interest which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR 1403.5. Until the loan is settled, such interest will be assessed beginning on the date immediately following the loan maturity date or the original required settlement date for called loans, whichever is applicable.

6. In § 1421.17, paragraphs (b) and (g) are revised and new paragraphs (h) and (i) are added to read as follows:

§ 1421.17 Farm storage loans.

* * * * *

(b) *Commingling eligible and ineligible commodity.* If an eligible quanity of a commodity has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless: (1) The producer has received prior approval from the county ASCS office to commingle the commodity as evidenced by an approved form CCC–687–1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county ASCS office; or (2) the producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production or purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county ASCS office.

* * * * *

(g) *Unauthorized removal and unauthorized disposition.* If there has been an unauthorized removal or unauthorized disposition of any part of farm-stored collateral, the county committee may: (1) Call the loan involved, (2) refuse to approve any further farm-stored loans for the producer with respect to any commodity for a period determined to be appropriate by the county committee, and (3) take other actions deemed necessary.

(h) *Liquidated damages.* If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of: (1) The day following the latest inspection of the collateral by an ASCS representative, or (2) the day following disbursement of the loan. Liquidated damages shall be computed by multiplying the loan principal which represents the quantity so disposed by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts at the time the unauthorized disposition is determined to have occurred.

(i) *Waiver of liquidated damages.* If liquidated damages are assessed in accordance with paragraph (h) of this section, the county committee may waive some or all of such liquidated damages if the county committee determines that: (1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity, and (2) the violation did not result in harm or damage to the right or interest of any person or government agency. The county committee shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

7. In § 1421.18, paragraphs (a) and (c) are revised to read as follows:

§ 1421.18 Release of the commodity under loan.

(a) *Obtaining release—farm storage loan.* A producer shall not dispose any commodity which is pledged as collateral for a loan until prior written approval for such disposition has been provided by the county committee in accordance with § 1421.8. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC the principal amount of the loan which is outstanding with respect to the quantity of the commodity released, plus interest. CCC will permit removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer. When the proceeds of the sale of the commodity are needed to repay a farm storage loan, the producer must request and obtain prior written approval of the county ASCS office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county ASCS office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county ASCS office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and the commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Marketing Authorization, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity removed with such authorization. Such liquidated damages shall be assessed beginning on the earlier of: (1) The expiration date of

such marketing authorization, or (2) the date delivery of the commodity to the buyer is completed, and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the quantity removed with such authorization by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts on the date that liquidated damages are first assessed.

* * * * *

(c) *Obtaining release, warehouse storage loans.* (1) The producer may arrange with the county ASCS office for the release of all or part of the commodity which is pledged as collateral for a warehouse storage loan at or prior to the maturity of such loan by repayment of the principal amount of the loan, plus interest, with respect to the quantity of the commodity to be released. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.5(b), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, the county committee may at any time during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. Any such approval shall be subject to all the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt. Warehouse receipts issued by the subsequent warehouse must: (i) Represent a commodity which is deemed to be stored commingled; (ii) be negotiable; and (iii) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent warehouse. The quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC–699, Reconcentration Agreement and Trust Receipt. Liability for any loss in quality or quantity shall be resolved solely between the warehouseman and the producer without any liability on the part of CCC. A producer may redeem all or part of the commodity reconcentrated by paying to CCC the loan principal plus applicable interest and charges before the new warehouse receipt is delivered to CCC. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with § 1421.733 and § 1421.753. Except for wheat, barley, sorghum, or rye, commodities which are reconcentrated shall be transported without cost to CCC. CCC shall increase or decrease the loan to the producer by the amount by which the loan value of the commodity stored in the subsequent warehouse is greater than or less than the value of the original warehouse storage loan. The maturity date of the new warehouse storage shall be the maturity date applicable to the original warehouse storage loan.

* * * * *

8. In § 1421.19, paragraph (a) is revised to read as follows:

§ 1421.19 Liquidation of farm storage loans.

(a) *General.* In the case of farm storage loans, the producer is required to repay the loan or deliver to CCC a sufficient quantity of the eligible commodity having a price support value equal to or greater than the outstanding balance of the loan. Deliveries may be either of the identical commodity which is subject to the note and security agreement or of other eligible commodities of the same kind. Deliveries shall be made in accordance with written instructions issued by the county ASCS office which shall set forth the time and place of delivery. CCC will not accept delivery of any quantity in excess of the larger of: (1) 110 percent of the measured or certified quantity, or (2) a sufficient quantity of the commodity having a settlement value equal to 110 percent of the loan value being settled. Settlement of the quantity delivered shall be made as provided in § 1421.22. If the producer fails to deliver to CCC the commodity pledged as price support loan collateral by the date specified by CCC on Form CCC–691, Commodity Delivery Notice, and if the producer subsequently redeems the collateral by repaying the loan before delivery is accomplished, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity redeemed. Such liquidated damages shall be assessed beginning on the date following the required delivery date and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the repaid quantity by 50 percent of the rate of interest charged by CCC with respect to delinquent debts on the date the failure to deliver occurred.

* * * * *

9. In § 1421.22, paragraph (a) is revised to read as follows:

§ 1421.22 Settlement.

(a) *General.* Settlement with producers for commodities acquired by CCC as a result of loans made or under purchase agreements entered into under this subpart shall be made as provided in this section and in the applicable commodity regulation. The price support rate at which settlement shall be made shall be determined in accordance with the provisions of the applicable commodity regulations. Settlement shall be made on the basis of the grade, quality, and quantity of the commodity delivered by the producer. In the case of farm-stored peanuts and farm-stored tobacco, paragraphs (b), (c), and (e) of this section shall not apply. In the case of farm-stored rice, paragraphs (b) and (c) of this section shall not apply.

* * * * *

10. A new § 1421.29 is added to read as follows:

§ 1421.29 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Numbers 0560–0087 and 0560–0040 have been assigned.

Signed at Washington, D.C. on November 21, 1984.

C. Hoke Leggett,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-31143 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC has determined that it is not unlawful under the Glass-Steagall Act for an insured nonmember bank to establish or acquire a bona fide subsidiary that engages in securities activities nor for an insured nonmember bank to become affiliated with a company engaged in securities activities if authorized under state law. At the same time, however, the FDIC has found that some risk may be associated with those activities. In order to address that risk the FDIC is amending its regulations to (1) define bona fide subsidiary, (2) require notice of intent to invest in a securities subsidiary, (3) limit the permissible securities activities of insured nonmember bank subsidiaries, and (4) place certain other restrictions on loans, extensions of credit, and other transactions between insured nonmember banks and their subsidiaries or affiliates that engage in securities activities.

EFFECTIVE DATE: December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202–389–4171), Room 4126 E. 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On August 23, 1982, the Board of Directors of the FDIC adopted a policy statement concerning the applicability of the Glass-Steagall Act to securities activities of subsidiaries of nonmember banks. The policy statement, which was published in the **Federal Register** on September 3, 1982 (47 FR 38984), concluded that, in the opinion of the Board of Directors, the Banking Act of 1933 (popularly known as the Glass-Steagall Act and codified in various provisions of title 12 of the United States Code) does not prohibit an insured nonmember bank from establishing an affiliate relationship with or organizing or acquiring a subsidiary corportion that engages in the business of issuing, underwriting, selling or distributing stocks, bonds, debentures, notes, or other securities. Although the policy statement was not designed to address the safety and soundness of such activities, it did state that the FDIC recognized its ongoing responsibility to ensure the safe and sound operation of insured nonmember banks and that, depending on the facts, potential risks can be presented by a bank subsidiary's involvement in particular securities activities.

In keeping with that statement, the FDIC on September 20, 1982 adopted an Advance Notice of Proposed Rulemaking (47 FR 42121) designed to solicit comment on the need, if any, for rulemaking with regard to securities activities of affiliates and subsidiaries of insured nonmember banks. After carefully reviewing the comments received in response to that notice, the FDIC adopted on May 9, 1983 a proposed regulation (May 1983 proposal) addressing the securities activities of subsidiaries and affiliates of insured nonmember banks. The basic features of the May 1983 proposal were as follows: (1) A requirement that a bank give FDIC notice of intent to invest in a securities subsidiary; (2) a prohibition on an insured nonmember bank establishing or acquiring a subsidiary that underwrites securities unless the underwriting activity is done on a best-efforts basis, is the underwriting of top rated debt securities, and/or is the underwriting of a money market type mutual fund; (3) a limit on the bank's investment in one or more securities subsidiaries to twenty percent of the bank's equity capital; (4) a limit on the amount of loans or other extensions of credit the bank can make to its securities subsidiary or affiliate; (5) a prohibition on the bank making loans to any customer where the purpose of the loan is to acquire securities currently being underwritten or distributed by the bank's subsidiary or affiliate or accepting such securities as collateral on a loan or other extension of credit; (6) a prohibition on the bank directly or indirectly making loans or other extensions of credit to companies whose securities are currently being underwritten or distributed by the bank's subsidiary or affiliate if those securities are not rated in the top four rating categories by a nationally recognized rating service; (7) a prohibition on the bank as trustee purchasing in its sole discretion any security currently being underwritten, distributed, or issued by the bank's subsidiary or affiliate or any security currently being underwritten, distributed, or issued by any investment company advised by the bank's subsidiary or affiliate; and (8) a prohibition on the bank transacting business through its trust department with the bank's securities subsidiary or affiliate unless the transactions are comparable to transactions with an unaffiliated securities company.

Additionally, the May 1983 proposal defined the term "bona fide subsidiary" as a subsidiary of an insured nonmember bank that at a minimum (i) is adequately capitalized; (ii) is physically separate in its operations from the operation of the bank; (iii) maintains separate accounting and other corporate records; (iv) observes separate formalities such as separate board of directors meetings; (v) maintains separate employees who are compensated by the subsidiary; and (vi) conducts business separately from, functions independently of, and is not identified with, the banking business of the insured nonmember bank.

The May 1983 proposal was published for a sixty-day comment period which ended on July 18, 1983. In addition to inviting written comments during that time period, the FDIC invited oral testimony at a one-day public hearing that was held on June 17, 1983. The FDIC received 35 written comments and heard oral testimony from two witnesses at the June 17 public hearing. Because of the complexity of the issues involved and the relatively small number of comments received during the comment period, the FDIC issued a revised proposed regulation dealing with same subject matter on May 1, 1984 (49 FR 18497). The new proposed regulation was formulated after carefully reviewing the written comments on the May 1983 proposal as well as testimony given before various congressional committees that was given directly in connection with, or was relevant to, FDIC's rulemaking. The revised proposal, which is detailed below, was issued for a thirty-day comment period during which FDIC received 22 comments. Those comments are summarized below where relevant to an explanation of the final regulation.

Of the total of fifty-nine comments received during both comment periods, twelve were totally opposed to FDIC pursuing the rulemaking. Of the twelve comments opposing the rulemaking, two that were received during the 30-day comment period resubmitted comments which had been filed with the FDIC in response to the May 1983 proposal. The basis for the objections to the rulemaking included the following: (1) The proposal is beyond FDIC's authority, (2) the proposal is contrary to the Glass-Steagall Act, (3) action with regard to this area is best left to the states, (4) FDIC should let Congress deal with the question, (5) there is no need for a regulation in the area, (6) the proposal will not produce and benefits, (7) securities activities are inherently unsafe and unsound and banks should

not be exposed to those risks at all, (8) the proposal will cause a mass exodus from the Federal Reserve System, and (9) at the most, the FDIC should issue a policy statement concerning insured nonmember bank indirect involvement in securities activities and not a regulation.

The FDIC acknowledges these comments but has determined to go forward with the rulemaking. FDIC is not attempting to usurp the prerogative of the state supervisors to regulate insured state nonmember banks nor the right of Congress to define the proper scope of a bank's direct and indirect securities activities under the Glass-Steagall Act. FDIC is merely seeking to fulfill its statutory responsibility to ensure the safe and sound operation of insured nonmember banks and to address the realities of the present market place. Moreover, the FDIC does not feel that indirect securities activities are inherently unsafe or unsound in all instances. The FDIC does recognize that certain risks may be involved depending upon the securities activities in which a nonmember bank subsidiary is engaged and that certain conflicts of interest can arise from securities activities. The risks and the conflicts of interest can, however, in our opinion, be adequately addressed by proper regulation. FDIC also rejects the argument that the proposal will cause a mass exodus from the Federal Reserve System. Such a forecast is merely speculative and is, in our opinion, unwarranted. Lastly, we have rejected the suggestion that the FDIC merely adopt a policy statement rather than a regulation as the latter is a preferable enforcement tool.

The FDIC also rejects the argument that the agency's position on the Glass-Steagall Act as set out in its policy statement is incorrect. The FDIC is merely applying the clear language of the statute. The only provision of the Glass-Steagall Act that prohibits affiliations between banks and corporations engaged in securities activities applies solely to member banks of the Federal Reserve System. Section 20 of the Glass-Steagall Act specifically provides that no *member* bank shall be affiliated with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution of stocks, bonds, debentures, notes or other securities. Section 32 of the Glass-Steagall Act prohibits persons who are officers, directors, or employees of corporations that are primarily engaged in certain securities activities, or partners or employees of partnerships so engaged, from serving as directors, officers, or employees of *member* banks. Section 21 of the Glass-Steagall Act which does apply to banks whether or not they are members of the Federal Reserve System was found by the Supreme Court to not reach companies related by ownership to banks. In *Board of Governors of the Federal Reserve System* v. *Investment Company Institute,* 450 U.S. 46 (1981) the Court at footnote 24 indicated that "Section 21 prohibits firms engaged in the securities business from also receiving deposits . . . and the language of § 21 cannot be read to include within its prohibition separate organizations related by ownership with a bank, which does receive deposits." FDIC's literal approach to the Glass-Steagall Act is also fully consistent with two recent Supreme Court cases involving the Glass-Steagall Act, *Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 104 S.Ct. 2979 (1984) ("Becker") and *Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 104 S.Ct. 3003 (1984) ("Schwab"). In both instances the Court relied on the plain language of the Glass-Steagall Act in deciding the cases and went so far as to state that it was constrained to abide by the literal meaning of the statute.

The FDIC's action in adopting this regulation is fully within the agency's authority and is consistent with its stated goal of safeguarding the safety and soundness of insured nonmember banks. The courts have recognized that defining what constitutes an unsafe or unsound banking practice in a particular fact situation is within the domain of the banking agencies. The 5th Circuit on two occasions stated that "One of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies."*Groos National Bank* v. *Comptroller of the Currency,* 573 F.2d 880, 897 (5th Cir. 1978), *First National Bank of LaMargue* v. *Smith,* 610 F.2d 1258, 1265 (5th Cir. 1980). The United States Court of Appeals for the D.C. Circuit has stated with regard to the Comptroller of the Currency's authority under section 8 of the Federal Deposit Insuance Act (12 U.S.C. 1818), one of the statutory provisions from which FDIC derives authority for this rulemaking, that "the Comptroller is entitled to accomplish his regulatory responsibilities over 'unsafe and unsound' practices both by cease and desist proceedings and by rules defining and explicating the practices which in his discretion he finds threatening to a stable and effective national banking system." *Independent Bankers Association of America* v. *Heimann,* 613 F.2d 1164, 1169 (D.C. Cir. 1979). Finally, the FDIC wishes to make clear that it is not, by adopting this final regulation, waiving its right to address on a case-by-case basis practices, conduct, or acts it finds to constitute unsafe and unsound practices that are not specifically addressed by this regulation. The FDIC will continue to monitor bank direct and indirect involvement in securities activities and will take whatever future action is appropriate.

The provisions of the final regulation and a further summary of the comments received by FDIC are detailed below.

1. Bona Fide Subsidiary

The term "bona fide subsidiary" as proposed for the thirty-day comment period required at a minimum that the subsidiary (i) be adequately capitalized; (ii) be physically separate in its operations from the operation of the bank and not operate on the same floor of a building on which deposits are received; (iii) not share a common name of logo with the bank; (iv) maintain separate accounting and other corporate records; (v) observe separate formalities such as separate board of directors' meetings; (vi) maintain separate employees who are compensated by the subsidiary; (vii) share no common officer with the bank; (viii) have a majority of directors that are neither directors nor officers of the bank; and (ix) conduct business pursuant to policies and procedures independent from the bank so that customers of the subsidiary are aware that the subsidiary is a separate organization from the bank and that investments recommended, offered, or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

In proposing the above definition the FDIC indicated that it was not necessarily implying that any association between a bank and its securities subsidiary in the public's mind could harm the reputation of the bank but rather that the FDIC was attempting to ensure the separateness of the subsidiary and the bank. That separation is essential inasmuch as the bank would be prohibited by the Glass-Steagall Act from engaging in many activities the subsidiary might undertake. If a bank's subsidiary is not sufficiently distinct from its parent, the subsidiary may be found to be an alter ego or a mere instrumentality of the bank and the bank held to be engaging in securities activities in violation of the Glass-Steagall Act. The definition was also designed to ensure the separateness of the subsidiary from the bank as a means of safeguarding the soundness of the parent bank. As stated in the May, 1983 proposal, "the parent bank is less likely to be harmed if the subsidiary has adequate capital and thus can itself absorb losses as well as liabilities arising from the securities operation."

The final regulation adopts a definition of "bona fide subsidiary" that is substantially the same as that which was most recently proposed for comment with a few significant revisions. The final definition retains the requirement that the subsidiary be adequately capitalized. This requirement was generally viewed as proper by those commenting on the May 1983 proposal. No comment was directed to this aspect of the proposed definition during the thirty-day comment period with the exception of the comment of the Investment Company Institute ("ICI") which resubmitted its comment filed in response to the May 1983 proposal. The ICI in commenting unfavorably on the May 1983 proposal opined that the parent bank could not be sufficiently insulated from the subsidiary's financial losses nor the possibility of liability under the securities laws regardless of to what degree the subsidiary is capitalized. After considering this comment, FDIC agreed that a parent bank may be considered a "controlling person" of the securities subsidiary and thus *potentially* subject to liability to the same extent as the subsidiary for any violations of the securities laws on the part of the subsidiary. That liability is not absolute, however. The bank as a "controlling person" may not be liable if it had no knowledge of the circumstances which gave rise to the violation, the bank acted in good faith, and the bank did not directly or indirectly induce the violation. The FDIC therefore concluded that it is possible to structure the relationship between a parent bank and its subsidiary to avoid or lessen the bank's exposure under the securities laws for the acts of the subsidiary.

Although the final regulation requires that the subsidiary be adequately capitalized, it does not define what constitutes adequate capital. No definition had been incorporated in the final regulation as the adequacy of any particular subsidiary's capital can vary from a safety and soundness point of view. It is FDIC's position, however, that the bank's subsidiary must, at a minimum, comply with any applicable capital requirements imposed by the Securities and Exchange Commission ("SEC") or imposed under state law. That level of capital is merely a starting point, however, and the FDIC reserves the right to determine that the subsidiary's activities and/or the parent bank's condition warrant that the subsidiary be capitalized over and above any such requirement. It is FDIC's intention to make this assessment during the "notice" period (see section (d) of the final regulation discussed below) and to inform the bank at that time whether in FDIC's opinion the capital position of the subsidiary is adequate. It is FDIC's belief that such a flexible approach will better serve FDIC's supervisory interest in maintaining the safety and soundness of insured nonmember banks.

The final definition also retains the requirement that the subsidiary maintain separate accounting and other corporate records and that the subsidiary observe separate formalities such as separate board of directors' meetings. No adverse comments were received as to either of these two requirements. Also retained is the requirement that the subsidiary maintain separate employees who are compensated by the subsidiary. Bank employees will be permitted, however, to perform so-called "back office" operations (such as accounting, data processing, and recordkeeping) provided that the bank is fully compensated for such services in an arm's-length transaction. In response to comments that the language of the exclusion for "back-office" operations was ambiguous, the FDIC has reworded footnote 5 of the final regulation which contains that exclusion to permit use of dual employees to perform functions which do not "directly involve customer contact." The proposal had excluded functions which do not "relate to" customer contact.

The separate employee requirements was criticized in a sustantial number of comments in response to the May 1983 proposal and in two comments filed during the 30-day comment period. Overall, the comments observed that the requirement would be costly and inefficient, would prevent the bank subsidiary from entering the securities area slowly, would prevent the bank from making available to the subsidiary the expertise of bank personnel already familiar with securities operations, and would probably most adversely impact smaller banks. The FDIC acknowledges that the separate employee requirement can produce some additional costs to insured nonmember banks but anticipates that the exception contained in the final regulation for back office operations (*i.e.*, allowing bank employees to perform administrative, non-customer contact type activities) reduces the inefficiency and added costs that might otherwise be produced. One comment, while recommending that the restriction be liberalized, did agree that the exclusion should alleviate some of the problems cited above. The separate employee requirement has also been retained in the final regulation as it is felt that the use of separate employees in customer contact positions is an extremely important factor in maintaining the separate corporate identity of the subsidiary and the bank. The requirement is also expected to have the added benefit of encouraging banks to hire experienced personnel to operate the subsidiary.

The final regulation retains the basic requirement that the subsidiary's operation be separated from the operation of the bank, however, the language indicating that "physically separate" operation of a subsidiary requires that the securities subsidiary not be located on the same floor of a banking building where deposits are received has been modified. The May 1983 proposal had required that the subsidiary's operation merely be physically separate and had not specified that the subsidiary could not operate on the same floor as the bank. The FDIC's purpose in changing the wording of the definition to that contained in the 30-day proposal was to more clearly demarcate the bank's depository business from the subsidiary's securities business and to prevent customer confusion regarding the separation. Several comments objected to this restriction as being overly broad and unnecessary, *i.e.* customer confusion can be avoided by less restrictive means and is adequately safeguarded against if the other proposed restrictions contained in the definition of bona fide subsidiary are observed. It was pointed out that as worded, the physically separate requirement would even prohibit a subsidiary of the bank from operating in a separate office with a separate entrance if the office happened to be on the same floor of a building where the bank operates.

The FDIC reevaluated its position and although the agency has determined to retain the requirement that the subsidiary's operation be physically separate and distinct, the minimum separation necessary to meet that regulatory standard has been modified.

The revised language would permit the subsidiary's to operate out of an office within a branch of the bank so long as the subsidiary's office is clearly identified and the bank and the subsidiary do not share a common entrance. The regulation, however, would permit both to share a common outer lobby or corridor. Existing operations within bank branches will be required to make whatever physical changes are necessary in order for the subsidiary to have separate offices that do not share a common entrance (other than a common outer lobby or corridor) with the bank. In all instances the subsidiary's offices must be clearly identified as belonging to the subsidiary.

The FDIC is adopting the physical separation requirement as described above despite the criticism it has received as we find our concern over public misconception as to with what entity the public is dealing to be a paramount concern. We are not comfortable with any less stringent requirement for fear that a bank customer may believe he or she is dealing with the bank or a department of the bank when making securities investments. For example, if the bank's subsidiary underwrites money market funds and an employee of the subsidiary counsels investors at a desk within the branch, there is the unavoidable possibility that the bank customer may confuse the investment in a money market fund underwritten by the subsidiary as a deposit of the bank even if the customer is given a written disclosure to the contrary. Although proper disclosures can go a long way in avoiding such customer confusion, disclosure *plus* other measures will more effectively separate the identities of the players.

The proposed definition of bona fide subsidiary required that the subsidiary not share a common name or logo with the bank. As previously stated by FDIC, name identification is a factor used by the courts in deciding whether to pierce the corporate veil, is a factor in public identification of the securities operation with the bank, plays a role in the public's misconception as to the insured status of investments placed with the subsidiary, and plays a role in engendering an expectation that the bank is liable for the obligations of the subsidiary. Additionally, a bank may be reluctant to allow a subsidiary to fail if that subsidiary carries the bank's name. The comments on the common name prohibition for the most part have been consistently critical and, in sum, opined that: a business's name is an asset on which it should be permitted to trade, name identification will not necessarily confuse the public, and as nonbanking companies may freely use a common name for any number of enterprises, it is unfair to prohibit banks from doing the same.

Despite this criticism, FDIC has determined to retain the prohibition on the use of a common name or logo by a bank and its securities subsidiary. The final regulation expressly indicates, however, that the restriction does not preclude a bank from advertising and/or otherwise disclosing the relationship between its subsidiary and itself. For example, bank X may advertise the securities services of its full service brokerage subsidiary, Y company, and denote Y company as a subsidiary of bank X. In this way, a bank may still obtain some benefits of name recognition but the public confusion that may arise if the subsidiary uses a common name (especially if that subsidiary operates out of the bank's branch) is lessened. We continue to feel that this restriction will not unduly competitively harm insured nonmember bank subsidiaries.

Insured nonmember banks should note that if the subsidiary *only* conducts activities that the bank itself could conduct, the need for the subsidiary to not be identified with the bank in order to avoid a Glass-Steagall Act violation is eliminated. The FDIC, however, still intends to require that there be sufficient differentiation between the bank and its subsidiary in its name, advertisements, promotions, customer contacts, etc., so as to avoid any public misconception as to the insured status of any accounts or other investments held by the subsidiary.

The final definition of bona fide subsidiary retains the proposed requirement that the subsidiary not share common officers with the bank and that a majority of its board of directors not be directors or officers of the bank. The officer/director requirement has been adopted in order to: (1) Ensure that the subsidiary operates independently from the parent bank, and (2) reduce the likelihood under the "controlling person" doctrine (see above) that the parent bank may be held liable for any securities laws violations on the part of the subsidiary. Five comments addressed the officer interlock restriction, some of which commented in the context of the same restriction found in proposed section 337.4(c) dealing with bank affiliation with securities companies. All five comments criticized the prohibition on any officer of the bank being an officer of the subsidiary (in the case of an affiliate any officer of the affiliate being an officer of the bank). In sum, the comments indicated that the restriction was not necessary in order to achieve a corporate separation under the law, that sharing of officers reduces costs, the restriction will adversely impact smaller banks, and that any conflicts of interest, etc. that might be associated with shared officers are sufficiently addressed under existing banking laws and regulations. While one of the comments extended its criticism to the restriction on the composition of the board of directors, several other comments supported that aspect of the restriction.

While FDIC agrees that shared officers and directors will not in and of itself cause the corporate form to be ignored, it is a factor, along with the other criteria set out in the definition of bona fide subsidiary, that a court will consider in deciding whether or not to do so. More importantly, shared officers and directors can play a significant role in determining the liability, if any, under the securities laws of the bank as a "controlling person." This restriction will also help to ensure that the bank subsidiary employs experienced managers. We do not anticipate that the restriction will be unduly burdensome for smaller banks that wish to establish securities subsidiaries as: (1) We expect smaller banks to confine their securities operations to brokerage or underwriting activities that the bank itself could lawfully conduct rather than to enter into underwriting activities the bank could not pursue (in the former instance the subsidiary need not be a bona fide subsidiary), and (2) should a bank establish a securities subsidiary that must be bona fide because of the nature of the activities it pursues, there is no minimum required number of experienced officers it needs to employ to do so. Depending upon the size and nature of the operation, one experienced officer may be sufficient to ensure that the securities operation is well managed.

The final regulation adopts the proposed requirement that the subsidiary conduct business pursuant to independent policies and procedures. The wording has been slightly modified in response to a comment that the phrase "so that customers of the subsidiary are aware that the subsidiary is a separate organization . . ." is ambiguous. The provision as reworded requires the subsidiary to employ "policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization . . .".

To briefly summarize, FDIC is adopting the definition of bona fide subsidiary substantially as proposed. We recognize that one cannot assure that a court will not pierce the corporate veil between a bank and its subsidiary by establishing a list of requirements and we further recognize that a court would probably not ignore the corporate form on the basis of one or perhaps two of the criteria the agency has set out. We hope rather to assure through this definition that the bank's subsidiary will be a well managed, fiscally independent, separate corporate body whose operation will not pose a threat to the bank and whose obligations and liabilities as well as the securities products it offers to the public will be perceived by the public to be its own. It is not our intent to establish inordinate burdens nor preclude innovation neither of which consequence do we feel will flow from our action.

The measures that FDIC is requiring to separate the subsidiary from its parent bank are borrowed from corporate law. Similar measures were required by the Federal Home Loan Bank Board when it approved the operation of a savings and loan association service company that would (1) offer securities brokerage and investment advisory services, and (2) operate out of savings and loan association branch offices. The Bank Board's action was challenged in Federal District court and upheld. In response to the charge that the host savings and loan association would be engaging in securities activities in violation of the Glass-Steagall Act, the court refused to pierce the corporate veil between the service corporation and the savings and loan association stating that in view of the prophylactic measures required by the Bank Board, the two organizations must be treated separately. (*Securities Industry Association* v. *Federal Home Loan Bank Board*, 588 F.Supp. 749 (D.D.C., 1984).

2. Underwriting

The regulations as published for 30-day comment restricted a nonmember bank subsidiary's securities underwriting activities that the bank could not lawfully itself conduct to the following: (1) underwriting of investment quality debt securities; (2) underwriting of investment quality equity securities; (3) underwriting of mutual funds whose investments are exclusively limited to investment quality debt securities and/or investment quality equity securities; and (4) underwriting of money market type mutual funds. The term "investment quality debt security" was defined to mean a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation. The term "investment quality equity security" was defined to mean marketable common or preferred corporate stock that is rated medium grade, average or better by a nationally recognized rating service.

Upon a review of the comments, FDIC has determined to revise the definition of investment quality equity security (see discussion in paragraph #3 below) and make the following changes to the underwriting restrictions as set out in proposed § 337.4(b)(1)(i): (1) The reference in § 337.4(b)(1)(i) (as well as elsewhere in the regulation) to mutual funds has been replaced with a reference to investment companies, (2) insured nonmember banks will be permitted to establish or acquire subsidiaries that underwrite investment companies not more than 25% of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities, and (3) if the subsidiary of an insured nonmember bank meets certain enumerated conditions (*i.e.* is a "qualified underwriter") the subsidiary's underwriting activities will not be limited to those identified in subparagraph (b)(1)(i) (*i.e.* investment quality debt, investment quality equity, money market funds, and qualifying investment companies).

The first revisions to § 337.4(b)(1)(i) is being made in response to a comment which pointed out that by using the term "mutual fund" the regulation excluded from eligibility for underwriting a number of other types of investment companies all of which are subject to regulation under the Investment Company Act of 1940, for example, unit investment trusts which are investment companies that have a defined investment portfolio that does not change. Inasmuch as FDIC did not intend such a result, the final regulation substitutes the term "investment company" for the term "mutual fund".

The second revision to paragraph (b)(1)(i) eliminates the requirement that an investment company invest "exclusively" in investment quality debt or investment quality equity securities in order for the investment company to be eligible for underwriting by the bank's subsidiary. FDIC received several comments which criticized the requirement as overly restrictive. As pointed out by one comment, the restriction would in fact exclude most mutual funds from eligibility as mutual funds are typically diversified within the meaning of the Investment Company Act of 1940; *i.e.* up to 25% of their investments are in securities that would not qualify as investment quality securities under the proposal.

The most significant revision to the proposal allows a "qualified underwriter" to engage in any underwriting activity; *i.e.* there are no product restrictions on the subsidiary if it meets the conditions enumerated in § 337.4(b)(2). Those conditions are: (1) Membership in good standing in the National Association of Securities Dealers ("NASD"), (2) continuous operation for the five year period preceding notice to FDIC as required by this part, (3) no officer, director, general partner, employee, or 10 percent shareholder of any class of voting securities of the subsidiary has been convicted within five years of the notice required by this part of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of a false filing with the Securities and Exchange Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser, (4) neither the subsidiary nor any of its directors, officers, general partners, employees, or 10 percent shareholders of any class of voting securities of the subsidiary is subject to any state or federal administrative order or court order, judgment, or decree entered within five years of the notice required by this part temporarily or preliminarily enjoining or restraining such person or the subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the Securities Exchange Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser, (5) none of the subsidiary's directors, officers, general partners, employees, or 10 percent shareholders are subject to an order entered within five years of the notice required by this part of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 780, 78o–4) or section 203 (c) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c), (f)), and (6)

all officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years experience in similar activities at NASD member securities firms.

FDIC has determined to adopt the "qualified underwriter" approach after reconsidering comments which urged FDIC to concentrate on the subsidiary's management rather than establishing product restrictions. This approach is also being adopted in light of several comments which brought to our attention that, in attempting to establish an objective standard to measure the investment quality of equity securities by defining "investment quality equity security" as proposed, FDIC excluded from eligibility for underwriting (1) entire industries whose equity securities are not ranked, (*e.g.* auto companies, steel companies, airlines), (2) equity securities of any company that has not been in operation for ten years or more (ranking is typically done by reviewing a stock's performance over a ten-year period in relationship to other stocks), and (3) equity investments other than common or preferred stock such as limited partnerships. Two comments pointed out that: (1) There is no customary or obligatory after market for shares of limited partnerships, (2) neither the subsidiary nor the bank would be identified with any such distribution as only the managing underwriter is named in the prospectus, and (3) there is no capital commitment on the part of the selling broker. (See paragraph #3 below.)

While FDIC recognizes that there are problems with trying to objectively define what constitutes an investment quality equity security and that there are no guarantees that investment grade equity securities are sound investments, it is still FDIC's feeling that it is appropriate to adopt a guarded stance at the outset with respect to equity underwriting even if utilizing an imperfect standard. FDIC has therefore retained the basic concept of product restrictions where a nonmember bank subsidiary is a de novo entrant into the securities underwriting market. If a nonmember bank acquires a functioning underwriter that is a "qualified underwriter" within the parameters of section 337.4(b)(2), that subsidiary is permitted a wider latitude in its underwriting activities under the final regulation. If the de novo subsidiary meets the remaining conditions for a qualified underwriter after it has been in operation for five years, the subsidiary may, after giving FDIC notice pursuant to § 337.4(d), expand its underwriting activities to ones other than those set out in § 337.4(b)(1)(i). In either case, the FDIC will not be precluded from intervening in, or objecting to, the acquisition of the qualified underwriter, or expansion of underwriting activities into ones permitted to a qualified underwriter, if such intervention or objection is warranted.

While the final regulation permits unlimited underwriting (in the sense of product restrictions) to qualified underwriting subsidiaries of insured nonmember banks, any de novo subsidiary will be limited to underwriting of investment quality debt and equity securities, underwriting investment companies that primarily invest in such securities, and underwriting money market funds. (Investment quality equity securities are normally traded on an exchange thus eliminating pressures on the subsidiary to create an after market. Even if the subsidiary were to create an after market in such securities, there should not be any undue risk due to the high quality of the securities.) By adopting this two-tier approach, FDIC hopes to allow nonmember bank subsidiaries the flexibility of slowly moving into larger securities markets as they gain more experience. At the same time, by permitting experienced securities underwriting firms owned by nonmember banks to engage in a larger product market, the FDIC is avoiding what would have been the unintended result of the proposal: precluding underwriting of securities of smaller, regional companies; companies that have not been operating for ten years or more; and companies whose securities are not ranked because their securities are not felt to be "amenable" to the ranking process. While the parent nonmember banks of such qualified underwriters are arguably exposed to greater risks, the FDIC feels that the requirement that the subsidiary be bona fide and the requirement that the subsidiary be well managed and experienced coupled with the other restrictions of the final regulation sufficiently offset those risks.

Lastly, as was the case with the 30-day proposal, the final regulation does not restrict a nonmember bank's affiliation with a securities company depending upon the activities conducted by that company. As it has indicated in earlier **Federal Register** notices, FDIC feels that there is less of a possibility that losses suffered by the bank's parent or sister affiliate due to underwriting activities will adversely impact the bank. This is especially so as the affiliate's ability to move funds out of the bank is limited by several provisions of the final regulation. In any event, the FDIC will have the opportunity when processing change in bank control applications to disapprove a bank's affiliation with a securities company if warranted under that Act.

3. Investment Quality Debt Security/ Investment Quality Equity Security

The May 1983 proposal defined the term "investment quality debt security" to mean a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are not predominantly speculative. The definition specifically included obligations rated in the top four rating categories by a nationally recognized rating service. The definition as revised in the most recent proposal provided that " 'Investment quality debt security' shall mean a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are equivalent to the investment characteristics of such a top rated obligation." The revised definition responded to comments on the May 1983 proposal that the phrase "speculative investment characteristics" was overly vague and to comments which indicated that by limiting the definition of investment quality debt securities to rated securities, the FDIC may foreclose access by smaller companies to capital markets.

The definition of investment quality debt security is being adopted as most recently proposed without modification. Only one comment was directed to the definition. It expressed approval of the language as proposed. The definition allows a bank subsidiary to underwrite debt securities that are of comparable quality to highly rated debt securities. As the nonrated debt obligations must still be of high quality in order for the bank's subsidiary to engage in the underwriting, the FDIC does not feel that the broader definition will expose the parent bank to any additional risks.

The most recent proposal defined the term "investment quality equity security" to mean a marketable common or preferred corporate stock that is rated medium grade, average, or better by a nationally recognized rating service. The proposed definition of investment quality equity security did not encompass nonrated equities that have equivalent investment characteristics to top rated equities as, as explained in the supplemental information to the proposal, the science of rating equity securities is not as precise as the science of rating debt securities, nor is it as developed.

In attempting to define what constitutes an investment quality equity security FDIC relied upon ratings of common and preferred corporate stock. According to a comment on the proposed definition, common stock is not rated, but is "ranked" with reference to its standing relative to other common stocks based on a ten-year history of earnings and dividends. The comment further indicated that (1) a significant group of companies in major industries is not ranked; *e.g.* most auto companies, steel companies, and airlines, and (2) some common stocks are not ranked at all because they are not considered amenable to the ranking process. In short, according to the comment, reliance on rankings of common stock to determine what constitutes an investment quality equity security is misplaced and is too narrow of an approach. Lastly, the comment indicated that, at the very least, FDIC's definition should allow for the underwriting of highly rated preferred corporate stock (preferred stock is "rated" in the same manner and according to much the same standards as bonds are rated) and/or underwriting of unrated preferred stock whose investment characteristics are equivalent to the investment characteristics to top rated preferred stock.

Upon consideration of the above, FDIC has determined to modify the definition of investment quality equity to read as follows: "Investment quality equity security shall mean marketable common stock ranked or graded in the top four categories or equivalent categories by a nationally recognized rating service and marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service or has investment characteristics that are equivalent to the investment characteristics of such top-rated preferred stock."

Although FDIC acknowledges that using ranking of common stocks as an objective measure of the investment quality of corporate securities is not free from shortcomings, FDIC has determined to retain this limitation on the permissible corporate underwriting activities of subsidiaries of insured nonmember banks for the reasons more fully set forth in paragraph #2 above describing the underwriting provisions of the final regulation.

4. Filing of Notice

The final regulation adopts the notice provision as proposed with minor changes. Under the final regulation the bank must give the appropriate FDIC regional office written notice of intent to establish or acquire a subsidiary that engages in any securities activity at least 60 days prior to consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The regulation also requires that, in addition to the 60-day advance notice, a bank must file a written follow-up notice with the appropriate FDIC regional office within 10 days after the acquisition is consummated or the subsidiary commences operations, whichever is earlier. The regulation does not specify the content of the written notice of intent. By not specifying the content of the notice, the FDIC is permitting a bank to satisfy the notice requirement in any way it finds most convenient. For example, if the subsidiary will be registered with the SEC, a copy of the SEC filing may simply be forwarded to the appropriate FDIC regional office.

Where the 60-day advance notice pertains solely to an instance where a bank transfers to its subsidiary securities activities previously performed by the bank, the bank is required under the final regulation to file an additional notice with the regional office if the subsidiary expands into restricted activities; *i.e.*, the underwriting activities referenced in subparagraph (b)(1)(i) and paragraph (b)(2) of the final regulation. Likewise, if the subsidiary gives the FDIC 60 days advance notice regarding the establishment or acquisition of a subsidiary that will engage in subparagraph (b)(1)(i) activities, an additional notice must be given to the regional office if the subsidiary commences broadened underwriting activities as permitted by paragraph (b)(2).

These notices serve as a supervisory mechanism that will apprise FDIC of which insured nonmember banks are conducting securities activities through their subsidiaries that pose potential risks to which the bank would not otherwise be exposed. The subsequent notice is a one-time notice; *i.e.*, the first time the subsidiary commences any activity covered by paragraph (b)(1)(i) or (b)(2), notice must be filed. No subsequent notice is required if the subsidiary later begins another underwriting activity covered by (b)(1)(i) or (b)(2) that was not the activity which triggered the above notice. The only comment received by FDIC during the most recent comment period which addressed the notice requirements objected to a bank having to give FDIC notice if it transfers securities activities from the bank to a subsidiary. The requirement is being retained, however, as FDIC does not feel that the requirement is burdensome and moreover because the information will aid FDIC in discharging its supervisory responsibilities.

It is the FDIC's intent to use the notices required by the final regulation as a point of reference. The regional office will contact the bank seeking further information if the bank's condition or other facts warrant a closer review. It is for this reason that the regulation requires that the initial notice be received at least 60 days in advance. The 60-day notice can be waived at the FDIC's discretion where such period is impractical, *e.g.*, where the acquisition is the result of a purchase and assumption transaction or an emergency merger. The subsequent notice must be received in the regional office within 30 days after the subsidiary commences the triggering underwriting activity. Prior notice is not required in this instance as it was felt to do so would be too impractical and would unduly interfere in the day-to-day operations of the subsidiary. None of the notice requirements are an approval process although the FDIC will not be precluded from intervening in an intended acquisition or establishment of a subsidiary or from objecting to the expansion of activities if such intervention or objection is warranted, for example, if the subsidiary would not appear to meet the requirements for a bona fide subsidiary, or any details of the planned transaction (such as the source of funding for the establishment or acquisition of the subsidiary) present any supervisory concerns.

The final regulation does not require a written notice when a bank becomes affiliated with a securities company. For the most part, affiliation with a securities company will arise out of a change in bank control or come to FDIC's attention when a bank seeks deposit insurance. As the FDIC will become aware of the affiliation prior to consummation in both instances, there is no need to create an additional notice requirement.

5. Lending Restrictions

The most recent proposal contained a number of restrictions designed to prevent abuse of a bank's credit facilities. Such abuse can arise in several ways, for example, the making of imprudent loans to companies whose securities are underwritten or distributed by the bank's subsidiary or affiliate in an effort to improve the condition of the company and thus the

marketability of the company's securities. The proposal would have prohibited a bank from: (1) Making extensions of credit to any company whose securities are currently underwritten or distributed by the bank's affiliate unless those securities qualify as investment quality debt securities or investment quality equity securities, (2) making any extension of credit to a money market fund or mutual fund currently underwritten or distributed by the bank's subsidiary or affiliate, (3) making any extension of credit where the proceeds are to be used to acquire securities currently issued, underwritten or distributed by the bank's subsidiary or affiliate or currently issued by an investment company advised by the bank's subsidiary or affiliate, (4) making any extension of credit to its securities subsidiary or affiliate that does not comport with section 23A of the Federal Reserve Act, (5) making any extension of credit to any investment company advised by the bank's subsidiary or affiliate if the extension of credit does not comport with section 23A of the Federal Reserve Act, (6) directly or indirectly conditioning any extension of credit to a company on the requirement that the company contract or agree to contract with the bank's subsidiary or affiliate to underwrite or distribute the company's securities, and (7) directly or indirectly conditioning any extension of credit to any person on the requirement that that person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate. (Items 6 and 7 are discussed in paragraph #9 below.)

The lending restrictions are being adopted as most recently proposed with two minor changes: (1) The reference to "money market fund" and "mutual fund" contained in paragraph (e)(4) has been replaced with the term "investment company", and (2) the restriction on extensions of credit to companies whose non-investment quality securities are currently underwritten or distributed by the bank's affiliate has been expanded to cover companies whose non-investment quality securities are currently underwritten or distributed by the bank's subsidiary. The expanded coverage is necessary as qualified underwriting subsidiaries of nonmember banks may underwrite securities that are not investment quality. The lending restrictions and the basis for their adoption are discussed separately below.

Paragraph (e)(3) of the final regulation prohibits a bank from extending credit to any company the stocks, bonds, debentures, notes or other securities of which are currently underwritten or distributed by a subsidiary or affiliate of the bank unless those securities qualify as investment quality debt securities or investment quality equity securities. Paragraph (e)(3) is designed to address the concern that a bank may make imprudent loans to companies whose lower quality securities are underwritten or distributed by the bank's subsidiary or affiliate in an effort to improve the condition of the company and thus the marketability of its securities. Inasmuch as the securities in question must be investment quality in order for the company to be eligible for extensions of credit from the bank, the above concern is eliminated. If the bank's subsidiary is engaging in underwriting activities as permitted by section 337.4(b)(2), the bank would not be able to extend credit to any company whose securities the bank's subsidiary currently underwrites or distributes assuming of course that the securities in question are not investment quality.

In determining whether an underwriting or distribution is "current", the bank may rely upon the affiliate's or subsidiary's statement that any particular underwriting or distribution has terminated. A footnote to paragraph (e)(3) indicates that the restrictions of (e)(3) are not to be construed as prohibiting the bank from honoring a loan commitment or revolving loan agreement or funding a line of credit where such loan commitment, revolving loan agreement, or line of credit was entered into prior in time to the underwriting or distribution. It is felt that this exclusion coupled with the definition of investment quality debt security and investment quality equity security (both of which take into consideration unrated debt and unrated preferred corporate stock that has investment characteristics equivalent to those of highly rated securities) prevents the restrictions of paragraph (e)(3) from having an adverse effect on the availability of credit. The same footnote also provides that the restrictions of (e)(3) do not apply to extensions of credit to non-U.S. companies whose securities are underwritten or distributed outside the United States by an insured nonmember bank's non-U.S. affiliate. This exclusion has been added in response to comments from several foreign banks. (See paragraph #14 below.)

Paragraph (e)(4) of the final regulation prohibits a bank from making any extension of credit or loan directly or indirectly to any investment company whose shares are currently underwritten or distributed by a subsidiary or affiliate of the bank. As stated in the preamble to the proposal, FDIC considered exempting mutual funds and money market funds from the reach of the lending restriction. Such an exemption was rejected, however, inasmuch as the credit needs of such funds are most likely to arise when the fund is having liquidity problems. If interest rates should rise sharply and large numbers of shareholders, especially institutional investors, redeem their shares to put their money directly into higher paying investments, a fund could face a liquidity crisis. A bank may thus be tempted to make an unsound loan to the fund in order to prevent the fund from suffering a loss by selling portfolio assets at a depressed price to meet liquidity needs. As the FDIC received no comments critical of the restriction, and it is still our opinion that the restriction is warranted, the final regulation retains the provision as proposed with the exception of the reference change to "investment company". Money market funds have been targeted within the prohibition despite their relative stability as at present there is no self-regulatory organization such as the NASD to watch-dog money market funds.

Paragraph (e)(5) of the final regulation prohibits a bank from extending credit for the purpose of acquiring securities currently underwritten or distributed by the bank's subsidiary or affiliate, securities issued by an investment company advised by a bank's subsidiary or affiliate, or securities issued by the bank's subsidiary or affiliate. The provision contains an exception that would permit the bank to extend credit to any employee of the subsidiary or affiliate where the purpose of the loan is to acquire securities of the subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board of trustees of the subsidiary or affiliate. Footnote 11 indicates that the bank in complying with paragraph (e)(5) may rely in good faith on the customer's statement as to the purpose of the loan. FDIC received one comment addressing the above described purpose lending restriction. That comment urged FDIC to merely require that any purpose loan by the bank comply with safe and sound banking practice rather than prohibiting purpose loans in their entirety. FDIC still feels, however, that this prudential restriction is warranted especially in a supervisory environment which is progressively moving toward fewer on-site examinations at greater intervals.

Paragraph (e)(6) of the final regulation subjects extensions of credit by a bank to the bank's subsidiary to the same loan ceiling and other restrictions as would be applicable under section 23A of the Federal Reserve Act if that subsidiary were an affiliate for the purposes of that statute. Paragraph (e)(6) also places extensions of credit to the bank's affiliate under the same restrictions. Paragraph (e)(7) subjects extensions of credit by a bank to an investment company advised by the bank's subsidiary to the same loan ceiling and other restrictions that would be applicable under section 23A of the Federal Reserve Act if that subsidiary were an affiliate within the meaning of section 23A and makes extensions of credit to investment companies advised by the bank's affiliate subject to the same restrictions. As loans or extensions of credit to the bank's affiliate as that term is defined in the regulation are already covered by the language of section 23A, placing affiliates under the restrictions of paragraph (e)(6) does not establish any additional requirements. Additionally, as section 23A covers extensions of credit to investment companies advised by the bank's affiliates, placing affiliates under the restriction of paragraph (e)(7) does not establish any additional requirements. The final regulation expressly incorporates the exemptions contained in section 23A as well as the restrictions. These provisions did not receive any adverse comment during the 30-day comment period and thus are being adopted as proposed. (FDIC did receive one comment opining that Congress did not intend for subsidiaries of banks that advise mutual funds to be subject to section 23A. Although that may or may not be the case, FDIC has determined that certain risks may be present even when the subsidiary merely acts as an adviser to an investment company and that those risks are appropriately addressed by section 23A-type restrictions.)

6. Trust Department Restrictions

One safety and soundness problem associated with securities activities of subsidiaries and affiliates of nonmember banks is dumping of poor securities into the bank's trust department. The May 1983 proposal contained a provision designed to address that concern that would have prohibited an insured nonmember bank which has a subsidiary or affiliate that engages in the sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities or acts as an investment adviser to any investment company that sells, distributes, or underwrites any such security, from purchasing in its sole discretion as fiduciary or co-fiduciary any security currently being issued, distributed, or underwritten by that subsidiary or affiliate or purchasing in its sole discretion any security currently being distributed, underwritten, or issued by any investment company advised by the subsidiary or affiliate. The May 1983 proposal also would have prohibited an insured nonmember bank from transacting business through its trust department with its securities subsidiary or affiliate unless the transactions are comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank. The later provision was designed to insulate the bank from the possibility that its securities subsidiary or affiliate will drain off profits from the bank.

In response to comments that the phrase "in its sole discretion" should be clarified, paragraph (e)(1) of the proposed regulation was reworded to permit insured nonmember banks to purchase, as fiduciary or co-fiduciary, securities currently distributed, underwritten or issued by the bank's subsidiary or affiliate or currently issued by an investment company advised by the bank's subsidiary or affiliate where those purchases are expressly authorized by the trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure. As FDIC indicated in its earlier publications, the provision merely restated the common law obligation of a fiduciary to refrain from self dealing and was at the same time consistent with the following statement regarding trust department examinations found in FDIC's Manual of Examination Policies: "It is a general axiom that a bank has a definite moral responsibility, as well as legal, not to deal with itself in the administration of a fiduciary account."

FDIC's examination manual also goes on to state that a bank should not invest fiduciary funds in its own obligations or stock unless court order, local law or the trust instrument authorizes the purchase and retention of the obligation or stock, or specific authority for the investment is obtained from all interested parties.

FDIC received several comments addressed to paragraph (e)(1) of the proposal all of which objected to the provision as worded. The comments indicated that the "expressly authorized" requirement was too strict; the requirement might neccesitate redrafting existing trust instruments which in some cases could prove impossible; obtaining specific authority from all interested parties could be costly and perhaps impossible; and the provision may preempt existing law or at best cause confusion. In response to these comments, paragraph (e)(1) has been revised in the final regulation so as to provide that the bank is prohibited from purchasing in its discretion as fiduciary, co-fiduciary, or managing agent any security currently underwritten, distributed, or issued by the bank's subsidiary or affiliate or any security issued by an investment company advised by the bank's subsidiary or affiliate unless one of three conditions are met: (1) The purchase is expressly authorized by the managing agency agreement, trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure, (2) the purchase, although not expressly authorized under item 1, is otherwise consistent with the bank's fiduciary obligation, or (3) the purchase is permissible under any applicable federal and/or state statute or regulation. Condition three is designed to take into account, for example, federal law governing employee benefit and pension plans which would permit, in certain instances, transactions involving such funds and affiliates of the funds' trustees. Condition two is responsive to the comment that in order to meet its fiduciary obligation, a trustee is not always required to obtain the authorizations covered by item one.

FDIC feels that paragraph (e)(1) as adopted in final should provide sufficient flexibility so as to not conflict with existing fiduciary common law and/or federal or state statutes or regulations governing the operation of trust departments and the duty of fiduciaries. At the same time it should prevent abuses that might otherwise arise. It should be noted that (e)(1) as adopted also covers purchases by the bank in its discretion as managing agent. Paragraph (e)(1) thus covers a situation where the bank is the managing agent for an investment account and the bank has investment discretion over that account. Although the bank is not a fiduciary with respect to that agency account in the same sense as if it were a trustee of a trust account, the bank still has certain obligations with respect to the account and it is in a position through its investment discretion to take securities off the hands of its subsidiary or affiliate. FDIC has therefore concluded that (e)(1) is appropriately expanded to cover such instances.

The final regulation adopts paragraph (e)(2) as proposed. Under that provision the bank is prohibited from transacting business through its trust department with the bank's subsidiary or affiliate unless the transactions are at least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank. The purpose of (e)(2) is to ensure that when a bank's subsidiary or affiliate executes securities transactions on behalf of the bank's trust accounts, the costs associated with those executions (both to the bank and the trust account) are not inflated, *i.e.* not substantially greater than would have been incurred if dealing with an unaffiliated securities company. To the extent those costs are inflated, the bank, may suffer, *i.e.* the subsidiary or affiliate may drain off profits from the bank, or the trust customers may suffer, *i.e.* the higher costs are passed on to the customer.

FDIC received one comment urging that paragraph (e)(2) be amended to require that such transactions be at cost as a beneficiary of a trust is entitled to a trustee which is free from the incentive to generate transactions in order to produce commission income. FDIC has not adopted an "at cost" requirement as the requirement of paragraph (e)(1) should adequately ensure against churning and other acts that can constitute a breach of fiduciary obligation on the part of the trustee when the bank is dealing with its subsidiary or affiliate. It should be noted that (e)(2) does not prohibit a bank's trust department from using the broker/dealer services of its subsidiary or affiliate to execute transactions on behalf of fiduciary accounts. The bank's decision to utilize the subsidiary's or affiliate's services (and the transaction as a whole) must fully comport, however, with the bank's fiduciary obligation to its trust department customers. It is not FDIC's intent to countenance any transaction or practice which, although "comparable" to transactions with unaffiliated securities companies, is otherwise a breach of fiduciary obligation.

7. Investment Ceiling

Paragraph (b)(3) of the proposed regulation would have restricted an insured nonmember bank's direct and indirect investment in one or more securities subsidiaries to 20% of the bank's primary capital unless the FDIC approves a greater investment. Although few of the comments received over the course of the rulemaking criticized the proposed investment restriction, the FDIC has determined to eliminate that portion of the regulation. The final regulation retains, however, the statement that the bank's investment in its securities subsidiary will not count toward the bank's capital. The investment limitation is being eliminated as the FDIC, upon further reflection, concluded that the investment ceiling was unnecessary inasmuch as the bank's investment in the subsidiary will be excluded from the bank's capital.

The exclusion provides the FDIC with a strong enforcement tool to help safeguard the bank's safety and soundness. If, for example, the FDIC should determine after receiving notice that an insured nonmember bank's capital would not be adequate after making the necessary adjustments, the bank could be subject to enforcement action if it were to proceed with the acquisition or establishment of the subsidiary. The automatic exclusion of the investment from the bank's capital will provide the FDIC greater assurance that the bank and subsidiary are independent, financially viable entities and will prevent institutions with marginal capital from taking on additional activities that could pose additional risks.

8. Affiliation With a Securities Company

Section 337.4(c) of the proposed regulation would have prohibited an insured nonmember bank from becoming affiliated with a securities company unless: (1) The securities business of the affiliate is physically separate in its operation from the operation of the bank and does not operate on the same floor of a building on which the bank receives deposits; (2) the bank does not share common officers with the affiliate; (3) a majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct any securities activities on behalf of the affiliate on the premises of the bank that involve customer contact; (5) the bank and affiliate do not share a common name or logo; and (6) the affiliate conducts business pursuant to policies and procedures independent from the bank so that customers of the affiliate are aware that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

The May 1983 proposal only required that the securities business of the bank's affiliate be "kept separate and distinct from the banking business of the insured nonmember bank". Inasmuch as the FDIC did not necessarily mean to imply that the affiliate could more closely mingle its operations with the bank than could the bank mingle operations with its subsidiary, the FDIC specifically proposed restrictions that paralleled those set forth for subsidiaries of insured nonmember banks. In doing so, the FDIC indicated that it felt that the restrictions were as warranted in the case of an affiliate as in the case of a subsidiary. The proposal further indicated that it was felt that the restrictions were necessary in order to avoid customer confusion, to avoid conflicts of interest, to avoid a finding that the bank is itself engaged in prohibited securities activities, and to avoid a finding that the affiliated securities company is taking deposits in violation of section 21 of the Glass-Steagall Act. For example, if the FDIC approves deposit insurance for a newly chartered bank whose parent is a securities company and the bank is so closely intertwined with its parent that one could find the parent securities company is taking deposits, the FDIC would, by its action, countenance a violation of the Glass-Steagall Act.

The FDIC specifically sought comment on the necessity of the above restrictions and the problems, ramifications, burdens, etc., if any, that might be associated with the director/officer restriction and the prohibition on the use of common names or logos. With the exception of the comments to be discussed below, the comments FDIC received which addressed the proposed restriction on bank affiliations with securities companies have essentially been outlined in paragraph #1 above which discusses the definition of bona fide subsidiary. (Inasmuch as the restrictions in proposed section 337.4(c) essentially parallel the restrictions for bona fide subsidiaries, comments directed to one provision, for the most part, raised issues equally applicable to the other.)

One comment made on behalf of several securities companies which are presently affiliated with insured nonmember banks or which intend to affiliate therewith made the argument that FDIC has not adequately supported its case for restricting the affiliation of a nonmember bank with a securities company *i.e.*, even if there is a basis to define bona fide subsidiary as proposed, there is a fundamental difference between a bank being owned or otherwise affiliated with a securities company and a bank establishing or acquiring a securities subsidiary. This

comment, as well as others, primarily focused on the prohibition on the use of a common name or logo, the restriction on shared officers, and the restriction on the composition of the bank's board of directors. One comment suggested exempting banks that are presently affiliated with securities companies from the common name prohibition (either by a premanent grandfather or through a list of exemptive criteria such as the amount of the affiliate's revenue, capital, or assets, the length of time the affiliate has been in business, and the location of a majority of the affiliate's offices). Such banks, said the comment, have expended considerable amounts of money in promotional activities (albeit less than that which would have been expended if they could not have relied on the name identification of their parent) and would need to expend far more to recapture the market position they presently hold if they are required to change their names.

Additionally, several comments objected to the proposed requirement that the affiliate conduct business pursuant to independent policies and procedures. One such comment felt that the requirement constituted an unwarranted intrusion on the affiliate's operations and was beyond FDIC's authority. Several others pointed out that under the language as proposed, an affiliate of a nonmember bank could not broker the bank's deposits as the provision requires the affiliate to make its customers aware that investments recommended or sold by the affiliate are not bank deposits, are not insured by the FDIC, nor are obligations of the bank. Lastly, several comments pointed out that § 337.4(c) would require that the affiliated securities company comply with the restrictions contained therein regardless of whether the securities company was solely conducting activities of the sort permitted to the bank under the Glass-Steagall Act. A subsidiary of a bank on the other hand only need meet the criteria for a bona fide subsidiary if it conducts securities activities which the bank could not conduct. After carefully weighing these comments, FDIC has determined to go forward with proposed § 337.4(c) with certain modifications described below.

The final regulation restricts under section 337.4(c) the affiliation of a securities company and a nonmember bank where the affiliate directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities. The language change thus tracks the language of section 21 of the Glass-Steagall Act and in effect cuts back the scope of the provision from that which was proposed. Under the new language, to the extent that the affiliate engages in any other securities activities (*i.e.* ones not encompassed by section 21 of the Glass-Steagall Act) the affiliate is not subject to § 337.4(c). As in the case of a nonmember bank subsidiary, however, it is still FDIC's intent to require that there be sufficient differentiation between the bank and its affiliate in the bank's name, advertisements, promotions, etc. so as to avoid any public misconception as to with whom it is dealing. Also, under the provision as revised in the final regulation, only a securities company that *directly* engages in the sale, distribution, or underwriting of securities is subject to the restrictions of § 337.4(c). (The proposal would have covered companes directly or indirectly engaged in securities activities.) For example, a nonmember bank may share officers with its parent holding company that does not itself engage in securities activities except where those persons are also officers of a company controlled by the bank's parent (*i.e.*, an affiliate of the bank as defined in § 337.4(a)(1)) that underwrites securities).

A securities company subject to § 337.4(c) will not be required to be physically separate in its operations from the operations of its affiliated nonmember bank in the sense of not operating on the same floor of a building on which the bank receives deposits. As is the case with a subsidiary, however, the final regulation retains the requirement that the affiliate be physically separate and distinct in its operations from the operation of the bank. The final regulation thus would allow the affiliated securities company to have a separate office located in the branch so long as it was clearly demarcated as belonging to the affiliate and conversely would allow the bank to be housed in the same building, on the same floor as the affiliate so long as separate, clearly demarcated offices are maintained. In both instances, access to the affiliate's offices may not be through a common entrance with the exception that a common outer lobby or corridor is permitted.

The final regulation requires that the affiliate conduct business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, nor are otherwise obligations of, nor guaranteed by, the bank. A footnote has been added to the provision to clarify that this restriction is not to be construed to prohibit the affiliate from engaging in the brokering of deposits to the extent otherwise permitted by law and/or regulation. Lastly, the final regulation retains the prohibition on the use of a common name or logo. Section 337.4(c) has been amended, however, to indicate that this prohibition does not preclude the bank from disclosing in its promotions, advertisements, etc. that it is affiliated with a securities company. The remaining portions of § 337.4(c) are being adopted as proposed. The FDIC rejected the idea of grandfathering banks presently sharing a common name or logo with securities affiliated because of the continued possibility of public confusion. Likewise, an asset or revenue based exemption is, in the FDIC's opinion, inappropriate as public confusion may still result. Additionally, a numerical or ratio test would be unmanageable over time and potentially more disruptive for banks affiliated with securities companies.

The FDIC is taking the above described action in an attempt to address three concerns: (1) Safety and soundness (FDIC wants to ensure that the bank is independent and operated in a manner consistent with safe and sound banking practice); (2) protection of the insurance fund (FDIC wants to avoid claims against the bank arising out of the public's misconception as to with whom it is dealing); and (3) compliance with section 21 of the Glass-Steagall Act which prohibits companies engaged in the business of issuing, selling, distributing, or underwriting securities from taking deposits (if the bank is a "captive" institution, the affiliate may be found to be taking deposits). The FDIC feels that the elements contained in § 337.4(c) of the final regulation all play an important part in achieving those ends. Taken as a whole, we do not feel that the restrictions are overly burdensome nor that they will interfere with the internal operations of the affiliate. Nor do we feel that the prohibition on common names or logos (the restriction which received the most criticism) will put nonmember banks affiliated with securities companies at an undue disadvantage or deprive them of the goodwill of their affiliate's name. Nonmember bank's presently affiliated with securities companies that share a common name or logo with their affiliate may still obtain some of the benefits of name recognition by identifying themselves as being affiliated with the securities company. Such banks also

have some flexibility in coming into compliance with the bank on common name or logo as they are required to conform to § 337.4(c) as soon as practicable, but not to exceed one year without the FDIC's consent.

9. Tying

The final regulation adopts without revision the anti-tying prohibition that was proposed for comment. Paragraph (e)(8) of the final regulation prohibits an insured nonmember bank from either directly or indirectly conditioning an extension of credit to any company on the requirement that the company contract, or agree to contract, with the bank's subsidiary or affiliate to underwrite or distribute that company's securities. Paragraph (e)(8) also prohibits a bank from conditioning an extension of credit to any person on the requirement that that person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate. Although insured nonmember banks that are part of a bank holding company system are subject to similar anti-tying restrictions under the Bank Holding Company Act Amendments of 1970, that Act would not seem to cover banks that are not held by bank holding companies in that the restrictions cover the tying of a loan with some additional credit, property, or service from the bank, the bank's holding company, or any other subsidiary of the bank's holding company. (12 U.S.C. 1972). The restriction in the final regulation fills that gap and serves as a reminder to all insured nonmember banks not to engage in unlawful tying practices. As a large number of insured nonmember banks are held by bank holding companies, the imposition of this requirement would not represent a major change from the status quo.

10. Construction of the Terms "Underwrite", "Distribute", and "Security"

It is not FDIC's intent by adopting this regulation to prevent an insured nonmember bank subsidiary from engaging in any securities underwriting activity that the insured nonmember bank may itself lawfully pursue under the Glass-Steagall Act. Those activities are set forth in 12 U.S.C. 24 (Seventh) and include underwriting obligations of the United States, general obligations of any state political subdivision thereof, and numerous other obligations specifically named therein. Insured nonmember banks should keep in mind that the terms "underwrite" and "distribute", and the phrase "stock, bonds, debentures, notes, or other securities" are to be construed consistently with the securities laws and regulations except where the context requires otherwise. A securities subsidiary or affiliate of an insured nonmember bank while engaged in the conduct of securities activities will be subject to the securities laws and regulations, the oversight of the SEC, and oversight by entities such as the NASD. The above terms are therefore to be construed consistently with the securities laws and regulations when used in connection with the subsidiary or affiliate. Reference in the final regulation to these terms as used in conjunction with an insured nonmember bank (see paragraphs (b)(l)(i), (f) and (g)) are to be construed consistently with the Glass-Steagall Act.

11. Definition of "Affiliate", "Subsidiary", and "Extension of Credit"

The final regulation defines the term "affiliate" to mean a company that directly or indirectly controls an insured nonmember bank and any company under common control with an insured nonmember bank. The term "affiliate" as defined herein differs from the proposed definition which included as an affiliate "any company controlled by a company, person, or group of persons that controls an insured nonmember bank." The phrase "any company under common control with an insured nonmember bank" has been substituted in the final regulation in order to clarify the scope of the definition. "Control" is defined as the power to directly or indirectly vote 25 percent of a bank's or company's stock, the ability to control the election of a majority of a bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company. At a minimum, the final regulation treats as affiliates of the bank a bank's parent company, a company that controls 25% or more of the bank's stock, and companies controlled by either of the above.

The term "subsidiary" is defined in the final regulation to mean a company controlled by a bank. As "company" is defined in the final regulation to include corporations other than banks, partnerships, business trusts, associations, joint ventures, pool syndicates or other similar business organizations, a securities company operated by several banks in a co-operative effort can be considered a subsidiary of each of the banks. Although it is possible for a mutual fund (*i.e.*, a business trust) to be a subsidiary of the bank if controlled by the bank, we anticipate that this will not generally be the case. All of the above terms are being adopted in the final regulation as most recently proposed as none of the definitions received comment.

The term "extension of credit" as defined in the final regulation has generally the same meaning as found in Federal Reserve Board Regulation O (12 FR 215.3) which concerns insider transactions. The term as defined herein covers, however, purchases "whether or not under repurchase agreement" of securities, other assets, or obligations. The "whether or not" language is included in the final regulation in an attempt to control the extent to which a bank may indirectly pour money into the subsidiary by means of purchasing securities and other assets from the subsidiary. The term also differs from that used in Regulation O in that a "draw" upon a line of credit is an extension of credit whereas a "grant" of a line of credit is not.

Although the term extension of credit is defined to include a purchase of securities, it is not FDIC's intent to prohibit a bank from purchasing, at a customer's direction, securities underwritten or distributed by the bank's subsidiary or affiliate. FDIC received a comment which inquired whether or not such a purchase would be permitted under paragraphs (e)(3) and (e)(4) of the regulation inasmuch as those provisions prohibit extensions of credit (said term including purchases of securities) to investment companies whose securities are underwritten or distributed by a bank's subsidiary or affiliate and extensions of credit to companies whose lower quality securities are underwritten or distributed. The answer is no. Likewise, a bank is not prohibited under paragraph (e)(7) from purchasing at the direction of a bank customer shares of an investment company advised by a subsidiary or affiliate of the bank, *i.e.* the purchase may be made without regard to the limitations and restrictions of section 23A of the Federal Reserve Act. Any purchases, however, by the bank for its own account of securities issued, distributed, or underwritten by the bank's subsidiary or affiliate or an investment company advised by the bank's subsidiary or affiliate is encompassed within the scope of the term extension of credit.

12. "Phase-Out" Provision

The final regulation requires all insured nonmember banks that established or acquired securities subsidiaries prior to the effective date of the regulation or which became affiliated with securities companies prior to the effective date of the regulation to bring themselves into compliance with the regulation within two years. Any bank that established or acquired a securities subsidiary prior to the relevant date must, however, comply with §§ 337.4(b)(1)(ii), 337.4(c) and 337.4(e) as soon as practicable such time not to exceed, however, one year unless the FDIC consents. Section 337.4(b)(1)(ii) requires that the subsidiary be a bona fide subsidiary if it conducts activities not permitted to the bank under the Glass-Steagall Act. Section 337.4(c) pertains to affiliations with securities companies and § 337.4(e) places lending and other restrictions on the bank. The final regulation also requires that any insured nonmember bank that is subject to the phase-out provision must inform the FDIC in writing within thirty days from the effective date of the regulation that it has a subsidiary or affiliate that conducts securities activities. This notice will provide FDIC with a mechanism to monitor compliance with the phase-out requirement.

The phase-out provision as adopted differs from the proposal in one respect. The final regulation more clearly denotes what the FDIC feels is a reasonable time period for a nonmember bank to comply with certain provisions of the regulation. The final regulation is still flexible on compliance as to those provisions, however, as the bank may request a longer time period to come into compliance.

The FDIC specifically requested comment addressing two issues with respect to the phase-out provision: (1) Is immediate compliance more appropriate than a phase-out provision in view of FDIC's stance that the restricted activities may pose a safety or soundness problem, and (2) if a phase-out provision is adopted, should it be longer than two years or shorter. FDIC did not receive any comments addressing either point. We did receive a comment urging FDIC to make the regulation prospective only, *i.e.* exempt banks that became affiliated with securities companies prior to the effective date of the regulation from the requirements of § 337.4(c). FDIC does not feel that an exemption is warranted in view of the agency's concerns as outlined in paragraph #8 above. Furthermore, FDIC does not feel that compliance with the regulation by such banks will be onerous inasmuch as the affected banks are given one year to comply with the regulation. To the extent that such banks have supplies of stationery and other printed matter on hand which carry the same name as the bank's securities affiliate (something in contravention of § 337.4(c)(v)), the banks will not be precluded from using the existing supplies. FDIC will expect the bank to take reasonable steps toward compliance as soon as possible and to ultimately comply within one year unless the FDIC otherwise consents.

Lastly, any insured nonmember bank that is presently subject to an outstanding order imposing conditions that are inconsistent with the final regulation, or that has agreed to conditions that are inconsistent with the final regulation, is still subject thereto and must file a request with FDIC's Board of Directors that the inconsistent conditions be listed.

13. Sections 337.4(f) and 337.4(g)

These sections of the final regulation are being adopted without change. They serve to remind insured nonmember banks that (1) it is not FDIC's intent to prohibit a bank subsidiary from conducting any securities activity that the bank itself could lawfully conduct under the Glass-Steagall Act, and (2) that the regulation does not authorize the bank to itself conduct any securities activities that are not lawful under the Glass-Steagall Act. We wish to stress that the final regulation does *not* authorize any insured nonmember bank to either directly, or indirectly through a subsidiary, conduct any securities activity. An insured nonmember bank must derive that authority, if at all, from some other source, such as state law.

14. Foreign Banks and Insured Branches of Foreign Banks

FDIC received during the most recent public comment period several comments urging FDIC to exempt insured branches of foreign banks from the restrictions of the regulation. One comment urged that FDIC exempt domestic U.S. bank subsidiaries of foreign banks as well. The comments indicated that, as proposed, the regulation could have an extraterritorial effect, *i.e.* it could prohibit U.S. branches or commercial bank subsidiaries of foreign banks from making loans to non-U.S. companies whose securities are underwritten or distributed outside the United States by non-U.S. subsidiaries or affiliates of the parent foreign bank. The comments also indicated that application of the proposal to insured branches of foreign banks would be inconsistent with the International Banking Act which grandfathered nonbanking activities of foreign banks and their affiliates in the United States. That Act also gave the Federal Reserve Board the authority to terminate grandfather status as to any particular foreign bank after December 31, 1985 if that agency determines such action is necessary to prevent undue economic concentration, decreased competition, conflicts of interest, or unsound banking practices in the United States. The interposition of an FDIC regulation is, according to these comments, unnecessary.

After carefully weighing these comments, the FDIC has determined to exempt foreign banks and insured branches of foreign banks by defining the term "insured nonmember bank" for the purposes of § 337.4 to exclude foreign banks with insured branches in the United States. The final regulation does *not* exclude domestic insured nonmember banks that are owned by foreign banks. It should be noted, however, that inasmuch as the final regulation defines "company" to exclude a bank, the foreign bank parent of a domestic bank does not fall within the definition of the term "affiliate" which itself refers to a "company" that directly or indirectly controls an insured nonmember bank. Any nonbank subsidiaries of the parent foreign bank would qualify, however, as affiliates of the U.S. bank subsidiary. The final regulation also provides that the lending restriction contained in § 337.4(e)(3) does not apply to extensions of credit to non-U.S. companies whose securities are underwritten or distributed outside the United States by an insured nonmember bank's non-U.S. affiliate or affiliates. The regulation has been changed in this manner in order to avoid any extraterritorial effect and also because equity securities of non-U.S. companies are not ranked by any nationally recognized rating service.

15. Federal Savings Banks

FDIC received a comment from the National Council of Savings Institutions requesting that FDIC expressly set forth in the regulation that federally chartered savings banks insured by FDIC are not subject to the regulation. FDIC has not done so, however, as it is FDIC's intent to include such institutions within the scope of the regulation. (The term "insured nonmember bank" has been defined in the final regulation so as to clearly cover FDIC insured federal savings banks. (The securities activities conducted by subsidiaries and affiliates of federal savings banks can impact bank safety and soundness and ultimately the insurance fund. As the insurer of such institutions, FDIC has the authority under section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) and the agency's general rulemaking authority to adopt rules and regulations applicable to such institutions designed to safeguard the

insurance fund and ensure compliance with the Glass-Steagall Act.

16. Paperwork Reduction Act

The notice requirements contained in the final regulation do not constitute "collections of information" for purposes of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and therefore are not subject to the Office of Management and Budget ("OMB") clearance provisions of that Act. This is because the notice requirements fall within the exception to the definition of "information" set out in § 1320.7(k)(1) of OMB regulations implementing the "collection of information clearance" provisions of the Act (5 CFR Part 1320). It is recognized, however, that the notice requirements do place an affirmative obligation on a bank to notify the FDIC of its intended action, to confirm whether or not the subsidiary was acquired or established, and to notify FDIC if the subsidiary's activities are expanded. Any costs associated with these notices would appear, however, to be minimal. The final regulation does not specify the content of the written notices nor require the bank to provide any specific information. Inasmuch as the bank subsidiary will in all likelihood be filing with the SEC, no additional paperwork burdens of any kind should be created.

17. Regulatory Flexibility Analysis

In accordance with FDIC's policy statement entitled "Development and Review of FDIC Rules and Regulations" and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FDIC conducted an analysis of the impact of the proposed regulation. The results of that analysis, which were published in the **Federal Register** along with the 30-day proposal, are republished below inasmuch as FDIC's conclusions drawn from the regulatory assessment of the final regulation do not differ from FDIC's conclusions with respect to the most recent proposal.

In general, participation by bank subsidiaries in the underwriting market for new securities issues offers a number of potential benefits. Bank participation will likely lower underwriting costs for issuers in a number of markets. This competitive benefit should be particularly noticeable in local and regional markets where the number of bidders for a new issue is generally small. Additionally, increased activity in the secondary market for securities will increase the liquidity of any new issue. This will increase the attractiveness of new securities issues to potential investors. The presence of new entrants in the underwriting and discount brokerage markets should increase investor awareness, provide for greater customer convenience and lower brokerage costs to investors (both for users of discount brokerage and full service brokerage services) as fee and service competition increases. All of the above factors will tend to benefit the U.S. economy as more money flows into the capital markets.

The final regulation should not interfere substantially with the realization of these potential benefits. Moreover, it should provide additional benefits in that it reduces the potential for conflicts of interest, helps to ensure that banks are adequately insulated from their subsidiaries, and prevents the subsidiaries from engaging in excessive risk taking. Furthermore, the final regulation should not, in any way, give certain competitors unfair advantage or work to the detriment of small banks.

There would be an overall cost to the economy if the advent of bank securities subsidiaries could be expected to jeopardize the viability of the nation's banking institutions. That does not appear to be the case, however, and certainly is not the case when the structure of the final regulation is taken into consideration. For example, the regulation is structured so as to insulate the bank from the activities of the subsidiary as well as any financial repercussions generated by losses on the part of the subsidiary. The bank is further insulated as it will not be able to make purpose loans, prop up companies whose securities are underwritten by the bank's subsidiary of affiliate, make excessive loans to its securities subsidiary or affiliate, invest an excessive amount of capital in the subsidiary, or move poor issues into the bank's trust department.

Several provisions of the final regulation are designed to address the potential for conflicts of interest. It should be pointed out, however, that conflicts of interest can never be entirely eliminated. Nor would it be desirable to attempt to do so as the costs associated with excessive restrictions and government oversight would far outweigh the potential benefits from any incremental reduction in conflicts of interest.

The final regulation should not be detrimental to small banks. The absence of an investment cap in the subsidiary should enable even relatively small insured nonmember banks to indirectly compete in the securites market through a subsidiary. Moreover, there are no restrictions against joint ventures, *i.e.* more than one bank or financial institution can join together to form a securities subsidiary. The requirements that the securities business of the subsidiary and affiliate be physically separate and distinct in its operation from the operation of the bank and that a majority of the bank's officers and directors not be officers or directors of the subsidiary of affiliate, and that no officer of the bank be an officer of the subsidiary or affiliate should not be an excessive burden or small banks.

List of Subjects in 12 CFR Part 337

Banks, banking, Securities, State nonmember banks.

In consideration of the foregoing, the FDIC hereby amends Part 337 of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 is amended to read as follows:

Authority: Sec. 6, 64 Stat. 876, 12 U.S.C. 1816; sec. 8(a), section 2[8(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 879), effective September 21, 1950, as amended by section 204 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1054), effective October 16, 1966; section 6(c)(14) of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 618), effective September 17, 1978; and section 113(g) of title 1 of the Act of October 15, 1982 (Pub. L. No. 97–320; 96 Stat. 1473 and 1474), effective October 15, 1982; 12 U.S.C. 1818(a); sec. 8(b), Section 2[8(b)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 202 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1046), as amended by section 110 of title I of the Act of October 28, 1974 (Pub. L. No. 93–495; 88 Stat. 1506); section 11 of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 624); sections 107(a)(1) and 107(b) of title I of the Act of November 10, 1978 (Pub. L. No. 95–630; 92 Stat. 3649 and 3653); and sections 404(c), 425(b), and 425(c) of title IV of the Act of October 15, 1982 (Pub. L. No. 97–320; 96 Stat. 1512 and 1524); 12 U.S.C. 1818(b); sec. 9, 64 Stat. 881–882, 12 U.S.C. 1819; sec. 18(j)(2); 92 Stat. 3664, 12 U.S.C. 1828(j)(2), sec. 422, 96 Stat. 1469, (Pub. L. No. 97–320); sec. 11(a), section 2[11(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 884), effective September 21, 1950, as amended by section 301(c) of title III of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1055), effective October 16, 1966; section 7(a)(3) of title I of the Act of December 23, 1969 (Pub. L. No. 91–151; 83 Stat. 375) effective December 23, 1969; sections 101(a)(3) and 102(a)(3) of title I of the Act of October 28, 1974 (Pub. L. No. 93–495; 88 Stat. 1500 and 1502), effective November 27, 1974; section 1401(a) of title XIV of the Act of November 10, 1978 (Pub. L. No. 95–630; 92 Stat. 3712), effective March 10, 1979; section 323 of title III of the Act of December 21, 1979 (Pub. L. No. 96–153; 93 Stat. 1120); section 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96–221; 94 Stat. 147), effective March 31, 1980; and section 103 of title I of the Act of December 28, 1981 (Pub. L. No. 97–110; 95 Stat. 1514), effective December 28, 1981; sec. 11(f), section 2[11(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 885), effective September 21, 1950, as amended by section 6(c)(20) of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 619), effective September 17, 1978, 12 U.S.C. 1821(f).

2. Part 337 is amended by adding new § 337.4 to read as follows:

§ 337.4 Securities activities of subsidiaries of insured nonmember banks; bank transactions with affiliated securities companies.

(a) *Definitions:* for the purposes of this section,

(1) "Affiliate" shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured nonmember bank.

(2) "Bona fide subsidiary" means a subsidiary of an insured nonmember bank that at a minimum: (i) is adequately capitalized; (ii) is physically separate and distinct in its operations from the operation of the bank;[4] (iii) does not share a common name or logo with the bank;[5] (iv) maintains separate accounting and other corporate records; (v) observes separate formalities such as separate board of directors' meetings; (vi) maintains separate employees who are compensated by the subsidiary;[6] (vii) shares no common officers with the bank; (viii) a majority of its board of directors is composed of persons who are neither directors nor officers of the bank; and (ix) conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

(3) "Company" shall mean any corporation (other than a bank), any partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.

(4) "Control" shall mean the power to directly or indirectly vote 25 per centum or more of the voting stock of a bank or company, the ability to control in any manner the election of a majority of a bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.

(5) "Extension of credit" shall mean the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes, but is not limited to:

(i) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(ii) An advance by means of an overdraft, cash item, or otherwise;

(iii) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description);

(iv) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(v) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(vi) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (A) accrued interest or (B) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(vii) Any other transaction as a result of which a natural person or company becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(6) "Insured nonmember bank" shall mean state and federally chartered banks insured by FDIC that are not members of the Federal Reserve System. The term shall not include foreign banks with insured branches in the United States nor insured branches of foreign banks.

(7) "Investment quality debt security" shall mean a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation.

(8) "Investment quality equity security" shall mean marketable common stock that is ranked or graded in the top four categories or equivalent categories by a nationally recognized rating service, marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service, or marketable preferred corporate stock that has investment characteristics that are equivalent to the investment characteristics of top rated preferred corporate stock.

(9) "Subsidiary" shall mean any company controlled by an insured nonmember bank.

(b) *Investment in securities subsidiaries.* (1) An insured nonmember bank may not establish or acquire a subsidiary that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities; conducts any activities for which the subsidiary is required to register with the Securities and Exchange Commission as a broker/dealer; acts as an investment adviser to any investment company; or engages in any other securities activity unless:

(i) Except as otherwise provided by § 337.4(b)(2), the subsidiary's underwriting activities that would not be authorized to the bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh)) as made applicable to insured nonmember banks by section 21 of the Glass-Steagall Act (12 U.S.C. 378) are limited to, and thereafter continue to be limited to, one or more of the following: (A) Underwriting of investment quality debt securities; (B) underwriting of investment quality equity securities; (C) underwriting of investment companies not more than 25 percent of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities; or (D) underwriting of investment companies not more than 25 percent of whose investments consist of investments other than obligations of the United States or United States Government agencies, repurchase agreements involving such obligations, bank certificates of deposit, banker's acceptances and other bank money instruments, short-term corporate debt instruments, and other similar investments normally associated with a money market fund; and

(ii) The subsidiary is, and thereafter continues to be, a bona fide subsidiary if

[4] The subsidiary must have separate offices that share no common entrance with the bank except that access to the subsidiary's and bank's offices may be through a common outer lobby or common corridor. In all instances the subsidiary's offices must be clearly identified as belonging to the subsidiary.

[5] This requirement shall not prohibit the subsidiary from advertising or otherwise disclosing its relationship to the insured nonmember bank.

[6] This requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and recordkeeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities.

that subsidiary conducts securities activities not authorized to the bank under section 16 of the Glass-Steagall Act as made applicable to insured nonmember banks by section 21 of the Glass-Steagall Act.

(2) Paragraph (b)(1)(i) of this section notwithstanding, a subsidiary of an insured nonmember bank may engage in underwriting activities other than as limited thereby provided that the following conditions are met:

(i) The subsidiary is a member in good standing of the National Association of Securities Dealers ("NASD");

(ii) The subsidiary has been in continuous operation for the five year period preceding notice to the FDIC as required by this part;

(iii) No director, officer, general partner, employee, or 10 percent shareholder of any class of voting securities of the subsidiary has been convicted within five years of the notice required by this part of any felony or misdemeanor in connection with the purchase or sale of any security involving the making of a false filing with the Securities and Exchange Commission or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(iv) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10 percent shareholders of any class of voting securities of the subsidiary is subject to any state or federal administrative order or court order, judgment, or decree entered within five years of the notice required by this part temporarily or preliminarily enjoining or restraining such person or the subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the Securities and Exchange Commission or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(v) None of the subsidiary's directors, officers, general partners, employees, or 10 percent shareholders of any class of voting securities of the subsidiary are subject to an order entered within five years of the notice required by this part of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 780, 78o–4) or section 203(c) or (f) of the Investment Advisors Act of 1940 (15 U.S.C. 80b–3(c), (f)); and

(vi) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five year experience in similar activities at NASD member securities firms.

(3) An insured nonmember bank's direct investment in a securities subsidiary described in paragraphs (b)(1) or (b)(2) of this section will not be counted toward the bank's capital.

(c) *Affiliation with a securities company.* An insured nonmember bank is prohibited from becoming affiliated with any company that directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities unless: (1) The securities business of the affiliate is physically separate and distinct from the operation of the bank; [7] (2) the bank and affiliate share no common officers; (3) a majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct any securities activities on behalf of the affiliate on the premises of the bank that involve customer contact; (5) the bank and affiliate do not share a common name or logo; [8] and (6) the affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.[9]

(d) *Filing of notice.* Every insured nonmember bank that intends to acquire or establish a subsidiary that (1) engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities; (2) acts as an investment adviser to any investment company; (3) conducts any activity for which the subsidiary is required to register with the Securities and Exchange Commission as a broker/dealer; or (4) engages in any other securities activity, shall notify the regional director of the FDIC region in which the bank is located of such intent. Notice shall be in writing and must be received in the regional office at least 60 days prior to consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The bank shall also notify the regional office in writing within 10 days after the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The 60-day notice requirement may be waived in FDIC's discretion where such notice is impracticable such as in the case of a purchase and assumption transaction or an emergency merger. Where the above notices pertain solely to the transfer of securities activities previously performed by the bank to the subsidiary, an additional written notice must be filed with the regional office if the subsidiary commences any securities activity covered by §337.4 (b)(1)(i) or (b)(2) of this part. This notice must be received in the regional office within thirty days after the subsidiary commences the new activity. If the 60-day advance notice and 10-day follow-up notice pertain to the establishment or acquisition of a subsidiary that engages in underwriting activities as limited by § 337.4(b)(1)(i), an additional written notice must be filed with the regional office if the subsidiary commences underwriting activities as permitted by § 337.4(b)(2) of this part. This notice must be received in the regional office within thirty days after the subsidiary commences the new activity.

(e) *Restrictions.* An insured nonmember bank which has a subsidiary or affiliate that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities, or acts as an investment adviser to any investment company shall not:

(1) Purchase in its discretion as fiduciary, co-fiduciary, or managing agent any security currently distributed, currently underwritten, or issued by such subsidiary or affiliate or purchase as fiduciary, co-fiduciary, or managing agent any security currently issued by an investment company advised by such subsidiary or affiliate, unless (i) the purchase is expressly authorized by the trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure, (ii) the purchase, although not expressly authorized under paragraph (e)(1)(i) of this section, is otherwise consistent with the insured nonmember bank's fiduciary obligation, or (iii) the purchase is permissible under applicable federal and/or state statute or regulation;

(2) Transact business through its trust department with such subsidiary or affiliate unless the transactions are at least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank;

(3) Extend credit or make any loan directly or indirectly to any company the stocks, bonds, debentures, notes or other securities of which are currently underwritten or distributed by such subsidiary or affiliate of the bank unless the company's stocks, bonds, debentures, notes or other securities that are underwritten or distributed (i) qualify as investment quality debt securities, or (ii) qualify as investment quality equity securities;[10]

(4) Extend credit or make any loan directly or indirectly to any investment company whose shares are currently underwritten or distributed by such subsidiary or affiliate of the bank;

(5) Extend credit or make any loan where the purpose of the extension of credit or loan is to acquire (i) any stock, bond, debenture, note, or other security currently underwritten or distributed by such subsidiary or affiliate; (ii) any security currently issued by an investment company advised by such subsidiary or affiliate; or (iii) any stock, bond, debenture, note, or other security issued by such subsidiary or affiliate, except that a bank may extend credit or make a loan to employees of the subsidiary or affiliate for the purpose of acquiring securities of such subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board trustees of the subsidiary or affiliate; [11]

(6) Make any loan or extension of credit to a subsidiary or affiliate of the bank that (i) distributes or underwrites stocks, bonds, debentures, notes, or other securities, or (ii) advises any investment company, if such loans or extensions of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by section 23A of the Federal Reserve Act (12 U.S.C. 371c) and that are not within any exemptions established thereby;

(7) Make any loan or extension of credit to any investment company for which the bank's subsidiary or affiliate acts as an investment adviser if the loan or extension of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by section 23A of the Federal Reserved Act and that are not within any exemptions established thereby; and

(8) Directly or indirectly condition any loan or extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's subsidiary or affiliate to underwrite or distribute the company's securities or directly or indirectly condition any loan or extension of credit to any person on the requirement that that person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate.[12]

(f) Nothing in this section prohibits an insured nonmember bank from establishing or acquiring a subsidiary that sells, distributes, or underwrites stocks, bonds, debentures, notes, or other securities or engages in any other securities activity if those activities would be permitted to an insured nonmember bank by sections 16 and 21 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh) and 378).

(g) Nothing in this section authorizes an insured nonmember bank to directly engage in any securities activity not authorized to it under sections 16 and 21 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh) and 378).

(h) An insured nonmember bank that prior to [insert effective date of regulation] became affiliated with a securities company or prior to that date established or acquired a subsidiary that engages in securities activities, shall have two years from December 28, 1984 to bring itself into compliance with § 337.4 of this Part, except that, such bank must comply with paragraphs 337.4(b)(1)(ii), 337.4(c) and 337.4(e) as soon as practicable (but not more than one year from [insert effective date of regulation] without the FDIC's consent) and must inform the regional director of the FDIC region in which the bank is located not later than 30 days after December 28, 1984 that the bank is affiliated with a company that engages in securities activities or has a subsidiary that engages in securities activities.

By Order of the Board of Directors, 19th day of November 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-31144 Filed 11-27-84; 8:45 am]

BILLING CODE 6714-01-M

---

[7] The affiliate must have separate offices that share no common entrance with the bank except that access to the affiliate's and bank's offices may be through a common outer lobby or common corridor. In all instances the affiliate's offices must be clearly identified as belonging to the affiliate.

[8] This requirement shall not prohibit the bank from advertising or otherwise disclosing its relationship to the affiliate.

[9] This requirement shall not be construed to prohibit the affiliate from brokering deposits to the extent and in the manner as otherwise permitted by statute and regulation.

[10] This restriction shall not be construed to prohibit the bank from honoring a loan commitment or revolving loan agreement or funding a line of credit where the loan commitment, revolving loan agreement, or line of credit was entered into prior in time to the underwriting or distribution. This restriction does not apply to any extension of credit to a non-U.S. company whose securities are underwritten or distributed outside the United States by a non-U.S. affiliate of an insured nonmember bank.

[11] In complying with § 337.4(e)(5) of this Part, the bank shall be entitled to rely in good faith on the customer's statement as to the purpose of the extension of credit or loan.

[12] An insured nonmember bank in complying with the requirements of §§ 337.4 (e)(1), (e)(3), and (e)(4) of this part concerning "current" underwritings and distributions may rely upon the affiliate's or subsidiary's statement that the underwriting or distribution of any particular security has terminated.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523 and 526

[No. 84-658]

Flood Disaster Protection, Nondiscrimination Requirements; Technical Amendments

Dated: November 16, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board has adopted amendments to its final regulations regarding flood disaster protection and nondiscrimination requirements in order to implement the Board's authority granted by the Garn-St Germain Depository Institutions Act of 1982 to regulate Federal savings banks insured by the Federal Deposit Insurance Corporation with respect to these matters.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra L. Richardson, Attorney, (202)–377–6455), Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On December 8, 1982, by Board Resolution No. 82–791, the Board adopted amendments to its regulations implementing the Board's authority to regulate Federal savings banks insured by the Federal Deposit Insurance Corporation ("FDIC") granted by the Garn-St Germain Depository Institutions Act of 1982 ("DIA") (Pub. L. 97–320; 96 Stat. 1469 (1982)). The DIA amended Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464 (1984)), granting additional powers to federal associations and enabling the Board to authorize the conversion of a state-chartered savings bank insured by the FDIC into a federal savings bank without requiring that it surrender its FDIC insurance in favor of insurance of accounts from the Federal Savings and Loan Insurance Corporation ("FSLIC"). Because the DIA provided, for the first time, for Board regulation of FDIC-insured federal savings banks (see 12 U.S.C. 1464(o)(1) (West Supp. 1984)), it

was necessary to make a large number of technical and conforming amendments to prior regulations to permit these institutions to fit rationally into the regulatory scheme. 47 FR 56985 (December 22, 1982). Such amendments were required in large degree due to the prior description of "insured institutions" as institutions the accounts of which are insured by the FSLIC.

These earlier revisions inadvertently omitted conforming changes to the language of the Flood Disaster Protection regulations (12 CFR 523.29) and the Nondiscrimination Requirements regulations (12 CFR Part 528) to reflect the addition of FDIC-insured federal savings banks to the Board's regulatees. Thus, 12 CFR 523.29(a) currently provides that requirements set forth in § 523.29 with respect to flood disaster protection "do not apply to a member whose accounts are insured by the Federal Deposit Insurance Corporation." Similarly, 12 CFR 528.1 currently excludes "savings bank(s) whose deposits are insured by the Federal Deposit Insurance Corporation" from the definition of "member institutions," to which the nondiscrimination requirements set forth in Part 528 are applicable. By its action today, the Board amends sections 523.29(a) and 528.1 to remove this inconsistency and to clarify that it is the Board's intent to regulate all operations of FDIC-insured federal savings banks as authorized by the DIA.

The Board has determined that observance of the notice and public procedure requirements of 5 U.S.C. 552(b) (1982) and 12 CFR 508.11 and the delay of effective date provided pursuant to 5 U.S.C. 552(d) (1982) and 12 CFR 508.14 are unnecessary and contrary to the public interest due to the minor, conforming nature of these amendments.

List of Subjects in 12 CFR Parts 523 and 528

Federal home loan banks; Fair housing, Flood insurance, Civil rights.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

Accordingly, the Board hereby amends Parts 523 and 528 of Subchapter B, Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

PART 523—MEMBERS OF BANKS

§ 523.29 [Amended]

1. Amend § 523.29(a) by inserting "which is not Board-chartered and" between the words "member" and "whose" in the second sentence thereof.

PART 528—NONDISCRIMINATION REQUIREMENTS

§ 528.1 [Amended]

2. Amend § 528.1(b)(1) by inserting "state-chartered" between the words "A" and "savings" in that paragraph.

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202(b), 87 Stat. 982, as amended (42 U.S.C. 1408(b)); sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1691, 1691a); Reorg. Plan No. 3 of 1947; 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071)

By: the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-31165 Filed 11-27-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ACE-07]

Alteration of Control Zone; Cape Girardeau, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the control zone at Cape Girardeau, Missouri, to extend the zone's area southwest of the Cape Girardeau Municipal Airport from 6.5 statute miles to 8.5 statute miles. The intended effect of this action is to provide the subject airport with additional instrument approach capability.

DATES: Effective date February 14, 1985. Comments must be received on or before December 29, 1984.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage additional instrument approach capability to the Cape Girardeau Municipal Airport, Cape Girardeau, Missouri, is being established. The establishment of a new instrument approach procedure entails alteration of the control zone at Cape Girardeau, Missouri, to extend the control zone area southwest of the Airport from 6.5 statute miles to 8.5 statute miles. On pages 19829 and 19830 of the **Federal Register** dated May 10, 1984, the FAA published a Notice of Proposed Rulemaking which inadvertently identified the alteration as a transition area rather than a control zone. However, the proposal correctly set forth the legal description of the control zone to be altered. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments were received as a result thereof. Although this action will increase the size of the control zone and is in the form of a final rule, it will not be preceded by an amended notice and public procedure because: (1) This is primarily a redescription of the existing control zone to accommodate a new approach to the Cape Girardeau Municipal Airport; (2) the notice to alter the airspace correctly set forth the legal description of the proposed control zone to be altered and (3) it is in the public interest to assure that the effectivity of this regulation coincides with the publication date for the instrument approach procedure pertaining to this alteration. However, interested persons are being given the opportunity to comment on the final rule. When the comment period ends the FAA will use the comments submitted, together with any other available information, to review the regulation. If this review indicates changes to the rule are appropriate, the agency will initiate rulemaking proceedings to amend it. Comments that include facts supporting the views and suggestions expressed will be of the most help in evaluating the appropriateness of the rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended by altering the following control zone:

Cape Girardeau, Missouri

Within a 5-mile radius of the Cape Girardeau, Missouri, Municipal Airport (latitude 37°13'30" N, longitude 89°34'10" W), within 2½ miles each side of the Cape Girardeau VOR 194° radial extending from the 5-mile radius to 6½ miles south of the VOR; within 3 miles each side of the Cape Girardeau VOR 044° radial extending from the 5-mile radius to 8½ miles northeast of the VOR; and within 3 miles each side of the Cape Girardeau VOR 279° radial extending from 5-mile radius to 8.5 miles west of the VOR.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

This amendment becomes effective 0901 G.m.t. February 14, 1985.

Issued in Kansas City, Missouri, on November 14, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-31089 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ASW-39]

Alteration of Transition Area: Refugio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Refugio, TX. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Mellon Ranch Airport. This amendment is necessary since the nondirectional radio beacon (NDB) SIAP is being revised to approach the airport in a different direction than the current procedure, thereby requiring realignment of the designated 700-foot transition area.

EFFECTIVE DATE: 0901 G.M.T., February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2463.

SUPPLEMENTARY INFORMATION:

History

On September 11, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Refugio, TX, transition area (49 FR 35653).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will alter the transition area of Refugio, TX, as proposed in the notice.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Refugio, TX [Revised]

That airspace extending upwards from 700 feet above the surface within a 5-mile radius of the Mellon Ranch Airport (latitude 28°16'50" N., longitude 97°12'40" W.), and within 3 miles each side of the 345° and 145° bearing on the Mellon Ranch NDB (latitude 28°16'41" N., longitude 97°12'31" W.) extending from the 5-mile radius area to 8.5 miles north and south of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on November 13, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-31092 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 301

[Docket No. RM84-16-003]

Methodology for Sales of Electric Power to Bonneville Power Administration

Issued: November 21, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purpose of further consideration.

SUMMARY: On October 1, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule, 49 FR 39293 (October 5, 1984) approving the Bonneville Power Administration's new methodology for determining the "average system cost" of a utility's resources for purposes of the power exchange program in the Pacific Northwest Electric Power Planning and Conservation Act. On October 30, 1984, the Commission received a petition for rehearing. By this order, the Commission grants rehearing for the purpose of further consideration of this petition.

EFFECTIVE DATE: This order is effective November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On October 1, 1984, the Federal Energy Regulatory Commission issued a final

rule [1] approving the Bonneville Power Administration's (BPA's) new methodology for determining the "average system cost" (ASC) of a utility's resources under the Northwest Power Act (NPA).[2]

On October 30, 1984, the Commission received a petition for rehearing from a number of utilities and State public utility commissions. The petitioners also requested that the rule be stayed pending a final Commission decision on their petition. To have sufficient time to consider the issues raised in this petition, the Commission grants rehearing of its final rule solely for the purpose of further consideration. Since the petitioners have presented no grounds for a stay, the stay is denied.

This order is effective on the date of issuance. This action does not constitute a grant or denial of the petition on its merits.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31189 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 209, 210, 211, 212, 220, 222, and 250

Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations concerning the reporting requirements for railroad employers, the creditability of compensation, the creditability of service, and the creditability of military service. Regulations concerning these subjects are contained in several sections of the Board's regulations, and this action will reorganize the rules concerning these subjects in a manner that should make them easier to use and understand. In addition, these rules contain provisions implementing amendments to the Railroad Retirement Act.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Robert P. Elling, Chief of Coverage, Procedures and Administration, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4876 (FTS 387-4876).

SUPPLEMENTARY INFORMATION: On September 27, 1984, the Board published Parts 209, 210, 211, and 212, as a proposed rule and invited comments for 30 days ending October 29, 1984 (49 FR 38143-38150). The Board received no comments on the proposed rule.

Some typographical errors appeared in the proposed rule document, but since they did not affect the intended meaning of the regulation, publication of a correction document was considered unnecessary. To avoid the possibility of the errors appearing in the final rule document and in the April 1, 1985 revision of Title 20 of the Code of Federal Regulations, they are identified below in this preamble. In addition, a number of minor amendments were made to clarify language or to otherwise improve the readability of the document. The amendments to the proposed rule document printed on September 27, 1984, are listed as follows:

1. On page 38143, column 3, table of contents for Part 209, in the title for § 209.10 the word "representative" should be "representatives' ".

2. On page 38144, column 2, § 209.6(a), line 11, the word "and" is added to clarify the language. That line should read "Compensation and Certification and mailed".

3. On page 38144, column 3, § 209.9, line 11 is amended to properly identify the section with which compliance is required. The line should read "in § 209.6(a) and shall be".

4. On page 38144, column 3, § 209.10, line 10, a comma is added after the word "Certification" to clarify the language. The line should read "Certification, status as an employee".

5. On page 38145, column 1, § 209.11(b), line 10, the word "and" is added to clarify the language. That line should read "magnetic tape or punchcards only, and".

6. On page 38145 column 2, § 210.1, last line, "the" should be "that".

7. On page 38145 column 2, § 210.3, line 11, "Title VI" should be "Title VII".

8. On page 38145, column 3, § 210.5(b), line 6, the words "first credited" are transposed to clarify the language. That line should read "after December 31, 1936, is credited first;".

9. On page 38146, column 3, § 211.2, section title, "compenstion." should be "compensation.".

10. On page 38147, column 1, § 211.2(c)(3), line 2, the word "individual" is redundant and has been removed to simplify the language. That line should read "by a nonresident alien for the".

11. On page 38147, column 2, § 211.3(a)(1), line 1, "crrtain" should be "certain".

12. On page 38148, column 1, § 211.9, line 1, "allbwance" should be "allowances". That line should read "Dismissal allowances paid to an".

13. On page 38148, column 3, § 211.14(b), line 16, "retiremenet" should be "retirement".

14. On page 38149, column 1, § 212.1, line 6, "services" should be "service".

15. On page 38149, column 3, item 6 (Part 222), line 4, "Service" should be "Compensation". That line should read "Railroad Compensation; therefore, Part 222 is".

16. On page 38150, in the Derivation Table below the first "Note.—", in the reference to Section 250.3(b), the last line of that entry reads "ered in § 290.6(b)." That line should read "ered in § 209.6(b)."

17. On page 38150, in the Derivation Table, last column, in the reference to § 222.2(b), "Renumeration" should be "Remuneration".

18. On page 38150 in the Derivation Table, last column, in the reference to § 222.3, "222.3 Employee representa-" should read "222.3(c) Employee representa-".

19. On page 38150 in the Derivation Table, last column, in the reference to § 222.2(b)(2), "Renumeration" should be "Remuneration".

20. On page 38150 in the Derivation Table, last column, the references for § 209.4 were not clear in our proposed rule document submission. Section 209.4 reads:

"209.4(a) Crediting of military service.
(b) Covered by BRC in revised Part 226.
(c)."

That portion should read:

"209.4(a) Crediting of military service.
(b) Covered by BRC in revised Part 226.
(c) Covered by BRC in revised Part 226."

Benefits under the Railroad Retirement Act are computed, in part, based on an individual's creditable railroad service and compensation and the Board is authorized by the Act to require railroad employers to furnish compensation and service records for their employees. The Board previously had regulations with respect to the information to be provided by employers which were found in Part 250 of the Board's regulations. In addition, the Board has issued Instructions to Employers which provide more detail concerning the reporting requirements. The regulation on employer reports is moved to Part 209 of the regulations, incorporates revisions of the existing regulations, and includes certain items from the Instructions to Employers. Amended Part 209 provides the basic reporting requirements for employers and contains information which explains when how reports are to be made. In addition, Part 209 explains the penalties that may be imposed for failure to comply with the reporting requirements.

Part 220, Definition and Creditability of Service, is replaced with a new Part 210, Creditable Railroad Service. Part 210 provides a better explanation of the circumstances under which service will be credited under the Railroad Retirement Act and is easier to use than Part 220.

Part 211, Creditable Railroad Compensation, replaces Part 222, Definition and Creditability of Compensation. Part 211 explains the various types of payments that may be credited as compensation under the Railroad Retirement Act and how and when they are to be credited.

Finally, Part 212, Military Service, replaces Part 209, Military Service. Part 212 explains the conditions under which military service may be credited as service under the Railroad Retirement Act and used in determining eligibility for and the amount of railroad retirement benefits.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

List of Subjects

20 CFR Part 209

Railroad employees, Railroad retirement, Railroads, Reporting and recordkeeping requirements.

20 CFR Part 210

Railroad employees, Railroad retirement, Reporting and recordkeeping requirements.

20 CFR Part 211

Railroad employees, Railroad retirement.

20 CFR Part 212

Railroad employees, Railroad retirement, Veterans.

Title 20 CFR Chapter II, is amended as follows:

1. Part 250, Reports and Information to be filed by Employers, is redesigned as Part 209, and is revised as follows:

PART 209—RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

Sec.

209.1 General.
209.2 Duty to furnish information and records.
209.3 Information regarding change in status.
209.4 Employers' notices of death of employees.
209.5 Employers' supplemental reports of service and compensation.
209.6 Employers' annual reports of creditable service and compensation.
209.7 Employers' adjustment reports.
209.8 Employers' quarterly summary reports of compensation adjustments.
209.9 Terminated employers' reports.
209.10 Employee representatives' reports.
209.11 Certificates of service months and compensation.
209.12 Employers' gross earnings reports.

Authority: Sec. 7(b)(5) and (6), Pub. L. 93-445, 88 Stat. 1339, 1340 (45 U.S.C. 231f(b)(5) and (6)); Sec. 9, Pub. L. 93-445, 88 Stat. 1343, (45 U.S.C. 231h); Sec. 13(a), Pub. L. 93-445, 88 Stat. 1345 (45 U.S.C. 2311).

§ 209.1 General.

Benefits under the Railroad Retirement Act are based in part upon an individual's years of service and amount of compensation credited to the individual under the Act. It is the duty of the Board to gather, keep and compile such records and data as may be necessary to assure proper administration of the Act. This part sets forth the types of reports employers are required to make to the Board and states the penalties that the Board may impose upon employers and employees who fail or refuse to make required reports.

§ 209.2 Duty to furnish information and records.

In the administration of the Railroad Retirement Act of 1974, the Board may require any employer or employee to furnish or submit any information, records, contracts, documents, reports or other materials within their possession or control, that, in the judgment of the Board, may have any bearing upon:

(a) The employer status of any individual, person or company,

(b) The employee or pension status of any individual,

(c) The amount and creditability of service and compensation, or

(d) Any other matter arising which involves the administration of the Railroad Retirement Act. Any person who knowingly fails or refuses to make any report or furnish any information required by the Board, may be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

§ 209.3 Information regarding change in status.

It is the duty of each employer to promptly notify the Board of:

(a) Any change in the employer's operations, ownership or control of the employer which affects its status as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act;

(b) Any change in the ownership or control by the employer in any company which may affect the status of the company as an employer under the Railroad Retirement Act or Railroad Unemployment Insurance Act; and

(c) The gain of ownership or control by the employer of any company which may give that company status as an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act. The notice must fully advise the Board of the type of change in ownership, the date of the change, the number of employees affected by the change and any other information pertinent to the change.

§ 209.4 Employers' notice of death of employees.

Each employer shall notify the Board immediately of the death of an employee who, prior to the employee's death, performed compensated service which has not been reported to the Board. The notice of death shall be made on the form prescribed by the Board and mailed to the Director of Compensation and Certification.

(Approved by the Office of Management and Budget under Control No. 3220-0005)

§ 209.5 Employers' supplemental reports of service and compensation.

Each employer shall furnish the Board a report of the current year service and compensation of each employee who ceases work for the purpose of retiring under the provisions of the Railroad Retirement Act. The reports are to be made on the form prescribed by the Board and mailed to the address shown on the reverse side of the form.

(Approved by the Office of Management and Budget under Control No. 3220-0005)

§ 209.6 Employers' annual reports of creditable service and compensation.

(a) Each year, on or before the last day of February, each employer is required to make an annual report of the creditable service and compensation of employees who performed compensated service in the preceding calendar year. The annual report shall include service and compensation previously furnished in supplemental reports and notices of death. Annual reports are to be prepared in accordance with the instructions issued by the Director of Compensation and Certification and mailed directly to that office. The reports may be made on magnetic tape, punch cards or the form prescribed by

[1] 49 FR 39293 (Oct. 5, 1984).

[2] Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839-839h (1982).

the Board as described in § 200.2 of this chapter. The reports must be accompanied by a report indication/specification sheet prescribed by the Board as described in § 200.2 of this chapter.

(b) Employers who do not have creditable service and compensation to report shall advise the Director of Compensation and Certification in writing, that they have no creditable service and compensation to report for the previous calendar year.

(Approved by the Office of Management and Budget under Control No. 3220–0008)

§ 209.7 Employers' adjustment reports.

(a) The Board may request employers to submit adjustments to correct employee accounts when:

(1) Errors are detected in processing employers' annual report;

(2) An employee shows that the amount of service or compensation reported by the employer to the employee's account was not correct; or

(3) An employee shows that he or she should have been credited with service and compensation for a period for which the employer reported no service and compensation.

(b) Employers may submit adjustment reports to:

(1) Correct service and compensation previously reported; and

(2) Report service and compensation that was omittted from a previous report.

(c) Employers submitting adjustment reports covering pay for time lost as an employee shall report this compensation as provided for in § 211.3 of this chapter. Adjustment reports are to be prepared in accordance with the instructions issued by the Director of Compensation and Certification and mailed directly to that office. The reports may be made on magnetic tape, punch cards or the form prescribed by the Board as described in § 200.2 of this chapter. Adjustment reports may be submitted to the Board each month but shall be summarized quarterly on the form prescribed by the Board as provided for in § 209.8.

(Approved by the Office of Management and Budget under Control No. 3220–0008)

§ 209.8 Employers' quarterly summary reports of compensation adjustments.

Each employer submitting compensation adjustment reports shall, on or by the last day of each quarter in which a compensation adjustment report is made, submit a summary report of the adjustments on the form prescribed by the Board as described in § 200.2 of this chapter. Employers who do not make any adjustment reports in any month of a quarter shall not submit a summary report for that quarter.

(Approved by the Office of Management and Budget under Control No. 3220–0008)

§ 209.9 Terminated employers' reports.

When an employer's status as an employer is terminated, a final report of creditable service and compensation shall be made. The final report shall be submitted to the Director of Compensation and Certification on or before the last day of the month following the final month for which there was compensated service. The report shall be completed as prescribed in § 209.6(a) and shall be marked Final Compensation Report.

(Approved by the Office of Management and Budget under Control No. 3220–0008)

§ 209.10 Employee representatives' reports.

Individuals claiming status as an employee representative shall describe their duties as an employee representative on the form prescribed by the Board and submit the form to the Director of Compensation and Certification. If the duties described in the status report are approved by the Director of Compensation and Certification, status as an employee representative is granted. The individual is then advised that he or she is required to make an annual report of creditable Railroad Retirement Act compensation. The compensation report shall be made on the form prescribed by the Board and is to be mailed to the Director of Compensation and Certification each year, or or before the last day of February. When the employee representative's status is terminated, the last report of service and compensation shall be marked Final Compensation Report.

(Approved by the Office of Management and Budget under Control No. 3220–0014)

§ 209.11 Certificates of service months and compensation.

(a) Each year the Board prepares certificates of service months and compensation, as described in § 200.2 of this chapter, for employees who performed compensated service in the preceding calendar year. This certificate is the employee's record of the service and compensation credited to his or her account. The certificates are either mailed directly to employees or forwarded to employers for delivery to their employees. Certificates mailed directly to employees and returned to the Board as undeliverable, are forwarded to employers for distribution to employees. Employers are to distribute the certificates within 30 days after they are received, and those certificates which are undeliverable within 30 days are to be returned to the Board. Employees who for any reason do not receive a certificate may obtain one from the nearest Board district office or may write to the Director of Compensation and Certification requesting one. Employers may also obtain certificates from the Director of Compensation and Certification for their employees.

(b) Employers currently receiving certificates for distribution to their employees, but who wish the Board to mail the certificates directly to the employees, shall each year, before May 1, submit the current addresses of all employees to the Director of Compensation and Certification. The address reports shall be submitted on magnetic tape or punch cards only, and prepared in accordance with the instructions issued by the Director of Compensation and Certification.

§ 209.12 Employers' gross earnings reports.

(a) Each employer is required to report the gross earnings of a one-percent sample group of railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits 30. This report is used to determine:

(1) Tax and benefit amounts involved in the Financial Interchange with the Social Security Administration; and

(2) Estimated tax income accruing to the railroad retirement system in future periods.

(b) Employers shall report as gross earnings the employee's earnings up to $100,000 a year which includes both taxable and non-taxable compensation for the year. All employers shall submit reports annually, or they may submit such reports more frequently if they desire. Employers with 5,000 or more employees shall provide a monthly or quarterly breakdown of the year's earnings. Employers with less than 5,000 employees may submit an annual amount only, although a monthly or quarterly breakdown is preferrable. Gross earnings are to be counted for the same time period as used in determining the employer's annual report of creditable compensation. The reports are to be prepared in accordance with prescribed instructions and mailed to: U.S. Railroad Retirement Board, Bureau of Research, Division of Labor Studies.

(Approved by the Office of Management and Budget under control No. 3220–0132)

2. Part 220, Definition and Creditability of Service, is redesignated as Part 210, and is revised as follows:

PART 210—CREDITABLE RAILROAD SERVICE

Sec.

210.1 General.
210.2 Definition of service.
210.3 Month of service.
210.4 Year of service.
210.5 Creditability of service.
210.6 Service credited for creditable military service.
210.7 Verification of service claimed.

Authority: Sec. 1 (d), (e) and (f), Pub. L. 93–445, 88 Stat. 1307 and 1308 (45 U.S.C. 231 (d), (e) and (f); Sec. 3(i), Pub. L. 93–445, 88 Stat. 1325 and 1326 (45 U.S.C. 231(i)); Sec. 7(b)(5), Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 210.1 General.

An individual's entitlement to benefits and the amount of benefits payable under the Railroad Retirement Act are determined based, in part, on the individual's years of service. This part defines what the term service means under the Railroad Retirement Act and sets forth what types of service are creditable under that Act.

§ 210.2 Definition of service.

Service means a period of time for which an employee receives payment from a railroad employer for the performance of work; or a period of time for which an employee receives compensation which is paid for time lost as an employee; or a period of time credited to an employee for creditable military service as defined in Part 212 of this chapter. Service shall also include the month in which an employee is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

§ 210.3 Month of service.

A month of service is any calendar month or any part of a calendar month for which an employee receives compensation for services performed for an employer; or receives pay for time lost as an employee; or is credited with compensation for a period of creditable military service; or is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

§ 210.4 Year of service.

(a) A year of service is twelve months of service consecutive or not consecutive. A fraction of a year of service is taken at its actual value.

(b) The term years of service means the total number of years an employee is credited with service as defined in § 210.2.

§ 210.5 Creditability of service.

(a) *Service before January 1, 1937.* (1) Service performed before January 1, 1937, is called prior service. Prior service is creditable under the Railroad Retirement Act if the employee had an employment relation with a railroad employer on August 29, 1935. Prior service may be combined with creditable service performed after December 31, 1936, to make the employee's total years of service equal, but not exceed, 30 years (360 months).

(2) An employee is considered to have an employment relation on August 29, 1935, if:

(i) The employee was on that date in active railroad service for an employer; or

(ii) The employee was on that date on a leave of absence expressly granted by the employer or the employer's authorized representative, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(iii) The employee had 6 months of active railroad service for an employer during the period August 29, 1935, through December 31, 1945; or

(iv) The employee was not in the service of an employer by reason of a mental or physical disability from which the employee was continuously disabled until the employee attained age 65 or until August 1945; or

(v) Solely for the reason stated in paragraph (a)(2)(iv) of this section the employee was not recalled to active service before August 1945; or

(vi) If the employee was recalled, the employee was unable to perform 6 months of service during the period August 29, 1935, through December 31, 1945, solely for the reason stated in subsection (a)(2)(iv) of this section.

(b) *Service after December 31, 1936.* All service performed after December 31, 1936, is creditable. If an employee has service both before January 1, 1937, and after December 31, 1936, all service after December 31, 1936, is credited first; if this service totals less than 30 years (360 months), then the service before January 1, 1937, is included but only up to the amount sufficient to make the total years of service equal 30. Where the years of service include only part of the service performed before January 1, 1937, the part included is taken in reverse order beginning with the last calendar month of the service.

(c) *Service after December 31, 1936, to a local lodge or division.* Services performed for a local lodge or division of a railway labor organization is creditable if the employee is credited with compensation as defined in § 211.2 of this chapter.

(d) *Service based on time lost.* Any month or any part of a month during which an employee performed no active service but received pay for time lost as an employee is counted as a month of service. Service for time lost as an employee shall be credited as provided for in § 211.3 of this chapter.

(e) *Place of performance of service.* (1) Service performed for an employer who conducts the Principal part of its business with the United States is creditable. However, service performed for an employer who conducts the principal part of its business outside the United States is creditable only when the service is performed in the United States. If an employer, other than a local lodge or division or a general committee of a railway labor organization, does not conduct the principal part of its business within the United States, the service performed outside the United States for that employer is not creditable.

(2) Service performed outside the United States by an employee who is not a citizen or resident of the United States is not creditable if the employer is required under the laws of that place to hire, in whole or in part, only citizens or residents of that place.

(f) *Service as employee representative.* Service performed as an employee representative is creditable in the same manner and to the same extent as through the organization by which the employee representative was employed were an employer.

(g) *Service performed after the beginning date of an annuity.* Service performed after the beginning date of an annuity shall be used in the annuity recomputation.

§ 210.6 Service credited for creditable military service.

Any calendar month in which an employee performed creditable military service, as defined in Part 212 of this chapter, shall be counted as a month of service and shall be included in the employee's years of service, as provided for in § 210.4, provided that the employee has not been credited for services performed to an employer for the same month(s).

§ 210.7 Verification of service claimed.

Service claimed by an employee, which is not credited in the records of the Board, must be verified to the satisfaction of the Board before it may

be credited. Verification of the Service claimed shall be as follows:

(a) Service claimed will be verified from the payroll or other detailed records of the employer.

(b) If the payroll or other detailed records are incomplete or missing, the service claimed and not established by these records will be verified from the personnel records of the employer.

(c) If the payroll, personnel and detailed records are incomplete or missing, the service claimed and not established by these records will be verified from any other books and records of the employer.

(d) If the employer's records do not establish the service claimed, the employee may submit affidavits and other evidence in support of the service claimed in either of the following instances:

(1) When there are not employer records available to show whether or not the service claimed was performed; or

(2) When there are employer records available which do not verify the service claimed and do not establish that the service claimed was not performed.

(e) When service is verified as to over-all dates, but is not supported in detail by employer records, and when there are no employer records showing in detail absences from service, a deduction shall be made to cover an average amount of the absences. The deduction shall be the absences shown by the applicant or 5 percent of the total period in question, whichever is greater. However, where the employee submits detailed records of the service claimed, properly identified and established as having been made at the time the employee performed the service for which detailed records of the employer are not available, full credit may be allowed for the service as may be verified from the records. Also, the employee may be permitted to establish in any other manner satisfactory to the Board the actual amount of his or her absences.

(f) For the purpose of verifying service before 1937, employers shall preserve through 1986, in accessible form, the original records of the service and compensation.

(g) For the purpose of verifying service after 1936, employers shall preserve in accessible form the original records of service and compensation for a period of five calendar years after the due date of the report.

3. Part 222, Definition and Creditability of Compensation, is redesignated as Part 211, and is revised as follows:

PART 211—CREDITABLE RAILROAD COMPENSATION

Sec.
211.1 General.
211.2 Definition of compensation.
211.3 Compensation paid for time lost.
211.4 Vacation pay.
211.5 Employee representative compensation.
211.6 Compensation based on waiver or refund of organization dues.
211.7 Compensation credited for creditable military service.
211.8 Displacement allowance.
211.9 Dismissal allowance.
211.10 Separation allowance.
211.11 Back pay.
211.12 Compensation credited for Title VII benefits.
211.13 Monthly maximum creditable compensation.
211.14 Verification of compensation claimed.

Authority: Sec. 1(h), Pub. L. 93–445, 88 Stat. 1310 (45 U.S.C. 231(h)); Sec. 7(b)(5), Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 211.1 General.

Benefits under the Railroad Retirement Act are based in part on the individual's years of service and amount of compensation credited to the individual under the Act. This part defines what the term compensation means and sets forth the criteria applied in determining what payments are creditable as compensation under the Railroad Retirement Act.

§ 211.2 Definition of compensation.

(a) The term compensation means any form of payment made to an individual for services rendered as an employee for an employer; services performed as an employee representative; and any separation or subsistence allowance paid under any benefit schedule provided in conformance with Title VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act. Compensation may be paid as money, a commodity, a service or a privilege. However, if an employee is to be paid in any form other than money, the employer and employee must agree before the service is performed upon the following:

(1) The value of the commodity, service or privilege; and

(2) That the amount agreed upon to be paid may be paid in the form of the commodity, service or privilege.

(b) Compensation includes, but is not limited to, the following:

(1) Salary, wages and bonuses;

(2) Pay for time lost as an employee;

(3) Cash tips of $20 or more received in a calendar month;

(4) Vacation pay;

(5) Military pay as determined in § 211.7 of this chapter;

(6) Displacement allowances as provided for in § 211.8 of this chapter;

(7) Dismissal allowances as provided for in § 211.9 of this chapter;

(8) Separation allowances as provided for in § 211.10 of this chapter;

(9) Back pay as provided for in § 211.11 of this chapter;

(10) Payments made under Title VII of the Regional Rail Reorganization Act of 1973 as provided for in §211.12 of this chapter.

(c) Compensation does not include:

(1) Tips, except as provided in paragraph (b)(3) of this section;

(2) Amounts voluntarily paid by an employer without deducting from the employee's salary the taxes imposed by law;

(3) Payments for services performed by a nonresident alien for the period the individual is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of Title 8, U.S.C. and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(4) Remuneration paid in certain cases, as described below, for services performed for a local lodge or division of a railway labor organization.

(i) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after 1936 and prior to April 1, 1940, shall not be creditable as compensation in a month unless taxes with respect to such remuneration were paid under the Railroad Retirement Tax Act prior to July 1, 1940.

(ii) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after March 31, 1940, and prior to January 1, 1975, shall not be creditable as compensation in a month if the amount of such remuneration earned in the month is less than $3.00.

(iii) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after December 31, 1974, shall not be creditable as compensation in a month if the amount of such remuneration earned in the month is less than $25.00.

(5) Payments for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering the service has not previously rendered service, other than as a delegate, which may be included in the individual's years of service;

(6) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for employees generally (or for employees generally and their dependents), or for a class or classes of employees (or for a class or classes of employees and their dependents), on account of sickness or accident disability, or medical, or hospitalization expenses in connection with sickness or accident disability; and

(7) Any amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred, or reasonably expected to be incurred in the business of the employer, provided the payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

§ 211.3 Compensation paid for time lost.

(a) A payment made to an employee for a period during which the employee was absent from the active service of the employer is considered to be pay for time lost and is, therefore, creditable compensation. Pay for time lost as an employee includes:

(1) Pay received for a certain period of time due to personal injury, or

(2) Pay received for loss of earnings for a certain period of time, resulting from the employee being placed in a position or occupation paying less money. In reporting compensation which represents pay for time lost, employers shall allocate the amount paid to the employee to the month(s) in which the time was actually lost. The entire amount of any payment made to an employee for personal injury is considered pay for time lost unless, at the time of payment, the employer states that a particular amount of the payment was for reasons other than pay for time lost.

(b) Where pay for time lost is allocated to the month(s) in which the time was actually lost, the Board will accept the allocation made by the parties involved if it relates to the employee's normal monthly pay. A reasonable relationship to an employee's normal monthly pay is ordinarily no less than ten times the employee's daily pay rate.

§ 211.4 Vacation pay.

(a) *Employee deceased or retired.* Where an employee has died, or ceased work for the purpose of retiring, the vacation pay due the employee shall be reported as compensation for the last day of service or as compensation for a period immediately after the last day of service, and during the employee's life, depending on whether the vacation pay is intended to make the employee's termination date effective on or after the last day of service. Vacation pay shall not be reported for a period after the date of death or date of termination.

(b) *Employee terminated.* Where an employee resigns his or her position or is discharged by the employer, any vacation pay due the employee shall be reported as compensation for the period prior to the effective date of the resignation or discharge. Vacation pay shall not be reported for a period after the date of termination.

(c) *Employee takes vacation.* Where an employee takes a vacation, the vacation pay shall be reported as compensation for the period the vacation is taken regardless of when the payment is made.

(d) *Employee does not take vacation.* Where an employee receives pay for vacation but does not take the vacation, the vacation pay shall be reported as compensation for the period it is covered by the employer's payroll except for payments made in December of the vacation year, or thereafter. Vacation payments made in the month of December of the year, or thereafter, shall be reported as compensation for December of the vacation year.

§ 211.5 Employee representative compensation.

All payments made to an individual who occupies the position or office of employee representative are creditable compensation, including compensation paid for services not connected with the representation of employees provided the payments do not exceed the monthly amounts shown in § 211.13.

§ 211.6 Compensation based on waiver or refund of organization dues.

A waiver or refund of organization dues which were based solely on consideration for membership in the organization is considered creditable compensation if there is proof that the waiver or refund was intended to be, and was accepted as, a dismissal of an obligation of the organization to compensate the employee for services rendered.

§ 211.7 Compensation credited for creditable military service.

In determining the monthly maximum creditable compensation of an employee, the following amounts shall be credited for each month of military service, provided the employee's combined monthly railroad and military compensation does not exceed the limits shown in § 211.13:

(a) $160 for each calendar month before 1968;

(b) $260 for each calendar month after 1967 and before 1975;

(c) For years after 1974, the amount to be credited, up to the monthly maximum creditable amount, is the actual earnings reported as wages under the Social Security Act.

§ 211.8 Displacement allowance.

A displacement allowance paid to an employee is creditable as compensation and shall be added to the employee's regular earned compensation for the month(s) the allowance is payable, regardless of when the actual payment is made.

§ 211.9 Dismissal allowance.

Dismissal allowance paid to an employee under a protective labor agreement that covers the amounts paid for a specific period of time are creditable as compensation under the Railroad Retirement Act, provided the employee has not severed his or her employee-employer relationship. Subject to the proviso in the preceding sentence, dismissal allowances are to be reported as compensation in the month(s) for which the employee is paid in the allowance.

§ 211.10 Separation allowance.

A lump sum separation allowance paid to an employee is creditable as compensation under the Railroad Retirement Act. A separation allowance is to be reported as compensation for the month last worked or as compensation for the month the employee-employer relationship terminated.

§ 211.11 Back pay.

Employers may report back pay as creditable compensation for the month the compensation is paid or for the period earned. If the back pay is reported as creditable to the month paid, the employee may, within the four year period defined in § 211.14(b), request that the back pay be allocated to the month(s) in which earned. The employer will submit the necessary adjustment giving the employee the proper credits.

§ 211.12 Compensation credited for Title VII benefits.

Payments made to an employee under Title VII of the Regional Rail Reorganization Act of 1973 are creditable as compensation only for the month in which the employee first filed for benefits under the Act. The compensation to be credited cannot exceed the monthly creditable amounts shown in § 211.13.

§ 211.13 Monthly maximum creditable compensation.

The amount of compensation that may be creditable under the Railroad Retirement Act with respect to an employee's service is subject to monthly limits. The monthly maximum for any month is one-twelfth of the maximum annual taxable wage base as defined in section 3121 of the Internal Revenue Code of 1954 that would be applicable to the period which includes the month. The maximum annual taxable wage base is defined in section 3121 of the Internal Revenue Code of 1954 as the amount of the contribution and benefit base determined under section 230 of the Social Security Act. Section 230(c) of the Social Security Act provides, with respect to the computation of annuities under the Railroad Retirement Act, for two separate annual maximum amounts for years beginning with 1979. For purposes of computing the amount of an annuity under the Railroad Retirement Act, except the Tier I annuity component provided by section 3(a), 4(a), or 4(f) of the Railroad Retirement Act or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act, the annual maximum wage base is determined without regard to the increases in the annual amounts specified in clause (2) of subsection (c) of section 230. Those increases are, however, applicable in computing the Tier I component of an annuity or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act. The table below lists the maximum monthly creditable amounts beginning with 1937. The maximum monthly creditable amounts for purposes of computing the Tier I annuity component and the social security guaranty amount is, for the years beginning with 1979, shown in parentheses.

January 1937 through June 1954	$300	
July 1954 through May 1959	350	
June 1959 through October 1963	400	
November 1963 through December 1965	450	
January 1966 through December 1967	550	
January 1968 through December 1971	650	
January 1972 through December 1972	750	
January 1973 through December 1973	900	
January 1974 through December 1974	1,100	
January 1975 through December 1975	1,175	
January 1976 through December 1976	1,275	
January 1977 through December 1977	1,375	
January 1978 through December 1978	1,475	
January 1979 through December 1979	1,575	(1,908.33)
January 1980 through December 1980	1,700	(2,158.33)
January 1981 through December 1981	1,850	(2,475.00)
January 1982 through December 1982	2,025	(2,700.00)
January 1983 through December 1983	2,225	(2,975.00)

§ 211.14 Verification of compensation claimed.

Compensation claimed by an employee, which is not credited in the records of the Board, must be verified to the satisfaction of the Board before it may be credited. An employee's claim to compensation not credited shall be processed as follows:

(a) If the compensation claimed is in excess of the monthly maximum creditable amounts shown in § 211.13, the Director of Compensation and Certification shall inform the employee that the compensation claimed is not creditable.

(b) If the compensation is claimed within four years from the date the compensation was required to be reported to the Board as prescribed in § 209.6 of this chapter, the Director of Compensation and Certification shall contact the employer requesting a review of their records, and if the employee's claim is correct, the employer will submit an adjustment crediting the employee with the compensation claimed. If the employer states that the employee's claim is incorrect, the employee will be requested to submit check stubs to show railroad retirement taxes withheld from the compensation claimed. Upon receipt of the check stubs, the proof will be sent to the employer along with a request for the employer to submit an adjustment crediting the employee with the compensation claimed.

4. The former Part 209, Military Service, is redesignated as Part 212, and is revised as follows:

PART 212—MILITARY SERVICE

Sec.

212.1 General.
212.2 Military service defined.
212.3 Crediting of military service.
212.4 Periods of creditable military service.
212.5 Verification of military service.
212.6 Board's determination for use of military service.

Authority: Sec. 1(g), Pub. L. 93–445, 88 Stat. 1309 (45 U.S.C. 231(g)); Sec. 3(i)(2), Pub. L. 93–445, 88 Stat. 1325 (45 U.S.C. 231b(i)(2)); Sec. 7(b)(5), Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 212.1 General.

In determining an individual's entitlement and amount of benefits under the Railroad Retirement Act, an individual's military service creditable under the Railroad Retirement Act is used. This part defines military service as used under this Act and sets forth the criteria to determine the creditability of military service.

§ 212.2 Military service defined.

Military service is the performance of active service by an individual in the armed forces of the United States. An individual is considered to be in active military service when commissioned or enrolled in the land, naval or air forces of the United States until resignation or discharge therefrom. The service of an individual in any reserve component of the land, naval or air forces of the United States, during any period in which ordered to active duty, even though less than thirty days, is also considered active service. However, service in the Army Specialist Corps and the Merchant Marine is not creditable under the Railroad Retirement Act.

§ 212.3 Crediting of military service.

In determining an individual's entitlement to an annuity and the amount of annuity to be paid under the Railroad Retirement Act, a calendar month or part of a calendar month during which the individual was in the active military service of the United States in a war service period, or period of national emergency, as determined in § 212.4, may be included in the individual's years of service. Military service is credited as though the individual had performed service for a railroad employer as provided for in Part 210 of this chapter, provided that the individual is credited with railroad service in the year of or the year before entrance into active military service. Compensation for creditable military service shall be credited as provided for in § 211.7 of this chapter.

§ 212.4 Periods of creditable military service.

In order for military service to be considered to be creditable under the Railroad Retirement Act, it must have been performed during one of the following periods:

(a) April 21, 1898 through August 13, 1898—Spanish American War;

(b) February 4, 1899 through April 27, 1902—Philippine Insurrection;

(c) May 9, 1916 through February 5, 1917—Mexican Border Disturbances;

(d) April 6, 1917 through November 11, 1918—World War I;

(e) September 8, 1939 through June 14, 1948—National Emergency and World War II. Individuals required to continue in service after this period may be credited with the service if:

(1) They were in military service on December 31, 1946, or

(2) They were required to remain in military service involuntarily after December 31, 1946;

(f) June 24, 1948 through December 15, 1950. This service is creditable only if entered into involuntarily;

(g) December 16, 1950 through September 14, 1978—National Emergency.

§ 212.5 Verification of military service.

Military service may be verified by the following proof:

(a) The original certificate of discharge or release to inactive duty from a branch of the armed forces that shows the beginning and ending dates of the individual's active military service; or a certified copy of the original certificate made by the Federal, State, county or municipal agency or department in which the original certificate is recorded; or

(b) A certificate from a branch of the armed forces that shows the beginning and ending dates of the individual's active military service; or

(c) A photocopy of the document described in (a) or (b) of this section.

§ 212.6 Board's determination for use of military service.

(a) Military service may be creditable under both the Railroad Retirement and Social Security Acts, but there are provisions under those Acts to prevent duplicate use of the service. The Railroad Retirement Board will determine whether an employee's military service should be used as railroad service or as Social Security service. The Board's determination is intended to be to the employee's advantage; however, if the employee does not agree with the Board's determination for use of the employee's military service, the employee may request that it be changed.

(b) Generally, it is to the employee's advantage for the employee's military service to be creditable as railroad service where any of the following conditions may be met with the use of the employee's military service as railroad service:

(1) It gives the employee 10 years of service (120 months), which is the minimum needed to qualify for an annuity based on age and service or total disability, as provided for in Part 216, Subpart B; or

(2) It gives the employee 20 years of service (240 months), which is the minimum needed to qualify for an occupational disability annuity, as provided for in § 216.6 of this chapter; or

(3) It gives the employee 25 years of service (300 months), which is the minimum needed to qualify for a supplemental annuity, as provided for in Part 216, Subpart C; or

(4) It gives the employee 30 years of service (360 months), which would allow the employee to retire at age 60 with a full annuity and will also provide a full annuity to a qualified spouse at age 60, as provided for in Part 216, Subpart B and D; or

(5) It gives the employee sufficient railroad service to entitle the employee to vested dual benefit payments, as provided for in Part 216, Subpart H.

(c) In certain cases it may be to the employee's advantage for the employee's military service to be credited under the Social Security Act. This is generally true under the following conditions:

(1) Crediting the military service under the Social Security Act would entitle the employee and any eligible children to social security benefits, since direct benefits are not payable to children of retired employees under the Railroad Retirement Act; or

(2) Crediting the military service under the Social Security Act would entitle employee to vested dual benefit payments.

PART 220—[RESERVED]

5. Part 220, Definition and Creditability of Service is redesignated as Part 210, Creditable Railroad Service; therefore, Part 220 is reserved.

PART 222—[RESERVED]

6. Part 222, Definition and Creditability of Compensation, is redesignated as Part 211, Creditable Railroad Compensation; therefore, Part 222 is reserved.

PART 250—[RESERVED]

7. Part 250, Reports and Information to be Filed by Employers, is redesignated as Part 209, Railroad Employers Reports and Responsibilities; therefore, Part 250 is reserved.

8. In order to enable users to check the completeness, accuracy, and reasoning behind these revised regulations, a Derivation Table follows:

DERIVATION TABLE

New section and name	Current section and name
Part 209—Railroad Employers Reports and Responsibilities.	Part 250—Reports and information to be filed by employers.
209.1 General—New.	
209.2 Duty to furnish information and records.	250.1(a) Duty to furnish information and records—General.
209.3 Information regarding change in status.	250.1(b) Duty to furnish information and records—Information concerning change of status.
209.4 Employers' notices of death of employees.	250.2 Employer to notify of death of employee.
209.5 Employer's supplemental reports of service and compensation.—New.	
209.6 Employers' annual reports of creditable service and compensation.	250.3 Employers' reports of compensation of employees.
(a)	(a)(i).
(b)	(a)(ii).
209.7 Employers' adjustment reports.	250.3 Employers' reports of compensation of employees.
(a) New	
(b)	(a)(1)
(c) New	
209.8 Employers' quarterly summary reports of compensation adjustments.	250.3(a)(2) Employers' reports of compensation of employees.
209.9 Terminated employers' reports.	250.3(c) Employers' reports of compensation of employees.
209.10 Employee representative's reports.	250.6 Reports of employee representatives.
209.11 Certificates of service months and compensation.	250.5 Employers to transmit annual statements of compensation.
(b) New	
209.12 Employers' "gross earnings" reports.—New.	
NOTE.—Section 250.4, Registration of Employees, was deleted due to the discontinuance of Form CER-1.	
Section 250.3(b), Intermittent or Seasonal Employers Reports, was deleted. These employers' reports are now covered in § 209.6(b).	
Part 210—Creditable Railroad Service.	Part 220—Definition and Creditability of Service.
210.1 General—New.	
210.2 Definition of service. (Title VII service added).	220.1 Meaning of service.
210.3 Month of service. (Title VII service added).	220.2 What constitutes a month and a year of service.
210.4 Year of service	220.2 What constitutes a month and a year of service.
210.5 Creditability of service.	220.3 Creditability of service.
(a)	(d) Service prior to Jan. 1, 1937.
(i)	(e) Service prior to Jan. 1, 1937, where individual was employee on Aug. 29, 1935.
(ii)—New	
(iii)—New	
(iv)—New	
(v)—New	
(vi)—New	
(b)	(f) Service subsequent to Dec. 31, 1936.
(c)	(i), (j) Service after Dec. 31, 1936, to a local lodge or division.
(d)	(c) Service based on time spent.
(e)	(b) Place of performance of service.
(f)	(h) Service as employee representative.
(g)	(g) Service performed subsequent to the beginning date of an annuity.
NOTE.—Use of service after revised Part 218.16.	ABD furnished by BRC in
210.6 Service credited for creditable military service.	209.4 Crediting of military service.

DERIVATION TABLE—Continued

New section and name	Current section and name
NOTE.—Use of military service in annuity computation will be furnished by BRC in revised Part 226.	
210.7 Verification of service claimed.	220.4 Verification of service claimed.
(g)—New	
NOTE.—Section 220.3(a) was omitted as the term "employer" is retained in Part 202	
Part 211—Creditable Railroad Compensation.	Part 222—Definition and Creditability of Compensation.
211.1 General—New.	
211.2 Definition of compensation.	222.2 Definition of compensation.
(a) (plus additions)	222.2(a)(1)(i).
(h) (plus additions)	222.1 Statutory provisions.
(c) (plus additions)	222.1 Statutory provisions.
211.3 Compensation paid for time lost.	222.2(b) Remuneration paid for time lost.
211.4 Vacation pay	222.3(h) Allowances in lieu of vacation.
(c)—New	
(d)—New	
211.5 Employee representative compensation.	222.3(c) Employee representative compensation.
211.6 Compensation based on waiver or refund of organizational dues.	222.2(c) Waiver and refund of organization dues.
211.7 Compensation credited for creditable military service.	222.4 Amount of compensation attributable to each month of military service creditable.
(b)—New	
(c)—New	
211.8 Displacement allowance.	222.2(b)(2) Remuneration paid for time lost.
211.9 Dismissal allowance.—New.	
211.10 Separation allowance.—New.	
211.11 Back pay.—New	
211.12 Compensation credited for title VII benefits.—New.	
211.13 Monthly maximum creditable compensation.	222.3(a) Maximum creditable compensation for one month.
211.14 Verification of compensation claimed.	222.5 Verification of compensation claimed.
(a)—New	
(b)—New	
NOTE.—Section 222.3(b), Use of compensation after the ASD is furnished by BRC in revised Part 218.16 and § 222.3(f) was deleted.	
Part 212—Military service	Part 209—Military Service.
212.1 General	209.1(a) Statutory provisions.
212.2 Military service defined.	(b) Statutory provisions.
212.3 Crediting of military service.	209.4(a) Crediting of military service. (b) Covered by BRC in revised Part 226 (c) Covered by BRC in revised Part 226.
212.4 Periods of creditable military service.	209.13 War period.
(a)	(a).
(b)	(b).
(c)—New	(c).
(d)	(d).
(e)	
(f)—New	
(g)—New	
212.5 Verification of military service.	209.14 Verification of military service claimed.
212.6 The Board's determination for use of military service—New.	

NOTE.—Use of military service in the annuity computation and Notices to SSA to be furnished by BRC in revised Part 226.

Dated: November 16, 1984.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 84-30798 Filed 11-27-84; 8:45 am]

BILLING CODE 7905-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-FRL-2726; FAP 9H5201 and 9H5217/R712; FAP 9H5217/R713]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency, and Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; Pirimiphos-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules extend a food additive regulation and a feed additive regulation to permit the combined residues of the insecticide pirimiphos-methyl and its metabolites in or on certain food and feed commodities in accordance with an experimental program These regulations are being extended in conjunction with experimental use permits requested by ICI Americas, Inc.

EFFECTIVE DATE: Effective on November 28, 1984.

ADDRESS: Written objections, identified by the document control number [FAP 9H5201 and 9H5217/R712 and 713], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of December 28, 1978 (43 FR 60652) (FAP 9H5201) and April 20, 1983 (48 FR 16962) FAP 9H5217), which announced that ICI Americas, Inc. Wilmington, DE 19897, had submitted food/feed additive petitions proposing to amend 21 CFR Part 193 and 561 by establishing regulations permitting the combined residues of the insecticide pirimiphos-methyl (*O*-[2-(diethylamino)-6-methyl-4-pyrimidinyl] *O,O*-dimethylphosphorothioate, the metabolite *O*-[2-ethylamino-6-methyl-pyrimidin-4-yl] *O,O*-dimethylphosphorothioate and in free and conjugated form the metabolites 2-ethylamino-6-methylpyrimidin-4-ol, 2-ethylamino-6-methylpyrimidin-4-ol and 2-amino-6-methylpyrimidin-4-ol in or on certain food and feed commodities. FAP 9H5201 requested a tolerance of 50 parts per million (ppm) in or on the food commodity peanut oil, and FAP 9H5217 requested tolerances for the food/feed commodities rice and wheat millings fractions at 50 ppm and the feed commodity rice hulls at 60 ppm.

EPA added a regulation to apply to peanut oil: 21 CFR 193.468 (48 FR 41157; Sept. 14, 1983). EPA revised § 193.468 to add rice and wheat milling fractions and added 21 CFR 561.432 to apply to rice hulls and rice and wheat milling fractions (48 FR 51453; Nov. 9, 1983). At the request of ICI Americas, Inc., EPA is extending §§ 193.468 and 561.432 to expire September 27, 1985.

Related documents [PP 9G2154/T470 and PP 9G2200/T469] extending temporary tolerances for pirimiphos-methyl and its metabolites in or on certain raw agricultural commodities appear elsewhere in this issue of the **Federal Register.**

The metabolism of pirimiphos-methyl and its metabolites is adequately understood, and an adequate analytical method, gas chromatography mass spectrometry, is available for enforcement purposes. The pesticide is considered useful for the purpose for which the regulations are sought, and it is concluded that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat 973; 7 U.S.C. 136 et seq.). Therefore, the regulations are extended as set forth below.

Any person adversely affected by this regulation, may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: November 4, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Chapter I is amended as follows:

PART 193—[AMENDED]

1. In Part 193, § 193.468 is amended in the table in paragraph (b) by revising the expiration dates, to read as follows:

§ 193.468 Pirimiphos-methyl.

* * * * *

(b) * * *

Foods	Parts per million	Expiration date
Peanut oil	50.0	Sept. 27, 1985.
Rice, milling fractions	50.0	Sept. 27, 1985.
Wheat, milling fractions	50.0	Sept. 27, 1985.

PART 561—[AMENDED]

2. In Part 561, § 561.432 is amended in the table in paragraph (b) by revising the expiration dates, to read as follows:

§ 561.432 Pirimiphos-methyl.

* * * * *

(b) * * *

Feeds	Parts per million	Expiration date
Rice, hulls	60.0	Sept. 27, 1985.
Rice, milling fractions	50.0	Sept. 27, 1985.
Wheat, milling fractions	50.0	Sept. 27, 1985.

[FR Doc. 84-31156 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Cotton Dust

AGENCY: Occupational Safety and Health, Administration (OSHA), Labor.

ACTION: Administrative stay.

SUMMARY: The current OSHA cotton dust standard (29 CFR 1910.1043) requires that by March 27, 1984, all textile operations to which the standard applies must be in compliance with the permissible exposure limit using engineering and work practice controls. Pending completion of an ongoing review of the standard, OSHA issued a stay of the effective date of this provision until September 27, 1984 for some operations of ring spinning of coarse count cotton yarns (February 23, 1984; 49 FR 6717). OSHA has not completed its review, and it is therefore extending the stay for the same operations until January 27, 1985. During this period all other applicable provisions of the standard apply. It appears that some coarse count cotton ring spinning operations have feasibility problems coming into compliance, and the stay will give OSHA time to review the record and make final determinations.

DATE: This stay is effective from September 27, 1984 to January 27, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Occupational Safety and Health Administration, Room N-3657, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Act requires OSHA to set occupational health standards which most adequately assure employee safety and health "to the extent feasible." In the preamble to the 1978 OSHA cotton dust standard (43 FR 27350, June 23, 1978), the Agency presented a substantial amount of evidence to demonstrate the technical feasibility of the standard in the textile industry based on the evidence then available.

Beginning in 1981 as evidence of actual implementation of the cotton dust standard became available, OHSA underlook a further review of the feasibility of the standard. As part of this review, OSHA hired a consulting firm, Centaur Associates, to examine a number of issues including the current state of compliance and to review the technological feasibility of completing the compliance programs within the deadline specified by the standard (March 27, 1984).

After visiting 15 plants and interviewing numerous industrial engineers and manufacturers of dust control equipment, Centaur reported that textile experts generally consider the requirements of the 1978 standard to come into compliance with the engineering control provisions by March 27, 1984 to be feasible. The Centaur Report (Exhibit 185) documented that in 1982, a large percentage of textile operations were already in compliance with the permissible exposure limit.

Nevertheless, Centaur found that a problem does exist for specific processes in the manufacturing of certain types of yarn to come into compliance with engineering controls by March 27, 1984. These problem areas were concentrated in the ring spinning operations for high-control-content, coarse count yarn. These yarns are used in denim, duck, heavy terry cloth, and heavy industrial fabrics. Recent experience with these particular ring spinning processes indicates that ventilation systems may not always be effetive and that this production equipment cannot generally be isolated.

There are several possible solutions to the dust control problem, including the rapid advent of open-end spinning systems. This relatively new technology reduces the dust levels because the fibers are spun within enclosed rotors and ventilation is designed into the machinery. There are, however, currently some problems with open-end spun yarn. For instance, open-end yarn is generally weaker than ring-spun yarns, and broken ends in weaving operations may sometimes result in negative wear and appearance properties in the finished fabric. These factors have led some garment manufacturers to insist that fabric for their apparel be made with ring-spun yarn.

It appeared, therefore, that it might not be feasible for employers to lower dust levels to the permissible exposure limit by March 27, 1984 for high-cotton-content, coarse count ring spinning operations. However, it also appeared that these problems could be overcome in several years. Control technology, including open-end spinning, is rapidly advancing and compliance with the standard should be possible in all operations in the relatively near future.

Based on this information, OSHA proposed in its June 10, 1983 **Federal Register** notice (48 FR 26962) to extend the deadline for compliance using engineering and work practice controls

found in § 1910.1043(m)(2)(ii). The deadline was proposed to be extended from March 27, 1984 to March 27, 1986. The proposed extension would cover only ring spinning, spooling and winding of coarse (yarn count of 14 or lower), high-cotton-content (equal to or greater than 80%) yarn.

This proposal was discussed at length by some of the commenters and additional evidence and testimony were presented on this issue at the hearings. Percy Thackston, Executive Vice President of the Bahnson Company, a supplier of ventilation equipment, testified to the inadequacy of control equipment for these operations (Tr. at 676). James A. King, Vice President of the Textile Manufacturing Division of Cone Mills Corporation, gave examples of his company's efforts to reduce dust levels below the PEL in the ring spinning of coarse count yarns (Tr. at 682–683). Commissioner John Brooks of North Carolina stated that these operations were the primary component of spinning areas which are not in compliance with the PEL in the State of North Carolina and concurred that a two-year extension would be reasonable (Tr. 1274, 1283). However, the evidence indicated that there are some coarse count, high-cotton-content yarn spinning operations which have already achieved the limit by switching to open end spinning.

The post-hearing briefs of both the Amalgamated Clothing and Textile Workers Union (Exhibit 279) and the American Textile Manufacturers Institute (Exhibit 280) recommended, based on the above evidence, that the two year extension proposed by OSHA be granted but with some slight modification to the specifications that OSHA originally proposed for the yarn operations to be covered. The testimony of Percy Thackston (Tr. at 698) and James King (Tr. at 684, 699) pointed out that a somewhat broader range of criteria for the yarn was needed.

The record for OSHA's June 10, 1983 proposal closed December 14, 1983. In February 1984, it became clear that OSHA could not complete the analysis of the record by the March 27, 1984 deadline to achieve compliance with the engineering control requirements. However, based on its preliminary review of the evidence and the recommendations of both the affected union and industry association, it appeared likely that OSHA's final decision would be to incorporate an extension similar to that recommended by the union and trade association. In addition, if the original deadline is extended, it would be wasteful for employers in the meantime to have to install ventilation equipment which would probably not achieve the permissible exposure limit, since better and more efficient equipment would be available shortly which would achieve the level. Based on this factor, the evidence in the record, and the recommendation of the interested parties, OSHA stayed the effective date of the engineering control requirement for ring spinning of coarse count cotton yarns as defined until September 27, 1984 in **Federal Register** notice of February 23, 1984 (49 FR 6717).

Final review of the amendments to the standard resulting from the June 10, 1983 proposal has not been completed. For the reasons just stated, it continues to be appropriate to stay the enforcement of the engineering control provisions solely for ring spinning using coarse count, high cotton content cotton yarns as defined in this notice. Accordingly, OSHA is hereby temporarily staying the effective date of the engineering control requirement of 29 CFR 1910.1043(m)(2)(ii) for the operations of ring spinning and winding, twisting, spooling, beaming, and warping following ring spinning, where the yarns meet the following criteria:

Where the weight of the yarn being run is 100 percent cotton, the stay applies where the average yarn count by weight is 16 or below.

Where the average by weight of the yarn being run is 80 percent or more cotton, the stay applies where the average yarn count by weight is 16 or below.

Where the average by weight of the yarn being run is 50 percent or more cotton, the stay applies where the average yarn count by weight is 14 or below.

This stay of enforcement is for a four month period, beginning on September 27, 1984 and ending on January 27, 1985. This stay will permit the Agency to make appropriate final decisions with full supporting rationale. In the interim, all the other provisions of the standard are in effect for these operations including the respiratory protection provisions which should reduce employee exposures below the permissible exposure limit. Except for this stay all provisions of the cotton dust standard 29 CFR 1910.1043 became fully effective for yarn production and slashing and weaving operations on March 27, 1984.

The matters temporarily stayed have already been subject to a specific proposal and comment by interested parties. The extent of the stay reflects both the record evidence and the views of both union and industry participants. The stay is for a brief fixed period to permit appropriate final decisions to be taken after careful and complete review of the record. Accordingly, the Agency determines that further notice and comment on this limited stay would serve no useful informational purpose and finds that this is good cause for finding further notice and comment unnecessary within the meaning of the Administrative Procedure Act, 5 U.S.C. 553(b).

List of Subjects in 29 CFR Part 1910

Cotton dust, Occupational safety and health.

Authority: This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, D.C. It is issued pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act. (84 Stat. 1593, 1600, 29 U.S.C. 655, 657), 29 CFR Part 1911; Secretary of Labor's Order No. 9–83 (48 FR 35736) and 5 U.S.C. 551 et seq.

Signed at Washington, D.C. this 19th day of November, 1984.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 84–30844 Filed 11–27–84; 8:45 am]

BILLING CODE 4510–26–M

POSTAL SERVICE

39 CFR Part 111

Additional Specifications for the Testing of Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends postal specifications for testing postage meters to include auxiliary equipment required for the operation of postage meters. This includes such items as carrying cases with built-in power supplies, postage meter bases which would effect the operation of the meters, and other equipment which could cause failures of postage meters. Testing meters without testing auxiliary equipment may not be sufficient to assure accuracy in collecting postage.

EFFECTIVE DATE: December 28, 1984.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 245–4565.

SUPPLEMENTARY INFORMATION: On September 18, 1984, the Postal Service published for comment in the **Federal Register** (49 FR 36510) proposed changes to Part 144 of the Domestic Mail Manual (DMM), dealing with specifications for the testing of postage meters. Interested persons were invited to submit written comments concerning the proposed changes on or before October 17, 1984. No comments were received. Before publishing the proposal in the **Federal Register**, however, we conferred with meter manufacturers about the proposed change. Two of them concurred at once with our proposal; one objected, but later concurred after the change was explained in greater detail.

Accordingly, the Postal Service hereby adopts, without change, the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (39 CFR 111.1).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 144—POSTAGE METERS AND METER STAMPS

In 144.9, add new .92j reading as follows:

144.9 Manufacture and distribution of postage meters.

* * * * *

.92 Specifications.

* * * * *

.92j Auxiliary equipment required for the operation of the postage meters must be a part of the final production models submitted for postal approval. Failure of the auxiliary equipment, which could cause malfunction in postage meter operation, will be considered the same as a postage meter failure.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401 (2), (10), 404(a)(2)(4))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84–31147 Filed 11–27–84; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3028/R706; FRL–2722–8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Acephate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide acephate and its cholinesterase-inhibiting metabolite in or on the raw agricultural commodity macadamia nuts. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Effective on November 28, 1984.

ADDRESS: Written objections, identified by the document control number [PP 4E3028/R706], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Donald Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA issues a proposed rule, published in the **Federal Register** of September 26, 1984 (49 FR 37812), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3028 to EPA on behalf of the IR–4 National Director, Dr. Robert H. Kupelian, and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodity macadamia nuts at 0.05 part per million (ppm).

There were no comments nor requests for referral to the advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 13, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.108 is amended by adding and alphabetically inserting the raw agricultural commodity macadamia nuts to read as follows:

§ 180.108 Acephate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * * *	
Macadamia nuts	0.05
* * * * * *	

[FR Doc. 84–30708 Filed 11–27–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 712

[OPTS–82008; FRL 2724–6]

Toxic Substances Control Act; Chemical Information Rules; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding seven chemicals to the Toxic Substances Control Act section 8(a) Preliminary Assessment Information rule. The seven

chemicals were recommended by the Interagency Testing Committee (ITC) in its Fifteenth Report and designated for priority consideration by EPA within 1 year. An amendment to the Preliminary Assessment Information rule, which was published in the **Federal Register** of May 11, 1983 (48 FR 21294), provides that chemical substances and designated mixtures that have been recommended for testing by the ITC and designated for 12-month response may be made subject to the rule by the publication of an amendment to that effect in the **Federal Register**. Thirty days after the publication of this amendment to the regulation, these chemicals will become subject to 40 CFR Part 712. Manufacturers of these chemicals will then have 60 days to submit a completed Preliminary Assessment Information report (EPA Form No. 7710–35) for each plant site at which they manufacture or import one of these seven chemicals.

EFFECTIVE DATE: This regulation becomes effective on December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington D.C.: (554–1404), Outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2000–0420.

I. Background

Under section 8(a) of the Toxic Substances Control Act (TSCA), EPA issued the Preliminary Assessment Information rule, which was published in the **Federal Register** of June 22, 1982 (47 FR 26992), for reporting by chemical manufacturers. Those companies which manufactured, produced, or imported one of the approximately 250 chemical substances listed were to report general production, use, and exposure data to the Agency by November 19, 1982. An amendment to the rule, published in the **Federal Register** of May 11, 1983 (48 FR 21294), added 40 CFR 712.30(c) which provides that chemicals designated by the Interagency Testing Committee may be made subject to the rule by the publication of a regulation to that effect in the **Federal Register**. Today's final rule uses the authority of 40 CFR 712.30(c) to add seven chemicals to the list for reporting of preliminary assessment information.

Elsewhere in today's **Federal Register**, EPA is issuing a notice announcing the receipt of the Fifteenth Report of the Interagency Testing Committee, which was transmitted to the Administrator of EPA on November 6, 1984. The Fifteenth Report, which revises and updates the Committee's priority list of chemicals, adds seven chemicals to the list for priority consideration within 12 months by EPA in the promulgation of test rules under section 4(a) of TSCA. In addition to adding the seven chemicals designated by the ITC to the section 8(a) Preliminary Assessment Information rule, the Agency, in a separate action, is adding these chemicals to the list of substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under section 8(d) of TSCA.

II. Chemicals To Be Added

The seven ITC designated chemicals for which reporting is required under section 8(a) are as follows:

CAS No.	Name
84–65–1	Anthraquinone.
85–22–3	Pentabromoethylbenzene.
98–82–8	Cumene.
126–99–8	2-Chloro-1,3-butadiene (Chloroprene).
137–20–2	Sodium N-methyl-N-oleoyltaurine.
149–30–4	Mercaptobenzothiazole.
556–67–2	Octamethylcyclotetrasiloxane.

III. Reporting Requirements

All persons who manufactured or imported the chemical named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each importing or manufacturing site which produces a subject chemical substance. A separate form must be completed for each chemical and submitted to the Agency no later than February 26, 1985. Copies of the form are available from the TSCA Assistance Office at the address given above.

Manufacturers who qualify as small with respect to the previously prescribed standards are exempt from this rule under 40 CFR 712.25(c).

Under § 712.30(a)(3) of the Preliminary Assessment Information rule, a company which has voluntarily submitted a Manufacturer's Report to the ITC will be allowed to submit a copy of the original Report to EPA. Also under § 712.30(a)(3), persons who previously and voluntarily provided EPA with a Manufacturer's Report on one of the seven substances listed in § 712.30(k) must notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission and must follow all other procedures outlined in that section.

Any person who believes that reporting on a chemical is unnecessary should promptly submit to the Agency his reasons in detail for that belief. The chemical may then be removed from the rule at the Agency's discretion, for good cause. When withdrawing a chemical from the rule, the Agency will issue a rule amendment for publication in the **Federal Register**.

IV. Release of Aggregate Data

The Agency will follow the procedures for release of aggregate data and requesting exemptions from release of aggregate statistics as prescribed in the rule related notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Requests for exemptions from release of aggregate data for any substance must be received by EPA no later than February 26, 1985.

V. Economic Impact

Employing the analysis prepared for the Preliminary Assessment Information rule published in the **Federal Register** of June 22, 1982, as well as other relevant data, the Agency has estimated the impact of the addition of these chemicals on the firms that must report and upon the Agency in terms of data processing costs.

The Agency used the TSCA Inventory to generate a list of manufacturers and importers of the seven chemicals. After excluding firms which reported no production for the Inventory, 59 companies operating 63 sites were listed as manufacturers of the chemicals and 28 importers of the chemicals were identified. Five of the manufacturers subject to reporting for this rule qualify as a small business as defined in 40 CFR 712.25(c). Thus, 82 firms (or 58 U.S. sites plus 28 importers) are expected to report for this rule. A total of 86 reports are expected.

The costs for reporting are broken down as follows:

Reporting Cost	
(a) 86 reports expected at $707 per report	$60,802
(b) 86 familiarization cases at $590 per case	50,740
Total	111,540
Average cost per site equals	$1,300
Average cost per firm equals	$1,360
Reporting Burden	
(a) Familiarization (18 hours per site times 86 sites per importers)	1,550
(b) Reporting (16 hours per report times 86 reports)	1,380
Total[1]	2,930
EPA Cost	
Processing Cost equals $80 per report times 86 reports	$6,880

[1]Hours.

VI. Rulemaking Record

EPA has established a public record (docket number OPTS–82014) for this rulemaking document. All documents, including the index to this public record, are available for inspection in the OTS Reading Room, Rm. E–107, 401 M Street, SW., Washington, D.C. from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. This record includes basic information considered in developing this rule.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(C)—a final rule which had been previously reviewed by OMB under the terms of the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2000–0420.

(Sec. 8(a), Pub. L. (94–469, 90 Stat. 2027 (15 U.S.C. 2607(a)))

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Reporting and recordkeeping requirements.

Dated: November 15, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 712—[AMENDED]

Therefore, Chapter I of 40 CFR Part 712 is amended by adding § 712.30(m) and OMB control number 2000–0420 to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(l) [Reserved]

(m) **A Preliminary Assessment Information Manufacturer's Report must be submitted by February 26, 1985, for each chemical substance listed below.**

CAS No.	Name
84–65–1	Anthraquinone.
85–22–3	Pentabromoethylbenzene.
98–82–8	Cumene.
126–99–8	2-Chloro-1,3-butadiene (Chloroprene).
137–20–2	Sodium N-methyl-N-oleoyltaurine.
149–30–4	Mercaptobenzothiazole.
556–67–2	Octamethylcyclotetrasiloxane.

(Approved by the Office of Management and Budget under control number 2000–0420).

[FR Doc. 84–30999 Filed 11–27–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 716

[OPTS–84013 FRL 2725–1]

Toxic Substances Control Act; Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This amendment will add seven chemicals to the list of chemical substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under section 8(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(d). The chemical substances to be added were recommended for testing by the Interagency Testing Committee (ITC) in its Fifteenth Report to EPA and designated for priority consideration by EPA within 12 months. Under 40 CFR 716.18(b), chemical substances and designated mixtures that have been designated for testing by the ITC may be made subject to the rule by the publication of an amendment to that effect in the **Federal Register**. Thirty days after publication of this amendment to the regulation, these chemicals will become subject to 40 CFR, Part 716, Subpart A.

EFFECTIVE DATE: This regulation becomes effective on December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2070–0004.

I. Background

EPA issued regulations under section 8(d) of TSCA, which were published in the **Federal Register** of September 2, 1982 (47 FR 38780), to require submission of lists and copies of unpublished health and safety studies on specifically listed chemicals by chemical manufacturers and processors. Other persons in possession of such studies may be asked to submit them on a voluntary basis. The rule established standardized reporting requirements and provides for amending the list of chemicals subject to the rule.

Section 716.18(b) provides that ITC-designated chemicals may be made subject to the rule by the publication of a regulation to that effect in the **Federal Register**. Therefore, this regulation adding these chemicals to 40 CFR 716.17 constitutes the notice required by 40 CFR 716.18(b). On December 28, 1984, the chemical substances listed below will become subject to 40 CFR Part 716, Subpart A.

Elsewhere in today's **Federal Register**, EPA is issuing a notice announcing the receipt of the Fifteenth Report of the Interagency Testing Committee, which was transmitted to the Administrator of EPA on November 6, 1984. The Fifteenth Report, which revises and updates the Committee's priority list of chemicals, adds seven chemicals to the list for priority consideration within 12 months by EPA in the promulgation of test rules under section 4(a) of TSCA. In addition to adding the seven chemicals designated by the ITC to the section 8(d) Health and Safety Data Reporting rule, the Agency, in a separate action, is adding these chemicals to the list of substances and mixtures for which a completed Preliminary Assessment Information report must be submitted under section 8(a) of TSCA.

The seven new designated chemicals are listed below.

II. Chemicals To Be Added

CAS No.	Name
84–65–1	Anthraquinone.
85–22–3	Pentabromoethylbenzene.
98–82–8	Cumene.
126–99–8	2-Chloro-1,3-butadiene (Chloroprene).
137–20–2	Sodium N-methyl-N-oleoyltaurine.
149–30–4	Mercaptobenzothiazole.
556–67–2	Octamethylcyclotetrasiloxane.

III. Economic Impact

EPA estimates that submitting the required data on these additional chemicals will cost industry $70,800. This consists of the following:

Corporate rule review	$40,670
Corporate review (site identification)	4,100
File search	7,040
Title testing	240
Photocopying (materials and labor)	2,020
Managerial review	14,900
Ongoing reporting	1,830
Total	70,800

If the Agency assumes ±30 percent margin of error in these estimates, the range of probable cost varies from $92,040 to $49,560. These costs are minimal compared to the importance of obtaining information in time to evaluate ITC-designated chemicals within statutory deadlines.

IV. Rulemaking Record

EPA has established a public record (docket number OPTS–84013) for this rulemaking document which, along with a complete index, is available for inspection in Rm. E–108, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. This record includes information considered by the Agency in adding the ITC chemicals to this rule. The record includes the following:

1. Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 84003.
2. Reports Impact Analysis for 40 CFR Part 716 and this regulation.
3. Fifteenth Report of the Interagency Testing Committee (ITC).

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive order.

This final rule was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 716.18(b)—a final rule which had been previously reviewed by OMB under the terms of the Executive order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0004.

(Sec. 8(d), Pub. L. 94–469, 90 Stat. 2029 (15 U.S.C. 2607(d)))

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements.

Dated: November 15, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, Title 40, Chapter I, Part 716 is amended by adding § 716.17(a)(10) and OMB control number 2070–0004 to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(10) As of December 28, 1984, the following chemical substances are subject to this subpart.

CAS No.	Name
84-65-1	Anthraquinone.
85-22-3	Pentabromoethylbenzene.
98-82-8	Cumene.
126-99-8	2-Chloro-1,3-butadiene (Chloroprene).
137-20-2	Sodium N-methyl-N-oleoyltaurine.
149-30-4	Mercaptobenzothiazole.
556-67-2	Octamethylcyclotetrasiloxane.

* * * * * *

(Information collection requirements approved by the Office of Management and Budget under control number 2070–0004)

[FR Doc. 84-30899 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW–2–FRL–2726–7]

New Jersey; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of New Jersey for final authorization, public hearing and public comment period.

SUMMARY: New Jersey has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New Jersey's application and has determined that the State must adopt two regulatory amendments for final authorization. The State must amend its exemption for incinerator facilities under N.J.A.C. 7:26–10.7(a)(1) to make it equivalent to the Federal exemption found at 40 CFR 264.340(b). The State must also amend N.J.A.C. 7:26–12.2 (f) through (k) to include all of the groundwater information that must be submitted as part of a land disposal facility's permit application, pursuant to the Federal requirements found at 40 CFR 270.14(c)(1) through (8). The State has already proposed the incinerator amendment in the August 6, 1984 State Register (CITE 16 N.J.R., page 2046) and the land disposal amendment in the October 1, 1984 State Register (CITE 16 N.J.R., page 2478). The State intends to adopt the necessary amendments by December 31, 1984. Thus, EPA tentatively intends to grant final authorization to the State to operate its program in lieu of the Federal program. New Jersey's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application.

DATES: A public hearing is scheduled for January 3, 1985. New Jersey will participate in the public hearing held by EPA on this subject. All comments on the New Jersey final authorization application must be received by the close of business on January 10, 1985.

ADDRESSEES: Copies of New Jersey's final authorization application are available during normal business hours at the following addresses for inspection and copying:

New Jersey Department of Environmental Protection, Division of Waste Management, Office of the Director, 32 East Hanover Street, Trenton, New Jersey 08625, Telephone (609) 292–1250

New Jersey Department of Environmental Protection, Southern Field Office, R.D. #1 Route 70, Vincentown, New Jersey 08088, Telephone (609) 859–2958

New Jersey Department of Environmental Protection, Northern Field Office, 1259 Route 46, Parsippany, New Jersey 07054, Telephone (201) 648–3689

New Jersey Department of Environmental Protection, Central Field Office, 120 Route 156, Yardville, New Jersey 08620, Telephone (609) 292–9592

Environmental Protection Agency, Region II Library, 26 Federal Plaza, Room 734, New York, New York 10278. Telephone (212) 264–2881

Environmental Protection Agency, Headquarters Library PM 211A, 401 M Street, SW, Washington, DC 20460. Telephone (202) 382–5926.

Written comments on the application and requests to speak at the hearing should be sent to: Deborah A. Craig, New Jersey State Coordinator, Solid Waste Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 906, New York, New York 10278. Telephone (212) 264–0504.

The public hearing will be held on January 3, 1985 at 10:00 a.m. in the First Floor Conference Room, State Library, West State Street, Trenton, New Jersey.

FOR FURTHER INFORMATION CONTACT: Deborah A. Craig, New Jersey State Coordinator, Solid Waste Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 906, New York, New York 10278. Telephone (212) 264–0504.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks, and, in certain instances (see item B. below for discussion), for surface impoundments and waste piles as well. Phase II B covers incinerator facilities, and Phase II C addresses landfills and land treatment facilities.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

B. New Jersey

New Jersey received Phase I interim authorization on February 2, 1983 and Phase II A and B interim authorization on April 6, 1984. Since New Jersey's application for Phase II A and B interim authorization was submitted after the January 28, 1983 deadline for inclusion of certain waste piles and surface impoundments in Component A, the State's Phase II authorization includes only responsibility for permitting storage and treatment in tanks, containers and incinerators. (See 47 FR 32379, July 26, 1982.) It does not include responsibility for permitting treatment, storage or disposal in surface impoundments, waste piles, land treatment facilities or landfills. New Jersey applied for permitting authority for land disposal facilities as part of its final authorization application submission.

New Jersey solicited public comment and held a public hearing, on June 22, 1984, on its draft application for final authorization. On August 3, 1984, New Jersey submitted its application for final authorization to EPA. On August 20, 1984, New Jersey submitted to EPA an addendum to its application which was the transcript of the State's public hearing on the draft application. Upon receipt of this addendum, EPA considered the State's final authorization application to be complete.

EPA has reviewed New Jersey's application and has determined that the State must adopt two regulatory amendments for final authorization. The State must amend its exemption for incinerator facilities under N.J.A.C. 7:26–10.7(a)(1) to make it equivalent to the Federal exemption found at 40 CFR 264.340(b). The State must also amend N.J.A.C. 7:26–12.2(f) through (k) to include all of the groundwater information that must be submitted as part of a land disposal facility's permit application, pursuant to the Federal requirements found at 40 CFR 270.14(c)(1) through (8). The State has already proposed the incinerator amendment in the August 6, 1984 State Register (CITE 16 N.J.R., page 2046) and the land disposal amendment in the October 1, 1984 State Register (CITE 16 N.J.R., page 2478). The State intends to adopt the necessary amendments by December 31, 1984. Consequently, EPA intends to tentatively grant final authorization to New Jersey.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on January 3, 1985 at 10:00 a.m., in the First Floor Conference Room, State Library, West State Street, Trenton, New Jersey. The public may also submit written comments on EPA's tentative determination up until the close of business on January 10, 1985.

Copies of New Jersey's application are available for inspection and copying at the location indicated in the "**ADDRESSEES**" section of this notice.

In making its final decision, EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to New Jersey. EPA expects to provide public notice, in January 1985, of its final decision on whether or not to approve New Jersey's program. The notice will be published in the **Federal Register** and will include a summary of the reasons for the final determination and a response to all major comments.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: November 5, 1984.

Christopher Daggett,

Regional Administrator.

[FR Doc. 84-31160 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL SCIENCE FOUNDATION

48 CFR Ch. 25

Acquisition Regulation; Establishment of Chapter

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: These regulations establish the National Science Foundation Acquisition Regulation (NSFAR) as Chapter 25 of the Federal Acquisition Regulation System. The NSFAR implements and supplements the FAR and supersedes the current NSF Procurement Regulations (41 CFR Chapter 25).

EFFECTIVE DATE: November 28, 1984.

ADDRESS: Division of Grants and Contracts, Policy Office, Room 201, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Kirby (202) 357–7880.

SUPPLEMENTARY INFORMATION: The NSFAR is based primarily on the current NSF Procurement Regulations (41 CFR Chapter 25). NSF published these regulations in a notice of proposed rulemaking in the **Federal Register** on March 15, 1984 (49 FR 9757). Requesting return of comments on or before May 15,

1984. No substantive comments were received.

A minor correction was made to a typographical error in section 2527.7002(a). Title 48 of the Code of Federal Regulations is amended as set forth below.

List of Subjects in 48 CFR Ch. 25

Government procurement.

Francis G. Naughton,

Acting Director, Division of Grants & Contracts.

November 19, 1984.

NSF amends Title 48 by establishing Chapter 25 to read as follows:

CHAPTER 25—NATIONAL SCIENCE FOUNDATION ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

Part 2501—Federal Acquisition Regulations System

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 2515—Contracting by Negotiation

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 2527—Patents, Data, and Copyrights
Part 2532—Contract Financing

SUBCHAPTER A—GENERAL

PART 2501—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2501.1—Purpose, Authority, Issuance

Sec.
2501.101 Purpose.
2501.102 Authority.
2501.103 Applicability.
2501.104 Issuance.
2501.104–1 Publication and code arrangement.
2501.104–2 Arrangement of regulations.

Subpart 2501.4—Deviations From the FAR.

2501.403 Individual deviations.
2501.404 Class deviations.

Subpart 2501.6—Contracting Authority and Responsibilities

2501.601 General.
2501.602 Contracting officers.
2501.602–1 Authority.

Authority: (42 U.S.C. 1870(a)).

Subpart 2501.1—Purpose, Authority, Issuance

2501.101 Purpose.

These regulations implement and supplement the Federal Acquisition Regulations (FAR).

2501.102 Authority.

The NSF Acquisition Regulations are issued under the authority of Section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

2501.103 Applicability.

Except where a deviation is specifically authorized in accordance with Subpart 2501.4 or otherwise authorized by law, the FAR and the NSFAR govern all NSF acquisitions.

2501.104 Issuance.

2501.104–1 Publication and code arrangement.

(a) The NSFAR is published in the daily issues of the **Federal Register** and, in cumulative form, in the Code of Federal Regulations.

(b) The NSFAR is issued as Chapter 25 of Title 48, CFR.

2501.104–2 Arrangement of regulations.

The NSFAR uses the same numbering system and arrangement used in the FAR. Where the NSFAR implements the FAR it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, Parts 70 and up are used by the NSFAR. Where the subject matter in the FAR requires no implementation the NSFAR contains no corresponding part.

Subpart 2501.4—Deviations From the FAR

2501.403 Individual Deviations.

Individual deviations, affecting only one contracting action may be authorized by the NSF Procurement Executive.

2501.404 Class Deviations.

Class deviations may be authorized by the NSF Procurement Executive subject to the limitations set forth in FAR Subpart 1.4.

Subpart 2501.6—Contracting Authority and Responsibilities

2501.601 General.

Authority and responsibility to contract for authorized supplies and services is vested in the Director, NSF, within the limits expressly provided by the National Science Foundation Act of 1950 (42 U.S.C. 1861-et seq.) The NSF Procurement Exectuive is delegated overall responsibility by the Director for the Foundation's contracting activities.

2501.602 Contracting Officers.

2501.602–1 Authority.

NSF Contracting Officers have authority to enter into, administer, or terminate contracts and make related determinations and findings to the extent of the authority delegated to them in writing by the NSF Procurement Executive.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2515—CONTRACTING BY NEGOTIATION

Subpart 2515.2—Negotiation Authorities

2515.215–70 NSF Negotiation Authorities.

(a) *Authorities.* Citation: 42 U.S.C. 1870(c).

(b) *Application.* When an NSF contract is for scientific activities which are determined by the NSF contracting officer to be "necessary to carry out the purposes of the NSF Act," then 41 U.S.C. 252(c)(15) is applicable and the contract may be entered into through negotiation rather than formal advertising. The Foundation's contracting officer may, in lieu of reliance on 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15), utilize other applicable negotiating authorities at his or her discretion. 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15) may also be used to authorize negotiation if the Foundation is carrying out, "at the request of the Secretary of State or Secretary of Defense, specific scientific activities in connection with matters relating to international cooperation or national security." Contracts or their modifications entered into under this authority may be done so without legal consideration and without performance or other bonds.

(42 U.S.C. 1870(c))

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2527—PATENTS, DATA, AND COPYRIGHTS

Subpart 2527.70—Disposition of Rights in Inventions

Sec.
2527.7001 General.
2527.7002 NSF patent policy.

Subpart 2527.71—Data Rights [Reserved]

Authority: 35 U.S.C. 200 et seq., commonly called the Bayh-Dole Act, as implemented by Office of Management and Budget Circular A–124; Secs. 11(e) and 12(a) of the National Science Foundation Act, as amended (42 U.S.C. 1870(e) and 1871(a)); and the Presidential Memorandum entitled "Government Patent Policy", issued February 18, 1983.

Subpart 2527.70—Disposition of Rights in Inventions

2527.7001 General.

The policies, procedures, and clauses that govern allocation of rights to inventions made in performance of NSF sponsored research were published in the **Federal Register** on May 2, 1983 at 48 FR 19860 as 45 CFR Part 650. These regulations shall also apply to contracts entered into by the National Science Foundation.

2527.7002 NSF patent policy.

As authorized by the National Science Board at its 230th meeting, October 15–16, 1981, the Director of the National Science Foundation adopted the following statement of NSF patent policy:

(a) As required by the Bayh-Dole Act and the Presidential Memorandum entitled "Government Patent Policy" issued February 18, 1983, the Foundation will use the Patent Rights clause prescribed by the Office of Management and Budget in all its funding agreements for the performance of experimental, developmental, or research work, including contracts for the operation of Government-owned research facilities, unless the Foundation determines that some other provision would better serve the purposes of that Act or the interests of the United States and the general public.

(b) In funding agreements covered by a treaty or agreement that provides that an international organization or foreign government, research institute, or inventor will own or share patent rights, the Foundation will acquire such patent rights, as are necessary to comply with the applicable treaty or agreement.

(c) The Foundation will claim no rights to inventions in funding agreements made primarily for the support of education or training, such as fellowships and traineeships. A disclaimer of interest in inventions will be included in such awards.

(d) If an awardee elects not to retain rights to an invention, the Foundation will allow the inventor to retain the principal patent rights unless the awardee shows that it would be harmed by that action.

(e) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication. However, if another Federal agency is known to be interested in the relevant technology, the Foundation may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.

(f) The Foundation will waive the restrictions imposed by the Bayh-Dole Act on the assignment or exclusive licensing of NSF-supported inventions by a nonprofit organization when that appears to serve the policy and objective of the Act. For identified inventions, the Foundation will waive the restrictions if the nonprofit organization obtains from the prospective assignee or licensee a firm commitment to develop and commercialize the invention. In any industry-university joint research award, the Foundation will waive the restrictions at the time of award if the nonprofit organization shows that they are unfair considering the industrial participant's contribution or that the project will not be undertaken unless they are waived.

(g) In funding agreements not controlled by the Bayh-Dole Act, the Foundation will waive any of the rights or conditions normally reserved or imposed if the grantee or contractor demonstrates (i) that the interests of the United States and the general public will be better served thereby, or (ii) that it is making a substantial contribution of funds, facilities, or equipment to the work performed under the funding agreement.

(h) As far as practical, the Foundation will apply the intent of this policy to funding agreements entered into before the effective dates of the Bayh-Dole Act and the Presidential Memorandum.

Subpart 2527.71—[Reserved]

PART 2532—CONTRACT FINANCING

Subpart 2532.4—Advance Payments

Sec.
2532.401 Statutory authority.
2532.403 Applicability.

Authority: (42 U.S.C. 1870(d)).

Subpart 2532.4—Advance Payments

2532.401 Statutory authority.

The NSF Act (42 U.S.C. 1870(d)) provides that advance, progress, or other payments which relate to scientific activities or scientific information may be made without regard to the provisions of Section 3548 Revised Statutes (31 U.S.C. 529)

2532.403 Applicability.

Advance payments may be made in any amount not exceeding the contract price, provided (a) the amount of the advance payment is based upon an analysis of the financing required by the contractor for the contract and does not exceed reasonable financial requirements between payments, and (b) such advance payment is appropriate in order to contract for the required work.

[FR Doc. 84–31121 Filed 11–26–84; 8:45 am]
BILLING CODE 7555–01–M

Proposed Rules

Federal Register
Vol. 49, No. 230
Wednesday, November 28, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ASW-50]

Proposed Removal of Transition Area; Cleveland, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area at Cleveland OK. The intended effect of the proposed action is to release controlled airspace no longer required for the protection of aircraft executing standard instrument approach procedure (SIAPs). This action is necessary since the proponent of the proposed nonfederal nondirectional radio beacon (NDB) has notified the agency the NDB will not be installed, thereby canceling the need for a 700-foot transition area.

DATE: Comments must be received by January 14, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 84-ASW-50, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2463.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ASW-50." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communication must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area at Cleveland, OK. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety.

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Cleveland, OK [Removed]

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65.)

Issued in Fort Worth, TX, on November 13, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-31090 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-AAL-16]

Proposed Alteration of Colored Federal Airway A-1, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to move Colored Federal Airway A-1 approximately six miles northeastward because of the relocation of the Farewell, AK, Nondirectional Radio Beacon (NDB). The NDB will better serve the users at Farewell Lake, AK, Airport where it is to be relocated.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-16, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AAL-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submittted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.105 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to relocate Colored Federal Airway, Amber 1 approximately six miles northeastward between Puntilla Lake, AK, NDB and Takoma River, AK, NDB. This action is necessitated by the relocation of existing Farewell, AK, NDB to a location in the proximity of Farewell Lake, AK, Airport. Section 71.105 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore — (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Colored Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.105 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

A-1 [Amended]

By removing the words "Farewell, AK, RBN;" and substituting the words "Farewell Lake, AK, NDB;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 19, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-31094 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-AAL-12]

Proposed Designation of Transition Area—Hooper Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a 700 foot transition area in the vicinity of Hooper Bay, AK. A new very high frequency omni-directional radio range distance measuring equipment (VOR/DME) has been installed at Hooper Bay and three new instrument approach procedures have been developed using this navigational aid. The transition area would provide controlled airspace from 700 feet above the surface for departure/arrival aircraft.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-12, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-

Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following is made: "Comments to Airspace Docket No. 84-AAL-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a 700 foot transition area in the vicinity of Hooper Bay, AK. A new VORTAC has been installed at Hooper Bay and three new instrument approach procedures have been developed that have Hooper Bay in their descriptions. This action provides controlled airspace for IFR arrival/departure operations. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Hooper Bay, AK [New]

That airspace extending upward from 700 feet AGL within 9.5 miles southwest and 4.5 miles northeast of the 315° radial from the Hooper Bay VORTAC and from the Hooper Bay VORTAC extending from 16.5 miles northwest, and within 4.5 miles southwest, and 9.5 miles northeast of the 135° radial from the Hooper Bay VORTAC extending from the VORTAC to 23.5 miles southeast.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 19, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-31086 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ASW-49]

Proposed Designation of Control Zone: Ardmore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a part-time control zone at Ardmore, OK. The intended effect of the proposed action is to provide controlled airspace for aircraft executing standard instrument approach procedures (SIAPs) to the Ardmore Municipal Airport. This action is necessary since a part-time nonfederal airport traffic control tower (ATCT) has been commissioned, which will provide communications to the surface and weather reports, which will qualify the airport for a control zone during the hours the ATCT is operational.

DATES: Comments must be received by January 14, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. ———, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2463.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 49." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) since there is a part-time nonfederal ATCT now at the airport which will provide communications to the surface and take the required weather reports to qualify the airport for a control zone while the ATCT is operational. Section 171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Ardmore, OK [New]

Within a 5-mile radius of the Ardmore Municipal Airport (latitude 34°18'12" N., longitude 97°01'01" W.) and within 1.5 miles each side of the Ardmore Vortac 055 degree radial extending from the 5-mile radius area to 8 miles southwest of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Fort Worth, TX, on November 13, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-31091 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 24339; Notice No. 84-20]

14 CFR Part 91

General Operating and Flight Rules; Proposed Change in Two-Way-Radio Communications; Failure Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to change two-way radio communications failure requirements for operations conducted under instrument flight rules (IFR), to clarify when a pilot must leave a clearance limit and begin descent and approach.

DATES: Comments must be received on or before: January 28, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24339, 800 Independence Avenue, SW., Washington, D.C., 20591; or deliver comments in duplicate to FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C., 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Airspace and

Air Traffic Rules Branch (AAT-230), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C., 20591, telephone (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. (24339)." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 91.127 of Part 91 of the Federal Aviation Regulations (14 CFR Part 91) to clarify when a pilot must leave a clearance limit and begin descent and approach. The current rule, § 91.127, provides that a pilot may expect to receive either an "expect further clearance time (EFC)" or an "expect approach clearance time (EAC)" when air traffic control (ATC) issues holding instructions. In the event of two-way radio communications failure, a pilot predicates certain actions on an EAC or EFC if one or the other is received from ATC. However, effective January 21, 1982, ATC discontinued the use of EAC's and adopted a procedure that provides pilots with more accurate and real-time delay information, and thus, a basis for simpler and more precise actions when they experience two-way radio communications failure. This new ATC procedure retains the traditional use of EFC's while providing pilots with additional information on delays that may be expected (e.g., "EXPECT FURTHER CLEARANCE ONE TWO ONE FIVE ANTICIPATE ADDITIONAL TWO ZERO MINUTE DELAY AT (fix)"). This proposed change would bring the rule into line with ATC procedures which are based on the exclusive use of EFC's. Since a simple editorial elimination from the rule of the term "expect approach clearance time" would result in procedural ambiguities, this change would clarify and simplify the rule by indicating the precise pilot responsibilities in terms of when to leave a clearance limit and when to begin the descent and approach.

The FAA has determined that this proposed regulation only involves a technical regulation which currently contains outdated procedures and for which this amendment is necessary to make it operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aviation safety and Air traffic control.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Part 91 of the Federal Aviation Regulations (14 CFR Part 91) by amending § 91.127 to remove paragraphs § 91.127 (c)(4) and (c)(5), and adding a new paragraph § 91.127(c)(3) to read as follows:

§ 91.127 IFR Operations: Two-way radio communications failure.

* * * * *

(c) * * *

(3) *Leave Clearance Limit.* (i) When the clearance limit is a fix from which an approach begins, commence descent or descent and approach as close as possible to the expect further clearance time if one has been received, or if one has not been received, as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

(ii) If the clearance limit is not a fix from which an approach begins, leave the clearance limit at the expect further clearance time if one has been received, or if none has been received, upon arrival over the clearance limit, and proceed to a fix from which an approach begins and commence descent or descent and approach as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. Sections 1348 and 1354(a)); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; and 14 CFR 11.65)

Issued in Washington, D.C., on November 7, 1984.

Norbert A. Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 84-31086 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6558]

Definition of "Annuity Contract or Optional Annuity Contract"

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule that would define the phrase "annuity contract or optional annuity contract," as used in section 3(a)(8) of the Securities Act of 1933, to include any contract with certain features. The rule would create a "safe harbor" by specifying conditions under which a particular contract will not be deemed subject to the federal securities laws. The release also addressed several related matters.

DATE: Comments must be received by February 15, 1985.

ADDRESS: Comments should be sent in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-38-84. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Special Counsel, (202) 272-2061, or Karen L. Skidmore, Attorney, (202) 272-3017, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is proposing for public comment rule 151 under the Securities Act of 1933 [15 U.S.C. 77a et seq.] ("Act") relating to certain types of annuity contracts generally known as "guaranteed investment contracts,"[1] a category which includes single premium deferred annuities. The proposed rule would define the phrase "annuity contract or optional annuity contract," as used in section 3(a)(8) of the Act, to include any annuity contract that (1) is offered by an insurance company or other entity subject to regulation by a state as an issuer of insurance (an "insurer"), (2) includes certain guarantees or principal and interest by the insurer sufficient for it to be deemed to assume the investment risk, and (3) is not marketed primarily as an investment. The proposed rule would in large measure codify the rationale underlying the Commission's generally statement of policy regarding the availability of section 3(a)(8) for these contracts,[2] although the rule would modify and clarify particular aspects of that release. The creation of a "safe harbor" will benefit the public by providing greater certainty in this area, while permitting the Commission to administer its statutes effectively. The Commission also is setting forth its views on several matters relating to the proposed rule.

I. Background and Discussion

Determining the status under the Act of any guaranteed investment contract involves certain factual and legal questions, *e.g.*, whether the insurer or the contractowner is assuming the investment risk under the contract. To the extent the insurer assumes this risk, the contract is similar to the traditional annuity contract[3] that Congress, in section 3(a)(8) of the Act, deemed to be "insurance" not subject to the Act.[4] However, to the extent the insurer does not assume that risk (and thus it is assumed by the contractowner), the contract appears more like the variable annuity contract[5] which the Supreme Court in *Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959) ("*VALIC*"), and in *Securities and Exchange Commission* v. *United Benefit Life Ins. Co.*, 387 U.S. 202 (1967) ("*United Benefit*") held to be a "security" not entitled to rely on section 3(a)(8). Since under a guaranteed investment contract the insurer and the contractowner may *share* the investment risk to varying degrees, depending on the facts and circumstances involved,[6] this type of contract cannot always readily be characterized either as "insurance" or as a "security" for purposes of section 3(a)(8).

Faced with a proliferation of these contracts that were being marketed with particular emphasis on investment features, the Commission in 1979 issued Securities Act Release 6051, setting forth its views as to the factors an insurer should consider in determining whether a contract is within section 3(a)(8).[7] Release 6051 sets forth a facts and circumstances approach, with substantial emphasis on the method of marketing. Notwithstanding its basically sound rationale, some of Release 6051's factors are not objective. The Commission now believes that it would be appropriate to propose a "safe harbor" rule that would prescribe, to the extent possible, an objective test for these contracts for purposes of section 3(a)(8).

II. Proposed Rulemaking

1. The Safe Harbor Concept

As a "safe harbor" rule, rule 151 is not intended to define the features of all guaranteed investment contracts that presently, or in the future, may be entitled to rely on section 3(a)(8).[8] Accordingly, the fact that a contract does not satisfy all of the rule's conditions shall not raise any presumption that it is not entitled to rely on section 3(a)(8). Rather, an insurer may seek to rely directly on the statute, in accordance with relevant judicial interpretations, just as an insurer relying on the rule would not be precluded from also claiming the availability of section 3(a)(8) outside the rule. In addition, while the rule is designed to provide a reasonably objective test, the insurer claiming the availability of the rule has the burden of establishing compliance with all of its conditions.[9] Finally, in view of the rule's objectives, and the purposes and policies underlying the Act, the rule would not be available to any contract in apparent technical compliance with the rule, if the contract is being sold as part of a plan to evade the provisions of the Act.

---

[1] The contracts included within this term are discussed in Securities Act Rel. No. 5638 (June 22, 1977) [42 FR 32861 (June 28, 1977)]. As relevant here, these contracts, generally speaking, are deferred annuities under which the purchaser agrees to pay money to an insurer (either in a lump sum or in installments) and the insurer promises to pay interest at a guaranteed rate for the life of the contract and, in some contracts, the insurer may periodically pay discretionary excess interest over and above the guaranteed rate. In addtion, all of these contracts allow the purchaser to buy an annuity with the monies accumulated under the contract.

[2] *See* Securities Act Rel. No. 6051 (April 5, 1979) [44 FR 21620 (April 11, 1979)] ("Release 6051").

[3] Under a traditional annuity contract, the insurer assumes the investment risk because it guarantees for the life of the contract (1) the principal amount of purchase payments made and interest credited thereto, and (2) to pay a specified rate of interest.

[4] *See Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65, 77-78 (1959).

[5] Under a variable annuity contract, the contractowner generally assumes all the investment risk because the insurer's obligation to the contractowner is only to pay him his proportionate share of the present value of the investment portfolio underlying the contract. *See VALIC*, 359 U.S. at 71.

[6] While the insurer assumes the investment risk to the extent it guarantees principal and a specified rate of interest for the life of the contract, it only shares this risk in the case of discretionary excess interest. The insurer, in initially establishing an excess rate, assumes the risk of that rate, but only for the period of the guarantee. Similarly, in each period thereafter in which discretionary excess interest is declared, the insurer assumes the investment risk of that rate for the period of the guarantee. On the other hand, in each period after the first, the contractowner assumes the investment risk that (1) no discretionary excess interest will be declared or (2) the rate actually declared will fluctuate (up or down) from the rate guaranteed in the immediately preceding period.

[7] The actions of the Commission preceding the issuance of Release 6051 are set forth in Securities Act Rel. No. 6050 (April 5, 1979) [44 FR 21565 (April 11, 1979)]; Securities Act Rel. No. 5633 (May 17, 1978) [43 FR 22053 (May 23, 1978)]; and Securities Act Rel. No 5638, *supra* note 1.

[8] Clearly, however, the rationale underlying the conditions set forth in the rule are, in the Commission's view, relevant to any section 3(a)(8) determination.

[9] *See, e.g., Lively* v. *Hirschfeld*, 440 F.2d 631 (10th Cir. 1971).

2. Proposed Rule 151

Rule 151 would define the phrase "annuity contract or optional annuity contract," as used in section 3(a)(8), to include any contract meeting the three conditions discussed below.

A. The Contract Must Be Issued by a Corporation Subject to Regulation as an Issuer of Insurance by Any State

Any contract seeking to rely on section 3(a)(8), must in the first instance be a "contract of insurance." Consistent with this requirement, and with the language of section 3(a)(8), paragraph (a)(1) of rule 151 requires the contract to be offered by a corporation subject to insurance regulation by any state.[10] The purpose of this initial requirement is to determine whether the status under the Act of the investment vehicle in question should be analyzed pursuant to section 3(a)(8). It must be emphasized that even if the contract satisfies this initial requirement, it nevertheless must be measured against the next two requirements of rule 151 to determine whether it is the type of "contract of insurance" that Congress sought to leave *exclusively* to state regulation.[11]

Release 6051 approaches this initial question from a different perspective by requiring not only that the contract be issued by a company subject to state insurance regulation, but also that it contain certain insurance-related features. One important feature is the requirement that the insurer assume a "meaningful morality risk" under the contract by guaranteeing "permanent" annuity purchase rates that are not "significantly lower than those otherwise commercially available." This requirement has proven difficult for the Commission to administer because it does not provide specific guidance for making the necessary economic determinations. Accordingly, this aspect of Release 6051 has not been incorporated into the rule. At the same time, the Commission recognizes that there is authority for the proposition that the assumption of mortality risk by an insurer is a necessary feature of insurance under the federal definition.[12] Therefore, while the proposed rule does not require an assumption of mortality risk by an issuer, the Commission specifically requests comments regarding whether a requirement of the assumption of mortality should be an element of the rule and, if so, how best to implement such a requirement.

B. The Insurer Assumes the Investment Risk Under the Contract

VALIC and *United Benefit* emphasize that Congress intended section 3(a)(8) to be available to annuity contracts under which the insurer assumes the investment risk. Although these cases, particularly *United Benefit*, do not require the insurer to assume *all* investment risk for a contract to be insurance under section 3(a)(8), they make clear that the degree of investment risk assumed by the insurer is the critical factor.[13] Paragraph (a)(2) of the rule requires that the insurer must assume the investment risk under the contract, as prescribed by paragraph (b) of the rule. Paragraph (b), in turn, prescribes an objective test which provides that the insurer will be deemed to assume the investment risk sufficient for purposes of section 3(a)(8) if the following three conditions are satisfied:

i. *The Value of the Contract Does Not Vary According to the Investment Experience of a Separate Account.*

Where the value of an annuity contract varies according to the investment experience of a separate account [14] the insurer promises to pay the contract owner only his proportionate share of the account's income and gains (or deduct his share of losses), similar to a variable annuity contract. Clearly in such a case the insurer is not assuming any investment risk, while the contract owner is assuming all investment risk and thus needs, and is entitled to, the dislosures the Act requires to be provided to an investor so he can intelligently appraise the risks involved in entrusting his money to the insurer. Paragraph (b)(1) of the rule precludes a contract from relying on the rule if its value varies according to the investment experience of a separate account.

ii. *The Insurer Guarantees Principal and a Specified Rate of Interest For the Life of the Contract.*

As stated in *VALIC* and *United Benefit*, the hallmark of a traditional annuity contract is that the insurer assumes the investment risk by guaranteeing principal and interest for the life of the contract. This section of the rule's investment risk test is based on that conclusion. Paragraphs (b)(2) (i) and (ii) require that the insurer must, for the life of the contract, (1) guarantee the principal amount of purchase payments (net of deductions for sales, administrative, or other expenses) and interest credited thereto;[15] and (2) credit a specified rate of interest to purchase payments and interest credited thereto.[16] These requirements will ensure that, consistent with applicable precedent, a contract relying on the rule includes a guarantee by the insurer that at least some portion of benefits will be paid in a fixed amount.[17]

iii. *The Insurer Guarantees That It Will Not Modify the Rate of Any Discretionary Excess Interest More Frequently Than Once Per Year.*

As discussed above, the insurer assumes investment risk under the contract to the extent it guarantees principal and interest. In the case of discretionary excess interest, the longer the period for which such interest is guaranteed, the greater the degree of investment risk assumed by the insurer.[18] Paragraph (b)(3) of rule 151

[10] Like section 3(a)(8), the rule would be available to any annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or officer performing like functions of any state or territory of the United States or the District of Columbia.

[11] *See VALIC*, 359 U.S. at 74–75.

[12] *See Helvering* v. *Le Gierse*, 312 U.S. 531, 539–41 (1941); Kroll & Cohen, *The Insurance-Security Identity Crisis*, 46 Geo. Wash. L. Rev. 790, 793 (1978).

[13] *See, e.g., United Benefit*, 387 U.S. at 210.

[14] Section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)] ("1940 Act") defines a "separate account" as an account established by an insurer under which income, gains and losses are credited to or charged against such account without regard to other income, gains, or losses of the insurer. A substantially identical definition of this term, as it is used in various rules under the 1940 Act, is contained in rule 0–1(e)(1) under the 1940 Act [17 CFR § 270.0–1(e)(1)].

[15] This requirement would work as follows. If in year one interest is credited under the contract at a rate of 10%, the rule requires the insurer to guarantee, for the remaining life of the contract, the principal amount of the dollar equivalent of the 10% interest actually credited in that year.

[16] The specified rate under the contract must at least be equal to the minimum rate required to be credited by the Standard Nonforfeiture Law used by the states. *See, e.g.*, 27 N.Y. Ins. Law § 208–c (McKinney's 1983–1984 Pocket Part).

[17] *See VALIC*, 359 U.S. at 71. The requirements of this part of the rule would preclude a contract with a "market value adjustment feature" from relying on the rule because the insurer does not guarantee the principal amount of purchase payments and interest credited thereto under the contract. Under this feature, the insurer adjusts the proceeds a contractowner receives upon an early surrender (*i.e.*, a surrender made before the end of a period of guaranteed discretionary excess interest) generally based upon the disparity between the rate of interest being credited to the withdrawn amount and the rate the insurer is crediting to new contracts. Thus, for surrenders made at a time of increasing rates, the adjustment could affect interest credited and principal.

While the rule has been drafted in a manner which precludes a contract with a market value adjustment feature from relying on it, the Commission does not intend to imply that no such contract can properly rely on section 3(a)(8).

[18] Of course, the degree of investment risk assumed by the insurer also is based on the amount

Continued

prescribes what the Commission believes is a reasonable balance by requiring that the insurer guarantee that it will not modify the rate of any discretionary excess interest credited under a contract more frequently than once per year. The Commission recognizes that any time period will necessarily be somewhat arbitrary, since neither Congress nor the courts have provided direct guidance on this issue. However, the Commission believes that Congress' 1982 decision to provide special tax treatment for discretionary excess interest only if it is guaranteed for at least one year supports using a one year time period.[19] While clearly Congress was dealing with the tax treatment to be afforded a guaranteed investment contract, rather than its status under section 3(a)(8), the concerns it sought to address are analogous to those of the Commission. Congress was concerned that this type of contract was being used extensively for a purpose not originally contemplated (*i.e.*, a vehicle for the short-term accumulation of tax-deferred interest rather than a long-term retirement vehicle); and it determined that this concern would, in part, be alleviated by the one year requirement.[20] The Commission similarly has been concerned that the discretionary excess interest provision makes such a contract operate less like a traditional annuity and more like a security and that the one year standard is also appropriate to meet those concerns.

C. The Contract Must Not Be Marketed Primarily as an Investment

The third condition of rule 151, set forth in paragraph (a)(3), is that the contract not be marketed primarily as an investment. This condition is derived principally from *United benefit*, where the Supreme Court, in holding the annuity contract before it to be outside the scope of section 3(a)(8), found significant the fact that the contract was "considered to appeal to the purchaser not on the usual insurance basis of stability and security but on the prospect of 'growth' through sound investment management."[21] Under these circumstances, the Court concluded "it is not inappropriate that promoters' offerings be judged as being what they were represented to be."[22] Similarly, the Commission believes that insurers and others marketing a contract with primary emphasis on discretionary excess interest and other investment-oriented features, while relegating mention of the traditional retirement planning features or an annuity contract to the "fine print," must be viewed as offering a security and not insurance.[23]

The Commission recognizes it is difficult to identify precisely the circumstances under which a contract is being marketed *primarily* as an investment, since all annuity contracts contain some investment features. In the Commission's view, among the factors relevant to this determination are whether the contract is promoted (1) with substantial emphasis on current discretionary excess interest, and the possibility of future interest, or other investment-oriented features of the contract,[24] and (2) as one type of tax-sheltered investment that is interchangeable with other such investments. In those instances where the insurer does not have direct control over the distribution of its contracts, the insurer nevertheless has the responsibility to take reasonable steps to ensure that its contracts are not marketed in a manner that would cause them to be outside rule 151.

IV. Other Matters

Several related matters are addressed below.

1. Status of Release 6051

Since rule 151 will apply only prospectively, Release 6051 will continue to be the Commission's statement of views and method for analyzing guaranteed investment contracts until a final rule is adopted. At that time, the Commission intends to withdraw Release 6051.

2. Section 3(a)(8) as an "Exclusion"

In the Commission's view, there can be no serious question that Congress intended any insurance contract (including any annuity contract or optional annuity contract) falling within section 3(a)(8) of the Act to be excluded from all provisions of the Act, notwithstanding the plain language of the Act that section 3(a)(8) is an "exemption" from the registration but not the antifraud provisions.[25] Similarly, in the Commission's view, a contract which satisfies rule 151 would be excluded from all provisions of the Act.

3. Deposit Fund Riders

Release 6051 prescribes different approaches for determining the availability of section 3(a)(8) to a "deposit fund rider," depending upon its size.[26] While this bifurcated approach may have been appropriate in the context of Release 6051, it is not consistent with the approach of rule 151, which does not include quantitative distinctions. Accordingly, the insurer must, irrespective of the size of the rider, determine its status under section 3(a)(8) or the rule separately.

of discretionary excess interest it guarantees. But that risk, *i.e.*, the risk that the insurer, by making imprudent investments or because of insolvency, will not be able to satisfy its contractual obligations, is the type of risk that Congress deemed to be adequately addressed by state insurance regulation. See VALIC, 359 U.S. at 77.

[19] *See* Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97–248, 96 Stat. 324 (1982). Section 805(f) of the Internal Revenue Code generally permits an insurer, in computing taxable gain or loss from operations, to take a full deduction for discretionary excess interest determined under (1) a rate guaranteed in advance for not less than 12 months or (2) a formula or index guaranteed in advance for not less than 12 months, provided the terms of the formula are beyond the insurer's control and are independent of its investment experience. The Commission has determined it would not be appropriate to incorporate the latter test into rule 151 because an insurer which "externalizes" its discretionary excess interest rate shifts to the contractowner all of the investment risk regarding fluctuations in that rate.

[20] *See, e.g., Tax Equity and Fiscal Responsibility Act of 1982, S. Rep. No. 94*, 97th Cong., 2d Sess. 350 (1982) ("*S. Rep. No. 94*").

[21] *United Benefit*, 387 U.S. at 211.

[22] *Id. Citing Securities and Exchange Commission* v. *C.M. Joiner Leasing Corp.*, 320 U.S. 344, 352–353 (1943). *Accord Grainger* v. *State Sec. Life Ins. Co.*, 547 F.2d 303, *reh'g denied*, 563 F.2d 215 (5th Cir. 1977), *cert. denied*, 436 U.S. 932 (1978) (in determining the availability of section 3(a)(8), it is appropriate to consider, along with the provisions of the contracts, "the circumstances surrounding their sale, including any oral representations made, in determining whether defendants were selling securities").

[23] *CF. S. Rep. No. 94, supra* note 20 350 ("The Committee believes that the use of * * * [guaranteed investment contracts] to meet long-term investment goals, such as income security, is still a worthy goal. However, the committee believes that their use for short-term investment and income tax deferral should be discouraged.").

[24] In particular, one feature that can be marketed in a manner that gives a contract the appearance of a short-term liquid investment, rather than insurance, is an "opt out" provision, under which the insurer agrees to waive the withdrawal charge otherwise applicable to a redemption if at any time the rate of discretionary excess interest falls below a rate specified in the contract.

[25] Section 3(a) exempts the instruments therein from all provisions of the Act "except as hereinafter expressly provided." The fraud provisions of sections 12(2) and 17 of the Act [15 U.S.C. 77*l*(2) and 77q] are specifically made applicable to instruments exempted by section 3. Support for the view that Congress intended section 3(a)(8) to be an exclusion is found in the Act's legislative history (*see H.R. Rep. No. 85*, 73d Cong., 1st Sess. 15 (1933)), Supreme Court decisions (*see, e.g., Tcherepnin* v. *Knight*, 389 U.S. 332, 342 n.30 (1967); *VALIC*, 359 U.S. at 68), and commentators (*see, e.g.*, L. Loss, *Securities Regulation* 496–497 (2d ed. 1961)).

[26] A deposit fund rider typically is associated with an insurance contract and permits monies in excess of the minimum purchase payments for the principal contract to be deposited with the insurer and credited with interest at a discretionary rate. Release 6051 views a "minor" rider as an incidental part of the principal contract, whereas a "significant" rider is viewed essentially as a separate instrument which must be analyzed independent of the principal contract in order to determine the availability of section 3(a)(8).

4. Accounting Treatment of Single Premium Deferred Annuities

Rule 151 is not intended to address the appropriate accounting treatment for any guaranteed investment contracts, including single premium deferred annuities.

5. No-Action and Interpretative Requests

To the extent an insurer is unable, or chooses not, to rely on rule 151, it has the responsibility for determining the status of its contracts under section 3(a)(8). For this reason, and because of the significant administrative burden which might otherwise ensue, the Commission has instructed the staff not to consider requests for no-action or interpretative advice regarding the status of a specific contract under the rule or section 3(a)(8) except in the most compelling circumstances.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule 151

It is proposed that Part 230 of Chapter II of Title 17 of the Code of Federal Regulations be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By adding § 230.151 to read as follows:

§ 230.151 Definition of "annuity contract or optional annuity contract" in Section 3(a)(8), for certain contracts.

(a) Any annuity contract or optional annuity contract (a "contract") shall be deemed to be within the provisions of section 3(a)(8) of the Securities Act of 1933 [15 U.S.C. 77c(a)(8)], *Provided*, That

(1) The contract is issued by a corporation subject to regulation as an issuer of insurance by any agency or officer of any State or Territory of the United States or the District of Columbia (the "insurer");

(2) The insurer assumes the investment risk under the contract as prescribed in paragraph (b) of this section; and

(3) The contract is not marketed primarily as an investment.

(b) The insurer shall be deemed to assume the investment risk under the contract if:

(1) The value of the contract does not vary according to the investment experience of a separate account;

(2) The insurer for the life of the contract

(i) Guarantees the principal amount of purchase payments (net of deductions for sales, administrative, or other expenses) and interest credited thereto; and

(ii) Credits a specified rate of interest to net purchase payments and interest credited thereto; and

(3) The insurer guarantees that the rate of any interest to be credited in excess of that described in paragraph (b)(2)(ii) will not be modified more frequently than once per year.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified that the proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paperwork Reduction Act

The proposed rule is not subject to the Act because it does not impose an information collection requirement.

Statutory Authority

The Commission is proposing rule 151 pursuant to the provisions of section 19(a) [15 U.S.C. 77s(a)] of the Act.

By the Commission,

Shirley E. Hollis,

Acting Secretary.

November 21, 1984.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that Rule 151 under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*], if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that, whether or not a substantial number of small entities offer contracts described in the rule, the economic impact of the rule, if any, on any entity offering such contracts will not be significant, because the rule would, in large part, codify the rationale underlying the Commission's general statement of policy regarding such contracts. The added certainty given by the rule may result in more of these contracts being offered and sold, but the general conditions for application of the securities laws will remain the same.

Dated: November 21, 1984.

John S.R. Shad,

Chairman.

[FR Doc. 84-31122 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

Joint Bidding Requirements; Request for Comments in Response to Petition for the Amendment of a Rule

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments.

SUMMARY: This notice is published pursuant to 43 CFR 14.4. The purpose of this notice is to request comments from all interested parties on the existing joint bidding requirements under 30 CFR 256.43; specifically, § 256.43(a)(3) which defines the term "subsidiary". A request to change or consider a change to 30 CFR 256.43 has been received. Information in response to this notice will be used to determine if an amendment of this particular section of the joint bidding regulations in recommended by those affected by it and therefore warrants further investigation and action by the Department of the Interior. As currently written, the term subsidiary means "a company 50-percent or more of whose stock or other interest having power to vote for the election of directors, trustees, or other similar controlling body of the company is directly or indirectly owned, controlled, or held with the power to vote by another company; a subsidiary shall be deemed a subsidiary of the other company owning, controlling, or holding 50-percent or more of the stock or other voting interest." If comments received indicate a change in the "50 percent or more" restriction is justifiable, the Department would consider amending this language to read "more than 50-percent" or some other variation.

DATE: Written comments must be received no late than December 28, 1984.

ADDRESS: Written comments should be submitted to the Chief, Offshore Leasing Management Division, Minerals Management Service, Mail Stop 645, 12201 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Chris Oynes, Chief, Offshore Leasing Management Division at (202) 343-6906.

Dated: November 13, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84-31110 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Wyoming to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and certification program as required by 30 CFR Part 850.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on December 28, 1984, will not necessarily be considered. A public hearing on the proposal will be held on December 24, 1984, at the location listed below under **"SUPPLEMENTARY INFORMATION."** Any person interested in making an oral or written presentation at the hearing should contact Mr. William R. Thomas, OSM Casper Field Office by 4:00 p.m. on December 13, 1984. If no one has contacted Mr. Thomas to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644.

The public hearing, if requested will be at Federal Building., 100 B Street, Casper, Wyoming 82601. See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Wyoming program amendment and administrative record on the Wyoming program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644; Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION: Copies of the Wyoming program amendment, the Wyoming program and the administrative record on the Wyoming program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002.

The Wyoming program was approved by the Secretary of the Interior on November 26, 1980, **Federal Register** (45 FR 78634-78637). On October 12, 1984, the State of Wyoming submitted to OSM an amendment to its approved permanent regulatory program. The proposed program amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of proposed regulations governing the standards for certification of blasters and a proposed training and certification program for blaster certification. A discussion of each area of concern is provided in an outline which follows the Federal regulations at 30 CFR Part 816, 817, and 850 as published in the March 4, 1983 **Federal Register** (48 FR 9486).

In accordance with the provisions of 30 CFR 732.17, OSM is seeking comments from the public on the adequacy of the proposed program amendment. If the proposed amendment is found by the Director to be in accordance with SMCRA and no less effective than the Federal regulations, the amendment will be approved and codified at 30 CFR Part 950 as part of the approved Wyoming program.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Sec. 503 (30 U.S.C. 1253).

Dated: November 20, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

[FR Doc. 84-31140 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF EDUCATION

34 CFR Part 750

Excellence in Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education (the Secretary) proposes to issue regulations for the implementation of the Excellence in Education Program. The Excellence in Education Program assists

projects in individual public schools designed to achieve excellence in education through activities that are consistent with the purposes of the Excellence in Education Act.

DATE: Comments must be received on or before January 14, 1985.

ADDRESS: Comments should be addressed to Mary Jean LeTendre, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4161, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Enderlein, (202) 472–1762 or at the address above.

SUPPLEMENATARY INFORMATION:

Background

The Excellence in Education Act was enacted as Title VI of the Education for Economic Security Act of 1984, Pub. L. 98–377. The Excellence in Education Act (the EEA) was designed to maintain the momentum for achieving educational excellence that was fostered by the report of the National Commission on Excellence in Education, "A Nation At Risk: The Imperative for Educational Reform," and other reports. In "A Nation At Risk," the Commission detailed the need to reverse the decline in educational quality in this Nation and made specific recommendations for achieving the goal of excellence.

The Excellence in Education program is intended to provide grant assistance for individual public schools across the country that are implementing the recommendations of the Commission or otherwise striving to improve the quality of elementary or secondary education.

Section 602 of the EEA provides for assistance to local educational agencies to carry out projects of excellence in individual public schools through activities that: (1) Demonstrate successful techniques for improving the quality of education, (2) can be disseminated and replicated, and (3) are conducted with the participation of school principals, school teachers, parents, and business concerns in the locality of the school. In addition to these purposes, section 607 of the EEA authorizes special school awards for those schools that obtain financial contributions from the private sector in order to support activities proposed for Federal assistance under the EEA. The Congress has appropriated $5 million for this program in Fiscal Year 1985.

Summary of Major Provisions

(1) Types of Grants

Proposed § 750.10 would implement provisions in sections 604, 605, and 607 of the EEA, establishing two types of awards under this program. Section 750.10 of the proposed regulations would authorize the Secretary to award two types of grants under this program: (1) School excellence grants and (2) special school grants. Special schoiol grants would require the assurance of private sector financial contributions as part of the application, as described in proposed § 750.20(b)(6)(ii). Those schools making such an assurance would be eligible for more funds under this program.

(2) Eligibility

Consistent with section 605(a)(1) of the EEA, under proposed § 750.2(a), a local educational agency (LEA) would be eligible to be considered for a grant under this program if a specific school or schools of that LEA were nominated by the chief State school officer or chief educational officer in accordance with proposed § 750.21. Proposed § 750.2(b) implements the requirement of section 606(b) of the EEA that no individual school is eligible to receive more than one grant award under this program.

(3) Establishing Priorities

Section 750.11 of the proposed regulations would allow the Secretary to establish priorities for this program consistent with section 605(c)(2) of the EEA. Proposed § 750.11(a) would implement the requirement of section 605(a)(2) of the EEA that the Secretary give priority to applications that have the highest potential for successfully demonstrating techniques to improve the quality of education and that can be disseminated and replicated. Under proposed § 750.11(B), the Secretary could also give priority to applications that have as their purposes one or more (or combinations) of those listed in section 605(c)(2)(A)–(G) of the EEA. Additionally, proposed § 750.11(c) would permit the Secretary to select as a priority other types of projects as announced in the **Federal Register**. The Secretary could establish a separate competition for each priority selected pursuant to proposed § 750.11(d).

In addition to establishing funding priorities under paragraphs (a) and (b) of proposed § 750.11, the Secretary could invite applicants to propose projects in any area of education within the purposes of the Excellence in Education Act. The purpose of the EEA is to provide funds to individual public schools to implement projects designated to achieve excellence.

(4) The Application and Selection Process

Proposed §§ 750.20 and 750.21 would implement the application procedures required by section 605(a) and (b) of the EEA. Under proposed § 750.20, a local educational agency would have to submit to the chief State school officer or to the chief educational officer an application for each school for which the local educational agency applied for a grant. Under proposed § 750.21, the chief State school officer could select from those applications up to twenty-five for submission to the Secretary. In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the chief educational officer could select up to five applications. Proposed § 750.21 would establish the process for use by the chief State school officer or the chief educational officer in selecting schools to nominate to the Secretary.

(5) Selection Criteria

Proposed § 750.31 would implement the requirement of section 605(c)(1) of the EEA that applications be selected for funding under this program based on uniform criteria. Section 750.31 of the proposed regulations would establish selection criteria for use by the Secretary in evaluating applications nominated by the chief State school officers or chief educational officers for school excellence grants and special school grants. In addition to the points indicated in parentheses following each criterion in proposed § 750.31, proposed § 750.30 would permit the Secretary to distribute a reserved 15 points among the applicable criteria. The Secretary would announce, in a notice published in the **Federal Register**, how the reserved points would be distributed for each competition.

(6) Funding Limitations

Proposed § 750.33 would implement the requirements of section 606 of the EEA that the Secretary base the amount of a grant award to an individual school on the size of the school, specifically, the number of students enrolled in the school and the number of teachers teaching in the school.

For school excellence grants, schools with fewer that 1,000 students and teachers would receive up to $15,000 for a one-year project or up to $30,000 for a two-year project under proposed § 750.33(b). Schools with 1,000 or more students and teachers could receive up to $20,000 for a one-year project or up to § 35,000 for a two-year project.

For special school grants, schools with fewer than 1,000 students and teachers could receive up to $20,000 for a one-year project or up to $35,000 for a two-year project under § 750.33(c). Schools with 1,000 or more students and teachers could receive up to $25,000 for a one-year project or up to $40,000 for a two-year project.

Proposed § 750.33(d), in implementing section 606(b) of the EEA, would limit the length of a grant under this program to a project period no longer than two years.

(7) Cost Sharing

Cost sharing would be a required post-award condition for a grantee receiving a special school grant. Proposed § 750.40 would implement the requirement of section 607(b) of the EEA that the Federal share for each year of the grant be not less than 67 2/3 percent nor more than 90 percent of the total cost of the project. The Secretary would announce, in a notice published in the **Federal Register**, the Federal share for each category of special school grants. Proposed § 750.40(c) would implement section 607(b) of the EEA, requiring the Secretary to base the Federal share for each category of special school grants upon uniform selection criteria. Under proposed § 750.40(c), the Secretary would base the Federal share for each competition established in any year on the following criteria: (1) If the Secretary has selected a priority for the competition, the extent to which private sector contributions will enhance the implementation of projects under that priority, and (2) the amount of funds appropriated or likely to be appropriated for this program in a particular year. For example, the Secretary could select as a priority, demonstrations of new and promising models of school-community and school-to-school relationships including the use of nonschool personnel to alleviate shortages in areas such as mathematics, science, and foreign language instruction, as well as other partnerships between business and education, including the use of equipment. Since projects addressing this priority would require private sector support, the Secretary could establish the Federal share as 67 2/3 percent. By requiring a larger non-Federal share, the Secretary would make it necessary for local schools to seek maximum private sector contributions.

As defined in the Education Department General Administration Regulations (EDGAR), 34 CFR 77.1, "project" means only the activity described in an application. Accordingly, a special school project could be part of one or more larger programs conducted at the local level.

Although proposed § 750.20(b)(6)(ii) would require an assurance that some private funds would be contributed to meet the cost of a special school project, the non-Federal share of the project costs would not have to be borne entirely by the private sector.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. In fiscal year 1985, it is anticipated that 250 or fewer grants not in excess of $25,000 each will be awarded under this program to LEAs for individual public schools. The proposed regulations would impose minimal burden on States, LEAs, and schools.

Paperwork Reduction Act of 1980

The information collection requirements contained in these regulations at §§ 750.20 and 750.21 will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Comments that concern *only* information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4161, 400 Maryland Avenue, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 750

Education, Grant program—education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance number ——, Excellence in Education Program)

Dated: November 23, 1984.

T.H. Bell

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 750 to read as follows:

PART 750—EXCELLENCE IN EDUCATION PROGRAM

Subpart A—General

Sec.

750.1 What is the Excellence in Education Program?
750.2 What parties are eligible for a grant under the Excellence in Education Program?
750.3 What regulations apply to this program?
750.4 What definitions apply to this program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

750.10 What types of grants does the Secretary award under this program?
750.11 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

Sec.
750.20 How does a local educational agency apply for a grant under this program?
750.21 How does a State educational agency nominate a school for a grant under this program?

Subpart D—How Does the Secretary Make a Grant?

750.30 How does the Secretary evaluate an application?
750.31 What selection criteria does the Secretary use?
750.32 How does the Secretary consider fair and equitable distribution of projects?
750.33 What funding limitations apply to grants under this program?

Subpart E—What Conditions Must Be Met by the Grantee?

750.40 Is cost sharing required for grants under this program?
750.41 Are there restrictions on the use of funds for equipment under this program?

Authority: Excellence in Education Act (the EEA), Title VI of the Education for Economic Security Act (the EESA), Pub. L. 98–377, 98, Stat. 1267 (20 U.S.C. 4031), unless otherwise noted.

Subpart A—General

§ 750.1 What is the Excellence in Education Program?

The Excellence in Education Program assists local educational agencies to carry out, in individual schools of those agencies, projects designed to achieve excellence in elementary and secondary education that—

(a) Demonstrate successful techniques for improving the quality of education;

(b) Can be disseminated and replicated; and

(c) Are conducted with the participation of school principals, school teachers, parents, and business concerns in the locality.

(Sec. 602 of the EEA)

§ 750.2 What parties are eligible for a grant under the Excellence in Education Program?

(a) Subject to the limitation in paragraph (b) of this section, a local educational agency is eligible to receive a grant under the Excellence in Education Program if a specific school or schools of that local educational agency have been nominated in accordance with § 750.21.

(b) A local education agency may not receive more than one grant award under this program for each individual school of the local educational agency.

(Sec. 604, 605, and 606 of the EEA)

§ 750.3 What regulations apply to this program?

(a) The following regulations apply to grants under the Excellence in Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grants), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs).

(2) The regulations in this Part 750.

(b) The regulations in this Part 750 do not apply to contracts awarded under the Excellence in Education Program.

(Sec. 604 of the EEA)

§ 750.4 What definitions apply to this program?

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in sections 3 and 603 of the Education for Economic Security Act:

Elementary school
Local educational agency
Secondary school
Secretary
State
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal year
Grant
Grant period
Project
Public

(c) *Additional definitions.* The following terms are used in this part:

"Chief educational officer" means the chief educational officer of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"Chief State school officer" means the chief educational officer of each State other than the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"EEA" means the Excellence in Education Act, Title VI of Public Law 98–377.

"EESA" means the Education for Economic Security Act, Public Law 98–377.

(Sec. 3 of the EESA and Sec. 603 of the EEA)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 750.10 What types of grants does the Secretary award under this program?

The Secretary awards two types of grants under this program:

(a) *School excellence grants.* The Secretary awards school excellence grants to carry out the purposes of this program described in § 750.1.

(b) *Special school grants.* The Secretary awards special school grants to encourage contributions of funds from the private sector to carry out further the purposes of this program.

(Sec. 605 and 607 of the EEA)

§ 750.11 How does the Secretary establish priorities for this program?

(a) The Secretary gives priority to applications proposing projects that have the highest potential for successfully demonstrating techniques to improve the quality of education and that can be disseminated and replicated.

(b) The Secretary also gives priority to applications that have as their purposes one or more (or combinations) of the following—

(1) Modernization and improvement of secondary school curricula to improve student achievement in academic or vocational subjects, or both, and competency in basic functional skills;

(2) Elimination of excessive electives and the establishment of increased graduation requirements in basic subjects;

(3) Improvement in student attendance and discipline through the demonstration of innovative student motivation techniques and attendance policies with clear sanctions to reduce student absenteeism and tardiness;

(4) Demonstrations to increase learning time for students;

(5) Experimentation providing incentives to teachers and teams of teachers for outstanding performance, including financial rewards, administrative relief such as the removal of paperwork and extra duties, and professional development;

(6) Demonstrations to increase student motivation and achievement through creative combinations of independent study, team teaching, laboratory experience, technology utilization, and improved career guidance and counseling; or

(7) Demonstrations of new and promising models of school-community and school-to-school relationships including the use of nonschool personnel to alleviate shortages in areas such as mathematics, science, and foreign language instruction, as well as other partnerships between business and education, including the use of equipment.

(c) In addition to establishing priorities for this program pursuant to paragraphs (a) and (b) of this section, the Secretary may also give priority to other types of projects as announced in the **Federal Register**.

(d) The Secretary may establish a separate competition for any or each priority selected. If a separate competition is established for a priority, the Secretary may reserve all applications that relate to the priority for review under the separate competition.

Note.—EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

(Sec. 605 of the EEA)

Subpart C—How Does One Apply for a Grant?

§ 750.20 How does a local educational agency apply for a grant under this program?

(a) A local educational agency shall submit to the chief State school officer (or chief educational officer) of the State, in which the local educational agency is located a separate application for each school with respect to which the local educational agency is applying for a grant. In any fiscal year in which the Secretary establishes separate grant competitions within this program, a local educational agency may apply for more than one grant for an individual school by submitting separate applications to each or any of the grant competitions. Pursuant to § 750.2(b), a local educational agency may receive only one grant under this program for each individual school.

(b) In addition to the information required in EDGAR, 34 CFR 75.107, the local educational agency must include in its application the following information:

(1) The type of grant under § 750.10 for which the local educational agency is applying.

(2) The name and location of the school.

(3) School size in terms of the number of students enrolled and the number of teachers teaching in the school.

(4) The size, socioeconomic conditions, location of the community in which the school is located, and the local governmental arrangements between the government and the local educational agency submitting the application.

(5) A description of the activities, including information designed to meet the selection criteria listed in § 750.31, that will be conducted in the school nominated.

(6) Assurances that—

(i) The school nominated for a grant will carry out the activities proposed in the application; and

(ii) If a school is nominated for a special school grant as described in § 750.10(b), it will receive contributions of funds from the private sector to help carry out the activities proposed in the application.

(7) An assessment of the potential for the proposed project to successfully demonstrate techniques for improving the quality of education that can be disseminated and replicated.

(Sec. 605 of the EEA)

§ 750.21 How does a State educational agency nominate a school for a grant under this program?

(a) In each fiscal year, the chief State school officer of each State may select for nomination to the Secretary up to twenty-five applications from those submitted in accordance with § 750.20(a). In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the chief educational officer may select up to five applications.

(b) In selecting schools to nominate under this section, the chief State school officer or chief educational officer shall assure a fair and equitable distribution of schools within the State after considering—

(1) All categories of public elementary and secondary schools within the State, including elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more schools;

(2) Socioeconomic conditions of the State;

(3) Geographic distribution within the State;

(4) School size;

(5) The size and location of the community in which the school is located;

(6) The local governmental arrangements between the government and the local educational agency submitting the application;

(7) The potential for the proposed project to demonstrate successfully techniques for improving the quality of education in ways that can be disseminated and replicated; and

(8) Other relevant information provided by the local educational agency in its application, including information that addresses each selection criterion in § 750.31.

(c) In order to nominate individual schools in local educational agencies for grants under this program, each chief State school officer or chief educational officer shall send to the Secretary the following information regarding each individual school to be nominated to the Secretary:

(1) The application submitted by the local educational agency that nominated the school.

(2) Any additional information considered under paragraph (b) of this section that is not included in the application and that is needed to enable the Secretary to make a determination under § 750.32.

(3) Any additional information that the chief State school officer (or chief educational officer) and local educational agency consider appropriate.

(Sec. 605 of the EEA)

Subpart D—How Does the Secretary Make a Grant?

§ 750.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 750.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 750.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the criteria in § 750.31.

(Sec. 605 of the EEA)

§ 750.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the school's need and to the purposes of this program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that traditionally have been underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) The quality of the work plan as evidenced by the specification and schedule of well-planned, creative, and innovative activities designed to achieve the project objectives; and

(vii) The participation of school principals, school-teachers, parents, and business concerns in the locality.

(b) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel that the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget of the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows the methods of assessing and reporting the outcomes of the project are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(3) The Secretary looks for information that shows reporting methods that enhance the potential for disseminating and replicating the project.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improving elementary or secondary education.* (15 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project contributes to the improvement of the quality of elementary or secondary education in the applicant's school through activities designed to implement recommendations from the Report of the National Commission on Execellence in Education, other national reports on the status of American education, or current research findings on approaches to making schooling more effective.

(2) The Secretary looks for information such as—

(i) The extent to which the project's objectives apply, to the school's particular circumstances and needs, current recommendations and findings concerning ways to improve the quality of education;

(ii) The process by which the applicant identified its needs;

(iii) The manner in which those objectives form the basis of the activities designed to demonstrate successful techniques for improving the quality of education in the applicant's school;

(iv) The extent to which the project provides potential to experiment with standards of quality; and

(v) The benefit to the applicant from meeting the project's objectives.

(g) *National significance.* (15 Points)

(1) The Secretary reviews each application for information that shows the national significance of the project.

(2) The Secretary looks for information that shows the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) A demonstrated national need for the project in terms of the recommendations to improve the quality of education in the Report of the National Commission on Excellence in Education, other national reports on the status of American schools, or current research findings on ways to improve the effectiveness of schools;

(ii) The extent to which the project meets specific national needs as shown by—

(A) The national needs addressed by the project;

(B) The potential benefit to other schools in the Nation from successfully addressing the needs;

(C) The extent to which the project involves creative or innovative techniques to improve educational quality in the school;

(D) The extent to which the project builds upon and adds to current educational information or research; and

(E) The extent to which the project is designed to yield outcomes that can be readily disseminated and replicated in other school settings, such as products, materials, processes, or techniques.

(h) *Applicant's commitment and capacity.* (5 Points) The Secretary looks for information that shows the extent of the applicant's commitment to the project, its efforts to generate community support for the project, and the likelihood that it will build on the project when Federal assistance ends.

(Sec. 602 and 605 of the EEA)

§ 750.32 How does the Secretary consider fair and equitable distribution of projects?

(a) After evaluating the applications according to the criteria contained in § 750.31 of these regulations, the Secretary determines whether the most highly rated applications are fairly and equitably distributed throughout the Nation and throughout each State. In determining whether the most highly rated applications are fairly and equitably distributed, the Secretary considers—

(1) All categories of public elementary and secondary schools within each State and within the Nation, including elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more schools;

(2) Socioeconomic conditions within the State and the Nation;

(3) Geographical distribution within the State and the Nation;

(4) School size;

(5) The size and location of the community in which the school is located;

(6) The local governmental arrangements between the government and the local educational agency submitting the application; and

(7) The potential for the proposed project to demonstrate successfully techniques for improving the quality of education that can be disseminated and replicated.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under a particular competition or under this program.

(Sec. 605 of the EEA)

§ 750.33 What funding limitations apply to grants under this program?

(a) The amount of a grant awarded to a local educational agency for an individual school must be based on the size of the school, the number of students enrolled in the school, and the number of teachers teaching in the school.

(b) With respect to school excellence grants, the amount of the grant may exceed the following:

(1) For schools with a size of fewer than 1000 students and teachers combined, $15,000 for a one-year project and $30,000 for a two-year project.

(2) For schools with a size of 1000 or more students and teachers combined, $20,000 for a one-year project and $35,000 for a two-year project.

(c) With respect to special school grants, the amount of the grant may not exceed the following:

(1) For schools with a size of fewer than 1000 students and teachers combined, $20,000 for a one-year project and $35,000 for a two-year project.

(2) For schools with a size of 1000 or more students and teachers combined, $25,000 for a one-year project and $40,000 for a two-year project.

(d) A grant under this program may not be made for a project period longer than two years.

(Sec. 606 and 607 of the EEA)

Subpart E—What Conditions Must Be Met by the Grantee?

§ 750.40 Is cost sharing required for grants under this program?

(a) The Secretary requires cost sharing only for grantees that receive special school grants.

(b) The Federal share for each year of the grant may not be less than 67⅔ percent nor more than 90 percent of the total cost of the project for which a special school grant is awarded.

(c) The Secretary announces, in a notice published in the **Federal Register**, the Federal share for each competition established for special school grants. The Secretary bases the Federal share for each competition on the following criteria:

(1) If the Secretary has selected a priority for the competition, the extent to which private sector contributions will enhance the implementation of projects under that priority; and

(2) The amount of funds appropriated (or likely to be appropriated) for this program in a particular year.

Note.—EDGAR establishes the rules governing cost sharing. See 34 CFR 74.50–74.57.

(Sec. 607 of the EEA)

§ 750.41 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used to purchase equipment.

(Sec. 605 of the EEA)

[FR Doc. 84-31117 Filed 11-27-84; 8:45 am]
BILLING CODE 4000-01-M

---

34 CFR Part 755

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages

AGENCY: Department of Education.

ACTION: Proposal rule.

SUMMARY: The Secretary of Education (the Secretary) proposes to issue regulations for the implementation of the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, as authorized by the Education for Economic Security Act. This program assists projects of national significance in: (1) Mathematics and science instruction, computer learning, and critical foreign language instruction, designed to improve the skills of teachers and instruction and to increase access of all students to this instruction; and (2) critical foreign languages, designed to improve or expand instruction.

DATES: Comments must be received on or before January 14, 1985.

ADDRESS: Comments should be addressed to Mary Jean LeTendre, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue SW., Room 4181, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Enderlein, (202) 472–1762 or at the address above.

SUPPLEMENTARY INFORMATION:

Background

Section 212, Title II of the Education for Economic Security Act (EESA), Pub. L. 98–377, authorizes the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages. The EESA was enacted to help meet the needs identified in "A Nation At Risk: The Imperative for Educational Reform," the report of the National Commission on Excellence in Education, and other national reports. Specifically, "A Nation at Risk" details a need to reverse the decline in mathematics and science competency in this country. This decline results in part from a shortage of qualified teachers as well as a reduction in the number of students taking courses in mathematics and science. Mathematics, science, computer technology, and foreign languages have a special importance in this country because continuing development in these areas is vital to the economic security of the Nation. In order to maintain economic strength, the skills of citizens in these fields must not be permitted to decline further. The purpose of the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages is to reverse this decline by funding projects designed to have nationwide impact in these critical areas. The Congress has appropriated $9.9 million for this program in Fiscal Year 1985.

Summary of Major Provisions

(1) Types of Grants

Section 755.10 of the proposed regulations would authorize the Secretary to award two types of grants under this program: (1) nationally significant project grants, as described in § 755.11, and (2) critical foreign language grants, as described in § 755.12. State educational agencies

(SEAs), local educational agencies (LEAs), institutions of higher education, and private nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations could apply for nationally significant project grants under proposed § 755.2(a). For critical foreign language grants, under proposed § 755.2(b), only institutions of higher education could apply.

(2) Establishing Priorities

Under proposed § 755.13(a), with respect to nationally significant project grants, the Secretary would give priority for funding to (1) LEAs, or consortia thereof, proposing to establish or improve magnet schools for gifted and talented students, and (2) applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science. (For the purposes of this program, magnet schools are those designed to attract gifted and talented students in the areas of mathematics, science, computer learning, or critical foreign languages and are distinct from magnet schools under Title VII of the EESA, which are for the purpose of achieving desegregation). Proposed § 755.13(a) would implement the requirement of section 212(b)(1) of the EESA that the Secretary give "special consideration" to these types of projects.

In addition, under proposed § 755.13(b), the Secretary could give priority to other types of projects listed in proposed §§ 755.11 and 755.12 or announced in the **Federal Register**. Proposed § 755.13(b) would also permit the Secretary to limit a priority to particular critical areas (including mathematics, science, computer learning, or particular critical foreign languages), particular educational levels, or any combination. Pursuant to proposed § 755.4, the Secretary would publish a list of critical foreign languages in the **Federal Register**. Levels of education would include, for example, preschool, elementary, secondary, or postsecondary education. The Secretary could establish a separate competition for each priority selected.

Sections 755.11 through 755.13 of the proposed regulations would incorporate the statutorily broad discretion of the Secretary to exercise leadership in education by focusing national attention on national needs within the scope of section 212 of the EESA. Under proposed § 755.13(b), the Secretary could invite applicants to propose projects in any area of education within the purpose of section 212 of the EESA. The purpose of section 212 of the EESA is to fund projects designed to have nationwide impact in mathematics, science, computer learning, or critical foreign languages. Proposed §§ 755.11(c) and 755.12(d) would make clear that the Secretary does not provide general operating revenue to any applicant, including an LEA, an institution of higher education, or any other agency that needs or wishes additional resources to meet its own local needs.

(3) Participation of Children and Teachers From Private Schools

Proposed § 755.20 would implement the requirements in section 211 of the EESA for the equitable participation of private school children and teachers in the purposes and benefits of Title II of the EESA. As indicated in proposed § 755.20(a), the requirement for the equitable participation of children applies to States (including SEAs and State agencies for higher education) and LEAs. To make the requirements for the equitable participation of teachers in section 211(b) of the EESA consistent with other statutory provisions, proposed § 755.20 makes that requirement applicable to LEAs as well as to States (including SEAs and State agencies for higher education).

Section 755.20(b) of the proposed regulations would require an applicant that is a State (including an SEA or a State agency for higher education) or an LEA to provide an assurance in its application that it will comply with the requirements of section 211 of the EESA, governing the equitable participation of private school children and teachers, if such an applicant proposes to provide benefits under the EESA to public school children and teachers. Specific requirements are established in the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.650. Applicants other than those described above are not subject to the equitable participation requirements in section 211 of the EESA or in EDGAR.

(4) Selection Criteria

Selections 755.31 and 755.32 of the proposed regulations would establish selection criteria for use by the Secretary in evaluating applications for nationally significant project grants and for critical foreign language grants, respectively. In addition to the points indicated in parentheses following each criterion in proposed §§ 755.31 and 755.32, proposed § 755.30 would permit the Secretary to distribute a reserved 15 points among the applicable criteria for each grant competition. The Secretary would announce, in a notice published in the **Federal Register**, how the reserved points would be distributed for each competition.

(5) Funding Considerations

Under proposed § 755.33 (a) and (b), the Secretary could fund applications other than the most highly rated applications if doing so would improve the geographical distribution of projects receiving funding in a particular competition or under this program. Proposed § 755.33 (a) and (b) would implement the requirement of section 212 of the EESA that projects assisted under this program have national significance by permitting the Secretary to assist projects that are best located to serve as resources for solving nationwide educational problems. Under proposed § 755.33(c), the Secretary could decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program. Under proposed § 755.33(d), the Secretary would not fund a project that receives Federal funds for the same project activities under title II of the EESA.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These regulations will not affect a substantial number of small entities. Only a small number of awards is planned for fiscal year 1985, and the proposed regulations would impose minimal burden on applicants and grantees.

Paperwork Reduction Act of 1980

The information collection requirements contained in §§ 755.20, 755.31, and 755.32 of these proposed regulations will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Comments that concern *only* information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Intergovernmental Review

The Secretary particularly requests comments on the proposed exclusion of this program from the requirements of Executive Order 12372, entitled "Intergovernmental Review of Federal Programs," as implemented by 34 CFR Part 79 (48 FR 29158; June 24, 1983). The bases for the proposed exclusion are categories 2b and 4b of the general Government-wide criteria (which are contained in appendix A to a notice published June 24, 1983, at 48 FR 29169). Criterion 2b excludes a research, development, and demonstration program other than those described in criterion 4b. Criterion 4b includes such a program within coverage of Executive Order 12372 if the program has a unique geographic focus, or is directly relevant to the governmental responsibilities of a State or local government within that geographic area. In contrast, this program assists nationally significant projects and activities that are designed to have nationwide impact.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4181, 400 Maryland Avenue SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 755

Education, Grants program—education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: November 23, 1984.

T.H. Bell,

Secretary of Education.

(The Catalog of Federal Domestic Assistance number is not available.)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 755 to read as follows:

PART 755—SECRETARY'S DISCRETIONARY PROGRAM FOR MATHEMATICS, SCIENCE, COMPUTER LEARNING, AND CRITICAL FOREIGN LANGUAGES

Subpart A—General

Sec.

755.1 What is the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages?
755.2 What parties are eligible for a grant under this program?
755.3 What regulations apply to this program?
755.4 What definitions apply to this program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

755.10 What types of grants does the Secretary award under this program?
755.11 What types of projects does the Secretary assist under a nationally significant project grant?
755.12 What types of projects does the Secretary assist under a critical foreign language grant?
755.13 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

755.20 What assurance must an applicant make?

Subpart D—How Does the Secretary Make a Grant?

755.30 How does the Secretary evaluate an application?
755.31 What are the selection criteria for nationally significant project grants?
755.32 What are the selection criteria for critical foreign language grants?
755.33 What special considerations may the Secretary use in selecting an application for funding?
755.34 Are there restrictions on the use of funds for equipment under this program?

Authority: Section 212, Title II of the Education for Economic Security Act (the EESA), Pub. L. 98–377, 98 Stat. 1281 (20 U.S.C. 3972), unless otherwise noted.

Subpart A—General

§ 755.1 What is the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages?

The Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages assists projects of national significance in—

(a) Mathematics and science instruction, computer learning, and critical foreign language instruction, designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to this instruction; and

(b) Critical foreign languages, designed to improve and expand instruction in those languages.

(Sec. 212 of the EESA)

§ 755.2 What parties are eligible for a grant under this program?

(a) The Secretary may award nationally significant project grants under § 755.11 to State educational agencies, local educational agencies, institutions of higher education, and private nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations.

(b) The Secretary may award critical foreign language grants under § 755.12 to institutions of higher education only.

(Sec. 212 of the EESA)

§ 755.3 What regulations apply to this program?

(a) The following regulations apply to grants made under this program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 755.

(b) The regulations in this Part 755 do not apply to contracts awarded under this program.

(Sec. 212 of the ESSA)

§ 755.4 What definitions apply to this program?

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in Section 3 of the Education for Economic Security Act:

Elementary school
Institution of higher education
Local educational agency
Secondary school
Secretary
State
State agency for higher education
State educational agency

(b) *Definitions in EDGAR.* The following terms used in in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal Year
Grant
Nonprofit
Private
Project
Public

(c) *Additional definitions.* The following terms are used in this part:

"Critical foreign languages" means language designated by the Secretary in a notice published in the Federal Register as critical to national security, economic, or scientific needs.

"EESA" means the Education for Economic Security Act, Public Law 98-377.

"Gifted and talented student" means a student, identified by various measures, who demonstrates actual or potential high performance capability in the fields of mathematics, science, foreign languages, or computer learning.

(Sec. 212 of the EESA)

Subpart B—What Types of Projects Does the Secretary Assist under This Program?

§ 755.10 What types of grants does the Secretary award under this program?

The Secretary awards two types of grants under this program:

(a) Nationally significant project grants, as described in § 755.11.

(b) Critical foreign language grants, as described in § 755.12.

(Sec. 212 of the EESA)

§ 755.11 What types of projects does the Secretary assist under a nationally significant project grant?

(a) The Secretary funds applications proposing projects of national significance in mathematics and science instruction, computer learning, and critical foreign language instruction.

(b) Projects funded under this section may include, but are not limited to, those designed to—

(1) Improve teacher recruitment and retention in the fields of mathematics, science, computer learning, and critical foreign languages;

(2) Improve teacher qualifications and skills in the fields of mathematics, science, computer learning, and critical foreign languages; and

(3) Improve curricula in mathematics, science, computer learning, and critical foreign languages, including the use of new technologies.

(c) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Sec. 212 of the EESA)

§ 755.12 What types of projects does the Secretary assist under a critical foreign language grant?

(a) The Secretary funds applications proposing projects that are designed to improve or expand instruction in critical foreign languages.

(b) Projects to improve instruction in critical foreign languages may include, but are not limited to, those designed to—

(1) Provide short- or long-term advanced training to foreign language instructors;

(2) Provide training in new teaching methods and proficiency evaluation techniques; and

(3) Improve teaching methods through curriculum development, including the use of new technologies.

(c) Projects to expand instruction in critical foreign languages may include, but are not limited to, those designed to—

(1) Add to the curriculum languages not currently offered;

(2) Add to the curriculum advanced language courses;

(3) Devise instructional approaches suited to diverse student populations and learning needs; and

(4) Use technology to increase access to instruction in critical foreign languages.

(d) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Sec. 212 of the EESA)

§ 755.13 How does the Secretary establish priorities for this program?

(a) With respect to nationally significant project grants, the Secretary gives priority to—

(1) Local educational agencies, or consortia thereof, proposing to establish or improve magnet schools for gifted and talented students; and

(2) Applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science.

(b) In addition to the priorities established in paragraph (a) of this section, each year the Secretary may select as a priority one or more of the types of projects listed in § 755.11 or § 755.12, or other types of projects as announced in the Federal Register. The Secretary may limit any priority to particular critical subjects (including mathematics, science, computer learning, or particular critical foreign languages), particular educational levels, or any combination.

(c) The Secretary selects priorities by taking into consideration the unmet national needs to improve the quality of teaching and instruction in mathematics, science, computer learning, and critical foreign languages and the unmet national needs to improve or expand instruction in critical foreign languages.

(d) The Secretary may establish a separate competition for any or each priority selected. If a separate competition is established for a priority, the Secretary may reserve all applications that relate to that priority for review under the separate competition.

Note.—EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

(Sec. 212 of the EESA)

Subpart C—How Does One Apply for a Grant?

§ 755.20 What assurance must an applicant make?

(a) An applicant that is a State (including a State educational agency or a State agency for higher education) or a local educational agency shall comply with the provisions of section 211 of the EESA, governing the equitable participation of private school children and teachers in the purposes and benefits of the EESA.

(b) An applicant described in paragraph (a) of this section shall include an assurance in its application that, in accordance with section 211 of the EESA, it will provide for the equitable participation of children and teachers in private elementary or secondary schools if the applicant proposes to use grant funds to provide benefits to children and teachers in public elementary or secondary schools, including the provision of services, materials, equipment, and inservice or teacher training and retraining.

Note.—EDGAR established requirements for participation of private school children. See 34 CFR 75.650.

(Sec. 211 of the EESA)

Subpart D—How does the Secretary Make a Grant?

§ 755.30 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria in § 755.31 or § 755.32.

(b) The Secretary awards up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the applicable criteria in § 755.31 or § 755.32.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion in § 755.31 or § 755.32 is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the Federal Register, the Secretary distributes the reserved 15 points among the applicable criteria listed in § 755.31 or § 755.32.

(Sec. 212 of the EESA)

§ 755.31 What are the selection criteria for nationally significant project grants?

The Secretary uses the following criteria in evaluating each application for a nationally significant project grant under § 755.11:

(a) *Plan of operation.* (15 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vi) For applicants required to provide an opportunity for equitable participation of private school students and teachers—a clear description of how the applicant will provide that opportunity.

(b) *Quality of key personnel.* (10 Points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.* (20 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project will contribute to the improvement of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.

(2) The Secretary looks for information such as—

(i) The objectives of the project; and

(ii) The manner in which the objectives of the project further the purpose of improving the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.

(g) *National significance.* (15 Points)

(1) The Secretary reviews each application for information that shows the national significance of the project.

(2) The Secretary looks for information that shows the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) A demonstrated national need for the project in terms of the recommendations to improve the quality of education in the Report of the National Commission on Executive in Education, other national reports on the status of American education, or current research findings on ways to improve the effectiveness of schools;

(ii) The extent to which the project meets specific national needs as shown by—

(A) The national needs addressed by the project;

(B) The benefits to be gained by meeting the objectives of the project; and

(C) The potential benefit to others from successfully addressing the needs;

(iii) The extent to which the project involves creative or innovative techniques to improve the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages;

(iv) The extent to which the project builds upon and adds to current educational information and research; and

(v) The extent to which the project will provide a model or other

information that could be used by others to solve educational problems.

(h) *Applicant's commitment and capacity.* (10 Points)

The Secretary looks for information that shows the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Sec. 212 of the EESA)

§ 755.32 What are the selection criteria for critical foreign language grants?

The Secretary uses the following criteria in evaluating each application for a critical foreign language grant under § 755.12:

(a) *Plan of operation.* (20 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vi) For applicants required to provide an opportunity for equitable participation of private school students and teachers—a clear description of how the applicant will provide that opportunity.

(b) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable, including, for example, foreign language proficiency examinations of individual students.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities, such as language laboratories, that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improvement or expansion of instruction in critical foreign languages.* (20 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project contributes to the improvement or expansion of instruction in one or more critical foreign languages.

(2) The Secretary looks for information such as—

(i) The objectives of the project;

(ii) The manner in which the objectives of the project further the purpose of improving or expanding instruction in critical foreign languages;

(iii) The extent to which the project involves techniques that are innovative;

(iv) The extent to which the project builds upon and adds to current educational information and research on instruction in critical foreign languages; and

(v) The extent to which the project will provide a model or other information that could be used by others to solve education problems.

(g) *Applicant's commitment and capacity.* (15 Points)

The Secretary looks for information that shows the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Sec. 212 of the EESA)

§ 755.133 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 755.31 or § 755.32, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition or under this program.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under a particular competition or under this program.

(c) The Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program.

(d) The Secretary shall not fund a project that receives Federal funds for the same project activities under Title II of the EESA.

(Sec. 212 of the EESA)

§ 755.34 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used under Part 755 to purchase equipment.

(Sec. 212 of the EESA)

[FR Doc. 84-31119 Filed 11-27-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2725-8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: On August 15, 1984 (49 FR 32601), USEPA proposed action on revisions to the draft Illinois 1982 ozone and carbon monoxide SIP. On October 2, 1984, (49 FR 38962), the public comment period was extended until October 13, 1984. On October 26, 1984, (49 FR 43072), the public comment period was extended until November 12, 1984. The State of Illinois has requested a further extension of the public comment period to allow a reasonable opportunity to comment on unresolved issues identified in the supplemental proposed rulemaking. Therefore, the public comment period is extended until December 3, 1984.

DATE: Comments must be received on or before December 3, 1984.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, (312) 886-6035.

Dated: November 15, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-31161 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 52 and 81

[FL-011; A-4-FRL-2726-6]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Florida: Redesignation of SO_2 and Ozone Nonattainment Areas and Minor Rule Changes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to redesignate as attainment the Pinellas County sulfur dioxide primary and secondary nonattainment area and the Duval County ozone nonattainment area. Also, EPA proposes to approve a State Implementation Plan (SIP) revision which provides that these redesignated areas be listed as air quality maintenance areas under a new rule also being approved today. EPA is also approving changes which the Florida Department of Environmental Regulation (DER) made in other rules to improve their wording, clarify their intent, and strengthen their prevention of significant deterioration (PSD) provisions.

DATE: To be considered, comments must be submitted on or before December 28, 1984.

ADDRESSES: Written comments should be addressed to Cheryl Espy of EPA, Region IV, Air Management Branch (see EPA, Region IV address below). Copies of the materials submitted by the States may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301-8241.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Espy, Air Management Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone 404/881-2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: On February 16, 1982, EPA granted full approval of the Florida State Implementation Plan. On August 12, 1983, DER submitted to EPA a revision to Florida's SIP. This revision consists of amendments to Florida Administrative Code Rules 17-2.100, 17-2.300, 17-2.400, 17-2.410, 17-2.460, 17-2.500, 17-2.510, and 17-2.650. On December 30, 1983 and June 13, 1984, DER submitted revisions to Rules 17-2.410 and 17-2.460 which modified the effective date of the redesignations of the nonattainment areas in their rules. In addition, on November 30, 1983, DER submitted a withdrawal of Rule 17-2.500 Prevention of Significant Deterioration, specifically addressing applicability for section (2)(e)4.a. (i) and (ii) from consideration as part of the August 12, 1983, SIP revision. An error was made in the wording of this portion of the rule and DER plans to correct it (by changing "or" to "and") as soon as possible. The change will provide a more restrictive application of creditable emissions when the new wording is added. The revisions's intent is to disallow PSD credits for nonattainment-related emission reduction in the redesignated areas.

The amendments to Rule 17-2.410 redesignate the Pinellas County sulfur dioxide primary and secondary nonattainment area and the Duval County ozone nonattainment area to attainment. This SIP revision provides that the Pinellas County area and the Duval County area be listed as air quality maintenance areas under Rule 17-2.460, Designation of Air Quality Maintenance Area. This special designation, in combination with amendments to 17-2.400, Procedures of designation and Redesignation of Areas, 17-2.400, Procedures of Designations and Redesignation of Areas, 17-2.510 New Source Review in Nonattainment Areas, (8) Construction/Operating Permit Requirements, (d) Operating Permits, 2., and 17-2.650 Reasonably Available Control Technology (RACT), (1) Volatile Organic Compounds, (a) Applicability, provides that all emission limiting standards, permit limitation, and other air pollution control measures that were established as a result of the nonattainment corrective plans for these areas—including those measures identified in the transportation control plans comprising the 1982 SIP update—shall remain in effect. However, new and modified facilities in the air quality maintenance areas will no longer be subject to nonattainment new source review requirements.

By listing the redesignated counties as air quality maintenance areas under the SIP, DER and EPA will have the regulatory authority to enforce all emission limiting standards, permit limitation and other air pollution control measures that were established as a result of the nonattainment corrective plans. EPA is approving the Duval County area and the Pinellas County area air quality maintenance areas under Florida's Rule 17-2.460, Designation of Air Quality Maintenance Areas. This does not constitute an approval of control strategies under EPA's Air Quality Maintenance Areas (AQMAs) concept as found in the Code of Federal Regulations (CFR) 52.529, Maintenance of National Standards.

These area redesignations and the accompanying rule amendments were approved by the Florida Environmental Regulation Commission at a duly noticed public hearing on June 15, 1983, and adopted by the Department (by filing of the rules with the Florida Secretary of State) on July 1, 1983. The revised effective dates of the State redesignations were approved by DER at the December 15, 1983 and April 17, 1984 hearings.

Other Regulation Amendments

DER also made related amendments to Rules 17–2.100, Definitions, (132) Redesignation of an Area, and 17–2.300, Ambient Air Quality Standards, (1) General and (2) Prohibition and Restrictions, to improve their wording, and clarify their intent. In response to a previous RPA suggestion, DER made a minor change of wording in Rule 17–2.500 Prevention of Significant Deterioration, (2) Applicability, (e) Emission Increases, 3. Contemporaneous Emissions Changes. Rule 17–2.500, Prevention of Significant Deterioration, (2) Applicability, (e) Emission Increases, 4. Creditable Emissions Changes, was amended to add RACT allowable emissions in the calculation of creditable emissions and decreases. Rule 17–2.500, Prevention of Significant Deterioration, (4) General Provisions, (b) Baseline Related Provisions, was amended so that any decrease in actual emissions which was relied on in demonstrating attainment defining, reasonable further progress, or issuing a permit under the nonattainment new source review or RACT rules shall be included in the baseline emissions and shall not be considered in calculating the amount of any maximum allowable increases remaining available. These changes are minor and clarify the intent of the SIP; therefore, EPA proposes to approve them.

Action

The Agency finds Florida's redesignation requests for the two counties to be consistent with the provisions of section 107 of the Clean Air Act, and proposes to grant them. The Agency also proposes to approve the rule changes described above.

Under 5 U.S.C. section 605(b), the Administrator has certified that area redesignations and SIP revisions do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 52 and 81

Air pollution control, Intergovernmental relations, National Parks, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulated matter, Carbon monoxide, Hydrocarbons, wilderness areas.

(Sec. 107, 110, 161, and 172 of the Clean Air Act (42 U.S.C. 7407, 7410, 7471, and 7502))

Dated: September 11, 1984.

John A. Little,

Acting Regional Administrator.

[FR Doc. 84–31159 Filed 11–27–84; 8:45 am]

BILLING CODE 4560-50-M

40 CFR Part 180

[OPP–300106; FRL–2726–5]

Camphor; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that camphor be exempted from the requirement of a tolerance when used as a deodorant and melting point adjustment agent in pesticide formulations. This proposed regulation was requested by W.R. Landis Associates, Inc.

DATE: Written comments, identified by the document control number [OPP–300106], must be received on or before, December 28, 1984.

ADDRESS:

By mail, submit comments to: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS–767), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: At the request of W.R. Landis Associates, Inc., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for camphor not exceeding 5 percent weight to weight (w/w) when used as a deodorant and melting point adjustment agent in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Camphor.

Name and address of requestor. W. R. Landis Associates, Inc., Valdosta, GA 31603–5126.

Bases for approval. (1) Camphor is cleared under 21 CFR 175.105 for indirect food additive usage as a component of adhesives.

(2) The dextrorotatory form (d isomer) of camphor is cleared under 21 CFR 172.515 as a synthetic flavoring substance and adjuvant.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP–300106]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 20, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(d) * * *

Inert ingredients	Limits	Uses
*	*	*
Camphor (CAS Registry No. 76–22–2).	Not more than 5% weight to weight (w/w) of pesticide formulations.	Deodorant, melting point adjustment.

[FR Doc. 84–31184 Filed 11–27–84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP–300107; FRL–2726–4]

Methyl Esters of Fatty Acids; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that methyl esters of fatty acids derived from edible fats and oils be exempted from the requirement of a tolerance when used as a solvent, cosolvent in pesticide formulations. This proposed regulation was requested by Stepan Co.

DATE: Written comments, identified by the document control number [OPP–300107], must be received on or before December 28, 1984.

ADDRESS:

By mail, submit comments to: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS–767), Environmental Protection Agency, Rm. 716A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22203, 703–557–7700.

SUPPLEMENTARY INFORMATION: At the request of the Stepan Co., the Administrator proposes to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for methyl esters of fatty acids derived from edible fats and oils when used as a solvent, cosolvent in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Methyl esters of fatty acids derived from edible fats and oils.

Name and address or requestor. Stepan Co., Northfield, IL 60093.

Bases for approval. (1) Methyl esters of fatty acids derived from edible fats and oils are cleared as a direct food additive under 21 CFR 172.225, with a 200-ppm residue tolerance in raisins.

(2) Methyl esters of higher fatty acids conforming to 21 CFR 573.640 are cleared under 40 CFR 180.1001(c) for use as an antidusting agent, when used in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is

proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP–300107]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164; 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 20, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(c) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Methyl esters of fatty acids derived from edible fats and oils.		Solvent, cosolvent.
* * * * *		

[FR Doc. 84–31155 Filed 11–27–84; 8:45 am]

BILLING CODE 4560–50–M

40 CFR Part 761

[OPTS–62035B; TSH–FRL 2727–8]

Polychlorinated Biphenyls (PCBs); Use in Electrical Transformers; Change of Hearing Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Change of hearing date of proposed rule.

SUMMARY: EPA issued a proposed rule, published in the **Federal Register** of October 11, 1984 (49 FR 39966), to address the risks posed by fire-related events involving electrical transformers containing PCBs. An informal hearing, if requested was to be held on December 26, 1984, in Washington, D.C. Today's action changes only the date of the hearing.

DATE: The informal hearing, if requested will begin on January 14, 1985, in Washington, D.C. The exact time and location of the hearing will be available by calling the TSCA Assistance Office toll free at 800–424–9065 or, in Washington, D.C., by calling 554–1404. Comments on the issues raised on the proposed rule and requests to participate in the informal hearing must be submitted by December 10, 1984.

ADDRESS: Comments should include the docket number OPTS–62035 and should be submitted in triplicate to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator—202–554–1404).

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

(15 U.S.C. 2605)

Dated: November 21, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84–31286 Filed 11–27–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 761

[OPTS 62035A; TSH FRL–2665–1]

Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers

Correction

In FR Doc. 84–26812, beginning on page 39966, in the issue of Thursday, October 11, 1984, make the following corrections:

1. On page 39966, in column one, the docket number should read as set forth above.

2. On page 39966, column two, under I. **Background**, line eleven, add a quotation mark (") before the word "any".

3. On page 39967, column one, fourth paragraph, line twenty-one, "dioxion" should read "dioxin".

4. On page 39969, column one, first complete paragraph, fifth line, the fourth word should read "potential".

5. On the same page, same column, last paragraph, sixth line from the bottom insert "6," in between "3", and "7".

6. In column two, second complete paragraph, fourth line, the first word should read "Contents" and the fourth word should read "transformer".

7. On page 39970, column three, first complete paragraph, line three, the last word should read "tetrachlorodibenzo-".

8. On page 39972, in column three, line seven, the second word should read "arcing".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

Passenger Automobile Average Fuel Economy Standards; Model Year 1987 and Beyond; Grant of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for rulemaking.

SUMMARY: This notice grants a petition for rulemaking submitted by the Center for Auto Safety (CFAS), requesting that the agency increase the automotive fuel economy standards for passenger cars in the 1987 model year and beyond. The Motor Vehicle Information and Cost Savings Act specifies a standard of 27.5 mpg for passenger automobiles for those model years, but allows amending that standard and establishing a higher one if the maximum feasible average level of fuel economy is higher than 27.5 mpg. The agency believes that the issues raised by the CFAS petition should be analyzed in the context of rulemaking, and the CFAS petition is granted to that extent. The granting of a petition does not mean that a rule will necessarily be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–1740).

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

(Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 23, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84–31176 Filed 11–23–84; 4:46 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155–4155]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Preliminary fishery specifications and request for comment.

SUMMARY: In this document the NMFS announces and requests comments on the preliminary 1985 specifications for groundfish taken in the fishery conservation zone (FCZ) and territorial waters off the coasts of Washington, Oregon, and California. These preliminary specifications estimate the acceptable level of biological catch (ABC) as well as the optimum yield (OY) and its distribution among domestic and foreign fishing operations for groundfish species or species groups as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan.

DATE: Comments on the preliminary specifications for 1985 must be received by December 13, 1984. The aggregate data upon which these preliminary specifications are based are available for public inspection at the Regional Directors' offices during business hours (8:00 a.m. until 4:30 p.m. PST weekdays) until the end of the comment period.

ADDRESSES: Send comments to Dr. T.E. Kruse, Acting Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115 or Mr. E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: T.E. Kruse at 206–526–6150 or E.C. Fullerton at 213–548–2575.

SUPPLEMENTARY INFORMATION: OMB Control Number 0648–0114. The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved by the Assistant Administrator for Fisheries, NOAA, on January 4, 1982. The FMP, as amended, and its implementing regulations at 50 CFR Part 663 (47 FR 43964, October 5, 1982, and 49 FR 27518, July 5, 1984) state that management specifications for certain species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39 °N. latitude, jack mackerel) will be evaluated each calendar year, that preliminary specifications for the succeeding calendar year will be published in the **Federal Register**, public comment will be requested, and final specifications for that year will be published in the **Federal Register**. The management specifications are made for the ABC, an estimate of the annual catch that could be taken without jeopardizing a resource's productivity, and the OY, which is based on socioeconomic as well as biological factors and thus is not necessarily equal to the ABC. The OYs for these six species set the maximum amounts of fish (in round weight) that may be taken and retained or landed each year from the FCZ (3–200 nautical miles) and the territorial sea (0–3 nautical miles off Washington, Oregon, and California.

The OY for each of these six species comprises several components that will be reassessed near July 1. The domestic annual harvest (DAH), which consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), is verified by surveys in November and June of the needs of the domestic fishing and processing industries. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established in case the domestic industry needs more Pacific whiting than initially estimated.

The OYs and ABCs may be changed during the year, within limits, under the procedures outlined at 50 CFR 663.22.

The Pacific Fishery Management Council (Council) reviewed and approved the preliminary specifications for ABCs for 1985 and received public comment at its September 19–20, 1984, meeting in Portland, Oregon. The Council made no recommendations regarding OY estimates, consequently NMFS proposes maintaining the same proportion between OY and ABC as in 1984; OY equals the ABC for all species except sablefish, for which OY is 30 percent higher.

Between the time the Council adopted the preliminary ABC specifications and this notice was published, updated biological analyses were received from the Council's Groundfish Management Team and released to the public by the Council. These revisions contain the best available data at this time. The revised specifications are presented below, and in some cases differ from the numbers the Council recommended in September as preliminary ABC estimates.

The 1985 preliminary management specifications are listed in Tables 1 and 2, followed by a discussion of the specifications for each species with a numerical OY and any changes made from the 1984 ABC estimates. These specifications of OYs and ABCs do not exceed the coastwide OYs and ABCs specified in 1984 by more than 30 percent.

TABLE 1.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1985

[In thousands of metric tons]

Species	Total OY	DAH	JVP [1]	DAH	Reserve	TALFF [1]
Pacific whiting	175.0	10.0	[1]20.0	130.0	35.0	10.0
Sablefish	[2]16.0	16.0	0.0	16.0	0.0	0.0

TABLE 1.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1985—Continued

(In thousands of metric tons)

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific ocean perch	[2] 1.55	1.55	0.0	1.55	0.0	0.0
Shortbelly rockfish	10.0	3.4	0.0	10.0	0.0	6.6
Widow rockfish	7.4	7.4	0.0	7.4	0.0	0.0
Jack mackerel	12.0	2.0	10.0	12.0	0.0	0.0
Other species	[3]					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding Pacific ocean perch 0.736%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. In foreign trawl and joint venture fisheries, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[2] Of this 1.55 metric tons, 2,500 metric tons is for part of the Monterey subarea. See § 663.21(a)(2).

[3] Of the 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3)).

[4] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.

TABLE 2.—PRELIMINARY ESTIMATES OF ABC FOR 1985 FOR THE CALIFORNIA/WASHINGTON REGIONS BY INPFC AREAS

(In metric tons)

Species	Vancouver [1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish						
Lingcod	1,000	4,000	800	1,100	400	7,000
Pacific cod	2,200	900	[2]	[2]	[2]	3,100
Pacific whiting						[3] 175,000
Sablefish				[4] 2,500		12,300
Rockfish						
Pacific ocean perch	600	950	[2]	[2]	[2]	1,550
Shortbelly						[5] 10,000
Widow						[5] 7,400
Other Rockfish [6]						
Bocaccio	[2]	[2]	[2]	4,100	2,000	6,100
Canary	600	2,100	600	[2]	[2]	3,300
Chilipepper	[2]	[2]	[2]	1,300	1,000	2,300
Yellowtail	600	2,100	300	[2]	[2]	3,000
Remaining rockfish	600	3,700	1,900	4,300	3,500	14,000
Flatfish						
Dover Sole	2,400	11,500	5,000	3,000	1,000	27,900
English Sole						[5] 1,500
Petrale Sole	600	1,100	500	600	600	3,200
Other flatfish (except arrowtooth flounder)	700	3,000	1,700	1,800	500	7,700
Other Fish [7]						
Jack mackerel						[8] 12,000
Others	2,500	7,000	1,200	2,000	2,000	14,700

[1] U.S. portion.

[2] These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in "Other" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only.

[3] Total all areas.

[4] Monterey Bay only.

[5] "Other rockfish" means rockfish species, listed at § 663.2, which do not have a numerical OY.

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, arrowtooth flounder, and, in the Eureka, Monterey, and Conception area, Pacific cod. "Other fish" is part of the "other species" category listed at § 663.2.

[7] North of 39 °N. latitude.

Species with a Numerical OY (Table 1)

Pacific whiting. Although the ABC/OY for Pacific whiting has not been reached in the past seven years and the very strong 1980 year class has entered the fishery, reproduction apparently has been poor since 1980. Until further stock analyses are completed, it is prudent to maintain ABC at a level that should produce the maximum sustainable yield (MSY).

Data available after the September Council meeting indicate that the 1985 ABC for Pacific whiting should be 175,000 metric tons (mt), 500 mt lower than in 1984. Pacific whiting apparently did not grow during 1982 and 1983 at the rate normally expected, possibly due to the effects of abnormally warm water ("El Nino"); a slowdown in the growth rate also was observed in anchovy, salmon, and herring stocks during those years. As a result, the numbers of fish taken per metric ton is greater than normally would be the case and the effect on the resource is one of higher mortality than would be expected for the tonnage of fish taken. For these reasons, the ABC for Pacific whiting may need to be decreased in the future.

As in 1984, MSY, ABC, and OY are proposed to be equal in 1985. Shore-based processors indicate their intent to process more Pacific whiting than in 1984, but the 1984 DAP estimate of 10,000 mt is estimated to be sufficient to cover their needs in 1985. Joint venture processing estimates are 20,000 mt larger than for 1984 at 120,000 mt. Accordingly, DAH is preliminarily estimated at 130,000 mt and initial TALFF will be 10,000 mt. The reserve, which is established in case domestic industry needs more fish than originally projected, is maintained at 35,000 mt (20 percent of OY).

Sablefish. The 1985 preliminary ABC for sablefish is 12,300 mt, eight percent below the 1984 ABC of 13,400 mt. This decrease resulted from new methodology in estimating SY. This ABC estimate is at the upper end of the MSY range (8,200 to 12,300 mt). There is some indication of a strong influx of young fish into the fishery which could allow the fishery to operate in excess of MSY levels for a few years. However, there also are indications of an absolute decrease in numbers of medium- and small-sized fish. If the 1984 OY (17,400 mt) were maintained in 1985, OY would be over 40 percent greater than ABC. Such a large difference is not supported with current data. Accordingly, the 1985 OY is reduced proportionately, with the OY preliminarily set at 16,000 mt, 30 percent above ABC as was the case in 1983 and 1984. Because the shore-based industry intends to process all available sablefish, none is available for joint venture or foreign fishing in 1985, except for minimal allowances for unavoidable incidental catches.

Pacific ocean perch. Pacific ocean perch have been overfished and are managed under the rebuilding schedule specified in the FMP. The rebuilding schedule sets OY at 600 mt in the Vancouver area and 950 mt in the Columbia area. Domestic processors will fully utilize OY so there is no Pacific Ocean perch available for joint venture or foreign fishing in 1985 except for minimal allowances for unavoidable incidental catches.

Shortbelly rockfish. The preliminary 1985 ABC and OY estimates for shortbelly rockfish are 10,000 mt, the same as in 1983 and 1984. As in 1984, a DAP of 3,400 mt, as indicated by the year-end survey, should adequately supply shore-based processing needs, and no joint venture fishery is expected in 1985. Although the remaining 6,600 mt is available for foreign fishing, most shortbelly rockfish occur south of 39 °N. latitude, in an area closed to the foreign trawl fishery, and no foreign interest has been expressed in this species for 1985.

Widow rockfish. The preliminary 1985 coastwide ABC for widow rockfish is 7,400 mt, 20 percent below the 9,300 mt ABC in 1984. This decrease resulted in part from methodology incorporating landings data for 1983 and 1984 which estimates the range of MSY to be 3,988 to 7,772 mt. Because this methodology was applied on a coastwide basis, area ABCs were not determined for 1985.

The OY and ABC for widow rockfish are the same, at the upper end of the MSY range. Because this species is fully utilized by domestic shore-based processors, no widow rockfish is available for joint venture or foreign fishing in 1985, except for minimal allowances for unavoidable incidental catches.

Jack mackerel (north of 39 °N. latitude). The estimates for jack mackerel set forth in the first amendment to the FMP (49 FR 27518, in July 5, 1984) are proposed to be maintained for 1985. ABC and OY are equal at 12,000 mt, DAP is 2,000 mt and JVP is 10,000 mt.

Species Without a Numerical OY (Table 2)

The other species managed under the FMP do not have numerical OYs. For the most part, they cannot be harvested selectively and, unless biological stress is documented, are not regulated by quotas. Full utilization by domestic processors of some species in the multispecies complex precludes joint venture or foreign targeting on underexploited species in the complex because large incidental catches of fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because JVP and TALFF are not available for any species in the multispecies complex. However, ABCs are specified for the major species or species groups in this complex. Changes to the 1984 ABC estimates for these species which are proposed to be in effect for 1985 are described below.

Canary rockfish. Due to new methodology based on catch history and because consistent signs of biological stress are not evident, the preliminary 1985 ABC for canary rockfish in the Columbia area is increased by 800 mt to 2,100 mt, raising the 1985 coastwide ABC to 3,500 mt from 2,700 mt in 1984.

Yellowtail rockfish. The 1985 preliminary ABC for yellowtail rockfish is reduced to 600 mt (from 1,400 mt in 1984) in the Vancouver area and increased to 2,100 mt (from 1,500 mt) in the Columbia area, resulting in a net decrease of 200 mt and a 1985 coastwide ABC of 3,000 mt. These adjustments resulted from more refined methodology which assumes variable recruitment into the fishery and sparates biomass growth from recruitment.

Remaining rockfish. The ABCs for this group (all rockfish in the management unit except Pacific ocean perch, shortbelly, widow, bocaccio, canary, chilipepper, and yellowtail rockfishes) are increased by 300 mt in the Vancouver area to correct an error in 1980 data used in computing the 1984 estimate. Accordingly, the coastwide ABC for remaining rockfish increases from 13,700 mt in 1984 to 14,000 mt in 1985.

Dover sole. The MSY and ABC estimates for Dover sole now appear to have been significantly understimated in the FMP. Several methods were employed recently to update these estimates. The 1985 preliminary ABC for Dover sole in the Columbia area was increased to 11,500 mt from 7,200 mt in 1984, raising the coastwide ABC to 27,900 mt. There is evidence that this fishery is currently being fished down to levels that will produce MSY in two to five years.

English sole. Catch per unit of effort has declined by almost 70 percent in the Vancouver-Columbia area since 1977, indicating a corresponding drop in biomass. Landings have declined in the southern areas but there is no indication that effort has been directed away from this species in either the Eureka or Monterey area. (Low landings in the Pt. Conception area may reflect a drop in effort.) There are no new stock assessments for these three southern areas. Accordingly, the coastwide ABC for English sole is reduced from 4,500 mt in 1984 to the preliminary estimate of 1,500 mt in 1985, proportional to the decrease in biomass in the Vancouver-Columbia area.

Other species. No changes to the ABCs for lingcod, Pacific cod, bocaccio and chilipepper rockfishes, Petrale sole, other flatfish and other fish comprising the multispecies complex are proposed for 1985.

Classification

These preliminary specifications are made under the authority of and in accordance with 50 CFR 663.24. This action is in compliance with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

Dated: November 21, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-31039 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 230
Wednesday, November 28, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

November 23, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Agricultural Cooperative Service
Local Cooperative Chemical and Fertilizer Study
Nonrecurring
Businesses or other for-profit; 1,000 responses; 400 hours; not applicable under 3504(h)
Eldon Eversull, (703) 382–1767

• Farmers Home Administration
Borrower Acknowledgement of Notice of Intent to Take Adverse Action
On occasion
FmHA 1924–26
Individuals or households; Farms; 90,000 responses; 22,500 hours; not applicable under 3504(h)
Ed Yaxley (202) 475–4021

Extension

• Agricultural Stabilization and Conservation Service
Request for Long-Term Agreement
On occasion
ACP–310
Farms; 10,000 responses; 5,000 hours; not applicable under 3504(h)
Charles W. Sims, (202) 447–7334

Jane A. Benoit,
Acting Departmental Clearance Officer.

[FR Doc. 84–31192 Filed 11–27–84; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Gibson City Grain Inspection Department (IL), Indianapolis Grain Inspection & Weighing Service, Inc. (IN), and Wyoming Department of Agriculture (WY)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Gibson City Grain Inspection Department, Indianapolis Grain Inspection & Weighing Service, Inc., and Wyoming Department of Agriculture.

DATE: Comments to be postmarked on or before January 14, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 832–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The October 1, 1984, issue of the **Federal Register** (49 FR 38683) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by October 31, 1984.

Donald Swanstrom, doing business as Gibson City Grain Inspection Department, Indianapolis Grain Inspection & Weighing Service, Inc., and Wyoming Department of Agriculture, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than January 14, 1985.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the

Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: November 1, 1984.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 84–30825 Filed 11–27–84; 8:45 am]
BILLING CODE 3410–EN–M

Request for Designation Applicants To Perform Official Services in the Geographic Areas Currently Assigned to Alaska Department of Natural Resources, Division of Agriculture (AK) Little Rock Grain Exchange Trust (AR) and Memphis Grain and Hay Association (TN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Alaska Department of Natural Resources, Division of Agriculture, Little Rock Grain Exchange Trust, and Memphis Grain and Hay Association.

DATE: Applications to be postmarked on or before December 28, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Alaska Department of Natural Resources, Division of Agriculture (Alaska), Pouch A, Wasilla, AK 99687, Little Rock Grain Exchange Trust (Little Rock), 600 Olive Street, Bldg. B, North Little Rock, AR 72114, Memphis Grain and Hay Association (Memphis), 1390 Channel Avenue, P.O. Box 13302, Memphis, TN 38113, were each designated under the Act as an official agency to perform inspection functions on June 1, 1982.

Each agency's designation terminates on May 31, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alaska, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Alaska, except those export port locations within the State.

The geographic area presently assigned to Little Rock, in the States of Arkansas and Texas, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Arkansas, the area shall be:

Bounded on the North by the northern Arkansas State line from the western Marion County line east to the eastern Clay County line,

Bounded on the East by the eastern Clay, Greene, Lawrence, Jackson, Woodruff, Monroe, Arkansas, Desha, and Chicot County lines;

Bounded on the South by the southern Arkansas State line from the eastern Chicot County line west to the western Miller County line; and

Bounded on the West by the western Miller, Little River, Howard, Pike, Clark, Hot Spring, Garland, Perry, Conway, Pope, Searcy, and Marion County lines.

In Texas, Bowie and Cass Counties.

An exception to the described geographic area is the following location situated inside Little Rock's area which has been and will continue to be serviced by Memphis Grain and Hay Association: Lochart-Thompson Grain Elevator, Augusta, Woodruff County, Arkansas.

The geographic area presently assigned to Memphis, in the States of Arkansas and Tennessee, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Arkansas, Craighead, Crittenden, Cross, Lee, Mississippi, Phillips, Poinsett, and St. Francis Counties.

In Tennessee, Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties.

The following locations, outside of the foregoing contiguous geographic area are presently assigned to Memphis and are part of this geographic area assignment:

1. Con-Agra, Inc., Augusta, Woodruff County, Arkansas.

2. Continental Grain Co., Tiptonville; West Tennessee Soya, Tiptonville; and Planters Gin, Ridgely; all in Lake County, Tennessee.

Interested parties, including Alaska, Little Rock, and Memphis, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning June 1, 1985, and ending May 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: November 1, 1984.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 84–30826 Filed 11–27–84; 8:45 am]
BILLING CODE 3410–EN–M

CIVIL RIGHTS COMMISSION

Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 6:00 p.m. and will end at

9:00 p.m., on December 7, 1984, at the Holiday Inn, Yellow Jacket Room, 110 E. Second Street, Superior, Wisconsin 54880. The purpose of the meeting is to discuss hate group activity in Northwest Wisconsin and recent developments in the Milwaukee school desegregation situation.

Persons desiring additional information or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 21, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-31088 Filed 11-27-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-402]

Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Korea of oil country tubular goods. The net subsidy is 0.53 percent *ad valorem*. We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of oil country tubular goods from Korea that are entered, or withdrawn from warehouse, for consumption, on or after September 12, 1984, and to require a cash deposit or bond on entries of these products in the amount equal to the net subsidy.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Rick Herring, or Tom Bombelles of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1785; 377-0187; or 377-3174.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Korea of oil country tubular goods. For purposes of this investigation, the following programs are found to confer subsidies:

- Short-term Export Financing under the Export Financing Regulations;
- Accelerated Depreciation under Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption"; and
- Tax Incentives for Exporters under Articles 22, 23 and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption."

We determine the net subsidy to be 0.53 percent *ad valorem*.

Case History

On June 12, 1984, we received a petition from the Lone Star Steel Company of Dallas, Texas, and the CF&I Steel Corporation of Pueblo, Colorado, on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Korea of oil country tubular goods receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring or threatening material injury to, a U.S. industry.

We found taht the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1984, we initiated such an investigation (49 FR 28291). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, the petition was amended and the LTV Steel Company of Cleveland, Ohio became co-petitioner. On July 23, 1984, United States Steel Corporation (U.S. Steel) entered an appearance to become a party to this proceeding.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On August 8, 1984, the ITC published in the **Federal Register** their preliminary determination that there is a reasonable indication that these imports are materially injuring, or threatening material injury to, a U.S. industry (49 FR 31782).

We presented questionnaires concerning the allegations to the government of Korea in Washington, D.C., on July 13, July 23 and August 20, 1984. On August 17, August 20, August 21 and August 30, 1984, we received responses to these questionnaires. On July 18 and August 20, petitioners presented additional information concerning the alleged subsidies and also alleged new subsidies. On July 9, August 31, and September 5, U.S. Steel presented additional information concerning the alleged subsidies and also alleged new subsidies. On September 12, 1984, we published our preliminary determination that benefits constituting subsidies within the meaning of the countervailing duty law were being provided to manufacturers, producers, or exporters in Korea of oil country tubular goods (49 FR 35836).

At the request of both petitioners and respondents, we held a hearing on November 1, 1984, to allow the parties an opportunity to address the issues arising in the investigation. Both petitioners, respondents, and other interested parties filed briefs before and after the hearing on these issues. They also filed briefs commenting on our verification.

In its pre-hearing brief filed on October 23, 1984, U.S. Steel made additional allegations of benefits received by manufacturers and exporters of OCTG. These allegations were (1) Regional Tax Incentives, (2) Tax incentives for Exporters, and (3) Special Foreign Exchange Loan System. Since these allegations were made after our preliminary determination and after the Commerce verification team returned from Korea, the allegations were made too late to be considered in this investigation. These additional allegations will be given consideration in the section 751 administrative review of the order, if an order is issued.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. This investigation covers both finished and unfinished oil country tubular goods.

The provisions of the *Tariff Schedules of the United States, Annotated (TSUSA)* covering all steel pipe and tube, including oil country tubular goods, were changed as of April 1, 1984. We have reviewed the classification of

steel pipe and tube by the U.S. Customs Service and determined that our original listing of the products subject to this investigation should be amended. As a result of the changes mentioned above, oil country tubular goods now comprise TSUSA item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

There are five Korean producers of the subject merchandise which exported to the United States during the period for which we are measuring subsidization: Hyundai Pipe Company (Hyundai Pipe), Korea Steel Pipe Company (Korea Steel), Pusan Steel Pipe Company (Pusan), DongJin Steel Company (DongJin), and Union Steel Manufacturing Company (Union). In addition, there are five trading companies which exported the subject merchandise to the United States during the period for which we are measuring subsidization. The trading companies are the Hyundai Corporation, Kukje-ICC Corporation, Sunkyong Limited, Samsung Co. Ltd., and Daewoo Corporation.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of this investigation. These principles are described in the Subsidies Appendix attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 F.R. 18006).

For purposes of this determination, we are calculating a country-wide rate. The period for which we are measuring subsidization is the 1983 calendar year, which corresponds to the most recent fiscal year for each of the Korean producers and exporters.

Based upon our analysis of the petition, the responses to our questionnaires, comments filed by petitioners, respondents, and other interested parties to this proceeding, and our verification, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Korea of OCTG under the following programs:

A. Short-Term Export Financing Under the Export Financing Regulations

Petitioners alleged that the producers and exporters in Korea of OCTG receive preferential short-term export financing under the following programs:

- Export Loans under the 1972 Regulations for Export Financing;
- Export Loans provided under the Foreign Trade Act;
- Deferred Payment Export Loans; and
- Preferential Exchange Rates for Export Loans Based on Letter of Credit

Short-term export financing is authorized only through the 1972 Export Financing Regulations. Our determination with respect to the three other programs is discussed in the sections on "Programs Determined Not to Confer Subsidies" and "Programs Not in Existence."

Under the Export Financing Regulations, short-term export loans can be provided to the following:

- Exporters in receipt of letters of credit;
- Exporters concluding documents of acceptance or documents against payment contracts;
- Exporters purchasing local supplies;
- Exporters stockpiling raw materials;
- Exporters with certificates based on past export performance;
- Producers of raw materials for export; and
- Companies awarded domestic projects based on international public tender.

To determine whether a subsidy exists with respect to short-term export loans under the Export Financing Regulations, we must determine whether the export loan progam is intended to, or operates to, stimulate export rather than domestic sales, or is contingent on export performance. If there is a preference in a program's operation for export over domestic sales, we then must find an appropriate way to measure that preference.

Prior to June 28, 1982, short-term export loans provided under the Export Financing Regulations were charged a lower interest rate than short-term domestic loans. On June 28, 1982, the Monetary Board established a uniform rate of 10 percent for both export and domestic short-term financing provided by commercial banks. The interest rate in effect during the period for which we are measuring subsidization was 10 percent for short-term export loans. We verified that domestic short-term financing through commercial banks is the predominant short-term debt instrument in Korea (see, for example, the Federation of Korean Industries surveys obtained during verification and the Korean Chamber of Commerce *Survey*, submitted as Exhibit 13 of the Government of Korea's response, August 17, 1984, as well as Bank of Korea *Monthly Statistical Bulletins*).

If all other terms and conditions, as well as the administration, of the domestic and export loan programs were identical, we would not find that an export subsidy is being conferred because export loans are not at an interest rate is preferential compared to the interest rate on the most comparable, predominant short-term debt instrument. However, we have found that there is a difference in the administration of domestic and export short-term loans programs. The Bank of Korea (BOK) sets different rediscount ratios for export and domestic short-term loans. As specified in the BOK's *1983 Annual Report*, the rediscount ratio for export loans is 70 percent of the face value of the loan. The rediscount ratio on domestic commercial bills is 30 percent of the face value of the loan for large firms and the heavy and chemical industries. The rediscount ratio for small- and medium-sized firms is 70 percent. Small- and medium-sized firms are defined as companies with fewer than 300 employees. None of the steel companies producing the products under investigation is classified as a small- or medium-sized firm. The rediscount rate for both domestic and export short-term loans is 5 percent.

The higher rediscount ratio for export loans provides an incentive for banks to provide an export loan over a domestic loan when lending to a large company. Indeed, the banks' fee structure, which specifies lower fees on the letters of credit on which the short-term export loans are based, indicates that the banks encourage these borrowers to use export financing. Thus, we consider that the higher rediscount ratio for short-term export loans provides, in effect, a preference for export loans over domestic loans.

Because the most comparable, predominant short-term debt instrument (*i.e.*, the 10 percent rate on short-term domestic bank loans) cannot measure this preference, we must find an alternative method of quantifying it. We know from the surveys published by the Korean Chamber of Commerce and by the Federation of Koren Industries and from the Bank of Korea *Statistical Bulletins*, that companies do use sources of short-term financing in addition to bank loans. These sources include investment companies, commercial

paper and the curb market. Since the rediscount mechanism operates in such a way as to encourage banks to supply firms short-term export financing at the expense of the domestic financing, we must conclude that short-term domestic financing comes from these other sources of financing as well as bank loans.

Therefore, the most appropriate way to measure the preference for export over domestic loans is to compare the 10 percent rate with a weighted average of short-term domestic credit. We have chosen this measure because it is the best approximation of what firms would pay for export financing if there were not a preference within the banking system for providing loans for export transactions.

The factors used to weight each of the four sources of short-term domestic credit were based on data from a number of sources, including the monthly *Statistical Bulletin* of the Bank of Korea and the surveys published by the Federation of Korean Industries (FKI). The *Statistical Bulletin* provides the size of, and interest rates charged on, short-term financing by banks, investment finance companies and commercial paper. The FKI surveys provide data on the proportion that curb market loans represent of total corporate borrowing for working capital. For the curb market interest rate, we have determined that the most appropriate rate to use is the average monthly rate for 1983 as published in the Survey conducted by the Korean Chamber of Commerce, provided as Exhibit 13 to the response submitted by the Government of Korea. This rate is 2.6 percent, which, when compounded, yields an annualized rate of 36.1 percent. We are using the rate published by the Chamber of Commerce as the most appropriate measure of the average curb market rate in 1983, because it was the only independently conducted study or survey of curb market rates that has been entered in the record of this investigation. We looked extensively for data on these rates at verification. We consider the Chamber Survey to be the most accurate reflection of average curb market rates during the period for which we are measuring subsidization.

Using the data from all these sources, we calculated the weighted-average rate that we have determined is the most appropriate way to measure the preference for export over domestic loans. Comparing this weighted-average rate to the 10 percent rate on export loans, we calculate an export subsidy of 0.46 percent *ad valorem*.

B. Accelerated Depreciation

Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption" permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. If the corporation has received less than 50 percent of its total proceeds from foreign exchange, it can still claim some accelerated depreciation, determined by a formula based on the firm's foreign exchange earnings and total business earnings. Of the firms investigated, only Pusan used accelerated depreciation under this program. Because the use of accelerated depreciation is contingent upon export performance, we determine that this program confers benefits which constitute export subsidies.

To calculate the benefits from the accelerated depreciation program for the period in which we are measuring subsidization (calendar year 1983), we determined the tax savings received in 1983 based on the accelerated depreciation which had been deducted from the 1982 income taxes payable in 1983. The amount of tax savings received under this program was divided by the total value of exports in 1983 to calculate an export subsidy of 0.03 percent *ad valorem*.

C. Tax Incentives for Exporters

Articles 22, 23 and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption" provide for the deduction from taxable income of a number of different reserves relating to export activities. These reserves cover export losses, overseas market development and price fluctuation losses. Under Article 22, a corporation may establish a reserve amounting to one percent of the foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve fund. If there are no offsets for export losses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

Under Article 23 governing overseas market development, a corporation may establish a reserve fund amounting to one percent of its foreign exchange earnings in the export business for the respective business year. Expenses incurred in developing overseas markets are offset from the reserve fund. Like the export loss reserve fund, if there are no offsets for expenses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

A price fluctuation reserve fund may be established under Article 24. Under this Article, a corporation may establish reserves equivalent to five percent of the book value of the products and works in progress which will be exported by the close of the business year. This reserve may be used to offset losses incurred from the fluctuation of prices for export goods. These losses may be offset by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following business year.

The balance in all three reserve funds is not subject to corporate tax, although all moneys in the reserve funds are eventually reported as income and subject to corporate tax either when they offset export losses or when the one-year grace period expires. Pusan Steel Pipe, Korea Steel Pipe, Hyundai Pipe, Kukje, Samsung, and Daewoo received benefits under these programs in 1983. We determine that these export reserve programs confer benefits which constitute export subsidies because they provide a deferral of direct taxes specifically related to export performance.

Because these export reserve funds constitute a deferral of tax liabilities, we treat the tax savings on these funds as interest-free loans to the corporation. Accordingly, we have quantified the benefits from the reserve funds by calculating the amount of tax savings and then applying a rate of interest which the firm would have had to pay for a short-term loan. Using this methodology, we calculate a subsidy of 0.04 percent *ad valorem*.

II. Programs Determined Not to Confer Subsidies

We determine that benefits which constitute subsidies are not being provided to manufacturers, producers, or exporters in Korea of OCTG, under the following programs:

A. Medium- and Long-Term Credit

Petitioners alleged that OCTG producers, as part of the Korean steel industry, have received medium- and long-term financing through government direction of credit and programs designed to finance major or key industries, and that these loans are made on terms which are inconsistent with commercial considerations.

In order to investigate the first allegation, that credit is directed within the Korean economy, we have examined whether the Korean government mandates, explicitly or implicitly, that certain industries or enterprises receive

credit at the expense of other borrowers. If there are explicit or implicit government mandates that certain industries or firms receive funds, then we would expect to find this reflected in the composition of the loan portfolios of all the lending institutions combined. Absent a finding that these key or major industries receive a disproportionate share of the medium- and long-term loans available in Korea, we cannot conclude that the Korean government is directing credit.

Medium- and long-term financing is provided through three types of financial organizations in Korea:

(1) Commercial banks;
(2) Specialized banks; and
(3) Development institutions (Korea Development Bank and the Export-Import Bank of Korea).

In addition, there are two government funds through which long-term financing is provided:

(1) The National Investment Fund; and
(2) The Fund for Expanding Export Facilities.

We have examined the three types of financial organizations and the two government funds that are the sources of medium- and long-term borrowing in Korea.

Viewing these institutions and funds in the aggregate, we determine that there is no government direction of medium- and long-term credit to the OCTG producers or to the broader steel sector. We have found that the lending institutions in Korea, when viewed as a whole, provide medium- and long-term loans to all sectors and all major industry groups, indeed to virtually all industries. Notwithstanding that certain of the sources have been created to provide credit to designated groups of recipients, these groups do not receive a disproportionate share of the total medium- and long-term credit available from all sources combined. Moreover, we determine that the OCTG producers and the broader steel industry do not receive a disproportionate share of funds from all these sources. Indeed, over the last 15 years, the steel industry has accounted for approximately 6 to 13 percent of GNP. During the same period the basic metals sector, which includes steel, has received 5 to 8 percent of medium- and long-term loans.

Although we have found that credit is not directed by the Korean government to OCTG producers or to the broader steel industry, we must still examine whether particular medium- and long-term loans from any of the individual institutions or funds confer benefits which constitute subsidies within the meaning of the countervailing duty law.

In order to determine that medium- and long-term loans are providing benefits which constitute domestic subsidies, we must find that the program is limited to a specific enterprise or industry or group of enterprises or industries, and that the loans are provided on terms inconsistent with commercial considerations. If either of these conditions is not met, then we cannot find that a domestic subsidy exists.

In making the determination on whether a program is limited to a specific enterprise or industry or group of enterprises or industries, we have consistently examined whether there is a *de facto*, as well as a *de jure*, limitation. In making the determination of whether a loan is inconsistent with commercial considerations, we examine whether the potentially contervailable loan offers more favorable terms than the firm would otherwise receive.

Based on our verification and information provided by the petitioners, the responses and the briefs submitted by parties to the proceeding, we have found the following with respect to each of the three types of financial organizations and the government funds:

1. Commercial Banks

Commercial banks, which until the early 1980's were either government-owned or government-controlled, consist of seven nationwide or "city" banks, 10 regional or "local" banks, and the branches of 48 foreign banks. The domestic commercial banks are authorized by the General Banking Act (G.B.A.) and provide the normal financial services that are usually offered by banks in all countries. There is no explicit listing in the G.B.A. that designates certain industries or sectors for receipt of commercial bank credit.

Bank of Korea statistics show the distribution of loans from the deposit money banks (DMB's). DMB's include both commercial and specialized banks. (Specialized banks are discussed in the following section.) Examination of the Bank of Korea statistics demonstrates that during both the 1970's and 1980's all sectors of the economy received loans through the DMB's and that steel did not receive a disproportionate share.

During verification, we obtained loan statistics directly from Hanil and Cho-Heung, two of the five largest commercial banks in Korea. The loan statistics are broken down by sector, major industry group and industry. The sectors are:

- Agriculture and forestry;
- Mining;
- Manufacturing;
- Electricity, gas and water;
- Construction;
- Wholesalers;
- Transportation and warehousing; and
- Others (including social services).

Each of these sectors is then broken down by major industry group and by industry within each group. Steel production is included in the primary metals group within the manufacturing sector. This group includes, in addition to steel, categories for aluminum and others.

Our review of the loan statistics of these two banks for various years in the 1970's and 1980's shows that all sectors and major industry groups, indeed, virtually all industries, received loans.

Furthermore, the statistics show that the steel industry did not receive a disproportionate share of the loans.

2. Specialized Banks

There are seven specialized banks in Korea: Korea Exchange Bank, Medium Industry Bank, Citizens National Bank, Korea Housing Bank, National Agricultural Cooperatives Federation, National Federation of Fisheries Cooperatives and Members Cooperatives, and the National Livestock Cooperative Federation. Each of these banks is set up by its own Act, and, by their titles, these banks are explicitly chartered to service certain broad sectors of the Korean economy.

Like commercial banks, specialized banks are deposit money banks and, therefore, are included in Bank of Korea statistics on DMB loan distribution. As stated previously, the Bank of Korea statistics show that all sectors and industries have received loans through the DMB's and that steel has not received a disproportionate share of DMB loans. In addition, it is clear that the specialized banks have been set up to serve sectors of the economy besides steel. None has been set up specifically for the steel industry or even for the manufacturing sector or heavy industry sector. We verified that the steel companies producing the products under investigation have only a few outstanding long-term loans from specialized banks and that these loans do not represent a disproportionate share of the long-term loans funds from specialized banks.

3. Development Institutions

a. *Korea Development Bank (KDB).* The KDB was established in 1954 to aid in the reconstruction of the country following the Korean War. Once reconstruction was completed, the bank shifted its resources to support the development of industries deemed

important for long-term economic growth. The industries named in the KDB Enforcement Decree include electric power, coal mining, shipbuilding, iron and steel manufacturing, semiconductors and overseas marine and/or air transport. In addition to these industries, KDB also provides loans for agriculture, oil and gas, food and beverage, textiles, paper and paper products, chemicals, rubber and plastic products, non-metallic mineral products, fabricated metal products, machinery and equipment, construction, wholesale and retail trade, communications and financial services. Thus, while there is an explicit designation that the KDB will service certain industries, it also has provided loans to borrowers in numerous industries that were not designated.

During the 1970's and 1980's, the KDB accounted for approximately 45 percent of the medium- and long-term loans available. Prior to the June 1982 equalization of interest rates, these designated industries were charged a lower interest rate than KDB borrowers in other industries. The interest rates charged by KDB are set by the Ministry of Finance.

b. *Export-Import Bank of Korea.* Promulgated by Law No. 2122 in July 1969, the purpose of the Export-Import Bank of Korea (Eximbank) is "to promote the sound development of the national economy and economic cooperation with foreign countries by extending the financial aid required for export and import transactions, overseas investment and the development of natural resources abroad." The Enforcement Decree for the Act specifies the "major" raw materials that Eximbank should develop:

- Coal, iron ore, cooper, petroleum, and other mined materials;
- Timber and other forest materials;
- Grains, cotton, sugar, rubber and other agricultural materials; and
- Other raw materials deemed necessary to secure stabilized long-term supply for the economy; however, this should be decided through a state meeting and announced through the Ministry of Finance.

Thus, if there is any explicit designation of recipients of loans from the Eximbank, the designated group is raw material users.

During verification, we examined all export and overseas investment loans awarded from 1976 through 1982. During those seven years, only five loans were awarded to the steel industry; one in 1979, two in 1980 and two in 1982. None of these five loans were for the financing of exports of the products under investigation. Also, during each of these years there were other projects financed in other industries. For example, in 1979, the other overseas investment loans went to a taxtile plant project, a manufacturing plant project, fishery development, a cement plant project, and vessel chartering. Thus, the Korea Eximbank finances projects in a wide number of industries. Moreover, the steel industry has not received a disproportionate share of Eximbank loan monies.

4. The National Investment Fund

On December 14, 1973, the government of Korea established the National Investment Fund (NIF) through Law No. 2635. The stated "purpose of this Act is to prescribe necessary matters for the establishment and effective management of the National Investment Fund on the bases of extensive nationwide savings efforts and participation, to secure and supply the investment and loan funds needed to promote the construction of major industries, including the heavy and chemical industries, as well as to help "increase exports."

In the preliminary determination, we determined that NIF loans were countervailable export subsidies because one of the express purposes stated in the Act was to help increase exports and because they were provided at preferential rates.

During verification, we found that there are two types of NIF loans, one to finance development and one to finance exports on a deferred payment basis. The NIF loans to finance exports on a deferred payment basis are managed by Eximbank. We verified that exports of the products under investigation are not eligible to receive NIF loans for exports on a deferred payment basis and that none of the companies producing OCTG has financed exports of OCTG through this program.

With respect to the other pool of NIF monies, our examination of loan files, as well as application and approval documents at the companies, did not reveal any export-related conditions on these NIF loans. Thus, we now conclude the NIF loans are not export subsidies.

Despite the fact that NIF loans would not be considered export subsidies, the law establishing the fund and the enforcement decree explicitly designate certain industries for receipt of these loans. In addition to "major industries, including the heavy and chemical industries," the enforcement decree names steel, nonferrous metals, shipbuilding, machinery, chemicals, electronics, food production, power, mining, cement, rural manufactured goods, projects to increase rural income, and fishing and fisheries projects. NIF, loans accounted for 25 to 30 percent of the medium and long-term loans issued in the 1970's and 1980's.

5. Fund for Expanding Export Facilities

During verification at the companies we found several outstanding long-term loans received through the "Fund for Expanding Export Facilities." This fund was established in 1973 and abolished in 1982. Eligibility for these loans was limited to manufacturers building facilities for producing export goods or raw materials and purchasers of ocean-going vessels used for the fish export industry. Thus, this Act designates exporters as recipients.

Based on the findings reported above, we determine that because commercial banks and specialized banks provide medium—and long-term loans to all sectors and industries in the economy, and because the steel industry did not receive a disproportionate share, loans from these sources are not limited to a specific enterprise or industry or group of enterprises or industries and therefore do not provide benefits which constitute subsidies. Furthermore, based on our review of the Eximbank Act and the Enforcement Decree, and the distribution of the loans we find that there is no *de jure* or *de facto* limitation to an enterprise or industry or group of enterprises or industries. Accordingly, we determine that Eximbank loans do not provide benefits which constitute subsidies.

We also determine that loans provided to the OCTG producers through the KDB and the NIF do not provide benefits which constitute subsidies, because the interest rates paid on these loans have been equal to the interest rate for all medium—and long-term loans in Korea since June 1982. Thus, these loans are not on terms inconsistent with commercial considerations.

To determine whether a loan is inconsistent with commercial considerations, we rely on the methodology in the Subsidies Appendix for long-term loans to companies considered creditworthy. As stated in the Appendix, the benechmark for long-term loans in company-specific, unless the company lacks adequate comparable commercial experience. If the company lacks comparable commercial experience, we use a national average long-term loan interest rate.

After finding an appropriate benchmark loan, the next step in determining if a loan was given on terms inconsistent with commercial considerations is to calculate the payment differential between the benchmark loan and the loans at issue. Consistent with our methodology, when the long-term loans are at variable interest rates, we calculate the benefit based on the differential between the interest rate for the loan at issue and the interest rate on the benchmark loans in the year for which we are measuring subsidization. As stated above, the rates on all medium—and long-term loans were equalized in 1982. Hence, for the year in which we are measuring subsidization, there is no interest differential between the loans at issue and the benchmark loans.

We note that using as the benchmark the 1983 interest rate on a variable rate long-term commercial loan is not a departure from prior practice. In our preliminary determination, we used a short-term interest rate as the benchmark for NIF loans. However, we stated that because we needed additional information in order to determine whether loans from commercial and specialized banks were subsidies, we could not use those variable rate long-term loans in establishing our benchmark. Thus, because we had no comparable commercial long-term loan experience with which to compare NIF loans, we use, as best information available, a short-term rate for purposes of measuring the benefit conferred by these loans.

Finally, we determined that loans received by the OCTG producers under the Fund for Expanding Export Facilities do not confer benefits that constitute export subsidies. Assuming, as we do, that eligibility for these loans is contingent upon export performance, to quantify any benefit arising from these long-term export-related loans, we must compare the terms of these loans to the cost of comparable commercial domestic long-term loans.

We know that all loans from the Fund for Export Facilities that were still outstanding during the period for which we are measuring subsidization were charged 10 percent interest after the June 1982 equalization of interest rates. Thus, since June 1982 the cost to the borrower on these loans is the same as the cost of comparable domestic long-term loans. As a result, we find that no benefit is conferred by these long-term export-related loans.

B. Import Duty Deferrals

Article 36 of the Customs Act of Korea permits the Ministry of Finance to designate an industry as eligible to pay customs duties on an installment basis, rather than upon entry. In our preliminary determination, we determined this program to confer a subsidy because the government of Korea did not provide us with any information demonstrating that during the period for which we are measuring subsidization this program was not limited to a specific enterprises or industry or group of enterprise or industries. A program may be available, in principle, to a wide group of industries, but when there appears to be some discretion on the part of the government in the granting of benefits under the program, we must determine that discretion effectively limits the program to specific enterprises or industries.

During the verification, we found that twenty-four industries were eligible to receive duty deferrals including industries as disparate as mining, cement, fertilizers, chemicals, machine tools, steel works, and plywood. Once an industry is considered eligible, each company within the industry may request deferral status by submitting an application to the Tariff Administration Office of the Office of Customs Administration. We examined this program to determine if only certain companies within each of the twenty-four industries had their application for duty deferral status approved. We found that in practice there appears to be no limitation to the companies within the twenty-four industries which receive duty referrals, and that any company which applies is granted that status. Therefore, we determine that this program is not limited to a specific enterprise or industry or group of enterprises or industries, and, therefore, does not constitute a subsidy.

C. Investment Tax Credit

Petitioners alleged that producers and exporters of OCTG may receive preferential tax benefits under Article 72 of the "Act of Concerning the Regulation of Tax Reduction and Exemption," which provides for a temporary investment tax credit when the government deems it necessary for adjustment of economic activities. During the period from January 1, 1982, through December 31, 1982, Article 57–2 was the enforcement decree for Article 72. Article 57–2 specifies that the investment tax credit was available for the acquisition of fixed assets used directly for the manufacturing or mining business. Consistent with past practice, programs available to all industries in the manufacturing and mining sectors are not limited to "a specific enterprise or industry, or group of enterprises or industries," and thus do not provide domestic subsidies. Since the tax credit is not contingent on export performance, it does not provide an export subsidy. Thus, we determine that this program does not constitute a subsidy.

D. Subsidized Steel Inputs

Petitioners alleged that Donglin may benefit from subsidies received by its parent company. Until 1984, Donglin was a wholly-owned subsidiary of Pohang Iron & Steel Company (POSCO), a manufacturer of hot-rolled coil, blooms, and billets. Petitioners alleged that subsidies received by POSCO on those products may be passed on to Donglin.

Donglin's raw material for OCTG is J–55 grade of hot-rolled steel coil. During 1983, Donglin purchased this product from POSCO and from an unrelated foreign supplier whom we have never found to be subsidized. We verified that the price paid by Donglin to POSCO was comparable to the price Donglin paid to its foreign supplier for hot-rolled coil. Furthermore, no rebates or discounts are received from POSCO on these purchases. Consequently, we determine that Donglin receives no competitive benefit through its purchases of inputs from POSCO.

Section 613 of the Trade and Tariff Act of 1984, signed by the President on October 30, codifies the standards for determining upstream subsidies. This section generally codifies Department practice. Our investigation was consistent with both Department practice and the newly codified standards.

E. Equity Infusions into Donglin

In their July 18 submission, petitioners alleged that POSCO, the parent company of Donglin, received government equity infusions on terms inconsistent with commercial considerations and that this equity subsidy may have been passed through POSCO to Donglin. Donglin was established on October 27, 1982, by POSCO. At the time of Donglin's formation, POSCO invested funds in order to provide cash for the purchase of the assets of Illsin Steel Company and working capital for Donglin's future operations. POSCO also guaranteed the notes of Donglin used for the purchase of Illsin's assets.

Illsin Steel Company was a bankrupt company, owned and operated by it two major creditors, Korea Exchange Bank (KEB) and Commercial Bank of Korea (CBK). In accordance with Korean law, at the time of bankruptcy the courts foreclosed upon Illsin's assets and offered the assets for sale at public

auction. Because there were no other bidders for the assets at the appraised value or above, the banks, which were the highest bidders, purchased the assets at auction. These assets were then sold to DongJin for cash and notes.

According to the banks: (1) The price offered by DongJin was the highest price which they could obtain, (2) the banks' operations of Illsin were resulting in a cash drain on them, and (3) it was in the bank's interest to sell the assets as a package, so as not to significantly decrease the value of the total package. Because there were no bidders, at auction, which would have paid the appraised value of the assets, and because it was in the banks' interest to minimize their losses, the sale of Illsin by the banks can be characterized as a distress sale.

Although the banks were eager to sell, the purchase of Illsin's assets by DongJin presented certain advantages to POSCO. Illsin had been a major supplier to POSCO. POSCO had knowledge and management expertise to operate Illsin and under the circumstances might negotiate terms which could make the venture economically attractive. The terms negotiated required a minimal amount of cash and notes, some of which were at zero interest rate.

To determine whether POSCO's equity infusion into DongJin was on terms inconsistent with commercial considerations, we analyzed the terms compared to ordinary commercial considerations. The Department did not find this transaction inconsistent with commercial considerations for the following reasons.

First, POSCO did not receive government funds during 1982 and, therefore, POSCO's investment in DongJin could not have been a pass through from the government. Second, we found no evidence that the government directed the banks to sell the assets to DongJin on favorable terms. Third, the cash investment into a newly created subsidiary by a parent company, and the guaranteeing of subsidiary's notes, when the subsidiary is still a "shell" organization, are normal business practices. Fourth, because of the commercial advantages to both the seller and the purchaser in this transaction, and the apparent lack of interest by any other party to purchase Illsin's assets, we determine that the transaction was not on terms inconsistent with commercial considerations. Moreover, we do not consider POSCO's guarantee of DongJin's notes payable to be a subsidy, because no evidence has been submitted that a parent company's guarantee of a wholly-owned subsidiary's loan is inconsistent with commercial considerations.

III. Programs Determined Not To Be Used

We have determined that OCTG manufacturers, producers, or exporters in Korea do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigation of OCTG from Korea":

A. Preferential Port Charges

Petitoners alleged that "designated companies" under the Iron and Steel Industry Rehabilitation Order are eligible on a case-by-case-basis to receive discounts on port rates. We verified that the rates charged to, and paid by, OCTG producers and exporters for use of ports are the same as those charged to all other users.

B. Tariff Reductions on Imported Plant and Equipment

Petitioners alleged that the government of Korea allows reductions of import duties for certain industries on certain items designated by the Ministry of Finance. We verified that none of the OCTG producers or exporters received tariff reductions on imported plant and equipment.

C. Free Export Zone Program

Petitioners alleged that producers and exporters of OCTG receive tax benefits based upon location in a free export zone. We verified that none of the producers or exporters of OCTG is located in a Free Export Zone.

D. Foreign Capital Inducement Law

Petitioners alleged that OCTG producers and exporters may be receiving financial and tax benefits under the Foreign Capital Inducement Law. The producers and exporters of OCTG are not eligible for any benefits under this program because they have no foreign ownership.

E. Export Credit Insurance

Petitioners alleged that the government of Korea provides annual contributions to an export insurance program. We verified that export credit insurance was not used to insure exports of OCTG to the United States.

F. Port Facilities

Petitioners alleged that the government of Korea is constructing a port at Kwangyang Bay to facilitate the importation of coal and iron ore. It is further alleged that POSCO, and therefore its subsidiary, DongJin, will benefit from this port. The port is scheduled for completion in 1987 and will not be used by any producer that exported OCTG to the United States during the period for which we are measuring subsidization.

G. Training Aid

Petitioners alleged that the steel industry has received training aid from the government of Korea. We verified that the steel companies producing the products under investigation have not received training grants or other training funds from the government of Korea.

H. Financial and Technical Assistance for Raw Material Purchases

Under the Iron and Steel Promotion Act financial and technical assistance to purchase raw materials is authorized. However, we found no evidence that steel companies producing the products under investigation receive assistance from the government in purchasing raw materials.

I. Preferential Utility Rates

Petitioners alleged that "designated companies" under the Iron and Steel Industry Rehabilitation Order are eligible on a case-by-case basis to receive discounts from regular utility charges. Under Article 7 of the Iron and Steel Industry Promotion Act reductions on utility charges are authorized. The steel industry made a request to the Korean Electric Company seeking reduced rates but the Electric Company turned down the request and the reductions were never granted. We also found no evidence that the steel companies producing the products under investigation received reductions or other assistance on any other utility rates.

Programs Not In Existence

We determine that the following programs are not in existence or have been abolished:

A Preferential Exchange Rates for Export Loans

Petitioners alleged that producers and exporters of OCTG receive preferential exchange rates for export loans based on letters of credit. Petitioners alleged that the exchange rate used for loans based on letters of credit was 10 percent more favorable to Korean exporters than the actual exchange rate. There is no preferential exchange rate used to convert export financing. For export loans granted under the Export Financing Regulations, a Won/U.S. dollar conversion factor which is lower than the official exchange rate is utilized when a loan is received against a letter of credit. Therefore, we determine that there is no program of preferential exchange rates for export loans that provides countervailable benefits to OCTG producers and exporters.

B. Export Financing under the Foreign Trade Transaction Act

Petitioners alleged that the government of Korea provides the steel industry with preferential short-term export financing under the Foreign Trade Transaction Act. The foreign Trade Transactions Act has been repealed and was not in effect during the period for which we are measuring subsidization.

C. Steel Industry Development Scheme

Petitioners alleged that the Korean Ministry of Trade and Industry is sponsoring a steel industry development scheme in which the government will spend 210 billion won on POSCO's (DongJin's parent company) plant expansion project. At verification we established that the Ministry of Trade and Industry is not sponsoring such a scheme.

D. Wage Controls

Petitioners alleged that the government of Korea controls wages for government-run firms such as POSCO, resulting in lower production costs for this segment of Korean industry. It is further alleged that DongJin may benefit from government wage controls by virtue of its status as a wholly-owned subsidiary of POSCO. The rates paid by DongJin to its workers are comparable to the rates paid by other steel manufacturers. We also found no evidence that the government of Korea has a wage control system under which DongJin must operate.

E. Joint Facilities for Industrial Complexes Scheme

Petitioners alleged in their August 20 submission that the government of Korea was providing funding for joint facilities in industrial complexes, and that the steel industry was one of the industries targeted for such funding. In 1981 such a program was discussed between the Federation of Small and Medium Industry Cooperatives and the government of Korea. The project was to be located near Kimpo Airport in Seoul. However, in January 1982 the proposed project was cancelled due to lack of funding.

F. Equipment Funds for Export Strategy Industries and Funding for Industrialization of New Technology

The Ministry of Trade and Industry (MTI) is presently studying proposals concerning these two projects but there has been no final decision on whether to set them up. The Korea Development Bank has received a loan from the Asian Development Bank to fund one of the programs. However, we verified that the ony industries eligible to receive loans from this fund are companies producing machines and machine parts.

G. Assistance for Trading Comnpanies

In their August 20 submission petitioners alleged that the government of Korea provided benefits to trading companies by allowing them to increase their foreign exchange holding and by allowing them to increase their reserve funds to cover export losses in foreign markets. With regard to the first allegation, trading companies are authorized to maintain foreign currency accounts of over $300,000 dollars. However, we found no evidence that other companies are limited in their foreign exchange holdings or any other evidence to suggest that this allowance for foreign exchange holding provides a countervailable benefit to trading companies. Regarding the allegation on export reserves, we verified at the trading companies that there are no special provisions allowing them to claim additional export loss reserves. Even if there were such provisions, we have verified all the outstanding export reserves held by the trading companies.

Petitioners Comments

Comment 1: Petitioners argue that the commercial bank interest rate, which was averaged with other rates to compute the benchmark, is not a free market rate and, therefore should not have been used in determining a benchmark. In support of their contention they cite Department practice as reflected in prior proceedings and in the Subsidies Appendix where "commercial" interest rates were used as benchmarks or where market-determined prices were sought.

DOC Position: We disagree. Petitioners are reading our prior determinations and the Subsidies Appendix too narrowly. For example, in seeking a "commercial" benchmark interest rate, we are seeking the alternative financing that is available to the firm in the lending marketplace of that country. We are asking if the interest rate paid on the allegedly preferential loan is less than what the average firm in that country would otherwise be paying. Similarly, in looking to market prices, we are seeking the prices that exist in that country's marketplace.

Typically, the marketplace is not the perfectly competitive market envisaged by economists. Instead, it is the commercial environment facing the firm. The commercial environment includes any distortions to relative prices that arise from government actions such as government regulation of the banking system, tax systems, customs duties or minimum wage laws. So long as profit-maximizing firms compete within that system, a marketpalce exists and our benchmarks for identifying and valuing subsidies are prices in that marketplace.

Comment 2: Petitioners argue that the benchmark interest rate used in the Department's preliminary determination, a weighted average of the interest rates charged by all sources of short-term commercial financing in Korea, does not reflect what a company would pay a normal commercial lender and is thus inconsistent with the principles enunciated by the Department for quantifying subsidies. Petitioners further argue that it is the curb market's unregulated interest rate which reflects the real cost of credit in Korea, and thus, pursuant to the principles enunciated in the Department's Subsidies Appendix, the curb market interest rate should be used as the benchmark interest rate in this case.

DOC Position: The Department believes that the correct benchmark for short-term lending normally is the most comparable, predominant form of short-term financing in the country under investigation. However, as explained in the section of the notice on "Short-Term Export Financing Under the Export Financing Regulations", the Department has found an incentive for banks to lend for export transactions at the expense of domestic financing. Using best information available, the Department has measured this preference for export lending by comparing the cost of export loans with the weighted-average cost of all forms of short-term domestic financing.

In the case of long-term loans, the Department has followed its standard practice of comparing the terms of loans under examination with the terms of comparable commercial long-term loans (see the section of the notice on "Medium- and Long-Term Credit"). In reaching these determinations, we believe we have been faithful to the principles enunciated in our Subsidies Appendix.

Comment 3: Petitioners contend that, assuming *arguendo*, the weighted-average benchmark is the correct benchmark, the Department's weighted-average benchmark understates the proportional size of the curb market and

overstates the proportional size of bank credit as sources of domestic credit.

DOC Position: As explained in the section of the notice on "Short-term Export Financing Under the Export Financing Regulations," we are using a weighted-average of short-term domestic financing costs in order to quantify the banking system's preference for export loans. This weighted-average credit pool comprises short-term domestic bank credit, investment and finance company credit, commercial paper, and the curb market. Our weights are based on the most reliable data entered in the record of this investigation, including the Bank of Korea's *Monthly Statistical Bulletin*, the Federation of Korean Industries' biannual surveys of corporate financing, and the Korea Chamber of Commerce's annual survey of the curb market.

Comment 4: Petitioners contend that Korean medium-and long-term financing is a countervailable benefit because it is made available only to specially-designated priority sectors, to specific subgroups within those sectors, and, in particular, to the steel industry.

DOC Position: As explained in the section of the notice on "Medium- and Long-term Credit," we found no evidence that the Governmnt of Korea directs medium- and long-term credit.

Respondents' Comments

Comment 1: Respondents argue that the Department was incorrect in not using the interest rate for short-term borrowings from commercial banks as the most appropriate national average commercial method of short-term financing. Bill discounts, overdrafts, and general term loans are the domestic equivalents of short-term export financing, and are the alternative financing to export loans. Department precedent has always been to select the most comparable and commonly used alternative source of financing in a given country.

DOC Position: We agree that the correct benchmark for short-term lending normally is the most comparable, predominant form of short-term financing in the country under investigation. However, as explained in the section of the notice on "Short-Term Export Financing Under the Export Financing Regulations", the Department has found an incentive for banks to lend for export transactions at the expense of domestic financing. Using best information available, the Department has measured this preference for export lending by comparing the cost of export loans with the weighted-average cost of all forms of short-term domestic financing.

Comment 2: Respondents contend that the Department was incorrect in determining that long-term loans provided by the National Investment Fund (NIF) constitute export subsidies. NIF loans are in no way contingent on export performance. Respondents further contend that NIF loans are also not domestic subsidies because they are generally available. In any case, given the Department's methodology for evaluating long-term variable rate loans, no new NIF loans or NIF loans outstanding have been at preferential interest rates since NIF rates were equalized with the commercial bill discount rate in late 1981.

DOC Position: We agree that NIF loans do not constitute an export subsidy. We have also found that they do not constitute a domestic subsidy because interest rates on NIF loans during the period under investigation were not on terms inconsistent with commercial considerations. The correct long-term benchmark rate, however, is not that which exists on short-term commercial bills; rather, it is the rate on comparable commercial long-term borrowing. This is the benchmark we used in determining that NIF loans did not constitute subsidies.

Comment 3: Respondents note in their comments on the Government Verification Report that, in the Ministry of Trade and Industry's requirements submission for NIF loans, a number of different companies from industries other than steel are listed and that not only steel companies were specifically listed.

DOC Position: We agree that companies from other industries were listed in the submissions.

Comment 4: Respondents argue in their comments on the DongJin Verification Report that the sale of assets by the banks to POSCO was incorrectly characterized as a loan. They argue that the transaction between POSCO and the banks is a purchase contract between the owners of the assets (the banks) and the purchaser (POSCO).

DOC Position: Our determination with respect to this transaction is set forth in the section of the notice on "Equity Infusions in DongJin."

Comment 5: Respondents note in their comments on the DongJin Verification Report, that the charges paid for opening letters of credit are unrelated to the short-term loans themselves.

DOC Position: As discussed in the section of the notice on "Short-term Export Financing Under the Export Financing Regulations," we consider that the fee structure, which specifies lower charges for opening those letters of credit used to purchase imports of raw materials which are then used in export production, to be a manifestation of the preference built into the government's rediscount mechanism on short-term export loans. We consider that we have captured any benefit from this fee structure in our comparison of the weighted-average interest rate on domestic loans with the 10 percent interest rate on export loans.

Comment 6: Respondents argue in their comments on the Government Verification Report that the central bank rediscount mechanism was established to ensure that financing reached the productive sector of the economy by tying the financing to commodities and transactions, and that the volume of domestic financing under this mechanism far exceeds export financing if overdrafts and general term loans are included. They also argue that because domestic commercial bills finance 100 percent of the bills value, while export loans are eligible for only 80 percent, the rediscount mechanism does not alter the value of financing reaching the borrower.

DOC Position: We disagree. In 1983, the volume of short-term domestic financing eligible for rediscount at the Bank of Korea was less than the volume of short-term export financing eligible for rediscount at the Bank of Korea. We believe this is a manifestation of the preference for export financing over domestic financing. Although a large company's domestic transactions are eligible for financing equal to 100 percent of transaction value, the bank which provides this financing may only rediscount 30 percent of that 100 percent at the Bank of Korea. At the same time, although all firms' export transactions are only eligible for financing equal to 80 percent of transactions value, the bank which provides this financing can rediscount 70 percent of the 80 percent at the Bank of Korea. Thus, the Bank of Korea supplies credit which covers only 30 percent of the value of a domestic transaction as compared to 56 percent of the value of an export transaction.

This preference for export credit is a subsidy, and we have countervailed it (see the section of this notice entitled. "Short-term Export Financing Under the Export Financing Regulations.")

Comments by U.S. Steel, a Party to the Proceeding

Comment 1: U.S. Steel argues that the weighted-average benchmark interest rate used by the Department in its preliminary determination greatly understated the subsidy from government provided/directed loans because it included the commercial bank interest rate, which is a heavily subsidized rate, available only to a select few government-preferred industries. U.S. Steel contends that the commercial bank rate should not be included in the weighted-average benchmark because it is not a market rate. Thus, its use contravenes the Department's standard requirement that the benchmark be a market interest rate. U.S. Steel further contends that because Korean commercial banks lend (1) at well below market interest rates, (2) only to a selected few government-preferred, priority sectors, and (3) without considering borrower creditworthiness, commercial banks cannot be considered "normal commerical lenders." This too contravenes standards Department policy which states that loan benchmarks represent what a company would pay a normal commercial lender.

DOC Position: See our responses to petitioners' Comment 1 and Comment 2.

Comment 2: U.S. Steel contends that, even if it were proper to include the commercial bank interest rate in the Department's weighted-average benchmark, the benchmark still understated the subsidy from government provided/directed loans because the size of the commercial bank sector has been greatly overstated relative to the private (curb) loan market.

DOC Position: See our response to petitioners' Comment 3.

Comment 3: Petitioner contends that exporters and/or steel producers benefit from a lower effective interest rate on domestic bank loans because they, unlike other borrowers, are not subject to compensating balance requirements.

DOC Position: Bank of Korea regulations specifically prohibit domestic banks from requiring compensating balances. During verfication, we found no evidence that domestic bank loans require compensating balances of other borrowers, while not requiring them of exporters and/or steel producers.

Comment 4: U.S Steel argues that the Korean government allocates the heavily subsidized credit of the "tightly government controlled-banking system" to select priority, export industries. All others must rely on the curb market for funds. Commercial bank loans have especially focused on the Korean steel industry, and loan decisions are based on political, not creditworthiness considerations. U.S. Steel contends that commercial bank loans were not generally available either prior to or during 1983–1984.

DOC Position: For an explanation of our treatment of medium- and long-term loans, see the section of this notice entitled "Medium- and Long-term Credit".

Comment 5: U.S. Steel contends that the National Investment Fund (NIF) provides preferential loans to steel producers.

DOC Position: The Department has found that NIF loans do not constitute subsidies during the period for which we are measuring subsidization (see the section of this notice entitled "Medium- and Long-Term Credit").

Comment 6: U.S. Steel contends that the NIF provided loans to steel producers at interest rates below those paid on NIF deposits. This differential in the cost of their funds and the return on their funds was assumed by the government, and constitutes an additional subsidy to steel producers.

DOC Position: During the period for which we are measuring subsidization, interest rates on long-term variable-rate NIF loans outstanding were not below interest rates on long-term variable-rate NIF deposits outstanding. Therefore, no government assumption of interest charges is indicated during the period for which we are measuring subsidization.

Comment 7: U.S. Steel argues that the respondent's non-responsiveness to questions in the Department's questionnaire concerning both commercial banks and NIF dictates that the Department make all inferences against respondents.

DOC Position: The Department has found respondents responsive to our requests for information throughout this investigation considering the time constraints under which all parties were operating. Furthermore, we obtained information on the commercial banks and NIF during our verification and U.S. Steel was given an opportunity to comment on the reports of our verification which discuss commercial banks and the NIF in detail.

Comment 8: U.S. Steel argues that Korean Development Bank (KDB) loans are not generally available and should therefore be countervailed.

DOC Position: The Department has found that KDB loans do not constitute subsidies during the period for which we are measuring subsidization (see the section of this notice entitled "Medium- and Long-Term Credit").

Comment 9: U.S. Steel contends that Korean steel producers benefit from government loan guarantees.

DOC Position: In the course of our investigation we determined that loan guarantees from both government-owned and privately-owned financial institutions are a standard commercial practice in Korea. The Bankers' Association sets the guarantee fees, and all Korean banking institutions charge those fees. The fee structure for loan guarantees does not differentiate by industry or class of transaction (*i.e.:* export or domestic). It does distinguish between won and foreign currency loans. As explained at verification by both foreign and Korean bankers, foreign banks, unlike Korean banks, cannot require collateral on their loans. Thus, foreign bankers generally require a loan guarantee. Korean banks usually require guarantees when a company has no unpledged collateral. We found that the steel companies producing the products under investigations paid the fees specified by the Bankers' Association for those guarantees that they had on their domestic and foreign currency loans. Thus, we do not consider that these guarantees are on terms inconsistent with commercial considerations.

Comment 10: U.S. Steel contends that the Department's verification reports indicate that preferential port charges for exports exist in Korea, based on the per ton differential in port charges for exporting, importing and domestic shipping.

DOC Position: The Korea Maritime and Port Administration (KMPA) establishes the rates for port charges. Rates vary according to port also to the type of port activity. Port charges are higher for importers than for exporters: however, the charges for domestic shipping are the lowest. For the port at Pusan the rate is 22 cents a ton for exporting, 37 cents a ton for importing, and 68 won a ton for shipping to another Korean port. The rate of 68 won for domestic shipping is much lower than the 22 cents a ton rate charged to exporters. Since an exporting activity is not favored over a domestic activity, we find no countervailable benefit being provided to producers or exporters of OCTG.

Comment 11: U.S. Steel notes that the Department's verification report on DongJin indicates that opening charges on letters of credit for loans for purchasing foreign raw materials for domestic use are higher than for loans purchasing foreign raw materials for export use. They consider this to be an export subsidy.

DOC Position: We believe that we have captured any benefit to short-term export loans provided by this fee structure in our calculation of the subsidy on the short-term export loans. For further discussion of this issue, see

our response to respondents' Comment 5.

Comment 12: U.S. Steel contends that Pohang Iron and Steel Company's (POSCO) equity infusions into Dongjin are a countervailable subsidy because no private investor would have been willing to invest in Dongjin.

DOC Position: Our determination with respect to the formation of, and equity investment in, Dongjin is set forth in the section entitled "Equity infusions into Dongjin."

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. Commerce officials spent from September 18 to October 17 verifying the information submitted by the government of Korea and by the companies under investigation, and gathering additional information to be used in our final determination. During this verification we followed normal verification procedures including inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, and to financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, on September 12, 1984 we instructed the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Korea (49 FR 35836). As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended and the Customs Service shall require a cash deposit or bond for each such entry of this merchandise in the amount of 0.53 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs Service to assess countervailing duties on all entries of OCTG from Korea entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation date, equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1771(d)).

William T. Archey

Acting Assistant Secretary for Trade Administration.

November 20, 1984.

[FR Doc. 84-31195 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Negotiations During 1985

November 23, 1984.

The U.S. Government anticipates holding negotiations during 1985 concerning expiring bilateral agreements covering certain cotton, wool and man-made fiber textiles and apparel from Brazil (March 31), Indonesia (June 30), Japan (December 31), Mauritius (September 30), Mexico (December 31), Singapore (December 31), and Yugoslavia (December 31). (The dates noted in parenthesis are the expiration dates of the agreements).

The purpose of this notice is to invite any party wishing to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D..C 20230. Because the exact timing of the negotiations is not yet estabilished, comments should be submitted promptly, particularly those expiring early in the year. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.The soliciation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31200 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limit for Certain Man-Made Fiber Apparel Products From the Republic of the Philippines

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1984. For further information contact James Nader, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated December 16, 1983 (48 FR 56425) established limits for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 645/646NT (sweaters), produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1984. At the request of the Government of the Republic of the Philippines, special carryforward in the amount of 5,201 dozen is being applied to the restraint limit for Category 645/646, increasing it from 101,641 dozen to 106,842 dozen for 1984, pending completion of a data reconciliation involving this Category. The 1985 limit for Category 645/646 will be adjusted to account for carryforward applied in the current year, depending on the outcome of the data reconciliation.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 16, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1984.[1]

Effective on November 29, 1984, paragraph 1 of the directive of December 16, 1983 is hereby further amended to include an adjusted restraint limit for Category 645/646NT of 106,842 dozen.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31198 filed 11-27-84; 8:45 am]

BILLING CODE 3510-DR-M

New Import Control Limits for Certain Cotton Textiles and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

November 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1984. For further information contact Jane Corwin, International Trade Specialist (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1981 between the Governments of the United States and the Republic of Singapore, the Government of the United States has decided to control imports of combed cotton yarn in Category 301 and man-made fiber dresses in Category 636, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1984, at respective levels of 300,000 pounds and 15,453 dozen. These controls are in addition of those previously announced for 1984 (See 48 FR 56628 and 49 FR 19569). The levels in the letter to the Commissioner of Customs, which follows this notice, will be adjusted to account for imports exported during the January-September 1984 period. Charges for imports in Category 301 have amounted to 217,700 pounds; in Category 636, to 10,809 dozen.

As the data become available, further charges will be made to account for the period which began on October 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton and man-made fiber textile products, produced or manufactured in Singapore and exported during 1984.

Effective on November 29, 1984, the directive of December 19, 1983 is hereby amended to include the following levels of restraint for cotton textiles and man-made fiber textile products in Categories 301 and 636:

Category	12-mo level of restraint[1]
301	300,000 pounds
636	15,453 dozen

[1] The levels of restraint have not been adjusted to reflect any imports exported after December 31, 1983. During the January-September 1984 period imports in Category 301 have amounted to 217,700 pounds. Imports during that period in Category 636 have amounted to 10,809 dozen.

Textile products in Categories 301 and 636 which have been exported to the United States before January 1, 1984 shall not be subject to this directive.

Textile products in Categories 301 and 636 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton textiles and man-made fiber textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31197 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-DR-M

New Import Control Limits for Certain Cotton Textile Products Produced or Manufactured in Thailand

November 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1984. For further information contact Jane Corwin, International Trade Specialist (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand, the United States Government has decided to control imports of cotton twill and sateen in Category 317, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1984, at a limit of 6,824,280 square yards equivalent which

[1] The agreement, provides, in part, that: (1) specific limits may be exceeded by during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems rising in the implementation of the agreement.

[2] The restraint limit has not been adjusted to reflect any imports exported after December 31, 1983.

includes available carryover from 1983. The limit has not been adjusted to account for merchandise exported on and after January 1, 1984. During the January–September 1984 period such goods have amounted to 6,101,980 square yards equivalent and will be charged. Further charges will be made to account for the period which began on October 1, 1984 and extends to the effective date of this action, as well as thereafter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 7, 1983 by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 29, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 317 produced or manufactured in Thailand, in excess of 6,824,280 square yards equivalent.[1]

Textile products in Category 317 which have been exported before January 1, 1984, shall not be subject to this directive.

Textile products in Category 317 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31201 Filed 11-27-84; 8:45 am]
BILLING CODE 3510-DR-M

Establishing New Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Republic of Uruguay

November 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1984. For further information contact James Nader, International Trade Specialist (202) 377–4212.

Background

The Governments of the United States and the Republic of Uruguay have exchanged notes amending their Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984 to establish, among other things, new specific limits of 1,700,000 square yards and 40,100 dozen, respectively for wool textile products in Categories 410 (woolen and worsted fabric) and 435 (wool coats), produced or manufactured in Uruguay and exported, in the case of Category 410, during the period which began on February 1, 1984 and extends through January 31, 1985; and, in the case of Category 435 (wool coats), during the period which began on July 1, 1984 and extends through June 30, 1985. The letter to the Commissioner of Customs which follows this notice amends the directive of June 18, 1984 to establish the foregoing specific limits for the indicated periods. Under the terms of the agreement, as amended, the new specific limit for Category 410 is being increased by the application of carryforward in the amount of 119,000 square yards to 1,819,000 square yards.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 18, 1984, concerning wool textile products, produced or manufactured in Uruguay and exported during specified restraint periods.

Effective on November 29, 1984, the directive of June 18, 1984 is hereby amended to establish a restraint limit of 40,100 dozen [1] for wool textile products in Category 435, produced or manufactured in Uruguay and exported during the twelve-month period which began on July 1, 1984 and extends through June 30, 1985.

Also effective on November 29, 1984, the directive of June 18, 1984 is hereby further amended to establish a restraint limit of 1,819,000 square yards [2] for wool textile products in Category 410, produced or manufactured in Uruguay and exported during the twelve-month period which began on February 1, 1984 and extends through January 31, 1985.[3]

Wool textile products in Categories 410 and 435 which have been exported to the United States in the case of Category 410, before February 1, 1984, and, in the case of Category 435, before July 1, 1984, shall not be subject to this directive.

Wool textile products in Categories 410 and 435 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

[1] The level of restraint has not been adjusted to reflect any imports exported after December 31, 1983. Imports in Category 317 during the January-September 1984 period have amounted to 6,101,980 square yards equivalent.

[1] The restraint limit has not been adjusted to account for any imports exported after June 30, 1984.

[2] The restraint limit has not been adjusted to account for any imports exported after January 31, 1984.

[3] The Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984 between the Governments of the United States and Uruguay provides, in part, that: (1) The specific limits may be adjusted for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter E. Lenahan

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31199 Filed 11-27-84; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement (DSEIS); Sacramento River Deep Water Ship Channel, CA.

AGENCY: Army Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of Intent to prepare a draft Supplement to the Final Environmental Impact Statement (DSEIS).

SUMMARY: 1. *Proposed Action:* The proposed project consists of deepening the existing deep water ship navigation channel from 30 feet to 35 feet (mean lower low water) and widening the navigation channel to between 250 and 400 feet in width. The proposed project is in the Continuing Engineering and Planning phase and design details for construction are being prepared. The DSEIS is being prepared to evaluate and update water quality issues, fish and wildlife impacts and mitigation, and recreation features. Project impact on salinity influencing water quality of water supply flows in the Delta is being evaluated. Previously evaluated project impact on fish and wildlife habitat at dredged material disposal sites is being reexamined. Potential additional recreation areas could be established at selected dredged material disposal sites and this is being coordinated with Solano, Sacramento and Yolo Counties. Comments received on the previous EIS suggested further information is needed about possible heavy metal (mercury) contamination in materials to be dredged and about secondary and cumulative impacts of the project and these subjects will also be addressed in the DSEIS. The project was previously evaluated in a Final Environmental Impact Statement published in the May 8, 1981 **Federal Register**.

2. *Alternatives:* Alternative methods of moving goods through the Port of Sacramento were studied thoroughly in the original EIS process and found either less economically and/or environmentally beneficial. These alternatives included: No action; increased use of LASH barges; and increased use of intermodel transportation. There are no alternatives to the proposed project being evaluated at this time. Alternate methods of disposing of the dredged material will be evaluated, as will possible uses of the disposal sites for recreation or fish and wildlife mitigation areas.

3. *Scoping of the DSEIS:* The original EIS was extensively coordinated with concerned agencies, environmental groups, and the general public through a series of public meetings and workshops. The supplement is being coordinated with concerned Federal, State and local agencies. Issues which are being reevaluated include water quality, salinity, fish and wildlife, and recreational use of the disposal sites. Public input is desired on these and any other issues of concern to assist in scoping the DSEIS.

4. *Estimated date of DSEIS:* A draft Supplement to the Final Environmental Impact Statement is expected to be circulated for public review in January 1985.

ADDRESS: Questions concerning the proposed project and the DSEIS can be answered by Michael Welsh, Environmental Planning Section, Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814–4794, telephone (916) 440–2456, (FTS 448–2456).

Dated: November 15, 1984.

Arthur E. Williams,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-31100 Filed 11-27-84; 8:45 am]
BILLING CODE 3710-GH-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 28, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 23, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: Application form for Follow Through Program
Agency Form Number: 4473
Frequency: Annually
Affected Public: Local Educational Agencies; Other Public and Private, Non-Profit Agencies, Organizations, and Institutions
Reporting Burden: Responses: 92; Burden Hours: 2,760
Recordkeeping Burden: Recordkeepers: 92; Burden Hours: 184

Abstract: State Education Agencies, Local Education Agencies and Institutions of Higher Education must

have this application form in order to meet all the requirements for securing the financial assistance available under the Follow Through authority.

Type of Review Requested: Extension
Title: Nominations for the National Advisory Council on Indian Education
Agency Form Number: 543
Frequency: On Occasion
Affected Public: State and Local Educational Agencies; Indian Tribes; Indian Organizations; Indian Institutions; Elementary or Secondary Schools for Indian Children supported by the Department of the Interior; Institutions of Higher Education
Reporting Burden: Responses: 80; Burden Hours: 80
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This form shall be used by individuals, tribes, and organizations to apply for or nominate persons to serve on the National Advisory Council on Indian Education. This Council advises the Secretary with respect to the administration of programs in which Indian children and adults participate or receive benefit.

Type of Review Requested: New
Title: State Performance Report (ECIA, Chapter 1, Migrant Program)
Agency Form Number: A10–6P
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden: Responses: 51; Burden Hours: 1,785
Recordkeeping Burden: Recordkeepers: 51; Burden Hours: 204

Abstract: This report is used to obtain necessary participation and performance data on the ECIA Chapter 1 migrant education program throughout the Nation. It is also needed to manage the program effectively and to provide information needed to comply with Sections 417(a) and 418(a) of the General Education Provisions Act and Section 555(e) of Chapter 1, ECIA.

Type of Review Requested: Extension
Title: Title IV, Section 418A of the Higher Education Act of 1965, as amended. High School Equivalency (HEP) College Assistance Migrant Program (CAMP) Financial Status and Performance Report.
Agency Form Number: 819–2
Frequency: Annually
Affected Public:
Reporting Burden: Responses: 30; Burden Hours: 180
Recordkeeping Burden: Recordkeepers: 30; Burden Hours: 30

Abstract: An institution of higher education or another public or non-profit private agency is required to file a financial status and performance report under the provisions of the Education Department General Administrative Regulations (EDGAR). The information will be used for future program decisions regarding program planning or management.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Client Assistance Program Request for Assistance
Agency Form Number: B20–1P
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden: Responses: 57; Burden Hours: 14.25
Recordkeeping Burden: Recordkeepers: 0; Burden Hurs: 0

Abstract: The information is needed to (1) determine the amount of each State's grant and (2) determine what agency will be conducting each State's program. The name of the designated agency is cited in Section 370.20(a)(1); the amount of funds requested is cited in Section 370.20(d).

Type of Review Requested: New
Title: Financial Status Report for the Client Assistance Program
Agency Form Number: B20–2P
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden: Responses: 57; Burden Hours: 57
Recordkeeping Burden: Recordkeepers: 57; Burden Hours: 57

Abstract: This annual report, prepared and submitted by the State agency designated by the Governor to administer the Client Assistance Program (CAP), is the only source of financial information available to RSA. Used in conjunction with client data it affords the capability of measuring the accomplishments of the program.

Type of Review Requested: Extension
Title: Annual Report on State VR Agency Post-Employment Services and Annual Reviews
Agency Form Number: RSA 62
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden: Responses: 82; Burden Hours: 71
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The ED–RSA 62, a reporting form instrument, is used to monitor State agency activities of service delivery to handicapped individuals after rehabilitation closure to ensure maintenance of employment. The form is also used to review earlier termination to see if the client can now benefit from rehabilitation and to review placement in a sheltered workshop to determine if the client can now work in the competitive labor market.

Type of Review Requested: Revision
Title: Program Impact Reporting System
Agency Form Number: RSA 911
Freqency: Annually
Affected Public: State or Local Governments
Reporting Burden: Responses: 83; Burden Hours: 3,464
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The specified data must be collected by the Commissioner, RSA and must be included in the Annual Report to the Congress in accordance with Section 13 of the Rehabilitation Act, as amended. The respondents are State VR agencies. The specified data are demographic and program data on each individual case closed out from the VR system each fiscal year.

Type of Review Requested: New
Title: Annual Client Assistance Program Report
Agency Form Number: RSA 227
Frequency: Annually
Affected Public: State or Local Governments; Non-profit Institutions
Reporting Burden: Responses: 57; Burden Hours: 228
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The ED–RSA 227 will be used to monitor CAP agency activities of service provided to client and client applicants of programs, projects and facilities authorized by the Rehab Act of 1973, as amended.

[FR Doc. 84–31118 Filed 11–27–84; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF85–69–000]

Acme Fence and Iron; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 1, 1984, Acme Fence and Iron, (Applicant) of P.O. Box 876, Norman, Oklahoma 73070, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a wind turbine generator located in northwest Norman, Oklahoma. The electric power production capacity of the facility is 180 kilowatts. The wind turbine is a 17 meter Derrieus design.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84–31177 Filed 11–27–84; 8:45 am]
BILLING CODE 4717–01–M

[Docket No. QF85–18–000]

Bio-Energy Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 23, 1984.

On October 11, 1984, Bio-Energy Corporation (Applicant), located at Route 127, P.O. Box 498, West Hopkinton, New Hampshire 03229, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Route 127 in the Town of West Hopkinton, New Hampshire. It consists of a steam boiler designed for wood chip burning, and an extraction turbine-generating set rated 11.5 MW. Electric power output generated by the facility will be sold to a local public utility whereas steam output will be sold to an adjacent paper mill for process use. The primary energy source used by the facility is wood chips or "waste wood". The construction of the facility began in August, 1983.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedrue. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84–31228 Filed 11–27–84; 8:45 am]
BILLING CODE 4717–01–M

[Docket No. RP83–44–007]

Algonquin Gas Transmission Co.; Tariff Filing Under Rate Schedule SNG–1

November 23, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on November 16, 1984, submitted a Cost of Service Report related to service under its Rate Schedule SNG–1 for the 1983–1984 Winter Delivery Season, as required by the provisions of its FERC Gas Tariff, Second Revised Volume No. 1. Together with such report, and reflecting the results of the report, Algonquin Gas has filed Sixth Revised Sheet No. 202 to reflect a negative amortization adjustment of $0.0371 to the base tariff SNG–1 Demand Charge approved in Docket No. RP83–44. Such tariff sheet is proposed to be effective November 1, 1984.

Algonquin Gas notes that a copy of this filing is being served upon all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commissions Rules of Practice and Procedure (18 CFR 285.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84–31229 Filed 11–27–84; 8:45 am]
BILLING CODE 4717–01–M

[Docket No. ES85–12–000]

Boston Edison Co.; Notice of Application

November 23, 1984.

Take notice that on November 14, 1984, Boston Edison Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking an order authorizing the issuance of short-term debt securities ("Short-term Debt") not exceeding in the aggregate $150,000,000 outstanding at any one time. The Short-term Debt will be issued by the Applicant on various dates through December 31, 1986. Short-term Debt consisting of promissory notes issued as short-term notes to commercial banks or institutional investors, promissory notes issued as short-term notes to commercial banks or institutional investors, promissory notes to commercial paper dealers and commercial paper placed directly with purchasers and all Short-term Debt will mature in no more than one year from the date of issue.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84–31230 Filed 11–27–84; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. QF85-71-000]

Bridgewater Hydroelectric Partnership; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 2, 1984, Bridgewater Hydroelectric Partnership (Applicant), of c/o Mitex, Inc., 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 125 kilowatt hydroelectric facility (P. 7513) will be located at the Old Mill Dam on the North River in the Town of Bridgewater, Virginia.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31231 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-75-000, et al. and Docket No. RP82-120-000]

Columbia Gas Transmission Corp. et al. and Columbia Gas Transmission Corp.; Informal Settlement Conference

November 23, 1984.

Take notice that on December 4, 1984, at 10:00 a.m. there will be an informal conference held in the offices of the Commission which will be convened to discuss the possible resolution by settlement of all or part of the issues in the above-captioned causes.

Any interested persons may at their option attend, but mere attendance will not serve to make one a party to the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31178 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-72-000]

Columbus Mills Dam Hydroelectric Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 2, 1984, Columbia Mills Dam Hydroelectric Project (Applicant), of Mitex, Inc., 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 450 kilowatt hydroelectric facility (P. 8005) will be located near the Maury River in Buena Vista, Virginia.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31232 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-115-004]

Consolidated Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

November 23, 1984.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on November 19, 1984, filed revised tariff sheets pursuant to a Stipulation and Agreement in Docket No. RP-82-115-000, approved by Commission letter order issued November 9, 1984. The revised tariff sheets reflect the resolution of the rate of return, capital structure and associated tax issued as provided in the Stipulation and Agreement.

Consolidated requests waiver of any of the Commission's Rules and Regulations as may be deemed necessary to permit the revised tariff sheets to become effective as proposed.

Copies of the filing were served upon Consolidated's jurisdictional customers, other persons intervening in Docket No. RP82-115-000, as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All petitions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31179 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-50-000]

Diamond Shamrock Exploration Co.; Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificates of Public Convenience and Necessity

November 23, 1984.

Take Notice that on November 20, 1984, Diamond Shamrock Exploration Company filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificates of Public Convenience and Necessity to authorize a special marketing program called Diamond Shamrock Special Marketing Program ("DSSMP"). Applicant proposes to conduct this program in a manner similar to those SMP extensions authorized by the Commission on September 20, 1984 in Docket Nos. CI83-269, *et al.* Under DSSMP, Applicants would market released gas. The authority sought herein would authorize the limited-term abandonment of the sale of the released gas to existing purchasers, and the resale of that gas to the DSSMP purchasers, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would authorize interstate pipeline, distributors and Hinshaw pipelines to transport DSSMP volumes pursuant to section 7(c) of the Natural Gas Act and would authorize intrastate pipelines to transport DSSMP volumes pursuant to section 311(a)(2) of the Natural Gas Policy Act.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before December 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31180 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-68-000]

Drapery Manufacturing, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 1, 1984, Drapery Manufacturing, Inc., (Applicant), of 8205 S.W. 29th Street, Oklahoma City, Oklahoma 73179, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a wind turbine generator located at the Applicant's address. The electric power production capacity of the facility is 180 kilowatts. The wind turbine is a 17 meter Derrieus design.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31233 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7809-001]

Emerson Falls Hydro Associates; Notice Suspending 120-Day Period for Action on Small Hydro Exemption

Issued November 21, 1984.

Emerson Falls Hydro Association filed an application for exemption for the proposed Emerson Falls Water Power Project No. 7809, to be located on the Sleepers River, in Caledonia County, Vermont. The application was filed pursuant to section 408 of the Energy Security Act of 1980 and § 4.101 *et seq.* of the Commission's regulations.

Additional time is necessary for action on the application in order to ensure full consideration of all information and comments that have been received. The 120-day period for Commission action is suspended pursuant to 18 CFR 4.105(b)(5)(iv).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31181 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-4-000]

Fayette Manufacturing Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 23, 1984.

On October 3, 1984, Fayette Manufacturing Corporation (Applicant), P.O. Box 1149, Tracy, California 95376, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 6.49 MW combined-cycle (with Kalina cycle technology) cogeneration facility will be located at the intersection of Kelso and Bruns Roads, 15 miles east of Livermore in Alameda County, California. The facility will consist of a combustion turbine generating set rated 3.77 MW; and a steam turbine generating set rated 2.72 MW. Heat produced from the combustion turbine exhaust as well as from the Kalina cycle will be used for heating a 100,000 square foot greenhouse. The construction of the facility will begin in the first quarter of 1985. The primary energy source to be used by the facility is natural gas.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy

Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31234 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-458-000]

Harris Energy, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 23, 1984.

On August 22, 1984, Harris Energy, Inc. (Applicant), located at 911 Moraga Road, Lafayette, California 94549, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. A revised application with supplemental information was filed by the Applicant on October 17, 1984. No determination has been made that the submittal constitutes a complete filing.

The 16.3 MW combined-cycle cogeneration facility will be located at the H.G. Fenton Materials Company quarry located near the north end of Camino Santa Fe Road in the Carroll Canyon area of San Diego, California. Exhaust heat from a combustion turbine will go directly both to an asphalt plant aggregate dryer and to a heat recovery steam generator from which, steam produced will go to an extraction/condensing steam turbine generator. Extracted steam will be used to heat asphalt storage tanks continuously. Net electric power generation by the facility will be between 12 MW and 15 MW depending on whether the aggregate dryer is on or off. The primary energy source will be natural gas or oil. The construction of the facility will begin in June 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31235 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-70-000]

Hitch Enterprises; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 1, 1984, Hitch Enterprises (Applicant), of P.O. Box 1308, Guymon, Oklahoma 73942, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a wind turbine generator located 20 miles south and 8 miles west of Garden City, Kansas. The electric power production capacity of the facility is 180 kilowatts. The wind turbine is a 17 meter Derrieus design.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31236 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6442-006]

Kelley, Ravenscroft and Chenoweth; Surrender of Preliminary Permit

November 23, 1984.

Take notice that Kelley, Ravenscroft and Chenoweth, Permittees for the Whitehorse Rapids Project No. 6442, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 6442 was issued on October 7, 1983, and would have expired on March 31, 1985. The project would have been located on Johnson Creek in Valley County, Idaho.

The Permittees filed the request on October 1, 1984, and the preliminary permit for Project No. 6442 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31237 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6267-011]

Lester Kelley, Vernon Ravenscroft and Helen Chenoweth; Surrender of Exemption From Licensing of a Small Hydroelectric Project of Five Megawatts or Less

November 23, 1984.

Take notice that Lester Kelley, Vernon Ravenscroft and Helen Chenoweth, Exemptees for the Reegan Creek Project No. 6267, have requested that their exemption be terminated. The exemption from licensing was issued on April 6, 1984, and the project would have been located on Reegan Creek in Valley County, Idaho. The Exemptees have stated that project construction has not commenced.

The Exemptees filed the request on October 1, 1984, and the exemption from licensing of Project No. 6267 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31240 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6245-012]

Lester Kelley, Vernon Ravenscroft and Helen Chenoweth; Surrender of Exemption From Licensing of a Small Hydroelectric Project of Five Megawatts or Less

November 23, 1984.

Take notice that Lester Kelley, Vernon Ravenscroft and Helen Chenoweth, Exemptees for the Bear Creek Project No. 6245, have requested that their exemption be terminated. The exemption from licensing was issued on April 6, 1984, and the project would have been located on Bear Creek in Valley County, Idaho. The Exemptees have stated that project construction has not commenced.

The Exemptees filed the request on October 1, 1984, and the exemption from licensing of Project No. 6245 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31239 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6230-005]

Lester Kelley, Vernon Ravenscroft and Helen Chenoweth; Surrender of Preliminary Permit

November 23, 1984.

Take notice that Lester Kelley, Vernon Ravenscroft and Helen Chenoweth, Permittees for the Caton Creek Project No. 6230, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 6230 was issued on October 18, 1983, and would have expired on March 31, 1985. The project would have been located on Caton Creek in Valley County, Idaho.

The Permittee filed the request on October 1, 1984, and the preliminary permit for Project No. 6230 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31241 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-46-000]

Marshfield Brook Hydroelectric Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On October 22, 1984, Marshfield Brook Hydroelectric Company (Applicant), 28 State Street, Montpelier, Vermont 05602, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 390 kW small power production facility is located in the Town of Marshfield, Washington County, Vermont. It is a hydroelectric generation facility and the primary energy source is water.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31342 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-50-000]

Methanol Production Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 23, 1984.

On October 22, 1984, Methanol Production Corporation (Applicant), located at 165 South Union, Suite 500, Lakewood, Colorado 80228, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Methanol Production Corporation will construct a modular methanol plant designed to convert medium BTU natural gas into industrial grade methanol at a plant to be located in Township 29½ South, Range 23 East, SLM, San Juan County, Utah.

Natural gas to fuel the facility and provide methanol feedstocks will originate from natural gas wells that have been shut in because of high concentrations of nitrogen, CO_2, and hydrogen sulfide.

Electric power will be produced in a bottoming-cycle from waste heat generated in the steam/methane reforming section of the modular methanol plant. Steam will be generated from the recovery of heat in the reformer flue gas. Electricity will be recovered from the steam via the use of a non-condensing steam turbo-generator. Total electric production capability of the plant is 846 kilowatts. Construction is scheduled to commence in January, 1985 with completion and start-up projected for December, 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31208 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER84-694-000, et al.]

Michigan Power Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Waiver of Notice Requirements, Establishing Hearing Procedures, and Consolidating Dockets

Issued November 20, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III, and Charles G. Stalon.

On September 21, 1984, Michigan Power Company (MPC) tendered for filing a proposed two-step rate increase for firm power service to two municipal wholesale customers, the City of Dowagiac and the Village of Paw Paw, Michigan.[1] The proposed Step 1 rates would increase revenues by approximately $152,000 (5.6%) for the calendar year 1983 test period. The proposed Step 2 rates would further increase revenues by approximately $404,000 (15%). MPC's submittal primarily reflects the pass-through of MPC's increased purchased power costs incurred as a result of its increased rates for service from Indiana and Michigan Electric Company (I&M) proposed in Docket Nos. ER84-587-000, *et al.*[2] MPC's filing also proposes a decrease in the loss factors incorporated in the company's fuel adjustment clause. MPC requests waiver of the notice requirements to allow its proposed Step 1 and 2 rates to become effective coincident with the effectiveness dates designated for I&M's corresponding rates.

Notice of MPC's filing was published in the **Federal Register**, with comments due on or before October 17, 1984. Paw Paw and Dowagiac filed timely motions to intervene. Paw Paw states that it is a customer of MPC and will be affected by the proposed increase. It does not, however, raise any substantive issues. Dowagiac contends that MPC's rates should be suspended on the same basis as were I&M's, inasmuch as MPC's filing is predicated largely on purchased power costs.[3] In addition, Dowagiac raises issues regarding MPC's proposed capital structure and rate of return. It also alleges that there are discrepancies between the data in MPC's filing and the data in I&M's filing in Docket Nos. ER84-587-000, *et al.* Dowagiac states that it does not object to MPC's request for waiver of the notice requirements, so long as both the Step 1 and Step 2 rates are suspended and become effective, subject to refund, no earlier than the proposed I&M rates.

On October 29, 1984, MPC filed a response to Dowagiac's motion to intervene. MPC does not object to Dowagiac's motion to intervene or request for an order making the rates subject to refund. However, MPC contests Dowagiac's allegations regarding capital structure, rate of return, and discrepancies with I&M's filing. It further states that there is no need for a hearing in this proceeding on the ground that Dowagiac may pursue its allegations in I&M's proceeding in Docket Nos. ER84-587-000, *et al.*

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely and unopposed interventions of Paw Paw and Dowagiac serve to make them parties to this proceeding.

Our preliminary examination of MPC's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that MPC's proposed rates may not produce substantially excessive revenues. As noted MPC's submittal, in large part, represents a pass-through of increased purchased power costs attributable to I&M's earlier filings. In addition, we note that neither intervenor in this proceeding objects to MPC's request for waiver of the notice requirements. Thus, we find that good cause exists to waive the notice requirements and to suspend MPC's proposed Step 1 and Step 2 rates, to become effective concurrently with I&M's proposed increase to MPC, on October 10, 1984 and one day after the date of commercial operation of Rockport 1, respectively, subject to refund.

Because we find that common questions of law and fact may be presented in this docket and in Docket Nos. ER84-587-000, *et al.*, we shall consolidate these proceedings for purposes of hearing and decision.

The Commission orders:

(A) MPC's request for waiver of the notice requirements is hereby granted for good cause shown; MPC's proposed rates are hereby accepted for filing and suspended, with the Step 1 and Step 2 rates to become effective, subject to refund, on October 10, 1984 and one day after the date of commercial operation of Rockport 1, respectively.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of MPC's rates.

(C) Docket No. ER-84-694-000 is hereby consolidated with the pending proceeding in Docket Nos. ER-84-587-000, ER84-588-000, ER84-589-000, ER84-590-000, ER84-591-000, and ER84-592-000 for purposes of hearing and decision.

(D) The Commission staff shall serve top sheets in this proceeding within 10 days from the date of this order.

(E) The administrative law judge designated to preside in Docket Nos. ER84-587-000, *et al.*, shall determine additional procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(F) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,
Secretary.

Attachment—Rate Schedule Designations

Other Parties: Village of Paw Paw, City of Dowagiac

Designation	Description
(1) 12th revised sheet No. 6 under FPC electric tariff, original volume No. 1 (supersedes 11th revised sheet No. 6).	Step one rates.
(2) Sixth revised sheet No. 7 under FPC electric tariff, original volume No. 1 (supersedes 5th revised sheet No. 7).	Fuel adjustment clause.
(3) 13th revised sheet No. 8 under FPC electric tariff, original volume No. 1 (supersedes 12th revised sheet No. 8).	Step two rates.

[FR Doc. 84-31182 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP84-141-000]

Midwestern Gas Transmission Co.; Informal Technical Conference

November 23, 1984.

Take notice that at 10:00 a.m. on Tuesday, December 4, 1984, an informal Staff Technical Conference will be held with Midwestern Gas Transmission Company in the captioned matter at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. All parties are invited to attend. The exact room location will be posted on the day of the conference.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31183 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-73-000]

Mitex, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 2, 1984, Mitex, Inc. (Applicant), of 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,500 kilowatt hydroelectric facility (P.3671-001) will be located near the Allegheny River in Armstrong County, Pennsylvania.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31209 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6708-001]

North Fork Power Co.; Surrender of Preliminary Permit

November 23, 1984.

Take notice that North Fork Power Company, Permittee for the North Fork Project No. 6708, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6708 was issued on May 17, 1983, and would have expired on April 30, 1986. The project would have been located on the North Fork Payette River in Valley County, Idaho.

The Permittee filed the request on October 9, 1984, and the preliminary permit for Project No. 6708 shall remain in effect through the thirteenth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

[1] *See* Attachment for rate schedule designations.

[2] By order dated October 4, 1984, in those dockets, the Commission, *inter alia*, accepted for filing I&M's two-step rate increase applicable for service to MPC and suspended I&M's Step 1 and Step 2 rates for one day from the proposed effective dates, to become effective, subject to refund, on October 10, 1984 and one day after the date of commercial operation of I&M's new generating unit (Rockport 1), respectively. 29 FERC ¶ 61,023 (1984) MPC purchases approximately 98% of its power and energy requirements from I&M.

[3] Dowagiac raised numerous cost of service issues in its motion to intervene in Docket Nos. ER84-587-000, *et al.* Dowagiac's intervention in those dockets was noted by the Commission.

for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31210 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-27-000]

Northern Border Pipeline Co.; Filing of Proposed Initial Rate Schedule, Proposed Changes of FERC Gas Tariff, and Proposed Service Agreement

November 23, 1984.

Take notice that Northern Border Pipeline Company (Northern Border) on *November 19, 1984* tendered for filing a Proposed Initial Rate Schedule, Proposed Changes to FERC Gas Tariff, and Proposed Service Agreement.

Northern Border states that the purpose of this filing is to effectuate the terms and conditions of an initial rate schedule known as Rate Schedule IT-1 in order to provide interruptible transportation service under Applicant's certificate issued by Commission order dated August 9, 1984, in Docket No. CP84-420 or under section 7 of the Natural Gas Act. Such rate schedule is proposed to be included in Northern Border's FERC Gas Tariff, Original Volume No. 1. Northern Border states that the interruptible transportation service rendered under proposed Rate Schedule IT-1 would be subject to the terms and conditions of a new service agreement known as the Interruptible Transportation Agreement. Northern Border further states that the proposed changes in its FERC Gas Tariff, Original Volume No. 1 concern conforming changes made in Rate Schedule T-1 and the General Terms and Conditions in order to integrate Rate Schedule IT-1 with Northern Border's existing Tariff.

Northern Border proposes to charge its IT-1 Shippers a rate for each dekatherm mile of gas stated as a rate per 100 Dekatherm-Miles equal to its debt service. Northern Border proposes to base the Dekatherm-Mile rate using its actual cost of service for a prior six month period and the billing determinants therein. Using this methodology, Northern Border proposes an initial rate of 8.015 cents per 100 Dekatherm-Miles. It is further proposed that the rate would be recomputed and revised tariff sheets filed to become effective each November 1 and May 1. Interruptible Transportation Agreements entered into would use the rate in effect at that time of execution for the entire term of service. Revenues received from the service would be credited to Northern Border's cost of service it is stated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital St., N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31184 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-26-000]

Northern Natural Gas Co. Division of InterNorth, Inc.; Proposed Changes in FERC Gas Tariff

November 23, 1984.

Take Notice that on November 19, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1:

First Revised Sheet Nos. 49, 49a and 49b.

These sheets contain revisions to the Applicability and Character of Service and Facility Surcharge sections of Northern's EUT-1 Rate Schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D..C, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31185 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-690-000]

Northern States Power Co. et al. (Minnesota); Order Accepting for Filing and Suspending Rates, Granting Intervention, and Establishing Hearing Procedures

Issued November 21, 1984

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III, and Charles G. Stalon.

On September 20, 1984, Northern States Power Company (Minnesota) (NSPM), Northern States Power Company (Wisconsin) (NSPW), and Lake Superior District Power Company (Lake Superior) (together referred to as the NSP Companies) jointly tendered for filing a revised coordinating agreement dated September 17, 1984.[1] The NSP Companies operate on a one-system basis;[2] the coordinating agreement, encompassing a cost of service formula rate, is intended to ensure that each operating company incurs uniform power supply costs. Aside from developing the formula with greater specificity, the revised agreement modifies the present formula rate in three ways: (1) All transmission investment is allocated without regard to voltage level; (2) a 12-CP demand allocator based on projected monthly demands is used, rather than a five year combined historical and forecasted average of the winter and summer coincident peaks for each company; and (3) the energy charges reflect hourly costs as dispatched, rather than average monthly costs. The NSP Companies request that the revised coordinating agreement become effective December 31, 1984.

Notice of the filing was published in the **Federal Register**, with comments due on or before October 17, 1984. On September 28, 1984, as supplemented on October 22, 1984, the Minnesota Public Utilities Commission and the Energy Issues Intervention Office of the Minnesota Department of Public Service (Minnesota Agencies) jointly filed a notice and motion to intervene and a request for hearing. The Minnesota Agencies object to: (1) The automatic adjusting features of the cost of service formula; (2) the use of only projected, rather than combined historical and projected, demand data; and (3) the limited time available to interested parties to review annual updates to the formula. Timely notices of intervention were also filed by the North Dakota Public Service Commission and the Wisconsin Public Service Commission, which raised no substantive issues.

On October 16, 1984, the River Electric Association [3] and the City of Marshall, Minnesota (Minnesota Intervenors) filed a motion to intervene. In addition, the Minnesota Intervenors raise several issues, including: (1) The rolling-in of transmission investment; (2) the accounting treatment of Lake Superior; (3) the calculation of transmission losses; (4) the development of demand allocation factors; (5) the actual level of integration and coordination of operations among the NSP Companies; and (6) the equalization of generation and transmission rates among the NSP Companies.

On October 17, 1984, five wholesale customers of NSPW and Lake Superior (Wisconsin Intervenors) [4] filed a motion to intervene and a request for a one day suspension and an investigation and hearing. In support of their request for suspension and a hearing, the Wisconsin Intervenors cite various cost of service issues, including: (1) The rate of return on equity; (2) the demand allocation methodology; and (3) costs included in the formula. The Wisconsin Intervenors also request assurances that costs passed through the formula will be subject to discovery and modification during subsequent requirements rate cases for each company.[5]

On October 19, 1984, the Public Utilities Commission of South Dakota filed an untimely notice of intervention, which stated no position as to the filing.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notices and motions to intervene serve to make the Minnesota Agencies, the North Dakota Commission, the Wisconsin Commission, the Minnesota Intervenors, and the Wisconsin Intervenors parties to this proceeding. In addition, we find that good cause exists to grant the late intervention of the South Dakota Commission, given the interests of the constituency which it represents, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

Our preliminary review of the NSP Companies' filing and the pleadings indicates that the submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the revised coordinating agreement for filing, and we shall suspend it as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed formula rate may not yield substantially excessive revenues. Therefore, we shall suspend that rate for one day, to become effective, subject to refund, on January 1, 1985.

The Commission orders:

(A) The South Dakota Commission's untimely notice of intervention is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The NSP Companies' submittal is hereby accepted for filing and suspended for one day, to become effective on January 1, 1985, subject to refund.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of the revised coordinating agreement.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment—Rate Schedule Designations

Designation	Description
Northern States Power Company (Minnesota)	
(1) Rate schedule FERC No. 437 (supersedes rate schedule FERC No. 416, as supplemented). (2) Supplement No. 1 to rate schedule FERC No. 437.	Coordinating agreement. Exhibits.
Northern States Power Company (Wisconsin)	
(3) Rate schedule FERC No. 73 (supersedes rate schedule FERC No. 67, as supplemented). (4) Supplement No. 1 to rate schedule FERC No. 73.	Coordinating agreement. Exhibits.
Lake Superior District Power Company	
(5) Rate schedule FERC No. 32 (supersedes rate schedule FERC No. 30, as supplemented). (6) Supplement No. 1 to rate schedule FERC No. 32.	Coordinating agreement. Exhibits.

[FR Doc. 84-31186 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-63-000]

Richard J. Olson; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On October 29, 1984, Richard J. Olson (Applicant), of S.R.A. Box 549, Homer, Alaska 99603 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing .

The 4 kilowatt wind facility is located in Homer, Alaska.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such

[1] *See* Attachment for rate schedule designations.

[2] NSPW and Lake Superior are wholly owned subsidiaries of NSPM.

[3] The River Electric Association consists of the six Minnesota Cities of Anoka, Brownton, North St. Paul, Olivia, Sauk Center, and Shakopee.

[4] The Wisconsin Intervenors represent the Cities and Villages of Bangor, Barron, Bloomer, and Medford, Wisconsin, and the Wisconsin Public Power Incorporated System.

[5] In this regard, we note that the proposed formula rate comprises an automatic adjustment clause which can be subject to subsequent review or investigation as to the propriatory or prudence of the costs flowed through the clause. *See Public Service Company of New Hampshire*, Opinion No. 37, 6 FERC ¶ 61,299 (1979).

petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31212 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-41-002]

Southwest Gas Corp.; Compliance Filing

November 23, 1984.

Take notice that on November 16, 1984, Southwest Gas Corporation (Southwest) tendered for filing the following tariff sheet to be a part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Twenty-fourth Revised Sheet No. 10.

Superseding Twenty-third Revised Sheet No. 10.

Southwest states that this revised tariff sheet reflects the rates authorized for Northwest Pipeline Corporation (Northwest) by Commission order issued October 31, 1984. Southwest requests an effective date concurrent with Northwest's rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31187 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-604-001]

Southwestern Public Service Co.; Compliance Filing

November 23, 1984.

Take notice that on November 13, 1984, Southwestern Public Service Company submitted for filing a compliance report pursuant to the Commission's Order issued October 15, 1984.

The Compliance Filing contained revised tariffs, revised cost of service analyses for Period I, fiscal 1983, and Period II, fiscal 1985, rebillings under these revised tariffs for both periods, and the necessary exhibits, rate design, and workpapers relating thereto.

The Compliance Filing also contains Southwestern's Bulk Power Market Experiment Adjustment Clause as requested by Staff during Prehearing Conference on November 7, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 6, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31188 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-44-000]

Swift Creek Power Co., Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On October 16, 1984, Swift Creek Power Company, Inc. (Applicant), 165 Wright Brothers Drive, Salt Lake City, Utah 84116, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.55 MW small power production facility is located on the Swift Creek Afton in Lincoln County, Wyoming. It is a hydroelectric generation facility (P-1651) and the primary energy source is water.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31213 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-51-000]

Texasgulf Chemicals Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 23, 1984.

On October 22, 1984, Texasgulf Chemicals Company, a division of Texasgulf Inc., (Applicant) of P.O. Box 30321, Raleigh, North Carolina 27622 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Texasgulf Chemicals Company's Newgulf sulphur mine near Newgulf in Wharton County, Texas. The facility installed in June 1984, will consist of a natural gas-fired combustion turbine generator, and a waste heat recovery boiler (WHRB). Superheated steam from the WHRB will be utilized to produce sulphur using the Frasch process. The net electric power production capacity of the plant will be 74,560 kW, which is expected to be sold to the Houston Lighting and Power Company. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commissin and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31214 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7683-002]

Tooele County; Surrender of Preliminary Permit

November 23, 1984.

Take notice that Tooele County, Permittee for the proposed Soldier Canyon Project, FERC No. 7683 has requested that its preliminary permit be terminated. The permit was issued on September 13, 1984, and would have expired on February 28, 1986. The project would have been located in Soldier Canyon, Tooele County, Utah.

The Permittee filed the request on October 11, 1984, and the preliminary permit for Project No. 7683 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provide for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31211 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $292,500 obtained as the result of a Consent Order which the DOE entered into with Thornton Oil Corporation a reseller-retailer of motor gasoline with headquarters in Louisville, Kentucky and retail operations in 18 states.

DATE AND ADDRESS: Applications for refund of a portion of the Thornton consent order funds must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF-0497 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Consent Order entered into by Thornton Oil Corporation which settled possible pricing violations in the firm's sales of motor gasoline to retail customers during the period April 1, 1979 through January 27, 1981.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Thornton consent order funds was issued on June 15, 1984. 49 FR 28095 (July 10, 1984). As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by retail customers who purchased motor gasoline from Thornton during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific information required in an application for refund is set forth in the Decision and Order.

Dated: November 14, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1984.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Thornton Oil Corporation.

Date of Filing: March 20, 1984.

Case Number: HEF-0497.

Pursuant to the provisions of 10 CFR Part 205, Subpart V, on March 20, 1984, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a consent order entered into with Thornton Oil Corporation (Thornton) on April 6, 1983. The Petition requests that the OHA formulate and implement procedures for the distribution of the funds received pursuant to the Thornton consent order.

I. Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain readily the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as a part of settlement agreements, see *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

II. Background

Thornton is an independent reseller-retailer of motor gasoline which operates approximately 50 retail outlets in 18 states.(*1*) Thornton sold strictly Thornton-branded motor gasoline from its retail outlets. In an audit of Thornton's operations during the period April 1, 1979 through July 31, 1980 (the audit period), the ERA tentatively found that the firm had violated the DOE price regulations set forth in 10 CFR Part 212, Subpart F. Subsequently, the ERA prepared a Notice of Probable Violation (NOPV) in which it alleged that Thornton had overcharged its customers by $193,627.76 in sales of motor gasoline

from its retail outlets during the audit period.(2) It appears, however, that this NOPV was never officially issued to Thornton. In order to settle all claims and disputes between Thornton and the DOE, as well as to resolve any potential liability regarding the firm's retail sales of motor gasoline anywhere in the United States during the period April 1, 1979 through January 27, 1981 (the consent order period), the firm entered into a consent order with the DOE, in which Thornton agreed to pay $292,500 to the DOE.(3) The consent order refers to the ERA's allegations of overcharges, but notes that no findings of violations were made.

On June 15, 1984, the OHA issued a Proposed Decisions and Order (Proposed Decision) tentatively setting forth procedures to distribute refunds to parties who were injured by Thornton's alleged violations in sales of motor gasoline during the consent order period. *Thornton Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058, 49 FR 28095 (July 10, 1984) (Proposed Decision). In the Proposed Decision, we described a two-stage process for distribuion of the funds made available pursuant to the Thornton consent order. Specifically, we proposed to disburse funds in the first stage to eligible claimants who were injured by Thornton's alleged overcharges. We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after completion of the first stage.

The purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of the Thornton refund process. This Decision sets forth the information that a purchaser of Thornton motor gasoline should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the Proposed Decision. We will not, however, determine procedures for the second stage of the refund process in this Decision. Our determination concerning the final disposition of remaining funds will necessarily depend on the size of the fund. *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (Marion). It would therefore be premature for us to address the issues raised by commenters concerning the dispostion of funds remaining after all the meritorious first stage claims have been paid.(4)

III. Analysis of Comments Filed by Thornton

Thornton filed comments in opposition to the proposed refund procedures. In these comments, it requests that the DOE return to the firm the funds it has remitted pursuant to the consent order and waive the requirement that Thornton continue to pay the balance of its refund obligation. Thornton maintains that it has "already refunded" the alleged overcharges to its customers because it has been forced by market conditions to lower its prices. Thornton states that it had difficulty competing in the marketplace in 1983 because of what it alleges were DOE mandated price rollbacks to retail customers of other firms charged with DOE regulatory violations. Thornton states that in 1983 it realized a gross margin of only $0.058 per gallon in sales of motor gasoline and that this amount was insufficient to earn a profit.

As a preliminary matter, Thornton's submission can only be construed as a motion to modify the consent order and, as such, must be rejected. Thornton appears to misunderstand the nature of consent orders. A consent order is an agreement voluntarily executed by a firm and the agency to settle outstanding disputes without an admission of regulatory noncompliance by the firm. *See McAlester Fuel Co.*, 8 DOE ¶ 82, 533 at 85,116 (1981) (*McAlester*). Because of their usefulness in the resolving litigation, consent orders are unique remedial instruments that, absent highly unusual circumstances, should not be disturbed.

See Westland Oil Development Corp., 8 DOE ¶ 82,582 at 85,316 (1981). There are stringent proscriptions against modifying consent orders or degrees. See *Richards Oil Co.*, 7 DOE ¶ 82,015 (1981). Thornton has not demonstrated that extraordinary circumstances exist in this case which should release the firm from the agreement contained in the consent order. See *Midler Oil Co.*, 9 DOE ¶ 81,033 (1982) (consent orders accorded a great measure of finality. (5) Moreover, it should be emphasized that Thornton voluntarily elected to enter into the consent order, and did so to obtain tangible benefits, namely, to reduce its potential refund liability and cost of litigation to a sum certain. If Thornton had objected to the terms of the consent order, it need not have signed it. However, since the firm, at its own discretion, entered into a consent order with a refund provision, it can not now utilize a different device (i.e., claiming that its low prices were in essence a price rollback to its customers) to resolve the DOE's allegations of regulatory violations.

Moreover, even if we were to consider Thornton's claim that the refund provisions of the consent order should be reconsidered, we are not persuaded by the firm's arguments that the consent order funds should be refunded to it or that it should be relieved from future payments. Thornton is completely incorrect in its claim that price rollbacks ordered by the DOE are the cause of whatever financial difficulties it may have experienced during 1983. As a result of the issuance of Executive Order 12287, 46 Fed. Reg. 9909 (January 30, 1981), which removed the price and allocation controls from crude oil and refined petroleum products, the DOE has not regulated the ceiling prices charged by motor gasoline marketers since January 27, 1981. In view of decontrol, the DOE has determined that price rollbacks are not an effective mechanism for implementing restitution to customers injured by their suppliers' pricing practices. *See, e.g., Chana's Auto Service Center*, 8 DOE ¶ 83,002 (1981); *New York Petroleum, Inc.*, 12 DOE ¶ 85,047 (1984). Therefore the agency has not ordered any price rollbacks since decontrol. Accordingly, Thornton is incorrect in its allegation that the DOE was responsible for any difficulties the firm may have incurred in 1983, and the firm's financial situation in 1983 is not a ground for altering the consent order. We therefore do not accept Thornton's comments in opposition to the establishment of a special refund proceeding with respect to its consent fund.

IV. First-Stage Refund Procedures

A. Injury Requirement

In the Proposed Decision issued in this proceeding, we proposed that customers who were ultimate consumers (end-users) of the motor gasoline purchased from Thornton should be presumed to have been injured by Thornton's pricing practices. *See* 10 CFR 205.282(e). Ultimate consumers would not be required to demonstrate that they absorbed the cost increases that resulted from Thornton's alleged overcharges, but would only be required to submit documentation of purchase volumes to be eligible for a refund. In contrast, with respect to resellers (retailers and jobbers) who resold Thornton's motor gasoline, we proposed that those claimants would be required to establish that they absorbed the alleged overcharges. Under the proposed procedures resellers who limited their claims to 50,000 gallons per month would not be required to document the extent of injury, and would be presumed to have incurred injury as a result of Thornton's alleged overcharges.

The State of Texas filed comments in opposition to our proposed refund procedures. Texas contends that the Subpart V regulations require persons to establish injury as a result of an alleged regulatory violation in order to be eligible for a refund. Texas further argues that presumptions of any kind can only be utilized after the claimant has successfully proven injury. According to Texas, presumptions can be applied to determine the amount of a refund, but are not permitted to be used to establish injury. Although Texas fails to distinguish between consumers and resellers, Texas' comments appear to be directed to the proposed presumptions involving resellers.

Upon further review of the audit records, we have determined that although Thornton is a retailer-reseller, the consent order only pertains to the retail portion of the firm's operations. The final audit report states that "All reseller type transactions were analyzed for potential violations, and it was determined the profit margins [indicated] . . . insignificant overcharge potential. The reseller transactions were not included in this audit, but a detailed audit was performed on . . . company-operated service stations." Audit Report at 1. Consequently, from the record we can infer that the retail operation was the only aspect of Thornton's business which led to the consent order agreement. The consent order acknowledges that Thornton sold motor gasoline to "other gasoline distributors," but expressly states that it is intended to settle the DOE's claims against Thornton "which have arisen from the audit" and which concern "the specified transactions during the settlement period." Thornton consent order at ¶¶ 2 and 3. We have therefore determined that since the "specified transactions" in the consent order were strictly retail transactions, only retail customers will be eligible to receive a portion of the consent order funds. Thus, reseller refund procedures are not necessary in this case.

In light of our determination to establish refund procedures only for end-users it is not necessary for us to consider Texas' objections to the use of presumptions of injury with respect to resellers.(6) Although Texas' objections do not appear to be directed toward the proposed procedures for end-user claimants, to the extent the State intended to address those procedures, the State's objections should be rejected.

Our experience in prior refund proceedings has convinced us that it is not appropriate to require end-users to provide the same documentation of injury that we generally require of resellers. *See, e.g., Marion; Standard Oil Company (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Company (Indiana)/Elgin, Joliet and Eastern Railway*, 11 DOE ¶ 85,105 (1983); *Webster Oil Company*, 12 DOE ¶ 85,070 (1984). Consumers of petroleum products generally fall into four categories: commercial end-users, regulated entities (e.g., public utilities), governmental agencies, and the general public (e.g., motorists). Commercial end-users which use petroleum products to manufacture and provide other goods and services do not resell the petroleum products in the same form. Their fuel costs are only one indistinguishable component of their prices for goods and services. Furthermore, these commercial end-users of petroleum products were not under price controls during the Thornton consent order period and were not required to maintain records showing the petroleum product cost justification for their prices. In the past we have found that an analysis of the impact of the increased cost of petroleum products in the final prices of products and services sold outside the petroleum industry would be beyond the scope of DOE refund proceedings. *Office of Enforcement*, 10 DOE ¶ 85,072 (1983) *(PVM)*, and also that there is no practicable method for determining the extent to which individual end-users may have passed through any alleged overcharges to their own customers. *See Marion*, 12 DOE at 88,030, and cases cited therein. In the case of regulated entities we have stated that these types of end-users would not be required to demonstrate that they absorbed alleged overcharges on the grounds that they are generally required to pass on to their customers the benefits of any refund received. *See PVM*, 10 DOE at 88,387. With respect to governmental purchasers of petroleum products, we presumed that the taxpayers who would have been ultimately injured by the consent order firm's pricing practices would correspondingly benefit from a refund to the governmental body. In the case of individuals who purchase refined petroleum products for their own use (motoring, home heating), these ultimate consumers' inability to pass through any overcharges is obvious, since there are no down-stream purchasers from whom such a consumer could recover increased costs. In view of the foregoing, we have determined that end-users absorbed the full impact of any overcharges. Therefore, end-users will only need to document the specific quantities of Thornton motor gasoline they purchased during the consent order period.

In the Proposed Decision, we stated that end-users' purchase documentation could be in the form of credit card or other receipts, and that if no gallonage is recorded on the receipt, a customer could extrapolate purchase volumes by estimating Thornton's per gallon prices. In a subsequent telephone conversation with Thornton, we learned that Thornton does not accept any credit cards, and that all transactions were made on a cash only basis.(7) It is therefore likely that most customers will not have receipts. Accordingly, we have determined that an applicant may submit an estimate of purchases with a detailed explanation showing how the estimated purchase volumes were derived.

B. Allocation of Refund Money

In the Proposed Decision, we proposed that refunds be calculated according to a volumetric method. Under this method, refunds would be computed by multiplying an applicant's total purchase volumes by a per gallon volumetric amount computed by dividing the Thornton settlement amount by the total volume of covered petroleum products sold by Thornton during the consent order period. In this case, the volumetric amount is $0.001714 ($292,500 which will ultimately be remitted to the DOE divided by 170,653,035 gallons of motor gasoline sold by Thornton during the consent order period).(8) No comments were received with regard to this proposal. Accordingly, we will implement the proposal.

We will also adopt the proposed minimum refund amount of $15.00 based upon our experience in prior refund cases that the costs of processing claims outweighs the benefits of distributing refunds for less then this amount. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). (9)

V. Application for Refund Procedures

We have determined that the procedures described above are the most equitable and efficacious means of distributing the Thornton consent order funds. Accordingly, we shall now accept applications for refunds from customers of Thornton who purchased motor gasoline from Thornton's retail outlets during the consent order period.

Each applicant should include in its application a statement of its motor gasoline purchases from Thornton during the consent order period. If no documentation of the gallons purchased is available, an applicant must submit a detailed explanation of how its volumes were estimated, including any pertinent information which supports its claim, e.g., the type and number of vehicles owned, the number of miles driven, the location of the Thornton outlets where gasoline was purchased, etc.

All applications must be received within 90 days after publication of the Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the OHA. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifiying why any such information is privileged or confidential. 10 CFR 205.283(a). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. ¶ 1001. In addition, the applicant should furnish the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Number HEF–0497, and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Thornton Oil Corporation pursuant to the Consent Order executed on April 6, 1983 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: November 14, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) Thornton operates retail outlets in Connecticut, New York, New Jersey, Pennsylvania, Ohio, Michigan, illinois, Indiana, Kentucky, Tennessee, West Virginia, Virginia, Maryland, North Carolina, South Carolina, Georgia, Florida, and Texas.

(2) No overcharges were found in a preliminary audit of Thornton's small reseller operations. As a result, Thornton's reseller operations were dropped from the audit and no allegations of reseller overcharges were made.

(3) Thornton is making timely payments in accordance with the consent order provisions, and as of October 31, 1984, had paid $182,782.70 to the DOE. The firm's payments are scheduled to be completed in May 1986.

(4) Comments on the second-stage refund procedures were filed by the states of Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These states argue that any funds remaining in the consent order fund after refunds are distributed to meritorious claimants should be distributed to the states for use in energy-related projects.

(5) The DOE procedural regulations provide that an application for modification or rescission of a consent order will be considered only if an applicant "demonstrates significantly changed circumstances." 10 CFR 205.199J(d) and 205.135(b)(1). Thornton has also made no showing whatsoever that there exist "significantly changed circumstances" within the meaning of these regulatory provisions.

(6) Moreover, these objections have been thoroughly considered and rejected in previous Decisions. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,207 (1982). Texas has presented no basis for reconsidering our prior conclusions regarding the use of presumptions in refund proceedings.

(7) *See* Memorandum of July 13, 1984 telephone conversation between Lawrence Hammett, Vice President of Thornton, and Diane Shaw, OHA Staff Analyst.

(8) Although the DOE has not received the complete settlement amount in this case, the amount currently held in escrow is sufficient to permit us to consider first-stage refund claims on the foregoing basis. An eligible applicant will also receive a proportionate share of the interest accrued on the consent order fund since its deposit in the escrow account.

(9) Under the volumetric method for allocating refunds in this proceeding, we calculate that an applicant must have purchased at least 8,750 gallons of Thornton motor gasoline during the 22-month consent order period in order to qualify for the minimum $15.00 refund. In contrast, according to Energy Information Administration data, the average motorist consumed approximately 1,080 gallons of motor gasoline per car during the consent order period. *Consumption Patterns of Household Vehicles, June 1979 to December 1980*, DOE/EIA–0319, at 2. Even if all of that motor gasoline were purchased from a Thornton outlet, that average motorist would qualify for a refund of only $1.85. Thus, we anticipate that although many of Thornton's retail customers may have legitimate claims, most of those claims will fall below the $15.00 threshold.

[FR Doc. 84–31244 Filed 11–27–84; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–240049; FRL–2722–4]

Pesticides; Special Local Need Registrations; Voluntary Cancellations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA is correcting a notice that inadvertently listed as cancelled a section 24(c) registration of a pesticide product.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT:

Lela Sykes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 718C, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2126).

SUPPLEMENTARY INFORMATION: In FR Doc. 84–15955 appearing at page 25298 in the **Federal Register** of June 20, 1984, EPA listed various cancellations of section 24(c) registrations for pesticide products. One of the cancellations was in error: CA 77 0084 for Black Leaf 40 [5887–7] Volck Supreme Oil Spray [239–2039] Tank Mix by FMC Corp., registered 4/15/77. This document gives notice that registration CA 77 0084 remains in effect. The correct registrant is the California Department of Agriculture and not FMC Corp. as listed in the **Federal Register** notice.

(Sec. 6(a)(1) of FIFRA, as amended, 86 Stat. 973, 89 Stat. 751) (7 U.S.C. 136))

Dated: November 9, 1984.

John W. Melone,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84–30544 Filed 11–27–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51537; TSH–FRL–2678–7]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84–25220, beginning on page 37458, in the issue of Monday, September 24, 1984, make the following corrections:

1. On page 37458, in column three, under **PMN 84–1150**, second line "Methylene" should read "Thio".

2. On the same page, same column, under **PMN 84–1151** on the second line of the last paragraph, "300" should read "100".

3. On page 37459, in column three under **PMN 84–1163** on line eleven, "BOD5" should read "BOD_5";

4. Also on the same line, "BOD20≦" should read "BOD_{20}:"

5. And on line twelve, "LC50" should read "LC_{50}".

BILLING CODE 1505–01–M

[PP 9G2200/T469; FRL–2726–1]

Pirimiphos-Methyl; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide pirimiphos-methyl and its metabolites in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire September 27, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail:

Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM#2m 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the **Federal Register** of November 30, 1983 (48 FR 54117), announcing the extension of temporary tolerances for the combined residues of the insectide pirimiphos-methyl, *O*-[2-diethylamino)-6-methyl-4-pyrimidinyl] *O,O*-dimethylphosphorothioate, the metabolite *O*-(2-ethylamino-6-methyl-pyrimidin-4-yl), *O,O*-dimethylphosphorothioate, and in free and conjugated form, the metabolites 2-dimethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol and 2-amino-6-methyl-pyrimidin-4-ol in or on the raw agricultural commodities corn, grain sorghum and wheat at 10.0 parts per million (ppm), rice at 15.0 ppm. A related food additive regulation has extended a tolerance for pirimiphos-methyl in rice and wheat milling fractions at 50.0 ppm and rice hulls at 60.0 ppm appears elsewhere in this issue of the **Federal Register**. These tolerances were issued in response to pesticide petition PP 9G2200, submitted by ICI Americas, Inc., Regulatory Affairs Department, Wilmington, DE 19897.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit (10182–EUP–17), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. ICI Americas, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 27, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: November 4, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–31158 Filed 11–27–84; 8:45 am]

BILLING CODE 6560–50–M

[PP 9G2154/T470; FRL–2726–2]

Pirimiphos-Methyl; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the insecticide pirimiphos-methyl and its metabolites in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire September 27, 1985.

FOR FURTHER INFORMATION CONTACT:

By Mail:

Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA has renewed temporary tolerances for the combined residues of the insecticide pirimiphos-methyl, *o*-[2-(diethylamino)-6-methyl-4-pyrimidinyl] *O,O*-dimethylphosphorothioate, the metabolite *O*-(2-ethylamine-6-methyl-pyrimidin-4-yl) *O,O*-dimethylphosphorothioate, and in free and conjugated form, the metabolites 2-dimethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl pyrimidin-4-ol and 2-amino-6-methyl-pyrimidin-4-ol in or on the raw agricultural commodities peanuts at 25.0 parts per million (ppm), peanuts hulls at 125.0 ppm, fat, meat and meat by-products of cattle, goats, hogs, horses, poultry and sheep (except liver and kidney) at 0.1 ppm, liver and kidney of cattle, goats, hogs, horses, poultry and sheep at 0.5 ppm and milk and eggs at 0.1 ppm. A related food additive regulation renewing a tolerance for pirimiphos-methyl in peanut oil at 50.0 ppm appears elsewhere in this issue of the **Federal Register**. These tolerances were renewed in response to pesticide petition PP 9G2154 submitted by ICI Americas, Inc., Regulatory Affairs Department, Wilmington, DE 19897.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the

above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 10182-EUP-15, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific date reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. ICI Americas, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 27, 1985. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: November 4, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-31157 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59173A; FRL-2725-5]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substance Control Act (TSCA), TME-85-1. The test marketing conditions are described below.

EFFECTIVE DATE: November 20, 1984.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC. 20460, (202-475-8992).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes of the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, numbers of workers exposed to the new chemical, and the levels and durations of exposure must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-1. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in TME-85-1. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain daily records of the number of workers exposed, the level of exposure, and the duration of exposure.

3. The applicant must maintain records of determinations that the gloves are impervious to the TME substance.

4. The applicant must maintain records of persons who wear impervious gloves, chemical safety goggles, and aprons during the manufacturing, processing, and use of the TME substance.

5. The applicant must maintain copies of any Material Safety Data Sheet used.

6. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

7. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME-85-1

Date of Receipt: October 10, 1984.

Notice of Receipt: October 19, 1984 (49 FR 41102).

Applicant: Confidential.

Chemical: (G) Modified styrene copolymer.

Use: (G) Industrial coating.

Production Volume: 9,400 kg.

Number of Customers: One.

Worker Exposure: Confidential.

Test Marketing Period: 6 months.

Commencing on: November 20, 1984.

Risk Assessment: Based on analogy with structurally related substances the Agency identified potential developmental toxicity and neurotoxicity concerns. However, under the conditions outlined above and the restrictions below, the estimated worker exposure to the test market substance will not be significant. Therefore, the test market substance will not pose an unreasonable risk to human health. No significant environmental concerns were identified and environmental release of the test market substance is expected to be low. The test market substance will not pose an unreasonable environmental risk.

Additional Restrictions: The workers are required to wear impervious gloves and chemical safety goggles during operations that involve the manufacturing and processing and use of the substance. The Material Safety Data Sheet (MSDS) must include the requirements for workers to wear impervious gloves, chemical safety goggles, aprons, and warning to avoid inhalation.

The gloves must be determined by the applicant to be impervious to the TME substance under the conditions of exposure, including the duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation of the gloves by the TME substance and associated chemical substances.

In addition, the workers are required to avoid conditions where there is potential for inhalation of the TME substance during manufacturing, processing and use.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 20, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-31164 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59173B; FRL-2725-6]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-2. The test marketing conditions are described below.

EFFECTIVE DATE: November 20, 1984.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202-475-8992).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-2. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. The production volume must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in TME-85-2. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME-85-2

Date of Receipt: October 10, 1984.

Notice of Receipt: October 19, 1984 (49 FR 41102).

Applicant: Confidential.

Chemical: (G) Modified polymer of alkanedioic acid.

Use: (G) A spray applied resin component of an industrial coating.

Production Volume: 75,000 kg.

Number of Customers: Ten.

Worker Exposure: Confidential.

Test Marketing Period: One year.

Commencing on: November 20, 1984.

Risk Assessment: No significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 20, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-31163 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review; Approvals

November 20, 1984.

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, Agency Clearance Officer, (202) 632-7513.

OMB No.: 3060-0048

Title: Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License

Form No.: FCC 704

The approval on FCC 704 has been extended through 11/30/87. The April 1983 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

OMB No.: 3060-0051

Title: License Expiration Notice and Renewal Application Short Form

Form No.: FCC 405-B

The approval on FCC 405-B has been extended through 11/30/87. The April 1982 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

OMB No.: 3060–0053
Title: Application for Consent to Transfer of Control of Corporation Holding Station License
Form No.: FCC 703

The approval on FCC 703 has been extended through 11/30/87. The November 1982 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

OMB No.: 3060–0088
Title: Annual Report of Licensee of Private Operational Fixed Microwave Radio Service Stations
Form No.: FCC 402–A

The approval on FCC 402–A has been extended through 11/30/87. The July 1982 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

OMB No.: 3060–0089
Title: Application for Land Radio Station License in the Maritime Services
Form No.: FCC 503

The approval on FCC 503 has been extended through 11/30/87. The May 1984 edition with the previous expiration date of 11/30/84 will remain in use until updated forms are available.

OMB No.: 3060–0093
Title: Application for Renewal of Radio Station License in Specified Services
Form No.: FCC 405

The approval on FCC 405 has been extended through 11/30/87. The December 1981 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84-31102 Filed 11-27-84; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-403]

Mutual Home Federal Savings and Loan Association; Grand Rapids, MI; Final Action; Approval of Conversion Application

Dated: November 21, 1984.

Notice is hereby given that on October 25, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Mutual Home Federal Savings and Loan Association, Grand Rapids, Michigan, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agency of the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, P.O. Box 60, Indianapolis, Indiana 46206.

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 84-31107 Filed 11-27-84; 8:45 am]
BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

Inactive Tariffs—Bureau of Tariffs; Intent To Cancel

The domestic offshore files of the Federal Maritime Commission contain numerous tariffs which have been classified as inactive either because the Commission's staff has been unable to contact the tariff filers at the addresses shown on the tariffs or the staff has been advised by the carrier or its agent that the tariffs no longer cover a common carrier service. The tariff publications of the following carriers, including their last known addresses, fall into the inactive category:

Aleut-Alaska Shipping Company, 600 S. Brandon, Seattle, Washington 98108; FMC–F No. 2
Aleut-Alaska Shipping Company, 600 S. Brandon, Seattle, Washington 98108; FMC–F No. 3
Alexander & Associates, 112 Erie Avenue, Seattle, Washington 98122; FMC–F No. 2
Alse Almacen Inc., G.P.O. Box 884, San Juan, Puerto Rico 00936; FMC–F No. 1
Atlantic Consolidators, Inc., 2500 83rd Street, North Bergen, New Jersey 07047; FMC–F No. 1
Cal-Hawaii Freight Systems, Inc., 5901 South Eastern Avenue, Commerce, California 90040; FMC–F No. 2
Cal-Hono Freight Forwarders, Inc., 1470 E. 4th Street, Los Angeles, California 90033; FMC–F No. 1
California Freight Specialists, Inc., 111 San Leandro Boulevard, San Leandro, California 94577; FMC–F No. 5
California Freight Specialists, Inc., 111 San Leandro Boulevard, San Leandro, California 94577; FMC–F No. 6
California Freight Specialists, Inc., 111 San Leandro Boulevard, San Leandro, California 94577; FMC–F No. 7
Caribbean Express Corp., 3751 W. North Avenue, Chicago, Illinois 60647; FMC–F No. 3
Caribbean Freight Service, Inc., 11102 Downs Road, Pineville, North Carolina 28134; FMC–F No. 1
Caribbean Project Lines, 87–10 51st Avenue, Elmhurst, New York 11373; FMC–F No. 1
Caribbean Project Lines, 87–10 51st Avenue, Elmhurst, New York 11373; FMC–F No. 2
Caribe Shipping, Inc., 24 Dodworth Street, Brooklyn, New York 11221; FMC–F No. 3
Christie-Lambert Van & Storage Co., Inc., 1010 6th Avenue N., Kent, Washington 98031; FMC–F No. 1
Coastal Barge Lines, Inc., 634 Nickerson Street, Seattle, Washington 98111; FMC–F No. 3
Divesco International, P.O. Box 100-Ortega Station, Jacksonville, Florida 32210; FMC–F No. 1
Econofreight Caribbean, Inc., G.P.O. Box 70155, San Juan, Puerto Rico 00936; FMC–F No. 1
Gem Shipping Service, 305 Valasco Street, Houston, Texas 77003; FMC–F No. 3
Ghezzi Trucking Inc., 2517 N.W. 195 Place, Seattle, Washington 98177; FMC–F No. 5
Hawaiian Container Corporation, 730 11th Street, Oakland, California 94606; FMC–F No. 2
Intermodal Freight Transportation, Inc., P.O. Box 3506, Carolina, Puerto Rico 00630; FMC–F No. 1
Islands Freight Transportation, Inc., P.O. Box 4374, Carolina, Puerto Rico 00630; FMC–F No. 2
Key Warehouse Corp., P.O. Box 524282, Miami, Florida 33152; FMC–F No. 3
La Isla Transport Corp., 166 South 1st Street, Brooklyn, New York 11211; FMC–F No. 2
Maislin Transport of Delaware, Inc., 50 Harrison Avenue, Kearny, New Jersey 07032; FMC–F No. 1
Marine Shippers, Inc., 1343 Logan Avenue, Costa Mesa, California 92626; FMC–F No. 3
Maritime Transportation Resources, Inc., Apartado 13641, Santurce, Puerto Rico 00908; FMC–F No. 1
Ocean Freight Consolidators, Inc., P.O. Box 527, Mataway, New Jersey 07747; FMC–F No. 1
Pan American Express, Inc., 2612 W. Division Street, Chicago, Illinois 60822; FMC–F No. 4
Presto Shipping Inc., 14021 S.W. 56th Terrace, Miami, Florida 33183; FMC–F No. 1
Sea Freight Forwarders, P.O. Box 5960, Ketchikan, Alaska 99901; FMC–F No. 3
Seabridge Freight Systems, Inc., 214 South Santa Fe Avenue, Los Angeles, California 90012; FMC–F No. 2
Smith Lighterage Company, Box 106, Dillingham, Alaska 99576; FMC–F No. 5
St. Croix Freight Forwarders, Inc., 3320 N.W. 48th Street, Miami, Florida 33142; FMC–F No. 1
Thru-Island Express, Inc., 63–69 Hook Road, Bayonne, New Jersey 07002; FMC–F No. 2
Trans-Pacific Freightways Corp., P.O. Box 17789, Honolulu, Hawaii 96817; FMC–F No. 1
Twin Express, Inc., 1810 Tonnelle Avenue, North Bergen, New Jersey 07047; FMC–F No. 7
Twin Express, Inc., 1810 Tonnelle Avenue, North Bergen, New Jersey 07047; FMC–F No. 8
Twinex Transport Corporation, P.O. Box 522832, Miami, Florida 33152; FMC–F No. 1
Unifreight Corporation, G.P.O. Box 6001, San Juan, Puerto Rico 00936; FMC–F No. 2
Valley Express, Inc., 925 Market Street, Paterson, New Jersey 07513; FMC–F No. 2
Virgin Island Run Fast Express, Inc., P.O. Box 478, Sabana Seca Station, Puerto Rico 00749; FMC–F No. 1

Inactive tariffs reflect inaccurate information to the shipping public and serve no useful purpose in the Commission's active files. In addition, 46 CFR 550.3(p)(2) requires the cancellation of inactive tariffs. Accordingly, the Commission proposes to cancel the above listed tariffs in the absence of a showing of good cause as to why they should not be cancelled.

Now, Therefore it is Ordered, That the above carriers advise the Director, Bureau of Tariffs at 1100 L Street, N.W., Washington, D.C. 20573, in writing within 30 days after the publication of this Order in the **Federal Register** of any reason why the Commission should not cancel their inactive tariffs;

It is Further Ordered, That a copy of this Order be sent by certified mail to the last known address of the carriers listed herein;

It is Further Ordered, That the tariffs of all carriers named herein not responding to this Order will be cancelled;

It is Further Ordered, That this notice be published in the **Federal Register** and a copy thereof filed with any tariff cancelled pursuant to this notice.

By the Commission pursuant to authority delegated by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,
Director, Bureau of Tariffs.

[FR Doc. 84-31086 Filed 11-27-84; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

Jarvis International Freight, Inc., 8114 Tiger Avenue, Houston, TX 77040, Ralph Wisemen, President.

By the Federal Maritime Commission.

Dated: November 21, 1984.

Francis C. Hurney,
Secretary.

[FR Doc. 84-31085 Filed 11-27-84; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Emmetsburg Bank Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 19, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Emmetsburg Bank Shares, Inc.*, Emmetsburg, Iowa; to become a bank holding company by acquiring 100 percentof the voting shares of Iowa Trust & Savings Bank, Emmetsburg, Iowa.

2. *Firstbancorporation of Batesville, Indiana*, Batesville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank and Trust Company of Batesville, Batesville, Indiana.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Charlton Associates*, Savannah, Georgia; to become a bank holding company by acquiring 48.657 percent of the voting shares of AmeriCorp, Inc., Savannah, Georgia, thereby indirectly acquiring AmeriBank, N.A., Savannah, Georgia, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Kenneth Holding Company*, Kenneth, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Kenneth, Kenneth Minnesota.

2. *R.O.M. Financial Services, Inc.*, Chanhassen, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Chanhassen, Chanhassen, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Wakefield Bancshares, Inc.*, Wakefield, Kansas; to become a bank holding company by acquiring at least 97 percent of the voting shares of The Farmers and Merchants State Bank, Wakefield, Kansas.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ennis Bancshares, Inc.*, Waco, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Ennis State Bank, Ennis, Texas.

Board of Governors of the Federal Reserve Ststem, November 21, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-31145 Field 11-27-84; 8:45 am]
BILLING CODE 6210-01-M

NBD BANCORP, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 U.S.C. 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve bank indicated or the offices of the Board of Governors not later than December 19, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60609:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to merge with United Michigan Corporation, Flint, Michigan, thereby indirectly acquiring Genesee Merchants Bank & Trust Co., Flint; The Peoples State Bank of Caro, Michigan, Caro; and Community State Bank, Fowlerville; all located in Michigan. NBD Bancorp, Inc., has also applied to acquire United Michigan Mortgage Co., Flint, Michigan, thereby engaging in making, acquiring or servicing loans or other extensions of credit for its own account or the account of others as would be made by a mortgage company.

Board of Governors of the Federal Reserve System, November 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31140 Filed 11-27-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Historically Black College and University Programs; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: Characteristics and Resources of Historically Black Colleges and Universities, with Emphasis on Interior-Specific Contract, Education and Training Needs and Opportunities

Abstract: This information is to be collected for the first time, as a part of a data base systems development project being performed under contract by Norfolk State University. The system will provide quick, accurate and comprehensive information on historically Black colleges and universities (HBUCUs) as it relates to potential DOI contract, education and training opportunities.

Frequency: Annual

Description of Respondents: Historically Black Colleges and Universities

Annual Responses: 112

Annual Burden Hours: 896

Bureau clearance officer: John Strylowski 202–343–6191

Dated: November 20, 1984.

Ira J. Hutchinson,

Director, Office of Historically Black College and University Programs.

[FR Doc. 84-31108 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Information Collection Request Submitted for OMB Review

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of review by OMB.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's (BLM) clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM's clearance officer and the Office of Management and Budget's reviewing official at (202) 395–7340.

Title: 43 CFR Part 4700 Protection, Management, and Control of Wild Free-Roaming Horses and Burros.

Abstract: Respondents furnish documentation about the following:

1. Qualifications of applicants related to adoption of 1 to 4 wild horses or burros;

2. Qualifications of applicants related to adoption of more than four animals;

3. Certification of humane care and treatment of adopted wild horses and burros for a period of 1 year;

4. Removal of wild horses and burros from private land.

The documentation about adoption allows the Bureau of Land Management to determine if an applicant will be given the opportunity to adopt wild horses or burros. Adoption applicants provide information about their qualifications and capability to provide humane care and treatment for wild horses and burros under conditions specified by Federal regulations. Applicants for adoption of more than 4 wild horses or burros are requested to additional information related to their capability to provide proper care for the number of wild horses or burros requested. Applicants requesting title to adopted wild horses or burros supply

information about changes in name or address and about animals which they are presently maintaining. This information is needed by BLM to issue titles to animals as requested by the applicant. The request for removal of animals from private land is necessary to determine the need for removing wild horses and burros from these lands.

Bureau Form Numbers: 4710–10 and 4710–11. One additional form to record information related to the capability of applicants for adoption of more than 4 animals will be developed later.

Frequency: Occasionally.

Description of Respondents: Applicants desiring to adopt wild horses or burros and applicants desiring title to adopted wild horses or burros for which they have provided humane care and treatment for 1 year. Landowners requesting the Bureau of Land Management to remove wild horses or burros from their property.

Annual response: 15,225.

Annual burden hours: 1,558.

Bureau Clearance Officer (alternate): Evelyn Weeks (202) 653–8853.

James M. Parker,

Associate Director.

November 19, 1984.

[FR Doc. 84-31174 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-84-M

[M-59763]

Realty Action—Exchange; Montana

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M–59763—Exchange of public and private lands, in Teton, Lewis and Clark, Cascade, Meagher, Blaine and Judith Basin Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

Public Land

T. 6 N., R. 9 E.,
Sec. 4, lot 4.
T. 7 N., R. 11 E.,
Sec. 6, lot 7.
T. 8 N., R. 5 E.,
Sec. 2, lot 3, SW¼SW¼.
T. 8 N., R. 7 E.,
Sec. 32, NE¼NE¼, SW¼SE¼.
T. 8 N., R. 10 E.,
Sec. 12, SE¼SW¼;
Sec. 24, NE¼NE¼, SE½NW¼.
T. 9 N., R. 4 E.,
Sec. 12, SE½S½SE¼SW¼, S½S½S W¼SE¼.
T. 10 N., R. 8 E.,
Sec. 4, lot 1, NW¼SW¼.
T. 10 N., R. 9 E.,
Sec. 19, lot 5;
Sec. 28, lots 3, 4, 5, 6, 7;
Sec. 29, lots 2 thru 6, 11, 12, 14 thru 21.
T. 10 N., R. 11 E.,
Sec. 14, NE¼SW¼;
Sec. 21, lots 1, 6;
Sec. 22, lots 1, 3, 4;
Sec. 23, lot 3.
T. 12 N., R. 3 E.,
Sec. 6, SE¼NE¼.
T. 12 N., R. 5 E.,
Sec. 6, lot 3, SE¼NE¼, NE¼SW¼, NE¼SE¼;
Sec. 10, lots 1, 2, 9, 10.
T. 13 N., R. 2 E.,
Sec. 20, N½NE¼.
T. 13 N., R. 5 E.,
Sec. 32, NE¼NE¼, SE¼SE¼.
T. 17 N., R. 6 E.,
Sec. 35, SW¼NE¼.
T. 17 N., R. 3 W.,
Sec. 18, lot 2;
Sec. 30, SW¼SE¼.
T. 20 N., R. 5 W.,
Sec. 32, W½NW¼.
T. 12 N., R. 12 E.,
Sec. 1, lots 1, 4, E½SW¼.
T. 12 N., R. 13 E.,
Sec. 3, SW¼NW¼, NW¼SE¼;
Sec. 6, lot 5;
Sec. 17, SW¼SE¼.
T. 13 N., R. 12 E.,
Sec. 11, W½NW¼;
Sec. 15N½NW¼;
Sec. 25, SE¼SE¼.
T. 13 N., R. 13 E.,
Sec. 6, E½NW¼;
Sec. 17, W½NW¼;
Sec. 18, NW¼NE¼;
Sec. 20, SW¼NW¼;
Sec. 30, NE¼NW¼;
Sec. 33, SW¼SE¼.
T. 14 N., R. 13 E.,
Sec. 31, SW¼SE¼.
T. 29 N., R. 19 E.,
Sec. 15, SW¼SW¼.
T. 14 N., R. 1 E.,
Sec. 24, N½NE¼.

Aggregating 2,619.47 Acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 24 N., R. 8 W.,
Sec. 5, part of lot 1, Lots 5, 6, SW¼NE¼, SE¼NW¼, N½SW¼, NW¼SE¼;
Sec. 6, Lot 7, SE¼NE¼SW¼, and SE¼SW¼SE¼;
Sec. 7, Lots 1, 2, NE¼, and E½NW¼;
Sec. 8, W½NW¼.

Aggregating 974.51 Acres.

DATES: For a period of 45 days from the date of receipt of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws by not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the Unitedf States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for review at this BLM office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment of $200.00 paid to the United States of America by the Nature Conservancy.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange.

Date: November 16, 1984.

William J. Cutler,

Acting District Manager.

[FR Doc. 84-31104 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-DN-M

Circle Cliffs Combined Hydrocarbon Lease Conversion; Cedar City District Office, UT; Availability of Draft Environmental Impact Statement and Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement and public hearing.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared a draft environmental impact statement (EIS) on a proposal by W. C. Kirkwood Oil and Gas to convert certain oil and gas leases to combined hydrocarbon leases in the Circle Cliffs Special Tar Sand Area. Copies of the draft EIS entitled "Circle Cliffs Combined Hydrocarbon Lease Conversion" are now available for public review and comment. The draft EIS analyzes the environmental impacts that would result from W. C. Kirkwood's plan for commercial development of the Circle Cliffs tar sands resource. Alternatives also considered are no action, restricted development, and a worst case development scenario.

In addition, notice is given that a public hearing will be held to seek public input on the EIS.

DATES: A public hearing will be held at 7 p.m. on December 20, 1984, at the Bureau of Land Management's Cedar City District Office. Written comments on the draft EIS will be accepted until January 28, 1985, at the Cedar City District Office.

ADDRESS: Please submit written comments to Dave Everett, EIS Team Leader, Bureau of Land Management, 1579 North Main, Cedar City, Utah 84720. Mr. Everett's telephone number is (801) 586–2401

Copies of the draft EIS can be obtained from:

Bureau of Land Management, Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, Utah 84111–2303

Bureau of Land Management, Cedar City District, 1579 North Main Street, Cedar City, Utah 84092

Bureau of Land Management, Public Affairs Office, Interior Building, 18th and "C" Streets, NW., Washington, D.C. 20240.

Dated: November 21, 1984.

James A. Moorhouse,

Acting State Director, Utah.

[FR Doc. 84–31089 Filed 11–27–84; 8:45 am]

BILLING CODE 4310-DQ-M

[F–54344; AK–965–5–00262; GP–5–015]

Termination of Proposed Withdrawal and Reservation of Lands, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the United States Geological Survey, Department of Interior, for a magnetic and seismological observatory at Bender Mountain, Alaska

EFFECTIVE DATE: November 28, 1984

ADDRESS: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271–5060.

Notice of a proposed withdrawal and reservation of lands for the United States Geological Survey, Department of Interior, was published in the **Federal Register**, Vol. 44, No. 160 on pages 47993 and 47994 of the issue for August 16, 1979. The purpose of the application, serial number F–54344, was for a magnetic and seismological observatory. The applicant agency has cancelled its application involving the lands described in the **Federal Register** publication referred to above. Therefore, at 8:00 a.m. Alaska Standard Time on the date of this publication, such lands will be relieved of the segregative effect of the above mentioned application.

The lands will continue to be withdrawn by, and subject to, the terms and conditions of prior withdrawals of record.

November 15, 1984.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 84–31170 Filed 11–27–84; 8:45 am]

BILLING CODE 4310-84-M

Clear Lake Resource Area—Realty Action for Sale of Public Lands in Glenn, Colusa, Yolo, Sonoma Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; sale of public lands, amendment.

SUMMARY: This action amends the Notice of Realty Action for the public land sale in the Clear Lake Resource Area originally published in the **Federal Register** on Wednesday, May 30, 1984 (49 FR 22547, May 30, 1984) and amended on Monday, July 16, 1984 (49 FR 28771, July 16, 1984).

The following described lands will be offered for sale by sealed bid at 10:00 a.m. on the third Wednesday of each month until the parcels are sold or until August 29, 1985.

Sale and parcel No.	Legal description	Fair market value
CA 15337	T. 19 N., R. 5 W., Sec. 18, SE¼SW¼.	$4,400
CA 15340	T. 14 N., R. 5 W., Sec. 26, SW¼SE¼.	[illegible]
CA 15342	T. 8 N., R. 7 W., Sec. 4, lots 1 & 2.	[illegible]
CA 15343	T. 11 N., R. 3 W., Sec. 17, W½SE¼.	$20,000

The following described lands will be offered for sale pending the outcome of an appeal.

Sale and parcel No.	Legal description	Fair market value
CA 15338	T. 6 N., R. 5 W., Sec. 9, NW¼SE¼.	$70,000
CS 15341	T. 6 N., R. 6 W., Sec. 32, SW¼SE¼.	$38,000

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The successful bidder has 180 days from the time of the sale in which to submit the full purchase price.

Detailed information concerning the sale are available for review at the Ukiah District Office, P.O. Box 940, Ukiah, California 95482.

FOR FURTHER INFORMATION CONTACT: Cathie Dokken (707) 462–3873.

Edwin G. Katias,

Acting District Manager, Ukiah.

[FR Doc. 84–31109 Filed 11–27–84; 8:45 am]

BILLING CODE 4310-84-M

[C–28258]

Proposed Modification of Bureau of Reclamation Paonia Project; Colorado

November 16, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that those orders which withdrew lands for the Paonia Project be modified to expire 20 years from the date of the final order insofar as it affects 1,143.99 acres of public land. The lands will remain closed to surface entry and mining but have been and will continue to be open to mineral leasing.

DATE: Comments should be received on or before February 26, 1985.

ADDRESS: All comments should be addressed to State Director, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, BLM Colorado State Office, 303–294–7626.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that portions of the existing land withdrawals made by Bureau Orders of September 14, 1949, August 31, 1950, and April 9, 1957, as amended; and Public Land Orders 3081 and 3084, dated May 14, 1963, be modified to expire 20 years from the date of the final order pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect the following described public lands:

Sixth Principal Meridian

T. 12 S., R. 89 W.,
Sec. 28, lot 1, SW¼NW¼, N½SW¼, SW¼SW¼, and SW¼SW¼SE¼;
Sec. 33, lots 1 thru 7, inclusive, W½SE¼NE¼, NW¼NW¼, E½SW¼, and W½E½SE¼.
T. 13 S., R. 89 W.,
Sec. 4, lots 5, 6, 10, 11, 12, 13, 14, 17, 18, 20, 21, and 22, and NW¼SW¼;
Sec. 5, SE¼SE¼;
Sec. 8, lot 2, NE¼NE¼, NE¼NW¼, and W½NW¼;
Sec. 9, lots 2 and 3.
T. 13 S., R. 90 W.,
Sec. 18, SE¼NW¼NE¼.
T. 14 S., R. 92 W.,
Sec. 3, N½SE¼NE¼SE¼, SW¼NE¼SE¼, and N½NE¼SE¼.

The areas described aggregate 1,143.99 acres of public land in Delta and Gunnison Counties, Colorado.

The purpose of these withdrawals is for the administration and protection of existing facilities in the Paonia Project. No change is proposed in the purpose or segregative effect of the withdrawals. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Richard D. Tate,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–31112 Filed 11–27–84; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1106, Block 133, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on November 16, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 16, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84–31115 Filed 11–27–84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Exxon Co. U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4001, Block 173, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on November 19, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 19, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31114 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Exxon Company, U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 4704, and 4711, Blocks 696 and 717, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Rockport, Harbor Island, and Flour Bluff, Texas.

DATE: The subject DOCD was deemed submitted on November 15, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 20 of the CFR.

Dated: November 16, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31171 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texaco, U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2618, Block 367, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 16, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 16, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31173 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Termination of Countervailing Duty Investigation Concerning Amoxicillin Trihydrate and Its Salts From Spain

AGENCY: International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to amoxcillin trihydrate and its salts from Spain.

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone number (202) 523–0368.

SUPPLEMENTARY INFORMATION: The trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the outstanding countervailing duty order on amoxicillin trihydrate and its salts from Spain. Notice of the countervailing duty order was published on July 27, 1979 in the **Federal Register** 44 FR 44154).

On September 13, 1984, the Commission was notified by letter that Biocraft Laboratories, Inc., the original petitioner for the countervailing duty order, wished to withdraw its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On October 3, 1984, (49 FR 39117) the Commission published a notice in the **Federal Register** requesting public comment by November 2, 1984, on the proposed termination of the Commission investigation on amoxicillin trihydrate and its salts from Spain. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation on amoxicillin trihydrate and its salts from Spain (T.D. 79–211). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: November 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31223 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

P. 15, middle paragraph
P. 35, first line of last paragraph
P. 36, first and second full sentences, and fourth sentence
P. 40, second full paragraph, up to and including "it was critical,"
P. 60, first full paragraph, excluding second sentence
P. 95, last paragraph, first sentence
findings of fact 118–22, 753–55

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, tel. 202–523–0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337–TA–143, now terminated, was conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 and 19 U.S.C. 1337a) in the importation or sale of certain amorphous metal alloys and articles. The investigation was instituted on the basis of a complaint filed by Allied Corp., alleging the infringement of three U.S. patents assigned to Allied. See 48 FR 15983 (Apr. 13, 1983); 48 FR 43108 (Sept. 21, 1983); 49 FR 42803 (Oct. 24, 1984).

On May 14, 1984, the presiding officer issued an ID holding that there is a violation of section 337 in the importation of amorphous metal articles made by a process that would infringe one of the patents in controversy, if the process were performed in the United States. The Commission denied the parties' petitions for review and the violation ID became the Commission's determination. See 49 FR 29159 (July 18, 1984).

On July 6, 1984, respondents Nippon Steel Corp. and Nippon Steel U.S.A., Inc. filed a motion to "declassify" certain findings of fact and discussion in the violation ID that had been designated as confidential (Motion No. 143–83C). The discussion and findings in question relate to the validity of the patents in controversy. Nippon argued that the presiding officer had erred by granting confidential treatment to the material in question, because it was on, or was based on information on, the public record of the investigation. On July 13, 1984, complainant Allied filed a response opposing the motion in part. On Aug. 15, 1984, the Commission issued an order certifying the motion to the presiding officer for an ID.

After considering additional arguments by the parties, the presiding officer on Oct. 16, 1984, issued an ID granting the motion in part and denying it in part (Order No. 50). The parties did not file petitions for review, and the Commission determined that a review on the Commission's own motion, under 19 CFR 210.55, was not warranted. The ID thus became the Commission's determination. 19 CFR 210.53(h).

Correction of Error

Page 9 of the confidentiality ID lists "p. 60, full paragraph, excluding second sentence" as part of the material that is to be made public. The correct notation is "p. 60, *first* full paragraph, excluding second sentence."

Public Inspection

Public inspection copies of the violation ID, the confidentiality ID, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0471.

By order of the Commission.

Issued: November 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31225 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–143]

Certain Amorphous Metal Alloys and Amorphous Metal Articles; Decision Not to Review Initial Determination Removing Confidential Designation From Certain Information

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) making available for public inspection certain findings of fact and portions of an ID issued on May 14, 1984, concerning the violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

SUMMARY: The following findings of fact and portions of the May 14, 1984 ID, which heretofore were designated as confidential, are now available for public inspection:

[Investigation No. 337–TA–194]

Certain Aramid Fiber; Determination Not To Review an Initial Determination Declaring the Investigation More Complicated

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) declaring the above-captioned investigation "more complicated" and extending the relevant deadlines by 10 weeks.

SUMMARY: Pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and 19 CFR 210.54, the Commission has decided not to review an ID declaring the above-captioned investigation more complicated.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of General Counsel, U.S. International Trade Commission, telephone (202) 523–0189.

SUPPLEMENTARY INFORMATION: The Commission has decided not to review the ID (Order No. 13) declaring this investigation more complicated and granting a limited extension of time, because of the unusual circumstances that exist with regard to the broadened scope of the investigation, and delays

and difficulty in obtaining discovery. Respondents have raised several affirmative defenses in this investigation which substantially broadened the scope of discovery required to develop an adequate record in this investigation. These issues include both patent and antitrust issues and require extensive discovery.

Complainant DuPont filed a motion to strike several of these affirmative defenses and did not permit discovery with respect to these issues until the presiding officer resolved the question of the permissible scope of discovery on September 9, 1984. The deadline for completion of discovery was November 9, 1984. Consequently, the parties have had a substantially shorter period for discovery on these issues than generally obtains in section 337 investigations. Considering the circumstances of the delay in discovery, the substantial expansion in the scope and complexity of discovery, and the short period for discovery on these issues, the Commission has decided not to review the ID declaring the investigation more complicated.

Copies of the presiding officer's ID declaring this investigation more complicated and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: November 19, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31217 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731–TA–208, 209, and 210 (Preliminary)]

Barbed Wire and Barbless Wire Strand From Argentina, Brazil, and Poland

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–T–208, 209, and 210 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Brazil, and Poland of barbed wire and loosely twisted double wire strand suitable for fencing purposes (barbless wire), provided for in items 642.02 and 642.11, respectively, of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by January 3, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–523–0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted is response to a petition filed on November 19, 1984, by Forbes Steel and Wire Corporation, Canonsburg, PA.

Participation in the Investigation

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later then seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on December 12, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Cates (202–523–0369) not later than December 11, 1984, to arrange for their appearence. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before December 14, 1984, a written statement of information pertinent to the subject of the investigations as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31221 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–189 (Final)]

Calcium Hypochlorite From Japan

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on December 20, 1984 to 10:00 a.m. on February 26, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–523–0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1984, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for December 20, 1984 (49 FR 43807, Oct. 31, 1984). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from December 17, 1984, to February 22, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by April 8, 1985.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on February 12, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on February 26, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 22, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on February 19, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 22, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 8, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 8, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: November 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31224 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–184]

Certain Foam Earplugs; Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) (Order No. 12) terminating the above-captioned investigation with respect to respondent S.S. Trading Co., Ltd. on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0079.

SUPPLEMENTARY INFORMATION: On June 28, 1984, complaint Cabot Corporation and respondent S.S. Trading Co., Ltd. filed a joint motion to terminate the investigation as to respondent S.S. Trading Co., Ltd. on the basis of a settlement agreement. The presiding officer issued an ID granting the joint motion for termination on September 24, 1984. No petitions for review or comments from Government agencies or the public were received.

Copies of the presiding officer's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

By order of the Commission.

Issued: November 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31218 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-184, 186, and 187 (Final)]

Potassium Chloride From East Germany, Spain, and the U.S.S.R.

AGENCY: International Trade Commission.

ACTION: Termination of investigation concerning potassium chloride from Spain and rescheduling of the hearing to be held in connection with investigations concerning potassium chloride from East Germany and the U.S.S.R.

SUMMARY: The Commission hereby announces the termination of investigation No. 731-TA-186 (Final), Potassium Chloride from Spain, and the rescheduling of the hearing to be held in connection with investigations Nos. 731-TA-184 (Final), Potassium Chloride from East Germany and 731-TA-187 (Final), Potassium Chloride from the U.S.S.R. The hearing has been rescheduled to begin at 10:00 a.m. on February 5, 1985.

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 20, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Johnson (202-523-0127), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1984, the Commission instituted the subject investigations and scheduled a hearing to be held in connection therewith for November 27, 1984 (49 FR 39115). Subsequently, the Commission was notified by the Department of Commerce that it was extending the date for its final determinations in the investigations concerning potassium chloride from East Germany and the U.S.S.R. (from November 20, 1984, to January 25, 1985) and was terminating its investigation concerning potassium chloride from Spain. The Commission, therefore, is revising its schedule and is terminating its investigation concerning potassium chloride from Spain. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determinations in antidumping investigations within 45 days of Commerce's final determination, or in these cases by March 11, 1985.

Staff report

A public version of the prehearing staff report in these investigations was placed in the public record on November 13, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on February 5, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC.

Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 28, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on January 29, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 29, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 11, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 11, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: November 21, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31230 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-206]

Certain Shoe Stiffener Components; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 22, 1984, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Foss Manufacturing Co., Inc., Ward Hill, Haverhill, Massachusetts 01830. Supplemental information was filed on November 8, 1984. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain shoe stiffener components into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 3,427,733; (2) infringement of the claims of U.S. Letters Patent 4,350,732; and (3) misappropriation of trade secrets. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, after a full investigation, the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Steven H. Schwartz, or Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4877 or 202-523-1272, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 19, 1984, Ordered That:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain shoe stiffener components into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 3,427,733; (2) infringement of the claims of U.S. Letters Patent 4,350,732; and (3) misappropriation of trade secrets, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of invetigation shall be served:

(a) The complainant is—Foss Manufacturing Co., Inc., Ward Hill, Haverhill, Massachusetts 01830.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served.

British United Shoe Machinery Co., Ltd., P.O. Box 88, Belgrave Road, Leicester, England, LE45BX.

Emhart Corporation, P.O. Box 2730, Hartford, Connecticut 06146.

Gould & Scammon, Inc., 1130 Minot Avenue, Auburn, Maine 04210.

(c) Steven H. Schwartz [1] and Juan Cockburn, Esq., Unfair Import Investigations Division, United States International Trade Commission, 701 E Street N.W., Room 122 and Room 128, respectively, Washington, D.C. 20436, shall be the Commission investigative staff, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

By order of the Commission.

Issued: November 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31236 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[1] Pending admission to the bar.

[Investigation No. 337-TA-190]

Certain Softballs and Polyurethane Cores Therefor; Determination Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice of nonreview of initial determination (ID).

SUMMARY: The Commission has determined not to review an ID to terminate this investigation as to respondent Diamond Sports Co. on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

SUPPLEMENTARY INFORMATION: Notice of the ID was published in the **Federal Register**, 49 FR 43809 (Oct. 31, 1984). The Commission has received neither a petition for review of the ID nor comments from the public or from other Government agencies.

By order of the Commission.

Issued: November 21, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31222 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-191]

Certain Stretch Wrapping Apparatus and Components Thereof; Decision Not To Review Initial Determination Terminating Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Termination of the investigation on the basis of a consent order.

SUMMARY: The United States International Trade Commission hereby givens notice of its decision not to review an initial determination (ID) terminating the above-captioned investigation. The ID terminated the investigation on the basis of a proposed consent order signed by complainant Lantech, Inc., respondents Muller Manufacturing, Ltd. and Muller Packaging Systems, Inc., and the Commission investigative attorney.

FOR FURTHER INFORMATION CONTACT: George Holoch, Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules § 210.53 (c) and (h) (19 CFR 210.53 (c) and (h)) Notice of the ID was published in the **Federal Register** of October 31, 1984, 49 FR 43810. No petition for review was filed, nor were any comments from Government agencies or the public received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

By order of the Commission.

Issued: November 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31219 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Prehearing Conference

Notice

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on December 5, 1984, in Hearing Room B at the Interstate Commerce Commission Building at 12th and Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Issued: November 21, 1984.

James P. Timony,

Administrative Law Judge.

[FR Doc. 84-31227 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-8)]

Intrastate Rail Rate Authority—Indiana

AGENCY: Interstate Commerce Commission.

ACTION: Notice of certification.

SUMMARY: The Commission grants final certification to the Public Service Commission of Indiana under 49 U.S.C. 11501(b), to regulate intrastate rail transportation, subject to the condition precedent that it modify its standard as noted in the full decision.

DATES: If the necesary changes are made, certification will begin on January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 14, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Vice Chairman Andre, joined by Commissioners Sterrett and Strenio, dissented with a separate expression. .

James H. Bayne,

Secretary.

[FR Doc. 84-31151 Filed 11-27-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-No. 93X)]

Rail Carriers; the Baltimore and Ohio Railroad Co.—Abandonment Exemption—In Mahoning County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the abandonment by The Baltimore and Ohio Railroad Company of 1.01 miles of track between milepost 75.07 and milepost 76.08 in Mahoning County, OH.

DATES: This exemption is effective on December 28, 1984. Petitions for reconsideration must be filed by December 18, 1984. Petitions for stay must be filed by December 10, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB-19 (Sub-No. 93X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: James J. Corbett, P.O. Box 6419, Cleveland, OH 44101.

FOR FURTHER INFORMATION: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area) or toll free (800) 424-5403.

Decided: November 5, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred in the result and commented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 84-31150 Filed 11-27-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Regulatory Flexibility Act Plan for the Periodic Review of Rules

AGENCY: Department of Justice.

ACTION: Notice of Regulatory Flexibility Act review plan.

SUMMARY: In accordance with the requirements of the Regulatory Flexibility Act, the Department of Justice is publishing a plan for the periodic review of its rules to determine whether they have or will have a significant economic impact upon a substantial number of small entities. The purpose of the review is to determine whether the rules need to be amended in any way in order to minimize any significant adverse economic impact upon small entities.

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, Administrative Counsel, Justice Management Division, Department of Justice, Room 1220, 10th and Constitution Avenue, NW., Washington, D.C. 20530 (202-633-3452).

SUPPLEMENTARY INFORMATION: Section 610(a) of the Regulatory Flexibility Act, 5 U.S.C.A. 601-612 (West 1984), requires that each agency review its rules to determine whether they have or will have a significant economic impact upon a substantial number of small entities. That section also requires that the review of all rules existing as of the effective date of the Act, i.e., January 1, 1981, be completed within ten years. Therefore, listed below is the required plan developed by the Department of Justice for the review of its regulations.

Dated: November 19, 1984.

Janis A. Sposato,

Administrative Counsel, Justice Management Division.

Year of review	DOJ rule	Title	Responsible organization
1985	28 CFR part 16, subpart C	Production of FBI Indentification Records in Response to Written Requests by Subjects Thereof	Federal Bureau of Investigation.
1985	28 CFR part 20, subpart C	Federal System and Interstate Exchange of Criminal History Record Information	Do.
1986	28 CFR part 14	Administrative Claims Under Federal Tort Claims Act	Civil Division.
1986	28 CFR part 15	Defense of Certain Suits Against Federal Employees, and Certification and Defense of Certain Suits Against Program Participants Under the National Swine Flu Immunization Program of 1976.	Do.
1986	28 CFR part 25	Recommendations to the President on Civil Aeronautics Board Decisions	Antitrust Division.
1986	28 CFR part 43	Recovery of Cost of Hospital and Medical Care Treatment Furnished by the United States	Civil Division.
1986	28 CFR part 48	Newspaper Preservation Act	Antitrust Division.
1986	28 CFR part 49	Antitrust Civil Process Act	Do.
1986	28 CFR part 57	Investigation of Discrimination in the Supply of Petroleum to the Armed Forces	Civil Division.
1987	28 CFR part 2	Parole, Release, Supervision and Recommitment of Prisoners, Youth Offenders, and Juvenile Delinquents	U.S. Parole Commission.

Year of review	DOJ rule	Title	Responsible organization
1987	28 CFR part 4	Procedure Governing Applications for Certificates of Exemption Under the Labor-Management Reporting and Disclosure Act of 1959, and the Employee Retirement Income Security Act of 1974.	Do.
1987	28 CFR part 13	Atomic Weapons and Special Nuclear Materials Rewards Regulations	Land and Natural Resources Division.
1987	28 CFR part 16, subpart F	Public Observation of Parole Commission Meetings	U.S. Parole Commission.
1987	28 CFR part 61	Procedures for Implementing the National Environmental Policy Act	Land and Natural Resources Division.
1987	28 CFR part 63	Floodplain Management and Wetland Protection Procedures	Do.
1987	45 CFR part V	Foreign Claims Settlement Commission of the United States, Department of Justice	Foreign Claims Settlement Commission.
1988	28 CFR part 41	Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs.	Civil Rights Division.
1988	28 CFR part 42, subpart F	Coordination of Enforcement of Non-discrimination in Federally Assisted Programs	Do.
1988	28 CFR part 42, subpart H	Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance.	Do.
1989	28 CFR part 3	Gambling Devices	Criminal Division.
1989	28 CFR part 5	Administration and Enforcement of Foreign Agents Registration Act of 1938, as Amended	Do.
1989	28 CFR part 9	Remission or Mitigation of Civil Forfeitures	Do.
1989	28 CFR part 10	Registration of Certain Organizations Carrying on Activities Within the United States	Do.
1989	28 CFR part 12	Registration of Certain Persons Having Knowledge of Foreign Espionage, Counterespionage, or Sabotage Matters Under the Act of Aug. 1, 1956.	Do.
1989	28 CFR part 16, subpart A	Production or Disclosure Under 5 U.S.C. 552(a)	Office of Legal Policy.
1989	28 CFR part 16, subpart B	Production or Disclosure in Federal and State Proceedings	Do.
1989	28 CFR part 16, subpart D	Protection of Privacy of Individual Records	Do.
1989	28 CFR part 18	LEAA Administrative Review Procedure	Office of Justice Programs.
1989	28 CFR part 20, subpart A	General Provisions	Do.
1989	28 CFR part 20, subpart B	State and Local Criminal History Record Information Systems	Do.
1989	28 CFR part 22	Confidentiality of Identifiable Research and Statistical Information	Do.
1989	28 CFR part 23	Criminal Intelligence Systems Operating Policies	Do.
1989	28 CFR part 24	Implementation of the Equal Access to Justice Act in Department of Justice Administrative Proceedings	Office of Legal Policy.
1989	28 CFR part 30	Intergovernmental Review of Department of Justice Programs and Activities	Office of Justice Programs.
1989	28 CFR part 31	Formula Grants	Do.
1989	28 CFR part 32	Public Safety Officers' Death Benefits	Do.
1989	28 CFR part 42, subpart D	Nondiscrimination In Federally Assisted Programs—Implementation of section 815(c)(1) of the Justice System Improvement Act of 1979.	Do.
1989	28 CFR part 42, subpart E	Equal Employment Opportunity Program Guidelines	Do.
1989	28 CFR part 47	Right to Financial Privacy Act	Criminal Division.
1989	28 CFR part 50	Statements of Policy	Office of Legal Policy.
1989	28 CFR part 52	Proceedings Before U.S. Magistrates	Do.
1989	28 CFR part 59	Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties	Criminal Division.
1989	28 CFR part 60	Authorization of Federal Law Enforcement Officers to Request the Issuance of a Search Warrant	Do.
1990	8 CFR part 101	Presumption of Lawful Admission	Immigration and Naturalization Service.
1990	8 CFR part 103	Powers and Duties of Service Officers; Availability of Service Records	Do.
1990	8 CFR part 109	Employment Authorization	Do.
1990	8 CFR part 204	Petition to Classify Alien as Immediate Relative of a U.S. Citizen or as a Preference Immigrant	Do.
1990	8 CFR part 205	Revocation of Approval of Petitions	Do.
1990	8 CFR part 207	Admission of Refugees	Do.
1990	8 CFR part 208	Asylum Procedures	Do.
1990	8 CFR part 209	Adjustment of Status of Refugees and Aliens Granted Asylum	Do.
1990	8 CFR part 211	Documentary Requirements; Immigrants; Waivers	Do.
1990	8 CFR part 212	Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole	Do.
1990	8 CFR part 213	Admission of Aliens on Giving Bond or Cash Deposit	Do.
1990	8 CFR part 214	Nonimmigrant Classes	Do.
1990	8 CFR part 215	Controls of Aliens Departing from the United States	Do.
1990	8 CFR part 221	Admission of Visitors or Students	Do.
1990	8 CFR part 223	Reentry Permits	Do.
1990	8 CFR part [illegible]	Refugee Travel Document	Do.
1990	8 CFR part 231	Arrival-Departure Manifests and Lists; Supporting Documents	Do.
1990	8 CFR part 232	Detention for Examination to Determine Mental or Physical Defects	Do.
1990	8 CFR part 233	Temporary Removal for Inspection	Do.
1990	8 CFR part 234	Physical and Mental Examination of Arriving Aliens	Do.
1990	8 CFR part 235	Inspection of Persons Applying for Admission	Do.
1990	8 CFR part 236	Exclusion of Aliens	Do.
1990	8 CFR part 237	Deportation of Excluded Aliens	Do.
1990	8 CFR part 238	Contracts with Transportation Lines	Do.
1990	8 CFR part 239	Special Provisions Relating to Aircraft; Designation of Ports of Entry for Aliens Arriving by Civil Aircraft	Do.
1990	8 CFR part 241	Judicial Recommendations Against Deportation	Do.
1990	8 CFR part 242	Proceedings to Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal.	Do.
1990	8 CFR part 243	Deportation of Aliens in the United States	Do.
1990	8 CFR part 244	Suspension of Deportation and Voluntary Departure	Do.
1990	8 CFR part 245	Adjustment of Status to that of Persons Admitted for Permanent Residence	Do.
1990	8 CFR part 246	Rescission of Adjustment of Status	Do.
1990	8 CFR part 247	Adjustment of Status of Certain Resident Aliens	Do.
1990	8 CFR part 248	Change of Nonimmigrant Classification	Do.
1990	8 CFR part 249	Creation of Records of Lawful Admission for Permanent Residence	Do.
1990	8 CFR part 250	Removal of Aliens Who Have Fallen Into Distress	Do.
1990	8 CFR part 251	Arrival Manifests and Lists: Supporting Documents	Do.
1990	8 CFR part 252	Landing of Alien Crewmen	Do.
1990	8 CFR part 253	Parole of Alien Crewmen	Do.
1990	8 CFR part 264	Registration and Fingerprinting of Aliens in the United States	Do.
1990	8 CFR part 265	Notices of Address	Do.
1990	8 CFR part 274	Seizure and Forfeiture of Vehicles, Vessels and Aircraft	Do.
1990	8 CFR part 280	Imposition and Collection of Fines	Do.
1990	8 CFR part 282	Forms for Sale to Public	Do.
1990	8 CFR part 287	Field Officers; Powers and Duties	Do.
1990	8 CFR part 289	American Indians Born in Canada	Do.
1990	8 CFR part 292a	Listing of Free Legal Services Programs	Do.
1990	8 CFR part 293	Deposit of and Interest on Cash Received to Secure Immigration Bonds	Do.
1990	8 CFR part 306	Special Classes of Persons Who May be Naturalized: Virgin Islanders	Do.
1990	8 CFR part 312	Educational Requirements for Naturalization	Do.

Year of review	DOJ rule	Title	Responsible organization
1990	8 CFR part 316a	Residence, Physical Presence and Absence	Do.
1990	8 CFR part 318	Pending Deportation Proceedings	Do.
1990	8 CFR part 319	Special Classes of Persons Who May be Naturalized: Spouses of U.S. Citizens	Do.
1990	8 CFR part 322	Special Classes of Persons Who May be Naturalized: Children of Citizen Parent	Do.
1990	8 CFR part 324	Special Classes of Persons Who May be Naturalized: Women Who Have Lost U.S. Citizenship by Marriage	Do.
1990	8 CFR part 327	Special Classes of Persons Who May be Naturalized: Persons Who Lost U.S. Citizenship Through Service in Armed Forces of Foreign Country During World War II.	Do.
1990	8 CFR part 328	Special Classes of Persons Who May be Naturalized: Persons with 3 Years Service in Armed Forces of the United States.	Do.
1990	8 CFR part 329	Special Classes of Persons Who May be Naturalized: Veterans of the U.S. Armed Forces Who Served During World War I or World War II or Enlisted Under Act of June 30, 1950, as Amended.	Do.
1990	8 CFR part 330	Special Classes of Persons Who May Be Naturalized: Seamen	Do.
1990	8 CFR part 332	Preliminary Investigation of Applicants for Naturalization and Witnesses	Do.
1990	8 CFR part 332a	Official Forms	Do.
1990	8 CFR part 332b	Instruction and Training in Citizenship Responsibilities: Textbooks, Schools, Organizations	Do.
1990	8 CFR part 332c	Photographic Studios	Do.
1990	8 CFR part 332d	Designation of Employees to Administer Oaths and Take Depositions	Do.
1990	8 CFR part 333	Photographs	Do.
1990	8 CFR part 334	Petition for Naturalization	Do.
1990	8 CFR part 334a	Declaration of Intention	Do.
1990	8 CFR part 335	Preliminary Examination on Petitions for Naturalization	Do.
1990	8 CFR part 335a	Transfer, Withdrawal or Failure To Prosecute Petition for Naturalization	Do.
1990	8 CFR part 335c	Investigation of Petitioners for Naturalization	Do.
1990	8 CFR part 336	Proceedings Before Naturalization Court	Do.
1990	8 CFR part 337	Oath of Allegiance	Do.
1990	8 CFR part 338	Certificate of Naturalization	Do.
1990	8 CFR part 339	Functions and Duties of Clerks of Naturalization Courts	Do.
1990	8 CFR part 340	Revocation of Naturalization	Do.
1990	8 CFR part 341	Certificates of Citizenship	Do.
1990	8 CFR part 342	Administrative Cancellation of Certificates, Documents, or Records	Do.
1990	8 CFR part 343	Certificate of Naturalization or Repatriation; Persons Who Resumed Citizenship Under section 323 of the Nationality Act of 1940, as Amended, or section 4 of the Act of June 29, 1906.	Do.
1990	8 CFR part 343a	Naturalization and Citizenship Papers Lost, Mutilated, or Destroyed; New Certificate in Changed Name; Certified Copy of Repatriation Proceedings.	Do.
1990	8 CFR part 343b	Special Certificate of Naturalization for Recognition by a Foreign State	Do.
1990	8 CFR part 343c	Certifications from Records	Do.
1990	8 CFR part 344	Fees Collected by Clerks of Court	Do.
1990	8 CFR part 349	Loss of Nationality	Do.
1990	21 CFR chapter II	Drug Enforcement Administration, Department of Justice	Drug Enforcement Administration.
1990	28 CFR part 6	Traffic in Contraband Articles in Federal Penal and Correctional Institutions	Bureau of Prisons.
1990	28 CFR part 7	Rewards for Capture of Escaped Federal Prisoners	Do.
1990	28 CFR part 40	Standards for Inmate Grievance Procedures	Do.
1990	28 CFR chapter III	Federal Prison Industries, Department of Justice	Federal Prison Industries
1990	28 CFR chapter V	Bureau of Prisons, Department of Justice	Bureau of Prisons.

[FR Doc. 84-31172 Filed 11-27-84; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Okolona Sewer Construction District, et al

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 8, 1984 a proposed consent decree in *United States* v. *Okolona Sewer Construction District, et al.*, Civil Action No. 84-1148-L(A), was lodged with the United States District Court for the Western District of Kentucky. The complaint filed by the United States alleged violations of the Clean Water Act by Okolona Sewer Construction District due to discharges of pollutants from its sewage treatment plant into Pond Creek, near Louisville, Kentucky. The complaint sought civil penalties for past violations, and injunctive relief to bring Okolona into compliance with the Clean Water Act. The consent decree provides that Okolona will cease discharge of pollutants into Pond Creek by merging into the Louisville and Jefferson County Metropolitan Sewer Construction District system.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States v. Okolona Sewer Construction District, et al.*, D. J. Ref. 90-5-1-1-2140.

The proposed consent decree may be examined at the office of the United States Attorney, Room 211 U.S. Courthouse, 601 West Broadway, Louisville, Kentucky and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

James M. Spears,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-30980 Filed 11-27-84; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-84-230-C]

B & J Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

B & J Coal Company, Inc., Teaberry, Kentucky 41660 has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its Mine No. 1 (I.D. No. 15-14410) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all mobile face equipment be equipped with illumination devices.

2. The coal seam ranges from 33 to 36 inches in height. The Joy Miner equipped with lights is approximately 34 inches in height.

3. Petitioner states that the lighting devices installed on the miner have been torn off, causing an arcing effect, and the guards around the lights have dislodged roof bolts, creating a safety hazard.

4. As an alternate method, petitioner proposes to use two sealed beam headlights installed in the operator's compartment.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31065 Filed 11-27-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-84-233-C]

Buffalo Ridge Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Buffalo Ridge Coal Co., Inc., c/o Wes-Co Engineering, Inc., Route 3, Box 54 SRS, Oneida, Tennessee 37841 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its No. 10 Mine (I.D. No. 40-01623) located in Anderson County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer banks of elevated roadways.

2. As an alternate method to providing berms on the roadway, petitioner proposes to equip the roadway with signs and other indicators to warn roadway users of hazardous areas, speed requirements and mining areas.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31071 Filed 11-27-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-84-213-C]

Canada Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Canada Coal Co., Inc., c/o Progressive Training & Research, Inc., Star Route 61, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 3 Mine (I.D. No. 15-11426) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that return air-courses be examined in their entirety on a weekly basis.

2. A rock fall, approximately 150 feet long, occurred in the return aircourse. This return is not used as an escapeway; the designated secondary escapeway is located in the conveyor belt entry.

3. Petitioner states that cleanup of this rock fall would expose miners to hazardous conditions which would be involved in shooting the rock, reroofbolting and retimbering.

4. As an alternate method, petitioner proposes to travel through a mandoor into the belt conveyor entry at the beginning of the fall, travel down the belt conveyor to a point below the fall, and travel through another mandoor back into the return.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31086 Filed 11-27-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-84-231-C]

Black River Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Black River Mining Company, HC 76, Box 645, Ransom, Kentucky 41558 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-04236) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Thacker seam and ranges from 38 to 50 inches in height with consistent ascending and descending grades creating dips in the coalbed.

3. Petitioner states that canopies can strike and dislodge the roof support system, creating the potential of a roof fall. The canopies also restrict and hamper the equipment operator's seating position and visibility, increasing the chances for an accident or injury.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31087 Filed 11-27-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-84-225-C]

Central Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Central Ohio Coal Company, P.O. Box 98, Cumberland, Ohio 43732 has filed a petition to modify the application of 30 CFR 77.902 (low- and medium-voltage ground check monitor circuits) to its Muskingum Mine (I.D. No. 33-00989) located in Morgan County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that three-phase low- and medium-voltage resistance grounded systems to portable and mobile equipment include a fail safe ground check circuit or other no less effective device to monitor continuously the grounding circuit to assure continuity.

2. The petitioner's voltage supply is a grounded delta. As an alternate method to using a resistance grounded system on the low- and medium-voltage supply system, petitioner proposes to use S.H.D. Power Cable from the protective device to portable heaters. This additional length of cable will not exceed 50 feet. The S.H.D.-type cable carries a continuous ground wire, will assure a safe and practical work standard, and will be installed according to National Electric Code standards.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31083 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-232-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1707 (escapeways) to its Jenkinjones No. 4 Mine (I.D. No. 46-04533) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the escapeway required to be ventilated with intake air be separated from the belt and trolley haulage entries for the entire length of such entries to the beginning of each working section.

2. Petitioner states that the last 700 feet of the track entry has such extremely wet and muddy conditions that the track haulage cannot be adequately maintained and haulage over the tracks may be unsafe.

3. As an alternate method, petitioner proposes to lay the track haulage in the intake escapeway of the last 700 feet. In support of this request, petitioner proposes to install an early warning fire detection system at the tailpiece with specific conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31081 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-212-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Matthews Mine (I.D. No. 40-00520) located in Claiborne County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install low-level carbon monoxide (CO) detectors with specific conditions at specified locations in the belt haulage entry.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31084 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-216-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Itmann No. 2 Mine (I.D. No. 46-01885) located in Wyoming County, West Virginia. The petition is filed

under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Parts of the Pole Green Return Air Courses were developed twenty years ago and now both the roof and roof supports have reached a stage of rapid deterioration. Rehabilitation of the affected areas will expose miners to hazardous working conditions.

3. As an alternate method, petitioner proposes to establish a ventilation evaluation point at a specific location in the affected area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31085 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-245-C]

Double L Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Double L Coal Corporation, P.O. Box 46, Big Rock, Virginia 24603 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-00403) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The normal mining height is 36 inches. However, a rider seam of coal now dips low enough to require mining which temporarily results in a 72-inch mining height.

3. As an alternate method, petitioner proposes to operate an Elswick roof bolting machine without a cab or canopy. This machine has been converted to operate a hand-held coal drill. This machine will always be at least 15 feet outby the working face when used and the machine and operator will always be under supported roof during operation.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31086 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-61-C]

Garber Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Garber Coal Company, 523 E. Market Street, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Whites Slope (I.D. No. 36-06815) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31073 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-235-C]

H.A.T. Coal Co; Petition for Modification of Application of Mandatory Safety Standard

H.A.T. Coal Company, 113 N. Oak Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 3 Slope (I.D. No. 36-07363) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

9. Petitioner states that the alternate method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31075 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-48-C]

K R K Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

K R K Coal Company, 120 Main Street, Joliett, Pennsylvania 17981, has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its K R K Slope (I.D. No. 36-06031) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. The mine is wet and virtually dust free. The upper area of the mine was deep and strip mined, leaving ventilation to the surface by means of abandoned slopes, cracks, fissures and strip pits. This creates a natural draft that would sweep noxious fumes to the surface away from the miners.

3. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impossible to wear the device while working. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. In addition, the wet conditions of the mine make it difficult to locate a suitable dry storage location for the self-rescuers.

4. Petitioner proposes to continue using the present filtertype self-rescuers as an alternative to providing self-contained self-rescuers.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31072 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-229-C]

Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mid-Continent Resources, Inc., 1058 Road 100, P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1303 (permissible explosives, detonators, blasting devices and shot-firing units; stemming boreholes) to its Dutch Creek No. 1 Mine—Coal Basin Adit/Rock Tunnels Project (I.D. No. 05-00301) located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that only permissible explosives and devices be used in a premissible manner underground.

2. Petitioner seeks a modification of the standard to permit the use of nonpermissible explosives and detonating devices, without evacuating personnel outby the Rock Tunnel Project (RTP) portals, during the continued development of the RTP until the overlying coal beds are intercepted or methane is encountered in the RTP. All of the proposed blasting operations will be performed under specific conditions as outlined in the petition.

3. Petitioner states that the proposed alternate method, coupled with the safety precautions and conditions outlined in the petition, will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in the petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at the address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31076 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-215-C]

Mount Calvery Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mount Calvery Coal Co., Box 66 Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-13772) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that cabs or canopies be installed on the mine's electric face equipment.

2. The mine height ranges from 42 to 47 inches.

3. Petitioner states that the canopies are striking and dislodging the permanent roof support, creating the potential for a roof fall. In addition, the canopies restrict the equipment operator's visibility. This forces the operator to lean out from under the canopy, exposing body parts to potential injury.

4. For these reasons, petitioner requests a modification of the standards.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31069 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-210-C]

Sandy Fork Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sandy Fork Mining Co., Inc., Route 4, Box 30, Beverly, Kentucky 40913 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its Mine No. 11 (I.D. No. 15-13455) and Mine No. 12 (I.D. No. 15-14160), both located in Leslie County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that berms or guards be provided on the outer banks of elevated roadways.

2. Petitioner states that the installation of berms on the outer banks of the roadway would hamper proper maintenance of the roads by preventing the removal of snow and ice from the roadways, causing the road surfaces to deteriorate. Run-off water would channel down the roadways, washing gravel and dirt from the roads into settling ponds and silt ponds.

3. As an alternate method of installing berms, petitioner proposes that:

a. All equipment operators will be trained in the use of haulage equipment and the safety of vehicles on haulage roads;

b. All haulage equipment will have original manufacturer's brakes, Engine or Jacob brakes, and an emergency (parking) braking system;

c. Roadway surfaces will be kept free of debris, excessive water, snow and ice and maintained as free as practicable of small ditches (washboard effects);

d. Warning signs will be posted designating curves, steep grades where trucks should shift to lower gear, and where roadways are reduced to one lane traffic. Stop signs will be posted where one road intersects another, giving main haulage traffic the right of way. Signs will be posted designating passing points;

e. A traffic system will be put into use for these roads requiring that loaded trucks have the right of way on the highway side of roads regardless of their direction of travel; and

f. Adequate supplies of crushed stone or other suitable material will be stored at strategic locations along haulage roads for use when road surfaces become slippery.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31074 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-225-C]

Thac West Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Thac West Mining, Inc., c/o Progressive Training & Research, Star Route-P.O. Box 61, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-12472) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine ranges from 36 to 48 inches in height with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the installation of canopies on the equipment would result in a diminution of safety because the canopies restrict the equipment operator's visibility. In addition, the canopies can strike the roof, increasing the changes of a roof fall.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31070 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-201-C]

Twin Oak Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Twin Oak Coal Company, 119 Greenwood Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 1 Mine (I.D. No. 36-07388) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. Petitioner states that the mine is wet, virtually dust free, and has good ventilation. It is a heavily pitching anthracite mine with miner headings on 50-foot centers.

3. The mine geology, undulation, thin coal and varying pitches make it

hazardous to wear the device while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

4. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it very difficult to locate a suitable dry storage location for the self-rescuers.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31094 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-216-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Room 1580, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.328 (aircourses and belt haulage entries) to its Cumberland Mine (I.D. No. 36-05018) located in Greene County, Pennsylvania; its Maple Creek No. 1 Mine (I.D. 36-00970) and Maple Creek No. 2 Mine (I.D. No. 36-03425), both located in Washington County, Pennsylvania; and its Morton Mine (I.D. No. 46-01329) located in Kanawha County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage air not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use the ventilating air from conveyor belt entries as intake air to provide additional volume and velocity for the working face. In support of this request, petitioner proposes that:

(a) A low-level carbon monoxide detection system with specific conditions will be installed at specific locations in each mine's belt conveyor entry;

(b) The construction of stoppings separating the belt haulage entry from the intake escapeway on main entries will be of concrete blocks, cinder blocks, brick or tile, and constructed with mortared joints, or constructed with material of equivalent strength.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard by preventing "still" areas where belt air is usually separated from other intake air, and will prevent potential air reversals caused by changes introduced in ventilating pressures.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31092 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-217-C]

U.S Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Room 1580, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its Cumberland Mine (I.D. No. 36-05018) located in Greene County, Pennsylvania; its Maple Creek No. 1 Mine (I.D. No. 36-00970) and Maple Creek No. 2 Mine (I.D. No. 36-03425), both located in Washington County, Pennsylvania; and its Morton Mine (I.D. No. 46-01329) located in Kanawha County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that devices be installed on all belts which will give warning automatically when a fire occurs on or near such belt.

2. As an alternate method, petitioner proposes to install a low-level carbon monoxide detection system with specific conditions at specific locations in each mine's belt conveyor entry.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at the address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31089 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

Copyright Office

Privacy Act of 1974; Establishment of New System of Records

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of establishment of new system of records.

SUMMARY: The Copyright Office last published the full text of its systems of records under the Privacy Act of 1974 (5 U.S.C. 552a) at 47 FR 36996, August 24, 1982. In order to facilitate access by members of the public to Copyright Office correspondence relating to the cable compulsory licensing system, the Office has decided to establish a new system of records containing copies of correspondence of the Register of Copyrights, the Copyright Office General Counsel and the Licensing Division with members of the public on the administration of the licensing system in section 111 of title 17 U.S.C. Although this information has previously been available in other files of the Office, establishment of this new system of records will make the information more readily accessible to the public.

DATES: Comments should be received on or before December 28, 1984.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department D.S. Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, D.C.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

The Privacy Act Systems of Records of the Copyright Office are amended as follows:

1. In *Table of Contents*, add "CO-20—Secondary Transmissions by Cable Systems: Correspondence Files."

2. Add new system CO-20 as follows:

CO-20

SYSTEM NAME:

Secondary Transmission by Cable Systems: Correspondence Files.

SYSTEM LOCATION:

Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cable systems owners and other individuals who correspond with the Licensing Division, the Copyright Office General Counsel or the Register of Copyrights concerning the administration of the cable compulsory licensing system in section 111 of title 17 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111, 705.

ROUTING USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office maintains these records to facilitate public access to correspondence of the Licensing Division, Copyright Office General Counsel and the Register of Copyrights on the administration of the section 111 compulsory licensing system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and binders.

RETRIEVABILITY:

Correspondence usually accessible by date letter sent to member of public.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C. 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under 'Notification Procedure.'

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Licensing Division personnel, the Copyright Office General Counsel and the Register of Copyrights.

Dated: November 19, 1984.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

Approved by:

Daniel J. Boorstein,

The Librarian of Congress.

[FR Doc. 84-31189 Filed 11-27-84; 8:45 am]

BILLING CODE 1410-03-M

[Docket RM 84-4]

Cable Compulsory License; Policy Decision Concerning Status of Low Power Television Stations

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

EFFECTIVE DATE: November 28, 1984.

1. Background

Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. This compulsory license is subject to various conditions, including the requirements that cable systems file Statements of Account semi-annually and pay statutory royalty fees in accordance with section 111(d)(2) and as adjusted by the Copyright Royalty Tribunal in accordance with section 801(b)(2).

Six years after the enactment of Section 111, the Federal Communications Commission (FCC) authorized the establishment of low power television stations entitled to originate programming. *See* 47 FR 21468 (1982), *on recon.*, 48 FR 21478 (1983). Since 1982, 117 low power television stations have gone on the air and an additional 259 construction permits have been granted. Lotteries for new construction permits are held every month; the FCC is expected to grant up to 4,000 of these permits.

The status of these low power television stations under the Copyright Act's definition of the "local service area of a primary transmitter" has been questioned. This definition establishes the demarcation between so-called "local" and "distant" signals under the cable compulsory license. This demarcation is critically important since large cable systems, whose semiannual gross receipts exceed $214,000, compute their copyright royalties beyond the minimum fee [1] on the basis of distant signal carriage (*i.e.*, the "distant signal equivalent" formula is applied).

The definition of local service area is found in section 111(f):

> The "local service area of primary transmitter," in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976. . . .

The Copyright Act was enacted in 1976; the relevant section 111(f) definition refers to the type of television broadcast station that the FCC required cable systems to carry on *April 15, 1976*. Under one interpretation of the Act, since the low power television station category did not exist in 1976, they can

[1] All cable systems pay a minimum fee for the privilege of making secondary transmissions, irrespective of gross receipts or actual distant signal carriage. 17 U.S.C. 111(d)(B)(i). (C) and (D).

not be considered "must-carry" stations under the FCC rules in effect on April 15, 1976. Moreover, the FCC currently does not require cable retransmission of low power television stations. The distinction between local and distant signals found in 17 U.S.C. 111(f) is frozen as of the FCC's rules in effect on April 15, 1976. The Committee on the Judiciary explained that they used this date in the relevant section 111(f) definition since they believed "that any such change for copyright purposes, which would materially affect the royalty fee payments provided in the legislation, should only be made by an amendment to the statute." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 99 (1976).

During the past year, representatives of cable systems have asked the Copyright Office whether these low power stations may be considered as "local" within the relevant definition of section 111(f). Reasoning from the language of the Act itself, the legislative history cited above, and the fact that the FCC did not choose to give these stations "must carry" status when they considered the matter, 48 FR 21475, 21482 (1983), the Copyright Office responded that low power television stations were not subject to the FCC's "must carry" rules and would presumably be classified as "distant" signals under the definition in 17 U.S.C. 111(f).

On September 25, 1984, various representatives of the low power television community asked the Copyright Office to reconsider its position on the status of low power television stations under the section 111(f) definition of "local service area of primary transmitter."

In response to the urgency of these requests, the Copyright Office held a pulbic hearing on October 12, 1984, for the purpose of eliciting comment on the correct interpretation of the Copyright Act as it relates to the status of signals of low power television stations retransmitted by cable systems. Specifically the Copyright Office invited comment in two areas: (1) If a cable system retransmits a low power television signal, should the signal be characterized as "local" or "distant" for purposes of applying the distant signal equivalent value formula? If the response is that the signal should be considered "local," how are the limits of the station's "local service area" difined and by what authority? (2) If a cable system retransmits a low power television station on the basis of a voluntary license from the station and all owners of copyright in all copyrighted works transmitted by the low power television station have granted explicit voluntary licenses for the secondary transmission by cable, must the cable system nevertheless specify that carriage in its Statement of Account and pay copyright royalties under the compulsory license, (assuming the cable system retransmits at least one additional broadcast signal), or is the retransmission of such a low power television station outside the cable compulsory license since all copyright owners have consented voluntarily to the retransmission?

2. Summary of the Hearing and Comment Record

At the October 12, 1984, hearing representatives from the American Low Power Television Association (ALPTA), Low Power Television, Inc., Community Broadcasters of America, Inc., Community Antenna Television Association (CATA), ACTS Satellite Network, Inc., American Christian Television System, Inc., and seven operators of low power television stations testified. The comment period was held open until October 22, 1984, and twenty-two comments were received. In addition to the comments submitted by those who testified at the hearing, comments were submitted by the Motion Picture Association of Amercia (MPAA), Major League Baseball, the National Association of Broadcasters, Multivisions, Ltd., Bogner Broadcast Equipment, Times Mirror Cable Television, Inc., National Cable Television Association, and more individual operators of low power television stations.

a. Status of Low Power Stations. Everyone who testified at the October 12 hearing took the position that low power television stations should be considered local signals within section 111(f). Several different arguments were presented for reaching this conclusion. The ALPTA and other members of the low power community took the position that the interpretation given by the Copyright Office is not required by the statute and is inconsistent with congressional intent. In support of the ALPTA argument an October 1, 1984, letter to the Register of Copyrights from Representative Robert W. Kastenmeier, Chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, and Senator Charles McC. Mathias, Jr., Chairman of the Subcommittee on Patents, Copyrights and Trademarks, was introduced in which these Members of Congress expressed the view that when section 111 was enacted all local signals were subject to must carry status and may carry local low power signals were not contemplated, but "Congress' intention was clear in wanting to distinguish between signals that were truly local and others that would be classified as distant." In this letter these Members of Congress indicate that any ambiguity in the law will be clarified by an amendment but ask the Copyright Office for "an interim indication . . . resolving any ambiguities in a manner to effectuate original intent . . ."

CATA argued that low power television is not a new service but an evolution and modification of the long standing television translator rules. To support this position CATA asserted that most of the rules governing translators also apply to LPTV stations. The same application forms are used by both, and a translator can convert to LPTV status by simply filing a letter asking for the authority to originate programming.

CATA minimizes the 1982 FCC decision that denied "must carry" status to LPTV stations by arguing that it is a post 1976 rule change that has no effect on the relevant definition in copyright law and that it was made as a result of the deregulation climate at the FCC.

In accord with their position that a LPTV station is a "deregulated translator," CATA stated that LPTV local service must be defined in the same manner that the local service area of a television translator was defined under the FCC rules in 1976. A determination of local status depends on whether the translator serves the cable community: the license so specifies, the signal is actually available, or the translator provides a "quality signal" to the cable community.

Representatives of Community Broadcasting and individual LPTV station operators testified concerning the need to obtain local status in order to be carried by cable systems.

Although no opposition to the ALPTA position was given at the October 12 hearing, during the comment period, representatives of copyright proprietors submitted statements in support of the interpretation originally given by the Copyright Office. The MPAA argued that if the statutory definition of "local service area" is disregarded, there will be no way to determine when a low power station is "local" and when it is "distant."

Responding to CATA's translator argument, Major League Baseball asserted that some translator stations did not have "must carry" rights under the April 15, 1976, FCC rules and that Copyright Office should not consider LPTV stations as "deregulated translators" since the FCC had not adopted such a construction. Finally, they argued any decision that carriage of a LPTV signal receivable off-the-air within a thirty-five mile zone is royalty-free must be made by Congress.

Other commentators supported the ALPTA position. Times Mirror Cable Industry, Inc. agreed with ALPTA that a ruling that locally broadcast LPTV signals are "local" under § 111 could be based upon the statutory language. Times Mirror argued that a LPTV station is a broadcast station whose signal is subject to compulsory licensing under section 111(c) but that its signal is not the signal of a "television broadcast station" for the purpose of defining the "local service area" in section 111(f). Times Mirror reached this conclusion by maintaining that "television broadcast station" in section 111(f) is a term of art referring to full power television stations. Times Mirror also observed that section 111(f) provides an alternative for defining the local service area of broadcast stations which do not possess mandatory carriage rights, *e.g.*, radio stations; that the FCC "must carry" rules for translators do not specifically define the local service area; and that the local area served for LPTV could be determined in the same way. Alternatively, Times Mirror argued that LPTV could at least be treated as local broadcast stations when carried by cable systems in their community of license and any other community served from the same headend.

Multivisions, Ltd. took the position that the Copyright Office's interpretation ignored the "common sense" of the statute, was overly simplistic, and at odds with the probable congressional intent. To support this position Multivisions quoted from the Seventh Circuit Court of Appeals opinion that the courts should "interpret the definitional provisions of the new act flexibly, so that it would cover new technologies as they appeared, rather than . . . narrowly and so force Congress periodically to update the act." *WGN Continental Broadcasting Co.* v. *United Video, Inc.*, 685 F.2d 218 (7th Cir. 1982), *rehearing denied* 693 F.2d 628. Multivisions asserted that the "mechanistic application of a 'distant' lable to all LPTV signal carriage would be at odds with the intent of the Copyright Act."

The comments submitted by the National Association of Broadcasters (NAB) and individual cable operators supported the ALPTA argument that LPTV signals should be classified as "local" without elaborating on it. Both NAB and several of the operators did suggest that this "local" classification should apply only in an area approximating the normal coverage zone of such stations.

b. Retransmission Consents. As to the second issue, all of the witnesses and commentators agreed that retransmission licenses could be negotiated, and royalties therefrom would substitute for compulsory license royalties for the particular signal for which consent had been secured. The MPAA wrote that such consents are a "practical, marketplace solution." As the hearing, however, LPTV operators testified that acquiring all of the consents necessary was a long and arduous procedure.

3. Policy Decision—Status of Low Power Television Signals

Having reviewed the statute and the legislative history in connection with an examination of the divergent views presented at the October 12 hearing and during the comment period and having noted the Kastenmeier-Mathias letter, the Copyright Office has concluded that the status of low power television stations under the cable compulsory license of the Copyright Act is ambiguous. Consequently, the Copyright Office will take a neutral position on this specific issue, awaiting the legislative clarification mentioned in the letter from Senator Mathias and Representative Kastenmeier. In examining Statements of Account, therefore, the Copyright Office will not question the determination by a cable system that a low power station's signal is "local" within an area approximating the normal coverage zone of such station.

a. *Retransmission Consent.* On the second issue presented in the September 25 ALPTA letter, opposing interests presented uniform responses that cable systems may carry low power television stations pursuant to negotiated retransmission consents. There was no suggestion that this could not be done outside the compulsory licensing provisions of section 111. If copyright owners and cable systems uniformly agree that negotiated retransmission consents supersede the compulsory license requirements, the Copyright Office has no reason to question this interpretation provided that the negotiated license covers retransmission rights for all copyrighted works carried by a particular broadcasting station for the entire broadcast day for each day of the entire accounting period. Since it appears that the negotiated license would supersede the compulsory license under these circumstances, cable systems would not have to take account of the signal of the low power television station for which the copyright owners' consents have been obtained in paying copyright royalties.

(17 U.S.C. 111, 702)

Dated: November 19, 1984.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

Approved by.

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 84-31169 Filed 11-27-84; 8:45 am]

BILLING CODE 1410-25-M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES Performance awards, ranks and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register.**

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Robert E. Gresham, Daniel H. Shear, Richard L. Petrocci and Armen Tashdinian.

DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Malcolm L. Trevor, Special Assistant for Administration to the Executive Director, National Capital Planning Commission, 1325 G Street, N.W., Suite 1007, Washington, D.C. 20576, (202) 724-0206.

Dated: November 20, 1984.
Kathleen K. McKay,
Assistant General Counsel.
[FR Doc. 84-31107 Filed 11-27-84; 8:45 am]
BILLING CODE 7520-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No 111 to Facility Operating License Nos. DPR-31, and Amendment No. 105 to Facility Operating License No. DPR-41, issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for Operation of the Turkey Point Plant Unit Nos. 3 and 4 (the facilities) located in Dade County, Florida. The amendments are effective as of the date of issuance and shall be implemented within 60 days of issuance.

The amendments permit the expansion of the spent fuel storage capacity for Turkey Point Plant Units 3 and 4. This expansion would be accomplished by reracking the existing spent fuel storage pools with neutron absorbing (poison) spent fuel racks composed of individual cells made of stainless steeel. Reracking the spent fuel pools would increase the Turkey Point Plant Units 3 and 4 storage capacities from 621 to 1404 spaces for each of the units. The new fuel storage racks will be arranged in two discrete regions within each pool. Region 1 will consist of 286 locations which will normally be used for core off-loading. Region 2 will consist of 1118 locations and will provide normal storage for spent fuel assemblies meeting required burnup considerations. The existing fuel storage racks have a nominal center-to-centerline spacing of 13.7 inches. The new Region 1 fuel storage racks will have a 10.6 inch centerline-to-centerline spacing and Region 2 will be 9.0 inch centerline-to-centerline spacing. The major components of the fuel rack assemblies are the fuel assembly cell, Boraflex (neutron absorbing) material and the wrapper. The wrapper covers the Boraflex material and provides venting of the Boraflex to the Pool environment.

The effective multiplication factor (K_{eff}) of the fuel assembly array is designed to maintain the required subcriticality of K_{eff} equal to or less than 0.95 for both Regions 1 and 2. The transmittal letter requesting the amendments dated March 14, 1984, includes the requested Technical Specification changes, the licensee's determination on significant hazards considerations and the supporting Spent Fuel Storage Facility Analysis Report.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in these license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was initially published in the **Federal Register** (49 FR 23715) and in the monthly publication (49 FR 29925) on July 7, 1974. A request for a hearing was filed on July 9, 1984, by the Center for Nuclear Responsibility, Inc. and Ms. Joette Lorion.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from persons, in advance of the holding and completion of any reqiured hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that these amendments involve no significant hazards consideration.

The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, these amendments have been issued and made immediately effective and any hearing will be held after issuance.

A separate Environmental Assessment has been prepared pursuant to 10 CFR Part 51. The Notice of Issuance of Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** (49 FR 45514) on November 16, 1984.

For further details with respect to the action see (1) the application for the amendments dated March 14, 1984, as and supplemented on July 2 and 23, August 14 and 22, September 10 and 28, October 5, 9, 16 and 26, and November 16, 1984, (2) Amendment Nos. 111 and 105 to Facility Operating License Nos. DPR-31 and DPR-41 (3) the Commission's related Safety Evaluation and (4) Environmental Assessment and Notice of Issuance of Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of November 1984.

For the Nuclear Regulatory Commission.
David L. Wigginton,
Acting Branch Chief, Operating Reactors Branch No. 1, Division of Licensing.
[FR Doc. 84-31207 Filed 11-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co.; Monticello Nuclear Generating Plant; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. DPR-22, issued to the Northern States Power Company (the licensee), which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant (the facility), located in Wright County, Minnesota. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to implement the Average Power Range Monitor/Rod Block Monitor/Technical Specifications (ARTS) Improvement Program.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on September 13, 1984, 49 FR 36038. No request for a hearing or petition for leave to intervene was filed following this notice.

Also, in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on November 16, 1984 (49 FR 45512).

For further details with respect to this action, see (1) the application for amendment dated May 30, 1984, as supplemented May 31, 1984, and September 6, 1984, and as clarified in a submittal dated October 17, 1984, (2) Amendment No. 29 to License No. DPR-22, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollett Mall, Minneapolis, Minnesota. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 16th day of November 1984.

For the Nuclear Regulatory Commission.
Domenic B. Vassallo,
Chief, Operating Reactors Branch #2, Division of Licensing.
[FR Doc. 84-31206 Filed 11-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-354-OL]

Public Service Electric and Gas Co., et al. (Hope Creek Generating Station); Order To Show Cause Why OL Proceeding Should Not Be Dismissed

November 21, 1984.

Before Administrative Judges Marshall E. Miller, Chairman, Dr. Peter A. Morris, Dr. David R. Schink.

The Board on August 10, 1984, entered an Order which provided that the sole intervenor in this proceeding, the Public Advocate of New Jersey (Public Advocate), "will be given to and including August 20, 1984, to identify its witnesses and to make them reasonably available for depositions within two weeks thereafter. Noncompliance with such dates may be grounds for dismissal or other sanctions" (p. 2-3). That Order was entered in response to a motion filed by the Applicants July 30, 1984, "To Compel Designation of Witnesses and Their Availability For Depositions and/or to Dismiss the Proceeding."

The pending contentions of the Public Advocate were admitted by the Board from the bench at a special prehearing conference held November 22, 1983. Those rulings were reaffirmed in a Special Prehearing Conference Order entered December 21, 1983. The latter Order also provided that the "parties are directed to commence discovery immediately and to proceed with expedition." The parties were further "encouraged to make voluntary disclosure, both formally and informally, of all information, data, documents and the like which could reasonably be relevant to the admitted issues" (Order at page 19).

The Public Advocate responded to our Order on August 20, 1984, by listing its witnesses but requesting an extension "until October 1984" for their depositions. The witnesses thus identified were members of MHB Technical Associates of San Jose, California, including Dale Bridenbaugh, Richard Hubbard, and Gregory Minor. Robert N. Anderson of San Jose State University was also described as a possible witness whose availability was not certain, but as soon as the Public Advocate "is able to discuss the matter with Professor Anderson, we will notify the Board and the parties of his status" (at page 2).

The Applicants filed a motion to dismiss the proceeding on August 24, 1984, arguing that it had vainly attempted since January, 1984, to take the depositions of the Intervenor's expert witnesses who could furnish the bases for this contentions. It was urged that the Public Advocate's actions constituted "inexcusable dilatory conduct" that amounted to "willful neglect . . . over an extensive period of time" (at pages 3 and 10).

The Staff opposed the Applicants' motion for dismissal, and did not oppose allowing the witnesses to be deposed in October. However, the Staff further stated that this "extension should only be granted, however, if the Public Advocate gives assurance that its witnesses are thoroughly prepared so that additional depositions are not required" (Staff's Response dated September 10, 1984, at page 3).

The Applicants filed their amended motion to dismiss the proceeding on November 13, 1984. They pointed out that the Public Advocate had wholly failed to comply with even "the relaxed schedule proposed by . . . himself" calling for the production of witnesses for depositions during the month of October (at page 2 and 3). None of the witnesses had been produced for depositions, and the status of Prof. Robert N. Anderson had never been clarified.

The Board believes that the state of the record requires that the Public Advocate be required to show cause why he and his contentions should not be dismissed. Accordingly, a conference with parties and counsel will be held as described below. In addition, there should be a status report on all aspects of this proceeding. All pending motions will be heard, and any other issues, whether procedural or substantive, will be considered. Counsel should be prepared to address the question of whether the proliferating NRC schedules of professional witnesses should be permitted to cause delays in this OL proceeding. All filings which the parties desire the Board to consider shall be in the hands of all Board members at least one week prior to the scheduled conference. If any party deems it necessary to proffer testimony at such conferences, the nature and scope of the testimony shall be disclosed to the Board and parties one week prior thereto.

Please take notice that a conference with parties and counsel will be held at 9:00 a.m. on December 17, 1984 at the U.S. Nuclear Regulatory Commission Hearing Room, located at 4350 East/West Highway, 5th Floor, Bethesda, Maryland.

It is so ordered.

Dated at Bethesda, Maryland this 21st day of November 1984.

For the Atomic Safety and Licensing Board.
Marshall E. Miller,
Administrative Judge.
[FR Doc. 84-31205 Filed 11-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co.; and the Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclar Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment submitted by application dated November 12, 1984, would add a new condition to the Facility Operating License. The incorporation of the proposed license condition into the operating license would allow for the operation of the Davis-Besse facility in modes 1, 2 or 3 without the SUFP and associated piping isolated from outside the AFW pump rooms when the SUFP is operating. The condition would require Toledo Edison to observe three new operations

restrictions relating to the use of and future modification to the startup feedwater pump (SUFP). The license condition would require Toledo Edison to station an operator in the SUFP area when the SUFP is in operation to monitor the status of associated piping failure. This operator would be required to take certain actions in event of piping failure. When the SUFP is not in operation, Toledo Edison would be required to isolate and maintain isolation of certain piping associated with the SUFP from outside the rooms containing the SUFP and auxiliary feedwater (AFW) pumps.

The license condition would require Toledo Edison to install a SUFP, associated piping, and valves such that the hazard to the AFW pumps from SUFP operation is removed. This installation is to be completed prior to commencing Cycle 6.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 28, 1984, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition of leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq. Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemented petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 12, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 23rd day of November 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-31304 Filed 11-27-84; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Application for License to Export Nuclear Material and Equipment.

3. The form number if applicable: NRC Form 7.

4. How often the collection is required: Once for each separate request for a specific export license.

5. Who will be required or asked to report: Any person in the U.S. who wishes to export nuclear material and equipment subject to the requirements for a specific export license.

6. An estimate of the number of responses: 400.

7. An estimate of the total number of hours needed to complete the requirement or request: 30 minutes for each form.

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. Abstract: Any person in the U.S. wishing to export nuclear material and equipment requiring specific authorization should file an application for a license on NRC Form 7. The application will be reviewed by the NRC and by the Executive Branch and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, 295–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 20th day of November, 1984.

For the Nuclear Regulatory Commission.

John Philips,

Acting Director, Office of Administration.

[FR Doc. 84-31302 Filed 11-27-84; 8:45 am]

BILLING CODE 7590-01-M

Office of Management and Budget Review of Information Collection Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35)

1. Type of submission, revision, or extension: Revision

2. The title of the information collection: Modifications to 10 CFR Part 55, Operator's Licenses, 10 CFR 50.74 and Regulatory Guides 1.134, 1.149 and 1.8.

3. The form number if applicable: NA

4. How often the collection is required: On occasion, annually and one time only.

5. Who will be required or asked to report: Individuals requiring a license to operate the controls at a nuclear facility and their employers.

6. An estimate of the number of responses: 3,552

7. An estimate of the total number of hours needed to complete the requirement or request: 6,821

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. Abstract: 10 CFR Part 55 requests detailed information of an applicant applying for a license as a reactor operator. In addition, NRC is establishing a procedure for obtaining approval for the use of simulation facilities in the partial conduct of operator licensing operating tests.

ADDRESSES: Copies of the submittal will be made available for inspection of copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 16th day of November 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84-31288 Filed 11-27-84; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Final Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments.

SUMMARY: On September 18 and October 31, 1984, the Northwest Power Planning Council amended three portions of its Northwest Conservation and Electric Power Plan (Power Plan). This notice describes those amendments.

FOR FURTHER INFORMATION CONTACT: Tom Foley, Manager of Conservation and Resources (regarding amendment of Appendix D); or Mark Cherniack, Conservation Analyst (regarding amendments of Action Item 12.13 and Program Design Principle 1E) at 850 S.W. Broadway, Portland, Oregon 97205, 503–222–5161, toll-free 1–800–222–3355 in Montana, Idaho, and Washington, and toll-free 1–800–452–2324 in Oregon.

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power and Conservation Planning Act, Pub. L. 96–501, 94 Stat. 2697, 16 U.S.C. 839 (the Act) allows the Council to amend the Power Plan from time to time. The Council recently amended three portions of the Power Plan. In adopting each amendment, the Council complied with all requirements of the Act and the Power Plan regarding substantial, non-technical amendments. Pursuant to those requirements, in the case of each amendment the Council:

- Announced the proposed amendment, public hearings and public comment period through the **Federal Register**, the Council's mailing list, and the Council's newsletter;
- Held public hearings in Oregon, Washington, Idaho and Montana;
- Accepted written comments;
- Consulted with Bonneville Power Administration (Bonneville), regional utilities, state and local governments and other interested parties, and;
- Compiled an administrative record.

Program Design Principle 1E

Notice of proposed amendment of Program Design Principle 1E (Chapter 10, page 10–7) was published at pages 25908–25910 of the **Federal Register** of June 25, 1984. The Council held a public comment period and hearings on the proposed amendment during July. At its regular public meeting in Kalispell, Montana on August 8, 1984, the Council decided to reopen the comment period to take additional public comment regarding the cost and administrative efficiency of the Council's proposal to use regional population weighted median income to determine eligibility for regional weatherization programs. Accordingly, a notice was published at pages 33188–33189 of the **Federal Register** of August 21, 1984 indicating that the Council would accept written comments regarding that issue through September 4, 1984. Based upon comments received, the Council amended Program Design Principle 1E at its September 19, 1984 meeting in Yakima, Washington to read as follows:

1E. Provide a program that pays 100 percent of the actual cost of all structurally feasible and regionally cost effective conservation measures for low-income households, at a cost not to exceed 4.0 cents per kilowatt-hour saved. This program shall be made available to households with an annual income specified by the U.S. Office of Management and Budget as 125 percent of the poverty level.

As amended, the Program Design Principle changes the formula for

determining the eligibility of low-income persons for 100 percent financing of home weatherization under Bonneville Power Administration's (Bonneville) weatherization program.

Oral comments on the proposed amendment were received at the public hearings. In addition, the Council received eight written comments. Five comments were from low-income and human service agencies, one from Bonneville, one from a public utility association and one from the Washington State House of Representatives Office of Program Research.

Six of the eight written comments proposed that the Council choose the Office of Management and Budget (OMB) guidelines to determine eligibility. Two major themes emerged as reasons:

1. Budget/Service Impact

The commenters stated that nearly doubling the number of eligible households will increase competition for the fixed funding levels in the Bonneville weatherization budget. There is specific concern that those in the low-income population who are particularly vulnerable—elderly, handicapped, families with young children—will not be served because they might end up last in line behind the larger number of eligible participants.

Response: The Council recognized that there would be an increase in the eligible population. The Council's intent through this design principle was to serve a larger proportion of low-income electric consumers who were not able to take advantage of weatherization programs in the region. Bonneville has agreed to serve a proportionate share of low-income households. Bonneville currently assumes that the low-income program represents approximately 10 percent of the overall weatherization budget.

The overall residential weatherization budget level is indicative of the slower pace of conservation during a time of surplus. The amount of funds available for low income weatherization will be relatively limited regardless of income guidelines until such time that the region and the Council decide to step up the pace for reasons of greater resource acquisition or greater social equity considerations. Council staff estimated that under current Bonneville budget levels and current OMB eligibility criteria, completion of low-income weatherization regionwide would take more than 60 years.

The Council noted that most community action agencies currently prioritize service to vulnerable segments of the low-income population and encourages this established practice to continue regardless of specific income guidelines.

2. Ability of Community Action Agencies (CAA) To Operate With Non-OMB Income Guidelines

The commenters stated that some CAA's will not be able to work with the Council's guidelines because:

(a) The mission statements of some CAA's currently would not permit the agency to work with other than OMB guidelines;

(b) In at least one state, the CAA's may be prohibited from using equipment purchased through U.S. Department of Energy(USDOE) funds for non-OMB clients;

(c) If Bonneville funds do not cover the full cost of weatherization, matching funds from other programs will not be available because of OMB restrictions; and

(d) Bonneville is proposing to offer up to $150 for minor repairs. Currently up to $300 is available through other federal programs. There would be no opportunity to match funds for non-OMB clients.

Response: The Council has reponded to concerns about some agencies having difficulty in operating Bonneville's weatherization program with non-OMB guidelines by choosing to utilize OMB guidelines for at least the full term of the FY 85 program. The Council will continue to monitor and assess the effectiveness of Bonneville and its contractors to achieve the established proportionate share levels in the low income sector.

In the Two Year Action Plan, the Council specified a program which pays 100 percent of the actual cost of all structurally feasible and regionally cost-effective conservation measures for low income households at a cost not to exceed 4.0 cents (1980 dollars) per kilowatt-hour saved. The Council expects Bonneville to operate the program consistent with this objective.

The Council noted that USDOE does not prohibit by regulation or practice the use of vehicles, tools or equipment purchased for use in programs which operate under OMB income guidelines, in programs which do not use OMB guidelines. As long as such other use supplements, but does not supplant, the original purpose of the goods, USDOE encourages cooperation among programs. USDOE expects proper cost sharing allocations if the goods are used in other programs. The regional USDOE office leaves management application of the regulations up to the state program operators.

At this time the Council believed the level of funding offered for structural repairs is a matter between Bonneville and its contractors. The Council also noted that the amount offered by Bonneville will increase the total available repair budget for homes to $450.

The remainder of the comments raised the following issues:

3. Support the Council's Position.

The Council received two written responses from low-income/human service agencies which supported the Council's position because: the new guidelines would broaden eligibility to a significant segment of the low-income population which lies just above the OMB definition yet remains ineligible for current programs. The agencies indicated that there would be no or few administrative problems with new guidelines.

Response: This support was noted by the Council.

4. Use of OMB Guidelines for Households of Nine or More

One commenter suggested that for households with nine or more persons, the OMB guidelines be used.

Response: The Council accepted use of OMB guidelines for all household sizes.

5. Recordkeeping Requirements

Bonneville commented that the proposed definition does not reduce recordkeeping requirements and may increase the cost of delivering the program to the region.

Response: The Council believed that the use of a single regionwide income guideline is administratively simpler than what was originally specified in the Two Year Action Plan. The Council's intent was to provide a guideline which minimized administrative requirements given its overall objective to broaden eligibility. The Council called for further comment on this point during a second public comment period described below. The recommended use of OMB guidelines should not increase recordkeeping requirements or costs in the program.

6. Definition Confusion

Bonneville stated that, because the Council's proposed definition was different from other low income programs, consumers might be confused.

Response: The Council has recommended the use of OMB guidelines which are consistent with current program operation and public information.

7. Penetration Impact

Bonneville stated that there is an unknown budget and program penetration impact resulting from the 30 percent increase in the incentive for low income consumers. This, coupled with the new income definition, could result in fewer low income residences being weatherized.

Response: The Council expected an increase in consumer interest in the program because of the 100 percent financing provision. There may also be an unknown impact on consumer acceptance because of the requirement of installation of all structurally feasible measures. Bonneville has agreed to budget for a proportionate share of low-income households. The Council has recommended the use of OMB guidelines which should not impact the budget or program results.

8. Derivation of the Population Weighted Median Income

Bonneville questioned the documentation of the proposed regional population weighted median income.

Response: The regional population weighted median income was derived in the following manner: The state median incomes of Idaho, Oregon and Washington were taken from the 1980 census. An average median income of the 13 counties in western Montana which are in Bonneville's service territory was taken from the 1980 census. Each state's percentage of total regional population (the three states plus western Montana) was determined and then multiplied by each state's median income and summed to derive a regional median figure which accounted for differences in state median income and population distribution. Since 1980 census figures were given in 1979 dollars, the Gross National Product deflator of 1.316 for 1979–1983 was uniformly applied to all income figures to give a regional median figure expressed in 1983 dollars.

9. Responsiveness of Council Proposal

Bonneville stated that the original proposed amendment did not address concerns that were raised, and it questioned the Council's intent.

Response: The statistical analysis submitted by Bonneville to the Council on April 10, 1984, compared county median incomes in 1979 dollars with OMB guidelines expressed in current dollars. However, the general direction of the analysis was useful and enabled the Council staff to complete a thorough analysis on which it based its initial recommendation to use a regional population weighted regional median income.

The Council intended that an expanded population of low income consumers in electrically heated households in the region have access to Bonneville's weatherization program. The recommendation to utilize OMB guidelines will change the Council's original intent until a further determination of contractor and program effectiveness is made.

10. Additional Costs of Non-OMB Guidelines

Bonneville stated that the administrative costs of implementing the proposed non-OMB income guidelines could be approximately $2.9 million or an increase of 5 percent in the weatherization program budget for administrative purposes. Bonneville further stated that this cost analysis reflected a generalization of costs which may vary greatly among operators.

Response: The Council has not accepted this analysis as a basis for its recommendation to utilize OMB guidelines. The Council believed a more detailed analysis would be appropriate before confirming any cost figures, including an analysis of the costs of delivering the low-income program in whole or part outside the present contractor system.

11. Effect of Changing Guidelines on Current Operators

Bonneville stated that the Council should not depart from OMB guidelines at this point or even to indicate an intention to do so in the near future. Bonneville also stated it has been less successful in weatherizing low income homes within the OMB guidelines than was hoped. Discouraging current operators of the Bonneville program or other federal low income weatherization program from participating with Bonneville would only compound the problem.

Response: The Council in recommending use of OMB guidelines is also concerned with developing capability in both the public and private sectors to deliver conservation programs in a timely and effective manner. The Council intends to monitor closely the operation and penetration rates of the Bonneville low-income weatherization program in FY 85 and to continue assessing the effectiveness of Bonneville and its program operators.

Action Item 12.13

Notice of proposed amendment of Action Item 12.13 (Street and Area Lighting, Chapter 10, page 10–16) was published at pages 35881–35883 of the **Federal Register** of September 12, 1984. After holding a public comment period and public hearings, the Council amended Action Item 12.13 at its October 31 meeting in Butte, Montana to read as follows:

12.13 Continue financial assistance for the street and area lighting program at a minimum viable level. The minimum viable level is that level of program activity which will maintain the regionwide capability to achieve savings in street and area lighting.

The Action Item as amended changes the Council's direction to Bonneville regarding its Street and Area Lighting Program. The Council's Power Plan originally called for termination of the Street and Area Lighting Program because it was expected to produce only short-term savings not needed during the current regional power surplus. However, subsequent information supplied by Bonneville and others indicated that maintaining the program at a minimum viable level would not only help acquire power savings that would continue through the current temporary surplus, but would also contribute to building conservation capability within the region.

The Council received only one comment (from Public Utility District No. 1 of Clallam County) during the public comment period held on the proposed amendment. That comment made three points:

1. Duration of Conservation Savings

Clallam stated that the region would benefit from maintaining the Street and Area Lighting Program at a minimum level by receiving conservation savings for at least the useful life of each new efficient fixture (at least 20 years).

Response: The Council has consistently supported the installation of conservation measures which have long useful lifetimes. It is clear that the installation of efficient fixtures is likely to provide savings to the region beyond the current surplus. The Council proposed this amendment partly for this reason.

2. Maintenance of an Inventory of Efficient Fixtures

The commenter stated that, due to inventory considerations, utilities which have participated in the existing program will probably continue to use energy efficient fixtures in new accounts.

Response: The Council was not able to make a determination about future utility practices, but hoped that utilities would adopt such energy conservation practices. The Council agrees that if Clallam's suggestion is correct,

continuation of the program could help build local capability to maintain efficient lighting systems through the current surplus period and into future periods when savings will be necessary.

3. Provision for Fast Start-Up

Clallam also stated that the maintenance of this program at a minimum level would allow for fast start-up when and if a more extensive program becomes necessary.

Response: The Council agrees. The Council had developed with Bonneville a set of criteria for regional conservation capability building which include elements related to the establishment of trained labor force and sufficient availability of conservation materials and equipment. Continuation of the Street and Area Lighting Program and at minimum viable level will clearly preserve the option of speeding up the program when and if it is needed.

Appendix D

Notice of proposed amendment of Appendix D ("Method of Surcharge") was published at pages 35881–35883 of the **Federal Register** of September 12, 1984. After holding a public comment period and public hearings, the Council amended Appendix D at its October 31 meeting in Butte, Montana to read as follows:

"Section 4(f)(2) of the Act provides for Council recommendation for surcharges on customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on customers which have not, implmented conservation measures that achieve savings of electricity comparable to the model conservation standards. The Council is responsible for drafting a "methodology" for the calculation of surcharges. The Council, in Action 25 of Chapter 10 of this Plan, has recommended to the Administrator that he impose a surcharge on customers serving jurisdictions which do not adopt the model conservation standards or achieve comparable savings. The purpose of the surcharge is twofold: 1) to recover costs imposed on the region's electric system by failure to adopt the model conservation standards or achieve comparable savings, and 2) to provide a strong incentive to utilities and state and local jurisdictions to adopt and/or enforce the standards or comparable alternatives. The following is the "methodology" for calculating surcharges:

1. The following model conservation standards must be adopted or comparable savings must be achieved in order to avoid surcharges:

- Model Standards for new residential buildings, Action 2;
- Model Standards for new commercial buildings, Action 6;
- Model Standards for conversion to electric space heat in residential buildings, Action 3; and
- Model Standards for conversion to electric space conditioning in commercial buildings, Action 7.

2. The Administrator shall identify those customers, states, or political subdivisions which have not:

a. Implemented each of the model standards listed in paragraph 1; or

b. Achieved comparable savings of electricity through other conservation methods, such as utility electric service requirements, incentive programs or rate designs.

3. The surcharge shall then be calculated by the Bonneville Administrator as follows:

a. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and is not exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10 percent of the cost to the customer of all firm power purchased from Bonneville under the Power Sales Contract.

b. If the customer is not purchasing firm power from Bonneville under a Power Sales Contract, but is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10 percent of the cost to the customer of the power purchased from Bonneville in the exchange.

c. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and also is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be a) 10 percent of the cost to the customer of firm power purchased under the Power Sales Contract *plus*, b) 10 percent of the cost to the customer of power purchased from Bonneville in the exchange multiplied by the fraction of the utility's exchange load that is served by the utility's own resources.

This calculation of the surcharge is designed to eliminate the possibility of surcharging a utility twice on the same load. In the calculation, the portion of a utility's exchange resource that is purchased from Bonneville and already surcharged under the power sales contract is subtracted from the exchange resources before establishing a surcharge on the exchange load.

d. If only a portion of a utility's service area has not adopted the model standards or achieved comparable savings, the surcharge calculated under a, b, or c above is to be multiplied by the non-complying jurisdiction's share of the utility's total load.

e. The surcharge shall be removed when model conservation standards have been adopted and enforced or alternative programs, estimated by the Administrator in consultation with the Council to save an equivalent amount of electricity, have been implemented.

4. A utility electric service requirement that results in construction of electrically space conditioned buildings which are the equivalent of buildings in conpliance with the model conservation standards constitutes an alternative plan that achieves comparable electricity savings. The Council intends to continue analyzing alternatives to building codes to achieve the construction of energy-efficient buildings to obtain cost-effective resources for the region.

5. Any entity that chooses not to adopt a particular model conservation standard with in the allotted period for adoption and wishes to avoid a surcharge must declare, before that period expires, how it intends to achieve comparable savings. In addition, that entity must indicate how it intends to demonstrate attainment of comparable savings.

To assist Bonneville in estimating comparable electricity savings from alternative plans, the entity should present its best estimate of new residential and commercial building construction in the non-complying jurisdictions within its service terrority. Bonneville shall determine, in consultation with the Council, whether the alternative conservation plan of an entity will achieve comparable savings. When determining electricity savings that would have occurred had the standards been adopted, jurisdiction-specific weather data and construction estimates, where available, should be used along with the Council's residential and commercial heat loss models.

The Council recognizes that in many cases data will not be available. In these cases Bonneville should rely on average electricity savings estimated by building type and climate zone and included in the Plan. For residential buildings, Bonneville should assume the following regarding houses built to the model conservation standards: 1) houses in climate zone 1 would save, on average, 5,130 kWh per year; 2) houses in climate zone 2 would save, on average, 6,508 kWh per year; and 3) houses in climate zone 3 would save, on average, 7,830 kWh per year. For commercial buildings and where good estimates are not available for the number of new houses, the savings should be determined by multiplying total expected regional average megawatt savings by sector from the standards, as shown in the Plan, by the utility's share of total regional load in the applicable sectors. Estimates of savings from conversion standards should be made on a case-by-case basis. The Council recognizes that these estimates will be difficult to make, but also that estimated savings from conversion standards probably will be small relative to savings from building standards. The Council will work with Bonneville on these estimates as requested.

If only a portion of a utility's service area has not adopted the standards, the lost electricity savings calculated in the above paragraph should be multiplied by the non-complying area's share of the utility's total applicable load.

If the Bonneville Administrator determines that the alternative plan will not achieve comparable savings, he shall notify the entity that its alternative plan has been judged to be not equivalent to the model conservation standards and that Bonneville will begin adding a surcharge to the entity's bill on a date certain. The surcharge will be calculated as described in Paragraph 3 of this method. If subsequent modifications to the entity's alternative plan bring it into compliance with the stated goals of the standards, then the surcharge shall be removed.

A general method of determining the electric energy savings of an alternative conservation plan shall be developed in consultation with the Council and included in Bonneville policy to implement the surcharge. Also, a method shall be included in the policy for terminating the surcharge once model standards have been adopted and enforced or comparable savings have been achieved."

Review and analysis of public comments follows. This includes responses to comments received both on the issue paper which preceded the proposed amendment and on the proposed amendment itself.

Comments were received from the following entities on the surcharge issue paper:

- Bonneville Power Administration (Bonneville)
- Washington State Energy Office (WSEO)
- Snohomish PUD #1 (SPUD)
- Pacific Northwest Generating Company (PNGC)
- Central Lincoln People's Utility District
- Clearwater Power Company and Idaho Cooperative Utilities Association (joint comment)
- City of Heyburn, Idaho
- Association of Idaho Cities
- Jim Lazar
- Seattle City Light (SCL)
- Ravalli County Electric Cooperative, Inc.
- City of Soda Springs, Idaho

Comments were received from the following entities during the comment period of the rulemaking regarding the proposed amendments:

- Snohomish PUD #1 (SPUD)
- City of Heyburn, Idaho
- Portland General Electric (PGE)
- Public Power Council (PPC)
- Western Montana Electric Generation and Transmission Cooperative
- Oregon Rural Electric Cooperative Association (OREC)
- Eugene Water and Electric Board (EWEB)
- Grant County Public Utility District
- Midstate Electric Cooperative
- Idaho Cooperative Utilities Association
- Fall River Rural Electric Cooperative
- Camas County, Idaho
- Association of Idaho Cities
- Mayor W.F. Whittom, Rupert, Idaho
- Lower Valley Power and Light
- Mindoka City/County Building Department
- Montana Local Government Energy Office
- Seattle Master Builders Association (SMB)
- Columbia Power Cooperative
- Public Utility Commissioner of Oregon (Oregon PUC)
- Pacific Power and Light (PP&L)
- Harney Electric Cooperative (HEC)
- City of Aberdeen, Washington
- League of Publicly Owned Utilities of Oregon
- City of Burley, Idaho
- Lincoln Electric Cooperative, Inc.
- Klamath Basin Home Builders
- Donald McDonald
- Tillamook Peoples Utility District (TPUD)
- Peoples Organization for Washington Energy Resources (POWER)
- Raft River Electric Cooperative
- Idaho State Senator Laird Noh
- Idaho State Homebuilders Association
- Commissioner Hopsa, Canyon County, Idaho

1. Determination of Which Loads To Surcharge

SPUD, Central Lincoln, HEC, EWEB, PP&L, OREC, and TPUD proposed that the surcharges be applied only to new residential and commercial load not in compliance with the model conservation standards rather than the entire utility load. SPUD and others cited the Act, as follows, to support their proposals:

". . . the Administrator may thereafter impose such a surcharge. . . on customers for those portions of their loads. . . which have not implemented conservation measures. . ." 16 U.S.C. 839b(f)(2).

Central Lincoln, among others, also argued that because the surcharge is meant to recover "additional costs" incurred and that additional costs can only come from new load not in compliance with the standards, only new residential and commercial load should be surcharged.

Response: If the surcharge were imposed only on new loads not in compliance, the structures producing those loads would nave to be surcharged 100–300 percent of their electric bill to recover costs imposed on the system. Since under the law a surcharge can be 50 percent at the maximum, the Administrator would not be able to recover costs if the surcharge applied ony to non-complying structures. Moreover, while the Northwest Power Act does nt define "loads" subject to surcharge, the language of section 4(f)(2) can be reasonably interpreted to mean surcharges apply to *total* loads within applicable jurisdictions within the region, not just incremental loads resulting from failure to adopt the standards. 16 U.S.C. 839b(f)(2). The intention of Congress becomes clearer if one looks at the complete quotation from Section 4(f)(2) and not the partial citation in SPUD's comments:

". . . the Administrator may thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards."

It can also be argued that this provision's reference to a surcharge on "the Administrator's customers" required surcharge on total loads placed on Bonneville. Also, the total loads interpretation is consistent with the purpose of the surcharge—to recover the costs imposed on the region by non-compliance and to create incentives for adoption. The House Commerce Report on the Power Bill states "The surcharge would be imposed on the customer by Bonneville, in order to provide substantial incentives for States and

localities to adopt effective conservation measures and thus accelerate achievement of conservation objectives " H. Rep. 96-976, Part I, at 56 (1980).

2. Double-Counting

SPUD testified that double counting would result in some cases if the surcharge applied to both firm sales and the residential exchange loads.

Response: The Council agrees and the amendment to Appendix D eliminates the chance of double surcharging.

3. Firms Loads Only

Bonneville proposed that only firm loads should be subject to the surcharge because a surcharge on non-firm loads would weaken Bonneville's market position and could result in Bonneville spilling while less economical thermal plants are operated by regional utilities.

Response: The Council agreed with this comment for the reason stated in Bonneville's written comments and because, in consultations with Bonneville staff, it became clear that it would be difficult to show that costs have been imposed on the non-firm part of the system by failure to adopt standards.

4. Treatment of Residential Exchange

Bonneville, while agreeing that residential exchange loads should be subject to the surcharge, suggested that a rationale for imposing a surcharge on that load be developed that looks only at the immediate costs imposed on the system by an exchanging utility that has not adopted the standards or achieved comparable savings. Since Bonneville does not immediately develop resources to serve that load, the only immediate additional costs are the costs to Bonneville of a larger exchange load than would have occurred if the utility's new residential load were in compliance. Bonneville argues that, although this approach would make a calculated surcharge somewhat smaller, the conclusion that a 10 percent surcharge should be imposed would not change.

Response: The possibility of a surcharge being imposed on the residential exchange load constitutes a large incentive to adopt codes in heavily populated areas in the region. If Bonneville's rationale were adopted, exchanging utilities could simply hold back from the exchange the portion of their residential load resulting from non-complying buildings. They could argue that since this portion of the load is not imposing costs of Bonneville, their exchange load would not be subject to the surcharge. Where utilities continue to exchange their entire load, Bonneville's rationale is sound.

It seems reasonable, to achieve the objectives of the Act, to subject exchange loads to the surcharge on the basis that exchanging utilities have a right, through the power sales contracts, (which contracts each exchanging utility also has with Bonneville) to put a load on Bonneville with seven years' notice. The potential size of this load is larger if standards are not adopted or comparable savings are not achieved. This has the effect of increasing not only the amount of resources ultimately needed but also the costs incurred in planning for future load. Increased costs would be incurred by holding a larger number of options at a given time, for example.

5. Inconsistent Definition of Exchange Loads

PGE and Oregon PUC argued that, during negotiations with Bonneville on long-term conservation contracts, Bonneville's stance was that the residential exchange load did not constitute a load on the Administrator. Because of this, exchanging utilities would have to pay a contract charge to participate in Bonneville's conservation programs. But, the Council's revision to Appendix D includes surcharging the exchange because that load imposes costs on the Administrator or his customers, both in the near-term by increasing the size of the exchange and on a long-term planning basis. PGE is concerned by the apparent inconsistencies between Bonneville's treatment of the exchange load and the Council's.

Response: As noted above, the Northwest Power Act does not define those "loads" served by the Administrator to which surcharges may be applied. Because residential buildings under construction in an exchanging utility's service territory constitute a potential load on the Administrator, failure to build efficiently now imposes a "planning cost" on the region, including the Administrator. Thus, a surcharge on the exchange load appears to be consistent with the purpose of surcharges (acquisition of cost-effective power savings). The definition of the Administrator's loads for the purposes of Bonneville's conservation contracts is a separate issue not involved in this rulemaking. However, the Council agrees that the Administrator would benefit from conservation in an exchanging utility's service territory, making it appropriate for the Administrator to share in the funding of conservation with that utility. Bonneville and utilities have not yet arrived at equitable ways to share in the cost of conservation where Bonneville has no ability to recover costs in rates. This is the case with utilities that exchange only. The Council staff will continue to follow developments in Bonneville's cost sharing discussions with regional utilities.

6. Limited Surcharge of Exhchange Loads

The Association of Idaho Cities recommended that surcharges be imposed on exchanging utilities only if those utilities have not adopted the residential standards. Failure to adopt the commercial standards should not result in a surcharge. The rationale for this recommendation is that for a utility whose contracts with Bonneville are limited to exchanges, the residential load is the only load that can impose a cost on the Administrator by failing to adopt standards.

Response: Any utility in the region that is a signatory to a Power Sales Contract with Bonneville can put a load (residential, commercial, etc.) on the Administrator with seven years' notice. Thus, failure to adopt commercial building standards puts a "planning cost" on the region. These costs may take the form of additional options in the Council plan to meet potential future Bonneville load, and ultimately could result in additional generating resources to meet the loads of inefficient commercial buildings.

7. Support for Flat 10 Percent Surcharge

Bonneville, in a comment on the first issue paper on the subject of surcharges, suggested that the Council's surcharge methodology be developed as a 10 percent across-the-board surcharge on firm loads of jurisdictions which do not adopt the standards or achieve comparable savings.

Response: The Council agreed with this recommendation and incorporated it into the proposed amendment to Appendix D. Staff analysis has shown that to recover additional costs, a surcharge of greater than 10 percent would be necessary only for utilities that purchase a relatively small share of their needs from Bonneville. Bonneville argues effectively that it in these very utilities that "have a strong tradition of developing resources to serve their own needs. . . ." If they continue to develop their own resources, then the costs imposed on the rest of the regional system would be diminished. Thus, the 10 percent minimum surcharge is likely to recover costs imposed on the rest of the system by Bonneville's partial requirements customers. Also, a major consideration in adopting this proposal is that Bonneville staff effort in implementing the surcharge will be dramatically reduced.

8. Higher Percentage Surcharge

SCL, one of the Bonneville partial requirements customers that would have triggered a calculated surcharge that could have been higher than 10 percent, commented that it would approve of a surcharge method that results in higher percentage surcharges. This position is consistent with its stand on conservation; that is, conservation anywhere in the region benefits the entire region. SCL does, however, recognize the advantages of a simpler method of calculating surcharges, and would have no quarrel in the region adopted an across-the-board 10 percent surcharge.

Response: The 10 percent across-the-board surcharge was proposed for reasons stated above in the response to Bonneville's public comment.

9. Base Surcharge on Costs

Several of the comments stated that the surcharge must be based solely on costs imposed on the Administrator by failure to adopt standards. Thus, a 10 percent flat rate is illegal because there will have been on consideration of costs imposed on the Bonneville system.

Response: The Northwest Power Act directs that "in no case may such surcharges be less than 10 per centum . . . of the Administrator's applicable rates for such load. . . ." 16 U.S.C. 839b(f)(2). Also, as noted above, the Act's legislative history refers to the surcharge's function as a "substantial incentive." House Commerce Report, H. Rep. 96-976, Part I, at 56 (1980). It also states that "there is a 10 percent floor and 50 percent ceiling on surcharges . . ." *Id.* The Council believes that the 10 percent flat surcharge called for in the amendments to Appendix D is required when, as the Council has estimated, actual additional resource costs caused by non-adoption of the model standards amount to less than 10 percent of Bonneville's rates. As indicated in the Council's issue paper preceding the proposed amendments, the Council estimated the costs of non-adoption using conservative assumptions. The issue paper showed that, except in rare circumstances, the surcharge based on costs imposed on the electrical system would be less than 10 percent minimum required by law. As a result, the amendments call for a 10 percent flat surcharge.

10. Inequitable Treatment of Small Utilities

A number of commenters focused on the difficult position of small, rural, full-requirements customers of Bonneville. These utilities have no recourse but to purchase all their power from Bonneville and possibly incur the surcharge, while at the same time they feel powerless to influence the adoption of standards. Many of these commenters emphasized their small proportions of residential and commercial loads, the very low growth rates of these loads, and the absence of building code enforcement in their service areas.

Response: Buildings constructed to the standards are judged by the Council to be cost-effective suppliers of electricity. The region will most likely need additional supplies of electricity in the future, depending on the fate of thermal generating plants under construction in the region. If new buildings are built inefficiently, higher costing resources will have to be built, leading in the long run to higher electricity prices for all. The Council has suggested that individual utilities evaluate their legal authority to impose service requirements on new electric heat customers. For example, a service requirement that electrically space conditioned buildings be designed and built to use an amount of electricity for space conditioning equivalent to that used by a building constructed to the model conservation standards would satisfy the requirements of the Act and the Plan and would enable a utility to avoid the surcharge. The Council also directed its staff and Bonneville staff to work together with these utilities to help them adopt alternative plans to avoid the surcharge. Examples of this kind of plan could include measures such as aggressive marketing of Super Good Cents homes together with weatherization of new electrically heated buildings. Finally, the Council also suggests that contracts with state or other agencies (as now exist in Oregon) for building code enforcement in rural areas may be feasible in other states.

11. Surcharge of Non-Bonneville Power

SMB stated that it is not fair to surcharge power that is not purchased from Bonneville.

Response: Contrary to SMB's assertion, only power purchased by a utility from Bonneville either under a Power Sales Contract or a Residential Exchange and Sales Agreement would be subject to a surcharge. The Northwest Power Act authorizes Bonneville to impose such surcharges only upon its customers.

12. Surcharge of Total Load

Several of the comments stated that it was unfair to surcharge total load (including irrigation and industrial loads) when the residential and commercial sectors would be responsible for the increased load due to non-adoption of standards.

Response: As noted above, the Northwest Power Act's authorization of a surcharge on Bonneville "loads" within non-adopting jurisdictions did not restrict the surcharge to residential and/or commercial loads. Application of the surcharge to total loads is consistent with the Congressionally-recognized incentive purpose of the surcharge as well.

13. Impact on Ratepayers

POWER commented that the stockholders, not the ratepayers, of IOU's should bear the burden of surcharge costs. The Idaho Cooperative Utilities Association and Lower Valley Power and Light commented that higher rates resulting from the surcharge would reduce loads and increase rates even more.

Response: The Council's legal authority regarding surcharges is limited to developing a method for surcharge and recommending that Bonneville impose surcharges. 16 U.S.C. 839(f) (1) and (2). State public commissioners have the authority to establish rates for their private utilities and to allocate responsibility for costs among classes of ratepayers and between ratepayers and stockholders. The Council has no such authority. Public utilities and cooperatives have similar authorities with regard to rate allocation.

14. Exemptions

Several of the comments were directed at the need for exemptions from the surcharge for rural utilities with low housing density and for utilities with very low electricity prices. Rural utilities would face higher enforcement costs, thereby making the standards too costly in their service territories. Customers for utilities with low rates would be forced to make a purchase of conservation that appears not to be cost-effective from their perspective.

Response: The proposed amendments did not address the question of exemptions from the surcharge. The Council believes the exemption issue deserves a separate process of consideration. In response to public comments, the Council has prepared and released an issue paper on exemptions. Based upon public comments received on that issue paper, the Council will decide whether to propose plan

amendments to address exemptions. Any such proposed amendments would be subjected to the same type of rulemaking process followed for these surcharge method amendments. See also the response to comment 10 above.

15. Status of Alternative Plans With Regard to Billing Credits and Bonneville Utility Conservation Contracts

The existing Method of Surcharge, Appendix D to the Plan, states that ". . . conservation savings to be achieved by the alternative conservation plan may be offered to Bonneville for acquisition under a utility conservation contract or a billing credit contract as desired by the entity." Bonneville staff have expressed concern over this language. Bonneville's position is that ratepayers are not paying for the cost of model conservation standards—except for incremental adoption and enforcement costs—and, therefore, ratepayers should not pay for alternatives to the model conservation standards.

Response: The Council agrees that an inconsistency existed, and has removed the cited language from the amendment.

16. Delay of Deadline for Imposition of Surcharge

Sixteen of the comments recommended a delay in the surcharge imposition date. Most of the commenters suggested that the surcharge should not be imposed until after the Bonneville Residential Standards Demonstration Program (RSDP) has been completed and results are available. A few of the commenters said that no decision should be made on surcharges until the Council has made a decision on exemptions from the standard or the surcharge. Still others urged delay of the surcharge until the cost-effectiveness of the standards was proven.

Response: The RSDP is not a test of whether standards are cost-effective. Rather, RSDP is a technical assistance training program to assist builders in becoming familiar with building energy efficient buildings. Bonneville's current thinking regarding development of its surcharge policy is that no surcharge would in fact be imposed before July of 1986. This is because Bonneville would need the six-month period from January 1, 1986 model standards deadline to determine whether or not alternative plans are in compliance. Thus, the region will have two years of experience with RSDP homes before any surcharge could be imposed. The Council expects the RSDP data to reinforce the Council's determination that the standards are cost-effective and economically feasible. The standards were based on extensive and detailed cost and feasibility information and analysis.

As noted above, because of the importance of the issue, exemptions are being treated as a separate issue by the Council. Based on the evidence developed in the current issue paper review, the Council may eventually decide to amend the plan to allow exemptions from the standard for certain classes of customers. The Council believes it is best to put a revised method for surcharges in place now while considering whether to begin a separate, careful, public process to consider possible exemptions.

See also response 18 below concerning the cost-effectiveness issue raised by this comment.

17. Accuracy of Council Calculations

SMB and PP&L questioned the accuracy of the calculations done by the Council staff in the issue paper which preceded the proposed amendments. In that paper, the proposed surcharge based on a 10 percent minimum was estimated to produce twice the revenue that would be collected if the surcharge were based on costs imposed on the electric system. SMB alleged that a 10 percent flat surcharge would actually collect revenues amounting to 10 times the additional costs expected to be imposed on the system by failure to adopt standards. PP&L estimated the results of the 10 percent flat surcharge would amount to five times such costs.

Response: The issue paper's analysis was a comparison of the revenues collected based on costs to the system versus revenues collected with a 10 percent minimum surcharge. That analysis showed that, with reasonable assumptions about Bonneville's wholesale rate and costs of the avoided resource based on a coal plant, the 10 percent minimum was more than adequate to cover costs imposed on the system for failure to adopt standards in any given year. Both PP&L's and SMB's comments on technical accuracy actually support the 10 percent minimum surcharge contained in the proposed amendment. That is, each of the analyses shows that a surcharge based on a specific calculation for each jurisdiction not in compliance with the standards will almost surely be less than the 10 percent minimum surcharge. As noted above, the Northwest Power Act requires that the surcharge be at least 10 percent of Bonneville's applicable rates.

However, there are several technical flaws in the SMB comments. Its statement says, "The first false assumption [made by the Council staff] is the use of the Bonneville's 1984 electric rates for what the region would pay for conservation." This assumption was never made. The SMB confused the adjustment that was being made to the coal plant costs to account for the revenue to Bonneville when a coal plant is operating to serve load. If the standards had been in place, that revenue would have been lost. In the Council staff analysis, it was assumed that the current Bonneville wholesale rate would remain constant in 1984 dollars at 22.5 mills/kWh. (This is a reasonable assumption, as Bonneville has forecasted a nominal dollar 7(b) rate of 59 mills/kWh for 2002. Discounting at 6 percent a year to account for the assumption about inflation yields 20.7 mills/kWh in 1984 dollars.) The SMB also incorrectly assumed that the Council's avoided resource cost of 40 mills/kWh (1980 dollars) was only valid for the last coal plant in the high forecast. Although the Council is currently reevaluating the avoided resource cost, the 40 mills/kWh estimate is consistent with a coal plant being backed down by water to a 50 percent capacity factor. Therefore, the SMB's assumption is not reasonable.

The SMB's bottom line is apparently that if the Council uses high-load forecast avoided cost figures from 2002 (which the Council did not), the Council should use high-load forecast prices from 2002. Doing this, the SMB estimated the costs imposed on the system to be 55.6–49.7 or 5.9 mills/kWh instead of the Council estimate of 33.1 mills/kWh (i.e., 55.6–22.5). (The 55.6 mills/kWh is 40 × 1.36 to convert to 1984 dollars and the 49.7 mills/kWh is 36 × 1.38 to convert to Council estimates of *average regional retail* rates in 2002 to 1984 dollars.) First of all, the average regional rate is not the appropriate rate to use in this calculation; Bonneville's wholesale rate should be used. That rate expressed in 1984 dollars is 20.7 mills/kWh in 2002., as was shown above. Using the correct figure, costs imposed on the region would be 55.6–20.7 or 34.9 mills/kWh, higher even than what the Council used. Secondly, it is not appropriate to look only to the end of the planning horizon to determine the costs imposed on the system from non-adoption in 1986.

In considerating the issue paper's estimate of the additional costs of failure to adopt the standards, it is important to note the Council's very conservation assumption about the life of a home (30 years). If the Council had used 60 years, the costs imposed on the system would have been 40 percent higher. Thus, by the SMB estimates, the "over-collection" would have been by a factor of about seven. By the Council's estimate there would be little "over-collection."

PP&L claimed that, from the Bonneville rate case, the regional marginal cost is estimated to be 35.9 mills/kWh (1987 dollars) instead of 40 mills/kWh (1980 dollars) or 55.6 mills/kWh (1984 dollars) used in the staff analysis. Further, in the rate case Bonneville projects a priority firm rate of 24.2 mills/kWh (1985 dollars). Ignoring the different years dollars for ease of explanation, PP&L then calculates the costs to the system based on the 30 year lives of one year's buildings in non-compliance to be $34.1 million dollars compared to the staff estimate of $95.6 million. Thus, in PP&L's analyis, "over-collection" would be by a factor of five. SMB suggested that the Council use "an average between medium-low and medium-high for *all* of its calculations, including foregone conservation savings." The Council is currently evaluating what its marginal resource is for each load forecast. The Council used the conservative 40 mills/kWh estimate to make sure that its calculations of costs imposed on the system by failure to adopt standards covered all potential resource costs. In addition, after examining the Bonneville rate case it appears to the Council that the 35.9 mills/kWh is a cost to serve new load as opposed to the 40 mills/kWh estimate, which is the costs of an avoided resource in the Council analysis. The difference is that the cost to serve new load will be less than the cost of an avoided resource when the system is in surplus. The Council took more of an approach based upon the Public Utility Regulatory Policies Act, looking at the avoided resource. With either approach, a different recommendation regarding the level of surcharge would not be justified. As noted above, the Northwest Power Act requires that surcharges amount to at least 10 percent of Bonneville rates.

In summary, the Council reviewed each calculation criticism made by SMB and found each to be flawed.

18. Cost-effectiveness of the Standard

Several of the comments questioned the cost-effectiveness of the standards, including whether or not it was cost-effective for the system to adopt standards as early as 1986.

Response: Questions regarding the cost-effectiveness of the standards were not germane to the proposed amendments at issue in this rulemaking. The proposed amendments related solely to the method of calculating surchages. However, the Council welcomes any new information regarding the cost-effectiveness of the standards, and carefully reviews all submissions. Questions regarding the cost-effectiveness of the model standards were carefully considered by the Council in development of its Power Plan. Based upon the construction costs and energy consumption data made available to it through the extensive, two-year process which led to the adoption of the model standards, the Council was satisfied at the time of such adoption that the standards were cost-effective to the region and economically feasible for consumers.

The Council determined that the region could acquire energy savings through the construction of efficient new buildings at a cost substantially less than obtaining equivalent amounts of power from coal or nuclear plants. The Council is not aware of new data sufficient to raise doubt regarding that decision. Of course, the Council carefully reviews any new information submitted on this subject.

19. Enforcement

Most of the comments touched on problems regarding enforcement of the standards by local governments and utilities (particularly rural electric cooperatives). The comments ranged from urging the Council to encourage adoption at the state level and reduce the pressure for utility adoption to allegations that utility enforcement is illegal as it vests police powers and governmental functions in a utility. Fall River Cooperative thought it might be barred from enforcement by the rules of the Rural Electrification Administration.

Response: Again, these comments did not relate directly to the proposed amendments at issue in this rulemaking. However, the Council has reviewed each submission and will consider them in its efforts to promote implementation of the standards. The Council has directed its staff to work with Bonneville to assist such utilities in developing methods of complying with the standards. Also, the Council has called on Bonneville to reimburse state and local governments for the full incremental costs of adopting and enforcing the standards.

20. Indoor Air Quality

Some commenters raised concern regarding indoor air quality problems that could be caused by building homes to the model standards.

Response: These comments did not relate directly to the proposed surcharge method amendments at issue in this rulemaking. However, the Council did carefully consider indoor air quality concerns when developing its model conservation standards.

21. Application of Standards to Mobile Homes

One commenter suggested that it was unfair to impose surcharges for failure to adopt the model standards for residences while the standards do not apply to mobile homes.

Response: The Council's model standards do not apply to mobile homes because mobile home construction is regulated by the federal government, not state or local building codes. The Council is working with Bonneville and the United States Department of Housing and Urban Development to determine if standards could be cost-effective for mobile homes. The Council's Plan calls for actions that would coordinate the Department's mobile homes standards with those of the Council.

22. Application of Surcharge to Users of Other Fuels

Western Montana Generation and Transmission Cooperative and the Idaho Cooperative Utilities Association stated that it was unfair to apply the surcharge only to users of electricity and not to users of other fuels (including wood, gas, etc.).

Response: The Northwest Power Act only authorizes surcharges on electrical rates. Neither Bonneville nor the Council have any authority to recommend or impose surcharges on users of other energy sources.

23. Constitutional Bar to Enforcement of Standards

The Idaho Cooperative Utility Association stated that "since the underlying statutory basis for the implementation of model conservation standards through a state or local building code emanates from a federal statute, fundamental issues of federal constitutional dimension are raised." The Association cited *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), in which the Supreme Court held that Congress may not regulate commerce so as to force directly upon a state Congress' choices as to essential decisions regarding the conduct of "traditional local government functions." The Association claimed that adoption and enforcement of building codes falls within the definition of such functions.

Response: Concerns regarding enforcement of the model standard are not directly relevant to the proposed changes to the method of surcharge at issue in this rulemaking. However, the

Council does not agree with the Association's claim regarding constitutional obstacles to model standards implementation. First, nothing in the Council's plan requires the adoption of a particular building code. The model standard simply requires a certain level of energy efficiency, and states, localities and local governments are free to meet the standard by implementing either the Council's suggested building code or another conservation program of their choosing achieving comparable savings. Second, neither the *Usery* case nor the cases following it block implementation of the standards. *Usery* concerned Department of Labor minimum wage and maximum hour provisions for state and local government employees. (Although the *Usery* principle was recently reargued before the Court in the context of work rules in *Garcia and Donovan* v. *San Antonio Metropolitan Transit Authority*, Nos. 82–1913 and 82–1951, the Council has been informed that the reargument did not touch on the concerns raised here by Idaho Cooperative Utilities Association.) In later cases the Supreme Court has refused to extend *Usery's* holding to energy-conservation legislation similar to the Northwest Power Act. For example, in 1982 the Court upheld the Public Utility Regulatory Policies Act's (PURPA) requirements that states enforce conservation-related rate design standards and consider other such standards. *FERC* v. *Mississippi*, 456 U.S. 742 (1982). The Court noted that, in the case of PURPA, "Congress naturally concluded that the energy problem was nationwide in scope, and that these developments demonstrated the need to establish federal standards regarding retail sales of electricity, as well as federal attempts to encourage conservation and more efficient use of scarce energy resources." *Id.*, at 757. *See also, Hodel* v. *Virginia Surface Mining and Reclamation Association*, 452 U.S. 264 (1981) (provisions of federal surface mining law prescribing performance standards for mining on steep slopes did not violate Tenth Amendment limitation on congressional exercise of commerce power as interfering with state's traditional governmental function of regulating land use). The Council is confident that its model standards, and the potental imposition of surcharges by Bonneville, do not run afoul of the Constitution.

24. Surcharge During Surplus

Some commenters doubted the need for surcharges when the region is experiencing a power surplus.

Response: One purpose of the surcharge is to serve as an incentive to ensure that new homes in the region are built to be energy-efficient. The Council has determined that obtaining energy savings through the model standards is much less expensive than, for example, building new power plants. Even during the temporary surplus, it is important that the region promote energy-efficient new housing so that this least-expensive energy resource is not ignored. The current surplus provides the region with an opportunity to prepare for later, inevitable power demands.

25. Refunds

SMB stated that it would "be unfair to levy a surcharge based upon the Council's projection of lost energy savings unless there were a provision for refunds. . . ." The Council should therefore provide for a refund to those jurisdictions which add retrofitting at a later date, and recover at least some of the "lost" savings.

Response: The SMB's "refund" suggestion, as included in its comment, was not described clearly enough to allow the Council to adequately understand it. Any such "refund" mechanism would have to be implemented by Bonneville, the entity authorized by the Northwest Power Act to impose the surcharge and allocate revenues from the surcharge. In fact, the Act's direction to Bonneville to "allocate any revenues from such charges in such manner as the Administator determines will help achieve the purposes of [the surcharge provision]" (16 U.S.C. 839e(h)) arguably could cover such a "refund."

26. "Cost of Non-Compliance Over Time"

SMB urged the Council to change the method from a one time surcharge to a method which accounts annually for the "cost of non-compliance over time." SPUD raised a similar concern.

Response: As indicated in the Council's issue paper preceding the proposed amendment,

> The existing methodology in Appendix D considers cost imposed on the system on an annual basis by those buildings not constructed to the Model Standards. This aspect of the existing method poses two problems. The first problem is that it would require Bonneville to carry each building on its accounts throughout its lifetime and account for it each year when it calculated the annual surcharge. Secondly, if the surcharge methodology only includes annual costs while not recognizing the costs associated with non-compliance over time, there would be no surcharge for failure to adopt during times of surplus even though future costs would be imposed on the system. And, in future years it would be very difficult to determine the costs incurred as a result of historical non-conformance with the standards. The surcharge methodology would be much simpler if a building were included in the surcharge calculation only once and then removed from the accounts. Also, the surcharge would end once standards were adopted. This would heighten the sence of a surcharge as an incentive to adopt standards and a way to recover costs imposed on the system, and not as a penalty to be meted out for failure to adopt. The surcharge amount would be equal to the present value of the alternative resource that could supply an equivalent amount of energy.

In developing its amendment to use a simple 10 percent surcharge, the Council determined that the 10 percent rate was the most reasonable alternative. The SMB's suggestion would potentially result in surcharging a utility for 50 years or more for failure to adopt the standards in any one year. The Council does not view this as a desirable outcome. The amendment is designed to capture the total impact on the system through the structure's life. Once the jurisdiction adopts the standards, the imposition of the surcharges ends.

The effect of the proposed amendment will be to improve the method of surcharging in the following ways:

- State and local jurisdictions and Bonneville customers will be able to see clearly how the surcharge might effect them;
- Bonneville's administrative duties will be lessened as it will not have to maintain voluminous records on consumers in its customers' service territories;
- The surcharge will be imposed only during the period that standards are not adopted or equivalent energy savings realized; and
- Potentially time consuming and data intensive calculations will be eliminated.

The Council also directed its staff to work with Bonneville and regional utilities to develop alternative conservation measures achieving energy savings comparable to those achieved by the model conservation standards set forth in the Council's Power Plan.

Edward Sheets,

Executive Director.

[FR Doc. 84–31106 Filed 11–27–84; 8:45 am]

BILLING CODE 0000–00–M

Demand Forecasting Advisory Committee; Regular Meeting

AGENCY: Demand Forecasting Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Presentation of Power Planning Division Workplan.
- Summary of Economic Forecast.

—DSI's

—Fuel Prices

- Discussion of Evaluation of BPA Residential Demand Model (RRHED).
- Discussion of JJA report on components of BPA Commercial Demand Model suitable for use by the Council forecasting system.
- Discussion of inputs for Residential Forecasting Model.
- Presentation of Decision Analysis Model.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Demand Forecasting Advisory Committee.

DATE: Monday, December 3, 1984, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 S.W. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Terry Morlan, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–31113 Filed 11–27–84; 8:45 am]

BILLING CODE 0000–01–M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Programs: U.S. Postal Service and City of Philadelphia, and Philadelphia School District, and advance notice of modification to an existing system of records.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to conduct a computer matching program, and to propose the addition of a new temporary routine use to system USPS 050.020, Finance Records—Payroll System.

DATE: Any interested party may submit written comments regarding the matching program and the proposed new routine use. Comments on this notice must be received on or before December 28, 1984.

ADDRESS: Comments may be mailed to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C., 20260–5010, or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected in Room 8121 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245–5568.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing a new temporary routine use for system USPS 050.020, Finance Records—Payroll System, in connection with its plans to begin identifying postal employees who are also on the employment rolls of the (1) City of Philadelphia, and (2) Philadelphia, Pennsylvania School District. The routine use, if adopted, will be in effect for a period of one year from its effective date. The purpose of this proposed action is to determine whether suspected violations of federal or state laws or Postal Service regulations have occurred in connection with the improper receipt of dual benefits by these employees. Of particular concern is the possible misuse of sick leave of the improper receipt of continuation of pay under the workers' compensation program.

Set forth below in the information required by the Revised Supplemental Guidance for Conducting Computerized Matching Program issued by the Office of Management and Budget (47 FR 21656; May 19, 1982).

Report of Computer Matching Program

In accordance with 39 U.S.C. 404, the Postal Service proposes to perform a match by computer of employees on the payroll of the Philadelphia Post Office, and Bulk Mail Center (BMC), and the Management Sectional Center (MSC) Southeastern at Devon, Pennsylvania, and the MSC South Jersey at Ballmawr, New Jersey, against the City of Philadelphia's listing of its employees. In addition, the Postal Service proposes to perform a match by computer of employees on the payroll of the above-mentioned BMC and MSCs against the Philadelphia School District's listing of its employees. The City of Philadelphia (CP) and the Philadelphia School District (PSC) will each provide a computer tape listing of their employees by name and social security number which the Postal Service will separately match against its Payroll System files for the purpose of identifying Postal Service employees common to both lists—i.e., "hits." Postal Service Payroll System files contain general payroll information including name, social security number, salary, family compensations, benefit deductions, accounts receivable, leave data, addresses, records of attendance and other relevant payroll information.

Upon completion of the match, and after the lists are compiled, the Postal Service will return to the CP and to the PSD their computer tapes and will disclose to CP and PSD only relevant details for the "hits" but not other information or names in its payroll system. All information obtained or utilized will remain under the control of the Postal Inspection Service and/or the investigative service for the CP and PSD Internal Controller's Office. Except for any individual investigative case file that may be established within the parameters of system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983), all other information complied as a result of this matching effort will be destroyed as soon as the determination is made that it relates to a legitimate, non-fraud situation.

Proposed System Modification To Add New Routine Use

On a one-time basis, the Postal Service proposes to disclose a limted amount of information from the payroll records of certain postal employees to the Internal Controller's Office of the Philadelphia, Pennsylvania School District (PSD) and the City of Philadelphia (CP). This information will be used to identify postal employees who have fraudulently received compensation benefits from either the Postal Service, the PSD, or the CP. The Postal Service believes that an integral part of the reason that employee payroll records are maintained is to protect the legitimate interests of the Government and therefore, such a routine use is compatible with the purpose of maintaining these records. System 050.020 last appeared in 49 FR 37489 dated September 24, 1984. As provided in 5 U.S.C. 552a(e)(11) for new routine uses, interested persons are invited to submit written views or arguments on the routine use proposed. After any comments submitted have been considered, final notice of the routine use will be published. Accordingly, it is proposed to modify system USPS 050.020, Finance Records—Payroll System, to add a new temporary routine use to allow this disclosure as follows:

USPS 050.020, Finance Records—Payroll System

"34. (Temp.) Disclosure of information about postal employees on the employment rolls of the Philadelphia, Pennsylvania School District (PSD) and on the employment rolls of the City of Philadelphia (CP) may be made to the PSD and CP for a one-time comparison with the PSD's and CP's time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year ending ————."

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-31148 Filed 11-27-84; 8:45 am]

BILLING CODE 7715-12-M

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Final notice of routine uses for existing system of records.

SUMMARY: The purpose of this document is to publish final notice of the Postal Service's addition of two routine uses to system USPS 050.020, Finance Records—Payroll System.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245-5368.

SUPPLEMENTARY INFORMATION: The Postal Service plans to assist the Department of Defense (DOD) in its two-part effort, as follows:

Part 1—In support of the Government's initiative under the Debt Collection Act of 1982, the Postal Service will assist the DOD in its efforts to identify current postal employees who have separated from military service and are indebted to the DOD and, if necessary, assist DOD in collecting the over-due debts from those employees. Upon request, on a semiannual basis, the Postal Service will provide to the DOD a computer tape of its employees with name and social security account number. The DOD will match this tape against its debtor files in the Defense Manpower Data Center Data Base for the purpose of identifying those persons who have separated from military service while indebted to DOD for reenlistment bonus, travel/transportation advances, etc. The DOD will return the uncopied computer tape to the Postal Service immediately after the match has been run. The DOD will provide to the Postal Service a tape of the matched employees and the Postal Service will then provide the home addresses of those employees. Disclosures made under this part are for the limited purpose of enabling DOD to identify indebted postal employees; to notify them of their indebtedness to the United States; and to take subsequent action to collect the debts.

Part 2—The Postal Service will assist DOD in its efforts to meet its Congressional reporting requirements under its Federal Sector Reserve Screening Program. This will involve screening current Postal Service employees for military reserve status and identifying those employees in positions critical to Postal Service operations who may not be subject to reserve callup as a result. For this purpose, upon request, on an annual basis, the Postal Service will provide to DOD a computer tape of its current employees by name, social security account number and salary for comparison with DOD's Ready Reservists file. Upon completion of the comparison process, DOD will return the uncopied computer tape to the Postal Service and, in addition, will provide to the Postal Service a tape of Postal Service employees with a military mobilization obligation.

Advance notice of the proposed adoption of the routine uses was published on August 23, 1984 at 49 FR 33515. No comments were received in response to the advance notice. System USPS 050.020 last appeared in 49 FR 37489 dated September 24, 1984. Publication of this notice is in accordance with the Privacy Act Implementation guidelines issued by the Office of Management and Budget (47 FR 28966).

Accordingly, the Postal Service is adding two new routine uses to system USPS 050.020, Finance Records—Payroll System, as follows:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System, 050.020

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

32. To provide to the Department of Defense (DOD), upon request, on a seminannual basis, the names, social security account numbers and home addresses of current postal employees for the purpose of identifying those employees who are indebted to the United States under programs administered by the Secretary, DOD, and for taking subsequent actions to collect those debts.

33. To provide to the Department of Defense (DOD), upon request, on an annual basis, the names, social security account numbers, and salaries of current postal employees for the purpose of updating DOD's listings of Ready Reservists and reporting reserve status information to the Postal Service and the Congress.

* * * * *

A complete statement of system USPS 050.020, as modified by this notice, appears below.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

USPS 050.020

SYTEM NAME:

Finance Records—Payroll System.

SYTEM LOCATION:

Payroll system records are located and maintained in all Departments, facilities and certain contractor sites of the Postal Service. However, Postal data centers are the main locations for payroll information. Also, certain information from these records may be stored at emergency records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees and postmaster relief/replacement employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain general payroll information including retirement deduction, family compensations, benefit deductions, accounts receivable, union dues, leave data, tax withholding, allowances, FICA taxes, salary, name, social security number, payments to financial organizations, dates of appointment or status changes, designation codes, position titles, occupation codes, position titles, occupation code, addresses records of attendance, and other relevant payroll information. Also includes automated Form 50 records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1003.5 U.S.C. 8339.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

1. Information within the system is for handing all necessary payroll functions and for use by employee supervisors for the performance of their managerial duties.

2. To provide information to USPS Management and executive personnel for use in section decisions and evaluation of training effectiveness. These records are examined by the Selection committee and Regional Postmasters General.

3. To compile various lists and mailing list, i.e., Postal Leader, Women's lists, i.e., Postal Leader, Women's Programs. Newsletter, etc.

4. To support USPS Personnel Programs such as Executive Leadership, Non-Bargaining Positions Evaluations of Probationary Employees, Merit Evaluation, Membership and Identification Listings, Emergency Locator Listings, Mailing Lists, Women's Programs, and to generate retirement eligibility information and analysis of employees in various salary ranges.

Use—

1. Retirement Deduction—To transmit to the Office of Personnel Management a roster of all USPS employees under Title 5 U.S.C. 8334, along with a check.

2. Tax Information—To disclose to Federal, State and local government agencies having taxing authority, pertinent records, relating to individual employees, including name, home address, social security number, wages and taxes withheld for other jurisdiction.

3. Unemployment Compensation Data—To reply to State Unemployment Offices at the request of separated USPS employees.

4. Employee Address File—For W-2 tax mailings and Postal mailing such as Postal Life, Postal Leaders,etc.

5. Salary payments and allotments to financial organizations—To provide pertinent information to organizations receiving salary payments or allotments as elected by the employee.

6. FI (SS Tax) Deduction—To SS Administration as record of earnings under the SS act for all casual employees not under retirement.

7. Determine eligibility for coverage and payments of benefits under the Civil Service Retirement System, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program and transfer related records as appropriate.

8. Determine the amount of benefit due under the Civil Service Retirement System, the Federal Employees, Group Life Insurance Program and the Federal Employees Health Benefits program and authorizing payment of that amount and transfer related records as appropriate.

9. Transfer to Office of Workers Compensation Program, Veterans Administration Pension Benefits Program, Social Security Old Ages, Survivor and Disability Insurance and Medicare Programs, military retired pay programs, and Federal Civilian employee retirement systems other than the Civil Service Retirement System, when requested by that program or system or by the individual covered by this system or by the individual covered by this system of records, for us in determining an individual's claim for benefits under such system.

10. Transfer earnings information under the Civil Service Retirement Systen to the Internal Revenue Service as requested by the Internal Revenue Code of 1954, as amended.

11. Transfer information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010.

12. Transfer information necessary to support a claim for health insurance benefits under the Federal Employees' Health benefits Program to a health insurance carrier or plan participating in the program.

13. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

14. To request or provide information from or to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefits.

15. As a data source for management information of production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of Individuals) under the Freedom of Information Act or to locate specific individual for personnel research or other personnel management functions.

16. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

17. Certain information pertaining to Postal Supervisors may be transferred to the National Association of Postal Supervisors.

18. Disclosure may be made to a congreasional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

19. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

20. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

21. Inactive records may be transferred to a GSA Federal Records Center prior to destruction.

22. To provide to the Office of Personnel Management (OPM) approximately 19 data elements (including SSAN, DOB, service competition date, retirement system, and FEGLI status) for use by OPM's Compensation Group collected are not for the purpose of making determinations about specific individuals but are used only as a means of ensuring the integrity of the active employee/annuitant data systems and for analyzing and statistically projecting Federal retirement and insurance system costs. The same data submission will be used to produce summary statistics for reports of Federal employment.

23. Information contained in this system of records may be disclosed to an authorized investigator appointed by the Equal Employment Opportunity Commission, upon his request, when that investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR Part 1613, and the contents of the requested record are needed by the investigator in the performance of his duty to investigate a discrimination issue involved in the complaint.

24. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

25. May be disclosed to a Federal or State agency providing parent locator services or to other authorized persons as defined by Pub. L. 93-647.

26. Disclosure of information about particular postal employees may be made to requesting states in connection with approved computer matching programs, limited to only those data elements considered relevant to making a determination of eligibility under unemployment insurance programs administered by the states (and by those states to local governments); to improve program integrity; and to collect debts

and overpayments owed to those governments and their components.

27. To union-sponsored insurance carriers for the purposes of determining eligibility for coverage and payments of benefits under union-sponsored, non-Federal insurance plans and transferring related records as appropriate.

28. (Temp.) To provide the Department of Education home address information on former postal employees for the purposes of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Education and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of one year ending February 3, 1985.

29. (Temp.) Disclosure of information about particular postal employees on the employment rolls of the City of New Orleans, Louisiana, may be made to the New Orleans' Department of City Civil Service (NOCCS) for comparison with the NOCCS time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year ending June 15, 1985.

30. (Temp.) Disclosure of information about particular postal employees who work in the District of Columbia and in the States of Maryland and Virginia may be made to the Government of the District of Columbia, Department of Human Service (DC–DHS) for comparison with the DC–DHS welfare program files.

Note.—This routine use will be in effect for a period of one year ending September 24, 1985.

31. (Temp.) To provide the Department of Housing and Urban Development the names, social security account numbers and home addresses of postal employees for the purpose of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Housing and Urban Development and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of five years ending September 24, 1989.

32. To provide to the Department of Defense (DOD), upon request, on a semiannual basis, the names, social security account numbers and home addresses of current postal employees for the purposes of identifying those employees who are indebted to the United States under programs administered by the Secretary, DOD, and for taking subsequent actions to collect those debts.

33. To provide to the Department of Defense (DOD), upon request, on an annual basis, the names, social security account numbers, and salaries of current postal employees for the purposes of updating DOD's listings of Ready Reservists and reporting reserve status information to the Postal Service and the Congress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Preprinted forms, magnetic tape, microforms, punched cards, computer reports and card forms.

RETRIEVABILITY:

These records are organized by location, name and social security number.

SAFEGUARDS:

Records are contained in locked filing cabinets; are also projected by computer passwords and tape library physical security.

RETENTION AND DISPOSAL:

Records are retained and updated throughout employment with the Postal Service. Upon separation records become historical data, this data is retained at the local site for two years then forwarded to the Federal Records Center nearest the pay location

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Finance Department and APMG, Employee Relations Department at Headquarters.

NOTIFICATION PROCEDURE:

Request for information on this system of records should be made to the head of the facility where employed, giving full name and social security number. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURES:

See Notification above.

RECORD SOURCE CATEGORIES:

Information is furnished by employees, supervisors and the Postal Source Data System.

[FR Doc. 84-31140 Filed 11-27-84; 8:45 am]
BILLING CODE 7715-12-M

RAILROAD RETIREMENT BOARD

Proclamation Regarding Railroad Unemployment Insurance Account

Pursuant to section 8(a) of the Railroad Unemployment Insurance Act, the Railroad Retirement Board has determined, and hereby proclaims, that the balance to the credit of the railroad unemployment insurance account as of the close of business September 30, 1984, was a deficit of $847,498,459.53. Based on this balance and pursuant to the table in section 8(a) of the Railroad Unemployment Insurance Act, the contribution rate to finance the railroad unemployment insurance program for calendar year 1985 shall be 8.0 percent.

In witness whereof the members of the Railroad Retirement Board have hereunto set their hands and caused its seal to be affixed.

Done at Chicago, Illinois, this 19th day of November 1984.

R. A. Gielow,
Chairman.
Earl Oliver,
Member.
C. J. Chamberlain,
Member.

By the Railroad Retirement Board.

Donald J. Parker,
Acting Executive Director.

[FR Doc. 84-31106 Filed 11-27-84; 8:45 am]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23493; 70-5943]

American Electric Power Company, Inc.; Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan

November 21, 1984.

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio, 43215, a registered holding company, has filed with this Commission a post-effective amendment to its proposal in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By orders in this proceeding dated February 8, 1977, April 19, 1978, March 29, 1979, August 8, 1979, May 1, 1980, June 30, 1981, June 15, 1982, June 29, 1983, and June 29, 1984 (HCAR Nos. 19879, 20506, 20979, 21180, 21544, 22113, 22539, 22989, and 22353), AEP was authorized to issue and sell, from time to time through June 30, 1985, up to 44,000,000 shares of its authorized but unissued common stock, $6.50 par value, pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Plan").

AEP now proposes to amend the Plan to provide, effective January 1, 1985, (i) that the price of shares of the company's common stock purchased with reinvested dividends will be 100% of the average of the daily high and low sales prices of the common stock, as published in the *Wall Street Journal* report of New York Stock Exchange—Composite Transactions, for the period of five trading days ending on the day of purchase, rather than 95% of such average, and (ii) that participants, other than eligible employees, may no longer invest by making optional cash payments pursuant to the Plan, and that eligible employees may continue to make such optional payments only by means of payroll deductions, subject to a minimum monthly limit of $5 and a maximum monthly limit of (A) 10% of regular salary or wages or (B) $1,000, whichever is less.

The amended proposal and further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 18, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as now amended or as it may be further amended, may be authorized.

For the Commission, by Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31138 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 23488; 70-7050]

Eastern Edison Co.; et al.; Proposed Issuance and Sale of Short-Term Notes to Banks

In the matter of Eastern Edison Company, 110 Mulberry Street, Brockton, Massachusetts 02403; Blackstone Valley Electric Company, Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865; Montaup Electric Company, P.O. Box 2333, Boston, Massachusetts 02107.

November 20, 1984.

Eastern Edison Company ("Eastern Edison"), Montaup Electric Company ("Montaup"), and Blackstone Valley Electric Company ("Blackstone") (collectively, the "Companies"), electric utility subsidiaries of Eastern Utilities Associates, a registered holding company, have filed a proposal with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act").

The Companies propose to issue and sell short-term notes to banks, from time to time during the period from December 28, 1984, to December 27, 1985, in aggregate amounts outstanding at any one time not to exceed $10 million for Eastern Edison, $30 million for Montaup, and $5 million for Blackstone.

Each note will be dated the date of issuance and will mature no later than September 30, 1986. Some notes will bear interest at a floating prime rate, have maximum maturities of nine months, and be prepayable at any time without premium. Other notes will bear interest at available money market rates, in all cases less than the prime rate at the time of issuance, will have maximum maturities of nine months, and will not be prepayable. Credit lines with banks are subject in some cases to commitment fees (⅜% on the line of credit) and/or compensating balance requirements (no greater than 10% of the line of credit). With such fees and/or balances, no line of credit would result in an effective cost of borrowing greater than 12.41% based on a prime rate of 11.75%.

The Companies will use the proceeds of the proposed notes, together with other funds available, to: (1) Renew outstanding notes payable to banks as they become due and (2) finance their respective 1985 cash construction expenditures which are currently estimated to be approximately $11,345,000 in the case of Eastern, $41,940,000 in the case of Montaup, and $3,023,000 in the case of Blackstone.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31134 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 23491; 70-7044]

System Fuels, Inc. et al.; Proposal To Enter Into Revolving Credit Agreement

In the matter of System Fuels, Inc., One Poydras Plaza, New Orleans, Louisiana 70113; Arkansas Power & Light Company, First Commercial Building, Little Rock, Arkansas 72201; Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39201; New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.
November 21, 1984.

System Fuels, Inc. ("SFI"), a fuel supply procurement subsidiary of Arkansas Power & Light Company ("AP&L") Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI") which are, in turn, public utility subsidiaries of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed a proposal pursuant to Sections 6(a), 7, and 12(b) and Rules 45 and 50(a)(2) thereunder.

SFI proposes to borrow and reborrow through December 31, 1987, pursuant to a Revolving Credit Agreement ("Credit Agreement") with Comerica Bank-Detroit ("Bank"), up to an aggregate principal amount at any one time outstanding not to exceed $15,000,000. All borrowings under the Credit Agreement will mature on December 31, 1987. The borrowings will be evidenced by a single master note of SFI, representing the obligation of SFI to pay the amount of the commitment ($15,000,00) or, if less, the aggregate unpaid principal amount of all loans made by the Bank thereunder, plus accrued interest. The proposed borrowings will be in addition to other borrowing arrangements currently maintained by SFI for the purpose of securing funds from external sources to

finance its fuel supply business and which have previously been authorized by this Commission (HCAR Nos. 22228, 22628, and 22859).

Loans under the Credit Agreement will bear interest on the unpaid principal amount thereof at (i) a floating rate per annum equal to the sum of: (1) ⅜ of 1% and (2) the daily Federal Funds rate, defined as the opening interest rate per annum bid each banking day by the Bank for overnight deposits of federal funds from member banks of the Federal Reserve System ("Standards Floating Rate"), (ii) a floating rate per annum equal to the rate of interest announced periodically by the Bank as it prime rate ("Alternate Floating Rate") of (iii) a fixed rate per annum equal to a rate of interest for a designated period of time agreeable to SFI and the Bank at the time of such loan ("Fixed Rate"), provided that the Fixed Rate shall in no event exceed the Bank's prime rate on the date the Fixed Rate is set plus 1½%. Assuming a prime rate of 11¾% and, as expected, full utilization of the Commitment by SFI, the maximum effective cost of money for any such loan at a Fixed Rate would be 13¼%. At the expiration of any Fixed Rate period, such Fixed Rate loan will convert to the Standard Floating Rate.

Unless SFI shall have otherwise notified the Bank, loans will bear interest at the Standard Floating Rate. Subject to the terms of the Credit Agreement, SFI will be permitted at any time to elect to have loans bear interest at the Alternate Floating Rate by giving notice to the Bank specifying the principal amount to be subject to such rate at least two business days in advance. Loans may bear interest at a Fixed Rate at any time that the Bank and SFI may agree on a rate for a designated period of time.

The Credit Agreement will provide that SFI, may, at it option, but subject to certain conditions specified therein, terminate early or reduce, from time to time, the Commitment. Further, SFI will be permitted at any time, without premium or penalty, to prepay, in whole or in part, the unpaid principal amount of the Note; provided, however, that without the consent of the Bank, SFI may not prepay any loan to which a Fixed Rate applies except upon the last day of the Fixed Rate period.

Pursuant to the terms of the Credit Agreement, SFI will convenant and agree to keep certain of its assets specified therein ("Collateral") free and clear of all liens and encumbrances, except certain permitted encumbrances, and will further covenant and agree, but only upon receipt of 60 days' prior written notice from the Bank, to grant to the Bank, to the extent permitted by applicable laws, a first priority, perfected security interest (or other analogous security device) in the Collateral, subject to prior permitted encumbrances, to secure the performance by SFI of its obligations to the Bank under the Credit Agreement and the Note.

In addition, and as an inducement to the Bank to enter into these financing arrangements with SFI, the Operating Companies propose to join with SFI as parties to the Credit Agreement and to convenant and agree with the Bank, that they will take any and all action as may be necessary to keep SFI in a sound financial condition and to place SFI in a position to discharge, and to cause SFI to discharge, its obligations to the Bank pursuant to the Credit Agreement and the Note. Under the Credit Agreement, SFI will pay to the Bank a commitment fee computed at the rate of ⅜ of 1% per annum on the average daily unused portion of the Commitment.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31127 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14245; 812-5817]

Toronto-Dominion Holdings (U.S.A.), Inc.; Application for Order Exempting Applicant

November 21, 1984.

Notice is hereby given that Toronto-Dominion Holdings (U.S.A.), Inc. ("Applicant"), c/o Joseph S. Stout, Jr., Exquire, Winthrop, Stimson, Putnam & Roberts, 40 Wall Street, New York, New York 10005, a wholly-owned subsidiary of The Toronto-Dominion Bank (the "Bank") filed an application on April 9, 1984, and an amendment thereto on October 30, 1984, for a Commission order, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), conditionally exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that its only outstanding securities are common shares owned by the Bank. Applicant states that, subsequent to April 30, 1982, the Bank transferred to Applicant its interest in certain of its United States subsidiaries, a minority interest in a small business investment company and certain real estate. Applicant states further that the small business investment company has been liquidated and Applicant has received liquidating distributions consisting of cash and securities of four companies which Applicant has disposed of for cash.

Applicant has five subsidiaries previously owned by the Bank, all of which are engaged in activities permitted by the Bank Holding Company Act of 1956 (the "Bank Holding Company Act") to which the Bank is subject. The five subsidiaries are: (1) Toronto Dominion Investments, Inc. ("Investments"), engaged in investing in securities, which securities do not include more than 5 percent of the outstanding voting shares of any company; (2) The Toronto-Dominion Bank Trust Company (the "Trust Company"), engaged in trust company activities of a fiduciary, agency or custodian nature, excluding the making of loans and investments and the acceptance of deposits except as permitted under the Bank Holding Company Act; (3) Toronto-Dominion (Colorado), Inc. ("Colorado"), engaged in making or acquiring loans and other extensions of credit; and (4) Toronto-Dominion (Illinois) Inc. ("Illinois"), engaged in making or acquiring loans and other extensions of credit; and (5) Toronto Dominion (New England), Inc. ("New England"), engaged in soliciting and other servicing activities for the Bank and its affiliates.

Applicant states that the Trust Company is a "bank" as defined in the Act and that New England neither holds nor invests, nor proposes to hold or invest, in securities. Applicant states further that investments and Colorado are not "investment companies" by

virtue of Section 3(c)(1) of the Act. Applicant states that it may form additional subsidiaries which will be banking subsidiaries. Applicant represents that its subsidiaries and itself will not constitute more than 10% of the Bank's assets.

Applicant wishes to provide funds received from the issuance and sale of commercial paper and other debt securities to the Bank and its affiliates, including subsidiaries of Applicant but excluding Investments, and any small business investment company (as defined in Section 662 of the Small Business Investment Act of 1958) (an "SBIC") in which the Bank has an equity interest, and any other affiliate of the Bank which is not a banking subsidiary and which is engaged primarily in investing in securities other than securities received in commercial lending transactions, trust company activities and other activities closely related to banking. Accordingly, substantially all of Applicant's assets will consist of the capital stock of, and amounts lent to or deposited with, the Bank and certain of its affiliates.

Applicant states that it is subject to substantial supervision and may only engage in servicing and other bank related activities expressly permitted to subsidiaries of bank holding companies under the Bank Holding Company Act. Applicant presently engages in servicing activities for the Bank and its affiliates. Applicant's activities are also circumscribed because of its relationship to the Bank which itself is subject to extensive regulation.

According to the application, on March 31, 1981, the Commission issued an order [Investment Company Act Release No. 11711], pursuant to Section 6(c) of the Act, exempting the Bank from all provisions of the Act to permit the Bank's issuance and sale of its commercial paper and other debt securities in the United States. On March 19, 1982, the Commission issued an order [Investment Company Act Release No. 12329], pursuant to Section 6(c) of the Act, exempting a domestic finance subsidiary of the Bank (the "Finance Subsidiary") from all provisions of the Act to permit issuance and sale of its commercial paper and other debt securities in the United States. Applicant states that the Finance Subsidiary has not issued, and so long as certain tax legislation continues in effect, it is not expected that the Finance Subsidiary will issue any securities other than those held by its parent.

Applicant proposes to issue and sell in the United States unsecured commercial paper promissory notes (the "Notes") in bearer form and denominated in United States dollars, which Notes will be unconditionally guaranteed as to principal, interest and premium, if any, by the Bank. Applicant does not expect that in the first year it would sell Notes in the United States which, together with comparable notes sold by the Bank and the Finance Subsidiary, would exceed an aggregate of $750,000,000 at any time outstanding, although this amount may be exceeded in future years.

Applicant contemplates that it will offer and sell the Notes with such terms and in such manner as to qualify the Notes for an exemption from registration, pursuant to Section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"). Applicant proposes to issue Notes of prime quality, eligible for discounting by Federal Reserve Banks, in minimum denominations of $100,000 and with a maturity of 270 days or less, exclusive of days of grace, and without provision for extension, renewal or automatic "rollover".

Applicant represents that, prior to issuance of the Notes or other debt securities (collectively, "Debt Securities") in the United States, such Debt Securities shall have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and United States counsel shall have certified, prior to such issuance, that the rating has been received respecting the securities then to be issued; provided, however, that no rating need be obtained respecting any issue, if, in the opinion of Applicant's counsel (counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in Rule 502 under the 1933 Act and relevant "no-action" letters made public by the Commission), an exemption from registration is available under the 1933 Act, whether under Section 4(2) of the 1933 Act or Regulation D thereunder or otherwise.

Applicant represents that the notes will not be advertised or otherwise offered for sale to the general public, other than an announcement of the establishment of the commercial paper facility as a matter of record, but instead will be offered and sold to institutional and other sophisticated investors, including individuals who normally purchase commercial paper notes of this type. The Notes will generally be sold through major United States commercial paper dealers, although Applicant may also directly sell the Notes.

Applicant further represents that it may offer and sell, from time to time, Debt Securities other than the Notes, which will be unconditionally guaranteed as to principal, interest and premium, if any, by the Bank. Such securities will be offered and sold to qualified investors in: (1) Private placements under an exemption from registration under the 1933 Act, based on the availability of such exemption in the opinion of United States counsel; (2) offerings in connection with which Applicant has received a letter from the Commission's staff stating that it would not recommend enforcement action to the Commission under the specified circumstances; or (3) registered public offerings.

Applicant represents that all Debt Securities will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Applicant. Applicant represents further that the Bank's guarantees of the Notes and other Debt Securities will be the Bank's direct liabilities and will under Canadian law rank *pari passu* among themselves and equally with all deposit liabilities of the Bank and with all other unsecured, unsubordinated indebtedness of the Bank with the exception of any amounts (other than indebtedness evidenced by the Bank's debentures which will be subordinate to the guarantees) due to the Government of Canada or any province thereof, in trust or otherwise, which amounts in the case of an insolvency of the Bank shall be a first and second charge, respectively, on the Bank's assets. In addition, the Bank's guarantees will rank prior to any of its subordinated indebtedness, including all issues of debentures, and to claims of holders of the Bank's equity securities.

Applicant undertakes to ensure that the commercial paper dealers in the United States through which it sells the Debt Securities will, and if Applicant or any affiliates directly offer such securities for sale, it or such affiliate will, provide to each offeree, prior to sale, a memorandum which describes the Bank's and Applicant's business and contains their most recently published audited fiscal year-end balance sheets and income statements, together with such financial information as is publicly available for any interim period. The memorandum will: (1) Describe any material differences between the relevant Canadian accounting principles and generally accepted accounting principles applicable to United States banks, (2) be at least as comprehensive as those customarily used in similar offerings of debt securities in the United States, and (3) be updated periodically to reflect material changes in Applicant's or the Bank's financial

status. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

Applicant represents that it will not issue or sell Debt Securities (other than short-term paper) until it has received (1) an opinion of its United States counsel to the effect that, under the circumstances of the proposed offering, Investments, Colorado, Illinois and any other comparable subsidiary would continue to be exempt from registration under the Act, or (2) a Commission order, pursuant to Section 6(c) of the Act, to the effect that none of such subsidiaries is an "investment company" as defined in the Act. Applicant is not requesting that the Commission review or approve the opinion of counsel regarding the availability of any such exemption.

As a condition to the requested order Applicant will not issue any equity securities to any person other than the Bank and its wholly-owned subsidiaries; and no proceeds of the sale of any Debt Securities will be lent to or deposited with Investments, any SBIC in which the Bank has an equity interest, or any other affiliate of the Bank which is not a banking subsidiary and which is engaged primarily in investing in securities other than securities received in commercial lending transactions, trust company activities and other activities closely related to banking.

Applicant represents that it will engage, either directly or indirectly, only in such activities as permitted from time to time by the Bank Holding Company Act. Applicant will not form additional subsidiaries unless they engage in activities permitted by the Bank Holding Company Act and unless they either (a) are not investment companies as defined in the Act, without giving effect to Section 3(c)(1) thereof, or (b) engage in extending credit.

Applicant will appoint a bank, trust company or a corporation providing corporate services for lawyers in the United States as its authorized issuing and paying agent with respect to the Debt Securities. Applicant will appoint such company or its United States counsel as its agent to accept service of process in any action based on the Debt Securities and instituted in any State or Federal court by the holder of any of the Debt Securities. Applicant will expressly submit to the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action, except to the extent that it contests the manner of service on its agent. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Debt Securities have been paid. Applicant will also be subject to suit in connection with the Debt Securities in any court in the United States which would have jurisdiction because of the manner of the offering of the Debt Securities or otherwise. Neither the issuing or paying agent, nor the agent for service of process, will be a trustee for the holders of Debt Securities or have any responsibilities or duties to act for such holders as would a trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 17, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own mofion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31128 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23492; 70-7010]

Transok, Inc.; Proposal To Establish a Subsidiary Gathering Company

November 21, 1984.

Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma, 74101, a natural gas transmission subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has proposed a transaction subject to Sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 and Rule 45 thereunder.

Transok proposes to form a wholly owned subsidiary corporation, Transok Gathering Company ("Gathering") to construct and operate natural gas gathering and compressor systems. The purpose of establishing this subsidiary is to ensure that Transok's status as an intrastate transporter of natural gas will not be jeopardized by the activities of Gathering.

Gathering will provide various natural gas gathering and compressor services to producers, transporters and certain end users of natural gas. Performance of such services will require Gathering to design, construct, operate and maintain natural gas gathering and compressor facilities. Transok expects that Gathering will own such facilities, which will be used in providing the services offered by Gathering. However, in some cases, Gathering may provide various services using facilities of others. Gathering may tap its pipeline into various intra- and inter-state pipelines.

Transok proposes to incorporate Gathering under the laws of the State of Oklahoma with an authorized capital of 1000 shares of common stock without par value. Transok will subscribe to all of Gathering's common stock at a subscription price of $1.00 per share. Transok estimates that Gathering will expend $17 million through 1988. Transok therefore requests authority to contribute up to $17 million when needed no later than 1988 in either equity or debt to Gathering to support its activities. Transok proposes to provide such contribution out of its operating revenues or borrowings from the CSW money pool.

Transok estimates that the fees to be paid or incurred by it in connection with this transaction are $5,000.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31136 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23489; 70-7053]

UNITIL Corp.; Proposed Acquisition of Electric Utility Securities

November 20, 1984.

UNITIL Corporation ("UNITIL"), 436 South River Road, R.F.D. 5, Bedford, New Hampshire, 03102, a New Hampshire Corporation, has proposed to this Commission, a transaction subject to Sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

UNITIL is a newly-organized corporation formed for the purpose of becoming a holding company and acquiring the common stock of Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter"), both of which are New Hampshire corporations and electric utility companies as defined in Section 2(a)(3) of the Act. UNITIL, Concord and Exeter have entered into an Agreement and Plan of Exchange ("Plan") which provides for the restructuring of Concord and Exeter through two simultaneous statutory share exchanges. Under the Plan, on the effective date of the exchanges: (a) Each issued and outstanding share of Concord common stock, no par value, the holder of which does not perfect dissenters' rights in accordance with state law, will be exchanged, without any action on the part of the holder thereof, for 2 shares of UNITIL's common stock, now par value; and (b) each issued and outstanding share of Exeter common stock, the holder of which does not perfect dissenters' rights in accordance with state law, will be exchanged, without any action on the part of the holder thereof, for 2.15 shares of UNITIL common stock. As a result UNITIL will become the sole common shareholder of Concord and Exeter. The rights of holders of Concord and Exeter preferred stock will be unaffected by the exchanges. Both Concord's voting shareholders and Exeter's common shareholders have approved the Plan.

Concord is an electric utility company engaged in the purchase, transmission, distribution, and sale of electricity at retail in a service area of approximately 240 square miles and to approximately 20,300 customers in Concord and twelve surrounding towns, all in New Hampshire. At June 30, 1984, Concord reported total assets of $18,631,650, net utility plant of $15,217,015 and total common stock equity of $5,727,558. For the twelve months ended June 30, 1984, Concord reported operating revenues of $26,330,150 and net income applicable to common stock of $694,316.

Exeter is an electric utility engaged in the purchase, transmission, distribution and sale of electricity at retail in a service area of approximately 167 square miles and to approximately 28,000 customers in Exeter and in all or part of fifteen surrounding towns, all in New Hampshire. At June 30, 1984, Concord reported total assets of $18,442,379, net utility plant of $15,676,144 and total common stock equity of $6,581,822. For the twelve months ended June 30, 1984, Exeter reported operating revenues of $28,332,227 and net income applicable to common stock of $1,076,113.

UNITIL has organized two subsidiaries. UNITIL Service Corp. ("UNITIL Service"), a New Hampshire Corporation, was formed to supply a variety of administrative and management services to Concord and Exeter, including financial management, ratemaking, auditing, employee benefit planning, insurance procurement and purchasing services. Because Concord and Exeter currently share the cost of certain professional services with Fitchburg Gas and Electric Company ("Fitchburg"), a Massachusetts utility, UNITIL anticipates that UNITIL Service will also supply similar services under contract to Fitchburg. The second subsidiary organized, UNITIL Power Corp. ("UNITIL Power"), a New Hampshire Corporation, is to act as a wholesale supplier of electricity to Concord and Exeter.

It is stated that Concord and Exeter are each relatively small but are similar in numbers of customers and in electric load, and require similar management direction. Currently they share some management and professional employees and the proposed transaction is intended to formalize this relationship, insuring that the benefits of shared management and professional employees are continued and to promote managerial and operating efficiency through greater management specialization and consolidation of operating functions. It is also believed that the holding company structure will enable the companies to obtain econonical and reliable power supply because rather than purchasing their entire energy requirements from a single supplier, as is currently the case, their combined load requirements should permit the negotiations of supply contracts with several suppliers, thus reducing the adverse cost and supply risks inherent in depending upon one supplier. In addition, the creation of a new enterprise twice the size of each of the companies individually, with corresponding larger revenues, net income, cash flow, capitalization, and equity, should result in greater financial strength which should improve the companies' ability to market securities upon favorable terms. Finally, the UNITIL system, it is stated, will provide Concord and Exeter with a corporate structure that promotes economies of scale and consolidation without changing the character of the individual companies.

UNITIL is not now a registered holding company, and does not intend to register as such if the acquistion is approved and the Plan consummated. UNITIL believes that it will be entitled to an exemption under Section 3(a)(1) of the Act because it and its public utility subsidiaries will be "predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized." UNITIL intends to claim such exemption by appropriate filing pursuant to Rule 2.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 14, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31133 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23494; 70-7038]

Yankee Atomic Electric Co.; Proposed Issuance and Sale of Short-Term Notes to Banks and/or Commercial Paper to Dealers; Exception From Competitive Bidding

November 21, 1984.

Yankee Atomic Electric Company ("Yankee Atomic"), 1671 Worcester Road, Framingham, Massachusetts, 01701, an electric utility subsidiary of New England electric System and Northeast Utilities, registered holding companies, has filed a proposal with this Commission pursuant to Sections 6, 7, 9 and 10 of the Public Utility Holding Company Act of 1935 and Rules 42(b)(2), 50(a)(2), and 50(a)(5) promulgated thereunder.

Yankee Atomic proposes to issue and sell up to a maximum aggregate outstanding principal amount of $15 million of short-term notes to banks and/or commercial paper to dealers through December 31, 1986. The bank notes are expected to be sold to the Bank of Nova Scotia ("Nova Scotia") and/or the Bank of Nova Scotia International (United Kingdom), Ltd. ("International"). The commercial paper will be sold to Merrill Lynch Money Market Incorporated ("Merrill"), and/or Lehman Commercial Paper Incorporated ("Lehman") and/or First Boston Corporation ("Boston"). The proceeds will be used for Yankee Atomic's 1985–1986 expenditures including approximately $27,000,000 for nuclear fuel and $11,300,000 for plant improvements and to repay note indebtedness.

Voluntary prepayment of bank borrowings, in whole or in part, is not subject to premium or penalty. However, if Yankee Atomic makes voluntary prepayment on advances by International on other than a LIBO Rate rollover date, Yankee Atomic is required to compensate this bank for any loss or expense. Advances made by Nova Scotia shall bear interest at ⅛ of 1% above its base rate per annum. Borrowings from International shall bear interest ¾ of 1% above its 1, 2, 3, 6, or 9-month LIBO Rate as selected from time to time by Yankee Atomic. Yankee Atomic is to pay a monthly standy fee of ⅜ of 1% per annum on the average daily unborrowed portion of the line of credit. Assuming borrowings at the maximum amount of the lines of credit, based on the current base rate of 12.25% and using the 6-month LIBO Rate of 11.25%, the effective interest cost to Yankee Atomic under borrowings with Nova Scotia and International would be 12.75% and 12%, respectively. Assuming borrowings at the maximum amount of the line of credit, using the 9-month LIBO Rate of 11.5%, the effective interest cost to Yankee Atomic under borrowings with International would be 12.25%.

The commercial paper will be in the form of unsecured promissory notes having maturities of up to 270 days. It will not be prepayable prior to maturity. Merrill and/or Boston and/or Lehman will initially reoffer the commercial paper at a discount rate, not more than ⅛ of 1% per annum less than the prevailing discount rate to Yankee Atomic. Commercial paper notes having a maturity of more than 90 days will not be issued if the effective interest cost exceeds that at which Yankee Atomic could borrow from Nova Scotia or International.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31131, Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21509; File No. SR-MCC-84-9 and SR-MSTC-84-8]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Clearing Corp. and Midwest Securities Trust Co.

November 21, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1984, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC") (collectively, "MCC/MSTC") filed with the Securities and Exchange Commission the proposed rule changes as described herein. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

The proposed rule changes would require each broker-dealer applicant for MCC/MSTC membership and each broker-dealer participant [1] to provide to MCC/MSTC a completed questionnaire [2] relating to the applicant's or participant's financial and operational status.[3] Under the proposal, participants would be required to file the questionnaire with MCC/MSTC on an annual basis.

MCC/MSTC believes that the information provided on the questionnaire will enable MCC/MSTC to monitor more effectively its participants' financial and operational status. Specifically, in light of the rapidly changing financial marketplace, MCC/MSTC must be aware of participants' financial activities that are outside of MCC/MSTC, but which could increase potential financial risks to MCC/MSTC and its participant community. For example, a broker-dealer may be substantially involved in risky transactions that are processed outside of MCC/MSTC or could significantly change its business mix without MCC/MSTC's knowledge. In either case, that broker-dealer may experience financial difficulty, but MCC/MSTC might not learn of the difficulty until MCC/MSTC-related activity is adversely affected. MCC/MSTC believes that the proposals would allow it to make more fully informed decisions regarding membership admission and would help MCC/MSTC learn in a more timely manner of changes participants' in business mix and financial activities outside MCC/MSTC that could expose MCC/MSTC and its membership to greater financial risk.

To assist the Commission in determining whether to approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved, comments may be submitted within 21 days after the date of publication in the **Federal Register**. Six copies of comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File Nos. SR-MCC-84-9 and SR-MSTC-84-8.

Copies of all documents relating to the proposals, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and MCC/MSTC's principal offices.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31130 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[1] The proposals apply only to broker-dealer participants. MCC/MSTC plan to develop a similar questionnaire for financial institution participants, *e.g.* banks.

[2] Pursuant to MCC Article VIII, Rule 1, Section 3(vi) and MSTC Article V, Rule 1, Section 3(2), MCC/MSTC may require participants to furnish information relating to their business or transactions. Under these rules, MCC/MSTC currently receives FOCUS reports from broker-dealer participants.

[3] The questionnaire solicits information relating to: (1) "Background Information," *e.g.*, form of organization; date business started; names of officers, counsel and outside accountants; numbers of registered representatives and operational personnel; and banking, service bureau, and clearing arrangements; (2) "Type of Business Conducted," *e.g.*, whether the firm is (a) a stock lender or borrower; (b) a municipal securities broker or dealer; (c) a market maker or underwriter; (d) a commodity futures or commodity options broker; or (e) other designated type of business; (3) Business mix changes, *e.g.*, changing from primarily a government securities to an options business; (4) account structure; (5) market making activities; (6) underwriting activities; (7) "Bonding", *i.e.* its fidelity bond coverage; and (8) "Pending Investigations and/or Litigations," *i.e.*, whether the firm is subject to any pending regulatory action or civil or criminal litigation. The proposed questionnaire is almost identical to National Securities Clearing Corporation's ("NSCC") questionnaire. The Commission approved NSCC's questionnaire in Securities Exchange Act Release No. 21146 (July 16, 1984), 49 FR 29500 (July 20, 1984).

To be considered, comments must be received by December 19, 1984. Six copies of comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSDTC-84-14.

Copies of all documents relating to the proposals, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at the principal office of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31123 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21511; File No. SR-PSDTC-84-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change of Pacific Securities Depository Trust Co.

November 21, 1984

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 25, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the rule change described below. The Commission is publicizing this notice to solicit comments on the rule change.

The proposed rule change would amend PSDTC's fee schedule by authorizing a charge for deposits for safekeeping of bearer securities which are convertible to registered form. The amount of the proposed new fee would be $5.00 per deposit plus $.04 per $1,000 of face value in excess of $50,000. The proposed new fee would recover for PSDTC the processing costs associated with conversion of securities from bearer to registered form.

PSDTC believes that the proposed new fee is consistent with Section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among PSDTC's participants.

The rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the **Federal Register**. That notice is expected to be published during the week of November 19, 1984. Please refer to File No. SR-PSDTC-84-14, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. § 552, is available at the Commission's Public Reference Room and at the principal office of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31125 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21504; File No. SR-PSE-84-21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Pacific Stock Exchange, Inc.

November 20, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 5, 1984, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to amend Rule VII, Section 7, of the Rules of its Board of Governors to provide that a member organization must file with the Exchange answers to financial questionnaires, reports of income and expenses, and any additional financial information prescribed by the Exchange unless that member organization is a member of and has as its designated examining authority another national securities exchange or registered national securities association.

In addition, under the proposed rule change each member organization must file with the Exchange a Report of Financial Condition on SEC Form X-17A-5, as required by Rule 17a-10 under the Act. Any member who fails to do so in a timely manner shall be subject to late filing charges of $100 if late by 1 to 30 days, $200 if late by 31 to 60 days, and $400 if late by 61 to 90 days. Repeated or aggravated failure to file the report for more than 90 days will be referred to the Ethics and Business Conduct Committee for appropriate disciplinary action.

According to the PSE since the problems it has experienced in obtaining FOCUS reports from members have increased over the last several years, the Exchange believes it necessary to provide additional incentives to those few PSE members who fail to make timely filings. The PSE views the proposed rule change as consistent with Section 6(b)(6) of the Act in that it provides for the appropriate discipline of Exchange members for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-84-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspecition and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31132 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21505; SR-Amex-84-22]

Self-Regulatory Organizations; The American Stock Exchange, Inc.; Order Approving Proposed Rule Change

November 20, 1984.

The American Stock Exchange, Inc. ("Amex") 86 Trinity place, New York, New York 10006, submitted on August 13, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Rule 481 ("Advertising, Market Letters, Sales Literature, Research Reports and Writing Activities") and to delete commentary paragraphs 9495 ("Advertising, Market Letters, Sales Literature, Research Reports, Radio, Television and Market Letters") and 9496 ("Outside Writing, Speaking, Teaching Activities") to update and consolidate Exchange requirements and standards governing member organizations' communications with the public.[1] The amendments to Rule 481, and deletions of commentary paragraphs consolidate all Exchange requirements for member organizations' communications with the public into one rule (Rule 472), and, provide for the elimination of certain provisions, including, among other things (1) the replacement of specific definitions of such terms as "advertisements," "market letters," "research reports," and "sales literature," with the general term "communications"; (2) a provision permitting the same supervisory analyst to both prepare and approve research reports, in lieu of the current requirement that, if a supervisory analyst has prepared a report, a member or allied member must also approve such reports; and (3) a provision that, where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization.

In addition, the Amex is also deleting Rule 425 ("Long Sales") which specifies the conditions under which a customer is deemed to be "long" and eligible to effect a long sale of a security.[2] The Exchange has stated in its filing that the Amex rule was adopted in 1968 to specifically address the problem of failures to deliver resulting from customer delays in making prompt deposits of securities sold. With the establishment of securities depositories and automated clearance and settlement procedures as well as the adoption of SEC Rule 15c3-3(m), the Amex believes that a specific Exchange rule addressing this problem is no longer necessary.[3]

The Exchange is also amending Rule 323 to eliminate the requirement that updated copies of the Amex Guide be kept in all member and member organizations' branch offices. In lieu of the current rule, the Exchange has amended Rule 323 to require that each member and member organization keep and maintain only one current copy of the Guide.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21317 September 13, 1984) and by publication in the **Federal Register** (49 FR 36719, September 19, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31138 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange

November 21, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

First Federal Savings and Loan Association of Arizona
Common Stock, $.01 Par Value, File No. 7-8155

Aviall Inc.
Common Stock, $.01 Par Value, File No. 7-8156

Ultimate Corp.
Common Stock, No Par Value, File No. 7-8157

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 13, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

[1] Rule 481(a) will provide that any communication which is generally distributed or made available by a member or member organization to customers or the public shall be approved in advance by a member, allied member, supervisory analyst or person designated under the provisions of Rule 320(c)(1). Rule 481(b) will provide that research reports shall be prepared or approved by a supervisory analyst acceptable to the Exchange under the provisions of Rule 343.

[2] Under the rule, if the customer does not comply with the specified conditions and fails to deliver the stock sold to the selling member organization within a "reasonable" period of time, the firm is required to close the transaction by purchasing securities of like kind and quantity.

[3] The Amex has noted in its filing that the amendments to Rule 481, and commentary paragraphs 9495 and 9496 are based on similar amendments to comparable New York Stock Exchange Rules 472, 474A, 474B, which was approved by the Commission Exchange Act Release No. 50678 (December 15, 1983); 48 FR 43752 (December 26, 1983). The amendments to Rule 425 ("Long Sales") are based on similar amendments to comparable New York Stock Exchange Rule 433 which was approved by the Commission on September 8, 1983. *See* Securities Exchange Act Release No. 20160 (September 8, 1983); 48 FR 41262 (September 14, 1983).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31139 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21506; SR-MSE-84-6]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc., Order Approving Proposed Rule Change

November 20, 1984.

The Midwest Stock Exchange, Inc. ("MSE") 120 South LaSalle Street, Chicago, IL 60603, submitted on August 27, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSE Article VIII, Rule 24 ("Uniform Code of Arbitration") by enabling parties under section 27 of the Rule to amend their pleadings as of right after having filed and before an arbitration panel is appointed, and, following appointment of a panel, to file new or different pleadings with the panel's consent.[1] In addition, the MSE proposes to encourage the filing of more specific answers under section 13 by (1) requiring the respondent to plead the relevant facts underlying his defenses, and (2) expressly granting arbitrators discretion to bar presentation of defenses and facts not pleaded, upon objection by an adversary party. Further, the MSE proposes to amend section 10 to allow unlimited challenges for cause to arbitration panel appointees, while extending parties' rights of peremptory challenges to proposed appointees to all hearings. In addition, the MSE proposes to amend section 4 to specify that applicable time limitations will not apply to a dispute referred to a court of competent jurisdiction, and to provide that such time limitations will be tolled by the claimant (rather than all parties) filing a duly executed Submission Agreement.

The MSE also proposes to increase from $2,500 to $5,000 the maximum amount in dispute which would qualify for simplified arbitration procedures under section 2 of Rule 24. In addition, the Exchange proposes to modify two of its section 31 fee schedules by increasing both the deposit required upon filing a claim and the forum fee, allocated on a par session basis, both of which are on a sliding scale depending on the amount in controversy. In addition, under this section, arbitrators would be permitted to assess forum fees and costs for matters settled or withdrawn prior to the commencement of the first session.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21303, September 10, 1984) and by publication in the **Federal Register** (49 FR 36585, September 18, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act and the rules and the regulations thereunder.

It is therefore, ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31137 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange

November 21, 1984

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Humana, Inc.
Common Stock, $1.6 ⅔ Par Value, File No. 7-8148

Interfirst Corp.
Common Stock, $5.00 Par Value, File No. 7-8149

Kaneb Services, Inc.
Common Stock, No Par Value, File No. 7-8150

Pulte Home Corp.
Common Stock, $1.00 Par Value, File No. 7-8151

Paradyne Corp.
Common Stock, $.10 Par Value, File No. 7-8152

Great Atlantic & Pacific Tea Co.
Common Stock, $1.00 Par Value, File No. 7-8153

Freeport MacMoran
Common Stock, $1.00 Par Value, File No. 7-8154

This security is listed and registerd on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 13, 1984, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportuntiy for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary

[FR Doc. 84-31128 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21513; SR-Phlx-84-19]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

November 21, 1984.

The Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA, 19103, submitted on September 27, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to trade options on the Value Line Average Stock Index ("VLA").

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21362, October 10, 1984) and by publication in the **Federal Register** (49 FR 40987, October 18, 1984). No comments were received with respect to the proposed rule change.

The VLA is an unweighted index composed of 1,693 stocks. Approximately 87% of the stocks in the index are listed on the New York Stock Exchange, Inc. of the American Stock

[1] On October 30, 1984, the MSE submitted Amendment No. 1 which indicated that the proposed rule change was approved by the MSE Executive Committee of the Board of Governors on October 25, 1984.

Exchange, Inc.; one of the stocks in the index is listed on the Phlx; approximately 13% of the stocks in the index are over-the-counter, national market system securities; and three of the stocks in the index are listed on the Toronto Stock Exchange.[1] The VLA is based on the geometric average of relative price changes of the stocks in the index. The value of the VLA is determined by dividing the current price of each of the issues comprising the index by the price of the issue at the time of the preceding value computation, and then multiplying that figure by the VLA "base value" of 100.[2] The resulting "indexed" price changes are geometrically averaged for all issues in the index.[3] The geometric average of changes in indexed prices is then multiplied by the value of the index at the preceding computation to arrive at the latest value.[4]

The Phlx proposed to apply its existing broad-based (or "market") index options rules to trading in options on the VLA. Phlx also intends to update index values every minute during the trading day,[5] and to disseminate index values by means of the Consolidated Last Sale Reporting System and the facilities of the Options Price Reporting Authority. In addition, daily closing index values will be published in the *Wall Street Journal* and other financial publications.

Because the VLA represents the geometric average of percentage changes in the prices of the stocks in the index, rather than the arithmatic average of either the prices of the stocks themselves or of the market value of these stocks, no one stock or group of stocks will exert a dominating influence on the total index value by virtue simply of price per share or total capitalization. Rather, the stocks that will have the greatest influence on the overall index value will be those that exhibit the greatest percentage change over the periods for which the index value is calculated. Because the index contains so many issues, it is unlikely that any one stock or small group to stocks will exhibit such great percentage changes in price over the periods of index calculation as to dominate the total index value. In addition, the index contains stocks representing a diversity of business sectors.[6] For these reasons, the Commission finds that the Phlx's proposed designation of the index as broad-based is appropriate.[7]

The Commission also finds that the composition and calculation of the VLA raise no regulatory issues that the Commission has not discussed and addressed in its previous orders approving broad-based index options. The VLA differs from the indices on which the Commission previously has approved options trading chiefly in that the VLA uses geometric rather than arithmatic averaging. Geometric averaging is simply a different mathematical method of averaging the relative price changes of the stocks in the index, and is employed in an attempt to obtain a different picture of the increases and decreases in these price changes than is obtained by use of an arithmatic average.[8] The use of geometric averaging does not by itself raises regulatory or surveillance issues.

The Commission notes that while it previously has not approved a broad-based index option for the Phlx, it has approved the Phlx rules that will govern trading in broad-based index options.[9] As a broad-based index option, the VLA will be subject to these approved rules, which are in all material respects identical to the rules that govern the trading of broad-based index options on other exchanges. In addition, the Commission finds that the Phlx has submitted to the Commission an adequate plan for the surveillance of options on the VLA.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31136 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

---

[1] The presence of unlisted stocks in this index does not offend section 12(a) of the Act. These stocks constitute only 13% of the total number of the stocks in the index, and no one or small group of these stocks exerts a significant influence on the overall index value. *See* Securities Exchange Act Release No. 20423, November 20, 1983; 49 FR 55869.

[2] This "base value" is the value of the index as of an arbitrarily picked date (June 30, 1961), and its mathematical function as described above is literally to "index" the daily percentage change in prices of the stocks in the index in order to facilitate comparisons of the value of the index through time.

[3] A geometric average is defined as the nth root of the product of "n" items. In the case of the Value Line Average Stock Index, the geometric average is the 1683rd root of the product of the 1683 indexed price changes of the stocks in the index.

[4] The Phlx has obtained the rights to use the VLA for purposes of options trading from Value Line and the Kansas City Board of Trade ("KCBT"). The KCBT is the designated contract market for futures on the VLA.

[5] The actual computation of index values will be performed by an independent entity engaged by the Phlx for this purpose.

[6] The Phlx states that 1,502 of the stocks in the index are industrial, 177 utilities, and 14 are rail stocks.

[7] For a more detailed discussion of the differences between broad and narrow-based indices, *see* Securities Exchange Act Release No. 21032, June 8, 1984, 49 FR 24964.

[8] An index based on geometric averaging will increase more slowly and decrease more rapidly than an index based on the arithmatic mean. *See* J. Lorie and M. Hamilton, *The Stock Market: Theory and Evidence*, p. 58 (1973).

[9] Securities Exchange Act Release No. 20437, December 2, 1983, 48 FR 55229.

[Release No. 21512; SR-Phlx-84-21]

Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change

November 21, 1984.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA, 19103, submitted on September 31, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to permit the listing of series of foreign currency options that expire in twelve months. Phlx currently employs quarterly expiration cycles for foreign currency options, meaning that series of foreign currency options expire in three month intervals. Because the maximum number of expiration months allowed at any one time is three, the maximum time to expiration of a foreign currency option series is nine months. Under the proposed rule change, the Phlx would retain quarterly expiration cycles for foreign currency options, but would increase from three to four the number of expiration months allowed to exist at any one time. The new fourth expiration month, being a part of the existing quarterly expiration cycle, would be twelve months away from expiration at the time of listing.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21391, October 10, 1984) and by publication in the **Federal Register** (49 FR 40986, October 10, 1984). No comments were received with respect to the proposed rule filing.

In its filing, Phlx states that the lack of foreign currency options with twelve months to expiration places the Phlx at a competitive disadvantage to both the foreign currency forward contract markets and the over-the-counter ("OTC") foreign currency options markets. The Phlx states that those seeking to hedge foreign currency positions desire a twelve month contract, and that its inability to offer a twelve month foreign currency options contract has acted and will continue to act as a disincentive to use of Phlx's foreign currency options by multinational corporations.

As a general matter, the Commission believes that the determination of expiration cycles and the number of expiration months for an option contract is a matter properly left to the business judgment of the exchange trading the contract. As the Commission previously has noted, however, proposals to introduce additional expiration months may raise regulatory concerns, principally the increased market fragmentation and decreased liquidity that might result from increasing the number of series outstanding due to the addition of the new expiration month(s).[1] Accordingly, a balance must be sought between ensuring that market participants are provided an array of expiration months and ensuring that the number of expiration months does not cause an excessive dispersion of interest and, as a consequence, excessive dilution of liquidity in open options series.[2]

The Phlx proposal, because it limits the total number of expiration months to four, will not result in a substantially increased potential for proliferation of foreign currency option series. Furthermore, the Phlx represents that demand exists for foreign currency options with twleve months to expiration, and that consequently trading in the new twelve month series should be active. Phlx has also represented that much of the trading in the new twelve month series should come from firms that are now using the foreign currency forward market or the OTC foreign currency options markets. Thus, the addition of this new expiration month, rather than reducing volume and liquidity in the existing three expiration months by drawing that volume away to the new twelve months series, may instead result in attracting trading interest that does not now exist at the Phlx.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above/mentioned proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31123 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

---

[1] *See* Securities Exchange Act Release No. 20201 (September 20, 1983), 48 FR 43747 (approving an Amex proposal to have four consecutive expiration months for broad-based index options rather than three expiration months with three-month intervals).

[2] *See* Securities Exchange Act Release No. 17236 (October 22, 1980), 45 FR 71453.

[Release No. 21515; SR-Phlx-84-20]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

November 21, 1984.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA, 19103, submitted on September 21, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, concerning cabinet trading that would permit specialists, market makers and customers to enter opening orders, at a limit price of one dollar per contract, against closing cabinet bids or offers in cases where there is no matching closing cabinet bid or offer.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21390, October 10, 1984) and by publication in the **Federal Register** (49 FR 40752, October 17, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31139 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0332]

Advent Industrial Capital Co.; Limited Partnership; Issuance of a Small Business Investment Company License

On August 21, 1984, a notice was published in the **Federal Register** (49 FR 33191) stating that an application has been filed by Advent Industrial Capital Company Limited Partnership, 45 Milk Street, Boston, Massachusetts 02109 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1984)) for a license as a small business investment company.

Interested parties were given until close of business September 20, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0332 on November 9, 1984, to Advent Industrial Capital Company Limited Partnership to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 20, 1984.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 84-31193 Filed 11-27-84; 8:45 am]
BILLING CODE 8025-01-M

[License No. 05/05-5198]

The Wisconsin MESBIC, Inc.; Issuance of a Small Business Investment Company License

On August 20, 1984, a notice was published in the **Federal Register** (49 FR 33075) stating that an application has been filed by The Wisconsin MESBIC, Inc., 622 Water Street, Suite 500, Milwaukee, Wisconsin, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing

small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business September 20, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-5198 on November 9, 1984, to The Wisconsin MESBIC, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 20, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31196 Filed 11-27-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-084]

Changes to Inland Navigation Rules

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: On October 30, 1984 the President signed Pub. L. 98-557 which promulgated certain changes to Rule 14 and Rule 24(i) of the Inland Navigation Rules Act of 1980 (33 U.S.C. 2001 et seq.) The Coast Guard publishes the full text of the International and Inland Rules in "Navigation Rules, International-Inland" (COMDTINST M16672.2A) which will be revised at the next scheduled publication. To facilitate ready access to the revised rules in the interim, this notice sets forth the modified text of Rule 14 and Rule 24(i). Affected parties are urged to note the changes and update personal copies of the Navigation Rules booklet.

EFFECTIVE DATE: October 30, 1984.

FOR FURTHER INFORMATION CONTACT: LCDR Charles Bell, Office of Navigation, U.S. Coast Guard, (G-NSR-3) 2100 Second Street, SW, Washington DC, 20593. Telephone (202) 245-0108.

SUPPLEMENTARY INFORMATION: 1. Rule 14 (33 U.S.C. 2014) of the Inland Navigation Rules Act of 1980 (33 U.S.C. 2001 et seq.) has been revised to read as follows:

Section 2014. Head-on situation (Rule 14).

(a) Course alterations to starboard; port side passage.

Unless otherwise agreed, when two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.

(b) Existence of head-on situation.

Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line or both sidelights and by day she observes the corresponding aspect of the other vessel.

(c) Assumption that head-on situation exists in case of doubt.

When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.

(d) Notwithstanding paragraph (a) of this rule, a power-driven vessel operating on the Great Lakes, Western Rivers, or waters specified by the Secretary, and proceeding downbound with a following current shall have the right-of-way over an upbound vessel, shall propose the manner of passage, and shall initiate the maneuvering signals prescribed by Rule 34(a)(i), as appropriate.

2. Rule 24(i) [33 U.S.C. 2024(i)] of the Inland Navigation Rules Act of 1980 has been revised to read as follows:

(i) Western Rivers or other specified waters.

Notwithstanding paragraph (c), on the Western Rivers (except below the Huey P. Long Bridge on the Mississippi River) and on waters specified by the Secretary, a power-driven vessel when pushing ahead or towing alongside, except as paragraph (b) applies, shall exhibit:

(i) sidelights; and

(ii) two towing lights in a vertical line.

Dated: November 20, 1984.

H.H. Kothe,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 84-31004 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Flight Standards Field Unit at Wilmington, DE; Closing

Notice is hereby given that on or about January 7, 1985, the Flight Standards Field Unit at Wilmington, Delaware, will be closed. Services to the general aviation public of Delaware, formerly provided by this office, will be provided by the Flight Standards District Office in Philadelphia, Pennsylvania. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in New York, NY, on November 14, 1984.

Joseph M. Del Balzo,

Director, Eastern Region.

[FR Doc. 84-31098 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

Flight Standards Field Unit at North Philadelphia, PA; Closing

Notice is hereby given that on or about January 7, 1985, the Flight Standards Field Unit at North Philadelphia, Pennsylvania, will be closed. Services to the general aviation public of North Philadelphia, formerly provided by this office, will be provided by the Flight Standards District Office in Philadelphia, Pennsylvania. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in New York, NY on November 14, 1984.

Joseph M. Del Balzo,

Director, Eastern Region.

[FR Doc. 84-31097 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-84-23]

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions perviously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: December 18, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Indepdendence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 20, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
21960	Florida Aircraft Leasing Corp.	14 CFR 91.31(a)	Extension of Exemption 3458A to allow petitioner to continue to operate certain DC-6 aircraft at a 5 percent increased zero fuel and landing weight in all-cargo operations under Part 125 of the FAR. To amend certain aircraft serial number listed in the Exemption.
24098	Alaska Helicopters	14 CFR 135.225(d) 121.652(a)	To amend Exemption 4109 which allows petitioner to operate BV-234 helicopters, with a passenger seating configuration of more than 30 seats and a payload capacity of more than 7,500 pounds, under Part 135, subject to certain conditions and limitations. It would allow petitioner to comply with § 135.225(d) instead of § 121.652(a).
24274	Republic Airlines	14 CFR 121.579(a)	To allow petitioner to engage the autopilot after takeoff on the MD-80 aircraft at an altitude lower than 500 feet. This would be consistent with the approved Airplane Flight Manual supplement which allows autopilot engagement at 200 feet.
24183	Helicopter Association International	14 CFR 135.167(a), (2)(xvi)	To allow petitioner to operate extended overwater flights carrying a 2-day supply of food rations supplying at least 500 calories for each four persons instead of 1,000 calories per day for each person.
21145	Air Transport Assoc.	14 CFR 121.424	To allow petitioner's members to eliminate the requirement that at least one takeoff and one landing during training must be accomplished at night by pilots undergoing upgrading training from second in command (SIC) to pilot in command in the same airplane type and by SIC's who are transitioning to other airplane types as SIC's.
24285	Southern Natural Gas	14 CFR 21.181	To allow petitioner to operate Falcon 20C aircraft utilizing the provisions of a minimum equipment list.
24308	Skystar International Inc.	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane in noncompliance with the operating noise limits until "hush kits" are installed.
24282	Commonwealth of Pennsylvania	14 CFR 21.181	To allow petitioner to operate PA Piper Navajo and King Air 1300 aircraft utilizing the provisions of minimum equipment lists.
24283	American Flyers	14 CFR 141.65	To allow petitioner to develop and administer certain written tests for airmen certification.
24284	American Airlines	14 CFR 121.411(a)(6)	To allow petitioner to use previously qualified check airmen who do not presently hold Class III medical certificates in flight simulator training programs.
24144	Air Atlanta	14 CFR 63.37	To allow petitioner to substitute training in a simulator for the required 5 hours of flight training in the duties of a flight engineer.
24279	Ketchikan Air Service	14 CFR 135.203(a)(1)	To allow the following operators to conduct overwater flights below 500 feet above the surface: Alaska Island Air, Inc.; Ketchikan Air Service, Inc.; Revilla Flying Service, Inc.; Temsco Helicopters, Inc.; Westflight Aviation, Inc.; Tyee Airlines; Tequan Air, Inc.; Totem Air.
24294	Regent Air Corp.	14 CFR 121.163 & 121.291	To allow petitioner to begin service without conducting the required 50 hours of proving runs and full emergency evacuation demonstration.
24295	Hawaiian Airlines	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8 airplane in noncompliance with the operating notice limits until it is hush-kitted.
24305	Stewart International Airport	14 CFR 91.303	To permit the continued operation of Stage 1 aircraft at Stewart International Airport.
24327	Sobelair	14 CFR 91.303	To allow petitioner to operate one round trip charter flight to various U.S. airports with a Boeing 707 that does not comply with the operating noise limits.
24333	Zas Airline of Egypt	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane to Stewart International Airport in New York in noncompliance with the operating noise limits until hush kits are installed.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought and disposition
21100	Minerve Company	14 CFR 61.77(d)(1), (vi)	To permit an employee of petitioner, age 62, to obtain a special purpose pilot certificate (SPPC). *Denied 10/30/84.*
21099	Heli-Trade Corp.	14 CFR 47.9(b)	Reconsideration of a Denial of Exemption to permit petitioner to report flight hours annually instead of every 6 months for the purpose of determining whether its aircraft are based and primarily used in the United States. *Denied 10/26/84.*
24161	Joseph D. Zweck	14 CFR 65.91(c)(1)	To allow petitioner to apply for an Inspection Authorization without having held a Mechanic's Certificate with both Airframe and Powerplant ratings for the 3-year period immediately before the application date. *Denied 11/7/84.*
24212	David M. Hendrick	14 CFR 65.91(c)(1)	To allow petitioner to apply for an Inspection Authorization even though his mechanic certificate has not been continuously in effect for 3 years. *Denied 11/7/84.*
24129	Larry Leverett Lupton	14 CFR 65.91(c)(1)	To allow petitioner to apply for an Inspection Authorization without having held a Mechanic's Certificate with Airframe and Powerplant ratings for 3 uninterrupted years immediately before application. *Denied 11/7/84*
24083	Arnautical, Inc.	14 CFR 63.37(a)	To allow flight engineer students who have completed the approved flight engineer course to substitute the 10 hours of flight training received in an airplane simulator for the 5 hours of flight time required in an airplane. *Denied 11/5/84.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought and disposition
24119	Northern Air Cargo, Inc.	14 CFR 91.39(b) & 121.157	To reconsider denial of Exemption 770N issued to petitioner on December 27, 1983. The exemption denied petitioner an amendment to an extension of Exemption 770M which granted relief until it terminated on December 31, 1983. *Partial grant 10/18/84.*
24172	Air Panama	14 CFR 21.181	To amend Exemption 4125 to add one DC–10–40 aircraft and reflect the revised registration number of the aircraft now covered under the exemption. The exemption permits petitioner to operate using a minimum equipment list. *Granted 10/30/84.*
23008	Kellogg Co.	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate Falcon 20 and Falcon 50 aircraft utilizing the provisions of minimum equipment list. The exemption permits petitioner to operate using a minimum equipment list. *Granted 11/5/84.*
24195	Mid Pacific Airlines	14 CFR 121.371(a) 121.378	The exemption would permit petitioner to contract with Air New Zealand for the inspection, repair, and overhaul of Rolls Royce Dart 542–10 engines. *Granted 10/31/84.*
19475	FlightSafety Int'l	14 CFR 61.157(e)(1) Appendix H of Part 121	To permit the inflight requirements of Appendix A of Part 61 of the FAR to be accomplished in an approved simulator; and to the extent necessary to permit petitioner to use instructors or check airmen who have not been employed by petitioner for at least 1 year in the capacity of an instructor, check airmen, pilot in command, or second in command of an airplane of the same group in which they are instructing or checking without its instructors or check airmen participating in an approved line flying program or approved line observation program. *Granted 10/31/84.*
21208	Steelcase, Inc.	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate Falcon 20 and Cessna Citation III aircraft utilizing the provisions of minimum equipment lists. *Granted 11/5/84.*
24290	Air Ontario, Ltd.	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate leased CV–580 aircraft utilizing the provisions of a minimum equipment list. *Granted 11/8/84.*
23925	Gulfstream Aerospace Corp.	14 CFR 23.49(b)(1)	To permit type certification of the Gulfstream Aerospace Model 1500 airplane, with a stall speed, V_{so}, in excess of 61 knots, but not exceeding 75 knots. The Model 1500 is a single-engine, pressurized, turbofanpowered airplane to be certificated to Part 23 of the FAR. *Granted 11/9/84.*
23716	World Balloon Corp.	14 CFR 47.15(b)	To allow petitioner to obtain special registration marks for its new balloon. *Denied 10/31/84.*
23980	Fritz Air Systems Transport, Inc.	14 CFR 121.3(e)	To allow petitioner to operate as an air carrier conducting all-cargo operations under the supplemental air carrier rules of Part 121 of the FAR without holding an air carrier operating certificate issued in accordance with Special Federal Aviation Regulation (SFAR) 38. *Denied 11/13/84.*

[FR Doc. 84–31030 Filed 11–27–84; 8:45 am]
BILLING CODE 4910–13–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal Acquisition Regulation (FAR) "Rule of Two"; Requirements for Setting Aside Acquisitions for Small Business

AGENCY: Office of Management and Budget.

ACTION: Extension of comment period.

SUMMARY: The purpose of this notice is to extend the comment period on the "rule of two" in Part 19 of the Federal Acquisition Regulation (FAR).

DATE: Comments are due on or before December 31, 1984.

FOR FURTHER INFORMATION CONTACT: William Maraist, Office of Federal Procurement Policy, OMB (202–395–3300).

SUPPLEMENTARY INFORMATION: On October 12, 1984, the Office of Federal Procurement Policy published a notice for comment in the **Federal Register** (49 FR 40135) on the issue of the most appropriate standard for determining competitiveness in making a small business set-aside determination (e.g. rule of two, sufficient number, or other standard). The comment period is extended from November 30 to December 31, 1984.

Comments

Comments should be forwarded to William Maraist, Office of Federal Procurement Policy, OMB, 726 Jackson Place, Washington, DC 20503 on or before December 31, 1984. Mr. Maraist may be contacted by phone on 202–395–3300.

Dated: November 27, 1984.

Donald E. Sowle,

Administrator.

[FR Doc. 84–31361 Filed 11–27–84; 11:34 am]
BILLING CODE 3110–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 230
Wednesday, November 28, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Deposit Insurance Corporation	1, 2
Federal Home Loan Bank Board	3
Federal Home Mortgage Corporation	4
International Trade Commission	5
Legal Services Corporation	6

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:30 a.m. on Monday, December 3, 1984, to considér the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities and establish one branch:

Citizens State Bank, Virginia, Nebraska, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in The Lewiston Co-operative Credit Association, Lewiston, Nebraska, and to establish the sole office of The Lewiston Co-operative Credit Association as a branch of Citizens State Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as a receiver, liquidator, or liquidating agent of those assets.

Case No. 46,144–SR, Mineral Bank of Nevada, Las Vegas, Nevada.

Case No. 46,147–NR, Union National Bank of Chicago, Chicago, Illinois.

Memorandum and Resolution re: Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 — 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: November 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–31311 Filed 11–26–84; 3:52 pm]
BILLING CODE 6714–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Monday, December 3, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6),(c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(g)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employes authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: November 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–31312 Filed 11–26–84; 3:52 pm]
BILLING CODE 6714–01–M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 49, No. 223, Page No. 45522, Date published—November 23, 1984.

PLACE: In the board room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

CHANGES IN THE MEETING: The following item has been withdraw from the open portion of the bank board meeting scheduled Friday, November 30, 1984, at 2:00 p.m.

Limitations on Direct Investment by Insured Institutions

No. 103, November 26, 1984.

J.J. Finn,

Secretary.

[FR Doc. 84-31239 Filed 11-26-84; 10:52 am]

BILLING CODE 6720-01-M

4

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: November 30, 1984, 10:00 a.m.

PLACE: 1776 G Street, NW., Washington, D.C., Conference Room C, Eighth floor.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, D.C. 20013 (202) 789-4763.

MATTERS TO BE CONSIDERED:

Closed: Minutes of October 26, 1984, Board of Directors' Meeting.
Closed: President's Report.
Closed: 1985 Plan and Budget.
Closed: Financial Report.

Date sent to **Federal Register:** November 26, 1984.

Maud Mater,

Secretary.

[FR Doc. 84-31230 Filed 11-26-84; 3:49 pm]

BILLING CODE 6720-01-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-56]

TIME AND DATE: 10:00 a.m., Thursday, December 6, 1984.

PLACE: Room 117, 701 E Street, NW., Washington D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Certain fifty position "D" pin electrical connectors (Docket No. 1117).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31215 Filed 11-23-84; 4:31 pm]

BILLING CODE 7020-02-M

6

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS MEETING

TIME AND DATE: It will commence at 1:30 p.m. and continue until all official business is completed; Wednesday, December 5, 1984.

PLACE: Hotel Washington (Washington Room), 515 15th Street, NW., Washington, D.C.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, criminal, litigation, and investigatory matters under 45 CFR 1622.5 (a), (d), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda
2. Introduction of Board Members
3. Approval of Closing a Portion of Meeting
4. Approval of Minutes—October 1, 1984
5. Selection of Chairman and Vice-Chairman of the Board
6. Consideration of Board Committees' Membership
7. Report by Corporation President
8. Report by Office of Comptroller
   —FY 1984 Audit Report
   —Allocation of FY 1984 Carry Over
   —FY 1986 Budget Mark
9. Report by Office of Field Services
10. Report by Office of Information Management

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272-4040.

Donald P. Bogard,

President.

[FR Doc. 84-31307 Filed 11-26-84; 3:28 pm]

BILLING CODE 6820-35-M

federal register

Wednesday
November 28, 1984

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards; Normal, Utility and Acrobatic Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 23826; Amdt. 23-31]

Airworthiness Standards; Normal, Utility and Acrobatic Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the airworthiness standards for single-engine, turbopropeller-powered airplanes to include whirl mode instability analysis and test as one of the dynamic evaluations associated with freedom from flutter, control reversal, and divergence. Single-engine, turbopropeller-powered airplanes are now being manufactured, and such dynamic evaluations are necessary in the interest of safety. This amendment establishes a level of safety for powerplant installations in single-engine, turbopropeller-powered airplanes consistent with that established for multiengine, turbopropeller-powered airplanes.

EFFECTIVE DATE: December 28, 1984.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

Propeller whirl flutter is an aeroelastic instability that can occur in an airplane with a flexible engine installation.

Turbopropeller installations are becoming increasingly common on single-engine airplanes, and a turbopropeller, wherever installed on an airplane, can exhibit unstable oscillatory motion resulting from combined aerodynamic, inertial, and gyroscopic modes. Special conditions have been issued to cover these requirements for single-engine airplanes with turbopropeller engines. This amendment adopts the dynamic stability evaluation now required for multiengine small airplanes to include single-engine, turbopropeller-powered airplanes.

Because of their unique characteristics, turbopropeller engine installations require special consideration. If damping and aerodynamic forces are not considered, and the structure allows angular deflections, the spinning propeller could behave like a gyroscopic pendulum. For example, if the system were released from an initial pitch deflection, the resulting angular velocity as the system springs back would induce a gyroscopic moment about the yaw axis. This moment would, in turn, cause the system to yaw, including a pitching moment, and so on. Significantly, in a flexible system, gyroscopic action of the rotating propeller couples with natural pitch and yaw modes causing a precession motion about the axis of the undisturbed system. This gyroscopic action by itself cannot lead to a divergent type whirl mode instability because the net energy input to the system is zero. However, when the resultant air stream is misaligned from the propeller rotation axis due to an angular displacement or a transverse liner velocity of the propeller axis, certain forces and moments are generated. For example, if the axis is deflected in pitch, a vertical lift force together with a yawing moment is developed by the propeller, which, for small deflections, is proportional to the pitch angle.

On a typical conversion from reciprocating to turbopropeller propulsion in a single-engine airplane, the lighter weight powerplant is usually moved forward to maintain the center of gravity between established limits. While the new longer engine mount could meet requirements for engine support, thrust, and torque loads, it could be more flexible than the structure it replaced, to the point where propeller whirl flutter could occur.

In like manner, the fuselage of a new single-engine, tractor, turbopropeller airplane could be slimmed in profile to accommodate a smaller frontal area engine, lightened in structure to support less engine weight, and made rigid enough to absorb engine thrust and torque loads. At the same time, the fuselage could be too flexible to prevent propeller whirl mode flutter.

Another area in which flutter evaluation is of concern to the FAA is the empennage of single-engine, pusher, turbopropeller-powered airplanes. Several new airplanes of this type are now under development, and in this configuration, empennage motion may be influenced by loads from the propeller as significantly as wing motion is influenced in multiengine, turbopropeller airplanes.

The wording of § 23.629(e)(2) of the FAR, "Engine-propeller nacelle stiffness" placed undue emphasis on engine mount and propeller hub flexibility with regard to the whirl mode analysis. In actuality, the airplane normal modes include airplane flexibility as well as flexibilities associated with the powerplant installation. Also, the word "nacelle" in § 23.629(e)(2) implied stiffness in an engine enclosure whose main purpose is reducing drag. Accordingly, amended § 23.629(e)(2) resolves this ambiguity by referring to propeller, engine, engine mount and airplane structure stiffness for the required dynamic evaluation.

Section 23.629(e) limited whirl mode requirements to multiengine, turbopropeller-powered airplanes. Accordingly, amended § 23.629(e) includes all turbopropeller-powered airplanes.

Discussion of Comments

The FAA received three public comments in response to Notice No. 84-2 (49 FR 10622; March 21, 1984), and all concurred with the proposal.

Economic Evaluation

In compliance with Executive Order 12291 (46 FR 13193, February 19, 1981), the FAA has determined that this amendment will not be a major rule having an annual effect on the economy of $100 million or more. The last applicant who complied with the whirl mode Special Conditions reported that the cost was less than 10,000 dollars. This is a one time cost for an engine installation approval. The amendment will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This final rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In addition to the reasons discussed earlier, the regulatory impact of showing compliance with this requirement is minimal in that the whirl mode evaluation only has to be conducted once for a specific airplane model, and the expected cost is less than that considered significant on an annual basis. In addition, the amendment is not expected to have subsequent secondary or incidental effects on a substantial number of small entities. Since this amendment will not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis has not been prepared.

Conclusion

The FAA has determined that this amendment is not a major rule under the provisions of Executive Order 12291, and is not significant under the provisions of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed earlier, the FAA certifies that the amendment will not have a significant economic impact on a substantial number of small entities under provisions of the Regulatory Flexibility Act. In addition, this amendment will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States. The draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Air transportation, Safety, Tires.

Adoption of the Amendment

Accordingly, Part 23 of the Federal Aviation Regulations (14 CFR Part 23) is amended, as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

1. By amending § 23.629 by revising the introductory text of paragraph (e) and the text of paragraph (e)(2) to read as follows:

§ 23.629 Flutter.

* * * * *

(e) For turbopropeller-powered airplanes, the dynamic evaluation must include—

(1) * * *

(2) Propeller, engine, engine mount, and airplane structure stiffness and damping variations appropriate to the particular configuration.

* * * * *

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); and 49 U.S.C. 106(g) (Revised Public L. 97-449, January 12, 1983))

Issued in Washington, D.C., on November 2, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 84-31087 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

Reader Aids

Federal Register

Vol. 49, No. 230

Wednesday, November 28, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072.....1
44073–44192.....2
44193–44272.....5
44273–44442.....6
44443–44620.....7
44621–44740.....8
44741–44888.....9
44889–44984.....13
44985–45106.....14
45107–45408.....15
45409–45570.....16
45571–45732.....19
45733–45842.....20
45843–46096.....21
46097–46332.....23
46333–46526.....26
46527–46698.....27
46699–46868.....28

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
November 16, 1984..... 45733

Notice:
November 7, 1984..... 44741

Proclamations:
5270..... 44073
5271..... 44075
5272..... 44077
5273..... 44079
5274..... 44081
5275..... 44193
5276..... 44195
5277..... 44197
5278..... 45107
5279..... 45409
5280..... 45411
5281..... 45413
5282..... 46699
5283..... 46701

5 CFR

Ch. XIV, App. A..... 45843

Proposed Rules:
213..... 45588
831..... 45588
930..... 45444
1255..... 45751
2429..... 44902

7 CFR

2..... 44743
46..... 45735
210..... 45109
220..... 45109
225..... 45109
226..... 45109
301..... 44083
353..... 46333
356..... 46335
407..... 46337
408..... 46703
418..... 46337
419..... 46341
422..... 46346
429..... 44443
441..... 44985
600..... 44743
729..... 44889
810..... 46347
907..... 44199, 44757, 45415
910..... 44084, 44744, 44890, 45109, 45415, 46527
911..... 46703
915..... 44447
926..... 44199
932..... 44447
944..... 44447
982..... 44745
984..... 44745
985..... 46704
989..... 44745
1004..... 44986
1139..... 43943
1421..... 46705
1446..... 45109
1910..... 45416
1980..... 46097

Proposed Rules:
27..... 44902
52..... 43970
53..... 44724
54..... 44724, 44758
400..... 45444
408..... 46393
420..... 44480
421..... 44476
422..... 46395
424..... 44485
425..... 44490
431..... 46400
432..... 44495
436..... 46405
437..... 46149
438..... 46409
725..... 44103
800..... 45751, 46414
910..... 44299
971..... 45592
982..... 44500
984..... 44299
1007..... 44760
1464..... 44103
1772..... 45752–45754

8 CFR

238..... 44745, 46347
292..... 44084

9 CFR

50..... 44273
78..... 44987, 45110
81..... 44087, 45111, 45741
92..... 44088
97..... 45843
113..... 45845
114..... 45845
204..... 46527
318..... 46530
319..... 46530
354..... 44091

Proposed Rules:
92..... 44501
381..... 44640

10 CFR

50..... 45112, 45114, 45571
430..... 46533
1046..... 46097

Proposed Rules:
40..... 46418, 46425
50..... 44645, 46426
55..... 46426

71 44502
210 45445
605 44590

11 CFR

6 44091

12 CFR

Ch. VII 46536
204 44448
207 43946
220 43946
221 43946
224 43946
303 44746
308 44746
337 46709
523 46725
528 46725
545 45846
563 ..... 45115, 45846
701 ..... 44993, 46105, 46540, 46541
795 44993

Proposed Rules:

5 45007
8 ..... 45102, 45592
701 46552

13 CFR

105 45742
120 44091

Proposed Rules:

107 ..... 44062, 46553

14 CFR

1 44422
23 45866
27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417, 45743–45746, 46105
43 ..... 44602, 45418
71 ..... 44450, 45418, 45747, 46726, 46727
73 ..... 44096, 44451, 45418
91 44422
97 ..... 44990, 46106
255 ..... 44451, 46347

Proposed Rules:

Ch. I 44766
Ch. II 46006
1 46670
27 46670
29 46670
33 46670
39 ..... 45011, 45755
71 ..... 44104, 44650, 45011, 45166–45171, 45756, 45757, 46153–46155, 46746–46748
73 ..... 45011, 45168, 45169
75 45171
91 46749

15 CFR

7 44622

Proposed Rules:

8c 45861
303 44651
320 ..... 44903, 45757

16 CFR

13 45115–45117
305 44200
455 45692
1212 46108
1700 44455

Proposed Rules:

3 46554
4 46554
300 44913
303 44913
451 46156

17 CFR

1 45418
3 45418
15 46116
17 46116
33 44891
140 45418
145 45418
200 ..... 43950, 45847
240 45117

Proposed Rules:

1 44105
140 45015
144 45015
230 46750
239 45172
240 ..... 46156, 46556
270 46558
274 45172

18 CFR

3 44273
11 46542
35 46727
37 46351
154 46353
157 44275
271 ..... 44201, 44993
274 44275
284 44275
301 46727
341 44628
356 44628
360 44628
361 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273

Proposed Rules:

271 ..... 44217, 45174, 45175
430 44105

19 CFR

4 ..... 44867, 46118
6 44867
7 44867
10 ..... 44867, 46363
11 44867
12 44867
18 44867
19 44867
24 ..... 44867, 46118
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
162 44867
172 44867
174 44867
191 44867
210 46123

Proposed Rules:

113 46161
141 46161
172 46161
175 ..... 46162, 46163
353 45593
355 45593

20 CFR

209 46728
210 46728
211 46728
212 46728
220 46728
222 46728
250 46728
395 44277
404 ..... 43951, 44458, 45420, 46365
410 46365
416 46365
422 46365

21 CFR

74 44096
178 44994
193 ..... 44458, 45123, 46736
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 ..... 45421, 46371
558 46371
561 ..... 45124, 45848, 46736
573 ..... 44630, 45124

Proposed Rules:

146 44652
184 46164
193 45869
450 44919
510 45593
511 44766

22 CFR

220 44631

Proposed Rules:

41 44920

23 CFR

140 45577

24 CFR

44 46140
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44962

26 CFR

5h 43951
41 45849
48 45849
301 44460

Proposed Rules:

1 ..... 44300, 45449, 45450
41 ..... 44300, 44310, 44921, 46167
48 ..... 44300, 44310, 44921, 46167
51 45758
301 45452

27 CFR

9 ..... 44202, 44895

Proposed Rules:

4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR

0 46371
2 44097
15 44995
511 44056

Proposed Rules:

545 44059

29 CFR

530 44262
1601 45424
1910 46737
1952 44202
2619 45129

Proposed Rules:

2617 44106
2640 45018
2648 45018

30 CFR

906 46372
915 44206
917 44750
935 ..... 43952, 44461, 44996
938 46542

Proposed Rules:

250 44924
256 46754
816 45595
817 45595
855 45595
914 46167
917 44653
920 43974
931 44769
938 43974
948 46168
950 46755

31 CFR

5 45578

33 CFR

72 46547
100 ..... 45579, 45580, 45758
117 ..... 43953–43956, 44207, 44632, 45130, 45580, 46547
165 44632

Proposed Rules:

117 ..... 43975, 44925, 45596
126 45597
157 46440
160 45597
165 ..... 44926, 46560, 46562

34 CFR

Proposed Rules:

Ch. VI 45834
76 45834
208 45834
280 46169
300 46252
350 46244
352 46244
358 46244
359 46244
750 46755
755 46761

36 CFR

Proposed Rules:

13 46441
223 44109
291 45117
1121 44310

38 CFR

3 ..... 44099, 45130
36 46548

Proposed Rules:

1 45870
21 46441

39 CFR

10 45130
111 ..... 46141, 46738
265 44286

40 CFR

52 ..... 44099, 44208, 44287, 44463, 44996, 46141
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 45292
180 ..... 44464–44467, 45132, 45849–45854, 46739
261 44978
265 46094
271 46742
704 ..... 45133, 45425
707 45581
712 46739
716 46741
721 46373
723 46066
761 44634
775 44997

Proposed Rules:

50 ..... 44770, 45871
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178, 45761–45765, 45872, 46442, 46767
53 45871
58 45871
65 46443
81 ..... 43977, 45031, 46767
147 44111
152 45873
157 45873
158 45873
162 45873
170 45181
180 ..... 46443, 46768, 46769
261 44718
271 ..... 44111, 44312, 44506, 45452, 45874, 46443
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 ..... 44218, 45598
716 ..... 44220, 45602
761 46770
799 ..... 45606, 45610

41 CFR

50–201 45855
Ch. 101 44468
101–20 44469
101–41 44470
101–47 44471
Ch. 201 45748

42 CFR

36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR

Public Land Orders:

1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997
6578 46144
6579 46144
6580 46145

Proposed Rules:

3160 44655
3420 44221

44 CFR

64 ..... 44751, 45133
65 ..... 45134, 45135
67 45136

Proposed Rules:

67 45181

45 CFR

801 44473

Proposed Rules:

95 45617
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR

310 45857
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397

Proposed Rules:

67 45623
510 46174

47 CFR

0 45582
2 ..... 44101, 44997
15 44210
25 44751
31 ..... 44289, 46378
43 44289
69 46383
73 ..... 43957, 44101, 45139–45146, 45583–45587, 46386
74 45155
76 45431

Proposed Rules:

0 45454
1 45454
2 ..... 45766, 45875, 46563
73 ..... 44113, 44114, 45186, 45625, 45875, 46444–46448, 46563
90 ..... 44223, 45454, 45875, 46563

48 CFR

Ch. 25 46743

Proposed Rules:

1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR

1 ..... 44102, 46145
171 45749
173 ..... 43963, 45749
175 45749
178 43965
179 43963
391 44210
392 44210
395 46145
571 ..... 44899, 46386
575 44751
1033 46392
1160 45858
1165 45858
1168 45858
1181 45858
1182 45858

Proposed Rules:

23 44772
172 45627
173 45627
195 44928
531 46770
542 45629
1102 44224

50 CFR

17 ..... 43965, 44753, 45160
258 44474
611 44757
620 44102
652 ..... 45164, 45859
661 46148
663 ..... 44638, 44901
671 ..... 44757, 46549
676 44998

Proposed Rules:

17 ..... 44507, 44712, 45766, 45880–45887, 46174
222 44774
227 44774
611 ..... 44655, 46177
630 45888
663 46771
672 44655
675 44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.

OL
9

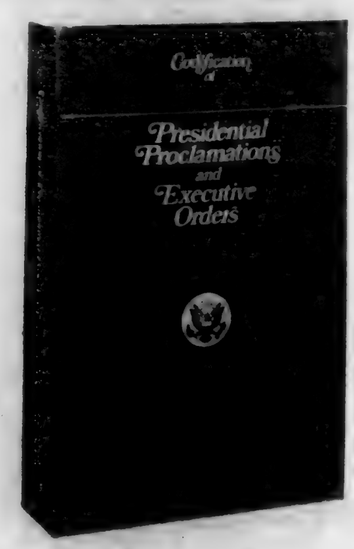
S S
30

O
8

984

MI

UPDATED EDITION NOW AVAILABLE



For those of you who must keep informed about Presidential proclamations and Executive orders, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20, 1981, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961–1981 period, along with any amendments, an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

MAIL ORDER FORM To:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my

Deposit Account No. ☐☐☐☐☐☐☐–☐ *Order No.* _____

Credit Card Orders Only

Total charges $ _____. Fill in the boxes below:

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Master Charge Interbank No. ☐☐☐☐

FOR OFFICE USE ONLY	
Quantity	Charges
Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

Please send me _____ copies of the ***Codification of Presidential Proclamations and Executive Orders*** *at $10.00 per copy. Stock No. 022-002-00097-0.*

NAME—FIRST, LAST

COMPANY NAME OR ADDITIONAL ADDRESS LINE

STREET ADDRESS

CITY STATE ZIP CODE

(or) COUNTRY

PLEASE PRINT OR TYPE

VOL
49

ISS
230

NO
28

1984

UMI

OL
9

SS
31

NO
29

984

MI

11-29-84
Vol. 49 No. 231

federal register

Thursday
November 29, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106
100

Postage and Fees Paid
U.S. Government Printing Office
375
SECOND CLASS NEWSPAPER

Federal Register
(ISSN 0097-6326)

SECOND CLASS NEWSPAPER

11-29-84
Vol. 49 No. 231
Pages 46869-46984

federal register

Thursday
November 29, 1984

Selected Subjects

Aircraft
Customs Service
Arms and Munitions
Alcohol, Tobacco and Firearms Bureau
Authority Delegations (Government Agencies)
Immigration and Naturalization Service
Bridges
Coast Guard
Continental Shelf
Minerals Management Service
Customs Duties and Inspection
Customs Service
Electric Power
Forest Service
Exports
International Trade Administration
Flood Insurance
Federal Emergency Management Agency
Freedom of Information
Postal Service
Government Contracts
Immigration and Naturalization Service
Imports
Animal and Plant Health Inspection Service

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Marine Mammals
National Oceanic and Atmospheric Administration
Marketing Agreements
Agricultural Marketing Service
Natural Gas
Federal Energy Regulatory Commission
Quarantine
Animal and Plant Health Inspection Service
Trade Practices
Federal Trade Commission
Water Supply
Environmental Protection Agency
Waterways
Saint Lawrence Seaway Development Corporation
Wildlife
Land Management Bureau

Contents

Federal Register
Vol. 49, No. 231
Thursday, November 29, 1984

Agricultural Marketing Service
RULES
46869 Oranges (navel) grown in Arizona and California

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service.

Air Force Department
NOTICES
Meetings:
46923 Scientific Advisory Board

Alcohol, Tobacco and Firearms Bureau
RULES
Firearms and ammunition, commerce:
46889 Sales by licensees at gun shows

Animal and Plant Health Inspection Service
RULES
Animal and poultry import restrictions:
46872 Horses; import permit requirements; interim rule affirmed
Livestock and poultry quarantine:
46871 Brucellosis; State and area classifications; interim

Army Department
See also Engineers Corps.
NOTICES
Meetings:
46924 Rifle Practice Promotion National Board

Coast Guard
RULES
Drawbridge operations:
46892 New Jersey
PROPOSED RULES
Drawbridge operations:
46917 Louisiana

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
46973 Meetings; Sunshine Act (4 documents)

Customs Service
RULES
Air commerce:
46885 Commercial aircraft arriving in U.S.; reporting requirements
46886 Merchandise, imported; valuation

Defense Department
See Air Force Department; Army Department; Engineers Corps.

Education Department
NOTICES
Grants; availability, etc.:
46924 Handicapped research; research and training centers

Energy Department
See Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.

Engineers Corps
NOTICES
Power and energy projects; financial sponsor and preference customer selection:
46924 Town Bluff Hydropower Project, TX

Environmental Protection Agency
RULES
Water pollution control; State underground injection control programs:
46896 Ohio
NOTICES
Meetings:
46949 Resource Conservation and Recovery Act
Toxic and hazardous substances control:
46931 Interagency Testing Committee; report; inquiry
46949 Premanufacture notices; monthly status reports; correction

Equal Employment Opportunity Commission
NOTICES
46973 Meetings; Sunshine Act
Procurement:
46951 Commercial activity review schedule (OMB A-76)

Farm Credit Administration
NOTICES
46973 Meetings: Sunshine Act; correction

Federal Aviation Administration
NOTICES
Environmental statements; availability, etc.:
46972 Stinson Municipal Airport, San Antonio, TX

Federal Communications Commission
RULES
Common carrier services:
46901 Interconnection arrangements, domestic and international record carriers

Federal Election Commission
NOTICES
46974 Meetings; Sunshine Act

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
46899 Connecticut et al.
46897 Missouri et al.

PROPOSED RULES
Flood elevation determinations:
46918 California et al.
46920 Maryland; correction

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
46874 Deregulation and other pricing changes

Federal Home Loan Bank Board
PROPOSED RULES
Mortgage loans, federally related:
46911 State due-on-sale laws, preemption; prepayment penalties prohibition; extension of time, etc.

Federal Labor Relations Authority
NOTICES
Senior Executive Service:
46951 Performance Review Board; membership

Federal Maritime Commission
NOTICES
46951 Agreements filed, etc.

Federal Mediation and Conciliation Service
NOTICES
Labor-management cooperation program:
46951 Application solicitation

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
46954 Manufacturers Hanover Corp.
46955 Sweetwater Valley Corp.
46955 United Community Financial Corp.
46974 Meetings; Sunshine Act (2 documents)

Federal Trade Commission
RULES
Prohibited trade practices:
46874 Batus Inc.
PROPOSED RULES
Prohibited trade practices:
46911 Ward Corp. et al.
NOTICES
46955 Premerger notification waiting periods; early terminations

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
46922 Wisconsin

Forest Service
RULES
46893 Land uses; permits for electric power transmission

General Services Administration
See also National Archives and Records Service.
NOTICES
46956 Federal Hotel/Motel Discount Directory; availability

Health and Human Services Department
See also Health Resources and Services Administration; Human Development Services Office.
NOTICES
46957 Federal financial participation in State assistance expenditures

Health Resources and Services Administration
NOTICES
Grants; availability, etc.:
46957 Maternal and child health projects

Hearings and Appeals Office, Energy Department
NOTICES
46928 Special refund procedures; implementation and inquiry

Human Development Services Office
NOTICES
Grants; availability, etc.:
46978 Integrated service delivery systems demonstration projects

Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
46869 Service officers, powers and duties, etc.
Transportation line contracts:
46870 Caribbean Express, Inc.
46870 San Juan Airlines, Inc.

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service.

Internal Revenue Service
PROPOSED RULES
Excise taxes:
46917 Heavy vehicle use tax; diesel fuel tax credits and refunds; correction

International Trade Administration
RULES
Export licensing:
46873 Export privileges, temporary denial; interpretation
NOTICES
Countervailing duties:
46922 Ferroalloys from Spain
46923 Unwrought zinc from Spain

International Trade Commission
NOTICES
Import investigations:
46963 Glass construction blocks
46963 High technology products; duty free treatment for imports; probable economic effects; correction
46963 Stainless steel sheet and strip from Spain; correction

Interstate Commerce Commission
NOTICES
Rail carriers:
46964 State intrastate rail rate authority; Montana
Railroad operation, acquisition, construction, etc.:
46963 Cimarron River Valley Railway Co.

Justice Department
See also Immigration and Naturalization Service.
NOTICES
46964 Agency information collection activities under OMB review

Land Management Bureau
RULES
Wildlife management:
46891 Viable coral communities; transfer and redesignation of regulations
NOTICES
Classification of public lands:
46959 Wyoming
Environmental statements; availability, etc.:
46958 Clear Creek Shale Oil Project, CO
Meetings:
46961 Roswell District Advisory Council
Sale of public lands:
46961 California
46959 Nevada
46959 Wyoming
Withdrawal and reservation of lands:
46961 Arizona; correction

Minerals Management Service
RULES
Outer Continental Shelf:
46891 Viable coral communities
NOTICES
Meetings:
46962 Outer Continental Shelf Advisory Board
Outer Continental Shelf; development operations coordination:
46961 Exxon Co., U.S.A.
46962 Koch Exploration Co.
46962 Pennzoil Exploration & Production Co.

Minority Business Development Agency
NOTICES
Group eligibility determination for assistance:
46923 Ex-felons

National Archives and Records Service
NOTICES
Meetings:
46956 Preservation Advisory Committee

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
46908 Commercial fishing operations; incidental taking of porpoises in eastern tropical Pacific Ocean tuna purse seine fishing
PROPOSED RULES
Marine mammals:
46921 Commercial fishing operations; incidental taking of porpoises in eastern tropical Pacific Ocean tuna purse seine fishing; advance notice

National Park Service
NOTICES
Oil and gas plans of operation; availability, etc.:
46963 Padre Island National Seashore, TX

Nuclear Regulatory Commission
NOTICES
46966 Agency information collection activities under OMB review
Applications, etc.:
46969 Southern California Edison Co. et al.
Environmental statements; availability, etc.:
46966 Duke Power Co. et al.
46970 Export and import license applications for nuclear facilities or materials
Grants; availability, etc.:
46965 Technology transfer and dissemination of nuclear energy process and safety information

Postal Service
RULES
46895 Freedom of Information Act; fee waiver policy for providing customer addresses to Government agency requesters; effective date postponed
NOTICES
46970 Domestic mail classification schedule; special fourth class mail; correction

Saint Lawrence Seaway Development Corporation
RULES
46893 Tariff of tolls

Securities and Exchange Commission
NOTICES
46974 Meetings; Sunshine Act (2 documents)

Small Business Administration
NOTICES
Applications, etc.:
46970 Charterway Investment Corp.
Small business investment companies:
46971 Maximum annual cost of money; Federal Financing Bank rate

Tennessee Valley Authority
NOTICES
46971, 46972 Agency information collection activities under OMB review (3 documents)
46975 Meetings; Sunshine Act

Transportation Department
See Coast Guard; Federal Aviation Administration; Saint Lawrence Seaway Development Corporation.

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Customs Service; Internal Revenue Service.
NOTICES
Notes, Treasury:
46972 AB–1986 series

Separate Parts in This Issue

Part II
46978 Department of Health and Human Services, Office of Human Development Services

---

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
907 46869

8 CFR
103 46869
238 (2 documents) 46870

9 CFR
78 46871
92 46872

12 CFR
Proposed Rules:
591 46911

15 CFR
388 46873

16 CFR
13 46874
Proposed Rules:
13 46911

18 CFR
270 46874
271 46874
272 46874
273 46874
274 46874

19 CFR
6 46885
152 46886

26 CFR
Proposed Rules:
41 46917
48 46917

27 CFR
178 46889

30 CFR
253 46891

33 CFR
117 46892
402 46893
Proposed Rules:
117 46917

36 CFR
251 46893

39 CFR
265 46895

40 CFR
147 46896

43 CFR
6620 46891

44 CFR
64 (2 documents) 46897, 46899
Proposed Rules:
67 (2 documents) 46818, 46920

47 CFR
Ch. I 46901

50 CFR
216 46908
Proposed Rules:
216 46921

Rules and Regulations

Federal Register
Vol. 49, No. 231
Thursday, November 29, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Oranges Regs. 605, 604 Amdt. 1, and 603 Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 605 establishes the quality of fresh California-Arizona navel oranges that may be shipped to market during the period November 30–December 6, 1984. Regulation 604, Amendment 1, increases the quantity of such oranges that may be shipped during the period November 23–29, 1984, and Regulation 603, Amendment 1, increases the quantity of such oranges that may be shipped during the period November 16–22, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: Amended Regulation 603 (§ 907.903) is effective for the period November 16–22, 1984. Amended Regulation 604 (§ 907.904) becomes effective on November 23, 1984. Regulation 605 (§907.905) becomes effective on November 30, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been revised under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation and amendments are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

These actions are consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on September 25, 1984. The committee met again publicly on November 20, 1984 at Porterville, California, to consider the current and prospective conditions of supply and demand and recommended quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is strong.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information on views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. § 907.905 is added as follows:

§ 907.905 Navel Orange Regulation 605.

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 30 through December 6, 1984, are established as follows:

(a) District 1: 1,400,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

2. § 907.904 Navel Orange Regulation 604 (49 FR 45415) paragraphs (a) through (d) are hereby revised to read:

§ 907.904 Navel Orange Regulation 604.

(a) District 1: 1,140,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

3. § 907.903 Navel Orange Regulation 603 (49 FR 45415) paragraphs (a) through (d) are hereby revised to read:

§ 907.903 Navel Orange Regulation 603.

(a) District 1: 920,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: 80,000 cartons;
(d) District 4: Unlimited cartons;

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 21, 1984.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division; Agricultural Marketing Service.

[FR Doc. 84–31319 Filed 11–28–84; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule designates Detention Service Officers assigned to

Immigration Service Processing Centers as Immigration Officers. The addition of these positions to the officer ranks is necessary to carry out the duties specified at Immigration Service Processing Centers, and formalizes a procedure which will benefit the public and enhance compliance with the Act.

EFFECTIVE DATE: February 23, 1983.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

For Specific Information: G.L. Blancett, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3662.

SUPPLEMENTARY INFORMATION: Over the past few years the Immigration and Naturalization Service has had an increase in the number of long-term detainees held at their Service Processing Centers. Under current staffing patterns, Service employees at the Service Processing Centers do not have the required time or training to provide extensive counseling to those long-term detainees, establish a one-on-one relationship conducive to the exchange of information, and respond to inquiries on the status of the administrative and judicial processes. Incumbents of this new position process newly admitted detainees and assist all detainees in adjusting to the requirements of institutional living. In addition, incumbents monitor the cases of long-term detainees and keep the detainees apprised of the status of their cases.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this order is exempt therefrom as provided by paragraph (a)(2) of section 553, which exempts matters relating to agency management of personnel.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant impact on a substantial number of small entities.

This order is not a rule within the meaning of section 1(a) of E.O. 12291 because it deals with agency organization, management, or personnel.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegation (Government agencies), Organization and functions (Government agencies).

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended to read as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

In § 103.1, paragraph (q) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(q) *Immigration officer.* Any immigration inspector, immigration examiner, border patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention officer, detention service officer, detention guard, investigator, general attorney, paralegal specialist, applications adjudicator, contact representative, or supervisory officer of such employees is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

* * * * *

(Sec. 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103))

Dated: November 21, 1984.

Raymond M. Kisor,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 84-31325 Filed 11-28-84; 8:45 am]

BILLING CODE 4410-01-M

---

8 CFR Part 238

Contracts With Transportation Lines; Addition of San Juan Airlines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the name of San Juan Airlines, Inc.

EFFECTIVE DATE: October 11, 1984.

FOR FURTHER INFORMATION CONTACT:

Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 533–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with San Juan Airlines, Inc. to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilities processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended by adding the name "San Juan Airlines, Inc." under "At Vancouver."

(Sec. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: November 23, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-31326 Filed 11-28-84; 8:45 am]

BILLING CODE 4410-10-M

---

8 CFR Part 238

Contracts With Transportation Lines; Addition of Caribbean Express, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Caribbean Express, Inc. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT:

Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Caribbean Express, Inc. on September 14, 1984, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilities the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, "Caribbean Express, Inc."

(Sec. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: November 23, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-31313 Filed 11-28-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 84-112]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Minnesota from Class A to Class Free. This action is necessary because it has been determined that this State meets the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the State of Minnesota.

DATES: Effective date of the interim rule is November 29, 1984. Written comments must be received on or before January 28, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. This document changes the classification of the State of Minnesota from Class A to Class Free.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the entire State of Minnesota was classifed as a Class A State. It had been necessary to classify this State as Class A rather than Class Free because of the herd infection rate. To attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the preceding 12 month period and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). A review of brucellosis program records establishes that the State of Minnesota should be changed to Class Free since this State now meets the criteria for classification as Class Free.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of the State of Minnesota reduces testing requirements

on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter, or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the State of Minnesota.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS.

Accordingly, 9 CFR Part 78 is amended as follows:

§ 78.20 [Amended]

1. Section 78.20(a) is amended by adding "Minnesota," immediately before "Montana".

2. In § 78.20(b), "Minnesota," is removed.

Authority: Secs. 4, 5, 6, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 23rd day of November, 1984.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 84-31316 Filed 11-28-84; 8:45 am]

BILLING CODE 3410-34-M

---

9 CFR Part 92

[Docket No. 84-064]

Importation of Horses; Affirmation of Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations concerning the importation of animals to require that importers of horses that are to be quarantined at privately-owned quarantine facilities must apply for and obtain import permits prior to entry of the horses into the United States. Under the regulations, it is necessary for Veterinary Services (VS) personnel to conduct examinations, collect or supervise the collection of diagnostic specimens, and supervise the isolation, quarantine, care, and handling of the horses to ensure that they meet the Department's quarantine requirements before release into the United States. The import permit requirement is necessary to provide prior notice of the arrival of the horses so that arrangements can be made for the availability of VS personnel to conduct the necessary activities. Further, the information required to be submitted in the application for the import permit is necessary to identify the horses, to allow VS to contact persons for the purpose of obtaining any necessary clarifications concerning the horses, to ensure that the privately-operated quarantine facility does not exceed its capacity, to help determine entry requirements for the horses, and to help trace the horses after quarantine.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 844–AAA, Federal Building, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 contain, among other things, provisions concerning the importation of horses into the United States. In order to help prevent the introduction and dissemination of communicable diseases of horses, the regulations in § 92.3 (a) and (g) provide, with certain exceptions, that horses intended for importation into the United States are to be entered at certain ports and quarantined at United States Department of Agriculture quarantine facilities or at privately-operated quarantine facilities approved by the Deputy Administrator for Veterinary Services (VS).

An interim rule published in the **Federal Register** on July 2, 1984 (49 FR 27136–27138), amended the regulations to require that importers of horses that are to be quarantined at privately-operated quarantine facilities must apply for and obtain import permits from VS prior to entry of the horses into the United States. Prior to the interim rule of July 2, 1984, only persons importing horses from countries in which contagious equine metritis exists were subject to the import permit requirements. The interim rule was made effective upon publication. Comments were solicited for sixty days following publication of the interim rule. One comment was received, which supported the interim rule. The factual situation which was set forth in the interim rule still provides a basis for the amendments.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Most importers of horses that are to be quarantined at privately-operated quarantine facilities already voluntarily apply for and obtain import permits prior to the entry into the United States of such horses. This rule will only affect a few importers who do not now obtain such permits, and it is anticipated that the changes made by the rule will have very little economic impact on such importers of horses.

Based on the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal Diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMALS AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR 92 published in the **Federal Register** on July 2, 1984, at 49 FR 27136–27138 is adopted as a final rule.

Authority: Sec. 2, 32 Stat. 792, as amended; secs. 2, 4, 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 23rd day of November 1984.

J. K. Atwell,

Veterinary Services.

[FR Doc. 84-31317 Filed 11-28-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 388

[Docket No. 41153-4153]

Administrative Proceedings

AGENCY: International Trade Administration, Commerce.

ACTION: Interpretation.

SUMMARY: The Department is clarifying the regulatory grounds for issuance of orders temporarily denying export privileges (15 CFR Part 388.19).

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Pamela P. Breed, Deputy Assistant General Counsel—Enforcement and Litigation, Office of Assistant General Counsel for International Trade, U.S. Department of Commerce (202–377–5311).

SUPPLEMENTARY INFORMATION: There have been recent proposals in the Congress to amend the Export Administration Act (EAA) to provide that an order temporarily denying export privileges may be issued in any case in which it is "necessary, in the public interest, to prevent an imminent violation" of the Act or any regulation under the Act. An "imminent violation" standard could easily be interpreted in a way that would unduly constrain the use of the temporary denial order (TDO) to protect United States interests with respect to export controls. Legislative history concerning such an amendment has suggested that adoption of the "imminent violation" standard would not significantly narrow the grounds for TDOs from those available prior to amendment. The Department of Commerce believes it is therefore important to publish this interpretation of the criteria in the existing Export Administration Regulations (Regulations) for issuance of a TDO so that the usefulness of this enforcement mechanism is not reduced, either under existing regulations or under new legislation.

This interpretative rule is exempt from the notice and comment requirements of the Administrative Procedure Act and will become effective upon publication in the **Federal Register.**

The Regulatory Flexibility Act does not apply to this interpretive rule because the interpretive rule was not required to be promulgated as a proposed rule before issuance as a final rule by Section 553 of the Administrative Procedure Act or by any other law. Neither an initial nor final Regulatory Flexibility Analysis was prepared.

Because this interpretive rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. No preliminary or final Regulatory Impact Analysis has been or will be prepared.

This interpretation does not impose a burden under the Paperwork Reduction Act of 1980.

The principal author of this interpretation is Cecil Hunt, Assistant General Counsel for International Trade, Office of the General Counsel.

List of Subjects in 15 CFR Part 388

Administrative practice and procedure, Administrative proceedings, Denial of export privileges, Exports, Temporary denial of export privileges.

PART 388—[AMENDED]

1. The authority for Part 388 is revised to read as follows:

Authority: Secs. 4, 5, 6, 7, 8, 11, 12, 15 and 21, Pub. L. 96–72, 50 U.S.C. App. 2401–2420, E.O. 12214 (45 FR 29783, May 6, 1980); 50 U.S.C. 1701–1708, E.O. 12470 (49 FR 13099, April 3, 1984); Dept. Organization Order 10–3, effective September 6, 1984, and International Trade Admin. Organization and Function Orders, 41–1 (48 FR 26854, June 10, 1983) and 41–4, effective February 9, 1984, unless otherwise noted.

2. Supplement No. 3 is added to Part 388:

Supplement 3—Grounds for Temporary Denial of Export Privileges

Interpretation

Section 388.19(a)(2) provides that the presiding official may issue an order temporarily denying export privileges (TDO) upon a showing that the order is required in the public interest to facilitate enforcement of the Act, any applicable Executive Order, or the Regulations, to avoid circumvention of administrative or judicial proceedings or to permit the completion of investigations.

These grounds should be understood, and the adequacy of the showing judged, in light of the general nature and objective of such denial orders. Whether the investigation or proceeding is under the Export Administration Act or under regulations in force under an Executive Order issued in connection with a presidentially-declared national emergency, the nature and objective of the TDO procedure is the same.

The TDO is not to be used as a punishment, but as a means for achieving important export control objectives. The authority for the TDO is not derived from the penalty provisions of the applicable statute, but is inherent in the authority to restrict exports.

The TDO can serve export control objectives in at least two ways. By denying to persons under investigation or charges the right to export, acquire abroad or deal in U.S.-controlled goods and technology, the TDO can reduce the risk that such goods and technology may be diverted to destinations or uses contrary to export control requirements. The TDO can also help to facilitate investigations by encouraging a person under investigation to cooperate in the investigation and to refrain from obstructing any administrative or judicial enforcement proceedings that may ensue. The TDO can be especially important to the achievement of export control objectives when the person under investigation or charges is located outside the United States, as the TDO can quickly put companies at home and abroad on notice to cease dealing with that person in the goods or technology covered by the order.

Although the risk of future illegal activity can justify seeking and issuing a TDO, there is no need to present evidence that a violation is "imminent", either in time or in degree of likelihood. Indeed, if a violation is "imminent" in the sense that an illegal export

is about to occur, the more effective step usually is to detain, and perhaps ultimately seize, the shipment in question. On the other hand, the need for prudent protective action in the form of a TDO can arise from the general circumstances of the case, such as evidence indicating that the violation under investigation or charges was significant and deliberate, rather than technical or negligent.

The provision in the Regulations that a TDO may be granted summarily on an *ex parte* basis is balanced by provisions under which a party can move to have the TDO vacated or modified. A hearing on such a motion can give a person subject to the TDO a chance to persuade the presiding official that the TDO is not warranted by the risk of future non-compliance with the Regulations or that the TDO is not needed to assure cooperation with the investigation and acceptance of the enforcement jurisdiction being asserted. The availability of this procedure means that the showing in support of the *ex parte* request for a TDO need not go beyond providing reasonable grounds for belief that the TDO will serve to advance one or more of the stated objectives.

Dated: November 19, 1984.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement, International Trade Administration.

[FR Doc. 84-30613 Filed 11-28-84; 8:45 am]
BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3099]

Batus Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This Order reopens the proceeding and modifies the divestiture order issued against a department store operator on December 6, 1982, 47 FR 31392, which required the company to divest department stores sufficient to reduce its floor space by 200,000 square feet and its sales volume by $20 million, as measured by 1981 sales. To date, the operator has received Commission approval for divestitures totalling 492,000 square feet and $17.9 million in 1981 sales, and has petitioned for modification of the Order stating that any further divestiture would "account for substantially more than $20 million in 1981 sales." Following an examination of the record and the company's plan of divestiture, the Commission concluded that the company had made a good faith compliance effort and that divestiture of a much larger store to satisfy the remaining $2.1 million sales volume requirement was not in the public interest. Therefore, Paragraph II of the original order has been modified by substituting for the phrase in the first sentence reading "in an amount not less than $20 million as measured by fiscal 1981 sales" the phrase "in an amount not less than $17.9 million as measured by fiscal 1981 sales."

DATES: Consent Order issued on December 6, 1982; Modifying Order issued November 13, 1984.

FOR FURTHER INFORMATION CONTACT:
FTC/L-301-18, Selig S. Merber, Washington, D.C. 20580 (202) 634-4642.

SUPPLEMENTARY INFORMATION: In the Matter of Batus, Inc., a corporation. Codification appearing at 47 FR 31392 remains unchanged.

List of Subjects in 16 CFR Part 13

Department stores, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Order Reopening Proceeding and Modifying Order

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani. In the Matter of BATUS, Inc., a corporation; Docket No. C-3099.

By petition filed July 17, 1984, respondent BATUS Incorporated ("Batus") requests, pursuant, to section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), that Paragraph II of the Commission's Order issued in this matter on December 6, 1982, be modified so that Batus will not be required to make further divestitures to reach the $20 million sales volume standard set out in Paragraph II of the order. Pursuant to § 2.51 of the Commission's Rules of Practice and Procedure, the petition was placed on the public record for thirty days. No comments were received.

The order required Batus to divest department stores in the Milwaukee, Wisconsin SMSA sufficient to reduce its floor space by 200,000 square feet and its sales volume by $20 million, as measured by 1981 sales. To date Batus has received Commission approval for divestitures totalling 492,000 square feet and $17.9 million in 1981 sales.

The Commission has reviewed Batus' plan of compliance with the divestiture requirements of the order, including its selection of stores, and the efforts undertaken to fulfill its obligations and believes Batus has made a good faith effort to accomplish full compliance with the order. The record also demonstrates that sale of an additional store having a 1981 sales volume in the range of $2.1 million to a viable competitor is unlikely. Given Batus' good faith compliance effort and the degree of divestiture already obtained, we believe that it is not in the public interest to require a divestiture of a much larger store to satisfy the remaining $2.1 million sales volume requirement. Therefore, we find that modification of certain language in Paragraph II of the order is in the public interest.

Accordingly, it is ordered, that the proceeding be, and it hereby is, reopened for the purpose of modifying the Order entered therein;

It is further ordered, that Paragraph II is amended by substituting in lieu of the phrase at the end of the first sentence which reads:

"in an amount not less than $20 million as measured by fiscal 1981 sales."

the phrase,

"in an amount not less than $17.9 million as measured by fiscal 1981 sales."

Issued: November 13, 1984.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 84-31259 Filed 11-28-84; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270, 271, 272, 273, and 274

[Docket No. RM84-14-000; Order No. 406]

Deregulation and Other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act

Issued: November 16, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: On January 1, 1985, the Natural Gas Policy Act of 1978 (NGPA) will deregulate the prices for substantial amounts of interstate and intrastate gas. The Federal Energy Regulatory Commission (Commission) is amending its regulations to prepare for price deregulation under section 121 of the NGPA for certain types of natural gas subject to sections 102, 103, 105, and 106, and is publishing new maximum lawful prices under sections 103(b) and 105(b)(3).

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Peter J. Roidakis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8511.
Elisabeth Pendley, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8511.

SUPPLEMENTARY INFORMATION:

Before the Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III, and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule implementing section 121 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982). On January 1, 1985, NGPA section 121 will deregulate the prices for substantial amounts of interstate and intrastate gas.

In general, this final rule states: (1) That jurisdictional agency determinations are still necessary for section 102 and section 103 gas after January 1, 1985; (2) that first sellers may make interim collections at the agreed to deregulated price; (3) that gas which qualifies for both a regulated and a deregulated category will be deregulated; (4) that contract prices for intrastate contracts above $1.00 per MMBtu by virtue of a definite price clause will be deregulated.

II. Background

At the time Congress was considering the NGPA, oil prices were rising and increasing demand and declining supplies of natural gas created severe shortages in many parts of the nation. Political concern about these market distortions, as well as concern about the nation's energy dependence, led Congress to enact legislation revamping the natural gas pricing structure that had existed under the Natural Gas Act (NGA), 15 U.S.C. section 717-717w (1982), and eventually to phase in market forces as a substitute for that structure for a substantial amount of our nation's gas supplies. Thus, in 1978, Congress deregulated some gas shortly after the enactment of the NGPA, provided for deregulation of prices for other categories of gas over the next decade, and retained regulatory and pricing controls on other gas wells until these wells are depleted.

Title I of the NGPA created several categories of natural gas, the first sale of which is subject to maximum lawful prices (ceiling prices). Those categories are based on a variety of factors, such as the date the well was drilled, whether the gas was sold under intrastate contracts or committed or dedicated to interstate commerce (dedicated gas), and the need for incentives to produce gas that is otherwise difficult or uneconomical to produce. In contrast, the price of certain natural gas produced from completion locations deeper than 15,000 feet, geopressured brine, coal seams, or Devonian shale was deregulated in 1979, shortly after enactment of the NGPA. Moreover, under section 121, the price for section 102(c) and some section 103 gas and certain intrastate gas will be deregulated on January 1, 1985, while additional section 103 gas will be deregulated on July 1, 1987. In addition to price deregulation, Congress also mandated higher ceiling prices on January 1, 1985, for certain categories of gas under sections 103 and 105. Since the enactment of the NGPA, many changes have occurred in the natural gas markets. One development, unforeseen by the drafters of the NGPA, is the current supply surplus of natural gas, however temporary or long-lived it may prove to be. This oversupply factor is an important consideration in understanding the controversy surrounding "dually qualified" wells, as discussed below.

In general, this rulemaking concerns categories of natural gas that will be price deregulated under section 121. On January 1, 1985, section 121(a) eliminates price controls from "new natural gas" defined in section 102(c)[1] and certain gas produced from "new, onshore production wells" under section 103.[2] Except for gas that is subject to section 121(e), section 121 also deregulates the price of intrastate gas that is categorized as section 105 or 106(b) gas, if the price paid for the last deliveries of such natural gas occurring on December 31, 1984 (or the price that would have been paid if no deliveries occurred on that date), is higher than $1.00 per MMBtu.[3]

The Commission has two goals in this rulemaking. The first is to resolve those legal and policy issues that are presented by deregulation of certain categories of gas under section 121. The second task is to make technical amendments to the Commission's NGPA regulations to conform them to the pricing changes that will take effect on January 1, 1985.

On September 13, 1984, the Commission proposed to amend its regulations to prepare for price deregulation under section 121 of the NGPA for certain types of natural gas subject to sections 102, 103, 105, and 106 and to publish new maximum lawful prices under sections 103(b) and 105(b)(3).[4]

The Commission received approximately 100 substantive comments to this rulemaking—45% representing producer interests, 25% representing pipeline interests and 30% from utilities, local distribution companies, and consumer groups. Numerous personal letters from royalty owners, investors, and other individuals were received.

III. Discussion

A. Jurisdictional Agency Determinations

Section 503 establishes procedures under which well category determinations are made by State or Federal jurisdictional agencies and then reviewed by this Commission. Since enactment of the NGPA, this section and the Commission's implementing regulations have been used primarily for determining whether gas qualifies under a particular NGPA pricing category.

The Commission's proposal discussed several circumstances in which it must decide if section 503 determinations would be required after several categories of gas are deregulated after January 1, 1985. Even though section 121 deregulates the price of certain categories of gas, the NGPA requires first sellers to continue to file for determinations for certain categories of gas that will be price deregulated after the determination becomes final, where determinations previously have been required under Title I.

1. Determinations for Gas That Will Be Deregulated

For sections 102 and 103 gas deregulated by section 121 and for which a producer has not filed for or

1 "New natural gas" under section 102(c) covers three types of gas: (1) gas produced from the Outer Continental Shelf under a lease entered into on or after April 20, 1977; (2) gas produced from an onshore well on which surface drilling began on or after February 19, 1977, or the depth was increased by 1,000 feet on or after that date, and which is at least 2.5 miles from the nearest marker well or which is 1,000 feet deeper than the deepest completion location of any marker well within 2.5 miles; and (3) gas produced from a reservoir from which natural gas was not produced in commercial quantities before April 20, 1977, subject to certain exclusions.

2 "New, onshore production wells" under section 103(c) are onshore wells on which surface drilling began on or after February 19, 1977, and from which gas is produced from a proration unit that meets certain requirements. Section 121 deregulates on January 1, 1985, the price of section 103 wells that were not committed or dedicated to interstate commerce on April 20, 1977, and that produce gas from a completion location deeper than 5,000 feet.

3 *See* section 121(e).

4 Notice of Proposed Rulemaking, 49 FR 36399 (Sept. 17, 1984) (Docket No. RM84-14-000).

obtained a determination prior to January 1, 1985, first sellers must continue to file applications for determinations with the appropriate jurisdictional agencies. The Commission proposed that the NGPA requires a determination in this instance. The vast majority of commenters supported the Commission's reading of the NGPA , but requested that the Commission simplify its section 503 filing requirements.

Under the determination process Congress established in section 503, jurisdictional agencies make certain factual findings about the well characteristics for certain categories of gas in Subtitle A of Title I of the Act. Subject to certain interim collection procedures in section 503(e), an affirmative determination by the jurisdictional agency is a condition precedent to a first seller charging and collecting a specified price. Section 503 does not distinguish between gas that is regulated or deregulated, but attaches a substantive effect to a jurisdictional agency's application of the definitions in section 102(c), 102(d), 103(c), 107(c) and 108(b). Nothing in sections 503 or 121 indicates that Congress intended this substantive effect to be changed by deregulation on January 1, 1985. Thus, the Commission believes that the NGPA requires producers to obtain well category determinations, even for gas which will be price deregulated after a final determination.

As we noted in the proposal, the Commission's approach to deregulation under section 107 followed this view. Under section 107(c)(1)–(4), Congress deregulated the price of certain types of high-cost natural gas, *i.e.*, gas produced from completions below 15,000 feet, Devonian shale, geopressured brine, and occluded natural gas produced from coal seams. Section 503(a)(1) requires that a determination be made "applying the definition of high-cost natural gas under section 107(c)." Similarly, section 107(c) requires that gas must be "determined in accordance with section 503 to be" high-cost gas. Given this NGPA mandate, the Commission required that producers obtain a determination in order for gas to be deregulated under section 107(c). This rule would adopt similar requirements for gas under sections 102(c) and 103 that will be deregulated on January 1, 1985.

With regard to commenter's suggestions that the Commission simplify its section 503 filing requirements, the Commission notes that it recently completed a rulemaking which substantially reduced the burden imposed in filing for determinations.[5]

Furthermore, because some jurisdictional agencies require certain filing requirements in addition to those required by the Commission, the Commission urges jurisdictional agencies to consider streamlining their filing requirements for section 102 and section 103 final determinations by reducing them to the minimum required by the Commission. The jurisdictional agencies must give written notice of any change in its procedures as described in § 274.105(b). Jurisdictional agencies might also consider filing an alternative plan with the Commission under § 274.207 to further decrease the burdensome filings and thereby streamline the section 102 and section 103 determination process. However, these alternative plans must satisfy the section 503 statutory requirement for substantial evidence.

2. Gas for Which Determinations Have Already Been Received

The Commission proposed that, if a producer has already obtained a determination prior to January 1, 1985, that the gas qualifies as section 102(c) or 103 gas, no additional determination that the gas is deregulated is required by the NGPA. Hence, the price for all section 102(c) or 103 gas that otherwise meets the prerequisites for deregulation is deregulated on January 1, 1985. Commenters supported this view. Under this approach, producers would determine whether the gas meets any additional criteria for deregulation under section 121 of the NGPA. The Commission expects that pipelines will monitor a producer's decision as to whether or not the gas is deregulated. The Commission intends to review these decisions with audits and investigation of complaints.

The Commission requested comment on whether additional filing requirements were necessary for section 103 gas that had already received a determination. Section 103 gas must meet two criteria to be deregulated. It must not have been committed or dedicated to interstate commerce on April 20, 1977,[6] and it must be produced from a completion location deeper than 5,000 feet.[7] The Commission requested comment on whether it has an obligation to review these deregulation criteria for section 103 gas before a first seller may charge and collect the deregulated price. The Commission considered requiring producers of such gas to file an affidavit, either separately or as part of a determination application, with the Commission and the purchasing pipeline that the section 103 gas meets these criteria. Alternatively, the Commission indicated that it might require a standard section 503 determination by jurisdictional agencies with review by this Commission prior to deregulation taking effect.

Commenters were overwhelmingly opposed to requiring any additional filing requirements for section 103 gas. These commenters supported the Commission's general approach of relying on pipelines to monitor these situations and to rely on audits and complaints. The Commission believes that it is not necessary to impose additional filing requirements at this time. These requirements would impose unnecessary burdens on applicants, jurisdictional agencies and this Commission in a situation where less burdensome alternatives exist for ensuring that the requirements of the NGPA will be adequately met.

Similarly, the Commission believes that post-January 1, 1985 section 103 determinations must receive treatment identical to that received by pre-January 1, 1985 section 103 determinations for deregulation. Therefore, all pending and prospective section 103 applications automatically deregulate once the section 103 determination is final, provided that the dedication and depth requirements are met. Neither an additional filing requirement such as an affidavit nor a second "deregulation" determination are necessary to implement the dedication and depth requirements in section 121.

Also, the Commission expects pipelines to monitor a producer's decision as to whether a well is deregulated. The Commission will review these decisions with audits and investigation of complaints. Pipelines complained of the additional monitoring burden and the increased cost to the consumer. In order to minimize this potential burden, the Commission will require the producer to file an affidavit with the pipeline at the pipeline's request, presenting information on the dedication and depth of the well. As a result, the pipeline will not need to invest resources to obtain this information.

3. Pending Determinations

Where an application for a determination is pending before a jurisdictional agency or this Commission on January 1, 1985, and becomes final after January 1, 1985, the Commission proposed that the determination must become final before the gas qualifies for deregulation.[8] This follows from the Commission's proposal that producers should be required to obtain a determination even for gas that will be price deregulated after January 1, 1985.[9]

Commenters supported this approach and it is adopted for the reasons stated above.

B. Interim Collection

The Commission's regulations state two different rules governing the price a first seller may collect while an application for a determination of the applicable category of gas is pending before the jurisdictional agency or this Commission. The first rule applies to gas that is subject to a ceiling price and for which a determination is required under the NGPA. In that situation, the Commission's current regulations allow producers, subject to contractual authorization, to collect the highest ceiling price for which they applied. 18 CFR 273.202(a)(1) and 273.203(a)(1) (1983). The second rule applies to gas that is deregulated under section 107(c)(1)–(4) and for which a determination is required. In that situation, the Commission's regulations allow a producer, subject to contractual authorization, to collect only up to the section 102 price, not a possibly higher deregulated price, while a determination is pending before a jurisdictional agency or this Commission. 18 CFR 273.202(a)(2) and 273.203(a)(2) (1983).

The Commission proposed several changes to its interim collection regulations in light of deregulation on January 1, 1985. First, the interim collection provisions of the regulations would be amended to apply not only to section 107(c)(1)–(4) gas, but also to sections 102(c) and 103 deregulated gas. Secondly, the Commission proposed to eliminate the section 102 price cap on interim collections and permit a producer to collect the price agreed upon by the parties while an application for a determination for such gas is pending before a jurisdictional agency or this Commission. This rule would apply both for applications pending on January 1, 1985, and for those filed after January 1, 1985. The deregulated price would be the price that the producer and purchaser agree should be collected during the interim period, and thereafter, once the well finally qualifies for a deregulated category.

A relatively small number of commenters addressed this proposal. Commenters suggested that although producers file for the correct NGPA category 96% of the time, this still means an *incorrect* filing rate of 4%, which, in absolute dollar amount, can be substantial. Based on this observation, these commenters request that the section 102 price ceiling continue to be used as a price cap for interim collections either on public policy grounds that the "refund remedy" for incorrect category filings is not, as a practical matter, an adequate remedy, or on the theory that, if regulatory restraints are further lifted, as proposed, the error rate may far exceed the 4% error rate now prevailing. One commenter requested that the escrow and refund protections of interim collection (18 CFR 273.302 and 18 CFR 154.102 (c) and (d), respectively), remain intact to protect pipelines and downstream customers from overcollection.

The rule adopted by the Commission extends interim collection procedures to sections 102(c) and 103 gas and removes the current price limitation in favor of whatever price the parties agree to. The Commission still believes that the new rule will not necessitate more refunds than under current regulations. If it is finally determined that the gas does not qualify under a deregulated section, however, the producer will be required to refund the difference between the price collected and the otherwise applicable ceiling price, with interest. 18 CFR 154.102 (c) and (d) (1983). The Commission believes this refund remedy is adequate. As requested, all other aspects of the Commission's current interim collection regulations will remain in effect for such gas, such as the surety bond or escrow options.

One commenter made the point that the proposed rule sets the interim rate at the "contract rate" rather than limiting it to the section 102 ceiling rate. Other commenters asked that the Commission clarify whether the "contract rate" was intended to be the new interim rate, or whether a separate "agreed upon" interim rate was intended. The Commission emphasizes that it intends that, in the final rule, an agreed-upon rate will govern interim collections. However, if the parties are entitled to renegotiate the price upon deregulation, they need do so only once. The agreed-upon interim deregulated price may continue to serve as the deregulated price, once the gas is ultimately determined to be deregulated.

C. Dual Qualification Gas

Some gas qualifies for two NGPA categories: one regulated under a maximum lawful price and one which will be deregulated on January 1, 1985. Examples of this dually qualified gas are new tight formation gas (section 107(c)(5)) which also qualifies as section 102 or section 103 gas in order to receive the incentive price and some stripper

---

[5] Reduction in Filing Requirements for Well Category Applications Under Sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978, 48 FR 44508 (Sept. 29, 1983) (Order No. 336); 49 FR 586 (Jan. 5, 1984) (Order on Rehearing).

[6] For purposes of determining whether the gas was committed or dedicated to interstate commerce on April 20, 1977, the Commission intends to apply the definition in section 2(18) of the NGPA. Under the NGA, acreage subject to an interstate contract was not dedicated gas until gas actually commenced flowing in interstate commerce. Conversely, if no gas under the contract actually flowed in interstate commerce, then the gas was not dedicated gas under the NGA. Under section 2(18) of the NGPA, however, gas may be committed or dedicated to interstate commerce before flowing in interstate commerce, if, when sold, it "would be required to be sold in interstate commerce . . . under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act." *See* generally, Conoco, Inc. v. FERC, 622 F.2d 798 (5th Cir. 1980); Tenneco Exploration Ltd. v. FERC, 649 F.2d 376 (5th Cir. 1981). Hence, gas which, if sold, would have been required to be sold in interstate commerce under the terms of any contract, Natural Gas Act (NGA) certificate, or provision of such Act would be deemed committed or dedicated to interstate commerce on April 20, 1977. With regard to infill wells, if the entire acreage comprising the proration unit is dedicated, then subsequent infill wells could not qualify for the deregulated price.

[7] For purposes of determining whether the completion location is located at a depth of more than 5,000 feet, the Commission proposed to amend § 272.104 to apply to section 103 gas. Section 272.104 currently applies to section 107(c) highcost natural gas which must, among other things, be produced from a completion location deeper than 15,000 feet and requires that the measurement "shall be the true vertical depth from the surface location to the highest perforation point of the completion location." 18 CFR 272.104 (1983). The Commission believes it is appropriate to use the same measurement definition for section 103 gas as for section 107(c) gas, as consistent with our current practice. No comments opposing this proposal were received.

[8] Several commenters request clarification of whether the "effective date" of deregulation, for any well is the date on which it is determined to qualify for a deregulated category, the date for which such determination is filed or some other date. A multiplicity of dates for deregulation, depending on when the wells qualify for a deregulated category could make contract administration confusing. Just as the NGPA provided for section 107(c)(1–4) gas to be deregulated on November 1, 1979, the NGPA provides a date certain (January 1, 1985) for deregulation. Collection of the deregulated price as of that date is, we emphasize, a matter of contract, however, subject to the need for a final determination (for section 102 and 103 gas) and the related dedication and depth requirements.

[9] Although somewhat unclear, some commenters appear to ask whether a producer that is charging the higher section 102(c) incentive price for gas that has also been eligible since 1979 for a lower deregulated price under section 107(c)(1–4), will be liable to refund the difference between the section 102(c) price and the otherwise applicable contract price for deregulated gas for past periods. In this situation, no actual violation of the NGPA maximum lawful price has occurred. However, there may be questions raised as to the price paid under the contract. Such contractural disputes should be resolved by the parties in the appropriate judicial forum.

well gas (section 108) which also qualifies as section 102 or section 103 or section 105 deregulated gas. Many contracts contain two clauses—one which sets the price if gas is regulated and one which is implemented if gas is deregulated. Producers would prefer to collect under the regulated category if the regulated price is higher than the deregulated price. Pipeline purchasers, on the other hand, want to renegotiate the gas price to arrive at a deregulated price which they believe will be lower than the regulated rate. By choosing to remain regulated, the producer may avoid renegotiation and the potential lowering of its contract price under current market conditions. And, in turn, the pipeline may be thwarted in renegotiating a new contract price.

The Commission proposed that gas that qualified for both a regulated and a deregulated category will be considered deregulated and the price would be collected under the clause of the contract governing deregulated gas. The Commission believed that Congress intended all price controls for gas specified in section 121 to terminate on January 1, 1985, whether or not the gas continued to qualify for a regulated price. This interpretation, the Commission noted, was consistent with the overall scheme envisioned by Congress when it enacted the NGPA—to provide incentive prices to encourage exploration and development of new reserves in the short-term, and to gradually substitute market forces for regulated prices by phasing in deregulation in 1985 and 1987.

Numerous comments were filed on this significant deregulation issue. Unlike comments filed by producers in previous years,[10] producer and royalty interest owner comments argued that the producer could choose to remain regulated under section 101(b)(5) and the NGPA does not require that this gas be deregulated. Many producers argue that they will be forced to shut in wells if these wells are deregulated because the prices will be uneconomic after renegotiation with pipelines. They argue that this would cause them severe economic hardship and would deprive the nation of needed gas reserves. Producers also argue that they would not have invested in tight formation wells (section 107(c)(5)) if they had known that this gas would be deregulated on January 1, 1985.

Comments from pipelines, gas associations, utilities and consumer groups supported the Commission's proposal, arguing that dually-qualified gas deregulated on January 1, 1985.

At the time the NGPA was crafted, it was assumed that the deregulated price would be equal to or exceed the otherwise applicable regulated maximum lawful prices. However, this probably will not be the case on January 1, 1985. Market prices are currently lower than the section 102 and section 103 ceiling prices. Admittedly, Congress may not have anticipated such a situation. It did, however, enact the NGPA in the belief that the marketplace could ascertain the value of a commodity in relation to supply and demand and allocate gas resources better than the regulated environment. Deregulation will accelerate the market trend to competitive affordable gas prices.

1. Section 121 Mandates Deregulation

The Commission believes that the position it took in its proposal is legally correct. Gas that is dually qualified must be considered deregulated under the NGPA. The Commission believes that it is implementing Congress' intention to phase in deregulation of natural gas. Section 121 states that all maximum lawful prices for certain categories of natural gas, namely gas under sections 102(c) and 103(c), "shall * * * cease to apply effective January 1, 1985 * * *." Therefore, gas that qualifies both under section 107(c)(5) or 108 *and* sections 102 or 103 will be deregulated, provided that section 103 gas meets the dedication and depth requirements. Deregulation appears to be mandatory. Producers cannot opt out of the statutory scheme on January 1, 1985, merely because market conditions are unfavorable. The Commission finds more persuasive the comments filed by producers on this issue in previous proceedings, where they too perceived a statutory mandate to deregulate.[11]

To ignore this fact invalidates the Congressional intent evident in the NGPA scheme of phased decontrol. The NGPA was created to phase from regulated ceiling prices in the short term to market clearing prices in the long term. Producers complain because market prices are currently lower than regulated prices. Under deregulation, the ability to negotiate a contract above the old regulated ceiling price is always possible.

With a different future market in mind, Congress allowed dual determinations to expedite the determination process and to prepare for the deregulation process. Quoting from the *Congressional Record*, October 14, 1978, H 13115–17:

> Another way in which dual determination requests could be appropriate would be in cases in which one determination would yield a short term benefit, while another a long term advantage. Such could be the case where a new well produces new gas and also qualifies as a stripper well. A single proceeding to determine qualification for both designations would permit the producer to obtain stripper well pricing under section 108 prior to January 1, 1985 and deregulation as new gas thereafter. In the long run a single state proceeding might present less administrative burdens than a subsequent proceeding in which a classification not previously requested is sought.

It is our statutory obligation to interpret and implement the NGPA. It is our belief that the statutory intent to deregulate takes precedence over the statute's increased supply objective. Thus when the deregulation date of January 1, 1985 is reached, section 121—being the last provision in point of arrangement (Subsection B), and detailing deregulation specifically—is the controlling section.[12] The maximum lawful ceiling prices for section 107(c)(5) and section 108 gas which also qualifies as section 102 or section 103 deregulated gas no longer exist. The statutory language mandates deregulation of gas qualifying for a regulated and deregulated category on January 1, 1985. It is this statutorily-mandated

[10] Contrary to producers' current pro-regulation stance, they formerly argued for decontrol of tight formation gas on January 1, 1985, if such wells qualify. Numerous comments were filed by producers in Docket No. RM79–76, Interim Rule Covering High-Cost Natural Gas Produced from Tight Formations, 45 FR 13414 (February 28, 1980). The following comment is typical of those presented by producers: "If a well qualifying as a 'tight' formation well also qualifies under section 102, then gas produced from that well will be price deregulated as of January 1, 1985. Similarly, if the Commission maintains its present requirement that any 'tight' formation well must also be a section 103 well, then gas from any such well *must* be price deregulated as of January 1, 1985, or July 1, 1987, depending on the depth of the well. Quite simply, the NGPA vests no discretion in the Commission in this regard. Thus, the fact that a well qualifies as a "tight" formation well under any regulation ultimately issued has absolutely no impact upon the question of whether the gas produced from such well will otherwise be price deregulated pursuant to the provisions of Section 121 if it also qualifies under a deregulated category." Pennzoil Co. *et al.*, October 30, 1979, comments at 14, Docket No. RM79–76.

[11] See, n.10, *supra*.

[12] Basic rules of general statutory construction and interpretation state that (1) when a conflict in a statute exists, the last provision in point of arrangement [within the statute] must control: Lodge 1858, Am. Fed. of Gov't Emp. v. Webb, 580 F.2d 498 (D.C. Cir. 1978); (2) [s]pecific terms will prevail over the general [terms] in the same or another statute which otherwise might be controlling; Lodge 1858, supra, *quoting* Ginsberg & Sons v. Popkin, 285 U.S. 204; (3) all sections must be reconciled so as to produce a symmetrical whole. Federal Power Comm. v. Panhandle Eastern Pipeline Col., 337 U.S. 498 (1949).

deregulation that may trigger the parties' contractual agreements, with subsequent economic consequences.[13]

2. The Effect of Section 101(b)5

The Commission believes that section 101(b)(5) is helpful, but not dispositive of the dual qualification issue. Section 101(b)(5) states:

> If any natural gas qualifies under more than one provision of this title providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable.

The Commission's proposal in this docket requested "comments on whether conflicts between regulated and deregulated gas prices are governed by this section * * *."

As early as 1979, in comments filed under Docket No. RM79–76, the producers interpreted the language to "compel" deregulation.[14] Producers now contend that section 101(b)(5) only refers to the ability of first sellers to collect the higher regulated prices. However, other commenters argued that the words "the provision which *could* result in the highest price shall be applicable" mean that, if gas is eligible for both regulated and deregulated prices, there always exists at least the potential for the parties to negotiate a contract above the old regulated ceiling price. We agree.

Gas which qualifies for two different ceiling prices, or for a ceiling price and a deregulated price, would qualifiy for the highest applicable price. In this case, the deregulated price, which always *could* result in a price *higher* than a regulated price, prevails. Although we do not find section 101(b)(5) compelling on this issue, it clearly provides for automatic eligibility for the deregulated price, subject to the agreement of the parties. Much has been said about section 101(b)(5). This statutory section must be understood in the context of the contractural agreements that exist between the parties. However "could" is interpreted, it may never operate to nullify the effectiveness of a contractual pricing right that is triggered by statutory deregulation.

3. Producers Claim of Reliance On the Incentive Prices

Some producers claim reliance on the incentive price in section 107(c)(5) and in section 108, and state that the Commission can not arbitrarily deny their ability to collect the incentive price. The Commission believes that this reliance is misplaced. It should have been clearly understood that the incentive price was to be statutorily removed by section 121 for section 102(c) and qualifying section 103 gas.

The Commission response to comments filed by producers in Docket No. RM79–76 put the producers on notice since February, 1980, when the interim rule on tight formations was issued, that tight formation section 107(c)(5) gas would deregulate if the gas also qualified as section 102(c) or section 103 gas. In the 1980 interim rule discussion on deregulation, the following was stated:

> The Commission was interested in soliciting comments as to whether section 101(b)(5) of the NGPA requires the eventual deregulation of tight formation gas which also qualifies as section 103 gas the price for which is deregulated in 1985 or 1987 * * *. Those that responded to this request argued that section 101(b)(5) compels deregulation of tight formation gas when that gas is finally determined to qualify under a deregulated category. The Commission agrees and notes with regard to the change in the interim rule that this argument applies equally to new tight formation gas which qualifies under section 102(c).[15]

In light of the above discussion, the Commission believes that the producers' claim of reliance is unsubstantiated.

4. Economic Dislocation

The Commission is not insensitive to the economic dislocation which will be caused by deregulation of gas categories that are dually qualified. However, the mandate of the NGPA is clear. Gas which qualifies for a regulated and deregulated price, deregulates.

The Commission recognizes that deregulation will have an effect on the typical gas sales contract. First, the maximum lawful prices are *ceiling* prices only; contract prices may be lower than the ceiling price. Second, these regulated ceiling rates do not set the *floor* for deregulated prices. Third, many gas sales contracts contain a clause which requires the parties to renegotiate the sales contract if deregulation occurs. These deregulation clauses would allow market forces to reshape the contractual price terms upon deregulation.[16]

Once deregulation of section 102(c) and qualifying section 103 gas occurs, the contract between the parties must control. Many contract deregulation clauses appear to allow no choice—renegotiation will begin if deregulation occurs. This process is triggered by the *contract* and the NGPA's scheme of deregulation, not by this Commission's policy preferences. The Commission's implementation of the statute is not "forcing" renegotiation: rather, the renegotiation process occurs as a result of the deregulation language in the statute and the parties' own contracts. The Commission's authority to interpret contracts is limited by the decision in *Pennzoil Co.* v. *FERC*.[17] Indeed, section 101(b)(9) sets forth the effect of the contract, regardless of the statutorily imposed maximum lawful ceiling prices or exemptions from ceiling prices, *i.e.*, deregulated prices. In fact, the contract terms prevail. The statute in section 101(b)(9) states that such ceiling prices "shall not supersede or nullify the effectiveness of the price established under such contract."

Thus, any economic harm to producers flows from the NGPA and their contracts. This harm does not flow from this Commission's exercise of discretion in administratively deregulating gas. The Commission has no such authority. In this instance, our mandate is to determine Congress' intent with regard to the dual qualification problem.

[13] Some producers raised an issue concerning the tax credit election available for tight formation wells under the Crude Oil Windfall Profits Tax Act, sections 231 (a) and (b). These provisions have been cited in support of the proposition that tight formation gas was intended by Congress to be forever regulated, even if dually-classified as section 102(c) or deregulated section 103 gas. An examination of the restrictions applicable to the use of this tax credit belies this interpretation, however.

Congress provided thus:

> (B) Special rules for gas from tight formations—The term "gas produced from a tight formation" shall only include—
>
> (i) Gas the price of which is regulated by the United States, and
>
> (ii) Gas for which the maximum lawful price applicable under the Natural Gas Policy Act of 1978 is at least 150 percent of the then applicable price under section 103 of such Act.

26 U.S.C. 29(c)(2)(B) [formerly 26 U.S.C. 44(D)(c)(2)(B).]

It is plain that the tax credit option was intended by Congress to be available only so long as the price of the gas "is regulated" (section (B)(i), above). Thus, Congress provided for removal of the tax credit when tight formation gas became deregulated, either as a result of dual classification, or otherwise.

[14] *See* n. 10, *supra*.

[15] *See* Interim Rule Covering High-Cost Natural Gas from Tight Formations, 45 FR 13414 (Feb. 28, 1980).

[16] *See*, DOE—EIA, Structure and Trends in Natural Gas Wellhead Contracts, November, 1983.

[17] 645 F.2d 360 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982). "* * * FERC can no longer interpret or apply § 154.93 to these contracts. Whether such a contract authorizes escalation to NGPA prices is for state or federal courts to decide, unless the NGPA vested in FERC independent authority to interpret contracts concerning gas not within FERC's jurisdiction."

5. Gas Qualifying as Section 107 Tight Formation Gas

In order to qualify as new tight-formation gas under section 107(c)(5), a producer must file the same information, in addition to other information, that would be filed to qualify as a section 102 or 103 determination. 18 CFR 274.205(e)(1)(i) (A) or (B) and 271.703(b)(2)(a) (1983). Thus, a determination that gas qualifies as new tight-formation gas is implicitly a determination that the gas meets the qualifications for either section 102(c) or 103. Accordingly, for new tight formation gas for which a producer has received a final determination prior to January 1, 1985, the Commission proposed that such gas would be deregulated under section 121 if the application contained the data and met the requirements for section 102(c) or 103 gas.

Producers argue that tight formation gas is section 107(c)(5) gas, not section 102 or section 103 gas. The Commission does not agree. Such gas is obviously qualified for both categories. Meeting the statutory criteria of section 102 or section 103 is a prerequisite to qualification as new tight formation gas under section 107(c)(5). The Commission thus believes that determinations that gas qualifies under section 107(c)(5) new tight-formation gas should also be considered section 102 or 103 determinations, regardless of whether that was explicit at the time that the determination was made.[18]

D. Deregulation of Intrastate Gas

Section 121(a)(3) deregulates the price of intrastate contracts where the price paid on December 31, 1984, is higher than $1.00 per MMBtu. Section 121(e), however, imposes a new ceiling price[19] on existing or successor contracts but not rollover contracts,[20] otherwise deregulated by section 121(a)(3), if the price is established under an indefinite price escalator clause.

This complicated scheme of deregulation raised several issues on which the Commission made proposals, several on how to decide whether gas was priced over $1.00, and several relating to indefinite price escalator clauses.

1. Determining Whether the $1.00 Threshold Is Met

Sections 121 and 105 of the NGPA provide generally that intrastate gas, the price of which is greater than $1.00 per MMBtu on December 31, 1984, is deregulated, provided that the price has not been "established under" an indefinite price escalator clause (as defined in section 105). If the price is greater than $1.00 per MMBtu but is established under an indefinite price escalator, section 105(b)(3) of the NGPA imposes a price limit equivalent to the section 102 ceiling price with a slightly lower adjustment factor, in addition to inflation. In a sense, section 121 deregulates the whole universe of section 105 gas on January 1, 1985, and section 105(b)(3), at the same moment, re-regulates any such gas that was over $1.00 per MMBtu in price on the last day of this year pursuant to an indefinite price escalator (except for gas sold under "rollover" contracts).

The notice of proposed rulemaking (NOPR) stated that the section 121(e) and 105(b)(3)(A) limitation applied only to a situation where operation of an indefinite price escalator was necessary in order to exceed the $1.00 threshold. In a situation where an intrastate contract contained both a fixed price term and an indefinite price term, and both were over $1.00 per MMBtu on January 1, 1985, the NOPR proposed that the section 105(b)(3)(A) limitation would *not* apply, even if the price on December 31, 1984 was determined pursuant to the indefinite price clause.[21]

Some commenters objected to this interpretation. On the other hand, many commenters supported the position put forth in the NOPR. After careful consideration of the comments on this subject, the Commission has determined to affirm the initial position and rationale on this issue set forth in the NOPR. There is a general lack of discussion in the legislative history on this precise point. However, the language of the statute, and the legislative history that does exist, appears to favor, on balance, the position enunciated in the NOPR. Accordingly, § 271.506(a) is being adopted as proposed.

2. Percentage of Proceeds Sales

A second situation in which it is unclear how to determine if the $1.00 threshold was met arose when the price paid under an intrastate contract is based on a percentage of the proceeds from a subsequent first sale (percentage sale). Determining whether the percentage sale price is above $1.00 per MMBtu on December 31, 1984, obviously presents the problem of determining a specific price paid on December 31, 1984. If conceived of as a daily price, a percentage sale price can fluctuate on a daily basis. For example, under a percentage sale, the price of gas, if reported on a daily basis, may be above $1.00 on December 28, below $1.00 on January 1, 1985, and above $1.00 again on January 3, 1985.

The Commission faced a similar problem in Order No. 68,[22] in which the Commission had to determine whether a percentage sale exceeded the section 105 and 106(b) ceiling price. The Commission noted that "the pricing mechanisms under sections 105 and 106(b) appear to assume a specific price stipulated by the terms of the contract." That order resolved this dilemma by reference to the subsequent resale between the percentage sale buyer and subsequent purchaser (resale contract). If the resale contract was within the ceiling price authorized by the NGPA, then the Commission assumed that the price paid under the percentage sale was within the ceiling price of the NGPA. The Commission noted that this was "the only practical course."

For purposes of determining whether section 105 gas subject to percentage sales contracts is priced above $1.00 per MMBtu and thereby deregulated, the Commission proposed to follow the same rule established in Order No. 68. As proposed in § 271.506(c), if a resale contract that follows a prior percentage sale is above $1.00 per MMBtu, the Commission would deem the percentage sale deregulated by operation of section 121. Conversely, if the price paid under the resale contract is below $1.00 per MMBtu on December 31, 1984, then the Commission will deem the percentage sale not deregulated by operation of section 121.

All but one commenter on this issue supported the Commission's proposal. Most stated that this approach offered the benefit of administrative simplicity and convenience for all concerned. The objecting commenter (a State agency) stated that it did not believe "sufficient protection" would be afforded by this approach, although it seemed to agree that any impact in the current market appeared "to lack harmful effect."

The Commission recognized that under this proposal, there may be certain instances where the price paid under the resale contract is over $1.00 per MMBtu and the percentage given to the seller is less than $1.00 per MMBtu, and thus is not technically eligible for price decontrol. The Commission believes that this problem is *de minimis*. Under section 105, the ceiling price for a percentage resale that remains regulated is the section 102 price ($3.845—December 1984). The Commission believes that, given the current surplus market, there will be few instances in which the price collected for a percentage sale of deregulated gas would exceed or equal the section 102 price. Thus, it makes little practical difference whether the Commission considers these percentage sales regulated or deregulated sales. Also, a decision to deregulate the percentage sale contract will have no rate impact on consumers since the resale contract already qualified for a deregulated price.

The Commission, therefore, will resolve the percentage sale problem as was done in Order No. 68, and proposed in the NOPR.

3. Indefinite Price Escalator Clause Issues

The NGPA at section 105(b)(3)(B) defines the term "indefinite price escalator clause" to include any provision of any contract—

(i) Which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

(ii) Which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

15 U.S.C. 3315(b)(3)(B) (1982).

The Commission expects there may be some instances where the parties disagree as to whether a specific clause is an indefinite price escalator clause under this definition.

In the preamble to Order No. 23[23] the Commission gave several examples of clauses in intrastate contracts that fall within the section 105(b)(3)(B) definition of indefinite price escalator clauses—most-favored-nations clauses, price-reference clauses, certain redetermination clauses, FPC clauses, area rate clauses, and other such clauses.[24] The Commission proposed that these clauses are within the definition of indefinite price escalator clauses in section 105(b)(3)(B) and should be used in applying that definition to interstate contracts.

Commenters generally agreed that these types of clauses generally met the section 105(b)(3)(B) definition of indefinite price escalator clause. Commenters argued, however, that although the Commission may define the parameters of what an "indefinite price escalator clause" is for section 105 purposes, it may not address other related questions that are essentially contractual. Such questions are to be left to the State or Federal courts. *See Pennzoil Co.* v. *FERC*, 645 F.2d 380, 382 (5th Cir. 1981).

The Commission here reaffirms its position that the types of clauses found in Order No. 23 to be indefinite price escalator clauses are also indefinite price escalator clauses under section 105(b)(3)(B) and should be so construed in applying the definition to intrastate contracts.

4. Forum for Resolving Disputes Over Indefinite Price Escalations

Disputes over the application of section 105 of the NGPA to particular contractual agreements are necessarily a hybrid. On the one hand, they present statutory interpretation questions derived from the federal statute. On the other hand, they present questions that are more fundamentally contractual in nature, which are more within the purview of state or federal courts, and not this agency. The line of demarcation separating the former type of questions relating to the specialized statute, and the latter type of questions that are more contractual, is not always clear-cut.

Given that these disputes involve conflict over a term defined in a federal statute and the implementation of the deregulation scheme of section 121, the Commission is convinced that it could exercise exclusive jurisdiction over these disputes if it deemed it necessary. Recognizing, however, that these disputes involve serious questions of contract interpretation between parties residing in the same state, the Commission believes its federal obligation is met by giving the guidance above as to what clauses in intrastate contracts are indefinite price escalator clauses and then allowing further disputes over these clauses to be decided in any appropriate judicial forum.

The notice proposed in § 271.506(a) that the Commission would have exclusive jurisdiction and that a petition for declaratory order "shall" be filed in instances where there is a conflict as to whether a contract clause meets the definition of indefinite price escalator in section 105(b)(3)(B). Many commenters objected to the mandatory nature of this regulation. Commenters were concerned that the potential for contract-by-contract Federal involvement in intrastate contract disputes might ensue, that staff resources might be diverted from the Commission's primary statutory responsibilities into a plethora of contractual issues, and that the jurisdiction of more appropriate forums would be intruded upon. We agree.

Upon consideration, we have determined to delete any references to this Commission's exclusive jurisdiction and the use of a declaratory order. The Commission has already given guidance as to the types of clauses that fall within the section 105(b)(3)(B) definition. The commenters have convinced us that these disputes are better resolved by judicial forum that is more typically the forum for contract disputes. This decision is further supported by the fact that, by definition, these are contracts involving producers, pipelines, and consumers in the same state. Thus we believe that either state or federal courts should exercise exclusive jurisdiction over these contract disputes.

E. Miscellaneous Issues

The Commission encouraged comments on additional issues in the NOPR and commenters raised many points, several of which require clarification and, in some instances, conforming amendments to the regulations in light of the changes that will be made by the NGPA on January 1, 1985.

1. Section 103, Impact of New Price Ceiling

The ceiling price of tight formation gas, as well as the price of certain production enhancement gas, is keyed to the price of gas under section 103 of the NGPA. The tight formation ceiling price, for example, is 200 percent of the section 103 price, and the formula for determining the price of qualified production enhancement gas at § 271.704(c)(1)(v) also employs a ceiling

[18] Gas covered by § 271.703(b)(3), recompletion tight formation gas, does not necessarily qualify under either section 102 or section 103. However, if a recompletion tight formation well, in addition to receiving a section 107(c)(5) determination, also has received either a section 102(c) or the appropriate section 103 determination, it would deregulate on January 1, 1985.

[19] The new ceiling price is established by section 105(b)(3)(B).

[20] Various commenters argued that rollover contracts were never "reregulated" by section 121(e), contrary to inferences drawn from the Commissions proposal. The Commission did not intend to imply that rollovers would be reregulated and therefore agrees with these commenters.

[21] Pursuant to 18 CFR 271.704(a)(3), any amount paid solely by reason of the maximum lawful price provided for production enhancement work shall be disregarded for purposes of applying section 121(a)(3) of the NGPA. This provision still applies.

[22] Rules Generally Applicable to Regulated Sales of Natural Gas and Ceiling Prices, 45 FR 5878 (Jan. 24, 1980) (Order No. 68).

[23] Final Regulations Amending and Clarifying Regulations Under the Natural Gas Act and the Natural Gas Policy Act, 44 FR 16885, 16888 (Mar. 20, 1979) (Order No. 23).

[24] In Order No. 23, the Commission was concerned with the issue of whether various contractual clauses in interstate contracts provided contractual authority to collect NGPA maximum lawful prices. Here, however, the Commission is concerned not so much with interpreting the intent of parties to contracts but with whether certain pricing clauses fall within the definition of "indefinite price escalator clause."

calculation based on 200 percent of the section 103 price.

On January 1, 1985, the NGPA provides for a new ceiling price for section 103 gas from wells 5,000 feet or less in depth (for gas which was not committed or dedicated to interstate commerce on April 20, 1977), which is *midway* between the section 102 ceiling price and the "old" section 103 ceiling price. As a consequence, the question arose as to whether to base the tight formation and production enhancement prices on the "new" higher section 103 price after 1984, or to continue using the "old" section 103 price as the price ceiling. Inasmuch as the production enhancement and tight formation prices were established with the intent of using the "old" section 103 price as the reference point, the "old" section 103 price shall continue to be used for this purpose after January 1, 1985. Conforming amendments to the pricing table in the regulations are being made to show both the "old" and "new" section 103 ceiling prices.

2. Section 110 Add-Ons

There was some comment that the Commission should clarify its regulations to indicate that the allowances under section 110 of the NGPA are not available for gas that is deregulated under the NGPA. The Commission believes that the allowances in § 271.1104 for production-related costs should cease to apply to gas that is deregulated on January 1, 1985. Because the price for deregulated gas will be determined by market forces, presumably any production-related costs will be considered in the price ultimately agreed to. Thus, there is no need for a ceiling on the amount a seller can collect for production-related costs for deregulated gas. The Commission believes that this approach is consistent with a decision by Congress to subject a substantial amount of interstate and intrastate gas to market forces after January 1, 1985. It makes little economic sense to keep one component of the price of gas subject to a ceiling while deregulating another component since a seller could legitimately increase the nonregulated component to compensate for cost limitations on the regulated component.

3. Measurement of 5,000 feet and "Committed or Dedicated" Status for Section 103 Purposes

A clarification was requested by some commenters concerning the allocation of production of section 103 gas some of which may be above, and some below 5,000 feet, and some of which may have been committed or dedicated to interstate commerce on April 20, 1977, while some of which was not. One commenter suggested gas production must be allocated between the regulated and deregulated categories. The Commission generally concurs with this approach. Similarly, where a well is perforated both above and below 5,000 feet, allocation of production would be appropriate if such perforations are in different completion locations. In the case of open hole completions, it also may be appropriate to allocate production to different completion locations.

4. 18 CFR 270.207 and 272.105

On April 22, 1980, the Commission issued a final rule defining and deregulating certain high-cost gas under NGPA sections 107(c) (1)–(4). (Docket No. RM79–44, Order No. 78, 45 FR 18092). One of the Commission's concerns therein was that situations could arise where prices paid for deregulated gas may be paid as consideration for the sale of gas still subject to price regulation, and thus possibly circumventing the applicable maximum lawful prices. To prevent this, §§ 270.207 and 272.105 were promulgated. These regulations prohibit any part of the price paid for deregulated high-cost gas from being used as consideration for regulated gas, and require separate billing for deregulated high-cost gas. Several commenters requested that these sections be amended to include gas that will be deregulated on January 1, 1985. We agree that the price paid for deregulated gas should not reflect an add-on to avoid the ceiling price for other gas sales that remain regulated.

5. Emergency Contract Carriage

A number of commenters suggested that if a seller's first sale volumes are "marketed-out" by a purchaser as a result of deregulation on January 1, 1985, then an emergency contract carriage arrangement would give the seller needed assistance to enable the seller to find alternate markets for its gas. Another commenter noted that the Commission may not have the authority to accomplish all that has been suggested on this issue. Another commenter asked that the Commission set in motion immediately a rulemaking to establish a contract carriage system.

The Commission has already allowed competitive pressures to operate more freely in the gas marketing network by means of a number of special marketing programs, which are being monitored closely. Whether it is more appropriate to explore contract carriage possibilities in the context of those programs, or elsewhere, is a matter requiring careful assessment to avoid precipitate action and the imposition of any further regulatory distortion in the natural gas markets.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires certain statements, descriptions, and analyses of rules that will have a "significant economic impact on a substantial number of small entities." [25] The Commission is not required to make such an analysis if it certifies that a rule will not have a "significant economic impact on a substantial number of small entities." [26]

There are approximately 10,000 natural gas producers in the United States, many of which would be classified as small entities under the appropriate RFA definition.[27] In the proposed rule, the Commission noted that the rule might affect most of these entities by amending the filing requirements that must be followed for gas that will be deregulated on January 1, 1985. The Commission stated that, while these changes would be important in implementing deregulation under the Natural Gas Policy Act, the Commission did not believe that the burden imposed by these regulations would be significant. The Commission believed that for the most part, these regulations would merely make legal decisions and technical corrections necessary to implement the statute. In those few instances where the Commission proposed to amend its regulations based on policy, the Commission believed that the economic impact, if any, would not be "significant." Accordingly, the Commission certified the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

Six commenters challenged this certification. These commenters focused on the Commission's proposed interpretation requiring gas to be deregulated if it qualified for both a regulated and a deregulated category of gas. They argue that they and other small entities would suffer severe economic impacts if the Commission required that they collect a deregulated price for certain section 107 tight formation gas and section 108 stripper well gas that also qualified for a deregulated category (e.g., section 102(c) or section 103(c)). They argue that, given the current surplus market, they would receive a much lower price for this gas if it were considered deregulated.

The Commission believes the certification in the proposed rule was proper. The Commission's proposed rule drew a distinction between rules adopted for policy reasons and rules that embodied legal requirements of the NGPA. The Commission believes that the NGPA itself requires the deregulation of gas qualifying for both a regulated and a deregulated category; this is not a policy decision over which the Commission can be influenced by the economic impact on small businesses.

The Commission believes this distinction is supported by the RFA and its legislative history. Section 2 of the RFA, stating the purposes of the Act, encourages the consideration of "alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes * * *." [28] Additionally, the Act states that the requirements of the RFA to do a regulatory flexibility analysis "[does] not alter in any manner standards otherwise applicable by law to agency action." [29] Similarly, the Senate Report states that "agencies [should] give explicit consideration to a range of alternatives that would substantially reduce the economic impact of the rule * * * while meeting the goals and purposes of the governing statute." [30] Numerous statements made by Congressmen and Senators at the time of passage of the RFA support the distinction between legal requirements mandated by statute and those adopted as a matter of policy.[31]

As noted above, the Commission believes that Congress intended that gas that qualifies for a deregulated category would be priced according to market forces. While some small producers may suffer severe economic impacts, the Commission believes these impacts are caused by Congress' scheme of deregulation, not by any discretionary policy adopted by this Commission.

Accordingly, the Commission continues to believe that it correctly certified that this rule will not have a significant economic impact on a substantial number of small entities.

V. Effective Date

This rule will become effective on January 1, 1985, to correspond with the date of decontrol under the NGPA.

List of Subjects in 18 CFR Parts 270 through 274

Natural gas, Incentive prices.

In consideration of the foregoing, the Commission amends Parts 270 through 274, Subchapter H, Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 270—[AMENDED]

1. The authority citation for Part 270 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

§ 270.101 [Amended]

2. Section 270.101(a) is amended by removing the words "high-cost" and inserting, in their place, the word "natural."

3. Section 270.101(c)(2) is revised to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(c) * * *

(2) The price of gas is deregulated only if such gas is deregulated natural gas as defined in § 272.103(a).

* * * * *

§ 270.102 [Amended]

4. Section 270.102(b)(14) is amended by removing the word "high-cost" and inserting, in its place, the word "natural."

§ 270.207 [Amended]

5. Section 270.207 is amended by removing the word "high-cost" and inserting, in its place, the word "natural" in the title and three times in the text.

6. A new § 270.208 is added to read as follows:

§ 270.208 Applicability of section 121.

First sales of natural gas that is deregulated natural gas as defined in § 272.103(a) is price deregulated and not subject to the maximum lawful prices of the NGPA, regardless of whether the gas also meets the criteria for some other category of gas subject to a maximum lawful price under Subtitle A of Title I of the NGPA.

PART 271—[AMENDED]

7. The authority citation for Part 271 reads as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

* * * * *

8. The table following § 271.101 is amended by adding a sentence at the end of footnote 1, adding footnote 4 and 5, revising designation C–103, and adding new designations C–103(b)(2) and E–105(b)(3) in the columns reading "Subpart of Part 271—NGPA Section," to read as follows:

§ 271.101 Ceiling prices for certain categories of natural gas.

* * * * *

TABLE I.—NATURAL GAS CEILING PRICES (OTHER THAN NGPA SECTIONS 104 AND 106(a))

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price (per MMBtu) for Determination in:
B	102	New natural gas, certain OCS gas[4].	
C	103(b)(1)	New, onshore production wells[5].	
C	103(b)(2)	New, onshore production wells[5].	
E	105(b)(3)	Existing intrastate contracts.	
F			
G			
H			
I			

[1] * * *. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's Regulations.)

* * * * * * *

[4] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's Regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

9. Section 271.201(a) is revised to read as follows:

§ 271.201 Applicability.

This subpart implements section 102 of the NGPA and applies to the first sale of:

(a) New natural gas which is not deregulated natural gas (see § 272.103(a)); or

* * * * *

10. Section 271.301 is revised to read as follows:

§ 271.301 Applicability.

This subpart implements section 103 of the NGPA and applies to the first sale of natural gas produced from a new, onshore production well, if such gas is

[25] 5 U.S.C. 603(a) (1982).

[26] *Id.* at section 605(b).

[27] *Id.* at section 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines small business concern as a business which is independently owned and operated and which is not dominant in its field of operation.

[28] Pub. L. No. 96–354, 94 Stat. 1164 at section 2(a)(7).

[29] 5 U.S.C. 606 (1982).

[30] S. Rep. No. 878, 1980 U.S. Code Cong. & Ad. News 2788.

[31] *See also* 126 Cong. Rec. H 8463 (daily ed. Sept. 8, 1980) (Statement of Congressman McDade); 126 Cong. Rec. H 8468 (daily ed. Sept. 8, 1980) (Statement of Congressman Andy Ireland) ("Statutory mandates must never be compromised . . . ."); 126 Cong. Reg. H 8472 (daily ed. Sept. 8, 1980) (Statement of Congressman Butler); 126 Cong. Rec. S 10937–38 (daily ed. August 6, 1980) (Statement of Senator Culver) (extensive analysis on "Preserving Statutory Objectives.").

not deregulated natural gas (see § 272.103(a)).

11. Section 271.501 is amended by revising the first sentence to read as follows:

§ 271.501 Applicability.

This subpart implements section 105 of the NGPA and applies to the first sale of natural gas under an existing intrastate contract or under a successor to an intrastate contract, if such natural gas is not deregulated natural gas (see § 272.103(a)). * * *

§ 271.502 [Amended].

12. Section 271.502(a) is amended by removing from the title the words "November 9, 1978, contract price at or below $2.06 per MMBtu."

13. Section 271.502(b) introductory text and (b)(1) are revised to read as follows:

§ 271.502 Maximum lawful prices.

* * * * *

(b) In the case of any first sale of natural gas to which this subpart applies, and for which the price paid exceeds $1.00 per MMBtu on December 31, 1984 (or would exceed $1.00 per MMBtu if sold on such date) solely by operation of an indefinite price escalator clause, the maximum lawful price for natural gas delivered in any month shall be the higher of:

(1) The maximum lawful price per MMBTu for such month specified for Subpart E of Part 271 in Table I of § 271.101(a)

* * * * *

14. A new § 271.506 is added to read as follows:

§ 271.506 Rules related to deregulation of intrastate gas.

(a) *Contracts over $1.00 by virtue of a definite price clause.* The price of natural gas subject to this subpart is deregulated if the price paid under a clause other than an indefinite price escalator clause is higher than $1.00 per MMBtu for the last deliveries of such gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price that would have been paid had deliveries occurred on such date.

(b) *Percentage-of-proceeds sales.* The price of natural gas sold under a percentage-of-proceeds contract subject to this subpart is deregulated if the price paid on the resale contract is deregulated under Part 272. (§ 270.202(b) states other rules for percentage-of-proceeds sales.)

15. Section 271.601 is revised to read as follows:

§ 271.601 Applicability.

This subpart implements section 106(b) of the NGPA and applies to the first sale of natural gas under an intrastate rollover contract, if such natural gas is not deregulated natural gas (see § 272.103(a)).

16. Section 271.703(a)(2) is revised to read as follows:

§ 271.703 Tight Formations.

(a) * * *

(2) 200 percent of the maximum lawful price specified for subpart C—NGPA Section 103(b)(1) of Part 271 in Table I of § 271.101(a).

* * * * *

§ 271.704 [Amended]

17. Section 271.704(c)(1)(v) is amended by removing the words "Subpart C" and inserting, in its place, the words "Subpart C—NGPA section 103(b)(1)."

PART 272—[AMENDED]

18. The authority citation for Part 272 reads as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

§§ 272.101 and 272.102 [Amended]

19. Section 272.101 and 272.102 are amended by removing the word "high-cost" and inserting, in their place, the word "natural."

20. In § 272.103, paragraph (a) is revised to read as follows:

§ 272.103 Definitions.

(a) "Deregulated natural gas" means:

(1) Natural gas for which a jurisdictional agency determination has become final under Parts 274 and 275 that the gas qualifies as:

(i) Deep, high-cost natural gas;

(ii) Gas produced from geopressured brine;

(iii) Occluded natural gas produced from coal seams; or

(iv) Gas produced from Devonian shale.

(2) Natural gas for which a jurisdictional agency determination becomes final under Parts 274 and 275 and which is sold in a first sale on or after January 1, 1985, and such gas qualifies as:

(i) New natural gas as defined in § 271.203;

(ii) Natural gas produced from any new, onshore production well if such gas as defined in § 271.303:

(A) Was not committed or dedicated to interstate commerce (as defined in NGPA section 2(18)) on April 20, 1977; and

(B) Is produced from a completion location which is located at a depth of more than 5,000 feet.

(3) Natural gas sold under an existing intrastate contract, any successor to an existing contract or any rollover contract, if:

(i) Such natural gas was not committed or dedicated to interstate commerce on November 8, 1978; and

(ii) In the case of any existing or successor contract, the price paid under a clause other than an indefinite price escalator clause for the last deliveries of such natural gas occuring on December 31, 1984, or, if no deliveries occurred on such date, the price that would have been paid had deliveries occurred on such date is higher than $1.00 per MMBtu, and

(iii) In the case of any rollover contract, the price paid on December 31, 1984, or if no deliveries occurred on such date, the price that would have been paid had deliveries occurred on such date is higher than $1.00 per MMBtu.

* * * * *

21. Section 272.104 is revised to read as follows:

§ 272.104 Special rules for measuring the depth of deregulated natural gas.

For purposes of determining the depth of a completion location under §§ 272.103(a)(2)(ii)(B) and 272.103(b), measurement shall be true vertical depth from the surface location to the highest perforation point in the completion location.

§ 272.105 [Amended]

22. Section 272.105 is amended by removing the words "high cost" where they occur and inserting, in their place, the word "natural."

PART 273—[AMENDED]

23. The authority citation for Part 273 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

24. Section 273.202(a)(2) is revised to read as follows:

§ 273.202 Collection pending jurisdictional agency determination of eligibility.

(a) * * *

(2) If an application has been filed with the jurisdictional agency for a determination of eligibility under Part 272 (relating to deregulated natural gas), the deregulated price may be charged pending the jurisdictional agency determination.

* * * * *

25. Section 273.203(a)(2) is revised to read as follows:

§ 273.203 Collection pending review of jurisdictional agency determination.

(a) * * *

(2) If a jurisdictional agency has determined in accordance with Part 274 that natural gas qualifies under Part 272 (relating to deregulated natural gas), the seller may charge and collect the deregulated price during the period described in paragraph (b) of this section.

* * * * *

26. In § 273.204, a new paragraph (a)(1)(iv) is added to read as follows:

§ 273.204 Retroactive collection after final determination.

(a) * * *

(1) * * *

(iv) in the case of new natural gas (as defined in § 271.203) and natural gas produced from a new, onshore production well (as defined in § 271.303) which also satisfies the criteria of § 272.103(a)(3), if the application for determination was filed on or before January 1, 1985, then for first sales of such natural gas delivered on or after January 1, 1985, the seller may retroactively collect the amount by which the deregulated price exceeds the price collected during such period.

* * * * *

§ 273.204 [Amended]

27. Section 273.204(a)(2) is amended by removing the words "Part 272" and inserting, in their place, the words "§ 272.103(a)(1)."

PART 274—[AMENDED]

28. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–34342; Department of Energy Organization Act, 42 U.S.C. 7101–7352.

29. Section 274.101 is amended by revising the introductory language to read as follows:

§ 274.101 Applicability.

This part applies to determinations of jurisdictional agencies (as defined in § 274.501) made under § 272.103(a)(1) and the following subparts of Part 271:

§ 274.104 [Amended]

30. Section 274.104(a) is revised by removing the words "for a maximum lawful price."

[FR Doc. 84-30783 Filed 11-28-84; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 84-236]

Customs Regulations Amendment Relating to Reporting Requirements for Certain Commercial Aircraft

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to extend to certain commercial aircraft, the reporting requirements currently applicable to private aircraft arriving from areas south of the U.S. Current regulations provide specifics regarding the requirements for reporting arrival, and include a list of designated airports at various border and coastline points at which designated aircraft must land. This amendment expands coverage of existing requirements to include certain commercial aircraft.

The amendment is necessary because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for action to expand the effectiveness of drug smuggling enforcement. Customs has found that because commercial aircraft are exempt from current reporting requirements, aircraft operators are able to claim to be on a commercial flight and thus bypass the necessity to report and land. This amendment remedies that situation.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Duane Oveson, Office of Inspection and Control, Customs Headquarters, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–5607).

SUPPLEMENTARY INFORMATION:

Background

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the U.S. market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated $80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users, and the major increases in volumes of illegal drug importations in the U.S. are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures.

The smuggler organizations has solidified a dominant position in the U.S. through the penetration of strategic points in the economy. Countries to the south of the U.S. are major sources of illegal drugs destined for the U.S. Smuggling by air is the preferred mode of transportation for low-volume, high cost narcotics. A Stanford Research Institute Study indicates the magnitude of the air smuggling threat at approximately 6,700 flights, annually. Although recent air interdiction activities in the southeastern U.S. have resulted in many arrests and seizures, an end to the present situation of drug abuse in the U.S. is not in sight.

To address this national problem, it is necessary to take action to expand the effectiveness of smuggling enforcement. In 1975, the Customs Regulations were amended by adding a new § 6.14 (19 CFR 6.14), to provide for a notice of intended arrival for private aircraft arriving in the U.S. via the U.S./Mexican border. Section 6.14 further provided that these private aircraft must land at any one or 14 designated airports along the U.S./Mexican border.

Because of the magnitude of the drug problem, and in direct response to Executive and Congressional directives, by an interim regulation published as T.D. 82–52 in the **Federal Register** on March 24, 1982 (47 FR 12620), the notice requirements were extended to private aircraft arriving in the U.S. via the Gulf of Mexico, Pacific and Atlantic Coasts. These interim regulations were adopted as a final rule by publication of T.D. 83–192 in the **Federal Register** on September 15, 1983 (48 FR 41381).

Because the existing regulations only apply to private aircraft, and commercial aircraft are exempt from the reporting requirements, aircraft operators are able to capitalize on this technicality to legally bypass the reporting requirements by claiming to be on a commercial flight. To prevent aircraft operators from avoiding the reporting and landing requirements, and thus possibly engaging in drug smuggling, it is now believed that these requirements should be made applicable to certain commercial aircraft in addition to all private aircraft.

Accordingly, on July 31, 1984, Customs published a notice in the **Federal Register** (49 FR 30527), proposing to amend §6.14(e), Customs Regulations (19 CFR 6.14(e)), by extending the current reporting requirements to certain commercial aircraft. This was accomplished by expanding the definition of "private aircraft." The expanded definition makes the reporting requirements applicable to a greater number of aircraft then did the previous definition.

Interested parties had until October 1, 1984, to submit comments on the proposal. After analysis of the comments received and further consideration of the matter, the amendment is being adopted, as proposed, with certain non-substantive changes. The amendment as proposed was based upon the definition of commercial aircraft appearing in the regulations of the Department of Transportation (DOT), (14 CFR Part 121). These regulations have been amended. The amendment, as published in this document, reflects the present DOT regulations set forth in 14 CFR Part 298, but makes no substantive changes from our earlier proposal.

Discussion of Comments

Three commenters expressed concern over anticipated increases in expenses for certain commercial operators as a result of the amendment.

Considering the high smuggling risk found to exist in certain commercial air operations, the present practice could be said to be discriminatory to non-commercial operators and owners. Any added costs will become part of normal commercial operating expenses. Relief from the requirements is available in extreme cases under existing overflight exemption procedures (see 19 CFR 6.14(f)).

One commenter was concerned about the impact of the regulations on international commuter flights.

Such carriers must satisfy certain criteria in order to be certified as commuter flights, including the publication of a flight schedule, which exempts them from the special landing and reporting requirements.

One commenter submitted an alternative definition of private aircraft.

Customs has determined that the definition cannot be adopted because it exempts the very segment of the aviation community that the regulations are intended to include (non-scheduled commercial operations).

One commenter suggested that the expansion of the definition of private aircraft to include certain commercial aircraft would cause confusion among Customs inspection personnel. It was suggested that the expanded requirements be implemented separately, and not included in the definition of private aircraft. It also was suggested that the special U.S./Mexican border requirements be made applicable to all aircraft operations, with specific exemptions stated separately.

By amending the definition of private aircraft, Customs is able to achieve the desired result with an amendment to a single paragraph of the regulations. The suggested alternative would require much more comprehensive amendments. Further, the amendment applies special requirements to all aircraft operations, with certain identified exceptions, as suggested by the commenter.

The remaining two commenters suggested that all unscheduled commercial aircraft be included in the requirements, regardless of payload or passenger capacity. We believe the stated limits are practical and desirable in light of staffing levels, inspection facility limitations, and smuggling threat estimates.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (Pub. L. 96-353, 5 U.S.C. 301 et seq.), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information requirements contained in this document were submitted to the Office of Management and Budget pursuant to section 3504(h) of the Paperwork Reduction Act of 1980. These requirements were approved by OMB (control number 1515-0098).

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 6

Air carriers, Air transportation, Aircraft, Airports.

Amendments to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended in the following manner:

PART 6—AIR COMMERCE REGULATIONS

Section 6.14(e) is revised to read as follows:

§ 6.14 Private aircraft arriving from areas south of the United States.

* * * * *

(e) *Private aircraft defined.* For the purpose of this section, "private aircraft" means all aircraft except public aircraft an those aircraft operated, on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Civil Aeronautics Board, or its successor, the Department of Transportation, authorizing interstate, overseas air transportation, and those aircraft with a seating capacity of more than 30 passengers or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand. (See 49 U.S.C. 1372 and 14 CFR Part 298).

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624; 49 U.S.C. 1509))

William von Raab,
Commissioner of Customs.

Approved: November 9, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 84-31279 Filed 11-28-84; 8:45 am]

BILLING CODE 4820-02-M

---

19 CFR Part 152

[T.D. 84-235]

Customs Regulations Amendment Relating to Valuation of Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by excluding from the price paid or payable for imported merchandise, the costs for foreign inland freight and other services incident to the international shipment of merchandise which occur after the goods have been sold for export to the United States and are placed with a carrier for through shipment. Evidence of sale for export and placement for through shipment shall be established by means of a through bill of lading to be presented to the district director of Customs. This change is necessary to conform the Customs Regulations to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, which requires the inclusion in, or the exclusion from, the Customs value of the cost of transport of the imported goods to the port or place of importation.

DATES: Effective November 29, 1984. The amendment will be applicable to all entries of merchandise for which liquidation was not final on November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce N. Shulman Value and Special Classification Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 96-39, the Trade Agreements Act of 1979, incorporated into U.S. law the trade agreements negotiated by the United States in the Tokyo Round of Multilateral Trade Negotiations. Title II of this act, "Customs Valuation," implemented the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the "Valuation Agreement"). Title II made significant changes in the laws administered by Customs relating to the valuation of imported merchandise by amending section 402, Tariff Act of 1930, as amended (the "Act") (19 U.S.C. 1401a). The Customs Regulations issued to administer the new statutory valuation scheme are contained in Subpart E, Part 152, §§ 152.100-152.108 (19 CFR 152.100-152.108).

Present section 402 of the Act provides five bases for determining value, presented in order of precedence of application. The first and primary basis of value is transaction value. Only if transaction value cannot be determined, or cannot be used, may another basis of value be used. The transaction value of imported merchandise, essentially, is the "price actually paid or payable" for the merchandise when sold for exportation to the United States. The term "price actually paid or payable is defined in the Act as the total payment (whether direct or indirect, and *exclusive* of any costs, charges, or expenses incurred for transportation, insurance, and related services *incident to the international shipment of the merchandise* from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller (section 402(b)(4)(A)) (emphasis supplied). It is clear, then, that any costs for insurance, freight, *etc.*, involved in the international movement of merchandise are to be excluded from the dutiable value of imported merchandise appraised using the transaction value basis. However, in many cases, another significant cost to an importer is the expense related to foreign inland freight charges, especially where the seller quotes prices on a C.I.F. (delivered) method.

Note.—Costs incurred in the transportation of imported merchandise in the U.S., if identified separately, also are excluded from the transaction value.

Customs current interpretation of the Act in regard to foreign inland freight, as stated in section 152.103(a)(5), is to include that cost in the transaction value if it is indeed reflected in the price actually paid or payable to the seller, *e.g.*, in a C.I.F. price quotation. On the other hand, if the price actually paid or payable to the seller does not include the cost of foreign inland freight, *e.g.*, in an ex-factory price quotation, that cost will not be added to the price if paid to a freight forwarder unrelated to the seller.

Under the above interpretation, no adjustment for foreign inland freight may be made when, as is often the case, the merchandise is purchased from a foreign seller on a C.I.F. basis.

Customs has now reconsidered its previous interpretation of the Act with respect to foreign inland freight and related charges. We have decided to amend the Customs Regulations, to exclude from the price actually paid or payable for imported merchandise, the costs of all foreign inland freight and other services incident to the shipment of this merchandise to the United States provided that: (1) These costs occur after goods have been sold for export to the United States; and (2) the goods have been placed with a carrier for through shipment to the United States. These costs are now to be considered incident to the international shipment of the merchandise within the meaning of section 152.102(f), Customs Regulations (19 CFR 152.102(f)), and are therefore excludable from the price paid or payable for the merchandise.

This new policy is in accord with Article 8.2(a) of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Valuation Code) which was implemented in the United States by the Trade Agreements Act of 1979. Article 8.2(a) of this act provides:

> In forming its legislation, each Party shall provide for the inclusion in or the exclusion from the Customs value, in whole or in part, of the following: (a) The cost of transport of the imported goods to the port or place of importation . . .

Customs is therefore amending § 152.103(a)(5) to exclude from the dutiable value of imported merchandise as "international freight," certain costs paid to a seller that are now dutiable as foreign inland freight. A notice of proposed rulemaking on this subject was published in the **Federal Register** on June 17, 1983 (48 FR 27778), inviting public comments. Most of the 37 comments received in response to the notice favored the new policy. However, many commenters pointed out ambiguities and problems with the proposal and recommended changes. These specific comments and our responses are set forth below.

Discussion of Comments

Comment: The proposed regulation discriminates between contiguous and noncontiguous countries and violates the United States obligations under the GATT Valuation Agreement of the most-favored-nation status accorded to various noncontiguous countries.

Response: This comment was apparently prompted by language in the **Federal Register** notice from which one could conclude that the proposed amendment was designed to benefit only contiguous countries. Because it is our intention, as stated above, to apply the regulations to *all* foreign inland freight, and therefore permit both contiguous and noncontiguous countries to benefit from the change, we have removed any language suggesting the contrary from this document.

Comment: The proposal provides for the exclusion, from the price paid or payable, or all documented foreign inland freight costs which occur subsequent to the placing of the imported merchandise on the exporting carrier. Since the phrase "exporting carrier" is not defined, it is unclear whether the phrase was meant to cover particular types of conveyances, multicarrier shipments, intermodal shipments (combinations of different modes of transportation, *e.g.*, ship, rail, truck, used for one shipment), and shipments of merchandise through reload centers (freight consolidation locations for freight destined for exportation to the United States).

Response: Customs agrees with this comment. Instead of defining the phrase "exporting carrier," however, any reference to it has been deleted. That phrase is too susceptible to being limited to carriers which physically transport foreign merchandise over the U.S. border. To avoid any confusion, it has been determined that in order for foreign inland freight to be deemed incident to the international shipment of merchandise, instead of requiring that freight costs occur subsequent to the placing of imported merchandise on the exporting carrier, the freight costs and other services incident to the shipment of the merchandise must occur after the

goods have been sold for export to the United States and are placed with a carrier for through shipment to the United States. This will cover shipments by more than one mode of transportation, by multiple freight companies, or through reload centers, as long as the merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States, as evidenced by the presentation to Customs of a through bill of lading. The through bill of lading is necessary to permit Customs officers to verify objectively that the above conditions have been satisfied.

Comment: The proposed amendment does not provide for shipments of goods which are not exported by common carrier, *e.g.*, shipments carried in an exporter's own conveyance, which would not be covered by a through bill of lading and therefore could not qualify for the exclusion of freight costs from the transaction value.

Response: Customs agrees. Accordingly, § 152.103(a)(5), has been revised to include situations where it is clearly impossible to ship merchandise on a through bill of lading. In this case, other documentation satisfactory to the district director, showing a sale for export to the United States and placement for through shipment to the United States, will be acceptable in lieu of a through bill of lading.

Comment: The phrase "if paid to an unrelated seller," which appears in the proposed amendment, should be deleted.

Response: This phrase appears not only in the proposal, but also in current § 152.103(a)(5). It was intended to put related parties on notice that freight payments made by a buyer to its related shipper would be subject to verification in order to ensure that the costs had not been overstated.

Since in many cases, related parties engage in arm's-length transactions, Customs sees no reason to continue to require that the foreign inland freight charge be paid to an unrelated seller in order to qualify for exclusion from the transaction value. Therefore, the phrase "unrelated seller" has been deleted from this amendment. However, a paragraph has been included which reaffirms Customs authority to make appropriate additions to the dutiable value of merchandise in instances where verification of the foreign inland freight charge or other charges for services incident to the international shipment of the merchandise reveals that they have been overstated.

Comment: Other costs which are incident to the international shipment of merchandise, such as warehousing, lighterage, and insurance, should be included within the scope of the regulation.

Response: Customs agrees and has revised § 152.103(a)(5) to provide for the exclusion from transaction value of other inland charges (besides freight charges) incident to the international shipment of merchandise to the United States so long as these charges occur after goods have been sold for export to the United States and are placed with a carrier for through shipment to the United States. We have also changed the heading of § 152.103(a)(5) from "Foreign inland freight" to "Foreign inland freight and other inland charges incident to the international shipment of merchandise."

Comment: The regulations should be effective with respect to entries which have not been liquidated as of the date of implementation of the regulatory changes.

Response: We agree with this comment and have made the changes applicable to all entries of merchandise for which liquidation was not final on the date this document is published in the **Federal Register.**

After careful analysis of the comments received, and further review of the matter, it has been determined to adopt the proposal with the changes discussed above.

Executive Order 12291

This amendment does not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, no regulatory impacts analysis has been prepared.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act, relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this amendment because it will not have a significant economic impact upon a substantial number of small entities.

Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Lists of Subjects in 19 CFR Part 152

Customs inspection and duties, imports, valuation.

Amendment to the Regulations

Part 152, Customs Regulations (19 CFR Part 152), is amended as set forth below.

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

Section 152.103(a)(5) is revised to read as follows:

§ 152.103 Transaction value.

(a) Price actually paid or payable—

* * * * *

(5) *Foreign inland freight and other inland charges incident to the international shipment of merchandise.*

(i) *Ex-factory sales.* If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a charge for foreign inland freight and other charges for services incident to the international shipment of merchandise (an ex-factory price), those charges will not be added to the price.

(ii) *Sales other than ex-factory.* As a general rule, in those situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the United States may be considered incident to the international shipment of that merchandise within the meaning of § 152.102(f) if they are identified separately and they occur after the merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States.

(iii) *Evidence of sale for export and placement for through shipment.* A sale for export and placement for through shipment to the United States under subsection (ii) of this section shall be established by means of a through bill of lading to be presented to the district director. Only in those situations where it clearly would be impossible to ship merchandise on a through bill of lading (*e.g.*, shipments via the seller's own conveyance) will other documentation satisfactory to the district director showing a sale for export to the United States and placement for through shipment to the United States be accepted in lieu of a through bill of lading.

(iv) *Erroneous and false information.* This regulation shall not be construed as prohibiting Customs from making appropriate additions to the dutiable value of merchandise in instances where verification reveals that foreign inland freight charges or other charges for services incident to the international shipment of merchandise have been overstated.

(R.S. 251, as amended, section 624, 46 Stat. 759, section 201, 93 Stat. 194 (19 U.S.C. 66, 1401a, 1624))

William von Raab,

Commissioner of Customs.

Approved: July 23, 1984.

John M. Walker Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-31285 Filed 11-28-84; 8:45 am]

BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-191; Ref: Notice No. 487]

Sales of Firearms and Ammunition by Licensees at Gun Shows

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends the regulations to allow a licensee to engage in business at a gun show located in the same State as the address specified on the license. Most of those in favor of the proposed change, and who stated a reason for their position, felt that it was inherently unfair to restrict sales by licensees to their licensed premises, while non-licensees who are not engaged in a firearms business may sell at such gun shows. The proposed regulation would remedy this incongruity. Furthermore, under the proposal the licensee would be generally subject to the same legal requirements to which he is subject to at his business premises, including, in particular, the recordkeeping provisions.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT:

J. Barry Fields, Firearms and Explosives Operation Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Ave., NW., Washington, DC 20226 (202-566-7591).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms has taken a position since the enactment of the Gun Control Act of 1968 that firearms licenses are not issued to engage in the business at gun shows. This policy is reflected in Revenue Ruling 69-59 which held that the law contemplates licensing of premises where the applicant regularly intends to engage in the business to be covered by the license rather than temporary locations.

Advance Notice of Proposed Rulemaking

The Bureau published an advance notice of proposed rulemaking on April 22, 1980, (45 FR 26982) requesting comments on changing regulations in 27 CFR Part 178 to allow sales of firearms by licensees at organized gun shows located in the same State as the address specified on the license. The comment period ended June 23, 1980, with a total of 1,537 letters and four petitions with 211 signatures received. The comments in favor were 1,371 (including the four petitions) and the comments opposed were 145. There were 25 comments not relevant to the gun show proposal. About 80 percent of all comments received were from licensees or former licensees.

Notice of Proposed Rulemaking

Based upon the above, the Bureau published a notice of proposed rulemaking on September 27, 1983, (48 FR 44088), proposing to amend the regulations to allow licensees to engage in business at gun shows held within the same State as the licensed premises.

Comments

During the 120 day comment period (the original comment period of 60 days was extended 60 days by publication of Notice No. 498 on December 12, 1983, (48 FR 55298)) 1103 written comments with 1145 signatures were received. Six hundred and forty seven, approximately 58%, favored adoption of the proposal, while 475 individuals, approximately 41%, were against adoption. Twenty three individuals who commented were not responsive to the issue.

The majority of those who commented on the proposal, whether they were for or against adoption, simply stated their position without giving a reason for it.

A strong underlying reason of many of those who expressed opposition to adoption of their proposal was that the proposal would seriously jeopardize or destroy the gun show as they understood it. Many individuals see the gun show as a social event of major importance devoted to educational and historical values which would be diluted by the admission of licensees selling modern firearms. This commercialization of the gun show would, in their view, be tantamount to the destruction of the gun show.

Also expressed was the fear that the closed gun show (open to members only) will be destroyed if the regulations are changed to allow licensees to engage in business at gun shows. By removing the existing restriction concerning licensee sales at gun shows, these commenters feel that they will lose the power to control admission to their closed shows and this will in turn destroy the perceived purpose of their shows.

Because this position was voiced so strongly by so many commenters, the Bureau has not lightly dismissed it in its evaluation. We have concluded, however, that this fear of the end of the closed gun show is unfounded. While licensees will be given the opportunity to engage in business at gun shows, this would not entitle them to enter gun shows that are closed to them by the organizers of the gun show. The organization's ability to determine who may participate at a particular gun show will not be affected by the adoption of this proposal.

Some of those who objected to the adoption of the proposal felt that the licensee who came from other areas of the State would not be familiar with the requirements of the local jurisdiction in which the gun show was being held. Because of the likelihood that sales could be made in violation of local requirements, such as the payment of local license fees and local taxes, outside licensees would have an unfair advantage over local licensees who were familiar with, and abided by, local ordinances. While this is a possibility, the Bureau cannot assume that licensees would not conduct their business in compliance with applicable laws.

Some commenters objected to the adoption of the proposal on the grounds that ATF will not have the forces necessary to monitor all gun shows. We do not consider this a particularly relevant issue because the vast majority of licensed dealers have demonstrated their desire to abide by the law and regulations. We do not anticipate any impact upon ATF's resources solely because of this change in the regulations.

Most of those in favor of the proposed change, and who stated a reason for their position, felt that it was inherently unfair to restrict sales by licensees to their licensed premises, while non-licensees who are not engaged in a firearms business may sell at such gun shows. The proposed regulation would remedy this incongruity. Furthermore, under the proposal the licensee would be generally subject to the same legal requirements to which he is subject to at his business premises, including, in particular, the recordkeeping provisions.

Licensees and non-licensees alike expressed deep dissatisfaction about the

disadvantage of not being able to buy firearms at a gun show from a licensee. Non-licensees complained that they were frequently prevented from buying a displayed firearm because they would have to travel, in some cases, many miles from the gun show, to pick up the firearm of their choice at the licensee's premises. This added expense and loss of time frequently made an otherwise desirable purchase impossible.

Regulation Change

This Treasury decision changes the regulations to allow licensees to sell firearms and ammunition at gun shows under the same license issued for their permanent address. Any sales will be restricted to gun shows located in the same State as the address specified on the license. The recordkeeping requirements of existing regulations must be complied with for sales at gun shows. Further, all transactions must be entered in the licensee's required records and retained on the premises specified on the license.

A gun show is defined as an event sponsored by any national, State or local organization, or an affiliate of such organization, devoted to the collection, competitive use or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use or other sporting use of firearms in the community. We believe this definition is sufficiently broad to include gun shows currently being held.

Drafting Information

The principal author of this document is J. Barry Fields, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The rule is intended to allow licensed dealers to sell firearms and ammunition at gun shows as is now done by non-licensees. The rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact nor compliance burden on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this practice because no requirement to collect information is proposed.

Authority and Issuance

Accordingly, under the authority in 18 U.S.C. 926 (82 Stat. 1226), 27 CFR Part 178 is amended as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The table of sections in 27 CFR Part 178, Subpart F, is amended to add a new § 178.100 and the existing § 178.100 is redesignated as § 178.101 to read as follows:

Subpart F—Conduct of Business

Sec.

* * * * *

178.100 Conduct of Business away from licensed premises

178.101 Record of transactions.

* * * * *

Par. 2. Section 178.41(b) is amended to provide for an exception for conducting business at gun shows. Paragraph (b) is revised to read as follows:

§ 178.41 General.

* * * * *

(b) Each person intending to engage in business as a firearms or ammunition importer, manufacturer, or dealer shall file an application, with the required fee (see § 178.42), with the District Director for the internal revenue district in which the premises are to be located, and, pursuant to § 178.47, receive the license required for such business from the Regional Director (Compliance). Except as provided in § 178.50, a license must be obtained for each business and each place at which the applicant is to do business. Such license shall, subject to the provisions of the Act and other applicable provisions of law, entitle the licensee to transport, ship, and receive firearms and ammunition covered by such license in interstate or foreign commerce and to engage in the business specified by the license, at the location described on the license, and for the period stated on the license: *Provided,* That it shall not be necessary for a licensed importer or a licensed manufacturer to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in the same type of firearms or ammunition authorized by his license to be imported or manufactured: *Provided further,* That payment of the license fee as an importer or manufacturer of, or a dealer in, destructive devices or ammunition for destructive devices includes the privilege of importing, manufacturing or dealing in, as the case may be, firearms other than destructive devices and ammunition for other than destructive devices by such a licensee at his licensed premises.

* * * * *

Par. 3. Section 178.50 is amended to allow sales of firearms and ammunition by licensees at gun shows. Section 178.50 is revised to read as follows:

§ 178.50 Locations covered by license.

The license covers the class of business or the activity specified in the license at the address specified therein. A separate license must be obtained for each location at which a firearms or ammunition business or activity requiring a license under this part is conducted except:

(a) No license is required to cover a separate warehouse used by the licensee solely for storage of firearms or ammunition if the records required by this part are maintained at the licensed premises served by such warehouse;

(b) A licensed collector may acquire curios and relics at any location, and dispose of curios or relics to any licensee or to other persons who are residents of the State where the collector's license is held and the disposition is made; or

(c) A licensee may conduct business at a gun show pursuant to the provision of § 178.100.

Par. 4. A new § 178.100 is added to specifically allow sales of firearms and ammunition at gun shows and existing § 178.100 is redesignated as § 178.101. As added, § 178.100 reads as follows:

§ 178.100 Conduct of business away from licensed premises.

(a) A licensee may conduct business temporarily at a gun show if the gun show is located in the same State specified on the license. The premises of the gun show at which the licensee conducts business shall be considered part of his licensed premises. Accordingly, no separate fee or license is required for the gun show locations. However, licensees shall comply with the provisions of § 178.91 relating to posting of licenses (or a copy thereof) while conducting business at the gun show.

(b) A gun show is an event sponsored by any national, State, or local organization, or affiliate of such organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use or other sporting use of firearms in the community.

(c) Licensees conducting business at gun shows shall maintain firearms and ammunition records in the form and manner prescribed by Subpart H of this part. In addition, records of receipt and disposition of firearms transactions conducted at gun shows shall include the location of the sale or other disposition and be entered in the required records of the licensee and retained on the premises specified on the license.

Par. 5. Section 178.121 is amended by adding a new paragraph (d) to provide a cross-reference to the recordkeeping requirements for sales by licensees at gunshow. As added, § 178.121(d) reads as follows:

Subpart H—Records

§ 178.121 General.

* * * * *

(d) For recordkeeping requirements for sales by licensees at gun shows see § 178.100(c).

Signed: October 19, 1984.

Stephen E. Higgins,
Director.

Approved: November 5, 1984.

John M. Walker, Jr.,
Assistant Secretary (Enforcement and Operations).

[FR Doc. 84-30887 Filed 11-28-84; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Part 253

43 CFR Part 6220

Protection and Management of Viable Coral Communities; Transfer of Regulations

AGENCIES: Minerals Management Service, and Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This document transfers regulations concerning protection and management of viable coral communities previously administered by the Bureau of Land Management (BLM) at 43 CFR Subpart 6220, redesignates them Minerals Management Service (MMS) regulations at 30 CFR Part 253, and removes the newly redesignated 30 CFR Part 253.

This action is being taken in response to a court decision which determined that those regulations were beyond the authority of the Department of the Interior (DOI) under the Outer Continental Shelf Lands Act (Act.)

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; 12203 Sunrise Valley Drive; Minerals Management Service; Reston, Virginia 22091; telephone (703) 860-7916.

SUPPLEMENTARY INFORMATION: On May 10, 1982, the Secretary of the Interior issued Amendment No. 1 to Secretarial Order No. 3071, consolidating all DOI Outer Continental Shelf (OCS) related functions in MMS. This Final Rule transfers regulations concerning protection and management of viable coral communities previously promulgated by BLM at 43 CFR Subpart 6220 and redesignates them at 30 CFR Part 253.

The regulations concerning the protection and management of coral were promulgated under the authority of section 5 of the Act. The U.S. Court of Appeals for the Fifth Circuit has determined that the Act did not provide the DOI with authority to promulgate conservation measures in areas not related to mineral leases, *United States v. Alexander,* 602 F.2d 1228 (1979). Since the regulations concerning the protection and management of viable coral communities were found to be beyond the authority of the DOI under the Act, this document removes the regulations which were newly redesignated at 30 CFR Part 253.

Publication of this rule as a proposed rule is unnecessary since one change is solely a redesignation and the other change is a removal of a rule which cannot be enforced. This change must be accomplished regardless of public comment.

The DOI has determined that the redesignation and the removal are not major rules under Executive Order 12291. Since the U.S. Court of Appeals has rendered the rules unenforceable, the removal will have no economic effect on the industry. The DOI certifies that this rule will not have any significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This is because there has been no enforcement of these regulations for the past 5 years. For the same reasons, this rule is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects.

Paperwork Reduction Act

The redesignation and removal of the regulations will not effect any information collection requiring approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Author

This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 253 and 43 CFR Part 6220

Continental shelf, Marine resources, Penalties, Surety bonds, Wildlife.

(43 U.S.C. 1334)

Dated: November 9, 1984.

Garrey E. Carruthers,
Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, Subpart 6224 of Title 43 of the Code of Federal Regulations is redesignated and amended as follows:

43 CFR Subpart 6224 [Redesignated as 30 CFR Part 253]

1. Title 43 Subpart 6224 of the Code of Federal Regulations is redesignated as Title 30 Part 253, and the section numbers are redesignated as follows:

Old 43 CFR Subpart 6224	New 30 CFR Part 253
6224.0-1	253.1
6224.0-3	253.2
6224.0-5	[illegible]
6224.1	253.4
6224.1-1	253.5
6224.1-2	[illegible]
6224.1-3	[illegible]
6224.1-4	[illegible]
6224.1-5	[illegible]
6224.1-6	[illegible]
6224.2	253.11
6224.3	253.12
6224.4	253.13
6224.5	253.14

PART 253—[REMOVED]

2. Newly redesignated Part 253 of Title 30 of the Code of Federal Regulations is removed.

[FR Doc. 84-31198 Filed 11-28-84; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 84-15]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of New Jersey Department of Transportation, the Coast Guard is changing the regulations governing the Route 35 Bridge across the New Jersey Intracoastal Waterway (Manasquan River) between Brielle and Point Pleasant Beach, NJ. This change will permit limited openings of the draw on weekends and holidays from Memorial Day through Labor Day from 10 a.m. to 8 p.m. This change is being made because peak vehicular traffic generally coincides with peak bridge openings for vessels. This action will accommodate the needs of vehicular traffic and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations effective on January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Williams C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: On June 22, 1984, the Coast Guard published a proposed rule (49 FR 25642) concerning this amendment. The Commander, Third Coast Guard District also published the proposal as a Public Notice dated July 6, 1984. In each notice interested persons were given until August 6, 1984 to submit comments.

On April 24, 1984, the Coast Guard published a final rule (49 FR 17450) that reorganized the regulations for drawbridges (Part 117 of Title 33, Code of Federal Regulations) to consolidate common requirements and to organize bridge regulations into a more usable format. This final rule follows the revised numbering and format.

Drafting Information

The drafters of these regulations are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Comments

Four responses were received on the proposed rule for this action. One respondent had no objections, two generally favored the proposal, and one objected feeling that the proposed rule would create hazards for the mariner. One person favoring the regulations suggested that scheduled openings begin at 6 a.m. instead of 10 a.m.

Temporary regulations were issued by the Commander Third Coast Guard District to assess the need for a change to the existing regulations and comments were solicited on the temporary regulations. These temporary regulations were in effect at the Route 35 Bridge from August 5, 1983 through September 15, 1983 and from Memorial Day through Labor Day 1984, and 31 responses (20 to 1983; 10 to 1984; 1 to 1984 extension) were received. Some respondents commented on more than one occasion to public notice for temporary regulations and the proposed rule. The temporary regulations issued in 1983 provided for hourly and half-hourly openings every day of the week between 10 a.m. and 8 p.m. while those issued in 1984 provided for openings only on weekends and holidays.

Two agencies had no objection to the temporary regulations. Nineteen respondents on temporary regulations favored weekday scheduled openings, lengthening of the effective hours or making regulations effective year-round. However, review of bridge opening logs and 1982-83 showed that this would not significantly reduce openings of the draw.

A local public official in three submittals forwarded the Coast Guard petitions with a total of over 1500 names of persons favoring one opening per hour during the respective period. The suggestion was rejected, through, because it would place an unnecessary burden on the mariner and could potentially contribute to hazardous vessel conditions at the bridge.

Eight objections were received on temporary regulations indicating that various, potentially hazardous situations could occur. This included hazards due to several vessels congregating while awaiting a bridge opening. This concern is recognized, however, mariners who frequent the waterway would generally schedule their transits to minimize their delay. Additionally, while the temporary regulations were in effect, no boating mishaps were reported as a result of vessel congestion or other reasons. One respondent also reported that the movable railroad bridge located 400 yards downstream would contribute to vessel congregation. However, since the railroad bridge remains in the open position except for train passage, instances of the railroad bridge contributing to vessel congestion should be minimal. Five of the eight objectors were also concerned with interaction between scheduled openings and passage through the Route 88 Bridge since such passages by low-powered sailboats must be done during slack water periods. It was suggested that unlimited openings be provided for (in the regulations) from one hour before to one hour after predicted slack water. However, a new Route 88 bridge is presently under construction and when it is completed, this concern will be eliminated. One objector also suggested openings at twenty minute intervals. This suggestion was rejected when weighed against the volume of vehicular traffic over the bridge.

The Coast Guard after investigation, evaluation, and consideration of comments on temporary and proposed regulations, has decided to issue final regulations identical to those in the proposed rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the bridge has a 30-foot clearance at Mean High Water in the closed position, commercial vessels should not be unduly impacted by these regulations. This is substantiated by 1982-83 bridge opening logs which show that the overwhelming majority of openings are made for recreational sailboats. The impact on these vessels will be minimal since the scheduled openings will accommodate their needs. No other company, organization, person, or other entity has been identified as being unduly impacted by these regulations. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended by redesignating the existing § 117.733 (b) through (h) as § 117.733 (c) through (i), respectively, and adding a new § 117.733(b) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(b) The draw of the Route 35 bridge, mile 1.1 (Manasquan River) at Brielle shall open on signal; except that, from Memorial Day through Labor Day on Saturday, Sundays, and federal holidays from 10 a.m. to 8 p.m., the draw need only open on the hour and half hour. The draw shall open at all times as soon as possible for passage of a public vessel of the United States, or for a vessel in distress.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g)(3))

Dated: November 9, 1984.

P.A. Yost,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 84-31283 Filed 11-28-84; 8:45 am]

BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls; Revision

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: This regulation revises the St. Lawrence Seaway Tariff of Tolls which the Saint Lawrence Seaway Development Corporation publishes and administers jointly with the St. Lawrence Authority of Canada for the use of the St. Lawrence Seaway. The effect of this revision is not to raise the level of tolls but to allow greater flexibility in the application of operational surcharges. A notice of the proposed revision was published in the **Federal Register** (49 FR 29971) on July 25, 1984.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, Chief Counsel, 400 7th Street, SW., 5424, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: During the 1978 navigation season, closing procedures were developed by the Corporation in conjunction with the Authority and representatives of the affected segments of the shipping industry. The implementation of these procedures was necessary in order to provide for the orderly exit of vessels from the St. Lawrence Seaway at the close of the navigation season. An integral part of these closing procedures was the establishment of operational surcharges, and on October 17, 1980, the St. Lawrence Seaway Tariff of Tolls was amended to provide for the assessment of such surcharges.

As a result of discussions with users of the St. Lawrence Seaway, the Administrator of the Saint Lawrence Seaway Development Corporation and the President of the St. Lawrence Seaway Authority of Canada agreed, on July 9, 1984, to recommend to their respective governments that Section 6 (presently codified as 33 CFR 402.7) of the existing St. Lawrence Seaway Tariff of Tolls be amended. As provided for by the amendment, the second sentence of § 402.7 would be revised by striking all the words after the word "dollars" and adding the words "an amount not exceeding the operational surcharge set forth below:". This revision would allow for the assessment of an operational surcharge in any amount as long as the amount does not exceed the applicable operational surcharge and thereby provide for greater flexibility in the application of the operational surcharges. This flexibility will make possible the better implementation of the purpose for which the closing procedures were established. On November 16, 1984 the Government of the United States and Canada exchanged diplomatic notes formalizing the amendment to the Tariff of Tolls. This revision involves a foreign affairs function of the United States; therefore Executive Order 12291 does not apply to this rulemaking. The Saint Lawrence Seaway Development Corporation certifies that for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), since the impact of this revision is expected to be minimal, it will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators, and therefore any resulting costs will be borne primarily by foreign vessels.

Furthermore, the Corporation has determined that this rulemaking is not a major Federal action affecting the quality of the human environment under the National Environmental Policy Act, and therefore an environmental impact statement is not required.

PART 402—[AMENDED]

In consideration of the foregoing, the introductory text of § 402.7(a) of Part 402 of Chapter IV of Title 33, Code of Federal Regulations is revised as follows:

§ 402.7 Post-clearance date operational surcharges.

(a) If the Authority and the Corporation so determine, they may establish a clearance date for the transit of the Montreal-Lake Ontario section. Each vessel which does not comply with the conditions announced by the Authority and the Corporation in establishing the clearance date may be required to pay in dollars an amount not exceeding the operational surcharge set forth below:

* * * * *

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended)

Issued at Washington, D.C. on November 20, 1984.

Saint Lawrence Seaway Development Corporation.

James L. Emery,

Administrator.

[FR Doc. 84-31277 Filed 11-28-84; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses; Special Uses

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends 36 CFR 251.54 to require only consultation with the Secretary of Energy on applications

for permits for electric power transmission lines of 66 kilovolts or higher. In addition, this rule eliminates the regulations at § 251.56(f)(3) requiring permit applicants to agree to stipulations and terms allowing the surplus capacity of the transmission facility to be used by Federal power marketing authorities. These requirements are no longer necessary since the enactment of the Public Utility Regulatory Policies Act of 1978 (92 Stat. 3117).

The rule eliminates burdensome and outdated procedures and conforms the Forest Service electric power transmission facility permitting procedures to those used the U.S. Fish and Wildlife Service (F&WLS) and Bureau of Land Management (BLM) of the Deparment of the Interior.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Paul M. Stockinger, Lands Staff, Room 1010, 1621 North Kent Street, Rosslyn, Virginia (703) 235–2410.

SUPPLEMENTARY INFORMATION: Current Forest Service regulations require that applicants for special use permits for electric transmission lines of 66 kilovolts or higher agree to wheeling stipulations. Wheeling is the transmission of power from one generating facility across the lines of another utility to reach a specific destination. These particular wheeling stipulations have allowed Federal power marketing authorities to use the surplus capacity of a permittee's line to transmit Federal power (Surplus capacity is defined as the amount of electric load a line may safely carry over its current level of operation.)

The Department of the Interior (USDI) was the first Federal land managing agency to require wheeling stipulations in power transmission line permits for facilities carrying 66 or higher kilovolts. USDI issued its first rule in 1948, removed the requirement in 1954, but reinstated the requirement in 1962, when the Bureau of Land Management (BLM) regulations were changed to require a wheeling provision in their permits. At that time, the Forest Service also changed its special-use permit regulations to require a similar stipulation. The enactment of the Public Utility Regulatory Policies Act of 1978 (92 Stat. 3137) provides the Federal Energy Regulatory Commission with authority to impose wheeling provisons on electric utilities. Thus, the wheeling stipulation requirement in land management agency permits is no longer needed. The stipulation was removed from the Department of the Interior regulations in 1982 for the BLM by final rulemaking published March 23, 1982 (43 CFR Part 2800) and in 1983 for the U.S. Fish and Wildlife Service by final rulemaking published July 11, 1983 (50 CFR Part 29).

On May 28, 1984, the Forest Service published a Notice of Proposed Rulemaking in the **Federal Register** at 49 FR 21083–21084 proposing to remove the wheeling stipulation requirement in Forest Service special-use permits and to revise the application procedure to only require consultation with the Department of Energy on the location of proposed electric power transmission lines of 66 kilovolts or higher. At the present time the regulation requires review and approval by the Department of Energy for electric power transmission lines of 66 kilovolts or higher.

Summary of Public Comment With the Department of Agriculture Response

A total of 22 comments were received regarding the proposed rulemaking. Private utilities and groups and one publicly-owned utility favored removal of the wheeling stipulations. A number of these entities also felt that consultation with the Department of Energy was unnecessary. Public power marketing organizations and agencies did not want the wheeling stipulations removed.

The arguments raised for and against the rulemaking fit into three basic categories: (1) Concurrence with the proposal; (2) concurrence, but in addition, the removal of the requirement to consult with the Secretary of Energy; and (3) opposition to any change in the wheeling provisions.

The comments and USDA response to them follow:

1. Consultation is duplicative.

The respondents feel that consultation with the Department of Energy is duplicative of information provided by the regional power pooling councils. These councils are made up of power marketing agencies and member companies. They provide their members information on existing and planned transmission lines. It is true that the regional power pooling councils make available information on existing or proposed transmission lines. However, there is no requirement that they coordinate with the applicant. In fact, quite often an applicant, although a member of this group or one of the public power companies, is unaware of long-range corridor planning efforts. Forest Service consultation with the Department of Energy is a tool used to verify that a proposed line is actually needed to provide service and is located in a corridor that would be usable for future expansion.

2. Consultation creates delays and added expense.

We feel that the consultation process is a necessary part of the overall planning and environmental analysis task. It is not to be interpreted as an absolute review and compliance process, but as an advice and notification mechanism. We believe that any delays and expense will be minor. Because the Forest Service would only require consultation instead of review and approval, the Department of Energy could not hold an application for extended periods of time.

3. Consultation is inconsistent with the USDI. Similar regulations are not presently found in USDI agencies' regulations.

One reason for eliminating the bulk of the wheeling requirements was to provide for some degree of consistency. However, the Forest Service does not fully operate under the same authorities as the USDI agencies. For example, the Multiple Use, Sustained Yield Act of 1960 (16 U.S.C. 528(note), 528–531) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601(note), 1600–1614) are peculiar to the Department of Agriculture. They establish the basis for developing forest plans which, in turn, designate areas of the National Forest System to, among other things, powerline corridors. Part of this planning effort involves consultation with other agencies. We feel that consultation with the Department of Energy is beneficial and important to the land designation processes.

4. Consultation would involve the Forest Service in disputes between private companies and the federal power marketing agencies that are unrelated to the management of the National Forests.

The sole purpose of the consultation process is to insure that only necessary transmission line corridors cross National Forest System lands. For example, if Department of Energy studies indicate a future need for a major corridor to serve a particular area, we would urge the applicant to construct the requested line within this corridor whenever possible. The Forest Service would be involved with disputes only to the extent of asking an applicant to show why a powerline is needed in the location requested.

5. Wheeling stipulations are needed to provide access to powerlines.

We have no quarrel over the fact that sharing of powerline capacity provides more efficient service with fewer impacts on the land. However, the requirement to impose stipulations should not involve the Forest Service. This is the province of the Department of Energy and its power marketing agencies. Many of the respondents have pointed out that the requirement to accept wheeling stipulations gives the power marketing agencies an unfair leverage in negotiating. The Public Utility Regulatory Policies Act of 1978 (92 Stat. 3117) provides a method for power marketing agencies to petition the Federal Energy Regulatory Commission (FERC) for an order to provide wheeling. We believe this to be more equitable than the present requirements.

6. The legislative intent of the Federal Land Policy and Management Act endorses and supports the existing policy of wheeling.

At the time of passage of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, as amended), there was no expressed statutory authority requiring a power company to accept any type of wheeling arrangement. The House Interior and Insular Affairs Committee report accompanying that act noted that the Committee had rejected suggestions to modify the existing policy on wheeling. The respondents argue that the rejection constitutes a specific Congressional endorsement and support for retaining wheeling stipulations. We do not interpret the Committee's rejection of modifying wheeling policy in this Federal lands act as an endorsement or a statement of Congressional intent. We feel the legislative intent of Congress is more properly reflected in the subsequent passage of the Public Utility Regulatory Policies Act which sets forth a procedure for wheeling that is equitable to all parties. The retention of wheeling stipulations in Forest Service regulations would circumvent this later intent.

7. The proposal would completely reverse current policy and constitute an abandonment of the land management responsibilities of the Forest Service.

Wheeling stipulations themselves are not needed to carry out land management policies. They are strictly a means of regulatory energy, which is more properly administered under the Public Utility Regulatory Policies Act.

8. The requirements of the Public Utility Regulatory Policies Act were intended to supplement, not replace existing law; they do not address the statutory responsibility of the land managing agencies; and they are not as strong as the existing regulatory requirements of the Forest Service.

Forest Service authorities are not replaced, limited, or impaired by this regulatory change. The Forest Service has sufficient other authorities to carry out the mandate of land management. The enactment of the Public Utility Regulatory Policies Act provides an alternate method of accomplishing wheeling and places responsibility where it belongs, with the Department of Energy, not the Forest Service. We continue to feel that the regulation is unnecessary with the passage of the Public Utility Regulatory Policies Act. The regulatory change properly shifts energy management to the Department of Energy and retains sufficient authority for the Forest Service to manage National Forest System lands.

Decision

Having considered the comments received, USDA believes that the rule should be promulgated as proposed.

Impacts

This rule has been reviewed under USDA procedures and Executive Order 12291 and it has been determined that this revised regulation is not a major rule. The revised regulation is not expected to increase costs to consumers served by power marketing agencies. The revision should decrease costs to the applicants and the Forest Service by (1) reducing the reporting burden on the applicants; (2) reducing the administrative workload on the Forest Service in processing applications; and (3) reducing delays since the Department of Energy (DOE) referral process would be modified from DOE review and approval of applications to only consultation with DOE. The change will not increase costs to States or local governments.

In addition, the Assistant Secretary of Agriculture for National Resources and Environment has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) and therefore does not require a regulatory flexibility analysis.

This rule does not contain information collection requirements subject to Office of Management and Budget review under 5 CFR Part 1320.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests rights-of-way, water.

Therefore, for the reasons set forth above, Part 251 of Title 36 of the Code of Federal Regulations is hereby amended as set forth below:

PART 251—[AMENDED]

1. In § 251.54, Special use applications, revise paragraph (g)(2) to read as follows:

§ 251.54 Special use applications.

* * * * * * *

(g) *Special application procedures.*

* * *

(1) * * *

(2) *Electric power transmission lines 66 KV or over.* Each application for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or highr under this section shall be referred to the Secretary of Energy for consultation.

* * * * * * *

§ 251.56 [Amended]

2. In § 251.56, Terms and conditions, remove paragraph (f)(3) in its entirety.

(Sec. 1, 30 Stat. 35; as amended, 62 Stat. 100, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472)) 90 Stat. 2776 (43 U.S.C. 1761–1771)

[FR Doc. 84-31318 Filed 11-28-84; 8:45 am]
BILLING CODE 3410-11-M

POSTAL SERVICE

39 CFR Part 265

Fee Waiver Policy for Providing Customer Addresses to Government Agency Requesters

AGENCY: Postal Service.

ACTION: Notice of postponement of effective date for fee payment.

SUMMARY: This is a notice postponing indefinitely the effective date of that part of a final rule published in the **Federal Register** on May 21, 1984, that would have required the Postal Service to begin on January 1, 1985 charging a $1.00 fee when it provides information about a postal customer's address to Federal, State, or local Government agency requesters. Other parts of the final rule, with certain minor modifications, continue in effect.

EFFECTIVE DATE: Payment of the fee required by 39 CFR 265.6(d)(4) is postponed until further notice; effective date for use of the standard request format required by 39 CFR 265.6(d)(7) is changed to January 1, 1985.

FOR FURTHER INFORMATION CONTACT: John Gunnels, Records Office, U.S. Postal Service (202) 245–4797.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 1984 (49 FR 21322), the Postal Service issued a final rule stating that, effective January 1, 1985, the Postal Service would begin charging a $1 fee when it provides information about a postal customer's address to Federal, State, or local

Government agency requesters. However, the effective date for payment of the fee now is being postponed until further notice. As a result of this action, the Postal Service will continue its present policy of providing address information to Government agency requesters at no charge at the very least through the end of Fiscal Year 1985.

The final rule also required Government agency requesters to begin using a standard request format when submitting their requests to post offices. This requirement remains in effect. However, agencies should delete the statement regarding payment of the fee when submitting their requests.

Although the final rule called for Government agencies to convert to the standard format by August 1, 1984, several agencies encountered delays in printing and distributing copies of the request format to their units. As a temporary measure, the Postal Service directed postmasters to continue to accept requests in other formats to afford agencies additional time to distribute the new format. The allowance of additional time in this regard extends to January 1, 1985, when Government agencies will be required, in accordance with the final rule, to use the standard request format when requesting address information about postal customers.

Accordingly, the effective date of 39 CFR 265.8(d)(4) is postponed indefinitely, and the effective date of 39 CFR 265.6(d)(7) is changed from August 1, 1984 to January 1, 1985.

List of Subjects in 39 CFR Part 265

Release of information, Postal Service.

(39 U.S.C. 401; 5 U.S.C. 552)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-31280 Filed 11-28-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[OW-S-FRL-2710-5]

Ohio Department of Natural Resources and Ohio Environmental Protection Agency; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Ohio has submitted an application under Section 1422 of the Safe Drinking Water Act for the Approval of an Underground Injection Control (UIC) program governing Classes I, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for these classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on December 13, 1984. This approval shall become effective on January 14, 1985.

FOR FURTHER INFORMATION CONTACT: John Taylor, Environmental Protection Agency, Region V, 230 South Dearborn Street Chicago, Illinois 60604. PH: (312) 886-1490 or FTS 886-1490.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Ohio was listed as needing a UIC program on September 25, 1978 (43 FR 6560). The State submitted an application under Section 1422 on August 6, 1984, for a UIC program to regulate Class I, III, IV, and V injection wells to be administered by the Ohio Department of Natural Resources (ODNR) and the Ohio Environmental Protection Agency (OEPA).

On September 5, 1984, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the ODNR and the OEPA. A public hearing was held on March 28, in Columbus, Ohio, on the draft application. A public hearing was offered, and comments were requested on the final application. No hearing requests nor comments were received.

After careful review of the application, I have determined that the portion of the Ohio UIC program submitted by the ODNR and the OEPA applicable on all State lands other than Indian Lands meets the requirements established by the Federal regulations pursuant to Section 1422 of the SDWA and, hereby, approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for non-Indian lands in the State of Ohio.

This approval will be codified in 40 CFR Section 147.1801. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to Section 1423 of the SDWA.

This program replaces the existing EPA-administered program. EPA promulgated the EPA-administered program, published November 15, 1984 (49 FR 45292), in order to comply with the requirement of the SDWA to promulgate a Federally-administered program if a State-administered program cannot be approved within a certain time. Now that EPA has determined that the State-administered program meets all applicable Federal requirements, the Agency is withdrawing the EPA-administered program and establishing the State-administered program as the applicable UIC program in the State, because of the preference in the SDWA for State administration of UIC programs.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water Supply, Incorporation by reference.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Authority: Safe Drinking Water Act, 42 U.S.C. 300h.

Dated: November 15, 1984.

William D. Ruckelshaus,

Administrator.

As set forth in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart KK—Ohio

1. Section 147.1801 is revised to read as follows:

§ 147.1801 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Ohio, other than those on Indian lands, is the program administered by the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency, approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on November 29, 1984; the effective date of this program is January 14, 1985. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Ohio. This incorporation by reference was approved by the Director of the **Federal Register** effective January 14, 1985.

(1) Ohio Revised Code Annotated, §§ 1509.01, 1509.03, 1509.221 (Supp. 1983);

(2) Rules of the Division of Oil and Gas, Ohio Administrative Code, §§ 1501:9-7-01 through 7-14 (1984);

(3) Ohio Revised Code Annotated, §§ 6111.04, 6111.043, 6111.044 (Supp. 1983);

(4) Rules of the Ohio Environmental Protection Agency, Ohio Administrative Code, §§ 3745-34-01 through 34-41; 3745-9-01 through 9-11 (Director Ohio EPA Order, June 18, 1984).

(b) *Other Laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(1) Ohio Revised Code, Chapter 119 (1978 Replacement Part);

(2) Ohio Code Supplement, §§ 6111.041, 6111.042, 6111.045 (Supp. 1982).

(c) (1) The Memorandum of Agreement between EPA Region V and the Ohio Department of Natural Resources, signed by the EPA Regional Administrator on March 30, 1984;

(2) Memorandum of Agreement between the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency, Related to the Underground Injection Control Program for the State of Ohio, signed August 1, 1984.

(d) *Statement of Legal Authority.* Statement from Attorney General of the State of Ohio, by Senior Assistant Attorney General, "Underground Injection Control Program—Attorney General's Statement," July 25, 1984.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[FR Doc. 84-30559 Filed 11-28-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6634]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program; Missouri, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287-0876, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal

Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subject in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
[illegible]				
Crawford	Unincorporated areas	290795A	Oct. 23, 1984—Emerg	Apr. 19, 1983
Indiana:				
Union	...do	180411	Oct. 24, 1984—Emerg	Mar. 4, 1977
Tennessee:				
Campbell	LaFollette, city of	475435B	Apr. 2, 1971—Emerg Dec. 17, 1971—Reg. Sept. 5, 1984—Susp. Oct. 23, 1984 Rein.	Dec. 23, 1971. July 1, 1974 and Nov. 12, 1976
Georgia:				
Union	Unincorporated areas	130254	Oct. 26, 1984—Emerg	Do
Illinois:				
[illegible]	Sun River Terrace, village of	171015	...do	Do
Oklahoma:				
Logan	Unincorporated areas	400096A	...do	Dec. 27, 1974 and Aug. 2, 1977
Tennessee:				
Obion	Rives, city of	470235	...do	Jan. 3, 1975
Texas:				
Goliad	Goliad, city of	480828	...do	July 16, 1976
Kansas:				
Miami	Osawatomie, city of	200223	June 13, 1974—Emerg. Sept. 19, 1984—Reg. Sept. 19, 1984—Susp. Oct. 26, 1984—Rein.	Jan. 23, 1974 and Apr. 2, 1976
Florida:				
Jackson	Malone, town of	120623—New	Oct. 30, 1984—Emerg	Do
New Hampshire:				
Strafford	Middleton, town of	330222A	do	Jan. 31, 1975 and Jan. 10, 1978
Region I				
Connecticut:				
Windham	Canterbury, town of	090183A	October 16, 1984, suspension withdrawn	Jan. 10, 1975
Maine:				
Cumberland	Falmouth, town of	0230045B	...do	Mar. 29, 1974 and Aug. 6, 1976
Massachusetts:				
Suffolk	Revere, city of	250228B	do	June 28, 1974 and Feb. 18, 1977
Region II				
New Jersey:				
[illegible]	Helmetta, bourough of	340262B	do	June 28, 1974 and Feb. 27, 1976
Sussex	Sparta, township of	340535B	do	Dec. 20, 1974 and June 11, 1976
Bergen	Teaneck, township of	340075B	do	June 14, 1974 and Oct. 3, 1975
New York:				
Chemung	Elmira, town of	360151B	do	Aug. 31, 1973 and June 25, 1976
Columbia	Gallatin, town of	361316B	do	Oct. 25, 1974 and July 30, 1976
Orange	Montgomery, town of	360623B	do	Mar. 22, 1974 and Aug. 20, 1976
Do	Montgomery, village of	360624B	do	Mar. 15, 1974 and Dec. 12, 1975
Region V				
Illinois:				
Cook and Lake	Barrington, village of	170057C	do	Mar. 22, 1974, Sept. 24, 1976 and Mar 12, 1982
Michigan:				
Livingston	Green Oak, township of	260447B	do	Mar. 27, 1977
Minnesota:				
Nicollet	Unincorporated areas	270625B	do	Aug. 26, 1977.
Wisconsin:				
Green	Browntown, village of	550161B	do	Jan. 9, 1974 and June 4, 1976
Waukesha	Oconomowoc Lake, village of	550582B	do	Feb. 2, 1979
Region VI				
Texas:				
Bexar	Unincorporated areas	480035B	do	Jan. 31, 1978
Region VII				
Missouri:				
Franklin	Unincorporated areas	290160B	...do	Jan. 17, 1978.
Maryland:				
Calvert	Unincorporated areas	240011B	July 5, 1973—Emerg. Sept. 28, 1984—Reg. Sept. 28, 1984—Susp. Nov. 9, 1984—Rein.	Oct. 18, 1974 and July 15, 1977
California:				
San Bernardino	Rancho Cucamonga, city of	060671A	Aug. 7, 1978—Emerg. Sept. 5, 1984—Reg. Sept. 5, 1984—Susp. Nov. 12, 1984—Rein.	Sept. 5, 1984

State and county	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Pennsylvania:				
Fulton	Belfast, township of	421659A	Nov. 15, 1984—Emerg	Dec. 20, 1974 and July 11, 1980.
Texas:				
Hill	Malone, city of	480861	...do	July, 9, 1976.
Idaho:				
Boundary	Unincorporated areas	160207B	Nov. 13, 1984—Emerg. Nov. 13, 1984—Reg.	Aug. 2, 1977 and Aug. 2, 1982.
Florida:				
Lake	Lady Lake, town of	120613A	Nov. 14, 1984—Emerg. Nov. 14, 1984—Reg.	Aug. 15, 1984.
Region I				
Connecticut:				
Windham	Danielson, borough of	090169A	Nov. 1, 1984, Suspension withdrawn	Jan. 24, 1975.
Do	Thompson, town of	090117B	...do	May 17, 1974 and July 26, 1977.
Do	Woodstock, town of	[illegible]	...do	Sept. 20, 1974 and Mar. 11, 1977.
Rhode Island:				
Providence	Cranston, city of	445396B	...do	Aug. 28, 1971, July 1, 1974 and May 21, 1976.
Washington	Narragansett, town of	445402C	...do	Dec. 7, 1971, July 1, 1974 and Dec. 3, 1976.
Region II				
New Jersey:				
Bergen	Garfield, town of	340037B	...do	June 29, 1973 and Apr. 15, 1980.
New York:				
Ulster	Olive, town of	360860B	...do	June 7, 1974 and July 30, 1976.
Region III				
Maryland:				
Calvert	Chesapeake Beach, town of	240100B	...do	Oct. 18, 1974 and Feb. 18, 1977.
Region V				
Indiana:				
Adams	Geneva, town of	180002C	...do	Nov. 23, 1973, June 11, 1976 and Jan. 12, 1979.
Region VI				
Texas:				
Brazoria	Brookside Village, city of	480067B	...do	June 28, 1974 and June 18, 1976
Region VIII				
Colorado:				
Lincoln	Limon, town of	080109B	...do	June 28, 1974 and Jan. 16, 1976.
Idaho:				
Twin Falls	Twin Falls, city of	160120B	...do	June 7, 1974 and Feb. 27, 1976.

Code for reading 4th column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: November 20, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–31255 Filed 11–28–84; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 64

[Docket No. FEMA 6635]

Suspension of Community Eligibility Under the National Flood Insurance Program; Connecticut, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 287–0876, 500 C Street, Southwest, FEMA, Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so

that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93-234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region I					
Connecticut: Fairfield	Westport, town of	090019B	Oct. 8, 1970, Emerg.; July 2, 1980, Reg.; Dec. 4, 1984, Susp.	July 19, 1980 and Dec. 4, 1984	Dec. 4, 1984
Massachusetts: Berkshire	Sandisfield, town of	250039B	June 11, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	June 28, 1974 and Dec. 24, 1976	Do.
Region II					
New Jersey: Bergen	Lodi, borough of	340047C	Apr. 21, 1975, Emerg.; Feb. 15, 1978, Reg.; Dec. 4, 1984, Susp.	July 27, 1973, Apr. 30, 1976 and Feb. 15, 1978.	Dec.
Mercer	Princeton, township of	340252B	Sept. 15, 1972, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	June 15, 1973 and May 28, 1976	Do.
New York: Chemung	Elmira, city of	360078B	Jan. 26, 1973, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Aug. 31, 1973 and Mar. 19, 1976	Dec.
Region III					
Pennsylvania: Chester	Charlestown, township of	421475B	Nov. 24, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Oct. 18, 1974 and May 14, 1976	Do.
West Virginia: Mingo	Unincorporated areas	540133C	June 9, 1975, Emerg.; Dec. 2, 1980, Reg.; Dec. 4, 1984, Susp.	Dec. 20, 1974, Aug 5, 1977 and Dec. 2, 1980.	Do.
Region IV					
Georgia: Stephens	Toccoa, city of	130231B	June 20, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	June 28, 1974 and Oct. 24, 1975	Dec.
North Carolina: Swain	Bryson City, city of	370228B	Mar. 25, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	June 14, 1974 and Oct. 1, 1976	Dec.
Avery	Newland, town of	370018B	Sept. 17, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	June 14, 1974 and Oct. 1, 1976	Do.
South Carolina: Beaufort	Unincorporated areas	450025C	Oct. 9, 1970, Emerg.; Sept. 30, 1977, Reg.; Dec. 4, 1984, Susp.	Sept. 30, 1977	Do.
Region V					
Illinois: Ogle	Byron, city of	170526B	July 21, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	May 10, 1974 and June 18, 1976	Do.
Bouvet	Dalton City, village of	170522B	May 27, 1975, Emerg.; June 30, 1976, Reg.; Dec. 4, 1984, Susp.	May 3, 1974 and July 30, 1976	Do.
Macon	Unincorporated areas	170056B	Sept. 14, 1979, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Sept. 8, 1978	Do.
Michigan: Oakland	Holly, village of	260587A	Nov. 4, 1981, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Oct. 3, 1975	Do.
Ottawa	Hudsonville, city of	260493A	Mar. 31, 1982, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Sept. 5, 1975	Do.
Ohio: Hancock	Findlay, city of	390244B	Jan. 16, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Jan. 23, 1974 and May 21, 1976	Dec.
Wisconsin: Washington	Hartford, city of	550473B	Apr. 17, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Jan. 9, 1974 and May 14, 1976	Dec.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region VI					
Texas: Jefferson	Beaumont, city of	485457B	June 19, 1970, Emerg.; Oct. 30, 1970, Reg.; Dec. 4, 1984, Susp.	Sept. 2, 1970, July 1, 1974 and Nov. 14, 1975.	Dec.
Fort Bend	Rosenberg, city of	480232B	July 21, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	June 28, 1974 and Aug. 22, 1975	Dec.
Region VII					
Missouri: Cooper	Wooldridge, village of	290112A	Mar. 22, 1976, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Apr. 25, 1975	Do.
Region IX					
Arizona: Graham	Unincorporated areas	040032B	Nov. 19, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	Jan. 17, 1975 and Nov. 29, 1977	Do.
Region X					
Idaho: Lemhi	Salmon, city of	160093A	Oct. 28, 1975, Emerg.; Dec. 4, 1984, Reg.; Dec. 4, 1984, Susp.	June 25, 1976	Dec.

[1] Date certain Federal Assistance no longer available in Special Flood Hazard Areas.
Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: November 20, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-31251 Filed 11-28-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 82-122; FCC 84-523]

Interconnection Arrangements Between and Among the Domestic and International Record Carriers

AGENCY: Federal Communications Commission.

ACTION: Report and Order rescinding existing interconnection arrangements.

SUMMARY: This Report and Order rescinds existing interconnection arrangements prescribed by the FCC pursuant to the Record Carrier Competition Act of 1981 to permit the implementation of an intercarrier agreement. Because of the agreement, the existing interconnection arrangements are no longer valid.

FOR FURTHER INFORMATION CONTACT: Margot F. Bester, International Policy Division, Federal Communications Commission, Washington, D.C. 20554 (202) 632-4047.

Report and Order

In the matter of international arrangements between and among the domestic and international record carriers, (CC Docket No. 82-122).

Adopted: November 8, 1984.
Released: November 15, 1984.
By the Commission.

I. Introduction

1. The Record Carrier Competition Act of 1981 (RCCA)[1] governs certain aspects of the provision of record communications services within the United States and between the United States and foreign points.[2] The major provisions of the RCCA govern the manner by which carriers interconnect their facilities and allocate revenues for the provision of record communications services. The majority of these provisions sunset on December 29, 1984.

2. On March 7, 1984, the United States Court of Appeals for the District of Columbia circuit rendered a decision [3] concerning our implementation of the RCCA. The Court reversed and remanded for further proceedings two aspects of our Interim Order.[4] On August 6, 1984 we issued a Further Notice of Proposed Rulemaking [5] to treat those issues remanded to us by the Court of Appeals. We reached tentative conclusions as to these issues and requested comment on our tentative conclusions.

3. In response to our Further Notice, the carriers filed an executed "Memorandum of Agreement" on September 27, 1984.[6] This negotiated agreement establishes terms and conditions regarding physical interconnection, billing, collecting and tariffing for telex services. The agreement formalizes the parties' respective obligations and undertakings in this regard. In addition, the carriers filed a "Supplemental Petition for Acceptance of Intercarrier Agreement." In this petition, the carriers request that we amend, revoke or waive our existing prescriptions so that the agreement may become operative prior to the statute's sunset date and continue until June 30, 1986. We note that the agreement by its terms became effective upon execution but that it contained a provision requiring Commission action on our existing prescription within forty-five days as a further condition.

4. In this Report and Order, we will summarize the statute, our Interim Order, other significant Commission

[1] 47 U.S.C. 222 (1981). Section 222 of the Act was rewritten by the RCCA.

[2] We have adopted a series of orders to implement the RCCA. The primary decision which implemented the RCCA was Interconnection Arrangements Between and Among the Domestic and International Record Carriers (Interim Order): 89 FCC 2d 928 (1982), *on reconsideration*, 93 FCC 2d 845 (1983), *rev'd in part sub nom.* Western Union v. FCC, No. 82-1502 (D.C. Cir. March 7, 1984).

[3] Western Union Telegraph Company v. Federal Communications Commission *et. al.*, No. 82-1502 (D.C. Cir. March 7, 1984).

[4] As will be discussed in detail below, the Court reversed and remanded that part of our Interim Order designating the international carrier as the originating carrier on outbound calls from the United States and requiring the pro rata distribution of revenues received for a portion of inbound calls.

[5] Interconnection Arrangements (Further Notice of Proposed Rulemaking FCC 84-380 (released August 6, 1984).

[6] An executed copy of this Agreement was filed on September 12, 1984, the date comments to our Further Notice were due.

orders, the Court's decision, our Further Notice and the intercarrier agreement. We will then set out our rationale for rescinding our existing prescriptions pre-sunset and permitting the implementation of this intercarrier agreement as proposed by the carriers. The intercarrier agreement is attached as Appendix A.

II. Background

5. The Statute: The RCCA, the majority of which sunsets pursuant to Section 222(e) on December 29, 1984, lifted the statutory bar on Western Union's provision of international services and permitted its re-entry into the international market.[7] It also facilitated the expansion of the international record carriers (IRCs) into the domestic market.[8] In addition to encouraging the development of competition in the record communications services market, the RCCA requires carriers to interconnect their facilities upon terms and conditions which are just, fair, and reasonable.[9] The RCCA also requires the pro rata allocation of international inbound record service transmission,[10] interconnection between a carrier's domestic and international segments which is equal in type and quality and available at the same rates and upon the same terms and conditions as that furnished to an interconnecting carrier,[11] the establishment of a nondiscriminatory formula for the equitable allocation of revenues derived from interconnected transmission,[12] and the establishment by each carrier of the total price charged to the public for any service originated by that carrier.[13] To implement these requirements, Section 222(c)(3)(A) required the Commission to convene, monitor and preside over interconnection negotiations between and among the domestic and international record carriers.[14] The RCCA also required the Commission to prescribe interconnection arrangements if the carrier negotiations failed to produce an agreement.[15]

6. The Interim Order: The carriers were not able to reach an agreement on the terms and conditions for interconnection within the forty-five and ninety day limits provided by the RCCA. Accordingly, the Commission, pursuant to the RCCA's mandate, conducted a rulemaking proceeding on an expedited basis and issued an Interim Order establishing the necessary technical and financial arrangements for the provision of interconnected telex and TWX services. Arrrangements were prescribed for purely domestic transmissions as well as for interconnected international inbound and outbound telex calls. In the Interim Order we designated the international carrier as the originating carrier for international outbound calls responsible for billing, tariffing and collection. We made no changes in the interconnection arrangements for international inbound transmissions and designated the carrier on whose network a purely a domestic call was initiated as the originating carrier for billing, collecting and tariffing purposes. We prescribed revenue allocation formulas for international inbound traffic (the pro rata formula) and international outbound traffic (transiting arrangements). We also created a holding factor to compensate domestic carriers for holding and set up a time when international minutes are used to determine billable domestic minutes.[16] Further, we prescribed a 15% discount from the terminating carrier's intra-network tariffed charge for inteconnected transmissions.

7. Subsequent Orders: Pursuant to our Interim Order, record carriers providing international and domestic service filed revisions to their tariffs purporting to establish the interconnection arrangements which we had prescribed. We found that these filings did not conform to our requirements as specified in the Interim Order and we rejected them.[17] We also took the unusual step of prescribing the specific tariff language needed to implement our Interim Order. In addition, we identified several technical matters which warranted further discussions among the carriers, the most important being the handling of store-and-forward transmissions and telex/TWX conversions. The carrier negotiations on these technical matters were not successful and we subsequently resolved these issues in our *Store-and-Forward-Decision*.[18] We have also released a number of additional orders relating to promotional telex rates, the distribution formula for unrouted outbound telegram traffic, telex traffic originated via teletext and private lines and the billing of overseas telex calls from ship customers of INMARSAT services.[19]

8. Court Decision: The following four aspects of our Interim Order were at issue in the case before the court: (a) whether the Commission erred in prescribing a 15% interim discount from a terminating carrier's publicly tariffed intra-network rate for an interconnected transmission; (b) whether the domestic or international carrier should be deemed the originating carrier with the right to tariff, bill and collect; (c) whether the formula prescribed by the Commission for allocating revenues received for international outbound calls (transiting arrangements) is reasonable; and (d) whether the Commission had the authority to require that revenues received for international inbound calls, rather than traffic, be distributed pursuant to a pro rata formula between interconnecting carriers.[20]

9. On review, the D.C. circuit held that our decision to prescribe on an interim basis a 15% discount for interconnected transmissions from a terminating carrier's publicly tariffed intra-network rate was not reviewable. The court also affirmed our revenue allocation formula for the outbound transmissions of one carrier employing the facilities of another carrier on a transiting basis. However, the court reversed and remanded that part of our Interim Order designating the international carrier as the originating carrier on calls outbound from the United States and requiring the pro rata distribution of revenues received for a portion of inbound calls.

10. As to the originating carrier for outbound calls, the court stated in its holding that both the language and the legislative history of the statute indicated that the domestic carrier on whose network the call originates is the originating carrier and has the responsibility to tariff, collect and bill for the entire call. As to pro rata, the court stated that Congress' intent in enacting that provision was to require carriers to physically distribute a portion of international inbound traffic. The court saw nothing in the statute giving us authority to transform this traffic (service) distribution requirement into a revenue distribution scheme. The court concluded if Congress' prescribed scheme to distribute traffic pro rata was unworkable, as we had determined, then the Commission must return to Congress and seek appropriate legislation.[21]

11. Further Notice of Proposed Rulemaking: In order to implement the court's holding on the originating/terminating issue, we recognize that it would be necessary for the record carriers to make operational, billing and tariff changes. To begin this process, we directed Western Union and all other originating carriers to submit information and an interconnection plan to demonstrate their technical ability to perform these functions. Public meetings were held under our aegis to discuss these proposals and establish a tariffing, billing and collection arrangement consistent with the court's decision. The carriers reached agreement on some aspects of a tariffing, billing and collection arrangement but were unable to reach agreement on others.

12. Since the carriers could not reach agreement on all the issues presented by the court, we issued a Further Notice of Proposed Rulemaking to treat the court's remand. We reached tentative conclusions with respect to pro rata distribution of revenues for international inbound calls, transiting arrangements for international outbound calls[22] and originating/terminating carrier.[23] Our tentative conclusions reflected the positions of the participants to the negotiations where an agreement had been reached.

13. Comments to our Further Notice were due on September 12, 1984. On that date, the carriers filed an unexecuted copy of a "Memorandum of Agreement." An executed copy of this agreement with an accompanying "Supplemental Petition for Acceptance of Intercarrier Agreement" was filed on September 27, 1984.[24]

14. The Agreement: The intercarrier agreement addresses two basic issues: (1) Billing, collecting and tariffing arrangements for realtime outbound interconnected telex calls (originating/terminating issue) and (2) continuation of physical interconnection arrangements.

15. With respect to billing arrangements for an international outbound call, the agreement provides that the party providing the domestic segment service may bill for the domestic segment and that the international carrier may bill for the international segment. However, the agreement initially provides that the international carrier will bill on behalf of the domestic carrier as it does today using international minutes as the basis for its charges to users.[25] If the domestic carrier later decides to bill and collect for its own services, it must give the international billing party 90 days notice to accommodate data processing and invoice processing charges. Thus, for at least the short term, the party providing the international service segment will continue to be the billing carrier and remain responsible for billing and collecting the domestic segment and the international segment charges.

16. With respect to the physical interconnection arrangements, the parties agree that they will not seek certification from us for any discontinuance of existing physical interconnection arrangements for domestic or international telex (including TWX) prior to July 1, 1986. The parties also agree that the terms and conditions (other than terms and conditions respecting rates, charges, or other compensation arrangements) governing physical interconnection of their respective domestic and/or international telex services (both realtime and store-and-forward) will continue to be reflected in tariffs filed with us and that any changes in these tariffs will be accomplished with other parties being given at least 90 days notice.

17. The parties also agreed either not to make changes until July 1, 1986 or to provide for a longer period of notice in some instances, and in other instances for close cooperation with other parties for the implementation of changes for the following specifically identified interconnection parameters: (1) Grade of service; (2) interconnection trunks; (3) network configurations; (4) signalization changes; and (5) routing modifications.

18. The parties state their intention, in the supplemental petition filed with the agreement, that any carrier certificated by us to provide domestic or overseas telex or TWX services would be able to become a party to this agreement. The parties also indicate that network access codes, what we interpret to be the 107X arrangements, would be made available to new carriers.

19. With respect to transiting arrangements, the parties note that such arrangements are currently provided pursuant to their interconnection tariffs. The agreement contemplates the maintenance of such tariffed arrangements subject to the option of any party to amend such arrangements on 90 days notice to other parties.

20. The parties also agree to withdraw support for a petition for rulemaking filed by RCA Global Communications to extend under Section 201(a) of the Communications Act of 1934, as amended, certain features of the interconnection arrangements we prescribed in our Interim Order.

21. Finally, the parties make clear that nothing in this agreement is intended to address the appropriate division of charges between interconnected carriers for interconnected domestic, inbound international or outbound international telex traffic and that nothing in this agreement is to have any bearing on the resolution of any controversy involving such division of charges. The parties reserve all rights to support or oppose any and all positions which may be

---

[7] Section 222(d).

[8] Id. After 1963 and prior to the passage of the RCCA, the provision of record communications services was bifurcated. Western Union dominated the domestic side but was prohibited under the old Section 222 from engaging in the direct provision of international record communications services. The international record carriers were authorized to provide service to overseas points through a limited number of gateway cities.

[9] Section 222(c)(1)(A)(i).

[10] Section 222(c)(1)(A)(ii).

[11] Section 222(c)(1)(B).

[12] Section 222(c)(2).

[13] Id.

[14] The Western Union Telegraph Company and Graphnet, Inc. participated in the interconnection negotiations as domestic record carriers. ITT World Communications Inc., RCA Global Communications, Inc., Western Union International, Inc., FTC Communications, Inc., TRT Telecommunications Corporation, International Relay, Inc., and CCI participated as primary existing international record carriers.

[15] Section 222(c)(3)(B).

[16] In our Interim Order, we prescribed a 1.3 holding factor. Western Union raised this holding factor to 1.408 to compensate for an imbalance in billing minutes.

[17] *See* Interconnection Arrangements, (Rejection Order), FCC 82-284 (released June 11, 1982).

[18] *See* Interconnection Arrangements, 93 FCC 2d 156 (1983). In the Store-and-Forward Decision order we addressed the treatment of store-and-forward interconnections and interconnection to forms of store-and-forward service where the output messages are not in the same form as the input messages. We concluded that many, but not all, of these store-and-forward offerings were enhanced services.

[19] *See* Western Union International, *et al.* Transmittal No. 1628, released April 3, 1983; Western Union Telegraph Co., Transmittal No. 8028, released May 10, 1983; Western Union Telegraph Co., Transmittal No. 7982, released March 21, 1983; Communications Satellite Corporation, Transmittal No. 1037, released March 4, 1983.

[20] The pro rata, transiting, and originating/terminating holdings of the court interpreted sections of the RCCA which sunset on December 29, 1984.

[21] In view of its reversal of pro rata distribution formula for inbound calls, the court stated that we may want to modify our transiting formula.

[22] As for pro rata, we tentatively concluded that a pro rata distribution of traffic as found in Section 222(c)(1)(A)(ii) could not be implemented prior to the section's sunset. We also tentatively concluded that the transiting arrangements prescribed in our Interim Order should remain intact.

[23] We reached tentative conclusions regarding the following originating/terminating sub-issues: (1) format of the domestic carrier's bill; (2) treatment of bad debts; (3) continuation of the international carriers Early Payment Credit (EPC) programs; (4) protection of proprietary data against improper disclosure and use by competitors; (5) format of the magnetic tape to be provided to the domestic carrier by the international carrier; (6) treatment of non-billable calls; (7) date of settlements; (8) disavowed calls; (9) date of implementation; and (10) the carrier to bear the expenses incurred in altering current billing arrangements.

[24] The following carriers are signatories to the agreement. Consortium Communications International, Inc.; FTC Communications Inc.; Graphnet, Inc.; ITT World Communications Inc.; International Relay, Inc.; RCA Global Communications Inc.; TRT Telecommunications Corporation; The Western Union Telegraph Company; and Western Union International, Inc.

[25] Each party handling a call originating on a domestic network which is routed by a calling subscriber to an overseas point via another party's international network will separately tariff its individual segment charge applicable to such a call.

offered or argued respecting any such controversy.[26]

III. *Discussion*

22. In order to permit the implementation of the intercarrier agreement, we will rescind our existing prescriptions prior to the sunset date. Since the interconnection arrangements specified in our *Interim Order* and *Store-and-Forward Order* were prescribed by us, we may amend these arrangements at any time when the circumstances warrant.[27] We also clarify that our prescriptions for record carrier interconnection arrangements would have terminated on the sunset date.[28] The carriers' agreement may extend beyond the sunset date without any further action by us. We believe that the conditions are now right to amend these prescriptions.

23. We believe that the intercarrier agreement filed by the carriers governs the terms and conditions of interconnection arrangements in a manner consistent with the RCCA. In enacting the RCCA, Congress intended that carriers negotiate their own interconnection agreement for the provision of through services. For example, Sections 222(c)(3) (A) and (B) provide a mechanism for carriers to negotiate their own interconnection arrangements. Section 222(c)(3)(C) provides a mechanism for additional carriers to elect to be subject to the terms of the previously established agreement. The Commission was to prescribe interim arrangements only if the carriers were unable to negotiate their own interconnection agreement. While the time originally established for entering into an agreement has passed, we believe that the carriers should be given the opportunity to implement this agreement. We note that if service is not provided under the terms of this agreement consistent with the public interest, we have continuing jurisdiction under Sections 201 and 203 as well as under those Sections of the RCCA which do not sunset to revisit this matter and prescribe any necessary arrangements.

24. We rescind our existing prescriptions so that the agreement may be implemented pre-sunset. The terms and conditions of the agreement regarding the treatment of international outbound traffic appear to be consistent with the Act, the RCCA and the decision of the court. The agreement governs the terms and conditions of interconnection in a matter consistent with Sections 201 and 222 for the provision of a through service: interconnection of facilities with all other record carriers, interconnection between a carrier's domestic and international segments which is equal in type and quality as that furnished to an interconnecting carrier, retention of transiting tariffs, and provision of access codes. Consistent with the court's decision, the domestic carrier may perform billing, collecting and tariffing functions. The court's decision gave the domestic carrier the responsibility to tariff, collect and bill for the entire call and the domestic carrier, by this agreement, has delegated this responsibility to the international carrier.

25. In our Interim Order, we prescribed a holding factor to compensate domestic carriers in instances where international minutes were used as the basis for billing calculations. At that time, we prescribed a figure based on our estimates of network operations. However, carriers now have had approximately two years of operational experience and should be in a position to implement a more accurate holding factor. If international minutes continue to be used to calculate billable domestic minutes and if a domestic carrier desires to be compensated on the basis of a holding factor, then we shall require such a domestic carrier to file a tariff revision indicating what holding factor it proposes to employ and providing support for this factor in accordance with our rules.

26. In our *Store-and-Forward Decision* we indicated that store-and-forward technology could be utilized to provide both basic and enhanced services. In addition to recognizing that some basic store-and-forward services were within the ambit of the RCCA, we also concluded that certain enhanced store-and-forward offerings which were "traditional" record communication services should be treated under the RCCA as a limited exception to our *Computer II* decision. We concluded that these enhanced store-and-forward services should be tariffed until the RCCA's sunset date, and that interconnection should be established to traditional record communication services regardless if they were basic or enhanced. We affirm those conclusions here: enhanced service offerings should be detariffed, but interconnection to the traditional record services under non-sunsetting provisions of the RCCA should remain intact. This appears to be consistent with the terms of the carrier's agreement.

27. With respect to the post-sunset period, the intercarrier agreement appears to be consistent with the statutory intent and with those provisions of the RCCA which do not sunset on December 29, 1984. Furthermore, our *Interim Order* and subsequent orders make clear that the interconnection arrangements prescribed by us were temporary and were to terminate at the sunset date.[29] There is no reason why the carrier's agreement cannot continue according to its terms past the sunset date.

28. Accordingly, it is ordered, that our existing prescriptions in Docket 82–122 are rescinded so that the agreement may be implemented prior to December 29, 1984.

29. It is further ordered, that if any carrier wishes to retain a holding factor for billing purposes it must file a tariff revision in accordance with our rules supporting such a factor on January 4, 1985 effective February 1, 1985.

30. It is further ordered, that carriers shall file tariff revisions relating to the offering of enhanced store-and-forward services consistent with this order on February 1, 1985 effective on 35 days notice.

31. It is further ordered, that pursuant to Section 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 403(1970), that the inquiry into the above-captioned matter initiated on August 6, 1984 is terminated.

32. It is further ordered, that the Petition for Rulemaking filed by RCA Global Communications is dismissed.

33. It is further ordered, that this order be printed in the **Federal Register.**

34. Pursuant to Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354) it is certified, that Sections 603 and 604 of that Act do not apply because this Report and Order will not have a substantial economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b) (1980 Supp.) The primary economic impact of this order will be upon carriers, not users.

[26] This issue is being dealt with in Phase II of Docket 78–97.

[27] *See*, e.g. In the Matter of Recording Devices in Connection with Telephone Services, 95 FCC 2d 848 (1983); In the Matter of Applications of GTE Satellite Corporation, 94 FCC 2d 1164 (1983).

[28] We have released orders which reach conclusions pursuant to sections of the RCCA which do not sunset and sections of the Communications Act other than Section 222. Although we have rescinded our prescriptions, we do not wish to revisit issues on which we have already spoken and which are based on non-sunsetting provisions. That is, although we are rescinding our prescription, the statutory interpretations that we have made for non-sunsetting provisions remain intact.

[29] *See*, Interim Order, 89 FCC 2d 929 (1982).

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

Before the Federal Communications Commission

[CC Docket No. 82–122]

Supplemental Petition for Acceptance of Intercarrier Agreement

In the matter of Interconnection Arrangements Between and Among the Domestic and International Record Carriers.

On September 12, 1984, the undersigned U.S. record carriers submitted to the Commission an agreement among themselves governing future interconnection arrangements, and requested that the Commission permit the early implementation of those arrangements. In order to submit that Agreement as the principal response of those carriers to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned matter, it was necessary to file an unexecuted copy of the Agreement to meet the Commission's filing date for such responses. The carriers represented that they would submit a fully executed copy of the Agreement to the Commission at the earliest practical date. Accordingly, they are herewith submitting that fully executed copy for filing with the Commission.

Following the initial filing of this Agreement, the carriers have been informally advised by the Commission's Staff that certain clarifications of their intentions with respect to the operation of this Agreement would be desirable as an aid to the Commission's review of the interconnection arrangements proposed therein. These carriers are therefore submitting this Supplemental Petition in an effort to address those questions.

As an initial matter, we note that the September 12 Petition respecting this Agreement sought the Commission's "approval" of the Agreement. The Staff has pointed out that the Commission ordinarily does not "approve" private agreements entered into among parties subject to its jurisdiction.

To clarify our intent in this regard, we note that certain Commission actions are necessary in order to permit the Agreement to be implemented. As reflected in Paragraph C.5. of the Agreement, an essential external condition which must be satisfied for the Agreement to become effective is an early action by the Commission to permit its implementation, in accordance with its terms. Such FCC action must include an appropriate amendment of existing prescriptions to permit revised interconnection arrangements for outbound international telex traffic to be implemented immediately and a declaration that no otherwise continuing prescription of physical interconnection arrangements would remain in effect after December 30, 1984—the latter declaration being required so as to recognize that the Agreement would reflect the sole definition of interconnection arrangements required among the Parties for the eighteen month period following the sunset of the Record Carrier Competition Act.

It was the apparent requirement for such changes in existing Commission prescriptions necessary to the implementation of this Agreement that motivated the Parties' request for approval of that Agreement. However, upon review of the original Petition, the carriers believe that this intent is reasonably clear from the overall tenor of the Petition and that a substitution of the term "acceptance" for the term "approval" (or "accept" for "approve") wherever such terms appear would more closely comport with the relief which they are seeking from the Commission. Accordingly the carriers request that the Commission treat this Supplemental Petition as so amending their original Petition.

The Staff has also inquired as to the Parties' intent with respect to interconnection arrangements for new carriers which are not parties to the Agreement. As indicated in the original Petition respecting this Agreement, the only other carrier known to the Parties to have a potential interest in the interconnection arrangements contemplated by that Agreement was involved in the discussions leading to the Agreement. However that carrier, Puerto Rico Communications Authority, declined to sign the Agreement at this time because it does not have any current international authority, and believes that its existing agreements with other carriers are adequate for its domestic interconnection arrangements. There is no question, however, but that PRCA will be able to become a party to the Agreement at a future date if it so wishes. Similarly, the Parties intend that any other carrier certificated by the Commission to provide domestic or overseas telex or TWX services would be able to become a party to the Agreement. Furthermore, the Parties intend that network access codes would be made available to new carriers, subject to technical limitations inherent in the existing switching equipment and numbering plans for each of the Parties and to such future Commission orders (if any) not inconsistent with the Agreement, respecting access codes.

In addition, the Staff has inquired as to the Parties' intent as to continued maintenance of overseas transit arrangements for other record carriers. The Parties note that such transit arrangements are currently provided pursuant to their interconnection tariffs, and that the Agreement contemplates the continued maintenance of all such tariffed arrangements, pursuant to Paragraph B.2., subject to the option of any Party to amend such tariffed arrangements on 90 days notice to other parties.[1] In the event that a change in such transit arrangements were proposed by a Party, the Commission would have an adequate opportunity to respond to such a proposal through its normal tariff review process.

For the reasons set forth hereinabove, and in the Petition accompanying the September 12, 1984 filing of this Agreement, the undersigned Parties respectfully request that the Commission accept this Agreement and permit its implementation in accordance with its terms at the earliest reasonable date.

Respectfully submitted,

Consortium Communications International, Inc.,

Robert Clifton Burns,

Its Attorney, Cohn & Marks, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

FTC Communications, Inc.,

Roger P. Newell,

Its Attorney, 90 John Street, New York, NY 10038.

Graphnet, Inc.,

Stanford B. Weinstein,

Its Attorney, 1919 Pennsylvania Ave., NW., Suite 210, Washington, DC 20006.

ITT World Communications Inc.,

John A. Ligon,

Its Attorney, 100 Plaza Drive, Secaucus, New Jersey 07096, (201) 330–5789.

[1] The Staff has also noted that the 90-day notice provided for in the Agreement may exceed the notice period required under the Commission's rules for such tariff filings. While the Parties would prefer the administrative convenience of a single 90-day filing for other Parties and the Commission, they will undertake to provide the initial 90-day notice only to other parties, with a subsequent FCC filing on the date for normal notice under the Commission's rules if the Commission objects to receiving such filings at an earlier date.

International Relay, Inc.,
Steven A. Levy,
Its Attorney, Hogan & Hartson, 815 Connecticut Avenue, Washington, DC 20006.

Puerto Rico Communications Authority,
J. Steven Huffines,
Its Attorney, Puerto Rico Federal Affairs Administration, Suite 107, 1400 20th Street, NW., Washington, DC 20036.

RCA Global Communications, Inc.,
Alexander P. Humphrey,
Its Attorney, 2030 M Street, NW., Washington, DC 20036.

TRT Telecommunications Corporation,
Lloyd D. Young,
Regulatory Counsel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

The Western Union Telegraph Company,
H. Richard Juhnke,
Its Attorney, 1828 L Street, NW., Suite 1001, Washington, DC 20036.

Western Union International, Inc.,
Robert Michelson,
Its Attorney, 1133 19th Street, NW., Washington, DC 20036.

Dated: September 7, 1984.

Memorandum of Agreement

Representatives of the undersigned U.S. Record Carriers participated in a number of meetings over the past several months concerning implementation of a recent appellate decision which construed the Record Carrier Competition Act of 1981 as providing the domestic carrier on whose network an interconnected through outbound international telex call was initiated with the rights under that statute of an "originating carrier" (*Western Union Telegraph Co.* v. *FCC*, 729 F. 2d 811, D.C. Cir., 1984), and looking toward a possible agreement as to continued physical interconnection arrangements for telex services beyond the sunset date of the Record Carrier Competition Act. Those discussions were initially conducted under the aegis of the Federal Communications Commission (FCC or Commission) staff and, after failing to conclusively resolve all relevant concerns during that phase of the discussions, continued through private negotiations among various of those carrier parties. Those parties have collectively reached an agreement which satisfactorily accommodates their various concerns as to the appellate court ruling and the continuation of physical interconnection arrangements for domestic and international telex services beyond the sunset date, and believe that such arrangements will be in the public interest. This Memorandum of Agreement is a means of formalizing the parties' respective obligations and undertakings.

The parties affirmatively state that nothing in this Agreement is intended to address the appropriate division of charges between interconnected carriers for interconnected domestic, inbound international or, except as may be inconsistent with the specific terms of Section A hereof, outbound international telex (including TWX) traffic (which "division of charges" is inclusive of any charges established by the FCC in CC Docket No. 82–122 for the "termination" of such interconnected traffic), and that nothing in this Agreement, including the Agreement in its entirety or the making of the Agreement by the parties, shall have any bearing on the resolution of any controversy involving such division of charges, including any controversy as to the scope, extent, or continuing effect, if any, beyond the sunset of the Record Carrier Competition Act of the Commission's prescription of any such division of charges. The parties reserve all rights to support or oppose any and all positions which may be offered or argued respecting any such controversy.

With the foregoing caveat, the undersigned parties agree as follows:

A. Interconnection Principles and Billing Arrangements for Real Time Outbound Interconnected International Telex Calls

1. Each party which handles a call originating on a domestic network and which is routed by the calling subscriber, on a real time basis, to an overseas point via another party's international network will separately tariff its individual segment charge applicable to such a call.

2. The end user will be billed the sum of the domestic segment charge and the international segment charge by the party providing the international segment, with such party acting on behalf of the party providing the domestic segment for the billing of that segment charge; the party providing such billing service will show on its bill the total charge to the end user (i.e., the sum of the domestic and international segment charges), and may, as well, provide a basis for the user to determine the separate segment charges.

3. A party providing domestic segment service may choose to bill that domestic segment itself, rather than having that charge billed in its behalf by the party providing the corresponding international segment service. In that event, 90 days' notice to the billing party will be required in order to accommodate data processing and invoice processing changes.

4. The parties acknowledge that, as part of the consideration for this Agreement, the billing party is waiving any right to recover compensation for the provision of billing services to another party and that no compensation for the provision of such services is provided for in the interconnection arrangements contemplated by this Agreement.

5. At all times during which a party providing a domestic segment service elects billing of that service by the party providing the corresponding international segment service, the domestic segment charge will be expressed in "international minutes".

6. In instances where a party providing a domestic segment service elects billing of that service by the party providing the corresponding international segment service, the billing party agrees to remit amounts owed to the other party within 60 days after the end of the month in which the traffic is carried. Such amounts owed to the other party shall be specified in an invoice presented by that other party to the billing party. Such invoice shall be based either on data furnished by the billing party pursuant to Paragraph 7 or, in the absence of such data, on the other party's estimate of such aggregate charges. The billing party will be liable for a late payment charge at the rate of 1.25 percent per month on any amount so invoiced by the other party which is not received by that party within the 60-day period specified above.

7. Consistent with existing practices among the parties, a party providing billing service to another party will provide that other party with a monthly report as to aggregate minutes and charges billed on its behalf.

8. Each party shall bear the burden of any revenue loss attributable to bad debts or disavowed calls for charges associated with its particular segment offering. In this connection, when a party providing domestic segment service elects billing of that service by the party providing the corresponding international segment service, the parties stipulate that 2.75 percent of the sums billed on behalf of the party providing domestic segment service shall constitute a reasonable estimate of the total revenue loss attributable to bad debts and disavowed calls associated with the domestic segment service. In the event the billing party seeks to recover more than the stipulated allowance in any particular month from the other party, it shall provide the other party with documentation

demonstrating the actual revenue losses; provided, however, that any individual bad debt (including debts attributable to bankruptcy) which exceeds $4,000 in domestic segment charges for a given month shall be recoverable by the billing party from the other party over and above its recovery of the stipulated amount, with documentation required only as to that specific customer bad debt.

9. The parties agree not to oppose a special permission application to the FCC by any other party seeking permission to file tariffs implementing the terms of Section A of this Agreement on 30 days' notice. The parties stipulate that nothing in the Communications Act of 1934, as amended, or any FCC order thereunder, precludes the filing of any such tariff; provided, however, that the foregoing shall not preclude any party from challenging the level or structure of rates embodied in such tariff filing as being unjust, unreasonable, unjustly discriminatory, or otherwise unlawful under the Communications Act or Rules and Regulations adopted thereunder by the FCC.

B. Continuation of Physical Interconnection Arrangements

1. The parties stipulate that, under Section 214(a) of the Communications Act and the applicable Regulations thereunder, any discontinuance (other than temporary, emergency or partial discontinuance, as provided for in Section 214(a)) of existing physical interconnection arrangements for domestic or international telex (including TWX) services can be accomplished only after certification by the FCC that the present and future public convenience and necessity would be served by such a discontinuance, and they agree that no party will seek certification from the FCC for any such discontinuance prior to July 1, 1986.

2. The parties further agree that the terms and conditions (other than terms and conditions respecting rates, charges, or other compensation arrangements) governing such physical interconnection of their respective domestic and/or international telex services (both real-time and store-and-forward) will continue to be reflected in tariffs filed with the FCC, and that any changes in such terms and conditions, except as may be specifically addressed in Paragraph 3, will be accomplished only through amendments to such tariffs, with other parties being given at least 90 days' notice of any such amendment to such tariffs, and with any such notice not being given earlier than January 1, 1985; provided, however, that the parties agree to maintain, for the term of this Agreement, the existing allocation of billing responsibility for interconnections provided pursuant to the Store and Forward Order in CC Docket No. 82–122; and provided further that, should the FCC determine not to accept the continued maintenance of such interconnection terms and conditions through tariffs filed by the parties, the parties will enter into an agreement which establishes substantially the same obligations, one to another, as would have been reflected in the tariffs contemplated by this paragraph.

3. For certain specifically identified interconnection parameters, the parties agree either not to make any change through June 30, 1986, or to provide for a longer period of notice and/or close cooperation with other parties for implementation of such changes. Those specific interconnection parameters are:

a. *Grade of Service*—No change in current standard of .01 grade of service.

b. *Interconnection Trunks*—Any reduction in number of interconnection trunks shall be accomplished through mutual agreement as to the number and designation of such trunks.

c. *Network Configurations*

i. Any network reconfiguration by a party requiring changes in interconnection locations shall be without cost to other parties and shall preserve existing inter-network charging arrangements; such reconfigurations will require at least six months' notice to other parties.

ii. Any network reconfiguration which would be transparent to other parties but require testing by those other parties will require at least 90 days' prior notice of such testing requirement.

d. *Signalization Changes*—Any signalization change requested by a party on existing terminations shall be accomplished on at least 90 days' prior notice, if the new signalization is a standard CCITT Rec. U.1 Type A, Type B, or Rec. U.11 Type C/Table 1. Any signalization change which would require software changes by other parties will be subject to mutual agreement of the affected parties, including without limitation the timeframe for such changes; the parties to such agreement will make good faith efforts to implement it in accordance with its terms.

e. *Routing Modifications*—Any routing modification which would require other parties to substantially modify existing network routing (e.g., routing change from west coast to east coast) will require at least 90 days' prior notification.

Alternatively, the parties may agree that any of the changes identified above would only be made after "reasonable notice" to other parties, taking into account particular circumstances related to the specific change contemplated and general industry practice respecting changes of that sort, along with a commitment for mutal cooperation.

4. No party will voluntarily take any action requiring a change in existing access codes for access from its subscribers to the networks of other parties; in the event a party is required to make such changes in access codes by legislative, judicial, or regulatory directive, that party will make its best efforts to assure that assignment of new access codes recognizes and accommodates existing market identities of other parties.

C. General Undertakings and Reservations

1. This Agreement shall become effective upon execution and shall remain in effect through June 30, 1986, unless nullified as provided in Paragraph 5.

2. Each party to this Agreement which elects, or has elected, to include a late-payment charge in its telex interconnection tariffs on file with the FCC with respect to amounts due from other carriers for handling inbound international interconnected telex traffic and domestic interconnected telex traffic shall, within 15 days of the release of a final order of the FCC accepting this Agreement, file revisions to such tariffs to provide that such a charge may not exceed 1.25 percent per month and will apply only to amounts not received within 60 days after the end of the month in which the traffic is carried or 30 days after the date of rendition of the bill, whichever is later.

3. To the extent that section 222(c)(1)(B) of the Communications Act of 1934, as amended, may be interpreted as being inapplicable to the interconnection arrangements contemplated by Section A of this Agreement, the parties stipulate that they will continue to be bound by the "equal treatment" provisions of section 222(c)(1)(B) for such arrangements during the period covered by this Agreement.

4. The parties intend that the existing FCC prescription of physical

interconnection arrangements for record services shall not continue after December 29, 1984 and that this agreement shall govern such interconnection arrangements as provided herein. The parties agree to withdraw support (wherever given) for a petition, dated April 5, 1984, filed by RCA Global Communications, Inc. contemplating a further order by the FCC respecting interconnection arrangements among the parties, and to seek termination of any further action by the FCC in connection with that petition. The parties further agree not to seek any action of the FCC which contemplates a further prescription of existing physical interconnection arrangements that would take effect prior to the termination of this Agreement; provided, however, that the requirements of this paragraph are not intended to limit in any way a party's right to oppose an effort by another party, whether by tariff filing or otherwise, or any similar action proposed by the FCC, to substantially alter the existing division of charges for interconnected traffic, or the relationship between such division of charges and a carrier's charge to the public for totally intra-network service; provided further that parties retain their rights under section 201(a) of the Communications Act of 1934, as amended, to seek interconnection arrangements in other circumstances not covered by this Agreement; and provided further that nothing in this Agreement shall constitute a waiver of any argument that existing physical interconnection arrangements are in compliance with applicable tariffs or shall preclude any party from filing a complaint before the FCC seeking interconnection as prescribed by applicable tariffs.

5. This Agreement shall be submitted to the FCC promptly upon execution and shall become null and void in the event that the Commission has not, within 45 days after its execution:

(a) Permitted its implementation, without modification, by, *inter alia*, issuing an order amending, waiving or revoking the Commission's Interim Order and Tariff Prescription Order in CC Docket No. 82-122, and any other order deemed by the Commission to bar implementation of this Agreement, to the extent necessary to effectuate this Agreement (taking into account the parties' intent that this Agreement does not address any matters, or affect any positions, related to divisions of charges for the handling of interconnected traffic) between that time and December 29, 1984; and

(b) Declared that no otherwise continuing prescription of record carrier interconnection arrangements (other than as to divisions of charges for the handling of interconnected traffic) shall remain in effect on and after December 30, 1984—it being the intent of the parties that the arrangements established pursuant to this Agreement shall replace and supersede all previously prescribed physical interconnection arrangements (including, specifically, those contained in the Interim Order, the Tariff Prescription Order and the Store and Forward Order in CC Docket No. 82-122), and the parties having hereinabove agreed that this Agreement (as well as any Commission action with respect thereto) is in no way intended to affect the division of charges which have previously been prescribed or otherwise established for the handling of interconnected traffic, and have reserved all positions with respect to such charges.

In witness whereof the undersigned Parties have executed this Memorandum of Agreement this 25th day of September, 1984.

Consortium Communications International, Inc.,
Yaakov Elkon,
President.

FTC Communications, Inc.,
Roger P. Newell,
Vice President.

Graphnet, Inc.,
Stanford B. Weinstein,
Vice President.

ITT World Communications Inc.,
John O'Boyle,
Vice President.

International Relay, Inc.,
Steven Geiger,
President.

RCA Global Communications, Inc.,
Lawrence M. Codacovi,
Executive Vice President.

TRT Telecommunications Corporation,
Roderick A. Mette,
Vice President.

The Western Union Telegraph Company,
John W. Pope, Jr.,
Vice President.

Western Union International, Inc.
Sergio Wernikoff,
Vice President.

[FR Doc. 84-31103 Filed 11-28-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 41045-4145]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), (NOAA), Commerce.

ACTION: Final rule-technical amendment.

SUMMARY: NOAA issues this technical amendment to implement the 1984 amendments to the Marine Mammal Protection Act of 1972 (MMPA). The MMPA directs the Secretary of Commerce (Secretary) to extend the general permit issued to the American Tunaboat Association, establish quotas for the eastern spinner and coastal spotted dolphins, and implement a scientific research program to monitor the status of the porpoise stocks involved in the tuna fishery. This action is intended to carry out the mandates expressed by Congress in amending the MMPA.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner (NMFS, Southwest Region), 213-548-2518; or Mr. Kenn Hollingshead (NMFS, Washington, D.C.), 202-634-7529.

SUPPLEMENTARY INFORMATION:

General Permit and Quotas

The 1984 amendments to the MMPA extend the Category 2 general permit issued on December 1, 1980, to the American Tunaboat Association, subject to a number of conditions and exceptions. First, the general permit would cease to have force and effect if it were surrendered by the permit holder or terminated by the Secretary. The second permit condition incorporates the standard in Section 101(a)(2) of the MMPA which states that the goal of the Act is to reduce the rate of incidental kill or serious injury of marine mammals to insignificant levels approaching zero, but provides that this goal is satisfied in the case of purse seine fishing for yellowfin tuna by continuation of the application of the best marine mammal safety techniques that are economically and technologically practicable.

The third condition states that the terms and conditions of the general permit will remain in force for the duration of the permit with several exceptions. The first exception allows the Secretary to make adjustments in the requirements relating to fishing gear.

fishing practices and permit administration as may be appropriate and consistent with the goals of the MMPA. However, because these changes are not specifically mandated, and because they require a change in the rules, not merely a change in the general permit, any modifications such as changing procedural regulations to guidelines are subject to formal rulemaking procedures as mandated by section 103(d) of the MMPA.

The second exception allows the terms and conditions to be amended or terminated if the decision to do so is based on the best scientific information available. In order to acquire this scientific information the Secretary is directed by these amendments to conduct a scientific research program for at least five years to assess trends in porpoise stock levels for those stocks affected by purse seining for yellowfin tuna and to develop indices of abundance for these stocks. These studies would provide a rational basis for determining if marine mammal stocks are being adversely affected by incidental take and whether the general permit should be modified accordingly.

The third exception provides for a limited quota for the incidental take of two stocks of porpoise for which no quota is provided under the current permit. It allows an annual incidental take of up to 250 coastal spotted dolphins (*Stenella attenuata*) and 2,750 eastern spinner dolphin (*Stenella longirostris*). However, as mentioned above, if the Secretary determines through the scientific research program, that a stock of porpoise is being significantly adversely affected, he could adjust the quota on that stock or institute other protective measures. The amendments also require that these new quotas are to be included within and not be in addition to the overall annual quota of 20,500 dolphins in the General Permit. The NMFS wishes to make it clear that all marine mammals taken, whether under quota or not under quota, will be counted within the aggregate quota of 20,500.

Enforcement Policy on Accidental Take

As mandated by the 1984 amendments to the MMPA, the accidental take enforcement policy (50 CFR 216.24(d)(2)(i)(C)) is modified to exclude the coastal spotted and eastern spinner dolphin stocks. As amended, the MMPA stipulates that, "No accidental taking of either species (i.e., coastal spotted dolphin and eastern spinner dolphin) is authorized at any time when an incidental taking of that species is permitted." This means that if the quota on either species is reached, the accidental take policy will not apply to cover further takings of that species.

The accidental take policy will continue to maintain its original intent which was to recognize (1) that small numbers of non-target species or stocks of porpoise may occur occasionally in larger schools of target species (i.e., those that are normally associated with tuna), and (2) the difficulty of stopping a porpoise set after it is initiated and prohibited species/stocks are discovered in the net. Although the eastern spinner stock has accounted for most of the accidental mortality, since this stock occurs in large mixed schools of targeted offshore spotted and whitebelly spinners, approximately eleven other species of porpoise for which no quotas have been issued would remain covered by the accidental take policy.

Classification

The NMFS has determined that the regulation modifications being made at 50 CFR 216.24 may have a significant impact on the human environment. However, the NMFS has also determined that the action contained herein is statutorily mandated and as such, the Secretary has no discretionary ability to consider alternatives in this matter. Therefore, no purpose would be served by preparing an environmental impact statement. (See *State of Minnesota by Alexander* v. *Block*, 660 F.2d. 1240, 1259 (8th Cir. 1981)).

The 1984 amendments of the MMPA, mandate that certain actions be in place no later than January 1, 1985. These amendments, for which the administration also has no discretionary ability to consider alternative approaches are contained in this rulemaking. Because of this lack of discretionary ability, the Agency has determined that notice and public procedures thereon are impracticable and unnecessary in this rulemaking. Furthermore, because notice and public procedures are not required, this proceeding is exempt from the requirements of the Regulatory Flexibility Act. Likewise, the procedures of E.O. 12291 are not permitted by law, and thus are inapplicable under Section 2 of that order. This final rule is being reported to the Director, Office of Management and Budget (OMB) with an explanation of why it is not possible to follow procedures of that order.

The collection of information for general permits and certificates of inclusion has been approved by OMB under OMB No. 0648-0083. This rule will not result in an increased paperwork burden as no additional recordkeeping is involved.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: November 20, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

For the reasons set forth in the preamble, 50 CFR Part 216 is amended as follows:

1. The authority citation for Part 216 reads as follows:

Authority: 16 U.S.C. 1361-1407.

2. Section 216.24 is amended by removing paragraph (d)(2)(i)(A)(*1*), redesignating paragraphs (d)(2)(i) (A)(*2*) and (A)(*3*) as (A)(*1*) and (A)(*2*) and revising newly redesignated paragraph (d)(2)(i)(A)(*2*), and paragraphs (d)(2)(i)(C) and (d)(2)(i)(D) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(d) * * *
(2) * * *
(i) * * *
(A) * * *

(*2*) Any other species or stock or marine mammals that does not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each calendar year by U.S. vessels in the course of commercial fishing operations will be limited to:

Species/stock	Quotas for each calendar year	Take	Encirclement	Mortality[1]
Spotted dolphin	(northern offshore)[2]	16,570,000	10,338,000	20,500
Do	(southern offshore)	4,605,000	2,873,000	5,697
Do	(coastal)	202,000	126,000	[3] 250
Spinner dolphin	(eastern)	2,222,000	1,386,000	[3]2,750
Do	(northern whitebelly)	1,205,000	[illegible],000	5,321
Do	(southern whitebelly)[4]	[illegible],000	[illegible],000	2,506
Common dolphin	(northern tropical)[5]	723,000	[illegible]	1,890
Do	(central tropical)	2,619,000	[illegible],000	8,112
Do	(southern tropical)	1,306,000	421,000	4,045
Striped dolphin	(northern tropical)	[illegible],000	21,000	429
Do	(central tropical)	116,000	[illegible],000	1,822

Species	Quotas for each calendar year: Take	Encirclement	Mortality[1]
Do. (Northern tropical)	285,000	199,000	4,095

[1] The U.S. allowable mortality in any one year may not exceed 20,500.
[2] Fifty percent of replacement yield for the northern offshore spotted dolphin is 42,896; however, the maximum allowable mortality in any year is 20,500.
[3] Mortality level established by Pub. L. 98-364, not subject to flexible mortality schedule published in 46 FR 42068-42069 (August 19, 1981).
[4] Includes allowance for mixed species take.
[5] Includes Baja nentic dolphin stock.

* * * * *

(C) Except for the coastal spotted dolphin stock and the eastern spinner dolphin stock, if at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit is valid until surrendered by the permit holder or suspended or terminated by the Assistant Administrator provided the permittee and certificate holders under this part continue to use the best marine mammal safety techniques and equipment that are economically and technologically practicable. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications must be consistent with and necessary to carry out the purposes of the Act. Any modifications proposed by the Assistant Administrator involving changes in the quotas will include the statements required by section 103(d) of the Act. Modifications will be proposed in the Federal Register and a public comment period will be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the Federal Register, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the Act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator will provide the requesting party or parties with his decision. If a request is denied, the Assistant Administrator will state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator will render a decision within 20 days from receipt of the notice.

* * * * *

[FR Doc. 84-31273 Filed 11-28-84; 8:45 am]
BILLING CODE 3510-23-M

Proposed Rules

Federal Register
Vol. 49, No. 231
Thursday, November 29, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 591

[No. 84-667]

Preemption of State Due-on-Sale Laws; Imposition of Prepayment Penalties

Dated: November 21, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Extension of comment period and revised proposed effective date.

SUMMARY: The Federal Home Loan Bank Board ("Board") is extending the comment period and revising the proposed effective date for a proposed amendment to its regulation prohibiting lenders from imposing prepayment penalties for or in connection with acceleration of loans on the security of borrower-occupied homes by the exercise of due-on-sales clauses.

DATES: Comments must be received by January 28, 1985.

The proposed effective date for any final rule which the Board may adopt will be 30 days after the publication of such final rule.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph Longino, Attorney, Office of General Counsel, (202) 377-6446, at the above address.

SUPPLEMENTARY INFORMATION: The Board is extending the comment period on a proposed amendment to its regulation prohibiting lenders from imposing prepayment penalties for or in connection with acceleration of loans on the security of borrower-occupied homes by the exercise of due-on-sale clauses. 12 CFR 591.5(b)(2).

The proposed rule, 49 FR 32081 (Aug. 10, 1984), would increase consumer protection by providing that a prepayment penalty may not be imposed if a lender (1) exercises a due-on-sale clause by written notice, (2) commences a foreclosure proceeding to enforce a due-on-sale clause or to seek payment in full as a result of invoking such a clause, or (3) fails to consent within a reasonable time to the written request of a qualified purchaser to assume the loan in accordance with its terms, and thereafter the borrower sells or transfers his home to that purchaser and prepays the loan in full.

Because it wished to expedite the rulemaking process as a means of minimizing uncertainty in the home-lending market pending final action on the proposed rule, the Board provided for a 30-day period for comment on the proposal, requesting that comments be received by September 10, 1984. The Board has determined to extend this comment period for an additional 60 days from the date of this notice because the technical complexity of issues raised in comments received has persuaded the Board that an additional period is appropriate to permit thorough evaluation of such issues.

In its proposal, the Board notified the public that the effective date of the rule, if adopted in final form, would be August 10, 1984, which is the date of publication of the proposal. However, in light of this extension of the comment period and the further consideration of additional comments which this extension will require, the Board hereby revises the proposed effective date for any final rule which the Board may adopt to be 30 days following the publication of such final rule in the Federal Register.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-31166 Filed 11-28-84; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9160]

Ward Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require five Rockville, Maryland builders and sellers of residential housing, together with a corporate officer, among other things, to cease failing to fully honor valid warranty claims within a reasonable period of time; representing that materials are defect-free, unless defects due to faulty material, workmanship or design are corrected or remedied within a reasonable period of time; failing to provide purchasers with building lots substantially conforming to the physical characteristics represented by the sellers; and failing to disclose prior to the signing of a sales contract, all disclaimers or limitations of the firms' responsibilities with regard to the physical condition of the lot. The text of all written warranties would have to be clearly and conspicuously displayed in sales offices and model homes and a copy of such warranties provided to prospective buyers if requested. In addition, the firms would be required to provide future purchases with an opportunity to arbitrate warranty disputes; provide arbitration to homeowners who had purchased their homes in the year preceding the effective date of the order; and, subject to conditions set forth in the order, provide repairs and/or cash payments to qualified homeowners who had purchased their homes between March 10, 1978 and a date one year prior to the effective date of the order, and who still own these homes when the consent order becomes effective.

DATE: Comments must be received on or before January 28, 1985.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Louise R. Jung, H-519, Federal Trade Commission, Washington, D.C. 20580. (202) 523-4489.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice

is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Residential housing builders and sellers, Trade practices.

In the matter of Ward Corporation, Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., Richlynn Land Developers, Inc., corporations, and Richard E. Ward, individually, and as an officer of said corporations (Docket No. 9160); Agreement containing consent order to cease and desist.

The Agreement herein, by and between respondents Ward Corporation, Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., Richlynn Land Developers, Inc., and Richard E. Ward (hereafter "respondents"), and the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondents Ward Corporation, Ward Development Company, Inc., and Ward Component Systems, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland, with their principal place of business located at 1300 Piccard Drive, Rockville, Maryland 20850. Respondents Richlynn Development, Inc. and Richlynn Land Developers, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of Virginia, with their principal place of business located at 1300 Piccard Drive, Rockville, Maryland 20850. Respondent Richard E. Ward is an officer of each said corporate respondent, and his principal place of business is the same as indicated herein for each said corporate respondent.

2. Respondents have been served with a complaint issued by the Federal Trade Commission charging them with violations of Section 5 of the Federal Trade Commission Act, and have filed an answer to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of the law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) any claim under the Equal Access to Justice Act.

5. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the respondents in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This Agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said complaint issued by the Commission.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents (1) issue its decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondents' address as stated in this Agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the Agreement may be used to vary or to contradict the terms of the Order.

8. Respondents have read the complaint and the Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

9. With respect to the unfair or deceptive acts or practices which are alleged in the complaint and which occurred prior to the date of service of this Order, the Commission hereby waives all claims it may have against respondents for consumer redress under section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b.

Order

I

It is ordered that respondents Ward Corporation, Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., and Richlynn Land Developers, Inc., corporations, and respondent Richard E. Ward, individually and as an officer of the corporations, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the construction, advertising, offering for sale, or sale of any new single-family unit which is a detached structure, an attached or semi-attached townhouse unit or a twin unit (hereinafter referred to as "residential home") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents will correct, repair or otherwise remedy any defect due to faulty materials, workmanship or design unless respondents do, in fact, correct, repair or otherwise remedy such defect within a reasonable period of time after receipt of a homeowner's valid request to do so.

2. Representing, directly or by implication, that the materials, workmanship or design is defect-free or meets or will meet a specified level of performance, unless the representation is, in fact, true or, in the event of any defect or a failure to meet the specified level of performance, respondents do, in fact, correct, repair or otherwise remedy such defect within a reasonable period of time after receipt of a homeowner's valid request to do so.

3. Failing to honor fully every valid warranty claim within a reasonable period of time after receipt of a homeowner's request therefor; provided, however, that nothing herein shall be construed as precluding respondents from denying or contesting a warranty claim believed in reasonable good faith to be without merit or, in such cases, from invoking any other rights provided by law.

4. Failing, whenever respondents represent, directly or by implication, that the lot offered to a purchaser will have certain physical characteristics including, but not limited to, size, contours, drainage, soil preparation, and seeding, to provide the purchaser with a lot conforming substantially to such representation.

5. Failing, prior to the time a sales contract for a new residential home is signed, to disclose clearly and conspicuously in writing to the prospective purchaser all disclaimers or limitations of respondents' responsibilities with regard to the physical condition of the lot.

II

It is further ordered that respondents, in connection with the sale of any new residential home settled after the home directly or by implication, that respondents will correct or complete items listed on an "Orientation Inspection Sheet" or any similar document reflecting the results of the purchaser's presettlement inspection of the home, unless respondents:

(a) Prior to settlement, inspect the home with the purchaser and any accompanying person(s), including (if desired) an inspector chosen by the purchaser, and list every readily apparent problem or incomplete item on an Orientation Inspection Sheet or similarly designated document;

(b) Correct or complete all such listed problems or items within one hundred and twenty (120) days of the inspection, subject to *force majeure*, labor disruptions, or any other events reasonably beyond respondents' control, in which case respondents shall correct or complete such problems or items within a reasonable period of time; and

(c) Disclose to the purchaser clearly and conspicuously on a copy of the Orientation Inspection Sheet or similarly designated document provided to the purchaser that, subject to events reasonably beyond respondents' control, all listed problems or items will be corrected or completed within one hundred and twenty (120) days.

III

It is further ordered that, in connection with any offering for sale of any new residential home for which a written warranty is offered, respondents shall:

1. Clearly and conspicuously display in each sales office and in each model home:

(a) The text of the warranty.

(b) A notice, in plain and readily understood language, that copies of the warranty may be obtained free of charge upon request.

2. Provide a copy of the warranty to each prospective purchaser who requests one.

3. Furnish to each purchaser a copy of the warranty prior to or at the time of execution of the sales contract for a new home.

4. Disclose clearly and conspicuously within the warranty any limitations on, disclaimers of, or exclusions from coverage under the written warranty or any implied warranty arising under state law; provided, however, that respondents shall not make any representation, written or oral, concerning any such limitation, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

IV

It is further ordered that, in connection with each sale of a new residential home for which a written warranty is offered, respondents shall establish and abide by an informal dispute resolution procedure as described in Appendix A. Respondents shall furnish to each purchaser of such a home a copy of Appendix A or a comparable written explanation of said informal dispute resolution procedure prior to, or at the time of, execution of the sales contract for the new home; provided, however, that nothing herein shall prohibit respondents from utilizing a form of sales contract which clearly and conspicuously discloses that the homeowner agrees to invoke the aforementioned dispute resolution procedure prior to invoking any other remedy provided by law.

V

It is further ordered that, if respondents deny any written request for warranty work under respondents' written warranty, respondents shall, within thirty (30) days after receipt of the request, provide the homeowner with a written statement of reasons for the denial, together with notice of the homeowner's right to submit any such warranty dispute to the informal dispute resolution procedure provided for in Paragraph IV of this Order.

VI

It is further ordered that, in connection with any offering for sale of a new residential home for which no written warranty is offered, respondents shall, prior to the time of execution of the sales contract, disclose clearly and conspicuously in writing to the prospective purchaser the fact that no written warranty is offered and any limitations on, disclaimers of, and exclusions from any implied warranty arising under state law; provided, however, that respondents shall not make any representation, written or oral, concerning any such limitation, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

VII

It is further ordered that, for each homeowner who took title to a home from respondents from March 10, 1978, to one year prior to the date of service of this Order and who as of the date of service of this Order is still the owner of that home, respondents shall establish and abide by the redress procedure and dispute resolution mechanism described in Appendix B for any claim made by the homeowner under any written warranty or under any express or implied warranty arising from state law and for any claim made by the homeowner relating to the pre-settlement inspection of the home, provided that:

(1) In the case of a warranty claim, the homeowner made a claim to respondents during the first year after settlement, and there is credible written evidence in respondents' or the homeowner's possession to establish that such a claim was then made;

(2) In the case of a claim relating to the pre-settlement inspection, the homeowner or respondents had at the time listed the problem or item on the Orientation Inspection Sheet;

(3) The claim relating to a specific problem or item has a value of $500 or more, measured by the greater of the homeowner's actual out-of-pocket expenses reasonably incurred or the reasonable estimated cost of repair by a contractor. (All problems or items resulting from the same cause and involving the same component(s) or defect(s) shall be deemed to be a single problem or item for purposes of determining value. For example, a number of leaking windows in a home caused by improper installation of the

windows shall be deemed to be a single problem or item.);

(4) Respondents refused or otherwise failed adequately to satisfy the homeowner's claim; and

(5) In the case of a home in which the homeowner has modified the affected part in a manner that substantially increases the cost of repairing or correcting the alleged problem or item but the homeowner nonetheless establishes that the alleged problem or item existed prior to the modification, respondents shall not be required to bear the increase in cost of repair or correction resulting from the modification.

VIII

It is further ordered that, for each homeowner who took title to a home from respondents within one year prior to the date of service of this Order and who as of the date of service of this Order is still the owner of the home, respondents shall establish and abide by an informal dispute resolution procedure substantially similar to that described in Appendix A for any claim made by the homeowner under any written warranty or under any express or implied warranty arising from state law and for any claim made by the homeowner relating to the presettlement inspection of the home and that within sixty (60) days after this Order becomes final, respondents shall provide each such homeowner with the notice letter attached hereto as Appendix C, along with a copy of Appendix A, or a comparable written explanation of said informal dispute resolution procedure.

IX

It is further ordered that in connection with any sale of a new residential home respondents shall maintain for three years after the date of transfer of title or of delivery of the home to the purchaser, whichever is earlier, and upon reasonable notice make available to the Commission for inspection and copying all non-privileged correspondence, memoranda and other documents regarding complaints or requests for repairs made to respondents by the purchasers, including all documents relating to repairs made by respondents to the home and all documents relating to disputes handled under this informal dispute resolution procedures required by this Order.

X

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations arising out of this Order.

XI

It is further ordered that respondents shall, within thirty (30) days of the date of service of this Order, distribute a copy of this Order to (a) each of respondents' operating subsidiaries and divisions, and (b) each officer and salaried employee of respondents and of said subsidiaries and divisions engaged in the construction, advertising, offering for sale, or sale of any new residential home(s).

XII

It is further ordered that within six (6) months after the date of service of this Order and within six (6) months after the completion of all respondents' obligations pursuant to paragraph VII of this Order, respondents shall file with the Commission a report, in writing, setting forth in detail the manner in which they have complied with this Order.

XIII

It is further ordered that all provisions of this Order except Subparagraphs 1, 2, 3 and 4 of Paragraph I shall be vacated ten (10) years after the date of service of this Order.

XIV

It is further ordered that no provision of this Order shall apply to any person, partnership, corporation or other entity not named herein unless respondents, individually or collectively, either have (a) a majority equity position in, (b) actual working control over, or (c) management responsibility for such person, partnership, corporation or other entity.

Appendix A

The informal dispute resolution procedure required by Paragraph IV of this Order shall be available to homeowners for an initiation fee of no more than $75.00 during the first three years after the effective date of this Order provision, no more than $100.00 during the fourth through sixth years after the effective date of this Order provision, and no more than $125.00 during the remaining years that this Order provision remains in effect. Provided, however, that in no event shall the initiation fee constitute more than half of the total cost of the procedure. Respondents shall be ordered to return or reimburse any such fee as part of the decision at the end of the procedure if the homeowner's claim is determined to be meritorious.

Upon invocation of this procedure by a homeowner, respondents shall appoint an arbitrator who is independent and knowledgeable in home construction and who has been either selected by an independent third-party organization experienced in dispute resolution or approved, in writing, by the homeowner. In ruling on claims submitted to him/her for resolution, the arbitrator shall (a) be bound by the provisions of respondents' written warranty and any express or implied warranties arising from state law and (b) use the Home Owners Warranty Program Quality Standards which are applicable to the first year of ownership of the home and any applicable provisions of the building code in the jurisdiction in which the home is located to interpret all applicable warranty provisions. He/she may also consider any applicable Orientation Inspection Sheet or similar document relating to an applicable pre-settlement inspection.

The arbitrator shall render a written decision on all claims submitted for resolution within sixty (60) days of respondents' receipt of the initiation fee, and shall promptly provide a copy of his/her decision to the homeowner and respondents. (If the homeowner is required under the sales contract to pursue this procedure prior to invoking any other legal remedy, he/she will be deemed to have fulfilled that requirement if a decision is not rendered within the required sixty-day period.) Such decisions shall be limited to determinations of the existence of defects or other problems within the scope of respondents' obligations, the nature of and time within which respondents should make required repairs or corrections, and, if the submitted claim is determined to be meritorious return or reimbursement of the homeowner's initiation fee. The arbitrator's decision on each submitted claim shall be binding on respondents but not on the homeowner.

Appendix B

The procedure for redress under Paragraph VII of the Order shall include the following:

A. Within sixty (60) days after the Order becomes final, respondents shall provide each homeowner covered by paragraph VII with the attached documents and a detailed description of the dispute resolution mechanism and its possible uses.

B. Within sixty (60) days after the mailing date of respondent's notice to

the homeowner of his/her right to file claims for redress, the homeowner shall mail his/her claim to respondents or forfeit any right to repairs or reimbursement under this Order.

C. Within sixty (60) days after receipt of any claim for redress, respondents shall respond in writing to the homeowner by either:

(1) Offering, within a stated time, to correct or repair the problem or item or to pay the homeowner an amount of money in settlement of the claim, and at the same time informing the homeowner of his/her right to accept or reject the offer, along with notice that:

(a) If a homeowner accepts the offer, he/she has the right to submit any dispute over respondent's performance under the offer to the dispute resolution mechanism; and

(b) If a homeowner rejects the offer, he/she has the right to submit the disputed claim to the dispute resolution mechanism.

(2) Denying the claim and at the same time giving the homeowner a detailed explanation of the reasons for the denial, along with notice that the homeowner has the right to submit the denied claim to the dispute resolution mechanism.

D. If a homeowner accepts the offered remedy, respondents shall perform the remedy within the time promised.

E. The dispute resolution mechanism shall:

(1) Be available to homeowners for an initiation fee of no more than $75.00. Provided, however, that in no event shall the initiation fee constitute more than half of the total cost of the procedure.

(2) Use an arbitrator who is independent and knowledgeable in home construction and who has been either selected by an independent third-party organization experienced in dispute resolution or approved, in writing, by the homeowner. In decisions relating to warranty claims, he/she shall be bound by the provisions of the written warranty and warranties implied under state law. The arbitrator shall use the Home Owners Warranty Program Quality Standards which are applicable to the first year of ownership of the home and any applicable provisions of the building code in the jurisdiction in which the home is located to interpret the warranty provisions.

(3) Render a decision in writing within sixty (60) days of respondent's receipt of the initiation fee. The arbitrator shall provide a copy of that decision to the homeowner and respondents within one week of rendering it. The arbitrator's decision shall be binding on respondents but not on the homeowner, who, at the time he/she receives a copy of the arbitrator's decision, shall be provided by the arbitrator or respondents with notice of his/her right to accept or reject the offer, along with notice that:

(a) If the homeowner accepts the decision, he/she has the right to submit any dispute over compliance with the decision to the dispute resolution mechanism; and

(b) If the homeowner rejects the decision, he/she has the right to pursue any other legal remedies available to him/her.

F. The arbitrator shall include in his/her decision an award of reimbursement of the initiation fee unless the arbitrator determines that the homeowner's claim was not substantially justified.

Attachment 1 to Appendix B

Dear Ward/Richlynn Homeowner: This letter is to notify you that you may be entitled to certain repairs made to your home free of charge. You may also be entitled to be reimbursed for money you already spent repairing your home.

Ward Development Company, Inc. ("Ward") and Richlynn Dedvelopment, Inc. ("Richlynn") recently agreed with the Federal Trade Commission to make certain home repairs without charge or to reimburse homeowners for repairs previously paid for by homeowners. If you purchased (that is, took title to) a home from Ward or Richlynn from March 10, 1978, to [one year prior to date of service of the Order] and still own that home today, you may be entitled to have no-cost repairs made under the written warranty we gave you. A copy of this warranty is attached to this letter as Appendix A. You may also be entitled to have no-cost repairs made to items that were listed during the presettlement inspection you made around the time you took title to your home. In addition, you may be entitled to reimbursement for money you spent repairing your home due to Ward or Richlynn's failure to do the repairs covered by the warranty or the presettlement inspection list.

Warranty Problems

You are eligible for a repair or reimbursement under the warranty if all of the following are true:

1. During your first year of ownership, you experienced a problem that was covered by the warranty;

2. You, Ward or Richlynn have some credible written evidence that you notified Ward or Richlynn of the problem during your first year of ownership. (If you do not have a letter or any other written record that you made a complaint to Ward or Richlynn, we will check our customer files to see if we have any record of your complaint. Our files may contain a work order, for example. We will consider your claim for a warranty problem *only* if there is some credible written evidence that you notified us of the problem during your first year of ownership.)

3. Ward or Richlynn refused to repair the problem or inadequately repaired the problem; and

4. The claim has a value of $500 or more, measured by the highest of the following:

—The reasonable estimated cost of repair by a contractor; or

—The homeowner's actual out-of-pocket expenses reasonably spent to repair the problem.

Pre-Settlement Inspection Items

You are eligible for a repair or reimbursement pursuant to the pre-settlement inspection list if all of the following are true:

1. The item was listed on the Orientation Inspection Sheet;

2. Ward or Richlynn refused to repair the item or inadequately repaired the item; and

3. The claim has a value of $500 or more, measured by the highest of the following:

—The reasonable estimated cost of repair by a contractor; or

—The homeowner's actual out-of -pocket expenses reasonably spent to repair the problem.

Limitation of Repair or Reimbursement Under the Warranty or Presettlement Inspection List

Please note, however, that if you have modified the part of your home affected by the claimed problem or item in a manner that substantially increases the cost of repair or correction, you must establish that the problem or item existed prior to the modification. And, even then, we will not bear the increase in cost of repair or correction resulting from the modification. For example, if you finished your basement and thus covered up the problem, we cannot be responsible for the cost of refinishing your basement after our repair work.

What you must do

If you think you are eligible for repairs or reimbursement under the warranty or the pre-settlement inspection or both, please fill out the enclosed "Claim Form" and mail it to:

Att: (*name of Ward/Richlynn representative*)
Ward/Richlynn, 1300 Piccard Drive,
Rockville, Maryland 20850.

You *must* mail this claim form by 60 days from the mailing date of this letter. If you miss the deadline, you will lose your right to repairs or reimbursement under the terms of our agreement with the Federal Trade Commission. Remember to keep a copy of your claim form and a record of the date you mail it, just in case your claim gets lost in the mail.

Ward/Richlynn will notify you within sixty (60) days of receipt of your claim form about whether we will honor your claim. If you are not satisfied with what we offer you as a repair or reimbursement, you will have the right to take the dispute to an impartial arbitrator. If Ward/Richlynn disputes any part of your claim, we will tell you why we are disputing the claim. You will also have the right to take this dispute to an impartial arbitrator. A description of the arbitration procedures is attached to this letter as Appendix B.

If you have any questions about this repair and reimbursement program, call [name of Ward/Richlynn representative] at [phone

number] between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

If you have any comments or concerns about how well Ward/Richlynn is responding to your claim, you might wish to send them to the Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580. Do *not* send your claim form to that address; if you do so you might lose your right to repairs or reimbursement due to delays in Ward/Richlynn's receipt of the claim form.

Very truly yours,

Ward Development Company, Inc.

Richlynn Development, Inc.

Enclosures

Attachment 2 to Appendix B: Claim Form

This claim form must be mailed by 60 days from the mailing date of the letter of notification. If you miss this deadline, you will lose your right to repairs or reimbursement under the terms of the agreement between Ward/Richlynn and the Federal Trade Commission.

I

Name(s) of Homeowner(s) _____
Telephone (Home) _____
(Work) _____

Mailing Address

_____
(Street)

_____
(City) (State) (Zip Code)
Today's date_____

II

I(we) purchased a home from:

( ) Ward Development Company, Inc.
( ) Richlynn Development, Inc.
( ) An affiliate of Ward Development or Richlynn Development

_____
(Enter name of company)

III

The date of settlement/closing on my(our) Ward/Richlynn home was_____. (Enter date you took title)

IV

MARK ONE

( ) Yes, I(we) am(are) the current owner of this Ward/Richlynn home.
( ) No, I(we) do not currently own this Ward/Richlynn home.

Note.—To be eligible for repairs or reimbursement by Ward/Richlynn, you must be *both* the purchaser of a new home from Ward/Richlynn from March 10, 1978, to [one year prior to date of service of the Order] *and* the current owner of this Ward/Richlynn home.

V

The address of my(our) Ward/Richlynn home is

_____
(Street)

_____
(City) (State) (Zip Code)

_____
(Name of Subdivision)

VI

Instructions for Warranty Claims

- **Use additional sheets of paper if necessary.**
- **List each problem separately.**
- **Describe in detail the nature of the problem.**
- **Attach a copy (*not* originals) of any written evidence you have that you notified Ward or Richlynn of the problem during your first year of ownership.**
- **If you are requesting reimbursement for money you spent for repairs, attach the following: a description of the repairs which were made, a copy (*not* originals) of the cancelled check or receipt showing that you paid for repairs, and a copy (*not* originals) of any other document(s) you have that shows what repairs were made and what you paid for them.**

Note.—If you do not have any written record that you made a complaint to us about a warranty problem, we will check our customer files to see if we have any written records (such as work orders) that you made a complaint to us. We will consider you claim for repair or reimbursement for a warranty problem *only* if there is some credible written evidence that you notified us about the problem in your first year of ownership. If no one has any written evidence that you made a complaint about the warranty problem, we can deny your claim for that problem.

Warranty Claims

I(we) request Ward/Richlynn to make the following repair(s) or reimburse me(us) under the warranty:

VII

Instructions for Pre-Settlement Claims

- **Use additional sheets of paper if necessary.**
- **List each problem separately.**
- **Describe in detail the nature of the problem.**
- **Attach a copy (*not* originals) of the pre-settlement inspection list, if you have it.**
- **If you are requesting reimbursement for money you spent for repairs, attach the following: a description of the repairs that were made, a copy (*not* originals) of the cancelled check or receipt showing that you paid for repairs, and a copy (*not* originals) of any other document(s) you have that shows what repairs were made and what you paid for them.**

Pre-Settlement Inspection Claims

I(we) request Ward/Richlynn to make the following repair(s) or reimburse me(us) pursuant to the pre-settlement inspection list:

Appendix C

Dear Ward/Richlynn Homeowner: This letter is to notify you that you may have the right to use arbitration to settle disputes with Ward/Richlynn.

Ward Development Company, Inc. ("Ward") and Richlynn Development, Inc. ("Richlynn") recently agreed with the Federal Trade Commission to set up an arbitration procedure which would be available at a reasonable cost to homeowners. If you purchased a new home from Ward or Richlynn from [364 days prior to date of service of Order] to [one day prior to date of service of Order] and still own that home today, you have the right to submit certain disputes to arbitration. Disputes that can go to arbitration include:

—Any disagreement you have with Ward/Richlynn about its performance under the one year written warranty given to you when you purchased the home. (For example, you may disagree with Ward/Richlynn's refusal to repair a problem that you believe is covered by the warranty. Or you may believe that Ward/Richlynn's attempts to repair a problem were inadequate. You can take these kinds of disputes to arbitration.)
—Any disagreements you have with Ward/Richlynn about its handling of problems and items listed during your pre-settlement inspection. (For example, you may believe that Ward/Richlynn has not corrected all of the items listed on the Orientation Inspection Sheet. Or you may dispute the adequacy of Ward/Richlynn's repairs. You can submit these disagreements to arbitration.)

You may use this arbitration procedure at any time, even after the one year warranty period is over. The expiration of the one year warranty period does *not* affect your right to arbitrate disputes that arise during the warranty period. A copy of the arbitration procedures is attached to this letter. Please read these procedures carefully.

If you have any questions about this arbitration procedure, call [name of Ward/Richlynn representative] at [phone number] between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

Very truly yours,

Ward Development Company, Inc.

Richlynn Development, Inc.

Enclosure

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Ward Corporation, Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., Richlynn Land Developers, Inc., and Richard E. Ward. These companies and Mr. Ward have been engaged in the construction and sale of new homes in the Washington, D.C. metropolitan area.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and must decide whether it should withdraw from the agreement or make final the agreement's proposed consent order.

On March 10, 1982, the Commission issued a complaint alleging that respondents Richard E. Ward, Ward Corporation and the wholly-owned subsidiaries of Ward Corporation violated section 5 of the Federal Trade Commission Act by:

- Failing to perform their obligations fully pursuant to their written warranty and warranties implied under state law;
- Failing to perform their obligations fully pursuant to their representations about correction and completion of items listed during a pre-settlement inspection of the home by the purchasers; and
- Failing to finish lots as represented to purchasers.

The proposed order prohibits the companies and Richard E. Ward from engaging in the following with respect to the construction and sale of new residential homes:

- Failing to honor fully every valid warranty claim within a reasonable period of time;
- Representing that they will remedy defects due to faulty materials, workmanship or design unless, in fact, they remedy such defects within a reasonable period of time;
- Representing that the materials, workmanship or design is defect-free or meets a specified level of performance unless, in fact, they remedy such defects within a reasonable period of time;
- Failing to provide purchasers with a lot conforming to representations made about size, contours, drainage and the like; and
- Representing that they will remedy items listed during a pre-settlement inspection by purchasers unless, in fact, they remedy such items within one hundred and twenty (120) days of the inspection, subject to events reasonably beyond their control.

In addition, respondents shall be required to provide future purchasers with an opportunity to arbitrate warranty disputes. Arbitration but not direct redress shall also be available to homeowners who purchased their Ward/Richlynn homes in the year preceding the effective date of the order.

Furthermore, repairs and/or cash payments will be provided to Ward/Richlynn homeowners who purchased their homes between March 10, 1978, and a date one year prior to the effective date of the order, and who still own these homes when the consent order goes into effect. Repairs or payments will be made if the homeowner has an unrepaired problem that is covered by the warranty, which costs $500 or more to repair and there is written evidence that the problem was reported to the builder in the first year of ownership. Repairs or payments will also be made for unremedied problems which were listed during the presettlement inspection and which cost $500 or more to repair. If any homeowner has any dispute over his or her claim for repairs or payments, the homeowner shall have the right to arbitrate the dispute for a fee of $75.00, which will be refunded to the homeowner unless the arbitrator determines that the homeowner's claim was not substantially justified.

In summary, the proposed order effectively precludes Richard E. Ward, the Ward Corporation and any subsidiary from engaging in the practices alleged in the complaint and, in addition, provides compensation for injuries suffered by past purchasers of Ward/Richlynn homes.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 84-31282 Filed 11-28-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 41 and 48

[LR-31-83]

Heavy Vehicle Use Tax; Credits and Refunds of the Tax on Diesel Fuel

Correction

In FR Doc. 84-29182 beginning on page 44300 in the issue of Tuesday, November 6, 1984, make the following corrections:

§ 41.4482(b)-1 [Corrected]

1. On page 44304, third column, § 41.4482(b)-1 (e)(2), **Certificate**, the date line should read:

_____, 19
(DATE)

§ 41.6001-2 [Corrected]

2. On page 44307, third column, § 41.6001-2 (c)(2), second line, "July," should read "July 1,".

3. On page 44308, second column, Example (1), line seventeen, "decaration" should read "declaration".

§ 48.6427-7 [Corrected]

4. On page 44309, second column, § 48.6427-7(c), third line, "is any diesel-powered highway vehicle" should appear between "vehicle" and "as defined in".

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CD-84-07]

Drawbridge Operation Regulations; Belle River, Lower Grand River and Pierre Pass, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulations governing the operation of the following drawbridges:

(1) The pontoon bridge over Belle River, mile 43.5, on LA 70 near Belle River, Assumption Parish, Louisiana.

(2) The pontoon bridge over the Lower Grand River, mile 25.9, on LA 997 at Pigeon, Iberville Parish, Louisiana.

(3) The swing span bridge over Pierre Pass, mile 1.0, on LA 70 at Pierre Part, Assumption Parish, Louisiana.

This change would require that the draws of the three bridges open on at least four hours advance notice from 10:00 p.m. to 6:00 a.m., and open on signal from 6:00 a.m. to 10:00 p.m. Presently, these draws are required to open on signal at all times.

This proposal is being made because of the infrequent requests for opening the draws during the prescribed advance notice period. This action should relieve the bridge owner of the burden of having persons constantly available at the bridges to open the draws between 10:00 p.m. and 6:00 a.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before January 14, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:
Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulations

The LDOTD originally had proposed that these three bridges be operated on a four-hour advance notice around the clock, as part of a broader proposed rule covering nine drawbridges (48 FR 28625; June 9, 1983), which was subsequently withdrawn. Because of objections received to that contemplated operation of the Belle River, Lower Grand River and Pierre Pass bridges, the LDOTD negotiated a compromise arrangement with the Police Juries of Assumption and Iberville Parishes, two local state senators and four local state representatives. This negotiated arrangement provided for a four-hour advance notice for bridge openings between 10:00 p.m. and 6:00 a.m., and opening on signal between 6:00 a.m. and 10:00 p.m., in lieu of the originally proposed four-hour notice around the clock, and is the same as this proposed rule.

The vertical clearance of the Belle River and Lower Grand River pontoon bridges in the closed position is zero, while that of the Pierre Pass swing span bridge is 3.8 feet above high water and 6.8 feet above low water. Navigation through the bridges consists of commercial and pleasure vessels. Data submitted by the LDOTD for the year 1983 show that this traffic through the bridges is as follows:

(1) Belle River Bridge. In 1983, between 10:00 p.m. and 6:00 a.m., there were 211 bridge openings—an average of 17.6 openings per month or an average of one opening about every two days.

(2) Lower Grand River Bridge. In 1983, between 10:00 p.m. and 6:00 a.m., there were 215 openings—an average of 17.9 openings per month or an average of one opening about every two days.

(3) Pierre Pass Bridge. In 1983, between 10:00 p.m. and 6:00 a.m., there were 108 bridge openings—an average of 9.0 openings per month or an average of one opening about every three days.

Considering the few openings involved for each bridge between 10:00 p.m. and 6:00 a.m., the Coast Guard feels that the current on site attendance at the bridges during the proposed advance notice period is not warranted, and adoption of the four-hour advance notice for an opening during this period will provide relief to the bridge owner, while still reasonably providing for the needs of navigation. The bridges will continue to open on signal between 6:00 a.m. and 10:00 p.m.

The advance notice for opening the draws would be given be placing a collect call at any time to the LDOTD District Office at Baton Rouge, Louisiana (504) 925–6786.

The LDOTD recognizes that there may be an unsual occasion, during the advance notice period, to open the bridges on less than four hours notice for a bona fide emergency or to operate the bridges on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass through the bridges during the proposed advance notice period. As evidenced by the 1983 bridge opening statistics, the Belle River and Lower Grand River bridges averaged one opening about every two days, while the Pierre Pass bridge averaged one about every three days. These vessels can reasonably give four hours notice for a bridge opening between 10:00 p.m. and 6:00 a.m. by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at any of the bridges at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted it will not have a significant economic impact on a substantial number of small entities.

List of subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by adding § 117.424, § 117.478 and § 117.486 to read as follows:

§ 117.424 Belle River

The draw of the S70 bridge, mile 43.5 near Belle River, shall open on signal; except that, from 10:00 p.m. to 6:00 a.m., the draw shall open on signal if at least four hours notice is given.

§ 117.478 Lower Grand River.

The draw of the S997 bridge, mile 25.9 at Pigeon, shall open on signal; except that, from 10:00 p.m. to 6:00 a.m., the draw shall open on signal if at least four hours notice is given.

§ 117.486 Pierre Pass.

The draw of the S70 bridge, mile 1.0 at Pierre Part, shall open on signal; except that, from 10:00 p.m. to 6:00 a.m., the draw shall open on signal if at least four hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: November 16, 1984.

W.H. Stewart,
Rear Admiral, U.S. Coast Guard.

[FR. Doc. 84–31294 Filed 11–28–84; 8:45 am]
BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. 6633]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:
Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction with the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subject in 44 CFR Part 67

Flood insurance—flood plains.

PART 67—[AMENDED]

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
California	San Luis Obispo County (unincorporated areas)	Arroyo Grande Creek	30 feet upstream from center of 22nd Street	*28
		Shallow Flooding	Intersection of 22nd Street and Garden Street	#2
		Shallow Flooding	100 feet north from intersection of Willow Street and Southern Pacific Railroad	*28
		Carpenter Canyon Creek	5 feet downstream from center of Private Road, approximately 0.1 mile above confluence with Corbit Canyon Creek	*186
		Cayucos Creek	50 feet upstream from the center of Northbound State Highway 1	*15
		Little Cayucos Creek	50 feet upstream from the center of Ocean Boulevard	*18
		Shallow flooding	At intersection of D Street and Ocean Boulevard	#1
		Corbit Canyon Creek	30 feet downstream from the center of Corbett Canyon Road	*167
		Delessigues Creek	100 feet upstream from center of Thompson Avenue	*345
		Los Berros Creek	20 feet upstream from center of Valley Road	*58
		Shallow Flooding	250 feet north along Valley Road from intersection with State Highway 1	*54
		Meadow Creek	10 feet upstream from the center of Roosevelt Avenue	*95
		Morro Creek	150 feet upstream of Private Road crossing which is approximately 2.4 river miles upstream of the Pacific Ocean	*114
		Little Morro Creek	30 feet upstream from center of Little Morro Creek Road	*124
		Nipomo Creek	160 feet upstream from center of U.S. Highway 101 northbound	*218
			250 feet upstream from center of Tefet Road	*304
		Pismo Creek	100 feet upstream from the center of a Private Road located approximately 800 feet upstream of the Pismo Beach corporate limit	*37
		San Luis Obispo Creek	200 feet upstream from the center of Harford Drive	*11
		Santa Rosa Creek	20 feet upstream from the center of Windsor Boulevard	*18
		Santa Rosa Creek Split Flow	30 feet upstream from the center of Cambria Road	*28
		Tefet Road Tributary	20 feet upstream from the center of Mallaugh Street	*245
		Tefet Road Tributary	At confluence with Tefet Road Tributary	*138
		Willow Creek	50 feet upstream from the center of Hidalgo Avenue	*26
		Corbit Canyon Creek	At City of Arroyo Grande corporate limits	*167
		Pacific Ocean	On C Street, 380 southwest of intersection with Ocean Boulevard	*11
			Just north of confluence with Hazard Canyon Creek at Montana De Oro State Park	*15

Maps available for inspection at County Engineer's Office, County Government Center, Room 206, San Luis Obispo, California.

Send comments to the Honorable Jerry Diefenderfer, County Government Center, Room 370, San Luis Obispo, California 93408

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maine	Harpswell, Town, Cumberland County	Casco Bay	Shoreline of Middle Bay at Jordan Point	*10
			Shoreline of Middle Bay on Birch Island at Howard Point.	*12
			Shoreline of Middle Bay at Wilson Cove	*9
			Shoreline of Middle Bay at Whaleboat Island, east side.	*16
			Western shoreline of Basin Cove	*10
			Shoreline of Potts Harbor at Basin Point Road (extended).	*21
			Shoreline of Potts Harbor 3,000 feet southwest of Ash Cove Road (extended).	*15
			Shoreline at Potts Point	*14
			Shoreline of Merriconeag Sound 150 feet south of Bailey Road (extended).	*16
			Shoreline of Merriconeag Sound at Stover Point	*12
			Shoreline of Merriconeag Sound at Garrison Gut Cove	*10
			Shoreline of Merriconeag Sound at Jaquish Gut	*15
			Shoreline of Merriconeag Sound at east side of Great Mark Island.	*20
			Shoreline of Middle Bay at Wilson Cove	*9
			Shoreline of Middle Bay on east side of Upper Goose Island.	*14
			Shoreline of Harpswell Sound at Clark Cove	*12
			Shoreline of New Meadows River at Laurel Point	*12
			Shoreline of Quahog Bay at Tondreaue Point	*12

Maps available for inspection at the Town Hall, South Harpswell, Maine.

Send comments to Honorable Malcom B. Whidden, Chairman of the Harpswell Board of Selectmen, Town Office, Harpswell Center, South Harpswell, Maine 04079.

Massachusetts	Marblehead, Town, Essex County	Atlantic Ocean	Shoreline at Peach's Point	*26
			Shoreline of Salem Harbor at Green Street (extended)	*13
			Shoreline of Little Harbor at Little Harbor Way	*14
			Shoreline of Marblehead Harbor at State Street (extended).	*14
			Shoreline of Marblehead Harbor at Nashua Avenue (extended)	*14
			Eastern shoreline of Marblehead Neck at Fishing Point Lane (extended)	*25
			South shore of Marblehead Neck Causeway, approximately 1,000 feet west of intersection of Ocean Avenue and Harbor Avenue	*17
			South shoreline of Marblehead Neck, approximately 300 feet east of east end of causeway.	*17
			Shore of Massachusetts Bay at Summit Road (extended).	*25
			Shore of Massachusetts Bay at Bartlett Street (extended).	*34

Map available for inspection at the Office of Douglas Seal, Town Engineer, Abbot Hall, Washington Street, Marblehead, Massachusetts.

Send comments to Honorable Thomas McNulty, Chairman of the Board of Selectmen, Abbot Hall, Washington Street, Marblehead, Massachusetts 01945.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19967; and delegation of authority to the Administrator)

Issued: November 16, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–31253 Filed 11–28–84; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6614]

Proposed Flood Elevation Determinations; Maryland

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 49 FR 31101 on August 3, 1984. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for Charles County, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0701.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in Charles County, Maryland, previously published at 49 FR 31101 on August 3, 1984, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

Under the Source of Flooding of Mattawoman Creek, the base flood elevation for the Mattawoman Creek's confluence with Piney Branch has been amended to read 111 feet in elevation.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: November 15, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–31252 Filed 11–28–84; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 41043–4143]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The NMFS intends to publish rule to amend regulations governing taking marine mammals incidental to the eastern tropical Pacific (ETP) commercial purse seine tuna fishery. These modifications, if promulgated in whole or in part, will implement the recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) and change certain fishing gear and procedural regulations to guidelines.

DATE: Final rules implementing mandated Congressional actions will be published in November 1984. Proposed rules for modifying fishing gear and procedural regulations will be published on or about January 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Kenn Hollingshead, NMFS, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (202/634–7529); or Mr. Svein Fougner, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731 (213/548–2516).

SUPPLEMENTARY INFORMATION: The NMFS announced in the **Federal Register** on January 13, 1984 (49 FR 1778), its intention to prepare an Environmental Impact Statement for regulations to govern the taking of marine mammals (porpoise) incidental to commercial purse seine fishing for tuna in the ETP beginning January 1, 1986. Public scoping meetings were held in San Diego, California (February 14, 1984) and in Washington, D.C. (February 16, 1984).

This rulemaking process is being adjusted to accommodate amendments to the MMPA signed into law on July 17, 1984 (Pub. L. 98–364). These amendments (1) extend the current American Tunaboat Association General Permit and continue the cumulative mortality quota system indefinitely; (2) establish quotas for the coastal spotted and eastern spinner dolphins which do not presently have quotas; and (3) provide new requiremens governing the importation of tuna and tuna products from nations fishing for tuna with purse seine gear in the ETP. The amendments also allow the Secretary to modify the regulations governing gear, procedures, and permit administration if warranted to further the goals of the MMPA.

The NMFS has determined that regulatory actions are necessary to implement the amendments to the MMPS and other actions mentioned above within the time constraints imposed by the Act. The NMFS intends to publish final regulations in the **Federal Register** in November 1984 implementing actions mandated by the U.S. Congress for which the Administration has no decision-making discretion. These include (1) extending the General Permit and quota system; (2) establishing annual quotas of 250 coastal spotted and 2,750 eastern spinner dolphins; and (3) excluding the coastal spotted and eastern spinner from the accidental take enforcement policy (50 CFR 216.24(d)(2)(i)(C)).

The NMFS is reviewing its regulations concerning the importation of yellowfin tuna and will be determining in the near future what modifications to those regulations will be necessary to implement the Congressional mandate. Effective January 1, 1986, all nations that wish to export yellowfin tuna to the U.S. and have tuna purse seine vessels in the ETP must provide documentary evidence that they have adopted a regulatory program governing the incidental taking of marine mammals in its fishery that is comparable to that of the U.S. They must also provide documentation that the average rate of incidental take of marine mammals in the fishery is comparable to that of the U.S. The NMFS will notify all nations currently purse seining for yellowfin tuna in the ETP of these new requirements for importation.

The NMFS is also considering making adjustments in regulations governing fishing gear and practices. The NMFS has initiated a thorough review of all regulations governing fishing gear, fishing practices, and permit adminstration under the previously announced rulemaking process to identify regulations, which singly or in combination, should be modified to further the goals of the MMPA. For example, converting some procedural requirements to guidelines would allow vessel operators to make on-the-spot adjustments in fishing techniques to protect porpoises without fear of punishment for procedural violations. The limits on dolphin mortality and most gear requirements would not change, but the rules would provide additional flexibility for vessel operators to use that gear most effectively.

The NMFS intends to publish proposed revisions to regulations governing fishing gear and practices for public review and comment in January 1985. A draft Supplemental Environmental Impact Statement (SEIS) with supporting documentation is being prepared and will be available to the general public at that time. The MMPA provides the public with an opportunity for a hearing on the record for such rulemaking, the tentative schedule provides for such a hearing if requested.

The NMFS hereby announces the following tentative schedule to consider these matters:

January 31, 1985—**Federal Register** publication of proposed regulatory modifications and notice of availability of draft SEIS

May 1, 1985—Close of public review period for draft SEIS

May 17, 1985—Start of formal hearing (in anticipation of a request)

July 31, 1985—Final Decision by NOAA/NMFS; Notice of Availability of final SEIS.

This schedule is subject to revision based on whether a hearing is requested and if requested, the scheduling and availability of an administrative law judge. The specific time, date, and location of the hearing (if requested) and procedural rules for participation in and conduct of the hearing will be announced in the **Federal Register** at least sixty days prior to the start of the hearing.

Dated: November 20, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 84–31272 Filed 11–28–84; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 49, No. 231
Thursday, November 29, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51-84]

Foreign-Trade Zone 41, Milwaukee, WI; Application for Subzone, Bay Shipbuilding Corp., Sturgeon Bay, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Wisconsin, Ltd. (FTZW), grantee of Foreign-Trade Zone 41, Milwaukee, requesting special-purpose subzone status for the Bay Shipbuilding Corporation shipyard in Sturgeon Bay, Wisconsin, some 40 miles from the Green Bay Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 16, 1984. The applicant is authorized to make this proposal under Chapter 110 of the Wisconsin Laws of 1977, approved October 13, 1977. The issue of adjacency will be reviewed by Customs.

The Board authorized the Milwaukee zone in September 1978 (Board Order 136, 43 FR 46887, 10/11/78). Subzones were approved for the American Motors plant in Kenosha and for the Muskegon Piston Ring plant in Manitowoc in August 1981 (Board Order 178, 46 FR 40718, 8/11/81).

The proposed subzone will be at Bay Shipbuilding's shipyard covering 80 acres at 605 North 3rd Avenue in the port area of Sturgeon Bay. The facility is used to construct and repair barges and oceangoing vessels. Current activity involves the conversion of containerships for Sea Land Services. Foreign-sourced components for these vessels will include main engines, generators, deck fittings and machinery, gears, anchors, chains, doors, windows, ladders, ventilation and air conditioning equipment, switchboards, life boats and davits.

Zone procedures will help Bay Shipbuilding reduce costs on its current orders and compete internationally on bids for new products. The benefits stem from the fact that most of the components are subject to significant duties, and that the finished products, as oceangoing vessels, are duty-free.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Clinton P. Littlefield, District Director, U.S. Customs Service, North Central Region, 628 E. Michigan Street, Milwaukee, WI 53202; and Colonel Raymond T. Beurket, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 28, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Federal Building, 517 East Wisconsin Avenue, Milwaukee, WI 53202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, NW., Room 1529, Washington, D.C. 20230.

Dated: November 26, 1984

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 84-31303 Filed 11-28-84; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[C-468-061]

Ferroalloys From Spain; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: As a result of a request by the Government of Spain, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on ferroalloys from Spain would not cause, or threaten to cause, material injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise on or after July 26, 1982, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Alan Long or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On January 2, 1980, the Treasury Department published in the **Federal Register** a countervailing duty order on ferroalloys from Spain (45 FR 25).

On July 26, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Spanish government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On October 23, 1984, the ITC notified the Department of its determination (49 FR 43811) that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of ferroalloys from Spain if the order were revoked. As a result, the Department is revoking the countervailing duty order concerning ferroalloys from Spain with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after July 26, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 26, 1982, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: November 23, 1984.

Alan F. Holmer,
Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-31299 Filed 11-28-84; 8:45 am]
BILLING CODE 3510-DS-M

[C-469-038]

Unwrought Zinc From Spain; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: As a result of a request by the Government of Spain, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on unwrought zinc from Spain would not cause, or threaten to cause material injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise on or after May 3, 1982, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Alan Long or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On April 8, 1977, the Treasury Department published in the **Federal Register** a countervailing duty order on unwrought zinc from Spain (41 FR 18587).

On May 3, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Spanish government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On October 4, 1984, the ITC notified the Department of its determination (49 FR 33927) that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of unwrought zinc from Spain if the order were revoked. As a result, the Department is revoking the countervailing duty order concerning unwrought zinc from Spain with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after May 3, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after May 3, 1982, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: November 23, 1984.

Alan F. Holmer,
Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-31298 Filed 11-28-84; 8:45 am]
BILLING CODE 3510-DS-M

Minority Business Development Agency

Receipt of Petition Requesting Designation as Group Eligible To Receive MBDA Assistance

AGENCY: Minority Business Development Agency (MBDA), Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) has received a petition requesting it to designate "ex-Felons" as a socially or economically disadvantaged group whose members are eligible to receive assistance from the Agency.

ADDRESS: Interested pesons are invited to submit comments regarding this petition to: Herbert S. Becker, Assistant Director, Office of Advocacy, Research and Information, United States Department of Commerce, Minority Business Development Agency, 14th and Pennsylvania Ave., NW., Room 5709, Washington, D.C. 20230. Telephone (202) 377–3163.

FOR FURTHER INFORMATION CONTACT: Ron Isler (202) 377–1712.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625 (E.O. 11625) the Minority Business Development Agency (MBDA) provides program funds to recipients who then provide management and technical assistance to minority business enterprises. A minority business enterprise is defined as a business owned or controlled by one or more socially or economically disadvantaged individuals. E.O. 11625 lists six groups whose members are considered socially or economically disadvantaged and the Department has designated three additional groups as eligible to receive MBDA assistance.

On October 24, 1984 (49 FR 42679) MBDA published a final rule, at 15 CFR Part 1400, which provides procedures under which groups not previously designated can establish their social or economic disadvantage. Section 1400.3 of the new rule (15 CFR 1400.13) provides that any group seeking designation must submit a written application containing evidence of the group's social or economic disadvantage to the MBDA Director. Section 1400.5(a) requires MBDA to publish notice or receipt of such an application and request comments from the public regarding the propriety of such a designation.

MBDA has received a petition requesting the Agency to recognize "ex-Felons" as a minority group whose members are eligible to receive MBDA assistance. Interested persons are invited to submit comments on the propriety of this designation to the above address by December 31, 1984.

Authority: 15 U.S.C. 1512, E.O. 11625, 3 CFR 616 (1971–75), 36 FR 19967 (1971); and E.O. 12432, 3 CFR 198 (1983), 48 FR 32551 (1983).

Dated: November 19, 1984.

Herbert S. Becker,
Assistant Director, Office of Advocacy, Research and Information.

[FR Doc. 84-31297 Filed 11-28-84; 8:45 am]
BILLING CODE 3510-21-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 20, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on Military Aerospace Platform will meet at the Pentagon, Washington, DC on December 19, 1984.

The purpose of the meeting will be a review by the Laboratories supporting Space Division of technologies pertinent to the military aerospace platform. The

meeting will convene from 8:30 a.m. to 5:00 p.m. on December 19.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-31280 Filed 11-28-84; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Final Selection; Town Bluff Hydropower Project; Texas

AGENCY: Army Corps of Engineers, DOD, Fort Worth District.

ACTION: Notice of final selection of the Sam Rayburn Municipal Power Agency as the financial sponsor and preference customer for the proposed Town Bluff Hydropower Project Texas.

SUMMARY: 1. The tentative selection of the Sam Rayburn Municipal Power Agency, a public body in the State of Texas, as the financial sponsor and preference customer for the proposed Town Bluff Hydropower project was announced in the Federal Register, Volume 49, Number 196, Thursday, October 11, 1984, pages 39892 and 39893. This announcement also stated that any subsequent proposals and/or applications for sponsorship or power and energy from the project received prior to November 13, 1984, would be considered in the final selection process.

2. Inquiries for additional information were received but no subsequent proposals or applications for financial sponsorship or for the power and energy from the project were received during the above mentioned public comment period which closed on November 13, 1984. Because no additional proposals were received and because the previously announced proposal submitted by the Sam Rayburn Municipal Power Agency met or exceeded all financial sponsor and preference customer criteria, notice is hereby given that the Sam Rayburn Municipal Power Agency is selected as the financial sponsor and preference customer for the proposed Town Bluff Hydropower Project, Texas.

ADDRESSES: For futher information about the proposed project design, construction and financing, contact: James L. Hair, Executive Assistant, Fort Worth District, Corps of Engineers, PO Box 17300, Fort Worth, Texas 76102, Telephone (817) 334-2301.

For further information about the proposed marketing of the power and energy from the proposed project, contact: Walter M. Bowers, Director, Power Marketing, Southwestern Power Administration, PO Box 1619, Tulsa, Oklahoma 74101, Telephone (918) 581-7529.

Theodore G. Stroup,

Colonel, CE, District Engineer.

[FR Doc. 84-31280 Filed 11-28-84; 8:45 am]

BILLING CODE 3710-20-M

Department of the Army

National Board for the Promotion of Rifle Practice; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: National Board for the Promotion of Rifle Practice.

Date of Meeting: 11 January 1985.

Place: 20 Massachusetts Avenue NW., Room 8222C, Pulaski Building, Washington, D.C. 20314.

Time: 0900-1700.

Proposed Agenda

1. Opening Prayer and Pledge of Allegiance to the Flag.
2. Federal Register Notice of the Meeting.
3. Roll Call.
4. Introductory Comments by the Chairman.
5. Review.
   a. Budget Committee Report—20 June 1984.
   b. Executive Committee Report—21 June 1984.
   c. Board's Report—22 June 1984.
6. Business: The purpose of this meeting is to Review the FY 87 Civilian Marksmanship Program objectives and funding impacts for the National Board for the Promotion of Rifle Practice and provide recommendations where appropriate.
7. Closing Prayer.

This meeting is open to the public.

Persons desiring to attend the meeting should contact the Office of the Director of Civilian Marksmanship (202) 272-0810 prior to 11 January 1985 to arrange admission.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 84-31288 Filed 11-28-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Proposed Funding Priorities for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Year 1985.

SUMMARY: The Secretary of Education proposes funding priorities for research activities to be supported by the National Institute of Handicapped Research (NIHR) in Fiscal Year 1985. NIHR is required under the Rehabilitation Act of 1973 as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. These proposed priorities are derived from the NIHR Long-Range Plan and are articulated within the goals, objectives, and research activities specified in the Plan.

Authority for the research program of NIHR is contained in Section 204 of the Rehabilitation Act of 1973, as amended by Public Law 95-602 and by Public Law 98-122.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before the December 31, 1984.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, 400 Maryland Avenue, S.W., Room 3070, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research. Telephone (202) 732-1139; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

SUPPLEMENTARY INFORMATION: Under this program, awards are issued to public and private agencies and organizations, including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities. These activities have a direct bearing on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

NIHR final regulations (46 FR 45300, September 10, 1981, as amended March 12, 1984 at 49 FR 9324) authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

NIHR invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Comments can include factors which support the importance of a priority to handicapped individuals and other interested parties.

Each priority is proposed under the program authority which NIHR believes to be most appropriate. These programs are described below. The public is also invited to comment on the appropriateness of the proposed program mechanism (i.e., whether certain research objectives are better accomplished by centers or by other grantees as discrete projects).

This notice does not solicit application proposal or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in an application notice in the **Federal Register.** The notice will also solicit grant applications and set the closing date.

The following nine proposed priorities represent areas in which NIHR proposes to support research and related activities through grants or cooperative agreements. Research and other activities which NIHR intends to procure through contracts will be announced by Requests for Proposals published in the *Commerce Business Daily.*

The publication of these proposed priorities does not bind the United States Department of Education to fund projects in any or all of these research areas. Funding of particular projects depends on both the availability of funds and on responses to this notice.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priorities proposed in this notice cover research and related activities to be conducted through Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Programs, and Knowledge Dissemination and Utilization Programs. Following are brief descriptions of these four programs.

Research and Training Centers (RTCs) have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RTCs must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally, each Center conducts a program of research, evaluation, and training activities focussed on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as undergraduate and graduate texts and curricula, in-service training, and continuing education.

Rehabilitation Engineering Centers (RECs) conduct coordinated programs of advanced research of an engineering or technological nature. RECs are also encouraged to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to handicapped individuals. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Ideally, each REC conducts a program of research, scientific evaluation, and training that advances the state of the art in technology or its application, contributes substantially to the solution of rehabilitation problems, and becomes an acknowledged center of excellence in a given subject area. RECs are encouraged to develop practical applications for their research through scientific evaluation activities that validate their findings as well as related findings of other centers. RECs generally conduct training programs to disseminate and encourage utilization of new rehabilitation engineering knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, in-service training, continuing education, and distribution of information and appropriate technology.

Research and Demonstration Projects have been supported to conduct research and/or demonstration in single project areas on problems encountered by handicapped individuals in their daily activities. These projects may conduct research on rehabilitation techniques and servies, including analysis of medical, industrial, vocational, social, sexual, psychiatric, psychological, economic, and other factors affecting the rehabilitation of handicapped individuals.

Knowledge Dissemination and Utilization Projects have been supported to ensure that rehabilitation knowledge generated from projects and centers funded by NIHR and others is fully utilized to improve the lives of handicapped persons.

Priorities for Research and Training Centers (4)

Rehabilitation of Elderly Disabled Individuals

The elderly population, and particularly the disabled elderly, presents one of the biggest challenges to health and social service systems facing the United States today. The number of persons over age 65 is currently about 23.5 million persons or about 11 percent of the total population.

Elderly people are at a greater risk for acquiring illnesses, disabilities, and resulting functional limitations, with the result that a large proportion of the handicapped and chronically impaired elderly have major physical, mental, social, and independent living deficits. Some additional data reported by NIHR-supported researchers elaborate the status of the elderly in America:

—Eighty-six percent of all elderly persons incur one or more chronic conditions of varying degrees of severity.
—Fifty-six percent of those over age 75 are limited in activities of daily living due to chronic conditions.
—Approximately 50 percent of the physically handicapped elderly also have psychiatric disabilities severe enough to warrant assistance.
—The majority of persons over age 65 living alone are eventually institutionalized.

Societal attitude towards the elderly are complex and often may include negative stereotyping, avoidance, neglect, and failure to acknowledge potential productivity and contributions to society.

An RTC is proposed which would—

• Develop methods for early detectionof emerging impairments and for successful early rehabilitation interventions;

• Study the complications of aging with significant disabling conditions such as polio or spinal cord injury;

• Assess the rehabilitation needs of, and develop rehabilitative strategies for, the geriatric mentally retarded population;

• Assess optional living arrangements for elderly disabled persons to devise alternatives to both institutionalization and social isolation;

• Investigate solutions, including technological aids, to problems which typically lead to institutionalization, including wandering, memory loss, and incontinence;

• Examine the vocational rehabilitation needs of the elderly disabled population and devise effective vocational strategies; and

• Analyze the current system of health care for the elderly as it relates to rehabilitation of disabled older persons, and develop strategies for policy or program improvements, including preparation of health care personnel to assume effective roles in rehabilitation of the elderly.

Improvement of Independent Living Programs

Disabled persons have begun to organize around the a theme of Independent Living (IL). It is theme that embraces such goals as self-determination, self-help, deinstitutionalization, and barrier-free access to services and opportunities previously denied to persons with disabilities. Congress acknowledged the importance of this theme in the passage of Title VII of the Rehabilitation Amendments of 1978, establishing a separate authroity for independent living service programs to be managed and directed largely by persons with disabilities. Independent living has emerged as a concept, a service system, and a social movement.

Implementation of the independent living programs of the Act requires an understanding of the boundaries of the program (e.g., eligibility, types of services) and of the goals, philosophy, and social policy implications of indepnedent living, as well as high quality program management. Continuing research is needed to support the development and refinement of the independent living concept and the enhance the quality of services.

An RTC is proposed which would—

• Develop an operational definition of independence which could be used to evaluate the efficacy of independent living programs and activities;

• Assess the impact of community service systems on independent living outcomes, and devise mechanisms to coordinate service delivery systems to facilitate living with maximum independence;

• Define, through research, the optimum roles of consumers, peer counselors, rehabilitative service agencies, and others in programs to facilitate independent living;

• Demonstrate effective models for training consumers, IL program staff, and staff of other service agencies in the concepts and techniques to facilitate independent living;

• Study the role of the family, peers, and personal support systems in enhancing independent living; and

• Explore and demonstrate the potential to extend IL programs to provide certain intake, referral, brokerage, skills training, and social support networks for persons with all types of physical, cognitive, emotional, behavioral, and sensory disabilities, and envaluate the benefits of these extended program models.

Improved Rehabilitation of Psychiatrically Disabled Individuals

There are approximately 2,000,000 severely psychiatrically disabled persons living in communities and 900,000 in institutions. Nearly 200,000 severely psychiatrically disabled persons are discharged into the care of their families each year. The rate of recidivism for psychiatric institutions is over 60 percent. Less than 10 percent of this population is employed and the employment prospects for this group are very poor.

There is a major need for additional knowledge and techniques to improve the vocational and independent living outcomes for these individuals, and to assist their families to contribute to successful adjustment outcomes. Studies have indicated the relation between vocational/independent living success and the specific skills of the disabled individual; recent research has revealed a positive impact from the direct teaching of coping and vocational skills.

Community living is further complicated for this group by uncertainties concerning eligibility for Social Security Disability Income benefits, the criteria for assessing that eligibility, and alternatives for economic security.

A RTC is proposed which would—

• Develop models of relating medical diagnosis and treatment to rehabilitation and community adjustment;

• Assess the factors in the rehabilitation process which lead to successful rehabilitation of clients with a disability of mental illness in the state vocational rehabilitation programs;

• Identify coping strategies for families and design a program to aid families to utilize those strategies; development of more effective roles for professional staff should be part of this program;

• Assess alternative housing and residence arrangements in terms of their suitability for psychiatrically ill clients with various characteristics;

• Assess and develop models for successful halfway house arrangements to facilitate deinstitutionalization, including needs for staffing in these programs;

• Assess the appropriate roles of staff and clients in community-based programs, including those based on the "clubhouse" models;

• Address the residential and Community living needs of psychiatrically disabled or restored individuals, and study alternative model; and

• Develop and test models for teaching community living skills and enhancing community adjustment for psychiatrically disabled or restored individuals.

Community Integration Resource Support

The move to establish least-restrictive living environments for disabled persons has resulted in a proliferation of community residences without a knowledge base of the most appropriate characteristics and components for community-based residences for individuals with various types of disabilities. There is a need to identify and share information about best programs and practices, including residential staffing, intake policies, program components, and service system linkages.

An RTC is proposed which would—

• Identify and evaluate innovative and best practices in the operation of community-based residences;

• "Package" information suitable for dissemination to increase the utilization of these practices;

• Develop and conduct training programs for state representatives on the use of the information packages and the stimulation of best practices;

• Establish and operate a technical assistance network to assist communities in implementing best practices;

• Identify, recruit, and work with a consortium of successful program operators and innovators who would provide consultation and technical assistance and assist in the identification, recruitment, and training of state representatives;

• Develop and work with a National Advisory Council or parents, professionals, and consumer to advise on criteria for identifying best practices and for selection participating states; and

• Develop training curricula and develop staff capacity to conduct technical assistance within states.

Priority for Rehabilitation Engineering Centers (1)

Technology for Blind and Visually Impaired Individuals

Blind and visually impaired persons experience problems in written communication, mobility, orientation, and employment. A Rehabilitation Engineering Center is needed to devote its efforts toward the study of these problems and the development of technological systems and devices to provide solutions to these problems. The successful applicant for this REC must address all of the following areas as part of a programmatic effort for such a Center.

An REC is proposed which would—

• Develop electronic reading machines with synthetic speech ouput, emphasizing reduced size, lower cost, and greater flexibility in these machines;

• Adapt from industry data entry techniques using modern optical character recognition methods for production of Braille, speech, and digital forms of output for use by blind people;

• Develop a high quality, low cost Braille embosser to permit both personal production of Braille material and rapid production of printed material for blind readers;

• Improve mechanical, paperless Braille display devices utilizing techniques of human factors engineering which emphasize simplified mechanical design, greater reliability, and low cost, so that blind people can have mass storage and retrieval of printed material in Braille, either in single-line or full-page format;

• Evaluate existing speech output devices for use in conjunction with computer terminals, with appropriate software or hardware, to enable the blind user to access the desired parts of the information displayed on the terminal;

• Evaluate the employment and personal uses of interface devices designed to meet the specific needs of blind people;

• Develop a comprehensive theory of the "mobility process" of blind pedestrians, to provide a scientific basis for improved training in the critical area of mobility for blind persons;

• Develop mobility and orientation devices, closed circuit television uses, magnification systems, Braille and other tactile output devices, and special adaptive vocational programs for low-vision individuals;

• Develop a portable, solid-state, closed-circuit television system for reading of printed material by low-vision individuals, and evolve plans for distribution to consumers;

• Identify the problems of partially-sighted individuals in mobility tasks, and the appropriate optical electronic aids for this population;

• Design filter systems which permit the user to adjust the bandwidth of illumination transmitted to enhance viewing under a wide variety of environmental conditions; and

• Investigate possible lightweight optical aids which provide high contrast and high magnification for persons with visual impairments.

Priorities for Research and Demonstration Projects (3)

Delivery of Rehabilitation Engineering Services

Disabled people and service providers alike have argued that advances in rehabilitation engineering and technology are not fully utilized through regular application to problems of disabled individuals in classrooms, worksites, or residences. Rehabilitation engineering needs to be integrated into all phases of the rehabilitation process.

A research and demonstration project is proposed to devise mechanisms for integrating engineering services and the rehabilitation engineer into all components of rehabilitation, including rehabilitation in school settings, to assist in restoration of physical function, communication, educational and vocational functioning, mobility, and community living. The project shall also investigate and implement methods to establish a low-cost, volunteer-operated, information and service delivery network for aids and devices.

Computer Adaptations for Severely Disabled

Computer technology makes possible a broad range of advances in personal functioning and mastery of the environment by disabled individuals. A research and demonstration project is proposed which would develop computer adaptations for severely disabled persons for restoration of physical function, interaction with the environment, and enhancement of vocational and social functioning. The project scope should include the development of software, hardware adaptations, and the operating systems to accommodate those adaptations.

Economics of Disability

The current system of economic transfer payments to workers who become disabled has been termed a "disabling system." To become eligible for benefits, persons must prove inability to work; once eligible for disability benefits, persons worry about losing their hard-won disability status and in addition face stigma and pressures associated with disability. NIHR-sponsored research has identified medical, psychological, economic, and social advantages inherent in beginning the disability management process as soon as an impairment which interferes with a person's major life activities is identified.

A research and demonstration project is proposed to—

• Examine the effectiveness of alternative disability management strategies at worksites;

• Document experiences of individuals assisted by model management programs as contrasted with persons not so assisted; and

• Develop model methods to communicate the value of disability management approaches to workers, employers, insurers, family members, human service providers, and relevant others who must change their policies and procedures in order for effective disability management systems to replace "disabling systems."

Priority for Knowledge Dissemination and Utilization Projects (1)

Satellite Broadcast of Programs on Low-Cost Technology

There is an assortment of efficient, low-cost aids and equipment devised to assist disabled persons with a variety of tasks. Disabled persons and professionals who work with them need information on inexpensive, easy-to-use aids and equipment to enhance employment and educational potential and daily living skills.

A knowledge dissemination and utilization project is proposed which would—

• Identify low-cost aids and equipment including simple adaptations to commercially available devices;

• Select aids for dissemination based on criteria of cost, ease of use, and needs of disabled persons;

• Prepare a series of tapes on workshops which demonstrate the use of these aids by disabled individuals, including interaction between the user and rehabilitation professionals such as rehabilitation engineers and occupational therapists;

• Broadcast the workshops via satellite to rehabilitation centers across the nation;

• Make the tapes available on loan to interested organizations, including local organizations of disabled persons; and

• Elicit feedback from disabled viewers about their experience with the

demonstrated devices and with similar aids.

Invitation to comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except federal holidays.

(29 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: November 26, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-31248 Filed 11-28-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1,125,000 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Amtel, Inc. The funds will be available to customers which purchased gasoline and/or middle distillates from Amtel during the period November 1, 1973 through May 3, 1979.

DATE AND ADDRESS: Applications for refund of a portion of the Amtel consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Amtel Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0027.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the final Decision and Consent Order entered into by Amtel, Inc. which settled possible pricing violations with respect to the firm's sales of gasoline and middle distillates during the period November 1, 1973, through May 3, 1979. Under the terms of the Consent Order, $1,125,000 has been remitted by Amtel, Inc. and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the Amtel Consent Order funds. The Proposed Decision and Order discussing the distribution of the Amtel consent order funds was issued on May 4, 1984. 6 Fed. Energy Guidelines ¶ 90,055, 49 FR 20366 (May 14, 1984).

The Decision and Order published with this Notice reflects an analysis of the comments received from interested parties. As the decision indicates, applications for refund from the consent order funds may now be filed. Applications will be accepted provided theyare postmarked no later than 90 days after publication of the Decision and Order in the **Federal Register**. Applications will be accepted from customers who purchased gasoline and/or middle distillates from Amtel during the period November 1, 1973, through May 3, 1979. The specific information required in an application for refund is set forth in the Decision and Order.

The Decision and Order provides for the general allocation of funds among successful claimants using a volumetric distribution based on the number of gallons of product purchased from Amtel. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first stage claims procedure is completed.

Date: August 24, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 24, 1984.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Amtel, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0027.

In accordance with the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a Consent Order entered into with Amtel, Inc. (Amtel). The petition requests that the OHA formulate and implement procedures for the distribution of the funds received pursuant to the Amtel Consent Order.

I. Background

Amtel is a "reseller-retailer" of refined petroleum products as that term was defined in 6 CFR 150.352 and 10 CFR 212.31. The firm was therefore subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F. An ERA audit of Amtel's operations revealed possible pricing violations by three of Amtel's subsidiaries, South Central Oil Company (South Central), Hauck Oil Company (Hauck Oil), and Hauck Trading Company (Hauck Trading), in sales of motor gasoline and middle distillates during the following periods: (i) March 29, 1974 through May 3, 1979 (South Central), (ii) November 1973 through November 1977 (Hauck Oil), and (iii) April 1974 through May 1978 (Hauck Trading).(1) In order to settle all claims and disputes between Amtel and the DOE regarding the legality of the prices charged by Amtel and its subsidiaries in sales of motor gasoline and middle distillates during the above-mentioned periods, Amtel and the DOE entered into a Consent Order, effective February 7, 1980, in which Amtel agreed to pay $1,250,000 to the DOE. This payment has been deposited in an escrow account for ultimate distribution to parties who may have been injured by the alleged overcharges.

On May 4, 1984, we issued a Proposed Decision and Order (PD&O) tentatively setting forth procedures to distribute the Amtel refund money. *Amtel, Inc.*, 6 Fed. Energy Guidelines ¶ 90,055 (May 4, 1984) (proposed decision); 49 FR 20366 (May 14, 1984). In the PD&O, we described a two-stage process for distribution of the funds made available pursuant to the Amtel Consent Order. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by Amtel's alleged pricing violations in sales of motor gasoline and middle distillates during the period November 1, 1973 through May 3, 1979 (the consent order period).

The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the Amtel refund process. This Decision sets forth the information that a purchaser of Amtel products should submit in order to establish eligibility for a portion of the consent order funds. Before establishing these requirements, we will address comments filed in response to the first-stage proposals set forth in the PD&O. We will not, however, determine procedures for the second stage of the refund process in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by commenters concerning the proposed disposition of any funds remaining after all the meritorious first-stage claims have been paid.

II. Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process is intended to be used in situations where the DOE is unable readily to identify either the persons or firms who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. Injury Requirement

In the PD&O, we pointed out that our experience with Subpart V proceedings indicated that first-stage refund claimants in this proceeding would be either resellers (including retailers) or end-users. We stated that in order to qualify for a refund, resellers generally would be required to establish that they absorbed the alleged overcharges. To make this showing, they would have to demonstrate that market conditions did not allow them to pass through the additional costs associated with alleged overcharges on the product they purchased from Amtel during the consent order period. Resellers would also have to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover these increased costs by increasing prices. We suggested, however, that those reseller claimants who purchased less than 50,000 gallons per month of product from Amtel be eligible for refunds based upon a less detailed demonstration of injury. Additionally, based upon our belief that spot market purchasers generally passed through any price overcharges, we proposed to establish a rebuttable presumption that spot market purchasers were not injured by Amtel's alleged overcharges. With respect to customers who were end-users (consumers) of Amtel motor gasoline and middle distillates, our experience in prior special refund cases led us to conclude that such customers absorbed the full impact of any overcharges. Accordingly, we proposed that end-users need only document the specific quantities of gasoline and/or middle distillates they purchased from Amtel during the consent order period in order to demonstrate injury.

In response to the proposals set forth in the PD&O, several commenters urged that we either raise the 50,000 gallon per month threshold level proposed for reseller applicants or eliminate it entirely, allowing all claimants to make a lesser showing of injury. As we have indicated in prior Subpart V decisions, it would be improper to distribute very large sums of money to claimants making only the lesser showing of injury. *Cf. Office of Special Counsel, Economic Regulatory Administration: In the Matter of The Charter Company*, 10 DOE ¶ 85,039 (1982). Accordingly, we decline to eliminate threshold level requirements. We do, however, find merit in the contention that the 50,000 gallon per month level is too low and should be raised. Too low a threshold level is likely to deter smaller Amtel customers from filing claims, for the cost incurred in preparing their claims would likely be grossly disproportionate to the potential refund amount. This result would be contrary to the purpose of this proceeding.(2) We have reevaluated the data pertinent to this proceeding and determined that the threshold level should be raised to a dollar amount of $2,500 per calendar year, up to a maximum of $15,000. Because there is a relatively long consent order period in this case (five and one-half years), the documentation necessary to support a claim based on a showing of actual injury is extensive. We find that the higher threshold level is necessary so that potential claimants will not be deterred from filing claims by the cost entailed in preparing detailed documentation for such a long period. Additionally, the higher threshold amount will be helpful to those claimants who no longer have complete and detailed records of transactions that took place as long as eleven years ago. This threshold will not, however, apply to resellers who were spot purchasers. In view of the presumption that spot purchasers were not injured by the alleged Amtel overcharges, no threshold applies to refund applications filed by spot purchasers. Regardless of the magnitude of their refund claims, all spot purchasers seeking refunds in this proceeding must demonstrate that they absorbed Amtel's alleged overcharges.

One commenter argues that the purchase threshold should be applied on a station-by-station basis. Otherwise, he asserts, large, multi-station operations will be unfairly penalized. We cannot agree with this contention. One reason that we allow smaller claimants to qualify for a refund with a lesser showing of injury is that small operators are more likely not to have the accounting resources and sophisticated record systems necessary to make the more detailed showing. *See, generally, Sid Richardson*, 10 DOE ¶ 85,056 at 88,278-79 (1983). In terms of recordkeeping ability, we see no significant difference between a large multi-station retailer and, for instance, a reseller with the same purchase volume. Both should have the resources and records necessary to make the more detailed showing of injury. Accordingly, we find that large, multi-station retailers are not unfairly penalized by the threshold requirement.(3)

The same commenter argues that, with respect to claims above the threshold amount, injury should be presumed whenever a purchaser sold its product at prices below its maximum lawful selling prices (MLSPs). This argument has been considered in detail and rejected in numerous cases of this Office. *See Standard Oil Co. (Indiana)/Gasper's Shell*, 12 DOE ¶ 85,021, (1984); *Standard Oil Co. (Indiana)/Zirwas' Amoco*, 12 DOE ¶ 85,019, (1984); *Standard Oil Co. (Indiana)/Crosby's Standard*, 11 DOE ¶ 85,191, (1983); *Standard Oil Co. (Indiana)/D&J Truck Stop*, 11 DOE ¶ 85,183, (1983); *Standard Oil Co. (Indiana)/John Coconato*, 11 DOE ¶ 85,121, (1983). In those Decisions we stated that injury could not be presumed whenever a purchaser sold its product at less than its MLSP because the inability to charge the full profit margin allowed under the regulations can be attributable to many factors, including temporary oversupply, lower than projected demand, and competition in the marketplace. *See Coconato*, 11 DOE at 88,186. The fact that a firm was charging lower prices due to one of these factors does not suggest a finding

that it was being injured by overcharges. The commenter in the present case has added nothing that would persuade us to reconsider our position on this matter. Accordingly, we must reject the contention that injury should be presumed whenever an Amtel purchaser sold its product at less than its MLSP.

IV. Allocation of Refund Money

In the PD&O, we proposed to use a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the consent order amount by the total volume of those products coverd by the Consent Order that were sold by the firm during the consent order period. In this case, the volumetric refund amount is $.001014 per gallon ($1,250,000 consent order amount divided by 1,232,387,710 gallons sold by Amtel). As we stated in the PD&O, we believe that the attribution of injury by this method to each gallon of refined products sold by Amtel is the best available general method of distributing the refund money.

One commenter, a large purchaser of Amtel products, stated in its comments that it believed that the volumetric approach was inequitable, since it would limit the firm to a relatively small recovery from the consent order fund, when in fact, the firm argues, it could prove that it suffered a much larger injury as a result of Amtel's pricing practices. The firm misunderstands our procedures. It has been our consistent position in special refund proceedings that while the volumetric approach is the best *general* method for distributing refunds, applicants in special refund proceedings are not subject to the volumetric formula for determining their refund share if they demonstrate that they were injured by overcharges at a level greater than the volumetric amount. *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982). Our analysis of refund applications also reflects this approach. For example, in a case involving an Amoco refund applicant, we specifically found that the applicant had satisfactorily demonstrated that it incurred an injury due to alleged overcharges at a level significantly greater than the volumetric amount, and we granted a refund on that basis. *Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE § 85,015 (1984). The volumetric method of computing refunds represents a simple alternative available to firms which were in the distribution chain but are not able to perform the difficult task of substantiating a particular level of injury traceable to the consenting firm's pricing practices. *See Standard Oil Co. (Indiana)/Illinois Service Station Operators Ass'n*, 11 DOE ¶ 85,246 (1984); *Standard Oil Co. (Indiana)/Cicero-Peterson Service, Inc.*, 11 DOE ¶ 85,192 (1983); *Standard Oil Co. (Indiana)/John Coconato*, 11 DOE ¶ 85,121 (1983). Thus, it should be clear that claimants are not limited by the volumetric refund amount, but rather can submit for our consideration documented claims of greater injury traceable to Amtel's pricing practices.(*1*)

Another commenter urges that rather than using a volumetric formula to distribute refunds, we should allocate refunds to successful claimants based upon the full amount of the alleged overcharges reflected in the ERA audit workpapers, subject to pro rata reduction if the sum of meritorious claims exceeds the amount of the consent order fund. We have, in several instances in the past, used audit workpapers as a guide in distributing refunds instead of using a volumetric methodology. *See e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984). However, in those cases, special circumstances existed warranting such treatment which do not exist in the present case. In *Bob's*, the total alleged overcharge amount was only $2,194.74, the audit period was only three months long, the consent order amount was for the full amount of the alleged overcharges, plus interest, and it appeared from the audit workpapers that there were in all likelihood only three overcharged customers, whose purchase volumes and levels of alleged overcharges were set forth clearly in the audit workpapers. Thus, relying on the audit workpapers was the most efficacious and equitable method of distributing refunds in that case. In *Marion*, we explained why we were using the audit workpapers for guidance in fashioning a refund plan:

> This proceeding involves an audit which was very narrow in scope, a consent order which was limited to the same products and time period as the audit, and a relatively small number of purchasers of the consent order firm's products, all or most of whom are identified in the [Notice of Probable Violation] and audit file.

Marion, supra at 88,031. In contrast, using the audit workpapers as a guideline for distributing refunds in this proceeding is not feasible for several reasons. As indicated in the PD&O, the ERA audit of the Amtel operations was conducted on a sample basis with respect to both the locations audited and the length of the audit period. Thus, while over 660 Amtel customers were identified, we must assume that many customers exist who were not identified. Additionally, because of the sample nature of the audit, any figures that could be derived from the workpapers would necessarily be incomplete. In this regard, we note that the over $4 million alleged overcharge figure referred to in the audit file is only a rough estimate. Moreover, Amtel entered into a consent order with the DOE before the ERA had completed its audit. Thus, neither the audit nor its findings were finalized or set forth in a Notice of Probable Violation, as occurred in *Marion*, or in a Proposed Remedial Order. Accordingly, the Amtel audit workpapers would not be a reliable guide for the distribution of refunds, and we find that the volumetric refund formula described above represents the best general method for distributing refunds in this case.

V. Other Procedures

In the PD&O, we proposed to establish a minimum refund amount of $15.00 based upon our experience in prior refund cases that the costs of processing claims outweights the benefits of distributing refunds for less than this amount. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). At noted above, we also proposed to establish a rebuttable presumption that spot market purchasers were not injured by Amtel's pricing practices and proposed that end-users need only document the specific quantities of gasoline and/or middle distillates they purchased from Amtel during the consent order period to demonstrate injury. No comments were received with regard to these proposals. Accordingly, for the reasons set forth in the PD&O, we will implement these proposals.

VI. Application for Refund Procedures

After having considered all the comments received concerning the first-stage procedures tentatively adopted in our May 4 PD&O, we have concluded that applications for refunds should now be accepted from parties who purchased petroleum products from Amtel. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the Amtel Consent Order Fund, Case No. HEF-0027.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying Amtel enforcement proceeding. Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. See 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Amtel Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following subjects should be covered in each application:

A. Each applicant should establish its volume of purchases by calendar quarter for the period of time for which it is claiming it was injured by the alleged overcharges.

B. Each applicant should state whether it was a regular customer of Amtel or whether it made only spot purchases from Amtel.

C. Each applicant should specify how it used the Amtel products—i.e., whether it was a reseller (including retailers) or ultimate consumer.

D. If the applicant is a reseller who wishes to claim a refund in excess of $2,500 per calendar year or a total refund in excess of $15,000 under the volumetric methodology, it should also

(i) State whether it maintained banks of unrecouped produce cost increases from the date of the alleged violation until the product was decontrolled. It should furnish OHA with quarterly bank calculations.

(ii) State whether it or any of its affiliates have filed any other applications for refunds in which they have referred to their banks to demonstrate injury.

(iii) Submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm with multiple suppliers in addition to Amtel may submit market surveys to show that price increases to recover alleged overcharges were not feasible.

E. If the applicant is a reseller who wishes to claim a refund in excess of the per gallon volumetric amount, it must, in addition, to providing the information specified in paragraph D, submit evidence which proves that it was injured by alleged overcharges on a per gallon basis at a level greater than the volumetric amount.

F. The applicant should report whether it is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pending of its application for refund. See 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Amtel, Inc. pursuant to the Consent Order executed on February 7, 1980, may not be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: August 24, 1984.

Footnotes

(*1*) Amtel purchased South Central on March 29, 1974 and sold it on May 3, 1979. Amtel purchased Hauck Oil on January 1, 1973. Amtel changed Hauck Oil's name to Premier Automotive, Inc. in July 1976 and discontinued the Hauck Oil/Premier Automotive operations in November 1977. Hauck Trading was formed from Hauck Oil in April 1974. In April 1975, Amtel changed Hauck Trading's name to Ambur Oil and Trading Company, Inc. The Ambur Oil operations were sold by Amtel in May 1978.

(*2*) One commenter urges that, with the exception of end-users, refunds be made only to claimants with fully documented claims and no presumption of injury based upon small purchase volumes be allowed. We cannot accept this position. For the reasons stated in the text, we have consistently found that a presumption of injury for small claims is necessary to effect the purposes of Subpart V and is in accordance with the regulatory requirements. *See* 10 CFR 205.282(e).

(*3*) Additionally, we note that many multi-station operations should be eligible for larger refunds as a result of our increasing the threshold to the $15,000 level.

(*4*) In the event that successful claims exceed the amount in the consent order fund, we will reduce the refunds on a pro rata basis. We will, therefore, not disburse any refunds until the deadline for applications has passed and we have determined the aggregate amount of the refunds.

[FR Doc. 84-31310 Filed 11-28-84 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41015; FRL-2725-7]

Fifteenth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Fifteenth Report to the Administrator of EPA on November 6, 1984. This report, which revises and updates the Committee's priority list of chemicals, adds seven designated chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. The new designated chemicals are anthraquinone, 2-chloro-1,3-butadiene, cumene, mercaptobenzothiazole, octamethylcyclotetrasiloxane, pentabromoethylbenzene, and sodium N-methyl-N-oleoyltaurine. The Fifteenth Report is included in this notice.

The Agency invites interested persons to submit written comments on the Report, and to attend Focus Meetings to help narrow and focus the issues raised by the ITC's recommendations. Members of the public are also invited to inform EPA if they wish to be notified of subsequent public meetings on these chemicals. EPA also notes the removal of 5 chemicals from the priority list because EPA has responded to the ITC's previous recommendations for testing of the chemicals.

DATES: Written comments should be submitted by December 31, 1984. Focus Meetings will be held on December 19 and 20, 1984.

ADDRESSES: Send written submissions to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection

Agency, Rm., E-106, 401 M St., SW., Washington, D.C. 20460.

Submissions should bear the document control number (OPTS-41015).

The public record supporting this action, including comments, is available for public inspection in Rm., E-107 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. Focus Meetings will be held in Rm. 3906, EPA Headquarters, 401 M St., SW, Washington, D.C. Persons planning to attend any one of the Focus Meetings and/or seeking to be informed of subsequent public meetings on these chemicals, should notify the TSCA Assistance Office at the address listed below. To insure seating accommodations at the Focus Meeting, persons interested in attending are asked to notify EPA at least one week ahead of the scheduled dates.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404, Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has received the Fifteenth Report of the TSCA Interagency Testing Committee to the Administrator.

I. Background

Section 4(a) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq;* 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixures may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA of chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the Committee to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. For such designations, the Agency must within 12 months either initiate rulemaking or issue in the **Federal Register** its reasons for not doing so. The ITC's Fifteenth Report was received by the Administrator on November 6, 1984, and follows this Notice. The Report designates seven substances for priority consideration and response by EPA within 12 months.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals. A notice is published elsewhere in today's **Federal Register** adding the seven substances designated in the ITC's Fifteenth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) rule requires the reporting of unpublished health and safety studies on the listed chemicals. These seven chemicals will also be added to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712) published elsewhere in this issue. The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

Focus Meetings will be held to discuss relevant issues pertaining to the chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meetings will be held December 19 and 20, 1984, in Rm. 3906, EPA Headquarters, 401 M St., SW, Washington, D.C. These meetings are intended to supplement and expand upon written comments submitted in response to this notice. The schedule for the Focus Meetings is as follows: December 19, 9:30 a.m.—2-Chloro-1,3-butadiene; 11:00 a.m.—Octamethylcyclotetrasiloxane; 1:30 p.m.—Pentabromoethylbenzene; 3:00 p.m.—Sodium N-methyl-N-oleoyltaurine; December 20, 9:30 a.m.—Anthraquinone; 11:00 a.m.—Mercaptobenzothiazole; 2:00 p.m.—Cumene.

Persons wishing to attend one or more of these meetings or subequent meetings on these chemicals should call the TSCA Assistance Office at the toll free number listed above at least one week in advance.

All written submissions should bear the identifying docket number (OPTS-41015).

III. Status of List

In addition to adding the seven designations to the priority list, the ITC's Fifteenth Report notes the removal of five chemicals from the list since the last ITC report because EPA has responded to the Committee's prior recommendations for testing of the chemicals. Subsequent to the ITC's preparation of its Fourteenth Report, EPA responded to the ITC's recommendations for five additional chemicals. The five chemicals removed and the dates of publication in the **Federal Register** of EPA's responses to the ITC for these chemicals are: calcium naphthenate, May 21, 1984 (49 FR 21411-21418); cobalt naphthenate, May 21, 1984 (49 FR 21411-21418); lead naphthenate, May 21, 1984 (49 FR 21411-21418); methylolurea, May 21, 1984 (49 FR 21371-21375); and 2-phenoxyethanol, May 21, 1984 (49 FR 21407-21411). The current list contains 16 designated substances or groups of substances and two recommended substances or groups of substances.

(Sec. 4, Pub. L. 94-469, 90 Stat. 2003; [15 U.S.C. 2601])

Dated: November 15, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Fifteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee, composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. Every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of seven chemicals and is noting the removal of five, as a result of responses by EPA.

The Priority List is divided into two parts: part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months, and part B contains chemicals and groups that have been recommended for priority consideration by EPA without being designated for response within 12 months. Although TSCA does not establish a deadline for EPA response to nondesignated chemicals and groups (part B of the Priority List), the Committee anticipates that the EPA Administrator will respond in a timely manner.

The chemicals being added to the Priority List are presented, together with the types of testing recommended, in the following Table 1.

TABLE 1.—ADDITIONS TO THE SECTION 4(E) PRIORITY LIST—NOVEMBER 1984

Chemical/group	Recommended studies
A. Designated for response within 12 months:	
Anthraquinone (CAS No. 84-65-1).	Chemical fate: Water solubility; biodegradation. Ecological effects: Acute toxicity to fish, aquatic invertebrates, and algae; chronic toxicity to aquatic organisms (testing conditional upon results of acute tests).
2-Chloro-1,3-butadiene (CAS No. 126-99-8).	Chemical fate: Water solubility; persistence. Ecological effects: Acute toxicity to sensitive life stages of fish, aquatic invertebrates, and algae.
Cumene (CAS No. 98-82-8).	Health effects: Short-term genotoxicity; chronic effects including oncogenicity; teratogenicity and reproductive toxicity. Ecological effects: Acute and chronic toxicity to estuarine and freshwater fish and invertebrates.
Mercaptobenzothiazole (CAS No. 149-30-4).	Chemical fate: Dissociation constant; persistence in water and soil; leaching/migration. Environmental effects: Acute and chronic toxicity to fish, aquatic invertebrates and plants, and terrestrial plants.
Octamethylcyclotetrasiloxane (CAS No. 556-67-2).	Chemical fate: Water solubility; octanol/water partition coefficient; biodegradation. Ecological effects: Acute toxicity to fish, aquatic invertebrates, and algae (concentrations of the chemical to be measured during the course of the studies); chronic toxicity to aquatic organisms (testing conditional upon results of acute tests).
Pentabromoethylbenzene (CAS No. 85-22-3).	Health effects: Two-year chronic bioassay; teratogenicity study. Ecological effects: Acute and chronic toxicity to fish, aquatic invertebrates, and plants.
B. Recommended but not designated for response within 12 months: None.	
Sodium N-methyl-N-oleoyltaurine (CAS No. 137-20-2).	Health effects: Short-term genotoxicity; sensitization; chronic toxicity to include oncogenicity (testing conditional upon results of short-term tests).

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality
- Thomas H. Magness, III, Member (*1*)
- George W. Schlossnagle, Alternate

Department of Commerce
- Bernard Greifer, Member and Vice Chairperson

Environmental Protection Agency
- Carl R. Morris, Member
- Arthur M. Stern, Alternate (*2*)

National Cancer Institute
- Elizabeth K. Weisburger, Member and Chairperson
- Richard Adamson, Alternate

National Institute of Environmental Health Sciences
- Dorothy Canter, Member

National Institute for Occupational Safety and Health
- Rodger L. Tatken, Member
- Sanford S. Leffingwell, Alternate

National Science Foundation
- Winston C. Nottingham, Member

Occupational Safety and Health Administration
- Ralph Yodaiken, Member

Liaison Agencies and Their Representatives

Consumer Product Safety Commission
- Lakshmi Mishra
- Arthur Gregory

Department of Agriculture
- Homer E. Fairchild
- Richard M. Parry, Jr.

Department of Defense
- Edmund Cummings (*3*)
- Patrick A. Truman

Department of the Interior
- Vyto A. Adomaitis
- David R. Rosenberger

Food and Drug Administration
- Arnold Borsetti
- Allen H. Heim

National Toxicology Program
- Dorothy Canter

Committee Staff

Martin Grief, Executive Secretary (*4*)
Norma Williams, ITC Coordinator
Alan Carpien—Office of the General Counsel, EPA
Stephen J. Ells—Office of Toxic Substances, EPA
Vera W. Hudson—National Library of Medicine

Notes

(*1*) Thomas Magness resigned from the Committee on May 1, 1984.

(*2*) Arthur Stern was appointed Acting Executive Secretary on September 4, 1984.

(*3*) Edmund Cummings was appointed on June 18, 1984.

(*4*) Martin Grief died on August 8, 1984. He served 4 years of distinguished and faithful service as the ITC Executive Secretary. The Committee deeply regrets his passing. His dedication and outstanding contributions to the goals of the Committee will long be remembered.

The Committee acknowledges and is grateful for the assistance and support given to it by the staffs of CRCS, Inc., and Dynamac Corporation (technical support prime and subcontractors) and personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register**. The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended, but not designated for response within 12 months.

Every 6 months, the Committee makes those revisions in the section 4(a) Priority List that it determines to be necessary and transmits then to the EPA Administrator.

The Committee is comprised of representatives from eight statutory member agencies, five liaison agencies, and one national program. The specific representatives and their affiliations are

named in the front of this report. The Committee's chemical review procedures and prior recommendations are described in previous reports (Refs. 1 through 14).

1.2 *Committee's previous reports.* Fourteen previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 1 through 14). Seventy-nine entries (chemicals and groups of chemicals) were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, two groups were recommended without being so designated. Removal of 65 entries was noted in the previous reports.

1.3 *Committee's activities during this reporting period.* Between April 1, 1984, and September 30, 1984, the Committee continued to review chemicals from its fourth and fifth and scoring exercises.

The Committee contacted chemical manufacturers and trade associations to request information that would be of value in its deliberations. Most of those contacted provided unpublished information on current production, exposure, uses, and effects of chemicals under study by the Committee.

During this reporting period, the Committee examined 97 chemicals for priority consideration. Seven chemicals were added to the section 4(e) Priority List, and 16 were deferred indefinitely. The remaining chemicals are still under study.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: ". . . make such revisions in the [priority] list as it determines to be necessary and . . . transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding seven chemicals: Anthraquinone; 2-chloro-1,3-butadiene; cumene; mercaptobenzothiazole; and sodium *N*-methyl-*N*-oleoyltaurine. All of these chemicals are designated for response within 12 months. The testing recommended for these chemicals and the rationales for the recommendations are presented in Chapter 2 of this report.

Five chemicals are being removed from the Priority List because the EPA Administrator has responded to the Committee's prior recommendations for testing them. They are:

Calcium naphthenate
Cobalt naphthenate
Lead naphthenate
Methylolurea
2-Phenoxyethanol

With the seven recommendations and five removals noted in this report, 18 entries now appear on the section 4(e) Priority List. The Priority List is divided in the following Table 2 into two parts; namely, Table 2A, Chemicals and Groups of Chemicals Designated for Response Within 12 Months, and Table 2B, Other Recommended Chemicals and Groups.

Table 2.—The TSCA Section 4(e) Priority List, November 1984

2A. Chemicals and Groups of Chemicals Designated for Response Within 12 Mo

Entry	Date of Designation
1. Anthraquinone	November 1984.
2. Bisphenol A	May 1984.
3. 2-(2-Butoxyethoxy) ethyl acetate	November 1983.
4. 2-Chloro-1,3-butadiene	November 1984.
5. Cumene	Do.
6. 1,2-Dibromo-4(1,2-dibromoethyl) cyclohexane.	May 1984.
7. Diisopropyl biphenyl	Do.
8. Ethylene bis(oxyethylene) diacetate	November 1983.
9. 2-Ethylhexanoic acid	May 1984.
10. 1, 2, 3, 4, 7, 7-Hexachlorononorbornene.	November 1983.
11. Isopropyl biphenyl	May 1984.
12. Mercaptobenzothiazole	November 1984.
13. Octamethylcyclotetrasiloxane	Do.
14. Oleylamine	November 1983.
15. Pentabromoethylbenzene	November 1984.
16. Sodium *N*-methyl-*N*-oleoyltaurine	Do.

2B. Other Recommended Chemicals and Groups of Chemicals

Entry	Date of Recommendation
1. Carbofuran intermediates	November 1982.
2. 3,4-Dichorobenzotrifluoride	May 1984.

To date, 70 chemicals and groups of chemicals have been removed from the Priority List. The cumulative list is presented in the following Table 3.

Table 3.—Cumulative Removals From the TSCA Section 4(e) Priority List—November 1984

Chemical/group	EPA responses to committee recommendations	
	Federal Register	
	Citation	Publication Date
1. Acetonitrile	47 FR 58620–58623	Dec. 29, 1982
2. Acrylamide	49 FR 30592–30594	July 31, 1984
3. Allyl epoxides	49 FR 449–456	Jan. 4, 1984
4. Allyl phthalates	46 FR 53775–53777	Oct. 30, 1981
5. Alkyltin compounds	47 FR 5456–5463	[1]Feb. 5, 1982
II. Aniline and bromo-, chloro-, and/or nitroanilines	49 FR 108–126	Jan. 3, 1984
7. Antimony metal	48 FR 717–725	Jan. 6, 1983
II. Antimony sulfide	48 FR 717–725	Jan. 6, 1983
9. Antimony trioxide	48 FR 717–725	Jan. 6, 1983
10. Aryl phosphates	46 FR 57452–57460	Dec. 29, 1981
11. Benzidine-based dyes	46 FR 55004–55006	Nov. 5, 1981
12. Benzyl butyl phthalate	46 FR 53775–53777	Oct. 30, 1981
13. Biphenyl	48 FR 23080–23086	May 23, 1983
14. Bis(2-ethylhexyl) terephthalate	48 FR 51845–51848	Nov. 14, 1983
15. Butyl glycolyl butyl phthalate	46 FR 54487	Nov. 2, 1981
16. Calcium naphthenate	49 FR 21411–21418	May 21, 1984
17. Chloranilic acid	47 FR 44878–44879	Oct. 12, 1982
18. Chlorinated benzenes, mono- and di-	49 FR 1760–1770	Jan. 13, 1984
19. Chlorinated benzenes, tri-, tetra-, and penta-	49 FR 1760–1770	Jan. 13, 1984
III. Chlorinated naphthalenes	46 FR 54491	Nov. 2, 1981
21. Chlorinated paraffins	47 FR 1017–1018	Jan. 8, 1982
III. 4-Chlorobenzotrifluoride	47 FR 50555–50558	Nov. 8, 1982
23. Chloromethane	45 FR 48524–48564	July 18, 1980
24. 2-Chlorotoluene	47 FR 18172–18175	Apr. 28, 1982
25. Cobalt naphthenate	49 FR 21411–21418	May 21, 1984
26. Cresols	48 FR 31812–31819	July 11, 1983
27. Cyclohexanone	49 FR 136–142	Jan. 3, 1984
III. *o*-Dianisidine-based dyes	46 FR 55004–55006	Nov. 5, 1981
29. Dibutyltin bis(isooctyl maleate)	48 FR 51361–51366	Nov. 8, 1983
30. Dibutyltin bis(isooctyl mercaptoacetate)	48 FR 51361–51366	Nov. 8, 1983
31. Dibutyltin bis(lauryl mercaptide)	48 FR 51361–51366	Nov. 8, 1983
32. Dibutyltin dilaurate	48 FR 51361–51366	Nov. 8, 1983
33. Dichloromethane	46 FR 30300–30320	June 5, 1981

Table 3.—Cumulative Removals From the TSCA Section 4(e) Priority List—November 1984—Continued

Chemical/group	EPA responses to committee recommendations	
	Federal Register	
	Citation	Publication Date
34. 1,2-Dichloropropane	49 FR 889–908	Jan. 6, 1984
35. Diethylenetriamine	47 FR 18386–18391	Apr. 29, 1982
36. Dimethyltin bis(isooctyl mercaptoacetate)	48 FR 51361–51366	Nov. 8, 1983
37. 1,3-Dioxolane	49 FR 32113–32114	Aug. 10, 1984
38. Ethyltoluene	48 FR 23088–23095	May 23, 1983
39. Fluoroalkenes	46 FR 53704–53706	Oct. 30, 1981
40. Formamide	48 FR 23096–23102	May 23, 1983
41. Glycidol and its derivatives	48 FR 57562–57571	Dec. 30, 1983
42. Halogenated alkyl epoxides	48 FR 57686–57700	Dec. 30, 1983
43. Hexachloro-1,3-butadiene	47 FR 58029–58031	Dec. 29, 1982
44. Hexachlorocyclopentadiene	47 FR 58023–58025	Dec. 29, 1982
45. Hexachloroethane	47 FR 18175–18176	Apr. 28, 1982
46. Hydroquinone	49 FR 438–449	Jan. 4, 1984
47. Isophorone	48 FR 727–730	Jan. 6, 1983
48. Lead naphthenate	49 FR 21411–21418	May 21, 1984
49. Mesityl oxide	48 FR 30699–30706	July 5, 1983
50. 4,4'-Methylenedianiline	48 FR 31806–31810	July 11, 1983
51. Methyl ethyl ketone	47 FR 58025–58029	Dec. 29, 1982
52. Methyl isobutyl ketone	47 FR 58025–58029	Dec. 29, 1982
53. Methylolurea	49 FR 21371–21375	May 21, 1984
54. Monobutyltin tris(isooctyl mercaptoacetate)	48 FR 51361–51366	Nov. 8, 1983
55. Monomethyltin tris(isooctyl mercaptoacetate)	48 FR 51361–51366	Nov. 8, 1983
56. Nitrobenzene	46 FR 30300–30320	June 5, 1981
57. 2-Phenoxyethanol	49 FR 21407–21411	May 21, 1984
58. Phenylenediamines	47 FR 973–983	Jan. 8, 1982
59. Polychlorinated terphenyls	46 FR 54482–54483	Nov. 2, 1981
60. Pyridine	47 FR 58031–58035	Dec. 29, 1982
61. Quinone	49 FR 456–465	Jan. 4, 1984
62. 4-(1,1,3,3-Tetramethylbutyl) phenol	49 FR 29449–29450	July 20, 1984
63. *o*-Toluidine-based dyes	46 FR 55004–55006	Nov. 5, 1981
64. Toluene	47 FR 56391–56392	Dec. 16, 1982
65. 1,2,4,-Trimethylbenzene	48 FR 23088–23095	May 23, 1983
66. Trimethylbenzenes	48 FR 23088–23095	May 23, 1983
67. 1,1,1–Trichloroethane	46 FR 30300–30320	June 5, 1981
68. Tris(2-chloroethyl) phosphite	47 FR 49466–49467	Nov. 1, 1982
69. Tris(2-ethylhexyl) trimellitate	48 FR 51842–51845	Nov. 14, 1983
70. Xylenes	47 FR 56392–56394	Dec. 16, 1982

[1] Removed by the Committee for reconsideration. Seven individual group members were subsequently designated in the 11th ITC Report (Ref. 11) for priority consideration.

References

(1) Initial Report to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1, 1977. Published in the **Federal Register** of Wednesday, October 12, 1977, 42 FR 55026–55060. Corrections published in the **Federal Register** of November 11, 1977, 42 FR 58777–58778. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560–10–78/001, January 1978.

(2) Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, April 1978. Published in the **Federal Register** of Wednesday, April 19, 1978, 43 FR 16684–16688. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560–10–78/002, July 1978.

(3) Third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1978. Published in the **Federal Register** of Monday, October 10, 1978, 43 FR 50630–50635. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560–10–79/001, January 1979.

(4) Fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, April 1979. Published in the **Federal Register** of Friday, June 1, 1979, 44 FR 31866–31899.

(5) Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, November 1979. Published in the **Federal Register** of Friday, December 7, 1979, 44 FR 70864–70874.

(6) Sixth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, April 1980. Published in the **Federal Register** of Wednesday, May 28, 1980, 45 FR 35897–35910.

(7) Seventh Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1980. Published in the **Federal Register** of Tuesday, November 25, 1980, 45 FR 78432–78446.

(8) Eighth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, April 1981. Published in the **Federal Register** of Friday, May 22, 1981, 46 FR 28136–28144.

(9) Ninth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1981. Published in the **Federal Register** of Friday, February 5, 1982, 47 FR 5456–5463.

(10) Tenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, April 1982. Published in the **Federal Register** of Tuesday, May 25, 1982, 47 FR 22585–22586.

(11) Eleventh Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1982. Published in the **Federal Register** of Friday, December 3, 1982, 47 FR 54625–54644.

(12) Twelfth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, May 1983. Published in the **Federal Register** of Wednesday, June 1, 1983, 48 FR 24443–24452.

(13) Thirteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, November 1983. Published in the **Federal Register** of Wednesday, December 14, 1983, 48 FR 55674–55684.

(14) Fourteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, May 1984. Published in the **Federal Register** of Tuesday, May 29, 1984, 49 FR 22389–22407.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following seven chemical

substances to the section 4(e) Priority List: Anthraquinone; 2-chloro-1,3-butadiene; cumene; mercaptobenzothiazole; octamethylcyclotetrasiloxane; pentabromoethylbenzene; and sodium *N*-methyl-*N*-oleoyltaurine. The recommendation of these chemicals is being made after considering the factors identified in section 4(e)(1)(A) and other available relevant information, as well as the professional judgment of Committee members.

The seven recommendations designated for response by the EPA Administrator within 12 months and supporting rationales are presented in section 2.2 of this report.

2.2 *Chemicals designated for response within 12 months with supporting rationales.*

2.2a *Anthraquinone*

Summary of recommended studies. It is recommended that anthraquinone be tested for the following:

A. Chemical Fate:

Water solubility
Biodegradation

B. Ecological Effects:

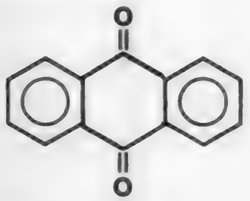
Acute toxicity to fish, aquatic invertebrates, and algae
Chronic toxicity to aquatic oranisms (testing conditional upon results of acute tests)

Physical and Chemical Information

CAS Number: 84–65–1.

Synonyms: 9,10-Anthracenedione; 9,10-Anthraquinone; 9,10-Dioxoanthracene.

Structural Formula:



Empirical Formula: $C_{14}H_8O_2$
Molecular Weight: 208
Melting Point: 283.5–285 °C.
Boiling Point: 379–381 °C.
Vapor Pressure: 1mmHg at 190 °C.
Specific Gravity: 1.419–1.438 (20/4).
Solubility in Water: 0.05mg/L (Ref. 7, C–I–L, 1984).
Log Octanol/Water Partition Coefficient: 2.16 (estimated; Ref. 17, Lyman et al., 1982).
Description of Chemical: Light-yellow needles.

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal.* No publicly available data were found on the current production volume of anthraquinone; however, it is known to be produced in the United States. In 1979, 3.7 million pounds of anthraquinone were imported (Ref. 24, USITC, 1980). In 1982, 364,358 pounds were imported (Ref. 25, USITC, 1983).

The major uses for anthraquinone are as an intermediate in the manufacture of dyes and dyestuff intermediates and as a kraft pulping additive to aid in the delignification of wood pulp (Refs. 12, 15, and 4, Kirk-Othmer, 1978, 1982; CEH, 1983). It is also used as a catalyst in the isomerization of vegetable oils and in the polymerization of drying oils, as an accelerator in nickel electroplating, and as an aid in improving the adhesion and heat stability of tire cords (Refs. 12, 13, and 14, Kirk-Othmer, 1978, 1979, 1980). In Europe, it is also used as a bird repellent, applied to growing crops and seeds (Ref. 15, Kirk-Othmer, 1982).

B. *Evidence for exposure.* Games and Hites (Ref. 9, 1977) found anthraquinone in six raw wastewater samples from a dye manufacturing plant at concentrations ranging from 49 to 110 ppb but did not detect anthraquinone in the effluent from the plant's wastewater treatment facility. According to Voss (Ref. 29, 1981), increased use of anthraquinone in wood pulping "may show up environmental effects which are, as yet, not obvious." Typical addition levels in the paper mills are 0.025–0.1 percent anthraquinone on bone-dry wood.

Anthraquinone has been found in the Waal River in the Netherlands (Ref. 19, Meijers and Van der Leer, 1976) and in the Baltic Sea (Ref. 8, Ehrhardt et al., 1982). Akiyama et al. (Ref. 1, 1980) found 5.2 ng/L of anthraquinone in samples of Japanese tapwater and detected it in sediments. In a study of drinking water contaminants in 12 Great Lakes municipalities, anthraquinone was found in all 12 locations (Ref. 30, Williams et al., 1982). The concentrations ranged from 0.3 to 72 ng/L.

The compound has been found in atmospheric samples taken in Toronto, Canada (Ref. 21, Pierce and Katz, 1976); Antwerp, Belgium (Ref. 3, Cautreels et al., 1977); and in southern Norway (Ref. 16, Lunde, 1976).

Bullhead catfish sampled from the Black River, Ohio, contained 42 ppb of anthraquinone (Ref. 26, Vassilaros et al., 1982). Anthraquinone also has been found in the surface wax of a perennial grass and in the heartwood of *Quebrachia lorentzii* (Ref. 2, Allebone et al., 1971), in the leaflets and pods of *Cassia angustifolia* (Ref. 23, Singh and Rao, 1982), and in cell suspension cultures of *Morinda citrifolia* (Ref. 32, Zenk et al., 1975). Ehrhardt et al. (Ref. 8, 1982) postulated that anthraquinone is formed in the atmosphere by the natural photooxidation of anthracene.

II. *Chemical fate information*—A. *Persistence.* Several environmental fate tests were performed to obtain information on the biodegradability of anthraquinone (Ref. 7, C-I-L, 1984). The reported results are summarized below.

1. *BOD test.* There was complete degradation of a 500 mg/L test solution in 24 days. The 5-day BOD showed 61 and 45 percent degradation using acclimated and unacclimated tests, respectively.

2. *CO_2 evolution test.* Test concentrations of 20 and 30 mg/L were used. After 38 days, the amount of CO_2 was equivalent to 83–96 percent of the theoretical CO_2 anticipated from the biodegradation of anthraquinone.

3. *End-product test.* At the end of the CO_2 evolution test, there were no discernible end products other than residual anthraquinone. More than 99 percent of the anthraquinone had degraded.

B. *Rationale for chemical fate recommendations.* All of the environmental fate tests were performed using test solutions in which the concentration of anthraquinone exceeded the reported solubility limit of anthraquinone. Therefore, the test data cannot be interpreted reliably. Based on expected releases of anthraquinone to the aquatic environment, biodegradation tests should be performed at test concentrations not exceeding its water solubility limit. Prior to fate and effects testing, the water solubility of anthraquinone must be accurately quantified to properly design and conduct these tests.

III. *Biological effects of concern to human health.* Anthraquinone has been tested for health effects and is not being recommended for further testing at this time.

Rats fed anthraquinone in the diet for 4 days excreted untransformed anthraquinone in urine (Ref. 22, Sims, 1964).

The intraperitoneal LD_{50} of anthraquinone in the rat is 3,500 mg/kg (Ref. 27, Volodchenko, 1977). Anthraquinone fed to rats daily for 7 days inhibited the absorptive and excretory functions of the liver (Ref. 20, Pidemskii and Masenko, 1970). Repeated enteral injections of anthraquinone at one-fifth LD_{50} in experimental animals caused damage to the liver, kidneys, and peripheral blood (Ref. 28, Volodchenko and Labunskii, 1972). Anthraquinone administered orally (1,206 ppm in diet) for 17 months, or subcutaneously (single dose of 1,000 mg/kg), failed to elevate the incidence of tumors in two hybrid strains of mice (Ref. 11, Innes et al., 1969).

Anthraquinone has been well tested in the *Salmonella*/microsome test system. Only one of nine studies showed any evidence of induction of mutagenicity. Positive results were obtained in the absence of metabolic activation in strains TA1537, TA1538, and TA98, indicating a frameshift type of mutagenesis. Yamaguchi (Ref. 31, 1982) found that anthraquinone markedly decreased the mutagenicity of some known mutagens. Cesarone et al. (Ref. 5, 1982) observed an increased in vivo production of single-strand DNA breaks in the liver and kidneys of mice injected intraperitoneally with anthraquinone.

IV. *Ecological effects of concern*—A. *Short-term effects.* Static acute toxicity tests have been performed with several aquatic organisms (Ref. 7, C-I-L, 1984). The LC_{50}s for *Daphnia pulex* and the fathead minnow were 46 and 2,650 mg/L, respectively. Both levels greatly exceed the reported solubility limit. The report stated that the fish died from clogging of the gills with undissolved anthraquinone. Giddings (Ref. 10, 1979) reported that 1,4-anthraquinone was "essentially nontoxic to *Selenastrum capricornutum*." The researcher attributed this to its insolubility. The test concentration was reported as 100 percent saturation.

Chillingworth (Ref. 6, 1974) determined the toxicity of anthraquinone to fathead minnows and *S. capricornutum*. No effects on the fish were observed at 180 mg/L or on the algae at 10 mg/L. In screening studies using three species of fish, all fish died in less than 13 hours after exposure to an anthraquinone concentration of 10 ppm (Ref. 18, MacPhee and Ruelle, 1969).

In a seed germination test with the radish, *Raphanus sp.*, the 48-hour ED_{50} was calculated to be 428,000 ppm. A 500 mg/L solution of anthraquinone applied to seedling wheat and soybean plants had no effect on shoot height and biomass, root biomass, and growth pathology (Ref. 7, C-I-L, 1984).

Several laboratory tests were performed to investigate the potential ecological effects of using anthraquinone as a pulping additive (Ref. 7, C-I-L, 1984). Several tests were performed with bluegill and *Daphnia magna* using an effluent containing anthraquinone. Due to the high mortality in the control groups, the observed problems with solubility, and the fact that the anthraquinone concentrations were not measured, the data from these studies cannot be used to reliably assess the toxic effect levels of anthraquinone.

B. *Long-term effects.* No information was found.

C. *Bioconcentration.* C-I-L (Ref. 7, 1984) reported the results of a 28-day bioconcentration test with the fathead minnow. Within 16 days of exposure to anthraquinone in water at a mean concentration of approximately 0.4 mg/L, a steady-state concentration in the fish was reached. The bioconcentration factor (BCF) was 24. Eleven days after transfer to clean water, 66 percent of the accumulated residues had been eliminated from the fish. After 16 days, the residues were below detectable limits. In a 30-day bioconcentration study with bluegill and a 5-day study with *D. magna*, the resulting BCFs were approximately 50 and 100, respectively (Ref. 7, C-I-L, 1984).

D. *Rationale for ecological effects recommendations.* The toxicity tests that were reviewed were performed at test concentrations that exceed the reported water solubility level of anthraquinone. These data are inadequate to quantify the acute and potential chronic toxicity to aquatic organisms. These data indicate, however, that anthraquinone may be very toxic to aquatic organisms. Since organisms were killed in the toxicity tests, anthraquinone may be toxic at its reported solubility limit of 0.05 mg/L. Flowthrough toxicity tests at concentrations not exceeding the measured solubility limit of anthraquinone should be performed. If these tests indicate toxicity at the solubility limit, chronic tests should also be performed. The bioconcentration tests indicate that bioconcentration of anthraquinone is not expected to be significant.

References

(1) Akiyama T, Koga M, Shinohara R, Kido A, Etoh S. 1980. Detection and identification of trace organic substances in the aquatic environment. J. UOEH 2(3):285–300.

(2) Allebone JE, Hamilton RJ, Bryce TA, Kelly W. 1971. Anthraquinone in plant surface waxes. Experientia 27(1):13–14.

(3) Cautreels W, Van Cauwenberghe K, Guzman LA. 1977. Comparison between the organic fraction of suspended matter at a background and an urban station. Sci. Total Environ. 8(1):79–86.

(4) CEH. 1983. Chemical Economics Handbook. Section 300.70035. Stanford Research Institute, Menlo Park, CA: SRI International.

(5) Cesarone CF, Bolognesi C, Santi L. 1982. Evaluation of damage to DNA after in vivo exposure to different classes of chemicals. Arch. Toxicol. 5 (Suppl.):355–359.

(6) Chillingworth MA. 1974. The toxicity of aminoanthraquinone dyes to fish and algae. In: Dyes and Environment. American Dye Manufacturers Institute, Inc.

(7) C–I–L, Inc. 1984. Unpublished information on the fate and effects of anthraquinone submitted by H.H. Holten. C–I–L, Inc. March 22, 1984.

(8) Ehrhardt M, Bouchertall F, Hopf HP. 1982. Aromatic ketones concentrated from Baltic Sea water. Mar. Chem. 11:449–461.

(9) Games LM, Hites RA. 1977. Composition, treatment efficiency, and environmental significance of dye manufacturing plant effluents. Anal. Chem. 49(9):1433–1440.

(10) Giddings JM. 1979. Acute toxicity to *Selenastrum capricornutum* of aromatic compounds from coal conversion. Bull. Environ. Contam. Toxicol. 23:360–364.

(11) Innes JRM, Ulland BM, Valerio MG, Petrucelli L, Fishbein L, Hart ER, Pallotta AJ, Bates RR, Falk HL, Gart JJ, Klein M, Mitchell I, Peters J. 1969. Bioassay of pesticides and industrial chemicals for tumorigenicity in mice: A preliminary note. J. Natl. Cancer Inst. 42(6):1101–1114.

(12) Kirk-Othmer. 1978. Encyclopedia of Chemical Technology. 3rd ed. Vol. 2. New York: John Wiley & Sons, Inc. pp. 700–706.

(13) Kirk-Othmer. 1979. Encyclopedia of Chemical Technology. 3rd ed. Vol. 8. New York: John Wiley & Sons, Inc. pp. 138, 170–171, 177–178.

(14) Kirk-Othmer. 1980. Encyclopedia of Chemical Technology. 3rd ed. Vol. 11. New York: John Wiley & Sons, Inc. p. 700.

(15) Kirk-Othmer. 1982. Encyclopedia of Chemical Technology. 3rd ed. Vol. 19. New York: John Wiley & Sons, Inc. pp. 317–318, 406, 497.

(16) Lunde G. 1976. Long-range aerial transmission of organic micropollutants. Ambio 5(5–6):207–208.

(17) Lyman WJ, Reehl WF, Rosenblatt DH. 1982. Handbook of Chemical Property Estimation Methods. Chapter 1. New York: McGraw-Hill Book Co.

(18) MacPhee C, Ruelle R. 1969. Lethal effects of 1888 chemicals upon four species of fish from western North America. Forest, Wildlife and Range Experiment Station. Moscow, ID: University of Idaho.

(19) Meijers AP, Van der Leer RC. 1976. The occurrence of organic micropollutants in the river Rhine and the river Maas in 1974. Sci. Res. 10:597–604.

(20) Pidemskii EL, Masenko VP. 1970. Effect of some anti-inflammatory preparations on the absorption and excretory function of a normal liver and one affected by hepatitis. Tr. Perm. Gos. Med. Inst. 99:325–328.

(21) Pierce RC, Katz M. 1976. Chromatographic isolation and spectral analysis of polycyclic quinones: Application of air pollution analysis. Environ. Sci. Technol. 10(1):45–51.

(22) Sims P. 1964. Metabolism of polycyclic compounds: 25. The metabolism of anthracene and some related compounds in rats. Biochem. J. 92:621–631.

(23) Singh P, Rao MM. 1982. Optimum stage of harvest of leaflets and pods of Senna

Cassia Angustifolia Vahl, in relation to yield of crude drug and anthraquinone. Indian J. Pharm. Sci. 44(1):12–13.
(24) USITC. 1980. U.S. International Trade Commission. Imports of Benzenoid Chemicals and Products, 1979. USITC Publ. No. 1083. Washington, DC: U.S. Govt. Printing Office.
(25) USITC. 1983. U.S. International Trade Commission. Imports of Benzenoid Chemicals and Products, 1982. USITC Publ. No. 1401. Washington, DC: U.S. Govt. Printing Office.
(26) Vassilaros DL, Stoker PW, Booth GM, Lee ML. 1982. Capillary gas chromatographic determination of polycyclic aromatic compounds in vertebrate fish tissue. Anal. Chem. 54:106–112.
(27) Volodchenko VA. 1977. Results of and future prospects for studying the toxicological characteristics of anthraquinone derivatives. Gig. Tr. Prob. Zabol. 21(12) 27–30.
(28) Volodchenko VA, Labunskii VV. 1972. Biological characteristics of the diaminoanthraquinone and anthraquinone isomers viewed in a comparative aspect. Gig. Tr. Prof. Zabol. 16(11):44–45.
(29) Voss GP. 1981. 9,10-Anthraquinone as an additive in chemical pulping. Paper Tech. Ind. 22(4):125–130.
(30) Williams DT, Nestmann ER, LeBel GL, Benoit FM, Otson R. 1982. Determination of mutagenic potential and organic contaminants of Great Lakes drinking water. Chemosphere 11(3):263–276.
(31) Yamaguchi T. 1982. Reduction of induced morality with biologically active quinones through inhibition of metabolic activation. Agric. Biol. Chem. 46(9):2373–2375.
(32) Zenk MH, El-Shagi H, Schulte U. 1975. Anthraquinone production by cell suspension cultures of *Morinda citrifolia*. Planta Med. (Suppl.):79–101.

2.2.b *2-Chloro-1,3-Butadiene (Chloroprene).*

Summary of recommended studies. It is recommended that chloroprene be tested for the following:

A. Chemical Fate:

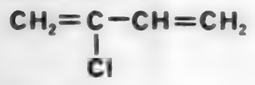
Water solubility
Persistence

B. Ecological Effects:

Acute toxicity to sensitive life stages of fish, aquatic invertebrates, and algae

Physical and Chemical Information

CAS Number: 126-99-8.
Synonym: Chloroprene.
Structural Formula:



Empirical Formula: C_4H_5Cl.
Molecular Weight: 88.5.
Melting Point: −130 °C (Ref. 15, Verschueren, 1983).
Boiling Point: 58.4 °C (Ref. 15, Verschueren, 1983).
Vapor Pressure: 188 mmHg at 20 °C (Ref. 9, NIOSH, 1977).
Specific Gravity: 0.9583 (Ref. 7, Irish, 1963).
Log Octanol/Water Partition Coefficient: 1.73 (estimated; Ref. 8, Lyman et al., 1982).
Description of Chemical: Colorless liquid.

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal.* No data were found on the current production volume of chloroprene. However, the total volume can be estimated from its use in the production of polychloroprene (neoprene) elastomers, which is the only significant use of chloroprene reported (Ref. 2, CEH, 1982). In 1983, approximately 254 million pounds of polychloroprene were produced in the United States (Ref. 6, Greek, 1984); the amount of chloroprene produced is expected to be similar. Approximately 33 percent of the production volume of polychloroprene is used in automotive belts and wire coverings; 25 percent, in nonautomotive wire coverings; and 25 percent, in the manufacture of adhesives.

B. *Evidence for exposure.* Preliminary data from the National Occupational Exposure Survey conducted during 1980–83 estimated that 6,405 workers were exposed to chloroprene in the workplace in 1980 (Ref. 10, NIOSH, 1984). It has been reported (Ref. 2, CEH, 1982) that chloroprene is shipped from the site of manufacture to a different plant for polymerization; thus, the potential exists for its release during handling and transport as well as during manufacturing and processing.

II. *Chemical fate information*—A. *Transport.* No information was found.

B. *Persistence.* No information was found.

C. *Rationale for chemical fate recommendations.* On the basis of its vapor pressure, the compound is expected to partition to the atmosphere. However, water solubility data are needed to confirm this conclusion and to provide information on the rate and extent of its partitioning to the atmosphere and other environmental media. This information is also needed to determine what types of persistence testing (biological, chemical, or photochemical) are most pertinent to an assessment of environmental exposure.

III. *Biological effects of concern to human health.* Although chloroprene is a high production chemical that is structurally related to the carcinogens 1,3-butadiene and vinyl chloride, sufficient testing to elucidate its potential health effects of concern to humans either has been conducted, is underway, or is planned. Thus, further testing for health effects is not being recommended at this time.

The acute oral LD_{50} for chloroprene was found to be 260 mg/kg body weight in mice and 251 mg/kg body weight in rats. In an inhalation study, the approximate lethal concentration of the chemical in rats following a 4-hour exposure was 2,300 ppm (Ref. 3, Clary, 1977).

Chloroprene has been shown to be genotoxic in a number of test systems, including the *Salmonella* microsomal assay (Ref. 1, Bartsch et al., 1979) and the *Drosophila* sex-linked recessive lethal mutation system (Ref. 16, Vogel, 1979). It was shown to induce chromosomal aberrations in human cells (Refs. 13 and 17, Sanotskii, 1976; Zhurkov et al., 1977). It was negative in V79 Chinese hamster cells for inducing resistence to 8-azaguanine or ouabain (Ref. 4, Drevon and Kuroki, 1979).

No published studies on the metabolism or toxicokinetics of chloroprene were found.

Several carcinogenicity studies have been published in the literature (Refs. 18, 20, 19, and 12, Zil'fyan and Fichidzhyan, 1972; Zil'fyan et al., 1975; Zil'fyan et al., 1977; Ponomarkov and Tomatis, 1980); however, they were of insufficient duration to evaluate chloroprene's carcinogenic potential. The Joint Industry Group on Chloroprene sponsored a chronic inhalation study of the chemical in Wistar rats and Syrian golden hamsters (Ref. 14, Trochimowicz, 1984). Exposure levels were targeted at 0, 10, and 50 ppm chloroprene for 6 hours/day, 5 days/week. The rats were exposed for 24 months; the hamsters, for 18 months. No evidence of chloroprene-induced carcinogenicity was found in either species.

As part of its testing initiative on 1,3-butadiene, an animal carcinogen, the National Toxicology Program is testing chloroprene for a number of toxicological endpoints. The chemcial has been selected for an indepth toxicological evaluation in 14- and 90-day studies. The 90-day studies will include sperm morphology and vaginal cytology evaluation, while the 14-day studies will include micronuclei evaluations and in vivo cytogenetics testing. Chloroprene will also be tested for carcinogenicity by inhalation. Toxicokinetic and metabolism studies are also planned using intravenous injections over a wide range of doses. Finally, inhalation teratology studies of the chemical in rats and mice are planned, as are fertility assessment studies of chloroprene in mice (Ref. 11, NTP, 1984.

IV. *Ecological effects of concern*—A. *Short-term effects.* The 96-hour LC_{50} of chloroprene with bluegill was 245 ppm (Ref. 5, Dupont, 1984). The test was a flowthrough test with the LC_{50} based on nominal test concentrations. The 7-day EC_{50} with the alga, *Navicula seminulum* was 3,800 ppm. This EC_{50} was also based on nominal test concentrations.

B. *Long-term effects.* No information was found.

C. *Bioconcentration.* Based on an estimated low log octanol/water partition coefficient of 1.73, substantial bioconcentration is not expected.

D. *Rationale for ecological effects recommendations.* Based on its estimated large production volume, environmental releases of chloroprene are likely. The available data on its acute toxicity to fish and algae are not sufficient to reliably assess the acute and chronic effect levels of chloroprene to aquatic organisms. The chloroprene concentrations in the test solutions from the reported tests were not measures; the LC_{50}s were based on nominal concentrations. The high vapor pressure of chloroprene suggests that the actual concentrations of choroprene in the test solutions may be considerably less than the nominal concentrations reported. Chloroprene may be more toxic than these data indicate. To reliably estimate the effects of the compound, acute toxicity tests in which the test concentrations are measured should be performed with sensitive life stages of fish, aquatic invertebrates, and algae.

References

(1) Bartsch HC, Malaveille C, Barbin A, Planche G. 1979. Mutagenic and alkylating metabolites of haloethylenes, chlorobutadienes, and dichlorobutenes produced by rodent or human liver tissues: Evidence for oxirane formation by P450-linked microsomal mono-oxygenases. Arch. Toxicol. 41:249–277.
(2) CEH. 1982. Chemical Economics Handbook. Standford Research Institutes. Menlo Park, CA: SRI International. Sections 300.5802 J. K.
(3) Clary JJ. 1977. Toxicity of chloroprene, 1, 3-dichlorobutene-2, and 1, 4-dichlorobutene-2. Environ. Health Perspect. 21:269–274.
(4) Drevon C, Kuroki T. 1979. Mutagenicity of vinyl chloride, vinylidene chloride and chloroprene in V79 Chinese hamster cells. Mutat. Res. 67:173–182.
(5) DuPont. 1984. Unpublished information on 2-chloro-1, 3-butadiene submitted by M. H. Cristman, E. I. du Pont. De Nemours & Co. October 17, 1984.
(6) Greek BF. 1984. Elastomers finally recover growth. Chem. Eng. News, April 30, 1984, pp. 35–56.
(7) Irish DD. 1963. Halogenated Hydrocarbons: I. Aliphatic. In: Patty, F. A., ed. Industrial Hygiene and Toxicology, 2nd rev. ed. New York: Interscience Publishers. Vol. II. pp. 1319–1321.
(8) Lyman WJ, Reehl WF, Rosenblatt DH. 1982. Handbook of Chemical Property Estimation Methods. New York: McGraw-Hill Book Co.
(9) NIOSH. 1977. Criteria for a recommended standard * * * Occupational exposure to chloroprene. U.S. Dept. of Health, Education, and Welfare. National Institute for Occupational Safety and Health. DHEW (NIOSH) Publ. No. 79–210. 176 pp.
(10) NIOSH. 1984. National Occupational Exposure Survey, 1980–83. Cincinnati, OH: National Institute for Occupational Safety and Health.
(11) NTP. 1984. National Toxicology Program. Minutes of the NTP Toxicology Design Committee Meeting. May 15, 1984.
(12) Ponomarkov V, Tomatis L. 1980. Longterm testing of vinylidene chloride and chloroprene for carcinogenicity in rats. Oncology 37:136–141.
(13) Sanotskii IV. 1976. Aspects of the toxicology of chloroprene: Immediate and long-term effects. Environ. Health Perspect. 17:85–93.
(14) Trochimowicz H. 1984. Personal communication from H. Trochimowicz, E. I. du Pont de Nemours & Co. September 28, 1984.
(15) Verschueren K. 1983. Handbook of Environmental Data on Organic Chemicals, 2nd ed. New York: Van Nostrand Reinhold Co. p. 384.
(16) Vogel E. 1979. Mutagenicity of chloroprene, 1-chloro-1,3-trans-butadiene, 1, 4-dichlorobutene-2, and 1,4-dichloro-2, 3-epoxybutane in *Drosophila melanogaster*. Mutata. Res. 67:377–381.
(17) Zhurkov VS, Fichidzhyan BS, Batikyan GG, Arutyunyan RM, Zil'fyan VN. 1977. Cytogenetic examination of persons in contact with chloroprene udner industrial conditions. Tsitol. Genet. 11:210–212.
(18) Zil'fyan VN, Fichidzhyan BS. 1972. Effect of chloroprene on development of Crocker's murine sarcoma. In: Proceedings of a Scientific Conference Devoted to the 50 Years of the Universities of USSR and to the 25 Years of the Armenian Institute of Roentgenology and Oncology, 1972. Yerevan, USSR. pp. 105–106 (Chem. Abst. 81:22099).
(19) Zil'Fyan VN, Fichidzhyan BS, Garibyan DK, Pogosova AM. 1977. Experimental study of chloroprene for carcinogenicity. Vopr. Onkol. 23:61–65.
(20) Zil'fyan VN, Fichidzhyan BS, Pogosova AM. 1975. Results of testing chloroprene for carcinogenicity. Zh. Eksp. Klin. Med. 15:54–57.

2.2.c *Cumene.*

Summary of recommended studies. It is recommended that cumene be tested for the following:

A. Health Effects:

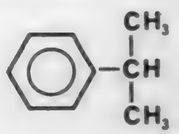
Short-term genotoxicity
Chronic effects including oncogenicity
Teratogenicity and reproductive toxicity

B. Ecological Effects:

Acute and chronic toxicity to estuarine and freshwater fish and invertebrates

Physical and Chemical Information

CAS Number: 98–82–8.
Synonyms: Isopropylbenzene; 2-Phenylpropane; Benzene, (1-methylethyl)- (9 CI).
Structural Formula:



Empirical Formula: C_9H_{12}.
Molecular Weight: 120.19.
Melting Point: −96.0 °C.
Boiling Point: 152.7 °C.
Vapor Pressure: 3.2 mmHg at 20 °C. (Ref. 49, Verschueren, 1977).
Specific Gravity: 0.862 at 20 °C.
Solubility in Water: 50 mg/L at 20 °C. (Ref. 18, Hutchinson et al., 1980).
Log Octanol/Water Partition Coefficient: 3.51 (Ref. 18, Hutchinson et al., 1980); 3.66 (Ref. 35, Rogerson et al., 1983).
Description of Chemical: Colorless, mobile liquid with a sharp, penetrating, aromatic odor.

Rationale for Recommendations

I. *Exposure information*—A. *Production.* The total annual production capacity of the 11 domestic producers of cumene as of January 1, 1983, was estimated to be 4.7 billion pounds (Ref. 41, SRI, 1983). The 1983 U.S. production of cumene was reported to be 3.30 billion pounds. On this basis, cumene was ranked 31 of the top 50 chemical products for 1983 (Ref. 6, C&EN, 1984). Domestic production of cumene in 1982 was reported to be 2.74 billion pounds, down from the 3.92 billion pounds produced in 1979 (Ref. 46, USITC, 1983). The public portion of the TSCA Inventory listed 21 companies at 25 sites with a 1977 aggregate production/importation range of 1.5 to 6.6 billion pounds (Ref. 10, EPA, 1984).

Importation of cumene has declined in recent years but is expected to remain at the 1980–81 level of about 300 million pounds over the next 5 years. Cumene exports in 1980 amounted to 63 million pounds (Ref. 7, CEH, 1982).

Cumene is present in a number of crude oils and in refinery streams, but all commercial (high-purity) cumene is produced by the alkylation of benzene with chemical-grade propylene under elevated temperature and pressure, most commonly in the presence of a solid phosphoric acid catalyst (Refs. 25 and 21, Lowenheim and Moran, 1975; Kirk-Othmer, 1979). Cumene also has been reported to be produced by distillation from coal-tar naphtha fractions or from petroleum (Ref. 17, Hawley, 1977).

B. *Use.* More than 98 percent of domestically produced cumene is used

in the manufacture of phenol and acetone; most of the remaining 2 percent is exported. Although more than half of the cumene utilized in the manufacture of phenol and acetone is used captively, a substantial portion is sold to other domestic producers of the two compounds (Ref. 7, CEH, 1982). More than 98 percent of domestically manufactured phenol and approximately 70 percent of domestically synthesized acetone are produced from cumene (Refs. 21 and 7, Kirk-Othmer, 1979, 1982; CEH, 1982).

A small amount of cumene is used in the production of alpha-methylstyrene (Refs. 7 and 21, CEH, 1982; Kirk/Othmer, 1979), which is used as a copolymer in acrylonitrile-butadiene-styrene plastics and which is also used in musk oil fragrances and shoe soles (Ref. 7, CEH, 1982). Minor uses of cumene are as a solvent (Refs. 7 and 17, CEH, 1982; Hawley, 1977) and as a high-octane component in aviation gasolines (Ref. 21, Kirk-Othmer, 1979).

C. *Evidence for exposure.* The OSHA 8-hour time-weighted average (TWA) permissible exposure limit for cumene in the workplace is 50 ppm [245 mg/m^3] (Ref. 33, OSHA, 1978); the ACGIH 8-hour TWA threshold limit value is the same (Ref. 1, ACGIH, 1983), and was selected to prevent induction of narcosis. The ACGIH 15-minute short-term exposure limit for the skin is 75 ppm (365 mg/m^3) (Ref. 1, ACGIH, 1983).

The National Occupational Hazard Survey, conducted by NIOSH during the years 1972–74, estimated that 863 workers were exposed to cumene in the workplace during that time period (Ref. 30, NIOSH, 1984.

One manufacturer of cumene recently reported that 20 workers are potentially exposed to the chemical. The cumene concentration in 102 8-hour TWA breathing zone samples ranged from less than 1 to 3 ppm; the concentration in the great majority of the samples was less than 1 ppm (Ref. 44, Texaco, 1984).

A second manufacturer reported that 12 of its process personnel are involved in the production of cumene. The manufacturing process is a closed system; the sewer system is closed and vented to a flare stack. A closed system also is used for sampling. Cumene vapors at levels of less than or equal to 0.5 ppm have been detected through area sampling. Breathing zone samples of process and maintenance personnel have been no higher than 0.14 ppm cumene vapor (Ref. 23, Koch, 1984).

A third manufacturer reported that 8–10 workers are involved in the production of cumene. The cumene units are closed systems without any waste streams, except spent catalyst. The cumene concentration in 730 12- or 8-hour TWA personal samples ranged from below the detection limit to 20 ppm. The average for the samples was below 0.08 ppm (Ref. 16, Gulf, 1984).

Cumene has been detected in ambient air samples of the vulcanization area of a shoe-sole factory at concentrations of 60–250 g/m^3. It also has been measured in the vulcanization and extrusion areas of the tire retreading factory at concentrations of 2–200 g/m^3 and 0–10 g/m^3, respectively (Ref. 8, Cochêo et al., 1983).

Cumene has been detected in aqueous effluents from a petroleum refinery and from a textile finishing and dyeing plant (Refs. 40 and 15, Snider and Manning, 1982; Gordon and Gordon, 1981). It has been detected at part-per-billion (ppb) levels in groundwater samples taken at progressive distances downgradient from an aviation fuel spill (Ref. 43, Tester and Harker, 1981). The Chemical also has been found at ppb levels in groundwater samples taken near two underground gasification sites in northeastern Wyoming (Ref. 42, Stuermer et al., 1982). Cumene has been measured at ppb levels in the ambient air samples from a number of localities (Refs. 2, 5, 27, 24, and 45, Arnts and Meeks, 1981; Bos et al., 1977; Miller and Alkezweeny, 1980; Lonneman et al., 1968; Tsani-Bazaca et al., 1982).

II. *Chemical fate information.* Cumene is expected to partition among soil, sediment, water, and air. Cumene in natural waters exposed to light of wavelength greater than 290 nm for 5 days was oxidized to the extent of 1.2–9.2 percent, depending on the water source and initial cumene concentration (Ref. 26, Mill et al., 1978). On the basis of its reactivity with atmospheric hydroxyl radicals, cumene was estimated to have a half-life of 2.4–24 hours in air (Ref. 9, Darnall et al., 1976).

Cumene is expected to biodegrade readily. The biological oxidation demand of cumene in sewage-seeded freshwater was 40, 62, 63, and 70 percent in 5, 10, 15, and 20 days, respectively (Ref. 31, OHMTADS). A number of strains of the *Pseudomonas* genus assimilate cumene (Ref. 32, Omori et al., 1975), and *Pseudomonas aeruginosa* has been shown to hydroxylate one of the chemical's methyl groups (Ref. 48, Van der Linden and Van Ravenswaay Claasen, 1971). At 10 °C in clean groundwater, cumene was completely degraded by microbes within 11 days (Ref. 20, Kappeler and Wuhrmann, 1978).

On the basis of its moderately high log P, cumene is expected to have a moderate potential to bioconcentrate. Actual bioconcentration will depend, however, on the rate of metabolism of the compound and the duration of exposure.

III. *Biological effects of concern to human health*—A. *Acute toxicity.* The acute toxicity of cumene is summarized in the following Table 4. Cumene was found to be a primary skin and eye irritant in rabbits (Ref. 51, Wolf et al., 1956).

B. *Metabolism and toxicokinetic studies.* Cumene has been observed to be absorbed via several routes. Ninety percent of an oral dose of cumene in rabbits was recovered as metabolites in the urine (Ref. 34, Robinson et al., 1955). Approximately 50 percent of cumene vapors inhaled by human volunteers was retained following exposure to the chemical at levels of 240–720 mg/m^3 (Ref. 36, Senczuk and Litewka, 1976). Cumene was absorbed through the shaved skin of rats (Ref. 47, Valette and Cavier, 1954).

In rats exposed for 2 months by inhalation to cumene at levels of 25 mg/L, cumene was detected in a number of tissues 24 hours following cessation of the last exposure. The highest levels were observed in the thyroid and adrenal glands. Rats were exposed by inhalation to the same concentration of cumene for 6 months. Seventy-two hours after the last exposure, cumene was found to distribute mainly to endocrine organs, central nervous system components, bone marrow, spleen, and liver (Ref. 10, Fabre et al., 1955.)

BILLING CODE 6560-50-M

Table 4 -- Acute Toxicity of Cumene in Laboratory Animals

Animal	Route of Admin.	Test Group (No.)	Dose	Effects	Reference
Mouse	Inh	8M, 8F for each concentration	LC_{50}: 10 mg/L (about 2,000 ppm) for 7 hr	Slight incoordination to deep narcosis (including analgesia, unconsciousness, complete relaxation, and loss of reflexes) and death	Werner et al. (Ref. 50, 1944)
		4	2,490 ppm for up to 30 min exposure	50% decrease in respiratory rate due to sensory irritation of upper respiratory tract	Nielsen and Alarie (Ref. 29, 1982)
		Unspecified	20 mg/L; duration of exposure unspecified	Minimal concentration to cause prostration	Lehmann and Flury (1943, cited in Ref. 13, Gerarde, 1960)
		"	25 mg/L; duration of exposure unspecified	Minimal concentration to cause loss of reflexes	"
Rat	Oral	5 for each concentration	LD_{50}: 2.91 g/kg	--	Smyth et al. (Ref. 39, 1951)
		Unspecified	LD_{50}: 1.4 g/kg	Some irritation to the stomach and intestines	Wolf et al. (Ref. 51, 1956)
		10	5 ml/kg	6 Died	Gerarde (Ref. 13, 1960)
		5 for each concentration	LD_{50}: 2,700 mg/kg	Weight loss, weakness, ocular discharge, collapse, and death; hemorrhagic lungs, liver discoloration, and GI tract inflammation in decedents	Monsanto (Ref. 28, 1984)
	Inh	Unspecified	"Saturated vapor"	The maximum duration of exposure for no deaths was 1 hour.	Smyth et al. (Ref. 39, 1951)
		6	8,000 ppm, for 4 hr	4 Died	"
Rabbit	Skin	5 for each concentration	LD_{50}: 12.3 ml/kg	--	"
		Unspecified	LD_{50}: >3,160 mg/kg	Weight loss, weakness, collapse, and death; hemorrhagic lungs, liver, discoloration, enlarged gallbladder, darkened kidneys and spleen, and GI tract inflammation in decedents	Monsanto (Ref. 28, 1984)

BILLING CODE 6560-50-C

Following intravenous administration of cumene to rats, the highest concentrations were found in adipose tissues, the brain, adrenal glands, heart, and lungs. Two to three hours after oral administration of the chemical to rats, maximum concentrations were measured in adipose tissues with levels 15–20 times higher than those seen in the adrenal glands and liver (Ref. 14, Gorban et al., 1978).

In biotransformation studies of cumene in rabbits, the animals were administered 2 ml of the chemical orally and 24-hour urine samples were collected for analysis of metabolites. About 40 percent of the dose was excreted as the glucuronide of 2-phenyl-2-propanol, 25 percent as the glucuronide of 2-phenyl-1-1-propanol, and 25 percent as the ester-glucuronide of 2-phenylpropionic acid (Ref. 34, Robinson et al., 1955).

In a biotransformation study in rats, the animals received a single oral dose of cumene (100 mg/kg) and 48-hour urine samples were collected following dosing. 2-Phenyl-2-propanol and 2-phenyl-1-propanol were both observed in the urine at unspecified levels (Ref. 3, Bakke and Scheline, 1970).

2-Phenyl-2-propanol also was excreted in the urine by human subjects exposed to cumene by inhalation. The levels of the metabolite in the urine were proportional to the atmospheric concentration of cumene during exposure (Ref. 36, Senczuk and Litewka, 1976).

C. *Teratogenicity/embryotoxicity.* Following inhalation exposure of female rats for 4 months to maximum permissible concentrations of cumene, embryonal mortality increased from 7.5 to 30.3 percent; the frequency of teratogenic effects increased from 3.0 to 11.0 percent (Ref. 37, Serebrennikov and Ogleznew, 1978). No other information on these studies was found.

D. *Genotoxicity.* When studied by several investigators, cumene was negative in the *Salmonella* microsomal assay using both the spot test and the plate incorporation technique (Refs. 12, 28, and 38, Florin et al., 1980); Monsanto, 1984; Simmon et al., 1977). In the *Saccharomyces cerevisiae* D3 test system, the chemical also was not mutagenic (Ref. 38, Simmon et al., 1977).

E. *Subchronic toxicity.* Cumene was administered in olive oil to female rats by gavage daily, 5 days a week for 6 months. At a dose of 154 mg/kg, no ill effects were observed on the basis of gross appearance, final body and organ weights, periodic blood counts, blood urea nitrogen, histopathologic examinations, and bone marrow counts. An increase in kidney weight was seen at a dose of 462 mg/kg/day (Ref. 51, Wolf et al., 1956).

No significant changes were noted in the lungs, liver, and kidneys of rats exposed to 500 ppm cumene for 8 hours/day, 6 days/week for 5 months (Ref. 11, Fabre et al., 1955).

Rats, guinea pigs, monkeys, and dogs were exposed to cumene vapors either repeatedly for 6 hours a day, 5 days a week, for a total of 30 exposures over a 6-week period, or continuously for 90–127 days. There was no difference in body weight and hematologic data between the treated animals and controls, and histopathologic examinations of the heart, liver, lungs, spleen, and kidneys were essentially negative (Ref. 19, Jenkins et al., 1970).

F. *Chronic toxicity/carcinogenicity.* No studies of the chronic toxicity of carcinogenicity of cumene were found.

G. *Rationale for health effects recommendations.* The potential exists for occupational and environmental exposure to cumene. Cumene has been detected in the ambient air of several localities; it also has been found in effluents from a petroleum refinery and an industrial plant and in groundwater samples. Although cumene was not mutagenci in either the *Salmonella* microsomal assay or the *S. cerevisiae* D3 test system, a more complete evaluation of its genotoxic potential should be performed. Data are lacking on chronic effects including oncogenicity. A limited productive toxicity study in female rats indicated an icrease in teratogenic effects after inhalation exposure to cumene. Accordingly, a battery of short-term genotoxicity assays (excluding the *Salmonella* assay), a chronic effects study including oncogenicity, and teratogenicity and reproductive toxicity studies are recommended for cumene.

IV. *Ecological effects of concern.* In a study on the effects of cumene on the green algae *Chlamydomonas angulosa* and *Chlorella vulgaris*, a 50 percent reduction in photosynthetic activity was noted at concentrations of 8.8 and 21.2 ppm, respectively (Ref. 18, Hutchinson et al., 1980). In 18- to 24- hour tests with the freshwater ciliates *Colpidium colpoda* and *Tetrahymena elliotti*, acute toxicity thresholds of 12 ppb and 3 ppm, respectively, were determined (Ref. 35, Rogerson et al., 1983). Bobra et al. (Ref. 4, 1983) reported that the 48-hour LC_{50} for the water flea *Daphnia magna* was 0.6 ppm.

V. *Rationale for ecological effects recommendations.* Cumene is one the top 50 chemicals produced in the United States and is released to the environment from a number of sources, as evidenced by detection of the compound in ambient air and water samples. This exposure potential, coupled with the demonstrated toxicity of the compound to invertebrates at low levels and the lack of test data on fish, indicate that further investigation of the toxicity of the compound to estuarine and freshwater fish and invertebrates should be made.

References

(1) ACGIH. 1983 TLV's—Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment with Intended Changes for 1983–84. Cincinnati, OH: American Conference of Governmental Industrial Hygienists. p. 16.

(2) Arnts RR, Meeks SA. 1981. Biogenic hydrocarbon contribution to the ambient air of selected areas. Atmos. Environ. 15(9): 1643–1651.

(3) Bakke OM, Scheline RR. 1970. Hydroxylation of aromatic hydrocarbons in the rat. Toxicol. Appl. Pharmacol. 16:691–700.

(4) Bobra AM, Shin WY, Mackay D. 1983. A predictive correlation for the acute toxicity of hydrocarbons and chlorinated hydrocarbons to the water flea (*Daphnia magna*). Chemosphere 12(9/10):1121–1129.

(5) Bos R, Guicherit R, Hoogeveen A. 1977. Distribution of some hydrocarbons in ambient air near Elft and the influence on the formation of secondary air pollutants. Sci. Total Environ. 7(3):269–281.

(6) C&EN. 1984. C&EN's top 50 chemical products & producers. Chem. Eng. News. May 7, 1984. pp. 7–10.

(7) CEH. 1982. Chemical Economics Handbook. Stanford Research Institute, Menlo Park, CA: SRI International. Sections 638.5030A–.5031B.

(8) Cocheo V, Bellomo ML, Bombi GG. 1983. Rubber manufacture: Sampling and identification of volatile pollutants. Am. Ind. Hyg. Assoc. J. 44(7):521–527.

(9) Darnall KR, Lloyd AC, Winer AM, Pitts JN Jr. 1976. Reactivity scale for atmospheric hydrocarbons based on reaction with hydroxyl radical. Environ. Sci. Technol. 10(7):692–696.

(10) EPA. 1984. TSCA Chemical Substances Inventory (public portion). Washington, DC: Environmental Protection Agency.

(11) Fabre R, Truhaut R, Bernuchon J, Louisillier F. 1955. Toxicological studies on solvent substitutes for benzene. III. Studies on isopropylbenzene or cumene. Arch. Mal. Prof. 16:285–299.

(12) Florin I, Rutberg L, Curvall M, Enzell CR. 1980. Screening of tobacco smoke constituents for mutagenicity using the Ames test. Toxicology 15:219–232.

(13) Gerarde HW. 1960. Toxicology and Biochemistry of Aromatic Hydrocarbons. Elsevier Monographs. Amsterdam, The Netherlands: Elsevier Publishing Co.

(14) Gorban GM, Solomin GI, Bizin YP, Sopikov NF, Tikhonova GP, Zinozev VM, Pilipyuk ZI, Gorshunova AI, Chukhno EI. 1978. Study of the toxicity and determination of the threshold of the acute inhalation effect of isopropyl benzene. [In Russian]. Gig. Saint. 10:113. (Toxline Abstract).

(15) Gordon AW, Gordon M. 1981. Analysis of volatile organic compounds in a textile finishing plant effluent. Trans. Ky. Acad. Sci. 42(3–4):149–157.

(16) Gulf. 1984. Unpublished information on cumene submitted by J.F. Dey, Gulf Oil Products Co. July 2, 1984.

(17) Hawley GG. 1977. The Condensed Chemical Dictionary. 9th ed. New York: Van Nostrand Reinhold Co. p. 241.

(18) Hutchinson TC, Hellebust JA, Tam D, Mackay D, Mascarenhas, RA, Shiu WY. 1980. The correlation of the toxicity to algae of hydrocarbons and halogenated hydrocarbons with their physical-chemical properties. Environ. Sci. Res. 16:577–586.

(19) Jenkins LJ Jr., Jones RA, Siegel J. 1970. Long-term inhalation screening studies of benzene, toluene, o-xylene, and cumene on experimental animals. Toxicol. Appl. Pharmacol. 16(3):818–823.

(20) Kappeler TH, Wuhrmann K. 1978. Microbial degradation of the water-soluble fraction of gas oil. II. Bioassays with pure strains. Water Res. 12:335–342.

(21) Kirk-Othmer. 1979. Kirk-Othmer Encyclopedia of Chemical Technology. 3rd ed. Vol. 7. New York: John Wiley & Sons. pp. [illegible]

(22) Kirk-Othmer. 1982. Kirk-Othmer Encyclopedia of Chemical Technology. 3rd ed. Vol. 17. New York: John Wiley & Sons. pp. 374–375.

(23) Koch. 1984. Unpublished information on cumene submitted by D.F. Janes, Koch Refining Co. April 6, 1984.

(24) Lonnema WA, Beller TA, Altshuller AP. 1968. Aromatic hydrocarbons in the atmosphere of the Los Angeles Basin. Environ. Sci. Technol. 2(11):1017–1020.

(25) Lowenheim FA, Moran MK. 1975. Faith, Keyes and Clark's Industrial Chemicals. 4th ed. New York: John Wiley & Sons. pp. 294–297.

(26) Mill T, Richardson H, Headry DG. 1978. Oxidation of organic compounds in aquatic systems: The free radical oxidation of cumene. Aquatic Pollutants: Transformation and Biological Effects. Elmsford, NY: Pergamon Press. pp. 223–236. (Abstract).

(27) Miller DF, Alkezweeny AJ. 1980. Aerosol formation in urban plumes over Lake Michigan. Ann. N.Y. Acad. Sci. 338:219–232.

(28) Monsanto. 1984. Unpublished information on cumene submitted by A.W. Thompson, Monsanto Co. April 27, 1984.

(29) Nielsen GD, Alarie Y. 1982. Sensory irritation, pulmonary irritation, and respiratory stimulation by airborne benzene and alkylbenzenes: Prediction of safe industrial levels and correlation with their thermodynamic properties. Toxicol. Appl. Pharmacol. 65:459–477.

(30) NIOSH. 1984. National Occupational Hazard Survey. Cincinnati, OH: National Institute for Occupational Safety and Health.

(31) OHMTADS. Oil and Hazardous Materials Technical Assistance Data System. Accession No. 7216655.

(32) Omori T, Jigami Y, Minoda Y. 1975. Isolation, identification and substrate assimilation specificity of some aromatic hydrocarbon utilizing bacteria. Agric. Biol. Chem. 39(9):1775–1779.

(33) OSHA. 1978. OSHA Safety and Health Standards for General Industry. 29 CFR 1910. Subpart Z. U.S. Department of Labor. Occupational Safety and Health Administration. Washington, DC: U.S. Govt. Printing Office. OSHA Publ. No. 2206. p. 541.

(34) Robinson D, Smith JN, Williams RT. 1955. Studies in detoxication. 60. The metabolism of alkylbenzenes: Isopropylbenzene (cumene) and derivatives of hydratropic acid. Biochem. J. 59:153–159.

(35) Rogerson A, Shiu WY, Huang GL, Mackay D, Berger J. 1983. Determination and interpretation of hydrocarbon toxicity to ciliated protozoa. Aquat. Toxicol. 3:215–228.

(36) Senczuk W, Litewka B. 1976. Absorption of cumene through the respiratory tract and excretion of dimethylphenylcarbinol in urine. Brit. J. Ind. Med. 33:100–105.

(37) Serebrennikov OA, Ogleznev GA. 1978. Developmental anomalies in the mother-fetus system following exposure to petrochemical products. Deposited Doc.; ISS VINITI. 2667–78; 151–1. (Abstract).

(38) Simmon VF, Kauhanen K, Tardiff RG. 1977. Mutagenic activity of chemicals identified in drinking water. Dev. Toxicol. Environ. Sci. 2:249–258.

(39) Smyth HF, Carpenter CP, Weil CS. 1951. Range-finding toxicity data: List IV. AMA Arch. Ind. Hyg. Occup. Med. 4:119–122.

(40) Snider EH, Manning FS. 1982. A survey of pollutant emission levels in wastewaters and residues from the petroleum refining industry. Environ. Internat. 7:237–256.

(41) SRI. 1983. Directory of Chemical Producers, USA, 1983. Stanford Research Institute, Menlo Park, CA: SRI International. pp. 518–519.

(42) Stuermer DH, Ng DJ, Morris CJ. 1982. Organic contaminants in groundwater near an underground coal gasification site in northeastern Wyoming. Environ. Sci. Technol. 16:582–587.

(43) Tester DJ, Harker RJ. 1981. Groundwater pollution investigations in the Great Ouse basin. Water Pollut. Control 80(5):614–631.

(44) Texaco. 1984. Published and unpublished information on cumene submitted by R.T. Richards, Texaco, Inc. May 14, 1984.

(45) Tsani-Bazaca E, McIntyre A, Lester J, Perry R. 1982. Ambient concentrations and correlations of hydrocarbons and halocarbons in the vicinity of an airport. Chemosphere 11(1):11–23.

(46) USITC. 1983. U.S. International Trade Commission. Synthetic Organic Chemicals, U.S. Production and Sales, 1982. Publ. No. 1422. Washington, DC: U.S. Govt. Printing Office. pp. 27, 37.

(47) Valette G, Cavier R. 1954. Percutaneous absorption and chemical structure. The case of hydrocarbons, of alcohols and of esters. [In French]. Arch. Int. Pharmacol. Ther. 97:232–240.

(48) Van der Linden AC, Van Ravenswaay Claasen JC. 1971. Hydrophobic enzymes in hydrocarbon degradation. Lipids 6(7):437–443.

(49) Verschueren K. 1977. Handbook of Environmental Data on Organic Chemicals. New York: Van Nostrand Reinhold Co. pp. 410–411.

(50) Werner HW, Dunn RC, Von Oettingen WF. 1944. The acute effects of cumene vapors in mice. J. Ind. Hyg. Toxicol. 26:264–268.

(51) Wolf MA, Rowe VK, McCollister DD, Hollingworth RL, Olyen F. 1956. Toxicological studies of certain alkylated benzenes and benzene. AMA Arch. Ind. Health 14:387–398.

2.2.d *Mercaptobenzothiazole.*

Summary of recommended studies. It is recommended that mercaptobenzothiazole be tested for the following:

A. Chemical Fate:

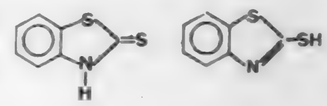
Dissociation constant
Persistence in water and soil
Leaching/migration

B. Environmental Effects:

Acute and chronic toxicity to fish, aquatic invertebrates and plants, and terrestrial plants

Physical and Chemical Information

CAS Number: 149–30–4.
Synonyms: MBT; 2(3H)-Benzothiazolethione; Thiotax®.
Structural Formula:



Empirical Formula: $C_7H_5NS_2$.
Molecular Weight: 167.
Melting Point: 180.2–181.7 °C (REF. 10, Merck, 1976).
Vapor Pressure: $<1.9 \times 10^{-6}$ torr at 25 °C. (Ref. 13, Monsanto, 1984).
Specific Gravity: 1.42 (Ref. 10, Merck, 1976).
Water Solubility: 51 ppm at pH 5. (25 °C); 118 ppm at pH 7. (25 °C); 900 ppm at pH 9. (25 °C) (Ref. 13, Monsanto, 1984).
Log Octanol/Water Partition Coefficient: 2.42 (Ref. 13, Monsanto, 1984).
Description of Chemical: Yellow, monoclinic needles or leaflets.

Rationale for Recommendations

I. *Exposure information—A. Production/use/disposal.* The 1981 production volume of mercaptobenzothiazole (MBT) was reported to be 2,328,000 pounds (Ref. 19, USITC, 1982). Its major use is as a rubber vulcanization accelerator and antioxidant. It is also used as a corrosion inhibitor in cutting oils, an additive in greases, a fungicide, and as a chemical intermediate in the manufacture of other rubber processing chemicals (Refs. 17, 10, 7, and 16, Uniroyal, 1984; Merck, 1976; Hawley, 1981; Santodonato et al., 1976).

The production volume of the sodium salt of mercaptobenzothiazole (NaMBT) was estimated to be 40 million pounds:

32 million pounds in the manufacture of rubber vulcanization accelerators, 4 million pounds as corrosion inhibitors in aqueous cooling systems; and 4 million pounds in the manufacture of MBT (Ref. 11, Monsanto, 1982).

The 1972 production volume of the zinc salt of MTB was estimated to be 4 million pounds (Ref. 18, USITC, 1974). It is used as a rubber accelerator and in fungicidal formulations.

B. *Evidence for exposure.* MBT has been found at a concentration of 30 μg/L in the wastewater from a tire manufacturing plant (Ref. 9, Jungclaus et al., 1976) and was detected in the leachate from a waste dump (Ref. 4, Cox, 1976). In addition to the releases from several manufacturing and processing plants, MBT may be released to the environment from the disposal of tires and rubber products. Substantial releases occur when MBT and the Na and Zn salts leach from the estimated 12 million pounds of vulcanization accelerators that are deposited annually as tire dust along highways (Ref. 16, Santodonato, 1976). At pH <7, MBT and the Na and Zn salts of MBT are expected to dissociate, yielding the ironic form of MBT. According to Aktulga (Refs. 1 and 2, 1971a, 1971b), MBT can be leached out of rubber; the author reported that the MBT was a degradation product of benzothiazyldisulfide, an ingredient of the rubber sample.

Releases may also occur as a result of disposal of waste radiator coolants from automobiles and industrial cooling systems.

II. *Chemical fate information*—A. *Transport.* The occurrence of MBT in the leachate from a waste dump (Ref. 4, Cox, 1976) indicates that it has some mobility.

B. *Persistence.* In tests with Thiotax® (a) trade name for 2-mercaptobenzothiazole), a 1.1 ppm solution had a photolysis half-life of 3.7 hours at midday in August. In the dark, the half-life was approximately 100 hours (Ref. 13, Monsanto, 1984).

In an 8-week biodegradation study (conducted in the dark) using buffered river water and a 1 ppm solution of Thiotax®, there was no biodegradation of Thiotax®. Some chemical degradation was observed (Ref. 13, Monsanto, 1984).

C. *Rationale for chemical fate recommendations.* Because of the expected releases into the aquatic and terrestrial environments, further information on the persistence of MBT and of any degradation product is needed. To estimate the amount of MBT that may leach from landfills, testing to determine leaching and migration rates is recommended.

III. *Biological effects of concern to human health.* Because of the extensive toxicological testing of MBT already completed and presently underway, no additional health effects testing is being recommended at this time.

MBT fed to two hybrid strains of mice at a daily dose of 100 mg/kg for 18 months failed to cause a significant increase in tumors (Ref. 8, Innes et al., 1969). MBT is presently in the histopathology phase of a National Toxicology Program (NTP) gavage carcinogenicity study in rats and mice (Ref. 14, NTP, 1984a).

Analysis of urinary metabolites from rats does intraperitoneally with ^{35}S labeled MBT indicated that the compound underwent conjugation with glutathione and with glucuronic acid. Radiolabeled sulfate was also identified in the urine. Similar results were seen in rabbits and dogs (Ref. Colucci and Buyske, 1965).

NaMBT and MBT were both reported to be negative in *Salmonella* assays in two independent studies (Refs. 13 and 5, Monsanto, 1982; Godek et al., 1984a). In addition, MBT and mercaptobenzothiazole disulfide were negative in the mouse lymphoma assay conducted by this company (Ref. 11, Monsanto, 1982). In addition, MBT was found to be negative in CHO-/HGPRT mammalian cell forward gene mutation assay (Ref. 6, Godek et al., 1984b) and in micronucleus assay (Sorg et al., 1984). MBT was tested by NTP in the *Salmonella* assay at two different laboratories. At one laboratory, it was negative in strains TA98, TA100, TA1535, and TA1537 with and without metabolic activation. At the other laboratory, MBT yielded equivocal results in TA98 with activation; it was negative in TA98 without activation as well as in the other strains mentioned above with and without activation. The chemical is presently being tested for its ability to induce chromosomal aberrations and sister-chromatid exchanges in Chinese hamster ovary cells (Ref. 15, NTP, 1984b).

No toxic or teratogenic effects of MBT were noted in studies in which pregnant rats were injected intraperitoneally with MBT on days 1–15 of gestation (Ref. 5, Hardin et al., 1981).

IV. *Ecological effects of concern*—A. *Short-term effects.* Static, acute toxicity tests have been performed with MBT and NaMBT (Refs. 11, 12, and 13, Monsanto, 1982, 1983, 1984). The following Table 5 summarizes these data; the data demonstrate that MBT and its sodium salt can be highly toxic to some aquatic organisms.

B. *Long-term effects.* No information was found.

C. *Other effects.* No information was found.

D. *Bioconcentration.* The log P of 2.42 for MBT suggests that significant bioconcentration in animals is unlikely. In a 72-hour feeding study with carp, elimination of ^{14}C-MBT was rapid (Ref. 6, Hashimoto et al., 1978).

E. *Rationale for ecological effects recommendations.* The available data demonstrate that MBT and its sodium salt exhibit high acute toxicity to aquatic organisms. Flowthrough tests in which the test concentrations are measured should be performed to quantify the acute toxicity values. The decreases in LC_{50}s over time in many of the acute tests indicate that chronic effects on these species may occur at considerably lower concentrations. Early life-stage tests with fish and life-cycle tests with daphnids should also be performed to estimate the chronic effect levels. Because of the expected widespread terrestrial exposure along roadways, tests to determine the effects on terrestrial plants should also be performed. Because of differences in dissociation rates at different pHs, acute testing at various pHs should be considered.

TABLE 5.—ACUTE TOXICITY OF MERCAPTOBENZOTHIAZOLE (MBT) AND SODIUM MERCAPTOBENZOTHIAZOLE (NaMBT) TO AQUATIC ORGANISMS

Species	LC_{50} (mg/L)					
	MBT			NaMBT[a]		
	24 h	48 h	96 h	24 h	48 h	96 h
Daphnia magna	7.0	4.1	—	44	19	—
Rainbow trout	0.92	0.75	0.75	2.0	1.8	1.8
Bluegill	3.4	2.1	1.5	5.7	4.5	3.8
Fathead minnow	18	13	11[b]	—	—	—
Selenastrum capricornutum	—	—	290	2	1	0.4

[a] Tested as a 50% aqueous solution; if calculated on a 100% active ingredient basis, the LC_{50}s would be 50% lower.
[b] A yellow precipitate was observed in all test solutions.

References

(1) Aktulga A. 1971a. Identification of the leached ingredients from rubber closures by spectrophotometric analysis. Eczacilik Bul. 13(4):49–56.

(2) Aktulga A. 1971b. Identification of the leached ingredients from rubber closures with gel filtration and quantitative estimation of 2-mercaptobenzothiazole. Eczacilik Bul. 13(5):74–80.

(3) Colucci DF, Buyske DA. 1965. The biotransformation of a sulfonamide to a mercaptan and to mercapturic acid and glucuronide conjugates. Biochem. Pharmacol. 14:457–466.

(4) Cox GB. 1976. Determination of 2-mercaptobenzothiazole in waste dump effluent by high pressure liquid chromatography. J. Chromatogr. 116:244–247.

(5) Godek EG, Naismith RW, and Matthews RJ. 1984a. Ames *Salmonella*/microsome plate test: mercaptobenzothiazole. PH 301–CMA–001–83, PH 301–CMA–001–83A. Submitted by Pharmakon Research International, Inc., Waverly, PA to Chemical Manufacturers Association, Washington, DC.

(6) Godek EG, Naismith RW, and Matthews RJ. 1984b. CHO/HGPRT. Mammalian cell forward gene mutation assay: mercaptobenzothiazole. PH 314–CMA–001–83. Submitted by Pharmakon Research International, Inc., Waverly, PA to Chemical Manufacturers Association, Washington, DC.

(7) Hardin BD, Bond GP, Sikov MR, Andrew FD, Beliles RP, Niemeier RW. 1981. Testing of selected workplace chemicals for teratogenic potential. Scand. J. Work Environ. Health 7 (Suppl. 4):66–75.

(8) Hashimoto K, Sasaki Y, Ohara Y, Matsuzana T. 1978. Absorption, distribution and excretion of 2-mercaptobenzothiazole in carp. Bull. Japanese Soc. Sci. Fisheries 44(6):623–629.

(9) Hawley GG. 1981. The Condensed Chemical Dictionary. 10th ed. New York: Van Nostrand Reinhold Co. p. 652.

(10) Innes JRM, Ulland BM, Valerio MG, Petrucelli L, Fishbein L, Hart ER, Pallotta AJ, Bates RR, Falk HL, Gart JJ, Klein M, Mitchell II, Peters J. 1969. Bioassay of pesticides and industrial chemicals for tumorigenicity in mice: A preliminary note. J. Natl. Cancer Inst. 42(6):1101–1114.

(11) Jungclaus GA, Games LM, Hites RA. 1976. Identification of trace organic compounds in tire manufacturing plant wastewaters. Anal. Chem. 48(13):1894–1896.

(12) Merck. 1976. The Merck Index. 9th ed. Rahway, NJ: Merck and Co., Inc. p. 762.

(13) Monsanto. 1982. Unpublished information on the production, uses, toxicity, environmental releases, and aquatic toxicity of MBT and sodium MBT submitted by J. R. Condray, Monsanto Co. July 16, 1982.

(14) Monsanto. 1983. Unpublished aquatic toxicity test data for sodium MBT submitted by B. J. Hill. August 12, 1983.

(15) Monsanto. 1984. Unpublished information submitted by B. J. Hill, Monsanto Co. March 29, 1984.

(16) NTP. 1984a. National Toxicology Program. Toxicology Research and Testing Program Management Status Report, p. 24. Available from Florence Jordan, Mail Drop 16–01, NIEHS, POB 12233, Research Triangle Park, NC 27709.

(17) NTP. 1984b. National Toxicology Program. Annual Plan for Fiscal Year 1984. p. 77.

(18) Santodonato J, Davis LN, Howard PH, Saxena J. 1976. Investigation of selected potential environmental contaminants: Mercaptobenzothiazoles. Syracuse, NY: Syracuse Research Corp. EPA–560/2–76–006.

(19) Sorg RM, Naismith RW, and Matthews RJ. 1984. Genetic Toxicology. Micronucleus test: mercaptobenzothiazole. PH 309A–CMA–001–83. Submitted by Pharmakon Research International, Inc., Waverly, PA to Chemical Manufacturers Association, Washington, DC.

(20) Uniroyal. 1984. Unpublished information submitted by R.J. Dowling, Uniroyal, Inc. May 4, 1984.

(21) USITC. 1974. U.S. Tariff Commission. Synthetic Organic Chemicals, U.S Production and Sales, 1972. TC Publ. No. 681. Washington, DC: U.S. Govt. Printing Office.

(22) USITC. 1982. U.S. International Trade Commission. Synthetic Organic Chemicals, U.S. Production and Sales, 1981. USITC Publ. No. 1292. Washington, DC: U.S. Govt. Printing Office.

2.2.e *Octamethylcyclotetrasiloxane* (9 CI).

Summary of recommended studies. It is recommended that octamethylcyclotetrasiloxane be tested for the following:

A. Chemical Fate:

Water solubility
Octanol/water partition coefficient
Biodegradation

B. Ecological Effects:

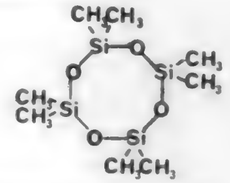
Acute toxicity to fish, aquatic invertebrates, and algae (concentrations of the chemical to be measured during the course of the studies)
Chronic toxicity to aquatic organisms (testing conditional upon results of acute tests)

Physical and Chemical Information

CAS Number: 556–67–2.

Synonyms: SF 1173 (General Electric); Dow Corning® 344 Fluid (95%); Organosilicone Fluid VS–7207 (Union Carbide); Silicone 4–7207 (Union Carbide); OMCTS.

Structural Formula:



Empirical Formula: $C_8H_{24}O_4Si_4$.

Molecular Weight: 296.62.

Melting Point: 17.4–17.6 °C (Ref. 1, Alpha, 1982).

Boiling Point: 175 °C (Ref. 1, Alpha, 1982).

Vapor Pressure: 1 mm Hg at ambient temperature (Ref. 26, Scarbel, 1982).

Specific Gravity: 0.9558 at 20 °C (Ref. 1, Alpha, 1982).

Water Solubility: Less than 1 percent (Ref. 26 Scarbel, 1982); less than 500 ppm (Ref. 15, Isquith and Annelin, 1976).

Octanol/Water Partition Coefficient: No information was found.

Description of Chemical: Clear, colorless liquid (Ref. 11, Griffiths and Parent, 1979).

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal.* Between 20 and 25 million pounds of octamethylcyclotetrasiloxane (OMCTS) were produced in 1982 by one major manufacturer (Ref. 14, Hobbs, 1982). About 80 percent of this production is used internally as a chemical intermediate, apparently in the manufacture of poly(dimethylsiloxane) and related polymers; the remainder is used in a variety of applications (e.g., as constituents of cosmetics, cleaners, antiflatulents, antacids, and antispasmodics) as mixtures from 3 to 98 percent OMCTS. Disposal of liquid manufacturing wastes and liquid wastes from consumer uses is expected to be via waste treatment facilities. Solid wastes are expected to be disposed of in landfills or by incineration.

B. *Evidence for exposure.* OMCTS is manufactured in large volume. Its multiple uses indicate that it may be released over wide geographical areas; therefore, many species or organisms may be exposed to this chemical. Furthermore, polyorganosiloxanes (silicones) have been found in effluents from waste treatment plants (4.8 ppb) and in sediment cores taken from Delaware Bay (1.2 ppm) (Ref. 22, Pellenbarg, 1979). Silicones have also been found in river water (2.0—54.2 μg/L), sediment (0.3 and 5.8 μg/g), and fish (0.36—0.89 μg/g) samples taken from tributaries of the Nagara River, Japan (Ref. 28, Watanabe et al., 1984).

II. *Chemical fate information*—A. *Transport.* OMCTS is volatile and not particularly water-soluble (precise data not available), so it is expected that a good deal of the released chemical may partition to the atmosphere and into soils and sediments. Silicone polymers are less volatile and therefore are expected to partition into soils and sediments only.

B. *Persistence.* Estimations of the half-life ($T_{1/2}$ = 13 days) of OMCTS, using the method of Atkinson (Ref. 4, 1980), indicate that the compound is destroyed in the troposphere and, therefore, is not expected to persist following atmospheric release. Isquith and Annelin (Ref. 15, 1976) attempted to measure the biodegradation rate of OMCTS. The compound persisted; however, there was a problem associated with the chemical's solubility and no attempt was made to determine the level of chemical that was actually solubilized during the course of the test.

C. *Rationale for chemical fate recommendations.* Tests for determining the water solubility, octanol/water partition coefficient, and biodegradation of OMCTS are being recommended for several reasons: Water solubility data are critical to the interpretation of

ecological effects (and biodegradation) data. The octanol/water partition coefficient data are necessary to assist in determining whether or not OMCTS will partition into biota and organic matter in soils and sediments. Confirmation of actual biodegradation is required to determine whether OMCTS can be expected to accumulate in the environment with time. The biodegradation test that has been performed is difficult to interpret, since there is no way of determining the concentrations of the chemical that were actually subjected to such testing.

III. *Biological effects of concern to human health.* Commercial products containing OMCTS have been tested extensively in laboratory animals with no adverse effects. Further testing for health effects is not being recommended at this time.

Acute and subchronic tests with OMCTS administered via the oral, dermal, and inhalation routes showed in most cases no untoward effects (Refs. 20, 29, 30, 21, 11, 24, and 19, McHard, 1961; Wolf, 1956; Weil et al., 1972; Myers et al., 1982; Griffiths and Parent, 1979; Rowe et al., 1948; Janssen, 1974). OMCTS was essentially nonirritating in skin and eye irritation tests (Refs. 9, 29, and 12, Clayton, 1972; Wolf, 1956; Groh, 1978). Chronic studies using Antifoam (5 percent OMCTS) also did not produce any significant effects (Refs. 6, 25, and 8, Carson, 1965, 1966; Rowe et al., 1950; Child et al., 1951). A three-generation study in rats using Antifoam A revealed no treatment-related effects on reproduction, hematology, renal function, and histopathology, and no change in morbidity or tumor incidence (Ref. 27, Statt and Bennett, 1974). OMCTS administered to rats to assess reproductive effects gave no evidence or either inducing chromosomal damage in germinal tissue or resulting in any estrogenic effects (Refs. 16, and 13, Isquith et al., 1982; Hayden and Barlow, 1972). Antifoam A was tested for teratogenic potential in rats with no detectable embryotoxic or teratogenic effects observed in fetuses (Ref. 10, Gongwer et al., 1970). Genotoxicity tests including the Ames *Salmonella*/microsome plate test, the dominant lethal assay, and the mouse lymphoma cell assay using OMCTS did not produce any treatment-related effects (Refs. 18, 17 and 16, Jagannath and Brusick, 1978; Isquith and Whaley, 1979; Isquith et al., 1982).

IV. *Ecological effects of concern*—A. *Acute toxicity.* Acute toxicity tests have been performed with several types of organisms exposed to nominal concentrations of OMCTS. In a 72-hour test with *Daphnia magna*, the LC_{16}, LC_{50}, and LC_{84} were 1.85, 23.4, and 298 ppm, respectively (Ref. 2, Annelin, 1976a). In a test with algae, up to 2,000 ppm (far in excess of the expected water solubility) of OMCTS did not inhibit growth, although there was an unexplained variation in filament weights (Ref. 3, Annelin, 1976b).

In addition, 4-day static bioassays were performed with rainbow trout, bluegill, mummichog, shore crab, and grass shrimp. No effects were observed up to 100 ppm (Ref. 23, Rausina et al., 1976); however, at 1,000 ppm all tests animals were quiescent.

In test performed with the house fly, southern armyworm, Mexican bean beetle, pea aphid, and strawberry spider mite, no toxic effects were observed (Ref. 7, Cerro, 1976).

B. *Long-term toxicity.* No information was found.

C. *Bioconcentration.* No information was found.

D. *Rationale for ecological effects recommendations.* The ecological test results did not indicate a high level of toxicity; however, nominal concentrations or OMCTS were used. In view of the volatile nature of the compound and uncertainty regarding its solubility, the interpretation and validity of these results should be questioned. Retesting should be performed in which concentration levels are determined at several intervals during the testing period.

References

(1) Alpha Catalog. 1982. Ventron Division of Thiokol Corp., Danvers, MA.

(2) Annelin RB. 1976a. Acute toxicity test with *Daphnia magna*-octamethylcyclotetrasiloxane. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(3) Annelin RB. 1976b. Algal assay-bottle test: Octamethylcyclotetrasiloxane. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(4) Atkinson R. 1980. Comments on "predicting gas phase organic molecule reaction rates using linear free energy correlations. I. O(³P) and OH addition and abstraction reactions." J. Chem. Kinet. 12:761–765.

(5) Carson S. 1965. Chronic (3-month) feeding studies with Antifoam A in rabbits. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(6) Carson S. 1966. Chronic (1-year) feeding studies with Antifoam A in rats. Upublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(7) Cerro JE. 1976. Primary insecticidal and miticidal screening of octamethylcyclotetrasiloxane. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(8) Child GP. Paquin HP. Deichmann WB. 1951. Chronic toxicity of the methyl-polysiloxane "Dow Corning Antifoam A" in dogs. AMA Arch. Ind. Hyg. 3:479–482.

(9) Clayton TE. 1982. Silicone Y–7207, range finding toxicity study. Unpublished report submitted by D.L. Heywood, Union Carbide Corp. July 22, 1982.

(10) Gongwer LE, Saatman RA, Hubben K. 1970. Dow Corning Antifoam A (medical grade): A teratogenic potential study in rats. Unpublished report. Submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(11) Griffiths JT, Parent RA. 1979. Dermal acute study in rabbits. Unpublished report submitted by M.P. Scarbel, General Electric Silicone Products. July 15, 1982.

(12) Gorh CL. 1978. Investigation of the concentration of a silicone vapor necessary to elicit threshold reactions in the human eye. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(13) Hayden JF, Barlow SA. 1972. Structure-activity relationships of organosiloxanes and the female reproductive system. Toxicol. Appl. Pharmacol 21:66–79.

(14) Hobbs EJ. 1982. Letter with attachments submitted by Dow Corning Corp. December 16, 1982.

(15) Isquith AJ, Annelin RB. 1976. Biochemical oxygen demand of octamethylcyclotetrasiloxane. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(16) Isquith AJ, Siddiqui WH, Miller BJ, Stanton E. 1982. Evaluation of octamethylocyclotetrasiloxane in the rodent dominant lethal assay. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(17) Isquith AJ, Whaley DP. 1979. Mutagenicity evaluation of Dow Corning 344 Fluid in the Ames bacterial assay. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(18) Jagannath DR and Brusick DJ. 1978. Mutagenicity evaluation of octamethylcyclotetrasiloxane Part I microbial assays, Part II cell culture assays. Unpublished report submitted by R.C. Gerlach, Industrial Health Foundation, Inc. July 6, 1982.

(19) Janssen L. 1974. 90-Day Subacute Aerosol Inhalation Toxicity Study with TX–1015, TS–997 and TX–1013 in Cynomolgus Monkeys. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(20) McHard J. 1961. Results of range finding toxicological tests on dimethyl cyclic tetramer. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(21) Myers RC, DePass LR, Frank FR. 1982. Organosilicone fluid VS–7207, acute inhalation toxicity studies. Unpublished report submitted by D.L. Heywood, Union Carbide Corp. July 22, 1982.

(22) Pellenbarg R. 1979. Environmental poly(organosiloxanes) (silicones). Environ. Sci. Technol. 13:565–573.

(23) Rausina G. 1976. Four-day static aquatic toxicity with TX–1283 in freshwater and saltwater species. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(24) Rowe VK, Spencer HC, Bass SL. 1948. Toxicological Studies on certain commerical silicones and hydrolyzable silane intermediates. J. Indust. Hyg. Toxicol. 30(6):332–353.

(25) Rowe VK, Spencer HC, Bass SL. 1950. Toxicological Studies on certain commercial silicones. II. Two year dietary feeding of "DC Antifoam A" to rats. Arch. Ind. Hyg. Occup. Med. 1:539–544.

(26) Scarbel MP. 1982. Letter with attachments submitted by General Electric Co. July 15, 1982.

(27) Statt WH, Bennett DR. 1974. Pharmacokinetic and metabolic studies on Dow Corning© Antifoams A and M in mice, monkeys and humans. Appendix I. Polydimethylsiloxane—13th Report of FAO/WHO Food Additives Committee. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(28) Watanabe N, Nakamura T, Watanabe E, Sato E, Ose Y. 1984. Distribution of organosiloxanes (silicones) in water, sediments and fish from the Nagara River watershed. Sci. Total Environ. 35:91–97.

(29) Wolf MA. 1956. The results of range finding toxicological tests on octamethylcyclotetrasiloxane. Unpublished report submitted by E.J. Hobbs, Dow Corning Corp. December 16, 1982.

(30) Weil CS, Condra NI, Geary DL, Jr., DeMary LJ. 1972. Silicone Y–7207 range finding toxicity studies. Unpublished report submitted by D.L. Heywood, Union Carbide Corp. July 22, 1982.

2.2.f *Pentabromoethylbenzene. Summary of recommended studies.* It is recommended that pentabromoethylbenzene be tested for the following:

A. Health Effects:

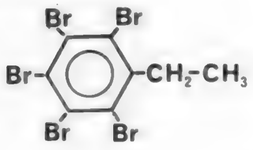
Two-year chronic bioassay
Teratogenicity study

B. Ecological Effecats:

Acute and chronic toxicity to fish, aquatic invertebates, and plants

Physical and Chemical Information

CAS Number: 85–22–3.
Structural Formula:



Empirical Formula: $C_8H_5Br_5$.
Molecular Weight: 501.
Melting Point: 135–138 °C (Ref. 3, Great Lakes, 1984a).
Boiling Point: 371 °C (estimated; Ref. 5, Lyman et al., 1982).
Vapor Pressure: $2–4 \times 10^{-8}$ mmHg at 25 °C (estimated; Ref. 5, Lyman et al., 1982).
Specific Gravity: Approximately 2.7 at 25 °C.
Log Octanol/Water Partition Coefficient: 7.3 (estimated; Ref. 5, Lyman et al., 1982).
Water Solubility: 8 ppb (estimated; Ref. 5, Lyman et al., 1982).
Decription of Chemical: White/off-white powder

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal.* The TSCA Inventory (public portion) reported the 1977 production of pentabromoethylbenzene (PEB) to be between 100,000 and 1,000,000 pounds (Ref. 1, EPA, 1977). Current production data are not publicly available; however, two manufacturers reported publicly that they are currently producing the compound.

PEB is an additive-type flame retardant. Suggested applications include thermoset polyester resins for circuit boards, textiles, adhesives, wire and cable coatings, polyurethanes, and thermoplastic resins (Refs. 2, 3, and 4, Ethyl, 1984; Great Lakes, 1984a, 1984b). A typical concentration level in thermoplastic resins is 12 parts of PEB by weight per 100 parts of resin (Ref. 3, Great Lakes, 1984a). One manufacturer recently reported that production process wastes are disposed of offsite in secure landfills (Ref. 2, Ethyl, 1984).

B. *Evidence for exposure.* Two manufacturers reported limited opportunity for worker exposure because most of the manufacturing process is enclosed; however, they reported that a small number of workers may be exposed to PEB dust during packaging and shipping operations. Consequently, they recommend or require protective equipment for these workers (Refs. 4 and 2, Great Lakes, 1984a; Ethyl, 1984). Consumer exposure to low levels of PEB is possible through direct contact with finished products (e.g., treated textiles) or environmental media contaminated with the compound.

II. *Chemical fate information*—A. *Transport.* PEB's high estimated octanol/water partition coefficient and low water solubility suggest that the compound partitions from water into sediments and has a strong tendency to bioaccumulate. Its low volatility suggests no partitioning into air except as dust particles.

B. *Persistence.* PEB's structure suggests that it is highly resistant to biodegradation and hydrolysis.

III. *Biological effects of concern to human health*—A. *Toxicokinetics and metabolism.* No information was found.

B. *Genotoxicity.* PEB was negative when tested for mutagenicity in *Salmonella* strains TA98, TA100, TA1535, and TA1537 with and without activation (Ref. 8, NTP, 1984).

C. *Short-term effects.* In primary skin irritation and sensitization studies, PEB was not a primary skin irritant or sensitizer (Refs. 3 and 2, Great Lakes, 1984a; Ethyl, 1984). In an inhalation study, rats exposed to PEB for 1 hour at a 2 mg/L concentration in air exhibited increased and then decreased respiration, prostration, salivation, lacrimation, erythema, and decreased motor activities. At 200 mg/L, dyspnea was also observed; no deaths occurred at either concentration (Ref. 3, Great Lakes, 1984a). The oral LD_{50} in unspecified animals has been reported to be greater than 5,300 mg/kg; the inhalation LC_{50}, greater than 200 mg/L; and the dermal LD_{50}, greater than 8,000 mg/kg (Ref. 2, Ethyl, 1984). In a 28-day feeding study, no compound-related effects (except for slightly reduced weight gain) were observed in rats fed 1,000 and 100 ppm of PEB (Ref. 3, Great Lakes, 1984a).

D. *Long-term (chronic) effects.* No information was found.

E. *Reproductive effects and teratogenicity.* No information was found.

F. *Rationale for health effects recommendations.* There is concern for worker exposure to PEB dust during manufacture of the compound, and especially during processing of products treated with PEB. Also, consumers and downstream workers may be dermally exposed to the compound via migration from treated polymeric products and textiles. The extent of these exposures, however, cannot be assessed due to the lack of current publicly available production information. Because of the lack of information on the chronic effects of PEB, and the known toxic effects observed in compounds having a polyhalogenated aromatic moiety, a 2-year chronic bioassay and a teratogenicity study are recommended. The chronic bioassay is recommended rather than short-term tests because the latter do not, in general show a positive association with carcinogenicity for polyhalogenated compounds (Refs. 9, 7, and 6, Rinkus and Legator, 1979; McCann et al., 1975; McCann and Ames, 1976). In addition, teratogenicity testing is recommended because of lack of information.

IV. *Ecological effects of concern*—A. *Short-term (acute effects).* No information was found.

B. *Long-term effects.* No information was found.

C. *Bioconcentration.* PEB's high estimated log P suggests a strong tendency to bioaccumulate. A

structurally related compound, pentabromomethylbenzene (PMB), in a study with juvenile Atlantic salmon (*Salmo salar*) (Ref. 10, Zitko and Carson, 1977), exhibited a fairly low uptake from water (96 hours) and from food (14, 28, and 42 days). Depuration half-lives were 32 and 83 days for uptake from water and food, respectively. It should be noted that 96 hours is a fairly short time for evaluating chemical uptake from water, and that an extended period of testing may have resulted in much higher accumulation. The relatively long depuration half-lives create some concern for the potential for chronic effects.

D. *Rationale for ecological effects recommendations.* Acute and chronic toxicity to aquatic organisms and plants are recommended for the following reasons:

1. The purported and potential uses of PEB are evidence of its probable wide distribution.

2. Data on a structurally related compound pentabromomethylbenzene) indicate that, although low levels of PEB are likely taken up by aquatic organisms, its residence time in the body may be relatively long. This provides presumptive evidence that PEB may have the potential to produce chronic effects.

3. PEB is structurally similar to many halogenated compounds that have appreciable toxicity.

4. The chemical is expected to partition into soils, sediments, and biota after release.

References

(1) EPA. 1977. TSCA Chemical Substances Inventory (public portion). Washington, DC: Environmental Protection Agency.

(2) Ethyl. 1984. Unpublished information on PMB submitted by R.L. Smith, Ethyl Corp. February 1, 1984.

(3) Great Lakes. 1984a. Unpublished information on PEB and PMB submitted by D.L. McFadden, Great Lakes Chemical Corp. January 11, 1984.

(4) Great Lakes. 1984b. Unpublished information on PEB and PMB submitted by D.L. McFadden, Great Lakes Chemical Corp. February 14, 1984.

(5) Lyman WJ, Reehl WF, Rosenblatt DH. 1982. Handbook of Chemical Property Estimation Methods. New York: McGraw-Hill Book Co. Chapters 1, 2, 12, and 14.

(6) McCann J, Ames B. 1976. Detection of carcinogens as mutagens in the *Salmonella*/microsome test: Assay of 300 chemicals: Discussion. Proc. Nat. Acad. Sci. 73:950–954.

(7) McCann J, Choi E, Yamasaki E, Ames B. 1975. Detection of carcinogens as mutagens in the *Salmonella*/microsome test: Assay of 300 chemicals. Proc. Nat. Acad. Sci. 72:5135–5139.

(8) NTP. 1984. National Toxicology Program. NTP testing status on 10 compounds submitted by V. Fung. January 1, 1984.

(9) Rinkus SJ, Legator MS. 1979. Chemical characterization of 465 known or suspected carcinogens and their correlation with mutagenic activity in the *Salmonella typhimurium* system. Cancer Res. 39:3289–3318.

(10) Zitko V, Carson WG. 1977. Uptake and excretion of chlorinated diphenyl ethers and brominated toluenes by fish. Chemosphere 6(6):293–301.

2.2.g. *Sodium N-Methyl-N-Oleoyltaurine.*

Summary of recommended studies. It is recommended that sodium *N*-methyl-*N*-oleoyltaurine be tested for the following:

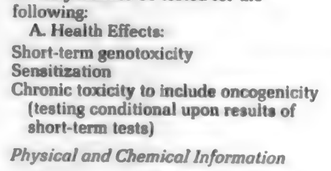
A. Health Effects:
Short-term genotoxicity
Sensitization
Chronic toxicity to include oncogenicity (testing conditional upon results of short-term tests)

Physical and Chemical Information

CAS Number: 137–20–2.

Synonyms: Sodium oleoylmethyltauride; Ethanesulfonic acid, 2-[methyl(1-oxo-9-octadecenyl)amino]-, sodium salt, (Z) (9 Cl).

Structural Formula:



Empirical Formula: $C_{21}H_{40}NO_4S$-Na.

Molecular Weight: 426.

Melting Point: No information was found.

Boiling Point: No information was found.

Vapor Pressure: No information was found.

Specific Gravity: No information was found.

Solubility in Water: No information was found.

Description of Chemical: Fine, white powder (Ref. 5, Hawley, 1981).

Rationale for Recommendations

I. *Exposure information*—A. *Production/use.* It was reported that in 1983 there were nine manufacturers of sodium *N*-methyl-*N*-oleoyltaurine (Ref. 7, SRI 1983). In 1977, the production/importation volume listed in the public portion of the TSCA Inventory was 300,000 to 3.1 million pounds (Ref. 3, EPA, 1984). Current production volumes are not publicly available.

The compound is an anionic surfactant that is widely used as a detergent and wetting agent in pesticidal formulations (Refs. 4, and 5, GAF, 1984; Hawley, 1981). It is also used in textile applications to wash prints and fabrics (Ref. 1, CNC Chemical, 1984), in rug shampoos, and in laundry soaps (Ref. 4, GAF, 1984).

B. *Evidence for exposure.* There is a potential for worker exposure in the textile and pesticide formulation industries. Consumers may be exposed to the salts via the compound's use in products such as household detergents, rug shampoos, laundry soaps, and surface coatings. Consumer exposure is expected to be principally via dermal contact.

II. *Chemical fate information.* Chemical fate testing of sodium *N*-methyl-*N*-oleoyltaurine is not being recommended at this time, since the pertinent chemical fate data allowing decisions to be made with regard to ecological effects testing are known. The compound partitions to the surface of aquatic bodies where it is rapidly biodegraded. In one of several studies, the chemical was found to be degraded by 75 pecent in Chesapeake Bay water within 1–4 days (Ref. 2, Cook and Goldman, 1974).

III. *Biological effects of concern to human health*—A. *Toxicological information.* In mice, the acute LD_{50} via the intravenous route was reported to be 350 mg/kg. At a concentration of 1 pecent in water, the compound caused "severe irritation" when applied to the eyes of rabbits (Ref. 6, Hopper et. al., 1949). No other toxicological information was found.

B. *Rationale for recommendations.* The use of sodium *N*-methyl-*N*-oleoyltaurine in household detegents, rug shampoos, and laundry soaps (Refs. 1 and 4, CNC Chemical, 1984; GAF, 1984) indicates the possibility of widespread, repeated exposure of consumer to the compound. Industrial releases to the atmosphere as fugitive dust from manufacturing and pesticide formulation may also be important from the standpoint of worker exposure. Due to the absence of health data on the compound and the potential for worker and consumer exposure, it is recommended that the compound be tested for short-term genotoxicity, sensitization in appropriate test systems, and chronic toxicity/oncogenicity (conditional upon the results of the short-term tests).

IV. *Ecological effects.* No information was found. The compound is expected to be released to surface waters, where it will partition to air/water, soil/water, and sediment/water interfaces. However, since rapid biodegradation of the compound is expected, testing for ecological effects is not being recommended at this time.

References

(1) CNC Chemical. 1984. Unpublished information of the production and use of N/methyl-N-oleoyltaurine submitted by P. O'Neil, CNC Chemical Co. May 1, 1984.

(2) Cook TM, Goldman CK. 1974. Degradation of anionic detergents in Chesapeake Bay. Chesapeake Sci. 15(1) 52–55.

(3) EPA. 1984. TSCA Chemical Substances Inventory (public portion). Washington, DC: Environmental Protection Agency.

(4) GAF. 1984. Unpublished information on the production and use of N-methyl-N-oleoyltaurine submitted by M. Rybka and H. Feigenbaum, GAF Corp. May 3, 1984.

(5) Hawley GG. 1981. The Condensed Chemcial Dictionary, 10th ed. New York: Van Nostrand Reinhold Co. p. 945.

(6) Hopper SS, Hulpieu HR, Cole VV. 1949. Some toxicological properties of surface-active agents. J. Am. Pharm. Assoc. 38:428–432.

(7) SRI. 1983. Directory of Chemical Producers, USA, 1983. Stanford Research Institute, Menlo Park; CA: SRI International . p. 907

[FR Doc. 84–31162 Filed 11–28–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–53065; TSH–FRL 2694–1]

Premanufacture Notices; Monthly Status Report for August 1984

Correction

In FR Doc. 84–27139 beginning on page 40200 in the issue of Monday, October 15, 1984, make the following corrections:

1. On page 40201, first column, **ADDRESS**, third line "[OPTS–5305]" should read "[OPTS–53065]"

2. On the same page "Table 1. "should read "Table I".

3. On the same page Table I, PMN No. 84–1050, the third column should read "49 FR 33718 (33720) (8–24–84); and PMN No. 84–1065, third column, "do" should read "49 FR 33718 (33722) (8–24–84)".

4. On page 40202, Table II, PMN No. 84–905, second column, insert "resin". after "phenolic"; PMN No. 84–907, second column, insert "resin." after "phenolic"; PMN No. 84–913, second column, "thiazoline" should read "thiasoline"; PMN No. 84–916, second column, "substitued" should read "substituted"; PMN No. 84–927, second column "Do" should be removed; PMN No. 84–929, second column, "mono-Methyl" should read "mono-methyl"; PMN No. 84–936, second column, "Keto-ester" should read "keto-ester"; PMN No. 84–941, fourth column, "Do" should read "October 8, 1984"; PMN No. 84–952, fourth column, "Do" should read "October 13, 1984"; and PMN No. 84–958, fourth column, "Do" should read "October 14, 1984".

5. On page 40203, Table II, PMN No. 84–968, second column, "alkyl" should read "Alkyl"; PMN No. 84–986, second column, first line, "naphthylazo)" should read "naphthylazo)]"; PMN No. 84–988, second column, "salt-" should read "salt="; PMN No. 84–990, second column, second line, "(0, 0'(5)]" should read" (0, 0')(5-)]"; and PMN No. 84–996, second column, "Polyalkyl" should read "Poly alkyl".

6. On the same page, Table III, PMN No. 84–274, "[(1–OXO–2–propenyl) OXY]" should read "[(1-OXO-2-propenyl) OXY]-".

7. On page 40205, Table IV, PMN No. 82–259, fourth column, "1984" should be removed.

8. On page 40206, Table V, PMN No. 84–376, second column, "Do" should read "Generic name: Aryl esters of alkyl dithiocarbamates."; and PMN No. 84–558, third column, "(4803)" should read "(14803)".

BILLING CODE 6560–01–M

[FRL–2727–7]

Notice of Public Meeting on 1984 RCRA Amendments

The Environmental Protection Agency (EPA) will hold a public briefing on December 11, 1984, which will be in the form of a video teleconference to discuss and receive comments on the 1984 amendments to the Resource Conservation and Recovery Act (RCRA). The videoconference will originate in Washington, D.C. and be simultaneously televised to 10 regional satellite sites around the country, as well as a Washington, D.C. site.

A panel of EPA experts in Washington will discuss the major provisions of the bill and provide an opportunity for questions from the audiences. The videoconference will originate from the Biznet Studio in Washington, D.C.

The new law is even more extensive than the original RCRA statute. Among other provisions, it will for the first time, add many small businesses to those which must meet Federal guidelines for managing hazardous wastes.

EPA is inviting national, State and regional environmental officials, together with representatives of industry, environmental interest groups, and the general public to take a closer look at how the new bill will work and how it will affect the management of hazardous waste in this country.

In addition to summarizing the major provisons of the bill, the panel will describe a rule that EPA plans to publish in December. That rule codifies in regulations those requirements specified in the sections which, by their own term, take effect immediately following or shortly after enactment of the 1984 Act. The following provisions covered by the Codification Rule will be discussed:

1. The ban on placement of bulk liquid hazardous waste and non-hazardous liquids in landfills;

2. The permitting and interim status requirements for double-liners and leachate collection systems at surface impoundments and landfills;

3. The re-definition of "regulated unit" for purposes of the ground-water monitoring and response program;

4. The obligation to institute corrective action for solid waste management units at permitted facilities;

5. The requirement to take corrective action beyond a facility's property boundary where needed;

6. The elimination of the double-liner variance from the ground-water monitoring and response program allowed for landfills, surface impoundments and waste piles;

7. The variance from ground-water monitoring allowed for certain engineered structures;

8. The ban on disposal in certain salt dome formations, caves and underground mines;

9. The ban on use of materials mixed with dioxin or other hazardous waste for dust suppressions;

10. The interim measures (i.e., manifest and destination requirements) for small quantity generators producing between 100 and 1000 kilograms of waste per month;

11. The preconstruction ban with the variance for PCB facilities having EPA approvals under TSCA;

12. The restrictions on a facility's permit life;

13. The authority to add conditions to a permit beyond those provided for in regulations;

14. The extension of interim status to facilities that become subject to permitting requirements because of new regulatory requirements;

15. The loss of interim status for facilities failing to submit Part B applications within specific deadlines;

16. The ban on the placement of hazardous wastes in certain cement kilns;

17. The requirement to label hazardous waste fuels;

18. The exclusion for certain wastes burned at resource recovery facilities;

19. The requirements for submission of exposure information about

individual landfills and surface impoundments;

20. The additional criteria (i.e., other constituents or factors) that must be evaluated before a waste can be delisted;

21. The authority to foster innovative research and development by the issuance of special treatment permits;

22. Extending the life of interim authorization for State programs by one year;

23. The requirement that State programs assure the public availability of information;

24. The identification of the new requirements that will go into effect in authorized States prior to State authorization;

25. The requirements concerning recordkeeping for hazardous waste exports;

26. The requirments for generators and owners or operators of treatment, storage and disposal facilities to certify that they have instituted a waste minimization program; and

27. The ban on installation of unprotected steel underground tanks.

A summary of the above provisons will be available at each of the satellite sites. Oral and written comments on these provisions are requested and will be made a part of the Docket for the Codification Rule. EPA also plans to solicit public comment upon publication of the Codification Rule and may revise portions of that rule based on those comments.

A recording (tape) of the public briefing will be made and copies will be available at EPA Headquarters and in each of EPA's 10 Regional Offices (see addresses and contact persons below). The tapes will also be made available for purchase at cost.

Addressees

The location of the satellite sites for viewing and participating in the videoconference are listed below. The meetings are open to the public, but will be limited to the seating capacity of the meeting rooms.

Washington, D.C.: Henry Lay Auditorium, 1615 H Street, NW., Washington, D.C.

EPA Region 1: Sheraton Tara, Massachusetts Turnpike at Rte. 9, Framingham, MA 01701, (617) 879–7200

EPA Region 2: (For New York location please contact EPA Coordinator listed below for Region 2)

EPA Region 3: Philadelphia Marriott, City Line Avenue and Monument Rd., Philadelphia, PA 19131, (215) 667–0200

EPA Region 4: Ramada Inn Airport, 845 N. Central Avenue, Atlanta, GA 30354, (404) 763–3551

EPA Region 5: Westin O'Hare, 61 N. River Rd., Rosemont, IL 60018, (312) 698–6000

EPA Region 6: The Westin Galleria Dallas, 13340 Dallas Pkwy, Dallas, Texas 75240, (214) 934–9494

EPA Region 7: The Marriott (Airport), Kansas City International Airport, Kansas City, MO 64195, (816) 464–2200

EPA Region 8: Marriott Denver West Hotel, 1717 Denver West Blvd., Golden, CO, (303) 279–9100

EPA Region 9: For location in San Francisco please contact EPA coordinator listed below for Region 9

EPA Region 10: Seattle Marriott, SEA–TAC, 3201 South 176th Street, Seattle, WA 98188, (206) 241–2000.

Most of the hotel properties listed above have blocked sleeping rooms for the EPA Video teleconference.

Time

The video conference will begin at 11:00 a.m. Eastern Standard Time (EST). On-air will be from 11:00 a.m. to 1:00 p.m. and 2:00 p.m. to 4:00 p.m. The panel of EPA staff in Washington will move from the studio at 4:00 p.m. to the Henry Lay Auditorium and will continue a general discussion on the provisions of the 1984 amendments. The Agency specifically solicits comments from the attendees on the provisions in the Codification Rule. EPA staff will continue discussions at each of the regional sites as well. Discussions will continue until 5:30 p.m. (EST).

For Further Information on the Videoconference Contact

Gerri Wyer, Office of Solid Waste (WH–562), U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382–4676

Robert J. Knox, Office of Solid Waste (WH–562), U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382–3345

For information and attendance at one of the 10 regional satellite sites contact:

EPA Region 1—Boston, MA: Janet Moebes, Waste Management Branch, U.S. EPA—Region I, John F. Kennedy Federal Bldg., Boston, MA 02203, (617) 223–1911

EPA Region 2—New York, NY: Terry Romas, Air and Waste Mgmt. Division, U.S. EPA—Region 2, 26 Federal Plaza, New York, NY 10278, (212) 264–3083

EPA Region 3—Philadelphia, PA: Rowland Schrecongost, Waste Management Division, U.S. EPA—Region 3, 6th and Walnut Streets, Philadelphia, PA, (215) 597–9492

EPA Region 4—Atlanta, GA: Allan Antley, Waste Management Branch, U.S. EPA Region 4, 345 Courtland Street, NE., Atlanta, GA 30308, (404) 881–3016

EPA Region 5—Chicago, IL: Judy Kertcher, Waste Management Branch, U.S. EPA—Region 5, 230 So. Dearborn Street, Chicago, IL 60604, (312) 353–8512

EPA Region 6—Dallas, TX: Pat Hull, Waste Management Branch, U.S. EPA Region 6, 1201 Elm Street, Dallas, TX 75270, (214) 767–9736

EPA Region 7—Kansas City, MO: Mike Sanderson, Waste Management Division, U.S. EPA Region 7, 324 E. 11th Street, Kansas City, MO 64106, (816) 374–5082

EPA Region 8—Denver, CO: Doris Sanders, Office of External Affairs, U.S. EPA Region 8, 1860 Lincoln Street, Denver, CO 80295, (303) 844–5927

EPA Region 9—San Francisco, CA: Lucy Mlenar, Waste Management Branch, U.S EPA Region, 215 Fremont Street, San Francisco, CA 94105, (415) 454–7472

EPA Region 10—Seattle, WA: Lisa L. Wyer, Waste Management Branch, U.S. EPA Region 10, 1200 6th Avenue, Seattle, WA 98101, (206) 442–2777

For Technical Information on the Codification Provisions Contact: Susan Hughes, Characterization and Assessment Division, Office of Solid Waste (WH–562), U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382–4670.

Additional Information

In addition to the above sites where the videoconference can be viewed, anyone having access to satellite reception equipment can pick up the signal and view the teleconference.

Satellite Transponder Specifications

Name of Program: EPA Teleconference.

Day of Program: December 11, 1984.

Test Time: 8:00 a.m.–9:00 a.m. (EST).

Countdown: 10:30 a.m.–11:00 a.m. (EST). Identified as EPA Teleconference.

Test Program: Biznet News.

Transponder Number: Westar V, Transponder #12X (4180 MH_z/V).

Lee M. Thomas,

Assistant Administrator, Solid Waste and Emergency Response.

[FR Doc. 84–31287 Filed 11–28–84; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Commercial Activity Preview Schedule

ACTION: Notice of Commercial Activity Review Schedule.

SUMMARY: Beginning 30 days from the date of this notice, the motor pool operations at Headquarters EEOC, 2401 E Street, NW., Washington, D.C., will undergo a cost comparision study required by Office of Management and Budget (OMB) Circular Number A–76, subject, "Performance of Commercial Activities," and its Supplement, dated August 4, 1983. This notice is issued in compliance with Part I, Chapter 1, paragraph C1b of the Supplement.

FOR FURTHER INFORMATION CONTACT: Robert P. Hill (202) 634–6971 or Natalie M. Werber (202) 634–7661, Equal Employment Opportunity Commission, Office of Management, Performance Management Division, Room 210, 2401 E Street, NW., Washington, D.C. 20507.

John Seal,

Management Director.

[FR Doc. 84–31285 Filed 11–28–84; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board Membership

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Clyde B. Blandford, Jr., Director of Personnel, Federal Labor Relations Authority, 500 C St., SW., Washington, DC 20424, (202) 382–0751.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, United States Code, requries each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor—along with any recommendations, including recommendations with respect to bonuses—to the appointing authority relative to the performance of the senior executive.

The members of the FLRA performance review board are:

1. Jan K. Bohren, Executive Director/Administrator, FLRA (Chairman of the PRB)
2. David Feder, Assistant General Counsel (Field Mgmt/Legal Policy), FLRA
3. Ernest Russell, National Labor Relations Board
4. Michael D. Sherwin, Civil Aeronautics Board
5. Jacqueline Bradley, Merit Systems Protection Board

Dated: November 20, 1984.

Federal Labor Relations Authority.

Clyde B. Blandford, Jr.,

Director of Personnel.

[FR Doc. 84–31011 Filed 11–28–84; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010684.

Title: Newark Marine Terminal Agreement.

Parties:

The Port Authority of New York and New Jersey (Authority)

Maher Terminals, Inc. (Maher)

Synopsis: Agreement No. 224–010684 provides for the lease of berthing area and an adjacent 48-acre area by the Authority to Maher at Berth No. 17, Port Newark. Maher will use the premises for the handling of vessels carrying lumber, steel and other general cargo. The term of the agreement is for five years and five months.

Agreement No.: 224–010688.

Title: Tampa Marine Terminal.

Parties:

The Tampa Port Authority (TPA)

Tampa Export Company (Tampa Export)

Synopsis: Agreement No. 224–010688 provides for the lease by the TPA to Tampa Export for 6.5 acres at Hooker Point, Tampa. The premises are to be used as a terminal operation for the purpose of processing scrap metal for export by Tampa Export using common carriers by water. The agreement also provides for a two year option for the lease of an additional 3.5 acres of adjacent property. The term of the agreement is for five years. The parties have requested a shortened review period for the agreement.

By Order of the Federal Maritime Commission.

Dated: November 26, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–31314 Filed 11–28–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft FY 1985 Program Guidelines/Application Solicitation.

SUMMARY: The Federal Mediation and Conciliation Service is publishing the draft Fiscal Year 1985 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public and receive public comments. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATE: Comments are due on or before December 31, 1984.

ADDRESS: Send comments to: Peter L. Regner, Director, Labor-Management Grant Programs, FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653–5320.

Labor-Management Cooperation Program Application Solicitation—FY 1985

A. Introduction

The following is the draft announcement for the Fiscal Year 1985 cycle of the Labor-Management Cooperation Program. These guidelines present the fifth year of efforts of the

Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was approved in October 1978.

The Act generally authorized FMCS to:

provide assistance in the establishment and operation of plant, area, public sector, and industrywide labor and management committees which—(A) have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and (B) are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

The Act also prohibited FMCS from awarding any grants or contracts under the following three circumstances:

(1) No assistance can be given for plant labor-management committees unless the employees in that plant are represented by a labor organization and there is in effect at that plant a collective bargaining agreement;

(2) no assistance can be given for an area, public sector, or industrywide labor-management committee unless its participants include any labor organizations certified or recognized as the representative of the employees of an employer participating in such a committee. However, employers whose employees are not represented by a labor organization may participate on such area or industrywide committees; and

(3) no assistance can be given to any committee which FMCS finds to have as one of its purposes the discouragement of the exercise of rights contained in section 7 of the National Labor Relations Act (29 U.S.C. 157) or the interference with collective bargaining in any plant or industry.

With respect to item (2) above, applicants for area, public sector, or industrywide grants should offer committee memberships to every labor organization having a collective bargaining contract with any employer participating on the committee. Any labor organization so desiring may voluntarily elect not to participate on the Committee. Documentation of all this (i.e., the listing of each participating employer and corresponding labor organizations and written declinations by those labor organizations not electing to participate on the committee) should be included as part of the application.

The Program Description and other sections that follow as well as a separately published FMCS Financial and Administrative Grants Manual make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, areawide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section F.

B. Program Description

Objectives

The Labor Management Cooperation Act of 1978 identified the following seven general areas for which financial assistance would be appropriate:

(1) To improve communications between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria and conform to the restrictions noted in Section A (Introdction). These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY85, competition will be open to plant, area, private industry, and public sector committes. In-plant committee applications must offer an innovative or unique effort.

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problems using as much relevant data as possible and discuss the full range of impacts these problems could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problems. This section basically discusses WHY the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail WHAT the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one overall goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g. members represent 70% of the area or plant workforce).

(c) a discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) in addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) a statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) for applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of the past efforts and accomplishments and how they would integrate with the proposed future expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant. The chart should identify months as "month 1, 2" etc., rather than by name of month as the grant start date will not be determined until all applications are reviewed. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for an external evaluation or internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic questions or issues the assessment would examine and what baseline data the committee staff would already have/or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and are willing to personally attend scheduled committee meetings.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating how many employees will be covered or represented through the labor-management committee;

(b) from existing committees, a copy of the existing staffing levels, a breakout of annual operating costs and identification of all sources and levels of financial support;

(c) a detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) an assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) an assurance that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For inplant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's fiscal feasibility vs. its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration and quality of the application; and,

(8) The cost value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, and other qualities that enhance an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, private non-profit labor-management committees, or a labor or management entity on behalf of a committee that will be created through the grant, and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies are not eligible.

Third party private non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee funding are not eligible to apply for funding to continue or expand their prior efforts.

D. Allocations

FMCS has received an FY85 appropriation of $1 million for the Labor-Management Cooperation Program. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that a least two awards will be made in each category (inplant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these aplications are selected for award, the remaining applications will be awarded according to highest score without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY85 appropriation to contract for program support purposes. In addition, $60,000 will be reserved for support of the Third National Labor-Management Conference.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence at least 12 months prior to the submission deadline) will be

for a period of 12 months. If succcessful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio. The total project period will thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period will thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants; up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

In FY85, applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants of existing committees must provide at least 25 percent of the total allowable project costs. All matching funds must be in cash rather than in-kind goods for services. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will also be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/state government funds previously made available for these purposes. Also, under no circumstances will business or labor officials participating on a labor-management committee be paid or otherwise compensated out of grant funds for time spent at committee meetings or time spent in training sessions.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY85 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications must be postmarked no later than May 10, 1985. No applications or supplementary materials can be accepted after the deadline. An originial application, containing numbered pages, plus three copies should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427.

After the deadline has passed, all eligible applications will be reviewed and scored initially by an FMCS Grant Review Board. The Director, Labor-Management Grant Programs, will finalize the scoring and place the application in one of the following three categories: (a) unacceptable for funding, (b) potentially acceptable for funding but funds are unavailable, and (c) recommended for funding.

All FY85 grant applicants will be notified of results, and all grant awards will be made, prior to September 30, 1985. Applications submitted after the deadline dates or that fail to adhere to eligibility or other major requirements will be administratively rejected prior to the convening of the Grant Review Board.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained by contacting Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427, or calling 202/653-5320.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 84-31289 Filed 11-28-84; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Manufacturers Hanover Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York; to engage *de novo* through its subsidiary, Manufacturers Hanover Leasing Corporation, New York, in providing data processing and data transmission services, facilities, data bases, and access to such services, facilities and data bases. All such data processing services would be restricted to financial, banking and economic data in accordance with written agreements so describing and limiting the services. The facilities would be designed, marketed and operated for the processing and transmission of such data, and any hardware provided in connection with these services would be offered only in conjunction with software that had been designed and marketed for the processing and transmission of such data. In addition, the general purpose hardware would not constitute more than 30 percent of the offering package.

Board of Governors of the Federal Reserve System, November 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31290 Filed 11-28-84; 8:45 am]

BILLING CODE 6210-01-M

Sweetwater Valley Corp.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 20, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Sweetwater Valley Corporation*, Sweetwater, Tennessee; to acquire 80 percent of the voting shares of City and County Bank of McMinn, Athens, Tennessee.

Board of Governors of the Federal Reserve System, November 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31288 Filed 11-28-84; 8:45 am]

BILLING CODE 6210-01-M

United Community Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *United Community Financial Corporation*, Wayland, Michigan; to acquire A.H. Johnson Agency, Inc., Wayland, Michigan, thereby engaging in general insurance sales in a town with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, November 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31291 Filed 11-28-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 84-0986—Triton Group Limited's proposed acquisition of voting securities of Simplicity Pattern Company, Incorporated, (Maxxam Group Incorporated, UPE).	Nov. 2, 1984.
(2) 84-1084—Mueller Company's proposed acquisition of assets of Valley Industries, Incorporated.	Do.
(3) 84-1085—Jostens, Incorporated's proposed acquisition of voting securities of Hazel, Incorporated, (Ernest Hazel, III, UPE).	Do.
(4) 84-1099—Dawn Chemical Company's proposed acquisition of assets of The Sherwin-Williams Company.	Do.
(5) 84-1100—Sealed Power Corporation's proposed acquisition of voting securities of Owatonna Tool Company.	Do.
(6) 84-1119—Blue Bell, Incorporated's through the Blue Bell Savings Profit Sharing and Retirement Plan proposed acquisition of voting securities of Blue Bell Incorporated.	Do.
(7) 84-1076—Republic Health Corporation's proposed acquisition of voting securities of Health Resources Corporation of America.	Nov. 6, 1984.

Transaction	Waiting period terminated effective
(8) 84-1079—CBS Incorporated's proposed acquisition of voting securities of Tri-Star Pictures, Incorporated, a newly formed joint venture corporation.	Do.
(9) 84-1080—Time Incorporated's proposed securities of Tri-Star Pictures, Incorporated, a newly formed joint venture corporation.	Do.
(10) 84-1082—The Coca-Cola Company's proposed acquisition of voting securities of Tri-Star Pictures, Incorporated, a newly formed joint venture corporation.	Do.
(11) 84-1086—Houston Natural Gas Corporation's proposed acquisition of voting securities of Zapata Gulf Marine Corporation, a joint venture.	Nov. 7, 1984.
(12) 84-1087—Zapata Corporation's proposed acquisition of voting securities of Zapata Gulf Marine Corporation, a joint venture.	Do.
(13) 84-1088—Halliburton Company's proposed acquisition of voting securities of Zapata Gulf Marine Corporation, a joint venture.	Do.
(14) 84-1044—Massachusetts Fund's proposed acquisition of voting securities of Keystone Custodian Fund, Series K-1.	Do.
(15) 84-1086—Lankenau Hospital Foundation's proposed acquisition of assets of Main Maternity Foundation.	Do.
(16) 84-1105—Royal Dutch Petroleum Company's proposed acquisition of assets of United States Steel Corporation.	Do.
(17) 84-1129—Triton Group, Limited's proposed acquisition of voting securities of Republic Corporation.	Do.
(18) 84-1137—Raffinerie Tirlemontoise, S A's proposed acquisition of voting securities of Jean d' Arc Company.	Do.
(19) 84-0987—Marcam Group Incorporated's proposed acquisition of voting securities of Triton Group, Ltd., Ratmas del Mar Company and assets of Triton.	Nov. 8, 1984.
(20) 84-1117—Blue Cross and Blue Shield of George/Columbus, Incorporated's proposed acquisition of assets and voting securities of Blue Cross and Blue Shield of George/Atlanta, Incorporated.	Do.
(21) 84-1056—Schlumberger Limited's proposed acquisition of voting securities of Fluid Rentals Company.	Nov. 9, 1984.
(22) 84-1103—Home Owners Federal Savings & Loan's proposed acquisition of voting securities of Knutson Mortgage and Financial Corporation, The Knutson Companies, Inc., (Donald T. Knutson, UPE).	Do.
(23) 84-1106—Price Communications Corporation's proposed acquisition of assets of TV Broadcasting Stations, Week-TV, Peoria and KRCF-TV, Jefferson City, (Kansas City Southern Industries, Incorporated, UPE).	Do.
(24) 84-1134—Fosseo Minerep PLC's proposed acquisition of voting securities of Gibson-Homans Company.	Do.
(25) 84-1136—Goldblatt Bros., Incorporated's proposed acquisition of assets of Household International, Incorporated.	Do.
(26) 84-1138—Macmillan Incorporated's proposed acquisition of assets of The School Division of Harper & Row Publishers, Incorporated.	Do.
(27) 84-1140—Holiday Inns, Incorporated's proposed acquisition of assets of San Francisco Chatman Associates.	Do.
(28) 84-1068—Great Northern Nekoosa Corporation's proposed acquisition of voting securities of The Chesfield Paper Company, (Alan E. Lang, UPE).	Nov. 15, 1984.
(29) 84-1133—Eastman Kodak Company's proposed acquisition of voting securities of Sun Microsystems, Inc..	Do.
(30) 84-1091—Graham Resources Incorporated's proposed acquisition of assets of Texas International Company.	Nov. 16, 1984.
(31) 84-1115—Sixon Corporation's proposed acquisition of assets of certain oil and gas producing properties in Yoakum County, TX., and carbon dioxide producing properties in New Mexico and Colorado, Cornell Oil Company, (Nancy C. McGee, UPE)	Do.
(32) 84-1124—Whitbread and Company, PLC's proposed acquisition of voting securities of The Buckingham Corporation, Beatrice Companies, Incorporated, UPE).	Do.
(33) 84-1126—Allied Corporation's proposed acquisition of voting securities of Bendix Systems, Incorporated, (Marcel R. Caldera, UPE).	Do.
(34) 84-1146—Unocal Corporation's proposed acquisition of voting securities of NEC Acquisition Company, (Diamond Shamrock Company, UPE).	Do.
(35) 84-1160—The Home Depot Incorporated's proposed acquisition of voting securities of Bowater Home Center, Incorporated, (Bowater, Incorporated, UPE).	Do.
(36) 84-1170—Masco Corporation's proposed acquisition of voting securities of Acqua Glass Corporation, (E. Benard Blasingame, UPE).	Do.
(37) 84-1171—E. Benard Blasingame's proposed acquisition of voting securities of Masco Corporation.	Do.

Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-31281 Filed 11-28-84; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Office of Federal Supply and Services

Federal Hotel/Motel Discount Directory, January 1985 Edition; Notice of Availability

The General Services Administration (GSA) announces the seventh edition of the Federal Hotel/Motel Discount Directory, which is scheduled for publication in January 1985. The directory will include over 4,300 hotels and motels in more than 1,448 domestic and foreign cities (an increase of 857 establishments and 248 cities over the January 1984 directory), and will provide information to Federal travelers to assist them in securing the most economical lodging available. The directory will include:

1. Discount lodging rates effective for 1 year;

2. Types of accommodations and facilities available to Federal travelers, such as accommodations for handicapped persons, free parking, free limousine service, and whether restaurants are located on the facility's premises;

3. Whether establishments accept the Diners Club charge cards;

4. Whether establishments guarantee the published discount rates; and

5. Information on where agencies or individual Federal travelers may obtain tax exemption certificates.

Agencies are encouraged to "ride" GSA's printing requisition and to order a sufficient supply of directories to satisfy their headquarters and field office needs for 1985. This **Federal Register** notice will be the only announced opportunity to "ride" GSA's printing requisition for the 1985 directory.

Agencies should submit a Standard Form (SF) 1, Consolidated Printing and Binding Requisition, citing the title of the directory, quantity desired, and a reference to GSA's printing requisition number 5-00204. The completed SF 1 should be sent to the Government Printing Office (GPO), Planning Service, Room 836, Washington, DC 20402, no later than December 7, 1984.

Single copies may be obtained over-the-counter at GPO bookstores, by calling the GPO order desk at (202) 783-3238 (FTS not available), or by writing to the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The cost of the directory will be announced by GPO at the time of publication.

By promoting and supporting the GSA Hotel/Motel Discount Directory program within your agency, you will help to reduce significantly the lodging costs to Federal travelers. GSA will continue its effort to constantly expand the number of discount lodging establishments and the number of cities where discount lodgings are available and to seek greater discounts for the Federal travelers.

Dated: November 20, 1984.

James J. Grady, Jr.,

Director of Policy and Agency Assistance, Office of Federal Supply and Services.

[FR Doc. 84-31284 Filed 11-28-84; 8:45 am]

BILLING CODE 6820-24-M

National Archives and Records Service

Advisory Committee on Preservation; Meeting

Notice is hereby given that the Executive Committee of the Advisory Committee on Preservation will meet on Tuesday, January 22, 1985, from 10:00 a.m. to 5:00 p.m. in Room 105 of the National Archives Building, Washington, D.C.

The agenda for the meeting will be:

1. Review of the Archivist's comments on the Committee's recommendations concerning preservation policies and practices at the National Archives.

2. Review of conservation program.

The meeting will be open to the public. For further information, call Alan Calmes on 202-523-3159.

Dated: November 14, 1984.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 84-31283 Filed 11-28-84; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1985 Through September 30, 1987

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: This notice announces the "Federal percentages" and "Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Title XIX of the Social Security Act (the Act) exists in each jurisdiction, title IV-A in all jurisdictions except American Samoa and the Northern Mariana Islands, titles I, X, and XIV operate only in Guam and the Virgin Islands, while title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1101(a)(8) and 1905(b) of the Act require the Secretary of Health and Human Services to publish these percentages each even-numbered year. The Secretary is to figure the percentages, by formulas in those sections of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentage to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assistance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of section 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

DATES: The percentages listed will be effective for each of the eight quarter-year periods in the period beginning October 1, 1985 and ending September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Emmett Dye, Office of Family Assistance, Social Security Administration, Room 2227, Switzer Building, 330 C Street SW., Washington, D.C. 20201, Telephone (202) 245-9234.

(Catalog of Federal Domestic Assistance Program Nos. 13.808—Assistance Payments—Maintenance Assistance (State Aid); 13.714—Medical Assistance Program)

Dated: November 26, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1985-SEPTEMBER 30, 1987 (FISCAL YEARS 1986 AND 1987)

State	Federal percentages	Federal medical assistance percentages
Alabama	68.05	72.30
Alaska	50.00	50.00
American Samoa	50.00	50.00
Arizona	59.08	62.26
Arkansas	65.00	73.83
California	50.00	50.00
Colorado	50.00	50.00
Connecticut	50.00	50.00
Delaware	50.00	50.00
District of Columbia	50.00	50.00
Florida	51.29	56.16
Georgia	62.27	65.05
Guam	50.00	[1] 50.00
Hawaii	50.00	51.00
Idaho	65.00	69.36
Illinois	50.00	50.00
Indiana	55.65	57.62
Iowa	54.34	56.00
Kansas	50.00	50.00
Kentucky	65.00	70.23
Louisiana	68.78	73.81
Maine	60.00	64.08
Maryland	50.00	50.00
Massachusetts	50.00	50.00
Michigan	51.99	56.76
Minnesota	50.00	53.41
Mississippi	65.00	78.42
Missouri	56.24	60.62
Montana	65.64	66.36
Nebraska	53.26	57.11
Nevada	50.00	50.00
New Hampshire	50.00	54.82
New Jersey	50.00	50.00
New Mexico	65.00	68.94
New York	50.00	50.00
North Carolina	65.00	66.18
North Dakota	50.13	55.12
Northern Mariana Islands	50.00	[1] 50.00
Ohio	55.66	58.30
Oklahoma	54.66	57.56
Oregon	57.26	61.54
Pennsylvania	51.91	55.72
Puerto Rico	50.00	[1] 50.00
Rhode Island	51.48	56.33
South Carolina	65.00	72.70
South Dakota	54.24	57.62
Tennessee	65.00	70.20
Texas	50.00	53.56
Utah	65.00	72.62
Vermont	53.40	57.06
Virgin Islands	50.00	[1] 50.00
Virginia	50.00	53.14
Washington	50.00	50.06
West Virginia	65.00	71.53
Wisconsin	52.82	57.54
Wyoming	50.00	50.00

[1] For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[FR Doc. 84-31256 Filed 11-28-84; 8:45 am]

BILLING CODE 4190-11-M

Health Resources and Services Administration

Availability of Funds for Maternal and Child Health Projects

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are now available for grants for carrying out the following activities: special Maternal and Child Health (MCH) projects of regional and national significance which contribute to the improvement of services for mothers, children and handicapped children; MCH research and training projects; genetic disease testing, counseling and information projects; and hemophilia diagnostic and treatment centers. Awards will be made under the program authority of section 502(a) of the Social Security Act, as

amended by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), which is known as the Maternal and Child Health Federal Set-Aside Program. Because of the diverse nature of the section 502(a) grants and of their varying funding cycles, HRSA, through this notice, invites potential applicants to inquire about program guidelines and specific application requirements for the particular grant in which they are interested and then to make their applications for funding.

DATE: Dates by which applications must be received differ for the several categories of grants, but range from March 1 to August 1, 1985, with most deadlines occurring in March and April. Specific information on filing deadlines will be included in the program guidelines which will be mailed to interested applicants as part of the application materials. Interested applicants should make their inquiries to the address above as soon as possible.

FOR FURTHER INFORMATION CONTACT: Potential applicants wishing to inquire about possible grant support should address their inquiries *in writing* to the Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery and Assistance, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2170.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 revised Title V of the Social Security Act to establish the Maternal and Child Health Services Block Grant. Between 10 and 15 percent of the funds appropriated for Title V in each fiscal year are to be retained by the Secretary for the award of grants for the purposes specified above. These programs were previously supported under sections 503(2), 504(2), 511 and 512 of the Social Security Act and under sections 1101 and 1131 of the Public Health Service Act as in effect prior to the enactment of Pub. L. 97–35.

Approximately $15.0 million is anticipated to be available for the support of new and competitive renewal projects. Of the total available, approximately $4.0 million has been allocated for training, $2.0 million for research, $1.6 million for genetics, $.6 million for hemophilia and $6.8 million for special MCH improvement projects.

Consistent with the statutory purpose of improving maternal and child health, the Department will examine applications for funds under the above categories (with the exception of hemophilia) to determine the extent to which they will promote improvements in maternal and infant health care and will deal with associated problems, including the unacceptably high rates of low birth weight, neonatal and postneonatal mortality, and the barriers to initiation and continuation of breastfeeding. Funds also will be available for the development of health promotion and prevention activities for children, adolescents and their families, social services in support of the needs of severely handicapped children, and improvements in services for the handicapped and chronically ill child and young adult.

In terms of what types of entities may apply for the various types of set-aside grants, it should be noted that the statute at section 502(a)(2) provides that training grants may be made only to public or nonprofit private institutions of higher learning and that research grants may be made only to public or nonprofit private institutions of higher learning or to nonprofit agencies and organizations engaged in research or in maternal and child health or crippled children's programs. Under the applicable provisions of 42 CFR Part 51d, governing comprehensive hemophilia diagnostic and treatment center grants, only public and nonprofit private entities are eligible to receive such grants (see 42 CFR 51d.101). Similarly, with respect to genetic diseases testing and counseling program grants, only public and nonprofit private entities are eligible to receive such grants (see 42 CFR 51f.103). There are no statutory or regulatory limitations on the type of entity which may apply for special MCH improvement project grants.

All requests for application information must be in writing and must specify clearly the type of applicant organization or agency and the specific type of project for which information is desired. It is essential that all interested applicants responding to this announcement specify one of the following activities as the primary interest of their request:

(1) research;
(2) training;
(3) genetic disease testing, counseling and information;
(4) hemophilia diagnostic and treatment centers; or
(5) special MCH improvement projects, e.g., those which test or show the effectiveness of a given approach or technique in the provision of maternal and child health care.

A Notice of Proposed Rulemaking (NPRM) proposing rules for implementing this program was published on January 12, 1983 (48 FR 1323). That NPRM proposes revising 42 CFR Part 51a (Grants for Maternal and Child Health and Crippled Childrens Services), Part 51d (Grants for Hemophilia Treatment Centers), and Part 51f (Project Grants for Genetics Diseases Testing and Counseling Programs) by eliminating repetitive and unnecessary provisions in those regulations and by providing for a single regulation to govern the various project activities included in the set-aside program. The comment period on the NPRM ended on February 11, 1983.

On June 25, 1982, 42 CFR Parts 51a, 51d and 51f, which were initially issued under the authorities of Title V of the Social Security Act and sections 1101 and 1131 of the Public Health Service Act, as in effect prior to the 1981 Public Law 97–35 amendments, were amended to make them applicable to projects awarded under the new section 502(a) authority (see 47 FR 27824). The preamble to that amending document states that until a concise new regulation governing the set-aside program can be developed, the amended regulations issued under the former categorical authorities (42 CFR Parts 51a, 51d and 51f) are to govern the award of set-aside funds. However, the Department notes that 42 CFR Part 51a was removed from the Code of Federal Regulations effective October 1, 1982 (see 47 FR 48593).

The MCH program is listed as No. 13.110 in the OMB *Catalog of Federal Domestic Assistance.*

Dated: November 21, 1984.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 84–31296 Filed 11–28–84; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Clear Creek Shale Oil Project; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of record of decision.

SUMMARY: The purpose of this notice is to announce the availability of the Record of Decision (ROD) for the Clear Creek Shale Oil Project. The decision is to implement the Agency's Preferred Alternative as designated in the Final EIS.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has decided to approve the Agency's Preferred Alternative as designated in the FEIS dated October 28, 1983. The preferred alternative is the Fruita I configuration at a 100,000 barrel-per-day production rate. The ROD summarizes the EIS scoping process, alternatives considered, components of the preferred alternative, decision rationale, mitigation, and monitoring.

Availability: Single copies of the ROD may be obtained from: Chevron EIS Team Leader, Bureau of Land Management, 764 Horizon Drive, Grand Junction, CO 81504, (303) 243–6552, FTS 323–0811.

Dick Freel,

Associate District Manager, Grand Junction District.

[FR Doc. 84–31270 Filed 11–28–84; 8:45 am]

BILLING CODE 4310–JB–M

[W–15488 (WY)]

Wyoming; Partial Termination of Classification of Public Lands for Multiple Use Management

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: This action partially terminates a classification of public land for multiple use management published December 9, 1970, insofar as it affects 10 acres located in the Pryor Mountain Wild Horse Range.

FOR FURTHER INFORMATION CONTACT: James Binando, Chief, Branch of Land Resources, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 657–6092.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the Bureau of Land Management classification for multiple use management is hereby partially terminated insofar as it affects the following described lands:

Sixth Principal Meridian

T. 58 N., R. 95 W.,
Sec. 22, S½NW¼SW¼SW¼ and N½SW¼SW¼SW¼.

The area described contains 10.00 acres in Big Horn County, Wyoming.

The above referenced classification segregated the described public land from appropriation under the agricultural land laws (43 U.S.C. Parts 7 and 9; 25 U.S.C. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171) and from appropriation under the mining laws (30 U.S.C. 21). The lands have been and remain open to mineral leasing.

At 8 a.m. on November 30, 1984, the segregative effect imposed by the classification will terminate insofar as they affect the above described public lands. The lands described above shall be open to operation of the public land laws generally, subject to valid existing rights and provisions of existing withdrawals and the requirements of applicable laws. All valid applications received prior to 8 a.m. on November 30, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. Appropriation of the lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such deteminations in local courts.

Marvin LeNoue,

Acting State Director.

[FR Doc. 84–31305 Filed 11–28–84; 8:45 am]

BILLING CODE 4310–DN–M

[N–39140]

Notice of Realty Action—Competitive Sale; Nevada

The Notice of Realty Action published in the **Federal Register** on August 9, 1984, identified 342.85 acres as suitable for disposal through sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, 1713.

The Notice of Realty Action is amended to include the following: Immediately following the legal description, the statement, "The lands described are hereby segregated from appropriation under the public land laws including the mining laws, pending disposition of this action," is inserted.

The following information is included under Paragraph 10 as Items 4 and 5:

(4) An easement 60 feet in width to accommodate the existing highway frontage road within the NE¼S½ Lot 1 SW¼, E½NW¼NW¼SE¼ and the SW¼NW¼SE¼,

(5) Easements 33 feet in width along the:

(a) Southern boundary of the E½SW¼N½ Lot 1 SW¼
(b) Eastern boundary of Lot 11
(c) Northern boundary of the N½SW¼S½ Lot 1 SW¼
(d) Southern boundary of the NE¼S½ Lot 1 SW¼
(e) Southern boundary of the E½NE¼NW¼SE¼
(f) Southern boundary of the E½NW¼NW¼SE¼
(g) Northern boundary of the S½NW¼SE¼ beginning at the right-of-way for U.S. Highway 395
(h) Northern boundary of the SW¼SW¼SE¼.

The last paragraph of the Notice of Realty Action will be amended as follows: Tracts of public land not sold at the first offering will remain available for purchase on a continuing, over-the-counter, "first-come first-served" basis at the appraised fair market value until sold or until other designation or disposition.

For a period of 45 days from the first publication of this notice amendment, interested parties may submit comments to the District Manager, Carson City District Office of the Bureau of Land Management, 1050 E. William Street, Suite 335, Carson City, Nevada 89701. The lands will be offered for sale no sooner than 60 days after the date of this notice amendment. Any adverse comments will be evaluated by the District Manager and forwarded to the Nevada State Director, Bureau of Land Management, who may vacate or modify the realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated this 21st day of November 1984.

Thomas J. Owen,

District Manager, Carson City District.

[FR Doc. 84–31308 Filed 11–28–84; 8:45 am]

BILLING CODE 4310–HC–M

[W–85251 and W–85252]

Wyoming; Reality Action; Modified Competitive Sale of Public Lands in Weston County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified Competitive Sale of Land Parcels in Weston County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for

less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law.

The planning document, environmental assessment/land report, and memorandum and letters of Federal, state, and local contacts concerning the sale are available for review at the Bureau of Land Management, Newcastle Resources Area Office. All bids and requests for information should be sent to BLM, Newcastle Resources Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (Phone (307) 746–4453).

The land described below is hereby segregated from all appropriation under the public land laws including the mining laws after publication in the **Federal Register**. The segregative effect will terminate when the patent is issued or 270 days from the date of publication of this notice.

Parcels

Parcel No.	Legal description	Acreage	Appraised value
W-86259	T. 47 N., R. 61 W., 6th P.M. sec. 14, NE¼NW¼	±0.00	$8,000
W-86262	T. 47 N., R. 61 W., 6th P.M. sec. 19, NE¼NW¼	±0.00	3,000

Sale Procedures

1. The sale will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process to adjoining landowners. The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted or terminated.

2. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a State, State instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands or interests in Wyoming.

3. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 4:30 p.m. on February 27, 1984, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked in the front lower left-hand corner with the words, "Public Land Sale, W–86259, Sale Held February 27, 1985" or "Public Land Sale, W–86262, Sale Held February 27, 1985."

4. All sealed bids must be accompanied by a payment of not less than ten (10) percent of the total bid. Each bid and any final payment must be accompanied by certified check, postal money order, bank draft, or cashier's check made payable to: DEPARTMENT OF THE INTERIOR-BLM.

5. Failure to pay the remainder of the full price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next high bid will be honored or the land will be reoffered under competitive procedures. If two (2) or more envelopes containing valid bids of the sale amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

6. If any parcels fail to sell, they will be reofferd for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11:00 a.m., on the fourth (4th) Wednesday of each month beginning March 27, 1985. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A reservation for ditches or canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. Oil and Gas lease W–75184 will remain in effect until terminated by the operation of the existing laws.

4. The successful bidder on W–86259 agrees that he takes the real estate subject to the authorized permanent range improvements of David E. Rawhouser, holder of range improvement project authorizations No. 4263 (a fence) and No. 4271 (2 reservoirs). David E. Rawhouser shall receive compensation from the successful bidder for the adjusted value of the terminated range improvements. Compensation shall not exceed the fair market value of the terminated portion of the permittee's interest (100 percent) therein. If the successful bidder and David E. Rawhouser are unable to agree on the compensation for the permanent range improvements, then the authorized officer shall determine the adjusted value. David E. Rawhouser may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value. If David E. Rawhouser so elects, he shall be allowed 180 days from the date of cancellation of range improvement project authorization No. 4263 to salvage material owned by him and perform rehabilitation measures necessitated by removal.

5. The patentee on W–86262 takes the real estate subject to the grazing use of David M. Nahrgang, holder of grazing authorization No. GR–8246. The rights of David M. Nahrgang to graze livestock on the real estate according to the conditions and terms grazing authorization No. GR–8264 shall cease two (2) years from the date of this Notice of Realty Action. The patentee is entitled to receive annual grazing fees from David M. Nahrgang in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register**.

6. The successful bidder on W–86262 agrees that he takes the real estate subject to the authorized permanent range improvement of David M. Nahrgang, holder of range improvement project authorization No. 4260 (a fence). David M. Nahrgang shall receive compensation from the successful bidder for the adjusted value of the terminated range improvement. Compensation shall not exceed the fair market value of the terminated portion of the permittee's interest (100 percent) therein. If the successful bidder and David M. Nahrgang are unable to agree on the compensation for the permanent range improvement, then the authorized officer shall determine the adjusted value. David M. Nahrgang may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value. If David M. Nahrgang so elects, he shall be allowed 180 days from the date of cancellation of range improvement project authorization No. 4260 to salvage material owned by him and perform rehabilitation measures necessitated by removal.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: November 23, 1984.

James W. Monroe,

Casper District Manager.

[FR Doc. 84-31267 Filed 11-28-84; 8:45 am]

BILLING CODE 4310-22-M

Roswell District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Roswell District Advisory Council.

DATE: January 9, 1985, beginning at 10:00 a.m. A public comment period will be held at 2:00 p.m..

Location: Roswell Public Library, 301 N. Pennsylvania Avenue, Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: Richard Bastin, Associate District Manager, or Guadalupe Martinez, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201 (505) 622–7670.

SUPPLEMENTARY INFORMATION: The proposed agenda will include: (1) Hunter Access Program Update, (2) Volunteer Program, (3) Planning Update, West Roswell EIS and West Carlsbad EIS, (4) Impact of the Federal Oil and Gas Royalty Mangement Act, (5) Current Status of the Grazing Fee Study, Subleasing Issue and CMA Pogram, (6) Brantley Dam Land Exchange, (7) Loco Hills Update, (8) Trespass on Stock Grazing Homestead Act Lands, (9) Fort Stanton Airport Update, and (10) Report on Realty Actions Proposed for FY 1985 (Exchanges, Withdrawals, and Sales).

The meeting is opened to the public. Interested persons may make oral statements to the Council during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the District Manager by January 2, 1985. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Earl Cunningham,

District Manager, Roswell, New Mexico.

[FR Doc. 84-31270 Filed 11-28-84; 8:45 am]

BILLING CODE 4310-FB-M

[CA 16677]

California: Realty Action; Sale of Public Land in Calaveras County, CA

The following described land has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed sale is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713). The parcel as described below will be offered by direct sale to the City of Angels at no less than the appraised fair market value of $37,500. The sale will not be offered for at least 60 days after the publication of the notice in the **Federal Register**.

Mount Diablo Meridian, California

T. 2 N., R 13 E.,
Sec. 10, Lot 13.
Containing 6.1 acres more or less.

The parcel was previously a portion of approximately 22.64 acres under Recreation and Public Purpose (R&PP) Patent 04–83–0016 issued to the City of Angels in 1982. A recent inadvertent violation in a condition of the R&PP patent resulted in a reversion of the lands back to the United States. In order to protect existing uses of the land by the City, the land will be offered by direct sale.

Sale terms and conditions are: A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2440.4, the above land will be segregated from appropriation under the mining laws, but excepting the mineral leasing laws for period of not-to-exceed two years, or until the land is sold, whichever occurs first. The segregation effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the two-year period.

It has been determined that the land is without known mineral interests and a purchase will constitute a simultaneous request for conveyance of the reserved mineral estate. As such, the purchaser will be required to deposit a $50.00 nonreturnable filing fee for conveyance of the mineral estate plus payment of not less than 10 percent or more than 30 percent of the purchase price at the time of the sale; remainder due within 180 days.

Detailed information concerning the sale, including the land report and environmental assessment report, is available for review at the Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxton Avenue, Room 311, Bakersfield, California 93301; (805) 861–4191. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination.

D.K. Swickard,

Area Manager.

[FR Doc. 84-31269 Filed 11-28-84; 8:45 am]

BILLING CODE 4310-40-M

[A–19339]

Arizona; Correction, Proposed Withdrawal and Opportunity for Public Hearing

November 21, 1984.

In FR Doc. 84–28776 appearing on page 44027, in the issue of Thursday, November 1, 1984, 3rd column, 1st paragraph, at the end of the word "land" add "from appropriation under the mining laws (30 U.S.C., Ch. 2) and the mineral leasing laws, subject to valid existing rights:"

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-31271 Filed 11-28-84; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of the Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the Grand Isle Block 16 Field Federal

Unit Agreement No. 14–08–0001–2932, submitted on November 14, 1984, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Grand Isle Block 16 Field Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations..

Dated: November 19, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico Region.

[FR Doc. 84–31282 Filed 1–28–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document, Koch Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Koch Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4213, Block 289, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 21, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 21, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84–31274 Filed 11–28–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Pennzoil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pennzoil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2045, Block 270, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 21, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Emile H. Simoneaux, Jr., Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 21, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84–31275 Filed 11–28–84; 8:45 am]

BILLING CODE 4310–MR–M

Information Transfer Subgroup of the Scientific Committee, Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. App. I and the Office of Management and Budget's Circular A–63 Revised.

The Scientific Committee of the Outer Continental Shelf Advisory Board will convene a meeting of its Information Transfer Subgroup on Thursday, December 13, 1984, in the La Concha Room, Sheraton Hotel, 1111 East Cabrillo Boulevard, Santa Barbara, California 93103. The Information Transfer Subgroup will meet during the period 9:00 a.m. to 5:00 p.m.

Agenda for the meeting will include the following subjects:

- Review of present procedures of the Environmental Studies Program for publication and dissemination of information
- Discussion of areas of concern with respect to the present procedures followed in exchange of information
- Plans for improving the present system of information exchange

The meeting of this committee is open to the public. Approximately 15 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240; telephone: (202) 343–7744.

Dated: November 27, 1984.

John B. Rigg,

Associate Direction for Offshore Minerals Management.

[FR Doc. 84–31456 Filed 11–28–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Availability of Plan of Operations and Environmental Analysis for the Purpose of Drilling the Dunn-McCampbell A–8 Exploratory Well; Sun Exploration and Production Company, Padre Island National Seashore, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Sun Exploration and Production Company a Plan of Operations for the purpose of drilling the Dunn-McCampbell A–8 Exploratory Well with Padre Island National Seashore, Kleberg County Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418. Copies of the document are available from Padre Island National Seashore and will be sent, upon request, to individuals or groups at a charge of $10.30 per copy, pursuant to the Freedon of Information Act. The document is 103 pages in length.

Dated: November 19, 1984

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 84–31276 Filed 11–28–84; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Docket No. 332–199]

Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports of Certain High Technology Products

Correction

In an ITC document in the issue of Wednesday, October 31, 1984, appearing on page 43811, in the third column, the document number in the heading should have appeared as set forth above.

BILLING CODE 1505–01–M

[Investigation No. 731–TA–164; Final]

Import Investigations; Stainless Steel Sheet and Strip From Spain; Determination

Correction

In an ITC document in the issue of Wednesday, October 31, 1984, appearing on page 43810, in the first column, the document number in the heading should have appeared as set forth above.

In addition, in the file line at the end of the document, "FR Doc. 84–28628" should have read "FR Doc. 84–28628".

BILLING CODE 1505–01–M

[Investigation No. 337–TA–187]

Certain Glass Construction Blocks; Initial Determination Termination Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Vereinigte Glaswerke GMBH, Euroglass Glasrep Corp., and Glas Und Spiegel Manfactur A.G. Schalke.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 26, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion therof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: November 26, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–31315 Filed 11–28–84; 8:45 am]

BILLING CODE 7035–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30521]

Cimarron River Valley Railway Co.; Exemption for Lease, Operation, and Purchase of Line

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts (1) Cimarron River Valley Railway Company (CRVR) and MBF Industries, Inc. (MBF) from 49 U.S.C. 10901, for the lease, operation, and purchase of a 25.47-mile line; and (2) CRVR from 49 U.S.C. 10746.

DATES: This exemption is effective on November 28, 1984. Petitions to reopen must be filed by December 19, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30521 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Peter A. Greene, Thompson, Hine and Flory, 1920 N St. NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTAL INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free (800) 424–5403.

Decided: November 7, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley, concurring, would emphasize that in his view, sections 10901 and 11343 are not mutually exclusive.

James H. Bayne,

Secretary.

[FR Doc. 84-31304-11-28-84: 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-18)]

Intrastate Rail Rate Authority—Montana; Certification

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Certification.

SUMMARY: The Commission grants final certification to the Montana Public Service Commission under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to a condition precedent that it modify its standards and procedures as noted in the full decision.

DATE: If the necessary changes are made, certification will begin on December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 20, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-31305 Filed 11-28-84: 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

November 26, 1984.

The Office of Management and Budget (OMD) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;
(2) The office of the agency issuing the form;
(3) The title of the form;
(4) The agency form number, if applicable;
(5) How often the form must be filled out;
(6) Who will be required or asked to report;
(7) An estimate of the number of responses;
(8) An estimate of the total number of hours needed to fill out the form;
(9) An indication of whether Section 3504(h) of Public Law 96–511 applies; and,
(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation. Department of Justice
(3) AGE, SEX, RACE, AND ETHNIC ORIGIN OF PERSONS ARRESTED
(4) DO–62
(5) Monthly
(6) State or local governments. Needed to collect information regarding number of persons arrested by law enforcement agencies throughout the United States. Data are published in comprehensive annual "Crime in the United States."
(7) 1,371 respondents
(8) 8,226 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633–4312
(2) Bureau of Justice Statistics. Department of Justice
(3) NATIONAL CRIME SURVEY (NCS)
(4) NCS—1, NCS–2, NCS–3, NCS–7, NCS–500
(5) Semi-annually
(6) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amount of crime committed against households and individuals throughout the Country. Respondents include persons 12 years of age or older living in 62,000 households in 309 PSU's.
(7) 151,500 respondents
(8) 91,186 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

New Collection

(1) Larry E. Miesse, 202/633–4312
(2) Bureau of Justice Statistics. Department of Justice
(3) *Testing of Screening and Incident Form Components for the National Crime Survey (NCS)*
(4) n/a
(5) One-time
(6) Individuals or households. New protype for screening techniques for the National Crime Survey.
(7) 1,500 respondents
(8) 780 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,

Agency Clearance Officer. Department of Justice.

[FR Doc. 84-31247 Filed 11-28-84: 8:45 am]

BILLING CODE 4410-1-M

NUCLEAR REGULATORY COMMISSION

Proposed Availability of FY 1985 Funds for Financial Assistance To Enhance Technology Transfer and Dissemination of Nuclear Energy Process and Safety Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research announces proposed availability of FY 1985 funds to support professional meetings, symposia, conferences, national and international commissions and publications for the expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research necessary to provide a technology base to assess the safety of nuclear power (hereinafter called project).

Projects will be funded through grants.

EFFECTIVE DATE: October 1, 1984 through September 30, 1985.

ADDRESS: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: The cognizant NRC grant official is Mr. Paul Edgeworth, telephone (301) 492–4291.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of This Announcement

Pursuant to section 31.a. and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC, Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit institutions, state and local Governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research program. The program includes, but is not limited to, support of professional meetings, symposia, conferences, national and international commissions, and publications. The primary purpose of this will be to stimulate research to provide a technological base for the safety assessment of systems and subsystems technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to enlarge the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety.

B. Eligible Applicants

Educational institutions, nonprofit entities, state and local Governments and professional societies are eligible to apply for a grant under this announcement.

C. Research Proposals

A research proposal should describe: (i) The objectives and scientific significance of the proposed meetings, symposium, conference, or commission; (ii) the methodology to be proposed or discussed, and its suitability; (iii) the qualifications of the participants and the proposing organization; and (iv) the level of financial support required to perform the proposed effort.

Proposals should be as brief and concise as is consistent with communication to the reviewers. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local Governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102, Attachment M. Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated on OMB Circular A–110, Attachment M.

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. *Cover Page.* The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;
Location and Dates of Conferences, Symposium, Workshop, etc.;
Names of Principal Participants;
Total Cost of Proposal;
Period of Proposal;
Organization or Institution and Department;
Required Signatures:

Principal Participants:
Name _____
Date _____
Address _____
Telephone Number _____

Required Organization Approval:
Name _____
Date _____
Address _____
Telephone Number _____

Organization Financial Officer:
Name _____
Date _____
Address _____
Telephone Number _____

2. *Project Description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding.

Applicant must identify other proposed sources of financial support for a particular project.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) Project Goals and Objectives.

The project's objectives must be clearly and unambiguously stated.

The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) Project Outline.

The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) Project Benefits.

The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) Project Management.

The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) Project Costs.

Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A–122; Educational Institutions shall adhere to the cost principles set forth in OMB Circular A–21; and state and local Governments shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must provide a detailed schedule of project costs, identifying in particular:

(1) Salaries—in proportion to the time or effort directly related to the project.

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note—Dues to organizations, federations or societies, exclusive of registration fees, and not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

D. Proposal Submission and Deadline

This program announcement is valid for the period of October 1, 1984 to September 30, 1985. Proposal submissions shall be one signed original and six copies.

E. Funds

For Fiscal Year 1985, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research anticipates making $75,000–$100,000 available for funding the project(s) mentioned herein.

The NRC anticipates that approximately 5 to 10 projects will be funded. Further, the NRC anticipates that its average support will be $5,000–15,000 per project.

F. Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

G. Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge;

2. Clarity of statement of objectives, methods, and anticipated results;

3. Range of issues covered by the meeting agenda;

4. Qualifications and experience of project speakers; and

5. Reasonable of estimated cost in relation to anticipated results.

H. Disposition of Proposals

Notification of award will be made by the Grants Officer and organizations whose proposals are successful will be so advised.

I. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to:

U.S. Nuclear Regulatory Commission, Attn: Grants Officer, Division of Contracts, AR–2223, Office of Administration, Washington, DC 20555

The address for hand-carried applications is:

U.S. Nuclear Regulatory Commission, Attn: Grants Officer, Division of Contracts, Office of Administration, Room 2223, 4550 Montgomery Lane, Bethesda, MD 20814.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Washington, DC this 13th day of November, 1984.

For the U.S. Nuclear Regulatory Commission.

Paul Edgeworth,

Chief, Contract Administration Section, Technical Contracts Branch, Division of Contracts, Office of Administration.

[FR Doc. 84–31322 Filed 22–28–84; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new revision or extension: Revision.

2. The title of the information collection: Certificate of Medical Examination by Facility License.

3. The form number if applicable: NRC Form 396.

4. How often the collection is required: Upon application for an initial operator license, and every five years for the renewal of operator or senior operator licenses.

5. Who will be required or asked to report: Facility employers of applicant's for operators' licenses.

6. An estimate of the number of responses: 1000 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: .35 hours per form.

8. An indication of whether Section 3504(h), Pub. L. 9696–511 applies: Not applicable.

9. Abstract: NRC Form 396 establishes the procedure for transmitting information to the Commission regarding the medical condition of applicants for initial and renewal operator licenses.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 16th day of November 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84–31323 Filed 11–28–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–413]

Duke Power Co., et al, Catawba Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting of relief from certain requirements of Section XI of the ASME Boiler and Pressure Vessel Code, as allowed by 10 CFR 50.55a(g)(6)(i) and issuance of partial exemptions from the requirements of Appendices A, E, and J to 10 CFR Part 50 to Duke Power Company, North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc., (the licensees) for the Catawba Nuclear Station, Unit 1, located at the licensees' site in York County, South Carolina.

Environmental Assessment

Identificotion of Proposal Actions: The first of the proposed actions would provide relief to the licensees, pursuant to 10 CFR 50.55a(g)(6)(i), from meeting certain requirements of the ASME Code for certain pumps and valves primarily in nuclear safety systems. The specific relief requests are identified in Section D of the Catawba Nuclear Station (Unit 1) Pump and Valve Inservice Testing Program submitted by letter dated March 9, 1983, and revised by submittals dated July 10, 13, 18, 23, 27, October 1, and November 6, 1984. Each such request proposes alternative tests and/

or test frequencies for identified pumps and valves.

The remaining proposed actions would provide partial exemptions from certain Commission regulations. The first exemption would relieve licensees from the requirement of conducting a full pressure airlock leakage test, pursuant to paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, whenever airlocks are opened during periods when containment integrity is not required. Licensees would rely, instead, on the seal leakage test described in paragraph III.D.2(b)(iii) when the reactor is in cold shutdown (mode 5) or refueling (mode 6) and when no maintenance has been performed on the airlock. The second exemption would relieve the licensees from complying with paragraph III.B of Appendix J insofar as it requires that a type B leakage rate test be performed, at full pressure (Pa, peak calculated accident pressure), on piping penetrations fitted with expansion bellows. The third exemption would allow licensees to exclude certain piping which penetrates the containment from the venting and draining requirements in paragraph III.A.(d) of Appendix J. The fourth exemption would grant delays (until the first refueling outage) in implementing the upgrade to safety-related of the pressurizer power operated relief valves (PORVs) and steam generator PORVs to bring them into compliance with GDC–1 of Appendix A. The fifth exemption would relieve Duke Power Company from the requirements of 10 CFR Part 50, Appendix E, Section IV. F., insofar as it requires the active participation of all Crisis Management Center (CMC) personnel for the Catawba Station emergency preparedness exercises.

Licensees' requests for exemptions and the bases therefor are contained in letters dated April 5, July 11 and 13, September 19 and 21, and October 3, 1984. The details of licensees' evaluation of environmental impacts of the requested relief and exemptions are contained in their letters dated November 8, and October 16, 1984, respectively.

The Need for the Proposed Actions: The ASME Code requires that the pumps and valves identified by licensees be tested at certain frequencies. However, limitations of design, geometry and accessibility make it impractical for licensees to meet certain of these requirements. Some of the required tests simply cannot be performed, while others would either place the unit in a mode of operation that could lead to equipment damage or to unit shutdown. However, testing of these pumps and valves in accordance with the proposed alternative methods or at the proposed alternative frequencies will adequately ensure the operability of the equipment.

As described in the staff's Safety Evaluation Report, Supplements 3 and 4, for Catawba Nuclear Station, performance of the leakage rate tests required by paragraph III.D.2(b)(ii) of 10 CFR Part 50, Appendix J, takes at least 6 hours per airlock. Exemption from type B leakage rate tests on airlocks opened during a period when containment integrity is not required would provide the licensees with greater plant availability over the lifetime of the plant. Exemption from type B leakage rate tests on piping penetrations fitted with expansion bellows is required because the bellows design for mechanical penteration will not allow the space to be pressurized to peak accident pressure, Pa, as required by paragraph III.B of Appendix J. Exemption of certain piping penetrations from the Appendix J venting and draining requirements is needed to prevent leakage, during Integrated Leak Rate Tests, through process containment isolation valves which receive a sealing fluid. A limited-period exemption from the requirement to upgrade the pressurizer and steam generator PORVs to safety-related would allow licensees to begin ascension to power while awaiting delivery of components to modify the pressurizer and steam generator PORVs. Finally, partial exemption from 10 CFR Part 50, Appendix E, paragraph IV.F., is needed to avoid requiring all Duke Power Company CMC personnal to participate in two full-scale exercises each year.

Environmental Impacts of Proposed Actions: The proposed relief for testing of certain pumps and valves in accordance with the proposed alternative test frequencies or methods will adequately ensure the operability of the equipment. Imposition of the ASME Code requirements would result in hardships or unusual difficulties without a compensating increase in the level of quality or safety. Because the proposed alternative test frequencies or methods will ensure operability of the equipment, the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

The first proposed exemption would permit the substitution of an airlock seal leakage test (paragraph III.D.2(b)(iii) of Appendix J, 10 CFR Part 50) for the full pressure airlock test otherwise required by paragraph III.D.2(b)(ii) when the airlock is opened while the reactor is in a cold shutdown or refueling mode. If the tests required by III.D.2(b)(i) and (iii) are current, no maintenance having been performed on the airlock and with it properly sealed, this exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

The second proposed exemption will provide alternative tests of piping penetrations fitted with expansion bellows such that there is adequate assurance that containment integrity is not affected. Appendix J requires that leak testing of expansion bellows assemblies on containment penetrations be conducted at a test pressure of Pa, the peak calculated accident pressure; for the Catawba plant, Pa is 14.7 psig. The bellows assemblies have a two-ply design that allows pressurization between the plies. However, the bellows assemblies cannot be pressurized beyond 3 to 5 psig. The exemption, therefore, is from the requirement that the test pressure equal Pa. During testing of the bellows assemblies, the inner ply is pressurized in a direction opposite to that which would be imposed in the event of an accident. Testing at Pa would jeopardize integrity of the inner ply. Alternatively, stiffening of the inner ply to better accommodate an increased test pressure would necessitate engineering compromises contrary to overall safety. Since the expansion bellows must flex during plant heat-up and cooldown, additional rigidity would increase the likelihood of inner ply failure. However, the proposed test pressure (3 to 5 psig) is sufficient for monitoring bellows assembly integrity. Therefore, from the standpoint of overall safety, plant operation with the

exemption is at least as safe as requiring compliance with the leak testing requirement of the regulations. Consequently, the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

The third proposed exemption will allow the licensees to use an alternative to the vent and drain method for accounting for the leakage of certain containment isolation valves. Granting of this exemption would allow use during Integrated Leak Rate Tests (ILRTs) of the seal water system which has been installed at Catawba. Containment isolation valves served by this system will not leak containment atmosphere to the environment during an accident and so need not be exposed to test pressure by being vented and drained during ILRTs. Other valves which are not served by the seal water system, but which are in the lines to be exempted from the venting and draining requirements, will be locally leakage rate tested and the results added to the ILRT results. Thus, all leakage will be accounted for. Consequently, the post-accident radiological releases will not be greater with the alternative tests than they would be without the requested exemption, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environment impacts associated with the proposed exemption.

The fourth exemption would grant delays (until the first refueling outage) in implementing the upgrade to safety-related of the pressurizer and the steam generator PORVs to bring them into compliance with GDC–1. The consequences of a steam generator tube rupture (SGTR) with the existing PORVs are discussed in Section 15.6.3 of the Catawba Final Safety Analysis Report (FSAR). Therefore, operation of Catawba Unit 1 during the first cycle is addressed by the current FSAR analysis. The staff has evaluated Catawba Unit 1 operation during the first cycle without the upgrade of the pressurizer and the steam generator PORVs in Section 15.4.4 of Supplement 3 to the SER (regarding the SGTR) and in Section 5.4.4.1 of Supplement 2 to the SER (regarding the residual heat removal system). The NRC staff stated in Supplement 2 that there are at least three means available to achieve RCS depressurization: (1) The normal pressurizer spray, (2) three pressurizer PORVs, and (3) an auxiliary pressurizer spray (with safety-related electric motor operator). Additionally, RCS cooldown, using the steam generators, results in an indirect depressurization due to fluid contraction. For the plant to be unable to effect an RCS depressurization, all of the above means would have to be unavailable, Although not specifically quantified, the staff believes the probability of this occurring in the first cycle of operation is low. Similarly, to achieve heat removal, at least the following means are available: (1) Steam dump system and (2) four steam system PORVs. Although the steam system PORVs are not fully safety related, the staff notes the availability of other means for decay heat removal. The staff believes that the likelihood of a simultaneous loss of all these other means is low.

As noted above, the staff believes the likelihood of total unavailability of the means for depressurization and heat removal during the first cycle of plant operation to be small. Consequently, the probability of an accident has not significantly increased and the post-accident radiological releases will not be significantly greater than previously determined with issuance of this proposed exemption, nor does the proposed exemption significantly affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed exemption.

The fifth proposed exemption, which would exempt Duke Power Company CMC personnel from full-scale participation in yearly execise of the Catawba emergency plans, otherwise required by paragraph IV.F. of Appendix E, 10 CFR Part 50, is consistent with a similar exemption granted on January 6, 1984, relating to participation in emergency preparedness exercises at Oconee and McGure. Participation by all Duke Power Company CMC personnel twice annually is deemed to be unnecessary. In the October 3, 1984, request, Duke Power Company committed to continue to provide adequate support by General Office personnel to ensure that effective annual exercises are conducted at each of its nuclear stations. Duke Power also committed to activate the Crisis Management Team fully in any full-scale exercise involving full state participation. If there are no such full-scale exercises planned for Duke Power nuclear stations in a calendar year, Duke will choose one of the local exercises in which all the CMC personnel will fully participate. Thus, the proposed exemption will, as described in the Duke Power request, provide an alternate method for training all the CMC personnel such that there is reasonable assurance of training adequacy consistent with the purpose of the subject Appendix E requirement. Consequently, the probability of an accident has not been increased and the post-accident radiological releases will not be greater than they would be were the proposed exemption not granted, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Actions: Because we have concluded that there is no measurable environmental impact associated with the proposed relief and exemptions, any alternatives to the relief and exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemptions. Such action would not reduce envirnomental impacts of Catawba Unit 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Catawba Nuclear Station, Units 1 and 2," dated January 1983.

Agencies and Persons Consulted: The NRC staff reviewed the licensees' requests that support the proposed relief and exemptions. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed actions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed relief and exemptions.

For further details with respect to the actions, see the licensees' requests for relief and their assessment of environmental impact of such relief, dated March 9, 1983, July 10, 13, 18, 23, 27, October 1, and November 6 and 8, 1984, and the requests for the exemptions and their assessment of the environmental impacts, dated April 5, July 11 and 13, September 19 and 21, and October 3 and 16, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland, this 23rd day of November 1984.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Acting Assistant Director for Licensing, Division of Licensing.

[FR Doc. 84-31321 Filed 11-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co. (San Onofre Nuclear Generating Station, Unit 1); Contingent Rescission of Suspension

I

The Southern California Edison (SCE) and San Diego Gas and Electric Company (the licensees) hold Provisional Operating License No. DPR–13, which authorizes Southern California Edison Company to operate the San Onofre Nuclear Generating Station, Unit 1 (the facility) at power levels not in excess of 1347 megawatts (thermal) rated power. The facility, which is located at the licensees' site in San Diego County, California, is a pressurized water reactor (PWR) used for the commercial generation of electricity.

II

The seismic design basis upon which San Onofre Unit 1 was initially licensed for structures, systems and components important to the safety of the plant was what, in today's terminology, would be consistent with a 0.25g Housner response spectra Operating Basis Earthquake (OBE) and a 0.5g Housner response spectra Safe Shutdown Earthquake (SSE). A number of actions have been taken in recent years, however, to upgrade the plant to 0.67g, the peak ground acceleration used as the seismic criteria applied to Units 2 and 3 that were later built on the same site.

Analyses of the seismic capability of the plant at 0.67g and submitted in the April-May 1982 time period as part of the ongoing seismic reevaluation program, indicated high stress values for certain equipment, piping and supports and, therefore, raised questions as to whether this equipment met the original licensing basis (0.5g Housner spectra SSE). The staff informed the licensee that further information demonstrating that the plant met its initial licensing design basis would be necessary before the plant, which was then shut down, would be permitted to restart. In letters dated June 15 and June 24, 1982, the licensee informed the staff that undertaking analyses to reconfirm that the plant met its original design basis would consume significant resources and would not contribute to the overall goal of upgrading the plant to 0.67g. Therefore, the licensee instead proposed to establish an implementation plan for upgrading the plant to 0.67g and committed itself to keeping the plant shut down until necessary reanalyses and plant modifications were completed. The statff agreed with the licensee that its program to upgrade the facility to 0.67g would resolve the staff's concerns about the ability of the plant to meet its licensed design basis, *i.e.*, 0.5g. However, in view of the staff's conclusion that the plant should not restart until the concerns about the plant's capability to shut down after the 0.5g design basis earthquake were resolved, the staff issued an order on August 11, 1982, to confirm the licensee's commitments to suspend operation of the plant and to undertake the plant modifications. The "Order Confirming Licensee Commitments on Seismic Upgrading" required that the licensees "[m]aintain San Onofre Unit 1 in the shutdown condition until modifications described in their submittal dated June 15, 1982 as supplemented by letter dated June 24, 1982 are completed and NRC approval is obtained for restart." 47 Fed. Reg. 36058, 36059 (Aug. 18, 1982).

Since the August 1982 Order was issued, the licensee has continued to make modifications to upgrade the capability of many plant structures, systems and components to 0.67g. Although not all the potentially necessary modifications are complete to assure that the plant could be brought to a cold-shutdown condition in the event of a postulated 0.67g earthquake, the licensee has proposed to return the plant to service for a limited period of time while the seismic reevaluation program is being completed.

On the basis of the staff's evaluation of the plant modifications and the licensee's analyses, the staff believes that there is reasonable assurance that operation of San Onofre Unit 1 can be resumed prior to completion of the seismic reevaluation program without posing an undue risk to public health and safety. It should be recalled that the suspension of operation imposed by the August 1982 order was based primarily on questions about whether the plant met its licensed design basis, 0.5g. Currently, the staff believes that the licensee has reasonably established the seismic capability of the systems which would provide the capability to achieve and maintain a hot standby condition in the event of a 0.67g modified Housner spectrum earthquake. Moreover, with respect to other systems, the staff believes that available information indicates that the plant should withstand a 0.5g seismic event, and may even withstand larger seismic event swithout substantial damage. Thus, the staff believes that plant operation with systems necessary to achieve host standby upgraded to 0.67g is sufficient to assure public health and safety until the overall seismic reevaluation is completed because (1) the seismic integrity of the primary system and its isolation boundaries has been established such that a severe seismic event would not be expected to cause an accident requiring systems that have not been completely upgraded, and (2) there is sufficient time available to manually set up cooling water supplies to achieve and maintain cold shutdown in the event that a severe seismic event were to occur. The bases for the staff's conclusions are discussed in greater detail in the Safety Evaluation Report being issued on this date.

To ensure the safety of long-term operation in terms of providing suitable margins, the seismic reevaluation program and additional modifications necessary to upgrade the plant's seismic capability should be completed in a timely manner. The staff believes that the reevaluation program should be completed before the return to power after the next refueling outage after restart and that the modification should

be completed by the same time unless the licensee provides a case-by-case justification for any extension of time for completion.

III

Based on the staff's evaluation, the public health and safety no longer requires suspension of plant operation. Therefore, the suspension of operation imposed by the Order of August 11, 1982 is hereby rescinded provided that the remainder of the seismic reevaluation program and the resulting plant modifications are completed by the end of the next refueling outage unless the licensee provides to the Director, Division of Licensing, a justification for any extension of time for completion of any modification and the Director is satisfied that continued operation may be permitted. Such justification, if any, should be provided prior to the commencement of the next scheduled refueling outage after this restart.

Dated at Bethesda, Maryland, this 21st day of November, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-31320 Filed 11-28-84; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 21st day of November 1984 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Acting Assistant Director, Export-Import and International Safeguards; Office of International Programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Exxon Nuclear Company, Inc. Nov. 2, 1984–Nov. 8, 1984, XSNMO2138, Amend. No. 01.	5.00 percent enriched uranium 5.00 percent enriched uranium	Additional 35,377 Additional 44,756	Additional 297 Additional 1,778	Additional material for Chinshan No. 2 Additional material for Kuosheng No. 2	Taiwan. Do.
Westinghouse Electric Co., Nov. 8, 1984–Nov. 8, 1984, XSNMO2181.	3.10 percent enriched uranium	30,250	933	Conversion, pelletizing and fabrication into fuel assemblies and return to U.S. for Catawba Unit 2.	Belgium.
Exxon Nuclear Company, Inc. Nov. 2, 1984–Nov. 9, 1984, XSNMO2097, Amend. No. 01.	Increased to 5.00 percent enriched uranium 5.00 percent enriched uranium	Additional 13,700 Now 750	Additional 454 30	Additional material for Oskarshamn 1 extended expiration date to July 1, 1990. Add Barsebaeck-1 to license	Sweden. Do.
Mitsui & Co (U.S.A.), Inc., Nov. 8, 1984–Nov. 13, 1984, XSNMO2182.	4.00 percent enriched uranium	16,614	504	Reload fuel for Fukushima I, Unit 1	Japan.
GA Technologies, Inc., Nov. 8, 1984–Nov. 15, 1984, XSNM02183.	19.75 percent enriched uranium	122.0	24.10	To NUKEM for processing into U_3O_8 and return to GA.	West Germany.
Transnuclear, Inc., Nov. 20, 1984–Nov. 20, 1984, XSNMO2187.	3.49 percent enriched uranium	94,186	3,238.40	Reload fuel for Grohnde 1	West Germany.

[FR Doc. 84-31324 Filed 11-28-84; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Domestic Mail Classification Schedule Changes for Special Fourth Class Mail; Correction

AGENCY: Postal Service.

ACTION: Notice; Correction.

SUMMARY: This document corrects a notice of a Domestic Mail Classification Schedule change for special fourth-class mail that appear at page 46222 in the Federal Register of Friday, November 23, 1984 (49 FR 46222). The action is necessary to correct an erroneous effective date.

EFFECTIVE DATE: 12:01 a.m., November 25, 1984.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245–4638.

SUPPLEMENTARY INFORMATION: The following correction is made in FR Doc. 84–30752 appearing on 46222, in the issue of November 23, 1984:

On page 46222, in the middle of the right-hand column, in the first full paragraph, the date "November 15, 1984" is corrected to read "November 25, 1984".

(39 U.S.C. 3625)

W. Allen Sanders,

Associate General Counsel Office of General Law and Administration.

[FR Doc. 84-31302 Filed 11-28-84; 8:45 am]

BILLING CODE 7710-12-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–5338]

Charterway Investment Corp.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Charterway Investment Corporation (Charterway), 222 South Hill Street, Suite 800, Los Angeles, California 90012, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.904(b) of the Regulations governing small business investment companies (13 CFR 107.904 (1984)) for approval of conflict of interest transactions.

Subject to SBA approval, Charterway proposes to invest in a minority owned bank, American International Bank (American International), 525 S. Flower Street, Los Angeles, California.

The proposed financing is brought within the purview of § 107.904(b) of the Regulations because Mr. Harold Chuang is a member of the Board of Directors of American International, and President of Charterway, and therefore is considered an Associate of Charterway Investment Corp. as defined by Section 107.3 of the Regulations. Completion of the financing as proposed will result in the acquisition of a 16.8 percent interest in American International by Charterway and its Associates.

Notice is hereby given that any interested person may, not later than (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: November 23, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31328 Filed 11-28-84; 8:45 am]

BILLING CODE 8025-01-M

Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the terms "FFB Rate", which is defined elsewhere in 13 CFR Section 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective *December 1, 1984,* and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is *11.735%* per annum.

13 CFR Section 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act, as amended by Section 524 of Pub. L. 96–221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: November 23, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31327 Filed 11-28-84; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Cheryl C. Thomas, Tennessee Valley Authority 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2522, FTS 858–2522.

Type of Request: Regular
Title of Information Collection: Forest Industries Survey—1984
Frequency of Use: Every 4 to 5 years
Type of Affected Public: Businesses
Small Businesses or Organizations Affected: Yes
Federal Budget Functional Category Code: 452
Estimated Number of Annual Responses: 2,500
Estimated Total Annual Burden Hours: 1,667
Estimated Annual Cost to TVA: $236,000

Need for and Use of Information: Forest industries in the Tennessee Valley will be surveyed in early 1985 to collect 1984 data. The purpose is to measure trends in industrial wood use, employment, product value, and number and kinds of industries. These data will be used primarily to evaluate progress in forest industries development and answer requests.

Dated: November 20, 1984.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 84-31283 Filed 11-28-84; 8:45 am]

BILLING CODE 8120-08-M

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supported documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Cheryl C. Thomas, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2522, FTS 858–2522.

Type of Request: Regular
Title of Information Collection: Farmer Questionnaire-Vicinity of Nuclear Power Plants
Frequency of Use: Annually near Sequoyah, Watts Bar, and Bellefonte Nuclear Plants; Semiannually near Browns Ferry Nuclear Plant.
Type of Affected Public: Individuals and farms
Small Businesses or Organization Affected: No
Federal Budget Functional Category Code: 271
Estimated Number of Annual Responses: 1,200
Estimated Total Annual Burden Hours: 1,200
Estimated Annual Cost to TVA: $40,000

Need For and Use of Information: Used to locate rural residents, home gardens, and milk animals for monitoring purposes around nuclear power plants.

Dated: November 20, 1984.
John W. Thompson,
Manager of Corporate Services, Senior Agency Official.
[FR Doc. 84-31284 Filed 11-28-84; 8:45 am]
BILLING CODE 8120-08-M

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Cheryl C. Thomas, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2522, FTS 858-2522.

Type of Request: Regular
Title of Information Collection: Natural Gas Energy Recovery Questionnaire
Frequency of Use: Nonrecurring
Type of Affected Public: Businesses and non-profit institutions
Small Businesses or Organizations Affected: No
Federal Budget Functional Category Code: 271
Estimated Number of Annual Responses: 160
Estimated Total Annual Burden Hours: 240
Estimated Annual Cost to TVA: $3,080

Need For and Use of Information: The information in the proposed collection is needed to adequately assess a potentially very promising electric power generating concept. Respondents will be natural gas transmission companies and gas distributors.

Dated: November 20, 1984.
John W. Thompson,
Manager of Corporate Services, Senior Agency Official.
[FR Doc. 84-31285 Filed 11-28-84; 8:45 am]
BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement; Proposed Expansion of Stinson Municipal Airport, San Antonio, TX

The Federal Aviation Administration (FAA) itends to prepare an Environmental Impact Statement (EIS) for the proposed expansion of Stinson Municipal Airport, San Antonio, Texas. The current proposed expansion would consist of a 500-foot extension to Runway 27, acquisition of land for and construction of a new runway (oriented approximately northwest-southeast) and at a length up to approximately 6,200 feet. The runway would be west of the existing Runway 14/32. Related development consists of ground alteration, creek channelization, culverting, and residential and business relocation to allow construction of the new runway; installation of a precision instrument landing system and approach lighting system for the northwest end of the new runway; and proposed taxiway and general aviation development as identified in the 1984 Airport Master Plan, prepared by Cress and Associates, Inc.

Proposed Federal action would include FAA approval of an Airport Layout Plan and possible subsequent Federal funding of airport development under the Airport and Airway Improvement Act of 1982, or successor legislation.

Possible alternatives include no action, alternative development scenarios for Stinson and realignment of the proposed new runway.

A Scoping meeting was held on Tuesday, November 13, 1984, in San Antonio to identify issues which might have significant impacts and to assist FAA in determining if an EIS would be required. At the request of the United States Department of the Interior, National Park Service, the decision to prepare an EIS has been made by FAA so that an adequate review of potential impact to the San Antonio Missions National Historical Park and other related historical property will be thoroughly considered.

The FAA intends to consult and coordinate with Federal, state, and local agencies which have jurisdiciton by law or have special expertise with respect to any environmental impacts associated with the proposed project. The Scoping process will continue through Friday, December 14, 1984. Interested persons and agencies are invited to send written comments on environmental issues related to the proposed expansion of Stinson Municipal Airport to: Mr. Richard Rodine, Supervisor, Planning Section (ASW-611), FAA Airports Division, Southwest Region, P.O. Box 1689, Forth Worth, Texas 76101, telephone (817) 877-2605. Comments should be receives by close of business December 14, 1984.

Dated: November 15, 1984.
Gene L. Faulkner,
Manager, Planning and Programming Branch.
[FR Doc. 84-31245 Filed 11-28-84; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circ. Public Debt Series—No. 36-84]

Notes; AB—1986 Series

November 23, 1984.

The Secretary announced on November 21, 1984, that the interest rate on the notes designated Series AB—1986, described in Department Circular—Public Debt Series—No. 36-84 dated November 15, 1984, will be 10¾ percent. Interest on the notes will be payable at the rate of 10¾ percent per annum.

Carole Jones Dineen,
Fiscal Assistant Secretary.
[FR Doc. 84-31292 Filed 11-28-84; 8:45 am]
BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 231
Thursday, November 29, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Commodity Futures Trading Commission	1-4
Equal Employment Opportunity Commission	5
Farm Credit Administration	6
Federal Election Commission	7
Federal Reserve System	8, 9
Securities and Exchange Commission	10, 11
Tennessee Valley Authority	12

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m. 6th Floor Hearing Room, Friday, December 7, 1984.

PLACE: 2033 K Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 84-31407 Filed 11-27-84; 2:28 pm]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m. 5th Floor Hearing Room, Thursday, December 13, 1984.

PLACE: 2033 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Oral argument/in the matter of Donald J. Murphy and Keith M. Rudman.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 84-31408 Filed 11-27-84; 2:28 pm]
BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 9:30 a.m. 5th Floor Hearing Room, Thursday, December 20, 1984.

PLACE: 2033 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed rules on the audit trail and restrictions on trading for exchange employees.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 84-31409 Filed 11-27-84; 8:45 am]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m. 6th Floor Hearing Room, Thursday, December 20, 1984.

PLACE: 2033 K Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 84-31410 Filed 11-27-84; 2:28 pm]
BILLING CODE 6351-01-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern Time), Tuesday, December 4, 1984.

PLACE: Clarence Mitchell Jr., Conference Room No. 200-C on the 2nd floor of the Columbia Plaza Office Building, 2401 "E" Street N.W. Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal No. 84-10-FOIA-215-MK, concerning a request for access to an open investigative file.
4. Freedom of Information Act Appeal No. 84-10-FOIA-117-SL, concerning a request for an ADEA investigative file.
5. Freedom of Information Act Appeal No. 84-9-FOIA-60-PX, concerning a request for information from a closed ADEA charge file.
6. Freedom of Information Act Appeal No. 84-10-FOIA-128-MM, concerning a request for lists of targeted locations, issues and respondents.
7. Analysis of Pre-Complaint Counseling and Complaint Processing Data Submitted by Federal Agencies for Fiscal Year 1983.
8. Use of the Second Exemption of the Freedom of Information Act, 5 U.S.C. § 552(b)(2).
9. Recommended fiscal year 1985 State and Local Agency Program Contract for Lexington-Fayette Urban County Government Human Rights Commission.
10. EEOC Compliance Manual, Section 624, Reproductive and Fetal Hazards, Appendix A.
11. Proposed Contract for Procurement of Legal Materials.

Closed

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Commission Decisions: ORA Decisions and Guidance Decisions.
3. Proposed Subpoenas.
4. Proposed Withdrawal of Commissioners' Charges.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register** the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia Matthews, Executive Office at (202) 634-6748.

Dated: November 27, 1984.
Cynthia Matthews,
Executive Officer, Executive Secretariat.
[FR Doc. 84-31422 Filed 11-27-84; 2:40 pm]
BILLING CODE 6570-06-M

6

FARM CREDIT ADMINISTRATION

Federal Farm Credit Board

Correction

FR Doc. 84-29901, which announced a meeting of the Federal Farm Credit Board on December 3, 4, and 5, 1984, appeared in the Notices section on page 45250 in the issue of Thursday, November 15, 1984. It should have

appeared in the Sunshine Act Meetings section.

BILLING CODE 1505-01-M

7

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 4, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, December 6, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft Advisory Opinion #1984-40, Robert F. Bauer, on behalf of the Democratic Congressional Campaign Committee
Draft Advisory Opinion #1984-56, Michael C. Mahoney, and Donna E. Hanberry, on behalf of Senator David Durenberger
Petition for rulemaking filed by common cause
Finace Committee report
Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-31411 Filed 11-27-84; 8:45 am]

BILLING CODE 6715-01-M

8

FEDERAL RESERVE SYSTEM
(Board of Governors)

TIME AND DATE: Approximately 10:15 a.m., Wednesday, December 5, 1984, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Studies of (1) futures and options markets, and (2) federal margin regulations (Public Docket No. R-0427). (This item originally announced for a closed meeting on November 26, 1984.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31438 Filed 11-27-84; 3:58 pm]

BILLING CODE 6210-01-M

9

FEDERAL RESERVE SYSTEM
(Board of Governors)

TIME AND DATE: 9:30 a.m., Wednesday, December 5, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed adoption of depreciation and capital budgeting for the Board's assets.
2. Proposed Federal Reserve Board budget for 1985.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31439 Filed 11-27-84; 3:58 pm]

BILLING CODE 6210-01-M

10

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, November 16, 1984.

CHANGE IN THE MEETING: Additional item.

The following item was considered at a closed meeting held on Tuesday, November 20, 1984, at 10:00 a.m.

Institution of injunctive action.

Chairman Shad and Commissioners Cox, Marinaccio and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barry Mehlman at (202) 272-2014.

Shirley E. Hollis,

Acting Secretary.

November 27, 1984.

[FR Doc. 84-31420 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

11

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of December 3, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, December 7, 1984, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 4, 1984, at 10:00 a.m., will be:

Formal orders of investigation.
Settlement of injunctive actions.
Institution of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.

At times changes in commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

or postponed, please contact: Steve Molinari (202) 272-2467.

Shirley E. Hollis,

Acting Secretary.

November 27, 1984.

[FR Doc. 84-31421 Filed 11-27-84; 2:40 pm]

BILLING CODE 8010-01-M

12

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1342]

TIME AND DATE: 10:15 a.m., Monday, December 3, 1984.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda items

Approval of minutes of meeting held on November 14, 1984.
Old Business Items:
1. Fiscal year 1985 operating budget financed from regular appropriations.
2. Fiscal year 1985 capital budget financed from regular appropriations.

New Business Items:
B—Purchase Awards
B1. Req. 52-834966—Tenant improvements and building modifications for the Chattanooga Office Complex.
D—Personnel Items
D1. Personal services contract with CDI Corporation, Philadelphia, Pennsylvania, for the performance of engineering, design, drafting, and related engineering and field support services, including field inspection services, requested by the Division of Engineering and Technical Services.
D2. Personal services contract with CLB Technical Services, New York, New York, for the performance of engineering, design, drafting, and related engineering and field support services, including field inspection services, requested by the Division of Engineering and Technical Services.
D3. Personnal services contract with Consultants & Designers, Inc., New York, New York, for the performance of engineering, design, drafting, and related engineering and field support services, including field inspection services, requested by the Division of Engineering and Technical Services.
F—Unclassified
F1. Contract No. TV-65518A between TVA and Alabama Department of Economic and Community Affairs, Office of Employment and Training to provide training to unemployed craftpersons.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: November 28, 1984.

W. F. Willis,

General Manager.

[FR. Doc. 84-31423 Filed 11-27-84; 8:45 am]

BILLING CODE 8120-01-M

Thursday
November 29, 1984

Federal Register

Part II

Department of Health and Human Services

Office of Human Development Services

Demonstration Projects of Integrated Service Delivery Systems for Human Service Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13.647–851]

Demonstration Projects of Integrated Service Delivery Systems for Human Service Programs

AGENCY: Office of Human Development Services, HHS.

ACTION: Announcement of availability of funds and request for State applications under the HHS Integrated Service Delivery Demonstration Program.

SUMMARY: The Office of Human Development Services (HDS), announces that competing applications will be accepted for new demonstration grants authorized under section 1136 of the Social Security Act.

This program announcement consists of four parts. Part I provides background information and discusses the purpose of the Integrated Service Delivery Demonstration Program. Part II describes the nature and scope of the projects to be funded. Part III defines applicant eligibility and describes in detail the application process. Part IV defines the application review and selection criteria, and process used to transmit the application forms and instructions.

DATE: The closing date for receipt of applications is January 18, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Albarelli, HDS/Division of Research and Demonstration, Room 723E—HHH Bldg., 200 Independence Avenue, SW., Washington, D.C. 20201, Telephone: (202) 245–6233.

Part I—Background Information

A. Scope of This Announcement

With this announcement, the Office of Human Development Services (HDS) implements section 2630 of Pub. L. 98–369, the Deficit Reduction Act, enacted July 18, 1984. Under the Act, Congress established section 1136 of the Social Security Act which authorizes demonstration projects to promote the effectiveness and efficiency of integrated delivery systems for human services programs. The legislation authorizes up to $8,000,000 to support the demonstration projects over a 42 month period.

To receive consideration for funding, applicants must propose projects that include a range of service integration activities as specified in section 1136. The project must demonstrate a comprehensive system of service delivery across broadly defined human service programs and populations including but not limited to those administered by the Office of Human Development Services.

The Office of Human Development Services administers the demonstration program and, in cooperation with other HHS programs and other Federal departments and agencies, is responsible for the solicitation, review, selection, administrative oversight, evaluation, reporting, and coordination of the demonstration projects.

In FY 1985, HDS will approve no fewer than three nor more than five projects (including at least one such project to be operated on a statewide basis) to be assisted over a period not to exceed 42 months. First year activities will be funded under section 1110 of the Social Security Act.

B. Program Purpose

Section 1136 of the Social Security Act is intended to demonstrate ways of improving the delivery of human services to individuals and families through the development of an integrated service delivery system. Such system assures that an applicant for services under any one program is informed of and has access to the services which may be available under other human services programs in the community. Demonstration projects sponsored under this program will involve multiple integration practices intended to increase the effectiveness of human services delivery systems. In this regard, particular attention is placed on the cost-efficiency and service effectiveness that will result from the demonstrations.

Through this demonstration program, HDS seeks to improve the management and delivery of human services to promote the following goals:

1. To adopt and implement national policies or programs aimed at strengthening the capacity of individuals to achieve or maintain self-sufficiency and the capacity of the family to care for all its members;

2. To provide national leadership in: (a) The development of effective methods of addressing human service needs; and (b) The development of State and local capacity to appropriately address social needs;

3. To foster the efficient and effective use of available resources through improved human services management; and

4. To target Federal budgetary support for services to that portion of the population in the greatest need of assistance and protection.

In the past, service integration has been clearly demonstrated under efforts to improve the administration of human services. Under this service integration announcement, HDS seeks to build on this focus and demonstrate improvements aimed at strengthening the ability of States and localities to address social needs, enable individuals and families to achieve self-sufficiency, and bring about a better targeting of resources on those populations for which services are a necessity. In the review and selection of project applicants, *emphasis will be placed on demonstration projects which propose the development of better linkages across human services and related programs that lead to both greater efficiencies in administration and management, and measurable impact on social problems of priority concern to the State.*

The concepts of service integration defined in this announcement are not new. During the last decade considerable attention was directed at the need to simplify the structure and administration of human service programs. The inherent problems associated with Federal categorical assistance programs had made the human service system almost impossible to administer. The resulting intergovernmental burdens and service delivery confusion was perceived as requiring administrative reforms at State and local levels. States were asked to assume the "challenge" of management initiatives intended to minimize the impacts of Federal statutory and regulatory requirements, and bring about better access to and coordination of local service delivery.

In the early and mid-1970's, the Department of Health, Education and Welfare and many States undertook a series of demonstrations known as Service Integration Targets of Opportunity (SITO). The focus of these projects was on changes to administrative structures and practices. The projects addressed innovations in community needs assessment, automated information systems, client pathways, common service directories, common intake forms, co-location of services, etc. Very few SITO projects attempted direct improvements in service delivery, and little emphasis was placed on the need for community participation in the determination of problems and needed reforms. The implicit assumption was that these reforms, developed outside the line agencies, would be adopted and ultimately translate into improved services at the community level.

Generally, this did not happen although the experiences of these and other management initiatives did contribute to the more focused, accountable and professional State administration of human services witnessed today.

In addition, other demonstration projects targeting more directly on local service delivery have been undertaken to promote the coordination and consolidation of program service activities. Recognizing the fragmentation and duplication of local services, the emphasis of these projects was on improving service access, achieving economies of scale through joint program endeavors, and increasing the efficiency of services as measured by reduced unit costs or increased clients served.

The experiences under these State and local service integration projects is important to today's efforts in restoring States to a position of programmatic responsibility, and increasing the flexibility of local governments in determining optional service arrangements. There is general support for a continued emphasis on cost containment, administrative efficiency and program service coordination. However, unlike the earlier initiatives which stressed State performance as the administrative middle-man responsible for a complex array of Federally determined program services, the emphasis of this program announcement is on the more fundamental role of States in effecting service delivery reforms which directly impact social problems in the community. The last decade has produced enough service integration studies and analysis to yield support for virtually any service delivery strategy which focuses on administrative process and efficiencies. The truly essential consideration in weighing the total body of information is what options are likely to produce meaningful reform with maximum advantages to communities and impact on program constituencies. Service delivery reforms must consider the adequacy and appropriateness of the service system to be effective on social problems. Under this announcement, priority consideration will be given to those applications which propose service delivery reforms supportive of measurable progress on human service issues which are: (1) Defined in the context of individual, family and community problems; (2) determined to be of priority concern to the State and communities involved; and (3) supportive of HDS' goal statements.

Part II—Nature and Scope of Projects

A. Demonstration Concept/Activities

Past efforts to coordinate or integrate human services have often been targeted on discrete program operations and services. These efforts include State and Federal research and demonstrations in such areas as: human services taxonomies; unified planning, resource allocation, needs assessment and eligibility determination; standardized purchase of service, billing and accounting techniques; coordinated and consolidated transportation, etc. In addition to these activities, much work has been accomplished and is in progress to reduce the social and economic problems which contribute to the need for publicly supported services. These include efforts designed to bring about the more concerted involvement of public, private and voluntary sectors from within and outside the human service field for purposes of prevention, intervention, and alternative service delivery. These efforts have resulted in a substantial knowledge base on integration techniques. The Department believes that these techniques combined with more recent changes in regulatory reform and block grant programming offer States and communities the opportunity to establish a comprehensive human service delivery system that more fully and creatively responds to individual needs, reduces dependency, and engenders and facilitates the important involvement of community resources. This approach underscores the principle that human service needs are best defined and addressed through institutions and organizations at the level closest to the needs.

As required under section 1136(b), the following activities are minimally expected to be included or involved under each project:

1. Development of a common set of terms for use in all of the human services programs involved;

2. Development for each applicant of a single comprehensive family profile which is suitable for use under all of the human services programs involved;

3. Establishment and maintenance of a single resources directory by which the citizens of the community involved may be informed of and gain access to the services which are available under all such programs;

4. Development of a unified budget and budgeting process, and a unified accounting system, with standardized audit procedures;

5. Implementation of unified planning, needs assessment, and evaluation;

6. Consolidation of agency locations and related transportation services;

7. Standardization of procedures for purchasing services from nongovernmental sources;

8. Creation of communications linkages among agencies to permit the serving of individual and family needs across agency and program lines; and

9. Development, to the maximum extent possible, of uniform application and eligibility determination procedures.

Applicants should show how they plan to use and refine existing technology developed in these areas. In addition, applicants are encouraged to propose any other methods, arrangements and procedures determined necessary or desirable for the establishment and operation of an integrated service delivery system. Finally, the applicant's approach should take account of the activities and outcomes of related research or demonstrations (completed or in progress), as well as applicable State, local and Federal laws.

To ensure that Federal program requirements do not hinder the establishment of the proposed services integration system, any State whose application is approved under this program may submit a request for waiver of those program requirements. The Secretary will review and approve these waiver requests if he/she determines that the waiver authority involved is available and is necessary to provide a useful and effective demonstration of the value of an integrated services delivery system. If the waiver request involves a Federal agency outside HHS, waiver review and approval will be requested by the Secretary of the head of such other agency, who will approve it if waiver authority is available and the waiver is determined necessary to the effectiveness of the project. Waiver requests should not be included with the applications submitted in response to this announcement. Grantees will be notified of the waiver procedures subsequent to the selection process.

B. Scope of Demonstration Projects

In considering and selecting the projects to be sponsored under this program, in accordance with section 1136(c)(2), HDS will take into account the size and characteristics of the populations to be served, the geographic distribution of the projects, and the number and nature of human service programs involved.

Up to five demonstration projects will be funded that include a range of participating human services programs

and populations. For purposes of these projects, the legislation defines "human services programs" to include the following:

1. Aid to Families with Dependent Children (Part A of title IV of the Social Security Act);

2. Supplemental Security Income benefits program (Title XVI of the Social Security Act);

3. Federal food stamp program; and

4. Any other Federal or federally assisted program (other than those under the Rehabilitation Act of 1973) which provides aid, assistance or benefits based wholly or partly on need or on income-related qualifications to specific classes or types of individuals or families or which is designed to help in crisis or emergency situations by meeting the basic human needs of individuals or families whose own resources are insufficient for that purpose.

Under paragraph four above, project applicants are encouraged to include the participation of other HHS assisted programs administered by the Office of Human Development Services, Health Care Financing Administration, Social Security Administration or the Public Health Service; and other human service programs outside HHS, such as those administered by the Department of Housing and Urban Development, Agriculture, and Labor.

At least one demonstration project that proposes to operate on a statewide basis will be funded, and sub-state projects will be selected to achieve a balanced geographic representation of metropolitan, urban, urban/rural mixed, and rural areas.

Part III—Application Process

A. Eligible Applicants

Any State or territory having an approved plan under Title IV–A of the Social Security Act, is eligible to apply under this announcement. (Local, sub-state jurisdictions or agencies are not eligible to apply or receive grant awards under this program announcement.) The proposed project(s) may be statewide in operation or may be limited to one or more political subdivisions of the State. To be considered for funding, the application must provide the following assurances, satisfactory to the Secretary of Health and Human Services:

1. That the project as proposed would be permitted under applicable State and local law;

2. That the project will not lower or restrict the levels of aid, assistance, benefits, or services, or the income or resource standards, deductions, or exclusions under any of the human services programs involved, or services under any of the programs involved;

3. That the State, *prior to its submission of the application,* has published a description of the proposed project and invited comments from interested persons in the community or communities which would be affected; and

4. That, if under the law governing any of the human services programs included under the project, there are provisions establishing safeguards which limit or restrict the use or disclosure of information (concerning applicants for or recipients of benefits or services) and a waiver of such provisions is granted in order to make such information available for purposes of the project, the State shall:

(a) Provide each applicant for and recipient of aid, assistance, benefits or services under the proposed integrated service delivery system with a clear and readily comprehensible notice that such information may be disclosed to and used by project personnel, or exchanged with the other agencies having responsibility for human services programs included within the project; and

(b) Take steps as may be necessary to ensure that the information disclosed will be used only for purposes of, and by persons directly concerned with, the project.

B. Available Funds

In FY 1985, HDS will make up to five awards pursuant to this announcement. Grants will be approved for project periods up to 42 months. Funding over this maximum project period will be accomplished over three fiscal year budget periods. As shown below, and based on the availability of funds totaling $8,000,000 as authorized under section 1136, grantee funding over the 42 month period is expected to range from $1,225,000 to $2,700,000 depending on the scope and complexity of the project.

FUNDING SUMMARY

Fiscal year	Estimated award amount	Anticipated budget period (month)
Statewide Project		
1985	$150,000	12
1986	1,650,000	17
1987	850,000	13
Total	2,700,000	42
Sub-State Project		
1985	$75,000	12
1986	600,000	17
1987	500,000	13
Total	1,225,000	42

In Fiscal Year 1985, up to $900,000 is available to support awards for first year planning costs expected to range from $75,000 to $150,000 among the projects selected. The availability of funds for fiscal years 1986 and 1987 is dependent upon passage of appropriations by the Congress.

The FY 1985 awards will be made pursuant to the authority under Section 1110 of the Social Security Act and may include funds appropriated under other HHS program authorities, and/or other Federal departments and agencies.

C. Federal Share of the Project

Federal funds to support projects will be provided in the following amounts:

1. Up to 90 percent of the project costs incurred by the State and its political subdivisions during the first 18 months of the project;

2. Up to 80 percent of the project costs incurred in the second year of project implementation (beginning with the nineteenth month of the project period); and

3. Up to 70 percent of the project costs incurred in the third year of project implementation (beginning with the thirty-first month of the project period).

The applicant share of the project costs must be in the form of grantee-incurred costs directly supportive of the demonstration activities. These may include expenses related to project personnel, equipment, travel, contractual support services, and any other costs incurred as a direct result of the project activity. HDS strongly encourages applications where the grantee share exceeds the minimum requirements stated above.

D. Eligible Project Expenditures

Project funds can be used to support: (1) Planning and management activities necessary to integrate services in a geographic area; (2) training and technical assistance activities necessary to enhance the services integration activities; and (3) any activity necessary to assist in the management, evaluation, and administration of the project.

This demonstration program is intended to assess the impact of integration activities on *existing* resources and services. Project funds cannot be used to support costs deemed unnecessary or inappropriate to this intent. Project funds cannot support: (1) Capital acquisition or renovation of buildings, land or vehicles; (2) equipment costs in excess of 15% of the total Federal grant Funds; (3) operations of the applicant and participating programs which existed prior to the grant awarded (full maintenance of efforts is expected); or (4) the costs associated with the actual services or assistance provided under any of the participating programs, or the establishment of new program services where none presently exist.

E. Project Timetable and Design

As required by legislation, the timetable for proposal solicitation, review, award and project start-up is shown below:

—Application receipt deadline—January 18, 1985
—Award notices issued—April 18, 1985
—Project effective date—May 1, 1985

No project funded under this program will be Federally assisted for a period of more than 42 months. Our expectation is that most grantees will use the first 6–12 months for planning purposes, the next 12–18 months as an implementation period, and a minimum of 12 months during which the integrated service system will be in operation. Continuation funding after the first budget period will depend upon availability of funds, satisfactory progress by the grantee, and HDS determination that continuation funding is in the best interest of the government.

During the first year of project activities, an HDS funded evaluation contractor will begin work with each grantee to develop an acceptable evaluation design and methodology to measure the efficiency and effectiveness of the demonstration project in relation to its goals and objectives. The evaluation contractor's responsibility will include the development of a data collection plan, including development of instruments and sampling techniques, training of grantee data collectors, and analysis and progress reporting throughout the demonstration period. Grantees will be responsible for the collection, maintenance, and accurate reporting of evaluation data.

F. Grantee Reporting

As a part of the terms and conditions of the grant award, progress reports shall be submitted by the State agency responsible for administration of the grant at quarterly (three month) intervals through the entire project period. The first progress report shall be submitted no later than—July 31, 1985—three months after the effective project start date of May 1, 1985. The report contents will place particular attention on the cost-effectiveness and improved service delivery of the integrated system. Detailed instructions on the quarterly reporting process and contents will be transmitted to each grantee with the Notice of Financial Assistance Awarded.

Part IV—Application Preparation

A. Availability of Forms

Applications for grants under this announcement must be submitted on the Standard Federal Form for grant assistance (SF 424—Parts I–IV). This form, as well as detailed guidance materials for use in preparing the application, will be mailed directly to the Chief Executive Officer of each State's Human Resource or Public Welfare Agency.

The transmittal of the application kit will occur within two days following the Federal Register publication date of this announcement. A listing of each State's Human Resources/Public Welfare Agency Chief Executive Officer to receive the application kit is included under Part IV (I) of this announcement.

Additional copies of the application kit may be obtained by contacting: HHS Integrated Services Demonstration Program, HDS/Division of Research and Demonstration, 200 Independence Avenue, SW., Room 732E, Washington, D.C. 20201 Telephone: (202)/245–6233.

B. Application Submission

One signed original and a minimum of two copies of the application must be submitted to: HDS/Division of Grants and Contracts Management, Attention HDS Annc. No. 13.647–851, 300 Independence Avenue, SW., Room 1740 North, Washington, D.C. 20201.

Submittal of five additional copies will expedite processing. There is no penalty for not submitting these additional copies.

C. Application Consideration

Complete applications that conform to the requirements of this program announcement will be reviewed competitively and evaluated by Federal officials and qualified persons not employed by the Federal Government. This review will also take into consideration comments and recommendations from HHS Regional officials and other Federal agencies.

The Assistant Secretary for Human Development Services will determine the action to be taken on each application.

D. Criteria for Screening and Review

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete, conforming applications will then be reviewed and evaluated competitively.

E. Screening Criteria

In order for an application to be considered for review, it must meet *all* of the following requirements:

(1) *Number of copies:* An original signed application and two copies must be submitted.

(2) *Standard Form 424:* The application must include all SF 424 forms completed according to instructions.

(3) *Eligibility:* The applicant must be a State or U.S. territory with an approved plan under Title IV–A of the Social Security Act, as amended.

(4) *Assurance:* The application must included or be accompanied by the four assurances identified under Part III–A of this announcement. Applicants are reminded that among the necessary assurances is one requiring public notification and comment *prior* to submission of the application.

(5) *Non-Federal Contribution:* A non-Federal contribution of at least 10% of the total project costs over the first 18 month budget period must be proposed.

APPLICATIONS MUST MEET *ALL* OF THE ABOVE REQUIREMENTS TO BE CONSIDERED.

F. Evaluations Criteria

All proposals, submitted by eligible applicants, will be competitively reviewed by qualified experts from both within and outside the Federal government. Acceptable applications must complete and meet the following criteria:

(a) *Criterion I:* Problem Description/Impact (20 Points).

• The application clearly identifies the problems (reasons for applying) to be addressed by the project in terms of the efficiencies of existing service administration, effectiveness of program services on priority social problems; and the benefits to be derived from the project on specific populations.

• The service integration concepts proposed are clearly identified and decribed in relation to the problems and benefits anticipated.

• The application must clearly describe how the proposed project anticipates significant and measurable improvements in the efficiency (reduced duplication and total system costs) and effectiveness (impact on social problems) of existing service delivery.

(b) *Criterion II:* Innovativeness (25 Points)

The application clearly proposes a *significant improvement upon, or important departure from, existing practices and previous related work* in the field of human services integration.

The proposed project constitutes new activity (on the part of the applicant State) and not a continuation or expansion of existing activity. The application describes and applies the experience of previous work in services integration with emphasis on both administrative efficiency and human service effectiveness. The innovations proposed will bring about lasting impact and change to service delivery.

(c) *Criterion III:* Technical Approach or Methodology (20 Points)

- The technical approach or methodology is realistic and achievable. It includes a well organized, strategic and task-oriented plan of action which if implemented achieves the project goals and objectives. Potential problem areas are identified explicitly and resolution approaches discussed.
- The technical approach or methodology includes a realistic and useful discussion of the evaluation opportunities and anticipated problems (i.e., availability of pre-demonstration data, reporting, etc.), and proposes a means of addressing key evaluation issues in cooperation with the Evaluation Contractor employed by HDS.

(d) *Criterion IV:* Staffing and Management (20 Points)

- The proposed staff are well qualified to carry out the project.
- The involvement of State and local executive officials is clearly evidenced to assure concerted efforts among participating programs and sub-State jurisdictions, and adequate management and oversight of the project.
- The applicant State has adequate facilities, resources, and experience to conduct the project as proposed.

(e) *Criterion V:* Budget Appropriateness and Reasonableness (15 Points)

- The proposed budget is commensurate with the effort needed to accomplish the project objectives. The cost of the project is reasonable in relation to the value of the anticipated results.
- The specific contributions (including but not limited to automated data processing services) of any collaborative agencies or organizations are assured in writing and included with the application when it is submitted. Where the participation of an agency other than the applicant is critical to the proposed project, the agency's agreement to participate is evidenced by a letter.
- The proposed applicant share in project costs exceeds the minimum match requirements.

G. This program is not covered under Executive Order 12372.

H. Closing Date for Receipt of Applications

Deadlines. The closing date for submittal of applications under this program announcement is January 18, 1985. Applications shall be considered as meeting this deadline if they are either:

1. Received on or before the deadline date at the HDS Receiving Office: HDS/Division of Grants and Contracts Management, Attention HDS Annc. No. 13.647–851, 300 Independence Avenue SW., Room 1740 North, Washington, D.C. 20201.

2. Sent on or before January 18, 1985 and received in time to be considered during the competitive review and evaluation process. (Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

Hand Delivered Applications. Hand delivered applications are accepted during the normal working hours of 9:00 A.M. to 5:30 P.M., Monday through Friday.

Late applications. Applications which do not meet these criteria are late and will not be considered in the competition.

Dated: November 23, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

I. Chief Executive Officers—State and Territorial Human Resource Public Welfare Agencies

Alabama

Leon Frazier, Commissioner, Alabama Dept. of Pension & Security, 64 North Union Street, Montgomery, AL 36130

Alaska

Robert London Smith, Ph.D., Commissioner, Alaska Dept. of Health and Social Services, Pouch H–01, Juneau, AK 99811

Arizona

Douglas Patino, Director, Arizona Dept. of Economic Security, P.O. Box 6123, Phoenix, AR 85005

Arkansas

Ray Scott, Director, Arkansas Dept. of Human Services, Donaghey Building—Suite 1300, 7th and Main, Little Rock, AK 72201

California

David Swoap, Secretary, California Health and Welfare Agency, 1600 Ninth Street, Room 433, Sacramento, CA 95814

Colorado

George Goldstein, Ph.D., Executive Director, Colorado Dept. of Social Services, 1575 Sherman Street, Denver, CO 80203

Connecticut

Stephen B. Heintz, Comm., Conn. Dept. of Income Maintenance, 110 Bartholomew Avenue, Hartford, CT 06115

James G. Harris, Jr., Commissioner, Conn. Dept. of Human Resources, 1179 Main Street, P.O. Box 786, Hartford, CT 06010

Delaware

Patricia C. Schramm, Secretary, Delaware Dept. of Health & Social Services, Administration Building, 1901 North duPont Highway, New Castle, DE 19720

Florida

David H. Pingree, Sec., Florida Dept. of Health & Rehabilitative Svcs., 1321 Winewood Blvd., Tallahassee, FL 32301

Georgia

James G. Ledbetter, Ph.D., Commissioner, Georgia Dept. of Human Resources, State Office Building, 47 Trinity Avenue, SW., Atlanta, GA 30334

Guam

Dennis B. Rodriguez, Guam Dept. of Public Health and Social Services, P.O. Box 2816, Agana, Guam 96910

Hawaii

Franklin Y. K. Sunn, Director, Hawaii Dept. of Social Services and Housing, P.O. Box 339, Honolulu, HI 96809

Idaho

Rose Bowman, Director, Idaho Dept. of Health and Welfare, 450 W. State Street—State House Mail, Boise, ID 83720

Illinois

Gregory L. Coler, Director, Illinois Dept. of Public Aid, 316 South Second Street, Springfield, IL 62762

Gordan Johnson, Director, Illinois Dept. of Children and Family Services, One North Old State Capitol Plaza, Springfield, IL 62706

Indiana

Donald L. Blinzinger, Admin., Indiana Dept. of Public Welfare, 701 State Office Bldg., Indianapolis, IN 46204

Iowa

Michael V. Reagen, Ph.D., Secretary, Iowa Dept. of Human Services, Hoover Building, Des Moines, IA 50319

Kansas

Robert C. Harder, Ph.D., Sec., Kansas Dept. of Social and Rehabilitation Services, State Office Building, 915 Harrison Street, Topeka, KS 66612

Kentucky

Elbert Austin, Jr., Secretary, Kentucky Cabinet for Human Resources, Capitol Annex, Room 237, Frankfort, KY 40621

Louisiana

Sandra Robinson, M.S., Sec., Louisiana Dept. of Health and Human Services, P.O. Box 3776, Baton Rouge, LA 70821

Maine

Michael R. Petit, Commissioner, Maine Dept. of Human Services, State House, Augusta, ME 04333

Maryland

Ruth Massinga, Secretary, Maryland Dept. of Human Resources, 1100 N. Eutaw Street, Baltimore, MD 21201

Massachusetts

Philip Johnston, Secretary, Massachusetts Executive Office of Human Services, One Ashburton Place, Rm. 1105, Boston, MA 02108

Charles Atkins, Commissioner, Massachusetts Dept. of Public Welfare, 600 Washington Street, Boston, MA 02111

Ms. Marie Mateva, Commissioner, Dept. of Social Services, 150 Causeway Street, Boston, MA 02114

Michigan

Agnes Mansour, Director, Michigan Dept. of Social Services, 300 South Capitol Avenue, P.O. Box 30037, Lansing, MI 48909

Minnesota

Leonard Levine, Commissioner, Minnesota Dept. of Public Welfare, Centennial Office Building—4th Fl., St. Paul, MN 55155

Mississippi

Donald B. Roark, Ph.D., Comm., Mississippi Dept. of Public Welfare, P.O. Box 352, Jackson, MS 39205

Missouri

Barrett Toan, Director, Missouri Dept. of Social Services, Broadway State Office Building, P.O. Box 88, Jefferson City, MO 65103

Montana

John D. LaFaver, Director, Montana Dept. of Social and Rehabilitative Svcs., P.O. Box 4210, Helena, MT 59604

Nebraska

Gina Bunning, Director, Nebraska Dept. of Social Services, 301 Centennial Mall South, P.O. Box 95026, Lincoln, NE 68509

Nevada

S. Barton Jacka, Director Nevada Dept. of Human Resources Capitol Complex 505 E. King Street Carson City, NV 89710

New Hampshire

Sylvio L. Dupuis, O.D., Commissioner New Hampshire Dept. of Health and Welfare, Hazen Drive, Concord, NH 03301

New Jersey

George Albanese, Commissioner, New Jersey Dept. of Human Services, One Capital Place, 222 S. Warren Street, Trenton, NJ 08625

New Mexico

Juan R. Vigil, Secretary, New Mexico Dept. of Human Services, P.O. Box 2348, Santa Fe, NM 87503

New York

Cesar A. Perales, Commissioner, New York State Dept. of Social Services, 40 North Pearl Street, Albany, New York 12243

North Carolina

Sarah T. Morrow, M.D., Secretary, North Carolina Dept. of Human Services, 325 N. Salisbury Street, Raleigh, NC 27611

North Dakota

John A. Graham, Ex. Director, North Dakota Dept. of Human Services, New State Office Building Judicial Wing, Bismarck, ND 58505

Ohio

Patrick K. Barry, Director, Ohio Dept. of Public Welfare, State Office Tower, 32nd Fl., 30 East Broad Street, Columbus, OH 43315

Oklahoma

Robert Fulton, Director, Oklahoma Dept. of Human Svcs., P.O. Box 25352, Oklahoma City, OK 73125

Oregon

Leo T. Hegstrom, Director, Oregon Dept. of Human Resources, 318 Public Service Building, Salem, OR 97310

Pennsylvania

Walter Cohen, Secretary, Pennsylvania Dept. of Public Welfare, P.O. Box 2675, Harrisburg, PA 17105

Rhode Island

Joseph Murray, Director, R.I. Dept. of Social and Rehabilitative Services, Aime J. Forand Building, 600 New London Avenue, Cranston, RI 02920

South Carolina

James L. Solomon, Jr., Comm., South Carolina Dept. of Social Services, P.O. Box 1520, Columbia, SC 29202

South Dakota

James W. Ellenbecker, Secretary, Office of the Secretary, South Dakota Dept. of Social Services, Richard F. Kneip Building, Pierre, SD 57501

Tennessee

Sammie Lynn Puett, Commissioner, Tennessee Dept. of Human Svcs., 111 Seventh Avenue, North, Nashville, TN 37203

Texas

Marlin W. Johnston, Commissioner, Texas Dept. of Human Resources, P.O Box 2960, Austin, TX 78769

Utah

Norman Angus, Ex. Director, Utah Dept. of Social Services, 150 West North Temple Street, P.O. Box 2500, Salt Lake City, UT 84110

Vermont

Lloyd Novik, M.D., Secretary, Vermont Agency of Human Services, 103 South Main Street, Waterbury, VT 05676

James P. O'Rourke, Commissioner, Vermont Dept. of Social Welfare, 103 South Main Street, Waterbury, VT 05676

Virgin Islands

Norman L. Johansen, Comm., Virgin Islands Dept. of Social Welfare, P.O. Box 550, Charlotte Amalie, St. Thomas, VI 00801

Virginia

William L. Lukhard, Comm., Virginia Dept. of Social Services, 8007 Discovery Drive, 8007 Discovery Drive, Richmond, VA 23288

William T. Coppage, Commissioner, Virginia Dept. for the Visually Handicapped, 391 Azalea Avenue, Richmond, VA 23227

Washington

Karen Rahm, Secretary, Washington Dept. of Social and Health Services, Mail Stop OB-44T, Olympia, WA 98504

West Virginia

John Burdette, III, Commissioner, West Virginia Dept. of Human Services, State Office Building, 1900 Washington Street, East, Charleston, WV 25305

Wisconsin

Linda Reivitz, Secretary, Wisconsin Dept. of Health and Social Services, P.O. Box 7850, Madison, WI 53707

Wyoming

Stanley H. Torvik, Director, Wyoming Dept. of Health and Social Services, Hathaway Building, Cheyenne, WY 82002

Puerto Rico

Jenaro Collazo-Collazo, Ph.D., Secretary, Puerto Rico Dept. of Social Services, P.O. Box 11398, Fernandez Juncos Station, Santurce, P.R. 00910.

[FR Doc. 84–31258 Filed 11–28–84; 8:45 am]

BILLING CODE 4135–01–M

Reader Aids

Federal Register

Vol. 49, No. 231

Thursday, November 29, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072.....1
44073–44192.....2
44193–44272.....5
44273–44442.....6
44443–44620.....7
44621–44740.....8
44741–44888.....9
44889–44984.....13
44985–45106.....14
45107–45408.....15
45409–45570.....16
45571–45732.....19
45733–45842.....20
45843–46096.....21
46097–46332.....23
46333–46526.....26
46527–46698.....27
46699–46868.....28
46869–46984.....29

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
November 16, 1984..... 45733

Notice:
November 7, 1984..... 44741

Proclamations:
5270..... 44073
5271..... 44075
5272..... 44077
5273..... 44079
5274..... 44081
5275..... 44193
5276..... 44195
5277..... 44197
5278..... 45107
5279..... 45409
5280..... 45411
5281..... 45413
5282..... 46699
5283..... 46701

5 CFR

Ch. XIV, App. A..... 45843

Proposed Rules:
213..... 45588
831..... 45588
930..... 45444
1255..... 45751
2429..... 44902

7 CFR

2..... 44743
46..... 45735
210..... 45109
220..... 45109
225..... 45109
226..... 45109
301..... 44083
353..... 46333
356..... 46335
407..... 46337
408..... 46703
418..... 46337
419..... 46341
422..... 46346
429..... 44443
441..... 44985
600..... 44743
729..... 44889
810..... 46347
907..... 44199, 44757, 45415, 46869
910..... 44084, 44744, 44890, 45109, 45415, 46527, 46703
911..... 46703
915..... 44447
928..... 44199
932..... 44447
944..... 44447
982..... 44745
984..... 44745
985..... 46704
989..... 44745
1004..... 44986
1139..... 43943
1421..... 46705
1446..... 45109
1910..... 45416
1980..... 46097

Proposed Rules:
27..... 44902
52..... 43970
53..... 44724
54..... 44724, 44758
400..... 45444
408..... 46393
420..... 44480
421..... 44476
422..... 46395
424..... 44485
425..... 44490
431..... 46400
432..... 44495
436..... 46405
437..... 46149
438..... 46409
725..... 44103
800..... 45751, 46414
910..... 44299
971..... 45592
982..... 44500
984..... 44299
1007..... 44760
1464..... 44103
1772..... 45752–45754

8 CFR

103..... 46869
238..... 44745, 46347, 46870
292..... 44084

9 CFR

50..... 44273
78..... 44987, 45110, 45871
81..... 44087, 45111, 45741
92..... 44088, 45872
97..... 45843
113..... 45845
114..... 45845
204..... 46527
318..... 45530
319..... 46530
354..... 44091

Proposed Rules:
92..... 44501
381..... 44640

10 CFR

50..... 45112, 45114, 45571
430..... 46533
1048..... 46097

Proposed Rules:
40..... 46418, 46425

50 ..... 44645, 46428
55 46428
71 44502
210 45445
605 44590

11 CFR

6 44091

12 CFR

Ch. VII 46536
204 44448
207 43946
220 43946
221 43946
224 43946
303 44746
308 44746
337 46709
523 46725
528 46725
545 45846
563 ..... 45115, 45846
701 ..... 44993, 46105, 46540, 46541
795 44993

Proposed Rules:

5 45007
8 ..... 45102, 45592
591 46911
701 46552

13 CFR

105 45742
120 44091

Proposed Rules:

107 ..... 44062, 46553

14 CFR

1 44422
23 46866
27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417, 45743–45746, 46105
43 ..... 44602, 45418
71 ..... 44450, 45418, 45747, 46726, 46727
73 ..... 44096, 44451, 45418
91 44422
97 ..... 44990, 46106
255 ..... 44451, 46347

Proposed Rules:

Ch. I 44766
Ch. II 46006
1 46670
27 46670
29 46670
33 46670
39 ..... 45011, 45759
71 ..... 44104, 44650, 45011, 45166–45171, 45756, 45757, 46153–46155, 46746–46748
73 ..... 45011, 45168, 45169
75 45171
91 46749

15 CFR

7 44622
386 46873

Proposed Rules:

8c 45861
303 44651
320 ..... 44903, 45757

16 CFR

13 ..... 45115–45117, 46874
305 44200
455 45692
1212 46108
1700 44455

Proposed Rules:

3 46554
4 46554
13 46911
300 44913
303 44913
451 46156

17 CFR

1 45418
3 45418
15 46116
17 46116
33 44891
140 45418
145 45418
200 ..... 43950, 45847
240 45117

Proposed Rules:

1 44105
140 45015
144 45015
230 46750
239 45172
240 ..... 46156, 46556
270 46558
274 45172

18 CFR

3 44273
11 46542
35 46727
37 46351
154 46353
157 44275
270 46874
271 ..... 44201, 44993, 46874
272 46874
273 46874
274 ..... 44275, 46874
284 44275
301 46727
341 44628
356 44628
360 44628
361 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
389 44273

Proposed Rules:

271 ..... 44217, 45174, 45175
430 44105

19 CFR

4 ..... 44867, 46118
6 ..... 44867, 46885
7 44867
10 ..... 44867, 46363
11 44867
12 44867
18 44867
19 44867
24 ..... 44867, 46118
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
152 46886
162 44867
172 44867
174 44867
191 44867
210 46123

Proposed Rules:

113 46161
141 46161
172 46161
175 ..... 46162, 46163
353 45593
355 45593

20 CFR

209 46728
210 46728
211 46728
212 46728
220 46728
222 46728
250 46728
395 44277
404 ..... 43951, 44458, 45420, 46365
410 46365
416 46365
422 46365

21 CFR

74 44096
178 44994
193 ..... 44458, 45123, 46736
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 ..... 45421, 46371
558 46371
561 ..... 45124, 45848, 46736
573 ..... 44630, 45124

Proposed Rules:

146 44652
184 46164
193 45869
450 44919
510 45593
511 44766

22 CFR

220 44631

Proposed Rules:

41 44920

23 CFR

140 45577

24 CFR

44 46140
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 45125
238 45125
250 45125
255 44750
300 45128
511 44066
905 44285
965 44982

26 CFR

5h 43951
41 45849
48 45849
301 44460

Proposed Rules:

1 ..... 44300, 45449, 45450, 46917
41 ..... 44300, 44310, 44921, 46167
48 ..... 44300, 44310, 44921 46167, 46917
51 45758
301 45452

27 CFR

9 ..... 44202, 44895
178 46889

Proposed Rules:

4 ..... 44217, 45018
5 44921
55 44922
178 44922
240 44217

28 CFR

0 46371
2 44097
15 44995
511 44056

Proposed Rules:

545 44059

29 CFR

530 44262
1601 45424
1910 46737
1952 44202
2619 45129

Proposed Rules:

2617 44106
2640 45018
2648 45018

30 CFR

253 46891
906 46372
915 44206
917 44750
935 ..... 43952, 44461, 44996
938 46542

Proposed Rules:

250 44924
256 46754
816 45595
817 45595
855 45595
914 46167
917 44653
920 43974
931 44769
938 43974
948 46168
950 46755

31 CFR

5 45578

33 CFR

72 46547
100 ..... 45579, 45580, 45758
117 ..... 43953–43956, 44207, 44632, 45130, 45580 46547, 46892
165 44632
402 46893

Proposed Rules:

117 ..... 43975, 44925, 45596, 46917
126 45597
157 46440
160 45597
165 ..... 44926, 46560, 46562

34 CFR

Proposed Rules:

Ch. VI 45834
76 45834
208 45834
280 46169
300 46252
350 46244
352 46244
358 46244
359 46244
750 46755
755 46761

36 CFR

251 46893

Proposed Rules:

13 46441
223 44109
291 45117
1121 44310

38 CFR

3 ..... 44099, 45130
36 46548

Proposed Rules:

1 45870
21 46441

39 CFR

10 45130
111 ..... 46141, 46738
265 ..... 44286, 46895

40 CFR

52 ..... 44099, 44208, 44287, 44463, 44996, 46141
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 ..... 45292, 46896
180 ..... 44464–44467, 45132, 45849–45854, 46739
261 44978
265 46094
271 46742
704 ..... 45133, 45425
707 45581
712 46739
716 46741
721 46373
723 46066
761 44634
775 44997

Proposed Rules:

50 ..... 44770, 45871
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178, 45761–45765, 45872, 46442, 46767
53 45871
58 45871
65 46443
81 ..... 43977, 45031, 46767
147 44111
152 45873
157 45873
158 45873
162 45873
170 45181
180 ..... 46443, 46768, 46769
261 44718
271 ..... 44111, 44312, 44506, 45452, 45874, 46443
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 ..... 44218, 45598
716 ..... 44220, 45602
761 46770
799 ..... 45606, 45610

41 CFR

Ch. 101 44468
Ch. 201 45748
50–201 45855
101–20 44469
101–41 44470
101–47 44471

42 CFR

36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR

6220 46891

Public Land Orders:

1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997
6578 46144
6579 46144
6580 46145

Proposed Rules:

3160 44655
3420 44221

44 CFR

64 ..... 44751, 45133, 46897, 46899
65 ..... 45134, 45135
67 45136

Proposed Rules:

67 ..... 45181, 46918, 46920

45 CFR

801 44473

Proposed Rules:

95 45617
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR

310 45857
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397

Proposed Rules:

67 45623
510 46174

47 CFR

Ch. I 46901
0 45582
2 ..... 44101, 44997
15 44210
25 44751
31 ..... 44289, 46378
43 44289
69 46383
73 ..... 43957, 44101, 45139–45146, 45583–45587, 46386
74 45155
76 45431

Proposed Rules:

0 45454
1 45454
2 ..... 45766, 45875, 46563
73 ..... 44113, 44114, 45186, 45625, 45875, 46444–46448 45563
90 ..... 44223, 45454, 45875 45563

48 CFR

Ch. 25 46743

Proposed Rules:

1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR

1 ..... 44102, 46145
171 45749
173 ..... 43963, 45749
175 45749
178 43965
179 43963
391 44210
392 44210
395 46145
571 ..... 44899, 46386
575 44751
1033 46392
1160 45858
1165 45858
1168 45858
1181 45858
1182 45858

Proposed Rules:

23 44772
172 45627
173 45627
195 44928
531 46770
542 45629
1102 44224

50 CFR

17 ..... 43965, 44753, 45160
216 46908
258 44474
611 44757
620 44102
652 ..... 45164, 45859
661 46148
663 ..... 44638, 44901
671 ..... 44757, 46549
676 44998

Proposed Rules:

17 ..... 44507, 44712, 45766, 45880–45887, 46174
216 46921
222 44774
227 44774
611 ..... 44655, 46177
630 45888
663 46771
672 44655
675 44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.

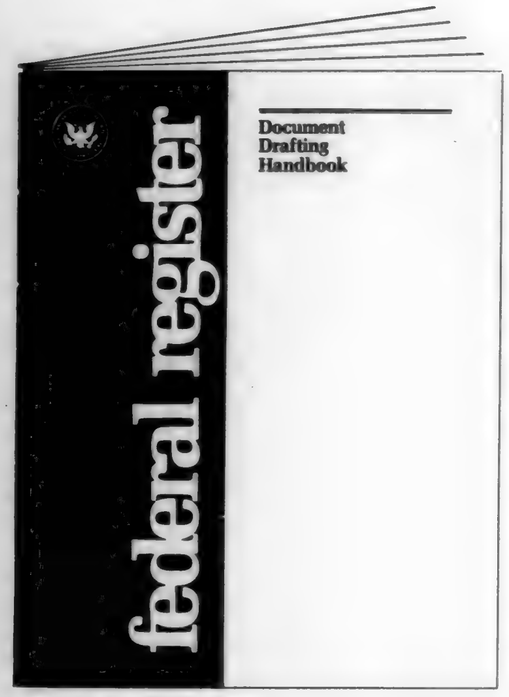
OL
9

S S
31

O
9

084

MI



Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.00

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

MasterCard and VISA accepted.

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me ____ copies of the DOCUMENT DRAFTING HANDBOOK at $5.00 per copy. Stock No. 022-001-00088-4.

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity		Charges
_____	Publications	_____
_____	Subscription	_____
	Special Shipping Charges	_____
	International Handling	_____
	Special Charges	_____
	OPNR	_____
_____	UPNS	
_____	Balance Due	
_____	Discount	
_____	Refund	

8/82

VOL
49

ISS
231

NO
29

1984

UMI

OL
9

SS
32

IO
O

984

MI

11-30-84
Vol. 49 No. 232

federal register

Friday
November 30, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D C 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106



Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

Penalty for private use $300

Federal Register
(ISSN 0097-6326)

375
SECOND CLASS NEWSPAPER

11-30-84
Vol. 49 No. 232
Pages 46985-47188

federal register

Friday
November 30, 1984

Selected Subjects

Aviation Safety
Federal Aviation Administration

Claims
Veterans Administration

Credit
Federal Reserve System

Fisheries
National Oceanic and Atmospheric Administration

Income Taxes
Internal Revenue Service

Loan Programs—Agriculture
Farmers Home Administration

Marketing Agreements
Agricultural Marketing Service

Meat Inspection
Food Safety and Inspection Service

Mortgage Insurance
Housing and Urban Development Department

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Pensions
Veterans Administration

Truth in Lending
Federal Reserve System

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC [illegible].

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Contents

Federal Register
Vol. 49, No. 232
Friday, November 30, 1984

The President
ADMINISTRATIVE ORDERS
46987 International communications satellites (Presidential Determination of Nov. 28, 1984)
PROCLAMATIONS
46985 Penn, William and Hannah, conferral of honorary U.S. citizenship (Proc. 5284)

Executives Agencies

Agricultural Marketing Service
RULES
46989 Lemons grown in Arizona and California

Agriculture Department
See Agricultural Marketing Service; Farmers Home Administration; Food Safety and Inspection Service; Packers and Stockyards Administration.

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
47122 International Business Machines Corp. et al.

Army Department
See also Engineers Corps.
NOTICES
Meetings:
47084 Science Board

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
47083 Procurement list, 1985; additions and deletions

Civil Aeronautics Board
NOTICES
47051 Agency information collection activities under OMB review
47052 All-cargo air service certificate applications
47052 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
47052 Jet 24
47053 Wilbur's Inc.
47149 Meetings; Sunshine Act

Civil Rights Commission
NOTICES
Meetings: State advisory committees:
47053 Connecticut

Commerce Department
See also International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.
NOTICES
47053 Agency information collection activities under OMB review

Defense Department
See Army Department; Engineers Corps.

Economic Regulatory Administration
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
47097 Alaska Electric Generation & Transmission, Inc.
47096 CoGen Lynchburg, Inc.
47098 New England Ethanol Products

Education Department
NOTICES
Grants; availability, etc.:
47084 Strengthening, special needs, and endowment grant programs; closing date extension

Employment and Training Administration
NOTICES
Adjustment assistance:
47129 Republic Steel Corp.
47128 Wheatland Tube Co.

Employment Standards Administration
NOTICES
47154 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (CO, KS, LA, MO, NM, OK, PA, RI, and TX)

Energy Department
See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission.
NOTICES
Environmental statements; availability, etc.:
47095 Savannah River Plant, SC; health effects and epidemiological studies of operations; meeting, etc.
Meetings:
47095 National Petroleum Council

Energy Research Office
NOTICES
Meetings:
47107 Energy Research Advisory Board (2 documents)

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
47084 San Joaquin River and Tributaries, CA

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
47050 Ohio; extension of time
Air quality planning purposes; designation of areas:
47050 Wisconsin; extension of time
NOTICES
Environmental statements; availability, etc.:
47111 Agency statements; review and comment
47108 Agency statements; weekly receipts
Meetings:
47112 Science Advisory Board (2 documents)

Toxic and hazardous substances control:
47113 Premanufacture exemption applications
47108 Premanufacture notices receipts
47113 Premanufacture notices receipts; correction (2 documents)

Farmers Home Administration
PROPOSED RULES
Loan and grant programs:
47007 Special supervision of delinquent and problem case FmHA farm borrowers
NOTICES
47051 Natural resources management guide; meeting

Federal Aviation Administration
RULES
47176 Airport radar service areas; final rule and request for comments
PROPOSED RULES
47178, 47184 Airport radar service areas (2 documents)

Federal Communications Commission
NOTICES
47149, 47150 Meetings; Sunshine Act (2 documents)

Federal Deposit Insurance Corporation
NOTICES
47150 Meetings; Sunshine Act (2 documents)

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
47102 Amoco Gas Co.
47103 Arkansas Louisiana Gas Co.
47105 Bethune, Congressman Ed, et al.
47103 Boston Edison Co.
47104 California Department of Water Resources
47104 Columbia Gas Transmission Corp.
47104 Consolidated Gas Supply Corp.
47105 Delmarva Power & Light Co.
47105 Equitable Gas Co. et al.
47106 Greensboro Lumber Co. et al.
47106 Gulf States Utilities Co.
47106 Kansas Gas & Electric Co.
47106 Lockhart Power Co.
47106 McCommons Oil Co.
47099 National Fuel Gas Supply Corp.
47099 Panhandle Eastern Pipe Line Co.
47100 Texas Gas Transmission Corp.
47100 Texas Gas Transmission Corp. et al.
47101 Trunkline Gas Co.
47101 Western Gas Interstate Co.
47102 Woods Creek, Inc.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
47107 Methane Development Corp.
47102 Saint Joseph Medical Center

Federal Maritime Commission
NOTICES
47113 Agreements filed, etc.

Federal Reserve System
RULES
Truth in lending (Regulation Z):
46989 Credit cards; issuance and liability
PROPOSED RULES
Unfair or deceptive acts or practices (Regulation AA):
47041 Credit practices
NOTICES
47151 Meetings; Sunshine Act

Federal Trade Commission
NOTICES
47151 Meetings; Sunshine Act

Fiscal Service
RULES
47001 Nomenclature changes; Financial Management Service

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
47050 Waterfowl hunting; non-toxic shot zones; extension of time

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
46991 Nitrofurazone and furazolidone; correction
NOTICES
Color additive petitions:
47114 Coopervision, Inc.; correction
Food additive petitions:
47114 Ciba-Geigy Corp.; correction
Human drugs:
47114 Bentyl with phenobarbitol capsules, etc.; approval withdrawn; correction
47115 Parenteral multivitamin drug products; exemption revoked; correction
47114 Winstrol tablets; approval withdrawn; correction
Laser variance approvals, etc.:
47115 Laser Images, Inc., et al.

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
47032 Fee increase for inspection service

Health And Human Services Department
See also Food and Drug Administration; Social Security Administration.
NOTICES
47114 Agency information collection activities under OMB review

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
46991 Interest rate changes
NOTICES
47116 Agency information collection activities under OMB review

Indian Affairs Bureau
NOTICES
Judgment funds; plans for use and distribution:
47117 Wyandotte Tribe of Oklahoma

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service.

NOTICES
Meetings:
47116 Garrison Diversion Unit Commission

Internal Revenue Service
RULES
Income taxes:
46992 Transactions between related taxpayers; losses, expenses, and interest; temporary
PROPOSED RULES
Income taxes:
47048 Transactions between related taxpayers; losses, expenses, and interest; cross reference

International Trade Administration
PROPOSED RULES
Export licensing:
47047 Foreign policy export controls review
NOTICES
Antidumping:
47076 Cellular mobile telephones and subassemblies from Japan
47077 Diamond tips for phonograph needles from United Kingdom
47078 Dried codfish from Canada
47077 Instant potato granules from Canada
47053 Titanium sponge from Japan
47066 Valves, couplings, nozzles and connections, of brass, suitable for use in interior fire protection systems from Italy
Countervailing duties:
47079 Live swine and fresh, chilled and frozen pork products from Canada
47054 Oil country tubular goods from Mexico
47060 Oil tubular goods from Spain
47074 Export trade certificates of review
Scientific articles; duty free entry:
47076 Food and Drug Administration

International Trade Commission
NOTICES
Import investigations:
47121 Cold-rolled carbon steel products from Korea
47121 Rowing machines and components
47121 Skinless sausage casings and resulting product manufacturing processes

Justice Department
See Antitrust Division.

Labor Department
See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Meetings:
47119 Salmon District Advisory Council; cancellation
47119 Salmon District Grazing Advisory Board; cancellation
Resource management plans:
47119 John Day Planning Area, OR
Withdrawal and reservation of lands:
47119 Alaska; correction

Legal Services Corporation
NOTICES
Grant awards:
47133 Birmingham Area Legal Services et al.

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
47129 Consolidation Coal Co. (2 documents)
47130 International Salt Co.
47130 Shannopin Mining Co.
47130 Tina Mining Co., Inc.

Minerals Management Service
NOTICES
47120 Federal and Indian leases royalties; refund procedures

National Bureau of Standards
NOTICES
Information processing standards, Federal:
47080 I/O channel level interface standards; technical verification guidance

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
47006 Bering Sea and Aleutian Islands king crab
47005 Pacific Coast groundfish
NOTICES
Deep seabed mining, exploration license applications:
47081 Ocean Minerals Co. and Kennecott Consortium
Fishery conservation and management:
47081 Foreign fishing permit applications

National Park Service
NOTICES
Environmental statements; availability, etc.:
47120 Lake Meredith Recreation Area and Alibates Flint Quarries National Monument, TX

National Science Foundation
NOTICES
47137 Agency information collection activities under OMB review

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
47034 Backfitting process for power reactors
NOTICES
Meetings:
47137, 47138 Reactor Safeguards Advisory Commission (2 documents)
47139 Regional State Liaison Officers

Occupational Safety and Health Administration
PROPOSED RULES
47049 Testing and certification; workplace equipment and materials; comment period reopened

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
47051 Auction Farm, IA, et al.

Pension and Welfare Benefit Programs Office
NOTICES
47133 Employee benefit plans; alternative computation methods for benefit accrual; public notice by Treasury Department
Employee benefit plans; prohibited transaction exemptions:
47131 Criterion Investments

Securities and Exchange Commission
NOTICES
Hearings, etc.:
47139 Den Norske Creditbank Finance Corp.
47139 Georgia Power Co.
47141 Shelter Resource Fund et al.
Self-regulatory organizations; proposed rule changes:
47143 American Stock Exchange, Inc.
47144 Boston Stock Exchange, Inc.
47144 Midwest Stock Exchange, Inc.
47145 New York Stock Exchange, Inc.
47146 Philadelphia Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
47139 Cincinnati Stock Exchange

Social Security Administration
RULES
Social security benefits, etc.:
46991 Expedited appeals process; reopening and revising determinations and decisions; correction

State Department
NOTICES
Meetings:
47146 Overseas Schools Advisory Council
47147 Soviet and Eastern European Studies Advisory Committee

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
47082 Panama
47083 Taiwan

Transportation Department
See Federal Aviation Administration.

Treasury Department
See Fiscal Service; Internal Revenue Service.

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
47004 Dependency of parents; monthly income level
47002 Legislative increases in compensation
Legal services, General Counsel:
47004 Personal property claims
NOTICES
47148 Agency information collection activities under OMB review

Separate Parts in This Issue

Part II
47154 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part III
47176 Department of Transportation, Federal Aviation Administration

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential
Determinations; No. 85-2 of November 28, 1984 46987
Proclamations:
5284 46985

7 CFR
910 46989
Proposed Rules
1872 47007
1900 47007
1910 47007
1924 47007
1941 47007
1943 47007
1945 47007
1951 47007
1955 47007
1960 47007
1962 47007

9 CFR
Proposed Rules:
307 47032
350 47032
351 47032
354 47032
355 47032
362 47032
381 47032

10 CFR
Proposed Rules:
2 47034
50 47034

12 CFR
226 46989
Proposed Rules:
227 47041

14 CFR
71 47176
91 47176
103 47176
105 47176
Proposed Rules:
71 (2 documents) 47178, 47184
91 47184
103 47184
105 47184

15 CFR
Proposed Rules:
Ch. III 47047

20 CFR
422 46991

21 CFR
558 46991

24 CFR
232 46991
235 46991

26 CFR
1 46992
Proposed Rules:
1 47048

29 CFR
Proposed Rules:
1907 47049
1910 47049
1935 47049
1936 47049

31 CFR
Ch. II 47001

38 CFR
3 (2 documents) 47002, 47004
14 47004

40 CFR
Proposed Rules:
52 47050
81 47050

50 CFR
663 47005
676 47006
Proposed Rules:
20 47050

Federal Register
Vol. 49, No. 232
Friday, November 30, 1984

Presidential Documents

Title 3—

The President

Proclamation 5284 of November 28, 1984

Conferral of Honorary Citizenship of the United States Upon William Penn and Hannah Callowhill Penn

By the President of the United States of America

A Proclamation

In the history of this Nation, there has been a small number of men and women whose contributions to its traditions of freedom, justice, and individual rights have accorded them a special place of honor in our hearts and minds, and to whom all Americans owe a lasting debt. Among them are the men and women who founded the thirteen colonies that became the United States of America.

William Penn, as a British citizen, founded the Commonwealth of Pennsylvania in order to carry out an experiment based upon representative government; public education without regard to race, creed, sex, or ability to pay; and the substitution of workhouses for prisons. He had a Quaker's deep faith in divine guidance, and as the leader of the new colony, he worked to protect rights of personal conscience and freedom of religion. The principles of religious freedom he espoused helped to lay the groundwork for the First Amendment of our Constitution.

As a man of peace, William Penn was conscientiously opposed to war as a means of settling international disputes and worked toward its elimination by proposing the establishment of a Parliament of Nations, not unlike the present-day United Nations.

Hannah Callowhill Penn, William Penn's wife, effectively administered the Province of Pennsylvania for six years and, like her husband, devoted her life to the pursuit of peace and justice.

To commemorate these lasting contributions of William Penn and Hannah Callowhill Penn to the founding of our Nation and the development of its principles, the Congress of the United States, by Senate Joint Resolution 80, approved October 19, 1984, authorized and requested the President to declare these persons honorary citizens of the United States of America.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim William Penn and Hannah Callowhill Penn to be honorary citizens of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of Nov., in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-31593
Filed 11-29-84; 11:28 am]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 85–2 of November 28, 1984

Memorandum for the Secretary of State, the Secretary of Commerce

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Sections 102(d) and 201(a) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 701(d), 721(a)), I hereby determine that separate international communications satellite systems are required in the national interest. The United States, in order to meet its obligations under the Agreement Establishing the International Telecommunications Satellite Organization (INTELSAT) (TIAS 7532), shall consult with INTELSAT regarding such separate systems as are authorized by the Federal Communications Commission. You are directed jointly to inform the Federal Communications Commission of criteria necessary to ensure the United States meets its international obligations and to further its telecommunications and foreign policy interests.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, November 28, 1984.

[FR Doc. 84–31594
Filed 11–29–84; 11:29 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 49, No. 232
Friday, November 30, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 492]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 260,000 cartons during the period December 2–8, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period December 2–8, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on November 27, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.792 is added as follows:

§ 910.792 Lemon Regulation 492.

The quantity of lemons grown in California and Arizona which may be handled during the period December 2, 1984, through December 8, 1984, is established at 260,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 28, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–31544 Filed 11–29–84; 8:45 am]
BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R–0501]

Truth in Lending; Credit Cards; Issuance and Liability

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final amendment to Regulation Z (Truth in Lending). The amendment specifically provides that credit cards issued for use with transactions that are exempt from all other provisions of the regulation are subject to the Regulation Z provisions governing the issuance of credit cards and the liability for unauthorized use. The amendment resolves any uncertainty that the issuance and liability protections apply to all credit cards regardless of use or cardholder status.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Ruth R. Amberg, Senior Attorney, or Lynn C. Goldfaden or Richard S. Garabedian, Staff Attorneys, in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–3667 or (202) 452–3867. Regarding the regulatory flexibility analysis: Robert Kurtz, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–2915.

SUPPLEMENTARY INFORMATION:

(1) General

Section 226.3 of Regulation Z (12 CFR Part 226) is amended to clarify that the restriction on unsolicited issuance of credit cards in § 226.12(a) and the provision in § 226.12(b) limiting a cardholder's liability for unauthorized use of a credit card to a maximum of $50 (both based on the 1970 credit card amendments to the Truth in Lending Act) apply to credit cards issued for use in transactions that are exempt from other sections of the regulation. Action on this issue was undertaken in response to questions about the applicability of these two credit card provisions from both the public and

private sectors. The amendment resolves any remaining uncertainty that the issuance and liability protections apply to all credit cards, regardless of use or cardholder status. The exempt status of a transaction with regard to all of the other provisions of the regulation is not affected by the amendment, therefore, the exemptions continue to apply to the cost disclosure, error resolution, rescission, and advertising requirements.

The Board published this amendment for public comment on January 18, 1984 (49 FR 2210) and solicited information on questions such as how to minimize creditors' compliance burdens and costs, and what other laws exist that provide protections against unsolicited issuance and liability for unauthorized use of credit cards. The Board received approximately 60 comments on the proposed amendment, including comments from 11 Federal Reserve Banks. Approximately two-thirds of the commenters supported the proposal.

(2) Scope

The Regulation Z exemptions most likely to be affected are those for: (1) Credit extended by a regulated public utility for utility services, including credit extended by telecommunications companies, and (2) extensions of credit for more than $25,000 (if unsecured by real estate or by the consumer's principal dwelling). Business credit transactions also are generally exempt from the regulation; however, the regulation presently makes clear that the credit card provisions on unsolicited issuance and liability for unauthorized use apply to cards issued for obtaining business-purpose credit. Although the types of exempt transactions most commonly made with credit cards are business transactions and telephone calls, the amendment makes clear that *all* credit cards are covered by the provisions on issuance and liability for unauthorized use, so that the amendment also generally applies to credit cards issued for use with other types of transactions that are exempt under Regulation Z. (The regulation also exempts credit extended by registered broker-dealers for the purchase of securities and commodities, certain student loans, and home fuel budget plans.)

The vast majority of the credit cards that are affected by this amendment are telephone calling cards. Other than a number of the credit cards issued for use in consumer asset management accounts, there appear to be comparatively few cards issued for consumer use with fixed credit lines over $25,000 that are not secured by real estate or a principal dwelling. (Regulation E, Electronic Fund Transfers—12 CFR Part 205—governs the issuance and liability for unauthorized use of virtually all of the cards in these consumer asset management accounts, as they involve access to asset accounts prior to accessing credit lines.) For these reasons, this discussion will focus on telephone credit cards.

(3) Telephone Credit Cards

The questions regarding the applicability of the credit card amendments to telephone cards take on particular importance because of the millions of telephone credit cards that have been issued in recent years; the fact that many paper telephone cards are being replaced by plastic cards which resemble and function much like retail and bank credit cards; and the legal changes in the telecommunications industry that even further expand the number of companies issuing cards. Furthermore, because of the wide spectrum of cards through which telephone services are becoming available, ranging from cards issued by traditional telephone companies to bank credit cards and travel-and-entertainment cards, both consumers and industry may have difficulty distinguishing situations in which the credit card protections apply.

The Board is concerned that, unless the credit card provisions apply to these cards, consumers who use credit cards in connection with credit programs involving exempt transactions will not have any federal protections restricting unsolicited issuance of such cards and limiting their liability for the unauthorized use of the card. Although there is no evidence of a pattern of abuse at this time, the lack of uniform, established legal protection may have a serious impact in the future in light of the scope of these programs and the indications of their continued growth. The Board received information indicating that only a few other laws provide protections against unauthorized telephone card charges, and these laws are of limited application.

The number of telephone credit cards issued by AT&T Communications, Inc. (AT&T), local Bell operating companies, and the independent telecommunications companies (not including other long-distance competitors) as of January 1984 was approximately 50 million. The number of outstanding cards has increased substantially over the last ten months as a result of AT&T's card distribution. The use of telephone credit cards is now being encouraged as the companies seek to control fraud losses and other costs associated with operator-assisted calls billed to third parties, as well as to provide consumers with easier access to telephone services. Presently, the Board understands that the major card issuers' stated policies include the issuance of cards to new customers only upon request and not imposing liability on a consumer for unauthorized charges made on a card. However, unless the credit card protections in Truth in Lending apply to these cards, it is unknown what policies will be set by these companies in the future. It is possible that the companies will reverse their past policies and seek to impose liability on the cardholder whose card is used for unauthorized calls.

Unsolicited issuance of credit cards is a different type of problem. Among the congressional findings leading to the ban on unsolicited issuance was that unsolicited cards were annoying and intrusive and that unsolicited issuance may increase the risk of extensive unauthorized use when cards are stolen before reaching the consumer. Because the vast majority of the telephone cards contain all of the information necessary for immediate use, unauthorized calls are relatively easy to make. Even if, ultimately, no liability were imposed on the consumer, the consumer not only would be subjected to the burden of proving that the card was never received, but also to the inconvenience of resolving the unauthorized billings.

The Board also believes that since credit cards used by businesses and for business purposes are subject to the protections, it is reasonable for credit cards used by consumers for personal credit transactions to be subject to the same protections. In addition, the amendment gives holders of telephone credit cards protections that are comparable to those available to consumers using other credit cards or debit cards to pay for the calls. Consumers now have the choice of a wide spectrum of cards with which to make telephone calls. Consumers who use any of these cards are in an equally difficult position to protect themselves against the risks of their cards being used fraudulently.

(4) Effective date; transition provisions

The amendment is generally effective on December 31, 1984. However, a limited delayed compliance date has been provided for the unsolicited issuance prohibition set forth in § 226.12(a) to minimize initial compliance costs associated with the amendment while still assuring consumer protections.

In regard to the unsolicited issuance prohibition, the Board has set a compliance date of January 29, 1985, in order to give issuers sufficient time to communicate the issuance rules throughout their organizations and to stop all procedures that might not comply, thereby avoiding inadvertent violations. The Board had solicited comment on waiving the unsolicited issuance prohibition as the AT&T Communications, Inc.'s one-time card distribution to all consumers who have either a Bell system card or a card issued by an independent company used for service over AT&T facilities; however, as distribution of the new card is substantially complete, that issue is now moot.

In its proposal, the Board solicited public comment on possible actions to minimize initial compliance costs. One issue involved outstanding cards or agreements containing language that is inconsistent with the liability limitation rules. The Board solicited comment on whether it should stipulate that card issuers not be required to replace existing cards or agreements merely to change misleading language (such as language on the card indicating that the cardholder is responsible for all charges made with the card), even though the liability limitations of Regulation Z already would be effective. Then, as new cards are issued or new agreements printed, the language would have to be modified to accurately reflect the limits. The commenters overwhelmingly indicated their support for correction of inconsistent language on credit cards and in agreements according to normal replacement schedules rather than immediate replacement. The Board agrees that this approach should help to minimize creditors' transitional costs. Card issuers electing to impose any liability for unauthorized use on the cardholder would, of course, need to comply with the conditions of liability set forth in § 226.12(b).

(5) Regulatory Flexibility Analysis

The Board's Division of Research and Statistics has prepared a regulatory flexibility analysis. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–3245.

List of Subjects in 12 CFR Part 226

Advertising, Banks—banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

(6) Text of Revision

Pursuant to the authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), Regulation Z, 12 CFR Part 226, is amended by adding an Office of Management and Budget control number to § 226.1, removing footnote 4 to § 226.3(a) and adding a new footnote 4 to § 226.3 to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB Control No. 7100–0199.)

* * * * *

§ 226.3 Exempt transactions.

This regulation does not apply to the following:[4] * * *

---

[4]The provisions in § 226.12 (a) and (b) governing the issuance of credit cards and the liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 27, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-31493 Filed 11-29-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

Federal Old-Age, Survivors, and Disability Insurance Benefits, Black Lung Benefits, Supplemental Security Income for the Aged, Blind and Disabled, and Organization and Procedures; Reopening and Revising Determinations and Decisions Expedited Appeals Process

Correction

In FR Doc. 84–30865 beginning on page 46365 in the issue of Monday, November 26, 1984, make the following correction: On page 46370, in the second column, the fifth through the eleventh lines from the top of the page should appear in the third column following the second line of the **Authority** for Part 422.

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Part 558

Antibiotic, Nitrofuran, and Sulfonamide Drugs in Animal Feeds; Nitrofurazone and Furazolidone

Correction

In FR Doc. 84–24516, beginning on page 36366 in the issue of Monday, September 17, 1984, make the following corrections:

1. On page 36367, first column, the fifth line from the bottom of the page should have read "Therefore, under the Federal Food, Drug,".

2. On page 36367, second column, second line, "21 CFR 5.82" should have read "21 CFR 5.83".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-84-1214; FR-2070]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 232 (Mortgage Insurance for Nursing Homes) and on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire

safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 13.00 percent to 12.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56268 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 12.50 percent per annum, except that where an application for commitment was received by the Secretary before November 21, 1984, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

2. In § 235.9, paragraph (a) is revised to read as follow:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.50 percent per annum, except that where an application for commitment was received by the Secretary before November 21, 1984, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after November 21, 1984, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 12.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Authority: Sections 211, 232(i) and 235(i) National Housing Act, (12 U.S.C. 1715b, 1715w(i) and 1715z(i); section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: November 20, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing, FHA Commissioner, HUD.

[FR Doc. 84-31471 Filed 11-29-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7991]

Income Tax; Taxable Years Beginning After December 31, 1953; Losses, Expenses, and Interest in Transactions Between Related Taxpayers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to deductions, timing of deductions, and losses in certain transactions between related taxpayers. The temporary regulations provide guidance to taxpayers subject to the provisions of section 267 of the Internal Revenue Code. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. The text of a portion of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: Effective after December 31, 1983, these temporary regulations are generally applicable to amounts otherwise allowable as deductions for taxable years beginning after 1983 and to losses on transactions after 1983.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley (for rules under section 267(f)) and John G. Schmalz or Robert H. Ginsburgh (for other rules) of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (Telephone: 202–566–3458 for Keith E. Stanley or 202–566–3297 for John G. Schmalz and Robert H. Ginsburgh; not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 174 of the Tax Reform Act of 1984 (Pub. L. No. 98–369; 98 Stat. 494) amends section 267 of the Internal Revenue Code of 1954 (relating to losses, expenses, and interest with respect to transactions between related taxpayers). This document adds temporary regulations to Part 1 of Title 26 of the Code of Federal Regulations to reflect the amendments to section 267. More specifically, temporary regulations are added in question and answer form under section 267 (a), (b), and (e) and section 706, dealing with deferral of certain deductions generally and application of that deferral and the disallowance of certain losses to partnerships. See §§ 1.267 (a)-2T and 1.706-2T, added by this document. The temporary regulations are added in standard format under section 267(f), dealing with losses between members of a controlled group of corporations. See §§ 1.267(f)-1T and 1.267(f)-2T added by this document.

The temporary regulation added by this document will stay in effect until superseded by later temporary or final regulations relating to these matters.

Cross Reference Notice

The text of the temporary regulations at §§ 1.267(a)-2T, 1.267(f)-1T, 1.267(f)-2T, and 1.1502-13T also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

Limited Scope of Temporary Regulations

These temporary regulations are not intended to address comprehensively all the issues raised by the amendments to section 267. Taxpayers may rely for guidance on the temporary regulations in this document, which the Internal Revenue Service will follow in resolving issues arising under section 267. No inference, however, should be drawn regarding questions not expressly raised and answered.

Topics

This preamble is divided into two topics. Topic I deals with the temporary regulations under section 267 (a), (b), and (e) and section 706. Topic II deals with the temporary regulations under section 267(f).

Topic I

Sections 267 (a), (b), and (e) and 706

Before the enactment of the Tax Reform Act of 1984, section 267(a)(2) of the Code denied a deduction for certain expenses and for interest owed by a taxpayer to a related taxpayer if payment was not made within 2½ months after the close of the taxable year of the payor in which the amount otherwise would have been deductible and if, by reason of the accounting method of the person to whom the payment was to be made, the amount was not included in the income of that person unless paid. Also, section 267(a)(2) did not apply to transactions between a partner and a partnership because they were not related persons under section 267(b). The Act revised section 267(a)(2) by providing that a deduction for an otherwise deductible amount may not be taken by the payor until the day the amount is includible in the gross income of the person to whom payment of the amount is made if that person and the payor are persons described in section 267(b) on the last day of the taxable year of the payor in which such amount otherwise would have been deductible. In addition, the Act extends this deferral to transactions between a partner and a partnership (excluding certain expenses and interest of partnerships owning low-income housing).

Explanation of section 267 (a), (b), and (e). The regulations under section 267(a) deal with issues that are of general application as well as issues that arise with respect to the application of section 267 to partnerships. The rules of general application concern transactions in which the person to whom the payment is owed uses the completed contract method of accounting and transactions in which the original issue discount rules under sections 1271 through 1275 or the imputed interest rules under section 483 apply. The rules of general application also deal with the situation in which the persons involved are related persons under section 267(b) at the end of the taxable year but cease to be so related in a subsequent year that ends before payment is made. The rules of general application also distinguish between amounts owed for the purchase of property versus amounts owed for the performance of services. *See* S. Rep. No. 98–169, 98th Cong., 2d Sess. 495 (1984).

With respect to the regulations under section 267(a) that deal with the application of section 267 to partnerships, the regulations make clear that section 267(a) applies to the partnership, rather than to the partners individually. In addition, the regulations provide that the disallowance rule of section 267(a)(1) and the deferral rule of section 267(a)(2) apply (subject to a *de minimis* exception) to property exchanged and amounts owed between partnerships that are not related persons for purposes of section 267 if the partnerships have one or more common partners or if any of the partners in either partnership is related to one or more partners in the other partnership. In such cases, the regulations require disallowance under section 267(a)(1) and deferral under section 267(a)(2) to the extent that they would have been required had the transaction occurred between the payor partnership and the partners of the payee partnership or, if the amount disallowed or deferred would be greater, between the payee partnership and the partners of the payor partnership. This rule ensures that section 267 will not be avoided by use of a partnership as an intermediary in related party transactions, and is thus consistent with the general approach suggested in the legislative history, *see* S. Rep. No. 98–169, 98th Cong., 2d Sess. 496, n.17 (1984), as well as with the rule of the regulations under section 267 prior to amendment. Consideration was given to extending this rule to transactions between other pass-through entities (for example, S corporations) and between such an entity and a partnership, and comments are invited concerning the appropriateness of such an extension.

Explanation of section 706. The regulations also address the interrelationship of section 706(d)(2) with section 267(a)(2). The regulations provide that a deduction for any expense that is deferred under section 267 constitutes an allocable cash basis item under section 706(d)(2)(B)(iv).

Topic II

Section 267(f)

A new section 267(f) was enacted by the Tax Reform Act of 1984. Section 267(f)(2) relates to the deferral and restoration of loss on the sale or exchange of property between two members of a controlled group. These temporary regulations provide guidance under new section 267(f).

Explanation of section 267(f). Under new section 267(f)(2), a loss of the sale or exchange of property from one member of a controlled group of corporations (a 50-percent-common-control test) to another member "shall be deferred until the property is transferred outside such controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations."

The primary rationale for deferring loss on transfers between members of the same group is to prevent the premature recognition of loss merely because the property is transferred to a related person. Although the temporary regulations provide that the principles of section 482 and the regulations thereunder are to be applied before section 267(f)(2) is applied, an ancillary rationale for deferring loss is to prevent artifically increasing the amount of a loss taken by a member on the sale or exchange of property at less than fair market value to another member in cases where section 482 is not easy to apply. Section 267(f)(2) provides for deferral of loss on such transfers until such time as the property is transferred outside the group (presumably at its fair market value), at which time that loss will be recognized in conjunction with the gain or loss recognized by the member transferring the property outside the group. At that time the sales price of property to an independent party can be used as a bench mark in applying section 482 to an intercompany sale of the same goods.

1. Rules for Groups Not Filing Consolidated Returns

If loss is deferred on a sale of property from one member of a controlled group not included in a consolidated return to another member, these temporary regulations generally apply the principles for restoring losses that are set forth in § 1.1502–13 for members that join in filing a consolidated return.

a. Selling Member Ceases To Be a Member

Section 1.1502–13(f)(1)(iii) provides for loss restoration when either the selling member or the owning member ceases to be a member. In certain cases such a restoration rule could provide a way of easily thwarting the intent of section 267(f)(2). Accordingly, the temporary regulations provide that if a member (M1) sells property to another member (M2), and thereafter, while M2 still holds the property, M1 ceases to be a member of the group, then M1's unrestored deferred loss for property at the time M1 ceases to be a member will never be restored to M1. Instead, M2's basis in the property will be increased by the amount of M1's unrestored deferred loss at the time M1 leaves the group. However, a special rule is provided to prevent the resourcing of deferred loss in the hands of the owning member through either increased depreciation deductions or reduced gain (or increased loss) upon resale of the property. See § 1.267(f)–1T (c) (6) and (7). Thus, the loss is preserved in the group because no member of a group should under section 267(f) be able to recognize a loss while the group continues to hold property it purchased from itself.

If, after the application of this rule, M2 keeps the property and is subsequently liquidated, the loss is forever lost. This is the normal consequence of the operation of sections 336 and 337.

b. Depreciable Property

For purposes of determining when a deferred loss on the sale of depreciable property is restored, § 1.267(f)–1T(d) replaces the rule of § 1.1502–13(d) of the consolidated returns regulations. The purpose of this rule is to prevent rapid restoration of the deferred loss in cases where the purchasing member depreciates the property more rapidly than did the selling member.

Loss will not be periodically restored under § 1.267(f)–1T(d) to the extent the selling member's (M1's) selling price is less than the salvage value that was assumed by M1. Mechanically this is accomplished by limiting the restoration amount to the lesser of the amount of M1's deferred loss for the property on the date of its sale or the total amount of depreciation that would have been allowable to M1 for the property after the date of its sale had it not been sold. Restoration of the portion of the loss that is not periodically restored can occur under other provisions of § 1.267(f)–1T. Such a restoration will occur, for example, upon the purchasing member's subsequent sale of the property outside the group.

c. Transfer of a Receivable

The temporary regulations at § 1.267(f)–1T (e) provide an exception to section 267(f)(2) for a member (M1) selling a receivable at "fair market value" at a loss to another member. The amount of that loss, not in excess of M1's gain on the sale to a nonmember of the property that generated the receivable, is excepted from the section 267(f)(2) loss deferral rules on the rationale that the group has recognized offsetting income. This treatment is in response to language in the Conference Committee Report for the Tax Reform Act of 1984, H.R. Rep. No. 98–861, 98th Cong., 2d Sess. 1033 (1984).

Section 44(b)(2) of the Tax Reform Act of 1984 mandates a regulations project under section 482. The Service may study the issue of the appropriate "fair market value" of a receivable in connection with this regulations project.

d. Inventory Sales

As is the case with sales of other kinds of property, the temporary regulations generally provide for the deferral and restoration of loss on the sale of inventory from one member (M1) to another member (M2) in accordance with the rules for deferred intercompany transactions in § 1.1502–13 of the consolidated returns regulations. It is uncertain whether § 1.1502–13 of the consolidated returns regulations properly determines the amount of deferred gain or loss on intercompany inventory sales and the timing of the restoration of that gain or loss. The Service and the Treasury have the problem under study and invite comments on this problem.

Under section 267(f)(3)(B), except to the extent provided in regulations, section 267(f)(2) does not apply to the sale of inventory in the ordinary course of the transferor's trade or business if either the transferor or the transferee is a foreign corporation. Under § 1.267(f)–1T(g)(3), evidence of a sale of inventory outside the ordinary course of business includes a sale made for the purpose of accelerating losses and an abnormally large volume of sales near the end of the taxable year. Use of these items of evidence responds to language in the Conference Committee Report for the Tax Reform Act of 1984, H.R. Rep. No. 98–861, 98th Cong., 2d Sess. 1033 (1984).

The temporary regulations at § 1.267–1T(g)(2) specifically provide for two cases in which section 267(f)(2) is applicable to the sale of inventory at a loss from one member (M1) to another member (M2) even though M1 or M2 is a foreign corporation. In the first case, M1 is a domestic corporation and M2 is a foreign corporation whose income from the resale of the inventory is taxable under section 882 (relating to effectively connected income). In the second case, M1 is a foreign corporation whose income from the sale of the inventory is taxable under section 882, and M2 either is a domestic corporation or is a foreign corporation whose income from the resale of the inventory is also taxable under section 882. This rule prevents a group's use of a foreign corporation for purposes of selling inventory in the domestic market while avoiding the application of section 267(f)(2).

Furthermore, this rule preserves the fairness of competition between groups that include such foreign corporations and similar groups including only domestic corporations.

e. Earnings and Profits Adjustments

The temporary regulations at § 1.267(f)–1T(c)(3) provide that if a member (M1), that does not join in filing a consolidated return with another member (M2), has deferred a loss on the sale of property to M2, M1's earnings and profits are not reduced until its deferred loss is restored. If this rule in the temporary regulations issued by this document is issued in final regulations, §§ 1.312–6 and 1.312–7 will be amended to reflect this earnings and profits treatment.

2. Rules Applicable if Consolidated Returns Are Filed

The temporary regulations provide that section 267(f)(2) generally does not apply to a loss on the sale of property between two members of a controlled group that join in filing a consolidated return. The consolidated returns regulations under § 1.1502–13 provide for the deferral and restoration of such losses.

a. Exceptions to General Consolidated Return Rule

Notwithstanding the fact that the selling member (M1) of loss property and the purchasing member (M2) join in filing a consolidated return at the time of the sale, problems arise in certain cases with permitting a restoration of deferred loss under § 1.1502–13. The temporary regulations ensure that a member not be permitted to escape the loss deferral provisions of section 267(f)(2) merely because it joins or has joined with another member in filing a consolidated return. Thus, for example, even though M1's deferred loss would ordinarily be restored under § 1.1502–13(f)(1)(iii) upon M2 leaving the affiliated group but still remaining a member of the same controlled group, the temporary regulations provide the deferred loss is not restored in that case.

Provisions of the temporary regulations that could prevent the restoration of deferred loss that otherwise would occur under § 1.1502–13 include § 1.267(f)–1T(c)(4) (which provides that two members of the same group are not, with respect to each other, considered to cease to be members of the group as long as they are both members of any one group), § 1.267(f)–1T(c)(5) (which prevents restoration when a member that is both the selling member and the owning member ceases to be a member), § 1.267(f)–1T(c) (6) and (7) (which prevents restoration when the selling member ceases to be a member), § 1.267(f)–1T(c)(8) (which prevents restoration upon the purchasing member's disposition of the property to a person having a section 267(b) relationship with the selling member), and § 1.267–2T(e) (which prevents restoration when property upon which loss has been deferred is disposed of outside the affiliated group to a member of the controlled group).

When depreciable property that was subject to the restoration rule of the consolidated returns regulations becomes subject to the restoration rule of these temporary regulations, § 1.267(f)–2T (g) and (h) provides special rules for determining the amount and the timing of the restoration that occurs. Similarly, the temporary regulations provide a special rule for determining the amount of deferred loss for a receivable that is restored at the time the deferred loss would otherwise have been fully restored under the consolidated returns regulations. See § 1.267(f)–2T(j).

b. Section 267(f)(2) Overrides Election Not To Defer

The selling member must defer under section 267(f)(2) loss realized on the sale or exchange of property to the purchasing member, notwithstanding the fact that the group with which these members join in filing a consolidated return has made an election under § 1.1502–13(c)(3) not to defer gain or loss on intercompany transactions. See § 1.267(f)–2T(c). To eliminate hardship that otherwise could possibly occur as a result of this exception, it is anticipated that a group will have the Commissioner's consent to revoke that election beginning during its taxable year ending in 1984. However, any revocation must be in such form and subject to such terms and conditions as the Commissioner may prescribe by revenue procedure or ruling.

c. Consolidated Return Regulations Cross-Reference

In some cases, the rules of section 267(f) and the regulations implementing section 267(f) apply to affiliated groups filing consolidated returns. Accordingly, a temporary regulations section is added to the consolidated returns regulations at § 1.1502–13T to cross-reference to § 1.267(f)–2T. If the temporary regulation § 1.267(f)–2T becomes final, then § 1.1502–13T(k) will also become final.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The collection of information contained in this regulation has been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0885.

Drafting Information

The principal authors of these temporary regulations are Keith E. Stanley (for rules under section 267(f)) and John G. Schmalz and Robert H. Ginsburgh (for other rules) of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.701–1—1.771–1

Income taxes, Partnerships.

26 CFR 1.1501–1— 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

Adoption of Amendments to the Regulations

Accordingly, the following amendments are made to Part 1 of Title 26.

Paragraph 1. Immediately after § 1.267(a)–1, there is added a new § 1.267(a)–2T. The new section reads as follows:

§ 1.267(a)–2T Temporary regulations; questions and answers arising under the Tax Reform Act of 1984.

(a) *Introduction—(1) Scope.* This section prescribes temporary question and answer regulations under section 267(a) and related provisions as

amended by section 174 of the Tax Reform Act of 1984, Pub. L. No. 98–369.

(2) *Effective date.* Except as otherwise provided by *Answer 2* or *Answer 3* in paragraph (c) of this section, the effective date set forth in section 174(c) of the Tax Reform Act of 1984 applies to this section.

(b) *Questions applying section 267(a)(2) and (b) generally.* The following questions and answers deal with the application of section 267(a)(2) and (b) generally:

Question 1: Does section 267(a)(2) ever apply to defer the deduction of an otherwise deductible amount if the person to whom the payment is to be made properly uses the completed contract method of accounting with respect to such amount?

Answer 1: No. Section 267(a)(2) applies only if an otherwise deductible amount is owed to a related person under whose method of accounting such amount is not ncludible in income unless paid to such person. Regardless of when payment is made, an amount owed to a contractor using the completed contract method of accounting is includible in the income of the contractor in accordance with § 1.451–3(d) in the year in which the contract is completed or in which certain disputes are resolved.

Question 2: Does section 267(a)(2) ever apply to defer the deduction of otherwise deductible original issue discount as defined in sections 163(e) and 1271 through 1275 ("the OID rules")?

Answer 2. No. Regardless of when payment is made, an amount owed to a lender that constitutes original issue discount is included in the income of the lender periodically in accordance with the OID rules. Similarly, section 267(a)(2) does not apply to defer an otherwise deductible amount to the extent section 467 or section 7872 requires periodic inclusion of such amount in the income of the person to whom payment is to be made, even though payment has not been made.

Question 3: Does section 267(a)(2) ever apply to defer the deduction of otherwise deductible unstated interest determined to exist under section 483?

Answer 3: Yes. If section 483 recharacterizes any amount as unstated interest and the other requirements of section 267(a)(2) are met, a deduction for such unstated interest will be deferred under section 267.

Question 4: Does section 267(a)(2) ever apply to defer the deduction of otherwise deductible cost recovery, depreciation, or amortization?

Answer 4: Yes, in certain cases. In general, section 267(a)(2) does not apply to defer the deduction of otherwise deductible cost recovery, depreciation, or amortization. Notwithstanding this general rule, if the other requirements of section 267(a)(2) are met, section 267(a)(2) does apply to defer deductions for cost recovery, depreciation, or amortization of an amount owed to a related person for interest or rent or for the performance or nonperformance of services, which amount the taxpayer payor capitalized or treated as a deferred expense (unless the taxpayer payor elected to capitalize or defer the amount and section 267(a)(2) would not have deferred the deduction of such amount if the taxpayer payor had not so elected). Amounts owed for services that may be subject to this provision include, for example, amounts owed for acquisition, development, or organizational services or for covenants not to compete. In applying this rule, payments made between persons described in any of the paragraphs of section 267(b) (as modified by section 267(3)) will be closely scrutinized to determine whether they are made in respect of capitalized costs (or costs treated as deferred expenses) that are subject to deferral under section 267(a)(2), or in respect of other capitalized costs not so subject.

Question 5: If a deduction in respect of an otherwise deductible amount is deferred by section 267(a)(2) and, prior to the time the amount is includible in the gross income of the person to whom payment is to be made, such person and the payor taxpayer cease to be persons specified in any of the paragraphs of section 267(b) (as modified by section 267(e)), is the deduction allowable as of the day on which the relationship ceases?

Answer 5: No. The deduction is not allowable until the day as of which the amount is includible in the gross income of the person to whom payment of the amount is made, even though the relationship ceases to exist at an earlier time.

Question 6: Do references in other sections to persons described in section 267(b) incorporate changes made to section 267(b) by section 174 of the Tax Reform Act of 1984?

Answer 6: Yes. References in other sections to persons described in section 267(b) take into account changes made to section 267(b) by section 174 of the Tax Reform Act of 1984 (without modification by section 267(e)(1)). For example, a transfer after December 31, 1983 (the effective date of the new section 267(b)(3) relationship added by the Tax Reform Act of 1984) of section 1245 class property placed in service before January 1, 1981, from one corporation to another corporation, 11 percent of the stock of which is owned by the first corporation, will not constitute recovery property (as defined in section 168) in the hands of the second corporation by reason of section 168(e)(4) (A)(i) and (D).

(c) *Questions applying section 267(a) to partnerships.* The following questions and answers deal with the application of section 267(a) to partnerships:

Question 1: Does section 267(a) disallow losses and defer otherwise deductible amounts at the partnership (entity) level?

Answer 1: Yes. If a loss realized by a partnership from a sale or exchange of property is disallowed under section 267(a)(1), that loss shall not enter into the computation of the partnership's taxable income. If an amount that otherwise would be deductible by a partnership is deferred by section 267(a)(2), that amount shall not enter into the computation of the partnership's taxable income until the taxable year of the partnership in which falls the day on which the amount is includible in the gross income of the person to whom payment of the amount is made.

Question 2: Does section 267(a)(1) ever apply to disallow a loss if the sale or exchange giving rise to the loss is between two partnerships even though the two partnerships are not persons specified in any of the paragraphs of section 267(b)?

Answer 2: Yes. If the other requirements of section 267(a)(1) are met, section 267(a)(1) applies to such losses arising as a result of transactions entered into after December 31, 1984 between partnerships not described in any of the paragraphs of section 267(b) as follows, and § 1.267(b)–1(b) does not apply. If the two partnerships have one or more common partners (*i.e.*, if any person owns directly, indirectly, or constructively any capital or profits interest in each of such partnerships), or if any partner in either partnership and one or more partners in the other partnership are persons specified in any of the paragraphs of section 267(b) (without modification by section 267(e)), a portion of the selling partnership's loss will be disallowed under section 267(a)(1). The amount disallowed under this rule is the greater of: (1) The amount that would be disallowed if the transaction giving rise to the loss had occurred between the selling partnership and the separate partners of the purchasing partnership (in proportion to their respective interests in the purchasing partnership); or (2) the amount that would be disallowed if such transaction had occurred between the separate partners of the selling partnership (in proportion to their respective interests in the selling partnership) and the purchasing partnership. Notwithstanding the general rule of this paragraph (c) *Answer 2*, no disallowance shall occur if the amount that would be disallowed pursuant to the immediately preceding sentence is less than 5 percent of the loss arising from the sale or exchange.

Question 3: Does section 267(a)(2) ever apply to defer an otherwise deductible amount if the taxpayer payor is a partnership and the person to whom payment of such amount is to be made is a partnership even though the two partnerships are not persons specified in any of the paragraphs of section 267(b) (as modified by section 267(e))?

Answer 3: Yes. If the other requirements of section 267(a)(2) are met, section 267(a)(2) applies to such amounts arising as a result of transactions entered into after December 31, 1984 between partnerships not described in any of the paragraphs of section 267(b) (as modified by section 267(e)) as follows, and § 1.267(b)–1(b) does not apply. If the two partnerships have one or more common partners (*i.e.*, if any person owns directly, indirectly, or constructively any capital or profits interest in each of such partnerships), or if any partner in either partnership and one or more partners in the other partnership are persons specified in any of the paragraphs of section 267(b) (without modification by section 267(e)), a portion of the payor partnership's otherwise allowable deduction will be deferred under section 267(a)(2). The amount deferred under this rule is the greater of: (1) The amount that would be deferred if the transaction giving rise to the otherwise allowable deduction had occurred between the payor partnership and the separate partners of the payee partnership (in proportion to their respective interests in the payee partnership); or (2) the amount that would be deferred if such transaction had occurred between the separate partners of the payor partnership (in proportion to their respective interests in the payor partnership) and the payee partnership. Notwithstanding the general rule of this paragraph (c) *Answer 3*, no deferral shall occur if the amount that would be deferred pursuant to the immediately preceding sentence is less than 5 percent of the otherwise allowable deduction.

Example. On May 1, 1985, partnership AB enters into a transaction whereby it accrues an otherwise deductible amount to partnership AC. AC is on the cash receipts and disbursements method of accounting. A holds a 5 percent capital and profits interest in AB and a 49 percent capital and profits interest in AC, and A's interest in each item of the income, gain, loss, deduction, and credit of each partnership is 5 percent and 49 percent, respectively. B and C are not related. Notwithstanding that AB and AC are not persons specified in section 267(b), 49 percent of the deduction in respect of such amount will be deferred under section 267(a)(2). The result would be the same if A held a 49 percent interest in AB and a 5 percent interest in AC. However, if A held more than 50 percent of the capital or profits interest of either AB or AC, the entire deduction in respect of such amount would be deferred under section 267(a)(2).

Question 4: What does the phrase "incurred at an annual rate not in excess of 12 percent" mean as used in section 267(e)(5)(C)(ii)?

Answer 4: The phrase refers to interest that accrues but is not includible in the income of the person to whom payment is to be made during the taxable year of the payor. Thus, in determining whether the requirements of section 267(e)(5) (providing an exception to certain provisions of section 267 for certain expenses and interest of partnerships owning low income housing) are met with respect to a transaction, the requirement of section 267(e)(5)(C)(ii) will be satisfied, even though the total interest (both stated and unstated) paid or accrued in any taxable year of the payor taxpayer exceeds 12 percent, if the interest in excess of 12 percent per annum, compounded semi-annually, on the outstanding loan balance (principal and accrued but unpaid interest) is includible in the income of the person to whom payment is to be made no later than the last day of such taxable year of the payor taxpayer.

Par. 2. Immediately after § 1.267(d)–1, there are added new §§ 1.267(f)–1T and 1.267(f)–2T. These new sections read as follows:

§ 1.267(f)–1T Temporary regulations for deferring certain losses of controlled groups.

(a) *Scope*—(1) *In general.* This section and § 1.267(f)–2T prescribe temporary regulations under section 267(f) as added by section 174(b)(2) of the Tax Reform Act of 1984, Pub. L. No. 98–369.

(2) *Effective date.* Section 267(f) is effective for the sale of property after 1983 except that section 267(f) does not apply to a sale of property to a foreign corporation on or before March 1, 1984.

(3) *Effect of consolidated return.* This section applies to loss on the sale of property between two members of a controlled group that do not join in filing a consolidated return for the taxable year the loss is incurred. Section 1.267(f)–2T applies to such a loss if the members join in filing a consolidated return for that year.

(4) *Coordination with section 482.* The principles of section 482 and the regulations thereunder apply before section 267(f) and the regulations thereunder apply.

(b) *Definitions.* For purposes of this section and § 1.267(f)–2T:

(1) *Group.* The term "group" means "controlled group." The term "controlled group" is defined in section 267(f)(1). Thus, excluded members referred to in section 1563(b), such as foreign corporations and exempt corporations, are not excluded from a group.

(2) *Member.* The term "member" means a corporation included in a controlled group.

(3) *M1 and M2.* The terms "M1" and "M2" refer, respectively, to the selling member and the purchasing member of property sold from one to the other. Unless otherwise specified, M1 and M2 are members of the same group at all relevant times.

(4) *Sale.* The term "sale" includes "exchange."

(5) *Depreciation and depreciable property.* The term "depreciation" means the deduction under section 167 or 168 or the deduction for amortization or depletion. The term "depreciable property" means any property subject to depreciation as so defined.

(6) *Inventory.* "Inventory" is property described in section 1221 (1).

(7) *Separate return year.* The term "separate return year" is defined in § 1.1502–1 (e).

(c) *Deferral and restoration of loss under consolidated returns principles*—(1) *General rule.* Except as otherwise provided in this section, the rules for deferred intercompany transactions in § 1.1502–13 of the consolidated return regulations apply under section 267(f)(2) to the deferral and restoration of loss on the sale of property directly or indirectly between M1 and M2 as if—

(i) the taxable year in which the sale occurred were a consolidated return year (as defined in § 1.1502–1(d)) and

(ii) all references to a "group" or an "affiliated group" were to a controlled group.

(2) *Elections not to deter loss not applicable.* Section 1.1502–13(c)(13) (relating to an election not to defer gain or loss) does not apply for purposes of this section.

(3) *Earnings and profits.* If, under this section, a loss is deferred by M1 on the sale of property to M2, then such loss shall not be reflected in earnings and profits until that amount is restored. See § 1.312–6(a).

(4) *General rule for continuation of membership.* Two corporations that are members of the same group are not, with

respect to each other, considered to cease to be members of the group as long as they are both members of any one group. Thus, for example, if P owns all the stock of M1 and M1 owns all the stock of M2, and if loss on the sale of property from M1 to M2 has been deferred under this section, P's transfer of all the stock to M1 to a nonmember will not result in a restoration of the deferred loss under section 267(f)(2) and § 1.1502–13(f)(1)(iii) because M1 and M2 remain members of one group. The result is the same whether the stock transfer is taxable or nontaxable and whether the transferee is an individual or a corporation.

(5) *Exception to restoration rule for selling member that is also owning member.* Section 1.1502–13(f)(2)(ii)(*b*) generally provides an exception to the restoration rule of § 1.1502–13(f)(1)(iii) (relating to a member ceasing to be a member) when the common parent of an affiliated group is both the selling and the owning member. For purposes of this section, the principles of § 1.1502–13(f)(2)(ii)(*b*) are extended to any member of a controlled group that is, at the time it ceases to be a member of the group, both the selling member and the owning member of property for which loss has been deferred. Thus, for example, if M1 defers a loss on its sale of property to M2 and M2 subsequently sells the property back to M1, then even M1 ceases to be a a member of the group, M1's loss will continue to be deferred. If M2 had deferred a loss as a result of its resale of the property to M1, that loss will be restored under section 267(f)(2) and § 1.1502–13(f)(1)(iii) when M1 ceases to be a member. If the property is depreciable property, see paragraph (d) of this section.

(6) *Exception to restoration rule for selling member that ceases to be a member.* If a selling member of property for which loss has been deferred ceases to be a member when the property is still owned by another member, then, for purposes of this section, § 1.1502–13(f)(1)(iii) shall not apply to restore that deferred loss and that loss shall never be restored to the selling member.

(7) *Basis adjustment and holding period.* If paragraph (c)(6) of this section precludes a restoration for property, then the following rules apply:

(i) On the date the selling member ceases to be a member, the owning member's basis in the property shall be increased by the amount of the selling member's unrestored deferred loss at the time it ceased to be a member ("increase amount").

(ii) If the property is depreciable property, then the amount of the owning member's depreciation for a taxable year attributable to the increase amount shall be equal to the amount of deferred loss for the property which the selling member would have restored under paragraph (d) of this section for its taxable year ending with or within the owning member's taxable year had the selling member not ceased to be a member.

(iii) The owning member's holding period for the property shall be increased by the selling member's holding period.

(iv) Annual depreciation attributable to the increase amount shall be deemed to have the same source (as within or without the United States) as the selling member had for its deferred loss. If gain or loss upon sale of the property by the owning member would have a different source than the selling member had for its deferred loss, then the owning member shall recognize a loss equal to the increase amount (as reduced by any depreciation attributable thereto) having the same source that the selling member had for its deferred loss, and the owning member shall adjust its gain or loss attributable to the other source by that amount.

(8) *No restoration on sale to a section 267(b) related person.* If property for which loss was deferred by M1 is sold by M2 to any person having a relationship to M1 specified in any paragraph of section 267(b) (other than a member of the same group), the remaining balance of the deferred loss, to the extent it is in excess of the amount of the gain (if any) recognized on the sale, shall never be restored and shall be treated as a loss referred to in section 267(d)(1).

(9) *Deconsolidation provisions not applicable.* The restoration rules under § 1.1502–13(f)(1)(iv) (relating to deferred loss on inventory) and § 1.1502–13(f)(1)(vii) (relating generally to filing consolidated returns for fewer than 3 years) are not applicable for purposes of this section.

(10) *Deleted examples.* For purposes of this section, the examples of § 1.1502–13(h) are not applicable.

(d) *Restoring deferred loss on depreciable property*—(1) *General rule.* Solely for purposes of this section, this paragraph (d) replaces § 1.1502–13(d) (relating to the restoration of gain or loss deferred on the sale of depreciable property from M1 to M2). Under this paragraph (d), for each of its taxable years ending after depreciable property was sold to M2, M1 shall restore a portion of the loss it deferred on that sale. The portion so restored is equal to the "restoration amount" multiplied by a fraction. The numerator of the fraction is the amount of the depreciation that would have been allowable to M1 that year (or for the portion of the year after the sale) had M1 not sold the property. The denominator equals the total amount of depreciation for all taxable years that would have been allowable to M1 after the date of the property's sale had the property not been sold. The "restoration amount" equals the lesser of—

(i) the amount of M1's deferred loss on the date of the sale or

(ii) the amount of the denominator.

(2) *Reduction for deferred loss.* The amount of M1's deferred loss for an item of depreciable property shall be reduced each taxable year by the amount restored relating to that item under paragraph (d)(1) of this section.

(3) *Examples.* This paragraph (d) is illustrated by the following examples:

Example (1). M1 and M2 use the calendar year. On January 1, 1980, M1 purchases depreciable property from a third party for $1,200 and begins depreciating it on the straight-line method (with $200 salvage value) over 10 years. On January 1, 1985, when its adjusted basis in the property is $700, M1 sells the property to M2 for $500 and realizes a deferred loss of $200. M2 owns the property until 1990. The portion of M1's $200 deferred loss that is restored in 1985 equals the amount of that loss ($200) multiplied by a fraction. Its numerator equals the depreciation that would have been allowable to M1 in 1985 had it not sold the property ($100). Its denominator equals the total amount of depreciation for all taxable years that would have been allowable to M1 after the date of the property's sale had the property not been sold ($500). Thus, the amount restored in 1985 equals $40 (*i.e.*, $200 x $100/$500). M1 will also restore $40 in 1986, 1987, 1988, and 1989. Thus, if M2 owns the property through the end of 1989, M1 will restore the entire deferred loss of $200, *i.e.*, $40 x 5. (Note that in this example the restoration amount equals the amount of M1's deferred loss ($200) since this amount is less than the amount of the denominator ($500).)

Example (2). Assume the same facts as in example (1) except that on January 1, 1987, when M1's unrestored deferred loss equals $120, M2 sells the property outside the group. Under section 267(f)(2) and § 1.1502–13(f)(1)(i), M1 will restore the $120 deferred loss on its 1987 return.

Example (3). Assume the same facts as in example (1) except that M1's sale of the property to M2 is for $150 rather than for $500. Thus, M1's deferred loss realized on the sale is $550. The numerator and the denominator of the fraction remain at $100 and $500 respectively. The restoration amount is $500 (*i.e.*, the lesser of the amount of the deferred loss ($550) or the amount of the denominator ($500)). The amount of M1's deferred loss restored in 1985 equals $100 (*i.e.*, $500 x $100/$500). M1 will also restore $100 in 1986, 1987, 1988, and 1989.

Example (4). (i) Assume the same facts as in example (3) except that on January 1, 1987, when M1's unrestored deferred loss equals $350, M2 sells the property outside the group. Under section 267(f)(2) and § 1.1502–13(f)(1)(i), M1 will restore the $350 deferred loss on its 1987 return.

(ii) If M2 instead abandons the property after 1989, when M1's unrestored deferred loss would equal $50, M1 would restore that $50 deferred loss under section 267(f)(2) and § 1.1502–13(f)(1)(i) on its return for the taxable year during which M2 abandoned the property.

(e) *Receivables*—(1) *Transfer of receivable.* If M1 owns a receivable which it had acquired as a result of its sale at a gain of goods or services to any person other than a member, and if M1 transfers that receivable in a sale at fair market value at a loss to M2, then notwithstanding any other provisions in this section, so much of the loss as does not exceed the gain from the sale of the underlying goods or services shall not be deferred.

(2) *Example.* This paragraph (e) is illustrated by the following example:

Example. A member (M1), a calendar year taxpayer, uses the accrual method. In 1985, M1 sells to a nonmember property having a basis of $80 for a receivable of $100. M1 reports the gain of $40 on its tax return for 1985. In 1986, M1 sells the receivable for its fair market value of $90 to another member for a $10 loss. M1 reports the $10 loss on the sale of the receivable on its 1986 tax return. If the sale is not at fair market value, this paragraph (e) does not apply and the $10 loss is deferred. See also paragraph (a)(4) of this section (relating to coordination with section 482).

(f) *Loss deferral rules not to apply to DISC.* Under section 267(f)(3)(A), a group does not include a DISC. However, a group does include a FSC. "DISC" and "FSC" are defined in sections 992 and 922, respectively.

(g) *Sales of inventory involving foreign corporations*—(1) *General rule.* Under section 267(f)(3)(B), except to the extent provided in regulations, section 267 (a)(1) and (f)(2) does not apply to the sale by M1 to M2 of property which is inventory in the hands of both M1 and M2 if the sale is in the ordinary course of M1's trade or business and if either M1 or M2 is a foreign corporation.

(2) *Exception.* Section 267(f)(2) is applicable to the sale of inventory at a loss from M1 to M2 in the following cases:

(i) M1 is a domestic corporation, M2 is a foreign corporation, and M2's income from the resale of the inventory is taxable under section 882 (relating to effectively connected income).

(ii) M1 is a foreign corporation, M1's income from the sale of the inventory is taxable under section 882, and M2 either is a domestic corporation or is a foreign corporation whose income from the resale of the inventory is taxable under section 882.

(3) *Sales outside ordinary course.* For purposes of paragraph (g)(1) of this section, whether a sale is outside the ordinary course of business is to be determined under the facts and circumstances. Evidence of a sale of inventory by M1 to M2 outside the ordinary course of business includes—

(i) A sale made for the purpose of accelerating losses,

(ii) An abnormally large volume of sales near the end of the taxable year, and

(iii) A sale by M1 at a loss of inventory to M2 if, had that inventory not been sold, a write-down to a value equal to the price for which it was sold would not have been proper (for example under § 1.471–2(c) and § 1.471–4(b), as affirmed by *Thor Power Tool Co. v. Commissioner,* 439 U.S. 522 (1979)).

(h) *Certain foreign currency losses.* Under section 267(f)(3)(C), section 267 (a)(1) and (f)(2) does not apply to a loss on the repayment of a loan if all of the following conditions are met:

(1) The loss is sustained by a member on the repayment to it of a loan made to another member,

(2) The loan is payable or denominated solely in a foreign currency, and

(3) The loss is attributable to a reduction in value of the foreign currency in which the loan is payable or denominated.

(Approved by the Office of Management and Budget under control number 1545–0885.)

§ 1.267(f)–2T Temporary regulations for deferring certain losses of members that join in filing consolidated returns.

(a) *Scope.* This section applies to loss on the sale of property between two members of a controlled group that join in filing a consolidated return for the year the loss is incurred. For effective dates, see § 1.267(f)–1T(a). For definitions, see § 1.267(f)–1T(b).

(b) *General rule.* If a loss is incurred on a sale by M1 to M2 in a taxable year during which they join in filing a consolidated return, § 1.1502–13 applies, except as provided in this section.

(c) *Election not to defer loss not applicable.* For purposes of section 267(f), an election under § 1.1502–13(c)(3) has no effect. Thus, even though M1 and M2 join in filing a consolidated return with a group for which an election under § 1.1502–13(c)(3) is in effect, M1's loss on a sale of property to M2 will be deferred as if that election had not been made.

(d) *Unrestored deferred loss adjustments if separate return year*—(1) *Occurrence of a separate return year.* If M1 joins in filing a consolidated return with M2 for a taxable year during which M1 sells property (after the effective date of section 267(f)) to M2 at a loss, and if either M1 or M2 (or both) later has a separate return year, then the event that results in that separate return year does not alone result in restoration of M1's deferred loss under § 1.1502–13(f) except to the extent either of the following provisions is applicable:

(i) That event alone would have resulted in restoration under § 1.267(f)–1T had M1 and M2 not joined in filing a consolidated return. See, for example, § 1.267(f)–1T(c) (4), (5), (6), and (7).

(ii) That event would have resulted in a one-time restoration under either paragraph (g) (2), (5), or (6) of this section (for depreciable property) or paragraph (j)(2) of this section (for receivables).

(2) *Subsequent restorations*—(i) Any amount that was not restored after applying paragraph (d)(1) of this section shall be restored under § 1.267(f)–1T (applied without paragraph (a)(3) thereof) and, if applicable, under paragraph (g) (3), (5), or (6) of this section.

(ii) If paragraph (g)(3) of this section applies and if M1 subsequently ceases to be a member, § 1.267 (f)–1T(c)(7) applies by deeming the increase amount to be equal to M1's unrestored deferred loss on the date M1 ceases to be a member.

(e) *Unrestored deferred loss adjustments if property disposed of outside consolidated group but not outside controlled group*—(1) *Occurrence of disposition.* If M1 and M2 join in filing a consolidated return for a taxable year during which M1 sells property (after the effective date of section 267(f)) to M2 at a loss, then M2's later disposition of that property to a member (M3) that does not join in filing a consolidated return with M1 and M2 will not result in restoration of M1's deferred loss under § 1.1502–13 unless paragraph (h) of this section (relating to depreciable property) or paragraph (j)(2) of this section (relating to certain receivables) applies. Thus, for example, that loss will not be restored on the disposition to M3, notwithstanding § 1.1502–13(e)(2) and (f)(1)(i) and (ii).

(2) *Subsequent restorations*—(i) Restoration of M1's deferred loss for the property subsequent to M2 disposing of the property to M3 shall be made under § 1.267(f)–1T (applied without paragraph (a)(3) thereof) and, if applicable, under paragraph (h) of this section.

(ii) If paragraph (h) of this section applies and if M1 subsequently ceases

to be a member, § 1.267(f)–1T(c)(7) applies by deeming the increase amount to be equal to M1's unrestored deferred loss on the date M1 ceases to be a member.

(f) *No restoration on sale to a section 267(b) related person.* Section 1.267(f)–1T(c)(8) applies whether or not M1 and M2 join or have ever joined in filing a consolidated return.

(g) *Restoring deferred loss on depreciable property after deconsolidation*—(1) *Conditions of application.* Except as otherwise provided, this paragraph (g) applies only if all the following conditions are met:

(i) M1 defers a loss on the sale of depreciable property to M2 that occurs after the effective date of section 267(f) during a taxable year in which M1 and M2 join in filing a consolidated return.

(ii) Either M1 or M2 (or both) has a later separate return year that would result in restoring M1's deferred loss if this section were not applicable.

(iii) For that separate return year, both M1 and M2 remain members of the same controlled group under § 1.267(f)–1T(c)(4).

(2) *One-time restoration.* If this paragraph (g) applies and the amount of the loss restored by M1 under § 1.1502–13(d) prior to the date either M1 or M2 began its first separate return year is less than the amount of the loss that would have been restored to M1 had M1 and M2 never joined in filing a consolidated return, then M1 shall restore an amount equal to the difference between those two amounts. This amount shall be restored by M1 when restoration would have occurred under § 1.1502–13(f)(1), were it applicable.

(3) *Annual adjustments.* If this paragraph (g) applies, then for each M1 taxable year during which M1 and M2 remain members of the same controlled group and which ends after the beginning of the first M1 or first M2 separate return year (whichever occurs first), M1 shall restore an amount equal to the amount of M1's "adjusted deferred loss" (as defined in paragraph (g)(4) of this section) multiplied by a fraction. The numerator of the fraction is the amount M1 would have restored under § 1.267(f)–1T(d) for that M1 taxable year (or, if M2 has the first separate return year, for the portion of the M1 taxable year after the first M2 separate return year) had M1 and M2 never joined in filing consolidated returns. The denominator is the total amount M1 would have restored beginning with the first such separate return year had M1 and M2 never joined in filing consolidated returns.

(4) *Adjusted deferred loss.* The "adjusted deferred loss" is an amount equal to—

(i) the amount of M1's deferred loss immediately prior to the one-time restoration of this paragraph (g), reduced by

(ii) the amount (if any) of that one-time restoration.

(5) *M1 leaves group while owning property.* If M1 is the owning member of the property for which M1 has deferred loss, and if the conditions of paragraph (g)(1) of this section are met except that the separate return year occurs as a result of M1 leaving the group, then the principles of paragraph (g) (2) and (3) of this section are applied as if M1 and M2 remain members of the same controlled group.

(6) *M1 leaves group while property still in group.* If the conditions of paragraph (g)(1) of this section are met except that M1 leaves the group when the property is still owned by a member, then—

(i) A one-time restoration is made under the principles of paragraph (g)(2) of this section (if applicable),

(ii) The adjusted deferred loss is determined under paragraph (g)(4) of this section, and

(iii) Section 1.267(f)–1T(c)(7) applies by deeming the increased amount to be equal to the adjusted deferred loss.

(7) *Example.* This paragraph (g) is illustrated by the following examples:

Example (1). (i) M1 and M2 join in filing a consolidated return for the calendar year. On January 1, 1980, M1 purchases depreciable property from a third party for $1,400 and begins depreciating it on the straight line method (with $200 salvage value) over 12 years. On January 1, 1985, when its adjusted basis in the property is $900, M1 sells the property to M2 for $800 for a loss of $100. Under § 1.1502–13(c)(1) the $100 loss is deferred. M2 depreciates the property on the straight line method (with zero salvage value) over 4 years. On January 1, 1987, all of the stock of M2 is transferred to M1's sole individual shareholder. Thus, M2 has a separate return year beginning January 1, 1987, and M2 remains a member of the same controlled group in which M1 is a member.

(ii) While M1 and M2 continue to join in filing a consolidated return, M1's $100 deferred loss is restored under § 1.1502–13(d)(1) as shown in the following table:

	1985	1986
1. Consolidated return fraction under § 1.1502–13 (d) (1) (ii) (b):		
a. Numerator (M2's depreciation)	$200	$200
b. Denominator (M2's depreciable basis)	800	800
c. Fraction	200/800	200/800
2. M1's deferred loss at time of deferred intercompany transaction	100	100
3. Amount of M1's loss restored	25	25

Thus, as of January 1, 1987, M1 has restored $50 (*i.e.*, $25+$25) of its loss and $50 (*i.e.*, $100–$50) of its loss remains deferred.

(iii) If § 1.267(f)–1T(d) were applicable when M1 sold the property to M2, M1 would have restored $14.29 of its $100 deferred loss for each of its taxable years 1985–1991. That is, for each of those years, M1's restoration amount ($100) would have been multiplied by a fraction having a numerator of $100 (the amount of depreciation that would have been allowable to M1 that year had M1 not sold the property) and a denominator of $700 (the total depreciation that would have been allowable to M1 for all taxable years after 1984 had M1 not sold the property). Thus, M1 could have restored $28.58 (*i.e.*, $14.29 × 2 years) as of the end of 1986. Since the amount ($50) M1 restored in 1985 and 1986 under § 1.1502–13(d) is not less than the amount ($28.58) M1 would have restored under $1.267(f)–1T(d), there is no "one-time restoration" under paragraph (g)(2) of this section.

(iv) In 1987, M1 will restore $10 of the $50 unrestored deferred loss. This 1987 restoration is determined by multiplying M1's adjusted deferred loss ($50) by a fraction. The numerator is $14.29 (the amount M1 would have restored under § 1.267–1T(d) for that year had M1 and M2 never joined in filing a consolidated return). The denominator is $71.45 (the total amount M1 would have restored for its taxable years 1987–1991 had M1 and M2 never joined in filing a consolidated return, *i.e.*, $14.29×5 years). Similarly, M1 will restore $10 in 1988, 1989, 1990, and 1991.

Example (2). (i) The facts are the same as in example (1) except that M2 depreciates the property on the straight line method (with zero salvage value) over 8 Years.

(ii) While M1 and M2 continue to join in filing a consolidated return, M1's $100 deferred loss is restored under § 1.1502–13(d)(1) as shown in the following table:

	1985	1986
1. Consolidated return fraction under § 1.1502–13(d)(1)(ii)(b):		
a. Numerator (M2's depreciation)	$100	$100
b. Denominator (M2's depreciable basis)	800	800
c. Fraction	100/800	100/800
2. M1's deferred loss at time of deferred intercompany transaction	100	100
3. Amount of M1's loss restored	12.50	12.50

Thus, as of January 1, 1987, M1 has restored $25 (*i.e.*, $12.50+$12.50 of its loss and $75 (*i.e.*, $100—$25) of its loss remains deferred.

(iii) As in example (1), if § 1.267(f)-1T(d) were applicable when M1 sold the property to M2, M1 would restore $14.29 of its deferred loss for each of its taxable years 1985–1991. Thus, M1 would have restored $28.58 (*i.e.*, $14.29×2 years) as of the end of 1986. Because the amount restored by M1 under § 1.1502–13(d) for 1985 and 1986 ($25) is less than the total amount M1 would have restored for these years had M1 never filed a consolidated return with M2 ($28.58), M1 restores as a "one-time restoration" under paragraph (g)(2) of this section the $3.58 difference (*i.e.*, $28.58—$25) on December 31, 1986 (*i.e.*, Immediately before M2's separate return year begins).

(iv) In 1987, M1 will restore $14.284 of the deferred loss. This restoration is determined by multiplying M1's adjusted deferred loss of $71.42 (*i.e.*, $75—$3.58) by a fraction. As in example (1), the numerator of this fraction is $14.29 and the denominator is $71.45. Similarly, M1 will restore $14.284 in 1988, 1989, 1990, 1991. Thus, by the end of 1991, M1 will have restored the entire amount of the loss that remained deferred ($75) as of the time immediately prior to M2's separate return year (*i.e.*, $3.58+($14.284×5 years)).

(h) *Depreciable property disposed of outside consolidated group but not outside controlled group.* If, after the effective date of section 267(f), M1 defers a loss on a sale of depreciable property to M2 during a taxable year for which M1 and M2 join in filing a consolidated return, then M2's disposition of that property to a member that does not join in filing the consolidated return will result in restoring M1's deferred loss under the principles of paragraph (g) (2) and (3) of this section.

(i) [Reserved]

(j) *Restoring deferred loss for a receivable after deconsolidation*—(1) *Conditions of application.* This paragraph (j) applies only if all of the following conditions are met:

(i) M1 defers a loss on the sale of a receivable to M2 that occurs after the effective date of section 267(f) and during a taxable year in which M1 and M2 join in filing a consolidated return.

(ii) If M1 and M2 had not joined in filing a consolidated return that year, all or a portion of the loss would not have been deferred under § 1.267(f)-1T(e).

(iii) An event occurs ("restoration event") which in the absence of applying this section would result in restoring all or a portion of M1's deferred loss under § 1.1502–13 but which, as a result of applying this section (as if this paragraph (j) did not apply), would not result in restoring that deferred loss.

(2) *One-time restoration.* If this paragraph (j) applies, then at the time M1 would have restored its deferred loss under § 1.1502–13 were this section not applicable, M1 shall restore an amount equal to the lesser of—

(i) The amount of the loss that would not have been deferred under § 1.267(f)–1T(e) had M1 and M2 not joined in filing a consolidated return for the taxable year in which M1 sold the receivable to M2 or

(ii) The amount of the loss that would have been restored under § 1.1502–13 as a result of the restoration event were it not for this section.

Par. 3. Immediately after § 1.706–1, there is added a new § 1.706–2T. The new section reads as follows:

§ 1.706–2T Temporary regulations; question and answer under the Tax Reform Act of 1984.

Question 1: For purposes of section 706(d), how is an otherwise deductible amount that is deferred under section 267(a)(2) treated?

Answer 1: In the year the deduction is allowed, the deduction will constitute an allocable cash basis item under section 706(d)(2)(B)(iv).

Par. 4. Immediately after § 1.1502–13, there is added a new § 1.1502–13T. The new section reads as follows:

§ 1.1502–13T Temporary regulations for certain intercompany transactions.

(a)–(j) [Reserved]

(k) *Priority of sections 267(f).* For application of section 267(f) when a consolidated return is filed, see § 1.267(f)–2T.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 267 (f)(2)(B), 706(d)(2)(B)(iv), 1502, and 7805 of the Internal Revenue Code of 1954 (98 Stat. 704, 26 U.S.C. 267; 98 Stat. 589, 26 U.S.C. 706; 68A Stat. 367, 26 U.S.C. 1502; 68A Stat. 917, 26 U.S.C. 7805, respectively).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue

Approved: November 14, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury

[FR Doc. 84-31488 Filed 11-29-84; 8:58 am]
BILLING CODE 4830-01-M

Fiscal Service

31 CFR Ch. II

Nomenclature Changes

AGENCY: Financial Management Service, Treasury.

ACTION: Final rule, nomenclature changes.

SUMMARY: The Bureau of Government Financial Operations became the Financial Managment Service (49 FR 43830, October 31, 1984. As a result, it is necessary to make numerous nomenclature changes throughout the CFR Chapter.

DATE: Effective October 10, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas Gilliland, Director, External Affairs, 202–566–2780.

SUPPLEMENTARY INFORMATION: 31 CFR, Chapter II, Subchapter A, title is amended by removing the words "Bureau of Governmental Financial Operations" and inserting in their place the words "Financial Management Service".

In addition to the amendment set forth above, 31 CFR Chapter II is amended by removing the words "Bureau of Governmental Financial Operations" and inserting "Financial Management Service" in the following places:

(a) 31 CFR 202.3(b)(2)(i)
(b) 31 CFR 205.4(b)
(c) 31 CFR 205.8(b)
(d) 31 CFR 205.9
(e) 31 CFR 205.10
(f) 31 CFR 209.12
(g) 31 CFR 223.22(a)
(h) 31 CFR 224.7
(i) 31 CFR Part 225, footnote 1
(j) 31 CFR 235.3
(k) 31 CFR 235.4
(l) 31 CFR 235.6
(m) 31 CFR 245.2 (a) and (b)
(n) 31 CFR 245.3 (a), (a) (2), (5) and (6)
(o) 31 CFR 245.4
(p) 31 CFR 245.5 (a) and (b)
(q) 31 CFR 245.6
(r) 31 CFR 245.7
(s) 31 CFR 248.2
(t) 31 CFR 250.2
(u) 31 CFR 250.3(a)(1)
(v) 31 CFR 250.4 (b)(1) and (f)
(w) 31 CFR 250.6
(x) 31 CFR 251.1
(y) 31 CFR 251.4
(z) 31 CFR 254.1(b)
(i) 31 CFR 254.3(b)
(ii) 31 CFR 254.4
(iii) 31 CFR 256.2
(iv) 31 CFR 257.2(a) and footnote 1
(v) 31 CFR 270.1
(vi) 31 CFR 270.2 (a)(1) and (a)(3)
(vii) 31 CFR 270.3 (a) and (b)
(viii) 31 CFR 270.4
(ix) 31 CFR 290.3
(x) 31 CFR 290.6

In addition to the above, the following nomenclature changes are made:

31 CFR 202.7: Delete "Banking Staff, Bureau of Government Financial Operations" and insert "Federal Finance, Financial Management Service".

31 CFR 205.3(e): Delete "Regional Disbursing Office, disbursing centers and regional disbursing offices" and insert "Regional Financial Centers".

31 CFR 205.4(b): Delete "Regional Disbursing Office" and insert "Regional Financial Center".

31 CFR 209.3(b)(1): After the words "as agent of the employee" insert a period, and strike the rest of the paragraph (pursuant to Pub. L. 98–369, Section 2814, 31 U.S.C. 3332(b).

31 CFR 209.8: Delete this section in its entirety; renumber 209.9 as 209.8; 209.10 as 209.9; 209.11 as 209.10; and 209.12 as 209.11 (pursuant to Pub. L. 98–369, Section 2814).

31 CFR 210.5: 31 U.S.C. 82c should be changed to 31 U.S.C. 3528.

31 CFR 223.2 and 226.3(a): Delete "Assistant Comptroller for Auditing, Bureau of Government Financial Operations" and insert "Assistant Commissioner, Comptroller, Financial Management Service".

31 CFR 223.3(a), 223.8(a), 223.12 (b) and (c), 223.16, and 223.22(c): Delete the words "Assistant Comptroller for Auditing" and insert "Assistant Commissioner, Comptroller".

31 CFR 235.3 and 235.4: 31 U.S.C. 562 and 31 U.S.C. 561 should be changed to 31 U.S.C. 3343.

31 CFR 240.2(n): 31 CFR 209.10(a) should be changed to 31 CFR 208.10(a), and 31 CFR 209.9 should be changed to 208.9.

31 CFR 240.6 (b) and (c)(1): Delete "Division of Check Claims, Policy and Collection Section" and insert "Check Claims Group, Reclamation Branch".

31 CFR 240.6(c)(1): Delete "Assistant Director (Support Services) Division of Check Claims" and insert "Director, Operations Division, Check Claims Group".

31 CFR 240.10(f): Delete "Disbursing Officer" and insert "Regional Financial Center".

31 CFR 240.11(a)(2): Delete "Bureau of Government Financial Operations, Division of Check Claims" and insert "Financial Management Service, Check Claims Group".

31 CFR 245.1: Change 31 U.S.C. 528 to 31 U.S.C. 3321.

31 CFR 245.4 and 248.2: Delete "Chief, Disbursing Officer" and insert "Director, Operations Group".

31 CFR 253.1(a) and 256.1 (a) and (b): Delete "Division of Disbursement" and insert "Field Operations Group, Financial Management Service".

Part 257: Please add a note following the table of contents of this part stating

Note.—One year after enactment of the Act (July 18, 1984), no claim may be made against the Postal Savings System.

31 CFR Part 261—Claims Pursuant to the Government Losses in Shipment Act, and 31 CFR Part 262—Declaration of Valuables Under the Government Losses in Shipment Act, are hereby transferred to Subchapter B, Parts 357 and 358 respectively.[1]

31 CFR 357.7 and 357.8: Delete "Bureau of Government Financial Operations, Division of Finance and Management Information, Washington, D.C. 20226" and insert "Bureau of the Public Debt".

Dated: November 20, 1984.

W.E. Douglas,

Commissioner.

[FR Doc. 84-30978 Filed 11-29-84; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

38 CFR Part 3

Legislative Increases in Compensation

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration (VA) is amending its adjudication regulations to implement pertinent provisions of the Veterans' Compensation and Program Improvements Amendments of 1984. These amendments are necessary to extend eligibility and increase benefits for certain VA claimants and beneficiaries in accordance with that law. The effect of these amendments will be to extend benefits to former prisoners of war, certain dependent children and hospitalized verterans, and certain Senior Reserve Officers' Training Corps members as well as to increase the benefits for certain blinded veterans who also suffer from varying degrees of hearing loss.

DATES: These amendments are effective October 1, 1983, as provided by the above cited law.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Compensation and Pension Service (211B), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–3005.

SUPPLEMENTARY INFORMATION: On pages 24035–37 of the **Federal Register** of June 11, 1984, the Veterans Administration published proposed amendments to 38 CFR 3.6, 3.30, 3.31, 3.57, 3.309 and 3.350. Interested persons were given 30 days to submit comments, suggestions or objections to the proposed amendments.

One comment was received concerning the proposed amendment to 38 CFR 3.31 which provides for a new exception to the general rule on commencement of the period of payment. The general rule is that payments based on an original, reopened or increased award of compensation, pension or dependency and indemnity compensation may not be made for any period prior to the first day of the calendar month following the month in which the award became effective. This general rule operated to the disadvantage of veterans who were entitled to a temporary total rating under paragraph 29 of the Schedule for Rating Disabilities (38 CFR 4.29) when hospitalization or treatment of a service-connected disability for a period in excess of 21 days occurred entirely within one calendar month. The new exception was created to insure that such seriously disabled veterans receive at least one full month of temporary total benefits.

The commentator suggested that the new exception should also apply in cases of temporary total ratings under paragraph 30 of the Rating Schedule (38 CFR 4.30) where the period of treatment (such as immobilization of a major joint by casting) began and ended within one calendar month. It was contended that veterans in such situations would not receive at least one full month of temporary total benefits if the new exception to 38 CFR 3.31 were limited to paragraph 29 situations as currently proposed.

After carefully considering this comment we have determined that the new exception to the general rule on the commencement of the period of payment should apply only to benefits under paragraph 29 and that veterans entitled to benefits under paragraph 30 would not be denied at least one full month of temporary total benefits. Once a veteran has met any of the three requirements for entitlement to a temporary total rating under paragraph 30, that regulation requires the temporary increase to be effective from the date treatment began and continue at least through the end of the next calendar month. Since a temporary increase under paragraph 30 must be effective for more than one calendar month, the general rule under 38 CFR 3.31 would apply to prohibit payment of the temporary increase only for the month in which treatment began. Veterans entitled under paragraph 30 are, therefore, assured of at least one full month of benefits at the temporary total rate.

[1] Transferred pursuant to Treasury Department Order No. 160-2, dated September 10, 1984.

For the above reasons, and because no other comments, suggestions or objections were received, the amendments have been adopted as proposed.

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, we have determined that these proposed regulations are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110)

Approved: November 8, 1984.

Harry N. Walters,

Administrator.

PART 3—[AMENDED]

38 CFR Part 3, Adjudication, is amended as follows:

1. In § 3.6, paragraph (c)(4) is revised to read as follows:

§ 3.6 Duty periods.

* * * * *

(c) *Active duty for training.*

* * * * *

(4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of field training or a practice cruise under chapter 103 of title 10, United States Code (this subparagraph is effective October 1, 1982, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982, and it is effective October 1, 1983, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated before October 1, 1982) (Pub. L. 97–306, as amended by sec. 210, Pub. L. 98–223); and

* * * * *

2. In § 3.30, paragraphs (b) and (c) are revised to read as follows:

§ 3.30 Frequency of payment of improved pension.

* * * * *

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $40 but less than $120. The provisions of § 3.29(b) apply to this paragraph. (Pub. L. 98–21)

(c) *Semiannully.* Payment shall be made every 6 months on or about June 1 and December 1, if the annual rate payable is at least $20 but less than $40. The provisions of § 3.29(b) apply to this paragraph. (Pub. L. 98–21)

* * * * *

3. In § 3.31, paragraph (a) is revised and new paragraph (c)(5) is added so that the added and revised material reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(a) *Increased award defined.* For the purposes of this section the term "increased award" means an award which is increased because of an added dependent, increase in disability or disability rating, or reduction in income. The term also includes elections of improved pension under section 306 of Pub. L. 95–588 and awards pursuant to paragraphs 29 and 30 of the Schedule for Rating Disabilities except as provided in paragraph (c) of this section.

* * * * *

(c) *Specific exclusions.* * * *

* * * * *

(5) Temporary total ratings pursuant to paragraph 29 of the Schedule for Rating Disabilities when the entire period of hospitalization or treatment, including any period of post-hospitalization convalescence, commences and terminates within the same calendar month. In such cases the period of payment shall commence on the first day of the month in which the hospitalization or treatment began. (38 U.S.C. 3011(c); sec. 113, Pub. L. 98–223)

4. In § 3.57 paragraph (a)(1) is amended by adding the words "and (3)" after the words "paragraph (a)(2)"; and new paragraph (a)(3) is added to read as follows:

§ 3.57 Child.

(a) *General.* * * *

(3) Subject to the provisions of paragraphs (c) and (e) of this section, the term "child" also includes a person who became permanently incapable of self-support before reaching the age of 18 years, who was a member of the veteran's household at the time he or she became 18 years of age, and who was adopted by the veteran, regardless of the age of such person at the time of adoption. (38 U.S.C. 101(4)(A); sec. 201, Pub. L. 98–223)

* * * * *

§ 3.309 [Amended]

5. In § 3.309, paragraph (c) is amended by adding "Dysthymic disorder (or depressive neurosis) (sec. 111, Pub. L. 98–223)" to the bottom of the list of diseases in that paragraph.

6. In § 3.350, paragraph (e)(1)(iv) is added (the first sentence of paragraph (e)(1) is shown for the reader's convenience), and paragraph (f)(2) is revised to read as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(e) *Ratings under 38 U.S.C. 314(o).* (1) The special monthly compensation provided by 39 U.S.C. 314(o) is payable for any of the following conditions:

* * * * *

(iv) Service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more disabling (and the hearing impairment in either one of both ears is service-connected) in combination with service-connected blindness of both eyes having only light perception or less. Sec. 112, Pub. L. 98–223)

* * * * *

(f) *Intermediate or next higher rate.* * * *

(2) Eyes, bilateral, and blindness in connection with deafness and/or loss or loss of use of a hand or foot.

(i) Blindness of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate between 38 U.S.C. 314 (l) and (m).

(ii) Blindness of one eye with 5/200 visual acuity or less and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate equal to 38 U.S.C. 314(m).

(iii) Blindness of one eye having only light perception and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate between 38 U.S.C. 314 (m) and (n).

(iv) Blindness in both eyes with visual acuity of 5/200 or less, or blindness in

both eyes rated under subparagraph (2) (i) or (ii) of this paragraph, when accompanied by service-connected total deafness in one ear, will afford entitlement to the next higher intermediate rate of if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 314, but in no event higher than the rate for (o).

(v) Blindness in both eyes having only light perception or less, or rated under subparagraph (2)(iii) of this paragraph, when accompanied by bilateral deafness (and the hearing impairment in either one or both ears is service-connected) rated at 10 or 20 percent disabling, will afford entitlement to the next higher intermediate rate, or if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 314, but in no event higher than the rate for (o). (Sec. 112, Pub. L. 98–223)

(vi) Blindness in both eyes rated under 38 U.S.C. 314 (l), (m) or (n), or rated under subparagraphs (2) (i), (ii) or (iii) of this paragraph, when accompanied by bilaterial deafness rated at no less than 30 percent, and the hearing impairment in one or both ears is service-connected, will afford entitlement to the next higher statutory rate under 38 U.S.C. 314, or if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o). (38 U.S.C. 314(p); Pub. L. 98–223)

(vii) Blindness in both eyes rated under 38 U.S.C. 314 (l), (m), or (n), or under the intermediate or next higher rate provisions of this subparagraph, when accompanied by:

(A) Service-connected loss or loss of use of one hand, will afford entitlement to the next higher statutory rate under 38 U.S.C. 314 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or

(B) Service-connected loss or loss of use of one foot which by itself or in combination with another compensable disability would be ratable at 50 percent or more, will afford entitlement to the next higher statutory rate under 38 U.S.C. 314 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or

(C) Service-connected loss or loss of use of one foot which ratable at less than 50 percent and which is the only compensable disability other than bilateral blindness, will afford entitlement to the next higher intermediate rate or, if the veteran is already entitled to an intermediate rate, to the next higher Statutory rate under 38 U.S.C. 314, but in no event higher than the rate for (o). (38 U.S.C. 314(p)) (Pub. L. 97–306)

* * * * *

(Pub. L. 98–223)

[FR Doc. 84–31362 Filed 11–29–84; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 3

Dependency of Parents—Compensation

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration (VA) is amending its adjudication regulations to increase the levels of monthly income below which conclusive dependency of a parent is established. These amendments are necessary because the monthly income levels currently in effect have not been adjusted for inflation (as measured by the Consumer Price Index) since 1975. The effect of these amendments will be the elimination of unnecessary development to establish dependency resulting in more rapid adjudication of claims.

DATE: These changes are effective May 1, 1984.

FOR FURTHER INFORMATION CONTACT: Rober M. White, Compensation and Pension Service (211B), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 389–3005.

SUPPLEMENTARY INFORMATION: On pages 32863–32864 of the **Federal Register** of August 17, 1984, (49 FR 32863), the VA published a proposed amendment to 38 CFR 3.250 concerning adjustment of the income levels necessary to establish conclusive dependency of a parent. Interested persons were given until September 17, 1984, to submit comments, suggestions or objections to the proposed amendment. Because of a typographical error in that publication, however, a correction was published on pages 34532–34533 of the **Federal Register** of August 31, 1984, and the comment period was extended to September 28, 1984. Since no comments, suggestions or objections were received, the amendment has been adopted as proposed and corrected.

The Administrator hereby certifies that this regulatory amendment will have no significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only claimants for VA benefits could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Exec. Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program number is 64.109)

Approved: November 6, 1984.

Harry N. Walters,

Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, ADJUDICATION, § 3.250(a)(1) is revised to read as follows:

§ 3.250 Dependency of parents—compensation.

(a) *Income.* (1) *Conclusive dependency.* Dependency of a parent (other than one who is residing in a foreign country) will be held to exist where the monthy income does not exceed:

(i) $400 for a mother or father not living together;

(ii) $660 for a mother and father, or remarried parent and spouse, living together:

(iii) $185 for each additional "member of the family" as defined in paragraph (b)(2). (38 U.S.C. 102(a))

* * * * *

[FR Doc. 84–31361 Filed 11–29–84; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 14

Personal Property Claims

AGENCY: Veterans Administration.

ACTION: Final regulation amendment.

SUMMARY: The Veterans Administration is amending its personnel claims regulation to reflect the increase in the maximum amount which is payable in settlement of personal property claims made by VA employees incident to their VA service from $15,000 to $25,000. Public Law 97–286 amended the Military Personnel and Civilian Employees' Claims Act of 1964 (Pub. L. 88–558), as amended, (31 U.S.C. 3721) to authorize this increase. This amendment also reflects the Administrator's transfer of technical cognizance over the settlement and payment of employee personal property claims from the General Counsel's Professional Staff Group I to Professional Staff Group III. This transfer of responsibility was previously noted in the **Federal Register** of August 1, 1984 at 49 FR 30691.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Alex Naimon, Office of the General Counsel (023D), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2154.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act/Executive Order 12291

These amendments have been reviewed pursuant to Executive Order 12291 and have been found not to come within the term "rule" as defined in, and made subject to, that order since this change deals exclusively with a matter concerning internal agency management.

This final regulation also comes within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. Because this regulatory amendment revises a rule concerning internal agency management, and only affects the internal operations of the agency, publication in proposed form is considered unnecessary; therefore, the amendment is excepted from the requirement of proposed regulatory development. This amendment is also not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because a general notice of proposed rulemaking is not required and will not be published (5 U.S.C. 601(2)).

There are no Catalog of Federal Domestic Assistance Numbers involved.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, claims, lawyers, organization and functions, Government agencies, veterans.

Approved: November 23, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

38 CFR Part 14, *Legal Services, General Counsel,* is amended as follows:

§ 14.664 [Amended]

Section 14.664 is amended by changing the figure "$15,000" to "$25,000"; by changing the words "Professional Staff Group I" to "Professional Staff Group III"; and by adding the cite "(31 U.S.C. 3721(b), as amended Pub. L. 97–226)" at the end of the section.

(38 U.S.C. 210(c))

[FR Doc. 84–31380 Filed 11–29–84; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 40453–4053]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NMFS issues this notice to close the fishery for widow rockfish taken off the coasts of Washington, Oregon and California, and seeks public comment on this action. This closure is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan which state that retention or landing of a species is prohibited when that species' quota is reached. This action is intended to stop fishing for widow rockfish because its optimum yield quota has been taken.

EFFECTIVE DATE: This notice is effective from 0001 hours Pacific Standard Time (PST), November 28, 1984, until 2400 hours PST, December 31, 1984, unless modified, superseded, or rescinded. Comments will be accepted through December 14, 1984.

ADDRESSES: Send comments to Dr. T. E. Kruse, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115, or Mr. E. C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: T.E. Kruse, 206–526–6150, or E. C. Fullerton, 213–548–2575.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR 663.21(b) and 611.70(e)(1) require the Secretary of Commerce (Secretary) to prohibit retention or landing of a species when the numerical optimum yield (OY) quota for that species has been taken. The 1984 OY for widow rockfish is 9,300 mt. Based on the best available information, and after consultation with the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game, and Acting Regional Director determined that this quota was reached on October 31, 1984.

Widow rockfish have been managed by trip limits since 1982 in attempts to reduce fishing levels and biological stress. The 50,000-pound trip limit imposed in January 1984 (49 FR 597, January 5, 1984) was reduced to 40,000 pounds in early May (49 FR 19825, May 10, 1984), although the trip frequency limit imposed in May remained the same as in January; i.e., one landing a week above 3,000 pounds. NMFS later announced (49 FR 30948, August 1, 1984) that when 9,200 mt of the 9,300-mt OY was reached, a 1,000-pound trip limit would be imposed until the OY was reached. On September 9, the 1,000-pound trip limit became effective (49 FR 35955, September 13, 1984).

The best data available in mid-November indicated that the OY quota was reached on October 31, 1984. The States of Washington, Oregon, and California have taken action similar to this and have closed their marine waters to the taking and retention of widow rockfish. Accordingly, all landings of widow rockfish, regardless of whether they are taken in Federal or State waters, are prohibited through the end of 1984.

Secretarial Action

No widow rockfish caught seaward of Washington, Oregon, and California may be taken and retained or landed after 0001 hours PST November 28, 1984, until 2400 hours PST December 31, 1984.

Classification

The determination to prohibit further retention of landings of widow rockfish is based on the most recent data

available. This action is taken under the authority of 50 CFR 663.21(b), 663.23, 611.70(e)(1), and 611.70(e)(3)(ii), and is in compliance with Executive Order 12291. The actions are covered by the regulatory flexibility analysis prepared for the authorizing regulations.

Because of the immediate need to prohibit further retention of widow rockfish and thereby prevent the overharvest that could otherwise result, the Secretary finds that advance notice and public comment on this closure are impracticable and not in the public interest, and that no delay should occur in its effective date. The public was able to comment at the August 1984 Council meeting when the Council recommended that trip limits for widow rockfish should be reduced when 100 mt of OY remained, in order to forestall closing the fishery. As required by 50 CFR 663.23, public comments also will be accepted for 15 days after the date this notice is effective.

List of Subjects in 50 CFR Part 663

Fish, Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: November 28, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-31380 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 676

[Docket No. 40803-4139]

King Crab Fishery of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: This document removes references to 50 CFR Parts 620 and 621 in the final rule implementing a fishery management plan for the king crab fishery of the Bering Sea and Aleutian Islands area (49 FR 44996, November 14, 1984). Parts 620 and 621 were superseded by regulations codified at 15 CFR Part 904 which appeared at 49 FR 1036, January 6, 1984.

EFFECTIVE DATE: December 2, 1984.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, Fees, Permits, and Regulations Division, NMFS, 202-634-7432.

Dated: November 28, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons stated above, § 676.4 (e) and (i) and § 676.7 are amended as follows:

§ 676.4 [Amended]

1. In §676.4(e), appearing on page 45003, and (i) appearing on page 45004, the reference to "50 CFR Part 621" is removed, and the phrase "15 CFR Part 904" is inserted in its place in each of these paragraphs.

§ 676.7 [Amended]

2. In § 676.7, appearing on page 45004, the phrase "to 50 CFR Part 620 (Citations)" is removed.

(16 U.S.C. 1801 *et seq.*)

[FR Doc. 84-31384 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 232
Friday, November 30, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1872,1900, 1910, 1924,1941,1943, 1945, 1951, 1955, 1960, and 1962

Special Supervisions of Delinquent and Problem Case FmHA Farm Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its existing regulations regarding the account servicing and supervision of Delinquent and Problem Case FmHA farm borrowers. These amendments are necessary because of recent court decisions. These amendments sets up procedure substantially the same as that contained in the "Pretermination" package that was issued to FmHA field offices on December 20, 1983 (see 49 FR 470). The differences between the "Pretermination" package and the requirements of the proposed amendments result from FmHA's experience using the "Pretermination" package. The proposed amendments provide for notifying borrowers of various servicing alternatives and set standards for using the servicing alternatives. Most FmHA borrowers whose accounts have not been accelerated with have these proposed amendments applied to them. However, the amendments will not apply to three categories of borrowers:

(1) Former borrowers in non-judicial foreclosure states who have had their FmHA security sold are not affected by these amendments; the sales were valid and will not be reversed.

(2) Borrowers and former borrowers in judicial foreclosure states are not affected by these amendments if FmHA has received a court decree authorizing liquidation of FmHA security; FmHA will proceed to liquidate, if it has not done so.

(3) Borrowers who received both the "Pretermination" package and an accelaration notice before October 20, 1984, are not affected by these amendments; FmHA will proceed to liquidate its security.

DATES: Comments must be received on or before January 29, 1985.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

The collection of information requirements contained in this proposed rulemaking have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Edward Yaxley, Senior Loan Officer, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5449-S, Washington, D.C. 20250, telephone (202) 447-3646.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or georgraphic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

Intergovernmental Consultation should be carried out in accordance with 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." For affected programs see FmHA Instruction 1940-J, available in any FmHA Office.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502)
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environment Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Background

The supervision and servicing of FmHA farm borrowers is governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921-1996). FmHA proposes to implement a procedure for deferring payments for farmer program borrowers to conform with 7 U.S.C. § 1981a and various court orders and for establishing a method of informing farmer program borrowers of available servicing alternatives including deferral.

The effects of this proposed action will be as follows:

a. FmHA will be in compliance with the various court orders.

b. A new method will be established to provide for loan deferrals to those borrowers who are not current because of circumstances beyond their control.

c. FmHA borrowers who receive a loan deferral will not be considered delinquent. A maximum of five consecutive installments can be deferred with one deferral, which will strengthen borrowers' cash flow

positions during the time needed to recover from devastating natual disasters or other conditions beyond a farmer's control, such as poor farming economy. A borrower who receives a deferral usually will have to wait two years after that deferral expires before another deferral can be considered.

Highlights

Subpart A of Part 1960 contains policies and procedures for the special supervision and servicing of FmHA farmer program borrowers. FmHA proposes to delete this Subpart from the *Code of Federal Regulations* (CFR) and revise Subpart B of Part 1924. FmHA's proposed revisions concern the supervision and servicing of delinquent and problem case borrowers. A series of notices will be used to (1) inform borrowers of any action FmHA will intend to take on their loan accounts and (2) give the borrowers the opportunity to be considered for servicing alternatives before such action is taken. Alternatives will include rescheduling, reamortization, deferral of payments and having loans rewritten at limited resource loan interest rates. This process will be used before FmHA will accelerate loan accounts, request voluntary conveyances of security or terminate the release of farm income for family living and farm operating expenses. The forms will also provide the borrower with notice of the opportunity for an appeal hearing in lieu of applying for alternative servicing actions.

Subpart A of Part 1951 prescribes policies and procedures for servicing borrowers' accounts, including rescheduling, reamortization and deferral instructions. The proposed changes in Subpart A of Part 1951 concern the following:

a. The conditions under which a loan deferral can be provided.

b. A record keeping system to monitor borrowers who have received deferrals.

c. The use of non-interest bearing sub-accounts for interest accrued during a deferral period. Interest which accrues during a deferral period will not bear interest for the remaining term of the loan.

d. The conditions under which a deferral may be cancelled.

e. The procedure for notifying a borrower of a cancellation of a deferral and for offering the opportunity for an administrative appeal.

f. The requirement that a two year period elapse between deferral periods, unless a shorter period is authorized by the State Director.

Subpart A of Part 1962 prescribes the policies and procedures for the servicing and liquidation of chattels that serve as security for FmHA farmer program loans. The proposed changes in Subpart A of Part 1962 will:

a. Require FmHA servicing officials to give borrowers notification of servicing alternatives under Subpart B of Part 1924 before proceeding with liquidation of chattel security.

b. Clarify the conditions under which release of farm income can be made.

c. Clarify the procedures used to account for chattel security.

Conforming changes were made to other FmHA regulations to reflect the conditions under which farm borrowers must be given notice of, and consideration for, servicing. The other FmHA regulations to be changed are: Subpart A of Part 1910, Subpart B of Part 1900, Supart A of Part 1941, Subparts A, B and C of Part 1943, Subpart D of Part 1945, Subpart A of Part 1955, Subparts A and F of Part 1951, and Subpart A of Part 1872.

List of Subjects

7 CFR Part 1872

Foreclosure, Loan Programs—Agriculture, Rural areas.

7 CFR Part 1900

Appeals, Credit, Loan programs—Housing and community development.

7 CFR Part 1910

Applications, Loan Program—Agriculture.

7 CFR Part 1924

Agriculture, Construction and repair, Loan program—Agriculture.

7 CFR Part 1941

Loan Programs, Agriculture.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1945

Disaster Assistance.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan Programs—Housing and community development, Mortgages, Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1960

Credit, Loan programs—Agriculture, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan Programs—Agriculture, Rural areas.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulation is amended as follows:

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Noted Only Cases

1. In § 1872.1 paragraph (g) is revised to read as follows:

§1872.1 General.

* * * * *

(g) *Definitions.* Unless otherwise indicated, the term "FmHA loans," "FmHA accounts," "FmHA interests," "FmHA security," FmHA debts," and similar terms apply to indebtedness owed to or insured by the United States of America action through the FmHA and to related security instruments. The term "note" includes any note, bond, assumption agreement, or other evidence of indebtedness. The term "mortgage" includes deeds of trust and similar real estate security instruments and chattel security instruments where appropriate. "County Supervisor" means "County Supervisor" and "Assistant County Supervisor" when in the opinion of the County Supervisor, the Assistant County Supervisor has been sufficiently trained to competently perform the required actions and the County Supervisor has delegated such authority to the Assistant County Supervisor in writing.

"Farmer Program loans" means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans and/or Rural Housing loans for farm service buildings (RHF).

2. Section 1872.17 is revised to read as follows:

§ 1872.17 Liquidation Action.

Liquidation of FmHA account(s) will be accomplished as expeditiously as possible (1) when the County Supervisor, with the advice of the District Director determines that continued servicing of the Section 502 or 504 RH loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1872.1(b), or (2) after Farmer Program borrowers receive Form FmHA 1924–14, "Notice—Farmer Program Servicing Options Including Deferrals and Borrower's Responsibilities," Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action" and any appeal has been concluded.

(a) *General.* When the borrower is willing to voluntarily liquidate the account immediately by (1) selling the property and paying the account in full, (2) transferring the total security with an assumption of all or the appropriate portion of the debt under § 1872.18 (3) selling the property for not less than its present market value under § 1872.17(h), or (4) conveying the security to the FmHA under Subpart A of Part 1955 of this chapter, the County Supervisor may give the borrower 60 days to accomplish such action. If the property is to be sold or transferred for its present market value which is less than the total secured debts against it, the County Supervisor will appraise the property immediately. If the unpaid FmHA secured debt and any prior lien does not exceed $100,000, the County Supervisor will establish the present market value of the security. Otherwise, the County Supervisor will obtain the concurrence of the District Director if the secured debt is less than $160,000 and the concurrence of the State Director if the secured debt exceeds $160,000.

(b) *Problem case record.* If the borrower is unwilling to take any of the actions specified in § 1872.17 (a) or fails to carry out any such actions within 60 days, the County Supervisor will complete and forward Form FmHA 465–7 in accordance with § 1955.15 (b) for Section 502 or 504 loans or § 1955.16(c) for Famer Program loans of Subpart A of Part 1955 of this chapter.

(c) *Acceleration of account.* When the State Director approves forced liquidation in Section 502 and 504 RH cases, the account should be accelerated and the borrower notified in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter. Section 1955.16 (f) of Subpart A of Part 1955 of this chapter explains how to accelerate farmer program loan accounts secured by real estate.

(d) *Voluntary liquidation after acceleration.* (1) Section 502 or 504 RH loans. If, after the notice of acceleration has been sent to the borrower as outlined in § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, arrangements are made to have the account voluntarily liquidated, the State Director may give the borrower time beyond the date listed in the notice of acceleration to accomplish voluntary liquidation, except in cases in which a borrower has both a Section 502 or 504 RH loan and a farmer program loan(s) being simultaneously liquidated. The State Director will inform the borrower of this decision in a separate letter. The State Director should place a time limit on the borrower which should not exceed three months from the date of the letter agreeing to allow the borrower to attempt to voluntarily liquidate. The original period fixed by the State Director plus any extensions determined necessary by the State Director should in no case exceed one year without prior concurrence of the National Office. Prior to granting any extension after the original period, the State Director will require the County Supervisor to report the steps taken by the borrower to liquidate the account. If a sale is involved, the County Supervisor's report should indicate whether the borrower's asking price is reasonable and whether the asking price is delaying the sale unreasonably. Acceleration or granting time for voluntary liquidation under this paragraph will not preclude exercise of the authority in § 1872.17(g). However, the authority in this paragraph should never be used for the purpose of extending the correction period under § 1872.17(f). If the borrower has not taken steps to voluntarily liquidate within the time period (including any extensions thereof) granted by the State Director, then the State Director should proceed with foreclosure in accordance with §1955.15(d) of Subpart A of Part 1955 of this chapter.

(2) *Farmer Program Loans.* Granting time for voluntary liquidation after acceleration is not authorized for farmer program loan accounts.

(e) *Multiple loans.* When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any other loan. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purposes of other FmHA loans, all FmHA loans should be liquidated. For example, on an OL and FO loan, the liquidation action will be started simultaneously, and the liquidation of real estate and chattel security will be coordinated to the extent possible. However, the chattel security will be liquidated under Supart A of Part 1962 of this chapter except that when an account(s) will be transferred, such transfer(s) will be accomplished in accordance with §1872.18 of this subpart.

(f) *Other violations of FmHA agreements.* An RH borrower who obtained a loan on a nonfarm tract or any FO or RL borrower who without FmHA consent does not personally operate the farm or recreational facility or, when required by the mortgage, does not live on the security property, is violating agreements with FmHA.

(1) *Section 502 And 504 RH Loans.* These borrowers will be promptly contacted in person by the County Supervisor and advised of the violation and that it will be necessary to liquidate the account by payment in full, by refinancing or otherwise, unless definite agreements are reached to remove the violation by reoccupying the property as required by the loan documents, or consent for lease is granted as authorized in § 1872.8 of this subpart. If the borrower is not available for personal contact or definite agreements cannot be reached or consent to a lease is not authorized, the County Supervisor will write to the borrower at the borrower's last known address, notifying the borrower of the violation and advising that, because of the violation, it will be necessary to liquidate the account. A notice as set forth as Exhibit C of Subpart A of Part 1955 *will not be used* for his purpose. The County Supervisor may authorize the borrower a reasonable period of time (60 to 90 days) in which to correct the violation. If during such period the borrower fails to remove the violation or pay the account in full, the case will be handled in accordance with paragraphs, (b), (c), and (d) of this section.

(2) *Farmer Program Loans.* Borrowers' accounts will be accelerated in accordance with § 1955.16(e) of Subpart A of Part 1955 of this chapter.

(g) *Accelerated repayment agreement.* When liquidation of the account is necessary because of failure to refinance or for other reasons and the remaining loan repayment period exceeds ten years for real estate loans or two years for OL and EM loans, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. Farmer Program loan borrowers must be sent Form FmHA 1924–14 before an accelerated repayment agreement is signed. For real estate loans other than RH loans on nonfarm tracts, the term of the agreement will not exceed ten years. For OL, EM, and RH nonfarm loans, the term of the agreement will not exceed five years. In either case, the balance of the debt will be scheduled for repayment in equal annual or monthly amortized installments of combined principal and

interest, except that, if annual payments are required, the first installment may be less than a full amortized installment if it is due substantially less than a full year after the date of the agreement and the borrower will not be able to pay the full amount. If the borrower owes a small amount and the remaining period of the loan is ten years or less for real estate loans and two years or less for OL or EM loans, the State Director may authorize an accelerated repayment agreement for a shorter period, as appropriate. Interest will be at the rate shown in the note. The State Director will detemine that authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest and (1) the borrower can reasonably be expected to meet the accelerated payments, and (2) the borrower will continue to comply with other requirements of the loans and security instruments. When an understanding is reached with the borrower, Form FmHA 465–11, "Accelerated Repayment Agreement," will be completed and executed. Separate Forms FmHA 465–11 will be used for each type of loan and for direct or insured loans. If RH loan borrowers fail to meet any installment when due as provided in such an agreement, foreclosure action will be initiated. Farmer Program borrowers who fail to meet installments will have their accounts accelerated in accordance with § 1955.16(1) of Subpart A of Part 1955 of this chapter.

(h) *Cash sale.* When a cash sale of mortgaged real estate will result in the secured debts not being paid in full, the County Supervisor is authorized to approve the sale for not less than the present market value of the property established in accordance with § 1872.17(a) and to release the Government's liens, provided:

(1) *Substantial recovery.* A substantial recovery can be made on the FmHA secured indebtedness based on a recent appraisal report showing the present market value of the property.

(2) *Application.* All the proceeds are applied on the mortgage debts in accordance with their respective priorities except authorized costs as specified in § 1872.4(c)(2).

(3) *Release.* The FmHA liens are not released by the County Supervisor until receipt of the appropriate sale proceeds for application on the Government's claim. The release will be made on forms approved or prepared by OGC. If the debt is not paid in full and a deficiency judgment is not to be obtained, the case will be reclassified to collection-only if the debt cannot be settled under the provisions of FmHA Instruction 456.1 and the requirements of FmHA Instruction 404.1, "Case Reclassification," and Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office.

3. In Section 1872.18, the introductory paragraph and the introductory paragraph of paragraph (b), paragraph (b)(1), (b)(8), (b)(14), (b)(17), (c)(2)(i) and (c)(2)(ii), (e) and the table in paragraph (g)(2)(iii) are revised as follows:

§ 1872.18 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer or real estate security for FmHA loans, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer Program loan borrowers must be sent Form FmHA 1924–14, as soon as the borrower contacts the County Supervisor inquiring about a transfer. If the proposed sale would not result in the FmHA account being paid in full at the time of the sale, the County Supervisor should explain thoroughly the requirements of this Section and §§ 1872.4 or 1872.17 of this subpart, as appropriate. When the transferor is receiving a substantial downpayment in connection with the sale of the property, the purchaser should be required to contact other sources of credit to secure a loan for repayment of the FmHA loan in full. When real estate security, including water rights, is sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate paragraphs of this Subpart, the account will be liquidated as required in § 1872.17.

* * * * *

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers or proposes to transfer real estate which is security for an FmHA loan(s) and the loan account(s) is to be assumed by use of either Form FmHA 460–9 or Form FmHA 460–5

* * * * *

(1) *Agreement.* Form FmHA 465–5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferee. This agreement will not be completed for Farmer Program borrowers until the borrower has received Form FmHA 1924–14.

* * * * *

(8) *Conveyance of a portion of the security.* Generally, title to all FmHA real estate security, including water rights, must be conveyed to the transferee not later than the date of closing the transfer. However, a transfer of a portion of the FmHA real estate security with an assumption of the total indebtedness may be approved, provided: (i) The portion of the FmHA security transferred has a present market value at least equal to the total indebtedness owed by the borrower or such indebtedness is reduced by a cash payment to the present market value of such property, (ii) the transaction is advantageous to the Government, and (iii) in the case of an RH loan, the property improved with RH funds is conveyed to the person assuming the RH loan. In such a transaction, the security retained by the transferor will be released from the Government's lien.

* * * * *

(14) *Loans.* An initial or subsequent loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the kind of loan being made. When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay equity. When real estate security for an RH loan is transferred to a person eligible under Subpart A of Part 1944 of this chapter for an RH loan to purchase such real estate, RH loan funds may be used to pay the equity. This, however, does not include income producing land or buildings. In lieu of the subsequent loan of the kind involved, the Government's lien may be subordinated to (i) enable the transferor to take a first mortgage to secure the amount of the equity payment, or (ii) to permit another lender to furnish the funds needed in connection with the transfer. In such cases, the subordination will be processed in accordance with the applicable provisions of § 1872.3 of this subpart. The transferor may convey title to the property by warranty deed or, when the transferor agrees to take a first lien to secure the downpayment, the property may be sold by purchase contract or similar instrument that meets the conditions of § 1943.16(a)(3) of Subpart A of Part 1943 of this chapter. In such cases, prior lienholders' agreements will be obtained in accordance with § 1807.2(f)(5) of Part 1807 of this Chapter. When necessary to settle a divorce action, a subsequent loan may be made or a subordination may be granted to permit the remaining

borrower to obtain a loan in an amount not to exceed the equity in the property.

* * * * *

(17) *Date.* The effective date of the transfer will be the actual date the transfer is closed. This is the date on which Forms FmHA 460–5 or 460–9 are signed. In connection with the use of either form, the unpaid principal balance and accrued interest will be shown in Table 1 and the accrued interest will be computed from Form FmHA 451–28, "Transaction Record," Form FmHA 451–31, "Borrower Transaction Record," or the monthly payment account Status Report. If Form FmHA 460–9 is used, the transferee will be informed of the amount of principal and interest owed. The transferee also will be advised of the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period and any accounts that must be paid to bring any monthly payments up to date.

* * * * *

(c) * * *

(2) *Repayment and reamortization terms.*—(i) *Form FmHA 460–9.* Except as noted below for RH loans, assumption of any FmHA loan may be approved without any change in the balance owed, interest rate, or other terms. In such cases, Form FmHA 460–9 will be used. A loan may be transferred even though it is on schedule, ahead of schedule, or behind schedule. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under § 1951.44 of Subpart A of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be placed on new rates and terms by using Form FmHA 460–5.

(A) Rural Housing Disaster (RHD) loans will be transferred at the current rate for Section 502 loans unless the transferee is eligible for a RHD loan.

(B) Direct Sections 502, 503, and direct Senior Citizen RH loans will be transferred at the current rate for Section 502 loans.

(C) Low and moderate RH loans transferred to a person having an above-moderate income will be transferred at the current rate for an above-moderate income will be transferred at the current rate for an above-moderate Section 502 loan.

(ii) *Form FmHA 460–5.* If an extension of the existing loan repayment period is necessary to enable the transferee to be successful, or if interest accrued during a deferral period is not paid in full at the time of transfer, Form FmHA 460–5 will be used. The new repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, and RH—33 years. If a new repayment period is used, the current interest rate for a new loan of the type involved will be used and any insurance charge applicable to such a loan will be provided for, except in assumptions by a surviving spouse under § 1872.18(b)(4). In determining the new repayment period and interest rate, (A) an ORE loan will be considered an FO or RH loan as appropriate, if the applicant and the property meet the requirements of § 1872.18(c)(1), and (B) a SL or other emergency type loans no longer being made will be considered an EM loan.

* * * * *

(e) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with § 1872.18 (c) or (d), the Government will not consent to the sale.

(1) *Section 502 and 504 RH Loans.* In such cases, the County Supervisor will advise the State Director of the sale. If the account is delinquent or the loan is otherwise in default, the County Supervisor also will advise the State Director of the nature of the default, and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the borrower and otherwise serviced in the usual manner.

(2) *Farmer program loans.* The borrower will be sent Form FmHA 1924–14.

* * * * *

(g) * * *

(2) * * *

(iii) *Distribution of Transfer Docket Forms.* The following table will be used as a guide in distributing the necessary forms.

FmHA form No.	Name of form	Total number of copies	Signed by transferee	Transfer docket	Copy for transferee
*440–1	Notice of Obligation of Funds	*3	2—O and C (*)	2—O and C	1—C.
*400–4	Nondiscrimination Agreement	2	1—O	1—O	1—C.
*410–1	Application for FmHA Services, (with attachments)	*1	1—O	1—O	
*410–4	Application for Rural Housing Assistance (Non Farm Tract)	*1		1	
*410–8	Request for Verification of Employment	1		1	
465–5 *	Transfer of Real Estate Security	3	1—O	1—O	1—C.
*440–2	County Committee Certification or Recommendation	1		1—O	
*431–2 *	Farm and Home Plan	1	1—O	1—O	In record book.
*431–1	Long-Time Farm and Home Plan	2	2—O and C	1—C	1—O.
*431–3 *	Household Financial Statement and Budget	2	1—O	1—C	1—O.
*431–4 *	Business Analyses—Nonagricultural Enterprise	2	2—O and C	1—C	1—O.
*422–1	Appraisal Report (Farm Tract)	1		1—O	
422–3	Map of Property	1		1—O	
*1922–8	Residential Appraisal Report	1		1—O	
*426–1	Valuation of Buildings	1		1—O	
*440–9 *	Supplementary Payment Agreement	2	1—O	2—O and C	1—C.
*424–1	Development Plan	2	1—O	2—O and C	1—C.
*460–5 *	Assumption Agreement (New Terms)	4	1—O	1—O	1—C.
*460–9 *	Assumption Agreement (Same Terms—Eligible Transferee)	4	1—O	1—O	1—C.
*465–8 *	Release from Personal Liability	2		1—O	1—C.
*443–17	Agreement to Sell Nonessential Real Estate	2	2—O and C	1—C	1—C.
1924–14	Notice—Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities	2		1—C	1—C.
1924–25	Notice of Intent to Take Adverse Action	2		1—C	1—O.
*1924–26	Borrower Acknowledgement of Notice of Intent to Take Adverse Action	1		1—O	
*1940–41 *	Truth in Lending Disclosure Statement	2	1—C	1—C	1—O.
*1940–43 *	Notice of Right to Cancel	3	*1	1	2—O and C.
*451–10	Request for Statement of Account	3		2—O and C (O to FC).	
451–25	Status of Account	2		2—O*C.	

FmHA form No.	Name of form	Total number of copies	Signed by transferee	Transfer docket	Copy for transferee
1980-8	Assumption Agreement (Information)	*2		1—C	

O—Original; C—Copy.
*—When applicable.
[1] In addition to plan for first full year, interim plan, if prepared, will be included in the docket.
[2] The original Form will not be executed until date of closing the transfer.
[3] In right to cancel cases, original and sufficient copies for each person who has right to cancel in accordance with Subpart I of Part 1940 of this Chapter.
[4] Original and one copy to transferee, two copies to each other person who has right to cancel in accordance with Subpart I of Part 1940 of this Chapter. If the person exercises his right to cancel, he/she will sign one copy of the Form and return it to the County Office.
[5] When requested, prepare an additional copy for delivery to transferor.
[6] Applicant must sign and date this form unless a similar certification is obtained on the application form.
[7] For ineligible transferees, delete the first sentence referring to other credit in item 34 of the form. The deletion will be initialed by the applicant.
[8] For ineligible transferees, delete the first sentence in the applicant's certification (item 23 on the Form FmHA 410–1 or item 12 on the Form FmHA 410–4) which refers to other credit. The deletion will be initialed by the applicant.
[9] Original to Finance Office.

PART 1900—GENERAL

Subpart B—Farmers Home Administration Appeal Procedure

4. In § 1900.51, a paragraph is added at the end of the text as follows:

§ 1900.51 General.

* * * * *

* * * FmHA officials may not deny or delay approved assistance pending the outcome of an appeal of a partial adverse action. For farmer program borrowers, releases for certain family living and farm operating expenses cannot be terminated until the borrower has received Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and any appeal has been concluded.

5. Section 1900.52 is amended by redesignating paragraphs (d) through (g) to (e) through (h) and adding a new paragraph (d) to read as follows:

§ 1900.52 Definitions.

* * * * *

(d) *Farmer Program Loans* means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), and Special Livestock (SL) Loans and Rural Housing loans for farm service buildings (RHF).

* * * * *

6. Section 1900.53 is amended by redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) to read as follows:

§ 1900.53 Decisions which are not appealable.

* * * * *

(f) If a borrower fails to return Form FmHA 1924–26 on time, or if the borrower completes Form FmHA 1924–26 to show that no appeal is requested, the borrower will be sent Exhibit B–6 and FmHA will take the adverse action listed in Form FmHA 1924–25 and the adverse action cannot be appealed.

* * * * *

7. Section 1900.55 is amended by revising paragraphs (a), (b) and (c) and adding a new paragraphs (d) and (e) to read as follows:

§ 1900.55 FmHA actions to limit the need for appeals.

* * * * *

(a) FmHA personnel should carefully check the accuracy of any adverse actions they intend to take.

(b) The specific reasons for intended adverse actions should be clearly explained to the applicant or borrower. Vague reasons should be avoided. For example, avoid "you lack repayment ability;" the applicant or borrower should be specifically advised why repayment ability is lacking.

(c) Except for borrowers who are sent Forms FmHA 1924–25 and 1924–26, a meeting will be required to be held between the affected parties and the decision maker to explain the adverse decision before the appeals process will begin. The required meeting may be waived by the decision maker if the decision maker previously met with or advised the affected parties of the specific reasons for the denial or the decision maker determines that a meeting would likely not avoid an appeal. In such cases, Exhibit B–2 with attachment Exhibit B–4 will be used without revision, except in cases involving acceleration of accounts which are provided for in § 1900.56(a) of this subpart. When a meeting is required, Exhibit B–1 will be used without revision to inform the appellant. If the appellant or appellant's representative [or legal counsel] without good cause, fails to schedule/attend this meeting, there will be no appeal.

(d) Borrowers who are sent Form FmHA 1924–25 and who complete Paragaph I or III of Form FmHA 1924–26 are entitled to a conference with the decision maker before the appeals process begins. The conference cannot be waived by the decision maker. If the borrower or the borrower's representative fails to attend the conference without having a legitimate excuse or if the borrower fails to bring the information requested in Form FmHA 1924–25, the borrower will be sent Exhibit B–6 and there will be no appeal of the intended adverse action.

(e) When the person or organization officials attend a meeting or conference with the decision making official and the meeting or conference results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting or conference, setting forth the conclusions reached. If the meeting or conference does not result in a resolution of the matter, Exhibit B–3 with attachment Exhibit B–4 will be used without revision to notify the person or organization of appeal rights within 7 calendar days of the meeting or conference. If the person or organization has returned Form FmHA 1924–26 indicating no appeal is desired, Exhibit B–6 will be sent.

8. In § 1900.56, paragraph (b) is removed, paragraph (a) is redesignated as paragraph (b), a new paragraph (a) is added, the introductory paragraph of newly designated (b), (b)(3), (b)(4) and (c)(2) are revised, and paragraph (b)(5) is added to read as follows:

§ 1900.56 Appeal from an initial FmHA decision.

(a) Borrowers who are sent Forms FmHA 1924–25 and 1924–26 are given an opportunity to appeal before the adverse action is taken unless Paragraph II D or Paragraph III of Form FmHA 1924–26 was completed. If an appeal is taken and finally decided in favor of FmHA, the final letter upholding the initial decision will contain the following statement: "This review concludes the administrative appeal of your case. FmHA will proceed to take the adverse action noted on Form FmHA 1924–25, "Notice of Intent to Take Adverse Action." You are not entitled to any further appeal in connection with the adverse action."

(b) If an applicant for FmHA assistance, an FmHA borrower (except those borrowers who are sent Form FmHA 1924–25 and Form FmHA 1924–26), or an FmHA grantee is directly and adversely affected by an FmHA decision or action, the official taking action or making the decision will inform that person or organization by letter of the action taken within 15 calendar days of the action. The term "directly and adversely affected" means having a request for FmHA assistance denied in whole or in part or having FmHA assistance reduced, canceled, or not renewed. Letters, as indicated in § 1900.53 or § 1900.55 of this subpart, as appropriate, will be used to notify the applicant. The following actions will also be taken if the adverse action is an acceleration of an FmHA loan:

* * * * *

(3) Except for farmer program loan acceleration notices, the letter will read substantially as found in Exhibit C, "Notice of Acceleration * * *," Subpart A, Part 1955 of this chapter, with attachment Exhibit B–4 or B–5 as appropriate. The term "hearing" will be used in lieu of "meeting" in the "Notice of Acceleration. * * *" The following language or other similar language mandated by FmHA regulations must be included in the acceleration notice: "The request for this hearing must be made within 30 calendar days from the date of this notice." (Farmer program loan accounts will be accelerated after all appeals have been concluded by sending either Exhibit D or E, Subpart A, Part 1955 of this chapter.)

(4) Any offer by the borrower for partial payment of (or curing) the default after acceleration of any loan secured by real estate, should be referred to the Approval Official in accordance with § 1955.15(d)(2)(i)(D) oif Subpart A of Part 1955 of this chapter.

(5) When a farmer program loan borrower also has a Rural Housing (RH) loan on a dwelling that is a part of the security, or by itself serves as additional security, for the farmer program loan(s), the RH loan will be accelerated at the same time the borrower is sent Form FmHA 1924–25. One appeal hearing and one review will be held for both adverse actions. The hearing officer and review officer will be the people designated in Exhibit D of this subpart to hear and review decisions to foreclose Single Family Housing accounts serviced in the County Office.

(c) * * *

(2) If the appellant has made a request to examine or copy the FmHA material concerning the case, except where the acceleration of a loan secured by real estate is involved, the material (unless privileged) will be made available to the appellant or the appellant's representative [or legal counsel] at the FmHA decision maker's office for 10 calendar days following the receipt of the request for appeal. When a real estate loan acceleration is involved, if the appellant has made a request to examine or copy the FmHA material concerning the case, the hearing officer will arrange for the file (other than privileged material) to be available in the servicing office for a reasonable period of time. An FmHA employee should ensure that no material is destroyed or removed from the files. The decision maker will then submit the request for hearing with the complete file to the hearing officer.

* * * * *

9. Exhibit B–3 to Subpart B of Part 1900 is amended by revising the title and the second sentence in the first paragraph to read as follows:

Exhibit B–3 to Subpart B—Letter for Notifying Applicants and Borrowers of Unfavorable Decision Reached At The Pre-Hearing Meeting or Conference

* * * * *

* * * We regret that our [meeting] [conference] with you did not result in a satisfactory conclusion.

* * * * *

10. Exhibit B–4 to Subpart B of Part 1900 is amended by revising the opening parenthetical statement now reading "(Use as an Attachment to Exhibit B–2, B–3, and Chattel Acceleration Notices, as Applicable)" to read "(Use as an Attachment to Exhibits B–2 and B–3, as Applicable)."

11. Exhibit B–5 to Subpart B of Part 1900 is amended by revising the opening parenthetical statement now reading "(Use as an Attachment to Real Estate Acceleration Notice)" to read "(Use as an Attachment to Real Estate Acceleration Notice Except Farmer Program Loan Acceleration)."

12. Exhibit B–6 is added to Subpart B of Part 1900 to read as follows:

Exhibit B–6 to Subpart B—Letter for Notifying Borrowers, Who Received Form FmHA 1924–25 But Who Have Waived or Forfeited Their Appeal Rights

U.S. Department of Agriculture

Farmers Home Administration

(Insert Address)

(Date)

Dear ————:

You are sent Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and attachments, on ———— (date). Because (You failed to return Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to take Adverse Action," in response to Form FmHA 1924–25 during the time provided).

(You) (Your representative) (failed to attend the conference scheduled on ———— (date) in response to your request on Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," without having a legitimate excuse).

(You failed to bring the information requested on Form FmHA 1924–25 to the conference held on ———— (date).

(You indicated on Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to take Adverse Action," you did not wish to appeal) you have (waived) (forfeited) your right to an appeal hearing concerning the adverse action the Farmers Home Administration (FmHA) intends to take as indicated on Form FmHA 1924–25.

This is notice that FmHA is proceeding to take adverse action. You will receive no further appeal rights in connection with this adverse action.

Sincerely,

(County Supervisor).

13. Exhibit D to Subpart B of Part 1900 is revised to read as follows:

Exhibit D to Subpart B—Hearing/Review Officers Designations

Decision maker or decision	Hearing officer	Review officer
County Supervisor	Assistant District Director from another District or person of equal or greater rank not involved in the case designated by State Director.	State Director designee (who has not been significantly involved with the case)
County Committee	State Director or designee	Deputy Administrator, Program Operations or designee.
District Director	State Director or Designee	Deputy Administrator, Program operations or designee.
State Director	Deputy Administrator, Program Operations or designee.	(No review).
Division Director or Assistant Administrator.	Deputy Administrator, Programs Operations or designee.	(No review).
Deputy or Associate Administrator	Administrator or designee	(No review).

Decision maker or decision	Hearing officer	Review officer
Decision to foreclose Real Estate (Single Family Housing accounts serviced in the County Office) (For accounts serviced in the District Office)	District Director from another district or other persons not involved in the initial decision designated by State Director. Deputy Administrator, Program Operations or designee.	Deputy Administrator, Program Operations or designee. (Not revised).

Notes

1. District Director also means Assistant District Director.

2. County Supervisor also means Assistant County Supervisor with loan approval authority.

3. For decisions not directly covered above, the Hearing/Review Officer is the person in the next higher level of FmHA authority.

4. When a hearing involves both the action on Form FmHA 1924–25 and an RH loan acceleration, the appeal process will follow that for the decision to foreclose the RH account, which means that a District Director or other person not involved in the initial decision is the hearing officer.

5. Designee is the person designated by the Hearing/Review Office to conduct a hearing or review. The designee signs the decision letter to the appellant without the concurrence of the original Hearing/Review Officer except:

a. For hearings on County Committee decisions. For these hearings the State Director or Acting State Director may designate other persons to act on his or her behalf in conducting the hearing; however, the State Director or Acting State Director must sign the hearing decision letter.

b. When the Hearing/Review Officer designated by the Deputy Administrator, Program Operations, is not a member of the National Office staff, the complete case file, hearing notes, tapes recordings, and a recommended decision will be sent to the Deputy Administrator, for review and a final decision.

c. When the Hearing/Review Officer is a member of the National Office staff, after the decision is written, but prior to notification of the applicant, in all cases requiring corrective actions or training (e.g., reversals or other problems which may become evident) the Hearing/Review Officer will brief the Deputy Administrator, Program Operations, concerning the decision and will notify the State Director involved that the decision will be reversed or modified, and will advise the District Director of what corrective action will have to be taken.

PART 1910—GENERAL

Subpart A—Receiving and Processing Application

14. In § 1910.4, paragraph (h) is removed and paragraphs (c) through (g) are redesignated as paragraphs (b) through (f).

15. In § 1910.8, paragraph (e) is added to read as follows:

§ 1910.8 Reaching an understanding.

. . . . . .

(e) *Use of Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options, Including Deferral, and Borrower Responsibilities."* Before or at loan closing, all FO, OL, SW, and EM applicants for initial or subsequent loans will have Form FmHA 1924–14 reviewed with them by the County Supervisor. In Addition to some of the items listed in paragraph (d) of this section, Form FmHA 1924–14 explains servicing options that are available to the borrower, including deferral, and the limited resource program. Form FmHA 1924–14 will be signed and distributed in accordance with the FMI.

PART 1924—CONSTRUCTION AND REPAIR

16. Sections 1924.51 through 1924.73 of Subpart B, and the title and the table of contents are revised to read as follows:

Subpart B—Management Advice to Individual Borrowers and Applicants

Sec.

1924.51 General
1924.52–1924.55 [Reserved]
1924.56 Credit counseling.
1924.57 Planning.
1924.58 Record keeping.
1924.59 Supervision.
1924.60 Analysis.
1924.61 Nonfarm enterprises.
1924.62 State supplements.
1924.63–1924.70 [Reserved]
1924.71 Delinquent borrowers.
1924.72 Borrowers who receive Form FmHA 1924–25.
1924.73 Followup supervisory actions by District Directors and State Office staff.
1924.74–1924.100 [Reserved]
Exhibit A—New Full-Time Family Farmer and Rancher Development Projects

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 P.L. 93–357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO 29 FR 14764, 33 FR 9850.

Subpart B—Management Advice to Individual Borrowers and Applicants

§ 1924.51 General.

This subpart sets forth policies for providing management advice to individual applicants and borrowers. The term "individual" as used in this Subpart applies to individuals and to farming partnerships, corporations and cooperatives, receiving or already having Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), and Economic Opportunity (EO) loan or Rural Housing loans for farm Service buildings (RHF) loans. This subpart applies to insured loan applicants/borrowers who depend on farm income for loan repayment, including Rural Housing (RH) borrowers who are also indebted for a farmer program loan that is not collection only or a judgment account, and those FO, SW and/or OL loan applicants and borrowers who use the services of a "New Full-Time Family Farmer and Rancher Development Committee." (See Exhibit A of this subpart).

§ 1924.52—1924.55 [Reserved]

§ 1924.56 Credit counseling.

The County Supervisor will provide credit counseling to applicants and borrowers by advising them of ways to use credit to make profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available, and methods of presenting requests for credit to lenders.

(a) In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available. If the applicant has filed an application for FmHA assistance, the procedure set out in Subpart B of Part 1900 of this chapter must be followed.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) In credit counseling with eligible applicants and borrowers the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant or borrower of FmHA's credit-elsewhere requirements and assist in the determination of the amount of other credit best suited for the applicant or borrower.

§ 1924.57 Planning.

(a) *Long-Times plans (Form FmHA 431–1, "Long-Time and Home Plan").* The long-time plan reflects long-time aims and objectives. It will be required of each applicant or borrower engaged in farming who is receiving a loan when the major adjustments or improvements needed will not be completed the first full crop year. The long-time plan, when developed, will be completed before preparing the annual plan, and revised as conditions require.

(b) *Annual plan (Form FmHA 431–2, "Farm and Home Plan," and Form FmHA 1962–1, "Agreement for the Use of Proceeds Release of Chattel and/or Farm Income," or other plans acceptable to FmHA.* These two forms will cover the 12-month period (or crop year) which most accurately reflects the annual production cycle of the operation. The references to Form FmHA 431–2 in this regulation mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision.

(1) Form FmHA 1962–1 must be completed once each year for all borrowers with FmHA loans secured by chattels. Form FmHA 431–2 will be required for those borrowers:

(i) Receiving initial loans.

(ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.

(iii) Who are experiencing financial and/or production management problems.

(iv) Who are requesting servicing options on Form FmHA 1924–26 "Borrower Acknowledgment of Notice of Intent to Take Adverse Action."

(v) Who have had payments deferred.

(vi) Who are making major adjustment to their operation.

(vii) Who have limited resource loans.

(2) Interim plan may be developed for the remainder of the current year's operation to supplement an annual plan for the following year in those cases where the annual plan alone would not be sufficient to accurately show the complete cycle of the operation. This plan and Form FmHA 1962–1 will show the planned use of of income to be received from livestock and crops held for sale, and cash on hand at that time.

(c) *Responsibility of County Supervisor:* County Supervisor will:

(1) Stress the need to correlate long-time and annual plans when both are being developed.

(2) Develop a list of key farm management and financial management practices for major enterprises, which will be updated annually. The County Supervisor will advise borrower of these practices and those practices not already used by a borrowers will be incorporated into the developing long-time and annual plans.

(3) Require applicants when developing their long-time and annual plans to fully utilize plans developed, if any, with the assistance of the Soil Conversation Service (SCS), the Extension Service (ES), or other agency or farm management service.

(4) Plan for the appropriate use of income with the applicant in accordance with Subpart A of Part 1962 of this chapter.

(5) Determine the feasibility of the plans. Plans must show the borrower will be able to:

(i) Pay all operating expenses.

(ii) Meet necessary payments on debts.

(iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses.

(iv) Have a reasonable standard of living.

(v) Provide for any essential capital purchases or improvement.

(d) *Documention and revision of plans.* (1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation.

(2) Initial and subsequent plans and Form FmHA 1962–1 will be revised whenever significant changes in the borrower's operation occur during the year. The plan and Form FmHA 1962–1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimate immediately above. The borrowers will initial and date major revisions to the plan and Form FmHA 1962–1.

§ 1924.58 Record keeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance, to analyze borrower's farming operations, and to determine whether borrowers have made prudent management decisions.

(b) *Responsibilities.* (1) Borrowers must select and maintain a record keeping system which adequately meets the needs of their farming operations and which provides, as a minimum, a record of the annual cash flow, beginning and end of year balance sheets, and an income statement. Borrowers receiving EM loans of $100,000 or more will be required to use a record keeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. Such borrowers will be encouraged to use a computer record keeping system when available.

(2) County Supervisors will determine whether borrowers have selected, established, and are maintaining appropriate record keeping systems. Such systems may include the farm record book (Form FmHA 432–1, "Farm Family Record Book") available through FmHA, other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial record keeping or accounting service.

§ 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the Government's interest and to accomplish the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used for each borrower.

(c) *Supervisory methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, etc. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require follow-up action.

(d) *Farm Visits.* (1) A minimum of one visit a year will be made by the County Supervisor to borrowers who have been indebted for less than one full crop year, or who have been sent Form FmHA 1924–25, "Notice of Interest to Take Adverse Action," who have had their loans reamortized, rescheduled, consolidated and/or deferred or who have limited resource loans. The District Director will visit a sufficient number of borrowers to assure that the cases are being handled properly. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspections ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(2) Visits will be coordinated with required inspections of security.

(3) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Borrowers who have been indebted less than one full crop year.

(ii) Borrowers who have been sent Form FmHA 1924–25.

(iii) Borrowers who have had their loans reamortized, rescheduled, consolidated and/or deferred or have limited resource loans.

(iv) Borrowers receiving annual production type loans.

(v) Other borrowers.

§ 1924.60 Analysis.

(a) *Purpose of Analyses.* No farmer can operate successfully during the crop year without an understanding of what is happening in the business. Without the use of properly prepared financial statements, an operator will have a hard time surviving in today's farming. Financial records and analyses point out exactly what happened the previous year, and indicate the most economically feasible corrections.

Specifically, analyses are used to:

(1) Show the operator the cost or profit of a management decision. These figures can then be used to make other management decisions that will increase the efficiency and/or profitability of the operation.

(2) Assist the operator in determining whether the type and scope of the operation are practical and profitable.

(3) Determine success in key management practices resulting in an improved return; or revealing a decision that reduces net dollar return.

(4) Monitor progress of borrowers in achieving long-range goals and in graduating to other credit.

(5) Help the County Supervisor determine how much individual supervision will be required for each borrower. The analysis will also help the County Supervisor determine feasibility of continuing with a borrower.

(6) Help the borrower and the County Supervisor prepare an annual plan of operation for the next year; and help them make sound management decisions.

(b) *Items considered for making an analysis.* The following are some of the items that should be considered during an analysis.

(1) Resources available.

(2) Options for types of enterprises available for the operation such as corn v. soybeans, sell the crops. v. feeding it to livestock, etc.

(3) Comparison of the production of livestock, livestock products or crops to past production.

(4) The production of this farming operation as compared to similar farming operations.

(5) Financial progress—such as increase or decrease of debts as compared to the increase or decrease of assets.

(6) Cost of operating expenses as compared to previous years and similar farming operation.

(7) Debt repayment as compared to money available to pay debts.

(8) Experience and ability of the borrower.

(9) Availability and cost of credit.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Adjust the analysis to the needs of each borrower and FmHA.

(2) Determine the date and place of the analysis, and scheduling the analysis at the time of year when the most effective results will be obtained.

(3) Document and report the results of the analysis.

(i) Assist the borrower in completing the "actual" plan and Form FmHA 1962–1 for the current year if necessary, and in recording a complete plan for the next year and completing Form FmHA 1962–1.

(ii) Obtain a copy of completed plans and Form FmHA 1962–1. Make a complete entry in the case file running record of results and agreements reached during the analysis, underscoring those items requiring following action.

(iii) Record the results on Form FmHA 1960–12, "Financial Farm Analysis Summary for Delinquent Farmer Program Borrowers."

(d) *Conducting analysis.* An analysis will be conducted for borrowers:

(1) Who are seriously delinquent (over $100,000) or who request assistance on Form FmHA 1924–26. (Revised)

(2) Who are experiencing financial and/or production management problems.

(3) Who are reorganizing or implementing a major change in operations which has not been completed.

(4) At the end of the first full crop year after receiving an initial loan and each year thereafter, until the County Supervisor determines the borrower in conducting the operation satisfactorily.

(5) Who have been granted deferral.

(6) Who have limited resource loan(s).

§ 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this Subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower or nonfarm enterprise loans. The appropriate plans and record book will be substituted for the nonfarm enterprise. Form FmHA 431–4, "Business Analysis Nonagricultural Enterprise," FmHA 432–10, "Business and Family Record Book," available at most FmHA offices can be used for these purposes.

§ 1924.62 State supplements.

The State Director may supplement this subpart as necessary to:

(a) Assure that each area included under the heading of management assistance will be carried out uniformly and effectively and to assign responsibilities to District Directors and other members of the State staff.

(b) Obtain information needed in the State about the performance of individual borrowers and the results of management assistance carried out in each County Office.

(c) Assure key farm management and financial management practices are established, and kept current in each County Office.

§§ 1924.63–1924.70 [Reserved]

§ 1924.71 Delinquent borrowers.

The Finance Office will send each County Office of list of all delinquent OL, FO, SW, RL, EM, EE, EO, SL and RH for farm service buildings borrowers effective March 31, June 30, September 30, and December 31.

All borrowers that are more than $100 behind schedule on their FmHA loan payments on March 31 will immediately be sent Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," Form FmHA 1924–14, "Notice—Farmer Program servicing Options Including Deferral and Borrower Responsibilities," to show that FmHA intends to accelerate the account(s) and FmHA From 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action." cases involving litigation will be handled in accordance with the advice of OGC.

§ 1924.72 Borrowers who receive Form FmHA 1924–25.

(a) If the borrower fails to respond within 30 days from receipt of the notice, FmHA will proceed with the intended action(s). Such actions are not appealable.

(b) If the borrower checks one of the blocks in Paragraph I of Form FmHA 1924–26 and the County Supervisor approves the request for servicing, the notice will be considerd terminated. If the request is denied, the County Supervisor will notify the borrower in writing of the denial with the reasons and facts supporting the denial. The borrower will be advised of appeal rights in accordance with Subpart B of Part 1900 of this chapter and the appeal will cover the denial of the request for servicing and the other adverse actions FmHA intends to take. If the borrower (or representative) fails to attend the scheduled conference without a legitimate excuse or fails to provide the necessary information, the County Supervisor will send Exhibit B–6 to subpart B of Part 1900 of this chapter.

(c) If the borrower checks any of the blocks in Paragraph II of Form FmHA 1924–26, any appeal will be handled under Subpart B of Part 1900 of this chapter. If the borrower completes Paragraph II to show that no appeal is desired, FmHA will proceed to take the adverse action.

(d) If the borrower checks any of the blocks in Paragraph III of Form FmHA 1924–26, but cannot complete the action within 60 days, FmHA will proceed to take adverse action against the borrower and no appeal will be allowed.

(e) If the borrower incorrectly completes Form FmHA 1926–26, the County Supervisor will contact the borrower to inform the borrower of the problem and request the borrower to submit a corrected form within 10 days of the contact. If the borrower fails to submit a corrected form within 10 days of the contact, FmHA will proceed with the intended adverse action and it will not be appealable. The contact and date will be recorded in the borrower's County Office case file.

§ 1924.73 Followup supervisory actions by District Directors and State Office staff.

(a) *Followup by the District Director.* The District Director is responsible for seeing that the County Office staff correctly handled any requests made by borrowers of Form FmHA 1924–26 in an effective and timely manner. This will include visits to evaluate a sufficient number of such cases to determine whether the desired results are being obtained and to determine what further training may be needed by the County Supervisor is supervising such cases. The District Director will continue followup actions periodically as needed to obtain the disired results in each County Office area. The followup will include a through review of any subsequent loan being made to the borrower to assure that the plan incorporates the corrective action agreed upon. This review will be recorded by the District Director in the running case record of the borrower's County Office file.

(b) *Followup by State Office staff.* (1) The State director is responsible for seeing that the special actions prescribed by this subpart are carried out by the County Supervisors and District Directors. (2) Farmer program loan chiefs and specialists should review a representative sample of deliquent and problem cases during each visit to a County Office to assure that a thorough analysis has been made, that appropriate action has been taken, and to determine what further training, if any, is needed for the District Director and County Supervisor.

(1) The State and/or District Office should periodically review the progress made in servicing these cases.

§§ 1924.74–1924.100 [Reserved].

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

17. In § 1941.18, paragraph (c) is revised to read as follows:

§ 1941.18 Rates and terms.

* * * * *

(c) *Consolidation or rescheduling.* When the loan approval official determines that consolidation or rescheduling will assist in the orderly collection of an OL, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

18. In § 1943.18, paragraph (a) and the introductory paragraph of paragraph (b) are revised, paragraphs (b)(1) and (b)(2) are removed and the introductory paragraph of paragraph (c)(3) is revised to read as follows:

§ 1943.18 Rates and Terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," when setting the term. In any case there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940–17, "Promissory Note."

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any FO loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

(c) * * *

(3) A lower interest rate borrower will pay the initial interest rate for 3 years. At the end of 3 years, and every two years thereafter, the loan will be reviewed by the County Supervisor to determine the interest rate to be charged. Before deciding whether to change the interest rate or leave it unchanged, the County Supervisor should consider.

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

19. In § 1943.68, paragraph (a) and the introductory paragraph of (b) are revised and paragraphs (b)(1) and (b)(2) are removed to read as follows:

§ 1943.68 Rates and Terms.

(a) *Terms of Loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940–17, "Promissory Note."

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

* * * * *

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

20. In § 1943.118, paragraphs (a) and the introductory paragraph of paragraph (b) are revised and paragraphs (b)(1) and (b)(2) are removed to read as follows:

§ 1943.118 Rates and terms.

(a) *Terms of Loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be

adequately secured, taking into account the probable depreciations of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940–17, "Promissory Note."

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any RL loan the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

* * * * *

PART 1945—EMERGENCY

Subpart D—Emergency Loan Policies, Procedures and Authorizations

21. In § 1945.168, the introductory paragraph of paragraph (b) and paragraph (c) are revised to read as follows:

§ 1945.168 Rates and terms.

* * * * *

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life of the security and the repayment ability of the applicant, as reflected in the completed Form FmHA 431–2, "Farm and Home Plan," when setting the term of each loan. In any case, there must be an interest installment scheduled at least annually.

* * * * *

(c) *Consolidation, rescheduling, and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

22. Section 1951.1 is revised to read as follows:

§ 1951.1 Purpose.

This subpart sets forth the policies, and procedures to use in servicing Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Recreation Loan (RL), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), and Rural Housing loan for farm service building (RHF) accounts.

23. In § 1951.6 paragraph (a) is revised to read as follows:

§ 1951.6 Handling payments.

(a) *Payments of Rural Housing (RH) loans.* Payments on RH loans will be handled in accordance with part 1951, Subparts B and G of this chapter.

* * * * *

24. In § 1951.7, paragraph (b)(2) is removed and paragraphs (b)(3) and (b)(4), and (b)(5) are redesignated as (b)(2), (b)(3), and (b)(4), and paragraphs (c), (d), and (e) are revised to read as follows:

§ 1951.7 Accounts of borrowers.

* * * * *

(c) *Notifying borrowers of payments.* County Supervisors will notify borrowers of the dates and amounts of payments that have been agreed on for all types of accounts. Form FmHA 451–3, "Reminder of Payment to be Made," or similar form approved by the State Director, will be used. The form will not contain any language indicating that an account is delinquent. These notices will be timed to reach borrowers immediately before the receipt of the income from which the payments should be made or before the installment due date on the note, as appropriate, and may include other pertinent information such as a reference to agreements reached during the year and sources of income from which the payment was planned. Such notices need not be sent when frequent payments are scheduled and the borrower customarily makes the payments when due.

(d) *Subsequent servicing.* When a borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with § 1924.71 of Subpart B of Part 1924 of this chapter.

(e) *Maintaining records of accounts in County Offices.* Records of the accounts of FmHA borrowers will be maintained in the County Office on Forms FmHA 1905–1, FmHA 1905–5, and FmHA 1905–10, "Advice of Borrower's Change of Address or Name," as provided in FmHA Instruction 1905–A (available in any FmHA office.).

* * * * *

25. In § 1951.8, paragraphs (a), (b)(1), (b)(7), and (c) are revised to read as follows:

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income (as defined in § 1962.4(j) of Subpart A of Part 1962 of this chapter) or non-farm income, and do not include proceeds from the sale of other chattel or real estate security. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, and normal income as defined in Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1), including income from leases or bonuses. All payments to the Finance Office by direct payment borrowers are considered regular payments.

(b) * * *

(1) Sale of chattels other than chattels which will be sold to produce farm income or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

* * * * *

(7) Transactions of a similar nature which reduce the value of security other than chattels which will be sold to produce farm income.

(c) *Refunds.* Refunds are payments derived from the return of unused loan funds, except that the term "refunds" as used in *Form 1940–17,* "Promissory Note," will be construed to mean the return of funds advanced for capital goods, when a loan is made for operating purposes.

26. In §1951.10 the introductory paragraph, and the introductory paragraph of paragraphs (a)(1), and paragraph (a)(2), (a)(3), and (a)(5) are revised, paragraph (b)(1) is removed, and paragraph (b)(2) is redesignated as the introductory paragraph of paragraph (b), to read as follows:

§ 1951.10 Application of payments on Operating (OL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO) loans to individuals, Soil and Water conservation (SW) coded "24", and other production type loan accounts.

Employees receiving payments on OL, EM, EE, EO, SW coded "24", and other production-type loan accounts will select, in accordance with the provisions of this paragraph, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited by the Finance Office first to unpaid billed interest and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to a portion of any deferred interest and then to interest accrued to the date of the payment and then to principal.

(a) * * *

(1) Payments from farm income or from assignments of income will be applied first to accounts with small balances, including recoverable costs, to remove such accounts from the records. Any balance will be applied on debts secured by the lien in the following order:

* * * * *

(2) Non-farm income and payments derived from the sale of real estate security, will be applied to the earliest account secured by the earliest lien covering such security. The amount to be applied to principal will be applied to the final unpaid installment(s).

(3) On partial refunds of loan advances, the amount to be applied to the principal will be applied to the final unpaid installment on the note which evidences such advance; however, a refund of an advance for current farm and home expenses repayable within the year may be applied to the principal on the first unpaid installment on such note as a regular payment.

(4) * * *

(5) When non-farm assets have been sold, the payments will be applied as set out in § 1945.156(b)(3) of Subpart D of Part 1945 of this chapter if they we sold as a condition for EM loan assistance.

* * * * *

(b) *Payments in full.* Errors of a significant amount in computation or collection will be called to the attention of the collection official by the Finance Office. The borrower's note will not be returned until the balance on the loan account is paid in full. Claims by or on behalf of the borrowers that the amounts owed have been computed incorrectly will be referred to the Finance Office.

27. In § 1951.11, paragraph (a)(2) is revised, paragraph (b)(3) is removed, and paragraph (d)(1)(i), (d)(1)(ii)(F), and (d)(2) are revised to read as follows:

§ 1951.11 Application of payments on real estate accounts.

(a) * * *

(2) All regular payments on insured loan accounts will be applied first to any unpaid balance of the insurance account, including unpaid interest on any advance from the insurance fund which is shown on the statement of account, second to a portion of any deferred interest and third to interest accrued on the note as of the date of the receipt of payment. Any remainder will be applied to the principal balance on the note. For amortized cost item accounts application will be made to only amount due before application to a portion of any deferred interest, accrued interest and principal on the note.

* * * * *

(d) *Finance Office handling.*

(1) Regular payment will be handled as follows:

(i) Amounts paid on direct loan accounts will be credited to the borrower's account as of the date of Form FmHA 451–2 or for direct payments the date payment is received in the Finance Office, and will be applied first to a portion of any deferred interest, second to interest accrued to the date received and third to principal.

(ii) * * *

(F) First to a portion of any deferred interest, second to accrued interest to the date of the payment on the note account and then to the principal balance of the note account.

(2) Extra payments and refunds will be credited to the borrower's note account as of the date of Form FmHA 451–2 and will be applied first to a portion of any deferred interest, second to interest accrued to the date of the receipt and third to principal. The amount to be applied to principal will be applied to the final unpaid installment(s). Extra payments and refunds will not affect the schedule status of a borrower except indirectly in connection with the amortization of a direct loan.

* * * * *

28. In § 1951.25, paragraph (b)(5) is revised to read as follows:

§ 1951.25 Review of limited resource FO and OL loans.

* * * * *

(b) * * *

(5) The County Office must initiate any automatic increase by notifying the borrower and the Finance Office as outlined in paragraph (c) of this section. This increase in interest rate will be as provided in Exhibit A of this subpart. This Exhibit may be obtained from any FmHA Office.

* * * * *

29. In § 1951.33, paragraph (a)(4) is removed, paragraph (b)(2) is removed, paragraphs (b)(3) through (b)(6) are redesignated as (b)(2) through (b)(5), paragraph (d) is removed, paragraph (e) is redesignated as (d), and the introductory paragraph and paragraphs (a)(2), (a)(3), the introductory paragraph of paragraph (b), the introductory paragraph of paragraph (c) and paragraph (c)(6) are revised as follows:

§ 1951.33 Consolidation and rescheduling of OL, SL, EO, and EM and EE loans made for Subtitle B purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance the loans. This section explains how to consolidate and reschedule *existing* loans providing the borrower agrees to such actions.

(a) * * *

(2) Reschedule means to rewrite the rates and/or terms of OL, SL, EO, EM or EE loans made for Subtitle B purposes.

(3) Consolidate means to combine and reschedule the rates and terms of two or more of the same type OL, SL, EO, EM or EE loans made for Subtitle B purposes for other than actual losses.

(b) *General requirements.* County Supervisors are authorized to consolidate and reschedule loans. When the County Supervisor determines that consolidation or rescheduling will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

* * * * *

(c) *Consolidation and/or rescheduling of OL, SL, EO, EE loans for other than real estate purposes and EM loans for Subtitle B purposes including EM loss loans.*

* * * * *

(6) At the time of the consolidation and/or rescheduling OL loans may be changed to a limited resource rate if the borrower meets the requirements for the limited resource interest rate.

* * * * *

30. In § 1951.40, paragraphs (b)(1)(ii), and (b)(1)(iii) are removed, and the introductory paragraph, paragraph (a), the introductory paragraph of paragraph (b), the introductory paragraph of paragraph (b)(1) are revised, paragraph (b)(1)(i) is redesignated as (b)(1), (b)(2), (b)(1)(iv), paragraph (c) is revised, paragraphs (d), the introductory paragraphs of paragraph (e), paragraph (e)(1), (e)(4), and (e)(5) are revised as follows:

§ 1951.40 Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance loans. This section explains how the County Supervisor can reamortize existing loans. County Supervisors are authorized to approve reamortization of loans under this section including assumption agreements.

(a) *Definition.* Reamortization means to rearrange the installments of a loan which may include changing the interest rate and terms of the loan.

(b) *Requirements.* This servicing action will not be taken if a borrower's account(s) is being serviced or is planned to be serviced in the near future by the OGC or the U.S. Attorney. Also, this servicing action will not be used for the purpose of avoiding FmHA graduation requirements. Loans should be reamortized, subject to the following conditions:

(1) FO, SW, RL, RHF, EE, and EM loans should be reamortized when it will be in the best interest of the borrower and the Government.

* * * * *

(c) *Terms.* Reamortized installments usually will be scheduled for repayment within the remaining period of the note or assumption agreement being reamortized. If any repayment is extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less, except RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(1) The FmHA's lien priority may be affected if the final due of the original loan is changed. A State supplement will be issued to provide instructions on the effect a change in due date has on security instruments and the action necessary to retain the Government's lien priority. The State supplement will also include instructions in releasing the original security instrument when a new one is obtained.

(2) The amount of interest accrued at the time of reamortization will be added to the principal. The first installment under the reamortization will at least equal to the interest which will accrue on the new principal between the date of Form FmHA 1940–17 and the next January 1.

(d) *Interest.* The interest rate will be the current interest rate in effect on the date of reamortization (the date the note is signed), or the interest rate on the *original* Promissory Note to be reamortized, which is less. This includes limited resource loans.

(e) *Processing.* A separate Form FmHA 1940–17 will be used for each note or assumption agreement being reamortized.

(1) Form FmHA 1940–17 may be processed provided the County Office has possession of the original note or assumption agreement being reamortized. If the County Office does not have possession of the original note or assumption agreement, the County Supervisor will ask the Finance Office to return the original form so it is in the County Office *before* Form FmHA 1940–17 is processed.

* * * * *

(4) The original and County Office copy of notes or assumption agreements that are reamortized will be marked "REAMORTIZED, (date)". The original of Form FmHA 1940–17 will be attached to the original of the note or assumption agreement beign reamortized and filed in the promissory note folder. A copy of each will be filed in the borrower's case file.

(5) There is no limit on the number of times a Form FmHA 1940–17 can be processed providing the requirements for reamortization are met each time this form is processed.

31. Section 1951.44 is added to read as follows:

§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHG, and EE loans.

All borrowers are expected to repay their loans according to planned repayment schedules. However, borrowers may request a deferral at the FmHA County Office when circumstances occur which will not permit borrowers to pay as scheduled. Loan deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, reamortization or debt set-aside, if available, in accordance with this subpart will not provide the cash flow needed to service in the debt, operate the farm and provide family living expenses.

(a) *Definitions:*

(1) Cash flow projection for the purpose of this section is a listing on a monthly, quarterly, semi-annual or annual basis, of all anticipated cash inflows, and all anticipated cash outflows—both farm and non-farm for the typical year.

(2) Loan Deferral: An approved delay in making regularly scheduled payments.

(3) Unduly impaired standard of living: a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, corporations and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, corporation or cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(b) *In order to be considered for deferral the borrower must meet all of the following conditions:*

(1) The reasons for needing the deferral are due to circumstances which are beyond the borrower's control. Circumstances beyond a borrower's control are limited to the following:

(i) A reduction of income within the 2 full calendar years immediately preceding the date of the request for a deferral, which reduces the operation's cash flow to a point where outlows exceed inflows. All other debt restructuring alternatives such as consolidation, rescheduling or reamortization or debt set-aside of any existing loan(s) must have been considered. A reduction of income does not by itself mean that the borrower is eligible for a deferral. A reduction in income due to inadequate or poor financial management decisions, such as untimely marketing practices, is not an acceptable reason for a deferral since the borrower had control over the situation. Acceptable reasons for reduction of income which could make a borrower eligible for a deferral include:

(A) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(B) Illness, injury or death of an individual borrower, stockholder, member or partner who operated the farm; or

(C) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made;

(ii) Unplanned, but essential, farm expenses and/or, in the case of individual borrowers, essential family living expenses. Unplanned expenses are those which were not listed in the most current farm plan of operation and can be paid from the authorized sale of chattel security. Proceeds from such sales can be used for unplanned purposes only if FmHA releases such proceeds in accordance with Subpart A of Part 1962 and Subpart A of Part 1872 (FmHA Instruction 465.1) of this chapter governing disposition of security. These unplanned expenses may result from:

(A) Accident, death, illness or injury to an individual borrower or dependent member of the borrower's family (stockholders, members or partners of an entity borrower are excluded except when that stockholder, member or partner is the manager of the farming operation); or

(B) Cost of repair of uninsured damage to the security (crops are excluded), provided the loss occurred because adequate insurance coverage was not available or FmHA determined at the time the loan was approved that the damaged security was not essential to the operation.

(2) The need for the deferral must be temporary. To be "temporary" means that the borrower will be able to show to the satisfaction of FmHA that the debt will be paid current by the end of the deferral period or that the new payments, as established by using the servicing alternatives of consolidation, rescheduling or reamortization, can be resumed at the end of the deferral period.

(3) Continuing to make the loan payments as presently scheduled without change will unduly impair the borrower's standard of living.

(4) The borrower must attend a conference with the County Supervisor. At the conference the borrower must provide sufficient financial and production records and cash flow projections to allow FmHA to make a decision on the request for a deferral.

(5) The borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors in accordance with Subpart A of Part 1903 of this chapter.

(c) *The FmHA official must determine that the borrower:*

(1) Acted in good faith in trying to meet agreements with FmHA and made an honest effort to pay but cannot due to reasons beyond the borrower's control;

(2) Requested a deferral of payments and appropriately documented the conditions causing the unduly impaired standard of living;

(3) Before experiencing the hardship, had paid, when due, all real estate taxes and property insurance premiums, and had made all payments on the FmHA debts as agreed upon by the County Supervisor, and otherwise has complied with the other conditions of the loan documents;

(4) Will be able to make scheduled payments after the deferral and plans to continue to operate the farm;

(5) Applied recommended and recognized successful production and financial management practices;

(6) Properly maintained and accounted for security;

(7) Has disposed of all nonessential assets in accordance with agreements made with FmHA, and applied the proceeds to the FmHA loan account(s) or paid other creditors in accordance with lien priorities or other approved agreements;

(8) Demonstrated by a realistic farm plan of operation, cash flow or other financial projections acceptable to FmHA that during the deferral period, the borrower can at least pay essential family living and/or farm operating expenses (for partnerships, corporations and cooperatives living expenses are excluded), repay any loans made during the deferral period for operating and family living expenses, meet all installments owed other creditors, and FmHA loans not deferred.

(d) *Borrower's financial and production history.* The showing under paragraph (b) of this section and the determination under paragraph (c) of this section will be based on:

(1) The borrower's financial and production history as reflected by the FmHA case file;

(2) A farm plan of operation, or similar financial and operating documents acceptable to FmHA, which details the borrower's actual current financial situation and the productive capacity of the farming or ranching operation;

(3) Additional farm plan(s) of operation, or similar financial and operating documents acceptable to FmHA, which detail realistic projections of the farming or ranching operation after the temporary situation is alleviated;

(4) Other information as needed by FmHA, such as financial or production records, copies of leases, marketing plans, agreements with other lienholders, etc.; and

(5) Other information the borrower presents at the conference with the County Supervisor.

(e) *Loans to be deferred.* It may not be necessary to defer all the borrower's loans. Deferrals will only be approved for a sufficient number of loans which will provide a cash flow needed under this paragraph.

(f) *Additional and subsequent deferrals.* (1) If during the period of the initial deferral the borrower is unable to make the scheduled payments and meets the conditions for a deferral, other loans may be deferred. However, the deferral period for such other loans will not extent beyond the expiration date of the initial deferral.

(2) Borrowers may request and have subsequent deferrals approved on a loan(s) provided the conditions of this paragraph are met and at least two years have lapsed from the date of expiration of prior deferrals unless prior concurrence of the State Director is obtained.

(g) *Special debt set-aside loans.* If a borrower has requested a deferral for a loan that has a portiop of the debt set-aside under § 1951.41 of this subpart, the set-aside will be canceled. The borrower may retain the set-aside loan and request a deferral on other loans. A borrower who requests a deferral of a set-aside loan must agree in writing to the cancellation of the set-aside.

(h) *Approval Authority.* County Supervisors are authorized to approve or disapprove requests for deferrals of loan payments after consideration of all of the items in this section. A request will be denied if the borrower(s) failed to attend the required conference without good reason and/or does not provide the required information within 30 days from date of request. This denial will not be appealable.

(i) *Term and interest rate.* A deferral will be for not more than five (5) installments. Interest that accrues during the deferral will not bear interest during the remaining term of the loan. However, interest will begin to accrue (at the higher of the note rate or the judgment rate) on the accrued interest if FmHA receives a deficiency judgment.

(j) *Processing.* (1) If the deferral is approved, all loans being deferred will be rescheduled, reamortized or consolidated as applicable. Interest that has accured will be added to the principal as of the date the new note(s) will be signed. All delinquent loans will be rescheduled, reamortized, consolidated or deferred as applicable to bring the account current. The County Supervisor will contact the Finance Office to find out the amount of interest and principal owed on the date the new note(s) will be signed. This date will be the date of the beginning period of the deferral. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral. The County Supervisor will determine the amount of interest that will accrue during the deferral period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on the promissory note as the scheduled installment for the remaining period of the loan. The FMI for Form FmHA 1940–17, "Promissory Note," has examples (IV, V, and X) which explain this. Finance Office will apply the payments made on the note in accordance with this subpart. The following addendum will be typed, completed, signed by the

borrower and attached to the promissory note:

Addendum For Deferred Interest

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of ____ percent. This agreement amends and attaches to the above note. $_____ of each annual installment on the note will be applied to the interest which accrued during the deferral period. The remainder of the annual installment will be applied in accordance with 7 CFR Part 1951, Subpart A.

Borrower

Borrower

The Finance Office will be notified of the deferral by the County Office sending Form FmHA 1951–4 and Form FmHA 1951–6, "Borrower Account Description Flag," to the Finance Office. The borrower will be notified by letter. The Finance Office will remove the borrower's name from the delinquency report and will set up a subaccount for interest that accrues during the deferral period.

(2) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with Subpart A of Part 1905 of this chapter. The Finance Office will provide the County Office with a quarterly status report for each borrower receiving a deferral.

(3) If the request for a deferral is denied, the borrower will be informed in writing of the specific facts supporting the denial and also will be notified of the appeal rights in accordance with Subpart B of Part 1900 of this chapter.

(4) Six months prior to the end of the deferral period the County Supervisor will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's upcoming installment on the FmHA debt.

(k) *Cancellation of a deferral.* Borrowers who purchase unplanned items without the County Supervisor's approval, fail to provide sufficient information within 30 days of the request for a review of their repayment ability, cease farming, dispose of any interest in real estate security without FmHA approval, or dispose of FmHA chattel security without proper authorization of Form FmHA 1962–1 will have their deferral canceled by the County Supervisor. Whenever it appears to the County Supervisor that the borrower has a substantial increase in income and repayment ability, the deferral will be canceled. The County Supervisor will notify the borrower in writing of FmHA's intention to cancel the deferral with the specific reasons for the cancellation and inform the borrower of the rights to appeal within 30 days of the date of the notice. If the borrower does not appeal within the 30 day period or the decision to cancel is upheld in the appeal, the borrower will be notified in writing of the cancellation. The Finance Office will be notified by checking the appropriate blocks on FmHA Form 1951–4 and sending the form to the Finance Office.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

32. In § 1951.262, paragraphs (a)(1) and (b)(2) are revised to read as follows:

§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

(a) * * *

(1) Provide information following receipt of both FmHA Guide Letters No. 1951–1 and 1951–2, or letters of similar format, such borrowers will not be asked to graduate. They are, at that point, in default of their security instruments, which require the borrower to comply with all future FmHA regulations not inconsistent with the security instruments. The servicing official will, based on the borrower's failure to supply information in accordance with § 1951.261(e) of this subpart, prepare the required documents recommending legal action and submit them together with the borrower's case file to the State Director with a written report outlining credit sources contacted by FmHA and the borrower, the reasons given by the borrower for failure to graduate, action taken by FmHA to verify the availability of credit, and the borrower's available financial resources along with any other data pertinent to the case. The State Director may, with the concurrence of the Regional Attorney, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan security instruments. Borrowers with FO, OL, SW, RL, EM, EO, EE loans or RH loans for farm service buidings must be sent Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and any appeal must be concluded before an acceleration notice is sent.

* * * * *

(b) * * *

(2) If the State Director determines the borrower is able to graduate, the State Director will accelerate the borrower's account(s) in accordance with § 1955.15(d)(2)(ii) of Subpart A of Part 1955 of this Chapter. If the borrower's account(s) is accelerated, the borrower will be given the right to appeal the decision in accordance with Subpart B of Part 1900 of this Chapter. Borrowers with FO, OL, SW, RL, EM, EO, or EE loans, or RH loans for farm service buildings must be sent Form FmHA 1924–25 and Form FmHA 1924–26 and any appeal must be concluded before an acceleration notice is sent. The advice of the Regional Attorney is required before accelerating the account.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans and Acquisition of Property

33. Section 1955.3 is amended by redesignating paragraphs (b) and (c) as (c) and (d) and adding a new paragraph (b) as follows:

§ 1955.3 Definitions.

* * * * *

(b) *Farmer Program loans.* For purposes of Part 1955, the following loans will be considered farmer program loans whether to individuals or entities: Farm Ownership (FO), Soil and Water (SW), Operating (OL), Recreation (RL), Economic Opportunity (EO) Emergency (EM), Economic Emergency (EE), Special Livestock (SL), and Rural Housing for farm service buildings (RHF).

* * * * *

34. In § 1955.10, the introductory paragraph, paragraph (d)(1) and the list of forms in paragraph (f)(1) are revised to read as follows:

§ 1955.10 Voluntary conveyance of real estate and related security.

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA will not make a demand on a borrower to voluntarily convey. Voluntary conveyance should be accepted only after all efforts to sell or transfer the security in accordance with the servicing instructions for the loan have been exhausted. Also, before a voluntary conveyance from a farmer program borrower can be accepted, the borrower must be sent Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options and Borrower Responsibilities."

* * * * *

(d) * * *

(1) *Documents required from borrowers.* Borrowers who offer to voluntarily convey property to FmHA after receiving Form FmHA 1924–25, "Notice of Intent to Take Adverse Action," must return Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," properly completed. All borrowers must execute Form FmHA 465–4. In addition, a warranty deed on an FmHA-approved form or a deed meeting the requirements of § 1807.2(e) of Part 1807 of this chapter (FmHA Instruction 427.1, paragraph II E) should be completed and signed at the same time as Form FmHA 465–4. However, it will not be recorded until voluntary conveyance is accepted. When the debt exceeds the value, a financial statement and information about present income is also required.

* * * * *

(f) * * *

(1) * * *

FmHA No.	Name of form	Number of copies	Signed by borrower	Voluntary conveyance section
422–1	Appraisal Report (Farm Tract)	1		1–O
425–3	Map of Property	1		1–O
422–7	Appraisal Report for Multiunit Housing	1		1–O
1923–8	Residential Appraisal Report	1		1–O
431–2	Farm and Home Plan	1	1–O	1–O
431–3	Household Financial Statement and Budget	1	1–O	1–O
440–2	County Committee Certification or Recommendation	1		1–O
443–3	Balance Sheet	2	2–O&C	2–O&C
442–10	Appraisal Report—Water and Waste Disposal Systems	1		1
451–10	Request for Statement of Account	2		1–C(O to Finance Office)
451–11	Statement of Account	2		2–O&1C
455–3	Lease of Security Property	3		3–O&2C
455–4	Offer to Convey Security	2	2–O&C	2–O&C
455–8	Release from Personal Liability	2		2–O&C
1924–14	Notice—Farmer Program Servicing Options and Borrower Responsibilities	1		1–O
1924–25	Notice of Intent To Take Adverse Action	2		1–C
1924–26	Borrower Acknowledgement Of Notice of Intent To Take Adverse Action	1	1–O	1–O
	Exhibit A Report on Association			
	Problem Case (Association-Type Projects)	2		2–O&C
	Exhibit B Report on Association			
	Loan Problem Case (Additional Information for Recreation Loans)	2		2–O&C
	Borrower's Deed or other instruments of conveyance	2	2–O&C	2–O&C
	Water rights evidence:			
	Copy of Resolution of the Governing body Authorizing the Conveyance to the Government	2	2–O&C	2–O&C

* * * * *

35. In § 1955.15, the heading, the introductory paragraph of paragraph (b), paragraph (b)(2), the introductory paragraph of paragraph (d), and paragraph (d)(1) are revised, paragraph (d)(2)(iii) is renumbered to (d)(2)(iv), a new paragraph (d)(2)(iii) is added, a new paragraph (e) is added, and paragraphs (d)(4) through (d)(17) are removed as follows:

§ 1955.15 Foreclosure of loans other than farmer program loans secured by real estate.

* * * * *

(b) *Problem case report.* If foreclosure is recommended, Form FmHA 465–7, "Report on Real Estate Problem Case," or Exhibit A of this subpart, as appropriate, will be completed. The problem case report or attachment to the report will contain the County Supervisor's recommendations as to the suitability of the property for retention in FmHA programs.

* * * * *

(2) *Recommendation for deficiency judgment.* If it appears that proceeds from the foreclosure sale will not full satisfy the debts secured by the property, the County Supervisor will review the borrower's situation to determine if there is a possibility of making a further recovery on the account. The facts revealed by this review should be included in or attached to the problem case report. When judicial or nonjudicial foreclosure does not automatically result in a deficiency judgment and there are other assets from which a substantial recovery can be made, the State Director will request OGC to obtain such judgment if legally permissible. No deficiency judgment may be sought if the borrower has received a moratorium on payments as provided for in § 1951.313 of this chapter when that moratorium was obtained on the Section 502 or 504 RH loan being foreclosed and the borrower has faithfully tried to meet loan obligations.

* * * * *

d. *Approval of foreclosure.* When foreclosure is approved it will be handled as follows:

(1) *Prior lien(s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA loan(s), either settling the prior lien or foreclosing subject to it. The assistance of OGC should be obtained in weighing the alternatives, with the objectives being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA's position. If State laws affect this action, a State supplement will be issued with the advice of OGC to establish the procedure to be followed.

* * * * *

(2) * * *

(iii) When a borrower has a Section 502 or 504 RH loan for a dwelling that also serves as security for a farmer program loan, the RH loan will be accelerated at the same time the borrower is sent Form FmHA 1924–25 for intent to accelerate the farmer program loan.

* * * * *

(e) *Cancellation of foreclosure action.* If the State Director determines that circumstances have changed and foreclosure is no longer necessary, the State Director may stop foreclosure and reinstate the loan account if the case has not been sent to OGC. If the case has been sent to OGC, the State Director may request OGC to stop foreclosure. The State Director will reinstate the loan account after being notified that foreclosure has been stopped. In either case, the borrower, County Supervisor, Finance Office, and OGC, if previously consulted, will be informed of any actions taken.

36. Section 1955.16 is added to read a follows:

§ 1955.16 Foreclosure of farmer program loans secured by real estate.

(a) *General.* Foreclosure will be initiated after the borrower has received Forms FmHA 1924–14, 1924–25 and 1924–26 and any appeal has been concluded.

(b) *Authority.* The District Director will accelerate the account(s) and execute any necessary documents.

(c) *Problem case report.* Form FmHA 465–7 will be completed and signed by the County Supervisor and submitted to the District Director, who must also sign it.

(1) *Chattel security.* If chattel security is also involved and legal action is necessary, Forms FmHA 455–1, "Request for Legal Action," 455–2, "Evidence of Conversion," and 455–22, "Information for Litigation," as applicable to the case, will be prepared in accordance with the respective FMI's and made a part of the problem case submission.

(2) *Appraisal report.* An appraisal which reflects the present market value of the real estate, in its existing condition, will be submitted with the problem case report. If for any reason the value changes substantially during the foreclosure process, the servicing official will notify the State Director immediately. Otherwise, the appraisal submitted with the problem case report will be used as a basis for calculating the government's bid at the foreclosure sale. In cases where the foreclosure process is extremely lengthy, or for some other reason the State Director believes the latest appraisal report may not reflect market value, the State Director may request a new appraisal prior to the foreclosure sale.

(3) *Recommendations for deficiency judgment.* If the debt will not be satisfied by the foreclosure, the borrower's financial situation will be assessed by the County Supervisor to determine if there is a possibility of further recovery on the account through a deficiency judgment. A summary of these determinations will be fully documented and appropriate recommendations made concerning deficiency judgment in the problem case report. The State Director may, based on the recommendations, request OGC to obtain such a judgment if legally permissible.

(d) *Prior lienholders.* See § 1955.15(d)(1) of this subpart for handling prior lienholder foreclosures.

(e) *Acceleration of account.* After acceleration, no time for voluntary liquidation is authorized. The District Director will review the file to make sure that Forms FmHA 1924–14, 1924–25 and 1924–26 were sent and any appeal has been concluded. If the proper forms were not sent or if the appeal has not been concluded, the file will be returned to the County Supervisor with appropriate instructions. All real estate accounts will be accelerated using Exhibit D or Exhibit E to this subpart or other appropriate forms approved by OGC to be signed by the District Director. Chattel loans will be accelerated simultaneously in accordance with Subpart A of Part 1962 of this chapter. The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address of the obligor(s). If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received within 15 days from the date the certified letter was sent, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. If the notice(s) is not returned by the Postal Service in 30 days, no further notice is required. If the notice(s) is returned marked "unable to forward," the County Supervisor will attempt to contact any known relative(s) of the obligor(s) in the County Supervisor's jurisdiction and obtain the obligor's address. If no relatives can be contacted or if the relatives are unable to give the requested information, the County Supervisor will contact local law enforcement officials in an attempt to obtain information on the obligor(s). Each contact and the results must be fully documented in the file. If all attempts are unsuccessful, the County Supervisor may proceed with liquidation. A State supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the County Supervisor.

(1) Where monetary default is involved, the account may be accelerated immediately.

(2) Where monetary default is *not* involved, the account will not be accelerated until the concurrence of OGC is obtained.

(3) If the borrower obtained the loan while a civilian, entered military service after the loan was closed, and FmHA has not obtained a waiver of rights under the Soldiers and Sailors Relief Act, the account will not be accelerated until OGC has reviewed the case and given instructions.

(4) If the borrower also has a Section 502 or 504 RH loan for a dwelling that serves as security for a farmer program loan, the RH loan will be accelerated in accordance with § 1955.15(d)(2)(i) of this Subpart.

37. Section 1955.17 is added to read as follows:

§ 1955.17 Further processing of foreclosures of all FmHA loans.

(a) *Unused loan funds.* The State Director will forward an order through the County Supervisor or District Director to the financial institution for withdrawal of any funds remaining in the supervised bank account in accordance with § 1902.15 of Subpart A of Part 1902.

(b) *Statement of account.* When a current transaction record is not available or a statement of account is required for foreclosure, Form FmHA 451–10 will be forwarded to the Finance Office to obtain a statement of account for each account to be included in the foreclosure. The Finance Office will not apply any payments to the account until further notice. If any payments are mistakenly applied on the account, the effect of the application will be as outlined in § 1955.15(d)(2)(i)(D) of this Subpart.

(c) *Forwarding docket to OGC.* If a borrower fails to satisfy the account during the period provided in the acceleration notice, the State Director will:

(1) Request the Director, Finance Office, if the note is not held in the County Office, to send the original note, a photocopy, or statement that the note is held in the insurance fund, as appropriate, to the State Director.

(2) Forward the borrower's case folder, including a photocopy of each FmHA note, any assumption or cosigner agreements, and such additional information and copies as appropriate, to OGC for instructions to complete foreclosure or, with prior approval of the Administrator, handle the matter as provided in a State supplement approved by OGC. The expiration date of the property insurance will be indicated so that OGC will know that an additional cost will be incurred if the sale is not completed before the expiration date. Also, any title evidence required by OGC will be submitted at that time so that they can give an opinion as to whether FmHA will obtain a title merchantable in fact if it is the successful bidder. On receiving advice from OGC, the County Supervisor or District Director will prepare and submit Standard Form 1034 in accordance with FmHA Instruction 2024–P (available in any FmHA office) requesting payment of all real estate taxes and assessments, including water assessments, which are due and payable. When required by OGC, request a current statement of account or transaction record which reflects the amount of vouchers processed in connection with the foreclosure. A copy of the account or transaction record will be sent to the State Director.

(3) Ordinarily, take no curative action with respect to title defects before foreclosure sale. However, the State Director may authorize necessary curative action if the State Director determines, with the advice of OGC, that it would be in the best interest of FmHA to cure certain defects before the sale.

(4) In nonjudicial foreclosure cases, the State Director will send the notice of sale to the borrower in the same manner and to the same address(es) as the notice of acceleration. If the State Director has learned of a new address at which the borrower may be residing, the State Director will also send a copy of the notice of sale to that address.

(5) Request, through OGC, in judicial foreclosure cases, that the U.S. Attorney petition the court to enforce the provision in the mortgage in which the borrower waives redemption rights.

(d) *Nondiscrimination.* Title VI of the Civil Rights Act of 1964 applies to any real property that was subject to this title when Federal financial assistance was extended and that continues to be used for the same or similar purposes. The advertisement of foreclosure sale for such property should include a statement that the property is subject to Title VI of the Civil Rights Act of 1964 and that the purchaser will be required to sign Form FmHA 400–4, "Nondiscrimination Agreement," if the purchaser intends to use the property for its original or similar purposes.

(e) *Expenses.* Expenses which OGC recommended for payment by FmHA will be paid in accordance with FmHA Instruction 2024–E, FmHA Instruction 2024–F, and FmHA Instruction 2075–A (available in FmHA Offices), as appropriate.

(f) *Maximum bid.* The State Director will establish the maximum amount of the FmHA bid. Such bid will be either the present market value of the security or FmHA gross investment, whichever is less.

(1) The present market value of the security will be determined by an appraisal made by a qualified FmHA employee. If a qualified FmHA employee is not available to appraise property securing a loan other than farmer program or housing, the State Director may obtain an appraisal from a qualified appraiser outside FmHA; for property securing farmer programs or housing loans, the Administrator must authorize any appraisal from a source outside FmHA.

(2) In establishing the present market value, the State Director will consider:

(i) The effect that any outstanding mineral rights, easements, other interests, or title defects will have on the resale of the property;

(ii) Any prior liens that will remain outstanding after the foreclosure sale; and

(iii) The appraisal report, the County Supervisor's recommendation concerning suitability of the property for FmHA programs, and any other pertinent information affecting or indicating the value.

(3) Gross investment means the amount of the FmHA secured debt including all advances made or to be made by FmHA and charged to the account. It also includes the amount of any prior liens or other costs which OGC advises must be paid from proceeds of the foreclosure sale before paying the FmHA secured debts.

(g) *Bidding.* The State Director or a person designated by the State Director is authorized to bid on behalf of FmHA. In appropriate cases the State Director may request through OGC that the U.S. Marshall be designated. The State Director will inform the County Supervisor by memorandum as to the maximum amount to be bid and the name of the person authorized to bid. The State Director will also indicate whether the property is suitable for retention in the FmHA program. A copy of this memorandum will be sent to OGC. An employee of FmHA may not bid for himself/herself nor have someone bid for him/her.

(1) Ordinarily, the State Director will designate the County Supervisor to bid on behalf of FmHA unless circumstances make it necessary or desirable to designate another person. In judicial foreclosure, OGC will be requested to inform the U.S. Attorney of the maximum amount recommended by FmHA to be bid and in appropriate cases that an FmHA employee will be available at the sale to make the bid.

(2) Where FmHA is the senior lienholder, the person authorized by FmHA will make only one bid and that will be for the authorized maximum bid. This bid will be made when no other party makes a bid or when the last bid made will result in the property being sold for less than the authorized maximum bid.

(3) When FmHA is not the senior lienholder, the State Director may authorize the person bidding on behalf of FmHA to make incremental bids in competition with other bidders. The State Director will inform the person bidding of the opening entry bid, bidding increments, and maximum bid.

(h) *Reports on sale.* Immediately after a foreclosure sale at which FmHA bids, the person authorized to bid will furnish the State Director a report about the sale. The State Director will send a copy of the report to OGC. When OGC receives this report or a report from the U.S. Attorney in judicial foreclosure, this report will serve as a request to OGC to send to the County Supervisor through the State Director instructions for completing the transactions or a final title opinion, as appropriate.

(i) *Completion of Form FmHA 465–6.* If FmHA is the successful bidder at the foreclosure sale, the County Supervisor will complete and forward Form FmHA 465–6 to the Finance Office. The form will be completed without waiting for the final report on acquired property from OGC and will be dated as of the day of the sale.

(j) *Appraising personal property.* The County Supervisor will inventory and appraise personal property acquired at the foreclosure sale with the real estate and submit a list of such items of the Finance Office with Form FmHA 465–6. A copy of the list will be sent to the State Director.

(k) *Leases.* If the sale is made subject to an agricultural, mineral, or other lease in which the lessor's interest is acquired by FmHA through the sale, the County Supervisor will submit a copy of the lease to the Finance Office with Form FmHA 465–6. If a lease terminated on act of sale, a new lease may be considered as provided by § 1955.63(a)(1) of Subpart B of Part 1955 of this chapter. For lease numbering see § 1955.10(j)(3).

(1) Any oral lease in effect at the time the Government acquires the property will be reduced to writing on Form FmHA 465–2 or other form approved by OGC. If a written lease cannot be obtained, request assistance from OGC. The lessee and County Supervisor (for FmHA lessor) will execute the form. The County Supervisor will notify any lessee in writing that the Government has acquired the former lessor's rights under any lease and will direct the lessee to remit all payments to the County Supervisor.

(2) Payments to FmHA under a lease which were due and payable before the date of the foreclosure sale will be applied first on any balance remaining on the debt after foreclosure and then on any other FmHA claim against the borrower. Any surplus remaining will be remitted to the borrower.

(3) The County Supervisor will collect payments due and payable after the date of foreclosure and deposit or transmit them as miscellaneous collections in accordance with Form

FmHA 451–2 and Subpart B of Part 1951 of this Chapter.

(4) Receipts for collections made in accordance with this Subpart will be issued to: "Lease proceeds from property formerly owned by (borrower's name and case number) and leased to (name of lessee)."

(l) *Deficiency judgment.* (1) If a deficiency judgement is obtained in accordance with § 1955.15(b)(2) or § 1955.16(c)(3) of this subpart, the account will be classified as a judgment case and the County Supervisor will send Form FmHA 455–20, "Notice of Judgment," to the Finance Office. The account will be served in accordance with § 1962.49(e) of Subpart A of Part 1962. When action to obtain a deficiency judgment is pending at the time Form FmHA 465–6 is sent to the Finance Office, the action will be indicated on the form.

(2) If a deficiency judgment is not obtained and the debt cannot be settled under Part 1864 of this chapter (FmHA Instruction 456.1), the County Supervisor will submit Forms FmHA 404–1 and FmHA 450–10 to the Finance Office to reclassify the account to collection only in accordance with FmHA Instruction 450.5, available in all FmHA Offices.

(m) *Property insurance.* Property insurance will be handled in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

38. Section 1955.18 is added to read as follows:

§ 1955.18 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of the subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse affect on the Government's interest, propose alternative courses of action, and show how the adverse affect will be eliminated or minimized if the exception is granted.

39. Exhibits D and E to Subpart A of Part 1955 are added as follows:

Exhibit D

(For use in accelerating farmer program loan accounts secured by real estate and/or chattels in cases not involving bankruptcy.)

Certified Mail

Return Receipt Requested

(Name and Address)

Date ————————

Notice of Acceleration of Your Debt to the Farmers Home Administration and Demand for Payment of That Debt

Dear ————————:

PLEASE TAKE NOTE that the entire indebtedness due on the promissory note(s) and/or assumption agreement(s) which evidence the loan(s) received by you from the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture is now declared immediately due and payable. They are described as follows:

Date of Instrument *Amount*

The promissory note(s) and/or assumption agreement(s) is (are) secured by (real estate mortgage(s), deed(s) of trust, security agreement(s), financing statement(s), etc.) described (perfected) as follows:

Recorded In:

Book No. Page No.

Date of Instrument *Place of Recordation (Filing)* *(Recorded under Document No.)*

This acceleration of your indebtedness is made in accordance with the authority granted in the above-described real estate instrument(s).

The reason(s) for the acceleration of your indebtedness is (are) as follows:

(If the borrower is in monetary default, list this as one reason for accelerating. If the borrower is not in monetary default, see § 1955.16(e)(2).)

The indebtedness due is $———— unpaid principal, and $———— unpaid interest, as of ————, 19——, plus additional interest accruing at the rate of $———— per day thereafter, plus any advances made by the United States for the protection of its security and interest accruing on any such advances, and the amount of subsidy to be recaptured in accordance with Subsidy Repayment Agreement on the loan(s) which is (are) subject to recapture. Unless full payment of your indebtedness is received within 30 days from the date of this letter, the United States will take action to foreclose the above described security instrument(s) and to pursue any other available remedies.

Payment should be made by cashier's check, certified check, or postal money order payable to the Farmers Home Administration and delivered to the County Supervisor of the Farmers Home Administration at (street address or P.O. Box)————, (city)————, (state)————, (zip code)————. If you submit to the United States any payment insufficient to pay the amount in full or insufficient to comply with any arrangements agreed to between the FmHA and you, that payment *WILL NOT CANCEL* the effect of this notice. If such insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the United States may have for breach of any promissory note or convenant in the security instrument(s) will result and the Farmers Home Administration may proceed as though no such payment had been made.

(The above-described security instrument(s) provides that the United States may foreclose without Court action by selling the property at public sale after ————. The Government intends to sell the property in this manner.) [1]

If you have not been advised of your rights to request a deferral of payments or other servicing options you should contact the County Supervisor at the above mentioned address within 15 days of the receipt of this notice.

If you fail to comply with the requirements outlined in this notice, the United States plans to proceed with foreclosure/liquidation.

YOU DO NOT HAVE ANY RIGHT TO APPEAL THIS DECISION TO ACCELERATE YOUR FmHA DEBT(S) TO ANY OFFICIAL OF THE FARMERS HOME ADMINISTRATION.

United States of America

By ————————

District Director, Farmers Home Administration, United States Department of Agriculture.

Exhibit E

(For farmer program REAL ESTATE OR CHATTEL LOANS.) (For use in bankruptcy cases where (1) the automatic stay has been lifted; *or* (2) the borrower has not reaffirmed liability, and (a) the bankruptcy proceeding has been closed or dismissed or (b) the borrower has been discharged and the property has been abandoned by the trustee or exempted by the borrower.)

Certified Mail No. ————————

Date ————————

Return Receipt Requested

(Name and Address)

Notice of Acceleration of Your Farmers Home Administration Account(s)

Dear ————————:

PLEASE TAKE NOTE that the Farmers Home Administration (FmHA) intends to enforce its (real estate mortgage(s), deed(s) of trust, security agreement(s), etc.) given or assumed by you as security for promissory note(s) and/or assumption agreement(s) and declares the entire secured debt to be immediately due and payable. The loan instrument(s) is(are) described as follows:

Date of Instrument *Amount*

The security instrument(s) referred to above is(are) described/ was(were) perfected as follows:

Date of Instrument *Place of Recordation (Filing)* *Record in:* *Book No.* *Page No.* *(Record under Document No.)*

The reason(s) for taking this action is(are) as follows:

[If the loan account is in monetary default, list this as one reason for accelerating. If the loan account is not in monetary default, see § 1955.16 (e)(2).]

The balance of the loan account amounts to $———— unpaid principal, and $———— unpaid interest, calculated to ————, 19——, plus interest accruing from that date at the rate of $———— per day, plus any advances made by the United States for the protection of its security and the interest accruing on any such advances (and any amount of subsidy to be recaptured in accordance with Subsidy Repayment Agreement on the loan(s) which is(are) subject to recapture). Pursuant to the terms of the loan instruments the Farmers Home Administration is now exercising its option to declare this debt immediately due and payable.

The security instrument(s) executed by you in favor of the FmHA is(are) not affected by a discharge in bankruptcy and the security can still be foreclosed upon or liquidated to satisfy the secured debt, although a discharge under the Bankruptcy Code does render any debt discharged unenforceable as your personal obligation. In other words, if FmHA goes ahead with foreclosure or liquidation, all property which is security would be sold. If the proceeds from that sale are not sufficient to pay off the debt, FmHA cannot seek a personal judgment against you for any deficiency. This letter is not intended as an act to collect or recover any debt from you for which your personal obligation has been discharged pursuant to 11 U.S.C. 524 but rather it is intended to collect or recover any such debt from the property which is security for the loan(s) made to you.

Unless full payment of the secured debt is received within 30 days from the date of this letter, the United States will take action to foreclose/liquidate under the authority granted in the above-described instrument(s). Payment should be made by cashier's check, certified check, or postal money order payable to the Farmers Home Administration and delivered to the FmHA County Supervisor (street address or P.O. Box)————, (city)————, (state)————, (zip code)————.

If there is submitted to the United States any payment insufficient to pay the account in full or insufficient to comply with any arrangements agreed to between the FmHA and you, that payment *WILL NOT CANCEL* the effect of this notice. If such insufficient payments are received and credited to your account, no waiver or prejudice of any rights which the United States may have for breach of any promissory note or covenant in the security instrument(s) will result and the FmHA may proceed against the security as through no such payment had been made.

(The above-described security instrument(s) provides(provide) that the United States may foreclose without Court action by selling the property at public sale after ————. The Government intends to sell the property in this manner.) [1]

If you have not been advised of your rights to request a deferral of payments or other servicing options you should contact the County Supervisor at the above mentioned address within 15 days of the date of this letter.

YOU DO NOT HAVE ANY RIGHT TO APPEAL THIS DECISION TO ACCELERATE YOUR FmHA DEBT(S) TO ANY OFFICIAL OF THE FARMERS HOME ADMINISTRATION.

United States of America.

By ————————

District Director, Farmers Home Administration, United States Department of Agriculture.

[1] (This paragraph will be omitted in States with judicial foreclosure or if it conflicts with State law.)

PART 1960—GENERAL

Subpart A—Special Servicing of Delinquent and Problem Case FmHA Farm Borrowers

40. Subpart A of Part 1960 is removed and reserved.

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

41. In § 1962.2, paragraph (b) is revised to read as follows:

§ 1962.2 Policy.

* * * * *

(b) If the objectives of paragraph (a) of this section cannot be met, or if the chattel security must be liquidated for other reasons, the security will be liquidated promptly to protect FmHA's financial interest provided the borrower has been sent Forms FmHA 1924–14, 1924–25, and 1924–26 and any appeal has been concluded. Normally, the borrower will dispose of chattel security and EO property at a public or private sale. However, when this cannot be done, the County Supervisor will take possession of and sell chattel security under this subpart.

42. In § 1962.3, paragraph (c) is added to read as follows:

§ 1962.3 Authorities and responsibilities.

* * * * *

(c) *Exception authority.* The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

43. Section 1962.4 is amended by revising paragraphs (c) and (d), renumbering paragraphs (j) through (o) as paragraphs (k) through (p), adding a new paragraph (j), adding paragraph (q) as follows:

§ 1962.4 Definitions.

* * * * *

(c) *Borrower.* Individual(s), corporation, cooperative, or partnership that is (are) liable for the loan(s) or any part thereof.

(d) *Chattel security.* Chattel property which may consist of, but is not limited to, inventory; accounts; contract rights; general intangibles; crops; livestock; fish; farm, business, and recreational equipment; and supplies, and which is covered by financial statements and security agreements, chattel mortgages, and other security instruments.

* * * * *

(j) *Farm income.* Proceeds from the sale of chattel security which is normally sold annually during the regular course of business such as crops, feeder livestock and other farm products.

* * * * *

(q) *Security.* Also means "Chattel security" when appropriate.

44. Section 1962.16 is added to read as follows:

§ 1962.16 Accounting by County Supervisor.

(a) The County Supervisor is responsible for maintaining a current record of each borrower's FmHA security. All chattel security will be inspected at least annually by the County Supervisor. The inspection will be recorded in the running record of the borrower's file. More frequent inspections should be made for delinquent borrowers or borrowers that have been indebted for less than one full crop year. At the time of the annual inspection the County Supervisor will discuss the provisions of §§ 1962.17 and 1962.18 of this subpart with the borrower, and the borrower and County Supervisor will complete and sign Form FmHA 1962–1, "Agreement For The Use of Proceeds/Release of Chattel Security

and/or Farm Income," if it has not been previously completed for the year. The form should be completed and signed even if a borrower does not plan to dispose of any chattel security. When the County Supervisor has other contacts with the borrower, the County Supervisor should also check for dispositions and acquisitions of security. The purpose of all inspections is to:

(1) Verify that the borrower possesses all the security,

(2) Determine security is properly maintained, and

(3) Supplement security instruments.

(b) Dispositions of chattel security will be recorded on Form FmHA 1962–1, and on the file copy of the security agreement or chattel mortgage. The original must not be altered. Additional acquired chattel security should be entered on the file copy of the security agreement or chattel mortgage and must be described on subsequent security instruments.

45. Section 1962.17 is revised to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) *General.* The borrower must account for all security and will be instructed of this by the County Supervisor when a loan is made and as often afterward as necessary. When the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor. Purchasers of security who inquire should be informed that the property is subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. When the borrower fails to account properly for security, the County Supervisor will take the actions required in § 1962.18 of this subpart.

(b) *Use of Form FmHA 1962–1.* (1) County Supervisors are authorized to approve dispositions of FmHA chattel security in accordance with this subpart. The County Supervisor will complete Form FmHA 1962–1 to show how the borrower will sell, exchange or consume security and use sales proceeds (including milk sales proceeds) and insurance proceeds derived from the loss of security. The five conditions set out in that form must all be met and the conditions set out in (b)(2) of this section must also be met.

(2) Sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to a prior lienholder and which come to FmHA can be used for one of the following purposes.

(i) Proceeds can be applied to the FmHA debt.

(ii) Proceeds can be used to purchase property better suited to the borrower's needs if FmHA will acquire a lien on the new property, equal in value to the lien held on the property sold. Any remaining sale proceeds will be applied to reduce the FmHA debt.

(iii) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophes, when the need for funds cannot be met with an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower and FmHA from suffering a substantial loss.

(iv) Proceeds can be used to pay for essential farm and/or family living (family living expenses are excluded for partnerships, corporations and cooperatives) expenses necessary for the continued operation of the farm in accordance with the current year's Farm Budget.

(v) Property can be exchanged for property which is better suited to the borrower's needs if FmHA will acquire a lien on the new property, equal in value to the lien held on the property exchanged.

(vi) Property can be consumed by the borrower as follows:

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock provided this is preferable to direct marketing and also provided that FmHA obtains a lien (or assignment) on the livestock and livestock products equal in value to the lien on the crops.

(3) The borrower must maintain records of dispositions of property and the actual use of proceeds and must make these records available to FmHA at the end of the period covered by the Form FmHA 1962–1, or when requested by FmHA. The County Supervisor will complete the "Actual" columns on that form, making sure that the dispositions of property and uses of proceeds were as agreed upon. If they were not, the County Supervisor will take the actions required by § 1962.18 of this subpart.

(4) If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received, as shown on Form FmHA 1962–1, the borrow is supposed to notify the County Supervisor. A new Form FmHA 431–2 and a new Form FmHA 1962–1 will be prepared to reflect the changes.

(5) If the borrower wants to sell, exchange or consume property in a way different from that shown on Form FmHA 1962–1, the borrower must get FmHA's permission, in advance. Permission will be granted if the five conditions set out in that Form have been met and if the requirements of (b)(2) of this section have been met.

(c) *Release of liens.* (1) Liens can be released by the County Supervisor when security is sold, exchanged or consumed, provided the conditions set out on Form FmHA 1962–1 and in this subpart are met.

(2) Junior FmHA liens on chattels and crops serving as security for FmHA loans can be released when such property has no present or prospective security value or enforcement of the FmHA lien would be ineffectual or uneconomical. The following information will be documented in the running case record.

(i) The present market value of the chattels or crops, as determined by the County Supervisor, on which FmHA has a value less junior lien.

(ii) The names of the prior lienholders, amount secured by each prior lien, and the present market value of any property which serves as security for the amount. The value of all property which serves as security for amounts owed to prior lienholders must be considered to determine whether the junior FmHA lien has any present or prospective value.

(3) Liens obtained through a mutual mistake can be released. The reasons for the release must be documented in the running case record.

(4) Liens can be released when there is no evidence of an existing indebtedness secured by the lien in the records of the FmHA County, State, or Finance Office.

(5) Liens on separate items of chattels can be released to another creditor for purposes set out in paragraph (b)(2) (iv) of this section when it has been determined by a current appraisal that the value of the remaining security is substantially greater than the remaining FmHA debt.

(d) *Processing the release of chattel security.* (1) If the borrower or an interested third party requests a release of specific items which must be recorded under the UCC or chattel mortgage laws, Form FmHA 462–12, "Statements of Continuation, Partial Release, Assignments, etc.," Form FmHA 460–1, "Partial Release," or other Forms approved by OGC and required by State statute will be used. Care must be used to be sure that only specific items are released; for example, if a borrower requests a release of five

cows, make sure that not all the cattle are released from the FmHA lien. When specific items are listed on the security agreement, the County Supervisor should record the disposition on the *work copy* of the security agreement.

(2) Assignment and consent to payment of proceeds will be processed under Subpart A of Part 1941 of this chapter and recorded on Form FmHA 1962–1.

(i) When it is necessary to temporarily amend Form FmHA 441–18, "Consent to Payment of Proceeds From Sale of Farm Products," or Form FmHA 441–25, "Assignment of Proceeds From the Sale of Dairy Products and Release of Security Interest," Form FmHA 462–9, "Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Products," will be used. All amendments of assignment agreements will be made on forms approved by OGC. The State Director will issue a State supplement with the advice of OGC and prior approval of the National Office on the use of other forms. The original form after completion will be forwarded directly to the person or firm making the payment against which the assignment is effective, and a copy will be kept in the borrower's case file. All amendments of assignment agreements will be approved and recorded on Form FmHA 1962–1. Conditions of this section must be met. The County Supervisor will see that payments are made in accordance with the original consent when the amendment period expires. Normally a temporary amendment will not exceed a six month period.

(ii) When FmHA is not expecting payment from the proceeds of a product on which it has a lien but the purchaser of the product inquires about payment, a letter should be written to the purchaser as follows:

"The Farmers Home Administration (FmHA) has a security interest in the (name of product) being sold to you by (name and address of borrower), but at the present time is not looking to the proceeds from the sale of that product for payment on the debt owed to this agency. Therefore, until further notice, it will not be necessary for you to make payment to FmHA for such product."

(e) *Releases of liens on wool and mohair marketed by consignment.*—(1) *Conditions.* Liens on wool and mohair may be released when the security is marketed by consignment, provided all the following conditions are met:

(i) The producer assigns to FmHA the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs.

(ii) The producer assigns to FmHA the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair.

(iii) The producer and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the producer and FmHA.

(2) *Authority.* The County Supervisor may execute releases of the Government's lien on wool and mohair on Form FmHA 462–4, "Assignment, Acceptance, and Release." Since Form FmHA 462–4 is not a binding agreement until executed by all parties in interest, including the producer, the broker and the Government, the County Supervisor may execute it before other parties sign it.

(f) *Notice of termination of security interest to purchasers of farm products under consents or assignments upon payment in full.* County Supervisors will notify purchasers of farm products as soon as the FmHA has received payment in full of indebtedness for collection of which it has accepted assignments or consents to payment of proceeds from the sale of the farm products. When Form FmHA 441–18 is in effect under the UCC, the notice to the purchaser will be made on Form FmHA 460–8, "Notice of Termination of Security Interest in Farm Products." When assignments have been used, the notice to the purchaser will be by letter or by forms prescribed by State supplements.

(g) *Release of FmHA's interest in insurance policies.* When an FmHA lien on property covered by insurance has been released, the County Supervisor is authorized to notify the insurance company of the release.

46. Section 1962.18 is revised to read as follows:

§ 1962.18 Unapproved disposition of chattel security.

When the County Supervisor learns that a borrower has made a disposition of chattel security in a manner not provided for on Form FmHA 1962–1 or becomes aware of the misuse of proceeds by a borrower, corrective action must be taken to protect the Government's interest.

(a) *Notice to borrowers.* When a borrower has not properly accounted for the use of proceeds from the sale of chattel security, the County Supervisor must request restitution by use of a letter similar to Guide Letter 1962–A–5.

(1) If the borrower makes restitution or provides sufficient information to enable the County Supervisor to post-approve the transaction on Form FmHA 1962–1, no further action will be taken against the borrower. Post-approval can only be given under the conditions set out in § 1962.17(b) of this Subpart. Only one such transgression can be allowed in any period covered by the Form FmHA 431–2 or between annual security inspections, whichever is appropriate, and this must be made clear to the borrower.

(2) If the borrower does not make restitution, if the County Supervisor cannot post-approve the transaction, or if the borrower makes a second unauthorized disposition of security or misuse of proceeds after settling the first offense as provided in paragraph (a)(1) of this section, the County Supervisor must take the following action:

(i) Proceed in accordance with § 1962.49 (b) the subpart, and

(ii) Place the borrower's name on the Unapproved Disposition of Security Log in accordance with paragraph (b) of this section.

(b) *Unapproved disposition of security Log.* Each County Office must maintain a log of borrowers who have made unapproved dispositions of chattel security.

(1) The following information must be included in the log:

(i) The borrower's name and address;

(ii) The date the unapproved disposition was discovered;

(iii) The item disposed of;

(iv) The amount of proceeds from the disposed item, the use of proceeds and the name and address of the purchaser, if known;

(v) The date that Guide Letter 1962–A–5 was sent to the borrower and date(s) of personal contact(s) with the borrower regarding the unapproved disposition; and

(vi) The date the case was referred to the State Office.

(2) Subsequent offenses by the same borrower must be entered separately on the log.

(3) The borrower's name must remain on the log for at least one calendar year from the date the unapproved disposition was discovered.

(4) The County Supervisor will forward the information on the logs to the State Director quarterly (January 1, April 1, July 1, and October 1). The information will contain only those entries made since the previous quarterly report. Negative reports are required.

(5) The State Director will collect the reports and forward them to the Office of Inspector General-Regional Office

Investigation. Negative reports will not be referred.

§§ 1962.22, 1962.23, 1962.24, and 1962.25 [Removed]

47. Sections 1962.22, 1962.23, 1962.24, and 1962.25 are removed and reserved.

48. 1962.34 is amended by revising the introductory paragraph, paragraphs (a)(2), (b)(3), and (e) and adding paragraph (f)(12) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to provisions in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1). The transferor (borrower) must be sent Form FmHA 1924–14 as soon as the borrower contacts the County Supervisor inquiring about a transfer.

(a) * * *

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. Form FmHA 460–9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 460–5, "Assumption Agreement (New Terms)." The new repayment period may not exceed that for a new loan of the same type. If Form FmHA 460–5 is used, the current interest rate for such loans will be charged to all applicants except those eligible for limited resource loans, who will be charged interest at the rate of 5 percent per year. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be placed on new rates and term.

* * * * *

(b) * * *

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using FmHA 460–5. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed. Interest rates to the transferee will be as follows:

(i) For OL, EE, SL, and EM loans, the current interest rate in effect for OL loans at the time of approval of the transfer plus one percent.

(ii) For EO loans, 6 percent.

* * * * *

(e) *County Committee actions.*—(1) *Transfer to eligible applicant.* The County Committee will certify the transferee's eligibility for the types of loans to be assumed on FmHA 440–2, "County Committee Certification or Recommendation."

(2) *Transfer to ineligible applicant.* The County Committee will execute a memorandum statement on Form FmHA 440–2 as follows: "In our opinion, the transferee, (name of transferee), will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan."

(3) *Release from liability.* If the total outstanding debt is not assumed the County Committee will execute a memorandum statement on Form FmHA 440–2 when they recommend the transferor be released from personal liability, which will read as follows: *"(Name of transferor and any co-signer)* in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the convenants incident to the loan to the best of their ability. Therefore, we recommend that the transferor and any co-signer be released from personal liability on the transferees' assumption of a portion of the indebtedness at least equal to the present market value of the security." If the total outstanding debt is assumed, the statement is not required.

(f) * * *

(12) Form FmHA 1924–14.

* * * * *

49. Section 1962.40 is amended by revising the introductory paragraph, and paragraphs (a), (b), and (c), to read as follows:

§ 1962.40 Liquidation.

FmHA will continue with borrowers if they make payments in accordance with their ability, account properly for security or EO property, and otherwise meet their loan obligations. When liquidation is begun, it is FmHA policy to liquidate all security and EO property except EO property that the County Supervisor determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for minimum family living needs will not exceed $600. However, only so much of the security and EO property will be liquidated as necessary to pay the indebtedness. Liquidation will be undertaken when no further assistance will be given to a borrower and the borrower is in default. Before any liquidation action is considered a borrower must have received forms FmHA 1924–25 and 1924–26, and any appeal must have been concluded.

(a) *Decision to liquidate.* The county supervisor may decide that liquidation of chattel security and nonsecurity property is necessary but the County Supervisor will not execute Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter. Cases involving legal problems not covered by this subpart or related State supplements and cases in which real estate serves as security for any FmHA loan will be handled under Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1). When it is decided liquidation is necessary, a statement of facts with reasons for the action will be recorded in the running case file, and the County Supervisor may execute:

(1) Form FmHA 455–4, "Agreement for Voluntary Liquidation of Chattel Security," or

(2) Form FmHA 455–3, "Agreement for Public Sale by Borrower", or

(3) Form FmHA 462–2, "Written Consent to Sell and Statement of Conditions on Which Lien will be Released", or

(4) Form FmHA 455–6, "Agreement for Temporary Custody of Property."

(b) *Lien searches.* The County Supervisor will obtain a current lien search report to determine the effect that liens of other parties will have on liquidation, the record lienholders to whom notices of sale will be given, and the distribution that will be made of the sales proceeds. Normally, lien searches should be obtained from the same source as is used when making a loan. If obtaining the searches from third party sources would cause undue delay which would interfere with orderly liquidation, searches may be made by the County Supervisor. If the lien search is made by third parties, the borrower will pay the cost from personal funds or if the borrower refuses, FmHA will pay the cost and charge it to the borrower's account in accordance with the security instrument or EO Loan Agreement. The records to be searched and the period covered by the search will be in accordance with a State supplement.

(c) *Acceleration of unmatured installments.* (1) The District Director will accelerate all unmatured installments by using Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter except in cases referred to OGC for civil action, if the notices has previously been given. However, when security is to be liquidated under the "Power of Sale" in the lien instrument without referral to OGC, the District Director will use Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter.

(2) Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only in such cases.

* * * * *

50. Section 1962.41 is amended by adding paragraph (c) to read as follows:

§ 1962.41 Sale of Chattel security or EO property by borrowers.

* * * * *

(c) *Record of Sale.* The sale will be recorded on Form FmHA 1962–1.

51. Section 1962.42 is amended by revising the introductory paragraph of paragraph (a) as follows:

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) *Repossession.* Prior to any repossession of FmHA security a borrower must receive Forms FmHA 1924–25 and 1924–26. The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lienholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with §1955.20 of Subpart A of Part 1955 of this chapter.

* * * * *

52. Section 1962.43 is amended by revising the introductory text of paragraph (b) as follows:

§ 1962.43 Liquidation of chattel security or EO property by other parties.

* * * * *

(b) *Sale by junior lienholders.* On learning through formal notice or otherwise that a junior lienholder has begun foreclosure, the County Supervisor will inform the foreclosing junior lienholder in writing as to the property on which FmHA holds a prior lien; and that if the junior lienholder's foreclosure sale is held, the County Supervisor will announce at the sale that FmHA holds a prior lien on each item of such property as security for an indeptedness of $——— (total principal and interest), and that any such property sold will continue to be subject to FmHA's prior lien.

* * * * *

53. Section 1962.47 is amended by revising the introductory text of paragraph (b)(3) as follows:

§ 1962.47 Bankruptcy and insolvency.

* * * * *

(b) * * *

(3) *Security released to FmHA.* Ordinarily, when the value of security is not more than the amount of FmHA liens and any prior liens against it plus any homestead or other exemptions that apply to it as specified in a State supplement or as determined by OGC, and effort will be made to get the security released to FmHA. A petition for abandonment may be referred by OGC to the U.S. Attorney or to the Department of Justice, as appropriate, for filing in any such case, with or without filing a proof of claim, as determined by OGC. When the bankruptcy judge orders security released to FmHA, it will be liquidated unless the State Director approves continuation with the borrower. Prior to any liquidation by FmHA, the borrower must receive Forms FmHA 1924–25 and 1924–26 and any appeal must be concluded.

* * * * *

§ 1962.48 [Removed]

54. Section 1962.48 is removed and reserved.

55. 1962.49 is amended by removing paragraphs (a)(3)(iii), (a)(3)(iv) and redesignating paragraphs (a)(3)(v) and (a)(3)(vi) as (a)(3)(iii) and (a)(3)(iv), by redesignating paragraph (c)(2) as (c)(3) and adding a new paragraph (c)(2), and by revising the introductory paragraph and paragraphs (a)(3)(ii), (c)(1), the introductory paragraph of paragraph (c)(3)(ii), and by adding (c)(3)(ii) (A) and (B) as follows:

§ 1962.49 Civil and criminal cases.

All cases in which court actions to effect collection or to enforce FmHA rights are recommended, as well as actions relating to apparent violations of Federal criminal statutes, will be handled under this section. Before any collection actions are taken by FmHA, a borrower must be sent Forms FmHA 1924–25 and 1924–26.

(a) * * *

(3) * * *

(ii) Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be used to accelerate the borrower's indebtedness, and will state the consequences of failure to make payment as demanded.

* * * * *

(c) * * *

(1) *County Office actions.* Forms FmHA 455–1, "Request for Legal Action," and FmHA 455–22 will be prepared. Form FmHA 455–2, "Evidence of Conversion," will be prepared for each conversion. The original and two copies of Forms FmHA 455–1, FmHA 455–22, and, when applicable, Form FmHA 455–2, together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or other to support the information contained on Form FmHA 455–1. Appropriate recommendations will will be made on Forms FmHA 455–1 and FmHA 455–22 against the borrower or others. When a case is referred to the State Office, the County Supervisor will keep that office informed of any future developments in the case.

(2) *District Office actions.* Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be prepared and sent.

(3) * * *

(ii) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC if referral is required under the policy expressed in this section. If such referral is not required, the State Director will set forth in Item 19 of Form FmHA 455–1 the basis for the determination not to refer the case and instructions for follow-up servicing action. The State Director will not recommend a third party conversion claim to the OGC if more than one year has run from the date of the annual accounting following the disposition of security, unless the Administrator or delegate determines a longer period of time should be applied either because of compelling circumstances such as evidence of intent to defraud or

misrepresentation, or because the case has been investigated by the OI; the period of time during which a suit may be filed is set by federal statute and is not changed by this section. Demands on third-party purchasers will be made in accordance with subparagraph (a)(4) of this section. In cases referred to OGC, the State Director will make comments and recommendations regarding the civil and criminal aspects of the case on Form FmHA 455–1. With respect to the criminal aspects of the case, the State Director, in making a recommendation, will consider the nature and gravity of the offense, the restitution made or undertaken, and all other extenuating circumstances.

(A) When cases are referred to OGC, the County Office case file, Form FmHA 455–1, and, when appropriate, Form FmHA 455–2 will be transmitted. In addition, when the institution of court proceedings by FmHA is recommended, the notes, financing statements, security agreements, loan agreements, other legal instruments and copies thereof as required by OGC, and Form FmHA 451–11, "Statement of Account," or Form FmHA 451–25, "Status of Account," and Form FmHA 455–22 will be submitted to OGC. The State Director, with the advice of OGC, will determine the number of copies of such instruments needed and the information required on the certified statement of account. Each request for a certified statement of account will specify the type of information needed.

(B) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for court or other action will be obtained from the Finance Office or County Office by the State Director. When the time required for obtaining the above material or document may jeopardize FmHA's interest by permitting the diversion or dissipation of assets which otherwise could be expected as a source of payment, the Finance Office, upon the request of the State Director will forward such material or documents directly to OGC or (at the State Director's direction) to the U.S. Attorney.

• • • • •

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Dated: November 23, 1984.

Michael E. Brunner,

Acting Administrator, Farmers Home Administration.

[FR Doc. 84-31437 Filed 11-29-84; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 354, 355, 362, and 381

[Docket No. 84-026P]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry inspection regulations to increase fees charged by FSIS to provide overtime inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees would reflect the increased costs of providing these services due to the increase for salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970.

DATE: Comments must be received on or before: December 31, 1984.

ADDRESS: Written comments to Regulations Office, Attention: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to Mr. William L. West, (202) 447–3367. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effects on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because the fees provided for in this document are not new but merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Regulations Office and should bear a reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views must make such request to Mr. West so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. Comments submitted pursuant to this document will be made available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

On September 28, 1984, FSIS published a final rule in the **Federal Register** (49 FR 38506) to increase fees charged by FSIS to provide overtime inspection, identification, certification, or laboratory services to meat and poultry establishments. The increases were the result of increased costs of providing these services in fiscal year 1985. The fee increases did not, however, include the increase resulting from a pay raise for Federal employees under the Federal Pay Comparability Act of 1970. Although the pay raise is normally effective at the beginning of each fiscal year, Congress delayed the pay raise until January 1985. As a result, FSIS stated in its September 28, 1984, final rule that when Congress enacts a pay raise, FSIS will engage in further rulemaking prior to raising fees.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1985 pay raise of 3.5 percent for Federal employees, the fees relating to such services would be amended as listed below.

Mandatory inspection by U.S. Government inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products and the ordinary costs of providing it are borne by the U.S. Government. However, other than ordinary costs for these inspection services may be incurred to accommodate the business needs of particular establishments. These costs are recoverable by the Government.

Currently, § 307.5 (9 CFR 307.5) of the meat inspection regulations provides that FSIS shall be reimbursed for the cost of meat inspection on holidays or on an overtime basis at the rate of $21.00 per inspector hour. Similarly, § 381.38 (9 CFR 381.38) of the poultry products inspection regulations provides that FSIS will be reimbursed at the rate of $21.00 per inspector hour for overtime and holiday poultry inspection services. These fees would be increased to $21.72 per inspector hour.

FSIS also provides a range of voluntary inspection services, the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service of Meat and Poultry, are provided under various statutes to assist in the orderly marketing of various animal products and byproducts not covered by the Federal Meat Inspection Act or the Poultry Products Inspection Act.

The basic hourly rate for providing such certification and inspection service is currently $17.96 per inspector hour (§§ 350.7, 351.8, 351.9, 354.101, 355.12, and 362.5). The overtime and holiday hourly rate is currently $21.00. The rate for laboratory services is currently $34.68 per hour. These hourly rates for these services would be increased to $18.60, $21.72 and $35.92, respectively.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat Inspection, Reimbursable services, Voluntary inspection, Certification Service.

9 CFR Part 351

Meat inspection, Certification service, Reimbursable services.

9 CFR Part 354

Meat inspection, Reimbursable services.

9 CFR Part 355

Meat inspection, Reimbursable services.

9 CFR Part 362

Poultry products inspection, Reimbursable services.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

The amendments to the Federal meat and poultry products inspection regulations would be as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 reads as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 82 Stat. 334; 21 U.S.C. 695, 7 CFR 2.15(a), 2.92.

2. Section 307.5(a) would be revised to read as follows:

§ 307.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $21.72 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

• • • • •

PART 350—[AMENDED]

3. The authority citation for Part 350 reads as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 82 Stat. 334, 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

4. Section 350.7(c) would be revised to read as follows:

§ 350.7 Fees and charges.

• • • • •

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $18.60 per hour for base time, $21.72 per hour for overtime including Saturdays, Sundays, and holidays, and $35.92 per hour for laboratory service, to cover the costs of the service and shall be charged for the time required to render such service. Where appropriate, this time will include but will not be limited to the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

• • • • •

PART 351—[AMENDED]

5. The authority citation for Part 351 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

6. Section 351.8 would be revised to read as follows:

§ 351.8 Charges for surveys for plants.

Applicants for the certification service shall pay the Department for salary costs at the rate of $18.60 per hour for base time, $21.72 per hour for overtime, travel and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

7. Section 351.9(a) would be revised to read as follows:

§ 351.9 Charges for examinations.

(a) The fees to be charged and collected by the Administrator for examination shall be $18.60 per hour for base time and $21.72 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14 and $35.92 per hour for any laboratory service required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

• • • • •

PART 354—[AMENDED]

8. The authority citation for Part 354 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

9. Section 354.101 (b) and (c) would be revised to read as follows:

§ 354.101 On a fee basis.

• • • • •

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $18.60 for base time and $21.72 for overtime or holiday work.

(c) Charges for any laboratory analysis or laboratory examination of rabbits under this part related to inspection service shall be $35.92 per hour.

PART 355—[AMENDED]

10. The authority citation for Part 355 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

11. Section 355.12 would be revised to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be $18.60 per hour for base time, $21.72 per hour for overtime, including Saturdays, Sundays, and holidays, and $35.92 per hour for laboratory services to reimburse the Service for the cost of the inspection service furnished.

PART 362—[AMENDED]

12. The authority citation for Part 362 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

13. Section 362.5(c) would be revised to read as follows:

§ 362.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rate of $18.60 per hour for base time; $21.72 per hour for overtime including Saturdays, Sundays and holidays, and $35.92 per hour for laboratory service to cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 381—[AMENDED]

14. The authority citation for Part 381 reads as follows:

Authority: 71 Stat. 447, 448, as amended, 21 U.S.C. 463, 468; 7 CFR 2.15(a), 2.92.

15. Section 381.38(a) would be revised to read as follows:

§ 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $21.72 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

Done at Washington, DC, on: November 26, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-31389 Filed 11-29-84; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Revision of Backfitting Process for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Rulemaking is being initiated by the Nuclear Regulatory Commission for the purpose of establishing requirements for long-term management of its review process for the imposition of new regulatory requirements or power reactors. More specifically, the objective of the rulemaking is to address "backfitting," a process which can include both plant specific changes and generic changes as applied to one or more classes of power reactors. This rulemaking would revise 10 CFR 50.54, 50.109, 2.204, and add a conforming amendment to Appendix O. The Commission is seeking public comment on the alternatives set out in this notice with a view toward issuing a final rule.

DATE: Comment period expires January 29, 1985. Comment received after this date will be considered if it is practicable to do so but assurance for consideration cannot be given except as to comments received before this date.

ADDRESSES: Mail comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch. Deliver comments to: Room 1121, 1717 H Street, NW., Washington, D.C. 20555, between 8:15 a.m. and 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, at the same address.

FOR FURTHER INFORMATION CONTACT: James R. Tourtellotte, Chairman, Regulatory Reform Task Force, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: (202) 634-3300.

SUPPLEMENTARY INFORMATION: The Commission previously published an Advance Notice of Proposed Rulemaking on this subject at 48 FR 44217 (September 28, 1983). There the Commission announced it was initiating a rulemaking proceeding for the purpose of establishing requirements for the long-term management of its process for the imposition of new regulatory requirements on power reactors. The Commission issued an interim policy on backfitting at that time and stated its intention to replace the existing regulation (10 CFR 50.109) with a new rule. The Commission also offered a number of questions regarding revision of the backfit rule. The comment period closed October 28, 1983 and the last comment was docketed December 5, 1983.

Forty commenters filed 41 comments as follows: Utilities, 18: vendors, 4; architect engineers and service companies, 3; industry groups and associations, 3; individuals associated with industry, 3; law firms representing industry, 2; intervenors and public interest groups, 7 (2 from the same persons); federal agency, 1 (DOE).

Industry commenters varied in their approach to the Advance Notice of Proposed Rulemaking. Some were specific in their comments and suggestions while others responded in a more general manner. Among the public interest and intervenor groups, the Union of Concerned Scientists (UCS) was the only one to answer the questions and provide specific comments.

As a general principle, UCS stated that "under the Atomic Energy Act, the Commission must issue, and the industry must meet, such standards as are necessary to protect the public health and safety." From this principle they argued that cost benefit balancing is prohibited and that reliance upon the probabilistic risk assessment is invalid in the regulatory process. UCS also argued that the Commission may establish governing standards and reach decisions in one of two ways, through rulemaking or adjudication. On this basis they continued their argument by stating "the Commission exercises its rulemaking authority to establish nuclear reactor safety under 10 CFR 2.758. Such a waiver request is subject to public scrutiny in an adjudicatory proceeding and thus meets the requirements of the Administrative Procedure Act."

These positions raise interesting questions with respect to the issuance of a final rule on backfitting. In addition to comments which the public may wish to make regarding the specific sections, the Commission is interested in receiving

comments on the positions outlined by UCS in association with their comments on the Advance Notice of Proposed Rulemaking. Specifically, the Commission is interested in receiving additional comments on whether cost benefit balancing is prohibited under the terms of the Atomic Energy Act and whether reliance upon probabilistic risk assessments is invalid. The Commission is also interested in views regarding the correctness of the UCS position that "the Commission exercises its rulemaking authority to establish nuclear reactor safety standards, and licensees may avoid those standards only by obtaining a waiver under 10 CFR 2.758."

A fundamental position of Industry is that backfitting should only be imposed by rule, regulation or order. Hence, backfitting would not be defined in terms of the imposition of new regulatory requirements as suggested by the RRTF and Staff proposals, but in terms of rules, regulations and orders. Accordingly, under the Industry approach backfitting of a production or utilization facility means a modification or addition required by the Commission to the facility or to the structures, systems, or components of such facility, the design thereof, or the procedures or organization required to construct or operate such facility. By defining backfitting as a modification, it would be similar to the current 50.109 approach. For standard designs, the Industry defines backfitting as the modification or addition required by the Commission to the facility or the structures, systems, or components of such facility or the design thereof after the approval has been issued.

In their October 28, 1983 comments on the Advanced Notice of Proposed Rulemaking, the AIF takes exception to the use of "regulatory requirements" as a definitional basis for backfitting. Speaking of the RRTF alternative, they stated:

> This proposed rule lacks a definition of "regulatory requirements" which, in the industry proposal, are comprised of rules, regulations, or order. The NRC view of backfitting from the "cause side" (regulatory requirements) of regulations contrasts with the industry view of backfitting from the "effects side" (modifications) of impacts. The industry version is preferred because it avoids the difficult definition of where in the infrastructure of regulatory guidance the line of defining "regulatory requirements" is drawn. Instead *any* Commission imposed change which impacts a licensed facility as defined in the industry's proposal is subjected to backfitting management controls.

The definition would also affect the grandfather clause in § 50.109(c). In this regard, Industry contends:

> Because the RRTF proposal would exempt current staff guidance, which is within its definition of "regulatory requirements," it would remove controls from a large block of requirements not previously subjected to backfit management and would exacerbate the current unsystematic process. Only applicable rules, regulations and orders should be the subject of any grandfather provisions.

Industry concern about the definition of "regulatory requirements" deserves some comment. Regulatory guides, branch technical positions, acceptance criteria and official letters are not legally enforceable to impose backfit requirements on licensees. Hence, there may understandably be some confusion as to what is meant by the term "regulatory requirement." For the purpose of backfitting regulations, "regulatory requirements" refers to any instrument or means (other than a rule, regulation, or an order to require compliance with the Commission's rules, regulations, or orders) used by the Staff to create an obligation upon licensees to change the design, construction or operation of a facility after a construction permit has been issued. The Commission has used this term only for the purpose of assuring that every means previously used by the Staff to impose an obligation to backfit is covered in the rule. There is no intent to remove controls or elevate the importance of any means previously used to impose a requirement or any type of requirement. Nevertheless, the difference between the NRC's use of "regulatory requirements" and industry's use of "rules, regulations and orders" in their respective definitions may be significant. The Commission is interested in public comments on the relative advantages and disadvantages of each definition.

The Proposal

The proposed amendment of § 50.54(f) is to assure that information requests of licensees are not unduly burdensome. Accordingly, each information request is to be evaluated prior to its issuance to assure that the burden imposed by the information request is justified in view of the potential safety significance of the issue to be addressed. Amendment of this section also provides for management control and accountability by requiring that staff evaluations be reviewed by the Executive Director for Operations prior to the issuance of the request. There appeared to be no opposition during the comment period for the Advance Notice of Proposed Rulemaking. This section is offered once again for public comment in association with the issuance of the proposed rule.

Section 50.109 is the heart of the backfit rule proposal. Proposed § 50.109(a) requires as a condition precedent to the imposition of a backfit: (1) A "systematic and documented analysis" of certain factors listed in paragraph (d); (2) the analysis must demonstrate that the backfit will substantially increase the overall protection of the public health and safety or the common defense and security; and (3) that the increased protection will clearly exceed the direct and indirect cost of implementation of the backfit for the facility affected. Secion 50.109(a) also has an emergency exception which provides that the analysis need not be performed, however, if the Commission determines that absent immediate action to impose the backfit, the public health and safety or the common defense and security will not be adequately protected. Analysis will ultimately be required, however, as the rule further provides: Imposition of the backfit in this circumstances shall not relieve the Commission of documenting the analysis after the fact.

The standard against which proposed backfits would be measured is "substantial increase in the overall protection of the public health and safety or the common defense and security." Substantial means important or significant in a large amount, extent, or degree. Under such a standard, the Commission would not ordinarily expect that safety improvements would be required as backfits which result in an insignificant or small benefit to public health and safety or the common defense and security, regardless of the implementation costs. On the other hand, the standard is not intended to be interpreted in a manner that would result in disapprovals of worthwhile safety or security improvements having costs that are justified in view of the increased protection that would be provided.

The phrase "overall protection of the public health and safety *or* the common defense and security" in the proposed backfit standard also deserves some discussion. The principal purpose of requiring consideration of the overall protection that would be provided by a proposed backfit is *to* assure that both its negative and positive effects are taken into account in deciding whether the backfit is justified. A backfit for a part of a plant should be evaluated in light of the net increase in overall protection that the entire plant would provide as a result of the backfit, taking

into account the effects it would have on other aspects of the plant. Thus, the net benefit of a backfit to the protection provided by the plant as a whole is the overriding consideration, not the benefit just to the part of the plant being backfitted.

However, the Commission does not intend use of the phrase "overall protection" in the backfit standard to signal a departure from its traditional reliance on defense in depth for protection of public health and safety. Therefore, safety improvements in one line of defense against undue risk should not be disapproved or approved based solely on the presence or absence of another line of defense to cope with the failure of the first. For example, safety improvements in the integrity of the reactor coolant system should not be dismissed merely because an emergency core cooling system has been provided to protect public health and safety with high confidence in the event that the integrity of the reactor coolant system is lost. On the other hand, such a suggested improvement may be precluded because it does not meet the substantial test, or does not increase overall protection provided by the plant due to, for example, the negative impacts on other aspects of the plant.

In the final analysis, judgment in the application of the standard will be essential in the implementation of the backfit rule.

The proposed requirement that the costs of backfits be considered and justified in view of the increased protection to public health and safety or security is based on the Commission's view that it should, in these circumstances, consider the direct costs of implementation in making safety decisions under the Atomic Energy Act.

The rule does not relieve applicants or licensees from compliance with the Commission's safety or security regulations. Accordingly, the consideration and weighing of costs contemplated by the rule is premised on the general assumption that the plant is or will be required to be in compliance with the regulations even without the backfit under construction.

Moreover, the proposed rule would not apply to requirements imposed prior to the rule's effective date. These requirements are reflected in plant specific documents and frequently include detailed measures not strictly compelled by the more general provisions of the Commission's regulations. The rule is also premised on the assumption that the plant is or will be required to be in compliance with these requirements even without the backfit.

Compliance with the Commission's regulations and requirements, as outlined above, should resolve any significant issues left unresolved at the construction permit stage of review for plants subject to the rule, and should provide a level of safety sufficient for adequate protection of the public health and safety and common defense and security under the Atomic Energy Act. Accordingly, the consideration and weighing of costs contemplated by the rule applies to backfits that are intended to result in incremental safety improvements for a plant that already provides an acceptable level of protection. In this area the Commission believes that direct and indirect implementation costs are especially relevant. Without cost as a competing consideration in these circumstances, the regulatory process takes on the characteristics of a quest for a risk-free plant—an unreasonable objective contrary to the overall intent of the Atomic Energy Act and the public interest.

Backfitting is defined as the "imposition of new regulatory requirements, or the modification of previous regulatory requirements, applicable to a facility, by means other than rulemaking after: (1) The date of issuance of the construction permit for the facility for facilities having construction permits issued after the effective date of this rule; or (2) six months before the date of docketing of the OL application for the facility for facilities having construction permits issued before the effective date of this rule; or (3) the date of issuance of the operating license for the facility for facilities having operating licenses.

Section 50.109(b) remains unchanged. Section 50.109(c), a grandfather clause, is reworded to account for regulatory requirements in the new backfit definition. Section 50.109(d) sets out seven factors to be used by the staff in its backfit analysis. Finally, § 50.109(e) explicitly recognizes the responsibility of the Executive Director for Operations to manage the Commission's backfitting program in general and requires approval of backfit analyses by the Executive Director for Operations or his designee.

As a matter of information, it may be noted that the seven factors in § 50.109(d) have precedent in existing NRC practices as seen in the Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG–BR–0058 (hereinafter Guidelines), the approved CRGR Charter (hereinafter Charter), and the Commission's approved plan for the management of plant specific backfitting, SECY–83–321 (hereinafter NRC Manual).[1]

The seven factors to be used by the Staff for a systematic and documented analysis are listed under 50.109(d) and read as follows: "(1) Potential reduction in risk to the public from the accidental offsite release of radioactive materials; (2) potential impact on radiological exposure of facility employees; (3) installation and continuing costs associated with backfit, including the cost of facility down time for the cost of construction delay; (4) the potential safety impact of changes in plant or operational complexity including the effect on other proposed and existing requirements; (5) the estimated resource burden on the NRC associated with the proposed backfit, and the availability of such resources; (6) the potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit; and (7) whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis. These seven factors are important to an understanding of the objective of the proposed change.

Although there has been some suggestion that these factors are too prescriptive, all of them are currently in use by the Commission in a similar context. The following discussion illustrates the point. Sections of the Charter, Manual and Guidelines appear to address the same general items as outlined in factors one through five of 50.109(d). In the Charter section IV(B)(iii), page 4 of the NRC Manual Chapter 0514, section 043(c)(6), the question is asked, "is the plant shut down necessary? How long?" In addition section IV(B)(v), page 4 and Chapter 0514, section 043(d)(2) requires "an assessment of cost to NRC, an assessment of cost to licensees, including resulting occupational dose increase or decrease, added plant and operational complexity and total financial costs." Finally, the Guidelines section III(B)(4)(a), page 4 requires "examples of the types of effects that could result in a cost or a benefit are

[1] The Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG–BR–0058, may be purchased for $3.75 by calling (301) 492–9530 or by writing to the Public Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or may be purchased from the National Technical Information Services, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Copies of the CRGR Charter and SECY–83–321 may be inspected or copied for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC, 20555.

listed in appendix B. The analysis should also identify the classes of persons or organizations who will receive the benefits or incur the costs, from the proposed alternatives."

Factor six requires consideration of "the potential impact of differences in facility type, design, or age on the relevancy and practicality of the proposed backfit." The Charter section IV(B)(iv), page 4 calls for "identification of category of reactors to which the generic requirement is to apply (that is . . . . all PWR's only, some vendor types, some vintage types such as BWR six and four, jet pump and non jet pump plants, etc.)." Section IV(V)(v), page 5 continues "to the extent that the category contains plants of different types or vintages, the items listed above shall be provided for each type and vintage, or justification shall be provided demonstrating that the analysis of each item is valid for all types and vintages covered." The Guidelines at section III(B)(1), page 3 also requires the staff to "identify the class or classes of licensees, reactors, or other facilities affected by the problem."

Factor seven is, "whether the backfit is interim or final, and if interim, the justification for imposing the proposed backfit on an interim basis." In the Charter at section IV(B)(iii), page 4 and the NRC Manual Chapter 0514, section 043(c)(2), it asks "is it the definitive, comprehensive position on the subject, or is it the first of a series of requirements to be issued in the future?"

Notwithstanding that drawing such parallels may suggest that the factors are generally the same as those already addressed by the Staff in other contexts and therefore not too prescriptive, contrary views may also be taken. Therefore, the Commission would like the views of the public as to whether the procedures set out in § 50.109(d) are too prescriptive, or whether they are necessary to assure that certainty is injected into the evaluation process for making a backfit determination.

It may be noted that the Commission does not intend to foreclose the possibility that the final rule may be defined to use rules, regulations and orders rather than regulatory requirements. In addition, the final rule could be applicable to rulemaking. In this regard, particular attention should be given to the following questions:

(1) Should § 50.109 also apply to backfitting imposed through rulemaking? When a modification is imposed by rule or regulation, should the affected licensee be afforded an appeal to the EDO? What is the basis for this position?

(2) Should § 50.109 limit backfitting to backfits "imposed by rule, regulation or order?" If the imposition of backfits is not limited to rule, regulation or order, what other mechanisms should be employed?

(3) Should a documented analysis of a proposed backfit come before the backfit is issued or only after an affected licensee lodges an appeal? What should the timing be for the documented analysis? What is the basis for this selection? What factors should be considered?

(4) Should backfitting be defined as the imposition of new regulatory requirements or the modification of previous requirements (the cause) or defined as a "modification or addition required by the Commission to the facility or to the structures, systems or components of such facility, the design thereof, or the procedures or organization required to construct or operate such facility" (the effect). What is the basis for this position?

(5) The industry's proposed standard for justification of a backfit is "substantial improvement in the overall safety of the plant considered over its remaining life." Is it appropriate to include the concept of "over its remaining life?" What other standard could be used?

(6) To what extent may the Commission consider costs, including economic costs in backfitting decision under the standards and processes proposed in § 50.109? What is the basis for the position stated?

Section 2.204 may be amended to require a backfitting analysis where new requirements are proposed on a licensee by reason of issuance of an amendment to the license. The Commission is interested in receiving the views of the public upon the advisability of imposing the requirements for backfitting analysis as a condition precedent to the issuance of a license amendment.

The proposal to amend 10 CFR Part 50, Appendix 0 did not appear in the ANPR. It is offered here because it appears to be necessary to conform Appendix 0 to a final rule should that rule be made by the Commission. The amendment provides that information requests to the approval holder regarding an approved design shall be evaluated prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such evaluation performed by the NRC staff shall be reviewed by the Executive Director for Operations or his designee prior to issuance of the request.

Environmental Impact; Categorical Exclusion

The promulgation of this rule would not result in any activity affecting the environment. The rule relates only to internal NRC staff procedures.

Accordingly, the categorical exclusion in 10 CFR 51.22(c)(3) applies and no environmental impact statement or environmental assessment need be prepared.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0011.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The affected facilities are licensed under the provisions of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of "small entities" as set forth in the Regulatory Flexibility Act or the small business size standards set forth in regulations issued by the Small Business Administration in 13 CFR Part 121.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Classified information, Confidential business information, Freedom of information, Hazardous waste, Nuclear material, Nuclear power plants and reactors, Penalties, Sex discrimination.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, notice is hereby given that adoption of the following amendments to 10 CFR Part 2 and 50 are contemplated.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 40.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, paragraph (f) is revised to read as follows:

§ 50.54 Conditions of Licenses.

* * * * *

(f) The licensee shall at any time before expiration of the license, upon request of the Commission submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended or revoked. Each information request must be evaluated prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such evaluation performed by the NRC staff must be reviewed by the Executive Director for Operations or his designee prior to issuance of the request.

* * * * *

3. §50.109, paragraphs (a) and (c) are revised and new paragraphs (d) and (e) are added to read as follows:

§ 50.109 Backfitting.

(a)(1) The Commission shall require the backfitting of a facility only when it determines, based on a systematic and documented analysis of the relevant and material factors listed in paragraph (d) of this section that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect cost of implementation for that facility are justified in view of this increase protection. This analysis need not be performed, however, if the Commission determines that immediate imposition of the backfit is required to protect the public health and safety or the common defense and security. Imposition of the backfit in this circumstance shall not relieve the Commission of documenting the analysis after the fact.

(2) As used in section, "backfitting" of a production or utilization facility means the imposition of new regulatory requirements, or the modification of previous regulatory requirements applicable to a facility, by means other than rulemaking after:

(i) The date of issuance of the construction permit for the facility for facilities having construction permits issued after [insert effective date of this amendment]; or

(ii) Six months before the date of docketing of the OL application for the facility for facilities having construction permits issued before [insert effective date of amendment]; or

(iii) The date of issuance of the operating license for the facility for facilities having operating licenses.

(3) For standard design approvals issued pursuant to Appendices M, N, and O to this part, "backfitting" means the imposition of new regulatory requirements upon the design after the approval has been issued or the modification of existing regulatory requirements by means other than rulemaking.

* * * * *

(c) Paragraph (a) of this section shall not apply to regulatory requirements imposed prior to (insert the effective date of this amendment).

(d) In reaching the determination required by paragraph (a) of this section, the Commission will consider information available concerning the following factors considered to be relevant and material, and any other information relevant and material to the proposed backfit:

(1) Potential reduction in the risk to the public from the accidental off-site release of radioactive material;

(2) Potential impact on radiological exposure of facility employees;

(3) Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay;

(4) The potential safety impact of changes in plant or operational complexity including the effect on other proposed and existing requirements;

(5) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(6) The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit; and

(7) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(e) The Executive Director for Operations shall be responsible for implementation of this section and all analyses required by this section shall be submitted to the Executive Director for Operations or his designee.

4. In Appendix O to 10 CFR Part 50, a new section (8) is added to read as follows:

Appendix O—Standardization of Design; Staff Review of Standard Designs

* * * * *

(8) Information requests to the approval holder regarding an approved design shall be evaluated prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such evaluation performed by the NRC staff shall be reviewed by the Executive Director for Operations or his designee prior to issuance of the request.

5. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 84–615, 76 Stat. 408 (42 U.S.C. 2341); sec. 201, 88 Stat. 1342, as amended (42 U.S.C. 5841; 5 U.S.C. 552.

Section 2.101 as issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 as issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300–2.309 also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1743 (42 U.S.C. 2135).

6. Section 2.204 is revised to read as follows:

§ 2.204 Order for modification of license.

The Commission may modify a license by issuing an amendment on notice to the licensee that the licensee may demand a hearing with respect to all or any part of the amendment within twenty (20) days from the date of the notice or such longer period as the notice may provide. If the amendment involves a backfit as defined in § 50.109(a) of this chapter, the determination required by that paragraph shall be made using the relevant and material factors set forth in § 50.109(d) of this chapter prior to issuance of the amendment unless the immediate action on items required by the amendment is needed to protect the public health and safety. The amendment will become effective on the expiration of the 20-day period during which the licensee may demand a hearing. In the event that the licensee requests a hearing, the amendment will become effective on the date specified in an order made following the hearing. When the Commission finds that the public health, safety, or interest so requires, the order may be made immediately effective.

Additional Views of Commissioner Asselstine

Backfitting is one of the most difficult and complex issues facing the Commission. The industry argues that the present process for considering and imposing changes to operating reactors and reactors under construction is informal and undisciplined, and results in the imposition of costly new requirements that are of only marginal safety benefit, or at their worst can result in a net safety loss for the facility. The principal area of concern to the industry appears to be with the changes that are required by the NRC staff to implement the general requirements of the Commission's regulations on a plant-by-plant. Typically, such changes are imposed either in response to problems identified at a particular plant or as part of the staff's ongoing effort to implement on a plant-by-plant basis more general rules adopted by the Commission.

The NRC staff and public commenters, for their part, argue that changes to existing plants and plants under construction are justified given the safety benefits of the changes and our present state of knowledge of nuclear safety, and that the NRC must retain the authority and flexi-bility to require these changes. They point out that a high standard for imposing new requirements, particularly where coupled with requirements for the extensive use of quantitative cost-benefit comparisons and lengthy and detailed written analyses, can have a strong chilling effect on the staff's efforts to develop and impose needed safety and security changes. Finally, they emphasize that excessive reliance on the monetary costs of new requirements is inconsistent with the NRC's mandate, which makes the public health and safety and the common defense and security the paramount consideration.

There is some merit in the views of both sides in the backfitting debate. After having visited a number of sites with operating plants and plants under construction, I am persuaded that there have been some instances in which the NRC staff has required changes to plants that are costly and of dubious safety value. I am also persuaded that the backfitting process has at times been too informal and has lacked the kind of supervision by more senior NRC staff members that is the hallmark of good management. Moreover, there appears to be some evidence that in a few instances a licensee has been penalized for appealing within the staff management the imposition of a proposed backfit.

At the same time, I believe that unnecessary and unjustified backfits are the exception rather than the rule, and that this agency's statutory mandate and our present state of knowledge of nuclear safety dictate the need for additional backfits now and for the foreseeable future. The simple fact is, we have a number of unresolved safety issues that must be addressed and we are still identifying new safety issues based upon the operating experience of the operating reactors. Further, the plants that are now candidates for operating licenses were given construction permits based upon very limited design information with many safety issues left unresolved. Nuclear power plant operating experience, in particular, demonstrates that there may be a continuing need for new regulatory requirements in the areas of plant design, hardware and operations. For example, the September 1984 semi-annual report by NRC's Office for Analysis and Evaluation of Operational Data (AEOD) includes as its key observations on reactor operating experience the following:

- Operational data analysis and feedback is vital, yet corrective actions taken at the individual plants are not as long-lasting or as effective as anticipated, and the basis of experience seems to be sometimes lost or forgotten with time.
- Operating experience continues to identify a wide range of system interactions.
- Operating experience indicates that a total loss of a safety system is not a rare event.
- Operating experience shows that operating practices, particularly those associated with maintenance and surveillance, are frequently deficient.
- Operating experience continues to indicate that multiple independent failures do occur.
- Operating experience has indicated component performance and reliability problems.
- Operating experience indicates that Emergency Safeguard Systems are frequently challenged.

Given this state of affairs, and as long as we are still on the learning curve regarding safety issues for the existing plants, the Commission must retain the authority and the flexibility to require changes to existing plants and plants under construction which will reduce the risk to the public posed by these facilities to a level that is as low as reasonably achievable.

What is needed in light of these legitimate competing interests is a carefully crafted backfitting rule. Such a rule should accommodate the public's interest in the prompt imposition of justified new safety and security requirements and the industry's interest in a more formal and disciplined review process for proposed new requirements to assure that they are in fact needed. Unfortunately, the Commission's proposed rule fails to provide a fair balancing of these interests. In its present form, the rule does not serve the public, the NRC staff, or the industry well.

I have four principal objections to the Commission's proposed rule. First, it seeks to impose a standard for backfitting that is subject to varying interpretation and to abuse. Under the proposed rule, the Commission could only require a backfit if it finds both that the backfit will result in a *substantial* increase in *overall* health and safety protection and that the costs of implementation for the facility are justified in view of this increased protection. This standard, particularly when read in the context of the factors to be considered in the analysis of costs and benefits, can be read as establishing a very high threshold for the imposition of a new requirement.

Depending upon how it is interpreted, this standard could be used to oppose

the imposition of cost-effective safety improvements that would substantially improve the performance of a particular safety system, or that would correct a new problem identified with the performance of a safety system, because the improvement as compared to the overall safety of the plant would not lead to a "substantial" increase in "overall" protection. Similarly, this standard could be used to prevent the adoption of new requirements that would result in safety improvements because the level of improvement may not be demonstrable in quantitative terms.

Both in the rule itself and in the accompanying statement of considerations the definition of what this standard requires is extremely unclear. At best, the rule and accompanying statement present an ambiguous safety test that can be interpreted as establishing a high threshold for the imposition of a new requirement. Moreover, the Commission's standard inappropriately allocates the burden in weighing safety benefits and monetary costs by requiring the proponent of a new safety benefits outweigh the costs. As the President's Commission on the Accident at Three Mile Island recommended in its report, the burden should be upon one who opposes the imposition of a new safety requirement. That is, where additional safety improvements are not clearly outweighed by cost considerations, there should be a presumption in favor of the safety change.

Second, the list of factors to be considered under the rule in evaluating the benefits and costs of proposed backfits heavily weights the evaluation against safety and other benefits and in favor of cost considerations. Potential benefits such as the reduction in the likelihood of serious operating events and accidents, avoiding the loss of onsite property, and assuring the long-term availability of the plant's generating capacity are ignored, while every possible cost, including such questionable "costs" as the NRC resource burden, is emphasized. This emphasis in the rule on cost considerations, particularly when coupled with the high standard for imposing a new requirement, is likely to have a strong chilling effect on the staff's consideration and development of new safety requirements. Indeed, there are strong indications that similar analysis requirements now being imposed by the Committee to Review Generic Requirements (CRGR) are having just such a chilling effect on the staff's efforts to develop and promulgate new generic safety measures.

Third, the number of activities the Commission's proposed rule covers is too narrow. Rulemaking, measures to implement the Commission's regulations, and existing NRC regulatory requirements are not covered by the backfitting measure. The Commission's rule has, then, a very high standard for imposing backfits which simply does not apply to most NRC actions. This makes little sense and provides essentially no control mechanism for the NRC staff's backfitting activities which appear to be of most concern to the industry—the plant-specific changes which are required by the NRC staff to implement the Commission's further regulations.

Further, the Commission's proposed rule inappropriately includes within its scope actions of the Commission itself and the Licensing and Appeal Boards. Virtually all backfitting concerns have focused on the more informal of the NRC staff. Actions by the Boards, which are based upon a formal evidentiary record, and by the Commission, which are typically preceded by staff review, are of a different character. I am aware of no justification for extending backfitting measures to these actions.

There is one more point worth noting. The Commission has spent a substantial amount of time trying to decide how to modify one paragraph in its extensive body of regulations—i.e. that dealing with backfitting. In my view, the Commission has not spent a sufficient amount of time dealing with broader aspects of the problem we are trying to remedy. Part of the problem has been that the NRC, the industry and the public have been learning about the safety characteristics of existing nuclear plants as they have been operating. The designs for existing plants evolved at a rapid pace in the late 1960s and early 1970s without prior extensive testing of the many and various designs. Most utilities have learned the performance characteristics and particular vulnerabilities of their plants after construction of their custom-made plants has been completed. In addition, the industry has been more than willing to postpone resolution of safety issues year after year. As a result, imposition of a safety solution is more difficult, painful and costly in the long run. The NRC originally went along with this approach with all its initial benefits to the nuclear industry. But now when the NRC asks for solutions to those long-delayed problems it is charged with unnecessarily ratcheting the industry.

Further, when operation of a plant reveals a safety flaw, both the industry and the NRC respond with piecemeal fixes. No one ever steps back and looks at the big picture. The Commission's proposed rule merely perpetuates that practice. I would prefer a broader inquiry into whether there is a better approach to regulating operating plants than simply modifying our backfitting regulation. That inquiry could explore alternative regulatory philosophies, such as a major focus on utility management, reliability assurance programs, or seeking additional defense-in-depth features that would make the existing plants substantially safer and more inherently safe. I believe it is more appropriate to develop an explicit Commission regulatory philosophy for the current generation of reactors and then decide how to modify the current regulations to carry out that philosophy. Without such a new approach to regulation, I fear that we will continue to treat the symptoms, rather than the root causes, of the backfitting problem.

In sum, the Commission's proposed rule appears to be an inappropriate response to the backfitting issue. It unfairly biases cost-benefit comparisons in favor of costs and fails to recognize that the presumption should be in favor of the safety benefit. At the same time, it would not apply to many of the NRC staff's activities that should be covered by a backfitting measure. In an effort to address this problem in a fairer and more comprehensive manner, I have developed an alternative approach that is contained in the suggested alternative backfitting rule which follows. I welcome public comment on whether this alternative approach provides at least a first step toward developing a reasonable, balanced and workable approach to dealing with the backfitting problem. I would also welcome public comment on the usefulness of a broader approach to dealing with the root causes of the backfitting problem.

50.109 Backfitting (Commissioner Asselstine's Alternative Rule)

(a) *Definitions*—For the purposes of this section, "backfitting" means a change in the design, construction or operation of a facility that is imposed by the NRC staff to:

(1) Satisfy a regulatory staff position that was developed or became effective after the date of issuance of the construction permit for the facility (for facilities having construction permits issued after [insert effective date of amendment]); or

(2) Satisfy a regulatory staff position that was developed or became effective less than six months before the date of docketing of the OL application for the facility (for facilities having construction permits issued before [insert effective date of amendment]); or

(3) Satisfy a regulatory staff position that was developed or became effective after [insert effective date of amendment] for the facility (for facilities having operating licenses on [insert effective date of amendment]).

For standard design approvals issued pursuant to Appendices M, N, and O to this part, "backfitting" means a change that is imposed to satisfy a regulatory staff position that was developed or became effective after the date of issuance of the design approval.

(b) *Backfitting Standard*—The staff in accordance with the procedures specified in subsection (c), may require the backfitting of a facility if it finds that such action is needed to reduce the risk to the public health and safety or the common defense and security posed by the facility to a level that is as low as reasonably achievable. In determining whether a proposed backfit is needed, the staff shall consider any safety costs as well as the expected safety benefits of the proposed backfit. Except as provided in this subsection, the staff shall also consider the monetary costs of the proposed backfit; however, there will be a presumption in favor of the backfit unless the staff finds that the safety improvements of the backfit are clearly outweighed by monetary cost considerations. The staff shall use qualitative judgment in making cost-benefit comparisons, and may only supplement this qualitative judgment with quantitative comparisons if it finds that the safety benefits and costs can be readily and accurately described in numerical terms. The staff may not consider monetary costs in deciding whether to require the backfitting of a facility:

(1) Where the proposed backfit is necessary to assure compliance with NRC's regulations;

(2) Where the proposed backfit is being considered at the operating license stage on safety matters that were left unresolved at the time of issuance of the construction permit; and

(3) Where the proposed backfit involves a new method of implementing the Commission's regulations and previously approved implementation methods were based upon a mistake in fact.

In such instances, the staff may consider monetary costs in evaluating alternative ways for achieving the purpose of the backfit.

(c) *Review and Implementation Procedures*—

(1) The staff shall prepare a written description of each proposed backfit and a brief (i.e., not to exceed 5 pages) summary written analysis of the applicable costs and benefits of the backfit. This description and analysis shall be prepared prior to imposing the proposed backfit unless the Office Director determines that immediate imposition of the backfit is required to protect the public health and safety or the common defense and security.

(2) Each proposed generic backfit (i.e., a regulatory staff position that would impose a backfit on more than one facility) shall be reviewed by the Committee to Review Generic Requirements (CRGR). The review by the CRGR and the decision by the Executive Director for Operations (EDO) shall consider the overall costs and safety benefits of the proposed generic backfit as provided in subsection (b) and shall be based on the description and analysis required by paragraph (1) of this subsection. Affected licensees shall be informed of all approved generic backfits and shall be given the opportunity to comment on the schedule within which they are expected to be implemented. Generic backfits shall not be imposed during the review process unless the Office Director determines that the public health and safety or the common defense and security so require. For each backfit reviewed by the CRGR and disapproved by the EDO, a brief summary of the rationale for disapproval shall be prepared by the EDO and placed in the Commission's Public Document Room along with the description and analysis required by paragraph (1) of this subsection.

(3) Each proposed plant-specific backfit shall be reviewed by the Office Director, or by an individual designated by the Office Director. The affected licensee shall be afforded the opportunity to review and comment on the description and analysis required by paragraph (1) of this subsection. The staff's review and decision on the proposed backfit shall be based on the description and analysis required by paragraph (1) of this subsection, and shall consider the overall costs and safety benefits of the proposed backfit as provided in subsection (b) as well as any comments submitted by the licensee. The affected licensee shall be informed of all approved plant-specific backfits and shall be given the opportunity to comment on the schedule within which they are expected to be implemented. Plant-specific backfits shall not be imposed during the review process unless the Office Director determines that the public health and safety or the common defense and security so require.

(d) (Current Subsection (b) unchanged).

(e) (Current Subsection (c) unchanged).

Dated at Washington, D.C. this 27th day of November, 1984.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary.

[FR Doc. 84-31444 Filed 11-30-84; 8:45 am]
BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Reg. AA; Doc. No. R-0006]

Unfair or Deceptive Acts or Practices; Credit Practices

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed amendment to Regulation AA (Unfair or Deceptive Acts or Practices). The proposal would implement, as to banks, the credit practices rule adopted by the Federal Trade Commission. The Federal Trade Commission Act requires the Board to adopt a rule, subject to certain exceptions, that is substantially similar to the Commission's rule. This rule would prohibit banks from taking, directly or indirectly, any consumer credit contract that contains a prohibited provision, from pyramiding late charges, or from obligating a cosigner without the required notice.

DATE: Comments must be received on or before January 28, 1985.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and C Streets NW., Washington, D.C. between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Doc. No. R-0006. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Steven Zeisel or Richard Garabedian, Staff Attorneys, in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667 or (202) 452-3667. Regarding the initial regulatory flexibility analysis, contact: Robert Kurtz, Economist, Division of Research

and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2915.

SUPPLEMENTARY INFORMATION:

(1) General

The Board is publishing for comment a proposed amendment to Regulation AA-(12 CFR Part 227). The proposal would implement, as to banks, the Credit Practices Rule adopted by the Federal Trade Commission (FTC), effective March 4, 1985 (49 FR 7740, March 1, 1984). Under section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)), the Board must adopt, subject to certain exceptions, regulations substantially similar to those adopted by the FTC under section 18(a)(1)(B) of the Act (15 U.S.C. 57a(a)(1)(B)). The Board must act within 60 days of the effective date of the FTC's rule. This rulemaking scheme was established by section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 57a).

The Board is not required to adopt a rule if it finds that such acts or practices of banks are not unfair or deceptive or if adoption of similar regulations would seriously conflict with essential monetary and payment systems policies of the Board. This proposal is intended to generate comment on the text of the rule and to give the Board more information on which to base a final determination of whether to adopt a rule or to make any modifications. It is not intended to suggest that the Board has decided to adopt a substantially similar rule.

The rule adopted by the FTC prohibits a creditor from including certain creditor remedies in consumer credit contracts or from purchasing contracts that contain the prohibited clauses. The rule also prohibits an accounting practice regarding late charges, prohibits misrepresentation of cosigner liability, and requires a disclosure to be given to cosigners. The prohibited contractual provisions are the following: (1) A confession of judgment clause; (2) a waiver or limitation of statutory exemption from attachment, execution or other legal process; (3) an assignment of wages; and (4) a non-purchase money security interest in household goods. The prohibited late charge practice prevents the deduction from a timely payment of a late charge applicable to an earlier payment, thus causing the timely payment to be delinquent because of non-payment in full. The cosigner rule prohibits misrepresentation of a cosigner's liability and requires that a notice be given to the cosigner to disclose the nature of the obligation.

The test used by the FTC to find an unfair act or practice requires that the injury that flows from the act or practice must be (1) substantial; (2) not outweighed by any countervailing benefits to consumers or competition that the practice produces; and (3) an injury that consumers themselves could not reasonably have avoided.

(2) Historical Overview

In 1975 the FTC was given explicit authority by the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act to adopt rules that define and prevent unfair acts or practices. On April 11, 1975, the FTC proposed the first Credit Practices Rule (40 FR 16347) that identified certain unfair and deceptive practices of creditors in consumer credit contracts and effectively prohibited such acts or practices. The Board, pursuant to its statutory mandate, published a similar rule for comment on May 5, 1975 (40 FR 19495). No final rule was ever adopted by the Board or the FTC based on the initial proposal. The FTC subsequently held hearings on the proposal and revised the rule in 1980. The rule went through further revisions until adopted by the FTC in February 1984. The final rule and the FTC's statement of basis and purpose and its regulatory analysis may be found at 49 FR 7740 (March 1, 1985). In response to this final action of the FTC, the Board is publishing a similar rule for comment.

(3) Particular Issues for Comment

The Board is required to adopt a substantially similar regulation to address the acts or practices in the FTC's rule unless it finds that (1) such acts or practices of banks are not unfair or deceptive, or (2) adoption of a similar regulation would conflict with essential monetary or payment system policies of the Board. This statutory scheme raises a list of issues on which the Board solicits comment. Since the Board can adopt the rule in part, or modify it to reflect the unique situation of banks, responses should focus separately on each of the provisions of the rule.

(1) To what extent do banks either use such practices in their own contracts or purchase contracts that contain prohibited practices?

(2) What is the burden of reviewing purchased contracts for the removal of provisions permitting such practices?

(3) Are any of the specified acts or practices not unfair as engaged in by banks?

(4) To what extent did modifications in the final rule satisfy concerns of the banking industry expressed in the rulemaking record?

(5) To what extent would the cost or availability of credit be affected by the rule?

(6) What nonregulatory alternatives exist to any rulemaking?

(7) To what extent should a delayed effective date be provided for any or all of the rule that may be adopted?

(8) What is the potential impact of the rule on large and small banks, and those banks located in low- and moderate-income communities?

(9) How frequently do banks take non-purchase money security interets in household goods? In what types of obligations? What percent are "blanket" security interests? To what extent would restrictions on these security interests increase credit costs or reduce credit availability? Is there any unfairness if banks specifically itemize the household goods being taken as security?

(10) What percent of banks "pyramid" late charges? How clearly is this practice disclosed to consumers? What percent of consumers are aware of the amount due (including accumulating late charges) at each payment?

(11) Do banks inform cosigners of their liability before they sign? Do banks always see the cosigner before obtaining the cosigner's signature? How often do banks attempt to collect from cosigners? How often are cosigners obtained in default situations?

The text of the Board's proposal is identical to the FTC's rule except for editorial and organizational changes designed to adapt the rule to the format and style of the Board's regulations. In particular, the proposal clarifies that the rule does not apply to transactions for the purchase of real property. None of these changes is intended to be substantive. If the Board finally adopts the rule, some additional editorial changes may become necessary to interweave the rule with the current provisions of Regulation AA.

(4) Initial Regulatory Flexibility Analysis

A. Statement of Purpose

The FTC Act provides in section 18(f) that whenever the FTC prescribes a rule prohibiting unfair practices, the Board shall promulgate substantially similar regulations prohibiting similar practices by banks, unless the Board finds that such practices of banks are not unfair or that implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board.

This initial economic impact statement is based primarily on an examination of information in the FTC rulemaking record, which consists of quantitative studies, consumer and creditor surveys, expert testimony, and anecdotes of specific consumer injuries and creditor experience. Banks participated fully in the FTC proceeding, even though they are not under FTC jurisdiction, in anticipation of Board consideration of their coverage under section 18(f). The record is examined for differences between banks and institutions under FTC jurisdiction in their use of creditor remedies and potential injury to their customers; differences which might affect a determination of unfairness. The rulemaking record was compiled over a period of approximately 10 years. The last opportunity for the public to present its views was in June 1983, when the FTC invited prior rulemaking participants to make oral presentations. Among the participants were the Consumer Bankers Association, American Bankers Association, California Bankers Association, Independent Bankers Association, the Consumer Federation of America, and the Federal Reserve Board.

B. Background

In 1972, the National Commission on Consumer Finance (NCCF) reported the results of its examination of the consumer credit market, including an analysis of creditor remedies. In response to NCCF findings the FTC Bureau of Consumer Protection (BCP) conducted an investigation to determine whether the use of certain collection remedies was an unfair practice under § 5 of the FTC Act. Based on the BCP staff report, the FTC initiated in April 1975 a proceeding for the promulgation of a trade regulation rule designed to abolish or limit the use of 11 credit practices. In March 1984, the FTC determined that the use of six credit practices was unfair.

C. Economic Implications

1. *Theory.* Economic analysis of the loan offer function suggests that legal restrictions on creditor remedies would tend to increase loan rates. Restrictions on creditor remedies would increase creditors' per-unit cost of supplying credit in either of two ways. First, remedy restrictions may increase the risk of delinquency and default on the loan by reducing the borrower's incentive to repay. Second, creditors may respond to the increased default risk by incurring additional costs for screening applicants, monitoring and collecting loans, and for administrative activities. Consequently, creditors would offer a given quantity of credit only at a higher price, i.e., the loan supply curve would shift upward. At the same time, restrictions on creditor remedies reduce the cost of default to the consumer. Thus, consumers may be willing to pay a higher price for a given quantity of credit, i.e., the demand curve would shift upward. (It is possible that the loan could be less attractive, if elimination of a remedy raises the probability of invoking a more onerous remedy.)

Market forces discourage creditor remedy clauses in contracts when the price consumers are willing to pay creditors to restrict creditor remedies cover the cost to creditors from foregoing the remedies. However, there may be information problems that may lead to market failures in the case of creditor remedies. These problems are consumers' imperfect knowledge of the effects of creditor remedies and asymmetric information on default probabilities.

Consumers who do not comprehend the implications of the creditor remedies in contracts they sign, might accept unknowingly creditor remedies that they would have been willing to pay to avoid. Therefore, government restrictions on creditor remedies could result in contracts that these consumers would have selected if they had been better informed. Thus, consumers who do not understand the consequences of creditor remedies may benefit from the rule.

Consumers and creditors might not have the same information on which to evaluate deficiency and default probabilities. This asymmetric information could cause an adverse selection problem. That is, within any group of consumers that creditors judge to be equally creditworthy, there might be some misclassified individual consumers who are less creditworthy than the others. Therefore, if a creditor offers a particular group contracts containing creditor remedies less onerous than those in the contracts of competitors, the creditor is more likely than its competitors to attract the misclassified higher risk consumers who are aware of the true deficiency and default probabilities. Adverse selection would discourage creditors who are willing to eliminate particular creditor remedies from doing so.

Benefit from restrictions on creditors remedies may not be shared equally by all groups of consumers. While some individual consumers benefit, others may be harmed, e.g., credit may become unavailable to consumers who had been marginally creditworthy before restrictions were imposed.

2. *Evaluation of the FTC Rulemaking Record.* The FTC rulemaking record is a compilation of empirical evidence on the possibility that market failures occur and on the benefits and costs of restrictions on creditor remedies. It is an extensive record consisting of econometric studies measuring the impact on credit prices and availability of restrictions on creditor remedies; surveys of creditors about the prevalence and use of various creditor remedy clauses in contracts; surveys of legal aid attorneys and consumers about their experience with and attitudes toward creditor remedies; and several hundred opinions on the potential economic effects of the provisions. The considerable effort by proponents and opponents of the rule in the rulemaking procedure has not resulted in precise measurement of potential net benefits, even though the results of their effort are, perhaps, the most that can be expected. The lack of precision is due to significant methodological and data problems in the econometric studies caused by the complexity of the issue, low survey response rates, and the subjective nature of many of the potential benefits to consumers. However, some general observations are possible.

The econometric evidence in the record suggests that the overall impact on credit cost and availability from restrictions on creditor remedies may be relatively small. The major econometric study, prepared for the FTC by the Bureau of Social Science Research, concluded that the rule would increase credit costs by 19/100 of one percent. However, both proponents and opponents of the rule recognized that the shortcomings of the econometric studies were too great for decisionmakers to rely on the results for more than gross estimates of the rule's effects. The record becomes much less persuasive when it is necessary to discount econometric evidence, which tries to minimize the effect of opinion and subjective perceptions on the decisionmaking process.

Small impacts of the rule on all consumers as a group do not mean that certain subgroups of consumers would not be affected significantly. Public comments and survey opinions of legal aid attorneys suggest that the probability of injury from the subject credit remedies may be greatest for lower income, less educated consumers. These consumers may be less likely to comprehend the implications of the various contracts clauses or to

understand their rights to legal protection when they become deficient or default on a loan. On the other hand, these consumers may be adversely affected by reductions in credit availability as a result of the rule, because they have few, if any, assets to offer as collateral besides their household goods and future wages; both types of collateral are restricted to some extent by the rule.

In its determination of unfairness, the FTC considered the potential benefits to consumers from eliminating pychological injuries, such as embarrassment, humiliation and anxiety caused by the creditor remedies and practices addressed in the rule. Attempts to value these subjective benefits by estimating consumers' willingness to pay to avoid certain creditor remedies were unsuccessful. Other subjective benefits considered by the FTC include procedural due process protections, the opportunity to assert valid claims and defenses, less interference in employment relations, retaining personal possessions and household goods, and protection against coerced settlements.

There are some statistics in the record and testimony by both opponents and proponents of the rule to indicate that banks use the subject remedies less than finance companies. Consequently, the probability of injury is lower for bank customers than for others. Even though the probability of injury may be lower for bank customers, it does not follow automatically that bank customers would benefit less from the rule. It is conceivable that bank customers fear injury from particular remedies more than customers of other institutions and, therefore, more highly value the benefits of restrictions on creditor remedies.

D. Provisions of the Rule

The provisions of the rule include a disclosure requirement, and prohibit an accounting practice and four contract clauses.

1. Consigners. This provision requires that, before the contract is signed, creditors provide cosigners with a disclosure document explaining cosigners' obligations. There are few jurisdictions with statutes requiring creditors to make such disclosures. Legal aid attorneys asserted in a National Consumer Law Center survey that 80 percent of cosigners who use legal aid service do not understand the nature and extent of their obligation: some cosigners believed they were merely acting as a reference for the principal debtor. Relatively few of the legal service clients obtain bank credit.

Testimony in the record based on creditor experience suggests that the cost of providing cosigners with the required disclosures would not be great. Most creditor concerns about cost focused on cosigner provisions proposed but not adopted into the final rule. The concept of informing cosigners of their obligations was not a major concern, because disclosure does not cause serious inconvenience to creditors in making cosigner loans nor significantly affect credit availability to inexperienced borrowers, who must depend on cosigners.

2. *Late Charges.* This provision prohibits a bank "pyramiding" late charges, i.e., assessing multiple late charges based on a single late payment that is subsequently paid in full on or before the next timely payment. The late change subtracted from the next timely payment causes that payment to be short, hence delinquent. The process continues with each subsequent payment. The cumulative impact of repetitive late charges can be substantial.

The extent of pyramiding cannot be ascertained from the current record. Pyramiding is prohibited in the states that have adopted the Uniform Consumer Credit Code. The problem is most serious in situations where the debtor becomes aware of pyramiding late charges only when the final payment is made. For example, some consumers are given a book of coupons at the time credit is extended rather than a periodic statement. Bank customers usually are given periodic statements indicating the amount of late charges as they accrue. No banks who participated in the FTC proceedings defended the use of pyramiding late charges.

3. *Confessions of Judgment (Cognovits).* A confession of judgment is a legal device whereby a debtor agrees in the loan contract to a judgment against himself in the event of default. The debtor waives the right to notice and the opportunity to be heard in court before judgment is entered. Such a waiver is constitutional, if the waiver is made voluntarily, knowingly, and intelligently. Therefore, the benefit of the provisions accrues to those consumers who waive their rights to due process out of ignorance or inability to effectively shop for credit on the basis of contract clauses. The record contains statements by legal aid groups that lower income consumers, especially, are unaware of the legal implications of the cognovit clause, partly because it conflicts with the common understanding of basic due process rights.

Few creditors and consumers would be affected by the provision, because most states restrict the use of confessions of judgment. The use of this creditor remedy is limited almost entirely to Ohio, Illinois, Pennsylvania, and Louisiana. The record does not provide a precise measurement of the extent cognovit clauses appear in contracts. The Consumer Bankers Association (CBA) surveyed its membership and found that 20 percent of the respondents included cognovit clauses in a majority of their contracts, where permitted by law. An NCLC survey of legal aid attorneys indicated that cognovit clauses were used, where permitted by law, in 16 percent of bank contracts, 21 percent of finance company contract, and 300 percent of contracts over all. Cognovits may reduce costs somewhat because it is more costly for the creditor to file suit in the event of default, than to file a confession of judgment.

4. *Wage Assignments.* A wage assignment is a contractual transfer by a debtor to a creditor of the right to receive wages directly from the debtor's employer. A wage assignment clause can be invoked in the event of default and the creditor is not required to obtain a prior court judgment, as is the case with wage garnishment. Most states prohibit or restrict the use of wage assignments in order to provide consumers some protection. However, the protections often fall short of providing the consumer with a hearing and an opportunity to assert defenses or counterclaims.

Small loan and finance companies are the primary users of wage assignments. The NCCF reported that wage assignments were included in 13 percent of personal loan contracts of finance companies and 3 to 4 percent of bank contracts.

Garnishment is a more costly substitute for wage assignments because of court cost. The increased cost could make the smallest loans to marginal consumers unprofitable. However, bank associations stated in the record that they do not anticipate significant impact from a prohibition on wage assignments.

5. *Security Interests in Household Goods.* This provision prohibits the use of nonpossessory security interests in household goods, other than a purchase money security interest. Consumers are not prevented from borrowing on the equity in their homes or pledging stocks, bonds, liquid financial assets, or certain other valuable assets excluded from the definition of household goods, if the assets are specifically encumbered in the contract. The prohibition is to protect debtors from the threat of losing or the actual loss of property deemed essential for a minimum standard of living. Nearly all concern expressed in the record by proponents of the rule focused on blanket liens on household goods. Repossessions seldom occur. Legal aid attorneys have asserted that their clientele have been injured by "psychological harassment" in the form of threats to repossess household goods. The anecdotal information includes cases in which consumers have agreed to economic arrangements, such as debt refinancing, only out of fear of losing all their household goods.

Most states have enacted statutes restricting installment sellers to a lien on the goods sold, but few states have similar restrictions on consumer loan transactions. There appears to be widespread use of non-purchase money household goods as collateral by finance companies, especially small loan companies, which are licensed to lend no more than a few hundred dollars. A National Consumer Finance Association survey of some 10,000 consumer accounts held by finance companies showed that household goods were taken as collateral in over 60 percent of personal loans. Although there are no statistics in the record, there is agreement between proponents and opponents of the rule that banks use this creditor remedy to a much lesser extent than finance companies. Moreover, unlike finance companies, banks seldom engage in the practice of taking blanket security interests in household goods, according to testimony from the American Bankers Association (ABA).

Creditors confirmed in the record that household goods usually have little resale value. Therefore, taking a security interest in household goods is unlikely to reduce creditors' losses in the event of default. However, because of the significant value consumers place on their own household goods, such collateral functions as a deterrent to default and as a signal to creditors of a potential borrower's good faith. Creditors perceive that the potential economic and psychological cost to debtors of losing their household goods is an effective deterrent to default. Consequently, it is consumers who have nothing other than household goods to pledge as collateral, who are at risk of losing access to credit from finance companies and banks or paying higher prices for unsecured personal loans.

6. *Waivers of Exemption.* There are statutes in most states that exempt certain real or personal property from judicial seizure in the event of default, in order to allow debtors and their families to retain basic necessities. This provision of the rule would prohibit the use of contract clauses waiving such protective rights, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

The prohibition of waiver of exemption clauses is likely to encourage the taking of security interests in property, to the extent permitted by the "household goods" portion of the rule. Creditors can seize secured property without obtaining a judgment; unlike unsecured property. Therefore, to the extent security interests are encouraged, collection costs might be reduced.

Apparently, some creditors find waiver of exemption clauses to be an effective tool in preventing default, if the debtor is unaware of what property is exempt from judgment under state law and incorrectly assumes that basic necessities may be lost. The record shows that some creditors include waiver of exemption clauses in contracts even when state law makes the clause unenforceable.

E. Potential Impact on Small Banks

The evidence in the record does not indicate that the rule will have a disproportionate effect on smaller banks. In 1977, the ABA surveyed its members in order to establish a profile of consumer credit practices used by banks. The ABA reported the results from over 800 banks in testimony before the FTC. The ABA testified that the survey results were similar for small and large banks, where small banks were defined as those with less than $100 million in deposits. However, the results about small banks were not as reliable statistically, because the response rate was only 18 percent, compared to 48 percent for large banks.

F. Summary and Conclusions

Banks participated fully in the FTC rulemaking proceedings, in anticipation of Board consideration of a similar rule for banks, as required by section 18(f) of the FTC Act. The rulemaking record is extensive. However, the considerable effort by proponents and opponents of the rule has not resulted in precise measurement of potential net benefits. The lack of precision is due to significant methodological and data problems in the econometric studies, low survey response rates, and the subjective nature of many of the potential benefits to consumers.

The rule restricts creditors from taking or receiving from consumers obligations that constitute or contain a confession of judgment or an assignment of wages, primarily in order to assure consumers of legal due process protection of a hearing and an opportunity to assert defenses or counterclaims. In addition, restrictions are imposed on creditors regarding waivers of exemptions and nonpossessory security interests in household goods other than a purchase money security interest, primarily to protect delinquent debtors from losing or from the threat of losing goods considered to be basic necessities. Finally, the rule prohibits the accounting practice of "pyramiding" late charges and requires creditors to disclose cosigners' rights and obligations.

Most comments in the FTC rulemaking record received from the banking industry addressed provisions which have been eliminated or modified in the final rule. FTC modification of the security interest provision satisfied many of the economic objections expressed by creditors by permitting purchase money security interests and security interests in other than household goods. However, bankers' associations still express concern about this provision. A potential benefit of the provision is the elimination of the "psychological" injury experienced by delinquent debtors who lose or are told by creditors that they might lose household goods considered to be basic necessities. Bankers' associations argue that the FTC exceeded its authority when it considered "psychological" injury in its determination that taking non-purchase money security interests in household goods is an unfair practice. In addition, some bankers are concerned that their lower income consumers with no collateral to pledge other than household goods will be restricted to more expensive, smaller, unsecured personal loans, if they qualify for credit at all. Banks generally do not take non-purchase money security interests in household goods, according to ABA testimony given to the FTC in 1978. Nearly all comments in the record about the potential costs and benefits of restrictions on security interests focused on blanket security interests, where *all* of a debtor's household goods are subject to seizure and the potential impact is greatest. The ABA testified that, unlike finance companies, banks in general seldom take blanket security interests. Evidence in the records not indicate whether there are subcategories of banks, e.g., small or rural banks, which depend on taking blanket security interests to a significant extent.

The record suggests that the probability of injury from creditor remedies and practices addressed by

the rule is lower for bank customers than for customers of finance companies. Finance companies are the most frequent users of the creditor remedies that would be prohibited by the trade regulation rule. In general, banks use the subject remedies less. Furthermore, bank customers may better comprehend contract terms and may be more knowledgeable of legal protections, if we assume that their greater educational attainment, incomes, and assets lead to more financial sophistication.

List of Subjects in 12 CFR Part 227

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

(5) Text of Proposed Revision

Pursuant to the authority granted in section 18 of the Federal Trade Commission Act (15 U.S.C. 57a), the Board proposes to amend Regulation AA, 12 CFR Part 227, by adding a Subpart A consisting of the current provisions and adding a new Subpart B, as follows:

PART 227—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Subpart A—Consumer Complaints

* * * * *

Subpart B—Credit Practices Rule

Sec.

227.11 Authority, purpose, and scope.
227.12 Definitions.
227.13 Unfair credit contract provisions.
227.14 Unfair or deceptive practices involving cosigners.
227.15 Unfair late charges.
227.16 State exemptions.

Authority: 15 U.S.C. 57a.

Subpart A—Consumer Complaints

* * * * *

Subpart B—Credit Practices Rule

§ 227.11 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board under § 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637).

(b) *Purpose.* Unfair or deceptive acts or practices in or affecting commerce are unlawful under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). This subpart is intended to define unfair or deceptive acts or practices of banks in connection with extensions of credit to consumers.

(c) *Scope.* This subpart applies to any bank that is insured or eligible to become insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*). Compliance is to be enforced by:

(1) The Comptroller of the Currency, in the case of national banks and banks operating under the code of laws for the District of Columbia;

(2) The Federal Deposit Insurance Corporation, in the case of state banks that are not members of the Federal Reserve System; and

(3) The Boards, in the case of state banks that are members of the Federal Reserve System.

§ 227.12 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) "Consumer" means a natural person who seeks or acquires goods, services, or money for personal, family, or household use other than for the purchase or real property.

(b) (1) "Cosigner" means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation.

(2) "Cosigner" includes any such person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a "cosigner" whether or not the person is designated as such on the credit obligation.

(c) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pensions, retirement, or disability program.

(d) "Household goods" means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents. The term "household goods" does not include:

(1) Works of art;

(2) Electronic entertainment equipment (other than one television and one radio);

(3) Items acquired as antiques, that is items over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character; and

(4) Jewelry (other than wedding rings).

(e) "Obligation" means an agreement between a consumer and creditor.

(f) "Person" means an individual, corporation, or other business organization.

§ 227.13 Unfair credit contract provisions.

In connection with the extension of credit to consumers, it is an unfair act or practice for a bank to enter into or purchase a consumer credit obligation that conbtains any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant or attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor;

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase money security interest.

§ 227.14 Unfair or deceptive practices involving cosigners.

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a bank to misrepresent the nature or extent of cosigner liability to any person; and

(2) An unfair act or practice for a bank to obligate a cosigner unless the cosigner is informed prior to becoming obligated of the nature of the cosigner's liability.

(b) *Disclosure requirement.* (1) To prevent the unfair or deceptive acts or practices defined in this seciton, a disclosure statement shall be given to the cosigner prior to becoming obligated. The disclosure statement shall consist of a separate document that contains the following statement and no other:

Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increases this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

(2) In the case of open-end credit, the disclosure statement shall be given to the cosigner prior to the time that the agreement creating the cosigner's liability for future charges is executed.

(3) A bank that is in compliance with this paragraph may not be held in violation of paragraph (a) of this section.

§ 227.15 Unfair late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a bank to levy or collect any deliquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) For the purposes of this section, collecting a debt means any activity, other than the use of judicial process, that is inteded to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

§ 227.16 State exemptions.

(a) *General rule.* (1) An appropriate state agency may apply to the Board for a determination that:

(i) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this subpart applies; and

(ii) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this subpart.

(2) If the Board makes such a determination, the provision of this subpart will not be in effect in that state to the extent specified by the Board in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

(b) *Applications.* The procedures under which a state agency may apply for an exemption under this section are the same as those set forth in Appendix B to Regulation Z (12 CFR Part 226).

By order of the Board of Governors of the Federal Reserve System, November 26, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-31356 Filed 11-29-84; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Ch. III

[Docket No. 41047-4147]

Request for Comments on Effects of Foreign Policy Export Controls

AGENCY: Office of Export Administration, Commerce.

ACTION: Notice of proposed rulemaking; solicitation of comments.

SUMMARY: The Office of Export Administration (OEA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help OEA make this determination, OEA is seeking comments on how existing foreign policy-based controls have affected exporters and the general public.

DATE: Comments should be received by December 31, 1984, to assure full consideration in formulation of control Policies.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporter Services Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Anne Welch, Special Programs Branch, Policy Planning Division, Office of Export Administration, Telephone: (202) 377–4351.

SUPPLEMENTARY INFORMATION: Generally, the foreign policy controls maintained by the Office of Export Administration cover human rights, South Africa, Namibia, Libya, anti-terrorism, regional stability, embargoed communist countries, oil and gas equipment for the Soviet Union and Afghanistan, and truck manufacturing equipment for the Soviet Kama River and ZIL truck plants.

Two changes in the foreign policy controls were made during the past year, and these were modified later in the year. Effective March 20, 1984, Iran was made subject to existing anti-terrorism controls applicable to other designated countries. Effective September 26, 1984, anti-terrorism controls were amended for Iran only, providing for denial of application to export all aircraft and helicopters; related parts, components, avionics subject to national security controls; marine outboard motors with a horsepower of 45 or more; and the export of other items subject to national security controls, if destined to a military end-user or for military end-use.

Effective April 3, 1984, foreign policy controls were imposed on the export to Iraq and Iran of designated chemicals that can be used in chemical warfare. Chemicals initially subject to these controls were potassium fluoride, dimethyl methylphosphonate, thiodiglycol, methyl phosphonyl difluoride and phosphorus oxychloride. Effective September 14, 1984, dimethylamine, dimethylamine hydrochloride and ethylene chlorohydrin (chloroethanol) were also made subject to these controls.

Rulemaking Requirements

1. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) are inapplicable because this regulation involves a foreign affairs function of the United States. However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in developing final regulations.

2. This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. Because a notice of proposed rulemaking is not required for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

To assure maximum public participation in the review process,

comments on the extension or revision of these existing foreign policy controls are solicited. The following criteria shall be considered in determining whether to revise our foreign policy export controls:

1. The probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such control;

2. The compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country that is the proposed target of the controls;

3. The reaction of other countries to the imposition or expansion of such export controls by the United States;

4. The likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

5. The ability of the United States to enforce the proposed controls effectively; and

6. The foreign policy consequences of not imposing controls.

The Department is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors.

Parties submitting comments are asked to be as specific as possible. However, respondents are reminded that the Department is soliciting only information that may be used publicly. No "confidential business information" will be accepted. Any information so designated will be returned to the commenter.

All comments received before the close of the comment period will be considered by the Department in the development of final regulations.

While comments received after the close of the comment period will be considered if possible, their consideration cannot be assured.

All public comments will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are required. If oral comments are received, they must be followed by written memoranda that will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not routinely be made available for public inspection.

The public record concerning these comments will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Authority: Secs. 203, 206, Pub. L. 95–223, Title II, 91 Stat. 1628, 1628 (50 U.S.C. 1702, 1704), Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Dated: November 26, 1984.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84-31308 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-183-84]

Losses, Expenses, and Interest in Transactions Between Related Taxpayers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that provide guidance relating to changes in section 267 made by the Tax Reform Act of 1984. These changes relate to deductions, timing of deductions, and losses in certain transactions between related taxpayers. The text of §§ 1.267 (a)–2T, 1.267 (f)–1T, 1.267 (f)–2T, and 1.1502–13T, as set forth in those temporary regulations, also serves as the comment document for this notice of proposed rulemaking.

DATES:

Proposed effective date. The regulations are proposed to be effective, generally, for amounts otherwise allowable as deductions for taxable years beginning after 1983 and for losses on transactions after 1983.

Date for comments and requests for a public hearing: Written comments and requests for a public hearing must be delivered or mailed by January 29, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–183–84) Washington, D.C. 20224.

FOR FURTHER INFORMATION: Keith E. Stanley (for rules under section 267(f)) and John G. Schmalz or Robert H. Ginsburgh (for other rules) of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (Telephone: 202–566–3458 for Keith E. Stanley or 202–566–3297 for John G. Schmalz and Robert H. Ginsburgh; not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** reflect amendments made to section 267 of the Internal Revenue Code of 1954 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) by section 174 of the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 494). More specifically, temporary regulations are added in question and answer form under section 267 (a), (b), and (e), dealing with deferral of certain deductions generally and application of that deferral and the disallowance of certain losses to partnerships. The temporary regulations are added in standard format under section 267(f), dealing with losses between members of a controlled group of corporations. For the text of the amendments to the temporary regulations, see T.D.7991, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Secretary of the Treasury has certified that the portion of this rule that is represented by §§ 1.267(f)–1T, 1.267(f)–2T, and § 1.1502–13T will not have a significant impact on a substantial number of small entities because that portion of this rule applies only to a sale or exchange at a loss of property from one member of a controlled group of corporations to another member of that group and, if applicable, merely defers the loss until a later date. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6) for this portion of the rule. For the portion of this rule that is represented by § 1.267(a)–2T, the Internal Revenue Service has concluded that, although this document is a notice of proposed rulemaking that solicits public comment, that portion of this rule is interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, that portion of this rule does not constitute a rule subject to this Regulatory Flexibility Act.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service request persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Keith E. Stanley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.1501–1—1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

These regulations are proposed to be issued under the authority contained in section 267(f)(2)(B) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 704, 26 U.S.C. 267; 68A Stat. 917, 26 U.S.C. 7805, respectively).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-31469 Filed 11-29-84; 9:50 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1907, 1910, 1935, and 1936

[Docket No. S–110]

Safety Testing or Certification of Certain Workplace Equipment and Materials

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rulemaking; reopening of comment period.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening the record to receive written comments on appropriate complaints handling procedures which may be incorporated into the final rule concerning safety testing and certification.

DATE: Written comments on this notice must be postmarked by December 31, 1984.

ADDRESS: Written comments should be submitted, in quadruplicate, to the Docket Office, Docket S–110, Room S6212, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION: On March 6, 1984, OSHA published a Notice of Proposed Rulemaking (49 FR 8326 *et seq.*) on Safety testing or Certification of Certain Workplace Equipment and Materials. Written comments and requests for a hearing were to be received by May 7, 1984. The deadline for comments was subsequently extended until June 21, 1984 (49 FR 19338, May 7, 1984).

On July 16, 1984 OSHA published a Notice of Informal Public Hearing (49 FR 28739). Interested persons were invited to participate in public hearings and to submit additional information on issues raised by the Agency in the Notice and on other relevant issues raised in the document proposing the rule.

This hearing was conducted in Washington, D.C., on September 25 and 26, and October 1, 1984. Participants were given until October 31, 1984, in which to file post-hearing comments, including additional information that may have been requested during the course of the hearing. An additional 30 days (until November 30, 1984) was given for the filing of briefs or arguments.

During the hearing, testimony was provided by an OSHA witness, Mr. David Swankin, concerning the need to include a complaints handling procedure in the final rule (see proposed § 1936.402). The Agency, in the preamble to the proposal, had asked the public and other Federal agencies for recommendations on appropriate complaint and appeals procedures. As part of his testimony, Mr. Swankin suggested regulatory text for OSHA consideration.

Briefly, Mr. Swankin suggested that any accredited laboratory, or any laboratory accrediting agency or third-party certification program seeking recognition from OSHA under the proposed regulatory scheme, be required to establish a fair complaint or dispute settlement procedure which could be utilized by all interested parties. It was suggested that the complaint procedure be in writing, that appeals be allowed on both technical and procedural issues, that complaints be heard expeditiously, with timely written decisions, and that no person hearing a complaint have a conflict of interest with any party to the appeal (tr. 144).

The Agency believes that Mr. Swankin's suggestion is constructive and will consider it for inclusion in the final rule. OSHA suggests that all interested persons who are concerned with the issue of complaints and appeals in the context of the proposed rule carefully examine Mr. Swankin's

testimony. Of particular interest is the question of the assignment of costs under any such requirements.

In order to provide an additional opportunity for comment and to encourage the fullest development of the record, OSHA is reopening the period in which to file written comments on this issue. Comments are also invited on alternative methods of appeal handling. Mr. Swankin's testimony appears in the hearing transcript on pages 115–149; in addition, a written copy of the testimony (with attachments) was submitted to the record as Exhibit 10. Copies of the Swankin testimony will be available, upon request, from the Docket Office, Docket S–110, Room S6212, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: (202) 523–7894. Comments on the above described issue must be submitted to the Docket Office by December 31, 1984. The schedule for post-hearing submissions on other issues is not affected by this extension.

Author

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 6(b) and 8(g)(2), 84 Stat. 1593 [29 U.S.C. 655]; 29 CFR Part 1911, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, D.C., this 26th day of November 1984.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 84–31329 Filed 11–29–84; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice announcing extension of public comment period.

SUMMARY: On September 25, 1984 (40 FR 37642 and 37644), the USEPA proposed to approve revisions to the Ohio State Implementation Plan for sulfur dioxide for the PPG Barberton Plant in Summit County and the Ohio Power Muskingum River Power Plant in Morgan and Washington Counties.

A 30-day comment period was provided which was scheduled to October 25, 1984. USEPA received a request to extend the comment period from the Natural Resource Defense Council (NROC). Therefore, USEPA is granting an additional 30-day period for the public to submit comments.

DATE: Comments must be received on or before November 26, 1984.

ADDRESSES: Comments should be submitted to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, (312) 886–6088.

Dated: November 19, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84–31386 Filed 11–29–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[A–5–FRL–2728–7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking; extension of the public comment period.

SUMMARY: On September 28, 1984 (49 FR 37807), USEPA proposed to revise the Total Suspended Particulate (TSP) designation for the City of Milwaukee from primary and secondary nonattainment to secondary nonattainment. The proposed revision would narrow the boundaries of the secondary nonattainment area, and would eliminate the designation of primary nonattainment. Comments on the redesignation and on USEPA's proposed action were to be received by October 26, 1984. The State of Wisconsin has requested an extension of the public comment period. This extension would allow the State a reasonable opportunity to respond to some of the comments that have been received in response to the proposed rulemaking. Therefore, the public comment period is extended to November 30, 1984.

DATE: Comments must be received on, or before November 30, 1984.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen Comerford, (312) 886–6034.

Dated: November 16, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–31388 Filed 11–29–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Zones in Which Nontoxic Shot Would Be Required for Waterfowl Hunting in 1985–86; Extending Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; extending public comment period.

SUMMARY: On October 30, 1984, in the Federal Register, a proposal for non-toxic shot zones for the 1985–86 waterfowl hunting season was published for public comment (49 FR 43570–43574). This publication stated that the Fish and Wildlife Service would accept public comment on the proposal until November 30, 1984. The Service wishes to announce at this time that public comment will be accepted until December 10, 1984, in order to receive comments at several public meetings on this subject scheduled for the first week in December.

DATE: Comments by December 10, 1984.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrow, (202) 254–3207.

Dated: November 26, 1984.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 84–31354 Filed 11–29–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 49, No. 232

Friday, November 30, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Bozeman, Montana, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATE: Meeting on December 12, 1984, 1:00 p.m. to 3:00 p.m.

Comments must be received no later than January 11, 1985.

ADDRESS: Meeting location at Federal Building, 10 East Babcock Street, Room 540, Bozeman, Montana.

Written comments and further information will be addressed to: State Director, FmHA, 10 East Babcock Street, Bozeman, Montana 59715 (406–587–5271).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Montana State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Montana. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 26, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84–31370 Filed 11–29–84; 8:45 am]

BILLING CODE 3410–07–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

IA–259 The Auction Farm, Sheldon, Iowa

IA–260 Bingley and Dykstra Sale Co., Knoxville, Iowa

IN–155 Bobby Lamb Feeder Pigs, Sedalia, Indiana

MN–180 Sauk Centre Tel-O-Auction Coop, Sauk Centre, Minnesota

OK–203 Southern Oklahoma Livestock Auction, Inc., Ada, Oklahoma

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Chief, Financial Protection Branch, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C . 20250, by December 17, 1984.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Chief of the Financial Protection Branch during normal business hours.

Done at Washington, D.C., this 19th day of November, 1984.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84–31366 Filed 11–29–84; 8:45 am]

BILLING CODE 3410–02–M

CIVIL AERONAUTICS BOARD

Proposed Collection of Information Under the Provisions of the Paperwork Reduction Act

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's clearance approval of the proposed amendments in Part 375 of the Board's Special Regulations, "Navigation of Foreign Civil Aircraft Within the United States" (OMB Clearance No. 3024–0031), under the Paperwork Reduction Act of 1980. Reporting requirement pursuant to this clearance are in §§ 375.42, 375.45 and 375.70 of the Board's Special Regulations.

FOR FURTHER INFORMATION CONTACT: George Wellington, Regulatory Affairs Division, Bureau of International Aviation, (202) 673–5878, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION:

Agency Clearance Office from whom a copy of the Collection of Information and Supporting Documents is available: Robin A. Caldwell (202) 673–5922.

How often the Collection of Information must be filed: Occasionally.

Who is asked or required to report: Foreign air carriers.

Estimate of number of annual responses: 83.

Estimate of number of annual hours needed to complete the Collection of Information: 21.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–31462 Filed 11–29–84; 8:45 am]

BILLING CODE 6320–01–M

Application for an All-Cargo Air Service Certificate

Dated: November 21, 1984.

In accordance with Part 291 (14 CFR Part 291) of the Board's Economic Regulations, notice is hereby given that the Civil Aeronautics has received an application, Docket 42470, from Air Transport International, Inc. P.O. Box 523118, Miami, Florida 33152 for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of §291.12(c) of Part 291, interested persons may file an answer in opposition to this application within twenty-one (21) days after publication of this notice in the **Federal Register.** An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31486 Filed 11-29-84; 8:45 am]

BILLING CODE 6320-01-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (see, 14 CFR 302.1701 et seq.)

Week ended November 16, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date Filed	Docket No.	Description
11-13-84	42621	Arrow Air, Inc., c/o Lawrence D. Washo, Seamon, Washo & Ozment, 1211 Connecticut Ave., N.W., Suite 300, Washington, D.C. 20036 Application of Arrow Air, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations for a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail as follows: A. Between the terminal point San Juan, Puerto Rico, on the one hand, and the coterminal points Rio de Janeiro and Sao Paulo, Brazil, B. Between the terminal point San Juan, Puerto Rico, on the one hand, and the coterminal points Rio De Janeiro and Sao Paulo, Brazil, via the intermediate point Caracas, Venezuela, and other intermediate points in the Caribbean and South America, on the other hand; C. Between the terminal point San Juan, Puerto Rico, on the one hand, and the coterminal points Rio de Janeiro and Sao Paulo, Brazil, and Buenos Aeries, Argentina, on the other hand; D. Between the terminal point San Juan, Puerto Rico, on the one hand, and the coterminal points Rio de Janeiro and Sao Paulo, Brazil, and Buenos Aeries, Argentina, via the intermediate point Caracas, Venezuela, and other intermediate points in the Caribbean and South America, on the other hand. Conforming Applications, Motion to Modify Scope and Answers may be filed by December 10, 1984
11-15-84	42632	Pan American World Airways, Inc., c/o Richard D. Mathias, Suite 901, 1660 L Street, NW., Washington, D.C. 20036 Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests that the Board amend Pan Am's certificate of public convenience and necessity for Route 136 so as to permit service between the United States and Anguilla, Carriacou, Dominica, Montserrat, Mustique, Saba, St. Bartelemy, St. Eustatius, St. Vincent, Tortola and Union Island. Pan Am additionally requests that the above described service be combinable with service over other existing route segments in its certificate for Route 136 Conforming Applications, Motions to Modify Scope and Answers may be filed by December 13, 1984
11-16-84	42641	Hawaiian Airlines, Inc., c/o Jonathan B. Hill, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Suite 500, Washington, D.C. 20037 Application of Hawaiian Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural applies for modification of its certificate of public convenience and necessity authorizing it to provide scheduled, large aircraft transportation of passengers property and mail between Honolulu, Hawaii and Tongatapu, Kingdom of Tonga, via Pago Pago, American Samoa. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 14, 1984
11-15-84	42477	Air Atonabee Limited d/b/a City Express, c/o Victor Pappalardo, 545 Lakeshore Blvd W. Toronto, Ontario, Canada M5V 1A3. Amendment #1 to the Application of Air Atonabee Limited. Answers may be filed by December 13, 1984

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31484 Filed 11-29-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-11-35]

Jet 24; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 84-11-35.

SUMMARY: The Board proposes to issue a certificate of public convenience and necessity to Jet Charter Service, Inc. d/b/a Jet 24 to provide scheduled foreign air transportation of persons, property, and mail between the United States, and a point or points in Spain and Switzerland.

Objections: All interested persons having objections to the Board's tentative findings and conclusions, as described in the order cited above, shall, NO LATER THAN December 12, 1984, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 42160, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to all affected carriers and the Departments of State and Transportation.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board will issue an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue, in accordance with the discussion contained in the show-cause order, the proposed certificate.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5432. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTRACT: Peter M. Bloch, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5203.

By the Civil Aeronautics Board: November 21, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31485 Filed 11-29-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-11-36]

Application of Wilbur's, Inc. for Certificate of Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause, (Order 84-11-36), Docket 42220.

SUMMARY: The Board is directing all interested persons to show cause why it should not issue an order granting Wilbur's a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation and in intra-Alaska all-cargo service.

DATES: Persons wishing to file objections should do so in Docket 42220 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 by December 20, 1984.

ADDRESSES: Responses should be filed in Docket 42220 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon parties listed in the Attachment to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-11-36 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-11-36 to that address.

By the Civil Aeronautics Board: November 9, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31483 Filed 11-29-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 6:00 p.m., on December 11, 1984, at the Connecticut Education Association, 21 Oak Street, Hartford, Connecticut 06106. The purpose of the meeting is to discuss the impact of highway construction on minority and integrated communities and the means of evaluating the impact.

Persons desiring additional information, or planning a presentation to the Committee, should contact the New England Regional Office at (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-31378 Filed 11-29-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Service Supply License Procedure
Form Number: Agency—ITA—6026P; OMB—0625—0041
Type of Request: Revision of a currently approved collection
Burden: 198 respondents; 7,149 reporting hours
Needs and Uses: The Service Supply License Procedure is used to authorize multiple shipments of parts from the U.S. or by approved service facilities abroad for the purpose of servicing equipment (A) previously exported from the U.S. (B) produced abroad by a foreign manufacturer whose equipment incorporates parts exported from the United States.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Sheri Fox, 395-3875

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: November 28, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84-31405 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-588-020]

Antidumping Duty Order; Titanium Sponge from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning titanium sponge from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that titanium sponge from Japan is being sold at less than fair value and that sales of titanium sponge from Japan are threatening material injury to a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of titanium sponge from Japan made on or after November 15, 1984, the date on which the ITC published its "Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-3965

SUPPLEMENTARY INFORMATION: The merchandise covered by this investigation is titanium sponge, which is currently classifiable under item number 629.1420 of the *Tariff Schedules of the United States Annotated (TSUSA)*. It also may be classified under item number 833. Imports of the merchandise under item 833 are not subject to this order.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on May 11, 1984, the Department published its preliminary determination that there was reason to believe or suspect that titanium sponge from Japan was being sold at less than fair value (49 FR 20042). On October 1, 1984, the Department published its final determination that these imports were being sold at less than fair value (49 FR 38687).

On November 9, 1984, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such importations threaten material injury to a United States industry. The ITC further determined, pursuant to section 736(b)(2) of the Act, that its finding of threat of material injury was not affected by the suspension of liquidation under section 733(b)(1) of the Act such that, but for the suspension of liquidation, the Commission would have found material injury.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of titanium sponge from Japan, with the exception of those entries entering under Tariff item number 833. These antidumping duties will be assessed on all unliquidated entries of titanium sponge entered, or withdrawn from warehouse, for consumption on or after November 15, 1984, the date on which the ITC published its "Determination" notice in the Federal Register (49 FR 45276).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margins (percent)
Osaka Titanium Company	15.09
Toho Titanium Company	34.25
Nippon Soda Company	56.21
All other Manufacturers/Producers/Exporters	28.47

This determination constitutes an antidumping order with respect to titanium sponge from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

November 16, 1984.

[FR Doc. 84-31377 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-404]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Oil Country Tubular Goods From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of oil country tubular goods as described in the "Scope of Investigation" section of this notice. The net bounty or grant is determined to be 5.84 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of oil country tubular goods from Mexico which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit on these products in the amount equal to the net bounty or grant.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner or Vincent P. Kane, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377–4412 or 377–5414.

SUPPLEMENTARY INFORMATION:

Final Determination and Order

Based upon our investigation, we determine that certain benefits that constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Mexico of oil country tubular goods as described in the "Scope of Investigation" section of this notice. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX)—to producers;
- Preferential Federal Tax Incentives (CEPROFI);
- Energy Discounts.

We determine the net bounty or grant is 5.84 percent *ad valorem*. For this determination we used the verified information to Tubos de Acero de Mexico, S.A. (TAMSA), the company that accounts for more than 60 percent, by volume, of the exports of the products under investigation to the United States.

Case History

On June 13, 1984, we received a petition from the Lone Star Steel Company of Dallas, Texas, and the CF&I Steel Corporation, of Pueblo, Colorado, on behalf of the oil country tubular goods industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of oil country tubular goods (OCTG) receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

We found the petition to provide sufficient grounds upon which to initiate an investigation, and on July 3, 1984, we did so (49 FR 28292). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1983, the petition was amended and LTV Steel Company Cleveland, Ohio became co-petitioner.

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the

merchandise being investigated is dutiable. Therefore, section 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, the domestic industry is not required to allege that, and the United States International Trade Commission is not required to determine whether, imports of these products cause or threaten material unjury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Mexico in Washington, D.C. on July 13, 1984. On August 17, 1984, we received responses to the questionnaire from the government of Mexico, Hylsa and TAMSA. We subsequently notified the government of Mexico that we would not require responses from the other companies which had been identified as producers and/or exporters of the products under investigation.

On September 6, 1984, we preliminarily determined that benefits that constitute bounties or grants within the meaning of section 303 of the Act, are being provided to manufacturers, producers, or exporters in Mexico of oil country tubular goods (49 FR 35842). We received a request for a hearing on September 6. On October 9, 1984, a hearing was held. We received briefs from the parties to the proceeding.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. This investigation covers both finished and unfinished oil country tubular goods.

The provisions of the *Tariff Schedules of the United States, Annotated* (TSUSA) covering all steel pipe and tube, including oil country tubular goods, were changed as of April 1, 1984. We have reviewed the classification of steel pipe and tube by the U.S. Customs Service and determined that our original listing of the products subject to this investigation should be amended. As a result of the changes mentioned above, oil country tubular goods now comprise TSUSA item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

The period for which we are measuring bounties or grants is calendar year 1983. The Mexican government responded that there are seven known producers of OCTG, of which only four are exporters. Because TAMSA accounts for more than 60 percent, by volume, of the exports of OCTG to the United States during the period under investigation, we used the verified information provided by TAMSA in making this determination.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigation. These principles are described in the Subsidies Appendix attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Order" which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006). For purposes of this determination, we are calculating a country-wide rate.

In response to our questionnaire, the government of Mexico and the responding companies provided data for the applicable period. Based upon our analysis of the petition, the responses to our questionnaire, and our verification, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Mexico of OCTG under the following programs:

A. Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX)—to Producers

FOMEX is a trust of the Secretaria de Hacienda y Credito Publico ("SHCP") to promote the manufacture and sale of exported products. The Bank of Mexico acted as the trustee. On July 27, 1983, FOMEX was formally incorporated into the National Bank for Foreign Trade. The National Bank of Foreign Trade, administers the financing of FOMEX loans through financial institutions that establish contracts for lines of credit with manufacturers and exporters.

During the period for which we are measuring bounties or grants, exporters could obtain either FOMEX pre-export (production) loans denominated in pesos with a maximum nominal annual interest rate of 8 percent, or denominated in dollars with a maximum annual interest rate of 6 percent. The maximum interest rates chargeable were increased in April 1984. TAMSA received pre-export; peso-denominated FOMEX loans to finance exports to the United States during the period under investigation.

Because the FOMEX pre-export financing program provides loans for export-related purposes at interest rates significantly less than those for comparable commercially available loans, we determine that this program confers a bounty or grant upon the exportation of OCTG.

We used the national average commercial rate as the benchmark for short-term peso-denominated borrowing. In this case, where we verified that the nominal rate charged on FOMEX pre-export loans granted to TAMSA is the effective rate, we chose as our benchmark the effective rate published monthly by the Banco de Mexico in the *Indicadores Economicos* (the rate "IE"). This rate is the weighted average of the rates charged by commercial banks on peso loans. Because the effective IE rate is an annualized rate that includes the effect of quarterly compounding, and the terms of FOMEX loans exclude compounding, we have adjusted the IE rate to exclude the compounding effect.

We determined the benefits from these loans based on the interest rate differential between FOMEX financing and comparable commercially available loans. Because these loans are U.S. export-related, we allocate the benefit received over TAMSA's total exports to the United States during the review period. On this basis, we calculated a bounty or grant in the amount of 1.35 percent *ad valorem*.

B. Preferential Federal Tax Credits (CEPROFI)

CEPROFIs are tax credits used to promote National Development Plan (NDP) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small- and Medium-sized firms. CEPROFI tax credits are granted for investments in plant and equipment and for certain payments relating to increased employment and wages. The value of the tax credits is established as a percentage of the investment made. Certain types of investments receive higher percentage tax credits than do others.

CEPROFI certificates are tax certificates of fixed value which may be used for a five-year period to pay Mexican federal taxes. Certain CEPROFI certificates are granted for

carrying out investments in "priority" industrial activities; others are available to all industries on equal terms.

Article 25 of the decree authorizing the issuance of CEPROFIs, published in the *Diario Oficial de la Federacion (Diaro Oficial)* on March 6, 1979, requires each recipient to pay a 4 percent supervision fee. The 4 percent supervision fee is "paid in order to qualify for, or to recieve" the CEPROFIs, and is therefore an allowable offset from the gross bounty or grant as defined by section 771(6)(A) of the Act.

CEPROFIs for the purchase of Mexican-made capital goods in the amount of 5 percent of the value of the good, have been determined not to be countervailable (*See* Final Affirmative Countervailing Duty Determination on Lime from Mexico, 49 FR 35672). Therefore, with respect to the countervailable CEPROFIs for the purchase of Mexican-made capital goods, which are granted for carrying out investments in "priority" industrial activities (in the amount of 20 percent of the value of the investment), the benefit to the recipient is the difference between the 20 percent countervailable CEPROFI and the 5 percent non-countervailable CEPROFI, less the amount of the supervision fee.

TAMSA was authorized to receive CEPROFIs for increased employment and for investment in equipment and buildings. Because these types of CEPROFIs are limited to a specific group of industries or to companies located in specific regions, we determined that these CEPROFIs confer a bounty or grant.

We allocated the amount of CEPROFI benefits received (based on CEPROFIs which were authorized during the period of investigation) over TAMSA's total FOB sales of all products. On this basis we calculated a bounty or grant of 4.25 percent *ad valorem*.

C. Energy Discounts

Petitioners alleged that OCTG producers receive discounts/rebates on energy prices from the state-owned electricity, oil and natural gas suppliers.

The program under which these discounts are available was established by a Presidential Decree published in the *Diario Oficial* on December 29, 1978. Based on a Presidential Decree published on June 19, 1979, the deadline for accepting applications was November 30, 1982. Those companies that qualified prior to the deadline are eligible to receive benefits until November 30, 1988, when the program is due to expire. The discounts/rebates are available to any company which makes new investment and is located in the priority zones.

TAMSA qualifies for, and receives a rebate on its purchases of natural gas. Because receipt of these rebates is limited to companies investing in priority zones, we determine that this program confers a bounty or grant.

We allocated the amount of the rabates received during the period over TAMSA's total sales of all products. On this basis we calculated a bounty or grant of 0.24 percent *ad valorem*.

II. Programs Determined Not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Mexico of OCTG under the following programs:

A. National Preinvestment Fund for Studies and Projects (FONEP)

FONEP finances feasibility studies for Mexican firms. Because such loans have been found to be available to all companies in Mexico, they have been determined not to confer bounties or grants. (*See* Final Affirmative Countervailing Duty Determination on Bars and Shapes from Mexico, 49 FR 32887).

In past investigations, we described FONEP as financing economic, technical and feasibility studies. However, "feasibility studies' is the term that FONEP uses to describe all studies it finances. Therefore, loans granted by FONEP to finance feasibility studies, including economic and technical feasibility studies, do not confer bounties or grants because they are not limited to a specific industry, group of industries, or to companies in specific regions.

B. Nacional Financiera, S.A. Loans (NAFINSA)

The petitioners alleged that the OCTG industry may receive loans at preferential interest rates through NAFINSA. NAFINSA operates as a commercial bank, trustee for Mexican government trust funds, and as an industrial group. We verified that TAMSA received short-term loans only from NAFINSA's commercial banking operation during the period for which we are measuring bounties or grants. However, contrary to previous investigations (*See* Final Affirmative Countervailing Duty Determination on Bars and Shapes from Mexico, 49 FR. 32887), during verification we obtained evidence that loans granted by the commercial banking operations of NAFINSA are not limited to a specific industry, group of industries, or to companies in specific regions. Therefore, we determine that these loans do not confer a bounty or grant.

III. Programs Determined Not To Be Used

We determined that the following programs have not been used by the companies that manufacture, produce, or export OCTG in Mexico. Unless otherwise stated, the basis for these determinations is the verification of the questionnaire responses.

A. Preferential Financing Programs

1. *Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX)—To importers.* FOMEX may provide preferential financing to U.S. importers of Mexican OCTG.

2. *Fund for Industrial Development Providing Credit for the Production of Exports (FONEI).* FONEI grants long-term credit for the creation, expansion, or modernization of enterprises in particular geographic regions.

3. *Article 94 Loans.* Under section II of Article 94 of the General Law of Credit Institutions and Auxiliary Organizations (the Banking Law) the Bank of Mexico establishes channels of credit to different sectors of economic activity.

4. *Guarantee and Development Fund for Medium and Small Businesses (FOGAIN).* All small-and medium-size businesses may receive loans under FOGAIN. However, rates vary according to location in various priority zones within Mexico.

5. *National Fund for the Development of Industry (FOMIN).* FOMIN is a trust fund that funds small-and medium-sized companies through stock purchases or loans at rates below those of commercial lending institutions.

B. Accelerated Depreciation

Companies may benefit from accelerated depreciation based on their status as a priority industry or their location in specific regions of the country.

C. Preferential Vessel, Freight, Terminal, and Insurance Benefits

Industries in Mexico may benefit from rebates or other discounts on transportation, storage, and insurance expenses involved in exporting products to the U.S.

D. Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN)

FIDEIN is aimed at developing industrial parks and cities.

E. Government Financed Technology Development

The National Development Program may assist industries in Mexico through grants for the purchase of technology for new plants.

F. Port Facilities

Petitioners allege that the Mexican OCTG industry benefits from the preferential use of Mexican port facilities. TAMSA does export through the Port of Veracruz. However, during verification, we found no evidence of preferential use of port facilities.

G. Subsidized Inputs

The petitioners alleged, and we initiated an investigation with respect to, upstream subsidization of hot-rolled coil, blooms and billets ("steel inputs"). TAMSA's steel inputs are purchased from unrelated suppliers. We found no evidence that TAMSA received a competitive benefit in the purchases from those unrelated suppliers.

Section 613 of the Trade and Tariff Act of 1984, signed by the President on October 30, codifies the standards for determining upstream subsidies. This section generally codifies Department practice. Our investigation was consistent with both Department practice and the newly codified standards.

Petitioners' Comments

Comment 1. Petitioners argue that a thorough and proper investigation of the countervailable subsidies provided by the Mexican government to the OCTG producers has not been made because the respondents have not provided complete information and the Department prematurely narrowed the scope of its inquiries by only investigating TAMSA.

DOC Position. We disagree. In antidumping investigations, the Department is not required to investigate all exports of the product from the country under investigation. Rather, investigation of at least 60 percent is considered representative. (Section 353.38 of the Department's regulations state that the Department: " . . . normally will examine at least 60 percent of the dollar volume of exports to the United States . . ."). There is no reference in the Department's countervailing duty regulations to the amount of the exports to the United States which must be investigated. We see no reason not to believe that coverage of at least 60 percent of the exports to the United States will provide an accurate representation in a countervailing duty investigation, just as in an antidumping investigation.

Comment 2. Petitioners argue that the Department erred by not initiating an investigation of whether the Mexican government has provided equity infusion to the OCTG producers since the petition did not provide any evidence that this has occurred. Petitioners contend that evidence exists, citing the Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Mexico (49 FR 5142, February 10, 1984) in which the Department determined that Alfa, S.A., the parent company of Hylsa, S.A., received equity infusions from the government. Further, petitioners state that they have no direct access to the financial records of Hylsa outlining its relationship with its government-owned parent or any other producer, and that to require such detailed evidence from the petitioners is to require an investigation as a pre-condition to an investigation.

DOC Position. We disagree. Section 355.26 of the Department's countervailing duty regulations provide that ". . . The petition shall contain, or be accompanied by, information, to the extent reasonably available to the petitioner. . . ." To require that the petition contain an allegation, supported by information to the extent reasonably available, as to the existence of equity infusions made on terms inconsistent with commercial considerations, is not the same as requiring the petitioners to conduct an investigation. See Notice of Initiation of Countervailing Duty Investigation: Oil Country Tubular Goods From Mexico (49 FR 28292).

Comment 3. Petitioners argue that the Department erred in its investigation and treatment of whether OCTG producers receive subsidies as a result of preferential prices for the inputs of materials and services they purchase or on inputs they produce.

Petitioners argue that the Department should investigate the prices which the OCTG producers pay for these inputs (including scrap, coal, pellets, natural gas, fuel oil, electricity, oxygen, and labor) and the prices paid by other customers, in order to determine if sales to OCTG producers are made at less than arm's length prices.

Petitioners argue that the Department should investigate TAMSA's purchases of ferroalloys and sponge iron from related companies, and its purchases of pellets from Consorcio Minero (a company in which TAMSA holds 15.71 percent of its equity), because the Department assumes that input sales are made at preferential prices in the case of transactions between related suppliers and purchasers.

Petitioners also argue that the Department should investigate and assume that the benefit of any subsidies TAMSA or any other integrated producer of OCTG receives on the production of inputs is passed through in OCTG prices, because TAMSA produces many of the raw materials it uses for its OCTG production.

DOC Position. We disagree. With respect to petitioners' argument that we should investigate prices paid by OCTG producers for their inputs in relation to prices paid by other customers in order to determine if these inputs are obtained at less than arm's length prices, the Department will investigate where it has reason to believe or suspect that the purchaser receives a competitive benefit on the purchase of an input. To date, the petitioners have not provided a sufficient showing of this. If a sufficient showing is made, the Department will investigate this allegation during the course of a section 751 administrative review.

As to petitioners' argument that the Department should investigate benefits received on the production of inputs by an integrated producer, the Department conducted its investigation into TAMSA on the basis of TAMSA's consolidated financial records, which include all records of any bounties or grants received by TAMSA's subsidiaries as well as sales made by its subsidiaries.

Comment 4. Petitioners argue that the Department should investigate the actual amounts companies received in countervailable subsidies under the CEDI program because a recipient is allowed to apply these certificates against taxes due over a period of several years. Thus, they may be used to reduce a company's tax liability during the investigation period. In addition, petitioners argue that CEDIs received in earlier years may have been used to increase reported losses, thereby allowing the respondents to benefit by use of "loss-carry-forwards" used during the period of investigation.

DOC Position. We disagree. The CEDI program was suspended on August 25, 1982, and the Mexican government has not granted new certificates on exports after that date. However, those granted on shipments prior to that date may be used for up to 5 years after the date of issuance. We have consistently followed the practice of allocating the full amount of the CEDI benefits to the year in which the certificates were issued. In this manner we have treated them in the same way as a cash payment. The incentive to export, provided by this

program, comes not from the use of the certificate, but rather, from the knowledge of receiving more certificates whenever additional export shipments take place. The use of year-old certificates creates no more incentive for a manufacturer to export than it does for him to produce for domestic sale. Since the program has been suspended there is no continuing incentive to export. In all other Mexican cases, we countervailed the benefits from the CEDI program on a current basis. If the Mexican government reintroduces the CEDI program, we will again countervail the benefits on a current basis.

As for the petitioners' suggestion that CEDIs may have been used to increase reported losses, thereby allowing respondents to take advantage of Mexican tax law and carry forward tax losses in order to offset tax liabilities incurred during the investigation period, thus shifting forward the period in which the benefit is derived, we disagree. We continue to believe that the benefit from the CEDI program was provided at the time the certificates were granted.

Comment 5. Petitioners argue that the Department should investigate the Program for Coverage of Foreign Exchange Risks from Debts Incurred Abroad ("FICORCA"), including "System 4," to determine if it includes an exchange risk program that charges a sufficient premium to meet its long-term obligations and losses. Further, petitioners argue that the Department should also investigate the rescheduling of TAMSA's debt and the four-year grace period to determine if the government of Mexico may have paid premiums or agree to assume the interest payments due during the grace period.

DOC Position. We disagree. The Department conducted a thorough investigation and determined that the FICORCA program does not confer a bounty or grant on the basis that it is available to all Mexican firms with foreign indebtedness; it is not targeted toward a specific industry or enterprise, group of industries or enterprises, or to companies located in specific regions. See Unprocessed Float Glass from Mexico: Final Affirmative Countervailing Duty Determination and Order (49 FR 23097, June 4, 1984).

Comment 6. Petitioners argue that the Department should investigate more fully whether U.S. importers received benefits under the FOMEX program.

DOC Position. During verification the files maintained by FOMEX on export loans, which contain information on all loans, whether granted to a Mexican company or its customers, were reviewed. No export financing loans were granted to either TAMSA or its U.S. customers during the period for which we are measuring bounties or grants. (See government verification report.)

Comment 7. Petitioners argue that the Department erred in calculating the benefits which Mexican OCTG producers received under the FOMEX and NAFINSA loans by reference to nominal commercial interest rates rather than effective commercial interest rates.

DOC Position. We disagree with the argument that benefits received under loan programs such as FOMEX should be calculated by comparison of a nominal interest rate to a commercially available effective interest rate. In our preliminary determination, we compared a nominal interest rate to a commercially available nominal interest rate. During verification it was determined that, in this instance, the nominal interest rate on FOMEX pre-export loans was the effective interest rate. Therefore, for our final determination, we compared the effective interest rate of FOMEX pre-export financing to a commercially available effective interest rate.

Comment 8. Petitioners argue that the Department erred by not investigating whether Mexican government programs, such as FONEP, which the Department has termed "generally available," bestow countervailable benefits on particular segments of Mexican industry such as OCTG producers.

DOC Position. We disagree. In determining whether a program is generally available, the Department looks at both who is eligible to participate in the programs and who actually participates in the program. For programs that the Department has previously determined to be generally available, such as FONEP, the determination was based on complete and thorough investigations.

Comment 9. The petitioners argue that the Department erred in its exclusion of 5 percent of CEPROFI certificates for the purchase of capital goods and equipment on the grounds that 5 percent CEPROFIs for the purchase of capital goods are generally available. Petitioners contend that to do so, simply because in theory other firms can receive such benefits, is erroneous and arbitrary.

DOC Position. We disagree. In determining whether a program is generally available, the Department looks at both who is eligible to participate in the program and who actually participates in the program. For programs that the Department has previously determined to be generally available, such as CEPROFIs for the purchase of Mexican-made machinery (in the amount of 5 percent of the investment), the determination was based on complete and thorough investigations. To fail to exclude the 5 percent of CEPROFI certificates which have been determined to be available to all industries on equal terms would be erroneous and arbitrary.

Comment 10. Petitioners argue that Mexican OCTG manufacturers receive substantial subsidies through government procurement purchases, as demonstrated by the government of Mexico granting huge price increases which came at a time when overall world conditions in the OCTG market were quite unfavorable. Petitioners argue that the PEMEX procurement program has essentially the same effect as the French government's procurement policies for nitrocellulose for military use (Industrial Nitrocellulose from France, 48 Fed. Reg. 11971, March 22, 1983), which was determined to constitute a countervailable benefit.

DOC Position. The petitioners first presented this allegation during the public hearing held on October 5, 1984. This allegation was raised too late during the course of this investigation to be considered. Should petitioners provide sufficient evidence, this allegation will be investigated during the 751 review.

Comment 11. Petitioners argue that the Department should investigate and countervail upstream subsidies received by Mexican OCTG producers through their purchase of subsidized inputs. This should not be limited to hot-rolled coil, blooms and billets, but should include pellets, ferroalloys and sponge iron.

DOC Position. The petition alleged, and the Department investigated, upstream subsidies received by Mexican OCTG producers on their purchases of steel inputs, which the petition identified as hot-rolled coil, blooms, and billets. The Department will investigate allegations of upstream subsidization where it has reason to believe or suspect that the purchaser receives a competitive benefit on the purchase of subsidized input. There has been no sufficient showing of that to date. Of course, we will investigate in a 751 review if a sufficient showing is made.

Comment 12. Petitioners argue that the Department should include the other Mexican OCTG producers in its investigation because: TAMSA only produces seamless pipe; a significant amount of welded OCTG is exported to the U.S. from Mexico; and there is evidence that the level of subsidization received by the other companies would significantly affect the overall level of subsidization found by the Department in calculating a nation-wide average for a final rate.

DOC Position. We disagree. See DOC Position to Petitioners' Comment 1.

Comment 13. Petitioners argue that the Department should investigate the distribution of benefits under the FICORCA program to determine if the program is disproportionately allocated to the steel industry in general and the OCTG industry in particular.

DOC Position. We disagree. See DOC Position in response to Petitioners' Comment 5.

Comment 14. Petitioners argue that the effective interest rate as published by the Banco de Mexico is the appropriate benchmark for subsidized short-term loans.

DOC Position. We disagree. The effective rate as published in the Indicadores Economicos is an annualized rate which includes the effect of quarterly compounding. In the case of FOMEX short-term loans, which are usually granted for a term of 90 days, it would be inappropriate to compare an effective rate which could not include compounding to an effective rate which includes quarterly compounding. See the "Programs Determined to Confer Bounties or Grants" section of this notice.

Respondents' Comments

Comment 1. Respondents argue that the Department correctly refused to initiate an investigation of whether OCTG producers received equity infusions from the Mexican government because the petition did not meet the requirement of § 355.26(a)(7) of the Department's regulations by omitting any support whatsoever for the allegation. Further, they state that TAMSA's response to the questionnaire clearly shows that there is no equity participation in TAMSA by the government of Mexico.

DOC Position. We agree. See Notice of Initiation of Countervailing Duty Investigation: Oil Country Tubular Goods from Mexico (49 Fed. Reg. 28292)

Comment 2. Respondents argue that the Department correctly used nominal commercial interest rates to calculate benefits.

DOC Position. We agree that for our preliminary determination, where information available was expressed in nominal terms, the appropriate comparison was the nominal interest rate charged on FOMEX pre-export loans and the nominal interest rate as published in the *Indicadores Economicos.* See Notice of Preliminary Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Mexico (49 FR 35842). For our final determination, we determine that the appropriate benchmark is the effective interest rate, as adjusted to remove the effect of compounding. See the "Programs Determined to Confer Bounties or Grants" section of this notice.

Comment 3. Respondents argue that the Department properly declined to investigate "generally available" government programs, such as FONEP and CEPROFI.

DOC Position. We agree. See "DOC Position to Petitioners' Comment 8."

Comment 4. Respondents argue that the Department correctly defined the parameters of the investigation of input subsidies, requiring information concerning steel inputs (hot-rolled coil, blooms and billets), and there is no basis for inquiry into alleged input subsidization. Further, they state that TAMSA's responses were made on a consolidated basis and therefore were not limited to inputs used solely for OCTG manufacture, but represent total information for TAMSA operations.

DOC Position. We agree. See DOC Position in response to Petitioners' Comment 3.

Comment 5. Respondents argue that the Department has already investigated programs that are generally available in Mexico and correctly concluded that they are not countervailable. Further, they state that there is not indication that the Department's evaluations of general availability under these programs, in practice as well as theory, have been anything less than complete.

DOC Position. We agree. See DOC Position to Petitioners' Comment 8.

Comment 6. Respondents argue that there is no basis in fact for petitioners' insistence that TAMSA's U.S. customers must receive FOMEX financing.

DOC Position. We agree. See the "Programs Determined Not to be Used" section of this notice.

Comment 7. Respondents argue that petitioners' suggestion that TAMSA's PEMEX sales are at inflated prices, creating a "pool of cash" used to subsidize U.S. sales, is totally inconsistent with petitioners' assertion in the parallel antidumping investigation, that TAMSA's home market sales are made at prices below their cost of production. Respondents contend that the two claims cannot be reconciled. Further, they argue that the circumstances of the Industrial Nitrocellulose investigation, cited by the petitioners, are inapposite.

DOC Position. Petitioners allegation was raised too late to be considered in this determination. See DOC Position in response to Petitioners' Comment 10.

Comment 8. Respondents argue that the Department correctly refused to initiate an investigation of the CEDI program since numerous investigations subsequent to the suspension of the program have concluded that no benefits have been derived and petitioners fail to offer any basis to suggest that the Department should alter its well-established position.

DOC Position. We agree. See Notice of Initiation of Countervailing Duty Investigation: Oil Country Tubular Goods From Mexico (49 FR 28292) and "DOC Position to Petitioners' Comment 4."

Comment 9. Respondents argue that during verification, officials from the Department acknowledged that TAMSA's response included a CEPROFI cerificate that was granted by the Mexican government on December 28, 1982. Further, they state that since the Department has stated that it considers a CEPROFI to confer a benefit upon the recipient on the date that the CEPROFI is granted by the Mexican government, rather than on the date of application or receipt, this particular CEPROFI should not be included in the computation of TAMSA's benefits from the use of CEPROFIs.

DOC Position. We agree. As stated in the "Programs Determined to Confer Bounties or Grants" Section of this notice, we allocated the amount of CEPROFI benefits received (based on CEPROFIs which were authorized during the period of investigation) over TAMSA's total FOB sales of all products.

Comment 10. Respondents argue that although a small portion of outstanding CEDI benefits were used during 1983, non remains outstanding. Therefore, since the CEDI program has been suspended, TAMSA can receive no further CEDI benefits. Further, they state that if would be unfair to increase the countervailing duty TAMSA will be required to deposit on its imports knowing that any amount related to past benefits under the CEDI program will inevitably be returned to the company after the annual review.

DOC Position. The Department calculates the benefits derived from the CEDI program based on the date of issuance by the government of Mexico. Even though a portion of outstanding CEDI certificates was used during 1983, none was granted since the suspension of the program. Therefore, we would find that no benefit was provided since the program was suspended. See "DOC

Position in response to Petitioners' Comment 4."

Comment 11. Respondents argue that because TAMSA's wholly-owned subsidiaries did not receive any countervailable benefits individually, and all benefits received by TAMSA's wholly-owned subsidiaries were derived through benefits received by TAMSA as a consolidated entity, the proper sales value over which TAMSA's countervailable benefits should be allocated is the total sales value for TAMSA and its wholly-owned subsidiaries, which is the non-consolidated net sales value identified by the ITA verification team.

DOC Position. We disagree. In order to determine an *ad valorem* benefit rate, the Department allocates countervailable benefits received over the FOB value of sales. In this instance, where the Department has investigated the countervailable benefits received by the intergrated producer, TAMSA, it is appropriate to allocate benefits over the company's total FOB sales value.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of TAMSA's operations and records.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). A public hearing was held on October 9, 1984. In accordance with the Department's regulations (19 CFR 355.34(a)), all written views have been received and considered.

The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The net bounty or grant for duty deposit purposes is 5.84 percent *ad valorem*. We are directing the United States Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with section 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

Dated: November 20, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-31371 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-406]

Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods From Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Spain of oil country tubular goods ("OCTG"). The net subsidy rates for each company are listed in the "Suspension of Liquidation" section of this notice. We are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of OCTG from Spain which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or bond on these products in the amounts equal to the net subsidies.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, John M. Davies, or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0167, 1784, or 1769.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided to manufacturers, producers, or exporters in Spain of OCTG. The following programs are determined to confer subsidies:

- Long-term loans and loan guarantees;
- Certain types of short-term loans provided under the Privileged Circuit Exporter Credits Program;
- Excessive rebates of indirect taxes on exports under the Desgravacion Fiscal a la Exportacion ("DFE"); and
- Regional investment incentives program.

For 1983, we determine the net subsidy to be 11.29 percent *ad valorem* for Altos Hornos de Vizcaya, S.A. ("AHV"), 16.37 percent *ad valorem* for Tubos Reunidos, S.A. ("TR") 19.87 percent *ad valorem* for Tubacex C.E. de Tubos per Extrusion, S.A. ("Tubacex"), 24.74 percent *ad valorem* for Babcock and Wilcox Espanola, S.A. ("B&W") and Transformaciones Metalurgicas Especiales, S.A. ("TRAMESA") and 15.00 percent *ad valorem* for all other manufacturers, producers, or exporters in Spain of OCTG. For cash deposit purposes, we determine the net subsidy to be 17.64 percent *ad valorem* for AHV, 16.17 percent *ad valorem* for TR, 17.67 percent *ad valorem* for Tubacex, 22.54 percent *ad valorem* for B&W and TRAMESA, and 17.21 percent *ad valorem* for all other manufacturers, producers, or exporters in Spain of OCTG.

Case History

On june 13, 1984, we received a petition from the Lone Star Steel Company and the CF & I Steel Corporation filed on behalf of the U.S. OCTG industry. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), petitioners alleged that manufacturers, producers, or exporters in Spain of OCTG receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1983, we initiated an investigation (49 FR 28425). In our notice of initiation, we stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, the petition was amended and LTV Steel Company of Cleveland, Ohio, became co-petitioner.

Since Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. On July 30, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that imports of Spanish OCTG are materially injuring, or threatening material injury to, a U.S. industry (49 FR 31782).

We presented a questionnaire concerning the allegations to the Government of Spain at its embassy in Washington, D.C. on July 13, 1984. On August 23, 1984, we received replies to the questionnaire from the Government

of Spain and TR. On August 24, 1984, we received a response from AHV. These two companies accounted for approximately 75 percent of Spanish OCTG exports to the United States during the period of investigation.

On September 6, we preliminarily determined that benefits constituting subsidies within the meaning of the countervailing duty law were being provided to manufacturers, producers, or exporters of OCTG in Spain.

On September 11, 1984, we wrote a letter to the Spanish government requesting that B&W, Tubacex, and TRAMESA, the other three known exporters of OCTG to the United States, also respond to the questionnaire.

On October 8, 1984, Tubacex sent us its response. The other two companies have not responded to our questionnaire.

We held a verification of the questionnaire responses in Madrid, Spain, on October 16-25.

In response to a request by the respondents received on September 20, a public hearing on this case was held on October 11. We received pre-hearing briefs from the parties to the proceeding on October 4 and 5. Post-hearing briefs were received on November 2.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods ("OCTG"). For the purpose of this investigation, the term "oil country tubular goods" covers hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (e.g., proprietary) specifications, as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under the following items:

610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244

This investigation includes OCTG that are in both finished and unfinished condition.

AHV and its subsidiary Laminaciones de Lesaca, S.A., B&W, TR, TRAMESA, and Tubacex are only known producers and exporters in Spain of the subject products which were exported to the United States during the period of investigation. The period for which we are measuring subsidization is the 1983 calendar year.

Analysis of Programs.

AHV, TR, and Tubácex answered our questionnaire. For purposes of this determination, we have used the information provided by these three companies.

Certain subsidies discussed in this notice were provided under a series of laws and decrees issued by the Government of Spain. Those laws and decrees include the following:

Decree 669/74 of March 14, 1974

This decree established the National Steel Industry Program, covering the period 1974-1982. To achieve the goals established by this program, the Spanish government authorized certain benefits for integrated and non-integrated steel firms, including preferential loans and loan terms, accelerated amortization of non-liquid investments, substantial reduction of certain taxes, and expropriation of land for new plant construction.

Law 60/1978 of December 23, 1978

This law authorized government aid in the form of preferential loans and loan terms and capital infusions for integrated steel producers in Spain, including AHV.

Order of May 22, 1980

This order authorized the Banco de Credito Industrial ("BCI") to extend additional government credits to non-integrated steel companies who had made investments under Decree 669/1974. BCI is a government credit institution which issues loans to companies in the Spanish steel industry.

Royal Decree 878/1981 of May 8, 1981

This decree, also known as the Integral Iron and Steel Reconversion Plan, provided aid to integrated steel producers in the form of preferential interest rates and terms on outstanding loans, new loans with preferential interest rates and terms, loan guarantees, and capital infusions. Certain of these programs are administered by the Institution Nacional de Industria ("INI"), a public holding company created in 1941 as an autonomous government agency and charged with promoting and stimulating the industrial development of Spain. INI's responsibilities cover a variety of sectors ranging from services to basic industries such as iron and steel.

Throughout this notice we refer to general principles applied to the facts in the current investigation. These principles are described in the Subsidies Appendix attached to the notice of Cold-Rolled Carbon Steel Flat-rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this determination, we have calculated company-specific *ad valorem* subsidy rates in accordance with 19 U.S.C. 1671(e)(a)(2), since we determine there is a significant diffferential among companies receiving benefits.

To calculate company-specific *ad valorem* rates, we allocated the countervailable benefits received by each company in 1983 over that company's total sales value, total export value, or total value of OCTG exported to the United States, as appropriate. For those Spanish OCTG producers and exporters which did not respond to the questionnaire, we attributed the highest *ad valorem* benefit found under each program for the three firms which responded. For those Spanish OCTG producers to which we did not send questionnaires, we calculated a trade-weighted *ad valorem* subsidy rate based on the value of the three responding companies' exports of OCTG to the United States in 1983.

Based upon our analysis of the petition, the material provided in response to our questionnaire, and our verification, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters of OCTG in Spain under the following programs:

A. Long-Term Loans and Loan Guarantees

Petitioners alleged that producers of the subject merchandise benefit from subsidies in the form of preferential loans, loan terms and loan guarantees. We requested information from each company under investigation on all long-term loans outstanding during the period of investigation. All three companies reported long-term loans outstanding during the period for which we are measuring subsidization.

We determine that the Government of Spain authorizes or direct banks to lend funds to certain companies in certain industries at rates or on terms inconsistent with commercial considerations.

To calculate the amount of subsidy from these loans, we used the loan methodology detailed in the Subsidies Appendix. For fixed-rate long-term loans to creditworthy companies, we prefer to use a company-specific commercial loan rate whenever possible. However, in this case none of the responding companies received comparable commercial long-term credit in the years in which they received preferential long-term loans. Therefore, we used as our long-term commercial benchmark the national average interest rate for loans "of over three years" applying to the year in which the loan terms were agreed upon. This rate is published by the Bank of Spain in its *Boletin Estadistico*. Because we were unable to obtain the national average rate of return on equity, we used the long-term benchmark interest rate for the year in which the loan terms were agreed upon as the weighted-average cost of capital.

To calculate the benefit in 1983 from variable-rate long-term loans, we compared the short-term benchmark interest rate for 1983 (as described in section I–B below), with the interest rate payable on the long-term loan in 1983, because we could not find company-specific, variable-rate long-term benchmark loans. Nor could we find a national average variable-rate long-term benchmark.

Since the companies under investigation did not receive comparable commercial loan guarantees in those years in which they received government-guaranteed long-term loans, we calculated the benefit from government-guaranteed long-term loans by comparing them with a commercial benchmark loan using the appropriate fixed rate or variable rate methodology outlined above.

The majority of loans reported by AHV, TR and Tubacex contain provisions for deferred principal repayment. We verified in our investigation of Certain Steel Products from Spain that preferential loans made under these programs and commercial loans within Spain contain similar deferral provisions. Therefore, for purposes of this determination, we are not treating deferral of principal repayment as a countervailable benefit.

We received allegations that AHV and TR were uncreditworthy.

1. *AHV:* In the 1982 investigation of Certain Carbon Steel Products from Spain (47 FR 51428), we determined AHV to be uncreditworthy for the years 1979 through 1981. Based upon our Subsidies Appendix methodology and after careful review of the company's financial statements for the years 1982 and 1983, we continue to find AHV uncreditworthy for the 1979 through 1981 period as well as for 1982 and 1983. To determine the creditworthiness of a company, we analyze its present and past financial condition, as reflected in various financial indicators calculated from its financial statements. We examined several of AHV's standard financial ratios. Important ratios in which AHV reflected unfavorable performance in the years 1979 through 1983 are times interest earned (defined as operating income divided by interest charges), net income as a percent of sales, the ratio of debt to equity, and return on equity.

For loans received prior to 1979, during the period in which AHV was creditworthy, we used the long-term benchmark interest rates described above. For loans received during AHV's uncreditworthy period, we used as a benchmark the average maximum interest rate for the year in which the loan terms were agreed upon, as published in the *Boletin Estadistico*, plus the "risk premium" (calculated in accordance with the Subsidies Appendix).

2. *TR:* Based upon evidence of continuing operating profits as well as favorable financial ratios, we find TR to be creditworthy for the period 1979 through 1983. We reviewed TR's annual reports and financial statements. The company's net income, return on equity, cash flow and other important financial ratios are favorable. Accordingly, we applied the long-term loan methodology for creditworthy companies described above.

For each company, we allocated the total countervailable benefit from the company's preferential long-term loans in 1983 over the company's total sales in 1983. We determine that the *ad valorem* subsidy for long-term loans is 5.75 percent for AHV, 0.88 percent for TR, and 0.92 percent for Tubacex.

B. Certain Types of Short-Term Loans Provided Under the Privileged Circuit Exporter Credits Program

Petitioners alleged that producers of the subject merchandise received benefits which constitute subsidies in the form of short-term preferential export loans. We requested information on all short-term loans outstanding during the period for which we are measuring subsidization. We verified that AHV had no short-term financing outstanding under this program during this period. We found that TR and Tubacex had short-term financing outstanding under the Privileged Circuit Exporter Credits Program during the period of investigation.

The Government of Spain requires all Spanish commercial banks to maintain a specific percentage of their lendable funds in privileged circuit accounts. These funds are made available to exporters at preferential interest rates through a variety of credit programs. While there is no direct outlay of government funds, the benefits conferred on the companies are the result of a government-mandated program to promote exports. We determine that OCTG producers benefited from two of the four privileged circuit programs available to exporters: The working-capital loans program and the pre-financing of exports program.

1. *Working Capital Loans.* Under the privileged circuit program, firms may obtain working capital loans for one year. The amount of loans for which a firm is eligible is based on a specified percentage of its previous year's exports. We verified that in 1983, the privileged circuit working capital loan interest rate ceiling mandated by the government was 10 percent.

It is Department policy to allocate benefits from preferential short-term loans based on the period in which interest payments are made. We found at verification that interest on most operating capital loans is paid quarterly. TR and Tubacex provided us with information on all working capital loans received during the period of investigation, but failed to provide information on all loans on which interest payments were made in 1983. Therefore, for our final determination, we are using best information available in accordance with § 355.39(b). To calculate the benefit, we multiplied the maximum allowable loan amount under this program for each company by the preference interest rate differential. This differential is the difference between the statutorily-mandated interest rate charged on working capital loans and the national average commercial interest rate on one-year loans.

In our preliminary determination, we based this interest differential on comparisons between nominal rates. At verification we discovered that interest was paid quarterly on most of the firms' operating-capital loans. Given our preference for effective interest rates, we are calculating the benefit from these loans by comparing the effective preferential rate to the effective national average commercial rate.

We chose as our 1983 benchmark for short-term operating capital loans, the 1983 weighted-average commercial lending rate for loans "of one to three years", as published by the Bank of Spain in the *Boletin Estadistico*.

Since this is a nominal rate, we calculated the effective rate by applying quarterly compounding, and then adding the legally established 0.5 percent commission. In addition, an ITE tax of 4.3 percent is charged by the government on all interest payments, both commercial and preferential. We added this tax to the benchmark rate. Based on these calculations, we determine the national average commercial interest rate to be 20.15 percent for one-year loans received in 1983.

To determine the benefit, we compared the preferential effective interest rate, including taxes, charged on operating capital loans with the effective national average commercial interest rate of 20.15 percent. This interest differential was multiplied by the total amount of each firm's loan eligibility. Eligibility is based on the firm's previous year's exports. Because we do not have information on the firms' 1982 exports, we determined loan eligibility by multiplying the 15 percent maximum eligibility rate for 1983 by the value of each firm's 1983 exports. The resulting amounts were allocated over each firm's total 1983 exports. On this basis, we determine that the *ad valorem* subsidy from working capital loans is 1.40 percent for TR and Tubacex.

2. *Prefinancing of Exports Program.* TR and Tubacex reported that they also received preferential prefinancing of exports. At verification, we found that each prefinancing loan was tied to a specific export shipment. For Tubacex, we found that none of the loans reported as outstanding on December 31, 1983, was tied to any shipment of OCTG to the United States in 1983. However, Tubacex and TR failed to provide us with information on all prefinancing loans outstanding during 1983. Consequently, we were unable to calculate the total amount of interest paid on prefinancing loans in 1983 for either TR or TUBACEX. Therefore, for our final determination, we are using best information available in accordance with Section 355.39(b). To calculate the subsidy, we allocated to each company the maximum allowable loan amount under this program.

We chose as our 1983 benchmark for short-term prefinancing of exports the 1983 weighted-average commercial lending rate of 17.12 percent for loans of three months. Since this is a nominal rate, we found the effective six month rate by compounding this rate once, then adding the ITE tax of 4.3 percent. Based on these calculations, we determine the national average commercial interest rate to be 18.73 percent annually for loans of six months.

To estimate the benefit, we compared the annualized effective preferential interest rate, including tax, with the effective national average commercial interest rate. We multiplied this interest differential by the amount of each firm's eligibility for privileged export credit for shipments to the United States. We determined eligibility by mulitplying the 85 percent eligibility rate by the value of each firm's exports of OCTG to the United States in 1983. We then multiplied this rate by the maximum six month loan term. The interest benefit was allocated over the total value of each firm's exports of OCTG to the United States during 1983. We determine that the *ad valorem* subsidy for short-term prefinancing of exports is 3.46 percent for TR and Tubacex.

C. Excessive Rebates of Indirect Taxes on Exports Under the Desgravacion Fiscal a la Exportation ("DFE")

Petitioners alleged that countervailable benefits are conferred on Spanish OCTG producers under the DFE program by the excessive rebate of indirect taxes upon export of OCTG.

Spain employs a cascading tax system under which a turnover tax is levied on each intermediate sale of a product through its various stages of production, up to, but not including, the final sale at the retail level. The DFE is the program designed to rebate to exporters these accumulated turnover taxes as well as final stage taxes on exportation.

To calculate the amount of subsidy potentially conferred by the DFE it is necessary to determine whether the remission of indirect taxes is excessive.

Information acquired during verification indicates that all three of the firms are integrated producers. In 1983, both TR and AHV purchased final stage inputs from unrelated suppliers. At verification, the companies provided us with information on purchased inputs and taxes paid on those inputs, as well as final stage taxes paid. They also provided us with information on the percentage of billets and coils incorporated in the value of the final product, but provided no information which would allow us to determine the percentage of other purchased inputs physically incorporated in the final product.

Since we verified that TR purchased some of its billets used in making OCTG from unrelated companies during the period of investigation, we have taken this percentage into account in calculating the indirect taxes paid on OCTG by TR. Because TR refused to provide us with a cost structure for the purchased inputs in the billets it produced, we were unable to calculate the amount of indirect taxes paid by TR on OCTG made with billets produced by TR. For all OCTG produced by TR, we have included the final stage tax on freight in our calculation of indirect taxes paid. On this basis, we determine that the DFE rebate confers an *ad valorem* subsidy of 12.59 percent on TR's exports of OCTG for 1983.

We verified that AHV purchased some of its coil in 1983. Although AHV normally produces its own coil, it was unable to do so in 1983 due to a fire at one of its plants. During 1983, some of AHV's OCTG exports were made from purchased coil. We have taken this percentage into account in calculating the indirect taxes paid by AHV in 1983. But because AHV has resumed its coil production, we believe it would be inappropriate for cash deposit purposes to base AHV's indirect tax incidence for OCTG on purchased coil inputs. Therefore, for AHV, we determine that the amount of DFE overrebate is 5.54 percent *ad valorem* in 1983 and 11.89 percent *ad valorem* for cash deposit purposes (see below).

Because Tubacex is an integrated producer and refused to provide us with a cost structure for its purchased inputs, in calculating the amount of indirect taxes paid by Tubacex, we allowed only the rebate of the final stage tax on freight. On this basis, we determine the DFE rebate confers an *ad valorem* subsidy of 14.09 percent on exports of OCTG by Tubacex for 1983.

On July 11, 1984, the DFE rebate applicable to all exporters of OCTG was reduced from 14.5 percent to 12.3 percent as part of Spain's transition to the value-added tax. Therefore, any exports of the merchandise under investigation on or after this date are subject to the lower DFE rate. Accordingly, for cash deposit purposes we determine that the DFE rebate confers an *ad valorem* subsidy of 10.39 percent on exports from TR and 11.89 percent on exports from AHV and Tubacex.

D. Regional Investment Incentive Programs

During verification, we found that TR received a grant under the CADEM (Centre for Energy and Mining Development and Saving) program. Because this program confers benefits on companies located in a specific region, we find it to be a countervailable subsidy.

The amount of this grant was less than 0.5 percent of TR's total sales in 1983. Therefore, in accordance with the

Subsidies Appendix, we allocated the entire benefit of this grant to 1983. To determine the benefit, we divided the amount of the grant by the company's total 1983 sales. We determine that the *ad valorem* subsidy to TR from this program is 0.04 percent.

II. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Spain of OCTG do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigation of OCTG from Spain."

A. Certain Privileged Circuit Credits

We discussed Privileged Circuit Credits in general, *supra*. We determine that two programs, working capital loans and prefinancing of exports, provide subsidies to OCTG manufacturers, producers, or exporters. We verified that the remaining privileged circuit programs identified in our notice of initiation were not used by AHV, TR, or Tubacex during the period of investigation. They are:

(1) Commercial services loans, and
(2) Short-term export credit.

B. Warehouse Construction Loans

Exporters wishing to construct warehouse facilities adjacent to loading zones may borrow 70–75 percent of the total investment. We verified that AHV, TR and Tubacex had no loans outstanding under this program in 1983.

C. Accelerated Depreciation and Reduction in Taxes

Decree 669/1974 permits the steel industry to employ accelerated depreciation of non-liquid investments and to obtain a substantial reduction in certain taxes. We verified that these programs were not used by AHV, TR or Tubacex in 1983.

D. Expropriation of Land for New Construction

Decree 669/1974 provides aid to certain industries by expropriating land for new plant construction. We verified that AHV, TR and Tubacex did not use this program.

E. Grants

Petitioners allege that Spanish OCTG producers have received grants from the Spanish government. We verified that AHV, TR and Tubacex received no grants from the Government of Spain during the period of investigation.

F. Energy Discounts

Petitioners allege that the OCTG producers receive discounts or rebates on energy prices under law 878/1981. We verified that AHV, TR and Tubacex did not receive preferential discounts or rebates on energy prices during the period of investigation.

G. Subsidized Steel Inputs

The petitioners alleged, and we initiated an investigation with respect to, upstream subsidization of hot-rolled coil, blooms and billets ("steel inputs"). We found no evidence that the companies under investigation received a competitive benefit in their purchases of steel inputs.

Section 613 of the Trade and Tariff Act of 1984, signed by the President on October 30, codifies the standards for determining upstream subsidies. This section generally codifies Department practice. Our investigation was consistent with both Department practice and the newly codified standards.

Petitioners' Comments

Comment 1. Petitioners contend that the entire amount of DFE rebate must be held to be a subsidy absent specific and detailed information showing how the rebate is calculated with reference to each stage of OCTG production by integrated and non-integrated producers and demonstration that the amount of DFE rebate is not excessive. They argue that the Spanish government has never demonstrated that its original calculations of the incidence of indirect tax affecting OCTG were reasonable when they were made. They further argue that the Government of Spain has not provided information concerning either OCTG producers' purchases of inputs or indirect taxes paid on those purchases. Thus, it has failed to demonstrate that DFE rebates for OCTG exports are based on the indirect taxes assessed on its production.

DOC Position. In previous countervailing duty cases on Spanish products, the Department has determined that the Spanish government applied proper techniques to make a reasonable estimate of the indirect tax incidence borne by final stage products and linked to the rebate. For purposes of this investigation, the Spanish government has supplied the Department with its calculations of the average indirect tax incidence on OCTG. Therefore, we have determined that the Spanish government has reasonably calculated the indirect tax incidence on inputs into OCTG.

Comment 2. Petitioners contend that TR is not entitled to DFE rebates because it purchases at least 97 percent of its raw materials from a related supplier.

DOC Position. During our verification, we found that TR purchased some of the billets used in the production of OCTG from unrelated companies in 1983. In determining the percent of DFE overrebate, we have allowed only those indirect taxes paid on purchases of inputs from unrelated suppliers.

Comment 3. Petitioners contend that the short-term benchmarks used in the preliminary determination do not accurately reflect the rates the AHV and TR would pay for commercial financing, since they are based on a three-year average of prime rates for loans in the commercial market.

DOC Position. We did not use a three-year average of prime rates as our short-term benchmark. Our short-term benchmarks are the 1983 weighted-average commercial lending rates for loans of up to three months and loans "of one to three years" as published by the Bank of Spain in its February 1984 *Boletin Estadistico*. We have determined that these rates are the most accurate reflection of short-term commercial financing in Spain.

Comment 4. Petitioners contend that the Department should use as a short-term benchmark for operating capital loans the average prime rate in 1983 for loans of one year, plus a two percent spread.

DOC position. During our countervailing duty investigation of Potassium Chloride from Spain, we found new information concerning the commercial financial market in Spain. We have determined that the rate for loans "of one to three years" published by the Bank of Spain in the *Boletin Estadistico* is the appropriate commercial benchmark for operating capital loans. We have found that this rate reflects the average interest rate on one-year loans which may be rolled over twice and not the average interest rate on loans with one to three year terms. Thus, these are interest rates for loans of comparable (i.e., one-year) terms. In choosing benchmark interest rates, the Department prefers a rate which reflects actual commercial borrowing experience to a theoretical construct such as the prime rate plus two percent.

Comment 5. Petitioners contend that effective rates are the most appropriate basis for a benchmark.

DOC Position. We agree and for the final determination we have compared effective preferential rates with effective commercial rates whenever adequate information was available to determine effective rates.

Comment 6. Petitioners contend that the spread used by the Department to calculate the "risk premium", i.e., the spread between Aaa and Baa bonds, does not accurately reflect the premium an uncreditworthy company must pay in the commercial market. They suggest that the Department calculate the spread between Aaa and Caa bonds, as an alternative.

DOC Position. As we stated in our Subsidies Appendix, we believe the most appropriate measure of the risk premium is the spread between Aaa and Baa bonds. Petitioners have not presented any evidence supporting their claim that the larger spread more accurately reflects what an uncreditworthy company would pay.

Comment 7. Petitioners contend that Spanish OCTG manufacturers may receive subsidies either through preferential prices for purchased material inputs or through upstream subsidies on inputs which they produce.

DOC Position. We verified that the companies under investigation do not receive a competitive benefit from purchases of subsidized steel inputs. At verification, we also found that discounts received by TR and Tubacex on electricity rates are provided by a privately-owned utility company as part of a commercial transaction. Finally, we believe that government-set price floors on coal do not confer a benefit on OCTG producers, because they do not result in a cost savings on OCTG production.

Comment 8. Petitioners contend that the Department erred by not investigating whether the Deferral of Tax and Social Security Debt which the Department has termed "generally available" bestows countervailable benefits on particular segments of Spanish industry such as OCTG producers. They argue that the Department must look at the pattern of disbursements under the programs to determine if OCTG producers or exporters as a group receive a disproportionate benefit.

DOC Position. In Carbon Steel Wire Rod from Spain (49 FR 19555), we found that the deferral of company tax and social security debt owed to the Government of Spain is authorized by general legislation and is available on equal terms to all Spanish companies. Petitioners have presented no new evidence to indicate that OCTG producers benefit disproportionately from these programs.

Comment 9. Petitioners contend that since AHV and TR account for only 75 to 80 percent of Spanish OCTG exported to the United States, the Department should insist on receiving information from other Spanish OCTG producers.

DOC Position. The Department does not need to receive information from all exporters. In this case, we requested that three other known exporters of Spanish OCTG respond to the questionnaire because we did not believe that AHV and TR accounted for a representative portion of Spanish exports of OCTG to the United States. Nonetheless, having sent the questionnaire as we did, for the two companies which did not respond of our questionnaire, we estimated benefits on the basis of the "best information available", because we believe it is inappropriate to calculate countervailing duty rates based on selective responses to our questionnaires.

Comment 10. Petitioners contend that Spanish OCTG producers may have received equity infusions under Law 60/1978 and Royal Decree 878/1981 and request that the Department investigate this matter during verification.

DOC Position. In our final affirmative countervailing duty determination on Certain Carbon Steel Products from Spain (47 FR 51438), we found that AHV did not receive a subsidy from a 1981 government stock purchase. Since petitioners did not present any new evidence of government equity infusions in AHV or in any of the other Spanish OCTG companies in their petition, we decided not to initiate on government equity infusions. In their prehearing brief, counsel for petitioners alleged a possible government equity infusion into TR. We verified that there have been no government equity infusions into TR.

Comment 11. Petitioners contend that AHV may benefit from CADEM (Center for Mining Development and Saving), a program administered by the Basque government to save energy.

DOC Position. We found that only TR received a grant under this program and have determined that this program does confer a benefit.

Respondents' Comments

Comment 1. Respondents contend that the Department's preliminary determination to countervail against the entire amount of the DFE rebate received by AHV on the grounds that no information was supplied with respect to purchased inputs is unjustified and contrary to the methodology applied by the Department in numerous prior determinations, including its determination with respect to the DFE received by AHV in its countervailing duty determination with respect to Certain Carbon Steel Products.

DOC Position. In calculating the amount of overrebate conferred by the DFE on each of the Spanish companies, the Department estimates the amount of indirect taxes paid by each company on its physically incorporated inputs. Because integrated producers do not pay turnover taxes on their final stage inputs (in this case, billets), we do not believe it is appropriate to include an estimate of indirect taxes paid on these inputs in our calculation of the total indirect tax incidence. Therefore, for each of the companies under investigation, we requested information on the amount of indirect taxes actually paid on purchased inputs, and on the portion of those purchased inputs physically incorporated in the final product. Where this information was not provided, we have used best information available and countervailed the entire DFE rebate.

Comment 2. Respondents contend that the long-term benchmark rate used by the Department to calculate subsidies for long-term preferential loans should not be the average maximum long-term commercial interest rate, but rather the weighted-average interest rate actually paid on the companies' long-term commercial loans during the period of investigation.

DOC Position. In our final determination, we have used the national average interest rate for loans "of over three years" published in the *Boletin Estadistico* as the benchmark for loans to creditworthy companies. For lack of company-specific rates, we have determined that this rate is the appropriate long-term benchmark, because it reflects the national average long-term commercial borrowing experience. For uncreditworthy companies, it is Department policy to measure loan benefits by finding the highest long-term commercial interest rate commonly available and adding a "risk premium". In Spain, this rate is the maximum rate on long-term loans published in the *Boletin Estadistico*.

Comment 3. Respondents contend that the weighted-average cost of capital used by the Department is excessive since the erroneously high long-term benchmark interest rates were also used as an estimate of the weighted cost of capital. They contend that this results in a further overstatement of the subsidy from long-term preferential financing.

DOC Position. It is the Department's policy to use the company-specific weighted-average cost of capital as the discount rate for valuing benefits that are allocated over time. One element of the weighted-average cost of capital is the firm's marginal cost of long-term debt. When we have no company-

specific cost of debt we use the long-term benchmark interest rate. The choice of this rate to represent the firm's marginal cost of debt is not erroneous. Nor does it overstate the value of the subsidy.

Comment 4. Respondents contend that the Department's determination with regard to the uncreditworthiness of AHV is erroneous because it is based solely upon various financial indicators calculated from its financial statements. Respondents argue that the Department can and must take into consideration the ability of the company to obtain commercial loans, and that if the company is able to obtain commercial loans without a government guarantee, then the Deparment should ignore financial ratios and determine the company to be creditworthy.

DOC Position. We disagree. We believe a determination of creditworthiness should be based on several factors including, but not limited to, the availability of credit from commercial sources. It is often possible, for instance, for uncreditworthy companies to obtain short-term commercial credit because of the low level of risk associated with short-term debt and the frequent existence of security.

Comment 5. Respondent contend that in its preliminary determination, the Department calculated a subsidy for a number of loans made to AHV by private banks which did not benefit from an INI guarantee. Inasmuch as these private bank loans were not mandated by the Spanish government and do not benefit from INI guarantees, the Department has no basis on which to determine these loans countervailable.

DOC Position. At verification, we found evidence of government involvement, as a result of which the banks' decision to grant these loans was linked by verbal agreement to a government loan under Law 60/1978; therefore, to determine whether AHV received a countervailable benefit, we compared the interest rates on these loans with our long-term commercial benchmark.

Comment 6. Respondents contend that during verification, the companies provided the Department with information on the cost of commercial loan guarantees. Respondents suggest that this cost be used as a benchmark against which the cost of INI guarantees can be compared for purposes of calculating the subsidy.

DOC Position. We did not receive adequate information during verification to determine the cost of comparable commercial guarantees; therefore, in calculating subsidies on government-guaranteed loans, we compared the interest rates on these loans with our benchmark interest rates in accordance with the method specified in our Subsidies Appendix (49 FR 18019).

Comment 7. Respondents contend that in the absence of evidence establishing that the benefit of any subsidy accorded a supplier of steel inputs was in fact passed on in the input price paid by the companies under investigation, there can be no basis for determining that OCTG products received the benefit of any subsidy on suppliers of such steel inputs.

DOC Position. We agree. During verification we found no evidence that the companies under investigation received a competitive benefit from purchases of subsidized steel inputs.

Verification

In accordance with section 776(a) of the Act, we verified data used in making our final determination. During this verification we followed normal procedures, including inspection of documents and inspection of the manufacturer's production methods and records.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The net subsidy for each firm is as follows:

Company	Final determination rate (percent)	Cash deposit rate (percent)
AHV	11.29	17.84
TR	16.37	16.17
Tubacex	19.87	17.67
B&W	24.74	33.34
TRAMESA	24.74	33.34
All Others	15.00	17.21

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs Service to assess countervailing duties on all entries of OCTG from Spain entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, and to require a cash deposit for an amount equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)).

Dated: November 20, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-31427 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-537-007]

Final Determination of Sales at Less Than Fair Value; Certain Valves, Couplings, Nozzles and Connections, of Brass, Suitable for Use in Interior Fire Protection Systems, From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain valves, couplings, nozzles and connections, of brass, suitable for use in interior fire protection systems, from Italy (fire protection products) are being sold, or are likely to be sold, in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise. We have directed the U.S. Customs Service to require a cash deposit or the posting of a bond for each such entry in an amount equal to the estimated dumping margin, as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Julia E. Hathcox, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-0184.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation and in accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), we determine that fire protection products from Italy are being sold in the United States at less than fair value, within the meaning of section 731 of the Act.

We found that the foreign market value of fire protection products from Italy exceeded the United States price on all sales. The overall weighted-average margin on all sales compared is 3.47 percent.

Case History

On January 3, 1984, we received a petition from Badger-Powhatan, a division of Figgie International Inc., on behalf of the fire protection products industry in the United States. In accordance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of fire protection products from Italy are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that these imports are materially injuring, or threatening to materially injure, a United States industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated the investigation on February 13, 1984 (49 FR 6398). On March 1, 1984, the ITC determined that there is a reasonable indication that imports of fire protection products are materially injuring a United States industry.

On March 2, 1984, we presented an antidumping questionnaire to Rubinetterie A. Giacomini S.p.A. (Giacomini), the sole Italian manufacturer selling the subject merchandise for export to the United States. We received a response from Giacomini on April 20, 1984. On July 2, 1984, we preliminarily determined that there is a reasonable basis to believe or suspect that fire protection products from Italy are being, or are likely to be, sold at less than fair value. On July 9–13, 1984, we verified Giacomini's response. On August 20, 1984, we published a notice postponing our final determination from September 17, 1984, until November 23, 1984, at the request of counsel for the respondent in accordance with section 735(a)(2)(A) of the Act (49 FR 32296). We received supplementary responses on August 13, August 20, and September 17, 1984, and verified these responses in Italy during the period October 24–26, 1984.

On October 16, 1984, in accordance with requests from counsel for petitioner and counsel for respondent, a public hearing was held.

Scope of Investigation

The merchandise covered by this investigation includes: Fire hose couplings (1½ and 2½ inch), fog/straight stream nozzles (1½ and 2½inch), angle-type hose gate valves (1½ and 2½ inch), wedge-disc hose gate valves (2½ inch), single and double clapper siamese fire department connections (2½ inch inlets and 4 inch outlets), pressure restricting valves, and pressure regulating valves. This merchandise is currently classified under the following item numbers of the *Tariff Schedules of the United States (Annotated)*: fire hose couplings—657.3540, fog/straight stream nozzles—680.1480, angle-type hose gate valves—680.1440, wedge-disc hose gate valves—680.1430, single and double clapper siamese fire department connections—680.1420, pressure restricting valves—680.1440, and pressure regulating valves—680.2740.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with home market prices, third country prices or constructed value. We used home market sales of nozzles, wedge-disc hose gate valves, couplings and angle hose gate valves for purposes of comparison. We used sales to Canada of siamese connectors and pressure restricting valves for purposes of comparison. Since the pressure regulating valves were sold only in the United States, we used constructed value as our basis for comparison.

The use of Italian home market prices for nozzles, wedge-disc hose gate valves, couplings and angle hose gate valves represents a departure from our preliminary determination, in which we used sales to Canada of such or similar merchandise as the basis for our comparisons. Following the preliminary determination, the Department determined that for the previously mentioned products sales of such or similar merchandise did exist in the home market during the period of investigation.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price, because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. We calculated the purchase price based on the F.O.B., C. & F., or C.I.F., packed price to unrelated U.S. customers.

We made deductions, where appropriate, for inland freight, marine insurance, ocean freight and a surcharge for less than container/load shipments.

Foreign Market Value

In accordance with section 773 of the Act, we based foreign market value on the F.O.B., delivered, packed prices or ex-factory, packed prices of nozzles, angle hose gate valves, wedge-disc hose gate valves, and couplings sold in the Italian home market. We compared identical merchandise where possible. Where no identical merchandise was sold in the home market we made comparisons in accordance with section 771(16)(B) or (C) of the Act.

For these four product categories, we made deductions, where appropriate, for foreign inland freight. Giacomini reported average inland freight charges for all lines of merchandise sold in its home market. We were able to ascertain an amount for inland freight specifically related to sales of the merchandise under investigation. We have used this verified weighted-average amount in making these deductions. We also deducted home market packing costs and added the costs of U.S. packing. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(4)(C) of the Act. Adjustments for differences in the merchandise were based on differences in the cost of material, direct labor, and directly related factory overhead. We also adjusted, where appropriate, for differences between the commission on sales in the Italian market and indirect selling expenses in the U.S. market in accordance with 19 CFR 353.15(c). Further adjustments were made for differences in credit terms between the home market and U.S. market. We disallowed a five percent adjustment to the gross price for before sale warehousing as this claim was not in accordance with 19 CFR 353.15(a). We also disallowed a claim for publicity costs, because such costs were not attributable to a letter sale of the merchandise by a purchaser. We did not allow a claim for a quantity discount because, although respondent alleged cost justifications for selected models, respondent did not demonstrate that this discount was granted on all sales of comparable quantities. We also did not allow a claim for expenses paid to the

home market sales personnel of Giacomini as part of that company's compensation plan because these expenses were indirect selling expenses.

Foreign market value for single and double siamese fire department connections and pressure restricting valves was based on the F.O.B., packed prices of Canadian sales. We made similar merchandise comparisons in accordance with section 771(16)(B) of the Act.

We made deductions, where appropriate, for foreign inland freight. We made adjustments for physical differences in the merchandise in accordance with section 773(a)(4)(C) of the Act. Such adjustments for differences in the merchandise were based on differences in the cost of material, direct labor, and directly related factory overhead. We made adjustments for differences in credit expenses in the United States and Canadian markets. Since these two product categories were sold in identical packed conditions in the U.S. and Canadian markets, no adjustment was made for packing when comparing these sales.

We did not allow a claim for a quantity discount because, although respondent alleged cost justification for selected models, respondent's sales listing did not demonstrate that this discount was granted on comparable quantities of all sales.

For the pressure regulating valves, we used constructed value. Where we used constructed value as a basis for foreign market value, we calculated it to include the costs of materials, fabrication, general expenses, profit and cost of packing. We found that respondent's general expenses were greater than 10 percent of materials and fabrication; therefore, we used respondent's general expenses. We found that respondent's profit was larger than 8 percent of material, fabrication and general expenses; therefore, we used respondent's profit.

Petitioner's Comments

Comment 1. Petitioner states that foreign market value for the A7/1 adjustable fog/straight stream nozzle should be based on home market prices reasonably contemporaneous with export prices to the United States. Petitioner further states that where no home market sales of the A7/1 were made near the date of export of the A7 to the United States, the Department should rely upon offers for sale as the basis for foreign market value.

DOC Position. For purposes of the final determination, we found and used actual sales of the A7/1 nozzle made in the Italian market during the period of investigation. Giacomini made sufficient sales of this product in the home market during the period of investigation to warrant the comparison of actual sales in the home market to sales to the United States. Since we used actual sales, petitioner's comment that we should use offers of sale is moot and need not be addressed.

Comment 2. Petitioner states that the R55 wedge-disc hose gate valve sold in the Italian market should be considered similar to the A53 wedge-disc hose gate valve sold by Giacomini in the United States and that the Department should base foreign market value of the A53 wedge-disc hose gate valve on the sales price or offered price of the 2½ inch R55 wedge-disc hose gate valve sold in Italy. Petitioner further comments that the R55 gate valve in comparable merchandise as it is used for "like" purposes; namely, the control of a flow of water in a straight stream in a stand pipe system.

DOC Position. We agree. The Department had determined that the R55 wedge-disc hose gate valve sold in Italy is similar merchandise to the wedge-disc hose gate valve sold by Giacomini in the U.S. market in accordance with section 771(16)(C) of the Act. During the course of verification, the Department determined that construction of the R55 was closely related to that of the A53. In addition we found the R55 and A53 valves to be of the same class or kind and used for like purposes, that is, to control a flow of water in a straight stream in a stand pipe system. The R55 is sold on an individual basis in the home market. During the course of verification, we could not establish that the R55, as an individual product, is used in the Italian market only for plumbing and heating and not for fire protection purposes. We verified that customers in the Italian market who purchase fire protection products also purchase the R55 as an individual unit. Therefore, we do not consider the fact that the R55 is part of a large unit used for fire protection purposes (A20) to be relevant to our decision that the R55 is similar merchandise to the A53. Thus we determine that the R55, on an individual basis, is similar to the A53.

Considering the statutory preference for comparing merchandise sold to the United States to the sold in the country of exportation, the Department had determined that the R55 valve is the proper comparison for the A53 valve for this final determination. Accordingly, we have not used the Canadian market sales of A56 angle hose gate valves that were used for our preliminary determination comparisons.

Comment 3. Petitioner states that the A20 truck couplings produced in Italy by Giacomini perform the identical function in Italy as siamese fire department connections in the United States. Petitioner states that these articles are "such or similiar" merchandise to the siamese fire department connections sold by Giacomini to the United States. According to petitioner, the truck coupling is used in the Italian home market in the same manner and for the same purpose as a fire department connection in the United States; that is, both the truck coupling and the siamese connector permit a fire truck to attach a hose to a building and to pump water into the building to supplement the municipal water supply and to increase the pressure of the water going into the stand pipe system.

DOC Position. We disagree. The Department has determined that the A20 truck coupling sold in Italy cannot be considered such or similiar merchandise within the meaning of the statute when compared to siamese fire department connections in the United States. First, the siamese clapper and the A20 truck coupling are quite different in appearance. They are composed of different components, with the clapper being made mainly of brass and the A20 being composed of brass, steel, aluminum, rubber and other materials. The working components of these two items differ considerably. The A20 consists of four different valves, each having a specific function and each having a certain number of subparts. The double siamese clapper, however, consists merely of a body, two clappers and pinlug swivels. Thus, we feel that these two products are different, rather than similiar, in terms of both material components and parts.

In addition the siamese clapper and the A20 truck coupling are not similiar in the purposes for which used under either section 771(16)(B) or (C) of the Act. The double siamese clapper has the sole purpose of providing an auxiliary inlet to supplement the fire protection water supply. The A20 also prevents contamination of the municipal water supply when the fire protection system is in use and also prevents possible backflow problems. The four different valves on the A20 serve two purposes, the prevention of backflows and unacceptably high water pressure. The A20's relief valve works as a safety measure to prevent increased water pressure from contaminating the municipal water supply, while the swivel valve and gate valve start, stop, and control the flow of water during operation.

In light of this, the Department used Canadian sales of siamese clappers to compare with sales of siamese clappers in the United States for this final determination.

Comment 4. Petitioner states that Giacomini's home market sales response discloses that the alleged total quantities of nozzles, couplings, and valves do not agree with the quantity of merchandise set forth in other Giacomini sales material. In addition, petitioner states that the total realized selling valves submitted for sales between August 1, 1983, and January 31, 1984, do not agree with the totals for each product reported in the home market sales computer printout.

DOC Position. The Department recognizes that certain discrepancies regarding the quantity of merchandise and overall sales vales exist when comparing certain Giacomini sales material and the home market sales computer printout. We must point out that respondent's invoicing procedures are not computerized. For purposes of submitting this response, respondent manually gathered invoices and put the information required from them into a form usable for producing a computerized response. The Department recognizes that Giacomini's response may be characterized by some slight discrepancies. However, these discrepancies are too minor to warrant a rejection of the entire Giacomini response.

Comment 5. Petitioner states that the Department should not permit any adjustments to foreign market value for quantity discounts claimed as a deduction by Giacomini. Petitioner states that, with regard to these claimed quantity discounts, Giacomini has failed to show that there are cost savings directly attributable to the production of different fire protection products and that, rather than a cost-based quantity discount, the quantity discount is nothing more than a selling device to obtain long-term contracts from U.S. customers. Petitioner has pointed out that quantity discounts have been given by Giacomini on certain shipments of lesser quantities and not on certain shipments of greater quantities. Thus, petitioner states that the discount is not shown to be based on the actual quantity purchased, but is allegedly the result of savings occasioned by the length of the contract. Petitioner states that the cost justifications presented are no more than *post hoc* attempts to find savings which did not actually accrue with respect to specific shipments of specific quantities.

DOC Position. We agree. For purposes of the final determination, the Department has disallowed the quantity discount claimed by respondent in its U.S. market. The Department cannot accept a claim for adjustment for differences in quantities on the basis of the volume of sales contracted for by a particular customer unless the discount is given on all sales of comparable quantities. Respondent has not submitted sufficient information to demonstrate that such savings relate to individual sales, and there are sales to the U.S. reflecting no discounts that were larger volumes that those to which quantity discounts were applied.

Comment 6. Petitioner states that the Department should reject alleged differences in credit costs and investigate credit terms offered to U.S. customers. Petitioner states the Department verified that the payment period on certain selected U.S. invoices was longer than 90 days as reported by Giacomini and that, as a result, credit costs are higher than reported in the response. Petitioner also states that there is no mention in the verification report of whether the interest rate used to compute credit costs was verified. In addition, petitioner questions the credit costs shown in the home market questionnaire response. Petitioner indicates that Italian credit costs may be overstated.

DOC Response. During the course of verification of the U.S. response, the Department did find that the payment period for certain U.S. invoices was longer than the 90 days reported by Giacomini. The Department did verify the interest rates used in calculating the U.S. credit costs. All of the above was taken into consideration for purposes of this final determination. In addition, Giacomini's home market credit percentages, used to report credit expense, were verified and no discrepancies were found.

Comment 7. Giacomini exported the models A165 and A167 pressure control valves to the United States during the period of investigation. Since there were no home market, Canadian or sales to other third countries of these articles, the Department, for purposes of its preliminary determination, based the foreign market value of these products on constructed value. The production costs upon which these constructed values were based were verified by the Department. Petitioner states that this verification covered only the cost of materials, processing costs, and selling and general administrative expenses. Petitioner states there is no mention in the verification of depreciation, research and development costs, and tooling costs which one could expect to be found in the case of "prototypes" with "problematic engineering configuration."

DOC Position. Processing costs includes such items as labor and factory overhead, the latter of which in Giacomini's case is composed of nearly twenty separate accounts and was included in the constructed value of models A165 and A167. There is no specific account entitled research and development (R & D). However, costs associated with R & D are accumulated through overhead and labor accounts, specifically, through the accounts labelled tests and inspections, worker wages and employee salaries, maintenance and repair of machinery, and equipment and tooling. Therefore, the Department's calculations of constructed value accounted for all elements of costs.

Comment 8. While Giacomini claims it does not sell pressure restricting valves in the home market, petitioners notes the inclusion of a "pressure restricting device" in Giacomini's literature discussing Italian fire protection products in general. Petitioner questions whether or not Giacomini sells such a pressure restricting valve in the home market and states that investigation of this question is necessary.

DOC Position. At verification, the Department made every effort to ascertain whether Giacomini sells pressure restricting valves for fire protection purposes in the home market. As a result, the Department has determined that Giacomini does not sell a pressure restricting valve in Italy. Therefore, the Department has used pressure restricting valves sold by Giacomini in a third country, Canada, for comparison to the pressure restricting valves sold in the United States.

Comment 9. Petitioner notes that respondent has claimed an adjustment for publicity costs in its Italian sales response. Petitioner states that, absent information that respondent incurred these publicity costs on behalf of its customers' resales, this adjustment is not permissible.

DOC Position. We agree. During the course of verification, the Department found no evidence that the publicity costs claimed as an adjustment by Giacomini were made on behalf of customer resale efforts. According to 19 CFR 353.15(b), "allowances generally will not be made for differences in advertising and other sellings costs of a seller unless such costs are attributable to a later sale of the merchandise by a purchaser." In accordance with our regulations, the Department did not

allow this adjustment for purposes of the final determination.

Comment 10. Petitioner states that production cost figures for Giacomini's home market and U.S. market products are understated in Giacomini's supplemental submission when compared to the cost figures found in Giacomini's original questionnaire response. Petitioner states that, in view of this, the Department should use the cost differences present in the original questionnaire response for purposes of the final determination.

DOC Position. During verification of the original response, the Department discovered that the company had provided costs which did not correlate to the period of investigation. Instead, the company has extracted the most current information available from its accounting records.

As discussed in the verification report, the Department requested that the response be re-worked using information corresponding to the period of investigation. The revised costs were those which were verified. The most significant change between the two responses occurred in the area of raw materials, where the prices paid for brass increased substantially during the period. There were no changes in the methodology used to allocate expenses to the products.

Comment 11. Counsel for petitioner requested that the Department make a detemination regarding the proper basis for comparison of Giacomini's sales to the United States. Petitioner pointed out that while identical products may not have been sold in the home market, products which could be considered similar merchandise possibly were being sold in the home market. Petitioner pointed out that similar home market products would be statutorily preferred for comparision purposes to similar or identical products sold in a third country, Canada in this case.

DOC Position. In its April 20, 1984, questionnaire response, respondent provided a listing of all Canadian sales and all U.S. sales of the merchandise under investigation. The Department determined to use the Canadian sales of straight stream/fog nozzles, wedge-disc hose gate valves, angle hose gate valves, couplings and connectors as the basis for comparision for purposes of the preliminary determination. For pressure regulating valves we used constructed value since there were no sales of similar merchandise in the home market or to third countries. After the preliminary determination, the Department requested that respondent submit a listing of all products sold in the home market which could be considered as fire protection products. The Department determined that similar wedge-disc hose gate valves, couplings and hose gate valves and identical straight stream/fog nozzles were being sold in the home market. The Department requested home market sales listings from Giacomini for all those products. In response, Giacomini submitted a home market sales listing which included angle hose gate valves, straight/stream fog nozzles, and fire hose couplings. Upon further request from the Department, respondent submitted sales of the R55 wedge-disc hose gate valve. According to respondent, siamese connectors and pressure restricting valves were not sold in the home market during the period of investigation. As this was substantiated during our verification, we considered Canadian sales of siamese connectors as the proper basis of comparision for our final determination.

An explanation of the Department's decision that similiar merchandise, or identical merchandise in the case of the fog nozzles (See DOC position in response to Petitioner's Comment 1), was sold in the home market during the period of investigation follows. In examining the similiar merchandise question, the Department looked to the criteria for similiar merchandise as listed in section 771(16) of the Act. To be viewed as similiar merchandise, under section 771(16)(C) of the Act merchandise must be: (a) Produced in the same country and of the same general class or kind as the merchandise which is the subject of the investigation, (b) like that merchandise in the purposes for which used and (c) such that the administering authority determines may be reasonably compared with that merchandise. First, the Department determined that all products involved in this discussion are produced in Italy, manufactured by Giacomini, and are of the same general class or kind of merchandise subject of this investigation. Specifically, we determined that the USA–A70 coupling 1½ inch and the USA–A70 coupling 2½ inch are both similar to both the Italian A9/1 coupling set 1½ inch and the Italian A10/1 coupling set 2½ inch in general physical characteristics in that all are produced by the same manufacturing process, consist of the same component parts, show similarity in weight and are produced from the same major material component, brass. We also determined that both the USA–A56 hose gate valve 1½ inch and the USA–A56 hose gate valve 2½ inch are similiar to both the Italian A1½ hose gate valve 1½ inch and Italian A 12/3 2½ inch hose gate valve in general physical characteristics in that all are produced by the same manufacturing process, consist of the same component parts, show similiarity in weight, and are produced from the same major component material, brass. We determined that the USA–A70 coupling 1½ inch, the USA–A70 coupling 2½ inch, the Italian A 9/1 coupling set 1½ inch, and the Italian A 10/1 coupling set 2½ inch are all used for the same purposes. The U.S. and Italian couplings perform the same function; that is, connecting fire hoses. The Italian couplings are externally threaded while the U.S. couplings are internally threaded. However, this is not a significant difference as the two couplings can still be attached to fire hoses and can be use to extinguish fires. The U.S. and Italian products are produced to meet different testing specifications. However, it is possible to use and Italian coupling in the United States within the confines of its testing paramerers, and vice versa.

We determined that the USA–A56 hose gate valve 1½ inch, the USA–56 hose gate valve 2½ inch, the Italian A 1½ hose gate valve 1½ inch and the Italian A 12/3 2½ inch hose gate valve are all used for the same purposes because both Italian and U.S. angle hose valves are used similarly for the control of water flow. Regardless of the fact that Italian angle hose valves are pressure tested and hydrostatically tested to withstand pressures lower than the U.S. valves which are tested to meet United Laboratories Underwriters (UL) specifications, the two valves perform the same function in the U.S. market as well as the Italian market.

The Department has also determined that all of the aforementioned U.S. merchandise may be reasonably compared to the specified Italian home market merchandise.

Finally, the Department decided that the fact that the U.S. products were produced to meet UL standards, while the Italian products meet other standards, was not a factor which would warrant a decision that the previously mentioned products were not similar.

For discussion of the such or similiar issue with regard to the R55 wedge-disc hose gate valve, see Petitioner's Comment 2.

Comment 12. Petitioner states that respondent may have lowered production costs by allocating all production costs on the basis of labor hours per unit rather than on the basis of the relative weight of domestic versus U.S. products. Petitioner further states that examination of the verification report suggests that costs may have been attributed to units on the basis of labor hours or machine time.

DOC Position. The Department verified the methodology used to allocate all processing costs and is satified that these costs were properly allocated on the basis of "machine time," which is the appropriate basis for the allocation of processing costs. "Machine Time" includes machine, labor and other expenses which are directly identifiable with the product by the time required for production. The amounts were reconciled to Giacomini's annual financial statements to ensure the inclusion of all expenses in the allocation process.

Comment 13. Petitioner notes that, in respondent's home market submission, indirect selling expenses are claimed as an adjustment with respect to all home market sales in which a commission was not paid.

Petitioner states since no commissions have been claimed as a deduction from the United States price, no allowance for indirect selling expenses can be made to foreign market value.

DOC Position. For purposes of the final determination, the Department has not allowed respondent's claim for indirect selling expenses in the home market. Because respondent has claimed no commissions in the U.S. market, indirect selling expenses cannot be allowed as an adjustment to the foreign market value.

Comment 14. Petitioner states that the Department's verification of home market data, which took place before respondent's submission, covered cost figures supporting alleged differences in merchandise only for the A56 2½ inch angle hose gate valve sold in the Canadian market, the model A11 1½ inch hose gate valve sold in the home market, and the A56 1½ inch hose gate valve sold in the United States. Petitioner notes that this cost verification was conducted prior to the supplemental submission by Giacomini detailing the production cost of all home market nozzles, couplings, and valves. Petitioner states that the Department should have undertaken a verification of the new submission.

DOC Position. Anticipating the possiblity of changes in market comparisons from those used in the preliminary determination, the Department selected and verified differences in merchandise cost data submitted by Giacomini in its original submission. As no discrepancies were found, we do not feel compelled to verify additional difference in merchandise claims.

Comment 15. Petitioner argued that because of delays, lack of narrative explanations, inadequate responses, and factual errors, the questionnaire response and respondent's supplemental data should be rejected in favor of using the best information otherwise available.

DOC Position. The Department received and verified all information it believes necessary in order to reach a final determination. The Department was able to verify responses and adjustments. We were satisfied at verification that the underlying bases for adjustments and cost of production methodology were adequately explained.

Respondent's Comments

Comment 1. Respondent requests that the Department make a determination as to whether Badger-Powhatan, petitioner, is truly representative of the industry(ies) on behalf of which it brought this petition. Noting the ITC's decision which found "seven like products and seven domestic industries" and the ITC's further statement that "for several products, the petitioner's share of the market was not large enough to render it representative of that particular industry," repondent requests that the Department determine whether petitioner is representative of any of the "domestic industries involved in this investigation." In addition, respondent requests that, should the Department find that Badger-Powhatan is not representative of any of the seven domestic industries, the scope of this investigation be modified to include only those industries of which Badger-Powhatan is representative.

DOC Position. After fully considering respondent's arguments regarding whether Badger-Powhatan has properly filed the petition in this case on behalf of the domestic industry, the Department has determined that petitioner does have legal standing. First, Badger-Powhatan does have the support of the industry as evidenced by letters written by Elkhart Brass Manufacturing Co. and John W. Moon, Inc. in support of the petition. In its preliminary determination, the ITC stated that the only three manufacturers producing a full line or nearly full line of brass components for fire protection systems are the petitioner, Elkhart and Moon. In discussing the question of whether Badger-Powhatan filed on behalf of the domestic industry, respondent cities action taken in the *Hot-Rolled Carbon Steel Sheet from Belgium and the Federal Republic of Germany* (Gilmore Steel). In seeking to determine whether the Gilmore Steel Corporation was representative of the industry, the Department sent letters to other producers asking if they supported Gilmore's petition. It determined that the vast majority of domestic producers of the merchandise under that investigation were opposed to the petition. Consequently, the Department dismissed Gilmore's petition. This, however, is not the case with Badger-Powhatan. Rather, petitioner has the support of two other major companies in this industry, and no U.S. producer has expressed oppossition to the petition.

We also note that the ITC's statement, that for several products the petitioner's share of the market was not large enough to render it representative of that particular industry, is actually, when taken in the full context of the Commission's statement, not a reference to the standing of the petitioner. Rather, it refers to whether the petitioner's profit-and-loss data could be extrapolated to the entire domestic industry.

Comment 2. Respondent argues that the Department should allow respondent's claim for adjustment based on quantity discounts. Respondent states that based on 19 CFR 353.14(b)(2) allowances can be made if "the exporter can demonstrate that the discounts are warranted on the basis of savings which are specifically attributable to the production of the different quantities involved." Respondent feels it has provided the Department with documentation which conclusively demonstrates the cost savings realized by the large quantity purchases of respondent's U.S. customer. Respondent states that respondent's savings in production time occur when the customer informs repondent of its needs early in the year. Respondent also points out that this customer purchases a large percentage of Giacomini's exports to the United States. Respondent continues by stating that savings in production time alone justify the discounts given this customer. Respondent also states that these savings are even higher since by receiving large orders early in the year respondent realizes significant savings when purchasing raw materials in large quantities. Respondent states that the production of brass fire protection equipment involves a certain amount of outside manufacturing, which, considering the high volume of orders from this customer, allows respondent to have this outside manufacturing done at a lower cost.

DOC Position. See response to Petitioner's Comment 5.

Comment 3. Respondent claims that the Department should not include the 5 percent "maggiore deposito" in the Italian net unit price. Respondent states that this surcharge is made on goods transported and stored after sale in a warehouse located in Milan. This surcharge is attached to sales when respondent and its customers agree that the customer will either pick up or have the merchandise sent from the warehouse. Respondent states that the legislative history of the Act supports the proposition that after-sale expenses such as taxes and special charges should not be used in making net price calculations. Respondent states that the addition of this charge in the gross unit price would unfairly penalize respondent for transportation and warehousing expenses incurred after the sale.

DOC Position. We disagree. The Department has determined that the "maggiore deposito," a specific percent, should be included in the Italian net unit price. Based upon information gathered during the course of verification, the Department considers this "surcharge" to be a before sale expense which should properly be included in the net unit price. Such an expense is of a general or fixed nature and would have been incurred whether or not a sale was made; as such, it would not ordinarily be considered an adjustment under the circumstances of sales provisions of 19 CFR 353.15. Generally, the surcharge covers Giacomini's extra costs of stocking goods in Milan, which is, for clients, a more convenient location. This warehousing takes place before the sale, and the goods are removed from warehouse after the sale.

Comment 4. Respondent states that Invoice 832, a sale made to Giacomini's U.S. customer, is actually an attempted sale which does not satisfy the criteria of being a sale within the "ordinary course of trade" and, as such, should not be used for purposes of this investigation. To support this premise, respondent submits the following information: Invoice 832, dated November 23, 1983, was an attempted sale to a U.S. customer which was scheduled to arrive in New York from Italy in early December, 1983. However, the ship and the goods aboard were seized by the United States government pursuant to a bankruptcy order against the line to which the vessel belonged. Giacomini's customer was eventually informed that delivery of the seized goods would be substantially delayed and that there even existed the possibility that the products might never be released. Considering this, the U.S. customer reordered the products from Giacomini. The U.S. customer reordered on Invoices 909, 917, and 33 those products originally requested on Invoice 832. Eventually, the U.S. customer was notified that the goods aboard the seized ship had been released and agreed with respondent to accept the goods.

Respondent argues that the original sales contract of Invoice 832 became void due to the impossibility of performance upon the terms contemplated by the parties. Respondent states that when the goods from the seized ship were released, Giacomini and his U.S. customer formed a new sales contract sometime following the ship's release in February, 1984.

In essence respondent considers that Invoice 832 represents a "non-sale" during the period of investigation and that the new contract for these goods was made outside the period of investigation. Respondent further states that the seizure of the vessel rendered the performance of the sales contract impossible and thereby terminated the sales contract on Invoice 832.

DOC Position. We agree. Based upon the information submitted by repondent, the Department has decided that, because of the special circumstances surrounding it, U.S. Invoice 832 will not be used for the purpose of making this final determination. The contract which ultimately covered the goods invoiced under Invoice 832 was negotiated after the period of investigation.

Comment 5. Respondent states that the R55 wedge-disc hose gate valve does not fall within the scope of the investigation since it is neither listed as a fire protection product, nor considered as such, by Giacomini and its Italian market customers. Respondent states that the use and design of the R55, unlike other Italian products being used for comparison purposes, is for plumbing and heating operations. Respondent further states that the R55, when sold individually in Italy, is used in plumbing and heating installations, and that the R55 is used in the A20 fire engine group which is a product not under investigation. Respondent points out that the R55 constitutes less than 50 percent of the total cost of manufacture of the A20 fire engine group. In *Certain Electric Motors from Japan* 49 FR 32627 (August 15, 1984), respondent notes that the Department held that it will consider a component incorporated into a larger system for comparison purposes only if that component constitutes 50 percent or more of the total cost of manufacture of the system. Respondent states that the A55 or A56 hose gate valve sold in Canada would be a more appropriate comparison to the A53 wedge-disc hose gate valve sold in the United States than the R55 wedge-disc hose gate valve.

DOC Position. The Department does not consider the 50 percent criterion mentioned in certain electric motors from Japan relevant in this case because we did not base our determination that the R55 and A53 valves are similar on the fact that the A20 truck coupling, which contains an R55 valve, is used as fire protection equipment. As pointed out in our response to Petitioner's Comment 2, we consider the R55 valve by itself, to be of the same class or kind of merchandise as the A53 and similar in component materials. Accordingly, we have chosen to compare individual sales prices in the Italian market of the R55 to the A53 valve sold in the United States.

Comment 6. Respondent states that the A20 fire engine group produced in the home market cannot be considered "such or similar" merchandise to the siamese connector sold by respondent in the United States. Respondent states that the two products are not made from the same parts. Respondent further states the two products are not used for "like purposes" within the meaning of the Act and that they are not of the "same general class or kind." Respondent also states that it is not feasible or convenient to compare the A20 fire engine group with the siamese clapper as there already exist third country sales of identical or nearly identical siamese connectors.

DOC Position. We agree. See response to Petitioner's Comment 3.

Comment 7. Respondent argues that nozzles, couplings, and angle hose gate valves sold in the Italian market are not "such or similar" merchandise to those nozzles, couplings, and angle hose gate valves sold in the United States. Citing section 771(16)(A), respondent states that none of the products mentioned above are identical in physical characteristics. Citing section 771(16)(B), respondent claims the merchandise sold in Italy is not similar to that sold in the United States, because the merchandise is not made from the same component materials, is not used for like purposes and is not approximately equal in commercial value. Citing section 771(16)(C), respondent claims the merchandise sold in Italy when compared to that sold in the United States is not of the same class or kind as the merchandise sold in Italy which is the subject of the investigation, is not used for like purposes and cannot be reasonaby compared to the merchandise in question. To prove dissimilarity of products, respondent states that all

requirements of section 771(16) (B) or (C) must be met. With reference to (B), respondent states that Italian and U.S. couplings 1½ inch are not like in component materials and are unlike in the purposes for which used. Respondent states that the U.S. and Italian products are produced to different testing pressures, which precludes them from performing the same functions. Respondent states that the products are dissimilar in mechanical operation; that is, the U.S. product is characterized by female threading, while the Italian product is characterized by male threading.

Respondent further states that, because of the greater sophistication of the U.S. coupling, the commercial values of the two couplings are different.

With regard to the U.S. and Italian couplings 2½ inch, respondent states that the structural superiority of the U.S. coupling is indicative of the dissimilarity in component materials. In addition, respondent states that the methods of operation are different since the U.S. coupling is machine tooled with interior threading and an expansion ring which allows a mechanically advanced linkage of the coupling and the fire hose. On the other hand, respondent states that the Italian coupling is introduced into the fire hose and connected by wrapping zinc plated iron strings around the hose and, then, tightened. Finally, with regard to couplings, respondent states that the commercial values of the couplings are greatly dissimilar.

Respondent states that under section 771(16)(B) the Italian and U.S. 1½ inch angle hose gate valves are not similar. Respondent states that the component materials from which the valves are constructed are not identical since the U.S. valve has a hand wheel made of aluminum and a wheel nut made of brass, while the Italian valve has a hand wheel and a wheel nut made of steel. Respondent states the U.S. valve is over twice as large as the Italian valve and that the two valves are composed of different components, the U.S. valve having a security dowel, a disc, a disc holder and a disc nut not found on the Italian valve.

Respondent further states that with regard to the purposes for which the two products are used, the U.S. valve is constructed to withstand more pressure than the Italian product. Respondent further states that the commercial value of the two valves is dissimilar.

Respondent states that U.S. and Italian 2½ inch hose gate valves are dissimilar since the Italian valve weighs 100 percent less than the U.S. valve and the valves are made of different component materials. The U.S. valve has a steel hand wheel and wheel nut, while the Italian valve has an aluminum hand wheel and a wheel nut made from brass. In addition, respondent argues that the two valves differ in purposes for which used since they are designed to withstand different working pressures. Respondent also states that since the Italian product is smaller and less modern and, therefore, sells at a lesser price than the U.S. model, the products are not equal in commercial value.

Respondent argues that the previously mentioned products are dissimilar under section 771(16)(C) as well. With regard to the 1½ inch Italian and U.S. couplings, respondent states there are significant differences in the physical characteristics of these coupling such as weight, length, threading, method of production, and method of installation. With regard to the expectations of the ultimate purchasers, respondent states that the U.S. purchasers expect couplings which will not just connect hoses, but which will withstand a certain amount of pressure. Respondent states the major difference in the purpose of the couplings relates to the amount of water pressure each is manufactured to withstand. Respondent states that, even though couplings in both markets serve to connect fire hoses, the U.S. product is designed to function under much greater stress than the Italian coupling. With regard to the 1½ and 2½ inch hose gate valves, respondent states that certain parts of the U.S. and Italian valves are composed of different materials, that the U.S. valve is twice as large as the Italian valve, and that the angles and the threading of the two valves differ. Respondent also states that the two valves are manufactured by different methods. Respondent argues that the two valves could not meet the same expectations for ultimate purchasers since the U.S.valve is forged and the Italian valve is forged and cast. Respondent further states that the U.S. and Italian couplings do not perform the same functions since the U.S. valve, by its construction and specifications, provides substantially greater resistance to pressure.

DOC Position. We believe these are minor differences, insufficient to declare the merchandise dissimilar. See response to Petitioner's Comment 11 for further details.

Verification. In accordance with section 776(a) of the Act, we verified the information provided by Giacomini by using standard verification procedures including examination of relevant sales and financial records of the company.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the merchandise subject to investigation as described in the "Scope of Investigation" section of this notice. This suspension of liquidation applies to all the subject merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The estimated weighted-average margin is 3.47 percent.

ITC Notification

In accordance with section 733(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on fire protection products from Italy entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: November 23, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-31374 Filed 11-30-84; 8:45 am]
BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Export Trade Certificates of Review.

SUMMARY: The Department of Commerce has issued export trade certificates of review to Opti-Copy, Inc. ("Opti-Copy") and First Agricultural Manufacturer's Export Trading Company, Inc. ("FAMECO"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on these certificates. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificates as "Export Trade Certificate of Review, application number 84-00009 or 84-00029".

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, Office of General Counsel, 202-377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-40 (April 13, 1983).

The Office of Export Trading Company Affairs received applications for export trade certificates of review from Opti-Copy on February 23, 1984, and from FAMECO on August 23, 1984. The Opti-Copy application was deemed submitted on February 28, 1984. A summary of the application was published in the **Federal Register** on March 13, 1984 (49 FR 9442). The FAMECO application was deemed submitted on August 29 and a summary published on September 13, 1984 (49 FR 35972).

Description of Certified Conduct

Based on analysis of the applications and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Opti-Copy and FAMECO meet the four standards of the Act:

Opti-Copy, Inc.—Application No. 84-00009

Export Trade

a. *Products.* Graphic arts prepress imaging equipment; engineering, architectural, seismic and cartographic cameras and projectors; and components and accessories thereof.

b. *Services.* All services related to the sales and maintenance of the Products, including the advertising and marketing of the Products and providing technical application and assistance to end-users or representatives.

Export Markets

The Export Markets include all parts of the world (particularly the Middle East, Africa, Far East, Latin America and Europe) except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. Opti-Copy may enter into nonexclusive agreements with individual Suppliers to act as an Export Intermediary for Products and Services in Export Trade.
2. Opti-Copy may enter into any number of agreements with individual Suppliers whereby:

a. Opti-Copy agrees to act as the exclusive Export Intermediary for Products and Services in Export Trade, and, in addition, may agree not to act as an Export Intermediary on behalf of any competitors of such Suppliers; and/or

b. The Supplier agrees not to sell, directly or indirectly, through any other Export Intermediary, into the Export Markets in which Opti-Copy exclusively represents the Supplier as an Export Intermediary.

3. Opti-Copy may enter into and terminate exclusive and nonexclusive agreements with individual buyers in the Export Markets to act as a purchasing agent with respect to particular transactions.
4. Opti-Copy may enter into, refuse to enter into, and from time to time terminate, exclusive or nonexclusive agreements with persons (including distributors, sales representatives, brokers, customers, and sales or marketing agents located in the U.S. or any Export Market) wherein:

a. Opti-Copy agrees to deal in Products and Services in any Export Market only through that person;

b. That person agrees not to sell or offer for sale in any Export Market any Products or Services not supplied by Opti-Copy which Opti-Copy considers to compete in that Export Market with Products and Services supplied by Opti-Copy;

c. That person agrees not to represent Opti-Copy's competitors in any Export Market or not to buy from Opti-Copy's competitors for resale in any Export Market; or

d. Any combination of (a) through (c) above.

5. Opti-Copy may enter into, refuse to enter into, and terminate license agreements with persons in the Export Markets for patents, trademarks, tradenames, know-how or technical assistance with respect to Products and Services in Export Trade wherein Opti-Copy grants to the licensee the right to develop, manufacture and/or market the Products and Services in the Export Markets.
6. The agreements described in paragraphs (1) through (5) above may contain territorial, customer, price and/or quantity restrictions for the Export Markets.
7. With respect to invitations to bid or sales opportunities in the Export Markets, Opti-Copy may:

a. Contact separately Suppliers of the Products and Services specified in the invitation to bid or the purchase specifications;

b. Distribute to Suppliers separately information about the bid, bid requirements, bidding dates, and any other information necessary in order for Opti-Copy to compile a responsive bid;

c. Solicit and receive independent export quotations for the Product and Services from Suppliers separately, provided Opti-Copy does not reveal to any Competitive Supplier any such quotation by any other Competitive Supplier, or the identity of the Competitive Supplier that provided such quotation, and provided further that Opti-Copy does not reveal to any Non-competitive Supplier any such quotation by any other Non-competitive Supplier of the same or similar Products or Services as the first Non-competitive Supplier, or the identity of the Non-competitive Supplier that provided such quotation, except for the sole purpose of seeking from the first Non-competitive Supplier a more favorable quotation for an actual or potential *bona fide* purchase by Opti-Copy of the Products and Services in Export Trade;

d. Enter into agreements with individual Suppliers whereby Opti-Copy will submit a response to the bid invitation or request for quotation; or

e. Any combination of (a) through (d) above.

Definitions

"Agreements with individual Suppliers" means that the negotiations are separate from, and are not conditioned upon, negotiations and agreements with other Suppliers.

"Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export-Related Services for export sales in the Export Markets.

"Competitive Supplier" means a supplier of any Product or Service that is the same as or similar to any Product that Opti-Copy assembles or any Service that Opti-Copy provides.

"Non-competitive Supplier" means a supplier of any Product or Service that is not the same as or similar to any Product that Opti-Copy assembles or Service that Opti-Copy provides.

"Supplier" means any Competitive Supplier or Non-competitive Supplier.

Members: For purposes of this certificate, J.H. Wally, III of Lenexa, Kansas; J.R. Clagett of Overland Park, Kansas; J.C. Wally of Shawnee Mission, Kansas; and John W. Wally, M.D. of Shawnee Mission, Kansas are "members" within the meaning of section 325.2(k) of the Regulations.

FAMECO—Application No. 84-00029

Export Trade

(a) Grain bins, feed bins, farm elevators, continuous-flow grain driers, crop-drying fans, supplemental heaters, grain cleaners, conveyors and unloaders, and other equipment to weigh, clean, dry, convey, store, grade, and process grain, rice, coffee and cereal (the "Products").

(b) Services (market feasibility studies, system design and engineering, selection and purchase of compatible equipment, development of financial packages, consolidation and packaging/containerization for export, export documentation and shipping, supervision of equipment installation and start-up, equipment training, selection of spare parts inventories, and establishment of equipment maintenance schedules) in connection with the foregoing Products (the "Related Services").

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

(1) FAMECO may purchase and take title to Products from U.S. suppliers for resale in the Export Markets.

(2) FAMECO may enter into exclusive and non-exclusive agreements, each negotiated independently with a single U.S. supplier, to act as an export intermediary. Each exclusive agreement may provide that (i) FAMECO will not respresent any competitors of such supplier for Products in Export Trade unless authorized by the supplier, and/or (ii) the supplier will not sell, directly or through any export intermediary other than FAMECO, into the Export Markets in which FAMECO exclusively represents the supplier.

(3) FAMECO may enter into exclusive and non-exclusive agreements with export intermediaries for sales in the Export Markets. Each exclusive agreement may provide that (i) FAMECO will deal in Products and Related Services in the Export Markets only through that export intermediary, and/or (ii) the export intermediary will not represent FAMECO's competitors in the Export Markets nor acquire Products and Related Services from FAMECO's competitors for sales in the Export Markets.

(4) FAMECO may enter into exclusive and non-exclusive agreements with buyers in the Export Markets to act as their buying agent. Each exclusive agreement may provide that the buyer in the Export Market will acquire Products and Related Services only through FAMECO.

(5) FAMECO's agreements with individual U.S. suppliers, export intermediaries, and buyers in the Export Markets may contain price, territorial, quantity, and customer restrictions for the Export Markets.

(6) In selling to the Export Markets, FAMECO may set a single price in the Export Markets for similar Products from different U.S. suppliers.

(7) FAMECO may discuss with each of its suppliers individually the price that FAMECO will charge in the Export Markets for that supplier's Products.

(8) FAMECO may refuse to deal with any competing export intermediary or supplier to the Export Markets.

Definitions

(a) "Export intermediary" means a person who acts as a distributor, sales

representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Related Services for Export Trade.

(b) "Supplier" means a person who produces, provides, or sells a Product.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202–377–3031.

Dated: November 27, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84-31439 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

Disposal of Application for Duty-Free Entry of Scientific Instrument, Food and Drug Administration

We have discontinued processing of the Food and Drug Administration application for duty-free entry under item 851.60 of a CAMAG Reprostar and Filter Holder Kit (Docket Number 83–360). The U.S. Customs Service has ruled that the article is not eligible because it cannot function as a scientific instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Imports Programs Staff.

[FR Doc. 84-31408 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-405]

Cellular Mobile Telephones and Subassemblies From Japan; Initiation on Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1984, and we will make ours on or before April 14, 1985.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2438.

SUPPLEMENTARY INFORMATION:

The Petition

On November 5, 1984, we received a petition in proper form filed by Motorola, Inc. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The Petitioner based the United States prices on actual sales or offers of sale to U.S. purchasers less, where applicable, foreign inland freight, ocean freight, duty, insurance, handling, commissions U.S. processing, and U.S. selling expenses. Petitioner calculated foreign market value by a variety of methods for individual producers. Where available, Motorola used actual sales and offers for sale in Japan, with adjustments for freight, physical differences, credit, warranty, and other selling expenses.

For producers with no home market sales or offers, Motorola calculated constructed value using its estimates of Japanese material, labor, direct manufacturing overhead, GSA plus interest, and packing expenses, plus the statutory minimum for profits. The constructed value was then adjusted for warranty, credit, and other selling expenses.

Based on the comparison of prices to home market prices or constructed values, petitioner found potential dumping margins ranging from 40 to 111 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on cellular mobile telephones and subassemblies and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 14, 1985.

Scope of Investigation

The products covered by this investigation are cellular mobile telephones and subassemblies. Cellular mobile telephones are radio-telephone equipment designed to operate in a cellular radio telephone system, i.e., a system that permits direct telephone communication with traditional land-line telephone and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each telephone consists of: (1) A transceiver, i.e., a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, i.e., a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this investigation.

Subassemblies are circuit modules and/or any other packaged functional assemblage of electronic components, dedicated for use in cellular mobile telephone transceivers or control units. Examples of such assemblies include audio processing modules, signal processing (logic) modules, RF modules, IF modules, synthesizers, duplexers, and power amplifiers.

The following merchandise has been excluded from this investigation: pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

Cellular mobile telephones are currently classified under item number 685.29 of the Tariff Schedules of the United States (TSUS). Subassemblies can be classified under item numbers 685.23, 685.24, as well as other possible tariff classifications.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protection order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 20, 1984, whether there is a reasonable indication that imports of cellular mobile telephones and subassemblies from Japan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: November 26, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-31451 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-036]

Instant Potato Granules From Canada; Tentative Determination to Revoke Dumping Finding

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Tentative Determination to Revoke Dumping Finding.

SUMMARY: The Department of Commerce has tentatively determined to revoke the dumping finding on instant potato granules from Canada. All sales of this merchandise to the United States during the period September 1, 1981, through August 31, 1983, were made at not less than fair value or had *de minimis* margins.

Interested parties are invited to comment on the tentative determination to revoke.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1984, the Deparment of Commerce ("the Department") published in the **Federal Register** (49 FR 27965–6) the final results of its last administrative review of the dumping finding on instant potato granules from Canada (September 27, 1972, 37 FR 20175).

Scope of the Determination

Imports covered by the tentative determination to revoke are shipments of instant potato granules from Canada. Instant potato granules are currently classifiable under items 140.5000, 140.7000, and 141.8610 through 141.8630 of the Tariff Schedules of the United States Annotated. The tentative determination covers the two known exporters of instant potato granules currently covered by the finding: McCain Foods Limited and Vauxhall Foods Limited.

Tentative Determination to Revoke

McCain Foods Limited and Vauxhall Foods Limited have requested revocation of the finding.

McCain and Vauxhall made either all sales at not less then fair value or had *de minimis* margins during the period September 1, 1981, through August 31, 1983. As provided for in section 353.54(e) of the Commerce Regulations, both firms have agreed in writing to an immediate suspension of liquidation and reinstatement of the finding under circumstances as specified in the written agreement. If this revocation is made final it will apply to all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on this tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the results of its analysis of any such comments or hearing.

This tentative determination to revoke and notice are in accordance with section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) and § 353.54 of the Commerce Regulations (19 CFR 353.54).

Dated: November 26, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Adminstration.

[FR Doc. 84-31454 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-027]

Diamond Tips for Phonograph Needles From the United Kingdom; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on diamond tips for phonograph needles from the United Kingdom. The review covers the two known manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and the period April 1, 1983, through March 31, 1984. The review indicates the existence of no dumping margins during the period.

As a result of the review, the Department has preliminarily

Interested parties are invited to comment on these preliminary results.

determined not to assess dumping duties on sales during the period.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 29437) the final results of its last administrative review of the dumping finding on diamond tips for phonograph needles from the United Kingdom (37 FR 6685, April 1, 1972) and announced its intent to conduct its next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of diamond tips for phonograph needles ("diamond tips") consisting individually of an almost microscopic chip of diamond bonded to steel and shaped to fit into the grooves of a phonograph record. Diamond tips are currently classifiable under item 685.3400 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of British diamond tips to the United States currently covered by the finding and the period April 1, 1983, through March 31, 1984. One firm, Bauden Precision Diamonds Ltd., did not ship British diamond tips to the United States during the period. The estimated antidumping duties cash deposit rate for Bauden will be the most recent rate for that firm.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the delivered packed price to the first unrelated purchaser in the United States. We made deductions for insurance and postage. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used the price to an unrelated purchaser in a third country (France), as defined in section 773(a)(1)(B) of the Tariff Act, since there were insufficient quantities of such or similar merchandise sold in the home market to provide a basis for comparison. Third-country price was based on the delivered packed price with an adjustment for insurance and postage. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margins exist for the period April 1, 1983, through March 31, 1984:

Manufacturer/Exporter	Margin (percent)
Bauden Precision Diamonds Ltd	[1] 0
Diamond Stylus Ltd	0

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess dumping duties on all appropriate entries.

Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in section 353.48(b) of the Commerce Regulations, on any shipments of British diamond tips for phonograph needles entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: November 19, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-31455 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-402]

Certain Dried Codfish From Canada; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Postponement of Preliminary Antidumping Determination.

SUMMARY: The preliminary antidumping determination involving certain dried salted codfish from Canada is being postponed until not later than January 22, 1985.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3003.

SUPPLEMENTARY INFORMATION: On August 8, 1984, we announced the initiation of an antidumping investigation to determine whether certain dried salted codfish from Canada are being, or are likely to be, sold in the United States at less than fair value (49 FR 32437-32438). The notice stated that we would issue our preliminary determination by December 26, 1984.

As detailed in the notice, the petitioner alleged that imports from Canada of certain dried salted codfish are being, or are likely to be, sold in the United States at less than fair value.

On October 30, counsel for the petitioner, Codfish Corporation, further alleged that sales of codfish are being made at below cost of production. Petitioner requested, therefore, that we make our determination of foreign market value on the basis of the respondents' costs and that the deadline for the preliminary determination be extended for 25 days in order to allow sufficient time for the cost of production investigation. We intend to issue a preliminary determination not later than January 22, 1985.

This notice is published pursuant to section 733(c)(2) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 733(f) of the Act.

Scope of Investigation

The term "certain dried salted codfish" covers codfish which has been dried and heavily salted, whether or not whole, but not otherwise prepared or preserved, and not in airtight containers, as currently provided for in the Tariff Schedules of the United States item number 111.22.

Dated: November 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-31452 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Initiation of Countervailing Duty Investigation: Live Swine and Fresh, Chilled and Frozen Pork Products From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether the producers or exporters in Canada of live swine and fresh, chilled and frozen pork products, as described in the "Scope of Investigation" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) so that it may determine whether imports of the subject merchandise materially injure or threaten material injury to a U.S. industry. If our investigation proceeds normally, we will make our preliminary determination on or before January 28, 1985.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Peter Sultan, Office of Investigations, Import Administration, International Trade Administration, U.S Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Telephone: (202) 377-3530 (LaCivita) or (202) 377-2815 (Sultan).

SUPPLEMENTARY INFORMATION:

Petition

On November 2, 1984, we received a petition from the National Pork Producers Council, filed on behalf of domestic pork producers, which includes hog producers and packers of unprocessed pork products. Because the National Pork Producers Council represents domestic hog growers, we will further evaluate petitioner's standing with respect to fresh, chilled and frozen pork products. A number of domestic packers support the petition.

In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters of live swine and fresh, chilled and frozen pork products in Canada directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930 as amended (the Act), and that these imports materially injure or threaten material injury to a U.S. industry.

Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore, Title VII of the Act applies to this investigation and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, within 20 days after a petition is filed, we must determine whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner to support the allegations. We have examined the petition on live swine and fresh, chilled and frozen pork products from Canada and we have found that the petition meets the requirements for initiation.

A petitioner must file a petition "on behalf of an industry," defined in section 771(4) of the Act as domestic producers of a "like product." It is unclear that the NPPC, whose members produce live swine, also represents the producers of fresh, chilled and frozen pork products; *i.e.*, it is unclear that the petitioner has filed on behalf of an industry. It is similarly unclear that fresh, chilled and frozen pork products are like products to live swine.

Nevertheless, we are initiating a countervailing duty investigation on these products because Congress recognized the special nature of agriculture and apparently contemplated the inclusion of growers and packers in one industry. We note that in previous cases the ITC included growers and processors in a single industry (*e.g., Lamb Meat from New Zealand*, Investigation No. 701-TA-80 (Preliminary)). In doing so, however, the ITC relied in part upon the interdependence and vertical integration of the industries involved. In this case, the petitioner's membership consists entirely of hog growers who do not further process the product and are not related to packers and processers of fresh, chilled and frozen pork. Because of the novelty of this issue, we invite interested parties to submit briefs to the Department of Commerce within fourteen days of the publication date of this notice.

We are initiating a countervailing duty investigation to determine whether producers or exporters in Canada of live swine and fresh, chilled and frozen pork products, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination by January 28, 1985. We note, however, that we may rescind the investigation if the petitioner lacks standing.

Scope of the Investigation

For the purposes of this proceeding, the merchandise covered by this investigation is defined as live swine and fresh, chilled and frozen meat (except meat offal) of swine as currently provided for in items 100.8500, 106.4020 and 106.4040 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

Allegations of Subsidies

The petition alleges that the Canadian hog producers receive benefits which constitute subsidies. We are initiating on the following allegations:

1. The Federal Stabilization Program which provides deficiency payments to selected agricultural producers, including hog growers.
2. Provincial stabilization program in:
   - Quebec,
   - Saskatchewan,
   - Manitoba,
   - British Columbia,
   - Alberta,
   - The Maritime Provinces (New Brunswick, Nova Scotia and Prince Edward Island), and
   - Ontario.
3. Other federal subsidies:
   - Industry specific low-interest loans,
   - The Hog Carcass Grading Settlement Program, and
   - The Record Performance Program.
4. Other Canadian provincial subsidies:
   - Grants and subsidized interest provided in Quebec,
   - Livestock Tax Credit Law in Saskatchewan,
   - Ontario Farm Tax Reduction Program,
   - Programs which Ontario and other governments have independently introduced to help farmers cope with the high cost of credit, and
   - Interest free-loans and loan guarantees in British Columbia, Alberta, Manitoba and the Atlantic provinces.

Notification of ITC

Section 702(d) of the Act requires us to notify the U.S. International Trade Commission (ITC) of this action, and to provide it with the information we used to arrive at this determination. We will

notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 17, 1984, whether there is a reasonable indication that imports of live swine and fresh, chilled and frozen pork products materially injure or threaten material injury to a U.S. industry. If the ITC's determination is negative, the investigation will be terminated; otherwise, the investigation will proceed to conclusion.

Dated: November 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-31453 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 41042-4142]

Federal Information Processing Standards 60-2, 61-1, 62, 63-1, 97 Technical Verification Guidance

AGENCY: National Bureau of Standards, Commerce.

ACTION: This notice provides technical verification guidance for Federal Information Processing Standards 60-2, 61-1, 62, 63-1, and 97 which were issued by the Secretary of Commerce under the provisions of Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973).

SUMMARY:

Background Information

This is the seventh such technical verification notice providing specific guidance concerning technical interface implementation approaches. The first such notice was published in the **Federal Register** on August 13, 1980 (45 FR 53858-53857) and set out the paragraph numbering system that would be followed in listing and responding to questions in that first notice and subsequent notices. The second notice was published in the **Federal Register** on October 17, 1980 (45 FR 68989-68990). The third notice was published in the **Federal Register** on December 10, 1980 (45 FR 82687-82689). The fourth notice was published in the **Federal Register** on March 6, 1981 (46 FR 15526-15528) and was the subject of two correction notices, both on March 15, 1981 (46 FR 18575). The fifth notice was published in the **Federal Register** on June 30, 1981 (46 FR 33576). The sixth notice was published in the **Federal Register** on March 23, 1982 (47 FR 12375).

Technical Verification Guidance

FIPS 60, 61, 62, 63, and 97 * are intended to achieve full plug-to-plug interchangeability of peripheral components. This general intent is the basis for this guidance.

7.1 If the adapter and controller are contained in the same physical cabinet, is it necessary that the two parts to separable to the extent that they may be separately reutilized as follows:

(a) The adapter could potentially "adapt" another compliant disk subsystem?

Yes, the two parts must be separable in that they may be separately reutilized so that the adapter could operate with another conforming disk subsystem that would replace the existing conforming disk subsystem. This means of course that each part would have its own power supply. Also the adapter should be constructed so that it can be readily removed from the controller cabinet and mounted in a replacement controller cabinet (potentially furnished by a different vendor) or another equipment cabinet or rack.

(b) The control unit (and drives) could potentially be reutilized on a FIPS 60 channel?

Yes, the two parts must be separable in that they may be separately reutilized so the adapter could be removed, if desired by the user, and the control unit and drives reutilized on a FIPS 60 conforming channel.

7.2 Must the adapter and control unit be separately priced? If not, what did FIPS 60 accomplish if the vendor removed his integated adapter/controller at the end of a lease period?

Yes, the adapter and control unit should be separately priced so that the user may reutilize either the adapter only or the disk subsystem only by extending the least of either at the end of a lease period.

7.3 If the controller and adapter are integrated, how does and agency know if the FIPS 60 interface is being used operationally and that the integrated box is not functioning in a non-conforming manner by bypassing the FIPS control?

Separate cable connection should be on or in the controller cabinet for the cables from the channel to the adapter, the adapter to the controller, and the controller to the devices. The functional, electrical, and mechanical interface specifications as defined in FIPS 60 must be present at the cable connection on the cabinet between the adapter and the controller. The using agency may check that interface for conformance to FIPS 60 or request NBS to check it for them.

7.4 Is FIPS 61 an "operational" standard in the sense that FIPS 60 has been enforced to be?

No, although FIPS 61 is applicable whenever use of FIPS 60 is required, unlike FIPS 60, FIPS 61 does not contain an operational use clause requiring equipment to be actually interconnected according to the prescribed power control provisions.

Recognizing that the power control for some computer systems has been engineered without console controlled, centralized power control capabilities such as those prescribed by FIPS 61, it appears reasonable that FIPS 61 not be required on the CPU or channel side of the I/O interface for such systems. That is, when implementation and use of the FIPS 60 interface is accomplished by adapting a non-conforming system that does not already employ centralized, FIPS 61 type, power control, it is not necessary to retrofit or redesign the system power control simply to implement FIPS 61. This is an option available to a CPU vendor.

It is essential however that the power control provisions of FIPS 61 be implemented on the peripheral side of the interface. Subsystems therefore can be interconnected and operated correctly with computer systems that either have, or do not have, the centralized power control features of FIPS 61.

ADDRESS: Requests for additional verification guidance for FIPS 60-2, 61-1, 62, 63-1, and 97 should be addressed to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899. Attention: I/O Verification Guidance.

FOR FURTHER INFORMATION CONTACT:

Mr. Steve A. Recicar, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3723.

* All references to FIPS 60, 61, 62, 63, and 97 refer to the latest effective version of the standards.

Dated: November 28, 1984

Ernest Ambler,

Director.

[FR Doc. 84-31359 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235,

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/674-2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, Fl. 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council 526 S.W. Mill Street, Portland, OR 97201, 503/221-6352

Jim H. Bryson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510, 907/271-4060

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1608, Honolulu, HI 98613, 808/523-1368.

For further information contact Shirley E. Whitten or John D. Kelly (Fees, Permits, and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1984 have been received from the Government(s), shown below.

Dated: November 28, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean
BSA	Bering Sea and Aleutian Islands	North Pacific
GOA	Gulf of Alaska	Do.
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic
SMT	Seamount Groundfish	Western Pacific
SNA	Snails (Bering Sea)	North Pacific
WOC	Pacific Groundfish (Washington, Oregon, and California)	Pacific
PBS	Pacific Billfishes and Sharks	Western Pacific

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching processing and other support
2	Processing and other support only
3	Other support only.
4	"Joint venture" in support of U.S. vessels

Nation, vessel name, vessel type	Application No.	Fishery	Activity
Government of the German Democratic Republic			
Hans Marchwitze Large Stern Trawler	GC-84-0052	NWA	1(4)
Government of Japan Tokyo Reefer Cargo Transport	JA-84-1135	BSA GOA WOC	3
Government of the USSR			
Kachevskoy Large Stern Trawler	UR-84-0062	BSA GOA WOC	1
Pomo Large Stern Trawler	UR-84-0201	BSA GOA WOC	1
Profiv Laperuza Cargo/Trawler	UR-84-0772	BSA GOA WOC	3

For the Information of the Reader

German Democratic Republic—The application submitted for the vessel, *Hans Marchwitze*, is for a directed fishery as well as a joint venture. Notice of the joint venture operation was published December 2, 1983, at 48 FR 54411.

Japan—Applications were received to authorize the vessels, *Suiyo Maru*, and *Seki Rex*, to conduct support activities in the WOC fishery. A receipt notice was published for these vessels 12/22/83 at 48 FR 56670 to authorize support activities in the BSA, GOA, NWA, SMT, and SNA fisheries.

USSR—Applications were received to authorize the vessels, *Skalistyi, Nadezhda, Khrustalnyi, Babykino, Kargat, Nikolaevsky Karabel* for directed fishing in Alaska. A receipt notice was published for these vessels March 23, 1984, at 49 FR 10976 for processing and support activities in Alaska as well as the WOC fishery. An application for the *Sulak* was received to authorize JV activities in the WOC fishery. Notice of receipt of this application was initially published December 2, 1983, at 48 FR 54410 to authorize operations for joint venture activities in Alaska.

[FR Doc. 84-31385 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-22-M

Deep Seabed Mining—Availability of Information

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of location of Ocean Minerals Company and Kennecott Consortium deep seabed mining license areas.

SUMMARY: On August 29, 1984, the National Oceanic and Atmospheric Administration (NOAA) issued a license (designated as USA-1) to Ocean Minerals Company (OMCO) to conduct deep seabed mining exploration activities in an area of 165,533 square kilometers in the Northeastern Equatorial Pacific Ocean within the seabed area generally known as the Clarion-Clipperton Fracture Zone. On November 20, 1984, OMCO formally withdrew its request for confidential treatment of the precise location of its license areas and requested NOAA to apprise the public of this fact and to publish the coordinates as well.

On October 29, 1984, NOAA issued a license (designated USA-4) to the Kennecott Consortium (KCON) to conduct deep seabed mining exploration activities in an area of 65,000 square kilometers in the Northeastern Equatorial Pacific Ocean within the seabed area generally known as the Clarion-Clipperton Fracture Zone. On

November 21, 1984, KCON formally withdrew its request for confidential treatment of the precise location of its license area and requested NOAA to apprise the public of this fact and to publish the coordinates as well.

In accordance with these requests and pursuant to 15 CFR 970.902(d)(5), NOAA hereby is publishing the coordinates of the OMCO and KCON license areas.

The OMCO license applies to two areas, bounded by a line with the following turning points:

Turning points	Latitude	Longitude
Area 1:		
1	13°40' N	128°35' W
2	11°40' N	128°35' W
3	11°40' N	131°15' W
4	11°30' N	131°15' W
5	11°30' N	132°00' W
6	11°40' N	132°00' W
7	11°40' N	133°50' W
8	12°50' N	133°50' W
9	12°50' N	132°15' W
10	13°20' N	132°15' W
11	13°20' N	130°00' W
12	13°40' N	130°00' W
1	13°40' N	128°35' W
Area 2:		
1	11°50' N	145°00' W
2	11°50' N	143°15' W
3	10°45' N	143°15' W
4	10°45' N	142°15' W
5	9°45' N	142°15' W
6	9°45' N	142°45' W
7	9°18' N	142°45' W
8	9°15' N	143°45' W
9	10°00' N	143°45' W
10	10°00' N	144°00' W
11	9°45' N	144°00' W
12	9°45' N	144°45' W
13	9°30' N	144°45' W
14	9°30' N	145°00' W
1	11°50' N	145°00' W

The KCON license area is bounded by a line with the following turning points:

Turning points	Latitude	Longitude
1	14°20' N	128°00' W
2	14°20' N	126°15' W
3	13°45' N	126°15' W
4	13°45' N	125°20' W
5	12°15' N	125°20' W
6	12°15' N	127°00' W
7	11°40' N	127°00' W
8	11°40' N	127°43' W
9	12°00' N	127°43' W
10	12°00' N	128°00' W
1	14°20' N	128°00' W

Consistent with the disclosure policy stated in the Environmental Impact Statement (EIS) on the OMCO and KCON license issuance, NOAA will send copies of this notice to the persons, organizations, and agencies who were EIS recipients.

FOR FURTHER INFORMATION CONTACT: John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653–8257.

Dated: November 23, 1984.

James P. Lawless,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-31460 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limit for Wool Sweaters Produced or Manufactured in Panama

November 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 1, 1984. For further information contact Kyle Poole, Trade Reference Assistant, (202) 377–4212.

Background

The Bilateral Wool Textile Agreement of August 7 and August 21, 1984 between the Governments of the United States and Panama establishes a specific limit of 44,440 dozen for wool sweaters in Category 445/446, produced or manufactured in Panama and exported during the agreement year which begins on December 1, 1984 and extends through November 30, 1985. The letter to the Commissioner of Customs which follows this notice establishes this import restraint limit.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754) and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of August 7 and August 21, 1984, between the Governments of the United States and the Republic of Panama; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 1, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in Panama and exported during the twelve-month period which begins on December 1, 1984 and extends through November 30, 1984, in excess of 44,440 dozen.[1]

In carrying out this directive, entries of wool textile products in Category 445/446, which have been exported to the United States on and after December 1, 1983 and extending through November 30, 1984, shall, to the extent of any unfilled balance, be charged against the restraint limit established for such goods during that twelve-month period. In the event the restraint limit established for that period has been exhausted by previous entries, such goods shall be subject to the limit set forth in this letter.

The restraint limit set forth above is subject to adjustment pursuant to the provisions of the bilateral agreement of August 7 and August 21, 1984, between the Governments of the United States and the Republic of Panama provide, in part, that: (1) Specific limits may be increased for carryover and carryforward. Any appropriate future adjustments under the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 12, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31382 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The restraint limit has not been adjusted to reflect any imports exported after November 30, 1984.

Adjusting Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products From Taiwan

November 27, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 27, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377–4212.

Background

The bilateral agreement of November 18, 1982, concerning cotton, wool, and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain categories during an agreement year for swing and shift, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same agreement year. Pursuant to the terms of the bilateral agreement, the import restraint limits established for Categories 331, 335, 338/339, 340, 347/348, 351, 433, 434, 445/446, 447, 448, 604, 631, 638, 640, 641, 647, 648, and 659pt. (only TSUSA numbers 703.0500 and 703.1000), exported during the twelve-month period which began on January 1, 1984, are being increased. The limits for Categories 319, 353/354/653/654, 639, 659pt. (only TSUSA number 703.1600), and 670pt. (only TSUSA number 706.4140) are being reduced to account for swing applied to the other categories. In addition, the adjusted restraint limit for Category 340 includes a deduction for carryforward used.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 27, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 13, 1983, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of goods exported during the twelve-month period beginning on January 1, 1984 and extending through December 31, 1984 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Effective on November 27, 1984, the directive of December 13, 1983 is hereby further amended to include adjusted restraint limits for cotton, wool and man-made fiber textile products in the following categories:

Category	Adjusted 12-month restraint limit [1]
319	16,550,386 square yards.
331	489,179 dozen pairs.
336	81,957 dozen.
338/339	658,850 dozen.
340	898,551 dozen.
347/348	978,064 dozen of which not more than 480,369 dozen shall be in Cat. 347 and not more than 775,491 dozen shall be in Cat. 348.
351	218,436 dozen.
353/354/653/654	162,886 dozen.
433	12,859 dozen.
434	9,069 dozen.
445/446	135,284 dozen.
447	5,580 dozen.
448	12,259 dozen.
604	496,336 dozen.
631	214,000 dozen pairs.
638	2,103,428 dozen.
639	4,696,712 dozen.
640	3,335,307 dozen.
641	742,507 dozen.
647	2,552,158 dozen.
648	3,260,354 dozen.
659 pt. [2]	3,628,316 pounds.
659 pt. [3]	1,514,017 pounds.
670 pt. [4]	31,289,067 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1983.
[2] In Category 659, only T.S.U.S.A. numbers 703.0500 and 703.1000.
[3] In Category 659, only T.S.U.S.A. number 703.1600.
[4] In Category 670, only T.S.U.S.A. number 706.4140.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31383 Filed 11-29-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement of November 18, 1982 concerning cotton, wool and man-made fiber textile products from Taiwan provides that (1) specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivalent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: November 30, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 28, 1984 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (49 FR 38325) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1985:

SIC 7349

Janitorial/Custodial, Philip J. Philbin Federal Building, 885 Main Street, Fitchburg, Massachusetts

C. W. Fletcher,

Executive Director.

[FR Doc. 84-31401 Filed 11-29-84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

Emergency Notice of Intent: Lower San Joaquin River and Tributaries, California Project

AGENCY: Corps of Engineers.

ACTION: Emergency notice of intent.

SUMMARY: This notice modifies the Notice published, May 11, 1984, 49 FR 20052.

Construction of one segment of the overall project will be initiated in the fall of 1984. Due to the emergency nature of this work, the requirements of the National Environmental Policy Act have been waived pursuant to 40 CFR 1506.11 and 33 CFR 230.8.

Emergency action is being taken to remove 700,000 cubic yards of sediment from the Eastside Bypass. The bypass is an existing feature of the Lower San Joaquin River and Tributaries, California, project. The bypass is located in Merced County. Removal of the sediment is needed to restore channel capacity and avoid potential levee failure which would cause widespread damage during the coming flood season. Mitigation to avoid losses to fish and wildlife resources has been included in the work. An environmental analysis has been prepared to assist in the emergency work. This has been coordinated with state and Federal fish and wildlife agencies, and copies are available to others interested in the work.

All other provisions of the earlier notice describing intent to prepare a draft environmental impact statement (DEIS) remain unchanged. The DEIS parepared will describe the remaining work to be accomplished and its inpacts.

FURTHER INFORMATION CONTACT: Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814 or calling Mr. Mike Welsh, Environmental Planning Section (916) 440-2456, (FTS) 448-2456.

Dated: November 2, 1984.

John O. Roach II,

Department of Army Liaison Officer With the Federal Register.

[FR Doc. 84-31434 Filed 11-29-84; 8:45 am]

BILLING CODE 3710-GN-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of meeting: Monday & Tuesday, 17 & 18 December 1984 (Closed).

Times of Meeting: 0830-1700 hours, both days (Closed).

Place: The Pentagon, Washington, D.C.

Agenda

The Army Science Board Ad Hoc Subgroup on 1979 Summer Study "Technology Planning of Future Fielded Systems" Follow-On will meet for classified briefings and discussions to assess the Army's progress to date in response to the study recommendations. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 84-31587 Filed 11-29-84; 11:37 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Strengthening Program, Special Needs Program, Endowment Grant Program; Extension of Closing Date for Transmittal of Requests for Designation as an Eligible Institution for Fiscal Year 1985

The Secretary extends to December 31, 1984, the closing date by which an institution of higher education that wishes to apply for a grant under the Strenghtening, Special Needs, or Endowment Grant Programs in Fiscal Year 1985 must apply for designation as an eligible institution, by submitting a "Request for Designation as an Eligible Institution" form (ED Form 1049-6). The previous closing date of October 29, 1984 was published in the **Federal Register** of September 28, 1984 (49 FR 38331-38341). The Strengthening Program, Special Needs Program, and Endowment Grant Program are authorized under sections 301-347 of Title III of the Higher Education Act of 1965, as amended (HEA). (20. U.S.C. 1051-1069c)

The Secretary is extending the closing date in order for the Department of Education to implement in Fiscal Year 1985 the amendments made to section 109 of the Tribally Controlled Community College Assistance Act of 1978, by section 8 of Pub. L. 98-192. Under these amendments, for the purposes of determining institutional eligibility for the Strengthening, Special Needs, and Endowment Grant Programs, any Indian student who receives a student assistance grant for the Bureau of Indian Affairs (BIA) for postsecondary education shall be deemed to have received such assistance under the Pell Grant Program.

Closing date for transmittal of request: A "Request for Designation as an Eligible Institution" must be mailed or hand-delivered to the U.S. Department of Education by December 31, 1984.

Request delivered by mail. A request sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.031H (Title III-Designation), Washington, D.C. 20202.

A request must show proof of mailing, consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier;

4. Any other proof of mailing that is acceptable to the U.S. Secretary of Education.

If a request is sent through the U.S. Postal Service, the Secretary does *not* accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified by the Application Control Center that its request for designation as an eligible institution will not be considered.

Request delivered by hand: A request that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered request between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

A request that it hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Request forms: A copy of the "Request for Designation as an Eligible Institution" form (ED Form 1049-6) was mailed to the Office of the President of all institutions of postsecondary education in early October 1984. An applicant institution is requested to use the ED Form 1049-6 that it received in early October 1984, if it is available, to apply under this notice. If an institution wishes to obtain a copy of the form, please write or call the U.S. Department of Education, Division of Eligibility and Agency Evaluation, Attention: 84.031H (Title III-Designation), Room 3522, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: Area Code 202, 245-9873. (Ed Form 1049-6 is approved by the Office of Management and Budget under Control Number 1840-0103.)

Program information: Under the Strengthening and Special Needs Programs, the Secretary detemines an institution's eligibility based, in part, upon an institution's education and general (E&G) expenditures, together with the amount of Pell Grants (for the Strengthening Program) and the amount of Title IV, HEA, student financial assistance (for the Special Needs Program) that was awarded to students attending that institution during a particular award year. In order to qualify for a grant under the Endowment Grant Program, an applicant institution must in effect qualify as an "eligible institution" under the eligibility requirements of the Strengthening Program or the Special Needs Program.

Under the amended section 109 of the Tribally Controlled Community College Assistance Act of 1978, an institution may include, together with its Pell grant award data, (1) the number of Indian students who received student assistance grants from BIA and (2) the amount of BIA student assistance funds disbursed to students for postsecondary education when applying for eligibility under the Strengthening, Special Needs, and Endowment Grant Programs.

For Fiscal Year (FY) 1985 grant awards, the Secretary will use award year 1981-1982 (July 1, 1981-June 30, 1982) as the base year for calculating an institution's eligibility to apply for a grant under the Strengthening Program (34 CFR 625.2 (a)(2), (3), and (4)); the Special Needs Program (34 CFR 628.2(a)(2), (3), and (4)); and the Endowment Grant Program (34 CFR 628.2).

In accordance with the amended section 109 of the Tribally Controlled Community College Assistance Act of 1978, any institution that participated in the BIA student assistance grant program (in base year 1981-1982) is requested to submit along with the "Request for Designation as an Eligible Institution" form (ED Form 1049-6) the following information:

	Award year 1981-82
The number of recipients of BIA student assistance grants	———
The amount of BIA student assistance funds disbursed to Indian students	$———

Please submit the information, in the format shown above, on official letterhead stationery of the institution over the signature of the President of the institution.

Conversion tables and eligibility thresholds on which, in part, the Secretary will make a determination of an institution's eligibility are published as an appendix to this notice. These are the same conversion tables and eligibility thresholds that were published in the **Federal Register** on June 20, 1984 for the FY 1984 Endowment Grant Program and on September 28, 1984, for the FY 1985 Strengthening, Special Needs, and Endowment Grant Programs.

Any institution that plans to request designation as an eligible institution is urged to apply by submitting ED Form 1049-6 well in advance of the December 31, 1984 closing date. After the closing date, the Secretary will not accept any new information or adjustments to the information that has been submitted on the "Request for Designation as an Eligible Institution" form.

Applicable regulations: Regulations applicable to the eligibility process include the Institutional Aid Programs-General Provisions Regulations (34 CFR 624.2, 624.3 and 624.20); the Strengthening Program Regulations (34 CFR 625.2 and 625.3); the Special Needs Program Regulations (34 CFR 628.2 and 628.3); and the Endowment Grant Program Regulations (34 CFR 628.2). These regulations were published in the **Federal Register** of January 5, 1982, 47, F.R. 540-557, and of July 12, 1984, 49, FR 28550-28550.

Applicable legislation: Legislation applicable to the eligibility process include Title III of the Higher Education Act of 1965, as amended; and the Tribally Controlled Community College Assistance Act of 1978, as amended by section 109 of Pub. L. 98-192.

Further information: For further information, contact the Division of Eligibility and Agency Evaluation, Room 3030, Regional Office Building 3, Washington, D.C. 20202. Telephone (202) 245-9873.

(20 U.S.C. 1051-1069c)

Dated: November 28, 1984.

(Catalog of Federal Domestic Assistance Number: 84.031 Institutional Aid Programs)

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

FISCAL YEAR 1985 COMPETITION.—STRENGTHENING PROGRAM; SPECIAL NEEDS PROGRAM; ENDOWMENT GRANT PROGRAM—NATIONAL STANDARDS FOR DETERMINING INSTITUTIONAL ELIGIBILITY FOR THE TITLE III INSTITUTIONAL AID PROGRAMS

[Threshold chart]

Categories of potentially eligible institutions	Minimum thresholds			
	Strengthening Program		Special Needs Program	
	Overall threshold	Waiver threshold	Overall threshold	Waiver threshold
Two-year public institutions	146	97	89	58
Two-year non-profit private institutions	137	91	87	56
Four-year public institutions	186	123	109	71
Four-year non-profit private institutions	196	131	125	83
Graduate public institutions [1]				26
Graduate non-profit private institutions [1]				76

[1] Institutions that do not award bachelor's degrees but do award graduate, postgraduate, or professional degrees may request designation for the Endowment Grant Program under the eligibility criteria for the Special Needs Program.

POINT TABLES

The Secretary of Education uses the following tables to determine Title III Institutional Eligibility for the Strengthening Program, Special Needs Program, and Endowment Grant Program for Fiscal Year 1985 (based on 1981-1982 data).

PART-A : STRENGTHENING

2 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0615	0.01 - 368.04	12826.90+
2	0.0616 - 0.0829	368.05 - 400.42	12826.89 - 9957.15
3	0.0830 - 0.0991	400.43 - 415.11	9957.14 - 8861.19
4	0.0992 - 0.1090	415.12 - 427.86	8861.18 - 7604.61
5	0.1091 - 0.1127	427.87 - 440.05	7606.60 - 7321.91
6	0.1128 - 0.1163	440.06 - 446.50	7321.89 - 7153.44
7	0.1164 - 0.1225	446.51 - 449.29	7153.43 - 6755.29
8	0.1226 - 0.1299	449.30 - 459.75	6755.28 - 6382.41
9	0.1300 - 0.1366	459.76 - 463.89	6382.39 - 6238.02
10	0.1367 - 0.1419	463.90 - 467.86	6238.01 - 6060.24
11	0.1420 - 0.1454	467.87 - 471.12	6060.23 - 5839.29
12	0.1455 - 0.1501	471.13 - 476.21	5839.28 - 5776.19
13	0.1502 - 0.1566	476.22 - 481.97	5776.18 - 5619.09
14	0.1567 - 0.1626	481.98 - 484.64	5619.08 - 5523.21
15	0.1627 - 0.1697	484.65 - 490.02	5523.20 - 5364.95
16	0.1698 - 0.1768	490.03 - 493.56	5364.94 - 5260.52
17	0.1769 - 0.1833	493.57 - 495.94	5260.51 - 5219.23
18	0.1834 - 0.1875	495.95 - 499.77	5219.21 - 5056.63
19	0.1876 - 0.1963	499.78 - 503.11	5056.62 - 4989.19
20	0.1964 - 0.1984	503.12 - 509.36	4989.18 - 4931.50
21	0.1985 - 0.2072	509.37 - 515.35	4931.49 - 4898.99
22	0.2073 - 0.2120	515.36 - 517.45	4898.98 - 4832.35
23	0.2121 - 0.2173	517.46 - 520.73	4832.34 - 4766.30
24	0.2174 - 0.2235	520.74 - 524.29	4766.29 - 4689.61
25	0.2236 - 0.2295	524.30 - 529.44	4689.60 - 4615.10
26	0.2296 - 0.2358	529.45 - 532.38	4615.09 - 4576.72
27	0.2359 - 0.2424	532.39 - 535.16	4576.71 - 4534.21
28	0.2425 - 0.2481	535.17 - 537.99	4534.20 - 4496.61
29	0.2482 - 0.2565	538.00 - 543.39	4496.60 - 4446.84
30	0.2566 - 0.2617	543.40 - 545.79	4446.83 - 4426.86
31	0.2618 - 0.2660	545.80 - 551.14	4426.85 - 4366.07
32	0.2661 - 0.2687	551.15 - 554.83	4366.05 - 4321.45
33	0.2688 - 0.2735	554.84 - 559.27	4321.44 - 4278.71
34	0.2736 - 0.2778	559.28 - 561.82	4278.70 - 4209.76
35	0.2779 - 0.2813	561.83 - 565.14	4209.75 - 4160.49
36	0.2814 - 0.2839	565.15 - 568.64	4160.48 - 4136.48
37	0.2840 - 0.2875	568.65 - 571.56	4136.46 - 4078.06
38	0.2876 - 0.2912	571.57 - 573.89	4078.05 - 4023.56
39	0.2913 - 0.2940	573.90 - 576.92	4023.55 - 3973.27
40	0.2941 - 0.2985	576.93 - 578.42	3973.26 - 3949.22
41	0.2986 - 0.3011	578.43 - 580.69	3949.21 - 3907.57
42	0.3012 - 0.3053	580.70 - 583.52	3907.56 - 3860.54
43	0.3054 - 0.3076	583.53 - 586.59	3860.53 - 3824.30
44	0.3077 - 0.3106	586.60 - 588.53	3824.29 - 3799.70
45	0.3107 - 0.3170	588.54 - 589.91	3799.69 - 3769.37
46	0.3171 - 0.3207	589.92 - 594.64	3769.36 - 3759.32
47	0.3208 - 0.3289	594.65 - 596.53	3759.31 - 3732.35
48	0.3290 - 0.3338	596.54 - 598.74	3732.34 - 3708.53
49	0.3339 - 0.3367	598.75 - 599.98	3708.52 - 3687.74
50	0.3368 - 0.3407	599.99 - 602.48	3687.73 - 3631.23

PART-A : CONTINUE

2 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3408 - 0.3439	602.49 - 604.96	3631.22 - 3590.61
52	0.3440 - 0.3485	604.97 - 606.19	3590.60 - 3570.10
53	0.3486 - 0.3554	606.20 - 608.77	3570.09 - 3538.79
54	0.3555 - 0.3601	608.78 - 611.75	3538.78 - 3509.44
55	0.3602 - 0.3650	611.76 - 614.07	3509.43 - 3476.22
56	0.3651 - 0.3679	614.08 - 616.03	3476.21 - 3447.80
57	0.3680 - 0.3740	616.04 - 618.57	3447.79 - 3409.89
58	0.3741 - 0.3788	618.58 - 619.29	3409.88 - 3400.70
59	0.3789 - 0.3832	619.30 - 620.18	3400.69 - 3371.08
60	0.3833 - 0.3877	620.19 - 623.20	3371.07 - 3333.41
61	0.3878 - 0.3916	623.21 - 626.75	3333.40 - 3289.25
62	0.3917 - 0.3953	626.76 - 634.02	3289.24 - 3264.32
63	0.3954 - 0.3987	634.03 - 638.60	3264.31 - 3233.12
64	0.3988 - 0.4018	638.61 - 640.70	3233.11 - 3212.44
65	0.4019 - 0.4052	640.71 - 643.10	3212.83 - 3185.09
66	0.4053 - 0.4117	643.11 - 647.54	3185.08 - 3149.68
67	0.4118 - 0.4174	647.55 - 651.65	3149.67 - 3138.24
68	0.4175 - 0.4246	651.66 - 653.06	3138.23 - 3116.96
69	0.4247 - 0.4291	653.07 - 654.20	3116.23 - 3097.86
70	0.4292 - 0.4357	654.21 - 657.42	3097.85 - 3059.72
71	0.4358 - 0.4404	657.43 - 660.25	3059.71 - 3018.07
72	0.4405 - 0.4462	660.26 - 664.09	3018.06 - 3003.71
73	0.4463 - 0.4530	664.10 - 665.87	3003.70 - 2991.18
74	0.4531 - 0.4595	665.88 - 671.16	2991.18 - 2942.65
75	0.4596 - 0.4636	671.17 - 673.55	2942.64 - 2902.00
76	0.4637 - 0.4746	673.56 - 675.78	2901.99 - 2878.91
77	0.4747 - 0.4836	675.79 - 677.89	2878.90 - 2864.57
78	0.4837 - 0.4962	677.90 - 682.52	2864.56 - 2813.61
79	0.4963 - 0.5021	682.53 - 685.72	2813.60 - 2787.36
80	0.5022 - 0.5112	685.73 - 690.28	2787.35 - 2754.49
81	0.5113 - 0.5168	690.29 - 693.46	2754.48 - 2737.91
82	0.5169 - 0.5289	693.47 - 698.17	2737.90 - 2722.29
83	0.5290 - 0.5340	698.18 - 702.56	2722.28 - 2683.10
84	0.5341 - 0.5480	702.57 - 707.54	2683.09 - 2662.00
85	0.5481 - 0.5598	707.55 - 713.14	2661.99 - 2640.26
86	0.5599 - 0.5713	713.15 - 720.59	2640.25 - 2625.91
87	0.5714 - 0.5874	720.60 - 725.53	2625.90 - 2576.94
88	0.5875 - 0.6030	725.54 - 729.37	2576.93 - 2547.06
89	0.6031 - 0.6260	729.38 - 733.48	2547.05 - 2523.46
90	0.6261 - 0.6423	733.49 - 740.97	2523.45 - 2499.34
91	0.6424 - 0.6693	740.98 - 748.39	2499.33 - 2432.26
92	0.6694 - 0.6884	748.40 - 756.74	2432.25 - 2390.07
93	0.6885 - 0.7302	756.75 - 764.67	2390.06 - 2345.09
94	0.7303 - 0.7520	764.68 - 774.90	2345.08 - 2292.83
95	0.7521 - 0.8106	774.91 - 787.19	2292.82 - 2271.01
96	0.8107 - 0.8809	787.20 - 794.80	2271.00 - 2224.39
97	0.8810 - 0.9526	794.81 - 808.93	2224.38 - 2098.02
98	0.9527 - 1.0530	808.94 - 840.65	2098.01 - 2041.67
99	1.0531 - 1.4319	840.66 - 887.99	2041.66 - 1900.13
100	1.4320+	888.00+	1900.12 - 1.00

PART-B : SPECIAL NEEDS

2 YR PUBLIC

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0576	0.01 - 418.19	9957.15+
2	0.0577 - 0.0683	418.20 - 457.27	9957.14 - 7606.61
3	0.0684 - 0.0740	457.28 - 478.80	7606.60 - 7153.44
4	0.0741 - 0.0816	478.81 - 490.90	7153.43 - 6382.41
5	0.0817 - 0.0868	490.91 - 506.58	6382.39 - 6060.24
6	0.0869 - 0.0944	506.59 - 520.84	6060.23 - 5776.19
7	0.0945 - 0.0993	520.85 - 530.67	5776.18 - 5523.21
8	0.0994 - 0.1124	530.68 - 541.02	5523.20 - 5260.52
9	0.1125 - 0.1223	541.03 - 548.25	5260.51 - 5056.63
10	0.1224 - 0.1281	548.26 - 553.12	5056.62 - 4931.50
11	0.1282 - 0.1364	553.13 - 560.21	4931.49 - 4832.35
12	0.1365 - 0.1440	560.22 - 565.83	4832.34 - 4689.61
13	0.1441 - 0.1535	565.84 - 574.49	4689.60 - 4576.72
14	0.1536 - 0.1567	574.50 - 583.94	4576.71 - 4496.61
15	0.1568 - 0.1613	583.95 - 590.08	4496.60 - 4426.86
16	0.1614 - 0.1652	590.09 - 593.26	4426.85 - 4321.45
17	0.1653 - 0.1725	593.27 - 598.99	4321.44 - 4209.76
18	0.1726 - 0.1766	599.00 - 603.83	4209.75 - 4136.48
19	0.1767 - 0.1808	603.84 - 609.98	4136.46 - 4023.56
20	0.1809 - 0.1863	609.99 - 616.83	4023.55 - 3949.22
21	0.1864 - 0.1925	616.84 - 623.02	3949.21 - 3860.54
22	0.1926 - 0.1972	623.03 - 630.45	3860.53 - 3799.70
23	0.1973 - 0.2027	630.46 - 635.29	3799.69 - 3759.32
24	0.2028 - 0.2059	635.30 - 643.16	3759.31 - 3708.53
25	0.2060 - 0.2133	643.17 - 648.40	3708.52 - 3631.23
26	0.2134 - 0.2172	648.41 - 652.36	3631.22 - 3570.10
27	0.2173 - 0.2235	652.37 - 657.14	3570.09 - 3509.44
28	0.2236 - 0.2276	657.15 - 662.09	3509.43 - 3447.80
29	0.2277 - 0.2328	662.10 - 667.62	3447.79 - 3400.70
30	0.2329 - 0.2395	667.63 - 675.70	3400.69 - 3333.41
31	0.2396 - 0.2472	675.71 - 679.36	3333.40 - 3264.32
32	0.2473 - 0.2548	679.37 - 684.97	3264.31 - 3212.84
33	0.2549 - 0.2641	684.98 - 687.63	3212.83 - 3149.68
34	0.2642 - 0.2723	687.64 - 692.47	3149.67 - 3116.24
35	0.2724 - 0.2820	692.48 - 701.34	3116.23 - 3059.72
36	0.2821 - 0.2890	701.35 - 708.64	3059.71 - 3003.71
37	0.2891 - 0.2996	708.65 - 714.00	3003.70 - 2942.65
38	0.2997 - 0.3102	714.01 - 724.49	2942.64 - 2878.91
39	0.3103 - 0.3236	724.50 - 730.73	2878.90 - 2813.61
40	0.3237 - 0.3341	730.74 - 737.97	2813.60 - 2754.49
41	0.3342 - 0.3482	737.98 - 746.75	2754.48 - 2722.29
42	0.3483 - 0.3583	746.76 - 752.19	2722.28 - 2662.00
43	0.3584 - 0.3735	752.20 - 762.81	2661.99 - 2625.91
44	0.3736 - 0.3906	762.82 - 772.20	2625.90 - 2567.06
45	0.3907 - 0.4207	772.21 - 787.30	2567.05 - 2499.34
46	0.4208 - 0.4642	787.31 - 806.21	2499.33 - 2390.07
47	0.4643 - 0.5051	806.22 - 835.07	2390.06 - 2292.83
48	0.5052 - 0.5506	835.08 - 885.98	2292.82 - 2224.39
49	0.5607 - 0.7103	885.99 - 941.43	2224.38 - 2041.67
50	0.7104+	941.44+	2041.66 - 1.00

PART-A : STRENGTHENING

2 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.1145	0.01 - 603.47	17341.83+
2	0.1146 - 0.1160	603.48 - 625.34	17341.82 -14175.57
3	0.1161 - 0.1697	625.35 - 648.14	14175.55 -11153.14
4	0.1698 - 0.1791	648.15 - 696.77	11153.13 - 9234.77
5	0.1792 - 0.1890	696.78 - 715.20	9234.76 - 8704.02
6	0.1891 - 0.2047	715.21 - 723.53	8704.01 - 8335.66
7	0.2048 - 0.2221	723.54 - 750.53	8335.64 - 8097.48
8	0.2222 - 0.2307	750.54 - 759.69	8097.46 - 7923.25
9	0.2308 - 0.2358	759.70 - 764.35	7923.24 - 7567.53
10	0.2359 - 0.2443	764.36 - 769.29	7567.52 - 7183.89
11	0.2444 - 0.2536	769.30 - 785.17	7183.88 - 6907.50
12	0.2537 - 0.2646	785.18 - 793.02	6907.49 - 6481.62
13	0.2647 - 0.2723	793.03 - 795.74	6481.61 - 6403.98
14	0.2724 - 0.2780	795.75 - 798.05	6403.96 - 6208.09
15	0.2781 - 0.2856	798.06 - 806.15	6208.08 - 5993.69
16	0.2857 - 0.2891	806.16 - 808.47	5993.68 - 5913.12
17	0.2892 - 0.3011	808.48 - 810.46	5913.11 - 5785.20
18	0.3012 - 0.3050	810.47 - 818.67	5785.19 - 5652.44
19	0.3051 - 0.3084	818.68 - 822.05	5652.43 - 5539.07
20	0.3085 - 0.3164	822.06 - 828.25	5539.05 - 5225.32
21	0.3165 - 0.3219	828.26 - 830.97	5225.30 - 5193.42
22	0.3220 - 0.3260	830.98 - 838.93	5193.41 - 5111.98
23	0.3261 - 0.3290	838.94 - 849.11	5111.96 - 5074.24
24	0.3291 - 0.3332	849.12 - 857.74	5074.23 - 5046.27
25	0.3333 - 0.3385	857.75 - 864.26	5046.26 - 4972.50
26	0.3386 - 0.3444	864.27 - 866.03	4972.49 - 4941.55
27	0.3445 - 0.3541	866.04 - 871.10	4941.54 - 4865.97
28	0.3542 - 0.3703	871.11 - 874.25	4865.96 - 4775.70
29	0.3704 - 0.3760	874.26 - 875.33	4775.69 - 4659.55
30	0.3761 - 0.3792	875.34 - 876.95	4659.54 - 4653.02
31	0.3793 - 0.3849	876.96 - 880.34	4653.01 - 4641.16
32	0.3850 - 0.3922	880.35 - 882.07	4641.14 - 4411.79
33	0.3923 - 0.3945	882.08 - 883.41	4411.78 - 4384.00
34	0.3946 - 0.4012	883.42 - 886.50	4383.99 - 4348.14
35	0.4013 - 0.4076	886.51 - 888.90	4348.13 - 4324.23
36	0.4077 - 0.4143	888.91 - 891.87	4324.21 - 4286.21
37	0.4144 - 0.4166	891.88 - 892.91	4286.20 - 4267.52
38	0.4167 - 0.4187	892.92 - 895.66	4267.51 - 4226.27
39	0.4188 - 0.4206	895.67 - 898.12	4226.26 - 4177.36
40	0.4207 - 0.4309	898.13 - 901.40	4177.35 - 4146.02
41	0.4310 - 0.4453	901.41 - 903.88	4146.01 - 4094.33
42	0.4454 - 0.4612	903.89 - 909.34	4094.32 - 4049.68
43	0.4613 - 0.4680	909.35 - 913.50	4049.67 - 3988.36
44	0.4681 - 0.4731	913.51 - 914.99	3988.35 - 3953.84
45	0.4732 - 0.4761	915.00 - 920.66	3953.83 - 3849.56
46	0.4762 - 0.4800	920.67 - 923.15	3849.55 - 3767.77
47	0.4801 - 0.4859	923.16 - 927.50	3767.76 - 3710.23
48	0.4860 - 0.4892	927.51 - 929.75	3710.22 - 3685.69
49	0.4893 - 0.4960	929.76 - 930.80	3685.68 - 3535.52
50	0.4961 - 0.5020	930.81 - 934.16	3535.51 - 3456.81

PART-A : CONTINUE

2 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.5021 - 0.5058	934.17 - 936.60	3456.80 - 3397.16
52	0.5059 - 0.5124	936.61 - 939.02	3397.15 - 3322.68
53	0.5125 - 0.5271	939.03 - 944.37	3322.67 - 3306.27
54	0.5272 - 0.5344	944.38 - 948.43	3306.26 - 3289.45
55	0.5345 - 0.5483	948.44 - 951.75	3289.44 - 3252.96
56	0.5484 - 0.5612	951.76 - 955.73	3252.95 - 3239.81
57	0.5613 - 0.5637	955.74 - 961.99	3239.80 - 3228.12
58	0.5638 - 0.5753	962.00 - 969.31	3228.11 - 3167.07
59	0.5754 - 0.5829	969.32 - 970.93	3167.06 - 3112.96
60	0.5830 - 0.5901	970.94 - 973.89	3112.95 - 3015.97
61	0.5902 - 0.5931	973.90 - 975.93	3015.96 - 3007.76
62	0.5932 - 0.5999	975.94 - 978.67	3007.75 - 2917.90
63	0.6000 - 0.6213	978.68 - 982.63	2917.89 - 2877.93
64	0.6214 - 0.6377	982.64 - 984.62	2877.92 - 2824.46
65	0.6378 - 0.6421	984.63 - 986.59	2824.45 - 2800.12
66	0.6422 - 0.6643	986.60 - 990.45	2800.11 - 2776.17
67	0.6644 - 0.6877	990.46 - 994.82	2776.16 - 2750.58
68	0.6878 - 0.6919	994.83 - 995.29	2750.57 - 2709.42
69	0.6920 - 0.6942	995.30 - 999.02	2709.41 - 2643.99
70	0.6943 - 0.7254	999.03 -1002.65	2643.98 - 2628.94
71	0.7255 - 0.7316	1002.66 -1006.10	2628.93 - 2567.53
72	0.7317 - 0.7515	1006.11 -1010.08	2567.52 - 2532.26
73	0.7516 - 0.7766	1010.09 -1011.22	2532.25 - 2459.68
74	0.7767 - 0.7934	1011.23 -1014.29	2459.67 - 2428.28
75	0.7935 - 0.8020	1014.30 -1018.73	2428.27 - 2424.44
76	0.8021 - 0.8175	1018.74 -1024.46	2424.43 - 2342.15
77	0.8176 - 0.8325	1024.47 -1025.37	2342.14 - 2320.02
78	0.8326 - 0.8489	1025.38 -1029.16	2320.01 - 2282.39
79	0.8490 - 0.8570	1029.17 -1043.82	2282.38 - 2218.12
80	0.8571 - 0.8696	1043.83 -1049.36	2218.11 - 2136.58
81	0.8697 - 0.8921	1049.37 -1054.28	2136.57 - 2105.07
82	0.8922 - 0.9108	1054.29 -1057.85	2105.06 - 2068.95
83	0.9109 - 0.9350	1057.86 -1061.48	2068.94 - 2034.49
84	0.9351 - 0.9847	1061.49 -1062.16	2034.48 - 2014.33
85	0.9848 - 1.0045	1062.17 -1064.89	2014.32 - 1987.21
86	1.0046 - 1.0507	1064.90 -1073.48	1987.20 - 1938.79
87	1.0508 - 1.0778	1073.49 -1081.49	1938.78 - 1910.38
88	1.0779 - 1.0896	1081.50 -1083.86	1910.37 - 1889.79
89	1.0897 - 1.1285	1083.87 -1093.10	1889.78 - 1791.28
90	1.1286 - 1.1621	1093.11 -1099.05	1791.27 - 1733.02
91	1.1622 - 1.2013	1099.06 -1107.98	1733.01 - 1664.15
92	1.2014 - 1.2479	1107.99 -1113.53	1664.14 - 1629.05
93	1.2480 - 1.3749	1113.54 -1125.46	1629.04 - 1505.72
94	1.3750 - 1.4670	1125.47 -1138.10	1505.71 - 1361.07
95	1.4671 - 1.5129	1138.11 -1148.27	1361.06 - 1169.11
96	1.5130 - 1.6181	1148.28 -1175.35	1169.10 - 1133.29
97	1.6182 - 1.6499	1175.36 -1212.43	1133.28 - 1046.43
98	1.6500 - 1.6500	1212.44 -1240.05	1046.42 - 940.53
99	1.6500 - 1.6500	1240.06 -1275.35	940.52 - 799.16
100	1.6500+	1275.36+	799.15 - 1.00

PART-B : SPECIAL NEEDS

2 YR PRIVATE

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0786	0.01 - 549.93	14175.57+
2	0.0787 - 0.1245	549.94 - 622.78	14175.55 - 9234.77
3	0.1246 - 0.1414	622.79 - 660.02	9234.76 - 8335.66
4	0.1415 - 0.1629	660.03 - 692.77	8335.64 - 7923.25
5	0.1630 - 0.1738	692.78 - 707.91	7923.24 - 7183.89
6	0.1739 - 0.1871	707.92 - 715.95	7183.88 - 6481.62
7	0.1872 - 0.1971	715.96 - 723.51	6481.61 - 6208.09
8	0.1972 - 0.2053	723.52 - 738.32	6208.08 - 5913.12
9	0.2054 - 0.2142	738.33 - 749.49	5913.11 - 5652.44
10	0.2143 - 0.2275	749.50 - 758.97	5652.43 - 5225.32
11	0.2276 - 0.2380	758.98 - 773.14	5225.30 - 5111.98
12	0.2381 - 0.2456	773.15 - 785.61	5111.96 - 5046.27
13	0.2457 - 0.2486	785.62 - 789.41	5046.26 - 4941.55
14	0.2487 - 0.2528	789.42 - 798.73	4941.54 - 4775.70
15	0.2533 - 0.2741	798.74 - 806.18	4775.69 - 4653.02
16	0.2742 - 0.2800	806.19 - 815.61	4653.01 - 4411.79
17	0.2801 - 0.2875	815.62 - 825.82	4411.78 - 4308.14
18	0.2876 - 0.2943	825.83 - 840.22	4308.13 - 4286.21
19	0.2944 - 0.2987	840.23 - 846.47	4286.20 - 4226.27
20	0.2988 - 0.3121	846.48 - 850.61	4226.26 - 4146.02
21	0.3122 - 0.3188	850.62 - 860.87	4146.01 - 4049.68
22	0.3189 - 0.3282	860.88 - 866.03	4049.67 - 3953.84
23	0.3283 - 0.3405	866.04 - 880.79	3953.83 - 3767.77
24	0.3406 - 0.3499	880.80 - 888.67	3767.76 - 3685.69
25	0.3500 - 0.3570	888.68 - 891.48	3685.68 - 3456.81
26	0.3571 - 0.3787	891.49 - 901.59	3456.80 - 3322.68
27	0.3788 - 0.3837	901.60 - 906.68	3322.67 - 3289.45
28	0.3838 - 0.4020	906.69 - 914.03	3289.44 - 3239.81
29	0.4021 - 0.4081	914.04 - 918.71	3239.80 - 3167.07
30	0.4082 - 0.4281	918.72 - 925.13	3167.06 - 3015.97
31	0.4282 - 0.4354	925.14 - 930.31	3015.96 - 2917.90
32	0.4355 - 0.4524	930.32 - 937.40	2917.89 - 2824.46
33	0.4525 - 0.4684	937.41 - 942.26	2824.45 - 2776.17
34	0.4685 - 0.4841	942.27 - 945.19	2776.16 - 2709.42
35	0.4842 - 0.5096	945.20 - 961.89	2709.41 - 2628.94
36	0.5097 - 0.5358	961.90 - 976.42	2628.93 - 2532.26
37	0.5359 - 0.5545	976.43 - 994.98	2532.25 - 2428.28
38	0.5546 - 0.5935	994.99 -1005.11	2428.27 - 2342.15
39	0.5936 - 0.6072	1005.12 -1016.67	2342.14 - 2282.39
40	0.6073 - 0.6465	1016.68 -1030.45	2282.38 - 2136.58
41	0.6466 - 0.6677	1030.46 -1040.55	2136.57 - 2068.95
42	0.6678 - 0.7123	1040.56 -1060.72	2068.94 - 2014.33
43	0.7124 - 0.7474	1060.73 -1081.48	2014.32 - 1938.79
44	0.7475 - 0.8181	1081.49 -1104.23	1938.78 - 1889.79
45	0.8182 - 0.8723	1104.24 -1137.32	1889.78 - 1733.02
46	0.8724 - 0.9725	1137.33 -1164.38	1733.01 - 1629.05
47	0.9726 - 1.1174	1164.39 -1191.24	1629.04 - 1361.07
48	1.1175 - 1.3231	1191.25 -1264.32	1361.06 - 1133.29
49	1.3232 - 1.6499	1264.33 -1471.51	1133.28 - 940.53
50	1.6500+	1471.52+	940.52 - 1.00

PART-A : STRENGTHENING

4 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0939	0.01 - 538.24	26103.34+
2	0.0940 - 0.1260	538.25 - 607.09	26103.33 -20855.06
3	0.1261 - 0.1345	607.10 - 620.21	20855.05 -17768.36
4	0.1346 - 0.1432	620.22 - 629.21	17768.35 -13151.79
5	0.1433 - 0.1528	629.22 - 646.97	13151.78 -11143.16
6	0.1529 - 0.1632	646.98 - 660.26	11143.14 -10509.04
7	0.1633 - 0.1684	660.27 - 666.76	10509.03 -10326.05
8	0.1685 - 0.1744	666.77 - 674.54	10326.04 - 8674.21
9	0.1745 - 0.1774	674.55 - 681.46	8674.20 - 8464.98
10	0.1775 - 0.1803	681.47 - 688.18	8464.96 - 8325.39
11	0.1804 - 0.1867	688.19 - 692.86	8325.38 - 8074.47
12	0.1868 - 0.1925	692.87 - 698.95	8074.46 - 7710.76
13	0.1926 - 0.1932	698.96 - 701.26	7710.75 - 7411.33
14	0.1933 - 0.1985	701.27 - 703.39	7411.32 - 7141.99
15	0.1986 - 0.2008	703.40 - 710.34	7141.98 - 7039.98
16	0.2009 - 0.2051	710.35 - 713.87	7039.89 - 6835.25
17	0.2052 - 0.2091	713.88 - 722.62	6835.24 - 6747.85
18	0.2092 - 0.2155	722.63 - 726.04	6747.84 - 6594.07
19	0.2156 - 0.2201	726.05 - 730.95	6594.05 - 6500.36
20	0.2202 - 0.2226	730.96 - 737.42	6500.35 - 6349.40
21	0.2227 - 0.2258	737.43 - 742.67	6349.39 - 6273.22
22	0.2259 - 0.2277	742.68 - 745.49	6273.21 - 6174.54
23	0.2278 - 0.2324	745.50 - 754.87	6174.53 - 6025.75
24	0.2325 - 0.2355	754.88 - 757.34	6025.74 - 5910.54
25	0.2356 - 0.2375	757.35 - 764.06	5910.53 - 5841.65
26	0.2376 - 0.2396	764.07 - 768.99	5841.64 - 5619.45
27	0.2397 - 0.2410	769.00 - 772.78	5619.44 - 5580.54
28	0.2411 - 0.2477	772.79 - 775.95	5580.53 - 5475.40
29	0.2478 - 0.2513	775.96 - 778.46	5475.39 - 5382.95
30	0.2514 - 0.2527	778.47 - 784.29	5382.94 - 5350.45
31	0.2528 - 0.2561	784.30 - 787.11	5350.44 - 5307.20
32	0.2562 - 0.2592	787.12 - 789.91	5307.19 - 5272.98
33	0.2593 - 0.2612	789.92 - 790.56	5272.96 - 5143.76
34	0.2613 - 0.2668	790.57 - 794.49	5143.75 - 5052.06
35	0.2669 - 0.2710	794.50 - 797.99	5052.05 - 4984.24
36	0.2711 - 0.2733	798.00 - 798.90	4984.23 - 4970.58
37	0.2734 - 0.2785	798.91 - 801.23	4970.57 - 4907.09
38	0.2786 - 0.2802	801.24 - 803.19	4907.08 - 4828.87
39	0.2803 - 0.2831	803.20 - 803.97	4828.86 - 4800.98
40	0.2832 - 0.2854	803.98 - 805.46	4800.96 - 4759.69
41	0.2855 - 0.2879	805.47 - 808.97	4759.68 - 4673.50
42	0.2880 - 0.2899	808.98 - 810.95	4673.49 - 4652.00
43	0.2900 - 0.2921	810.96 - 813.99	4651.99 - 4612.53
44	0.2922 - 0.2953	814.00 - 814.62	4612.52 - 4561.15
45	0.2954 - 0.2988	814.63 - 816.44	4561.14 - 4520.18
46	0.2989 - 0.3005	816.45 - 821.94	4520.17 - 4490.61
47	0.3006 - 0.3039	821.95 - 825.11	4490.60 - 4453.80
48	0.3040 - 0.3059	825.12 - 827.09	4453.79 - 4403.72
49	0.3060 - 0.3079	827.10 - 827.66	4403.71 - 4383.87
50	0.3080 - 0.3100	827.67 - 830.65	4383.86 - 4338.86

PART-A : CONTINUE

4 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3101 - 0.3133	830.66 - 831.68	4338.85 - 4317.64
52	0.3134 - 0.3140	831.69 - 833.65	4317.63 - 4304.37
53	0.3141 - 0.3164	833.66 - 835.65	4304.36 - 4273.67
54	0.3165 - 0.3179	835.66 - 836.87	4273.66 - 4241.81
55	0.3180 - 0.3193	836.88 - 840.35	4241.80 - 4202.61
56	0.3194 - 0.3205	840.36 - 841.09	4202.60 - 4164.98
57	0.3206 - 0.3279	841.10 - 844.16	4164.96 - 4022.91
58	0.3280 - 0.3297	844.17 - 846.37	4022.90 - 3985.47
59	0.3298 - 0.3304	846.38 - 847.87	3985.46 - 3969.92
60	0.3305 - 0.3325	847.88 - 852.09	3969.91 - 3930.62
61	0.3326 - 0.3345	852.10 - 852.63	3930.61 - 3875.61
62	0.3346 - 0.3375	852.64 - 855.02	3875.60 - 3838.91
63	0.3376 - 0.3438	855.03 - 859.02	3838.90 - 3808.48
64	0.3439 - 0.3461	859.03 - 862.33	3808.47 - 3775.92
65	0.3462 - 0.3479	862.34 - 864.68	3775.91 - 3756.35
66	0.3480 - 0.3523	864.69 - 866.07	3756.34 - 3738.02
67	0.3524 - 0.3601	866.08 - 867.68	3738.01 - 3726.95
68	0.3602 - 0.3664	867.69 - 868.16	3726.94 - 3714.73
69	0.3665 - 0.3743	868.17 - 874.39	3714.72 - 3679.20
70	0.3744 - 0.3800	874.40 - 877.36	3679.19 - 3649.10
71	0.3801 - 0.3880	877.37 - 879.42	3649.09 - 3618.91
72	0.3881 - 0.3967	879.43 - 883.52	3618.90 - 3601.65
73	0.3968 - 0.4012	883.53 - 886.91	3601.64 - 3577.04
74	0.4013 - 0.4083	886.92 - 888.20	3577.03 - 3526.79
75	0.4084 - 0.4125	888.21 - 891.51	3526.78 - 3472.81
76	0.4126 - 0.4204	891.52 - 894.22	3472.80 - 3411.82
77	0.4205 - 0.4282	894.23 - 896.23	3411.81 - 3394.44
78	0.4283 - 0.4367	896.24 - 900.57	3394.43 - 3378.48
79	0.4368 - 0.4419	900.58 - 902.76	3378.47 - 3340.15
80	0.4420 - 0.4511	902.77 - 908.31	3340.14 - 3296.89
81	0.4512 - 0.4641	908.32 - 913.56	3296.88 - 3254.01
82	0.4642 - 0.4806	913.57 - 917.25	3254.00 - 3209.33
83	0.4807 - 0.4905	917.26 - 921.77	3209.32 - 3179.35
84	0.4906 - 0.4982	921.78 - 926.81	3179.34 - 3094.70
85	0.4983 - 0.5081	926.82 - 931.72	3094.69 - 3013.87
86	0.5082 - 0.5261	931.73 - 933.55	3013.86 - 2975.51
87	0.5262 - 0.5537	933.56 - 944.88	2975.50 - 2901.89
88	0.5538 - 0.5601	944.89 - 952.59	2901.88 - 2850.12
89	0.5602 - 0.5988	952.60 - 957.96	2850.11 - 2829.72
90	0.5989 - 0.6265	957.97 - 968.08	2829.71 - 2742.87
91	0.6266 - 0.6700	968.09 - 976.60	2742.86 - 2709.33
92	0.6701 - 0.6903	976.61 - 986.27	2709.32 - 2668.29
93	0.6904 - 0.7403	986.28 - 992.93	2668.28 - 2625.96
94	0.7404 - 0.7557	992.94 -1006.21	2625.95 - 2573.02
95	0.7558 - 0.7716	1006.22 -1024.05	2573.01 - 2557.19
96	0.7717 - 0.8065	1024.06 -1045.97	2557.18 - 2500.10
97	0.8066 - 0.8439	1045.98 -1062.99	2500.09 - 2444.41
98	0.8440 - 0.9079	1063.00 -1074.30	2444.40 - 2377.48
99	0.9080 - 1.0112	1074.31 -1126.64	2377.47 - 2135.41
100	1.0113+	1126.65+	2135.40 - 1.00

PART-B : SPECIAL NEEDS

4 YR PUBLIC

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0885	0.01 - 672.41	20855.06+
2	0.0886 - 0.1106	672.42 - 697.35	20855.05 -13151.79
3	0.1107 - 0.1199	697.36 - 726.89	13151.78 -10509.04
4	0.1200 - 0.1230	726.90 - 734.53	10509.03 - 8674.21
5	0.1231 - 0.1265	734.54 - 750.26	8674.20 - 8325.39
6	0.1266 - 0.1330	750.27 - 766.84	8325.38 - 7710.76
7	0.1331 - 0.1450	766.85 - 776.04	7710.75 - 7141.99
8	0.1451 - 0.1518	776.05 - 781.96	7141.98 - 6835.25
9	0.1519 - 0.1607	781.97 - 787.35	6835.24 - 6594.07
10	0.1608 - 0.1672	787.36 - 794.40	6594.05 - 6349.40
11	0.1673 - 0.1736	794.41 - 798.13	6349.39 - 6174.54
12	0.1737 - 0.1774	798.14 - 805.95	6174.53 - 5910.54
13	0.1775 - 0.1816	805.96 - 813.62	5910.53 - 5619.45
14	0.1817 - 0.1834	813.63 - 819.71	5619.44 - 5475.40
15	0.1835 - 0.1863	819.72 - 823.31	5475.39 - 5350.45
16	0.1864 - 0.1909	823.32 - 833.17	5350.44 - 5272.99
17	0.1910 - 0.1944	833.18 - 842.22	5272.96 - 5052.06
18	0.1945 - 0.1980	842.23 - 847.87	5052.05 - 4970.58
19	0.1981 - 0.2016	847.88 - 854.33	4970.57 - 4828.87
20	0.2017 - 0.2073	854.34 - 857.99	4828.86 - 4759.69
21	0.2074 - 0.2104	858.00 - 864.74	4759.68 - 4652.00
22	0.2105 - 0.2134	864.75 - 871.44	4651.99 - 4561.15
23	0.2135 - 0.2180	871.45 - 876.94	4561.14 - 4490.61
24	0.2181 - 0.2238	876.95 - 882.44	4490.60 - 4403.72
25	0.2240 - 0.2307	882.45 - 888.24	4403.71 - 4338.86
26	0.2308 - 0.2341	888.25 - 893.05	4338.85 - 4304.37
27	0.2342 - 0.2402	893.06 - 898.87	4304.36 - 4241.81
28	0.2403 - 0.2429	898.88 - 902.98	4241.80 - 4164.98
29	0.2430 - 0.2463	902.99 - 915.95	4164.96 - 3985.47
30	0.2464 - 0.2504	915.96 - 926.10	3985.46 - 3930.62
31	0.2505 - 0.2577	926.11 - 929.93	3930.61 - 3838.91
32	0.2578 - 0.2672	929.94 - 937.10	3839.90 - 3775.92
33	0.2673 - 0.2747	937.11 - 947.77	3775.91 - 3738.02
34	0.2748 - 0.2808	947.78 - 955.95	3738.01 - 3714.73
35	0.2809 - 0.2956	955.96 - 971.61	3714.72 - 3649.10
36	0.2957 - 0.3026	971.62 - 981.36	3649.09 - 3601.65
37	0.3027 - 0.3113	981.37 - 984.46	3601.64 - 3526.79
38	0.3114 - 0.3305	984.47 - 994.26	3526.78 - 3411.82
39	0.3306 - 0.3396	994.27 -1005.43	3411.81 - 3378.48
40	0.3397 - 0.3554	1005.44 -1016.53	3378.47 - 3296.89
41	0.3555 - 0.3736	1016.54 -1034.23	3296.88 - 3209.33
42	0.3737 - 0.3969	1034.24 -1044.54	3209.32 - 3094.70
43	0.3970 - 0.4305	1044.55 -1056.84	3094.69 - 2975.51
44	0.4306 - 0.4525	1056.85 -1065.52	2975.50 - 2850.12
45	0.4526 - 0.4880	1065.53 -1075.80	2850.11 - 2742.87
46	0.4881 - 0.5544	1075.81 -1105.73	2742.86 - 2668.29
47	0.5545 - 0.6263	1105.74 -1132.80	2668.28 - 2573.02
48	0.6264 - 0.6699	1132.81 -1156.43	2573.01 - 2500.10
49	0.6700 - 0.7792	1156.44 -1229.61	2500.09 - 2377.48
50	0.7793+	1229.62+	2377.47 - 1.00

PART-A : STRENGTHENING

4 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0569	0.01 - 698.17	21317.37+
2	0.0570 - 0.0897	698.18 - 760.33	21317.36 -15038.08
3	0.0898 - 0.1051	760.34 - 784.50	15038.07 -13594.30
4	0.1052 - 0.1250	784.51 - 810.64	13594.29 -12102.52
5	0.1251 - 0.1363	810.65 - 818.63	12102.51 -11115.52
6	0.1364 - 0.1431	818.64 - 827.63	11115.51 -10642.75
7	0.1432 - 0.1474	827.64 - 836.09	10642.74 -10276.52
8	0.1475 - 0.1526	836.10 - 841.98	10276.51 -10186.97
9	0.1527 - 0.1601	841.99 - 847.80	10186.96 - 9681.36
10	0.1602 - 0.1659	847.81 - 852.54	9681.35 - 9418.54
11	0.1660 - 0.1711	852.55 - 856.43	9418.53 - 9160.14
12	0.1712 - 0.1782	856.44 - 860.69	9160.13 - 8833.39
13	0.1783 - 0.1821	860.70 - 863.70	8833.38 - 8703.32
14	0.1822 - 0.1901	863.71 - 868.72	8703.30 - 8294.02
15	0.1902 - 0.1937	868.73 - 871.57	8294.01 - 8160.92
16	0.1938 - 0.1991	871.58 - 876.43	8160.91 - 8074.15
17	0.1992 - 0.2033	876.44 - 879.19	8074.14 - 7952.78
18	0.2034 - 0.2077	879.20 - 884.02	7952.77 - 7766.44
19	0.2078 - 0.2131	884.03 - 886.77	7766.43 - 7636.25
20	0.2132 - 0.2175	886.78 - 891.40	7636.24 - 7522.10
21	0.2176 - 0.2231	891.41 - 894.66	7522.09 - 7389.64
22	0.2232 - 0.2270	894.67 - 898.74	7389.63 - 7289.51
23	0.2271 - 0.2297	898.75 - 902.26	7289.50 - 7160.73
24	0.2298 - 0.2336	902.27 - 906.02	7160.71 - 7070.71
25	0.2337 - 0.2390	906.03 - 908.33	7070.70 - 6998.64
26	0.2391 - 0.2427	908.34 - 911.16	6998.63 - 6897.70
27	0.2428 - 0.2487	911.17 - 913.49	6897.69 - 6791.72
28	0.2488 - 0.2528	913.50 - 917.12	6791.71 - 6705.99
29	0.2529 - 0.2571	917.13 - 919.46	6705.98 - 6602.59
30	0.2572 - 0.2617	919.47 - 922.29	6602.58 - 6500.73
31	0.2618 - 0.2656	922.30 - 925.58	6500.71 - 6421.55
32	0.2657 - 0.2684	925.59 - 928.18	6421.54 - 6367.62
33	0.2685 - 0.2741	928.19 - 932.11	6367.61 - 6292.60
34	0.2742 - 0.2803	932.12 - 935.72	6292.59 - 6224.40
35	0.2804 - 0.2860	935.73 - 938.24	6224.39 - 6162.72
36	0.2861 - 0.2894	938.25 - 941.17	6162.71 - 6108.21
37	0.2895 - 0.2938	941.18 - 943.96	6108.20 - 6019.20
38	0.2939 - 0.2979	943.97 - 946.36	6019.19 - 5934.93
39	0.2980 - 0.3026	946.37 - 947.55	5934.92 - 5879.34
40	0.3027 - 0.3058	947.56 - 949.27	5879.33 - 5815.29
41	0.3059 - 0.3095	949.28 - 951.95	5815.28 - 5757.80
42	0.3096 - 0.3136	951.96 - 954.30	5757.79 - 5707.27
43	0.3137 - 0.3179	954.31 - 957.19	5707.26 - 5635.34
44	0.3180 - 0.3220	957.20 - 960.58	5635.33 - 5587.76
45	0.3221 - 0.3256	960.59 - 962.46	5587.75 - 5509.07
46	0.3257 - 0.3288	962.47 - 964.54	5509.05 - 5435.69
47	0.3289 - 0.3354	964.55 - 966.56	5435.67 - 5367.75
48	0.3355 - 0.3403	966.57 - 968.76	5367.74 - 5322.77
49	0.3404 - 0.3454	968.77 - 972.50	5322.76 - 5288.41
50	0.3455 - 0.3492	972.51 - 975.29	5288.39 - 5235.43

PART-A : CONTINUE

4 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3493 - 0.3543	975.30 - 976.93	5235.42 - 5185.90
52	0.3544 - 0.3595	976.94 - 979.86	5185.89 - 5137.48
53	0.3596 - 0.3640	979.87 - 981.94	5137.46 - 5093.57
54	0.3641 - 0.3666	981.95 - 984.17	5093.55 - 5043.03
55	0.3667 - 0.3706	984.18 - 987.55	5043.02 - 4998.78
56	0.3707 - 0.3764	987.56 - 991.16	4998.77 - 4948.31
57	0.3765 - 0.3830	991.17 - 993.87	4948.30 - 4895.10
58	0.3831 - 0.3850	993.88 - 997.60	4895.09 - 4867.81
59	0.3851 - 0.3899	997.61 -1000.18	4867.80 - 4835.55
60	0.3900 - 0.3946	1000.19 -1003.24	4835.54 - 4798.70
61	0.3947 - 0.3999	1003.25 -1005.35	4798.69 - 4735.62
62	0.4000 - 0.4046	1005.36 -1008.00	4735.61 - 4684.24
63	0.4047 - 0.4097	1008.01 -1010.55	4684.23 - 4616.48
64	0.4098 - 0.4131	1010.56 -1013.55	4616.46 - 4578.07
65	0.4132 - 0.4172	1013.56 -1015.55	4578.05 - 4532.66
66	0.4173 - 0.4209	1015.56 -1019.23	4532.64 - 4495.82
67	0.4210 - 0.4301	1019.24 -1025.77	4495.80 - 4421.48
68	0.4302 - 0.4351	1025.78 -1029.31	4421.46 - 4354.18
69	0.4352 - 0.4420	1029.32 -1033.93	4354.17 - 4298.42
70	0.4421 - 0.4508	1033.94 -1038.28	4298.41 - 4230.77
71	0.4509 - 0.4569	1038.29 -1042.70	4230.76 - 4180.80
72	0.4570 - 0.4604	1042.71 -1045.19	4180.79 - 4137.60
73	0.4605 - 0.4669	1045.20 -1049.92	4137.59 - 4091.83
74	0.4670 - 0.4721	1049.93 -1052.92	4091.82 - 4041.84
75	0.4722 - 0.4775	1052.93 -1057.60	4041.83 - 3998.01
76	0.4776 - 0.4870	1057.61 -1063.49	3998.00 - 3941.60
77	0.4871 - 0.4924	1063.50 -1068.15	3941.59 - 3900.75
78	0.4925 - 0.5022	1068.16 -1074.88	3900.74 - 3824.10
79	0.5023 - 0.5092	1074.89 -1080.07	3824.09 - 3775.62
80	0.5093 - 0.5262	1080.08 -1083.18	3775.61 - 3708.14
81	0.5263 - 0.5347	1083.19 -1087.87	3708.13 - 3633.77
82	0.5348 - 0.5462	1087.88 -1095.59	3633.76 - 3593.12
83	0.5463 - 0.5555	1095.60 -1100.45	3593.11 - 3523.54
84	0.5556 - 0.5690	1100.46 -1110.48	3523.53 - 3471.47
85	0.5691 - 0.5832	1110.49 -1119.17	3471.46 - 3401.47
86	0.5833 - 0.6058	1119.18 -1129.29	3401.46 - 3331.50
87	0.6059 - 0.6249	1129.30 -1138.17	3331.49 - 3228.58
88	0.6250 - 0.6474	1138.18 -1152.87	3228.57 - 3165.26
89	0.6475 - 0.6737	1152.88 -1171.10	3165.25 - 3088.15
90	0.6738 - 0.6957	1171.11 -1188.30	3088.14 - 3010.37
91	0.6958 - 0.7185	1188.31 -1208.41	3010.36 - 2890.30
92	0.7186 - 0.7537	1208.42 -1221.25	2890.29 - 2770.60
93	0.7538 - 0.8025	1221.26 -1241.51	2770.59 - 2655.30
94	0.8026 - 0.8497	1241.52 -1262.74	2655.29 - 2499.82
95	0.8498 - 0.9006	1262.75 -1288.81	2499.81 - 2362.56
96	0.9007 - 0.9389	1288.82 -1313.17	2362.55 - 2103.40
97	0.9390 - 0.9882	1313.18 -1354.31	2103.39 - 1902.16
98	0.9883 - 1.0662	1354.32 -1419.30	1902.15 - 1669.07
99	1.0663 - 1.2827	1419.31 -1525.66	1669.06 - 1435.75
100	1.2828+	1525.67+	1435.74 - 1.00

PART-B : SPECIAL NEEDS

4 YR PRIVATE

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0787	0.01 - 710.86	15038.08+
2	0.0788 - 0.1102	710.87 - 747.49	15038.07 -12102.52
3	0.1103 - 0.1285	747.50 - 781.80	12102.51 -10642.75
4	0.1286 - 0.1434	781.81 - 811.30	10642.74 -10186.97
5	0.1435 - 0.1613	811.31 - 836.72	10186.96 - 9418.54
6	0.1614 - 0.1729	836.73 - 858.86	9418.53 - 8833.39
7	0.1730 - 0.1849	858.87 - 872.75	8833.38 - 8294.02
8	0.1850 - 0.1932	872.76 - 893.98	8294.01 - 8074.15
9	0.1933 - 0.2048	893.99 - 906.57	8074.14 - 7766.44
10	0.2049 - 0.2117	906.58 - 918.81	7766.43 - 7522.10
11	0.2118 - 0.2202	918.82 - 926.81	7522.09 - 7289.51
12	0.2203 - 0.2282	926.82 - 942.52	7289.50 - 7070.71
13	0.2283 - 0.2340	942.53 - 952.46	7070.70 - 6897.70
14	0.2341 - 0.2402	952.47 - 958.18	6897.69 - 6705.99
15	0.2403 - 0.2471	958.19 - 965.37	6705.98 - 6500.73
16	0.2472 - 0.2537	965.38 - 977.71	6500.71 - 6367.62
17	0.2538 - 0.2611	977.72 - 986.23	6347.61 - 6224.40
18	0.2612 - 0.2653	986.24 - 996.71	6224.39 - 6108.21
19	0.2654 - 0.2713	996.72 -1008.41	6108.20 - 5934.93
20	0.2714 - 0.2787	1008.42 -1017.71	5934.92 - 5815.29
21	0.2788 - 0.2864	1017.72 -1027.85	5815.28 - 5707.27
22	0.2865 - 0.2963	1027.86 -1035.14	5707.26 - 5587.76
23	0.2964 - 0.3049	1035.15 -1043.20	5587.75 - 5435.68
24	0.3050 - 0.3124	1043.21 -1054.51	5435.67 - 5322.77
25	0.3125 - 0.3207	1054.52 -1065.47	5322.76 - 5235.43
26	0.3208 - 0.3293	1065.48 -1075.85	5235.42 - 5137.48
27	0.3294 - 0.3373	1075.86 -1084.42	5137.46 - 5043.03
28	0.3374 - 0.3469	1084.43 -1094.79	5043.02 - 4949.31
29	0.3470 - 0.3549	1094.80 -1109.66	4949.30 - 4867.81
30	0.3550 - 0.3649	1109.67 -1120.25	4867.80 - 4798.70
31	0.3650 - 0.3713	1120.26 -1134.01	4798.69 - 4684.24
32	0.3714 - 0.3806	1134.02 -1144.11	4684.23 - 4579.07
33	0.3807 - 0.3895	1144.12 -1154.23	4579.06 - 4495.82
34	0.3896 - 0.4004	1154.24 -1164.77	4495.80 - 4354.18
35	0.4005 - 0.4070	1164.78 -1182.91	4354.17 - 4230.77
36	0.4071 - 0.4193	1182.92 -1195.00	4230.76 - 4137.60
37	0.4194 - 0.4297	1195.01 -1212.65	4137.59 - 4041.84
38	0.4298 - 0.4400	1212.66 -1228.48	4041.83 - 3941.60
39	0.4401 - 0.4541	1228.49 -1246.34	3941.59 - 3824.10
40	0.4542 - 0.4621	1246.35 -1262.22	3824.09 - 3708.14
41	0.4622 - 0.4758	1262.23 -1296.73	3708.13 - 3593.12
42	0.4759 - 0.4950	1296.74 -1317.78	3593.11 - 3471.47
43	0.4951 - 0.5140	1317.79 -1343.19	3471.46 - 3331.50
44	0.5141 - 0.5445	1343.20 -1374.29	3331.49 - 3165.26
45	0.5446 - 0.5793	1374.30 -1410.88	3165.25 - 3010.37
46	0.5794 - 0.6127	1410.89 -1446.60	3010.36 - 2770.60
47	0.6128 - 0.7043	1446.61 -1517.31	2770.59 - 2409.82
48	0.7044 - 0.8032	1517.32 -1603.72	2409.81 - 2103.40
49	0.8033 - 0.8521	1603.73 -1763.08	2103.39 - 1669.07
50	0.8522+	1763.09+	1669.06 - 1.00

PART B: SPECIAL NEEDS

GRADUATE PUBLIC

POINTS	NEED PERCENT	NEED DOLLARS
1	0.0001 - 0.0942	0.01 - 545.59
7	0.0943 - 0.1869	545.60 - 1380.94
19	0.1870 - 0.3619	1380.95 - 1408.23
32	0.3620 - 0.3785	1408.24 - 1675.49
50	0.3786+	1675.50+

PART B: SPECIAL NEEDS

GRADUATE PRIVATE

POINT	NEED PERCENT	NEED DOLLAR
1	0.0001 - 0.0176	0.01 - 449.61
2	0.0177 - 0.0248	449.62 - 577.11
3	0.0249 - 0.0315	577.12 - 595.20
4	0.0316 - 0.0401	595.21 - 618.31
5	0.0402 - 0.0567	618.32 - 669.46
6	0.0568 - 0.0618	669.47 - 728.18
7	0.0619 - 0.0635	728.19 - 783.84
8	0.0636 - 0.0650	783.85 - 813.56
9	0.0651 - 0.0863	813.57 - 848.67
10	0.0864 - 0.0994	848.68 - 873.85
11	0.0995 - 0.1018	873.86 - 881.80
12	0.1019 - 0.1028	881.81 - 897.93
13	0.1029 - 0.1113	897.94 - 949.89
14	0.1114 - 0.1170	949.90 - 968.59
15	0.1171 - 0.1299	968.60 - 969.71
16	0.1300 - 0.1419	969.72 -1011.31
17	0.1420 - 0.1461	1011.32 -1018.04
18	0.1462 - 0.1479	1018.05 -1024.48
19	0.1479 - 0.1605	1024.49 -1030.75
20	0.1606 - 0.1629	1030.76 -1071.02
21	0.1630 - 0.1737	1071.03 -1100.22
22	0.1738 - 0.1777	1100.23 -1112.27
23	0.1778 - 0.1785	1112.28 -1127.49
24	0.1786 - 0.1816	1127.50 -1301.17
25	0.1817 - 0.1855	1301.18 -1360.01
26	0.1856 - 0.1913	1360.02 -1369.27
27	0.1914 - 0.1977	1369.28 -1415.09
28	0.1978 - 0.2021	1415.10 -1444.43
29	0.2022 - 0.2044	1444.44 -1448.95
30	0.2045 - 0.2062	1448.96 -1512.23
31	0.2063 - 0.2098	1512.24 -1517.85
32	0.2099 - 0.2130	1517.86 -1543.44
33	0.2131 - 0.2307	1543.45 -1584.03
34	0.2308 - 0.2367	1584.04 -1589.99
35	0.2368 - 0.2400	1590.00 -1604.72
36	0.2401 - 0.2618	1604.73 -1635.81
37	0.2619 - 0.2625	1635.82 -1643.40
38	0.2626 - 0.2736	1643.41 -1664.07
39	0.2737 - 0.2833	1664.08 -1766.45
40	0.2834 - 0.2858	1766.46 -1802.77
41	0.2859 - 0.2954	1802.78 -1945.64
42	0.2955 - 0.3064	1945.65 -1955.76
43	0.3065 - 0.3174	1955.77 -2028.77
44	0.3175 - 0.3203	2028.78 -2258.91
45	0.3204 - 0.3520	2258.92 -2275.66
46	0.3521 - 0.3717	2275.67 -2580.90
47	0.3718 - 0.4614	2580.91 -2772.57
48	0.4615 - 0.5237	2772.58 -3400.06
49	0.5238 - 0.6939	3400.07 -3563.35
50	0.6940+	3563.36+

[FR Doc. 84-31249 Filed 11-29-84; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

National Petroleum Council Oil Supply/Demand Task Group; Meeting

Notice is hereby given that the Oil Supply/Demand Task Group will meet in December 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Oil Supply/Demand Task Group will address previous Council refining studies and evaluate further refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Oil Supply/Demand Task Group will hold its first meeting on Wednesday, December 5, 1984, starting at 9:00 a.m., Second Floor Conference Room, Diamond Shamrock Corporation, located in the Ranger Insurance Building, 5333 Westheimer, Houston, Texas.

The tentative agenda for Oil Supply/Demand Task Group meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.
2. Discuss the scope of the overall study.
3. Discuss the study assignment of the U.S. Oil Supply/Demand Task Group.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Oil Supply/Demand Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Oil Supply/Demand Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Carolyn B. Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2709, prior to the meeting and reasonable provisions will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Publilc Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 21, 1984.

William A. Vaughn,

Assistant Secretary Fossil Energy.

[FR Doc. 84-31384 Filed 11-29-84; 8:45 am]

BILLING CODE 6450-01-M

Public Comment Period and Meeting on a Panel's Review and Findings of Ongoing Health Effects and Epidemiological Studies of Operations at the Savannah River Plant

AGENCY: Department of Energy.

ACTION: Notice of a 30-Day public comment period and public meeting.

SUMMARY: The Department of Energy (DOE) announces the initiation of a 30-day public comment period on a panel's review and findings regarding epidemiological studies of persons working at and/or living around DOE's Savannah River Plant in South Carolina. The panel review was conducted by the U.S. Department of Health and Human Services' Centers for Disease Control (CDC) at DOE's request. Panel members consisted of a group of epidemiologists and other scientists. Panel members were requested to review past and current epidemiological studies and to provide a list of further studies for consideration. As approved by the panel and documented in a report entitled, "Epidemiologic Projects Considered Possible to Undertake in Populations Around the Savannah River Plant," the panel's recommendation was that only 3 studies, presently being conducted by DOE, merited serious consideration as high priorities at this time. A public meeting and 30-day comment period on the panel's recommendation is being held pursuant to DOE's commitment in the final environmental impact statement for L-Reactor Operation (DOE/EIS–0108). Written comments on the CDC panel's recommendation may be submitted at any time during the 30-day comment period and should be directed to Mr. Grover A. Smithwick, at the address below. The Department will also hold a public meeting in Aiken, South Carolina, for the purpose of receiving oral comments on the panel's recommendation. After the 30-day public comment period, the Department of Energy will prepare a report of the meeting summarizing the comments received during the public comment period, and a final position based on the public comments received and the recommendation of the CDC panel. All oral comments received at the meeting, and all written comments postmarked by December 30, 1984, will be considered by the Department in determining its final position.

DATES AND TIMES: The 30-day public comment period will begin on December 1, 1984, and will end on December 30, 1984. All written comments postmarked by December 30, 1984, will be considered by the Department of Energy in determining its final position.

Oral comments will be received at a public meeting which will be held as follows:

December 18, 1984, at 10:00 a.m. at the Odell Weeks Activity Center, 1700 Whiskey Road, Aiken, South Carolina 29801.

Availability of Panel Recommendations

Copies of the CDC panel's report entitled "Epidemiologic Projects Considered Possible to Undertake in Populations Around the Savannah River Plant," are available for inspection at the following reading rooms and libraries:

Atlanta Public Library, 1 Margaret Mitchell, NW., Atlanta, Georgia 30303
Augusta Regional Library, 902 Greene Street, Augusta, Georgia 30901
Burke County Library, Fourth Street, Waynesboro, Georgia 30830
Chatham County Public Library, 2002 Bull Street, Savannah, Georgia 31499
Statesboro Regional Library, 124 South Main Street, Statesboro, Georgia 30458
Aiken-Bamberg-Barnwell-Edgefield Regional Library, 1307 Georgia Avenue, North Augusta, South Carolina 29841
Aiken County Library, 435 Newberry Street SW., Aiken, South Carolina 29801
Allendale-Hampton-Jasper Regional Library, War Memorial Building, Court House Square, Allendale, South Carolina 29810
Beaufort County Library, 710 Craven Street, Beaufort, South Carolina 29902
Richland County Public Library, 1400 Sumter Street, Columbia, South Carolina 29201
South Carolina State Library, 1500 Senate Street, Columbia, South Carolina 29201
U.S. Department of Energy, 211 York Street, NE., Federal Building, Aiken, South Carolina 29801
Freedom of Information Reading Room, Room 1E–190, U.S. Department of Energy, Forrestal Building, 1000 Independence Ave, SW., Washington, D.C. 20585

In addition, copies of the report may also be obtained by contracting Mr. Grover A. Smithwick at the address below.

ADDRESSES: Written comments, requests for copies of the CDC panel's report, the requests to speak at the meeting, and requests for further information on the 30-day public comment period should be directed to: Mr. Grover A. Smithwick, Acting Assistant Manager for Health, Safety, and Environment, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29801, (803) 725–3857 or 725–2203. Envelopes should be marked "Attention: CDC Panel's Recommendations."

Meeting Procedures

The Department of Energy invites any person who has an interest in the CDC panel's recommendation or who is a representative of a group of persons that has an interest in the CDC panel's recommendation, to submit written comments or to make oral presentations at the public meeting. Individuals desiring to make oral presentations should notify Mr. Grover A. Smithwick at the above address no later than one week before the meeting so that the Department may arrange a schedule for the presentations.

Persons who have not submitted a request to speak in advance may register to speak at the public meeting before the meeting commences; they will be called on to present their comments as time permits. In order to ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to individuals, and ten minutes will be allotted for individuals representing groups.

A panel will be present who will make a brief presentation at the beginning of the meeting and who will clarify or comment on issues raised during the meeting. There will be no cross examination of either the panel or persons making presentations. Any further procedural rules needed for the proper conduct of the meeting will be announced by a presiding officer prior to the start of the meeting.

All written comments and the meeting transcript will be included in the meeting report. All persons receiving a copy of the CDC panel's report, who make a presentation at the public meeting, or who provide written comments, will be sent a copy of the Department's final position.

Issued at Washington, D.C. on November 26, 1984.

William W. Hoover,

Assistant Secretary for Defense Programs.

[FR Doc. 84-31389 Filed 11-29-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA–FC–84–011; OFP Case No. 64010–9248–20–24]

Exemption From Prohibitions; CoGen Lynchburg, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting to CoGen Lynchburg, Inc. exemption from prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby givens notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. (8301 *et seq.* ("FUA" or "the Act") to CoGen Lynchburg, Inc. (CGL or "the petitioner") of Houston, Texas. The permanent congeneration exemption permits the use of natural gas as the primary energy source for a proposed 425.0 MW (net, approximate) electric power and steam plant facility located in La Porte, Texas, which will consist of four 75MW combustion gas turbine generators, four unfired waste heat boilers, and one extraction-induction-condensing steam turbine generator. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on January 29, 1985.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–073, Washington, D.C. 20585, Phone (202) 252–9269

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252–6749.

SUPPLEMENTARY INFORMATION: On April 20, 1984, CGL petitioned ERA under section 212(c) of FUA and CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a proposed 425.0 MW (net, approximate) electric power and steam facility located in La Porte, Texas. The La Porte facility is designed to burn natural gas or oil. The La Porte's electric capacity will be 425.0 mega-watts at a system heat rate of 7595 Btu per kWh (74°F). Approximately 374,000 pounds per hour of process steam from the waste heat boilers will be delivered to chemical plants in the Upjohn La Porte, Texas, Chemical Complex. And, appoximately 410MW of electric power from the gas and steam generators will be delivered to the Houston Lighting & Power Company (HL&P); HL&P is interconnected with the Electric Reliability Council of Texas regional gird. Accordingly, CGL will be selling more than 50 percent of the La Porte facility's annual electric power generation to HL&P making the cogeneration facility an electric powerplant in accordance with the definition of "electric generating unit" contained in 10 CFR 500.2.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including CGL's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 6, 1984 (49 FR 35221), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on October 27, 1984; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 10(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that CGL has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogneration exemption to CGL to permit the use of natural gas as the primary energy source for its cogeneration facility in LaPorte, Texas.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C. on November 14, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–31432 Filed 11–29–84; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–84–015; OFP Case No. 61050–9254–21–22]

Powerplant and Industrial Fuel Use Act; Alaska Electric Generation and Transmission, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification from the Alaska Electric Generation and Transmission, Inc., for an exemption from the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On July 30, 1984, Alaska Electric Generation and Transmission, Inc. (AEG&T), Palmer, Alaska, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for a proposed new electric powerplant from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new elecric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules governing the reliability of service exemption, 10 CFR § 503.40, were published at 46 FR 59872 (December 7, 1981).

The unit for which AEG&T seeks an exemption is a natural gas-fired combustion turbine with a nameplate rating of 39 MW, that will operate as a simple-cycle combustion turbine unit to produce electrical power at AEG&T's plant at Soldotna, Alaska. The new unit, identified as Soldotna Power Plant Unit No. 1, is expected to commence operation to meet load forecast electrical demands commencing in 1985.

After receipt of additional information from AEG&T remedying deficiencies in the originally-filed petition, ERA has now determined that the amended petition includes sufficient evidence to support a determination on the exemption request, and it is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from AEG&T at any time during the proceeding should circumstances or procedural requirements so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, D.C. 20585, Monday-Friday, 8:00 a.m.–4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefor, will be published in the **Federal Register**.

DATES: Written comments are due on or before January 14, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–073, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. Docket No. ERA–FC–84–015 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–007, Washington, D.C. 20585, Phone (202) 252–9629

Steven E. Ferguson, Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 independence Avenue SW., Washington, D.C. 20585, Phone (202) 252–6947.

SUPPLEMENTARY INFORMATION: AEG&T proposes to install a new combustion turbine powerplant unit at Soldotna, Alaska. The new unit will operate as a base load integrated system, producing electricity to meet forecast demands, commencing with the winter of 1985–86.

Section 212(f) of FUA and 10 CFR 503.40 provide for a permanent exemption for powerplants necessary to maintin reliability of service. In addition, section 317 of Pub. L. 97–394 (42 U.S.C. 8322) provides that:

> In the case of any new electric power plant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted . . . Nothing in this section shall apply to any new electric power plant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40 (a) and (c), AEG&T's petition for a permanent exemption for Soldotna Power Plant Unit No. 1 includes evidence and supporting information demonstrating that Soldotna Power Plant Unit No. 1 is a qualifying powerplant under section 317 of Pub. L. 97–394; that no alternate power supply exists; and that the use of mixtures in the unit is not feasible. In addition, AEG&T submitted and environmental impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

After review of AEG&T's environmental impact analysis and other relevant information, ERA has determined that the granting of the requested exemption would clearly not result in significant effects on the quality of the human environment, and, as such, requires neither an environmental impact statement nor an Environmental Assessment. ERA's compliance with the documentary requirements of the National Environmental Policy Act of 1969 (NEPA) have accordingly been satisfied by the preparation of a memorandum for the file in accordance with section A.3(c)(1) of DOE's NEPA guidelines.

The acceptance of the petition by ERA does not constitute a determination that AEG&T is entitled to the exemption requested. That determination will be based on the entire record of the proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on November 15, 1984.

Robert L Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-31431 Filed 11-29-84; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-023; OFP Case No. 65037-9259-01-12]

Powerplant and Industrial Fuel Use Act; New England Ethanol Products

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by New England Ethanol Products for its Auburn, Maine facility.

On October 11, 1984, New England Ethanol Products (New England Ethanol) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent emergency purposes exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act" for a new boiler to be located at its proposed plant in Auburn, Maine. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation (MFBI) consisting of a boiler. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the emergency purposes exemption are found at 10 CFR 503.39.

The project for which the exemption is requested consists of a No. 2 oil-fired package emergency backup boiler to be used to provide low pressure process steam during emergency and maintenance outages of the main high pressure coal-fired boiler.

ERA has determined that the petition is sufficient to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3 and 501.63. ERA retains the right, however, to request additional relevant information from New England Ethanol at any time during the proceeding, as circumstances may require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before January 14, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-073, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-023 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-6002

Steve E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or petroleum in new MFBI's that consist of a boiler unless an exemption for such use has been granted by ERA. New England Ethanol has filed a petition with ERA requesting a permanent emergency purposes exemption to permit the use of No. 2 oil as the primary energy source in the proposed new package backup boiler to be located at its new cogeneration plant in Auburn, Maine. This No. 2 oil-fired package backup boiler will provide low pressure steam for process and space heating during emergency and maintenance outages of the main high pressure coal-fired boiler. The No. 2 oil-fired boiler will operate at 200 psig, and produce saturated steam with a design heat input of 142.9 million BTU per hour. Because the No. 2 oil-fired boiler will be used only for emergency and maintenance purposes, it will operate less than 40 hours per year.

Section 212(e) of the Act and 10 CFR 503.39 provide for a permanent emergency purposes exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.39(a), New England Ethanol has certified to ERA that:

1. It will operate and maintain the proposed unit for emergency purposes only; and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.39(c) (and in addition to the certifications discussed above), New England Ethanol has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. environmental certifications, as required under 10 CFR 503.13(b).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for emergency purposes, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorial exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. New England Ethanol has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. ERA will review the completed environmental checklist submitted by New England Ethanol pursuant to 10 CFR 503.13(b), together with other relevant information. Unless it appears during the proceeding on New England Ethanol's exemption request that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that New England Ethanol is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on November 9, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-31430 Filed 11-29-84; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP85-55-000]

National Fuel Gas Supply Corp.; Application

November 26, 1984.

Take notice that on October 24, 1984, National Fuel Gas Supply Corporation (Applicant), Ten LaFayette Square, Buffalo, New York 14203, filed in Docket No. CP85-55-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by transfer certain production properties and related facilities in Venango, Clarion and Forest Counties, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to sell to S.G. Thompson (Thompson) 217 natural gas wells, including all pipe, casing and related equipment contained therein and thereon, 49 complete backbone pipelines and 12 partial backbone pipelines, along with all miscellaneous valves, fittings, appliances, and conduits connected thereto, including drips and associated equipment connected therewith as well as 12 complete active well lines, 6 partially active well lines, and 3 abandoned well lines, as is, in place and without warranty. Applicant explains that the sale at a price of $108,000 and assignment of the production properties and gas rights was to allow continued production from these wells.

It is asserted that Applicant has transferred and sold all of its rights, title and interest in the producing properties and related facilities to Thompson effective June 1, 1983. It is explained that actual deliveries of gas to Applicant would remain unchanged as Applicant would continue to receive the gas pursuant to a gas purchase contract with Thompson dated June 1, 1983.

It is stated that there would be no interruption, reduction or termination of gas service presently provided to Applicant's customers as a result of the proposed abandonment. It is stated further that the price of the gas to Applicant would not change as a result of the transfer.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion ot intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31331 Filed 11-29-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP85-61-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

November 26, 1984.

Take notice that on November 1, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001 filed in Docket No. CP85-61-000 a request pursuant to section 157.205 of the Regulations of the Natural Gas Act (18 CFR 157.205) for authorization to transport on an interruptible basis up to 1,600 Mcf of natural gas per day for the Simpson Paper Company (Simpson) of Vicksburg, Michigan, under the certificate issued in Docket No. CP83-83-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 1,600 Mcf of natural gas per day pursuant to the terms of a transportation agreement dated June 19, 1984, between Panhandle and Michigan Gas Storage Company (Michigan Gas), acting as agent for Simpson, from Major County, Oklahoma, to Oakland County, Michigan. Panhandle indicates the gas, purchased by Simpson from Petrolane-Texas Gas Services, Inc., would be used in Simpson's paper mill under boilers, direct-fired heaters and water heaters.

Panhandle proposed to charge Michigan Gas a transportation charge based upon Panhandle's currently effective Rate Schedule OST of 42.0 cents per million Btu of gas to the extent the transportation service is within the contract entitlement transportation quantity (CETQ) plus 1.24 cents per million Btu GRI unit surcharge. For any transportation service in excess of the CETQ Panhandle states it would charge

the current OST-E rate of 87.0 cents per milion Btu plus 1.24 cents per million Btu GRI service charge. There is no added incentive charge applied to the proposed transportation service, it is explained.

Additionally, Panhandle requests "flexible authority" to add and/or delete sources of gas and/or receipt/delivery points and agrees to make certain filing requirements in the implementation of such "flexible authority." Panhandle asserts the "flexible authority" would be implemented if such altered service is on behalf of the same end-user, at the same end-user location, within the maximum daily and annual volumes authorized in the subject docket, and under the same terms and conditions authorized for the basic service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31332 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST83-235-001, et al.]

Texas Gas Transmission Corp., et al.; Extension Reports

November 26, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before December 21, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST83-235-001	Texas Gas Transmission Corp., 3800 Frederica St., Owensboro, KY 42301	LGS Intrastate, Inc.	Oct. 23, 1984	B	Jan. 21, 1985
ST83-240-001	PGC Pipeline, 950 One Energy Square, Dallas, TX 75206	Arkansas Louisiana Gas Co.	Oct. 30, 1984	C	Feb. 1, 1985.
ST83-241-001	do	Texas Eastern Transmission Corp.	Oct. 24, 1984	C	Do.
ST83-265-001	Producer's Gas Co., 950 One Energy Square, Dallas, TX 75206	Transwestern Pipeline Co.	Oct. 22, 1984	C	Do.
ST83-275-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Panhandle Eastern Pipe Line Co.	Oct. 24, 1984	G	Jan. 24, 1985.
ST83-284-001	Canyon Creek Compression Co., 701 E. 22nd St., Lombard, IL 60148	Tennessee Gas Pipeline Co.	do	G	Do.
ST83-464-001	Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, CO 80944	Bridgeline Gas Distribution Co.	Oct. 25, 1984	B	Jan. 23, 1985
ST83-629-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Transwestern Pipeline Co.	Oct. 30, 1984	C	Feb. 1, 1985.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-31334 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-63-000]

Texas Gas Transmission Corp.; Application

November 26, 1984.

Take notice that on October 25, 1984, Texas Gas Transmission Corporation (Texas Gas), P.O. 1160, Owensboro, Kentucky 42302, filed in Docket No. CP85-63-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Memphis Light, Gas & Water Division (Memphis), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that it was transporting up to 2,500 Mcf of natural gas per day for Memphis from the Bayou Galion field in Morehouse Parish, Louisiana, pursuant to a transportation service agreement dated August 19, 1977, as amended September 1, 1977. It is stated that the transportation service commenced July 29, 1978, for a term of 15 years. Texas Gas states that it was informed by Memphis that Memphis had sold its interests in gas production from the Bayou Galion field and that Texas Gas and Memphis agreed in a letter agreement dated September 10, 1984, to terminate the transportation service. It is asserted that no customers of Texas Gas would be adversely affected by the abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31335 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-3-006]

Trunkline Gas Co.; Petition To Amend

November 26, 1984.

Take notice that on October 26, 1984, Trunkline Gas Company (Petitioner), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP75-3-006 a petition to amend the order issued November 10, 1977 in Docket No. CP74-322, *et al.*, pursuant to section 7(c) of the Natural Gas Act so as to eliminate the volumetric ceiling of 52,000,000 Mcf of natural gas which was a condition of the November 10, 1977, order, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that the Petitioner is transporting natural gas for Northern Michigan Exploration Company (NOMECO) pursuant to transportation agreements dated June 12, 1974, that the service was certificated by Commission order issued November 10, 1977, and that Petitioner performs this service under Rate Schedules T-33 and T-34 of its FERC Gas Tariff, Original Volume No. 2. It is further stated that a condition of the Commission's November 10, 1977, order limited the sale by NOMECO and the transportation by Petitioner to 52,000,000 Mcf, which were the estimated proven reserves attributable to NOMECO's working interest in the three offshore blocks addressed in the certificate proceeding.

Petitioner avers that MOMECO notified the Commission on August 17, 1984, stating that the estimated reserves are now 70,000,000 Mcf. Petitioner further avers that elimination of the 52,000,000 Mcf ceiling would allow Petitioner to transport volumes which NOMECO has or may have available for sale from its working interests in the three offshore blocks. It is stated that Petitioner has sufficient capacity in its existing facilities to transport NOMECO's gas as well as the other volumes connected to Petitioner's system.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing there in must file a motion to intervene in accordance with the Commission's Rules

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31336 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-623-001]

Western Gas Interstate Co.; Application

November 26, 1984.

Take notice that on October 31, 1984, Western Gas Interstate Company (Western), 900 United Bank Tower, 400 West 15th Street, Austin, Texas 78701, filed in Docket No. CP84-623-001 an amendment to its pending application filed July 30, 1984, in Docket No. CP84-623-000 pursuant to section 7(b) of the Natural Gas Act so as to propose the abandonment of certain jurisdictional facilities by transfer to San Juan Interstate Gas Co. (San Juan Interstate), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Western's amendment states that it now seeks authorization to abandon its Antelope Ridge Line, located in Lea County, New Mexico by transfer to San Juan Interstate, instead of by transfer to Gas Company of New Mexico (GCNM) as originally proposed in Western's application in Docket No. CP84-623-000. San Juan Interstate is a wholly-owned subsidiary of Sunbelt Mining Co., Inc., a wholly-owned subsidiary of Public Service Company of New Mexico (PNM), it is asserted. Western further states that the transfer of the Antelope Ridge Line facilities is part of a transfer of its parent company's, Southern Union Company, New Mexico properties to PNM under an April 12, 1984, settlement and agreement of the New Mexico natural gas antitrust litigation. Western proposes that the transfer of the Antelope Ridge Line would be by sale at original cost net of accumulated depreciation, less certain operation liabilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure hearing provided for, unless otherwise advised, it will be unnecessary for Western to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31337 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5816-002]

Woods Creek, Inc.; Surrender of Preliminary Permit

November 26, 1984.

Take notice that Woods Creek, Inc., Permittee for the Fourth of July Creek Hydroelectric Project No. 5816, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5816 was issued on May 14, 1982, and would have expired on May 31, 1985. The project would have been located on Fourth of July Creek in Snohomish County, Washington, within the Snoqualmie National Forest.

The Permittee filed the request on October 29, 1984, and the preliminary permit for Project No. 5816 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31338 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-23-000]

Saint Joseph Medical Center; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 28, 1984.

On October 16, 1984, Saint Joseph Medical Center (Applicant), of 333 No. Madison St., Joliet, Illinois 60435 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle facility will be located in Joliet, Illinois. The electric power production capacity will be 1,300 kW. The primary energy source will be natural gas. Heat from reciprocating engines will be recovered in steam generators. This steam will be used for servicing water heaters for laundry and domestic use, cooking, autoclaving and space heating and cooling.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31333 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-98-000]

Amoco Gas Co.; Application

November 28, 1984.

Take notice that on November 9, 1984, Amoco Gas Company (Applicant), P.O. Box 3092, Houston, Texas 77253, filed in Docket No. CP85-98-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a blanket certificate of public convenience and necessity for authorization to transport, sell, and assign volumes of natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C, D, and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that during the 12-month period ending December 31, 1983, it received within or at the state boundaries of Texas from interstate pipelines approximately 1,498,503 Mcf of gas which was exempt from Commission jurisdiction by virtue of section 1(c) of the Natural Gas Act in Docket No. CP66-369. During this same period, Applicant states that it received approximately 130,244,768 Mcf of gas from all sources of supply.

Applicant asserts that for transportation service it would charge its rates on file with the Railroad Commission of Texas (Railroad Commission) for intrastate transportation service pursuant to § 284.123(b)(1)(ii) of the Regulations.

Applicant also states that for sales of gas it would charge the rate approved by the Railroad Commission of 25.0 cents per million Btu plus Amoco Gas' weighted average cost of gas.

Applicant indicates it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations.

Applicant also requests that the Commission determine that the requirements of § 282.501 through 282.506 and § 284.222(e)(3) are not applicable to Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31339 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-77-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application

November 28, 1984.

Take notice that on October 31, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla, P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP85-77-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continuation of services and the continued operation of certain existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla states that following a review of its operations, initiated when it was preparing its application for a blanket certificate pursuant to Order No. 234, Arkla filed on November 3, 1982, an application in Docket No. CP83-60-000 for clarification of the jurisdictional status of certain existing facilities and services and, if necessary, certificate authorization to continue the operation of those facilities and services. By order issued December 2, 1983, the Commission granted Arkla's request for clarification and authorized the continued operation of certain services and facilities, it is explained. Arkla states that the order denied Arkla's request with respect to unspecified sales taps because the information provided was insufficient to permit action on that portion of the application. Arkla states that as a result of a review it conducted after the December 2, 1983, order was issued, it has identified the taps and related facilities that may have been constructed without authorization. Specifically, Arkla requests authorization to continue operating 994 residential, commercial and town border taps. The locations of these facilities are set forth in Exhibit F to the application, it is stated. Arkla estimates the cost of these taps to be $239,065. Arkla states that residential and commercial customers on its system typically use an average of about 0.25 Mcf of gas per day or a 1.34 Mcf of gas per day, respectively.

Arkla also seeks authorization for any jurisdictional facilities which may have been overlooked in its search so that any possible cloud over the legality of any of its retail sales taps may be removed.

Any person desiring to be heard or to protest with reference to said application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission' Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Arkla to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31340 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-12-000]

Boston Edison Co.; Application

November 28, 1984.

Take notice that on November 14, 1984 Boston Edison Company (Boston Edison), filed an application pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of short-term debt securities ("Short-term Debt") not exceeding in the aggregate $150,000,000 outstanding at any one time.

The Short-term Debt will be issued by Boston Edison on various dates through December 31, 1986. Short-term Debt consisting of promissory notes issued as short-term notes to commercial banks or institutional investors, promissory notes to commercial paper dealers and commercial paper placed directly with purchasers and all other Short-term Debt will mature in no more than one year from the date of issue.

According to the application, the aggregate amount of Short-term Debt to be outstanding at any one time will not exceed $150,000,000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211. 385.214). All such motions or protests should be filed on or before December 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31341 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6067-001]

The California Department of Water Resources; Surrender of Exemption

November 26, 1984.

Take notice that the California Department of Water Resources, Exemptee for the proposed Del Valle No. 2 Project No. 6067, has requested that its exemption be terminated. The exemption was issued on June 15, 1982. The project would have been located on an existing outlet pipe serving the existing Del Valle Dam in Almeda County, California.

The Exemptee filed the request on November 4, 1984, and the exemption from licensing for Project No. 6067 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31342 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-82-000]

Columbia Gas Transmission Corp.; Application

November 26, 1984.

Take notice that on November 1, 1984, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-82-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of two interconnecting tap facilities to provide additional points of delivery to two existing wholesale customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the following new points of delivery for the following wholesale customers:

Columbia Gas of Ohio, Inc. (COH)
1 tap for residential service—
Estimated annual usage of 150 Mcf
Union Light, Heat and Power Company (Union)
1 tap for commercial service—
Estimated annual usage of 25,700 Mcf

Applicant estimates that the interconnecting tap facility necessary for the point of delivery to COH would cost $300 and for the point of delivery to Union would cost $400. It is stated that the cost of the proposed interconnections would be financed through internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31343 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-97-000]

Consolidated Gas Supply Corp.; Application

November 26, 1984.

Take notice that on November 9, 1984, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26031, filed in Docket No. CP85-97-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate public convenience and necessity authorizing a limited-term off-system sale of natural gas for resale to Consolidated Edison Company of New York, Inc. (Con Edison), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell for resale up to 150,000 dt equivalent of natural gas per day on an interruptible basis to Con Edison through October 31, 1985. Applicant states that the subject gas is from general system supply and is surplus to the needs of Applicant's present customers throughout the term of the proposed sale. Applicant explains it would deliver the gas for the account of Con Edison at existing points of interconnection between Applicant's facilities and those of Transcontinental Gas Pipe Line Corporation, Texas Eastern Transmission Corporation, or Tennessee Gas Pipeline Company, a Division of Tenneco Inc. Applicant proposes to sell the gas to Con Edison at a rate equivalent to the average unit cost at 100-percent load factor under Applicant's Rate Schedule RQ of its FERC Gas Tariff, Original Volume No. 1 which is currently $3.8545. It is indicated that Applicant's rate treatment of the sales quantities and revenues attributable to the proposed sale would be governed by the terms of the stipulation and agreement approved by the Commission on March 2, 1983, in Docket No. RP82-115.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31344 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-363-008]

Delmarva Power and Light Co.; Refund Compliance Filing

November 26, 1984.

Take notice that on November 16, 1984, Delmarva Power and Light Company (Delmarva) submitted for filing its compliance report pursuant to the Commission's Letter order dated August 17, 1984.

Delmarva states that the required refunds to the City of Newark, Town of New Castle and Town of Smyrna were made on October 31, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 10, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31345 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-4-000]

Congressman Ed Bethune, Complainant, v. Arkansas Power and Light Co. et al.; Complaint and Motion for Expedited Investigation

November 26, 1984.

Congressman Ed Bethune, Complainant, v. Arkansas Power Light Company, Mississippi Power and Light Company, Louisiana Power and Light Company, New Orleans Public Service, Inc., Middle South Energy, Inc., Middle South Utilities, Inc., Respondents.

Take notice that on October 25, 1984, Congressman Ed Bethune submitted for filing a complaint and motion for an expedited investigation pursuant to sections 205 and 206 of the Federal Power Act and Rules 206 and 212 of the Commission's Rules of Practice and Procedure.

Congressman Bethune requests that the Commission:

1. Conduct an expedited investigation of the contract, obligations, and agreements concerning Grand Gulf;
2. Determine whether or not any fraud or misrepresentation is present;
3. Apply any findings of fraud or misrepresentation to the two ongoing cases before the Commission (ER82-616-000 and ER82-483-000); and
4. Issue orders relieving AP&L and the Arkansas ratepayers of all costs and obligations associated with Grand Gulf.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31346 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-424-002]

Equitable Gas Company, Carnegie Natural Gas Co.; Petition To Amend

November 26, 1984.

Take notice that on November 6, 1984, Equitable Gas Company (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, and Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP83-424-002 a joint petition to amend the order issued July 13, 1984, in Docket Nos. CP83-424-000 and CP83-424-001 pursuant to section 7(c) of the Natural Gas Act so as to authorize an additional natural gas delivery point from Equitable to Carnegie, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is indicated that by order issued July 13, 1984, Equitable and Carnegie were authorized to exchange gas at various locations in Pennsylvania, pursuant to the terms of a June 1, 1983, agreement between Equitable and Carnegie. Equitable and Carnegie request that the July 13, 1984, order be amended to add the United States Steel Specialty Steel Products Division Plant at McKees Rocks, Pennsylvania, as an additional point of delivery from Equitable to Carnegie.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Equitable and Carnegie to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31347 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-8-000]

Greensboro Lumber Co., Complainant, v. Ogiethorpe Power Corp., et al., Respondents; Complaint

November 26, 1984.

Take notice that on November 7, 1984, Greensboro Lumber Company (Greensboro) submitted for filing a complaint pursuant to Rules 203 and 206 of the Commission's Rules of Practice and Procedure.

Greensboro requests that the Commission require the respondents to purchase electric energy and capacity from a qualifying facility at a price that is just and reasonable, and to require respondents to revise their interconnection policies so as to comply with the Public Utility Regulatory Policies Act of 1978 (PURPA).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. In addition, the Commission notes that the complaint was served on all respondents as of the filing date. Thus, the date for answers to the complaint shall also be December 10, 1984. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31348 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-14-000]

Gulf States Utilities Co.; Application

November 26, 1984

Take notice that on November 13, 1984, Gulf States Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue unsecured short-term promissory notes not to exceed $300,000,000 principal amount in the aggregate outstanding at any one time. These issues will be exempt from competitive bidding requirements pursuant to § 34.2(a)(2i)(3i) of the Commission's Regulations. The notes would be issued at various times after authorization is granted but no note would have a maturity after December 31, 1986.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 13, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31349 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-257-004]

Kansas Gas and Electric Co.; Refund Report

November 26, 1984.

Take notice that on November 14, 1984, Kansas Gas and Electric Company (KG&E) submitted for filing its refund report and payment verification for KEPCo pursuant to the Commission's letter order dated October 12, 1984.

KG&E states that the refund amount includes interest from the date payment was received through November 9, 1984 at the appropriate interest rate.

KG&E states that a copy of the transmittal letter to KEPCo was enclosed as evidence of refund payment.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 10, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31350 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-199-002]

Lockhart Power Co.; Refund Report

November 26, 1984.

Take notice that on November 16, 1984, Lockhart Power Company (Lockhart) submitted for filing its refund report pursuant to a settlement agreement in FERC Docket No. ER84-199-000.

Lockhart states that the total amount of the refund due to Lockhart's sole wholesale customer, the City of Union, South Carolina, is $28,300.81, which includes interest of $1,557.86 calculated in accordance with the Commission's regulation.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 10, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31351 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-350-001]

McCommons Oil Co.; Application for Partial Abandonment of Service

November 23, 1984.

Take notice that Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective application which is on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before November 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

District No. and Date Filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI84-350-001, B, Oct. 15, 1984	McCommons Oil Company, 1100 LTV Tower, Dallas, Texas 75201.	Natural Gas Pipeline Company of America Boyer Lease and the J.S. Perkins Leases, Wise County, Texas.	(1)	

[1] Leases expired under their own terms for lack of production more than 15 years ago.

Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total succession; F—Partial succession.

[FR Doc. 84-31353 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-83-000]

Methane Development Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 26, 1984.

On November 9, 1984, Methane Development Corp. of 186 Montague Street, Brooklyn, New York 11201, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at the Babylon landfill located at the corner of Gleam Street and Edison Avenue, West Babylon, New York 11704. The primary energy source will be methane gas to be recovered from the landfill. The initial electric power production capacity will be 450 kilowatts using internal combustion engine-generator sets.

Any person desiring to be heard or objecting to the granting of qualfying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intevene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31352 Filed 11-29-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board, International R&D Panel; Meeting Change

This notice is to advise of the new times and dates of the meeting of the Energy Research Advisory Board (ERAB) International R&D Panel (December 17-18, 1984) as published in the issue of November 14, 1984 (49 FR 45054).

The meeting of the ERAB International R&D Panel will hold its meeting starting at 9:00 a.m. and adjourning at 6:00 p.m., on December 17, 1984; and starting at 9:00 a.m. and adjourning at 4:00 p.m., on December 18, 1984. The Panel will not meet on December 19, 1984. The subjects originally scheduled for the morning of December 19 are now scheduled for the morning of December 17. The meet will be held both days at the U.S. Department of Energy, 1000 Independence Avenue SW., Room 4A-110, Washington, D.C. 20585.

Issued at Washington, D.C., on November 21, 1984.

Charles E. Cathy,

Deputy Director, Office of Science and Technology Affairs, Office of Energy Research.

[FR Doc. 84-31428 Filed 11-29-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board, Materials Facilities Ad Hoc Review; Open Meeting

Notice is hereby given of the following meeting:

Name: Materials Facilities Ad Hoc Review of the Energy Research Advisory Board (ERAB).

Date and Time: December 12, 1984—8:00 a.m. to 5:00 p.m.

Place: University of California, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 50-A, Room 5132, Berkeley, CA 94720.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-5444.

Purpose of the Parent Board

To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Ad-Hoc Review is examining the National Research Council report on materials facilities and assessing its significance in terms of the Department's research programs.

Tentative Agenda

- Discussion of DOE priorities relative to National Research Council report "Major Facilities for Materials Research and Related Disciplines".
- Discussion and presentations on neutron sources and synchrotron radiation sources.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Review is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 20, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-31429 Filed 11-29-84; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2727-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed November 19, 1984 through November 23, 1984 Pursuant to 40 CFR 1506.9.

EIS No. 840528, Final, COE, AK, Cube Cove-Admiralty Island Log Transfer Facility, C/O, Permit, Chatham Strait/Admiralty Island, Due: December 31, 1984, Contact: Gene Augustine (907) 753-2724.

EIS No. 840529, Draft, AFS, MN, Superior National Forest Land and Resource Management Plan, Cook, Lake, Koochiching, and St. Louis Counties, Due: March 15, 1985, Contact: Clay Beal (218) 727-6692.

EIS No. 840530, Draft, BLM, UT, Circle Cliffs Special Tar Sand Area, Oil/Gas Leases, Conversion to Combined Hydrocarbon Leases, Garfield County, Due: January 28, 1985, Contact: Dave Everett (801) 586-2401.

EIS No. 840531, Draft, COE, MI, Upper Saginaw River Dredged Material Disposal Site, Construction, Saginaw and Bay Counties, Due: January 14, 1985, Contact: Barbara Schmitt (313) 226-7590.

Dated: November 27, 1984.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84-31375 Filed 11-29-84; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51547; FRL-2728-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 31, 1983 (48 FR 21722). This notice announces receipt of forty-two PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 85-148, 85-149, 85-150, 85-151, 85-152, 85-153, 85-154, 85-155, 85-156 and 85-157; February 13, 1985.

PMN 85-158, 85-159, 85-160, 85-161, 85-162, 85-163, 85-164 and 85-165; February 16, 1985.

PMN 85-166, 85-167, 85-168, 85-169, 85-170, 85-171, 85-172, 85-173, 85-174, 85-175, 85-176, 85-177, 85-178, 85-179, 85-180, 85-181, 85-182, 85-183, 85-184 and 85-185; February 17, 1985.

PMN 85-186, 85-187, 85-188 and 85-189; February 18, 1985.

Written comments by:

PMN 85-148, 85-149, 85-150, 85-151, 85-152, 85-153, 85-154, 85-155, 85-156 and 85-157; January 14, 1985.

PMN 85-158, 85-159, 85-160, 85-161, 85-162, 85-163, 85-164 and 85-165; January 17, 1985.

PMN 85-166, 85-167, 85-168, 85-169, 85-170, 85-171, 85-172, 85-173, 85-174, 85-175, 85-176, 85-177, 85-178, 85-179, 85-180, 85-181, 85-182, 85-183, 85-184 and 85-185; January 18, 1985.

PMN 85-186, 85-187, 85-188 and 85-189; January 19, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51547]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 85-148

Manufacturer. Diamond Shamrock Chemicals Company.

Chemical. (G) Modified acrylic copolymer.

Use/Production. (S) Industrial additive to control the rheology of oil well drilling fluids (muds) and consumer pigment dispersions in coatings. Prod. range: Confidential.

Toxicity Data. LC_{50} 96 hr (Mysidopsis Almyra): 96.4 and 73.6%.

Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 1.4 kg/3 lb to 9.1 kg/20 lb per batch released to water. Disposal by publicly owned treatment works (POTW) and on-site waste treatment plant.

PMN 85-149

Manufacturer. Confidential.

Chemical. (G) Epoxy acrylic copolymer.

Use/Production. (G) Adhesive binder. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-150

Importer. Confidential.

Chemical. (G) Fluoranthenamine-substitutedaminoanthraquinone.

Use/Import. (S) Industrial textile dye. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 3 workers, 15 min/batch/yr.

Environmental Release/Disposal. Release to water. Disposal by water treatment plant.

PMN 85-151

Importer. Confidential.

Chemical. (G) Fluoranthenediamine-bis(substitutedaminoanthraquinone) derivative.

Use/Import. (S) Industrial textile dye. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 3 workers, 15 min/batch/yr.

Environmental Release/Disposal. Release to water. Disposal by water treatment plant.

PMN 85-152

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Reacted epoxy resin.

Use/Production. (G) Size ingredient. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: a toal of 2-10 workers, up to 24 hrs/da, up to 350 da/yr.

Environmental Release/Disposal. Release to air. Disposal by POTW, on-site treatment plant and incineration.

PMN 85-153

Manufaturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Reacted epoxy resin.

Use/Production. (G) Size ingredient. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: a total of 2-10 workers, up to 24 hrs/da, up to 350 da/yr.

Environmental Release/Disposal. Release to air. Disposal by POTW, on-site treatment plant and incineration.

PMN 85-154

Importer. Confidential.

Chemical. (G) Benzoid diester of acetic acid.

Use/Import. (S) Industrial intermediate in the production of polyesters. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No data submitted.

PMN 85-155

Importer. Confidential.

Chemical. (G) Halogenated aromatic sulfamide.

Use/Import. (S) Commercial and consumer in-can preservative for use in protective coatings. Import range. 1,000-10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal and inhalation.

Environmental Release/Disposal. No data submitted.

PMN 85-156

Manufacturer. Confidential.

Chemical. (G) Disubstituted carbopolycyclesulfonic acid salt.

Use/Production. (S) Site-limited isolated intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 85-157

Manufacturer. Confidential.

Chemical. (G) Disubstituted carbopolycyclesulfonic acid.

Use/Production. (S) Site-limited isolated intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PNM 85-158

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Aromatic diol.

Use/Production. (S) Industrial polymer preparation. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-159

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymeric aliphatic polyol acrylate ester.

Use/Import. (S) Industrial film-forming ingredient in radiation-curable surface coating systems. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 200 to 500 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Less than 900 kg/yr released to air and water. Disposal by incineration and landfill.

PMN 85-160

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymeric aliphatic polyol acrylate ester.

Use/Import. (S) Industrial film-forming ingredient in radiation-curable surface coating systems. Import range: Confidential.

Toxicity data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 200 to 500 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by incineration and landfill.

PMN 85-161

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymeric aliphatic polyol acrylate ester.

Use/Import. (S) Industrial film-forming ingredient in radiation-curable surface coating systems. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 200 to 500 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by incineration and landfill.

PMN 85-162

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymeric aliphatic polyol acrylate ester.

Use/Import. (S) Industrial film-forming ingredient in radiation-curable surface coating systems. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 200 to 500 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Less than 200 kg/yr released to air and water. Disposal by incineration and landfill.

PMN 85-163

Manufacturer. Confidential.

Chemical. (G) Cyanoacetate ester.

Use/Production. (S) Site-limited intermediate for production of a cyanoacrylate adhesive. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-164

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (S) Potting compound. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-165

Importer. American Hoechst Corporation.

Chemical. (S) Polymer of dehydrated castor-oil fatty acids, pentaerithritol, isophthalic acid, linseed oil, dehydrated castor oil, dimethylethanolamine, isononanoic acid and maleic anhydride.

Use/Import. (G) Open, non-dispersive. Import range: 300-500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 10-12 workers, up to 30-60 manhours/yr.

Environmental Release/Disposal. No data submitted.

PMN 85–166

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aromatic polycyanate resin.
Use/Production. (S) Industrial lamination and encapsulation for electronic components and structural composites. Prod. range: Confidential.
Toxicity Data. Acute oral: > 2,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. Manufacture: dermal, a total of 52 workers.
Environmental Release/Disposal. Less than 0.5 kg/day/2 wks released to land. Disposal by navigable waterway after treatment.

PMN 85–167

Manufacturer. The Dow Chemical Company.
Chemical. (G) Organo sulfur compound.
Use/Production. (G) Solvent. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Slight, Eye—Slight; Inhalation: 42,000 parts per million (ppm) (1 hr).
Exposure. Manufacture: dermal and inhalation.
Environmental Release/Disposal. Released to air and water. Disposal by incineration and navigable waterway after treatment.

PMN 85–168

Manufacturer. Confidential.
Chemical. (G) Functional polyether.
Use/Production. (G) Additive for an industrial coating with a non-dispersive use. Prod. range: 6,000–40,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 29 workers, up to 8 hrs/da, up to 145 da/yr.
Environmental Release/Disposal. 0.5 to 80 kg/batch released to land. Disposal by incineration and approved landfill.

PMN 85–169

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane.
Use/Production. (G) Industrial coating resin product. Prod. range: 30,000–300,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 33 workers, up to 8 hrs/da, up to 155 da/yr.
Environmental Release/Disposal. 3 to 175 kg/batch released to land. Disposal by incineration and approved landfill.

PMN 85–170

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Fatty ester.
Use/Production. (S) Industrial component of fire resistant hydraulic fluid. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Skin—Irritant, Eye—Irritant.
Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 5 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 10 kg released to air with 50 kg to water. Disposal by POTW.

PMN 85–171

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Fatty ester.
Use/Production. (S) Industrial component of fire resistant hydraulic fluid. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Skin—Irritant, Eye—Irritant.
Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 5 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 10 kg released to air with 50 kg to water. Disposal by POTW.

PMN 85–172

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Fatty ester.
Use/Production. (S) Industrial component of fire resistant hydraulic fluid. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Irritation: Skin—Irritant, Eye—Irritant.
Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 5 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 10 kg released to air with 50 dg to water. Disposal by POTW.

PMN 85–173

Mnaufacturer. Confidential.
Chemical. (G) Cyanoacetate ester.
Use/Production. (S) Site-limited intermediate for production of a cyanoacrylate adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 85–174

Manufacturer. Confidential.
Chemical. (G) Alkenyl substituted carbomonocyclic alkenyl ether.
Use/Production. (S) Site-limited chemical intermediate in the preparation of an epoxy adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 85–175

Importer. Confidential.
Chemical. (G) Branched mono-carboxylic fatty acid.
Use/Import. (S) Raw material for chemical synthesis (reacts with alcohols, amines, metal bases, isocyanates). Import range: Confidential
Toxicity Data. No data submitted.
Exposure. No exposure.
Environmental Release/Disposal. No release.

PMN 85–176

Importer. Confidential.
Chemical. (G) Branched mono-carboxylic fatty acid.
Use/Import. (S) Raw material for chemical synthesis (reacts with alcohols, amines, metal bases, isocyanates). Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No exposure.
Environmental Release/Disposal. No release.

PMN 85–177

Importer. Confidential.
Chemical. (G) Branched mono-carboxylic fatty acid.
Use/Imports. (S) Raw material for chemical synthesis (reacts with alcohols, amines, metal bases, isocyanates). Import range: Confidential.
Toxicity Data. Acute oral: > 10 g/kg; Irritation: Skin—Non-irritation; Ames test: Negative.
Exposure. No exposure.
Environmental Release/Disposal. No release.

PMN 85–178

Importer. Confidential.
Chemical. (G) Branched mono-carboxylic fatty acid.
Use/Imports. (S) Raw material for chemical synthesis (reacts with alcohols, amines, metal bases, isocyanates). Import range: Confidential.
Toxicity Data. Acute oral: > 20.0 ml/kg; Irritation: Skin—Non-irritation.
Exposure. No exposure.
Environmental Release/Disposal. No release.

PMN 85–179

Importer. Confidential.
Chemical. (G) Branched mono-carboxylic fatty acid.
Use/Imports. (S) Raw material for chemical synthesis (reacts with alcohols, amines, metal bases, isocyanates). Import range: Confidential.
Toxicity Data. Acute oral: > 20.0 ml/kg; Irritation: Skin—Non-irritation; Ames test: negative.
Exposure. No release.

Environmental Release/Disposal. No release.

PMN 85–180

Importer. Confidential.
Chemical. (G) Branched mono-carboxylic fatty acid.
Use/Import. (S) Raw material for chemical synthesis (reacts with alcohols, amines, metal bases, isocyanates). Import range: Confidential.
Toxicity Data. Acute oral: > 10 ml/kg; Irritation: Skin—Non-irritant.
Exposure. No exposure.
Environmental Release/Disposal. No release.

PMN 85–181

Manufacturer. Emery Industries.
Chemical. (S) 1-(2-methoxyethoxy)-4-methylbenzene.
Use/Production. (S) Fragrance ingredient for industrial, commercial and consumer use. Prod. range: 100–25,000 kg/yr.
Toxicity Data. Acute oral: 4.30 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not an irritant; Phototoxicity: Negative; Repeated insult patch test: Potential sensitization to no reaction.
Exposure. Manufacture: dermal, a total of 8 workers, up to 1 hr/da, up to 165 da/yr.
Environmental Release/Disposal. Less than 1 kg released to water. Disposal by POTW.

PMN 85–182

Manufacturer. Emery Industries.
Chemical. (G) Alkyl ester.
Use/Production. (S) Fragrance ingredient for industrial, commercial and consumer use. Prod. range: 100–25,000 kg/yr.
Toxicity Data. Acute oral: 5.34 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not an irritant, Phototoxicity: Negative; Repeated insult patch test: Cumulative irritant.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–183

Manufacturer. Emery Industries.
Chemical. (S) 4.5-dihydro-5-ethyl-2-methyl-3-furancarboxylic acid ethyl ester.
Use/Production. (S) Fragrance ingredient for industrial, commercial and consumer use. Prod. range: 100–25,000 kg/yr.
Toxicity Data. Acute oral: 5.01 g/kg. Acute dermal: > 2.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not an irritant; Phototoxicity: Negative; Repeated insult patch test: Cumulative irritant.
Exposure. Manufacture: dermal, a total of 10 workers, up to 8 hrs/da, up to 165 da/yr.
Environmental Release/Disposal. Less than 1 kg released to water. Disposal by POTW.

PMN 85–184

Importer. Aceto Chemical Company, Inc. and Ward Blenkinsop and Company, Ltd.
Chemical. (G) Naphthoquinone diazidesulphonic acid ester in formulation with phenol formaldehyde resin.
Use/Import. (S) Industrial composition suitable for the coating on positive working lithographic printing plates. Import range: Confidential.
Toxicity Data. Acute oral: > 1 g/kg; Acute dermal: > 500 mg/kg; Ames Test: Non-carcinogenic.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 85–185

Manufacturer. Confidential.
Chemical. (G) Substituted phenyl salt.
Use/Production. (G) Chemical intermediate. Prod. range: 30–100 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 4 workers, up to 0.5 hr/da, up to 3 da/yr.
Environmental Release/Disposal. Less than 0.3 kg/batch released to land. Disposal by chemical waste landfill.

PMN 85–186

Manufacturer. Confidential.
Chemical. (G) Polyalkyleneoxy alkyl, aryl alkyl, alkyl silicone.
Use/Production. (S) Industrial surfactant for use in production of polyurethane foam. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 12 hrs/da, up to 22 da/yr.
Environmental Release/Disposal. 100 kg/campaign released to air with 12 kg/batch to land. Disposal by incineration and landfill.

PMN 85–187

Manufacturer. Confidential.
Chemical. (G) Arylalkyl hydrogen alkyl silicone.
Use/Production. (S) Site-limited intermediate to make a surfactant. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 12 hrs/da, up to 18 da/yr.
Environmental Release/Disposal. 100 to 200 kg/campaign released to air and land. Disposal by incineration and landfill.

PMN 85–188

Manufacturer. Confidential.
Chemical. (G) Polyester diol.
Use/Production. (S) Site-limited base resin used to manufacture polyester urethane-acrylate and copolyester/polyether urethane acrylate blocked for radiation cured printing plates and cured master molds. Prod. range: 34,000–150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 39 workers, up to 1 hr/da, up to 70 da/yr.
Environmental Release/Disposal. 1 to 20 kg/batch released to control technology. Disposal by incineration.

PMN 85–189

Manufacturer. KAY–FRIES, INC.
Chemical. (G) Alkyl alkoxy siloxane.
Use/Production. (G) Masonry coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. 0.4 kg released to land. Disposal by permitted landfill.

Dated: November 26, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–31302 Filed 11–29–84; 8:45 am]
BILLING CODE 6560–50–M

[ER–FRL–2727–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 13, 1984 through November 16, 1984 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–COE–L35011–WA, Rating EC2, Milwaukee Waterway Fill and

Container Terminal Facility, Dredge/Fill, Permit, WA. Summary: EPA requested that additional information be included in the FEIS relating to alternatives, mitigation, and disposal of contaminated sediments in near-shore environments which is needed to complete a 404(b)(1) evaluation of the proposed project.

ERP No. DS–FHW–D40208–VA, Rating EO2, I–664 Construction, Harbor Access Road/Terminal Avenue to North Island, VA. Summary: EPA objects to the use of Thimble Shoal Channel as a source of borrow material if the channel deepening is not authorized by Congress. If Congressional approval is obtained, EPA recommended mitigation measures be included to reduce turbidity levels and the impacts to the blue crab and juvenile sea turtles. EPA also suggested alternative source locations of borrow material.

ERP No. D–FHW–E40673–TN, Rating EC2, Pellissippi Parkway/TN–162, Extension, I–40/75 to TN–115/Alcoa Highway, TN. Summary: EPA believes that the proposed project has the potential for adverse effects on surface and groundwater quality, air quality and noise levels. Additional information, particularly in the air and water areas was requested to be included in the FEIS to help in FHWA's selection of a proposed alternative.

ERP No. D–FHW–K40147–HI, Rating LO, Alii Highway, Construction, Kailua-Kona to Keauhou, HI. Summary: EPA recommended that FHWA coordinate project planning with the Hawaii Health Department to ensure that project components do not have any adverse impacts on ground water.

ERP No. D–NOA–E90006–AL, Rating LO, Weeks Bay National Estuarine Sanctuary, Designation, AL. Summary: EPA supports this designation proposal since isolated areas of undistributed pristine habitat of this type are needed for research and education. EPA's review has not identified any potential adverse environmental impacts.

Final EISs

ERP No. F–COE–E30008–FL, Key Biscayne Beach Erosion Control/Shore Protection, Key Biscayne, FL. Summary: The majority of EPA's original concerns regarding the unacceptability of this proposal remain valid, despite some project design modifications that will reduce adverse impacts to seagrass communities. EPA has coordinated with Dade County and Miami Seaport officials concerning the use of seagrass material at the beach fill site for transplantation mitigation in other areas.

ERP No. F–COE–F36112–OH, Reno Beach-Howard Farms Flood Control Plan, Implementation, OH. Summary: EPA's review has not identified any potential environmental impacts requiring substantive changes to the proposal.

ERP No. F–FHW–L40125–WA, North Foothill Drive Construction, Ruby Street to Crestline Street, WA. Summary: Review of the FEIS has been completed and the project found to be satisfactory.

ERP No. F–FHW–L69000–WA, Washington State Convention/Trade Center, Construction, Lease of I–5 Airspace, Pike Street to Freeway Park WA. Summary: Review of the FEIS has been completed and the project found to be satisfactory.

Dated: November 27, 1984.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84–31373 Filed 11–29–84; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–2729–5]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of a Subcommittee of the Environmental Engineering Committee (EEC) of the Science Advisory Board will be held at the Westpark Hotel, Club Room, 1st floor, 1900 N. Fort Myer Drive, Arlington, VA, on December 17–18, 1984. The meeting will begin at 9:00 a.m. each day and last until approximately 5:00 p.m. on December 17, and until 12:00 noon on December 18.

The purpose of the meeting is to continue review of Agency criteria for determining which wastes should be restricted from land disposal. The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Terry F. Yosie, Staff Director, Science Advisory Board, at (202) 382–4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such comments must contact Mr. Torno prior to December 12, 1984, in order to be placed on the agenda.

Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382–2552.

Dated: November 20, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84–31388 Filed 11–29–84; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–27–2729–6]

Science Advisory Board; Groundwater Protection Research Review Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby goven that a two-day meeting of the Groundwater Protection Research Review Committee (GPRRC) of the Science Advisory Board will be held in Conference Room 1101, West Tower, Waterside Mall, U.S. Environmental Protection Agency, 401 "M" Street SW., Washington, DC on December 19–20, 1984. The meeting will begin at 9:00 a.m. and last until approximately 5:00 p.m. on each day.

The Committee, organized at the request of the Deputy Administrator, has been asked to:

1. Review the Agency's Ground-Water research program, including fate, transport and effects of contaminants, abatement and control technologies, modeling, monitoring, analytical methods and quality assurance.
2. Identify short-term and long-term information needs for policy development.
3. Identify strengths and weaknesses of the current research program.
4. Identify high-priority research needs.

Committee selection is almost complete, and the membership includes:

Chairman

Mr. John Quarles, Morgan, Lewis & Bockius

Members

Dr. Joan Berkowitz, Arthur D. Little
Dr. Keros Cartwright, Illinois State Geological Survey
Dr. Lenore Clesceri, Rensselaer Polytechnic Institute
Mr. Richard Conway, Union Carbide
Dr. James Davidson, University of Florida
Ms. Mary Gearhart, Colorado Department of Health
Dr. Jay Lehr, National Water Well Association
Dr. Raymond Loehr, Cornell University
Dr. James Mercer, GeoTrans, Inc.
Dr. Ruth Neff, State of Tennessee
Dr. James Norris, CIBA-Geigy
Mr. Thomas Prickett, Thomas Prickett & Associates

We anticipate that one or two more members will be selected, and their names will be published in the notices of subsequent meetings.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Terry F. Yosie, Staff Director, Science Advisory Board, at (202) 382–4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such comments must contact Mr. Torno prior to December 13, 1984, in order to be placed on the agenda.

In order to minimize any inconvenience due to EPA visitor control procedures, persons wishing to attend the meeting are requested to call Mrs. Brenda Browne at (202) 382–2552, so that they may be included on a roster that will be prepared for the building security guards.

Dated: November 21, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84–31387 Filed 11–29–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59177; FRL–2728–2]

Vegetable Oil Polymer With Alkane Diols; Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting of the exemption.

DATE: Written comments by December 17, 1984.

ADDRESS: Written comments, identified by the document control number "(OPTS–59177]" and the specific TME number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–4201, 401 M Street, SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 85–8

Close of Review Period. December 20, 1984.

Manufacturer. Confidential.

Chemical. (G) Vegetable oil polymer with alkane diols.

Use/Production. (G) Binder component for an industrially applied coating. Prod. range: 8,700 kg/lbs/1 month.

Toxicity Data: No data submitted.

Exposure. Manufacture and processing. Dermal, a total of 21 workers, up to 4 hrs/da, up to 47 da/yr.

Environmental Release/Disposal. 5 to 16 kg/batch released to land. Disposal by incineration and landfill.

Dated: November 26, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–31395 Filed 11–29–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51538; TSH–FRL–2682–8]

Certain Chemicals; Premanufacture Notices; Hercules, Inc., et al.

Correction

In FR Doc. 84–25801, beginning on page 38356, in the issue of Friday, September 28, 1984, make the following corrections:

(1) On page 38356, column one, under **PMN 84–1191**, fourth line, next to the last word should read "component".

(2) And on the fifth line the third word should read "solution".

BILLING CODE 1505–01–M

[OPTS–51541; TSH–FRL–2698–2]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84–27645, beginning on page 41102, in the issue of Friday, October 19, 1984, make the following corrections:

(1) On page 41102, in column two, in the docket number "BH" should read "TSH" as set forth above.

(2) On the same page in column three under **PMN 85–12**, sixth line, after the word "and" add the sign greater than ">" before the figure "1".

BILLING CODE 1505–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–010687.

Title: French Mediterranean Westbound Stabilization Agreement.

Parties:

Marseilles North Atlantic U.S.A. Freight Conference
A.P. Moller-Maersk Line

Synopsis: The proposed agreement would authorize the parties to agree upon rates and tariff provisions in the trade from French Mediterranean ports and inland points in Continental Europe to U.S. North Atlantic ports in the Hampton Roads/Portland, Maine range and inland U.S. points via such ports. It would also permit the parties to discuss and exchange statistics and to share facilities in connection with the functions permitted by the agreement.

Agreement No.: 202–010689.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea Line
The East Asiatic Co., Ltd.
Evergreen Marine Corp. (Taiwan), Ltd.
Hanjin Container Lines, Ltd.
Hapag-Lloyd Trans-Pacific Service
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korean Marine Transport Co., Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co. Ltd.
Orient Overseas Container Line, Inc.
Zim Israel Navigation Co. Ltd.

Synopsis: The proposed agreement would permit the parties to agree upon rates, changes, rules and regulations governing the movement of cargo in the trade from or via ports on the Atlantic, Gulf and Pacific coasts (including Alaska) of the United States and inland U.S. points via such ports to points and ports in Japan, Korea, Taiwan, Siberia USSR, the People's Republic of China, Hong Kong, Viet Nam, Democratic Kampuchea (Cambodia), Thiailand, Laos, the Republic of the Philippines, the Republic of Singapore, the Federation of Malaysia, the Sultanate of Brunei and the Republic of Indonesia.

Dated: November 27, 1984.
By Order of the Federal Maritime Commission.
Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 84-31438 Filed 11-29-84; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services HHS) publishes a list of information collection packages it has submitted to the Office of Manaegment and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on November 23, 1984.

Health Care Financing Administration

Subject: Medicare Program Carrier Performance Report-Existing collection w/o OMB control number—HCFA-1565
Respondents: Medicare carriers
Subject: Quarterly Showing Validation Survey HCFA-9050 (0938-0282) Revision
Respondents: States
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Student Reporting Form—SSA 138EV (0960-0088) Revision
Respondents: Full-time Students Receiving Social Security Benefits
Subject: Statement of Marital Relationship (by one of the parties) SSA-754 (0960-0038)
Respondents: Individuals
OMB Desk Officer: Robert J. Fishman

Copies of the above information collection clearance packages can be obtained by calling HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer.

Dated: November 23, 1984.
Wallace O. Keene,
Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-31257 Filed 11-29-84; 8:45 am]
BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 80N-0276; DESI 7630]

Drugs for Human Use; Drug Efficacy Implementation; Upgrading Notice and Withdrawal of Approval of Pertinent Parts of New Drug Application for Winstrol Tablets

Correction

In FR Doc. 84-24514 beginning on page 36437 in the issue of Monday, September 17, 1984, make the following corrections:

On page 36438, first column.

1. In the second paragraph, sixth line, the zip code should have read "20857".

2. In the third paragraph, fourth line, "HEN-310" should have read "HFN-310".

3. In the seventh paragraph, sixth line, the first word reading "for" should have read "from".

BILLING CODE 1505-01-M

[Docket No. 84F-0300]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In FR Doc. 84-25437, beginning on page 37850 in the issue of Wednesday, September 26, 1984, make the following correction: On page 37850, it the third column, in the next to last line of the first paragraph of **SUPPLEMENTARY INFORMATION,** insert "terephthalate" after "ethylene".

BILLING CODE 1505-01-M

[Docket No. 84C-0298]

Coopervision, Inc.; Filing of Color Additive Petition

Correction

In FR Doc. 84-25438 appearing on page 37850 in the issue of Wednesday, September 26, 1984, make the following correction: In the second column, the tenth line from the bottom of the page, "Blue" should read "Red".

BILLING CODE 1505-01-M

[Docket No. 75N-0184; DESI 597]

Drugs for Human Use; Drug Efficacy Study Implementation; Bentyl With Phenobarbital Capsules, Tablets, and Syrup; Withdrawal of Approval of Parts and New Drug Applications

Correction

In FR Doc. 84-24579 appearing on page 36450 in the issue of Monday, September 17, 1984, make the following corrections:

1. In the first column, fifteenth line of the first paragraph of Supplementary Information, "314.11" should have read "314.111"; and in the fourth line of the second paragraph, "NOA's" should have read "NDA's".

2. In the second column, first line of the fourth complete paragraph should have read: "The Director of the Center for Drugs and".

BILLING CODE 1505-01-M

[Docket No. 79N-0113; DESI 2847]

Drugs for Human Use; Drug Efficacy Study Implementation; Parenteral Multivitamin Products; Revocation of Exemption ("Paragraph XIV/Category 11); Announcement of Effective Formulations; Followup Notice and Opportunity for Hearing

Correction

In FR Doc. 84-24580, beginning on page 36446 in the issue of Monday, September 17, 1984, make the following corrections:

1. On page 36446, third column, nineteenth line from the bottom of the page, "reformulation" should have read "reformation".

2. On page 36449, second column, fifteenth line from the bottom of the page, "December" should have read "October".

BILLING CODE 1505-01-M

[Docket No. 78T-0173 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for six organizations that manufacture and produce laser light shows, light show projectors, or both. The projector provides a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), each of the six organizations listed in the table below has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products.

So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the table below, and the effective date of the variance as specified in the table below. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

Docket No.	Manufacturing organization	Demonstration laser product	Effective date/ termination date
78P-0173 (extension)	Laser Images, Inc., 6907 Hayvenhurst Avenue, Van Nuys, CA 91406	LASERIUM (krypton) and Concert System (CS) Series of Class III and IV laser projector manufactured by Laser Images, Inc. and for laser light shows assembled and produced by Laser Images, Inc. incorporating those projectors.	Sept. 6, 1984–Aug. 22, 1985.
79P-0462 (extension)	Laser Systems Development Corp., 17 E. Bijou Street, Colorado Springs, CO 80903	Laser Systems Development Corp. Class III or Class IV laser projection system model R-2 the C-3 Model Series and laser light shows assembled and produced by Laser Systems Development Corp. incorporating these laser projection systems.	Sept. 6, 1984–Aug. 20, 1985.
84V-0178	Visage Enterprisee, Inc., 610 West 56th Street, New York, NY 10019.	Visage Enterprisee Visage Laser Display System and the Visage Enterprisee Laser Projection System.	Aug. 10, 1984–Aug. 10, 1985.
84V-0234	Hotel Rivera, Inc., 2901 Las Vegas Blvd. South, Las Vegas, NV 89109.	Laser light shows assembled and produced by Hotel Riviera, Inc. which incorporate a Laser Media Model LMS laser projection system.	Sept. 19, 1984–Sept. 19, 1985.
84V-0243	Mr. Patrick Murphy and Mr. David Lytle, 1905 N. Ode Street, Arlington, VA 22209.	Laser light shows assembled and produced by Patrick Murphy that incorporate his Class IIIb helium-neon or Class IIIb or IV argon-ion laser projection systems.	Aug. 21, 1984–Aug. 21, 1985.
84V-0261	Walt Disney World Company, Center Building, P.O. Box 40, Lake Buena Vista, FL 32830.	Laser light shows, produced by Walt Disney World Company, in a theater employing Class IV Science Faction ion laser projectors.	Sept. 11, 1984–Sept. 11, 1985.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 23, 1984.
Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31355 Filed 11-29-84; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1479]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency from number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collections to OMB

Proposal: Public Housing Manager Certification—Application Requirements
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit and State or Local Governments
Estimated Burden Hours: 48
Status: New
Contact: Odessa W. Burroughs, HUD, (202) 472-4703 Robert Neal, OMB, (202) 395-7316.

Proposal: Public Housing Manager Certification Appeals Procedure
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated Burden Hours: 6
Status: New
Contact: Odessa W. Burroughs, HUD, (202) 472-4703 Robert Neal, OMB, (202) 395-7316.

Proposal: Public Housing Manager Certification Program—Annual Review of Approved Certifying Organizations
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 6
Status: New
Contact: Odessa W. Burroughs, HUD, (202) 472-4703 Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 9, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-31470 Filed 11-29-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Garrison Diversion Unit Commission; Public Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commission meeting:

Name: Garrison Diversion Unit Commission.

Date of Meeting: The hearing will be held on Thursday, December 13, with a business meeting to follow on Thursday, December 14, to continue through Friday, December 15, if necessary.

Time of Meeting: The hearing will be 8:00 a.m.–5:30 p.m.; the business meetings 8:00 a.m. to 5:00 p.m. each day.

Place of Meeting: The hearing will be held at the Minot Municipal Auditorium, 420 Third Avenue South, Minot, North Dakota. The business meeting will be held at the Sherator Riverside Inn Convention Center, 2100 Burdick Expressway East, Minot.

Contact Person: Michael J. Clinton, Technical Staff Director, (303) 239-0701 (see Public Participation section for numbers to call to testify).

Purpose of Meeting: At the hearing, comments will be received on the Commission's preliminary final report. At the business meeting, the Commission will, following consideration of public comment, discuss, amend, and possibly adopt the preliminary final report and its recommendations. If the report is not approved, the Commission will review further changes December 19 and 20 in Washington, D.C.

Public participation: At the public hearing, scheduling of oral presentations will be done on a proportioned basis to strive for equal representation between proponents and opponents of water development in the State of North Dakota. The December 13 morning session (8 a.m. to 12 noon) will be devoted to invited presentations with time allotted for questions and answers. The afternoon session (1:30 to 5:30 p.m.) will be divided into 5-minute witness presentations followed by 5-minute question and answer periods. The Commission Chairman may extend speakers' times, allow question and answer periods, or adjust the order of presentations at his discretion.

Individuals and organizations wishing to make oral statements in the afternoon session should contact Linda Woodworth of the Garrison Diversion Unit Technical Staff Office in Lakewood, Colorado. The toll-free number that callers in the States of North and South Dakota and Minnesota should use is 800-832-9467; the number for other callers is 303-239-0701. Calls will be accepted on a first-come, first-served basis beginning at 8 a.m. Mountain Standard Time on December 3. The speakers' list will be closed at 12 noon and prepared as final. Persons calling after time slots are filled will be placed on a waiting list and will be called to testify if time allows or if a scheduled speaker cancels his/her reservation. The Commission requests that comments be limited to discussion of the contents of the preliminary final report.

No one caller will be allowed to schedule more than one time slot for his/her group. Those reserving time must specify speakers' names. No speaker changes or last-minute consolidations of time will be allowed. If a speaker is unable to attend the hearing at the scheduled time, he/she may be given an opportunity to speak at the end of the day's scheduled testimony, time permitting.

Speaker and others are welcome to submit written testimony the day of the hearing; however, due to time constraints, no further written comments will be accepted.

Transcripts: A transcript of the hearings will be made. Requests for information on arrangements for reviewing or obtaining copies of the transcripts should be directed to the Commission's Technical Staff at 303-239-0701.

Dated: November 28, 1984.

Robert N. Broadbent,

Federal Representative.

[FR Doc. 84-31357 Filed 11-29-84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Preparation of a Roll of Absentee Wyandotte Indian Descendants

November 26, 1984.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Area Director of the Muskogee Area Office of the Bureau of Indian Affairs is preparing a roll of Absentee Wyandotte Indian descendants. The roll prepared will be used as the basis for a per capita distribution of an apportioned share of judgment funds awarded the Wyandotte Tribe of Oklahoma in docket numbered 139 before the Indian Claims Commission and dockets numbered 141, 212 and 213 before the U.S. Court of Claims. In accordance with the Act of October 30, 1984, which authorized the use and distribution of the Wyandotte judgment funds, notice of the roll preparation and the deadline for filing applications as well as the procedures to be followed is to be published in the **Federal Register**.

DATE: Applications for inclusion on the roll of Absentee Wyandotte Indian descendants must be filed with the Area Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, and must be received by the Area Director no later than close of business on January 28, 1985.

FOR FURTHER INFORMATION CONTACT: Rosella C. Garbow, Branch of Tribal Operations, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, telephone number: (918) 687-2314 (FTS, 736-2314).

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary by 209 DM 8 and pursuant to the Act of October 30, 1984, Pub. L. 98-602.

Background

The Act of October 30, 1984, Pub. L. 98-602, provides for the use and distribution of judgment funds awarded the Wyandotte Tribe of Oklahoma in docket numbered 139 before the Indian Claims Commission and dockets numbered 141, 212, and 213 before the U.S. Court of Claims. Under the Act the Secretary has been directed to prepare a roll of persons who were born on or before and living on the date of the Act and who are listed in, or who are lineal descendants of individuals listed in, the compilation entitled "Census of Absentee or Citizen Wyandotte Indians" compiled by Joel T. Olive and dated November 18, 1895 (as corrected by W.A. Richards, Commissioner of the General Land Office, in a circular dated October 28, 1904).

In accordance with the Act of October 30, 1984, applications for enrollment by persons who meet or who believe they meet the requirements for enrollment are to be filed with the Secretary within 90 days of the date of the Act in such manner as the Secretary shall prescribe. The Secretary is further directed to publish in the **Federal Register** and in local media as the Secretary may determine to be appropriate, notice of the provisions of the Act providing for a per capita distribution to Absentee Wyandotte descendants; the preparation of the roll and the deadline for filing applications in order to establish eligibility for enrollment; and the procedures to be followed.

The procedures to be followed to prepare a roll of Absentee Wyandotte Indian descendants eligible to share in a per capita distribution of an apportioned share of certain Wyandotte judgment funds are as follows:

Procedures

Preparation of a Roll of Absentee Wyandotte Indian Descendants

Sec.
1. Definitions
2. Qualifications for Enrollment and the Deadline for Filing Applications
3. Notices
4. Application Forms
5. Burden of Proof
6. Action by the Director
7. Appeals
8. Decision of the Secretary on Appeals
9. Preparation, Certification, and Approval of the Roll
10. Special Instructions

1. Definitions

As used in these procedures:

"Act" means the Act of Congress approved October 30, 1984, Pub. L. 98-602, which authorizes and directs the Secretary to prepare a roll of persons who meet the requirements specified in the Act and to distribute certain judgment funds to such persons.

"Adopted child" means a child or adult whose natural parents' parental rights were terminated by court order and given to others to exercise.

"Assistant Secretary" means the Assistant Secretary of the Interior for Indian Affairs or his/her authorized representive acting under delegated authority.

"Department" means the Department of the Interior.

"Director" means the Area Director, Muskogee Area Office, Bureau of Indian Affairs, or his/her authorized representative acting under delegated authority.

"Lineal descendants" means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, et cetera. It does not include collateral relative such as brothers, sisters, nieces, nephews, cousins, et cetera, or adopted persons.

"Living" means born on or before and alive on the date specified.

"Secretary" means the Secretary of the Interior or his/her authorized representative acting under delegated authority.

"Sponsor" means a parent, recognized guardian, attorney, next friend, next of kin, spouse, executor or administrator of estate, the Director, or other person who files an application for enrollment on behalf of another person.

"Staff Officer" means the Enrollment Officer or other person authorized to prepare the roll.

2. Qualifications for Enrollment and the Deadline for Filing Applications

The roll shall contain the names of persons living on October 20, 1984, who meet the following requirements:

(a) Their names are listed in, or they are lineal descendants of individuals listed in, the compilation entitled "Census of Absentee or Citizen Wyandotte Indians" compiled by Joel T. Olive and dated November 18, 1895 (as corrected by W. A. Richards, Commissioner of the General Land Office, in a circular dated October 28, 1904); and

(b) They file or have filed on their behalf an application with the Area Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401. Application forms must be received by the Director no later than close of business on January 28, 1985. Applications received after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicants otherwise meet the requirements for enrollment.

3. Notices

(a) The Director shall give notice to all other Area Directors of the Bureau of Indian Affairs and all Superintendents within the jurisdiction of the Director, of the preparation of the roll for public display in Bureau field offices.

(b) The Director shall, on the basis of available residence data, publish notices in the local media of the preparation of the roll.

(c) Notices shall advise of the preparation of the roll and the relevant procedures to be followed including the requirements for enrollment and the deadline for filing applications in order to be eligible for enrollment. The notices shall also state how and where application forms may be obtained as well as the name, address, and telephone number of a person who may be contacted for further information.

4. Application Forms

(a) Application forms to be filed by or for applicants for enrollment will be furnished by the Director or other designated persons, upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing applications.

(b) Among other information, each application form shall contain:

(1) Certification as to whether the application is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application is filed by a sponsor, the name and address of the sponsor and relationship to applicant.

(3) A control number for the purpose of keeping a record of forms furnished interested individuals.

(c) Application forms may be filed by sponsors on behalf of other persons.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, he/she shall promptly notify the Director of any change in address, giving appropriate identification of the application, otherwise the mailing address as stated on the form shall be acceptable as the address of record for all purposes under these procedures.

(e) Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

5. Burden of Proof

The burden of proof rests upon the applicant to establish his/her eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits, may be used to support claims of eligibility for enrollment. Records of the Bureau of Indian Affairs may be used to establish eligibility.

6. Action by the Director

The Director shall consider each application and all documentation. Upon determining an individual's eligibility, the Director shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing of his/her decision.

(a) If the Director determines that the individual is eligible, the name of the applicant shall be placed on the roll.

(b) If the Director determines that the applicant is not eligible, he/she shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing of the adverse action by certified mail, to be received by the addresses only, return receipt requested, and shall explain fully the reasons for the adverse action and of the right to appeal to the Secretary. If correspondence is sent out of the United States, it may be necessary to use registered mail.

(c) If an individual files applications on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person involved.

(d) If a certified or registered notice is returned as "Unclaimed" the Director shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Director. If the acknowledgment of receipt is not returned, computation of the appeal period shall begin on the date the notice was remailed. Certified or registered notices returned for any reason other than "Unclaimed" need not be remailed.

(e) Except as provided in paragraph (d) of this section, a notice of adverse action is considered to have been made and computation of the appeal period shall begin on the date:

(1) Of delivery indicated on the return receipt;

(2) Of acknowledgment of receipt;

(3) Of person delivery; or

(4) Of the return by the post office of an undelivered certified or registered letter.

(f) In all cases where an applicant is represented by an attorney, the attorney will be recognized as fully controlling the case on behalf of his/her client and service on the attorney of any document relating to the application shall be considered to be service on the applicant he/she represents. Where an applicant is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(g) To avoid hardship or gross injustice, the Director may waive technical deficiencies in applications or other submissions. Failure to file by a deadline does not constitute a technical deficiency.

7. Appeals

Appeals from or on behalf of applicants who have been denied enrollment must be in writing and must be filed pursuant to Part 62 of Subchapter F of Chapter I of Title 25 of the Code of Federal Regulations (25 CFR Part 62), a copy of which shall be furnished with each notice of adverse action.

8. Decision of the Secretary on Appeals

The decision of the Secretary on an appeal shall be final and conclusive for this Department and written notice of the decision shall be given the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable.

9. Preparation, Certification, and Approval of the Roll

(a) The staff officer shall prepare a minimum of five (5) copies of the roll of those persons determined eligible for enrollment. The names of persons whose appeals are sustained will be added to the roll when they establish eligibility. In addition to other information which may be shown, the completed roll shall contain for each person an identification number, name, address, sex, date of birth, date of death, when applicable, and the basic roll number and name and relationship of the ancestor on the basic roll through whom eligibility was established.

(b) A certificate shall be attached to the roll by the staff officer certifying that to the best of his/her knowledge and belief the roll contains only the name of those persons determined eligible for enrollment.

(c) The Director shall approve the roll.

10. Special Instructions

To facilitate the work of the Director, the Assistant Secretary may issue special instructions not inconsistent with these procedures.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-31433 Filed 11-29-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Salmon District Advisory Council; Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting: Cancellation.

SUMMARY: The November 29, 1984 Meeting for the Salmon District Advisory Council published in the **Federal Register** Tuesday, October 30, 1984 on pages 43593 and 43594 is cancelled. The meeting will be rescheduled at a later date.

DATED: November 20, 1984.

Kenneth G. Walker,

District Manager.

[FR Doc. 84-31435 Filed 11-29-84; 8:45 am]

BILLING CODE 4310-GG-M

Salmon District Grazing Advisory Board; Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting: Cancellation.

SUMMARY: The December 13, 1984 Meeting for the Salmon District Grazing Advisory Board, published in the **Federal Register** Wednesday, November 7, 1984, on pages 44559 is cancelled. The meeting will be rescheduled at a later date.

DATED: November 21, 1984.

Jerry W. Goodman,

Associate District Manager.

[FR Doc. 84-31436 Filed 11-29-84; 8:45 am]

BILLING CODE 4310-GG-M

[F-81490]

Proposed Withdrawal and Opportunity for Public Meeting, Alaska

Correction

In FR Doc. 84-29585 beginning on page 44816 in the issue of Friday, November 9, 1984, make the following correction: On page 44816, in the third column, in the first complete paragraph, remove the comma at the end of the first line.

BILLING CODE 1505-01-M

[INT FEIS 84-34]

Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the John Day Planning Area, Burns District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the John Day Planning Area, Burns District, Oregon.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202(a) of the Federal Land Policy and Management Act of 1976, the Department of the Interior has prepared a combined Final Environmental Impact Statement (FEIS) and proposed Resource Management Plan for 182,120 acres of BLM-administered lands within the John Day Planning Area encompassing Grant and the northern portion of Harney Counties in Oregon.

DATE: Notice is hereby given that the proposed John Day Resource Management Plan and Final Environmental Impact Statement is available for public review and comment. The public review and protest period will end 30 days after publication of this notice or the date the Environmental Protection Agency publishes its notice of receipt of the final environmental impact statement or Daecember 31, 1984, whichever date is later. At the end of the comment and protest period, the proposed resource management plan, excluding any portions under protest, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. The approval process and the final resource management plan shall be published with the record of decision in the spring of 1985.

ADDRESS: Written comments on the proposed plan and final statement should be sent to the Burns District Office, 74 South Alvord, Burns, Oregon 97720. Any portion of the plan may be protested as outlined in 43 CFR 1610.5-2. All protests should be sent to: Director, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The proposed resource management plan is designed to guide future management action on 182,120 acres of BLM-administered lands in the John Day Planning Area. The document describes the proposed resource management plan and contains written comments received during the public review period and responses to those comments, and changes which were made as a result of public comment. The three major issues would be addressed as follows:

1. *Forest Management*—The intensity of management on forest lands would be altered to provide consideration of critical wildlife forage and cover areas, streams supporting fish and important visual resource areas.

2. *Forage Use*—Forage use by livestock would continue at the current level, 25,323 Animal Unit Months (AUMs). Forage available to wildlife would continue at the current level. The wild horse population and their total forage use would remain unchanged but the percentage of the total herd area on BLM lands would be reduced from 24% to 11%. Livestock grazing use in riparian zones would be coordinated to facilitate improvement of riparian vegetation condition along 28.5 stream miles in improvement (1) category allotments. Forage conditions would be inproved through vegetative manipulation (prescribed burning and/or seeding) on approximately 6,295 acres in Improve category allotments.

3. *Land Ownership Adjustments*—Several hundred parcels ranging in size from 1 to 640 acres each, amounting to 5,240 acres would be offered for sale. An additional 16,000 acres may be available for sale depending on a case-by-case analysis of significant big game habitat and forestry considerations. Public land holdings would be consolidated through exchange.

Protests should include the following information:

The name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue or issues being protested.

A statement of the part or parts being protested.

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.

A short, concise statement explaining why the BLM State Director's decision is wrong.

FOR FURTHER INFORMATION CONTACT: Malcolm (Bud) Shrode, Area Manager, Burns District Office, 74 South Alvord, Burns, Oregon 97720.

Copies of the RMP/FEIS are available for review at the following public libraries or obtainable at the following Bureau of Land Management Offices:

Bureau of Land Management, Burns District Office, 74 South Alvord, Burns, OR 97720, (503) 573–5241
Bureau of Land Management, Oregon State Office (912), 825 NE. Multnomah Street, Portland, OR 97208, (503) 231–5274
Harney County Library, 80 West "D" Street, Burns, OR 97720, (503) 573–6670
Grant County Library, 507 S. Canyon Boulevard, John Day, OR 97845, (503) 575–1992

Dated: November 5, 1984.

Joshua L. Warburton,

District Manager.

[FR Doc. 84-31372 Filed 11-29-84; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Final Order on Royalty Refund Requests Resulting from FERC Orders 93/93A

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final Order on Royalty Refund Requests Resulting from FERC Orders 93/93A.

SUMMARY: The purpose of this notice is to issue a final order by the Director of the Minerals Management Service, appealable to the Interior Board of Land Appeals (IBLA), on certain royalty refund requests made as a result of the decision in *Interstate Natural Gas Associate of America et al.* v. *FERC.*

FOR FURTHER INFORMATION CONTACT: Mr. Milton Dial, Chief, Royalty Compliance Division, FTS 326–231–3011, (303) 231–3011

Mr. James Detlefs, Chief, Fiscal Accounting Division, FTS 326–3281, (303) 231–3281

SUPPLEMENTARY INFORMATION: As a result of *Interstate Natural Gas Association et al.* v. *FERC*, 716 F. 2d 1 (D.C. Cir. 1983), *cert. den.*, 104 S. Ct. 1616 (1984), MMS has determined that certain payors of royalties on Federal and Indian leases are eligible to request refunds of a portion of royalties paid on natural gas for the period from December 1, 1978, to December 8, 1983.

I. Final Order

The Department of the Interior has received a number of appeals from its August 8, 1984, notice of refund procedures and order to pay royalties (49 FR 31779).

The MMS does not view the August 8, 1984, notice on tolling period as a final order from which an appeal may be taken. Therefore, all appeals of the tolling period filed on the August 8, 1984, notice are dismissed as being procedurally defective. (The order to pay royalty in that notice was a final order.) The Director of the MMS has now issued this final order, from which an appeal may be taken to the IBLA, on certain FERC Orders 93/93A royalty refund requests.

Through this order MMS denies all FERC Orders 93/93A refund requests which seek refunds of royalty payments made before November 9, 1981, on Federal Outer Continental Shelf (OCS) leases. This final Director's order is based on the 2-year statute of limitations for royalty refund requests mandated by section 10 of the Outer Continental Shelf Lands Act (OCSLA) 43 U.S.C. 1339(a). The order does not apply to any lessee who filed a proper notice with MMS which tolled the 2-year statute. (See Sol. Op. M–36942, 88 I.D. 1090, 1100–1102 (1981)).

Arguments made by various payors which claim that the 2-year period has not run against their refund requests can be summarized as either disputing the time at which the 2-year period began or contending that some subsequent event tolled the statute. The MMS has considered the issues and has concluded that the clear language of section 10 mandates that the 2-year period commence upon the recipt of payment by DOI, or its administering agencies or bureaus. The day of "payment" in section 10 cannot be read to mean "the day on which a payment became an overpayment." This position was upheld in *Phillips Petroleum Co.*, 30 IBLA 393, 397 (1079).

In order to have tolled the statute during the judicial resolution of FERC Orders 93/93A, a payor must have given written notice to the Department of the challenge and of the approximate difference in amount should the challenge succeed. See Sol. Op. M–36942, 88 I.D. 1090 (1981). A payor may not *post facto* toll the statute by waiting judicial resolution to notify the Department.

Those payors wishing to appeal this final decision to the IBLA should include with their notice of appeal a schedule of the royalty payments made after December 1, 1978, that they assert would be subject to refunds but for this decision pursuant to section 10 of the OCSLA.

II. Notice of Extension of Tolling Period and Revision of Refund Criteria

The MMS will accept documentation showing that refunds have been paid on the non-royalty portion of the claim as sufficient to justify a refund of royalties paid under FERC Orders 93/93A for the royalty portion. Documention of the non-royalty portion should follow the format required in the MMS' previous **Federal Register** notices of August 8 and April 25, 1984.

The MMS will also honor the extension given to large first sellers by FERC in its "Order Granting Stay and Rehearing for the Purpose of Further Consideration," issued October 24, 1984, and may honor subsequent extensions granted by FERC. The October 24 extension will change the end of the MMS' tolling period for claims under section 10 of the Outer Continental Shelf Lands Act, as amended, from November 9, 1984, until FERC issues a final order on the merits of the petitions for rehearing. This extension of tolling period and revisions of refund criteria are not final orders for purposes of appeal.

Dated: November 23, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84-31413 Filed 11-29-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Availability of Draft Environmental Assessment for the Development Concept Plan/Road Classification Plan Lake Meredith Recreation Area and General Management Plan Amendment Alibates Flint Quarries National Monument; Hutchinson Moore and Potter Counties, TX

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, and Part 516 of the Departmental Manual, the National Park Service has prepared a Draft Environmental Assessment for the Development Concept Plan/Road Classification Plan, Lake Meredith Recreation Area; and General Management Plan Amendment, Alibates Flint Quarries National Monument, Huchinson, Moore and Potter Counties, Texas.

The Draft Environmental Assessment describes and analyzes a proposed parkwide development concept plan/road classification plan for Lake Meredith Recreation Area, updating a master plan prepared in the late 1960s; and as proposed amendment to the 1978 General Management Plan for Alibates Flint Quarries National Moument. The plans will guide development and use of the areas for the next 10 to 15 years.

Copies of the Draft Environmental Assessment are available from Lake Meredith Recreation Area/Alibates Flint Quarries National Monument, Post Office Box 1438, Fritch, Texas 79036; and the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to comment on the Draft Environmental Assessment should provide them to the Superintendent, Lake Meredith Recreation Area/Alibates Flint Quarries National Monument, at the address provided above, within 30 days from the publication date of this notice.

Dated: November 6, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-31457 Filed 11-29-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–218 (Final)]

Certain Cold-Rolled Carbon Steel Products From the Republic of Korea

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing, prehearing conference, and prehearing brief filing date in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on December 11, 1984, to 10:00 a.m. on December 13, 1984. The hearing will now be held concurrently with the hearing previously scheduled in connection with investigations Nos. 731–TA–169 through 182 (Final), Certain Carbon Steel Products from Argentina, Australia, Finland, and Spain (49 FR 39622, Oct. 9, 1984). The prehearing conference scheduled in connection with the subject investigation for 9:30 a.m. on November 27, 1984, is rescheduled for 10:00 a.m. on December 7, 1984 (in room 117 of the USITC Building); and prehearing briefs will be due on December 10, 1984, rather then December 6, 1984, as previously scheduled.

For futher information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's original notice of investigation (49 FR 40676, Oct. 17, 1984).

EFFECTIVE DATE: November 26, 1984.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–523–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 27, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31404 Filed 11-29-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–193]

Certain Rowing Machines and Components Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: MDI Sanyco Automotive U.S.A. Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 27, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such request should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: November 27, 1984.

By order of the Commision.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31403 Filed 11-29-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–148/169]

Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product; Issuance of General Exclusion Order and Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of a general exclusion order in Inv. No. 337–TA–148 and a limited exclusion order in Inv. No. 337–TA–169.

SUMMARY: Having determined that the issues of remedy, the public interest, and bonding are properly before the Commission, and having reviewed the written submissions filed on remedy, the public interest, and bonding and those portions of the record relating to those issues, the Commission has determined

in investigation No. 337–TA–148 to issue a general exclusion order prohibiting entry into the United States, except under license, of small caliber cellulose skinless sausage casings manufactured in accordance with a method which, if practiced in the United States, would infringe claims 1, 2, 3, and 5 of U.S. Letters Patent 3,461,484, owned by complainant Bufpak, for the remaining term of the patent. The Commission has further determined, in investigation No. 337–TA–169, to issue a limited exclusion order prohibiting entry into the United States, except under license from complainant Union Carbide, of small caliber cellulose skinless sausage casings manufactured by Viscofan, S.A. and Industria Navarra de Conversion de Envolturas Artificiales, S.A., of San Sebastian, Spain, for a period of ten (10) years from the date of the order.

FOR FURTHER INFORMATION CONTACT: Judity M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: On August 1, 1984, the presiding officer issued an initial determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a in the importation and sale of the skinless sausage casings under investigation. Specifically, the presiding officer determined in Inv. No. 337–TA–148 that respondent Viscofan manufactures skinless sausage casings using a method which would infringe a valid U.S. patent (U.S. Letters Patent 3,461,484) owned by complainant Bufpak if practiced in the United States, and that respondent Viscofan misappropriated certain trade secrets owned by complainant Union Carbide in Inv. No. 337–TA–169. The presiding officer found all the other elements of a violation of section 337 to exist in each investigation. He also determined that respondent Viscofan had failed to prove its affirmative defenses of patent misuse and unclean hands, which alleged that complainants Teepak and Union Carbide had conspired to monopolize the manufacture of skinless sausage casings in the United States by means of illegal patent pooling, cross-licensing, price-fixing, and predatory behavior.

On September 21, 1984, the Commission determined to review one issue raised in respondent Viscofan's petition for review. The Commission determined to review the administrative law judge's disposition of Motion No. 148/169–17, respondent's motion to redesignate certain documents and deposition testimony as nonconfidential. The Commission further determined not to review the administrative law judge's determination as to violation of section 337 and 19 U.S.C. 1337a. 49 FR 39925 (Oct. 11, 1984). The parties were requested to file written submission on the issue under review, and on remedy, the public interest, and bonding. Complainant Union Carbide, respondent Viscofan, and the Commission investigative attorney have submitted briefs on the issue under review. Complainants Teepak and Union Carbide, respondent Viscofan, and the Commission investigative attorney have submitted briefs on the issues of remedy, the public interest, and bonding. Submissions on the issue of the public interest have been received from Members of Congress and from the Secretary of Commerce. The Customs Service has filed a submission on the issue of remedy. No other submissions were received.

Copies of the Commission's Action and Order, the Commission Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are available for inspection during the official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: November 28, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–31402 Filed 11–29–84; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. International Business Machines Corp. and Rolm Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16 (b) through (h), that a Stipulation and Final Judgment, Stipulated Hold Separate Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *International Business Machines and ROLM Corporation*. The government's complaint in this case alleges that the acquisition by International Business Machines Corporation ("IBM") of the Mil-Spec Computer Division of ROLM Corporation ("ROLM") would result in a lessening of competition in the United States in the production and sale of mil-spec commercial based computers in violation of section 7 of the Clayton Act, 15 U.S.C. section 18. Mil-spec commercial based computers are computers that are manufactured to meet certain rigorous military specifications so that they will have the ability to withstand harsh environmental conditions, and that are based on the architecture of a commercially available computer and are software compatible with that computer.

IMB has agreed that if it acquires ROLM, it will divest itself of ROLM's Mil-Spec Computer Division within six (6) months after November 19, 1984, and, in the interim, it will hold ROLM's Mil-Spec Computer Division as a separate, independent entity. The proposed Final Judgment seeks to assure that IBM complies with its agreement to sell ROLM's Mil-Spec Computer Division and to maintain it as an entity separate and apart from IBM until the sale is completed.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to P. Terry Lubeck, Acting Chief, Intellectual Property Section, Antitrust Division (SAFE-700), Department of Justice, Washington, DC 20530 (202/724–7986).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court for the District of Columbia

[Civ. No. 84–3508, Filed: November 20, 1984]

Stipulation

United States of America, Plaintiff, v. *International Business Machines Corporation and ROLM Corporation*, Defendants.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment;

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: November 19, 1984.

J. Paul McGrath,

Assistant Attorney General.

Mark Leddy,

Roger B. Andewelt.

P. Terry Lubeck,

Burney P.C. Boote,

Don A. Resnikoff,

Richard L. Irvine,

Attorneys, Department of Justice, Antitrust Division, Washington, D.C. 20530. Telephone: 202/724–7986.

For the Defendant International Business Machines Corporation.

Cravath, Swaine & Moore

By Ronald S. Rolfe,

A Member of The Firm.

One Chase Manhattan Plaza, New York, New York 10005, 212/422–3000

For the Defendant Rolm Corporation

Wilson, Sonsini, Goodrich & Rosati

By Charles T.C. Compton,

A Member of The Firm.

2 Palo Alto Square, Palo Alto, California 94306, (415) 493–9300

Stipulation Approved for Filing

Dated: November , 1984.

Judge John G. Penn,

United States District Judge

U.S. District Court for the District of Columbia

[Civ. No. 84–3508; Filed: November 20, 1984.]

Final Judgment

United States of America, Plaintiff, v. *International Business Machines Corporation and ROLM Corporation*, Defendants.

Whereas, plaintiff, United States of America, having filed its Complaint herein on November 19, 1984, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement and the defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Odered, adjudged and decreed as follows:

I

This Court has jurisdiciton over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may by granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "IBM" means the defendant International Business Machines Corporation; each division, subsidiary or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them. After IBM acquires ROLM, IBM includes ROLM but does not include the Mil-Spec Computer Division;

B. "ROLM" means that defendant ROLM Corporation; each division, subsidiary or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them;

C. "Defendants" means IBM and ROLM;

D. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity;

E. "Mil-spec computer" means a computer that is manufactured to meet certain rigorous military specifications so that it will have the ability to withstand harsh environmental conditions;

F. "Mil-spec commercial and based computer" means a mil-spec computer that is based on the architecture of a commercially available computer and that is software compatible with that computer;

G. "Mil-Spec Computer Division" means the Mil-Spec Computer Division of ROLM. The Mil-Spec Computer Division includes all of ROLM's rights and obligations under all agreements between ROLM and Data General Corporation or other third parties relating to the business of the Mil-Spec Computer Division.

III

A. The provisions of the Final Judgment shall apply to the defendants, their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Except for paragraph IV.C of this Final Judgment, nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. IBM shall require, as a condition of the sale or other disposition of all or substantially all of its assets involved in the production and sale of mil-spec computers, other than the divestiture required herein, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

A. In the event that IBM acquires ROLM, IBM is hereby ordered and directed, no later than six (6) months after November 19, 1984, to divest to a purchaser or purchasers all of its direct and indirect ownership in the control over the Mil-Spec Computer Division. Nothing in this Final Judgment shall preclude plaintiff from approving a divestiture by means of a "spin-off," "leveraged buy-out," or public offering.

B. Divestiture of the Mil-Spec Computer Division shall be accomplish in such a way as to ensure that, as of the time of divestiture, it reasonably can be anticipated that the Mil-Spec Computer Division can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in the production and sale of mil-spec commercial based computers. Divestiture shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, if plaintiff objects, to the Court that (i) the purchase is for the purpose of competing effectively in the production and sale of mil-spec commercial based computers and (ii) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of mil-spec commercial based computers.

C. In accomplishing the divestiture ordered by this Final Judgment, IBM shall make known in the United States, by usual and customary means, the availability of the Mil-Spec Computer Division for sale as an ongoing business. IBM shall notify any person making an inquiry regarding the possible purchase

of the Mil-Spec Computer Division that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. IBM also shall furnish, to all bona fide prospective purchasers who so request, and subject to appropriate confidentiality assurances, all pertinent information regarding the Mil-Spec Computer Division and shall permit them to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the Mil-Spec Computer Division.

D. IBM shall take all reasonable steps to accomplish said divestiture, including the sale of assets only.

V

A. IF IBM has not divested all of its ownership interest in the Mil-Spec Computer Division within six (6) months after November 19, 1984, the Court shall, on application of the plaintiff, appoint a trustee to effect the divestiture. Such appointment shall become effective six (6) months after November 19, 1984 or as soon thereafter as the Court appoints a trustee. After the trustee appointment becomes effective, only the trustee, and not IBM, shall have the right to sell the Mil-Spec Computer Division. The trustee shall disposed of the Mil-Spec Computer Division at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provision of Section VI of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. The trustee shall have the power to require IBM to divest assets only. IBM shall not object to a sale by the trustee on any grounds other than malfeasance.

B. If IBM has not divested all of its ownership interest in the Mil-Spec Computer Division within four (4) months after November 19, 1984, IBM shall notify plaintiff of that fact. If IBM still has not divested all of its ownership interest in the Mil-Spec Computer Division within the next ten (10) days thereafter, the plaintiff and IBM shall exchange at that time written notices of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within twenty (20) days of the exchange of written notices, plaintiff shall notify this Court of the person upon whom the parties have agreed and this Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish this Court the names of each party's nominees. This Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of IBM, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of the Mil-Spec Computer Division and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to IBM and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. IBM shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records and facilities of the Mil-Spec Computer Division, and IBM shall develop such financial or other information relevant to the business or assets to be divested as the trustee may request. IBM shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (i) the trustee's efforts to accomplish the required divestiture, (ii) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (iii) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture pursuant to Section IV or V of this Final Judgment, IBM or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify the defendants. The notice shall set forth the details of the proposed transaction and for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Mil-Spec Computer Division, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days of receipt by plaintiff of such notice, the plaintiff may request additional information concerning the proposed divestiture and the proposed purchase. The defendants shall furnish the additional information within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within (15) days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing IBM and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the periods specified, or if the plaintiff notifies in writing IBM and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to IBM's limited right to object to the sale under the proviso in Section V(A). Upon objection by the plaintiff or by IBM under Section V(A), the proposed divestiture shall not be accomplished unless approved by the Court. IBM shall have no right to object to any divestiture of the Mil-Spec Computer Division proposed by the trustee except under Section V(A).

VII

Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, IBM shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include, for each person who, during the preceding thirty (30) days, made an offer, expressed an interest or desire to acquire, or entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in, the Mil-Spec Computer Division, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. IBM shall maintain full records of all efforts made to divest the Mil-Spec Computer Division.

VIII

IBM shall abide by the provisions set forth in the Stipulated Hold Separate Order entered by the Court, stipulated on November 19, 1984, a copy of which is attached hereto.

IX

IBM shall provide to plaintiff for a period of five (5) years from the entry of this Final Judgment, twenty (20) days' advance notice, in writing, of its acquisition of one percent (1%) or more of the voting securities of any person engaged in the manufacture or sale of mil-spec commercial based computers (excluding components thereof), the assets of which are recorded on the books of such company in an amount in excess of $15 million, or its acquisition from any such person, except pursuant to supply arrangements or otherwise in the ordinary course of business, assets relating to such products in an amount in excess of $15 million. Nothing in this Section shall require IBM to give notice of plaintiff of any such acquisitions by its pension plans.

X

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Divsion, and on reasonable notice to IBM made to its principal office, be permitted:

1. Access during office hours of IBM to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of IBM, who have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of IBM and without restraint or interference from it, to interview officers, employees, and agents of IBM, who may have counsel present, regarding any such matters;

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to IBM's principal office, IBM shall submit such written reports, under oath if requested, regarding any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law;

C. If at the time information or documents are furnished by IBM to plaintiff, IBM represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and IBM marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure", then ten days' notice shall be given by plaintiff to IBM prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

U.S. District Court for the District of Columbia

[Civ. No. 84-3506; Filed: November 20, 1984]

United States of America, Plaintiff, v. *International Business Machines Corporation and ROLM Corporation*, Defendants.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against International Business Machines Corporation and ROLM Corporation in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil action began on November 19, 1984, when the United States filed a complaint challenging the proposed acquisition of ROLM Corporation ("ROLM") by International Business Machines Corporation ("IBM") as a violation of section 7 of the Clayton Act (15 U.S.C. 18). The complaint alleges that the effect of the acquisition of ROLM by IBM may be substantially to lessen competition in the United States in the production and sale of "mil-spec commercial based computers." The complaint requests that IBM be required, if it acquires ROLM, to divest itself of ROLM's Mil-Spec Computer Division within six (6) months after November 19, 1984 and, in the interim, to hold ROLM's Mil-Spec Computer Divisions as a separate, independent entity.

The United States and IBM have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action; except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish violations of the Judgment.

II. Events Giving Rise to the Alleged Violation

In 1983, IBM and ROLM entered into an agreement pursuant to which IBM could purchase up to 30 percent of the voting securities of ROLM. Pursuant to that agreement, IBM has purchased approximately 23 percent of the voting securities of ROLM. On about September 26, 1984, IBM and ROLM entered into another agreement pursuant to which IBM will purchase all the outstanding voting securities of ROLM that IBM does not already own. Both IBM and ROLM's Mil-Spec Computer Division manufacture and sell "mil-spec computers" to the United States military. The military uses these computers to aid in communications, command, control, and intelligence functions on battlefields, in navigation and in the operation of aircraft, ships, submarines, and missiles, and for other purposes. Thus, these computers must be specially designed and built to withstand harsh environmental conditions such extremes in temperature, dust, or vibration. Many mil-spec computers utilize standard architectures developed by the military.

Another type of mil-spec computer used by the military is "mil-spec commercial based computers." Such a computer differs from other types of mil-spec computers because they are each

software compatible with a computer that is used for a variety of commercial applications. Software compatibility permits a mil-spec commercial based computer to run software that can be run on the commercially available computer counterpart. It thus is often unnecessary to design new software for mil-spec commercial based computers, and where creation of new software is required, it is facilitated by the availability of commercial software. Also, mil-spec commercial based computers generally have greater processing capabilities than other types of mil-spec computers. In 1983, domestic sales of mil-spec commercial based computers were about $150 million.

For a significant number of military applications, some of which have been developed recently, no acceptable alternative exists to the use of mil-spec commercial based computers. For such applications, including certain communications, command, control, and intelligence applications (e.g., missile launch and control), the speed, reliability, and flexibility of mil-spec commercial based computers is required. In addition, the software compatibility of mil-spec commercial based computers permits the military to take advantage of software developments in commercial applications. Because of these and other unique capabilities, sales of mil-spec commercial based computers to the United States military comprise a relevant market for antitrust purposes.

Few firms produce and sell mil-spec commercial based computers. For each year from 1980 through 1983, two firms, ROLM and Norden Systems, Inc., an affiliate of United Technologies Corporation of Hartford, Connecticut, have accounted for over 60 percent of total annual domestic sales. Other competitors such as Electronic Memories & Magnetics of Encino, California, have relatively small shares of the business and limited production capacity. Thus, the production and sale of mil-spec commercial based computers is a highly concentrated business.

In addition, there are substantial barriers to beginning production and sale of mil-spec commercial based computers. To enter this business requires, among other things, access to and expertise in an appropriate commercial computer design, the adaptation of that design to meet military specifications, and the development of or access to special ceramic-coated mil-spec semiconductor chips and other specialty components. Also, a firm must have appropriate production facilities, approval by the United States military, and a marketing group with expertise in military procurement.

ROLM manufactures mil-spec commercial based computers under a series of licenses from Data General Corporation of Westboro, Massachusetts. ROLM's mil-spec commercial based computers are software compatible with certain of Data General's commercially available computers. In calendar year 1983, ROLM's sales of mil-spec commercial based computers were approximately $75 million, or about 50 percent of total mil-spec commercial based computer sales.

IBM is the dominant manufacturer of computers for commercial uses in the United States. Many of its commercial machines are used by the United States military. In addition, IBM manufactures mil-spec computers for the military. While IBM currently does not manufacture mil-spec commercial based computers, it is one of only a few potential entrants into that market. IBM has the capability and incentive to commence production and sale of these computers. Also, IBM has indicated to the United States military that it intends to enter this market and to commence accepting orders in 1985. IBM has significant and unique advantages with respect to entry into the production and sale of mil-spec commercial based computers. These include a variety of commercial computer designs upon which mil-spec commercial based computers could be based, expertise in semiconductor chip design, and extensive experience in production and sale of mil-spec computers to the military.

If IBM entered the concentrated business of supplying mil-spec commercial based computers in the near future, it would be another major firm that could compete for the military's needs for such computers. However, if IBM acquires ROLM, IBM will control ROLM's Mil-Spec Computer Division. In that situation, it would be unrealistic to expect meaningful competition to exist between IBM and its newly acquired Mil-Spec Computer Division. Thus, instead of gaining a new competitor, the military still would have only two major firms to vie for its business. Therefore, IBM's acquisition of ROLM, and its Mil-Spec Computer Division, may substantially lessen competition in the production and sale of mil-spec commercial based computer in violation of section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment and Its Anticipated Effects on Competition

The United States brought this action because the effect of IBM's acquisition of ROLM may be substantially to lessen competition in violation of section 7 of the Clayton Act in the production and sale of mil-spec commercial based computers. The only anticompetitive effects associated with the acquisition would be eliminated if ROLM's Mil-Spec Computer Division and IBM remained independent competitors in the production and sale of mil-spec commercial based computers.

To this end, the proposed Final Judgment requires IBM, if it acquires ROLM, to divest ROLM's Mil-Spec Computer Division within six (6) months after November 19, 1984, and if IBM does not, the Court will, at the request of the United States, appoint a trustee to make the sale. The Final Judgment provides a mechanism that should allow ample time for a trustee to be selected in advance of the expiration of the six (6) month period, and if one is so selected, the trustee's appointment will take affect when the period expires. In addition, once the trustee is appointed, only the trustee, and not IBM, shall have the right to sell the Mil-Spec Computer Division.

If a trustee is appointed, IBM will pay all of the trustee's expenses in selling the Mil-Spec Computer Division, and the trustee's commission will be structured to provide an incentive for it to complete the sale promptly. In addition, at the time of its divestiture, the Mil-Spec Computer Division shall be able to be operated as a viable, ongoing business engaged in the production and sale of mil-spec commercial based computers. Also, the purchaser of the Mil-Spec Computer Division must be able to demonstrate that it has the managerial, operational, and financial capability to compete effectively in the production and sale of such computers and that it intends to engage in such competition. If the United States objects to the proposed purchaser, the divestiture can be completed only with permission of the Court.

The proposed Final Judgment also requires that until IBM divests the Mil-Spec Computer Division, IBM shall maintain the Division as an entity separate and apart from IBM. In addition, IBM must take all steps necessary to assure that none of the Mil-Spec Computer Division's technology or other business information becomes available to IBM. Finally, IBM is required to refrain from taking certain steps that may jeopardize the Mil-Spec Computer Division's ability to remain a viable competitor in the production and sale of mil-spec commercial based computers. A Stipulated Hold Separate Order, approved by the Court on November 19, 1984, provides these same protections until the proposed Final Judgment is entered.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Judgment within which any person may submit to the government written comments regarding the proposed Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: P. Terry Lubeck, Acting Chief, Intellectual Property Section, Antitrust Division (700 Safeway Building), U.S. Department of Justice, Washington, D.C. 20530.

VI. Alternatives to the Proposed Final Judgment

The proposed Final Judgment would assure that IBM will divest ROLM's Mil-Spec Computer Division within six (6) months and that during that time ROLM's Mil-Spec Computer Division would be isolated from any interference by IBM. The only alternative considered to settling this action pursuant to the proposed Final Judgment was for the United States to seek an injunction enjoining IBM's proposed acquisition of ROLM stock. The government rejected this alternative because there was substantial risk it would not succeed. Also, if the government had sought to block IBM's acquisition ROLM stock and did not secure a preliminary injuction, the ultimate outcome of the litigation would have been no better and likely would have been significantly worse than the outcome reflected in the proposed Final Judgment.

IBM likely would have raised a series of arguments in opposition to a preliminary injunction. First, IBM could have argued that it would be unfair to halt the entire acquisition when the sole concern of the United States was IBM's acquisition of ROLM's Mil-Spec Computer Division, a comparatively minor part of ROLM. Second, IBM probably would have agreed to hold the ROLM's Mil-Spec Computer Division separate and to divest it within a reasonable period in the event the Court were subsequently to find a violation of the Clayton Act. Third, IBM could have asserted that an injunction would also be inappropriate because the theory of the case is based on the actual potential competition doctrine. That doctrine interprets section 7 of the Clayton Act as prohibiting the acquisition of a major competitor in a concentrated market by one of the few actual potential entrants into the market. While this interpretation is economically sound and consistent with legal precedent, the Supreme Court has never affirmatively held that section 7 reaches this conduct. Fourth, IBM could have asserted that it was unfair for the government now to seek to enjoin IBM's purchase of ROLM stock when the government did not object only fifteen (15) months ago when IBM notified the government that it intended to purchase up to thirty percent (30%) of ROLM's stock.

Under the circumstances, while the government believes that there are sound responses to these arguments, there was a substantial risk that the government would not have been successful if it had sued to block the entire transaction. Had the government lost the motion for a preliminary injuction, it would have had to establish liability under the Clayton Act at a trial at some indefinite point in the future. Even if successful at trial, the government would only be entitled to divestiture of the Mil-Spec Computer Division of ROLM, which is the relief called for in the proposed Final Judgment. Thus, the government concluded that the public interest in competition in this important market would be best served by a divestiture accomplished as soon as practicable under the circumstances of this case, rather than risk a likely significant delay of divestiture and the possibility of no divestituture at all.

It should be noted that IBM told the government that it faced tax losses in the tens of million of dollars if it did not purchase the remaining ROLM stock by Wednesday, November 21, 1984. The Antitrust Division has no view on the likelihood of such losses or their magnitude. Its interest in this case relates solely to the competitive effects of the transaction. Once it was determined that a competitive problem existed in the mil-spec commercial based computer market, the government informed IBM that it would object to the acquisition of ROLM stock by IBM unless this problem could be satisfactorily resolved. IBM then requested that, if possible, a Complaint and Stipulated Final Judgment resolving the matter be filed before November 21, 1984. Negotiations commenced shortly thereafter and led to the proposed Final Judgment.

VII. Determinative Documents

The only documents determinative in the formulation of the proposed Final Judgment were the agreements between IBM and ROLM dated September 26, 1984, providing for the purchase by IBM of all the ouststanding voting securities of ROLM. A copy of those agreements is being filed by the United States pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and is attached to the proposed Final Judgment.

Dated: November 19, 1984.

Respectfully submitted.

P. Terry Lubeck,
Burney P.C. Boote,
Don Allen Resnikoff,
Richard L. Irvine,
Attorneys, U.S. Department of Justice.
Antitrust Division (SAFE–704).
Washington, D.C. 20530, (202) 724–7979.

U.S. District Court for the District of Columbia

[Civ. No. 84-3508; Filed: November 20, 1984]

Stipulated Hold Separate Order

United States of America, Plaintiff, v. *International Business Machines Corp. and ROLM Corp.*, Defendants.

It is hereby ordered that:

1. As used in this Order:

(a) "IBM" means the defendant International Business Machines Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them. After IBM acquires ROLM, IBM includes ROLM but does not include the Mil-Spec Computer Division;

(b) "ROLM" means the defendant ROLM Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them;

(c) "Mil-spec computer" means a computer that is manufactured to meet certain rigorous military specifications so that it will have the ability to withstand harsh environmental conditions;

(d) "Mil-spec commercial based computer" means a mil-spec computer that is based on the architecture of a commercially available computer and that is software compatible with that computer;

(e) "Mil-Spec Computer Division" means the Mil-Spec Computer Division of ROLM. The Mil-Spec Computer Division includes all of ROLM's rights and obligations under all agreements between ROLM and Data General Corporation or other third parties relating to the business of the Mil-Spec Computer Division.

2. Until the divestiture required by the proposed Final Judgment in this action has been accomplished, and at all times thereafter, IBM shall take all steps necessary to assure that none of the Mil-Spec Computer Division's technology and other business information (including but not limited to all information ROLM received from Data General Corporation or any other third party pursuant to one or more agreements between them relating to the business of the Mil-Spec Computer Division) is transferred, or otherwise becomes known or available, to IBM. In the event that any such technology or other information becomes known or available to IBM, IBM shall not use it, unless the information becomes publicly available other than through IBM or is obtained from a source other than ROLM or its Mil-Spec Computer Division. Notwithstanding the foregoing, IBM may designate up to five (5) senior ROLM executives to provide management assistance and professional guidance to the Mil-Spec Computer Division until the divestiture ordered in the proposed Final Judgment in this action occurs, and these executives can receive such technology and other information as is reasonably necessary to carry out those functions, but they may not disclose any of it to IBM or any other person other than the Mil-Spec Computer Division, except as provided in IV.C. and IV.D. of the Final Judgment in this action. Nothing in this paragraph 2 shall prohibit IBM from acquiring technology or other business information from the successor to ROLM's Mil-Spec Computer Division as a result of arm's-length bargaining conducted after the divestiture required by the proposed Final Judgment in this action has been accomplished.

3. Until the divestiture required by the proposed Final Judgment in this action has been accomplished, IBM shall:

(a) Take all steps necessary to assure that the Mil-Spec Computer Division will be maintained as a separate entity with its assets and operations separate, distinct, and apart from those of IBM;

(b) Take no steps with respect to the operation of the Mil-Spec Computer Division that negatively would impact its ability to maximize its profits; regardless of any actual or possible negative impact on IBM's profits.

(c) Refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel of the Mil-Spec Computer Division, except in the ordinary course of business, without prior approval of plaintiff;

(d) Maintain normal repair and maintenance schedules at the Mil-Spec Computer Division and at least preserve it as it currently exists;

(e) Refrain from altering or selling any assets of the Mil-Spec Computer Division, other than in the ordinary course of business, or from taking any action that would have the effect of reducing the scope of the Mil-Spec Computer Division's manufacturing or sales operations or its product line from that existing or in development at the time of the filing of the Complaint in this action, without the prior approval of the plaintiff;

(f) Refrain from taking any action that would jeopardize the sale of the Mil-Spec Computer Division as a viable competitor in the production and sale of Mil-Spec commercial based computers;

(g) Refrain from reducing any funding of the Mil-Spec Computer Division existing at the time of the filing of the Complaint in this action, without prior approval of the plaintiff; and

(h) Grant any reasonable request for the Mil-Spec Computer Division for additional funding and provide written notice to plaintiff within five (5) days of the denial of any such request for additional funding, including a statement of the request and IBM's reasons for its denial.

4. This Order shall remain in effect until further order of the Court.

5. Nothing herein shall suggest that any portion of this Order is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

Presented by.

For Plaintiff.

P. Terry Lubeck,
Attorney, U.S. Department of Justice.

For Defendant International Business Machines Corporation.

Cravath, Swaine & Moore

By: _____
Ronald S. Rolfe

For Defendant ROLM Corporation.

Wilson, Sonsini, Goodrich & Rosati

By: _____
Charles T.C. Compton

It is so ordered:

Dated: November , 1984.

Judge John G. Penn,
United States District Judge.

[FR Doc. 84-31399 Filed 11-29-84; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-15, 343]

Wheatland Tube Company, Wheatland, PA; Affirmative Determination Regarding Application for Reconsideration

Pursuant to 29 CFR 90.18, an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers in the case listed below. In this case, the review indicated that there were issues raised which were of sufficient weight as to bear importantly on the Department's original negative determination. Consequently, the application for administrative reconsideration was affirmed. A final determination on reconsideration will be made soon.

TA-W-15, 343 Wheatland Tube Company, Wheatland, Pennsylvania (November 27, 1984)

Signed at Washington, D.C. this 27th day of November 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-31520 Filed 11-29-84; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-15,323]

Republic Steel Corp., Fairhope Plant, Canton, OH; Workers Adjustment Assistance, Dismissal of Application for Reconsideration; Republic Steel Corp.

Pursuant to 29 CFR 90.18, an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Republic Steel Corporation's Fairhope Plant, Canton, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, a dismissal of the application was issued on November 8, 1984.

Signed at Washington, D.C. this 20th day of November 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-31450 Filed 11-29-84; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-237-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Three electrical installations are presently being ventilated into the 1 Left thru 6 Left bleeder system. This bleeder system is now badly deteriorated, making it nearly impossible to adequately ventilate the installations with the air currents coursed directly into the returns.

3. As an alternate method, petitioner proposes that:

a. The electric equipment will be housed in a fireproof structure, equipped with automatically closing doors activated by thermal devices with an activation temperature of not greater than 165 degrees fahrenheit. Such doors will be designed to enclose all associated electric components in a reasonable airtight enclosure in case of a fire or excessive temperature;

b. The electric equipment will be protected with thermal devices or equivalent to remove incoming power;

c. A fire suppression device will be installed at each installation;

d. The electrical equipment will contain no flammable cooling liquid or flammable hydraulic oil;

e. Grounded phase protective devices protecting three phase equipment will be adjusted to remove incoming power at not more than 40 percent of the available current;

f. Rectifying substations providing power to trolley systems will be protected by direct current circuit breakers with reverse current protection;

g. No combustible materials will be stored or allowed to accumulate in the fireproof structure;

h. Firefighting equipment will be provided on the outside of the fireproof structure;

i. A warning light, integrated with the fire suppression device, will be installed in a location adjacent to the haulage track so that it can be readily observed by persons passing by;

j. The electrical equipment will be examined weekly and tested and maintained by a qualified electrician; and

k. The fire suppression devices will be examined weekly.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31448 Filed 11-29-84; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-84-243-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Crane Creek No. 6 Mine (I.D. No. 46-01586) located in Mercer County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air-courses be examined in their entirety on a weekly basis.

2. The entries in the Thomas Mains have deteriorated and adverse roof conditions have rendered the return aircourse hazardous to travel and examine. Rehabilitation of this area would expose miners to hazardous working conditions.

3. As an alternate method, petitioner proposes to establish one checkpoint in the Thomas Mains, where air and gas measurements will be made, and the results will be recorded as set forth in the standard.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1984. Copies of the

petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31445 Filed 11-29-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-23-M]

International Salt Co.; Petition for Modification of Application of Mandatory Safety Standard

International Salt Company, 3846 Retsof Road, Retsof, New York 14539 has filed a petition to modify the requirements of 30 CFR 57.21-21(b) (main fans; requirements) to its Sterling "B" Shaft (I.D. No. 30-02664) located in Livingston County, New York. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that main fans be provided with pressure-recording gages, that they be examined daily for good operation, and that the charts of such gages be changed after completing one revolution.

2. As an alternate method, petitioner proposes that a responsible person be in attendance in the immediate area of the main fan(s) while persons are underground. A "Deckman" is stationed at the collar when persons are underground. This person's duties are to operate the collar doors when persons/material are entering or leaving the shaft, signal the hoistman to raise or lower the conveyance at the collar level, prepare materials and supplies for lowering into the shaft, and perform maintenance on equipment when time permits. This person's movement is restricted to within 100 of the shaft collar while persons are underground, and does not leave the work station unless relieved by another responsible person. This person is always within audio and usually visual range of the ventilation fans. This person is at all times in attendance in the immediate area of the main fans while persons are underground, and would be immediately aware of any fan failure, and has a direct communication with the fan. Persons underground are working in a shaft, adjacent to the vent tubing in fresh air. A fan failure would immediately be noted by these persons underground by the cessation of noise and airflow, and by the vent tubing going slack. Communication is provided from within the shaft to the hoistman, allowing evacuation or other appropriate action if a fan failure occurs.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31446 Filed 11-29-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-234-C]

Shannopin Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Shannopin Mining Company, Box 364, Bobtown, Pennsylvania 15315 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Shannopin Mine (I.D. No. 36-00907) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air-courses be examined in their entirety on a weekly basis.

2. The return airways between the No. 3 and No. 4 Air Monitoring stations have deteriorated. In addition to roof falls, there is a 24-inch height in certain places, and accumulations of water, making it hazardous to work these return airways for weekly inspections. Rehabilitation of these airways would expose miners to hazardous conditions, resulting in a diminution of safety.

3. As an alternate method, petitioner proposes to establish air monitoring checkpoints at specific locations to routinely monitor both air quantity and quality in the airway. In support of this request, petitioner states that:

a. Methane and air readings will be made by a certified person;

b. The measuring stations will be maintained in good working condition;

c. Methane will not be allowed to accumulate in these return aircourses beyond legal limits;

d. A date board or book will be located at each measuring station to record the results of air measurements and tests; and

e. A diagram showing the direction of air flows in this area will be posted at the measuring stations and other strategic locations.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31449 Filed 11-29-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-236-C

Tina Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tina Mining Company, Inc., Weeksbury, Kentucky 41667 has filed a petition to modify the application of 30 CFR 75.1101 (deluge-type water sprays) to its No. 1 Mine (I.D. No. 15-10427) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that deluge-type water sprays, foam generators actuated by rise in temperature, or other no less effective means of controlling fire, be installed at main and secondary belt-conveyor drives.

2. As an alternative to a deluge-type water spray, petitioner proposes to have a high pressure waterline alongside the fire-resistant belt conveyor drive with outlet and fire hose. A slip and sequence switch for the belt drive and a fire sensor system will be provided.

3. For this reason, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31447 Filed 11-29-84; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

Grant of Individual Exemptions; Criterion

AGENCY: Investments Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Criterion Investments Located in Houston, Texas

[Prohibited Transaction Exemption 84-172; Exemption Application No. D-4837]

Exemption

Section I. Exemption for Certain Transactions Involving the Purchase of Interests in Criterion Venture Partners II (the Partnership)

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase of interests in the Partnership by employee benefit plans (Participating Plans), if the general conditions set forth in Section II are met, and if:

1. Each purchase of interests in the Partnership by a Participating Plan is authorized in writing by a fiduciary (the Independent Fiduciary) of each Participating Plan who is independent of the Applicants,[1] affiliates of the Applicants and officers, directors and general partners of the Applicants (Interested Persons). If such Independent Fiduciary directs that assets then under management by any of the Interested Persons be invested in the Partnership, such written authorization by the Independent Fiduciary shall specify such fact and the manner in which such assets shall be transferred to the Partnership.

2. The following persons may not acquire or hold any securities of any company whose securities the Partnership holds [2] (provided, however, that the restrictions contained in this subsection shall not apply to any venture capital limited partnership or venture capital company that is controlled by or managed by Covered Persons as defined below and that is subject to the allocation formula described in section 6 of the Summary of Facts and Representations contained in the Proposed Exemption):

(a) The Applicants and officers, directors and general partners of the Applicants.

(b) Affiliates of CVP II, Criterion Investments, Inc., Mr. Hill, Mr. Wicks and Mr. Rider [3] ("Covered Persons").

3. The terms and conditions of the partnership agreement (the Partnership Agreement) at the formation of the Partnership and at the time of any purchase of an interest covered by this exemption shall be no less favorable to the Participating Plans than the terms and conditions available in arm's-length transactions between unrelated parties.

4. Prior to accepting any investment of assets in the Partnership by a Participating Plan, the Applicants shall furnish or cause to be furnished to each Independent Fiduciary authorizing such investment a copy of this exemption, the Partnership Agreement, a private placement memorandum which describes the respective rights of the general and limited partners to distributions and capital appreciation, services to be performed by the general partner and the compensation payable therefor, all other material rights and obligations of the partners, and such other information as requeste by the Independent Fiduciary.

5. A Participating Plan shall not, after the date of investment of Plan assets in the Partnership, pay to any of the Applicants a separate investment management fee or similar fee with respect to the Participating Plan's assets

[1] The Applicants are CVP Management Partnership II (CVP II), Harvard H. Hill, Jr. (Mr. Hill), David O. Wicks, Jr. (Mr. Wicks), Gregory A. Rider (Mr. Rider), Criterion Group, Inc. and two of its three wholly-owned subsidiaries, Criterion Investment Management Company and Criterion Investments, Inc.

[2] The Applicants represent that CVP II and its general partners, (Mr. Hill, Mr. Wicks, Mr. Rider and Criterion Investments, Inc. will not cause any mutual fund for which Criterion Funds, Inc. serves as investment adviser to purchase the securities of any company whose securities the Partnership holds.

[3] The Applicants represent that Criterion Investment Management Company is not included as a Covered Person because it will not exercise discretionary control over the investments made by any of the venture capital companies managed by the Applicants.

invested in the Partnership.[4] If a Participating Plan invests in the Partnership during any period for which the Plan has prepaid to any of the Applicants an investment management or similar fee, the amount of such fee will be returned to the Participating Plan. This condition shall not preclude payment by the Partnership to any of the Applicants of expenses and allocations provided in the Partnership Agreement.

6. No sales commissions or similar fees will be charged by the Applicants to any Participating Plan with respect to its investment in the Partnership. No redemption fee or other penalty shall be charged by the Applicants to any Participating Plan which transfers all or a portion of its Partnership interests as permitted by the Partnership Agreement, except that a Participating Plan must compensate the Partnership for reasonable fees and expenses incurred by the Partnership in its efforts to locate a suitable purchaser for the Participating Plan's Partnership interest.

7. The Partnership Agreement will require that limited partners receive audited annual financial statements with respect to the Partnership as well as such other information as the limited partner (or a Participating Plan's Independent Fiduciary) may reasonably request concerning the operations and investments of the Partnership.

8. No Participating Plan may invest more than 10% of its assets in the Partnership.

Section II. General Conditions

(a) The Applicants maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six-years period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in section (2) of this paragraph (b) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) of this Section II are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Partnership of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan or any duly authorized employee or representative of such participant or beneficiary.

(b)(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of the Applicants, or commercial or financial information which is privileged or confidential.

Section III. Definition and General Rules

(a) An "affiliate" means a person with one or more of the following relationships to any of the Covered Persons: [5]

(i) Any person directly or indirectly, through one or more intermediaries, controlled by such Covered Persons; and

(ii) Officers, directors, highly compensated employees, relatives of or general partners in any such Covered Persons.

(b) The term "control" means beneficial ownership, by Covered Persons in the aggregate, either directly or through one or more controlled companies, of more than 50% of a company's voting securities.

(c) The term "relative" means spouse and minor children sharing the same household of such Covered Person.

(d) The term "highly compensated employee" means a person whose compensation during the most recent fiscal year exceeds the greater of $30,000 or 10% of the total compensation earned by all employees of the employer.

(e) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Partnership as its proportionate interest in the total assets of the Partnership as calcuated on the most recent preceding valuation date of the Partnership.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 17, 1984 at 49 FR 28938.

Comments and Hearing Requests: One comment was received from the Applicants requesting that footnote 2 in the Proposed Exemption be deleted. Footnote 2 to the Proposed Exemption defines the term Applicants to include all affiliates of the Applicants. The Applicants state that because of the breadth of the definition of the term affiliate contained in Subsection II of the Proposed Exemption, Applicants would be unable to identify all its affiliates. Accordingly, the Applicants would be unable to control the investment conduct of its affiliates in order to ensure compliance with the conditions contained in this Exemption. The Applicants further represent that under condition number 2 of Section I of the Proposed exemption, the definition of the term affiliate could result in investment restrictions applying to other venture capital partnerships managed by the Applicants which may make "follow-up" investments in portfolio companies with the Partnership. This investment restriction could also apply to mutual funds managed by Criterion Funds, Inc. and to pension plans for which Criterion Investment Management Company serves as investment adviser.

The Department has determined that the definition of affiliate, particularly when considered under condition number 2 of Section I of the Proposed Exemption may have been overrestrictive. Therefore, the definition section of the exemption and condition number 2 of Section I of the final exemption have been modified.

Effective Date: This exemption will be effective July 1, 1984.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction

[4] This condition shall not preclude the payment by the Participating Plans to the Applicants of investment management or other fees with respect to assets not invested in the Partnership.

[5] For purposes of condition 1 of Section I of this Exemption, the term Covered Persons also includes Criterion Investment Management Company.

provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of November, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84-31472 Filed 11-29-84; 8:45 am]

BILLING CODE 4510-29-M

Employee Benefit Plans; Notice to the Public Pursuant to Section 106 of the President's Reorganization Plan No. 4 of 1978

Pursuant to section 106 of the President's Reorganization Plan No. 4 of 1978, the Department of the Treasury is required to notify the Department of Labor of certain actions which it proposes to take under certain provisions of the Employee Retirement Income Security Act of 1974 (the Act).

On November 15, 1984, the Department of the Treasury notified the Department of Labor that the Department of the Treasury intends to publish proposed regulations relating to alternative computation methods for benefit accrual under qualified plans under section 411(b)(3)(A) of the Internal Revenue Code. The proposed regulations would apply to, among other plans, collectively bargained plans.

Robert A. G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84-31458 Filed 11-29-84; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Grants and Contracts; Request for Comments Pursuant to the 1985 Recipient Grant and Contract Awards

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Public Law 93-355a, 88 Statute 378, 42 U.S.C. 2996-2996(*l*), as amended, Public Law 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *".

On or about January 1, 1985, the Legal Services Corporation will refund grants and contracts to its recipient programs for the delivery and for support of the delivery of legal services to eligible clients. The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by the following organizations:

Field Programs

Alabama

Birmingham Area Legal Services in Birmingham—$922,809
Legal Services of North Central Alabama, Inc. in Huntsville—$525,569
Legal Services Corporation of Alabama, Inc. in Montgomery—$4,980,406

Alaska

Alaska Legal Services Corporation in Anchorage—$1,520,236

Arizona

Pinal & Gila Counties Legal Aid in Coolidge—$207,386
Coconino County Legal Aid in Flagstaff—$95,980
Community Legal Services, Inc. in Phoenix—$1,745,603
Papago Legal Services, Inc. in Sells—$176,421
Southern Arizona Legal Aid, Inc. in Tucson—$1,010,137
DNA-People's Legal Services, Inc. in Window Rock—$2,169,912

Arkansas

Ozark Legal Services in Fayetteville—$459,084
Western Arkansas Legal Services, Inc. in Fort Smith—$321,768
Legal Services of Arkansas, Inc. in Little Rock—$956,625
Central Arkansas Legal Services, Inc. in Little Rock—$868,642
Legal Services of Northeast Arkansas, Inc. in Newport—$455,236
East Arkansas Legal Services in West Memphis—$690,074

California

Greater Bakersfield Legal Assistance, Inc. in Bakersfield—$371,768
Redwood Legal Assistance in Eureka—$339,537
Fresno-Merced Counties Legal Services in Fresno—$763,185
Legal Aid Foundation of Long Beach in Long Beach—$724,328
Bet Tzedek Legal Services in Los Angeles—$100,578
Legal Aid Foundation of Los Angeles in Los Angeles—$4,126,178
Western Center on Law & Poverty, Inc. in Los Angeles—$1,088,444
Legal Aid Society of Monterey County in Monterey—$191,060
Napa County Legal Assistance Agency in Napa—$109,694
California Indian Legal Services in Oakland—$727,960
Charles Houston Bar Association Judicare Service Project, Inc. in Oakland—$143,743
Legal Aid Society of Alameda County in Oakland—$1,455,176
Channel Counties Legal Services Association in Oxnard—$471,235
San Fernando Valley Neighborhood Legal Services in Pacoima—$987,501
Legal Aid Society of Pasadena in Pasadena—$1,055,984
Legal Aid Society of San Mateo County in Redwood City—$473,452
Contra Costa Legal Services Foundation in Richmond—$434,416
Inland Counties Legal Services in Riverside—$1,323,308
Legal Services of Northern California in Sacramento—$1,416,077
Legal Aid Society of San Diego, Inc. in San Francisco—$1,548,400
California Rural Legal Assistance, Inc. in San Francisco—$4,554,630
San Fancisco Neighborhood Legal Assistance Foundation in San Francisco—$1,427,106
Bar Association of San Francisco's Volunteer Legal Services Program in in San Francisco—$19,924
Legal Aid Society of Santa Clara County in San Jose—$659,345
Legal Aid Society of Marin County in San Rafael—$116,999
Legal Aid Society of Orange County in Santa Ana—$1,975,619
Solano County Legal Assistance in Vallejo—$189,156
Tulare/Kings Counties Legal Services, Inc. in Visalia—$389,789
Legal Aid Society of Santa Cruz County, Inc. in Watsonville—$173,222

Colorado

Pikes Peak Legal Services in Colorado Springs—$285,285

Colorado Rural Legal Services, Inc. in Denver—$1,310,253
Legal Aid Society of Metropolitan Denver in Denver—$1,109,999
Pueblo County Legal Services, Inc. in Pueblo—$166,406

Connecticut

Connecticut Legal Services, Inc. in Middletown—$1,528,169
Community Renewal Team of Greater Hartford, Inc./Neighborhood Legal Services, Inc. in Harford—$365,051
South Central Connecticut Legal Services in New Haven—$822,776

Delaware

Community Legal Aid Society, Inc. in Wilmington—$533,510

District of Columbia

Neighborhood Legal Services Program in Washington—$1,542,890
NRTA/AARP Legal Counsel for the Elderly in Washington—$108,229
Urban Law Institute of the Antioch School of Law in Washington—$440,786

Florida

Florida Rural Legal Services, Inc. in Bartow—$2,439,296
Central Florida Legal Services, Inc. in Daytona Beach—$774,597
Legal Aid Services of Broward County, Inc. in Ft. Lauderdale—$716,075
Three Rivers Legal Services, Inc. in Gainesville—$533,354
Jacksonville Area Legal Aid, Inc. in Jacksonville—$978,535
Legal Services of Greater Miami, Inc. in Miami—$1,952,829
Withlacoochee Area Legal Services, Inc. in Ocala—$308,533
Greater Orlando Area Legal Services, Inc. in Orlando—$827,104
Northwest Florida Legal Services, Inc. in Pensacola—$376,775
Gulfcoast Legal Services, Inc. in St. Petersburg—$815,806
Legal Services of North Florida, Inc. in Tallahassee—$792,573
Bay Area Legal Services, Inc. in Tampa—$866,102

Georgia

Atlanta Legal Aid Society, Inc. in Atlanta—$1,634,067
Georgia Legal Services Program in Atlanta—$5,162,500

Guam

Guam Legal Services Corporation in Anigua—$170,192

Hawaii

Legal Aid Society of Hawaii in Honolulu—$209,161
Native Hawaiian Legal Corporation in Honolulu—$101,940

Idaho

Idaho Legal Aid Services, Inc. in Boise—$1,245,154

Illinois

Land of Lincoln Legal Assistance Foundation, Inc. in Alton—$2,490,643
Cook County Legal Assistance Foundation, Inc. in River Forest—$813,226
Legal Assistance Foundation of Chicago in Chicago—$4,943,590
West Central Illinois Legal Assistance in Galesburg—$150,374
Prairie State Legal Services, Inc. in Rockford—$1,752,600

Indiana

Legal Services of Maumee Valley, Inc. in Fort Wayne—$281,432
Legal Services Program of Greater Gary, Inc. in Gary—$490,179
Legal Services Organization of Indiana, Inc. in Indianapolis—$2,636,558
Legal Services Program of Northern Indiana, Inc. in South Bend—$817,547

Iowa

Legal Services Corporation of Iowa, Inc. in Des Moines—$2,303,096
Legal Aid Society of Polk County in Des Moines—$380,605

Kansas

Kansas Legal Services, Inc. in Topeka—$2,095,050

Kentucky

Cumberland Trace Legal Services, Inc. in Bowling Green—$391,747
Northern Kentucky Legal Aid Society, Inc. in Covington—$281,896
Central Kentucky Legal Services, Inc. in Lexington—$526,278
Legal Aid Society, Inc. in Louisville—$1,060,525
Western Kentucky Legal Services, Inc. in Madisonville—$793,259
Northeast Kentucky Legal Services, Inc. in Morehead—$448,611
Appalachian Research and Defense Fund in Prestonburg—$2,070,316

Louisiana

Central Louisiana Legal Services, Inc. in Alexandria—$380,298
Capital Area Legal Services Corporation in Baton Rouge—$987,855
Southeast Louisiana Legal Services Corporation in Hammond—$615,607
Acadiana Legal Services Corporation in Lafayette—$1,114,789
Southwest Louisiana Legal Services, Inc. in Lake Charles—$368,442
North Louisiana Legal Assistance Corporation in Monroe—$816,092
Kisatchie Legal Services Corporation in Natchitoches—$329,961
New Orleans Legal Assistance Corporation in New Orleans—$1,530,151
Northwest Louisiana Legal Services, Inc. in Shreveport—$646,206

Maine

Pine Tree Legal Assistance, Inc. in Portland—$1,290,505

Maryland

Legal Aid Bureau, Inc. in Baltimore—$3,327,038

Massachusetts

Greater Boston Legal Services in Boston—$2,051,662
Massachusetts Law Reform Institute in Boston—$468,386
Volunteer Lawyers Project of the Boston Bar Association in Boston—$160,909
Cambridge and Somerville Legal Services, Inc. in Cambridge—$378,064
South Middlesex Opportunity Council, Inc./South Middlesex Legal Services, Inc. in Framingham—$189,334
Legal Services for Cape Cod and Islands, Inc. in Hyannis—$239,549
Merrimack Valley Legal Services, Inc. in Lowell—$390,143
Neighborhood Legal Services, Inc. in Lynn—$476,711
Southeastern Massachusetts Legal Assistance Corporation in New Bedford—$617,452
Western Massachusetts Legal Services, Inc. in Springfield—$856,772
Legal Assistance Corporation of Central Massachusetts in Worcester—$470,291

Michigan

Legal Services of Southeastern Michigan in Ann Arbor—$446,622
Legal Services Organization of Southcentral Michigan in Battle Creek—$191,795
Michigan Migrant Legal Assistance Project, Inc. in Berrien Springs—$447,793
Michigan Legal Services in Detroit—$427,039
Wayne County Neighborhood Legal Services in Detroit—$2,564,360
Legal Services of Eastern Michigan in Flint—$917,358
Legal Aid of Western Michigan in Grand Rapids—$810,847
Legal Aid Bureau for Southwestern Michigan, Inc. in Kalamazoo—$321,519
Legal Aid of Central Michigan in Lansing—$401,442
Lakeshore Legal Services, Inc. in Mt. Clemens—$465,877
Oakland Livingston Legal Aid in Pontiac—$452,548
Berrien County Legal Services Bureau, Inc. in St. Joseph—$176,904
Upper Peninsula Legal Services, Inc. in Sault Ste. Marie—$800,608

Micronesia

Micronesian Legal Services Corporation in Saipan—$886,840

Minnesota

Judicare of Anoka County, Inc. in Anoka—$89,543
Anishinabe Legal Services, Inc. in Cass Lake—$190,671
Legal Aid Service of Northeastern Minnesota in Duluth—$380,855
Central Minnesota Legal Services in Minneapolis—$1,080,429
Northwest Minnesota Legal Services, Inc. in Moorhead—$451,908
Southern Minnesota Regional Legal Services, Inc. in St. Paul—$1,526,242

Mississippi

South Mississippi Legal Services Corporation in Biloxi—$833,169
Judicare of Mississippi, Inc. in Columbus—$133,164
East Mississippi Legal Services Corporation in Forest—$572,285
Southeast Mississippi Legal Services Corporation in Hattiesburg—$492,303

Central Mississippi Legal Services Corporation in Jackson—$909,482
Southwest Mississippi Legal Services Corporation in McComb—$499,622
North Mississippi Rural Legal Services in Oxford—$2,648,765

Missouri

Mid-Missouri Legal Services Corporation in Columbia—$310,387
Legal Services of Northeast Missouri, Inc. in Hannibal—$223,856
Legal Aid of Western Missouri in Kansas City—$1,598,653
Meramac Area Legal Aid Corporation in Rolla—$274,820
Legal Services of Eastern Missouri, Inc. in St. Louis—$1,435,078
Southeast Missouri Legal Services, Inc. in Charleston—$582,912
Legal Aid of Southwest Missouri in Springfield—$621,654

Montana

Montana Legal Services Association in Helena—$1,016,026

Nebraska

Legal Services of Southeast Nebraska in Lincoln—$359,841
Legal Aid Society, Inc. in Omaha—$631,864
Western Nebraska Legal Services, Inc. in Scottsbluff—$557,639

Nevada

Nevada Legal Services in Carson City—$582,201
Washoe Legal Services in Sparks—$126,897

New Hampshire

New Hampshire Legal Assistance in Concord—$854,165
New Hampshire Bar Association/New Hampshire Pro Bono Referral System in Concord—$89,056

New Jersey

Cape-Atlantic Legal Services, Inc. in Atlantic City—$244,723
Warren County Legal Services in Belvidere—$44,068
Camden Regional Legal Services, Inc. in Camden—$1,113,771
Union County Legal Services Corporation in Elizabeth—$293,458
Hunterdon County Legal Services Corporation in Flemington—$39,460
Bergen County Legal Services in Hackensack—$270,647
Hudson County Legal Services Corporation in New Jersey—$728,249
Legal Aid Society of Morris County in Morristown—$110,207
Essex-Newark Legal Services Project, Inc. in Newark—$1,172,359
Middlesex County Legal Services Corporation in New Brunswick—$293,322
Legal Services of New Jersey, Inc. in New Brunswick—$204,317
Passaic County Legal Aid Society in Paterson—$440,796
Somerset-Sussex Legal Services in Somerset—$161,241
Ocean-Monmouth Legal Services, Inc. in Toms River—$508,104
Legal Aid Society of Mercer County in Trenton—$311,607

New Mexico

Legal Aid Society of Albuquerque, Inc. in Albuquerque—$539,186
Indian Pueblo Legal Services in Bernalillo—$347,145
Southern New Mexico Legal Services, Inc. in Las Cruces—$738,995
Northern New Mexico Legal Services, Inc. in Santa Fe—$686,956

New York

Legal Aid Society of Northeastern New York, Inc. in Albany—$845,056
Oak Orchard Legal Services, Inc. in Albion—$143,328
Southern Tier Legal Services in Bath—$292,430
Broome Legal Assistance Corporation in Binghamton—$187,604
Neighborhood Legal Services, Inc. in Buffalo—$824,067
Chemung County Neighborhood Legal Services, Inc. in Elmira—$228,735
Mid-Mohawk Legal Services, Inc. in Fonda—$121,413
Nassau/Suffolk Law Services Committee, Inc. in Hempstead—$1,125,667
Chautauqua County Legal Services, Inc. in Jamestown—$124,089
Legal Aid Society of Rockland County, Inc. in New City—$141,343
Community Action for Legal Services, Inc. in New York—$10,974,833
The Legal Aid Society—Community Law Offices in New York—$50,589
Niagara County Legal Aid Society, Inc. in Niagara Falls—$154,107
North Country Legal Services, Inc. in Plattsburgh—$314,468
Mid-Hudson Legal Services, Inc. in Poughkeepsie—$615,586
Farmworker Legal Services of New York, Inc. in Rochester—$283,432
Monroe County Legal Assistance Corporation in Rochester—$1,066,907
Legal Services of Central New York, Inc. in Syracuse—$681,008
Legal Aid Society of Oneida County, Inc. in Utica—$472,186
Westchester Legal Services, Inc. in White Plains—$844,409

North Carolina

Legal Services of Southern Piedmont, Inc. in Charlotte—$847,894
North Central Legal Assistance Program in Durham—$520,333
Legal Services of North Carolina, Inc. in Raleigh—$6,233,821
Legal Aid Society of Northwest North Carolina, Inc. in Winston-Salem—$487,320

North Dakota

Legal Assistance of North Dakota, Inc. in Bismarck—$853,470
North Dakota Legal Services, Inc. in New Town—$123,059

Ohio

Western Reserve Legal Services in Akron—$513,162
Stark County Legal Aid Society in Canton—$247,133
Legal Aid Society of Cincinnati in Cincinnati—$870,931
Council for Economic Opportunities in Greater Cleveland/Legal Aid Society of Cleveland in Cleveland—$1,686,989
Legal Aid Society of Columbus in Columbus—$953,700
Ohio State Legal Services Association in Columbus—$1,432,975
Legal Aid Society of Dayton in Dayton—$482,754
Legal Aid Society of Lorain County, Inc. in Elyria—$176,584
Butler-Warren Legal Assistance Association in Hamilton—$244,598
Allen County-Blackhoof Area Legal Services Association in Lima—$257,996
Central Ohio Legal Aid Society, Inc. in Newark—$232,437
Rural Legal Aid Society of West Central Ohio in Springfield—$451,005
Advocates for Basic Legal Equality, Inc. in Toledo—$850,554
The Toledo Legal Aid Society in Toledo—$242,313
Wooster-Wayne Legal Aid Society, Inc. in Wooster—$65,090
Northeast Ohio Legal Services in Youngstown—$554,465

Oklahoma

Legal Aid of Western Oklahoma, Inc. in Oklahoma City—$1,949,666
Oklahoma Indian Legal Services, Inc. in Oklahoma City—$289,497
Legal Services of Eastern Oklahoma, Inc. in Tulsa—$1,528,881

Oregon

Lane County Legal Aid Service, Inc. in Eugene—$267,223
Legal Aid Service—Multnomah Bar Association, Inc. in Portland—$488,280
Oregon Legal Services Corporation in Portland—$1,780,083
Marion-Polk Legal Aid Service, Inc. in Salem—$206,188

Pennsylvania

Blair County Legal Services Corporation in Altoona—$116,219
Lehigh Valley Legal Services, Inc. in Allentown—$282,773
Bucks County Legal Aid Society in Bristol—$211,913
Legal Services, Inc. in Carlisle—$199,027
Delaware County Legal Assistance Association in Chester—$493,155
Northwestern Legal Services in Erie—$540,085
Laurel Legal Services, Inc. in Greensburg—$400,727
Southern Alleghenys Legal Aid, Inc. in Johnstown—$278,261
Central Pennsylvania Legal Services in Lancaster—$867,061
Montgomery County Legal Aid Service in Norristown—$232,196
Community Legal Services, Inc. in Philadelphia—$2,655,670
Neighborhood Legal Services Association in Pittsburgh—$1,405,341
Schuylkill County Legal Services Pottsville—$158,294
Northern Pennsylvania Legal Services, Inc. in Scranton—$335,978
Keystone Legal Services, Inc. in State College—$308,939

Southwestern Pennsylvania Legal Aid Society, Inc. in Washington—$453,942
Legal Aid of Chester County in West Chester—$152,766
Legal Services of Northeastern Pennsylvania, Inc. in Wilkes-Barre—$362,631
Susquehanna Legal Services in Williamsport—$373,600

Puerto Rico

Puerto Rico Legal Services, Inc. in Santurce—$15,499,154
Santurce Law Office, Inc. in Santurce—$366,269

Rhode Island

Rhode Island Legal Services, Inc. in Providence—$851,536

South Carolina

Neighborhood Legal Assistance Program, Inc. in Charleston—$1,354,537
Palmetto Legal Services in Columbia—$1,247,274
Carolina Regional Legal Services Corporation in Florence—$263,313
Legal Services Agency of Western Carolina, Inc. in Greenville—$637,274
Legal Services of the Fourth Judicial Circuit, Inc. in Hartsville—$448,720
Piedmont Legal Services, Inc. in Spartanburg—$819,783

South Dakota

Dakota Plains Legal Services, Inc. in Mission—$832,397
Black Hills Legal Services, Inc. in Rapid City—$183,168
East River Legal Services Corporation in Sioux Falls—$492,486

Tennessee

Southeast Tennessee Legal Services, Inc. in Chattanooga—$606,224
Legal Services of South Central Tennessee, Inc. in Columbia—$513,534
West Tennessee Legal Services, Inc. in Jackson—$780,046
Legal Services of Upper East Tennessee, Inc. Johnson City—$731,606
Knoxville Legal Aid Society in Knoxville—$543,512
Memphis Area Legal Services, Inc. in Memphis—$1,499,513
Legal Services of Middle Tennessee, Inc. in Nashville—$1,063,256
Rural Legal Services of Tennessee, Inc. in Oak Ridge—$725,864

Texas

Legal Aid Society of Central Texas in Austin—$1,438,879
Coastal Bend Legal Services, Inc. in Corpus Christi—$813,203
North Central Texas Legal Services Foundation, Inc. in Dallas—$1,510,552
El Paso Legal Assistance Society in El Paso—$792,793
West Texas Legal Services in Fort Worth—$2,755,905
Gulf Coast Legal Foundation in Houston—$2,794,038
Laredo Legal Aid Society, Inc. in Laredo—$293,402
East Texas Legal Services, Inc. in Nacogdoches—$2,291,585
Bexar County Legal Aid Association in San Antonio—$1,380,880
Heart of Texas Legal Services Corporation in Waco—$401,049
Texas Rural Legal Aid, Inc. in Weslaco—$4,143,165

Utah

Utah Legal Services, Inc. in Salt Lake City—$1,271,018

Vermont

Vermont Legal Aid, Inc. in Burlington—$701,555

Virginia

Legal Services of Northern Virginia in Arlington—$444,781
Client Centered Legal Services of Southwest Virginia, Inc. in Castlewood—$430,293
Charlottesville-Albemarle Legal Aid Society in Charlottesville—$172,139
Legal Aid Society of New River Valley, Inc. in Christiansburg—$156,517
Rappahannock Legal Services, Inc. in Fredericksburg—$314,982
Peninsula Legal Aid Center, Inc. in Hampton—$496,995
Blue Ridge Legal Services, Inc. in Harrisonburg—$257,162
Virginia Legal Aid Society, Inc. in Lynchburg—$940,919
Southwest Virginia Legal Aid Society, Inc. in Marion—$233,938
Tidewater Legal Aid Society in Norfolk—$800,998
Petersburg Legal Aid Society, Inc. in Petersburg—$153,831
Central Virginia Legal Aid Society in Richmond—$508,335
Virginia Poverty Law Center in Richmond—$229,380
Legal Aid Society of Roanoke Valley in Roanoke—$341,295

Virgin Islands

Legal Services of the Virgin Islands, Inc. in Christiansted, St. Croix—$443,098

Washington

Evergreen Legal Services in Seattle—$3,182,948
Spokane Legal Services Center in Spokane—$354,126
Puget Sound Legal Assistance Foundation in Tacoma—$499,140

West Virginia

Appalachian Research and Defense Fund, Inc. in Charleston—$824,397
Legal Aid Society of Charleston in Charleston—$394,195
West Virginia Legal Services Plan, Inc. in Charleston—$1,348,158
North Central West Virginia Legal Aid Society in Morgantown—$300,204

Wisconsin

Legal Services of Northeastern Wisconsin, Inc. in Green Bay—$516,730
Western Wisconsin Legal Services, Inc. in LaCrosse—$365,719
Legal Action of Wisconsin, Inc. in Madison—$1,732,075
Wisconsin Judicare, Inc. in Wausau—$282,663

Wyoming

Legal Aid Services, Inc. in Casper—$285,273
Legal Services for Southeastern Wyoming, Inc. in Cheyenne—$133,272
Wind River Legal Services, Inc. Fort Washakie—$40,593

National Support Centers

National Consumer Law Center in Boston, Massachusetts—$683,372
Center for Law and Education, Inc. in Boston, Massachusetts—$608,362
Center on Social Welfare Policy and Law in New York, New York—$699,177
National Employment Law Project, Inc. in New York, New York—$526,727
Food Research and Action Center in Washington, D.C.—$83,280
Mental Health Law Project in Washington, D.C.—$95,421
Migrant Legal Action Program in Washington, D.C.—$572,309
National Social Science and Law Center in Washington, D.C.—$320,722
National Veterans' Legal Services Project, Inc. in Washington, D.C.—$95,421
Native American Rights Fund in Boulder, Colorado—$260,325
National Economic Development and Law Center in Berkeley, California—$428,522
National Housing and Community Development Law Project, Inc. in Berkeley, California—$748,713
National Center for Immigrants' Rights Legal Aid Foundation of Los Angeles in Los Angeles, California—$171,813
National Health Law Program in Los Angeles, California—$637,280
National Senior Citizen Law Center in Washington, D.C.—$616,057
National Center for Youth Law in San Francisco, California—$632,319

Clearinghouse

National Clearinghouse for Legal Services in Chicago, Illinois—$842,916

DATE: All comments related to this action must be received by the Office of Field Services of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gene M. Potack, Director, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, NW,, Washington, D.C. 20005, (202) 272–4080.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is a private non-membership, nonprofit corporation, established by Congress in the Legal Services Corporation Act of 1974, Public Law 93–355 and amended in 1977 by Public Law 95–222. The Corporation is funded solely by an annual federal appropriation. The purpose of the Corporation is to provide financial support to independent legal services providers located in the continental United States and its possessions. These legal services organizations provide free legal assistance in non-criminal matters or proceedings to persons financially unable to afford legal assistance.

Such financial support is provided in the form of grants and contracts, usually for a twelve-month calendar period, and is used primarily to fund the costs of the direct delivery of legal services to the eligible client population. Certain funding is also earmarked for migrant and Native American persons because of their distinct legal problems. The Legal Services Corporation also funds separate National Support Centers; the National Clearinghouse for Legal Services; and provides other supplementary funding to programs for legal research, training, and other technical assistance. The total amount of funding is noted above. The above referenced amounts also reflect the formula distribution of funding as required by the 1965 LSC Appropriations Bill, Pub. L. 98–411.

Donald P. Bogard,
President, Legal Services Corporation.
November 28, 1984.

[FR Doc. 84-31497 Filed 11-29-84; 8:45 am]
BILLING CODE 6820-35-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9421.

OMB Desk Officer: Carlos Tellez, (202) 395–7340.

Title: 1985 Survey of Doctorate Recipients.

Affected Public: Individuals.

Number of Responses: 24,000 respondents; total of 6,000 burden hours.

Abstract: The information provided in this survey will enable the National Science Foundation to comply with the legislative requirement to collect information about scientific and technical personnel that may be used in policy and planning activities by private industry, educational institutions, and government agencies.

Dated: November 27, 1984.

Herman G. Fleming,
NSF Reports Clearance Officer.

[FR Doc. 84-31389 Filed 11-29-84; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 13–15, 1984, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the Federal Register on November 14, 1984.

The agenda for the subject meeting will be as follows:

Thursday, December 13, 1984

8:30 a.m.–8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly on items of current interest.

8:45 a.m.–12:30 p.m.: Hope Creek Generating Station, Unit 1 (Open) The Committee will consider the request for an operating license for the facility. Members of the NRC Staff and representatives of the Applicant will participate.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this project and to discuss Safeguards Information, as appropriate.

1:30 p.m.–2:45 p.m.: Hope Creek Generating Station, Unit 1 (Open)—The members of the Committee will consider the request for an operating license for this facility. Representatives of the NRC Staff and the Applicant will participate.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this project and to discuss Safeguards Information, as appropriate.

2:45 p.m.–3:15 p.m.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activity and proposed items for full Committee consideration.

3:15 p.m.–5:15 p.m.: Quantitative Safety Goals (Open)—The members will hear and discuss reports of its Subcommittee and the NRC Staff regarding the trial use over a two-year period of proposed quantitative safety goals for nuclear power plants.

5:15 p.m.–6:00 p.m.: Systematic Evaluation Program (Open)—The members will hear the report of its Subcommittee regarding the seismic portion of the SEP for the San Onofre Nuclear Generating Station, Unit 1. Members of the NRC Staff and the licensee will participate, as appropriate.

Friday, December 14, 1984

8:30 a.m.–10:30 a.m.: Fire Protection Features (Open)—The members of the Committee will hear and discuss a briefing by representatives of the NRC Staff on the recommendations of its Steering Committee on Fire Protection policy. Representatives of the nuclear industry will participate, as appropriate.

10:30 a.m.–11:45 a.m.: NRC Safety Research Program and Budget (Open/Closed)—The members of the Committee will discuss portions of the proposed ACRS report to the U.S. Congress regarding the proposed NRC Safety Research Program and Budget for FY 1986–87.

Portions of this session will be closed as required under Exemption 9(B) to discuss the potential elimination or reduction of specific portions of the research program. Premature disclosure of the possible curtailment or elimination of any contract could result in an inability to retain key personnel and thereby frustrate the Commission's ability to continue/complete affected programs effectively.

11:45 a.m.–12:00 noon: ACRS Activities (Closed)—The members will discuss the qualifications of candidates proposed for selection as ACRS Officers during CY 1985.

This portion of the meeting will be closed to discuss information which, if discussed in public, would represent an unwarranted invasion of personal privacy.

1:00 p.m.–2:00 p.m.: ACRS Subcommittee Activity (Open)—The Committee will hear and discuss the reports of designated ACRS subcommittees regarding current activities on safety-related matters, including the piping and use of highly combustible gases in vital areas, use of cast stainless steel in nuclear power plant systems, and systems interactions in nuclear power plants.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

2:00 p.m.–3:00 p.m.: ACRS Reports to NRC (Open)—The members will discuss a proposed report to the NRC regarding the two-year trial use of quantitative safety goals as a mechanism for regulation of nuclear facilities.

Saturday, December 15, 1984

8:30 a.m.–10:30 a.m.: ACRS Reports to NRC (Open)—The members will discuss proposed reports to the NRC regarding items considered during this meeting, including the Hope Creek Generating Station, Unit 1 operating license.

Portions of this session will be closed as required to discuss Proprietary Information and Safeguards Information applicable to the matters being discussed.

10:30 a.m.–12:00 noon: ACRS Subcommittee Activity (Open)—The members will hear and discuss reports regarding recent activities of designated ACRS subcommittees, including quality

assurance in the design and construction of nuclear power plants, steam generator overfill in nuclear facilities, ACRS activities, and ACRS procedures.

Portions of this session will be closed as necessary to discuss matters that relate to the internal personnel rules and practices of the agency and information the release of which would represent an unwarranted invasion of personal privacy.

1:00 p.m.–2:00 p.m.: ACRS Reports to NRC (Open)—The members will discuss a proposed report to the NRC regarding the use of Designated Representatives as a QA measure in the design and manufacture of nuclear power plant components and systems.

2:00 p.m.–2:45 p.m.: Activities of ACRS Members (Open)—Members of the Committee will report on matters discussed during a recent technical exchange meeting with representatives of Japanese nuclear industry, nuclear development, and regulatory bodies.

Portions of this session will be closed to discuss information provided in confidence by a foreign source.

2:45 p.m.–3:30 p.m.: ACRS Reports to NRC (Open)—The members will complete discussion of reports to the NRC regarding matters considered during this meeting and generic issues applicable to the NRC regulatory process.

Portions will be closed as necessary to discuss Proprietary and Safeguards Information related to the matters being discussed and information related solely to the internal personnel rules and practices of the agency.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibiltiy that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information related solely to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)), Safeguards Information which addresses details of the applicant's security measures (5 U.S.C. 552b(c)(3), Proprietary Information (5 U.S.C. 552b(c)(4)), information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4), information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6), and information the premature release of which would be likely to significantly frustrate implementation of proposed agency action (5 U.S.C. 552b(c)(9)(B)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m. e.s.t.

Dated: November 27, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–31441 Filed 11–29–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Gessar II and Reliability and Probabilistic Assessment; Meeting

The ACRS Subcommittees on GESSAR II and Reliability and probabilistic Assessment will hold a combined meeting on December 4 and 5, 1984, at the Hyatt at Los Angeles Airport, 6225 West Century Blvd., Los Angeles, CA. Notice of this meeting was published Wednesday, November 14, 1984 (49 FR 45083).

The meeting will be open to public attendance except those portions that may be closed to discuss proprietary information regarding the General Electric Standard Safety Analysis Report.

The agenda for the subject meeting shall be as follows:

Tuesday, December 4, 1984—8:30 a.m. until the conclusion of business

Wednesday, December 5, 1984—8:30 a.m. until the conclusion of business

This will be the second in the current series of meetings to review the General Electric Standard Safety Analysis Report to extend the Final Design Approval so that it will be applicable to future plants. Items carried over from the October 1984 meeting will be considered. The meeting will also focus on the GESSAR II treatment of severe accidents and the Probabilistic Risk Assessment performed in connection with the GESSAR II design.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 26, 1984.

Morton W. Libarkin,

Assistant Executive Director of Project Review.

[FR Doc. 84–31442 Filed 11–19–84; 8:45 am]

BILLING CODE 7590–01–M

Regional State Liaison Officers' Meeting

On December 5 and 6, 1984, the Nuclear Regulatory Commission (NRC) will sponsor a regional meeting with the Governor-appointed State Liaison Officers from Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. The subjects which will be discussed include waste management, transportation, inspection of spent fuel shipments, emergency response as well as other items of mutual regulatory interest.

The meeting will be conducted at the NRC Region III office, 799 Roosevelt Road, Building 4, Glen Ellyn, Illinois. The meeting is open to the public for attendance and observation and will take place from 10:00 a.m. until 4:30 p.m. on Wednesday, December 5, and from 8:30 a.m. until 1:00 p.m. on Thursday, December 6, 1984.

Questions regarding this meeting should be directed to Roland Lickus, at (312) 790–5666.

Dated at Glen Ellyn, Illinois this 21st day of November, 1984.

For the Nuclear Regulatory Commission.

James G. Keppler,

Regional Administrator.

[FR Doc. 84–31440 Filed 11–29–84; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23496; 70–7048]

Georgia Power Co.; Proposed Issuance of First Mortgage Bonds for Sinking Fund Purposes and Exception From Competitive Bidding

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, a public-utility subsidiary of The Southern Company, a registered holding company, has filed a proposal with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

Georgia proposes to issue (i.e., obtain the authentication and delivery thereof by its trustee) up to $35,952,000 principal amount of First Mortgage Bonds 3⅞% Series due 1985 (the "Bonds") and to surrender such Bonds to the trustee under the Indenture of Georgia to satisfy, in whole or in part, the sinking fund requirement provided for in its Indenture to be satisfied on or prior to June 1, 1985. Said Indenture provides for annual sinking fund payments on or before June 1 of each year in an amount equal to 1% of the principal amount of bonds authenticated under the Indenture prior to the preceding January 1 (less bonds retired directly or indirectly as a result of the release of property and less bonds authenticated to refund other bonds). Payment may be made in cash or in principal amount of bonds authenticated under the Indenture. The proposed Bonds will be issued on the basis of unfunded net property additions.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 19, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–31418 Filed 11–29–84; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange

November 26, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

American International Group, Inc.
Common Stock, $2.50 Par Value, File No. 7–8158

Club Med Inc.
Common Stock, $1.00 Par Value, File No. 7–8159

Continental Illinois Holding Co.
Common Stock, $1.00 Par Value, File No. 7–8160

General Motors Corporation
Common Stock Class "E", $.10 Par Value, File No. 7–8161

Great American First Savings Bank
Common Stock, $1.00 Par Value, File No. 7–8162

Pan Am Corporation
Capital Stock, $.25 Par Value, File No. 7–8163

AM International, Inc.
Common Stock, $2.50 Par Value, File No. 7–8164

Hasbro Bradley, Inc.
Common Stock, $.50 Par Value, File No. 7–8165

Ozark Holdings Inc.
Common Stock, $.50 Par Value, File No. 7–8166

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 17, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–31416 Filed 11–29–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14249; (812–5915)]

Den Norske Creditbank Finance Corp., Filing of Application for an Order Exempting Applicant

November 23, 1984.

Notice is hereby given that Den norske Creditbank ("DnC"), c/o Herman F. Greene, Esquire, Mayer, Brown & Platt, 600 Seventeenth Street, Suite 2300 South, Denver, CO, 80202, a private commercial bank organized under the laws of Norway and headquartered in Oslo, filed an application on August 6, 1984, and amendments thereto on October 31, 1984, and November 1, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Den norske Creditbank Finance Corporation ("DnC Finance"), a general commercial lending subsidiary to be

formed under the laws of Delaware and to be wholly-owned by DnC, from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the respresentations therein which are summarized below.

According to the application, DnC is the leading commercial bank in Norway with $5,159,383,000 in total assets on an unconsolidated basis as of December 31, 1983. Its worldwide consolidated assets as of that date total $7,065,233,000. DnC's common stock is publicly owned by more than 60,000 shareholders. As of February 1984, the 139 United States shareholders of DnC (0.23% of all shareholders) owned 0.27% of DnC's outstanding shares.

On August 26, 1981, the Commission issued an order pursuant to section 6(c) of the Act exempting DnC from all provisions of the Act (Investment Company Act Release No. 11921) for the purpose of issuing its commercial paper in the United States. Information regarding DnC including a description of its business and the banking regulation to which it is subject is included in DnC's application requesting that order (File No. 812-4997) as well as in the present application. Since obtaining that order, DnC has sold its commercial paper in the United States and currently has approximately $190,000,000 of its commercial paper outstanding.

The application states that in addition to issuing commercial paper, the activities of DnC in the United States consist of (i) the direct ownership of 25% of the capital stock of Nordic American Banking Corporation ("NABC"), a company organized under the New York Banking Law, (ii) the indirect ownership through NABC of N/A, Leasing, Inc., a New York holding company that owns 100% of the shares of Commercial Funding, Inc., a full pay-out leasing company, (iii) the indirect ownership through NABC of Nordic Monitoring Services Limited, a United Kingdom corporation headquartered in New York City that provides advisory services to certain Norwegian corporations seeking to increase their exports to the "third world" through projects sponsored by international development agencies, (iv) the indirect ownership (through Oslo Investment A/S, a 100% owned Norwegian subsidiary) of Ferro Invest II, Inc., a Delaware subsidiary whose business is limited to the ownership of a 4.6% general partnership interest in Elkem Metals Company of Pittsburgh, and (v) the operation of two representative offices, one in Houston, Texas and one in Denver, Colorado.

The application states that DnC, because of its 25% ownership interest in NABC, is subject to the Bank Holding Company Act of 1956 ("BHCA") to the same extent as United States bank holding companies (except that DnC is not subject to section 3 of the BHCA). Under section 4 of the BHCA, DnC is not permitted to engage in activities in the United States other than "(A) those of banking or of managing or controlling banks and other subsidiaries authorized under (the BHCA) or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under (BHCA section 4(c)(8))". Under BHCA section 4(c)(8), DnC is permitted to hold shares of any company the activities of which the Federal Reserve Board . . . has determined (by order or regulation) to be so closely related to banking or controlling banks as to be a proper incident thereto."

According to the application, DnC has been conducting its commercial lending business in the United States directly through its two representative offices. DnC now proposes to conduct its United States lending operations through DnC Finance because of two regulatory considerations. First, DnC is active in making loans to oil and gas companies operating in the western part of the United States. DnC's loans to such companies are typically secured by mortgages on interests in mineral leases held by such companies. DnC is presently unable, however, to make loans secured by mortgages on Federal oil and gas leases because Section 20 of the Mineral Lands Leasing Act of 1920 prohibits aliens from acquiring interests in United States oil and gas properties other than through stock ownership in a domestic corporation. The Minerals Lands Leasing Act denies even stock ownership privileges to "[c]itizens of another country, the laws, customs or regulations of which deny similar or like privileges to citizens or corporations of [the United States.]" In the opinion of DnC's United States counsel, Norway is a "reciprocal" country for purposes of the Mineral Lands Leasing Act and therefore DnC may acquire an interest in a United States Federal mineral lease by stock ownership of a United States subsidiary that acquires such an interest. Its United States counsel has further advised DnC that if DnC established a United States lending subsidiary, that subsidiary could make loans secured by mortgages on Federal oil and gas leases. Second, DnC has been advised by counsel, that under new United States tax regulations, effective January 1, 1985, interest on United States loans entered into by DnC after May 16, 1984, might be subject to United States tax. If so, DnC would have to file a United States tax return covering its worldwide operations. DnC has been further advised that it could avoid having to file a United States tax return covering DnC's worldwide operations by conducting that part of its United States lending activities that would be subject to United States tax through a United States subsidiary and would only have to file a United States tax return for that subsidiary.

The application states that, in compliance with its obligations under the International Banking Act of 1978 and the BHCA, DnC applied for and obtained approval from the Federal Reserve Bank of New York for the formation of DnC Finance. Upon the formation of DnC Finance, DnC will make a capital contribution of $5,000,000 and become the only shareholder of DnC Finance. DnC will cause persons who are presently employed by DnC to be named the directors and officers of DnC Finance. Future operations of DnC Finance will be funded by loans and additional capital contributions from DnC. The credit committee of DnC in Oslo, Norway will, under authority delegated by DnC Finance's Board of Directors, serve as the credit committee for DnC Finance. DnC will continue to perform through DnC Finance essentially the same lending activities under the same credit policies as DnC is currently performing in the United States. DnC Finance will not make a public offering of its securities in the United States.

To remove any doubt concerning whether the DnC Finance's operations would comply with the Act without registration under the Act, it requests an order of the Commission pursuant to Section 6(c) of the Act exempting DnC Finance from all provisions of the Act. The application argues that such an exemptive order is justified for the following reasons: (1) DnC is subject to bank regulation both in Norway and the United States. Under the International Banking Act and the BHCA, is restricted to engaging directly or indirectly in bank-related activities in the United States. DnC Finance will engage in commercial lending activities in the United States of the same type as those in which DnC is presently engaged and under the same policies that presently apply to DnC's United States lending activities. DnC has decided to form a United States subsidiary because of Federal land and tax policies that have no application to United States banks. A United States bank engaged in commercial lending in the United States of the type in which DnC is engaged would not have to respond to the regulatory isues to which DnC is responding by forming a United States subsidiary and thus a United States bank would not subject such lending activites to regulation under the Act. If DnC Finance were subject to regulation under the Act, it would suffer a competitive disadvantage as compared with United States banks. In view of the banking-type activities in which DnC Finance proposes to engage, subjecting it to regulation under the Act would be inequitable and inconsistent with the policy of the International Banking Act of 1978; (2) there is no direct, and only insignificant indirect, United States investor interest in DnC Finance. The Act was not intended to protect the class of investors who have an interest in DnC Finance. (3) The proposed activities of DnC Finance do not involve the potential abuses that the Act was intended to regulate. No public interest would be served by the regulation of DnC Finance under the Act. (4) DnC Finance presently appears to be within the exemption provided by section 3(c)(1) of the Act. (DnC's preliminary calculation indicates that at the time DnC initially acquires shares in DnC Finance, the value of all securities of companies that would be excluded from the definition of investment company by section 3(c)(1) of the Act owned by DnC will not exceed 5% of the value of DnC's total assets, but DnC has not been able to document this calculation in every respect.) (5) DnC Finance will, in substance, continue the lending activities which DnC is presently conducting in the United States. Applicant asserts that DnC's present operations do not violate the Act and that the triggering events for the proposed change in DnC's corporate structure have no bearing on the need for protection of investors by application of the Act to DnC Finance.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 18, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31415 Filed 11-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14248; 812-5136]

Shelter Resource Fund, Shelter Resource Corp.; and Wilfred N. Cooper; Filing of Application For An Order Exempting Shelter Resource Fund

November 23, 1984.

Notice is hereby given that Shelter Resource Fund ("Partnership"), Suite 200, 3880 Michelson Drive, Irvine, CA, 92715, a California limited partnership, and its general partners, Shelter Resource Corporation ("SRC") and Wilfred N. Cooper ("Cooper") (collectively, "General Partners," and together with the Partnership, "Applicants"), filed an application on March 16, 1982, and an amendment thereto on November 13, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions.

Applicants represent that the Partnership was formed in February 1982, as a vehicle for private investment in government-assisted housing projects in accordance with the policies and objectives of Title IX of the Housing and Urban Development Act of 1968 ("Title IX"). Applicants also represent that the Partnership operates as a "two-tier" partnership; *i.e.*, the Partnership, as a limited partner, invests in other limited partnerships ("Local Limited Partnership"), which in turn engage in the development, rehabilitation, ownership and operation of housing for low and moderate income persons ("Projects"). Applicants further represent that the Partnership's investments in Local Limited Partnerships are and will continue to be in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974).

Applicants state that the Partnership is organized as a limited partnership because that form of organization is the only one which provides an investor ("Limited Partner") with both liability limited to his capital investment and the right to claim on his individual tax return the deductions, losses, credits and other tax items a partnership can pass thrqugh to its partners. According to Applicants, one of the primary objectives of the Partnership is to pass through to its partners during the early years in the investment net losses which may be used to offset other taxable income. It is stated that other primary objectives of the Partnership are to invest in Projects which will appreciate in value and to obtain reasonable protection for its capital investments.

Applicants further represent that the Partnership filed a registration statement under the Securities Act of 1933 pertaining to the sale of 800 investment units ("Units") at $2,500 per Unit. Each Unit consisted of two limited partnership interests and two warrants, each entitling the investor to purchase one additional limited partnership interest, exercisable during the periods February 1 to March 31, 1984, and February 1 to March 31, 1985, respectively ("Warrants"). Each Warrant entitles an investor to purchase the related limited partnership interests for $1,250 each, the equivalent price per limited partnership interest acquired pursuant to the purchase of a Unit. It is also stated that in the event that any Warrant is not exercised, the respective limited partnership interests may be sold by the Partnership to other qualifying offerees. Applicants believe that after deduction of anticipated selling commissions and expenses of organization and registration, the Partnership will have $3,440,000 available for investment from the proceeds of the offering. Offers and sales of the Units to the public are effected through selected members of the National Association of Securities Dealers, Inc., on a "best efforts" basis as agents for the Partnership to obtain subscriptions for Units, and thereafter, to sell any limited partnership interests available upon the nonexistence of the Warrants.

According to Applicants, interests in the Partnership will be sold only to investors who meet specified suitability standards. Among the suitability standards is a requirement that investors will have some part of their income (without regard to investment in the Partnership) for the current year (and which is expected to continue for the succeeding four years) subject to a federal income tax rate of 38% or more, and that they have a net worth (exclusive of home, furnishings and automobiles) of at least $30,000. In addition, the Amended and Restated

Certificate and Agreement of Limited Partnership ("Partnership Agreement") requires that until January 1, 1987, each transferee of limited partnership interests represent that he meets the specified suitability standards.

Applicants state that the Partnership is controlled by the General Partners and that the Limited Partners, consistent with their limited liability status, will be entitled to vote on certain material matters affecting the operation of the Partnership. Limited Partners owning a majority of Partnership interests have the right to dissolve the Partnership, remove any General Partner and elect a replacement therefor, continue the Partnership upon the death, insanity, retirement or bankruptcy of a General Partner and approve or disapprove a sale of all or substantially all of the assets of the Partnership. Further, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

Applicants represent that at least 75% of the net amount available for investment will be invested in Local Limited Partnerships which own or lease federal, State or local government-assisted housing projects located in rural or suburban areas. According to Applicants, the Partnership has invested or is committed to invest 100% of the amount available for investment in such housing. Further, Applicants state that the Partnership must acquire at least a 51% interest of all limited partnership interests in each Local Limited Partnership in which it invests and that it presently owns at least 95% of each Local Limited Partnership interest in which it has already invested. It is also stated that neither the Partnership nor the General Partners will participate directly in on-site management of the Projects.

Applicants state that, as set forth in the Partnership Agreement and described in the prospectus, the General Partners will receive certain fees and other compensation for services rendered to the Partnership (none of which were negotiated at arm's length). However, Applicants represent that all such fees and compensation are in substantial conformity with the Guidelines adopted by the North American Securities Administrator's Association, Inc. and the Rules of the California Corporation Commission.

The Partnership has filed and will file with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 all required reports. The General Partners will also send each Limited Partner a year-end report containing financial statements audited by the Partnership's independent accountants and tax information required for the preparation of each Limited Partner's federal income tax return. In addition, each Limited Partner will receive a report at least semi-annually of the Partnership's activities and the operational status of its investments, as well as interim reports regarding acquisitions.

Applicants state that under the California Limited Partnership Act and under the terms of the Partnership Agreement, the General Partners are fiduciaries of the Partnership and its Limited Partners. Applicants state that under the Partnership Agreement, Cooper and the officers and directors of SRC will be indemnified only when a court finds that such person's conduct fairly and equitably merits indemnity in the amount claimed.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request that the Partnership be exempted from all provisions of the Act pursuant to section 6(c). Applicants submit that such exemption is both necessary and appropriate in the public interest. It is asserted that the form of organization of the Partnership, *i.e.*, a limited partnership, which is necessary to limit the liability of private investors investing in subsidized low and moderate income housing, is incompatible with the regulatory framework of the Act. Applicants also submit that to discourage the two-tier limited partnership arrangement by application of the Act to entities such as itself would eliminate the primary means of attracting private equity capital into government-assisted housing and would frustrate the national policy declared by Congress "to encourage the widest possible participation by private enterprise in the provision of housing for low and moderate income persons." Further, Applicants represent that the Partnership Agreement and the prospectus contain various provisions designed to eliminate or significantly reduce conflicts of interest between the Partnership and the Limited Partners.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 18, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31414 Filed 11-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21500; Amendment No. 2 to File No. SR-AMEX-82-27]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating to Amendment of Exchange Rule 950(k) Regarding Restrictions on Options Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 5, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission Amendment No. 2 to the above filing to reflect changes in the Statement of Terms of Substance in Item I and the Statement of Purpose in Item II. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Rule 950(k) to permit a member organization which is affiliated with an options specialist to perform certain types of research and advisory services with respect to stocks underlying options, provided certain conditions are met.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* On December 29, 1982, the Exchange submitted to the Commission File No. SR-Amex-82-27, proposing amendments to Amex Rule 950(k) to allow options specialist firms to: (1) Engage in non-material business transactions with the issuer or insiders of the issuer of a stock underlying a specialty option; (2) accept specialty options orders from small pension and profit sharing funds; and (3) make recommendations for the purchase or sale of stocks underlying specialty options under specified conditions. On April 2, 1984, the Exchange amended the portion of the proposed rule change regarding recommendations for the stocks underlying specialty options. The Commission approved the first two parts of this filing on July 12, 1984, but left open the third part dealing with recommendations pending Commission consideration of the adoption of amendments to Rule 139 under the Securities Act of 1933.

The amendments to Rule 139 were recently adopted by the Commission. As a result of discussions with the SEC staff the Exchange has determined to amend SR-Amex-82-27 to adopt standards regarding research coverage by options specialist firms of issuers whose stock underlies their specialty options, which substantially conform to new Rule 139(b). In addition, the Exchange is modifying the proposed rule change to require specialist firms to disclose that they are or are associated with the options specialist, and that the options specialist may, at any time, (i) have a long or short position in the option, or (ii) be on the other side of customer options orders executed on the Floor of the Exchange.

(2) *Basis.* The proposed amendments are consistent with section 6(b) of the Exchange Act in general and further the objectives of section 6(b)(5) in particular in that they are designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest by removing barriers to entry into specializing and encouraging competition in specializing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes are intended to reduce burdens on competition which were excessive since they created disincentives to options specializing without any offsetting regulatory benefits. Rule 950(k), as amended, does impose certain burdens on competition, but only for the purpose of satisfying the Exchange's regulatory interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section.

450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 21, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 20, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31419 Filed 11-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21514; File No. SR-BSE-84-7]

Self-Regulatory Organizations; Proposed Change by Boston Stock Exchange, Incorporated; Relating to Procedures for Registration as a Dealer-Specialist

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), Notice is hereby given that on October 18, 1984 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The proposed rule change codifies procedures for registration as a Dealer-Specialist on the BSE and the requirements imposed upon members and member organizations registered as such. Dealer-Specialists must meet certain financial standards (unchanged by this rule filing) and maintain registration in not less than twenty (20) stocks, fifteen (15) of which are traded through the ITS system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to enhance the breadth of the markets at the BSE and to improve the performance of Dealer-Specialists thus strengthening the competitive position of the Boston Stock Exchange.

(b) The statutory bases for the proposed Rule change are Section 6(b)(5) and Section 11(b) of the Securities Exchange Act of 1934, as amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Boston Stock Exchange does not believe that the proposed change will have an adverse impact upon competition. The proposed measures are designed to improve Dealer-Specialist performance and to enhance the competitive position of the Boston Stock Exchange.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On April 26, 1984 the Board of Governors of the BSE chartered the Special Committee on Specialists, chaired by William F. Devin. The Committee was charged with reviewing and evaluating the specialist system at the BSE and with making recommendations to strengthen that system. During the succeeding months comments were solicited from all members of the BSE as well as from a broad spectrum of the brokerage community. These comments were solicited through questionnaires, personal interviews and general requests for comment. The changes proposed by this filing represent conclusions reached by the Committee after consideration of the comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 21, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31412 Filed 11-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21503; File No. SR-MSE-84-9]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange.; Relating to Responsibilities of Foreign Members

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 30, 1984, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the text of the proposed change to MSE Article I, Rule 1, Section (g), "Responsibilities of Foreign Members".

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to impose conditions on foreign members which do not maintain offices in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Securities and Exchange Commission and the Exchange. The rule change will enable the Exchange to help ensure foreign members' compliance with its financial responsibility rules and with federal securities laws.

The proposed rule change is consistent with section 19(g) of the Securities Exchange Act of 1934, in that it provides that a self-regulatory organization must enforce compliance by its members and persons associated with its members with the provisions of the Securities Exchange Act of 1934, the rules and regulations thereunder and the rules of the self-regulatory organization.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Midwest Stock Exchange, Incorporated believes that the proposed rule change will create certain necessary burdens on current and future foreign members in that they will be required to comply with the conditions set forth in the proposed rule change. MSE believe the requirements are necessary to effectively regulate foreign members' compliance with MSE's rules and with federal securities laws and to protect other members from unnecessary financial exposure in their dealings with such members.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriated and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 21, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 20, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31570 Filed 11-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21510; File No. SR-NYSE-84-36]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Rate Increases Affecting Equity Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting rate increases affecting initial and continuing listing fees for equity securities and bonds.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) The purpose of this change is to offset in part the increased costs of supplying services provided by the Exchange. These costs include manpower, systems, and utilities associated with providing market place services. The Basis under the Act for the proposed rule change is section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* The proposed fee changes will not impose any burden on competition not

[1] *See* Exhibit A for current and proposed listing fees.

necessary or appropriate in furtherance of the purposes of the Act.

(C) *Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others.* The Exchange has not formally solicited written comments regarding this proposed change, and no unsolicited written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 21, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1984.

Shirley E. Hollis,

Acting Secretary.

EXHIBIT I—LISTING FEES

Equities	Current	Proposed
Initial fees: Original listing—charge per company	$26,350	$31,700
Initial listing fees—applies for original listings plus shares issued in connection with mergers, consolidations, stock dividends, rights and warrants:		
Minimum fee	1,175	1,270
Rates per million shares:		
0 to 2 million shares	11,750	12,700
2 to 4 million shares	5,900	6,400
4 to 300 million shares	2,900	3,100
300+ million shares	1,500	1,600
Continuing annual fees—Fee equal to the greater of the Per Share Fee calculation or the Range Minimums:		
Per Share Fee—rate per million shares:		
0 to 2 million shares	1,175	1,270
2+ million shares	590	640
Range Minimums:		
1 to 10 million shares	11,750	12,700
10 to 20 million shares	17,600	19,000
20 to 50 million shares	23,500	25,400
50 to 100 million shares	35,200	38,000
100 to 200 million shares	46,950	50,700
200+ million shares	58,700	63,400
Supplements—minor information changes to previous applications, rate per each	295	320
Bonds		
Initial fee—Rates per million dollars of par value:		
Issues with maturity greater than 5 years	172	225
Issues with maturity of 5 years or less	65	82
Relisting or change in obligor	32	42
Continuing fee: Rate per issue per million dollars per value	10	(1)

[1] No charge.

[FR Doc. 84-31386 Filed 11-29-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21502.; File No. SR-PHLX 84-25]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Relating to Strike Prices for Stock Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1984, Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") proposes to revise certain strike price policies to permit the introduction of (i) $5 strike prices for stock options; and (ii) strike prices in increments of $5 for underlying stocks trading over $100.

1. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The Exchange is proposing two modifications to its strike price policies to both expand the range of available strike prices and facilitate the introduction of new ones. The modifications are designed to ensure that strike prices are available to accommodate changing market movements. This is necessary to provide continuity for investors engaging in hedging and trading strategies.

Introduction of $5 Strike Prices (Stock Options). Current Exchange policy for stock options provides for the listing of strike prices (for both puts and calls) (i) to be set in $5 intervals for stocks trading from $10 to $100 and (ii) to bracket the price of the underlying security. Thus, if a stock is trading at $17, strike prices of $15 and $20 would be listed. Subsequently, if the stock price moves up to $20, $25 strike prices would be added; if the stock price moves down to $15, $10 strike prices would be added. Under this policy, both in- and out-of-the-money puts and calls are generally always available for trading.

For stocks trading at $10 or below, no in-the-money calls or out-of-the-money puts ($5 strike prices) are available for trading because current Exchange policy prohibits the introduction of $5 strike prices. This restriction is a carry-over from a time when the maintenance criteria for underlying stocks required the Exchange to begin to "unwind," for eventual delisting, options whose underlying stock closed below $10 for a specified period of time. Thus, it would have been inappropriate to add $5 strike prices at a time when the price of the underlying stock declined to $10 or below because the option might have to be delisted.

In November 1981, the maintenance criteria were modified to require delisting if an underlying stock closed below $8 (instead of $10) for a specified period of time. The issue of introducing $5 strike prices was not addressed at that time. Recently, when a number of options whose underlying stocks were trading below $10 but did not meet delisting criteria (i.e., were not in the process of being "wound down"), the Exchange received special approval from the SEC to list $5 strike prices for certain options. The Commission staff requested the PHLX and the other options exchanges to submit rule changes to authorize the listing of such strike prices on a regular basis.

Accordingly, the Exchange herein proposes that its strike price policy be modified to permit the introduction of $5 strikes for stock options, so long as the underlying stock has not met delisting requirements. This policy change will permit, on a formal basis, the addition of in-the-money call and out-of-the-money put strike prices and thus provide a full complement of trading opportunities for investors.

Introduction of $5 Strike Price Increments Over $100 (Stock Options). As noted above, current Exchange policy for stock options provides for the listing of strike prices at $5 intervals for stocks trading between $10 and $100 and at $10 intervals for stocks trading above $100. When the Exchange initiated index options trading, $5 strike price intervals were introduced up to $200. Subsequently, the SEC approved the expansion of $5 intervals for index values above $200.

The utility of $5 strike price increments over $100 has been clearly demonstrated in index options. The narrower intervals provide additional flexibility for hedgers and traders. The highly successful index options trading in $5 increments has prompted many market participants to request that this policy be carried over to stock options. Therefore, the Exchange proposes to modify its stock option strike price policy to permit the introduction of $5 strike price intervals over $100, while still retaining the authority to list $10 strike price intervals if market conditions warrant.

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange by increasing the availability of strike prices, and thus potentially increasing market liquidity. Therefore, the proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the PHLX comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before December 21, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 20, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31417 Filed 11-29-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/785]

Soviet and Eastern European Studies Advisory Committee; Meeting

The Department of State announces that the Soviet and Eastern European Studies Advisory Committee will meet on December 17–18, 1984 starting at 10:00 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, D.C.

The advisoy Committee will recommend grant recipients for the advancement of the objectives of the Soviet-Eastern European Research and Training Act of 1983. The agenda will include: opening statements by the Chairman of the Committee and its members; oral statements by interested members of the public and receipt of written statements; and, within the Committee, discussion, approval, and recommendation for negotiation of grant agreements to "national organizations with an interest and expertise in conducting research and training concerning Soviet and Eastern European countries and in disseminating the results of such research" based on the guidelines amplifying the purposes set forth in the 1983 Act and contained in the call for applications published in the **Federal Register** on October 11.

Members of the general public may attend the meeting to make and/or submit statements, and to observe the Committee's deliberations subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry must be arranged in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend or to make or submit statements, so advise Paul K. Cook, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR, Department of State, Room 4643, Washington, D.C.

20520, (202) 653–5144. All attendees must use the C Street entrance to the building.

Dated: November 10, 1984.

Paul K. Cook,

Executive Director, Soviet and Eastern European Studies, Advisory Committee.

[FR Doc. 84-31434 Filed 11-29-84; 8:45 am]

BILLING CODE 4710-32-M

[CM-8/758]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive meeting on Wednesday, December 19, 1984, 9:30 a.m., in Conference Room 1205, Department of State Building, Washington, D.C.

Agenda items scheduled for discussion are as follows:

I. Welcome and Introduction of Participants
II. Greetings from the Department of State
III. Preliminary Results of Surveys and Reports Concerning Schools Fund-Raising Drives and Activities of Regional School Associations
IV. Council's Program for Supporting Educational Opportunities Abroad
(a) Final Report of 1983 Program and Initial Progress Report on 1984 Program
(b) Recommendation of Council's Evaluation Committee Regarding New Projects Submitted by Regional Overseas Schools Associations for 1985 Program
(c) Council's Efforts in Securing Necessary Participation for 1985 and Future Council Programs
V. Council Communication with U.S. Corporations and Foundations
VI. Other Business

For purposes of fulfilling building security, members of the public desiring to attend the meeting should call Ms. Joyce Bruce, Office of Overseas Schools, Department of State, Washington, D.C., Area Code 703–235–9600, prior to December 19. The public may participate in discussions at the Chairman's instructions.

Dated: November 19, 1984.

Vincent M. McGugan,

Acting Executive Secretary, Overseas School Advisory Council.

[FR Doc. 84-31423 Filed 11-29-84; 8:45 a.m.]

BILLING CODE 4710-24-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The Department of Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20530, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 20, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Office of Personnel and Labor Relations.
2. Inquiry Concerning Applicant for Employment.
3. VA Form Letter 5–127.
4. On occasion.
5. Individuals or households; State or local government; Businesses or other for-profit; Federal agencies or employees.
6. 50,000 responses.
7. 12,500 hours.
8. Not applicable.

[FR Doc. 84-31370 Filed 11-29-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 232

Friday, November 30, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1
Federal Communications Commission	2, 3
Federal Deposit Insurance Corporation	4, 5
Federal Reserve System	6
Federal Trade Commission	7

1

CIVIL AERONAUTICS BOARD

[M-414, Nov. 21, 1984]

TIME AND DATE: 10:00 a.m., November 28, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, DC. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Docket 42114, Draft final rule to reduce the reporting requirements for large certificated air carriers by eliminating fourteen reporting schedules contained in the CAB Form 41 report, decreasing the level of detail reported on many of the remaining Form 41 schedules and eliminating the filing of the nine remaining statements of carrier accounting procedures. (OC, BDA, BIA, BCAA, OEA, OCCCA, OGC)
3. Docket 41184, Final rule and policy statement requiring that any advertised price for a flight, tour, or a component of a tour be the total price to be paid by the passenger to the tour operator or airline. (Memo 2033–B, OGC, OCCCA)
4. Docket 41597, Final rule eliminating an unnecessary and duplicative policy statement on standard conditions in foreign air carrier permits. (Memo 1912–A, OGC, BIA)
5. Docket 39041, Subsidy guidelines for carriers providing essential air transportation to small communities. (OGC)
6. Docket 41690, International baggage liability notice: Petition of Howard Boros. (OGC)
7. Docket 41599, Second year rate of compensation for Wings West Airlines, Inc., for its provision of essential air service at Visalia, California. (Memo 1932–C, BDA, OCCCA, OC)
8. Docket . , Renewal of carrier selection to provide essential air service for Glasgow, Glendive, Havre, Lewistown, Miles City, Sidney and Wolf Point, Montana, and Williston, North Dakota. (Memo 2588, BDA, BCAA, OC)
9. Docket 42330, Renewal of carrier selection to provide essential air service at Brookings, Huron and Mitchell, South Dakota. (Memo 2498–A, BDA, OCCCA, OC)
10. Docket 41906, Carrier selection for Inyokern and Palmdale/Lancaster, California. (Memo 2170–B, BDA, OCCCA, OC)
11. Docket 41029, Notice of Wien Air Alaska to suspend service at Aniak, Galena, St. Mary's and Unalakleet, Alaska. (Memo 1582–M, BDA, OCCCA)
12. Dockets 37501 and EAS–565, Essential Air Service at Hazleton, Pennsylvania. (Memo 012–L, BDA, OCCCA, OGC)
13. Docket , Essential air service for Barter Island (Kaktovik), Alaska. (Memo 2592, BDA, OCCCA)
14. Dockets 40531 and 40532, Notice of Wien Air Alaska to suspend service at Medfra, Solomon, and Council, Alaska. (Memo 1280–G, BDA, OCCCA)
15. Dockets 42460 and EAS–651, Scheduled Skyways' notice to suspend service at Hot Springs, Arkansas. (Memo 2507–A, BDA, OCCCA)
16. Commuter carrier fitness determination of Grant County Flying Service, Inc. d/b/a Turner Aire. (Memo 2591, BDA)
17. Docket 42355, Application of Sierra Pacific Airlines, Inc. for a certificate under section 401(d)(1) to engage in scheduled interstate overseas air transportation. (Memo 2585, BDA)
18. Revocation of air carrier certificates of Action Air Cargo Corporation; Air New England, Inc.; American Eagle Airlines, Inc.; Ball Brothers, Inc.; Century Airlines, Inc.; Circle Airfreight Corporation; Flight Transportation Corporation; Great Plains Airlines, Ltd.; Holiday Airways, Inc.; Houston Airlines, Inc.; Intercontinental Airways, Inc.; International Air Associates, Inc.; Jet Executive International; National Air Commuter, Inc.; Peninsular Air Transport, Inc.; S. S. Airways, Inc.; Sun Land Airlines, Inc.; Swift Aire Lines, Inc.; Taino International Airways, Inc.; and U.S. Aircoach, Inc. (Memo 2589, BDA, OGC)
19. Docket 38623, IATA agreement proposing various fare revisions within the area comprising Asia and the Pacific. (Memo 2586, BIA)
20. Docket 40294, United States-Latin America All-Cargo Show-Cause Proceeding; Docket 40363, American Airlines, Inc.; Docket 39799, Arrow Airways, Inc.; Docket 40385, Guy-America Airways, Inc.; Docket 40224, Jet Charter Service, Inc.; Docket 40381, Pan American World Airways, Inc. for a certificate to engage in U.S.-Latin American scheduled all-cargo service. (Memo 960–C, BIA)
21. Report on Brazil. (BIA)
22. Report on Costa Rica. (BIA)
23. Report on the United Kingdom. (BIA)
24. Report on Poland. (BIA)
25. Discussion on Italy. (BIA)
26. Report on Egypt. (BIA)
27. Upcoming Negotiations with Saudi Arabia. (BIA)
28. Discussion on Peru. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, *The Secretary.* (202) 673–5068.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31481 Filed 11-27-84; 4:59 pm]

BILLING CODE 6325-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

November 27, 1984

FCC to hold a closed Commission Meeting Tuesday, December 4, 1984.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Tuesday, December 4, 1984, following the Open Meeting, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Application for Review of the Review Board's Decision, 95 FCC 2d 668, in the Otis L. Hale d/b/a/ Mobilfone Communications DPLMRS comparative renewal proceeding (CC Docket Nos. 82–15 through 82–17).

Hearing—2—Exceptions to the *Initial Decision* in ICS/MCI/CMS (Los Angeles Cellular Proceeding), CC Docket No. 83–146.

These items are closed to the public because they concern Adjudicatory Matters (See 47 CFR 0.603 (j)).

The following persons are expected to attend the appropriate portions of this meeting:

Commissioners and their assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Common Carrier Bureau and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission:

Hearing 1, November 21, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item in Closed Session

Hearing 2, November 20, 1984. Commissioner Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–31933 Filed 11–28–84; 3:11 pm]

BILLING CODE 6712–01–M

3

FEDERAL COMMUNICATIONS COMMISSION

FCC to hold open Commission meeting, Tuesday, December 4, 1984.

November 27, 1984

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, December 4, 1984, which is scheduled to commence at 9:30 a.m., in room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—*Title:* Memorandum Opinion and Orders in the matter of the lottery proceedings for selection among competing 800 MHz SMR applications in the San Diego, Buffalo and Los Angeles-San Francisco areas. *Summary:* The Commission will determine the comparative points to be assigned each of the competing 800 MHz SMR applications in the above areas and whether to grant these applications by random selection lottery proceedings.

Private Radio—2—*Title:* Memorandum Opinion and Order in the matter of the authority of the Private Radio Bureau to initiate Lottery Proceedings. *Summary:* The Commission will consider whether to grant the Private Radio Bureau delegated authority to issue lottery notices in the Land Mobile Services.

Common Carrier—1—*Title:* Further Notice of Proposed Rulemaking In The Matter of MTS and WATS Market Structure, CC Docket No. 78–72, Phase I. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rulemaking that addresses: (1) the computation of party-line subscriber line charges; (2) the private line surcharge; (3) the Commission's waiver of the Dedicated and Common Transport access charge rules; (4) the Commission's decision to preclude exchange carriers from mixing average schedule and cost data in supporting access charges tariffs.

Common Carrier—2—*Title:* In the Matter of Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT Global Communications Satellite System. *Summary:* The Commission will consider responsive pleadings to the NPRM on whether the Commission's current policy, established in 1986, on the ownership and operation of U.S. earth stations which operate with the INTELSAT system still serves the public interest.

Mass Media—1—*Title:* Amendment of Parts 1, 63 and 76 of the Commission's Rules to Implement the Provisions of the Cable-Communications Policy Act of 1984 and other cable-related matters. *Summary:* The Commission will consider proposed rule changes to implement the provisions of the Cable Communications Policy Act of 1984. In addition, the Commission will consider action on a number of cable-related petitions and rule making proceedings.

Mass Media—3—*Title:* Notice of Proposed Rule Making concerning ownership reporting requirements for cable television systems. *Summary:* The Commission will consider initiation of a Rule Making proceeding looking toward deletion or substantial simplification of existing ownership reporting requirements for cable television systems (47 C.F.R. Section 76.403 and Schedules 3 and 4 of FCC Form 325.)

Mass Media—3—*Title:* Applications for authority to construct interim Direct Broadcast Satellite Systems by Satellite Syndicated Systems, Inc., Satellite Development Trust, National Christian Network, Advanced Communications Corporation, Hughes Communications Galaxy, Inc., National Exchange, Inc., and Space Communications Services; and petitions to deny the applications of Hughes and National Exchange filed by United States Satellite Broadcasting Company, Inc. *Summary:* The Commission considers these applications and petitions to deny.

Mass Media—4—*Title:* Application to transfer control of Northern Plains Broadcasting Group, Inc., licensee of television Station KNDX, Channel 2, Dickinson, North Dakota, from Daniel W. Coon, Calvin Caffritz, Martha Creath and Thomas A. Curtis to KXMC–TV, Inc. (BTCCT–840617KG). *Summary: The Commission will consider KXMC–TV, Inc.'s application to acquire control of television Station KNDX and its proposal to operate KNDX primarily as a satellite of KXMC–TV, Minot, North Dakota. KXMC–TV, Inc. requests a grant of the transfer application pursuant to Note 5 of Section 73.3555, which exempts satellite stations from the ban on Grade B overlap of commonly owned stations.*

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–31934 Filed 11–28–84; 3:11 pm]

BILLING CODE 6712–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of change in subject matter of Agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, November 26, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,148–L, Franklin National Bank, New York, NY.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: November 27, 1984.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 84–31501 Filed 11–28–84; 11:58 am]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, November 26, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

By the same majority vote, the Board further determined that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: The First National Bank of Midland, Midland, Texas.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter added to the agenda in a meeting open to public observation; and that the matter added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: November 27, 1984.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 84–31502 Filed 11–28–84; 11:58 a.m.]

BILLING CODE 6714–01–M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Wednesday, December 5, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC, 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: An additional item has been added to this meeting: Federal Reserve Bank and Branch director appointments.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–31467 Filed 11–28–84; 10:30 am]

BILLING CODE 6210–01–M

7

FEDERAL TRADE COMMISSION

TIME AND DATES: 10:00 a.m., Tuesday, December 4, 1984.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Discussion of staff recommendation that the Commission publish an advance notice of proposed rulemaking in the **Federal Register** concerning the Retail Food Advertising and Marketing Practices Rule, 16 CFR 424.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 532–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 84–31466 Filed 11–28–84; 11:01 am]

BILLING CODE 6750–01–M

OL
9
SS
32
IO
0
984
MI

federal register

Friday
November 30, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Colorado: CO83–5113	July 15, 1983.
Kansas: KS84–4101	Oct. 26, 1984.
Louisiana: LA84–4055	Sept. 28, 1984.
Oklahoma: OK84–4049	Sept. 7, 1984.
Pennsylvania:	
PA84–3004	Feb. 17, 1984.
PA83–3053	Nov. 25, 1983.
PA83–3051	Do.
PA84–3026	July 13, 1984.
PA84–3013	May 11, 1984.
PA84–3017	June 15, 1984.
PA84–3000	Jan. 13, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Missouri and Kansas: MO84–4025 (MO84–4106).	April 27, 1984
New Mexico: NM84–4041 (NM84–4105)	June 29, 1984
Texas: TX84–4007 (TX84–4104)	Feb. 17, 1984
Rhode Island: RI83–3042 (RI84–3043)	Aug. 19, 1983

Signed at Washington, D.C. this 23rd day of November 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. C083-5113 MOD. # 7 (48 FR 32451 July 15, 1983) Adams, Arapahoe, Boulder, Clear Creek Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit and Weld Counties, Colorado	Basic Hourly Rates	Fringe Benefits
OMIT:		
Electricians:		
Elbert, Park and Teller Counties:		
Electrician, Technicians as issued in Modification #6	$16.12	2.31+ 6%
ADD:		
Electricians:		
Elbert, Park Counties:		
Electrician, Technicians	16.12	2.31+3%

DECISION NO. RS84-4101 MOD. # 2 (49FR 43176 - October 26, 1984 - Shawnee County, Kansas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS (General)	$9.05	$2.30

DECISION # OK84-4049 MOD. # 4 (49 FR 35473 - September 7, 1984 Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma	Basic Hourly Rates	Fringe Benefits
CHANGE:		
TILE LAYERS, TERRAZZO WORKERS & MARBLE MASONS		
Area I	$16.84	$1.50
Area II	15.09	3.10

DECISION #LA84-4055-MOD#1 (49 FR 38445-Sept. 28,1984) Statewide, Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers:		
Zone 3	16.00	3.12
Zone 4	14.54	2.05
Carpenters:		
Zone 1		
Carpenters	11.26	.60
Millwrights	11.98	.60
Piledrivermen	12.16	.60
Zone 3		
Carpenters & Drywall	13.45	2.50
Millwrights	14.15	2.50
Piledrivermen	13.85	2.50
Zone 4		
Millwrights	15.60	1%
Electricians:		
Zone 5		
Electricians & Cable Splicers	16.45	1.68 +9%
Zone 8		
Electricians	15.28	1.00 +3½%
Cable Splicers	15.53	1.00 +3½%
Elevator Constructors:		
Zone 1		
Mechanics	14.87	3.28+a
Helpers	70%JR	3.28+a
Helpers (prob.)	50%JR	
Glaziers		
Zone 3	16.92	1.41
Lathers:		
Zone 2	13.50	1.96
Zone 3	11.26	.60
Line Construction:		
Zone 1:		
Linemen	16.45	1.68 +9%
Hole digging equip.; tractor w/winch & derrick; line truck w/winch & derrick working hot lines	75%JR	1.68 +9%
Pole truck & trailer or pole hauling & setting truck (not energized lines)	65%JR	1.68 +9%
Truck w/o winch	45%JR	1.68 +9%
Groundmen	50%JR	1.68 +9%

DECISION #LA84-4055 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Plasterers		
Zone 6	12.00	.01
Plumbers & Pipefitters:		
Zone 6:		
Helpers (exterior sewer & all related work including bell holding & cramming, cutting holes unloading & loading of materials, equipment & tools to & from jobsite & distribution & stock piling of same, dismantling, erecting & dismembering scaffold, general clean up of site	4.80	.03

Footnotes:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; 5 yrs. and over - 8% of basic hourly rate & 7 paid holidays, A thru G.

PAID HOLIDAYS:
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

MODIFICATIONS P. 3

DECISION NO. PA84-3004
MOD. NO. 4
(49 FR 6209 - February 17, 1984)

Armstrong, Allegheny, Beaver, Butler, Fayette, Indiana, Washington & Westmoreland, Counties Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	16.10	5.57
CEMENT MASONS		
Zone 2	17.74	
ELECTRICIANS		
Zone 1	17.72	3%+ 3.45
Zone 2	17.05	6.37
GLAZIERS	15.73	5.45
LINE CONSTRUCTION		
Zone 2		
Lineman, dynamite man, heavy equipment operator	15.99	.80+3 3/8%
Winch truck operator	11.29	.80+3 3/8%
Groundman	10.00	.80+3 3/8%
LABORERS:		
LANDSCAPING		
Landscape laborer to include general landscaping work and driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job	10.45	25%
Landscape Tractor Operator to operate small industrial rubber tire tractor equipped with front end loader and back hoe attachments used for the sole purpose of landscape work including soil spreding, but not for heavy and highway construction work	10.87	25%
MARBLE SETTERS		
Zone 1	15.67	4.27
MILLWRIGHTS	15.22	4 3%
PAINTERS:		
Zone 2		
Commercial		
Brush	10.00	5.80
Spray	10.52	5.80
Industrial		
Brush	13.05	5.80
Roller	13.58	5.80
PLASTERERS		
Zone 1	14.19	4.04
Zone 2	17.74	4.04
PLUMBERS		
Zone 1	17.08	4.40
Zone 2	16.65	4.69
STEAMFITTERS		
Zone 1	16.65	4.74
STONEMASON		
Zone 2	15.46	6.63
SHEET METAL WORKERS	16.49	4.96
ROOFERS	17.34	4.10
TERRAZZO WORKERS		
Zone 1	15.10	5.36
TILE SETTERS		
Zone 1	14.00	5.36

MODIFICATIONS P. 4

DECISION NO. PA84-3000 - MOD. # 6
(49 FR 1851 - January 13, 1984)
Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Hutingdon, Indiana, Jefferson, Mercer, Lawrence, McKean, Mifflin, Potter, Somerset, Venango, Warren, Washington & Westmoreland Counties, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Landscaping		
Zone 1		
Class 1		
Landscape laborer to including general landscaping work and the driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job	10.45	25%
Class 2		
Landscape tractor operator to operate small industrial rubber tire tractor equipped with front end loader and backhoe attachment used for the sole purpose of landscape work including soil spreading, but not for heavy and highway work	10.87	25%
LINE CONSTRUCTION		
Zone 2		
Lineman	15.06	.80+ 3 3/8%
Winch truck op.	10.54	.80+ 3 3/8%
Truck Drivers	9.79	.80+ 3 3/8%
Groundman	9.04	.80+3 3/8%
PLUMBERS (Bridgedrain pipe)		
Allegheny, Washington, Greene, Armstrong Counties	16.65	4.69

DECISION NO. PA83-3053 - MOD. NO. #3 (48 FR 53268 - November 25, 1983) Blair County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS	17.70	3%+ 3.45
GLAZIERS	15.73	5.45
LABORERS	11.65	2.79
ROOFERS	17.34	

DECISION NO. PA83-3051 - MOD. NO. #5 (48 FR 53264 - November 25, 1983) Franklin County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS	11.65	2.79
LINE CONSTRUCTION		
Linemen	15.06	.80+3 3/8%
Winch Truck Op.	10.54	.80+3 3/8%
Groundman	9.04	.80+3 3/8%

DECISION NO. PA84-3026 - MOD. NO. #1 (49 FR 28654 - July 13, 1984) Allegheny County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Residential 4 story walk-up or with elevator	17.72	3%+3.45
PLUMBERS	16.65	4.69
SHEET METAL WORKERS	16.49	4.96

DECISION NO. PA84-3013 - MOD . NO. #4 (49 FR 20229 - May 11, 1984) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
Group 5	12.90	3.90

DECISION NO. PA84-3017 MOD. NO. 2 (49 FR 24859 - June 15, 1984) Berks, Lehigh & Northampton Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians:		
Zone 3	17.38	1.80+3%
Piledrivermen	15.97	6.81+d

STATE: Missouri & Kansas

COUNTIES: Cass,Clay,Jasckson,Platte, Ray,Henry,Johnson, & Lafayette Cos., Missouri: Johnson & Wyandotte Cos., Kansas

DECISION NO: MO84-4106

DATE: Date of Publication

Supersedes Decision No. MO84-4025 dated April 27, 1984 in 49 FR 18220.

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including 4 stories) and heavy and highway construction in Johnson & Wyandotte Cos., Kansas only.

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers	$17.29	$4.26
Boilermakers	17.345	3.25
Bricklayers & Stonemason	15.94	3.00
Carpenters:		
Zone 1-Cass,Clay,Jackson,Platte & Ray Cos., Mo.; Johnson & Wyandotte Cos.,Kansas: Carpenters, Lathers, Millwrights & Pile-drivermen	16.05	2.67
Zone2-Henry County, Mo.: Carpenters & Lathers	13.70	2.67
Millwrights & Pile-drivermen	16.05	2.67
Zone 3-Johnson & Lafayette Cos., Mo.: Carpenters & Lathers	14.775	2.67
Millwrights & Pile-drivermen	16.05	2.67
Cement Masons (Building Construction):		
Zone 1-Cass,Clay,Jackson,Lafayette,Platte, & Ray Cos., Mo.; Johnson & Wyandotte Cos., Kansas: Cement Masons	15.395	2.33
Zone 2-Henry & Johnson Cos., Mo.	13.98	
Cement Masons (Heavy & Highway Construction): Johnson & Wyandotte Cos., Kansas	15.17	2.33
Electricians:		
Zone 1-Western half of Clay & Jackson Cos., Mo. not including Blue Springs; Northern half of Platte Cos., Mo.; Northwestern portion of Cass Cos., Mo. not including Pleasant Hill: Electricians	16.18	10%+ 3.01
Electricians(cont'd):		
Zone 2-Henry,Johnson & Lafayette Cos., Mo. & remainder of Clay,Jackson,Platte&Cass Cos.,Mo.: Electricians (contracts exceeding 2,000 man hrs.	16.18	10%+ 3.01
Electricians(contracts not exceeding 2,000 man hrs.	15.18	10%+ 3.01
Zone 3-Ray Cos., Mo.: Electricians (contracts exceeding 2,000 man hrs.	16.18	10%+ 3.01
Electricians (contracts not exceeding 2,000 man hrs.	14.58	10%+ 3.01
Zone 4-Wyandotte County, Kansas	16.18	10%+ 3.01
Zone 5-Johnson County (that portion east of Monticello, Olathe, & Spring Hill Townships), Kansas	16.18	10%+ 3.01
Johnson County (that portion west of Aubry, Oxford & Shawnee Townships), Kansas	15.55	3%+ 2.13
Elevator Constructors	16.89	2.69+ a
Elevator Constructors' Helpers	50%JR	2.69+ a
Elevator Constructors' Helpers (Prob.)	50%JR	
Glaziers	14.665	3.56+ 17.14%
Ironworkers:		
Zone 1-Cass,Clay,Jackson,Platte,Ray,Henry, Johnson & Lafayette Cos., Mo.: Johnson & Wyandotte Cos.,Kansas	17.25	3.25

DECISION NO.:MO84-4106 PAGE 2

	Basic Hourly Rates	Fringe Benefits
Laborers:		
Building Construction:		
Zone 1-Cass,Clay,Jackson,& Platte Cos., Mo.; Johnson & Wyandotte Cos., Kansas:		
Group 1	$13.35	2.15
Group 2	13.50	2.15
Group 3	13.65	2.15
Zone 2-Lafayette & Ray Cos., Mo.:		
Group 1	12.35	2.15
Group 2	12.50	2.15
Group 3	12.65	2.15
Zone 3-Henry & Johnson Cos., Mo.:		
Group 1	9.825	2.90
Group 2	9.925	2.90
Group 3	10.15	2.90
Site Preparation & Grading, Heavy & Highway Construction:		
Zone 4-Johnson & Wyandotte Cos., Kansas:		
Group 1	12.52	3.45
Group 2	13.32	3.45
Line Construction:		
Zone 1-Cass,Clay,Jackson,Platte & Ray Cos., Mo.;Wyandotte & Johnson Cos., Kansas:		
Linemen	18.33	8½%+1.00
Lineman operator	17.10	8½%+1.00
Groundman powderman	12.84	8½%+1.00
Groundman	12.23	8½%+1.00
Zone 2-Cass,Clay,Jackson,Platte,Ray,Henry, Johnson & Lafayette Cos., Mo.; Wyandotte Co. & Johnson Co.-that portion east of Monticello,Olathe & Spring Hill Townships,Kansas:		
Line Construction(Telephone & telegraph Work including C.A.T.V. work):		
Cable Splicers;air pressure technicians; central office equipment man	10.96	3%+.45
Telephone lineman & installer repairman; C.A.T.V. terminator;		
Line Construction (cont'd):		
Zone 2-equipment operator (¾ yd. backhoe & larger & D-4 crawlers & larger	$10.39	3%+.45
Equipment operator (trenchers & all other equipment)	9.11	3%+.45
Groundman-winch driver	7.87	3%+.45
Groundman	6.36	3%+.45
Line Construction (Railroad & Cross Country Transmission Lines):		
Zone 3-Wyandotte Co. & Johnson Co.-that portion east of Monticello, Olathe & Spring Hill Townships:		
Lineman	15.50	3½%+1.06
Lineman operator	14.36	3½%+1.06
Groundman, powderman	10.79	3½%+1.06
Groundman	10.09	3½%+1.06
Pole Treating:		
Pole treating specialist	16.24	3½%+1.06
Pole treating inspector	15.50	3½%+1.06
Pole treating truck driver	10.79	3½%+1.06
Pole treating groundman	10.09	3½%+1.06
Marble & tile setters	17.52	7%+1.23
Marble & tile setters finishers	14.40	
Painters:		
Zone 1-Cass,Clay,Henry, Jackson,Johnson(excluding Whiteman AFB), Lafayette,Platte & Ray Cos., Mo.;Johnson & Wyandotte Cos.,Kansas:		
Brush & tapers	16.04	2.00
Spray	17.04	2.00
Zone 2-Johnson Co., Mo. Whiteman AFB Only):		
Brush	14.25	
Spray	15.25	
Plasterers:		
Zone 1-Cass,Clay,Jackson,Lafayette,Platte & Ray Cos., Mo.; Johnson,		

DECISION NO.:MO84-4106 Page 3

	Basic Hourly Rates	Fringe Benefits
Plasterers(cont'd):		
Zone 1-& Wyandotte Cos., Kansas	$17.60	
Zone 2-Henry & Johnson Cos., Missouri	13.66	
Pipefitters	17.44	3.22
Plumbers:		
Zone 1-Platte,Clay,Jackson,&Cass Cos., Mo.; Johnson & Wyandotte Cos. Kansas	18.46	2.70
Zone 2-Johnson,Henry,Ray & Lafayette Cos.,Mo.	16.02	2.70
Power Equipment Operators:		
Building Construction:		
Group I	15.86	4.05
Group II	15.51	4.05
Group III:		
(a)	10.45	4.05
(b)	13.61	4.05
(c)	11.25	4.05
(d)	13.86	4.05
Group IV	16.11	4.05
Group V	15.76	4.05
Group VI	16.36	4.05
Group VII:		
(a)	15.71	4.05
(b)	15.46	4.05
(c)	13.46	4.05
Group VIII	16.86	4.05
Group IX	16.36	4.05
Site Preparation & Grading, Heavy & Highway Construction:		
Zone 1-Johnson & Wyandotte Cos., Kansas:		
Group I	14.60	4.07
Group II	14.35	4.07
Group III	13.65	4.07
Group IV:		
Oilers	9.63	4.07
Oiler drivers (all types)	12.65	4.07
Roofers	16.48	2.91
Sheet metal workers	16.75	2.78
Soft floor layers	12.44	10%+3.34
Sprinkler fitters	19.28	3.21
Terrazzo Workers:		
Terrazzo workers	15.31	10%
Terrazzo workers finishers	13.58	
Terrazzo base machine	13.93	
Truck Drivers:		
Building Construction:		
Group I	$14.335	2.75
Group II	14.385	2.75
Group III	14.46	2.75
Group IV	14.585	2.75
Group V	14.485	2.75
Group VI	14.685	2.75
Group VII	14.535	2.75
Group VIII	14.435	2.75
Truck Drivers:		
Site Preparation & Grading,Heavy & Highway Construction:		
Zone 1-Johnson & Wyandotte Cos.,Kansas:		
Group I	13.82	4.00
Group II	13.67	4.00
Group III	13.36	4.00
Group IV	13.16	4.00
Group V	12.94	4.00

FOOTNOTE: a-Employer contributes 8% of basic hourly rate for over 5 yrs. of service & 6% of basic hourly rate for 6 mos. to 5 yrs. service as Vacation Pay Credit. Also 7 paid Holidays.

WELDERS - Receive rates prescribed for craft performing operation to which welding is incidential.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

CLASSIFICATION DEFINITIONS

LABORERS: (BUILDING CONSTRUCTION - ZONES 1 and 2)

GROUP I

General labor; wiremesh handlers or setters; carpenter tender; track men; salamander tenders; landscape man; sod layers; wrecker (for alterations or entire projects); Plumber laborers (conduit pipe, sewer work, drain tile and duck lines, digging and backfilling), power tool operators; pier hole diggers (over 10 ft.); jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch winch operators; swinging scaffolds; georgie buggies (self-propelled); fork lift; hosemen; insulation man.

GROUP II

Vibrator operator; fork lift (masonry, brick tender, plaster tender, stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding).

GROUP III

Barco, Jackson or similar tam operators; asphalt rakers; power men; mastic hot kettle men; sandblasting and gunnite nozzlemen; wagon and churn drill operators; cutting torch or burner men.

LABORERS: (BUILDING CONSTRUCTION - ZONE 3)

GROUP I

General laborers - carpenter tenders, track men, wreckers, reinforcing rod carriers, and all other General laborers, plumbers laborers sewer work, water lines, conduit pipe, drain tile and duck lines, batter board man on pipe and ditch work

GROUP II

First Semi-Skill - Stone mason tenders, air tool operators, pier hole men working below ground, vibrator man, jack hammer, chipping hammer operators, material batch hopper man, scale man, spreader or screed man on asphalt machine, chain or concrete saw, brush feeders on pulverizers, swinging scaffold, cement handlers (bulk or sack), laser beam man

GROUP III

Second Semi-Skill - Plaster tenders, hod carrers, brick tenders, cutting torck and burner men, asphalt rakers, barco tamper, jackson or any similar tamps, power buggy operator, powderman, mastic kettlemen, sandblasting and gunnite nozzlemen, head pipe layer on sewer work, man working tunnels, head forms and stringline man, hot tar applicator.

LABORERS: Site Preparation (ZONE 4)

GROUP I

Carpenter tenders; salamander tenders; (dump man and ticket takers on stock piles;) loading trucks under bins, hoppers and conveyors, track men and all other general laborers; air tool operators; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgie buggies man; material batch hopper man; scale man; material mixer man (except on manholes); coffer dams, abutmentments and pier hole men working below ground); riprap pavers rock, block or brick; scaffolds over 10 feet not self supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only), crusher feeder; men handling creosote ties on creosote materials; men working with and handling epoxy material or materials (where special protection is required); topper or standing trees;

CLASSIFICATION DEFINITIONS (cont'd)

LABORERS: Site Preparation (ZONE 4)

GROUP I (cont'd)

batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on underground tunnels where compressed air is not used.

GROUP II

Spreader or screed man on asphatl machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp wagon driller; churn drills; air track drills and all other similar drills; form setters; cutting torch man; liners and stringline men on concrete paving, curbs, gutters and etc.; hot mastic kettleman; hot tar application; hand blade operators; manhole builders tenders and mortar men on brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; manhole builder (brick or block); dynamite and powderman; welder; head pipe layer on sewer work.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

Group I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe; barbergreene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mix plant, portable (job site); concrete mixer paver; crane-overhead; cursher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man; locomotives

GROUP II - Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws; self-propelled; crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and tennies, sub-grader; tractors over 50 h.p.; compressors (2) 125' ft. or over not more than 20' apart; compressors-tandem; compressors single, truck mounted; elevator; finishing machine

GROUP III

(a) Oilers
(b) Fork lift-masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.

GROUP IV

Clamshells, 100 ft. of boom or over (excluding jib); crane or rigs, 100 ft. of boom or over (excluding jib); draglines, 100 ft. of boom over (excluding jib); pile drivers, 100 ft. of boom or over

CLASSIFICATION DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION

Group V
Hoists - each additional drum over 1 drum
Group VI
Crane or rigs, over 200 ft. of boom
Group VII
Ready Mixed Concrete Plants;
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor Operator
Group VIII
Master Mechanic
Group IX
Crane - tower or climbing

POWER EQUIPMENT OPERATORS: (Site Preparation)
Group I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers - 2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator - 2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader - fork lift; hoistline engine - 2 active drums; locomotive operator, standard guage; mechanics and welders; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump - 2; push cat op.; quad-track; scoop operator - all types; scoops in tandem; self-propelled rotary drill (leroy or equal not air trac); shovel operator; side discharge spreader; sideboom cats; skimmer scoop operator; slip - form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator - 2
Group II - A-frame truck, asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; back filler operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader; greaser; hoisting engine - 1 drum; latourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydrahammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator tractor operator over 50 h.p.
Group III - Boilers - 1; chip spreader (front man); churn drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator - 1.

CLASSIFICATIONS DEFINITIONS (Cont'd)

POWER EQUIPMENT OPERATORS: (Site Preparation - Cont'd):
Group IV:
Oilers
Oiler driver (all types)

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP I RATE
Clamshells - 3 yd. capacity or over - crane or rigs, 80 ft. boom or over (including jib) - draglines, 3 yd. capacity or over - piledrivers, 80 ft. of boom or over (including jib) - shovels & backhoes, 3 yd. capacity or over.

TRUCK DRIVERS (Building Construction):
Group I - Warehousemen and stock man
Group II - Flat beds; pick-ups; drum trucks, under 10 yds.
Group III - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers
Group IV - Straddle trucks, wheel tractors (when used for towing); hydro lift trucks, hydraulically operated aerial lifts; heavy hauling, A-frame and winch fork trucks; heavy excavating (dumpster, euclid, etc.); double bottom units (20 tons capacity and over)
Group V - Distributor truck drivers and operators; oilers, greasers
Group VI - Mechanics; transit mix tractor trailer
Group VII - Transit mix, 5 yds. and over
Group VIII - Transit mix, under 5 yds.

TRUCK DRIVERS: (Site Preparation)
GROUP I
Mechanics & welders-field
GROUP II
A-frame low boy - boom truck driver
GROUP III
Insley wagons; dump trucks, excavating, 5 cu. yds and over; dumpsters; half-tracks; speedace; euclids and similar excavating equipment
Material trucks, tandem two teams, semi-trailers, winch trucks; fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, tandem or semi
Group IV
One team; station wagons; pickup truck; material trucks, single axle tank wagon drivers, single axle
Group V
Oilers; greasers-field

STATE: NEW MEXICO
DECISION NO. NM84- 4105
SUPERSEDES DECISION NO. NM84-4041 dated June 29, 1984 in 49 FR 26979.
DESCRIPTION OF WORK: STREETS, HIGHWAY, UTILITY AND LIGHT ENGINEERING CONSTRUCTION shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields, highway bridges, median channels and grade separations involving highways; parks, golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including linings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling telephone and electrical transmission lines and site preparations which are part of streets, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, gas lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stubouts), providing such utility construction is outside the property line or more than five (5) feet from a building or heavy engineering structure, including the Navajo Indian Reservation.

COUNTY: STATEWIDE
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 8.11	$ .44
CEMENT MASONS	7.08	.26
IRONWORKERS:		
Reinforcing	7.49	.50
Structural	8.25	1.29
LABORERS:		
GROUP I	4.92	.35
GROUP II	5.22	.35
GROUP III	5.62	.35
COMMERCIAL LINE WORK:		
AREA A		
Linemen-Technicians:		
Zone I	17.00	2.00+ 3-1/2%
Zone II	18.53	2.00+ 3-1/2%
Zone III	19.55	2.00+ 3-1/2%
Zone IV	21.42	2.00+ 3-1/2%
Cable Splicers:		
Zone I	18.70	2.00+ 3-1/2%
Zone II	20.23	2.00+ 3-1/2%
Zone III	21.25	2.00+ 3-1/2%
Zone IV	23.12	2.00+ 3-1/2%

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK (CONT'D):		
Equipment Ops. (includes helicopter op.):		
Zone I	$16.15	2.00+ 3-1/2%
Zone II	17.68	2.00+ 3-1/2%
Zone III	18.70	2.00+ 3-1/2%
Zone IV	20.57	2.00+ 3-1/2%
Equipment Mechanic (includes helicopter mechanic) & Powderman:		
Zone I	14.79	2.00+ 3-1/2%
Zone II	16.32	2.00+ 3-1/2%
Zone III	17.34	2.00+ 3-1/2%
Zone IV	19.21	2.00+ 3-1/2%
Groundman & Jackhammer:		
Zone I	12.07	2.00+ 3-1/2%
Zone II	13.60	2.00+ 3-1/2%
Zone III	14.62	2.00+ 3-1/2%
Zone IV	16.49	2.00+ 3-1/2%

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK (CONT'D):		
AREA B		
Linemen-Technicians:		
Zone I	$14.20	.80+ 3-1/2%
Zone II	15.65	.80+ 3-1/2%
Cable Splicers:		
Zone I	14.45	.80+ 3-1/2%
Zone II	15.90	.80+ 31/2%
Equipment Op. & Mechanic (includes helicopter op. & helicopter mechanic):		
Zone I	12.35	.80+ 3-1/2%
Zone II	13.62	.80+ 3-1/2%
Powderman:		
Zone I	11.93	.80+ 3-1/2%
Zone II	13.15	.80+ 3-1/2%
Groundman-Jackhammer:		
Zone I	10.08	.80+ 3-1/2%
Zone II	11.11	.80+ 3-1/2%
AREA C:		
Linemen-Technicians:		
Zone I	17.10	.80+ 3-1/2%
Zone II	17.55	.80+ 3-1/2%
Zone III	17.70	.80+ 3-1/2%
Zone IV	17.95	.80+ 3-1/2%
Cable Splicers:		
Zone I	17.45	.80+ 3-1/2%
Zone II	17.90	.80+ 3-1/2%
Zone III	18.05	.80+ 3-1/2%
Zone IV	18.30	.80+ 3-1/2%

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK (CONT'D):		
Equipment Op. & Mechanic (includes helicopter op. & helicopter mechanic):		
Zone I	$14.88	.80+ 3-1/2%
Zone II	15.33	.80+ 3-1/2%
Zone III	15.48	.80+ 3-1/2%
Zone IV	15.73	.80+ 3-1/2%
Powderman:		
Zone I	14.36	.80+ 3-1/2%
Zone II	14.81	.80+ 3-1/2%
Zone III	14.96	.80+ 3-1/2%
Zone IV	15.21	.80+ 3-1/2%
Groundman-Jackhammer:		
Zone I	12.14	.80+ 3-1/2%
Zone II	12.59	.80+ 3-1/2%
Zone III	12.74	.80+ 3-1/2%
Zone IV	12.99	.80+ 3-1/2%
LINE CONSTRUCTION-UTILITY FOR ELECTRIC & TELEPHONE UTILITIES, REA CO-OPS, RAILROADS & MUNICIPALITIES:		
Linemen-Technicians	15.47	1.80+ 3-1/2%
Cable Splicers	16.55	1.80+ 3-1/2%
Equipment op. & mechanic (includes helicopter op. & helicopter mechanic)	13.46	1.80+ 3-1/2%
Powderman	12.99	1.80+ 3-1/2%
Groundman-Jackhammer	10.52	1.80+ 3-1/2%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush	$ 8.13	$ .44
Spray	7.74	.20
POWER EQUIPMENT OPERATORS:		
GROUP I	7.67	.26
GROUP II	7.87	.26
GROUP III	8.45	.26
GROUP IV	8.47	.26
GROUP V	8.47	.26
GROUP VI	8.62	.26
GROUP VII	8.67	.26
GROUP VIII	8.82	.26
GROUP IX	9.32	.26
GROUP X	10.12	.26
TRUCK DRIVERS:		
Pick-up truck 3/4 ton or under; warehouseman; dump truck under 8 cu. yds.; flat bed, 1½ ton or under	6.12	.26
Dump truck, 8 to 16 cu. yds.; flat bed over 1½ ton	6.32	.26
Distributor (asphalt); transit-mix; lowboy, light equipment; off-highway hauler; dump truck over 16 cu. yds.; trailer semi-trailer dump	6.52	.26
Diesel-powered transport; lowboy heavy equipment	6.72	.26

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

CLASSIFICATION AREA AND ZONE DEFINITIONS

LABORERS:
GROUP I - Common laborer; carpenter tender; concrete buggy op. (hand); concrete workers
GROUP II - Air & power tool man; asphalt heaterman; asphalt jointman; asphalt raker; batching plant scaleman; tenders (to cement mason & plasterer); chain sawman; concrete power buggyman; concrete touchup man; concrete sawman; curbing machine, asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer & mason tender; powderman or blaster tender; sandblaster; scaler; vibratorman (hand type); vibrator compactor (hand type); wagon air tract, drill & diamond driller (outside) & tender
GROUP III - Gunite pumpcrete & nozzleman; multiplate setter; manhole builder; pipelayer; powderman-blaster-make-up

COMMERCIAL LINE WORK (excluding work done for electric & telephone utilities, REA co-ops, railroad & municipalities):
AREA A - Also applies to switching stations & substations adjacent to power plants. Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, Debaca, Grant, Guadalupe, Harding, Lincoln, Los Almos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia, White Sands Missile Range & that portion of Fort Bliss in New Mexico
ZONE I - Cities & Towns Basing Points & Miles from Main Post Office

*Albuquerque - 25 miles	Roswell - 12 miles
Santa Fe - 10 miles	Ruidoso - 12 miles
Las Vegas - 8 miles	Portales - 12 miles
Farmington - 6 miles	Carrizozo - 12 miles
Raton - 6 miles	Clovis - 12 miles
Tucumcari - 6 miles	Gallup - 10 miles
Aztec - 6 miles	**Pojoaque - 2 miles

*The eastern edge of the Albuquerque zone extends no further than the western boundary of the Village of Tijeras
**All areas adjacent to Pojoaque that are 2 miles distance from the main post office in that town will be zoned out of Santa Fe.
ZONE II - Extending up to 20 miles beyond Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 9% of the journeyman rate of Zone I.
ZONE III - Extending up to 30 miles beyond Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 15% of the journeyman rate of Zone I
ZONE IV - Anything beyond 30 miles from Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 26% of the journeyman rate for Zone I
For establishing the outlying free zones from the Albuquerque free zone only, Zone II shall extend up to 10 miles beyond Zone I, Zone III shall extend up to 20 miles beyond Zone I and Zone IV anything beyond 20 miles from Zone I
FOR WORK IN LOS ALAMOS COUNTY - USE THE ZONE III RATE.

CLASSIFICATION AREA AND ZONE DEFINITIONS - CONT'D

COMMERCIAL LINE WORK (Cont'd):
AREA B - Applies to switching stations & substations adjacent to power plants in Zone I & Zone II in Luna, Dona Ana, Otero & Hildalgo Cos., exclusive of White Sands Missile Range & that part of Fort Bliss in New Mexico.
ZONE I - that area within 25 miles radius from the downtown Post Office of El Paso, Texas. Fort Bliss & Biggs Field; the area within a 5 mile radius of any city, town or municipality within which an employer establishes or maintains his place of business; the area within 10 mile radius from the Post Office in Alamogordo, New Mexico.
ZONE II - all other areas of the jurisdiction except those specified in Zone I
AREA C - applies to switching stations adjacent to power plants in Eddy & Lea Cos.; the following zones listed shall be designated from the Main Post Office of Artesia, Carlsbad, Hobbs & Lovington:
Zone I - 0 to 12 miles Zone II - 12 to 22 miles
Zone III - 22 to 40 miles Zone IV - 40 miles & beyond

POWER EQUIPMENT OPERATORS
GROUP I - Concrete paving curing machine
GROUP II - Belt type conveyors (material & concrete); broom (self-propelled); fork lift; grease truck op.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attachment); industrial locomotive brakeman; front end loader (2 CY or less); fireman; oiler; screedman; roller (pull type); mulching machine; roller (self-propelled)
GROUP III - Concrete paving form grader; concrete paving gang vibrator; concrete paving joint or saw machine; concrete paving subgrader; tractor with backhoe attachment; subgrade or base finisher; power plant (electric, general or welding machine)
GROUP IV - Bulldozer (including self-propelled roller with dozer attachment; batch or continuous mix plant (concrete soil-cement or asphalt); roller (steel wheel); front end loader (2 CY thru 10 CY); scraper; motor grader
GROUP V - Asphalt distributor; asphalt paving or laydown machine; asphalt; retort heater; mixer, heavy duty, asphalt or soil cement; trenching machine; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM & over); crushing, screening & washing plants; drilling machine (cable, core or rotary); mixer, concrete (1 CY & less); pump (6" intake or over); winch truck; hoist (1 drum); industrial locomotive motorman; lumber stacker; tractor (50 drawbar HP or over)
GROUP VI - Concrete paver mixer; hoist (2 drum & over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer concrete (over 1 CY); mechanic and/or welder
GROUP VII - Concrete slip-form paving machine; concrete paving finishing machine; concrete paving longitudinal float; gunite machines; refrigerator; jumbo form or drilling; stage; slusher; concrete paving spreader; pumpcrete machine; grout pump op.

CLASSIFICATION AREA AND ZONE DEFINITIONS - CONT'D

POWER EQUIPMENT OPERATORS - (cont'd)
GROUP VIII - Mine hoist; bulldozer (multiple units); scraper (multiple units); mucking machines; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile)
GROUP IX - Belt loader (CMI type) op.; derrick cableway
GROUP X - Pipemobile op., mole op.

SUPERSEDEAS DECISION

STATE: Texas
DECISION NO.: TX84-4104
Supersedes Decision No. TX84-4007, dated February 17, 1984, in 49 FR 6215.
DESCRIPTION OF WORK: See "Area Covered by Various Zones "

COUNTIES: Statewide
DATE: Date of Publication

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Operator	-	6.40	6.00	6.00	-
Asphalt Heater Operator	-	-	5.55	-	-
Asphalt Raker	6.45	5.55	6.20	5.65	5.95
Asphalt Shoveler	6.00	-	-	-	5.50
Batching Plant Scale Operator	7.40	6.80	6.00	-	6.60
Carpenter	7.30	7.00	7.00	6.85	6.50
Carpenter Helper	5.60	6.30	5.90	5.85	5.45
Concrete Finisher (Paving)	8.55	7.90	7.15	5.65	6.70
Concrete Finisher Helper (Paving)	-	-	5.05	4.75	5.55
Concrete Finisher (Structures)	7.30	6.65	6.65	5.50	6.25
Concrete Finisher Helper (Structures)	6.10	6.00	5.70	4.75	5.35
Concrete Rubber	-	-	-	-	-
Electricians	13.15	-	11.80	12.65	13.25
Electrician Helper	-	-	-	9.10	6.25
Form Builder (Structures)	6.80	6.50	-	5.35	6.[illegible]
Form Builder Helper (Structures)	6.50	-	-	4.55	5.55
Form Liner (Paving & Curb)	-	-	-	-	6.25
Form Setter (Paving & Curb)	-	-	-	5.35	6.25
Form Setter Helper (Paving & Curb)	-	-	-	-	5.05
Form Setter (Structures)	7.70	7.25	7.40	5.45	6.60
Form Setter Helper (Structures)	6.25	6.45	5.10	5.05	5.35
Laborer, Common	5.10	4.80	4.90	4.40	4.50
Laborer, Utility	6.05	5.80	6.30	5.40	5.25
Manhole Builder, Brick	-	-	7.50	-	-
Mechanic	9.30	8.85	7.35	7.50	7.40
Mechanic Helper	7.00	6.35	5.80	6.25	5.50
Oiler	6.50	6.15	5.20	6.50	5.89
Servicer	6.85	6.85	6.25	5.58	5.60
Painter (Structures)	7.00	-	-	6.50	-
Piledriver Person	-	-	5.00	-	-
Pipelayer	-	-	5.00	5.50	5.60
Pipelayer Helper	-	-	-	4.90	5.05
Pneumatic Mortar Operator	-	-	6.60	-	-
Blaster	7.10	7.00	-	5.85	5.90
Blaster Helper	-	6.45	-	-	-
Reinforcing Steel Setter (Paving)	-	-	-	-	6.00
Reinforcing Steel Setter (Structures)	6.00	-	7.00	5.45	6.05
Reinforcing Steel Setter Helper	5.70	-	5.75	4.50	5.60
Steel Worker (Structural)	-	-	-	-	6.85

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Steel Worker Helper (Structural)	-	-	-	-	5.90
Sign Erector	-	-	-	-	7.60
Spreader Box Man	7.00	-	6.25	6.85	6.10
Swamper	-	-	-	-	-
Power Equipment Operators:					
Asphalt Distributor	7.75	7.55	6.60	7.25	6.15
Asphalt Paving Machine	-	7.25	6.55	6.35	6.95
Broom or Sweeper Operator	-	5.25	4.90	6.60	5.25
Bulldozer 150 HP & Less	-	6.80	5.75	6.00	5.90
Bulldozer over 150 HP	-	7.05	6.60	6.65	6.85
Concrete Paving Curing Machine	-	-	-	-	-
Concrete Paving Finishing Machine	8.15	8.00	-	-	6.60
Concrete Paving Form Grader	-	-	-	-	-
Concrete Paving Grinder	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Mixer	-	-	-	-	-
Concrete Paving Saw	-	-	-	-	-
Concrete Paving Spreader	-	-	-	7.50	-
Paving Sub Grader	6.50	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	7.00	7.40	7.00	6.15	6.65
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	8.55	8.90	7.80	7.35	7.80
Crusher or Screening Plant Operator	7.50	6.95	6.15	-	6.25
Elevating Grader	-	-	6.80	-	7.00
Foundation Drill Operator (Crawler Mounted)	9.00	-	-	-	7.00
Foundation Drill Operator (Truck Mounted)	-	-	-	-	8.25
Foundation Drill Operator Helper	-	-	-	-	-
Front End Loader (2½ CY & less)	6.65	6.35	6.15	5.85	5.75
Front End Loaders (Over 2½ CY)	-	-	-	-	-
Mixer (Over 16 CF)	9.00	-	-	5.25	-
Mixer (16 CF & Less)	-	-	-	-	-
Motor Grader Operator, Fine Grade	8.00	9.40	8.95	8.65	7.90
Motor Grader Operator	7.75	9.00	7.70	7.60	6.75
Roller, Steel Wheel (Plant-Mix Pavements)	6.60	6.75	5.65	5.00	5.20
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	6.20	6.20	5.55	5.10	4.95
Roller, Pneumatic (Self-Propelled)	5.85	5.60	5.35	5.10	5.00
Scrapers (17 CY & Less)	6.20	6.55	6.05	5.35	[illegible]
Scrapers (Over 17 CY)	-	-	-	-	-
Self-Propelled Hammer	-	-	-	-	-

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Side Boom	-	-	-	-	-
Tractor (Crawler Type) 150 HP & Less	-	6.00	-	7.50	5.00
Tractor (Crawler Type) over 150 HP	6.85	7.00	6.00	-	6.80
Tractor (Pneumatic) 80 HP & Less	6.50	6.00	5.50	5.50	4.55
Tractor (Pneumatic) over 80 HP	6.85	6.50	6.50	6.15	6.00
Traveling Mixer	-	-	-	-	5.65
Trenching Machine, Light	-	-	-	5.40	5.25
Trenching Machine, Heavy	-	6.40	-	-	6.00
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	6.40	6.95	-	6.00
Truck Drivers:					
Single Axle, Light	5.85	6.00	5.65	5.30	4.90
Single Axle, Heavy	6.45	-	-	5.60	5.15
Tandem Axle or Semitrailer	6.45	6.40	5.75	6.15	5.20
Lowboy-Float	-	-	6.45	6.05	6.00
Transit-Mix	-	-	-	-	-
Winch	-	-	-	-	5.00
Vibrator Operator (Hand Type)	-	-	-	-	-
Welder	8.00	7.50	6.75	5.60	7.05
Welder Helper	-	-	6.50	-	5.55

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Operator	-	-	-	-	5.50
Asphalt Heater Operator	-	6.25	4.85	6.25	-
Asphalt Raker	5.70	6.10	5.85	5.75	7.35
Asphalt Shoveler	4.85	-	-	-	-
Batching Plant Scale Operator	5.75	5.05	-	-	-
Carpenter	6.70	7.75	6.90	7.45	7.65
Carpenter Helper	5.45	5.70	5.65	5.90	5.80
Concrete Finisher (Paving)	5.80	-	6.95	-	7.60
Concrete Finisher Helper (Paving)	4.35	-	-	-	6.35
Concrete Finisher (Structures)	6.50	6.80	6.70	6.95	7.35
Concrete Finisher Helper (Structures)	5.85	5.25	5.25	5.60	6.25
Concrete Rubber	5.75	-	5.80	5.70	6.00
Electrician	-	-	-	-	10.25
Electrician Helper	-	-	-	-	6.90
Form Builder (Structures)	6.50	6.95	6.75	6.70	7.45
Form Builder Helper (Structures)	-	5.50	5.00	6.00	6.00
Form Liner (Paving & Curb)	4.55	-	-	-	6.85
Form Setter (Paving & Curb)	5.55	-	5.50	6.00	6.65
Form Setter Helper (Paving & Curb)	-	-	-	-	5.45
Form Setter (Structures)	5.55	7.45	6.90	6.90	7.25
Form Setter Helper (Structures)	5.10	5.30	5.55	5.55	5.80
Laborer, Common	4.35	4.55	4.85	4.70	5.05
Laborer, Utility	5.35	5.45	5.50	5.30	5.80
Manhole Builder, Brick	-	-	-	-	-
Mechanic	6.40	7.40	7.90	7.95	8.95
Mechanic Helper	5.60	5.25	6.50	6.10	6.55
Oiler	-	7.00	5.00	-	7.00
Servicer	6.00	6.20	5.60	6.15	5.80
Painter (Structures)	-	-	-	-	-
Piledriver Person	-	9.00	-	-	-
Pipelayer	5.15	6.25	6.05	5.75	6.90
Pipelayer Helper	4.50	4.85	4.85	4.70	5.60
Pneumatic Mortar Operator	-	-	-	-	-
Blaster	-	-	-	-	-
Blaster Helper	-	-	-	-	-
Reinforcing Steel Setter (Paving)	-	-	5.85	-	-
Reinforcing Steel Setter (Structures)	6.35	6.75	6.85	6.60	7.70
Reinforcing Steel Setter Helper	-	5.25	5.25	5.30	5.90
Steel Worker (Structural)	5.75	-	6.50	-	7.85
Steel Worker Helper (Structural)	5.20	-	5.00	-	6.00
Sign Erector	-	-	-	-	-

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Spreader Box Operator	-	-	-	-	-
Swamper	-	5.65	-	-	-
Power Equipment Operators:					
Asphalt Distributor	6.15	-	5.90	6.85	7.10
Asphalt Paving Machine	6.15	-	6.60	5.95	7.55
Broom or Sweeper Operator	4.60	-	5.25	6.25	-
Bulldozer 150 HP & Less	5.50	6.45	6.80	6.00	7.00
Bulldozer Over 150 HP	6.40	6.95	7.60	7.10	7.75
Concrete Paving Curing Machine	-	-	-	-	-
Concrete Paving Finishing Machine	-	-	-	-	6.00
Concrete Paving Form Grader	-	-	-	-	-
Concrete Paving Grinder	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Mixer	-	-	-	-	-
Concrete Paving Saw	-	-	-	-	6.80
Concrete Paving Spreader	-	-	-	-	-
Paving Sub Grader	-	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (Less than 1½ CY)	6.35	6.85	7.00	7.10	7.50
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	7.75	8.10	8.50	8.05	8.15
Crusher or Screening Plant Operator	-	5.70	-	-	-
ElevatingGrader	-	-	-	-	7.00
Foundation Drill Operator (Crawler Mounted)	12.50	-	12.00	-	-
Foundation Drill Operator (Truck Mounted)	-	-	10.15	8.65	8.20
Foundation Drill Operator Helper	7.00	-	7.00	6.25	6.75
Front End Loader (2½ CY & Less)	5.50	6.05	6.20	6.40	6.85
Front End Loader (Over 2½ CY)	6.75	6.65	6.95	7.45	7.40
Mixer (Over 16 CF)	-	-	-	-	-
Mixer (16 CF & Less)	-	-	-	-	-
Motor Grader Operator, Fine Grade	7.45	8.30	8.15	8.30	8.30
Motor Grader Operator	6.45	7.35	7.75	7.55	7.75
Roller, Steel Wheel (Plant-Mix Pavement)	4.60	6.00	5.75	5.40	6.60
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4.50	5.60	5.45	5.80	6.15
Roller, Pneumatic (Self-Propelled)	4.85	5.10	5.00	5.30	6.35
Scrapers (17 CY & Less)	5.30	5.75	6.35	6.00	7.00

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Scrapers (Over 17 CY)	6.25	6.90	6.45	6.35	7.25
Self-Propelled Hammer	-	-	-	-	6.75
Side Boom	-	-	-	5.80	-
Tractor (Crawler Type) 150 HP & Less	4.90	6.00	6.00	5.00	6.50
Tractor (Crawler Type) Over 150 HP	6.50	6.50	6.95	5.25	7.25
Tractor (Pneumatic) 80 HP & Less	4.70	5.60	4.85	5.00	8.35
Tractor (Pneumatic) Over 80 HP	5.35	5.95	5.75	6.35	7.00
Traveling Mixer	5.10	5.35	-	5.50	7.05
Trenching Machine, Light	-	-	-	-	-
Trenching Machine, Heavy	-	-	-	-	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	-	-	-	-
Truck Drivers:					
Single Axle, Light	4.95	5.20	5.05	5.40	5.55
Single Axle, Heavy	5.00	6.35	5.50	-	6.60
Tandem Axle or Semi-Trailer	5.15	6.20	5.65	5.50	6.15
Lowboy-Float	5.05	-	-	-	8.10
Transit-Mix	-	-	-	-	6.50
Winch	-	-	-	-	-
Vibrator Operator (Hand Type)	-	-	-	-	-
Welder	7.15	7.35	7.00	6.45	7.70
Welder Helper	5.15	-	-	-	5.75

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Operator	-	-	-	-	-
Asphalt Heater Operator	-	6.95	-	-	-
Asphalt Raker	7.75	7.10	5.50	8.15	7.15
Asphalt Shoveler	6.00	-	-	6.00	7.00
Batching Plant Scale Operator	8.00	7.50	-	7.10	6.80
Carpenter	7.40	7.15	7.60	8.10	9.30
Carpenter Helper	5.80	5.70	6.50	6.45	7.00
Concrete Finisher (Paving)	8.30	7.35	7.50	6.00	8.45
Concrete Finisher Helper (Paving)	6.45	-	-	-	6.60
Concrete Finisher (Structures)	7.75	6.95	7.30	8.05	8.15
Concrete Finisher Helper (Structures)	6.40	6.15	6.35	7.00	6.65
Concrete Rubber	-	-	5.65	-	6.65
Electrician	10.00	-	-	15.25	14.00
Electrician Helper	7.80	-	-	-	9.05
Form Builder (Structures)	7.50	6.45	6.90	7.25	8.00
Form Builder Helper (Structures)	5.85	-	5.50	6.20	5.95
Form Liner (Paving & Curb)	7.75	7.75	6.50	7.00	7.65
Form Setter (Paving & Curb)	7.70	7.10	-	7.00	7.00
Form Setter Helper (Paving & Curb)	6.55	6.35	-	-	6.10
Form Setter (Structures)	7.50	7.30	7.20	7.55	7.50
Form Setter Helper (Structures)	5.55	5.80	6.70	5.85	6.10
Laborer, Common	5.20	5.10	5.05	5.15	5.50
Laborer, Utility	5.90	6.05	6.15	5.65	6.25
Manhole Builder, Brick	-	-	-	-	-
Mechanic	8.60	7.80	8.25	9.00	9.00
Mechanic Helper	6.90	5.80	-	7.00	7.15
Oiler	7.00	6.90	-	6.30	7.30
Servicer	6.85	6.25	-	6.10	7.55
Painter (Structures)	7.00	-	-	-	-
Piledriver Person	-	-	8.50	-	8.45
Pipelayer	6.15	6.40	-	-	6.90
Pipelayer Helper	5.20	5.50	-	-	5.70
Pneumatic Mortar Operator	-	-	-	-	-
Blaster	-	-	-	-	-
Blaster Helper	-	-	-	-	-
Reinforcing Steel Setter (Paving)	-	6.00	-	-	6.10
Reinforcing Steel Setter (Structures)	7.50	7.25	7.35	6.70	8.15
Reinforcing Steel Setter Helper	5.85	5.00	6.00	-	5.85
Steel Worker (Structural)	6.00	-	-	-	8.10
Steel Worker Helper (Structural)	-	-	-	-	6.50
Sign Erector	6.50	6.25	-	-	-

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Spreader Box Man	$ -	$ -	$ -	$ -	$ 7.15
Sweeper	-	-	-	-	-
Power Equipment Operators:					
Asphalt Distributor	8.95	7.15	8.00	6.85	7.00
Asphalt Paving Machine	7.65	7.25	6.50	6.95	7.90
Broom or Sweeper Operator	-	5.50	8.00	5.75	-
Bulldozer 150 HP & Less	7.50	8.80	7.00	8.00	7.45
Bulldozer over 150 HP	7.90	-	8.25	7.35	8.70
Concrete Paving Curing Machine	7.60	-	-	7.00	7.10
Concrete Paving Finishing Machine	7.95	-	-	-	7.95
Concrete Paving Form Grader	7.25	-	-	-	-
Concrete Paving Grinder	-	-	-	-	7.35
Concrete Paving Joint Sealer	-	-	-	-	7.85
Concrete Paving Longitudinal Float	-	-	-	-	7.00
Concrete Paving Mixer	8.00	-	-	-	-
Concrete Paving Saw	7.50	7.00	-	-	7.50
Concrete Paving Spreader	8.50	-	-	-	8.50
Paving Sub Grader	8.00	-	-	-	-
Crane,Clamshell,Backhoe,Derrick, Dragline,Shovel(less than 1½ CY)	7.60	7.05	7.50	7.10	8.30
Crane,Clamshell,Backhoe,Derrick, Dragline,Shovel(1½ CY & Over)	8.05	8.50	8.40	9.00	9.20
Crusher or Screening Plant Op.	-	-	-	-	-
Elevating Grader	-	-	-	-	-
Farm Loader	-	-	-	-	-
Foundation Drill Operator (Crawler Mounted)	-	-	-	-	11.25
Foundation Drill Operator (Truck Mounted)	8.75	10.00	9.10	-	9.00
Foundation Drill Operator Helper	-	7.00	-	-	-
Front End Loader (2½ CY & Less)	6.95	6.85	6.40	6.45	6.95
Front End Loader (Over 2½ CY)	7.60	8.20	7.00	7.10	7.90
Mixer (Over 16 CF)	7.75	-	-	-	6.35
Mixer (16 CF & Less)	-	-	-	-	5.75
Motor Grader Operator, Fine Grade	8.35	8.70	8.15	8.45	8.80
Motor Grader Operator	7.90	7.55	7.40	7.65	8.35
Roller, Steel Wheel (Plant-Mix Pavement)	7.60	6.40	6.25	5.65	6.95
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	6.95	6.30	6.50	5.60	6.05
Roller, Pneumatic(Self-Propelled)	6.45	6.10	8.50	5.85	6.50
Scrapers (17 CY & Less)	6.55	6.45	6.15	6.10	6.50
Scrapers (Over 17 CY)	7.00	8.90	7.00	7.00	7.50
Self Propelled Hammer	-	-	-	-	-

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Side Boom	-	5.10	-	-	-
Tractor (Crawler Type) 150 HP & Less	6.50	6.15	-	-	6.50
Tractor (Crawler Type) Over 150 HP	7.35	7.05	-	5.50	7.90
Tractor (Pneumatic) 80 HP & Less	6.00	5.10	-	-	6.10
Tractor (Pneumatic) Over 80 HP	-	-	-	-	7.80
Traveling Mixer	6.50	5.75	-	6.00	6.50
Trenching Machine, Light	-	-	-	5.50	7.00
Trenching Machine, Heavy	6.25	-	-	-	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	-	-	-	-
Truck Drivers:					
Single Axle, Light	6.35	5.85	6.10	5.95	6.20
Single Axle, Heavy	6.80	6.70	-	-	7.10
Tandem Axle or Semi-trailer	6.95	6.70	6.55	6.00	6.75
Lowboy-Float	7.50	7.00	7.00	-	7.05
Transit-Mix	6.50	-	-	-	7.35
Winch	-	7.00	-	-	-
Vibrator Operator (Hand Type)	6.00	-	-	-	-
Welder	7.55	-	7.25	-	8.50
Welder Helper	-	-	-	-	7.00

Unlisted classifications needed for work not included within the scope of the classifications listed may be added only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Operator	-				
Asphalt Heater Operator	-				
Asphalt Raker	9.00				
Asphalt Shoveler	-				
Batching Plant Scale Operator	-				
Carpenter	8.65				
Carpenter Helper	6.95				
Concrete Finisher (Paving)	9.00				
Concrete Finisher Helper (Paving)	8.00				
Concrete Finisher (Structures)	8.75				
Concrete Finisher Helper (Structures)	-				
Concrete Rubber	-				
Electrician	-				
Electrician Helper	-				
Form Builder (Structures)	-				
Form Builder Helper (Structures)	-				
Form Liner (Paving & Curb)	-				
Form Setter (Paving & Curb)	-				
Form Setter Helper (Paving & Curb)	-				
Form Setter (Structures)	7.30				
Form Setter Helper (Structures)	-				
Laborer, Common	6.20				
Laborer, Utility	6.65				
Manhole Builder, Brick	8.00				
Mechanic	10.40				
Mechanic Helper	7.25				
Oiler	-				
Servicer	7.85				
Painter (Structures)	-				
Piledriver Person	-				
Pipelayer	7.00				
Pipelayer Helper	-				
Pneumatic Mortar Operator	-				
Blaster	-				
Blaster Helper	-				
Reinforcing Steel Setter (Paving)	7.50				
Reinforcing Steel Setter (Structures)	-				
Reinforcing Steel Setter Helper	-				
Steel Worker (Structural)	-				
Steel Worker Helper (Structural)	-				
Sign Erector	-				
Spreader Box Operator	-				
Swamper	-				

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Power Equipment Operators:					
Asphalt Distributor	8.00				
Asphalt Paving Machine	10.00				
Broom or Sweeper Operator	-				
Bulldozer 150 HP & Less	8.45				
Bulldozer Over 150 HP	10.25				
Concrete Paving Curing Machine	-				
Concrete Paving Finishing Machine	-				
Concrete PavingForm Grader	-				
Concrete Paving Grinder	-				
Concrete Paving Joint Sealer	-				
Concrete Paving Longitudinal Float	-				
Concrete Paving Mixer	-				
Concrete Paving Spreader	-				
Paving Sub Grader	-				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (Less than 1¼ CY)	8.70				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1¼ CY & Over)	9.95				
Crusher or Screening Plant Operator	-				
Elevating Grader	-				
Foundation Drill Operator (Crawler Mounted)	-				
Foundation Drill Operator (Truck Mounted)	-				
Foundation Drill Operator Helper	-				
Front End Loader (2½ CY & Less)	8.15				
Front End Loader (Over 2½ CY)	8.[illegible]				
Mixer (Over 16 CF)	-				
Mixer (16 CF & Less)	-				
Motor Grader Operator, Fine Grade	10.50				
Motor Grader Operator Operator	8.50				
Roller, Steel Wheel (Plant-Mix Pavements)	-				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	-				
Roller, Pneumatic (Self-Propelled)	6.50				
Scrapers (17 CY & Less)	-				
Scrapers (Over 17 CY)	-				
Self-Propelled Hammer	-				
Side Boom	-				
Tractor (Crawler Type) 150 HP & Less	-				
Tractor (Crawler Type) Over 150 HP	-				
Tractor (Pneumatic) 80 HP & Less	-				
Tractor (Pneumatic) Over 80 HP	-				

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Traveling Mixer	-				
Trenching Machine, Light	-				
Trenching Machine, Heavy	-				
Wagon Drill, Boring Machine or Post Hole Driller Operator	-				
Truck Drivers:					
Single Axle, Light	6.80				
Single Axle, Heavy	7.10				
Tandem Axle or Semitrailer	7.00				
Lowboy-Float	10.90				
Transit-Mix	-				
Winch	-				
Vibrator Operator (Hand Type)	-				
Welder	10.60				
Welder Helper	-				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(A)(1)(ii)).

AREA COVERED BY VARIOUS ZONES

ZONE 1 - Archer, Armstrong, Baylor, Briscoe, Carson, Castro, Childress, Clay, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Montague, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita & Wilbarger Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 2 - Bailey, Borden, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Foard, Gaines, Garza, Hale, Haskell, Hockley, Jones, Kent, King, Knox, Lamb, Lubbock, Lynn, Motley, Scurry, Shackelford, Stephens, Stonewall, Terry, Throckmorton, Yoakum & Young Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 3 - Andrews, Brown, Callahan, Coke, Coleman, Comanche, Concho, Crane, Crockett, Eastland, Ector, Erath, Glasscock, Howard, Irion, Kimble, Loving, Martin, McCulloch, Menard, Midland, Mills *, Mitchell, Nolan, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Taylor, Tom Green, Upton, Ward & Winkler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used for work on water or sewage treatment plant or lift/pump stations in Mills County

---

ZONE 4 - Brewster, Culberson, El Paso *, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves & Terrell Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams), Water & sewer lines and Highway Projects (does not include building structures in rest area projects)

*Not to be used for Heavy Projects in El Paso County

ZONE 5 - Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Guadalupe, Kendall, Kerr, Kinney, LaSalle, Maverick, McMullen, Medina, Real, Uvalde, Val Verde, Wilson & Zavala Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 6 - Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy & Zapata Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

---

ZONE 7 - Aransas, Bee, Calhoun, DeWitt, Goliad, Jackson, Jim Wells, Karnes, Kleberg, Lavaca, Live Oak, Nueces, Refugio, San Patricio & Victoria Counties

DESCRIPTION OF WORK - Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

---

ZONE 8 - Austin, Bastrop, Blanco, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales, Hays, Lee, Llano, Mason, Travis & Williamson * Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used on work on water or sewage treatment plant or lift pump Stations in Williamson Co

---

ZONE 9 - Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone, McLennan & Navarro Counties

DESCRIPTION OF WORK Heavy (exluding tunnels, dam & work on water or sewage treatment plant or lift/pump stations) and Highway Projects (does not include building structures in rest area projects)

ZONE 10 - Cooke, Denton, Hood, Jack, Johnson, Palo Pinto, Parker, Sommervell, Tarrant * and Wise Counties

DESCRIPTION OF WORK: Heavy (exluding tunnels & dams), Water & Sewer Lines and Highway Projects (does not include building structures in rest area projects)
*Not to beused for Heavy Projects in Tarrant County

ZONE 11 - Collin, Dallas, Ellis, Grayson & Rockwall Counties

DESCRIPTION OF WORK: Water & sewer lines & Highway Construction Projects Only

---

ZONE 12 - Bowie, Camp, Cass, Delta, Fannin, Franklin, Gregg, Harrison, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Rains, Red River, Rusk, Smith, Titus, Upshur, Van Zandt & Wood Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 13 - Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Panola, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity & Tyler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

---

ZONE 14 - Brazos, Burleson, Grimes, Leon *, Madison, Milam *, Robertson *, Walker & Washington Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used for work on water or sewage treatment plant or lift/pump stations in Leon, Milam & Robertson Cos.

ZONE 15 -Brazoria, Fort Bend, Galveston, Harris, Matagorda, Montgomery, Waller & Wharton Counties

DESCRIPTION OF WORK: Highway Construction Projects Only

ZONE 16 - Chambers, Hardin, Jefferson *, Liberty & Orange * Counties

DESCRIPTION OF WORK: Heavy Projects (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

*Not to be used for Heavy Projects & Incidental Shore Work in Jefferson & Orange Cos.

SUPERSEDEAS DECISION

STATE: RHODE ISLAND COUNTIES: STATEWIDE
DECISION NO. RI84-3043 DATE: DATE OF PUBLICATION
Supersedes Decision No. RI83-3042 dated August 19, 1983, in 48 FR 37809.
DESCRIPTION OF WORK: Building (including Residential), Heavy, Highway, and Marine Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.63	4.13
BOILERMAKERS	18.16	1.815 +10%
BRICKLAYERS, STONEMASONS;		
HEAVY & HIGHWAY CONST.	14.35	4.78
BUILDING CONSTRUCTION	15.62	4.78
CARPENTERS, SOFT FLOOR LAYERS, PILEDRIVERMEN:		
Building Construction	14.75	4.55
Residential Construction (4 stories or less)	11.80	4.55
Heavy & Highway Construction	14.80	4.55
CEMENT MASONS: (Building Construction)	15.37	4.48
ELECTRICIANS		
Tiverton & Little Compton	15.75	2.00+ 16.5%
Westerly Township	18.10	4.65+ 3.5%
Remainder of State	16.85	0.04+ 15%
ELEVATOR CONSTRUCTORS	17.464	3.00+ a+b
ELEVATOR CONSTRUCTORS HELPERS	70%JR	3.00+ a+b
GLAZIERS (BUILDING CONSTRUCTION):	16.08	2.53
LABORERS:		
Laborers; Carpenters Tenders; Cement Finisher Tenders; Mason Tenders; Scaffold Erectors & Wrecking Laborers	13.45	2.80
Asphalt Rakers; Adzeman; Pipe-Trench Bracers; Demolition Burners; Chain Saw Ops.; Fence & Guard Rail Erectors; Setters of Metal Forms for Roadways; Pipelayers; Riprap & Dry Stonewall Builders; Highway Stone Spreaders Pneumatic Tools Ops.; Wagon Drill Ops., Tree Trimmers; Barco Type Jumping Tampers; Mechanical Grinder Ops., Plasterers' Tenders; Scaffold Builders; Mortar Mixers	13.70	2.80
Pre-cast Floor & Roof Plank Erectors	13.95	2.80
Air Track Ops.; Block Pavers; Rammers; & Curb Setters	14.20	2.80
Blasters; Powdermen	14.45	2.80
HEAVY & HIGHWAY CONSTRUCTION): LABORERS		
Laborers; Carpenters Tenders; Cement Finisher Tenders; Mason Tenders; Scaffold Erectors & wrecking laborers	13.45	2.80
Concrete & Power Buggy Ops.; Concrete Saw Ops.; Demolition Burners; Fence & Guard Rail Erectors; Highway Stone Spreaders; Mason Tenders; Mechanical Grinder Ops.; Mortar Mixers; Pipe Trench Bracers; Pneumatic Tool Ops.; Riprap & Dry Stone wall Builders; Scaffold Erectors; Setters of Metal Forms for Roadways; Wagon Drill Ops.; Wood Chipper Ops.;	13.70	2.80
Air Track Drill Ops.; Brick Pavers; Block Pavers; Rammers; Curb Setters	14.20	2.80
Blaster & Powdermen	14.45	2.80
LINE CONSTRUCTION:		
Lineman	18.00	2.10+ 4.375%
Cable Splicer; Driver; Equipment Op.; Groundman	15.30	2.10+ 4.375%
Groundman	14.40	2.10+ 4.375%

DECISION NO. RI84-3043

	Basic Hourly Rates	Fringe Benefits
MARBLE SETTERS, TERRAZZO WORKERS & TILE SETTERS	16.37	4.78
MARBLE, TILE & TERRAZZO FINISHERS	13.76	2.50
MARINE DIVERS	24.00	3.55
MILLWRIGHTS (Building Construction)	15.00	4.55
MILLWRIGHTS (Heavy & Highway Construction)	14.80	4.55
PAINTERS:		
Adamsville, Compton, Little Compton, North Tiverton, Sakonnet, Tiverton:		
Brush; Tapers	15.55	2.65
Sandblasting; Spray Steel	16.55	2.65
Remainder of State:	15.80	2.65
Brush; Roller; Tapers	15.55	1.65+ 1.5%
Structural Steel; Steam Cleaning	15.80	1.65+ 1.5%
Air Brush	16.05	1.65+ 1.5%
Spray; Sand or Water Blasting	16.55	1.65+ 1.5%
PAINTERS, SIGN; Bristol, Kent & Providence Counties	9.65	1.08+ c+d
POINTERS, CAULKERS and CLEANERS	15.17	4.03
PLUMBERS	17.22	5.16
POWER EQUIPMENT OPERATORS:		
Digging Machine; Ross Carriers; Cranes; Pile-Drivers; Lighters; Locomotives; Derricks; Hoists Pavers; & Front End loaders 3 yds. and over	16.515	3.10
Economobile Type Equipment	16.29	3.10
Fork Lift	16.09	3.10
Firemen and Oilers	12.09	3.10
Bulldozers; Graders; Spreaders; Tractors; Scrapers and Rollers	15.09	3.10
Front-end Loaders less than 3 yards	15.59	3.10
Pipping Type Backhoe	15.44	3.10
Well-point Installation	15.16	3.10
Gas or Electric Driven Pumps; Air Compressors; Heaters; Concrete Mixers; Concrete Pumps; Stone Crusher; Welding Machines & Generators for Light Plants	12.14	3.10
	12.84	3.10
BRIDGES, CAISSONS, DOCKS, MARINES PIERS, SUB-BASEMENT SUBTERRANEAM, TUNNELLS, & HEAVY CONSTRUCTION		
Digging Machine; Cranes; Pile Driver; Lighters; Locomotives; Derricks; Hoists; Pavers; & Front End Loaders, 3 yds. & Over	17.24	3.10
Firemen and Oilers	12.865	3.10
Bulldozers; Graders; Spreaders; Scrapers; Rollers	15.79	3.10
Front-end Loaders, Less than 3 yards	16.29	3.10
Well-point Installation Crews	15.965	3.10
Air Compressors, Gas or Electric Driven Pumps	12.59	3.10
Heaters; Concrete Mixers; Concrete Pumps; Stone Crushers; Welding Machines; and Generators for Light Plants	13.[illegible]	3.10
Boat and Tug Operators	11.115	3.10
WATER AND SEWERLINE PROJECTS, HIGHWAY AND BRIDGE INCIDENTAL TO HIGHWAY CONSTRUCTION PROJECTS		
Class 1	16.471	3.10
Class 2	14.[illegible]	3.10
Class 3	15.[illegible]	3.10
Class 4	11.[illegible]	3.10
Class 5	14.95	3.10
Class 6	15.45	3.10
Class 7	15.07	3.10
Class 8	15.05	3.10
Class 9	12.57	3.10
Class 10	14.05	3.10
Class 11	13.[illegible]	3.10
Class 12	14.52	3.10
Class 13	14.45	3.10
Class 14	14.[illegible]	3.10
Class 15	11.745	3.10

DECISION NO. RI-84-3043

	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Composition; Water-Proofers	14.80	4.25
Slate, Tile, Precast Concrete	15.00	4.25
SHEET METAL WORKERS	17.00	6.16
SPRINKLERFITTERS	19.01	3.16
STEAMFITTERS	17.28	5.65
TRUCK DRIVERS (Building Construction)		
Dump & Two Axle Equipment Drivers	11.64	2.2925
Trailers & Three Axle Equipment Drivers	11.72	2.2925
Low Bed Trailers (24 Ton Rated Cap. & Over) I Beam Trailers Specialized Earth Moving Equipment - Euclid Type	11.97	2.2925
Euclid Type Equipment Over 35 Ton capacity	12.22	2.2925
TRUCK DRIVERS (Heavy and Highway Construction)		
Class I	11.26	3.2225 +f+g
Class II	11.41	3.2225 +f+g
Class III	11.46	3.2225 +f+g
Class IV	11.56	3.2225 +f+g
Class V	11.66	3.2225 +f+g
Class VI	11.91	3.2225 +f+g
Class VII	12.16	3.2225 +f+g
PLASTERERS	15.37	4.48
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

[FR Doc. 84-31243 Filed 11-29-84; 8:45 am]
BILLING CODE 4510-27-C

DECISION NO. RI84-3043

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Class 1 - Digging Machines; Cranes; Pile Drivers; Lighters; Locomotives; Derricks; Hoists; Front End Loaders (3 to 4 yds.); Economobiles; Ross Carriers; and Pavers.

Class 2 - Forklifts

Class 3 - Firemen

Class 4 - Oilers

Class 5 - Bulldozers; Spreaders; Rollers; Tractors

Class 6 - Front End Loaders, Less than 3 yards

Class 7 - Scrapers; Graders; Dozer Pusher Operators

Clas 8 - Pippin Type Backhoe Operators

Class 9 - Gas and Electric Driven Heaters; Concrete Mixers; Stone Crushers; Light Plants; Welding Machines; Concrete Pumps

Class 10 - Mechanical and Welders (inside)

Class 11 - Bulldozers in Pits

Class 12 - Shovel Operators; Front End Loaders, 3 cubic yards and over; Dragline and Crane Operators in Material yards

Class 13 - Test Boring Machine Operators

Class 14 - Well Point Installation Crew

Class 15 - Pumps and Compressors

TRUCK DRIVERS CLASSIFICATIONS

Class I - Pick-up Trucks; Station Wagons and Panel Trucks

Class II - Two Axle, Tenders on Low Beds

Class III - Three Axle Equipment

Class IV - Four and Five Axle Equipment

Class V - Low Bed Trailers; Special Earth Moving Equipment under 35 tons; Mechanics; Paving Restoration Vehicle and Vac Haul

Class VI - Special Earth Moving Equipment 35 Tons

Class VII - Trailers when used on a double Hook-up (Pulling 2 Trailers)

DECISION NO. RI-3043

PAID HOLIDAYS: A-New Years's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:

a. 7 Paid Holidays: A through F, plus Day after Thanksgiving.

b. Employer contributes 6% basic hourly rate for 5 years or more of service; 4% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

c. 9 Paid Holidays: A through F, plus V.J. Day; Columbus Day; & Veterans Day

d. One year's seniority - one week's paid vacation; 2 years' seniority - 2 weeks' paid vacation

e. 7 Paid Holidays: A through F, plus Columbus Day provided employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday.

f. Holidays: A through F; Washington's Birthday, Columbus Day, Veteran's Day. V-J Day, providing Employee has worked at least One Day in the Calendar Week in which the Holiday Falls.

g. Employee who has been on the Payroll for 1 year or more but less than 5 years and has worked 150 Days during the last Year of Employment shall receive 1 week's paid Vacation; 5 to 10 years - 2 weeks' paid Vacation; 10 or more years - 3 weeks' paid Vacation

federal register

Friday
November 30, 1984

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71, 91, 103, and 105
Special Federal Aviation Regulation; Airport Radar Service Areas; Final Rule; Request for Comments and Notices of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71, 91, 103, and 105

[Docket No. 23708, SFAR 45-1]

Special Federal Aviation Regulation; Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends Special Federal Aviation Regulation (SFAR) No. 45 to retain the Airport Radar Service Areas (ARSA) at Columbus OH, and Austin, TX, beyond their respective termination dates of December 22, 1984, and January 19, 1985. As a result of a successful operational confirmation of the ARSA concept at these sites, the FAA is taking regulatory action to propose that existing Terminal Radar Service Areas (TRSA) be replaced by ARSA's. An extension of SFAR No. 45 is necessary to continue the Columbus and Austin ARSA's during the rulemaking process, and to preclude the confusion to pilots that would result from the temporary reversion to TRSA's at these locations. No other changes are being made to the provisions of SFAR No. 45.

EFFECTIVE DATES: December 21, 1984, through June 20, 1985; comments must be received before December 15, 1984.

ADDRESSES: Comments may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 23708, 800 Independence Avenue SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Davis, Airspace Rules and Aeronautical Information Division, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this operational confirmation by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23708." The postcard will be date/time stamped and returned to the commenter. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking action on any further rulemaking. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompasses a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (July 26, 1983; 48 FR 34286) proposing the establishment of Airport Radar Service Areas (ARSA) at Columbus, OH, and Austin, TX. These locations were designated ARSA's by SFAR No. 45 (October 26, 1983; 48 FR 50036) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Need for Amendment to SFAR No. 45

The FAA has determined that the confirmation of the ARSA conducted under SFAR No. 45 indicates the benefits of national applicability. The FAA has, therefore, proposed amendments to the Federal Aviation Regulations (FAR) which would establish the mechanics for designating ARSA locations and rules governing operations within the airspace of an ARSA. These proposed amendments are in the form of a Notice of Proposed Rulemaking (NPRM) and are being issued coincidental with this action. If, after considering public comments on the proposed amendments, the FAA elects not to adopt the amendments, the FAA will take action to revoke the Columbus and Austin ARSA's. Alternatively, if the proposed amendments are adopted, the SFAR will be superseded by a final rule. The FAA believes that the SFAR should be continued for a sufficient time to complete the rulemaking process on the general amendments. Extending the SFAR to cover the period in which the national ARSA program is being proposed and considered will provide continuity of ATC services at the two current ARSA locations and continuity of the rules for operating in the airspace around these airports, and will prevent confusion on the part of pilots using the airports.

The SFAR establishing the temporary Austin and Columbus ARSA's will expire on December 21, 1984, and January 18, 1985, respectively. Because these areas were established after full public notice and comment and are being extended for no more than 6 months, and because a temporary expiration of ARSA procedures at these locations could adversely affect air safety, I find that notice and public procedure are contrary to the public interest, and that good cause exists for making the extension effective in less than 30 days.

Since this is only a 6-month extension of an existing temporary regulation affecting only two locations, the FAA has determined that this document involves a regulation which: (1) Is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the same reason stated above, I certify that the rule will not have a significant economic impact on a substantial number of small entities. The total projected impact of this regulation may be found in a copy of the final regulatory evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified above under the caption, "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 91

Air traffic control, Airports, Aviation safety, Flight rules.

14 CFR Part 103

Aircraft, Aviation safety, Recreation and recreation areas, Ultralights.

14 CFR Part 105

Aircraft, Aviation safety, Recreation and recreation areas, Parachute jumps.

Accordingly, SFAR No. 45-1 supersedes SFAR No. 45, is effective December 21, 1984, through June 20, 1985, and is added to 14 CFR Parts 71, 91, 103, and 105.

Special Federal Aviation Regulation No. 45-1

Contrary provisions of the Federal Aviation Regulations notwithstanding,

1. The Robert Mueller Municipal Airport, Austin, TX, and the Port Columbus International Airport, Columbus, OH, are designated Airport Radar Service Areas (ARSA) airports at which, unless otherwise provided for in a Notice to Airmen issued by the ARSA facility, radar services will be provided continuously.

2. For purposes of this Special Federal Aviation Regulation:

(a) The Austin, TX, ARSA is that airspace extending upward from the surface to and including 4,800 feet MSL within a 5 nautical mile radius of the Robert Mueller Municipal Airport and that airspace extending upward from 2,000 feet MSL to 4,800 feet MSL, within a 10 nautical mile radius of Robert Mueller Municipal Airport from the 027° true bearing from the airport clockwise to the 077° true bearing from the airport and that airspace extending upward from 2,300 feet MSL to 4,800 feet MSL within a 10 nautical mile radius of the airport from the 207° true bearing from the airport clockwise to the 027° true bearing from the airport.

(b) The Columbus, OH, ARSA is that airspace extending upward from the surface to and including 4,800 feet MSL within a 5 nautical mile radius of the Port Columbus International Airport and that airspace extending upward from 2,500 feet MSL to 4,800 feet MSL within a 10 nautical mile radius of Port Columbus International Airport from the 008° true bearing from the airport clockwise to the 122° true bearing from the airport and that airspace extending upward from 2,200 feet MSL to 4,800 feet MSL within a 10 nautical mile radius of the airport from the 127° true bearing from the airport clockwise to the 008° true bearing from the airport.

(c) The primary airport is the airport for which the ARSA is designated; a satellite airport is any other airport, heliport, helipad, etc., within that ARSA.

3. Unless otherwise authorized or required by ATC—

(a) Arrivals and Overflights—no person may operate an aircraft in an ARSA unless two-way radio communication is established with ATC prior to entering that ARSA and is thereafter maintained with ATC while within that ARSA;

(b) Departures—no person may operate an aircraft within an ARSA unless two-way radio communication is maintained with ATC while within that ARSA, except that for aircraft departing a satellite airport, two-way radio communication is established as soon as practicable and thereafter maintained with ATC while within that ARSA;

(c) ATC Instructions and Clearances—except in an emergency, no person may, while within an ARSA, operate an aircraft contrary to an ATC clearance or instruction;

(d) Traffic Patterns—no person may takeoff or land an aircraft within an ARSA except in compliance with FAA arrival and departure traffic patterns; and

(e) Ultralight Vehicle and Parachute Jump Operations—no person may operate an ultralight vehicle within, or make a parachute jump within or into, an ARSA except under the terms of an ATC authorization issued by the ATC facility having jurisdiction over that ARSA.

4. In addition to the required preflight actions of FAR Section 91.5, each pilot in command shall review NOTAM's pertaining to flight within an ARSA prior to conducting flight in an ARSA.

This SFAR terminates at 12:01 a.m. local time on June 21, 1985, unless sooner superseded or rescinded.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; and 14 CFR 11.65).

Issued in Washington, D.C., on November 20, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 84-31380 Filed 11-27-84; 3:01 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-31]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at three locations concurrently with the promulgation of proposed operating rules for flight in such areas by separate rulemaking. These proposed designations and rules should, therefore, be considered together. In taking these actions, the FAA is adopting several National Airspace Review (NAR) Terminal Task Group 1-2.2 recommendations. This notice also announces the date, time, and location of an informal airspace meeting which will be held in conjunction with this proposal.

DATE: Comments must be received on or before December 24, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 84-AWA-31, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting in Baltimore, MD, on December 12, 1984, to receive additional input with respect to the proposal.

Note.—The FAA has determined that similar meetings at Austin and Columbus are not necessary in that ARSA's have already been established under separate rulemaking and were the subject of several user meetings in their respective areas.

Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The meeting will begin at 9:00 a.m. (local time). There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space available basis. The FAA representative may accelerate the meeting agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A copy of a summary of the meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the FAA representative. Participants submitting handout materials must present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Public Meeting Schedule

The schedule for the meeting is as follows:

Date: December 12, 1984, 9:00 a.m. to 4:00 p.m.

Place: Holiday Inn, 890 Elkridge Landing Road, Baltimore-Washington International Airport, Linthicum, MD 21090.

Agenda

9:00 to 9:15—Presentation of Meeting Procedures

9:15 to 10:00—FAA Presentation of Proposal

10:15 to 12:00—Public Presentations and Discussion

1:30 to 4:00—Public Presentation and Discussion

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Economic Impact

A draft regulatory evaluation for the proposed ARSA's has been placed in the docket. Because the proposal, as it relates to the airport at Austin, TX, and Columbus, OH, makes the ARSA's permanent at these sites and the regulatory evaluations for these sites remain valid, this summary concerns only Baltimore-Washington International Airport (BWI).

The potential cost elements as a result of implementing the ARSA at BWI may be summarized as follows:

1. Additional costs for circumnavigating or flying over the ARSA.
2. The need for some operators to purchase avionics.
3. Delay costs as a result of operating within an ARSA rather than a TRSA.
4. Costs relating to preparation of charts, notifying the public and educating pilots.
5. Controller staffing costs.

The FAA has estimated that perhaps as many as 20 aircraft per day will choose to avoid the ARSA. This can be done by flying at 4,000 feet or higher above ground level and is estimated to cost about $7,000 per year.

There are two nontowered airports within 10 miles of BWI; however, neither are located in the surface area of the ARSA. Aircraft "based" at these airports would be able to land and takeoff without having to communicate with ATC; therefore, these users will not have to have communication avionics.

An analysis of the Columbus and Austin ARSA's indicated no additional delay as a result of ARSA implementation and the same is expected for BWI. Charts and education for users is expected to have an associated one-time cost of $21,000. There would be no need for additional controllers required at BWI as a result of the ARSA but there would be a one time training cost of $20,000. The estimated annual cost including annualization of one-time costs is estimated to be $14,000 per year.

The primary benefit of an ARSA at BWI would be a reduction in the midair collision risk. This benefit is derived from the reduction in nonparticipating aircraft operating close to the primary airport and its associated approach and departure courses. The reduction in midair collision risk at BWI has not been estimated. It involves estimating the future collision risk at BWI under present TRSA conditions and determining how much this risk will be reduced by the ARSA. At Columbus it was estimated that there is a 75 percent reduction in midair collision risk as a result of implementing an ARSA at the site. The FAA believes that similar results can be achieved at BWI. Because the cost is minimal, $14,000 per year, and the midair collision risk reduction is significant, although not quantitatively estimated as yet, the FAA believes that the benefits of implementing an ARSA at BWI outweigh the stated estimated costs.

Trade Impact Analysis

The proposal only affects airspace within the United States. This proposal will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the U.S. and will not impact sales of U.S. aviation products or service in foreign countries.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to insure that small entities are not disproportionately affected by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The FAA criterion for a "significant" impact is $3,400/year in 1983 dollars. A "substantial" number is at least 11 operators and at least one third of the small entities subject to the rule. The total economic impact to the many users is estimated to be $14,000/year. This impact does not meet the threshold for significant impact and, therefore, does not have "a significant economic impact on a substantial number of small entities."

Related Rulemaking

This NPRM concerns the designation of certain airspace as ARSA's. On this date, a separate NPRM was issued proposing to establish the definition of and operating rules for an ARSA. These two NPRM's should be read together for a full understanding of the impact of this notice. Because this notice proposes designation of airspace not provided in current Federal Aviation Regulations, this proposal will not be adopted as a final rule unless the related proposal is also adopted.

The Proposal

The FAA is considering an amendment to § 71.501 (proposed under Notice No. 84-22) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate an ARSA for the Robert Mueller Municipal Airport, Austin, TX; the Port Columbus International Airport, Columbus, OH; and the Baltimore-Washington International Airport, Baltimore, MD. Currently ARSA's are in place at the Austin and Columbus airports on a temporary basis. They were designated under Special Federal Aviation Regulations (SFAR) No. 45 (October 28, 1983; 48 FR 50038) which was issued to operationally confirm certain recommendations of the National Airspace Review (NAR) Task Group 1-2.2. Under this SFAR, the ARSA's would be terminated by January 19, 1985, and the subject of airspace would revert to the nonregulatory airspace designation—Terminal Radar Service Area (TRSA).

The FAA recognizes that allowing these ARSA's to revert to TRSA's prior to a national disposition of the ARSA program would not be in the public interest. Further, the FAA believes that, by proposing to codify the Columbus and Austin ARSA's as permanent designations coincidentally with proposing the ARSA designation rules and the rules governing flight activity in an ARSA, local users stand to benefit. Therefore, the FAA, coincidentally with this action, has also extended the temporary designations of Columbus and Austin as ARSA's through June 28, 1985. Thus, the aviation community in these areas will benefit from the continuity of rules, airspace designations, ATC procedures, and ATC services while rulemaking is being accomplished to adopt the ARSA program on a national basis. The rules for designating an ARSA and for governing flight operations within an ARSA are proposed in a separate NPRM issued on this date. The adoption of these designations is dependent on the adoption of the rules proposed in the related notice. Additionally, the FAA believes that as a result of recent air traffic experience in the Baltimore area, users there would also benefit from early establishment of an ARSA. The Baltimore-Washington International Airport is high on the list of ARSA candidate locations under the criteria recommended by the NAR task group. Also, the proximity of this airport to FAA headquarters would facilitate the development of procedures which would be utilized by FAA field elements in further implementing the adopted NAR recommendations pertaining to ARSA's. Section 71.501 of Part 71 of the Federal Aviation Regulations would be included in FAA Handbook 7400.6 on the next planned republication date.

The FAA has determined that this proposed regulation only involves a proposed body of technical regulations for which frequent and routine amendments would be necessary to keep them operationally current. It, therefore is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reason stated under the heading "REGULATORY FLEXIBILITY DETERMINATION," I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The anticipated impact may be found in a copy of the draft regulatory evaluation

contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 71

Airspace; Navigation (air), Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.501 (proposed under Notice No. 84–22) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Robert Mueller Municipal Airport, Austin, TX [New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-nautical-mile radius of the Robert Mueller Municipal Airport and the airspace extending upward from 2,000 feet MSL to 4,600 feet MSL within a 10-nautical-mile radius of Robert Mueller Municipal Airport from the 027°T(020°M) bearing from the airport clockwise to the 207°T(200°M) bearing from the airport and that airspace extending upward from 2,300 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the airport from the 207°T(200°M) bearing from the airport clockwise to the 027°T(020°M) bearing of the airport.

Port Columbus International Airport, Columbus, OH [New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-nautical-mile radius of the Port Columbus International Airport and that airspace extending upward from 2,500 feet MSL to 4,800 feet MSL with a 10-nautical-mile radius of the Port Columbus International Airport from the 008°T(010°M) bearing from the airport clockwise to the 127°T(129°M) bearing from the airport and that airspace extending upward from 2,200 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the airport from the 127°T(129°M) bearing from the airport clockwise to the 008°T(010°M) bearing from the airport.

Baltimore-Washington International Airport, Baltimore, MD [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-nautical-mile radius of the Baltimore-Washington International Airport (lat. 39°10'30"N., long. 76°40'10"W.) and that airspace extending upward from 1,300 feet MSL to 4,200 feet MSL within a 10-nautical-mile radius of the Baltimore-Washington International Airport from the 012°T(020°M) bearing from the airport clockwise to the 192°T(200°M) bearing from the airport and that airspace extending upward from 1,700 feet MSL to 4,200 feet MSL within a 10-nautical-mile radius of the airport from the 192°T(200°M) bearing from the airport clockwise to the 012°T(020°M) bearing from the airport clockwise to the 012°T(020°M) bearing from the airport, excluding the airspace within and beneath the Washington D.C., Terminal Control Area.

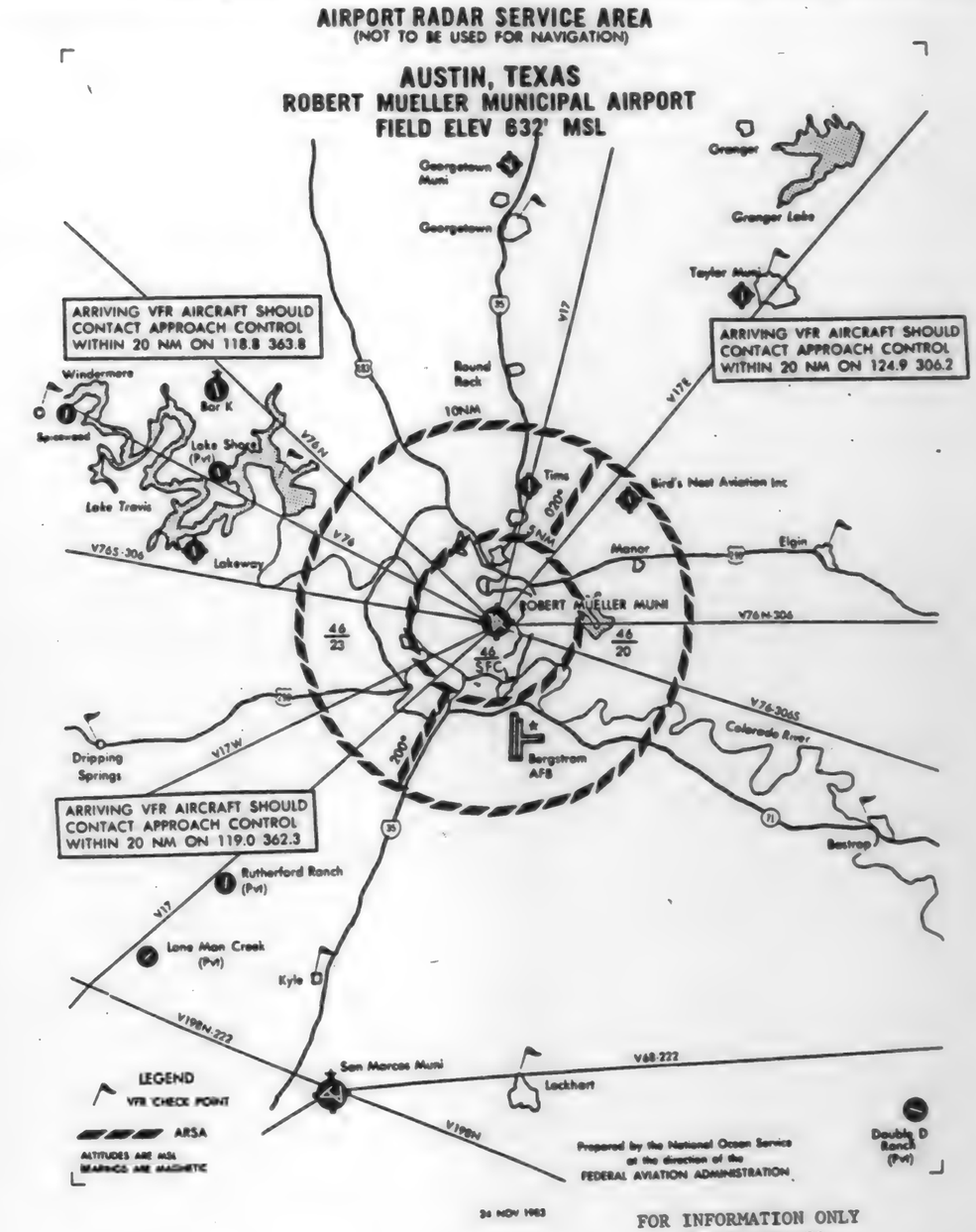
(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 13, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

PORT COLUMBUS INTL. AIRPORT
COLUMBUS, OHIO
FIELD ELEV. 816 MSL



LEGEND

VFR CHECK POINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

FOR INFORMATION ONLY
ASD 84-AWA-31
2 of 3

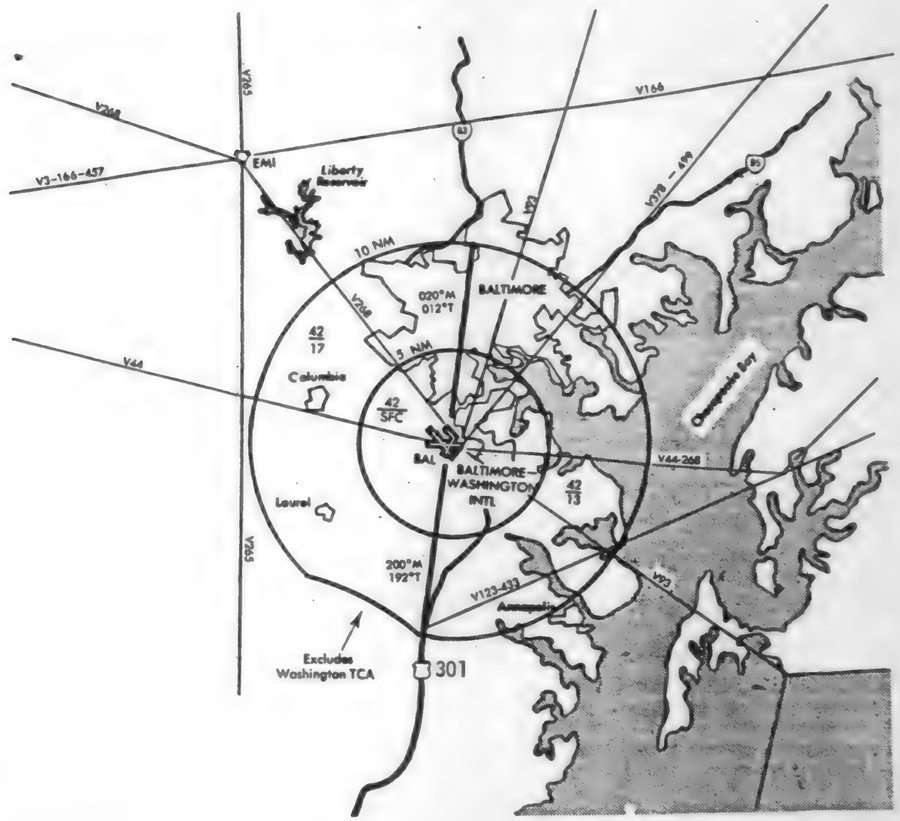
Prepared by the National Ocean Service
at the direction of the
FEDERAL AVIATION ADMINISTRATION

SE NOV 1983

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

BALTIMORE, MARYLAND
BALTIMORE WASHINGTON INTERNATIONAL AIRPORT
FIELD ELEV. 146' MSL



FOR INFORMATION ONLY
ASD 84-AWA-31
3 of 3

[FR Doc. 84-31389 Filed 11-27-84; 3:01 pm]
BILLING CODE 4910-13-C

14 CFR Parts 71, 91, 103, and 105

[Docket No. 23708; Notice No. 84-22]

Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is considering the adoption of certain National Airspace Review (NAR) recommendations concerning air traffic rules governing flight operations within airspace that would be designated as "airport radar service areas." This notice proposes to define "airport radar service area" and establish air traffic rules for operation within such an area. Specific designations of individual airport radar service areas will be proposed in separate notices of proposed rulemaking. The initial airport radar service areas are proposed in Airspace Docket No. 84-AWA-31 for the Robert Mueller Municipal Airport, Austin, Texas; the Port Columbus International Airport, Columbus, Ohio; and the Baltimore Washington International Airport, Baltimore, Maryland. These initial proposed designations would be followed at a later date by one or more notices proposing airport radar service areas for other locations identified in Special Federal Aviation Regulation No. 45 [48 FR 50038].

DATE: Comments must be received on or before December 24, 1984.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 23708, 800 Independence Avenue SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Davis, Airspace-Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited in the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23708." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The three main objectives of the NAR are:

(1) To develop and incorporate into the air traffice system a more efficient relationship between traffic flows, airspace allocation, and system capacity. This will involve the use of improved air traffic flow management to maximize system capacity and improve airspace management.

(2) To review and eliminate, wherever possible, governmental restraints to system efficiency levied by Federal Aviation Regulations (FAR) and FAA directives—reducing complexity and simplifying the ATC system.

(3) To revalidate ATC services within the national Airspace System with respect to state-of-the-art and future technological improvements. This will entail a complete review of separation criteria, Terminal Control Area/Terminal Radar Service Area (TCA/TRSA) requirements, Instrument Flight Rules/Visual Flight Rules (IFR/VFR) services to the pilot, etc.

Organizations participating in the NAR task group are:

Federal Aviation Administration
Department of Defense
Air Transport Association
National Business Aircraft Association
Regional Airline Association
Aircraft Owners and Pilots Association
Experimental Aircraft Association
Helicopter Association International

NAR Recommendations Pertaining to the Proposal

The comprehensive plan contains an administrative structure and detailed task assignments which have resulted in recommendations to the FAA, including the NAR Task Group 1-2.2 recommendations set forth below which are the subject of this NPRM.

NAR 1-2.2.1 Replace TRSA's With Airport Radar Service Areas (ARSA's)

"The Task Group Recommends that the current Terminal Radar Service Area (TRSA) program,—Airspace and Services—be discontinued. The Task Group further recommends that the concept identified herein as [airport radar service area (ARSA)] be implemented as replacement for the TRSA program in accordance with the recommendations to follow."

(The task group recommendations referred to the ARSA concept as "Model B Airspace." References to "Model B Airspace" have been replaced with the term "ARSA" for consistency with the terminology used in the proposed FAA rule.)

NAR 1-1.2.2 ARSA Size and Operating Requirements

"The Task Group recommends that the physical dimensions of [an ARSA] shall be a 10 NM radius capped at 4,000 feet height above airport (HAA) from the primary airport. This airspace shall extend down to 1200 feet above the surface except that an inner core with a 5 nautical mile radius shall extend down to the surface. Except for aircraft departing from satellite airports/heliports within [an ARSA], all aircraft shall establish two-way radio communications with ATC prior to entering [an ARSA]. Aircraft departing satellite airports/heliports within the surface area of [an ARSA] shall establish two-way radio communications with ATC as soon as possible. Pilots must comply with approved FAA traffic patterns when departing these airports."

NAR 1-2.2.3 Outer Area Limits and Operating Requirements

"The Task Group recommends that the outer limit of [the area outside of the ARSA in which ARSA services are provided by an ARSA facility] be the same dimensions as the radar/radio coverage within each approach control's delegated airspace. While strongly encouraged, two-way radio communications is *not* a VFR requirement in [this airspace] and aircraft are not restricted from entering/transiting this airspace."

NAR 1-2.2.4 ATC Services

"Services provided within [an ARSA] shall as follows: sequencing of arriving aircraft; IFR be provided standard IFR separation; IFR to VFR be provided traffic advisories and conflict resolution so that targets do not merge at the same altitude; and VFR to VFR be provided traffic advisories. Furthermore, aircraft operating outside [an ARSA but within the approach control's area of jurisdiction] will receive [ARSA] services upon establishing two-way radio communications and radar contact."

[NAR 1-2.2.5 Not applicable to this proposal]

NAR 1-2.2.6 Airspace Designation Criteria

"The Task Group recommends that, excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location. Any other location serviced by a radar approach control facility may be considered as a candidate location for [an ARSA] on the basis of a thorough staff study considering, but *not limited to*, the following:

1. Traffic mix, flow, density, and volume.
2. Airport configuration, geographical features and adjacent airspace/facilities.
3. Collision risk assessment.
4. ATC capabilities to provide [ARSA] services to the users at maximum benefit and minimum cost.

All proposed [ARSA] actions shall be subject to regional and headquarters approval. Military operated facilities will process requests through appropriate military and FAA channels. Any [ARSA] location which fails to meet the establishing criteria for its respective location for more than 12 consecutive months, shall be subject to a regulatory review to terminate the [ARSA] designation."

NAR 1-2.2.7 Charting

"The Task Group recommends for further consideration by Task Group 1-6 that all [ARSA's] be charted, and that either a visual or narrative method of identifying the [area in which ARSA services are provided by an ARSA facility] be undertaken."

NAR 1-1.2.8 Education

"The Task Group recommends the aviation community be made aware of [the ARSA program] by educational programs to support ATC operational and procedural information, phraseology, practices, and the desirability of voluntary participation. Specifically, it is recommended:

1. All FAA pilot exams and appropriate textbooks must contain a significant amount of questions and information concerning radar operation in terminal areas. Specifically, operations and procedures be included in written and practical tests for pilot certification, ratings, and reviews.
2. Specific questions and answers must be required on all flight reviews and other appropriate occasions [air carrier initial and recurrent proficiency training, pilot proficiency exams, biennial flight review, etc.) to assure that users in every aviation community have shown a current understanding of radar terminal areas and their use of these areas.
3. The FAA develop and fund a traveling air traffic team to speak to pilot groups on operations within the National Airspace System; i.e., [ARSA]. Emphasis should be given to flight instructor contact.
4. An advisory circular dealing with [the ARSA program] be published to include well presented, up-to-date information on operations in terminal airspace and that this advisory circular be given the widest possible dissemination to aviation users and organizations.
5. The Airman's Information Manual (AIM) be distributed free of charge to all fixed base operators (FBO's) at all public use airports.
6. FAA Public Affairs Office develop and promote through the general news media, aviation awareness of FAA services and publications available to the pilot and general public.
7. Facts about terminal airspace in some form of questionnaire be developed and distributed by the FAA to appropriate agencies (licensed pilots, fixed-base operators, business organizations, etc.). This questionnaire could be a public relations effort, advisory circular, or included in the Airman's Information Manual.
8. FAA continue to make available to interested pilot groups training or other audio-visual aids that deal with terminal radar operations."

A copy of the task group's report is in the public docket.

The Current Situation

A Terminal Radar Service Area (TRSA) is the airspace surrounding designated airports where ATC provides radar vectoring, sequencing, and separation on a full-time basis for all aircraft operating under IFR and participating aircraft operating under VFR. TRSA airspace and operating rules are not established by regulation and participation by pilots operating under VFR is voluntary. The NAR group recommends the replacement of all TRSA's with ARSA.

Within the National Terminal Radar Program, there are three levels of service provided to aircraft operating under VFR. The first or lowest level of service is referred to as basic radar service and consists of traffic advisories and vectoring when requested by the pilot or when suggested by ATC and accepted by the pilot. This basic radar service is provided by all commissioned terminal radar facilities as an additional service.

In addition to the basic service, certain terminal radar facilities provide radar advisory and arrival sequencing to aircraft operating under VFR. This level of service, referred to as Stage II, is intended to adjust the flow of all arriving aircraft into the traffic pattern in a safe and orderly manner and to provide radar traffic information to departing aircraft operating under VFR. Pilot participation is urged but is not mandatory.

The third and highest level of service provided to aircraft operating under VFR in the terminal radar environment is known as Stage II Service. This program offers radar sequencing and separation as well as all of the other level services to all participating aircraft operating under VFR. As with the other levels of service, pilot participation is also urged but is not mandatory. Stage III is in use at all locations identified as

TRSA's in the Airport/Facility Directory, Airman's Information Manual, and are depicted on sectional aeronautical charts.

There have been a number of problems with the TRSA program which have been identified by the task group. The task group stated that, because there are different levels of service offered within the TRSA, users are not always sure of what they are getting in terms of service; and they are not always sure of what restrictions or privileges exist, how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, generally dissimilar in dimensions and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating within relatively close proximity of the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and to the extent feasible, within standard size airspace designations.

Certain provisions of FAR § 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport in an airport area (ATA) are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates the installation of radar approach control. In the past, the FAA has resorted to special rulemaking under Part 93, or designated terminal control area (TCA) airspace in order to maintain safety and efficient utilization of airspace in high-traffic areas. These actions represent the highest level of control exercised in terminal areas. The minimum level of control at an airport with an active control tower, is the airport traffic area and the attendant requirements in FAR §§ 91.85 and 91.87. The proposed ARSA airspace and regulations represent a compromise action between those levels of control.

The ARSA Confirmation

In Notice 83-9 [July 28, 1983; 48 FR 34286], the FAA stated that it believed in the merits of the task group's recommendations, and set forth aspects of those recommendations which could be confirmed under a proposed Special Federal Aviation Regulation (SFAR) at Austin, Texas, and Columbus, Ohio. After reviewing the proposal in the light of the comments received, the FAA issued SFAR No. 45 [October 28, 1983; 48 FR 50038] to accomplish the confirmation.

The FAA contracted with Engineering and Economic Research, Inc. (EER) to analyze user operational experience with the ARSA's at Columbus and Austin. A copy of the EER analyses is in the docket. The FAA, itself, conducted random informal evaluations of ATC procedures which were also being confirmed. Informal discussion between FAA management and air traffic controllers at Columbus and Austin concerning ARSA operations and air traffic procedures were conducted routinely. These activities revealed that a significantly majority of users approve of the ARSA concept in the NAR recommendations. The FAA also conducted a detailed analysis of comparative radar data gathered before and during the confirmation at Columbus, a copy of which is in the docket, and found that the ARSA produced a significant reduction in collision risk.

Accordingly, the FAA concludes that the confirmation at Columbus and Austin indicates probable benefit of the ARSA program for users at other locations. The confirmation also revealed an ARSA to be a practical replacement for a TRSA from an ATC procedural standpoint. FAA is, therefore, adopting the NAR recommendations by proposing air traffic rules governing flight operations within designated ARSA's. The extent of the FAA's adoption of the NAR recommendation is specified under the heading, "Discussion of the NAR Recommendations."

Discussion of NAR Recommendations

The FAA's action with respect to each of the aforementioned NAR recommendations is set forth below.

NAR 1-2.2.1 Replace TRSA's With ARSA's

While the adoption of this recommendation depends on the FAA adopting all other NAR recommendations addressed herein, the FAA believes that a portion of it can be separated from those other recommendatinos and independently adopted. Therefore, the FAA intends to address only the aspect of this recommendation dealing with the discontinuance of TRSA's and allow the other recommendations to be treated individually. In that regard, all current TRSA locations would remain as such until they are cancelled or converted to ARSA's. Additionally, ATC procedures dealing with TRSA's would remain in place and aeronautical charts would continue to depict each TRSA until it is cancelled or converted. Accordingly, this recommendation is considered adopted.

NAR 1-2.2.2 ARSA Size and Operating Requirements

The physical dimensions of the ARSA and the operating requirements recommended by the task group are adopted except that the floors of the airspace between 5 and 10 miles will be segmented and expressed in altitudes above MSL instead of AGL because of variations in terrain elevations. This deviation is in the spirit of the task group's recommendations and every effort will be made to ensure that the ARSA airspace between 5 and 10 miles will be segmented only as necessary.

Additionally, some customizing of the recommended airspace size will be required due to proximity of satellite airports and other regulatory airspace designations. However, customizing will be held to the absolute minimum required and the FAA forsees no situation that would necessitate extension of the ARSA airspace beyond 10 nautical miles.

NAR 1-2.2.3 Outer Area Limits and Operating Requirements

Since the task group has not proposed any new operating requirements for this airspace, rulemaking is not required. In regard to the limits of the area within which ARSA services would be provided outside of the designated ARSA, the FAA may not always have the resources or capability to provide the ARSA service to the limits of the ARSA facility's area of jurisdiction. In some cases this area would extend as far as 90 miles. The extent of an approach control facility's radio and radar coverage is based on the handling of traffic operating under IFR. Further, the design of that airspace does not consider collision risk. While the limit that was operationally confirmed at Austin and Columbus coincided with the extent of the approach control facility's delegated airspace, the FAA believes flexibility must be retained in establishing limits because of considerations which include: Proximity to terminal control areas; clustering of ARSA's; approach control area of jurisdiction; terrain; unusually high level of activity not related to the ARSA airport operation, and radio/radar coverage. Accordingly, the limits of the airspace outside the ARSA within which ARSA services would be provided will be initially established at 20 nautical miles from the ARSA airport. In any regard, the established limits will be depicted narratively on sectional charts in a manner similar to the method used for the confirmation. The procedures for establishing the limits will be implemented under the FAA directive system; therefore, user organizations will have another opportunity to provide comments regarding this subject.

NAR 1-2.2.4 ATC Services

The ATC services that the task group recommended the FAA provide within the ARSA will be implemented under the FAA directives system. The services which will be mandatorily applied by ATC in the ARSA will be available to pilots on a voluntary participation basis in other specified areas within the approach control's area of jurisdiction. These services will be in addition to the services and separation currently applied to aircraft operating under IFR. Specifically, ATC will: (1) Resolve potential conflictions between aircraft operating under IFR and aircraft operating under VFR so that those aircraft's radar targets do not merge; and (2) provide traffic advisory service and arrival sequencing to aircraft.

NAR 1-2.2.6 Airspace Designation Criteria

This recommendation is adopted.

NAR 1-2.2.7 Charting

This recommendation is adopted. An ARSA would be depicted on aeronautical charts in a manner similar to the way Austin, Texas, and Columbus, Ohio, locations have been depicted.

NAR 1-2.2.8 Education

This recommendation consists of eight distinctive parts. Parts 1 and 2 which deal with FAA pilot exams, textbooks, flight reviews, etc., are still under review by elements of the Office of Aviation Standards and will be addressed outside of this rulemaking action.

Part 3 of this recommendation, which requests the FAA to fund a travel team to address pilot groups on the subject of flight operations in terminal airspace, will be adopted in principle. Instead of a travel team, the FAA will emphasize more contacts with pilot groups and instructor pilots by the local radar air traffic facility personnel. It is FAA's experience that most topics discussed during these types of encounters deal with local adaptations of national programs.

The FAA will issue an advisory circular explaining the ARSA program, after promulgation of these proposed rules. Therefore, Part 4 of this recommendation is adopted.

Part 5 of this recommendation, free Airman's Information Manuals (AIM), is not adopted. While the AIM costs are $20 annually, these costs are assessed by the Government Printing Office (GPO) and not the FAA. However, the FAA is concerned with rising costs and has initiated a study to determine what, if any, options are available to make the AIM more reasonable in price. In the meantime, the AIM is available to the public on a subscription basis from the GPO Superintendent of Documents.

Part 6 of this recommendation is a request to the FAA to create an aviation awareness of available FAA services and publications. This aspect is under review by an element of the Office of Aviation Standards and will be addressed outside of this rulemaking action.

Part 7 of this recommendation is adopted. The FAA will include a questionnaire in the advisory circular that would be issued under Part 5 of this recommendation.

Part 8 of this recommendation is adopted. Audio-visual aids dealing with terminal operations are available from the FAA library and, as has been the case in the past, will be available to interested pilot groups through the local air traffic facilities or general aviation district offices.

The Proposal

The proposed amendments would establish a new type of airspace assignment and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in that airspace.

For aircraft arriving at any airport designated as an ARSA, prior to entering the ARSA: (1) Two-way radio communications would have to be established with the ATC facility having jurisdiction over the area; and, (2) while in the ARSA, two-way radio communications would have to be maintained with the ATC facility having jurisdiction over the area. For aircraft departing from the primary airport within the ARSA, two-way radio communications would have to be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport or heliport within the ARSA, as soon as possible after takeoff, two-way radio communications would have to be established and thereafter maintained, while operating within the ARSA, with the ATC facility having jurisdiction over the area.

All aircraft operating within an ARSA would be required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the proposed rule would permit ATC to authorize appropriate deviations to any of the operating requirements of the proposed rules when safety considerations justify the deviation or more efficient utilization of the airspace can be attained.

Economic Impact

This notice proposes to define an ARSA and establish air traffic rules for operation within the ARSA. Specific designations of individual ARSA's will be proposed in separate notices of proposed rulemaking. This proposal has no anticipated economic consequences. Rather, it is the airspace proposals which would implement this proposed rule at specific sites that would have the economic impact, if any, at those sites. The FAA will provide a Regulatory Evaluation (an analysis of the economic impact), a Trade Impact Analysis (an analysis of the impact of the rule on foreign trade), and a Regulatory Flexibility Determination (whether a proposal has a significant economic impact on a substantial number of small entities) when an ARSA is proposed at specific sites. However, the FAA encourages comment with respect to any economic consequences of this proposal, especially as it relates to the merits of the ARSA compared to a TRSA.

Accordingly, the FAA has determined that: (1) The proposal does not involve a major rule under Executive Order 12291; (2) the proposal is not significant nor does it require a full Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the proposal will not have a significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the U.S.

List of Subjects

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 91

Air traffic control, Airport, Aviation safety, Flight rules, Terminal control areas.

14 CFR Part 103

Aircraft, Aviation safety, Recreation and recreation areas, Ultralight vehicles.

14 CFR Part 105

Aircraft, Aviation safety, Recreation and recreation areas, Parachute jumps.

PART 71—[AMENDED]

For the reasons set out in the preamble, Chapter I of Title 14 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. In Part 71, new § 71.1(e), new § 71.14, and new Subpart L, § 71.501, are added to read as follows:

§ 71.1 Applicability.

* * * * *

(e) The airspace assignments described in Subpart L of this part are designated as airport radar service areas.

§ 71.14 Airport radar service areas.

The airport radar service areas listed in Subpart L consist of controlled airspace within which, unless otherwise provided for in a Notice to Airmen issued by the ARSA facility, radar service is provided continuously.

Subpart L—Airport Radar Service Areas

§ 71.501 Designation.

The airspace descriptions listed below are designated as airport radar service areas. The primary airport for each airport radar service area is also designated. Except as otherwise specified, all mileages are nautical miles and all altitudes are above mean sea level.

PART 91—[AMENDED]

2. In Part 91, § 91.1(b)(1) is revised and new § 91.88 is added to read as follows:

§ 91.1 Applicability.

* * * * *

(b) * * *

(1) When over the high seas, comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.70(c), 91.88, and 91.90 of Subpart B.

* * * * *

§ 91.88 Operations at airports within airport radar service areas.

(a) *General.* For the purposes of this section, the primary airport is the airport designated in Part 71, Subpart L, for which the airport radar service area is designated. A satellite airport is any other airport or heliport within the airport radar service area.

(b) *Deviations.* An operator may deviate from any provision of this section under the provision of an ATC authorization issued by the ATC facility having jurisdiction of the airport radar service area. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

(c) *Arrivals and Overflights.* No person may operate an aircraft in an airport radar service area unless two-way radio communication is established with ATC prior to entering that area and is thereafter maintained with ATC while within that area.

(d) *Departures.* No person may operate an aircraft within an airport radar service area unless two-way radio communication is maintained with ATC while within that area, except that for aircraft departing a satellite airport, two-way radio communication is established as soon as practicable and thereafter maintained with ATC while within that area.

(e) *Traffic Patterns.* No person may takeoff or land an aircraft within an airport radar service area except in compliance with FAA arrival and departure traffic patterns.

PART 103—[AMENDED]

3. In Part 103, § 103.17 is revised to read as follows:

§ 103.17 Operations in certain airspace.

No person may operate in ultralight vehicle within an airport traffic area, control zone, airport radar service area, terminal control area, or positive control area unless that person has prior authorization from the air traffic control facility having jurisdiction over that airspace.

PART 105—[AMENDED]

4. Part 105 is amended to add new § 105.20 to read as follows:

§ 105.20 Jumps in or into Airport Radar Service Areas

(a) No person may make a parachute jump and no pilot in command may allow a parachute jump to be made from that aircraft in or into an airport radar service area without, or in violation of, the terms of an ATC authorization issued under this section.

(b) Each request for an authorization under this section may be submitted to the control tower at the airport for which the airport radar service area is designated.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; and 14 CFR 11.65)

Issued in Washington, D.C., on November 13, 1984.

Norbert A. Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 84-31391 Filed 11-27-84; 3:01 pm]

BILLING CODE 4910-13-M

Reader Aids

Federal Register

Vol. 49, No. 232

Friday, November 30, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

43943–44072.....1
44073–44192.....2
44193–44272.....5
44273–44442.....6
44443–44620.....7
44621–44740.....8
44741–44888.....9
44889–44984.....13
44985–45106.....14
45107–45408.....15
45409–45570.....16
45571–45732.....19
45733–45842.....20
45843–46096.....21
46097–46332.....23
46333–46526.....26
46527–46698.....27
46699–46868.....28
46869–46984.....29
46985–47188.....30

PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
November 16, 1984.....45733

Notice:
November 7, 1984.....44741

Presidential Determinations:
No. 85-2 of November 28, 1984.....46989

Proclamations:
5270.....44073
5271.....44075
5272.....44077
5273.....44079
5274.....44081
5275.....44193
5276.....44195
5277.....44197
5278.....45107
5279.....45409
5280.....45411
5281.....45413
5282.....46699
5283.....46701
5284.....46985

5 CFR

Ch. XIV, App. A.....45843

Proposed Rules:
213.....45588
831.....45588
930.....45444
1255.....45751
2429.....44902

7 CFR

2.....44743
46.....45735
210.....45109
220.....45109
225.....45109
226.....45109
301.....44083
353.....46333
356.....46335
407.....46337
408.....46703
418.....46337
419.....46341
422.....46346
429.....44443
441.....44985
600.....44743
729.....44889
810.....46347
907.....44199, 44757, 45415, 46559
910.....44084, 44744, 44890, 45109, 45415, 46527, 46989
911.....46703
915.....44447
928.....44199
932.....44447
944.....44447
982.....44745
984.....44745
985.....46704
989.....44745
1004.....44986
1139.....43943
1421.....46705
1446.....45109
1910.....45416
1980.....46097

Proposed Rules:
27.....44902
52.....43970
53.....44724
54.....44724, 44758
400.....45444
408.....46393
420.....44480
421.....44476
422.....46395
424.....44485
425.....44490
431.....46400
432.....44495
436.....46405
437.....46149
438.....46409
725.....44103
800.....45751, 46414
910.....44299
971.....45592
982.....44500
984.....44299
1007.....44760
1464.....44103
1772.....45752–45754
1872.....47007
1900.....47007
1910.....47007
1924.....47007
1941.....47007
1943.....47007
1945.....47007
1951.....47007
1955.....47007
1960.....47007
1962.....47007

8 CFR

103.....46869
238.....44745, 46347, 46870
292.....44084

9 CFR

50.....44273
78.....44987, 45110, 46871
81.....44087, 45111, 45741
92.....44088, 46871
97.....45843

113 45845
114 45845
204 46527
318 46530
319 46530
354 44091

Proposed Rules:
92 44501
307 47032
350 47032
351 47032
354 47032
355 47032
362 47032
381 ..... 44640, 47032

10 CFR
50 ..... 45112, 45114, 45571
430 46533
1046 46097

Proposed Rules:
2 47034
40 ..... 46418, 46425
50 ..... 44645, 46428, 47034
55 46428
71 44502
210 45445
605 44590

11 CFR
6 44091

12 CFR
Ch. VII 46536
204 44448
207 43946
220 43946
221 43946
224 43946
226 45893
303 44746
308 44746
337 46709
523 46725
528 46725
545 45846
563 ..... 45115, 45846
701 ..... 44993, 46105, 46540, 46541
795 44993

Proposed Rules:
5 45007
8 ..... 45102, 45592
227 47041
591 46911
701 46552

13 CFR
105 45742
120 44091

Proposed Rules:
107 ..... 44062, 46553

14 CFR
1 44422
23 46866
27 44422
29 44422
39 ..... 44093, 44094, 44449, 44621, 44890, 44987, 45416, 45417, 45743–45746, 46105
43 ..... 44602, 45418
71 ..... 44450, 45418, 45747, 46726, 46727, 47176
73 ..... 44096, 44451, 45418
91 ..... 44422, 47176
97 ..... 44890, 46106
103 47176
105 47176
255 ..... 44451, 46347

Proposed Rules:
Ch. I 44766
Ch. II 46006
1 46670
27 46670
29 46670
33 46670
39 ..... 45011, 45755
71 ..... 44104, 44650, 45011, 45166–45171, 45756, 45757, 46153–46155, 46746–46748, 47178, 47184
73 ..... 45011, 45168, 45169
75 45171
91 ..... 46749, 47184
103 47184
105 47184

15 CFR
7 44522
386 46873

Proposed Rules:
Ch. III 47047
8c 45861
303 44651
320 ..... 44903, 45757

16 CFR
13 ..... 45115–45117, 46874
305 44200
455 45692
1212 46108
1700 44455

Proposed Rules:
3 46554
4 46554
13 46911
300 44913
303 44913
451 46156

17 CFR
1 45418
3 45418
15 46116
17 46116
33 44891
140 45418
145 45418
200 ..... 43950, 45847
240 45117

Proposed Rules:
1 44105
140 45015
144 45015
230 46750
239 45172
240 ..... 46156, 46556
270 46558
274 45172

18 CFR
3 44273
11 46542
35 46727
37 46351
154 46353
157 44275
270 46874
271 ..... 44201, 44993, 46874
272 46874
273 46874
274 ..... 44275, 46874
284 44275
301 46727
341 44628
356 44628
360 44628
381 44628
375 ..... 44273, 44275
381 ..... 44273, 44275
385 ..... 44273, 44275
388 44273

Proposed Rules:
271 ..... 44217, 45174, 45175
430 44105

19 CFR
4 ..... 44867, 46118
6 ..... 44867, 46885
7 44867
10 ..... 44867, 46363
11 44867
12 44867
18 44867
19 44867
24 ..... 44867, 46118
54 44867
101 44867
112 44867
113 44867
114 44867
123 44867
125 44867
127 44867
132 44867
133 44867
134 44867
141 44867
142 44867
144 44867
145 44867
146 44867
147 44867
148 44867
151 44867
152 46886
162 44867
172 44867
174 44867
191 44867
210 46123

Proposed Rules:
113 46161
141 46161
172 46161
175 ..... 46162, 46163
353 45593
355 45593

20 CFR
209 46728
210 46728
211 46728
212 46728
220 46728
222 46728
250 46728
395 44277
404 ..... 43951, 44458, 45420, 46365
410 46365
416 46365
422 ..... 46365, 46991

21 CFR
74 44096
178 44994
193 ..... 44458, 45123, 46736
361 44459
430 44460
436 44460
442 44460
510 ..... 44285, 45123
520 44894
522 45123
529 45420
540 ..... 44749, 45420, 45421
546 45422
556 ..... 45421, 46371
558 ..... 46371, 46991
561 ..... 45124, 45848, 46736
573 ..... 44630, 45124

Proposed Rules:
146 44652
184 46164
193 45869
450 44919
510 45593
511 44766

22 CFR
220 44631

Proposed Rules:
41 44920

23 CFR
140 45577

24 CFR
44 46140
205 45125
207 ..... 44750, 45125
213 45125
220 45125
221 45125
232 ..... 45125, 46991
235 46991
238 45125
250 45125
255 44750
300 45128
511 44066
905 44295
965 44962

25 CFR
1 46992
5h 43951
41 45849
48 45849
301 44460

Proposed Rules:
1 ..... 44300, 45449, 45450, 47046
41 ..... 44300, 44310, 44921, 46167, 46917
48 ..... 44300, 44310, 44921 46167, 46917
51 45758
301 45452

27 CFR
9 ..... 44202, 44895
178 46889

Proposed Rules:
4 ..... 44217, 45018
5 44921
55 44922

178 44922
240 44217

28 CFR
0 46371
2 44097
15 44995
511 44056

Proposed Rules:
545 44059

29 CFR
530 44262
1601 45424
1910 46737
1952 44202
2619 45129

Proposed Rules:
1907 47049
1910 47049
1935 47049
1936 47049
2617 44106
2640 45018
2648 45018

30 CFR
253 46891
906 46372
915 44206
917 44750
935 ..... 43952, 44461, 44996
938 46542

Proposed Rules:
250 44924
256 46754
816 45595
817 45595
855 45595
914 46167
917 44653
920 43974
931 44769
938 43974
948 46168
950 46755

31 CFR
Ch. II 47001
5 45578

33 CFR
72 46547
100 ..... 45579, 45580, 45758
117 ..... 43953–43956, 44207, 44632, 45130, 45580 46547, 46892
165 44632
402 46893

Proposed Rules:
117 ..... 43975, 44925, 45596, 46917
126 45597
157 46440
160 45597
165 ..... 44926, 46560, 46562

34 CFR
Proposed Rules:
Ch. VI 45834
76 45834
208 45834
280 46169
300 46252
350 46244
352 46244
358 46244
359 46244
750 46755
755 46761

36 CFR
251 46893

Proposed Rules:
13 46441
223 44109
291 45117
1121 44310

38 CFR
3 ..... 44099, 45130, 47002, 47004
14 47004
36 46548

Proposed Rules:
1 45870
21 46441

39 CFR
10 45130
111 ..... 46141, 46738
265 ..... 44286, 46895

40 CFR
52 ..... 44099, 44208, 44287, 44463, 44996, 46141
60 ..... 44633, 45424
61 44633
81 45131
86 44740
124 45292
144 45292
146 45292
147 ..... 45292, 46896
180 ..... 44464–44467, 45132, 45849–45854, 46739
261 44978
265 46094
271 46742
704 ..... 45133, 45425
707 45581
712 46739
716 46741
721 46373
723 46066
761 44634
775 44997

Proposed Rules:
50 ..... 44770, 45871
51 ..... 44770, 44878
52 ..... 43976, 43977, 44110, 44505, 44927, 45178, 45761–45765, 45872, 46442, 46767, 47050
53 45871
58 45871
65 46443
81 ..... 43977, 45031, 46767, 47050
147 44111
152 45873
157 45873
158 45873
162 45873
170 45181
180 ..... 46443, 46768, 46769
261 44718
271 ..... 44111, 44312, 44506, 45452, 45874, 46443
406 44928
407 44928
408 44928
409 44928
411 44928
422 44928
424 44928
426 44928
431 44928
432 44928
439 44928
712 ..... 44218, 45598
716 ..... 44220, 45602
761 46770
799 ..... 45606, 45610

41 CFR
Ch. 101 44468
Ch. 201 45748
50–201 45855
101–20 44469
101–41 44470
101–47 44471

42 CFR
36 44288
400 45431
403 44472
405 44472
441 45431

43 CFR
6220 46891

Public Land Orders:
1821 44473
6547 (corrected by PLO 6577) 44997
6577 44997
6578 46144
6579 46144
6580 46145

Proposed Rules:
3160 44655
3420 44221

44 CFR
64 ..... 44751, 45133, 46897, 46899
65 ..... 45134, 45135
67 45136

Proposed Rules:
67 ..... 45181, 46918, 46920

45 CFR
801 44473

Proposed Rules:
95 45617
201 45558
205 45558
206 45558
225 45558
232 45558
233 45558
234 45558
235 45558
237 45558

46 CFR
310 45857
500 44362
501 44362
502 44362
503 44362
504 44362
505 44362
538 45364
572 45320
580 45364
585 45397
587 45397

Proposed Rules:
67 45623
510 46174

47 CFR
Ch. I 46901
0 45582
2 ..... 44101, 44997
15 44210
25 44751
31 ..... 44289, 46378
43 44289
69 46383
73 ..... 43957, 44101, 45139–45146, 45583–45587, 46386
74 45155
76 45431

Proposed Rules:
0 45454
1 45454
2 ..... 45766, 45875, 46563
73 ..... 44113, 44114, 45186, 45625, 45875, 46444–46448 46563
90 ..... 44223, 45454, 45875 46563

48 CFR
Ch. 25 46743

Proposed Rules:
1480 45187
1803 45194
1804 45194
1805 45194
1812 45194
1813 45194
1814 45194
1815 45194
1816 45194
1817 45194
1825 45194
1827 45194
1831 45194
1832 45194
1835 45194
1842 45194
1844 45194
1845 45194
1852 45194

49 CFR
1 ..... 44102, 46145
171 45749
173 ..... 43963, 45749
175 45749
178 43965
179 43963
391 44210
392 44210
395 46145
571 ..... 44889, 46386
575 44751
1033 46392
1160 45858
1165 45858
1168 45858
1181 45858
1182 45858

Proposed Rules:
23 44772

172 45827
173 45827
195 44926
531 45770
542 45829
1102 44224

50 CFR

17 ..... 43965, 44753, 45180
216 46006
258 44474
611 44757
620 44102
652 ..... 45164, 45859
661 46148
663 ..... 44638, 44901, 47005
671 ..... 44757, 46549
675 ..... 44998, 47006

Proposed Rules:

17 ..... 44507, 44712, 45766, 45880–45887, 46174
20 47050
216 46921
222 44774
227 44774
611 ..... 44655, 46177
630 45888
663 46771
672 44655
675 44655

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List November 16, 1984.

VOL
49

ISS
232

NO
30

1984

UMI

OL
9
SS
33
E
3
984
MI

12-3-84
Vol. 49 No. 233

Monday
December 3, 1984

federal register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S.MAIL
Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

Federal Register
(ISSN 0097-6326)

SECOND CLASS NEWSPAPER

12-3-84
Vol. 49 No. 233
Pages 47189-47380

federal register

Monday
December 3, 1984

Selected Subjects

Aircraft
Federal Aviation Administration
Aviation Safety
Federal Aviation Administration
Bridges
Coast Guard
Color Additives
Food and Drug Administration
Fisheries
National Oceanic and Atmospheric Administration
Flood Insurance
Federal Emergency Management Agency
Investment Companies
Securities and Exchange Commission
Marine Safety
Coast Guard
Marketing Agreements
Agricultural Marketing Service
Motor Carriers
Interstate Commerce Commission
Nuclear Materials
Nuclear Regulatory Commission
Postal Service
Postal Service
Savings and Loan Associations
Federal Home Loan Bank Board

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Contents

Federal Register
Vol. 49, No. 233
Monday, December 3, 1984

Agricultural Marketing Service
RULES
47190 Hops of domestic production
47189 Tomatoes grown in Florida
PROPOSED RULES
47271 Sweet peppers grown in Florida; proceeding terminated

Agriculture Department
See Agricultural Marketing Service; Farmers Home Administration.

Bonneville Power Administration
NOTICES
47323 Conservation cost sharing principles, etc.; meetings

Coast Guard
RULES
Drawbridge operations:
47231 Louisiana
Regattas and marine parades:
47230 Pompano Beach 22nd Annual Christmas Boat Parade

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
47322 Agency information collection activities under OMB review
Contract market proposals:
47323 New York Futures Exchange; Commodity Research Bureau Futures Price Index futures contract

Energy Department
See Bonneville Power Administration; Federal Energy Regulatory Commission; Southwestern Power Administration.

Environmental Protection Agency
NOTICES
47330 Agency information collection activities under OMB review

Farmers Home Administration
NOTICES
47279 Natural resources management guide; meeting

Federal Aviation Administration
RULES
47204 IFR altitudes
PROPOSED RULES
Airworthiness standards:
47358 Transport category airplanes; special review

Federal Communications Commission
RULES
Common carrier services:
47265 Customer premises telephone equipment, detariffing procedures, etc. (second computer inquiry)
PROPOSED RULES
Common carrier services:
47275 AT&T communications and exchange telephone carriers; authorized rates of return for interstate services; extension of time
NOTICES
Radio broadcasting:
47331 AM and FM construction permit applications; incomplete and patently defective; future policy

Federal Emergency Management Agency
RULES
Flood elevation determinations:
47240 Alaska et al.

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
47324 Amerada Hess Corp. et al.
47325 Carolina Power & Light Co.
47325 Citizens Utilities Co.
47325 Conoco, Inc.
47326 Consolidated Gas Transmission Corp. et al.
47326 Illinois Power Co.
47326 Natural Gas Pipeline Co. of America
47327 Northern Natural Gas Co.
47329 Pacific Power & Light Co.
47329 Tampa Electric Co.
47329 Texas Gas Transmission Corp.

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
47271 Conversions from mutual to stock form; modified conversions

Federal Maritime Commission
NOTICES
47332 Agreements filed, etc.

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
47333 Commerce Bancorp, Inc., al.
47333 Full Service Insurance Agency, Inc.
47334 Merrill Bankshares Co., et al.
47334 SBC Financial Corp., et al.
47333 Suntrust Banks, Inc., correction
47335 Valley Bancorporation
47335 Welcome Bancshares, Inc.
Federal Reserve Bank services; fee schedules and pricing principles:
47335 U.S. Treasury book-entry securities service

Fiscal Service
NOTICES
47354 U.S. Treasury book-entry securities held at Federal Reserve Banks; fee schedule

Food and Drug Administration
RULES
Color additivities:
47229 D&C Orange No. 17, and D&C Red Nos. 19 and 37; provisional listing; closing date postponed
47228 FD&C Red No. 3, FD&C Yellow Nos. 5 and 6, D&C Red Nos. 8, 9, 33, and 36; provisional listing; closing date postponed
NOTICES
Human drugs:
47336 Parafon forte tablets; hearing on approval, withdrawal; connection
Meetings:
47336 Advisory committees, panels, etc.
Sunlamp variance approvals, etc.:
47337 Mt. Hood Manufacturing, Inc. et al.

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
47279 California

Health And Human Services Department
See Food and Drug Administration; Human Development Services Office; National Institutes of Health.

Human Development Services Office
NOTICES
Procurement:
47338 Commercial activities review, 1985 FY

Interior Department
See Land Management Bureau; Minerals Management Service.

Internal Revenue Service
PROPOSED RULES
Excise taxes:
47274 Heavy vehicle use tax; diesel fuel tax credits and refunds; extension of time
NOTICES
Authority delegations:
47355 Chief Counsel et al.

International Development Cooperation Agency
See Overseas Private Investment Corporation.

International Trade Administration
NOTICES
Countervailing duties:
47284 Cold-rolled carbon steel flat-rolled products and carbon steel structural shapes from Korea
47279 Deformed steel bars for concrete reinforcement from South Africa
47280 Portland hydraulic cement from Costa Rica
Scientific articles; duty free entry:
47282 National Institutes of Health et al.

International Trade Commission
NOTICES
Import investigations:
47339–47340 Rowing machines and components (3 documents)

Interstate Commerce Commission
RULES
Motor carriers:
47268 Lease and interchange of vehicles; master leases-agreements
PROPOSED RULES
Motor carriers:
47277 Intercity passenger service adequacy
NOTICES
Rail carriers:
47341 State intrastate rail rate authority; Georgia, Iowa, Missouri, and New Mexico
Railroad operation, acquisition, construction, etc.:
47340 Atlantic Richfield Co.
Railroad services abandonment:
47341 Soo Line Railroad Co.

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
47339 Wyoming; correction

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
47339 Santa Maria Basin, California; OCS development and production plan

National Communications System
NOTICES
Meetings:
47341 National Security Telecommunications Advisory Committee

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
47276 Door locks and door retention components; petition denied
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
47353 General Motors Corp.
47354 Western Star Mack Trucks, Inc.

National Institutes of Health
NOTICES
Meetings:
47337 Cardiology Advisory Committee
47338 Clinical Applications and Prevention Advisory Committee
47338 Pulmonary Diseases Advisory Committee

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
47269 Atlantic mackerel, squid, and butterfish
PROPOSED RULES
Fishery conservation and management:
47278 Atlantic surf clam and ocean quahog
NOTICES
Fishery conservation and management:
47298 Foreign fishing permit applications

Nuclear Regulatory Commission
RULES
Export and import of nuclear equipment and material:
47191 Required licensing actions

NOTICES
47341 Agency information collection activities under OMB review
Applications, etc.:
47343 Duquesne Light Co. et al.
47344 Westinghouse Electric Corp.
Committees; establishment, renewals, terminations, etc.:
47342 Three Mile Island Unit 2 Decontamination Advisory Panel
Environmental statements; availability, etc.:
47342 Boston Edison Co.
Meetings:
47342 Review of Enforcement Policy Ad Hoc Advisory Committee

Overseas Private Investment Corporation
NOTICES
47356 Meetings; Sunshine Act

Personnel Managment Office
NOTICES
Excepted service:
47344 Schedules A, B, and C; positions placed or revoked; update

Postal Service
RULES
Domestic Mail Manual:
47232 Business Reply Mail
47231 Miscellaneous amendments
PROPOSED RULES
International Mail Manual:
47275 Finland and Saudi Arabia; Express Mail Service

Securities and Exchange Commission
RULES
Investment companies:
47208 Separate accounts funding flexible premium variable life insurance contracts
PROPOSED RULES
Securities:
47274 Unlisted trading privileges in over-the-counter securities; correction
NOTICES
Hearings, etc.:
47346 C–U Funding Corp.
47348 Connecticut Light & Power Co. et al.
47349 Jefferson Village Housing Partners et al.
47350 Prudential-Bache California Municipal Fund et al.
47350 Robb, Walter E., III
Self-regulatory organizations; proposed rule changes:
47352 Depository Trust Co.
47352 Pacific Clearing Corp.
Self-regulatory organizations; unlisted trading privileges:
47353 Boston Stock Exchange, Inc.; correction
47353 Midwest Stock Exchange, Inc.; correction

Small Business Adminstration
NOTICES
Meetings; regional advisory councils:
47353 Vermont; date change

Southwestern Power Administration
NOTICES
47324 Town Bluff Hydropower Project, TX; sponsor selection

Trade Representative, Office of United States
NOTICES
Import quotes and exclusions, etc.:
47344 Coffee

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.

Treasury Department
See also Fiscal Service; Internal Revenue Service.
NOTICES
47354 Agency information collection activities under OMB review

Separate Parts in This Issue

Part II
47358 Department of Transportation, Federal Aviation Administration

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
966.....47189
991.....47190
Proposed Rules:
Ch. IX.....47271
10 CFR
110.....47191
12 CFR
Proposed Rules:
563b.....47271
14 CFR
95.....47204
Proposed Rules:
25.....47358
17 CFR
270.....47208
274.....47208
Proposed Rules:
240.....47274
21 CFR
81 (2 documents).....47228, 47229
26 CFR
Proposed Rules:
41.....47274
48.....47274
33 CFR
100.....47230
117.....47231
39 CFR
111 (2 documents).....47231, 47232
Proposed Rules:
10.....47275
44 CFR
67.....47240
47 CFR
61.....47265
Proposed Rules:
Ch. I.....47275
49 CFR
1057.....47268
Proposed Rules:
571.....47276
1063.....47277
50 CFR
655.....47269
Proposed Rules:
652.....47278

Rules and Regulations

Federal Register
Vol. 49, No. 233
Monday, December 3, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

Tomatoes Grown in Florida; Amendment No. 3 To Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final regulation requires that tomatoes shipped from the regulated area be packed at permanent nonportable facilities. This should help to maintain quality standards and result in fewer order violations by eliminating field-packed tomatoes.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT:
Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–5764.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966) regulate the handling of tomatoes grown in designated counties of Florida. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in September 1982 the committee recommended, and the Secretary approved, a regulation which continues in effect from marketing season to marketing season unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary.

Interim Amendment No. 3 to the handling regulation became effective October 10, 1984, and will terminate December 31, 1984. The provisions of Interim Amendment No. 3 are the same as those hereafter set forth.

Notice was given in the October 4, 1984, **Federal Register** (49 FR 39153) allowing interested persons until November 9, 1984, to file written comments. One comment was received in support of the proposal.

At its annual meeting at Marco Island on September 7, 1984, the committee recommended the regulation be continued but with three changes. These changes specify that tomatoes must be packed with proper equipment and at the registered handler's facilities. Also, a new definition for "adequate facilities" is added.

For a number of years many handlers have packed tomatoes in the field or in primitive sheds without the benefit of the kind of grading and sizing equipment used by the larger packing houses. These smaller, transient handlers glean from the tomato fields whatever the regular harvesting crews miss or pass by. They are sometimes local residents who often salvage those tomatoes too ripe to ship any great distance and offer them in local, nearby markets within the regulated area. More often, however, they are itinerant handlers from adjoining or nearby States who buy from the producer a field of tomatoes previously harvested and pack the salvageable fruit in whatever containers are available.

Handlers who pack and distribute their tomatoes solely within the regulated area are neither required to register with the Florida Tomato Committee nor to have their tomatoes inspected. Handling regulation § 966.323 specifically requires that only tomatoes for shipment outside the regulated area must meet the grade, size, container and inspection requirements unless exempted.

The order specifies in § 966.60 that handlers register with the Florida Tomato Committee upon applying for inspection. Once this is done the handler is then a registered handler as defined in § 966.113. Since all tomatoes leaving the regulated area must be inspected, and since a handler must register with the committee in order to secure inspection, all handlers of tomatoes leaving the area are required to be registered handlers.

The current handling regulation § 966.323 requires only that a registered handler have the tomatoes inspected and certified prior to being shipped out of the regulated area. This amends § 966.323 to require that in addition to inspection, all regulated tomatoes be packed at the facilities of a registered handler and further that the "adequate facilities" set forth in § 966.113 be defined as those being in a permanent location using nonportable equipment. The effect of this rule will be that henceforth all tomatoes shipped from the regulated area must be packed in a packing house or facility of a permanent nonportable nature. This will eliminate field packing operations for all but those tomatoes marketed locally within the area.

It is the belief of the committee that requiring standardized packing facilities should help reduce marketing order violations in the form of interstate movement of off-size, off-grade or uninspected tomatoes.

Findings. After consideration of all relevant matters including the proposal recommended by the Florida Tomato Committee, it is hereby found and determined that the amendment, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida.

PART 966—[AMENDED]

Section 966.323 (47 FR 58213, 48 FR 26757, 48 FR 52027 and 49 FR 39153) is hereby further amended by revising paragraphs (a) (2)(i) and (3)(ii) and adding the definition "adequate facilities" after "Certified Tomato Repacker" to paragraph (e) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) *Grade, size, container and inspection requirements.*

* * * * *

(2) *Size.* (i) Tomatoes shall be at least 2⅝₃₂ inches in diameter and be sized with proper equipment in one or more of the following ranges of diameters. Measurements of diameters shall be in accordance with the methods prescribed in Paragraph 51.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

* * * * *

(3) *Containers.*

* * * * *

(ii) Each container or lid shall be marked to indicate the designated net weight and must show the name and address of the registered handler (as defined in § 966.7) in letters at least one-fourth (¼) inch high, and such containers must be packed at the registered handler's facilities.

* * * * *

(e) *Definitions.*

* * * * *

"Adequate facilities" as referred to in the definition of registered handler in §§ 966.7 and 966.113 are defined as those being in a permanent location with nonportable equipment for the proper grading, sizing and packing of tomatoes.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674)

Dated: November 27, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-31140 Filed 11-30-84; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 991

Hops of Domestic Production; Expenses of the Hop Administrative Committee, and Rate of Assessment for the 1984–85 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1984–85 marketing year, to be collected from handlers to support activities of the Committee which locally administers the Federal marketing order covering hops of domestic production.

DATES: Effective August 1, 1984 through July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The hop marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Committee established under the marketing order, and upon other information. Pursuant to this, it is found that the expenses and rate of assessment as hereinafter provided, will tend to effectuate the declared policy of the act.

The Committee recommended for approval expenses totalling $338,829. That total included $68,759 for legal fees and economists' fees associated with a hearing to amend the hop marketing order held in June 1984. Payment of these fees must be approved separately by USDA and the matter of these fees is still under review.

Hence, at this time, only those expenses associated with the Committee's day-to-day administrative operating expenses are being approved. These expenses total $320,070 and are derived by subtracting the expenses for legal and economists' fees totalling $68,759 from $388,829, the total expenses recommended by the Committee for the 1984–85 marketing year.

Assessment income for the 1984–85 marketing year is expected to total $342,600. This is obtained by applying the recommended assessment rate of 0.6 cent per pound to 57.1 million pounds, the quantity of assessable hops expected during the 1984–85 marketing year. In addition, interest on invested funds is expected to earn approximately $6,000. This results in estimated total income of $348,600, or $28,530 more than the reduced expenses of $320,070.

Section 991.56(b) requires any funds in excess of a marketing year's expenses to be placed in an operating reserve not to exceed approximately one year's operational expenses or such lower limits as the Committee, with the approval of the Secretary, may establish. Funds in the operating reserve can be used by the Committee only to pay expenses which are authorized by the Secretary pursuant to § 991.55.

The Committee has approximately $100,004 in its operating reserve. All of the excess funds expected to be generated during the 1984–85 marketing year will have to be placed in the Committee's operating reserve and only used to pay expenses authorized pursuant to § 991.55.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and good cause exists for not postponing the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). The order requires that the rate of assessment for a particular marketing year shall apply to all assessable hops handled from the beginning of such year. The 1984–85 marketing year began August 1, 1984. To enable the Committee to meet its marketing year obligations, approval of the expenses and assessment rate is necessary without delay. It is necessary to effectuate the declared policy of the act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 991

Marketing agreements and orders, Hops.

PART 991—[AMENDED]

The following section prescribes annual expenses and assessments and will not be published in the Code of Federal Regulations.

Therefore, § 991.318 is removed and § 991.319 is added as follows:

§ 991.319 Expenses and assessment rate.

Expenses of $320,070 by the Hop Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 991.56 is fixed at 0.6 cent per pound of salable hops for the marketing year ending July 31, 1985. Pursuant to § 991.56(b), at the end of a marketing year, funds in excess of the year's expenses shall be placed in an operating reserve not to exceed approximately one marketing year's operational expenses or such lower limits as the Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Committee for expenses authorized pursuant to § 991.55.

(Secs. 1–19, 48 Stat. 31 as amended: 7 U.S.C. 601–674)

Dated: November 28, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-31547 Filed 11-30-84; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

Export and Import of Nuclear Equipment and Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the export and import of nuclear equipment and material. The amended regulations expand the authority to export nonsensitive nuclear equipment and minor quantities of nuclear material without applying for and obtaining a specific NRC license authorizing the action. These amendments are intended to reduce the total number of required licensing actions without affecting the Commission's existing rigorous controls over the export of proliferation-sensitive nuclear commodities.

EFFECTIVE DATE: January 2, 1985.

FOR FURTHER INFORMATION CONTACT: Marvin R. Peterson, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4599 or Joanna M. Becker, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7630.

SUPPLEMENTARY INFORMATION: On March 1, 1984, the Nuclear Regulatory Commission (NRC) published a proposed amendment in the Federal Register to 10 CFR Part 110, its regulation governing the export and import of nuclear equipment and material (49 FR 7572). These proposed amendments contained provisions that would expand the authority to export nonsensitive nuclear equipment and minor quantities of nuclear material under a general license.

These amendments would reduce the number of actions that would require an exporter to apply for and obtain a specific NRC license that would authorize the export of certain types of nuclear equipment and certain quantities of nuclear material, thereby reducing the regulatory burden on the public and the administrative burden on the NRC staff. The proposed amendments also contained several miscellaneous changes to simplify and clarify the provisions of 10 CFR Part 110.

The final rule which follows, with only minor exceptions, adopts the admendments as proposed. The amendments can be divided into four broad categories: (1) New or revised general licenses; (2) elimination of unnecessary paperwork and other regulatory burdens on licensees; (3) simplification and clarification of certain sections of Part 110; and (4) corrections and other nonsubstantive technical amendments.

The new and revised general licenses incorporate for the first time in NRC's regulations the U.S. Government policy of facilitating nuclear cooperation with countries sharing U.S. nonproliferation goals. The Departments of Commerce and Energy have adopted similar general licensing provisions for nuclear-related commodities and technology under their respective export licensing and approval authorities. Under this concept, the general licenses are divided into essentially two categories. Those in the first category permit exports to all countries except certain embargoed countries: Cuba, Kampuchea, North Korea, and Vietnam. The Commission and the Executive Branch have reviewed these general licenses and concluded that the material involved is insignificant from the standpoint of possible proliferation concerns, regardless of the country of destination. The general licenses in the second category apply to a narrower category of countries, i.e., those states, except for Libya, Iraq, Syria, and Iran, which are adherents to the Nuclear Nonproliferation Treaty (NPT), plus France, Spain, and the Peoples Republic of China. While additional commodities could be exported under the general licenses in this category, they are only moderately more significant from a proliferation standpoint than those in the first category. As a further caution, a general license may not be used if the exporter knows, or has reason to believe, that the material will be used in any activities related to isotope separation, chemical reprocessing, heavy water production or the fabrication of nuclear fuel containing plutonium. The new component general license is further limited to only those countries which, in addition to sharing good nonproliferation credentials, have provided the U.S. with generic assurances that they meet the criteria set out in section 109 of the Atomic Energy Act. For easy reference, a detailed comparison of the new or revised general licenses with the former general licenses is included at the end of this statement of considerations.

The Commission believes that this new approach to general licenses can benefit U.S. nonproliferation objectives by demonstrating to countries abroad the advantages of supporting effective nonproliferation policies. It also conforms to section 2 of the Nuclear Non-Proliferation Act of 1978 (NNPA) with respect to confirming the reliability of the United States as a supplier of nuclear equipment and material to those countries which adhere to effective nonproliferation policies. At the same time, the Commission remains concerned about the further spread of sensitive nuclear activities (i.e., isotope separation, chemical reprocessing, heavy water production and plutonium fuel fabrication) beyond those advanced nations that are already engaging in those activities. The Commission intends to monitor developments in these areas closely and, should additional countries make any significant moves that are inconsistent with U.S. law and policy, such as the design or acquisition of sensitive nuclear facilities or the commencement of research and development programs to acquire such facilities, the Commission will promptly initiate steps, after consulting with the Executive Branch, to revoke the eligibility of these countries for favorable general license treatment.

The new or revised general licenses are as follows:

1. Paragraph 110.21(a)(1): New general license for the export of low-enriched uranium in contaminated items or substances.

2. Paragraph 110.21(b)(1): New general license for the export of up to 0.001 effective kilogram per shipment of any special nuclear material.

3. Paragraph 110.21(b)(2): New general license for the export of replacements for damaged or defective fuel elements.

4. Paragraph 110.22(a)(2): Revision to the general license for export of thorium to conform with revisions in the international export control (COCOM) embargo list.

5. Section 110.23: Revisions to general licenses to export byproduct materiel to provide for expanded authority to export tritium and other byproduct material with an atomic number greater than 83 (e.g., californium-252, neptunium-237 and berkelium-249).

6. Paragraph 110.23(b): Revision to the general license to export americium-241 to restrict generally-licensed exports to certain destinations (i.e., the general license is limited to americium-241

incorporated in petroleum exploration equipment).

7. Section 110.24: Increase in the amount of deuterium authorized for export under a general license.

8. Section 110.25: Revision to the general license to export nuclear grade graphite to cover exports of fabricated nonnuclear-related commercial products (e.g., electrodes, golf clubs, fishing rods, etc.).

9. Paragraph 110.22(b): Increase from 1 to 10 kilograms of source material authorized for export under general license. This revision conforms with revisions of the COCOM embargo list and is consistent with the export control guidelines in IAEA INFCIRC/254, "Guidelines for Nuclear Transfers" (Supplier Guidelines).

10. Section 110.28: New general license for the export of nuclear reactor components to light water- or heavy water-moderated research or power reactors in designated countries which have acceptable nonproliferation credentials and which have also provided the U.S. with generic assurances that they meet the Section 109 criteria of the Atomic Energy Act. Except for France, NPT adherence or acceptance of full-scope IAEA safeguards is a necessary condition for placing a country on the authorized list. Persons making exports under this new general license are also required to submit an annual report of all components shipped during the previous calendar year.

11. Section 110.27: New general license for the import of special nuclear material, except for spent fuel in quantities exceeding 100 kilograms.

In addition to the new and revised general licenses, the following amendments have been made to Part 110:

1. Sections 110.1 and 110.3 through 110.5 are revised and simplified.

2. In § 110.2, editorial changes are made and definitions added for "NPT" and "IAEA." The "Nuclear grade graphite" definition is also revised to conform with international export control guidelines and the definition of a "person" is revised to clarify that, with respect to imports, the Department of Energy is not considered a person.

3. Section 110.6 is revised to (1) cover produced SNM and (2) eliminate the requirement for approvals in cases where the retransfer has been approved in the context of a previously issued NRC export license.

4. Former §§ 110.11 and 110.12 are deleted because they are replaced or encompassed by the proposed new general licenses in § 110.27 and § 110.21(b)(1), respectively. Former § 110.13 is redesignated § 110.11.

5. Paragraph 110.30(d), concerning consolidated license applications, has been revised to eliminate the two year time period limitation and the restriction to "reasonably similar circumstances." These provisions, which stem from subsection 126a.(2) of the Atomic Energy Act, apply only to single Commission findings involving multiple export license applications.

6. Section 110.30 is revised and expanded in scope to encompass the provisions of existing §§ 110.30, 110.35, and 110.36 [except that the requirement in former § 110.36(b) is deleted as unnecessary].

7. Section 110.31 is revised to incorporate, in simplified form, the provisions of former §§ 110.31 through 110.34.

8. Former § 110.35(b) is deleted as unnecessary.

9. Sections 110.40 and 110.41 are revised for clarification and to expand the categories of cases not requiring Executive Branch review.

10. In § 110.42, editorial changes are made and certain provisions from former § 110.44 are added so that § 110.42 contains a comprehensive listing of all the applicable export licensing criteria for NRC-licensed equipment and material. The changes also specify that health and safety findings (pertaining to health and safety in the U.S.) are required only for issuance of licenses to export production and utilization facilities.

11. In § 110.43, the provision for "countrywide" physical security findings has been expanded to cover exports of all categories of nuclear material.

12. In § 110.44, editorial changes are made to accommodate the transfer of certain provisions to § 110.42. Changes are also made to reflect the fact that byproduct material export license applications, for which the Commission cannot make the requisite statutory findings after receipt of favorable Executive Branch judgments, will not be referred to the President for action since applicable statutes do not contemplate referral. These applications will be denied by the Commission.

13. Section 110.45 is revised to specify that its provisions do not apply to byproduct material exports.

14. In § 110.50, paragraph (b)(3) is deleted as unnecessary.

15. Section 110.51 is revised to specify that license amendments are not required for certain changes in intermediate consignees.

16. In § 110.70, the categories of license applications noticed in the **Federal Register** are revised to eliminate noticing requirements for imports and for low-enriched uranium export license applications and applications for export of less than five effective kilograms of plutonium, high-enriched uranium or uranium-233.

17. Editorial changes are made in §§ 110.83 and 110.84.

18. Section 110.89 is revised to clarify certain filing and service requirements.

19. Paragraphs (b) and (c) of § 110.91 are deleted since their provisions for public dissemination of Commission staff and Executive Branch views are adequately covered in § 110.72. The Commission intends to adhere to its practice of making unclassified staff and Executive Branch views promptly available to the public.

20. Paragraph 110.103(a) is revised to eliminate the requirement for binding hearing documents on the left side.

21. The contents of former Appendix A are incorporated into new §§ 110.8 and 110.9.

22. A new Appendix A is added which lists gas centrifuge enrichment plant components which are under NRC's export licensing authority. This appendix was published in the **Federal Register** originally as part of an interpretative rule on January 24, 1984 (49 FR 2881).

23. Appendix C is redesignated Appendix B and footnote c to the appendix is revised to conform to IAEA INFCIRC/225-Rev. 1.

Analysis of Public Comment

The public comment period on the proposed rule expired April 17, 1984. The NRC received comments from six sources including individuals, businesses, and the Executive Branch. The following discussion summarizes the comments received and describes the actions taken in response to these suggestions.

Nuclear Control Institute. The Nuclear Control Institute (NCI) comments, in general, objected to any amendments which would relax the Commission's existing export licensing regulations. The Commission shares NCI's concern regarding the continued necessity of strong export licensing regulations which are rigorously implemented and enforced. The Commission has exercised proper caution in this regard by assuring that the amendments, insofar as they alter current requirements, involve only nonsensitive matters which do not affect existing rigorous controls over proliferation-sensitive nuclear commodities.

NCI also suggested that the Commission delay action which affects

component exports until completion of action on several pending legislative proposals directed at nuclear component exports. Although these proposals failed to pass during the 98th Congress, the Commission recognizes that eventual passage of some of the bills if resubmitted would require changes in Part 110. The Commission will take action to amend Part 110 promptly upon the passage of any legislation requiring amendments to the regulations. However, in view of the delay in final consideration of the contemplated legislative changes, the Commission believes that the pending Part 110 amendments should be implemented as planned. This is particularly so since only one portion of the amendments would be affected by the legislation as originally proposed.

NCI also had several comments directed at specific proposed amendments to which the Commission responds as follows:

1. Section 110.6: NCI objects to the proposed amendment to § 110.6 which would clarify that retransfers of material and equipment approved in the context of an export license do not require separate Department of Energy (DOE) approval as a "subsequent arrangement" under the requirements of the Nuclear Non-Proliferation Act of 1978 (NNPA).

The Commission does not agree that this amendment would conflict with the requirements for separate DOE review under section 131 of the Atomic Energy Act. The amendment simply clarifies what has, in fact, been Commission and Executive Branch practice since enactment of the NNPA in 1978. Separate reviews are required only when the ultimate end use is not known at the time of the original export license application. A typical case involves the export of low-enriched uranium fuel for fabrication in one country and then reexport to a second country for installation in a power reactor. In these cases, the Commission views the application as an export to the second country with an intermediate consignee in the first country. The Executive Branch and the Commission have agreed that it is unnecessary to require a separate (and duplicate) DOE review of the reexport to the ultimate consignee in the second country. The Commission notes that such retransfer approvals do not extend to retransfers for such sensitive end uses as reprocessing. These types of retransfers will continue to be subject to separate DOE review as a "subsequent arrangement" under section 131 of the Atomic Energy Act.

2. Section 110.7: NCI objects to the Commission's practice (since 1978) of conforming its export licensing jurisdiction with the international export control "Trigger List" and suggests the Commission's jurisdiction should be expanded to cover additional proliferation-sensitive items.

The Commission agrees with NCI that there are many commodities outside NCR's jurisdiction which may be significant from a nuclear proliferation standpoint. Nevertheless, the Commission does not believe there is any need to change the scope of NRC's export licensing jurisdiction because section 309(c) of the NNPA provides for adequate nonproliferation export controls over nuclear commodities licensed by the Department of Commerce. The Commission staff has worked closely with the Executive Branch in establishing the Commerce Department's export control "Nuclear Referral List" and consults with the Executive Branch on frequent occasions with regard to individual export license applications for items on this list. It is also relevant to note that the great majority of items licensed by the Commerce Department are so-called "dual-use" items, such as high speed computers, which have predominantly nonnulcear end uses. The Commission believes that, as a general matter, it is good administrative practice to limit the Commission's export licensing authority exclusively to nuclear items, where NRC's expertise is greatest, and to rely on the Commerce Department to consult with the Commission on those Commerce-licensed dual-use exports with potential proliferation significance.

3. Paragraph 110.21(b)(2): NCI objects to the scope of the Commission's proposed new general license for the export of replacement fuel elements. To reduce the risk of misreporting as a means of accumulating low-burn-up spent fuel containing weapons-grade plutonium, NCI recommends that the general license be valid only until fuel elements are used in a reactor or for a period of one year after the initial export authorization.

The Commission does not agree with NCI's contention that the proposed general license would pose a realistic proliferation threat. Licensing experience since 1975 indicates that its provisions would need to be used only on rare occasions and where expeditious export is critical. In addition, there are only a limited number of exporters of enriched uranium fuel and significant exports of this material would also probably be subject to DOE enrichment contracts. These factors significantly minimize the risk of proliferation concerns with respect to the proposed general license. Accordingly, the Commission does not believe it necessary to make any change to the proposed general license.

4. Section 110.28: NCI recommends that the proposed component general license be revised to require notifications to the Commission of shipments under the license within 60 days of each export rather than a single annual report. NCI believes that this more rigorous reporting requirement would reduce the risk of the piecemeal accumulation of sensitive component exports.

While the suggested change would moderately increase the Commission's ability to monitor shipments, the significant increase in administrative reporting requirements on licensees that this change would entail (i.e., several hundred individually reportable shipments can be expected to be made under the general license at various times throughout a typical year) would far outweigh the modest decrease in proliferation concern, particularly since the general license would not apply to countries with significant potential proliferation concerns. In view of the limited number of countries involved and the lengthy period of time which would be required to construct an unauthorized reactor via the diversion route, the Commission concludes that an annual reporting requirement would be sufficient. However, the Commission will, as NCI proposed, review annually the proliferation implications of the components exported under the general license, and place the annual reports in the Public Document Room.

NCI also questioned the inclusion of Taiwan and South Korea on the list of countries which would be eligible to receive U.S. components under the proposed component general license.

In view of Taiwan's and South Korea's status as parties to the Nuclear Nonproliferation Treaty (NPT) and their nonproliferation credentials, the Commission has decided not to revise the list of countries as proposed. The Commission shares, however, NCI's general concern that exports under the proposed general license warrant careful monitoring. Accordingly, the Executive Branch has been notified formally by the Commission that NRC intends to monitor closely the activities of countries on the eligible lists and will not hesitate to take steps, after consulting with the Executive Branch, to revise a country's status if changed circumstances warrant.

5. Paragraph 110.30(d): NCI objects to the proposal to relax the existing limitations on consolidated license applications.

The Commission has decided not to accept the comment and change the amendment as requested. In view of the extremely wide range in proliferation significance of the various commodities licensed by NRC, it is not possible to devise any practical general guidelines for the scope and duration of individual export licenses. Conversely, a detailed set of export licensing guidelines for each commodity (and form of commodity) would be excessively complicated for incorporation into Part 110. Accordingly, the Commission will continue to exercise its careful case-by-case judgment regarding the appropriateness of any requested consolidated license application. For example, exports of high-enriched uranium will continue to be licensed individually. On the other hand, because of the limited proliferation concerns involved, unnecessary burdens would be imposed on exporters and the NRC staff if separate export licenses for each shipment of low-enriched uranium (LEU) fuel to power reactors in countries with good nonproliferation credentials are required. Furthermore, even for these countries, all long-term licenses are reviewed on an ongoing basis by the Commission. Should a material change in circumstances arise in the importing country, the Commission has sufficient authority to take appropriate action, including suspension or revocation of active export licenses.

6. Paragraph 110.35(b): NCI objects to the proposed deletion of the requirement for license applicants to amend their applications whenever substantive changes occur before the license is issued.

The Commission continues to believe that this provision should be deleted. If there should be a significant change in the export request, such as a change in the type of quantity of material or its destination, an applicant would be required, in its own self-interest, to notify the Commission. Otherwise the license as eventually issued by the Commission would not reflect the change in facts and could not be used.

7. Sections 110.40 and 110.41: NCI objects to the proposed revised guidelines for referring export license applications to the Commission and the Executive Branch for review.

The Commission does not agree that these proposed internal procedures for processing the less significant export license applications are inappropriate. The lack of Commissioner or Executive Branch review of certain categories of exports does not lessen in any way the substantive review of each application by the NRC staff with respect to compliance with statutory requirements. In addition, if there are significant changes in circumstances involving particular exports or recipient countries, the NRC staff will continue its practice of referring these cases to the Executive Branch and/or the Commissioners. Such referrals are contemplated by §§ 110.41(a)(8) and 110.40(b)(7).

8. Paragraph 110.41(d)(8): NCI objects to the proposed deletion of the dollar limit ($10,000) cutoff for those cases requiring Executive Branch review.

The Commission believes that a more meaningful basis for judging the proliferation significance of a particular export is the country of destination. This consideration led to the proposal to amend § 110.41 to delete the dollar cutoff criterion and replace it with a requirement that *all* export license applications for countries with questionable nonproliferation credentials be referred to the Executive Branch. Accordingly, the Commission has not retained the dollar limit.

9. Sections 110.44, 110.45(c): NCI objects to the proposed editorial amendment to § 110.45(c) which would *require* the Commission to issue an export license if "applicable statutory provisions are met." NCI prefers leaving license issuance optional and also revising the related provision in § 110.44 to conform with § 110.45(c).

The Commission does not agree with this position since, if all applicable statutory provisions have been determined by the Commission to be met, there is clearly no basis for the Commission to withhold issuance of the requested export license. Further, Section 126 b. of the Atomic Energy Act of 1954, as amended, *requires* the Commission to issue an export license when all applicable statutory requirements have been met.

10. Section 110.70: NCI objects to the proposal to eliminate **Federal Register** noticing requirements for low-enriched uranium fuel export license applications.

While the Commission agrees with NCI that public participation in the Commission's export license reviews should be permitted, it does not believe that this necessitates that all low enriched fuel export license applications be noticed in the **Federal Register**. Copies of all applications will continue to be placed in the Commission's Public Document Room. In addition, the great majority of persons interested in the Commission's export license proceedings are on a mailing list which provides a monthly list of all new NRC export license applications received. (Others desiring this listing can be added to the mailing list by contacting NRC's Office of International Programs). The list of applications received will normally be received in time for recipients to submit comments to the Commission on the pending applications prior to license issuance. The Commission believes that these latter means are more effective than **Federal Register** noticing in making interested parties aware of pending NRC export license applications. As an extra precaution, however, the Commission will continue to notice in the **Federal Register** receipt of license applications with potential proliferation significance, such as all proposed exports of significant quantities of high-enriched uranium.

Mr. E. Nemethy. Mr. Nemethy had 4 comments, none of which, in the Commission's view, warranted any revisions to the amendments as proposed. Mr. Nemethy's comments, and the Commission's responses to them, are as follows:

1. Paragraph 110.41(a)(7) requires Executive Branch review for export license applications to embargoed countries (i.e., those listed in § 110.28). Mr. Nemethy asked how it is possible to consider approving exports to "embargoed" countries.

The Commission would not normally consider licensing exports to countries listed in § 110.28 in view of the U.S. Government's general embargo on U.S. trade with those countries. However, although there have been no export licenses to an embargoed country issued to date, the Commission recognizes that it may be appropriate to consider exceptions to the general embargo in certain situations, such as the export of medical radioisotopes for humanitarian purposes.

2. Mr. Nemethy asked why the USSR isn't included on the lists of embargoed or restricted destinations. If the USSR is permitted to receive imports under the proposed general licenses, what would prevent it from reexporting the material to an embargoed destination?

With regard to Mr. Nemethy's first point, the Executive Branch and the Commission do not believe that the USSR poses any foreign policy concern or any proliferation risk with respect to any of the non-sensitive commodities under NRC's existing or proposed general licenses. With regard to Mr. Nemethy's second point, if the USSR should begin to retransfer NRC general-licensed commodities to embargoed countries in violation of Part 110, the Commission would clearly have grounds to consider placing the USSR on the restricted or embargoed country lists.

3. Mr. Nemethy asked what would prevent the USSR, or any other country, from retransferring any NRC-licensed export to a third country without obtaining DOE approval as required by § 110.6.

The Commission acknowledges that foreign countries could subvert U.S. export controls by diverting NRC-licensed exports from their original intended end use. There are actions that the U.S. Government can take, and has taken, however, to counter these concerns. For exports of proliferation significance, such as exports of reactors and significant quantities of special nuclear material, exports must be made under formal agreements for cooperation which contain explicit requirements for obtaining the prior consent of the U.S. Government before retransfers of U.S.-origin material can take place. As a result, any unauthorized retransfer would be a violation of the terms of the agreement and grounds for taking appropriate diplomatic action including cessation of further nuclear cooperation. For less significant commodities, the primary means for controlling reexports is through the export licensee. The Commission has the authority to impose appropriate sanctions on such licensees in cases of violations of any export license terms. In addition, the Commission could refuse to issue any new licenses for export to countries which permit the unauthorized retransfer of NRC-licensed commodities to third countries. To date, the Commission is not aware of any examples of the unauthorized retransfer by any country of any NRC-licensed commodity.

4. Mr. Nemethy asked, with reference to the proposed general license in § 110.21, what would prevent an exporter from exporting material for use in the specified proscribed sensitive activities and then later denying that he had any advance knowledge of the activities.

The Commission recognizes that in certain instances it may be difficult to establish that a violation is willful. This is particularly the case with respect to the proposed end use restrictions in § 110.21. Because of this situation, the Commission has limited severely the quantities and forms of materials that may be exported under a general license so that, even in the case of a deliberate violation, the proliferation risk would be minimal.

The Atomic Industrial Forum (AIF). AIF was generally in favor of the proposed amendments. It commented that reactor pressure tubes should be eligible for export under the proposed general license in § 110.26.

The Commission agrees with AIF's comment that reactor pressure tubes are eligible for export under the proposed general license in § 110.26 and the final rule has been correspondingly modified. The Commission also notes AIF's suggestion that NRC replace DOE as the agency responsible for obtaining official assurance letters from foreign governments with respect to proposed nuclear exports. The Commission plans to consult further with the Executive Branch on this matter.

The Department of Energy (DOE). DOE raised questions concerning the proposed general license for the export of Neptunium-237.

After consultation with DOE and the other Executive Branch agencies, it was concluded that it would be appropriate to adopt a limited Neptunium-237 general license which will permit the export of up to 1 gram per shipment and 10 grams per year to any one country. The previously proposal general license would have permitted the export of up to 1 kilogram of Neptunium-237 per year to any one country.

The Petroleum Equipment Suppliers Association (PESA). PESA claimed that the proposed general license for the export of Americium-241 could place undesirable constraints on the development of oil and gas resources around the world and recommended that the general license be modified.

The Commission has consulted with the Executive Branch on this matter and agreement has been reached to modify the proposed general license to permit exports of Americium-241 when contained in petroleum exploration equipment in quantities of up to 20 curies per device and 200 curies per year to countries listed in § 110.28. This modification will permit the unrestricted export of Americium-241 for the oil and gas exploration purposes cited by PESA.

3M Company. 3M objected to the revised general license in § 110.23(a)(4) because it would revoke the provisions of the former general license in § 110.24(c)(4) which permitted the essentially unrestricted export of polonium-210 in static eliminators.

The restriction on static eliminator exports was unintentional. The Commission has consulted with the Executive Branch and agreement has been reached to reinstate the former general license which will permit the continued export under general license of polonium-210 when contained in static eliminators. In addition, the Executive Branch has requested additional time to review the proposed general license for the export of polonium-210 when *not* incorporated in static eliminators. Accordingly, that proposed general license will not be adopted at this time.

Miscellaneous. The proposed language covering end use restrictions on general licenses in §§ 110.21(b) and 110.22(b) has been moved to § 110.20(d) so that the restrictions now apply to all exports under general license. The proposed general license for the export of nuclear grade graphite has been modified to make it simpler and clearer. The list of restricted destinations in § 110.29 has been updated. Finally, the definition of a "person" in § 110.2 has been revised to specify that, with respect to imports, DOE is not defined as a person.

Note.—DOE has separate statutory authority to import nuclear equipment and material. As a result of this latter change, the proposed DOE contractor import exemption in § 110.11 is no longer necessary and it has been deleted. The Commission has concluded that the amendments are not inimical to the common defense and security, do not constitute an unreasonable risk to the public health and safety, and will not result in any activity which adversely affects the environment. Furthermore, the amendments are consistent with the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, and do not conflict with the safeguards criteria of the International Atomic Energy Agency.

The amendments are not inconsistent with the obligations of the United States under any treaty or international arrangement, including the Treaty on the Non-Proliferation of Nuclear Weapons.

COMPARISON OF FORMER REGULATIONS WITH NEW CHANGES

New	Former
I. General License Revisions	
A. Special nuclear material:	
1. Low-enriched uranium as residual contamination (§ 110.21(a)(1)).	None.
2. One effective gram or less of SNM to countries not listed in § 110.28 or § 110.29 § (110.21(b)(1)).	None.
3. Replacement fuel elements to countries not listed in § 110.28 or § 110.29 (§ 110.21(b)(2)).	None.
B. Source material:	
1. Thorium in alloys in concentrations of 5% or less to countries not listed in § 110.28 (§ 110.22(a)(2)).	Thorium in aircraft parts only (§ 110.23(b)(2)).
2. Source material in individual shipments of 10 kilograms or less to countries not listed in § 110.28 or § 110.29 (§ 110.22(b)).	Individual shipments of 1 kilogram or less (§ 110.23(a)(1)).
C. Byproduct material:	
1. Byproduct material with an atomic number greater than 83, except polonium-210, americium-241 and neptunium-237 (§ 110.23(a)(1)).	Americium-241 only (§ 110.24(d)).

COMPARISON OF FORMER REGULATIONS WITH NEW CHANGES—Continued

New	Former
2. Tritium in light sources up to 10,000 curies per shipment (§ 110.23(a)(2)).	100 curies per shipment limitation (except in aircraft safety devices) § 110.24 (b) and (c)).
3. Tritium in any dispersed form in shipments of 100 curies or less (§ 110.23(a)(3)).	Same, but limited to certain dispersed forms only (§ 110.24(c)).
4. Neptunium-237 in shipments of 1 gram or less. (§ 110.23(a)(5)).	None.
5. Tritium in any form in shipments of 100 curies or less to countries not listed in § 110.28 or § 110.29 (§ 110.23(b)).	None.
D. Deuterium:	
1. Deuterium in shipments of 1 kilogram or less (§ 110.24(a)).	90 grams of heavy water (18 grams of deuterium) or less per shipment (§ 110.25).
2. Deuterium in shipments of 10 kilograms or less to countries not listed in § 110.28 or § 110.29 (§ 110.24(b)).	None.
E. Nuclear grade graphite in shipments of up to 100 kilograms or in fabricated non-nuclear related commercial products (§ 110.25).	Shipments of up to 100 kilograms only (§ 110.26).
F. Nuclear reactor components to certain countries (§ 110.26).	None.
G. Imports (§ 110.27)	Formerly authorized under exemption except as authority for SNM imports (§ 110.11).

B. Significant Other Changes to Part 110

(Over-the-general format)

A. Section 110.8	Elimination of requirements for prior approval of retransfers when such retransfers have been approved in the context of issuing the original export license.
B. Section 110.30(d)	Elimination of provision limiting consolidated license applications to two year duration.
C. Section 110.41	Expansion of authority for NRC to process minor applications without referral to the Executive Branch (i.e., emphasis would be placed on reviewing exports for sensitive end uses or initial exports to new facilities).
D. Section 110.42	Clarification that health and safety findings are not required with respect to the impact abroad of reactor exports.
E. Section 110.50	Elimination of requirement to return expired licenses to NRC.
F. Section 110.51	Elimination of requirement to obtain license amendments for: (1) Changes in value (but not quantity) of nuclear equipment; (2) changes in addresses of consignees; and (3) addition of new intermediate consignees for component licenses.
G. Section 110.70	Elimination of requirement to notice receipt in the FEDERAL REGISTER of applications for imports and for export of LEU and less than 5 kgs. of HEU, U-233 or plutonium.

Environmental Impact: Categorical Exclusion

The NRC has determined that these amendments are a categorical exclusion under 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for these amendments.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0027.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. This analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from Marvin R. Peterson, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4599.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities, except to reduce the regulatory burden on licensees by reducing significantly the number of specific license applications required. It is estimated that, among the approximately 125 exporters/importers affected, the number of specific license applications per year will be reduced from about 450 to 200. Assuming an average of one hour to prepare an application, this will reduce the cost to the public from about $27,000 to $12,000 per year.

List of Subjects in 10 CFR Part 110

Administrative practice and procedures, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

Under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Part 110 are published as a document subject to codification.

PART 110—EXPORT AND IMPORT OF NUCLEAR FACILITIES AND MATERIAL

1. The authority citation for Part 110 is revised to read as follows:

Authority: Sec. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sec. 110.1(b)(2) also issued under Pub. L. 96–533, 94 Stat. 3138 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c. and 57d., 68 Stat. 473, 475 (42 U.S.C. 2074, 2077). Sec. 110.21 also issued under sec. 54c., 68 Stat. 473 (42 U.S.C. 2074). Sec. 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Sec. 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sec. 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Secs. 110.80–110.113 also issued under 5 U.S.C. 552, 554. Secs. 110.130–110.135 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 110.20–110.29, 110.50, and 110.120–110.129 also issued under secs. 161b. and i., 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i); and § 110.53 also issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. The table of contents of Subparts A through E of Part 110 is revised to read as follows:

Subpart A—General Provisions

Sec.
110.1 Purpose and scope.
110.2 Definitions.
110.3 Interpretations.
110.4 Inquiries.
110.5 License requirements.
110.6 Retransfers.
110.7 Information collection requirements: OMB approval.
110.8 List of nuclear equipment and material under NRC export licensing authority.
110.9 List of nuclear equipment and material under NRC import licensing authority.

Subpart B—Exemptions

110.10 General.
110.11 Export of IAEA safeguard samples.

Subpart C—General Licenses

110.20 General.
110.21 Export of special nuclear material.
110.22 Export of source material.
110.23 Export of byproduct material.
110.24 Export of deuterium.
110.25 Export of nuclear grade graphite.
110.26 Export of nuclear reactor components.
110.27 Imports.
110.28 Embargoed destinations.
110.29 Restricted destinations.

Subpart D—Applications for Specific Licenses

Sec.
110.30 Filing license applications.
110.31 Information required in license applications.

Subpart E—Review of License Applications

110.40 Commission review.
110.41 Executive Branch review.
110.42 Export licensing criteria.
110.43 Physical security standards.
110.44 Issuance or denial of licenses.
110.45 Conduct resulting in termination of nuclear exports.

* * * * *

Subpart A—General Provisions

3. Section 110.1 is revised to read as follows:

§ 110.1 Purpose and scope.

(a) The regulations in this part prescribe licensing, enforcement, and rulemaking procedures and criteria, under the Atomic Energy Act, for the export for nuclear equipment and material, as set out in § 110.8, and the import of nuclear equipment and material, as set out in § 110.9.

(b) The regulations in this part apply to all persons in the United States except: (1) The Departments of Defense and Energy for activities authorized by sections 54, 65, 82, and 91 of the Atomic Energy Act, except when the Department of Energy seeks an export license under section 111 of the Atomic Energy Act; (2) persons who export uranium depleted in the isotope 235 and incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics, as authorized by section 110 of the International Security and Development Cooperation Act of 1980,[1] and (3) persons who import deuterium, nuclear grade graphite or nuclear equipment other than production or utilization facilities.

4. Section 110.2 is amended by: (1) Removing the paragraph designations of the definitions; (2) removing the definitions of "Agreement State," "Depleted uranium," "Energy Reorganization Act"; "Government agency," "Nuclear equipment," and "Nuclear material;" (3) revising the definitions of "Classified information," "General license," "Nuclear grade graphite and "Person;" and (4) adding, in appropriate alphabetical order, definitions for "IAEA" and "NPT." The added and revised definitions read as follows:

[1] These exports are subject to the controls of the State Department and the Commerce Department under the general authority of the Arms Export Control Act and the Export Administration Act. The Commerce Department also has export licensing authority over additional nuclear-related commodities, such as advanced computers, bulk zirconium and beryllium.

§ 110.2 Definitions.

* * * * *

"Classified information" means National Security Information classified under Executive Order 12356.

* * * * *

"General license" means an export or import license effective without the filing of a specific application with the Commission or the issuance of licensing documents to a particular person.

* * * * *

"IAEA" means the International Atomic Energy Agency.

* * * * *

"NPT" means the Treaty on the Non-Proliferation of Nuclear Weapons (TIAS 6839).

* * * * *

"Nuclear grade graphite" means graphite with a boron equivalent content of less than 5 parts per million and density greater than 1.5 grams per cubic centimeter.

* * * * *

"Person" means any individual, corporation, partnership, firm, association, trust, estate, institution, group, Government agency other than the Commission or, with respect to imports, the Department of Energy; and State or political entity within a State; any foreign government or political entity of such government; and any authorized representative of the foregoing.

* * * * *

5. Section 110.4 is revised to read as follows:

§ 110.4 Inquiries.

Inquiries concerning this part should be addressed to the Office of the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone (301) 492–4599 or 492–7984).

6. Section 110.5 is revised to read as follows:

§ 110.5 License requirements.

Except as provided under Subpart B, no person may export any nuclear equipment or material listed in § 110.8, or import any nuclear equipment or material listed in § 110.9, unless authorized by a general or specific license issued under this part.

7. Section 110.6 is revised to read as follows:

§ 110.6 Retransfers.

(a) Retransfer of any nuclear equipment or material listed in § 110.8, including special nuclear material produced through the use of U.S.-origin source material or special nuclear material, requires authorization by the Department of Energy, unless the export to the new destination is authorized under a specific or general license or an exemption from licensing requirements. Under certain agreements for cooperation, Department of Energy authorization is also required for the retransfer of special nuclear material produced through the use of non-U.S.-supplied nuclear material in U.S.-supplied utilization facilities.

(b) Requests for authority to retransfer are processed by the Department of Energy, Office of International Nuclear and Non-Proliferation Policy, Washington, D.C. 20585.

8. Section 110.8 is redesignated as § 110.7 and revised to read as follows:

§ 110.7 Information collection requirements: OMB approval.

The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). OMB has approved the information collection requirements in §§ 110.28, 110.30, 110.31, 110.50 and 110.53 under control number 3150–0036, and has approved the use of Form NRC–7, as referenced in § 110.30, under control number 3150–0027. No other information collection requirements are contained in Part 110.

9. A new § 110.8 is added to read as follows:

§ 110.8 List of Nuclear equipment and material under NRC export licensing authority.

(a) Nuclear reactors and parts and components for nuclear reactors as follows:

(1) Reactor pressure vessels, i.e., metal vessels, as complete units or major shop-fabricated parts, specially designed or prepared to contain the core of a nuclear reactor and capable of withstanding the operating pressure of the primary coolant.

(2) On-line (e.g., CANDU) reactor fuel charging and discharging machines, i.e., manipulative equipment specially designed for inserting or removing fuel in an operating nuclear reactor.

(3) Reactor control rods, i.e., rods specially designed or prepared for the control of the reaction rate in a nuclear reactor.

(4) Reactor primary coolant pumps, i.e., pumps specially designed or prepared for circulating the primary coolant in a nuclear reactor.

(5) Reactor pressure tubes, i.e., tubes specially designed or prepared to contain fuel elements and the primary coolant in a nuclear reactor at an operating pressure in excess of 50 atmospheres.

(6) Zirconium tubes, i.e., zirconium metal and alloys in the form of tubes or assemblies of tubes specially designed or prepared for use in a nuclear reactor.

(7) Reactor internals, e.g., core support structures, control and rod guide tubes, thermal shields, baffles, core grid plates and diffuser plates specially designed or prepared for use in a nuclear reactor.

(8) Reactor control rod drive mechanisms, including detection and measuring equipment to determine flux levels.

(9) Any other components specially designed or prepared for use in a nuclear reactor or in any of the components described in this paragraph.

(b) Plants for the separation of the isotopes of source material, special nuclear material or lithium, and components for those plants as follows:[2]

(1) Uranium hexafluoride (UF_6) corrosion resistant valves.

(2) Units capable of separating isotopes of source material, special nuclear material or lithium, such as: (i) Gas centrifuges, (ii) jet nozzle separation units, (iii) vortex separation units, and (iv) laser isotope separation units.

(3) Uranium hexafluoride (UF_6) corrosion resistant axial or centrifugal compressors and specially designed or prepared seals for those compressors.

(4) Gaseous diffusion barriers specially designed or prepared for use in separating isotopes of source material, special nuclear material or lithium.

(5) Gaseous diffuser housings specially designed or prepared for use in plants for separating isotopes of source material, special nuclear material or lithium.

(6) Heat exchangers specially designed or prepared for use in gaseous diffusion plants.

(7) Any other components specially designed or prepared for use in an isotope separation plant or in any of the components described in this paragraph.

(c) Plants for the reprocessing of irradiated nuclear reactor fuel elements and components for those plants as follows:

(1) Fuel element chopping machines, i.e., remotely operated equipment specially designed or prepared to cut, chop or shear irradiated nuclear reactor fuel assemblies, bundles, or rods.

(2) Criticality safe tanks, i.e., small diameter, annular or slab tanks specially designed or prepared for the dissolution of irradiated nuclear reactor fuel.

(3) Countercurrent solvent extractors specially designed or prepared for use in a reprocessing plant.

(4) Process control instrumentation specially designed or prepared for monitoring or controlling the processing of material in a reprocessing plant.

(5) Any other components specially designed or prepared for use in a reprocessing plant or in any of the components described in this paragraph.

(d) Plants for the fabrication of nuclear reactor fuel elements and specially designed or prepared parts and components for those plants.

(e) Plants for the production of heavy water, deuterium and deuterium compounds, and specially designed or prepared parts and components for those plants.

(f) Special nuclear material.

(g) Source material.

(h) Byproduct material.

(i) Deuterium.

(j) Nuclear grade graphite.

10. A new § 110.9 is added to read as follows:

§ 110.9 List of nuclear equipment and material under NRC import licensing authority.

(a) Production and utilization facilities.

(b) Special nuclear material.

(c) Source material.

(d) Byproduct material.

11. Subpart B is revised to read as follows:

Subpart B—Exemptions

§ 110.10 General.

(a) In response to a request or on its own initiative, the Commission may grant an exemption from the regulations in this part, if it determines that the exemption—

(1) Is authorized by law;

(2) Is not inimical to the common defense and security; and

(3) Does not constitute an unreasonable risk to the public health and safety.

(b) An exemption from statutory licensing requirements, as authorized by sections 57d, 62, and 81 of the Atomic Energy Act, will be granted only after coordination with the Executive Branch and after completion of rulemaking proceedings under Subpart L.

(c) The granting of an exemption does not relieve any person from complying with the regulations of other Government agencies applicable to exports or imports under their authority.

§ 110.11 Export of IAEA safeguards samples.

A person is exempt from the requirements for a license to export special nuclear material set forth in sections 53 and 54d. of the Atomic Energy Act and from the regulations in this part to the extent that the person exports special nuclear material in IAEA safeguards samples, if the samples are exported in accordance with § 75.42(e)(1) of this chapter, or a comparable Department of Energy order, and are in quantities not exceeding a combined total of 100 grams of contained plutonium, U-233 and U-235 per facility per year. This exemption does not relieve any person from complying with Parts 71 or 73 of this chapter or any Commission order pursuant to section 201(a) of the Energy Reorganization Act of 1974 (42 U.S.C. 5841(a)).

12. Subpart C is revised to read as follows:

Subpart C—General Licenses

§ 110.20 General.

(a) In response to a petition or on its own initiative, the Commission may issue a general license for export or import if it determines that any exports or imports made under the general license will not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety and otherwise meet applicable statutory requirements.

(b) All general licenses will be coordinated with the Executive Branch and will be subject to rulemaking proceedings under Subpart L.

(c) A general license does not relieve a person from complying with the regulations of other Government agencies applicable to exports or imports under their authority.

(d) A general license for export may not be used if the exporter knows, or has reason to believe, that the material will be used in any activity related to isotope separation, chemical reprocessing, heavy water production or the fabrication of nuclear fuel containing plutonium, unless these activities are generically authorized under an appropriate agreement for cooperation.

(e) As specified in §§ 110.21 through 110.26, only certain countries are eligible to receive imports of material or equipment under NRC general license. The Commission will closely monitor these countries and may at any time remove a country from its general

[2] See Appendix A for a detailed listing of the components of a gas centrifuge enrichment plant which have been interpreted to be covered by the general entries in this paragraph.

license eligibility in response to significant adverse developments in the country involved. A key factor in this regard is the nonproliferation credentials of the importing country.

§ 110.21 Export of special nuclear material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) Low-enriched uranium as residual contamination (17.5 parts per million or less) in any item or substance.

(2) Plutonium containing 80 percent or more by weight of plutonium-238 in cardiac pacemakers.

(3) Special nuclear material in sensing components in instruments, if no more than 3 grams of enriched uranium or 0.1 gram of plutonium or U-233 are contained in each sensing component.

(b) A general license is issued to any person to export the following to any country not listed in § 110.28 or § 110.29:

(1) Special nuclear material in individual shipments of 0.001 effective kilograms or less (e.g., 1.0 gram of plutonium, U-233 or U-235, or 10 kilograms of 1 percent enriched uranium). No person may export more than 0.1 effective kilogram per year to any one country.

(2) Special nuclear material in fuel elements as replacements for damaged or defective unirradiated fuel elements previously exported under a specific license, subject to the same terms as the original export license and the condition that the replaced fuel elements must be returned to the United States within a reasonable time period.

§ 110.22 Export of source material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) Uranium or thorium in any substance in concentrations of less than 0.05 percent by weight.

(2) Thorium in incandescent gas mantles or in alloys in concentrations of 5 percent or less.

(b) A general license is issued to any person to export uranium or thorium in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29. No person may export more than 1,000 kilograms per year to any one country.

(c) A general license is issued to any person to export uranium or thorium in individual shipments of 1 kilogram or less to any country listed in § 110.29. No person may export more than 100 kilograms per year to any one country.

§ 110.23 Export of byproduct material.

(a) A general license is issued to any person to export the following to any country not listed in § 110.28:

(1) All byproduct material, except tritium, polonium-210, neptunium-237, and americium-241.

(2) Tritium in luminescent light sources in individual shipments of 10,000 curies or less.

(3) Tritium in any dispersed form (i.e., not in bulk gaseous form) in individual shipments of 100 curies or less. A person may not export more than 1,000 curies per year to any one country.

(4) Polonium-210 in individual shipments of 100 curies or less when contained in static eliminators.

(5) Neptunium-237 in individual shipments of 1 gram or less. No person may export more than 10 grams per year to any one country.

(b) A general license is issued to any person to export americium-241 to any country not listed in § 110.28, except that exports of americium-241 exceeding one curie per shipment or 100 curies per year to countries listed in § 110.29—

(1) Must be contained in petroleum exploration equipment in quantities not exceeding 20 curies per device; and

(2) May not exceed 200 curies per year to any one country.

(c) A general license is issued to export tritium in bulk, undispersed form in individual shipments of 100 curies or less to any country not listed in § 110.28 or § 110.29. No person may export more than 10,000 curies per year to any one country.

§ 110.24 Export of deuterium.

(a) A general license is issued to any person to export deuterium in individual shipments of 10 kilograms or less (50 kilograms of heavy water) to any country not listed in § 110.28 or § 110.29. No person may export more than 200 kilograms (1000 kilograms of heavy water) per year to any one country.

(b) A general license is issued to any person to export deuterium in individual shipments of 1 kilogram or less (5 kilograms of heavy water) to any country listed in § 110.29. No person may export more than 5 kilograms (25 kilograms of heavy water) per year to any one country.

§ 110.25 Export of nuclear grade graphite.

(a) A general license is issued to any person to export bulk nonfabricated nuclear grade graphite in individual shipments of 100 kilograms or less to any country not listed in § 110.28. No person may export more than 2,000 kilograms per year to any one country.

(b) A general license is issued to any person to export nuclear grade graphite in fabricated nonnuclear-related commercial products to any country not listed in § 110.28, except that graphite electrodes weighing more than 1 kilogram per electrode may not be exported to any country listed in § 110.29. Fabricated products are those in final manufactured form except for detailed maching and other final steps necessary for the intended end use of the product.

§ 110.26 Export of nuclear reactor components.

(a) A general license is issued to any person to export any nuclear reactor component, listed in § 110.8 (a)(5) through (a)(9), for use in any light or heavy water-moderated power or research reactor in any of the following countries:

Canada	Philippines
EURATOM [3]	Spain
Indonesia	Sweden
Japan	Switzerland
South Korea	Taiwan

[3] Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, the United Kingdom and West Germany.

(b) This general license does not authorize the export of essentially complete reactors through piecemeal exports of facility components. When individual exports of components would amount in the aggregate to export of an essentially complete nuclear reactor, a facility export license is required.

(c) Persons making exports under the general license established by paragraph (a) of this section shall submit by February 1 of each year one copy of a report of all components shipped during the previous calendar year. This report must include:

(1) A description of the components keyed to the categories listed in § 110.8(a).

(2) Approximate shipment dates.

(3) A list of recipient countries and endusers keyed to the items shipped.

§ 110.27 Imports.

A general license is issued to any person to import byproduct, source or special nuclear material, other than 100 kilograms or more of irradiated fuel, if the consignee is authorized to possess the material under: (a) A contract with the Department of Energy or (b) an exemption from licensing requirements issued by the Commission or a general or specific license issued by the Commission or a State with which the Commission has entered into an agreement under section 274b. of the Atomic Energy Act. Importers of special

nuclear material under this general license shall provide advance notification of imports to the Commission as specified in § 73.27 of this chapter.

§ 110.28 Embergoed destinations.

Cuba, Kampuchea, North Korea, Vietnam.

§ 110.29 Restricted destinations.

Afghanistan	Libya
Albania	Malawi
Algeria	Mauritania
Andorra	Mozambique
Angola	Niger
Argentina	Oman
Bahrain	Pakistan
Belize	Qatar
Bhutan	Saudi Arabia
Brazil	Seychelles
Burma	South Africa
Chile	St. Kitts
Comoros	St. Vincent and the Grenadines
Djibouti	Syria
Equatorial Guinea	Tanzania
Guyana	United Arab Emirates
India	Vanuatu
Iran	Yemen Arab Republic
Iraq	Zambia
Israel	Zimbabwe
Kiribati	
Kuwait	

13. Subpart D is revised to read as follows:

Subpart D—Applications for Specific Licenses

§ 110.30 Filing license applications.

(a) A person shall file a license application with the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or deliver the application in person to the Commission's offices at 1717 H Street, NW., Washington, DC.

(b) An export license application should be filed on Form NRC 7 unless it is for a license to export a production or utilization facility. An import license application and a production or utilization facility export license application should be filed by letter. Upon request, applications may be filed by telegram.

(c) Each person shall provide in the license application, as appropriate, the information specified in § 110.31. The Commission may also require the submission of additional information if necessary to complete its review.

(d) A consolidated license application may be filed covering multiple shipments.

(e) Information in a previous license application may be incorporated by reference.

(f) An applicant shall withdraw an application whenever it is no longer needed. The Commission's official files retain all documents related to a withdrawn application.

§ 110.31 Information required in license applications.

(a) Name and address of applicant.

(b) Name and address of supplier of equipment or material.

(c) Country of origin of equipment or material, if known.

(d) Names and addresses of all intermediate and ultimate consignees, other than intermediate consignees performing shipping services only.

(e) Dates of proposed first and last shipments.

(f) Description of the equipment or material including, as appropriate, the following:

(1) Maximum quantity of material in grams or kilograms (curies for byproduct material) and its chemical and physical form.

(2) For enriched uranium, the maximum weight percentage of enrichment and maximum weight of contained U-235.

(3) For nuclear equipment, total dollar value.

(4) For nuclear reactors, the name of the facility and its design power level.

(5) Description of end use by all consignees in sufficient detail to permit accurate evaluation of the justification for the proposed export or import, including the need for shipment by the dates specified.

14. Section 110.40 is amended by revising paragraph (b) to read as follows:

§ 110.40. Commission review.

* * * * *

(b) The Commissioners shall review a license application for export of the following:

(1) A production or utilization facility.

(2) More than one effective kilogram of high-enriched uranium, plutonium or U-233.

(3) 1,000 kilograms or more of heavy water or nuclear grade graphite.

(4) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors or the fabrication of nuclear fuel containing plutonium, except for categories of exports approved in advance by the Commission as constituting permitted incidental assistance.

(5) The initial export to a country since March 10, 1978 of source or special nuclear material for nuclear end use.

(6) An export involving over: (i) 10 grams of plutonium, U-233 or high-enriched uranium; (ii) 1 effective kilogram of low-enriched uranium; (iii) 250 kilograms of source material, heavy water or nuclear grade graphite; or (iv) 1,000 curies of tritium, to any country listed in § 110.28 or § 110.29.

(7) Any export subject to special limitations as determined by the staff or a majority of the Commissioners.

* * * * *

15. Section 110.41 is amended by removing paragraph (d) and revising paragraph (a) to read as follows:

§ 110.41 Executive Branch review.

(a) A license application for export of the following will be promptly forwarded to the Executive Branch for review:

(1) A production or utilization facility.

(2) More than one effective kilogram of high-enriched uranium or 10 grams of plutonium or U-233.

(3) Deuterium, nuclear grade graphite, or over 100 curies of tritium.

(4) Source or special nuclear material to be exported under the US–IAEA Agreement for Cooperation.

(5) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors or the fabrication of nuclear fuel containing plutonium, except for categories of exports approved in advance by the Executive Branch as constituting permitted incidental assistance.

(6) The initial export of nuclear material or equipment to a foreign reactor.

(7) An export to any country listed in § 110.28 or § 110.29.

(8) An export subject to special limitations as determined by the Commission or the Executive Branch.

* * * * *

16. Section 110.42 is revised to read as follows:

§ 110.42 Export licensing criteria.

(a) The review of license applications for the export for peaceful nuclear uses of production or utilization facilities,[4] special nuclear material and source material is governed by the following criteria:

(1) IAEA safeguards as required by Article III (2) of the NPT will be applied with respect to any such facilities or material proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material or facilities proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such material or facilities, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Physical security measures will be deemed adequate if such measures provide a level of protection equivalent to that set forth in § 110.43.

(4) No such material or facilities proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other country or group of countries unless the prior approval of the United States is obtained for such retransfer.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor will be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) With respect to exports of such material or facilities to nonnuclear weapon states, IAEA safeguards will be maintained with respect to all peaceful activities in, under the jurisdiction of, or carried out under the control of such state at the time of export. This criterion will not be applied if the Commission has been notified by the President in writing that failure to approve an export because this criterion has not been met would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security, in which case the provisions of Section 128 of the Atomic Energy Act regarding Congressional review will apply.

(7) The proposed export of a facility or of more than 0.003 effective kilograms of special nuclear material, other than plutonium containing 80 percent or more by weight of plutonium-238, would be under the terms of an agreement for cooperation.

(8) The proposed export is not inimical to the common defense and security and, in the case of facility exports, does not constitute an unreasonable risk to the public health and safety in the United States.

(b) The review of license applications for the export of nuclear equipment, other than a production or utilization facility, and for deuterium and nuclear grade graphite, is governed by the following criteria:

(1) IAEA safeguards as required by Article III (2) of the NPT will be applied with respect to such equipment or material.

(2) No such equipment or material will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) No such equipment or material will be retransferred to the jurisdiction of any other country or group of countries without the prior consent of the United States.

(4) The proposed export is not inimical to the common defense and security.

(c) The review of license applications for the export of byproduct material and for source material for nonnuclear end uses is governed by the criterion that the proposed export is not inimical to the common defense and security.

17. Section 110.43 is revised to read as follows:

§ 110.43 Physical security standards.

(a) Commission determinations on the adequacy of physical security programs in recipient countries for Category I quantities of nuclear material (see Appendix B) are based upon the following:

(1) Review of the physical security program established by the recipient country and of the implementation of the national requirements, as considered through country visits and other information exchanges, to ensure that the physical security measures provide, as a minimum, protection comparable to that set forth in International Atomic Energy publication INFCIRC/225/Rev. 1, entitled "The Physical Protection of Nuclear Material" (INFCIRC/225), which is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register on May 3, 1978. Notice of any changes to the publication will be published in the Federal Register. Copies of INFCIRC/225 may be obtained from the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and are available for inspection in the Commission Public Document Room. A copy is on file in the library of the Office of the Federal Register.

(2) Written assurances from the recipient country or group of countries that physical security measures providing, as a minimum, protection comparable to that set forth in INFCIRC/225 will be maintained.

(b) Commission determinations on the adequacy of physical security programs in recipient countries for Category II and III quantities of material (see Appendix B) are based on available relevent information and written assurances from the recipient country or group of countries that physical security measures providing, as a minimum, protection comparable to that set forth in INFCIRC/225 will be maintained.

(c) Commission determinations on the adequacy of physical security programs in recipient countries for exported facilities are made in accordance with the categories of material (see Appendix B) in use or in storage at the exported facilities and are based on available relevant information and written assurances from the recipient country or group of countries that physical security measures providing, as a minimum, protection comparable to that set forth in INFCIRC/225 will be maintained.

(d) Commission determinations may be based on a country-wide finding rather than on case-by-case analysis. The Commission will reexamine a determination whenever there are changed circumstances within a country that might reduce the effectiveness of its physical security program.

18. Section 110.44 is revised to read as follows:

§ 110.44 Issuance or denial of licenses.

(a) The Commission will issue an export license if it has been notified by the State Department that it is the judgment of the Executive Branch that the proposed export will not be inimical to the common defense and security; and——

(1) Finds, based upon a reasonable judgment of the assurances provided and other information available to the Federal government, that the applicable criteria in § 110.42, or their equivalent, are met. (If an Executive Order provides an exemption pursuant to section 126a of the Atomic Energy Act, proposed exports to EURATOM countries are not

[4] Exports of complete nuclear reactors, complete reactor pressure vessels, primary coolant pumps, control rods and reactor fuel charging and discharging machines are subject to the comprehensive export criteria in § 110.42(a). A complete nuclear reactor includes those parts and components, as specified in § 110.8(a), which are within or attached directly to the reactor vessel, which control the level of power in the reactor core, or which normally contain or come in direct contract with or control the primary coolant of the reactor. Nuclear reactor parts and components (other than complete pressure vessels, primary coolant pumps, control rods or fuel charging and discharging machines) when exported separately are subject to the export criteria in § 110.42(b).

required to meet the critieria in § 110.42(a) (4) and (5)); or

(2) Finds that there are no material changed circumstances associated with an export license application (except for byproduct material applications) from those existing at the time of issuance of a prior license to export to the same country, if the prior license was issued under the provisions of paragraph (a)(1) of this section.

(b) The Commission will issue an import license if it finds that the proposed import would not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety and that any applicable requirements of Subpart A of Part 51 of this chapter have been satisfied.

(c) If, after receiving the Executive Branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under the Atomic Energy Act, the Commission will publicly issue a decision to that effect, and will submit the license application to the President. The Commission's decision will include an explanation of the basis for the decision and any dissenting or separate views. The provisions in this paragraph do not apply to byproduct material export license applications.

(d) The Commission will deny: (1) Any export license application for which the Executive Branch judgment does not recommend approval; (2) any byproduct material export license application for which the Commission is unable to make the finding in paragraph (a)(1) of this section; or (3) any import license application for which the Commission is unable to make the finding in paragraph (b) of this section. The applicant will be notified in writing of the reason for denial.

19. Section 110.45 is amended by revising the introductory text of paragraphs (a) and (b) and revising paragraph (c) to read as follows:

§ 110.45 Conduct resulting in termination of nuclear exports.

(a) Except as provided in paragrah (c) of this section, no license will be issued to export nuclear equipment or material, other than byproduct material, to any nonnuclear weapon state that is found by the President to have, after March 10, 1978:

* * * * * *

(b) Except as provided in paragraph (c) of this section, no license will be issued to export nuclear equipment or material, other than byproduct material, to any country or group of countries that is found by the President to have, after March 10, 1978:

* * * * * *

(c) Under section 129 of the Atomic Energy Act, the President may waive the requirement for the termination of exports to a country described in paragraph (a) or (b) of this section after determining in writing that the cessation of exports would seriously prejudice the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. If the President makes this determination, the Commission will issue licenses to export to that country, if other applicable statutory provisions are met.

20. Section 110.50 is amended by revising paragraph (b) to read as follows:

§ 110.50 Terms.

* * * * * *

(b) Specific licenses.

(1) Each specific license will have an expiration date.

(2) A licensee may export or import only for the purpose stated in the license application.

(3) Unless a license specifically authorizes the export of foreign-origin nuclear material or equipment, a licensee shall notify in writing the Assistant Director for Export/Import and International Safeguards at least 40 days prior to export of Australian-origin nuclear material or equipment. A license may not ship this material or equipment until authorized by the Assistant Director for Export/Import and International Safeguards. The Assistant Director will not authorize shipment until after obtaining the consent of the Australian Government.

(4) A licensee authorized to export or import special nuclear material is responsible for compliance with the physical protection requirements of Part 73 of this chapter, unless a domestic licensee of the Commission has assumed that responsibility and the Commission has been so notified.

(5) A license may be transferred, disposed of or assigned to another person only with the approval of the Commission by license amendment.

21. Section 110.51 is revised to read as follows:

§ 110.51 Amendment and renewal of licenses.

(a) A licensee may submit an application to renew a license or to amend a license.

(b) If an application to renew a license is submitted 30 days or more before the license expires, the license remains valid until the Commission acts on the renewal application. An expired license is not renewable.

(c) An amendment is not required for—

(1) Changes in value (but not amount or quantity);

(2) Changes in the mailing addresses within the same countries of intermediate or ultimate consignees; or

(3) The addition of intermediate consignees in any of the importing countries specified in the license (for a nuclear equipment license only).

(d) In acting upon license renewal and amendment applications, the Commission will use, as appropriate, the same procedures and criteria it uses for original license applications.

22. Section 110.53 is amended by revising paragraph (b) to read as follows:

§ 110.53 United States address, records, and inspection.

* * * * * *

(b) Each licensee shall maintain a record of each export or import for 5 years (2 years for byproduct material).

* * * * * *

23. Section 110.70 is amended by revising paragraph (b) to read as follows:

§110.70 Public notice of receipt of an application.

* * * * * *

(b) The Commission will also publish in the **Federal Register** a notice of receipt of an application for a license to export the following:

(1) A production or utilization facility.

(2) Five effective kilograms or more of plutonium, high-enriched uranium or uranium-233.

(3) 10,000 kilograms or more of heavy water or nuclear grade graphite.

* * * * * *

24. Section 110.82 is amended by revising the introductory text of paragraph (b) and paragraph (b)(3) to read as follows:

§ 110.82 Hearing request or intervention petition.

* * * * * *

(b) Hearing requests and intervention petitions must—

* * * * * *

(3) Explain why a hearing or an intervention would be in the public interest and how a hearing or intervention would assist the Commission in making the determinations required by § 110.44.

* * * * * *

25. Section 110.83 is amended by revising paragraph (a) to read as follows:

§ 110.83 Answers and replies.

(a) Unless otherwise specified by the Commission, an answer to a hearing request or intervention petition may be filed within 30 days after the request or petition has been served.

* * * * * *

26. Section 110.84 is amended by revising paragraph (d) to read as follows:

§ 110.84 Commission action on a hearing request or intervention petition.

* * * * * *

(d) Before granting or denying a hearing request or intervention petition, the Commission will review the Executive Branch's views on the license application and may request further information from the petitioner, requester, the Commission staff, the Executive Branch or others.

* * * * * *

27. Section 110.89 is amended by revising paragraphs (a), (b), and (d)(1); and the introductory text of paragraph (d) is set out for the convenience of the user to read as follows:

§ 110.89 Filing and service.

(a) Hearing requests, intervention petitions, answers, replies and accompanying documents must be filed with the Commission by delivery or by mail or telegram to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Chief, Docketing and Service Branch. Filing by mail or telegram is complete upon deposit in the mail or with a telegraph company.

(b) All filing and Commission notices and orders must be served upon the applicant; the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Executive Secretary, Department of State, Washington, DC 20520; and participants if any. Hearing requests, intervention petitions, and answers and replies must be served by the person filing those pleadings.

* * * * * *

(d) Proof of service, stating the name and address of the person served and the manner and date of service, shall be shown, and may be made by—

(1) Written acknowledgment of the person served or an authorized representative; or

* * * * * *

28. Section 110.91 is revised to read as follows:

§ 110.91 Commission consultations.

The Commission may consult at any time on a license application with the staff, the Executive Branch or other persons.

29. Section 110.103 is amended by revising paragraph (a) to read as follows:

§ 110.103 Acceptance of hearing documents.

(a) Each document filed or issued must be clearly legible and bear the docket number, license application number and hearing title.

* * * * * *

30. Appendix A is revised to read as follows:

Appendix A—List of gas centrifuge enrichment plant components under NRC's export licensing authority.

1. *Assemblies and components especially designed or prepared for use in gas centrifuges.*

Note.—The gas centrifuge normally consists of a thin-walled cylinder(s) of between 75mm (3 ins.) and 400 mm (16 ins.) diameter contained in a vacuum environment and spun at high peripheral speed (of the order of 300 m/per second and more) with the central axis vertical. In order to achieve high speed, the materials of construction for the rotating rotor assembly, and hence its individual components, have to be manufactured to very close tolerances in order to minimize the unbalance. In contrast to other centrifuges, the gas centrifuge for uranium enrichment is characterized by having within the rotor chamber a rotating disc-shaped baffle(s) and a stationary tube arrangement for feeding and extracting UF_6 gas and featuring at least 3 separate channels of which 2 are connected to scoops extending from the rotor axis towards the periphery of the rotor chamber. Also contained within the vacuum environment are a number of critical items which do not rotate and which, although they are especially designed, are not difficult to fabricate nor are they fabricated out of unique materials. A centrifuge facility, however, requires a large number of these components so that quantities can provide an important indication of end use.

1.1 *Rotating Components.*

(a) Complete Rotor Assemblies: Thin-walled cylinders, or a number of interconnected thin-walled cylinders, manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

If interconnected, the cylinders are joined together by flexible bellows or rings as described in § 1.1(c). The rotor is fitted with an internal baffle(s) and end caps, as described in § 1.1 (d) and (e), if in final form. However, the complete assembly may be delivered only partly assembled.

(b) Rotor Tubes: Especially designed or prepared thin-walled cylinders with thickness of 12mm (.50 in.) or less, a diameter of between 75mm (3 ins.) and 400mm (16 ins.), and manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

(c) Rings or Bellows: Components especially designed or prepared to give localized support to the rotor tube or to join together a number of rotor tubes. The bellows in a short cylinder of wall thickness 3mm (.125 in.) or less, a diameter of between 75mm (3 ins.) and 400mm (16 ins.), having a convolute, and manufactured from one of the high strength-to-density ratio materials described in the footnote to this section.

(d) Baffles: Disc shaped components of between 75mm (3 ins.) and 400mm (16 ins.) diameter especially designed or prepared to be mounted inside the centrifuge rotor tube, in order to isolate the take-off chamber from the main separation chamber and, in some cases, to assist the UF_6 gas circulation within the main separation chamber of the rotor tube, and manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

(e) Top Caps/Bottom Caps: Disc shaped components of between 75mm (3 ins.) and 400mm (16 ins.) diameter especially designed or prepared to fit to the ends of the rotor tube, and so contain the UF_6 within the rotor tube, and in some cases to support, retain or contain as an integrated part, an element of the upper bearing (top cap) or to carry the rotating elements of the motor and lower bearing (bottom cap), and manufactured from one of the high strength-to-density ratio materials described in the Footnote to this Section.

Footnote

The materials used for centrifuge rotating components are:

(a) Maraging steel capable of an ultimate tensile strength of 2.050×10^9 N/m² (300,000 lb/in.²) or more.

(b) Aluminium alloys capable of an ultimate tensile strength of 0.460×10^9 N/m² (67,000 lb/in.²) or more.

(c) Filamentary materials suitable for use in composite structures and having a specific modulus of 12.3×10^6 or greater and a specific ultimate tensile strength of 0.3×10^6 or greater ("Specific Modulus" is the Young's Modulus in N/m² divided by the density in Kg/m³. "Specific Ultimate Tensile Strength" is the ultimate tensile strength in N/m² divided by the density in Kg/M³).

1.2 *Static Components.*

(a) Magnetic Suspension Bearings: Especially designed or prepared bearing assemblies consisting of an annular magnet suspended within a housing containing a damping medium. The housing will be manufactured from a UF_6 resistant material (see footnote to section 2). The magnet couples with a pole piece or a second magnet fitted to the top cap described in Section 1.1(e). The magnet may be ring-shaped with a relation between outer and inner diameter smaller or equal to 1.6:1. The magnet may be in a form having an initial permeability of 0.15 Henry/meter (120,000 in CGS units) or more, or an energy product of greater than 80,000 joules/m³ (10×10^6 gauss-oersteds.) In

addition to the usual material properties, it is a prerequisite that the deviation of the magnetic axes from the geometrical axes is limited to very small tolerances (lower than 0.1mm) or that homogeneity of the material of the magnet is specially called for.

(b) Bearings/Dampers: Especially designed or prepared bearings comprising a pivot/cup assembly mounted on a damper. The pivot is normally a hardened steel shaft polished into a hemisphere at one end with a means of attachment to the bottom cap described in Section 1.1(e) at the other. The shaft may, however, have a hydrodynamic bearing attached. The cup is pellet-shaped with hemispherical indentation in one surface. These components are often supplied separately to the damper.

(c) Molecular Pumps: Especially designed or prepared cylinders having internally machined or extruded helical grooves and internally machined bores. Typical dimensions are as follows: 7mm (0.3 ins.) to 400mm (16 ins.) internal diameter, 10mm (0.4 ins.) or more wall thickness, 1 to 1 length to diameter ratio. The grooves are typically rectangular in cross-section and 2mm (0.08 in.) or more in depth.

(d) Motor Stators: Especially designed or prepared ring shaped stators for high speed multi-phase AC hysteresis (or reluctance) motors for synchronous operation within a vacuum in the frequency range of 600–2000 Hz and a power range of 50–100 volts amps. The stators consist of multi-phase windings on a laminated low loss iron core comprised of thin layers typically 2.0mm (0.08 in.) thick or less.

2. *Especially designed or prepared auxiliary systems, equipment and components for gas centrifuge enrichment plants.*

Note.—The auxiliary systems, equipment and components for a gas centrifuge enrichment plant are the systems of the plant needed to feed UF_6 to the centrifuges to link the individual centrifuges to each other to form cascades (or stages) to allow for progressively higher enrichments and to extract the product and tails of UF_6 from the centrifuges, together with the equipment required to drive the centrifuges or to control the plant.

Normally UF_6 is evaporated from the solid using heated autoclaves and is distributed in gaseous form to the centrifuges by way of cascade header pipework. The "product" and "tails" of UF_6 gaseous streams flowing from the centrifuges are also passed by way of cascade header pipework to cold traps (operating at about −70 °C where they are condensed prior to onward transfer into suitable containers for transportation or storage. Because an enrichment plant consists of many thousands of centrifuges arranged in cascades, there are many kilometers of cascade header pipework incorporating thousands of welds with a substantial amount of repetition of layout. The equipment, component and piping systems are fabricated to very high vacuum and cleanliness standards.

The following items either come into direct contact with UF_6 process gas or directly control the centrifuge and the passage of the gas from centrifuge to centrifuge and cascade to cascade.

(a) Feed Systems/Product and Tails Withdrawal Systems:

Especially designed or prepared process systems including:

1. Feed autoclaves (or stations), used for passing UF_6 to the centrifuge cascades at up to 100 Kg/m³ (15 lb/in.³)

2. Desublimers (or cold traps) used to remove UF_6 from the cascades up to 3 Kg/m³ (0.5 lb/in³) pressure. The desublimers are capable of being chilled to −70 °C and heated to 70 °C.

3. Product and tails stations used for trapping UF_6 into containers.

This plant equipment and pipework are wholly made of or lined with UF_6 resistant materials (see Footnote to this Section) and are fabricated to very high vacuum and cleanliness standards.

(b) Machine Header Piping Systems:

Especially designed or prepared piping systems and header systems for handling UF_6 within the centrifuge cascades.

This piping network is normally of the "triple" header system with each centrifuge connected to each of the headers. There is thus a substantial amount of repetition in its form. It is wholly made of UF_6 resistant materials (see Note to this Section) and is fabricated to very high vacuum and cleanliness standards.

(c) UF_6 Mass Spectrometers/Ion Sources: Especially designed or prepared magnetic or quadrapole mass spectrometers capable of taking "on-line" sample of feed, product or tails from UF_6 gas streams and having all of the following characteristics:

1. Unit resolution for mass greater than 320.

2. Ion sources constructed of or lined with nichrome, monel or nickel-plate.

3. Electron bombardment ionization sources.

4. Having a collector system suitable for isotope analysis.

(d) Frequency Changers: Frequency changers (also known as converters or invertors) especially designed or prepared to supply motor stators as defined under Section 1.2(d), or parts, components and subassemblies of such frequency changers having all of the following characteristics:

1. A multiphase output of 600 Hz to 2000Hz.

2. High stability (with frequency control better than 0.1%).

3. Low harmonic distortion (less than 2%).

4. An efficiency of greater than 80%.

Footnote

Materials resistant to corrosion by UF_6 include stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel.

31. Appendix C to Part 110 is redesignated as Appendix B and amended by revising footnote C to read as follows:

Appendix B—Categorization of nuclear material

* * * * *

[c] Natural uranium, depleted uranium, thorium and quantities of uranium enriched to less than 10% not falling into Category III should be protected in accordance with prudent management practice.

* * * * *

Dated at Washington, DC this 28th day of November 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-31548 Filed 11-30-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 24319; Amdt. 321]

Air Traffic and General Operating Rules; IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Adoption of the Amendment

PART 95—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t. December 20, 1984.

(Secs. 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on December 20, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 321 EFFECTIVE DATE, DECEMBER 20, 1984

FROM	TO	MEA

§95.1001 DIRECT ROUTES-U.S.

ATLANTIC ROUTES

R507 IS ADDED TO READ

UTAHS, PR FIX *24000 - MRA **1200 - MOCA	*CONCH, BI FIX	**24000 MAA-45000
*CONCH, BI FIX *24000 - MRA **1200 - MOCA	GRAND TURK, BF VORTAC	**24000 MAA-45000

R763

BORINQUEN, PR VORTAC *1200 - MOCA	GRAND TURK, BF VORTAC	*14000 MAA-45000

§95.6005 VOR FEDERAL AIRWAY 5

IS AMENDED TO READ IN PART

TANDS, TN FIX	BOWLING GREEN, KY VORTAC	2700

§95.6018 VOR FEDERAL AIRWAY 18

IS AMENDED TO READ IN PART

FANEN, MS FIX VIA S ALTER. *2000 - MOCA	MERIDIAN, MS VORTAC VIA S ALTER.	*3000

§95.6020 VOR FEDERAL AIRWAY 20

IS AMENDED TO READ IN PART

SPARTANBURG, SC VORTAC	CHECK, NC FIX	3000
CHECK, NC FIX	MOPED, NC FIX	3700
MOPED, NC FIX	BARRS, NC FIX	3000

§95.6066 VOR FEDERAL AIRWAY 66

IS AMENDED TO READ IN PART

RALEIGH-DURHAM, NC VORTAC	FRANKLIN, VA VORTAC	2500

§95.6095 VOR FEDERAL AIRWAY 95

IS AMENDED TO READ IN PART

GUNNISON, CO VORTAC	BALOO, CO FIX NE BND SW BND	 16200 12000
BALOO, CO FIX	BALIF, CO FIX NE BND SW BND	 16200 15000

FROM	TO	MEA

§95.6095 VOR FEDERAL AIRWAY 95—Continued

BALIF, CO FIX	TREES, CO FIX	16200
TREES, CO FIX	*CHILT, CO FIX SW BND NE BND	 16000 13600
*12600 - MCA CHILT FIX, SW BND		
CHILT, CO FIX	MONTH, CO FIX	11800
MONTH, CO FIX	FOLES, CO FIX	10200

§95.6096 VOR FEDERAL AIRWAY 96

IS AMENDED TO READ IN PART

KOKOMO, IN VORTAC	*FORCE, IN FIX	2600
*6000 - MCA FORCE FIX, NE BND		
FORCE, IN FIX *2300 - MOCA	FORT WAYNE, IN VORTAC	*6000

§95.6106 VOR FEDERAL AIRWAY 106

IS AMENDED TO READ IN PART

COBOL, CT FIX *3000 - MOCA	BARNES, MA VORTAC	*3500

§95.6119 VOR FEDERAL AIRWAY 119

IS AMENDED TO READ IN PART

BURGS, WV FIX *3100 - MOCA	OTOWN, PA FIX	*3700

§95.6133 VOR FEDERAL AIRWAY 133

IS AMENDED BY ADDING

INTERNATIONAL FALLS, MN VORTAC *2800 - MOCA	U.S. CANADIAN BORDER	*6500

IS AMENDED TO READ IN PART

FORT MILL, SC VORTAC	STANN, NC FIX	3400

§95.6146 VOR FEDERAL AIRWAY 146

IS AMENDED TO READ IN PART

PROVIDENCE, RI VORTAC	MARTHAS VINEYARD, MA VOR	2000

FROM	TO	MEA

§95.6157 VOR FEDERAL AIRWAY 157

IS AMENDED TO READ IN PART

WEBBS, FL FIX *1500 - MOCA	OCALA, FL VORTAC	*2000
TAR RIVER, NC VORTAC	LAWRENCEVILLE, VA VORTAC	2400

§95.6162 VOR FEDERAL AIRWAY 162

IS AMENDED TO READ IN PART

LUCKE, VA FIX	CARIS, PA FIX	5000

§95.6164 VOR FEDERAL AIRWAY 164

IS AMENDED TO READ IN PART

GANIS, NY FIX	BUFFALO, NY VORTAC	2500

§95.6198 VOR FEDERAL AIRWAY 198

IS AMENDED TO READ IN PART

FORT STOCKTON, TX VORTAC *4700 - MOCA	OZMOS, TX FIX	*8000

§95.6214 VOR FEDERAL AIRWAY 214

IS AMENDED TO READ IN PART

GALLS, PA FIX *3100 - MOCA	OTOWN, PA FIX	*3700

§95.6222 VOR FEDERAL AIRWAY 222

IS AMENDED TO READ IN PART

FORT STOCKTON, TX VORTAC *4700 - MOCA	OZMOS, TX FIX	*8000

§95.6225 VOR FEDERAL AIRWAY 225

IS AMENDED TO READ IN PART

HOMEY, FL FIX *1300 - MOCA	DIDDY, FL FIX	*2000

§95.7007 JET ROUTE NO. 7

IS AMENDED TO READ IN PART

LOS ANGELES, CA VORTAC	FRIANT, CA VORTAC	18000	45000
FRIANT, CA VORTAC	RENO, NV VORTAC	18000	45000

FROM	TO	MEA

§95.6234 VOR FEDERAL AIRWAY 234

IS AMENDED TO READ IN PART

BRAKR, OK FIX *4700 - MOCA	LIBERAL, KS VORTAC	*5700

§95.6259 VOR FEDERAL AIRWAY 259

IS AMENDED TO READ IN PART

FORT MILL, SC VORTAC	MIDET, NC FIX	3700

§95.6267 VOR FEDERAL AIRWAY 267

IS AMENDED TO READ IN PART

GREMM, FL FIX *2000 - MRA **1400 - MOCA	*DOUGS, FL FIX	**5000

§95.6408 VOR FEDERAL AIRWAY 408

IS AMENDED TO READ IN PART

LUCKE, VA FIX	SCOBY, MD FIX	5000

§95.6454 VOR FEDERAL AIRWAY 454

IS AMENDED TO READ IN PART

LIBERTY, NC VORTAC *2500 - MOCA	LAWRENCEVILLE, VA VORTAC	*6000

§95.6415 HAWAII VOR FEDERAL AIRWAY 15

IS AMENDED TO READ IN PART

*CANON, HI FIX *32000 - MRA **6000 - MRA	**VANDA, HI FIX W BND E BND	 32000 6000

[FR Doc. 84-31474 Filed 11-30-84; 8:45 am]
BILLING CODE 4910-13-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC-14234; S7-35-84]

Separate Accounts Funding Flexible Premium Variable Life Insurance Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Temporary adoption of rule, final rule, form amendments, and request for comments.

SUMMARY: The Commission is adopting, on a temporary basis, a rule that will provide insurance company separate accounts with exemptions from the Investment Company Act of 1940 to the extent necessary to permit them to offer a new type of insurance product known as flexible premium variable life insurance. Concurrently, the Commission is requesting public comment on that rule. These actions will offer companies the opportunity to sell this product immediately, pending adoption of a permanent rule.

DATES: Effective December 3, 1984. Comments must be received on or before January 31, 1985.

ADDRESSES: All communications on this matter should be sent, in triplicate, to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Such communications should refer to File No. S7-35-84 and will be available for public inspection at the Commission's Public Reference Room 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Special Counsel (202) 272-2061, or Robert E. Plaze, Attorney (202) 272-2622, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting, on a temporary basis, rule 6e-3(T) [17 CFR 270.6e-3(T)] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") relating to flexible premium variable life insurance ("flexible life" or "flexible contracts"). The rule provides extensive exemptive relief from various provisions of the Act and rules thereunder to any separate account [1] established by a life insurance company ("life insurer") and offering flexible life. [2] Rule 6e-3(T) is based in large part upon a suggested rule contained in a rulemaking petition (the "petition") submitted by the American Council of Life Insurance ("Petitioner") and published for comment in Investment Company Act Release No. 13632 ("Release 13632"). [3] The temporary rule is intended to be a companion to rule 6e-2 under the Act [17 CFR Part 270 6e-2], the existing exemptive rule relating to scheduled premium variable life insurance ("scheduled life" or "scheduled contracts") (hereinafter flexible life and scheduled life collectively are referred to as "variable life" or "variable contracts"). Because the scope and nature of the relief provided by the temporay rule differs in certain respects from that in Petitioner's suggested rule, the Commission has decided to request public comment on the revisions before adopting a permanent rule. The Commission is also adopting, on a temporary basis, and at the same time proposing for comment, related technical amendments to rule 6c-3 [17 CFR 270.6c-3] and Form N-6EI-1 under the Act [17 CFR 274.301].

Background

1. The Petition

On June 29, 1983, as supplemented on September 15, 1983, Petitioner submitted a petition urging the Commission to adopt a comprehensive exemptive rule under the Act for separate accounts proposing to offer flexible life. [4] The petition describes flexible life as a new type of whole life insurance product that will be funded by separate accounts and will provide for flexible payments and death benefits. [5] Petitioner argued that adoption of its suggested rule was the best way to resolve the issues this new product raises under the Act, and asserted that adoption of that rule would be consistent with the statutory standards for exemptive relief prescribed in section 6(c) of the Act [15 U.S.C. 80a-6(c)]. [6]

2. Request for Comment on the Suggested Rule

In Release 13632 the Commission requested public comment on the issues arising under the Act relating to flexible life. The Commission included the petition and suggested rule as part of the release, but it expressly took no position as to the need for or appropriateness of adopting Petitioner's rule.

The Commission received forty comment letters, thirty-seven of which were filed by or on behalf of life insurers, many of whom participated directly in formulating the petition. These commentators urged adoption of the suggested rule with only minor clarifications. The other commentators either supported adoption of the suggested rule generally or raised matters not directly related to the treatment of flexible life under the Act. [7]

3. The Commission's Decision to Adopt a Temporary Rule While Seeking Comment Thereon

After reviewing the petition, the suggested rule, and comments received in response to Release 13632, the Commission has decided to adopt, on a temporary basis, a modified version of Petitioner's suggested rule. In addition, in view of the changes made, the Commission has decided to seek public comment prior to adoption of a final rule. As a result, life insurers will be able to offer flexible life immediately, based on rule 6e-3(T) while comment is sought on it. [8] Following the comment period, a final rule will be adopted.

Since the rule is a companion to rule 6e-2, and the latter rule has provided workable standards, rule 6e-3(T), like Petitioner's suggested rule, follows the same general approach as rule 6e-2. Modifications have been made only where (1) necessary to accommodate the differing characteristics of flexible life or (2) experience has shown that the provisions of rule 6e-2 need to be

[1] A separate account may be organized under the Act either as a management investment company ("management account") or as a unit investment trust ("trust account").

[2] The relief provided by rule 6e-3(T) is also available to the account's investment adviser, principal underwriter, and depositor.

[3] (Nov. 23, 1983) [48 FR 54043 (Nov. 30, 1983); 29 SEC Docket 365 (Dec. 6, 1983)].

[4] The specific nature of the exemptions requested by Petitioner are discussed more fully in Release 13632 and the petition.

[5] For a more complete description of the features of flexible life, *see* discussion in Section I, *infra* and the petition at 6-23. Page citations to the petition refer to the pagination of the petition as submitted to the Commission and available in the Commission's Public Reference Room in File No. S7-1004.

[6] Section 6(c) gives the Commission authority to exempt any person from any provision of the Act or rule thereunder if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policy and provisions of the Act.

[7] Among the matters raised was the importance of assuring full and fair disclosure concerning registered insurance products and sales and disclosure practices pertaining to whole life insurance generally.

[8] If the provisions of the final rule differ from those of rule 6e-3(T), the Commission anticipates providing issuers relying on rule 6e-3(T) with a one year transition period to comply with the final rule.

revised or updated. [9] The Commission has not otherwise reconsidered the policy determinations underlying specific provisions of rule 6e-2.

Due to staffing limitations and the Commission's desire to expedite adoption of a final rule of general applicability, the Commission does not encourage life insurers to file individual flexible life exemptive applications during the comment period seeking relief different from, or in addition to, that provided by rule 6e-3(T). The staff will, however, process applications relating to the rule if they involve technical or unforeseen matters.

Discussion

Rule 6e-3(T) provides exemptions from various provisions of the Act and rules under it where necessary to permit separate accounts to offer flexible life.

I. Flexible Life [10]

A flexible contract will provide an immediate cash benefit many times the amount of the initial purchase payment. So long as the contract is in force, the death benefit payable under the contract will never be less than the current face amount of death benefit under the contract. The amount of the death benefit may vary depending on the investment experience of the separate account used to fund the contract. The contract holder generally will have the right to elect one of two benefit options: a death benefit equal to the face amount of the contract or, if greater, the cash value plus a pure risk amount [11] ("Option I"); or a death benefit equal to a pure risk amount plus cash value ("Option II"). [12] Investment experience also may have a bearing on the duration of the death benefit because a flexible contract generally will remain in force only so long as cash surrender value [13]—which will vary based on investment experience—is sufficient to meet the cost of insurance [14] and various other fees and charges deducted periodically.

A flexible contract generally will permit the contractholder to determine both the timing and amount of payments, subject to certain limitations. [15] Contracts may stipulate a target payment schedule intended to provide the level of insurance benefits selected by the contractholder, who will be encouraged, but not required, to make payments pursuant to the schedule. Failure to pay a target payment will not necessarily cause the contract to lapse if, as noted above, there is sufficient cash surrender value available under the contract to pay the fees and charges necessary to keep it in force.

The sales load structures under flexible contracts will vary among companies. Some life insurers may design contracts under which sales load is deducted from payments (a "front-end sales load") while others may deduct sales load other than from payments (a "subsequent sales load"). [16]

A flexible contract will lapse when the "grace period" expires. [17] The grace period generally begins on any day on which cash surrender value is insufficient to meet the various fees and charges due that day. If an additional payment is not received within a specified period after the grace period begins (at least 61 days), the contract will lapse.

Finally, contracts generally will have features found in other insurance contracts, such as those permitting the contractholder to take out a loan using the contract as security and to redeem the contract and receive its cash value less deductions for sales load and other charges. In addition, most, if not all, flexible contracts will be designed to conform to applicable requirements of the Internal Revenue Code, which are contained in section 7702 (formerly section 101(f)). [18]

II. Rule 6e-3(T)

The rule is divided into four paragraphs. Paragraph (a) defines generally the type of separate account that may use the rule, and paragraph (b) provides relief from specific sections of the Act and rules thereunder. Terms used in the rule are defined in paragraph (c), while paragraph (d) sets forth certain computational rules to be used in applying the rule.

Each provision of the rule is described below. Significant similarities and differences between the rule, rule 6e-2 [19] and Petitioner's suggested rule [20] are also noted.

A. *Paragraph (a)—The Separate Account.* Paragraph (a) provides that a separate account of a life insurer [21]

[9] Given that rule 6e-3(T) and rule 6e-2 are intended as companion rules, the Commission intends to propose for comment in the near future a number of conforming changes to rule 6e-2.

[10] The discussion is based on Petitioner's generic description of flexible life (*see* petition at 6-23).

[11] The manner in which the pure risk amount is determined is described *infra* note 14.

[12] The relationship between the pure risk amount and the cash value of any flexible contract is governed by section 7702 of the Internal Revenue Code of 1954, as amended [I.R.C. section 7702 (1984)] ("Code") (*see infra* note 14), which requires that for contracts issued on or after January 1, 1985 the death benefit must be at least 250% of cash value for insured aged 40 and under. This percentage drops in varying increments each year and is 105% for insureds between the ages of 75 and 90. Absent this relationship between cash value and death benefit, the contract will not qualify for the favorable tax treatment afforded life insurance.

[13] Generally speaking, cash value accumulates from that portion of payments made under a life insurance contract not necessary to purchase immediate life insurance coverage. In a traditional level payment whole life insurance product, cash value accumulated in early years of the contract (and interest paid thereon) is used to pay the increasingly large insurance costs in later years. Cash surrender value is equal to the cash value of the policy less any deductions made upon redemption (*see* Section II.C.11., *infra*).

[14] Simply stated, the "cost of insurance" is the charge made periodically by the life insurer for the net amount of death benefit under the contract for which the insurer is "at risk" during that period. The insurer is at risk for that amount of the death benefit equal to the face amount of the contract less its current cash value; this is the "pure risk amount." The amount of the cost of insurance charge is calculated by multiplying the net amount at risk by the "cost of insurance rate," a rate which is based on factors such as the sex, age, and rate class of the insured.

[15] Life insurers may reserve the right to limit the amount and number of payments and may prescribe minimum payments.

[16] The two most likely types of subsequent sales loads are (1) a deferred sales load and (2) a periodic charge directly on the cash value of a contract. A deferred sales load generally is a sales load deducted upon redemption (either partial or full) of a contract. The imposition of the sales load, and the rate at which the sales load is deducted, may be contingent on the number of years the contract has been in effect. A sales load that is a periodic charge against cash value would provide, for example, that each day a percentage deduction from cash value would be made for sales load.

[17] The grace period provisions are required by article IV, section 3(b)(2) and article IX, section 3 of the Variable Life Insurance Model Regulation ("Model Regulations"). The Model Regulation, which has been adopted by many states, was amended by the National Association of Insurance Commissioners in December 1982 specifically to permit flexible life. A copy of the amended provisions as they were proposed, with commentary, is attached to Release 13632.

[18] Section 7702 defined a life insurance contract for purposes of the Code generally as any contract which is a life insurance contract under the applicable state law, but only if the contract meets either of two alternative tests designed to limit investment-motivated payment of large amounts of cash under the contract.

[19] As noted above, the Commission intends to propose certain actions with respect to rule 6e-2 in a future release.

[20] Citations to Petitioner's June 29 submission will refer to the "petition;" citations to the September 15 supplemental submission will refer to the "petition supplement." Paragraphs of Petitioner's suggested rule will be referred to as "items" throughout this release in order to distinguish them from portions of rule 6e-2 and 6e-3(T), which will be referred to as "paragraphs" or "provisions."

[21] Paragraph (a)(1) of the rule provides that the life insurance company which establishes and maintains the separate account will be referred to throughout the rule as the "life insurer." Similarly, various other changes in language used in rule 6e-2 and in Petitioner's suggested rule have been made throughout rule 6e-3(T) in order to improve its readability. These changes are discussed in this release only where they are substantive.

which meets six conditions will be exempt from the registration provisions of the Act. However, such a separate account will be subject to all other provisions of the Act as if it were registered, except as specifically provided in paragraph (b) of the rule. The conditions, which are similar to those contained in rule 6e–2(a), are designed to ensure the segregated nature of the separate account and also to limit the availability of the rule to separate accounts offering flexible contracts as defined in paragraph (c)(1) of the rule (*see* discussion in Section II.C.1., *infra*).[23] The principal differences from rule 6e–2(a) are that: (1) Paragraph (a)(1) now includes a reference to the definition of "separate account" in section 2(a)(37) of the Act [15 U.S.C. 80a–2(a)(37)];[23] (2) the prohibition in rule 6e–2(a)(3) on holding funds in the separate account corresponding to dividend accumulations has been deleted;[24] and (3) paragraph (a)(2) permits the assets of the separate account to be derived from the sale of flexible contracts and scheduled premium variable life insurance contracts.[25] Regarding the latter matter, to the extent a separate account offers scheduled contracts it will, of course, continue to be governed by rule 6e–2 rather than rule 6e–3(T).

B. *Paragraph (b)—The Exemptive Provisions.* Paragraph (b) provides that if the separate account meets the requirements of paragraph (a), then it shall be exempt from certain enumerated provisions of the Act with respect to flexible contracts funded by the account. This provision, like rule 6e–2(b), sets forth fifteen exemptions, many of which are substantively similar or identical to the exemptions provided by rule 6e–2(b) or requested by Petitioner in the suggested rule. The discussion below describes these exemptions and focuses particularly on the relief which differs from or is in addition to that provided by rule 6e–2(b) or the suggested rule.[26]

1. Paragraph (b)(1)—Sales Load Definition

Like rule 6e–2(b)(1) for scheduled life separate accounts, this paragraph exempts flexible life separate accounts from section 2(a)(35) [15 U.S.C. 80a–2(a)(35)], which defines the term "sales load." The purpose of this exemption is to make the special definition of sales load contained in paragraph (c)(4) of the rule (*see* discussion in Section II.C.4., *infra*) applicable to the sales load provisions of the Act as they relate to flexible life separate accounts. Relief also is provided from various other sections of the Act and rules thereunder necessary to permit a subsequent sales load.[27] This relief is necessary because the Act and rule 6e–2, which were drafted when sales loads were uniformly front-end, only contemplates sales loads being deducted in this manner.

2. Paragraphs (b)(2) and (b)(3)—Registration

Paragraph (b)(2) exempts a flexible life separate account from the prohibitions of section 7 [15 U.S.C. 80a–7] regarding transactions by unregistered investment companies and paragraph (b)(3) provides relief from the requirements of section 8 [15 U.S.C. 80a–8], provided that the account files a notification of claim of exemption under rule 6e–3(T) on Form N–6EI–1 [28] and a registration statement on a form designated by the Commission, generally within ninety days thereafter. Both provisions are substantively identical to rule 6e–2 (b)(2) and (b)(3), respectively. Until a registration form specifically designed for variable life separate accounts is adopted, a flexible life separate account organized as a management account should file on Form N–1 [17 CFR 274.11], and a flexible life separate account organized as a trust account should file on Forms N–8B–2 [17 CFR 274.12] and S–6 [17 CFR 239.16]. In each case the first page of such form should make special notation that the filing is made pursuant to rule 6e–3(T).

3. Paragraph (b)(4)—Eligibility Restrictions

Like rule 6e–2(b)(4), this provision provides a partial exemption from the restrictions of section 9(a) [15 U.S.C. 80a–9(a)] on certain persons serving in various positions with an investment company so that the restrictions are not applicable to personnel of the life insurer who do not participate directly in the administration or management of the separate account or in the sale of flexible contracts.

4. Paragraph (b)(5)—Investment Policies

This provision provides flexible life separate accounts with the same relief from section 13(a) [15 U.S.C. 80a–13(a)] provided by rule 6e–2(b)(5) to permit the life insurer in limited instances to disapprove changes in investment policies initiated by contractholders.

5. Paragraph (b)(6)—Initial Capital Requirements

This provision exempts a flexible life separate account from the minimum capital requirements of section 14(a) [15 U.S.C. 80a–14(a)] on the same terms as are provided in rule 6e–2(b)(6).

---

[23] Paragraph (a)(2) of the rule provides that flexible premium variable life insurance contracts will be referred to throughout the rule as "flexible contracts." The Commission believes it is appropriate in the rule to refer to flexible life as *contracts*, rather than *policies* as suggested by Petitioner, because these instruments are investment contracts for purposes of the federal securities laws, notwithstanding that in insurance terminology they are "insurance policies."

[23] Section 2(a)(37) of the Act defines a separate account essentially as an account maintained by an insurance company under which income and losses are credited to and charged against the account's contracts without regard to the income or losses of the insurance company. The reference to section 2(a)(37) in paragraph (a)(1) has made it unnecessary to include in the rule a provision similar to rule 6e–2(a)(4).

[24] Rule 6e–2(a)(3) prohibits a scheduled life separate account from being used for dividend accumulations, and this restriction is explained in the petition at note 24 as an industry suggestion to help assure that a scheduled contract would function as little as possible as an investment vehicle. In light of the arguments set forth in the petition at 33–34, the Commission believes it is appropriate not to include such a prohibition in this rule.

[25] Paragraph (a)(2) of the rule provides that scheduled premium variable life insurance contracts will be referred to throughout the rule as "scheduled contracts."

[26] Because rule 6e–3(T) provides a comprehensive and interrelated set of exemptions from the Act, a separate account relying on the rule should comply with each exemptive provision to the extent that the provision or the underlying section of the Act applies thereto.

[27] The relief provided by paragraph (b)(1) would permit a flexible life separate account to deduct a subsequent sales load in any of the three manners Petitioner envisions (*see* petition at 57). First, relief is provided from sections 2(a)(32) [15 U.S.C. 80a–2(a)(32)), 22(c) [15 U.S.C. 80a–22(c)], 26(a)(2)(C) [15 U.S.C. 80a–26(a)(2)(C)], 27(c)(1) [15 U.S.C. 80a–27(c)(1)], and 27(d) [15 U.S.C. 80a–27(d)] and rule 22c–1 [17 CFR 270.22c–1] to permit a deferred sales load (*see* description *supra* note 16). Second, additional relief is provided from section 12(b) [15 U.S.C. 80a–12(b)] and rule 12b–1 thereunder [17 CFR 270.12b–1] to permit a sales load to be deducted periodically from cash value (*see* description *supra* note 16). Third, this paragraph would permit any combination of a front-end, deferred, and periodic sales load. In all cases, as in rule 6e–2, the definition of sales load set forth in paragraph (c)(4) would be controlling, and the amount of sales load actually deducted would have to comply with the limitations set forth in paragraph (b)(13) and, if applicable, paragraph (d) of the rule (*see* discussion in Sections II.B.12. and II.D., *infra*).

The suggested rule contains no relief from section 12(b) and rule 12b–1 for subsequent sales loads based on Petitioner's "belief that these provisions are inapplicable to a charge (in whatever form) to recover sales and distribution expense * * *" that complies with section 27 (petition at note 34). While agreeing with the practical result of Petitioner's position, the Commission believes relief is nevertheless necessary, and it has been included in the rule.

[28] As noted above, the Commission is adopting, on a temporary basis, amendments to Form N–6EI–1 in order to make it available to separate accounts relying on rule 6e–3(T) as well as those relying on rule 6e–2.

6. Paragraph (b)(7)—Selection of Investment Adviser

A limited exemption from section 15(a) [15 U.S.C. 80a–15(a)] is provided by paragraph (b)(7)(i) to permit the initial selection of the account's investment adviser to be made without prior contractholder approval. Paragraph (b)(7)(ii) provides an exemption from sections 15 (a), (b), and (c) to permit state insurance authorities in certain cases to disapprove the advisory contract and the life insurer to disapprove changes in the account's principal underwriter or investment adviser. These provisions are substantially identical to the corresponding provisions of rule 6e–2.

7. Paragraph (b)(8)—Selection of Board of Directors

This provision, like rule 6e–2(b)(8), provides a limited exemption from the requirements of section 16(a) [15 U.S.C. 80a–16(a)] to permit persons to serve as directors of the separate account without prior contractholder approval.

8. Paragraph (b)(9)—Custodianship Assets

This paragraph provides an exemption from section 17(f) [15 U.S.C. 80a–17(f)] generally to allow the securities and similar investments of a management account to be maintained in the custody of the life insurer or of an affiliated life insurer, provided certain conditions designed to ensure safekeeping of such assets are satisfied. The relief is substantially identical to rule 6e–2(b)(9), with two minor modifications.[29] Petitioner's suggested rule includes similar relief, but also provides relief from section 17(f) if the management account complies with rule 17f–2 [17 CFR 270.17f–2.][30] The need for such an alternative test is unclear, however, because rule 6e–2(b)(9) provides relief comparable to, and in some cases exceeding, that provided by rule 17f–2. Accordingly, this suggestion has not been incorporated into the rule, although comment is requested as to whether such an alternative test is necessary.

9. Paragraph (b)(10)—Voting Rights

This provision, which is substantively identical to rule 6e–2(b)(10), provides an exemption from the voting rights requirements of section 18(i) [15 U.S.C. 80a–18(i)] if, *inter alia*, flexible life contractholders receive one vote for each $100 of cash value. The Commission has determined not to incorporate Petitioner's suggestion to add the words "registered management" to describe the type of investment company which is the subject of the contractholder voting requirements discussed in this part of the rule. Such an addition could lead to confusion about the scope of the relief provided in cases where, for example, a flexible life separate account organized as a management company elects, in reliance on the rule, not to register under the Act.

10. Paragraph (b)(11)—Dividends

As in the case of rule 6e–2(b)(11), this provision exempts from section 19 [15 U.S.C. 80a–19] any dividend paid on a participating flexible contract on the ground that such "dividends" are not dividends in the sense used in the Act.

11. Paragraph (b)(12)—Pricing and Processing

This paragraph provides relief from sections 22(d) [15 U.S.C. 80a–22(d)], 22(e) [15 U.S.C. 80a–22(e)], and 27(c)(1) and rule 22c–1 in connection with certain pricing and processing provisions. The pricing relief provided by paragraph (b)(12)(i) is similar to rule 6e–2(b)(12)(i), although the language has been updated to reflect an amendment to rule 22c–1 effected after the adoption of rule 6e–2.[31] Paragraph (b)(12)(i)(B)(*1*) incorporates Petitioners's suggestion that the rule provide pricing relief specifically to permit deductions from cash value for items such as the cost of insurance and administrative fees and charges to be made at such times as specified in the contract,[32] and paragraph (b)(12)(i)(B)(*2*) requires the death benefit to be determined only on days when it could be affected by the investment experience of the separate account.[33] In addition, this paragraph permits a subsequent sales load to be deducted from cash value at specified times.

One significant difference in terminology between rule 6e–2 and rule 6e–3(T) that first appears in this provision is the use of the terms "cash value" and "cash surrender value." Rule 6e–2 uses these terms interchangeable [34] because it was drafted for contracts in which these amounts would be equal. In the case of a flexible contract subject to a deferred sales load, however, the contract's cash value and its cash surrender value may not be equal since the latter may reflect a deduction for the deferred sales load. Accordingly, definitions of these terms have been included in paragraph (c)(10) and (c)(11) of the rule.

Petitioner urges that the pricing provisions should only require that a contract's cash value and death benefit be "determinable" on valuation days, rather than "determined" as required by rule 6e–2(b)(12)(i), apparently because some contracts may provide that daily investment experience may not affect the death benefit and charges may be deducted from cash value other than on a daily basis (*see* petition at 73–74). Since these situations already are specifically excepted from the general pricing requirements by paragraphs (b)(12)(i)(B) (*1*) and (*2*), Petitioner's suggestion has not been incorporated into the rule.

12. Paragraph (b)(13)—Sales Load and Other Deductions

This provision provides exemptions from section 27 and related provisions in connection with the deduction of sales load and certain fees and charges from the assets of a flexible life separate

---

[29] The first modification is to paragraph (b)(9)(iv) of the rule. It has been revised to permit securities to be deposited in any manner permitted by any rule under section 17(f), and the language therein referring to a national securities exchange or association has been deleted in light of the enactment of section 17A of the Securities Exchange Act of 1934 [15 U.S.C. 78q–1] as part of the Securities Exchange Act Amendments of 1975 [Pub. L. No. 94–29, 89 Stat. 97]. The effect of this modification is to permit a separate account, in accordance with rule 17f–4 [17 CFR 270.17f–4], to deposit its securities in a clearing agency registered with the Commission under section 17A of the 1934 Act or the book-entry system as provided by the book-entry regulations of federal agencies.

Second, paragraphs (b)(9)(iii) and (b)(9)(vi) have been modified to clarify that the life insurer may retain an independent public accountant on behalf of the account.

[30] Rule 17f–2, a rule not specifically drafted for insurance company separate accounts, specifies certain conditions under which a management investment company may maintain its securities and similar investments in its own custody.

[31] Former rule 22c–1(b) required that an investment company price its shares not less frequently than once daily at the close of trading on the New York Stock Exchange. This rule was amended in 1979 (Investment Company Act Rel. No. 10827 (Aug. 13, 1979) [44 FR 486549 (Aug. 20, 1979); 18 SEC Docket 120 (Aug. 28, 1979)]) to require pricing on any day there is a sufficient degree of trading in the portfolio securities of the investment company that the current net asset value of the investment company's redeemable securities might be materially affected and to permit a company's board of directors to designate a time during the day at which pricing would occur.

[32] The relief provided by paragraph(b)(12)(i)(B)(*1*) provides explicit relief for practices already permitted for scheduled life separate accounts by rule 6e–2(b)(12)(ii).

[33] For example, investment experience (either positive or negative) would not affect the death benefit under an Option I contract (*see* description in Section I, *supra*) until the cash value plus pure risk amount exceeded the current face amount of death benefit under the contract.

[34] *Compare* rule 6e–2(b)(10)(i)(A) and rule 6e–2(b)(12)(i).

account. Like rule 6e–2(b)(13), this provision is divided into nine sections, discussed below.

a. Paragraph (b)(13)(i)—Sales Load Limitation. Paragraph (b)(13)(i) provides exemptions comparable to those provided by rule 6e–2(b)(13)(i) and incorporates part of Petitioner's suggested rule. The nature of the relief provided by this provision is most easily understood by first examining the nature and scope of the exemptions provided to scheduled contracts in rule 6e–2 and the reasons underlying that relief.

Rule 6e–2(b)(13)(i) provides separate accounts offering scheduled contracts with an exemption from the requirement of section 27 that sales load deducted under any periodic payment plan certificate not exceed 9% of payments "to be made thereon." Since scheduled contracts provide coverage for an indeterminate period—*i.e.*, for the whole of life—it was necessary to specify an artificial time period, which in the case of rule 6e–2 is the lesser of 20 years or the anticipated life expectancy of the insured.[35] In adopting this time period, the Commission believed it to be a reasonable estimate of the period during which payments would be made. Petitioner argues that flexible contracts similarly are of indeterminate length and that the same relief should be granted.[36] This time period appears equally reasonable in the case of flexible contracts and has been incorporated into the rule.

Petitioner asserts, however, that flexible life requires additional relief because the sales load provisions of rule 6e–2 contemplate payments which are scheduled and in a fixed amount. It is for this purpose that Petitioner has developed the concept of a "guideline annual premium" which, as discussed in Section II.C.6., *infra*, is defined generally as the level annual payment necessary to provide the future benefits under the contract through maturity, based on certain assumptions. The guideline annual premium, in effect, corresponds to scheduled payments under rule 6e–2, and the sum of 20 years' guidelines, like the sum of twenty years' scheduled payments under rule 6e–2, provides the base against which to measure compliance with the 9% limitation. Petitioner urges the Commission to incorporate this approach into a flexible life rule because it "has substantive and procedural virtues superior to those of other possible methods of specifying premium payments" (petition at 48).[37]

The Commission believes that, on balance and in the absence of a readily apparent alternative, the guideline annual premium approach for measuring compliance with the sales load requirements can be adopted in the case of flexible life without frustrating the intent of the relevant statutory provisions. Moreover, although it is somewhat troublesome to permit the amount of sales load to be based on other than actual payments, particularly with a product like flexibile life which may permit significant variations in actual payments, the use of artificial tests in connection with both scheduled life [38] and variable annuity contracts [39] has proven to be a practical way to accommodate insurance products under the Act. Separate issues are presented regarding the appropriateness of the various assumptions to be used in defining the amount of the guideline annual premium, and they are discussed in Section II.C.6., *infra* in connection with the definition of this term set forth in paragraph (c)(8) of the rule.

Thus, paragraph (b)(13)(i)(A) of the rule provides relief from the sales load limitations of sections 27(a)(1) [15 U.S.C. 80a–27(a)(1)], 27(h)(1) [15 U.S.C. 80a–27(h)(1)], and 27(h)(4) [15 U.S.C. 80a–27(h)(4)], provided that sales load does not exceed 9% of the sum of the guideline annual premiums that would be paid during the relevant contract periods.[40] Like rule 6e–2(b)(13)(i), the relevant contract periods are equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract. The 1980 Commissioners Standard Ordinary Mortality Table ("1980 CSO Table") is prescribed for determining anticipated life expectancy, rather than the 1958 Commissioners Standard Ordinary Mortality Table ("1958 CSO Table") as specified in rule 6e–2(b)(13)(i), and the reason for this change is explained in Section II.C.8., *infra*.[41]

Where payments in excess of the guideline amount are made during any contract period, Petitioner proposes that sales load be permitted to be deducted from the excess amount. This additional sales load would be limited to the lesser of 9% of the guideline single premium—*i.e.*, the amount necessary to pay up the contract until maturity [42]—or 9% of the payments in excess of the guideline annual premium. The Commission has decided not to adopt this suggestion because it would permit a contractholder, who takes advantage of the contract's flexibility and concentrates his payments during the early contract years, to be charged more than a 9% sales load on payments equal to the sum of 20 guideline annual premiums. Similarly, two otherwise comparable contractholders could, depending on the timing and amount of their payments, pay different amounts of sales load even though the total amount of their payments was equal.[43]

Under this paragraph, a life insurer has wide latitude to design a schedule of sales load deductions so long as the total amount deducted does not exceed 9% of the guideline annual premiums which would be paid during 20 years or the insured's life expectancy, if less, subject, of course, to the other relevant limitations in the Act and this rule.[44] In addition, subject to the "stair step" provisions which are discussed immediately below, a life insurer would be permitted to deduct a sales load from any payments made in excess of 20 guideline annual premiums, or, if less, the number of guideline annual premiums corresponding to the insured's life expectancy.[45] Finally, paragraph (b)(13)(i)(B) has been included as an alternate sales load test to clarify that a life insurer who deducts sales load from actual payments in a manner permitted by section 27(a)(1) can also rely on the rule.

b. Paragraph (b)(13)(ii)—"Stair Step" Relief. This provision provides exemptions similar to those in rule 6e–2(b)(13)(ii) from the requirements of sections 27(a)(13) [15 U.S.C. 80a–27(a)(3)] and 27(h)(3) [15 U.S.C. 80a–27(h)(3)] that the amount of any sales load deducted from any payment not exceed the proportionate amount deducted from any prior payment—commonly known as "stair step" requirements.[46] Paragraph (d)(1)(ii) provides comparable relief from the stair step requirements relating to other than front-end sales loads (*see* discussion in Section II.D.1., *infra*).

c. Paragraph (b)(13)(iii)—Deduction of Fees and Charges and Custodianship of Assets. This provision provides relief from sections 27(c)(2), 26(a)(1), and 26(a)(2) to permit certain fees and charges to be deducted from account assets and to permit various custodianship activities regarding those assets. The relief is modeled upon comparable relief afforded variable annuity separate accounts by rules 26a–1 and 26a–2 [17 CFR 270.26a–1 and 270.26a–2] and relief proposed to be codified in rule 26a–3,[47] but differs from rule 6e–2(b)(13)(iii) to the extent that conditional, rather than blanket, relief is provided.

Although the exemptions provided by this provision generally are routine, the treatment of any charges for mortality, expense, and guaranteed death benefit risks ("risk charges") in paragraph (b)(13)(iii)(F) differs from the approach of rule 6e–2. Despite the potential that the proceeds from risk charges may be used to finance distribution, the scheduled life rule imposes no conditions in this regard, primarily because at the time the rule was adopted state insurance regulations effectively limited these charges to no more than .50%. [48] Recent action at the state level, however, has effectively rescinded this limitation.[49] In light of this action, and the concerns noted above, the Commission has determined to incorporate into the rule conditions comparable to those required of variable annuity separate accounts that deduct risk charges.

This provision also requires that the amount of the risk charge be disclosed in the prospectus and be at least one half of the maximum charge permitted under the contract. This requirement is identical to that contained in rule 6e–2(c)(1)(iii) and, in that context was intended to assure that the life insurer would not initially set an unrealistically low risk charge in order to induce persons to purchase a scheduled contract, and later raise the charge to the contract maximum. Petitioner would delete this requirement, although the explanation given does not address the concern noted above (*see* petition at 35). The Commission has determined not to make this change absent evidence that this concern is no longer valid or is not relevant to flexible, as opposed to scheduled, contracts. Comment on this issue is requested.

d. Paragraph (b)(13)(iv)—Redeemability and Contract Lapses. This provision provides relief from sections 27(c)(1) and 27(d) to the extent that the insurance nature of flexible contracts prevents them from being redeemable for a pro rata share of the separate account's assets within the meaning of these provisions.[50] The specific relief provided differs from the corresponding provisions of rule 6e–2(b) in two ways.

First, paragraph (b)(13)(iv)(B) provides that the life insurer may include a provision in the contract requiring that, if on a contract processing day [51] there is insufficient cash surrender value to pay the charges necessary to keep the contract in force until the next such day, that amount shall be applied to purchase a non-forfeiture option [52] specified by the life insurer. This provision differs from rule 6e–2(b)(13)(iv), which permits the contractholder to elect to receive either the contract's cash surrender value or any of several non-forteiture options. In suggesting this approach, Petitioner argues that this different treatment for flexible contracts is appropriate because a lapse typically will occur only when cash surrender value is minimal and, under these circumstances, it is fair to permit the life insurer to recover some of its expenses in providing the grace period. The Commission agrees, but it has included a proviso in the rule that this approach may be used only where contract processing days occur not less frequently than monthly because it believes Petitioner's assumption of minimal cash surrender value is reasonable only if processing days occur at least that often.[53]

In addition, paragraph (b)(13)(iv)(B)(*2*) requires that before the life insurer may apply a contract's cash value to a non-forfeiture option in the manner described above, any excess paid for sales loading (calculated pursuant to paragraph (b)(13)(v)(A) and discussed in Section II.B.12.e.i., *infra*) shall be applied to keep the contract in force.[54]

---

[35] While section 27 limits sales load to 9% of payments made, it permits proportionately more sales load to be deducted in the early years of a periodic payment plan certificate. For example, it permits up to 50% of the first year's payment to be deducted as sales load, so long as the issuer can demonstrate prospectively that the total sales load deducted over the life of the certificate will not exceed 9% of total payments made. Since variable contracts are of indeterminate length, an artificial test (such as the 20 year or life expectancy test) is necessary to permit the life insurer to demonstrate compliance with the 9% limitation on a prospective basis.

[36] *See* petition at 44.

[37] Petitioner argues, among other things, that such an approach would provide life insurers with some certainty as to a compliance with the Act and would assist them in structuring commission payments to life insurance agents. Absent use of the guideline annual premium approach, Petitioner suggests that life insurers might be forced to limit sales loads to 9% of payments as they are actually paid, which would create problems for the life insurer given the heavily front-end loaded nature of traditional insurance agent commission schedules (*see* petition at 45–51).

[38] *See* rule 6e–2(b)(13)(i).

[39] *See* rule 27e–1 [17 CFR 270.27e–1].

[40] The term "contract period" is defined in paragraph (c)(5) of the rule generally as the period from a contract issue or anniversary date to the earlier of the next following anniversary date or the contract's termination date. *See* discussion in Section II.C.5., *infra*.

[41] A mortality table is an actuarial device which estimates life expectancy. The 1958 CSO Table, developed jointly by the Society of Actuaries and the National Association of Insurance Commissioners ("NAIC"), prescribes the minimum basis upon which certain insurance-related calculations must be made. The NAIC recently promulgated a mortality table embodying contemporary mortality assumptions—the 1980 CSO Table—which generally will be mandatory for all life insurance contracts by 1989.

[42] The term "guideline single premium" is defined in paragraph (c)(9) of the rule and is discussed in Section II.C.8., *infra*.

[43] For example, assume a flexible contract that contains an excess front-end sales load which declines to 0% before the 10th contract year and that contractholder X pays exactly the guideline annual premium (*e.g.*, $1,000) each year for 20 years. X could pay sales load of up to 9% of his total premium payments (9% of $20,000=$1,800). Contractholder Y has an identical contract, but makes annual premium payments equal to twice the guideline annual premium in each of the first 10 contract years. Under Petitioner's suggested rule, Y could pay sales load of up to 9% of 20 guideline annual premiums ($1,800), plus up to 9% of the excess of his payments over the guideline amount for each of the first 10 years (9% of $10,000=$900), *i.e.*, Y could pay sales load equal to 13.5% of his premium payments ($2,700), which is 150% of what X could be charged for the same amount of payments.

[44] *See e.g.*, Section 27(a)(2) of the Act [15 U.S.C. 80a–27(a)(2)], and paragraphs (b)(13)(ii) and (b)(13)(v) of this rule, discussed *infra*.

[45] For example, assume a contractholder with a life expectancy of at least 20 years purchases a flexible contract with a guideline annual premium of $1,000. The life insurer is permitted to deduct $1,800 in sales load (9% of $20,000) from the contractholder's first $20,000 in payments, regardless of the timing of those payments. If, and only if, the contractholder subsequently makes payments in addition to the $20,000, the life insurer can deduct a sales load from such additional payments, subject to the "stair step" provisions.

[46] Because the Commission had decided not to adopt the petition's approach to payments in excess of the guideline, the petition's "ratio" approach to this stair step provision is unnecessary and has not been included as part of this paragraph.

Similar to rule 6e–2(b)(13)(ii), the paragraph provides an exception to the "stair-step" requirements for increases caused by the grading of cash surrender values into reserves. The administrative history of the provision in rule 6e–2 does not provide specific guidance regarding the types of situations contemplated by this exception. Comment is requested on the types of situations in the context of flexible life in which it is anticipated that this exception would be operative.

[47] Rule-26a–3 was proposed for comment in Investment Company Act Rel. No. 14190 (Oct. 11, 1984).

[48] *See* Article VI, Section 7(5) of the former Variable Life Insurance Model Regulation.

[49] *See* Commentary on the Model Regulation at 108, *reprinted in* Appendix A of the petition.

[50] In addition, this section provides relief from sections 2(a)(32), 22(c) and Rule 22c–1.

[51] The term "contract processing day" is defined in paragraph (c)(13) generally as any day on which fees and charges under the contract are deducted from the separate account. *See* discussion in Section II.C.13., *infra*.

[52] Generally speaking, an non-forfeiture option is a contract feature required under state law which provides for the application of any cash value remaining upon lapse to purchase a paid-up life insurance policy.

[53] Thus, while the life insurer has discretion to designate how often contract processing days will occur under its contracts, this provision requires that if they occur less frequently than monthly, the contractholder (in the circumstances described in the text above) must be given the right to choose a cash refund or a non-forfeiture option.

[54] The Commission has determined not to incorporate two of Petitioner's suggestions into this paragraph. First, Petitioner would permit the life insurer upon a contract lapse to keep any excess sales loading, primarily because of "the absence of nonforfeiture options with cash value" (petition at

Continued

If the contractholder subsequently makes a payment, paragraph (b)(13)(iv)(B)(*2*) permits the life insurer to recapture the excess sales loading previously applied to keep the contract in force.

Second, paragraph (b)(13)(iv)(C) specifies that, subject to other provisions of the rule, sales load may be deducted upon a redemption.[55]

e. Paragraph (b)(13)(v)—Surrender and Refund of Excess Sales Load Right and Conversion Right. This paragraph, like rule 6e–2 (b)(13)(v), provides exemption from the requirement of section 27(d) that the holder of a periodic payment plan certificate must have the right to surrender the certificate within the first 18 months after issuance and receive the value of his account plus any amount paid for sales loading which exceeds 15% of gross payments made. Relief is provided so long as the flexible contractholder is given a surrender and refund right and a conversion right, as discussed separately below.

i. Surrender and Refund Right. Paragraph (b)(13)(v)(A) provides that the contractholder must be given the right to surrender the contract within the first 24 months and receive its cash surrender value plus a refund of any "excess" paid for sales loading. This provision defines the "excess" amount of sales loading refundable as that amount of sales load which exceeds the sum of (1) the lesser of 30% of the guideline annual premium or 30% of actual payments made during the first contract period [56] plus (2) the lesser of 10% of the guideline annual premium or 10% of actual payments made during the second contract period plus (3) 9% of payments made during either the first or the second contract period in excess of the guideline annual premium in each period.

Petitioner's formula in the suggested rule for determining excess sales load subject to the refund right would permit the life insurer to retain sales load at higher rates where the contractholder chooses to pay less than the guideline annual premium during the first two contract year.[57] Petitioner asserts that this relief is necessary to protect life insurers since they will bear expenses in early contract years irrespective of the amount of payments made. While this concern appears valid, the Commission is reluctant to reduce the amount of refund to be received by contractholders. Moreover, a more direct way to address Petitioner's concern is to permit the life insurer to fix the timing and minimum amount of payments during the first two contract years. This approach has been incorporated into the definition of a flexible contract (*see* discussion in Section II.C.1., *infra*).

ii. Conversion Right. In addition to the surrender and refund right discussed above, paragraph (b)(13)(v)(B) of the rule provides that the contractholder must be given the right to convert the flexible contract during the first 24 months into a different type of life insurance policy. While the corresponding provision of rule 6e–2 specifies that conversion must be to a whole life policy, this provision of Rule 6e–3(T) permits the life insurer to specify conversion into any policy other than a variable contract. As noted by Petitioner, the purposes underlying the conversion right are satisfied so long as the contractholder has the right to convert to any type of fixed-benefit life insurance policy (*see* petition at 56).[58]

As further suggested by Petitioner, the new policy must provide for either the same death benefit or the same amount at risk to the life insurer as the flexible contract at the time of conversion and must provide for premiums based on the same issue age and risk classification of the insured as the flexible contract, subject to an equitable adjustment. The suggested rule would permit the life insurer to select whether the new policy would provide the same death benefit or amount at risk. The Commission believes, however, that the insured should have the option of making this determination, and this requirement has been included in paragraph (b)(13)(v)(B)(*1*).

f. Paragraph (b)(13)(vi)—Reserve Requirements. This provision provides exemption from the reserve requirements of rule 27d–1 [17 CFR 270.27d–1] imposed on the principal underwriter and depositor of periodic payment plan certificates subject to sections 27(d) or section 27(f) on terms identical to those of rule 6e–2(b)(13)(vi) and the suggested rule.

g. Paragraph (b)(13)(vii)—Notification of Surrender and Refund Right and Conversion Right. This provision implements the notification requirements of section 27(e) [15 U.S.C. 80a–27(e)] and rule 27e–1 thereunder [17 CFR 270.27e–1] by prescribing the form, manner of delivery, and timing of the notice of the surrender and refund right specified in paragraph (b)(13)(v)(A). It preserves the basic requirements of rule 6e–2(b)(13)(vii), with certain modifications discussed below.

The first modification is that this provision has been expanded to permit the notice requirement to be satisfied by providing the contractholder with a written document containing information comparable to that required by Form N–27I–1 [17 CFR 274.301]. This approach, which is based on a suggest by Petitioner, will permit life insurers to design the form of the notice they must provide.

A second modification to this provision relates to the timing of the required notice regarding the surrender and refund right. Petitioner points out that the requirement of rule 6e–2(b)(13)(vii)(B) that the notice be provided if the contractholder fails to make a scheduled payment is not meaningful in the case of a flexible contract. Alternatively, Petitioner suggests that the notice should be given generally within 30 days after the first and second contract anniversaries and that the surrender and refund right should not expire until not less than 15 days after the last notice is mailed (*see* petition at 69). While the nature of flexible contracts clearly warrants an alternative notice requirement, notice would appear most appropriately given at times during the surrender and refund period when a contract is likely to terminate. Accordingly, paragraph (b)(13)(vii)(B) requires that the notice be sent whenever the amounts available on any contract processing day to pay the charges authorized by the contract are insufficient to keep the contract in force until the next contract processing day.[59] Since Article IX, section 3 of the Model Regulation (*see supra* note 16) requires a report to be sent in similar circumstances, paragraph (b)(13)(vii)(B) indicates that the required notice and report may be sent together.

A third modification is that the rule permits notice to be provided through personal delivery by sales representatives, as an alternative to delivery of the notice by first class mail. Petitioner suggested this modification to conform the rule with common industry practice.

h. Paragraph (b)(13)(viii)—"Free Look" Period. In addition to the surrender and refund right and the conversion right discussed above, rule 6e–2(b)(13)(viii) requires that the contractholder be provided a 45 day "free look" period during which he may elect to return his scheduled contract and receive a refund of the present value of his gross payments, and a similar withdrawal right is set forth in paragraph (b)(13)(viii). As suggested by Petitioner, this provision permits the life insurer to design the form of the notice, provided it contains information comparable to that required by Form N–27I–2 [17 CFR 274.303].

This provision permits the life insurer to impose the investment risk during the free look period on the contractholder. The corresponding provision of rule 6e–2, on the other hand, imposes that risk on the life insurer, apparently because state law at the time rule 6e–2 was adopted mandated this result. Petitioner points out that this result is no longer required under state law,[60] and argues that it is inequitable to impose the investment risk during the free look period on the life insurer, especially given the possibility under flexible life of large voluntary initial payments which, if made, could impose substantial risk on the life insurer (*see* petition at 70). In view of the fact that the corresponding free look period of section 27 imposes all investment risk on the purchaser, Petitioner's suggestion has been incorporated into the rule.[61]

Finally, the Commission has determined not to revise the length of the withdrawal period as required by Petitioner. Rule 6e–2(b)(13)(viii)(A) permits the contractholder to elect withdrawal anytime up to the latest of (i) 45 days from the date of the application for insurance, (ii) 10 days from receipt of the contract by the insured, or (iii) 10 days from the mailing of the notice of right to withdraw. Petitioner's proposed rule would delete the first alternative solely on the ground that at the time rule 6e–2 was being developed, the Model Regulation had a similar requirement which has since been deleted (*see* petition at 71). However, the 45 day provision in rule 6e–2 already represents a shortening of the 60 day withdrawal period provided by section 27(f), and the Commission is reluctant to shorten this period further. Moreover, the fact that the flexible contractholder will bear the investment risk during the free look period further lessens any need to shorten the withdrawal period.

i. Paragraph (b)(13)(ix)—When Contract Submitted. Similar to Rule 6e–2(b)(13)(ix), this paragraph deems the postmark date on the envelope returning the contract to be the date the contract is submitted for surrender, conversion, or withdrawal.

13. Paragraph (b)(14)—Selection of Independent Public Accountant

Similar to the relief provided by paragraphs (b)(7) (selection of investment adviser) and (b)(8) (selection of board of directors) of the rule, this paragraph provides a limited exemption from section 32(a) [15 U.S.C. 80a–32(a)] to permit the initial selection of the account's independent public accountant to be made without prior contractholder approval. The relief is identical to that contained in rule 6e–2(b)(14) and the suggested rule.

14. Paragraph (b)(15)—Trust Accounts

This provision provides certain exemptions specifically tailored for any separate account organized as a unit investment trust ("trust account"). The relief is similar to that contained in rule 6e–2(b)(15), except that relief also is provided to permit (1) trust accounts to be used to fund either scheduled life or flexible life and (2) underlying funds to offer their shares to both variable life separate accounts and variable annunity separate accounts. While this latter practice, commonly referred to as "mixed funding," is precluded by the literal language of rule 6e–2(b)(15), the Commission has granted exemptions on several occasions permitting this practice.[62] The conditions under which this relief has been granted have been included in the rule, with limited exceptions.[63]

C. *Paragraph (c)—The Definitions.* Paragraph (c) of the rule, like the corresponding paragraph of rule 6e–2, defines various terms used in the rule.

1. Paragraph (c)(1)—Definition of Flexible Premium Variable Life Insurance

This provision defines a flexible contract for purposes of the rule as a contract of life insurance, subject to regulation under the insurance laws of every jurisdiction in which it is offered, which contains certain features discussed below. Like rule 6e–2(c)(1), this provision defines the type of contract for which the rule's exemptions are designed. Although comparable to the definition in rule 6e–2, the definition of flexible life has been modified to reflect the differing character of the product. The specific language of the definition is based in large part on the suggested rule, with certain modifications discussed below.

Paragraph (c)(1) states that a flexible contract shall provide for payments which are not fixed by the life insurer as to both timing and amount. Limited exceptions from these requirements are provided to permit the

---

56). To the extent this may be true, the Commission nevertheless believes it would be inequitable to permit the life insurer to keep any excess loading which it otherwise would have been obligated to refund had the contractholder surrendered (rather than lapsed). Although this suggestion has not been incorporated into the rule, paragraph (b)(13)(iv)(B)(*2*), as noted above, does permit the life insurer to apply any excess loading to keep the contract in force. If the application of any excess load is insufficient to keep the contract in force, the life insurer may then apply the excess load, together with any remaining cash surrender value, to the purchase of a specified non-forfeiture option.

Second, Petitioner's suggestion to insert the word "additional" to describe the type of "interest" charge that may not be included in any option that may be imposed automatically under a contract has not been incorporated because the basis for this suggestion is unclear and is not discussed in the petition.

[55] For purposes of clarity and consistency with the terminology of the Act, the term "redemption" has been substituted in various parts of the rule for the phrase "complete or partial surrender or withdrawal," as used in the suggested rule, and similar phrases used in rule 6e–2.

[56] The term contract period is defined in paragraph (c)(5) of the rule generally as the period from a contract issue or anniversary date to the earlier of the next following anniversary date or the contract's termination date. *See* discussion in Section II.C.5., *infra*.

[57] In the first contract year, the suggested rule defines excess sales loading as the amount in excess of the lesser of 30% of the guideline annual premium or 50% of actual payment, and in the second year these amounts are 10% and 17%, respectively.

[58] Of course, the conversion right would not be available to a contractholder while the grace period is in effect since in that circumstance paragraph (b)(13)(iv) is controlling.

[59] Of course, a notice would not be required to be sent on each day during a grace period, rather only at the beginning of each grace period.

[60] *See* Model Regulation, Article IV, section 3(a)(5).

[61] Although the language of the suggested rule requires the life insurer to refund any contract fees and charges deducted from premium payments, it would not require the life insurer to refund any fees or charges deducted from cash value. The Commission believes such a result is inconsistent with the intent of section 27, and it has added a new provision to Petitioner's suggested language, paragraph (b)(13)(viii)(A)(*3*), to preclude this possibility.

[62] *See, e.g.*, Investment Company Act Rel. No. 13580 (Oct. 18, 1983); Investment Company Act Rel. No. 13464 (Aug. 26, 1983). Since the prohibition in rule 6e–2(b)(15) against mixed funding was based in part on concerns that conflicts could arise between the interests of variable life and variable annuity contract-holders, recipients of exemptive orders have represented, among other things, that the life insurer would monitor for the existence of any material irreconcilable conflicts and, if one arose, would notify the separate account and take appropriate action, at its own cost, to remedy such conflict.

[63] The Commission is not codifying three conditions contained in individual applications and requests comment on whether these omission are appropriate. First, the requirement that state insurance authorities be notified of mixed funding has not been included because the Commission is not aware of any problems under state law that have arisen in connection with mixed funding. Second, the rule does not require the life insurer to obtain an opinion of counsel to the effect that mixed funding will not have any adverse federal tax consequences because several life insurers recently have advised the staff that provisions of the Tax Reform Act of 1984 [P.L. 98–369] have effectively eliminated the need for such an opinion by clarifying the consequences of mixed funding. Finally, the rule does not explicitly require prospectus disclosure regarding certain risks of mixed funding because the Commission does not believe it would be appropriate to specify disclosure requirements in this type of rule, although such disclosure may nevertheless be appropriate.

life insurer to fix the timing and minimum amount of payments for the first two contract periods (*see* discussion in Section II. C.5., *supra*) and to prescribe a reasonable minimum amount for any additional payment.

While Petitioner expects that generally *both* the amount and timing of payments will be flexible and determined by the contractholder (*see* petition at 16), the definition does permit the life insurer to fix the timing or the amount of payments, but not both. Life insurers should be aware, however, that the definition is not intended to include a contract which provides only a limited range of flexibility with respect to either timing or amount of payments, while the other element is set by the life insurer, or a contract which provides a very limited range of flexibility with respect to both timing and amount of payments. Such contracts are effectively scheduled contracts and may not rely on this rule or use the guideline annual premium approach for determining permissible sales load.

Paragraph (c)(1)(ii) states that a flexible contract shall provide a death benefit the amount or duration of which may vary to reflect the separate account's investment experience.[64]

Paragraph (c)(1)(iii) states that the cash value of a flexible contract must vary to reflect the investment experience of the separate account. This requirement is also contained in rule 6e–2(c)(1)(i).[65]

The rule does not include a proviso to paragraph (c)(1), as suggested by Petitioner, stating that a flexible contract shall not include that portion of a contract treated under state law as providing any annuity benefits other than as a settlement option. The petition fails to explain the purpose or need for such a provision. Comment is requested on the need for such a provision.

2. Paragraph (c)(2)—Definition of Incidental Insurance Benefits

This provision defines the term "incidental insurance benefits" in generally the same way this term is defined in rule 6e–2(c)(2), except that, consistent with the general design of flexible life, the requirement that the duration of the benefits may not vary with investment experience has been deleted.

Petitioner would define incidental insurance benefits as insurance benefits "lacking discrete cash values that vary" in accordance with investment experience (petition at 75). This approach, according to Petitioner, would permit incidental benefits the duration and amount of which may change with investment experience. Although it is, as noted above, consistent with the design of flexible life to permit the duration of incidental benefits to vary with investment experience, the petition does not explain why this design also necessitates that the amount of the benefits so vary nor does the petition define the concept of "discrete" cash values. Moreover, if the amount of an incidental benefit changes with investment experience, it is questionable whether such a benefit should be treated as "fixed" for purposes of the rule as suggested by Petitioner (*see* petition at 75). In light of these concerns, the Commission has not incorporated Petitioner's suggestion into the rule, although comment is requested on the matters raised above.

3. Paragraph (c)(3)—Definition of Guaranteed Death Benefit

The term "guaranteed death benefit" is defined generally as any amount guaranteed by the life insurer to be paid upon death without regard to the investment experience of the separate account. Although, as noted above in connection with the definition of a flexible contract (*see supra* note 65), a flexible contract is not required to include a guaranteed death benefit, this provision recognizes that life insurers nevertheless may elect to include this feature in their contracts. This definition corresponds to the definition of "minimum death benefit" in rule 6e–2(c)(3), and except for several non-substantive changes, it is identical to the definition suggested by Petitioner.

4. Paragraph (c)(4)—Definition of Sales Load

Similar to rule 6e–2(c)(4), this provision defines "sales load" for purposes of the rule as the difference between payments made and the sum of certain enumerated deductions deemed not to be sales load. Given the scheduled nature of payments under scheduled life, rule 6e–2(c)(4) measures sales load at the time payments are made. Because sales and other expenses under flexible contracts may not necessarily be deducted from payments, this provision measures sales load during a contract period, as defined in paragraph (c)(5) (*see* discussion in Section II.C.5., *infra*).

For the most part, the deductions are similar to those permitted by rule 6e–2(c)(4). This provision, however, differs from rule 6e–2(c)(4), and the suggested rule, in several respects. First, paragraph (c)(4)(i) refers to increases in cash value for that contract period that are "attributable to payments made" in order to exclude from sales load any increase in cash value attributable to a dividend accumulation.[66] Second, paragraph (c)(4)(ii) specifies the 1980 CSO Table for purposes of the cost of insurance deduction. Petitioner urges that the rule, like rule 6e–2, specify the 1958 CSO Table. The reason for this change is discussed in Section II.C.8., *infra*. Third, paragraph (c)(4)(vii) permits deduction of an additional charge in the nature of an interest charge when payments which may be required by the life insurer during the first two contract periods are made more frequently than annually but limits this charge to payments made to fulfill any minimum payment that may be required.[67] The suggested rule would incorporate the standard of rule 6e–2(c)(4)(viii), which permits deduction of an additional interest or service charge or administrative fee assessed when payments are made more frequently than annually. Although the interest portion of this type of deduction appears appropriate in the context of a scheduled contract, which is priced on the assumption of annual payments, it appears less relevant, and perhaps inappropriate, when the contract does not require scheduled payments. Accordingly, a deduction is permitted only when the life insurer, pursuant to paragraph (c)(1)(i), requires minimum payments during the first two contract periods.[68]

[64] In the case of a flexible contract with an Option I death benefit, for example, the amount of the death benefit will vary based on investment experience only in the circumstances described *supra* note 33. Similarly, a flexible contract could guarantee that so long as the prescribed payments are paid, the contract will provide for a minimum death benefit. In such a case, while the amount of any death benefit in excess of the guaranteed death benefit would vary based on investment experience, the duration of that death benefit would vary only based on the incidence of the prescribed payments.

[65] As suggested by Petitioner (*see* petition at 34–35), the definition of a flexible contract does not require the contract to provide a guaranteed minimum death benefit of a stated amount as does rule 6e–2(c)(1)(ii).

[66] *See* discussion in Section II.A., *supra*.

[67] Thus, if a contract required a $1000 payment in the second year, and a contractholder made a $400 payment on January 1 (the normal due date) and a $750 payment on June 1, an interest charge would be placed on $600 ($1000 − $400 = $600). Because this charge is designed to compensate the life insurer for the time value of the money it anticipated collecting on the normal due date (January 1), no charge should be assessed against the first $400 payment, but only against $600 of the second payment which is the amount the life insurer anticipated receiving 5 months earlier.

[68] The deduction for an additional service charge or administrative fee in the case of frequent payments has not been included in this part of the definition because a deduction for these items would be allowed by paragraph (c)(4)(iv).

Finally, two changes suggested by Petitioner have not been incorporated into this definition. The first change concerns the rate of return assumed in calculating the deduction for dividends paid under a participating flexible contract. The suggested rule replaces the "gross annual investment return" standard of rule 6e–2(c)(4)(ix) with a "net investment earnings rate", thereby apparently permitting a greater dividend deduction (and correspondingly a higher sales load) than rule 6e–2.[69] This basis for this particular change is not discussed in the petition and appears unwarranted. Second, Petitioner's "catch-all" deduction for unforeseen fees and charges set forth in item (c)(4)(xii) of the suggested rule has not been incorporated into the rule. The Petitioner did not present adequate justification for this deduction and the Commission can see no need for it at this time.

5. Paragraph (c)(5)—Definition of Contract Period

As noted above, the rule makes frequent use of the term "contract period," which is defined by this provision generally as the period from a contract issue or anniversary date to the earlier of the next following anniversary date or the last day of the grace period. The language suggested by Petitioner has been modified slightly so as to clearly encompass the first year a contract is in effect.

6. Paragraph (c)(6)—Definition of Variable Death Benefit

This provision defines the term "variable death benefit" generally as the death benefit payable under a flexible contract which varies to reflect the investment experience of the separate account and which would be payable in the absence of any guaranteed death benefit. This term is used in paragraphs (c)(2) and (c)(4)(iii) of the rule and the definition is substantively identical to rule 6e–2(c)(6) and item (c)(6) of the suggested rule.

7. Paragraph (c)(7)—Definition of Payment

Like rule 6e–2(c)(7), paragraph (c)(7) defines "payment" in two ways depending on where it is used in the rule. Generally, "payment" means gross premiums paid. For purposes of calculating sales load and any refund, "payment" means gross premiums less certain charges for substandard risks, incidental insurance, or more frequent than annual payments. This bifurcated approach is intended to assure that the sales load and refund provisions will apply only to the amount of sales load charged for the variable benefits. Excluded for all purposes from the definition is that portion of the payment deducted by the insurer to recapture excess sales loading applied by the life insurer to maintain contract benefits pursuant to paragraph (b)(13)(iv)(B)(2).[70]

The rule does not incorporate Petitioner's suggestion that the three charges noted above be excluded from the definition of payment only if they are deducted from payments as they are made. Petitioner argues that this approach is necessary because where such charges are deducted from cash value, it would be impossible to attribute them to particular payments. Attribution is not necessary in this case, or generally for any purpose under the rule, however, because the rule uses the guideline annual premium, rather than payments made, as the concept against which to measure compliance. Moreover, Petitioner's suggestion would in effect permit different amounts of sales load to be deducted from identical flexible contracts based solely on the timing of the deduction of these three charges.[71]

8. Paragraph (c)(8)—Definition of Guideline Annual Premium

As noted above (*see* Section II.B.12.a., *supra*), the design of a flexible contract makes it necessary to create a concept corresponding to scheduled payments under rule 6e–2. This construct is the "guideline annual premium," which this paragraph defines generally as the level annual payment necessary to provide the future benefits under the contract through its maturity. Because it is a future-oriented concept, the guideline annual premium necessarily must include certain assumptions as to the timing and amount of payments. In the Commission's view, the assumptions used should be designed, to the maximum extent possible, to produce a guideline annual premium that could reasonably be expected to be paid by a purchaser of a flexible contract.

In defining the guideline annual premium, paragraph (c)(8)(i)(A) provides that payments are assumed to be fixed by the life insurer both as to timing and amount.[72] The timing of each payment is, of course, assumed to be annual, while the amount of each payment includes four additional assumptions specified by paragraph (c)(8)(i)(B). They are: (1) Payments are based on the 1980 CSO Table; (2) net investment earnings are earned at the greater of 5% or the rate specified in the contract at issuance; (3) sales load is deducted at the rate specified in the contract; and (4) various fees and charges under the contract are deducted at rates specified in the contract.[73]

The definition is similar to that suggested by Petitioner, except it uses different assumptions for the CSO Table used [74] and net investment earnings.[75] The practical effect of not using Petitioner's assumptions is that the rule permits a smaller guideline annual premium than would be permitted by the suggested rule. The Commission believes this is appropriate because Petitioner's assumptions result in a guideline annual premium that exceeds the amount that could reasonably be expected to be paid by a purchaser of a flexible contract, as discussed below.

Petitioner's definition of the guideline annual premium is "derived from" section 101(f) (now section 7702) of the Code (petition at 45) which, as relevant here, prescribes the *maximum* amount which may be paid under a flexible contract and still allow it to be taxed as "life insurance."[76] Since the Code prescribes a *maximum* amount, it seems unlikely at best that a contractholder could reasonably be expected to make payments in excess of the Code limitation, even assuming that the life insurer would permit such payments, because to do so would put the tax status of the contract in jeopardy. Yet Petitioner's formulation of the guideline annual premium in fact produces a

[69] The assumed gross annual investment return used in calculating this deduction has been increased from 4% to 5% to reflect a more reasonable expectation of return. *See* discussion in Section II.C.8., *infra*.

[70] This treatment is necessary to ensure that the recaptured sales load will not be treated as "new" sales load. The circumstances under which sales load may be recaptured are described in Section II.B.12.d., *supra*.

[71] In addition, since the Commission, as noted above (*see* Section II.C.4, *supra*), has not incorporated Petitioner's "catch-all" deduction into the rule, the suggested rules's reference to that charge has not been included in this provision.

[72] The amount of each payment is equal to the payment that would be required under a comparable scheduled contract.

[73] A life insurer offering a scheduled contract would make assumptions concerning these four items in formulating the amount of each scheduled payment under the contract.

[74] The suggested rule assumes payments are based on the 1958 CSO Table.

[75] The suggested rule assumes net investment earnings at 4%.

[76] *See supra* note 18. When it originally incorporated the guideline annual premium concept into the Code, Congress explained that its purpose was to prevent flexible contracts that were "overly investment oriented." *S. Comm. on Finance Report on the Tax Equity and Fiscal Responsibility Act of 1982*, S. Rep. No. 494, 97th Cong., 2d Sess. 352–53 (1982) (Vol. 1).

guideline annual premium that is greater than the amount permitted to be paid by the Code. This is because Petitioner's guideline annual premium, although identical in all other respects to the corresponding Code concept, uses different assumptions for the CSO Table [77] and net investment earnings [78] that produce a larger guideline annual premium. The practical effect of these differences is that the suggested rule permits compliance with the sales load limitation to be measured against a guideline annual premium that would not, and in fact under the Code could not, reasonably be expected to be paid by a flexible contractholder. Formulating the guideline annual premium in this manner, in the Commission's view, would be inconsistent with the protection of investors and the policy and provisions of the Act.

On the other hand, merely to conform the assumptions used in the rule to those in the Code similarly would not produce a guideline annual premium approaching reasonable expectations. As noted above, the Code prescribes the *maximum* amount which a contractholder may pay. If the definition of guideline annual premium in the rule incorporated the same assumptions as are used in the Code, it would produce a guideline annual premium that would be based on the questionable assumption that an insurer could reasonably anticipate the contractholder paying the maximum amount permitted by the Code. While the Commission has accepted the Code-derived guideline annual premium concept as an appropriate tool for measuring permissible sales load, the differing purposes and objectives of the Code and the Act preclude using the same assumptions in actually calculating the guideline annual premium.

The Commission believes that, on balance, use of the 1980 CSO Table and the 5% net investment rate assumptions produces a reasonable guideline annual premium against which to measure sales load compliance. Notwithstanding Petitioner's assertion that the 1958 CSO Table "remains the standard mortality table in use in the insurance industry today" (petition at 37), the 1980 CSO Table is the standard which most closely reflects the actual mortality experience upon which flexible life will be priced. In fact, a number of life insurers already are using this table and, as Petitioner points out, it will become mandatory in 1989 (*see* petition at 38). Regarding the net investment rate assumption, any particular rate of return necessarily must be somewhat arbitrary. The 5% rate, however, is within the range of assumed rates specified in the Code and is itself a conservative estimate of long-term investment performance.[79] In the Commission's view, these factors support use of the 1980 CSO Table and the 5% net investment rate assumptions to limit the guideline annual premium to an amount that can reasonably be expected to be paid by purchasers of flexible life.

As discussed above, the 1980 CSO Table has been specified in four places in the rule.[80] The Commission believes this treatment is appropriate in light of its primary decision to use the 1980 CSO Table in the definition of guideline annual premium. It must be emphasized, however, that in specifying the 1980 CSO Table in the rule, the Commission is not attempting to require life insurers to use that table for insurance-related purposes such as calculating the cost of insurance or valuing reserves. Rather, in the four places where the 1980 CSO Table is specified, it is for the sole purpose of providing an assumption for purposes of calculating sales load under the rule.

In addition to the matters discussed above, several other changes have been made to Petitioner's suggested definition of guideline annual premium. First, the terminology used to describe the maturity date for purposes of the guideline annual premium and the guideline single premium (*see* Section II.C.9., *infra*) has been standardized through a common cross-reference to the description in paragraph (c)(8)(ii)(B). Second, the initial sentence of paragraph (c)(8)(ii) has been revised to provide that the provisions of that part of the rule are designed to clarify the "future benefits under the contract" referred to in the introductory language of paragraph (c)(8)(i).[81]

9. Paragraph (c)(9)—Definition of Guideline Single Premium

The term "guideline single premium" is designed as the single amount payable which would provide the future benefits under the contract until maturity. Otherwise, this amount is computed on the same basis as the guideline annual premium.

10. Paragraph (c)(10)—Definition of Cash Value

"Cash Value" is defined generally as the amount available in cash upon a voluntary termination of a contract, without regard to termination charges or deduction for any policy loans. The language used is substantively identical to the corresponding item in the suggested rule.

11. Paragraph (c)(11)—Definition of Cash Surrender Value

"Cash surrender value" is defined essentially as the cash value of a contract less any sales load or other charges that may be deducted upon redemption. It is a companion provision to the definition of cash value (*see* Section II.C.10., *supra*). The definition is substantively identical to the corresponding item of the suggested rule.

12. Paragraph (c)(12)—Definition of Net Investment Earnings

The term "net investment earnings" is used in paragraphs (c)(4)(i) and (c)(8)(i)(B) of the rule and is defined as investment earnings in the separate account after deduction of any asset charges. It is similar to the corresponding item of the suggested rule, with certain modifications. First, the phrase "interest rate guarantees" has been deleted from the list of examples of asset charges to compute net investment earnings because this concept is not explained in the petition and its relevance to flexible life is not readily apparent. Second, the last clause of the definition has been clarified to specifically exclude deductions for sales load in the form of asset charges. Finally, this paragraph specifically excludes for purposes of the definition of sales load in paragraph (c)(4) any asset charge deducted pursuant to paragraphs (c)(4)(ii)–(viii) in order to prevent double-counting of any such charges.

13. Paragraph (c)(13)—Definition of Contract Processing Day

The term "contract processing day" is used several times in paragraph (b)(13) and this provision defines it as any day on which charges under the contract are deducted from the separate account.[82]

D. *Paragraph (d)—The Computational Rules.* Paragraph (d) sets forth several computational rules to be used in applying rule 6e-3(T). These computational rules have no counterpart in rule 6e-2, and are based largely on the suggested rule, with certain modifications discussed below.

1. Paragraph (d)(1)—Subsequent Sales Loads

As discussed above (*See* Section II.B.12.a., *Supra*), the rule provides generally that sales load imposed on a flexible contract may not exceed 9% of the sum of twenty guideline annual premiums. This provision permits sales load to be deducted other than from payments, *i.e.*, as a subsequent sale load.[83] This paragraph essentially provides that the 9% limit on sales load shall be deemed satisfied with respect to any subsequent sales load if the amount of sales load deducted (together with any front-end load that may have been deducted previously) is not more than the amount that could have been deducted as a front-end sales load.[84]

Paragraph (d)(1)(ii) provides relief from the "stair step" requirements of section 27 for subsequent sales loads and corresponds to the relief provided by paragraph (b)(13)(ii) for front-end sales loads (*see* discussion in Section II.B.12.b., *supra*). It provides that the amount of any subsequent sales load deducted shall not exceed the proportionate amount of sales load previously deducted pursuant to the same method.[85]

Petitioner suggests an "economic value approach" in determining whether a subsequent sales load satisfies the rule's sales load requirements. Under this approach, any subsequent sales load would be permitted so long as the contractholder would be in the same financial condition as would have resulted from a completely front-end sales loaded contract (*see* petition at 60). Petitioner acknowledges that this approach would not preclude the possibility that sales load would exceed 9% of twenty guideline payments because the life insurer would be entitled, in effect, to receive the benefit of positive investment experience (*see* petition at 58).

Petitioner's "economic value approach", however, is inconsistent with the conditions under which both variable annuity and scheduled life issuers have been permitted to impose a subsequent sales load. Consistent with section 27 of the Act, permissible sales load in all such cases has been limited to 9% of payments, and the Commission codified this condition for variable annuity separate accounts imposing a deferred sales load in rule 6c–8(b)(1) under the Act [17 CFR 270.6c–8(b)(1)]. Moreover, while a deferred load could be considered a deterrent to redemption that is inconsistent with the intent of section 22(e) of the Act, relief to deduct a deferred load has been deemed appropriate in part because deferring the sales load benefits investors by permitting them to receive any positive investment experience on the portion of the sales load which is deferred. Under Petitioner's approach, however, the life insurer, rather than the contractholder, would be the primary beneficiary of any such positive investment experience.[86] Because the petition offers no persuasive arguments to support reversal of the Commission's long-standing position, and does not justify why issuers of flexible contracts should be treated differently from other issuers, this change has not been incorporated into the rule.[87]

2. Paragraph (d)(2)—Sales Load on Changes on Contract Benefits

This paragraph prescribes the computational rules to be used in determining whether the sales load on an increase in or an addition of insurance benefits requested by a contractholder after issuance of the contract complies with the requirements of the rule. Paragraph (d)(2)(i) permits sales load in such a case provided that during each contract period it does not exceed the sales load that would be permissible under the "base test contract" and the "incremental test contract," and that the total sales load does not exceed the sum of the corresponding loads under these test.[88]

Generally speaking, paragraph (d)(2)(iii)(B) defines the base test contract as the actual contract before the increase or charge occurred, while paragraph (d)(2)(iii)(C) defines the incremental test contract as the actual contract after the increase or charge. Included in the definition of the latter test is a requirement that the amount of sales load deducted shall not exceed 50% of the amount otherwise permitted by the rule and an exemption from the surrender, conversion, and withdrawal provisions set forth in paragraphs (b)(13)(v)(A), (b)(13)(v)(B), and (b)(13)(viii). On the other hand, if the increase or change is subject to those provisions, the proviso to paragraph (d)(2)(iii)(C) permits 100% of the sales load otherwise permitted by the rule to be deducted.[89]

---

[77] The suggested rule specifies the 1958 CSO Table irrespective of whether that table or the 1980 CSO Table is actually used in the contract design whereas section 7702 requires use of the same table that is guaranteed under the contract.

[78] The suggested rule assumes net investment earnings at the annual effective rate of 4% whereas section 7702 assumes: (1) The greater of 4% or the minimum rate or rates guaranteed upon issuance of the contract for purposes of the Code concept corresponding to the guideline annual premium, and (2) the greater of 6% or the minimum rate of issuance for purposes of the Code concept which corresponds to the guideline single premium used in this rule (*see* discussion in section II.C.9., *infra*).

[79] For example, the rate of return for an unmanaged portfolio of common stocks averaged 12.2% for the 32 20-year periods commencing December 31, 1925 through December 31, 1956. L. Fisher & J. Lorrie, *A Half Century of Returns on Stocks and Bonds* 24–25 (1977). A 5% return was exceeded in all but two of these 32 periods.

[80] See paragraphs (b)(13)(i), (c)(4)(ii), (c)(8)(i)(B) and (d)(1)(i).

[81] In addition, the references to permissible charges in paragraph (c)(8)(i)(B) does not include item (c)(4)(xii) of the suggested rule which, as discussed above (*see* Section II.C.4., *supra*), has not been incorporated into the rule. In addition, this paragraph includes a deduction for item (c)(4)(viii) (a charge where payments are made more frequently than annually. *see* Section II.C.4., *supra*) of the suggested rule only during the first two years of the contract because this is the only period during which such a charge may be made (*see* Section II.C.1., *supra*). A deduction for item (x) has not been included in the rule because it is unclear why the definition of sales load under a participating flexible contract should include a deduction for amounts that in fact will be credited to the contract. Comment on the latter matter is requested.

[82] Petitioner also requests that the Commission include in the rule a provision which would define the term "insurance company," as otherwise defined by section 2(a)(17) of the Act [15 U.S.C. 80a-2(a)(17)], to include life insurers whose primary business is the writing of flexible or scheduled life. Because this request raises issues applicable to insurers offering any type of variable insurance product, the Commission does not believe it is appropriate to address this matter in a flexible life rule.

[83] As discussed *supra* at note 16, the petition identifies three types of subsequent sales load that are expected to be imposed on flexible contracts: (1) A deferred sales load upon full or partial redemption; (2) a periodic deduction directly from a contract's cash value; or (3) a combination of (1) and (2) (*see* petition at 57).

[84] Paragraph (d)91)(i) is the operative provision. It contains two assumptions which have the effect of permitting the amount of a subsequent load to be calculated on the assumption that a payment in the amount of a guideline annual premium or a guideline single premium had been made during each contract period even if one had not been made.

[85] For example, if a contract were subject to both a daily charge for sales load and a deferred sales load, the amount of any daily charge could not exceed the proportionate amount of any prior daily charge and the amount of any deferred sales load could not exceed the proportionate amount of any prior deferred sales load. On the other hand, the amount of any deferred sales load could exceed any daily charge, and vice versa.

[86] While permitting the life insurer to be the primary beneficiary of positive investment experience, Petitioner's approach would not require the life insurer to assume the risk of negative investment experience.

[87] Since the rule does not incorporate Petitioner's "economic value approach," any life insurer deducting sales load periodically from cash value must monitor the aggregate amount of sales load deducted in order to ensure it does not exceed the 9% limitation on sales load.

[88] Paragraph (d)(2)(ii) prescribes certain assumptions regarding payments and redemptions to be used in applying paragraph (d)(2)(i). As suggested by Petitioner, the two tests "together test representative payment patterns and otherwise police abuses contrary to the purpose and policies of the 1940 Act" (petition supplement at 15).

[89] The reference to paragraph (d)(1)(ii) in the first sentence of paragraph (d)(2)(i) has the effect of permitting the "stair step" requirement of the rule and Act (*see* discussion in Section II.D.1., *supra*) to be applied independently to any subsequent sales load imposed in connection with an addition of an

Continued

Finally, paragraph (d)(2)(iii)(D) specifically precludes reliance on this provision in connection with any automatic changes in insurance benefits, regardless of whether the contractholder has the opportunity to disapprove such changes, and any exchange of one type of flexible contract for another, such as a change from an Option I to an Option II contract.

Petitioner's suggested rule differs from these requirements in three respects. First, the suggested rule incorporates Petitioner's "economic value approach" (*see* discussion in Section II.D.1., *supra*) in the item corresponding to paragraph (d)(2)(i)(A) of the rule. In light of the Commission's decision not to incorporate that approach elsewhere in the rule, it has not been incorporated here.

Second, Petitioner's definition of the incremental test contract would permit life insurers to deduct a full sales load on any increase or change under a contract while at the same time dispensing with any surrender, conversion, or free look right. Petitioner's arguments in favor of this treatment do not, in the Commission's view, support the requested relief. The petition states that these rights are not necessary in the case of an increase or change because these actions involve an adjustment to an existing contract with which the contractowner "is presumably experienced and satisfied" (petition supplement at 19). On the other hand, this same familiarity with the contract apparently does not affect the need for a full sales load because, according to Petitioner, the sales effort "usually will involve additional sales effort * * * [which] will approach, and in some cases be equivalent to, the sales effort required for a new sale * * * " (petition supplement at 6–7). The Commission believes that if a full sales load is to be imposed on an increase or change, the surrender, conversion, and free look rights ought to be provided to the contractholder, but that the need for these protections diminishes to the extent that less than a full sales load may be deducted. On balance, the Commission believes the approach of paragraph (d)(2)(iii) discussed above is a reasonable compromise in this regard.

One of Petitioner's arguments in support of a full sales load on an increase or change is of particular concern to the Commission. Petitioner implies that if the rule permits less than a full sales load, the commissions paid to sales personnel will be correspondingly decreased and thus sales personnel will have an incentive to approach contractholders "and suggest the purchase of a second policy where an increase or addition would be suitable, thereby earning the higher commission" (petition supplement at 7). While the Commission recognizes that sales practices and commission schedules for flexible life are not the immediate subject of this rule, in its view the practice described above would be inconsistent with the standards of conduct expected of persons selling insurance or any other products subject to the federal securities laws.

Finally, Petitioner would permit sales load to be imposed on two types of increases or changes specifically excluded by paragraph (d)(2)(iii)(D) of the rule. Regarding sales load on automatic changes not specifically declined by the contractholder, a grant of additional relief does not seem appropriate because it appears that any sales effort in connection with such an adjustment would be minimal. Regarding sales load on changes from a contract with an Option I death benefit to one with an Option II death benefit (*see* Section I, *supra*), the basis for Petitioner's proposed method of making the change, which appears highly disadvantageous to the contractholder, is not explained or justified and thus has not been incorporated into the rule.

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule 6e–3(T) and Amendments to Rule 6c–3 and Form N–6EI–1

PART 270—[AMENDED]

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By adding new § 270.6e–3(T) to read as follows:

§ 270.6e–3(T) Temporary exemptions for flexible premium variable life insurance separate accounts.

(a) A separate account, and its investment adviser, principal underwriter and depositor, shall, except as provided in paragraph (b) of this Rule, comply with all provisions of the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] and the rules under it that apply to a registered investment company issuing periodic payment plan certificates if:

(1) It is a separate account within the meaning of section 2(a)(37) of the Act [15 U.S.C. 80a–2(a)(37)] and is established and maintained by a life insurance company pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies with Rule 7d–1 [17 CFR 270.7d–1] under the Act (the "life insurer");

(2) The assets of the separate account are derived solely from (i) the sale of flexible premium variable life insurance contracts ("flexible contracts") as defined in paragraph (c)(1) of this Rule, (ii) the sale of scheduled premium variable life insurance contracts ("scheduled contracts") as defined in paragraph (c)(1) of Rule 6e–2 [17 CFR 270.6e–2] under the Act, (iii) funds corresponding to dividend accumulations with respect to such contracts, and (iv) advances made by the life insurer in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or other contract liabilities not involving life contingencies;

(4) The separate account is legally segregated, and that part of its assets with a value approximately equal to the reserves and other contract liabilities for such separate account are not chargeable with liabilities arising from any other business of the life insurer;

(5) The value of the assets of the separate account, each time adjustments in the reserves are made, is at least equal to the reserves and other contract liabilities of the separate account, and at all other times approximately equals or exceeds the reserves and liabilities; and

(6) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.].

(b) A separate account that meets the requirements of paragraph (a) of this Rule, and its investment adviser, principal underwriter and depositor shall be exempt with respect to flexible contracts funded by the separate account from the following provisions of the Act:

(1) Section 2(a)(35) [15 U.S.C. 80a–2(a)(35)], *Provided, however,* That the term "sales load," as used in the Act and rules under it, shall have the meaning set forth in paragraph (c)(4) of this Rule. *And provided further,* That in connection with any sales load deducted pursuant to paragraph (d)(2) of this Rule, the separate account and other persons shall be exempt from Sections 2(a)(32) [15 U.S.C. 80a–2(a)(32)], 12(b) [15 U.S.C. 80a–12(b)], 22(c) [15 U.S.C. 80a–22(c)], 26(a) [15 U.S.C 80a–26(a)], 27(c)(1) [15 U.S.C. 80a–27(c)(1)], and 27(d) [15 U.S.C. 80a–27(d)] and Rules 12b–1 [17 CFR 270.12b–1] and 22c–1 [17 CFR 270.22c–1].

(2) Section 7 [15 U.S.C. 80a–7].

(3) Section 8 [15 U.S.C. 80a–8], to the extent that:

(i) For purposes of paragraph (a) of Section 8, the separate account shall file with the Commission a notification on Form N–6EI–1 [17 CFR 274.301] which identifies the separate account; and

(ii) For purposes of paragraph (b) of Section 8, the separate account shall file with the Commission the form designated by the Commission within ninety days after filing the notification on Form N–6E–1, *Provided, however,* That if the fiscal year of the separate account ends within this ninety day period, the form may be filed within ninety days after the end of such fiscal year.

(4) Section 9 [15 U.S.C. 80a–9], to the extent that:

(i) The eligibility restrictions of Section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates and who do not participate directly in the management or administration of the separate account or in the sale of flexible contracts; and

(ii) A life insurer shall be ineligible under paragraph (3) of Section 9(a) to serve as investment adviser, depositor of or principal underwriter for the separate account only if an affiliated person of such life insurer, ineligible by reason of paragraph (1) or (2) of Section 9(a), participates directly in the management or administration of the separate account or in the sale of flexible contracts.

(5) Section 13(a) [15 U.S.C. 80a–13(a)], to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the sub-classification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by its contractholders or board of directors may be disapproved by the life insurer, if the disapproval is reasonable and is based on a good faith determination by the life insurer that:

(A) The change would violate state law; or

(B) The change would not be consistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques used by other separate accounts of the life insurer or of an affiliated life insurance company with similar investment objectives;

(iii) Any action described in paragraph (b)(5) (i) or (ii) of this Rule and the reasons therefor shall be disclosed in the proxy statement for the next meeting of contractholders.

(6) Section 14(a) [15 U.S.C. 80a–14(a)], *Provided,* That until the separate account has total assets of at least $100,000, the life insurer shall have (i) a combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in the balance sheet of such life insurer contained in the registration statement for flexible contracts filed under the Securities Act of 1933 [15 U.S.C. 77a et seq.] (the "1933 Act").

(7)(i) Section 15(a) [15 U.S.C. 80a–15(a)], to the extent it requires that the initial written contract with the investment adviser shall have been approved by the vote of a majority of the outstanding voting securities of the registered investment company, *Provided,* That:

(A) The investment adviser is selected and a written contract is entered into before the effective date of the 1933 Act registration statement for flexible contracts, and that the terms of the contract are fully disclosed in the registration statement, and

(B) A written contract is submitted to a vote of contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement, unless the Commission upon written request and for good cause shown extends the time for the holding of such meeting;

(ii) Sections 15 (a), (b) and (c), to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided,* That such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided,* That such disapproval is reasonable and is based on a good faith determination by the life insurer that:

(*1*) The proposed investment advisory fee will exceed the maximum rate specified in any flexible contract that may be charged against the assets of the separate account for such services; or

(*2*) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques used by the current investment adviser to the separate account, or advise the purchase or sale of securities which would not be consistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts with similar investment objectives of the life insurer or an affiliated life insurance company;

(D) Any action described in paragraph (b)(7)(ii) (A), (B) or (C) of this Rule and the reasons for it shall be disclosed in the proxy statement for the next meeting of contractholders.

(8) Section 16(a) [15 U.S.C. 80a–16(a)], to the extent that:

(i) Directors of the separate account serving before the first meeting of the account's contractholders are exempt from the requirement of Section 16(a) that they be elected by the holders of outstanding voting securities of the account at an annual or special meeting called for that purpose, *Provided,* That:

(A) Such persons were appointed directors of the account by the life insurer before the effective date of the 1933 Act registration statement for flexible contracts and are identified in the registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors), and

(B) An election of directors for the account is held at the first meeting of contractholders and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by the Commission upon written request and for good cause shown;

(ii) A member of the board of directors of the separate account may be disapproved or removed by an insurance regulatory authority if the person is not eligible to be a director of the separate account under the law of the life insurer's domicile.

(9) Section 17(f) [15 U.S.C. 80a–17(f)], to the extent that the securities and similar investments of a separate account organized as a management investment company may be maintained in the custody of the life insurer or of an affiliated life insurance company, *Provided,* That:

---

insurance benefit requested by a contractholder. Thus, the proportionate amount of sales load deducted upon an addition may not exceed the proportionate amount deducted in connection with a prior addition.

(i) The securities and similar investments allocated to the separate account are clearly identified as owned by the account, and the securities and similar investments are kept in the vault of an insurance company which meets the qualifications in paragraph (b)(9)(ii) of this Rule, and whose safekeeping function is supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a state or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of the Commission, representatives of insurance regulatory authorities, independent public accountants retained by the separate account (or on its behalf by the life insurer), accountants for the life insurer, and to no more than 20 persons authorized by a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated life insurance company in whose vault the investments are kept (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) of this Rule that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in accordance with any rule under Section 17(f), or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated life insurance company, shall sign a notation showing (A) the date and time of the deposit, withdrawal or order, (B) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another person, the name of such person. The notation shall be sent promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who is not himself permitted to have access to the securities or investments under paragraph (b)(9)(iii) of this Rule. The notation shall be on serially numbered forms and shall be kept for at least one year;

(vi) The securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account (or on its behalf by the life insurer) at least three times each fiscal year, at least two of which shall be chosen by the accountant without prior notice to the separate account. A certificate of the accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be sent to the Commission by the accountant promptly after each examination;

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by federal or state authorities under any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(10) Section 18(i) [15 U.S.C. 80a–18(i)], to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Flexible contractholders shall have one vote for each $100 of cash value funded by the separate account, with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders under paragraph (b)(10)(i)(A) of this Rule, with fractional votes allocated for amounts less than $100, *Provided*, That after the commencement of sales of flexible contracts, the life insurer shall cast its votes for an against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days before any meeting at which such vote is held, *Provided*, That if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date;

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust of the character described in section 16(c) [15 U.S.C. 80a–16(c)]) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provisions of this Rule.

(11) Section 19 [15 U.S.C. 80a–19], to the extent that the provisions of this section shall not apply to any dividend or similar distribution paid or payable under provisions of participating flexible contracts.

(12) Sections 22(d) [15 U.S.C. 80a–22(d)], 22(e) [15 U.S.C. 80a–22(e)], and 27(c)(1) and Rule 22c–1, to the extent:

(i) That the death benefit and cash value of each flexible contract shall be determined:

(A) No less frequently than once daily on each day [other than a day on which no payment or request for redemption is received by the separate account] in which there is a sufficient degree of trading in the portfolio securities of the separate account that the cash value of the contracts might be materially affected; and

(B) At such specific time during the day as determined by a majority of the board of directors of the separate account no less frequently than annually; *Except*, That:

(*1*) To the extent that the calculation of the cash value reflects deductions for the cost of insurance and other insurance benefits or administrative expenses and fees or sales load, such deductions need only be made at such times as specified in the contract or as necessary for compliance with insurance laws and regulations; and

(*2*) Unless required by insurance laws and regulations, the death benefit need not be calculated on any day that the investment experience of the separate account would not affect the death benefit;

(ii) Necessary to comply with this Rule or with insurance laws and regulations and established administrative procedures of the life insurer for issuance, transfer and redemption of flexible contracts, including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract, *Provided, however*, That any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholders and to all other holders of contracts of the same class or series funded by the separate account, *And provided further*, That any such action shall be disclosed in the form filed by the separate account with the Commission under paragraph (b)(3)(ii) of this Rule.

(13) Section 27 [15 U.S.C. 80a–27], to the following extent:

(i) Section 27(a)(1) [15 U.S.C. 80a–27(a)(1)], 27(h)(1) [15 U.S.C. 80a–27(h)(1)], and 27(h)(4) [15 U.S.C. 80a–27(h)(4)], to the extent that sales load, as defined in paragraph (c)(4) of this Rule, deducted does not exceed that permitted by either subparagraph (A) or (B) below:

(A) 9 per centum of the sum of the guideline annual premiums that would be paid during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract based on the 1980 Commissioners Standard Ordinary Mortality Table, *Provided*, That this subparagraph (b)(13)(i)(A) shall not prohibit deduction of sales load, in any manner permitted by this Rule, from payments made in excess of the sum of the guideline annual premiums that would be paid during the lesser of 20 years or the anticipated life expectancy of the insured based on the 1980 Commissioners Standard Ordinary Mortality Table; or

(B) 9 per centum of payments made thereon; *Provided*, That the separate account elects by written notice to the Commission to be governed (with respect to each class of flexible contract offered) by either subparagraph (b)(13)(i)(A) or (B).

(ii) Sections 27(a)(3) [15 U.S.C. 80a–27(a)(3)] and 27(h)(3) [15 U.S.C. 80a–27(h)(3)], *Provided*, That the proportionate amount of sales load deducted from any payment shall not exceed the proportionate amount deducted from any prior payment unless an increase is caused by the grading of cash surrender values into reserves or reductions in the annual cost of insurance;

(iii) Sections 27(c)(2) [15 U.S.C. 80a–27(c)(2)], 28(a)(1) [15 U.S.C. 80a–26(a)(1)], and 26(a)(2) [15 U.S.C. 80a–26(a)(2)], to the extent necessary to permit the actions described in paragraphs (A) through (F) of this section, *Provided*, That the life insurer complies with all other applicable provisions of section 26 as if it were a trustee, depositer or custodian for the separate account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate operations.

(A) Payment of a fee to the life insurer, or to any affiliated person or agent of the insurer, for bookkeeping or other administrative services provided to the separate account, *Provided*, That the fee is not greater than the expenses, without profit: (*1*) Actually paid by the life insurer for the services provided and (*2*) increased by the value of any services provided directly by the life insurer, as determined in accordance with generally accepted accounting principles consistently applied. The standard set forth in this paragraph shall be applied as follows: if the separate account reserves the right to increase the fee, the fee shall not exceed the cost of the services to be provided for one year; or if the fee is guaranteed not to increase for a specified period of time, the fee shall not exceed the average expected cost of the services to be provided during the period of the guarantee;

(B) The holding of the assets of the separate account by the life insurer without a trust indenture or other such instrument;

(C) When the separate account is organized as a unit investment trust, the holding of the securities of any registered management investment company which offers its shares to the separate account in uncertificated form;

(D) When the separate account is organized as a management investment company, the holding of its assets in any manner permitted by paragraph (b)(9) of this Rule or by section 17(f) or the rules under it;

(E) The deduction of premium taxes imposed by any state or other governmental entity, the cost of insurance, and, if the separate account is organized as a management investment company, an investment advisory fee;

(F) The deduction of a charge for mortality, expense, and any guaranteed death benefit risks assumed by the life insurer under the flexible contracts (collectively, a "risk charge"), *Provided*, That the registration statement under the 1933 Act for flexible contracts includes:

(*1*) A representation that this section is being relied on;

(*2*) A representation that the level of the risk charge either is:

(*i*) Within the range of industry practice for comparable flexible or scheduled contracts, or

(*ii*) Reasonable in relation to the risks assumed by the life insurer under the contracts;

(*3*) A brief description of the methodology used to support the representation made in response to paragraph (b)(13)(iii)(F)(*2*) of this Rule and an undertaking to keep and make available to the Commission on request the documents used to support that representation;

(*4*) A representation that either:

(*i*) The proceeds from explicit sales loads will cover the expected costs of distributing the flexible contracts; or

(*ii*) (*A*) The life insurer has concluded that there is a reasonable likelihood that

the distribution financing arrangement of the separate account will benefit the separate account and contractholders and will keep and make available to the Commission on request a memorandum setting forth the basis for this representation; and

(*B*) (*1*) If the separate account is organized as a management investment company, a representation that the account will have a board of directors, a majority of whom are not interested persons of the separate account, formulate and approve any plan under Rule 12b–1 to finance distribution expenses; or

(*2*) If the separate account is organized as a unit investment trust, a representation that the account will invest only in management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notwithstanding the provisions of this paragraph (b)(13)(iii)(F), no risk charge may be deducted in reliance thereupon if the registration statement or amendment thereto which initially sets forth the deduction of such charge or its increase becomes effective by lapse of time pursuant to Section 8(a) of the 1933 Act or Rule 486 [17 CFR 230.486] thereunder. Such charge shall be disclosed in the prospectus and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract. Any separate account organized under the act as a management investment company and deducting a risk charge pursuant to this section shall be exempt from section 12(b) and Rule 12b–1 thereunder to the extent that monies derived from the risk charge may be used to finance distribution of the flexible contracts;

(iv) Sections 27(c)(1) and 27(d), and sections 2(a)(32) and 22(c) and Rule 22c–1 thereunder, to the extent that:

(A) Such sections require that the flexible contract be redeemable or provide for a refund in cash, *Provided,* That the contract provides for election by the contract holder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered, *And provided further,* That unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contract-holder, the contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge.

(B) Notwithstanding the provisions of paragraph (b)(13)(iv)(A) of this Rule, if the cash surrender value of the contract on any contract processing day is less than the amount necessary to pay the charges due under the contract, the contract may provide that the cash surrender value (and any excess paid for sales loading not used to keep the contract in force pursuant to paragraph (b)(13)(iv)(B)(*2*) of this Rule) shall be applied to purchase a non-forfeiture option specified by the life insurer in such contract, *Provided,* That the contract also provides that:

(*1*) Contract processing days occur not less frequently than monthly, and

(*2*) The amount of any excess paid for sales loading (as provided in paragraph (b)(13)(v)(A) of this Rule) shall first be applied to keep the contract in force, *Provided, however,* That if the contractholder subsequently makes a payment, the life insurer may recover such excess loading;

(C) Subject to other provisions of this Rule, sales loads may be deducted upon redemption.

(v) Section 27(d), *Provided,* that the flexible contract gives the holder thereof the right to:

(A) Surrender the contract at any time during the first 24 months after issuance and receive in cash an amount not less than the sum of the present value of his contract which is the cash surrender value next computed after receipt by the life insurer of the request for surrender in proper form, plus, depending upon the period over which such contract has been retained by the contractholder, an amount which is a refund of any excess paid for sales loading prior to or in connection with the surrender. The amount of sales loading to be refunded shall be equal to that part of the sales loading in excess of the sum of (*1*) the lesser of 30 per centum of the guideline annual premium or 30 per centum of the actual payments made during the first contract period, plus (*2*) the lesser of 10 per centum of the guideline annual premium or 10 per centum of the actual payments made during the second contract period, plus (*3*) 9 per centum of the payments made during the first or the second contract period after such payments exceed the guideline annual premium;

(B) Convert the contract at any time during the first 24 months after issuance so long as the contract is in force to a life insurance policy on the life of the insured under a plan of insurance (other than a plan involving a flexible contract as defined in paragraph (C)(1) of this Rule or a scheduled contract as defined in paragraph (c)(1) of Rule 6e–2) specified in the contract, issued by the life insurer or by an affiliated life insurance company, which provides for (*1*) at the election of the contract-holder, either the same death benefit or the same net amount at risk as the flexible contract at the time of conversion and (*2*) premiums which are based on the same issue age and risk classification of the insured as the flexible contract. The conversion shall be subject to an equitable adjustment in payments and cash values to reflect variances, if any, in the payments and cash values under the flexible contract and the new policy. The method of computing such adjustment shall be filed with the Commission as an exhibit to the form required under paragraph (b)(3)(ii) of this Rule;

(vi) A depositor or principal underwriter for a flexible contract sold subject to section 27(d) or Section 27(f), or both, shall be exempt from the requirements of Rule 27d–1 [17 CFR 270.27d–1] if an insurance company undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter under sections 27(d) and 27(f) to refund charges and such insurance company, depositor and principal underwriter comply with all provisions of Rule 27d–2 [17 CFR 270.27d–2];

(vii) Section 27(e) [15 U.S.C. 80a–27(e)] and Rule 27e–1 [17 CFR 270.27e–1] thereunder, to the extent that the separate account and the depositor and principal underwriter therefor, when such persons are subject to paragraph (b)(13)(v)(A) of this Rule, are required to provide a notice of right of surrender and refund to holders of flexible contracts, if the life insurer or a duly authorized agent provides a notice of surrender and refund rights on a written document containing information comparable to that required by Form N–27I–1 [17 CFR 274.301] to the holder of any flexible contract under which a refund may be available, *Provided,* That such notice shall be sent by first class mail or personal delivery to the contractholder:

(A) Upon issuance of the flexible contract, which notice may be sent together with the issued contract and an illustration, in a form appropriate for inclusion in the prospectus for the flexible contract, of guideline annual premiums, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured; and

(B) On any contract processing day, prior to the expiration of the surrender and refund right provided in paragraph (b)(13)(v)(A) of this Rule, on which the amounts available under the contract on such day to pay the charges authorized by the contract are less than the amount necessary to keep the contract in force until the next following contract processing day. This notice may be sent together with any notice required by applicable state authority to be sent in these circumstances; *Provided, however,* That the right of surrender and refund provided by paragraph (b)(13)(v)(A) of this Rule shall not expire until not less than 15 days after the mailing or receipt if personally delivered of the last notice referred to in this paragraph (b)(13)(vii)(B);

(viii) Section 27(f) and Rule 27f–1 thereunder [17 CFR 270.27f–1], *Provided,* That:

(A) The contractholder may elect to return the contract within 45 days of the date of the execution of the application for insurance, or within 10 days after receipt of the issued contract by the contractholder, or within 10 days after mailing or personal delivery of the notice of the right of withdrawal referred to in paragraph (b)(13)(viii)(C) of this Rule, whichever is later, and receive a refund equal to the sum of (*1*) the difference between the payments made, including any contract fees or other charges, and the amounts allocated to the separate account under the contract, (*2*) the value of the amounts allocated to the separate account under the contract on the date the returned contract is received by the insurer or its agent, and (*3*) any contract fees and other charges imposed on the amounts allocated to such separate account, *Provided, however,* That if state law or the contract so require, the redeeming contractholder shall receive a refund of all payments made for such contract;

(B) A refund in accordance with paragraph (b)(13)(viii)(A) of this Rule to redeeming contractholders will not in any way affect the interests in the separate account or the benefits of other flexible or scheduled contractholders;

(C) Notice of such withdrawal right and a statement of contract fees and other charges on a written document containing information comparable to that required by Form N–27I–2 [17 CFR 274.303] is sent by first class mail or personal delivery to the contractholder, which notice and statement may be accompanied by the flexible contract, and an illustration, in a form appropriate for inclusion in the prospectus for the flexible contract, of guideline annual premiums (or, if the contract is subject to paragraph (b)(13)((i)(B), payments), death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured;

(D) The contractholder, in conjunction with the notice of withdrawal right referred to in paragraph (b)(13)((viii)(C), is provided with a form of sequest for refund of the amount computed in accordance with paragraph (b)(13)(viii)(A), which form shall set forth:

(*1*) Instructions as to the manner in which a refund may be obtained, including the address to which the request form should be mailed; and

(*2*) Spaces necessary to indicate the date of such request, the contract number and the signature of the contractholder; and

(E) Within 7 days from the receipt of such duly executed timely request for refund, the life insurer will refund in cash to the contractholder the amount computed in accordance with paragraph (b)(13)(viii)(A) of this Rule; and

(ix) Solely for purposes of paragraphs (b)(13)(v) and (b)(13)(viii) of this Rule, the postmark date on the envelope containing the flexible contract shall determine whether such contract has been submitted for surrender, conversion, or withdrawal within the designated period.

(14) Section 32(a)(2) [15 U.S.C. 80a–32(a)(2)], *Provided:* That:

(i) The independent public accountant is selected before the effective date of the 1933 Act registration statement for flexible contracts, and the identity of the accountant is disclosed in the registration statement, and

(ii) The selection of the accountant is submitted for ratification or rejection to flexible contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by order of the Commission.

(15) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, *Provided,* That: the board of directors of each investment company, constituted with a majority of disinterested directors, will monitor such company for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders and scheduled or flexible contractholders investing in such company; the life insurer agrees that it will be responsible for reporting any potential or existing conflicts to the directors; and, if a conflict arises, the life insurer will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the scheduled or flexible contracts; Then:

(i) The eligibility restrictions of section 9(a) shall not apply to those persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described in this paragraph (b)(15);

(ii) The life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser of or principal underwriter for any registered management investment company described in this paragraph (b)(15) only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(A) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulator authority subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of this Rule; or

(B) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of this Rule;

(iv) Any action taken in accordance with paragraph (b)(15)(iii) (A) and (B) of this Rule and the reasons therefor shall be disclosed in the next report to contractholders made under Section 30(d) [15 U.S.C. 80a–29(d)] and Rule 30d–2 [17 CFR 270.30d–2];

(v) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from section 14(a), *Provided,* That until the company has total assets of at least $100,000, the life insurer shall have at least the minimum net worth prescribed in paragraph (b)(6) of this Rule; and

(vi) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from sections 15(a), 16(a), and 32(a)(2), to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14) of this Rule, *Provided,* That the company complies with the conditions set forth in those paragraphs as if it were a separate account.

(c) When used in this Rule:

(1) "Flexible premiuim variable life insurance contract" means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract provides for:

(i) Payments which are not fixed by the life insurer as to both timing and amount, *Provided, however,* That the life insurer may fix the timing and minimum amount of payments for the first two contract periods and may prescribe a reasonable minimum amount for any additional payment;

(ii) A death benefit the amount or duration of which may vary to reflect the investment experience of the separate account; and

(iii) A cash value which varies to reflect the investment experience of the separate account.

(2) "Incidental insurance benefits" means insurance benefits provided pursuant to the flexible contract, other than any guaranteed and variable death benefit, which do not vary in amount in accordance with the investment experience of the separate account, and include, but are not limited to, accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, and family income or fixed benefit term riders.

(3) "Guaranteed death benefit" is any amount guaranteed by the life insurer to be paid pursuant to a flexible contract in the event of the death of the insured without regard to the investment experience of the separate account, if there are no outstanding loans or partial surrenders, but does not include any incidental insurance benefits.

(4) "Sales load" charged during a contract period is the excess of any payments made during the period over the sum of the following:

(i) The amount of the increase in the cash value for the period that is attributable to payments made and not to net investment earnings for the period;

(ii) The cost of insurance for the period based on the 1980 Commissioners Standard Ordinary Mortality Table and net interest at the annual effective rate specified for purposes of paragraph (c)(8)(i)(B) of this Rule;

(iii) A reasonable charge necessary to cover the risk assumed by the life insurer that the variable death benefit will be less than any guaranteed death benefit;

(iv) Any administrative expenses or fees which are deducted pursuant to paragraph (b)(13)(iii)(A) of this Rule;

(v) A deduction for and approximately equal to state premium taxes;

(vi) Any additional charge assessed if the insured does not meet standard underwriting requirements;

(vii) Any additional charge assessed specifically for any incidental insurance benefits;

(viii) Any additional charge, in the nature of an interest charge, assessed when payments are made more frequently than annually, but only to the extent that such payments are made to fulfill a minimum payment requirement imposed pursuant to paragraph (c)(1)(i) of this Rule;

(ix) Any amounts redeemed by the contractholder or paid out to the beneficiary upon the death of the insured which are not attributable to net investment earnings for the period; and

(x) For a participating flexible contract, a deduction for dividends to be paid or credited in accordance with the dividend scale in effect on the issue date of the contract assuming a gross annual investment return for the separate account which funds the contract of 5 per centum. The deduction may be determined by either of the following methods, but the same method must be used for each contract period:

(A) The actuarial level annual equivalent of dividends to be paid or credited over the contract periods described in paragraph (b)(13)(i) of this Rule, based upon the mortality, interest and lapse assumptions used in computing the dividend scale for the contract (and, if the contract is subject to paragraph (b)(13)(i)(A), the assumption that the guideline annual premium will be paid in each contract period) multiplied by the fraction of the contract year represented by the contract period; or

(B) That portion of the dividend to be paid for the contract year which does not depend on the making of payments in addition to those made during the period.

(5) "Contract period" means the period from a contract issue or anniversary date to the earlier of the next following anniversary date (or, if later, the last day of any grace period commencing before such next following anniversary date) or the termination date of the contract.

(6) "Variable death benefit" is the amount of death benefit, other than incidental insurance benefits, payable under a flexible contract which varies to reflect the investment experience of the separate account and which would be payable in the absence of any guaranteed death benefit.

(7) "Payment," as used in paragraphs (b)(13)(i), (b)(13)(ii), and (b)(13)(v)(A) of this Rule and in sections 27(a)(2) and 27(h)(2) solely with respect to flexible contracts, means for a contract period the gross premiums paid less any portion of such gross premiums charged for the items specified in paragraphs (c)(4)(vi), (c)(4)(vi), and (c)(4)(viii) of this Rule. "Payment," as used in any other section of this Rule, means the gross premiums paid or payable for the flexible contract, *Except,* That "Payment" shall not include any amount deducted by the life insurer to recover excess sales loading previously applied to keep the contract in force pursuant to paragraph (b)(13)(iv)(B)*(2)* of this Rule.

(8)(i) "Guideline annual premium" means the level annual amount that would be payable through the maturity date specified in paragraph (c)(8)(ii)(B) of this Rule for the future benefits under the contract if, subject to the provisions of paragraph (c)(8)(ii) of this Rule:

(A) The payments were fixed by the life insurer as to both timing and amount, and

(B) The payments were based on the 1980 Commissioners Standard Ordinary Mortality Table, net investment earnings at the greater of an annual effective rate of 5 per centum or rate or rates guaranteed at issuance of the flexible contract, the sales load under the contract, and the fees and charges associated with the contract specified in paragraphs (c)(4)(iii), (c)(4)(iv), (c)(4)(v), (c)(4)(vi), (c)(4)(vii), and (c)(4)(viii), (for the first two contract periods as permitted by paragraph (c)(1)(i)) of this Rule.

(ii) In computing the future benefits under the flexible contract for determining the guideline annual premium:

(A) The excess of the amount payable by reason of the death of the insured (determined without regard to any incidental insurance benefits) over the

cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(B) The maturity date shall be the latest maturity date permitted under the contract but not less than 20 years after the date of issue or (if earlier) age 95, and

(C) The amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any incidental insurance benefits) at any time under the contract.

(9) "Guideline single premium" means the single amount payable at a specified time which would provide the future benefits under the contract until the maturity date specified in paragraph (c)(8)(ii)(B) of this Rule and which otherwise is computed on the same basis as the guideline annual premium.

(10) "Cash value" means the amount that would be available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, without regard to any changes that may be assessed upon such termination and before deduction of any outstanding contract loan.

(11) "Cash surrender value" means the amount available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, after any charges assessed in connection with the termination have been deducted and before deduction of any outstanding contract loan.

(12) "Net investment earnings" means investment earnings in the separate account after deduction of any asset charges, including but not limited to, such charges for income tax; brokerage and other investment expenses; mortality, expense, and guaranteed death benefit risks; and an investment advisory fee, but not including deductions for sales load. However, "net investment earnings" as used in paragraph (c)(4)(i) of this Rule shall not include any amount deducted pursuant to subparagraphs (ii) through (viii) of paragraph (c)(4).

(13) "Contract processing day" means any day on which charges under the contract are deducted from the separate account.

(d) The following computational rules shall be used in applying this Rule:

(1)(i) Paragraphs (b)(13)(i) and (b)(13)(ii) of this Rule shall be deemed to be satisfied with respect to any flexible contract under which sales load is deducted other than from payments prior to the allocation of net payments to the separate account if during each contract period through the maturity date specified in paragraph (c)(8)(ii)(B) of this Rule, the amount of sales load deducted is not more than the amount of sales load that could be deducted under a flexible contract that is identical to the actual contract except that sales load is deducted only from payments prior to the allocation of net payments to the separate account in any manner satisfying the provisions of the Act and this Rule; *Provided,* That, solely for a contract subject to paragraph (b)(13)(i)(A), during the period equal to the lesser of 20 years or the life expectancy of the insured named in the contract based on the 1980 Commissioners Standard Ordinary Mortality Table, payments may be assumed to be made in each of the alternative amounts:

(A) Level annual payments equal to the guideline annual premium for the actual contract, and

(B) A single payment made at issue equal to the guideline single premium at issue for the actual contract.

(ii) The amount of sales load deducted pursuant to any method permitted under paragraph (d)(1)(i) shall not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method unless an increase in such proportionate amount is caused by the grading of cash surrender values into reserves, or reductions in the annual cost of insurance.

(2)(i) Solely with respect to increases in or additions of insurance benefits requested by a contractholder after issuance of a flexible contract, the contract shall be deemed to satisfy paragraphs (b)(13)(i)(A), (b)(13)(ii), (b)(13)(v), (b)(13)(viii), and (d)(1)(ii) of this Rule, *Provided,* That during each contract period through the maturity date specified in paragraph (c)(8)(ii)(B) of this Rule:

(A) The amount of sales load imposed is not more than the amount of sales load that would be permissible under the base test contract, as defined in paragraph (d)(2)(iii)(B) of this Rule, and the incremental test contract, as defined in paragraph (d)(2)(iii)(C) of this Rule, and

(B) The sum of the sales loads charged in the contract period and all preceding contract periods shall not exceed the sum of the corresponding sales loads under the base test contract and the incremental test contract.

(ii) The following assumptions shall be used in applying paragraph (d)(2)(i):

(A) Payments for the actual contract, as defined in paragraph (d)(2)(iii)(A) of this Rule, and the base and incremental test contracts are paid in each of the following alternative amounts:

(1) Level annual payments for the base test contract equal to the guideline annual premium for the contract, commencing upon issuance; level annual payments for the incremental test contract equal to the difference between the guideline annual premium for the actual contract after the increase in or addition of insurance benefits and before such increase or addition, commencing upon such increase or addition; and level annual payments for the actual contract equal to the guideline annual premium for such contract, commencing upon issuance and adjusted for such increase or addition as of the date of such increase or addition; and

(2) A single payment at issue for the base test contract and for the actual contract in an amount equal to the guideline single premium for the actual contract at issue; and a single payment for the actual contract and the incremental test contract equal to the additional guideline single premium needed for the actual contract upon the increase in or addition of insurance benefits, as of the date of such increase or addition;

(B) Net investment earnings are earned at an annual effective rate specified in paragraph (c)(8)(i)(B) of this Rule; and

(C) No redemptions are made under the actual and test contracts.

(iii) For purposes of this paragraph (d)(2):

(A) "Actual contract" shall mean the flexible contract issued to the contractholder, and adjusted for the increase in or addition of insurance benefits, as of the date of the increase or addition;

(B) "Base test contract" shall mean the actual contract had the increase or addition not occurred;

(C) "Incremental test contract" shall mean a flexible contract that: *(1)* Is issued on the date of the increase or addition; *(2)* provides insurance benefits identical to the incremental change in insurance benefits under the actual contract upon such increase or addition; *(3)* deducts, in any manner permitted by this Rule, not more than 50 per centum of the sales load which would be permitted under the act and this Rule; and *(4)* is not subject to the surrender, conversion, and withdrawal provisions set forth in paragraphs (b)(13)(v) (A) and (B) and (b)(13)(viii) of this Rule: *Provided, however,* That if the increased or added benefit is subject to the surrender, conversion, and withdrawal provisions set forth in paragraphs (b)(13)(v) (A) and (B) and (b)(13)(viii) of this Rule, this paragraph (d)(2)(iii)(C) shall be applied by substituting "100" for

"50". For purposes of satisfying the provisions of the Act and this Rule, the amounts specified in paragraph (d)(2)(ii)(A) (*1*) and (*2*) of this Rule as paid for the incremental test contract shall be treated as the guideline annual premium and guideline single premium, respectively, for such contract;

(D) Any change in insurance benefits which would occur automatically under a contract, with or without the opportunity for contractholder disapproval, or any change in death benefit option shall not be considered an "increase in or addition of insurance benefits requested by a contractholder" for purposes of imposing additional sales load.

2. By revising § 270.6c–3 to read as follows:

§ 270.6c–3 Exemptions for certain registered variable life insurance separate accounts.

A separate account which meets the requirements of paragraph (a) of Rule 6e–2 [17 CFR 270.6e–2] or paragraph (a) of Rule 6e–3(T) [17 CFR 270.6e–3(T)] and registers as an investment company under Section 8(a) of the Act [15 U.S.C. 80a–8(a)], and the investment adviser, principal underwriter and depositor of such separate account, shall be exempt from the provisions of the Act specified in paragraph (b) of Rule 6e–2 or paragraph (b) of Rule 6e–3(T), except for sections 7 [15 U.S.C. 80a–7] and 8(a) of the Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e–2 or Rule 6e–3(T).

PART 274—[AMENDED]

Part 274 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By revising § 274.301 and amending Form N–6EI–1 to read as follows:

§ 274.301 Notification of claim of exemption pursuant to Rule 6e–2 or Rule 6e–3(T) under the Investment Company Act.

This form shall be filed with the Commission as required by § 270.6e–2 or § 270.6e–3(T) of this chapter by each insurance company with respect to each separate account for which exemption is claimed pursuant to § 270.6e–2 or § 270.6e–3(T).

Form N–6EI–1

Notification of Claim of Exemption Pursuant to Rule—— Under the Investment Company Act of 1940

* * * * *

1. Rule as to use of Form:

This form shall be used as the notification of claim of exemption filed with the Commission under either Rule 6e–2 or 6e–3(T) under the Investment Company Act of 1940.

* * * * *

NOTIFICATION OF CLAIM OF EXEMPTION

The undersigned life insurer hereby notifies the Securities and Exchange Commission that it has established a separate account that will be maintained and operated in compliance with Rule —— under the Investment Company Act of 1940, and submits the following information:

* * * * *

SIGNATURE

Pursuant to Rule —— under the Investment Company Act of 1940, the undersigned ——————

(Name of Separate Account

and ——————

(Name of Life Insurer)

have caused this Notification of Claim of Exemption to be duly executed on behalf of the separate account claiming exemption in the city of ——————, county of ——————, state of ——————, on the —— day of ——————, 19—.

Attest: ——————

(Name)

——————

(Title)

——————

(Name of Separate Account)

By ——————

(Chairman of the Board of Directors)

Attest: ——————

(Name)

——————

(Title)

——————

(Name of Life Insurer)

By ——————

(Director, Trustee or Senior Officer)

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission previously certified that rule 6e–3(T) and amendments to rule 6c–3 and Form N–6EI–1 will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

Paperwork Reduction Act

The information collection required by rule 6e–3(T) and Form N–6EI–1 has been submitted to the Office of Management and Budget for clearance. Rule 6c–3 is not subject to the Act because it does not impose an information collection requirement.

Statutory Authority

Rule 6e–3(T) is issued and Form N–6EI–1 is amended pursuant to the provisions of sections 6(e) [15 U.S.C. 80a–6(e)] and 38(a) [15 U.S.C. 80a–37(a)] of the Act. Rule 6c–3 is amended pursuant to the provisions of sections 6(c) [15 U.S.C. 80a–6(C)] and 38(a) of the Act. Because this rulemaking is exemptive in nature, the Commission finds, pursuant to section 553(d)(1) of the Administration Procedure Act [5 U.S.C. 553(d)(1)], that the 30 day delay in effectiveness is not required, and, accordingly, the rule and rule and form amendments will become effective immediately upon publication in the **Federal Register**.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

November 14, 1984.

[FR Doc. 84–31518 Filed 11–30–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Red No. 3 and of FD&C Yellow No. 5 in Cosmetics and Externally Applied Drugs and of Their Lakes in Food and Ingested Drugs; Provisional Listing of FD&C Yellow No. 6 for Use in Food, Drugs, and Cosmetics; Provisional Listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 in Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of these color additives for use in coloring food and ingested drugs; of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics. The new closing date for the provisional listing of all of these color additives will be February 1, 1985. This postponement will provide additional time for the determination of the applicability of the statutory standard for the listing of color additives to the results of the scientific investigations of FD&C Red No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36.

DATES: Effective December 3, 1984, the new closing date for FD&C Red No. 3 and its lakes, FD&C Yellow No. 5 and its lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 will be February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of December 3, 1984, for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in cosmetics and in externally applied drugs and for the provisional listing of the use of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 in food and ingested drugs; of FD&C Yellow No. 6 for use in foods, drugs, and cosmetics and of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics by a rule published in the **Federal Register** of October 2, 1984 (49 FR 38935). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 45237 for FD&C Red No. 3, 48 FR 45760 for FD&C Yellow No. 5, 49 FR 13344 for FD&C Yellow No. 6, 48 FR 42807 for D&C Red No. 8 and D&C Red No. 9, 48 FR 44773 for D&C Red No. 33, and 49 FR 38935 for D&C Red No. 36.

FDA extended the closing dates for the provisional listing of each of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 to permit the consideration of the scientific and legal aspects of the data concerning the safety of their provisionally listed uses. FDA expected that the current closing dates would provide time for the preparation and publication of appropriate regulations in the **Federal Register** regarding the final decision on the petitions for the permanent listing of the aforementioned uses of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5.

The review of the data relevant to the provisionally listed uses of FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 has required more time than anticipated, however. Additional time is still needed to determine the applicability of the statutory standard for listing color additives to D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as to FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes.

This postponement will provide additional time for the preparation and publication of the appropriate **Federal Register** documents setting forth the decision on the petitions for the permanent listing of FD&C Red No. 3 and FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring food and ingested drugs; for the permanent listing of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and for the permanent listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in coloring drugs and cosmetics. The continued use of these color additives for the short time needed for a fully coordinated review of the data and for the preparation of the **Federal Register** documents will not pose a hazard to the public health.

Because of the short time until the December 3, 1984 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing this postponement as a final rule. This final rule will permit the uninterrupted use of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36 and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, until February 1, 1985. To prevent any interruption in the provisional listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, and in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being made effective on December 3, 1984.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Food, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," and "FD&C Red No. 3" in paragraph (a) to read "February 1, 1985" and by revising the closing dates for "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 33," and "D&C Red No. 36" in paragraph (b) to read "February 1, 1985."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," "FD&C Red No. 3," "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 33," and "D&C Red No. 36" in paragraph (d) to read "February 1, 1985" and by revising the closing dates for "FD&C Red No. 3" and "D&C Red No. 33" in paragraph (e) to read "February 1, 1985."

Effective date. This final rule is effective December 3, 1984.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: November 14, 1984.

Joseph P. Hile

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–31560 Filed 11–30–84; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for Use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use as color additives in externally applied drugs and cosmetics. The new closing date will be February 1, 1985. This postponement will provide additional time for determining the applicability of the statutory standard for the listing of noningested color additives to the results of the scientific investigations of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37.

DATES: Effective December 3, 1984, the new closing date for D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 will be February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of December 3, 1984, for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use in externally applied drugs and cosmetics by a final rule published in the **Federal Register** of October 2, 1984 (49 FR 38936). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 38814 for D&C Red No. 19 and D&C Red No. 37 and 48 FR 44774 for D&C Orange No. 17.

FDA extended the closing date for the provisional listing of these color additives on these occasions to permit consideration of the scientific and legal aspects of the submissions of the petitioner, the Cosmetic, Toiletry and Fragrance Association, Inc., in support of the safety of the external uses of these color additives. Although D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 have been shown to be animal carcinogens upon ingestion, somewhat different questions are raised by the request to list these color additives for noningested use. It has taken more time to review the data involved in resolving these questions than the agency anticipated. Additional time is still needed to determine the applicability of the statutory standard for the listing of color additives for noningested use to D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37. The regulations set forth below will postpone the December 3, 1984 closing date for the provisionally listed use of these color additives until February 1, 1985. This postponement will also provide additional time for the preparation and the publication of **Federal Register** documents setting forth the final decision on the petitions for the permanent listing of these color additives for external use. The continued use of these color additives in externally applied products for the short time needed for the adequate review of the data and for the preparation of **Federal Register** documents that will announce the decision on these color additives will not pose a hazard to the public health.

Because of the short time until the October 2, 1984 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing the postponement as a final rule. This final rule will permit the uninterrupted use of these color additives until February 1, 1985. To prevent any interruption in the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 and in accordance with 5 U.S.C. 553(d)(1) and (3), this final rule is being made effective December 3, 1984.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and under transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS AND COSMETICSs

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (b) to read "February 1, 1985."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (d) to read "February 1, 1985."

Effective date: This final rule shall be effective December 3, 1984.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: November 14, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31581 Filed 11-30-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 84-10]

Marine Parade; Pompano Beach 22nd Annual Christmas Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Pompano Beach 22nd Annual Christmas Boat Parade. The parade is scheduled to take place in all navigable waters from a center point between Lake Santa Barbara and Lettuce Lake. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective at 1830 local time on December 16, 1984 and terminate at 2200 local time on December 16, 1984.

FOR FURTHER INFORMATION CONTACT: Ens. T.F. Tabrah, (305) 350–4309.

SUPPLEMENTARY INFORMATION: On September 6, 1984, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (CGD7 84–10). Interested persons were requested to submit comments and no comments were received. This rule is being made effective in less than 30 days after publication in the **Federal Register.** There was not sufficient time remaining after receipt of the application for this event to provide for both a comment period and a 30 day delayed effective date. Since the regulations are necessary to protect lives and property during this event, the Coast Guard has determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than 30 days after publication.

Drafting Information

The drafters of this regulation are Ens. T.F. Tabrah, project officer, USCG Group Miami and LCdr. K.E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

The Pompano Beach 22nd Annual Christmas Boat Parade is a 10 mile parade with approximately 75–100 boats displaying decorative lighting expected to participate. Regulations are issued by the Commander, U.S. Coast Guard Group Miami as a public service to facilitate the holding of this event, to promote maritime safety, and to reduce to a minimum interference with other vessel traffic in the area.

Economic Assessment and Certification

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This conclusion follows from the fact that the duration of this temporary rule is short and the regulated area is small and not normally transited by commercial vessels. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–T710 to read as follows:

§ 100.35–T710 Pompano Beach 22nd Annual Christmas Boat Parade.

(a) *Regulated area:* All navigable waters from a center point between Lake Santa Barbara and Lettuce Lake, (approximate position 26–13.2N, 080–05.9W) proceeding north in the Intracoastal Waterway to the Hillsboro Blvd. Bridge in Hillsboro Beach.

(b) *Effective Date:* The regulations become effective at 1830 local time on 16 December 1984 and terminate at 2200 local time on 16 December 1984.

(c) All vessel traffic in the regulated area will be controlled by the Patrol Commander and will proceed at 5 MPH when passing parade participants.

(d) Rule 20 of the Navigation Rules, International-Inland of December 1983 will be suspended for registered participants only.

(e) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be signal for any non-participating vessels to stop immediately. The display of a red distress flare from a patrol vessel will be signal for any and all vessels to stop immediately.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: November 9, 1984.

G.E. Walton,

Captain, U.S. Coast Guard, Commander, USCG Group Miami.

[FR Doc. 84-31580 Filed 11-30-84; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 117

[CGD 05-84-03]

Drawbridge Operation Regulations; West Pearl River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation Development (LDOTD), the Coast Guard is changing the regulation governing the lift span bridge on U.S. Highway 90 over the West Pearl River, mile 7.9, near Pearlington, St. Tammany Parish, Louisiana, by requiring that at least four hours advance notice of opening be given at all times. The bridge presently is required to open on signal from 5:00 a.m. to 9:00 p.m. and on 12 hours notice from 9:00 p.m. to 5:00 a.m. This change is being made because of infrequent requests for opening the draw.

This action will relieve the bridge owner of the burden of having a person constantly available to open the draw from 5:00 a.m. to 9:00 p.m. and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on January 2, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 1 October 1984, the Coast Guard published a proposed rule (49 FR 38856) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 10 October 1984. In each notice interested persons were given until 15 November 1984 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments

The only response to the public notice and the **Federal Register** was a comment of no objection from the Louisiana Department of Wildlife and Fisheries.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the bridge has averaged only 10 openings per month (one opening every three days) since 1981. These few vessels can reasonably provide four hours notice for a bridge opening by placing a collect call at any time to the LDOTD District Office in Hammond, Louisiana, telephone (504) 345–7390. Scheduling their arrival at the appointed time would involve little or no additional expense to the mariners. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising § 117.511(b) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.511 West Pearl River.

* * * * *

(b) The draw of the US 90 bridge, mile 7.9 near Pearlington, shall open on signal if at least four hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: November 25, 1984.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 84-31529 Filed 11-30-84; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual, Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 16 of the Domestic Mail Manual (DMM), which is incorporated by reference in the **Federal Register,** 39 CFR 111.1.

Most of the revisions are minor, editorial or clarifying. Substantive changes, such as the revised regulations on official mail and the use of padded envelopes in the registered mail system, have previously been published in the **Federal Register.**

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245–4638.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the **Federal Register** (see 39 CFR 111.1), has been amended by the publication of a transmittal letter for issue 16, dated September 27, 1984. The text of all

published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 16 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Note.—Issue 16 contains all DMM revisions published between July 19, 1984, and September 27, 1984. (Postal Bulletins 21467 through 21478.)

Summary of Changes

Major Revision

Official Mail.

* * * * *

Other Revisions

1. Section 119.1 is revised to include three additions to the list of registered U.S. Postal Service trademarks or service marks and one addition and three deletions from the list of proposed or pending registration of U.S. Postal Service trademarks or service marks (PB 21478, 9–27–84).

2. Exhibit 122.63*f* reflects mandatory changes and/or additions to the Optional State Distribution Center (SDC) labeling list for mailer prepared Second-Class newspaper treatment publications (PB 21471, 8–16–84).

3. Section 136.7 is revised to improve the handling of Express Mail drop shipments (PB 21476, 9–13–84).

4. Section 145.3 is revised to allow permit imprints to be printed on address labels (PB 21467, 7–19–84).

5. Section 153.24 is changed to clarify procedures for handling mail addressed to deceased persons (PB 21474, 9–6–84).

6. Sections 157.2 and 157.3 are amended to reflect the change in supervision of highway contract route (HCR) service and to add Express Mail to this service (21474, 9–6–84).

7. Section 261.3 is added to explain procedures used for experimental Tag 2705X, *Same Day—Move It* (PB 21474, 9–6–84).

8. Section 723.21 is revised to remove the current exclusion from bulk bound printed matter of parcels weighing less than 15 pounds that measure over 84 inches in length and girth combined (PB 21473, 8–30–84).

9. * * *

10. Minor editorial and typographical changes have been made to 115.91a; 132; 136.753c; 141.241; 145.42; 157.31b; 281; 282; 447.6; 464.242c(1); 468.31; Exhibit 482*c* (p.1, p.2); Exhibit 482 *e, f, g*; 667.322; 668; 712.1; 767.535; 768; 952.233; and Index: Customer Complaints.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	"Federal Register" publication
16	Sept. 27, 1984	49 FR 47232, December 3, 1984.

(5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408, 3001–3011, 3201–3218, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 84-31489 Filed 11-30-84; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 111

Business Reply Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule establishes final regulations for a variety of changes to Business Reply Mail (BRM) to be effective January 2, 1985.

The rule prescribes format requirements to accommodate mail processing optical character reader specifications, and makes changes throughout the Business Reply Mail section to simplify procedures and provide clearer instructions for mailers and postal personnel.

EFFECTIVE DATE: January 2, 1985.

FOR FURTHER INFORMATION CONTACT: Dick Greene, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260–5371, Telephone (202) 245–4530.

SUPPLEMENTARY INFORMATION: A detailed explanation of the nature and background of the proposed rule, including the reasons for its proposed adoption and a discussion of the major changes, accompanied its publication in the **Federal Register** on October 1, 1984 (49 FR 38661).

Five letters were received with comments on the proposed regulations. The comments and the Postal Service response are as follows:

1. A comment was received questioning the need for horizontal bars (917.526) and the half inch space requirement between the bars and the ZIP Code (917.525b). Because it appears that the horizontal bars have important recognition value, the Postal Service declines to change the proposed regulation. As to the half inch space, it is needed to preclude any possible interference which might affect the Postal Service's optical character readers. These readers often pick up marks or characters too close to the read area.

2. Two comments were received on the need for a grace period after the effective date of the final rule to allow mailers to use up existing stocks and to assure mailers that non-conforming BRM distributed prior to the final rule effective date will be acceptable for delivery.

Both in the proposal and in the final rule the Postal Service provided for a one-year grace period (See 917.6—Implementation Deadline) and has revised 917.6 to make it clear that non-conforming BRM already in distribution will continue to be acceptable for delivery.

3. One comment was received from the Postal Rate Commission stating that section 917.243b of the proposed regulation could be interpreted as modifying the postage payment guarantee contained in section 2.020 of the Domestic Mail Classification Schedule. Since the intent of the proposed regulation was only to insure that BRM permit holder would not be penalized for failure to accept BRM improperly used as a label, the Postal Service has revised 917.243b to make clear that it does not modify the postage guarantee and that it extends only to use of BRM as a label.

4. Two commenters opposed proposed regulation 917.593, which restricts BR labels to non-standard size BRM. The Postal Service believes that the use of BR labels on standard size envelopes and cards prevents efficient processing because the position and alignment of BR labels cannot be controlled. Furthermore, BR labels were never intended to be a means of circumventing format requirements for standard size BRM.

5. One commenter suggested that deletion of the legend "Business Reply Card" may cause permit holders to be unaware of lower postage rates. The Postal Service believes that permit holders are generally aware of the proper rates for their BRM. Furthermore, the rates for cards are generally available and are listed elsewhere in the DMM. Deletion of the legend "Business Reply Card" will avoid printing errors when "Business Reply Mail" is inadvertently printed on cards and will eliminate another check on format requirements by postal personnel, thus streamlining the administration of BRM. Accordingly, proposed section 917.522 has not been revised.

6. One comment was received questioning whether proposed 917.525 c, which prohibits use of unique ZIP Codes on BRM, pertained only to unique ZIP + 4 codes and not to unique 5-digit ZIP Codes presently used for regular mail. This regulation applies to all unique ZIP Codes. The Postal Service must have exclusive BRM ZIP Codes, including 5-digit ZIP Codes, to prevent revenue losses when BRM (especially nonstandard BRM) gets mixed with postage paid regular mail because it has been batched and separated by ZIP Code.

7. One commenter suggested that business reply permit renewal notices be sent 60 to 90 days before renewal and that we keep track of them to ensure renewal, and that directive copy should be used on the outer envelope to assure that the renewal notice reaches the proper person in a large corporation. The Postal Service currently has a constant deadline of December 31 for renewals, which provides permit holders with a predictable annual date. Our present method has proven satisfactory and will be improved by the new requirement that the permit holder be notified by certified mail and given 10 days to renew. Permit holders will quickly become aware of the need for renewal when their BRM is held for 10 days. The absence of BRM delivery will call their attention to the problem. As a result, the Postal Service believes the method currently in place, as modified by these regulations, provides a more efficient way to renew BRM than the commentor's proposal. Additionally, the Postal Service will send the renewal notice to the address provided by the permit holder. Large corporations are expected to provide the proper address to direct the delivery of the renewal notice.

8. One comment concerned the requirement that the permit holder's name must always be printed even when BRM is distributed by dealers and third parties. It was suggested that adding the permit holder's name may not be beneficial to dealers and third parties.

This regulation allows a permit holder's permit to be used to represent the business of the permit holder by dealers and third parties. Dealers and third parties who prefer not to be identified by association with a permit holder may apply for their own permits.

For the reasons given and after careful consideration, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations.

See 39 CFR 111.1

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

Revise part 917 to read as follows:

PART 917—BUSINESS REPLY MAIL (BRM)

917.1 General.

.11 Description. BRM service enables mailers to receive First-Class Mail back from customers by paying postage only on the mail that is returned to them from their original distribution of BRM pieces. The permit holder guarantees payment of the appropriate First-Class postage plus a handling charge per piece on all returned BRM distributed under the permit holder's permit number. All BRM will be cancelled to assure that First-Class service standards are being met.

.12 Special Services. Special services (*e.g.*, insurance, registration, certified, C.O.D., return receipts) cannot be used with BRM.

.13 Distribution. Business reply cards, envelopes, self-mailers, cartons, and labels may be distributed by a valid BRM permit holder in any quantity for return to any post office in the United States and its territories and possessions, including military post offices overseas. Refer to International Mail Manual (IMM), 233.32, for international BRM requirements. Domestic BRM must not be sent to any foreign countries.

917.2 Permits.

.21 Application.

.211 Completing Forms. Completion of Form 3614, *BRM Application and Annual Renewal Notice,* appearing below, is required. Form 3614 and the annual permit fee must be submitted to the post office issuing the permit. On receipt of the application and fee, the postmaster will complete the permit portion of the form and assign the permit number. The postmaster will complete and give the customer Form 3544, *Receipt for Payment;* and provide Publication 115, *Business Reply Mail,* to the applicant. The postmaster will not return Form 3614 to the customer. (See 917.242 for exceptions when branches and dealers are involved.)

.212 Filing Forms. Post offices file Form 3614 by permit holder in alphabetical order. A copy of Form 3544 must be attached to Form 3614 as proof of payment. (*Exception:* Post offices with a large number of BRM permits may elect to file Form 3544 in permit number sequence, for cross reference purposes.)

.22 Annual Permit Renewals. A renewal notice (Form 3614) will be furnished each BRM permit holder by December 1 of each year. The permit holder must return the renewal notice and payment to the post office issuing the permit by December 31.

.23 Nonrenewed Permits. When records indicate a permit was not renewed, the permit holder will be informed in writing by certified mail that all *BRM mail will be held for ten days and then returned to sender,* if the permit is not renewed. The following methods will be followed if the permit is not renewed after the mailer has been notified in writing and ten days have elapsed:

a. BRM will be returned to the sender.

b. BRM that does not contain the sender's return address is forwarded to the nearest dead letter branch for proper handling with the endorsement "Business Reply Permit Cancelled."

c. BRM qualifying for the card rate is treated as waste (See 159).

d. Mail distributed by branches and dealers of the permit holder is returned to the post office where the permit is held for collection of postage and fees from the permit holder.

.24 Acceptance of BRM in any Post Office.

.241 Acceptance Conditions. BRM will be processed and delivered under the following conditions:

a. The permit holder's permit number, city, state, and name *must be printed on the BRM distributed.*

b. Post offices will not accept BRM for delivery and will require branches, agents or dealers to apply for a permit and pay the permit fee if branches, agents or dealers distribute BRM on behalf of a permit holder and the name of the permit holder is not printed above their name and address. Branches', agents', or dealers' names and addresses must be printed below the permit holder's name.

.242 Return Through More Than One Post Office. A permit holder can distribute BRM through any post office for delivery at any post office. The permit holder does not have to pay an additional permit fee to distribute or return BRM through other post offices

provided the permit holder submits a written authorization to the other post offices involved for the branch, agent, or dealer to receive the BRM, and the permit holder provides a copy of a valid Form 3544 (which shows the BRM permit fee was paid) to any post office that will be processing the BRM. The permit holder's written authorization must provide the name, address, and telephone number of the branch, agent or dealer authorized to receive BRM.

.243 Permit Holder's Guarantee. The permit holder guarantees payment of postage and fees on delivery of BRM. Any concern distributing BRM under one permit for return to its branches or dealers guarantees to pay postage on any returns refused by any authorized addresses, branches or dealers. Refusal to accept and pay the required charges for BRM offered for delivery will be grounds for immediate revocation of the BRM permit. Exceptions area as follows:

a. When refusal involves branches, agents and dealers, the BRM will be forwarded to the post office issuing the original permit for collection of the refused postage and fees from the permit holder before the BRM permit is revoked.

b. In all cases where BRM is improperly used as a label (See 917.522), the post office will treat the item as waste. The post office will not consider the permit holder's refusal to accept and pay BRM charges for improper use of BRM as a label as grounds for revocation of a BRM permit. However, the use of a proper business reply label requires the permit holder to pay postage in all cases.

917.3 Postage and Fees.

.31 General. There is an annual BRM permit fee. First-Class postage and a BRM per piece charge will be collected from the addresses upon delivery. An additional annual accounting fee is required for establishment of a business reply account.

.31 Zone Related BRM. All BRM must be cancelled. First-Class Zone Rated (Priority) BRM will be rated zone 1 if the zone cannot be determined from the cancellation or the sender's address on the BRM piece.

.31 Fees:

BRM annual permit and renewal fee	$40.00
BRM accounting fee	175.00

The applicable and full BRM fee(s) must be paid each calendar year or portion thereof. Fees are not prorated. Fees are not refundable or transferable even when BRM permits or accounts are not used.

.33 Payment of Postage and Fees.

.331 General. Permit holders have three options for paying postage and fees on BRM returned; (1) In cash; (2) through a postage due account; or (3) through a business reply account.

.332 Cash or Postage Due Account. Payment may be paid in cash or through a regular postage due account as follows:

a. Amount Collected. The amount to be collected for cash or use of regular postage due account transactions is the appropriate First-Class postage, *plus a charge of 18 cents per piece.*

b. Account Fee. No business reply account fee will be charged when the regular postage due account is used. Use of a postage due account does not qualify the BRM for the lower per piece charge given permit holders with a business reply account.

c. Affixing Stamps or Meter strips. Postage due stamps or meter strips for the amount will be affixed to the mail or to Form 3582—A, *Postage Due Bill.* The stamps must be cancelled and delivered to the addressee with the mail when the amount due is paid.

.333 Business Reply Account. A business reply account must only be used for payment of postage and fees on BRM as follows:

a. Amount Collected. The amount to be collected for business reply account transactions is the appropriate First-Class postage, *plus a charge of 5 cents per piece.*

b. Account Fee. In addition to the annual permit and renewal fee, a separate accounting fee is charged for each business reply account at each post office where the mail is to be returned. The full fee must be paid for the whole or part of each calendar year.

c. The following conditions apply to business reply accounts:

1. Only one billing is provided for each business reply account.

2. When a permit holder distributes BRM with different addresses or post office box numbers under the same permit number in the same delivery unit and is covered by one business reply account, the BRM is separated by each different address or post office box number, but only one billing is provided for the business reply account.

3. When a permit holder with a business reply account desires a separation of charges, payment of a business reply accounting fee is required for *each* billing prepared for each separation. The permit holder pays the appropriate First-Class postage, plus a charge of 18 cents per piece, for each separation if a business reply account fee is not paid for each separation.

d. Insufficient Funds. When a business reply account contains insufficient funds to cover the amount due for postage and fees, the BRM is held and the permit holder notified by certified mail that the BRM is being held. If funds are not deposited within three days, the BRM is treated as a cash or postage due account transaction and the permit holder pays the appropriate First-Class postage plus a charge of 18 cents per piece. If funds are deposited within three days, all BRM held during the three days will be charged First-Class postage, plus 5 cents per piece.

e. BRM Addressed to Different Firms. BRM addressed to several different firms at the same delivery unit may be delivered to an agent authorized by a valid business reply permit holder. The agent will pay one business reply account fee for all the firms represented by the agent in the same delivery unit. If the agent, or any of the firms represented by the agent, desires a separation of charges then the conditions in 917.333(e) are applicable.

.334 Two or More BRM Pieces. Two or more BRM pieces may be mailed as a single item under the following conditions:

a. The BRM pieces are identically addressed and approximately the same size or shape. They must be securely or permanently fastened together. String or rubber bands are unacceptable.

b. The weight of the combined item must not exceed the permitted maximum size of 108 inches (length and girth) or the weight limit of 70 pounds.

c. BRM postage due calculations are based on the total weight of the item and the appropriate First-Class postage plus the BRM charge for one piece.

d. When two or more BRM pieces mailed together become separated, BRM postage and fee charges are calculated for each piece.

.340 BRM Bearing Stamps.

.341 BRM with postage affixed is handled in the same manner as other BRM. No effort is made to identify or separate BRM pieces having postage affixed. Applicable postage and fees are charged without deducting the amount of any postage stamps affixed.

.342 Refunds. The 5¢ or 18¢ per BRM piece charges are not refundable. However, business reply permit holders may request a credit or refund (as provided in 147.22) for the amount of postage affixed to BRM pieces by submitting a completed Form 3533, *Application and Voucher for Refund of Postage and Fees, to the postmaster* along with evidence of the excess postage payment for which a credit or refund is desired. Permit holders are entitled to a refund for postage affixed to BRM that may be attributed to printed

endorsements which solicit mailers to help reduce permit holder postage costs. To receive refunds for postage, business reply permit holders must present to the designated office properly faced and banded packages of 100 identical BRM pieces with identical amounts of postage affixed. Exceptions to this are:

a. A postmaster may accept a package of less than 100 business reply envelopes if necessary to prevent loss or hardship to a mailer.

b. The address side of the envelope may be separated and submitted as evidence, instead of the entire envelope, provided all address sides are separated in the same manner.

.343 Foreign Postage Refunds. The permit holder is only entitled to a refund of the U.S. First-Class postage rate charged to the permit holder, not any value of the foreign postage stamps nor the BRM per piece handling charges.

917.4 Address Alterations.

.41 General. The address on BRM pieces cannot be altered to an address other than that of the permit holder. BRM items cannot be converted for any other purpose than intended by the permit holder, *even when postage is affixed.*

.42 Processing. BRM with address alterations will be processed as follows:

a. BRM qualifying for the card rate is treated as waste (see 159).

b. Other BRM pieces with altered addresses must be endorsed "Return to Sender." If the BRM does not contain a return address, it will be followed to the nearest dead letter branch with the endorsement "Undeliverable As Addressed."

c. The only acceptable alteration of address information on BRM would be when the centralized mark-up (CMU) or the permit holder applies a label containing the new address of the permit holder. A new address label will be unacceptable if it interferes with the Facing Identification Mark (FIM), if it covers the permit holder's name printed on the BRM; or if a bar code was previously printed on the item.

917.5 Format.

.51 General. All forms of printing are permissible provided they are legible to the satisfaction of the Postal Service. However, handwriting, typewriting, or handstamping cannot be used to prepare the address side of BRM (see DMM 137 for exception on Official Mail). Printed borders are not authorized on business reply letters and cards; however, they are allowed on business reply labels and cartons and envelopes larger than 6⅛" high or 11½" long or ¼" thick. All colors of ink are acceptable provided there is at least a 30% reflectance difference throughout the red spectral range of 550 to 775 nanometers (nm) between the paper and ink.

.52 Format Elements (see Exhibit 917.52).

.521 "No Postage Necessary • • •" Endorsement. The endorsement "NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES" must be printed in the upper right hand corner of the face of the piece. The endorsement must not extend further than 1¾" from the right edge of the mail piece.

.522 Business Reply Legend. The appropriate BUSINESS REPLY legend must appear above the address in capital letters at least 5/16" in height. Authorized legends are:

Legend	For use on
BUSINESS REPLY MAIL	All BRM except for business reply labels. (Cards must qualify for the lower card rate—see 917.56.)
BUSINESS REPLY LABEL	The legend "BUSINESS REPLY LABEL" means that the permit holder guarantees payment of First Class postage upon the return of mailable matter with the permit holder's business reply label. Items printed with the legend "BUSINESS REPLY MAIL" are not acceptable as labels.

.523 Permit Number. Immediately below the BUSINESS REPLY legend the words "FIRST-CLASS PERMIT NO • • •" followed by the permit number and the name of the issuing post office (city and state) must be shown in capital letters.

.524 "Postage Will Be Paid • • •" Endorsement. The legend POSTAGE WILL BE PAID BY ADDRESSEE" must appear below the "FIRST-CLASS PERMIT NO • • •", not lower than 2¼" from the bottom edge of the BRM.

.525 Address. The complete address, including the name of the permit holder, street address, and/or post office box number, city, state, and ZIP Code must be printed directly on the mail piece. *Exception:* Preprinted labels with only delivery address information are permitted for addressing BRM. However, the permit holder's name must still be printed directly on the BRM. Permit holders are liable for the postage and fees on BRM returned with improper addressing. Mailers are encouraged, but not required, to use ZIP+4 Codes and corresponding bar codes on BRM. Other requirements are as follows:

a. The bottom line of the address must be no lower than ⅝", and the top line of the address must not be higher than 2¼", from the bottom edge of the mail piece. The space ⅝" from the bottom edge and 4½" from the right edge of the mail piece is reserved for bar codes. A clear margin void of any extraneous matter (except for the horizontal bars specified in 917.528) of at least 1" is required between the left and right edges of the mail piece and the address.

b. There must be at least ½" clearance between the ZIP Code and the horizontal bars.

c. Unique ZIP Codes, unless assigned exclusively for BRM/postage due mail, must not be used for BRM.

d. A company logo is permitted if it is located *no lower than the top of the street address or the post office box line.* The logo must not interfere with any of the required business reply endorsements.

e. The upper left corner of the address side is available for permit holder use (see Exhibit 917.52—Figure 3).

.526 Horizontal Bars. To facilitate rapid recognition of BRM, a series of horizontal bars parallel to the length of the mail piece must be printed immediately below the endorsement "NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES." The bars must be uniform in length, at least 1" long and 1/16 to 5/16 inch thick and evenly spaced. The vertical column of horizontal bars must not extent below the delivery address line, which is the line above the line containing the ZIP Code.

.527 Facing Identification Mark (FIM). FIM is a vertical bar code pattern printed at the top right portion of the address side of the BRM piece. FIM functions as an orientation mark for automatic facing and cancelling equipment. Requirements for FIM are as follows:

a. A FIM must be printed on all BRM except business reply labels, or BRM larger than 6⅛" high or 11½" long or ¼" thick. The following FIM types are applicable for BRM:

FIM B—For preprinted BRM, penalty, or franked mail *without* bar code. Prevents rejection on the facer canceller.

FIM C—For preprinted BRM and penalty or franked mail *with* bar code. Allows capture at facer canceller.

b. See Exhibit 917.52, Figure 2, for FIM printing location. Each FIM bar must be at least ⅛" high. Each bar must be at least .03125" (±.006" wide). Extraneous ink must not cause a bar to exceed specified limits. BRM is nonmailable when the FIM has insufficient ink coverage, improper measurement, ink in the space between the bars, or is either enlarged or reduced.

c. The combined effects of positional and rotational skew must be limited to ±5 degrees from the perpendicular edge

of the printed FIM to the top edge of the mail piece.

d. There must be at least a 30 percent reflectance difference throughout the red spectral range of 500 nm to 775 nm between the paper and ink.

e. Additional specifications for printing the FIM pattern and bar codes are contained in Publication 25, *A Guide to Business Mail Preparation*. USPS negatives or positives and specifications must be used for printing the FIM pattern and bar code. Negatives and positives are available, free of charge, from the local post office customer service representatives.

.528 Pre-Bar Coded BRM. Bar coding permits highly reliable sortation of mail through automated bar code sorters instead of manual or mechanized methods. Pre-bar coding of BRM is optional. If BRM is pre-bar coded, these requirements must be followed:

a. FIM C must be used for pre-bar coded business reply mail.

b. Each full bar must be 0.125 ± 0.10" high. Each half bar must be 0.050 ± .010" high. All bars printed must be 0.020 ± .005" wide. The horizontal spacing of all bars must be 21 bars per inch ± 1 bar. See Exhibit 917.52 for bar code printing location.

c. Extraneous ink must not exceed 0.003" in the allowed height or width of any bar or cause space-to-background print reflectance differences (PRD) to exceed 10%.

d. The combined effects of positional and rotational skew must be limited to ± 5 degrees from the perpendicular edge of the printed bar code to the bottom edge of the mail piece.

e. There must be at least a 30% reflectance difference throughout the red reflectance range of 500 nm to 775 nm between the paper and ink.

.53 BRM Format Review. Postal inspection of BRM before printing is not mandatory. However, permit holders receiving written postal approval of BRM before printing could avoid the cost of reprinting and distributing in the event of a nonmailable ruling. Postal approval of BRM requires that two BRM pieces be submitted to the post office where the permit is held or where the mail will be returned. The post office will return one BRM with written approval or required changes. The postmaster retains the other BRM piece and a copy of the written approval or required changes given to the mailer.

.54 BRM Format Corrective Action.

.541 The permit holder and authorized permit users must be notified in writing of specific errors when BRM formats do not meet current postal requirements. The *permit holder* is responsible for correcting BRM formal and ensuring that future formats meet specifications.

.542 Repeated instances of incorrect BRM formats, as determined by the Postal Service, are grounds for revocation of the business reply permit. The permit holder must be notified by certified mail and allowed ten days to respond before a permit is revoked.

.543 To obtain a new permit after a BRM permit has been revoked for failure to follow BRM format requirements, a new application (Form 3614) must be completed, the required BRM permit fee must be paid, a new business reply account fee must be paid (if used) and two samples of all BRM format must be submitted to the appropriate post office for approval for the next two-year period.

.55 Envelopes.

.551 Paper envelopes used for BRM must have a minimum base weight of 20 pounds (17" x 22", 500 sheet base). Nonpaper envelopes must be approved for mailability by the USPS Engineering Support Center, Rockville, Maryland 20852-8101.

.552 If the BRM envelope is made of paper with dark fibers, the print reflectance difference (PRD) between the fibers and the background should not exceed 10%.

.553 Envelope paper must not have phosphorescence exceeding 3.0 phosphory meter units (PMU) to avoid orientation problems in the facer canceller. Envelopes must have at least a 50% reflectance value.

.554 Half tone screening of less than 200 dots per inch must not be used in the background of the address area of the envelope as the cause OCR interference.

.555 BRM envelopes are nonmailable when sealed with wax, clasps, string, staples, or buttons, or when all edges are not straight or when the envelopes is not rectangular.

.56 Window Envelopes. A BRM window or open panel envelope must be prepared as follows:

a. The endorsements "NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES", and "POSTAGE WILL BE PAID BY THE ADDRESSEE.", the permit holder's name, horizontal bars; FIM; the legend "BUSINESS REPLY MAIL", First-Class permit number; city, and state; and the permit holder's name *must be printed* on the *address side of the envelope.*

b. There must be at least ⅛ inch clearance and no extraneous (nonaddress) printing around the edges of the address shown in the window even when the address is moved to its full limits inside the window envelope.

c. The window must not be positioned lower than ⅝" (unless there is 4" of clear space for the printing of bar codes from the right edge of the window) or higher than 2¼" from the bottom edge of the envelope. This area is reserved for addressing and bar codes. The address showing through for addressing and bar codes. The address showing through the window must be that of the permit holder or an authorized agent/dealer and must be at least 1" from the left or right edge of the mail piece.

d. Materials covering windows must allow the address to be readable.

e. Permit holders are responsible for the postage and fees on all BRM returned if the address is incomplete or cannot be read through the window.

.57 Self-Mailers. BRM self-mailers must be rectangular, at least 0.007" thick, and contain instructions for folding and sealing. Self-mailers are nonmailable when sealed with wax, clasps, string, staples, or buttons, and when they do not have straight sides.

.58 BRM Cards. Cards must be rectangular in shape, not less than 3½ × 5" or greater than 4¼ × 6" and of uniform thickness not less than 0.007".

.59 Business Reply Labels.

.591 Minimum size of label with the legend "Business Reply Label" 2 × 3" it is not necessary to print FIM or bar codes on BR labels; however, all other BRM format requirements must be met on the label.

.592 The series of horizontal bars on business reply labels must be at least ¾" in height.

.593 Business reply labels must not be used on standard size BRM cards and envelopes.

917.6 Implementation Deadline

All BRM distributed after December 31, 1985, must comply with the format requirements contained in this section or the BRM will not be accepted for distribution. Mailers are given a one-year grace period (between January 1 and December 31, 1985) to distribute and dispose of stocks of BRM which do not meet the format requirements in this section. All BRM distributed prior to December 31, 1985, will be delivered to a valid permit holder whenever returned.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401(2), (10), 404(a)(2), (4))

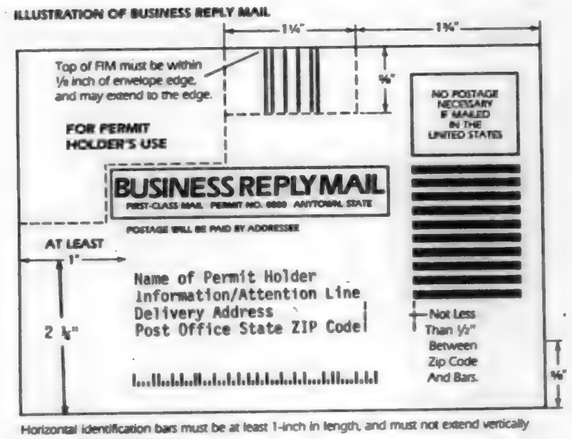
W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

BILLING CODE 7710-12-M

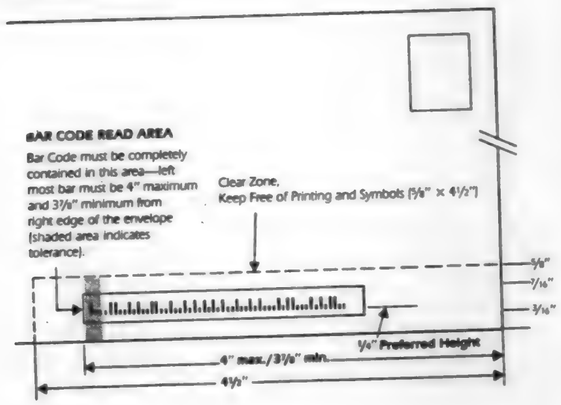
EXHIBIT 917.52 BUSINESS REPLY MAIL FORMAT REQUIREMENTS

Figure 3



Horizontal identification bars must be at least 1-inch in length, and must not extend vertically below the delivery address line.

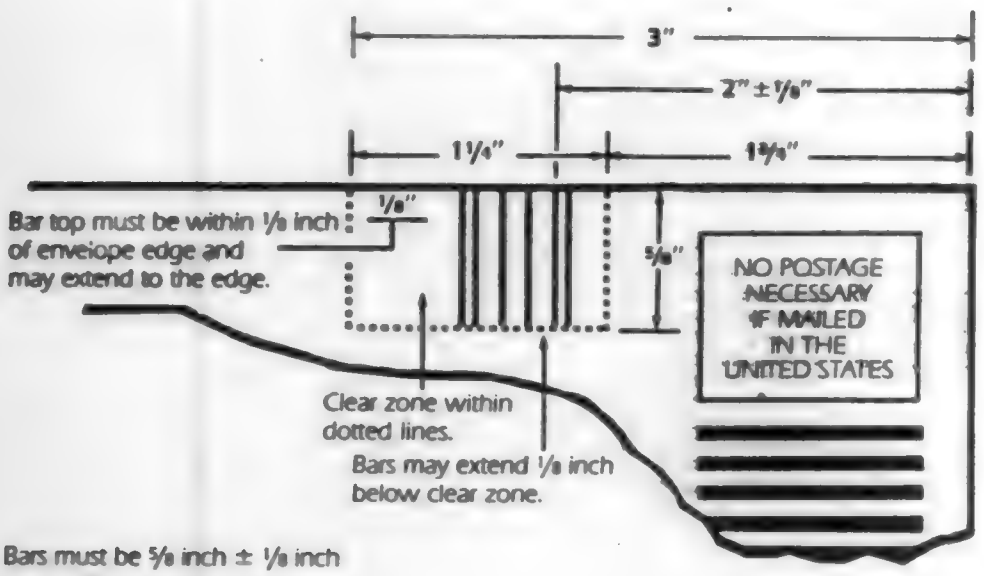
Figure 1



Both FIM abd Bar Code must have at least 30% print reflectance differance and the combined effects of positional and rotational skew must be limited to ± degrees from the FIM or Bar Code to the top or bottom edge of the mail piece.

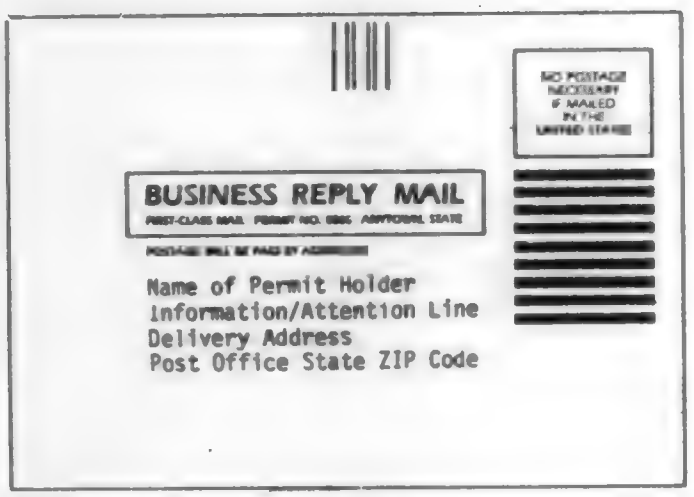
Figure 2

FIM LOCATION

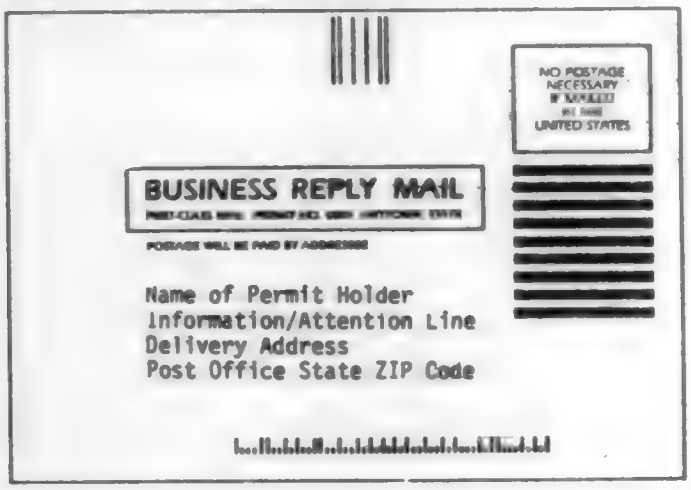


Bars must be 5/8 inch ± 1/8 inch long. USPS supplied FIM patterns (A-B-C) are 5/8 inch long and should not be reduced or enlarged in size.

FIM B
FOR PRE-PRINTED BUSINESS REPLY PENALTY OR FRANKED MAIL WITHOUT BAR CODE. PREVENTS REJECTION ON THE FACER CANCELER.



FIM C
FOR PRE-PRINTED BUSINESS REPLY PENALTY OR FRANKED MAIL WITH BAR CODE. ALLOWS CAPTURE AT FACER CANCELER.



Examples are reduced from actual size.

FORM SIZE 3 7/8" X 8"

FORM 3614, BRM APPLICATION AND ANNUAL RENEWAL NOTICE

Application is made to distribute business reply cards, envelopes, self mailers, cartons, and labels prepared and mailed for return without prepayment of postage under Section 917, Domestic Mail Manual. Postage at First-Class rates and the additional per piece charge for business reply mail will be paid on all pieces returned under this privilege. Applicant agrees to prepare mailing pieces in accordance with Section 917, Domestic Mail Manual, and understands that failure to conform with those requirements may be considered basis for revocation of this permit. The annual business reply permit fee, and the annual accounting charge if payment is to be from a BRM trust account, must accompany this request.

PERMIT MUST BE RENEWED BY DECEMBER 31. BRM WILL NOT BE DELIVERED WITHOUT A VALID PERMIT.

NAME AND ADDRESS OF PERMIT HOLDER (print or type)	NAME		TELEPHONE NO.
	STREET	CITY AND STATE	ZIP CODE
POST OFFICE TO WHICH SUBMITTED (City, State and ZIP Code)	SIGNATURE AND TITLE OF APPLICANT		DATE

TO BE COMPLETED BY POSTMASTER

BRM ACCOUNT YES NO	BRM ACCOUNT FEE RECEIPT NO.	BRM PERMIT FEE RECEIPT NO.	☐ APPLICATION APPROVED ☐ APPLICATION DENIED	PERMIT NUMBER
DATE OF ISSUANCE	DATE OF EXPIRATION	SIGNATURE OF POSTMASTER		

- POSTMASTER MUST GIVE CUSTOMER FORM 3544, RECEIPT FOR PAYMENT FOR PROOF OF HAVING A VALID PERMIT.

[FR Doc. 84-31558 Filed 11-30-84; 8:45 am]
BILLING CODE 7715-12-C

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Alaska, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Federal Insurance Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alaska	Bethel (City), Bethel Division, FEMA–6604	Kuskokwim River	At the intersection of Main and 1st Avenue	*17
Maps available for inspection at Planning Department, City Complex, Bethel, Alaska.				
California	Santa Cruz (city), Santa Cruz County, FEMA–6599	Arana Gulch	Intersection of Arana Gulch and center of Soquel Avenue.	*33
		Carbonera Creek	120 feet downstream from center of State Highway 1 (Cabrillo Freeway).	*35
		Moore Creek	Intersection of Moore Creek and center of Delaware Avenue.	*40
		San Lorenzo River	20 feet upstream from center of Laurel Street	*18
		San Lorenzo River—Without consideration of levee.	60 feet upstream from center of Riverside Avenue	*14
Maps available for inspection at City Planning Department, 809 Center Street, Santa Cruz, California 95060.				
Connecticut	Jewett City, borough, New London County, (FEMA Docket No. 6604).	Quinebaug River	At upstream corporate limits	*100
			At downstream corporate limits	*85
		Pachaug River	At upstream corporate limits	*129
			Confluence with Quinebaug River	*98
Maps available for inspecton at City Hall, School Street, Jewett City, Connecticut.				
Connecticut	Lisbon, town, New London County, (Docket No. FEMA–6586).	Shetucket River	Downstream corporate limits	*37
			Upstream of Norwich Avenue	*56
			Upstream of Taftville Dam	*57
			Upstream corporate limits	*64
		Quinebaug River	Downstream corporate limits	*37
			Upstream of dam	*51
			Approximately 1.5 miles upstream of dam	*59
			Approximately 3 miles upstream of downstream corporate limits.	*70
			Upstream of Connecticut Turnpike	*84
			Upstream of Sylvandale Road	*88
			Upstream of dam	*100
			Upstream corporate limits	*101
		Bliesville Brook	At confluence with Shetucket River	*37
			Upstream of Ice House Road	*72
			Upstream of Bundy Hill Road	*94

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of School House Road	*99
			Approximately 150' downstream of State Route 169	*124
Maps available for inspection at the Town Clerk's Office, Lisbon, Connecticut.				
Connecticut	North Stonington, Town, New London County, (FEMA Docket No. 6614).	Shunock River	Confluence with Pawcatuck River	*23
			Voluntown Road (upstream side)	*30
			Approximately 50 feet upstream of State Route 617	*55
			State Route 184 (upstream side)	*66
			Approximately 1.6 miles upstream of State Route 184 (upstream side of footbridge).	*96
			Dam (upstream side)	*115
			Rocky Hollow Road (upstream side)	*131
			Approximately .9 mile upstream of Main Street	*139
		Green Fall River	Approximately 400' downstream of downstream corporate limits.	*66
			State Route 184 (upstream side)	*55
			Approximately 170 feet upstream of Ashaway-Clarks Falls Road.	*71
		Pawcatuck River	Clarks Falls Dam (downstream side)	*78
			Downstream corporate limits	*23
			Approximately 400 feet upstream of Boom Bridge Road.	*26
		Whitford Brook	Upstream corporate limits	*28
			Downstream corporate limits	*80
			Upstream corporate limits	*88
			Approximately .3 mile upstream from downstream corporate limits.	*91
Maps available for inspection at the Town Clerk's Office, North Stonington, Connecticut.				
Connecticut	Preston, town, New London County, (Docket No. FEMA–6586)	Shetucket River	At downstream corporate limits	*33
			At confluence of Quinebaug River/corporate limits	*37
		Joe Clark Brook	At confluence with Poquetanuck Cove	*13
			At upstream corporate limits	*21
		Thames River	Downstream corporate limits	*13
			Upstream corporate limits	*14
		Quinebaug River	At confluence with Shetucket River	*37
			Upstream of dam	*51
			Approximately 1 mile downstream of upstream corporate limits.	*70
			Upstream corporate limits	*77
Maps available for inspection at the Building Inspector's Office, Town Hall, Norwich, Connecticut.				
Connecticut	Sterling, town, Windham County, (Docket No. FEMA–6614)	Moosup River	Downstream corporate limits	*283
			Upstream of Abandoned Railroad	*288
			At confluence of East and West Branches of Moosup River	*296
			Approximately 30' upstream of State Route 14A	*336
			Approximately 20' downstream of footbridge	*341
			Approximately 890' upstream of footbridge	*343
		East Branch Moosup River	At confluence with Moosup River	*295
			Upstream of State Route 14	*296
			Approximately 315' upstream of State Route 14	*304
		West Branch Moosup River	At confluence with Moosup River	*295
			Downstream of Church Street	*298
			Approximately 95' upstream of Church Street	*304
Maps available for inspection at the Town Clerk's Office, Oneco, Connecticut				
Florida	City of Dunnellon, Marion County, (Docket No. FEMA–6614)	Withlacoochee River	About 1.5 miles downstream of U.S. Highway 41	*31
			About 3.9 miles upstream of U.S. Highway 41	*35
		Rainbow River	Within corporate limits	*34
Maps available for inspection at the City Hall, Dunnellon, Florida				
Florida	City of Fort Myers, Lee County, (Docket No. FEMA–6614).	Caloosahatchee	At intersection of Seaboard Street and First Street	*8
			At intersection of Flower Street and First Street	*8
			At intersection of Avacado Drive and Gasparilla Drive	*9
			About 0.6 mile west of intersection of Valencia Way and Lynwood Avenue	*9
			Along east bank from Commerce Street to southern corporate limit	*10
		Billy Creek	Just upstream of Palmetto Avenue	*8
			About 0.3 mile upstream of Nuna Avenue	*12
Maps available for inspection at City Hall, Planning, Building and Zoning Department, Fort Myers, Florida				
Idaho	Kooskia (city), Idaho County, FEMA–6604	Middle Fork Clearwater River	Intersection of Fall Street and Ping Street	*1,256
		South Fork Clearwater River	50 feet upstream of centerline of B Street	*1,247
		South Fork Clearwater River—Without Consideration of levee	Intersection of 1st Avenue and Main Street	*1,250
Maps available for inspection at City Hall, Kooskia, Idaho				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	Unincorporated areas of Douglas County (Docket No. FEMA-6604).	Kaskaskia River	Downstream county boundary	*643
			Upstream county boundary	*667
		"A" Creek	At mouth	*646
			Just downstream road 200E	*652
		West Fork Creek	At mouth	*652
			Just downstream road 100E	*653
		Lake Fork Creek	At mouth	*652
			Just downstream of U.S. Route 36	*657
		Bear Creek	At mouth	*652
			Just downstream of U.S. Route 36	*658
		Dry Fork Creek	At mouth	*655
			Just downstream road 1350N	*673
		Embarras River	Just upstream of U.S. Route 36	*641
			About 3400 feet upstream of Sycamore Street	*651
		Jordan Slough	Within community	*650
		West Ditch	Within community	*651
		Hayes Branch	Just upstream of Prairie Street	*650
			About 3250 feet upstream of North Line Road	*652
		Scattering Fork	About 1350 feet downstream of Egyptian Trail Road	*648
			About 750 feet upstream of Egyptian Trail Road	*651
Maps available for inspection at the County Clerk's Office, Douglas County Courthouse, Tuscola, Illinois.				
Illinois	Unincorporated areas of Lawrence County (Docket No. FEMA-6586).	Wabash River	At southern county boundary	*414
			About 0.5 mile upstream of northern county boundary	*434
		Embarras River	At mouth	*420
			About 700 feet upstream of U.S. Route 50	*433
			About 4300 feet upstream of northern county boundary.	*439
		Brushy Creek	Just upstream of County Route 5	*438
			About 0.5 mile upstream of State Route 801	*442
		Muddy Creek	Just upstream of Unnamed Road 5.5 miles upstream of mouth.	*433
			Just upstream of U.S. Route 50	*448
			About 0.45 mile upstream of Cedar Street	*455
Maps available for inspection at the County Clerk's Office, Lawrence County Courthouse, Lawrenceville, Illinois.				
Illinois	Village of Erie, Whiteside County (Docket No. FEMA-6604).	Rock River	About 1.02 miles downstream of Erie Road	*592
			About 0.78 mile upstream of Erie Road	*594
Maps available for inspection at the Village Clerk's Office, Erie, Illinois.				
Illinois	City of LaSalle, La Salle County (Docket No. FEMA 6614).	Illinois River	About 1.57 miles downstream of State Route 351	*462
			About 0.95 mile upstream of the Illinois Central Gulf Railroad.	*463
		Shallow flooding (overflow from unnamed creek).	About 1050 feet southeast of the intersection of St. Vincents Avenue and 24th Street.	*593
Maps available for inspection at the 1st Floor Bulletin Board, City Hall, 745 Second Street, LaSalle, Illinois.				
Illinois	Unincorporated areas of Pulaski County (Docket No. FEMA-6614).	Mississippi River	At confluence of Cache River Diversion Channel	*337
			About 1.2 miles upstream of confluence of Cache River Diversion Channel.	*337
		Ohio River	Just upstream of confluence of Cache River	*331
			About 6.7 miles upstream of Lock and Dam No. 53	*334
Maps available for inspection at the County Clerk's Office, Pulaski County Courthouse, Mound City, Illinois.				
Illinois	Village of Seneca, La Salle and Grundy Counties (Docket No. FEMA-6599).	Illinois River	About 0.8 mile downstream of Chicago, Rock Island and Pacific Railroad.	*497
			At Chicago, Rock Island and Pacific Railroad	*498
Maps available for inspection at the Clerk's Office, Village Hall, 116 W. Williams Street, Seneca, Illinois.				
Illinois	Unincorporated areas of Wabash County (Docket No. FEMA-6604).	Wabash River	At downstream county boundary	*387
			At upstream county boundary	*414
Maps available for inspection at the County Clerk's Office, Wabash County Courthouse, Mt. Carmel, Illinois.				
Illinois	Unincorporated areas of White County (Docket No. FEMA-6614).	Wabash River	At confluence of Little Wabash River	*369
			About 1.9 miles upstream of Illinois Central Railroad	*387
		Little Wabash River	At mouth	*386
			About 5.3 miles upstream of County Highway 815	*387
		Elliott Creek	At mouth	*385
			About 800 feet upstream of South State Street	*400
		Center Tributary	At mouth	*391
			About 750 feet upstream of mouth	*391
		North Tributary	At mouth	*398
			About 400 feet upstream of County Highway 3	*401
Maps available for inspection at the County Clerk's Office, White County Courthouse, Carmi, Illinois.				
Indiana	City of Fort Wayne, Allen County (Docket No. FEMA 6614).	Maumee River	About 0.5 mile downstream of confluence of Pierson Ditch.	*753

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		St. Marys River	Just upstream of Columbia Avenue	*756
			At confluence with St. Joseph River	*758
		Pierson Ditch	About 0.45 mile upstream of Lower Huntington Road	*766
			At mouth	*753
			Just downstream of Lake Avenue	*762
			Just upstream of Lake Avenue	*769
			About 0.6 mile upstream of State Boulevard	*787
		Branch No. 1	At confluence with Pierson Ditch	*772
			Just downstream of State Boulevard	*776
		St. Joseph River	At mouth	*758
			About 0.4 mile upstream of confluence of Swift Ditch	*767
		Summer Drain	At mouth	*762
			Just upstream of Northcrest Drive	*778
			Just upstream of Archwood Lane	*793
			Just upstream of Ludwig Road	*814
		Unnamed Tributary No. 1	At mouth	*762
			Just downstream of Crescent Avenue	*766
			Just upstream of Crescent Avenue	*773
			Just downstream of Hobson Road	*776
		Unnamed Tributary No. 2	About 1000 feet downstream of Martin Luther Drive	*782
			Just downstream of Leo Road	*786
		Fairfield Ditch	At mouth	*763
			Just downstream of Lower Huntington Road	*764
			Just upstream of Lower Huntington Road	*769
			Just downstream of Baer Field Thruway	*775
		Trier Ditch	Just downstream of Paulding Road	*769
			About 1.0 mile upstream of Paulding Road	*770
		Junk Ditch	Within community	*759
		Spy Run	At mouth	*758
			Just upstream of Sherman Boulevard	*775
			Just downstream of Washington Center Road	*804
		Lowther-Newhaus Ditch	At mouth	*776
			Just downstream of Leesburg Road	*794
		Natural Drain No. 2	Just upstream of Washington Center Road (downstream crossing).	*850
			About 0.37 mile upstream of Washington Center Road (upstream crossing).	*875
		Natural Drain No. 7	At mouth	*817
			Just downstream of Huguenard Road	*834
		Bercot Drain	At mouth	*819
			Just downstream of Huguenard Road	*836
		Swift Ditch	At mouth	*767
			About 0.41 mile upstream of mouth	*777
		Schoppman Ditch	At mouth	*764
			About 0.09 mile upstream of St. Joe Road	*773
		Becketts Run	At mouth	*765
			About 0.8 mile upstream of mouth	*769
		Chapman Ditch	About 0.52 mile downstream of Airport Runway	*786
			About 0.15 mile upstream of Airport Runway	*794
		Lawrence Branch	Just upstream of Covington Road	*785
			Just upstream of State Route 14	*799
		Flaugh Ditch	About 0.57 mile downstream of State Route 14	*785
			Just upstream of State Route 14	*794
		Brown No. 2	About 2000 feet downstream of Chaifant Road	*822
			Just downstream of Chaifant Road	*833
Maps available for inspection at the City County Building, 1 Main Street, Fort Wayne, Indiana.				
Indiana	(Uninc.) Knox County (Docket No. FEMA-6333)	Wabash River	At confluence of White River	*405
			About 13.3 miles upstream of U.S. Route 50	*434
		White River	At mouth	*405
			About 3.7 miles upstream of confluence of Buckhorn Creek.	*428
		Maria Creek	At mouth	*430
			Just upstream of State Route 550	*430
		Smalls Creek	At mouth	*429
			Just downstream of State Route 550	*454
		Snapp Creek	At mouth	*427
			About 1.8 miles upstream of U.S. Route 41	*446
		Kessinger Ditch	About 1.0 mile downstream of U.S. Route 50	*446
			About 1,800 feet upstream of Southeast 300 South Road	*457
Maps available for inspection at the Area Plan Commission Office, Knox County Courthouse, Seventh and Busseron Streets, Vincennes, Indiana.				
Iowa	City of Cedar Falls, Black Hawk County (Docket No. FEMA-6599)	Cedar River	About 5,200 feet downstream of confluence of Dry Run Creek.	*854
			About 21,200 feet upstream of U.S. Highway 218	*871
		Cedar River Diversion	Just upstream of U.S. Highway 20	*859
			At divergence from Cedar River	*862
		Dry Run Creek	At mouth	*860
			About 2,250 feet upstream of West Ridgeway Avenue	*926
		University Branch Dry Run Creek	At mouth	*863
			Just downstream of Hudson Road	*893
			About 200 feet upstream of Hudson Road	*902
			About 8,600 feet upstream of Hudson Road	*953
		Southwest Branch Dry Run Creek	At mouth	*871
			About 11,800 feet upstream of Hudson Road	*917
		West Branch Dry Run Creek	At mouth	*894

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 150 feet downstream of West 27th Street	*929
			About 100 feet upstream of West 27th Street	*934
			About 2,100 feet upstream of West 27th Street	*934
		Black Hawk Creek	At downstream corporate limits	*860
			At upstream corporate limits	*861
		Unnamed tributary to Cedar River	Just upstream of Clayton Ulrich Dam	*897
			Just downstream of U.S. Highway 20	*895
			Just upstream of U.S. Highway 20	*900
			Just downstream of Union Road	*940
			Just upstream of Union Road	*946
			About 800 feet upstream of Union Road	*952
		Unnamed tributary to Dry Run Creek	At mouth	*881
			About 850 feet upstream of South Lawn Road	*895

Maps available for inspection at the Community Development Department, City Hall, 220 Clay Street, Cedar Falls, Iowa

Kansas	City of Colwich, Sedgwick County (Docket No. FEMA-6604).	Cowskin Creek	About 3,100 feet downstream of State Highway 96	*1,369
			About 2,100 feet upstream of State Highway 96	*1,374

Maps available for inspection at the City Clerk's Office, City Hall, Colwich, Kansas.

Kentucky	Unincorporated areas of Pike County (Docket No. FEMA 6614).	Ratliff Creek	At mouth	*670
			About 1.133 miles upstream of U.S. Route 460 and 23	*729
			About 1.148 miles upstream of U.S. Route 460 and 23	*736
			About 1.313 miles upstream of U.S. Route 460 and 23	*744
			About 1.326 miles upstream of U.S. Route 460 and 23	*748
			Just downstream of Private Drive (about 1.75 miles upstream of U.S. Route 460 and 23).	*783
			Just upstream of Private Drive (about 1.75 miles upstream of U.S. Route 460 and 23).	*786
			About 1.918 miles upstream of U.S. Route 460 and 23	*806
			About 1.928 miles upstream of U.S. Route 460 and 23	*813
			Just downstream of Private Drive (about 2.483 miles upstream of U.S. Route 460 and 23).	*880
			Just upstream of Private Drive (about 2.483 miles upstream of U.S. Route 460 and 23).	*887
			About 2.993 miles upstream of U.S. Route 460 and 23	*971
		Shelby Creek	At mouth	*586
			Just upstream of U.S. Route 119 and 23 (about 7.09 miles upstream of State Route 1469).	*943
			Just downstream of Fleming Branch Road	*1,025
			Just upstream of Fleming Branch Road	*1,030
			About 0.03 mile upstream of Chessie System (about 2.05 miles upstream of Fleming Branch Road).	*1,159
		Marrowbone Creek	At mouth	*709
			Just upstream of Private Drive (about 0.125 mile upstream of Rockhouse Creek Road)	*825
			Just downstream of Coal Company Drive	*1,123
			Just upstream of Coal Company Drive	*1,126
			Just upstream of Chessie System (about 0.26 mile upstream of Coal Company Drive)	*1,148
		Johns Creek	About 0.39 mile downstream of confluence of Raccoon Creek.	*732
			About 2.68 miles upstream of confluence of Raccoon Creek.	*747
		Raccoon Creek	At mouth	*734
			At confluence of Burning Fork	*756
		Big Creek	At mouth	*652
			About 450 feet upstream of Road Fork Road	*750
		Pond Creek	At mouth	*671
			Just upstream of State Route 1056	*868
		Blackberry Creek	At mouth	*704
			Just upstream of Blue Spring Branch Road	*846
		Peter Creek	At mouth	*722
			Just upstream of State Route 199	*845
		Right fork, Peter Creek	At mouth	*845
			About 0.34 mile upstream of Norfolk Southern Railway (Norfolk Southern Railway about 0.32 mile upstream of mouth	*870
		Left fork, Peter Creek	At mouth	*845
			About 1.24 miles upstream of Beech Creek Road	*1,035
		Zebulon tributary	At mouth	*857
			Just downstream of Private Drive (about 0.142 mile downstream of U.S. Route 119).	*866
			Just upstream of Private Drive (about 0.142 mile downstream of U.S. Route 119).	*873
			Just downstream of Private Drive (about 0.046 mile downstream of U.S. Route 119).	*881
			Just upstream of Private Drive (about 0.046 mile downstream of U.S. Route 119)	*887
			About 0.034 mile upstream of U.S. Route 119	*896
		Brushy Branch	At mouth	*1,146
			About 0.46 mile upstream of Private Drive	*1,252
		Ashcamp Branch	At mouth	*1,063
			Just downstream of State Route 195 (about 0.46 mile upstream of State Route 197)	*1,123

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of State Route 195 (about 0.46 mile upstream of State Route 197).	*1,127
			Just downstream of Ashcamp Branch Road	*1,380
			Just upstream of Ashcamp Branch Road	*1,385
			About 0.97 mile upstream of Happy Hollow Road	*1,451
		Levisa Fork	At downstream county boundary	*662
			About 2.75 miles upstream of Russell Fork Road	*668
		Russell Fork	At mouth	*668
			At state boundary	*668
		Burning Fork	At mouth	*756
			At confluence of Zebulon Tributary	*857
		Tug Fork	At confluence of Big Creek	*652
			At upstream county boundary	*827

Maps available for inspection at the Pike County Courthouse, Pikeville, Kentucky.

Maine	Dixfield, town, Oxford County, (Docket No. FEMA-6604).	Webb River	U.S. Route 2 (upstream side)	*419
			Kingdom Road bridge (upstream side)	*430
			Confluence with Aunt Hannah Brook	*434
			Upstream corporate limits	*437

Maps available for inspection at the Town Hall, Dixfield, Maine.

Maine	Limerick, town, York County (Docket No. FEMA-6604).	Little Ossipee River	Downstream corporate limits	*296
			Upstream of Flowage Dam	*312
			State Route 5 (upstream side)	*318
			At confluence of Pendexter Brook	*327
			Clarks Bridge Road, extended	*347
			Upstream corporate limits	*374

Maps available for inspection at the Town Hall, Limerick, Maine.

Maine	Lisbon, town, Androscoggin, County (Docket No. FEMA-6604).	Androscoggin River	Confluence of Little River	*83
			Worumbo Mill Dam (upstream side)	*108
			Confluence of Sabattus River	*115
			Upstream corporate limits	*124
		Sabattus River	At confluence with Androscoggin River	*115
			Mill Street (upstream side)	*158
			Webster Road (upstream side)	*174
			Upstream corporate limits	*186
		No Name Brook	Confluence with Sabattus River	*186
			Upstream corporate limits	*189
		Barker Brook	Confluence with Sabattus River	*159
			Ridge Road (upstream side)	*161
		Salmon Brook	Corporate limits	*138
			Approximately 200' upstream of corporate limits	*138

Maps available for inspection at the Town Clerk's Office, Lisbon, Maine.

Maine	North Berwick, town, York County (Docket No. FEMA-6604).	Great Works River	Downstream corporate limits	*104
			Upstream side of North Berwick Dam	*126
			Downstream side of Cardmill Dam	*144
			Upstream side of Oak Woods Road	*179
			Upstream side of Roberts Road	*190
			Upstream side of Bauneg Beg Dam	*210
			Upstream side of Sand Pond Road	*225
			Upstream corporate limits	*227

Maps available for inspection at the Town Clerk's Office, Town Office Building, Main Street, North Berwick, Maine.

Maine	Sanford, town, York County (Docket No. FEMA-6604).	Great Works River	Downstream corporate limits	*210
			Upstream side of Sand Pond Road	*225
			Upstream side of Old Mill Road	*234
			Upstream side of Twombly Road	*248
		Goodall Brook	At confluence with Great Works River	*236
			Upstream side of Berwick Road	*257

Maps available for inspection at the Town Clerk's Office, Sanford, Maine.

Maine	Waldoboro, town, Lincoln County (Docket No. FEMA-6614).	Medomak River	Approximately 1.5 miles downstream of Main Street	*10
			Upstream side of Main Street bridge	*15
			Upstream side of U.S. Route 1	*49
			Upstream side of Cross Street	*63
			Upstream side of Upper Depot Road	*83
			At Ellard Mank Road	*124
			At confluence with Medomak Pond	*137
		Little Medomak Pond Outlet Stream	At confluence with Medomak Pond	*137
			Upstream side of Storer Mountain Road	*231
		Medomak Pond	Entire shoreline	*137
		Little Medomak Pond	Entire shoreline	*231

Maps available for inspection at Town Clerk's Office, Waldoboro, Maine.

Maine	Waterboro, town, York County (Docket No. FEMA-6604).	Little Ossipee River	Downstream corporate limits	*290
			Upstream of Little Ossipee Flowage Dam	*312
			Upstream State Route 5	*318
			Upstream corporate limits	*355
		Little Ossipee Lake	Entire shoreline	*313

Maps available for inspection at the Town Clerk's Office, Town Hall, Waterboro, Maine.

—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Massachusetts	Edgartown, town, Dukes County (FEMA Docket No. 8614).	Nantucket Sound	Shoreline of Sengekontacket Pond at Felix Neck	*11
			Shoreline of Sengekontacket Pond at Bran Point	*10
			Shoreline at Edgartown Beach	*14
			Shoreline of Edgartown Harbor at Litchfield Road (extended).	*14
			Shoreline of Edgartown Harbor 0.6 mile northeast of Litchfield Road (extended).	*19
			Shoreline at Cape Poge	[illegible]
			Shoreline of Cape Poge Bay at John Oliver Point	*14
			Shoreline of Cape Poge Bay at Whister Point	*10
			Shoreline 700 feet north of Dyke Road (extended)	*13
			Shoreline at Dyke Road (extended)	*14
			Shoreline at Inner Harbor at Cooke Street (extended)	*13
		Atlantic Ocean	Shoreline at Wasque Point	*12
			Shoreline of Katama Bay at Wasque Avenue (extended).	*[illegible]
			Shoreline of Katama Bay at Long Point	*10
			Shoreline of Katama Bay 700 feet west of Long Point	*15
			Shoreline of Edgartown Great Pond at Kanomika Neck	*10
			Shoreline of Edgartown Great Pond at West Point	*[illegible]
			Shoreline at Western Corporate limits	*12
Maps available for inspection at the office of Steven Bryant, Building Inspector, Edgartown, Massachusetts.				
Massachusetts	Lynn, City, Essex County (Docket No. FEMA–6599)	Atlantic Ocean	Shoreline at Grosvenor Street extended	*19
			Shoreline at Newhall Street extended	*12
			Shoreline at Wolcott Road extended	*17
		Saugus River	Saugus River at east side of General Edwards bridge	*10
			Saugus River at crossing of Western Avenue	*[illegible]
			Entire shoreline of Little River	*[illegible]
		Cedar Pond	Entire shoreline	*101
		Flax Pond	Entire shoreline	*56
		Sluice Pond	Entire shoreline	*65
Maps available for inspection at the City Engineer's Office, Lynn City Hall, City Hall Square, Lynn, Massachusetts.				
Massachusetts	Oak Bluffs, town, Dukes County (FEMA Docket No. [illegible])	Lagoon Pond	Shoreline at northeast side of causeway	*[illegible]
			Shoreline approximately .6 mile northeast of causeway	*13
			Shoreline at Forest Avenue (extended)	*12
			Shoreline at Lagoon Road (extended)	*[illegible]
		Nantucket Sound	Shoreline of Vineyard Haven Harbor approximately .3 mile west of Hospital Road (extended).	*14
			Shoreline of Vineyard Haven Harbor at Troy Street (extended).	*13
			Shoreline at West Avenue (extended)	*16
			Shoreline at Commercial Avenue (extended)	*13
			Shoreline at Samoset Avenue (extended)	*22
			Shoreline approximately 200 feet south of Tuckernuck Avenue (extended).	*14
			Shoreline at Cannonicus Avenue (extended)	*22
			Shoreline approximately .6 mile south of South Circuit Avenue (extended).	*15
			Shoreline of east shore of Joseph Sylvia State Beach Park.	*14
			Shoreline of Sengekontacket Pond at Sarson Island	*10
			Shoreline of Sengekontacket Pond at Brush Island	*12
Maps available for inspection at the office of Alfred Mateli, Building Inspector, Oak Bluffs Town Hall, Oak Bluffs, Massachusetts.				
[illegible]	Westport, Town, Bristol County (FEMA Docket No. [illegible])	Rhode Island Sound	Shoreline approximately 900 feet west of Quicksand Point.	*31
			John Reed Road (extended)	*19
			South end of Sorteenth Avenue (extended)	*18
			Shoreline at Gooseberry Neck	*16
			Entire shoreline Richmond Pond	*15
			Shoreline at Horseneck Point	*14
Michigan	(Twp) White Lake, Oakland County (Docket [illegible] FEMA–6527).	Huron River	Just downstream of Cooley Lake Road	*931
			Just downstream of Oxbow Lake Dam	*938
			Just upstream of Oxbow Lake Dam	*944
			Just downstream of Pontiac Lake Dam	*952
			Just upstream of Pontiac Lake Dam	[illegible]
		Sugden Creek	Mouth at Huron River	*932
			Just upstream of the Bogie Lake Weir	[illegible]
		Bogie Lake	Shoreline	[illegible]
		Lake Neva	Shoreline	[illegible]
		Cedar Island Lake	Shoreline	*935
		Pontiac Lake	Shoreline	*965
		White Lake	Shoreline	*1,021
		Grass Lake	Shoreline	*1,018
		Mandon Lake	Shoreline	*937
		Round Lake	Shoreline	[illegible]
		Tull Lake	Shoreline	[illegible]
		Cooley Lake	Shoreline	*936
		Long Lake	Shoreline	[illegible]
Maps available for inspection at the Clerk's Office, Town Hall, 7525 Highland Road, White Lake, Michigan.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Missouri	(Uninc.) Butler County (Docket No. FEMA–8614)	Black River	At southern county boundary (downstream crossing)	[illegible]
			About 0.23 mile upstream of State Highway 53	*319
			About 3.5 miles downstream of confluence of Shady Creek.	[illegible]
			About 0.4 mile downstream of confluence of Shady Creek.	*341
			Just upstream of Missouri Pacific Railroad	*350
			At northern county boundary	*376
		Pike Creek	Just upstream of U.S. Highway 67	[illegible]
			Just downstream of County Highway PP	*343
		Cane Creek	Just upstream of Missouri Pacific Railroad	*329
			Just upstream of County Highway M	*342
			Just downstream of County Highway PP	*358
		Menorkenut Slough	Just downstream of State Highway 53	*313
			Just downstream of County Highway 562	*313
		Ditch No. 31	At mouth	*313
			Just downstream of County Highway 663	*314
		Little Black River	About 4.8 miles downstream of U.S. Highway 160	[illegible]
			At western county boundary	*341
		Beaverdam Creek	At mouth	*326
			At western county boundary	*412
		Shallow Flooding-Sheet Flow (overflow from Black River).	At Cane Creek Ditch, about 2.2 miles south of County Highway 260.	[illegible]
			At County Highway 335 intersection with County Highway 346.	*307
			Southeast of County Highway 605 intersection with Ashcraft Road.	*334
Maps available for inspection at the County Clerk's Office, Butler County Courthouse, Poplar Bluff, Missouri.				
Missouri	City of Hartville, Wright County (Docket No. FEMA–[illegible]).	Woods Fork Gasconade River	About 900 feet downstream of State Highway 38	*1,142
			About 3,950 feet upstream of State Highway 38	*1,152
Maps available for inspection at the Merchantile-Wright County Bank, Hartville, Missouri.				
Missouri	City of Hollister, Taney County (Docket No. FEMA 8614).	White River	At confluence of Coon Creek	*715
			About 0.27 mile upstream of Missouri Pacific Railroad	*717
		Turkey Creek	At mouth	*716
			About 1.0 mile upstream of Third Street	*742
Maps available for inspection at City Hall, Hollister, Missouri.				
Missoun	City of Oronogo, Jasper County (Docket No. FEMA–6604).	Center Creek	About 3,000 feet downstream of Burlington Northern Railroad.	*887
			About 6,900 feet upstream of Third Street	*898
Maps available for inspection at City Hall, Oronogo, Missoun.				
Missouri	Village of Redings Mill, Newton County	Shoal Creek	About 2,300 feet downstream of State Highway 86	*909
			About 2,700 feet upstream of State Highway 86	*912
Maps available for inspection at the City Clerk's Office, Box 68, Route 4, Joplin, Missouri.				
Missouri	Town of Wakenda, Carroll County (Docket No. FEMA–8599).	Missouri River	Within community	*665
Maps available for inspection at the Missoun Valley Human Resources Development Corporation, 606 E. Benton, Carrollton, Missoun.				
Missouri	Unincorporated areas of Warren County (Docket No FEMA–8614).	Missoun River	At downstream county boundary	*486
			At upstream county boundary	*517
		Big Creek	About 0.85 mile downstream of Fairlane Acres Road	*727
			About 1.2 miles upstream of Fairlane Acres Road	*762
		Hickory Lick Creek	Just upstream of County Highway AA	*772
			About 0.3 mile upstream of County Highway AA	*775
		Peruque Creek	About 3,500 feet downstream of confluence of Skunk Creek.	*667
			Just upstream of Roelker Road	*719
		Tuque Creek Tributary	About 630 feet downstream of Missouri-Kansas-Texas Railroad	*495
			About 200 feet downstream of State Highway 47	*496
Maps available for inspection at the County Clerk's Office, Warren County Courthouse, Warrenton, Missouri.				
Nebraska	Village of Barneston, Gage County (Docket No. FEMA–8614).	Big Blue River	Within community	*1,195
Maps available for inspection at Fire Hall 6, Barneston, Nebraska.				
New Jersey	Aberdeen, township, Monmouth County (FEMA Docket No. 8604).	Matawan Creek	At downstream corporate limits	*20
			Approximately 380' downstream of upstream corporate limits.	*34
		Mohingson Brook	Confluence with Matawan Creek	*12
			Upstream side of Main Street	[illegible]
			Upstream side of CONRAIL	[illegible]
			Upstream side of Lloyd Road	*34
			Upstream corporate limits	*[illegible]
		Gravelly Run	At downstream corporate limits	*22

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Downstream side of State Route 34	*28
			Upstream side of Mill Road	*42
			At upstream corporate limits	*[illegible]
		Raritan Bay	Shoreline at confluence of Whale Creek	*18
			Shoreline at South Concourse Drive extended	*17
			Shoreline at confluence of Matawan Creek	*17

Maps available for inspection at the Township Municipal Building, 1 Aberdeen Square, Aberdeen, New Jersey.

New Jersey	North Caldwell, borough, Essex County (FEMA Docket No. 6499).	Passaic River	Total length within corporate limits	*171
		Green Brook	Downstream corporate limits	*227
			Central Avenue (upstream side)	*356
			Dam 5 (upstream side)	*411

Maps available for inspection at the Municipal Building, Gould Avenue, North Caldwell, New Jersey.

New Jersey	Readington, township, Hunterdon County (FEMA Docket No. 6586).	Lamington River	Downstream corporate limits	*97
			Lamington Road—upstream side	*106
			Interstate Route 78—upstream side	*115
			Upstream corporate limits	*116
		Rockaway Creek	Confluence with Lamington River	*[illegible]
			Island Road—downstream side	*103
			Lamington Road—downstream side	*113
			Mill Road—upstream side	*122
			Oldwick Road—upstream side	*146
			Interstate 78—upstream side	*159
			Upstream side of dam near Rockaway Road	*182
			Upstream corporate limits	*201
		South Branch Rockaway Creek	Confluence with Rockaway Creek	*124
			U.S. Route 22—upstream side	*126
			Cushetunk Lake Dam—upstream side	*143
			Upstream side of Access Road upstream of Cushetunk Lake.	*146
			Mountain Road—upstream side	*158
			Upstream corporate limits	*173
		Chambers Brook	Downstream corporate limits	*94
			County Line Road—upstream side	*99
			Ridge Road—upstream side	*119
			Coddington Road—upstream side	*133
			Approximately 400 feet downstream of Pulaski Road	*158
		Holland Brook	Downstream corporate limits	*[illegible]
			Centerville Road—upstream side	*103
			Downstream side of Pinebank Road—downstream crossing.	*125
			Upstream side of Holland Brook Road—downstream crossing.	*134
			Upstream side of dam downstream of Holland Brook Road—2nd crossing.	*142
			Upstream side of Holland Brook Road—upstream crossing.	*149
			Upstream side of Access Road upstream of Holland Brook Road—upstream crossing.	*158
			Downstream side of Access Road downstream of Whitehouse Road.	*181
		Pleasant Run	Downstream corporate limits	*[illegible]
			Old York Road—upstream side	*101
			U.S. Route 202—downstream side	*104
		South Branch Raritan River	Downstream corporate limits	*87
			Higginsville Road—upstream side	*[illegible]
			Main Street—upstream side	*[illegible]
			U.S. Route 202—downstream side	*103
			Downstream side of dam upstream of Rockefellows Mill Road.	*106
			Upstream side of CONRAIL second crossing	*111
			State Route 523—downstream side	*115
		Tributary A to the South Branch Raritan River	Confluence with South Branch Raritan River	*108
			CONRAIL culvert—upstream side	*115
			Approximately 1 mile upstream of CONRAIL culvert	*131
			Barley Sheaf Road—upstream side	*155

Maps available for inspection at the Readington Township Municipal Building, Whitehouse Station, New Jersey.

New Mexico	Village of Bosque Farms, Valencia County (FEMA-6548).	Rio Grande (East Overbank)	Approximately 450 feet south of the intersection of Cottonwood and West Bosque Loop.	*4,861
			Approximately 100 feet north of the intersection of West Bosque Loop and Willow Trail.	*4,865
			Approximately 100 feet north of the intersection of Otero Drain and North Bosque Loop.	*4,867

Maps available for inspection at Village Hall, 1455 West Bosque Loop, Bosque Farms, New Mexico 87042.

New York	Greenville, town, Orange County (Docket No., FEMA-6604).	Rutgers Creek	At downstream corporate limits	*657
			Logtown Road (downstream side)	*767
			Dam (upstream side)	*784
			Minisink Turnpike (upstream side)	*820

Maps available for inspection at the Town Hall, Middletown, New York

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Kirkland, town, Oneida County (FEMA Docket No. [illegible]).	Oriskany Creek	Downstream corporate limits	*[illegible]
			Upstream of dam	*527
			Upstream Norton Avenue	*[illegible]
			At confluence of White Creek	*[illegible]
			Upstream State Route 12B	*[illegible]
			Upstream Dugway Road	*651
			Approximately .9 mile upstream of confluence of Turkey Creek.	*[illegible]
			Approximately 100' upstream of upstream corporate limits.	*730
		St. Mary's Brook	Confluence with Oriskany Creek	*[illegible]
			Upstream Kirkland Avenue	*535
			Downstream Norton Avenue	*[illegible]
		White Creek	Confluence with Oriskany Creek	*[illegible]
			Upstream side Grant Road	*[illegible]
			Approximately .64 mile upstream Grant Road	*[illegible]
		Turkey Creek	Confluence with Oriskany Creek	*[illegible]
			Upstream face Page Road	*696

Maps available for inspection at the Town Clerk's Office, Post Office Building, Clinton, New York.

New York	Lafayette, town, Onondaga County (FEMA Docket No. 6614).	Butternut Creek	Downstream corporate limits	*[illegible]
			Upstream of dam	*640
			Upstream of Smith Road	*[illegible]
			Upstream side of Apulia Road (downstream crossing)	*740
			Upstream of Colton Road	*[illegible]
			Upstream side of U.S. Route 20	*864
			Upstream side of Gates Road	*[illegible]
			Upstream corporate limits	*901
		Onondaga Creek	Approximately 2,200 feet downstream of Tully Farms Road.	*[illegible]
			Upstream of Nichols Road	*[illegible]
			Upstream corporate limits	*[illegible]
		Kennedy Creek	Approximately 1,400 feet downstream of Interstate Route 81.	*1,004
			Upstream of U.S. Route 11	*1,019
			Upstream side of Sentinel Heights Road	*1,048
			Approximately 2,950 feet upstream of Sentinel Heights Road.	*1,098
		Cascades Creek	Confluence with Butternut Creek	*[illegible]
			Upstream of Gates Road	*915
			Approximately 4,100 feet upstream of Clark Hollow Road.	*1,003

Maps available for inspection at the Town Offices, Route 20, Lafayette, New York.

New York	Minisink, town, Orange County (FEMA Docket No. 6614).	Wallkill River	Downstream corporate limits	*[illegible]
			Approximately 2.5 miles upstream of Pine Island Turnpike bridge.	*[illegible]
		Rutgers Creek	Downstream side of Oil City Road Bridge	*369
			Upstream corporate limits	*[illegible]
			Confluence with the Wallkill River	*[illegible]
			Approximately 1.0 mile upstream of confluence with the Wallkill River.	*[illegible]
			Carter Road bridge (upstream side)	*416
			Ridgebury Road bridge (upstream side)	*[illegible]
			County Route 22 bridge (upstream side)	*[illegible]
			Fordlee Road bridge (upstream side)	*457
			Pine Island Turnpike bridge (upstream side)	*[illegible]
			Langlitz Road bridge (upstream side)	*467
			Waterloo Road bridge (upstream side)	*[illegible]
			Pine Hill Road bridge (upstream side)	*[illegible]
			Goodridge Road bridge (upstream side)	*[illegible]
			Mendys Road bridge (upstream side)	*622
			Upstream corporate limits	657

Maps available for inspection at the Clerk's Office, the Building Inspector's Office, and the Planning Board Chairman's Office.

New York	Rhinebeck, village, Dutchess County (FEMA Docket No. 6599).	Landsman Kill	Downstream corporate limits	*130
			U.S. Route 9 (upstream side)	*160
			Parsonage Street (upstream side)	*[illegible]
			Upstream corporate limits	*194
		Rhinebeck Kill	Downstream corporate limits	*140
			Approximately 200' upstream of U.S. Route 9	*146

Maps available for inspection at the Town Clerk's Office, Village Hall, 76 East Market Street, Rhinebeck, New York.

New York	Scio, town, Allegany County (FEMA Docket No. 6586).	Genesee River	At downstream corporate limits	*1,427
			Upstream Knight Creek Road	*1,445
			2,000 feet upstream of confluence of Vandermark Creek.	*1,452
			6,600 feet downstream of confluence of Brimmer Brook.	*1,465
		Brimmer Brook	Upstream corporate limits	*1,478
			At confluence with Genesee River	*1,475
			At first upstream corporate limits	*1,494

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			2,270 feet downstream of downstream crossing of Petrolia Road	*1,708
			300 feet upstream of downstream crossing of Petrolia Road	*1,760
			800 feet downstream of Yeager Hill Road	*1,830
			950 feet upstream of upstream Petrolia Road crossing	*1,870
		Knight Creek	At confluence with Genesee River	*1,436
			Downstream side of second crossing of Knight Creek Road	*1,470
			Downstream side of third crossing of Knight Creek Road	*1,505
			3,250 feet upstream of third crossing of Knight Creek Road	1,534
		Vandermark Creek	At confluence with Genesee River	1,448
			Downstream side of first crossing of Vandermark Road	1,520
			Downstream side of second crossing of Vandermark Road	1,566
Maps available for inspection at Town Hall, Scio, New York.				
New York	Sullivan, town, Madison County (FEMA Docket No. 6614)	Chittenango Creek	Confluence with Oneida Lake	*373
			Approximately 150' upstream of State Route 31	*385
			Oxbow Road (upstream side)	*391
			Peck Road (upstream side)	*396
			Approximately 150' upstream of Fyler Settlement Road	*399
			Interstate Route 90 (upstream side)	*401
			Kirkville Road (upstream side)	*404
			Hoags Road (upstream side)	*406
			Bolivar Road (upstream side)	*414
			CONRAIL (upstream side)	*417
			Old Erie Canal (upstream side)	*430
			Downstream corporate limits with Village of Chittenango	*435
			Upstream corporate limits with Village of Chittenango	*484
			Dike Road (upstream side)	*501
			Upstream side of bridge abutments	*538
			Most upstream corporate limits	*548
		Oneida Lake	Entire shoreline	*373
		Canaseraga Creek	Confluence with Oneida Lake	*373
			State Route 31 (upstream side)	*378
			Tag Road (upstream side)	*392
			Approximately 400' upstream of Interstate Route 90	*397
			New Boston Road (upstream side)	* 12
			CONRAIL (upstream side)	*417
			Harsh Road (upstream side)	*420
			Old Erie Canal (upstream side)	*430
			State Routes 5 and 13 (upstream side)	*460
			Confluence with Canaseraga Creek	*385
		Cowaselon Creek	Upstream corporate limits	*386
Maps available for inspection at the Town Offices, Lakeport Road, Sullivan, New York.				
New York	Waweyanda, town, Orange County (Docket No. FEMA-6604)	Wallkill River	At downstream corporate limits	*366
			Approximately 1 mile upstream of downstream corporate limits	*368
			Upstream side of Maple Avenue	*382
		Rutgers Creek	Approximately .86 mile downstream of Lower Road	*387
			At Lower Road	*398
			Upstream side of Carter Road	*418
			Upstream side of Ridgebury Road	*449
			Upstream side of State Route 284	*450
Maps available for inspection at the Town Hall, Richbury Hill Road, State Hill, New York.				
New York	Wellsville, town, Allegany County (FEMA Docket No. 6581)	Brimmer Brook	At downstream corporate limits	*1,493
			Upstream side of Philips Road	*1,510
			Approximately 500 feet upstream State Route 417	*1,590
			Upstream corporate limits	*1,708
		Chenunda Creek	At confluence with Genesee River	*1,518
			Upstream side of State Route 19	*1,541
			At upstream corporate limits	*1,561
		Dyke Creek	At downstream corporate limits	*1,505
			Upstream side of State Route 417	*1,514
			Upstream side of CONRAIL	*1,524
			Upstream side of Williams Grove Road	*1,546
			Approximately 0.45 mile upstream of Williams Grove Road	*1,553
		Genesee River	At downstream corporate limits	*1,478
			At downstream corporate limits for the Village of Wellsville	*1,486
			At upstream corporate limits for the Village of Wellsville	*1,499
			Upstream side of Wendrick Road	*1,515
			At confluence of Chenunda Creek	*1,518
			At upstream corporate limits	*1,521
		Wightman Hollow Creek	At confluence with Dyke Creek	*1,528
			Downstream side of State Route 417	*1,550
			400 feet upstream of first crossing of Wightman Hollow Road	*1,610

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream side of second crossing of Wightman Hollow Road	*1,660
			Approximately 0.43 mile upstream of second crossing of Wightman Hollow Road	*1,726
Maps available for inspection at the Municipal Building, Main Street, Wellsville, New York.				
North Carolina	Town of Andrews, Cherokee County (Docket No. FEMA-6599).	Valley River	About 0.22 mile downstream from Old Route 19-129	*1,719
			Just downstream of Old Route 19-129	*1,719
			Just upstream of Old Route 19-129	*1,730
			About 0.16 mile upstream of Tatham Gap Road	*1,772
		Tatham Creek	Mouth at Valley River	*1,772
			Just downstream of Old Route 19-129	*1,797
Maps available for inspection at the Town Hall, Andrews, North Carolina.				
North Carolina	Town of Atlantic Beach, Carteret County (FEMA-6604)	Atlantic Ocean	Intersection of East Broadwalk Street and South Eremville Avenue	*10
			Approximately 400 feet south of the intersection of West Atlantic Boulevard and Charlotte Avenue.	*14
		Bogue Sound	Intersection of State Highway 58 and Brooks Avenue	*7
Maps available for inspection at Building Inspector's Office, Town Hall, Salter Patch Road, Atlantic Beach, North Carolina 28512.				
North Carolina	Unincorporated Areas of Currituck County (Docket No. FEMA 6614).	Atlantic Ocean	About 500 feet east of Sandfiddler Road (extended), 1.2 miles south of Anemone Road.	*9
			Near intersection of Sandfiddler Road and Caner Road	*9
			About 300 feet east of intersection of Ocean Trail and Shad Street.	*9
			About 300 feet east of Ocean Trail and 2 miles south of Shad Street.	*9
			From 2,850 feet north of intersection of Sandfiddler Road and Pompand Lane to about 4,500 feet south and 1,800 feet east of Sandfiddler Road at Anemone Road.	*10
			Just landward of shoreline from about 1.3 miles north of intersection of Ocean Way and Ocean Trail to about 350 feet east of Ocean Trail at southern county boundary.	*11
			Along shoreline from about 1.5 miles north of Ocean Way to southern county boundary.	*12
			Just landward of shoreline from about 1.5 miles north of Ocean Way to about 500 feet south of Coral Lane	*12
			Along shoreline from northern county boundary to about 1.5 miles north of Ocean Way.	*13
		Atlantic Ocean/Albemarle Sound	About 0.4 mile west of intersection of U.S. Route 158 and Snows Lane.	*9
			About 1,200 feet west of intersection of U.S. Route 158 and SR 1100.	*9
			Along shoreline from point west of intersection of Snows Lane and U.S. Route 158 to U.S. Route 158 bridge over Currituck Sound.	*10
		Atlantic Ocean/Albemarle Sound/North River.	Along shoreline of North River and Indiantown Creek from about 1.5 miles upstream of Taylors Bay to U.S. Route 158.	*6
			At the intersection of NC 34 and NC 168	*6
			Along shoreline from about 2,400 feet south from mouth of Lutz Creek to about 1.5 miles northwest of mouth of Taylors Bay.	*7
			Along shoreline from point west of intersection of Snows Lane and U.S. Route 158 to about 2,400 feet south from mouth of Lutz Creek.	*8
		Atlantic Ocean/Currituck Sound	About 1 mile north of intersection of SR 1135 and SR 1136	*5
			About 0.5 mile east of intersection of NC 3 and SR 1131.	*5
			Landward of seawalls along shoreline from just east of SR 1158 to about 1,000 feet north of SR 1159.	*5
			About 0.5 mile northeast of intersection of U.S. Route 158 and NC 3.	*5
			About 0.7 mile west of intersection of Caner Road and Ocean Pearl Road.	*5
			About 1 mile northwest of Tasman Drive just landward of shoreline at Parkers Bay.	*5
			At the intersection of Swan Drive and SR 1245 (on Bell Island).	*5
			Along NC 168 and about 0.5 mile southeast of intersection of NC 168 and SR 1248.	*5
			Along NC 615 near Back Bay	*5
			At intersection of SR 1301 and SR 1236	*5
			About 2,200 feet along Brumley Road east of its intersection with NC 615.	*5
			Along southern shoreline from southeastern tip of Knotts Island to about 2 miles north of Live Oak Point.	*6
			At intersection of SR 1248 and SR 1249	*6

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Along Webster Creek, about 4,100 feet upstream of the mouth.	*6
			At the intersection of Walnut Island Boulevard and Ruffler Lane.	*6
			Along Shingle Landing Creek just downstream of SR 1222.	*6
			From Deal Island at northern county boundary along eastern shoreline to south end of Beasley Bay.	*6
			In the area of Capsies Creek on Knotts Island	*6
			Along western shoreline from one mile south of Dowdy's Bay to mouth of Northwest River.	*7
			Along eastern shoreline from south end of Beasley Bay to southern county boundary (about 4000 feet west of Ocean Trail).	*7
			At intersection of SR 1251 and SR 1253	*7
			At intersection of New Beach Road and U.S. Route 158.	*7
			About 0.9 mile east of intersection of U.S. Route 158 and SR 1116.	*7
			About 0.25 mile east of intersection of U.S. Route 158 and SR 1111.	*7
			Along eastern shoreline of Knotts Island (Simpson Neck) from northern county boundary to southeastern tip of island.	*7
			Along western shoreline from mouth of Webster Creek to one mile south of Dowdy's Bay.	[illegible]
			Along western shoreline from U.S. Route 158 bridge over Currituck Sound to mouth of Webster Creek.	*9
			Along western shoreline of North Landing River from northern county boundary to Troublesome Point.	*9

Maps available for inspection at the Currituck County Courthouse, Currituck, North Carolina.

North Carolina	Town of Emerald Isle, Carteret County (Docket No. FEMA-6604).	Atlantic Ocean/Bogue Sound	Along northern shoreline from eastern corporate limits to 19th Street.	*7
			Along northern shoreline from 19th Street to Kelly Lane.	[illegible]
			About 150 feet south of intersection of Sound Drive and East View Drive.	*9
			Along northern shoreline from Kelly Lane to Old Ferry Road.	*9
			At the intersection of Coast Guard Road and Reed Drive.	*9
			Along northern shoreline from Old Ferry Road to about 600 feet northeast of the intersection of Coast Guard Road and Bay Court.	*10
			At Channel Drive cul-de-sac	*12
			At the intersection of Emerald Drive and the northern corporate limits.	*12
		Atlantic Ocean	About 100 feet north of southern shoreline from the eastern corporate limits to about 200 feet west of 1st Street.	*11
			About 100 feet south of intersection of 2nd Street and Ocean Drive.	*12
			About 150 feet north of southern shoreline, just east of Bogue Inlet Drive.	*12
			Just east of Surf Scooter Court cul-de-sac	*12
			At Catamaran Court cul-de-sac	*12
			At the intersection of Channel Drive and Station Street	*12
			About 150 feet north of southern shoreline just west of Bogue Inlet Drive.	*13
			Along the southern shoreline from eastern corporate limits to the intersection of West Summerplace Circle and Ocean Drive.	*16
			Along the southern shoreline from the intersection of Fawn Drive and Ocean Drive to the western corporate limits.	*16
			Along the southern shoreline from the intersection of West Summerplace Circle and Ocean Drive to the intersection of Fawn Drive and Ocean Drive.	*17

Maps available for inspection at the Town Hall, Route 1, Emerald Isle, North Carolina.

North Carolina	Town of Indian Beach, Carteret County (Docket No. FEMA-6604).	Atlantic Ocean	About 100 feet north of southern shoreline (both land tracts).	*11
			Along southern shoreline (both land tracts)	*16
		Atlantic Ocean/Bogue Sound	Along northern shoreline of the eastern land tract of Indian Beach.	*6
			Along northern shoreline of the western land tract of Indian Beach.	*7

Maps available for inspection at the Town Hall, Indian Beach, North Carolina.

North Carolina	City of Jacksonville, Onslow County (FEMA-6604)	Brick Kiln Branch	Approximately 200 feet downstream of State Highway 24	*24
			Just upstream of State Highway 24	*14
		Brinson Creek	Just downstream of Seaboard Coastline Railroad	*5
			Just downstream of U.S. Highway 17	*8
		Burnt House Branch	Approximately 50 feet downstream of Hargett Street	*10

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Dotey's Branch	Just upstream of Dewitt Street	*12
			Just upstream of Gum Branch Road	*23
		Little Creek	Just downstream of Decatur Road	*11
			Just downstream of Sous Drive	*18
		Mill Creek	Just downstream of Doris Avenue	*12
			Just upstream of Gum Branch Road	*19
		Mill Creek North Tributary	Just upstream of Forest Grove Avenue	*13
			Approximately 1000 feet upstream of Dewitt Street	*18
		New River	Just upstream of Old Bridge Street	*7
		Northeast Creek	Just upstream of Pine Green Road	*14
		Northeast Creek Tributary	Just downstream of Courtland Drive	*15
			Just downstream of Country Club Drive	*22
		Sandy Run Branch	Just upstream of Onslow Drive	*11
			Just downstream of Bell Fork Road	*25
		Scales Creek	Just upstream of State Highway 24	*11
			Just upstream of Camp Lejune Railroad	*24
		Socoe Creek	Just downstream of Barn Street	*12
			Just upstream of Barn Street	*15

Maps available for inspection at City Hall, 211 Johnson Boulevard, Jacksonville, North Carolina 28540.

North Carolina	Unincorporated areas of Pender County (FEMA-6604)	Bear Den Branch	Just downstream of U.S. Highway 42	*47
		Bill Branch	Approximately 500 feet downstream of State Highway 53.	[illegible]
			Just upstream of State Highway 53	*46
		Bull Branch	Just downstream of State Road 1001	*53
			Just upstream of State Road 1302	[illegible]
		Bullrail Creek	Just upstream of State Road 1211	[illegible]
		Burgaw Creek	Just downstream of State Road 1509	[illegible]
			Just upstream of the Seaboard Coast Line Railroad	[illegible]
		Buxton Branch	Just downstream of U.S. Highway 421	[illegible]
		Colvins Creek	Just upstream of State Road 1100	[illegible]
			Just downstream of State Road 1201	[illegible]
		Crooked Run	Just upstream of State Road 1332	[illegible]
			Just downstream of State Road 1319	[illegible]
		Doctors Creek	Just downstream of State Road 1304	*51
		Dry Branch	Just downstream of U.S. Highway 421	*51
		Guffords Branch	Just downstream of Old Burgaw Road (SR 1400)	*22
		Horse Branch	Just upstream of State Road 1345	[illegible]
			Just upstream of State Route 1339	*51
		Horse Branch Tributary	Just downstream of State Road 1345	*42
		Jones Creek	Just downstream of Lake Ann Dam	[illegible]
			Approximately 400 feet upstream of Lake Ann Dam	[illegible]
			Just downstream of State Road 1201	[illegible]
		Lewis Creek	Just upstream of NC 117	*27
		Long Creek	Just downstream of State Highway 210	*10
		Mill Branch	Just downstream of State Road 1128	[illegible]
			Just upstream of State Highway 53	[illegible]
		Moores Creek	Just downstream of North Carolina Highway 210	*14
			Approximately 5,000 feet upstream of U.S. Highway 421.	[illegible]
		Mulberry Branch	Just downstream of State Highway 210	*17
		N.E. Cape Fear River	Just upstream of State Highway 53	[illegible]
			At Croons Bridge Road (SR 1318)	*24
		Rileys Creek	Approximately 1,700 feet south of the intersection of NC 210 and Old Burgaw Road.	*12
		Rockfish Creek	Approximately 1,400 feet downstream of Proposed Interstate Highway 40.	[illegible]
		Sills Creek	Just upstream of State Road 1324	*51
		Sills Creek Tributary No. 1	Just downstream of State Road 1325	[illegible]
		Sills Creek Tributary No. 1	Approximately 450 feet downstream of State Road [illegible]	[illegible]
		Taylor Branch	Just downstream of a Private Dam	*47
			Just upstream of a Private Dam	*51
		Tuckahoe	Just downstream of State Road 1207	[illegible]
		Atlantic Ocean	Approximately 1,000 feet south of the intersection of SR 1603 and SR 1562.	*12
		Topsail Sound	Intersection of SR 1561 and SR 1563	[illegible]
			Intersection of Sound View Drive and Fairway Drive	*10

Maps available for inspection at Administrative Building, Burgaw, North Carolina 28425.

North Carolina	Town of Pine Knoll Shores, Carteret County (FEMA-6604).	Atlantic Ocean	Along shoreline	*14
		Bogue Sound	Along shoreline at Hoffman inlet	*7
			Approximate 10,000 feet west of Pine Knoll Boulevard (extended) along shoreline.	[illegible]

Maps available for inspection at Town Hall, Pine Knoll Boulevard, Atlantic Beach, North Carolina 28512.

North Carolina	Town of Surf City, Pender County (FEMA-6604)	Atlantic Ocean	Along shoreline	*16
			Approximately 100 feet south of intersection of Hispaniola Lane & North Carolina Highway 50.	*11
			Approximately 550 feet south of intersection of New River Drive & Pender Avenue.	*11
		Topsail Sound	At the intersection of New River Drive & Pender Avenue.	*7
			At the intersection of Topsail Drive & Roland Avenue	[illegible]

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 600 feet north of intersection of Hispano Lane & North Carolina Highway 50.	*10
Maps available for inspection at Town Hall, North New River Drive, Surf City, North Carolina 28445.				
North Carolina	Town of Topsail Beach, Pender County (FEMA-6604)...	Atlantic Ocean	Along shoreline at inlet Drive (extended)	*17
			Along shoreline at Barwick Avenue (extended)	*16
		Topsail Sound	Along shoreline at Sunset Avenue	*10
Maps available for inspection at Town Hall, 820 South Anderson Boulevard, Topsail Beach, North Carolina 28445.				
Ohio	Unincorporated areas of Champaign County (Docket No. FEMA-6614).	Lee Creek	About 0.5 mile downstream of Township Road 39 (at county boundary).	*1,002
		Graves Creek	About 200 feet upstream of State Route 29	*1,122
			About 1.25 miles downstream of Crowl Road	*
			Just downstream of Crowl Road	*1,001
			Just upstream of Crowl Road	*1,007
			About 0.55 mile upsteam of State Route 245	*1,032
		Graves Creek Tributary F	About 0.5 mile downstream of Crowl Road	*
			About 200 feet upstream of Crowl Road	*1,022
		Dugan Run	About 550 feet downstream of Muzzys Road	*1,000
			Just downstream of Conrail (near Jackson Hill Road)	*1,122
			Just upstream of Conrail (near Jackson Hill Road)	*1,127
		Dugan Run Tributary B	About 0.55 mile upstream of State Route 714	*1,156
			At mouth	*1,134
			Just downstream of State Route 714	*1,155
Maps available for inspection at the County Commissioner's Office, Champaign County Courthouse, Urbana, Ohio.				
Ohio	City of Hamilton, Butler County (Docket No. FEMA-6604).	Great Miami River	About 3.5 miles downstream of Pershing Street	*566
			Just downstream of U.S. Route 127	*592
Maps available for inspection at the Planning Director's Office, Municipal Building, High and Monument Streets, Hamilton, Ohio.				
Ohio	City of Defiance, Defiance County (Docket No. FEMA-6604).	Maumee River	About 0.36 mile downstream of Domersville road	*677
			About 1.1 miles upstream of Norfolk Southern Railway	*
		Auglaize River	At mouth	*679
			About 0.93 mile upstream of Jefferson Street	*
Maps available for inspection at the City Engineer's Office, City County Building, Defiance, Ohio.				
Ohio	City of Napoleon, Henry County (Docket No. FEMA-6604).	Maumee River	About 1.8 miles downstream of Detroit Toledo and Ironton Railroad.	*656
			About 2.3 miles upstream of Perry Street	*
Maps available for inspection at the Municipal Building, 255 Riverview Avenue, Napoleon, Ohio.				
Ohio	City of Newark, Licking County (Docket No. FEMA-6584).	Licking River	About 0.8 mile downstream of confluence of Shawnee Run.	*801
			At confluence of South Fork Licking River	*813
		South Fork Licking River	At confluence with Licking River	*813
			Just downstream of National Drive	*816
			About 0.2 mile downstream of Orchard Street	*818
			About 0.1 mile upstream of Orchard Street	*819
		North Fork Licking River	At confluence with Licking River	*813
			About 140 feet upstream of Everett Avenue	*823
			Just downstream of dam	*833
			Just upstream of dam	*
			About 3.1 miles upstream of Water Works Road	*863
		Raccoon Creek	At mouth	*817
			Just upstream of Chesse System railroad	*822
			Just upstream of North 21st Street	*832
			About 0.5 mile upstream of Cherry Valley Road	*885
		Log Pond Run (Downstream of COE-LPRDP Outflow).	Just upstream of Eddy Street	*852
			Just downstream of North 21st Street	*861
			About 4,800 feet upstream of North 21st Street	*870
			About 100 feet downstream of U.S. Army Corps of Engineers-Log Pond Run Diversion Project (COE-LPRDP) Outflow.	*875
		Log Pond Run (Upstream of COE-LPRDP Outflow).	Just upstream of Goosepond Road	*
			Just downstream of King Road	*886
Maps available for inspection at City Hall, 40 W. Main Street, Newark, Ohio.				
Ohio	Village of Powell, Delaware County (Docket No. FEMA-6604).	Olentangy River	At downstream corporate limits	*774
			At upstream corporate limits	*775
Maps available for inspection at the Village Hall, 5 N. Liberty Street, Powell, Ohio. Send comments to Honorable J. Thomas Cantwell, Mayor, Village of Powell, Village Hall, 5 N. Liberty Street, P.O. Box 124, Powell, Ohio 43065.				
Ohio	Village of West Liberty, Logan County (Docket No. FEMA-6604).	Mad River	About 2100 feet downstream of U.S. Route 68	*1,082
			About 300 feet upstream of Baird Street	*1,091
		Mud Run	Just downstream of Sidney Street	*1,081
			Just downstream of State Route 245	*1,084
			Just upstream of State Route 245	*1,089

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Macochee Creek	About 1400 feet upstream of State Route 245	*1,089
			At confluence with Mad River	*1,088
			About 1300 feet upstream of confluence with Mad River	*1,086
Maps available for inspection at the Village Hall, West Liberty, Ohio.				
Oregon	Albany (city), Linn and Benton Counties FEMA-6614....	Willamette River	400 feet upstream from centerline of Southern Pacific Railroad.	*201
		Calapooia River	Intersection of Bonnie Street and 15th Avenue	*204
		Oak Creek	10 feet upstream from centerline of Southern Pacific Railroad.	*210
		Calapooia River Split Flow	90 feet downstream from center of 53rd Avenue	*212
		Truax Creek	10 feet upstream from most westerly corporate limit crossing	*210
Maps available for inspection at Planning Department, 127 Broadalbin, SW, Albany, Oregon.				
Pennsylvania	Allegheny, township, Blair County (FEMA Docket No. [illegible]	Beaverdam Branch Juniata River	Approximately .15 mile downstream corporate limits	*966
			Downstream Legislative Route 07059	*969
			Upstream Sewage Treatment Plant Road	*1,035
			Confluence of Burgoon Run and Mill Run	*1,045
		Blair Gap Run	Confluence with Beaverdam Branch Juniata River	*
			Most downstream corporate limits	*977
			Approximately .47 mile upstream of most downstream corporate limits.	*
			Second crossing corporate limits	*1,091
			Most upstream corporate limits	*1,049
			Approximately 12 mile upstream of Township Route [illegible]	*1,102
		Burgoon Run	Confluence with Beaverdam Branch Juniata River	*1,045
			Upstream corporate limits	*1,060
		Mill Run	Confluence with Beaverdam Branch Juniata River and Burgoon Run	*1,045
			Approximately 75' upstream of upstream corporate limits.	*1,053
		Sugar Run	At East Burns Avenue	*1,070
			Upstream Oak Avenue	*1,120
			Upstream of fifth upstream Access Road	*1,235
			Upstream of 7th upstream Access Road	*1,307
			Approximately .25 mile upstream of Sugar Run Road	*1,431
		Brush Run	Most downstream corporate limits	*
			Approximately .64 mile upstream downstream corporate limits.	*971
			Most upstream corporate limits	*
		Gillans Run	Downstream corporate limits	*1,021
			Upstream Township Route 406	*1,086
			Approximately .53 mile upstream Township Route 414	*1,199
		Spencer Run	At Legislative Road 07059	*1,042
			Upstream of Township Route 406	*1,123
			Upstream U.S. Route 22	*1,164
			Upstream of Township Route 425	*1,208
			Upstream of 4th upstream Access Road	*1,249
			Approximately .17 mile downstream of most upstream Access Road.	*1,345
			Approximately .21 mile upstream of most upstream Access Road.	*1,456
		Tributary to Gillans Run	Downstream corporate limits	*1,034
			Upstream of Township Route 406	*1,090
			Approximately .2 mile upstream of U.S. Route 22 (2nd crossing).	*1,219
Maps available for inspection at the Municipal Building, R.D. 1, Duncansville, Pennsylvania.				
Rhode Island	Little Compton, town, Newport County (FEMA Docket No. 6599).	Sakonnet River	2,300 feet northwest of intersection of Taylors Lane and Taylors Lane south.	*
			Shoreline approximately 1.4 miles southeast of Church Point.	*
			Shoreline at Taylors Lane extended	*16
			Shoreline approximately 1,700 feet south of Hardy Subdivision Road extended.	*24
			Shoreline at Hardy Subdivision Road extended	*26
			Shoreline at June Way extended	*31
		Rhode Island Sound	500 feet south along Rhode Island Road from intersection with Pennsylvania Road.	*
			Shoreline at Sakonnet Point	*16
			Shoreline approximately 300 feet south of Little Pond Cove extended.	*
			Shoreline at Ocean Drive extended	*24
			Shoreline approximately 1,250 feet north of Ocean Drive extended.	*
			Shoreline approximately 300 feet south of Point Meadows extended.	*31
Maps available for inspection at the Town Clerk's Office, Town Hall, Little Compton, Rhode Island.				
Rhode Island	New Shoreham, Town, Washington County (FEMA Docket No. 6614).	Atlantic Ocean	Shoreline at Black Rock Point	*25
			Shoreline at Southeast Point	*23

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Rhode Island Sound	Shoreline 1,000 feet northeast of Southeast Point	*21
			Shoreline at Old Harbor Point	*19
			Shoreline 800 feet southeast of Water Street extended	*14
			Shoreline at Water Street extended	*13
			Shoreline 800 feet northwest of Beach Avenue extended	*13
			Shoreline 4,500 feet southwest of Jerrys Point	*20
			Shoreline at Jerrys Point	*14
			Shoreline at Balls Point	*17
			Shoreline at Sandy Point	*13
		Block Island Sound	Shoreline 500 feet south of Sandy Point	*9
			Shoreline of Great Salt Pond at Cormorant Point	*11
			Shoreline of Great Salt Pond at Harms Point	*11
			Shoreline 1,000 feet southwest of Grace Point	*11
			Shoreline at Cooneymus Road extended	*15
			Shoreline at Southwest Point	*20

Maps available for inspection at the Town Clerk's Vault, New Shoreham, Rhode Island.

Tennessee	Town of Farragut, Knox County (FEMA-6604)	Little Turkey Creek	Just downstream of Turkey Creek Drive. (Flooding at this location is affected by backwater from Tennessee River)	*815
			Approximately 160 feet upstream of Virtue Road	*856
		North Fork Turkey Creek	Just downstream of Kingston Pike	*900
			Just upstream of Kingston Pike	*881
			Just downstream of Gingsby Chapel Road	*935
		Turkey Creek	Approximately 110 feet upstream of Turkey Creek Drive	*816
		Turkey Creek	Approximately 180 feet downstream of Kingston Pike	*872

Maps available for inspection at the Town Hall, 1426A Kingston Pike, Farragut, Tennessee 37933.

Texas	Unincorporated areas of Aransas County (FEMA-6604).	Gulf of Mexico	South of San Jose Island along eastern shoreline	*10
			South of San Jose Island along western shoreline	*8
		Aransas Bay	Along the southern shoreline of Mud Island	*7
			Along shoreline at Jay Bird Point	*6
			East of Aransas County Airport along the shoreline	*6
			Along eastern shoreline Traylor Island	*12
		Mesquite Bay	Along shoreline of Roddy Island	*8
		San Antonio Bay	East of Thomes Pond along shoreline	*7
		St. Charles Bay	Along shoreline at Black Jack Point	*10
			South of Bugentine Dam	*11
		Aransas Bay/St. Charles Bay	Along shoreline of Goose Island	*10
		Copano Bay	Along shoreline at Shell Point	*10
			Along shoreline at Redfish Point	*5
		Port Bay	At Swan Lake	*7

Maps available for inspection at the Office of Leonard Sepcht, Flood Plain Administrator, Aransas County Courthouse, 301 N. Live Oaks, Rockport Texas 78382

Texas	City Aransas Pass, Aransas, Nueces and San Patricio Counties (FEMA-6604)	Gulf of Mexico/Redfish Bay	Intersection of Highland Avenue and State Highway 361	*10
			Intersection of the State Highway 35 and Young Avenue	*9

Maps available for inspection at City Hall, 600 West Cleveland Street, Aransas Pass, Texas 78336.

Texas	City of Bayside, Refugio County (FEMA-6604)	Copano Bay	Along shoreline at Driscoll Ave (extended)	*10
			Along western shoreline at Black Point	*9

Maps available for inspection at Bayside Community Building, Bayside Texas, 78340

Texas	Euless, city, Tarrant County (FEMA Docket No. 6604)	Little Bear Creek	Approximately 900' upstream of confluence with Big Bear Creek	*511
			North Main Street (upstream side)	*525
			At Industrial Boulevard	*538
			At upstream corporate limits	*546
		Blessing Branch	Approximately 8,500' upstream of confluence with West Fork Trinity River	*540
			Fuller Wiser Road (upstream side)	*554
			North Main Street (upstream side)	*574
		Sulphur Branch	At downstream corporate limits	*493
			At upstream corporate limits	*506
		Hurricane Creek	At downstream corporate limits	*501
			Marlene Drive (upstream side)	*522
			At upstream corporate limits	*537
		Stream HC-1	Confluence with Hurricane Creek	*515
			Kynette Drive (upstream)	*535
			Upstream corporate limits	*546
		Boyd Branch	At downstream corporate limits	*515
			State Route 10 (upstream side)	*540
			Approximately 950' upstream of Vitis Road	*549

Maps available for inspection at the City Hall, Euless, Texas.

Texas	City of Ingleside, San Patricio County (FEMA-6604)	Kinney Bayou	Just upstream of Eighth Street	*12
			Just downstream of Live Oak Street	*13
		Combined flooding effects from Kinney Bayou and Corpus Christi Bay	Approximately 550 feet west of the intersection of Port Avenue and FM 1069	*9

Maps available for inspection at City Hall, 501½ San Angelo Street, Ingleside, Texas 78362.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Texas	Unincorporated areas of Matagorda County (FEMA-6614).	Bucks Bayou	Just downstream of an unnamed road located approximately 3,800 feet upstream of the confluence with Peyton Creek.	*25
		Cedar Lake Creek	Approximately 300 feet downstream of FM 457	*36
			Approximately 400 feet downstream of FM 2611	*10
			Approximately 300 feet downstream of State Highway 521.	*19
		Cottonwood Creek	Just upstream of the confluence of Dry Creek	*75
		East Carancahua Creek	Approximately 100 feet downstream of FM 2668	*52
			Just downstream of FM 616	*26
			Approximately 1,500 feet downstream of State Route 111.	*44
		Hardeman Slough	Just upstream of State Highway 35	*75
		Lonnville Bayou	Just upstream of Southern Pacific Railroad	*43
			Just downstream of Missouri Pacific Railroad	*81
			Approximately 1,000 feet downstream of State Highway 35.	*96
		Live Oak Creek	Just downstream of State Highway 60	*31
			Just upstream of FM 2668	42
		Tres Palacios River	Just downstream of the confluence of Briar Creek	*19
			Just downstream of State Highway 35; East Bound	*24
			Just downstream of the confluence of Juanita Creek	*38
		Tres Palacios Bay	Just downstream of State Highway 35 Bridge over Turtle Creek	*14
		Matagorda Bay	At Crab Lake (entire shoreline)	*10
		Gulf of Mexico	At Matagorda Peninsula Airport	*10
		East Matagorda Bay	At confluence of Intracoastal Waterway with Live Oak Bayou.	*11

Maps available for inspection at Matagorda County Building Official's Office, County Courthouse, Bay City, Texas 77414.

Texas	City of Port Aransas, Nueces County (FEMA-6604)	Corpus Christi Bay	At the intersection of Avenue G and 6th Street	*8
		Gulf of Mexico	Avenue G extended at shoreline	*10

Maps available for inspection at City Hall, P.O. Drawer I, Port Aransas, Texas 78373.

Texas	City of Port Lavaca, Calhoun County (FEMA-6604)	Little Chocolate Bayou	Just upstream of State Highway 35	*13
		Lynn Bayou	Approximately 500 feet upstream of Oakglen Drive	*16
		Lavaca Bay	Shoreline at Cypress Street (extended)	*16

Maps available for inspection at Office of Public Works, City Hall, Port Lavaca, Texas 77979.

Texas	Unincorporated areas of Refugio County (FEMA-6604).	Mission River	Approximately 600 feet downstream of Missouri Pacific Railroad.	*98
		Blanco Creek	Just downstream of State Highway 202	*53
		Copano Bay/Mission Bay	Just east of FM 2678 on Mission River	*8
		St. Charles Bay	Just south of the intersection of State Highway 35 and State Highway 774.	*10
		San Antonio Bay	Approximately 250 feet east of Farm to Market Road 2040 just north of Aransas County Line.	*8
		Hynes Bay	At the outermost tip of McDowell Point	*8
		San Antonio Bay/Guadlupe Bay/Mission Lake/Green Lake.	Just west of Calhoun County line on State Highway 35	*11

Maps available for inspection at Refugio County Judge's Office, County Courthouse, Room 104, Refugio, Texas 78377.

Texas	City of Rockport, Aransas County (FEMA-6604)	Gulf of Mexico/Aransas Bay	Along shoreline at Water Street	*7
		Gulf of Mexico/Little Bay	Along shoreline at Concho Street extended east of Austin Street.	*6

Maps available for inspection at City Hall, 319 North Broadway, Rockport, Texas 78382.

Texas	Unincorporated areas of San Patricio County (FEMA-6604).	Hondo Creek	Just downstream of FM 54	*44
			Just upstream of FM 50	*74
		Taft Creek A	Approximately 600 feet upstream of Southern Pacific Railroad.	*53
		Taft Creek B	Just upstream of FM 102	*41
		Jack Green Hollow	Approximately 900 feet upstream of McNelly Road	*140
		Nueces River (Part 1)	Approximately 400 feet upstream of FM 666	*88
		Nueces River (Part 2)	Just upstream of Missouri Pacific Railroad	*12
		Chiltipin Creek	Just downstream of U.S. Route 77	*88
		Peter's Swale	Approximately 400 feet upstream of FM 42	*78
			Approximately 100 feet upstream of U.S. Highway 77 (upstream crossing).	*73
		Nueces Bay	At the south end of Highway FM 1074 at the county limits.	*16
			At the mouth of Nueces River at Nueces Bay	*16
			Just downstream of Missouri Pacific Railroad	*14
		Corpus Christi Bay	At the mouth of Gum Hollow with Corpus Christi Bay	*15
			At the mouth of an unnamed stream just east of the City of Portland with Corpus Christi Bay.	*15
			At the mouth of Kinney Bay with Ingleside Cove	*16
		Red Fish Bay	Just upstream of State Highway 35, 1000 feet east of intersection of Highway FM 1069 and FM 2725 on an extension line of FM 1069.	*16
		Copano Bay/Mission Bay/Port Bay	Just downstream of Highway FM 881	*8

Maps available for inspection at County Courthouse, 400 W. Sinton, Rm 105, Sinton, Texas 78387.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Texas	City of Seadrift, Calhoun County (FEMA-8614)	Gulf of Mexico/San Antonio Bay	Intersection of Second Street and Washington Avenue	*8
Maps available for inspection at City Hall, Seadrift, Texas 77983.				
West Virginia	Anawalt, town, McDowell County (FEMA Docket No 8604)	Tug Fork	Downstream corporate limits	*1,640
			Approximately 0.7 mile upstream of Johnson Street bridge	*1,668
			Upstream side of Norfolk and Western Railway bridge (2nd upstream crossing)	*1,688
			Upstream corporate limits	*1,707
		Little Creek	Confluence with Tug Fork	*1,685
			Upstream side of Railroad Avenue bridge	*1,688
			Upstream corporate limits	*1,700
Maps available for inspection at the Town Hall, Anawalt, West Virginia.				
West Virginia	Gary, City, McDowell County (Docket No. FEMA-8604).	Tug Fork	Downstream corporate limits	*1,371
			U.S. Steel Building (Upstream Side)	*1,400
			At confluence of Sandlick Creek	*1,411
			Maintenance Road 49 (upstream side)	*1,429
			Payton Place Road (upstream side)	*1,450
			Most upstream corporate limits	*1,470
		Sandlick Creek	At confluence with Tug Fork	*1,411
			Approximately 170 ' downstream of County Route 13/2	*1,451
Maps available for inspection at the City Hall, Gary, West Virginia.				
West Virginia	Kanawha County (FEMA Docket No. 8604)	Kanawha River	Approximately 170 feet downstream of County Route 13/2	*587
			At confluence of of Davis Creek	*592
			Upsteam side of Marmet Locks and Dam	*601
			At State Route 61 spur bridge	*606
			Approximately .15 mile downstream of London Lock & Dam #3.	*617
			At upstream county boundary	*625
		Pocatalico River	At downstream county boundary	*601
			Approximately .4 mile upstream of County Road 7	*609
			Approximately 800 feet downstream of County Road 21/7.	*616
			At confluence of Tupper Creek	*624
			Approximately .3 mile upstream of County Road 21	*631
			Approximately 800 feet upstream of County Road 33 (1st upstream crossing).	*646
			Approximately 1,000 feet upstream of County Road 33 (2nd upstream crossing)	*656
			Approximately 200 feet downstream of upstream county boundary	*672
		Rocky Fork	At confluence with Pocatalico River	*603
			At State Route 622 (2nd crossing)	*610
			At County Road 5/13	*629
			Approximately 50 feet downstream of State Route 62	*660
			Approximately 50 feet upstream of Dam Road	*693
		Tupper Creek	At confluence with Pocatalico River	*624
			Approximately 600 feet downstream of confluence of Legg Fork	*629
			Approximately 200 feet upstream of Interstate Route 77 (1st upstream crossing)	*645
			Approximately 100 feet upstream of County Road 29	*663
			Approximately 70 feet downstream of County Road 24	*688
			Approximately .46 mile downstream of County Road 21/25	*713
			Approximately 40 feet downstream of County Road 21/25	*738
			Downstream side of parking lot culverts	*748
			Upstream side of County Road 21	*791
			Approximately 860 feet upstream of County Road 21	*797
		Legg Fork	At confluence with Tupper Creek	*629
			Downstream side of County Road 28/2	*639
			Approximately 130 feet upstream of County Road 28	*657
			Approximately .93 mile upstream of County Road 28	*677
			At confluence of Huggard Branch	*700
		Huggard Branch	At confluence with Legg Fork	*700
			Approximately .46 mile upstream of confluence with Legg Fork	*730
			At 1st upstream Access Road	*761
			Approximately 90 feet downstream of 2nd upstream Access Road	*782
			Approximately .33 mile upstream of 2nd upstream Access Road	*808
		Coal River	At confluence with Kanawha River	*588
			Approximately 6.0 mile upstream of confluence with Kanawha River	*600
			At confluence of Smith Creek	*612
			Approximately 1,000 feet upstream of State Route 214	*625

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Smith Creek	Approximately 1.1 miles upstream of State Route 214	*627
			At confluence with Coal River	*612
			Approximately 100 feet downstream of County Road 9 (2nd upstream crossing).	*625
			Approximately 75 feet upstream of County Road 12 (1st upstream crossing).	*635
			At County Road 12 (2nd upstream crossing)	*645
			At confluence of Little Smith Creek	*678
			Approximately 775 feet downstream of County Road 12 (3rd upstream crossing).	*715
			At County Road 12 (4th upstream crossing)	*750
			Approximately 100 feet upstream of County Road 12 (5th upstream crossing).	*790
			Approximately 700 feet upstream of County Road 12 (6th upstream crossing).	*830
		Little Smith Creek	At confluence with Smith Creek	*678
			Approximately 120 feet upstream of County Road 9/3	*696
			Approximately .61 mile upstream of County Road 9/3	*730
			Approximately 1.29 miles upstream of County Road 9/3.	*768
			Approximately 1.82 miles upstream of County Road 9/II.	*820
			Approximately 2.22 miles upstream of County Road 9/II.	*870
			Approximately 2.24 miles upstream of County Road 9/3.	*908
		Davis Creek	At downstream county boundary	*590
			At State Route 214	*604
			Approximately 1.4 miles downstream of County Road 20 (1st upstream crossing).	*638
			Approximately 200 feet downstream of County Road 20 (1st upstream crossing).	*646
			At county Road 20/5	*660
			At County Road 23 (1st upstream crossing)	*660
			Approximately 50 feet downstream of confluence of Kanawha Fork.	*700
		Tyler Creek	Approximately .20 mile downstream of county boundary	*599
			Upstream side of County Road 5/6	*601
			Upstream side of State Route 62 (3rd upstream crossing).	*630
			Approximately 100 feet upstream of confluence of Landers Creek.	*655
		Twomile Creek	At downstream county boundary	*600
			Approximately 100 feet upstream of confluence of Edens Fork.	*609
			Approximately 50 feet upstream of 2nd upstream Access Road	*621
			Approximately 60 feet upstream of County Road 21/14.	*640
			Approximately .30 mile downstream of County Road 21/13.	*661
			Approximately 65 feet downstream of County Road 21/13.	*682
			Approximately 540 feet downstream of County Road 21 (2nd upstream crossing).	*700
			Approximately 150 feet upstream of County Road 21 (2nd upstream crossing).	*717
			Approximately 50 feet downstream of County Road 21 (3rd upstream crossing).	*745
			Approximately 860 feet upstream of County Road 21 (4th upstream crossing).	*775
			Approximately .3 mile upstream of County Road 21 (4th upstream crossing).	*805
		Edens Fork	At confluence with Twomile Creek	*609
			Upstream side of County Road 27 (1st upstream crossing).	*615
			Upstream side of County Road 27/1	*627
			Upstream side of County Road 27/4	*646
			Upstream side of County Road 27 (2nd upstream crossing)	*656
			Approximately 1 mile upstream of County Road 27 (2nd upstream crossing).	*705
			At County Road 27 (3rd upstream crossing)	*736
			Approximately .28 mile upstream of County Road 27 (4th upstream crossing).	*787
		Elk River	At downstream county boundary	*595
			At confluence of Coopers Creek	*604
			At confluence of Little Sandy Creek	*612
			At confluence of Blue Creek	*619
			At Old Queen Shoals bridge	*634
			At upstream county boundary	*648
		Elk Twomile Creek	At confluence with Elk River	*595
			Upstream side of Greenbrier Street (1st upstream crossing).	*610
			Downstream side of County Road 46 (1st upstream crossing).	*631

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream side of County Road 46 (4th upstream crossing)	[illegible]
			Approximately 200 feet upstream of County Road 46 (6th upstream crossing).	*717
		Coopers Creek	At confluence with Elk River	[illegible]
			Approximately 100 feet downstream of confluence of Bens Fork.	*627
			Approximately 250 feet upstream of County Road 119/14.	[illegible]
			Downstream side of County Road 26	*659
			Approximately .77 mile upstream of County Road 26	*677
		Little Sandy Creek	At confluence with Elk River	*612
			Approximately 300 feet upstream of Interstate 79 (1st upstream crossing).	*620
			Approximately 800 feet downstream of County Road [illegible]	*639
			Approximately 300 feet upstream of County Road 43/14.	[illegible]
			Approximately 60 feet upstream of County Road 43/6	*667
		Blue Creek	At confluence with Elk River	*619
			Upstream side of Access Road	*624
			Approximately 130 feet downstream of confluence of Lower Threemile Fork.	*630
		Big Sandy Creek	At downstream county boundary	*630
			Approximately 750 feet upstream of confluence of Thorofare Run.	*631
		Thorofare Run	At confluence with Big Sandy Creek	*631
			Upstream side of County Road 59 (1st upstream crossing).	*687
			Upstream side of County Road 59 (2nd upstream crossing).	*742
			Approximately 74 mile upstream of County Road 59 (2nd upstream crossing).	*845
		Campbells Creek	At confluence with Kanawha River	[illegible]
			Upstream side of County Road 73 (1st upstream crossing)	*611
			Upstream side of County Road 73/3	*626
			Upstream side of County Road 73/5	*637
			Upstream side of County Road 73 (2nd upstream crossing)	*658
			Upstream side of County Road 73/8	[illegible]
			Upstream side of County Road 73 (3rd upstream [illegible]	*712
			Approximately 400 feet downstream of confluence of Eightmile Hollow	*794
		Lens Creek	Approximately 850 feet upstream of confluence with Kanawha River	*602
			Upstream side of County Road 68	*627
			At confluence of Ring Hollow	*674
			At confluence of Fourmile Fork	[illegible]
			Approximately .63 mile above confluence of Fourmile Fork.	*720
			Upstream side of 9th upstream Access Road	*751
			Approximately .77 mile above 9th upstream Access [illegible]	*804
		Witcher Creek	At confluence with Kanawha River	[illegible]
			Upstream side of County Road 70 (2nd upstream crossing)	*613
			Approximately .5 mile downstream of confluence of Laurel Fork.	*672
			Approximately 100 feet downstream of confluence of Left Fork.	*701
		Fields Creek	At confluence with Kanawha River	[illegible]
			Upstream side of County Road 77/1	*621
			Upstream side of Delta Route 14	*652
			Upstream side of Delta Route 13	*672
			Approximately .60 mile upstream of Delta Route 13	*701
		Cabin Creek	At confluence with Kanawha River	*607
			Upstream side of County Road 79/3 (1st upstream crossing)	*633
			Upstream side of County Road 79/4 (2nd upstream crossing)	[illegible]
			Upstream side of County Road 79/3 (3rd upstream [illegible]	[illegible]
			Upstream side Chessie System (5th upstream crossing).	*720
			Upstream side of County Road 74	*745
			Upstream side of Chessie System (7th upstream crossing).	*801
			Downstream side of County Road 79/3 (4th upstream [illegible]	[illegible]
			Upstream side of County Road 76 (1st upstream [illegible]	*907
			Upstream side of County Road 76 (2nd upstream crossing).	*1,029
			Upstream side of Chessie System (12th upstream crossing).	*1,066

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Kellys Creek	Upstream side of County Road 76 (3rd upstream [illegible]	*1,130
			At downstream county boundary	[illegible]
			Upstream side of County Road 81 (1st upstream [illegible]	*570
			Upstream side of County Road 81/6	*710
			Upstream side of Kellys Creek and Northwestern Railroad (2nd upstream crossing).	*752
			Approximately .76 mile downstream County Road 81 (3rd upstream crossing).	*790
			Upstream side County Road 81 (3rd upstream crossing).	*845
		Hurricane Fork	At confluence of Hurricane Fork	*863
			At confluence with Kellys Creek	[illegible]
			Upstream side of County Road 81	*919
			Approximately 80 mile upstream of County Road 81	[illegible]
		Paint Creek	At confluence with Kanawha River	*614
			Upstream side of County Road 83/2	*624
			Upstream side of County Road 83/3	[illegible]
			Upstream side of County Road 83/1	[illegible]
			Upstream side of County Road 83	*695
			Downstream of Interstate Route 77	*716
		Hughes Creek	At confluence with Kanawha River	*616
			Upstream U.S. Route 60	[illegible]
			Approximately 1.07 mile upstream of U.S. Route 60	[illegible]
		East Bank Tributary	At confluence with Kanawha River	*610
			Approximately 80 feet upstream of upstream county boundary	[illegible]
		Upper Creek	Approximately .72 mile upstream of confluence with Kanawha River	*722
			At upstream county boundary	*736
Maps available for inspection at the Planning Commission, Kanawha County Courthouse, 409 Virginia Street East, Charleston, West Virginia				
West Virginia	Keystone, town, McDowell County (FEMA Docket No [illegible]	Elkhorn Creek	Downstream corporate limits	*1,623
			Norfolk and Western Railway bridge (upstream side)	*1,668
			Upstream corporate limits	*1,675
			Approximately 0.15 mile upstream of corporate limits	*1,682
Maps available for inspection at the City Hall, Keystone, West Virginia				
West Virginia	Kimball, town, McDowell County (FEMA Docket No. 6604).	Elkhorn Creek	Downstream corporate limits	*1,478
			At confluence of Laurel Branch	*1,485
			Upstream corporate limits	*1,497
Maps available for inspection at the City Hall, Welch, West Virginia				
West Virginia	Mabscott, town, Raleigh County (Docket No. FEMA-6604).	Whitestick Creek	Downstream corporate limits	*2,284
			Upstream side of North Hill Street	*2,290
			At Mill Road	*2,325
Maps available for inspection at the Town Hall, Mabscott, West Virginia.				
West Virginia	Mercer County (FEMA Docket No. 6599)	Bluestone River	Approximately 3.0 miles downstream of dam	*1,961
			Approximately 2.3 miles downstream of dam	*1,980
			Approximately 1.3 miles downstream of dam	*2,000
			Approximately 0.5 mile downstream of dam	*2,022
			Approximately 0.1 mile upstream of dam	*2,040
			Approximately 1.6 miles upstream of dam	*2,060
			Upstream of most downstream crossing of U.S. Route [illegible]	*2,070
			Upstream of most downstream Access Road	*2,079
			Upstream of State Route 10	*2,087
			Approximately 2.7 miles upstream State Route 10	*2,096
			Approximately 3.8 miles upstream State Route 10	*2,110
			Approximately 0.5 mile upstream of second downstream [illegible] Road	*2,120
			Approximately 0.9 mile downstream of third downstream [illegible] Road	*2,140
			Upstream of third downstream Access Road	*2,161
			Approximately 1.0 mile upstream of third downstream [illegible] Road	*2,180
			Upstream State Route 71 (first crossing)	*2,195
			At confluence of Crane Creek	*2,210
			Upstream County Route 15 (2nd crossing)	*2,220
			Approximately .9 mile downstream of Norfolk and Western Railway (fourth crossing).	*2,230
			At downstream county boundary (Bramwell)	*2,241
			At upstream county boundary (Bramwell)	*2,260
			Upstream of second dam	*2,280
			At County Route 52/6 (downstream crossing)	*2,289
			Most upstream county boundary	*2,302
		East River	Approximately .34 mile downstream 1st corsing Norfolk & Western Railway	*1,646
			1st crossing Norfolk & Western Railway (downstream)	*1,652

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			0.6 mile upstream most downstream Access Road	*1,667
			Downstream county boundary (Oakvale)	*1,703
			Upstream county boundary (Oakvale)	*1,754
			1st most downstream Private Drive (downstream)	*1,790
			4th Access Road (upstream)	*1,821
			County Route 38/3 (upstream)	*1,866
			At 2nd Private Drive	*1,910
			6th crossing Norfolk & Western Railway (upstream)	*1,944
			1st crossing County Route 38/5 (upstream)	*1,986
			2nd crossing County Route 38/5 (upstream)	*2,007
			3rd crossing County Route 38/5 (upstream)	*2,056
			0.5 mile upstream Interstate 77	*2,103
			6th Access Road (upstream)	*2,140
			At confluence of Dyepot Branch	*2,171
			0.65 mile upstream of confluence of Dyepot Branch	*2,194
		Payne Branch	At confluence with East River	*1,700
			Upstream U.S. Route 460	*1,735
			Approximately 0.5 mile upstream of U.S. Route 460	*1,771
			Upstream County Route 28	*1,812
			Approximately 0.5 mile upstream of County Route 28	*1,863
		Blacklick	At confluence with Bluestone River	*2,077
			At confluence of Rocky Branch	*2,078
			Upstream County Route 7/1 (second crossing)	*2,168
			Upstream County Route 16/4	*2,234
			Approximately 0.5 mile upstream County Route 16/4	*2,323
			Approximately 0.8 mile downstream U.S. Route 19	*2,333
			Upstream of U.S. Route 19	*2,347
			Approximately 1.0 mile upstream U.S Route 19	*2,358
			Approximately 2.0 miles upstream U.S. Route 19	*2,374
			Approximately 3.0 miles upstream U.S. Route 19	*2,426
		Widemouth Creek	Approximately 0.4 mile downstream Access Road (1st crossing).	*2,341
			Upstream Norfolk and Western Railway (2nd crossing)	*2,355
			At downstream county boundary (Matoaka)	*2,359
			At upstream county boundary (Matoaka)	[illegible]
			Downstream of second Access Road	[illegible]
			Approximately 130 feet upstream of Norfolk and Western Railway (sixth crossing).	*2,372
		Lorton Lick Creek	At confluence with Bluestone River	*2,213
			Approximately 0.5 mile upstream of confluence with Bluestone River	*2,237
			Approximately 1.0 mile upstream of confluence with Bluestone River	*2,257
			Approximately 1.5 miles upstream of confluence with Bluestone River	*2,329
			Approximately 40 feet upstream of State Route	*2,412
		Brush Fork	At county boundary	*2,332
			Approximately 1.0 mile upstream of county boundary	[illegible]
			Upstream State Route 123	*2,341
			Upstream County Route 23/3	*2,359
			Approximately .16 mile upstream County Route 11 (third crossing).	*2,372
		Brush Creek	Approximately .15 mile downstream Interstate Route 77.	*2,354
			Upstream County Route 7/4	*2,365
			Upstream County Route 16 (1st crossing)	*2,375
			Upstream County Route 16 (2nd crossing)	*2,380
			At County Route 16 (3rd crossing)	*2,383
			Downstream county boundary (at Princeton)	*2,386
			Upstream county boundary (at Princeton)	*2,393
			Downstream County Route 34/1	*2,400
			Upstream U.S. Route 19, 21 & 460 (2nd crossing)	*2,404
			Approximately 1.1 miles downstream of County Route 19/33.	*2,409
			At confluence of South Fork	*2,415
		Daves Fork	Approximately .34 mile downstream of county boundary	*2,389
			At county boundary (Princeton)	*2,397
			Upstream State Route 20	*2,420
			Upstream County Route 14	*2,467
			Approximately .27 mile upstream County Route 14	*2,472
		Christian Fork	At confluence with Daves Fork	*2,401
			Approximately 0.7 mile upstream of confluence with Daves Fork	*2,410
			Approximately 1.36 miles upstream of confluence with Daves Fork	*2,433
		South Fork	At confluence with Brush Creek	*2,415
			Upstream second upstream Access Road	*2,419
			Upstream U.S. Route 19, 21 and 460 (1st crossing)	*2,426
			Upstream County Route 19/34	*2,436
			At confluence of Middle Fork	*2,443
		Middle Fork	At confluence with South Fork	*2,443
			Approximately .68 mile upstream of confluence with South Fork	*2,455
		Glady Fork	Approximately 390 feet downstream of Bluefield Road	*2,395
			Approximately .15 mile upstream of Bluefield Road	*2,401

Maps available for inspection at the Mercer County Courthouse, Princeton, West Virginia.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
West Virginia	Northfork, town, McDowell County (FEMA Docket No. 6604).	Elkhorn Creek	Downstream corporate limits	*1,690
			Norfolk and Western Railway bridge (downstream side).	*1,710
			Confluence of North Fork	*1,718
			Approximately 686 feet upstream of upstream corporate limits.	*1,733

Maps available for inspection at the City Hall, Central Avenue, Northfork, West Virginia.

Wisconsin	Village of Loganville, Sauk County (Docket No. FEMA-6604).	Narrows Creek	Downstream corporate limits	*914
			Upstream corporate limits	*914

Maps available for inspection at the Village Clerk's Office, Village Hall, Loganville, Wisconsin.

Wisconsin	City of Reedsburg, Sauk County (Docket No. FEMA-6604.	Baraboo River	About 3.95 miles downstream of Chicago and North Western Railroad.	*877
			About 0.60 mile upstream of confluence of Hobbe Creek.	[illegible]
		Hay Creek	Mouth at Baraboo River	[illegible]
			About 3,200 feet upstream of mouth	[illegible]

Maps available for inspection at the Zoning Administrator's Office, City Hall, 134 S. Locust, Reedsburg, Wisconsin. Send comments to Honorable John W. Semlen, Mayor, City of Reedsburg, City Hall, 134 S. Locust, Reedsburg, Wisconsin 53959.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Chittenango, village, Madison County (FEMA Docket No. 6546).	Chittenango Creek	Downstream corporate limits	*435
			Upstream Russel Street	*445
			Upstream Perryville Road	*461
			Upstream corporate limits	*484

Maps available for inspection at the Village Hall, 222 Genesee Street, Chittenango, New York.

New York	Hempstead, town, Nassau County (Docket No. FEMA-6550).	Atlantic Ocean	Entire shoreline within community	*14
		Reynolds Channel	Shoreline at northern end of Jefferson Boulevard (extended).	*7
			Shoreline at northern end of Richard Street (extended)	[illegible]
			Shoreline at Cinder Island	[illegible]
		Middle Bay	Shoreline at Colony Drive (extended)	[illegible]
			Shoreline of Parsonage Creek at Jay Way (extended)	*7
		East Bay	Shoreline at Whaleneck Point	[illegible]
			Shoreline of Mud Creek at John Street (extended)	*7
		Head of Bay	Shoreline at Meadows Road (extended)	[illegible]
			Shoreline of Hook Creek at Rockaway Turnpike	[illegible]

Maps available for inspection at the Office of the Commissioner of the Building Department, Town Hall, Hempstead, New York.

Ohio	City of Harrison, Hamilton County (Docket No. FEMA-[illegible]).	Whitewater River	About 10,400 feet downstream of Indiana-Ohio State boundary.	[illegible]
			About 9,200 feet upstream of Indiana-Ohio State boundary.	*517
		Dry Fork of Whitewater River	Within community	[illegible]

Maps available for inspection at the Building Commissioner's Office, Harrison, Ohio.

Texas	Ft. Bend County Levee Improvement District, No. 2 (FEMA-6592).	Oyster Creek	Approximately 200 feet upstream of Blair Road	[illegible]
			Approximately 1600 feet upstream of Colonist Park Road	*72
			Just upstream of Oyster Creek Dr.	*73

Maps available for inspection at Vinson and Elkins Law Firm, 2800 First City Tower, Houston, Texas 77002.

Texas	Unincorporated areas of Nueces County (FEMA-6014).	Nueces River (Part 1)	Approximately 400 feet upstream of FM 666	[illegible]
		Nueces River (Part 2)	Approximately 21,000 feet upstream of Missouri Pacific Railroad.	*15
		Oso Creek	Just upstream of FM 2444	*15
			Approximately 2,800 feet upstream of State Highway 286.	[illegible]
		Oso Creek Tributary No. 5	Approximately 900 feet upstream of FM 2244	*24
			Approximately 600 feet upstream of County Road 47	*31
		Oso Creek Tributary No. 8	Approximately 900 feet upstream of County Road 26	*19
		Oso Creek Tributary No. 14	Approximately 700 feet upstream of McGloin Road	*44

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Ditch A	Approximately 500 feet downstream of Bauer Road	*75
		Ditch B	Approximately 1100 feet upstream of Timber Bridge	*81
		Ditch BN	Just upstream of State Highway 44	*80
		Ditch C	Just downstream of City of Robstown Corporate limits. Approximately 5500 feet upstream of FM 1694.	*67
		Ditch F	Approximately 5480 feet upstream of confluence with Ditch A.	*81
		Carretta Creek	Just upstream of U.S. Highway 77 Bypass	*40
			Just upstream of City of Bishop Corporate limits (Approximately 1450 feet upstream of North Avenue F).	*57
		North Carretta Creek	Approximately 550 feet upstream of East 6th Street	*51
		Laguna Madre	At Matanza Windmill	*11
		Gulf of Mexico/Laguna Madre	At Yorktown Boulevard over Oso Creek	*10
		Corpus Christi Bay	At Mustang Island Road Bridge over Newport Pass	*10
		Nueces Bay	At Navigation Boulevard Bridge over Tule Lake Channel.	*12
		Oso Bay	6000 feet south of NASA tracking station	*12
West Virginia	Wood County (FEMA Docket No. 6548)	Ohio River	At downstream county boundary at confluence of Pond Creek.	*599
			At confluence of Sandy Creek	*606
			At confluence of Tributary A	*613
			At upstream county boundary at confluence of Bull Creek.	*620
		Little Kanawha River	At downstream county boundary at confluence of Washington Creek.	*610
			Approximately 11 miles upstream of confluence of Tygart Creek.	*610
		Tygart Creek	At confluence with Little Kanawha River	*610
			Upstream of Interstate Route 77 (downstream crossing).	*610
			Upstream of County Route 21/22	*621
			Upstream of Interstate Route 77 culvert	*638
			Upstream of southbound ramp of Interstate Route 77	*664
			Confluence of Burns Run	*696
			Approximately .4 mile upstream of most upstream Access Road	*751
		Pond Creek	Confluence with Ohio River	*599
			County Route 25	*599
			Upstream of County Route 25 (upstream crossing)	*606
			Confluence of Pennike Run	*628
			Approximately .7 mile upstream of County Route 25/6 at County Route 23 extended.	*654
		Worthington Creek	Confluence with Little Kanawha River	*610
			Upstream of Interstate Route 77	*610
			Upstream of Mustang Drive	*618
			Upstream of second upstream access road	*637
			Upstream of County Route 3/13	*672
			Upstream of Access Road located near Doyle Tributary.	*707
			Approximately .5 mile upstream of Access Road near Doyle Tributary.	*717
		Big Run	Confluence with Ohio River	*615
			County Route 3/1	*615
			Approximately .23 mile downstream of Interstate Route 77	*621
		North Fork Lee Creek	Approximately .6 mile downstream of most downstream Access Road.	*662
			Upstream of County Route 15	*680
			Upstream of County Route 46/2	*693
			Upstream of County Route 46/4	*733
			Approximately 1 mile upstream of County Route 46/4	*758
		Little Tygart Creek	At confluence with Tygart Creek	*610
			Upstream of County Route 21 (second crossing)	*610
			Upstream of County Route 20/21	*616
			Approximately .5 mile upstream of County Route 20/21.	*616
		Sams Creek	Confluence with Tygart Creek	*610
			Approximately 1.5 miles upstream of confluence with Tygart Creek.	*610
			Approximately 2.67 miles upstream of confluence with Tygart Creek.	*630
		Neal Run	At confluence with Little Kanawha River	*610
			At Gihor Road	*610
			Upstream of County Route 3/9 (Lark Mead Road)	*616
			Downstream of State Route 95 culvert	*626
		Plum Run	At confluence with Big Run	*615
			Upstream of Interstate Route 77	*634
			Approximately .33 mile upstream of Interstate Route 77.	*646
		Pennike Run	At confluence with Pond Creek	*628
			Approximately 1.02 miles upstream of confluence with Pond Creek.	*676
		Bear Run	Confluence with Pond Creek	*639

Maps available for inspection at the Nueces County Engineer's Office, County Courthouse, 901 Leopard Street, Corpus Christi, Texas 78401.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately .49 mile upstream of confluence with Pond Creek	*656
		Burns Run	Confluence with Tygart Creek	*696
			Approximately .5 mile upstream of confluence with Tygart Creek.	*748
		Tributary A	Confluence with Ohio River	*613
			At county boundary	*613
		Williams Creek	Confluence with Big Run	*615
			At county boundary	*615
		Pond Run Upper Reach	At confluence with Ohio River	*612
			Approximately .61 mile upstream of confluence with Ohio River.	*612
		Pond Run Lower Reach	At most downstream county boundary	*630
			At most upstream county boundary just downstream of levee	*631
		Wards Run	At confluence with Little Kanawha River	*610
			County boundary at Camden Avenue	*610

Maps available for inspection at the Probate Office, Wood County Courthouse, Parkersburg, West Virginia.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: November 15, 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 84-31254 Filed 11-30-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 81-893; FCC 84-511]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)

AGENCY: Federal Communications Commission.

ACTION: Fourth report and order.

SUMMARY: This order establishes the requirements regarding the detariffing of embedded customer premises equipment (CPE) owned by Western Union and the International Record Carriers. The Order continues the process of removing CPE from regulated operations based on the Commission's finding that the competitive provision of CPE is in the public interest. The Order requires that record carrier CPE be detariffed no later than December 31, 1985.

EFFECTIVE DATE: The Effective date of this Order is December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Brown, Policy and Program Planning Division, Common Carrier Bureau (202) 632-9342.

Fourth Report and Order

In the matter of procedures for implementing the detariffing of customer premises equipment and enhanced services (second computer inquiry) (CC Docket No. 81-893).

Adopted: October 26, 1984.
Released: November 5, 1984.

By the Commission.

I. Background

1. This Report and Order continues the process of implementing the Commission's decision in the *Second Computer Inquiry* [1] to detariff customer premises equipment (CPE) [2] provided by Western Union and the international record carriers (hereinafter collectively referred to as the record carriers). Prior orders in this docket have addressed the implementation of detariffing of AT&T's embedded CPE, CPE used in the provision of mobile services, and CPE provided by the independent telephone companies.[3] In the *Notice of Proposed Rulemaking* in this docket,[4] the Commission proposed to detariff any record carrier CPE not already detariffed by December 31, 1987. To accomplish detariffing, the Commission proposed to allow the record carriers to submit detariffing plans demonstrating that the carriers would adhere to the general principles developed in the *AT&T Order*, as well as the Commission's accounting rules.[5] We sought comment on whether our proposals equitably balanced the interests of ratepayers, users, and the record carriers. We also sought comment concerning the treatment of CPE already removed from regulated service. This Order generally adopts the proposals as set forth in the *Notice*, with the modifications noted below.

2. Subsequent to the *Final Decision* in *Computer II*, the Commission, as part of a proceeding to unbundle record carrier CPE from the provision of service, ordered that the international record carriers detariff telex equipment. *Interface of the International Telex Service with the Domestic Telex and TWX Service*, Docket No. 21005, 86 FCC 2d 411 (1981) (*IRC Telex Detariffing Order*) *aff'd sub nom. Western Union*

[1] *Amendment of § 69.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 *(Final Decision), reconsideration, 84 FCC 2d 50 (1980), further reconsideration*, 88 FCC 2d 512 (1981), *Aff'd sub nom. Computer & Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C.Cir. 1982), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n v. FCC*, 103 S. Ct. 2109 (1983) (hereinafter collectively referred to as *Computer II*)

[2] Customer premises equipment includes any equipment provided by a common carrier and located on the premises of a customer, except overvoltage protection equipment, simple inside wiring, intrasystem wiring, or multiplexing equipment used for the delivery of multiple channels to a customer.

[3] *See* CC Docket No. 81-893, Report and Order, 95 FCC 2d 1276 (1983) (AT&T Order); CC Docket No. 81-893, Second Report and Order, FCC 87-289, released June 29, 1984 (Mobile Services Order); and CC Docket No. 81-893, Third Report and Order, FCC 84-483, released October 26, 1984 (Independents' CPE Order).

[4] 94 FCC 2d 76 (1983) (hereinafter *Notice*).

[5] *Id.* at 110-11.

Telegraph Co. v. *FCC*, 674 F.2d 160 (D.C. Cir. 1982). The order did not apply to Western Union Telegraph Company (Western Union),[6] and did not implement the detariffing of any non-telex CPE owned by these carriers. By August 1981, the international record carriers had removed their telex equipment from tariff. In 1982 and 1983, these carriers also removed some non-telex CPE from tariff.[7] Some of the carriers detariffed all of their CPE by transferring it to a separate subsidiary, while others detariffed selected non-telex CPE. Thus, only Western Union's embedded CPE, along with some of the embedded non-telex CPE provided by the other record carriers, remains under tariff.[8]

3. Two carriers submitted comments in response to our *Notice* concerning the detariffing of record carrier CPE. TRT Telecommunications Corporation (TRT) argues that it has already complied with the goals of the *Notice* by transferring all of its CPE to a separate, but commonly-controlled, company. Western Union submitted substantive comments, objecting to the application of the general principles developed in the *AT&T Order* to the record carriers. Western Union specifically objects to the use of net book value as the transfer value for the CPE, and the requirement that this equipment be offered for sale at net book value during a "price predictability" period.

II. Discussion

A. Determination of Applicable Principles

4. In the *Notice*, we proposed to allow each record carrier to submit a CPE detariffing plan which would explain the detariffing principles and procedures which the carrier proposed to follow. In the *AT&T Order*, we stated that the record carriers could look to the principles developed in the AT&T case to determine how detariffing should proceed. *AT&T Order*, 95 FCC 2d at 1377–78. Western Union complains that it is unable to discern which principles should apply, and argues that if the AT&T procedure is adopted in its entirety, the record carriers will suffer serious competitive disadvantages.[9] In addition, Western Union argues that § 35.1–7(b) of the Commission's Rules governs the removal of assets from the rate base, and that the Commission should consider how this section relates to the principles developed in the AT&T case.

5. Although our original proposal, as discussed in the *Notice*, would provide maximum flexibility to the record carriers in detariffing CPE, we believe that considerations of consistency, fairness, and administrative convenience require that we specify the legal and accounting principles pertinent to this proceeding. Resolution of the issues raised by Western Union will enable the record carriers to detariff CPE in a manner consistent with the requirements which we view as necessary to accommodate the public interest. Furthermore, by alleviating uncertainty to the maximum extent possible, we can expedite the detariffing process. For reasons discussed *infra* at para. 11, however, we decline to impose one methodology to accomplish detariffing. Although we will elucidate the principles which will apply to the removal of CPE from the rate base, the carriers are free to fashion any detariffing mechanism consistent with the policies explained here.

B. Relevant Accounting Rules

6. Western Union argues that we should not require the record carriers to submit detariffing plans until we have explained how the relevant accounting rules affect the detariffing process. Western Union argues that § 35.1–7(b) of the Commission's Rules should govern the accounting methodology associated with this process.

7. Sections 34.1–7(b) and 35.1–7(b) of the Rules establish the accounting procedures to be followed in transferring record carrier assets from regulated accounts to non-regulated accounts. Section 34.1–7(b) applies to most of the international record carriers, while § 35.1–7(b) applies to Western Union and the remaining record carriers. The provisions and effect of the two sections are identical. Pursuant to these rule sections, the transfer is accounted for by crediting the appropriate plant accounts and charging the depreciation reserve account by the amount credited. The depreciation reserve account is then credited, and the non-regulated account charged, with the "estimated fair value" of the assets transferred. Any loss or gain on the transaction is therefore reflected in the depreciation reserve account, which raises or lowers the value of the rate base. The only open issue with regard to the detariffing of record carrier CPE is the determination of what constitutes "estimated fair value." *See Amendment of Parts 34 and 35*, CC Docket No. 83–678, FCC 83–398, released Sept. 1, 1983, at para. 34.

8. Sections 34.1–7(b) and 35.1–7(b), therefore, do not determine what constitutes "estimated fair value." The Commission must determine the valuation issue consistent with the principles established in *Democratic Central Committee* v. *Washington Metropolitan Area Transit Commission*, 485 F.2d 786 (D.C. Cir. 1973) and related cases, *cert. denied sub nom. D.C. Transit System* v. *Democratic Central Committee*, 415 U.S. 935 (1974). The *Democratic Central Committee* case requires that a gain or loss on the transfer of regulated assets be charged to the group—*i.e.*, ratepayers or shareholders—who bore the risk of loss when the assets were regulated. 485 F.2d 807–08. Record carrier ratepayers have generally borne the risk of loss on record carrier CPE.[10] Thus, while § 34.1–7(b) and 35.1–7(b) specify the accounting procedures used to transfer regulated assets to non-regulated accounts, they do not address valuation to be assigned to the embedded CPE.

C. Valuation

9. The *Notice*, in proposing to detariff record carrier CPE, did not specifically suggest that the Commission establish the "estimated fair value" of the CPE to be transferred. The *Notice* instead proposed to accomplish detariffing by reference to the general principles used in detariffing AT&T's embedded CPE. The *AT&T Order* adopted economic value as the valuation standard to be used in detariffing, and defined economic value as the price a carrier would be willing to pay for its CPE if, instead of owning it, the carrier had the opportunity to purchase it. *AT&T Order*, 95 FCC 2d at 1306. But we determined that measuring the economic value of AT&T's embedded base was impractical. As a result, we adopted net book value as a surrogate for economic value.[11] *Id.* at 1306–07.

10. Western Union argues that the use of net book as a surrogate for economic value is unnecessary and undesirable in the case of the record carriers. Western Union asserts that the use of net book, in combination with the post-transfer control requirements imposed on AT&T, would have negative effects on the market for record carrier CPE because net book value exceeds the market value of the equipment. Thus, a requirement that the record carriers offer their in-place equipment at net book to customers would bring sales of in-place CPE to a halt. Western Union argues that economic value can be measured by reference to recent sales of equipment.

11. The decision of how to measure the economic value of record carrier CPE has been complicated by deregulatory events which have occurred since our adoption of *Computer II* and by the regulatory history of these carriers. In some cases, the record carriers have already transferred their equipment at net book value to separate subsidiaries. In TRT's case, the transfer was made to an affiliated non-carrier company which is commonly controlled by TRT.[12] While these events would not render our adoption of an alternate valuation measurements standard impossible, we hesitate to impose a measurement which, for example, would require these carriers to attempt to appraise their CPE as it existed at the time of the transfer.[13] The practical problems of measuring the value of CPE which has long since been removed from the rate base seem to require that a surrogate value, such as net book be employed. The use of net book value, however, presents equally difficult problems with respect to other carriers. Some of the record carriers have had their depreciation rates prescribed by Commission order.[14] Others have been free to alter their depreciation rates without obtaining Commission approval. Thus, some of the carriers have been able to adjust depreciation rates to changes in the CPE marketplace, as that marketplace is affected by economic, technological, and regulatory factors. These differences in the regulatory environment may affect the degree to which a carrier should be required to protect the interests of ratepayers in transferring the equipment to non-carrier accounts. Therefore, even if we were to require that the CPE be transferred at net book, it would be difficult to determine on the basis of our record here what, if any, additional requirements would be necessary pursuant to our obligations under *Democratic Central Committee*.

12. Rather than impose one methodology for measuring economic value, we will allow the record carriers to determine independently the "fair value" of their CPE for the purpose of making the necessary accounting entries prescribed in §§ 34.1–7(b) and 35.1–7(b). In all cases, the methodology employed should be consistent with the principles enunciated in *Democratic Central Committee* and applied in the *AT&T Order*. *See id.* at 1312–19. If, for example, a carrier seeks to transfer its equipment at net book value, it should consider whether the risk of loss or gain on the transfer remains with the group which carried the risk of loss or gain when the CPE was regulated. The record carriers should further consider whether post-transfer controls similar to those imposed on AT&T would be necessary under the circumstances, especially where the equipment is transferred at net book value. The same is true if the carrier seeks to establish economic value by reference to appraisals or some other valuation methodology.

13. Adoption of a flexible, individual method of valuing CPE has the advantage of avoiding across-the-board requirements which could prove difficult or impossible to implement with the carriers as a group. We are not unaware, however, of the fact that this approach creates the potential problem that a carrier may determine, "fair value," in a manner which is at odds with *Democratic Central Committee*.[15] For example, the carrier could grossly undervaluate its CPE, only to allow its shareholders to receive the actual gains on the CPE as it is sold out of a nonregulated account. We conclude, however, that the likelihood that a carrier would manipulate transfer value in this manner appears minimal and our review of the plans will focus on this issue. In addition, as a result of various deregulatory activities in recent years, the marketplaces for record carrier services and CPE have become increasingly competitive.[16] All the

---

[6] At the time the Commission issued the order, Western Union was restricted to the provision of domestic record carrier services, while the international record carriers were restricted to providing record carrier services from certain "gateway" cities to international locations. The record carriers now compete for domestic and international traffic, as a result of recent amendments to the Communications Act, and the Commission has authorized Western Union to provide international service. Record Carrier Competition Act of 1981, Pub. L. 97–130, 95 Stat. 1687, Dec. 29, 1981, 47 U.S.C. 222 (1983); Western Union Telegraph Co., 94 FCC 2d 472 (1983).

[7] As authority for detariffing non-telex CPE, the IRCs' relied upon the *IRC Telex Detariffing Order* and the *Computer II* decisions. While the Common Carrier Bureau permitted these carriers to detariff the specified non-telex CPE, the carriers were required to maintain separate books of account in the event a different valuation standard for embedded CPE was required as a result of Commission action in this docket. *See e.g. TRT Telecommunications Corp.*, Mimeo No. 6293, released September 14, 1982 (authorizing TRT to detariff its leased channel terminal equipment). International record carrier CPE which remains under tariff, and which will be detariffed pursuant to this Order, includes: RCA Global, Tariff No. 79, handset equipment for Datel; RCA Global, Tariff No. 80, station equipment for Press Bulletin service; RCA Global, Tariff No. 75, station equipment for Overseas Stock Ticker service; RCA Global, Tariff No. 98, teleprinter equipment for Sports Bulletin service; Western Union International, Tariff No. 11, handset equipment for Datel; Western Union International, station equipment for Press Bulletin service; ITC, Tariff No. 13, handset or teleprinter equipment for Datel; ITT Worldcom, Tariff No. 47, station equipment for Press Bulletin service; ITT Worldcom, Tariff No. 42, station equipment for Overseas Exchange Ticker service; ITT Worldcom, Tariff No. 44, teleprinter equipment for International Sports Events Reporting Service; TRT, Tariff No. 10, equipment for Telegram-Mexico (this appears to be the only equipment not transferred by TRT).

[8] Pursuant to the *Computer II* decisions, any CPE which was tariffed or otherwise subject to the separations process as of January 1, 1983, is considered embedded. CPE which enters a carrier's inventory on or after that date must be offered on a non-regulated basis. Further Reconsideration, 88 FCC 2d at 528.

[9] Western Union's specific allegations regarding competitive disadvantages are discussed *infra*, para. 10.

[10] Western Union argues that, pursuant to § 35.1–6(j) of the Commission's Rules, the shareholders bear the risk of loss when CPE is sold out of the rate base. We conclude, however, that, not withstanding Western Union's assertion, ratepayers are entitled to the gains, if any, on the transfer of equipment to non-regulated accounts. In reaching this conclusion, we first note that, under *Democratic Central Committee*, "our task . . . is properly to balance the investor and ratepayer interests so as to apportion gains and losses in the most equitable manner." *American Tel. & Tel. Co., Charges for Interstate Telephone Service*, Docket No. 19129, Phase II, 84 FCC 2d 1, 66 (1977), *quoted in AT&T Order*, 95 FCC 2d at 1314. Our conclusion here that ratepayers are entitled to any gains represents an equitable apportionment for the following reasons. First, under our ratemaking policies, ratepayers have borne the risk of loss due to obsolescense or casualty loss for the assets involved during the period of their use in regulated service. Second, investors have had an opportunity to earn a fair rate of return on their investment in these assets throughout such period of use in regulated service. *See e.g., International Carriers' Rates*, CC Docket No. 20778, 75 FCC 2d 726 (1980) (electing to maintain existing autl orized rate of return of 7.5 to 8.5 percent). Third, the combination of these first two factors has resulted in the insulation of investors from any losses affecting these assets during the period of regulated service. In other words, no investor risks have been associated with this investment. In these circumstances, investors have no claims to any gains upon the removal of these assets from regulated service. *See Democratic Central Committee*, 485 F.2d at 806 ("[A]n investor can hardly muster any equitable support for a claim to appreciation in asset value where he has been shielded against the risk of loss on his investment. . . .").

[11] As used here, "net book value" is the original cost of an asset less the related depreciation reserve. *See AT&T Order*, 95 FCC 2d at 1306, n.40.

[12] *See* TRT Transmittal No. 973, May 22, 1981; TRT Transmittal No. 995, Dec. 4, 1981; and TRT Transmittal No. 1028, July 20, 1982.

[13] Even if we were to impose such a requirement, it is doubtful that these carriers could locate all of the CPE transferred. Some of the CPE has no doubt been sold or otherwise removed from the inventory of the subsidiary or non-carrier company.

[14] *See, e.g., ITT WorldCom*, FCC 74–1420, released Jan. 6, 1975, and *Western Union Telegraph Co.*, FCC 77–19, released Jan. 11, 1977.

[15] To ensure that the dangers of price manipulation will be minimized, we are requiring the carriers to report their detariffing plans to the Commission. *See infra* at para. 15.

[16] In the *Competitive Common Carrier* proceeding, the Commission found the record carrier industry was subject to sufficient competition to warrant forbearance treatment. *Competitive Common Carrier Services*, 95 FCC 2d 554, 571–2, 577 (1983) *aff'd* FCC 84–394, Mimeo No. 34934, released August 27, 1984. These carriers, however, will be regulated pursuant to streamlined regulatory procedures until December 31, 1984.

Continued

record carriers now compete for both domestic and international business. Customers no longer need separate terminals to communicate on each carrier's facilities. In addition, the carriers are prevented from cross-subsidizing services and CPE, by virtue of the Record Carrier Competition Act. As a result, numerous non-carrier suppliers of CPE have been able to compete with the carriers in the CPE marketplace. Moreover, the industry is under increasing competitive pressure from companies providing a range of substitutable services, particularly in the domestic market. Accordingly, attempts to manipulate the transfer or sale price will be frustrated by competition in the CPE and service markets, as well as by the accounting safeguards we outlined in *Computer II*. We further intend to safeguard against one-time or continuing cross subsidy by evaluating, as part of our review of the transfer, the carriers' proposed valuation standard in light of the prior depreciation history and the competitive environment.

D. Related Issues

14. In addition to the CPE to be transferred, the carriers may have supporting assets which will also have to be transferred to nonregulated accounts. Generally, supporting assets are shared between the provision of CPE and other tariffed services. Carriers should follow existing procedures we have established in accounting for these shared assets. Any segregated supporting assets should be transferred in a manner consistent with the policies adopted in the *AT&T Order*, where we also employed economic value as the valuation standard.[17] 95 FCC 2d at 1366–67. Land and buildings are to be appraised and transferred at appraised value. As in *AT&T*, we will not require appraisal of other types of segregated supporting assets. Carriers should determine which valuation methodology should be employed consistent with *Democratic Central Committee* principles.

E. Procedural Matters

15. In implementing *Computer II*, we must be concerned with ensuring that the record carriers comply with the principles developed in *Democratic Central Committee* and our relevant accounting rules. Accordingly, we will require that the record carriers submit reports to the Common Carrier Bureau detailing their plans for removing CPE from tariff, and explaining how the process they have elected fulfills the *Democratic Central Committee* requirements. For the purpose of this report, Western Union should include plans regarding all of its CPE. The other record carriers should include plans for any CPE not detariffed pursuant to our order in CC Docket No. 21005, *supra*, para. 2. Carriers such as TRT who have detariffed non-telex CPE based upon the general *Computer II* finding that CPE should be detariffed, shall be required to justify the valuation methodology employed in detariffing, and to adjust their books retroactively if changes are required. The *Notice* proposed to detariff record carrier CPE no later than December 31, 1987. There appears to be no reason to defer detariffing until that date. As part of our review of the carriers' detariffing plans, we will evaluate whether CPE customers will have sufficient opportunity to purchase in-place equipment, or to purchase or lease other equipment, in a manner consistent with the plan adopted for AT&T. Thus, a carrier may detariff its CPE earlier if it demonstrates that its CPE customers will have the opportunity to evaluate present arrangements and pursue alternatives. Proposals explaining how the carriers will execute this process are due no later than July 1, 1985. To allow CPE customers adequate time to make other CPE arrangements, detariffing should not occur earlier than six months from the date the plan is filed. In all cases we will require that record carrier CPE should be detariffed no later than December 31, 1987, pursuant to *Computer II*. Detariffing plans will be placed on public notice, and will be subject to modification pursuant to our obligations under *Democratic Central Committee*.

III. Ordering Clauses

16. Accordingly, it is ordered that, pursuant to section 4(i), 4(j), 201–205, 213, 218, 220, and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 213, 218, 220, and 403, the policies, rules, and requirements set forth herein are adopted.

17. It is further ordered that Western Union and the international record carriers submit proposals regarding the detariffing of CPE to the Chief, Common Carrier Bureau, no later than July 1, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-31535 Filed 11-30-84; 8:45 am]

BILLING CODE 6712-01-M

[17] We will take no action at this time regarding detariffing any inside or intrasystem wiring provided by the record carriers, because the record in this proceeding does not address the issue. Detariffing of embedded inside and intrasystem wiring will be addressed separately in due course.

when a portion of the Record Carrier Competition Act expires. *Id.* at 578; 47 U.S.C. 222(e). *See also Interconnection Arrangements*, 93 FCC 2d 159 (1983) (resolving issues related to the implementation of the Record Carrier Competition Act of 1981, Pub. L. 97-130, 95 Stat. 1687, 47 U.S.C. 222); *IRC Telex Detariffing Order*, *supra* para. 2 (detariffing the IRCs' telex CPE); *Gateways Order*, 76 FCC 2d 115 (1980) (opening up more "gateway," cities for the origination and termination of IRC traffic); *Unbundling Order*, 76 FCC 2d 61 (1980), *stay denied*, 77 FCC 2d 929 (1980) (unbundling the provision of services and CPE).

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-No. 14)]

Lease and Interchange Regulations (Master Leases)

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts final rules modifying existing leasing regulations set forth at 49 CFR Part 1057. The new rules allow the use of master leases and will allow required receipts to be transmitted by mail, telegraph, or other similar means of communications. The existing regulations, which require preparation and execution of a lease at the transfer point and inclusion of specific information about the trip involved, often make it difficult to execute valid leases. While we acknowledge that the regulations may not solve every impediment involving trip leasing, particularly those involving State rules and regulations, we conclude that the regulations will be the most effective method to streamline the existing process of trip leasing.

DATE: This decision will be effective on January 2, 1985.

FOR FURTHER INFORMATION CONTACT:

Judy Ann Barnes (202) 275–7962

or

Mary A. Kelly (202) 275–7292

SUPPLEMENTARY INFORMATION: Existing Commission regulations (49 CFR Part 1057) require that when a lessor transfers equipment to a lessee on a trip lease, the lessee must prepare and execute a receipt for the equipment at the transfer point. By notice of proposed rulemaking (49 FR 6522 (February 22, 1984)) we proposed to modify the existing leasing regulations as follows: (1) To allow the use of a master lease covering more than one unit of equipment; (2) to require that a copy of the master lease be carried in the equipment; and (3) to allow required receipts to be transmitted by mail, telegraph, or other similar means of communication. The proposed additions to the lease and interchange regulations would authorize the use of a master lease in connection with trip-lease operations, and would allow carriers to issue the initiating receipt other than in person. The proposed rulemaking was instituted at the request of the Common Carrier Conference—Irregular Route (CCC–IR).

Additional information is contained in the Commission's decision which is available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission. To purchase a copy of the full decision, write T.S. Infosystems, Inc., Room 2227, Interstate Commerce Commission Building, 12th and Constitution Ave., NW., Washington, DC 20423, or call 289–4357 in the DC Metropolitan area or toll free (800) 424–5403.

Regulatory Flexibility Analysis

In our prior decision we certified that this action would not have a significant economic impact on a substantial number of small entities. We reaffirm that finding here.

Energy and Environmental Considerations

This action will not have any significant adverse impact upon the quality of the human environment or conservation of energy resources.

List of Subjects in 49 CFR Part 1057

Motor carriers, Lease and interchange regulations.

Adoption of Rules

We adopt the revisions to Title 49, Part 1057, of the Code of Federal Regulations described in the appendix to this decision.

These rules are issued under the authority contained in 49 U.S.C. 10321 and 11107, and at 5 U.S.C. 553.

Decided: November 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio. Commissioner Gradison commented with a separate expression.

James H. Bayne,

Secretary.

Appendix

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

Title 49 CFR Part 1057 is amended as follows:

§ 1057.11 [Amended]

1. Section 1057.11 is amended by adding sentences to the end of paragraphs (b)(1) and (d)(1) to read as follows:

§ 1057.11 General leasing requirements.

* * * * * *

(b) * * *

(1) * * * The receipt identified in this section may be transmitted by mail, telegraph, or other similar means of communication.

* * * * * *

(d) * * *

(1) * * * This provision is complied with by having a copy of a master lease in the unit of equipment in question and where the balance of documentation called for by this paragraph is included in the freight documents prepared for the specific movement.

* * * * * *

2. Section 1057.22 is amended by adding a new paragraph (c)(4) to read as follows:

§ 1057.22 Exemption for private carrier trip leasing and trip leasing between authorized carriers.

* * * * * *

(c) * * *

(4) * * * Nothing in this section shall prohibit the use, by authorized carriers, private carriers, and all other entities conducting lease operations pursuant to this section, of a master lease if a copy of that master lease is carried in the equipment while it is in the possession of the lessee, and if the master lease complies with the provisions of this section and receipts are exchanged in accordance with § 1057.11(b), and if records of the equipment are prepared and maintained in accordance with § 1057.11(d).

[FR Doc. 84-31614 Filed 11-30-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 31220-244]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of squid specifications increase.

SUMMARY: NOAA issues this notice increasing the annual squid specifications to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries. Regulations governing the squid fisheries require publication of any specification adjustments, with reasons for such adjustments. This action is intended to foster the FMP's goal of creating benefits for the United States fishing industry.

DATE: November 30, 1984, with a 15-day public comment period, ending December 17, 1984.

ADDRESS: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments on Notice of Squid Specifications".

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, extension 273.

SUPPLEMENTARY INFORMATION: Section 655.21(b)(1)(v) of the implementing regulations states that initial optimum yield (IOY) squid specifications will be determined annually by the Regional Director, NMFS, Northeast Region, in consultation with the Mid-Atlantic Fishery Management Council under § 655.22 (a) and (b) (49 FR 402, January 4, 1984). Section 655.22(f) states that any adjustments to the IOY will be published in the **Federal Register**, with the reason for such adjustments. This action provides increased *Loligo* squid specifications which are effective immediately. The adjustments are necessary because the representatives of Italian vessels which fish in the Northwest Atlantic requested from both the Mid-Atlantic and the New England Fishery Management Councils, at their October 1984 meetings, an additional *Loligo* TALFF allocation of 3,800 metric tons (mt). This additional amount would bring the 1984–1985 fishing year, which ends March 31, 1985, total amount of *Loligo* TALFF for Italy to 5,000 mt.

In exchange for the amount requested, the Italian vessel owners, through their U.S. representative, would commit to guaranteed purchases totaling no less than 300 mt of squid and, under any circumstances, not less than $250,000 worth of squid. In addition, arrangements would be made by the U.S. representative to accommodate U.S. fishing vessels that may want to enter into joint ventures with Italian vessels during the period under consideration. Other specifications are adjusted accordingly as specified at § 655.21(b)(1)(v).

The Secretary finds it necessary to apportion additional amounts without affording a prior opportunity for public comment, in order to prevent the

premature closure of the *Loligo* squid fishery for Italy. This would impair the ability of domestic processors and fishermen to utilize a continuing fishery. However, public comments will be invited for a period of fifteen (15) days after the effective date of the apportionment. The Secretary of Commerce will consider all timely comments in deciding whether to continue, modify, or cancel an apportionment that has previously been made and will publish responses to those comments in the Federal Register as soon as practicable.

The following table lists the adjustments to the *Loligo* squid specifications in metric tons for the maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual procesing (DAP), joint venture processing (JVP), Reserve, and total allowable level of foreign fishing (TALFF).

SQUID SPECIFICATIONS FOR FISHING YEAR 1984-85

(In metric tons (mt))

Loligo squid	Initial annual specifications	Adjusted annual specifications
Max OY*	44,000	28,000
ABC	44,000	28,000
IOY	21,125	[b] 24,925
DAH	17,875	17,875
DAP	13,000	13,000
JVP	4,875	4,875
Reserve	0	0
TALFF	3,250	[c] 7,050

[a] This is the maximum OY (as stated in the FMP) to which the IOY may rise.
[b] This is the adjusted IOY, and includes the 3,800 mt increase.
[c] This is the adjusted TALFF, and includes the 3,800 mt increase.

Other Matters

This action is authorized by 50 CFR Part 655, and complies with E.O. 12291.

(16 U.S.C. 1801 *et seq.*)

Dated: November 28, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-31540 Filed 11-30-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 233
Monday, December 3, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Ch. IX

[Docket No. AO-84-1]

Sweet Peppers Grown in Florida; Decision To Terminate Proceedings on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proposed rule.

SUMMARY: This document terminates proceedings without prejudice on a proposed marketing agreement and order for sweet peppers grown in Florida. The proposal would have provided authority for the establishment of grade, size, quality and container standards and also for production and marketing research. Because of apparent insufficient support among a number of growers, further development of the program is terminated at this time.

DATE: Termination on proposed marketing agreement and order on December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447-5464.

SUPPLEMENTARY INFORMATION: Prior documents in these proceedings: Notice of Hearing—Issued June 1, 1984, and published June 5, 1984 (49 FR 23186). Notice of Recommended Decision to Terminate Proceedings—Issued September 18, 1984, and published September 25, 1984 (49 FR 37599).

A public hearing was held in Belle Grade, Florida, on June 20, 1984, on a proposed marketing agreement and order for sweet peppers grown in Florida. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and the applicable rules of practice (7 CFR Part 900). At the conclusion of the hearing the Presiding Officer set July 20, 1984, as the deadline for filing briefs. Briefs were submitted by Valjean Haley, John I. Whitworth, E. Wayne Dubois and Theorore W. Winsberg, Chairman, Sweet Pepper Steering Committee, regarding the proposal. The briefs indicated that the sweet pepper industry currently lacks a unified base to support efforts to develop and administer a marketing order program. They recommended that in view of this, these proceedings should be indefinitely suspended. However, the rules of practice do not provide for long suspensions of rulemaking proceedings. Because the hearing record will become stale with the passage of time, a new or reopened hearing would be necessary even if the proceedings were "suspended" as opposed to "terminated." Also, the Department representatives are prohibited from making off the record or ex parte contact with interested persons during the pendency of a rulemaking proceeding and would continue to be so prohibited during a period of suspension, or until termination. This is not a desirable situation under the current circumstances in the sweet peppers industry. For the foregoing reasons, and in view of the hearing evidence and positions expressed in briefs filed by interested parties, these proceedings shall be terminated without prejudice.

Notice of Recommened Decision was published in the September 25, 1984, Federal Register (49 FR 37599) giving interested persons until October 25, 1984, to file written comments. None was filed.

Findings and Conclusions

It is concluded, therefore, that further promulgation of this proposed marketing agreement and order should not be undertaken at this time. Hence, since proceedings will be terminated without prejudice, there is no need for findings or conclusions on issues which relate to particular terms or provisions of the proposed program. It is understood, however, that if the industry later develops a greater degree of support for a proposed marketing order, new proceedings should be instituted without prejudice.

Signed at Washington, D.C., on November 28, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-31367 Filed 11-30-84; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 84-655]

Modified Conversions

Dated: November 16, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board is proposing to amend its regulations governing modified conversions of mutual insured institutions to stock form. The amendments would facilitate the modified conversion procedure and enhance its use as a capitalization vehicle.

DATE: Comments must be received by December 31, 1984.

ADDRESS: Send comments to Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C., 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Senior Attorney, Corporate and Securities Division (202-377-6457), J. Larry Fleck, Deputy Director, Corporate and Securities Division (202-377-6413), or Julie L. Williams, Director, Corporate and Securities Division (202-377-6459), Office of the General Counsel, at the above address.

SUPPLEMENTARY INFORMATION: By Resolution No. 83-148, dated February 17, 1983, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), promulgated Subpart D of the Conversion Regulations, 12 CFR Part 563b (1984), which provides guidelines for modified conversions of insured institutions from the mutual to the stock form of organization. 12 CFR 563b.34

through 563b.38 (1984); *Conversions from Mutual to Stock Form*, 48 FR 15591 (April 12, 1983). In modified conversions, the substantive and procedural rights granted to members in converting mutual associations by the Board's standard conversion rules may be restricted. 48 FR at 15599. The authority for modified conversions derives from section 121 of the Garn-St Germain Depository Institutions Act of 1982 which allows the Board to approve conversions notwithstanding other provisions of state or federal law when it is determined that the converting institution faces severe financial conditions that threaten its stability, and conversion is likely to improve the institution's condition. 12 U.S.C. 1464(p) (1982).

In its standard conversion regulations, contained in Subpart A of the Conversion Regulations, the Board has given extensive recognition to the rights and interests of the account holders and other members who are the legal owners of the mutual institution. Accordingly, Subpart A has required the informed approval of members to effect a conversion and has given them preemptive subscription rights in the stock issued by the converting institution. The standard conversion regulations additionally seek to ensure that a fair price is paid by the subsequent stockholders for their ownership of the institution by mandating that the total price of the stock sold equals the institution's appraised *pro forma* market value. Subpart A contains further safeguards, such as the establishment of a liquidation account for the benefit of the account holders, which represents the net worth of the institution at the time of conversion, to sustain their liquidation interests. Maximum purchase limits and the requirement of widespread stock distribution also are safeguards to prevent parties from using the conversion to acquire control of the institution and the conversion proceeds to the detriment of account holders and other stockholders.

The conversion approval authority contained in section 121 enables the Board to modify the conversion process to meet the needs of institutions whose financial condition has so deteriorated that standard conversions are not feasible. In order to encourage the development of innovative proposals, the Board declined to promulgate detailed regulations on either the procedural or structural aspects of modified conversions. Subpart D primarily lists quantitative criteria for satisfying the statutory requirement of severe financial conditions and provides minimal guidelines regarding the structure of modified conversions. The substantive guidelines in 12 CFR 563b.37 generally apply the provisions of Subpart A unless clearly inapplicable, and specifically affirm the preemptive rights of members to purchase all the stock offered in the conversion. Section 563b.37, however, does indicate that modified conversions may be effected without the approval of members and may involve sales of conversion stock at an aggregate price not equal to the *pro forma* market value of the institution as determined by an independent appraiser. Under the current rules, however, modified conversion stock sales must infuse enough capital to bring the institution into net-worth compliance on the basis of Generally Accepted Accounting Principles ("GAAP").

Although very few modified conversions have been completed to date, the Board and its staff have received many inquiries regarding Subpart D and have reviewed a number of proposals on an informal basis. These discussions have indicated that, in their current form, the Subpart D substantive guidelines may have inhibited the development of the modified conversion program. Difficulties have primarily arisen in respect to the preemptive rights of members to the entire stock offering and the requirement of a capital infusion sufficient to bring the institution into net-worth compliance on a GAAP basis.

Following the suggestion of the Board in the preamble to the modified conversion regulations, 48 FR at 15600, institutions have sought to fashion modified conversions in which standby investors would purchase any stock remaining after the exercise of preemptive rights by members. Potential investors, however, may be unwilling to commit to such an arrangement unless they can be assured of some level of control after the conversion. At the same time, the requirement of GAAP net worth has intensified the need of the converting institution for the capital investors can supply. The requirement can prove particularly difficult for institutions that have adapted their asset/liability mix to regulatory accounting principles.

Upon review of the matter, the Board has determined that modification of the Subpart D substantive guidelines is within its section 121 authority. The GAAP net-worth requirement was adopted to provide quantitative assurance that the modified conversion is "likely to improve the financial condition of the institution" within the meaning of section 121, 12 U.S.C. 1464(p)(2) (1982). The use of GAAP as a measure was also consistent with the use of GAAP for determining eligibility for modified conversion. *See* 12 CFR 563b.36(b) (1984). The Board, however, never rejected the use of regulatory accounting principles as an indicator of financial condition. Moreover, the adequacy of the capital infusion is substantiated by the financial opinion submitted by the converting association pursuant to § 563b.37(f). Accordingly, the Board is prosing to amend the substantive guidelines for modified conversions to no longer require a capital infusion sufficient to bring the association into regulatory net-worth compliance on a GAAP basis. Instead, the post-conversion adequacy of the stock sale would be determined according to regulatory net-worth principles.

The question of members' preemptive rights in the entire issue of conversion stock presents the Board with a difficult issue. The preemptive rights of members have been an essential element in the Board's Conversion Regulations since their introduction. The only exception to this requirement has occurred in supervisory conversions where the absence of liquidation value in the institution has made it unnecessary to recognize this equity interest of members. 48 FR 15598 (April 12, 1983). Modified conversions may also involve institutions in which there is negligible or no realizable liquidation value, and in such cases it would not be inappropriate to suspend members' preemptive rights. As the liquidation value increases, the value of members' equity interest gains substance. The Board has therefore determined that, consistent with section 121, it may restrict members' preemptive rights to a portion of the total offering without undermining the practical equity interests of the mutual members. At one extreme, preemptive rights may be disregarded when the converting institution has little or no realizable equity value upon liquidation. Conversely, members would be entitled to preemptive rights in the entire conversion issue whenever the institution could undertake a Subpart A conversion by virtue of its net worth or other intrinsic value. Within these boundaries, preemptive rights could be limited to a portion of the total modified conversion stock offering. The Board is proposing to amend § 563b.37(g) to reflect this determination and to provide related guidelines to institutions considering modified conversion. The Board may allow further limitation on

subscription rights when compelling circumstances are present.

The Board emphasizes that its authority to restrict members' preemptive rights in this manner arises only when the conversion can be approved under section 121 and has no bearing on Subpart A conversions. Among the criteria for section 121 treatment is that there is not a reasonable likelihood that the converting institution could market its stock in a standard conversion. 12 CFR 563b.36(b)(3)(iii) (1984). Accordingly, unless it is determined that it would not be feasible for the institution to accomplish a conversion under Subpart A, the institution will be required to proceed under Subpart A and afford its eligible account holders and other members full subscription rights.

The Board additionally believes that the modified conversion process can be improved by adopting less rigid guidelines for qualifying for modified conversion. As noted previously, the Board's authority to approve modified conversions arises when severe financial conditions exist which threaten the stability of the insured institution and the conversion to stock form is likely to improve the financial condition of the institution. 12 CFR 563b.36(a)(2) (1984). In paragraph (b) of § 563b.36, the modified conversion regulations set forth criteria by which the requirement of severe financial conditions may be demonstrated. These criteria include failure to meet regulatory net-worth requirements, impracticality or infeasibility of a standard conversion, and a history of recent losses. Under the current regulation, the requisite recent-loss history is determined on a sliding scale with three consecutive quarterly losses required if the institution has more than two-percent net worth and one loss in the last three quarters when the institution has less than one-percent net worth. Losses are calculated on the basis of GAAP.

Although the recent-loss guidelines were intended to provide only quantitative guidance to institutions, the Board is concerned that the guidelines may be deterring qualified associations from applying for modified conversion and conversely may encourage non-qualified institutions to undertake modified conversion. For example, an institution with low net worth and recent losses may satisfy the § 563b.36(b)(2) guidelines even though it has successfully restructured its loan portfolio and is well-positioned for future profitability. Such an institution could quite likely complete a standard conversion and should convert under Subpart A rather than under procedures intended for institutions in financial difficulty. Conversely, the § 563.36(b)(2) guidelines might not be satisfied by an institution that has avoided losses through salary forbearances or by adopting other unusual economy measures. Accordingly, the Board is proposing to amend § 563b.36(b)(2) to delete the current quantitative-loss guidelines in favor of a more broadly-worded criterion. Under the proposed rule, an institution not meeting its net-worth requirement and unable to conduct a standard conversion would qualify for modified conversion if it could show that its recent and projected income from operations would not enable it to achieve and maintain the regulatorily-required level of net worth without a substantial capital infusion. It is anticipated that the restated loss criteria would encourage the use of Subpart D by institutions whose long-term viability is threatened by structural imbalances.

Questions have also arisen with respect to the application of the guideline specifying that a modified conversion applicant not meet its regulatory net-worth requirement. It has been noted that the guidelines for supervisory conversions allow an applicant to disregard appraised equity capital that may be treated as net worth under Insurance Regulation § 563.13(c), 12 CFR 563.13(c) (1984). *See* 12 CFR 563b.32 (1984). Similarly, it has been observed that, pursuant to Insurance Regulation § 563c.14, an insured institution could elect to recognize loan losses that had previously been deferred for regulatory accounting purposes and thus lower its regulatory net worth. *See* 12 CFR 563c.14(a) (1984). Accordingly, various prospective applicants have requested permission to disregard the effect of these techniques on their net worth in determining their eligibility for modified conversion.

In the Board's view, the statutory conditions for modified conversion may be satisfied by an institution that is meeting its regulatory net-worth requirement solely by virtue of deffered loan losses or appraised equity capital. The exclusion of appraised equity capital is consistent with the Board's position in supervisory conversions and the Board proposes to amend the modified conversion guidelines to provide for such an exclusion in similar circumstances. The treatment of deferred loan losses allowed under Insurance Regulations §§ 563.13(e) and 563c.14(a) reflects the Board's determination that sales of loans and mortgage-related securities should not be constrained when the sale proceeds are used to improve the asset/liability mix of the institution. *See Treatment of Gains and Losses on the Sale or Other Disposition of Mortgage Assets, Mortgage-Related Securities and Debt Securities*, Resolution No. 81-581, 46 FR 50048-49 (October 9, 1981). Even under this regulatory accounting treatment, however, the loss on the loan sale is eventually recognized as the deferred-loan-loss account is amortized. Moreover, disclosure of the amount of the loss which would be required to be recognized under GAAP may prevent the institution from converting under Subpart A. Accordingly, the Board proposes to amend the modified conversion guidelines to allow insured institutions to assume recognition of such loan losses notwithstanding a prior deferral election under § 563c.14(a) and the exemption contained in § 563.13(e).

The Board is also using this opportunity to produce several other modifications to Subpart D in order to facilitate the modified conversion process. Section 563b.38 is proposed to be amended to clarify what materials must be submitted in order to receive approval to file a modified conversion application. These materials would include an outline of the plan of conversion and the amount of the capital infusion anticipated.

The Board has determined that a 30-day public comment period is appropriate because prompt action is in the public interest. Since the statutory authority for modified conversions is currently scheduled to expire on October 15, 1985, 12 U.S.C. 1464 note (1982), expeditious consideration by the Board of these proposed amendments is necessary to ensure effective utilization of the procedure. In view of the time required for structuring a modified conversion and preparation and review of the application, observance of a 60-day notice-and-comment procedure might delay implementation beyond the point where the amendments would be of benefit to insured institutions.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal abases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the proposal.

4. *Overlapping of conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rule.* Other alternatives, such as the present rules, may tend to limit the utility of the modified conversion procedure. More liberal provisions may raise questions of statutory authority.

List of Subjects in 12 CFR Part 563b

Savings and loan associations, Securities.

Accordingly, the Board hereby proposes to amend Part 563b of subchapter D, Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

Subpart D—Guidelines for Modified Conversions

1. Revise § 563b.36(b) (1) and (2) as follows:

§ 563b.36 Guidelines for qualification.

* * * * * *

(b) * * *

(1) The insured institution does not meet its regulatory net-worth requirement *except* that for purposes of determining compliance the institution may: (i) Disregard the effect of appraised equity capital by following the procedures of § 563b.32 of Subpart C; and (ii) recognize losses on any sale or other disposition of mortgage loans, redeemable ground-rent leases or other securities specified in § 563c.14 notwithstanding a prior election under paragraph (a) of that section or the exemption under § 563.13(e);

(2) Current and projected income from operations is not sufficient to restore and maintain the institution's regulatorily required net worth:

* * * * *

§ 563b.37 [Amended]

2. Amend § 563b.37 by removing the phrase "on the basis of generally accepted accounting principles" at the end of paragraph (f) and substituting therefor the phrase "excluding from net-worth items disregarded pursuant to § 563b.36(b)(1)", and inserting before the period at the end of paragraph (g) the following: "*Except* that such subscription rights may be eliminated or reduced as follows: (1) If the regulatory net worth of the institution is 1 percent or less of an institution's liabilities, subscription rights may be reduced to an amount between 0 percent and 20 percent of the total stock offered, such percentage between 0 percent and 20 percent to be determined on a sliding scale on the basis of the institution's regulatory net worth between 0 percent and 1 percent; (2) if the regulatory net worth of the institution is more than 1 percent but not in excess of 2 percent, subscription rights may be reduced to an amount between 20 percent and 50 percent of the total stock to be offered, such percentage between 20 percent and 50 percent to be determined on a sliding scale on the basis of the institution's regulatory net worth between 1 percent and 2 percent; and (3) if the regulatory net worth of the institution is more than 2 percent but not in excess of 3 percent, subscription rights may be reduced to an amount between 50 percent and 100 percent of the total stock offered, such percentage between 50 percent and 100 percent to be determined on a sliding scale on the basis of the institution's regulatory net worth between 2 percent and 3 percent.

§ 563b.38 [Amended]

3. Amend paragraph (a) of § 563b.38 by adding the following sentence at the end thereof: "Applications for test-case treatment shall be accompanied by a detailed discussion of the institution's qualification for modified conversion, an outline of the proposed plan of conversion, an estimate of the amount of capital expected to be raised, and a plan of operation of the institution following conversion."

(Home Owners' Loan Act section 5(p), 12 U.S.C. 1464(p) (1982))

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-31560 Filed 11-30-84; 8:45 am]

BILLING CODE 6720-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21498; File No. S7-37-84]

Unlisted Trading Privileges in Over-the-Counter Securities

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of public comments; correction.

SUMMARY: In FR Doc. 84-30756, beginning on page 46156 in the issue of Friday, November 23, 1984 the "**DATE**" paragraph should have read "comments to be received January 15, 1985."

ADDRESSES: All comments should be submitted in triplicate and addressed to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comments should refer to File No. S7-37-84, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William W. Uchimoto, Esq., (202) 272-2409, Room 5193, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31517 Filed 11-30-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 41 and 48

[LR-31-83]

Heavy Vehicle Use Tax; Credits and Refunds of the Tax on Diesel Fuel

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for submitting comments.

SUMMARY: This document provides notice of an extension of time for submitting comments concerning the notice of proposed rulemaking relating to the imposition of tax on the use of heavy vehicles and relating to credits and refunds of the tax imposed on the sale of diesel fuel. Some members of the public have requested that an extension on the deadline for filing comments on the notice of proposed rulemaking be established. Accordingly, the extended deadline for submission of comments is January 7, 1985. An exception to this provision applies to comments being submitted with respect to proposed regulations § 41.6001-2 relating to proof of payment for state registration purposes.

DATE: Written comments should be delivered or mailed by January 7, 1985.

ADDRESS: Send comments to the Commissioner of Internal Revenue, 1111 Constitution Avenue, NW., Attn: CC:LR:T (LR-31-83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attn: CC:LR:T, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking published in the **Federal Register** for Tuesday, November 6, 1984 (49 FR 44300), comments with respect to the proposed rules were to be delivered or mailed to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-31-83), Washington, D.C. 20224, by December 6, 1984. Some members of the public have requested that an extension on the deadline for filing comments on the notice of proposed rulemaking be established. The date by which comments must be delivered or mailed is hereby extended to January 7, 1985, except for comments concerning the proposed rules relating to proof of payment for state registration purposes.

This document in no way affects the details of the notice of public hearing on the proposed regulations appearing in the **Federal Register** for Tuesday, November 6, 1984 (49 FR 44310).

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-31467 Filed 11-30-84; 8:45 am]

BILLING CODE 4830-01-M

POSTAL SERVICE

39 CFR Part 10

Proposed Express Mail International Service to Finland and Saudi Arabia

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to agreements with the postal administrations of Finland and Saudi Arabia, the Postal Service proposes to begin Express Mail International Service with Finland and Saudi Arabia at postage rates indicated in the tables below. The proposed service is scheduled to begin on February 1, 1985.

DATE: Comments must be received on or before January 2, 1985.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 245-4414.

ADDRESS: Written comments should be directed to the General Manager, Rate Development Division, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260-5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8620, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5350.

SUPPLEMENTARY INFORMATION: The International Mail Manual is incorporated by reference in the **Federal Register**, 39 CFR 10.1. Additions to the manual concerning the proposed new service, including the rate tables reproduced below, will be made in due course. Accordingly, although 39 U.S.C. 407 does not require advance notice and the opportunity for submission of comments on international service, and the provisions of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553) do not apply (39 U.S.C. 410(a)), the Postal Service invites interested persons to submit written data, views or arguments concerning the proposed International Express Mail Service to Finland and Saudi Arabia at the rates indicated in the tables below.

List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

FINLAND—INTERNATIONAL EXPRESS MAIL

Custom Designed Service[1][2]		On Demand Service[2]	
Up to and Including		Up to and Including	
Pounds	Rate	Pounds	Rate
1	$26.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30
21	102.00	21	94.00
22	105.70	22	97.70
23	109.40	23	101.40
24	113.10	24	105.10
25	116.80	25	108.80
26	120.50	26	112.50
27	124.20	27	116.20
28	127.90	28	119.90
29	131.60	29	123.60
30	135.30	30	127.30
31	139.00	31	131.00
32	142.70	32	134.70
33	146.40	33	138.40
34	150.10	34	142.10
35	153.80	35	145.80
36	157.50	36	149.50
37	161.20	37	153.20
38	164.90	38	156.90
39	168.60	39	160.60
40	172.30	40	164.30
41	176.00	41	168.00
42	179.70	42	171.70
43	183.40	43	175.40

FINLAND—INTERNATIONAL EXPRESS MAIL—Continued

Custom Designed Service[1][2]		On Demand Service[2]	
Up to and Including		Up to and Including	
Pounds	Rate	Pounds	Rate
44	187.10	44	179.10

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

SAUDI ARABIA—INTERNATIONAL EXPRESS MAIL

Custom Designed Service[1][2]		On Demand Service[2]	
Up to and Including		Up to and Including	
Pounds	Rate	Pounds	Rate
1	$26.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30
21	102.00	21	94.00
22	105.70	22	97.70
23	109.40	23	101.40
24	113.10	24	105.10
25	116.80	25	108.80
26	120.50	26	112.50
27	124.20	27	116.20
28	127.90	28	119.90
29	131.60	29	123.60
30	135.30	30	127.30
31	139.00	31	131.00
32	142.70	32	134.70
33	146.40	33	138.40
34	150.10	34	142.10
35	153.80	35	145.80
36	157.50	36	149.50
37	161.20	37	153.20
38	164.90	38	156.90
39	168.60	39	160.60
40	172.30	40	164.30
41	176.00	41	168.00
42	179.70	42	171.70
43	183.40	43	175.40

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published when the final rule is adopted.

(39 U.S.C. 401, 404 407)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 31559 Filed 11-30-84; 8:45]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 84-800]

Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communication Commissions.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This action extends the period for filing Reply Comments in the Matter of Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84–800. This action is taken in response to a petition filed by Ameritech.

DATES: Reply comments are now due by January 22, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Goodman, Common Carrier Bureau, (202) 632–0745.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on August 17, 1984 (49 FR 32871).

In the Matter of Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers; CC Docket No. 84–800.

Adopted: November 26, 1984.
Released: November 28, 1984.

By the Chief, Common Carrier Bureau.

1. In a Notice of Proposed Rulemaking, we invited interested parties to file comments on factors for our examination of authorized rates of return for AT&T and exchange telephone carriers. FCC 84–395, released August 13, 1984. After an extension of the filing dates, comments were filed on November 9. On November 20, the Ameritech Operating Companies (Ameritech) filed a motion to extend the time for filing reply comments from December 10, 1984, to February 4, 1985.

2. Ameritech bases its request for an extension of time on the tremendous volume of comments as well as the complex nature of the proceeding. According to Ameritech, over 6000 pages of comments and appendices were filed on November 9. In order to respond properly, it states that it will be necessary to coordinate and consult with expert witnesses, and to collect relevant data and information. Ameritech claims that two months is the minimum additional time needed to file reply comments. Moreover, Ameritech asserts that the far-reaching and permanent changes potentially resulting from this proceeding preclude an urgent need to rush to a decision.

3. We agree that the public interest would be served by allowing additional time for preparing reply comments. We are mindful of both the approaching holiday season as well as the complex and important nature of the proceeding. We are not convinced, however, that an extension of two months is fully warranted. Accordingly, the date for filing reply comments in this proceeding is extended until January 22, 1985.

4. So ordered.

Federal Communications Commission.

Kenneth A. Levy,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 84–31537 Filed 11–30–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components

AGENCY: National Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking, submitted by Mr. William Poehl, to amend Federal Motor Vehicle Safety Standard No. 206, *Door Locks and Door Retention Components*, to require an inside trunk lock release lever on all new automobiles. In his petition, Mr. Poehl listed various possible circumstances in which people could be trapped inside the trunk of an automobile and requested the standard to require an operable lever or handle inside of the trunk. After reviewing the petition along with previous actions in this area, the agency has concluded that the likelihood of an internal hood latch lever being utilized is remote. The agency will, however, continue to gather data in this subject area and will institute rulemaking action at some future date, if appropriate.

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (202–426–2242).

SUPPLEMENTARY INFORMATION: In May 1984, Mr. William Poehl submitted a petition to the NHTSA concerning Standard No. 206, *Door Locks and Door Retention Components*. Mr. Poehl's petition requested that every new car be equipped with a trunk release lever that can be easily operated from inside a vehicle's trunk. The petition listed various possible circumstances of accidental and intentional entrapment in the trunk of a vehicle. Mr. Poehl believed that persons such as alarm and stereo installers, mechanics, playful children, pranksters, and crime victims may be trapped in the trunk. The petitioner also believed that an elderly person might fall into the trunk and thereby become entrapped. He petitioned the agency to require an inside trunk release on all new cars in order to ensure the release of these victims.

After reviewing the petition and previous actions in this area, the agency has concluded that the likelihood of an internal trunk release lever ever being utilized is remote. The agency is not aware of any accident data indicating that there is much likelihood of occurence of accidental entrapment in a vehicle's trunk. Trunk lids are spring-loaded in the open position and, therefore, not likely to close by themselves with someone inside. Because the lids are spring loaded, it is difficult to close the trunk from any position except standing behind the vehicle and pushing down on the outer surface of the trunk lid. From that position, a person has a full view of the trunk interior. It would be extremely unlikely that that person would accidently close the lid with someone inside. Concerning an elderly person falling into the trunk, Mr. Poehl suggested that entrapment could occur if snow on the trunk closed the lid when the person fell. It is unclear to the agency how the trunk would entrap the person in this circumstance, since it is unlikely that the individual would fall in such a way that more than his or her upper torso is inside the trunk. Again, in this situation, an internal trunk release lever would not likely need to be utilized.

The agency is aware that victims of crime or pranks are, on occasion, purposely locked in the trunk of a vehicle. However, the petitioner did not provide any data supporting the benefits of an internal release mechanism in these circumstances. The agency does not know, for example, how often a victim of a crime or prank who is purposely locked in a vehicle's trunk might also be secured so that an internal release mechanism could not be operated.

Although at this time NHTSA has concluded it would be inappropriate to require an internal trunk release mechanism for automobile trunks, the agency will continue to gather information in this subject area and will institute rulemaking action at a future date, if appropriate.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1410a); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 27, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84–31553 Filed 11–30–84; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1063

[Ex Parte No. MC–95 (Sub-3)]

Regulations Governing the Adequacy of Intercity Motor Common Carrier Passenger Service (Modification of Regulations)

AGENCY: Interstate Commerce Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The notice of proposed rulemaking in this proceeding [44 FR 53092 (1979)] proposed amending the Commission's rules at 49 CFR Part 1063 concerning the adequacy of service, equipment, and facilities provided by motor passenger carriers operating over regular routes. The Commission has considered the merits of the modifications to its regulations that were originally proposed in this proceeding and has concluded that some of the proposals should not be adopted, while others require further consideration in the light of the provisions of the Bus Regulatory Reform Act of 1982. Further comments are solicited with regard to the proposals concerning: (1) Notice of schedule changes, (2) temperature control equipment on buses providing commuter services, (3) transportation of handicapped passengers, and (4) expanding the current restroom exemption to cover somewhat larger vehicles.

DATE: Comments must be filed by January 2, 1985.

ADDRESS: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403. Send comments to Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 12th and Constitution Ave., NW., Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: James L. Brown, (202) 275–7898 Howell I. Sporn, (202) 275–7691

SUPPLEMENTARY INFORMATION:

Energy and Environment

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Statement

This proceeding was instituted before we were required to consider specifically the impact of the proposals on small businesses. Nevertheless, we have considered this issue at this time and certify that the regulation changes under consideration in this proceeding will not have a significant economic impact on a substantial number of small entities because, if adopted, they would only change commuter practices in minor ways.

List of Subjects in 49 CFR Part 1063

Buses.

This decision is issued pursuant to 5 U.S.C. 553 and 559, and 49 U.S.C. 10102, 10321, 10703, 10762, 10730, 10922, 11145, and 11702.

Decided: November 16, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Gradison, joined by Vice Chairman Andre, dissented with a separate expression. Commissioner Lamboley did not participate.

James H. Bayne,

Secretary.

PART 1063—[AMENDED]

Appendix

Further comments are solicited with regard to the following proposed amendments. Part 1063 of Title 49 of the Code of Federal Regulations would be amended as follows:

§ 1063.6 [Amended]

(1) In § 1063.6, paragraph (b) would be revised to read as follows:

§ 1063.6 Service responsibility.

* * * * *

(b) *Continuity of service.* Except as provided in 49 CFR 1042.2(c)(6), no carrier shall make any change in an existing regular-route schedule without first filing a written notice with the Regional Office of the Interstate Commerce Commission in all regions affected by the schedule change. A copy of the notice shall be displayed by the carrier continuously in a conspicuous place in each facility affected and on each bus providing the affected services. The notice shall be displayed for at least 15 days before it becomes effective, and shall contain the carrier's name, a description of the schedule change, the date the change will be effective, the reasons for the change, and the name and address of the responsible carrier official or representative to whom passengers may address comments and seek information. Unless the schedule change is due to the conversion to or from daylight savings time or otherwise reflects a normal, seasonal schedule change, the description of the change shall be specific and the notice shall also describe available alternate services.

* * * * *

§ 1063.7 [Amended]

(2) In § 1063.7, paragraphs (a) and (b) would be revised to read as follows:

§ 1063.7 Equipment.

(a) *Temperature control.* All buses shall be equipped with operable temperature control equipment capable of maintaining reasonable temperatures.

(b) *Restrooms.* Each bus used to provide service subject to this part with seating for more than 25 passengers (not including the driver), except those in commuter service, shall have a restroom. Such on-board restrooms shall be clean, sanitary, and free of offensive odor, and regularly maintained. A bus may be operated without a restroom if reasonable rest stops are made.

* * * * *

§ 1063.8 [Amended]

(3) In § 1063.8, paragraphs (a) and (b) would be revised to read as follows:

§ 1063.8 Accommodations for handicapped, disabled, blind and elderly.

(a) *Transportation.* No carrier shall deny transportation to any person on the basis of a handicap, physical disability, or blindness, or because that person cannot board a bus without assistance, except as provided in this section. A guide or a seeing-eye dog, hearing-guide dog, or other guide dog specially trained for that purpose shall be provided free passage when accompanied by a blind or deaf person.

(b) *Assistance.* All carriers shall, whenever possible, provide assistance to handicapped, disabled, blind, and elderly passengers, in boarding buses; such assistance when requested shall include advance boarding and seating. Carriers shall provide assistance to such passengers on request in the use of terminal accommodations and baggage service. At all terminals there shall be prominently displayed a notice stating where and from whom such assistance may be obtained. Handicapped persons who require the assistance of an attendant shall not be denied transportation so long as they are

accompanied by an attendant. Handicapped persons who require the service of an attendant, but who are unaccompanied, are not required to be transported by a carrier under this regulation. Handicapped persons requiring the assistance of an attendant are those who cannot take care of their fundamental personal needs.

* * * * *

[FR Doc. 84-31518 Filed 11-30-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: Notice of availability of an amendment and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council has submitted an amendment to the fishery management plan (FMP) for the Atlantic Surf Clam and Ocean Quahog Fisheries for review by the Secretary of Commerce. Comments are invited from the public on the amendment and any other documents made available.

DATE: Comments will be accepted until February 8, 1985.

ADDRESSES: Send comments to Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930. Copies of the amendment; the environmental assessment, and draft regulatory impact review/initial regulatory flexibility analysis are available upon request from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Richard Seamans, Jr., 617-281-3600, ext. 262.

SUPPLEMENTARY INFORMATION: This FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act.

Amendment 5 proposes measures for managing the Atlantic surf clam and ocean quahog fisheries in the fishery conservation zone (FCZ). The rule provides a mechaniam for adjustments to the minimum size limit for surf clams and revises the method of inspecting surf clams for compliance. The rule also adds a requirement that surf clams cages be tagged and adds a presumption that surf clams landed on an authorized fishing day were caught in the FCZ and are subject to the Federal minimum size limit. The receipt date for this amendment is November 26, 1984. Proposed regulations for this amendment will be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: November 28, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-31539 Filed 11-28-84; 3:47 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 233
Monday, December 3, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Harrisburg, Pennsylvania, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on January 9, 1985, 10:00 a.m. to 12:30 p.m. Comments must be received no later than February 8, 1985.

ADDRESSES: Meeting location at Room 202, Federal Building, 3rd and Walnut Street, Harrisburg, Pennsylvania.

Written Comments and Further Information will be addressed to: D. Elmer Hawbaker, State Director, FmHA, Post Office Box 905, Harrisburg, Pennsylvania 17108 (717-782-4477).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Pennsylvania State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Pennsylvania. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 26, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-31546 Filed 11-30-84; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 282]

Resolution and Order Approving the Request of the City of San Jose, CA, for Time Extension on Temporary Site

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the request by the City of San Jose, California, grantee of Foreign-Trade Zone 18, filed with the Foreign-Trade Zones Board (the Board) on October 5, 1984, requesting a seven-month extension of zone status for the Metal Processing Industries, Inc. (MPI) site in San Jose that was approved by the Board on October 13, 1983 (Board Order 228) for a period of one year, the Board, finding that the requirements of the Foreign-Trade Zones Act and Regulations are satisfied, and that the proposal is in the public interest, approves the request and extends zone status at the MPI site until May 13, 1985.

Signed at Washington, D.C., this 26th day of November 1984.

This approval is retroactive to October 13, 1984.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-31555 Filed 11-30-84; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[C-791-005]

Deformed Steel Bars for Concrete Reinforcement From South Africa; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of Administrative review of countervailing duty order.

SUMMARY: On October 11, 1984, the Department of Commerce published the preliminary results of its administrative reveiw of the countervailing duty order on deformed steel bars for concrete reinforcement from South Africa. The review covers the period January 1, 1983, through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 39888) the preliminary results of its administrative review of the

countervailing duty order on deformed steel bars for concrete reinforcement ("rebars") from South Africa (47 FR 47900, October 28, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of South African rebars. Such merchandise is currently classifiable under items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1983, through June 30, 1983 and two programs: (1) Preferential rail rates, and (2) Export Incentive Program—Categories A, B, and D.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the total bounty or grant to be zero percent for the period January 1, 1983, through June 30, 1983. The Department will instruct the Customs Service to liquidate entries of this merchandise exported on or after January 1, 1983, and on or before June 30, 1983 without regard to countervailing duties.

The Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirements shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: November 27, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-31827 Filed 11-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-401]

Suspension of Countervailing Duty Investigation; Portland Hydraulic Cement From Costa Rica

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving portland hydraulic cement from Costa Rica. The basis for the suspension is an agreement to renounce completely all benefits provided by the government of Costa Rica which we find to constitute bounties or grants on portland hydraulic cement exported to the United States.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3003 or 377-1769.

SUPPLEMENTARY INFORMATION:

Case History

On June 21, 1984, we received a petition in proper form from the Puerto Rican Cement Co., Inc. and the San Juan Cement Co., Inc. on behalf of the U.S. industry producing portland hydraulic cement. Petitioners alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act"), are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Costa Rica of portland hydraulic cement exported to the United States.

Costa Rica is not a "country under the Agreement" within the meaning of section 701(b) of the Act, therefore, section 303 of the Act applies to this investigation. The merchandise being investigated is nondutiable, but there is no "international obligation" within the meaning of section 303(a)(2) of the Act (which requires an injury determination for nondutiable merchandise). Therefore, the domestic industry is not required to allege that, and the United States International Trade Commission is not required to determine whether, imports of this product cause or threaten to cause material injury to a U.S. industry. We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on July 11, 1984, we initiated an investigation (49 FR 29117).

On July 23, 1984, we presented a questionnaire concerning the allegations to the government of Costa Rica in Washington, D.C. On August 23, 1984, we received the response to the questionnaire.

We issued an affirmative preliminary determination on September 14, 1984 (published on September 21, 49 FR 37134). We preliminarily determined that there was reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of the Act were being provided to Industria Nacional de Cementos, S.A. ("INCSA"), the only cement manufacturer to export cement to the United States from Costa Rica. We preliminarily determined the net bounty or grant was 15 percent *ad valorem*. The program preliminarily determined to bestow countervailable benefits was the Tax Credit Certificates (Certificados de Abono Tributario, or "CAT").

We directed the U.S. Customs Service to suspend liquidation of all entries of the product under investigation which were entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on this product in an amount equal to the estimated net bounties or grants. The only U.S. destination for Costa Rican cement was Puerto Rico.

We verified information provided by the government in Costa Rica during the week of October 15–18, 1984.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. On October 12, 1984 a public hearing was held at the request of the Government of Costa Rica and of the petitioners.

On October 29, 1984, we initialed a proposed suspension agreement pursuant to section 704 of the Act. Petitioners were provided an opportunity to submit comments regarding the proposed suspension agreement. We have taken such comments into consideration.

Scope of the Investigation

The product covered by this investigation is portland hydraulic cement. The merchandise is currently classifiable under item number 511.1440 of the *Tariff Schedules of the United States, Annotated (TSUSA).*

Only one company was identified by the government of Costa Rica as being a manufacturer and exporter of the product under investigation. It is Industria Nacional de Cementos, S.A. (INCSA).

The period for which we are measuring bounties or grants is October 1, 1982 through September 30, 1983. This was the last complete fiscal year for INCSA at the time the Department of Commerce's questionnaire was sent out.

Petitioners' Comments

Petitioners made the following comments concerning the suspension agreement which we initiated on October 29, 1984.

Comment 1. Petitioners request that clauses be added to the suspension agreement requiring bank certification that INCSA has turned in all its CATs and expressly requiring that INCSA can not receive benefits for certificates turned in after initialing the suspension agreement.

DOC Position. Since the suspension agreement is only between the Department of Commerce and INCSA, we cannot request third parties, such as the Banco Central de Costa Rica, to certify that INCSA has turned in all of its CAT Certificates.

Commerce cannot retroactively prohibit INCSA from selling its CAT certificates at a discount in the market prior to the effective date in the final agreement. However, we concur with petitioner, that the final agreement should ensure that no benefit is obtained on return of the CAT certificates to the Central Bank and we have amended the provisions of the agreement accordingly.

Comment 2. INCSA's representation that it will not apply for or receive any countervailable bounties or grants should be amended to expressly exclude programs Costa Rica is currently developing.

Doc Position. Paragraph B.1.b. of the Agreement contains INCSA's representations that it will not apply for or receive *any* counteravailable bounties or grants in the future.

Comment 3. Monitoring provisions should be made more effective by committing the Department of Commerce to explicitly agree to annual verifications. INCSA should be required to make the same reporting commitments to petitioners as to the Department of Commerce.

DOC Position. The agreement is between the Department of Commerce and the respondent, INCSA. It requires quarterly reporting of the value and volume of portland hydraulic cement exported from Costa Rica to the United States. Some of these data are confidential. The statute contemplates the Department's receipt and restriction of access to confidential information. The statute does not contemplate requiring INCSA to report to petitioners and we will not expand section 704 of the Trade Act to include reporting requirements to business competitors.

Suspension of Investigation

We consulted with the petitioners and considered the comments submitted with respect to the proposed agreement. We determined that the agreement: Will eliminate or offset completely the net bounty or grant with respect to the subject merchandise exported directly or indirectly to the United States; can be monitored effectively; and is the public interest. Therefore, we find that the criteria for suspending an investigation under section 704 of the Act have been met. The terms and conditions of the agreement, signed February 23, 1983, are set forth in Annex 1 to this notice.

Pursuant to section 704(f)(2)(A) of the Act, we hereby terminate the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption of portland hydraulic cement from Costa Rica effective September 21, 1984, pursuant to our Preliminary Affirmative Countervailing Duty Determination; Portland Hydraulic Cement from Costa Rica (49 FR 37134). Any cash deposits on entries of portland hydraulic cement from Costa Rica pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Right to Request Continuation of Investigation

Notwithstanding the agreement, we will continue the investigation if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published in pursuant to section 704(f)(1)(A) of the Act.

Dated: November 28, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Annex I

Suspension Agreement— Portland Hydraulic Cement From Costa Rica

Pursuant to the provisions of section 704 of the Tariff Act of 1930 ("the Act"), and § 355.31 of the Commerce Regulations, the Department of Commerce ("the Department") and Industria Nacional de Cementos, S.A. ("INCSA"), Apdo. 4009–1000, San Jose, Costa Rica, enter into the following Suspension Agreement ("the Agreement") on the basis of which the Department shall suspend its countervailing duty investigation filed pursuant to section 303 of the Act, with respect to portland hydraulic cement from Costa Rica, subject to the terms and provisions set forth below.

A. *Scope of the Agreement.* The Agreement applies to portland hydraulic cement from Costa Rica other than white non-staining portland cement, which is manufactured or exported by INCSA and which is currently classifiable under item 511.1440 of the *Tariff Schedules of the United States Annotated* (TSUSA) (hereinafter, referred to as the "subject product").

B. *Basis for the Agreement.* 1. INCSA is a manufacturer of the subject product, accounting for more than 85 percent of the total imports of the subject product from Costa Rica into the United States. INCSA voluntarily agrees not to apply for or receive any countervailable benefits, for products that are produced in Costa Rica and exported directly or indirectly to the United States, from the Costa Rican government's Tax Credit Certificates (CAT's) program with respect to shipments of the subject product entered, or withdrawn from warehouse, for consumption in the United States, on or after the effective date of this Agreement. Furthermore:

a. Any unused and outstanding countervailable CAT certificates, that are in INCSA's possession, granted in connection with shipments of the subject product to the United States will be returned to the Banco Central de Costa Rica, without the benefit of compensation, on the effective date of this Agreement.

b. INCSA will not apply for or receive any bounties or grants which are countervailable under the Act. A bounty or grant which is "countervailable under the Act" is any bounty or grant which has been or might be found to be countervailable in any investigation or § 751 review under the Act.

c. INCSA shall notify the Department in writing, at least thirty days prior to knowingly applying for or accepting any new benefits on the subject products that it has a reasonable basis to believe may be countervailable under the Act.

d. Renunciation of the receipt of these benefits does not constitute an admission by INCSA that such benefits are bounties, grants or subsidies within the meaning of the U.S. countervailing duty law or any other U.S. law.

e. The initialing or signing of this Suspension Agreement by INCSA shall not be construed as constituting a waiver of the rights or entitlements of INCSA or the Goverment of Costa Rica to pursue or seek redress of their rights or entitlements under law or statute.

2. In accordance with the provisions of the Act and applicable regulations, this Agreement applies to the product

described in Paragraph A which is produced in Costa Rica and exported directly or indirectly to the United States.

3. The effective date of this Agreement is the date it is published in the **Federal Register.**

C. *Monitoring.* (1) INCSA will supply to the Department such information as the Department deems necessary to demonstrate that it is in full compliance with the terms of this Agreement.

(2) INCSA will notify the Department if it: (a) Transships the subject product through third countries, (b) alters its position with respect to any terms of the Agreement, (c) applies for or receives directly or indirectly the benefits of the programs described in Paragraph B for the manufacture of the subject products exported to the United States.

(3) Furthermore, INCSA agrees to undertake the obligation to report to the Department within 15 days after the beginning of each calendar quarter (April, July, October, January) all relevant information deemed by the Department to be necessary to maintain the Agreement. The information shall include, but will not be limited to:

(a) The volume and value of all exports of the subject product that is produced in Costa Rica and exported directly or indirectly through intermediaries to the United States;

(b) A report of INCSA's participation, if any, in the CAT's program;

(c) A certification that INCSA continues to be in full compliance with this Agreement.

(4) INCSA agrees to permit such verification and data collection as deemed necessary by the Department in order to monitor this Agreement. The Department will request such information and may perform such verification periodically pursuant to administrative reviews conducted under section 751 of the Act.

D. *Violation of the Agreement.* If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 704 (b) or (d) of the Act, then the provisions of section 704(i) shall apply.

Signed on this 27th day of November, 1984, for Industria Nacional de Cementos, S.A.

Andrew Jaxa-Debicki,

Special Counsel, INCSA.

I have determined that the provisions of Paragraph B completely eliminate the bounties or grants being provided in Costa Rica with respect to portland hydraulic cement exported directly or indirectly to the United States and that the provisions of Paragraph C ensure that this Agreement can be monitored effectively pursuant to section 704(d) of the Act. Furthermore, I have determined that this Agreement meets the requirements of section 704(b) of the Act and is in the public interest as required in section 704(d) of the Act.

Dated: November 28, 1984.

U.S. Department of Commerce.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-31528 Filed 11-30-84; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; National Institutes of Health, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85-000. Applicant: National Institutes of Health, 9000 Rockville Pike, Building 3, Room B1-22, Bethesda, MD 20205. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Studies of ameba, baker's yeast and isolated membranes and organelles from these two organisms. The experiments to be conducted will include: (1) Examination of chitin localization with chitin-specific labels in selected cells with mutations affecting chitin synthesis, (2) localization of specific membrane proteins in situ during endocytosis and examination of structural relationships between membrane systems and (3) filament formation in chemically modified myosin; interaction of myosin and actin under various experimental conditions. Application received by Commissioner of Customs: October 12, 1984.

Docket No. 85-001. Applicant: University of Washington, Seattle, WA 98195. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Examination of biological specimens for the purposes of diagnosis and research related to diagnosis of disease. At times, the instrument may be used to instruct new residents and staff in its use for the purposes of using the instrument as described above. Application received by Commissioner of Customs: October 12, 1984.

Docket No. 85-002. Applicant: University of Kansas Medical Center, Rainbow Boulevard at 39th Street, Kansas City, KS 66103. Instrument: Electron Microscope, Model JEM-100CX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: Study of cells and tissues of the body in terms of elemental analysis and morphometry. This includes the structure of viruses, virus-induced products of infection and pathogenic organisms in studies on multiplication and distribution of these agents and their interactions and effects on cells and tissues of animals. Studies will also be done to correlate cell selection processes of normal cells with structural changes induced by viruses, chemicals or stress environments in cell and tissue culture. Application received by Commissioner of Customs: October 22, 1984.

Docket No. 85-006. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Instrument: Tritium Meter, Model WTM 5000. Manufacturer: Hughes Whitlock Ltd., United Kingdom. Intended use: The instrument will be used to conduct assays for radioactive contamination resulting from the use of radioactive biochemicals in research and teaching laboratories. The radioactivity will be primarily H-3, C-14, P-32, I-125 used in biological and medical research. Application received by Commissioner of Customs: October 22, 1984.

Docket No. 85-007. Applicant: University of Illinois, Urbana-Champaign Campus, 223 Administration Building, 506 S. Wright Street, Urbana, IL 61801. Instrument: Pyrolysis unit with flame ionization and thermal conductivity gas detectors, Model #29340. Manufacturer: Delsi Instruments, France. Intended use: Investigation which involves determining source rocks and studying the organic matter (bitumen and kerogen), contained in Illinois Basin deep rocks. The source rocks will be evaluated for past, present, or future hydrocarbon potential and the organic matter characteristics will be used to correlate source rocks with pooled hydrocarbons and with other source rocks. With data generated by the Rock Eval pyrolysis unit and total organic carbon data, geochemical logs will be plotted for a number of test wells and the potential source rocks in the basin determined and rapidly evaluated.

Application received by Commissioner of Customs: October 22, 1984.

Docket No. 85-008. Applicant: VCU/Medical College of Virginia, Department of Biochemistry, Box 614 MCV Station, Richmond, VA 23298. Instrument: Automatic Recording Spectropolarimeter, Model J-500C and Accessories. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use: Studies of enzymes, proteins and nucleic acid oligomers either naturally occurring or the product of semi-synthetic procedures. The experiments to be conducted are to obtain the circular dichroism spectra of the native, apo (metal-free) and proteolytically modified form of the bacterial enzyme alkaline phosphatase, to utilize extant algorithms for the interpretation of these spectra in terms of the secondary structure composition of the protein and to obtain the temperature dependent alterations in these spectra as a means of assessing macromolecular stability. In addition, the instrument will be used for educational purposes in the courses Bic 602 Physical Properties of Macromolecules, Bic 604 Enzymology and Bic 605 Molecular Biology. The objectives of these courses are to describe macromolecular structures, the methods employed in obtaining the experimental evidence which gives rise to these structures and illustrating relationships between molecular structure and functional behavior. Application received by Commissioner of Customs: October 26, 1984.

Docket No. 85-009. University of Wyoming, Microbiology and Veterinary Medicine College of Agriculture, Box 3354 University Station, Laramie, WY 82071. Instrument: Electron Microscope, Model EM 410LS with Accessories Manufacturer: N.V. Philips, The Netherlands. Intended use: Investigations of microbiology and diseases of livestock, wildlife and companion animals. These studies will include morphologic features of causative agents and fine structure changes in host tissues, cell cultures, and microbes. Major areas of emphasis will include current on-going and projected research involving the following agents: Bovine respiratory syncitial virus, bovine leukosis virus, *Anoplasma marginale*, chronic wasting disease of deer, and the common agents of respiratory and enteric diseases of livestock (e.g. IBR, BVD, VSV, bovine rotavirus etc.). Additional studies of fine structure characteristics will be conducted on bacterial plasmid preparations, thin section materials, and other submicroscopic cellular preparations from naturally and experimentally involved animal tissues and tissue culture cells during infection, immunologic disease, intoxications and molecular enginering. Science related educational purposes will include graduate studies in Microbiology and Veterinary Medicine. Application received by Commissioner of Customs: October 22, 1984.

Docket No. 85-010. Applicant: University of Rochester, Institute of Optics, Wilmot Building, Room 121, Rochester, NY 14627. Instrument: Carbon Dioxide Laser with Power Supply, Model GN-802-GP/GE. Manufacturer: MPB Technologies, Inc., Canada. Intended use: Analysis of the refractive profiles of infrared gradient materials in an interferometer. Application received by Commissioner of Customs: October 22, 1984.

Docket No. 85-012. Applicant: University of Kentucky, Department of Chemistry, Lexington, KY 40506-0055. Instrument: Fourier-Transform Infrared Spectrometer System, Model IZMO1 with Accessories. Manufacturer: Bomem, Inc., Canada. Intended use: Spectroscopic studies in the spectral range from far infared to ultraviolet/visible for the following types of chemical compounds: Boron hydride and halide derivatives; volatile small transient molecules such as HBO; boron-containing medicinals; macromolecular and polymeric boron compounds, pyrazaboles and borazines; dipyrazolylboryl polycations; transition metal complexes of Pt, Rh, Pd, Ni; metal carbonyls; and other compounds, particularly of biochemical catalytic and macromolecular nature related to research activities being conducted. The instrument will also be used for instruction of the principles, instrumentation, applications and techniques involved in IR (and other types of) spectroscopy. Application received by Commissioner of Customs: October 22, 1984.

Docket No. 85-013. Applicant: Montana State University, Department of Plant & Soil Science, Leon Johnson Hall, Bozeman, MT 59717-0002. Instrument: Electromagnetic Soil Conductivity Meter, Model EM 38. Manufacturer: Geonics Ltd., Canada. Intended use: Studies of saline soils and their deleterious effects on agricultural crop production. The objectives of the experiments to be conducted involve reducing the problem of saline seeps and accelerating saline seep inventories respectively. In addition, the instrument will be used for educational purposes in the courses: Introductory Soils, Field Soil Survey, Air-Photo Interpretation, Soil Chemistry and Soil Physics.

Application received by Commissioner of Customs: October 22, 1984.

Docket No. 85-015. Applicant: The University of Michigan, Randall Laboratory, Ann Arbor, MI 48109. Instrument: Molecular Beam Epitaxy System, Model V80. Manufacturer: Vacuum Generators Ltd., United Kingdom. Intended use: The instrument will be used for the growth of research samples in the form of thin films of high purity metals which are stratified on atomic dimensions, i.e., synthetic crystals of alternating atomic layers of different metals. The materials studied have high melting points and low vapor pressures. Experiments will be conducted to characterize the synthetic thin films, such as X-ray structure, low-temperature conductivity studies, etc. The objectives of the investigations will be to better understand the fundamental behavior of thin films of solids, especially their electron properties. In addition the instrument will be used in the training of graduate students in Physics and Materials Science as part of their thesis work. Application received by Commissioner of Customs: October 4, 1984.

Docket No. 85-016. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Ultra High Vacuum Chamber.

Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended use: The instrument will be used as a sample preparation chamber in conjunction with an existing Molecular Beam Epitaxy System. The materials to be studied are layered superlattices utilizing a large range of different elements such as niobium, etc. Application received by Commissioner of Customs: October 22, 1984.

Docket No.: 85-017. Applicant: University of Miami, Department of Pharmacology, 1600 N.W. 10th Avenue, P.O. Box 016189, Miami, FL 33101. Instrument: Fluorescence Microscope. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of Ca^{2+} regulation of muscle contraction during graduate research in Pharmacology. Application received by Commissioner of Customs: October 26, 1984.

Docket No.: 85-020. Applicant: Furman University, Department of Chemistry, Poinsett Highway, Greenville, SC 29613. Instrument: Excimer Laser, Model TE-861M-4 with Accessories. Manufacturer: Lumonics, Inc., Canada. Intended Use: Studies of small organic and inorganic compounds including methane, silver, and aluminum. The compounds to be studied

will be irradiated with high energy laser light to remove electrons and to form metal cluster radicals in the gas phase. These ionic and neutral species will be wrapped in neon matrices at liquid helium temperatures and studied by means of electron spin resonance techniques. Experiments will be conducted to obtain magnetic data on these new molecules and to compare this information with results obtained from ab initio and CI calculations for the same molecules. This will allow for better modeling of the electronic orbitals. The instrument will also be used for educational purposes in Experimental Techniques in Chemistry II a course to introduce the students to new and different techniques concerning physical chemistry; to encourage independent research; and to provide a means of learning to write journal-quality papers. Application received by Commissioner of Customs: October 26, 1984.

Docket No.: 85–021. Applicant: Research Medical Center, 2316 East Meyer Boulevard, Kansas City, MO 64132. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Examination of a variety of biological material from the human body including tissue, cytological specimens, body fluids and microorganisms (e.g., viruses, chlamydiae, bacteria, and fungi). Research studies will include the following:

(a) Study of kidney tissue to determine ultrastructural alterations in immune mechanisms of pathologenesis of glomerulonephritis and other renal diseases.

(b) Study of soft tissue tumors to determine specific ultrastructural characteristics that will permit delineation of cell of orgin.

(c) Study of lung tissue to determine specific ultrastructural markers of malignant tumors.

(d) Study of liver tissue to characterize role of viruses and viral particles in hepatitis and other inflammatory liver disease.

(e) Uterine cervical tissue to identify herpetic and papova viruses to establish their role as a factor in the etiology of tumors of the cervix.

(f) Study of culture negative granulomatous lesions to determine etiological agents.

(g) Identification and study of viruses that are not readily isolated by culture technique.

(h) Study of abnormal cilia morphology in specialized epithelial cells of the upper respiratory tract and its relationship to chronic pulmonary disease.

The instrument will also be used in the training of pathology residents and medical histotechnologists enrolled in training programs. Application received by Commissioner of Customs: October 26, 1984

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-31525 Filed 11-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-403]

Final Affirmative Countervailing Duty Determination; Cold-Rolled Carbon Steel Flat-Rolled Products From Korea; and Final Negative Countervailing Duty Determination; Carbon Steel Structural Shapes From Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Korea of cold-rolled carbon steel flat-rolled products. The net subsidy is 3.60 percent *ad valorem*. We also determine that no benefits which constitute subsidies within the meaning of the Act are being provided to manufacturers, producers, or exporters in Korea of carbon steel structural shapes. The net subsidy is *de minimis*, and therefore our final determination is negative. Accordingly, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of cold-rolled carbon steel flat-rolled products from Korea which are entered or withdrawn from warehouse, for consumption on or after September 18, 1984, and to require a cash deposit or bond on entries of cold-rolled carbon steel flat-rolled products in the amount equal to the net subsidy.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Rick Herring, or Tom Bombelles of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitutional Avenue, NW., Washington, DC 20230; telephone: (202) 377–1785; 377–0167; or 377–3174.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that the following programs confer subsidies on the products under investigation:

- Short-term Export Financing under the Export Financing Regulations.
- Tax Incentives for Exporters under Articles 22, 23 and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption."
- Special Depreciation under the "Act Concerning the Regulation of Tax Reduction and Exemption."
- Government Equity Infusions into POSCO.
- Reductions in Port Charges.
- Tariff Reductions on Plant and Equipment under Article 28 of the Customs Act of Korea.

The net subsidy for cold-rolled carbon steel flat-rolled products is 3.60 percent *ad valorem*. Therefore, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided to manufacturers, producers, or exporters in Korea of cold-rolled carbon steel flat-rolled products. The net subsidy for carbon steel structural shapes is 0.37 percent *ad valorem* which is *de minimis*. Therefore, with respect to carbon steel structural shapes, we determine that no benefits constituting subsidies within the Act are being provided to manufacturers, producers, or exporters of carbon steel structural shapes.

Case History

On June 18, 1984, we received a petition from United States Steel Corporation on behalf of the carbon steel structural shapes and cold-rolled carbon steel flat-rolled products (shapes and sheet) industries. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petitioner alleged that manufacturers, producers, or exporters in Korea of shapes and sheet receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on July 3, 1984, we initiated investigations (49 FR 28294). We stated that we expected to issue preliminary determinations by September 11, 1984. On September 4, 1984, Chaparral Steel Company entered an appearance to become a party to the proceeding with

respect to carbon steel structural shapes.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. On August 8, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that these imports materially injure, or threaten material injury to, a U.S. industry (49 FR 31781).

We presented questionnaires concerning the allegations to the government of Korea at its embassy in Washington, D.C., on July 13, and July 23, 1984. On August 17, August 20, and August 21, we received responses to these questionnaires. On August 20, we presented a second supplemental questionnaire to the government of Korea. We received a response to this questionnaire on August 31. We received another supplemental response on September 4. On July 19, August 31, and September 5, petitioner submitted additional information concerning the alleged subsidies and also alleged new subsidies. On September 18, 1984, we published our preliminary determinations that benefits constituting subsidies were being provided to manufacturers, producers, or exporters in Korea of cold-rolled carbon steel flat-rolled products, and that no benefits constituting subsidies are being provided to manufacturers, producers, and exporters of carbon steel structural shapes (49 FR 36538).

At the request of both petitioners and respondents, we held a hearing on October 31, 1984, to allow the parties an opportunity to address the issues arising in the investigations. Both petitioners, respondents, and other interested parties filed briefs before and after the hearing on these issues. They also filed briefs commenting on our verification.

In its pre-hearing brief filed on October 23, 1984, U.S. Steel made additional allegations of benefits received by manufactuerrs and exporters of shapes and sheet. These allegations were (1) Regional Tax Incentives, (2) Tax Incentives for Exporters, and (3) Special Foreign Exchange Loan System. In its post-hearing brief filed on November 14, 1984, U.S. Steel made another allegation with respect to cold-rolled carbon steel flat-rolled products. This allegation concerned government infrastructure aid to POSCO in the Pohang area. Since these allegations were made after our preliminary determinations and after the Commerce verification team returned from Korea, the allegations were made too late to be considered in these investigations. These additional allegations will be given consideration in the section 751 administrative review of the order on cold-rolled carbon steel flat-rolled products, if an order is issued.

Scope of the Investigations

The products covered by these investigations are carbon steel structural shapes and cold-rolled carbon steel flat-rolled products. The term "*carbon steel structural shapes*" covers hot-rolled, forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2, Subpart B of the *Tariff Schedules of the United States, Annotated (TSUSA)*, from blooms, billets, slabs, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items s 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the *TSUSA*. Such products are generally referred to as structural shapes.

The term "*cold-rolled carbon steel flat-rolled products*" covers the following cold-rolled carbon steel products: cold-rolled carbon steel flat-rolled products are flat-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width, and 0.1875 inches or more in thickness; as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inches in thickness whether or not in coil; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

There are three Korean producers of cold-rolled carbon steel flat-rolled products that exported to the United States during the period for which we are measuring subsidization: Pohang Iron and Steel Company (POSCO), Dongjin Steel Company (Dongjin), and Union Steel Manufacturing Company (Union). In addition, there are six trading companies that exported cold-rolled carbon steel flat-rolled products to the United States during the period for which we are measuring subsidization: Hyundai Corporation, Kukje-ICC Corporation, Sunkyong Limited, Samsung Co. Ltd., Daewoo Corporation and Hyosung Corporation. Inchon Iron & Steel Company (Inchon) is the only producer of carbon steel structural shapes that exported to the United States during the period for which we are measuring subsidization. Of the trading companies, only Hyundai Corporation exported carbon steel structural shapes to the United States during the period for which we are measuring subsidization.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of these investigations. These general principles are described in detail in the Subsidies Appendix to the "Final Affirmative Countervailing Duty Determination and Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina," published in the April 26, 1984 issue of the Federal Register (49 FR 18006).

For purposes of these determinations, we are calculating a country-wide rate. The period for which we are measuring subsidization is the 1983 calendar year, which corresponds to the most recent fiscal year for each of the Korean producers and exporters.

Petitioner alleged that POSCO is both unequityworthy and uncreditworthy. Although we did not initiate on these specific allegations we did request information in our questionnaries i n order to review these allegations in accordance with the guidelines set out in the Subsidies Appendix. Even though government equity infusions into POSCO were found in the 1982 "Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea" (47 FR 57535) not to be on terms inconsistent with commercial considerations, our standards have been revised by the Subsidies Appendix, and, thus, we must reexamine these allegations in these investigations.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company is a reasonable commercial investment. POSCO's shares are not publicly traded and there is no market-determined price for its shares; therefore, we must determine whether POSCO is equityworthy. To make this determination, we reviewed and assessed POSCO's financial statements from 1972 through 1983. We also examined studies submitted by the government of Korea. In analyzing the financial statements, we considered the information from the viewpoint of an investor. The Department, when

considering the accounting principles and practices, analyzed the impact of certain accounting practices on the company's overall financial results. Specifically, we restated the financial results in each of the relevant years in accordance with Korean generally accepted accounty principles. this restatement resulted in a significant impact on the amount of pofits, losses and net worth of the of the company. After taking into consideration the accounting practices and methods, we examined the following ratios:

- Rate of return on equity:
- Debt to tangible net worth:
- Percent of foreign-denominated debt:
- Cash flow to principal repayment; and
- Current ratio.

Based on our review of POSCO's financial statements and the responses from both POSCO and the government, our verification and comments by the parties to the proceeding, we determine that the government's equity infusions into POSCO were on terms inconsistent with commercial considerations from 1978 through 1980.

With respect to the allegation that POSCO is uncreditworty, we have determined that no long-term loans or loan guarantees are being provided to POSCO on terms that are inconsistent with commercial considerations. Thus, creditworthiness is only of secondary importance in this investigation. Because no long-term loan benchmarks are required, the creditworthiness determination only figures into the calculation of the discount rate for those subsidy programs used by POSCO in which the benefits are treated as grants.

To determine whether POSCO is creditworthy, we focused on the ability of the company to meet its interest obligations. In addition, an important measure of creditworthiness is whether foreign lenders are lending significant amounts of funds to the company. Accordingly, we also examined the percentage of POSCO's outstanding loans that are foreign loans. Our examination of these factors leads us to conclude that POSCO has been and continues to be creditworthy.

Based upon our analysis of the petition, the additional information filed by petitioner, the responses to our questionnaires, comments filed by the parties to the proceeding, and our verification, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Korea of carbon steel structural shapes and cold-rolled carbon steel flat-rolled products under the following programs:

A. Short-term Export Financing Under the Export Financing Regulations

Petitioners alleged that the producers and exporters in Korea of shapes and sheet receive preferential short-term export financing under the following programs:

- Export Loans under the 1972 Regulations for Export Financing;
- Export loans provided under the Foreign Trade Act;
- Deferred Payment Export Loans: and
- Preferential Exchange Rates for Export Loans Based on Letter of Credit

Short-term export financing is authorized only through the 1972 Export Financing Regulations. Our determination with respect to the three other programs is discussed in the sections on "Programs Determined Not to Confer Subsidies" and "Programs Not in Existence."

Under the Export Financing Regulations, short-term export loans can be provided to the following:

- Exporters in receipt of letters of credit;
- Exporters concluding documents of acceptance or documents against payment contracts;
- Exporters purchasing local supplies;
- Exporters stockpiling raw materials;
- Exporters with certificates based on past export performance;
- Producers of raw materials for export; and
- Companies awarded domestic projects based on international public tender.

To determine whether a subsidy exists with respect to short-term export loans under the Export Financing Regulations, we must determine whether the export loan program is intended to, or operates to, stimulate export rather than domestic sales, or is contingent on export performance. If there is a preference in a program's operation for export over domestic sales, we then must find an appropriate way to measure that preference.

Prior to June 28, 1982, short-term export loans provided under the Export Financing Regulations were charged a lower interest rate than short-term domestic loans. On June 28, 1982, the Monetary Board established a uniform rate of 10 percent for both export and domestic short-term financing provided by commercial banks. The interest rate in effect during the period for which we are measuring subsidization was 10 percent for short-term export loans. We verified that domestic short-term financing through commercial banks is the predominant short-term debt instrument in Korea (see, for example, the Federation of Korean Industries surveys obtained during verification and the Korean Chamber of Commerce *Survey*, submitted as Exhibit 13 of the Government of Korea's response, August 17, 1984, as well as Bank of Korea *Monthly Statistical Bulletins*).

If all other terms and conditions, as well as the administration, of the domestic and export loan programs were identical, we could not find that an export subsidy is being conferred because export loans are not at an interest rate that is preferential compared to the interest rate on the most comparable, predominant short-term debt instrument. However, we have found that there is a difference in the administration of domestic and export short-term loans programs. The Bank of Korea (BOK) sets different rediscount ratios for export and domestic short-term loans. As specified in the BOK's *1983 Annual Report*, the rediscount ratio for export loans is 70 percent of the face value of the loan. The rediscount ratio on domestic commercial bills is 30 percent of the face value of the loan for large firms and the heavy and chemical industries. The rediscount ratio for small- and medium-sized firms is 70 percent. Small- and medium-sized firms are defined as companies with fewer than 300 employees. None of the steel companies producing the products under investigation is classified as a small- or medium-sized firm. The rediscount rate for both domestic and export short-term loans is 5 percent.

The higher rediscount ratio for export loans provides an incentive for banks to provide an export loan over a domestic loan when lending to a large company. Indeed, the banks' fee structure, which specifies lower fees on the letters of credit on which the short-term export loans are based, indicates that the banks encourage these borrowers to use export financing. Thus, we consider that the higher rediscount ratio for short-term export loans provides, in effect, a preference for export loans over domestic loans.

Because the most comparable, predominant short-term debt instrument (*i.e.*, the 10 percent rate on short-term domestic bank loans) cannot measure this preference, we must find an alternative method of quantifying it. We know from the surveys published by the Korean Chamber of Commerce and by the Federation of Korean Industries, and from the Bank of Korea *Monthly Statistical Bulletins*, that companies do use sources of short-term financing in addition to bank loans. These sources include investment and finance companies, commercial paper and the curb market. Since the rediscount mechanism operates in such a way as to encourage banks to supply firms short-term export financing at the expense of domestic financing, we must conclude that short-term domestic financing comes from these other sources of financing as well as bank loans.

Therefore, the most appropriate way to measure the preference for export over domestic loans is to compare the 10 percent rate on short-term export credit with a weighted average of rates on short-term domestic credit. We have chosen this measure because it is the best approximation of what firms would pay for export financing if there were not a preference within the banking system for providing loans for export transactions.

The factors used to weight each of the four sources of short-term domestic credit were based on data from a number of sources, including the *Monthly Statistical Bulletins* of the Bank of Korea and the surveys published by the Federation of Korean Industries (FKI). The *Monthly Statistical Bulletins* provide the size of, and interest rates charged on, short-term financing by banks, investment and finance companies and commercial paper. The FKI surveys provide data on the proportion that curb market loans represent of total corporate borrowing for working capital. For the curb market interest rate, we have determined that the most appropriate rate to use is the average monthly rate for 1983 as published in the survey conducted by the Korean Chamber of Commerce, provided as Exhibit 13 to the response submitted by the Government of Korea. This rate is 2.6 percent, which, when compounded, yields an annualized rate of 36.1 percent. We are using the rate published by the Chamber of Commerce as the most appropriate measure of the average curb market rate in 1983, because it is the only independently-conducted study or survey of curb market rates that has been entered in the record of this investigation. We looked extensively for data on these rates at verification. We consider the Chamber survey to be the most accurate reflection of average curb market rates during the period for which we are measuring subsidization.

Using the data from all these sources, we calculated the weighted-average rate that we have determined is the most appropriate way to measure the preference for export over domestic loans. Comparing this weighted-average rate to the 10 percent rate on export loans, we calculate an export subsidy of 0.33 percent *ad valorem* for cold-rolled carbon steel flat-rolled products and 0.36 percent *ad valorem* for carbon steel structural shapes.

B. Tax Incentives for Exporters

Articles 22, 23, and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption" provide for the deduction from taxable income of a number of different reserves relating to export activities. These reserves cover export losses, overseas market development and price fluctuation losses. Under Article 22, a corporation may establish a reserve amounting to one percent of foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve fund. If there are no offsets for export losses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

Under Article 23 governing overseas market development, a corporation may establish a reserve fund amounting to one percent of its foreign exchange earnings in the export business for the respective business year. Expenses incurred in developing overseas markets are offset from the reserve fund. Like the export loss reserve fund, if there are no offsets for expenses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

A price fluctuation reserve fund may be established under Article 24. Under this Article, a corporation may establish reserves equivalent to five percent of the book value of the products and works in progress which will be exported by the close of the business year. This reserve may be used to offset losses incurred from the fluctuation of prices for export goods. These losses may be offset by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following business year.

The balance in all three reserve funds is not subject to corporate tax, although all monies in the reserve funds are eventually reported as income and subject to corporate tax either when they offset export losses or when the one-year grace period expires. We determine that these export reserve programs confer benefits which constitute export subsidies because they provide a deferral of direct taxes specifically related to export performance. Only certain trading companies exporting cold-rolled carbon steel flat-rolled products used these programs during the period for which we are measuring subsidization.

Because these export reserve funds constitute a deferral of tax liabilities, we treat the tax savings on these funds as interest-free loans to the corporation. Accordingly, we have quantified the benefits from the reserve funds by calculating the amount of tax savings and then applying a rate of interest which the firm would have had to pay for a short-term loan. Using this methodology, we calculate a benefit of less than 0.005 percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

C. *Special Depreciation Under the "Act Concerning the Regulation of Tax Reduction and Exemption*

In our questionnaire, we requested information on a program that permits accelerated depreciation under Article 25 of the Act Concerning the Regulation of Tax Reduction and Exemption." Article 25 permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. As discussed in the section "Programs Determined Not To Be Used," we verified that no producers or exporters of shapes and sheet claimed accelerated depreciation under Article 25. However, POSCO did claim "special" depreciation under Article 11 of the "The Act Concerning the Regulation of Tax Reduction and Exemption." This special depreciation is provided to "a domestic person carrying on an important industry." The "important" industries include:

- The naptha-cracking industry:
- The iron and steel industry producing pig iron:
- The machine industry:
- The electronics industry:
- The shipbuilding industry: and
- The aerial industry.

Our review, during verification, of the Enforcement Decree for Article 11, indicated that only those enterprises within a designated industry that produce designated goods, are eligible for this special depreciation. We asked the administering authority for clarification concerning whether all firms or just certain firms within an industry could claim this special depreciation. The government of Korea did not provide any further documentation clarifying the eligibility requirements. Thus, because we have no evidence in the record of these investigations that this special depreciation for "important" industries

is not limited to a group of enterprises, we determine that it consitutes a subsidy. POSCO is the only company producing either of the products under investigation that claimed this special depreciation.

To calculate the benefits from the special depreciation program for the period in which we are measuring subsidization (calendar year 1983), we determined the tax savings received in 1983 based on the special depreciation which had been deducted from the 1982 income taxes payable in 1983. The amount of tax savings received under this program was divided by the total value of all sales in 1983 to determine a subsidy of 2.41 percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

D. Government Equity Infusions into POSCO

Petitioner alleged that equity infusions into POSCO by the government of Korea were on terms inconsistent with commercial considerations. As discussed in the "Analysis of Programs" section, we determine that POSCO was not a reasonable commercial investment (was unequityworthy) from 1978 through 1980, and thus the government equity infusions in each of those years were on terms inconsistent with commercial considerations. Therefore, we determine that these infusions confer benefits which constitute a subsidy. To calculate the benefit, we followed the rate of return shortfall methodology outlined in the Subsidies Appendix. The net subsidy if 0.71 percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

E. Reductions in Port Charges

"Designated companies" under the Iron & Steel Industry Rehabilitation Order are eligible on a case-by-case basis to receive discounts from regular utility and port rates. In its response, the government stated that this program was never fully implemented and that only POSCO receives any benefits under it. We verified that POSCO receives a 50 percent reduction in port charges only. Because this reduction is limited to a specific enterprise, we determine that it constitutes a subsidy. Since the reduction is 50 percent of port charges, the amount of the benefit is equal to the amount of port charges paid and is treated as a grant. Under the grant methodology outlined in the Subsidies Appendix, we must compare the sum of all grants received in any given year with 0.5 percent of total sales. If the sum of all grants is less than 0.5 percent, then the grant is allocated to the year of receipt. If the sum of all grants is greater than 0.5 percent, then we allocate the benefit of those grants over 15 years, which is the average useful life of renewable physical assets in the steel industry. Because POSCO could only provide the port charges paid in 1981 through 1983, we used, as best information available for each of the previous years, an average of the port charge paid in 1981 through 1983. Using this methodology, we calculate a subsidy of 0.05 percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

F. Tariff Reductions on Plant and Equipment

Under Article 28 (Duty Abatement for Important Industries) of the Customs Act, "Customs duty may be abated with respect to goods which are designated by the notice of the Ministry of Finance from among machinery equipment for the use of such industries as designated by an Ordinance of the Ministry of Finance from among those falling under any of the following subparagraphs * * * which cannot be properly manufactured domestically * * *." The industries listed in the subparagraphs include the chemical industry, primary metal manufacture, general machinery manufacture, manufacuture of electric instruments, manufacture of transportation machinery, manufacture of scientific instruments, manufacture of machine parts, and electric railroad transportation. In our preliminary determinations, we found these tariff reductions to be a subsidy because eligibility for the reduction required government designation and because we did not know whether all the industries listed in the Act had been designated by the Ministry of Finance.

During the government verification, we received a list of all industries designated by the Ministry from 1974 through 1983. While we were verifying this program at one of the companies, we found that the designated industries are subdivided into three categories: Class A, Class B and Class C.

Companies in Class A are eligible for a higher percentage of tariff reduction than those in Class B and Class C. The Class A category includes the following:

- Naptha-chemical industry;
- Steel producers with over 200,000 tons of capacity;
- Manufacturers of certain machinery such as steam turbines and hydrogenerators;
- Electric railway manufacturers; and
- Certain transportation and scientific equipment.

Based on our review of documentation entered in the record of these investigations, it appears that eligibility for Class A tariff reductions is limited to specific enterprises within designated industries, while eligibility for Class B and Class C tariff reductions are provided to all others in the designated industries. Thus, because no evidence has been submitted to the contrary, we determine that Class A tariff reductions are limited to a group of enterprises and, as such, constitute subsidies.

To determine the amount of the benefit from these tariff reductions, we must determine whether the Class B and Class C tariff reductions are limited to a specific enterprise or industry or group of enterprises or industries. In the 1974 Enforcement Decree, 14 separate industries were designated, including agriculture, mining, chemicals, basic metals, machinery, electric appliances, defense, air transportation and electric railways. All the firms in these industries are eligible for at least a Class C designation. Accordingly, given the number and diversity of those eligible, we do not consider that Class C tariff reductions are limited to a specific enterprise or industry or group of enterprises or industries.

Two companies producing the products under investigation, POSCO and Inchon, have received tariff reductions on plant and equipment. To calculate the benefit from Class A tariff reductions, we compared the amount of tariff reduction received under Class A and the amount of tariff reduction that the company would have received under Class C. We treated the difference as a grant. As explained in the section on "Reductions in Port Charges" above, we summed all the benefits being treated as grants in any given year (*i.e.*, the sum of the reduction in port charges plus tariff reductions on plant and equipment). When the sum of the grants was greater than 0.5 percent, we allocated the grants over 15 years. Using this methodology, we calculate a susidy of 0.10 percent *ad valorem* for cold-rolled carbon steel flat-rolled products and 0.01 percent *ad valorem* for carbon steel structural shapes.

II. Programs Determined Not To Confer Subsidies

We determine that benefits which constitute subsidies are not being provided to manufacturers, producers, or exporters in Korea of shapes and sheet, under the following programs:

A. Medium- and Long-Term Credit

Petitioner alleged that producers of shapes and sheet, as part of the Korean steel industry, have received medium- and long-term financing through government direction of credit and programs designed to finance major or key industries, and that these loans are made on terms which are inconsistent with commercial considerations.

In order to investigate the first allegation, that credit is directed within the Korean economy, we have examined whether the Korean government mandates, explicitly or implicitly, that certain industries or exterprises receive credit at the expense of other borrowers. If there are explicit or implicit government mandates that certain industries or firms receive funds, then we would expect to find this reflected in the composition of the loan portfolios of all the lending institutions combined. Absent a finding that these key or major industries receive a disproportionate share of the medium- and long-term loans available in Korea, we cannot conclude that the Korean government is directing credit to the steel industry.

Medium- and long-term financing is provided through three types of financial organizations in Korea:

(1) Commercial banks;
(2) Specialized banks; and
(3) Development institutions (Korea Development Bank and the Export-Import Bank of Korea).

In addition, there are two government funds through which long-term financing is provided:

(1) The National Investment Fund; and
(2) The Fund for Expanding Export Facilities.

We have examined the three types of financial organizations and the two government funds that are the sources of medium- and long-term borrowing in Korea.

Viewing these institutions and funds in the aggregate, we determine that there is no government direction of medium- and long-term credit to the producers of shapes and sheet or to the broader steel sector. We have found that the lending institutions in Korea, when viewed as a whole, provide medium- and long-term loans to all sectors and all major industry groups, indeed to virtually all industries. Notwithstanding that certain of the sources have been created to provide credit to designated groups of recipients, these groups do not receive a disproportionate share of the total medium- and long-term credit available from all sources combined. Moreover, we determine that the steel industry does not receive a disproportionate share of funds from all these sources. Indeed, over the last 15 years, the steel industry has accounted for approximately 6 to 13 percent of GNP. During the same period the basic metals sector, which includes steel, has received 5 to 8 percent of medium- and long-term loans.

Although we have found that credit is not directed by the Korean government to producers of shapes and sheet or to the broader steel industry, we must still examine whether particular medium- and long-term loans from any of the individual institutions or funds confer benefits which constitute subsidies within the meaning of the countervailing duty law.

In order to determine that medium- and long-term loans are providing benefits which constitute domestic subsidies, we must find that the program is limited to a specific enterprise or industry or group of enterprises or industries, and that the loans are provided on terms inconsistent with commercial considerations. If either of these conditions is not met, then we cannot find that a domestic subsidy exists.

In making the determination on whether a program is limited to a specific enterprise or industry or group of enterprises or industries, we have consistently examined whether there is a *de facto*, as well as a *de jure*, limitation. In making the determination of whether a loan is inconsistent with commercial considerations, we examine whether the potentially countervailable loan offers more favorable terms than the firm would otherwise receive.

Based on our verification and information provided by the petitioners, the responses and the briefs submitted by parties to the proceeding, we have found the following with respect to each of the three types of financial organizations and the government funds:

1. *Commercial Banks.* Commercial banks, which until the early 1980's were either government-owned or government-controlled, consist of seven nationwide or "city" banks and 10 regional or "local" banks. The branches of 48 foreign banks are also included in the commercial bank category. The domestic commercial banks are authorized by the General Banking Act (G.B.A.) and provide the normal financial services that are usually offered by banks in all countries. There is no explicit listing in the G.B.A. that designates certain industries or sectors for receipt of commercial bank credit.

Bank of Korea statistics show the distribution of loans from the deposit money banks (DMB's). DMB's include both commercial and specialized banks. (Specialized banks are discussed in the following section.) Examination of the Bank of Korea statistics demonstrates that during both the 1970's and 1980's all sectors of the economy received loans through the DMB's and that steel did not receive a disproportionate share.

During verification, we obtained loan statistics directly form Hanil and Cho-Heung, two of the five largest commercial banks in Korea. The loan statistics are broken down by sector, major industry group and industry. The sectors are:

- Agriculture and forestry;
- Mining;
- Manufacturing;
- Electricity, gas and water;
- Construction;
- Wholesalers;
- Transportation and warehousing; and
- Others (including social services).

Each of these sectors is then broken down by major industry group and by industry within each group. Steel production is included in the primary metals group within the manufacturing sector. This group includes, in addition to steel, categories for aluminum and others.

Our review of the loan statistics of these two banks for various years in the 1970's and 1980's shows that all sectors and major industry groups, indeed, virtually all industries, received loans. Furthermore, the statistics do not show that the steel industry received a disproportionate share of the loans.

2. *Specialized Banks.* There are seven specialized banks in Korea: Korea Exchange Bank, Medium Industry Bank, Citizens National Bank, Korea Housing Bank, National Agricultural Cooperatives Federation, National Federation of Fisheries Cooperatives and Members Cooperatives, and the National Livestock Cooperative Federation. Each of these banks is set up by its own Act, and, by their titles, these banks are explicitly chartered to service certain broad sectors of the Korean economy.

Like commercial banks, specialized banks are deposit money banks and, therefore, are included in Bank of Korea statistics on DMB loan distribution. As stated previously, the Bank of Korea statistics show that all sectors and industries have received loans through the DMB's and that steel has not received a disproportionate share of DMB loans. In addition, it is clear that the specialized banks have been set up to serve sectors of the economy besides steel. None has been set up specifically for the steel industry or even for the manufacturing sector or heavy industry or even for the manufacturing sector or heavy industry sector. We verified that the steel companies producing the products under investigation have only a few outstanding long-term loans from

specialized banks and that these loans do not represent a disproportinate share of the long-term loan funds from specialized banks.

3. *Development Institutions.*— a. *Korea Development Bank (KDB).* The KDB was established in 1954 to aid in the reconstruction of the country following the Korean War. Once reconstruction was completed, the bank shifted its resources to support the development of industries deeded important for long-term economic growth. The industries named in the KDB Enforcement Decree include electric power, coal mining, shipbuilding, iron and steel manufacturing, semiconductors and overseas marine and/or air transport. In addition to these industries, KDB also provides loans for agriculture, oil and gas, food and beverage, textiles, paper and paper products, chemicals, rubber and plastic products, non-metallic mineral products, fabricated metal products, machinery and equipment, construction, wholesale and retail trade, communications and financial services. Thus, while there is an explicit designation that the KDB will service certain industries, it also has provided loans to borrowers in numerous industries that were not designated.

During the 1970's and 1980's, the KDB accounted for approximately 45 percent of the medium- and long-term loans available. Prior to the June 1982 equalization of interest rates, these designated industries were charged a lower interest rate than KDB borrowers in other industries. The interest rates charged by KDB are set by the Ministry of Finance.

b. *Export-Import Bank of Korea.* Promulgated by Law No. 2122 in July 1969, the purpose of the Export-Import Bank of Korea (Eximbank) is "to promote the sound development of the national economy and economic cooperation with foreign countries by extending the financial aid required for export and import transactions, overseas investment and the development of natural resources abroad." The Enforcement Decree for the Act specifies the "major" raw materials that Eximbank should develop:

- Coal, iron ore, copper, petroleum, and other mined materials;
- Timber and other forest materials;
- Grains, cotton, sugar, rubber and other agricultural materials; and
- Other raw materials deemed necessary to secure stabilized long-term supply for the economy; however, this should be decided through a state meeting and announced through the Ministry of Finance

Thus, if there is any explicit designation of recipients of loans from the Eximbank, the designated group is raw material users.

During verification, we examined all export and overseas investment loans awarded from 1976 through 1982. During those seven years, only five loans were awarded to the steel industry; one in 1979, two in 1980 and two in 1982. None of these five loans was for the financing of exports of the products under investigation. Also, during each of these years, there were other projects financed in other industries. For example, in 1979, the other overseas investment loans went to a textile plant project, a manufacturing plant project, fishery development, a cement plant project, and vessel chartering. Thus, the Korea Eximbank finances projects in a wide number of industries. Moreover, the steel industry has not received a disproportionate share of Eximbank loan monies.

4. *The National Investment Fund.* On December 14, 1973, the government of Korea established the National Investment Fund (NIF) through Law No. 2635. The stated "purpose of this Act is to prescribe necessary matters for the establishment and effective management of the National Investment Fund on the bases of extensive nationwide savings efforts and participation, to secure and supply the investment and loan funds needed to promote the construction of major industries, including the heavy and chemical industries, as well as to help increase exports."

In the preliminary determinations, we determined that NIF loans were countervailable export subsidies because one of the express purposes stated in the Act was to help increase exports and because they were provided at preferential rates.

During verification, we found that there are two types of NIF loans, one to finance development and one to finance exports on a deferred payment basis. The NIF loans to finance exports on a deferred payment basis are managed by Eximbank. We verified that exports of the products under investigation are not eligible to receive NIF loans for exports on a deferred payment basis and that none of the companies producing shapes and sheet has financed exports of shapes and sheet through this program.

With respect to the other pool of NIF monies, our examination of loan files, as well as application and approval documents at the companies, did not reveal any export-related conditions on these NIF loans. Thus, we now conclude the NIF loans are not export subsidies.

Despite the fact that NIF loans would not be considered export subsidies, the law establishing the fund and the enforcement decree explicitly designate certain industries for receipt of these loans. In addition to "major industries, including the heavy and chemical industries," the enforcement decree names steel, nonferrous metals, shipbuilding, machinery, chemicals, electronics, food production, power, mining, cement, rural manufactured goods, projects to increase rural income, and fishing and Fisheries projects. NIF loans accounted for 25 to 30 percent of the medium- and long-term loans issued in the 1970's and 1980's.

5. *Fund for Expanding Export Facilities.* During verification at the companies we found several outstanding long-term loans received through the "Fund for Expanding Export Facilities." This fund was established in 1973 and abolished in 1982. Eligibility for these loans was limited to manufacturers building facilities for producing export goods or raw materials and purchasers of ocean-going vessels used for the fish export industry. Thus, this Act designates exporters as recipients.

Based on the findings reported above, we determine that because commercial banks and specialized banks provide medium- and long-term loans to all sectors and industries in the economy, and because the steel industry did not receive a disproportionate share, loans from these sources are not limited to a specific enterprise or industry or group of enterprises or industries and therefore do not provide benefits which constitute subsidies. Furthermore, based on our review of the Eximbank Act and the Enforcement Decree, and the distribution of the loans we find that there is no *de jure* or *de facto* limitation to an enterprise or industry or group of enterprises or industries. Accordingly, we determine that Eximbank loans do not provide benefits which constitute subsidies.

We also determine that loans provided to the shapes and sheet producers through the KDB and the NIF do not provide benefits which constitute subsidies, because the interest rates paid on these loans have been equal to the interest rate for all medium- and long-term loans in Korea since June 1982. Thus, these loans are not on terms inconsistent with commercial considerations.

To determine whether a loan is inconsistent with commercial considerations, we rely on the methodology in the Subsidies Appendix for long-term loans to companies

considered creditworthy. As stated in the Appendix, the benchmark for long-term loans is company-specific, unless the company lacks adequate comparable commercial experience. If the company lacks comparable commercial experience, we use a national average long-term loan interest rate.

After finding an appropriate benchmark loan, the next step in determining if a loan was given on terms inconsistent with commercial considerations is to calculate the payment differential between the benchmark loan and the loans at issue. Consistent with our methodology, when the long-term loans are at variabale interest rates, we calculate the benefit based on the differential between the interest rate for the loan at issue and the interest rate on the benchmark loans in the year for which we are measuring subsidization. As stated above, the rates on all medium- and long-term loans were equalized in 1982. Hence, for the year in which we are measuring subsidization, there is no interest differential between the loans at issue and the benchmark loans.

We note that using as the benchmark the 1983 interest rate on a variable rate long-term commercial loan is not a departure from prior practice. In our preliminary determinations we used a short-term interest rate as the benchmark for NIF loans. However, we stated that because we needed additional information in order to determine whether loans from commercial and specialized banks were subsidies, we could not use those variable rate long-term loans in establishing our benchmark. Thus, because we had no comparable commercial long-term loan experience with which to compare NIF loans, we used, as best information available, a short-term rate for purposes of measuring the benefit conferred by these loans.

Finally, we determine that loans received by the shapes and sheet producers under the Fund for Expanding Export Facilities do not confer benefits that constitute export subsidies. Assuming, as we do, that eligibility for these loans is contingent upon export performance, to quantify any benefit arising from these long-term export-related loans, we must compare the terms of these loans to the cost of comparable commercial domestic long-term loans.

We know that all loans from the Fund for Export Facilities that were still outstanding during the period for which we are measuring subsidization were charged 10 percent interest after the June 1982 equalization of interest rates. Thus, since June 1982 the cost to the borrower on these loans is the same as the cost of comparable domestic long-term loans. As a result, we find that no benefit is conferred by these long-term export-related loans.

B. Import Duty Deferrals

Article 36 of the Customs Act of Korea permits the Ministry of Finance to designate an industry as eligible to pay customs duties on an installment basis, rather than upon entry. In our preliminary determinations, we determined this program to confer a subsidy because the government of Korea did not provide us with any information demonstrating that during the period for which we are measuring subsidization this program was not limited to a specific enterprise or industry or group of enterprises or industries. A program may be available, in principle, to a wide group of industries, but when there appears to be some discretion on the part of the government in the granting of benefits under the program, we must determine whether that discreation effectively limts the program to specific enterprises or industries.

During verification, we found that twenty-four industries were eligible to receive duty deferrals including industries as disparate as mining, cement, fertilizers, chemicals, machine tools, steel works, and plywood. Once an industry is considered eligible, each company within that industry may request deferral status by submitting an application to the Tariff Administration Office of the Office of Customs Administration. We examined this program to determine if only certain companies within each of the twenty-four industries had their application for duty deferral status approved. We found that in practice there appears to be no limitation to the companies within the tweny-four industries which receive duty deferrals, and that any company which applies is granted that status. Therefore, we determine that this program is not limited to a specific enterprise or industry or group of enterprises or industries, and, therefore, does not constitute a subsidy.

C. Investment Tax Credit

Petitioner alleged that producers and exporters of shapes and sheet may receive preferential tax benefits under Article 72 of the "Act Concerning the Regulation of Tax Reduction and Exemption," which provides for a temporary investment tax credit when the government deems it necessary for adjustment of economic activities. During the period from January 1, 1982, through December 31, 1982, Article 57–2 was the enforcement decree for Article 72. Article 57–2 specifies that the investment tax credit was available for the acquisition of fixed assets used directly for the manufacturing or mining business. Consistent with past practice, programs available to all industries in the manufacturing and mining sectors are not limited to "a specific enterprise or industry, or group of enterprises or industries," and thus do not provide domestic subsidies. Since the tax credit is not contingent on export performance, it does not provide an export subsidy. Thus, we detemine that this program does not constitute a subsidy.

D. Equity Infusions Into Dongjin

Petitioner alleged that POSCO equity infusions into DongJin were on terms inconsistent with commercial considerations. DongJin was established on October 27, 1982, by POSCO. At the time of DongJin's formation, POSCO invested funds in order to provide cash for the purchase of the assets of Ilssin Steel Company and working capital for DongJin's future operations. POSCO also guaranteed the notes of DongJin used for the purchase of Ilssin's assets.

Ilssin Steel Company was a bankrupt company, owned and operated by its two major creditors, Korea Exchange Bank (KEB) and Commercial Bank of Korea (CBK). In accordance with Korean law, at the time of bankruptcy the courts foreclosed upon Ilssin's assets and offered the assets for sale at public auction. Because there were no other bidders for the assets at the appraised value or above, the banks, which were the highest bidders, purchased the assets at auction. These assets were then sold to DongJin for cash and notes.

According to the banks: (1) The price offered by DongJin was the highest price which they could obtain. (2) the banks' operations of Ilssin were resulting in a cash drain on them, and (3) it was in the bank's interest to sell the assets as a package, so as not to significantly decrease the value of the total package. Because there were no bidders, at auction, which would have paid the appraised value of the assets, and because it was in the banks' interest to minimize their losses, the sale of Ilssin by the banks can be characterized as a distress sale.

Although the banks were eager to sell, the purchase of Ilssin's assets by DongJin presented certain advantages to POSCO. Ilssin had been a major supplier to POSCO. POSCO had knowledge and management expertise to operate Ilssin and under the

circumstances might negotiate terms which could make the venture economically attractive. The terms negotiated required a minimal amount of cash and notes, some of which were at zero interest rate.

To determine whether POSCO's equity infusion into Dongjin was on terms inconsistent with commercial considerations, we analyzed the terms compared to ordinary commercial considerations. The Department did not find this transaction inconsistent with commercial considerations for the following reasons.

First, we found no evidence that the government directed the banks to sell the assets to Dongjin on favorable terms. Second, the cash investment into a newly created subsidiary by a parent company, and the guaranteeing of subsidiary's notes, when the subsidiary is still a "shell" organization, are normal business practices. Third, because of the commercial advantages to both the seller and the purchaser in this transaction, and the apparent lack of interest by any other party to purchase Ilssin's assets, we determine that the transaction was not on terms inconsistent with commercial considerations. Moreover, we do not consider POSCO's guarantee of Dongjin's notes payable to be a subsidy, because no evidence has been submitted that a parent company's guarantee of a wholly-owned subsidiary's loan is inconsistent with commercial considerations.

E. POSCO's Purchases of Domestic Iron Ore

In its july 9 submission, petitioners alleged that, under the Steel Industry Promotion Act (No. 2181 and Enforcement Decree No. 5366), suppliers of iron ore to a domestic steel mill are treated like exporters of the ore and thus are eligible for export financing. In addition, petitioner alleged that, since exports are exempt from the value-added tax (VAT), domestic iron ore sales are as well. We collected information on domestic iron ore sales during verification in conjunction with the allegation that steel companies receive financial and technical assistance in purchasing raw materials (see the section on "Programs Determined Not To Be Used").

At verification, we found that the government sets the prices on domestic iron ore, and that POSCO, the only fully integrated steel mill in Korea, buys virtually all domestic iron ore production. We verified that the price paid by POSCO to the domestic iron ore suppliers was higher than the price paid to numerous unrelated foreign suppliers, none of whom we have found to be subsidized. Consequently, we determine that no competitive benefit is received by POSCO on its purchases of iron ore. Section 613 of the Trade and Tariff Act of 1984, signed by the President on October 30, codifies the standards for determining upstream subsidies. This section generally codifies Department practice. Our investigation was consistent with both Department practice and the newly codified standards.

With respect to petitioner's allegation that POSCO receives an exemption from VAT on its domestic iron ore purchases, we did receive documents, at verification, which indicate that POSCO has been paying VAT on its domestic iron ore purchases. Because POSCO pays VAT on its domestic iron ore purchases and because no competitive benefit is being received by POSCO through its purchases of domestic iron ore, we determine that no countervailable benefits are being provided to POSCO on its purchases of domestic iron ore.

III. Programs Determined Not To Be Used

We have determined that manufacturers, producers, or exporters in Korea of shapes and sheet do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigations of Carbon Steel Structural Shapes and Cold-Rolled Carbon Steel Flat-Rolled Products from Korea":

A. Accelerated Depreciation Under Article 25 of the "Act Concerning the Regulations of Tax Reduction and Exemption"

Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption" permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. If the corporation has received less than 50 percent of its total proceeds from foreign exchange, it can still claim some accelerated depreciation, determined by a formula based on the firm's foreign exchange earnings and total business earnings. We verified that none of the producers or exporters of shapes and sheet claimed accelerated depreciation under Article 25 during the period for which we are measuring subsidization.

B. Free Export Zone Program

Petitioner alleged that producers and exporters of shapes and sheet receive tax benefits based upon location in a free export zone. We verified that none of the producers or exporters of shapes and sheet is located in a Free Export Zone.

C. Foreign Capital Inducement Law

Petitioner alleged that producers and exporters of shapes and sheet may be receiving financial and tax benefits under the Foreign Capital Inducement Law. The producers and exporters of shapes and sheet are not eligible for any benefits under this program because they have no foreign ownership.

D. Export Credit Insurance

Petitioner alleged that the government of Korea provides annual contributions to an export insurance program. We verified that export credit insurance was not used to insure exports of shapes and sheet to the United States.

E. Training Aid

Petitioner alleged that the steel industry has received training aid from the government of Korea. We verified that the steel companies producing the products under investigation have not received training grants or other training funds from the government of Korea.

F. Financial and Technical Assistance for Raw Material Purchases

Under the Iron and Steel Promotion Act, financial and technical assistance to purchase raw materials is authorized. However, we found no evidence that steel companies producing the products under investigation receive assistance from the government in purchasing raw materials.

G. Preferential Utility Rates

Petitioner alleged that "designated companies" under the Iron and Steel Industry Rehabilitation Order are eligible on a case-by-case basis to receive discounts from regular utility charges. Under Article 7 of the Iron and Steel Industry Promotion Act reductions on utility charges are authorized. The steel industry make a request to the Korean Electric Company seeking reduced rates but the Electric Company turned down the request and the reductions were never granted. We also found no evidence that the steel companies producing the products under investigation received reductions or other assistance on any other utility rates.

H. Development of Kwangyang Bay Industrial Zone

Petitioner alleged that the government of Korea is constructing a port at Kwangyang Bay to facilitate the importation of coal and iron ore. It is further alleged that POSCO will benefit from this port. POSCO is in the process of constructing a new steel mill at Kwangyang Bay. The mill is scheduled for completion in 1987.

In 1982, the government established an industrial zone at Kwangyang Bay under the authority of the Industrial Complex Development Act. The authorization for the Kwangyang Bay Industrial Zone states that the purpose of the zone is "to effectively and systematically construct an industrial zone in relation to the construction of Kwangyang steel mill and the major facilities of port, water, roads, railways, etc." According to government officials, the infrastructure is not being built for the exclusive use of POSCO although POSCO will be the first company to use it. In addition, POSCO is undertaking, at its own expense, the construction of several port facilities, such as a central terminal station for cargo and an import pier. There is a projection that 26 companies will locate in the zone upon completion of the infrastructure and POSCO's mill.

We verified that neither the port nor any other infrastructure in the zone has been used to produce or export the products under investigation. Accordingly, we determine that no countervailable benefits were bestowed upon the products under investigation during the period for which we are measuring subsidization.

Programs Not in Existence

We determine that the following programs are not in existence or have been abolished:

A. Preferential Exchange Rates for Export Loans

Petitioner alleged that producers and exporters of shapes and sheet receive preferential exchange rates for export loans based on letters of credit. Petitioner alleged that the exchange rate used for loans based on letters of credit was 10 percent more favorable to Korean exporters than the actual exchange rate. There is no preferential exchange rate used to convert export financing. For export loans granted under the Export Financing Regulations, a Won/U.S. dollar conversion factor which is lower than the official exchange rate is utilized when a loan is received against a letter of credit. Therefore, we determine that there is no program of preferential exchange rates for export loans that provides countervailable benefits to shapes and sheet producers and exporters.

B. Export Financing under the Foreign Trade Transaction Act

Petitioner alleged that the government of Korea provides the steel industry with preferential short-term export financing under the Foreign Trade Transaction Act. The Foreign Trade Transactions Act has been repealed and was not in effect during the period for which we are measuring subsidization.

C. Steel Industry Development Scheme

Petitioner alleged that the Korean Ministry of Trade and Industry is sponsoring a steel industry development scheme in which the government will spend 210 billion won on POSCO's plant expansion project. At verification we established that the Ministry of Trade and Industry is not sponsoring such a scheme.

D. Wage Controls

Petitioner alleged that the government of Korea controls wages for government-run firms such as POSCO, resulting in lower production costs for this segment of Korean industry. It was further alleged that Dongjin may benefit from government wage controls by virtue of its status as a wholly-owned subsidiary of POSCO. The rates paid by POSCO and Dongjin to their workers are comparable to the rates paid by other steel manufacturers. We also found no evidence that the government of Korea has a wage control system under which Dongjin or POSCO must operate.

E. Joint Facilities for Industrial Complexes Scheme

Petitioners in the OCTG investigation alleged in their August 20 submission that the government of Korea was providing funding for joint facilities in industrial complexes, and that the steel industry was one of the industries targeted for such funding. In 1981 such a program was discussed between the Federation of Small and Medium Industry Cooperatives and the government of Korea. The project was to be located near Kimpo Airport in Seoul. However, in January 1982 the proposed project was cancelled due to lack of funding.

F. Equipment Funds for Export Strategy Industries and Funding for Industrialization of New Technology

The Ministry of Trade and Industry (MTI) is presently studying proposals concerning these two projects but there has been no final decision on whether to set them up. The Korea Development Bank has received a loan from the Asian Development Bank to fund one of the programs. However, we verified that the only industries eligible to receive loans from this fund are companies producing machines and machine parts.

G. Assistance for Trading Companies

Petitioners in the OCTG investigation alleged that the government of Korea provided benefits to trading companies by allowing them to increase their foreign exchange holdings and by allowing them to increase their reserve funds to cover export losses in foreign markets. With regard to the first allegation, trading companies are authorized to maintain foreign currency accounts of over $300,000. However, we found no evidence that other companies are limited in their foreign exchange holdings or any other evidence to suggest that this allowance for foreign exchange holding provides a countervailable benefit to trading companies. Regarding the allegation on export reserves, we verified at the trading companies that there are no special provisions allowing them to claim additional export loss reserves. Even if there were such provisions, we have verified all the outstanding export reserves held by the trading companies.

H. Import Duty Reductions or Exemptions for Raw Materials

Petitioner alleged that producers and exporters of shapes and sheet receive reductions or exemptions of import duties on iron ore and coking coal. The 1983 Tariff Schedules of Korea show that imports of iron ore and coking coal were not subject to any import duties. Therefore, we determine that there was no program providing a reduction or exemption of import duties on iron ore and coal that provides countervailable benefits to shapes and sheet producers or exporters during the period for which we are measuring subsidization.

I. Coal Import Funds

Petitioner alleged that the government of Korea subsidizes the importation of coal through a specific fund for that purpose. We found that there are no coal import funds or programs that relate to the importation of coking coal used to produce steel. Furthermore, respondents indicate that all imported coking coal is purchased on a commercial basis and that world market prices are paid. Therefore, we determine that there is no coal import fund or program that provides countervailable benefits to shapes and sheet producers.

Petitioner's Comments

Comment 1: Petitioner argues that the commercial bank interest rate, which was averaged with other rates to

compute the benchmark, is not a free market rate and, therefore, should not have been used in determining a benchmark. In support of this contention, petitioner cites Department practice as reflected in prior proceedings and in the Subsidies Appendix where "commercial" interest rates were used as benchmarks or where market-determined prices were sought.

DOC Position: Petitioner is reading our prior determinations and the Subsidies Appendix too narrowly. For example, in seeking a "commercial" benchmark interest rate, we are seeking the alternative financing that is available to the firm in the lending marketplace of that country. We are asking if the interest rate paid on the allegedly preferential loan is less than what the average firm in that country would otherwise be paying. Similarly, in looking to market prices, we are seeking the prices that exist in that country's marketplace.

Typically, the marketplace is not the perfectly competitive market envisaged by economists. Instead, it is the commercial environment facing the firm. The Commercial environment facing the firm. The commercial environment includes any distortions to relative prices that arise from government actions such as government regulation of the banking system, tax systems, customs duties or minimum wage laws. So long as profit-maximizing firms compete within that system, a marketplace exists and our benchmarks for identifying and valuing subsidies are prices in that marketplace.

Comment 2: Petitioner argues that the benchmark interest rate used in the Department's preliminary determination, a weighted average of the interest rates charged by all sources of short-term commercial financing in Korea, does not reflect what a company would pay a normal commercial lender and is thus inconsistent with the principles enunciated by the Department for quantifying subsidies. Petitioner further argues that it is the curb market's unregulated interest rate which reflects the real cost of credit in Korea, and thus, pursuant to the principles enunciated in the Department's Subsidies Appendix, the curb market interest rate should be used as the benchmark interest rate in this case.

DOC Position: The Department believes that the correct benchmark for short-term lending normally is the most comparable, predominant form of short-term financing in the country under investigation. However, as explained in the section of the notice on "Short-Term Export Financing Under the Export Financing Regulations", the Department has found an incentive for banks to lend for export transactions at the expense of domestic financing. Using best information available, the Department has measured this preference for export lending by comparing the cost of export loans with the weighted-average cost of all forms of short-term domestic financing.

In the case of long-term loans, the Department has followed its standard practice of comparing the terms of loans under examination with the terms of comparable commercial long-term loans (see the section of the notice on "Medium- and Long-Term Credit"). In reaching these determinations, we believe we have been faithful to the principles enunciated in our Subsidiaries Appendix.

Comment 3: Petitioner contends that, assuming *arguendo*, the weighted-average benchmark is the correct benchmark, the Department's weighted-average benchmark understates the proportional size of the curb market and overstates the proportional size of bank credit as sources of domestic credit.

DOC Position: As explained in the section of the notice on "Short-term Export Financing Under the Export Financing Regulations," we are using a weighted-average of short-term domestic financing costs in order to quantify the banking system's preference for export loans. This weighted-average credit pool comprises short-term domestic bank credit, investment and finance company credit, commercial paper, and the curb market. Our weights are based on the most reliable data entered in the record of this investigation, including the Bank of Korea's *Monthly Statistical Bulletin*, the Federation of Korean Industries' biannual surveys of corporate financing, and the Korea Chamber of Commerce's annual survey of the curb market.

Comment 4: Petitioner contends that exporters and/or steel producers of shapes and sheet benefit from a lower effective interest rate on domestic bank loans because they, unlike other borrowers, are not subject to compensating balance requirements.

DOC Position: Bank of Korea regulations specifically prohibit domestic banks from requiring compensating balances. During verification, we found no evidence that domestic banks require compensating balances or other borrowers, while not requiring them of exporters and/or steel producers.

Comment 5: Petitioner argues that the Korean government allocates the heavily subsidized credit of the "tightly government controlled-banking system" to select priority, export industries. All others must rely on the curb market for funds. Commercial bank loans have especially focused on the Korean steel industry, and loan decisions are based on political, not creditworthiness considerations. U.S. Steel contends that commercial bank loans were not generally available either prior to or during 1983–1984.

DOC Position: For an explanation of our treatment of medium- and long-term loans, see the section of this notice entitled "Medium- and Long-term Credit".

Comment 6: Petitioner contends that the National Investment Fund (NIF) provides preferential loans to producers of shapes and sheet.

DOC Position: We have found that NIF loans do not constitute subsidies during the period for which we are measuring subsidization (see the section of this notice entitled "Medium- and Long-Term Credit").

Comment 7: Petitioner contends that the NIF provided loans to producers of shapes and sheet at interest rates below those paid on NIF deposits. This differential in the cost of their funds and the return on their funds was assumed by the government, and constitutes an additional subsidy to producers of shapes and sheet.

DOC Position: During the period for which we are measuring subsidization, interest rates on long-term variable-rate NIF loans outstanding were not below interest rates on long-term variable-rate NIF deposits outstanding. Therefore, no government assumption of interest charges is indicated during the period for which we are measuring subsidization.

Comment 8: Petitioner argues that Korean Development Bank (KDB) loans are not generally available and should therefore be countervailed.

DOC Position: We have found that KDB loans do not constitute subsidies during the period for which we are measuring subsidization (see the section of this notice entitled "Medium- and Long-Term Credit").

Comment 9: Petitioner alleges that the Export-Import Bank of Korea (Eximbank) has provided loans for POSCO's coking coal development projects abroad—projects which provided the coking coal input for steel production. Given the "government compensation for interest losses" of the Eximbank, these loans are undoubtedly highly preferential.

DOC Position: We determine that Eximbank loans are not limited to a specific enterprise or industry or group of enterprises or industries. Because this criterion for a domestic subsidy is not met, we determine that Eximbank loans do not confer benefits which constitute subsidies.

Comment 10: Petitioner argues that a 3.5 percent loan to POSCO, given by the Korean government with funds obtained from the Japanese government, is a countervailable subsidy.

DOC Position: We did not initiate an investigation of this loan. This loan was examined in the 1982 investigation of certain steel products from Korea (see "Final Affirmative Countervailing Duty Determinations: Certain Steel Products From the Republic of Korea," 47 FR 57535), and found not to be countervailable. After examining the information submitted by petitioner in these investigations, and the record of the 1982 case, we determined that no new information had been presented, merely a restatement of the existing evidence which we had used to determine that the 3.5 percent loan did not confer a subsidy upon POSCO.

Comment 11: Petitioner argues that the respondent's non-responsiveness to questions in the Department's questionnaire concerning both commercial banks and NIF dictates that the Department make all inferences against respondents.

DOC Position: We have found respondents responsive to our requests for information throughout this investigation considering the time constraints under which all parties were operating. Furthermore, we obtained information on the commercial banks and NIF during our verification and petitioner was given an opportunity to comment on the reports of our verification which discuss commercial banks and the NIF in detail.

Comment 12: Petitioner contends that Korean producers of shapes and sheet benefit from government loan guarantees. In particular, petitioner argues that industry-specific, government loan guarantees permitted POSCO to borrow funds in the European bond market at lower rates than would be possible without government guarantees.

DOC Position: In the course of our investigations, we determined that loan guarantees from both government-owned and privately-owned financial institutions are a standard commercial practice in Korea. The Bankers' Association sets the guarantee fees, and all Korean banking institutions charge those fees. The fee structure for loan guarantees does not differentiate by industry or class of transaction (*i.e.*, export or domestic). It does distinguish between won and foreign currency loans. As explained at verification by both foreign and Korean bankers, foreign banks, unlike Korean banks, cannot require collateral on their loans. Thus, foreign bankers generally require a loan guarantee. Korean banks usually require guarantees when a company has no unpledged collateral. We found that the steel companies producing the products under investigations paid the fees specified by the Bankers' Association for those guarantees that they had on their domestic and foreign currency loans. Thus, we do not consider that these guarantees are on terms inconsistent with commercial considerations.

Comment 13: Petitioner contends that the Department's verification reports indicate that preferential port charges for exports exist in Korea, based on the per ton differential in port charges for exporting, importing and domestic shipping.

DOC Position: The Korea Maritime and Port Administrative (KMPA) establishes the rates for port charges. Rates vary according to port and also to the type of port activity. Port charges are higher for importers than for exporters; however, the charges for domestic shipping are the lowest. For the port at Pusan the rate is 22 cents a ton for exporting, 37 cents a ton for importing, and 68 won a ton for shipping to another Korean port. The rate of 68 won for domestic shipping is much lower than the 22 cents a ton rate charged to exporters. Since an exporting activity is not favored over a domestic activity, we find no countervailable benefit being provided to producers or exporters of shapes and sheet.

Comment 14: Petitioner notes that the Department's verification report on Dongjin indicates that opening charges on letters of credit for loans for purchasing foreign raw materials for domestic use are higher than for loans purchasing foreign raw materials for export use. They consider this to be an export subsidy.

DOC Position: As discussed in the section of the notice on "Short-term Export Financing Under the Export Financing Regulations," we consider that the fee structure, which specifies lower charges for opening those letters of credit used to purchase imports of raw materials used in export production, is a manifestation of the preference built into the government's rediscount mechanism on short-term export loans. We consider that we have captured any benefit from this fee structure in our comparison of the weighted-average interest rate on short-term domestic loans with the 10 percent interest rate on short-term export loans.

Comment 15: Petitioner contends that Pohang Iron and Steel Company's (POSCO) equity infusions into Dongjin are a countervailable subsidy because no private investor would have been willing to invest in Dongjin.

DOC Position: Our determination with respect to the formation of, and equity investment in, Dongjin is set forth in the section entitled "Equity Infusions into Dongjin."

Comment 16: Petitioner claims that suppliers of iron ore to domestic steel mills receive subsidies in the form of highly preferential export financing and exemption from value-added tax. Because these subsidies are available to every supplier of iron ore, economic forces cause the iron ore producers to pass subsidies through to the purchasers, (*i.e.* steel producers).

DOC Position: We have found that POSCO does not receive a competitive benefit from its purchases of domestic iron ore. Our determination is in accordance with section 613 of the Trade and Tariff Act of 1984. With respect to the exemption of VAT on its domestic iron ore purchases, the evidence on the record indicates that POSCO does pay VAT on its domestic iron ore purchases.

Comment 17: Petitioner argues that because tariff reductions on plant and equipment are treated as grants, the DOC should consider the extent to which producers of the products under investigation benefited from tariff reductions over the last 15 years.

DOC Position: We have employed our standard grant methodology with respect for both tariff reductions and port charges. In any given year when the sum of the grants received was greater than 0.5 percent of total sales, we allocated the grants over 15 years to determine the amount of the benefit accruing to the year for which we are measuring subsidization.

Comment 18: Petitioner argues that government equity infusions into POSCO between 1978 and 1980 as well as other equity infusions from 1973 to the present were inconsistent with commercial considerations. In support of this argument, petitioner cites the following factors: (1) Inadequate rate of return on equity, (2) unfavorable economic environment, and (3) lack of dividend payments by POSCO.

DOC Position: In order to determine whether government equity infusions are inconsistent with commercial considerations, we analyze the company's operations to determine the potential of the company to yield an adequate rate of return to an investor. Consistent with the Subsidies Appendix,

many factors are considered in this analysis, including those cited by the petitioner. However, other factors, such as management, market growth, availability of production inputs and critical financial indicators (*i.e.*, cash flow, return from operations) also are taken into consideration.

After considering all pertinent factors relevant to each year from 1969 through 1983, including rate of return on equity, economic environment, domestic and export markets and the ability to pay dividends, we concluded that the government's equity infusions into POSCO were inconsistent with commercial considerations from 1978 through 1980.

Comment 19: Petitioner states that it is their understanding that POSCO strongly objected to becoming a public corporation because it did not wish to pay dividends. Petitioner argues that POSCO's non-payment of dividends supports petitioner's position that POSCO is unequityworthy.

DOC Position: The Department's analysis indicated that, in most years, POSCO's cash position was sufficient to pay dividends. Since POSCO was not a public corporation attempting to attract equity funds in the public market, and therefore was not required to pay dividends, the use of internally generated funds by POSCO for expansion purposes was a business decision that can be considered a normal commercial practice.

Comment 20: Petitioner claims that studies conducted in 1969 and 1971 should not be used to determine the equityworthiness of POSCO in 1973 and 1974; rather, the most recent experience should be used for the determination.

DOC Position: We analyzed the most recent feasibility studies if available, as well as POSCO's financial position and other relevant factors in our determination of equityworthiness in 1973 and 1974. We agree that studies conducted in 1969 and 1971 would generally not include information pertinent to a 1973 and 1974 determination.

Comment 21: Petitioner claims that technological efficiency does not necessarily mean economic efficiency, and thus should not be a major factor in our equityworthiness determination.

DOC Position: While technological efficiency clearly has a bearing on the company's ability to produce, efficient production is not the only factor which influences the financial return to the investor.

Comment 22: As argued previously, petitioner claims that, before DOC can determine whether government equity infusions are counteravailable, it must subtract out other domestic government subsidies from the firm's reported profits (losses) to determine a firm's true profitability.

DOC Position: We have maintained consistently that the Department should use the same basis as a private investor to determine equityworthiness. When deciding to invest, a private investor will assess the financial position of the firm at that point in time (see the Subsidies Appendix, 49 FR 18006).

We use the actual experience of the company as presented by generally accepted accounting principles in the country in which the company is located for determining the equityworthiness of the company. This provides a consistent standard for comparison to other companies which are conducting business in that country.

We already account for subsidies, other than equity, which the company received from the government by using methodologies specifically designed by the Department to calculate the benefit from these subsidies. If we countervailed these subsidies again when measuring the benefits to the company from the equity investment by the government, we would be double counting.

Comment 23: The petitioner claims that the Department should amend its methodology for quantifying the subsidy from government equity infusions by considering the riskiness of the investment in POSCO and comparing its rate of return on equity to a similarly risky investment. Consequently, the comparison should not be made to the average rate of return on equity, but to a rate of return on equity which includes a risk premium.

DOC Position: A company is considered to be equityworthy when it indicates the ability to generate a reasonable rate of return within a reasonable time period. We define this rate as the national average rate of return on equity. If the Department decides that a company is unequityworthy (*i.e.*, not likely to yield this average rate), then we find the equity infusion to be inconsistent with commercial considerations. This is not equivalent to saying that the investment is risky. Nor would we have any reasonable basis for determining the degree of risk involved in an investment. Moreover, if we chose to view such an investment as a "risky investment", we would have to reformulate our equityworthiness analysis because investors willing to bear a higher risk would evaluate these financial criteria differently. Therefore, in valuing the benefit from equity infusions that are found to be inconsistent with commercial consideration, we compare the rate of return of the firm under investigation to the national average rate of return on equity, and do not add a risk premium.

Respondents; Comments

Comment 1: Responders argue that the Department was incorrect in not using the interest rate for short-term borrowings from commercial banks as the most appropriate national average commercial method of short-term financing. Bill discounts, overdrafts, and general term loans are the domestic equivalents of short-term export financing, and are the alternative financing to export loans. Department precedent has always been to select the most comparable and commonly used alternative source of financing in a given country.

DOC Position: We agree that the correct benchmark for short-term lending normally is the most comparable, predominant form of short-term financing in the country under investigation. However, as explained in the section of the notice on "Short-Term Export Financing Under the Export Financing Regulations", the Department has found an incentive for banks to lend for export transactions at the expense of domestic financing. Using best information available, the Department has measured this preference for export lending by comparing the cost of export loans with the weighted-average cost of all forms of short-term domestic financing.

Comment 2: Respondents contend that the Department was incorrect in determining that long-term loans provided by the National Investment Fund (NIF) constitute export subsidies. NIF loans are in no way contingent on export performance. Respondents further contend that NIF loans are also not domestic subsidies because they are generally available. In any case, given the Department's methodology for evaluating long-term variable rate loans, no new NIF loans or NIF loans outstanding have been at preferential interest rates since NIF rates were equalized with the commercial bill discount rate in late 1981.

DOC Position: We agree that NIF loans do not constitute an export subsidy. We have also found that they do not constitute a domestic subsidy because interest rates on NIF loans during the period under investigation were not on terms inconsistent with commercial considerations. The correct long-term benchmark rate, however, is not that which exists on short-term commercial bills; rather, it is the rate on

comparable commercial long-term borrowing. This is the benchmark we used in determining that NIF loans did not constitute subsidies.

Comment 3: Respondents note in their comments on the Government Verification Report that, in the Ministry of Trade and Industry's requirements submission for NIF loans, a number of different companies from industries other than steel are listed and that not only steel companies were specifically listed.

DOC Position. We agree that companies from other industries were listed in the submissions.

Comment 4: Respondents argue in their comments on the DongJin Verification Report that the sale of assets by the banks to POSCO was incorrectly characterized as a loan. They argue that the transaction between POSCO and the banks is a purchase contract between the owners of the assets (the banks) and the purchaser (POSCO).

DOC Position. Our determination with respect to this transaction is set forth in the section of the notice on "Equity Infusions in DongJin."

Comment 5: Respondents not in their comments on the DongJin Verification Report, that the charges paid for opening letters of credit are unrelated to the short-term loans themselves.

DOC Position. We believe that we have captured any benefit to short-term export loans provided by this fee structure in our calculation of the subsidy on the short-term export loans. For further discussion of this issue, see our response to petitioner's Comment 14.

Comment 6: Respondents argue in their comments on the Government Verification Report that the central bank rediscount mechanism was established to ensure that financing reached the productive sector of the economy by tying the financing to commodities and transactions, and the volume of domestic financing under this mechanism far exceeds export financing if overdrafts and general term loans are included. They also argue that because domestic commercial bills finance 100 percent of the bills, value, while export loans are eligible for only 80 percent, the rediscount mechanism does not alter the value of financing reaching the borrower.

DOC Position: We disagree. In 1983, the volume of short-term domestic financing eligible for rediscount at the Bank of Korea was less than the volume of short-term export financing eligible for rediscount at the Bank of Korea. We believe this is a manifestation of the preference for export financing over domestic financing. Although a large company's domestic transactions are eligible for financing equal to 100 percent of transaction value, the bank which provides this financing may only rediscount 30 percent of that 100 percent at the Bank of Korea. At the same time, although all firms, export transactions are only eligible for financing equal to 80 percent of transaction value, the bank which provides this financing can rediscount 70 percent of the 80 percent at the Bank of Korea. Thus, the Bank of Korea supplies credit which covers only 30 percent of the value of a domestic transaction as compared to 56 percent of the value of an export transaction.

This preference for export credit is a subsidy, and we have countervailed it (see the section of this notice entitled "Short-term Export Financing Under the Export Financing Regulations.")

Comment 7: Respondents contend that tariff reductions on plant and equipment are generally available. They claim that DOC has sufficient evidence, obtained at verification, to find that tariff reductions on imported equipment are available to a large number of industries and, thus, are generally available.

DOC Position: We determined that tariff reductions on plant and equipment, unlike import duty deferrals on plant and equipment, confer benefits which constitute subsidies because this program operates to provide higher tariff reductions to certain enterprises within the industries designated as eligible for tariff reductions. Thus, the benefit equals the differential between the higher tariff reductions for certain enterprises and the tariff reduction allowed for all the other designated industries.

Comment 8: Respondents argue that DOC should calculate company-specified rates for cold-rolled carbon steel flat-rolled products.

DOC Position: It is the Department's policy to issue country-wide rates unless separate enterprises have received significantly different benefits. In this case, although one producer under investigation receives benefits under all six programs found to confer subsidies, while the other producers and exporters receive benefits under only two of the programs, the level of benefits received is not significantly different. Thus, we do not believe that company-specific rates are appropriate.

Comments 9: Respondent claims that the Department erred in its preliminary determination by using U.S. "generally accepted accounting principles" instead of Korean "generally accepted accounting principles" to review the financial results of POSCO. Respondent contends that the Department must view the equityworthiness of the company in the country where it is located. Specifically, respondent claims that in conducting the equityworthiness analysis, the Department should apply Korean accounting principles pertaining to unrealized exchange gains and losses which permit amortization of such gains and losses over a five year period, and should not apply U.S. principles to exchange gains and losses.

DOC Position: We did not use U.S. accounting principles to restate POSCO's financial statements which were used as a basis for the preliminary determination. An investor would consider many factors when deciding to invest in a company. One of these factors is the impact of generally accepted accounting principles on the presentation of the firm's financial results. Thus, we also examined the effects of these accounting principles on POSCO's financial statements.

When analyzing the financial results of POSCO, we used the korean principles which permit a five-year period of amortization for unrealized exchange gains and losses. U.S. accounting principles would require all exchange losses to be expensed in the year in which such losses were incurred. However, a significant number of POSCO's exchange transactions had not been amortized over a five-year period in POSCO's financial statements. An investor reviewing the financial results of POSCO would have considered the impact from these exchange transactions which had not been amortized over five years. Thus, the Department also considered the impact to profits and to other financial aspects of the company from such transactions.

Comment 10: Respondent argues that the Department departed from its prior determinations which require the use of the accounting practices of the country of the company under investigation to determine the equityworthiness of a company.

DOC Position: We did not depart from our prior determinations. We used the Korean "generally accepted accounting principles" when reviewing the financial statements of POSCO, and we considered the impact to the financial results from the application of such principles.

Comment 11: Respondent claims that POSCO is a sound investment if viewed by any standard because of its efficient production operations and its ability to service it debt. Also, the feasibility studies presented to the banks for financing POSCO's expansions presented positive economic projections.

DOC Position: We analyzed many factors for the equityworthiness

determination, two of which were POSCO's production results and the effects of debt leverge on its operations. Additionally, the Department reviewed the feasibility studies and compared the projections in each feasibility study with the company's on-going financial results to determine the impact such studies may have had on an investment decision. This comparison revealed that the actual financial results were not commensurate with the financial projections and, therefore, such studies would have been used for only a short period of time as a basis for an investment decision. Furthermore, the fact that the company's performance failed to meet projections would have negatively influenced an investor.

Comment by Chaparral Steel Company, a Party to the Proceeding: In addition to endorsing the comments filed by petitioner in these proceedings, Chaparral Steel Company also filed a separate comment pertaining to the production of carbon steel structural shapes.

Comment: Chaparral Steel Company provided raw material, transportation, comparative labor cost data, and price information to suggest that, given the Koreans' cost disadvantages and lower selling prices for carbon steel structural shapes in the United States, Korean shapes producers must be subsidized.

DOC Position: Chaparral did not provide any detailed evidence or arguments that specific government programs exist which defray the Koreans' presumed cost disadvantage for steel production. At verification, we found that Inchon Iron and Steel Company, the only shapes producers in these investigations, paid all duties and shipping costs for the import of scrap iron and steel. We have also fully investigated all other programs alleged by petitioner to be subsidies. Absent specific charges that additional government subsidies exist to benefit Korean producers of shapes, we cannot determine that carbon steel structural shapes sold in the United States are subsidized to any degree greater than the *de minimis* level found in these determinations.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determinations. Commerce officials spent from September 18 to October 17 verifying the information submitted by the government of Korea and by the companies under investigation, and gathering additional information to be used in our final determinations. During this verification we followed normal verification procedures including inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, and to financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, on September 18, 1984 we instructed the U.S. Customs Service to suspend liquidation of all entries of cold-rolled carbon steel flat-rolled products from Korea (49 FR 36538). As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended and the Customs Service shall require a cash deposit or bond for each such entry of this merchandise in the amount of 3.60 percent *ad valorem*. This suspension will remain in effect until further notice. As stated above, our final determination with respect to carbon steel structural shapes is negative; therefore, we are not directing the U.S. Customs Service to suspend liquidation of entries of carbon steel structural shapes.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to the investigation of cold-rolled carbon steel flat-rolled products. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether imports of cold-rolled carbon steel flat-rolled products materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist with respect to cold-rolled carbon steel flat-rolled products, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs Service to assess countervailing duties on all entries of cold-rolled carbon steel flat-rolled products from Korea entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation date, equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

November 26, 1984.

[FR Doc. 84-31524 Filed 11-30-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State for foreign vessels to fish in the fishery conservation zone under the Magnuson Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.).

Send comments on applications to:

Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington DC 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas, G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus MA 01906, 617-231-0422

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suit 306, 1 South Park Circle, Charleston, SC 29407, 803-571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809-753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813-228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503-221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suit 2D, Anchorage, AK 99510, 907-271-4064

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1608, Honolulu, Hawaii 98613, 808-523-1368

For further information contract Shirley Whitted or John D. Kelly (Fees, Permits, and Regulations Division), 202-634-7432. The Magnuson Act also requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983 issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received between October 10, 1984 and November 29, 1984 from the Government(s) shown below.

Dated: November 11, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries service.

BILLING CODE 3510-22-M

Fishery codes and designation of Regional Fishery Management councils which review applications for individual fisheries are as follows:

CODE	FISHERY	REGIONAL FISHERY MANAGEMENT COUNCIL
ABS	ATLANTIC BILLFISHES AND SHARKS	NEW ENGLAND, MID-ATLANTIC, SOUTH ATLANTIC, GULF OF MEXICO, CARIBBEAN
BSA	BERING SEA AND ALEUTIAN ISLANDS GROUNDFISH	NORTH PACIFIC
GOA	GULF OF ALASKA	NORTH PACIFIC
NWA	NORTHWEST ATLANTIC OCEAN	NEW ENGLAND, MID-ATLANTIC SOUTH ATLANTIC, GULF OF MEXICO, CARIBBEAN
SMT	SEAMOUNT GROUNDFISH (PACIFIC OCEAN),	WESTERN PACIFIC
SNA	SNAILS (BERING SEA),	NORTH PACIFIC
WOC	PACIFIC GROUNDFISH (WASHINGTON, OREGON, AND CALIFORNIA),	PACIFIC
PBS	PACIFIC BILLFISHES AND SHARKS	WESTERN PACIFIC

Activity codes which specify categories of fishing operations applied for are as follows:

ACTIVITY CODE — FISHING OPERATIONS

1.....CATCHING, PROCESSING, AND OTHER SUPPORT.

2.....PROCESSING AND OTHER SUPPORT, ONLY.

3.....OTHER SUPPORT ONLY.

4.....°JOINT VENTURE° IN SUPPORT OF U.S. VESSELS.

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
***GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC			
BODO UHSE LARGE STERN TRAWLER	GC-85-0040	NWA	1
EHM WELK LARGE STERN TRAWLER	GC-85-0041	NWA	1
HANS MARCHWITZA LARGE STERN TRAWLER	GC-85-0052	NWA	1
LUTTEN KLEIN CARGO/TRANSPORT VESSEL	GC-85-0026	NWA	3
STUBNITZ FACTORY SHIP	GC-85-0047	NWA	2
***GOVERNMENT OF ITALY			
ANTONIETTA MADRE MEDIUM STERN TRAWLER	IT-85-0013	NWA	1
CARLO DI FAZIO MEDIUM STERN TRAWLER	IT-85-0015	NWA	1
CORRADO SECONDO LARGE STERN TRAWLER	IT-85-0012	NWA	1
DE BIOSA GIUSEPPE MEDIUM STERN TRAWLER	IT-85-0016	NWA	1
DE BIOSA L. MEDIUM STERN TRAWLER	IT-85-0023	NWA	1
DE BIOSA T. MEDIUM STERN TRAWLER	IT-85-0004	NWA	1
GABRIELLA C. MEDIUM STERN TRAWLER	IT-85-0018	NWA	1
MARIA C. MEDIUM STERN TRAWLER	IT-85-0021	NWA	1
MARIA MICHELA MEDIUM STERN TRAWLER	IT-85-0024	NWA	1
TONTINI PESCA QUARTO LARGE STERN TRAWLER	IT-85-0003	NWA	1
TONTINI PESCA TERZO MEDIUM STERN TRAWLER	IT-85-0002	NWA	1
***GOVERNMENT OF JAPAN			

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
AKASHI MARU NO. 18 PAIR TRAWLER	JA-85-0178	BSA	1
AKASHI MARU NO. 19 PAIR TRAWLER	JA-85-1136	BSA	1
AKASHI MARU NO. 51 PAIR TRAWLER	JA-85-0162	BSA	1
AKASHI MARU NO. 52 PAIR TRAWLER	JA-85-0163	BSA	1
AKASHI MARU NO. 58 PAIR TRAWLER	JA-85-0164	BSA	1
AKASHI MARU NO. 59 PAIR TRAWLER	JA-85-0165	BSA	1
AKASHI MARU NO. 63 PAIR TRAWLER	JA-85-0166	BSA	1
AKASHI MARU NO. 65 PAIR TRAWLER	JA-85-0167	BSA	1
AKASHI MARU NO. 66 PAIR TRAWLER	JA-85-0168	BSA	1
AKASHI MARU NO. 67 PAIR TRAWLER	JA-85-0169	BSA	1
AKASHI MARU NO. 68 PAIR TRAWLER	JA-85-0170	BSA	1
AKASHI MARU NO. 69 PAIR TRAWLER	JA-85-0171	BSA	1
AKASHI MARU NO. 71 PAIR TRAWLER	JA-85-0172	BSA	1
AKASHI MARU NO. 72 PAIR TRAWLER	JA-85-0173	BSA	1
AKASHI MARU NO. 73 PAIR TRAWLER	JA-85-0174	BSA	1
AKASHI MARU NO. 75 PAIR TRAWLER	JA-85-0175	BSA	1
AKASHI MARU NO. 76 PAIR TRAWLER	JA-85-0176	BSA	1
AKASHI MARU NO. 77	JA-85-0177	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
PAIR TRAWLER			
AKASHIA MARU CARGO/TRANSPORT VESSEL	JA-85-1156	BSA,GOA,NWA, SMT,SNA	5
AKEBONO MARU NO. 15 MEDIUM STERN TRAWLER	JA-85-0312	BSA	1
AKEBONO MARU NO. 18 MEDIUM STERN TRAWLER	JA-85-0315	BSA	1
AKEBONO MARU NO. 2 MEDIUM STERN TRAWLER	JA-85-1154	BSA,GOA,SMT	1
AKEBONO MARU NO. 21 MEDIUM STERN TRAWLER	JA-85-0316	BSA	1
AKEBONO MARU NO. 22 MEDIUM STERN TRAWLER	JA-85-0317	BSA,GOA,SMT	1
AKEBONO MARU NO. 27 MEDIUM STERN TRAWLER	JA-85-0308	BSA,GOA,SMT	1
AKEBONO MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-0306	BSA,GOA,SMT	1
AKEBONO MARU NO. 32 MEDIUM STERN TRAWLER	JA-85-0307	BSA,GOA,SMT	1
AKEBONO MARU NO. 72 LARGE STERN TRAWLER	JA-85-0338	BSA,GOA,SMT	1
AKEBONO MARU NO.1 MEDIUM STERN TRAWLER	JA-85-1153	BSA,GOA,SMT	1
AKEBONO MARU NO.3 MEDIUM STERN TRAWLER	JA-85-0105	BSA,GOA,SMT	1
AKEBONO REEFER CARGO/TRANSPORT VESSEL	JA-85-0911	BSA,GOA,NWA, SMT,SNA	5
AKIHO MARU PAIR TRAWLER	JA-85-0061	BSA	1
AKIZUKI MARU CARGO/TRANSPORT VESSEL	JA-85-2023	BSA,GOA,NWA, SMT	3
ALBATROSS CARGO/TRANSPORT VESSEL	JA-85-0081	BSA,GOA,NWA, SMT	5
ANYO MARU NO. 11 MEDIUM STERN TRAWLER	JA-85-0541	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
ANYO MARU NO. 12 MEDIUM STERN TRAWLER	JA-85-0580	BSA	1
ANYO MARU NO. 15 MEDIUM STERN TRAWLER	JA-85-0104	BSA	1
ANYO MARU NO. 18 MEDIUM STERN TRAWLER	JA-85-1175	BSA,GOA	1
ANYO MARU NO. 21 LONGLINER/GILLNET	JA-85-0621	BSA,GOA	1
ANYO MARU NO. 22 LONGLINER/GILLNET	JA-85-0622	BSA,GOA	1
AOBA MARU PAIR TRAWLER	JA-85-0114	BSA	1
AOYAGI MARU CARGO/TRANSPORT VESSEL	JA-85-0026	BSA,GOA,NWA, SMT	3
ASUNA REEFER CARGO/TRANSPORT VESSEL	JA-85-0048	BSA,GOA,NWA, SMT,SNA	3
BANSHU MARU NO. 6 LARGE STERN TRAWLER	JA-85-0373	NWA	1
BANSHU MARU NO. 7 LARGE STERN TRAWLER	JA-85-0374	NWA	1
BEHING MARU CARGO/TRANSPORT VESSEL	JA-85-1159	BSA,GOA,NWA, SMT	3
BIYO MARU CARGO/TRANSPORT VESSEL	JA-85-0598	BSA,GOA,NWA, SMT	3
BIZEN REEFER CARGO/TRANSPORT VESSEL	JA-85-0037	BSA,GOA,NWA, SMT,SNA	3
BUNGO REEFER CARGO/TRANSPORT VESSEL	JA-85-0039	BSA,GOA,NWA, SMT,SNA	3
CAMBRIDGE REEFER CARGO/TRANSPORT VESSEL	JA-85-0036	BSA,GOA,NWA, SMT,SNA	3
CHIKUBU MARU LARGE STERN TRAWLER	JA-85-0356	BSA,GOA	1
CHITOSE MARU CARGO/TRANSPORT VESSEL	JA-85-0180	BSA,GOA,NWA, SMT,SNA	3
CHOSEI MARU NO. 78 POT FISHING VESSEL	JA-85-0838	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
CHOUN MARU NO. 21 MEDIUM STERN TRAWLER	JA-85-0519	BSA	1
CHOYO MARU NO. 81 LONGLINER/GILLNET	JA-85-0615	BSA,GOA	1
CHOYOH MARU CARGO/TRANSPORT VESSEL	JA-85-0574	BSA,GOA,NWA, SMT	3
CHUYO MARU NO. 22 MEDIUM STERN TRAWLER	JA-85-0419	BSA	1
DAIAN MARU NO. 188 MEDIUM STERN TRAWLER	JA-85-0553	BSA	1
DAIEI MARU NO. 2 MEDIUM STERN TRAWLER	JA-85-0544	BSA	1
DAIGEN MARU CARGO/TRANSPORT VESSEL	JA-85-1147	BSA,GOA,NWA, SMT	3
DAIKAN MARU CARGO/TRANSPORT VESSEL	JA-85-0033	BSA,GOA,NWA, SMT	3
DAIKICHI MARU NO. 32 MEDIUM STERN TRAWLER	JA-85-0554	BSA	1
DAIKICHI MARU NO. 37 MEDIUM STERN TRAWLER	JA-85-0483	BSA	1
DAIKICHI MARU NO. 51 MEDIUM STERN TRAWLER	JA-85-0484	BSA	1
DAIKICHI MARU NO.1 SMALL STERN TRAWLER	JA-85-1198	BSA	1
DAIKOH MARU CARGO/TRANSPORT VESSEL	JA-85-0021	BSA,GOA,NWA, SMT	3
DAINICHI MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-0514	BSA	1
DAIRIN MARU NO. 28 MEDIUM STERN TRAWLER	JA-85-0524	BSA	1
DAIRYO MARU CARGO/TRANSPORT VESSEL	JA-85-1002	BSA,GOA,NWA, SMT	3
DAISHIN MARU NO. 16 LARGE STERN TRAWLER	JA-85-0374	NWA	1
DAISHIN MARU NO. 22	JA-85-0286	BSA,GOA,SMT	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
LARGE STERN TRAWLER			
DAISHIN MARU NO. 28 LARGE STERN TRAWLER	JA-85-0569	BSA,GOA,SMT	1
DAISHO MARU CARGO/TRANSPORT VESSEL	JA-85-0035	BSA,GOA,NWA, SMT	3
DAITO MARU NO. 58 MEDIUM STERN TRAWLER	JA-85-1176	BSA	1
DAITO MARU NO. 68 MEDIUM STERN TRAWLER	JA-85-1565	BSA	1
DAITOKU MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-0816	BSA	1
DEJIMA MARU PAIR TRAWLER	JA-85-1179	BSA	1
DOUGLAS CARGO/TRANSPORT VESSEL	JA-85-2028	BSA,GOA,NWA, SMT	3
EASTERN REEFER CARGO/TRANSPORT VESSEL	JA-85-0600	BSA,GOA,NWA, SMT	3
EBISU FONTAINE CARGO/TRANSPORT VESSEL	JA-85-0589	BSA,GOA,NWA, SMT	3
EBISU MARU NO. 11 DANISH SEINER	JA-85-0042	BSA	1
EBISU MARU NO.5 DANISH SEINER	JA-85-1183	BSA	1
EHIKO MARU CARGO/TRANSPORT VESSEL	JA-85-0107	BSA,BSA,BSA	3
EIHO MARU CARGO/TRANSPORT VESSEL	JA-85-1062	BSA,GOA,NWA, SMT,SNA	3
EIKYU MARU NO. 11 MEDIUM STERN TRAWLER	JA-85-0300	BSA	1
EIKYU MARU NO. 12 LONGLINER/GILLNET	JA-85-0124	BSA,BSA	1
EIKYU MARU NO. 2 MEDIUM STERN TRAWLER	JA-85-0299	BSA	1
EIKYU MARU NO. 3 MEDIUM STERN TRAWLER	JA-85-1174	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
EIKYU MARU NO. 35 MEDIUM STERN TRAWLER	JA-85-0511	BSA	1
EIKYU MARU NO. 81 MEDIUM STERN TRAWLER	JA-85-0092	BSA	1
EIKYU MARU NO. 86 SMALL STERN TRAWLER	JA-85-1186	BSA	1
EITOKU MARU CARGO/TRANSPORT VESSEL	JA-85-1094	BSA,GOA,NWA, SMT,SNA	3
EIWA MARU NO. 28 POT FISHING VESSEL	JA-85-0820	BSA	1
EIYO MARU CARGO/TRANSPORT VESSEL	JA-85-0109	BSA,GOA,NWA, SMT	3
EIYO MARU PAIR TRAWLER	JA-85-0111	BSA	1
ENA MARU CARGO/TRANSPORT VESSEL	JA-85-0577	BSA,GOA,NWA	3
ENYOH MARU CARGO/TRANSPORT VESSEL	JA-85-0086	BSA,GOA,NWA, SMT	3
FALCON CARGO/TRANSPORT VESSEL	JA-85-0918	BSA,GOA,NWA, SMT	3
FUJI MARU NO. 1 MEDIUM STERN TRAWLER	JA-85-0255	BSA	1
FUJI REEFER CARGO/TRANSPORT VESSEL	JA-85-0908	BSA,GOA,NWA, SMT,SNA	3
FUJISHIO MARU CARGO/TRANSPORT VESSEL	JA-85-0574	BSA,GOA,NWA, SMT	3
FUKUCHO MARU NO. 23 MEDIUM STERN TRAWLER	JA-85-0495	BSA	1
FUKUI MARU NO. 18 MEDIUM STERN TRAWLER	JA-85-1173	BSA	1
FUKUSHIN MARU NO. 5 MEDIUM STERN TRAWLER	JA-85-0571	BSA	1
FUKUYO MARU CARGO/TRANSPORT VESSEL	JA-85-1025	BSA,GOA,NWA, SMT,SNA	3
FUKUYOSHI MARU NO. 28 MEDIUM STERN TRAWLER	JA-85-0472	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
FUKUYOSHI MARU NO. 38 MEDIUM STERN TRAWLER	JA-85-0304	BSA,GOA	1
FUKUYOSHI MARU NO. 8 LONGLINER/GILLNET	JA-85-0624	BSA,GOA	1
FUKUYOSHI MARU NO. 85 LONGLINER/GILLNET	JA-85-0603	BSA,GOA	1
FUYO MARU CARGO/TRANSPORT VESSEL	JA-85-0925	BSA,GOA,NWA, SMT	3
GINRYU MARU NO. 5 MEDIUM STERN TRAWLER	JA-85-1171	BSA	1
HAKKO ARROW CARGO/TRANSPORT VESSEL	JA-85-0888	BSA,GOA,NWA, SMT	3
HAKKO BOOMERANG CARGO/TRANSPORT VESSEL	JA-85-0881	BSA,GOA,NWA, SMT	3
HAKKO CARDIOID CARGO/TRANSPORT VESSEL	JA-85-0882	BSA,GOA,NWA, SMT	3
HAKKO FONTAINE CARGO/TRANSPORT VESSEL	JA-85-0587	BSA,GOA,NWA, SMT	3
HAKUBASAN MARU CARGO/TRANSPORT VESSEL	JA-85-1027	BSA,GOA,NWA, SMT,SNA	3
HAKUREI MARU PAIR TRAWLER	JA-85-0013	BSA	1
HAKURYU MARU NO. 72 MEDIUM STERN TRAWLER	JA-85-1178	BSA	1
HARUYO MARU CARGO/TRANSPORT VESSEL	JA-85-0570	BSA,GOA,NWA, SMT	3
HAYASHABU MARU CARGO/TRANSPORT VESSEL	JA-85-0883	BSA,GOA,NWA, SMT,SNA	3
HAMAYOSHI MARU NO. 63 MEDIUM STERN TRAWLER	JA-85-1187	BSA	1
HARUNA MARU LARGE STERN TRAWLER	JA-85-0350	BSA,GOA	1
HARUSHIO MARU CARGO/TRANSPORT VESSEL	JA-85-0582	BSA,GOA,NWA, SMT	3
HATSUE MARU NO. 38	JA-85-0605	BSA,GOA	1
LONGLINER/GILLNET			
HATSUE MARU NO. 62 MEDIUM STERN TRAWLER	JA-85-0403	BSA	1
HATSUE MARU NO. 68 LONGLINER/GILLNET	JA-85-0562	BSA,GOA	1
HAYASHIKANE MARU NO. 1 CARGO/TRANSPORT VESSEL	JA-85-1102	BSA,GOA,NWA, SMT,SNA	3
HAYATSUKI MARU CARGO/TRANSPORT VESSEL	JA-85-1037	BSA,GOA,NWA, SMT,SNA	3
HEIKYU MARU NO. 35 DANISH SEINER (STERN CHUTE)	JA-85-0567	BSA	1
HIDESHIMA MARU CARGO/TRANSPORT VESSEL	JA-85-0049	BSA,GOA,NWA, SMT	3
HIROTSUKI MARU CARGO/TRANSPORT VESSEL	JA-85-1146	BSA,GOA,NWA, SMT	3
HIYO MARU CARGO/TRANSPORT VESSEL	JA-85-2025	BSA,GOA,NWA, SMT,SNA	3
HOKEN MARU NO. 38 MEDIUM STERN TRAWLER	JA-85-1164	BSA	1
HOKEN MARU NO. 8 MEDIUM STERN TRAWLER	JA-85-0425	BSA	1
HOKKAI MARU CARGO/TRANSPORT VESSEL	JA-85-0922	BSA,GOA,NWA, SMT,SNA	3
HOKKAI MARU PAIR TRAWLER	JA-85-0012	BSA	1
HOKKO MARU NO. 137 SMALL STERN TRAWLER	JA-85-1199	BSA	1
HOKKO MARU NO. 17 DANISH SEINER	JA-85-0050	BSA	1
HOKO MARU NO. 31 CARGO/TRANSPORT VESSEL	JA-85-1083	BSA,GOA,NWA, SMT,SNA	3
HOKUO MARU NO. 25 MEDIUM STERN TRAWLER	JA-85-0457	BSA	1
HOKUSEI MARU CARGO/TRANSPORT VESSEL	JA-85-004	BSA,GOA,NWA, SMT	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	10 ACTIVITY
HOKUSHIN MARU PAIR TRAWLER	JA-85-0014	BSA	1
HOKUTO MARU PAIR TRAWLER	JA-85-0015	BSA	1
HOKUYU MARU NO. 68 MEDIUM STERN TRAWLER	JA-85-1177	BSA	1
HOYO MARU FACTORY SHIP	JA-85-0190	BSA	2
HOYO MARU NO. 63 POT FISHING VESSEL	JA-85-0862	SNA	1
ICELAND REX CARGO/TRANSPORT VESSEL	JA-85-0072	BSA,GOA,NWA, SMT	3
ISHIKARI MARU CARGO/TRANSPORT VESSEL	JA-85-0595	BSA,GOA,NWA, SMT	3
ISOKAZE MARU CARGO/TRANSPORT VESSEL	JA-85-1038	BSA,GOA,NWA, SMT	3
IZUMO REEFER CARGO/TRANSPORT VESSEL	JA-85-0053	BSA,GOA,NWA, SMT,SNA	3
JAMES CARGO/TRANSPORT VESSEL	JA-85-0584	BSA,GOA,NWA, SMT	3
JIN PO MARU NO.3 CARGO/TRANSPORT VESSEL	JA-85-3825	BSA,GOA,NWA, SMT,SNA	3
JINYO-MARU CARGO/TRANSPORT VESSEL	JA-85-1132	BSA,GOA,NWA, SMT,SNA	3
JUKYU MARU NO. 18 MEDIUM STERN TRAWLER	JA-85-0402	BSA	1
JUNYO MARU PAIR TRAWLER	JA-85-0065	BSA	1
JUYO MARU CARGO/TRANSPORT VESSEL	JA-85-1068	BSA,GOA,NWA, SMT,SNA	3
KAIKO MARU NO. 3 MEDIUM STERN TRAWLER	JA-85-0258	BSA	1
KAIKO MARU NO. 8 DANISH SEINER (STERN CHUTE)	JA-85-1560	BSA	1
KAIUN MARU NO. 38 MEDIUM STERN TRAWLER	JA-85-0533	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	11 ACTIVITY
KAIUN MARU NO. 62 DANISH SEINER	JA-85-1482	BSA	1
KAIUN MARU NO. 65 MEDIUM STERN TRAWLER	JA-85-2010	BSA	1
KAIUN MARU NO. 78 DANISH SEINER	JA-85-0092	BSA	1
KAIYO MARU NO. 11 MEDIUM STERN TRAWLER	JA-85-0313	BSA	1
KAIYO MARU NO. 53 MEDIUM STERN TRAWLER	JA-85-0464	BSA	1
KAIYO MARU NO. 7 MEDIUM STERN TRAWLER	JA-85-0431	BSA	1
KAIYO MARU NO. 8 MEDIUM STERN TRAWLER	JA-85-0432	BSA	1
KAIYO MARU NO. 8 POT FISHING VESSEL	JA-85-1137	SNA	1
KAKUDAI MARU NO. 25 MEDIUM STERN TRAWLER	JA-85-0254	BSA	1
KAKUYO MARU NO. 1 PAIR TRAWLER	JA-85-0210	BSA	1
KAKUYO MARU NO. 11 PAIR TRAWLER	JA-85-2008	BSA	1
KAKUYO MARU NO. 12 PAIR TRAWLER	JA-85-2009	BSA	1
KAKUYO MARU NO. 2 PAIR TRAWLER	JA-85-0211	BSA	1
KAKUYO MARU NO. 3 PAIR TRAWLER	JA-85-0212	BSA	1
KAKUYO MARU NO. 5 PAIR TRAWLER	JA-85-0213	BSA	1
KAKUYO MARU NO. 7 PAIR TRAWLER	JA-85-0214	BSA	1
KAKUYO MARU NO. 8 PAIR TRAWLER	JA-85-0215	BSA	1
KASHIMA MARU	JA-85-0001	BSA,GOA,NWA,	2

12

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
FACTORY SHIP		SNA	
KASHIMA MARU NO. 23 MEDIUM STERN TRAWLER	JA-85-0508	BSA	1
KASHIMA REEFER CARGO/TRANSPORT VESSEL	JA-85-0054	BSA,GOA,NWA, SMT,SNA	3
KASHIWAGI MARU CARGO/TRANSPORT VESSEL	JA-85-0019	BSA,GOA,NWA, SMT	3
KASHIWAHANA MARU NO. 1 CARGO/TRANSPORT VESSEL	JA-85-0884	BSA,GOA,SMT	3
KASUGA MARU CARGO TRANSPORT VESSEL	JA-85-0181	BSA,GOA,NWA, SMT,SNA	3
KASUGA REEFER CARGO/TRANSPORT VESSEL	JA-85-0055	BSA,GOA,NWA, SMT,SNA	3
KATABAMI MARU TANKER FUEL/WATER	JA-85-0597	BSA,GOA	3
KATORI MARU PAIR TRAWLER	JA-85-0114	BSA	1
KATSUKI MARU PAIR TRAWLER	JA-85-0115	BSA	1
KATSUYAMA MARU PAIR TRAWLER	JA-85-0833	BSA	1
KEIFU MARU CARGO/TRANSPORT VESSEL	JA-85-0572	BSA,GOA,NWA, SMT	3
KEIYO MARU CARGO/TRANSPORT VESSEL	JA-85-0102	BSA,GOA,NWA, SMT	3
KENDRICK CARGO/TRANSPORT VESSEL	JA-85-0912	BSA,GOA,NWA, SMT	3
KHALIJ FREEZER CARGO/TRANSPORT VESSEL	JA-85-0058	BSA,GOA,NWA, SMT	3
KHALIJ FROST CARGO/TRANSPORT VESSEL	JA-85-0068	BSA,GOA,NWA, SMT	3
KHALIJ REEFER CARGO/TRANSPORT VESSEL	JA-85-0059	BSA,GOA,NWA, SMT	3
KINYO MARU CARGO/TRANSPORT VESSEL	JA-85-0103	BSA,GOA,NWA, SMT	3

13

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
KISARAGI MARU CARGO/TRANSPORT VESSEL	JA-85-0929	BSA,GOA,NWA, SMT	3
KISHIN MARU CARGO/TRANSPORT VESSEL	JA-85-1165	BSA,GOA,NWA, SMT,SNA	3
KIYO MARU CARGO/TRANSPORT VESSEL	JA-85-1026	BSA,GOA,NWA, SMT,SNA	3
KIYO MARU NO. 55 LONGLINER/GILLNET	JA-85-0602	BSA,GOA	1
KOEI MARU NO. 15 MEDIUM STERN TRAWLER	JA-85-1396	BSA	1
KOEI MARU NO. 35 MEDIUM STERN TRAWLER	JA-85-0489	BSA	1
KOEI MARU NO. 51 MEDIUM STERN TRAWLER	JA-85-0488	BSA	1
KOHOKU MARU NO. 17 MEDIUM STERN TRAWLER	JA-85-0443	BSA	1
KOHOKU MARU NO. 18 POT FISHING VESSEL	JA-85-0839	BSA,GOA,SNA	1
KOHOKU MARU NO.7 SMALL STERN TRAWLER	JA-85-1191	BSA	1
KOHSHO MARU CARGO/TRANSPORT VESSEL	JA-85-0579	BSA,GOA,NWA, SMT	3
KOMESHIMA MARU CARGO/TRANSPORT VESSEL	JA-85-2021	BSA,GOA,NWA, SMT	3
KONGO MARU LARGE STERN TRAWLER	JA-85-0341	BSA,GOA	1
KORYO MARU NO. 108 MEDIUM STERN TRAWLER	JA-85-0421	BSA	1
KORYO MARU NO. 6 LONGLINE FISHING VESSEL	JA-85-1241	BSA	1
KORYO MARU NO.23 MEDIUM STERN TRAWLER	JA-85-0423	BSA	1
KOSHIN MARU NO. 11 MEDIUM STERN TRAWLER	JA-85-0303	BSA,GOA	1
KOSHIN MARU NO. 21 SMALL STERN TRAWLER	JA-85-1503	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
KOTOBUKI MARU NO. 25 MEDIUM STERN TRAWLER	JA-85-0507	BSA	1
KOTOKU MARU CARGO/TRANSPORT VESSEL	JA-85-1035	BSA,GOA,NWA, SMT,SNA	3
KOYO MARU LARGE STERN TRAWLER	JA-85-0365	NWA	1
KOYO MARU PAIR TRAWLER	JA-84-0112	BSA	1
KOYO MARU NO. 2 LARGE STERN TRAWLER	JA-85-0297	BSA,GOA	1
KOYO MARU NO. 3 LARGE STERN TRAWLER	JA-85-0343	BSA,GOA	1
KUMANO MARU NO. 15 MEDIUM STERN TRAWLER	JA-85-0534	BSA	1
KUNASHIRI CARGO/TRANSPORT VESSEL	JA-85-1151	BSA,GOA	3
KUNISAKI CARGO/TRANSPORT VESSEL	JA-85-0899	BSA,GOA,NWA	3
KURASHIMA MARU CARGO/TRANSPORT VESSEL	JA-85-2027	BSA,GOA,NWA, SMT	3
KYOHO MARU CARGO/TRANSPORT VESSEL	JA-85-1034	BSA,GOA	3
KYOKUSHIN MARU CARGO/TRANSPORT VESSEL	JA-85-1161	BSA,GOA,NWA, SMT,SNA	3
KYOWA MARU NO. 15 MEDIUM STERN TRAWLER	JA-85-0305	BSA	1
KYOYO MARU NO. 8 SMALL STERN TRAWLER	JA-85-0635	BSA	1
LONGLINER/GILLNET LONGLINE FISHING VESSEL	JA-85-0116	BSA,GOA	1
LONGLINER/GILLNET LONGLINE FISHING VESSEL	JA-85-0119	BSA,GOA	1
MABAH CARGO/TRANSPORT VESSEL	JA-85-0108	BSA,GOA,NWA, SMT	3
MANRYO MARU NO. 31	JA-85-0445	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
MEDIUM STERN TRAWLER			
MANRYO MARU NO. 52 SMALL STERN TRAWLER	JA-85-1189	BSA	1
MARINE ACE CARGO/TRANSPORT VESSEL	JA-85-0002	BSA,GOA,NWA, SMT	3
MARINE FELLOW CARGO/TRANSPORT VESSEL	JA-85-0003	BSA,GOA,NWA, SMT,SNA	3
MATSUEI MARU NO. 88 LONGLINER/GILLNET	JA-85-0609	BSA,GOA	1
MATSUKAZE MARU CARGO/TRANSPORT VESSEL	JA-85-1045	BSA,GOA,NWA, SMT	3
MATSUSHIMA MARU CARGO/TRANSPORT VESSEL	JA-85-0920	BSA,GOA,NWA, SMT	3
MATSUYAMA MARU PAIR TRAWLER	JA-85-1157	BSA	1
MEISHO MARU NO. 35 MEDIUM STERN TRAWLER	JA-85-0522	BSA	1
MEIYO-MARU CARGO/TRANSPORT VESSEL	JA-85-1133	BSA,GOA,NWA, SMT,SNA	3
MIHO MARU CARGO/TRANSPORT VESSEL	JA-85-1069	BSA,GOA,NWA, SMT	3
MIKAMI MARU LARGE STERN TRAWLER	JA-85-0368	NWA	1
MINESHIMA MARU FACTORY SHIP	JA-85-0080	BSA	2
MITO MARU NO. 82 LONGLINER/GILLNET	JA-85-0611	BSA,GOA	1
MITSU MARU NO. 51 DANISH SEINER (STERN CHUTE)	JA-85-1559	BSA	1
MIYASHIMA MARU CARGO/TRANSPORT VESSEL	JA-85-0919	BSA,GOA,NWA, SMT	3
MIYOSHIMA MARU CARGO/TRANSPORT VESSEL	JA-85-0025	BSA,GOA,NWA, SMT	3
MIZUHO MARU PAIR TRAWLER	JA-85-0060	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
			16
MIZUHO REEFER CARGO/TRANSPORT VESSEL	JA-85-0016	BSA,GOA,NWA, SNA	3
MUTSU MARU NO. 52 MEDIUM STERN TRAWLER	JA-85-0251	BSA	1
NANIWA MARU NO. 36 TANKER FUEL/WATER	JA-85-0396	BSA,GOA	3
NANSHIN MARU CARGO/TRANSPORT VESSEL	JA-85-0057	BSA,GOA,NWA, SMT,SNA	3
NARITA MARU NO. 35 MEDIUM STERN TRAWLER	JA-85-0436	BSA	1
NICHIYO MARU CARGO/TRANSPORT VESSEL	JA-85-1147	BSA,GOA,NWA, SMT	3
NIHONKAI MARU MEDIUM STERN TRAWLER	JA-85-0369	NWA	1
NIITAKA MARU LARGE STERN TRAWLER	JA-85-0259	BSA,GOA,SMT	1
NIKKA MARU CARGO/TRANSPORT VESSEL	JA-85-0927	BSA,GOA	3
NIKKO MARU CARGO/TRANSPORT VESSEL	JA-85-1077	BSA,GOA,NWA, SMT,SNA	3
NIPPONHAM MARU NO. 1 CARGO/TRANSPORT VESSEL	JA-85-1082	BSA,GOA,NWA, SMT,SNA	3
NISHIYAMA MARU PAIR TRAWLER	JA-85-0836	BSA	1
NISSEI MARU CARGO/TRANSPORT VESSEL	JA-85-0914	BSA,GOA,NWA, SMT,SNA	3
NISSHIN MARU NO. 2 FACTORY SHIP	JA-85-0140	BSA	1
NISSHIN MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-1168	BSA	1
NITTO MARU 70 DANISH SEINER (STERN CHUTE)	JA-85-1562	BSA	1
NITTO MARU NO. 35 PAIR TRAWLER	JA-85-0220	BSA	1
NITTO MARU NO. 36 PAIR TRAWLER	JA-85-0221	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
			17
NOJIMA MARU CARGO/TRANSPORT VESSEL	JA-85-1096	BSA,GOA,NWA, SMT	3
OHTORI MARU LARGE STERN TRAWLER	JA-85-0342	BSA,GOA	1
OKUSHIRI CARGO/TRANSPORT VESSEL	JA-85-0580	BSA,GOA,NWA, SMT	3
ORIENT MARU NO. 3 MEDIUM STERN TRAWLER	JA-85-0551	BSA	1
ORION CARGO/TRANSPORT VESSEL	JA-85-0591	BSA,GOA,NWA, SMT	3
OSAKA REEFER CARGO/TRANSPORT VESSEL	JA-85-2011	BSA,GOA,NWA, SMT,SNA	3
OTOHA MARU PAIR TRAWLER	JA-85-0010	BSA	1
PALOMA CARGO/TRANSPORT VESSEL	JA-85-0998	BSA,GOA,NWA, SMT	3
PHOENIX CARGO/TRANSPORT VESSEL	JA-85-0917	BSA,GOA,NWA, SMT	3
RAKUYO MARU PAIR TRAWLER	JA-85-0043	BSA	1
REIYO MARU CARGO/TRANSPORT VESSEL	JA-85-1067	BSA,GOA,NWA, SMT,SNA	3
RIKUZEN MARU LARGE STERN TRAWLER	JA-85-0340	BSA,GOA	1
RISHIRI CARGO/TRANSPORT VESSEL	JA-85-0027	BSA,GOA,NWA, SMT	3
RYOAN MARU NO. 28 MEDIUM STERN TRAWLER	JA-85-0426	BSA	1
RYOAN MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-0459	BSA	1
RYOAN MARU NO. 35 SMALL STERN TRAWLER	JA-85-1195	BSA	1
RYOEI MARU NO. 38 SMALL STERN TRAWLER	JA-85-0634	BSA	1
RYOUN MARU NO. 2	JA-85-0877	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
		18	
POT FISHING VESSEL			
RYOYO MARU CARGO/TRANSPORT VESSEL	JA-85-1024	BSA,GOA,NWA, SMT,SNA	3
RYUHO MARU NO 38 LONGLINER/GILLNET	JA-85-0557	BSA,GOA	1
RYUHO MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-0506	BSA	1
RYUHO MARU NO. 37 MEDIUM STERN TRAWLER	JA-85-0480	BSA	1
RYUJIN MARU NO. 11 MEDIUM STERN TRAWLER	JA-85-1172	BSA	1
RYUJIN MARU NO. 52 MEDIUM STERN TRAWLER	JA-85-0548	BSA	1
RYUJIN MARU NO. 8 MEDIUM STERN TRAWLER	JA-85-0486	BSA	1
RYUSEI MARU CARGO/TRANSPORT VESSEL	JA-85-0003	BSA,GOA,NWA, SMT	3
RYUSEI MARU CARGO/TRANSPORT VESSEL	JA-85-0626	BSA,GOA,NWA, SMT	3
RYUSHO MARU CARGO/TRANSPORT VESSEL	JA-85-0627	BSA,GOA,NWA, SMT	3
RYUSHO MARU NO. 15 LONGLINER/GILLNET	JA-85-0619	BSA,GOA	1
RYUSHO MARU NO. 18 LONGLINER/GILLNET	JA-85-0620	BSA,GOA	1
RYUYO MARU LARGE STERN TRAWLER	JA-85-0280	BSA,GOA,SMT	1
SACHI MARU NO. 22 MEDIUM STERN TRAWLER	JA-85-0477	BSA	1
SACHIKAZE MARU CARGO/TRANSPORT VESSEL	JA-85-1057	BSA,GOA,SMT	3
SACHISHIO MARU CARGO/TRANSPORT VESSEL	JA-85-0097	BSA,GOA,NWA, SMT	3
[illegible] MARU CARGO/TRANSPORT VESSEL	JA-85-1001	BSA,GOA,NWA, SMT	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
		19	
SAKURA REEFER CARGO/TRANSPORT VESSEL	JA-85-0907	BSA,GOA,NWA, SMT,SNA	3
SANKICHI MARU NO. 23 POT FISHING VESSEL	JA-85-0848	SNA	1
SANUKI MARU CARGO/TRANSPORT VESSEL	JA-85-0915	BSA,GOA,NWA, SMT	3
SANWA FONTAINE CARGO/TRANSPORT VESSEL	JA-85-0590	BSA,GOA,NWA, SMT	3
SANYO MARU CARGO/TRANSPORT VESSEL	JA-85-0724	BSA,GOA,NWA, SMT	3
SEAGULL CARGO/TRANSPORT VESSEL	JA-85-0034	BSA,GOA,NWA, SMT	3
SEIHO MARU NO. 15 DANISH SEINER	JA-85-0043	BSA	1
SEIJU MARU NO. 28 MEDIUM STERN TRAWLER	JA-85-0445	BSA	1
SEITOKU MARU NO. 105 MEDIUM STERN TRAWLER	JA-85-0447	BSA	1
SEIYOH MARU CARGO/TRANSPORT VESSEL	JA-85-0583	BSA,GOA,NWA, SMT	3
SEKI REX CARGO/TRANSPORT VESSEL	JA-85-1148	BSA,GOA,NWA, SMT,SNA	3
SHIDAKA MARU CARGO/TRANSPORT VESSEL	JA-85-0179	BSA,GOA,NWA, SMT	3
SHIGA MARU CARGO/TRANSPORT VESSEL	JA-85-1012	BSA,GOA,NWA WOC	3
SHIKISHIMA MARU FACTORY SHIP	JA-85-0030	BSA	1
SHIKISHIMA REEFER CARGO/TRANSPORT VESSEL	JA-85-0869	BSA,GOA,NWA, SMT,SNA	3
SHINASAHI MARU CARGO/TRANSPORT VESSEL	JA-85-0578	BSA,GOA,NWA, SMT,SNA	3
SHINBUNGO MARU CARGO/TRANSPORT VESSEL	JA-85-0047	BSA,GOA,NWA, SMT	3
SHINEI MARU NO. 21 MEDIUM STERN TRAWLER	JA-85-0527	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	20 ACTIVITY
SHINEI MARU NO. 43 SMALL STERN TRAWLER	JA-85-1196	BSA	1
SHINMEI MARU NO. 18 LONGLINE FISHING VESSEL	JA-85-1481	ABS	1
SHINNICHI MARU NO. 38 MEDIUM STERN TRAWLER	JA-85-0563	BSA	1
SHINRYU MARU NO. 18 CARGO/TRANSPORT VESSEL	JA-85-0906	BSA,GOA,NWA, SMT,SNA	3
SHINRYU MARU NO. 38 CARGO/TRANSPORT VESSEL	JA-85-0905	BSA,GOA,NWA, SMT	3
SHINSEI MARU CARGO/TRANSPORT VESSEL	JA-85-0870	BSA,GOA,NWA	3
SHINSHO MARU CARGO/TRANSPORT VESSEL	JA-85-0440	BSA,GOA,NWA, SMT,SNA	3
SHINTAKARA MARU CARGO/TRANSPORT VESSEL	JA-85-0046	BSA,GOA,NWA, SMT	3
SHINTOKU MARU NO. 25 LONGLINER/GILLNET	JA-85-0613	BSA,GOA	1
SHINWA MARU CARGO/TRANSPORT VESSEL	JA-85-0904	BSA,GOA,NWA, SMT	3
SHIRANE MARU LARGE STERN TRAWLER	JA-85-0362	NWA	1
SHIZUOKA MARU MEDIUM STERN TRAWLER	JA-85-0918	BSA,GOA,SMT	1
SHOEI MARU NO. 5 SMALL STERN TRAWLER	JA-85-0639	BSA	1
SHOKEN MARU CARGO/TRANSPORT VESSEL	JA-85-0920	BSA,GOA,NWA, SNA	3
SHOSEI MARU NO. 38 DANISH SEINER	JA-85-0556	BSA	1
SHOSHIN MARU NO. 18 MEDIUM STERN TRAWLER	JA-85-0454	BSA	1
SHOSHIN MARU NO. 21 MEDIUM STERN TRAWLER	JA-85-0453	BSA	1
SHOTOKU MARU NO.63	JA-85-1194	BSA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	21 ACTIVITY
SMALL STERN TRAWLER			
SHOUTOKU MARU CARGO/TRANSPORT VESSEL	JA-85-0028	BSA,GOA,NWA, SMT,SNA	3
SHOYO MARU MEDIUM STERN TRAWLER	JA-85-1394	BSA	1
SHOYO MARU (B) CARGO/TRANSPORT VESSEL	JA-85-1503	GOA,NWA,SMT	3
SHUNYOO MARU NO. 110 MEDIUM STERN TRAWLER	JA-85-0564	BSA	1
SHUYO MARU CARGO/TRANSPORT VESSEL	JA-85-1028	BSA,GOA,NWA, SMT,SNA	3
SHUYO MARU PAIR TRAWLER	JA-85-0110	BSA	1
SINGAPORE FONTAINE CARGO/TRANSPORT VESSEL	JA-85-0556	BSA,GOA,NWA, SMT	3
SKYLARK CARGO/TRANSPORT VESSEL	JA-85-0028	BSA,GOA,NWA, SMT	3
SOHO MARU NO. 52 MEDIUM STERN TRAWLER	JA-85-0633	BSA	1
SOHO MARU NO. 68 DANISH SEINER	JA-85-0204	BSA	1
SOYO MARU FACTORY SHIP	JA-85-0248	BSA	2
SOYOKAZE MARU CARGO/TRANSPORT VESSEL	JA-85-1048	BSA,GOA,NWA, SMT	3
STARLING CARGO/TRANSPORT VESSEL	JA-85-0024	BSA,GOA,NWA, SMT	3
STEVENS CARGO/TRANSPORT VESSEL	JA-85-0022	BSA,GOA,NWA, SMT	3
SUIHOO MARU NO. 20 MEDIUM STERN TRAWLER	JA-85-0565	BSA	1
SUIYO MARU CARGO/TRANSPORT VESSEL	JA-85-0575	BSA,GOA,NWA, SMT	3
SUMI MARU NO. 18 LONGLINE FISHING VESSEL	JA-85-1491	ABS	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
SUMIYOSHI MARU NO. 53 LONGLINER/GILLNET	JA-85-0488	BSA,GOA	1
SUN HAPPINESS CARGO/TRANSPORT VESSEL	JA-85-0891	BSA,GOA,NWA, SMT	3
SUNBIRD CARGO/TRANSPORT VESSEL	JA-85-0576	BSA,GOA,NWA, SMT	3
SUOH CARGO/TRANSPORT VESSEL	JA-85-0893	BSA,GOA,NWA, SMT,SNA	3
SURUGA MARU CARGO/TRANSPORT VESSEL	JA-85-2014	BSA,GOA,NWA, SMT	3
SUZUKA MARU LARGE STERN TRAWLER	JA-85-0343	[illegible]	1
SUZUKAZE MARU CARGO/TRANSPORT VESSEL	JA-85-1058	BSA,GOA,SMT	3
SWALLOW CARGO/TRANSPORT VESSEL	JA-85-0032	BSA,GOA,NWA, SMT	5
SYUNYO MARU PAIR TRAWLER	Ja-85-0042	BSA	1
TAISEI MARU NO. 16 MEDIUM STERN TRAWLER	JA-85-0458	BSA	1
TAISEI MARU NO. 16 CARGO/TRANSPORT VESSEL	JA-85-1052	BSA,GOA,NWA, SMT,SNA	3
TAISEI MARU NO. 3 MEDIUM STERN TRAWLER	JA-85-0449	BSA	1
TAISEI MARU NO. 3 CARGO/TRANSPORT VESSEL	JA-85-0085	BSA,GOA,NWA, SMT,SNA	3
TAISEI MARU NO. 35 MEDIUM STERN TRAWLER	JA-85-0434	[illegible]	1
TAISEI MARU NO. 51 MEDIUM STERN TRAWLER	JA-85-0250	[illegible]	1
TAISEI MARU NO. 52 CARGO/TRANSPORT VESSEL	JA-85-1055	BSA,GOA,NWA, SMT,SNA	3
TAISEI MARU NO. 87 CARGO/TRANSPORT VESSEL	JA-85-1053	BSA,GOA,NWA, SMT,SNA	3
TAISEI MARU NO. 98 CARGO/TRANSPORT VESSEL	JA-85-1054	BSA,GOA,NWA, SMT,SNA	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
TAISEI MARU NO. 58 MEDIUM STERN TRAWLER	JA-85-0411	BSA	1
TAIYO MARU NO. 83 MEDIUM STERN TRAWLER	JA-85-0360	NWA	1
TAKACHIHO MARU LARGE STERN TRAWLER	JA-85-0291	BSA,GOA,SMT	3
TAKASHIRO MARU NO. 31 POT FISHING VESSEL	JA-85-0856	SNA	1
TAKATOYO MARU NO. 18 LONGLINE FISHING VESSEL	JA-85-1331	AI	1
TAKATSUKI MARU CARGO/TRANSPORT VESSEL	JA-85-2022	BSA,GOA,NWA, SMT,SNA	3
TAKESHIMA MARU CARGO/TRANSPORT VESSEL	JA-85-0921	BSA,GOA,NWA, SMT	3
TAKUYO MARU CARGO/TRANSPORT VESSEL	JA-85-0029	BSA,GOA,NWA, SMT,SNA	3
TATEYAMA MARU PAIR TRAWLER	JA-85-0835	BSA	1
TEISHO MARU NO. 18 MEDIUM STERN TRAWLER	JA-85-0535	BSA	1
TENKAI MARU TANKER FUEL/WATER	JA-85-0894	BSA,GOA,SMT, SNA	3
TENSEI MARU CARGO/TRANSPORT VESSEL	JA-85-0896	BSA,GOA,NWA, SMT	3
TENSHUN MARU TANKER FUEL/WATER	JA-85-0182	BSA,GOA,SMT, SNA	3
TENYO MARU LARGE STERN TRAWLER	JA-85-0352	BSA,GOA	1
TENYO MARU NO. 2 LARGE STERN TRAWLER	JA-85-0332	BSA,GOA	1
TENYO MARU NO. 3 LARGE STERN TRAWLER	JA-85-0333	BSA,GOA	1
TENYO MARU NO. 5 LARGE STERN TRAWLER	JA-85-0334	BSA,GOA	1
TENYOSHI MARU	JA-85-0008	BSA,GOA,SMT,	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
TANKER FUEL/WATER		[illegible]	
TENYU MARU NO. 28 DANISH SEINER (STERN CHUTE)	JA-85-1483	BSA	1
TENYU MARU NO. 37 LONGLINER/GILLNET	JA-85-0616	BSA,GOA	1
TENYU MARU NO. 57 SMALL STERN TRAWLER	JA-85-0637	BSA	1
TESHIO MARU LARGE STERN TRAWLER	JA-85-1169	NWA	1
TOKACHI MARU LARGE STERN TRAWLER	JA-85-0360	NWA	1
TOKIWA MARU CARGO/TRANSPORT VESSEL	JA-85-0631	BSA,GOA,NWA, SMT,SNA	3
TOKUKO MARU CARGO/TRANSPORT VESSEL	JA-85-0593	BSA,GOA,NWA, SMT	3
TOKURYU MARU CARGO/TRANSPORT VESSEL	JA-85-0592	BSA,GOA,NWA, SMT	3
TOKYO REEFER CARGO/TRANSPORT VESSEL	JA-85-1135	BSA,GOA,NWA, SMT,SNA	3
TOMI MARU NO. 21 LONGLINE FISHING VESSEL	JA-85-1476	[illegible]	1
TOMI MARU NO. 51 MEDIUM STERN TRAWLER	JA-85-0897	[illegible]	1
TOMI MARU NO. 53 MEDIUM STERN TRAWLER	JA-85-0433	[illegible]	1
TOMI MARU NO. 58 MEDIUM STERN TRAWLER	JA-85-0467	BSA	1
TOMI MARU NO. 81 SMALL STERN TRAWLER	JA-85-1192	BSA	1
TOMI MARU NO. 82 SMALL STERN TRAWLER	JA-85-1193	[illegible]	1
TOMI MARU NO. 83 MEDIUM STERN TRAWLER	JA-85-1170	[illegible]	1
TOMI MARU NO. 85 MEDIUM STERN TRAWLER	JA-85-0282	BSA,GOA	1
TOMI MARU NO. 88 LONGLINER/GILLNET	JA-85-0612	BSA,GOA	1
TORA MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-0422	BSA	1
TORA MARU NO. 58 SMALL STERN TRAWLER	JA-85-1190	BSA	1
TOSA MARU CARGO/TRANSPORT VESSEL	JA-85-1071	BSA,GOA,NWA, SMT,SNA	3
TOSHIN MARU CARGO/TRANSPORT VESSEL	JA-85-0056	BSA,GOA,NWA, SMT,SNA	3
TOYOSHIMA MARU PAIR TRAWLER	JA-85-0123	BSA	1
TRANSMARINE CARGO/TRANSPORT VESSEL	JA-85-0073	BSA,GOA,NWA, SMT	3
TSUDA MARU LARGE STERN TRAWLER	JA-85-0337	BSA,GOA	1
TSUNE MARU NO. 31 LONGLINER/GILLNET	JA-85-0601	BSA,GOA	1
TSURUSUKI CARGO/TRANSPORT VESSEL	JA-85-0430	BSA,GOA,NWA, SNA	3
TSUSHIMA MARU PAIR TRAWLER	JA-85-0071	BSA	1
UNO MARU NO. 17 CARGO/TRANSPORT VESSEL	JA-85-1208	BSA,CRB,GOA, NWA,SMT,SNA	3
UNO MARU NO. 18 CARGO/TRANSPORT VESSEL	JA-85-1104	BSA,GOA,NWA, SMT,SNA	3
UNO MARU NO. 8 CARGO/TRANSPORT VESSEL	JA-85-1032	BSA,GOA,NWA, SMT,SNA	3
WAKABA MARU PAIR TRAWLER	JA-85-0117	BSA	1
WAKATSUKI MARU CARGO/TRANSPORT VESSEL	JA-85-1150	BSA,GOA,NWA, SMT	3
WASHIMA MARU PAIR TRAWLER	JA-85-0122	BSA	1
WAYO MARU PAIR TRAWLER	JA-85-0044	[illegible]	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
WESTERN REEFER CARGO/TRANSPORT VESSEL	JA-85-0599	BSA,GOA,NWA, SMT	3
WHITE ARROW CARGO/TRANSPORT VESSEL	JA-85-0084	BSA,GOA	2
WORLD FONTAINE CARGO/TRANSPORT VESSEL	JA-85-0588	BSA,GOA,NWA, SMT	3
YASHIRI CARGO/TRANSPORT VESSEL	JA-85-0581	BSA,GOA,NWA, SMT	3
YAHATA MARU NO. 56 MEDIUM STERN TRAWLER	JA-85-0441	BSA	1
YAHATA MARU NO. 58 MEDIUM STERN TRAWLER	JA-85-0432	BSA	1
YAKUSHI MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-0496	BSA	1
YAKUSHI MARU NO. 51 MEDIUM STERN TRAWLER	JA-85-0438	BSA	1
YAMASAN MARU NO. 101 SMALL STERN TRAWLER	JA-85-1184	BSA	1
YAMASAN MARU NO. 102 SMALL STERN TRAWLER	JA-85-1185	BSA	1
YAMATO MARU LARGE STERN TRAWLER	JA-85-0329	BSA,GOA,SNA	1
YAMATO REEFER CARGO/TRANSPORT VESSEL	JA-85-2019	BSA,GOA,NWA, SMT,SNA	3
YASAKA REEFER CARGO/TRANSPORT VESSEL	JA-85-0652	BSA,GOA,NWA, SMT,SNA	3
YASHIMA MAR PAIR TRAWLER	JA-85-0070	BSA	1
YASHIO MARU NO. 11 MEDIUM STERN TRAWLER	JA-85-0452	BSA	1
YAYOI MARU CARGO/TRANSPORT VESSEL	JA-85-0018	BSA,GOA,NWA, SMT,SNA	3
YOSHI MARU NO. 81 MEDIUM STERN TRAWLER	JA-85-0555	BSA	1
YOSHINO REEFER	JA-85-0039	BSA,GOA,NWA,	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
CARGO/TRANSPORT VESSEL		SMT,SNA	
YURYO MARU NO. 31 MEDIUM STERN TRAWLER	JA-85-0466	BSA	1
YURYO MARU NO. 35 DANISH SEINER	JA-85-0201	BSA	1
YUWASU MARU CARGO/TRANSPORT VESSEL	JA-85-0005	BSA,GOA	3
ZAO MARU LARGE STERN TRAWLER	JA-85-0341	NWA	1
ZENPO MARU NO. 21 MEDIUM STERN TRAWLER	JA-85-0253	BSA	1
ZUIYO MARU LARGE STERN TRAWLER	JA-85-0335	BSA,GOA,SMT	1
ZUIYO MARU NO. 2 LARGE STERN TRAWLER	JA-85-0351	BSA,GOA	1
ZUIYO MARU NO. 3 LARGE STERN TRAWLER	JA-85-0331	BSA,GOA	1
***GOVERNMENT OF THE REPUBLIC OF KOREA			
SI DONGJIN LONGLINE FISHING VESSEL	KS-85-0053	BSA,GOA	1
SOI DONG SOO CARGO/TRANSPORT VESSEL	KS-85-0119	BSA,GOA	3
CHEON YANG HO LARGE STERN TRAWLER	KS-85-0003	BSA,GOA	1
CORAL STAR CARGO/TRANSPORT VESSEL	KS-85-0135	BSA,GOA	3
CRYSTAL DAHLIA LARGE STERN TRAWLER	KS-85-0034	BSA,GOA	1
DAE JIN NO. 21 LARGE STERN TRAWLER	KS-85-0136	BSA,GOA	1
DAE SUNG HO LARGE STERN TRAWLER	KS-85-0051	BSA,GOA	1
DAEJIN NO. 52 LARGE STERN TRAWLER	KS-85-0037	BSA,GOA	1
DONGSUNG-HO	KS-85-0039	BSA,GOA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
			28
LARGE STERN TRAWLER			
BAE CHEOG HO FACTORY SHIP	KS-85-0112	BSA,GOA	2
BAE CHEOG HO NO. 2 CARGO/TRANSPORT VESSEL	KS-85-0098	BSA,GOA	3
HAN JIN HO LARGE STERN TRAWLER	KS-85-0045	BSA,GOA	1
HAN KIL HO LARGE STERN TRAWLER	KS-85-0044	BSA,GOA	1
HANIL HO MEDIUM STERN TRAWLER	KS-85-0107	BSA,GOA	1
KYUNG YANG HO LARGE STERN TRAWLER	KS-85-0085	BSA,GOA	1
HAN BUG LARGE STERN TRAWLER	KS-85-0033	BSA,GOA	1
NO. 29 TAE BAEK FACTORY SHIP	KS-85-0091	BSA,GOA	2
NO. 1 CHIL BO SAN CARGO/TRANSPORT VESSEL	KS-85-0133	BSA,GOA	1
NO. 1 HAN SUNG LARGE STERN TRAWLER	KS-85-0106	BSA,GOA	1
NO. 2 CHIL BO SAN CARGO/TRANSPORT VESSEL	KS-85-0125	BSA,GOA	1
NO. 201 O DAE YANG LONGLINE FISHING VESSEL	KS-85-0128	BSA,GOA	1
NO. 215 TAE BAEK MEDIUM STERN TRAWLER	KS-85-0105	BSA,GOA	1
NO. 3 CHIL BO SAN HO CARGO/TRANSPORT VESSEL	KS-85-0074	BSA,GOA	3
NO. 303 DAI HO LARGE STERN TRAWLER	KS-85-0095	BSA,GOA	1
NO. 315 TAE BAEK MEDIUM STERN TRAWLER	KS-85-0117	BSA,GOA	1
NO. 5 CHIL BO SAN HO CARGO/TRANSPORT VESSEL	KS-85-0075	BSA,GOA	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
			29
NO. 6 CHIL BO SAN HO CARGO/TRANSPORT VESSEL	KS-85-0076	BSA,GOA	3
NO. 7 SANG WON MEDIUM STERN TRAWLER	KS-85-0041	BSA,GOA	1
NO. 70 GYANG HO LARGE STERN TRAWLER	KS-85-0048	BSA,GOA	1
NO. 707 DAI HO LARGE STERN TRAWLER	KS-85-0123	BSA,GOA	1
NO. 71 DONG BANG LARGE STERN TRAWLER	KS-85-0121	BSA,GOA	1
NO. 77 DONG BANG CARGO/TRANSPORT VESSEL	KS-85-0118	BSA,GOA	3
NO. 99 TAE BAEK FACTORY SHIP	KS-85-0079	BSA,GOA	2
OCEAN VIOLET CARGO/TRANSPORT VESSEL	KS-85-0088	BSA,GOA	3
ODAEYANG NO. 106 CARGO/TRANSPORT VESSEL	KS-85-0099	BSA,GOA	3
OYANG HO LARGE STERN TRAWLER	KS-85-0006	BSA,GOA	1
PUNG YANG HO LARGE STERN TRAWLER	KS-85-0004	BSA,GOA	1
SALUTA LARGE STERN TRAWLER	KS-85-0103	BSA,GOA	1
SHIN AN HO LARGE STERN TRAWLER	KS-85-0047	BSA,GOA	1
SHIN YANG HO LARGE STERN TRAWLER	KS-85-0122	BSA,GOA	1
SUNFLOWER NO. 7 LARGE STERN TRAWLER	KS-85-0002	BSA,GOA	1
TAE BAEK HO LARGE STERN TRAWLER	KS-85-0042	BSA,GOA	1
TAE YANG NO. 12 CARGO/TRANSPORT VESSEL	KS-85-0081	BSA,GOA	3
YUYANG HO LARGE STERN TRAWLER	KS-85-0104	BSA,GOA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
***GOVERNMENT OF THE NETHERLANDS			
ALIDA LARGE STERN TRAWLER	NL-85-0006	NWA	1
ANNIE HILLINA MEDIUM STERN TRAWLER	NL-85-0027	NWA	1
ARIADNE MEDIUM STERN TRAWLER	NL-85-0009	NWA	1
ASTRID LARGE STERN TRAWLER	NL-85-0028	NWA	1
BOEIER LARGE STERN TRAWLER	NL-85-0021	NWA	1
CORNELIS VROLIJK FZN MEDIUM STERN TRAWLER	NL-85-0014	NWA	1
DIRK DIRK LARGE STERN TRAWLER	NL-85-0026	NWA	1
HENDRIKA JOHANNA MEDIUM STERN TRAWLER	NL-85-0025	NWA	1
HOLLAND LARGE STERN TRAWLER	NL-85-0023	NWA	1
JOHANNA MARIA MEDIUM STERN TRAWLER	NL-85-0011	NWA	1
JOINT FROST LARGE STERN TRAWLER	NL-85-0020	NWA	3
PEER SLUIS MEDIUM STERN TRAWLER	NL-85-0024	NWA	1
PRINS BERNHARD MEDIUM STERN TRAWLER	NL-85-0007	NWA	1
ZEELAND LARGE STERN TRAWLER	NL-85-0022	NWA	1
***GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC			
AMAREL LARGE STERN TRAWLER	PL-85-0046	BSA,GOA	1
ANTARES LARGE STERN TRAWLER	PL-85-0037	BSA,GOA WOC	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
ANTONI GARNUSZEWSKI CARGO/TRANSPORT VESSEL	PL-85-0106	BSA,GOA,NWA WOC	3
AQUARIUS LARGE STERN TRAWLER	PL-85-0103	BSA,GOA	1
AQUILA LARGE STERN TRAWLER	PL-85-0097	BSA,GOA	1
ARCTURUS LARGE STERN TRAWLER	PL-85-0038	BSA,GOA	1
ATLANTIK LARGE STERN TRAWLER	PL-85-0060	BSA,GOA WOC	1
BOREAS LARGE STERN TRAWLER	PL-85-0085	BSA,GOA	1
BUROW CARGO/TRANSPORT VESSEL	PL-85-0033	BSA,GOA,NWA WOC	3
CASSIOPEIA LARGE STERN TRAWLER	PL-85-0099	BSA,GOA	1
DELFIN LARGE STERN TRAWLER	PL-85-0065	BSA,GOA WOC	1
DEMERDLA LARGE STERN TRAWLER	PL-85-0075	BSA,GOA WOC	1
DZIECI POLSKIE CARGO/TRANSPORT VESSEL	PL-85-0091	BSA,GOA,NWA WOC	3
EMBLA LARGE STERN TRAWLER	PL-85-0008	BSA,GOA	1
GDYNSKI KOSYNIER LONGLINE FISHING VESSEL	PL-85-0090	BSA,GOA,NWA WOC	3
GEMINI LARGE STERN TRAWLER	PL-85-0048	BSA,GOA	1
GRINDAL LARGE STERN TRAWLER	PL-85-0007	BSA,GOA	1
GRYF POMORSKI LARGE STERN TRAWLER	PL-85-0049	BSA,GOA,NWA WOC	3
HAJDUK LARGE STERN TRAWLER	PL-85-0066	BSA,GOA WOC	1
HALNIAK CARGO/TRANSPORT VESSEL	PL-85-0029	BSA,GOA,NWA WOC	3

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
HUMBAK LARGE STERN TRAWLER	PL-85-0019	BSA,GOA	1
INDUS LARGE STERN TRAWLER	PL-85-0094	BSA,GOA	1
KALMAR LARGE STERN TRAWLER	PL-85-0039	BSA,GOA	1
KAPITAN LEDOCHOWSKI CARGO/TRANSPORT VESSEL	PL-85-0087	BSA,GOA,NWA WOC	3
KASZUBY 2 CARGO/TRANSPORT VESSEL	PL-85-0027	BSA,GOA,NWA WOC	3
KOLIAS LARGE STERN TRAWLER	PL-85-0050	BSA,GOA	1
KULBAK LARGE STERN TRAWLER	PL-85-0104	BSA,GOA	1
LEWANTER CARGO/TRANSPORT VESSEL	PL-85-0030	BSA,GOA,NWA WOC	3
LIKODYN LARGE STERN TRAWLER	PL-85-0025	BSA,GOA	1
MANTA LARGE STERN TRAWLER	PL-85-0052	BSA,GOA WOC	1
MARLIN LARGE STERN TRAWLER	PL-85-0034	BSA,GOA WOC	1
MAZURY CARGO/TRANSPORT VESSEL	PL-85-0098	BSA,GOA,NWA WOC	3
MORS LARGE STERN TRAWLER	PL-85-0063	BSA,GOA WOC	1
MUSTEL LARGE STERN TRAWLER	PL-85-0012	BSA,GOA	1
[illegible]CYN LARGE STERN TRAWLER	PL-85-0077	BSA,GOA WOC	1
[illegible]LSK LARGE STERN TRAWLER	PL-85-0078	BSA,GOA	1
OTOL LARGE STERN TRAWLER	PL-85-0011	BSA,GOA	1
PARMA	PL-85-0084	BSA,GOA WOC	1
LARGE STERN TRAWLER			
PERSEUS MEDIUM STERN TRAWLER	PL-85-0004	BSA,GOA WOC	1
POLLUX LARGE STERN TRAWLER	PL-85-0006	BSA,GOA	1
POMORZE LARGE STERN TRAWLER	PL-85-0031	BSA,GOA,NWA WOC	3
PROF. BOGUCKI LARGE STERN TRAWLER	PL-85-0107	BSA,GOA WOC	1
REGULUS LARGE STERN TRAWLER	PL-85-0095	BSA,GOA	1
REKIN LARGE STERN TRAWLER	PL-85-0080	BSA,GOA WOC	1
SAGITTA LARGE STERN TRAWLER	PL-85-0040	BSA,GOA	1
SIRIUS LARGE STERN TRAWLER	PL-85-0062	BSA,GOA WOC	1
TAZAR LARGE STERN TRAWLER	PL-85-0054	BSA,GOA WOC	1
TERRAL CARGO/TRANSPORT VESSEL	PL-85-0086	BSA,GOA,NWA [illegible]	3
TUNEK LARGE STERN TRAWLER	PL-85-0045	BSA,GOA	1
VEGA LARGE STERN TRAWLER	PL-85-0055	BSA,GOA WOC	1
WALEN LARGE STERN TRAWLER	PL-85-0009	BSA,GOA	1
WINETA CARGO/TRANSPORT VESSEL	PL-85-0061	BSA,GOA,NWA WOC	3
ZONDA CARGO/TRANSPORT VESSEL	PL-85-0102	BSA,GOA,NWA WOC	3
ZULAWY CARGO/TRANSPORT VESSEL	PL-85-0041	BSA,GOA,NWA WOC	3
***GOVERNMENT OF SPAIN			
ALTEAMAR UNO	SP-85-0067	[illegible]	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
MEDIUM STERN TRAWLER			
ANA MARIA BANDON MEDIUM STERN TRAWLER	SP-85-0057	NMA	1
ANCORA D'OURO MEDIUM STERN TRAWLER	SP-85-0090	NMA	1
ANDES MEDIUM STERN TRAWLER	SP-85-0117	NMA	1
ANGUIACHO MEDIUM STERN TRAWLER	SP-85-0118	NMA	1
AREA COVA SIDE TRAWLER	SP-85-0013	NMA	1
AXEKO SIDE TRAWLER	SP-85-0104	NMA	1
CANTON DE CORA MEDIUM STERN TRAWLER	SP-85-0030	NMA	1
CAPITAN EMILIO SIDE TRAWLER	SP-85-0123	NMA	1
CAPITAN JORGE SEGUNDO SIDE TRAWLER	SP-85-0069	NMA	1
CHICHA TOUZA MEDIUM STERN TRAWLER	SP-85-0025	NMA	1
CODEBIDE MEDIUM STERN TRAWLER	SP-85-0165	NMA	1
CONBAROYA II MEDIUM STERN TRAWLER	SP-85-0015	NMA	1
CONBAROYA III MEDIUM STERN TRAWLER	SP-85-0047	NMA	1
CONGELAMAR PRIMERO MEDIUM STERN TRAWLER	SP-85-0174	NMA	1
COSTA DEL CABO SIDE TRAWLER	SP-85-0139	NMA	1
[illegible] MEDIUM STERN TRAWLER	SP-85-0124	NMA	1
CUDILLERO MEDIUM STERN TRAWLER	SP-85-0111	NMA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
EGUNSENTIA MEDIUM STERN TRAWLER	SP-85-0062	NMA	1
FARPESCA IV MEDIUM STERN TRAWLER	SP-85-0093	NMA	1
FRAGANA MEDIUM STERN TRAWLER	SP-85-0046	NMA	1
ISLA GRACIOSA MEDIUM STERN TRAWLER	SP-85-0127	NMA	1
ISLA MONTANA CLARA MEDIUM STERN TRAWLER	SP-85-0128	NMA	1
IZARRA MEDIUM STERN TRAWLER	SP-85-0064	NMA	1
KANTAOPE MEDIUM STERN TRAWLER	SP-85-0056	NMA	1
LAXE DOS PICOS MEDIUM STERN TRAWLER	SP-85-0035	NMA	1
MADROA SMALL STERN TRAWLER	SP-85-0024	NMA	1
MANUEL NORES MEDIUM STERN TRAWLER	SP-85-0107	NMA	1
MAPOSA CUARTO MEDIUM STERN TRAWLER	SP-85-0161	NMA	1
MAPOSA OCTAVO MEDIUM STERN TRAWLER	SP-85-0163	NMA	1
MAPOSA PRIMERO SIDE TRAWLER	SP-85-0149	NMA	1
MAPOSA QUINTO MEDIUM STERN TRAWLER	SP-85-0072	NMA	1
MAPOSA SEGUNDO SIDE TRAWLER	SP-85-0150	NMA	1
MAPOSA SEPTIMO MEDIUM STERN TRAWLER	SP-85-0164	NMA	1
MAPOSA SEXTO SIDE TRAWLER	SP-85-0085	NMA	1
MAPOSA TERCERO MEDIUM STERN TRAWLER	SP-85-0166	NMA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
			36
MAR DE GALILEA SMALL STERN TRAWLER	SP-85-0055	NWA	1
MAR DE LABRADOR MEDIUM STERN TRAWLER	SP-85-0176	BSA,GOA	1
MARIA EUGENIA G MEDIUM STERN TRAWLER	SP-85-0170	NWA	1
MARIA TERESA RODRIGUEZ MEDIUM STERN TRAWLER	SP-85-0167	NWA	1
MAYI CUATRO MEDIUM STERN TRAWLER	SP-85-0073	NWA	1
MIRADOR DEL FITO MEDIUM STERN TRAWLER	SP-85-0171	NWA	1
MOUTA MEDIUM STERN TRAWLER	SP-85-0040	NWA	1
NAVIJOSA NOVENO MEDIUM STERN TRAWLER	SP-85-0168	NWA	1
NAVIJOSA OCTAVO MEDIUM STERN TRAWLER	SP-85-0160	NWA	1
NAVIJOSA QUINTO SIDE TRAWLER	SP-85-0152	NWA	1
NAVIJOSA SEXTO SIDE TRAWLER	SP-85-0153	[redacted]	1
NAVIJOSA VII SIDE TRAWLER	SP-85-0154	[redacted]	1
[redacted] MEDIUM STERN TRAWLER	SP-85-0043	NWA	1
ORBALLO MEDIUM STERN TRAWLER	SP-85-0036	NWA	1
PEGAGO CUARTO SIDE TRAWLER	SP-85-0151	NWA	1
PEGAGO SEGUNDO SIDE TRAWLER	SP-85-0098	NWA	1
PEGAGO TERCERO MEDIUM STERN TRAWLER	SP-85-0070	NWA	1
PEIXE DO MAR	SP-85-0005	NWA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
			37
SIDE TRAWLER			
PEIXINO MEDIUM STERN TRAWLER	SP-85-0108	NWA	1
PERCA MEDIUM STERN TRAWLER	SP-85-0045	NWA	1
PESCAMARO UNO MEDIUM STERN TRAWLER	SP-85-0034	NWA	
PESCAPUERTA PRIMERO SIDE TRAWLER	SP-85-0019	NWA	1
PESCAPUERTA SEGUNDO LARGE STERN TRAWLER	SP-85-0112	NWA	1
PESCAPUERTA TERCERO MEDIUM STERN TRAWLER	SP-85-0020	NWA	1
PEVEGASA SEGUNDO MEDIUM STERN TRAWLER	SP-85-0083	NWA	1
PINEIRO CORREA MEDIUM STERN TRAWLER	SP-85-0044	NWA	1
PINZON PRIMERO MEDIUM STERN TRAWLER	SP-85-0172	NWA	1
PLAYA DE CADIZ MEDIUM STERN TRAWLER	SP-85-0136	NWA	1
PLAYA DE MENDUINA SMALL STERN TRAWLER	SP-85-0137	NWA	1
PLAYA DE MOGOR MEDIUM STERN TRAWLER	SP-85-0021	NWA	1
PLAYA DE PESMAR MEDIUM STERN TRAWLER	SP-85-0113	[redacted]	1
PUENTE DE GONDOMAR MEDIUM STERN TRAWLER	SP-85-0077	[redacted]	1
PUENTE LOURIDO MEDIUM STERN TRAWLER	SP-85-0109	NWA	1
PUENTE MINOR MEDIUM STERN TRAWLER	SP-85-0023	NWA	1
PUENTE TORALLA SMALL STERN TRAWLER	SP-85-0052	NWA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	38 ACTIVITY
PUNTA DE LOS CASTILLOS SIDE TRAWLER	SP-85-0028	NJA	1
RIO VERDUGO MEDIUM STERN TRAWLER	SP-85-0065	NJA	1
SUDWAR 005 SMALL STERN TRAWLER	SP-85-0143	NJA	1
SUDWAR UNO MEDIUM STERN TRAWLER	SP-85-0059	NJA	1
TASARTE MEDIUM STERN TRAWLER	SP-85-0114	NJA	1
TEUCRO MEDIUM STERN TRAWLER	SP-85-0101	NJA	1
TITO MARQUEZ MEDIUM STERN TRAWLER	SP-85-0038	NJA	1
TORALLA MEDIUM STERN TRAWLER	SP-85-0016	NJA	1
UR ERTZA MEDIUM STERN TRAWLER	SP-85-0110	NJA	1
UTLACHWI MEDIUM STERN TRAWLER	SP-85-0070	NJA	1
VILLA ANA SIDE TRAWLER	SP-85-0145	NJA	1
VILLA DE MARIN MEDIUM STERN TRAWLER	SP-85-0051	NJA	1
VIVIANDOR MEDIUM STERN TRAWLER	SP-85-0039	NJA	1
XEITOSINO MEDIUM STERN TRAWLER	SP-85-0022	NJA	1
ZAPPNET SIDE TRAWLER	SP-85-0053	NJA	1
***TAIWAN			
CHEN I NO. 1 LONGLINER/GILLNET	TW-85-3118	PBS	1
CHIEF DRAGON 737 MEDIUM STERN TRAWLER	TW-85-0055	BSA,GOA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	39 ACTIVITY
CHIEF DRAGON 777 CARGO/TRANSPORT VESSEL	TW-85-0056	BSA,GOA	3
CHIEN JIA 3 LONGLINE FISHING VESSEL	TW-85-3075	PBS	1
CHIN HUEY 21 LONGLINE FISHING VESSEL	TW-85-3073	PBS	1
CHIN WOEI 61 LONGLINE FISHING VESSEL	TW-85-3114	PBS	1
CHUNG MA 2 LONGLINE FISHING VESSEL	TW-85-3078	PBS	1
FU PENG 1 LONGLINE FISHING VESSEL	TW-85-3110	PBS	1
GOLDEN DRAGON NO. 1 LARGE STERN TRAWLER	TW-85-0004	BSA,GOA	1
HAI FWU 12 LONGLINE FISHING VESSEL	TW-85-3086	PBS	1
HAI I 1 LONGLINE FISHING VESSEL	TW-85-3052	PBS	1
HIGHLY NO. 303 CARGO/TRANSPORT VESSEL	TW-85-0054	BSA,GOA	3
HIGHLY NO. 707 CARGO/TRANSPORT VESSEL	TW-85-0041	BSA,GOA	3
HO MEI NO. 1 LONGLINER/GILLNET	TW-85-3083	PBS	1
HORNG HSING LONGLINE FISHING VESSEL	TW-85-3045	PBS	1
HUI CHING NO. 1 LONGLINER/GILLNET	TW-85-3034	PBS	1
KUO ZONG 3 LONGLINE FISHING VESSEL	TW-85-3039	PBS	1
PENG MOU 6 LONGLINE FISHING VESSEL	TW-85-3099	PBS	1
RUEY FONG. 3 LONGLINE FISHING VESSEL	TW-85-3016	PBS	1
SHENG FONG NO. 1 LONGLINER/GILLNET	TW-85-3119	PBS	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY 40
SHENG PENG 1 LONGLINE FISHING VESSEL	TW-85-3049	PBS	1
SHIN TAI 7 LONGLINE FISHING VESSEL	TW-85-3111	PBS	1
SHIN YUAN CHENG NO. 21 LONGLINER/GILLNET	TW-85-3066	PBS	1
SHIN YUAN SENG NO. 11 LONGLINER/GILLNET	TW-85-3057	PBS	1
SHYA SHENG LONGLINE FISHING VESSEL	TW-85-3014	PBS	1
SUR TON 1 LONGLINE FISHING VESSEL	TW-85-3019	PBS	1
SUR TON 3 LONGLINE FISHING VESSEL	TW-85-3020	PBS	1
TONG ANN 31 LONGLINE FISHING VESSEL	TW-85-3097	PBS	1
TONG CHOU 7 LONGLINE FISHING VESSEL	TW-85-3044	PBS	1
YIH HSING LONGLINE FISHING VESSEL	TW-85-3044	PBS	1
YING RUEY SHIANG 3 LONGLINE FISHING VESSEL	TW-85-3013	PBS	1
YING YIH SHIANG LONGLINE FISHING VESSEL	TW-85-3015	PBS	1
YU SHAN 7 LONGLINE FISHING VESSEL	TW-85-3087	PBS	1
YU SHIANG 7 LONGLINE FISHING VESSEL	TW-85-3106	PBS	1
YUNG CHANG FU 1 LONGLINE FISHING VESSEL	TW-85-3094	PBS	1
YUNG CHANG FU 31 LONGLINE FISHING VESSEL	TW-85-3041	PBS	1
***GOVERNMENT OF THE U.S.S.R.			
18 SYEZD VLKSM LARGE STERN TRAWLER	UR-85-0417	BSA,GOA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY 41
ABINSK CARGO/TRANSPORT VESSEL	UR-85-0756	BSA,GOA WOC	3
AMURSKIY BEREG CARGO/TRANSPORT VESSEL	UR-85-0755	BSA,GOA WOC	3
BARYKINO LARGE STERN TRAWLER	UR-85-0765	BSA,GOA	1
BEREG MECHTY CARGO/TRANSPORT VESSEL	UR-85-0753	BSA,GOA WOC	3
KAMCHATSKIY BEREG CARGO/TRANSPORT VESSEL	UR-85-0755	BSA,GOA WOC	3
KAPITAN REDKOKASHA LARGE STERN TRAWLER	UR-85-0766	BSA,GOA	1
KARSAT LARGE STERN TRAWLER	UR-85-0198	BSA,GOA	1
KATANGLI LARGE STERN TRAWLER	UR-85-0818	BSA,GOA	1
KHRUSTALNYI BEREG CARGO/TRANSPORT VESSEL	UR-85-0732	BSA,GOA WOC	3
KLUCHEVSKOI LARGE STERN TRAWLER	UR-85-0062	BSA,GOA	1
KORSHUN LARGE STERN TRAWLER	UR-85-0215	BSA,GOA	1
LOTOS LARGE STERN TRAWLER	UR-85-0220	BSA,GOA	1
MYS BELKINA LARGE STERN TRAWLER	UR-85-0214	BSA,GOA	1
MYS EGOROVA LARGE STERN TRAWLER	UR-85-0097	BSA,GOA	1
MYS SHINA LARGE STERN TRAWLER	UR-85-0169	BSA,GOA	1
MYS SHIVZIY LARGE STERN TRAWLER	UR-85-0165	BSA,GOA	1
MYS RATMANOVA LARGE STERN TRAWLER	UR-85-0078	BSA,GOA	1
NIKOLAEVSKIY KARABEL	UR-85-0175	BSA,GOA	1

NATION VESSEL NAME VESSEL TYPE	APPLICATION NUMBER	FISHERY	ACTIVITY
LARGE STERN TRAWLER			
GRALOUVI CARGO/TRANSPORT VESSEL	UR-85-0773	BSA,GOA WOC	3
POGRANICHNIK STRELNIKOV LARGE STERN TRAWLER	UR-85-0225	BSA,GOA	1
POIMA LARGE STERN TRAWLER	UR-85-0261	BSA,GOA	1
PROLIV LAPERUZA CARGO/TRANSPORT VESSEL	UR-85-0772	BSA,GOA WOC	3
SAHARA LARGE STERN TRAWLER	UR-85-0047	BSA,GOA	1
SEVERODONETSK FACTORY SHIP	UR-85-0757	BSA,GOA	1
SLAVTANKER LARGE STERN TRAWLER	UR-85-0767	BSA,GOA	1
SOJUZ - 3 LARGE STERN TRAWLER	UR-85-0235	BSA,GOA	1
SOVGAVANJ LARGE STERN TRAWLER	UR-85-0234	BSA,GOA	1
SULAK FACTORY SHIP	UR-85-0239	BSA,GOA	2
SVETLAJA LARGE STERN TRAWLER	UR-85-0260	BSA,GOA	1
TERMEI LARGE STERN TRAWLER	UR-85-0202	BSA,GOA	1
TIBIL LARGE STERN TRAWLER	UR-85-0162	BSA,GOA	1
VOSTOCHNYI BEREG CARGO/TRANSPORT VESSEL	UR-85-0761	BSA,GOA WOC	3
XVI SYEZD PROFSOYUZOV LARGE STERN TRAWLER	UR-85-0720	BSA,GOA	1
ZELENOGRAD LARGE STERN TRAWLER	UR-85-0634	BSA,GOA	1

BILLING CODE 3510-22-C

Japan

Joint Venture—The Government of Japan has applied for fishing vessel permits to engage in joint venture activities off Alaska. The applications request that Japanese vessels receive transshipments in the FCZ of U.S. harvested fish in the total amount of 330,000 mt. The species being requested include 4,200 mt Pacific cod, 324,400 mt pollock, and 1,400 mt other species. The five American companies that will be partners in individual joint venture operations with the Japanese are:

Peter Pan Seafoods, Inc., 1000 Denny Building, 6th & Blanchard, Seattle, WA 98121
Universal Seafoods, Inc., P.O. Box 15110, NE., 90th Street, Redmond, WA 98052
Mr. Clinton E. Atkinson, 8000 Crest Drive, NE., Seattle, WA 98115
Whitney-Fidalgo Seafoods, Inc., 2360 W. Commodore Way, P.O. Box 99008, Seattle, WA 98199
Westward Trawlers, Inc., 3040 W. Commodore Way, Seattle, WA 98190

Poland

Joint Venture—The Government of the Polish People's Republic has applied for fishing vessel permits to engage in joint venture activities in Alaska. The applications request that Polish vessels transshipments in the FCZ of U.S. harvested fish in the total amount of 20,000 mt of pollock in Alaska with two American partners: Alaska Contact, 750 West Second Avenue, Suite 204, Anchorage, Alaska and Quest Trading Company, 790 North 4th Court, Coos Bay, Oregon. Both operations will begin January 1 and end December 31, 1985. For the WOC fishery, Poland has requested 10,000 mt of Pacific whiting with the American partner, Quest Trading Company. This operation will begin May 1, and end October 30, 1985.

Korea

Joint Venture—The Government of the Republic of Korea has applied for fishing vessel permits to engage in joint venture activities in Alaska. The applications request that Korean vessels receive transshipments, in the FCZ, of U.S. harvested fish in the total amount of 125,700 mt for the following species: pollock (75,100 mt); Pacific cod (8,750 mt); flounders (8,250 mt); Pacific ocean perch (5,400 mt); Atka Mackerel (25,400 mt) and other groundfish (2,800 mt). Thirteen (13) American partners will participate in the joint ventures with Korea, however, negotiations have been completed with only the following six companies:

Daerim America, Inc., 2125 Center Avenue, Suite 105, Ft. Lee, NJ 07024
Profish International, Inc., 1530 Westlake Avenue N., Suite 700, Seattle, WA 98109
Cal-Alaska Fisheries, Inc., 324 W. 8th Street, Suite 203, Los Angeles, CA 90005
Alaska Joint Venture Fisheries, Ltd., 750 W. Second Avenue, Anchorage, Alaska 99501
Joint Venture Fisheries, Ltd., Canal Place Office Park, 150 Nickerson, Suite 207, Seattle, WA 98107
Alaska Contact, Ltd., 750 West Second Avenue, Suite 203, Anchorage, Alaska 99501

Netherlands

Joint Venture—The Government of the Kingdom of the Netherlands has applied for fishing vessel permits to engage in joint venture activities in the NWA fishery. The applications request that Netherlands vessels receive transshipments of Atlantic Mackerel from U.S. fishing vessels in the amount of 5,000 mt from January–December, 1985. The American partner in this joint venture is Scan Ocean, Inc., 42 Rogers Street, Gloucester, MA 01930.

East Germany

Joint Venture—The Government of the German Democratic Republic has applied for fishing vessel permits to engage in joint venture activities in the NWA fishery. The applications request that East German vessels receive transshipments, in the FCZ, of 5,000 mt of mackerel from U.S. fishing vessels. The American partner in the joint venture is Joint Trawlers (North America), Ltd., P.O. Box 1209 Gloucester, MA 01930. The operation will take place December, 1984–April, 1985.

Taiwan

Joint Venture—Taiwan has applied for fishing vessel permits to engage in joint venture activities in Alaska. The applications request that Taiwanese vessels receive transshipments of U.S. harvested fish in the total amount of 9,000 mt including Pacific cod (3,700 mt); pollock (2,800 mt); Turbot (1,400 mt) and other species (1,100 mt). This joint venture has two American partners: Alaska Contact, Ltd., 750 W. 2nd Avenue, Suite 203, Anchorage, AK 99501 and St. George Tanaq, Corp., 2604 Fairbank Street, Anchorage, AK 99503. The vessels will operate March, 1985–November, 1985.

USSR

Joint Venture—The Government of the Union of Soviet Socialist Republics has applied for fishing vessel permits to engage in joint venture activities in Alaska. The applications request that Soviet vessels receive transshipments of pollock (2,589 mt), atka mackerel (20,468 mt), yellowfin sole (31,865 mt), Pacific cod (24,369 mt), other flounders (21,244 mt), and other species (2,065 mt) from domestic vessels. The total is 102,600 mt. The American partner is Marine Resources Company (MRC), 192 Nickerson #307, Seattle, WA 98109. The operation will begin February, 1985 and end October, 1985.

Spain

Joint Venture—The Government of Spain (GOS) has applied for a fishing vessel permit to engage in joint venture activities in Alaska. The application requests that the Spanish vessel receive transshipments of groundfish totalling 12,000 mt: pollock (4,000 mt) and Pacific cod (8,000 mt). The American partner is Alaska Salt Fish Corporation, 705 Christensen Drive, Anchorage, AK 99501. The operation was scheduled to begin January, 1985 and continue until the harvesting ends. The vessel for which a permit was requested has sunken. This notice is to indicate the intent of GOS to form a joint venture.

[FR Doc. 84-31048 Filed 11-30-84; 8:45 am]
BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395–7231. Copies of the submission are available from Joseph Salazar, Agency Clearance Officer, (202) 254–9735.

Title: Market Surveys.
Form number: Not applicable.
Action: Extension.
Respondents: Businesses (excluding small businesses).
Estimated annual burden: 2,000.
Estimated number of respondents: 400.

Issued in Washington, D.C., November 27, 1984.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 84-31488 Filed 11-30-84; 8:45 am]
BILLING CODE 6351-01-M

New York Futures Exchange Commodity Research Bureau Futures; Price Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Futures Exchange ("NYFE") has applied for designation as a contract market in the Commodity Research Bureau Futures Price Index ("CRB Index"). The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before February 1, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Reference should be made to the NYFE CRB Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, (202) 254–7303.

A copy of the terms and conditions of the NYFE's proposed CRB Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYFE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the NYFE in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, by February 1, 1985.

Issued in Washington, D.C., on November 28, 1984.

Jean A. Webb,
Secretary to the Commission.

[FR Doc. 84-31330 Filed 11-30-84; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Draft Conservation Cost-Sharing Principles and Proposed Model Conservation Standards Implementation Program Guidelines; Meeting

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Meeting notice.

SUMMARY: *Cost Sharing:* In early August 1984, BPA initiated a process to develop policy and principles reflecting the concept of conservation cost sharing.Cost sharing is defined as the up-front sharing of the cost of conservation program incentives between BPA and implementor. This concept was proposed in lieu of the current conservation contract charge to: (1) Address concerns about equitable cost recovery from generating and non-generating utilities, (2) reflect BPA's current resource planning assumptions, and (3) address program flexibility and cost concerns voiced by utilities regarding the conservation contract charge. The resulting final cost-sharing principles will be used as the basis for negotiating amendments to BPA's long-term conservation contract reflecting the cost sharing approach.

BPA has written draft conservation cost-sharing principles, and will hold meetings and accept comments on the principles. Copies of the principles are available upon request from the Public Involvement office at the address below. Any written comments on the principles should be received by 5 p.m., December 31, 1984, addressed to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Model Conservation Standards: In its Two Year Action Plan, the Northwest Power Planning Council (Council) established standards for energy-efficiency in new residential and commercial buildings. The Council recommended that State and local governments adopt these Model Conservation Standards (MCS) by January 1, 1986, and that BPA develop a program to reimburse these entities for incremental costs associated with the adoption and enforcement of the MCS.

In response, BPA has developed Proposed Policies and Guidelines for a Model Conservation Standards Implementation Program (MCSIP), which will support MCS implementation and enforcement after January 1, 1986. BPA will hold meetings and accept comments on MSCIP. Copies of these procedures which were released November 16, 1984, are also available from the Public Involvement office. Written comments regarding the MCSIP should be received by 5 p.m., December 17, 1984, addressed to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Public meetings on the Draft Conservation Cost-Sharing Principles (CS) and the proposed Model Conservation Standard Implementation Program Guidelines will be held during the week of December 10th. Meeting locations, dates and times are as follow:

Missoula, Montana
December 10, Missoula Village Red Lion, Canyon Room, 100 Madison, 9:30–11:30 a.m.—CS, 1:00–3:00 p.m.—MCS
Spokane, Washington
December 11, Spokane Ridpath Hotel, Terrace Room C, West 515 Sprague, 9:30–11:30 a.m.—CS, 1:00–3:00 p.m.—MCS
Portland, Oregon
December 12, Thunderbird Motor Inn—Jantzen Beach, Klamath Room, 1401 N. Hayden Island Drive, 9:30–11:30 a.m.—MCS, 1:00–3:00 p.m.—CS
Boise, Idaho
December 13, Owyhee Plaza, 1109 Main Street, 9:30–11:30 a.m.—CS, 1:00–3:00 p.m.—MCS
Seattle, Washington
December 14, Seattle Mercer Forum, Rooms I and II, Mercer Street at 3rd Avenue North, 9:30–11:30 a.m.—CS, 1:00–3:00 p.m.—MCS

Responsible Officials: Sue F. Hickey, Director, Division of Planning and

Evaluation, Office of Conservation, is the official responsible for developing the cost-sharing policy. Sydney D. Berwager, Director, Division of Residential Programs, Office of Conservation, is the official responsible for developing MCS-support policies and procedures.

FOR FURTHER INFORMATION CONTACT:
Ms. Danna L. Geiger, Public Involvement Office, P.O. Box 12999, Portland, Oregon, 97212. Telephone numbers, voice/TTY, for the Public Involvement Office are: 503-230-3478 in Portland; toll-free 800-452-8429 for Oregon outside of Portland; and toll-free 800-547-8048 for Washington, Idaho, Montana, Utah, Wyoming, Nevada, and California.

Issues in Portland, Oregon, on November 27, 1984.

James J. Jura,
Acting Administrator.

[FR Doc. 84-31681 Filed 11-29-84; 4:30 pm]
BILLING CODE 6450-01-M

Southwestern Power Administration

Proposed Town Bluff Hydropower Project, Texas; Notice of Final Selection

AGENCY: Department of Energy, Southwestern Power Administration.

ACTION: Notice of final selection of the Sam Rayburn Municipal Power Agency as the financial sponsor and preference customer for the proposed Town Bluff Hydropower Project in Texas.

SUMMARY:

1. The tentative selection of the Sam Rayburn Municipal Power Agency, a public body in the state of Texas, as the financial sponsor and preference customer for the proposed Town Bluff Hydropower Project was announced in the **Federal Register**, Volume 49, Number 199, Friday, October 12, 1984, page 40095. This announcement also stated that any subsequent proposals and/or applications for sponsorship or power and energy from the project received prior to November 13, 1984, would be considered in the final selection process.

2. Inquires requesting additional information were received; however, no subsequent proposals or applications for finapcial sponsorship or power and energy from the project were received during the above mentioned public comment period which closed on November 13, 1984. Because no additional proposals were received and because the previously announced proposal submitted by the Sam Rayburn Municipal Power Agency met or exceeded all financial sponsor and preference customer criteria, notice is hereby given that the Sam Rayburn Municipal Power Agency is selected as the financial sponsor and preference customer for the proposed Town Bluff Hydropower Project, Texas.

ADDRESSES:

For further information about the proposed project design, construction and financing, contact: James L. Hair, Executive Assistant, Forth Worth District, Corps of Engineers, P.O. Box 17300, Fort Worth, Texas 76102, Telephone (817) 334-2301;

or

For further information about the proposed marketing of the power and energy from the proposed project, contact; Walter M. Bowers, Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101, Telephone (918) 581-7529.

Dated: November 23, 1984.

Ronald H. Wilkerson,
Administrator, Southwestern Power Administration.

[FR Doc. 84-31678 Filed 11-30-84; 11:37 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP85-4-000]

Amerada Hess Corp., et al; Blanket Protest, Complaint, Motion To Intervene, and Request for Evidentiary Hearings on Production-Related Cost Allowances

In the matter of Amerada Hess Corp., American Petrofina Co., Aminoil USA Inc., Amoco Production Co., ARCO Oil and Gas Co., Champlin Petroleum Co., Chevron USA Inc., Cities Service Co., Cities Service Oil & Gas Corp., CNG Producing Co., Conoco, Inc. Diamond Shamrock Exploration Co., Exxon Corp., Getty Oil Co., Gulf Oil Co., Kerr-McGee Corp., The Louisiana Land & Exploration Co., Marathon Oil Co., Mobil Producing Texas and New Mexico, Inc., Mobil Oil Exploration & Producing Southeast Inc., Phillips Oil Co., Placid Oil Co., Shell Western E&P Inc., Shell Oil Co., Shell Offshore Inc., Sohio Petroleum Co., Sun Exploration & Production Co., The Superior Oil Co., Tenneco Oil Co., Texaco, Inc., Texaco Producing Inc., Union Oil of California, Union Texas Petroleum Corp.

Issued November 27, 1984.

On October 31, 1984, Associated Gas Distributors (AGD) filed a Blanket Protest, Complaint, Motion to Intervene, and Request for Evidentiary hearings on Production-Related Cost Allowances in response to the blanket affidavits submitted by the above-named companies[1] insofar as such affidavits purport to cover rate increases for natural gas first sales to the following named interstate pipelines: Columbia Gas Transmission Corporation, Consolidated Gas Transmission Corporation, Panhandle Eastern Pipe Line Company, Sea Robin Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, and United Gas Pipe Line Company (jointly referred to as AGD pipeline supplies). Specifically, AGD alleges that each of the AGD companies relies either directly or indirectly upon one or more of the AGD pipeline suppliers and that the rate increases proposed by the above-captioned producing companies, insofar as their blanket affidavits provide for increased rates for first sales of natural gas to the AGD pipeline suppliers, will adversely affect the AGD companies' cost of purchased gas, their retail rates, and their competitive position in the marketplace.

AGD states that Mobil Oil Corporation filed a complaint on August 28, 1984[2] that argued that a vast majority of interstate pipelines failed to comply with the Commission's section 110 regulations by not paying production-related costs in installments during the period March 7, 1983 through December 31, 1984. AGD further states that on September 8, 1984, Indicated Producers submitted in Docket No. GP84-51-000 a "Motion to Require Pipeline Purchasers to Pay Gathering and Compression Allowances." As reason for the non-payment of the section 110 allowances, AGD alleges" . . . that the pipelines' non-payment is attributable to good faith disagreements or non-agreements between the contracting parties as to whether the producers' charges for production-related services are justified by the facts pertaining to individual wellhead sales and/or the producers' failure to provide in a timely way the factual description or basis for their charges." Therefore, on the basis of the Mobil Complaint, the Indicated Producers Motion, the pipelines' response thereto and the instant complaint, AGD asserts that a proceeding in the nature of a hearing before the Production Related Cost

[1] The blanket affidavits are required by §154.94(k)(1) of the Commission's regulations under the Natural Gas Act.

[2] Mobil Corp. v. ANR Pipeline Company, Docket No. GP84-50-000.

Board is required by the remedial procedure provided in § 275.1105(d) of the Commission's regulation.

Any person who desires to be heard or to make a protest to the request should file, within 30 days after this notice is published in the **Federal Register**, with the Commission a motion to intervene or a protest in accordance with Rules 211 or 214 of the Rules of Practice and Procedure. Such motion to intervene or protest should be filed at 825 North Capitol Street, NE., Washington, D.C. 20426. All protests filed will be considered but will not make the protestants parties to the proceeding. Any party who wishes to become a party must file a motion to intervene in accordance with the Commission's rules. The companies named in this filing have been served by AGD and also have 30 days from **Federal Register** publication to file their answers.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31676 Filed 11-30-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-132-000]

Carolina Power & Light Co.; Filing

November 27, 1984.

The filing Company submits the following:

Take notice that on November 19, 1984, Carolina Power & Light Company (CP&L) tendered for filing proposed cancellation of the "1971 Generator Installation Agreement" dated July 6, 1969, between CP&L (FPC No. 98), Duke Power Company (FPC No. 247), South Carolina Electric & Gas Company (FPC No. 30), and Virginia Electric and Power Company (FPC No. 96). Under the Agreement, CP&L built a 194 megawatt unit, Asheville Unit No. 2, at CP&L's Asheville Steam Electric Plant and sold unit capacity and energy to the other three utilities. In addition, CP&L and Duke constructed and operated 230 kV transmission facilities to provide additional interconnection from the Asheville Steam Electric Plant.

Under the provisions of Article 2 of the Agreement, CP&L would notify the Parties to the Agreement prior to May 1 of each year the amount of the Asheville Unit No. 2 generating capacity CP&L would remain in order to have sufficient capacity to meet their projected Western Division peak demand. No charges or payments have been made between CP&L and Duke, SCE&G, or VEPCO for capacity since April 30, 1977, nor the transmission facilities since April 30, 1979, thereby making the "1971 Generator installation Agreement" inactive.

CP&L has sent copies of this filing to Duke Power Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company.

This cancellation is proposed to be effective sixty days after filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 31677 Filed 11-30-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-131-000]

Citizens Utilities Co.; Cancellation

November 27, 1984.

The filing Company submits the following:

Take notice that on November 19, 1984, Citizens Utilities Company (Citizens) tendered for filing a notice of cancellation Rate Schedule FPC No. 11.

Citizens requests an effective date of January 18, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 31678 Filed 11-30-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP85-5-000]

Conoco, Inc., Complaint

Issued: November 27, 1984.

Conoco, Inc., a producer of natural gas, has filed a complaint against sixteen pipeline companies[1] alleging that those companies have failed to make timely payments to Conoco of production-related cost allowances. Conoco states that § 271.1104(e) of the Commission's regulations[2] implementing section 110 of the NGPA,[3] requires the pipeline companies to pay it for certain production-related costs incurred before March 7, 1983, (the retroactive period) in equal installments between March 3, 1983 and December 31, 1984. Also the pipeline companies allegedly were required to pay Conoco for production-related costs incurred after March 7, 1983, (the current period) within the time period stated in Conoco's invoice or in the contract.[4] Conoco states that as of September 30, 1984, the pipeline companies had paid only 22.1% of their payments for the retroactive period and only 12.9% of the amounts billed for the current period. Conoco requests that the Commission: (1) Direct that the pipeline companies make the payments for which they have received billings within thirty days, (2) declare that failure to make timely payments will result in enforcement action including imposition of civil fines under section 504(b) of the NGPA, and (3) direct the pipeline companies to offset the production-related cost allowances against any Btu refund payments required by the rulemaking proceeding in Docket No. RM84-6-000.

[1] Columbia Gas Transmission Corporation; El Paso Natural Gas Company; Gas Company of New Mexico, Division of Southern Union Company; Lone Star Gas Company; Natural Gas Pipeline Company of America; Northern Natural Gas Company, Division of Internorth Inc.; Northwest Central Pipeline Corporation; Northwest Pipeline Corporation; Panhandle Eastern Pipe Line Company; Sea Robin Pipeline Company; Southern Natural Gas Company; Texas Eastern Transmission Corporation; Texas Gas Resources Corporation; Transcontinental Gas Pipeline Company; Transwestern Pipeline Company; United Gas Pipe Line Company.

[2] 18 CFR 271.1104(c) (1984).

[3] 15 U.S.C. 3320 (1982).

[4] That time period generally was a month or less from the date of the invoice.

Any person who desires to be heard or to make any protest to this complaint should file, within 15 days after this notice is published in the Federal Register, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed will be considered but will not make the protestants parties to the proceeding. Copies of the complaint have been served by Conoco on all respondents. Answers to the complaint shall be due within 21 days after this notice is published in the Federal Register under Rules 206 and 213 (18 CFR 385.206 and 385.213).

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31479 Filed 11-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-85-000]

Consolidated Gas Transmission Corp. and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Request Under Blanket Authorization

November 27, 1984.

Take notice that on November 2, 1984, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), Tenneco Building, Houston, Texas 77002 (collectively referred to herein as Applicants), filed in Docket No. CP85-85-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to increase the maximum volume of natural gas to be stored in the jointly-owned Harrison storage pool, located in northern Pennsylvania and southern New York, pursuant to the certificates issued to Consolidated in Docket No. CP82-537-000 and Tennessee in Docket No. CP82-413-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants propose to increase the storage capacity of the Harrison storage pool by 644,000 Mcf of gas, from 33,456,000 Mcf to 34,100,000 Mcf, at a pressure base of 14.73 psia. Applicants explain that the additional capacity would be utilized as top storage gas and thus the top storage gas level is also proposed to be increased by 644,000 Mcf, from 20,073,000 Mcf to 20,717,000 Mcf. Applicants state that in planning the development of the Harrison storage pool, the original capacity of the production pool was estimated to be 33,456,000 Mcf of gas at the original pool pressure of 2140 psig. It is further stated that with continued operation of the pool, Applicants have found that this volume of gas reaches a stabilized wellhead pressure for the pool of less than 2140 psig. Applicants have calculated that the requested additional 644,000 Mcf of natural gas can be stored at Harrison before reaching the original pool pressure of 2140 psig.

Applicants advise that no new facilities would be necessary to increase the storage pool capacity and that the increase in capacity would have virtually no impact on the normal operations of the facility.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31480 Filed 11-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-130-000]

Illinois Power Co.; Filing

November 27, 1984.

The filing Company submits the following:

Take notice that on November 16, 1984, Illinois Power Company (Illinois) tendered for filing an initial rate schedule (Power Coordination Agreement) described herein between Soyland Power Cooperative, Inc. (Soyland), Western Illinois Power Cooperative, Inc. (WIPCO) and Illinois Power Company.

Under the Power Coordination Agreement, Soyland and WIPCO will have the right to purchase the output from a portion of Illinois Power Company's fossil-fueled generating capacity. The parties to the Agreement also agreed to pool their generating facilities so as to minimize the facilities which each will require to meet the growing requirements of their respective customers and members for electric power and to provide their customers for economic benefits and reliable service inherent from coordinated system planning and operation. In addition, the Agreement provides that the parties will share the use of transmission facilities, including the right to tap the systems of the other parties for the purpose of serving its members or customers located in the area served by the pool.

The Company, with the concurrence of Soyland and WIPCO, requests that the Commission grant a waiver of its notice requirements pursuant to the Commission's regulations and allow the filing to become effective on January 1, 1985, without suspension to achieve the effective date provided in the Power Coordination Agreement.

Copies of the filing were served upon the Company's electric cooperative customers, and the Illinois Commerce Commission, Springfield, Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31481 Filed 11-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-88-000]

Natural Gas Pipeline Company of America; Application

November 27, 1984

Take notice that on November 6, 1984, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, P.O. Box 1206, Lombard, Illinois, 60148, filed in Docket No. CP85-88-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas and the construction and operation of appurtenant facilities in the Twin Field area, Hansford County, Texas, all as more fully set forth in the application which is on file with the Commission and is open to public inspection.

Applicant states that it owns and operates a gas collection system in the Twin Field area, Hansford County, Texas. Applicant further states that analysis indicates significant quantities of heavy hydrocarbons which condense in the pipeline and cause pressure drop problems. In order to alleviate this situation, Applicant proposes to install a block valve, two side taps, and appurtenant facilities to connect its system to a skin mounted, refrigeration-type, liquid extraction plant to be located within Applicant's booster station No. 86 in Hansford County, Texas. Applicant explains that this plant would be capable of processing 2 MMcf of natural gas per day.

It is stated that the cost of the proposed facilities is $21,000 which would be financed with funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 17, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31482 Filed 11-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-14-047]

Northern Natural Gas Company, Division of InterNorth, Inc.; Petition To Amend

November 27, 1984.

Take notice that on November 9, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Petitioner), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP83-14-047 a petition to amend the order issued October 26, 1984, in Docket No. CP83-14-040 pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of the term of said order from January 28, 1985, to October 26, 1986. Petitioner also requests authorization to expand the applicability of this program and to make an administrative change to Rate Schedule LVCS, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on October 8, 1982, it filed an application for a certificate of public convenience and necessity authorizing Petitioner to provide service through October 26, 1984, under two new flexible pricing rate schedules: The Flexible Pricing-Pipeline Option (FPO) and the Large Volume Contract Service (LVCS) rate schedule. It is stated that Rate Schedule FPO would apply to a group of Petitioner's utility customers whose consumers possess installed alternative fuel capability and are designated and defined, according to their natural gas requirements, in Petitioner's F.E.R.C. Gas Tariff, Third Revised Volume No. 1, as priorities 6, 7, and 8 (boiler fuel, 1,500 Mcf of gas or more per day) consumers. It is stated that Rate Schedule LVCS would provide a similar service, but would apply to distributor customers who contract on an individual basis with end-users who consume more than 199 Mcf of gas per day and who possess installed alternative fuel capability. Petitioner asserts that both of these services are designed to provide natural gas service to those consumers who, because of competitive fuel pricing situations, would otherwise use alternative fuels rather than purchase natural gas at prices based on Petitioner's existing rates.

Petitioner states that on December 22, 1982, May 27, 1983, and November 25, 1983, Petitioner was issued temporary authorization in Docket Nos. CP83-14-001, CP83-14-005, and CP83-14-014, respectively, to provide service under these flexible rate schedules for customers and consumers who would otherwise use No. 6 fuel oil. It is asserted that such temporary certificates were granted by the Commission as a means of providing short-term relief from the economically debilitating effects that would occur to Petitioner and its customers if measures were not taken to stem the load loss occurring on Petitioner's system.

Petitioner states that on February 22, 1984, the Presiding Administrative Law Judge issued an initial decision recommending the issuance of a permanent certificate with several conditions, one of which required tracking of the discount sales and crediting of any net overrecovery of fixed costs in future rate cases to Petitioner's noneligible customers (26 FERC ¶ 63,071). It is stated that on May 25, 1984, the Commission approved the initial decision but added the condition that the fixed costs recovered from discount sales revenues be credited to noneligible customers during the period that Petitioner's current rates are in effect (27 FERC ¶ 61,299). It is further stated that the Commission's order authorized Petitioner's flexible pricing rate schedules to include those consumers who possess any alternative fuel capability rather than limiting the program to those consumers with only No. 6 fuel oil capability. Petitioner states that it accepted the certificate but sought rehearing of the rate conditions. It is stated that the Commission denied Petitioner's request for rehearing on August 21, 1984 (28 FERC ¶ 61,230). It is also stated that on October 17, 1984, Petitioner filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit requesting such court to review the Commission's orders issued on May 25, 1984, and August 21, 1984, in Docket No. CP83-14-000.

Petitioner states that the Commission order of May 25, 1984, authorized its flexible pricing rate schedules through October 26, 1984. On July 23, 1984, Petitioner states it filed a petition to amend order to extend the term of the Commission's May 25, 1984, order from October 26, 1984, to October 26, 1986, as well as to make certain minor language changes to Rate Schedule LVCS. It is stated that on October 26, 1984, the

Commission issued an order in Docket No. CP83–14–040 granting Petitoner's request to extend the term, but limited the extension to a three-month period terminating January 28, 1985. It is asserted that such limited extension was granted, based on the success of Petitioner's program as documented in Petitioner's July 23, 1984, petition to amend, to provide the Commission additional time necessary to evaluate fully the final results and merits of this program for the entire period ending October 26, 1984.

It is stated that the Commission's May 25, 1984, order requires Petitioner to track and keep records of all sales made under the FPO and LVCS rate schedules and to secure from each discount customer an affidavit stating the price at which that customer could purchase alternative fuels and stating that the customer would switch to an alternative fuel if Petitioner did not provide the flexible rate.

Petitioner asserts that it has filed its compliance report containing the required information necessary for the Commission to evaluate the benefits of this program.

Petitioner asserts that the reasons underlying the permanent certificates issued May 25, 1984, and October 26, 1984, still exist. Accordingly, Petitioner requests that the Commission amend its order of October 26, 1984, to extend this flexible pricing service through October 26, 1986. Petitioner asserts that the FPO and LVCS rate schedules are accomplishing their desired goals, i.e. (1) returning load to the system that would otherwise use alternative fuels, (2) recovering fixed costs that Petitioner would lose in the absence of FPO and LVCS sales, (3) reducing Petitioner's take-or-pay exposure, (4) reducing Petitioner's system-wide gas costs reflected through its purchase gas adjustment (PGA), and (5) assisting in reducing the current surplus of natural gas available to Petitioner.

Petitioner states that from the inception of this program on May 27, 1983, through October 26, 1984, Petitioner has sold approximately 3,600,000 Mcf of natural gas to customers and consumers which otherwise would have used some alternative fuels. It is stated that these volumes were sold at rates ranging from $3.33461 per Mcf to $3.5566 per Mcf and assisted in the recovery of fixed costs ranging from $.27251 to $.4945 per Mcf.

It is asserted that such recovery of fixed costs has amounted to approximately $1.5 million to date that Petitioner would otherwise have foregone in the absence of these two rate schedules. Petitioner states that its currently effective rates are based upon total system sales of 587,000,000 Mcf. Petitioner states that its sales have deteriorated from this level and it is estimated now such sales would be 572,000,000 Mcf for 1985. Petitioner asserts that sales at the 572,000,000 Mcf level for 1985 would not enable Petitioner to recover the fixed costs underlying its currently effective rates. It is further asserted that the continued availability of the flexible rate schedules is critical to enable Petitoner the opportunity to recover its fixed costs and to achieve its market objectives of maintaining stable rates and halting further market erosion.

Over the past several years, Petitioner asserts, it has experienced a gas supply surplus; and such surplus is expected to be in existence throughout the proposed term of this service. It is asserted that sales under these rate schedules certainly assist Petitioner's efforts in reducing and managing this gas supply surplus. It is stated that the sales made under these flexible pricing rate schedules have resulted in Petitioner's avoidance of approximately $8.8 million in take-or-pay exposure which continues to be a major problem confronting Petitioner. Petitioner also states that the actual sales made under these flexible rate schedules have been priced at rate reflecting Petitioner's system-wide average cost of natural gas, whereas, the actual production required by these sales was purchased ratably from Petitoner's sources in the lower 48 states. As a result, Petitioner states that its general system customers have realized the benefit of approximately $1.1 million of increased gas cost recovery. It is asserted that this purchase price differential automatically is flowed back as a benefit in the form of reduced gas cost to Petitioner's customers via Petitioner's existing PGA tariff mechanism.

Although Petitioner has had as many as thirteen large volume customers on the flexible pricing program over the last two years, Petitioner asserts that the volume of actual sales made or the number of customers who have so far participated in this program cannot be the only measure of the need for this program. It is asserted that the flexibility offered by this program combined with the ability to demonstrate the programs' continued availability are major forces that are necessary to compete in the very competitive market environment.

Petitioner asserts that continued regulatory uncertainty diminishes the effectiveness of this program and impedes Petitioner's efforts to maximize its market acceptance. It is further asserted that market knowledge and acceptance. It is further asserted that market knowledge and acceptance of this program make it a powerful marketing tool in and of itself, and sales erosion to alternative fuels can be minimized simply with regulatory assurance and continued availability of such a competitive program. Petitioner submits that the extension of the program's term from January 26, 1985, to October 26, 1986, would provide the necessary assurance to Petitioner's customers regarding the program's overall stability.

Petitioner states that on November 1, 1984, it implemented new Rate Schedule CDO–1 (Contract Demand-Offsystem Service) which was approved by Commission Order dated June 1, 1984, in Docket No. RP83–73. It is stated that this rate schedule is available to any buyer who has contracted for a firm offsystem purchase of natural gas from Petitioner to serve a community wherein the buyer's distribution pipeline facilities are connected to Petitioner's pipeline facilities through a third party's pipeline facilities. At the present time, Petitioner states that it serves two utility customers under Rate Schedule CDO–1 who in turn serve end-users. Consequently, Petitioner seeks approval to extend the applicability of Rate Schedules LVCS and FPO to natural gas delivered to a gas utility under Petitioner's Rate Schedule CDO–1. Petitioner states that it has an immediate need to expand the applicability of these flexible pricing rate schedules to include Petitioner's CDO–1 customers to avoid the loss of at least three ultimate consumers to an alternative fuel.

Petitioner further requests the Commission to expand the market eligible for service under these two rate schedules to include the requirements consumers which do not have installed alternative fuel capability but would install alternative fuel capability due to the cost of natural gas service. Petitioner asserts that such expansion is needed to discourage customers and consumers from making an uneconomic investment in alternative fuel capability where the new investment is used not so much to utilize the alternative fuel as to qualify for cheaper natural gas. It is further stated that once the consumer has installed alternative fuel capability, the danger of such consumer's switching from natural gas to alternative fuels is exacerbated. Petitioner also seeks authority to make one administrative change to Rate Schedule LVCS which it claims does not affect the type of service being rendered. It is stated that

language has been added to the "Contract Requirements" section of said rate schedule which states that "all contracts executed pursuant to this rate schedule would be subject to termination if Petitioner effectuates a reduction in its Purchase Gas Cost that would enable the sale to be made pursuant to the CD–1 and CDO–1 Rate Schedules but constituting no increase in cost to the ultimate consumers."

Petitioner states that the Commission issued a permanent certificate on May 25, 1984, approving Petitioner's flexible rate program and applied such program to consumers who have the capability to use any alternative fuel. It is stated that such permanent certificate requires Petitioner to credit the fixed costs recovered by its flexible pricing sales to non-discount customers during the period Petitioner's current rates remain in effect. It is also stated that the Commission required Petitioner, after rates are established in its next rate case, to track sales and revenues under Rate Schedules FPO and LVCS and to determine if there has been any net over-recovery of costs to the non-eligible customers. If there is a net under-recovery, Petitioner's stockholders must bear the loss. It is stated that on May 25, 1984, Petitioner accepted the certificate without prejudice to Petitioner's filing for rehearing of the above revenue crediting provisions. It is further stated that on June 25, 1984, Petitioner filed for rehearing of the subject revenue crediting provisions which was subsequently denied on August 21, 1984. On October 17, 1984, Petitioner states it filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit requesting such court to review the Commission's orders issued on May 25, 1984, and August 21, 1984. Consequently, Petitioner asserts that the ultimate treatment of the revenues which result from the implementation of these flexible rate schedules is subject to the final disposition of the pending court proceeding.

Any person desiring to be heard or to make any protest with reference to said peition to amend should on or before Dec. 17, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31483 Filed 11-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85–126–000]

PacifiCorp, Doing Business as Pacific Power & Light Co.; Filing

November 27, 1984.

The filing Company submits following:

Take notice that on November 16, 1984, PacifiCorp, doing business as Pacific Power & Light Company (Pacific), tendered for filing Pacific's Revised Appendix 1 for the state of Oregon. The Revised Appendix 1 calculates an average system cost for the state of Oregon applicable to the exchange of power between Bonneville Power Administration (Bonneville and Pacific).

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective July 1, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commissioner of Oregon, and Bonneville's Direct Service Industrial Customers.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31484 Filed 11-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85–126–000]

Tampa Electric Co.; Filing

November 27, 1984.

The filing Company submits the following:

Take notice that on November 15, 1984, Tampa Electric Company (Tampa) tendered for filing Service Schedule X providing for extended economy interchange service between Tampa and the City of Tallahassee, Florida (Tallahassee). Tampa states that Service Schedule X is submitted for inclusion as a supplement under the existing contract for interchange service between Tampa and Tallahassee, designated as Tampa's Rate Schedule FERC No. 20.

Tampa proposes an effective date of November 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served on Tallahassee and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31485 Filed 11-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85–74–000]

Texas Gas Transmission Corp.; Application

November 27, 1984.

Take notice that on October 29, 1984, Texas Gas Transmission Corporation (Texas Gas) filed in Docket No. CP85–74–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that under a gas producer contract dated June 29, 1984, (Contract) between Texas Gas and Amoco, Amoco has the right to retain each day, from the date of first deliveries until July 1, 1987, up to 25 percent of the daily contract quantity established thereunder for sale to Florida Gas Transmission Company (Florida Gas) to fulfill Amoco's obligations to Florida Gas under a warranty contract dated November 20, 1964. It is further stated that in order to fulfill its obligations under the Contract, Texas Gas entered into a gas transportation agreement (Agreement) with Amoco on June 29, 1984. Texas Gas states that under this Agreement Texas Gas would transport such retained gas for Amoco on a firm basis in its system and in its capacity in a portion of the system of ANR Pipeline Company (ANR).

It is indicated that Texas Gas would receive such gas at a point of receipt at the proposed interconnection of the facilities of Texas Gas and Amoco on Amoco's A Production Platform in Block 294, West Cameron area, offshore Louisiana, and would transport such gas through the facilities which are presently being constructed by Texas Gas under blanket authority granted in Docket No. CP84-583-000 to a point of interconnection with the facilities of ANR in Block 167, West Cameron area. It is stated that ANR would then transport and deliver such gas to Texas Gas, under an existing transportation agreement, at a point onshore near Eunice, Louisiana, for further transportation and delivery to Florida Gas for the account of Amoco in Acadia Parish, Louisiana.

By this application Texas Gas requests authorization to perform such transportation for Amoco, whenever requested by Amoco, for a term not to extend beyond July 1, 1987. It is indicated that Amoco would pay Texas Gas a monthly transportation charge determined by multiplying the volumes of gas delivered during such month by the sum of (a) the ANR Rate Schedule X-63 100 percent load factor rate and (b) Texas Gas' legally effective rate applicable to the transportation service rendered in Texas Gas' pipeline, which is in Texas Gas' Rate Schedule T-SL/Z-SL, as filed with the Commission. It is stated that no new facilities nor new sales are proposed herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 17, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31486 Filed 11-30-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPG-FRL-2729-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW; Washington, D.C. 20460; telephone (202) 382-2742 of FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Pesticides Programs

- Title: Affirmation of Nonmultinational Status (EPA #0612).

Abstract: EPA requires anyone seeking to obtain registrant-submitted health and safety data from the Agency to affirm that they are not affiliated with a foreign or multinational pesticide producer. EPA uses this information to ensure compliance with Section 10(g) of the Federal Insecticide, Fungicide and Rodenticide Act.

Respondents: Anyone wanting certain EPA health and safety data.

- Title: PCBs Manufacture, Processing, Distribution in Commerce and Use Prohibitions: Use in Electrical Transformers (EPA #1199).

Abstract: EPA requires owners of PCB electrical transformers to prepare PCB Smoke Spread Reduction Plans for each PCB transformer location. Agency inspectors will use these plans to determine compliance with requirements for transformer isolation under the Toxic Substances Control Act.

Respondents: Owners of PCB electrical transformers.

Resources Management Programs

- Title: Contractor's Cumulative Claim and Reconciliation (EPA #0246).

Abstract: Contractors with cost-reimbureable EPA contracts submit certain information to the Agency under the Federal Acquisition Regulations. EPA uses the information in auditing the claim and in reconciling payments with allowable, allocable and reasonable costs.

Respondents: Contractors with cost reimbursable EPA contracts.

Agency PRA Clearance Requests Completed by OMB

EPA #0227, Applicants Permit to Discharge Wastewater—Form 1 (General Information), was approved 11/5/84 (OMB #2000-0474; expires 4/30/85).

EPA #0822, Pretreatment Baselines Monitoring Report, was approved 10/18/84 (OMB #2040-0012: expires 10/31/87).

EPA #0861, NPDES Compliance Inspection Report, was approved 11/5/84 (OMB #2040-0003: expires 4/30/85).

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, SW., Washington, D.C. 20460;

and

Carlos Tellez and Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: November 23, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-31398 Filed 11-30-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Statement of Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications

August 2, 1984.

This Public Notice reflects our continuing effort to expedite application processing. In an ongoing proceeding in General Docket No. 79-137, involving application processing procedures, we have made significant improvements in meeting this objective. In 1981, we revised the Application for Construction Permit for Commercial Broadcast Station (FCC Form 301). The revised Form 301 has resulted in an improvement in application processing through clarification and refinement of the reporting requirements and the elimination of antiquated and unnecessary disclosures. We have recently revised the Application for Construction Permit for Noncommercial Educational Broadcast Stations (FCC Form 340). The revised Form 340 is similar to the revised Form 301. In regard to our experience with the revised Form 301, however, we continue to receive many incomplete and patently defective applications.[1] This problem is especially acute in the FM service.

[1] In regard to full service television applications, the administrative burden attendant to incomplete and patently defective applications has not proved to be inordinate. For this reason, we are not including television applications within the ambit of this *Public Notice* at this time.

The number of construction permit applications returned by the FM Branch is approximately 40% of the tendered applications. Incomplete and patently defective applications place an inordinate burden on our processing staff. This burden entails repeated requests by the staff for information clearly called for in the application. This delays the processing of not only the incomplete and patently defective applications, but also the processing of grantable applications. Most important, service to the public in the initiation of new broadcast service is delayed. In the future, we expect the problem to be aggravated by the increase in the volume of FM applications resulting from BC Docket No. 80-90 and our related action today changing our filing and cut-off procedures.

At the outset, we recognize that returning or dismissing an incomplete or patently defective construction permit application can result in severe consequences to the applicant. At the very least, the applicant could lose its place in the processing line. In many situations, a cut-off date could preclude the refiling of the application. For these reasons, we have not instituted draconian procedures with respect to incomplete or defective applications. However, we do feel that return is warranted where the application is not substantially complete and thus both impairs our ability to evaluate the application and significantly delays processing. In this Public Notice, we are advising applicants as to the types of omissions and defects which will render the application subject to return at the time of tender. We are also advising applicants as to the types of omissions and defects which will result in the return of an application as unacceptable for filing, or outright dismissal.

We have delineated below three stages at which an application can be either returned or dismissed—return at time of tender, return as unacceptable for filing, and dimissal. The first stage involves obvious defects—significant omissions such as a failure to include required sections. The second stage involves engineering omissions and other defects which would render the application subject to return as unacceptable for filing. Finally, the third stage involves dismissal after the application has been accepted for filing.

Illustrative examples of defects and omissions at each of the three processing stages are set forth below. We emphasize, however, that, while detailed, they are *not* meant to be all-inclusive. It should also be noted that a failure of the staff to discern an omission or defect at one stage in the process does not preclude appropriate action upon later discovery.

Return at Time of Tender

If the application does not include required sections, the application is patently defective and will be returned at the time of tender. Such an application will not be assigned a file number until resubmitted with all required sections and signed. In these cases we will *not* allow the applicant to remedy the omission and have its application accepted *nunc pro tunc* in order to participate in a comparative hearing, if a cut-off date has passed by the time of resubmission.

Return As Unacceptable for Filing

Section 73.3580(h) of the Rules requires local public notice of the filing of certain broadcast applications and amendments. We permit the applicant to certify compliance with this requirement. In the event the applicant fails to certify; or if it did not, in fact, comply with the requirements contained in § 73.3580, the application is subject to return as unacceptable for filing.

Each application receives a detailed engineering review by the processing staff to determine whether it meets our technical acceptance criteria. Indeed, we believe this to be a core function of the Commission. This review involves determinations with respect to interference to existing facilities, power requirements and minimum spacing requirements. For AM applications, the interference study pertains to daytime hours, nighttime hours and critical hours. In addition, AM applications must comply with certain acceptance criteria. FM applications must comply with distance separation standards as well as the maximum power and antenna height limitations. If an application does not comply with these requirements and does not contain an appropriate request for waiver, the application will be returned. Similarly, if an FM applicant proposes a directional antenna with a ratio exceeding 15 dB maximum to minimum radiation in the horizontal plane (§73.316) and does not include sufficient justification for waiver, the application is subject to return.

There are special concerns applicable to AM broadcasting. Of the three broadcasting services, AM broadcasting is the most complex from an engineering point of view. The accuracy of the coordinates is absolutely essential. Failure to supply coordinates or submitting obviously incorrect coordinates may render the entire engineering section defective. The staff

must also be able to determine the antenna effeciency of a nondirectional antenna. Therefore, the height of the antenna, frequency, power and both the length and number of radials in the ground system must be included. If the antenna is top loaded or sectionalized, we must have this information. In regard to a directional antenna, we must have the field ratios, the phases, theoretical RMS and the height of the antenna. Return is appropriate if this requested information is not included.

Dismissal

In some situations, an applicant may fail to answer a question or include an Exhibit clearly called for in the application. Many of these instances can be attributed to clerical error or oversight. However, when numerous uncorrected defects and omissions, considered in the totality, impair our ability to evaluate the application, the application will be subject to dismissal. In a similar vein, dismissal is warranted if the application contravenes our multiple ownership rules without sufficient justification for waiver.

Reconsideration Nunc Pro Tunc

Finally, we would also like to note that we have, on many occasions, granted reconsideration of an action dismissing or returning an application as unacceptable for filing when an applicant submits a relatively minor curative amendment within 30 days. In contested proceedings, the result of this procedure is that applications are accepted *nunc pro tunc*. We will continue to act favorably on such requests after an initial dismissal or return of an application as unacceptable for filing. This procedure is a reasonable accommodation to applicants who wish to participate in the comparative proceeding and may be unfamiliar with our application requirements. In the situations in which we have granted reconsideration in the first instance, the curative amendment has not unduly delayed the processing of other applications. In the future, we will, however, expect such applicants to completely review *all* portions of a returned or dismissed application. Thereafter, if the same application is returned or dismissed a second time, it will *not* be afforded *nunc pro tunc* reconsideration rights. Repeating a procedure whereby applications are re-accepted *nunc pro tunc* is obviously unfair to other applicants in a comparative proceeding who have prepared properly executed applications. Furthermore, this process of repeatedly affording *nunc pro tunc* reconsideration rights leads to delay and tends to encourage the filing of incomplete and poorly prepared applications.

Delay in publication is due to late receipt of document by the FCC representative and the Office of Federal Registration.

Action by the Commission July 26, 1984. Commissioners Fowler (Chairman), Quello, Dawson, Rivera and Patrick.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 31536 Filed 11-30-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 221–010685
Title: Los Angeles Terminal Agreement
Parties: The City of Los Angeles acting as the Los Angeles Harbor Department (City) Los Angeles Harbor Improvement Corporation (LAHIC)
Synopsis: Agreement No. 221–010685 provides for the lease by the City to LAHIC of certain land within the Port of Los Angeles containing sites for existing terminals or terminals that are to be constructed. The parties have requested a shortened review period for the agreement.

Agreement No.: 221–010686
Title: Los Angeles Terminal Agreement
Parties: The City of Los Angeles acting as the Los Angeles Harbor Department (City) Los Angeles Harbor Improvement Corporation (LAHIC)
Synopsis: Agreement No. 221–010686 provides that LAHIC will lease from the City eight marine terminal sites located within the Port of Los Angeles. The agreement also provides for the leaseback of the sites to the City by LAHIC when the construction and improvements have been completed thereto. The leases and leaseback provide a means for creating an income stream to LAHIC, which will be fractionalized and sold as certificates of participation. The buyers of the certificates will provide the capital necessary to finance the projects. Operational control of the sites will be in the Los Angeles Harbor Department. The parties have requested a shortened procedure for the agreement.

Agreement No.: 224–010690
Title: Los Angeles Terminal Agreement
Parties: The City of Los Angeles (City) Mitsui O.S.K. Lines, Ltd. (MOL)
Synopsis: Agreement No. 224–010690 provides for the granting by the City to MOL preferential use of a container terminal at Berths 136–139 including 70 acres of backland area within the Port of Los Angeles. The term of the agreement will be for ten years cancellable after the fifth year. Compensation will be based on a guranteed minimum per acre. The revenue sharing will be as provided in the Agreement. MOL must pay the City crane charges and they have the option to purchase up to five container cranes itself or require the city to make the purchase. When the agreement is concluded, the City agrees to purchase any cranes MOL has purchased provided that the City is not obligated to purchase more than four cranes at the facility.

Agreement No.: 244–010691
Title: Charleston Terminal Agreement
Parties: The South Carolina State Ports Authority (Authority) Atlantic Cargo Services, A.B. (ACS)
Synopsis: Agreement No. 244–010691 provides for the granting by the Authority to ACS of a lease to use 4.7 acres at the Columbus Street Terminal in Charleston for the parking and assembly of ACS's containers and other purposes in connection with their container shipping terminal operations. The term of the agreement will be for 3 years commencing on the effective date as determined by the Commision with options for two 3-year terms. The parties requested a shortened review period for the agreement.

Agreement No.: 224–010692
Title: Portland Terminal Agreement
Parties: The Port of Portland (Port) Daiichi Chuo Kisen Kaisha and Trade Ocean Line (Daiichi/T.O. Line)
Synopsis: Agreement No. 224–010692 provides that Daiichi/T.O. Line shall use the premises at Terminals 1, 2 and/or 4, the adjacent dock, and backup areas as assigned by the Port, for their breakbulk multipurpose vessels in their eastbound/westbound trade. The Port will provide Daiichi/T.O. Line all marine terminal services. The agreement shall be for a term of two years and shall commence the first day of the month following the date the Commission designates as the effective date. Daiichi/T.O. Line agrees to use the Port of Portland as its designated Columbia River port of call. The agreement provides reduction to its services and facilities charges when the prescribed tonnage are reached and exceeded.

By Order of the Federal Maritime Commission.

Dated: November 28, 1984

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 84–31532 Filed 11–30–84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Suntrust Banks, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

Correction

In FR Doc. 84–30342 beginning on page 45808 in the issue of Tuesday, November 20, 1984, make the following correction:

On page 45809, first column, second complete paragraph, last line, "1974" should have read "1984".

BILLING CODE 1505-01-M

Commerce Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or a bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 24, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Commerce Bancorp, Inc.*, Washington, D.C.; to become a bank holding company by acquiring 100 percent of the voting shares of Commerce National Bank of Washington, D.C.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minesota 55480:

1. *Cash Holding Company, Inc.*, Sioux Falls, South Dakota; to become a bank holding company by acquiring 98.6 percent of the voting shares of Southern Hills Bank, Edgemont, South Dakota, and 100 percent of the voting shares of Custer County Bank, South Dakota.

2. *Gebsco, Inc.*, Cochrane, Wisconsin; to acquire 90.7 percent of the voting shares of Mondovi State Bank, Mondovi, Wisconsin.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Greater Texas Bancshares, Inc.*, Georgetown, Texas; to acquire 100 percent of the voting shares of National Bank of Oak Hill, Austin, Texas, a *de nova* bank.

2. *Lone Star Bancgroup, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Lone Star National Bank, Dallas, Texas.

3. *Ruidoso Bank Corporation*, Ruidoso, New Mexico; to acquire 100 percent of the voting shares of Bank of the Rio Grande, N.A., Las Cruces, New Mexico, a *de novo* bank.

4. *Vidor Bancshares, Inc.*, Beaumont, Texas; to become a bank holding company by acquiring 99 percent of the voting shares of Allied Vidor Bank, Vidor, Texas.

5. *Westchase Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 23 percent of the voting shares of West Belt National Bank, Houston, Texas.

D. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **North Bay Bancorp**, Novato, California; to become a bank holding company by acquiring 100 percent of the voting shares of Novato National Bank, Navota, California (in organization).

Board of Governors of the Federal Reserve System, November 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–31505 Filed 11–30–84; 8:45 am]

BILLING CODE 6210-01-M

Full Service Insurance Agency, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Full Service Insurance Agency, Inc.*, Buxton, North Dakota; to acquire Philip Peterson Insurance Agency, Climax, Minnesota, thereby engaging in general insurance agency activities in a community that has a population not exceeding 5,000. These activities would be performed in Traill and Grand Forks Counties, North Dakota.

Board of Governors of the Federal Reserve System, November 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31507 Filed 11-30-84; 8:45 am]

BILLING CODE 6210-01-M

Merrill Bankshares Co., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Merrill Bankshares Company*, Bangor, Maine; to engage *de novo* through its subsidiary, Merrill Life Insurance Company, Phoenix, Arizona, in underwriting credit life insurance and credit accident and health insurance directly related to the extension of credit by The Merrill Trust Company, Bangor, Maine and Merrill Bank, N.A., Farmington, Maine, bank subsidiaries of the Applicant. These activities would be conducted in the State of Maine.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alpha Banco, Inc.*, Alpha, Illinois; to engage *de novo* in acting as agent for the issuance of insurance related to the extension of credit to customers of Farmers State Bank of Alpha. These activities would be performed in Mercer, Henry, and Knox Counties in the State of Illinois.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Community Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, First Community Leasing, Houston, Texas, in leasing personal or real property, and acting as broker, agent and adviser in connection with the leasing of such property.

D. **William W. Wiles**, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *NBC Bank Corp*, El Dorado, Arkansas and *Exchange Bancshares, Inc.*, El Dorado, Arkansas; to engage through a joint venture in providing electronic data processing accounting functions for Applicants' banking subsidiaries and for local businesses, through a *de novo* Consolidated Data Services, Inc., El Dorado, Arkansas. This application may be inspected at the Federal Reserve Bank of St. Louis.

Board of Governors of the Federal Reserve System, November 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31508 Filed 11-30-84; 8:45 am]

BILLING CODE 6210-01-M

SBC Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 21, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *SBC Financial Corporation*, Chittenango, New York; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Chittenango, Chittenango, New York.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Americorp, Inc.*, Savannah, Georgia (formerly Atlantic South Coastal Corporation); to acquire 100 percent of the voting shares of Ameribank, N.A., Savannah, Georgia. Comments on this application should be received not later than December 19, 1984.

2. *First American Corporation*, Nashville, Tennessee; to acquire 100 percent of the voting shares of Midland Bank and Trust Company, Memphis, Tennessee.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *The Levelland Company*, Levelland, Texas; to increase its current holding from 22.22 percent to 23.33 percent of the voting shares of Lubbock Bancorporation, Inc., Lubbock, Texas, thereby indirectly increasing its holding in Bank of the West, Lubbock, Texas.

Board of Governors of the Federal Reserve System, November 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31509 Filed 11-30-84; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancorporation; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin; to engage *de novo* through its subsidiary, Valley Brokerage Services, Appleton, Wisconsin, in providing discount brokerage services by acting as agent to its customers. These activities would be conducted in the State of Wisconsin.

Board of Governors of the Federal Reserve System, November 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31511 Filed 11-30-84; 8:45 am]

BILLING CODE 6210-01-M

Welcome Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Welcome Bancshares, Inc.*, C/O Welcome State Bank, Welcome, Minnesota; to acquire Welcome Insurance Agency, Welcome, Minnesota, thereby operating a general insurance agency in the city of Welcome, Minnesota, which has a population not exceeding 5,000. These activities would serve Martin, Jackson, Watonwan, and Faribault counties in the State of Minnesota, and Emmett and Kessuth counties in the State of Iowa.

Board of Governors of the Federal Reserve System, November 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31510 Filed 11-30-84; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0534]

U.S. Treasury Book-Entry Securities Service: Request for Comment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board of Governors is requesting public comment on a proposed fee for the funds settlement component of the secondary market book-entry transfer of U.S. Treasury securities.

DATE: Comments must be received by January 16, 1985.

ADDRESS: Comments, which should refer to Docket No. R-0534, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Gerald D. Manypenny, Manager (202/452-3954) or Brada W. Panther, Analyst (202/452-2831), Division of Federal Reserve Bank Operations; or Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Daniel L. Rhoads, Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUMMARY: The Federal Reserve's book-entry securities service provides for safekeeping and transfer of book-entry securities. Book-entry securities issued by the United States Treasury are the principal securities in the Federal Reserve's book-entry system. Prior to 1981, fees for Treasury book-entry securities services were established by the Department of the Treasury. However, with the implementation of pricing for Federal Reserve services under the Monetary Control Act of 1980 ("MCA"), the account maintenance and secondary market transfers of Treasury book-entry securities were regarded by the Federal Reserve as priced services under the MCA.

Based upon a review of the roles of the Federal Reserve and the Treasury in providing this service, the Treasury Department has concluded that the secondary market book-entry service provided by the Reserve Banks for U.S. Treasury securities should be regarded as a fiscal agency activity conducted on Treasury's behalf rather than as a priced service under the MCA. Consequently, the Treasury has determined that fees charged for the book-entry securities activity performed on behalf of the Treasury by Reserve Banks as fiscal agents will be established by the Treasury and collected by Reserve Banks on behalf of the Treasury. In this regard, by separate announcement the Treasury Department is requesting public comment on a proposed fee schedule for this activity. The Treasury's proposed fee schedule would contain no charge for account maintenance but would impose fees of $1.50 for securities transfers originated on-line and $8.25 for securities transfers orginated or received off-line.[1]

A book entry securities transfer message typically contains two elements, the securities transfer and the accompanying funds settlement and related accounting. The Federal Reserve and the Treasury have etermined that the funds settlement element of a securities transfer message is not a fiscal agency activity performed by the Reserve Banks on behalf of the Treasury. Therefore, the fees proposed by the Treasury for this service do not include funds settlement.

Separation of the funds settlement activity from the securities transfer element may have a disruptive effect on the secondary market since the settlement may not take place at the same time the securities are transferred. Funds settlement is believed necessary to support secondary market activity in book-entry Treasury securities. Accordingly, the Board believes it appropriate to regard the funds settlement element as an activity incidental to the provision of the securities transfer fiscal agency service on behalf of the Treasury Department rather than as a priced service under the MCA.

The Board also believes that the Federal Reserve's costs of providing the funds settlement element should be recovered from users of the service. Consequently, the Board has determined to solicity public comment on a fee of $0.75 per book-entry securities transfer to recover these costs. This fee would cover the direct, support, overhead and float costs associated with this element and would be in addition to the fees announced by the Treasury. Since the funds settlement activity is incidental to the provision of a fiscal agency service, the fee does not take into account the private sector adjustment factor. Further, it is proposed that income from this fee would be regarded as a recovery of costs rather than as revenue.

By order of the Board of Governors of the Federal Reserve System, November 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31606 Filed 11-30-84; 8:45 am]

BILLING CODE 6210-01-M

[1] Current Federal Reserve fees provide for a monthly account maintenance fee of $15 plus $0.50 per issue in the account, and transfer fees of $3 for transfers originated on-line and $10 for transfers originated or received off-line.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0058; DESI 11300]

McNeil Pharmaceutical; Parafon Forte Tablets; Hearing on Proposal to Withdraw Approval; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice correction.

SUMMARY: The Food and Drug Administration (FDA) is adding Cord Laboratories, Inc. to the list of parties to the hearing on Parafon Forte Tablets announced October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3490.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 15, 1984 (49 FR 40212), the Commissioner of Food and Drugs granted a hearing on the proposal to withdraw approval of the new drug application for parafon Forte Tables. That notice listed as parties to the hearing, FDA's Center for Drugs and Biologics, McNeil Pharmaceutical (the holder of NDA 11-529), and four other drug manufacturers. However, one manufacturer that filed a hearing request in response to the proposed withdrawal was inadvertently omitted from the list of parties. That manufacturer is now being added as a party to the Parafon Forte hearing.

Accordingly, the following correction should be made in FR Doc. 84-27101, beginning on page 40212, in the issue of Monday, October 15, 1984.

The addition to page 40212, third column, third paragraph, should read as follows:

5. Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, Co 80020.

Dated: November 23, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31490 Filed 11-30-84; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Amendment of Meeting Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is amending the notice of the Cardiovascular and Renal Drugs Advisory Committee meeting to explain that the committee discussion and conclusions regarding aspirin will be considered by the agency in its preparation of a final monograph on OTC internal analgesic drugs. The notice, which was published in the **Federal Register** of November 14, 1984 (49 FR 45070), is amended by revising the meeting announcement to read as follows:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. December 10 and 11, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 10, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; December 11, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons desiring to present data, information, or views, orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. The committee will discuss the use of aspirin in cardiovascular disease, Sterling Drug Inc. (information on file in Docket No. 77N-0094); Atenupres (Lofexidine) NDA 18-955, Merrell Dow, for use in hypertension; Sectral (Acebutolo) NDA 18-971, Ives Laboratories, for use in angina pectoris, cardiac arrhythmia, and hypertension; Questran (Cholestyramine) NDA 16-640, NDA 16-019, Mead Johnson, for use in coronary artery disease. The committee's discussion and conclusions regarding aspirin will be considered by the agency in its preparation of a final monograph on OTC internal analgesic drugs. Such a monograph is being developed as part of the OTC Drug Review proceeding on OTC internal analgesic, antipyretic, and antirheumatic products. The advance notice of proposed rulemaking for those products was published in the **Federal Register** of July 8, 1977 (42 FR 35346).

Dated: November 27, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31482 Filed 11-30-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 84V-0260 ET AL.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by the Deputy Director, Center for Devices and Radiological Health (CDRH), for certain specified sunlamps and sunlamp products manufactured or imported by three organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATE: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Centers for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), each of the three organizations listed in the table below has been granted a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted for the listed products to vary as specified from that portion of §1040.20(c)(2)(ii) requiring the maximum timer interval for a sunlamp product to be 10 minutes or less. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for the nominally untraviolet-A (UVA) sunlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at wavelengths shorter than 320 nanometers. FDA's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturer does not result in severe, acute skin burns or corneal injury. Therefore, the time interval requirement of § 1040.20(c)(2)(ii) is not appropriate for these UVA products. Even through the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unnecessary risk to chemically sensitized lenses or of cornea damage or of long-term development of lens opacities.

CDRH has determined that suitable and/or alternate means of radiation protection are provided by constraints on the physical and optical design and by warnings in the user manual and on the products for all of the variances in lieu of the requirements listed in the table that were determined to be inappropriate. Therefore, on the effective dates specified in the table below, FDA aproved the requested variances by letter to each manufacturer or importer from the Deputy Director, CDRH.

So that each product may show evidence of the variance approved for the manufacturer or importer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the table below, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Effective date/termination date
84V-0260	Mt. Hood Manufacturing, Inc., 37396 Ruben Lane, Sandy, OR 97055.	Sunmaster UVA tanning beds manufactured by Mt. Hood Manufacturing, Inc.	Sept. 11, 1984-Sept. 11, 1989
84V-0273	Pacific Solarium, 1610 N. 1st Street, Yakima, WA 98901	UVA sunlamp products (tanning beds) manufactured by Pacific Solarium.	Sept. 21, 1984-Sept. 21, 1989
84V-0295	Southern Exposure, Inc., 473 W. Northwest Highway, Palatine, IL 60067.	UVA Solarume manufactured by Alsun Holland b.v.	Sept. 21, 1984-Sept. 21, 1989

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 23, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31491 Filed 11-30-84; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee,

National Heart, Lung, and Blood Institute, January 7 and 8, 1985, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 8:30 a.m. on January 7 to adjournment of January 8. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–4236, will provide summaries of the meeting and rosters of the Committee members.

Eugene R. Passamani, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20205, telephone (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Disease Research, National Institutes of Health)

Dated: November 26, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-31505 Filed 11-30-84; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, January 15–16, 1985. The meeting will be held in Conference Room B119, Federal Building, 7550 Wisconsin Avenue, Bethesda, Maryland 20205.

This meeting will be open to the public on January 15 from 9:00 a.m. to recess and from 8:30 a.m. to adjournment on January 16 to discuss new initiatives, program policies and issues. Attendance by the public is limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20205, phone (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 26, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-31504 Filed 11-30-84; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Pulmonary Diseases Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 21–22, 1985, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9, Bethesda, Maryland 20205.

The entire meeting, from 8:30 a.m. on February 21 to adjournment on February 22, will be open to the public. The Committee will discuss the plans for fiscal year 1986. Attendance by the public will be limited to the space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of the meeting and rosters of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: November 26, 1984.

Betty J. Beveridge,

Committee Management Officer.

[FR Doc. 84-31503 Filed 11-30-84; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Review of Commercial Activities, FY 1985

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Human Development Services gives notice that the Office of Human Development Services (OHDS) will review in FY 1985 some of its activities to determine if these activities should be performed by commercial sources under contract or "in house" by government personnel using government facilities. Publication of this informational notice is required by the provisions of Office of Management and Budget (OMB) Circular A–76 (Revised). This notice is not an invitation for bids or a request for proposals.

Authority: The Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.) and the Office of Federal Procurement Policy Act Amendments of 1979 (41 U.S.C. 401 et seq.); OMB Circular No. A–76 (Revised).

FOR FURTHER INFORMATION CONTACT: William Rule, IV, Office of Human Development Services, Office of Management Services, 200 Independence Ave. SW., Rm. 315D, Washington, D.C. 20201 Telephone (202) 245–3368.

SUPPLEMENTARY INFORMATION: OHDS is required by OMB Circular A–76 to inventory all functions that are not purely governmental and which can be designated as commercial activities. These inventoried commercial activities are scheduled for review and for cost-comparison studies to determine if the activity should remain "in house" or contracted out. The commercial activities scheduled for FY 1985 review and the locations where these activities are being performed are as follows:

Commercial Activity and Location

1. Word Processing and Typing, Washington, D.C.
2. Mail and Messenger Services, Washington, D.C.
3. Audio-Visual Services, Washington, D.C.
4. ADP Services, Washington, D.C.
5. Clearinghouse Operations, Washington, D.C.
6. Training Services, Washington, D.C.
7. Equipment Operation and Security, Washington, D.C.
8. Material Management, Washington, D.C.
9. Travel Services, Nationwide.

Dated: November 23, 1984.

Norman Goldstein,

Director, Office of Management Services.

Approved: November 27, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 84-31498 Filed 11-30-84; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W-32093, W-71385, W-71386, W-71391, W-71414, W-71895]

Notice of Proposed Continuation of Withdrawal; Wyoming

Correction

In FR Doc. 84–30183 beginning on page 45497 in the issue of Friday, November 16, 1984, make the following corrections:

1. On page 45497, in the third column, under "T.26N., R. 84 W.," in Sec. 9, "W½SW¼" should read "N½SW¼".

2. In the same column, under "T. 28 N., R. 84 W.," in Sec. 15, "SW½;" should read "SW¼;".

3. On page 45498, in the first column, under "T. 29 N., R. 84 W.,":

a. In Sec. 9, the fourth line should read "SE¼SE¼;".

b. In Sec. 26, in the second line, "SW¼SE¼," should read "SW¼SW¼ SE¼;".

c. In Sec. 28, in the first line, "SW¼NE¼NE¼," should read "SW¼NW¼NE¼,".

4. On the same page, in the second column, under "T. 29N., R. 85 W.,":

a. In Sec. 3, in the first line, "NE¼SW¼" should read "NW¼ SW¼".

b. In Sec. 12, in the third line, "NW¼NE¼SE¼." should read "NW¼NE¼SW¼."

BILLING CODE 1505-01-M

Minerals Management Service

Outer Continental Shelf; Proposed Development and Production Plan; Availability of Draft Environmental Impact Statement and Intent To Hold Public Hearings

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability for Environmental Impact Statement/ Environmental Impact Report.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service, Santa Barbara County, California State Lands Commission and California Coastal Commission have jointly prepared a Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Point Arguello Field Development and Production Plans proposed for the southern Santa Maria Basin, offshore Santa Barbara County, California. Single copies of the Final EIR/EIS, including the Response to Comments Volume, can be obtained from Santa Barbara County, Resource Management Department, Energy Division, 123 East Anapamu Street, Santa Barbara, California 93101 or by contacting Randy Smith at (805) 963–3434. A Technical Appendix Addendum and republished final copies of Technical Appendices O and K have also been prepared. The technical appendices which were prepared for the Draft EIR/EIS may also be obtained individually or as a unit by forwarding a written request to the above address. When requesting an individual appendix, refer to the following titles:

E. Geology
F. Air Quality
G. Onshore Water Resources
I. Marine Biology
J. Terrestrial and Freshwater Biology
K. Cultural Resources
L. Aesthetics (Noise, Visual)
M. Socioeconomics
N. Other Uses (Commercial Fishing, Recreation, Traffic)
O. System Safety and Reliability

Copies of the Final EIR/EIS will also be available for review in following public libraries:

County of Los Angeles Public Library, Govt. Pub. Unit, 330 W. Temple, Los Angeles, CA 90012
State Library—Govt. Pub. Sec., Attn: Beverly Pettijohn, P.O. Box 2037, Sacramento, CA 95814
San Luis Obispo, City/County Library, 1354 Bishop Street, San Luis Obispo, CA 93406
Main Library, Vandenburg Air Force Base, CA 73437
U.S. DOI Natural Resource Library, 18th and C NW., Washington D.C. 20240
Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, CA 93101
University of California Library, Santa Barbara Campus, Main Library, Santa Barbara, CA 93106

Agencies, interested groups or individuals needing further information should contact Mary Elaine Warhurst at Minerals Management Service, 1340 W. 6th Street, Los Angeles, CA 90017 or at (213) 688–4360.

Dated: November 26, 1984.

William E. Grant,

Regional Director, Pacific OCS Region.

[FR Doc. 84-31494 Filed 11-30-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-193]

Certain Rowing Machines and Components Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice if hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Lotus International Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 28, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

Issued: November 28, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31521 Filed 11-30-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-193]

Certain Rowing Machines and Components Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Fu Luong Traffic Parts Co., Ltd.

SUMMARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 28, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: November 28, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31522 Filed 11-30-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-193]

Certain Rowing Machines and Components Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commision.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: M.T.I. Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 28, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Officer of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: November 28, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31523 Filed 11-30-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30517]

Atlantic Richfield Co.; Exemption; Continuance in Control

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the continuance in control of Arco Metals Trucking Company and Butte, Anaconda & Pacific Railway by Atlantic Richfield Company from the requirements of 49 U.S.C. 11343, subject to protective conditions for rail employees.

DATES: This decision is effective on January 2, 1985. Petitions for reconsideration must be filed by December 24, 1984. Petitions for stay must be filed by December 13, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30517 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Michael F. Morrone, 1150 Seventeenth Street, NW., Suite 1000, Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: November 14, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Simmons dissented in part with a separate expression. Chairman Taylor, joined by Commissioner Lamboley, concurred in the result with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 84-31513 Filed 11-30-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-Nos. 5, 9, 17 and 22)]

Intrastate Rail Rate Authority; Georgia, Iowa, Missouri and New Mexico

AGENCY: Interstate Commerce Commission.

ACTION: Notice of certification.

SUMMARY: The Commission grants final certification to the Georgia Public Service Commission, the Iowa Department of Transportation, the Missouri Public Service Commission, and the New Mexico State Corporation Commission under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to a condition precedent that they modify their standards and procedures as noted in the full decision.

DATES: If the necessary changes are made, certification will begin on January 2, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll Free (800) 424-5403.

Decided: November 19, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Simmons dissented in part with a separate expression. Chairman Taylor concurred in part and dissented in part with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 84-31512 Filed 11-30-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-57 (Sub-14X)]

Soo Line Railroad Company—Abandonment Exemption—In Marquette, MI; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 2.7-mile line of railroad between milepost 0.0 near Washington Street and milepost 2.7 near Hawley Street in Marquette, MI.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that and overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective January 2, 1985, unless stayed pending reconsideration. Petitions to stay must be filed by December 13, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 24, 1984 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: C. Harold Peterson, 804 Soo Line Building, P.O. Box 530, Minneapolis, MN 55504.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 26, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-31613 Filed 11-30-84; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on December 12, 1984. The meeting will be held at Headquarters North American Aerospace Defense Command (HQ NORAD) in Colorado Springs, Peterson AFB, Colorado.

December 12, 1984

8:00 a.m.—Call to Order
8:05 a.m.—Welcome from Chief, North American Aerospace Defense Command
8:30 a.m.—Review of Government Action on NSTAC recommendations
9:15 a.m.—Report from Industry
11:00 a.m.—NSTAC IV Deliberations
2:00 p.m.—Classified Government Briefing
4:00 p.m.—Discussion with President's representative
4:30 p.m.—Adjournment

Due to the requirement to discuss Classified information, the afternoon session of this meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-6274 or write the Manager, National Communications System, Washington, DC 20305-2010.

David C. Brown,

Captain, USN, NCS Joint Secretariat.

[FR Doc. 84-31473 Filed 11-30-84; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: Disposal of High-Level Radioactive Waste in Geologic Repositories: Amendments to Licensing Procedures, 10 CFR Part 60.

3. The form number if applicable: Not Applicable.

4. How often the collection is required: On Occasion.

5. Who will be required or asked to report: Affected States and Indian Tribes.

6. An estimate of the number of responses: 96

7. An estimate of the total number of hours needed annually to complete the requirement or request: 460

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 60 contains detailed provisions for the participation of States and Indian tribes in the process of siting and developing a high-level radioactive waste geologic repository. The proposed amendments do not require States and affected Indian tribes to submit any proposals. This is strictly voluntary on their part, and only if they desire to do so would the information in question be required of them.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 21st day of November 1984.

For the Nuclear Regulatory Commission.

John Philips,

Acting Director, Office of Administration.

[FR Doc. 84–31543 Filed 11–30–84; 8:45 am]

BILLING CODE 7590–01–M

Ad Hoc Advisory Committee for Review of Enforcement Policy; Initial Meeting

An Ad Hoc Advisory Committee for Review of Enforcement Policy has been established by the Nuclear Regulatory Commission to obtain expert advice from persons outside the Commission on the effectiveness of its current enforcement practices.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Committee on Enforcement Policy will hold its first meeting at 9:00 a.m., December 18, 1984 in Room 118 of the Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland. The meeting may continue on December 19, 1984 at the same location. The meeting will be open for public observation.

At this meeting, the Director, Office of Inspection and Enforcement, NRC, will make a presentation describing the current enforcement program, his views on the effectiveness of the program and potential issues for the committee to address. The committee will also discuss the proposed scope of its review of enforcement practices.

The Advisory Committee is chaired by E.P. Wilkinson of Del Mar, California. The other members are Colin S. Diver, Professor of Law, Boston University School of law; Micheal V. Hasten, an attorney in Chicago, Illinois with Winston and Strawn;

Dr. Joseph M. Hendrie, with the Department of Nuclear Energy, Brookhaven National Laboratory Associated Universities, Inc.; and Dr. Howard L. Parris, Project Manager, Human Factors Division, Electric Power Research Institute, Palo Alto, California.

Serving as liaison officer to the Committee for NRC is Karen Cyr, and attorney with the NRC Office of the Executive Legal Director.

Further information on the meeting may be obtained from Ms. Karen, Cyr, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301/492–7269.

Dated at Washington, D.C. this 28th day of November, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–31541 Filed 11–30–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Renewal

The Nuclear Regulatory Commission announces the renewal of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2. It has been determined that renewal of this Advisory Panel for an additional two-year period is necessary and in the public interest in order to continue to receive public input and enhance public understanding of the major activities required to decontaminate and safely clean up the damaged facility (Unit 2) at Three Mile Island Nuclear Power Station.

The charter for the Panel has been extended to November 27, 1986.

Dated at Washington, DC, this 28th day of November 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–31542 Filed 11–30–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Appendix R to 10 CFR 50 to Boston Edison Company (the licensee), for the Pilgrim Nuclear Power Station, located in Plymouth County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The exemption would relax the following requirements:

1. That there be no intervening combustibles between redundant trains of safe shutdown equipment. The exemption would apply only to certain fire zones on the 23-foot and 51-foot elevations of the reactor building where the intervening combustible load is very low and the licensee proposes to install automatic water curtains where no physical barriers exist.

2. That total area coverage automatic fire suppression systems be installed. The exemption would apply only to the above fire zones and to the torus compartment below the reactor building. The licensee proposes to enclose in a fire barrier one train of shutdown cables in the torus compartment to assure safe shutdown.

3. That fixed fire suppression systems be installed in areas for which alternate shutdown capability is provided. The exemption would apply only to the fire zones identified in item 1 above and to the vital M.G. set room. Automatic smoke detection equipment, which alarms in the control room, and manually-operated fire suppression equipment is available in these areas.

The exemption is responsive to the licensee's application for technical exemptions dated May 17, 1983, as supplemented by a letter dated April 2, 1984. The request for schedular exemption will be the subject of a separate action.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection equivalent to that required by Appendix R such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Pilgrim Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated May 17, 1983, and the supplement dated April 2, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Plymouth Public Library, North Street, Plymouth, Massachusetts.

Dated at Bethesda, Maryland, this 27th day of November 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84–31549 Filed 11–30–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co. et al. (Beaver Valley Power Station Unit No. 1); Exemption

I

The Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company (the licensees), are the holder of Facility Operating License No. DPR–66 (the license) which authorizes operation of the Beaver Valley Power Station, Unit No. 1 The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility comprises a pressurized water reactor at the licensee's site located at Beaver County, Pennsylvania.

II

By letter dated July 14, 1983, Duquesne Light Company applied for an amendment to Operating License DPR–66 to change certain provisions of the Technical Specifications. Among these requested changes, one change would require an exemption from the Commission's regulation, described as follows:

Section III.D.2(b)(ii) of Appendix J, 10 CFR Part 50, states that "Air locks opened during periods when containment integrity is not required by the plant Technical Specifications shall be tested at the end of such periods at not less than Pa".

Duquesne Light Company has requested that the Beaver Valley Unit No. 1 Technical Specification 4.6.1.3 be changed to required an overall air lock leak rate test at Pa (38.3 psig) to be perfomed only "Upon completion of maintenance which has been performed on the air lock that could affect the air lock sealing capability". This requested Technical Specification change is a deviation from the subject regulation. Containment integrity is not required whenever the plant is in cold shutdown (Mode 5) or refueling (mode 6). If an airlock is opened during Mode 5 and 6, Appendix J nevertheless requires that an overall air lock leakage test at not less than Pa be conducted prior to plant startup (i.e., entering Mode 4).

Airlocks typically do not have the capability to be pressurized internally to Pa and remain leaktight, without the installation of holding devices (strongbacks) or mechanical adjustment of the operating mechanisms of the inner doors. This is because the inner doors are designed to be seated with the application of pressure on the containment side of the door. During air lock testing, the test pressure exerted on the air lock side of the inner door causes the door to unseat. The use of strongbacks or mechanical adjustment of the door prevent the unseating of the inner door, allowing the test to proceed. The installation of strongback or performance of mechanical adjustments is time consuming (often taking several hours), may result in additional radiation exposure of operating personnel, and may cause degradation of the operating mechanism of the inner door with consequent loss of reliability of the air lock. In addition, when conditions require frequent degradation of the operating mechanism of the inner door with consequent loss of reliablity of the air lock. In addition, when conditions require frequent openings over a short period of time, testing at Pa after each opening becomes impractical (tests often take from 8 hours to several days), accelerated degradation of mechanical equipment, and increases personnel exposure to radiation.

Paragraph III.D.2(b)(i) requires that air locks be tested at Pa at 6-month intervals. Paragraph III.D.2(b)(iii) provides that air locks opened during periods when containment integrity is required, their seals must be tested within 3 days after opening. If both types of tests are current and no maintenance has been performed on the air lock, there should be no reason to expect the air lock to leak excessively just because it has been opened in Mode 5 or 6. Consequently, when no maintenance has been performed on an air lock, the tests prescribed by Paragraph III.D.2(b)(i) and III.D.2(b)(iii) should be sufficient; whenever maintenance has been performed on an airlock, the requirements of Paragraph III.D.2(b)(ii) must be still be applicable.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants an exemption with respect to the requirements of 10 CFR 50, Appendix J, Section III.D.2(b)(ii):

The Beaver Valley Unit I Technical Specifications may be amended to require overall air lock leak test at Pa prior to establishing containment integrity and upon completion of air lock maintenance that could affect the air lock sealing capability.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (49 FR 32134).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 19th day of November, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director for Operating Reactors Division of Licensing.

[FR Doc. 84-31550 Filed 11-30-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-57]

Westinghouse Electric Corp. Nuclear Training Reactor; Renewal of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. R-119 for Westinghouse Electric Corporation (the licensee) which renews the license for operation of the Nuclear Training Reactor located in Zion, Illinois. The facility is a non-power reactor that has been operating a power levels not ig excess of 10 kilowatts (thermal). The renewed Operating License No. R-119 will expire on January 28, 2002.

The amendmed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on January 29, 1982 at 47 FR 4372. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG-1083) for the renewal of Facility Operating License No. R-119 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment dated November 1, 1994 for the renewal of Facility Operating License No. R-119 and has concluded that this action will not have a significant effect on the quality of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on November 26, 1984 at 49 FR 46521.

For further details with respect to this action, see (1) the application for amendment dated December 18, 1981, as supplemented, (2) the Finding of No Significant Envirnmental Impact, (3) Amendment No. 6 to Operating License R-119, (4) the Commission's related Safety Evaluation Report (NUREG-1083), and (5) Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Copies of NUREG-1083 may be purchased by calling (301) 492-9530 or by writing to the Publication Serivces Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 27 day of November 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 84-31551 Filed 11-30 84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Quotas for U.S. Imports of Coffee From Nonmembers of the International Coffee Agreement; Elimination of Quota in 1986-1987

The Council of the International Coffee Organization (ICO) approved a resolution September 30, 1984, setting maximum limits for imports of coffee from countries not parties to the 1983 International Coffee Agreement (ICA) for coffee years 1984-85 to 1988-89 (a coffee year is Oct. 1-Sept. 30). As part of this decision the United States agreed to limit non-member imports into the United States for coffee year 1984-85 to a quantity not greater than 74,710 60-kilogram bags. The United States has previously announced **Federal Register**, June 6, 1984) that the non-member quota for coffee year 1984-85 would not open until February 1, 1985; therefore this limit of 74,710 60-kilogram bags will apply for the period February 1-September 30, 1985.

According to this same ICO resolution, importing members of the ICO may also establish a non-member import limit at a level below the maximum limit (74,710 bags in the case of the United States) specified in the resolution. The United States has decided that beginning in coffee year 1985-86 the non-member import limit for the United States shall be zero. The elimination of imports from non-members, is done under the authority of Public Law 98-120 and is consistent with the responsibilities of the United States under the ICA.

Dated: November 27, 1984.

William E. Brock,

U.S. Trade Representative.

[FR Doc. 84-31475 Filed 11-30-84; 8:45 am]

BILLING CODE 3190-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on October 23, 1984 (49 FR 42657). Individual authorities established or revoked under Schedules A, B or C between October 1, 1984 and October 31, 1984 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception is established:

Department of the Army

Building Manager, Office of the Director of Intercollegiate Athletics, U.S. Military Academy, West Point, New York. Effective October 25, 1984.

Schedule B

No exceptions were established or revoked in Schedule B during the month of October.

Schedule C

The following exceptions are established:

Department of Agriculture

One Confidential Assistant to the Director, Office of Rural Development Policy. Effective October 25, 1984.

One Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective October 26, 1984.

Department of Commerce

One Special Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration. Effective October 3, 1984.

One Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective October 12, 1984.

One Congressional Affairs Officer to the Director, Minority Business Development Agency. Effective October 12, 1984.

One Chief, Executive Services to the Deputy Assistant Secretary for the Economic Development Administration. Effective October 18, 1984.

One Confidential Assistant to the Assistant Secretary for Trade Development. Effective October 24, 1984.

One Deputy Director to the Director, Office of Public Affairs. Effective October 26, 1984.

One Confidential Assistant to the Assistant Secretary for Economic Development. Effective October 30, 1984.

One Confidential Aide to the Special Assistant to the Secretary. Effective October 30, 1984.

Department of Defense

One Private Secretary to the Principal Deputy Assistant Secretary of Defense (Public Affairs). Effective October 24, 1984.

Department of Education

One Staff Assistant to the Director of Regional Liaison. Effective October 2, 1984.

One Confidential Assistant to the Director, Office of Intergovernmental and Interagency Affairs. Effective October 4, 1984.

One Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective October 19, 1984.

One Confidential Assistant to the Deputy Under Secretary for Management. Effective October 30, 1984.

One Staff Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective October 30, 1984.

Department of Health and Human Services

One Confidential Staff Assistant to the Chief of Staff. Effective October 2, 1984.

One Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs. Effective October 22, 1984.

One Special Assistant for Block Grants to the Director, Office of State and Project Assistant. Effective October 23, 1984.

Department of Housing and Urban Development

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective October 1, 1984.

One Special Assistant for Community Relations to the Regional Administrator/Regional Housing Commissioner in Los Angeles, California. Effective October 5, 1984.

One Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective October 12, 1984.

One Senior Legislative Specialist to the Deputy Assistant Secretary for Legislation. Effective October 15, 1984.

One Special Assistant to the Secretary. Effective October 15, 1984.

One Special Assistant to the Assistant Secretary for Policy Development. Effective October 15, 1984.

One Intergovernmental Relations Specialist to the Deputy Under Secretary for Intergovernmental Relations. Effective October 18, 1984.

One Assistant Director for Executive Secretariat Operations to the Executive Assistant to the Secretary. Effective October 22, 1984.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective October 23, 1984.

Department of the Interior

One Special Assistant to the Director, Bureau of Land Management in Sacramento, California. Effective October 15, 1984.

Department of Justice

One Staff Assistant to the Associate Deputy Attorney General. Effective October 25, 1984.

Department of Labor

One Staff Assistant to the Secretary. Effective October 12, 1984.

Department of State

One Special Assistant to the Deputy Assistant Secretary for Private Sector Initiatives, Bureau of International Organization Affairs. Effective October 2, 1984.

One Staff Assistant to the Under Secretary for Management. Effective October 3, 1984.

One Staff Assistant to the Under Secretary for Management. Effective October 3, 1984.

One Foreign Affairs Officer to the Assistant Secretary for the Bureau of Oceans and International Environmental and Scientific Affairs. Effective October 5, 1984.

One Special Assistant to the Coordinator for Public Diplomacy for Latin America and the Caribbean. Effective October 16, 1984.

Department of Transportation

One Staff Assistant to the Administrator, Research and Special Programs Administration. Effective October 1, 1984.

One Receptionist to the Deputy Secretary. Effective October 2, 1984.

One Deputy Executive Secretary for Management. Effective October 12, 1984.

One Deputy Executive Secretary for Policy. Effective October 12, 1984.

One Congressional Liaison Specialist to the Director of Congressional Affairs. Effective October 15, 1984.

One Staff Assistant to the Executive Secretary. Effective October 15, 1984.

One Congressional Liaison Officer to the Director of Congressional Affairs. Effective October 18, 1984.

One Executive Assistant to the Deputy Administrator, Urban Mass Transportation Administration. Effective October 19, 1984.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective October 30, 1984.

Department of the Treasury

One Special Assistant to the Assistant Secretary for Policy, Planning and Communications. Effective October 12, 1984.

ACTION

One Secretary (Typing) to the Director. Effective October 5, 1984.

Administrative Conference of the United States

One Special Assistant to the Chairman. Effective October 2, 1984.

Agency for International Development

One Legislative Research Assistant to the Director, Office of Legislative Affairs. Effective October 11, 1984.

One Congressional Liaison Assistant to the Assistant Administrator for the Bureau for Private Enterprise. Effective October 12, 1984.

Commission on Civil Rights

One Special Assistant to the Staff Director. Effective October 3, 1984.

One Public Affairs Specialist to the Public Affairs Officer. Effective October 3, 1984.

One Special Assistant to the Staff Director. Effective October 12, 1984.

One Confidential Assistant to the Staff Director. Effective October 12, 1984.

Consumer Product Safety Commission

One Special Assistant (Legal) to a Commissioner. Effective October 23, 1984.

Executive Office of the President

One Executive Secretary to the Executive Associate Director for Budget and Legislation, Office of Management and Budget. Effective October 18, 1984.

Federal Deposit Insurance Corporation

One Legislative Attorney and Advisor to the Director, Office of Congressional Relations and Public Information. Effective October 24, 1984.

Federal Home Loan Bank

One Secretary to the Director, Federal Savings and Loan Insurance Corporation. Effective October 5, 1984.

Federal Labor Relations Authority

One Congressional Affairs and Public Information Officer. Effective October 5, 1984.

Federal Trade Commission

One Special Assistant (Economic Advisor) to the Chairman. Effective October 10, 1984.

General Services Administration

One Confidential Assistant to the Commissioner, Federal Property Resources Service. Effective October 19, 1984.

Interstate Commerce Commission

One Confidential Assistant to a Commissioner. Effective October 1, 1984.

One One Confidential Assistant to a Commissioner. Effective October 11, 1984.

One Secretary (Stenography) to a Commissioner. Effective October 11, 1984.

One Confidential Assistant to a Commissioner. Effective October 15, 1984.

International Trade Commission

One Staff Assistant to a Commissioner. Effective October 1, 1984.

One Staff Assistant (Legal) to a Commissioner. Effective October 19, 1984.

National Credit Union Administration

One Executive Assistant to the Vice Chairman. Effective October 15, 1984.

One Staff Assistant to the Vice Chairman. Effective October 15, 1984.

National Endowment for the Humanities

One Special Assistant to the Chairman. Effective October 23, 1984.

Selective Service System

One Deputy Director to the Director, Congressional Affairs. Effective October 30, 1984.

Small Business Administration

One Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective October 23, 1984.

One Special Assistant to the Associate Deputy Administrator for Special Programs. Effective October 25, 1984.

United States Information Agency

One Special Projects Officer to the Chairman, Advisory Board for Radio Broadcasting to Cuba. Effective October 12, 1984.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective October 12, 1984.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-31545 Filed 11-30-84; 8:45 am]

BILLING CODE 4325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14250; (812-5928)]

C-U Funding Corp.; Application for Exemption

November 28, 1984.

Notice is hereby given that C-U Funding Corp. (c/o Mudge, Rose, Guthrie, Alexander & Ferndon, 180 Maiden Lane, New York, New York, 10038) ("Applicant"), a Delaware corporation, filed an application on August 28, 1984, and amendments thereto on November 21 and 26, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of its relevant provisions.

Applicant states that it is a special purpose corporation formed solely to facilitate the financing of a certain coal-fired steam electric generating plant known as Craig Station Unit 3 ("Unit 3") constructed by Colorado-Ute Electric Association, Inc. ("Colorado-Ute"), an electric generation and transmission cooperative association headquartered in Montrose, Colorado. Colorado-Ute is also constructing coal handling and other facilities in conjunction with Unit 3; Colorado-Ute intends to transfer an undivided interest in these facilities to other electrical firms that share ownership of Craig Station Units 1 and 2, but will retain an undivided interest in Unit 3. Colorado-Ute's remaining undivided interest in the new coal handling facilities and Unit 3 (the "Facility") are subject to the transactions described hereinafter. Unit 3 commenced commercial operation in October, 1984.

Colorado-Ute is a taxable cooperative that operates on a not-for-profit basis and is in the business of providing wholesale electric service to its fourteen retail electric distribution cooperative members, who collectively constitute the second largest utility system in Colorado in terms of customers and sales. Colorado-Ute has entered into contracts with its members obligating them to purchase all their energy and power needs from, and for Colorado-Ute to deliver that power to the extent available, through the year 2025. The rates charged by Colorado-Ute are set by its Board of Directors and are subject to approval by both federal and state authorities.

Colorado-Ute has financed the construction of the Facility through various borrowings from the Federal Financing Bank, sale of pollution control bonds issued by Moffat County, Colorado, and by unsecured short term loans. Long term financing for the Facility has been effected by the issuance and sale by Moffat County of long term pollution control bonds ("Bond"), issued under a trust indenture between Moffat County and the United Bank of Denver, N.A., ("Trustee") and are payable from and secured by a pledge of the revenues to be received by Moffat County under a financing agreement ("Financing Agreement") with Colorado-Ute. To evidence its obligations under the Financing Agreement, Colorado-Ute executed and delivered to Moffat County a note ("Colorado-Ute Note") that obligates payments at such times of principal and interest (and premium, if any) on the Bonds in accordance witht their scheduled maturity or mandatory sinking fund redemptions. Pursuant to a guaranty agreement ("Guaranty") with Colorado-Ute, the National Rural Utilities Cooperative Finance Corporation ("CFE"), a private non-profit cooperative association that provides financing to its members, has unconditionally guaranteed to the Trustee for the benefit of Bond holders the full and prompt payment of the principal and interest (and premium, if any) of the Bonds when due. Colorado-Ute has agreed to reimburse CFC for any amounts CFC expends under the Guarantee by execution of a note ("Guaranty Note"). Colorado-Ute's obligations under the Guaranty Note are absolute and unconditional.

Applicant states that Colorado-Ute's second step for long-term financing of the Facility was the sale of the Facility, on or about the in-service date of the Facility for federal income tax purposes, to separate owner trusts ("Lessors") consisting of institutional equity investors who thereafter will lease the Facility on a net lease basis to Colorado-Ute. Individual Lessors who acquire an undivided interest in the Facility are expected to assign their rights and obligation to a separate trust, of which United States Trust Company of New York ("US Trust") will be trustee. As a consequence of such assignment, US Trust will acquire legal title to the Facility ("Lessor"), and will then act on behalf of the individual Lessors. The lease will expire not prior to the latest maturity of the Bonds and the long-term, registered securities to be issued by Applicant ("Serial Facility Bonds"). Lessors, in consideration for an undivided interest in the Facility, make an equity contribution, assume the nonrecourse liabilities of Colorado-Ute pursuant to the Financing Agreement, and issue nonrecourse, taxable notes ("Taxable Indebtedness") constituting the balance of the purchase price. Lessors also issue a guaranty note ("Lessor Bond Guaranty Note") evidencing a nonrecourse, contingent obligation to CFC with respect to the liability of Colorado-Ute under the Guaranty. Assumption by Lessors of the Financing Agreement discharges Colorado-Ute from its terms and the Colorado-Ute Note.

The Taxable Indebtedness incurred by individual Lessors consists of a non-recourse loan from the National Cooperative Services Corporation ("NCSC"), a private, nonprofit District of Columbia corporation owned and operated by 29 electric cooperatives that assist in the development of alternative sources of capital. The loan from the NCSC ("NCSC Note"), Applicant states, is intended to serve as an interim measure pending completion of the Serial Facility Bond offering. With respect to the assumption of the Financing Agreement, Lessors issue a note ("Lessor Note") held by the Bond Trustee as security for the Bonds. The NCSC Note is prepayable without penalty to the Lessors, and along with the Lessor Note and Guaranty Note, are to be issued under a trust indenture, security agreement and first deed of trust ("Lease Indenture") between the Lessors and the First Interstate Bank of Denver, N.A. ("Lease Indenture Trustee") (together with any other notes issued under the Lease Indenture, "Lessor Notes"). Upon completion of the sale and leaseback transaction, the Rural Electrification Administration, an agency of the United States Department of Agriculture which is a primary source of long-term loans for electric cooperatives, will release its lien on the Facility and any other mortgagees, Applicant states, will also release their liens on the Facility.

Applicant states that the third and final phase in the financing of the Facility for which application for exemption from the Act is made is the issuance by individual Lessors of long-term refunding notes ("Refunding Lessor Notes") to the Applicant and the application of the proceeds thereof to prepay each Lessors' NCSC Note. Applicant will obtain the capital to acquire the Refunding Lessor Notes by issuing and selling Serial Facility Bonds, long-term taxable debt securities, registered under the Securities Act of 1933 and qualified under the Trust Indenture Act of 1939 ("Bond Indenture"). The Refunding Lessor Notes of the Lessors will require payments to be made in such amounts and at such times so as to provide for the payment of a proportionate share of the principal and interest (and premium, if any) on the Serial Facility Bonds. In the aggregate, all payments under the Refunding Lessor Notes will be sufficient to pay in full the principal and interest (and premium, if any) on the Serial Facility Bonds when due.

Colorado-Ute's lease with the Lessors requires basic rental payments and certain other payments to be made directly to the Lease Indenture Trustee for distribution to the Bond Trustee and the Serial Facility Bondholders. In the aggregate, the payments will be sufficient to pay the principal and interest (premium, if any) when due of all Lessor Notes, including the Refunding Lessor Notes. As a net lease, Colorado-Ute will be unconditionally obligated to make basic rental payments without any right of counterclaim, set off, deduction or defense. Applicant contends that the direct source of payment for debt service on all Lessor Notes, including the Refunding Lessor Notes, and therefor, the direct source of payment for the Serial Facility Bonds, will be the basic rental and certain other payments by Colorado-Ute under its lease agreements with Lessors.

The application states that both Moody's Investor Service and Standard and Poor's Corporation have rated the Serial Facility Bonds on the basis of the creditworthiness of Colorado-Ute. Based on that evaluation, the Serial Facility Bonds have been rated "A2" and "A-" respectively. Moreover, Applicant contends that Colorado-Ute can be deemed to have issued the Serial Facility Bonds itself, a position taken by the Division of Corporation Finance of the Commission with respect to the Serial Facility Bonds registration statement under the Securities Act of 1933. Applicant therefor asserts that in substance Colorado-Ute is the issuer and principal source of payment of the Serial Facility Bonds.

Serial Facility Bonds to be issued by Applicant will be secured by a pledge of the Refunding Lessor Notes to the trustee under the Bond Indenture ("Bond Indenture Trustee"). Refunding Lessor Notes and other Lessor Notes, Applicant states, will be nonrecourse and secured equally and ratably by a first mortgage lien and security interest in Lessors' undivided interests in the Facility and certain of such Lessors' rights under the leases with Colorado-Ute, including the right to receive basic rental payments, certain other payments, and each Lessor's rights under various support agreements. Applicant believes these measures will enable Lessors to provide for the operation of the Facility and the transmission of power upon expiration of the lease or a termination by default.

Serial Facility Bondholders, Applicant states, are entitled to pursue remedies against Colorado-Ute and the Facilities in the event of default with respect to the Serial Facility Bonds. Following the closing of the sale of Serial Facility Bonds, the Refunding Lessor Notes will be pledged and assigned to the Bond Indenture Trustee as security for the Serial Facility Bonds. The Bond Indenture Trustee, as a holder of the Refunding Lessor Notes, will have the right to vote, give consents, and issue waivers with respect to the Refunding Lessor Notes pursuant to the Lease Indenture. The Bond Indenture Trustee may, after an occurance of default, and upon the direction of not less than 25% in principal of the Serial Facility Bonds outstanding, declare all Serial Facility Bonds to be immediately due, subject to the conditions and terms of the Bond Indenture and the rights of Lessors to cure any payment default of Colorado-Ute. Accordingly, Applicant asserts,

Serial Facility Bondholders will direct the action of the Lease Indenture Trustee by a "pass-through vote mechanism": The Serial Facility Bondholders direct the Bond Indenture Trustee, in its capacity as a holder of Refunding Lessor Notes, to vote or take action on their behalf, through the Lease Indenture Trustee. Thus, according to the application, the principal amount of Refunding Lessor Notes directing any action, or voting upon any proposal, will directly correspond to and be dependent on the postion of the principal amount of Serial Facility Bondholders.

In the event of default by Colorado-Ute, the Lease Indenture Trustee would have the right, upon direction of a majority in principal amount of Refunding Lessor Notes (a majority of the principal amount of Serial Facility Bonds also by reason of the pass-through voting mechanism) to declare all the Refunding Lessor Notes to be due and payable, and to execute the remedies provided under the Lease Indenture. Among the remedies under the Lease Indenture is the right to terminate the leases and demand redelivery of the Facility, and to demand that Colorado-Ute pay, within 10 days, all unpaid basic rent plus a stipulated amont which, in all cases, will be sufficient to pay the principal and interest on all the Serial Facility Bonds.

Applicant contents that, by virtue of the pass-through voting mechanism, the Serial Facility Bondholders have access under the Lease Indenture and Bond Indenture, to the credit of Colorado-Ute. Moreover, Serial Facility Bondholders are entitled to realize on the security of the Facility, appraised at a value of not less than $517 million, free of any rights of Colorado-Ute or any creditor thereof. The combination of Refunding Lessor Notes and the obligation of Colorado-Ute under the lease agreement with the Lessors, Applicant asserts, constitutes the substantial equivalent of a quaranty by Colorado-Ute of the Serial Facility Bonds.

Applicant contemplates each Lessor will reimburse Colorado-Ute for basic rent paid by Colorado-Ute under the lease in an amount equal to the accrued and unpaid interest on their Lessor Notes for the interim period following the lease closing and the commencement date projected for July 1, 1985. Colorado-Ute, Applicant maintains, will be the primary obligor with respect to such rental payments and has an absolute and unconditional obligation to make such payment without regard to whether such reimbursement is made.

Applicant states that is may be deemed to be an investment company as defined by the Act by reason of its proposed acquisition and holding of the Refunding Lessor Notes and Applicant's issuance of the Serial Facility Bonds, which may be held by more than 100 persons. The only significant asets of the Applicant will be the Refunding Lessor Notes. All payments on the Refunding Lessor Notes, Applicant states, will be applied to the payment of principal and interest on the Serial Facility Bonds.

Applicant also represents that: (1) Applicant will not hold shares of capital stock of any other corporation; (2) applicant will not make investment decisions on behalf of the holders of the Serial Facility Bonds; (3) applicant will not sell, trade or otherwise deal in the Refunding Lessor Notes after they have been pledged as security; and (4) the outstanding common stock of Applicant will be held entirely by CT Corporation, a service corporation that facilitates corporate organizations, and that Applicant's equity securities will not be publicly offered. It is not expected that Applicant will make any additional Serial Facility Bond offerings.

Applicant asserts that an order pursuant to section 6(c) of the Act exempting it from all provisions of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 17, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated below. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 31508 Filed 11-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23498, (70-7031)]

The Connecticut Light and Power Co.; Proposed Acquisition of Securities

November 27, 1984.

In the matter of The Connecticut Light and Power Co., Selden Street, Berlin, Connecticut 06037; Montaup Electric Co., P.O. Box 2333, Boston, Massachusetts 02107; and New England Power Co., 25 Research Drive, Westborough, Massachusetts 01581.

Connecticut Light & Power Company ("CL&P"), an electric and gas utility subsidiary of Northeast Utilities, a registered holding company, Montaup Electric Company ("Montaup"), an indirect electric utility subsidiary of Eastern Utilities Associates, a registered holding company, and New England Power Company ("NEP"), an electric utility subsidiary of New England Electric System, a registered holding company, have collectively ("Applicants") filed a proposal with this Commission, pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935.

The Applicants are proposing the acquisition by each Applicant of its respective share of common stock to be issued by New Hampshire Yankee Electric Corporation ("New Hampshire Yankee"). The Applicants, who are among sixteen joint owners ("Joint Owners") of the Seabrook Nuclear Power Project ("Seabrook"), currently under construction in Seabrook, New Hampshire, have ownership interests of 4.05985%, 2.89989%, and 9.95766%, respectively.

Public Service Company of New Hampshire ("PSNH") owns the largest joint ownership share of 35.56942%. Currently PSNH is responsible for directly managing the construction of Seabrook. At a meeting on June 23, 1984, the Joint Owners voted that a new division ("Division") within PSNH be created to manage the construction of Seabrook and, after the receipt of all necessary regulatory approvals, primary responsibility for management of construction of Seabrook be shifted to a new corporation, New Hampshire Yankee.

New Hampshire Yankee, organized under New Hampshire law and incorporated on August 2, 1984, has authorized, subject to the receipt of all necessary approvals, the issuance of 1,000 shares, $1.00 par value per share, of common stock to the Joint Owners. Each Joint Owner is to acquire such stock in proportion to its ownership share of Seabrook, and a restriction on the transfer of common stock has been agreed to in order to preserve this equality. Consistent with their joint ownership shares, CL&P, Montaup, and NEP will acquire 40.5985, 28.9989, and 99.5766 shares respectively.

The purpose of selling common stock is to provide initial capitalization for the establishment of New Hampshire Yankee as a corporate entity. Costs are expected to be about $70,000. CL&P's, Montaup's and NEP's share of these costs, and therefore the estimated purchase price of their common stock will be $2,841.90, $2,029.92, and $6,970.36, respectively.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 26, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31564 Filed 11-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14255; (812-5943)]

Jefferson Village Housing Partners and Jefferson Village Management Corp., Filing of Application for Order Granting Exemption

November 27, 1984.

Notice is hereby given that Jefferson Village Housing Partners, (1150 Seventeenth Street, N.W., Suite 500, Washington, D.C. 20036) (the "Partnership"), a District of Columbia limited partnership, and its general partner, Jefferson Village Management Corp. (the "General Partner") ("Applicants"), filed an application on September 21, 1984, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions thereof relevant to the application.

The application states that the Partnership was formed under the District of Columbia Uniform Limited Partnership Act on December 29, 1983. Applicants state that the Partnership will operate as a "two-tier" partnership; *i.e.*, the Partnership will invest, as a limited partner, in Jefferson Village Associates (the "Operating Partnership"), which is engaged in the rehabilitation, ownership and operation of a government-assisted townhouse and garden apartment complex for low and moderate income persons (the "Complex").

The application states that the Partnership will offer to investors in transactions not involving any public offering 61 units of limited partnership interest ("Units") at $101,100 per Unit with a minimum investment of one-half Unit per investor. Purchasers of Units will become limited partners ("Limited Partners") owning 99 percent of the Partnership. In the event that subscriptions for all 61 Units are not received, no Units will be sold and all investor funds wil be returned.

Applicants represent that subscription for Units must be approved by the General Partner and that such approval will be made conditional upon representations as to suitability of the investment for each subscriber. The subscriber must show, among other things, that he is an Accredited Investor as defined in Rule 501(a) of Regulation D under the Securities Act of 1933 or that he is a "Qualified Investor" who has a net worth (exclusive of home, furnishings and automobiles) of at least $300,000 per Unit purchased. Applicants state that transfers of Units will be permitted, subject to certain exceptions, only with the prior written consent of the General Partner, which consent shall be given in the sole discretion of the General Partner.

Applicants state that, under the partnership agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times. Applicants also state that the fees and other forms of compensation that will be paid to the General Partner and its affiliates will be fair and no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Applicants represent further that the Partnership is required to distribute to Limited Partners annual financial statements and an annual report of the Partnership's activities, which includes a description of all transactions during the fiscal year providing for payments to affiliated persons in excess of $1,000. Further, it is represented that the partnership agreement and private placement memorandum contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners.

Applicants contend that the exemption of the partnership from all provisions of the Act is both necessary and appropriate in the public interest. Applicants assert that by investing in Operating Partnership interests, the Partnership is implementing the national policy enunciated by Congress in section 901 of Title IX of the Housing and Urban Development Act of 1968. Applicants further assert that the suitability standards set forth in the subscription agreement, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on the Operating Partnership by various federal, state and local agencies, provide protection to investors in Units comparable to that provided by the Act. Applicants contend, therefore, that the requested exemption would be entirely consistent with the protection of investors and the purposes and policies of the Act. Finally, Applicants contend that that Partnership's operations will be in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31585 Filed 11-30-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 14256; (812-5902) and (812-5904)]

Prudential-Bache California Municipal Fund and Prudential-Bache Municipal Series Fund; Applications for an Order Exempting Applicants

November 27, 1984.

Notice is hereby given that Prudential-Bache California Municipal Fund and Prudential-Bache Municipal Series Fund (One Seaport Plaza, 199 Water Street, New York, NY, 10292) ("Applicants"), each registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed applications on July 24, 1984, and amendments thereto on November 13, 1984, for an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Applicants to assess a contingent deferred sales load on certain redemptions of their respective shares and to permit Applicants to waive the contingent deferred sales load in specified circumstances. Applicants also request that all shares of any series which is subsequently created and issued and sold on substantially the same basis as the initial series be similarly exempted from the provisions of the Act enumerated above. All interested persons are referred to the applications on file with the Commission for a statement of the representations contained therein which are summarized below and to the Act and the rules thereunder for the text of the applicable provisions.

Applicants state they were organized as Massachusetts business trusts on May 18, 1984, and registered under the Act on said date. Prudential-Bache Securities Inc. ("Prudential-Bache"), Applicants' principal underwriter, is also Applicants' distributor and will receive the proceeds of the contingent deferred sales loads.

Applicants propose to impose a contingent deferred sales load upon certain redemptions of their shares. Applicants represent that no contingent deferred sales load will be imposed upon redemption on amounts derived from (i) increases in the value of an account (including reinvestment of dividend income and capital gains distributions) above the total cost of shares being redeemed due to increases in the net asset value per share of each Applicant, or (ii) purchases made more than five years prior to the redemption. (If the current net asset value of shares redeemed has declined below the shareholder's cost due to an Applicant's performance, the contingent deferred sales load will be applied to the current value rather than the repurchase price.) Applicants propose to waive the contingent deferred sales load on (i) redemptions following the death or disability of a shareholder, and (ii) redemptions in connection with certain distributions from Individual Retirement Accounts ("IRAs") or other qualified retirement plans.

Applicants state that where a contingent deferred sales load is imposed, the amount of the charge will depend upon the shares being redeemed were purchased. During the first 12 months after purchase, the charge would be 4% of the amount subject to a redemption charge. The charge would decrease by 1% per 12-month period thereafter until after five 12-month periods (with a 1% charge imposed during the fourth and fifth 12-month periods), at which time no charge would be imposed upon redemptions. Applicants represent that any contingent deferred sales load imposed upon redemption would not, in the aggregate, exceed 4% of the total cost of the shares redeemed. Applicants further represent that in determining the amount of the deferred sales load, shares held the longest will be assumed to be the first redeemed. Applicants request exemptions from the provisions of sections 2(a)(32), 2(a)(35) and 22(c) of the Act and Rule 22c-1 thereunder to the extent necessary to permit the contingent deferred sales loads.

Applicants propose to finance the distribution of their respective shares pursuant to plans adopted under Rule 12b-1 under the Act ("the Plans"). The Plans provide that each Applicant will accrue daily and pay monthly to Prudential-Bache a distribution fee equal .5% of the lesser of (i) the aggregate gross sales of each Applicant's shares since its inception (not including reinvestments of dividends or capital gains distributions) less the aggregate net asset value of shares redeemed since that Applicant's inception upon which a contingent deferred sales load has been imposed or waived, or (ii) each Applicant's average daily net assets.

Applicants propose to waive the contingent deferred sales load on (i) redemptions following the death or disability of a shareholder, and (ii) redemptions in connection with certain distributions from IRAs or other qualified retirement plans. Applicants state that in those situations, the redemption is either unforeseen by the shareholder at the time of purchase (i.e., resulting from the extraordinary circumstances of death or disability) or is fully intended at the time of purchase (i.e., ordinary retirement distribution pursuant to an IRA or other retirement plan). Applicants contend that neither situation would be inconsistent with Applicants' purpose or the shareholder's initial intention of making a long-term investment. Therefore, Applicants also request exemptions from the provisions of section 22(d) to permit the contingent deferred sales load to be waived in those situations.

Notice is further given that any interested person wishing to request a hearing on either application may, not later than December 24, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the respective Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the applications will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31586 Filed 11-30-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 14251; File No. 812-5925]

Walter E. Robb III; Filing of Application, and Order of Temporary Exemption

November 26, 1984.

Notice is hereby given that Walter E. Robb III, 35 Farm Road, Sherborn, Massachusetts 01770) has filed an Application, and amendment thereto, pursuant to section 9(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*, as amended, (the "Act"), for a permanent exemption from section 9(a) of the Act. The applicant also requests that the Commission enter a temporary order permitting Mr. Robb to accept a position as independent trustee of Massachusetts Tax-Exemption Money Market Fund. All interested persons are referred to the Application on file with the Commission for a statement of the representations therein, pertinent parts of which are summarized below:

Mr. Robb was a defendant in an action entitled *SEC* v. *Gladding Corp.*, et al, C.A. No. 79-1194-MA (D.Mass., filed June 21, 1979). The Complaint alleged, inter alia, that Mr. Robb had violated sections 10(b) and 13(a) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), 15 U.S.C. 78j(b) and 78m(a), and Rules 10b-5, 12b-20 and 13a-13 thereunder. On June 20, 1979, Mr. Robb entered into a Stipulation and Consent, without admitting or denying any of the allegations of the Complaint. Contemporaneous with the filing of the Complaint, and pursant to the Stipulation and Consent, a Final Judgment of Permanent Injunction (the "Injunction") was entered, enjoining Mr. Robb (a) from making any untrue statement of material fact or omitting to state a material fact necessary in order to make the statements made, in light of circumstances under which they were made, not misleading, in connection with the purchase or sale of Gladding Corporation common stock or any other securities of any issuer, by the use of any means or instrumentalities of interstate commerce, and (b) from filing or causing to be filed with the Commission a quarterly or other periodic report, of Gladding Corporation, its affiliates or subsidiaries, or of any other issuer, required to be filed by the Commission pursuant to section 13(a) of the Exchange Act and the rules and regulations thereunder, which is materially false and misleading or which otherwise fails to disclose a material fact required to be disclosed therein.

To the extent it may be applicable herein, section 9(a) of the Act disqualifies any person or any person with which such person is affiliated, from acting in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust or registered face-amount certificate company if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) of the Act provides that upon Application, the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on appropriate temporary or other conditional basis if it is established that: (1) The prohibitions of section 9(a), as applied to the specific application, are unduly or disproportionately severe; and/or (2) the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such Application.

The Application states that while Mr. Robb does not believe that the terms of the Injunction in *SEC* v. *Gladding*, supra, should, standing alone, constitute a basis for disqualification under section 9(a), in order to resolve fully any questions as to the applicability of that Section and in full compliance with all applicable federal securities laws, Mr. Robb has submitted an Application, pursuant to section 9(c) of the Act, for exemption from the provisions of section 9(a). In support of his position that the Commission should grant him an exemption from the provisions of section 9(a) of the Act, Mr. Robb states, inter alia, the following:

1. There have never been any factual findings of misconduct on the part of Mr. Robb, and he has made no admissions of any misconduct. As noted above, in the Judgment and Injunction entered against Mr. Robb, the Court made no findings of fact or conclusions of law; with the exception of that action, *SEC* v. *Gladding*, Mr. Robb has never been a defendant in any action or proceeding commenced by the Commission or any other person alleging a violation of federal or state securities law.

2. The Complaint filed by the Commission in *SEC* v. *Gladding* contained no allegations or suggestions of self-dealing, motivation of personal gain or actions involving moral turpitude on the part of Mr. Robb. Thus, even if the allegations of the Complaint were to be taken as true, they would not support the disproportionately severe prohibitions imposed by section 9(a), and do not suggest that the imposition of the prohibitions contained in section 9(a) on Mr. Robb is necessary for the protection of investors. There has never been anything in Mr. Robb's conduct which would make it against the public interest to grant his Application.

3. As is attested to in the Affidavits submitted with Mr. Robb's Application, Mr. Robb is a man of recognized integrity, outstanding character and ability, who has contributed much to his community.

4. Mr. Robb has been asked to serve as an independent trustee of Massachusetts Tax-Exempt Money Market Fund (the "Trust"), a Massachusetts Business Trust which is registered under the Investment Company Act of 1940 as a non-diversified open-end management investment company. Richard B. Bailey, Chairman of the Board of Trustees of the Trust, noted in his Affidavit that Mr. Robb is especially well suited to serve as a Trustee. His participation as a trustee would be in the best interests of the investors in the Trust, and in the public interest, in light of his integrity, ability, experience, independence and expertise in the area of business finance. In the position of independent trustee, Mr. Robb would not be responsible for preparing financial and reporting documents in the first instance, although he recognizes that his responsibilities as a trustee would include the approval of such documents.

5. More than five years have elapsed since the Injunction against Mr. Robb was entered, and he has complied with its terms fully since then. To prohibit him from serving as a trustee of the Trust, or from serving or acting in a similar capacity with other investment companies or related entities, would place an undue and disproportionate limitation on his ability to pursue his livelihood and participate fully in business and financial affairs.

6. The issuance of an Order granting Mr. Robb's Application would be fully in accord with the policies and principles underlying the provisions of section 9 of the Act.

Notice is given that any interested party may, not later than December 21, 1984, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities & Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon John J. Curtin, Jr., Esq. and Rory FitzPatrick, Esq. Bingham, Dana & Gould, 100 Federal Street, Boston, MA 02110. Proof of such service (by Affidavit or, in the case of an attorney, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0-5 of the Rules and Regulations promulgated under the Act, an Order disposing of the Application

herein may be issued by the Commission upon the basis of the information stated in said Application unless an order for hearing upon said Application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponement thereof.

The Commission has considered the matter and the application for exemption pending final determination of the matter by the Commission and finds, without passing on the merits of the specific arguments advanced by Applicant, that the conduct of Applicant has been such as not to make it against the public interest or protection of investors to grant Applicant's application for exemption from the provisions of section 9(a) of the Act pending final determination by the Commission of the application which is the subject of this Notice.

Accordingly, it is ordered, pursuant to section 9(c) for the Act, that the application of Walter E. Robb, III for exemption from the provisions of section 9(a) of the Act pending final determination by the Commission of the application which is the subject of this Notice, insofar as any ineligibility to serve or act in the capacities enumerated in such Section arises out of the injunction referred to in this Notice, be and is hereby granted, effective forthwith.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31557 Filed 11-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21523; File No. SR-DTC-84-09]

Filing and Immediate Effectiveness of Proposed Rule Change by the Depository Trust Co.

November 27, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 22, 1984, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change modifies DTC's lottery system for allocating called securities among participants' positions at DTC. Specifically, the proposed rule change would establish a two step lottery process to allocate partially called securities among participants having positions in the callable securities and units that include callable securities. In the event of a partial call affecting such securities issues, DTC will first allocate the called securities among participants having positions in the issue of callable securities in accordance with DTC's existing lottery procedures, treating the total of participants' positions in the issue of callable securities represented by units as a single separate participant position. DTC will then reallocate the called securities allocated to the issue of units among participants having positions in the units by conducting a separate lottery.

DTC believes that the proposed rule change is consistent with the requirements of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. Until recently, DTC refused to make depository-eligible units [1] that included callable securities because of allocation concerns. DTC believes that the proposed modification to DTC's lottery system, however, would address those concerns adequately.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-DTC-84-9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 31562 Filed 11-30-84; 8:45 am]

BILLING CODE 8010-01-M

[1] DTC's procedures permit the processing of units and their components through DTC's book-entry system; this enables participants to separate a unit into its components or combine the components to create a unit by book-entry. For example, a security may be issued with a warrant or an option attached that can be separated and sold independent of the security. DTC procedures allow participants to deposit the security only or to combine the security and the warrant or option to form a unit.

[Release No. 21524; File No. SR-PCC-84-12]

Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Clearing Corp.

November 27, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 2, 1984, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change modifies PCC's policy relating to interface settlement activities on days when banks located in the State of California are open and banks located in other parts of the country, especially New York City, are closed. PCC currently receives funds for interface settlement activities and disburses any funds owed participants on settlement day. The participant usually presents the check to the bank for payment the day after settlement (S+1). A problem occurs when PCC receives a draft from another clearing agency which is drawn on a non-California bank that is closed on S+1. To pay funds due to its participants, PCC may have to overdraft its settlement account and thereby incur interest charges on those overdrafts.

Under the revised policy, PCC would continue to receive payments from its participants and distribute checks to its participants for interface settlement activities on settlement day. PCC, however, would require PCC members whose CNS interface cash settlements exceed a specified dollar amount to reimburse PCC for interest expenses it incurred with respect to those settlements. Under the proposed rule change, PCC would notify its members before each non-uniform bank holiday of the potential interest charges for receiving payments from another clearing agency and the threshold settlement levels for those charges to compensate PCC for overdraft interest expenses.

In its filing, PCC stated that it believes that the proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 by providing procedures for increased safeguarding of securities and funds which are in the custody and control of PCC. Previously, PCC, because the cost and financial exposure have been minimal, has absorbed any interest cost resulting from interface settlement activity. PCC believes that the volume and value of securities moving through the interface causes and unacceptable level of potential financial exposure and expense to PCC and its participants and, accordingly, has modified its procedures to minimize its financial risk, while allowing PCC participants to receive funds from PCC on settlement day.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 90 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PCC-84-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commssion and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

November 28, 1984.

[FR Doc. 84-31561 Filed 11-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21496A]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Correction

In FR Doc. 84-30739 beginning on page 46228 in the issue of Friday, November 23, 1984, change the comment date in the last paragraph to January 15, 1985.

Shirley E. Hollis,

Acting Secretary.

November 28, 1984.

[FR Doc. 84-31567 Filed 11-30-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21497A]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Correction

In FR Doc. 30743 beginning on page 46229 in the issue of Friday, November 23, 1984, change the comment date in the last paragraph to January 15, 1985.

Shirley E. Hollis,

Acting Secretary.

November 28, 1984.

[FR Doc. 84-31568 Filed 11-30-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting; Amended Notice

The Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, has changed it meeting date from December 3, 1984, to Thursday, December 6, 1984, 10:00 a.m. at the Lincoln Inn, St. Johnsbury, Vermont, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call David C. Emery, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602. (802) 229-0538.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 28, 1984.

[FR Doc. 84-31627 Filed 11-30-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 1P84-18; Notice 1]

General Motors Corp., Receipt of Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

General Motors Corporation of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.101, Motor Vehicle Safety Standard No. 101, *Controls and Displays*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

Paragraph § 5.2.3 of Standard No. 101 requires, by reference to Table 1, the headlamp switch to be identified by a specified symbol. At the manufacturer's option the word "Lights" may also be provided. Petitioner manufactured 129,535 1984-model Pontiac Bonneville and Grand Prix passenger cars in which the symbol was omitted, but the optional wording provided. Inadvertent deletion of the symbol occurred because of a styling change in the control knob surface from the design of the year previous. Petitioner argues that the effect of the noncompliance on safety is inconsequential, because the word "Lights" appears on the trim place immediately to the left of the headlamp switch. This identification is immediately understandable and is not confusing to the operator.

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corporation described above. Comments should refer to the docket

number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials will be filed, and all comments received after the closing date will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: November 21, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-31552 Filed 11-30-84; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-17; Notice 1]

Western Star Mack Trucks, Inc.; Petition for Exemption From Notice and Recall for Inconsequential Noncompliance

Western Star Mack Trucks, Inc., of Kelowna, B.C., Canada has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.302, Motor Vehicle Safety Standard No. 302, *Flammability of Interior Materials*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Section S4 of Standard No. 302 requires that an occupant trim panel, when tested in accordance with specified procedures, shall not burn or transmit a flame across its surface at a rate of more than 4 inches per minute. Plastic speaker grille retainer rings supplied in 514 trucks manufactured between January 1982 and June 1984 may not comply with the standard. Petitioner has discovered that the rings do not meet the requirements and causes assemblies to exceed the burn rate by ⅛ to ¾ inch per minute. Petitioner understands that the rings are also used by other manufacturers in the heavy duty truck, automotive and recreational vehicle industries.

Petitioner argues that the noncompliance is inconsequential because "rings with a minimal volume of 2.75 cubic inches, will not expedite the spread of a fire." In petitioners experience, vehicle fires are most likely to originate in the lower portions of a cab, either in the firewall area or on the floor; the speaker grille retaining rings at issue are located in the sleeper box, in the upper portion of the cab behind the driver's head, and by the time flames reached it the entire cab might be in flames. The risk of a fire originating in the speaker area is considered low due to the low level electrical current running through the related wiring in that area.

Interested persons are invited to submit written data, views and arguments on the petitions described above. Comment should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date January 2, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: November 27, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-31554 Filed 11-30-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 28, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No.: 1545-0152
Form No.: IRS Form 3115
Type of Review: Revision
Title: Economic Performance Requirement
Clearance Officer: Garrick Shear, (202) 566-6254, Room 5571, 1111 Constitution Avenue NW., Washington, D.C. 20224
OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of Alcohol, Tobacco and Firearms

OMB No.: 1512-0130
Form No.: ATF F 4473, Part II
Type of Review: Revision
Title: Firearms Transcations Records, Contigous State, Non-Over the Counter
Clearance Officer: Howard Hood, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 84-31531 Filed 11-30-84; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

Intent to Establish a Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Department of the Treasury, Fiscal Service, Bureau of the Public Debt.

ACTION: Fee schedule.

SUMMARY: The Department of the Treasury has determined that fees imposed for the transfer of book-entry Treasury securities between depository institutions maintaining accounts therefor at Federal Reserve Banks should be identified and collected as Treasury fees. This determination has resulted in the formation of a proposed Treasury book-entry fee schedule, which is herein published for comment.

EFFECTIVE DATE: The fee schedule set out in this notice will be effective on March 28, 1985, subject to any changes the Department may deem appropriate as a result of comments received. Final notice of the adoption of the fee schedule will be provided no later than thrity (30) days prior to the above effective date.

DATES: Comments must be received on or before January 16, 1985.

ADDRESSES: Comments should be directed to the Office of Financing, Bureau of the Public Debt, Room 310 Washington Building, Washington, D.C. 20239.

FOR FURTHER INFORMATION CONTACT: Carl M. Locken, Jr., Acting Assistant Commissioner (Financing), Bureau of the Public Debt, Washington, D.C. 20239, telephone (202) 376-0319, or.

Anne M. Meister, Federal Reserve Liaison Officer, Bureau of the Public Debt, Washington, D.C. 20239, telephone (202) 376-0249.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks are authorized, as fiscal agents of the United States, to maintain Treasury book-entry securities in accounts for depository institutions and to transfer such securities between accounts held at the same Bank, or at different Banks.

Until 1981, the Treasury charged a fee for the transfer of Treasury securities between Federal Reserve Banks. Since that time, the Federal Reserve System's schedule of fees for Securities Services has included charges for both the maintenance by Reserve Banks of book-entry accounts and for the transfer of securities between accounts.

As a result of a recent review, the Treasury has determined that:

(1) Any fees charged in conjunction with book-entry activities performed on behalf of the Treasury by the Federal Reserve Banks should be clearly identified as Treasury fees;

(2) The Treasury would continue to impose a fee on depository institutions for transfers of book-entry Treasury securities conducted by the Federal Reserve Banks, as fiscal agents of the United States, between accounts held at the same, or different, Federal Reserve Banks.

(3) The fee for account maintenance heretofore imposed would be terminated.

As the proposed fee schedule shown below indicates, the Treasury plans to charge a fee to depository institutions for each on-line transfer originated, each off-line transfer originated, and each off-line transfer received. The fee will be established on a national basis, with no variance for the time of day a security is transferred. No fee shall be assessed for transfers to and from collateral accounts supporting borrowings from the Federal Reserve or Treasury deposits.

The Treasury fee relates only to the transfer of the securities. The Federal Reserve will assess an additional fee for the processing of payments associated with a securities transfer transaction where securities are transferred against payment. The Federal Reserve fee for handling such payments is set out in a separate notice being published by the Board of Governors of the Federal Reserve System. Treasury fees for securities transfers will be collected by the Federal Reserve Banks, as fiscal agents of the United States, for deposit to the Treasury.

The following is the proposed Treasury fee schedule for Treasury securities transfers:

Fee Schedule

On-line transfers originated, $1.50 per transfer
Off-line transfers received, $6.25 per transfer
Off-line transfers received, $6.25 per transfer

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-31358 Filed 11-30-84; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 77 (Rev. 18)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority granted to the Commissioner of Internal Revenue and District Directors, by CFR 301.7701-9, 26 U.S.C. 6212, 26 CFR 301.6212-1, Treasury Department Order 150-37, and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any notice of deficiency is delegated to other Internal Revenue Service employees. The text of the delegation order appears below.

EFFECTIVE DATE: October 29, 1984.

FOR FURTHER INFORMATIOIN CONTACT: Edward A. Wahl, OP:EX:I:E, 1111 Constitution Avenue, N.W., Room 2116, Washington, D.C. 20224, 202-566-6466 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION: This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Robert J. Sweeney,

Director, Office of IRP, Service Center and Support Programs (Examination).

Order No. 77 (Rev. 18)

Effective date: October 29, 1984.

Authority To Issue Notices of Deficiency

1. The authority granted to the Commissioner of Internal Revenue and District Directors, by 26 CFR 301.7701-9, U.S.C. 6212, 26 CFR 301.6212-1, Treasury Department Order 150-37, and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any notice of deficiency is hereby delegated to the following officials:

a. Chief Counsel;
b. Regional Counsel;
c. Regional Directors of Appeals;
d. Chiefs and Associate Chiefs of Appeals Offices;
e. Appeals Team Chiefs as to their respective cases;
f. Service Center Directors;
g. Reviewers (grade GS-12 and higher), in Employee Plans and Exempt Organizations Divisions;
h. Revenue Agents, and Tax Auditors (Reviewers) (grade GS-6 and higher), in the Examination Divisions;
i. Revenue Agents (grade GS-11 and higher), in streamlined districts Examination Sections and/or groups;
j. Chiefs of Correspondence and Processing Sections;
k. Examination Tax Examiners/Revenue Agents (grade GS-6 and higher), in Service Center Compliance Divisions;
l. Tax Examiners (grade GS-5 and higher), in Service Center Processing and Tax Accounts Divisions; and
m. Tax Examiners (Reviewers) (grade GS-6 and higher) Quality Assurance and Management Support Division, Service Centers.

2. Delegation Order No. 77 (Rev. 17), effective July 14, 1983, is superseded.

Dated: October 29, 1984.

James I. Owens,

Deputy Commissioner.

[FR Doc. 84-31560 Filed 11-30-84; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 233
Monday, December 3, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Overseas Private Investment Corporation	1

1

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors.

TIME AND DATE: 10 a.m. (closed portion), 11 a.m. (open portion), Thursday, December 13, 1984.

PLACE: Offices of the Corporation, seventh floor Board Room 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 10 a.m. to 11 a.m. will be closed to the public. The open portion of the meeting will start at 11 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 10 a.m. to 11 a.m.)

1. Insurance Project in East Asian Country.
2. 1985 Legislative Renewal.
3. Claims Report.
4. Information Report: Finance Projects.
5. Information Reports: General.
6. China Projects Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 11 a.m.).

1. Approval of the Minutes of the two Previous meetings.
2. Confirmation of Scheduled Board Meetings.
3. OPIC Program Results: FY 1984.
4. Financial Summary for the Twelve Months ended September 30, 1984.
5. Information Reports.

CONTACT PERSON FOR INFORMATION:

Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653-2925.

November 29, 1984.

Elizabeth A. Burton,

Corporate Secretary.

[FR Doc. 84-31589 Filed 11-30-84; 9:14 am]
BILLING CODE 10-23-M

federal register

Monday
December 3, 1984

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Special Review; Transport Category Airplane Airworthiness Standards; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24344; Notice No. 84-21]

Special Review; Transport Category Airplane Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airworthiness standards contained in Part 25 applicable to transport category airplanes to: (1) Update Part 25 for clarity and accuracy, (2) ensure the standards are appropriate and practicable for the smaller transport category airplanes common to regional air carrier operation, and (3) relieve the regulatory burden wherever possible. The second objective would take into account the regulatory studies already accomplished for the formerly proposed Part 24, which has since been withdrawn. The proposed changes also implement the President's regulatory reform program by simplifying a number of technical requirements, eliminating unnecessary applicability of rules where appropriate, and removing unnecessary administrative burdens on those regulated by this Part to the extent possible without lowering the prevailing level of safety.

DATES: Comments must be received on or before April 4, 1985.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24344, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 24344.

Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch (ANM-112), Regulations and Policy Office, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in the light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact concerned with this proposal will be filed in the the docket. Each proposal is numbered separately. Each comment should be identified by the proposal number or Section of the regulations to which it relates. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24344." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons intersted in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Historical Background

Although the scope was subsequently expanded, this review was originally initiated to ensure that the type certification standards presently contained in Part 25 are appropriate and practicable for the smaller transport category airplanes. In order to place this aspect of the review in proper perspective, it is also necessary to review the evolution of the type certfication standards applicable to such airplanes.

Type certification standards for two basic classes of airplanes have existed for approximately three decades: Part 23 and predecessor regulations for small airplanes, which are defined as those having maximum certificated takeoff weights (MCTW) of 12,500 pounds or less; and Part 25 and predecessor regulations for transport category airplanes. The International Civil Aviation Organization (ICAO) and the airworthiness authorities of many other countries make a similar distinction. When this distinction in weight was established, civil airplanes were either well above 12,500 pounds, as typified by the Douglas DC-3 (25,200 pounds MCTW, 21 passengers), or well below, as typified by the Beech D18S (8,750 pounds MCTW, 8 passengers). This was due primarily to a lack of powerplants suitable for airplanes with an MCTW of approximately 12,500 pounds. Similarly, powerplant availability inherently limited small airplanes to a passenger capacity of approximately 9 or less at that time. Furthermore, the abundance of relatively inexpensive, military surplus Douglas DC-3 and Beech 18 airplanes, spares therefore, and the engines used in these airplanes inhibited the development of airplanes in the 12,500 pounds MCTW class for some time.

The eventual advent of turbopropeller engines in the 600 to 1,000 horsepower class facilitated the development of airplanes with an MCTW of up to 12,500 pounds that were suitable for air taxi and commercial operations. The lighter weight of turbopropeller engines and other components, combined with the increased MCTW, made feasible the design of small airplanes with a passenger capacity of 20 or more, as typified by the de Havilland Twin Otter and Swearingen Metro. The FAA recognized such airplanes were well beyond the intended scope of Part 23 and that Part 23 did not provide an adequate level of safety for such airplanes when used in air taxi and commercial operations. In response to this situation, greater levels of safety

were provided in three steps: (1) Special Federal Aviation Regulation (SFAR) No. 23 (34 FR 189; January 7, 1969) provided interim standards for such airplanes when intended for use in air taxi and commercial operations; (2) SFAR No. 23 was, in turn, superseded by the definitive standards contained in Appendix A to Part 135 and § 135.144 was concurrently added to Part 135 to implement the standards from an air taxi and commercial operations standpoint (35 FR 10101; June 19, 1970); and (3) Part 23 was amended (Amendment 23-10; 36 FR 2863; February 11, 1971) to limit the applicability of that Part to small airplanes having a passenger seating capacity of 9 or less. By virtue of this last change, future small airplanes having a passenger capacity of 10 or more were required to be type certificated as transport category airplanes in accordance with Part 25. Part 135 did, however, permit such airplanes that had been previously type certificated in accordance with Part 23 and SFAR No. 23, or with Part 23 and Appendix A to Part 135, to continue in air taxi and commercial operations.

The FAA included a proposal in Notice No. 77-17 (42 FR 43490; August 29, 1977), which specified certain dates beyond which reciprocating engine or turbopropeller powered small airplanes having a capacity of 10 passengers or more could not be used in air taxi or commercial operations, unless they were type certificated as transport category airplanes. For reasons stated in Notice No. 77-17A (42 FR 56740; October 27, 1977), that proposal was later withdrawn. Had the proposal been adopted, such airplanes type certificated prior to Amendment 23-10, in accordance with Part 23 and SFAR No. 23, or with Part 23 and Appendix A to Part 135, would have been ineligible for air taxi or commercial operations after a specified date unless an extensive recertification program were undertaken.

Part 25 was considered by some persons to be unduly restrictive and costly as a type certification standard for certain small airplanes used by air taxi and commercial operators. The FAA, therefore, issued Advance Notice of Proposed Rulemaking (ANPRM) No. 77-25 (42 FR 56702; October 27, 1977) in which recommendations concerning possible changes in type certification requirements for such airplanes were requested. As a result of recommendations received and other considerations, the FAA initiated the Light Transport Airplane Airworthiness Review Program. The original scope of this review included airplanes having a capacity of 30 passengers or less and an MCTW of 35,000 pounds or less; however, the scope was later expanded to include airplanes having a capacity of 60 passengers or less and an MCTW of 50,000 pounds or less.

As an interim measure, SFAR No. 41, "Airworthiness Standards: Reciprocating and Turbopropeller Powered Small Multi-engine Airplanes—Increase in Approved Takeoff Weights and Passenger Seating Capacities," (44 FR 52723; September 17, 1979) was issued to provide standards for the recertification of small, multi-engine airplanes to a maximum zero fuel weight of 12,500 pounds, contrary provisions in Part 23 notwithstanding. Although SFAR No. 4 expired October 17, 1981, it was later reinstated (47 FR 35150; August 12, 1982) with certain changes in applicability.

Meanwhile, the Light Transport Airplane Airworthiness Review continued, and airworthiness standards specifically applicable to such airplanes were studied in depth. It was originally anticipated that these standards would be issued as a new Part 24; however, based on information developed from the review, the FAA determined that the economic benefits expected to result from the new airworthiness standards would not be realized. Accordingly, the FAA issued Notice No. 78-17E (45 FR 85600; December 29, 1980) terminating the review. In the termination notice, the FAA stated that it intended to study the technical information developed during the Light Transport Airplane Airworthiness Review for possible rulemaking action to improve Part 25.

Concurrent with this review of Part 25, the FAA has proposed in Notice No. 83-17 (48 FR 52010; November 15, 1983) to amend Part 23 of this Chapter to provide standards for type certification of propeller-driven airplanes with a maximum passenger capacity of 19 and an MCTW of up to 19,000 pounds. If this proposal is adopted, applicants will have a choice of certificating such airplanes under either Part 23 or Part 25.

After this current review of Part 25 was begun, the scope was expanded to include relieving the regulatory burden wherever possible without compromising the existing standards. In this regard, improvement of government regulations was recognized as a prime goal with the issuance of Executive Order (E.O.) 12044 (43 FR 12661; March 24, 1978). It was deemed essential that there be no more regulations than necessary, and that those which are necessary be comprehensible and present the least possible burden to those affected. It was further deemed that regulations should not be issued without involvement of the public and that once issued should be periodically reviewed and revised, as needed, to assure they continue to meet the needs for which they were originally designed. The intent of E.O. 12044 was implemented, insofar as FA regulatory activities are concerned, with the issuance of a Department of Transportation Order entitled "Regulatory Policies and Procedures" (44 FR 11034; February 26, 1979). The philosophy of improving government regulations has been continued and given further emphasis with the issuance of E.O. 12291 (46 FR 13193; February 19, 1981). In order to maximize the net benefits to society in all regulatory activities, this E.O. requires special attention to alternatives involving the least net cost, taking into consideration, among other things, the condition of the particular industries affected by the regulations.

Finally, this review has provided an excellent opportunity to update Part 25 for clarity and accuracy, and the scope of the review has been further expanded accordingly. As the review progressed, relatively few changes were found to be warranted with respect to type certification of the smaller transport category airplanes or relieving the regulatory burden. Consequently, updating Part 25 for clarity and accuracy has become the dominant reason for the changes proposed in this notice.

Regulatory Objectives

The objectives of the rulemaking proposed in this notice are threefold:

1. *To update Part 25 for clarity and accuracy.* This notice contains numerous miscellaneous changes to clarify rules that have been shown to be confusing, to correct editorial errors, to reflect current terminology and to conform the rules to actual certification practice. These changes are considered particularly necessary because Part 25 is used as a basis for certification of transport airplanes by many foreign airworthiness authorities, some of whom may not be familiar with the overall intent of the rules. Some of the proposed changes were, in fact, prompted by inquiries from foreign airworthiness authorities. In those instances where experience has shown a rule to be unclear, a change has been proposed to state the requirement in more specific terms.

2. *To ensure the airworthiness standards are appropriate for the smaller transport airplanes common to regional air carrier operation.* Part 25

and predecessor regulations have been amended periodically to keep pace with changing technology in transport airplane design. In some instances, Part 25 rules address areas that are of vital interest in the certification of large transport airplanes but are of no concern for the smaller transport category airplanes due to inherent characteristics of such airplanes. Similar conditions exist with respect to other parameters, such as airspeed or passenger capacity. This notice, therefore, contains changes that would restrict the applicability of certain rules to only those airplanes that are not inherently free from concern. No change is proposed that would adversely affect the level of safety afforded any transport category airplane.

3. *To relieve the regulatory burden wherever possible.* This notice contains changes to relieve or delete certain rules considered unnecessary. These are rules that are now considered unnecessary due to subsequent service experience or changing technology. Part 25 has become a model for type certification of transport airplanes for a majority of the civil aviation authorities of other counties due to the high level of safety afforded by this Part. While relieving the regulatory burden is considered to be of utmost importance, no change is proposed that would adversely affect this high level of safety.

Economic Evaluation

The majority of the 100 proposals in this NPRM are editorial changes which clarify the current regulation. While the editorial changes generate an administrative saving associated with the clarification, this saving cannot be readily determined. Only 9 of the 100 proposals have a clear economic impact. In each of these 9, there is only an economic benefit associated with the proposal. The 9 proposals generally provide relief to aircraft certification applicants, such as allowing more efficient test programs or design requirements. The benefits of some of the proposals cannot be quantified.

Table 1 summarizes the economic effects and benefits associated with the 9 relieving proposals. There are no increased requirements or costs associated with the proposals. The benefit associated with all of the changes totals over $100,000 for certification of the smaller transport category airplanes and over $400,000 for certification of the larger transport category airplanes.

The proposals were reviewed to meet the requirements of the Regulatory Flexibility Act of 1980; and the FAA has determined that the proposals, if adopted, would not have a significant economic impact on a substantial number of small entities. Only five firms in the U.S., Boeing, Cessna, Gates Learjet, Lockheed, and McDonnell Douglas, have manufactured large transport category airplanes and certificated them under Part 25 of the FAR. Each of these companies far exceeds the 1,500 employee standard of the Small Business Administration for small manufacturers. Thus, it is clear that those U.S. firms directly regulated today by Part 25 are large entities.

TABLE 1.—SUMMARY OF BENEFITS DUE TO PROPOSALS

Proposal No.	Economic effect	Estimate of benefits
2	Places specific limitations in advisory circular; simpler test program.	Two hours of flight test time plus associated analysis and reporting; $41,600 to $201,600 per certification program.
10	Reduces test burdens.	Do.
11	....do.....	Ten minutes of flight test time; $3,300 to $16,700 per certification program.
13	....do.....	Five hours of flight test time for slower, lower altitude aircraft, plus associated analysis and reporting; $103,200 per relevant aircraft certification program.
27	Eliminates a test condition for propeller aircraft.	Not quantifiable.
28	Relieves propeller blade fit tests.	Do.
36	Increases analysis allowed in lieu of testing.	Do.
38	Deletes certain required analysis.	One day of analysis time or about $160,000 whenever engine thrust ratings are increased.
41	Allows alternative to an opening cockpit window.	Variable, depending on production.

The proposed rules comply in their entirety with the President's directive (E.O. 12291) that existing regulations be evaluated periodically under criteria that consider the degree to which technology, economic conditions, and other factors have changed in the subject area affected by the regulations. List of Subjects in 14 CFR Part 25: Air transportation, Aircraft, Aviation, safety, Safety, Tires.

The Proposed Amendment

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

Accordingly, the FAA proposes to amend Part 25 of the Federal Aviation Regulations (FAR) (14 CFR Part 25) as follows:

1. By revising § 25.2 to read as follows:

§ 25.2 Special retroactive requirements.

The following special retroactive requirements are applicable to an airplane for which the regulations incorporated by reference in the type certificate predate the sections specified below—

(a) Irrespective of the date of application, each applicant for a supplemental type certificate (or an amendment to a type certificate) involving an increase in passenger seating capacity to a total greater than that for which the airplane has been type certificated must show that the airplane concerned meets the requirements of:

(1) Sections 25.72(d), 25.783(g), 25.785(c), 25.803(c)(2) through (9), 25.803(d) and (e), 25.807(a), (c) and (d), 25.809(f) and (h), 25.811, 25.812, 25.813(a), (b) and (c), 25.815, 25.817, 25.853(a) and (b), 25.855(a), 25.993(f), and 25.1359(c) in effect on October 24, 1967, and

(2) Sections 25.803(b)— and 25.803(c)(1) in effect on April 23, 1969.

(b) Compliance with subsequent revisions to the sections specified in paragraph (a) above may be elected in accordance with § 21.101(b) of this chapter.

Explanation. Section 25.2 was adopted in 1967 to require compliance with then current crashworthiness requirements for certain aircraft already in service. If taken literally, § 25.2 precludes compliance with later rules, either voluntary in accordance with § 21.101(a)(2) or mandatorily due to a subsequent date of application, because of an editorial error. The proposed revision would clarify the intent of this rule. The reference to an application for a type certificate is no longer pertinent, as such an application is effective for only 5 years, and more than 15 years have elapsed since the date § 25.2 was adopted. This unnecessary reference would, therefore, be delegated for clarity.

2. By amending § 25.21 by removing paragraph (b) and marking it "reserved" and revising paragraph (d) to read as follows:

§ 25.21 Proof of compliance.

* * * * *

(b) [Reserved]

* * * * *

(d) Parameters critical for the test being conducted, such as weight, loading (center of gravity and inertia), airspeed, power and wind, must be maintained within acceptable tolerances of the critical values during flight testing.

* * * * *

Explanation: Section 25.21(a)(1) specifies the investigation of each probable combination of weight and center of gravity if compliance cannot be reasonably determined from combinations investigated. Basing flying qualities on rearward center of gravity speeds is considered unnecessary as Airplane Flight Manual reference speeds are based on the more conservative forward center of gravity stalling speeds. Notwithstanding, § 25.21(b) currrently provides that the flying qualities may be based on the forward center of gravity stalling speeds only if the difference between the forward and rearward stalling speeds is less than 2 knots. As § 25.21(b) unnecessarily requires the testing of airplanes with a difference greater than 2 knots to be based on the rearward center of gravity stalling speeds, it would be removed. The specific tolerances currently outlines in § 25.21(d) would be removed, updated to reflect current practice, and published in the Engineering Flight Test Guide for Transport Airplanes. (This document is presently published as Order No. 8110.8; however, it will be reissued in the near future as an advisory circular.)

3. By revising § 25.29, paragraph (a)(3)(iii), to read as follows:

§ 25.29 Empty weight and corresponding center of gravity.

(a) * * *

(3) * * *

(iii) Other fluids required for normal operation of airplane systems, except potable water, lavatory precharge water, and fluids intended for injection in the engine.

* * * * *

Explanation: Section 25.29 currently specifies "water intended for injection in the engine"; however, the fluid may be other than water, e.g., a water-alcohol solution. This paragraph has previously been interpreted to include all fluids intended for injection in the engines. This proposal, which reflects the accepted interpretation, would ensure uniformity of application.

4. By revising § 25.33, paragraph (c), to read as follows:

§ 25.33 Propeller speed and pitch limits.

* * * * *

(c) The means used to limit the low pitch position of the propeller blades must be set so that the engine does not exceed 103 percent of the maximum allowable engine r.p.m. or 99 percent of an approved maximum overspeed, whichever is greater, with —

(1) The propeller blades at the low pitch limit and governor inoperative;

(2) The airplane stationary under standard atmospheric conditions with no wind; and

(3) The engines operating at the takeoff manifold pressure limit for reciprocating engine power airplanes or the maximum takeoff torque limit for turbopropeller engine powered airplanes.

Explanation: Turbopropeller engine torque is analogous to reciprocating engine manifold pressure in the context of propeller pitch settings. This paragraph has been interpreted to mean "torque" for turbopropeller engines, and the proposed revision would reflect accepted practice by specifying manifold pressure or torque as applicable. This revision would also reflect the possibility that an engine may have an approved maximum overspeed limit greater than 103 percent of the maximum engine r.p.m. allowed for normal operation. The term, "standard atmospheric conditions," has been interpreted to include no wind because a forward or rearward wind component would render the test results meaningless. The term "no wind" would, therefore, be added for clarification and consistency with the wording of the corresponding section in Part 23 of this Chapter.

§ 25.111 [Amended]

5. By amending § 25.111, paragraph (a)(1), by removing the regulatory reference "§ 25.101(c)" and inserting "§ 25.101(f)" in its place.

Explanation: This change would correct an editorial error that was inadvertently introduced during the recodification of §§ 4T.111 and 4T.116 of Special Civil Air Regulation No. SR-422B into §§ 25.101 and 25.111, respectively, of Part 25.

6. By revising § 25.121, paragraph (b)(1), to read as follows:

§ 25.121 Climb: One-engine-inoperative.

* * * * *

(b) * * *

(1) The critical engine inoperative and the remaining engines at the takeoff power or thrust available at the time the landing gear is fully retracted, as determined under § 25.111, or the lesser power or thrust if a reduction of power or thrust greater than 0.5 percent occurs prior to the point at which the airplane reaches a height of 400 feet above the takeoff surface; and

* * * * *

Explanation: Section 25.121(b)(1) is a recodification of § 4T.120(a)(1) of Special Civil Air Regulation No. SR-422B and, as indicated in the preamble to SR-422B, is intended, in part, to account for only significant power or thrust reductions, e.g., exhausting a wet takeoff power or thrust rating, and not those associated with normal lapse with altitude. The proposed change would clarify the intent of this paragraph in this regard and reflect actual certification practice.

§ 25.125 [Amended]

7. By amending § 25.125, paragraph (a)(2) by removing the words "steady gliding" and inserting the word "stabilized" in their place.

Explanation: As presently written, § 25.125(a)(2) indicates that landings must be accomplished by approaching at idle power or thrust, a procedure that is inappropriate for transport category airplanes. The proposed change would clarify this section and reflect accepted practice.

8. By amending § 25.146, by revising paragraph (a) introductory text and by removing and reserving paragraph (b)(2) to read as follows:

§ 25.147 Directional and lateral control.

(a) *Directional control; general.* It must be possible, with the wings level, to yaw into the inoperative engine and to safely make a reasonably sudden change in heading of up to 15 degrees in the direction of the critical inoperative engine. This must be shown at $1.4V_{s1}$ for heading changes up to 15 degrees (except that the heading change at which the rudder pedal force is 150 pounds need not be exceeded), and with—

* * * * *

(b) * * *

(2) [Reserved]

* * * * *

Explanation: As presently worded, § 25.147(a) specifies that it must be possible to make reasonably sudden changes in heading of up to 15 degrees in either direction with the critical engine inoperative and the wings "approximately level." Many certificated transport category airplanes are not in literal compliance with this section in that they cannot be yawed more than a few degrees toward the operative engine(s) with the wings "approximately level." Such airplanes do, however, comply with the intent of § 25.147(a), which is to ensure that there are no unsafe characteristics if a sudden change in heading is made with asymmetric power or thrust and that some directional control toward the operative engine remains. As proposed, the wording of § 25.147(a) would reflect the intent of the rule more accurately and conform to actual type certification

practice. Due to the editorial structure of § 25.147, paragraph (a)(3) currently specifies that directional control must be demonstrated at the most unfavorable center of gravity position for all airplanes except those with four or more engines. Paragraph (b)(2) currently specifies that such airplanes must be tested with the center of gravity in the most forward position, although it is actual certification practice to test all airplanes, including those with four or more engines, at the most unfavorable center of gravity position. Paragraph (b)(2) would, therefore, be deleted to eliminate this inconsistency and refect actual certification practice.

9. By amending § 25.149 by revising paragraph (b), and the introductory texts of paragraphs (e), (f), and (g) to read as follows:

§ 25.149 Minimum control speed.

* * * * *

(b) V_{MC} is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with that engine still inoperative and maintain straight flight with an angle of bank of not more than 5 degrees.

* * * * *

(e) V_{MCO}, the minimum control speed on the ground, is the calibrated airspeed during the takeoff run at which, when the critical engine is suddenly made inoperative, it is possible to maintain control of the airplane on the critical runway surface using the rudder control, as limited by 150 pounds of force, and the lateral control to the extent of keeping the wings level to enable the takeoff to be safely continued using normal piloting skill. In the determination of V_{MCO}, assuming that the path of the airplane accelerating with all engines operating is along the centerline of the runway, its path from the point at which the critical engine is made inoperative to the point at which recovery to a direction parallel to the centerline is completed may not deviate more than 30 feet laterally from the centerline at any point. V_{MCO} must be established with—

* * * * *

(f) V_{MCL}, the minimum control speed during landing approach with all engines operating, is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with the engine still inoperative and maintain straight flight with an angle of bank of not more than 5 degrees. V_{MCL} must be established with—

* * * * *

(g) For airplanes with three or more engines, V_{MCL-2}, the minimum control speed during landing approach with one critical engine inoperative, is the calibrated airspeed at which, when a second critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with both engines still inoperative and maintain straight flight with an angle of bank of not more than 5 degrees. V_{MCL-2}, must be established with—

* * * * *

Explanation: The term "sideslip would be used in paragraphs (b), (f), and (g) in lieu of "yaw" to conform to current terminology. Paragraph (e) would be revised to clarify the extent to which lateral control may be used in controlling the heading during the test. The reference to nosewheel steering has been removed to allow credit for nosewheel steering if testing is conducted on critical runway surfaces. The word "recover" would be removed because it incorrectly implies that the airplane would be allowed to go out of control before corrective action is taken.

10. By revising § 25.177 to read as follows:

§ 25.177 Static directional and lateral stability.

(a)–(b) [Reserved]

(c) In straight, steady sideslips, the aileron and rudder control movements and forces must provide positive stability and be substantially proportional to the angle of sideslip in a stable sense; and the factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or a rudder force of 180 pounds is obtained, the rudder pedal forces may not reverse; and increased rudder deflection must produce increased angles of sideslip. Compliance with this paragraph must be demonstrated for all landing gear and flap positions and symmetrical power conditions at speeds from 1.2 V_{S1} to V_{FE}, V_{LE}, or V_{FC}/M_{FC}, as appropriate.

(d) The rudder gradients must meet the requirements of paragraph (c) at speeds between V_{FC}/M_{FC} and V_{MO}/M_{MO} except that the dihedral effect (aileron deflection opposite the corresponding rudder input) may be negative provided the divergence is gradual, easily recognized, and easily controlled by the pilot.

Explanation: It is not considered necessary to define directional and lateral stability parameters as separate entities to determine that an airplane has satisfactory directional-lateral stability. By evaluating the force and deflection of the ailerons and rudder, and the bank and yaw angles required to maintain steady heading sideslips, the lateral-directional characteristics of an airplane may be determined. Section 25.177 would, therefore, be revised accordingly to eliminate the present requirement for unnecessary testing.

§ 25.181 [Amended]

11. By amending § 25.181, paragraphs (a) and (b), by removing the words "stalling speed" and inserting "1.2 V_S" in their place.

Explanation: This change would eliminate unnecessary testing between stalling speed and 1.2 stalling speed. (Flying qualities in this range are covered by §§ 25.143 and 25.203)

§ 25.205 [Removed]

12. By removing § 25.205

Explanation: Current § 25.205 requires demonstration of stall recovery from a pilot induced sideslip with the airplane in a cruise configuration with asymmetric thrust and resultant large control deflections. This has been found to be an unrealistic test that does not contribute to the safe operation of the airplane because the unusual configuration tested would seldom, if ever, be achieved in service. Section 25.205 would, therefore, be deleted as impractical and unnecessary.

13. By revising § 25.251, paragraph (e), to read as follows:

§ 25.251 Vibration and buffeting.

* * * * *

(e) For an airplane with M_D greater than .6 or with a maximum operating altitude greater than 25,000 feet, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined with the airplane in the cruise configuration for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certificated. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

Explanation: Section 25.251(e) currently requires determination of the positive maneuvering load factors at which the onset of perceptible buffet occurs under various specified conditions. The testing required for compliance with this paragraph is not justified for slower airplanes operating at lower altitudes as they have not been found critical in this regard. The applicability of this paragraph would, therefore, be limited to airplanes with M_D greater than .6 and to those with a maximum operating altitude greater than 25,000 feet.

14. By revising § 25.253, paragraph (a)(3), to read as follows:

§ 25.253 High-speed characteristics.

(a) * * *

(3) There must be no reversal of the response of the airplane to control input by the pilot about any axis at any speed up to V_{DF}/M_{DF}. Any reversal of elevator control force gradient or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

* * * * *

Explanation: Section 25.253(a)(3) would be revised to clarify the intent of the term "control reversal" currently used in that section.

§ 25.307 [Amended]

15. By amending § 25.307 by removing paragraphs (b) and (c) and marking them [Reserved].

Explanation: Sections 25.307 (b) and (c) currently serve only to reference §§ 25.571, 25.573 and 25.601. Section 25.573 no longer exists, and it is considered redundant to specify compliance with §§ 25.571 and 25.601. This proposed revision to § 25.307 would, therefore, remove the contents of paragraphs (b) and (c) in the interest of simplicity.

§ 25.331 [Amended]

16. By amending § 25.331, paragraph (c)(2)(i), by removing the expression "A to D" following the word "Points" and inserting the expression "A_1 to D_1" in its place and, paragraph (c)(2)(ii), by removing the expression "A to D" following the word "Points" and inserting the expression "A_2 to D_2" in its place.

Explanation: Subscripts that were inadvertently omitted in a prior amendment would be replaced.

§ 25.341 [Amended]

17. By amending § 25.341, paragraph (b)(1), by moving the closing parenthesis following the expression "1-cos" in the formula to the end of the formula and, by redesignating paragraph (b)(3) as paragraph (c), and by removing the letter "p" from each place it appears as a mathematical symbol and inserting the lower case Greek letter rho in its place.

Explanation: This change would correct existing editorial errors by moving a parenthesis in § 25.341(b)(1) to the correct location and substituting the lower case Greek letter rho for the letter "p." Note that paragraph (c) has been misidentified as subparagraph (b)(3) in some printings of Part 25.

18. By revising § 25.345, paragraph (c)(1), to read as follows:

§ 25.345 High lift devices.

* * * * *

(c) * * *

(1) Maneuvering to a positive limit load factor as prescribed in § 25.337(b); and

* * * * *

Explanation: This proposal is related to a change made previously to § 25.337. Prior to Amendment 25–23, § 25.337 specified a positive limit maneuvering load factor "not less than 2.5." Similarly, § 25.345(c) specified a positive limit maneuvering load factor of 2.5 for high lift devices used in enroute conditions. Section 25.337 was changed by Amendment 25–23 to specify the greater of 2.5 or the value derived from the formula

$$2.1 + \frac{24{,}000}{W + 10{,}000}$$

As "W" was the maximum design weight, this change meant that airplanes of less than 50,000 pounds had to be designed to positive limit maneuvering load factors greater than 2.5. The corresponding change to § 25.345(c) was inadvertently omitted at that time. This proposal would eliminate the conflict that now exists for airplanes of less than 50,000 pounds.

19. By amending § 25.361 by revising paragraph (a) introductory text, (a)(2) and paragraph (c) introductory text to read as follows:

§ 25.361 Engine torque.

(a) Each engine mount and its supporting structure must be designed for the effects of—

* * * * *

(2) A limit torque corresponding to the maximum continuous power and propeller speed, acting simultaneously with the limit loads from flight condition A of § 25.333(b); and

* * * * *

(c) The limit engine torque to be considered under paragraph (a) of this section must be obtained by multiplying mean torque for the specified power and speed by a factor of—

* * * * *

Explanation: This revision would correct an editorial error that was introduced during the recodification of § 4b.216 of the Civil Air Regulations into § 25.361 of the FAR. Section 4b.216 required, in part, design of the engine mount and supporting structure to withstand the effects of limit engine torque corresponding to maximum continuous power and speed combined with specified limit flight loads and the effects of limit engine torque corresponding to takeoff power and speed combined with 75% of the specified limit flight loads. Section 4b.216 further defined limit torque as the mean torque multiplied by a factor appropriate for the type of engine used. This factor, which was used to account for peak excursions above the mean torque, was applicable to the torque corresponding to maximum continuous power and speed and that corresponding to takeoff power and speed. Although the recodification program was not intended to introduce any substantive change, the wording of § 25.361 inadvertently limited the applicability of this factor to the torque corresponding to maximum continuous speed. This inadvertence, which has been perpetuated by subsequent revisions to § 25.361, left the limit torque corresponding to takeoff power and speed undefined. In the absence of such definition, it would be necessary for an applicant to conduct additional testing to determine the limit torque corresponding to takeoff power and speed for the specific engine involved. The proposed change to § 26.361 would correct this error and reflect actual certification practice.

§ 25.365 [Amended]

20. By amending the introductory sentence of § 25.365 by removing the words "for occupants."

Explanation: Pressurization loads apply to the entire pressure vessel. As presently worded, § 25.365 could be construed to apply only to those compartments to be occupied by passengers and crewmembers and not to other pressurized compartments, such as baggage, etc, This proposal, which reflects accepted practice, would clarify the intent of § 25.365.

21. By revising § 25.373, paragraph (a), to read as follows:

§ 25.373 Speed control devices.

* * * * *

(a) The airplane must be designed for the symmetrical maneuvers and gusts prescribed in §§ 25.333, 25.337 and 25.341, and the yawing maneuvers and

lateral gusts in § 25.351, at each setting and the maximum speed associated with that setting; and

* * * * *

Explanation: This proposal would clarify § 25.373 (a) to ensure design at each setting and the maximum speed associated with that setting.

22. By amending § 25.395 revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 25.395 Control system.

* * * * *

. (b) The system limit loads, except the loads resulting from ground gusts, need not exceed the loads that can be produced by the pilot (or pilots) and by automatic or power devices operating the controls.

(c) The loads must not be less than those resulting from application of the minimum forces prescribed in § 25.397(c).

Explanation: This proposal would clarify § 25.395 by removing the reference to a "rugged system" and substituting therefor a reference to the values specified in § 25.397(c). These values have previously been determined to be the minimum necessary to ensure a "rugged system."

§ 25.397 [Amended]

23. By amending Footnote 3 to § 25.397 by removing the word "most" and inserting the words "must be" in its place.

Explanation: This would be a clarifying change to correct an editorial error.

24. By revising § 25.415, paragraph (a)(2), to read as follows:

§ 25.415 Ground gust conditions.

(a) * * *

(2) The control system stops nearest the surfaces, the control system locks, and the parts of the systems (if any) between these stops and locks and the control surface horns, must be designed for limit hinge moments H obtained from the formula,

$H = Kc_0q$,

where—

H = limit hinge moment (ft. lbs.);

c = mean chord of the control surface aft of the hinge line (ft.);

S_s = area of the control surface aft of the hinge line (sq. ft.);

q = dynamic pressure (p.s.f.) based on a design speed not less than $14.6(W/S)^{1/2} + 14.6$ (f.p.s.), except that the design speed need not exceed 88 f.p.s. (W/S is wing loading based on maximum airplane weight and wing area); and

K = limit hinge moment factor for ground gusts derived in paragraph (b) of this section.

* * * * *

Explanation: The symbol "W/S" is not defined in § 25.415, and the use of the symbol "S" in another context in the same rule has led to much confusion. This proposal would preclude further confusion by reidentifying the control surface area aft of the hinge line as "S_s" and by adding the parenthetical definition of "W/S."

§ 25.459 [Amended]

25. By amending § 25.459 by inserting the word "slats," after the word "slots," before the words "and spoilers."

Explanation: Although slats are not specifically mentioned, § 25.459 is presently applicable to slats because they are "special devices using aerodynamic surfaces." This proposal would provide clarification by ensuring that slats are not overlooked in determining compliance with this section.

§ 25.563 [Removed]

26. By removing § 25.563.

Explanation: Section 25.563 merely cross references § 25.801(e). As the cross reference is unnecessary, § 25.563 would be deleted for simplicity.

27. By amending § 25.571 by revising the heading of paragraph (b) and by revising paragraphs (b)(2), (e)(1), and (e)(2) to read as follows:

§ 25.571 Damage-tolerance and fatigue evaluation of structure.

* * * * *

(b) *Damage-tolerance evaluation.*

* * *

(2) The limit gust condition specified in §§ 25.305(d), 25.341 and 25.351(b) at the specified speed up to V_C, and in § 25.345.

* * * * *

(e) * * *

(1) Impact with a 4-pound bird at V_C at sea level;

(2) Uncontained fan blade impact;

* * * * *

Explanation: The parenthetical expression "fail-safe" would be deleted from the heading of § 25.571(b) as fail-safe is not synonymous with damage-tolerance. Section 25.571(b)(2) would be revised to clarify that the condition of § 25.305(c) applies to all flight and ground loading conditions where structural response to any rate of load application might produce transient stresses appreciably higher than those corresponding to static loads. It has been the practice to substantiate structures to the discrete gust requirements for both health structure and for structure in the fail-safe mode considering both static and dynamic loads. With the advent of continuous turbulence loads (PSD), required by § 25.305(d), analysis of dynamic response to discrete gust loads required by § 25.305(c) was discontinued based on the assumption that PSD loads account for the dynamic response to rate of load application required by § 25.305(c). Since the PSD analysis is accepted as showing compliance with the discrete gust dynamic analysis, the PSD loads must be accounted for in the fail-safe analysis. This revision to § 25.571(b)(2) would reflect accepted industry practice of substituting the continuous turbulence requirements for the dynamic discrete gust requirements. Section 25.571(e)(1) would be changed to specify impact with a 4-pound bird at "V_C at sea level" in lieu of "likely operational speeds up to 8,000 feet" for consistency with the bird strike requirements of related §§ 25.631 and 25.775 and to eliminate confusion concerning the applicability of § 91.70(a) of this Chapter. Section 91.70(a) limits the operational speed to 250 KIAS at altitudes below 10,000 feet MSL; however, § 91.70(a) applies only to operation within the continental U.S. Thus "likely operational speeds" at low altitudes include any speed up to V_C, not just to 250 KIAS. As presently worded, § 25.571(e)(2), which was introduced with Amendment 25-42 effective December 1, 1978, specifies that the structure must withstand the effect of a propeller blade impact. The worst possible trajectory must be considered, and no consideration may be given to improbability of blade failure. Service experience has shown that compliance with § 25.571(e)(2) would be impossible for any economically viable propeller driven airplane, and five exemptions from compliance have been granted to date. Due to the recent adoption of § 25.571(e)(2) and the exemptions granted, compliance with this section has never been demonstrated for any airplane. The reference to propeller blades presently contained in § 25.571(e)(2) would, therefore, be deleted and replaced by proposed § 25.905(d). (See proposal No. 61.) Section 25.905(d), which would specify that "Design precautions must be taken to minimize the hazards to the airplane . . ." would be more realistic and consistent with the philosophy of § 25.903(d)(1) pertaining to engine rotor failures. This change would also specifically state that damage to vital systems and hazards due to extreme unbalance must also be considered.

Previously, vital systems and hazards were addressed only in general terms in §§ 25.671 and 25.1309.

28. By amending § 25.613 by revising paragraphs (b) and (e) to read as follows:

§ 25.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraph (e) of this section, compliance with this paragraph must be shown by selecting design values which assure material strength with the following probability:

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component, 99 percent probability with 95 percent confidence. (2) For redundant structure, in which the failure of individual elements would result in applied loads being safely distributed to other load carrying members, 90 percent probability with 95 percent confidence.

* * * * *

(e) Greater design values may be used if a "premium selection" of the material is made in which a specimen of each individual item is tested before use to determine that the actual strength properties of that particular item will equal or exceed those used in design.

Explanation: The probability bases contained in MIL-HDBK-5 for establishing allowables are currently incorporated by reference in §§ 25.613 and 26.615. Section 25.613 would be changed to state these bases directly. This change would make § 25.615 redundant except for the requirement of § 25.615(b) which is being transferred to § 25.613 for clarity. The references to MIL-HDBK-5, -17 and -23, and ANC-18 would no longer be necessary or appropriate and would be deleted accordingly.

§ 25.615 [Removed]

29. By removing § 25.615.

Explanation: See proposal No. 28.

30. By revising § 25.625, paragraph (d), to read as follows:

§ 25.625 Fitting factors.

* * * * *

(d) For each seat, berth, safety belt, and harness, the fitting factors specified in § 25.785(f)(3) apply.

Explanation: See proposal No. 45.

31. By amending § 25.629 by revising paragraphs (b)(1) and (d)(1)(ii) to read as follows:

§ 25.629 Flutter, deformation, and fail-safe criteria.

* * * * *

(b) * * *

(1) The airplane must be designed to be free from flutter and divergence (unstable structural distortion due to aerodynamic loading) for all combinations of altitude and speed encompassed by the V_D/M_D versus altitude envelope enlarged at all points by an increase of 20 percent in equivalent airspeed at both constant Mach number and constant altitude, except that Mach numbers greater than 1.0 need not be included when M_D is less than 1.0 at all design altitudes and the following is established—

* * * * *

(d) * * *

(1) * * *

(ii) Any other combination of failures, malfunctions, or adverse conditions not shown to be extremely improbable.

* * * * *

Explanation: Section 25.629, as written, could be interpreted to require flutter clearance above Mach 1.0 without accounting for Mach effects, such as compressibility. This revision would replace the standard speed margin with a damping margin determined by § 25.629(b)(1) (i) and (ii). When the damping margin is established, no flutter clearance would be required above Mach 1.0 if M_D is less than 1.0. Section 25.629(d)(1)(ii) would be amended to correct an editorial error by adding the words "malfunctions, or adverse conditions," which were inadvertently removed with Amendment 25-46.

§ 25.673 [Removed]

32. By removing § 25.673.

Explanation: Due to the present scope of §§25.671 and 25.1309, § 25.673 is redundant and would be removed to preclude possible confusion.

33. By revising § 25.693 to read as follows:

§ 25.693 Joints.

Control system joints (in push-pull systems) that are subject to angular motion, except those in ball and roller bearing systems, must have a special factor of safety of not less than 3.33 with respect to the ultimate bearing strength of the softest material used as a bearing. This factor may be reduced to 2.0 for joints in cable control systems. For ball or roller bearings, the approved ratings may not be exceeded.

Explanation: The reference to MIL-HDBK-5 would be removed as that document does not contain approved ratings for bearings.

§ 25.697 [Amended]

34. By amending § 25.697, paragraph (a), by removing the reference "§ 25.47," and inserting the reference "§ 25.101(d)" in its place.

Explanation: This would be a conforming change to reflect the prior transfer of certain requirements from § 25.47 to § 25.101(d) by Amendment 25-38.

35. By revising § 25.701 to read as follows:

§ 25.701 Flaps and slats.

(a) Unless the airplane has safe flight characteristics with the flaps or slats retracted on one side and extended on the other, the motion of flaps or slats on opposite sides of the plane of symmetry must be synchronized by a mechanical interconnection or approved equivalent means.

(b) If a wring flap or slat interconnection is used, it must be designed to account for the applicable unsymmetrical loads, including those resulting from flight with the engines on one side of the plane of symmetry inoperative and the remaining engines at takeoff power.

(c) For airplanes with flaps or slats that are not subjected to slipstream conditions, the structure must be designed for the loads imposed when the wing flaps or slats on one side are carrying the most severe load occurring in the prescribed symmetrical conditions and those on the other side are carrying not more than 80 percent of that load.

(d) The interconnection must be designed for the loads resulting when the surfaces on one side of the plane of symmetry are jammed and immovable while the surfaces on the other side are free to move and the full power of the surface actuating system is applied.

Explanation: The consequences of asymmetrical slat retraction can be the same as those of asymmetrical flap retraction. This revision would ensure that asymmetrical slat retraction is not overlooked.

§ 25.723 [Amended]

36. By amending § 25.723, paragraph (a), by removing the word "identical" and inserting "similar" in its place.

Explanation: Traditionally, energy absorption tests were conducted to substantiate landing gear systems for increases in maximum takeoff and landing weight. With the development of

improved analytical methods, analyses were accepted for such increases under the equivalent level of safety provisions of § 21.21(b) of this chapter. Section 25.723 was subsequently amended to permit the use of an analysis in lieu of a test, provided the analysis was based on tests conducted on a landing gear system with identical energy absorption characteristics. This change failed, however, to provide the relief intended because weight increases invariably necessitate minor design changes, such as changes in metering characteristics of tire ratings. These changes, in turn, result in slightly altered energy absorption characteristics. As analytical methods can account for such changes as well as weight increases, § 25.723 would be further amended to specify "similar" in lieu of "identical" energy absorption characteristics. The proposed change would provide more latitude in accepting analyses and would be consistent with the previous acceptance of analyses under the equivalent level of safety provisions of § 21.21(b).

§ 25.731 [Amended].

37. By amending § 25.731, paragraph (b)(1), by removing the word "takeoff" and inserting the word "maximum" in its place.

Explanation: Section 25.25 was amended to provide for weights that are in excess of takeoff weight, such as ramp weights, provided compliance with the applicable structural requirements, including wheel strength, is demonstrated at the higher weights. Section 25.731 would be revised to implement this relaxatory change to § 25.25.

38. By amending § 25.733 by revising paragraphs (a)(1), (c), and (c)(1) to read as follows:

§ 25.733 Tires.

(a) * * *

(1) The loads on the main wheel tire, corresponding to the most critical combination of airplane weight (up to maximum ramp weight) and center of gravity position, and

* * * * *

(c) When a landing gear axle is fitted with more than one wheel and tire assembly, such as dual or dual-tandem, each wheel must be fitted with a suitable tire of proper fit with a speed rating approved by the Administrator that is not exceeded under critical conditions, and with a load rating approved by the Administrator that is not exceeded by—

(1) The loads on each main wheel tire, corresponding to the most critical combination of airplane weight (up to maximum ramp weight) and center of gravity position, when multiplied by a factor of 1.07; and

* * * * *

Explanation: The effects of inertia on tire loading are momentary at the initiation of taxi. This load becomes negligible when a constant taxi speed is obtained or, in the case of takeoff, when lift takes over as the airplane gains airspeed. In either case, the relative effect on loading is transient and relatively small when distributed among the main landing gear wheels and tires. In addition, consideration of this inertia loading introduces an unnecessary burden into the tire loading requirements when engine thrust ratings are changed. For these reasons, the requirement to consider the effects of inertia would be deleted from § 25.733(a)(1). In addition, § 25.733(c)(1) would be changed from a reference to § 25.733(a)(1) to a direct statement of the loading conditions for the sake of clarity.

39. By revising § 25.735, paragraph (b), to read as follows:

§ 25.735 Brakes.

* * * * *

(b) The brake system and associated systems must be designed and constructed so that if any electrical, pneumatic, hydraulic, or mechanical connection or transmitting element (excluding the operation pedal or handle) fails, or if any single source of hydraulic or other brake operating energy supply is lost, it is possible to bring the airplane to rest under conditions specified in § 25.125, with a mean deceleration during the landing roll of at least 50 percent of that obtained in determining the landing distance as prescribed in that section. Subcomponents within the brake assembly, such as brake drum, shoes, and actuators (or their equivalents), shall be considered as connecting or transmitting elements, unless it is shown that leakage of hydraulic fluid resulting from failure of the sealing elements in these subcomponents within the brake assembly would not reduce the braking effectiveness below that specified in this paragraph.

* * * * *

Explanation: This would be a conforming change to clarify the intent of the last sentence in existing § 25.735(d).

40. By revising § 25.772 to read as follows:

§ 25.772 Pilot compartment doors.

For an airplane that has a maximum passenger seating configuration of more than 20 seats and that has a lockable door installed between the pilot compartment and the passenger compartment:

(a) The emergency exit configuration must be designed so that neither crewmembers nor passengers need use that door in order to reach the emergency exists provided for them; and

(b) Means must be provided to enable flight crewmembers to directly enter the passenger compartment from the pilot compartment if the cockpit door becomes jammed.

Explanation: Section 25.772 presently applies to certain airplanes with a lockable door installed ". . . to comply with § 121.313(f) of this Chapter . . ." While compliance with § 121.313(f) would generally be the reason for installing a lockable door, there is nothing to preclude the installation of a lockable door for other reasons, such as compliance with an anticipated similar foreign air carrier operating requirement. Because the need for emergency egress is not limited to operations under Part 121, the reference to § 121.313(f) is inappropriate and would be deleted. Other nonsubstantive editorial changes would be made for clarity. The exception for airplanes of 20 seats or less presently contained in § 25.772 is not altered by this proposal. It must be noted, however, that the presence of a lockable door installed between the pilot compartment and the passenger compartment must be considered in determining compliance of such airplanes with § 25.805 (which would become § 25.807(f) under proposal No. 50).

41. By amending § 25.773, by revising paragraphs (b)(1)(i) and (b)(2), to read as follows:

§ 25.773 Pilot compartment view.

* * * * *

(b) * * *

(1) * * *

(i) Heavy rain at speeds up to 1.6 V_{s1} with lift and drag devices retracted; and

(ii) * * *

(2) The first pilot must have—

(i) A window that is openable under the conditions prescribed in paragraph (d)(1) of this section when the cabin is not pressurized, provides the view specified in that paragraph, and gives sufficient protection from the elements against impairment of the pilot's vision; or

(ii) An alternate means to maintain a clear view under the conditions specified in paragraph (b)(1) of this section, considering the probable damage due to a severe hail encounter.

* * * * *

Explanation: Section 25.773(b)(1)(i) would be revised for clarity and consistency with actual certification practice by specifying that all lift and drag devices, e.g., slats and spoilers as well as flaps, must be retracted. Section 25.773(b)(2) currently requires an openable clear vision window; however, other means of compliance, such as the use of a side window positioned to provide adequate forward vision without being subject to obscuration, have been found acceptable under the equivalent level of safety provisions of § 21.21(b)(2) of this chapter. Section 25.773(b)(2) would, therefore, be amended to allow alternate means of maintaining clear vision.

§ 25.779 [Amended]

42. By amending § 25.779, paragraph (b)(1), by removing the word "Throttles" and inserting the words "Power or thrust" in its place.

Explanation: The words "Power or thrust" would be substituted for "Throttles," which is a misnomer when applied to turbine engines.

§ 25.781 [Amended]

43. By amending § 25.781 by removing the diagram caption "THROTTLE CONTROL KNOB" and inserting the term "POWER OR THRUST CONTROL KNOB" in its place, and removing the diagram caption "RPM CONTROL KNOB" and inserting the term "PROPELLER CONTROL KNOB" in its place.

Explanation: The words "POWER or THRUST" would be substituted for "THROTTLE," which is a misnomer when applied to turbine engines. The word "PROPELLER" would be substituted for "RPM" for consistency with § 25.779.

44. By revising § 25.783, paragraph (g), to read as follows:

§ 25.783 Doors

* * * * *

(g) Cargo and service doors not suitable for use as emergency exists need only meet paragraphs (e) and (f) of this section and be safeguarded against opening in flight as a result of mechanical failure of a single structural element.

* * * * *

Explanation: As a result of adverse service experience with certain external doors, including cargo doors in particular, Amendment 25–24 introduced requirements that external doors must have provisions to prevent pressurization of the airplane to an unsafe level if the door is not fully closed and locked and that it be shown by analysis that inadvertent opening is extremely improbable. These requirements were introduced as new § 25.783(f), and existing § 25.783(f) was reidentified as new § 25.783(g). Due to the editorial structure of existing § 25.783(f) and new § 25.783(g), cargo and service doors were inadvertently exempted from compliance with the new requirements even though the new requirements were largely prompted by such doors. Section 25.783(g) would, therefore, be amended to correct this inadvertence.

45. By revising § 25.785 to read as follows:

§ 25.785 Seats, berths, safety belts, and harnesses.

(a) A seat (or berth for a nonambulant person) must be provided for each occupant who has reached his or her second birthday.

(b) Each seat, berth, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in § 25.561.

(c) Each seat or berth must be approved.

(d) Each occupant of a seat that makes more than an 18 degree angle with the vertical plane containing the airplane centerline must be protected from head injury by a safety belt and an energy absorbing rest that will support the arms, shoulders, head, and spine, or by a safety belt and shoulder harness that will prevent the head from contacting any injurious object. Each occupant of any other seat must be protected from head injury by a safety belt and, as appropriate to the type, location, and angle of facing of each seat, by one or more of the following:

(1) A shoulder harness that will prevent the head from contacting any injurious object.

(2) The elimination of any injurious object within striking radius of the head.

(3) An energy absorbing rest that will support the arms, shoulders, head, and spine.

(e) Each berth must be designed so that the forward part has a padded end board, canvas diaphragm, or equivalent means, that can withstand the static load reaction of the occupant when subjected to the forward inertia force specified in § 25.561. For berths, the forward inertia force need not be considered with respect to the safety belt. Berths must be free from corners and protuberances likely to cause injury to a person occupying the berth during emergency conditions.

(f) Each seat or berth, and its supporting structure, and each safety belt or harness must be designed for an occupant weight of 170 pounds, considering the maximum load factors, inertia forces, and reactions among the occupant, seat, safety and harness for each relevant flight and ground load condition (including the emergency landing conditions prescribed in § 25.561). In addition—

(1) The structural analysis and testing of the seats, berths, and their supporting structures may be determined by assuming that the critical load in the forward, sideward, downward, and rearward directions (as determined from the prescribed flight, ground, and emergency landing conditions) acts separately and using selected combinations of loads if the required strength in each specified direction is substantiated.

(2) Each pilot seat must be designed for the reactions resulting from the application of the pilot forces prescribed in § 25.395.

(3) The inertia forces specified in § 25.561 must be multiplied by a factor of 1.33 (instead of the fitting factor prescribed in § 25.625) in determining the strength of the attachment of each seat to the structure and each belt or harness to the seat or structure.

(g) Each seat at a flight deck station must have a restraint system consisting of a combined safety belt and shoulder harness with a single-point release that permits the flight deck occupant, when seated with the restraint system fastened, to perform all of the occupant's necessary flight deck functions. There must be a means to secure each combined restraint system when not in use to prevent interference with the operation of the airplane and with rapid egress in an emergency.

(h) Each seat located in the passenger compartment and designated for the use of a flight attendant during takeoff and landing must be:

(1) Near a required floor level emergency exit, except that another location is acceptable if the emergency egress of passengers would be enhanced with that location. A flight attendant seat must be located adjacent to each Type A emergency exit. Other flight attendant seats must be evenly distributed among the required floor level emergency exits to the extent feasible.

(2) To the extent possible, without compromising proximity to a required floor level emergency exit, located to provide a direct view of the cabin area for which the flight attendant is responsible.

(3) Positioned so that the seat will not interfere with the use of a passageway or exit when the seat is not in use.

(4) Located to minimize the probability of the occupants suffering injury by being struck by items dislodged from service areas or service equipment.

(5) Either forward or rearward facing with an energy absorbing rest that is designed to support the arms, shoulders, head and spine.

(6) Equipped with a restraint system consisting of a combined safety belt and shoulder harness unit with a single point release. There must be means to secure each restraint system when not in use to prevent interference with rapid egress in an emergency.

(i) Each safety belt must be equipped with a metal to metal latching device.

(j) If the seat backs do not provide a firm handhold, there must be a handgrip or rail along each aisle to enable persons to steady themselves while using the aisles in moderately rough air.

(k) Each projecting object that would injure persons seated or moving about the airplane in normal flight must be padded.

(l) Each forward observer's seat required by the operating rules must be shown to be suitable for use in conducting the necessary enroute inspection.

Explanation: A number of changes would be made to this section for clarity and editorial improvement. In addition, the requirement presently contained in § 25.1307 to provide a seat for each occupant would be transferred to this section for editorial convenience and relaxed to allow use of a berth in lieu of a seat for a nonambulant occupant. Although § 25.1307 states that a seat must be provided for "each occupant", the section has not been interpreted to require seats for infants. This section would, therefore, be clarified by specifically stating that it applies only to persons that are two years of age or older for consistency with actual certification practice and corresponding § 121.311 of this chapter. Section 25.785(h) would be amended to permit placing a flight attendant seat at a location other than near a floor level emergency exit if the emergency egress of passengers would be enhanced by that location. In addition, § 25.785(h) (new) would be rearranged for clarity. The strength requirements presently contained in § 25.1413(b) and (c) for safety belts and harnesses would be transferred to § 25.785 and combined with the same requirements for seats and berths. A corresponding conforming change would also be made to § 25.625. The contents of § 25.1413(d) concerning belts with metal to metal latching devices would also be transferred to § 25.785 for editorial improvement.

46. By revising § 25.791 to read as follows:

§ 25.791 Passenger information signs and placards.

(a) If smoking is to be prohibited, there must be a placard so stating that is legible to each person seated in the cabin. If smoking is to be allowed, and if the crew compartment is separated from the passenger compartment, there must be at least one sign notifying when smoking is prohibited. Signs which notify when smoking is prohibited must be operable from either pilot seat and, when illuminated, must be legible under all probable conditions of cabin illumination to each person seated in the cabin.

(b) Signs that notify when seat belts should be fastened and that are installed to comply with the operating rules of this chapter must be operable from either pilot seat and, when illuminated, must be legible under all probable conditions of cabin illumination to each person seated in the cabin.

(c) A placard must be located on or adjacent to the door of each receptacle used for the disposal of flammable waste materials to indicate that use of the receptacle for disposal of cigarettes, etc., is prohibited.

(d) Lavatories must have placards conspicuously located on or adjacent to each side of the entry door to indicate that smoking in the lavatory is prohibited.

(e) Symbols that clearly express the intent of the sign or placard may be used in lieu of letters.

Explanation: Section 25.853 contains type certification requirements for "no smoking signs" and signs indicating that disposal of cigarettes in receptacles intended for flammable waste is prohibited. The requirements for such signs would be transferred from § 25.853 to § 25.791 for editorial improvement and would be stated in objective terms. Alternate means of compliance would be provided by the addition of § 25.791(e) which would allow the use of acceptable symbols in lieu of letters.

§ 25.801 [Amended]

47. By amending § 25.801, paragraph (a), by removing the regulatory reference "§ 25.807(d)" and inserting "§ 25.807(e)" in its place.

Explanation: See proposal No. 50.

48. By amending § 25.803 by removing paragraphs (b) and (d) and marking them [Reserved] and revising paragraphs (a) and (c) to read as follows:

§ 25.803 Emergency evacuation.

(a) Each crew and passenger area must have emergency means to allow rapid evacuation in crash landings, with the landing gear extended as well as with the landing gear retracted, considering the possibility of the airplane being on fire.

(b) [Reserved]

(c) For airplanes having a seating capacity of more than 44 passengers, it must be shown that the maximum seating capacity, including the number of crewmembers required by the operating rules for which certification is requested, can be evacuated from the airplane to the ground under simulated emergency conditions within 90 seconds. Compliance with this requirement must be shown by actual demonstration using the test criteria outlined in Appendix I of this part unless the Administrator finds that a combination of analysis and testing will provide data equivalent to that which would be obtained by actual demonstration.

(d) [Reserved]

* * * * *

Explanation: The emergency evacuation test criteria presently contained in paragraph (c) would be transferred to new Appendix I for clarity and editorial consistency with the corresponding requirements of Part 121 of this chapter. Current § 25.803(b) would be removed, and nonredundant material from that section would be transferred to § 25.807 for consistency and clarity.

§ 25.805 [Removed]

49. By removing § 25.805.

Explanation: See Proposal No. 50.

50. By revising § 25.807 to read as follows:

§ 25.807 Emergency exits.

(a) *Type.* For the purpose of this Part, the types of exits are defined as follows:

(1) *Type I.* This type is a floor level exit with a rectangular opening of not less than 24 inches wide by 48 inches high, with corner radii not greater than one-third the width of the exit.

(2) *Type II.* This type is a rectangular opening of not less than 20 inches wide by 44 inches high, with corner radii not greater than one-third the width of the exit. Type II exits must be floor level exits unless located over the wing, in which case they may not have a step-up inside the airplane of more than 10 inches nor a step-down outside the airplane of more than 17 inches.

(3) *Type III.* This type is a rectangular opening of not less than 20 inches wide by 36 inches high, with corner radii not greater than one-third the width of the exit, and with a step-up inside the airplane of not more than 20 inches. If the exit is located over the wing, the step-down outside the airplane may not exceed 27 inches.

(4) *Type IV.* This type is a rectangular opening of not less than 19 inches wide by 26 inches high, with corner radii not greater than one-third the width of the exit, located over the wing, with a step-down inside the airplane of not more than 29 inches and a step-down outside the airplane of not more than 36 inches.

(5) *Ventral.* This type is an exit from the passenger compartment through the pressure shell and the bottom fuselage skin. The dimensions and physical configuration of this type of exit must allow at least the same rate of egress as a Type I exit with the airplane in the normal ground attitude, with landing gear extended, and at least the same rate of egress as a Type III exit with the airplane in the most adverse exit opening condition that would result from the collapse of one or more legs of the landing gear.

(6) *Tail cone.* This type is an aft exit from the passenger compartment through the pressure shell and through an openable cone of the fuselage aft of the pressure shell. The dimensions and physical configuration of this type of exit must allow at least the same rate of egress as a Type III exit with the airplane in the most adverse exit opening condition that would result from the collapse of one or more legs of the landing gear. The means of opening the tail cone must be simple and obvious and must employ a single operation.

(7) *Type A.* This type is a floor level exit with a rectangular opening of not less than 42 inches wide by 72 inches high with corner radii not greater than one-sixth of the width of the exit.

(b) *Step down distance.* Step down distance, as used in this section, means the actual distance between the bottom of the required opening and a usable foot hold, extending out from the fuselage, that is large enough to be effective without searching by sight or feel.

(c) *Over-sized exits.* Openings larger than those specified in this section, whether or not of rectangular shape, may be used if the specified rectangular opening can be inscribed within the opening and the base of the inscribed rectangular opening meets the specified step-up and step down heights.

(d) *Passenger emergency exits.* Except as provided in paragraphs (3) through (5) of this paragraph, the minimum number and type of passenger emergency exits is as follows:

(1) For passenger seating configurations of 1 through 299 seats:

Passenger seating configuration (crewmember seats not included)	Emergency exits for each side of the fuselage			
	Type I	Type II	Type III	Type IV
1 through 9				1
10 through 19			1	
20 through 39		1	1	
40 through 79	1		1	
80 through 109	1		2	
110 through 139	2		1	
140 through 179	2		2	

Additional exits are required for passenger seating configurations greater than 179 seats in accordance with the following table:

Additional emergency exits (each side of fuselage)	Increase in passenger seating configuration allowed
Type A	110
Type I	45
Type II	40
Type III	35

(2) For passenger seating configurations greater than 299 seats, each emergency exit in the side of the fuselage must be either a Type A or Type I. A passenger seating configuration of 110 seats is allowed for each pair of Type A exits and a passenger seating configuration of 45 seats is allowed for each Type I exits.

(3) If a passenger ventral or tail cone exit is installed, an increase in the passenger seating configuration beyond the limits specified in paragraph (d) (1) or (2) of this section may be allowed as follows:

(i) For a ventral exit, 12 additional passenger seats.

(ii) For a tail cone exit incorporating a floor level opening of not less than 20 inches wide by 60 inches high, with corner radii not greater than one-third the width of the exit, in the pressure shell and incorporating an approved assist means in accordance with § 25.809(h), 25 additional passenger seats.

(iii) For a tail cone exit incorporating an opening in the pressure shell which is at least equivalent to a Type III emergency exit with respect to dimensions, step-up and step-down distance, and with the top of the opening not less than 56 inches from the passenger compartment floor, 15 additional passenger seats.

(4) For airplanes on which the vertical location of the wing does not allow the installation of overwing exits, an exit of at least the dimensions of a Type III exit must be installed instead of each Type IV exit required by paragraph (d)(1) of this section.

(5) An alternate emergency exit configuration may be approved in lieu of that specified in paragraph (d) (1) or (2) of this section provided the overall evacuation capability is shown to be equal to or greater than that of the specified emergency exit configuration.

(6) The following must also meet the applicable emergency exit requirements of §§ 25.809 through 25.813:

(i) Each emergency exit in the passenger compartment in excess of the minimum number of required emergency exits.

(ii) Any other floor level exit that is accessible from the passenger compartment and is as large or larger than a Type II exit, but less than 46 inches wide.

(iii) Any other passenger ventral or tail cone exit.

(e) *Ditching emergency exits for passengers.* Ditching emergency exits must be provided in accordance with the following requirements whether or not certification with ditching provisions is requested:

(1) For airplanes that have a passenger seating configuration of nine seats or less, excluding pilots seats, one exit above the waterline in each side of the airplane, meeting at least the dimensions of a Type IV exit.

(2) For airplanes that have a passenger seating configuration of 10 seats or more, excluding pilots seats, one exit above the waterline in a side of the airplane, meeting at least the dimensions of a Type III exit for each unit (or part of a unit) of 35 passenger seats, but no less than two such exits in the passenger cabin, with one on each side of the airplane. The passenger seat/exit ratio may be increased through the use of larger exits, or other means, provided it is shown that the evacuation capability during ditching has been improved accordingly.

(3) If it is impractical to locate side exits above the waterline, the side exits must be replaced by an equal number of readily accessible overhead hatches of not less than the dimensions of a Type III exit, except that for airplanes with a

passenger configuration of 35 seats or less, excluding pilots seats, the two required Type III side exits need be replaced by only one overhead hatch.

(f) *Flightcrew emergency exits.* For airplanes in which the proximity of passenger emergency exits to the flightcrew area does not offer a convenient and readily accessible means of evacuation of the flightcrew, and for all airplanes having a passenger seating capacity greater than 20, flightcrew exits shall be located in the flightcrew area. Such exits shall be of sufficient size and so located as to permit rapid evacuation by the crew. One exit shall be provided on each side of the airplane, or, alternatively, a top hatch shall be provided. Each exit must encompass an unobstructed rectangular opening of at least 19 by 20 inches unless satisfactory exit utility can be demonstrated by a typical crewmember.

Explanation: The following changes would be made for consistency, clarity and editorial improvement: The requirements of § 25.805 would be reworded and transferred to new § 25.807(f). The requirements of § 25.807(a)(7)(iii), (iv) and (v) would be transferred to § 25.813(a). The requirement of § 25.807(a)(7)(vi) would be transferred to § 25.785(h)(1). The requirement of § 25.807(a)(7)(vii) would be deleted because it is covered by existing § 25.813(b). The requirements of § 25.807(a)(7)(viii) would be transferred to § 25.809(f) and (h). The requirement of § 25.807(a)(7)(ix) would be transferred to § 25.809(f). The closing statement of § 25.807(a) concerning stepdown distance, which has erroneously been shown as part of § 25.807(a)(7)(ix) in some printings of Part 25, would be reidentified as new § 25.807(b). The introductory sentence of current § 25.807(b) and the introductory paragraph of § 25.807(c) would be transferred to § 25.813. The remainder of current § 25.807(b) would be reidentified as new § 25.807(c), and the balance of current § 25.807(c) would be reidentified as new § 25.807(d). New § 25.807(d)(5) would be added to provide for alternate emergency exit configurations. Such alternate configurations have previously been approved under the equivalent level of safety provisions of § 21.21(b)(1) of this Chapter. The requirements of current § 25.803(b) would be transferred to § 25.807 and combined with those of new § 25.807(d)(6) because the intent of the two paragraphs is similar. In an emergency situation, passengers will tend to use any exit that appears to be available and not just those designated for compliance with the minimum number of emergency exits specified in § 25.807. In order to assure the unhampered egress of any passengers attempting to use such exits, §§ 25.803(b) and current 25.807(c)(6) (which would become new § 25.807(d(6)) require excess emergency exits and certain other exits to meet the same standards as those designated for compliance with the minimum number specified in § 25.807. The requirements of the two paragraphs would, therefore, be combined for consistency and clarity.

51. By amending § 25.809 by revising paragraph (h), and the introductory text of paragraph (f) and by revising (f)(1) and by adding (f)(3) and (f)(4) to read as follows:

§ 25.809 Emergency exit arrangement.

* * * * *

(f) Except as provided in subparagraphs (3) and (4) of this paragraph, each landplane emergency exit more than 6 feet from the ground with the airplane on the ground and the landing gear extended must have an approved means to assist the occupants in descending to the ground.

(1) The assisting means for each passenger emergency exit must be a self supporting slide or equivalent; and, in the case of a Class A exit, it must be capable of carrying simultaneously two parallel lines of evacuees. In addition, the assisting means must be designed to meet the following requirements:

* * * * *

(3) Assist means are not required for Type I through IV exits that are located above the wing nor for Type A exits that are located above the wing and have no stepdown.

(4) Assist means are required for each type A exit located above the wing and having a stepdown unless the exit without an assist means can be shown to have a rate of passenger egress at least equal to that of the same type of non-over-wing exit.

* * * * *

(h) If the place on the airplane structure at which the escape route required in § 25.803(c) terminates is more than 6 feet from the ground with the airplane on the ground and the landing gear extended, means to reach the ground must be provided to assist evacuees who have used the escape route. If the escape route is over a flap, the height of the terminal edge must be measured with the flap in the takeoff or landing position, whichever is higher from the ground. The assisting means must be usable and self-supporting with one or more landing gear legs collapsed and under the most adverse anticipated wind conditions. The assisting means provided for each escape route leading from a Type A emergency exit must be capable of carrying simultaneously two parallel lines of evacuees.

* * * * *

Explanation: The present reference in paragraph (h) to § 25.803(e) would be changes to § 25.803(d) to conform to the proposed change to § 25.803. (See proposal No. 48.) The requirements of current § 25.807(a)(7)(viii) would be transferred to § 25.809 (f) and (h) for consistency and editorial improvement. The requirement of § 25. 807(a)(7)(ix) would also be transferred to § 25.807(f) for consistency and editorial improvements.

52. By amending § 25.813 by adding a new introductory paragraph and by revising paragraph (a) to read as follows:

§ 25.813 Emergency exist access.

Each required emergency exit must be acessible to the passengers and located where it will afford an effective means of evacuation. Emergency exit distribution must be as uniform as practical, taking passenger distribution into account; however, the size and location of exits on both sides of the cabin need not be symmetrical. If only one floor level exit per side is prescribed, and the airplane does not have a tail cone or ventral emergency exit, the floor level exit must be in the rearward part of the passenger compartment, unless another location affords a more effective means of passenger evacuation. Where more than one floor level exit per side is prescribed, at least one floor level exit per side must be located near each end of the cabin, except that this provision does not apply to combination cargo/passenger configurations. In addition—

(a) There must be a passageway leading from each main aisle to each Type I, Type II, or Type A emergency exit and between individual passenger areas. If two nor more main aisles are provided, there must be a cross aisle leading directly to each passageway between the exit and the nearest main aisle. Each passageway leading to a Type A exit must be unobstructed and at least 36 inches wide. Other passageways and cross aisles must be unobstructed and at least 20 inches wide. Unless there are two or more main aisles, each Type A exit must be located so that there is passenger flow along the main aisle to that exit from both the forward and aft direction.

* * * * *

Explanation: The requirements of current § 25.807(a)(7) and certain portions of those of § 25.807 (b) and (c) would be transferred to this section for consistency and editorial improvement. (See proposal No. 50.)

53. By revising § 25. 833 to read as follows:

§ 25.833 Combustion heating systems.

Combustion heaters must be approved.

Explanation: Redundant material would be removed in the interest of simplicity. The title would also be revised to reflect the revised scope of § 25.833. (The term "approved" when used in Part 25 in this context, means that the product must comply with an applicable Technical Standard Order or, in lieu thereof, be approved in conjunction with the type certification process for the airplane on which it is to be installed.)

54. By amending § 25.851 by revising paragraphs (a) and (b)(1) to read as follows:

§ 25.851 Fire extinguishers.

(a) Hand fire extinguishers. (1) the following minimum number of hand fire extinguishers must be conveniently located in passenger compartments:

Passenger capacity	Number of extinguishers
7 through 30	1
31 through 60	2
61 or more	3

(2) At least one hand fire extinguisher must be conveniently located in the pilot compartment.

(3) A readily accessible hand fire extinguisher must be available for use in each Class A or Class B cargo compartment.

(4) Each hand fire extinguisher must be approved.

(5) The types and quantities of each extinguishing agent used must be appropriate to the kinds of fires likely to occur where used.

(6) Each extinguisher for use in a personnel compartment must be designed to minimize the hazard of toxic gas concentration.

(b) * * *

(1) The capacity must be adequate for any fire likely to occur in the compartment where used, considering the volume of the compartment and the ventilation rate; and

* * * * *

Explanation: Due to an apparent editorial error, § 25.851(b) implies that the requirements of that paragraph do not apply to fire extinguishment systems installed in addition to those required by the minimum standards of Part 25. Whether or not a fire extinguishment system is "required" is obviously irrelevant insofar as the potential hazards to the occupants that may be created by that system are concerned. This change would state the requirements of the rule more clearly. Other nonsubstantive changes would also be made for clarity.

55. By revising § 25.853 to read as follows:

§ 25.853 Compartment interiors.

(a) For each compartment occupied by the crew or passengers, the following apply:

(1) Materials must meet the applicable test criteria prescribed in Appendix F of this part.

(2) If smoking is to be allowed:

(i) An adequate number of self-contained, removable ashtrays must be provided for all seated occupants, and

(ii) Lavatories must have self-contained removable ashtrays located conspicuously on or near the entry side of each lavatory door, except that one ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory served.

(3) Each receptacle used for the disposal of flammable waste material must be fully enclosed, constructed of at least fire resistant materials, and must contain fires likely to occur in it under normal use. The ability of the receptacle to contain those fires under all probable conditions of wear, misalignment, and ventilation expected in service must be demonstrated by test.

(b) For each cargo and baggage compartment not occupied by crew or passengers, the following apply:

(1) Materials must meet the applicable test criteria prescribed in Appendix F of this part.

(2) No compartment may contain any controls, wiring, lines, equipment, or accessories whose damage or failure would affect safe operation, unless those items are protected so that—

(i) They cannot be damaged by the movement of cargo in the compartment, and

(ii) Their breakage or failure will not create a fire hazard.

(3) There must be means to prevent cargo or baggage from interfering with the functioning of the fire protective features of the compartment.

(4) Sources of heat within the compartment must be shielded and insulated to prevent igniting the cargo.

(5) Cargo compartments must meet one of the class requirement of § 25.857.

(6) Flight tests must be conducted to show compliance with the provisions of § 25.857 concerning—

(i) Compartment accessibility,

(ii) The entries of hazardous quantities of smoke or extinguishing agent into compartments occupied by the crew or passengers, and

(iii) The dissipation of the extinguishing agent in Class C compartments.

(7) During the above tests, it must be shown that no inadvertent operation of smoke or fire detectors in any compartment would occur as a result of fire contained in any other compartment, either during or after extinguishment, unless the extinguishing system floors each compartment simultaneously.

Explanation: The test criteria presently contained in §§ 25.853, 25.855, and 25.1359 would be transferred to Appendix F for editorial improvement and consistency. (See proposal No. 98.) The requirement for "no smoking" signs would be transferred to § 25.791 for consistency with other passenger information sign requirements. The remaining nonredundant portions of § 25.855 for cargo and baggage compartments would be transferred to § 25.853 and combined with those for crew or passenger compartments. Section 25.853 presently requires lavatory ashtrays for airplanes in which smoking is not allowed as well as for those in which smoking is allowed. The presence of lavatory ashtrays in airplanes in which smoking is not allowed appears to be a counterproductive invitation to smoke even though smoking is not allowed anywhere in the airplane.

Section 25.853 would, therefore, be amended to require lavatory ashtrays only if smoking is to be allowed in other portions of the airplane.

§ 25.855 [Removed]

56. By removing § 25.855.

Explanation: See proposal No. 55.

§ 25.867 [Removed]

57. By removing § 25.867.

Explanation: Section 25.867 and predecessor regulations require certain surfaces aft of the nacelles to be fire resistant. Section 25.1193(e) and predecessor regulations cover the same subject in a more comprehensive and objective manner. As § 25.867 could be misleading if not read in context with § 25.1193(e), it would be removed.

58. By adding a new § 25.869 as follows:

§ 25.869 Fire protection: Systems.

(a) Electrical system components:

(1) Components of the electrical system must meet the applicable fire and smoke protection requirements of §§ 25.831(c) and 25.863.

(2) Electrical cables, terminals, and equipment in designated fire zones, that are used during emergency procedures, must be at least fire resistant.

(3) Main power cables (including generator cables) in the fuselage must be designed to allow a reasonable degree of deformation and stretching without failure and must be—

(i) Isolated from flammable fluid lines; or

(ii) Shrouded by means of electrically insulated, flexible conduit, or equivalent, which is in addition to the normal cable insulation.

(4) Insulation on electrical wire and electrical cable installed in any area of the fuselage must be self-extinguishing when tested in accordance with the applicable portions of Appendix F.

(b) Each vacuum air system line and fitting on the discharge side of the pump that might contain flammable vapors or fluids must meet the requirements of § 25.1183 if the line or fitting is in a designated fire zone. Other vacuum air systems components in designated fire zones must be at least fire resistant.

(c) Oxygen equipment and lines must—

(1) Not be located in any designated fire zone,

(2) Be protected from heat that may be generated in, or escape from, any designated fire zone, and

(3) Be installed so that escaping oxygen cannot cause ignition of grease, fluid, or vapor accumulations that are present in normal operation or as a result of failure or malfunction of any system.

Explanation: This would be a clarifying editorial change in which all fire protection requirements for systems would be combined and transferred to subpart D as new § 25.869 under the heading "Fire protection." Section 25.1359 would become § 25.869(a) except for test acceptance criteria which would be transferred to Appendix F. Sections 25.1433 (b) and (c) would be combined as § 25.869(b), and § 25.1451 would become § 25.869(c). Both would incorporate minor editorial changes.

59. By revising § 25.901, paragraph (c), to read as follows:

§ 25.901 Installation.

* * * * *

(c) For each powerplant and auxiliary power unit installation, it must be established that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane except that the failure of structural elements need not be considered if such failure is extremely improbable.

* * * * *

Explanation: This would be a clarifying change to substitute current probability terminology. Use of the term "extremely improbable" in this context does not imply that a numerical analysis of failure rates is required.

60. By amending § 25.903 by adding a new paragraph (f) to read as follows:

§ 25.903 Engines.

* * * * *

(f) *Auxiliary Power Unit.* Each auxiliary power unit must be approved or meet the requirements of the category for its intended use.

Explanation: Requirements for auxiliary power units (APU) are, for the most part, presented with the corresponding requirements for propulsion engines in Part 25. This would be a nonsubstantive editorial change to present the requirement for APU qualification in § 25.901 along with the analogous requirement for propulsion engine certification.

61. By amending § 25.905 by adding a new paragraph (d) to read as follows:

§ 25.905 Propellers.

* * * * *

(d) Design precautions must be taken to minimize the hazards to the airplane in the event a propeller blade fails or is released by a hub failure.

Explanation: See proposal No. 27.

§ 25.925 [Amended]

62. By amending § 25.925, paragraph (a), by removing the word "tire" in the last sentence and inserting the word "tire(s)" in its place.

Explanation: The requirement to show positive clearance with the critical tire deflated and the corresponding strut deflated was introduced into both Parts 3 and 4b of the Civil Air Regulations (CAR) during the late 1940's. (Parts 3 and 4b of the CAR are predecessors of Parts 23 and 25 of the FAR, respectively.) Although "tire" is singular, it was interpreted at that time to mean "tires" in the case of airplanes with dual wheels. This was well understood at the time; however, preoccupation with turbojet aircraft over the past two decades has resulted in confusion. This change would clarify the intent of § 25.925(a) and ensure that it is applied correctly.

63. By revising § 25.933 to read as follows:

§ 25.933 Reversing systems.

(a) For turbojet reversing systems—

(1) Each system intended for ground operation only must be designed so that during any reversal in flight the engine will produce no more than flight idle thrust. In addition, it must be shown by analysis or test, or both, that—

(i) Each operable reverser can be restored to the forward thrust position; and

(ii) The airplane is capable of continued safe flight and landing under any possible position of the thrust reverser.

(2) Each system intended for inflight use must be designed so that no unsafe condition will result during normal operation of the system, or from any failure (or reasonably likely combination of failures) of the reversing system, under any anticipated condition of operation of the airplane including ground operation. Failure of structural elements need not be considered if the probability of this kind of failure is extremely improbable.

(3) Each system must have means to prevent the engine from producing more than idle thrust when the reversing system malfunctions, except that it may produce any greater forward thrust that is shown to allow directional control to be maintained, with aerodynamic means alone, under the most critical reversing condition expected in operation.

(b) For propeller reversing systems—

(1) Each system intended for ground operation only must be designed so that no single failure (or reasonably likely combination of failures) or malfunction of the system will result in unwanted reverse thrust under any expected operating condition. Failure of structural elements need not be considered if this kind of failure is extremely improbable.

(2) Compliance with this section may be shown by failure analysis or testing, or both, for propeller systems that allow propeller blades to move from the flight low-pitch position to a position that is substantially less than that at the normal flight low-pitch position. The analysis may include or be supported by the analysis made to show compliance with the requirements of § 35.21 of this chapter for the propeller and associated installation components.

Explanation: Unwanted, inflight deployments of thrust reversing systems have occurred on turbojet powered transport airplanes, sometimes with catastrophic results. To preclude further catastrophic occurrences of this nature, §25.933 was amended to require showing that the reverser can be restored to the forward flight position *or* that the airplane is capable of continued safe flight and landing under any possible position of the thrust reverser. Shortly after § 25.933 was amended, it was recognized that the change failed to achieve the intended level of safety due to the use of the word "or." An unwanted, inflight deployment is generally accompanied by damage to the reversing system due to the dynamic nature of the deployment, particularly at high speed. Although it might be demonstrated that an undamaged reverser could be restored to the forward thrust position, there is no assurance that the reverser could be restored in an actual unwanted, inflight deployment due to the possibility of unpredictable damage. It is, therefore, essential that the airplane be capable of continued safe flight and landing under any possible position of the thrust reverser. Conversely, it is also essential that an operable reverser be restored to the forward thrust position whenever possible. In view of the above, the word "or" would be replaced with the word "and" to require showing that the reverser can be restored to the forward thrust position, if undamaged, *and* that the airplane is capable of continued safe flight and landing under any possible position of the thrust reverser. With this change, § 25.933 would be consistent with the original intent of this rule and with industry practice, and would, therefore, introduce no additional burden. Prior to the amendment of § 25.933, paragraph (a) clearly applied to all reversing systems intended for ground use only, including reversible pitch propellers. Due to an inadvertence, § 25.933(a) can now be erroneously interpreted to apply only to turbojet airplanes. The proposed change would clarify the applicability of this section. Certain other editorial changes would also be made for the sake of clarity. The use of the term "extremely improbable" in this context does not mean that a numerical analysis of failure rates is required.

§ 25.937 [Amended]

64. By amending § 25.937 by inserting the word "of" after the word "any" in the first sentence and by removing the word "remote" in the second sentence and inserting the word "improbable" in its place.

Explanation: This would be a clarifying change to correct an editorial error and utilize current probability terminology. The use of the term "extremely improbable" in this context does not mean that a numerical analysis of failure rates is required.

§ 25.945 [Amended]

65. By amending § 25.945 by removing paragraph (b)(4) and marking it [Reserved].

Explanation: The requirement for marking the augmentation system tank filler openings would be transferred from § 25.945 to § 25.1557 for editorial convenience and clarity.

§ 25.973 [Amended]

66. By amending § 25.973 by removing paragraph (a) and marking it [Reserved].

Explanation: The reference to § 25.1557(c) for fuel filler opening markings is erroneous, and a corrected reference to § 25.1557(b)(1) would be redundant. Section 25.973(a) would, therefore, be removed in its entirety.

67. By revising § 25.979, paragraph (b)(2), to read as follows:

§ 25.979 Pressure fueling system.

* * * * *

(b) * * *

(2) Provide indication at each fueling station of failure of the shutoff means to stop the fuel flow at the maximum quantity approved for that tank.

* * * * *

Explanation: The term "desired level" presently contained in § 25.979(b)(2) has been misinterpreted to mean a chosen intermediate quantity of fuel. This change would clarify the intent by substituting the phrase "maximum quantity approved for that tank."

68. By revising § 25.1013, paragraph (c), to read as follows:

§ 25.1013 Oil tanks.

* * * * *

(c) *Filler connection.* Each recessed oil tank filler connection that can retain any appreciable quantity of oil must have a drain that discharges clear of each part of the airplane. In addition, each oil tank filler cap must provide an oil-tight seal.

* * * * *

Explanation: Section 25.1013(c)(2) contains an unnecessary reference to § 25.1557(b)(2). This reference would be removed for consistency with action proposed with regard to fuel and augmentation system fluids. (See proposals Nos. 65 and 66, respectively.)

69. By revising § 25.1093, paragraph (b)(1), to read as follows:

§ 25.1093 Induction system deicing and anti-icing provisions.

* * * * *

(b) *Turbine engines.* (1) Each turbine engine must operate throughout the flight power range of the engine (including idling), without the accumulation of ice on the engine, inlet system components, or airframe components that would adversely affect engine operation or cause a serious loss of power or thrust—

(i) Under the icing conditions specified in Appendix C, and

(ii) In falling and blowing snow within the limitations established for the airplane for such operation.

* * * * *

Explanation: Historically, turbine engine induction systems, as well as analogous reciprocating engine carburetor heat rise systems, have been required to meet specified standards regardless of whether the airplane is approved for operation in icing conditions. An airplane may inadvertently enter unseen icing conditions, and any difficulty experienced due to the accumulation of ice on the airframe must not be compounded due to a loss of power or thrust caused by engine icing. Due to an editorial error introduced with Amendment 25–40, the phrase, "within the limitations established for the airplane," implies that an operational limitation may be accepted in lieu of providing the capability to operate the engines safely in icing conditions. The proposed change would correct this editorial error by clarifying that the phrase, "within the limitations established for the airplane," applies only to operation in snow. Due to the difference in the standard of ice protection required for the engines and that required by § 25.1419 for the airplane in general, the term "inlet system components" is interpreted to include any portion of the airframe from which accumulated ice could be ingested. Section 25.1093(b)(1) would be amended to ensure that such airframe components are not overlooked during the evaluation of the engine installation.

70. By adding § 25.1141, paragraph (e), to read as follows:

§ 25.1141 Powerplant controls: General.

* * * * *

(e) The portion of each powerplant control located in the engine compartment that is required to be operated in the event of fire must be at least fire resistant.

* * * * *

Explanation: A new paragraph (e) is proposed to clarify the requirement that the powerplant controls located in the engine compartment be at least fire resistant if those controls are required to be operated in the event of fire. This requirement is presently contained in

§ 25.863(b)(5), but it is proposed to specifically address it in this section for consistency with the corresponding paragraph in Part 23 of this chapter and to ensure that the requirement will not be overlooked.

71. By amending § 25.1165 by adding a new paragraph (h) to read as follows:

§ 25.1165 Engine ignition systems.

* * * * *

(h) Each engine ignition system of a turbine powered airplane must be considered an essential electrical load.

Explanation: Compliance with § 25.1309(e) presently requires such ignition systems to be considered essential electrical loads. This change would ensure that the requirement is not overlooked.

§ 25.1181 [Amended]

72. By amending § 25.1181, paragraph (b), by removing the reference to "§ 25.1205" and inserting "§ 25.1203" in its place.

Explanation: This would be a nonsubstantive change to correct an editorial error. The referenced § 25.1205 was previously recodified as § 25.867. Because § 25.1205 no longer exists and § 25.867 would be deleted, the reference to § 25.1205 would simply be removed. (See proposal No. 57.)

§ 25.1305 [Amended]

73. By amending § 25.1305 by removing paragraph (e)(3).

Explanation: Prior to Amendment 25–23, a means to indicate reverse pitch was required for reciprocating powered airplanes, and a means to indicate blade angle below the flight low pitch position (Beta) was required for turbopropeller airplanes. Due to an apparent editorial error, this section was revised to require both indicating means for turbopropeller aircraft. As the additional reverse indication serves no useful purpose for turbopropeller airplanes, § 25.1305 would be amended to specify that only Beta indication is required for turbopropeller airplanes.

§ 25.1307 [Amended]

74. By amending § 25.1307 by removing paragraph (a) and marking it [Reserved], and by removing paragraphs (f), (g) and (h).

Explanation: The contents of paragraph (a) would be transferred to § 25.785 for editorial improvement. Paragraph (f) would be removed because the requirement is already appropriately expressed in § 25.773(b)(1). Paragraph (g) would be removed because the requirement is already stated in § 25.1145. Paragraph (h) would be removed as it is an unnecessary reference to § 25.851(a) (5) and (6). (See proposals Nos. 43 and 54.)

75. By amending § 25.1351 by revising paragraphs (d) (1) and (2) to read as follows and by removing paragraph (d)(3):

§ 25.1351 General.

* * * * *

(d) * * *

(1) A single malfunction, including a wire bundle or junction box fire, cannot result in loss of both the part turned off and the part turned on; and

(2) The parts turned on are electrically and mechanically isolated from the parts turned off.

Explanation: Section 25.1351(d)(3) is misleading in that it implies that compliance with § 25.1359(d) is optional. As § 25.1359(d) is self-supporting, § 25.1351(d)(3) is unnecessary and would be removed. Nonsubstantive, related editorial changes would be made to § 25.1351(d) (1) and (2). Note that § 25.1359(d) would become new § 25.869(a)(4) in accordance with proposals Nos. 58 and 76.

§ 25.1359 [Removed]

76. By removing § 25.1359.

Explanation: See proposals Nos. 58 and 98.

77. By revising § 25.1381, paragraph (a)(1), to read as follows:

§ 25.1381 Instrument lights.

(a) * * *

(1) Provide sufficient illumination to make each instrument, switch, and other device necessary for safe operation easily readable; and

* * * * *

Explanation: The recodification of § 4b.630(a) of the Civil Air Regulations into § 25.1381(a)(1) of the FAR was not intended to result in any substantive change; however, due to the wording selected, § 25.1381(a) has been misinterpreted to mean that the illumination must make each instrument, switch, or other device readable only if there is any illumination provided for that instrument, switch, or other device. This change would clarify that sufficient illumination must be provided for each instrument, switch, and other device necessary for safe operation and not just those arbitrarily chosen for illumination.

§ 25.1403 [Removed]

78. By removing § 25.1403.

Explanation: See proposal No. 83.

§ 25.1411 [Amended]

79. By amending § 25.1411 by removing paragraphs (d), (e), (f) and (g).

Explanation: See proposal No. 61.

§ 25.1413 [Removed]

80. By removing § 25.1413.

Explanation: The requirements of § 25.1413(a) are an unnecessary duplication of § 25.791. The strength requirements of §§ 25.1413 (b) and (c) would be transferred to § 25.785 and combined with the same requirements for seats and berths. The contents of § 25.1413(d) concerning belts with metal to metal latching devices would also be transferred to § 25.785 for editorial improvement. (See proposals Nos. 45 and 46.)

81. By revising § 25.1415 to read as follows:

§ 25.1415 Ditching equipment.

(a) The following are required if certification with ditching provisions is requested:

(1) An approved life preserver stowed within easy reach of each occupant while seated.

(2) Approved life rafts with sufficient rated capacity to accommodate all occupants. In addition:

(i) Unless excess rafts are provided, the buoyancy and seating capacity beyond the rated capacity of the rafts must accommodate all occupants in the event of a loss of one raft of the largest capacity.

(ii) Rafts must be stowed near exits through which they can be launched during an unplanned ditching.

(iii) The stowage provisions for each portable raft must allow rapid detachment and removal of the raft for use at other than the intended exists.

(iv) Each raft must have a trailing line and a static line designed to hold the raft near the airplane, but to release it if the airplane becomes totally submerged. A raft that is automatically or remotely released outside the airplane must be attached to the airplane by the static line. Means must be provided to attach any other raft to the airplane by the static line.

(3) Provisions to store life lines that—

(i) Allow one life line to be attached to each side of the fuselage, and

(ii) Are arranged to allow the life lines to be used to enable the occupants to stay on the wing after ditching, if the exists are located such that the occupants may egress to the wing surface.

(4) Approved survival equipment attached to each liferaft.

(5) A survival type emergency locator transmitter for use in one liferaft that meets the requirements of TSO–C91 and that is stowed near in exit available during an unplanned ditching.

(b) If certification with ditching provisions is not requested and if approved life preservers are not provided, there must be an approved flotation means for each occupant. This means must be within easy reach of each seated occupant and must be readily removable from the airplane.

Explanation: The provisions of § 25.1411 (d) through (g) would be transferred and combined with those of § 25.1415 for consistency and clarity. Other changes would be made for clarity and to state the requirements in a more objective manner.

§ 25.1416 [Removed]

82. By removing § 25.1416.

Explanation:
See proposal No. 83.

83. By revising § 25.1419 to read as follows:

§ 25.1419 Ice protection.

(a) If fluids subject to freezing may be drained overboard in flight or during ground operation, the drains must be designed and located to prevent the formation of hazardous quantities of ice on the airplane as a result of the drainage.

(b) If certification with ice protection provisions is desired, the airplane must be able to safely operate in the continuous maximum and intermittent maximum icing conditions of Appendix C. To establish that the airplane can operate within the continuous maximum and intermittent maximum conditions of Appendix C:

(1) An analysis must be performed to establish that the ice protection for the various components of the airplane is adequate, taking into account the various airplane operational configurations; and

(2) To verify the ice protection analysis, to check for icing anomalies, and to demonstrate that the ice protection system and its components are effective, the airplane or its components must be tested in the various operational configurations, in measured natural atmospheric icing conditions and by one or more of the following tests, as found necessary:

(i) Laboratory dry air or simulated icing tests, or a combination of both, of the components or models of the components.

(ii) Flight dry air tests of the ice protection system as a whole, or of its individual components.

(iii) Flight tests of the airplane or its components in measured simulated icing conditions.

(3) Caution information, such as an amber caution light or equivalent, must be provided to alert the flightcrew when the anti-ice or deice system is not functioning normally.

(4) Unless operations at night in known or forecast icing conditions are prohibited by an operating limitation, a means must be provided for illuminating or otherwise determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation. Any illumination that is used must be of a type that will not cause glare or reflection that would handicap crewmembers in the performance of their duties.

(5) For turbine engine powered airplanes, the ice protection provisions of this section are considered to be applicable primarily to the airframe. For the powerplant installation, certain additional provisions of Subpart E of this Part may be found applicable.

Explanation: Sections 25.1403, 25.1416, and 25.1455 would be transferred to § 25.1419 clarification and editorial improvement. In addition to this consolidation, the contents of present § 25.1416(c) would be revised to allow use of the "dark cockpit concept," i.e., a warning when failure occurs rather than continual pilot monitoring of a healthy system. The "dark cockpit concept" has been found acceptable previously under the equivalent level of safety provisions of § 21.21(b)(1) of this chapter.

§ 25.1421 [Removed]

84. By removing § 25.1421.

Explanation: Section 25.1421 specifies that megaphones must be restrained when subject to the ultimate forces specified in § 25.561(b)(3). Paragraphs 25.561 (a) and (c), however, require such restraint for all such items of mass, including megaphones. Section 25.1421 would, therefore, be deleted to remove this redundancy.

§ 25.1433 [Amended]

85. By amending § 25.1433 by removing paragraphs (b) and (c) and by redesignating paragraph (a) as the whole of § 25.1433.

Explanation: See proposal No. 58.

86. By amending § 25.1435 by revising paragraphs (a) and (b) to read as follows:

§ 25.1435 Hydraulic systems.

(a) *Design.* (1) Each element of the hydraulic system must be designed to withstand, without deformation that would prevent it from performing its intended function, the design operating pressure loads in combination with limit structural loads which may be imposed.

(2) Each element of the hydraulic system must be able to withstand, without rupture, the design operating pressure loads multiplied by a factor of 1.5 in combination with ultimate structural loads that can reasonably occur simultaneously. Design operating pressure is maximum normal operating pressure, excluding transient pressure.

(b) *Tests and Analysis.* (1) A complete hydraulic system must be static tested to show that it can withstrand 1.5 times the design operating pressure without a deformation of any part of the system that would prevent it from performing its intended function. Clearance between structural members and hydraulic system elements must be adequate and there must be no permanent detrimental deformation. For the purpose of this test, the pressure relief valve may be made inoperable to permit application of the required pressure.

(2) Compliance with § 25.1309 for hydraulic systems must be shown by functional tests, endurance tests, and analyses. The entire system, or appropriate subsystems, must be tested in an airplane or in a mock-up installation to determine proper performance and proper relation to other aircraft systems. The functional tests must include simulation of hydraulic system failure conditions. Endurance tests must simulate the repeated complete flights that could be expected to occur in service. Elements which fail during the tests must be modified in order to have the design deficiency corrected and, where necessary, must be sufficiently retested. Simulation of operating and environmental conditions must be completed on elements and appropriate portions of the hydraulic system to the extent necessary to evaluated the environmental effects. Compliance with § 25.1309 must take into account the following:

(i) Static and dynamic loads including flight, ground, pilot, hydrostatic, inertial and thermally induced loads, and combinations thereof.

(ii) Motion, vibration, pressure transients and fatigue.

(iii) Abrasion, corrosion and erosion.

(iv) Fluid and material compatability.

(v) Leakage and wear.

* * * * *

Explanation: The requirements of § 25.1435(a)(2), which pertain to crew indication, are adequately covered by § 25.1309. Section 25.1435(a) would, therefore, be deleted as redundant. Sections 25.1435(a)(4) (i) and (ii)

presently establish pressure limits expressed in terms of pump average discharge pressure; however, with proper system design, as required by § 25.1309, greater pressures are acceptable. Sections 25.1435(a)(4) (i) and (ii) would, therefore, be deleted to allow flexibility in design. In addition, current subparagraphs (a) (5), (6), (7), and (8) have been replaced by the proposed subparagraphs (b)(2)(i) through (b)(2)(v). The current subparagraphs do not specify limits and are considered vague and to general. The proposed § 25.1435(b)(2) (i) through (v) would only require limits to be established as necessary to meet the safety requirements of § 25.1309.

§ 25.1451 [Removed]

87. By removing § 25.1451.

Explanation: See proposal No. 58.

§ 25.1455 [Removed]

88. By removing § 25.1455.

Explanation: See proposal No. 83.

89. By revising § 25.1521 to read as follows:

§ 25.1521 Powerplant limitations.

(a) *General.* The powerplant limitations prescribed in this section must be established so that they do no exceed the corresponding limits for which the engines and propellers are type certificated and do not exceed the values on which compliance with any other requirement of this part is based.

(b) *Reciprocating engine installations.* Operating limitations relating to the following are established for reciprocating engine installations:

(1) Horsepower or torque, r.p.m., manifold pressure, and time at critical pressure altitude and sea level pressure altitude for—

(i) Maximum continuous power (relating to unsupercharged operation or to operation in each supercharger mode as applicable); and

(ii) Takeoff power (relating to unsupercharged operation or to operation in each supercharger mode as applicable).

(2) Fuel grade or specification.

(3) Cylinder head and oil temperatures.

(4) Any other parameter for which a limitation has been established as part of the engine type certificate except that a limitation need not be established for a parameter that cannot be exceeded during normal operation due to the design of the installation or to another established limitation.

(c) *Turbine engine installations.* Operating limitations relating to the following are established for turbine engine installations:

(1) Horsepower, torque or thrust, r.p.m., gas temperature, and time for—

(i) Maximum continuous power or thrust (relating to augmented or unaugmented operation as applicable).

(ii) Takeoff power or thrust (relating to augmented or unaugmented operation as applicable).

(2) Fuel designation or specification.

(3) Any other parameter for which a limitation has been established as part of the engine type certificate except that a limitation need not be established for a parameter that cannot be exceeded during normal operation due to the design of the installation or to another established limitation.

(d) *Ambient temperature.* An ambient temperature limitation (including limitations for winterization installations, if applicable) must be established as the maximum ambient atmospheric temperature established in accordance with § 25.1043(b).

Explanation: Section 25.903 requires each engine to be type certificated. Any limitation established as a condition of the engine type certificate is, therefore, a limitation on the airplane by reference regardless of whether the parameter is specified in § 25.1521. This change would clarify the applicability of such limitations to the airplane and ensure that they are not overlooked during airplane certification. The basic format would be changed for clarity and consistency with § 33.7 of this chapter, which pertains to the engine type certificate.

90. By revising § 25.1522 to read as follows:

§ 25.1522 Auxiliary power unit limitations.

If an auxiliary power unit is installed in the airplane, limitations established for the auxiliary power unit, including categories of operation, must be specified as operating limitations for the airplane.

Explanation: Section 25.1522 presently specifies that limitations must be established if an auxiliary power unit (APU) meets the requirements of TSO–C77, implying that such limitations need not be established for those APU's that are approved in conjunction with the type certification process for the airplanes on which they are installed and do not have TSO–C77 authorization. Such limitations are, in fact, required for APU's that do not have TSO–C77 authorization by §§ 25.1301 and 25.1309. This change would place the requirement for limitations for all APU's in the same section for clarity. This change would also delete an obsolete reference to § 37.183, which no longer exists.

91. By revising § 25.1533, paragraph (a)(2), to read as follows:

§ 25.1533 Additional operating limitations.

(a) * * *

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of this Part (including the landing and approach climb provisions of §§ 25.119 and 25.121(d) for altitudes and ambient temperatures).

* * * * * *

Explanation: This would correct an editorial error that has existed in this Section and predecessor regulations for a number of years. Due to the editorial structure of the section, this correction would introduce no additional burden.

92. By revising § 25.1543, paragraph (b), to read as follows:

§ 25.1543 Instrument markings: General.

* * * * * *

(b) Each instrument marking must be clearly visible to the appropriate crewmember.

Explanation: Section 25.1543 currently specifies that instrument markings must be visible to the pilot when, in fact, the instrument may be required for another crewmember, such as the flight engineer. This change would substitute the term "appropriate crewmember" for "pilot." Also, specific reference to "arc and line" would be deleted to reflect that symbols, such as diamonds or triangles, are frequently used in addition to lines and arcs.

93. By revising § 25.1551 to read as follows:

§ 25.1551 Oil quantity indication.

Each oil quantity indicating means must be marked to indicate the quantity of oil readily and accurately.

Explanation: The wording of present § 25.1551 was written to accommodate the traditional dipsticks. The phrase "with enough increments" would be deleted to accommodate other indication means, such as sight glasses. The term "indicating means" would be used in lieu of "indicator" because the latter has sometimes been misinterpreted to mean an indicator in the cockpit.

94. By amending § 25.1557, by revising the heading of paragraph (b), and adding a new paragraph (b)(3) to read as follows:

§ 25.1557 Miscellaneous markings and placards.

* * * * * *

(b) *Powerplant fluid filler openings.*

(1) * * *

(2) * * *

(3) Augmentation fluid filler openings must be marked at or near the filler cover to identify the required fluid.

* * * * * *

Explanation: See proposal No. 65.

95. By amending § 25.1581 by adding a new paragraph (a)(3) to read as follows:

§ 25.1581 General.

(a) * * *

(3) Any limitation established as a condition of compliance with the applicable noise standards of Part 36 of this chapter.

* * * * * *

Explanation: Section 36.1581(c) currently requires certain weight limitations established in compliance with Part 36 to be included in the limitations section of the Airplane Flight Manual. This would be a conforming editorial change for consistency with § 36.1581(c).

96. By amending § 25.1583, by revising paragraphs (b)(1), (f) and (i) to read as follows and by removing paragraph (b)(3):

§ 25.1583 Operating limitations.

* * * * * *

(b) * * *

(1) Limitations required by §§ 25.1521 and 25.1522.

* * * * * *

(f) *Altitudes.* The altitude established under § 25.1527.

* * * * * *

(i) *Maneuvering flight load factors.* The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, must be furnished.

Explanation: Section 25.1583(b)(1) would be amended to conform to the previous addition of § 25.1522 which pertains to auxiliary power unit limitations. It is not considered necessary to furnish information concerning instrument markings in the Airplane Flight Manual because such information is contained in other required documents. Section 25.1583(b)(3) would, therefore, be deleted. It is also considered unnecessary to explain the altitude limiting factors in the Airplane Flight Manual. Section 25.1583(f) would, therefore, be revised to delete this requirement. The statement that the accelerations limit the angle of bank in turns and limit the severity of pull-up maneuvers presently required by § 25.1583(i) has been a source of confusion and is not considered necessary. Accordingly, § 25.1583(i) would be amended to delete the requirement for this statement.

97. By revising § 25.1587, paragraph (b) introductory text, to read as follows:

§ 25.1587 Performance information.

* * * * * *

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this Part within the operational limits of the airplane, and must contain the following:

* * * * * *

Explanation: The parenthetical phrase, "include §§ 25.115, 25.123, and 25.125 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable," presently contained in § 25.1587(b) has created confusion because some of the items cited (wind, slope, etc.) are not consistent with those mentioned in the specified paragraphs. The parenthetical phrase would, therefore, be deleted.

98. By revising Appendix F to read as follows:

Appendix F—Test Criteria and Procedures for Showing Compliance With § 25.853.

(a) *Material test criteria*—(1) *Interior compartments occupied by crew or passengers:*

(i) Interior ceiling panels, interior wall panels, partitions, galley structure, large cabinet walls, structural flooring, and materials used in the construction of stowage compartments (other than underseat stowage compartments and compartments for stowing small items such as magazines and maps) must be self-extinguishing when tested vertically in accordance with the applicable portions of this Appendix. The average burn length may not exceed 6 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 3 seconds after falling.

(ii) Floor covering, textile (including draperies and upholstery), seat cushions, padding, decorative and nondecorative coated fabrics, leather, trays and galley furnishings, electrical conduit, thermal and acoustical insulation and insulation covering, air ducting, joint and edge covering, cargo compartment liners, insulation blankets, cargo covers and transparencies, molded and thermoformed parts, air ducting joints, and trim stripe (decorative and chafing), that are constructed of materials not covered in subparagraph (iv) below, must be self-extinguishing when tested vertically in accordance with the applicable portions of this Appendix. The average burn length may not exceed 8 inches, and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 5 seconds after falling.

(iii) Motion picture film must be safety film meeting the Standard Specifications for Safety Photographic Film PH 1.25 (available from the American National Standards Institute, 1430 Broadway, New York, N.Y. 10018). If the film travels through ducts, the ducts must meet the requirements of subparagraph (ii) of this paragraph.

(iv) Clear plastic windows and signs, parts constructed in whole or in part or elastomeric materials, edge lighted instrument assemblies consisting of two or more instruments in a common housing, seat belts, shoulder harnesses, and cargo and baggage tiedown equipment, including containers, bins, pallets, etc., used in passenger or crew compartments, may not have an average burn rate greater than 2.5 inches per minute when tested horizontally in accordance with the applicable portions of this Appendix.

(v) Except for small parts (such as knobs, handles, rollers, fasteners, clips, grommets, rub strips, pulleys, and small electrical parts) that would not contribute significantly to the propagation of a fire and for electrical wire and cable insulation, materials in items not specified in subparagraphs (i), (ii), (iii), or (iv) of this paragraph may not have a burn rate greater than 4.0 inches per minute when tested horizontally in accordance with the applicable portions of this Appendix.

(2) *Cargo and baggage compartments not occupied by crew or passengers:* (i) Thermal and acoustic insulation (including coverings) used in each cargo and baggage compartment must be constructed of materials that meet the requirements set forth in paragraph (a)(1)(ii) of this Appendix.

(ii) Cargo or baggage compartments defined in § 25.857 as Class B through E must have a liner constructed of materials that meet the requirements of paragraph (a)(1)(ii) of this Appendix and separated from the airplane structure (except for attachments). Such liners must be subject to the 45° angle test. The flame may not penetrate (pass through) the material during application of the flame or subsequent to its removal. The average flame time after removal of the flame may not exceed 15 seconds, and the average glow time may not exceed 10 seconds.

(iii) Insulation blankets and covers used to protect cargo must be constructed of materials that meet the requirements of paragraph (a)(1)(ii) of this Appendix. Tiedown equipment (including containers, bins, and pallets) used in each cargo and baggage compartment must be constructed of materials that meet the requirements of paragraph (a)(1)(v) of this Appendix.

(3) *Electrical system components:* Insulation on electrical wire or cable installed in any area of the fuselage must be self-extinguishing when subjected to the 60° test specified in this Appendix. The average burn length may not exceed 3 inches, and the average flame time after removal of the flame source may not exceed 30 seconds. Drippings from the test specimen may not continue to

flame for more than an average of 3 seconds after falling.

(b) *Test Procedures*—(1) *Conditioning:* Specimens must be conditioned to 70° ±5° F., and at 50 percent ±5 percent relative humidity until moisture equilibrium is reached or for 24 hours. Each specimen must remain in the conditioning environment until it is subjected to the flame.

(2) *Specimen configuration:* Except for small parts and electrical wire and cable insulation, materials must be tested either as section cut from a fabricated part as installed in the airplane or as a specimen simulating a cut section, such as a specimen cut from a flat sheet of the material or a model or the fabricated part. The specimen may be cut from any location in a fabricated part; however, fabricated units, such as sandwich panels, may not be separated for test. Except as noted below, the specimen thickness must be no thicker than the minimum thickness to be qualified for use in the airplane. Test specimens of thick foam parts, such as seat cushions, must be ½-inch in thickness. Test specimens of materials that must meet the requirements of paragraph (a)(1)(v) of this Appendix must be no more than ⅛-inch in thickness. Electrical wire and cable specimens must be the same size as used in the airplane. In the case of fabrics, both the warp and fill direction of the weave must be tested to determine the most critical flammability condition. Specimens must be mounted in a metal frame so that the two long edges and the upper edge are held securely during the vertical test prescribed in subparagraph (4) of this paragraph and the two long edges and the edge away from the flame are held securely during the horizontal test prescribed in subparagraph (5) of this paragraph. The exposed area of the specimen must be at least 2 inches wide and 12 inches long, unless the actual size used in the airplane is smaller. The edge to which the burner flame is applied must not consist of the finished or protected edge of the specimen but must be representative of the actual cross-section of the material or part as installed in the airplane. The specimen must be mounted in a metal frame so that all four edges are held securely and the exposed area of the specimen is at least 8 inches by 8 inches during the 45° test prescribed in subparagraph (6) of this paragraph.

(3) *Apparatus:* Except as provided in subparagraph (7) of this paragraph, test must be conducted in a draft-free cabinet in accordance with Federal Test Method Standard 191 Model 5903 (revised Method 5902) for the vertical test, or Method 5906 for horizontal test (available from the General Services Administration, Business Service Center, Region 3, Seventh & D Streets, SW., Washington, D.C. 20407). Specimens which are too large for the cabinets must be tested in similar draft-free conditions.

(4) *Vertical test:* A minimum of three specimens must be tested and results averaged. For fabrics, the direction of weave corresponding to the most critical flammability conditions must be parallel to the longest dimension. Each specimen must be supported vertically. The specimen must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1550 °F. The lower edge of the specimen must be ¾-inch above the top edge of the burner. For materials covered by paragraph (a)(1)(i) of this Appendix, the flame must be applied for 60 seconds and then removed. For materials covered by paragraph (a)(1)(ii) of this Appendix, the flame must be applied for 12 seconds and then removed. Flame time, burn length, and flaming time of drippings, if any, may be recorded. The burn length determined in accordance with subparagraph (7) of this paragraph must be measured to the nearest tenth of an inch.

(5) *Horizontal test:* A minimum of three specimens must be tested and the results averaged. Each specimen must be supported horizontally. The exposed surface, when installed in the aircraft, must be face down for the test. The specimen must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in center of the flame must must be 1550 °F. The specimen must be positioned to that edge being tested is centerd ¾-inch above top of the burner. The flame must be applied for 15 seconds and then removed. A minimum of 10 inches of specimen must be used for timing purposes, approximately 1½ inches must burn before the burning front reaches the timing zone, and the average burn rate must be recorded.

(6) *Forty-five degree test:* A minimum of three specimens must be tested and the results averaged. The specimens must be supported at an angle of 45° to a horizontal surface. The exposed surface when installed in the aircraft must be face down for the test. The specimens must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1550 °F. Suitable precautions must be taken to avoid drafts. The flame must be applied for 30 seconds with one-third contacting the material at the center of the specimen and then removed. Flame time, glow time, and whether the flame pentrates (passes through) the specimen must be recorded.

(7) *Sixty degree test:* A minimum of three specimens of each wire specification (make and size) must be tested. The specimen of wire or cable (including insulation) must be placed at an angle of 60° with the horizontal in the cabinet specified in subparagraph (3) of this paragraph with the cabinet door open during the test, or must be placed within a chamber approximately 2 feet high by 1 foot by 1 foot, open at the top and at one vertical side (front), and which allows sufficient flow of air for complete combustion, but which is free from drafts. The specimen must be parallel to and approximately 6 inches from the front of the chamber. The lower end of the specimen must be held rigidly clamped. The upper end of the specimen must pass over a pulley or rod and must have an appropriate weight attached to it so that the specimen is held tautly throughout the flammability test. The test specimen span beween lower clamp and upper pulley or rod must be 24 inches and must be marked 8 inches from the lower end to indicate the central point for flame applications. A flame from Bunsen or Tirrill burner must be applied for 30 seconds at the test mark. The burner must be mounted underneath the test mark on the specimen, perpendicular to the specimen and at an angle of 30° to the vertical plane of the specimen. The burner must have a nominal bore of ⅜-inch and be adjusted to provide a 3-inch high flame with an inner cone approximately one-third of the flame. The minimum temperature of the hottest portion of the flame, as measured with a calibrated thermocouple pyrometer, may not be less than 1750 °F. The burner must be positioned so the hottest portion of the flame is applied to the test mark on the wire. Flame time, burn length, and flaming time, burn length, and flaming time of dripings, if any, must be recorded. The burn length determined in accordance with paragraph must be measured to the nearest tenth of an inch. Breaking of the wire specimens is not considered a failure.

(8) *Burn length:* Burn length is the distance from the original edge to the farthest evidence of damage to the test specimen due to flame impingement, including areas of partial or complete consumption, charring, or embrittlement, but not including areas sooted, stained, warped, or discolored, nor areas where material has shrunk or melted away from the heat source.

Explanation: The test criteria presently contained in §§ 25.853, 25.855, and 25.1359, would be transferred to Appendix F for editoral improvement and consistency. The term "acrylic" would be replaced by the generic term "clear plastic" to clarify the applicability to all nonglass window materials.

Appendix G—[Amended]

99. By amending Appendix G, paragraph (b)(2), by removing the lower case Greek letter Beta where defined as the root-mean-square gust velocity, and inserting a lower case Greek Letter sigma in its place.

Explanation: This would be a conforming change to correct an editorial error.

100. By adding a new Appendix I to read follows:

Appendix I—Emergency Demonstration

The following test criteria and procedures must be used for showing compliance with § 25.803:

(a) The emergency evacuation must be conducted either during the dark of the night or during daylight with the dark of night simulated. If the demonstration is conducted indoors during daylight hours, it must be conducted with each window covered and each door closed to minimize the daylight effect. Illumination on the floor or ground may be used, but it must be kept low and shielded against shining into the airplane's windows or doors.

(b) The airplane must be in a normal attitude with landing gear extended.

(c) Standards or ramps may be used for descent from the wing to the ground, and safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the airplane's emergency evacuation equipment may be used to aid the participants in reaching the ground.

(d) Except as provided in paragraph (a) of this Appendix, only the airplane's emergency lighting system may provide illumination.

(e) All emergency equipment required for the planned operation of the airplane must be installed.

(f) Each external door and exit, and each internal door or curtain, must be in the takeoff configuration.

(g) Each crewmember must be seated in the normally assigned seat for takeoff and must remain in the seat until receiving the signal for commencement of the demonstration. Each crewmember must be a person having knowledge of the operation of exits and emergency equipment and, if compliance with § 121.291 is also being demonstrated, a member of a regularly scheduled line crew.

(h) A representative passenger load of persons in normal health must be used as follows:

(1) A minimum of 25 percent of the participants must be over 50 years of age, with at least 40 percent female. Participants over 60 years of age need not be used.

(2) The remaining 75 percent may be 50 years of age or younger, with at least 30 percent female. Participants under 18 years of age need not be used.

(3) Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger.

(4) Crewmembers, mechanics, and training personnel, who maintain or operate the airplane in the normal course of their duties, may not be used as passengers.

(i) No passenger may be assigned a specific seat except as the Administrator may require. Except as required by subparagraph 1 of this paragraph, no employee of the applicant may be seated next to an emergency exit.

(j) Seat belts and shoulder harnesses (as required) must be fastened.

(k) Before the start of the demonstration, approximately one-half of the total average amount of carry-on baggage, blankets, pillows, and other similar articles must be distributed at serveral locations in aisles and emergency exit access ways to create minor obstructions.

(l) Each crewmember must be seated in his normally assigned seat for takeoff and must remain in the seat until receiving the signal for commencement of the demonstration.

(m) No prior indication may be given to any crewmember or passenger of the particular exits to be used in the demonstration.

(n) The applicant may not practice, rehearse, or describe the demonstration for the participants nor may any participant have taken part in this type of demonstration within the preceding 6 months.

(o) The pretakeoff passenger briefing required by § 121.571 may be given. The passengers may also be advised to follow directions of crewmembers but not be instructed on the procedures to be followed in the demonstration.

(p) If safety equipment as allowed by paragraph (c) of this paragraph is provided, either all passenger and cockpit windows must be blacked out or all of the emergency exits must have safety equipment in order to prevent disclosure of the available emergency exits.

(q) Not more than 50 percent of the emergency exits in the sides of the fuselage of an airplane that meets all of the requirements applicable to the required emergency exits for that airplane may be used for the demonstration. Exits that are not to be used in the demonstration must have the exit handle deactivated or must be indicated by red lights, red tape, or other acceptable means placed outside the exits to indicate fire or other reason why they are unusable. The exits to be used must be representative of all of the emergency exits on the airplane and must be designated by the applicant, subject to approval by the Administrator. At least one floor level exit must be used.

(r) All evacuees, except those using an over-the-wing exit, must leave the airplane by a means provided as part of the airplane's equipment.

(s) The applicant's approved procedures must be fully utilized during the demonstration.

(t) The evacuation time period is completed when the last occupant has evacuated the airplane and is on the ground. Provided that the acceptance rate of the stand or ramp is no greater than the acceptance rate of the means available on the airplane for descent from the wing during an actual crash situation, evacuees using stands or ramps allowed by paragraph (c) of this Appendix are considered to be on the ground when they are on the stand or ramp.

Explanation: See proposal No. 48.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Note.—These proposed amendments are generally relieving, clarifying, or editorial in nature and would have minimal economic impact based upon the assessment discussed more fully in the Section entitled "Economic Evaluation." In those instances in which alternative means of compliance are provided for, no additional burden would be imposed. As that assessment also indicates, no small entities, within the meaning of the Regulatory Flexibility Act, would be affected. The FAA has therefore determined that this notice involves a rulemaking action which is not a "major rule" under Executive Order 12291 and is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, for the reasons stated above, it is certified that the proposals, if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Seattle, Washington, on September 21, 1984.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-31246 Filed 11-30-84; 8:45 am]

BILLING CODE 4910-13-M

Reader Aids

Federal Register

Vol. 49, No. 233

Monday, December 3, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189-47380.....3

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1984

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
December 3	December 18	January 2	January 17	February 1	March 4
December 4	December 19	January 3	January 18	February 4	March 4
December 5	December 20	January 4	January 22	February 4	March 5
December 6	December 21	January 7	January 22	February 4	March 6
December 7	December 24	January 7	January 22	February 5	March 7
December 10	December 26	January 9	January 24	February 8	March 11
December 11	December 26	January 10	January 25	February 11	March 11
December 12	December 27	January 11	January 28	February 11	March 11
December 13	December 28	January 14	January 28	February 11	March 12
December 14	December 31	January 14	January 28	February 12	March 13
December 17	January 2	January 16	January 31	February 15	March 18
December 18	January 2	January 17	February 1	February 19	March 18
December 19	January 3	January 18	February 2	February 19	March 18
December 20	January 4	January 22	February 4	February 19	March 19
December 21	January 7	January 22	February 4	February 19	March 20
December 24	January 8	January 23	February 7	February 22	March 25
December 26	January 10	January 25	February 11	February 25	March 25
December 27	January 11	January 28	February 11	February 25	March 26
December 28	January 14	January 28	February 11	February 26	March 27
December 31	January 15	January 30	February 14	March 1	April 1

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0–45	13.00	Jan. 1, 1984
46–51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53–209	13.00	Jan. 1, 1984
210–299	13.00	Jan. 1, 1984
300–399	7.50	Jan. 1, 1984
400–699	13.00	Jan. 1, 1984
700–899	13.00	Jan. 1, 1984
900–999	14.00	Jan. 1, 1984
1000–1059	12.00	Jan. 1, 1984
1060–1119	9.50	Jan. 1, 1984
1120–1199	7.50	Jan. 1, 1984
1200–1499	13.00	Jan. 1, 1984
1500–1899	6.00	Jan. 1, 1984
1900–1944	14.00	Jan. 1, 1984
1945–End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1–199	13.00	Jan. 1, 1984
200–End	9.50	Jan. 1, 1984
10 Parts:		
0–199	14.00	Jan. 1, 1984
200–399	12.00	Jan. 1, 1984
400–499	12.00	Jan. 1, 1984
500–End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1–199	9.00	Jan. 1, 1984
200–299	14.00	Jan. 1, 1984
300–499	9.50	Jan. 1, 1984
500–End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1–59	13.00	Jan. 1, 1984
60–139	13.00	Jan. 1, 1984
140–199	7.00	Jan. 1, 1984
200–1199	13.00	Jan. 1, 1984
1200–End	7.50	Jan. 1, 1984
15 Parts:		
0–299	7.00	Jan. 1, 1984
300–399	13.00	Jan. 1, 1984
400–End	12.00	Jan. 1, 1984
16 Parts:		
0–149	9.00	Jan. 1, 1984
150–999	9.50	Jan. 1, 1984
1000–End	13.00	Jan. 1, 1984
17 Parts:		
1–239	14.00	Apr. 1, 1984
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1–399	7.50	Apr. 1, 1984
400–499	13.00	Apr. 1, 1984
500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1984
100–169	12.00	Apr. 1, 1984
170–199	12.00	Apr. 1, 1984
200–299	4.25	Apr. 1, 1984
300–499	14.00	Apr. 1, 1984
500–599	13.00	Apr. 1, 1984
600–799	6.00	Apr. 1, 1984
800–1299	9.50	Apr. 1, 1984
1300–End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0–199	8.00	Apr. 1, 1984
200–499	14.00	Apr. 1, 1984
500–699	6.00	Apr. 1, 1984
700–1699	12.00	Apr. 1, 1984
1700–End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0–1.169	14.50	Apr. 1, 1984
§§ 1.170–1.300	10.00	Apr. 1, 1984
§§ 1.301–1.400	7.50	Apr. 1, 1984
§§ 1.401–1.500	13.00	Apr. 1, 1984
§§ 1.501–1.640	12.00	Apr. 1, 1984
§§ 1.641–1.850	12.00	Apr. 1, 1984
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	13.00	Apr. 1, 1984
30–39	9.00	Apr. 1, 1984
40–299	14.00	Apr. 1, 1984
300–499	9.50	Apr. 1, 1984
500–599	8.00	Apr. 1, 1980
600–End	5.50	Apr. 1, 1984
27 Parts:		
1–199	13.00	Apr. 1, 1984
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0–99	14.00	July 1, 1984
100–499	6.50	July 1, 1984
500–899	14.00	July 1, 1984
900–1899	7.50	July 1, 1984
1900–1910	15.00	July 1, 1984
1911–1919	5.50	July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	7.00	July 1, 1983
200–699	5.50	July 1, 1984
700–End	13.00	Oct. 1, 1984
31 Parts:		
0–199	8.00	July 1, 1984
200–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	9.00	July 1, 1983
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1983
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
*400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
*81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
*150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
*400–424	13.00	July 1, 1984
425–End	13.00	July 1, 1983
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
*3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984

Title	Price	Revision Date
42 Parts:		
1–60	12.00	Oct. 1, 1983
*61–399	7.50	Oct. 1, 1984
400–End	17.00	Oct. 1, 1983
43 Parts:		
*1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1983
4000–End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1–199	9.00	Oct. 1, 1983
200–499	6.00	Oct. 1, 1983
500–1199	12.00	Oct. 1, 1983
*1200–End	9.50	Oct. 1, 1984
46 Parts:		
*1–40	9.50	Oct. 1, 1984
41–69	9.00	Oct. 1, 1983
*70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1983
140–155	8.00	Oct. 1, 1983
156–165	9.00	Oct. 1, 1983
166–199	7.00	Oct. 1, 1983
200–399	12.00	Oct. 1, 1983
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	12.00	Oct. 1, 1983
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48	1.50	[2] Sept. 19, 1983
49 Parts:		
1–99	7.00	Oct. 1, 1983
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	12.00	Oct. 1, 1983
400–999	13.00	Oct. 1, 1983
1000–1199	12.00	Oct. 1, 1983
1200–1299	12.00	Oct. 1, 1983
1300–End	7.50	Oct. 1, 1983
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1984 CFR set	550.00	1984
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

OL
9

SS
33

E
3

984

MI



Just Released

Code of Federal Regulations

Revised as of July 1, 1984

Quantity	Volume	Price	Amount
_____	Title 34—Education (Part 400-End) (Stock No. 022-003-95390-6)	$14.00	$_____
_____	Title 40—Protection of Environment (Parts 150–189 (Stock No. 022-003-95403-1)	13.00	_____
_____	(Parts 400–424 (Stock No. 022-003-95405-8)	13.00	_____
_____	Title 41—Public Contracts and Property Management (Chapters 3–6) (Stock No. 022-003-95409-1)	14.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form **Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

VOL
49
ISS
233
DE
3
1984
UMI

OL
9

SS
34

E
4

984

MI

12-4-84
Vol. 49 No. 234

federal register

Tuesday
December 4, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S. MAIL

Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

Federal Register
(ISSN 0097-6326)

SECOND CLASS NEWSPAPER

12-4-84
Vol. 49 No. 234
Pages 47381-47472

federal register

Tuesday
December 4, 1984

Selected Subjects

Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Electronic Funds Transfers
Federal Reserve System
Endangered and Threatened Species
Fish and Wildlife Service
Fisheries
National Oceanic and Atmospheric Administration
Food Ingredients
Food and Drug Administration
Grant Programs—Natural Resources
Fish and Wildlife Service
Hazardous Waste
Environmental Protection Agency
Marine Resources
National Oceanic and Atmospheric Administration
Mortgage Insurance
Housing and Urban Development Department
Organization and Functions (Government Agencies)
Small Business Administration
Postal Service
Postal Service

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Quarantine
Animal and Plant Health Inspection Service

Savings and Loan Associations
Federal Home Loan Bank Board

Small Businesses
Small Business Administration

Truth in Lending
Federal Reserve System

Voting Rights
Personnel Management Office

X Rays
Food and Drug Administration

Contents

Federal Register
Vol. 49, No. 234
Tuesday, December 4, 1984

Agricultural Marketing Service
PROPOSED RULES
47402 Honey, extracted; grade standards; correction

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Forest Service; Human Nutrition Information Service; Soil Conservation Service.

Alcohol, Tobacco and Firearms Bureau
NOTICES
Organization, functions, and authority delegations:
47468 Associate Director (Law Enforcement); correction

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal and poultry import restrictions:
47402 Reservation of space for quarantine of animals and birds

Arts and Humanities, National Foundation
NOTICES
47461 Agency information collection activities under OMB review

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Defense Department
NOTICES
Meetings:
47426, 47427 Electron Devices Advisory Group (2 documents)
47427 Media Advisory Council

Delaware River Basin Commission
NOTICES
47427 Hearings, etc.

Economic Regulatory Administration
NOTICES
Remedial orders:
47428 Tampimex Oil International, Ltd.

Employment and Training Administration
RULES
Job Training Partnership Act programs:
47384 Indian and Native American employment and training program; designation procedures for grantees; correction
NOTICES
Adjustment assistance:
47442 Electra Co. et al.
Job Training Partnership Act:
47443 Performance standards; numerical values

Energy Department
See Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.

Energy Information Administration
NOTICES
47428 Agency information collection activities under OMB review

Environmental Protection Agency
RULES
Hazardous waste:
47390 Permit program; test manual corrections, etc.
Hazardous waste program authorizations:
47391 Virginia
PROPOSED RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
47420 Chlorpyrifos; correction
NOTICES
Meetings:
47434 Science Advisory Board
47435 Water Engineering Research Laboratory Seminar

Farmers Home Administration
NOTICES
47423 Natural resources management guide; meeting (2 documents)

Federal Aviation Administration
RULES
Airworthiness directives:
47382 B.F. Goodrich
47415 Beech
PROPOSED RULES
47415 VOR Federal Airways; withdrawal

Federal Bureau of Investigation
NOTICES
Committees; establishment, renewals, terminations, etc.:
47441 National Crime Information Center Advisory Policy Board

Federal Communications Commission
RULES
Radio broadcasting:
47395 AM stations; daytime-only, etc.; hours of operation; effective date stayed

Federal Deposit Insurance Corporation
NOTICES
47470 Meetings; Sunshine Act

Federal Election Commission
NOTICES
47470 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
47429 United Gas Pipe Line Co.

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
47410 Conversions from mutual to stock form; conversion proxy solicitations

Federal Maritime Commission
RULES
47393 General and administrative provisions; employee responsibilities and conduct, official seal, practice and procedure, etc.; correction
NOTICES
Freight forwarder licenses:
47435 DM Ocean Freight Forwarders Division et al.
47435 JIF America, Inc. et al.
47435 K-C International Freight Forwarders

Federal Reserve System
PROPOSED RULES
Electronic fund transfers (Regulation E):
47405 Official staff commentary update
Truth in lending (Regulation Z):
47406 Official staff commentary update
NOTICES
47470 Meetings; Sunshine Act

Fish and Wildlife Service
RULES
Endangered and threatened species:
47397 Koki'o
PROPOSED RULES
47420 Federal aid in fish and wildlife restoration; sport fishing

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
47387 Altana, Inc.; sponsor name change
47387 Nutrius, Inc.; sponsor name change; correction
GRAS or prior-sanctioned ingredients:
47384 Lactase enzyme preparation
Radiological health:
47387 Diagnostic x ray systems and components; reporting and recordkeeping requirements, and effective date
PROPOSED RULES
Food for human consumption:
47418 Margarine; indentity standards; correction
NOTICES
GRAS or prior-sanctioned ingredients:
47435 Heinz U.S.A.; petition; correction
Human drugs:
47435 Single-entity coronary vasodilators; exemption revoked, etc.; correction

Forest Service
NOTICES
Meetings:
47424 Tonto National Forest Grazing Advisory Board

Health And Human Services Department
See Food and Drug Administration; Health Resources and Services Administration; Public Health Service.

Health Resources and Service Administration
NOTICES
Grants; availability, etc.:
47436 State health planning and development agencies; determination of population of States

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
47431 Cases filed
47432 Decisions and orders
47432 Special refund procedures; implementation and inquiry

Historic Preservation, Advisory Council
NOTICES
47423 Meetings

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
47388 Condominium ownership; maximum mortgage amounts for nonoccupant mortgagors

Human Nutrition Information Service
NOTICES
Meetings:
47424 Dietary Guidelines Advisory Committee

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.
NOTICES
Environmental statements; availability, etc.:
47436 Jackson Lake Safety of Dams Project, WY-ID

International Trade Administration
NOTICES
Countervailing duties:
47425 Leather wearing apparel from Mexico
47425 Textiles and textile products from Panama
Meetings:
47426 President's Export Council

International Trade Commission
NOTICES
47440 Agency information collection activities under OMB review

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
47440 Southern Pacific Transportation Co.

Justice Department
See also Federal Bureau of Investigation.
NOTICES
Pollution control; consent judgments:
47441 Pine Valley Golf Club

Labor Department
See also Employment and Training Administration; Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office.
NOTICES
47441 Privacy Act; systems of records

Land Management Bureau
NOTICES
Oil and gas leases:
47438 Colorado
Planning analysis:
47437 Kentucky
47437 Louisiana

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
47443 Colorado Westmoreland Inc.
47444 Giant Portland & Masonry Cement Co.
47444 Kaiser Sand & Gravel Co.

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
47438 Shell Offshore Inc.

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
47396 Lamps, reflective devices, and associated equipment; semi-sealed headlamps with replaceable bulb, etc.; response to petition

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
47422 Atlantic surf clam and ocean quahog
Fishery products, processed:
47421 Crab meat and oysters; grade standards
Marine sanctuaries:
47415 Fagatele Bay National Marine Sanctuary; American Samoa

National Park Service
NOTICES
Historic Places National Register; pending nominations:
47439 Arizona et al.

National Science Foundation
NOTICES
47461 Antarctic Conservation Act of 1978; permit applications, etc.

National Transportation Safety Board
NOTICES
47470 Meetings; Sunshine Act

Nuclear Regulatory Commission
NOTICES
47461 Agency information collection activities under OMB review
Application, etc.:
47462 Connecticut Light & Power Co. et al.
47463 Connecticut Yankee Atomic Power Co.
47465 Inspection & Testing, Inc.
47466 Philadelphia Electric Co.
47466 Portland General Electric Co. et al.
Environmental statements; availability, etc.:
47466 Tennessee Valley Authority
47471 Meetings; Sunshine Act

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
47444 Royal Bank of Canada et al.
47460 Pension fund investments and corporate governance; hearings

Personnel Management Office
RULES
Voting rights program:
47392 Alabama; final rule and request for comments
47393 South Carolina; final rule and request for comments

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
47467 Durbin, ND

Postal Service
RULES
Domestic and International Mail Manuals:
47389 Incorporation by reference, conformance of regulations to current practice
NOTICES
47471 Meetings; Sunshine Act

Public Health Service
NOTICES
Meetings:
47436 Vital and Health Statistics National Committee

Reclamation Bureau
NOTICES
47438 Central Valley Project, CA; water service ratesetting policy; policy options document availability, and workshops and hearings

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; unlisted trading privileges:
47467 Midwest Stock Exchange

Small Business Administration
RULES
Organization, functions, and authority delegations:
47381 Program activities in field offices
PROPOSED RULES
Small business size standards:
47412 Dredging
47414 Dredging; advance notice
NOTICES
License surrenders:
47468 H & T Capital Corp.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
47424 Loving Field Ball Park Complex Critical Area Treatment RC&D Measure, VA

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission; various States:
47419 Maryland; comment period reopened, etc.

Tennessee Valley Authority
RULES
47383 Nondiscrimination in Federally assisted programs; correction

Trade Representative, Office of United States
NOTICES
47467 International trade agreements (Tokyo Round); determinations

Transportation Department
See Federal Aviation Administration; National Highway Traffic Safety Administration.

Treasury Department
See Alcohol, Tobacco and Firearms Bureau.

Veterans Administration
NOTICES
Meetings:
47468 Educational Allowances Station Committee; hearing
47468 Readjustment Problems of Vietnam Veterans Advisory Committee

---

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
52 47402

9 CFR
Proposed Rules:
92 47402

12 CFR
Proposed Rules:
205 47405
226 47406
500 47410
563b 47410

13 CFR
101 47381
Proposed Rules:
121 (2 documents) 47412, 47414

14 CFR
39 (2 documents) 47381, 47382
Proposed Rules:
71 47415

15 CFR
Proposed Rules:
941 47415

18 CFR
1302 47383

20 CFR
632 47384

21 CFR
184 47384
510 47387
558 47387
1020 47387
Proposed Rules:
166 47418

24 CFR
234 47388

30 CFR
Proposed Rules:
920 47419

39 CFR
10 47389
111 47389

40 CFR
260 47390
270 47390
271 47391
Proposed Rules:
180 47420

45 CFR
801 (2 documents) 47392

46 CFR
500 47393
501 47393
502 47393
503 47393
504 47393
505 47393

47 CFR
73 47395

49 CFR
571 47396

50 CFR
17 47397
Proposed Rules:
Ch. II 47420
80 47421
652 47422

Rules and Regulations

Federal Register
Vol. 49, No. 234
Tuesday, December 4, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2—Amdt 39]

Delegations of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Administrator has approved a proposal for delegation of authority changes affecting field positions from the Office of External Awards. These changes include the establishment of uniform levels of delegated procurement authority for Regional Administrators, Deputy Regional Administrators, and Assistant Regional Administrators for Administration. Approved changes for other field positions include delegated procurement authority utilizing S.F. 1402's "Certificates of Appointment" on which are indicated the specific Contract Officer's scope of authority. Additionally, authority is given Assistant Regional Administrators for Administration (ARA/A's) to be accountable for all other administrative procurement positions in their respective regions certified as Contract Officers under the Federal Acquisition Regulations, Subparts 1.601 through 1.604.

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald Allen, Information Resources Management Branch, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Telephone No. (202) 653–8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedures, Organization and functions (Government agencies).

PART 101—ADMINISTRATION

For the reasons set forth in the preamble and pursuant to authority in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3–2 is amended as set forth below:

§ 101.3–2 [Amended]

* * * * *

1. Part X.I.e., existing subparagraphs (1) through (19) are deleted and subparagraphs (1) through (6) are added as follows:

	Open market	Federal supply schedule (FSS)
(1) Regional Administrators	$25,000	(1)
(2) Deputy Regional Administrators	25,000	(1)
(3) Assistant Regional Administrators for Administration (ARA/A's) [2]	25,000	(1)
(4) District Directors	2,500	$2,500
(5) Deputy District Directors	2,500	2,500
(6) Branch Managers	2,500	2,500

[1] Unlimited.
[2] ARA/A's (within their respective regions) are accountable for all Contract Officers certified under Federal Acquisitions Regulations (FAR), Subparts 1.601 through 1.604, using S.F. 1402, "Certificate of Appointments."

Dated: November 27, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–31595 Filed 12–3–84; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–CE–35–AD, Amendment 39–4958]

Airworthiness Directives; Beech 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain models of the Beech 200 series airplanes which requires inspection and repair of wing fuel bay upper panels. Entry of moisture through blind fastener rivets in the outer skin of the panels causes corrosion which results in debonding of these panels. Structural integrity of the panel may be impaired. The required action will correct any existing debonding and prevent entry of moisture which could result in additional debonding.

EFFECTIVE DATE: December 11, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2040 and Beech Service Instructions No. C–12–0084 applicable to this AD may be obtained from Beech Aircraft Corporation, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE–120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: As early as April 1983, Beech began receiving reports of wrinkled upper wing panels in the area bounded by the fuselage, nacelle, front spar, and rear spar. This area is one piece of all-aluminum bonded honeycomb sandwich which serves as the fuel bay upper cover, as well as a load-carrying structural member. Debonding of the face sheet from the honeycomb core causes the visible wrinkling. The debonding is caused by moisture leaking into the honeycomb via blind fasteners (rivets) in the outer face sheet of the panel. The moisture causes corrosion to grow inside the honeycomb, which attacks the face sheet bonds. Without corrective maintenance, the debonding can progress to a point where safe flight is jeopardized. Beech has developed inspection and repair schemes for affected civil and military versions of the Beech Model 200 series. The inspections consist basically of searching for debonded areas by the "coin tap" method. If debonding is detected, the panel is repaired by potting-in extra fasteners provided in Beech service kits designed for this

purpose. To preclude entry of moisture into the honeycomb area it is necessary to seal each blind fastener in the upper surface of the fuel bay upper panel on all affected airplanes, regardless of condition.

Since the FAA has determined that the unsafe conditon described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring inspection and repair of upper wing panels on certain Beech 200 series airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13) is amended by adding the following new AD.

Beech: Applies to Models 200 and B200 (serial nos. BB–614 thru BB–1192 except BB–627, BB–647 BB–665, BB–798, BB–823, BB–1139, BB–1158, BB–1167, BB–1179, and BB–1189); 200C and B200C (serial nos. BL–7 thru BL–66 and BL–68 thru BL–71); 200 CT and B200CT (serial nos. BN–1 thru BN–4); 200T and B200T (serial nos. BT–20 thru BT–26, BT–28, and BT–30); C–12D and FWC–12D (serial nos. BP–1, BP–7 thru BP–11, BP–22, and BP–24 thru BP–45); RC–12D (serial nos. GR–1 thru GR–10); and UC–12B (serial nos. BJ–1 thru BJ–66) airplanes certificated in any category.

Compliance: Required within the next 75 hours time-in-service or six calendar months, whichever occurs first, after the effective date of this AD, unless already accomplished:

To assure the continued structural integrity of the wing fuel bay upper panels, accomplish the following:

(a) Inspect the wing center section upper skin panels for possible debonding in accordance with Beech Service Bulletin No. 2040 (for civil registered airplanes) or Beech Service Instructions No. C–12–0094 (for military airplanes).

(1) If no debonding is detected, proceed to paragraph (b) below.

(2) If debonding is detected in either panel, the discrepant panel must be repaired by installation of Kit No. 101–4032–1 (L.H.) or 101–4032–3 (R.H.), prior to proceeding to paragraph (b) below.

(b) Seal all accessible blind rivets in both wing center section fuel bay upper panels as described in Service Bulletin 2040 or Service Instructions C–12–0094 (as applicable).

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used, if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4400.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

This amendment becomes effective on December 11, 1984.

Issued in Kansas City, Missouri, on November 23, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84–31570 Filed 12–3–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 84–NM–126–AD; Amdt. 39–4960]

Airworthiness Directives: BFGoodrich Emergency Evacuation Slide/Rafts P/N's 7A1340 Series, 7A1342 Series, 7A1371 Series, 7A1373 Series, 7A1437 Series, 7A1439 Series, 7A1447 Series, and 7A1448 Series, Installed in Boeing Model 747 Airplanes in Accordance With Supplemental Type Certificates (STC) SA574GL, SA575GL, SA744GL, or SA745GL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the inspection and replacement of girt bar attachment assemblies of BFGoodrich Emergency Evacuation Slide/Rafts installed in certain Boeing Model 747 airplanes in accordance with supplemental type certificates. This AD is prompted by the failure of a girt bar attachment assembly during an emergency evacuation. The inspection and replacement procedure contained in this amendment are necessary to prevent additional failures of these slides/rafts when needed during an emergency evacuation of the airplane.

DATES: Effective December 17, 1984.

Compliance is required within 15 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from BFGoodrich Company, Attn: Mr. David Smith, Dept. 1809, Bldg. 17F, 500 South Main Street, Akron, Ohio 44318; telephone (216) 374–2886. A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

FOR FURTHER INFORMATION CONTACT: Charles Smalley, Aerospace Engineer, Systems Equipment Branch, ACE–130C, FAA, Central Region, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694–7126.

SUPPLEMENTARY INFORMATION: During an emergency evacuation of a Boeing Model 747 airplane on November 16, 1984, the slide/raft installed at door Number One Left became detached and fell from the aircraft. Several passengers were using the slide/raft as it fell to the ground; one passenger required hospitalization as a result of injuries sustained during the fall. It was found that the thread holding the loops to the girt bar attachment assembly broke, which allowed the slide/raft to fall from the aircraft. A second slide/raft on the airplane which had the same style girt bar attachment assembly began to exhibit the same failure mode while being buffeted by the wind after the evacuation was completed. This style girt bar attachment assembly has been replaced with a new style on the currently manufactured slide/rafts. To prevent additional failures of this type, an airworthiness directive is being issued which requires the replacement of the old style girt bar attachment assemblies on BFGoodrich Emergency Evacuation Slide/Rafts, P/N's 7A1340 series, 7A1342 series, 7A1371 series, 7A1373 series, 7A1437 series, 7A1439 series, 7A1447 series, and 7A1448 series.

Since a situation exists which requires immediate adoption of this amendment, it is found that notice and public procedure hereon are impracticable and good cause exists for making this AD effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

BFGoodrich: Applies to BFGoodrich Emergency Evacuation Slide/Rafts P/N's 7A1340 series, 7A1342 series, 7A1371 series, and 7A1373 series installed on Boeing Model 747–100 and 747–200B airplanes in accordance with Supplemental Type Certificate (STC) SA574GL, and on Boeing Model 747–100B, 747SR, and 747–300 airplanes in accordance with STC SA575GL; and BFGoodrich Emergency Evacuation Slide/Rafts P/N's 7A1437 series, 7A1439 series, 7A1447 series, and 7A1448 series installed on Boeing Model 747–100 and 747–200B airplanes in accordance with STC SA744GL, and on Boeing Model 747–100B, 747SR, and 747–300 airplanes in accordance with STC SA745GL.

Compliance is required as indicated, unless already accomplished.

Inspect and replace, as required, the girt bar attachment assemblies in accordance with the following:

A. Within the next 15 days after the effective date of this airworthines directive (AD), inspect the applicable slide/rafts and replace the girt bar attachment assemblies in accordance with the procedures contained in BFGoodrich Alert Service Bulletin 25–093, Revision 1, dated November 21, 1984, or subsequent FAA approved revisions.

B. Destroy the replaced girt bar attachment assemblies to preclude their installation at a later date.

C. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Chicago Aircraft Certification Office, FAA, Central Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to BFGoodrich Company, Attn: Mr. David Smith, Dept. 1809, Bldg. 17F, 500 South Main Street, Akron, Ohio 44318; telephone (216) 374–2886. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

This amendment becomes effective December 17, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C 106(g) (Revised, Pub. L 97–449, January 12, 1983); and (14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft equipment. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; Feburary 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on November 27, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–31572 Filed 12–3–84; 8:45 am]

BILLING CODE 4910–13–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1302

Nondiscrimination in Federally Assisted Programs of TVA; Effectuation of Title VI of the Civil Rights Act of 1964; Correction

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a number of errors contained in the final rule amending Part 1302 of TVA's regulations which was published May 15, 1984 (49 FR 20480). Part 1302 implements the requirements of Title VI of the Civil Rights Act of 1964, as amended, insofar as that title applies to programs which receive financial assistance from TVA. The corrections to the final rule were suggested by the Department of Justice and the Office of the Federal Register.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Jr., Associate General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, (615) 632–4142.

DATED: November 27, 1984.

W. F. Willis,

General Manager.

PART 1302—[AMENDED]

Accordingly, TVA is correcting the amendments to 18 CFR Part 1302, which appeared as FR Doc. 84–12967 at pages 20480–4 in the issue of May 15, 1984, as follows:

§ 1302.13 Definitions [Redesignated as § 1302.3]

1. By redesignating § 1302.13 (appearing at page 20481, column one) as § 1302.3 and by correcting it by adding quotations marks to the terms defined in paragraphs (a)–(d) as follows:

* * * * * *

(a) "TVA" * * *

(b) "Recipient" * * *

(c) "Assistant Attorney General" * * *

(d) "Title VI" * * *

§ 1302.7 Compliance reviews and conduct of investigations.

2. By correcting § 1302.7 by changing the reference to "paragraph (b)(3)" to "paragraph (b)(6)" where it appears in § 1302.7(b)(3)(iii) in column two of page 20482; by ending paragraph (b)(4) (page 20482, column two) with paragraph (iii), the end of which is revised to read "* * * made." instead of "* * * made; and,"; and by redesignating paragraph (b)(4)(iv) as paragraph (b)(5), and revising the paragraph to read as follows:

* * * * * *

(b) * * *

(5) TVA's General Manager may extend the 180-day period set out in paragraph (b)(4) of this section for good cause shown.

In addition, § 1302.7 is further corrected by redesignating paragraphs (b)(5), (b)(6), and (b)(7) (page 20482, columns two and three) as paragraphs (b)(6), (b)(7), and (b)(8), respectively. Furthermore, the last sentence of § 1302.7(c)(4) (page 20483, column one) now reads:

* * * * * *

(c) * * *

(4) * * * The determination is to be made no later than 14 days after conclusion of a 50-day negotiation period, whenever possible.

* * * * * *

The last sentence of § 1302.7(c)(4) is corrected to read:

* * * * * *

(c) * * *

(4) * * * The determination is to be made no later than 14 days after conclusion of a 50-day negotiation

period. TVA's General Manager may extend the 14-day period for good cause shown.

* * * * *

§ 1302.8 Procedure for effecting compliance.

3. By correcting paragraph (b) of § 1302.8 (page 20483, column two) by adding the following phrase to the end of the paragraph:

* * * * *

(b) * * * and for such purposes, the term "recipient" shall be deemed to include one which has been denied financial assistance.

* * * * *

§ 1302.10 [Redesignated as § 1302.11]

4. By redesignating § 1302.10 as § 1302.11.

[FR Doc. 84-31680 Filed 12-3-84; 8:45 am]
BILLING CODE 8120-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 632

Job Training Partnership Act: Indian and Native American Employment and Training Programs; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Final designation procedures for grantees; correction.

SUMMARY: This document corrects a rule-related notice that appeared in the **Federal Register** of Tuesday, October 23, 1984. The wording at page 42561 incorrectly appeared to permit all applicants to request to serve only the members of specific tribes, rather than all Native Americans residing in an area.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, 601 D Street, NW, Room 6122, Washington, D.C. 20213. Phone: (202) 376-6225.

SUPPLEMENTARY INFORMATION: The following corrections are made in **Federal Register** Doc. 84-27925 appearing on page 42559 in the issue of October 23, 1984:

On page 42561, Section II of the notice contained instructions for requesting specific population groups within a county and a sample county described as "Beaumont (only members of Aztec Tribe)." The Department of Labor wishes to make it known that these references were intended to apply only to States of Oklahoma and Hawaii. Grantees in all other States are required to serve all eligible Native Americans residing in their assigned areas. The Department has maintained this policy for many years for the purposes of avoiding fragmentation of geographic areas.

This policy was restated clearly in the referenced **Federal Register** notice, under **SUPPLEMENTARY INFORMATION.** It applies whether the area is an entire county, only the reservation part of a county, or only the off-reservation part of a county. Applicants should be cognizant of this when preparing their final Notice of Intent under 20 CFR 632.11, which must be postmarked by January 1, 1985 or delivered no later than close of business on January 2, 1985.

Signed at Washington, D.C. this 27th day of November 1984.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

[FR Doc. 84-31686 Filed 12-3-84; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 77G-0007]

Direct Food Substances Affirmed as Generally Recognized as Safe; Lactase Enzyme Preparation From Kluyveromyces Lactis

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that a lactase enzyme preparation derived from the yeast *Kluyveromyces lactis* is generally recognized as safe (GRAS) for use in the production of lactase-treated milk and lactose-reduced milk. This action responds to a petition filed by SugarLo Co.

DATES: Effective December 4, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1388 effective on December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Damon Larry, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION:

Introduction

Under the procedures described in § 170.35 (21 CFR 170.35), SugarLo Co., P.O. Box 1017, Atlantic City, NJ 08404, submitted a petition (GRASP 6G0077), requesting that FDA affirm as GRAS the use of a lactase enzyme preparation derived from the yeast *Kluyveromyces lactis* (*K. lactis*) (previously named *Saccharomyces lactis)* to produce lactase-treated milk, in which there is less lactose than regular milk, and lactose-reduced milk, in which 70 percent or more of the lactose has been converted to glucose and galactose.

FDA published a notice of the filing of this petition in the **Federal Register** of April 19, 1977 (42 FR 20348), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. FDA did not receive any comments in response to that notice. However, on April 30, 1979, a manufacturer of lactase enzyme preparations submitted a number of published reports on the occurrence of *K. lactis* in food to augment the safety data in the petition. FDA considers this submission to be a comment on the petition and has reviewed the reports submitted in the comment in its evaluation of the petition.

Lactase enzyme preparation from *K. lactis* is a soluble enzyme preparation. It is composed of the cellular fraction of *K. lactis* that contains lactase enzyme activity, residual amounts of processing aids used to separate this cellular fraction from the yeast cells, and substances added to this cellular fraction as stabilizers or diluents. The lactase enzyme preparation contains the enzyme B-galactoside galactohydrase which catalyzes the hydrolysis of the disaccharide lactose to the monosaccharides glucose and galactose.

Lactase enzyme preparation from *K. lactis* has been commercially available to food processors in the United States since 1972 and since 1976 has been sold at the retail level for home use. This enzyme preparation also has been used experimentally in the United States in the manufacture of cheese. Lactose-reduced milk prepared from lactase enzyme preparation from *K. lactis* has been sold in some U.S. markets since 1978.

In evaluating this petition to affirm as GRAS the use of lactase enzyme preparation from *K. lactis* as a food ingredient, the agency has considered five aspects of its manufacture and use: (1) The source of the lactase enzyme preparation, (2) the production and purification of the lactase enzyme preparation, (3) the use of the lactase enzyme preparation in food, (4) residual levels of the lactase enzyme preparation that may occur in the food, and (5) the safety of the lactase enzyme preparation and of the resulting hydrolyzed lactose (i.e., lactose that has been enzymatically converted to glucose and galactose).

Source of Lactase Enzyme Preparation

1. The source of this enzyme preparation is the yeast *K. lactis*. According to published reports included in the petition or submitted in the comment on the petition, *K. lactis* has been isolated from yogurt, certain cheeses, and fermented milks such as kefir. Published information shows that *K. lactis* appears to act synergistically with bacteria in yogurt culture. In addition, during cheese culture, *K. lactis* produces carbon dioxide, which is necessary to open the cheese (that is, to create air pockets in the cheese) before brining. This information shows that *K. lactis* is a normal, even necessary, constituent of many cultured dairy products. Published information in the petition also shows that the morphology life-cycle, and nutritional requirements of *K. lactis* have been well-characterized.

Production and Purification of the Lactase Enzyme Preparation

2. The methods by which microbial lactase enzyme preparations are made have been the subject of numerous scientific reviews (e.g., Refs. 1 through 4). Methods of partially purifying lactase enzyme preparations from various species of *Kluyveromyces,* including *K. lactis*, are described in Refs. 5 and 6.

The petition describes the commercial production of lactase enzyme preparation from *K. lactis*. Under the method of manufacture described in the petition, *K. lactis* is maintained as a pure culture under conditions that minimize any genetic changes and is grown in a pure culture fermentation. At the end of the fermentation, the cells are collected, washed with water, and ruptured with octanol. The insoluble cellular fragments are removed from the liquid fraction and discarded. Ethanol is then added to the liquid fraction to solidify the proteins, which include the enzyme. This insoluble material is separated from the liquid, washed with ethanol, and dried. Under this method of manufacturing this enzyme preparation, the processing aids used to separate the cellular fraction of the yeast cell that contains the enzyme activity and the substances added to this cellular fraction to stabilize or dilute the enzyme preparation are either GRAS ingredients or approved food additives.

The petition shows that the enzyme preparation produced by this method of manufacture does not contain any viable yeast cells. It also shows that lactase enzyme preparation from *K. lactis* produced in this manner meets the general and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d Ed. (1981), and that this substance catalyzes the reaction described for lactase in the Food Chemicals Codex. The petition further shows that when lactase enzyme preparation from *K. lactis* is made under the method of manufacture that it describes, there is little variation in the specific activities of individual batches of enzyme preparation.

The Use of Enzyme Lactase Preparation in Food

3. Lactase enzyme preparation from *K. lactis* is added to milk to convert the lactose in the milk to glucose and galactose. Milk treated with the preparation therefore contains less lactose than regular milk. Milk with a reduced lactose content is sold to people with lactose intolerances.

Residual Levels of Lactase Enzyme from K. lactis That May Occur in Food

4. The petition contains information showing that the use of lactase enzyme preparation from *K. lactis* under current good manufacturing conditions to produce lactose-reduced milk results in levels of the enzyme preparation ranging up to 375 parts per million in the finished food.

According to the information in the petition, the level of the enzyme preparation from *K. lactis* used will vary depending upon the degree of hydrolysis desired, the incubation conditions, and the duration of incubation. Data in the petition show that the enzymatic activity of lactase enzyme preparation from *K. lactis* declines under acidic conditions and ceases when this lactase enzyme preparation is exposed to pH below 2. These data also demonstrate that this enzyme preparation shows maximal activity in the temperature range of 25 to 40 °C. The enzymatic activity of this enzyme preparation decreases at temperatures below 25 °C and ceases at temperatures of 60 °C or above.

According to information in the petition, mixtures of lactase enzyme preparation from *K. lactis* may be incubated at 35 °C for 6 hours or less or at refrigeration temperatures (i.e., 7 °C or below) for 24 hours or more to produce lactose-reduced milk, in which at least 70 percent of the lactose is converted to glucose and galactose. If a lesser degree of lactose hydrolysis is desired, adjustments may be made in the level of lactase enzyme preparation that is added to the milk or in the length of the incubation of the mixture of milk and lactase enzyme preparation.

The variability of the conditions of use for lactase enzyme preparation from *K. lactis* suggests that there are no typical levels of use for this preparation. Aside from the finding that use of the enzyme preparation will result in no more than 375 parts per million of the enzyme preparation in the finished food, there is no set of percentage-by-weight use levels for addition of this lactase enzyme preparation to food that would be applicable under the wide variety of conditions under which this enzyme product is used.

Safety of Use of Lactase Enzyme Preparation and of the Resulting Hydrolyzed Lactose

5-A. The petition contains unpublished animal feeding studies of lactase enzyme preparation from *K. lactis* that show that this enzyme preparation was not harmful under the conditions of the test. However, FDA finds that the design of these animal feeding studies does not meet the criteria established in the "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food" (1982). Therefore, these animal feeding studies do not constitute sufficient evidence to support the petition.

FDA nonetheless finds that sufficient information is available to establish the safety of lactase enzyme preparation from *K. lactis*. The agency is basing this finding on evidence that the yeast *K. lactis* is safe, evidence that the materials used to make the enzyme preparation are safe, and information about the amount of exposure to this lactase enzyme preparation and to dried *K. lactis* yeast.

Safety of the Yeast

5-B. The comment on GRASP 6G0077 contains published information that establishes the safety of the yeast *K. lactis*. Among this published information is information that establishes that *K. lactis* is a normal, even necessary component of many cultured dairy products, and that no reports of toxicity or pathogenicity have ever been associated with the presence of *K. lactis* in food (Refs. 7 and 8). Additionally, the comment includes published studies in which subjects were fed 10 grams or more per day of dried *K. lactis* as a dietary supplement in a variety of

clinical situations (Refs. 9 and 10). These studies also did not reveal any health hazard attributable to the consumption of dried *K. lactis*. Finally, FDA is aware that dried *K. lactis* is consumed as a dietary supplement in Europe (Ref. 9).

Safety of Materials Used to Make the Enzyme Preparation

5–C. FDA finds that the process of extracting the lactase-containing cellular fraction of *K. lactis* during the manufacture of the lactase enzyme preparation does not create any basis for concern about the safety of the preparation. As discussed in paragraph 2 above, the cellular fraction of the yeast that contains lactase enzyme activity is separated from the yeast cell by physical means. As explained in paragraph 2, under the conditions described in the petition, the solvents used in the extraction of the lactase-containing cellular fraction of *K. lactis* are unlikely to change the cellular fraction in any chemically significant way. Moreover, as stated above, information in the petition shows that the substances used to extract the cellular fraction or to stabilize or to dilute the lactase enzyme preparation are either GRAS ingredients or food additives approved for this use.

Exposure Data

Use information contained in the petition domonstrates that consumption of the lactase enzyme preparation from *K. lactis* (including diluents and stabilizers as well as cellular material derived from *K. lactis*) resulting from its use in milk will not exceed 250 milligrams per person per day (Ref. 11). Even if it is assumed that the entire enzyme preparation is composed of cellular material, this amount of cellular material is much less than the amount of such cellular material that was consumed by the subjects in the clinical studies of the use of dried *K. lactis* as a dietary supplement (Refs. 9 and 10). Thus, because the level of exposure to this cellular material from consuming dried *K. lactis* as a dietary supplement is safe, and because that exposure is much greater than the level of exposure to the cellular material that results from the consumption of milk treated with lactase enzyme preparation from *K. lactis*, FDA concludes that the levels of lactase enzyme preparation from *K. lactis* used in the production of lactase-treated and lactose-reduced milk are safe.

Other Information

The petition also contains published clinical studies on the consumption of lactose-reduced milk that has been prepared with this enzyme preparation. These studies show that lactose-reduced milk, which contains residual amounts of the enzyme preparation, has been ingested by lactose intolerant people without ill effects. Data in the petition also show that the monosaccharides galactose and glucose occur in equal proportions in lactose-reduced milk, and that the quantity of glucose and galactose in lactose-reduced milk does not exceed the quantity of these monosaccharides derived from lactose that is ingested when an equal volume of regular milk is consumed. FDA finds that this information corroborates its conclusion that lactase enzyme preparation from *K. lactis* is safe for use in the production of lactase-treated milk and lactose-reduced milk.

Conclusions

The agency has evaluated all the information related to the use of lactase enzyme preparation from *K. lactis* and has reached the following conclusions:

1. The enzyme preparation is not GRAS based upon history of common use in food.

2. The enzyme preparation is GRAS based upon scientific procedures. This conclusion is based upon FDA's evaluation of information provided in published studies that relate to the safety of the yeast *K. lactis*, the procedures used to produce the enzyme preparation, and the safety of milk that has been treated with the enzyme product.

3. Lactase enzyme preparation from *K. lactis* is technically effective for producing lactase-treated milk or lactose-reduced milk.

4. It is both impractical and unnecessary for FDA to delineate the levels of lactase enzyme preparation from *K. lactis* used in milk. FDA has determined that the amount of active enzyme that is added to milk is variable because of the variable conditions of use, and that a set of percentage-by-weight levels of use for lactase enzyme preparation would not be useful. In addition, there are no safety concerns to warrant establishment of use levels for lactase enzyme preparation from *K. lactis*.

Therefore, the agency is affirming that lactase enzyme preparation from *K. lactis* is GRAS when used under current good manufacturing practice conditions in accordance with § 184.1(b)(1). To make clear, however, that the affirmation of the GRAS status of this substance is based on the evaluation of limited uses, the regulation sets forth the technical effect and food uses of this ingredient that FDA evaluated.

Environmental Effects

The agency has determined pursuant to 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Effects

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule, and the agency has determined that the rule is not a major rule as defined by that Order. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

References

The following information has been placed on display with the Dockets Management Branch (address above).

1. Pomeranz, Y., "Lactase (Beta-D-Galactosidase) I. Occurrence and Properties," *Food Technology*, 86:682–687, 1964.

2. Wallenfels, K., and O.P. Malhorta "B-Galactosidase (Crystalline)," *in* "Methods in Enzymology," Vol. V, S.P. Colowick and N.O. Kaplan, eds., Academic Press, New York, pp. 212–219, 1960.

3. Underkofler, L.A., R.R. Barton, and S.S. Rennert, "Microbiological Process Report," *Applied Microbiology*, 6:212–221, 1958.

4. Beckhorn, E.J., M.D. Labbee, and L.A. Underkofler, "Production and Use of Enzymes for Food Processing," *Journal of Agriculture and Food Chemistry*, 13:30–34, 1965.

5. Beirmann, L. and M.D. Glantz, "Isolation and Characterization of B-Galactosidase from *Saccharomyces lactis*," *Biochimica et Biophysica Acta*, 1:67:373–377, 1968.

6. Fenton, D.M., "Solvent Treatment for B-D-Galactosidase Release from Yeast Cells," *Enzyme Microbiological Technology* 4:229–232, 1982.

7. Memorandum dated December 13, 1983, from P. Mislivec to S. Shibko, "*Saccharomyces lactis* Lactase Enzyme."

8. Memorandum dated June 5, 1978, from P. Mislivec to V. Prunier, "Lactase Enzyme Derived from *Kluyveromyces lactis*."

9. Vrignaud, Y., "Levure Lactique," *Revue de Institut Pasteur de Lyon*, 4:147–165, 1971, translation provided by G.B. Fermentation Industries, Inc., as part of a comment on GRASP 6G0077.

10. Gervais, CL, "Effet bénéfique d'une levure lactique chez l'enfant Biafrais dénutri," *Bulletin de la Société de Pathologie Exotique*, 66:445–450, 1973, translation provided by G.B. Fermentation Industries, Inc., as part of a comment on GRASP 6G0077.

11. Memorandum date March 15, 1978, from L.W. Schroeder to V.G. Prunier, "Review of Submissions of 1–10–78 and 12/5/77 Lactose Enzyme (LE) from *Kluyveromyces lactis*."

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 184 is amended by adding new § 184.1388, to read as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

§ 184.1388 Lactase enzyme preparation from Kluyveromyces lactis.

(a) This enzyme preparation is derived from the nonpathogenic, nontoxicogenic yeast *Kluyveromyces lactis* (previously named *Saccharomyces lactis)*. It contains the enzyme B-galactoside galactohydrase (CAS Reg. No. CBS 683), which converts lactose to glucose and galactose. It is prepared from yeast that has been grown in a pure culture fermentation and by using materials that are generally recognized as safe or are food additives that have been approved for this use by the Food and Drug Administration.

(b) The ingredient meets the general and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d Ed. (1981), p. 107–110, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in §170.3(o)(9) of this chapter to convert lactose to glucose and galactose.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Current good manufacturing practice is to use this ingredient in milk to produce lactase-treated milk, which contains less lactose than regular milk, or lactose-reduced milk, which contains at least 70 percent less lactose than regular milk.

Effective date. This regulation shall become effective December 4, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: November 5, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–31583 Filed 12–3–84; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a sponsor name change for several new animal drug applications (NADA's) from Byk-Gulden, Inc., to Altana, Inc.

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Borders, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Byk-Gulden, Inc., 60 Baylis Rd., Melville, NY 11747, advised the Center for Veterinary Medicine of a change in corporate name to Altana, Inc. This is an administrative change which does not in any other way affect the approval of the firm's NADA's. The regulations in 21 CFR 510.600(c) are amended accordingly.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 510 is amended in § 510.600 in paragraph (c)(1) by removing the entry for "Byk-Gulden, Inc.," and by alphabetically adding a new entry for "Altana, Inc.," and in paragraph (c)(2) in the entry for "025463" by removing the sponsor name "Byk-Gulden, Inc." and inserting in its place "Altana, Inc." to read as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Altana, Inc., 60 Baylis Rd., Melville, NY 11747	025463

(2) * * *

Drug labeler code	Firm name and address
025463	Altana, Inc., 60 Baylis Rd., Melville, NY 11747

Effective date. December 4, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 28, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84–31584 Filed 12–3–84; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In FR Doc. 84–28551 beginning on page 39539 in the issue of Tuesday, October 9, 1984, make the following correction:

On page 39539, third column, under "Part 558", "§ 558.321" should have read "§ 558.325".

BILLING CODE 1505–01–M

21 CFR Part 1020

[Docket No. 78N–0308]

Diagnostic X-Ray Systems and Their Major Components; OMB Approval and Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Management and

Budget (OMB) has approved the information collection requirements in the final rule amending the performance standard for diagnostic x-ray systems and their major components to add requirements concerning computed tomography x-ray (CT) systems. FDA also is affirming the effective date of the amendments.

EFFECTIVE DATE: September 3, 1985, except for § 1020.30 (a), (b)(36)(iii)–(v), (58)–(62), (h)(3)(iv)–(viii), and (n); §§ 1020.31 and 1020.32 (introductory texts); § 1020.33 (a), (b), and (c)(2); and § 1020.33(c)(1) as it affects § 1020.33(c)(2), all of which are effective November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 31, 1984 (49 FR 34698), FDA published a final rule amending the performance standard for diagnostic x-ray systems and their major components (21 CFR 1020.30, 1020.31, and 1020.32) and adding new requirements in 21 CFR 1020.33. The final rule adds new provisions to the standard to address the radiation safety aspects of CT systems. The rule requires manufacturers of CT systems to provide user information to purchasers of CT systems concerning conditions of use, dose, and imaging.

OMB Approval

In paragraph 78 of the preamble to the final rule, FDA advised that the collection of information requirements contained in §1020.33 (c), (d), (g), and (j) would be submitted to OMB for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The agency also stated that the requirements under § 1020.33 (c), (d), (g), and (j) would not be effective until FDA obtained OMB approval of these information collection requirements. FDA also advised that it would publish a notice in the Federal Register concerning OMB approval of the requirements.

On October 24, 1984, OMB approved without change the collection of information requirements, under OMB control number 0910–0025.

List of Subjects in 21 CFR Part 1020

Electronic products, Ionizing radiation, Medical devices, Radiation protection, Standards, Television receivers, X-rays.

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

§ 1020.33 [Amended]

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f) and under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1020 is amended in § 1020.33 *Computed tomography (CT) equipment* in paragraphs (c), (d), (g), and (j) by adding the number "0910–0025" at the end of the parenthetical statement appearing at the end of each paragraph.

Effective date. This regulation shall be effective September 3, 1985, except for the following, which shall be effective November 29, 1984: § 1020.30 (a), (b)(36)(iii)–(v), (58)–(62), (h)(3)(vi)–(viii), and (n); §§ 1020.31 and 1020.32 (introductory texts); §1020.33 (a), (b), and (c)(2); and § 1020.33(c)(1) as it affects § 1020.33(c)(2).

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f); secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371))

Dated: November 27, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31582 Filed 11-30-84; 10:43 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 234

[Docket No. R-84-1215; FR-2030]

Condominium Mortgage Insurance: Maximum Mortgage Amounts for Nonoccupant Mortgagors

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Department's regulation prescribing maximum mortgage limits for nonoccupant owners of HUD-insured condominium units. This amendment is promulgated to conform HUD regulations to the National Housing Act, as amended by the Housing and Urban-Rural Recovery Act of 1983.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Brian Chappelle, Acting Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755–6720. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: The National Housing Act (NHA) (12 U.S.C. 1701–1749) authorizes HUD/Federal Housing Administration (FHA) to insure mortgage for single family residences, including one-family units in condominiums (see section 234 of the NHA).

HUD/FHA insures lenders against losses on insured home mortgages, thereby lowering lenders' risk and encouraging a flow of credit for homeownership. The Department's insurance program has increased the opportunity for homeownership—one of the fundamental objectives of the Department. The limits on how much the Department may insure are set by the National Housing Act. Maximum mortgage amounts depend on whether the buyer intends to live in the home, the appraised value of the property, the number of family units in the dwelling and the prevailing housing prices in the area. The insured mortgage amount cannot exceed a fixed percentage of the appraised value, called the loan-to-value ratio.

Section 425 of the Housing and Urban-Rural Recovery Act of 1983 (1983 Act) amended the NHA to increase the maximum insurable amount of a mortgage on a dwelling owned by a nonoccupant mortgagor. Today's final rule implements section 425 for condominiums. HUD implemented this provision for single family residences in a final rule published on March 30, 1984 (see 49 FR 12693, 12696), but did not include amendments implementing section 425 of the 1983 Act for condominium units in that rule.

The Department is issuing today's rule as a final rule. As a matter of policy, the Department submits most of its rulemakings for public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that good cause exists for publishing this document as a final rule without public comment. The Department believes that prior public comment is unnecessary, because the revision to the Department's regulation grants a benefit to a class of persons potentially eligible to participate in a HUD program.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981.

Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export market.

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule merely carries out a statutory policy and does not impose any new administrative or economic burdens on small entities.

This rule was listed as item number 89 in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684, 41710) under Executive Order 12291 and the Regulatory Flexibility Act.

The applicable Catalog of Federal Domestic Assistance program number is 14.133.

List of Subjects in 24 CFR Part 234

Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Part 234 as follows:

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Section 234.27 is amended by revising paragraphs (d)(1) and (d)(2) as set forth below:

§ 234.27 Maximum mortgage amounts.

* * * * *

(d) * * *

(1) The lesser of the amount computed under paragraph (a) of this section or 85 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance; or

(2) The amount computed under paragraph (a) of this section (even if it is greater than 85 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance), if the mortgage covers a unit and the Commissioner is furnished with certificates indicating that:

(i) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the family unit before the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the family unit is not sold before the due date of the 18th amortization payment of the mortgage to a purchaser, acceptable to the Commissioner, who will occupy the family unit, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage; and

(iv) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph, shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 28, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-31605 Filed 12-3-84; 8:45 am]

BILLING CODE 4210-01-M

POSTAL SERVICE

39 CFR Parts 10 and 111

Incorporation by Reference, Conformance of Regulations to Current Practice

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule removes certain obsolete references in existing domestic and international postal regulations. The obsolete references provide that the Director of the Federal Register's approval of the incorporation by reference of certain documents will expire unless renewed and extended by the Director upon annual application by the Postal Service. Current Federal Register practice in relation to documents incorporated by reference is that there is no automatic annual expiration of approval, and therefore there is no need for an agency to reapply each year for approval. A document that meets the requirements of 1 CFR Part 51 will be approved for incorporation by reference if requested, and no formal annual review of that approval is required. For these reasons the Postal Service is revising its regulations to conform to the current practice.

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245–4638.

List of Subjects in 39 CFR Parts 10 and 111

Incorporation by reference, Postal Service.

Accordingly, 39 CFR is amended as follows:

PART 10—INTERNATIONAL POSTAL SERVICE

1. Revise § 10.4 to read as follows:

§ 10.4 Approval of the Director of the Federal Register.

Incorporation by reference of the publication now titled the International Mail Manual was approved by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51 on June 24, 1981.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

2. Revise § 111.4 to read as follows:

§ 111.4 Approval of the Director of the Federal Register.

Incorporation by reference of the publication now titled the Domestic Mail Manual was approved by the Director of the Federal Register under 5

U.S.C 552(a) and 1 CFR Part 51 on March 29, 1979.

(5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3218, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84–31621 Filed 12–3–84; 8:45 am]

BILLING CODE 7718–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 270

[SWH–FRL–2729–8]

Hazardous Waste Management System: General; and EPA Administered Permit Programs; the Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of technical corrections to EPA test manual; amendment to final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today making corrections to and updating the second edition of the test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (1982) (EPA Publication No. SW–846) which was incorporated by reference into 40 CFR Parts 260 and 270 in the **Federal Register** on September 21, 1982 (47 FR 41563). Present references in 40 CFR Parts 260 and 270 to SW–846 are being amended to reflect these revisions to the test manual. These corrections and changes were made due to typographical errors in the original edition and for purposes of clarification.

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424–9346 toll free, or (202) 382–3000. For technical information contact David Friedman, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382–4770.

SUPPLEMENTARY INFORMATION:

I. Corrections to Test Methods Manual

EPA announced the availability of the second edition of its test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (1982) (EPA Publication No. SW–846) in the **Federal Register** on September 21, 1982 (47 FR 41563). Upon review and following questions received from the public, it was determined that several errors existed in the test methods manual. To alleviate confusion arising from apparent errors or confusing wording in the test methods, corrections and clarifications were deemed necessary.

Table 1 summarizes the corrections being made in the second edition of the methods manual.

TABLE 1.—CORRECTIONS FOR SW–846, 2ND EDITION

Method	Page and section No. of change	Reason for change
1110—Corrosivity Toward Steel	Page 3, section 4.5.2	Typographical error
1310—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test.	Page 1, section 4.1	Glas-Col Apparatus Co. took over Kraft Apparatus.
	Page 10, section 7.7.2	Typographical error
3010—Acid Digestion Procedure for Flame Absorption Spectroscopy	Page 1, section 1.1	Clarification.
3030—Acid Digestion of Oils, Greases or Waxes	Page 1, section 1.1	This test method is inappropriate for high levels of barium and lead as precipitate forms.
3050—Acid Digestion of Sludges	Page 1, section 2.1	Barium was inadvertently left out of the discussion.
	Page 2, section 7.1	To be consistent with apparatus specified in Sect. 4.1 of this method
	Page 3, section 7.5	Barium was inadvertently left out of the discussion.
	Page 3, section 7.5	Typographical error.
	Page 3, section 7.6	Barium was inadvertently left out of the discussion.
3060—Alkaline Digestion	Page 2, section 5.6	Typographical error.
	Page 3, section 8.1	Inappropriate reference
5030—Purge-and-Trap Method	Page 4, table 1	Column for Method 8015 inadvertently left out of the discussion
7061—Arsenic (Atomic Absorption, Gaseous Hydride)	Page 4, section 7.1	This procedure should be run on a digested sample rather than directly on the sample.
7080—Barium (Atomic Absorption, Direct Aspiration Method)	Page 1, section 2.2	Deuterium background correction is difficult above 400 nm
7196—Hexavalent Chromium: Colorimetric Method	Page 2, section 4.2	Separatory funnels are not used in this method.
	Page 3, section 7.2.1	Clarification.
7197—Hexavalent Chromium: Chelation/Extraction	Page 2, section 5.4	Typographical error.
7471—Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique).	Page 5	A handling method for solids or semisolids was not provided in the orginal version of method.
7741—Selenium (Atom Absorption, Gaseous Hydride)	Page 4, section 7.1.1	This procedure should be run on a digested sample rather than directly on the sample.
7760—Silver (Atomic Absorption, Direct Aspiration Method)	Page 3, section 7.2.1	This precaution was added due to comments received.
7761—Silver (Atomic Absorption, Furnace Method)	Page 3, section 7.2.1	This precaution was added due to comments received.
8020—Aromatic Volatile Organics	Page 1, section 2.1	Maximum sensitivity is necessary for the analysis of ground water. This may be achieved with the use of a photoionization detector.
	Page 1, section 2.1	FID achieves appropriate degree of sensitivity for waste analysis.
	Page 9, table 1	See reason for change in section 2.1
8080—Organochlorine Pesticides and PCB's	Page 5, section 6.1	Clarification.
8150—Chlorinated Herbicides	Page 1, section 2.0	The Boron trifluoride/methanol option was inadvertently left out in the orginal version of this method.
	Page 6, section 5.7	Benzene was inadvertently left out of the discussion.
	Page 7, section 5.0	Necessary information required for change in Sect. 2.0 of this method.
	Page 10, section 7.1.2.8	This information is necessary for the use of Boron trifluoride/methanol.
	Page 10, section 7.1.2.9	This change is necessary in section numbering due to the insertion of new 7.1.2.8.
	Page 11	This information is necessary for the use of Boron trifluoride/methanol.
9010—Total and Amenable Cyanide	Page 1, section 1	Autoanalyzer method is incorporated into this revised method.
	Page 1, section 2	Detection limit for colorimetric method is approximately one hundred times lower than titrimetric. The colorimetric method allows for less error since measurements are determined spectrophotometrically rather than by eye.
	Page 1, section 3	Fatty acids do not interfere with manual distillation and colorimetric analysis.
	Pages 1–2, section 4	The equipment specified is necessary to perform colorimetric analysis.

TABLE 1.—CORRECTIONS FOR SW–846, 2ND EDITION—Continued

Method	Page and section No. of change	Reason for change
	Page 2, section 5	$AgNO_3$ is not needed for the colorimetric method. Sulfamic acid solution. Reagent added to prevent organics and nitrites from forming cyanide under rigorous distillation conditions. Bismuth nitrate solution. Preferred reagent in preventing positive interference from sulfide. Lead acetate is a suspected carcinogen. Barbituric acid-chloramine-T complex used in place of $AgNO_3$ solution.
	Pages 4–6, section 7.0	Detection limit for colorimetric method is approximately one hundred times lower than titrimetric. The colorimetric method allows for less error since measurements are determined spectrophotometrically rather than by eye.

II. Availability Of Updates

The EPA manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (1982) (EPA Publication No. SW–846) is incorporated by reference in several sections of EPA's regulations. Today's corrections to the test methods manual are now also incorporated by reference by virtue of their incorporation into this manual. This incorporation by reference was approved by the Director of the **Federal Register** on December 4, 1984.

These technical corrections will be referred to as "Update I to SW–846" and are available from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202–783–3238) (GPO Number 055–002–81001–2). Persons holding a subscription to the second edition of SW–846 will automatically receive this amendment. Others may purchase both the second edition of the manual and this amendment from the GPO.

EPA has determined under section 553(b) of the Administrative Procedures Act, 5 U.S.C. 553(b) that there is good cause for promulgating these amendments without prior notice. These amendments are entirely technical in nature and do not change any substantive requirement.

Dated: November 20, 1984.

Jack McGraw,

Acting Assistant Administrator; Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—[AMENDED]

1. The Authority citation for Part 260 reads as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930 and 6974).

§ 260.11 [Amended]

2. Section 260.11 is amended by revising the fourth reference in paragraph (a) to read as follows:

(a)* * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Second Edition, 1982 as amended by Update I (April, 1984)]. The second edition of SW–846 and Update I are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3228, on a subscription basis.

* * * * *

§ 260.21 [Amended]

3. Section 260.21 is amended by removing the comment at the end of this section.

* * * * *

PART 270—[AMENDED]

4. The authority citation for Part 270 reads as follows:

Authority: Secs. 1006, 2002, 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927 and 6974).

5. Section 270.6 is amended by revising the first reference in paragraph (a) to read as follows:

§ 270.6 References.

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Second Edition, 1982 as amended by Update I (April, 1984)]. The second edition of SW–846 and Update I are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238, on a subscription basis.

* * * * *

[FR Doc. 84–31607 Filed 12–3–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW–3–FRL–2730–1]

Commonwealth of Virginia; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on the Commonwealth of Virginia's application for final authorization.

SUMMARY: Virginia has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Virginia's application and has made the final decision that Virginia's hazardous waste management program satisfies all of the requirements necessary to qualify for Final Authorization. Thus, EPA is granting final authorization to the State to operate its program in lieu of the Federal program.

EFFECTIVE DATE: Final Authorization for Virginia, for purposes of judicial review, shall be effective at 1:00 p.m. Eastern Standard Time on December 18, 1984.

FOR FURTHER INFORMATION CONTACT: John A. Armstead, Program Manager, State Programs Section, US EPA Region III, 6th and Walnut Streets, Philadelphia, PA 19106, (215) 597–7259.

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must: (1) Be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of 42 U.S.C. 6226(b)).

On June 26, 1984, Virginia submitted a complete application to obtain final authorization to administer the RCRA program. On September 13, 1984, EPA published a tentative decision announcing that Virginia's hazardous waste program did satisfy all of the

requirements necessary for final authorization.

The Commonwealth agreed to maintain a level of effort in compliance and enforcement which ensures an effective program consistent with EPA's Compliance and Enforcement Strategy (June 12, 1984). Since the publication of the tentative determination, Virginia has shown the ability to maintain this level of performance and fulfilled the commitments included in the Memorandum of Agreement. Therefore, EPA has determined that the Commonwealth's hazardous waste program satisfies all the necessary requirements for final authorization. Further background on the tentative decision to grant authorization appears in Vol. 49 No. 170 FR 35966, September 13, 1984.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of public hearing on the application. The public hearing was not held as scheduled on October 16, 1984, since neither EPA nor the Commonwealth received significant interest in holding the hearing.

The Commonwealth does not seek authority to impose its hazardous waste regulatory program over Indian lands. Therefore, EPA will be administering the RCRA program directly over the Mattaponi Indian Reservation, Box 178, West Point, Virginia 23181 and the Pamunkey Indian Reservation, Pamunkey, Virginia 28086.

Decision

I conclude that Virginia's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the Commonwealth of Virginia is granted Final Authorization to operate its hazardous waste management program. The Commonwealth now has the responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program authorized today. Virginia also has primary enforcement responsibility, although EPA retains the right to take enforcement action under Section 3008 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Virginia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the Commonwealth. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and record keeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: November 8, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84-31611 Filed 12-3-84; 8:45 am]

BILLING CODE 6560-50-M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program; Appendix A: Alabama

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management is establishing a new office for filing of applications or complaints under the Voting Rights Act of 1965, as amended, in Monroe County, Alabama. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution .

DATES: This rule is effective December 4, 1984. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before January 3, 1985.

ADDRESS: Send or deliver comments to Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, Room 5532 1900 E Street, NW, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brooks, Coordinator, Voting Rights Program (202) 632-5544.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Monroe County, Alabama, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on August 31, 1984, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because its purpose is the addition of a new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedures, Voting rights.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 801—VOTING RIGHTS PROGRAM

Accordingly, the Office of Personnel Management amends 45 CFR 801.202, Appendix A, by alphabetically adding Monroe County, to the listing for Alabama, to read as follows:

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

Alabama

County; Place for filing; Beginning date.

* * * * *

Monroe—Room 112, Monroe Motor Court South, Highway 21, Monroeville, Alabama. August 31, 1984.

* * * * *

(5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973c, 1973g)

[FR Doc. 84-31624 Filed 12-3-84; 8:45 am]

BILLING CODE 6325-01-M

45 CFR Part 801

Voting Rights Program; Appendix A: South Carolina

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management is establishing three new offices for filing of applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective immediately upon publication. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before January 3, 1985.

ADDRESS: Send or deliver comments to Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, Room 5532 1900 E Street, NW, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brooks, Coordinator, Voting Rights Program, (202) 632-5544.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Bamberg, Colleton, and Hampton Counties, South Carolina as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. He determined on October 10, 1984, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because its purpose is the addition of three new locations to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedures, Voting rights.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 801—VOTING RIGHTS PROGRAM

Accordingly, the Office of Personnel Management amends 45 CFR 801.202, Appendix A, by alphabetically adding Bamberg County, Colleton County, and Hampton County, South Carolina, to read as follows:

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

South Carolina

County; Place for filing; Beginning date.

* * * * *

Bamberg—Room 6, Farmers Home Administration, J. Carl Kershe Agriculture Building, Calhoun Street, Bamberg, South Carolina; Colleton—Soil Conservation Service, Room 203, 119 Benson Street, Walterboro, South Carolina; Hampton—Farmers Home Administration, 1st Floor, 1003 Elm Street, Hampton, South Carolina. October 10, 1984.

* * * * *

(5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973c, 1973g)

[FR Doc. 84-31625 Filed 12-3-84; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 500, 501, 502, 503, 504 and 505

[Docket No. 84-20 for Part 505]

Corrections to Final Rules in Subchapter A General And Administrative Provisions

AGENCY: Federal Maritime Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects final rules in Subchapter A containing general and administrative provisions that appeared in the **Federal Register** of Tuesday, November 6, 1984, beginning at 49 FR 44362. This action is necessary to correct typographical and other errors in the Supplementary Information and in the text of the regulations.

DATES: Parts 500–505 effective December 6, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 84–29100 beginning on page 44362 in the issue of Tuesday, November 6, 1984:

1. On page 44362, in the first column, in the first paragraph of the **SUPPLEMENTARY INFORMATION,** third line, "[40 FR 16994]" should be "[49 FR 16994]".

PART 500—[CORRECTED]

§ 500.207 [Corrected]

2. On page 44365, in the third column, in § 500.207, last line, "dispute" should be "disputed".

§ 500.211 [Corrected]

3. On page 44366, in the first line of the second column, in § 500.211, "76 CFR Part 503" should be "46 CFR Part 503".

§ 500.212 [Corrected]

4. On page 44367, in the second column, in the last line of § 500.212(c)(8)(iii), "hearing examiner" should be "examiner".

PART 502—[CORRECTED]

§ 502.11 [Corrected]

5. On page 44372, in the second line of the first column, in § 502.11(b)(2), "constructed" should be "construed".

§ 502.32 [Corrected]

6. On page 44373, in the second column, in § 502.32(a)(2), "paragraph (a)" should be "paragraph (a)(1)"; in § 502.32(a)(4), "paragraph (c)" should be "paragraph (a)(3)"; on page 44374, in the first column, in § 502.32(c)(4), in the first line, "(1)" should be "(i)"; and, in the third line of § 502.32(c)(4), remove the phrase "the Chairman or".

§ 502.67 [Corrected]

7. On page 44377, in the second column, in the fourteenth line of § 502.67(b)(2), remove the phrase "the Secretary of", and in § 502.67(c), in the last line, remove the phrase "[Rule 74]".

§ 502.68 [Corrected]

8. On page 44378, the eleventh line of the second column in § 502.68(b) should read: "complaint under section 22 of the ".

Exhibit No. 1 to Subpart E [Corrected]

9. On page 44380, in the third column, in Exhibit No. 1 to Subpart E, remove the second paragraph beginning "Under the Shipping Act . . ." and insert:

Under the Shipping Act of 1984 [foreign commerce], the complaint must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of complainant.

Under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 [domestic commerce], the complaint must be filed within two (2) years from the time the cause of action accrues and may be brought only against a "person subject to the Act", e.g., a common carrier, terminal operator or freight forwarder.

10. On page 44381, in the first column, in Exhibit No. 1 to Subpart E, in paragraph No. 6, seventh line, "relating of" should be "relating to".

§ 502.93 [Corrected]

11. On page 44382, in the first column, in § 502.93, "Appendix A to this part (#4)" should be "Exhibit No. 1 to Subpart O".

§ 502.112 [Corrected]

12. On page 44384, in the first column, in the eleventh line of § 502.112(b), "Appendix" should be "Exhibit".

§ 502.143 [Corrected]

13. On page 44385, in the third column, in § 502.143, eighth line, "issued" should be "issues".

§ 502.147 [Corrected]

14. On page 44386, in the twenty-ninth line of the second column, in § 502.147(a), "office" should be "officer".

§ 502.157 [Corrected]

15. On page 44387, in the first column, in § 502.157(a), second line, "restored" should be "resorted".

§ 502.201 [Corrected]

16. On page 44390, in the third line of the first column, in § 502.201(i)(l)(viii), "enveloped" should be "envelopes".

§ 502.203 [Corrected]

17. On page 44390, in the penultimate line of the third column, in § 502.203(c), "objection party of deponent" should be "objecting party or deponent".

§ 502.205 [Corrected]

18. On page 44391, in the third column, in the fourth line of § 502.205(c), the cross-reference "§ 502.210(h)" should be "§ 502.201(h)".

§ 502.209 [Corrected]

19. On page 44393, in the second column, the fifth line of § 502.209(b)(3), should read: "affirmation, or in the conduct of parties".

§ 502.210 [Corrected]

20. On page 44393, in the third column, in § 502.210(a)(3), fifth line, "thereof" should be "thereto".

§ 502.230 [Corrected]

21. On page 44395, in the first column, the heading of § 502.230 should read: "Reopening by presiding officer or Commission.".

§ 502.287 [Corrected]

22. On page 44397, in the second column, in § 502.287, thirteenth line, "depose" should be "be deposed".

§ 502.305 [Corrected]

23. On page 44398, in the third column, in § 502.305, in the fourth and fifth lines of the regulatory text, "[Rule 321]" should be "[Rule 305]".

Exhibit No. 1 to Subpart S [Corrected]

24. On page 44399, in the first column, in the seventh line of the first full paragraph of "Information to Assist in Filing Informal Complaints" in Exhibit No. 1 to Subpart S, "Subchapter S" should be "Subpart S", and, in the second column, in Exhibit No. 1 to Subpart S, first full paragraph, first and second lines, remove the words: "If the claim is for 'damages' as defined in § 502.303" and capitalize the first word "a".

§ 502.312 [Corrected]

25. On page 44399, in the third column, in § 502.312, in the fifth line, "complaint" should be "complainant".

§ 502.315 [Corrected]

26. On page 44399, in the third column, in § 502.315, in the second line, "complainants" should be "complaints" and in the eighth line, "complaints" should be "complainants".

PART 503—[CORRECTED]

Part 503 Table of Contents [Corrected]

27. On page 44401, in the third column, in the Table of Contents, "503.67 Effect of provisions of this subpart on any other subpart" should be "503.67 Effect of provisions of this subpart on other subparts".

§ 503.13 [Corrected]

28. On page 44402, in the first column, the heading of § 503.13 should read: "Incorporation by reference".

§ 503.25 [Corrected]

29. On page 44402, in the third column, in § 503.25(c), "Report" should be "Reports".

§ 503.34 [Corrected]

30. On page 44403, in the third column, in the fifth line of §503.34(d), the citation "5 U.S.C. 522" should be "5 U.S.C. 552".

§ 503.35 [Corrected]

31. On page 44404, in the first column, in § 503.35(a)(5), "Interagency or interagency" should be "Interagency or intraagency".

§ 503.59 [Corrected]

32. On page 44407, in the second column, in § 503.59(f)(2), in the second line, "authorized" should be "unauthorized" and, in the fourth line of the third column, in § 503.59(k), "Office" should be "Officer".

§ 503.60 [Corrected]

33. On page 44408, in the second column, in § 503.60(h), sixth line, "indentifiable" should be "identifiable".

§ 503.61 [Corrected]

34. On page 44408, in the second column, in § 503.6(c)(1), in the first line, "offices" should be "officers".

§ 503.63 [Corrected]

35. On page 44408, in the third column, in § 503.63(a), in the third line, "of the section" should be "of this section" and, in the fifth and sixth lines, "system or records" should be "system of records".

§ 503.65 [Corrected]

36. On page 44409, in the second column, in § 503.65(c)(iii), "will be make" should be "will be made".

§ 503.66 [Corrected]

37. On page 44409, in the second column, in the heading of § 503.66(b), "request" should be "requesting".

§ 503.73 [Corrected]

38. On page 44410, in the third column, the heading of § 503.73 should read: "Exceptions-meetings.".

§ 503.75 [Corrected]

39. On page 44412, in the first column, the third line of § 503.75(h) should read: "observation a portion of a meeting, no such."

§ 503.79 [Corrected]

40. On page 44413, in the first column, in the third line of § 503.79(g), "is" should be "if" and on page 44413, in the second line of the second column, in § 503.79(j), "disposition by the agency or a particular" should be "disposition by the agency of a particular".

§ 503.80 [Corrected]

41. On page 44413, in the second column, in the second line of § 503.80(b), the cross-reference "paragraph (b)" should be "paragraph (a)".

§ 503.81 [Corrected]

42. On page 44413, in the third column, the heading of § 503.81 should read: "Effect of vote to withold information pertaining to meeting.".

§ 503.85 [Corrected]

43. On page 44414, in the second column, in the twentieth line of § 503.85(b), "transcript of recording" should be "transcript or recording".

§ 503.87 [Corrected]

44. On page 44415, in the first column, the heading of § 503.87 should read: "Effect of provisions of this subpart on other subparts".

PART 504—[CORRECTED]

§ 504.4 [Corrected]

45. On page 44416, in the second column, in § 504.4(a)(12), "interchange of" should be "interchange or" and in § 504.4(a)(22), "Investigator" should be "Investigatory".

§ 504.7 [Corrected]

46. On page 44417, in the first column, in § 504.7(a)(1), fifth line, "action to may" should be "action may" and in the second line of the second column, in § 504.7(b)(3), "[EIS]" should be "[EPA]".

§ 504.9 [Corrected]

47. On page 44417, in the third column, in § 504.9(c), in the sixth line, "informed" should be "informal", and, on page 44418, in the first line of the first column, in § 504.9(d), "the Shipping Act or section 15 of the" should be "the Shipping Act, 1916, or section 15 of the".

PART 505—[CORRECTED]

§ 505.1 [Corrected]

48. On page 44418, in the sixth line of the second column, in § 505.1, "designated provisions of the Shipping" should be "designated provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, the Shippping".

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–31623 Filed 12–3–84; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82–538; RM–3983; Docket No. 18421]

Hours of Operation of Daytime-Only AM Broadcast Stations; and Amendment Regarding Hours of Operation of Dominant and Secondary Stations; Order Staying Effective Date

AGENCY: Federal Communications Commission.

ACTION: Final rule; stay of effective date.

SUMMARY: This action stays the changes made in the rules regarding post-sunset operation by daytime-only AM stations pending action on petitions for reconsideration regarding those rule changes. The Final Rule in this proceeding was published on April 26, 1984 (49 FR 17942).

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order

In the matter of Hours of Operation of Daytime-only AM Broadcast Stations; BC Docket No. 82–538, RM–3983; amendment of § 73.61 of the Commission's Rules (Hours of Operation of Dominant and Secondary Stations), Docket No. 18421.

Adopted: November 16, 1984.
Released: November 20, 1984.

By the Chief, Mass Media Bureau:

1. The Commission has before it the petitions for reconsideration of the *Memorandum Opinion and Order* in this proceeding [1] and responsive pleadings, as well as a Joint Motion For Final Orders and Termination of Proceeding filed by the Association for Broadcast Engineering Standards ("ABES") and the Daytime Broadcasters Association ("DBA").

2. The subject proceeding was begun in order to explore possible rule changes to help alleviate the difficulties daytime-only stations face because they are licensed to operate only between local sunrise and local sunset. Although provision had long been made for pre-sunrise operation by daytime-only stations, there was no opportunity for post-sunset operation. As a result, the proceeding focused primarily on the possibility of allowing such post-sunset operation.

3. Based on the record developed in the proceeding the Commission concluded that it was possible to authorize post-sunset operation for daytime-only stations, and it adopted a *Report and Order* amending the rules to permit such operation. Under these rules, Class III stations (those on regional channels) were permitted to operate two hours beyond local sunset with a maximum power of 500 watts, reduced as necessary in order to avoid interference. Most Class II stations, (those on clear channels), also were permitted to operate beyond local sunset, also with a maximum power of 500 watts. However, the specific power and period of post-sunset operation

[1] Petitions for reconsideration have been filed by the Association for Broadcast Engineering Standards; KCPX, Inc.; Summit Radio Corp.; The Henry Radio Company; and Harte-Hanks Radio, Inc.

varied depending on applicable interference protection requirements.

4. Although DBA supported the Commission's decision to allow post-sunset operation, it nonetheless sought partial reconsideration of the Commission decision to limit powers in order to avoid interference. According to DBA, the new rules imposed excessive limitations on the post-sunset power available to daytime-only stations, thus preventing many of them from being able to conduct effective post-sunset operation. Responsive pleadings were filed by ABES and others.

5. After review of the matters raised in the petition for reconsideration, the Commission adopted a *Memorandum Opinion and Order* amending the new rules to allow the use of greater power. Instead of making the calculations on a "worst case" basis, the power for Class III stations was increased by making the calculations at the midpoint of the first hour. The power calculated for the first hour can be used until 6:00 p.m. even if that extends beyond one hour. In addition, regardless of domestic interference, each Class III day-time only station would be able to use at least 100 watts during this pre-6:00 p.m. period. Although a similar arrangement for Class II stations was not feasible, other changes in the rules were made which make it possible for them to use more power during the first hour after sunset.

6. As noted above, ABES and several other parties sought reconsideration of the *Memorandum Opinion and Order* revising the rules. They asserted that the new rules will permit widespread destructive interference to the reception of full-time stations on the channel. Because of this, ABES also sought a stay of the revised rules pending examination of the issues raised in its petition for reconsideration. DBA opposed the stay and sought additional time to oppose the petitions for reconsideration. During this period, negotiations began between ABES and DBA to consider the possibility of a settlement between them which could then be recommended to the Commission as basis for resolving the outstanding issues in the proceeding. After a series of discussions the parties were able to reach an agreement which was embodied in a joint motion submitted by ABES and DBA. The compromise worked out by ABES and DBA makes provision for enhanced power for Class III stations during the first portion of the post-sunset period while at the same time attempting to minimize the interference such operation would cause to the reception of full-time stations. Various parties, including all of those which have sought reconsideration, have expressed support of the joint motion. In so doing, several of these parties have provided extensive showings regarding the impact which they believe could be expected from adoption of the industry compromise provision.

7. In order to reach a judgement on how to deal with the issues in this proceeding it is necessary to evaluate the impact adoption of the joint proposal would have. To do so requires extensive computer programming in order to make it possible to calculate the powers and periods of operation the proposal would permit. This in turn makes it possible to examine the impact such operations would have. This process is well underway but has not yet been completed. In order to avoid confusion in this regard, we believe it is appropriate to stay the rule revision made by the *Memorandum Opinion and Order* pending action on the pleadings before the Commission. This means the original power levels as specified October 19, 1983, remain in effect and may be used under the terms and conditions then specified.

8. Accordingly, it is ordered, That the revisions to § 73.99 of the Commission's Rules contained in the subject *Memorandum Opinion and Order* (49 FR 17942) are stayed pending further consideration.

(Secs. 4, 303 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303))

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 84-31536 Filed 12-3-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 9]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petition for reconsideration.

SUMMARY: On November 13, 1984 (49 FR 44899), NHTSA amended Motor Vehicle Safety Standard No. 108 to alter the corrosion test requirements and procedures applicable to semi-sealed replaceable bulb headlamps and lens/reflector components of such headlamps. The amendment was to become effective 30 days after publication in the **Federal Register**, i.e., December 13, 1984. Volkswagen of America, Inc., and its associated companies petitioned for reconsideration of the effective date to delay it until September 1, 1985, alleging insufficient time for revised certification procedures and modification if required. NHTSA has granted this petition and adopted a new effective date of September 1, 1985, to accord with manufacturer model-year practices and to alleviate any potential hardship to manufacturers of vehicles with replaceable bulb headlamps. Given the limited use of these headlamps in 1985 model cars, the existing test continues to meet the need for motor vehicle safety for the remainder of the model year.

EFFECTIVE DATE: September 1, 1985.

ADDRESS: Petitions for Reconsideration should refer to the docket number and notice number and be submitted to: Administrator, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-2720.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to postpone the effective date of the amended corrosion test requirements and procedures applicable to semi-sealed replaceable bulb headlamps and lens/reflector components of such headlamps. These were adopted on November 13, 1984, with an effective date of December 13, 1984.

Under the test currently in effect, a replaceable bulb headlamp is tested for corrosion in a salt spray chamber with the bulb inserted at all times. Under the amendment adopted on November 13, 1984, effective December 13, 1984, the bulb is removed for the final hour of eight of the ten 24-hour test cycles, thereby exposing the interior of the lamp to the corrosive influence of the salt spray in the test chamber. On November 15, 1984, Volkswagen of America on behalf of itself, Volkswagen AG, and Audi NSU Auto Union AG petitioned for a delay in the effective date of the requirements to September 1, 1985. Its reasons were as follows. First, NHTSA has generally reserved short time compliance schedules for relaxation of rules or optional procedures. Though installation of semi-sealed headlamps is optional, those who are committed to use this technology for the 1985-model year must meet new requirements with an extremely short leadtime. Second, petitioner anticipated that the final rule was to have become effective with a long enough leadtime for vendor contact and certification testing to the new corrosion resistance requirements. Finally, the petitioner notes that the imposition of new requirements in the middle of a model year is highly unusual action for the agency to take, and that "it is clearly impossible for a manufacturer to complete all of the tests and judgments necessary in a mere 30 days and to replace or modify designs without halting production on an entire model line."

The agency reviewed Volkswagen's arguments. Because of the criticality of reflector integrity to headlamp performance and the relationship of corrosion tests to it, the agency had found initially that an early effective date was in the public interest. The agency was unaware that an early effective date might have an adverse economic effect. It wishes to lessen the economic impact that an early implementation of the amendment would have in the course of the 1985 model year. The use of semi-sealed headlamps in the 1985 model year is not extensive, and the test that is currently specified in Standard No. 108 is deemed sufficient for motor vehicle safety, given the limited application of the new headlighting systems. Accordingly, the agency has granted Volkswagen's petition.

In consideration of the foregoing, the effective date of the amendments to paragraphs S4.1.1.36, S4.1.1.36(d)(4), S6.1., and S6.5 made at 49 FR 44901 is changed from December 13, 1984, to September 1, 1985.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: November 28, 1984.

Howard M. Smolkin,

Acting Administrator.

[FR Doc. 84-31589 Filed 11-30-84; 11:49 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Critical Habitat for Kokia drynarioides (koki'o)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and critical habitat for the plant *Kokia drynarioides* (koki'o). This species is known only from one small wild population of about 15 individuals located in and near the Ka'upulehu Forest Reserve and the adjoining Pu'uwa'awa'a Ranch, county and island of Hawaii, State of Hawaii. The lone population is vulnerable to any substantial habitat alteration and faces numerous threats, including continued livestock damage, destruction of seeds by rodents, invasion of exotic species, and fire on and near the site where it occurs. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *Kokia drynarioides* and its critical habitat.

EFFECTIVE DATE: The effective date of this rule is January 3, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Regional Office, 500 N.E. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Division Chief, Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Kokia drynarioides (koki'o, hau-hele'ula or Hawaii tree cotton) is a member of the mallow family (Malvaceae). It is one of four native Hawaiian species belonging to this endemic genus and is the only koki'o growing on the island of Hawaii. There are no other wild trees on Hawaii with a combination of large red malvaceous flowers, palmately lobed leaves, and three large involucral bracts at the base of the flower and fruit. Initially collected during Cook's second visit to the Hawaiian Islands and described by Seemann in 1865, the species has undergone a steady population decline to a point at which only 15 plants are now known in the wild. The population was estimated at about 200 trees in 1929 (Degener and Degener, 1965). Cattle and feral herbivores have been responsible for most of the population decline; however, the recent invasion of an exotic bunch grass (fountaingrass, *Pennisetum setaceum*) has served to inhibit regeneration as well as increase the probability, extent and intensity of wildfires (Lamoureux, 1981).

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of subsection 4(c)(2) of the Act, and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975 **Federal Register** publication. *Kokia drynarioides* was included in the July 1, 1975 notice and the June 16, 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978 **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 (Pub. L. 95-632) required that all proposals over 2 years old be withdrawn. On December 10, 1979 the Service published a notice of the withdrawal of that portion of the June 16, 1976 proposal that had not been made final, along with other proposals that had expired (44 FR 70796). *Kokia drynarioides* was reproposed for endangered status on September 12, 1983 (48 FR 40920). Critical habitat was proposed at that time.

Summary of Comments and Recommendations

In the September 12, 1983 proposed rule (48 FR 40920) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notce was published in the *Hawaiian Star Bulletin* on October 5, 1983, which invited general public comment.

Five written comments were received. Very little new information was provided, but four of the comments endorsed the proposed rule. A response from the Department of Land and Natural Resources of the State of Hawaii reported that in the 1950's there were a number of groves of 15 or more large healthy trees, which no longer exist. The State spokesman concurred with the proposed endangered status for the koki'o. He also expressed concern over management of such a large land area and suggested that a practical approach to simplify management procedures would be to develop management plans that would consider the koki'o and also other rare species within the area.

The Office of the Mayor, Hawaii County, with the recommendation of the county's Arborist Advisory Committee, gave full endorsement for the proposed rule. Attention was directed to the fact that the Committee has proposed a *Kokia drynarioides* found in the Manuka State Park for consideration as an exceptional tree of Hawaii County.

An endorsement for listing and designation of critical habitat was received from a person who identified herself as kama'aina from Ka'upulehu. She referred to her family's enjoyment of the tree, the opportunity for educational and aesthetic benefits to the beneficiaries of the Bishop Estate and the State through protection of the koki'o and the possible enhancement of conservation efforts by the Pacific Tropical Botanical Gardens from the listing. She expressed concern over the possible response of lessees of these lands. Another favorable response was received from a resident with botanical training. He again expressed concern over the possible reaction of lessees, and supported a Natural Area Reserve for the Pu'uwa'awa'a area.

The only comments critical of the proposed listing and critical habitat designation were received from an estate manager representing a landowner, Kamehameha Schools, Bernice Pauahi Bishop Estate. In summary the principal concerns of the estate manager were: (1) the effects that listing would have on income realized by the landowner from private lands proposed for critical habitat, (2) whether trees of this species might be found in other areas, (3) the size of the critical habitat proposed, and (4) the size, accuracy, and clarity of the map included in the proposed listing. He also stated concern about appropriate notification of landowners prior to publication of such proposals.

In answer to the first concern expressed above, the designation of critical habitat will not automatically reduce potential or realized income from that property. Unless Federal activities, funding, or permits are required for a proposed activity in the area, no direct constraints involving plants on private property are imposed by the Endangered Species Act. If activities having Federal involvement that may affect the plant are planned for the area, the affected Federal agency must consult with the U.S. Fish and Wildlife Service regardless of whether critical habitat has been designated (see section 7(a)(2) of the Act).

It is highly doubtful that new populations of *Kokia drynarioides* will be found. This species has been of special interest to professional and amateur botanists since the early 1900's, due to its rarity and its beauty. A plan was published in 1916 for protection of the Koki'o (Young and Popenoe, 1916), but was never fully implemented (Rock, 1919; Lamoureux, 1981).

In response to the question of critical habitat size, the designation includes areas that are considered important to the survival and recovery of the species. The surviving koki'o trees are not found in dense stands but are scattered as mature trees throughout the designated area. Critical habitat is based upon the biological needs of the species being considered and the designation is based upon information obtained from botanists from Federal, State, and private organizations. However, recovery efforts are expected to include additional species surveys which may lead to changes in critical habitat boundaries.

In response to landowner concerns regarding the critical habitat map, additional checking of available records indicates that the information presented in the proposed rule is correct. We welcome further information if there are errors in the maps presented. Mapping individual trees as suggested is not appropriate for critical habitat designations, however, because locations change as existing trees die and new seedlings become established.

Our office in Honolulu will help the landowner to locate existing trees if requested, and can also share available information on the presence and status of any candidate species for listing as endangered or threatened. A plant candidate species list was published in 1975 and has been revised at intervals subsequently; this koki'o was one of the species originally included in that list. The Service endeavors to notify all individuals, including landholders, likely to be affected by a proposed regulation in time for comments to be received prior to any final action.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Kokia drynarioides* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Kokia drynarioides* (Seem.) Lewt. (koki'o) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat for this species has been greatly modified by many years of management as rangeland for livestock (see Factor C. below). The recent invasion of the exotic fountaingrass has further degraded the suitability of the habitat for seedling survival, and threatens also to increase the frequency, intensity and extent of wildfires, which may eliminate adult trees as well.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to this species.

C. *Disease or predation.* This plant is extremely palatable to livestock. Cattle browse on the mature trees and graze any seedlings that may appear above the fountaingrass. Rodents, especially the introduced roof rat, *Rattus rattus*, eat the seeds, often before they fall from the tree.

D. *The inadequacy of existing regulatory mechanisms.* A plan to protect *Kokia drynarioides* was drawn up in about 1915 (Young and Popenoe, 1916), but never thoroughly carried out (Rock, 1919). Continued use of the habitat for cattle pasture and subsequent incursion of the introduced fountaingrass have led to a continued decline of the population.

E. *Other natural or manmade factors affecting its continued existence.* The reduction in number of individuals of this species probably has a detrimental effect on the breeding system and genetic recombination in the species. The wild population exists entirely within the potential destruction area of a dormant volcano, between lava tongues of its 1800–1801 eruption.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Kokia drynarioides* as endangered. Due to the low number of extant trees and the threats posed to the species, threatened status is not appropriate. The designation of critical habitat is discussed below.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for *Kokia drynarioides* to include three areas totaling approximately 2,600 acres in the North Kona District on the Island of Hawaii. The exact boundaries are given in the Regulations Promulgation section. The critical habitat provides the necessary areas for survival, growth, and reproduction of *Kokia drynarioides*.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Any activity that would significantly disturb the soil, topography, or other physical and biological components of the area in which *Kokia drynarioides* occurs could adversely modify its critical habitat. Existing and proposed land uses in the immediate locality of the population and in its surroundings must be carefully examined if such modifications are to be prevented. This might require exclosures to insure the establishment of seedlings and survival of existing trees and the removal of some lands from grazing. The State of Hawaii is currently considering Natural Area Reserve status for a portion of the Pu'uwa'awa'a Ranchlands.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The area designated as critical habitat covers some 3.86 square miles of private and State-owned land. This area is chiefly used for livestock grazing. No federal lands are involved, and the grazing requires no Federal funds or authorization. The main impact of designation as critical habitat is to restrict federally conducted, funded, or authorized activities. Thus designation of critical habitat will have no economic impact. Even if Federal activities were involved, they would not be barred unless their effect would be to jeopardize the species or to adversely modify that habitat. For these reasons, there should be no economic impact to the designation and restriction of critical habitat is unwarranted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With respect to the determination of endangered status and critical habitat for *Kokia drynarioides*, there are no known Federal actions that may be affected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Kokia drynarioides*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No such trade in this species is known. It is anticipated that few trade permits involving the species will ever be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to *Kokia drynarioides*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. *Kokia drynarioides* is known only from State and private lands. It is anticipated that few if any permits for collecting will be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Enviromental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not

constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No significant economic or other impacts are expected to result from the designation of critical habitat for the koki'o. The critical habitat area is located on State and private lands in Hawaii County, State and island of Hawaii. There is no known involvement of Federal funds or permits for the State or private lands within the critical habitat designation. No direct costs, enforcement costs or information collection or recordkeeping requirements are imposed on small entities by the designation. These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon.

Literature Cited

Literature Cited

Degener, O., and I. Degener. 1965. Flora Hawaiiensis. Family: 221. Genus: *Kokia*. Species: *drynarioides*. Honolulu.

Lamoureux, C.H. 1961. Status report on *Kokia drynarioides*. Research Corporation of the University of Hawaii under Contract 14-16-0001-79096 to the U.S. Fish and Wildlife Service. 28 pp.

Rock, J.F. 1919. The Hawaiian genus *Kokia*, a relative of the cotton. Terr. Hawaii Bd. Agr. For. Botanical Bull. 6:1-22.

Young, R.A., and P. Popenoe. 1916. Saving the Kokio tree. J. Heredity 7(1):24-28.

Author

The primary author of this rule is Carol A. Wilson, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131). George E. Drewry of the Service's Washington Office served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Malvaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species			Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Malvaceae—Mallow Family:							
*	*	*	*	*	*	*	*
Kokia drynarioides	koki'o	(=Hau-hele'ula or Hawaii tree cotton).	U.S.A. (HI)	E		17.96(a)	NA.
*	*	*	*	*	*	*	*

3. Amend § 17.96(a) by adding critical habitat of *Kokia drynarioides* as follows (the position of this entry under §17.96(a) will follow the same sequence as the species occurs in §17.12):

§ 17.96 Critical habitat—plants.

(a) * * *

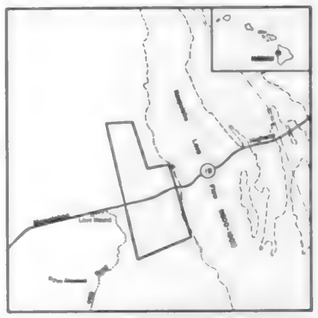
* * * * *

Malvaceae—*Kokia drynarioides*

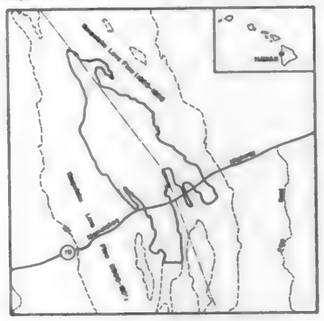
Kokia drynarioides (koki'o)

Hawaii, Island and County of Hawaii, North Kona District, three areas totaling approximately 2,600 acres.

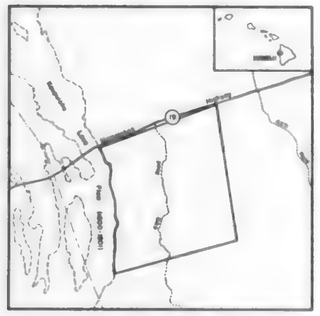
1. Ka'upulehu Ahupua'a area, bounded as follows: from a point of origin at Universal Transverse Mercator (UTM) coordinate 925880 near or on the west boundary of the Ka'upulehu 1800-1801 lava flow (approximately at intersection of said west boundary and 2800 ft elevation contour); thence west southwesterly approximately 864 ft to UTM coordinate 914875 (also near 2800 ft elevation contour); thence north northwesterly approximately 1987 ft to UTM coordinate 909889 (near the 1400 ft elevation contour); thence east northeasterly approximately 378 ft to UTM coordinate 913900 (also near the 1400 ft elevation contour; then south southeasterly approximately 720 ft to UTM coordinate 916891; thence east northeasterly approximately 320 ft to UTM coordinate 920892 (near the said west boundary of the 1800-1801 lava flow); thence south southeasterly approximately 1140 ft to the point of origin. Included in this area is Ka'upulehu Forest Reserve, Section B.



2. Ka'upulehu Ahupua'a and Pu'uwa'awa'a Ahupua'a boundary area, identified as follows: An unnamed kipuka (discontinuity) in 1800-1801 lava that straddles the boundary between Ka'upulehu and Pu'uwa'awa'a Ahupua'a and also crosses Mamalahoa Highway between 2400 and 1000 feet of elevation. Excluded is a small tongue of the said kipuka that extends south of UTM coordinate 941885 at approximately 2400 ft of elevation and above. UTM coordinate 931924 marks the low elevation end of the said kipuka.



3. Pu'uwa'awa'a Ahupua'a area, identified as follows: Halepi'ula 3, Waimea Paddock of Pu'uwa'awa'a Ranch, which lies south of (upslope) and abuts Mamalahoa Highway just east of the boundary between Ka'upulehu and Pu'uwa'awa'a Ahupua'a. East boundary of the 1800-1801 Ka'upulehu lava flow is the west boundary of the paddock. The paddock corners are near UTM coordinates 948901 (NW), 985909 (NE) 973886 (SE), and 971879 (SW).



Primary constituent elements of critical habitat are appropriate soil type, climate, protection from grazing damage, protection from aggressive exotic weeds, and presence of suitable pollinators.

* * * * *

Dated: November 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-31575 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Extracted Honey

Correction

In FR Doc. 84-28845, beginning on page 43970, in the issue of Thursday, November 1, 1984, make the following corrections.

1. On page 43970, in column three, second complete paragraph, line six, the first word should read "quality".

§ 52.1394 [Corrected]

2. On page 43971, in column two, in § 52.1394(d)(3), line five "materially" should read "seriously".

§ 52.1399 [Corrected]

3. On page 43972, in column one, in § 52.1399, Table II, in the fourth table head "3" should read "13".

§ 52.1403 [Corrected]

4. On page 43973, in § 52.1403, Tables IV and V, remove the words "[Analytical quality]" from under the table headings.

5. Columns one of both Tables IV and V are corrected as set forth below:

* * * * *

TABLE IV.—FILTERED STYLE

Factors
Percent soluble solids (minimum) (Analytical)
Absence of defects (Quality)
Score points
Flavor and aroma (Quality)
Score points
Clarity (Quality)
Score points

* * * * *

TABLE V.—STRAINED STYLE

Factors
Percent Soluble Solids (minimum) (Analytical)
Absence of defects (Quality)

TABLE V.—STRAINED STYLE—Continued

Factors
Score points
Flavor and aroma (Quality)
Score Points

* * * * *

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 83-131]

Reservation of Space for Quarantine of Animals and Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations for obtaining and cancelling reservations for space in quarantine facilities maintained by Veterinary Services (VS) (1) by providing a mechanism for raising the amount of the reservation fees for certain animals and birds, (2) by revising the provisions for forfeitures of reservation fees, (3) by specifying the place and time for acceptance of reservation cancellation notices, and (4) by providing for cancellation fees under certain circumstances. This action appears to be necessary to more fully utilize the space quarantine facilities maintained by VS and to reduce losses incurred as a result of the failure to utilize space which has been reserved.

DATE: Comments must be received on or before January 3, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M.P. Dulin, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

Federal Register
Vol. 49, No. 234
Tuesday, December 4, 1984

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of certain animals and birds (the term animals is defined in the regulations to include poultry but not birds). These provisions include the requirements in § 92.4 that in order to import certain animals or birds into the United States, an importer or an importer's agent ("agent") must quarantine the animals or birds in a quarantine facility for a specified period of time. Section 92.4 also contains provisions for obtaining and cancelling reservations for space in quarantine facilities maintained by Veterinary Services (VS).

Amount of Reservation Fee—Forfeiture of Reservation Fee

It is provided in § 92.4(a)(4) that, in order to reserve space at a quarantine facility maintained by VS, the importer or agent must, at the time a request to reserve space is made, pay (a) $80.00 for each lot of poultry or birds; (b) $130.00 for each horse; and (c) $240.00 for each lot of any other animals.

Further, § 92.4(a)(4) provides that the reservation fee for animals or birds shall be forfeited if the importer or agent fails to present such animals or birds for entry into the quarantine facility unless the reservation is cancelled in advance. Under the current regulations cancellation must be made by notifying the veterinarian in charge of the quarantine facility at least 72 hours prior to the beginning of the time for importation as prescribed in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required.

It is proposed to amend § 92.4 to require that an importer or agent pay a reservation fee for each lot of animals or birds to be quarantined in a quarantine facility maintained by a Veterinary Services, in an amount estimated by the veterinarian in charge to be 25 percent of the cost of providing care, feed, and handling during quarantine; except that the reservation fee would be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals.

It is also proposed to amend § 92.4 to provide for forfeiture of the reservation fee if the animals or birds are not presented for quarantine within 24 hours after the designated time of arrival unless: (1) Written notice of cancellation from the importer or agent is received by the office of the veterinarian in charge of the quarantine facility (the address of the quarantine facilities may be found in telephone books applicable to the locations of the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782) during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays) no later than 5 days for horses or 15 days for other animals and birds prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 5 or 15 day period shall not include Saturdays, Sundays, or holidays), or (ii) services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administator, Veterinary Services (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

As indicated in a **Federal Register** document of July 27, 1982, at 47 FR 32432, the reservation fees and forfeiture provisions are designed to

> * * * discourage importers or their agents from making frivolous reservations, encouraging importers and their agents to present animals for entry into the quarantine facility on time, defray some of the costs incurred by Veterinary Services when personnel and materials are allocated to a quarantine facility because space has been reserved and the reserved space is not used, and recover some of the revenue lost when space at a quarantine facility is reserved and the reserved space is not used and other potential users of the facility are denied the opportunity to use the space.

Based on experience, it appears that the current reservation fee and forfeiture provisions do not adequately accomplish these purposes. Specifically, they are not adequate to discourage frivolous reservations.

The current provisions set amounts for reservation fees that are the same for lots of poultry, birds, and other animals (excluding horses), regardless of how many poultry, birds, or other animals (excluding horses) are scheduled to be in the lot. These provisions also set amounts for reservation fees for horses, and for lots of birds, poultry, and other animals regardless of the length of the scheduled quarantine period. Under the proposal, reservation fees would be proportionately larger the more birds, poultry, and other animals in a lot and would become proportionately larger for longer quarantine periods. Further, by requiring that the reservation fee be 25 percent of the estimated costs of providing care, feed, and handling during quarantine, but in no instance less than the present reservation fee, it appears that a forfeiture of the reservation fee would significantly reduce the number of reservations made without a real intent to use the reserved space. Additionally, a forfeiture of such an increased reservation fee would more fully defray some of the costs incurred by Veterinary Services when personnel and materials are allocated to a quarantine facility because space has been reserved and the reserved space is not used.

The proposal to allow animals and birds to arrive within a 24 hour grace period without forfeiture of the reservation fee appears to be warranted. As noted above, it is the policy of the Department to establish procedures designed to encourage importers and agents to present animals or birds for entry into the quarantine facility on time. However, frequently there are practical problems that arise during transportation or at Customs which can cause limited delays in the arrival time of the animals or birds, and the Department plans its activities to accommodate such delays.

The proposal to increase time periods for cancellations without forfeiture of the reservation fee, appears to be warranted. In addition to discouraging importers or agents from making frivolous reservations, it is necessary that the time periods allow a sufficient amount of time for the Department to make reasonable efforts to allow other importers an opportunity to use the cancelled space. It appears that this can be accomplished by changing the regulations to require 5 days advance notice of cancellation for horses and 15 days advance notice of cancellation for birds and animals other than horses. The difference in the time periods for advance notice of cancellation reflect differences in the ability of importers to respond to last minute opportunities to fill cancelled space. It appears that it is much more likely for horses to be readily available for filling cancelled space on short notice than for birds or for animals other than horses.

Notice of Cancellation

In addition, as noted above, it is proposed to amend § 92.4 to provide that notices of cancellation must be in writing and will be accepted by the office of the veterinarian in charge of the quarantine facility from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The addresses of the quarantine facilities may be found in the telephone books applicable to the locations of the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, Hyattsville, MD 20782. It appears that notices of cancellation should be required to be made in writing in order to help avoid misunderstandings concerning cancellations. Also, specifying the place and time for acceptance of such notices appears to be necessary to help the importer or agent understand where and when the cancellations will be accepted.

Cancellation Fee

It is proposed to amend § 92.4 to provide that in situations in which a reservation fee is to be returned (other than certain situations explained below), a $40.00 cancellation fee shall be deducted from the reservation fee. A cancellation fee of $40.00 appears to be necessary in order to allow the Government to recover administrative costs incurred in refunding a reservation fee.

Cancellation Without Forfeiture or Payment of Cancellation Fee

The proposal also contains provisions for cancellation without forfeiture of the reservation fee or without deduction of a cancellation fee if the Deputy Administrator determines that services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine). It appears that it would be unfair to penalize an importer or agent by not refunding a reservation fee or by charging a cancellation fee under such circumstances since the importation of birds or animals would not be possible because of these types of events which are beyond the control of the importer or agent. Further, it appears that cancellations for such reasons would be infrequent and that the Government can absorb costs associated with such limited delays without adversely affecting the operations of a quarantine facility.

It does not appear that consideration should be given for cancellation without forfeiture of the reservation fee or without repayment of a cancellation fee because of problems with carriers. It would be difficult to implement fair criteria for determining when a cancellation fee should be paid. Some carriers are regularly unreliable and this policy will encourage importers and agents to take action to help ensure timely shipments.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." Based on information compiled by the Department, it has been determined that this action would not result in a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action would, in some cases, increase the fee required to be paid by an importer or agent in order to reserve quarantine space for animals and birds in a quarantine facility maintained by Veterinary Services. The fee paid for such space would be applied against the expenses incurred for services received by the importer or agent in connection with the quarantine for which the fee to reserve space was paid. Also, any part of the reservation fee which remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation fee was paid, would be returned to the individual who paid the reservation fee. Therefore, the only cost which importers or agents who actually use the reserved space would incur as a result of the adoption of this proposal would be an increase in the opportunity cost of the prepayment of the reservation fee. In this case, the importer or agent could have invested the amount of the increase in the fee. However, in most instances, this opportunity cost is negligible.

An importer or agent would only incur more than an opportunity cost (1) when a reservation fee would be forfeited because of a failure to present for entry the animals or birds for which the fee to reserve space was paid, or (2) when a $40.00 cancellation fee would be deducted from the payment of a reservation fee to cover administrative costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, would be amended as follows:

1. In Part 92, footnotes 6 through 16 and the references thereto would be renumbered 7 through 17, respectively.

2. In § 92.4 paragraph (a)(4) would be revised to read as follows:

§ 92.4 Import permits for ruminants,[7] swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes;[7] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

(a) * * *

(4)(i) For each lot of animals or birds to be quarantined in a quarantine facility maintained by Veterinary Services, the importer or the importer's agent shall pay a reservation fee estimated by the veterinarian in charge of the quarantine facility to be 25 percent of the cost of providing care, feed, and handling during quarantine: *Except* that the reservation fee shall be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals. The reservation fee shall be paid at the time the importer or the importer's agent requests a reservation of quarantine space.

(ii) Any importer or importer's agent shall pay the reservation fee by check or U.S. money order; except that anyone who issues a check to the Department for a reservation fee which is returned because of insuffient funds shall be denied any further request for reservation of a quarantine space until the outstanding amount is paid.

(iii) Any reservation fee shall be applied against the expenses incurred for services received by the importer or importer's agent in connection with the quarantine for which the reservation fee was paid. Any part of the reservation fee which remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation fee was paid, shall be returned to the individual who paid the reservation fee.

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry within 24 hours following the designated time of arrival of the horse, the lot of birds, a lot of poultry, or the lot of other animals for which the reservation fee was paid: *Except* that the reservation fee shall be returned to the individual who paid the reservation fee if:

(A) Written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility[8] during regular business hours (8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays) no later than 5 days for horses or 15 days for other animals or birds prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 5 or 15 day period shall not include Saturdays, Sundays, or holidays), or

(B) The Deputy Administrator, Veterinary Services, determines that services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services, (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

(v) A $40.00 cancellation fee shall be deducted from any reservation fee returned to the importer or the importer's agent, except that such fee shall not be deducted if the reservation fee is returned because of the provisions in paragraph (a)(4)(iv)(B) of this section.

* * * * *

Authority: Sec. 7, 26 Stat. 416, sec. 2, 32 Stat. 792, as amended; secs. 4, 11, 76 Stat. 130, 132; 21 U.S.C. 102, 111, 134c, 134f; 7 CFR 2.17, 2.51, 371.2(d).

[8] The addresses of USDA quarantine facilities may be found in the telephone books applicable to the locations of the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

Done at Washington, D.C., this 29th day of November, 1984.

William E. Ketter,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-31634 Filed 12-3-84; 8:45 am]
BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; EFT-2]

Electronic Fund Transfers; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed changes to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The proposed revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material.

DATE: Comments must be received on or before January 31, 1985.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and C Streets, NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include reference to EFT-2. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst or John C. Wood, Senior Attorneys, or Richard S. Garabedian, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667 or (202) 452-2412.

SUPPLEMENTARY INFORMATION: (1) *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). Effective September 24, 1981, an official staff commentary (EFT-2 Supp. II to 12 CFR Part 205) was published to interpret the regulation. The commentary is designed to provide guidance to financial institutions in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. There have been two updates so far, the first on April 6, 1983 (48 FR 14880), and the second on October 18, 1984 (49 FR 40794). This notice contains the proposed third update. It is expected that it will be adopted in final form in March 1985.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language to be deleted is set off with brackets.

(2) *Proposed revisions.* The material that has been added or revised is largely self-explanatory. Questions 7-18.5 and 11-11.5 relate to amendments to Regulation E adopted by the Board on October 11, 1984 (49 FR 40794), which cover all debit card transactions whether or not an electronic terminal is involved. The amendments also extend the time periods for resolution of errors involving point-of-sale (POS) debit card transactions; the longer periods parallel those applicable to foreign-initiated transfers.

The proposed revision of question 7-18.5 reverses the present interpretation: currently, disclosure of the longer error resolution time periods in the case of foreign-initiated transfers is not required. Transfers resulting from POS debit card transactions (unlike foreign-initiated transfers) are quite common, however, and to assure accurate disclosures and avoid confusion on the part of consumers, proposed question 7-18.5 requires financial institutions to disclose the longer error resolution periods. Since most institutions would be required to revise their error resolution disclosures for POS debit card transactions, it seems likely that making the further revision for foreign-initiated transfers would result in little or no additional expense. Consequently, revised question 7-18.5 would require that the error resolution disclosures for accounts subject to foreign-initiated or POS debit card transactions state the extended time periods.

The other proposal relating to the October amendments (new question 11-11.5) discusses the meaning of POS debit card transaction for purposes of the longer error resolution periods.

Other proposed changes to the commentary respond to inquiries received by the staff. New question 2-28 addresses unauthorized transfers. New question 5-4.5 states that an institution may not issue, without request from the consumer, a validated personal identification number (PIN) to permit a debit card previously issued for POS transactions to be used at ATMs. This interpretation differs from a proposed interpretation under Regulation Z that permits such PIN issuance. The different treatment is based on the definition of an access device in Regulation E. Under Regulation E a PIN is an access device in all cases, even when it cannot be used alone to initiate an EFT; in contrast, a PIN issued to existing cardholders that cannot be used by itself to obtain credit is not a credit card under Regulation Z. (See the proposed update to the official staff commentary to Regulation Z, Truth in Lending, published elsewhere in this **Federal Register** issue.) The rule regarding access devices is more restrictive in part because of the consumer's potentially greater risk; for example, the consumer may be liable for as much as $500 (or even an unlimited amount) rather than only $50 as under Regulation Z. Moreover, unauthorized use of an access device entails the loss of use, and perhaps even permanent loss, of the consumer's own funds in an access account; in the case of unauthorized credit card use, only extensions of credit are involved. In addition, when the debit card was originally issued without a PIN, the consumer may not have contemplated that the card could later be used at ATMs to obtain cash.

(3) *Transition issues relating to amendments.* The staff has received other inquiries dealing with the interim period between the adoption of the POS debit card amendments in October 1984 (discussed above) and the April 16, 1985, effective date. Since guidance on these matters is needed now and will cease to be relevant after the transition period, the staff believes it is appropriate to address them separately for the proposed commentary.

Industry representatives have asked whether revised disclosures must be provided to existing customers who have already been given Regulation E disclosures for certain debit card transactions, or to customers who contract for EFT services before April 16, 1985. Revised disclosures may but need not be provided prior to April 16, 1985; however, beginning on that date, any disclosure given (e.g., initial disclosures to a new customer, or the long-form or short-form error resolution notice to an existing customer) must accurately reflect the terms and conditions of the EFT services (including debit card transactions) offered by the institution. For example, initial disclosures to new customers will have to reflect that all transfers resulting for debit card transactions are electronic fund transfers, and that the error resolution periods for POS debit card

transactions are 20 business days and 90 calendar days (if the institution wishes to take advantage of the longer periods).

After April 16, error resolution notices, whether given annually or on periodic statements, also must reflect the longer periods. Similarly, initial disclosures and error resolution notices must reflect the exception from provisional recrediting in cases where accounts are subject to the Board's Regulation T (Credit by Brokers and Dealers). Institutions may comply by modifying appropriately the error notice forms that appear in §§ 205.7(a)(10) and 205.8(b).

An institution that wishes to use existing forms until its supplies are exhausted may reflect the changed terms and conditions by any appropriate means such as by use of an insert, attachment, or computer-generated notice on periodic statements (in the case of a short-form notice on the statement). Institutions are not required to make a special mailing of revised error resolution notices or of other disclosures.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

PART 205—[AMENDED]

Text of revisions. The proposed revisions to the Official Staff Commentary on Regulations E (EFT–2, Supp. II to 12 CFR Part 205) read as follows:

• • • • •

Section 205.2—Definitions and Rules of Construction

• • • • •

►Q 2–28: *Unauthorized transfers—forced initiation.* A consumer is forced by a robber, at gunpoint, to withdraw cash at an ATM. Do the liability limits for unauthorized transfers apply?

A: Yes. The transfer is unauthorized for purposes of Regulation E. Under those circumstances, the actions of the robber are tantamount to use of a stolen access device. (§§ 205.2(l) and 205.6)◄

• • • • •

Section 205.5—Issuance of Access Devices

• • • • •

►Q 5–4.5: *Unsolicited issuance—PINs.* May a financial institution issue, without a specific request, validated personal identification numbers (PINs), thus allowing consumers to use their existing debit cards at automated teller machines?

A: No. Issuance of a validated PIN for an existing debit card does not meet the regulation's requirement that an unsolicited access device be unvalidated when issued. (The issuance of PINs for existing credit cards is, however, permissible under the Truth in Lending Act and Regulation Z; see Comment 12(a)(1)-8 of the Official Staff Commentary to Regulation Z.) (§§ 205.5(a) and (b) and 205.2(a))◄

• • • • •

Section 205.7—Initial Disclosure of Terms and Conditions

• • • • •

Q 7–18.5: *Error resolution disclosure—*[*foreign-initiated transfers*] ►*extended time periods*◄ The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States ►or transfers resulting from POS debit card transactions◄, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which [transfers may be initiated outside the United States] ►these types of transfers can be made◄?

A: A financial institution [may but need not refer to the longer time periods in the error-resolution disclosure.] ►must give error-resolution disclosures that reflect its actual procedures. An institution that takes advantage of the longer time periods applicable to POS and foreign-initiated transfer must, therefore, state them in its error-resolution disclosures. Similarly, and institution that relies on the exception from provisional recrediting (for accounts subject to Regulation T) must phrase its disclosures appropriately.◄ (§§ 205.7(a)(10), 205.8(b), and 205.11►(c)(3) and ◄(c)(4))

• • • • •

Section 205.11—Procedures for Resolving Errors

• • • • •

►Q 11–11.5: *POS debit card transactions.* The deadlines for investigating errors are extended for all transfers resulting from POS debit card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit card transactions?

A: POS debit card transactions generally take place at merchant locations, but also include mail and telephone orders of goods or services involving a debit card. Transactions at ATMs, however, are not POS even though the ATM may be in a merchant location. (§ 205.11(c)(4))◄

• • • • •

(15 U.S.C. 1693b)

Board of Governor or the Federal Reserve System, November 28, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-31578 Filed 12-3-84; 8:45 am]

BILLING CODE 6210-01-M

---

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed changes to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The proposed revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material.

DATE: Comments must be received on or before January 31, 1985.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B–2223, 20th and C Streets, NW., Washington, D.C. between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to TIL–1. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Contact the following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–2412 or (202) 452–3867:

Subpart A—Lynn Goldfaden, Gerald Hurst

Subpart B—Richard Garabedian, Adrienne Hurt

Subpart C—Rugenia Silver, Susan Werthan

SUPPLEMENTARY INFORMATION:

I. General

The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR Part 226). Effective October 13, 1981, and official staff commentary (TIL–1, Supp. I to 12 CFR Part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise. There have been three general updates so far—the first in September 1982 (47 FR 41338), the second in April 1983 (48 FR 14882), and the third in April 1984 (49 FR 13482). There was also a limited update concerning fees for the use of automated teller machines, which was adopted in October 1984 (49 FR 40560). This notice contains the proposed fourth general update. It is expected that it will be

adopted in final form in March 1985 with optional compliance until the uniform effective date of October 1 for mandatory compliance.

Certain conventions have been used to highlight the proposed revision. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

II. Proposed Revisions

Following is a brief description of the proposed revisions to the commentary:

Subpart A—General

Section 226.2—Definition and Rules of Construction

2(a) Definitions

2(a)(15) "Credit Card"

Comment 2(a)(15)–2 would be revised to make clear that certain types of access devices that are used at wholesale petroleum distribution terminals—whether or not credit is involved—are not considered credit cards under Regulation Z.

2(a)(17) "Creditor"

Paragraph 2(a)(17)(i)

Comment 2(a)(17)(i)–8 would be added to explain how the numerical tests for determining who is a "creditor" should be applied to loans made by employee savings plans. It provides that the numerical test should be applied to the plan as a whole rather than to the individual account.

2(a)(20) "Open-End Credit"

Comment 2(a)(20)–5 would be revised to correct a potential contradiction caused by the language "specific approval for each extension." Because "verification" of credit information—which is permissible under the open-end credit definition—necessary involves "approval" if a credit extension is not denied after verifying the credit information, the "specific approval" language may be confusing. The proposal would, therefore, delete that language. The comment would continue to mean, however, that while creditors may verify credit information on an open-end credit plan before authorizing additional credit extensions, they may not undertake activities such as requiring a new application for each additional credit extension, without jeopardizing a program's status as a open-end credit Plan.

Section 226.4—Finance Charge

4(a) Definition

The first sentence of comment 4(a)–3 would be revised to clarify which charges by third parties are excluded from the finance charge. The revision makes clear that, in order to be excluded, the charge must be imposed on the consumer rather than the creditor and the creditor must not retain the charge.

Subpart B—Open-End Credit

Section 226.7—Periodic Statement

7(h) Other Charges

Comment 7(h)–4 would be added to make clear that, in disclosing "other charges" on the periodic statement, creditors have the flexibility to disclose them individually or as a total, as long as the charges are still itemized and identified by tape.

Section 226.9—Subsequent Disclosure Requirements

9(d) Finance Charge Imposed at Time of Transaction

Comment 9(d)–1 would be totally rewritten since the ban on credit card surcharges expired on February 27, 1984. Revised comment 9(d)–1 would make clear that a finance charge, such as a credit card surcharge, imposed by a person other than the card issuer for using a credit card, must be disclosed to consumers prior to their being committed to purchasing property or services, in order to satisfy the § 226.9(d)(1) requirement that the amount of that finance charge be disclosed prior to its imposition. For example, the charge must be disclosed to the consumer prior to the consumer's having dinner at a restaurant, or staying overnight at a hotel.

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

Comment 12(a)(1)–8 would be added to make clear that card issuers may issue, without a specific request from the consumer, a personal identification number (PIN) to existing cardholders, provided that PIN cannot be used by itself to obtain credit. This interpretation differs from a proposed interpretation under Regulation E that prohibits such PIN issuance. The different treatment is based on the definition of an access device in Regulation E. Under Regulation E a PIN is an access device in all cases, even when it cannot be used alone to initiate an EFT; in contrast, a PIN issued to existing cardholders that cannot be used by itself to obtain credit is not a credit card under Regulation Z. The rule regarding access devices is more restrictive in part because of the consumer's potentially greater risk. See Question 5–4.5 in the proposed update to the official staff commentary to Regulation E (published elsewhere in this Federal Register issue).

Section 226.15—Right of Rescission

15(a) Consumer's Right to Rescind

Paragraph 15(a)(1)

Comment 15(a)(1)–2 would be revised to reflect the amendment to the Truth in Lending Act in Pub. L. 98–479 which permanently exempts from the right of recission individual transactions made on an open-end line of credit in accordance with a previously established credit limit.

References

Reference to § 205 of Pub. L. 98–479 would be added to the References section to reflect the permanent exemption from the right of rescission for individual credit extensions made on an open-end credit line.

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1)

The last example in comment 17(a)(1)–5 regarding due-on-sale clauses would be deleted consistent with the proposed change in position in comment 18(q)–1.

Section 226.18—Content of Disclosures

18(f) Variable Rate

Comment 18(f)–5 would be revised to add recent federal adjustable rate mortgage regulations to the list of variable rate regulations for which footnote 43 to § 226.18(f) may be used. Under the proposal, creditors making disclosures in accord with the rules issued by the Department of Housing and Urban Development (49 FR 23580) need not make the variable rate disclosures required by § 226.18(f).

Comment 18(f)–5 would also be revised to reflect a new citation to the variable rate regulation of the Federal Home Loan Bank Board. The revision is technical and reflects no substantive change in the comment.

Comment 18(f)–8 would be revised to clarify the application of the discounted variable rate rules to two types of variable rate transactions. First, a paragraph would be added to explain that transactions in which the only difference between the initial rate and the index rate at consummation results from a change in the index are not discounted transactions. Second, material would be added to address

plans that have a built-in delay between index changes and implementation of those changes. In calculating a composite annual percentage rate for these plans, creditors may use an index value prior to consummation as long as it incorporates the same delay used for later rate adjustments.

18(k) Prepayment

Comment 18(k)–2 would be revised to delete the example regarding student loans with loan fees, in order to make the comment more consistent with comment 18(k)–3. Comment 18(k)–2 illustrates transactions that may require disclosures under both § 226.18(k)(1), regarding penalties for prepayment of simple interest transactions, and § 226.18(k)(2), regarding rebates for prepayment of precomputed transactions. Comment 18(k)–3 clarifies that prepaid finance charges do not require rebate disclosures. Since loan fees in student loans are normally prepaid finance charges, the continued use of that type of transaction as an example of a loan requiring a rebate disclosure is inappropriate and may cause confusion. The deletion of the example is a technical revision and does not affect the substance of either comment.

18(q) Assumption Policy

The substance of comment 18(q)–1 would be deleted and replaced by a new provision which reverses the rule on assumption policy disclosure. When uncertainty exists as to the assumability of the obligation, a negative rather than affirmative disclosure would be required. It is believed that under such circumstances, a negative disclosure would be less misleading to consumers. Since this change would reverse the current position on assumption disclosures, it would be applied prospectively.

Section 226.23—Right of Rescission

23(f) Exempt Transactions

Comment 23(f)–8 would be added to clarify the application of the right of rescission to closed-end credit transactions arising from the conversion of an open-end credit account. Where consummation of both the closed-end and open-end credit occurs at the time the consumer enters into the open-end agreement, the closed-end disclosures may be delayed until conversion, as provided by comment 17(b)–2. Proposed comment 23(f)–8 would make clear that, if the creditor has previously complied with the rescission requirements on the open-end account, no new right of recession applies on the conversion of an account secured by the consumer's principal dwelling.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

PART 226—[AMENDED]

Text of revisions. The proposed revisions to the commentary (TIL–1, Supplement 1 to 12 CFR Part 226) read as follows:

Supplement I—Official Staff Commentary—TIL–1

SUBPART A—GENERAL

* * * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

* * * * * *

2(a)(15) "Credit Card"

* * * * * *

2. *Examples.* Examples of credit cards include:

• A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit

• A card that accesses both a credit and an asset account (that is, debit-credit card)

• An identification card that permits the consumer to defer payment on a purchase

• An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

In contrast, credit card does not include, for example [, a] ►:

• A◄ check guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft[.]

►• Any card key that must be used in order to gain access to a wholesale distribution facility to obtain petroleum products for business purposes, and the use of which is required without regard to payment terms.◄

* * * * * *

2(a)(17) "Creditor"

* * * * * *

Paragraph 2(a)(17)(i)

* * * * * *

►*8. Loans from employee savings plans.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances. In such cases, the numercial tests should be applied to the plan as a whole rather than to the individual accounts, even if the loan amount is determined by reference to the balance in an individual account and the repayments are credited to the individual account.◄

* * * * * *

2(a)(20) "Open-End Credit"

* * * * * *

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit [without specific approval for each extension (beyond verification, for example, of]►. The creditor may verify◄ credit information such as the consumer's continued income and employment status or [of] information for security purposes [)]. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. * * *

* * * * * *

Section 226.4—Finance Charge

* * * * * *

4(a) Definition.

* * * * * *

3. *Charges by third parties.* Charges imposed by someone other than the creditor for services that are not required by the creditor are not finance charges►, provided the charges are imposed on the consumer rather than on the creditor by the third party, and the creditor does not retain the charge◄. For example:

• A fee charged by a loan broker to a consumer, provided the creditor does not require the use of a broker (even if the creditor knows of the loan broker's involvement or compensates the broker)

• A tax imposed by a state or other governmental body on the credit transaction that is payable by the consumer (even if the tax is collected by the creditor)

* * * * * *

Subpart B—Open-End Credit

* * * * * *

Section 226.7—Periodic Statement

* * * * * *

7(h) Other Charges.

* * * * * *

►*4. Itemization—types of "other charges".* Each type of "other charge" (such as late payment charges, over-the-credit-limit charges, ATM fees that are not finance charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of "other charges" attributable to both an over-the-crtedit-limit charge and a late payment charge would not be permissible. "Other charges" of the same type may be disclosed, however, individually or as a total. For example, three ATM fees of $1 may be listed separately or as $3.◄

* * * * * *

Section 226.9—Subsequent Disclosure Requirements

* * * * * *

9(d) Finance Charge Imposed at Time of Transaction.

1. [*Ban on credit card surcharges.* 15 U.S.C. 1666f provides that until February 27, 1984, no seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card instead of paying by cash, check, or similar means.]

►*Disclosure prior to imposition.* The requirement that the amount of a finance charge imposed at the time of the honoring a consumer's credit card be disclosed prior to its imposition requires a person imposing such a credit card surcharge to disclose its existence prior to the consumer's becoming obligated to purchase property or services.◄

* * * * * *

Section 226.12—Special Credit Card Provisions

* * * * * *

12(a) Issuance of Credit Cards.

Paragraph 12(a)(1).

* * * * * *

►*8. Unsolicited issuance of PINs.* A card issuer may issue to existing credit cardholders, without a specific request, personal identification numbers (PINs), thus allowing consumers to use their existing credit cards at automated teller machines, provided the PINs cannot be used alone to obtain credit.◄

* * * * * *

Section 226.15—Right of Rescission

* * * * * *

15(a) Consumer's Right to Rescind.

Paragraph 15(a)(1).

* * * * * *

2. *Exceptions.* Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the act provides an exception: [until September 30, 1985,] the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the act. [The consumer will have the right to rescind each extension made after September 30, 1985 under such a secured open-end credit plan, whether that plan was established before or after that date.]

* * * * * *

References

Statute: §§ 113.125, [and]►, ◄ 130 ►, and the Housing and Community Development Technical Amendments Act of 1984, (Sec. 205, Pub. L. 98–479)◄

* * * * * *

1981 Changes: Section 226.15 reflects the statutory amendments of 1980, providing for a limited right of rescission [for a three-year trial period] when individual credit extensions are made in accordance with a previously established credit limit for an open-end credit plan. ►The 1980 amendments provided that this limited rescission right be available for a three-year trial period. However, Pub. L. 98–479 now permanently exempts such individual credit extensions from the right of rescission.◄

* * *

* * * * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements.

17(a) Form of Disclosure.

* * * * * *

Paragraph 17(a)(1).

* * * * * *

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following: * * *

[• A statement that a due-on-sale clause is contained in the loan document. For example, the disclosure given your § 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."]

* * * * * *

Section 226.18—Content of Disclosures

* * * * * *

18(f) Variable Rate.

* * * * * *

5. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other federal agencies are exempt from the requirements of § 226.18(f), by virtue of footnote 43. Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board ►(12 CFR 545.33),◄ [(12 CFR 545.6–2(a)) and] the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR Part 29) ►and the adjustable-rate mortgage regulations issued by the Department of Housing and Urban Development (24 CFR Part 203 and 24 CFR Part 234)◄. The exception in footnote 43 is also available to creditors that are required by state law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 (Pub. L. 97–320) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

* * * * * *

8. *Discounted variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

• When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. ►The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that payment changes are based on the index value in effect 45 days before the change date, creditors may use the index value 45 days before consummation in calculating a composite annual percentage rate.◄

• The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

• If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

• Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with § 226.22(a)(3) of the regulation.

• Examples of discounted variable-rate transactions include:

—A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $226,463.32 and the total of payments $366,463.32.

—Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76, and the total of payments $365,234.76.

►This paragraph does not apply to variable-rate loans in which the initial rate is set according to the index or formula used for later adjustments, but is not set at the value of the index or formula at consummation. For example, if a creditor commits to an initial

rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor may base its disclosures on the initial rate.◄

• • • • •

16(k) Prepayment.

• • • • •

2. . *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, [simple-interest student loans with loan fees and] mortgages with mortgate-guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H–15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

• • • • •

16(q) Assumption Policy.

1. *Policy statement.* [Because a creditor's assumption policy may be based on a variety of circumstances not determinable at the time the disclosure is made, the creditor may use phrases such as "subject to conditions" or "under certain circumstances" in complying with § 226.16(q). The provision requires only that the consumer be told whether or not a subsequent purchaser might be allowed to assume the obligation on its original terms and does not contemplate any explanation of the criteria or conditions for assumability. However, the creditor may state that a due-on-sale clause is contained in the loan document. (See comment 17(a)(1)–5 regarding directly related information.)] ►In making the disclosure required by this section, if uncertainty exists as to whether a subsequent purchaser will be allowed to assume the obligation on its original terms, the creditor should state that the obligation cannot be assumed on its original terms. For example, if the obligation is subject to a due-on-sale clause, it is viewed as being nonassumable for purposes of complying with this section. However, if the only uncertainty pertains to a determination of the creditworthiness of the subsequent purchaser, the obligation is viewed as being assumable and an affirmative disclosure is appropriate.◄

• • • • •

Section 226.23—Right of Rescission

• • • • •

23(f) Exempt Transactions

• • • • •

►*8. Converting open-end to closed-end credit.* Under certain state laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion, assuming that the right of rescission was previously provided on the open-end account pursuant to § 226.15.◄

• • • • •

(15 U.S.C. 1604)

Board of Governors of the Federal Reserve System, November 28, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-31577 Filed 12-3-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 500 and 563b

[No. 84-554]

Conversion Proxy Solicitations

Dated: November 16, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board is proposing alternative procedures for obtaining the approval of the members of mutual insured institutions for plans to convert from the mutual to stock form or organization. The alternative procedure would authorize use of certain existing proxies to approve such plans when the members have been provided previously with adequate disclosure regarding the plan. The alternative procedure is intended to balance the interests of members with the practical needs of converting insured institutions. In addition, the Board proposes to clarify other provisions of the Conversion Regulations relating to voting.

DATE: Comments must be received by January 31, 1985.

ADDRESS: Send comments to Director, Public Information Services Branch, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Senior Attorney, Corporate and Securities Division (202) 377–6457; J. Larry Fleck, Deputy Director, Corporate and Securities Division (202) 377–6413; or Julie L. Williams, Associate General Counsel, Director, Corporate and Securities Division (202) 377–6459, Office of General Counsel, at the above address.

SUPPLEMENTARY INFORMATION: Conversions to the stock form ("conversions") of mutual savings and loan associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions") are governed by Part 563b of the Regulations for the Federal Savings and Loan Insurance Corporation ("Corporation") ("Conversion Regulations"), 12 CFR Part 563b (1984). Among the regulatory requirements for such a conversion are the approval of the plan of conversion by at least a majority of the total outstanding votes of the association's members, unless the institution is state-chartered and state law requires a higher percentage. 12 CFR 563b.6(e) (1984). Voting may be either in person or by proxy. *Id.* To obtain the required approval vote, it is necessary to send out a proxy statement conforming to the Form PS. 12 CFR 563b.5 (c) and (e)(1); 563b.6(c) (1984). Although converting associations may use a summary proxy statement, they must make available to requesting members a supplemental information statement which, when combined with the summary statement, contains all the information required by the Form PS. 12 CFR 563b.3(d)(14). Proxies solicited for the special meeting at which a plan of conversion will be voted upon cannot confer authority to vote at any other meeting. 12 CFR 563b.5(d)(2) (1984).

The proxy solicitation requirements were intended to ensure that members have all the information they need to vote intelligently on the plan of conversion. *See Conversions of Insured Institutions From Mutual Into Stock Associations,* Resolution No. 73–26, 38 FR 1334, 1335 (Jan. 11, 1973). Since the conversion will extinguish the voting rights of members, 12 CFR 563b.3(c)(15) (1984), such consent is critical to the validity of the plan. The member proxy solicitation, however, adds significantly to the cost of conversion to stock form. There is not only the cost of preparing, printing, and mailing the proxy statement, but, in the event members do not respond to the initial solicitation, converting institutions must incur the additional expense of supplemental mailings, advertisements, telephone solicitations and even personal visits to members.

The Federal Home Loan Bank Board ("Board"), as operating head of the Corporation, believes that the member approval process can be streamlined and yet still provide the necessary informed consent of members. The Board proposes to allow the limited use of existing proxies to approve plans of conversion when members have previously been furnished the disclosure mandated by the Form PS. As a rule, mutual insured institutions obtain general proxies from the accountholders and borrowers who are the voting members of the association upon the opening of their savings or loan accounts. *See, e.g.,* W. Prather, Savings Accounts 129–32 (6th ed. 1981). Although such proxies must be revocable at will, 12 CFR 569.2(a) (1984), the Board's regulations and the laws of many states allow these proxies to run indefinitely. The directors of mutual insured institutions use these general proxies to obtain member consent to routine matters of business such as elections of directors.

The Board believes that the use of running general proxies or other existing proxies in conversion votes is not inconsistent with its objective of fully-informed consent if voting members are furnished the disclosures mandated by the Form PS and are specifically informed that their previously-executed proxies may be used if they do not respond to the solicitation. Accordingly, the Board proposes to amend § 563b.5(d) of the Conversion Regulations to allow the use proxies other than those specifically solicited for the meeting to approve a conversion if all voting members as of the voting record date have been provided with a proxy statement meeting the requirements of the Form PS and with a proxy meeting the requirements of § 563b.5, and containing provision for an affirmative or negative instruction as to casting of the member's vote. Item 1 of the Form PS itself would be amended to require a bold-face legend on the cover of the proxy statement indicating that, if a proxy is not returned by the meeting date, management may use its general or other existing proxies to vote on the plan of conversion. Item 4 regarding voting rights would also be amended to require additional disclosure on the use of other proxies.

Although there is case law support for the use of general proxies to approve extraordinary corporate transactions, the Board also recognizes that the authority conferred by a given general proxy will depend on its wording. Moreover, for state-chartered associations, state law may impede the use of general proxies. Accordingly, the Board expects institutions and their counsel to consider such issues in the opinion on the validity of the special conversion meeting which must be submitted pursuant to § 563b.8(c)(2).

In line with its goal of procuring the fully informed consent of members, the Board is additionally proposing clarifications of the regulations designed to ensure the widest possible participation in the conversion vote. The Board notes that in recent years there has been a significant growth in the precentage of deposits in insured institutions that are represented by accounts held in a fiduciary capacity, such as accounts for the benefit of Individual Retirement Account (IRA) participants. Questions have arisen regarding the extent of the voting rights of the beneficial holders of such accounts. In the Board's view, where the names of beneficiaries of accounts held in a fiduciary capacity with a federal association appear on the association's account records, those beneficial account holders should be allowed to cast the votes represented by the account in connection with the vote on conversion. Further, the Board believes that where beneficiaries have voting rights, as in the case of federal associations described above, or as may be available in the case of state-chartered institutions, such beneficial account holders should receive copies of the proxy soliciting materials used in the conversion. Therefore, the Board proposes to amend Conversion Regulation § 563b.6(c) to state this requirement. In the Board's view, a plan of conversion may authorize the fiduciary of accounts beneficially owned by others to vote or grant proxies for such accounts, provided the grant is consistent with applicable law and the governing instrument and the beneficiary is fully informed prior to the grant. An amendment to Item 4 of the Form PS is proposed to reflect this determination.

Finally, the Board proposes to update the sectional references in § 563b.3(d)(14), authorizing the use of summary proxy statements, and to relocate this provision in § 563b.6 with the other provisions relating to the furnishing of proxy statements.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rule would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* To the extent that rules would affect small institutions, this has been discussed elsewhere in the proposal.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Description of reporting and recordkeeping requirements.* Discussed elsewhere.

List of Subjects in 12 CFR Part 563b

Securities, Savings and Loan Associations.

Accordingly, the Board hereby proposes to amend Part 563b of Subchapter D, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

SUBPART A—STANDARD CONVERSIONS

§ 563b.3 [Amended]

1. Amend § 563b.3 by removing paragraph (d)(14) thereof.

2. Amend § 563b.5 by adding a new paragraph (d)(4) thereto, as follows:

§ 563b.5 Solicitation of proxies; proxy statement.

• • • • •

(d) *Requirements as to proxy.*

• • • • •

(4) Notwithstanding the foregoing, the proxy may be in a form previously obtained from voting members and conferring general authority to vote on any and all matters at any meeting of the members or other authority to vote on matters to be presented at the special meetings, provided that such voting member has been furnished a proxy statement conforming with paragraph (c) of this section and the voting member does not grant a later-dated proxy to vote at the meeting called to consider the plan of conversion or attend such meeting and vote in person.

• • • • •

3. Revise paragraph (c) of § 563b.6 as follows:

§ 563b.6 Vote by members.

• • • • •

(c)(1) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Corporation. The notice shall be given not more than 45 nor fewer than 20 days prior to the date of the meeting to each association member, unless state law requires a different notice period. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity (i) in the case of a Federal association, where the name of the beneficial holder is disclosed on the institution's records.

and (ii) in the case of a state-chartered association where the beneficial holder possesses voting rights.

(2) *Summary proxy statement.* The proxy statement required by paragraph (c)(1) of this section may be in summary form, *Provided:*

(i) A statement is made in bold-face type on the notice to members required under paragraph (c)(1) that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS.

(ii) The last date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of paragraph (c)(1). Without prior approval by the Board, the special meeting of members shall not be held fewer than 20 days after the last date on which the supplemental information statement is mailed to requesting members;

(iii) The supplemental information statement required to be furnished to members pursuant to paragraph (c)(2)(i) of this section may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to § 563b.3(d)(1) of this Subpart.

(A) The summary proxy statement shall be prepared in accordance with the following requirements:

(*1*) All of the requirements of Form PS shall be met, with the exception of the following:

(*i*) Item 6. *Management Remuneration.*

(*ii*) Item 7. *Business of the Applicant.* Paragraphs (c) through (m), and (o).

(*iii*) Item 14. *Financial Statements.*

(*iv*) Item 15. *Consents of Experts and Reports,* Paragraph (b).

(*2*) The disclosure requirements of Items 8(j), 9 and 13 of Form PS may be prepared in summary form.

(*3*) The disclosure requirements of Item 5 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

(*4*) The plan of conversion shall not be required to be attached to the summary proxy statement under Item 16.

(*5*) Include the statement contained in § 563b.8(u) of this Part

* * * * *

4. Amend Item 2 of the Form PS referenced in § 500.31(a)(1) by adding the following sentence at the end:

Form PS

[Facing Sheet]

Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, 1700 G Street, N.W., Washington, D.C. 20552

Proxy Statement

* * * * * *

Form PS

Information Required in Conversion Proxy Statement

* * * * *

Item 2—Notice of Meeting.

If the applicant intends to use previously obtained proxies at the meeting in accordance with § 563b.5(d)(4), the notice of the meeting shall include the following bold-face legend:

The association may use your previously-executed proxies to vote for the plan of conversion in the event you do not execute another proxy for this meeting, attend and vote in person, or otherwise revoke your previously-executed proxies

* * * * *

5. Amend Item 4 of the Form PS referenced in § 500.31(a)(1) by adding the following sentence to paragraph (a): "Discuss the voting rights of beneficiaries of accounts held in a fiduciary capacity such as IRA and Keogh accounts, and indicate whether the trustees may vote or grant proxies for such accounts."; and adding a new paragraph (d), as follows:

* * * * *

Item 4—Voting Rights and Vote Required for Approval.

* * * * *

(d) If the Applicant intends to use previously-executed proxies to vote on the plan of conversion in accordance with § 563(d)(4), discuss how such proxies were obtained, the circumstances in which such proxies may be used, and how such proxies will be voted.

* * * * *

(Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1726, and 1730; Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895 and 901, as amended, 15 U.S.C. 78c, l, m, n, and w; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1943–48 Comp.))

By The Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-31499 Filed 12-3-84; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Dredging Size Standard

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: SBA is proposing to amend its size standards regulation in dredging from the present $9.5 million to $13.5 million. A special study has resulted from intense public interest in the dredging industry size standard. SBA has obtained additional information from a questionnaire mailed to virtually every firm in the dredging industry. As a result of this additional information, SBA has been able to construct a profile of the dredging industry and, thus, propose a size standard which better reflects the industry's structure.

DATE: Written comments must be submitted on or before January 18, 1985.

ADDRESS: Address all comments to: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 500, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, (202) 653–6373.

SUPPLEMENTARY INFORMATION: On February 9, 1984, the Small Business Administration published a Final Rule in the **Federal Register** (49 FR 5023) in which its size standards were comprehensively revised. One industry in which the size standard was maintained, however, was dredging. For this latter industry, SBA chose to maintain a size standard of $9.5 million until it could solve the problem of a lack of data. Toward this objective, SBA organized a task force to structure a questionnaire which was then sent to every known firm in the dredging industry. Approximately 20 percent of the industry responded to that questionnaire and the responses along with other information, provided by the Corps of Engineers, have proved useful in formulating a picture of the industry which can be used to set a size standard.

Of all industries affected by size standards, dredging is one of the most sensitive. SBA, for example, estimates that it has received written responses from 28 percent of the industry in contrast to a response rate for all other industries of 0.1 percent. Of these commentors, a clear majority would prefer a lower size standard, with both very large and very small firms preferring a low size standard, while firms in the mid-range of size preferring a higher size standard. SBA, however, must evaluate the quality of the argument in setting size standards rather than simply polling respondents. Of critical interest is information on the industry, and SBA has finally been able to gather the necessary information to set a size standard based on industry structure. Some of this information is summarized below;

- Approximately three-fourths of all dredging activity is generated by the Federal Government. Thus, if firms are unable to win Federal contracts, there are only limited private alternatives to fall back on.
- About a third of a billion dollars is expended by the Federal Government each year in dredging. However, over the 1980–83 period, nominal spending did not increase while inflation increased 21 percent. Thus the real value of contract dollars declined 21 percent over the period, indicating that firms specializing in Federal dredging activity are competing for a smaller pie.
- Dredging is an industry dependent on capital investments. These investments require a continual flow of revenues to justify and cover capital expenditures.
- Dredging has a high incidence of set-asides (20 percent vs. the normal 8 percent). In inland areas and the Southeast, set-aside dollars range between 50 and 60 percent of total dredging expenditures.

These factors in total lead to great pressures on firms to expand their markets in any way possible. One approach is to convince the SBA to revise its size standard. For its own part, however, SBA must set its size standards based on industry structure and for dredging it has identified six factors which impact on the setting of a size standard. These are summarized as follows:

Factor	Finding	Implication
Concentration ratio (Proportion of sales attributable to the four largest firms).	In general, the findings by region were indeterminate. Some regions (such as the Gulf Coast) had patterns of procurement suggesting that a higher size standard is preferable. However, other regions (such as the Great Lakes) had patterns of procurement in which a lower size standard would seem to be desirable.	Indeterminate results suggest that no change from the size standard of $9.5 million is necessary based on regional concentration patterns.
Average firm-size	The data suggest that dredging firms are approximately twice as large as other firms in general construction.	High average firm size suggests that a higher size standard is warranted. The fact that dredging has a size standard considerably lower than the size standard in general construction, but a higher average firm size argues for a higher size standard than $9.5 million.
Cost increases	Costs per cubic yard for dredging work have, since 1975, increased at approximately the same pace as the GNP reflator.	Since the cost inflator in the construction industries was +40 percent, while in nonconstruction industries it was +81 percent, the retention of the dredging size standard of $9.5 million would appear to be unfair. This factor in isolation argues for a higher size standard than $9.5 million.
Proportion small	The proportion of firms actively in the dredging industry that are small under a size standard of $9.5 million is much less than the proportion of general construction firms defined as small under its size standard of $17 million.	This relationship argues for a higher dredging size standard than the present $9.5 million.
Size of contract	Government contracts in the dredging industry are about twice the size of general construction contracts, although the dredging size standard is much smaller than the size standard for general construction.	This relationship argues for a higher dredging size standard than the present $9.5 million.
Proportion of contract dollars received by small firms.	The dredging industry generally has a higher proportion of dollars won by small firms than other industries with the important exception of heavy construction.	These results are ambiguous, neither suggesting a higher nor a lower standard than the present $9.5 million in dredging.

Of the six variables in question, four suggest that a higher size standard than the present $9.5 million is warranted. Average firm size, cost increases since 1975, the proportion of firms defined as small, and the average size of dredging contract all suggest a higher size standard than $9.5 million. The remaining variables—firm dominance within regions and the proportion of contract dollars won by small firms—were indeterminate. Thus there is a strong, although not absolutely decisive, argument in favor of a higher size standard than $9.5 million.

Given that most of the facts point to a higher size standard, the key question is how high a size standard would be most appropriate for the dredging industry. In particular, the two variables which were indeterminate would seem to caution against raising the size standard a full 81 percent in line with nonconstruction industries. More realistic would be an increase of 40 percent to $13.5 million, which would put the dredging increase in line with the increase for the general construction industries. It would be less than the full increase, but would reflect the findings of this study that an increase in the size standard is merited based on industry structure.

Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

SBA certifies that this regulation is a nonmajor rule as defined by Executive Order 12291. Since the total annual set-aside revenues of the dredging industry are between $65 and $70 million, this regulation is not likely to have an annual economic effect exceeding $100 million. Similarly, this regulation is not likely to result in a major increase in costs or prices, or in significant adverse effects on the United States economy.

SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act.

This regulation is likely, however, to have a significant economic impact on a substantial number of small entities. Therefore, in compliance with the Regulatory Flexibility Act, SBA offers this initial regulatory flexibility analysis.

SBA has considered regulatory action in this instance in response to intense public comment on the size standard in this particular industry. The purpose of this proposed rule is to update the size standard for the dredging industry, which has not been revised recently to reflect inflation or changes in industry structure. This proposed change is authorized by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) which mandates that SBA define small business concerns on an industry-by-industry basis.

The dredging industry is comprised of approximately 250 companies of which 194 participated in the Federal procurement process in Fiscal Year 1983. Any of the 194 might be impacted by this proposed increased size standard if they were to bid on a dredging requirement that was set aside for small business. Potentially, all 194 companies could be affected by this proposed rule.

In deciding that a size standard of $13.5 million more accurately reflects the current dredging industry, SBA also considered raising the size standard

above $13.5 million, lowering it below $9.5 million, or maintaining it at $9.5 million. Although a more detailed analysis of the factors considered is presented above, the following summarizes SBA's reasons for selecting the $13.5 million size standard for the dredging industry. Raising the standard above the $13.5 million level was rejected because of concern about regional concentration patterns which are prevalent within the industry and because the industry currently has a relatively high incidence of small business set-asides.

The following factors, taken together, are the basis of SBA's rejection of the alternatives which would maintain the $9.5 million size standard, or would advocate lowering it: relatively high average firm size, high contract value, inflationary trends in the industry, and the generally concentrated nature of the industry (i.e., four firms are responsible for one-third or more of the sales of the industry), as well as the desire to maintain comparable size standards in similarly structured industries.

In light of these factors, SBA decided to raise the dredging size standard from $9.5 million to $13.5 million.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

PART 121—[AMENDED]

Accordingly, pursuant to 15 U.S.C. 634(b)(6) of the Small Business Act, SBA proposes to amend § 121.2(c)(2) of 13 CFR Part 121 by increasing the dredging size standard from $9.5 million to $13.5 million, as follows:

§ 121.2 [Amended]

(c) * * *

(2) * * *

* * * * *

MAJOR GROUP 16—CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION—GENERAL CONTRACTORS

1629	Dredging and surface cleanup activities	$13.5M

* * * * *

Dated: November 28, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-31380 Filed 12-3-84; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 121

Small Business Size Standards; Dredging Size Standard

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: SBA has elsewhere published in this issue of the **Federal Register** a proposed rule in which the dredging size standard would be raised from $9.5 million to $13.5 million. However, it would also like to solicit public opinion on two other possible approaches to the dredging size standard. These approaches are designed to channel more Federal assistance to smaller dredging firms with receipts of $5.0 million or less. The first approach would raise the size standard to $13.5 million, but only for contracts estimated to be greater than $500,000. The size standard would be $5.0 million for contracts estimated to be less than $500,000. These figures are illustrative only. The second approach would revise the SBA requirement that 40 percent of the dredging equipment used by a firm winning a set-aside contract be owned by the firm winning the contract or by another small dredging concern to a different percentage (while increasing the size standard to the $13.5 million level). SBA feels that exploring these alternative approaches in the **Federal Register** at this time would generate new thinking within the industry, possibly leading to a dredging size standard which would be more acceptable to the industry as a whole.

DATE: Written comments must be submitted on or before January 18, 1985.

ADDRESS: Address all comments to: Andrew A. Canellas, Director, Size Standard Staff, Small Business Administration, 1441 L Street, N.W., Room 500, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, (202) 653-6373.

SUPPLEMENTARY INFORMATION: Simultaneously with this advance notice SBA is proposing a revision in the dredging size standard from $9.5 million to $13.5 million. This revision is proposed based on the structure of the industry. However, SBA is somewhat uncomfortable with a decision process in which one figure, that of gross receipts, is the only variable used to allocate its assistance in an industry as sharply divided as the dredging industry. It is possible that various compromise approaches might be more acceptable to the industry than a revision focusing solely on the dollar figure of average receipts over a 3 year period. The two approaches which the SBA is offering for public discussion at this time are reviewed below along with their possible outcomes:

Proposal

1. Raise the size standard to $13.5 million for contracts estimated to be greater than $500,000, but lower it to $5.0 million for contracts estimated to be less than $500,000. Thus, if a contract were greater than $500,000, it could be either unrestricted or set-aside for any firm with $13.5 million or less in gross receipts. If a contract were $500,000 or less, it could be either unrestricted or set-aside for firms with $5.0 million or less in gross receipts. These figures are illustrative only. SBA would welcome comments from firms on the appropriateness of these figures as well as the overall approach.

Possible Outcome

More contracts and contract dollars would be set-aside, since there would be a larger pool of firms to draw on for those contracts in excess of $500,000. For contracts estimated to be less than $500,000, fewer contracts would be set-aside since the pool of eligible firms would be reduced. In general, most firms presently defined as small would benefit by the greater number of contracts set-aside, and for firms in the $5.0 to $9.5 million range, the opportunity to expand to $13.5 million. The very small firms would benefit on small contracts which were set-aside by not having to compete with those small firms with more than $5.0 million in receipts. The Army Corps of Engineers could expand its set-aside targets, but has indicated its dislike for the complexity of the system. Protests might increase over the decision as to whether a contract is estimated to exceed $500,000 or not.

Proposal

2. Revise the SBA requirement that 40 percent of the dredging equipment be owned by the firm winning the set-aside contract or equipment owned by another small dredging concern to a higher level, while increasing the size standard to the $13.5 million level. SBA also would welcome discussion over moving to a lower level or to discontinuing the regulation entirely.

Possible Outcome

A higher requirement would most heavily impact on firms in the $5.0 to $9.5 million size range. These appear to be the firms now leasing equipment or subcontracting with large firms to perform the contract. Raising the size standard to $13.5 million would increase the number of eligible firms and the number of set-aside contracts. On the other hand, restricting further the amount of subcontracting or leasing permitted would result in fewer set-asides than if the 40 percent requirement were still in place. Thus, while more contracts would be set-aside with a $13.5 million size standard, a higher proportional requirement for firm controlled dredging equipment would lessen somewhat the number of set-asides and mostly affect the firms presently in the $5.0 to $9.5 million size range. Over time, there would probably be a net increase in leasing from firms in the $5.0 to $13.5 million range to firms with $5.0 million or less in gross receipts since they would be constrained from leasing with large firms.

SBA has put forward this notice in the form of an advance notice of proposed rulemaking to downplay its importance relative to our proposed rulemaking in which the size standard would be raised to $13.5 million. An advance notice is designed to solicit information only and is not associated with imminent action to the same extent as a proposed rule. At this preliminary point, SBA is interested in reaction to the two proposals. SBA is also interested in views of the correctness of the possible outcomes and welcomes any additional suggestions on this issue.

Dated: November 26, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-31592 Filed 12-3-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWP-6]

VOR Federal Airway V-460, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws Airspace Docket No. 83-AWP-6 published in the **Federal Register** on February 10, 1984 (49 FR 5136), proposing an alteration of VOR Federal Airway V-460 between San Diego, CA, and Julian, CA. The proposed alteration was designed to complement planned air traffic control procedures in that area. The circumstances prompting the proposal have changed and the FAA has determined that the proposal is no longer appropriate.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

Withdrawal of the Proposal

Pursuant to the authority delegated to me, Airspace Docket No. 83-AWP-6 published in the **Federal Register** on February 10, 1984 (49 FR 5136), is hereby withdrawn.

Issued in Washington, D.C., on November 26, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-31571 Filed 12-3-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 941

[Docket No. 40564-4064]

Fagatele Bay National Marine Sanctuary Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: These proposed regulations define which activities are allowed and which are prohibited within the proposed Fagatele Bay National Marine Sanctuary; the procedures by which persons may obtain permits for conducting activities normally prohibited; and the penalties for committing prohibited acts without a permit. The purpose of designating the Fagatele Bay National Marine Sanctuary is to protect and preserve an example of a pristine tropical marine habitat and coral reef terrace ecosystem of exceptional biological productivity; to expand public awareness and understanding of tropical marine environments; to expand scientific knowledge of marine ecosystems; to improve resource management techniques; and to regulate uses within the Sanctuary to ensure the health and well-being of the ecosystem and its associated flora and fauna.

EFFECTIVE DATE: Comments will be accepted until February 4, 1984.

ADDRESS: Send comments to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Kelvin Char, 202/634-4236.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434, (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the continental shelf as marine sanctuaries to preserve or restore distinctive conservation, recreational, ecological, or aesthetic values. Section 302(f)(2) of the Act directs the Secretary to issue necessary and reasonable regulations to control any activities permitted within a designated marine sanctuary. The responsibility for administering the provisions of the Act and its authority has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management within the National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

In March 1982, a proposal nominating Fagatele Bay, American Samoa, as a candidate for marine sanctuary designation, was submitted to the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. The recommendation submitted by Governor Peter T. Coleman cited, among other benefits of marine sanctuary designation, the development and implementation of a comprehensive Management Plan that would serve to: (1) Protect the bay's natural resources and pristine character; (2) create and enhance public awareness and understanding of the need to protect marine resources; (3) expand scientific examination of marine ecosystems associated with the high islands found in the Pacific, especially coral reefs that have been infested by the crown-of-thorns starfish, and apply scientific knowledge to the development of improved resource management techniques; and (4) allow uses of the sanctuary that are compatible with the sanctuary designation, giving highest priority to nondestructive traditional and public recreational uses.

In April 1982, NOAA placed the nominated area on the List of Recommended Areas (LRA) and, after preliminary public and agency

consultation, further declared the area an Active Candidate. After preparation and distribution of an Issue Paper by NOAA's Office of Coastal Zone Management in May 1982, a public workshop was held in American Samoa to solicit additional comments on the feasibility of further considering the site as a national marine sanctuary.

Based on the workshop results and in consultation with other Federal agencies and the American Samoa Government, a decision was made to proceed to the next step toward designation—development of a draft management plan and draft environmental impact statement (DEIS) for the proposed sanctuary. The draft management plan and DEIS, which contained an analysis of these draft regulations, was distributed on October 27, 1983. A public hearing was held in American Samoa on January 18, 1984 to receive testimony on the DEIS. Comments on the draft management plan/DEIS were accepted until January 20, 1984.

Comments received by NOAA on the DEIS were reviewed and, where appropriate, were incorporated into the final environmental impact statement and management plan (FEIS/MP). To meet the requirements of the Act, the proposed designation will be sent to the Congress and the Governor of American Samoa and will not go into effect until the expiration of 60 legislative days. The Governor of American Samoa will have 60 days to disapprove the designation or any of its terms. Thereafter, to the extent not disapproved by an act of Congress or the Governor of American Samoa, the Secretary may formally designate the area as a national marine sanctuary and final regulations will take effect.

Other Matters

(A) Classification Under Executive Order 12291

Executive Order 12291 (E.O. 12291) defines a "major rule" as "any regulation that is likely to result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets." The major activities supported by the area within the proposed sanctuary consist of small-scale recreational and subsistence activities.

Most of the activities in the proposed sanctuary are not affected by sanctuary regulations; the economic impacts on affected activities are minor and the regulations do not restrict recreational activities. Because the impact of the regulations on economic interests is minor or because the activities are not regulated at all, the Assistant Administrator has determined that this is not a "major rule" under E.O. 12291.

(B) Regulatory Flexibility Act Analysis

A Regulatory Flexibility Analysis is not required for this notice of rulemaking. These regulations set forth which activities are allowed and which are prohibited in the proposed Fagatele Bay National Marine Sanctuary; the procedures by which persons may obtain permits for activities otherwise prohibited; and the penalties for committing prohibited acts without a permit. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and the rules will have no effect on small business. For the same reasons, the General Counsel has certified to the Small Business Administration that the proposed rules will not have a significant economic impact on a substantial number of small entities within the area of the proposed sanctuary under the Regulatory Flexibility Act.

(C) Paperwork Reduction Act of 1980 (Pub. L. 96–511)

These regulations will impose no information collection requirements of the type covered by Pub. L. 96–511 other than those already approved by the Office of Management and Budget (approval number 0648–0141). Comments on the information collection requirements in § 941.11 of these proposed regulations shall be directed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer, Department of Commerce, NOAA.

List of Subjects in 15 CFR Part 941

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

(Federal Domestic Assistance Catalog Number 11.419, Coastal Zone Management Program Administration)

Dated: May 9, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, 15 CFR Part 941 is proposed to be added as follows:

PART 941—FAGATELE BAY NATIONAL MARINE SANCTUARY PROPOSED REGULATIONS

Sec.

941.1 Authority.
941.2 Purpose.
941.3 Scope of regulations.
941.4 Boundaries.
941.5 Definitions.
941.6 Management and enforcement.
941.7 Allowed activities.
941.8 Activities prohibited or controlled.
941.9 Other authorities.
941.10 Penalties for commission of prohibited acts.
941.11 Permit procedures and criteria.
941.12 Appeal of permit action.

Authority: Title III of Pub. L. 92–532, 86 Stat. 1061, 1062 (16 U.S.C. 1431–1434).

§ 941.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Marine Protection, Research and Sanctuaries Act of 1972 as amended (the Act). The following regulations are issued pursuant to Title III of the Act.

§ 941.2 Purpose.

The purpose of designating the Fagatele Bay National Marine Sanctuary is to protect a unique deepwater terrace formation and a coral reef ecosystem representative of the warm water tropical Pacific Islands in its natural state and to regulate uses within the Sanctuary to ensure the health and integrity of the ecosystem and its associated flora and fauna.

§ 941.3 Scope of regulations.

The provisions of this Part apply only to the area defined by regulation as the Fagatele Bay National Marine Sanctuary (the Sanctuary). Neither these provisions nor any permit issued under its authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statue or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this Part.

§ 941.4 Boundaries.

The Sanctuary is a 163-acre (.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutila, American Samoa. The site is divided into two Subzones, *A* and *B*, and includes Fagatele Bay in its entirety up to mean high high water (MHHW). The seaward boundaries are defined by straight lines between the following points:

Point	Pt. No.	Sub-zone	Latitude	Longitude
Fagatele Point	1–1	A	14°22'15"S	170°46'5"W.
Manaokuka Benchmark	1–2	A	14°22'18"S	170°45'35"W.
Fagatele Point	2–1	B	14°22'15"S	170°46'5"W.
Steps Point	2–2	B	14°22'44"S	170°45'5"W.

§ 941.5 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA).

(b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, or his or her successor, or designee.

§941.6 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Development Planning Office (DPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. The American Samoa Department of Parks and Recreation (DPR) shall conduct surveillance within the Sanctuary and shall enforce these regulations pursuant to 14 U.S.C. 88, 16 U.S.C. 1432(f)(4), 16 U.S.C. 7421(b), 16 U.S.C. 3375(a), or other appropriate legal authority.

§941.7 Allowed activities.

All activities except those specifically prohibited by Section 941.8 may be carried out within the Sanctuary subject to all prohitions, restrictions, and conditions imposed by other authorities.

§941.8 Activities prohibited or controlled.

(a) Unless permitted by the Assistant Administrator in accordance with Section 941.11, or as may be necessary for national defense, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited or controlled in *Subzones A* and *B* of the Sanctuary. All prohibitions and controls will be applied consistently with international law. Refer to § 941.10 for penalties for commission of prohibited acts.

(i) *Taking and Damaging Natural Resources.* (i) No person shall gather, break, cut, or similarly damage or destroy any invertebrate, coral, bottom formation, or marine plant.

(ii) No person shall gather, cut, damage, or similarly destroy any crown-of-thorns starfish *(Acanthaster planci).*

(iii) No person shall possess or use poisons, electrical charges, explosives, or similar environmentally destructive methods.

(iv) No person shall possess or use spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, and bang sticks.

(v) No person shall possess or use seines, trammel nets, or any fixed net.

(vi) There shall be a rebuttable presumption that any items listed in these paragraphs found in the possession of a person within the Sanctuary have been used, collected, or removed from within the Sanctuary.

(2) *Operation of vessels.* (i) No vessel shall approach closer than 200 feet to a vessel displaying a dive flag except at a maximum speed of three knots.

(ii) All vessels from which diving operations are being conducted shall fly in a conspicuous manner the international code flag alpha "A."

(iii) All vessels shall be operated to avoid striking or otherwise causing damage to the natural features of the Sanctuary.

(3) *Discharges.* No person shall litter, deposit, or discharge any materials or substances of any kind into the waters of the Sanctuary.

(4) *Disturbance of the Benthic Community.* Disturbance of the benthic community by dredging, filling, dynamiting, and bottom trawling shall be prohibited.

(5) *Removing or Damaging Cultural Resources.* No person shall remove, damage, or tamper with any historical or cultural resource within the boundaries of the Sanctuary.

(6) *Taking of sea turtles.* No person shall ensnare, entrap, or fish any sea turtle while it is listed as a threatened or endangered species as defined by the Endangered Species Act of 1973.

(7) *Use of dangerous weapons.* Except for law enforcement purposes, no person shall use or discharge explosives or weapons of any description within the Sanctuary boundaries. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers are not considered weapons for purposes of this subsection.

(8) *Other prohibitions.* No person shall mark, deface, or damage in any way, or displace or remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(b) In addition to those activities prohibited or controlled in accordance with § 941.8(a), the following activities are prohibited or controlled in *Subzone A:*

(1) *Taking and damaging natural resources.* (i) No person shall possess or use fishing poles, handlines, or trawls.

(ii) Commercial fishing shall be prohibited.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 941.9 Other authorities.

No license, permit or other authorization issued pursuant to any other authority may validly authorize any activity prohibited by § 941.8 unless such activity meets the criteria stated in § 941.11(a), (c) and (d), and is specifically authorized by the Assistant Administrator.

§ 941.10 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. NOAA will apply to all enforcement matters under the Act, the consolidated civil procedure regulations set forth at 15 CFR 904.110 through 904.243, and the seizure, forfeiture, and disposal procedure regulations set forth at 50 CFR Part 219.

§ 941.11 Permit procedures and criteria.

Under special circumstances where an activity otherwise prohibited by § 941.8 of these regulations is required for research or educational purposes designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking, and the activity is judged not to cause long-term or irreparable harm to the resources, a

permit may be granted by NOAA in cooperation with DPO.

(a) Any person in possession of a valid permit issued by the Assistant Administrator after consultation with the Director in accordance with this Section may conduct the specified activity in the Sanctuary if such activity is: (1) Related to research involving Sanctuary resources; (2) to further the educational value of the Sanctuary; or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, ATTN: Sanctuary Programs Division, National Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. An application shall include a description of all proposed activities, the equipment, methods, and personnel involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached. This information collection has been approved by the Office of Management and Budget (approval number 0648-0141).

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate such matters as: (1) The general professional and financial responsibility of the applicant; (2) the appropriateness of the methods being proposed for the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and (4) the end value of the activity.

(d) Permits may be issued by the Assistant Administrator for activities otherwise prohibited under § 941.8. In addition to meeting the criteria in § 941.11(a) and (c), the applicant must also satisfactorily demonstrate to the Assistant Administrator that: (1) The activity shall be conducted with adequate safeguards for the environment; and (2) the environment shall be returned to the condition which existed before the activity occurred. A permit issued according to these provisions shall be appropriately conditioned and the activity monitored to ensure compliance.

(e) In considering an application submitted pursuant to this Section, the Assistant Administrator shall seek and consider the view of the Sanctuary Manager and Director. The Assistant Administrator may also seek and consider the views of any other person or entity, within or outside of the Territorial Government, and may hold a public hearing, as he or she deems appropriate.

(f) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this Section, in whole or in part, and subject the permit to such condition(s) as the Assistant Administrator deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, to the following conditions: (1) The Assistant Administrator, Director, or their designated representatives may observe any activity permitted by this Section; (2) any information obtained in the research site shall be made available to the public; and (3) the submission of one or more reports of the status of progress of such activity may be required.

(g) A permit granted pursuant to this Section is non-transferrable.

(h) The Assistant Administrator may amend, suspend, or revoke a permit granted pursuant to this Section, in whole or in part, temporarily or indefinitely if, in his/her view, the permittee has acted in violation of the terms of the permit or regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder and shall set forth reason(s) for the action taken. The permittee in relation to whom such action has been taken may appeal the action as provided for in § 941.12.

§ 941.12 Appeal of permit action.

(a) Except for permit actions which are imposed for enforcement reasons and covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a permit, the permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning or suspension of any permit under § 941.11 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reasons(s) therefor, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this Section, the Administrator may request the Appellant to submit such additional infomation and in such form as will allow action upon the appeal. The Administrator shall decide the appeal using the criteria set out in § 941.11(a), (c) and (d) and any information relative to the application on file, any information provided by the Appellant, and such other consideration as is deemed appropriate. The Administrator shall notify the Appellant of the final decision and the reason(s) therefor, in writing normally within 30 days of the date of the receipt of adequate information required to make the decision.

(c) If a hearing is requested, or if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a Hearing Officer appointed for that purpose. The Appellant and other interested persons may appear personally or by counsel at the hearing and submit material and present arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the interested persons of his or her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's decision shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this Section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Appellant, permit applicant or Holder, stating the reason(s) therefor.

[FR Doc. 84-31576 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 166

[Docket No. 82P-0186]

Margarine; Proposal To Amend the Standard of Identity

Correction

In FR Doc. 84-28518 beginning on page 43560 in the issue of Tuesday, October 30, 1984, make the following correction:

On page 43561, third column, second complete paragraph (beginning with Therefore), tenth line, "§ 166.10" should read "§ 166.110".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Review of State Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: OSM is reopening the period for review and comment on an amendment submitted by the State of Maryland to its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Specifically, OSM is reopening the comment period to allow the public sufficient time to consider and comment on modifications submitted by Maryland on August 7, 1984, October 10, 1984, and November 9, 1984, to its initial amendment of January 13, 1984. The amendment consists of regulations governing surface coal mining and reclamation operations on State owned land, statutory amendments concerning license suspension and permit conditions regarding areas designated unsuitable for mining and revisions to the State's inspection frequency standards.

DATE: Written comments not received on or before 4:00 p.m. on December 19, 1984, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to:

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: Maryland Administrative Record, 603 Morris Street, Charleston, West Virginia 25301

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Maryland program amendment and administrative record on the Maryland program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Ellis, Acting Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION: Copies of the Maryland program amendment, the Maryland program and the administrative record on the Maryland program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315, Washington, D.C. 20240, Telephone: (304) 343-7896

Maryland Department of Natural Resources, Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136

In addition, copies of the amendment are available for inspection and copying during regular business hours at the following location:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004

The Maryland program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FR 79430-79451). On Febuary 18, 1982, following submission of program amendments to satisfy the conditions of approval, the Maryland program was fully approved by the Secretary (47 FR 7214-7217).

On January 13, 1984, the State of Maryland submitted proposed statutory and regulatory revisions to its approved program (Administrative Record No. MD 229). The submission contained revisions concerning permitting requirements and performance standards for coal exploration activities and inspection and enforcement procedures involving right of entry, public participation, notices of violation and cease and desist orders.

On February 16, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendment, a public comment period and an opportunity for a public hearing on the amendment (49 FR 5971-5973). On March 1, 1984, OSM published a notice in the **Federal Register** which corrected the February 16, 1984, notice concerning the hearing date and the date by which persons interested in making oral or written presentations at the hearing must contact OSM (49 FR 7605-7606). The public hearing scheduled for March 12, 1984, was not held because no one expressed an interest in participating in the hearing. The public comment period closed on March 19, 1984.

Following its review and opportunity for public comment, on April 5, 1984, OSM notified Maryland of certain deficiencies contained in the proposed amendment, and provided the State an opportunity to submit additional information to address the deficiencies (Administrative Record No. MD 241). On May 4, 1984, Maryland submitted additional information to clarify certain provisions of its initial amendment (Administrative Record No. MD 250). On May 9, 1984, as a follow-up to its May 4, 1984, letter, Maryland submitted revised bond release procedures (Administrative Record No. MD 249). Representatives of OSM and the State met on May 31, 1984, to discuss the additional information submitted by the State (Administrative Record No. MD 252). As a result of this meeting, Maryland withdrew its proposed amendment of May 9, 1984, and submitted additional modifications on June 8, 1984, concerning the form, amount and release procedures for performance bonds (Administrative Record No. MD 251).

On July 5, 1984, OSM reopened the comment period to provide the public sufficient time to consider the proposed revisions submitted by the State of Maryland on June 8, 1984, and to review the minutes of the meeting held on May 31, 1984, between OSM and the State (49 FR 27582-27583) (Administrative Record No. MD 266).

On August 7, 1984, the State of Maryland submitted a proposed amendment to its permanent program at COMAR 08.13.09 to regulate surface coal mining and reclamation activities on land owned by the State. In so doing, the State proposes to repeal similar provisions at COMAR 08.13.04.28 of its interim regulations (Administrative Record No. MD 282). On October 10, 1984, Marlyland submitted additional modifications to its permanent program in response to OSM's letter of April 5, 1984. The modifications consist of amendments to the Maryland Strip Mining Law at § 7-504(c) and § 7-505.1(e) concerning license suspension procedures and conditioning of permits to protect areas under study or which have been designated unsuitable for mining (Administrative Record No. MD 283). On November 9, 1984, Maryland also submitted proposed amendment to its pemanent program regulations at COMAR 08.13.09.40B regarding the inspection frequency of surface coal mining reclamation operations (Administrative Record No. MD 284).

The comment period being announced today is to provide the public sufficient time to comment on the modifications submitted by the State of Maryland on August 7, 1984, October 10, 1984, and November 9, 1984, to its permanent regulatory program. If approved, the initial amendment and the modifications thereto will become part of the Maryland permanent program in accordance with the provisions of 30 CFR 732.17.

Dated: November 28, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84-31598 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3E2886/P341; PH-FRL 2697-6]

Chlorpyrifos; Proposed Tolerance

Correction

In FR Dec. 84-27642, beginning on page 42753, in the issue of Wednesday, October 24, 1984, make the following correction: On the page 42753 in column two, under **SUPPLEMENTARY INFORMATION,** second complete paragraph, seventh line, "e, 5, 6–" should read "3, 5, 6–".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

Proposed Rule Implementing Amendments to the Federal Aid in Sport Fish Restoration Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would implement amendments to the Federal Aid in Sport Fish Restoration Act that provide Federal funds to States for the restoration, conservation, management, and enhancement of sport fish, and the provision for public use and benefits from these resources. It seeks to clarify legal requirements and to establish integrated policies necessary for implementation of the legislative amendments.

DATES: Comments must be received by January 3, 1985.

ADDRESSES: Any comments on the proposed requirements should be submitted to the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703/235-1526.

SUPPLEMENTARY INFORMATION: The Deficit Reduction Act of 1984 (Pub. L. 98-369) amended the Federal Aid in Sport Fish Restoration Act, commonly known as the Dingell-Johnson or D-J Act, that was enacted on August 9, 1950, (64 Stat. 430; 16 U.S.C. 777-777k). The new law will require regulatory changes to accomodate several provisions including: (a) The States must allocate 10 percent of their D-J apportionment for motorboat access facilities; (b) the States may use up to 10 percent of their D-J apportionment for an aquatic resources education program; (c) the States must use their additional D-J funds to expand their fishery management programs; (d) the District of Columbia will be allowed to participate in the grant program; (e) Coastal States must equitably allocate new funds between fresh and saltwater activities; (f) the States will be permitted to enter multi-year financial agreements for large-scale activities.

This proposed rule serves almost entirely to interpret, clarify, and consolidate requirements imposed by Pub. L. 98-369. Further, it has been determined that this proposed rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This proposed rule does not contain any new recordkeeping or information collection requirements as defined by Paperwork Reduction Act of 1980.

The Department has determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required.

During the drafting of this proposed rule, the FWS met with representatives of the various State fish and game agencies to discuss the amendments to the Act. Comments were received during those sessions. A record of those comments will be made a part of the administrative record of this rulemaking and will be available for public inspection. Those comments will be considered, along with all others received during the comment period, in formulating the final rule.

The principal author of this rule is Dr. Robert J. Sousa, U.S. Fish and Wildlife Service, Division of Federal Aid, Washington, D.C. 20240, telephone 703/235-1526.

List of Subjects in 50 CFR Part 80

Fish grant programs, Natural resources, Grant administration, and Wildlife.

PART 80—[AMENDED]

Accordingly, it is proposed to amend 50 CFR Part 80 as follows:

1. The authority citation for Part 80 is revised to read as follows:

Authority: Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777i), as amended and Federal Aid in Wildlife Restoration Act (16 U.S.C. 669i), as amended.

2. In § 80.1, paragraph (b) is revised to read as follows:

§ 80.1 Definitions.

* * * * *

(b) *State.* Any State of the United States; the territorial areas of Guam, the Virgin Islands, and American Samoa; the Commonwealth of Puerto Rico, the District of Columbia, and the Commonwealth of the Northern Mariana Islands.

* * * * *

3. In § 80.2, paragraph (a) is revised to read as follows:

§ 80.2 Eligibility.

* * * * *

(a) Federal Aid in Sport Fish Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

* * * * *

4. In § 80.5, paragraph (c) is added to read as follows:

§ 80.5 Eligible undertakings.

* * * * *

(c) Additional funds resulting from expansion of the D-J Program must be added to existing State fishery program funds available from traditional sources and not as a substitute therefor.

5. Section 80.15 is amended by adding paragraph (e) to read as follows:

§ 80.15 Allowable costs.

* * * * *

(e) Not more than 10 percentum of the annual amount apportioned to each State under provisions of the Federal Aid in Sport Fish Restoration Act may

be obligated on projects for aquatic education.

6. A new § 80.23 is added to read as follows:

§ 80.23 Allocation of funds between marine and freshwater fishery projects.

(a) Each coastal State, to the extent practicable, shall equitably allocate those funds specified by the Secretary, in the apportionment of Federal Aid in Sport Fish Restoration funds, between projects having recreational benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(1) Coastal States are: Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

(2) The allocation and subsequent obligation of funds between projects that benefit marine and freshwater interests will be in the same proportion as the estimated number of resident marine anglers and resident freshwater anglers, respectively, bears to the estimated number of the total resident anglers in the State. The numbers of marine and freshwater anglers shall be based on a statistically reliable method for determining the relative distribution of resident anglers in the State between those that fish in saltwater and those that fish in freshwater.

(3) To the extent practicable means that the amounts allocated of each year's apportionment may not necessarily result in an equitable allocation for each year. However, the amounts allocated over a period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects.

(4) Failure to provide for an equitable allocation may result in the State becoming ineligible to participate in the use of those funds specified, or such other sanction as the Director considers appropriate.

7. A new § 80.24 is added to read as follows:

§ 80.24 Motorboat access facilities.

The State shall allocate at least 10 percentum of the funds apportioned to it under the Federal Aid is Sport Fish Restoration Act for access facilities. All facilities constructed, acquired, developed, renovated, or maintained must be for the purpose of providing additional, improved, or safer access of public waters for boating recreation as part of the State's effort for the restoration, management, and public use of sport fish. Though a broad range of access facilities and associated amenities can qualify for funding under the 10 percent provision, power boats with common horsepower ratings must be accomodated and in addition, the State must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management.

8. A new § 80.25 is added to read as follows:

§ 80.25 Multi-year financing under the Federal Aid in Sport Fish Restoration Program.

(a) States may finance the acquisition of lands or interests in lands and the construction of structures and facilities utilizing multi-year funding as authorized by the Federal Aid in Sport Fish Restoration Act in two ways:

(1) States may finance the entire cost of the acquistion or construction from a non-Federal funding source and claim federal aid reimbursement in succeeding apportionment years according to a scheduled reimbursement plan.

(2) States may negotiate an installment purchase or contract whereby periodic and specified amounts are paid to a seller or contractor and federal aid reimbursements are allowed for each payment from any apportionment year current at the time of payment.

(b) Multi-year financing is subject to the following conditions:

(1) Projects must provide for prospective use of funds and be approved by the Regional Director in advance of the State's obligation or commitment to purchase property or contract for structures or facilities.

(2) States must agree to complete the project even if federal funds are not available. In the event the project is not completed those Federal funds expended but not resulting in sport fishery benefits must be recovered.

(3) Project proposals must include a complete schedule of payment to complete the project.

(4) No costs for interest or financing shall be claimed for reimbursement.

Dated: October 29, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-31574 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. II

[Docket No. 40670-4070]

U.S. Standards for Grades of Crab Meat and Oysters

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of intent to develop standards.

SUMMARY: This notice announces this agency's decision based on comments received regarding the development of U.S. Standards for Grades of Crab Meat and Oysters. It is a followup to the notice previously published on June 19, 1984, 49 FR 25017.

FOR FURTHER INFORMATION CONTACT: Rita A. Creitz, National Standards Coordinator, National Seafood Inspection Program, Office of Utilization Research, National Marine Fisheries Service, Washington, D.C. 20235. Phone (202) 634-7458.

SUPPLEMENTARY INFORMATION: This agency, in response to two petitions received from the National Blue Crab Industry Association and The Shellfish Institute of North America, published on June 19, 1984, a **Federal Register** notice (49 FR 25017) inviting written comments until August 3, 1984, on the desirability and scope for two new voluntary U.S. Standards for Grades: crab meat and oysters. A total of 23 written comments were received. Most addressed both proposed standards. Following is a summary of those comments as they pertain to each proposed U.S. Standards for Grades.

Oysters: 19 comments were received, all in support of the development of the standard, from 10 processors, 6 trade associations, 2 State Governments, and one industrial food organization. One comment stated that the standard should "not apply to cooked and processed oysters."

Crab Meat: 11 comments were received from 7 processors, 3 industry trade associations, and one food service organization. Ten comments supported the development of a standard. In response to the question whether there was interest in developing a standard which would include species in addition to blue crab, one comment stated standards were not needed for Dungeness, Snow (*Chionoecetes bairdi, C. opilio*), or King Crabs.

Based on the supportive nature, the quantity, and the geographical

distribution of the comments; it is the decision of NMFS that there is national interest in, and that resources should be committed to, the development of the subject U.S. Standards for Grades. The U.S. Standards for Grades of Crab Meat will be limited to blue crab meat. Since insufficient information could be gathered from the comments to define specifically the scope of each standard, NMFS will obtain (as soon as possible) the information necessary, working with industry and users of the commodity, to identify the scope and begin the development process. Those interested in learning the progress of the respective standards are invited to write or call the identified contact.

Dated: November 28, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 84-31599 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 41161-4161]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1985 fishing quotas and request for comments.

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1985 and requests public comment. These quotas have been selected from a range defined as the optimum yield for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the fishery conservation zone in 1985.

DATE: Comments will be accepted until December 31, 1984.

ADDRESS: Comments on the proposed 1985 fishing quotas should be sent to the Management Division, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930-3097. A copy of the report used to propose the quotas is available for public inspection at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, Surf Clam Management Coordinator, 617-281-3600, ext. 273.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as optimum yield for each fishery.

To implement this regulatory provision for establishing quotas, the Regional Director has considered the following information: Stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing.

Proposed quotas based on that information are published here for public review and comment; a copy of the report on the methodology used in establishing these quotas is available to the public.

Analyses of stock assessments, catch records, and all other relevant information indicate increases in productivity, especially surf clam recruitment of strong 1976 and 1977 year classes off northern New Jersey and Delmarva Peninsula. Overall, adequate resources currently exist in the Mid-Atlantic Area. The total landings for the Mid-Atlantic Area, as of October 26, 1984, was approximately 2,225,000 bushels. The total ocean quahog resource has been established at 27 million bushels, and the additional 400,000 bushels remain within the range of the optimum yield.

The New England Area, presently governed by emergency regulations (49 FR 37598, September 25, 1984), will continue its 200,000 bushel quota until December 27, 1984. The total landings for the New England Area, excluding the newly discovered Georges Bank beds, is approximately 60,000 bushels. The recent discovery of surf clams on Georges Bank necessitated the establishment of a scientific survey which aided scientists in determining the size and concentration of the surf clam beds on Georges Bank. Exploratory fishing landings by commercial vessels totalled approximately 400,000 bushels. Because of this survey, the Mid-Atlantic and New England Fishery Management Councils (Councils) are considering partition of the New England Area into a new Nantucket Area (west of 69°), and a new George Bank Area (east of 69°) with quotas of 200,000 bushels for the Nantucket Area and 300,000 bushels for the Georges Bank Area. A partition of the New England areas and accompanying quotas would be implemented by amendment to the FMP.

In the meantime, under regulations which will be in effect on January 1, 1985, the quota will be 100,000 bushels for the entire New England Area.

The following quotas are proposed for the Mid-Atlantic and New England Areas for 1985:

Fishery	1985 Quota in bushels
Mid-Atlantic Surf Clam	[1] 2,650,000
New England Surf Clam	100,000
Ocean Quahog	8,400,000

[1] Approximately 45 million pounds of surf clam meat.

Comments on these proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final annual quotas for each fishery and publish those quotas in the Federal Register.

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries, under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Administrative practice and procedure, Fish, Fisheries, Recordkeeping and reporting requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: November 29, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-31650 Filed 11-29-84; 4:57 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 234
Tuesday, December 4, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given pursuant to 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on December 12, 1984, at 7:00 p.m., a public information meeting will be held at the Pinal Room (No. 215) of the Memorial Union on the Arizona State University Campus, Tempe, Arizona. The meeting is being called by the Executive Director of the Council in accordance with 800.6(b)(3) of the Council's regulations for the purpose of providing an opportunity for representatives of national, state, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed "Plan 6" as a feature of the Central Arizona Project, an undertaking assisted by the Bureau of Reclamation, Department of the Interior, that will advesely affect the Roosevelt Dam, a property included in the National Register of Historic Places. Consideration will be given to the undertaking, its effects on National Register or eligible properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties.

The Following is a summary of the agenda of the meeting:

An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

A description of the undertaking and an evaluation of its effects on the Roosevelt Dam and other cultural properties by the Bureau of Reclamation.

A statement by the Arizona State Historic Preservation Officer.

Statements froms local officials, private organizations, and the public on the effects of the undertaking on cultural properties.

A general question period.

Representatives of the Council, the Bureau of Reclamation, and the Arizona State Historic Preservation Officer will limit their statements to not more than 15 minutes. Other speakers should limit their statements to not more than 10 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting and for an additional 10 days. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 730 Simms Street, Room 450, Golden, Colorado 80401; telephone (303) 236-2682.

Dated: November 28, 1984.

John M. Fowler,

Acting Executive Director.

[FR Doc. 84-31614 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Topeka, Kansas, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 7, 1984, 10:00 p.m. to 12:00 noon.

Comments must be received no later than January 6, 1985.

ADDRESSES: Meeting location at Room 201, Federal Building, 444 SE. Quincy Street, Topeka, Kansas.

FOR FURTHER INFORMATION CONTACT: Written Comments and Further Information Will Be Addressed To: State Director, FmHA, 444 SE. Quincy Street, Topeka, Kansas 66683 (913-295-2879).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Kansas State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Kansas. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 28, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-31638 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Albuquerque, New Mexico, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 23, 1984, 1:00 p.m to 3:00 p.m.

Comments must be received no later than January 22, 1985.

ADDRESS: Meeting location at Room 112, Federal Building, 421 Gold Avenue, SW., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Written Comments and Further Information Will Be Addressed to: State

Director, FmHA, Room 3414, Federal Building, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102 (505–766–2462).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's New Mexico State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in New Mexico. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contract.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 28, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-31635 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-07-M

Human Nutrition Information Service

Dietary Guidelines Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Dietary Guidelines Advisory Committee.

Date: December 19, 1984.

Place: Administration Building, Room 107–A, U.S. Department of Agriculture, Independence Avenue, SW., Washington, D.C. 20250.

Time: December 19, 1984, 9 a.m. to 5 p.m.

Purpose: To review comments received on "Nutrition and Your Health: Dietary Guidelines for Americans," Home and Garden Bulletin Number 232, and finalized any recommendations the Committee deems appropriate.

Agenda: The agenda will include the following items: Review of draft recommendations for the 7 Dietary Guidelines, review of comments received on the Dietary Guidelines since the May 22, 1984 meeting, discussion of the Committee's report and any other items related to the Committee's plans.

The meeting is open to the public. There is a limited amount of space available for public attendance. Written statements should be submitted to Isabel D. Wolf, Administrator, Human Nutrition Information Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 360, Hyattsville, Maryland 20782, prior to the Committee's final meeting on December 19, 1984.

Done at Washington, D.C. this 29 day of November, 1984.

[FR Doc 84-31599 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-KE-M

Forest Service

Tonto National Forest Grazing Advisory Board; Meeting

The Tonto National Forest Grazing Advisory Board will meet January 23, 1985, at 1:00 p.m. to the Tonto National Forest Supervisor's Office, 2324 E. McDowell Rd., Phoenix, Arizona. This meeting was originally scheduled for November 26, 1984, however, cancelled and rescheduled as indicated at the request of the Advisory Board Chairman. The purpose of this meeting is to cover the following agenda items:

1. Review the proposed allotment management plan and other management alternatives under consideration, for the Chrysotile Allotment.

2. Review proposed expenditure of Range Betterment Funds for the Chrysotile Allotment.

3. Receive advice and recommendations from the Board relative to the proposed plan of management for the Chrysotile Allotment. The meeting will be open to the public. Persons who wish to attend should notify James L. Kimball, Forest Supervisor, Tonto National Forest, 2324 E. McDowell Rd., Phoenix, Arizona 85006, telephone: (602) 261–3205. Written statements may be filed with the Board, before or after the meeting.

Dated: November 21, 1984.

James L. Kimball,

Forest Supervisor.

[FR Doc. 84-31605 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Loving Field Ball Park Complex Critical Area Treatment; RC&D Measure, Pulaski County, VA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Loving Field Ball Park Complex Critical Area Treatment RC&D Measure, Pulaski County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804–771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for grading, shaping and seeding eroding areas in Pulaski County, Virginia. The planned work will include the establishment of four (4) acres of permanent vegetative cover, installing a diversion, waterway, and heavy use area protection.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation

and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: November 21, 1984.

James B. Michael,

Acting State Conservationist.

[FR Doc. 84-31601 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–001]

Leather Wearing Apparel From Mexico; Supplemental Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of supplemental final results of administrative review of countervailing duty order.

SUMMARY: On March 31, 1983, the Department of Commerce published in the **Federal Register** the final results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico. In compliance with a remand from the Court of International Trade we have reviewed certain documents submitted by Confecciones Generales, S.A., and have determined the amount of net bounty or grant to be zero for that firm during the review period.

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1983, the U.S. Court of International Trade issued a decision in *Hide-Away Creations, Ltd.* v. *United States* and *Confecciones Generales, S.A.* v. *United States* (Slip Op. 83–135) that the Department of Commerce ("the Department") had not sufficiently satisfied the statutory requirement of publication of notice in the **Federal Register** prior to commencment of the administrative review under section 751 of the Tariff Act of 1930 ("the Tariff Act") of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357, April 10, 1981). The court remanded the case to the Department, with instructions that within 30 days the Department review xero deposit rate certifications pertaining to Confecciones Generales, S.A., and any related matters, and publish in the **Federal Register** supplemental final results of its administrative review (48 FR 13474, March 31, 1983).

Scope of the Review

Imports covered by the review are currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. The review covers the period January 14, 1981, the date liquidation was suspended in the preliminary affirmative determination (46 FR 21357), through December 31, 1981, and three programs: CEDI, the countervailable program cited in the final determination, as well as FOMEX and CEPROFI, two programs found countervailable in the final determination on ceramic tile from Mexico (47 FR 20013, May 10, 1982).

Analysis of Certifications

The Mexico government's certification, dated April 20, 1983, stated that Confecciones had received no benefits under the CEDI, FOMEX or CEPROFI programs. An attached certification from Confecciones, dated February 4, 1983, stated that Confecciones had never received any benefits under the CEDI, FOMEX or CEPROFI programs and will not apply for or receive benefits under these programs in the future.

The Department finds that the certifications are in acceptable form and there is no evidence on record contradicting the information in the certifications.

Supplementary Final Results of the Review

Based on our analysis of the certifications, we determine that the total bounty or grant for the period was zero for the firm of Confecciones. Accordingly, the Department will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise which were entered, or withdrawn from warehouse, for consumption on or after January 14, 1981, and exported on or before December 31, 1981.

This supplementary final results of administrative review pertains only to Confecciones and will not affect any other firms covered in the final results published on March 31, 1983.

The supplementary administrative review and notice are in accordance with the court order and section 516A(e) of the Tariff Act (19 U.S.C. 1516a(e)).

Dated: November 13, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-31630 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-DS-M

[C–225–401]

Termination of Countervailing Duty Investigation; Certain Textiles and Textile Products From Panama

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On October 3, 1984, the American Textile Manufactures Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union withdrew their countervailing duty petition, filed on July 23, 1984, on certain textiles and textile products from Panama. Their letter of withdrawal appears as an Appendix A to this notice. Based on the withdrawal, we are terminating the countervailing duty investigation.

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washingon, D.C. 20230; telephone: (202) 377–1784 or 377–1769.

SUPPLEMENTARY INFORMATION:

Case History

On July 23, 1984, we received a petition from counsel for the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union filed on behalf of the U.S. industry producing textiles and textile products. In accordance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that producers, manufacturers, or exporters in Panama of certain textile and textile products receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation. We initiated the investigation on August 10, 1984 (49 FR 32895).

Scope of Investigation

The products covered by this investigation are textiles and textile products. The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States Annotated* (TSUSA), as listed in Appendix B to this notice.

Withdrawal of Petition

On October 3, 1984, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 704(a) of the Act (19 U.S.C. 1671c(a)), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have notified all parties to the investigation of petitioners' withdrawal and our intention to terminate. Pursuant to § 355.30(a) of our regulations (19 CFR 355.30(a)), we have determined that termination of this case is in the public interest.

For these reasons, we are terminating our investigation of certain textiles and textile products from Panama.

November 27, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

October 3, 1984.

Wilmer, Cutler & Pickering, 1666 K Street, NW., Washington, D.C. 20006

[Case No. C 225-401]

Total Number of Pages: 1. This document does not contain privileged, confidential, or business proprietary information, or information subject to administrative protective order.

Secretary of Commerce,

Attention: Import Administration, Central Records Unit, Room B-099, Department of Commerce, Pennsylvania Avenue at 14th St., NW., Washington, D.C. 20230

Re: Countervailing Duty Investigation; Certain Textiles and Textile Products from Panama

Dear Mr. Secretary: On behalf of the petitioners in this case, we hereby withdraw the countervailing duty petition involving textiles and textile products from the Republic of Panama. We withdraw this petition without prejudice.

Sincerely,

John D. Greenwald.

Appendix B

The products covered by this investigation are certain textiles and textile products. The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States Annotated* (TSUSA) listed below.

Yarns						
310.1170						
Fabric						
338.5009						
Special Construction Fabrics						
355.4530						
Textile Furnishings						
365.7825	366.7925	366.7930				
Apparel						
370.3600	370.8820	373.2200	374.1000	374.1500	374.3530	
374.3550	374.4000	374.6020	374.6040	376.2430	376.2830	
376.2886	379.0576	379.0240	379.0250	379.0260	379.0620	
379.0640	379.2340	379.2630	379.2640	379.3130	379.3140	
379.3180	379.3190	379.3338	379.3530	379.3540	379.4020	
379.4050	379.4060	379.5520	379.5530	379.5550	379.5555	
379.6992	379.7620	379.7630	379.7640	379.8311	379.8360	
379.8735	379.8911	379.9035	379.9510	379.9540	379.9555	
379.9575	379.9585	383.0305	383.0605	383.1802	383.2205	
383.2305	383.2325	383.2720	383.2731	383.4709	383.4730	
383.4761	383.5072	383.5073	383.5395	383.6350	383.6360	
383.6371	383.6372	383.7560	383.7878	383.8073	383.8160	
383.8680	383.9015	383.9060	383.9070	383.9295	383.9245	
Miscellaneous						
385.3000	385.5000	386.0430				

[FR Doc. 84-31833 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-DS-M

Full Council Meeting, President's Export Council; Partially Closed Meeting

A meeting of the President's Export Council (PEC) will be held December 17, 1984, 10:30 a.m.–3:30 p.m., the Dunbarton Room, Four Seasons Hotel, 2800 Pennsylvania Avenue, N.W.,. Washington, D.C. The Council's purpose is to advise the President on matters relating to United States export trade.

General Session: 10:30 a.m.–12 noon. Opening Remarks; discussion of outstanding issues, possible topics include: export promotion, countertrade, intellectual property rights, state export promotion activities and recent trade legislation; discussion of the Final Report and discussion of U.S.-Japan Trade.

Executive Session: 2:00 p.m.–3:30 p.m. Discussion of matters properly classified under Executive Order 12356, dealing with negotiations with the European Community, the State of the Union Address, export control issues and other classified issues.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b (c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes contact Amy Dale (202) 377–1125, 3213, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: November 30, 1984.

Henry P. Misisco,

Acting Director, Office of Planning and Coordination.

[FR Doc. 84-31783 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

SUMMARY: Working Group D (Production) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 1:00 p.m., Thursday, 13 December 1984.

ADDRESS: The meeting will be held at Varian Associates, 611 Hansen Way, Palo Alto, California 94303.

FOR FURTHER INFORMATION CONTACT: Thomas Henion, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g., manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability of skilled people to support the critical electronic component supply base. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 27, 1984.

[FR Doc. 84-31839 Filed 12-3-84; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

SUMMARY: Working Group B (Mainly Low Power Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 8:30 a.m., Tuesday, December 4, 1984.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 1215 Jefferson Davis Highway, Suite 1203, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Michael Shapiro, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

November 27, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-31829 Filed 12-3-84; 8:45 am]

BILLING CODE 3810-01-M

Secretary of Defense Media Advisory Council; Meeting

The Secretary of Defense Media Advisory Council will meet in a closed session on Monday, December 17, 1984 in the Washington, D.C. area. The Council's agenda will include discussions on the Sidle Panel recommendations concerning military-media relations and press coverage of future combat operations. The establishment of the Council was reported in the **Federal Register** on Tuesday, November 20, 1984.

Any additional information concerning the meeting may be obtained from: Colonel Robert J. O'Brien, Jr., USAF, Deputy Assistant Secretary of Defense (Public Affairs), The Pentagon, Washington, D.C. 20301, phone: 202–695–3381.

Dated: November 27, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-31828 Filed 12-3-84; 8:45 am]

BILLING CODE 3810-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 12, 1984, beginning at 1:30 p.m. in the Benjamin West Room of the Holiday Inn Center City, 1800 Market Street, Philadelphia, Pennsylvania. The hearing will be a part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissions and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Application for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Horsham Township Authority D-79-30 CP RENEWAL.* Renewal of an approved ground water withdrawal from Well No. 26 which supplies water to the applicant's distribution system in Horsham Township, Montgomery County, Pennsylvania. Commission approval was limited to five years and will expire unless renewed. The proposed 30-day withdrawal from Well No. 26 remains at 14.7 million gallons (mg). The well is located in the Southeastern Pennsylvania Ground Water Protected Area.

2. *New Jersey Water Company—Haddon District D-81-11 CP.* An amended application for a ground water withdrawal project to supply the applicant's Camden distribution system. New Well Nos. 53, 54 and 55 replace Well Nos. 46 through 49 which are no longer in use. Each of the three new wells is expected to yield 1.5 million gallons per day (mgd). However, the total withdrawal from existing and new wells will not be increased above the existing New Jersey Department of Environmental Protection limit of 193.75 mg/30 days. The new wells are located along Cleveland Avenue, between Reeves and 34th Streets, in the City of Camden, Camden County, New Jersey.

3. *Borough of Dublin (D–81–75 CP).* A well water supply project to initially provide water service to a new housing development in the Borough of Dublin, Bucks County, Pennsylvania. Designated as Well Nos. 1 and 2, the combined facilities will supply a maximum of 27.000 gallons per day (gpd). The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Borough of Quakertown (D–82–4 CP).* A well water suply project to augment public water supplies in the Borough of Quakertown and portions of Richland Township, Bucks County, Pennsylvania. Designated as Well No. 15, the new facility will be used at an average rate of 400.000 gpd. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Pennwalt Corporation D–84–6.* A new industrial waste treatment facility to treat wastes from manufacture of a new product line at the applicant's reactivated Thorofare plan in West Deptford Township, Gloucester County, New Jersey. The facility will be designed for neutralization of hydrochloric and hydrofluoric acids, and removal of fluorides and suspended solids from an average waste flow of 0.394 mgd. Treated effluent will discharge to the Delaware River at River Mile 90.5.

6. *Rollins Environmental Services, Inc. D–84–38.* Addition of a scrubber solids treatment system at the applicant's Bridgeport industrial waste treatment facility in Logan Township, Gloucester County, New Jersey. The system is expected to remove 90 percent TSS from an average incinerator scrubber waste flow of 1.1 mgd. Ultimate discharge is to Raccoon Creek in Logan Township.

7. Hereford Estates Mobile Home Park D–84–39. A sewage treatment project to serve the applicant's mobile-home park in Hereford Township, Berks County, Pennsylvania. The existing 0.020 mgd plant will be expanded to provide secondary treatment for an average waste flow of 0.070 mgd. Effluent concentration for BOD_5 and TSS will average 30 milligrams per liter. Treated effluent will continue to discharge to the Perkiomen Creek in Hereford Township.

8. *American Electric & Power Ltd. D–84–49.* A floating hydroelectric power generator in the Delaware River upstream of the City of Easton and between Forks Township, Northampton County, Pennsylvania and Lopatcong Township, Warren County, New Jersey. Up to 30 kilowatts of power will be produced by two parallel paddle wheels mounted on a 39 foot wide by 28 foot long pontoon boat. The vessel will be anchored to the river bottom using boat anchors but will be free to rise and fall with river stage except during low flow conditions, when it will rest on permanent support legs. It will be connected to the Pennsylvania shore only by a submarine cable connecting to the local electric transmission lines of Pennsylvania Power and Light Company.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in singe copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

November 27, 1984.

[FR Doc. 84–31727 Filed 12–3–84; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Notice of Proposed Remedial Order; Tampimex Oil International, Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Tampimex Oil International, Ltd.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed remedial Order which was issued to Tampimex Oil International, Ltd., 11 Greenway Plaza, suite 1506, Houston, Texas 77046. This Proposed Remedial Order alleges violations in the pricing of motor gasoline of 10 CFR 210.92 and 212.93 for period March 1974 through July 1979. The principal amount of the alleged violations for this period is $14,327,762.00.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from:

U.S Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas on the 30th day of October, 1984.

Sandra K. Webb,

Director, Houston Office Economic Regulatory Administration.

[FR Doc. 84–31601 Filed 12–3–84; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Friday, November 2, 1984 (49 FR 44129).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., November 28, 1984.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form No. (1)	Form Title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual reporting burden (8)	Abstract (9)
EIA–860	Annual Electric Generator Report.	New	Annually	Mandatory	State or local governments.	900	21,600	The data supports the Generating Unit Reference File (GURF) which is used to publish annually the inventory of Power Plants in the United States. Every electric utility that operates or plans to operate a power plant in the United States or Puerto Rico submits a form.
EIA–861	Annual Electric Utility Report.	New	Annually	Mandatory	Electric utilities	3,200	28,800	This form is filed annually by every electric utility in the United States and Puerto Rico. This data will maintain and update the Electric Utility Frame database which supports queries from the Executive Branch, Congress, and other agencies, and the general public. Form EIA–861 is designed to collect information on the status of electric utilities and the generation, transmission, and distribution of electric energy in the U.S. and Puerto Rico.
FERC–73	FERC Form No. 73, Service Life Data.	Extension	On occasion	Mandatory	Oil pipeline companies.	24	3,360	FERC–73 implements regulations found in Title 18 CFR, Subchapter Q, Part 352. Data are collected on property installations, transactions, gross salvage, cost of removal, and net salvage value. FERC uses the data to perform service life analysis and to determine book depreciation rates for oil pipeline properties.

[FR Doc. 84–31632 Filed 12–3–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

United Gas Pipe Line Co.; Petition To Amend

[Docket No. CP84–379–003]

November 29, 1984.

Take notice that on November 21, 1984, United Gas Pipe Line Company (Petitioner), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84–379–003 a petition pursuant to Section 7 of the Natural Gas Act to amend the order issued May 31, 1984, in Docket No. CP84–379–000, as amended July 25, 1984, so as to authorize Petitioner to extend its discount rate schedule (DRS) for one year, so as to allow for monthly charges in the DRS rate subject to a ceiling and a floor, so as to change the date on which Rate Schedule PL–N customers must designate discount volumes, so as to allow a waiver of the incremental pricing surcharge for certain discount volumes, and to clarify what volumes would receive the discount rate where Petitioner has contracted to supply a stipulated percentage of specified requirements of customers under its Rate Schedules G and DG, all as more fully set forth in the petiton to amend which is on file with the Commission and open to public inspection.

Petitioner states that on May 31, 1984, the Commission approved its application in Docket No. CP84–379 for a limited-term certificate of public convenience and necessity to implement the DRS, and on July 25, 1984, the Commission approved Petitioner's application to amend that schedule by increasing the discount. It is stated that with an effective date of June 1, 1984, the DRS expires on December 31, 1984.

It is stated that in summary fashion, the DRS as approved by the Commission provides all of Petitioner's present jurisdictional customers a discount rate for gas purchased from Petitioner above a certain volume (the threshold volume). Petitioner states that for present customers under Rate Schedules DG and G, the threshold volume equals the volume purchased during the corresponding month of 1983. It is stated that for those volumes in excess of the threshold volume and for certain other volumes that each customer may designate (discount volumes), the rate is $3.09 per Mcf. Petitioner states that for customers under the PL–N rate schedule, the threshold volume equals each customer's current minimum bill volume computed in accordance with the minimum bill provision of Rate Schedule PL–N in effect as of March 1, 1984. It is stated that although the minimum volume is an annual volume, pipeline customers which either have purchased, or expect to purchase, the minimum bill volume, may designate as purchases under this rate schedule each month a portion of the gas to be purchased in that month. It is further stated that only the volumes so designated would be sold under this rate schedule, and there are no restrictions on the use to which the purchased gas may be put.

Petitioner states that the DRS has witnessed success, but the factors that prompted its implementation remain. It is stated, for example, during the months of June through September, Petitioner sold 5,331,000 Mcf of discount volumes. It is further stated that Entex, Inc. which is Petitioner's largest city-gate customer, increased its purchases from Petitioner over the same months in 1983 an

average of slightly more than 12 percent in the months of July through September. Petitioner asserts that New Orleans Public Service, Inc., another large city-gate customer, increased its purchases from Petitioner over the corresponding months of 1983 by 133 percent in June, 6 percent in July, 12 percent in August, and 2 percent in September (total discount volumes in these months were 824,000 Mcf). It is stated that the DRS has resulted in lower gas costs for 72 percent of Petitioner's city-gate customers; 77 out of 107 distribution companies served by Petitioner have purchased some discount volume.

No pipeline has yet nominated discount volumes, but, Petitioner states, it is confident that its pipeline, and its city-gate, customers would avail themselves of the DRS when the heating season occurs. It is at that time, Petitioner states, it anticipates that two of its four pipeline customers would have reached their minimum bill volumes and would begin to utilize the DRS.

It is asserted that the problems that prompted Petitoner to file the DRS continue to plague its system.

Petitioner states that it projects sales of 555,000,000 Mcf of gas in 1984. It is further stated that this compares with sales of 586,000,000 Mcf in 1983, 865,000,000 Mcf in 1982, and 1,062 Bcf in 1981—a decline of nearly 48 percent in three years. Petitioner states as the volume of sales decreases, its exposure under take-or-pay provisions of producer contracts increases. Petitioner asserts that its estimate of potential take-or-pay exposure for contract years through 1984, after giving effect to settlements with a number of suppliers, could be in excess of $900 million under certain contract interpretations advanced by suppliers.

It is stated that the loss of markets that Petitioner has experienced is only partially reflected in its currently effective rates determined by a settlement approved by the Commission in Docket No. RP82–57. It is stated that for the first settlement rate period (October 1, 1982, through September 30, 1983), rates were calculated on an imputed sales volume of 700,000,000 Mcf, whereas actual sales were 640,000,000 Mcf. As a result, Petitioner states, it failed to recover approximately $17 million of the stipulated return for the period. It is stated that the same imputed sales level underlies rates for the second rate period (an open-ended period that commenced October 1, 1983). Petitioner states that its actual sales during the first year of the second rate period fell far short of the imputed sales level. It is further stated that the cost and revenue study required under the settlement showed that during the first year United failed to recover $53.4 million of the settlement cost of service.

Considering the interests of both Petitioner and its customers, Petitioner asserts, the DRS should be continued during 1985. Petitioner, however, is proposing several modifications to the DRS.

While the current discount rate of $3.09 has permitted substantial sales by Petitioner, it is stated, the market in which Petitioner must compete is extremely fluid. Petitioner asserts that uncertainties about the impact of the January 1, 1985, deregulation in competitors' pricing makes it essential that Petitioner build additional flexibility into the DRS. Petitioner proposes to change the DRS to permit Petitioner to modify the DRS rate each month as required to meet changing market conditions. At least five days before the beginning of each month, Petitioner would notify each of its jurisdictional customers what the discount rate would be for the following month. The quoted rate would neither exceed $3.09 Mcf per nor be less than the sum of (i) the actual weighted average cost of gas for the month in which the gas is delivered plus the GRI surcharge, if applicable. It is stated that to date, sales under the DRS have been reflected in purchased gas adjustment computations on the same basis as other sales to customers. Under the new procedures, Petitioner would exclude from the total gas costs used to compute Account No. 191 an amount computed by multiplying the actual weighted average cost of gas for the month by the volume of DRS sales, thus assuring that such sales would not generate amounts to be charged or returned to customers through surcharges in future periods. For record keeping purposes, changes in the rate would be implemented through an abbreviated Natural Gas Act Section 7 filing which would set out the applicable rate for the coming month. Petitioner requests waiver of the notice requirements and other regulations to permit the rate changes filed not less than five days before the end of a month to become effective as of the first day of the following month not subject to refund as long as the stated price is within the permissible range. In addition, Petitioner states, since the filings would be purely ministerial, Petitioner requests waiver of the normal filing fee for Section 4 rate changes. Petitioner asserts that it reserves the right to change both the maximum and mimimum rate and the procedures used to determine the discount rates through a filing made under Section 4 of the Natural Gas Act. It is stated that this method of setting the rates provides flexibility for Petitioner in adapting to the imperatives of the market.

Petitioner also proposes to change the date on which Rate Schedule PL–N customers designate discount volumes. It is stated that under the proposed amendment, these customers would designate the amount of DRS gas for any month before the first working day of that month. Currently, it is stated, these customers designate DRS gas for any month within seven days after the close of the month. It is stated that the proposed change is designed to assure that the pipeline's nominations of DRS volumes for a month are in response to the quoted price for that month. It is stated that if the PL–N customers were not required to make their designations until after the end of the month, they could wait to designate volumes until they knew both the prior month and current month prices and to designate DRS volumes in whichever of the two months had a lower DRS rate. Petitioner states that it is not proposing to change the method of determining DRS volumes for PL–N customers or the consequences which result if a pipeline nominates DRS volumes but does not purchase its minimum bill volume for the year.

Petitioner requests that it be granted an exemption from the incremental prcing rules under Title II of the Natural Gas Policy Act of 1978 with regard to the sales in which a Rate Schedule G or DG customer submits an affidavit to the effect that the volumes could not have been sold if purchased from Petitioner absent the discount rate. Absent the discount rate, it is stated, the sales of the discount gas by Petitioner's customers by definition either would not be made or would be made using gas purchased from someone other than Petitioner. Petitioner states it would, therefore, not be able to make these if the incremental pricing surcharge is added to the discount rate.

Petitioner asserts that the only other proposed change to the DRS is a change required to apply the threshold volume concept in the unique circumstances of Petitioner's service agreement with a few customers. It is further stated that the problem which this change is designed to correct has arisen only with respect to Petitioner's sales to Arkansas-Louisiana Gas Company (Arkla) at Shreveport, Louisiana. Under its service agreement with Arkla, Petitioner states, it has contracted to supply 50 percent of certain of Arkla's Shreveport requirements. It is stated that in 1983 (the base year for determining the threshold volume) Arkla did not purchase from Petitioner the stipulated percentage of its requirements each month, taking less than 50 percent of its requirements in some months and more than 50 percent in months. It is claimed that in these circumstances, Arkla can utilize the low threshold months to "load-up" on the discount volumes, while in the high threshold months, Arkla could purchase very little from Petitioner and turn to another supplier. It is stated that in this manner Arkla can use the DRS to replace gas priced at Petitioner's regular rates with gas at the discount rate, instead of increasing overall takes from Petitioner. It is asserted that this would defeat the purpose of the DRS.

Petitioner, therefore, proposes that if it has a contract to supply a certain percentage (other than full requirements) of specified requirements of a customer then the threshold volume for each month would be the total volume of the customer's actual specified requirements for that month multipled by the percentage to be supplied by Petitioner. It is stated that the customer's purchases would then be deemed made under the DRS to the extent that the customer's actual specified requirements for the month multiplied by the percentage to be supplied by Petitioner exceeds the customer's threshold volume for the month.

Petitioner also requests that the Commission expedite its consideration of this petition. It is asserted that the general and particular concepts involved in the DRS have already been approved by the Commission. It is further asserted that this amendment extends a program that has been successful and is still needed and places in effect a rate formula that provides the potential for an increase in the amount of the discount, provides an incentive for Petitioner to reduce gas costs and assures that the rate charged for such sales would never be less than Petitioner's actual weighted cost of gas for the month in which the sale is made. Otherwise, it is stated, there are only three other minor changes to the DRS. Petitioner requests that the amendment be made effective January 1, 1985, as it is important to Petitioner and its customers in Planning for 1985 to know as soon as possible whether the DRS program would continue in effect.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31573 Filed 12–3–84; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed Week of November 2 Through November 9, 1984

During the Week of November 2 through Noveber 9, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any persons who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: November 21, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 2 through Nov. 9, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 9, 1984	Economic Regulatory Administration, Washington, DC	HRZ-0226	Interlocutory Order. If granted: Economic Regulatory Administration would be permitted to withdraw its allegation that Gulf Oil Corporation misallocated its gasoline non-product costs (Case No. HRO–0159).
Oct. 26, 1984	Department of Interior, Washington, DC	HEZ–0225	Interlocutory Order. If granted: The Office of Hearings and Appeals would issue a final Decision and Order without first issuing a Proposed Decision and Order in Case No. HEE–0092.
Nov. 5, 1984	Murphy Oil Corp., Washington, DC	HRD–0248	Motion for Discovery. If granted: Discovery would be granted to Murphy Oil Corporation in connection with the Statement of Objections submitted in response to the April 16, 1984 Proposed Remedial Order (Case No. HRO–0248) issued to the firm.
Nov. 5, 1984	Natural Resources Defense Council, Inc., Washington, DC.	HFA–0262	Appeal of an Information Request Denial. If granted: The October 29, 1984, Freedom of Information Request Denial issued by the Office of Classification would be rescinded, and the Natural Resources Defense Council, Inc. would receive access to documents which discuss the amounts of K–65 generated by nuclear reactors.
Nov. 6, 1984	Zoubek Oil Co., Inc., Norfolk, NE	HEE–0106	Exception to the Reporting Requirements. If granted: Zoubek Oil Co., Inc. would not be required to file form EIA–7268 "Reseller/Retailer's Monthly Petroleum Products Sales Report."
Nov. 8, 1984	Economic Regulatory Administration/Kaiser Aluminum International, Washington, DC.	HRJ–0051	Protective Order. If granted: Economic Regulatory Administration would enter into a Protective Order with Kaiser Aluminum International regarding the release of proprietary information in connection with the Proposed Remedial Order issued to the firm (Case No. HRO–0180).
Nov. 2, 1984	Marathon Oil Co., Findlay, OH	HRD–0240	Motion for Discovery. If granted: Discovery would be granted to Marathon Oil Company in connection with the statement of objections submitted in response to a Proposed Remedial Order issued to the firm (Case No. HRO–0242).

REFUND APPLICATIONS RECEIVED

[Week of Nov. 2, to Nov. 9, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
Nov. 5, 1984	Willis/Country Fair	RF41-14.
Nov. 5, 1984	Gulf/Harvey's Gulf Service	RF40-0211.
Nov. 5, 1984	Gulf/Central Gulf Service	RF40-0212.
Nov. 5, 1984	Gulf/Commonwheel Corp.	RF40-0213.
Nov. 5, 1984	Gulf/Todd & Redal Gulf Service	RF40-0214.
Nov. 5, 1984	Gulf/Reynolds Gulf Service Inc	RF40-0215.
Nov. 5, 1984	Vickers/Sikeston General Oil Co	RF1-374.
Nov. 5, 1984	Willis/Seaway Aluminum Manufacturing	RF41-15.
Nov. 5, 1984	Gulf/Reynold Gulf Service, Inc	RF40-216.
Nov. 5, 1984	Gulf/Ernie's Gulf Service	RF40-217.
Nov. 6, 1984	Gulf/Lake Ave. Gulf Service	RF40-218.
Nov. 6, 1984	Gulf/J. J. Taylor, Inc	RF40-219.
Nov. 7, 1984	Gulf/Byron Elevator, Inc	RF40-220.
Nov. 7, 1984	Gulf-Danny's Gulf Service	RF40-221.
Nov. 7, 1984	Gulf/Butler Trucking Co	RF40-222.
Nov. 8, 1984	Gulf/Russ's Gulf	RF40-223.
Nov. 8, 1984	Gulf/Newton's Westchester Gulf	RF40-224.
Nov. 9, 1984	Gulf/Yellow Freight System, Inc	RF40-225.
Nov. 9, 1984	Gulf/Murphy Motor Freight Lines, Inc	RF40-226.
Nov. 9, 1984	Gulf/Sun City Gulf	RF40-227.

[FR Doc. 84-31686 Filed 12-3-84; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Proposed Decision and Order Week of October 29 through November 2, 1984

During the week of October 29 through November 2, 1984, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W. Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: November 21, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

J&M Distributing, East Greenwich, RI, HEE-0101

J&M Distributing filed an Application for Exception from the provisions of the EIA reporting requirements. The exception request, if granted, would relieve J&M Distributing of the requirement to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On October 31, 1984, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 84-31602 Filed 12-3-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; The Hertz Corp., Rent-A-Car Division

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $694,919 obtained as the result of a Consent Order which the DOE entered into with The Hertz Corporation, Rent-A-Car Division whose headquarters are located in White Plains, New York.

DATE AND ADDRESS: Applications for refund of a portion of the Hertz consent order funds must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF-0090 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Consent Order entered into by The Hertz Corporation, Rent-A-Car Division, which settled alleged pricing violations during the period August 1, 1979 through June 30, 1980. The alleged violations occurred when the firm charged its motor vehicle rental customers a refueling charge for motor gasoline. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Hertz consent order funds was issued on July 27, 1984. 49 FR 31490 (August 7, 1984).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who incurred refueling charges from Hertz during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific information required in an application for refund is set forth in the Decision and Order.

Dated: November 14, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1984.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: The Hertz Corporation.
Date of Filing: October 13, 1983.
Case Number: HEF-0090.

Pursuant to the provisions of 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a consent order entered into with The Hertz Corporation, Rent-A-Car Division (Hertz) on February 2, 1981. The Petition requests that the OHA formulate and implement procedures for the distribution of the funds received pursuant to the Hertz consent order.

I. Background

Hertz is engaged in the business of renting motor vehicles. In the course of rental transactions, Hertz levies a refueling charge when a customer returns a vehicle with less motor gasoline than when the vehicle was rented. According to the ERA, the firm was therefore a "retailer" of motor gasoline as that term was defined in 10 C.F.R. § 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Hertz' operations in its Mid Atlantic Zone during the period August 1, 1979 through June 30, 1980 (the audit period) revealed possible pricing violations of the regulations set forth in 10 C.F.R. Part 212, Subpart F. In order to settle all claims and disputes between Hertz and the DOE regarding the firm's resale of motor gasoline from its nation-wide operations during the audit period, the firm entered into a consent order with the DOE. The consent order refers to the ERA's characterization of Hertz as a retailer and allegations of overcharges, and Hertz' objections to the ERA's position on those issues, but notes that the issues were not adjudicated. In the consent order, Hertz agreed to refund $849,918 through a price rollback. Hertz began implementing the price rollback; however, after the decontrol of petroleum prices on January 28, 1981, the price rollback was no longer a valid method of implementing refunds. Therefore, in accordance with the consent order's provisions, Hertz remitted the $694,919 balance of its rollback obligation to the DOE.

On July 27, 1984, the OHA issued a Proposed Decision and Order (Proposed Decision) tentatively setting forth procedures to distribute refunds to parties who were injured by Hertz' alleged violations in sales of motor gasoline during the consent order period, August 1, 1979 through June 30, 1980. *The Hertz Corp.*, 6 Fed. Energy Guidelines, ¶90,059, 49 Fed. Reg. 31490 (August 7, 1984) (Proposed Decision). In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the Hertz consent order. Specifically, we proposed to disburse funds in the first stage to eligible claimants who were injured by Hertz' alleged overcharges. We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process, and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

The purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of the Hertz refund proceeding. This Decision sets forth the information that a purchaser of Hertz motor gasoline should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the Proposed Decision. We will not, however, determine procedures for the second stage of the refund process in this Decision. Our determination concerning the final disposition of remaining funds will necessarily depend on the size of the fund. *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). It would therefore be premature for us to address the issues raised by commenters concerning the disposition of funds remaining after all the meritorious first stage claims have been paid.(*1*)

II. Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain readily the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as a part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. First-Stage Refund Procedures

Before we discuss the specific procedures to be adopted in this proceeding, it is necessary to address the comments submitted by Hertz. Although Hertz essentially agrees with the methodology outlined in the Proposed Decision, the firm filed comments in which it challenges certain statements made in that Decision. Specifically, Hertz objects to the implication that the firm was a "retailer" under the DOE regulations as defined in 10 C.F.R. § 212.31. Hertz' appraisal of the Proposed Decision is incorrect. No finding was made that Hertz was a retailer under the DOE price regulations. It merely indicated that the ERA considered Hertz a retailer in its audit.(*2*) We also indicated that this audit was settled by a consent order. It is appropriate at this juncture to reiterate that a consent order does not constitute a finding or admission of violation, but rather is a document of compromise which settles issues and avoids litigation. Hertz' status under the DOE price regulations was not decided in the consent order and is not at issue in this proceeding.

As we indicated in the Proposed Decision, all claimants in this proceeding will be consumers (end-users) of the motor gasoline which Hertz supplied. In previous special refund proceedings, we have presumed that end-users did not pass through increased costs resulting from alleged overcharges and found that they therefore incurred injury as a result of purchases made from a firm which had entered into a consent order to settle DOE enforcement claims. *See Marion; Thornton Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058, 49 Fed. Reg. 28095 (July 10, 1984) (Proposed Decision). Consistent with these precedents, we have determined that Hertz' vehicle rental customers were injured by any overcharge which occurred and need not demonstrate that they absorbed increased costs resulting from Hertz' alleged overcharges. They must only document the specific quantities of motor gasoline for which they paid a "refueling charge" to Hertz during the consent order period.

In the Proposed Decision, we noted that Hertz' customer receipts do not

indicate the number of gallons purchased from Hertz, but merely state the dollar amount of the refueling fee. However, we stated that by using an assumed price per gallon, applicants would be able to perform a simple division and thereby estimate fairly accurately the gallonage which they purchased from Hertz. Based upon Mid Atlantic Zone price data that Hertz has made available to the DOE, we calculated that during the period August 1979 through January 1980, Hertz' average refueling charge was $1.06 per gallon. No one has objected to this proposed figure. Accordingly, a potential claimant may calculate the gallons of motor gasoline it purchased by dividing its total refueling fees by $1.06, and use that gallonage figure in its refund application.

In the Proposed Decision, we suggested that refunds be calculated according to a volumetric method. Under this method, refunds would be computed by multiplying an applicant's total purchase volumes by a per gallon volumetric amount computed by dividing the Hertz settlement amount by the total volume of motor gasoline sold by Hertz during the consent order period. In this case, the volumetric amount is $0.01586 ($894,919 remitted to the DOE divided by 43,807,500 gallons of motor gasoline sold by Hertz during the consent order period). We received no objections to the proposed volumetric method, and it will be adopted in this proceeding.(3) An eligible applicant will also receive a proportionate share of the interest accrued on the consent order fund.

We recognize that it is likely that many of the affected customers were individual motorists who purchased very small amounts of gasoline in isolated transactions. As a result, the amount of refunds to which most individual customers will be entitled will be very small. As in prior special refund cases, we will not grant refunds for less than $15.00 (the approximate cost to the government of issuing refund checks) because the cost to the public of issuing such small refunds exceeds the restitutionary benefits which may be achieved. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).(4)

V. Application for Refund Procedures

We have determined that the procedures described above are the most equitable and efficacious for purposes of distributing the Hertz consent order funds. Accordingly, we shall now accept applications for refunds from customers who rented Hertz motor vehicles and incurred refueling charges during the consent order period.

Each applicant should include in its application a statement of its motor gasoline purchases from Hertz during the consent order period. The applicant should indicate whether it possesses receipts or other documentation to support its statement. If the purchase figure is based on estimates, the application should include the detailed description of how the estimated figure was calculated. All applications must be received within 90 days after publication of the Decision and Order in the Federal Register. A copy of each application will be available for public inspection in the Public Docket Room of the OHA. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential. Each applicant must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. ¶ 1001. In addition, the applicant should furnish the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Number HEF-0090, and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by The Hertz Corporation, Rent-A-Car Division pursuant to the consent order executed on February 2, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: November 14, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) Comments on the second-stage refund procedures were filed by the states of New Mexico, Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island, West Virginia, and Texas. These states argued that any funds remaining in the consent order fund after refunds are distributed to meritorious claimants should be distributed to the states for use in energy-related projects. In addition Texas raises comments which are inapplicable to this proceeding, namely, the use of a small claims threshold and standards to determine refund eligibility for applicants who were not end-users.

(2) While the refund methodology set forth in the Proposed Decision is similar to that utilized in cases in which the consent order firm has retail operations, *see, e.g., Thornton Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058, 49 Fed. Reg. 28085 (July 10, 1984) (Proposed Decision), this has no bearing on whether Hertz was a retailer under the DOE price regulations. *Cf. Standard Oil Co. (Indiana)/ Hertz Corp.*, 11 DOE ¶ 85,202 (1983) (treatment of vehicle rental firm refund claimant under Subpart V regulations not determinative of its status under the price regulations).

(3) The recovery of a specified amount for each gallon of motor gasoline purchased is, like the other presumptions we are employing in this proceeding, subject to challenge by refund claimants who seek to establish that the presumption should not be applied in their cases and are able to demonstrate that the alleged overcharges resolved by the consent order were disproportionately borne by them, resulting in a level of probable injury in excess of the volumetric presumption. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982).

(4) Using the volumetric factor of $0.01586 per gallon, we calculate this an applicant must have purchased from Hertz at least 946 gallons of motor gasoline in order to qualify for the minimum $15.00 refund. Assuming that ten gallons was the average refueling amount, an applicant would have to have rented approximately 95 vehicles from Hertz during the 11-month consent order period to meet the minimum threshold.

[FR Doc. 84-31609 Filed 12-3-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2729-6]

Science Advisory Board Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Chlorinated Organics Subcommittee of the Environmental Health Committee (EHC) of the Science Advisory Board will be held on December 20, 1984, in the Fremont Conference Room, Hyatt Regency at Crown Center, 2345 McGee Street, Kansas City, Missouri 64108. The meeting will start at 9:00 a.m. and adjourn not later than 4:00 p.m.

The principal purpose of the meeting will be to review and comment on the scientific adeqacy of a draft Health Assessment Document (HAD) for Chloroform prepared by the Office of Health and Environmental Assessment in the Office of Research and Development (ORD). The document is dated March 1984 (EPA-600/8-84-004A).

For information on how to obtain copies of the draft HAD please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 54268 or call (513) 684-7562.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact Dr. Daniel Byrd, Executive Secretary to the EHC, or Mrs. Patti Howard, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 before c.o.b. December 14, 1984.

Dated: November 27, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-31608 Filed 12-3-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2729-7]

Water Engineering Research Laboratory; Seminar

AGENCY: Water Engineering Research Laboratory.

ACTION: Notice of seminar.

SUMMARY: This notice sets forth the schedule of the upcoming seminar entitled Reliability Concepts in the Design of POTWs. Topics to be covered include: statistical characterization of POTW effluent variability and available design procedures; linking effluent variability with water quality; characterization, prediction, and control of POTW upsets; and mechanical reliability and plant performance.

DATE: December 4, 1984, 8:30 a.m. to 5:00 p.m.

ADDRESS: U.S. EPA Andrew W. Briedenbach Environmental Research Center, 26 West St. Clair Street, Cincinnati, Ohio.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri Marshall, Conference Coordinator, Dynamac Corporation, The Dynamac Building, 11140 Rockville Pike, Rockville, MD 20852 (301/468-2500).

Nancy G. Juilleret,

Acting Deputy Director, Water Engineering Research Laboratory.

[FR Doc. 84-31610 Filed 12-3-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants; D M Ocean Freight Forwarders Division

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

D M Resources, Inc. d.b.a. D M Ocean Freight Forwarders Division, 2730 Carl Road, Irving, TX 75062; Officers: Rawles Fulgham, Irvin L. Levy, Lester A. Levy, Milton P. Levy, Jr., Ray J. Pulley.

Carrie D. Struyk d.b.a. TXM Shipping Company, 119 Circle Drive, Beaufort, NC 28516.

Ernest A. Fransz d.b.a. I.N.A. Freight Forwarding Services, 17338 S. Denker Avenue, Gardena, CA 90247.

By the Federal Maritime Commission.

Dated: November 29, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-31620 Filed 12-3-84; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License; K-C International Freight Forwarders

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date released
17081	IG Tai Chang d.b.a. K-C International Freight Forwarders, 3410 Geary Blvd., #101, San Francisco, CA 94118.	Nov. 23, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-31618 Filed 12-3-84; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; JIF America, Inc.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
2471	JIF America, Inc., 1717-19 Elmhurst Road, Elk Grove Village, IL 60007.	Nov. 27, 1984.
2628	Empire Freight Forwarding, Inc., 17 Direnzo Court, Staten Island, NY 10309.	Nov. 23, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-31619 Filed 12-3-84; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84G-0320]

Heinz U.S.A.; Filing of Petition for Affirmation of GRAS Status

Correction

In FR Doc. 84-27615 beginning on page 41110 in the issue of Friday, October 19, 1984, make the following corrections:

1. On page 41110, third column, in the "DATE" paragraph, "January 17, 1985" should have read "December 18, 1984".

2. In the same column, in the last paragraph, in the second line, "January 17, 1985" should have read "December 18, 1984".

BILLING CODE 1505-01-M

[Docket No. 77N-0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators; Drug Efficacy Study Implementation; Revocation of Exemption and Notice of Opportunity for Hearing

Correction

In FR Doc. 84-27103 beginning on page 40213 in the issue of Monday, October 15, 1984, make the following corrections:

1. On page 40219, first column, first complete paragraph, fourth line from the bottom, "89 mg" should have read "80 mg".

2. On page 40222, third column, fifth paragraph, third line, "157:206-211" should have read "153:207-211.

3. On page 40224, second column, first complete paragraph, twelfth line,

"frequenly" should have read "frequency".

BILLING CODE 1505-01-M

Health Resources and Services Administration

Grants to State Health Planning and Development Agencies

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice regarding grants to State Health Planning and Development Agencies—determination of population of the States.

SUMMARY: This notice provides the population figures the Department will use when it determines the amount of grants to State Health Planning and Development Agencies (States Agencies).

SUPPLEMENTARY INFORMATION: Section 1525 of the Public Health Service Act authorizes the Secretary of Health and Human Services to make grants to State Agencies to assist them to meet their operating costs. The amount of the grant is determined in accordance with a formula and is based in part on a determination by the Secretary of the population of the States. The formula is provided in the regulations governing grants to State Agencies (42 CFR Part 123, Subpart C). Section 123.204(b)(1) of these regulations provides that the Secretary will determine the population of each State based upon the latest available estimate from the Department of Commerce. These estimates are based on the Bureau of Census, Publication P–25, Number 951, "Estimates of the Population of States," provisional estimates for July 1, 1983. The population figures for Puerto Rico and the outlying areas are based on the Bureau of Census, Publication P–25, Number 943, "Estimates of the Population of Puerto Rico and the Outlying Areas," estimates for July 1, 1982.

Accordingly, the Secretary has made the following determination of populations of the States.

Date: November 28, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

POPULATION OF THE STATES FOR PURPOSES OF DETERMINING STATE HEALTH PLANNING AND DEVELOPMENT AGENCY GRANTS, FISCAL YEAR 1985

Alabama	3,969,000
Alaska	479,000
American Samoa	34,000
Arizona	2,980,000
Arkansas	2,578,000
California	25,174,000
Colorado	3,139,000
Connecticut	3,138,000
Delaware	606,000
District of Columbia	623,000
Florida	10,680,000
Georgia	5,732,000
Guam	111,000
Hawaii	1,023,000
Idaho	989,000
Illinois	11,486,000
Indiana	5,479,000
Iowa	2,905,000
Kansas	2,425,000
Kentucky	3,714,000
Louisiana	4,438,000
Maine	1,146,000
Maryland	4,304,000
Massachusetts	5,767,000
Michigan	9,069,000
Minnesota	4,144,000
Mississippi	2,587,000
Missouri	4,970,000
Montana	817,000
Nebraska	1,597,000
Nevada	891,000
New Hampshire	959,000
New Jersey	7,468,000
New Mexico	1,399,000
New York	17,667,000
North Carolina	6,082,000
North Dakota	680,000
Northern Mariana Island	18,000
Ohio	10,746,000
Oklahoma	3,298,000
Oregon	2,662,000
Pennsylvania	11,895,000
Puerto Rico	3,261,000
Rhode Island	955,000
South Carolina	3,264,000
South Dakota	700,000
Tennessee	4,685,000
Texas	15,724,000
Trust Territory	120,000
Utah	1,619,000
Vermont	525,000
Virgin Islands	101,000
Virginia	5,550,000
Washington	4,300,000
West Virginia	1,965,000
Wisconsin	4,751,000
Wyoming	514,000
Total	237,630,000

[FR Doc. 84–31617 Filed 12–3–84; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–643), notice is hereby given that the National Committee on Vital and Health Statistics, pursuant to functions established by section 306(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 242k), will convene on Thursday, December 13 and Friday, December 14 from 9:00 a.m. to 5:00 p.m. both days in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Committee will hear reports from the Subcommittee on Uniform Minimum Health Data Sets, the Subcommittee on Disease Classification and Automated Coding of Medical Diagnosis, the Work Group on Indigent Health Data Needs, and the Work Group on Statistical Aspects of Physician Payment Systems.

Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contracting William F. Steward, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: November 23, 1984.

Manning Feinleib, M.D., Dr. P.H.

Director, National Center for Health Statistics.

[FR Doc. 84–31600 Filed 12–3–84; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[INT FES 84–44]

Jackson Lake Safety of Dams Project Wyoming-Idaho; Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental impact statement on the proposed Jackson Lake Safety of Dams Project. The proposed project would include actions to assure the safety of Jackson Lake Dam, located in Grand Teton National Park, and maintain benefits of the dam and Jackson Lake while maintaining national park values.

Copies are available for inspection at the following locations:

Office of Environmental Affairs, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343–4991

Division of Environmental Compliance, National Park Service, Washington, D.C. 20240, Telephone: (202) 343–2163

Regional Office of Environmental, Bureau of Reclamation, Federal Building, Box 043—550 West Fort Street, Boise, Idaho 83724, Telephone: (208) 334–1207

Regional Environmental Compliance Office, National Park Service, P.O. Box 25287, Denver, Colorado 80225, Telephone: (303) 234–4942

Minidoka Project Office, Bureau of Reclamation, 1359 Hansen Avenue, Burley, Idaho 83318, Telephone: (208) 678–0461

Park Superintendent, Grand Teton National Park, Moose, Wyoming 83012, Telephone: (307) 733–2880

Single copies of the statement may be obtained on request to the Bureau of Reclamation or the National Park Service at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

Dated: November 29, 1984.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 84–31616 Filed 12–3–84; 8:45 am]

BILLING CODE 4310–85–M

Bureau of Land Management

[4–22451–ILM]

Intent To Prepare a Planning Analysis for the State of Kentucky

AGENCY: Bureau of Land Management, Interior.

ACTION: Planning start for the State of Kentucky.

SUMMARY: Notice is hereby given that the Jackson District of the Eastern States Office is starting the preparation of a Planning Analysis for the Federal Mineral Ownership (FMO) under BLM jurisdiction in Kentucky. A planning analysis, hereafter referred to as the Plan, consists of an environmental assessment or an environmental impact statement, if necessary, plus any other data and analysis necessary to make an informed decision. The product is a document developed upon the analysis, display, and documentation requirements of the CEQ regulations. It is used to assess the impacts of the proposal and to provide a basis for a decision on the proposal. It will be prepared in accordance with Bureau of Land Management Planning Regulations (43 CFR Part 1600).

Geographic Area of the Plan: The Plan will consider FMO in the State of Kentucky. It encompasses as much as 1.4 million acres of FMO under Federal, state and private surface.

Anticipated Issues: The Plan will address several issues on which public comment would be beneficial.

Issues that will be addressed in the Plan include but are not limited to the following: (1) The need to protect various wildlife and plant species (including endangered species); (2) the need to protect Floodplains and Wetlands; (3) the need to protect valuable cultural resources; and (4) the extent of and possible development of mineral deposits.

Interdisciplinary Team: The Plan will be developed by a Bureau of Land Management Interdisciplinary Team (IDT) located in Jackson, Mississippi. The team includes a geologist, hydrologist, realty specialist, geographer, environmental coordinator, soil scientist, natural resource specialist, archaeologist, and administrative personnel.

Planning Process: The preparation of a Plan and the evaluation of its impacts includes the following steps:

(1) Identification of issues and action that gives Federal agencies and state and local governments an opportunity at the outset of the planning process to suggest concerns, needs and resource use, development and protection opportunities for consideration in the Plan.

(2) Development of planning criteria to guide the development of the Plan to ensure that it is tailored to the issues previously identified and to ensure that unnecessary data collection is avoided; to guide the analysis of the management situation; to assist in the design and formulation of alternatives; and to estimate the effects of alternatives.

(3) Inventory data and information collection (including resources, environmental, social, economic and institutional data).

(4) Analysis of the management situation to determine the capability of public land resources to respond to: Needs, concerns and opportunities identified through public participation and coordination with other publics; issues defined earlier in the planning process; and national and State Director guidance.

(5) Formulation of management alternatives for the resources in the planning area.

(6) Estimation of the effects of the alternatives.

(7) Selection of a preferred alternative, which is incorporated into the draft plan and draft environmental document (ED).

(8) Selection of a Plan which becomes the proposed Plan and is accompanied by a final ED.

(9) Monitoring and evaluation of the Plan.

Public Participation: The planning process is flexible and designed to accommodate the unique situations caused by the widely scattered nature of BLM's ownership pattern and the variety of affected publics. The plan generally follows a "grass roots" approach to public involvement, using localized, one-to-one contacts and extensive direct mailings, as well as continual coordination with local, state and other Federal agencies. In addition, news releases will accompany the publication of the draft plan and environmental document (30-day review and comment period) in May 1985; the publication of the proposed plan and final environmental document (which will trigger a 30-day opportunity for protest) in July 1985; and the final notice and comment (as necessary) on any changes made as a result of action on a protest. This schedule is tentative, and may be changed as the planning process unfolds. Complete records of all public participation will be available for public review at all times throughout the development of the Plan.

DATE: Comments should be submitted by January 3, 1985. Comments received or postmarked after that date may not be considered in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Address comments and requests to: District Manager, Jackson District Office, Bureau of Land Management, P.O. Box 11348, Jackson, Mississippi 39213.

Additional Information: For information about BLM Planning in Kentucky—to review planning maps and narratives or other information or to offer data or assistance—Contact: Ed Roberson, Jackson District Office, (601) 960–4405.

Robert L. Todd,

Acting District Manager.

[FR Doc. 84–31651 Filed 12–3–84; 8:45 am]

BILLING CODE 4310–GJ–M

[4–22451–ILM]

Intent To Prepare a Planning Analysis for the State Of Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Planning start for the State of Louisiana.

SUMMARY: In compliance with 43 CFR Part 1600, the Jackson District Office announces that the Louisiana Planning Analysis has been initiated and will be available for public review in February 1986. This plan represents those public lands and Federal Mineral Ownership (FMO) under BLM jurisdiction in Louisiana. The BLM administers approximately 1.2 million acres of Federal minerals under surface lands managed by other Federal agencies. This Louisiana plan will discuss the mineral potential underlying these lands and outline the policies and programs of the Bureau as they relate to the plan, prescribing resource allocations identified by these agencies to date.

Land ownership conflicts/records maintenance—In the past, the Eastern

States Office of the BLM has not had an active management posture with regard to Public Domain lands in Louisiana. This situation has led to a greater potential for ownership conflicts and incidence of trespass. To help alleviate these potential problems, a concerted effort towards accurate and well-maintained lands records has been initiated with the assistance of State and local governments and the general public.

Mineral ownership records—Mineral ownership in Louisiana is located on tracts administered by the Bureau of Land Management as well as other Federal agencies, the State, or private parties. In order to facilitate minerals actions, every effort will be made to coordinate with these entities and maintain accurate minerals records.

This plan will be completed as a Category 1 Planning Analysis, which means that an Environmental Assessment (EA) will be prepared as an integral part of the process.

Public lands under BLM jurisdiction in Louisiana consist of 58 separate parcels, ranging in size from .10 acres to 640 acres, scattered over 29 parishes and totaling approximately 2,100 acres.

This plan also considers approximately 57,391 acres of Federal Mineral Ownership under BLM-Administered or privately-owned surface and will address the retaining of minerals by the U.S. (unless requirements of 43 U.S.C. 1719 are met) for leasing by application or through competitive sale. In addition, the plan will make several recommendations regarding the gathering of more detailed data.

Some of the issues to be addressed in the plan include, but are not limited to the following: (1) The potential for ownership conflicts and trespass; (2) the need to protect various wildlife and plant species (including endangered species); (3) the possible development of mineral deposits; (4) the need to protect valuable cultural resources; and (5) the need to protect floodplains and wetlands.

The Plan is being developed by a Bureau of Land Management Interdisciplinary Team (IDT) located in Jackson, Mississippi. The team includes a geologist, hydrologist, realty specialist, geographer, environmental specialist, soil scientist, natural resource specialist, archaeologist, and administrative personnel. Persons wishing to comment and to be kept informed on this effort should immediately contact the team leader at the address or telephone number listed below. Please request to be placed on the mailing list for the Louisiana Plan.

DATE: Comments should be submitted by January 3, 1985. Comments received or postmarked after that date may not be considered in the decision-making process.

ADDRESS: Comments and requests to: District Manager, Jackson District Office, Bureau of Land Management, P.O. Box 11348, Jackson, Mississippi 39213, (601) 960-4405.

FOR FURTHER INFORMATION CONTACT: Tom Dyer, Jackson District Office, (601) 960-4405.

Robert L. Todd,

Acting District Manager.

[FR Doc. 84-31652 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-GJ-M

[Colorado 30885; 5-00258-GP5-011]

Oil and gas lease; Proposed Reinstatement; Huerfano County; CO

Notice is hereby given that a petition for reinstatement of oil and gas lease C-30885 for lands in Huerfano County, Colorado was timely filed and was accompanied by all the required rentals and royalties accruing from July 1, 1984, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Barbara Benz of the Colorado State Office at (303) 294-7600.

Cecilia L. Reynolds,

Acting Chief, Mineral Leasing Section.

[FR Doc. 84-31662 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Reclamation

Municipal and Industrial Water Service; Ratesetting Policy; Central Valley Project (CVP), CA; Amendment to Notice of Availability of Policy Options Document and Intent To Hold Public Workshops and Hearings

The Department of the Interior, through the Bureau of Reclamation, has developed a municipal and industrial (M&I) water ratesetting options paper for the CVP. The paper was prepared pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), Pub. L. 88-44 (Act of June 21, 1963, 77 Stat. 68), and the Reclamation Reform Act of 1982, title II, Pub. L. 97-293 (96 Stat. 1263).

The Bureau of Reclamation hereby amends its Notice of Availability of Policy Options Document and Intent to Hold Public Workshops and Hearings as published in 49 FR, page 41114, October 19, 1984. The public hearings dates have been rescheduled to receive comments on the proposed policy options document from interested individuals and organizations. The public hearings will begin at 1:00 p.m. in the following locations:

Concord—Tuesday, Decembe 4, 1984, at the Concord Inn (Walnut Room), 1401 Willow Pass Road

Sacramento—Thursday, December 6, 1984, at the Convention Center, Activities Bldg. (Yuba/Placer Room), 14th & K Streets

Fresno—Tuesday, December 11, 1984, at the Fresno Convention Center (Wine Room), 700 M Street

Requests to speak may be made at the hearings. Those individuals or organizations which desire to speak at a specified time should send a written request for such to the address listed below. Each heaaring will continue until all persons desiring to comment have been heard.

Copies of the draft policy may be otained without charge by writing to the Regional Director, Bureau of Reclamation, Water Rate Policy, (MP-440), 2800 Cottage Way, Sacramento, CA 95825. Questions by telephone should be directed to Donna Tegelman at (916) 484-4540.

Dated: November 29, 1984.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 84-31670 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Receipt of Development Operations Coordination Document; Main Pass Area; Offshore Louisiana

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 3339 and 4253, Blocks 303 and 304, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on November 26, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 26, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31585 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 24, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 19, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Williams, *Williams Historic Business District*, Roughly bounded by Grant and Railroad Aves., and 1st and 4th Sts.

DELAWARE

New Castle County

Wilmington, *Bancroft and Sons Cotton Mills (Brandywine Cotton Mills)*, Rockford Rd.
Wilmington, *Public School No. 19*, 801 S. Harrison St.

MAINE

Cumberland County

Portland *Portland Waterfront Historic District (Boundary Increase)*, 79-85 and 295-309 Commercial and 3 Center Sts.

MARYLAND

Queen Anne's County

Ruthsburg vicinity, *Hawkins Pharsalia*, MD 304

MISSISSIPPI

Hinds County

Jackson, *Greenwood Cemetery*, Bounded by West, Davis, Lamar and George Sts.

NEBRASKA

Cedar County

Menominee vicinity, *Zavadil, Franz, Farmstead.*

Gage County

Beatrice, *Kilpatrick, Samuel D., House*, 701 N. 7th St.

Lancaster County

Lincoln, *Townsend Photography Studio*, 226 S. 11th St.

NEW JERSEY

Atlantic County

Atlantic City, *Madison Hotel*, 123 S. Illinois Ave.
Linwood, *Linwood Borough School No. 1*, 16 W. Poplar Ave.

Warren County

Oxford, *Shippen Manor*, Belvidere Rd.

NEW YORK

Orange County

Maybrook (Village), *Blake, John, House*, 924 Homestead Ave.

NORTH CAROLINA

Burke County

Morganton, *Riddle, Dr. Joseph Bennet, House*, 411 W. Union St.

Carteret County

Beaufort, *Carteret County Home*, NC 101

Edgecombe County

Tarboro vicinity, *Howell Homeplace*, SR 1517

Forsyth County

Winston-Salem, *Lowe, Cicero Francis House* 204 Cascade Ave.

Hertford County

Ahoskie, *Newsome, James, House*, NC 11 at jct. NC 42

Macon County

Franklin, *Bryson, Albert Swain, House*, Pine Lane

Martin County

Hamilton vicinity, *Hickory Hill*, NC 903
Hamilton vicinity, *Sherrod Farm*, W side of NC 125/903
Jamesville, *Jamesville Primitive Baptist Church and Cemetery*, E side of NC 171

Moore County

Pine Bluff vicinity, *McLeod Family Rural Complex*, .4 miles west of US 1

Pitt County

Greenville, *Ficklen, E.B., House*, 508 W. 5th St.

Randolph County

Franklinville, *Franklinville Historic District*, Roughly bounded by Deep River, Sunrise Ave., Clark St., and Greensboro Rd.

Richmond County

Little's Mills vicinity, *Little, John Phillips, House*, Off NC 73

Rowan County

Kannapolis vicinity, *Stigerwalt, John, House*, E of Kannapolis off SR 1221 (Old Beatty Ford Rd.)
Spencer, *Spencer Historic District*, Roughly bounded by N to S Salisbury Ave., 8th St., Whitehead Ave., and Jefferson St.

Union County

Lancaster vicinity, *North Carolina-South Carolina Cornerstone*, Off US 521

Wilson County

Wilson, *Old Wilson Historic District*, Roughly bounded by Nash, N. Cone, Gold and Railroad Sts. and Maplewood Cemetery
Wilson, *West Nash Street Historic District*, West Nash St.
Wilson, *Wilson Central Business-Tobacco Warehouse Historic District*, Roughly bounded by Pender, Green, Pine, S. Jackson, and Hines Sts.

OHIO

Coshocton County

Coshocton, *Meek, J. F., Buildings*, 546 Chestnut St. and 213-215 N. Sixth St.

Cuyahoga County

Cleveland, *Medical Centre Building*, 1001 Huron Rd.

Franklin County

Columbus, *Plaza Hotel*, 736-740 E. Long St.

Hamilton County

Cincinnatic, *Courtland Flats*, 117-121 E. Court St.

PENNSYLVANIA

Bedford County

Bedford, *Bedford Springs Hotel Historic District*, US 220

PUERTO RICO

Aguadilla County

Aguadilla, *Cardona Residence*, Betances St. #55
Aguadilla, *District Courthouse*, Progreso
Aguadilla, *El Parterre (Old De Agua)*, Bounded by Munoz Rivera, Gonzalo Firpo, De Diego and Mango Sts.
Aguadilla, *Old Urban Cemetery*, Cuesta Vieja
Aguadilla, *Residence Lopez*, Progreso St. #67

San Juan County

San Juan vicinity, *Church of San Agustin in Puerta de Tierra*, #265 Ponce de Leon Ave.
Santurce, *Church of San Mateo de Cangrejos of Santurce*, Corner of San Jorge St. and Eduardo Conde Ave.

SOUTH CAROLINA

Lancaster County

Lancaster vicinity, *North Carolina-South Carolina Cornerstone*, Off US 521

TENNESSEE

Davidson County

Nashville, *Capers C.M.E. Church (McKissack and McKissack Bldgs. TR)*, 319 15th Ave., North
Nashville, *Carnegie Library (McKissack and McKissack Bldgs. TR)*, Fisk University, 17th Ave., North
Nashville, *Hubbard House (McKissack and McKissack Bldgs. TR)*, 1109 1st Ave., South
Nashville, *Morris Memorial Building (McKissack and McKissack Bldgs. TR)*, 330 Charlotte Ave.

Knox County

Knoxville, *Market Square Commercial Historic District*, Market Sq. Mall

Rutherford County

Eagleville, *McCord, William Harrison, House*, US 41A

WISCONSIN

Sheboygan County

Greenbush., *Robinson, Charles, House*, Center St., Old Wade House State Park
Town Herman, *Mission House Historic District*, County Trunk M

[FR Doc. 84-31658 Filed 12-3-84; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review. The Commission is requesting an expedited review and approval of the Commission's questionnaire by the Office of Management and Budget on or before December 21, 1984.

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with investigation No. 332-185, Assessment of the Effects of Barter and Countertrade Transactions on U.S. Industries, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)). Information called for in this questionnaire pertaining to military related export sales and resulting offset obligations is for use by the President as mandated by section 309 of the Defense Production Act Amendments of 1984 (Pub. L. 98-265), enacted on April 17, 1984.

Summary of Proposals

(1) Number of forms submitted: One.
(2) Title of form: Assessment of the Effects of Barter and Countertrade Transactions on U.S. Industries—Questionnaire for companies that have negotiated countertrade agreements or that have offset obligations resulting from military related export sales.
(3) Type of request: New.
(4) Frequency of use: Nonrecurring.
(5) Description of respondents: Firms manufacturing products in the United States that have negotiated barter or countertrade agreements with foreign organizations or that have offset obligations resulting from military related export sales.
(6) Estimated number of respondents: 150.
(7) Estimated total number of hours to complete the form: 5,250.
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm. Information supplied in connection with this survey associated with military related export sales regarding offsets will be made available in aggregated form to appropriate Executive agencies as designated by the Office of Management and Budget.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Charles Ervin, the USITC clearance officer (tel. No. 202-523-4463). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Ms. Francine Picoult, Desk Officer for the U.S. International Trade Commission on or before December 21, 1984. The expedited review is a result of a statutory requirement of Section 309 of the Defense Production Act Amendments of 1984. If you anticipate commenting on the form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436).

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: November 30, 1984.
[FR Doc. 84-31709 Filed 12-3-84; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-12 (Sub-No. 75)]

Rail Carriers; Southern Pacific Transportation Co., Abandonment in Fresno County, CA; Notice of Findings

The Commission has found that the public convenience and necessity permit the Southern Pacific Transportation Company to abandon its 8.37-mile rail line between milepost 208.300, at or near Biola Junction, and milepost 199.934, at or near Biola, in Fresno County, CA.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that (1) a financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later that 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc 84-31613 Filed 12-3-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Pursuant to Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Pine Valley Golf Club*, Civil Action No. 84-2105 (JFG) was lodged with the United States District Court for the District of New Jersey.

This is an action for civil penalties and injunctive relief concerning disposal of pesticides, fungicides, herbicides and other chemicals in violation of the Resource Conservation and Recovery Act ("RCRA") at the Pine Valley Golf Club, and for recovery of the government's costs of oversight of defendants' removal of the chemicals pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The decree enjoins future illegal acts and provides for the payment of a civil penalty of $26,830.84 pursuant to section 3008 of RCRA and a payment of $8,169.16 to reimburse plaintiff for its response and removal costs pursuant to section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Pine Valley Golf Club*, D.J. No. 90-7-1-258.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

James M. Spears,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-31664 Filed 12-3-84; 8:45 am]
BILLING CODE 4410-01-M

Federal Bureau of Investigation

National Crime Information Center Policy Board; Renewal

In accordance with the provisions of the Federal Advisory Committee Act [U.S.C. App. I (Supp. II, 1972)], the Office of Management and Budget (OMB) Circular A-63, the Director, FBI, has determined that the renewal of the National Crime Information Center (NCIC) Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the FBI by law.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the NCIC, particularly the system's relationship with local and state criminal justice systems.

The Board consists of thirty members of which twenty are elected from state and local criminal justice representatives; six appointed by the Director, FBI, consist of two members each from the judicial, prosecutorial, and correctional segments of the criminal justice community; four are representatives of criminal justice professional associations, e.g., American Probation and Parole Association, National Sheriff's Association, National District Attorney's Association, and the International Association of Chiefs of Police.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the renewal of the NCIC Advisory Policy Board to the the Committee Management Liaison Officer, Federal Bureau of Investigation, National Crime Information Center, Washington, D.C. 20533.

Dated: November 2, 1984.

William H. Webster,
Director.

[FR Doc. 84-31663 Filed 12-3-84; 8:45 am]
BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Amendment of Privacy System of records and changes in routine uses and in location for system, Occupational Safety and Health Administration.

SUMMARY: Pursuant to 5 U.S.C. 552a(e)(4) and (11), sections of the Privacy Act, the Department of Labor hereby publishes for comment the amendment of the system of records DOL/OSHA-1, "Discrimination Complaint File." Under Section 405 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2301 *et seq.*), the Secretary of Labor is responsible for handling employee discrimination complaints related to commercial motor vehicle safety and health matters. Pursuant to the Secretary's Order No. 9-83, 48 FR 35736, (August 5, 1983), the Secretary has delegated to OSHA responsibility for administration of the program because OSHA currently investigates similar discrimination complaints arising under Section 11(c) of the OSH Act. This notice amends DOL/OSHA-1 to include in the system records maintained pursuant to Section 405 of the Surface Transportation Assistance Act. This notice also amends DOL/OSHA-1 to reflect a change in the locations of the system and it also amends the system to reflect more accurately the routine uses of the records maintained in the system. Routine uses have been added and include the National Labor Relations Board and state occupational safety and health agencies which conduct investigations similar in scope and purpose to those conducted under OSHA and STAA.

DATE: Persons wishing to comment on this system of records may do so by January 3, 1985.

EFFECTIVE DATE: Unless otherwise noticed in the Federal Register, this notice shall become final on January 3, 1984.

ADDRESS: Seth P. Zinman, Associate Solicitor, Office of the Solicitor, Division of Legislative and Legal Counsel, U.S. Department of Labor, Room N-2428, 200 Constitution Avenue NW., Washington, D.C. 20210; Telephone (202) 523-6188.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N-

2428, Washington, DC. 20210; Telephone (202) 523–8188.

Amendment of DOL/OSHA–1

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Labor hereby publishes an amendment to the systems of records maintained by the Occupational Safety and Health Administration, previously published at 47 FR 30409–30410 (July 13, 1982).

DOL/OSHA–1

SYSTEM NAME:

Discrimination Complaint File.

SYSTEM LOCATION:

Regional Offices, See 29 CFR 70.36 (a)(3) for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints pursuant to section 11(c) of the Occupational Safety and Health Act or section 405 of the Surface Transportation Assistance Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files compiled in connection with investigations of discrimination complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11(c) of the Occupational Safety and Health Act (Pub. L. 91–596) and Section 405 of the Surface Transportation Assistance Act (Pub. L. 97–424).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is in the investigation of violations of section 11(c) of the OSH Act and/or section 405 of the Surface Transportation Assistance Act.

Disclosure may be made to the National Labor Relations Board, state occupational safety and health agencies and to other Federal and state agencies when they are conducting similar or related investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files.

RETRIEVABILITY:

By complainant's name or case identification number.

SAFEGUARDS:

Locked storage equipment, and personnel screening.

RETENTION AND DISPOSAL:

Destroy 5 years after case is closed.

SYSTEM MANAGER(S) NAME AND ADDRESS:

Regional Administrator at address where system is located.

NOTIFICATION PROCEDURES:

As above.

RECORD ACCESS PROCEDURES:

As above.

CONTESTING RECORD PROCEDURES:

As above.

RECORD SOURCE CATEGORIES:

Individual complaints filed alleging discrimination and information compiled in connection with investigations of alleged acts of discrimination.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with paragraph (k)(2) of the Privacy Act, investigatory material compiled for law enforcement purposes which is maintained in the Discrimination Complaint File is exempt from paragraphs (c)(3); (d), (e)(1); (e)(4) (G), (H), and (I); and (f) of 5 U.S.C. 552a. Disclosure of information contained in this file could threaten investigators, witnesses, information and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act and the Surface Transportation Assistance Act. In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment or dismissal from employment of those involved, and could discourage those contacted in future investigations from cooperating with investigators.

Signed at Washington, D.C. 29th day of November 1984.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 84–31654 Filed 12–3–84; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, Electra Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 19, 1984–November 23, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or any appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,380; Electra Co., Division of Masco Corp. of Indiana, Cumberland, IN

TA–W–15,307; Kern Foods, Inc., Ohio Division, Leipsic, OH

TA–W–15,386; Pera Fashions, Inc., Miami, FL

TA–W–15,444; Noyo Pride, Inc., Fort Bragg, CA

TA–W–15,408; AT&T Technologies, Inc., Kearny, NJ

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA–W–15,401; Cheney Brothers, Inc., Manchester, CT

The investigation revealed that criterion (3) has not been met. Separations from the subject firm resulted from a transfer of production to another domestic facility.

Affirmative Determinations

TA–W–15,322; Pierrette, North Bergen, NJ

A certification was issued covering all workers separated on or after December 15, 1983.

TA–W–15,452; U.S. Steel Corp., International Traffic Dept., New York, NY

A certification was issued covering all workers separated on or after August 21, 1983 and before November 1, 1984.

TA–W–15,472; The Hanover Shoe, Inc., Hanover, PA

A certification was issued covering all workers separated on or after March 1, 1984.

TA–W–15,403; The Hanover Shoe, Inc., White Sulphur Springs, WV

A certification was issued covering all workers separated on or after July 17, 1983 and before September 30, 1984.

TA–W–15,372; Complex Division Stretchwear Manufacturing Co., Inc., Coamo, PR

A certification was issued covering all workers separated on or after September 1, 1983 and before April 1, 1984.

TA–W15,448; Lesnow Manufacturing Co., Inc., Easthampton, MA

A certification was issued covering all workers separated on or after February 1, 1984.

TA–W–15,490; Kurt Preiss Leather Creations, Inc., Hallandale, FL

A certification was issued covering all workers separated on or after August 1, 1984 and before September 30, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 19, 1984–November 23, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 27, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84–31647 Filed 12–3–84; 8:45 am]

BILLING CODE 4510–30–M

Numerical Values for Performance Standards for Titles II–A and III of the Job Training Partnership Act (JTPA) in Program Year 1985

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Performance Standards.

SUMMARY: The Department of Labor (DOL) is announcing performance standards for Program Year (PY) 1985 for Titles II–A and III of the Job Training Partnership Act. The performance standards established in PY 1984 will be retained in PY 1985.

DATES: the performance standards announced in this document apply to Program Year (PY) 1985, which begins on July 1, 1985, and ends on June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies. Telephone: 202–376–6700.

SUPPLEMENTARY INFORMATION: On July 6, 1984, the Department of Labor (DOL) solicited public comments on an Options Paper regarding whether numerical values of the performance standards under Title II–A of the Job Training Partnership Act (JTPA) should be adjusted each program year (PY) or every two years. 49 FR 27840. This notice announces DOL's decision to retain for PY 1985 the same numerical values for the performance standards established for PY 1984.

DOL received forty-two comments in response to the July 6 notice regarding adjusting the numerical values for the Secretary's preformance standards for JTPA Title II–A programs in PY 1985 and subsequent years. Twenty-eight respondents favored Option 2 that would change the measures and numerical values no more than every two years; eleven respondents favored Option 1 that would revise the numerical values for PY 1985 standards and during alternate years; and three respondents did not favor either option.

Given this response and based on its own examination of the issue, DOL has decided to maintain the PY 1984 standards for a second year. It also will continue the same approach for setting JTPA Title III standards.

JTPA Titles II–A and III

Performance Standards for PY 1985

The performance standards for PY 1985 for JTPA Titles II–A and III shall be the same as those published in the **Federal Register** notice at 49 FR 4052 (February 1, 1984). Therefore, the Title II–A standards are: Adult entered employment rate, 55 percent; adult cost per entered employment rate, $5,704; adult average wage at placement, $4.91; adult welfare entered employment rate, 39 percent; youth entered employment rate, 41 percent; youth positive termination rate, 82 percent; youth cost per positive termination, $4,900. Performance standards issuances which were in effect for PY 84 shall continue to be in effect for PY 85 (namely PSI–2–84, PSI–3–84, PSI–1–PY 84). For Title III, Governors again shall be required to set an entered employment rate standard for formula funded projects, and are encouraged to set goals for cost per entered employment.

Signed at Washington, D.C., this 28 day of November 1984.

Frank C. Casillas,

Assistant Secretary for Employment and Training.

[FR Doc. 84–31648 Filed 12–3–84; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–84–223–C]

Petition for Modification of Application of Mandatory Safety Standard; Colorado Westmoreland Inc.

Colorado Westmoreland Inc., P.O. Box E, Paonia, Colorado 81428, has filed a petition to modify the application of 30 CFR 75.1714–2(e)(3) (self rescue devices; use and location requirements) to its Orchard Valley Mine located in Delta County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that self-contained self-rescuer (SCSR) devices not be placed more than 25 feet from miners on mantrips into and out of the mine.

2. As an alternative method, petitioner proposed to cache SCSRs at intervals not to exceed 2,000 feet along the mantrip routes. Cached SCSRs will be checked once every seven days. Any unit carried or worn will be checked every shift.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84–31655 Filed 12–3–84; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-84-21-M]

Petition for Modification of Application of Mandatory Safety Standard; Giant Portland & Masonry Cement Co.

Giant Portland & Masonry Cement Company, P.O. Box 218, Harleyville, SC 29448 has filed a petition to modify the application of 30 CFR 56.16–14(b) (overhead cranes; requirements) to its Harleyville Quarry and Mill (I.D. No. 38–00007) located in Dorchester County, South Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that operator-carrying overhead cranes be provided with automatic switches to halt uptravel of the blocks before they strike the hoist.

2. Petitioner seeks a modification of the standard to permit operation of the Marl Crane without an automatic switch to halt uptravel of the blocks before they strike the hoist. Petitioner states that there is no travel of equipment or personnel under or in the vicinity of the suspended load of the crane and that the switch would serve no purpose of safety.

3. For this reason, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31656 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-22-M]

Petition for Modification of Application of Mandatory Safety Standard; Kaiser Sand & Gravel Co.

Kaiser Sand & Gravel Company, P.O. Box 580, Pleasanton, California 94566 has filed a petition to modify the application of 30 CFR 56.16–2(c) (materials storage and handling) to its Radum Plant (I.D. No. 04–01827) located in Alameda County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ladders, platforms, or staging be provided where persons are required to enter any facility for maintenance or inspection purposes, that no person enter the facility until the supply and discharge of materials have ceased and the supply and discharge equipment is locked out, that persons entering the facility wear a safety belt or harness equipped with a lifeline suitably fastened, and that a second person, similarly equipped, be stationed near where the lifeline is fastened to constantly adjust it or keep it tight as needed, with minimum slack.

2. As an alternate method, petitioner proposes to conduct repairs inside bunkers or silos as follows:

a. All material (rock, sand or gravel) is drained or drawn down to empty the bunker/silo;

b. By a positive means, a chain locks out the lower draw-down gate by each worker to prevent opening;

c. The switch gear that activates the gate is tagged-out by the worker;

d. A permanent ladder is provided and internal repair commences at the bottom of the bunker/silo, providing a safe working surface. No void can form below nor can the gate be opened, also eliminating the use of safety belts and life lines;

e. There is always a person with radio communication to the control room that calls for and controls the flow of specific materials into a series of bunkers, including the bunker/silo where work may be conducted below.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31657 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Application No. D-4683 et al.]

Proposed Exemptions; the Royal Bank of Canada et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Program, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Royal Bank of Canada (Royal Bank) Located in Montreal, Quebec, Canada

[Application No. D–4683]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, retroactive to June 15, 1981, to the execution by Royal Bank of a letter of credit agreement (the Agreement) providing for and the actual issuance, maintenance in effect and performance or honoring of a letter of credit (the Letter of Credit) in conjunction with a private financing arrangement where Royal Bank may have had or may in the future have a party in interest relationship with one or more of the several investor employee benefit plans (the Plans).

Effective Date: If this proposed exemption is granted, the effective date will be June 15, 1981.

Summary of Facts and Representations

1. The Letter of Credit is an integral part of the subject leveraged lease financing transaction involving the purchase of a McDonnell Douglas DC–10–15 aircraft (the Aircraft) for lease and operation by Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana), a major Mexican airline. The mechanism by which the Aircraft was acquired and leased to Mexicana was a complex but fairly typical leveraged lease financing arrangement containing the following elements: (1) Mexicana had previously contracted with McDonnell Douglas Corporation (the Manufacturer) to purchase the Aircraft. As part of the financing arrangement, Mexicana assigned its rights and obligations under the purchase agreement to the Bank of New York (Owner Trustee) as trustee, with the Manufacturer consenting and agreeing to the assignment; (2) The Owner Trustee, acting on behalf of McDonnell Douglas Financing Corporation (the Owner Participant), purchased the Aircraft from the Manufacturer for $50,000,000; (3) The Owner Trustee obtained $17,000,000 (⅓ of the purchase price) from the Owner Participant and the balance from the collective investment of eleven life insurance companies and one commercial bank (the Loan Participants).[1] Some of the Loan Participants have invested funds on behalf of the Plans through insurance company separate accounts and, in the case of the commercial bank, through a commingled pension trust; (4) The amounts loaned by the Loan Participants were evidenced by a series of non-recourse notes (the Loan Certificates) issued by the Owner Trustee pursuant to a trust indenture and mortgage (the Indenture) between itself and Bankers Trust Company (the Loan Trustee), as trustee for the holders of the Loan Certificates. The Loan Certificates mature twelve years after their issue and bear interest at the rate of 15½ percent per annum with principal amortization payments commencing at the end of the second year. Among other things, the Indenture created a security interest in the Aircraft in favor of the holders of the Loan Certificates and the Royal Bank; (5) To provide further security for the holders of the Loan Certificates, the Owner Trustee entered into the Agreement with the Royal Bank. The Agreement provides for the issuance by the Royal Bank of the Letter of Credit in favor of the Loan Trustee, for the benefit of the holders of the Loan Certificates, in an amount sufficient to cover the full amount of the principal and interest owing on the Loan Certificates;[2] and (6) the Aircraft was then leased by the Owner Trustee to Mexicana for a basic term of fifteen years under a lease agreement (the Lease Agreement) providing for rentals sufficient to pay all of the obligations arising under the agreements referred to above. The various elements to the financing agreement were tied together by a participation agreement executed by all the parties to the above described transactions except the Manufacturer of June 15, 1981.

2. The Royal Bank is a Canadian chartered bank headquartered in Montreal, Province of Quebec. It is Canada's largest bank and the fourth largest in North America. On October 31, 1982, it had total assets of Can. $88.5 billion (U.S. $72.2 billion, based on the exchange rate on October 29, 1982 of Can. $1.00=U.S. $.8157). Included among its holdings are two wholly-owned banking subsidiaries in the United States and its possessions: the Royal Bank and Trust Company (New York, New York) and Banco de San Juan (Hato Rey, Puerto Rico). Since both of these financial institutions possess authorization to engage in trust activities, it is possible that one of the Plans having a beneficial interest in the Loan Certificates may have a party in interest relationship with an affiliate of the Royal Bank.

3. The Letter of Credit is an unconditional and irrevocable promise to pay to the Loan Trustee (for the benefit of the holders of the Loan Certificates) the amount stated therein by a single payment upon presentation by the Loan Trustee of certain specified documents, one of which is a certificate of the Loan Trustee that either an event of default has occurred under the Indenture or a payment to the Loan Certificate holders is or may be an avoidable preference under the U.S. Bankruptcy Code (as a result of the bankruptcy of Mexicana). The Loan Certificates become immediately due and payable upon the giving of the notice of acceleration to the Owner Trustee, such notice may be given by

[1] The names of the original Loan Participants are Aetna Life Insurance Company, INA Life Insurance Company, Horace Mann Life Insurance Company, INA Life Insurance Company of New York, Standard Life Insurance Company of Indiana, John Hancock Mutual Life Insurance Company, Morgan Guaranty Trust Company of New York (as Trustee of a Commingled Pension Trust), Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America, Unionmutual Stock Life Insurance Company of New York, Canada Life Assurance Company and Crown Life Insurance Company.

[2] The fact that the repayment of the Loan Certificates is fully covered by the Royal Bank's Letter of Credit means that the interest rate on the Loan Certificates is lower than the interest rate which would have been required if such repayment were dependent solely upon the lease rentals payable by Mexicana and the mortgage on the Aircraft.

either Royal Bank or the holders of twenty five (25) percent or more in outstanding principal amount of the Loan Certificates. Upon receipt of the notice of acceleration, the Loan Trustee is obligated to demand payment from the Royal Bank under the Letter of Credit in an amount equal to the outstanding principal and interest due on the Loan Certificates. When the Loan Trustee receives payment from the Royal Bank, it will in turn pay all of the holders of the Loan Certificates against delivery of the outstanding Loan Certificates duly endorsed and assigned to the Royal Bank. While Royal Bank may give the notice of acceleration which sets in motion the demand for payment under the Letter of Credit, section 4.15 of the Indenture provides that "no such action shall adversely affect the interests of the holders of the Loan Certificates."

The Letter of Credit Agreement provides for a fee payable to Royal Bank in an amount equal to one percent on the average daily maximum amount available under the Letter of Credit, subject to certain limitations. The fee is payable by the Owner Trustee; however the Lease Agreement between the Owner Trustee and Mexicana provides that the amount of the fee is included in the rent payable by Mexicana. Non-payment of this fee will not affect the validity of the Letter of Credit or the obligations of Royal Bank thereunder.

4. Royal Bank acknowledges that it has de minimus banking relationships with the Loan Trustee and certain of the Loan Participants and believes it is the principal Canadian banker for Crown Life Insurance Company. However, Royal Bank represents that it neither owns five percent or more of the outstanding voting shares nor has the power to influence the management decisions of any of the Loan Participants or the Loan Trustee.

5. The applicant understands that the Department has taken the position that where a loan transaction in which employee benefit plans are investors is guaranteed by a person having a party in interest relationship to such investing plans a prohibited extension of credit exists between the guarantor and the investing plans. the Loan Participants disclosed the identities of all Plans with more than a 5% interest in any separate account or in the commingled pension trust, and reasonable steps were taken to determine that no party in interest relationship existed between the Royal Bank and those Plans. However, the Loan Participants refused to disclose the identities of Plans owning less than 5% interests in the separate accounts and commingled pension fund. Since the identity of certain of the Loan Certificate holders could not be established in advance, the Royal Bank is concerned that it may be a party in interest (e.g., by providing custodial or other services) to a Plan which either has or may hereafter acquire Loan Certificates. Therefore, should a full disclosure of the identity of Plans investing in the Loan Certificates establish such a relationship, it could be argued that the issuance and maintenance in effect of the Letter of Credit involves a loan or extension of credit in violation of section 406(a)(1)(B) of the Act.

The applicant acknowledges the possible application of two previously granted class exemptions involving investment by bank collective investment funds and insurance company pooled separate accounts.[3] However, the Loan Participants have not been willing to provide assurances that the pooled accounts which they operate meet the requirements of those exemptions. The Royal Bank also acknowledges the existence of the recently granted class exemption for qualified professional asset managers (QPAM); [4] however, Royal Bank has no assurances that transactions involving current holders of the Loan Certificates would qualify for the relief available under that exemption. Additionally, the Indenture acknowledges the potential for transferability of the Loan Certificates to, among others, employee benefit plans which are not invested through such pooled vehicles or managed by entities which satisfy the definition of a QPAM. To date no sales have occurred and the Loan Trustee stated that as of July 1, 1984, the original Loan Participants continue to be the beneficial owners of the Loan Certificates. The applicant also notes that the Department has taken the position that a loan or extension of credit which is permissible when entered into nevertheless becomes prohibited if a party in interest relationship develops thereafter. The honoring of the Letter of Credit by the Royal Bank also raises prohibited transaction problems should the Department determine the transfer of the Loan Certificates under the terms of the Indenture to be prohibited. Because of the above stated concerns Royal Bank has determined that it could be exposed to the risk of a possible prohibited extension of credit for the life of the Letter of Credit. Accordingly, the applicant has determined it appropriate to seek exemptive relief for the transactions described herein.

6. In summary, the applicant has represented that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The proposed exemption applies to the issuance, maintenance in effect, performance and hororing of a single letter of credit, the terms of which are fixed based on arms length negotiations between unrelated parties; (b) the Letter of Credit is a secondary form of security adding an additional protection at no cost to the holders of the Loan Certificate and which is held by the independent Loan Trustee acting pursuant to the Indenture; and (c) repayment of the Loan Certificates is assured by Royal Bank's unconditional obligation and its substantial resources.

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

Krohn Clinic, Ltd., Money Purchase Pension Plan (the Plan) Located in La Crosse, Wisconsin

[Application No. D-5370]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) a lease, effective July 1, 1984, of certain improved real property (the Property) by the Plan to Krohn Clinic, Ltd., (the Employer), the sponsor of the Plan; and (2) the potential cash purchase of the Property from the Plan by the Employer pursuant to a provision in such lease; provided that the terms and conditions of such transactions are at least as favorable to the Plan as the Plan could expect in arm's-length transactions with unrelated parties.

Effective date: If granted, this exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined contribution money purchase pension plan with 47 participants and total assets of $2,430,600 as of September 14, 1984. The Employer is a Wisconsin professional corporation with a net worth of $686,928 as of April 6, 1984, operating as the Krohn Medical Clinic for the general practice of medicine. The trustee of the Plan is the La Crosse Trust Company (the Trustee), which represents that it is independent of and unrelated to the Employer except as Trustee of the Plan. Among the assets of the Plan is the Property, a 160,000 square foot parcel of land improved with a one-story frame and masonry building and adjacent parking lot located at 610 West Adams Street in Black River Falls, Wisconsin and used by the Employer as its principal place of business. As of February 15, 1984 the property had a fair market value of $610,000, according to Donald F. Johnson (Johnson), an independent professional real estate appraiser whose office is located in La Crosse, Wisconsin. Based upon Johnson's valuation, the Property constitutes 25 percent of the total assets of the Plan as of September 14, 1984. The Property has been leased by the Employer from the Plan continuously since 1970 under a lease (the Original Lease) which was renewed according to its terms on May 31, 1982. The Employer represents that the Original Lease constitutes a lease as defined under section 414(c)(2) of the Act and is therefore exempt until June 30, 1984 from the prohibitions of section 406 and 407 of the Act.[5] An exemption is requested to permit the Employer's continued lease of the Property from the Plan past June 30, 1984 under a modification of the Original Lease (the New Lease), effective July 1, 1984, under the terms and conditions proposed herein.

2. The interests of the Plan for all purposes under the New Lease are and will remain represented by the Trustee. The New Lease is a triple net lease for an initial term of ten years, with provisions for unlimited five-year renewal terms at the Trustee's sole discretion. Under the New Lease the employer assumes responsibility for all taxes, all costs of maintenance and repair, and full fire and extended coverage insurance on the Property. The New Lease requires the Employer to indemnify the Plan and hold the Plan harmless against all claims, demands, and liabilities arising from the Employer's use of the Property. Annual rental under the New Lease, payable monthly, will be the greater of (1) the fair market rental value of the Property as determined annually by an independent appraiser selected by the Trustee, or (2) ten percent of the fair market value of the Property as determined annually by independent appraiser selected by the Trustee. Rental during any renewal term shall be determined in the same manner. Johnson has determined that the amount of rental being charged under the Original Lease at the time of his appraisal, which was $60,000, was equal to the Property's fair market rental value. After an investigation by the Trustee of existing market conditions relating to the Property's fair market rental value as of July 1, 1984, in which the Trustee found no significant changes since Johnson's appraisal of February 15, 1984, the annual rental under the New Lease for its first year has been set at $61,000, representing the higher figure of ten percent of the Property's fair market value. Other than the amount of rental, all terms and conditions of the New Lease during any renewal terms shall remain the same as those of the New Lease during its initial term. Any renewal of the New Lease beyond its initial ten-year term shall be at the sole discretion of the Trustee.

3. The New Lease includes a provision (the Put Option) under which the Trustee may require the Employer to purchase the Property from the Plan for cash upon ninety days' written notice for a purchase price equal to the greater of: (1) The fair market value of the Property as determined by a qualified, independent real estate appraiser chosen by the Trustee, or (2) the original cost of the Property to the Plan. Such a purchase of the Property under the Put Option shall occur without any attendant sales costs to the Plan. The Put Option provides that the Trustee shall predicate any decision to exercise the Put Option on a good-faith evaluation of the following factors: (1) The yield of the Property in relation to alternative investment returns; (2) the Plan's liquidity needs; and (3) the ratio of real estate asset value to total Plan asset values. Further, the Trustee represents that any exercise of the Put Option shall be evaluated under the prudent man rule and diversification requirements of section 404 of the Act. An exemption is requested to permit the potential purchase of the Property by the Employer pursuant to the Trustee's potential exercise of the Put Option.

4. The Trustee will represent the Plan in the enforcement of all terms and conditions of the New Lease and will monitor the Employer's performance thereunder for the duration of the New Lease, including any renewal thereof. The Plan's continued leasing of the Property to the Employer past June 30, 1984 under the New Lease has been reviewed and evaluated by William P. Grow (Grow), Assistant Vice President of the Trustee. Grow represents that the Plan's continued holding of the Property and its continued lease to the Employer under the New Lease are in the best interests and protective of the participants and beneficiaries of the Plan for the following reasons: (1) Historically, the Property has proven to be a good investment for the Plan, having appreciated substantially since its acquisition and having yielded the Plan a return of 12.8% over the past ten years; (2) the Plan's return on the Property under the New Lease, to be no less than ten percent, will compare quite favorably to returns available from alternative investments, especially marketable bonds; (3) in the event of unforeseen adverse developments with respect to the Property, the Plan's investment in the Property is protected by the Put Option; (4) the Property provides the Plan with non-interest-sensitive performance, lending stability of principal value to this Plan asset in a context of fluctuating financial markets; (5) Plan assets are appropriately diversified by industry, number of issues, and maturity; and (6) the Property represents the Plan's sole investment in real property, and its continued holding by the Plan does not adversely affect the Plan's liquidity needs. The Trustee represents that based upon the current and projected cash flow on Plan assets, the percentage of Plan assets represented by the Property is steadily diminishing.

5. In summary, the applicant represents that the subject transactions satisfy the criteria of section 408(a) of the Act because: (1) The New Lease is a triple net lease under which the Employer pays all expenses related to the Property and will protect the Plan's investment in the Property with full fire and extended coverage insurance; (2) the Plan's interests under the New Lease are represented by the Trustee, an independent fiduciary which is unrelated to the Employer; (3) the New Lease ensures the Plan a return from the Property of no less than the Property's fair market rental value, determined annually; (4) the Put Option protects the Plan from unforeseen adverse developments with respect to the Property by requiring the Employer to purchase the Property from the Plan for its full fair market value, without attendent sales costs to the Plan; and (5) after a review and analysis of the subject transactions, the Trustee has

[3] Prohibited Transaction Exemption 78-19, 43 FR 59915, December 22, 1978 and Prohibited Transaction Exemption 80-51, 45 FR 49708, July 25, 1980.

[4] Prohibited Transaction Exemption 84-14, 49 FR 9494, March 13, 1984.

[5] The Department expresses no opinion as to whether the Original Lease constitutes a lease as defined under section 414(c)(2) of the Act.

determined that the New Lease, including the Put Option, is in the best interests and protective of the Plan's participants and beneficiaries.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

ESI Profit Sharing Retirement Plan and Trust (the Plan) Located in Portland, Oregon

[Application No. D–5395]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale, pursuant to the escrow arrangement described below, of certain employer real property (the Property) by the Plan to Electro Scientific Industries, Inc. (the Employer), a party in interest with respect to the Plan, provided the terms of such transaction are at least as favorable to the Plan as those of similar transactions between unrelated parties.

Summary of Facts and Representations

1. The Plan covered 609 participants as of December 31, 1982, and, as of May 31, 1983, had assets totalling $8,404,347. The trustee of the Plan is the United States National Bank of Oregon (the Trustee). The Employer has a variety of commercial accounts with the Trustee, which is one of the two largest banking institutions in the State of Oregon and maintains a large commercial banking practice. It is represented that each individual account of the Employer with the Trustee represents less than 1% of the aggregate of similar accounts currently maintained by the Trustee. Section 10.05–2 of the Plan authorizes the Profit Sharing Committee (the Committee) for the Plan to elect to direct the investment of Plan assets. Each member of the Committee is an employee of the Employer and owns less than 1% of the Employer's stock.

2. To avoid any question arising out of the relationships between the Employer and the Committee members, the Committee has waived its authority under Plan section 10.05–2 as it relates to the Property and has left to the Trustee the exclusive authority and control over, and responsibility for, the management and investment of the Property.

3. The Property consists of 5.27 acres of land improved by a one-story engineering building of 21,424 square feet. The Property is located at 13900 N.W. Science Park Drive, Beaverton, Oregon, in a highly desirable, campus-like development near Portland, known as Sunset Science Park. The Trustee currently manages the Property. The building contained on the Property is a multi-purpose industrial building currently used by the Employer for research and development, some light manufacture, and general drafting and engineering. The land was acquired by the Plan in 1963 for about $31,000, and the building was constructed in 1963 by the Plan for about $340,000 as an income investment.

4. The Property has been leased to the Employer since September 1, 1963, under a lease which, among other provisions, gave the Employer both a purchase option and also a right of first refusal in the event a sale of the Property was considered. Prohibited Transaction Exemption (PTE) 84–55 (49 FR 23955, June 8, 1984) exempts such leasing effective July 1, 1984, but does not exempt either the purchase option or the right of first refusal. The Trustee has been involved with the Property since the Plan acquired it. At the request of the Trustee, the Property is appraised annually by an independent appraiser. The history of the Property since the Plan acquired it is described in detail in the Notice of Proposed Exemption for PTE 84–55, published April 3, 1984 (Application No. D–4401, 49 FR 13214). The Plan has continued to lease the Property to the Employer under the terms described in detail in said Notice.

5. The Plan now proposes to sell the Property to the Employer pursuant to the following terms:

(a) An independent appraiser, chosen by the Trustee and at the Employer's expense, will determine the fair market value of the Property as of a date certain in the near future (the Escrow Date) without regard to any right of first refusal or purchase option of the Employer under the existing lease. Such value shall be the amount of the offer to purchase the Property. The independent appraiser chosen by the Trustee is the firm of Curtis Mackenzie and Slocum, which has not provided any prior services and has no relationship to the Employer, according to the applicant. The individuals who will participate in the new appraisal are Messrs. John E. Slocum, Patrick C. Jordan, and Gerald L. Curtis—all of whom are certified Members of the Appraisal Institute of the American Institute of Real Estate Appraisers and have extensive real-estate appraisal experience.

(b) On the Escrow Date (see (a), above), a sale agreement between the Plan and the Employer (the Sale Agreement) will be executed by the Trustee, serving as an independent fiduciary to the Plan, only if it has determined that: (i) The sale of the Property is in the best interests of the Plan, its participants and beneficiaries, and (ii) the price of the offer is not less than the fair market value of the Property on the Escrow Date.

(c) The Sale Agreement (see (b), above) will provide that the sale price and any additional payment (see (f), below) will be payable in cash in full to the Escrow Agent (see (e), below) no later than the Delivery Date (defined in (e), below).

(d) The deed shall be in the form of a bargain and sale deed which will convey the interest in the Property, will estop the Plan and its successors from ever asserting that it had less than the full estate in the Property at the date of the deed, and will pass after acquired title. However, the deed will not operate to provide covenants of title in the Employer as grantee or its successors. Therefore, according to the applicant, the Plan is not required to defend the title to the Property against claims that the Plan did not legally possess the Property or did not have authority to transfer the Property or that the Property was encumbered. The applicant explains that under a bargain and sale deed, if the transferor does not have legal title to the property described in the deed on the date of transfer and the transferor later acquires such property, the property passes to the transferee; however, the transferor is not required to obtain such property or to cure any defects in its title to the property. It is represented that deeds in this form are the types normally used by the Trustee when acting in a fiduciary capacity.

(e) On the Escrow Date, the executed Sale Agreement, documents of conveyance of title, and such other documents as are necessary to consummate the transaction, each dated as of the Escrow Date, will be deposited with an independent third party (the Escrow Agent). An escrow agreement (the Escrow Agreement) between the Trustee, the Employer, and the Escrow Agent will be entered into which will provide that the documents conveying title, the sale price, and the additional payment described in (f), below, will not be delivered until and unless the proposed exemption is granted and the terms and conditions of the Escrow Agreement are satisfied. In such event: (i) Said date (the Delivery Date) shall occur no later than 15 days following the date the proposed exemption is granted; and (ii) on the Delivery Date, the documents conveying title will be delivered to the Employer, and the sale price and the additional payment described in (f), below, will be delivered to the Trustee for the Plan. The Escrow Agent is the real estate department of the Trustee. The Escrow Agreement does not affect the obligation of the Employer to make payments to the Plan when due under the lease on the Property during the period beginning on the Escrow Date and ending on the Delivery Date (the Escrow Period).

(f) If the exemption is granted, the parties desire to preserve the benefit of their respective bargains during the Escrow Period. Therefore, the Escrow Agreement is designed to place the Plan and the Employer in the same economic position which they would have been in had the sale closed on the Escrow Date, subject to satisfaction of the terms of the Escrow Agreement. Pursuant to the Escrow Agreement, if the proposed exemption is granted, the Plan will be entitled to an additional payment (the Additional Payment) on the Delivery Date equal to the excess, if any, of (A) over (B), below. For this purpose:

(A) Equals the sum of—

(i) The product obtained by multiplying the sale price of the Property by a rate for the entire Escrow Period equal to the interest rate on the Escrow Date borne by a security (the Alternative Security) selected by the Trustee, in which the Plan would have invested had it had the purchase price available for investment, plus

(ii) Interest on the product obtained under A(i), above, computed from the date interest on the Alternative Security would have been received if the Plan had acutally invested in the Alternative Security on the Escrow Date, and computed until the Delivery Date at a daily rate equal to that earned by QualiVest Fund, the money market fund of the Trustee; and

(B) Equals the sum of—

(i) Any net payments under the lease of the Property during the Escrow Period, plus

(ii) Interest on the amount under B(i), above, computed from the date such amounts are received by the Plan to the Delivery Date at the daily rate described in A(ii), above.

(g) If the proposed exemption is not granted, the escrow documents shall be returned to the appropriate parties, and the sale shall not be consummated. In such event, except as specified in (h), below, neither the Trustee nor the Employer shall have any further obligations with respect to the sale.

(h) Whether or not the transaction if finally consummated, all expenses of the sale, including escrow expenses and attorneys' fees, will be paid by the Employer.

(i) If the Department's notice granting or denying the proposed exemption is not received by April 1, 1985, the sale shall not be consummated, and the escrow documents shall be returned to the appropriate parties.

6. The applicant explains that the purpose of the Escrow Agreement (see 5, above) is to fix the Employer's obligation to purchase the Property for its fair market value on the Escrow Date, thereby protecting the Plan from any decrease in the Property's fair market value during the period required for the Department to take final action on the proposed exemption (see 7(c), below), while providing interest income to the Plan on the sale price during such period to the extent of the Additional Payment (described in 5(f), above).

7. The Trustee represents that the proposed sale of the Property would be in the best interest of the Plan and its participants for the following reasons:

(a) The sale of the Property to the Employer would reduce costs to the Plan, including bank fees, appraisal fees, and maintenance fees.

(b) The Trustee feels that the sale of the Property and subsequent investment of the proceeds in various areas of the market will provide more diversification and flexibility to the Plan. Some investments under consideration include quaranteed insurance contracts, collective stock and bond funds, and a dedicated bond portfolio, depending upon the timing of the availability of the sale proceeds and the market climate at that time.

(c) While the value of the Property has increased over 300% compared to the Plan's investment therein, the real estate market projections for this area indicate a "soft" market and as potential decline in property values.

(d) The Trustee feels that the escrow arrangement described in 5, above, is the most prudent means of handling the proposed transaction because the escrow arrangement will not only fix the sale price but will protect the value of the sale price in the interim.

8. The Trustee also represents that the proposed transaction (including the escrow arrangement) will be subject to the following conditions:

(a) The sale price of the Property, as determined by an independent appraisal, must be equal to the fair market value of the Property on the date the sale document is executed and placed into escrow without regard to any right of first refusal or purchase option of the Employer.

(b) The sale price of the Property will be payable in cash in a lump sum at closing, which shall occur after (and if) the propsed exemption is granted.

(c) All costs incurred as a result of the proposed sale will be borne by the Employer.

9. The Trustee explains that it is not aware of a third party who might be interested in purchasing the Property and would not expect a third party purchaser either to agree to a lump-sum cash transaction or to pay all of the sales related expenses. Given the Employer's willingness to meet the conditions set forth above, the Trustee believes the Employer is the most appropriate purchaser.

10. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the entire sale price and any Additional Payment will be paid in cash to the Plan on the Delivery Date, which will occur no later than 15 days following the date the proposed exemption is granted; (b) the proposed sale price will equal the fair market value of the Property as of the Escrow Date determined without regard to the Employer's right of first refusal and purchase option under the lease on the Property; (c) the Escrow Agreement is designed to place the Plan and the Employer in the same economic position which they would have been in had the sale closed on the Escrow Date, subject to satisfaction of the terms of the Escrow Agreement; (d) whether or not the transaction is finally consummated, all expenses of the sale, including escrow expenses and attorneys' fees, will be paid by the Employer; (e) the sale will result in greater flexibility and greater potential diversification for the Plan; (f) the Trustee, an independent fiduciary to the Plan, represents that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries; (g) the Trustee will agree to the proposed transaction only if the conditions described in 8, above, are met; and (h) if the proposed exemption is not granted by April 1, 1985, the sale will not be consummated.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Star-Mark, Inc., Profit Sharing Plan and Trust (the Profit Sharing Plan); and Star-Mark, Inc., Defined Benefit Plan and Trust (the Defined Benefit Plan; Collectively, the Plans) Located in Sioux Falls, South Dakota

[Application Nos. D-5398 and D-5399]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The purchase of certain leases of equipment (the Leases) by the Plans from Star-Mark, Inc. (the Employer), the sponsor of the Plans; (2) the repurchase by the Employer or its shareholders (the Shareholders) of any Leases in default; (3) the indemnification of the Plans by the Employer and its Shareholders against any loss relating to the Leases; and (4) the possible repurchase by the Employer of its Shareholders of the leased equipment at the end of the term of a Lease, provided that the following conditions are met:

A. Any sale of Leases to the Plans will be on terms at least as favorable to the Plans as an arm's length transaction with an unrelated third party.

B. The acquisition of a Lease from the Employer shall not cause either Plan to hold: (1) More than 25% of that Plan's assets in the Leases' (2) more than 3% of that Plan's assets in a single Lease; and (3) more than 10% of that Plan's assets in Leases of any one lessee.

C. Upon default by a lessee on any payment due under a Lease, the Employer and its Shareholders agree to indemnify the Plan holding that Lease against any loss resulting from such default and also agree to repurchase such Lease at full face value, without discount, and to repurchase the equipment underlying the Lease at the present value of that equipment based on its value at the end of the Lease. A Lease shall be deemed to be in default for purposes of this section if: (1) A payment due under the terms and conditions of the Lease is past due for a period of 45 days; (2) a lessee defaults in the performance of any other term of condition of the Lease for a period of 45 days; or (3) a lessee Leases doing business or becomes insolvent.

D. The Plans receive adequate security for the equipment underlying the Lease. For purposes of this exemption, the term adequate security means that the equipment is secured by a perfected security interest in the leased equipment, so that if there is a default on a Lease and the security is foreclosed upon or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan holding the Lease will experience no loss.

E. Insurance against loss or damage to the leased equipment from fire or other hazards will be procured and maintained by the lessee, and that the proceeds from such insurance will be assigned to the Plans.

Temporary Nature of Exemption: This exemption is temporary in nature and will expire five years after the date of grant with respect to the purchase by the Plans of Leases.

Summary of Facts and Representations

1. The Profit Sharing Plan has approximately 58 participants and assets of $104,541.87 as of March 31, 1984. The Defined Benefit Plan has four participants and assets of $97,926.57 as of June 30, 1983. The trustees of the Profit Sharing Plan are Paul W. Lawrence, Robert J. Swanson and Samuel Hertogs, officers and shareholders of the Employer. The trustees of the Defined Benefit Plan are Paul W. Lawrence, Robert J. Swanson, Samuel Hertogs, Donald W. Gustafson and David A. Lawrence, officers and shareholders of the Employer.

2. The Employer is in the business of manufacturing and distributing all types of cabinetry. Cabinets are distributed through third party dealers who display them on their premises. As an incentive to dealers to take on the Employer's lines, the Employer leases cabinet displays to the dealers. The Leases that the Plans propose to purchase from the Employer will involve Employer cabinets which are leased to these third party dealers. The Leases vary in length from 12 to 36 months, with the lessee determining the length of an individual Lease. The Leases will be sold to the Plans for cash. The Plans propose to invest, for a five year period, up to 25% of each Plan's assets in such Leases, with the conditions that no more than 10% of a Plan's assets be invested in the Leases of any one customer and no more than 3% of a Plan's assets be invested in a single Lease. The Leases are completely net to the Plan and similar Employer leases have been yielding a return of 15½% per annum.

3. The purchase price of a Lease will be based on the invoiced price of the cabinets being leased less an appropriate discount as determined by the independent fiduciary of the Plans (see below). No commissions will be paid to the Employer as a result of sales of Leases to the Plans. The rental for the Leases purchased by the Plans will be calculated by the same method used to calculate the rental for the leases which are held by the Employer for its own account. Rentals will be comparable to what the Plans could obtain in a direct transaction with an unrelated third party.

4. Notwithstanding the fact that upon purchase of a Lease the Plans also acquire and hold title to the equipment underlying the Lease, as a further protection to the Plans such equipment will be secured by a perfected security interest which will name the purchasing Plan as the secured party. If the security would be foreclosed upon in the event of default, the value and the liquidity of the security will by such that it may reasonably be anticipated that loss of principal or interest will not result. In addition, the lessee is required to maintain insurance on the cabinets against fire and other hazards, the proceeds of which shall be assigned to that Plan.

5. The Plans will assumed the position of the lessor under the terms of the Leases. However, if a default occurs, the Plans will have full recourse against the Employer and the shareholders of the Employer (the Shareholders). In addition, the Employer and the Shareholders have agreed to repurchase any Lease in default at its full face value, without any discount and to repurchase the cabinets underlying the Lease for the present value of the cabinet's residual value at the expiration of the Lease as determined by the independent fiduciary of the Plans (see below). The Employer and the Shareholders have also agreed to indemnify the Plans for any losses suffered as a result of a default. Leases shall be deemed to be in default if the lessee fails to make a rental payment within 45 days after it is due or if a lessee defaults in the performance of any other term or condition of the Lease for a period of 45 days or if a lessee ceases doing business or becomes insolvent. The Employer's net worth as of April 28, 1984 was $443,692. The Shareholders represent that their net worth is in excess of $16,000,000.

6. First Bank of South Dakota (the Bank) has agreed to act as an independent fiduciary for the Plans with respect to the proposed purchases of the Leases. The Bank represents that as of June 30, 1984, its sole relationship with the Employer and its officers, directors and Shareholders is that the Employer and one Shareholder have deposits of $105,000 in the aggregate, representing less than 1% of the Bank's total deposits and that the Employer and a partnership controlled by the directors of the Employer have, in the aggregate, $875,000 in loans from the Bank, representing less than 1% of the Bank's total loans.

7. The Bank represents that the Bank alone will determine whether it will purchase any Leases in general and any individual Lease in particular. The Bank further represents that it will evaluate Leases it is considering, taking into consideration: (a) An appropriate rate of return to the Plans based on other comparable investments available to the Plans, considerations include safety of the investment, period required to amortize the investment and the returns being realized by the Bank on commercial installment loans; and (b) the rate of return that the Bank intends to realize will determine the amoun of discount the Bank requires from the invoiced amount. The Bank represents that its decision making process will be ongoing in order that the Plans maintain actuarily sound liquidity and that there be diversification of non-cash investments. In the event the Bank acquires any Leases, the Bank represents that it will alternate the purchase of Leases between the Plans and that no more than 25% of either Plans' assets will ever be invested in Leases at any given time. The Bank represents that the Leases purchased will be of equal quality. In addition, the Bank represents that the purchase of Leases will be beneficial to the Plans for the following reasons: (a) The Leases are secured and guaranteed by the property, the lessee, the Employer and the Shareholders; (b) the Leases are of short duration—1, 2 or 3 years; (c) the Leases are amortized (except for minimal buyout) fully, there is no substantial balloon payment; (d) the Bank can determine any appropriate discount from the invoice to generate a substantial return to the Plans; and (e) the Lease amounts are relatively small—usually not over several thousand dollars each, and the lessees are located over a wide geographic area, adding to diversification. The Bank represents that it will monitor and enforce the Leases including all agreements of the Employer and the Shareholders.

8. At the end of the term of the Lease, the lessee has the option of purchasing the cabinets under a purchase option or returning them to the leasing Plan. If the lessee does not purchase the cabinets, the Employer covenants that it will repurchase the cabinets at the higher of the buyout price set in the Lease or the fair market value of the cabinets at the date of the expiration of the Lease, as determined by the Bank.

9. In summary, the applicant represents that the proposed transactions meet the statutory requirements of section 408(a) of the Act because: (a) The Bank, acting as independent fiduciary on behalf of the Plans will have the sole authority to select, purchase and monitor the Leases and also to monitor the Employer's and Shareholders indemnification and repurchase agreement; (b) the sales of the Leases will be limited to a five year period and no more than 25% of the assets of either Plan will be invested in the Leases; (c) the Plans will have perfected security interests in each cabinet subject to a Lease; and (d) the Employer will indemnify the Plans for any loss suffered by the Plans as a result of a Lease default and repurchase both the Lease and the cabinets underlying the Lease.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Newspaper Agency Corporation Pension Trust (the Plan) Located in Salt Lake City, Utah

[Application No. D-5540]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The continued leasing of certain improved real property (the Property) from the Plan to Newspaper Agency Corporation (the Employer), a party in interest with respect to the Plan, (2) the guarantee by Kearns-Tribune Corporation and Deseret News Publishing Corporation (collectively, the Employer's Owners) of the Employer's obligations under such lease, and (3) the possible future sale of the Property by the Plan to the Employer pursuant to Articles 19 or 20 of such lease; provided the terms of each of these transactions are at least as favorable to the Plan as those the plan could obtain in similar transactions with unrelated parties, and provided further that in the event of any such sale the sales price is not less than the fair market value of the Property on the date of the sale, disregarding any reduction in value attributable to the Employer's rights under Article 19 and 20 of such lease.

Effective Date: If the proposed exemption is granted, the exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan covering 765 participants as of June 15, 1984. The total fair market value of the Plan's assets as of August 16, 1984 was $11,935,913.73. The Plan trustee is First Interstate Bank of Utah, N.A. (the Trustee), which is solely responsible for the investment of Plan assets. The Trustee has no common officers or directors with the Employer or the Employer's Owners. Although the Employer and one of the Employer's Owners are clients of the Trustee, their deposits represent only .00046% and .00057%, respectively, of the Trustee's total deposits as of August 3, 1984. On this same date, the Employer had no loans with the Trustee, and loans to one of the Employer's Owners represented .00515% of the Trustee's total outstanding loans. Various officers and directors of the Employer and one of the Employer's Owners have had deposit and loan relationships with the Trustee, neither of which exceeded 1/10 of 1% of the Trustee's total deposits and loans. The Trustee's Trust Department has many years experience managing assets and is currently responsible for managing assets of approximately $450,000,000. The Trustee's employee benefit staff has had various experience regarding the Act. Mr. Anthony Vazulik, who overseas the administration of the Plan, has 23 years experience in managing various employee benefit programs and is very familiar with the Act, according to the Trustee, whose law firm (Jones, Waldo, Holbrook & McDonough) counsels the Trustee on its responsibilities under the Act.

2. The Property consists of land improved by a one-story commercial warehouse comprising approximately 52,500 square feet located at 656 South 300 West and 326 West 700 South in Salt Lake City Utah. The Property is not subject to an outstanding mortgage or any other indebtedness and constituted 11.39% of the Plan's total assets as of August 16, 1984. The Property constitutes an integral part of the Employer's business of producing two daily newspapers seven days a week. The Employer uses the Property to receive, by railroad and by truck,

newsprint and other supply items for printing newspapers and related functions; to store such supplies; and to house a five-unit Goss Urbanite offset press used to print various sections of the newspapers.

3. The Plan purchased the Property in 1971 and has leased the Property continuously to the Employer pursuant to a lease entered into on July 21, 1971 (the Original Lease). It is represented that the Employer has consistently complied with the terms of both the Original Lease and the existing lease (described in 5, below) in a timely manner. The applicant represents that the leasing of the Property has satisfied the conditions provided by section 414(c)(2) of the Act because the Original Lease was entered into before July 1, 1974 and was not a prohibited transaction within the meaning of section 503(b) of the Code and the terms under which the leasing has occurred have been as favorable to the Plan as those of an arm's-length transaction with an unrelated party.[4]

4. Mr. Ralph B. Wright, Member of the American Institute of Real Estate Appraisers, has estimated the Property's fair market value as of June 30, 1983, at $1,252,500, and is fair market rental value as of July 1, 1984 at $100,000 to $110,000 per year under a triple net lease. Mr. Wright states that he is not related to the Employer, the Employer's Owners, or their principals and that after personally inspecting the Property, he finds it well maintained and in first class condition throughout. He explains that although the Property lacks finished office space and off-street parking, it is conveniently located, has rail service, is near the freeway, is dock-high, and has good overhead clearance, inside truck docks, overhead storage mezzanine, sprinkling and heating systems.

5. The Plan and the Employer have entered into an agreement dated August 1, 1983 (the Current Least), which supersedes the Original Lease on condition that the proposed exemption is granted. The Current Lease is a triple-net lease for a term of 10 years. The Employer is obligated to pay all taxes levied against the Property, all utility charges, the cost of installing any fixtures and equipment, all maintenance and repair costs, and premiums for both liability and casualty insurance for the benefit of the PLan as an additional named insured. All trade fixtures and equipment installed by the Employer remain the Employer's property and may be removed by the Employer, who must repair any damage caused by such removal. The Employer has agreed to indemnify the Plan from all liabilities for personal injury or property damage occurring on the property and not caused by the Plan's negligence.

6. The Current Lease gives the Employer the option to extend the Current Lease for two additional terms of 10 years each. It requires a rental payment of $8,900 per month ($106,800 per year) for the first 3 years of the Current Lease. For every subsequent 3-year period, rental payments will be adjusted to reflect the fair rental value of the Property at the beginning of each such period as determined by a qualified (i.e., M.A.I.) appraiser who is not related, directly or indirectly, to the parties to the Current Lease. In no event, however, will the monthly rental payment be reduced below $8,900 per month. The Employer's Owners, each of whom owns half of the Employer, have guaranteed performance of all conditions of the Current Lease, including the payment of rent, by the Employer and have agreed to perform such conditions themselves if the Employer is unable to do so.

7. Article 19 of the Current Lease permits the Employer, under certain circumstances, to purchase the Property from the Plan for cash during the term of the Current Lease or any extension thereof, at a price offered to and accepted by the Plan under a bona fide offer (the Right of First Refusal). If such offer is not in the form of cash but in the form of any other valuable consideration, the Employer may exercise the Right of First Refusal by tendering the reasonable cash value of the other valuable consideration offered by the third party offer. The Employer may not exercise the Right of First Refusal unless the trustee or other independent fiduciary, having determined that the sale to the Employer is in the best interests of the Plan, approves of the sale.

8. Article 20 of the Current Lease gives the Employer an option to purchase the Property for cash (the Purchase Option) at any time during the term of the Current Lease and extensions thereof at a price equal to the Property's fair market value. The Purchase Option shall not be exercised unless the trustee or other independent fiduciary to the Plan, having determined that the sale to the Tenant is in the best interests of the Plan, approves the sale. To determine the fair market value of the Property, the Employer and the Plan shall each appoint an MAI appraiser (each at their own expense) who shall appoint a third MAI appraiser; all 3 MAI appraisers, working together, shall then detemine the Property's fair market value.

9. The Trustee states that in many respect the Current Lease is more favorable to the Plan and its participants and beneficiaries than other leases negotiated by the Trustee. For example, the Property is located in an area of Salt Lake City which has an excellent opportunity to appreciate because of inflation and demand for warehouse space. Additionally, rents are adjusted throughout the term of the Current Lease to generate a good return, according to the Trustee, on the Property's fair market value. Also, the Current Lease insures that any sale of the Property will be completed at its fair maket value. By diversifying approximatly 11% of the total Plan assets into real estate, the Trustee asserts that it is taking steps to protect the Plan participants and beneficiaries from stock and bond market fluctuations. For these reasons, the Trustee believes the Current Lease to be in the best interests of the Plan and its participants and beneficiaries.

10. The Trustee's investment personnel review the Plan's assets at least monthly. In addition, the real estate section of the Trustee's Trust Department take an active role in analyzing the Property as part of the Plan's entire portifolio. The Trustee's Investment Committee after reviewing the real estate section's suggestions, makes the final decision to hold or to sell any Plan asset (including the Property). The Trustee represents that diversification, investment return, safety and market conditions are some of the considerations which are reviewed before the final investment decision is made. The Trustee will monitor the Current Lease throughout its duration on behalf of the Plan, taking any appropriate actions to safeguard the interests of the Plan.

11. The Trustee explains that it has agreed to give the Employer the Right of First Refusal under Article 19 of the Current Lease as a necessary condition to attract good quality tenants and that such provision is appropriate and commercially acceptable in Salt Lake City. The Trustee represents further that the Property will not be offered for sale and the Employer would not be allowed to exercise the Right of First Refusal unless it is in the best interest of the Plan. Pursuant to the Trustee's standard policy, the Property would be appraised to determine its fair market value before it is offered for sale. In determining such fair market value, any reduction in value attributable to the Right of First Refusal and the Purchase Option will be disregarded. The Trustee states that the Employer would pay cash in the full amount of the sales price on the date of the sale. The Trustee also represents that all of the statements in this paragraph apply to the Purchase Option, as well as to the Right of First Refusal.

12. In summary, the applicant represents that the subject transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the current rental rate is within the range of fair market rental value of the Property as determined by a qualified appraiser unrelated to the Employer, the Employer's Owners, or their principals; (b) the rental rate will be adjusted every 3 years to reflect the fair rental value of the Property at the beginning of each such period as determined by an M.A.I. appraiser who is not related, directly or indirectly, to the parties to the Current Lease, but will never be less than the current rental rate; (c) the Current Lease does not require the Plan to pay any costs relating to the Property and requires the Employer to indemnify the Plan for certain liabilities relating to the Property; (d) the Employer will maintain both liability and casualty insurance, naming the Plan as an additional insured, with respect to the Property; (e) the Trustee, an independent fiduciary with respect to the Plan, represents that the Current Lease is in the best interests of the Plan and its participants and beneficiaries; (f) the Trustee will monitor the Current Lease throughout its duration on behalf of the Plan, taking any appropriate actions to safeguard the interests of the Plan; (g) neither the Right of First Refusal nor the Purchase Option may be exercised unless the Trustee determines that such exercise would be in the best interest of the Plan; (h) the Trustee represents that the Right of First Refusal and the Purchase Option are appropriate and commercially acceptable in Salt Lake City; and (i) if either the Right of First Refusal or the Purchase Option is exercised, the sales price (I) will not be less than the fair market value of the Property on the date of the sale—disregarding, in determining such fair market value, any reduction in value attributable to the Right of First Refusal or the Purchase Option, and (II) will be paid in cash in full on the date of the sale.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[4] Section 414(c)(2) of the Act provided a transitional exemption ending June 30, 1984 for certain leases meeting specified conditions. The Department expresses no opinion herein as to the applicability of section 414(c)(2) to the past leasing of the Property.

Armstrong Rubber Company Pension Plan (the Plan) Located in New Haven, Connecticut

[Application No. D-5568]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c) (2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b) (1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code shall not apply to the cash sale by the Plan of a $1,000,000 Series B note (the B Note) to Armstrong Rubber Company (the Employer), the sponsor of the Plan, provided that the sales price is not less than the fair market value of the B Note at the time the sale is consummated.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan. As of September 30, 1983, the Plan had 2,150 participants and net assets of $55,717,087. Chemical Bank (Chemical) was the trustee of the Plan from January 2, 1964 through September 30, 1982. Effective October 1, 1982, Manufacturers Hanover Trust Company became trustee of the Plan. However, Chemical retained investment management over the B Note. On October 1, 1983, Favia Hill and Associates, Inc. (Favia Hill), a wholly owned subsidiary of Chemical New York Corporation, a bank bolding company and an affiliate of Chemical became the investment manager for the B Note and has sole discretion with respect to any disposition of the B Note.

2. In 1970, the Employer constructed its corporate headquarters (the Building) on a parcel of land (the Land) it owned in New Haven, Connecticut. On February 28, 1973, Chemical Bank, the then trustee of the Plan, acting through Second New Haven Bank as its subtrustee (the Subtrustee), purchased the Land from the Employer for $1,000,000 in cash. Immediately following this purchase, the Subtrustee conveyed the Land to Long Wharf, Inc. (Long Wharf) in consideration for the B Note. Also on February 28, 1973, the Employer conveyed the Building to Long Wharf for $6,000,000 in cash. Long Wharf is a corporation all of whose shareholders are employees or partners of Goldman, Sachs and Company, investment bankers. Long Wharf's sole purpose is to act as an intermediary in the transaction.

3. Long Wharf raised the $6,000,000 it paid the Employer through the sale of notes (the Series A Notes). The Series A Notes mature on March 1, 2003 and yield 8⅛% interest with full amortization of principal over the 30 year period. The Series A Notes were sold to third party institutional investors for $6,000,000. The B Note matures on March 1, 2003 and yields 8⅛% interest plus partial amortization of principal over the 30 year period. The total quarterly payment is $20,687.07. The principal is amortized at the rate of % of 1% per year. At maturity, the scheduled unpaid principal balance of the B Note will be $812,493.82 At that time the Land will be deeded to the Plan in lieu of repayment of the remaining principal. Should the appraised value of the Land be less than $812,493.92, the difference will be paid to the Plan by the Employer pursuant to as collateral agreement (the Agreement) between the Subtrustee and the Employer.

4. Payment of principal and interest on the A Notes and the B Note (collectively, the Notes) is funded by a 43 year lease (the Lease) of the Land and the Building (collectively, the Property) dated February 28, 1973, between the Employer and Long Wharf. The rent during the initial 30 year term of the Lease is set so as to equal the amount required by Long Wharf to make its principal and interest payments. Upon maturity of the B Note, the Land reverts to the Plan and the Lease provides a formula for determining the rental payments for the remaining thirteen year term of the Lease. Upon the expiration of the Lease, the Building will revert to the Plan.

5. The Notes are secured by a Deed of Trust and Indenture of Mortgage (the Mortgage) from Long Wharf to First New Haven Bank (First New Haven, now known as Connecticut National Bank). At the closing, February 28, 1973, the Lease was assigned by Long Wharf to First New Haven as collateral security for the Mortgage and rental payments have been made directly to First New Haven which has then made all debt service payments. The applicant represents that on February 28, 1973, in order to be insulated against Connecticut taxes, Long Wharf conveyed the Property by quitclaim deed containing a non-merger provision to the Employer. The Employer expressly assumed and agreed to be bound by the Lease, the assignment of the Lease to First New Haven and the Mortgage (with the exception of the obligation to pay the principal and

interest due or to become due on the Notes). In addition, the Employer and the Subtrustee executed the Agreement and had it recorded. In the Agreement, the Employer again assumed and agreed to be bound by the Lease, the assignment of the Lease to First New Haven, the Mortgage (with the exception mentioned above), and also agreed that upon expiration or sooner termination of the Lease, it will convey the Building and any other improvements on the Land to the Plan.

6. The Employer now seeks to purchase the B Note from the Plan for its appraised value. The applicant submitted two appraisals, both of which establish the fair market value of the B Note by combining the present value of the income stream to be generated by the B Note and the present value of the Plan's reversionary interest in the Property, as of March 1, 2003. The applicant represents that the appraisers did not reduce their appraisals of the B Note as a result of the terms of the Lease between the years 2003 and 2016.

7. On June 30, 1984, Arthur B. Estrada, MAI determined that the present value of the income stream to be generated by the B Note was $614,444 and the present value of the Plan's reversionary interest in the Property was $2,346,719. Mr. Estrada concluded that the fair market value of the B Note as of June 30, 1984 was $2,960,000. Also on June 30, 1984, Norman R. Benedict, MAI determined that the present value of the income stream to be generated by the B Note was $578,708 and the present value of the Plan's reversionary interest in the Property was $1,521,364. Mr. Benedict concluded that the fair market value of the B Note as of June 30, 1984, was $2,100,000. Favia Hill, acting as independent fiduciary on behalf of the Plan, represents that the two appraisals will be updated as of the date of closing and that it will use the higher of the two appraisals to establish the value of the B Note. The updated appraisals will not be reduced as a result of the terms of the Lease between the years 2003 and 2016.

8. As mentioned in representation 1 above, Favia Hill, the Plan's investment manager with respect to the B Note, is a wholly owned subsidiary of Chemical New York Corporation which is an affiliate of Chemical. The applicant represents the following with respect to business relationships between the Employer and Chemical: (a) the average checking account balances for the period June 1, 1983 through May 31, 1984, that the Employer had with Chemical totaled $993,000 which was less than 1% of the checking account balances held by Chemical; (b) the average loan balances for the period June 1, 1983 through May 31, 1984, totaled $7,300,000 which was less than 1% of the average loan balances for all Chemical loans; (c) Chemical is the registrar and transfer agent for the Employer's stock; (d) Chemical is the trustee of the Employer's Sinking Fund Debentures due April 15, 1996 (as of July 1, 1984, the sinking fund balance was $14,999,000 and $1,350,000 is being paid into the sinking fund annually); (e) neither Chemical New York Corporation nor any of its affiliates owns any stock of the Employer for its own portfolio, and although Chemical is custodian for 65,202 shares of stock of the Employer, it does not have voting or investment authority over those shares; (f) the Employer does not own any shares of Chemical New York Corporation; and (g) no members of the boards of directors of Chemical New York Corporation and the Employer sit on both boards.

Finally, Chemical is the agent and major participant for a revolving credit and term loan agreement into which the Employer entered on June 15, 1984. The revolving credit period will end on approximately June 14, 1988 and the payback period is for an additional four year period beginning approximately June 15, 1988. Chemical will provide 46.67% of the credit under this agreement, and if the Employer utilizes all of the available credit, the credit extended by Chemical will be approximately 1% of its outstanding credit.

9. Favia Hill, acting as independent fiduciary on behalf of the Plan, represents that the proposed sale is prudent and in the best interest of the participants and beneficiaries of the Plan. Favia Hill further represents that it concluded that the proposed sale is as favorable to the Plan as could be obtained in arm's-length negotiations between totally unrelated parties and that the sale should occur as soon as practicable after taking into account several factors, including the following: (a) the MAI appraisals submitted to the Department; (b) concern about holding an investment which yields 8⅛% which is less than current market rates and does not provide liquidity and cash flow returns when compared to other real estate investments; (c) concern about being locked into an investment until the year 2003, where the investment is backed by real estate located in New Haven, Connecticut, without regard to changes in commercial real estate values in New Haven; and (d) the appraised value of the B Note is higher than the value of the B Note to a third party because it represents the fair market value of the Property without taking into account any diminution in value based upon the favorable lease terms between the years 2003 and 2016 which would result in a third party paying a lower value for the B Note. In addition, Favia Hill represents that it will review the value of the Property and the updated appraisals as of the date of the sale and it will complete the sale only if the sale is in the best interests of the Plan, its participants and beneficiaries as of that date.

10. In summary, the applicant represents that the proposed sale meets the statutory criteria of section 408(a) of the Act because (a) this is a one time transaction for cash; (b) the sales price will be determined by qualified, independent appraisers; and (c) Favia Hill, acting as independent fiduciary on behalf of the Plan has determined and will determine at the time of the sale, that the proposed transaction is in the best interests and protective of the Plan, its participants and beneficiaries.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Stamford Computer Group, Inc. Defined Benefit Pension Trust (the Plan) Located in Stamford Connecticut

[Application No. D-5599]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply for a period of five years from the date of an exemption grant to: (1) the purchase by the Plan of certain leases of computer equipment (the Leases) from Stamford Computer Group, Inc. (the Employer); and (2) the agreement by the Employer to indemnify the Plan against any loss relating to the Leases and also to repurchase any Leases that are in default in accordance with paragraph (C) below, provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. The acquisition of a Lease from the Employer shall not, immediately following the acquisition, cause the Plan to hold more than 25 percent of the

current value (as that term is defined in section 3(26) of the Act) of Plan assets in Leases sold by the Employer.

C. Upon default by the lessee on any payment due under a Lease, the Employer guarantees in writing the immediate payment of all remaining rental payments and all other amounts due and owing under the Lease. A Lease shall be deemed to be in default for purposes of this section, if a payment due under the terms and conditions of the Lease is past due for 10 days; or in the event the lessee shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors or a liquidating agent, offer a composition or extension to creditors, make a bulk sale; or in the event any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or of amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation, or dissolution shall be begun by or against the lessee; or in the event of appointment under any jurisdiction at law or in equity of any receiver of any property of the lessee; or in the event the condition of affairs of the lessee shall so change as to, in the opinion of the independent fiduciary (discussed below), impair its security or increase its credit risk.

D. The Plan receives adequate security for the property underlying the Lease. For purposes of this exemption, the term adequate security means that the property is secured by a perfected security interest in the property leased, so that, if there is a default on the Lease, and the security is foreclosed upon, or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan will experience no loss.

E. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee, and the proceeds from such insurance will be assigned to the Plan.

Temporary Nature of the Exemption: This exemption, if granted, will be temporary in nature and will expire 5 years after the date of grant with respect to the acquisition of Leases from the Employer.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 2 participants, Lawrence Goichman and his wife, Jennifer Goichman. Mr. Goichman is the sole shareholder of the Employer and is co-trustee of the Plan with Mrs. Goichman.[1] As of August 31, 1983, the Plan had net assets of $237,033.61.

2. The Employer is engaged in the business of purchasing and leasing IBM computer equipment. The Leases that the Plan proposes to purchase from the Employer will involve equipment which is leased to third parties. These Leases vary in length from 24 months to a maximum of 72 months, with an average length of 36 months, depending on the useful life of the equipment. The Leases will be sold to the Plan for cash. The Plan proposes to invest up to 25% of its assets in such Leases. The Leases are completely net to the Plan and similar Employer leases have been yielding a net return of approximately 13% per annum.

3. When the Employer leases a specific computer to a lessee, that lease is generally evidenced by four documents. The Lease Agreement (the Agreement) describes the type of equipment leased and the terms of the lease, including the monthly rental payments. The lessee's obligation to make rental payments is absolute and unconditional. The lessee is responsible for maintaining the equipment through a maintenance contract with the manufacturer of the equipment. The lessee can not assign, sublease or encumber the equipment. The lessee bears the risk of physical damage to or loss on destruction of the equipment, however caused. During the term of the lease, the lessee must keep in effect risk insurance on the equipment.

4. In addition to the Agreement, an Employer lease is also evidenced by a Delivery and Acceptance Certificate wherein the leasee certifies that the equipment described in the Agreement was satisfactorily installed and accepted as satisfactory in all respects. The Secretary's Certificate of Incumbency acknowledges the lessee's obligation under the Agreement and the ability of the signer to so bind the lessee. The Lessee's Acknowledgement acknowledges the Employer's right to assign the Agreement to a financing entity and consents to make the rental payments to the assignee absolutely and unconditionally, regardless of any termination of the lease and regardless of any defenses the lessee may have against the Employer. Any Lease which the Plan purchases shall be evidenced by the four above mentioned documents. It addition, the Employer will forward a Notice of Assignment of the Lease notifying the lessee that all payments under the Agreement are to be made to the Plan. The lessee shall acknowledge and return the Notice of Assignment of Lease.

5. The purchase price of a Lease will be based upon the retail price of the equipment being leased. In addition, no commissions will be paid to anyone as a result of the sale of Leases to the Plan. The rental for the Leases purchased by the Plan willl be calculated by the same method used to calculate the rental for the Employer's leases. Rentals will be comparable to what the Plan could obtain in a direct transaction with an unrelated third party. Title to the equipment does not pass to the Plan upon the purchase of a Lease. However, a UCC-1 Financing Statement will be file naming the lessee as the debtor, the Employer as the secured party and the Plan as the assignee of the secured party. This perfects the Plan's security interest in the leased equipment. In the event of default, if the security would be foreclosed upon, the applicant represents that the value and liquidity of the security will be such that it may reasonably be anticipated that loss of principal or interest will not result.

6. An indemnification agreement will be entered into between the Employer and the Plan under which, upon default by the lessee on any payment due under a Lease, the Employer agrees to indemnify the Plan against any loss resulting from such default (including repurchasing such Lease at a price equal to the remaining unpaid rental for the term of the Lease that would otherwise have been paid by the defaulting lessee). The agreement will provide that a Lease shall be deemed in default under the terms of the lease if: (1) Lessee fails to pay any installment payment due under the Lease within 10 days after the date such payment becomes due and payable; (2) a lessee defaults in the performance of any other term or condition of the Lease for a period of 10 days after written notice and demand to correct same; or (3) the lessee ceases doing business or becomes insolvent or bankrupt.

7. Edmund Pilla, CPA has agreed to serve as independent fiduciary on behalf of the Plan with respect to the proposed transactions. Mr. Pilla represents that he is a principal in the firm of Tackman, Pilla, Arnone & Company, P.C. and that his firm provides accounting services for the Employer, the Plan and Mr. Goichman individually. Mr. Pilla further represents that the income derived by his firm from the Employer, the Plan and Mr. Goichman is not in excess of 1% of the total income derived from all of the

[1] Since Mr. Goichman is the sole shareholder of the Employer and the only participants are Mr. and Mrs. Goichman, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

firm's clients. Mr. Pilla represents that he has over three years experience with investments by pension plans and with investments in computer leasing. Mr. Pilla further represents that he is familiar with the stringent rules of the Act governing prudent investments and that he was advised by counsel of the obligations and responsibilities as independent fiduciary of the Plan.

8. Mr. Pilla represents that as independent fiduciary acting on behalf of the Plan he will (a) be responsible for the selection of Leases to be acquired by the Plan; (b) review all proposed transactions in order to confirm in each case that the Plan is acquiring only "top quality" leases, e.g. leases with companies having top credit ratings and good prior leasing experience; (c) review lessee's credit application; (d) review lessee's financial condition; (e) review lessee's credit references and make a determination regarding appropriate credit limits; (f) determine the appropriate discount rate and purchase price for a Lease; and (g) monitor and enforce the terms of the transactions including the Employer's indemnification agreement.

9. Mr. Pilla represents that the Plan's purchase of Leases is in the best interest of the Plan, its participants and beneficiaries because: (a) the lessees will be solid and reputable companies; (b) the investment is safe and fully secured; (c) the Leases are negotiated at arm's length and guarantee and assured annual investment return to the Plan which is higher than the rate of return available in other investiments; and (d) there will be ample liquidity and diversification of assets.

10. The applicant represents that in the event that new participants enter the Plan, a new trust will be established to fund the benefits of the new participants. This action will be taken in order to assure that any new participant will not be prejudiced by the investment in the Leases.

11. In summary, the applicant represents that the proposed transactions meet the requirements of section 4975(c) (2) of the Code because: (a) the purchase of Leases will be limited to a five-year period and will be limited to 25% of Plan assets; (b) the decision to purchase a Lease will be made by Mr. Pilla acting as independent fiduciary on behalf of the Plan; (c) the Plan will have a perfected security interest in the equipment underlying the Lease; and (d) the Employer will repurchase any Lease in default, indemnifying the Plan against any loss in case of default.

Notice to Interested Persons

Because Mr. Goichman is the sole shareholder of the Employer and the Goichmans are the only participants in the plan, it has been determined that there is not need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Employee Retirement Plan of Doubleday & Company, Inc. and Associated Companies (the Plan) Located in New York City, New York

[Application No. D–5638]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continuation, beyond June 30, 1984, of a guaranty made to the Plan by Doubleday Broadcasting Company, Inc. (DBC), a party in interest with respect to the Plan, in order to secure the obligation of Christian Broadcasting Network (CBN), under a lease by the Plan to CBN, provided that the terms and conditions of such guaranty are at least as favorable to the Plan as those obtainable by the Plan in a similar transaction with an unrelated party.

Effective Date: If granted, the exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which had approximately 3,350 participants and net assets of approximately $53,436,543 as of June 30, 1984. The sponsor of the Plan is Doubleday & Company, Inc. (Doubleday) and certain affiliated companies, including DBC. Chemical Bank New York Trust Company (the Trustee) is the trustee of the Plan's assets pursuant to a trust agreement with Doubleday dated October 27, 1960, and Interfirst Bank Dallas, N.A. (the sub-Trustee), formerly First National Bank in Dallas, serves as a secondary trustee under a secondary trust agreement (the Secondary Trust Agreement) with the Trustee dated January 16, 1968. DBC and the Sub-Trustee are financially independent unrelated entities which have no common officers or directors and no contractual arrangements, formal or informal, between them.

2. Until January 23, 1968, DBC owned and occupied certain improved real property (the Property) located at 3900 Harry Hines Boulevard, Dallas, Texas, where it operated a television broadcasting facility known as Station KDTV. On January 23, 1968, DBC conveyed the Property to the Sub-Trustee for the Plan, and subsequently entered into a lease of the Property from the Sub-Trustee dated March 15, 1968. In November, 1973, CBN, an unrelated party, acquired Station KDTV and executed a new lease of the Property from the Sub-Trustee.[8] As a condition to permitting the Plan to enter into the new lease with CBN and releasing DBC from liability under its lease, the Sub-Trustee required DBC to guaranty CBN's obligations under the new lease between the Plan and CBN. For this reason, DBC executed a Surrender, Release and Lease Guaranty Agreement (the Guaranty Agreement) with the Sub-Trustee dated November 15, 1973. Under the Guaranty Agreement, DBC unconditionally guaranteed to the Sub-Trustee the full and punctual performance and observance by CBN of each term, covenant and condition of its lease, including any modification, renewal or extension therefore.[9] The sole consideration for DBC's guaranty under the Guaranty Agreement was the Sub-Trustee's agreement to cancel DBC's lease, to accept DBC's surrender of such lease and to enter into the new lease with CBN.

3. The Sub-Trustee is a national bank chartered in 1929 with resources in excess of $11 billion. The application states that the Sub-Trustee has regularly and frequently exercised discretion as a trustee or other fiduciary with respect to the assets and administration of employee benefit plans and is an experienced and qualified fiduciary fully familiar with its statutory duties, responsibilities and liabilities as a fiduciary under the Act. The Secondary Trust Agreement with the Trustee provides the Sub-Trustee with the power to own, hold and manage the Property for the Plan, and further provides that the Sub-Trustee has full authority to take an action on behalf of the Plan which it deems necessary to ensure the performance of, enforce and carry out any of the provisions of any existing or future leases of the Property.

4. Pursuant to this authority, the Sub-Trustee negotiated and executed the Guaranty Agreement with DBC and has continued to monitor and enforce its provisions on behalf of the Plan. The application states that the Sub-Trustee considers the Guaranty Agreement to be in the best interest of the Plan and its participants and beneficiaries because it secures CBN's duties under the lease and therefore serves to protect Plan assets. As of June 30, 1984, the fair market value of the Property with respect to which DBC unconditionally guaranteed the lessee's lease obligations, constituted less than 1% of the Plan's net assets. The lease to CBN provides for a term of twenty years, to expire in 1993, subject to certain extension and purchase options of the lessee.

5. The applicants state that they are concerned that DBC's guaranty of CBN's lease obligations to the Plan may constitute a prohibited extension of credit between the Plan and a party in interest with respect to the Plan after June 30, 1984, and therefore request relief, effective July 1, 1984, for the continuation of the guaranty pursuant to the Guaranty Agreement. The Sub-Trustee has approved the Guaranty Agreement, and will continue to monitor and enforce its terms.

6. In summary, the applicants represent that the transaction satisfies the criteria of section 408(a) of the Act because (a) the Sub-Trustee, as an independent fiduciary for the Plan, negotiated and executed the guaranty on the Plan's behalf; and (b) the Sub-Trustee has approved, monitored and enforced the guaranty and will continue to monitor and enforce the guaranty on the Plan's behalf.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

A.F. Abdullah, M.D., P.A. Pension Plan (the Plan) Located in Hagerstown, Maryland

[Application No. D–5678]

Proposed Exemption

The Department is considering an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed borrowing by the Plan of the maximum loan values of life insurance policies held by the Plan on the lives of Plan participants, provided that the terms and conditions of such loans are at least as favorable to the Plan as those it could obtain from an unrelated party.

Summary of Facts and Representations

1. The Plan covers four participants and, as of May 1, 1984, has assets totalling $342,886.85. The trustee of the Plan (the Trustee) is Hagerstown Trust Company. Dr. A. Abdullah (the Administrator) is the administrator of the Plan. John Hancock Mutual Life Insurance Company (the Insurer) is the issuer of the life insurance policies in question and also provides services to the Plan. The Insurer does not serve in the capacity of a fiduciary to the Plan with respect to the proposed loans, according to the Trustee.

2. The proposed loans, one for each participant, will total $30,662.78 and will bear interest, payable yearly, at the rate of 8.0% per year. There is no repayment schedule for the principal amount of each proposed loan. Each proposed loan matures on the death of the participant or at the election of the Trustee to pay the loan. All loan proceeds will be invested in a group deferred annuity contract yielding approximately 13⅝% per year.

3. Upon the death or retirement of a participant for whom such an annuity was purchased with such loan proceeds, there would be a partial surrender of the group annuity contract, the loan from the life insurance policy insuring such participant would be repaid, and the participant or beneficiary would receive the full face amount of the life insurance policy plus allocations from a side fund held by the Trustee as part of the Plan's benefits. It is represented that the terms and conditions of the proposed loans are the same as those of similar policy loans made by the Insurer to other policy holders.

4. The Trustee made the decision to borrow on these policies after consulting with the Administrator. The Trustee states that the proposed loans will be administratively feasible as policy loans involve nominal paperwork and are simple transactions, and that the proposed loans will benefit and protect plan participants and beneficiaries by producing a return in excess of the interest payable on the proposed loans, thereby providing increased benefits to participants in the Plan. The Trustee represents that any loans for future participants in the Plan will be made under the same terms and conditions as those of the proposed loans for the present participants in the Plan.

5. In summary, the Trustee represents that the proposed loans meet the exemptive criteria provided by section 408(a) of the Act (a) for the reasons stated in 4, above; (b) because the loan terms and conditions are the same as those of similar policy loans made by the Insurer to other policy holders; and (c) the decision to make the proposed loans will be made by the Trustee, who has determined that the transactions are appropriate for the Plan.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

J. Michael Pisias, Jr., a Professional Corporation Pension Plan Located in San Francisco, California

[Application No. D–5679]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of a limited partnership interest (the Interest) in the Western Mud Co., Limited (the Partnership) to J. Michael Pisias, Jr., the trustee of the Plan, provided that the sales price is no less than the fair market value of the Interest at the time the sale is consummated.[10]

Summary of Facts and Representations

1. The Plan is a defined benefit plan with one participant, J. Michael Pisias. As of February 28, 1984, the Plan had net assets of $120,626. Mr. Pisias is engaged in the practice of law.

2. Among the assets of the Plan is the Interest in the Partnership. The

[8] In this proposed exemption the Department is not proposing exemptive relief for the lease by the Plan to CBN, nor is the Department expressing any opinion as to whether the lease is within the scope of any of the provisions of Part 4 of Title I of the Act.

[9] The Sub-Trustee represents that the Guaranty Agreement was exempted until June 30, 1984 by section 414(c)(1) of the Act. The Department expresses no opinion as to whether the Guaranty Agreement met the requirements of section 414(c)(1) of the Act.

[10] Since Mr. Pisias is the sole shareholder of J. Michael Pisias, Jr., A Professional Corporation (the Employer), the Plan sponsor, and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

Partnership which is located in Elk City, Oklahoma, manufactures a special mud used in drilling natural gas and oil wells. The Plan purchased its Interest in the Partnership on September 13, 1982, from Capital Concepts Investment Corp. (Capital), a party unrelated with respect to the Plan. Mr. Pisias represents that the Plan purchased the Interest after he was introduced to James H. Hunt III (Mr. Hunt), Senior Financial Advisory to Capital. Mr. Pisias further represents that, except in connection with the Partnership, he has no business relationship with any of the general partners. Besides Mr. Hunt, and Beverly Igoe his personal and corporate accountant, Mr. Pisias states that he does not have any knowledge as to the identities of any other limited partners.

3. The original purchase price for the Interest was $46,875, including an initial cash contribution of $12,500; an interest free promissory note (the Note) by the Plan to the Partnership in the sum of $18,750 payable in three installments of $6,250 each and due on June 1, 1983, June 1, 1984 and June 1, 1985; and an assumption agreement (the Agreement) in the amount of $15,625 representing the Plan's proportionate share of the Partnership's debt to the Commerce Bank. Mr. Pisias represents that when he purchased the Interest on behalf of the Plan he was informed that the Agreement would never be called and that the cash flow of the Partnership was so high that the Plan would probably not need to make the three $6,250 contributions required under the Note. However, the Partnership's cash flow was insufficient to alleviate the Plan from making the $6,250 contributions due in June, 1983 and June, 1984. As of September 14, 1984, the Plan's total cash expenditure with respect to the acquisition and holding of the Interest was $25,000. The Plan has paid no brokerage commissions or any other fees with respect to the acquisition or holding of the interests. The Partnership has used a portion of the Plan's capital contributions to reduce the Plan's debt liability under the Agreement. As of July 30, 1984, the Plan's remaining debt under the Agreement was $4,418.75 which accrues interest at Commerce Bank prime plus 1½% per annum.

4. Mr. Pisias will purchase the Interest from the Plan for cash at the higher of its fair market value or the total cash expenditure of the Plan in connection with the acquisition and holding of the Interest. Mr. Hunt who is currently a Vice President of Winthrop Securities Co., Inc. and was previously a Senior Financial Advisor to Capital has appraised the Interest and determined that the fair market value of the Interest on September 24, 1984, was $6,250. Mr. Hunt has an MBA in Economics and represents that he has 13 years of experience in the securities field and 12 years of experience in the banking field. Mr. Hunt further represents that he is a limited partner of the Partnership and that he is familiar with the operations of the Partnership. In addition, Mr. Hunt represents that he concurs with the analysis of the general partners of the Partnership which is as follows: (a) due to the severely depressed conditions in and around Elk City, Oklahoma, the assets currently held by the Partnership have a value of approximately 25% of their original cost; (b) the company will continue to generate losses for at least three more years; (c) the type of equipment owned by the Partnership has glutted the market by virtue of repossession and default, causing a large drop in value; and (d) the present mortgage on the equipment exceeds the value of the equipment. The Plan will incur no fees in connection with the sale.

5. In summary, the applicant represents that the proposed sale meets the statutory criteria of section 408(a) of the Act because (a) this is a one time transaction for cash; (b) the Plan will incur no expenses in connection with the sale; (c) the fair market value of the Interest is only 25% of the amount expended by the Plan in connection with the acquisition and holding of the Interest but the Plan will not incur a loss on the sale; and (d) the general partners of the Partnership anticipate that the Partnership will continue to generate losses for at least three more years.

Notice to Interested Persons: Because Mr. Pisias is the sole shareholder of the Employer and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of the proposed exemption.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Rumph Chiropractic Clinic, P.C. Employees' Pension Plan and Trust (the Plan) Located in Waterford, Michigan

[Application No. D–5687]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of an unimproved parcel of real property (the Property) by the Plan to a partnership, as described herein, which will be a party in interest with respect to the Plan, provided that the sales price of the Property is not less than its fair market value at the time the sale is consummated.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 5 participants. Mr. Paul A. Rumph (Mr. Rumph) is the sole shareholder and officer of Rumph Chiropractive Clinic, P.C., the sponsor of the Plan, and serves as the trustee of the Plan. As of September 30, 1983, the Plan has total assets of $105,533.

2. On September 23, 1977, the Plan purchased the Property from Weinberger & Wilsek, an unrelated party for $20,000. The Property consists of .74 acres of vacant land and is located in the Waterford Township, Oakland County, Michigan. The Property was purchased pursuant to a land sales contract providing that the Plan make a down payment of $500 and pay the balance of the purchase price with interest at 8½% per annum in seven annual payments. Payments on the land have been made in full and the Plan currently owns the Property free and clear of any debt.[11] Since the date of purchase the Plan has paid real estate taxes with respect to the Property totalling approximately $943.00.

On January 1, 1977, Mr. Rumph and his wife purchased a parcel of property which is located adjacent (the Adjacent Parcel) to the Property. The Adjacent Parcel currently has approximately 8,400 square feet of retail space and is leased, in part, to the Plan sponsor.

3. The applicant represents that there has been interest in the construction and lease of new retail space in the area of the properties, and that construction of new space on the Property would provide approximately 4,100 spare feet of additional retail space. The applicant therefore seeks an exemption for the Plan to sell the Property to a developer which will be a partnership in which Mr. Rumph will have an interest. The exact composition of the Partnership is not known at this time pending approval of this exemption request.

4. Mr. Robert R. Butcher, ASA, an independent appraiser located in Madison Heights, Michigan, appraised the Property and determined that, as of June 26, 1984, it had a fair market value of $40,000. Mr. Butcher then specifically evaluated the value of the Property if sold to an adjoining owner, and determined that the Property would have an added increment of value to the owner of 19%, which would cause the final sales price to be $48,000.

5. The Plan proposes to sell the Property for cash at its full appraised value of $48,000 provided that this amount is not less than its fair market value on the date of sale. The Plan will not pay any commissions or expenses with regard to the sale of the Property.

6. The Michigan National Bank of Detroit (the Bank) has been appointed to serve as the independent fiduciary for the Plan with respect to the proposed sale of the Property. The Bank acknowledges its duties, responsibilities, and liabilities as a fiduciary for the Plan with respect to the Property. The Bank is independent of and unrelated to the Plan sponsor and Mr. Rumph except for certain depository relationships which represent less than .0013% of its total deposits and loans which represent less than .0045% of its total loans. The Bank has completely reviewed all relevant documents involving the proposed sale, including the Plan's financial statements and the appraisal, and has determined that the sale of the Property at this time is in the best interests of the Plan and their participants and beneficiaries. In this regard the Bank states that the Property's value represents at least 34% of the Plan's assets and this is an undue concentration of the Plan's assets in a single, non-income producing asset which is not readily marketable. The Bank also represents that the sale of the Property would result in a substantial return on investment to the Plan. The Bank further represents that a cash sale of the Property would enable the Plan to reinvest the proceeds in diversified, readily marketable income-producing assets which will be more beneficial to the Plan than the continued investment in real estate.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the sale will be a one-time transaction for cash; (b) the Bank will serve as the fiduciary for the Plan with respect to the Property and has determined that the sale of the Property will be in the best interests of the Plan; (c) the Plan will receive the fair market value of the Property as determined by an independent appraiser; and (d) the Plan will not incur any expenses with respect to the sale.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Sheboygan Oral and Maxillofacial Associates, Ltd. Defined Contribution Plan (the Plan) Located in Sheboygan, Wisconsin

[Application No. D–5756]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the individually directed account (the Account) of Richard F. Morrissey (Dr. Morrissey) in the Plan, of five units in the Limited Partnership of Doctors Park Investment Club for cash in the amount of $34,398.45 to Dr. Morrissey, provided that such amount is not less than the fair market value of the units on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which had six participants and net assets of approximately $985,859 as of July 31, 1983. The trustees of the Plan (the Trustees) are John J. Keller, D.D.S. and Dr. Morrissey. A provision in the Plan permits participants to direct the Trustees with respect to the investment of all or a portion of the assets in their accounts.

2. The Account had assets of approximately $833,603 on July 31, 1983. Pursuant to the Plan provision permitting individually directed investments, Dr. Morrissey directed the Trustees of the Plan to invest $50,000 of the assets in the Account in five units (at $10,000 each) in the Limited Partnership of Doctors Park Investment Club (the Partnership) on February 1, 1981. The Account has incurred no additional expenses in connection with the holding of the Partnership units. The Partnership was formed on February 1, 1981 for the purpose of acquiring a portfolio of numismatic materials, i.e., collectible coins. Each limited partner contributed at least $30,000 in cash for three units of $10,000 per unit. The Partnership currently consists of thirty-two units.

3. The applicant represents that as of July 31, 1983 the value of the Partnership units was $7,500, or $37,500 for the five units held by the Account. Other than approximately $2,000 in working capital, the only asset of the Partnership is its portfolio of collectible coins. The Partnership has no outstanding liabilities. The application states that the fair market value of the Partnership's portfolio plus the $2,000 in working capital divided by the thirty-two Partnership units represents the fair market value per unit. The Partnership's portfolio was appraised on August 30, 1984 by Mr. Maurice Rosen, president of Numismatic Counseling, Inc., 1975 Hempstead Turnpike, East Meadow, New York, who determined that the fair market value of the portfolio as of July 31, 1984 was $218,150. Mr. Rosen is independent of the Partnership and Dr. Morrissey and has been appraising coins since 1968. Mr. Rosen states that he based his determination of value on his own expertise and experience, current market conditions and data provided in *Numismatic News* and *Coin Magazine*. Based upon Mr. Rosen's appraisal of the Partnership's portfolio and the Partnership's approximately $2,000 of working capital, the Partnership units each had a fair market value of approximately $6,879.69 as of July 31, 1984.

4. Dr. Morrissey proposes to purchase the units from the Account for cash in the amount of $6,879.69 per unit, for a total of $34,398.45, provided that such amount is not less than the fair market value of the units on the date of sale. No Commissions or fees will be paid by the Account with respect to the sale and no accounts of any other participants in the Plan will be affected by the sale. Dr. Morrissey represents that the sale of the Partnership units is in the best interest of the Account and because they have declined in value since their purchase by the Account.

5. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because: (a) this is a one-time transaction for cash; (b) the Account will incur no expenses in connection with the sale; (c) the Account will receive the fair market value of the Partnership units as based upon an appraisal by a qualified independent appraiser; and (d) the only person to be affected by the transaction is Dr.

[11] In this proposed exemption the Department expresses no opinion as to whether the Plan's acquisition of the Property violated any provision of Part 4 of Title I of the Act.

Morrissey and he desires that the transaction be consummated.

Notice to Interested Persons: Since the only assets of the Plan involved in the proposed transaction are those of Dr. Morrissey's Account, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests are due 30 days after the date of publication in the Federal Register.

For Further Information Contact: Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a) (1) (B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975 (c) (2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 29th day of November, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84-31053 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-29-M

Pension Fund Investments and Corporate Governance; Hearings

Pursuant to section 513 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1143, public hearings on pension fund investments and corporate governance will be held by the Office of Pension and Welfare Benefit Programs beginning at 9:30 a.m. on Wednesday and Thursday, January 9 and 10, 1985 in the Terrace Room, Plaza Hotel, 768 Fifth Avenue, New York, New York and at 9:30 a.m. Monday and Tuesday, January 14 and 15, 1985 in the Washington Room, Holiday Inn, 760 Kearny Street, San Francisco, California.

The hearing will be concentrated on two subjects. The hearing on the first day in each city will concentrate on the investment performance of pension funds. It will explore various aspects of pension fund performance. Among the questions to be explored are the following:

1. What has been the historic performance of pension funds?

2. How has this performance compared to the performance of other institutional investors and indices (e.g. mutual funds, U.S. Treasury bills, S&P 500, consumer price index)?

3. To the extent there is any difference between rates of return earned by pension funds and other investors, what may explain the difference?

4. Is there any reason to believe in light of overall rate of return experience over the past 20 years, that an active investment policy for pensions has produced superior results to a passive (index fund) investment policy, after management and turnover costs are netted-out? Is there any evidence of a difference in results for pension plans actively managed by in-house managers from results of pension plans actively managed by outside investment managers?

5. What is a legitimate target rate of return for a pension fund? Why?

6. What is the relationship of investment performance of pension funds to participant benefits?

The second day in each city will be devoted to issues relating to the role of corporate pension funds with respect to issues of corporate governance. The Office of Pension and Welfare Benefit Programs (OPWBP) wants to develop a record on the experience of those pension funds that have been actively involved in corporate governance issues, including especially:

1. Voting on proposals of management to discourage takeovers (such as "fair price" provisions, "super majority" provisions, and the creation of new classes of stock).

2. Initiation or participation in shareholder initiatives relating to corporate governance (such as initiatives relating to executive compensation, "targeted buybacks," or requirements for committees composed of outside directors to consider merger offers).

3. Voting on other matters which may be brought before corporate shareholders.

OPWBP is especially interested in testimony concerning the basis for those investment managers' decision to take an active role in voting shares, the basis for selecting the proposals or initiatives to vote on, the process for determining how to vote in each particular case, the difference (if any) in voting shares held by a pension fund versus shares held in other fiduciary capacities, and decisions to take action beyond voting, such as bringing or joining in a lawsuit against management.

OPWBP emphasizes that its purpose is to explore the experience of those managers that have taken a role with respect to corporate governance.

Individuals, or representatives of organizations wishing to appear at the hearing on any of the above issues should submit written requests to be heard, copies of their statements, and an outline indicating the time to be allocated to each topic, on or before December 28, 1984 to Edward F. Lysczek, Office of the Administrator, U.S. Department of Labor, Room S-4522, Third and Constitution Avenue, NW., Washington, D.C. 20210. Telephone number (202) 523-8753.

Individuals or organizations wishing to submit written statements on any aspect of the hearing should send 10 copies to Mr. Lysczek at the above address. Papers will be included in the record of the meeting if received on or before January 7, 1985.

The Department will prepare an agenda indicating the order of presentation of oral comments and the time allotted to each person making oral comments. In the absence of special circumstances, each commentator will be allotted 10 minutes in which to complete his or her presentation. Information about the agenda may be obtained on or after January 4, 1985, by telephoning Mr. Edward Lysczek at (202) 523-8753. This is not a toll-free number. Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments should be prepared to answer questions regarding their comments.

A written record of the hearing will be made.

Signed at Washington, D.C., this 28th day of November, 1984.

Robert A.G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84-31579 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by December 20, 1984.

ADDRESSES: Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: Each entry issued by the Endowment contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Title: International Panel Exhibition Project Description
Form Number: N/A
Frequency of Collection: Annually
Respondents: Non Profit Institutions
Use: The National Endowment for the Arts, the National Endowment for the Humanities and USIA cooperate in selecting cultural programming including exhibitions for overseas presentation by USIA. The collection of information enables an International Panel to determine the suitability of exhibitions for international touring.
Estimated Number of Respondents: 200
Estimated Hours for Respondents to Provide Information: 200

Peter J. Basso,

Director of Administration, National Endowment for the Arts.

[FR Doc. 84-31615 Filed 12-3-84; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On September 28, 1984 and October 16, 1984, the National Science Foundation published a notice in the Federal Register of permit applications received. On November 21, 1984 permits were issued to:

Jeanette Thomas
Philip R. Kyle.

Charles, E. Myers,

Permit Office, Division of Polar Progams.

[FR Doc. 84-31667 Filed 12-3-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revison or extension: Extension.

2. The title of the information collection: 10 CFR Part 140, Financial Protection Requirements and Indemnity Agreements.

3. The form number, if applicable. Not applicable.

4. How often the collection is required: Per occurrence (non-recurring) or annually for certain subsections.

5. Who will be required to ask to report: All licensees subject to Price-Anderson liability and financial protection requirements.

6. An estimate of the number of responses: 136.

7. An indication of the total number of hours needed to complete the requirement or request: 940 hours.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The information to be collected is needed to provide appropriate procedures and requirements for determining the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

Approved: NRC Clearance Officer is R. Stephen Scott, (301) 492-8585. Dated at Bethesda, Maryland, this 28th day of November 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84-31645 Filed 12-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

The Connecticut Light and Power Co., Western Massachusetts Electric Co., and Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-21 issued to Connecticut Light and Power Company, Western Massachusetts Electric Company and Northeast Nuclear Energy Company (the licensees), for operation of the Millstone Nuclear Power Plant, Unit 1 located in New London County, Connecticut.

The amendment would change the March 14, 1983 Order confirming licensee commitments on Post-TMI related issues for the Millstone Nuclear Power Plant, Unit 1 relating to the completion data of the Control Room Habitability modifications in accordance with the licensees' application for amendment dated November 7, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

By letter dated December 28, 1983, Northeast Nuclear Energy Company (NNECO) proposed that the NRC grant deferral of several NRC-required modifications for the purpose of conducting an integrated review of those requirements and other ongoing projects. One of the specific projects for which deferral was requested was NUREG-0737 (Clarification of TMI Action Plan Requirements) Item III.D.3.4, Control Room Habitability. The purpose of this integrated review was to reassess the safety significance of planned modifications and establish long-term implementation schedules for all plant backfits that would provide improved resource management and result in plant modifications being implemented on a schedule commensurate with their overall significance. The December 28, 1983 submittal also provided a basis for requesting deferral from the implementation of modifications associated with Item III.D.3.4, and provided justification for continued operation in the interim.

By letter dated April 5, 1983, the NRC staff concluded that deferral of the Control Room Habitability modifications was justified and acceptable, and informed NNECO that a request for a license amendment to modify the completion date contained in the Confirmatory Order would be required. NNECO's November 7, 1984 submittal requested a proposed amendment that would remove the required completion date for Item III.D.3.4 of December 31, 1984 and replace it with "To Be determined." The proposed change would also indicate that this item is no longer considered part of the Confirmatory Order. The completion date for the modifications will be developed in conjunction with the Integrated Safety Assessment Program (ISAP) which is scheduled to be completed by November, 1985, for the Millstone, Unit 1 Plant. At the completion of ISAP a living schedule will be developed which will be incorporated into the license by an amendment. If during the course of the review the staff determines that a more expeditious schedule is needed for a particular item or items, those schedules will be appropriately modified.

NNECO has reviewed the proposed change and concluded that it does not involve a significant hazards consideration. The basis for this conclusion is that the three criteria for 10 CFR 50.92(c) are not compromised. Their determination that there is no significant hazards consideration is based on the fact that: (1) Deferral of installation of upgraded control room habitability systems will have no impact on existing safety analyses, (2) the plant will continue to operate with the margin of safety as defined in the original FSAR, and (3) the control room operators can be adequately protected against the effects of toxic gases by isolating the control room and using self-contained breathing apparatus and the effects of radioactive gases by maintaining doses within the guidelines of 10 CFR 50 Appendix A, General Design Criterion 19, and therefore the plant can be safely shutdown from the control room under accident conditions.

In addition, NNECO maintains that an evaluation of the examples provided in 48 FR 14870 of amendment requests likely involving no significant hazards consideration reveals that the intent of example (iv) is applicable to this situation. NNECO states that since the staff documented its conclusion that deferral of the subject modifications was justified and acceptable, the acceptability of relief has been established in prior reviews by both NNECO and the NRC The applicability of example (iv), coupled with the facts discussed above, forms the basis for NNECO's conclusion that no significant hazards considerations are involved.

Based on the review of NNECO's determination, the NRC staff proposes to determine that the requested action does not constitute a significant hazards condition.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By January 3, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-fee telephone call to Western Union at (800) 325-6000 [in Missouri (800) 342-6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment and NRC's letter and Safety Evaluation dated April 5, 1984 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 29th day of November 1984.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84-31640 Filed 12-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The amendment would modify the March 14, 1983 Order confirming licensee commitments on Post-TMI related issues for the Haddam Neck Plant relating to the completion date of the Control Room Habitability modifications in accordance with the licensee's application for amendment dated November 7, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

By letter dated December 29, 1983, Connecticut Yankee Atomic Power Company (CYAPCO) proposed that the NRC grant deferral of several NRC-required modifications for the purpose of conducting an integrated review of

those requirements and other ongoing projects. One of the specific projects for which deferral was requested was NUREG–0737 (Clarification of TMI Action Plan Requirements) Item III.D.3.4, Control Room Habitability. The purpose of this integrated review was to reassess the safety significance of planned modifications and establish long-term implementation schedules for all plant backfits that would provide improved resource management and result in plant modifications being implemented on a schedule commensurate with their overall significance. The December 28, 1983 submittal also provided a basis for requesting deferral from the implementation of modifications associated with Item III.D.3.4 and provided justification for continued operation in the interim.

By letter dated April 5, 1984, the NRC staff concluded that deferral of the Control Room Habitability modifications was justified and acceptable, and informed CYAPCO that a request for a license amendment to modify the completion date contained in the Confirmatory Order would be required. The licensee's November 7, 1984 submittal requested a proposed amendment that would remove the required completion date for Item III.D.3.4 of December 31, 1984 and replace it with "To Be Determined." The proposed change would also indicate that this item is no longer considered part of the Confirmatory Order. The completion date for the modifications will be developed in conjunction with the Integrated Safety Assessment Program (ISAP) which is scheduled to be completed by November, 1986, for the Haddam Neck Plant. At the completion of ISAP a "living schedule" will be developed which will be incorporated into the license by an amendment. If during the course of the review the staff determines that a more expeditious schedule is needed for a particular item or items, those schedules will be appropriately modified.

CYAPCO has reviewed the proposed change and concluded that it does not involve a significant hazards consideration. The licensee's basis for this conclusion is that the three criteria for 10 CFR 50.92(c) are not compromised. This determination that there is no significant hazards consideration is based on the fact that: (1) Deferral of installation of upgraded control room habitability systems will have no impact on existing safety analyses, (2) the plant will continue to operate with the margin of safety as defined in the original FSAR, and (3) the control room operators can be adequately protected against the effects of toxic gases as shown by previous analysis and the effects of radioactive gases by maintaining doses within the guidelines of 10 CFR 50 Appendix A, General Design Criterion 19, and therefore the plant can be safely shutdown from the control room under accident conditions.

In addition, the licensee maintains that an evaluation of the examples provided in 48 FR 14870 of amendment requests likely involving no significant hazards considerations reveals that the intent of example (iv) is applicable to this situation. The licensee states that since the staff documented its conclusion that deferral of the subject modifications was justified and acceptable, the acceptability of relief has been established in prior reviews by both CYAPCO and the NRC. The applicability of example (iv), coupled with the facts discussed above, forms the basis for CYAPCO's conclusion that no significant hazards considerations are involved.

Based on the review of the licensee's determination the NRC staff proposes to determine that the requested action does not constitute a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By January 3, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies those requirement with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 [in Missouri (800) 343–6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski: petitioner's name and telephone; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitoner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment and NRC's letter and Safety Evaluation dated April 5, 1984 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland, this 29th day of November 1984.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84–31637 Filed 12–3–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket: 30–19532; License: 11–19921–01; EA 84–18]

Inspection and Testing, Inc.; Order Revoking License

Inspection & Testing, Inc., ATTN: T. L. Finkenbinder, President, 4990 Valenty Road, Chubbuck, Idaho (Licensee) is the holder of License 11–19921–01 (license) issued by the Nuclear Regulatory Commission (NRC). License 11–19921–01 authorizes the possession and use of byproduct materials for industrial radiography and is due to expire February 28, 1987.

II

On April 14, 1984 the Commission issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $4,800.00 to the licensee for violations of NRC requirements in the conduct of radiographic field operations which resulted in a personnel overexposure.

The licensee responded on April 23, 1984 to the Notice of Violation and Proposed Imposition of Civil Penalties requesting that the civil penalties be mitigated due to the severe financial impact it would have on the state of its business and its ability to survive. The licensee indicated that it was seriously considering bankruptcy. As a result, the proposed civil penalties were reduced to $1,000.00 and an Order imposing the penalties was issued on July 6, 1984.

Subsequently, the licensee indicated that bankruptcy proceedings would be commenced shortly and that he expected repossession of his assets to begin within a few days.

By Order dated August 31, 1984 the license was suspended, effective immediately, and the licensee was given an opportunity to show cause why the license should not be revoked. As described in that Order, the Commission took these actions on the basis of the licensee's failure to pay the civil penalties imposed by the NRC Order issued on July 6, 1984, and because of NRC concerns as to whether the license had sufficient resources to properly safeguard the licensed material until an authorized transfer could be made.

In accordance with the August 31, 1984 Order, the licensee was required, among other things, to transfer within 7 days of the issuance of the Order all radioactive material within its possession to a person authorized to possess such material. By letter dated October 19, 1984 the licensee notified the NRC that such a transfer had been made to the licensee's state of Idaho License IDA–193.

The Order also provided the licensee opportunity to file a written answer within 25 days of the date of the Order, and stated that, upon the licensee's failure to file an answer within the specified time, the Director, Office of Inspection and Enforcement, would issue a subsequent Order, without further notice, revoking the license. No answer was filed to show why the license should not be revoked. Because the circumstances described in the Order dated August 31, 1984, would warrant revocation of a license and the license has not demonstrated, though given an opportunity to do so, why its license should not be revoked, I have determined that Byproduct Material License 11–19921–01 should be revoked.

III

In view of the above, it is hereby ordered, pursuant to Sections 81, 161(b), 186 of the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR Parts 2 and 30, that:

Byproduct Material License 11–19921–01 is revoked.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 27th day of November 1984.

For the Nuclear Regulatory Commission

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 84–31638 Filed 12–3–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-352-OL, 50-353-OL; ASLBP No. 81-485-07-OL]

Philadelphia Electric Co.; Establishing an Additional Limited Appearance Session in the Limerick Area

Atomic Safety and Licensing Board: before Administrative Judges: Helen F. Hoyt, Chairperson, Dr. Richard F. Cole, Dr. Jerry Harbour. In the matter of Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2).

November 27, 1984.

In the limited appearance session of this Board on November 15 and 16, 1984, a number of persons who requested time to make a statement to this Board were not heard because time allotted for the session expired before they could be called. The Board, therefore, has decided to schedule an additional session to be held on December 13, 1984 (Thursday) between the hours of 6:00 p.m. (e.s.t.) and 10:00 p.m. (e.s.t.) at the Stowe Fire Company, Vine and Rice Streets, Stowe, Pennsylvania 19464. The following procedures will be in force:

1. 10 CFR 2.715(a) provides that:

A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making oral or written statement of his position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but he may not otherwise participate in the proceeding.

The subject of this limited appearance session is offsite emergency planning. This Board is presently conducting evidentiary hearings in Philadelphia, Pennsylvania on the issues of offsite emergency planning.

2. The limited appearance permits the making of a statement (oral or written) of one's views of the issues which will become a part of the record of the proceedings. However, the statement is not evidence; but it may serve to alert the Board and parties to areas in which evidence may need to be adduced.

3. Persons who have not made a limited appearance on this record will be accorded priority. The Board has retained a register of those persons who did not make an appearance on November 15 and 16, 1984 because of insufficient time. Those persons on the register will be called before persons registering on the evening of the session on December 13, 1984.

4. For those persons wishing to make written statements, the address is: Judge Helen F. Hoyt, Chairperson, Atomic Safety and Licensing Board (Limerick), U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

5. The limited appearance session at Stowe is a federal judicial proceeding and will be conducted as if it were being held in a courtroom. No signs or demonstrations will be permitted in the hearing room. Cameras will be permitted, but only in fixed positions and only with available lighting.

Dated at Bethesda, Maryland, this 27th day of November, 1984.

For the Atomic Safety and Licensing Board.

Helen F. Hoyt,

Chairperson, Administrative Judge.

[FR Doc. 84-31642 Filed 12-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344 OLA (SFP Amendment)]

Portland General Electric Co., et al. (Trojan Nuclear Plant); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this spent fuel pool amendment proceeding:

Thomas S. Moore, Chairman
Gary J. Edles
Dr. Reginald L. Gotchy.

Dated: November 28, 1984.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 84-331639 Filed 12-3-84; 8:45 am]

BILLING CODE 1505-01-M

[Docket No. 50-260]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.48(c)(4) to the Tennessee Valley Authority (TVA/the licensee), for the Browns Ferry Nuclear Plant, Unit 2 located in Limestone County, Alabama.

Environmental Assessment

Identification of Proposed Action

The exemption would grant the licensee a schedular deferment from the provisions of Appendix R, Section III.G, fire protection of the equipment used for safe shutdown capability, from the current cycle 5 refueling outage to the end of the cycle 6 refueling outage. The exemption is responsive to the licensee's application for exemption dated June 5, 1984.

The Need for the Proposed Action

Appendix R, Section III.G requires a licensee authorized to operate a nuclear power reactor to provide fire protection for equipment used for safe shutdown by means of separation and barriers or provide alternative safe shutdown capability. The schedular requirements of 10 CFR 50.48(c)(4) call for the implementation of modifications before startup after the earliest of the following events commencing 180 days after Commission approval:

(1) The first refueling outage;

(2) Another planned outage that lasts for at least 60 days; or

(3) An unplanned outage that lasts for at least 120 days.

In a submittal dated June 5, 1984, the licensee requested that the implementation schedule for the proposed fire protection modification at Browns Ferry be extended in accordance with the proposed integrated schedule for plant modifications (TVA letter dated August 14, 1984). The integrated schedule calls for the modifications to be completed during the cycle 6 outage which is one cycle later than required by 10 CFR 50.48(c)(4), based on Commission approval of proposed modifications having been granted on October 12, 1983 (letter from D.B. Vassallo to H.G. Parris dated October 12, 1983).

The level of modification work associated with the current cycle 5 outage does not permit significant additional work to be added to the outage work scope without delaying restart of the plant. As an alternative to implementation of the required modifications during the current cycle 5 outage, the licensee has proposed interim compensatory fire protection measures to be instituted during cycle 6. These measures are being evaluated by the staff.

Environmental Impacts of the Proposed Action

By using reasonable interim compensatory measures, the proposed exemption will provide a degree of fire protection such that there is no significant increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement dated September 2, 1972 for the Browns Ferry Nuclear Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated June 5, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Athens Public Library, South and Forrest, Athens, Alabama 36511.

Dated at Bethesda, Maryland this 28th day of November, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-31641 Filed 12-3-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the **Federal Register** of January 4, 1980, (45 FR 1161), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, and 47 FR 16697.

Under Section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930 as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, William E. Brock, United States Trade Representative, in conformance with the provisions of Section 2(b) of the Act, Section 701(b) of the Tariff Act of 1930 as amended, and section 1-103(b) of Executive Order 12188, does hereby determine, effective on the date of signature of this Notice that:

With respect to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), Portugal has accepted the obligations of the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement.

In accordance with section 702(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of November 28, 1984, Portugal is a "country under the Agreement."

Inquires concerning this notice should be addressed to Catherine Curtiss, Office of Bilateral Affairs, Japan and Western Europe, Office of the U.S. Trade Representative, Washington, D.C. 20506, (202) 395-3074.

Dated: November 28, 1984.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-31597 Filed 12-3-84; 8:45 am]

BILLING CODE 3195-01-M

POSTAL RATE COMMISSION

[Order No. 591; Docket No. A85-6]

Durbin, North Dakota 58023 (Susan Bernstein et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: November 28, 1984.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy.

Docket Number: A85-6.

Name of affected Post Office. Durbin, North Dakota 58023.

Name(s) of petitioner(s): Susan Bernstein; Mr. & Mrs. Ben Bautz.

Type of determination: Closing.

Date of filing of appeal papers: November 26, 1984.

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before December 11, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

November 26, 1984—Filing of Petitions
November 28, 1984—Notice and Order of Filing of Appeal
December 21, 1984—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
December 31, 1984—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR § 3001.115(a) and (b)].
January 22, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
February 6, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
February 13, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
March 26, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 84-31686 Filed 12-3-84; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Midwest Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 28, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the

Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

B.A.T. Industries Ltd.
ADR Ordinary Shares, 25 Pence Par Value, File No. 7-8167

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protections of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31644 Filed 12-3-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. (04/04-0115)]

H&T Capital Corp.; Surrender of License

Notice is hereby given that H & T Capital Corporation, 4750 Selma Highway, Montgomery, Alabama, 36105 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). H & T Capital Corporation was licensed on July 15, 1975.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on November 16, 1984, and accordingly all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: November 21, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc 84-31626 Filed 12-3-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[ATF O 1100.76A; Notice 544; Correction]

Authority To Administer Seized Personal Property Program in 27 CFR Part 72, Disposition of Seized Personal Property, and 26 CFR Part 601, Statement of Procedural Rules; Delegation Order

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Correction to FR notice on Delegation Order.

SUMMARY: This document clarifies and corrects the signature authority for all documents and correspondence concerning petitions for remission or mitigation of forfeiture relating to the seized personal property program, which appeared in the seized personal property program, which appeared in the issue of Friday, September 21, 1984 (49 FR 37203). This action is necessary to correct a technical error.

FOR FURTHER INFORMATION CONTACT: Frank W. Nickell or Gayle P. Miller, Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226 (202-566-7123).

SUPPLEMENTARY INFORMATION: In FR Doc. 84-25055, appearing in the issue of Friday, September 21, 1984, omissions occurred on pages 37203 and 37204.

Paragraph 4.b. [Corrected]

This paragraph should be corrected to read as follows: "To sign all documents and correspondence relating to petitions for remission or mitigation of forfeiture, including the authority to affix the signature of the Director."

Paragraph 5.b. [Corrected]

This paragraph should be corrected to read as follows: "The authorities in paragraph 4b above may be redelegated to personnel in Bureau Headquarters not lower than the position of seized property examiner, except that the authority to affix the signature of the Director may not be redelegated below the level of Chief in the Office of Law Enforcement."

Approved: November 20, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-31689 Filed 12-3-84; 8:45 am]

BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held in Room 139, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC, on December 13 and 14, 1984. These meetings will begin at 9 a.m. and conclude at 4:30 p.m.

Both meetings will be open to the public to the seating capacity of the conference room. Anyone having questions concerning the meetings may contact Mr. Edward Lord, Assistant Director for Administration and Development, Readjustment Counseling Service, Veterans Administration Central Office, at phone number 202/389-5410/5419.

This notice does not appear in the **Federal Register** at least 15 days prior to the date of the first meeting due to delays in administrative processing.

Dated: November 27, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc 84-31622 Filed 12-3-84; 8:45 am]

BILLING CODE 8320-01-M

Station Committee on Educational Allowances; Hearing

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on December 27, 1984, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Rice College (formerly American College and Memphis School of Commerce) 2829 Lamar Avenue, Memphis, Tennessee 38114, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Commission at that time and place.

Dated: November 27, 1984.

R.S. Bielak,

Director, VA Regional Office, 110 Ninth Avenue South, Nashville, Tennessee.

[FR Doc. 84-31680 Filed 12-3-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 234
Tuesday, December 4, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Election Commission	1
Federal Deposit Insurance Corporation	2
Federal Reserve System	3
National Transportation Safety Board	4
Nuclear Regulatory Commission	5
Postal Service	6

1

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" DOC. NO. 84-31411.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, December 4, 1984, 10:00 a.m.

Pursuant to § 3.2(a)(1) and (b)(v) of the Commission's Sunshine Act regulations, the following item has been added to the agenda: Application of 11 CFR 104.14(d).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 84-31708 Filed 10-30-84; 1:10 pm]
BILLING CODE 6715-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:55 p.m. on Thursday, November 29, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Strong City State Bank, Strong City, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, November 29, 1984; (2) accept the bid for the transaction submitted by Chase County Bank, Strong City, Kansas, a newly-chartered State nonmember bank subsidiary of Chase County Bankshares, Incorporated, Strong City, Kansas; (3) approve the applications of Chase County Bank, Strong City, Kansas, for Federal deposit insurance, and for consent to purchase certain assets of and to assume the liability to pay deposits made in The Strong City State Bank, Strong City, Kansas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C.T. Conover, (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 30, 1984.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,
Deputy Executive Secretary.

[FR Doc. 84-31786 Filed 11-30-84; 3:57 pm]
BILLING CODE 6714-01-M

3

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, December 10, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was previously announced for a closed meeting on December 5, 1984.)
2. Proposed purchase of computers within the Federal Reserve System.
3. Appointment of new members to the Consumer Advisory Council.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 30, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-31784 Filed 11-30-84; 3:57 pm]
BILLING CODE 6210-01-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-37]

TIME AND DATE: 9 a.m., Tuesday, December 11, 1984.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—Illinois Hawker Siddley HS 748-2A, N748LL, near Pinckneyville, Illinois, October 11, 1983.
2. *Highway Accident Report*—Collision of Isle of Wight County, Virginia, Schoolbus with Chesapeake and Ohio Railway Company Freight Train, State Route 615, near Carrsville, Virginia, April 12, 1984.
3. *Marine Accident Report*—Collision of the Panamanian Cement Carrier M/V AMPARO PAOLA with the Danzier Bridge, Inner Harbor Navigation Canal, New Orleans, Louisiana, November 23, 1983.
4. *Response to Petition for Reconsideration of Probable Cause:* Aircraft Accident—Texasgulf Aviation, Inc., Lockheed Jetstar, L-1329-731,N5205, Westchester County Airport, White Plains, New York, February 11, 1981.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6528.

H. Ray Smith, Jr.,
Federal Register Liaison Officer.

November 30, 1984.

[FR Doc. 84-31726 Filed 11-30-84; 2:07 pm]
BILLING CODE 7533-01-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 3, 10, 17, and 24, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 3

Monday, December 3

2:00 p.m.
Discussion/Possible Vote on Severe Accident Policy Statement (Public Meeting)

Wednesday, December 5

2:00 p.m.
Discussion of Manangement-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
Meeting on Indian Point *postponed.*

Thursday, December 6

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 10—Tentative

Monday, December 10

1:30 p.m.
Discussion/Possible Vote on Hydrogen Rule (Public Meeting)
3:00 p.m.
Discussion of Adjudication Matters Related to Catawba-1 (Closed—ex. 10) (if needed)

Tuesday, December 11

10:00 a.m.

Staff Follow-up to 11/15 DOE Briefing on High Level Waste Program (Public Meeting)
2:00 p.m.
Year End Budget Review (Public Meeting)

Thursday, December 13

2:00 p.m.
Affirmative Meeting (Public Meeting) (if needed)

Friday, December 14

10:00 a.m. Discussion of 1985 Policy and Planning Guidance (Public Meeting)
2:00 p.m.
Briefing and Discussion on the Hearing Process (Public Meeting)

Week of December 17—Tenative

Monday, December 17

10:00 a.m.
Discussion of Material False Statements—Policy Options (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, December 18

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Catawba-1 (Public Meeting)
2:00 p.m.
Discussion of Need for and Impact of Further TMI-1 Hearings (Public Meeting) (Tentative)

Wednesday, December 19

10:00 a.m.
Discussion/Affirmation of Indian Point Order (Public Meeting)

Thursday, December 20

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 24 Tentative

Friday, December 28

11:30 a.m.

Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

George T. Mazuzan,
Office of the Secretary.

November 28, 1984.

[FR Doc. 84-31643 Filed 11-29-84; 4:42 p.m.]
BILLING CODE 7590-01-M

6

POSTAL SERVICE (BOARD OF GOVERNORS)

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Tuesday, December 11, 1984, in Washington, D.C., and at 8:30 a.m. on Wednesday, December 12, 1984, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, D.C. As indicated in the following paragraph, the December 11 meeting is closed to public observation. The December 12 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretarty of the Board, David F. Harris, at (202) 245-3734.

At its meeting on November 13, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for December 11. (See 49 FR 46237, November 23, 1984.) The agenda items of the meeting to be closed concern: (1) Strategic planning in connection with possible continued collective bargaining negotiations involving the Postal Service and four labor organizations representing certain postal employees; and (2) Further consideration of the Postal Rate Commission's September 7, 1984, Opinion and Recommended Decision in Docket No. R84-1.

Agenda

Tuesday Session, December 11—1:00 p.m. (Closed)

1. Strategic Planning—Collective Bargaining.
2. Consideration of Postal Rate Commission recommended decision in the omnibus rate case, Docket No. R84-1.

Wednesday Session, December 12—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 13-14, 1984.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)
3. Officer Compensation.
4. Review of the Postal Service's Budget Program. (Mr. Coughlin, Senior Assistant Postmaster General, Finance Group, will present the Postal Service's budget for FY 1986, as it is proposed for transmission to OMB and the Congress, for the approval of the Board.)
5. Consideration of the FY 1984 Financial Statements. (The Board will review the audited financial statements and footnotes for the Postal Service for FY 1984.)
6. Amendment to the Bylaws of the Board of Governors. (The Board will consider a proposed revision to its Bylaws to clarify the description of matters that the Board reserves for its approval.)
7. Report on Consumer Protection under Pub. L. 95-196. (The Board will review the semi-annual report on consumer protection distributed to the Board in advance of the meeting in accordance with section 3013, title 39, United States Code.)
8. Capital Investments:
   a. Summit, New Jersey General Mail Facility.
   b. Postal Source Data System (PSDS) replacement.
9. Consideration of a Tentative Agenda for the January 7-8, 1984, meeting in Washington, D.C.

David F. Harris,
Secretary.

[FR Doc. 84-31677 Filed 11-30-84; 11:00 am]
BILLING CODE 7715-12-M

Reader Aids

Federal Register

Vol. 49, No. 234

Tuesday, December 4, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189-47380.....3
47381-47472.....4

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR
966.....47189
991.....47190
Proposed Rules:
Ch. IX.....47271
52.....47402

9 CFR
Proposed Rules:
92.....47402

10 CFR
110.....47191

12 CFR
Proposed Rules:
205.....47405
226.....47406
500.....47410
563b.....47271, 47410

13 CFR
101.....47381
Proposed Rules:
121.....47412, 47414

14 CFR
39.....47381, 47382
95.....47204
Proposed Rules:
25.....47358
71.....47415

15 CFR
Proposed Rules:
941.....47415

17 CFR
270.....47208
274.....47208
Proposed Rules:
240.....47274

18 CFR
1302.....47383

20 CFR
632.....47384

21 CFR
81.....47228, 47229
184.....47384
510.....47387
558.....47387
1020.....47387
Proposed Rules:
166.....47418

24 CFR
234.....47388

26 CFR
Proposed Rules:
41.....47274
48.....47274

30 CFR
Proposed Rules:
920.....47419

33 CFR
100.....47230
117.....47231

39 CFR
10.....47389
111.....47231, 47232, 47389
Proposed Rules:
10.....47275

40 CFR
260.....47390
270.....47390
271.....47391
Proposed Rules:
180.....47420

44 CFR
67.....47240

45 CFR
801.....47392

46 CFR
500.....47393
501.....47393
502.....47393
503.....47393
504.....47393
505.....47393

47 CFR
61.....47265
73.....47395
Proposed Rules:
Ch. I.....47275

49 CFR
571.....47396
1057.....47268
Proposed Rules:
571.....47276
1063.....47277

50 CFR

17.....47397
655.....47269

Proposed Rules:

Ch. II.....47421
80.....47420
652.....47278, 47422

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List November 16, 1984.



Just Released

Code of Federal Regulations

Revised as of October 1, 1984

Quantity	Volume	Price	Amount
_____	Title 42—Public Health (Parts 61–399) (Stock No. 022–003–95422–8)	$7.50	$_____
_____	Title 43—Public Lands: Interior (Parts 1–999) (Stock No. 022–003–95424–4)	9.50	_____
_____	Title 45—Public Welfare (Part 1200-End) (Stock No. 022–003–95431–7)	9.50	_____
	Title 46—Shipping		
_____	Parts 1–40 (Stock No. 022–003–95432–5)	9.50	_____
_____	Parts 70–89 (Stock No. 022–003–95434–1)	6.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the Code of Federal Regulations publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

VOL
49

ISS
234

DE
4

1984

UMI

OL
9

SS
35

E
5

984

MI

12-5-84
Vol. 49 No. 235

federal register

Wednesday
December 5, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

375

SECOND CLASS NEWSPAPER

12-5-84
Vol. 49 No. 235
Pages 47473-47586

federal register

Wednesday
December 5, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Antibiotics
Food and Drug Administration

Animal Drugs
Food and Drug Administration

Copyright
Copyright Royalty Tribunal

Dairy Products
Agricultural Marketing Service

Energy Conservation
Federal Trade Commission

Food Additives
Food and Drug Administration

Forests and Forest Products
Land Management Bureau

Government Procurement
Environmental Protection Agency
General Services Administration

Marketing Agreements
Agricultural Marketing Service

Meat and Poultry Inspection
Food Safety and Inspection Service

Pesticides and Pests
Environmental Protection Agency

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Savings and Loan Associations
Federal Home Loan Bank Board

Tomatoes
Agricultural Marketing Service

Waste Treatment and Disposal
Environmental Protection Agency

Wilderness Areas
Forest Service

Contents

Federal Register
Vol. 49, No. 235
Wednesday, December 5, 1984

The President
PROCLAMATIONS
47473 National Care and Share Day, 1984

Executive Agencies

Actuaries, Joint Board for Enrollment
NOTICES
Meetings:
47582 Actuarial Examination Advisory Committee

Agricultural Market Service
RULES
47475 Oranges (navel) grown in Arizona and California
PROPOSED RULES
47496 Dairy promotion program; referenda procedure, etc.
Milk marketing orders:
47495 Texas; extension of time
47495 Tomatoes grown in Florida; reapportionment of Committee membership

Agriculture Department
See Agricultural Marketing Service; Food Safety and Inspection Service; Forest Service.

Army Department
NOTICES
47520 Privacy Act; systems of records

Centers for Disease Control
NOTICES
47573 Self-contained breathing apparatus "use test" performance requirements project; NIOSH meeting

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration.
NOTICES
47519 Agency information collection activities under OMB review
Committees; establishment, renewals, terminations, etc.:
47518 Minority Enterprise Development Advisory Committee

Conservation and Renewable Energy Office
RULES
Consumer products:
47479 Dishwashers; test procedures; correction

Copyright Royalty Tribunal
RULES
47487 Public broadcasting entities licensed to colleges and universities; cost of living adjustment for performance of musical composition

Defense Department
See also Army Department; Navy Department.
NOTICES
Meetings:
47520 Science Board task forces
47520 Wage Committee

Energy Department
See Conservation and Renewable Energy Office.

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
47490 California
47488 Virginia
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
47493 Alpha-(*P*-nonylphenyl)-omega-hydroxypoly (oxypropylene) block polymer with poly (oxyethylene)
47491 Iprodione
47493 Red Chicory (tops)
Pesticides; tolerances in food and animal feeds:
47481 Dicamba; denial of stay
PROPOSED RULES
47516 Acquisition regulations; competition in contracting requirements
Air quality implementation plans; delayed compliance orders:
47507 Pennsylvania
Hazardous waste:
47510 Identification and listing exclusions, correction and extension of time
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
47508 *N*-methylpyrrolidone
47509 Vinylpyrrolidone-styrene copolymer
Pesticide programs:
47508 Registration and classification procedures
NOTICES
Air quality criteria:
47550 Motor vehicles; catalytic converter testing procedures; criteria and workshops
Pesticide, food, and feed additive petitions:
47550 Chevron Chemical Co. et al.
47556 Union Carbide Agricultural Products Co., Inc., et al.
47549 Zoecon Corp. et al.
Pesticides; temporary tolerances:
47548 American Cyanamid Co.

Federal Communications Commission
PROPOSED RULES
Radio services, special:
47516 Inspection interval for vessels subject to Great Lakes Agreement; withdrawn
NOTICES
Agency information collection activities under OMB review
Hearings, etc.:
47557 Caballero Spanish Radio, Inc., et al.
47557 DeBeau Broadcasting, Inc., et al.
47558 Francon, Inc., et al.
47560 Grande Broadcasting, Inc., et al.
47560 Laughlin Roughrider Broadcasting, Inc., et al.
47562, RKO General, Inc. (2 documents)
47568

Meetings:
47567 International Maritime Organization
47567 ITU World Administrative Radio Conference Advisory Committee

Federal Highway Administration
RULES
Motor carrier safety regulations:
47494 Driver's record of duty status; correction

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
47499 Subordinated-debt securities; issuance and use
NOTICES
47586 Meetings; Sunshine Act

Federal Reserve System
NOTICES
47570 Agency information collection activities under OMB review
Bank holding company applications, etc.:
47570 LNB Bancorp, Inc., et al.
47471 SNB Corp et al.

Federal Trade Commission
RULES
Appliances, consumer; energy cost and consumption information in labeling and advertising:
47479 Dishwashers; comparability ranges; effective date extended

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
47486 Tetracycline soluble powder
Food additives:
47480 Adhesive coatings and components; acetone-formaldehyde condensate
Human drugs:
47485 Erythromycin-benzoyl peroxide topical gel
47483 High-pressure liquid chromatographic assay for cephradine
PROPOSED RULES
Food for human consumption:
47505 Sucrose and corn sugars; scientific literature update; opportunity for public review
Human drugs:
47505 Antibiotic drugs: Dactinomycin, doxorubicin hydrochloride, and plicamycin; deletion of toxicity test; correction
47504 Nonclinical laboratory studies; good laboratory practice; correction
NOTICES
Food additive petitions:
47573 Cosden Oil & Chemical Co.; correction
Laser variance approvals, etc.:
47573 Laser Productions et al.; correction

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
47475 Transportation of product for use as animal food

Foreign Trade Zones Board
NOTICES
Applications, etc.:
47518 New Jersey

Forest Service
PROPOSED RULES
47505 Boundary waters canoe area wilderness

General Services Administration
PROPOSED RULES
Acquisition regulations (GSAR):
47516 Competition in contracting requirements
NOTICES
Property management:
47571 Dutch Island Light Station, Jamestown, RI; wildlife order conveyance
Telecommunications standards:
47571 Analog to digital conversion of voice by 2,400 Bit per second linear predictive coding; adoption

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration.
NOTICES
Grants; availability, etc.:
47572 Social security disability program demonstration project; vocational rehabilitation project; employment of beneficiaries disabled by intestinal disease

Health Care Financing Administration
NOTICES
47573 Privacy Act; systems of records

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
47575 Gila River Indian Reservation, AZ

Interior Department
See also Indian Affairs Bureau; Land Management Bureau; Minerals Management Service.
NOTICES
Meetings:
47575 Garrison Diversion Unit Commission

International Trade Administration
NOTICES
47519 Export trade certificates of review

International Trade Commission
NOTICES
47579 Agency information collection activities under OMB review
Import investigations:
47579 Aluminum frame, fabric-covered luggage and components
47580 Cut-to-length carbon steel plate from West Germany
47580 Filbert industries, U.S. and foreign; competitive conditions
47580 Motor graders with adjustable control consoles and components
47581 Rotary wheel printing systems
47582 Rowing machines and components
47582 Woodworking machines
47586 Meetings; Sunshine Act

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
47582 Baltimore & Ohio Railroad Co.

Justice Department
NOTICES
Organization, functions, and authority delegations:
47583 Assistant Attorney General, Civil Division

Land Management Bureau
PROPOSED RULES
Forest management:
47511 Federal timber contracts; modification
NOTICES
Classification and sale of public lands:
47578 Oregon
Classification of public lands:
47576 Utah
Survey plat filings:
47577, 47578 California (4 documents)

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
47578 Shell Offshore Inc.

National Aeronautics and Space Administration
NOTICES
47564 Agency information collection activities under OMB review

Navy Department
NOTICES
47547 Privacy Act; systems of records

Oceans and Atmosphere, National Advisory Committee
NOTICES
47583 Meetings; changes

Postal Rate Commission
NOTICES
47586 Meetings; Sunshine Act

Small Business Administration
NOTICES
47584 Agency information collection activities under OMB review
Disaster loan areas:
47584 California
Meetings; regional advisory councils:
47584 North Carolina

State Department
NOTICES
Passports, foreign; validity:
47585 Libya; extension of restrictions on use

Transportation Department
See Federal Highway Administration.

Treasury Department
NOTICES
Notes, Treasury:
47585 G–1990 series
47585 H–1990 series

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamation
5285.....47473

7 CFR
907.....47475
Proposed Rules:
966.....47495
1126.....47495
1150.....47496

9 CFR
301.....47475
325.....47475
381.....47475

10 CFR
430.....47479

12 CFR
Proposed Rules:
561.....47499
563.....47499

16 CFR
305.....47479

21 CFR
175.....47480
193.....47481
436.....47483
442.....47483
452.....47485
546.....47486
561.....47481
Proposed Rules:
58.....47504
182.....47505
184.....47505
450.....47505

38 CFR
Proposed Rules:
261.....47505
293.....47505
294.....47505

37 CFR
304.....47487

40 CFR
52 (2 documents).....47488, 47490
180 (3 documents).....47491, 47493
Proposed Rules:
65.....47507
154.....47508
180 (2 documents).....47508, 47509
261.....47510

43 CFR
Proposed Rules:
5400.....47511

47 CFR
Proposed Rules:
83.....47516

48 CFR
Proposed Rules:
Ch. 5.....47516
1501.....47516
1502.....47516
1503.....47516
1505.....47516
1506.....47516
1513.....47516
1514.....47516
1515.....47516
1517.....47516
1527.....47516
1533.....47516
1536.....47516
1552.....47516

49 CFR
395.....47494

Federal Register
Vol. 49, No. 235
Wednesday, December 5, 1984

Presidential Documents

Title 3—

The President

Proclamation 5285 of December 3, 1984

National Care and Share Day, 1984

By the President of the United States of America

A Proclamation

The spirit of neighbor helping neighbor flows like a deep and mighty river through the history of our Nation. We are proud of our strong and uniquely American tradition of voluntarism. Compassion, vision, and a fundamental sense of decency are the hallmarks of our national character and are reflected in the charitable works of our citizens.

During this holiday season, I call upon all Americans to reflect this spirit of generosity and cooperation by joining in partnership with others to provide food to those in need. I ask the agricultural and food industries to donate surpluses to food banks around the country and to complement government programs that are providing food assistance to low-income Americans. I look for the support of community groups, charitable organizations, and individuals in donating food items and in transporting and distributing them to those in need. Let the caring, sharing, and goodwill generated by private initiative spread across this great Nation of ours and bring joy to each and every individual.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 15, 1984, as National Care and Share Day and call upon the people of the United States to pay tribute to acts of charity and to promote community involvement in caring for the needs of our neighbors.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of Dec., in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-31946
Filed 12-4-84; 11:44 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 235
Wednesday, December 5, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regs. 606, 605 Amdt. 1, 604 Amdt. 2]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 606 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 7–13, 1984. Regulation 605, Amendment 1, increases the quantity of such oranges that may be shipped during the period November 30–December 6, 1984, and Regulation 604, Amendment 2, increases the quantity of such oranges that may be shipped during the period November 23–29, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: Amended Regulation 604 (§ 907.904) is effective for the period November 23–29, 1984. Amended Regulation 605 (§ 907.905) becomes effective on November 30, 1984. Regulation 606 (§ 907.906) becomes effective on December 7, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation and amendments are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

These actions are consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on September 25, 1984. The committee met again publicly on November 27, 1984 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendments are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information on views on the regulation and amendments at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. Section 907.906 is added as follows:

§ 907.906 Navel Orange Regulation 606.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 7, 1984, through December 13, 1984, are established as follows:

(a) District 1: 1,600,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

2. Section 907.905 Navel Orange Regulation 605 paragraphs (a) through (d) are hereby revised to read:

§ 907.905 Navel Orange Regulation 605.

(a) District 1: 1,500,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

3. Section 907.904 Navel Orange Regulation 604 paragraphs (a) through (d) are hereby revised to read:

§ 907.904 Navel Orange Regulation 604.

(a) District 1: 1,240,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 29, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-31694 Filed 12-4-84; 8:45 am]
BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 301, 325, and 381

[Docket No. 82-020F]

Transportation and Other Transactions of Animal Food Containing Meat and/or Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal meat and poultry products inspection regulations regarding the transportation and other transactions, in commerce, of animal food containing meat and/or poultry products. The

Federal meat inspection regulations currently provide three basic requirements for animal food prepared from carcasses of livestock prior to being transported in commerce: (1) It must be properly identified as an animal food, (2) it must not be represented as a human food, and (3) it must be denatured. However, the regulations provide exemptions from the denaturing requirement. This final rule continues to exempt animal food containing meat products from the denaturing requirement if clearly labeled, in a specified manner, as animal food, and also allows the affected industry more flexibility in the labeling of animal food containing meat products. The final rule also amends the Federal meat inspection regulations regarding animal food containing meat products to reflect the fact that these regulations apply to all transactions in commerce. Furthermore, this final rule revises the definition of animal food to reflect the fact that the Federal meat inspection regulations do not cover processed dry animal food.

In addition, the final rule establishes comparable animal food provisions and exemptions in the poultry products inspection regulations. These regulations currently require only that poultry carcasses, and parts and products thereof, not intended for use as human food be denatured and marked "Not fit for human food" prior to shipment from an official establishment or transportation in commerce. Many of these changes are in response to a petition from the Pet Food Institute.

EFFECTIVE DATE: December 5, 1985.

FOR FURTHER INFORMATION CONTACT:
Mr. R.W. Conter, Director, Compliance Division, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7745.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this final rule is not a major rule under Executive Order 12291. It provides more flexible regulations on the labeling and preparation of animal food products containing meat or poultry products and continues to provide assurance that the products intended for use in animal food do not enter into human food channels. This final rule will result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as determined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). It allows more flexibility for the affected industry in the labeling and preparation of animal food products containing meat or poultry ingredients.

Background

Under the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration (FDA) has primary authority over regulating the production of animal food (21 U.S.C. 321(f), 341). However, the U.S. Department of Agriculture is responsible, under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), for assuring that meat and poultry and products made therefrom not intended for use as human food do not enter into commerce unless they are denatured or otherwise identified to deter their use as human food.

Section 325.11(d) of the Federal meat inspection regulations (9 CFR 325.11(d)) sets forth certain requirements for the transportation in commerce of animal food prepared wholly or in part from materials derived from livestock carcasses. The regulations provide three basic requirements for such animal food before allowing it to be transported in commerce: (1) It must be properly identified as animal food, (2) it must not be represented as being a human food, and (3) it must be denatured as prescribed in § 325.13(a)(2) of the Federal meat inspection regulations (9 CFR 325.13(a)(2)). However, § 325.11(d) provides for exemptions from the denaturing requirement if animal food (1) contains less than 5 percent of parts or products of livestock carcasses and is not represented as a human food product or a product of the meat food industry, or (2) is packaged in hermetically sealed, retort processed, conventional retail-size containers or is semi-moist and packaged in retail size packages and the retail-size container or package bears on its label the name of the article (e.g., "Dog Food") in letters at least three times as high, wide, and thick, and as contrasting in color with their background, as the letters in any words denoting the use of carcass-derived ingredients.

In addition, § 325.11(d) provides that the requirements of 9 CFR Part 325 do not apply to any animal food which does not consist of any parts or products of the carcasses of livestock, or to livestock or poultry feed which does not consist of any such articles other than processed livestock byproducts (such as meat meal tankage, meat and bone meal, blood meal and feed grade animal fat).

No explicit requirements are contained currently in the poultry products inspection regulations for transporting animal food consisting of undenatured poultry or poultry products. Section 381.193 of the poultry products inspection regulations (9 CFR 381.193) requires only that poultry carcasses, and parts and products thereof, not intended for use as human food must be denatured as prescribed in § 381.95 of the regulations, and marked "Not fit for human food" prior to shipment from an official establishment or transportation in commerce.

PFI Petition

The Food Safety and Inspection Service (FSIS) was petitioned by the Pet Food Institute (PFI) to modify the Federal meat and poultry products inspection regulations relating to the transportation of inedible product for use in the production of animal food. PFI asserts that the Federal meat and poultry products inspection regulations are not consistent with other rules equally applicable to pet food labeling and impose requirements unnecessary to protect the public. Specifically, PFI petitioned for the following changes:

1. Exempt animal food products from denaturing when such products contain less than 10 percent of parts or products of livestock carcasses rather than the current 5 percent limit. PFI suggested that the "less than 10 percent" would be consistent with the guidelines of the Association of American Food Control Officials (AAFCO). AAFCO guidelines prescribe that in products containing less than 10 percent carcass-derived ingredient(s), the name(s) of such ingredient(s) may not form a part of the product name. PFI contends that such labeling would not present any confusion to consumers concerning the meat content and, thus, would justify the increase.

2. Eliminate the requirement that animal food must be named as such, e.g., "Dog Food," in order to be exempt from denaturing, provided that terms referencing the product as animal food, such as "Dog Food" or "For Cats," are stated on the label in letters at least as large as those required in the quantity-of-content declaration. PFI contends that the risk of confusion between animal food and human food arises only if animal food is labeled in a manner similar to human food; e.g., "Beef Tips."

3. Establish poultry products inspection regulations comparable to the meat inspection regulations to provide consistency for animal foods regardless of whether they contain meat or poultry.

In response to the PFI petition, on August 8, 1983, FSIS published a proposed rule in the **Federal Register** (48 FR 35884). The proposal stated that animal food need not be denatured if the name of the article clearly denotes the article's intended use as animal food and appears on the label in a conspicuous manner. Two methods of labeling for that purpose were proposed:

(1) The name of the article may be stated on the label as "Animal Food," "Pet Food," or "(name of species) Food" (e.g., "Dog Food") in letters at least twice as high, wide, and thick as the letters indicating the presence of any meat ingredients; or

(2) The name of the article may be stated on the label to indicate the presence of meat ingredients (e.g., "Horsemeat for Pets" or "Beef Stew for Dogs") provided that the entire name is stated on the main display panel, whether on one line or more, and the letters denoting the article's intended use as animal food are at least as high, wide, and thick as the letters indicating the presence of meat ingredients, and provided further that if a vignette is used on the label, the letters stating the article's intended use must be at least one-half as high, wide, and thick as the letters used in the article's name indicating the presence of meat or poultry ingredients but not less than ⅛ inches high.

Furthermore, it was proposed that the letters used to denote the intended use must contract as markedly with their background as the letters indicating the presence of meat ingredients.

Lastly, FSIS proposed poultry products inspection regulations comparable to the meat inspection regulations, as suggested by PFI.

FSIS did not propose an increase in the amount of meat permitted in animal food exempt from denaturing, but welcomed any additional evidence on this point. Under the FMIA and PPIA, FSIS has an obligation to regulate the control of meat products and poultry products not intended for use as human food to assure that such products do not enter into human food channels. Permitting products containing twice as much undenatured meat as is currently allowed under the regulations to be exempt from FSIS control would result in increased trade in undenatured, increase in the risk of such product being diverted to human use. Whether the AAFCO guidelines might ameliorate the guidelines might ameliorate the increased risk is unknown. In any case, the guidelines do not provide a means for FSIS to fulfill its statutory obligations in this regard.

Discussion of Comments

FSIS received 15 comments in response to the proposed rule—4 from manufacturers of human food, 3 from associations of human food manufacturers, 3 from pet food manufacturers, 2 from State agencies, 1 from a pet food manufacturers' association, 1 from a Federal agency, and 1 from a consumer. All commenters supported the intent of the proposed rule, with 4 recommending changes. The following is a summary of the issues raised by the commenters and FSIS's response to each:

Dry Food

1. *Comment.* Four commenters requested that the regulations be amended to exempt processed dry pet foods from the denaturing requirement even if they contain livestock or poultry articles. They stated that due to the nature and appearance of the dry pet food, there was no risk of confusing it with human food.

Response. FSIS agrees that there is no risk that consumers would confuse processed dry animal food in the finished state as human food.

The FMIA and the PPIA require that livestock or poultry products not intended for human food be denatured or otherwise identified as prescribed by regulations of the Secretary to deter their use for human food. However, historically, processed dry animal foods have not been considered by consumers to be as products of the meat and poultry food industries, and it has never been the intent of FSIS to impose denaturing or labeling requirements for such animal foods. The manufacturing of processed dry animal food has traditionally been solely regulated by FDA. Therefore, the final rule has been amended by revising the definition of "animal food" to clarify that the Federal meat inspection regulations are not intended to cover processed dry animal foods. The definition of "animal food manufacturer" is also amended for clarity. The poultry products inspection regulations are amended similarly by revising the definition of "animal food manufacturer" and by adding a definition for "animal food."

In addition, § 325.11(d)(4) of the Federal meat inspection regulations is amended in this final rule to reflect that these regulations do not apply to processed dry animal food as this product does not come under the definition of an animal food. A similar provision has also been added in the final rule for the poultry products inspection regulations.

Labeling Size

2. *Comment.* Four commenters disagreed with the proposed requirement that words identifying product as pet food must be twice the size as those referencing the livestock or poultry ingredient. They recommended that all such wording be equal in size.

Response. The intent of this proposed rule was to assure that the name of the article, such as "Animal Food," "Pet Food," "Dog Food," or "Cat Food," would be conspicuous on the label when it appeared noncontiguous to the labeling showing ingredients derived from carcasses of livestock or poultry. Since the proposed rule provides for equal size type of contiguous labeling, such as "Beef Stew for Dogs" or "Turkey Dinner for Cats," FSIS sees no valid reason to allow equal size type for the name of the article and the reference to the livestock or poultry ingredient since this would not fulfill the "conspicuous" labeling requirement.

Can Lid Labeling

3. *Comment.* Four commenters recommended that as an alternative to a pet vignette on the principal display panel, words such as "Dog Food" or "For Pets" be permitted on the lid of the canned pet foods rather than on the principal display panel to qualify for the half-size lettering for reference to pet food.

Response. FSIS believes that in order to be considered conspicuous, and to reduce the possibility of consumer confusion as much as possible, the vignette and half-size lettering must appear on the principal display panel where such labeling customarily is placed.

Effective Date

4. *Comment.* Two commenters requested that if the proposal is made a final rule, FSIS should allow a minimum of 1 year for pet food manufacturers to comply with the new labeling requirements. This would give manufacturers time to make the labeling revisions and exhaust their existing label supply.

Response. FSIS agrees that some phase-in period is necessary and,

therefore, has made this final rule effective 1 year after publication. FSIS believes this will provide sufficient time for manufacturers to exhaust most of their existing label supplies and to obtain new labeling that complies with this rule.

Miscellaneous

5. *Comment.* One commenter advised FSIS of two minor typographical errors.

Response. FSIS has amended the final rule correcting those errors.

Additional Amendments

FSIS has also revised the regulations to reflect the fact that these regulations govern all transactions in commerce of animal food. The final rule has been amended to include that no animal food shall be bought, sold, transported, offered for sale or transportation, or received for transportation in commerce, or imported, except as set forth in the regulations.

Final Rule

After consideration of the comments received, FSIS has determined to adopt the proposed rule, modified as discussed herein.

List of Subjects

9 CFR Part 301

Meat and meat food products, Meat inspection.

9 CFR Part 325

Meat inspection, Transportation.

9 CFR Part 381

Poultry products inspection, Transportation.

1. The authority citations for Parts 301 and 325 are revised to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

PART 301—[AMENDED]

2. Section 301.2 is amended by revising paragraphs (p) and (q) to read as follows:

§ 301.2 Definitions.

* * * * *

(p) *Animal Food.* Any article intended for use as food for dogs, cats, or other animals derived wholly, or in part, from the carcass or parts or products of the carcass of any livestock, except that the term animal food as used herein does not include (i) processed dry animal food or (ii) livestock or poultry feeds manufactured from processed livestock byproducts (such as meatmeal tankage, meat and bonemeal, bloodmeal, and feed grade animal fat).

(q) *Animal food manufacturer.* Any person engaged in the business of manufacturing or processing animal food.

* * * * *

PART 325—[AMENDED]

3. Section 325.11(d)(1), (3), and (4) of the Federal meat inspection regulations (9 CFR 325.11(d)(1), (3) and (4) are revised to read as follows:

§ 325.11 Inedible articles: denaturing and other means of identification; exceptions.

* * * * *

(d)(1) Except as provided in paragraphs (d)(2), (3), and (4) of this section, or in §§ 314.10 and 314.11 of this subchapter, no animal food prepared, in whole or in part, from materials derived from the carcasses of livestock in an official establishment or elsewhere, shall be bought, sold, transported, offered for sale or transportation, or received for transportation, in commerce, or imported, unless:

(i) It is properly identified as animal food;

(ii) It is not represented as being a human food; and

(iii) It has been denatured as prescribed in § 325.13(a)(2) so as to be readily distinguishable from an article of human food.

* * * * *

(3) Notwithstanding the provisions of paragraph (d)(1) of this section, animal food packed in hermetically sealed, retort processed, conventional retail-size containers, and retail-size packages of semi-moist animal food need not be denatured in accordance with § 325.13(a)(2) if the name of the article clearly conveys the article's intended use for animal food and appeared on the label in a conspicuous manner.

(i) Except as provided in subdivision (ii) of paragraph (d)(3), the name of the article must be stated on the label as "Animal Food," "Pet Food," or "(name of species) Food" (e.g., "Dog Food" or "Cat Food"). To be considered conspicuous, the name of the article, wherever it appears on the label, must be in letters at least twice as high, wide, and thick as the letters indicating the presence in the article of any ingredients derived from the carcasses of livestock.

(ii) Notwithstanding the provisons of paragraph (i) of this paragraph (d)(3), the article's name may be stated on the label to show that it is or contains livestock-source material and that the article is for animals; e.g., "Horsemeat for Pets" or "Beef Stew for Dogs": *Provided,* That the entire name of the article is stated, wherever it appears on the label, as an individual, contiguous unit, whether stated on a single line or more than one line, and the letters denoting the article's intended use for animal food are at least as high, wide, and thick as the letters indicating the presence of material derived from any livestock carcass. However, when the label bears on its principal display panel a vignette which pictures, in clearly recognizable form and size, one or more animals of the species for which the article's name indicates the article is intended, the letters used to state the article's intended use shall be at least one-half as high, wide, and thick as the letters used in the article's name or other letters indicating the presence of material derived from any livestock carcass, but shall not be less than ⅛ inches high. The letters used to state the article's intended use may be separated from the article's name by the vignette.

(iii) Letters used to denote the intended use of the article must contrast as markedly with their background as the letters indicating the presence in the article of livestock carcass-source material contrast with their background.

(4) The requirements of this part do not apply to livestock or poultry feeds manufactured from processed livestock byproducts (such as meat meal tankage, meat and bone meal, blood meal, and feed grade animal fat), or to processed dry animal food.

* * * * *

PART 381—[AMENDED]

4. The authority citation for Part 381 is revised to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

5. Section 381.1(b) of the poultry products inspection regulations (9 CFR 381.1(b)) is amended by revising subparagraph (5) and by adding new subparagraph (60) to read as follows:

§ 381.1 Definitions.

* * * * *

(b) * * *

(5) *Animal food manufacturer.* "Animal Food Manufacturer" means any person engaged in the business of manufacturing or processing animal food.

* * * * *

(60) *Animal food.* Any article intended for use as food for dogs, cats, or other animals, derived wholly, or in part, from carcasses or parts or products of the carcass of poultry, except that the term animal food as used herein does not include (i) processed dry animal food or (ii) livestock or poultry feeds manufactured from processed poultry byproducts (such as poultry byproduct meal, hydrolyzed poultry feathers, and hydrolyzed poultry byproducts aggregate).

6. Section 381.193 of the poultry products inspection regulations (9 CFR 381.193) is revised to read as follows:

§ 381.193 Poultry carcasses, etc., not intended for human food.

(a) Except as provided in paragraphs (b) of this section, poultry carcasses, and parts and products thereof, that are not intended for use as human food may, after they have been denatured as prescribed in § 381.95, be bought, sold, transported, offered for sale or transportation, or received for transportation, in commerce, or imported, even though they do not comply with all the provisions of the regulations, provided they are marked "Not fit for human food." These requirements do not apply to parts of poultry carcasses that are naturally inedible by humans, such as entrails.

(b)(1) Except as provided in paragraphs (b) (2), (3), and (4) of this section, no animal food processed, in whole or in part, from materials derived from the carcasses of poultry in an official establishment or elsewhere, shall be bought, sold, transported, offered for sale or transportation, or received for transportation in commerce, or imported, unless:

(i) It is properly identified as animal food;

(ii) It is not represented as being a human food; and

(iii) It has been denatured as prescribed in § 381.95 so as to be readily distinguishable from an article of human food.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, an animal food that consists of less than 5 percent of parts or products of the carcasses of poultry and that is not represented by labeling or appearance or otherwise as being a human food or as a product of the poultry industry need not be denatured in accordance with § 381.95.

(3) Notwithstanding the provisions of paragraph (b)(1) of this section, animal food packed in hermetically sealed, retort processed, conventional retail-size containers, and retail-size packages of semi-moist animal food need not be denatured in accordance with § 381.95 if the name of the article clearly conveys the article's intended use for animal food and appears on the label in a conspicuous manner.

(i) Except as provided in paragraph (ii) of this paragraph (b)(3), the name of the article must be stated on the label as "Animal Food," "Pet Food," or "(name of species) Food" (e.g., "Dog Food" or "Cat Food"). To be considered conspicuous, the name of the article, wherever it appears on the label, must be stated in letters at least twice as high, wide, and thick as the letters indicating the presence in the article of any ingredients derived from carcasses of poultry.

(ii) Notwithstanding the provisions of paragraph (i) of this paragraph (b)(3), the article's name may be stated on the label to show that it is or contains poultry carcass-source material and that the article is for animals; e.g., "Chicken for Pets" or "Turkey Dinner for Cats": *Provided,* That the entire name of the article is stated, wherever it appears on the label, as an individual, contiguous unit, whether stated on a single line or more than one line, and the letters denoting the article's intended use for animal food are at least as high, wide, and thick as the letters indicating the presence of material derived from any poultry carcass. However, when the label bears on its principal display panel a vignette which pictures, in clearly recognizable form and size, one or more animals of the species for which the article's name indicates the article is intended, the letters used to state the article's intended use shall be at least one-half as high, wide, and thick as the letters used in the article's name or other letters indicating the presence of material derived from any poultry carcass, but shall not be less than ⅛ inch high. The letters used to state the article's intended use may be separated from the article's name by the vignette.

(iii) Letters used to denote the intended use of the article must contrast as markedly with their background as the letters indicating the presence in the article of poultry carcass-source material contrast with their background.

(4) The requirements of this part do not apply to livestock or poultry feed manufactured from processed poultry byproducts (such as poultry byproduct meal, hydrolyzed poultry feathers, and hydrolyzed poultry byproducts aggregate), or to processed dry animal food.

Done at Washington, DC, on: August 29, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-31767 Filed 12-4-84; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-82-130]

Energy Conservation Program for Consumer Products; Test Procedures for Dishwashers

Correction

In FR Doc. 84-30976 beginning on page 46533 in the issue of Tuesday, November 27, 1984, make the following correction:

Appendix C—[Corrected]

On page 46536, in the second column, in the next to last line of the column, "than the test" should read "then the test".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Extension of effectiveness of rules on dishwasher ranges of comparability.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of efficiencies for dishwashers have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on November 17, 1983 remain in effect until new ranges are published.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: James Mills or Lucerne D. Winfrey, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580, (202) 376–8034.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)[1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule[2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.[4] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for dishwashers have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on November 17, 1983.

In consideration of the foregoing, the present ranges for dishwashers will remain in effect for the next year.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84–31588 Filed 12–4–84; 8:45 am]

BILLING CODE 6750–01–M

[1] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979)

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 28036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 83F–0098]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the use of acetone-formaldehyde condensate as a component of adhesives intended for use in food-contact packaging applications. This action responds to a petition filed by American Cyanamid Co.

DATES: Effective December 5, 1984; objections by January 4, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 22, 1983 (48 FR 17389), FDA announced that a petition (FAP 3B3698) had been filed by American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of acetone-formaldehyde condensate as a component of adhesives intended for use in contact with food.

FDA is aware that some studies show that formaldehyde has caused tumors in rats at the site of intranasal administration. No such study exists, however, that suggests that formaldehyde is tumorigenic when ingested by animals. In fact, there are studies in the literature in which a precursor to formaldehyde (hexamethylenetetramine) did not cause tumors when ingested by mice and rats. Because hexamethylenetetramine is broken down in the stomach to formaldehyde, these studies directly tested whether orally administered formaldehyde is carcinogenic. For the reasons discussed more fully in the agency's denial of requests for a hearing on aspartame (49 FR 6672; February 27, 1984), the inhalation study is not appropriate for use in evaluating the safety of this resin, because it has been demonstrated that formaldehyde is not a systemic carcinogen.

FDA has evaluated data in the petition and other relevant material and concludes that the food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 175 is amended in § 175.105(c)(5) by alphabetically inserting a new item in the list of substances, to read as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
Acetone-formaldehyde condensate (CAS Reg. No. 25619–09–4).	
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 4, 1985 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective December 5, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 29, 1984.

Ronald T. Ottes,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–31730 Filed 12–4–84; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 1H5321/R139D; FRL–2730–3]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency Animal Drugs, Feeds, and Related Products; Tolerances for Pesticides in Animal Feeds; Dicamba; Denial of Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of stay of food/feed additive regulations; response to comments.

SUMMARY: This document denies a request for a stay of the food/feed additive regulations for residues of the herbicide dicamba. It also responds to comments received in response to the notice granting an extension of time for filing comments on the rules. The Agency has determined that the establishment of food/feed additive regulations for dicamba on sugarcane molasses satisfies criteria set forth in the Federal Food, Drug, and Cosmetic Act.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Room 245, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 16, 1983 (48 FR 11113), under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 348) EPA issued final rules that estalished food and feed additive regulations (21 CFR 193.465 and 561.427) to permit the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its sugarcane metabolite (3,6-dichloro-5-hydroxy-*o*-anisic acid) in or on sugarcane molasses at 2.0 parts per million (ppm). The Agency received an objection to the issuance of these regulations from the Natural Resources Defense Council, Inc. (NRDC). NRDC also requested a stay of the regulations effective date. In response to NRDC's objections, the Agency published in the **Federal Register** of July 27, 1983 (48 FR 34024), a notice providing supplemental information on the level of nitrosamine contamination is sugarcane molasses, the calculations used by the Agency to arrive at its risk estimates, and the rationale followed by the Agency in establishing the food/feed additive regulations. This supplemental notice also provided a 30-day time period for filing objections to the March 16, 1983 regulations.

The Agency has received comments in response to the July 27, 1983 supplemental notice from NRDC; from Congressman George Brown, Jr., Chairman of the Subcommittee on Department Operations, Research, and Foreign Agriculture of the House Committee on Agriculture; and from Velsicol Chemical Co.

NRDC did not raise any objections to the supplemental information published by EPA detailing the nature of the risk extrapolation process; however, NRDC requested that the Agency publish an additional supplemental notice concerning the applicability of the Delaney Clause, section 409(c)(3)(A) of the FFDCA. NRDC further requested that EPA respond to NRDC's request for a stay of the effective date of the regulations.

The Agency believes that the **Federal Register** notices establishing the dicamba food/feed additive regulations for sugarcane molasses and providing an extension of time for filing objections more than adequately delineate the Agency's rationale for establishing the rules. The supplemental notice

specifically noted that "the Agency adopted and applied the FDA rationale set forth in 'D & C Green No. 6; Listing as a Color Additive in Externally Applied Drugs and Cosmetics,' published in the **Federal Register** of April 2, 1982 (47 FR 14136)." That **Federal Register** notice delineates in great detail FDA's rationale for the "constituents policy," which has been adopted by EPA in support of the issuance of the food/feed additive regulations. Therefore, EPA believes that there is no merit to NRDC's objection that the Agency has not responded to NRDC's objections concerning the applicability of the Delaney Clause. The Agency notes that in *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984), the Court of Appeals (6th Circuit) recently upheld FDA's D & C Green No. 5 decision, which, like the Green No. 6 decision, was based on the "constituents policy" approach. The Court of Appeals agreed with the FDA that the Delaney Clause in the color additives provision of FFDCA section 706(b)(5)(B) (21 U.S.C. 376(b)(5)(B)) clearly was "aimed only at those additives containing impurities that produced cancer when tested together." 728 F.2d at 325. In light of EPA's conclusion that the establishment of the dicamba food/feed additive regulations for sugarcane molasses does not pose a safety concern under the "general safety clause" of section 409 of the FFDCA, and is not barred by the Delaney Clause, the Agency sees no merit in NRDC's request for a stay.

Chairman George E. Brown, Jr., expressed concern that this action and the reasoning provided in support of it could have significant ramifications that should be considered in a more comprehensive and systematic way. Specifically, the Congressman urged the Agency to review in more detail the advisability and legality of adopting the FDA's constitutent policy and consider and clarify the potential impact of applying the policy expressed in the dicamba food/feed additive regulations to other pesticides that contain cancer-producing impurities and metabolites. Chairman Brown also posed a number of specific questions that are beyond the scope of the dicamba rules and hence will not be addressed in this document.

The Agency appreciates the concern expressed by Congressman Brown and is planning to review the issues raised by the Delaney Clause and FDA's constituents policy in establishing and revoking food additive regulations for pesticide chemicals. The Agency is particularly concerned about situations where new data demonstrate for the first time a carcinogenic potential for pesticides for which food additive regulations have already been established. EPA plans to address this subject in a **Federal Register** notice that will discuss various options for dealing with such situations and will request public comment on these options.

In deciding on the food and feed additive regulations for dicamba, EPA concluded that the requirements of the Delaney Clause, FFDCA section 409(c)(3)(A), were satisfied and that such dicamba residues on sugarcane molasses do not present a safety concern. As discussed in the **Federal Register** of March 16, 1983 (48 FR 11113) and July 27, 1983 (48 FR 34024), because dicamba and its metabolites have not been shown to induce cancer, the requirements of the Delaney Clause have been satisfied for the additive itself, dicamba. EPA recognized full well that the safety question of the dicamba impurity, dimethyl-*N*-nitrosamine (DMNA), still had to be addressed. EPA addressed this safety question by adopting and applying FDA's constituents policy. Again, this policy refers to FDA's conclusion that the safety of impurities (undesired, nonfunctional constituents) should be judged under the general safety provisions of FFDCA, using the risk assessment as one of the decisionmaking tools.

EPA does not regard deliberately added active or inert ingredients, or metabolites thereof, as potential candidates for clearance under the constituents policy rationale set forth in the dicamba rule. Rather, EPA will only consider applying this rationale to impurities arising from the manufacture of the pesticide (residual reactants, intermediates, and products of side reactions and chemical degradates). Furthermore, the Agency will consider using this rationale in issuing a food additive regulation only where the potential risk from the impurity is extremely low. In estimating this risk, the Agency will rely on very conservative risk estimation methodology, in line with the policy expressed by FDA in the Green No. 6 decision, in order to arrive at a worst-case risk estimate that provides an upper bound on the risk. Such methodology was followed by EPA in concluding that the establishment of the regulation allowing residues of dicamba on sugarcane molasses did not present a safety concern.

Velsicol Chemical Corp. submitted comments in support of the dicamba rule. Velsicol took the position that, in addition to the constituents policy, there are alternative rationales, e.g., the "de minimis" approach, that are applicable to the dicamba situation. In Velsicol's view, under the "de minimis" approach, there is inherent authority in section 409 of the FFDCA to ignore "de minimis" (frivolous) situations that clearly present no public health or safety concerns. *Monsanto* v. *Kennedy*, 613 F.2d 947 (D.C. Cir. 1979) (concerning acrylonitrile monomer migration into beverages from polymer bottles). Velsicol urged the Agency to acknowledge that *Monsanto* provides an independent and alternative basis for issuing the dicamba rules.

The Agency chooses not to decide at this time whether a "de minimus" rationale based on the *Monsanto* decision is available under section 409 of the FFDCA in cases involving the proposed use of pesticides on food crops, since that decision is unnecessary to resolve the matter at hand.

Velsicol also commented that:

> EPA quite properly explained in its **Federal Register** notices of March 16, 1983 and July 27, 1983 that the Delaney Clause only applies to the additive itself—in this case dicamba—and not to undesired, nonfunctional contaminants which are "constituents" in the food additive. Since no tolerance may be granted unless a food additive passes the "general safety" test in section 409, there is no risk that the EPA "constituents policy" will result in a significant risk to any consumer of the food.

In addition, Velsicol presented information in support of EPA's conclusion that the risk estimate for the dicamba sugarcane molasses regulations represents a worst-case risk. Specifically, Velsicol noted that the highest level of DMNA detected in the dimethylamine salt formation of dicamba registered for the sugarcane use is 0.445 ppm, a value lower by a factor of about 6 than the 3.0 ppm value used by the Agency. Using this value, the "worst-case" lifetime risk, according to Velsicol, would be 4.66×10^{-10}. Finally, Velsicol provided support for the Agency's contention that DMNA is extremely volatile and breaks down in the presence of ultraviolet light, citing J.E. Oliver, "Volatilization of Some Herbicide-Related Nitrosamines for Soils," *Journal of Environmental Quality*, Vol. 8, No. 4, 1979, pp. 596–601.

In response to Velsicol's position that 0.445 ppm is the highest level of nitrosamine that has been detected in the formulation of dicamba registered for sugarcane use, the Agency has concluded that its use of the 3 ppm value in the risk assessment was correct.

Although the highest value for DMNA in the Velsicol formulation registered for sugarcane use was 0.445 ppm (based on the analysis of four samples), a sample of another dimethylamine dicamba product containing a similar amount of dimethylamine in the formulation was reported to contain 2.98 ppm DMNA. Since dimethylamine is considered to be the source of DMNA in these dicamba products, it is reasonable to assume that the product registered for sugarcane use could contain as much as 3 ppm DMNA.

The Agency agrees with Velsicol that the actual concentration of DMNA in sugarcane is likely to be lower than the calculated value of 0.75 part per trillion (ppt) because of the volatility and light sensitivity of this compound. The Oliver paper cited by Velsicol in its comments contains numerous graphs depicting the rapid volatilization of low-molecular-weight nitrosamines after their application to soil. Table 2 of the Oliver paper confirms Velsicol's claim that 43 percent of the dipropylnitrosamine (DPNA) applied to Matapeake loam at 22° C volatilized within 3 hours of application. In addition, Figure 2 of the paper shows that DMNA volatilizes more rapidly than DPNA, as expected, based on the molecular weight differences. Therefore, the actual concentration of DMNA in sugarcane is likely to be lower than the 0.75 ppt level used by the Agency in its calculations. In spite of the data discussed above, the Agency does not believe that a modification of the 0.75 ppt number is justifiable because of the other factors involved, such as differences between DMNA and dicamba in their uptake by plants and their biodegradability in the soil.

In conclusion, based on the information presented in the March 16, 1983 and July 27, 1983 **Federal Register** notices, in conjunction with the considerations discussed in this document, the Agency has determined that the establishment of food/feed additive regulations for dicamba on sugarcane molasses satisfies the criteria of section 409 of the Federal Food, Drug, and Cosmetic Act. Therefore, the Agency is denying the request by NRDC for a stay of § 193.465 *Dicamba* (21 CFR 193.465) and § 561.427 *Dicamba* (21 CFR 561.427).

Dated: November 21, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-31721 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 83N-0352]

High-Pressure Liquid Chromatographic Assay for Cephradine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by revising the high-pressure liquid chromatographic (HPLC) assay for cephradine. This action improves the HPLC assay method for this antibiotic drug.

DATES: Effective January 4, 1985; comments, notice of participation, and request for hearing by January 4, 1985; data, information, and analyses to justify a hearing by February 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 22, 1983 (48 FR 52750), FDA proposed to amend the antibiotic drug regulations by revising the HPLC assay used to determine the potency of cephradine and the cephalexin content of cephradine.

Interested persons were given until January 23, 1984, to submit written comments on the proposal and until December 22, 1983, to submit requests for an informal conference. No requests for an informal conference were received.

One comment was received from a manufacturer recommending a modification of the proposed HPLC assay methods. The comment suggested that mobile phase be used in place of distilled water as the diluent in the preparation of the working standard and sample solutions.

In evaluating the merits of this comment, the agency performed comparative studies of the proposed HPLC assay method using mobile phase and distilled water in the preparation of the working standard and sample solutions. Based on these studies, the agency has determined that these diluents produce equivalent assay results. The agency believes that designating the use of distilled water over mobile phase as the diluent in this test would serve no practical purpose in assuring drug product quality. Thus, the proposed HPLC assay method is modified in accordance with the manufacturer's suggestion.

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the final rule would refine an existing technical provision without imposing a more stringent requirement. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, Cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 436 and 442 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. Part 436 is amended by adding new § 436.337 to read as follows:

§ 436.337 High-pressure liquid chromatographic assay for cephradine.

(a) *Equipment.* A suitable high-pressure liquid chromatograph equipped with:

(1) A low dead volume cell 8 to 20 microliters;

(2) A light path length of 8 millimeters;

(3) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers;

(4) A suitable recorder that is compatible with the detector output;

(5) A suitable integrator (optional); and

(6) A 25-centimeter column having an inside diameter of 4.6 millimeters and packed with octadecyl silane chemically bonded to porous silica or ceramic microparticles, 10 micrometers in diameter, U.S.P. XX.

(b) *Reagents*—(1) 4 percent glacial acetic acid.

(2) 3.86 percent sodium acetate.

(c) *Mobile phase.* 4 percent glacial acetic acid:3.86 percent sodium acetate:methanol:distilled water (3:15:200:782). Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase prior to its introduction into the chromatograph pumping system. The distilled water:methanol ratio may be varied to obtain acceptable operation of the system.

(d) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 1.2 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the cephradine in the cephradine working standard that is about 75 percent of full scale.

(e) *Preparation of working standard and sample solutions*—(1) *Preparation of cephradine working standard solution.* Place an accurately weighed portion of the cephradine working standard into a suitably sized container. Add 5.0 milliliters of distilled water and place in an ultrasonic bath to facilitate dissolution. Dilute with a sufficient amount of mobile phase to obtain a solution containing 0.8 milligram of cephradine activity per milliliter.

(2) *Preparation of cephalexin working standard solution.* Dissolve an accurately weighed portion of the cephalexin working standard with mobile phase to obtain a solution containing 0.02 milligram of cephalexin activity per milliliter. Place in an untrasonic bath to facilitate dissolution.

(3) *Preparation of sample solutions*—(i) *Product not packaged for dispensing (micrograms of cephradine per milligram).* Dissolve an accurately weighed portion of the sample with mobile phase to obtain a solution containing 0.8 milligram per milliliter. Place in an ultrasonic bath to facilitate dissolution. Using this sample solution, proceed as directed in paragraph (f)(1) of this section.

(ii) *Product packaged for dispensing.* Determine both micrograms of cephradine per milligram of the sample and milligrams of cephradine per container. Use separate containers for preparation of each sample solution as described in paragraph (e)(3)(ii) (*a*) and (*b*) of this section.

(*a*) *Micrograms of cephradine per milligram.* Dissolve an accurately weighed portion of the sample with mobile phase to obtain a solution containing 0.8 milligram per milliliter. Place in an ultrasonic bath to facilitate dissolution. Using this sample solution, proceed as directed in paragraph (f)(1) of this section.

(*b*) *Milligrams of cephradine per container.* Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute the solution thus obtained with mobile phase to obtain a solution containing 0.8 milligram per milliliter. Using this sample solution, proceed as directed in paragraph (f)(1) of this section.

(f) *Procedure*—(1) *Cephradine content.* Using the equipment, reagents, mobile phase, and operating conditions as listed in paragraphs (a), (b), (c), and (d) of this section, inject 10 microliters of the cephradine working standard solution into the chromatograph. Allow an elution time sufficient to obtain satisfactory separation of the expected components. After separation of the working standard solution has been completed, inject 10 microliters of the sample solution prepared as described in paragraph (e)(3)(i) of this section into the chromatograph and repeat the procedure described for the working standard solution. The elution order is void volume, cephalexin, and cephradine. If the sample is packaged for dispensing, repeat the procedure for each sample solution prepared as described in paragraph (e)(3)(ii) (*a*) and (*b*) of this section.

(2) *Cephalexin content.* Proceed as directed in paragraph (f)(1) of this section, except:

(i) Use a detector sensitivity setting that gives a peak height for the cephalexin in the cephalexin working standard that is about 75 percent of full scale; and

(ii) Use the cephalexin working standard in lieu of the cephradine working standard.

(g) *Calculations*—(1) Calculate the micrograms of cephradine per milligram of sample as follows:

$$\text{Micrograms of cephradine per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100 - m)}$$

where:

A_u = Area of the cephradine peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cephradine peak in the chromatogram of the cephradine working standard;

P_s = Cephradine activity in the cephradine working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

m = Percent moisture content of the sample.

(2) Calculate the cephradine content of the vial as follows:

$$\text{Milligrams of cephradine per vial} = \frac{A_u \times P_s \times C_u \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the cephradine peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the chephradine peak in the Chromatogram of the cephradine working standard;

P_s = Cephradine activity in the cephradine working standard solution in micrograms per milliliter;

C_u = Milligrams of the standard per milliliter; and

d = Dilution factor of the sample.

(3) Calculate the percent cephalexin content of the sample as follows:

$$\text{Percent cephalexin} = \frac{A_u \times W_b \times P_b \times 10}{A_b \times W_u \times (100 - m)}$$

where:

A_u = Area of the cephalexin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_b = Area of the cephalexin peak in the chromatogram of the cephalexin working standard;

W_b = Milligrams of cephalexin per milliliter of cephalexin working standard solution;

W_u = Milligrams of cephradine per milliliter of sample solution;

P_b = Micrograms of cephalexin per milligram of cephalexin working standard; and

m = Percent moisture content of the sample.

PART 442—CEPHA ANTIBIOTIC DRUGS

2. Part 442 is amended:

a. In § 442.40 by revising paragraph (b) (1)(iii) and (5) to read as follows:

§ 442.40 Cephradine.

* * * * * *

(b) * * *

(1) * * *

(iii) *High-pressure liquid chromatographic assay.* Proceed as directed in § 436.337 of this chapter, preparing the sample as described in paragraph (e)(3)(i) of that section.

* * * * * *

(5) *Cephalexin content.* Proceed as directed in § 436.337 of this chapter.

* * * * * *

b. In § 442.40a by revising paragraph (b)(1)(iii) to read as follows:

§ 442.40a Sterile cephradine.

* * * * * *

(b) * * *

(1) * * *

(iii) *High-pressure liquid chromatographic assay.* Proceed as directed in § 436.337 of this chapter.

* * * * * *

c. In § 442.41 by revising paragraphs (b)(1)(iii) and (5) to read as follows:

§ 442.41 Cephradine dihydrate.

* * * * * *

(b) * * *

(1) * * *

(iii) *High-pressure liquid chromatographic assay.* Proceed as directed in § 436.337 of this chapter, preparing the sample as described in paragraph (e)(3)(i) of that section.

* * * * * *

(5) *Cephalexin content.* Proceed as directed in § 436.337 of this chapter.

* * * * * *

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before January 4, 1985, a written notice of participation and request for hearing, and (2) on or before February 4, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. January 4, 1985.

(Secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g)).)

Dated: November 28, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-31673 Filed 12-4-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 452

[Docket No. 84N-0339]

Antibiotic Drugs; Erythromycin-Benzoyl Peroxide Topical Gel

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for new antibiotic dosage form, erythromycinbenzoyl peroxide topical gel. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective December 5, 1984; comments, notice of participation, and request for hearing by January 4, 1985; data, information, and analyses to justify a hearing by February 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drug and Biologics (HFN–815), Food and Drugs Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic dosage form, erythromycin-benzoyl peroxide topical gel. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 452

Antibiotics, Macrolide.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 452 is amended by adding new § 452.510d to read as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

§ 452.510d Erythromycin-benzoyl peroxide topical gel.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Erythromycin-benzoyl peroxide topical gel is erthromycin packaged in combination with a suitable and harmless gel containing benzoyl peroxide and one or more suitable dispersants, stabilizing agents, perfumes, and wetting agents. When reconstituted as directed in the labeling, each gram contains 30 milligrams of erythromycin and 50 milligrams of benzoyl peroxide. The erythromycin

content is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of erythromycin that it is represented to contain. The benzoyl peroxide content is satisfactory if it contains not less than 90 percent and not more than 115 percent of the milligrams of benzoyl peroxide that it is represented to contain. The erythromycin used conforms to the standards prescribed by § 452.10(a)(1), except with respect to heavy metals.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The erythromycin used in making the batch for potency, moisture, pH, residue on ignition, identity, and crystallinity.

(*b*) The batch for erythromycin content and benzoyl peroxide content.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The erythromycin used in making the batch: 5 packages, each containing approximately 100 milligrams.

(*b*) The batch: A minimum of 8 containers.

(b) *Tests and methods of assay*—(1) *Erythromycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Reconstitute the sample as directed in the labeling. Place an accurately weighed representative portion of the constituted product into a high-speed glass blender jar containing 0.5 milliliter of polysorbate 80 and sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Further dilute an aliquot of the stock solution with solution 3 to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Benzoyl peroxide content.* Reconstitute the sample as directed in the labeling. Place an accurately weighted representative portion (about 2.5 grams) of the constituted product into a tared 250-milliliter glass-stoppered flask. Add 50 milliliters of glacial acetic acid and 20 milliliters of methylene chloride. Stopper and shake vigorously to disperse the gel. Add 1.0 milliliter phenylsulfide, swirl, stopper, and allow to stand at room temperature for 2 minutes. Purge the flask with nitrogen for 3 seconds. Add 5 milliliters for freshly prepared saturated sodium iodide solution, stopper, and swirl to mix. Let stand in the dark for 30 minutes. Add 50 milliliters of previously boiled and cooled distilled water and titrate the liberated iodine with 0.1*N* sodium thiosulfate, adding starch T.S. near the endpoint. Perform a blank determination and correct the sample titer. Each milliliter of 0.1*N* sodium thiosulfate is equivalent to 12.11 milliliters of benzoyl peroxide. Calculate the benzoyl peroxide content as follows:

$$\text{Percent benzoyl peroxide} = \frac{V_s \times \text{Normality of sodium thiosulfate} \times 12.11}{\text{Sample weight in grams}}$$

where:

V_s = Milliliters of sodium thiosulfate used in the titration of the sample minus the milliliters of sodium thiosulfate used in the titration of the sample blank.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation, therefore, is effective December 5, 1984. However, interested persons may, on or before January 4, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before January 4, 1985, a written notice of participation and request for hearing, and (2) on or before February 4, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. December 5, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: November 28, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-31674 Filed 12-4-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 546

Tetracycline Antibiotic Drugs for Animal Use; Tetracycline Soluble Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Medico Industries, Inc., providing for use of tetracycline soluble powder in swine and calves. The drug is labeled for control and treatment of bacterial enteritis and bacterial pneumonia.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Medico Industries, Inc., Elkan Estates, P.O. Box 338, Elwood, KS 66024, has filed NADA 65–496 for tetracycline hydrochloride soluble powder. Each pound of the drug contains 324 grams of tetracycline hydrochloride. The drug is administered orally in the drinking water of swine for the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and for bacterial pneumonia associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp., susceptible to tetracycline. It is administered orally in the drinking water of calves for the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and for bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp., susceptible to tetracycline. The application complies with the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group evaluation for tetracycline hydrochloride (see 35 FR 10966–10967, July 8, 1970). The application is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 546

Animal drugs, Antibiotics, Tetracycline.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 546 is amended in § 546.180d by changing the cross-reference "(c)(5)" in paragraph (c)(2) and (3) to read "(c)(6)"; by redesignating paragraph (c)(5) as (c)(6); by adding new paragraph (c)(5); and by adding new paragraph (c)(6) (i)(*c*) and (iii) (*d*) to read as follows:

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 546.180d Tetracycline soluble powder.

* * * * * *

(c) * * *

(5) *NAS/NRC status.* The conditions of use specified in paragraph (c)(6) (i) (*c*)(*1*) *and (iii)(d)*(*1*) of this section are NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified in § 514.111 of this chapter, but may require bioequivalency and safety information.

(6) *Conditions of use.* (i) * * *

(*c*) *Amount.* 10 milligrams per pound body weight daily.

(*1*) *Indications for use.* For the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp., susceptible to tetracycline.

(*2*) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food purposes within 5 days of treatment; use as sole source of tetracycline.

(*3*) *Sponsor.* See No. 015562 in § 510.600(c) of this chapter.

* * * * *

(iii) * * *

(*d*) *Amount.* 10 milligrams per pound body weight daily.

(*1*) *Indications for use.* For the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp., susceptible to tetracycline.

(*2*) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food purposes within 4 days of treatment; use as sole source of tetracycline.

(*3*) *Sponsor.* See No. 015562 in § 510.600(c) of this chapter.

* * * * *

Effective date. December 5, 1984.

(Sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n)))

Dated: November 28, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-31729 Filed 12-4-84; 8:45 am]

BILLING CODE 4160-01-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

Cost of Living Adjustment for Performance of Musical Compositions by Public Broadcasting Entities Licensed to Colleges and Universities

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: In accordance with 37 CFR 304.10(a) the Copyright Royalty Tribunal announces a cost of living adjustment of 6.1%. This adjustment is to be applied to the compulsory royalty rates paid by public broadcasting entities which are licensed to colleges, universities or other nonprofit educational institutions and which are not affiliated with National Public Radio, for their use of copyrighted published nondramatic musical compositions. In accordance with 37 CFR 304.10(b) the Copyright Royalty Tribunal publishes (below) a revised schedule of rates as adjusted by the above change in the cost of living index.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, (202) 653–5175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 29, 1982 (47 FR 57923) codified at 37 CFR 304.10, the Copyright Royalty Tribunal published a final rule announcing the adjustment of the royalty schedule for the use of certain copyrighted works in connection with non-commercial broadcasting.

Sec. 304.10 Cost of living adjustment.

(a) On December 1, 1983 the CRT shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the May 1982 to the last Index published prior to December 1, 1983. On each December 1 thereafter the CRT shall publish a notice of the change in the cost of living during the period from the first Index published subsequent to the previous notice, to the last index published prior to December 1 of that year.

(b) On the same date of the notices published pursuant to paragraph (a), the CRT shall publish in the **Federal Register** a revised schedule of rates for section 304.5 alone, which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates for § 304.5 alone, shall become effective thirty days after publication in the **Federal Register.**

Accordingly, it is announced that the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) for the Index published June 22, 1983 to the last index published prior to December 1, 1984 is 6.1%. (Last year's May Index, published June 22, 1983 was 297.1. This year's October Index, published November 23, 1984 was 315.3). The rates published in the **Federal Register** on December 1, 1983 (48 FR 54223), 37 CFR 304.5 are revised as shown below.

List of Subjects in 37 CFR Part 304

Copyright, Radio, Television.

PART 304—[AMENDED]

§ 304.5 [Amended]

37 CFR Part 304.5(c) is amended by removing the paragraphs containing dollar amounts and inserting the following:

* * * * *

(c) * * *

For all such compositions in the repertory of ASCAP annually	$149
For all such compositions in the repertory of BMI annually	149
For all such compositions in the repertory of SESAC annually	33
For the performances of any other such composition	1

(Pub. L. 94–553)

Marianne Mele Hall,

Chairman.

November 30, 1984.

[FR Doc. 84–31739 Filed 12–4–84; 8:45 am]

BILLING CODE 1410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–2731–2]

Approval and Promulgation of Implementation Plans; Compliance With the Statutory Provisions of Part D and Section 110 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Call for State Implementation Plan (SIP) Revisions.

SUMMARY: EPA here gives notice that it has: (1) Notified the States listed in Table A that their SIP's for certain areas are substantially inadequate to assure attainment and maintenance of certain primary national ambient air quality standards (NAAQS) and (2) called upon those States to submit curative SIP revisions to EPA for approval.

DATES: SIP revisions are due within 1 year of the date EPA notified the State (in most cases, this date was September 28, 1984).

ADDRESSES: Copies of the technical support document supporting the determinations of SIP inadequacy referred to in today's notice are located in Docket No. A–84–45, West Tower Lobby, Gallery 1, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket may be examined between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying. A duplicate copy of the docket for each affected area is located in the EPA Regional Office of the Region in which the area is located.

FOR FURTHER INFORMATION CONTACT:

Willis P. Beal, Office of Air Quality Planning and Standards (MD–15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (919/541–5665, FTS 629–5665). For questions relating to specific areas, please contact the appropriate EPA Regional Office.

James Sydnor, Chief, Air Management Branch, EPA Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, 215/597–8175, FTS 597–8175

James T. Wilburn, Chief, Air Management Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/881–3043, FTS 257–3043

Steve Rothblatt, Chief, Air Programs Branch, EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353–2211, FTS 353–2211

Jack Divita, Chief, Air Programs Branch, EPA Region VI, First International Building, 1201 Elm Street, Dallas, Texas 75270, 214/767–2746, FTS 729–2745

SUPPLEMENTARY INFORMATION:

I. Background

The 1970 Clean Air Act Amendments established deadlines for attainment of the primary NAAQS and required States to adopt SIP's providing for attainment within the deadlines. In many areas of the country, the first SIP's failed to bring about timely attainment. In 1976, EPA found these plans inadequate under Section 110(a)(2)(H), 42 U.S.C. 7410(a)(2)(H), and called for SIP revisions under Section 110(c)(1)(C), 42 U.S.C. 7410(c)(1)(C). See, e.g., 41 FR 28842 (July 13, 1976).

In 1977, Congress amended the Clean Air Act to address the problem of continuing nonattainment of the NAAQS. New Section 107(d), 42 U.S.C. 7407(d), required each State to designate immediately all areas as either attaining the NAAQS, not attaining the NAAQS, or unclassifiable for lack of data. Section 107(d) further required EPA to review, modify, and promulgate these designations by February 1978. New Section 110(a)(2)(I), 42 U.S.C. 7410(a)(2)(I), required each State to revise its SIP to prohibit major stationary source construction or modification after July 1, 1979, in any nonattainment area whose SIP did not meet the requirements of Part D of the amended Act. Section 172(a)(1) of that part required each nonattainment area SIP to "provide for" primary NAAQS attainment as soon as practicable, but no later than December 31, 1982.[1] (These were called "Part D plans" because the requirement was in Part D of the amended Clean Air Act.) The 1977 Amendments, however, retained the authority in Sections 110(a)(2)(H) and 110(c)(1)(C) to issue notices of deficiency and calls for SIP revisions as an additional remedial mechanism.

By July 1, 1979, few of the over 400 nonattainment areas designated by EPA had in effect a SIP meeting the requirements of Part D. As a result, on July 2, 1979 (44 FR 39471), EPA published a regulation inserting the statutory construction ban into SIP's and automatically imposing the ban as of July 1, 1979, in each nonattainment area without an approved or promulgated Part D plan. EPA stated it would lift the ban when the necessary Part D provisions were in place.

Since 1979, EPA has approved, fully or conditionally, all portions of Part D plans for the majority of nonattainment areas with the 1982 attainment deadline.[2] However, many of those areas continued to experience NAAQS violations after the 1982 deadline.

On February 3, 1983, EPA proposed two sets of findings for Part D plans for nonattainment areas with the 1982 deadline (48 FR 4972). First, EPA proposed to find as a factual matter that many of these SIP's had failed to attain the NAAQS by the end of 1982. Second, EPA proposed that the legal consequences of such failures should be disapproval of the SIP and the imposition of a Section 110(a)(2)(I) construction ban.

After evaluating the comments on these proposals, EPA issued a final

[1] Section 172(a)(2) allowed areas that demonstrated that it would be impossible to attain either the ozone or carbon monoxide standards by the end of 1982 to obtain attainment date extensions and defer compliance with some of the requirements of Section 172(b).

[2] If the State committed to submit corrections on a prompt, definite schedule, conditional approvals were given to Part D plans that contained only minor deficiencies.

policy notice on November 2, 1983. This notice revised the Agency's position on the legal consequences of a failure to meet the 1982 deadline (48 FR 50686). In that policy, EPA agreed with many past commenters that imposition of the Section 110(a)(2)(I) ban was not a legal consequence in any case where EPA had previously fully or conditionally approved a State plan.

In that final policy, EPA, however, stated its intent to find inadequate any approved or conditionally approved Part D plan that failed to bring about attainment by 1982. For such inadequate plans pursuant to Section(a)(2)(H) of the Act, EPA specified it would call for corrective SIP revisions. The Agency would take further action to impose construction bans under Section 173(4) and funding restrictions under Section 176(b) in any area that fails to submit a revision in a timely manner.

Twenty-seven calls for SIP revisions were made on February 24, 1984, for ozone, carbon monoxide, sulfur dioxide, and nitrogen oxides. (See 49 FR 18827 on May 3, 1984 for additional details on this process. This is included in the Technical Support Document for this notice.) The SIP calls for particulate matter were deferred because of the pending proposed revision to the particulate matter standard.

II. Finding of Inadequacy

During the past summer, air quality data through 1983 (and into 1984 if available) were reviewed to determine if additional areas needed to revise their SIP's. (Action on SIP calls for particulate matter is being deferred because of the pending particulate matter standard.) Based on this analysis, EPA has determined that the SIP's listed in Table A are substantially inadequate to provide for attainment and maintenance of certain primary NAAQS in certain areas, and has notified those States by letters of this determination. The basis for the finding of SIP inadequacy is EPA's conclusion that those areas either are covered by fully or conditionally approved Part D plans and are still experiencing violations of the primary NAAQS or are areas where a Part D plan was never required but have experienced primary NAAQS violations. The pollutants and areas for which the SIP is inadequate are specified in Table A.

TABLE A.—CALLS FOR SIP REVISION

[September–October 1984]

EPA region and State	Area	Pollutant
III: VA	Richmond	Ozone.
IV: TN	Memphis	Ozone.

TABLE A.—CALLS FOR SIP REVISION—Continued

[September–October 1984]

EPA region and State	Area	Pollutant
V:		
IL	Madison Co	Sulfur dioxide.
MI	Wayne Co	Sulfur dioxide.
MN	Dakota Co	Sulfur dioxide.
VI:		
LA	Orleans Parish	Carbon monoxide.
OK	Oklahoma Co	Carbon monoxide.
TX	Harris Co	Carbon monoxide.
	Denton Co	Ozone.

Note: Two States, Florida and North Carolina, have notified EPA by letters from their Governors that they will make SIP revisions for their States. The two areas, Miami, Florida, and Raleigh-Durham, NC, have both had violations of the NAAQS for carbon monoxide. As with the 9 areas in Table A, they will have 1 year to submit a SIP revision to EPA. In addition, Wisconsin was notified on April 26, 1984, that its SO_2 SIP is inadequate.

The factual material that supports EPA's finding of inadequacy is the monitoring data cited above (through 1983 and including portions of 1984 if available). This material is available in the technical support document.

III. Call for SIP Revision

These findings of inadequacy require the States, pursuant to the provisions of Section 110(a)(2)(H), to carry out their SIP obligations and to adopt and submit to EPA for approval whatever additional control measures are necessary to assure timely attainment and maintenance of the NAAQS in question. In its recent notices of inadequacy, EPA has called upon the States to meet these obligations. In addition, EPA may make additional findings of SIP inadequacy and calls for revision whenever the most recent air quality data demonstrate that a SIP is substantially inadequate to achieve the primary NAAQS.

Under Section 110(c), 42 U.S.C. 7410(c), a State would have 60 days to adopt and submit the necessary measures after receiving notification of the inadequacy, unless EPA were to extend this period. EPA is extending that period to 1 year for areas which had previously approved SIP's. The possible sanctions include a construction ban under Section 173(4), and funding restrictions under Section 176 and possibly Section 316(b).

IV. Guidance on the Necessary Revisions

The States have already received copies of the EPA publication entitled "Guidance Document for Correction of Part D SIP's for Nonattainment Areas," issued on January 27, 1984, which will assist them in making the revisions necessary to cure the inadequacies in their SIP's. This document may also be inspected in the Docket identified and at the EPA Regional Offices. EPA's November 2, 1983, notice (48 FR 50686) explains EPA's general policy on which the guidance for these revisions is based.

As noted by the Guidance Document and by EPA's general preamble for proposing rulemaking published on April 4, 1979 (44 FR 20372), additional control measures added to a SIP generally do not relax or revoke the existing requirement. The new requirement does not supersede or replace the old requirement until the source comes into compliance with the new requirement. Instead, the existing requirement remains an enforceable provision of the SIP and co-exists with the new requirement in the applicable implementation plan. The present emission control requirement must be retained because the source must be prevented from operating without controls (or with less stringent controls) while it is moving toward compliance with (or challenging) the new requirement. This policy applies to every Part D SIP action taken by EPA unless such action fits within one of the exceptions enumerated in the above referenced 1979 **Federal Register** notice. The fact that a SIP revision fits within an exception shall be indicated in the **Federal Register** notice approving that SIP revision.

V. Final Actions

In EPA's view, these findings of inadequacy do not constitute final actions that are reviewable inasmuch as they are not ripe for review. Under the test articulated in *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967), the determinations will not be sufficiently concrete for judicial resolution until additional action is taken by EPA in reliance on them. Moreover, States will not suffer hardship from delaying review because the findings do not have an immediate, direct, and substantial impact. Also, the States will have a later opportunity to obtain judicial review of the findings.

The 60-day time period for filing a petition for review under Section 307(b) is tolled until EPA makes the findings ripe by taking additional action in reliance on them, such as imposing sanctions or promulgating revisions, because a time limitation on petitions for judicial review can only run against challenges ripe for review. See, e.g., *Baltimore Gas & Electric Co.* v. *Interstate Commerce Commission*, 672 F.2d 148, 149 (D.C. Cir. 1982).

VI. Miscellaneous

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Carbon monoxide, Hydrocarbons.

Authority: Secs. 101, 107, 110, 116, 171–178 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416, 7501–08, and 7601(a)); sec. 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95–95, 91 Stat. 685 (August 7, 1977).

Dated: November 28, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-31711 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-9-FRL-2729-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan (SIP) Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: Today's notice takes final action to approve revisions to the rules of the North Coast Air Quality Management District (AQMD) and the Lake, Mendocino, Sacramento, San Diego, San Joaquin, San Luis Obispo and Shasta Counties and Monterey Bay Unified Air Pollution Control Districts (APCD's). These revisions generally are administrative and retain the previous emission control requirements. EPA has reviewed these rules with respect to the Clean Air Act and determined that they should be approved.

DATE: This action is effective February 4, 1985.

ADDRESSES: A copy of the revisions is available for public inspection during normal business hours at the EPA Region 9 office and at the following locations.

California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95814
Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460
EPA Library, Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20460
Lake County APCD, 255 North Forbes Street, Lakeport, CA 95453
Mendocino County APCD, Courthouse Square, Ukiah, CA 95482
Monterey Bay Unified APCD, 1164 Monroe Street, Suite 10, Salinas, CA 93906
North Coast Unified Air Quality Management District, 5630 South Broadway, Eureka, CA 95501
Sacramento County APCD, 3701 Branch Center Road, Sacramento, CA 95827
San Diego County APCD, 9150 Chesapeake Drive, San Diego, CA 92123
San Joaquin County APCD, 1601 East Hazelton Avenue, P.O. Box 2009, Stockton, CA 95201
San Luis Obispo County APCD, P.O. Box 637, County Airport, Edna Road, San Luis Obispo, CA 93406
Shasta County APCD, 1855 Placer Street, Redding, CA 96001

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, State Implementation Plan Section, A–2–3, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7641 FTS: 454–7641.

SUPPLEMENTARY INFORMATION:

Background

The ARB submitted as SIP revisions the following rules on:

March 14, 1984

Lake County APCD

Rule 602 New Source Review

North Coast Unified AQMD

Rule 100 Title
Rule 120 Administration
Rule 130 Definitions [Paragraphs (d1) and (s5)]
Rule 160 Ambient Air Quality Standards
Rule 240 Permit to Operate
Rule 500 Enforcement
Rule 520 Civil Penalties
Rule 600 Authorization
Rule 610 Petition Procedures
Appendix B—Continuous Monitoring

San Diego County APCD

Rule 2 Definitions
Rule 52 Particulate Matter
Rule 53 Specific Contaminants

San Joaquin County APCD

Rule 110 Equipment Breakdown
Rule 202 Exemptions
Rule 407 Sulfur Compounds

April 19, 1984

Mendocino County APCD

Rule 1–100 Title
Rule 1–120 Administration
Rule 1–130 Definitions [Paragraphs (d1) and (s5)]
Rule 1–160 Ambient Air Quality Standards
Rule 1–240 Permit to Operate
Rule 1–500 Enforcement
Rule 1–520 Civil Penalties
Rule 1–600 Authorization
Rule 1–610 Petition Procedures
Appendix B—Continuous Monitoring
Rule 2–101 Restrictions and Description
Rule 2–102 Exemptions
Rule 2–200 Definitions
Rule 2–301 Open Burning—Agricultural
Rule 2–302 Open Burning—Non-Agricultural
Rule 2–303 Forecasts
Rule 2–304 Burning Permits
Rule 2–305 Designated Fire Agencies
Rule 2–401 Burning Preparation and Restrictions
Rule 2–501 Prohibitions
Rule 2–502 Penalties

Monterey Bay Unified APCD

Rule 101 Definitions
Rule 200 Permits Required
Rule 203 Applications
Rule 422 Burning of Wood Wastes

Sacramento County APCD

Rule 101 General Provisions and Definitions
Rule 102 Circumvention
Rule 103 Exceptions
Rule 403 Fugitive Dust
Rule 404 Particulate Matter
Rule 405 Dust and Condensed Fumes
Rule 406 Specific Contaminants
Rule 407 Open Fires
Rule 408 Incinerator Burning
Rule 409 Orchard Heaters
Rule 410 Reduction of Animal Matter
Rule 420 Sulfur Content of Fuels
Rule 501 Agricultural Burning
Rule 601 Procedure Before the Hearing Board
Rule 602 Breakdown Conditions; Emergency Variances
Rule 701 Emergency Episode Plan

San Luis Obispo County APCD

Rule 105 Definitions

Shasta County APCD

Rule 1:2 Definitions
Rule 2:2 State AAQS (repealed)
Rule 2:3 Implementation Plans (repealed)
Rule 2:6 Open Burning
Rule 2:26 Emissions Calculation Standards (repealed)
Rule 2:27 Banking (repealed)
Rule 3:2 Specific Air Contaminants

These rule revisions, are administrative and they do not significantly impact current emission control requirements. They cover changes in permit requirements and expand categories of exempt sources, provide new definitions as well as clarification and wording changes to reflect new boundaries.

San Joaquin County Rule 202 exempts specific small emission units from the requirement for a permit to operate. The rule has been amended to lower the exemption size cut-off from 750 HP to 200 HP for internal combustion engines. The District has informed EPA that the exemptions in Rule 202 would not exempt these units from any of the requirements of their new source review regulations.

Thus, it is the purpose of this notice to approve and to incorporate these rules into the California SIP, with the exception of portions of Rule 160 and Appendix B for both the North Coast Unified AQMD and the Mendocino APCD as discussed below.

Rule 160, "Ambient Air Quality Standards," for the North Coast Unified AQMD and Mendocino APCD is being approved with the following exceptions: No action is being taken at this time on 160(a) since it does not apply in the two districts, and it contains requirements for non-criteria pollutants. Therefore, 160(a) is not appropriate for inclusion in the SIP.

Paragraph (D)(1)(e) of Appendix B, "Continuous Monitoring, of the North Coast Unified AQMD and the Mendocino APCD are not being acted on at this time since they include Kraft Pulp Mills in the Standards of Performance in Monitoring Systems.

Additionally, ERA is taking this opportunity to rescind Shasta County APCD's Rules 2:2, "State Ambient Air Quality Standards"; 2:3, "Implementation Plans"; 2:26, "Emissions Calculation Standards", and 2:27, "Banking".

Evaluation

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, EPA is required to approve or disapprove these regulations as SIP revisions. All rules submitted, except those not being acted on at this time have been evaluated and found to be in accordance with the Clean Air Act, EPA policy and 40 CFR Part 51. EPA's detailed evaluation of the submitted rules is available at the locations indicated in the **ADDRESSES** section of this notice.

EPA Action

This notice approves the rule revisions listed above and incorporates them into the California SIP. This is being done without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse comments, the approval will be withdrawn and a subsequent notice will be published. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Authority: Sec. 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601(a)).

List of Subjects—40 CFR Part 52

Air Pollution Control Agency, Incorporation by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: November 28, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(153) and (c)(154) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(153) Revised regulations for the following APCD's were submitted on March 14, 1984 by the Governor's designee.

(i) Lake County APCD.

(A) New or amended Rule 602.

(ii) North Coast Unified AQMD.

(A) New or amended Rules 100, 120, 130 [Paragraphs (d1) and (s5)], 160 (except (a) and non-criteria pollutants), 240, 500, 520, 600, 610 and Appendix B (except (D)(1)(e)).

(iii) San Diego APCD.

(A) New or amended Rules 2, 52 and 53.

(iv) San Joaquin APCD.

(A) New or amended Rules 110, 202 and 407.

(154) Revised regulations for the following APCD's were submitted on April 19, 1984 by the Governor's designee.

(i) Mendocino County APCD.

(A) New or amended Regulation 1: Rules 100, 120, 130 (Paragraphs (d1) and (s5)), 160 (except (a) and non-criteria pollutants), 240, 500, 520, 600, 610 and Appendix B (except (D)(1)(e)) and Regulation 2: Rules 101, 102, 200, 201, 302, 303, 304, 305, 401, 501, and 502.

(ii) Monterey Bay Unified APCD.

(A) New or amended Rules 101, 200, 203 and 422.

(iii) Sacramento County APCD.

(A) New or amended Rules 101, 102, 103, 403–410, 420, 501, 601, 602 and 701.

(iv) San Luis Obispo County APCD.

(A) New or amended Rule 105.

(v) Shasta County APCD.

(A) New or amended Rules 1:2, 2:2 (repealed), 2:3 (repealed), 2:6 2:26 (repealed), 2:27 (repealed), and 3:2.

[FR Doc. 84-31688 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 180

[PP 3F2984/R722; FRL-2730-5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer, and its monohydroxylated metabolite in or on certain raw agricultural and animal meat commodities. This regulation to establish maximum levels for residues of the pesticide in or on the commodities was requested in a petition by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on December 5, 1984.

ADDRESS: Written objections, identified by the document control number [PP 3F2984/R722], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1900).

SUPPLEMENTARY INFORMATION:

1. EPA issued a notice, published in the **Federal Register** of November 23, 1983 (48 FR 52974), which announced that Rhone-Poulenc, Inc., P.O. Box 125, Monmouth Junction, NJ 08852, had submitted pesticide petition 4F2984 to the EPA. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose amending 40 CFR 180.399 by establishing tolerances for the combined residues of the fungicide iprodione in or on the following commodities:

a. Iprodione [3-(3,5-dichlorophenyl)-*N*-,(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl) -*N*[3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the raw agricultural commodity grapes at 60 parts per million (ppm).

b. Iprodione and its nonhydroxylated metabolites (expressed as iprodione equivalents) in or on the commodities eggs at 0.8 ppm; fat, meat, and meat byproducts (except kidney and liver) of cattle, goats, hogs, horses, and sheep at 0.4 ppm, and kidney and liver of cattle, goats, hogs, horses, and sheep at 3.0 ppm.

c. Iprodione and its nonhydroxylated and hydroxylated metabolites (expressed as iprodione equivalents) in or on the commodity milk at 0.3 ppm.

2. Subsequently, EPA issued a notice, published in the **Federal Register** of June 6, 1984 (49 FR 23445), which announced that Rhone-Poulenc Inc. amended the petition as follows:

a. Redesignating a tolerance for iprodione and its nonhydroxylated metabolites of 0.4 ppm for fat (except poultry fat), meat, and meat byproducts (except liver and kidney) of cattle, goats, hogs, horses, poultry and sheep, and 3 ppm for liver and kidney of cattle, goats, hogs, horses, poultry, and sheep (except poultry kidney).

b. Adding tolerances for iprodione and its nonhydroxylated metabolites of 3.0 ppm for poultry liver and 2.0 ppm for poultry fat.

There were no comments received in response to these notices of proposed rulemaking.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the tolerances, include (1) a three-generation rat reproduction study with a NOEL of 500 ppm (25 mg/kg body weight/day), a reproductive LEL of 2,000 ppm (100 mg/kg body weight/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg body weight/day; (2) a rabbit teratology study in which the following doses were administered by gavage, 0, 100, 200 and 400 mg/kg body weight, resulting in a teratogenic NOEL equal to or greater than 400 mg/kg body weight; (3) a rat teratology study in which the following doses were administered by gavage, 0, 100, 200, and 400 mg/kg body weight, resulting in a teratogenic NOEL greater than 400 mg/kg body weight; (4) a rat 24-month feeding/oncogenicity study using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study at the highest dose tested; (5) an 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, 178.6 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study at the highest dose tested.

Data currently lacking include a second teratology study using gastric intubation and mutagenecity studies including (1) DNA repair; (2) gene mutation, mammalian, preferably in vitro; and (3) chromosomal aberration, mammalian, preferably in vitro.

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 25 mg/kg/day) and using a 100 fold safety factor, is calculated to be 0.2500 mg/kg of bw/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 15.00 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 1.0706 mg/day. The current action will utilize 3.48 percent of the ADI. These tolerances and the published tolerances utilize a total of 10.62 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of the chemical.

The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Room 3708 (A–110), 401 M Street, SW., Washington, DC 20460. Such objections must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e)).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 20, 1984.

Susan Sherman,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.399 is amended by (1) adding the commodity grapes to paragraph (a), (2) revising the list of commodities in paragraph (b), and (3) revising the tolerance level for milk in paragraph (c) to read as follows:

§ 180.399 Iprodione; tolerances for residues

(a) * * *

Commodities	Parts per million
* * * * * *	
Grapes	60.0
* * * * * *	

(b) * * *

Commodities	Parts per million
Cattle, fat	0.4
Cattle, kidney	3.0
Cattle, liver	3.0
Cattle, meat	0.4
Cattle, mbyp (except liver, kidney)	0.4
Eggs	0.8
Goats, fat	0.4
Goats, kidney	3.0
Goats, liver	3.0
Goats, meat	0.4
Goats, mbyp (except liver, kidney)	0.4
Hogs, fat	0.4
Hogs, kidney	3.0
Hogs, liver	3.0
Hogs, meat	0.4
Hogs, mbyp (except kidney, liver)	0.4
Horse, fat	0.4
Horses, kidney	3.0
Horses, liver	3.0
Horses, meat	0.4
Horses, mbyp (except kidney, liver)	0.4
Poultry, fat	2.0
Poultry, liver	3.0
Poultry, meat	0.4
Poultry, mbyp (except kidney, liver)	0.4
Sheep, fat	0.4
Sheep, kidney	3.0
Sheep, liver	3.0
Sheep, meat	0.4
Sheep, mbyp (except kidney, liver)	0.4

(c) A tolerance of 0.3 part per million * * *

[FR Doc. 84-31719 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300095A; FRL-2730-8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities, Alpha-(P-Nonylphenyl)-Omega-Hydroxypoly (Oxypropylene) Block Polymer With Poly(Oxyethylene)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule expands the exemption from the requirement of a tolerance for *alpha-(p-*nonylphenyl)-*omega-*hydroxypoly (oxypropylene) block polymer with poly(oxyethylene) when used as a surfactant in pesticide formulations. This regulation was requested by the Quaker Chemical Corp.

EFFECTIVE DATE: Effective on December 5, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of September 5, 1984 (49 FR 35030), which announced that Quaker Chemical Corp. had requested that 40 CFR 180.1001(c) be amended by expanding the existing exemption from the requirement of a tolerance for *alpha-(p-*nonylphenyl)-*omega-*hydroxypoly (oxypropylene) block polymer with poly (oxyethylene) (the entry appears incorrectly in the CFR because of a typographical error—"*alpha-(p-*Nonylphenyl)-*alpha* * * *" should read "alpha-(*p-*Nonylphenyl)-*omega* * * *). The ingredient is listed for use as a surfactant in pesticide formulations, and the amendment would expand the polyoxypropylene content from 20–60 moles to 10–60 moles, the polyoxyethylene content from 30–80 moles to 10–80 moles, and the molecular weight from 2,100–7,100 to 1,200–7,100.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticide efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulations deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 30, 1984.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(c) is amended by revising the entry *alpha-(p-*Nonylphenyl)-*alpha-*hydroxypoly(oxypropylene) block polymer with poly(oxyethylene), to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
*Alpha-(p-*Nonylphenyl-*omega-*hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); polyoxypropylene content of 10–60 moles; polyoxyethylene content of 10–80 moles; molecular weight 1,200–7,100		Surfactants, related adjuvants of surfactants.
* * * * *		

[FR Doc. 84-31718 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300098A; FRL-2730-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Certain Pesticide Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of certain pesticide chemicals in or on the raw agricultural commodity red chicory (tops). These regulations, established upon the initiative of the EPA, set maximum permissible levels for residues of the insecticide in or on the commodity.

EFFECTIVE DATE: Effective on December 5, 1984.

ADDRESS: Written objections, identified by the document control number [OPP-300098A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued two proposed rules, published in the **Federal Register** of October 24, 1984, which announced that upon the initiative of the EPA, the Agency proposed amending 40 CFR Part 180 by establishing tolerances for residues of certain pesticide chemicals in or on red chicory (tops) in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

1. *Section 180.153.* EPA proposed (49 FR 42752) establishing a tolerance for residues of the insecticide *O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate in or on the raw agricultural commodity red chicory (tops) (also known as radicchio, a salad crop only recently introduced for cultivation in the U.S.) at 0.7 part per million (ppm).

2. *Section 180.157.* EPA proposed (49 FR 42754) establishing a tolerance for residues of the insecticide methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers in or on red chicory (tops) (also known a radicchio) at 0.5 part per million (ppm).

This action is in response to requests from growers of this minor crop for which there are currently no registered pesticides.

There were on comments nor request for referral to an advisory committee received in response to the proposed rules.

The toxicological data and other relevant material have been evaluated and discussed in the proposed rules.

The pesticides are considered useful for the purpose for which the tolerances are sought. The Agency has determined that the establishment of the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 26, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. In § 180.153 by adding and alphabetically inserting the raw agricultural commodity red chicory (tops) to read as follows:

§ 180.153 O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * * *	
Chicory, red (tops) (also known as radicchio)	0.7
* * * * * *	

2. In § 180.157 by adding and alphabetically inserting the raw agricultural commodity red chicory (tops) to read as follows:

§ 180.157 Methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * * *	
Chicory, red (tops) (also known as radicchio)	0.5
* * * * * *	

[FR Doc. 84-31720 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

[BMCS Docket No. MC-99-1; Amdt. No. 83-14]

Driver's Record of Duty Status; Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction of effective date and comment period date.

SUMMARY: This document corrects the effective date and the comment period date of the final rule amendment to the driver's record of duty status that appeared at page 46145 in the **Federal Register** of Friday, November 23, 1984 (49 FR 46145).

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767, or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 to 4:15 p.m. ET, Monday through Friday.

Beginning on page 46145 in the issue of Friday, November 23, 1984, the dates "November 23, 1985" and "January 31, 1984" are hereby corrected to read as "November 23, 1984" and "January 31, 1985." The date line, as corrected, now reads as follows: "This rule is effective November 23, 1984. Comments must be received by January 31, 1985."

(49 U.S.C. 3102; 49 CFR 1.48)

Issued on: November 28, 1984.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 84-31681 Filed 12-4-84; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 49, No. 235
Wednesday, December 5, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

Tomatoes Grown in Florida; Proposed Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule will reapportion membership of the Florida Tomato Committee by reducing the membership from District 2 from three to two members and increasing the membership from District 4 from three to four. Production from district 2 has been decreasing in recent years and that from District 4 has been increasing. This will make committee representation more proportional to current production.

DATE: Comments due January 4, 1985.

ADDRESS: Comments should be sent to Hearing Clerk, Room 1077-S, U.S. Department of Agriculture, Washington, D.C. 20250. Four copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447-5764.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR 966) regulate the handling of tomatoes grown in designated counties of Florida. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

The order currently provides for a committee of twelve members and their alternates. In recent years the tomato-producing areas in Florida have changed with production declining in District 2 and increasing sharply in District 4. Since the different districts now produce differing proportions of the total tomato crop, it is appropriate that committee composition reflect that change. Accordingly, at its October 10 meeting the Florida Tomato Committee unanimously recommended that District 2 membership be reduced from three to two and District 4 membership be increased from three to four. The committee has determined that this will provide adequate and equitable industry representation in view of the current distribution of tomato production and shipments. This action is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) and § 966.25 of the order.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida.

PART 966—TOMATOES GROWN IN FLORIDA

A new § 966.161 would be added to read as follows:

§ 966.161 Reapportionment of Committee Membership.

Pursuant to § 966.25, industry membership on the Florida Tomato Committee shall be reapportioned as follows:

District 1—three members and their alternates.

District 2—two members and their alternates.

District 3—three members and their alternates.

District 4—four members and their alternates.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 29, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-31690 Filed 12-4-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1126

[Docket No., AO-213-A51]

Milk in the Texas Marketing Area; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends the time for filing exceptions to a recommended decision issued October 25, 1984, concerning proposed amendments to the Texas milk marketing order. Counsel for handlers who are regulated under the order requested the additional time to complete exceptions to the recommended decision.

DATE: Exceptions now are due on or before December 17, 1984.

ADDRESS: Exceptions (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued August 29, 1983; published September 1, 1983 (48 FR 39643).

Correction to Notice of Hearing: Published September 12, 1983 (48 FR 40894).

Extension of Time for Filing Briefs: Issued November 25, 1983; published December 1, 1983 (48 FR 54243).

Partial Recommended Decision: Issued December 6, 1983; published December 12, 1983 (48 FR 55290).

Correction to Partial Recommended Decision: Published December 19, 1983 (48 FR 56060).

Extension of Time for Filing Briefs and Exceptions: Issued December 22, 1983; published December 29, 1983 (48 FR 57310).

Extension of Time for Filing Exceptions: Issued January 27, 1984; published February 1, 1984 (49 FR 4006).

Extension of Time for Filing Exceptions: Issued February 21, 1984; published February 24, 1984 (49 FR 6910).

Partial Final Decision and Termination of Proceeding: Issued May 14, 1984; published May 17, 1984 (49 FR 20825).

Recommended Decision: Issued October 25, 1984; published October 31, 1984 (49 FR 43692).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing order which was issued October 25, 1984, is hereby extended to December 17, 1984.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1128

Milk marketing orders, Milk, Dairy products.

(Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C. on November 29, 1984.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 84-31882 Filed 12-4-84; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 1150

Dairy Promotion Program; Invitation To Submit Comments on Proposed Procedure for Conducting Referenda and Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Dairy Research and Promotion Order was fully implemented on May 1, 1984, as required under the procedures established in Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983. The Act also requires that the Secretary must conduct an initial referendum among producers within the 60-day period immediately preceding September 30, 1985, to determine whether the promotion order should be continued. This document proposes the procedures for conducting the initial referendum among producers and any subsequent referenda that may be conducted in connection with the promotion order. Also, three proposed amendments to the order are included. One is a conforming change as a result of information that may need to be obtained to conduct a referendum, while the other two have been proposed by the National Dairy Promotion and Research Board. One amendment would change the name of the order to be consistent with the name of the Board, while the other proposal would clarify that the proportion of votes necessary by the Board in conducting its business be based on the number of Board members present and voting rather than on the number of Board members present.

DATE: Comments must be postmarked not later than February 4, 1985.

ADDRESS: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard M. McKee, Chief, Promotion and Research Staff, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6909.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as a "non-major" rule. Also, William T. Manley, Acting Administrator, Agricultural Marketing Service, certifies that this action will not have a significant economic impact on a substantial number of small entities because it involves only procedures to conduct referenda. The proposed procedures would involve the voluntary participation of all milk producers and cooperative associations of milk producers, but only to the extent of the act of voting.

Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983 authorized the establishment of a Dairy Research and Promotion Order to implement a national program for dairy product promotion, research and nutrition education. The promotion order was fully implemented on May 1, 1984, within the timeframe and under the procedures specified in the enabling legislation. The Act also requires that the Secretary conduct a referendum among producers within the 60-day period immediately preceding September 30, 1985, to ascertain whether the promotion order should be continued. After September 30, 1985, the Act specifies that the Secretary may conduct a referendum at any time, and shall hold a referendum on request of a representative group comprising 10 percent or more of the producers subject to the order, to determine whether producers favor the termination or suspension of the order.

This proposal would establish the procedures to be followed in conducting the initial, mandated referendum, as well as any subsequent referenda that may be conducted in connection with the Dairy Research and Promotion Order. Implementation of these procedures requires a conforming amendment to the order to include the information collection and recordkeeping requirements that may be necessary of cooperative associations and other persons responsible for submitting assessments to the Board to verify and avoid a duplication of votes.

Two additional amendments to the Dairy Research and Promotion Order have been proposed by the National Dairy Promotion and Research Board. One amendment would change the name of the order to be consistent with the name of the Board as defined in the Act, while the other proposal would clarify that the proportion of votes necessary by the Board in conducting its business be based on the number of Board members present and voting rather than on the number of Board members present.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research, Referenda procedures.

PART 1150—DAIRY PROMOTION PROGRAM

It is hereby proposed that 7 CFR Part 1150—Dairy Promotion Program be amended as follows:

1. The authority for these Amendments reads as follows:

Authority: Pub. L. 98–180, 97 Stat. 1128.

2. Change the title of the subpart for §§ 1150.101 through 1150.187 from "Dairy Research and Promotion Order" to "Dairy Promotion and Research Order."

3. Revise § 1150.137(a) to read as follows:

§ 1150.137 Procedure.

(a) A majority of the members shall consitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require that

concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning notice of meetings.

* * * * *

4. Revise § 1150.187 to read as follows:

§ 1150.187 Paperwork Reduction Act assigned number.

. The information collection and recordkeeping requirements contained in § 1150.133, 1150.152, 1150.153, 1150.171, 1150.172, 1150.202, 1150.204, 1150.205, 1150.211 and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0147.

5. Add "Subpart—Procedure for Conduct of Referenda in Connection with the Dairy Promotion and Research Order" to read as follows:

Subpart—Procedure for Conduct of Referenda in Connection With the Dairy Promotion and Research Order

Sec.

1150.200 General.
1150.201 Definitions.
1150.202 Associations eligible to vote.
1150.203 Conduct of referendum.
1150.204 Who may vote.
1150.205 Duties of the referendum agent.
1150.206 Date of referendum.
1150.207 Notice of Referendum.
1150.208 Time for voting.
1150.209 Tabulation of ballots.
1150.210 Confidential information.
1150.211 Supplementary instructions.
1150.212 Submittals or requests.

Authority: Pub. L. 98–180, 97 Stat. 1128.

Subpart—Procedure for Conduct of Referenda in Connection With the Dairy Promotion and Research Order

§ 1150.200 General.

Referenda to determine whether eligible producers favor the continuance, termination or suspension of the Dairy Promotion and Research Order shall be conducted in accordance with this subpart.

§ 1150.201 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, or the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

(b) "Department" means the United States Department of Agriculture.

(c) "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(e) "Order" means the Dairy Promotion and Research Order, as amended.

(f) "Board" means the National Dairy Promotion and Research Board established pursuant to § 1150.131 of the order.

(g) "Assessment" means the assessments that are collected and remitted to the Board pursuant to § 1150.152 of the order.

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative or other entity, and, for the purpose of this subpart, shall include only one member of a family that owns or operates a dairy farm business unit.

(i) "Producer" means any person engaged in the production of milk for commercial use and whose milk is subject to an assessment. In the case of a producer who is other than an individual, the business unit shall be regarded as the producer.

(j) "Cooperative association" means any cooperative marketing association of producers which is organized under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act."

(k) "Referendum agent" means the person designated by the Secretary to conduct the referendum.

(l) "Representative period" means the period designated by the Secretary pursuant to section 115 of the Act.

§ 1150.202 Associations eligible to vote.

(a) In conducting any referendum under the Act, the Secretary shall consider the approval or disapproval by any cooperative association engaged in a bona fide manner in marketing milk or the products thereof as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers. In order to be eligible to vote in a referendum, a cooperative association must:

(1) Certify to the referendum agent, in conjunction with casting its ballot, that the association is organized under the provisions of the "Capper-Volstead Act" and that it is engaged in a bona fide manner in marketing milk or the products thereof;

(2) Certify to the referendum agent, in conjunction with casting its ballot, the number of producers on whose behalf the cooperative association is casting a ballot, that such producers are members of or under contract with the cooperative association and that the association was engaged during the representative period in marketing the milk of each of the producers for whom the cooperative association claims the right to vote;

(3) Furnish to the referendum agent, in conjunction with casting its ballot, a copy of the resolution authorizing the casting of the ballot;

(4) Certify to the referendum agent, in conjunction with casting its ballot, that the cooperative association has complied with the requirements of paragraph (b) of this section; and

(5) Agree to make available to the referendum agent necessary records and information pertaining to the representative period to validate the eligibility of the cooperative association to vote and to verify the number and identity of the producers on whose behalf the cooperative association claims the right to vote.

(b) Not later than 30 days prior to the beginning of the referendum, each cooperative association that elects to vote on behalf of its producers shall furnish each producer with the following information:

(1) A description of the question(s) upon which the referendum is being held;

(2) A statement of how the cooperative association intends to vote on each question on behalf of producers for whom it claims the right to vote;

(3) The procedure to be followed by a producer to cast an individual ballot if the producer so chooses;

(4) The time period within which individual ballots must be cast; and

(5) An official ballot for use by the producer, which shall contain the name of the cooperative association from which it was furnished.

(c) Not later than 30 days prior to the beginning of the referendum, each cooperative association shall notify the referendum agent as to whether or not the association intends to vote on behalf of its producers.

§ 1150.203 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.

§ 1150.204 Who may vote.

(a) Each producer shall be entitled to only one vote in each referendum, and no person who may claim to be a producer shall be refused a ballot. Any producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that such person is a producer. All information required on the ballot pertinent to the identification of the person voting must be supplied and certified to as being correct for the representative period in order for the ballot to be valid.

(b) Any cooperative association meeting the requirements specified in § 1150.202 may, if it elects to do so, vote and cast one ballot for producers who are members of or under contract with such cooperative association. Any such cooperative association casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such voter in such referendum.

(c) Voting by proxy or agent will not be permitted. However, a producer who is other than an individual may cast its ballot by a person who is duly authorized, and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer. All information required on the ballot pertinent to the identification of the person on whose behalf the ballot is cast must be supplied and certified to as being correct for the representative period in order for the ballot to be valid.

§ 1150.205 Duties of the referendum agent.

The referendum agent, in addition to any other duties imposed by the subpart, shall:

(a) Verify the eligibility of all producers and cooperative associations to vote in the referendum by reviewing all ballots cast to assure that each ballot:

(1) Is mailed within the prescribed time;

(2) Contains all certifications required attesting to the eligibility of each producer and cooperative association to vote; and

(3) Is completed with respect to all necessary information pertinent to the identification of the person voting so that additional verification can be conducted by the referendum agent to substantiate the eligibility of each producer and cooperative association to vote.

(b) Conduct further verification, as necessary, to determine the eligibility of each producer and cooperative association to vote. Such verification may be completed by reviewing readily available sources of information, including the following:

(1) Records of the Department;

(2) Producers' records maintained and made available by persons responsible for remitting the assessment to the Board;

(3) Producers' records maintained and made available by cooperative associations; and

(4) Any other reliable sources of information which may be available to the referendum agent.

(c) Further verify ballots to avoid a duplication of votes. The following criteria shall serve as a guide:

(1) In the case of a producer that is other than an individual, the business unit shall be regarded as a producer;

(2) No person may vote more than once although such person may operate more than one farm, hold more than one health authority approval, or appear on the records of more than one person who is responsible for remitting an assessment to the Board;

(3) In the event that more than one individual of a family claims the right to vote and casts a ballot as a producer, concurring votes of such individuals shall be treated as one vote while any conflicting vote shall thereby invalidate all ballots cast by such individuals.

(4) In the event that an individual producer, who is a member of a cooperative association that votes on behalf of its members who are producers, casts an individual ballot under the circumstances specified in § 1150.202(b), the individual ballot shall be counted and the total number of producers for whom the cooperative association is voting shall be reduced accordingly; and

(5) Whenever more than one cooperative association claims the right to vote for a producer, only the cooperative association which furnishes evidence satisfactory to the referendum agent that such association was in fact marketing the milk of the producer on the date of the referendum order may vote for such producer.

§ 1150.206 Date of referendum.

A referendum shall be held:

(a) During the 60-day period immediately preceding September 30, 1985;

(b) At the direction of the Secretary at any time after September 30, 1985; or

(c) After September 30, 1985, upon the request of a representative group comprising 10 percent or more of the number of producers subject to the order. Cooperative associations that are entitled to vote on behalf of producers under § 1150.202 may file such request for a referendum.

§ 1150.207 Notice of referendum.

The referendum agent shall provide adequate notice of the referendum by:

(a) Mailing to each known cooperative association a notice of the referendum which shall include:

(1) Instructions for completing the ballot;

(2) A statement as to the time within which the ballot must be mailed to the referendum agent;

(3) A ballot containing a description of the question(s) upon which the referendum is being held;

(4) A description of the eligibility requirements for a cooperative association to vote on behalf of producers who are members of or under contract with such cooperative association;

(5) A description of the certifications that must be made by a cooperative association to cast a valid ballot on behalf of producers; and

(6) A description of the requirements of § 1150.202(b) for a cooperative association that elects to vote on behalf of its members who are producers.

(b) Generally make material and information widely available to producers through the Department and other means. Such information shall include a notice of referendum and include:

(1) Instructions for completing the ballot;

(2) A statement as to the time within which ballots must be mailed to the referendum agent; (3) A ballot containing a description of the question(s) upon which the referendum is being held;

(4) A description of the eligibility requirements for producers to vote; and

(5) A description of the certification that must be made by a producer to cast a valid ballot.

(c) Give public notice of the referendum:

(1) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) announcing the time within which ballots must be completed and mailed to the referendum agent, eligibility requirements, required certifications to cast a valid ballot, where additional information, ballots and instructions may be obtained and other pertinent information; and

(2) By such other means as the referendum agent may deem advisable.

§ 1150.208 Time for voting.

There shall be no voting except within the time specified by the referendum agent.

§ 1150.209 Tabulation of ballots.

(a) The referendum agent shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in §§ 1150.202, 1150.204, 1150.205, and 1150.208. Ballots that are not valid shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast approving and the number of ballots cast disapproving shall also be ascertained. The ballots marked "disqualified" shall not be considered as approving or disapproving, and the person who cast such ballots shall not be regarded as participating in the referendum.

(c) The referendum agent shall notify the Administrator of the number of ballots cast, the count of the votes, and the number of disqualified ballots. The referendum agent shall seal the ballots, including those marked "disqualified," the tabulation of ballots and the count of the vote, and shall transmit to the Administrator a complete detailed report of all actions taken in connection with the referendum together with all ballots cast and all other information furnished to or compiled by the referendum agent.

(d) Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent, or others who assist in the referendum, shall not disclose the results of the referendum or the total number of ballots and votes cast.

§ 1150.210 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, shall be regarded as confidential.

§ 1150.211 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

§ 1150.212 Submittals or requests.

Interested persons may secure information or make submittals or requests to the Administrator with respect to the provisions contained in this subpart.

Signed at Washington, D.C. on November 28, 1984.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 84-31691 Filed 12-4-84; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[Docket No. 84-630]

Amendments Relating to the Issuance and Use of Subordinated-Debt Securities

Dated: November 30, 1984.

AGENCY: Federal Home Loan Board.

ACTION: Proposed rule.

SUMMARY: As part of the Board's response to its concern over the adequacy of the capital base for insured institutions, the Board is proposing several changes concerning the use of subordinated debt securities as regulatory net worth. First, the Board is proposing to revise 12 CFR 561.13, which currently permits institutions to include 100 percent of subordinated debt issued pursuant to 12 CFR 563.8–1 as regulatory net worth until the remaining period to maturity is less than one year. The proposed revision would provide that the amount of subordinated debt includable as net worth will be amortized pursuant to a schedule which permits 100 to be included when the years to maturity are greater than or equal to seven, and decreases by approximately one-seventh each year thereafter. Second, the Board is proposing to revise § 563.8–1 to prohibit insured institutions from increasing their net worth by selling subordinated-debt securities to other insured institutions or their corporate affiliates. Third, the Board is proposing to revise § 563.8–1 to clarify the rights of the FSLIC in determining the treatment of subordinated-debt liabilities of an insured institution which is in receivership, with specified language regarding such treatment to be included, without deviation, in the terms of the subordinated-debt instrument itself. Fourth, in order to expedite processing of subordinated-debt applications, the Board is proposing to delegate the authority to approve subordinated-debt applications to the Principal Supervisory Agents. Subordinated-debt applications involving novel policy issues or offering circulars for subordinated debt to be sold in a public offering would continue to be reviewed at the Board. Finally, the Board is proposing a number of technical and clarifying changes to §§ 563.8 and 563.8–1.

DATE: Comments must be received by February 4, 1985.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be publicly available at this address.

FOR FURTHER INFORMATION CONTACT: James H. Underwood, Staff Attorney, Office of General Counsel, (202) 377–6649, or Frank M. Passarelli, Associate Director, Office of Examinations and Supervision, (202) 377–6493, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

Section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. 1726(b), was amended by the Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. 97–320, to require that institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC") maintain adequate reserves satisfactory to the Corporation as established in accordance with FSLIC regulations. Section 403(b) of the NHA also provides that reserves shall consist of capital stock and such other items as the Corporation may determine appropriate.

The current regulation governing the statutory-reserve requirement is set forth at 12 CFR 563b. 13(a). In addition to the statutory reserve requirement, the Board, as operating head of the FSLIC, also requires that insured institutions maintain a minimum specified level of net worth ("regulatory net worth"), 12 CFR 563.13(b). Although the net-worth requirement is not mandated by statute, it serves as a regulatory tool by which the Board can ensure that an institution has adequate capital to support increases in its liabilities and to absorb potential losses.

In recent rulemaking proceedings, (*Insurance of Accounts of De Novo Institutions*, 48 FR 54320 (Dec. 2, 1983); *Net Worth Requirements of Insured Institutions*, 49 FR 6501 (February 22, 1984), the Board has expressed concern over the recent rapid growth of many insured institutions that has occurred without a concomitant increase in capital. As previously noted by the Board, the DIA and changes in state laws have significantly increased the investment powers of insured

institutions which, when coupled with the development of a national market for insured deposits and other liabilities, has enabled institutions to rapidly increase their deposit base and investments. To the extent that a strategy of rapid growth is not supported by an adequate capital base, there is a significant increase in risk to the FSLIC.

The Board is concerned that the current net-worth requirements may not adequately address the problem of the increase in risk to the FSLIC caused by the rapid growth of some insured institutions that has occurred without an adequate increase in such institutions' capital base. The Board notes that the other federal banking agencies have recently proposed to increase the minimum capital levels of the institutions they regulate because of concern over increased levels of risk within the banking system. The Board also notes that under the other banking agencies' current and proposed capital adequacy guidelines, subordinated debt is not permitted to be included as primary capital.

When the Board originally permitted institutions to include subordinated debt as regulatory net worth in 1973, the Board limited the amount of such subordinated debt that could be included to 20 percent of the issuing institution's regulatory net-worth requirement and did not permit subordinated debt to be included as part of the statutory reserve. The Board amended § 561.13 on August 26, 1982 (47 FR 39661, September 9, 1982), to permit institutions to include 100 percent of the principal amount of subordinated-debt securities as regulatory net worth and to use subordinated debt to satisfy the statutory-reserve requirement. In the preamble to the 1982 amendment of § 561.13, the Board noted that the net-worth requirement is a creation of the Board used primarily as a means to gauge the financial condition of an institution, and concluded that it was within the Board's discretion to alter the percentage of net worth required to be maintained by insured institutions, and the items that are eligible to be included as net worth, to reflect current economic and industry conditions.

Discussion of the Proposal

The Board, upon reconsideration of the issue of subordinated debt as net worth, has preliminarily concluded that subordinated debt should not be considered the equivalent of capital stock and retained earnings for purposes of satisfying the Board's minimum net-worth requirement.

While subordinated debt does share some of the characteristics of other items that are includable in net worth (*e.g.*, redeemable preferred stock) in that it is subordinate to other obligations of the insured institution and has a medium- to long-term duration at issuance, subordinated debt is a liability which, unlike capital stock, is not permanent. Thus, and institution which has issued subordinated debt is obligated to repay the obligation upon maturity, with a resulting decrease in net worth, notwithstanding the financial condition of the institution at that time. In addition, unlike stock on which dividends can be suspended, subordinated-debt interest payments cannot be suspended by institutions in an unhealthy financial condition. In this regard, the Board is soliciting comments on whether subordinated debt that is convertible into common stock should be treated differently than non-convertible subordinated debt, and under what circumstances such treatment would be appropriate.

The Board recognizes, however, that subordinated debt affords protection to the FSLIC in the event of insolvency of an insured institution and believes that it is appropriate that institutions be permitted to continue to include qualifying subordinated debt as regulatory net worth. As described above, the Board is proposing to revise § 561.13 to provide that the amount of subordinated debt includable as net worth will be amortized pursuant to a schedule which permits 100 percent to be included when the years to maturity are greater than or equal to seven, and decreases by approximately one-seventh each year thereafter. In addition, in determining the maturity of subordinated debt includable as new worth, the issuing institution would be required to take into account any required sinking-fund payments, other required prepayments and reserve allocations to be made on the subordinated debt. For example, if an institution had issued a qualifying $1,000,000 subordinated debt security and is required to make sinking-fund payments equal to one-third of the principal amount of the subordinated-debt at the end of years five and six, with the final payment of principal due at the end of year seven (assuming the subordinated debt had an original term to maturity of seven years), the amount includable as net worth upon issuance would be as follows:

Segment	Term (in maturity (years))		Portion included
⅓ due end of year 5	5	71 percent of $333,333	$236,666
⅓ due end of year 6	6	86 percent of 333,333	286,666
⅓ due end of year 7	7	100 percent of 333,333	333,333
		Total	856,665

For each year thereafter, the amount includable as net worth would decrease by approximately one-seventh.

In order to permit the use of "deep-discount" or "zero-coupon" subordinated-debt securities, the Board is proposing to allow an amount equal to the cash received on issuance plus the interest accrued but not payable until maturity, to be treated as the principle amount outstanding at each computation date. For deep-discount instruments not bearing a stated rate but simply an amount payable at maturity, the "accrued interest" shall be an amount equal to the pro rata increase in the value of the bond, determined on an interest or level-yield basis.

The Board is proposing this revision because, in the Board's opinion, the degree of protection provided the FSLIC by subordinated debt depends on the subordinated debt's term to maturity. Since, in general, the longer the term to maturity the greater the protection, the Board believes that as subordinated debt approaches maturity, in view of the proximity of funding the obligation, the amount of that subordinated debt includable as net worth, which controls the extent to which the issuing institution can increase its liabilities, should diminish. The Board believes that the use of a sliding scale for determining the amount of subordinated debt includable as net worth is a more balanced approach which will continue to offer insured institutions the flexibility to restructure their assets and liabilities while reducing the risk to the FSLIC.

The second change proposed by the Board would revise § 563.8–1 to provide that subordinated debt issued to other insured institutions or their corporate affiliates may not be included as regulatory net worth by the issuing institution. As discussed above, the issuance of subordinated-debt securities, because of their subordination to other obligations of the issuing institution, does result in a transfer of risk from the FSLIC to the purchaser of the subordinated-debt securities. Where the purchaser of the subordinated-debt security is another insured institution of a corporate affiliate thereof, however, the rationale for permitting the issuing institution to include the subordinated-debt as part of its new worth is severely weakened since the risk to the FSLIC has not been transferred outside the insurance system. Similarly, savings and loan holding companies should serve as a source of financial strength for their subsidiary insured institutions. To the extent that the failure of an insured institution which has issued subordinated debt to the holding company of another insured institution (or any corporation affiliated therewith) diminishes the ability of that holding company to function as a source of financial strength for its subsidiary insured institution, the risk to the FSLIC is increased. The Board, however, is soliciting comments on whether any distinction should be made between sales of subordinated debt to diversified and non-diversified savings and loan holding companies.

Based on these factors, the Board is proposing to prohibit the sale of subordinated-debt securities issued pursuant to § 563.8–1 to insured institutions and their corporate affiliates and to require that the subordinated-debt security certificate bear a legend which states that the security is not eligible for purchase by an insured institution or its corporate affiliates. The proposed revision is intended to apply only to insured institutions (or their corporate affiliates) other than the issuer of the subordinated debt. Thus, sales of subordinated debt to the holding company of the issuer or to a subsidiary of the issuer would not be affected by this proposed amendment. Sales to the holding company of the issuer or to a subsidiary of the issuer would still be subject to the other provisions of § 563.8–1, however, and would continue to be reviewed on a case-by-case basis. The Board understands that institutions which issue subordinated debt may not be able to prevent the original purchaser from selling the security to the prohibited entities. To prevent these types of transactions, the proposed revision to § 563.8–1 would require that the agreement or indenture pursuant to which the subordinated-debt securities are issued provide that the subordinated-debt securities may not be purchased or held by insured institutions and their corporate affiliates. In addition, the agreement of indenture must state that if such an entity purchases the subordinated debt security, the transfer of ownership may not be made on the issuer's books and the transferee will not be recognized as a holder and will not be entitled to receive any payments of principal or interest on the subordinated debt security.

The third change proposed by the Board involves the treatment of subordinated debt liabilities of an insured institution which is in receivership. The current regulation provides that subordinated debt must be subordinated on liquidation to all claims against the institution having the same priority as savings account holders or any higher priority. The underlying rationale for permitting institutions to include subordinated debt as regulatory net worth is based on the assumption that subordinated debt, by virtue of its subordination, will function as a cushion against losses incurred by the FSLIC as a result of the issuing institution's insolvency.

In the overwhelming majority of supervisory cases that involve FSLIC assistance, however, the insolvent institution is either merged into another insured institution or the FSLIC sells all or substantially all of the assets of the insolvent institution to another insured institution by means of a purchase-and-assumption or similar transaction. Moreover, the appointment of a receiver will usually trigger the default provisions of the subordinated-debt agreement entered into by the issuing institution and the subordinated debt purchasers, which results in the holders of the instrument having the right to immediately accelerate payment of the principal of the subordinated debt. Although the Board is of the opinion that the FSLIC has the power under its current regulations to determine if subordinated-debt liabilities will be assumed in receivership cases; as well as the power to prohibit the acceleration of any principal of the subordinated debt in the event the subordinated debt liability is assumed by another insured institution in a receivership case, the Board believes that it is appropriate to revise the current regulation to clarify the treatment of subordinated debt in receivership cases.

The Board believes that it is essential that the FSLIC be able to use subordinated debt to reduce its costs in receivership cases if subordinated debt is to be utilized by insured institutions as regulatory net worth. In order to make certain that subordinated debt which is included as regulatory net worth serves to reduce the FSLIC's cost in receivership cases, the Board is proposing to revise § 563.8–1 to provide that the FSLIC, as receiver, shall have the right to determine whether subordinated debt liabilities shall be assumed by the acquiror in the event the issuer of the subordinated debt is merged or acquired through a purchase-and-assumption or similar transaction. The proposed revision also would clarify that the holders of subordinated debt would be precluded from accelerating any payment of principal on the subordinated-debt obligation if such obligation is assumed by the acquiror of the issuing institution. In order to effect this change, the proposed revision to the regulation would require that each subordinated-debt certificate and the purchase agreement or indenture pursuant to which the subordinated-debt securities are issued, contain prescribed language setting forth the rights of the FSLIC in the event the issuer of the subordinated debt is in receivership. Failure to include this language would result in the subordinated debt being ineligible for treatment as net worth.

Effective Dates and Grandfathering Provisions

The Board notes that pursuant to this rulemaking proceeding, it could impose new net-worth requirements that would affect all subordinated debt, both prospective and outstanding issuances. However, the Board recognizes that it might be unnecessarily disruptive to impose new requirements on outstanding subordinated debt issued pursuant to § 563.8–1. Therefore, the Board is advising the public that, if it adopts these amendments in substantially their proposed form, institutions that have issued or propose to issue subordinated debt that has been approved for inclusion in net-worth pursuant to § 563.8–1 prior to the publication date of this proposal, December 5, 1984, would be permitted to continue to include 100 percent of the principal amount of such subordinated debt as regulatory net worth until the remaining period to maturity is less than one year.

The Board also realizes that many institutions which have recently applied for permission to include such subordinated debt as part of their regulatory net worth could suffer substantial costs and disruption of their operating plans if the new standards set forth in the proposed amendment were applied to pending applications. In recognition of this problem, the Board proposes to permit institutions which have filed a substantially complete application pursuant to § 563.8–1 prior to the date of publication of this proposal, December 5, 1984, to include 100 percent of the subordinated debt as regulatory net worth until the remaining period to

maturity is less than one year if such subordinated debt otherwise is in compliance with the requirements of § 563.8–1, and provided that the application is not amended in any material respect subsequent to the date of publication of this proposal.

With respect to the proposed revisions to § 563.8–1 concerning the sale of subordinated debt to other insured institutions or their corporate affiliates, and the treatment of subordinated debt in receivership cases, if the proposed amendment is adopted in final form substantially as proposed, the Board intends for the amendment to be effective as of the publication date of this proposal. The Board, however, recognizes that this could cause undue hardship to institutions which have issued subordinated debt prior to the proposal of the amendment but have not received approval of their applications to include the subordinated debt as regulatory net worth. In recognition of this problem, if an institution has issued subordinated debt and filed a substantially completed application pursuant to § 563.8–1 prior to the publication date of this proposal, December 5, 1984, the application will not be denied solely on the basis that the application does not conform to the proposed amendment to § 563.8–1.

Other Amendments

The Board is also taking this opportunity to propose amending § 563.8–1 to provide that the minimum denomination for subordinated-debt securities issued pursuant to that section shall be raised from $50,000 to $100,000. This change would conform the minimum-denomination requirements of § 563.8–1 with those of § 563.8. The Board also is proposing changes to the $100,000 minimum-denomination requirement in § 563.8 and § 563.8–1 to clarify that the requirements of § 563.8(f)(2)(ii) are applicable when the debt security is issued at a discount that exceeds 10 percent of the face amount of such security. Although it is the Board's opinion that debt securities which are issued at a substantial discount are currently subject to § 563.8(f)(2)(ii), the proposed revision would explicitly clarify the Board's intentions regarding the $100,000 minimum-denomination requirement. As a further revision to the minimum-denomination requirements in § 563.8 and § 563.8–1, the Board is proposing to revise the $10,000 minimum-denomination requirement in § 563.8(f)(2)(ii) and § 563.8–1(d)(v) to $1,000 and to clarify that the $1,000 minimum-denomination requirement is not subject to any purchase-price limitations.

In addition the Board is proposing a change to § 563.8 to clarify that the minimum-denomination requirements are not applicable to sales of debt securites to be distributed exclusively abroad to foreign nationals, if certain safeguards are provided. The Board is also proposing a technical amendment to the offering-circular requirement of § 563.8(h) to reflect changes that have been made in § 563c.1 (pertaining to accounting requirements for financial statements) and the regulations of the Securities and Exchange Commission.

In order to expedite the processing of subordinated-debt applications, the Board is proposing to delegate to the Principal Supervisory Agents the authority to approve such applications that are in conformance with § 563.8–1. The only exceptions to this delegation would be those subordinated-debt applications that involve policy issues that have not been resolved by the Board and applications that include an offering circular that will be utilized in a public offering of subordinated debt. The authority to approve applications that are not delegated to the Principal Supervisory Agents would be delegated jointly to the Directors of the Office of District Banks and the Office and Examinations and Supervision and the General Counsel, with review by the Board of applications involving unresolved policy issues.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to institutions whose accounts are insured by the FSLIC.

3. *Impact of the proposed rule on small institutions.* The proposed rule would cause the amount of subordinated debt includable as regulatory net worth by small institutions to decrease pursuant to a schedule which permits 100 percent to be included when the years to maturity are greater than or equal to seven, and decreases by approximately one-seventh each year thereafter; and would prohibit the inclusion of subordinated debt as regulatory net worth by small institutions if the subordinated debt is sold to insured institutions or any corporation affiliated therewith.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rules.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the supplementary information set forth above.

Lists of Subjects in 12 CFR Parts 561 and 563

Insurance of accounts, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 561 and 563, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations,* as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. Amend § 561.13 by revising paragraph (a); redesignating paragraph (c) as new paragraph (d) and revising the text thereof; and adding new paragraph (c) as follows: [It is noted that companion Board Resolution No. 84–681, issued today, also proposes to amend § 561.13; appropriate conforming citation and text changes will be made should the Board adopt either or both of these proposed sets of regulations.]

§ 561.13 Regulatory net worth.

(a) The term "regulatory net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, common stock, preferred stock, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), securities which constitute permanent equity capital in accordance with generally accepted accounting principles (if approved by the Corporation), appraised equity capital (as defined in § 563.13(c) of this subchapter), and any other nonwithdrawable accounts of an insured institution: *Provided,* That for any non-permanent instrument qualifying as regulatory net worth under this section, either (1) the remaining period to maturity or required redemption (or time of any required sinking fund of other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is not less than one year, or (2) the redemption or prepayment is only at the option of the issuer and such payments would not cause the institution to fail to meet its statutory-reserve or net-worth requirement under § 563.13 of this subchapter; and *Provided further,* That

capital stock may be included as net worth without limitation if it would otherwise qualify but for either (i) a provision permitting redemption in the event of a merger, consolidation, or reorganization approved by the Corporation were the issuing institution is not the survivor, or (ii) a provision permitting a redemption where the funds for redemption are raised by the issuance of permanent stock.

* * * * *

(c)(1) The term "regulatory net worth" also includes suborbinated debt securities issued pursuant to § 563.8–1 of this subchapter: *Provided,* that unless otherwise approved by the Corporation in writing, subordinated debt securities issued pursuant to § 563.8–1 after December 5, 1984, may be included as regulatory net worth only in accordance with the following schedule:

Years to maturity of outstanding subordinated debt	Percent included in net worth
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	86
Less than 6 but greater than or equal to 5	71
Less than 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	0

(2) For purposes of determining the "principal amount outstanding" of an obligation issued at a discount which exceeds 10 percent of the face amount, the issuing institution shall treat as principal only the gross consideration actually received upon issuance plus the accrued interest not payable until maturity, as of the date of the computation. In the case of an instrument, sold at a discount which exceeds 10 percent, which bears no stated rate of interest, the amount which can be added to principal each period is an amount equal to the accrued interest payable computed on the "level-yield" or "interest" method.

(3) For purposes of computing the amount of subordinated debt includable as regulatory net worth pursuant to this paragraph, the issuing institution must determine the effective maturity of each portion of the principal amount outstanding of the subordinated debt which is subject to required sinking-fund payments, other required prepayments and required reserve allocations and calculate the percentage amount of each portion of the principal amount outstanding which may be included pursuant to the schedule set forth in this paragraph.

(d) Unless the context indicates otherwise, the term "net worth" whenever used in this subchapter shall mean "regulatory net worth" as defined in this section, except that the term as used in § 563.8–4 shall not include items permitted to be used as part of the reserve calculations pursuant to § 563.13(c).

PART 563—OPERATIONS

2. Amend § 563.8 by revising paragraph (f)(1); removing the word "or" at the end of paragraph (f)(2)(i)(*b*), substituting a semi-colon for the period at the end of paragraph (f)(2)(i)(*c*), and adding paragraph (f)(2)(i)(*d*); revising the introductory text of paragraph (f)(2)(ii), and revising paragraphs (g) and (h), as follows:

§ 563.8 Borrowing limitations.

* * * * *

(f) *Minimum denominations of securities evidencing outside borrowings.*

(1) *General rule.* The minimum denomination of the security shall be $100,000 and the purchase price upon original issue shall be at least $90,000.

(2) *Exceptions.*

(i) * * *

(*d*) Distributed exclusively abroad to foreign nationals, provided the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States. Such safeguards include, without limitation, measures that would be sufficient such that registration of the offering would not be required if the issuer were subject to the Securities Act of 1933.

(ii) The minimum denomination may be $1,000 (without regard to purchase price) if the securities are not offered or sold at any office of the institution or any of its affiliates, and

* * * * *

(g) *Disclosure.* No insured institution shall, directly or indirectly in connection with the offer, sale, or issuance of a security evidencing a borrowing pursuant to this section, make any statement that: (1) Is false or misleading with respect to any material fact; or (2) omits to state any material fact (i) necessary in order to make the statements made, in light of circumstances under which they were made, neither false nor misleading, or (ii) during the period the securities are being offered, necessary to correct any earlier statement made in the offering materials that has subsequently become false or misleading.

(h) *Offering Circular*—(1) *Review.* No final offering circular shall be furnished to purchasers under paragraph (f)(2)(ii)(*b*) of this section unless it is filed with the Corporate and Securities Division of the Board's Office of General Counsel, and declared effective by the General Counsel or his designee, prior to its use.

(2) *Content.* A final offering circular under this section shall be in a form satisfactory to the Corporation. At a minimum, it shall contain information in detail comparable to that required under the Securities Act of 1933, General Form of Registration S–1, or such other form as would be appropriate if the issuing institution meets the eligibility requirements prescribed by the Securities and Exchange Commission for use of that form, and Item 7 of Form PS as prescribed in Part 563b of this subchapter.

(3) *Financial statements.* A final offering circular under this section shall contain financial statements required by the appropriate form under the Securities Exchange Act of 1933 which the insured institution would be eligible to use. Such financial statements shall be prepared in accordance with the requirements of § 563c.1 of this subchapter. The issuer shall make available promptly upon request to each purchaser of a security issued subject to the requirements of paragraph (f)(2)(ii)(*b*) (including purchasers upon resale) while the securities are outstanding, audited annual statements of condition and operation and comparative unaudited quarterly statements of condition and operations for the first three quarters.

* * * * *

3. Amend § 563.8–1 by substituting a semi-colon for the period at the end of paragraph (b)(2)(iv) and adding new paragraph (b)(2)(v); revising the introductory text of paragraph (d); revising paragraphs (d)(1)(i) and (d)(1)(v); adding new paragraph (d)(1)(vi); revising paragraph (d)(3); and adding new paragraph (i), as follows:

§ 563.8–1 Issuance of subordinated debt securities.

* * * * *

(b) *Eligibility requirements.* * * *

[2] * * *

(v) The subordinated debt securities have been issued, or are proposed to be issued, to an institution whose accounts are insured by the Corporation, or a corporate affiliate thereof.

* * * * *

(d) *Requirements as to securities.* Subordinated debt securities issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements, not including paragraphs (1)((i)(*a*) and (1)(ii) of this section which are not eligible for waiver, are waived by the Corporation.

(1) *Form of certificate.* * * *

(i) Bear on its face, in bold-face type, the following legends: (*a*) "This security is not a savings account or deposit and it is not insured by the Federal Savings and Loan Insurance Corporation"; and (*b*) "This security is not eligible for purchase by any institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation or, or corporate affiliate thereof";

* * * * *

(v) Be in a minimum denomination of at least $100,000 (provided that the purchase price upon original issue shall be at least $90,000), except that the minimum original amount shall be $1,000 (without regard to purchase price) for securities meeting the requirements of § 563.8(f)(2)(ii) of this Part, and upon partial prepayment a certificate for the amount then outstanding may be issued in substitution therefor; and

(vi) Set forth, in the certificate and the purchase agreement or indenture, the following statement: "Notwithstanding anything to the contrary in this certificate (or in any related document): (*a*) If the FSLIC shall be appointed receiver for the issuer of this certificate (the "issuer") and in its capacity as such shall cause the issuer to merge with or into another insured institution, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another insured institution or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more other insured institutions, the FSLIC shall have no obligation, either in its capacity as receiver or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligation represented by this certificate in whole or in part by any insured institution or institutions which results from any such merger or which has purchased or otherwise acquired from FSLIC as receiver for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with FSLIC, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by an insured institution with or into which the issuer may have been merged, as aforesaid, and/or by one or more insured institutions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by FSLIC as receiver for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in accordance with the procedures and priorities set forth in the Federal Home Loan Bank Board's regulations as they may be applicable to the receivership of the issuer or as they may be set forth in orders of the Federal Home Loan Bank Board relating to such receivership. (*b*) In the event that the obligation represented by this certificate is assumed in full by another insured institution, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with FSLIC assume all or a portion of the liabilities of the issuer, and payment or provision for payment shall have been made in respect of all matured installments of interest upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, then any default caused by the appointment of a receiver for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded, (*c*) This security is not eligible to be purchased or held by any FSLIC-insured institution or corporate affiliate therof. The issuer of this security may not recognize on its transfer books any transfer made to a FSLIC-insured institution or any corporate affiliate thereof and will not be obligated to make any payments of principal or interests on this security if the owner of this security is a FSLIC-insured institution or any corporate affiliate thereof, and (*d*) For the purpose of parts (*a*) and (*b*) of this paragraph, the term, "insured institution" means a depository institution the accounts in which are insured by the FSLIC, the Federal Deposit Insurance Corporation or any federal or state agency which performs similar functions."

* * * * *

(3) *Limitations on sale to certain institutions.* (i) No insured institution may sell any subordinated debt securities issued pursuant to this section to a Federal Home Loan Bank or, except with prior written approval of the Corporation in a supervisory situation, to the Corporation; and

(ii) Without the prior written approval of the Corporation, no insured institution may sell, either directly or indirectly through an underwriter or otherwise, any subordinated debt securities issued pursuant to this section to an institution whose accounts are insured by the Corporation or any corporate affiliate thereof.

* * * * *

(i) *Delegations of authority.* (1) The Principal Supervisory Agent is authorized to approve subordinated debt applications filed pursuant to this section, if they are in compliance with regulatory requirements, unless the subordinated debt application involves policy issues which the Corporation has not resolved or requires an offering circular for subordinated debt securities to be sold in a public offering. (2) The Director of the Office of District Banks, with the concurrence of the Director of the Office of Examinations and Supervision and the General Counsel, or their designees, are authorized to approve any subordinated debt application filed pursuant to this section if they are in compliance with regulatory requirements, unless the respective office directors are of the opinion that the subordinated debt application involves policy considerations which warrant formal consideration by the Corporation.

(Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 2 and 5, 48 Stat. 128 and 132, as amended (12 U.S.C. 1462 and 1464); sec. 409, 94 Stat. 160, sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); secs. 401, 402, 403, 405, 406, 407, 48 Stat. 1255, 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1729, 1730), Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071; sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a))

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-31780 Filed 12-4-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 58

[Docket No. 83N-0142]

Good Laboratory Practice Regulations

Correction

In FR Doc. 84-28403 beginning on page 43530 in the issue of Monday, October 29, 1984, make the following corrections:

1. On page 43530, third column, second complete paragraph, fourth line, "76–0400" should have read "76N–0400".

2. On page 43533, second column, entry 10, "57.105" should have read "58.105".

3. On the same page, third column, entry 18a, eleventh line, "§ 581.20" should have read "58.120".

BILLING CODE 1505-01-M

21 CFR Parts 182 and 184

[Docket Nos. 79N-0141; 79N-0142]

Scientific Literature Update on Corn Sugars and Sucrose; Opportunity for Public Review

AGENCY: Food and Drug Administration.

ACTION: Notice; related to proposed rule making.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public review of its second updated compilation of recently published scientific literature on corn sugars and sucrose and is soliciting from the public copies of relevant published studies and other information not included in the agency's compilation. Relevant articles from this scientific literature update and articles and other data submitted in response to this notice will be considered in the agency's decision on the generally recognized as safe (GRAS) status of corn sugar, corn syrup, invert sugar, and sucrose.

DATE: Submissions by January 4, 1985. However, highly relevant articles and other data on the safety of these ingredients will be accepted and considered throughout the review process.

ADDRESS: Published articles, other relevant data, information, and requests for a single copy of the bibliographic listing for the updated scientific literature compilation may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John Gordon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 6, 1984 (49 FR 23457), FDA announced the availability of the bibliographic compilation of scientific articles that it will consider in formulating final rules on the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose. That notice also stated that data and information generated during the Federation of American Societies for Experimental Biology (FASEB) review of corn sugars and sucrose, comments on the proposals published in the **Federal Register** of November 30, 1982 (47 FR 53917 and 53923), and responses to the June 6, 1984 notice will be considered in the formulation of final rules on these ingredients. In addition, the notice announced that the agency would update the bibliographic compilation by August 30, 1984. Because of the extensiveness of the data retrieval and compilation process, the agency was not able to meet the August 30, 1984 date.

FDA is issuing this notice to provide an opportunity for all interested persons to review the updated compilation of the scientific literature that is being considered by the agency. This compilation consists of articles retrieved as a result of machine searches of various data bases including Medline, Toxline, Cancerline, Biological Abstracts, Food Science and Technology Abstracts, and others.

All submissions responsive to the proposals and the June 6, 1984 notice have been incorporated into the agency's file. The agency will consider all of the articles and information generated from this notice and the June 6, 1984 notice, the FASEB review, and comments on the November 30, 1982 proposals in formulating final rules on the GRAS status of corn sugar, corn syrup, invert sugar, and sucrose.

The compilation is on file at the Dockets Management Branch (address above) for public examination between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of the bibliographic listing from the scientific literature compilation, identified with the docket number found in brackets in the heading of this document, should be submitted in writing to the Dockets Management Branch.

Interested persons may, on or before January 4, 1985, submit to the Dockets Management Branch (address above) published articles and other relevant data and information for consideration by the agency. Two copies of any submissions are to be submitted, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Received submissions and other data and information may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 29, 1984.

Ronald T. Ottes,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31672 Filed 12-4-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 450

[Docket No. 84N-0327]

Antitumor Antibiotic Drugs; Deletion of LD_{10} Test for Dactinomycin, Doxorubicin Hydrochloride, and Plicamycin

Correction

In FR Doc. 84-29614 beginning on page 44919 in the issue of Tuesday, November 13, 1984, make the following correction: On page 44920, first column, the fifth line of the paragraph preceding the heading "Part 450—Antitumor Antibiotic Drugs" should have read "U.S.C. 357, 371 (f) and (g))) and under".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 261, 293, and 294

Boundary Waters Canoe Area Wilderness, Updating of Use Provisions

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the existing regulations governing use of the Boundary Waters Canoe Area Wilderness. The proposal implements the Boundary Waters Canoe Area Wilderness Act of October 21, 1978 (92 Stat. 1650; 16 U.S.C. 472).

The proposed changes reflect the reduction of motorboat and snowmobile use within the Wilderness required under the 1978 Act and delete obsolete administrative regulations.

DATE: Comments on this proposed regulation must be received by February 4, 1985.

ADDRESS: Comments on this proposed rule should be mailed to R. Max Peterson, Chief (2320), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: W.T. Svensen, Recreation Staff (202) 382–9407.

SUPPLEMENTARY INFORMATION: The Forest Service has responsibility for management of the Boundary Waters

Canoe Area (BWCA) Wilderness, located in the Superior National Forest, Minnesota. The Chief of the Forest Service through the Regional Forester, Forest Supervisor, and District Rangers, manages the surface resources and, in some instances, the subsurface resources of these lands.

Existing rules at 36 CFR Parts 261, 293, and 294 specify and guide the management of the wilderness and provide for enforcement of rules for the benefit of public health, safety, and welfare and the protection of wilderness resources.

The October 21, 1978, Boundary Waters Canoe Area Wilderness Act updated and provided for changes in the way the wilderness is to be managed. Among other things, the legislation expanded the boundaries of the wilderness, created a Mining Protection Area outside the wilderness, eliminated harvesting of timber within the wilderness, reduced motorized snowmobile and motorboat use, provided economic incentives to businesses affected by the legislation, and increased recreation management emphasis outside the wilderness.

36 CFR Part 261 contains general prohibitions affecting behavior of visitors to the National Forest. Specific prohibited activities in National Forest wilderness are set forth at 36 CFR 261.16. The proposed rule would change the prohibition against possessing or using a motor vehicle, motorboat or motorized equipment in wilderness by allowing such use when it is authorized by Federal law or regulation.

In 36 CFR 293.16 are administrative rules governing management of the BWCA Wilderness. Section 293.16 is obsolete because of the numerous changes in management prescribed by the 1978 Act. The proposed rule would specify the lakes and portions of lakes where use of motors is permitted; size of permitted motors; portages where mechanical and mechanized devices may be permitted; snowmobile routes.

36 CFR 294.2 provides for the navigation of aircraft within an airspace reservation over major portions of the BWCA wilderness. Executive Order 10092 is the basis for this rule. The 1978 BWCA Wilderness Act incorporated this order into the Act. The proposed rule would remove those obsolete provisions which allowed permits for navigation within the airspace reservation until January 1, 1952.

This action has been reviewed pursuant to Executive Order 12291. It has been determined that this action is not a major rule and does not require a regulatory impact analysis. This rule will have a minor impact on the economy and will result in no increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. The proposed rule will have no effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary for Natural Resources and Environment has determined that this action does not require a regulatory flexibility analysis under the Regulatory Fexibility Act (5 U.S.C. 601 et seq.,) because the action will not have a significant economic impact on a substantial number of small entities; it imposes no paper work or record keeping requirements on small entities; it does not affect the competitive position of small entities in relation to large entities; and it does not affect cash flow, liquidity, or ability to remain in the market for small entities.

There are no new paperwork or information collection requirements contained in the proposed rule.

This regulation has been administratively determined to be a categorical exclusion from NEPA pursuant to 40 CFR 1501.4(a)(2), 40 CFR 1508.27(b) and Forest Service Manual 1951.2. Because the regulation fits into a categorical exclusion, neither an environmental assessment nor an environmental impact statement was prepared.

List of Subjects in Parts 261, 293, and 294

Law enforcement—prohibitions, National forest, Navigation (air), Recreation and recreation areas, Wilderness area.

Therefore, for the reasons set forth in the preamble, Parts 261, 293, and 294 of Title 36 of the Code of Federal Regulations are proposed to be amended as follows:

PART 261—PROHIBITIONS

1. Revise the authority citation for 36 CFR Part 261 to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526, as amended (7 U.S.C. 101, (f)); 82 Stat. 916 (16 U.S.C. 1246, (i)); 92 Stat. 1650 as amended (16 U.S.C. 1133 (c)–(d)(1), unless otherwise noted.

2. In 36 CFR 261.16, revise the introductory text and paragraph (a) to read as follows:

§ 261.16 National Forest Wilderness.

The following are prohibited in a National Forest Wilderness:

(a) Possessing or using a motor vehicle, motorboat or motorized equipment except as authorized by Federal Law or regulation.

* * * * *

3. In 36 CFR 261.17, revise the heading and introductory sentence to read as follows:

§ 261.17 Boundary Waters Canoe Area Wilderness.

The following are prohibited in the Boundary Waters Canoe Area Wilderness:

* * * * *

PART 293—WILDERNESS—PRIMITIVE AREAS

4. Revise the authority citation for 36 CFR Part 293 to read as follows:

Authority: Secs. 4–6, 92 Stat. 1650, as amended (16 U.S.C. 1131–36); 74 Stat. 215 (16 U.S.C. 528–531); 46 Stat. 1020 (16 U.S.C. 577–577c).

5. At 36 CFR 293.16, revise the heading, remove the introductory paragraph and paragraphs (d), (e), (f), and (g) and revise paragraphs (a), (b), and (c) so that the section in its entirety reads as follows:

§ 293.16 Special provisions governing the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

(a) *Motorboat Use.* (1) For purposes of this section, motorboats permitted to operate in the BWCA Wilderness are defined as watercraft propelled by a gasoline or electric powered motor with the propeller below the waterline.

(2) Motorboats may operate without restrictions on motor size or number of motors on Sand Point Lake, Little Vermilion Lake, Loon Lake, Loon River, and that portion of Lac La Croix which lies south of Snow Bay and east of Wilkins Bay, all in Saint Louis County.

(3) Motorboats with a motor or combination of motors totaling no more than 25 horsepower may operate on Trout Lake in Saint Louis County, Fall Lake, Moose Lake, Newfound Lake, Newton Lake, Sucker Lake, Snowbank Lake, South Farm Lake, and Basswood Lake, except that portion of Basswood Lake generally north of the narrows at the north end of Jackfish Bay and north of a point on the International Boundary between Ottawa Island and Washington Island, all in Lake County, and East Bearskin Lake and Saganaga Lake, except that portion west of American Point in Cook County.

(4) Motorboats with a motor or combination of motors totaling no more than 10 horsepower may operate on Clearwater Lake, North Fowl Lake, South Fowl Lake, Alder Lake, Canoe Lake, Sea Gull Lake, and Island River east of Lake Isabella, all in Lake County, except that motorboats may not operate: (i) After January 1, 1999 on that portion of Sea Gull Lake west of Three Mile Island, and (ii) after January 1, 1994, on Brule Lake in Cook County or until the termination of the operation of the resort adjacent to Brule Lake in operation as of 1977, whichever occurs first.

(5) Motorboats with a combination of motors that exceed 25 horsepower may travel on the portion of Saganaga Lake in Cook County described as the Saganaga Corridor extending from the Saganaga Narrows north to the International Boundary east of Campers, Clark and Horseshoe Islands and west of Oskenonton Island; provided that the motor or motors in operation at one time do not exceed 25 horsepower.

(b) *Mechanical and mechanized portages.* (1) BWCA visitors may use portage wheels and other non-motorized devices to transport watercraft over the following routes:

(i) The portages along the International Boundary.

(ii) Four Mile Portage from Fall Lake to Hoist Bay of Basswood Lake.

(iii) The portage from Back Bay to Pipestone Bay of Basswood Lake.

(iv) The portages from Fall Lake to Newton Lake to Pipestone Bay of Basswood Lake.

(v) The portage from Vermilion Lake to Trout Lake.

(2) The Forest Service may authorize, by special use permit, the use of motor vehicles to transport watercraft over the following portages:

(i) Four Mile Portage from Fall Lake to Hoist Bay of Basswood Lake.

(ii) Vermilion Lake to Trout Lake.

(iii) Prairie Portage from Sucker Lake to Basswood Lake.

(iv) Loon River to Loon Lake and from Loon Lake to Lac La Croix.

(c) *Snowmobile use.* (1) A snowmobile is defined as a self-propelled, motorized vehicle not exceeding forty inches in width designed to operate on ice and snow, having a ski or skis in contact with the snow and driven by a track or tracks.

(2) The Forest Service permits use of snowmobiles only on the following routes:

(i) The overland portages in Saint Louis County from Crane Lake to Little Vermilion Lake in Canada.

(ii) The route in Cook County from Sea Gull River along the eastern portion of Saganage Lake to Canada.

(3) The Forest Service may issue special-use authorizations to use snowmobiles for the grooming of specified cross-country ski trails near existing resorts.

PART 294—SPECIAL AREAS

6. In 36 CFR 294.2, revise the section heading, remove paragraph (d) in its entirety, redesignate existing paragraphs (e) and (f) as paragraphs (d) and (e), and revise the text of new paragraph (d) to read as follows:

§ 294.2 Navigation of aircraft within airspace reservation over the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

* * * * *

(d) *Official flights.* The provisions of §§ 294.2(b) and 294.2(c) do not apply to flights made for conducting or assisting in the conduct of official business of the United States, of the State of Minnesota or of Cook, St. Louis, or Lake Counties, Minnesota.

* * * * *

8. Revise the authority citation which follows § 294.2 to read as follows:

(Sec. 8, 92 Stat. 1650 (16 U.S.C. 1131); 16 U.S.C. 472)

Dated: November 14, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-31679 Filed 12-4-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[Docket No. A-3-FRL-2731-1]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Brown Group Recreational Products, Inc., Hedstrom Division

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order issued by the Pennsylvania Department of Environmental Resources to Brown Group Recreational Products, Inc., Hedstrom Division. The Order requires the company to bring air emissions from its metal surface coating facility in Bedford, Pennsylvania into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) by April 21, 1985. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before January 4, 1985.

ADDRESS: Comments should be submitted to Director, Air Management Division, EPA Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joseph S. Arena, Environmental Scientist, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. Telephone: (215) 597–6553.

SUPPLEMENTARY INFORMATION: Brown Group Recreational Products, Inc., Hedstrom Division (hereinafter Hedstrom) operates a metal surface coating facility at Bedford, Pennsylvania. The Order under consideration addresses emissions from the surface coating processes, which are subject to § 129.52 of Title 25 of the Pennsylvania Code. The regulations limit the emissions of Volatile Organic Compounds (VOC), and is part of the federally approved Pennsylvania State Implementation Plan. The Order requires final compliance with the regulation by April 21, 1985 through the discontinuance of noncomplying prime coatings.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order

does satisfy the requirements of this subsection.

EPA's review indicates that the Hedstrom facility is a major source of VOC emissions. The facility is unable to comply with regulations limiting emissions of VOCs codified at Section 129.52 of Title 25 of the Pennsylvania Code, part of the federally approved State Implementation Plan, because low solvent coatings are still being developed. The Order requires compliance with the regulation by April 21, 1985, one year after April 21, 1984, the date by which compliance is otherwise required. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. The Order contains expeditious increments of progress towards compliance and emission monitoring and reporting requirements and provides for interim emission reduction requirements to avoid an imminent and substantial endangerment to health. Pennsylvania has determined that the Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so. The Order notifies Hedstrom of its liability for noncompliance penalities under Section 120 of the Clean Air Act, 42 U.S.C. 7420.

It the Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similiarly precluded. If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any noncompliance penalties under Section 120 of the Act, unless the source is otherwise entitled to an exemption under Section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413, 7601)

Dated: November 20, 1984.

Thomas P. Eichler,

Regional Administrator, Region III.

[FR Doc. 84-31714 Filed 12-4-84; 8:54 am]

BILLING CODE 6560-50-M

---

40 CFR Part 154

[OPP-250058 FRL-2729-27]

Pesticide Registration and Classification Procedures; Notification to the Secretary of Agriculture of a Proposed Regulation on Criteria and Procedures for Special Reviews of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation that would revoke 40 CFR 162.11 (a) and (b) and to issue a new subpart in 40 CFR Part 154 in it place. Section 162.11 contains rules governing what is known as the "Rebuttal Presumption Against Registration" or RPAR process. The proposed amendments would revise both the substantive criteria under which EPA initiates review of pesticide products and the procedures for the process. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: Joanne Dizikes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of theAdministrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime after the 30-day period.

Pursuant to FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Sec. 25, Pub. L. 92-516, 86 Stat. 973 as amended (7 U.S.C. 136 et seq.))

Dated: November 19, 1984.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-31516 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

[40 CFR Part 180]

[OPP-300109 FRL-2730-7]

N-Methylpyrrolidone; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that *N*-methylpyrrolidone be exempted from the requirement of a tolerance when used as a solvent, cosolvent in pesticide formulations. This proposed regulation was requested by GAF Corp.

DATE: Written comments, identified by the document control number [OPP-300109], must be received on or before January 4, 1985.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Division (TS-767), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: At the request of GAF Corp., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for *N*-methylpyrrolidone when used as a solvent, cosolvent in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. *N*-Methylpyrrolidone.

Name and address of requestor. GAF Corp., Wayne, NJ 07470.

Bases for approval. (1) *N*-Methylpyrrolidone is cleared under 40 CFR 180.1047 when used in pesticide formulations with the fungicide triforine applied to certain crops only.

(2) An adequate toxicity data base on *N*-methylpyrrolidone exists, including 90-day feeding studies in dogs and rats (no-observed-effects levels (NOEL's) of 1,000 ppm (25 mg/kg) in dogs and 2,000 ppm (50 mg/kg) in rats, respectively, the highest levels tested) and negative response for mutagenicity (Ames test).

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300109]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 23, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(d) * * *

Inert ingredients	Limits	Uses
* * *	*	*
N-Methyl pyrrolidone (CAS Reg No. 120-94-5)		Solvent, cosolvent
* * *	*	*

[FR Doc. 84-31717 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 180

[OPP-300108; FRL-2730-6]

Vinylpyrrolidone-Styrene Copolymer; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that vinylpyrrolidone-styrene copolymer be exempted from the requirement of a tolerance when used as an opacifier in pesticide formulations. This proposed regulation was requested by GAF Corp.

DATE: Written comments, identified by the document control number [OPP-300108], must be received on or before January 4, 1985.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, deliver comments to: Registration Division (TS-767C), Environmental Protection Agency, Rm. 716A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460
Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: At the request of the GAF Corp., the Administrator proposes to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for vinylpyrrolidone-styrene copolymer when used as an opacifier in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellents in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredients may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Vinylpyrrolidone-styrene copolymer.

Name and address of requestor. GAF Corp., Wayne, NJ 07470.

Bases for approval. Safety of the proposed use is inferred from the 40 CFR 180.1001(c) clearance and from the food additive clearances noted below.

(1) Vinylpyrrolidone polymer (polyvinylpyrrolidone; PVP):

(a) Exempted from the requirement of a tolerance under 40 CFR 180.1001(c), with a molecular weight of 40,000 or over.

(b) Direct food additive status under 21 CFR 172.210 as a coating agent on fresh citrus fruits.

(c) Has a tolerance as a clarifying agent of 60 ppm in wine and 10 ppm in beer under 21 CFR 173.55.

(2) Styrene:

(a) Direct food additive status under 21 CFR 172.515—synthetic flavorings and adjuvants.

(b) Indirect food additive status under 21 CFR 173.300—resinous and polymeric coatings in food-contact surfaces.

(c) Indirect food additive status under 21 CFR 176.170—components of a paper and paperboard in contact with aqueous and fatty foods.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not post a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP–300108]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 23, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Vinylpyrrolidone-styrene copolymer (CAS Reg. No. 25086–29–7).	Not to exceed 2 percent of the total formulation	Opacifier
* * *	* * *	* * *

[FR Doc. 84–31718 Filed 12–4–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SWH-FRL 2729–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Correction notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) today is correcting a proposed rule and request for comment published in the **Federal Register** on October 23, 1984 (49 FR 42580–42593). The rule proposed to exclude solid wastes generated at several particular generating facilities from the lists of hazardous wastes in 40 CFR 261.31 and 261.32. That proposal, as published, inadvertently omitted a portion of the proposed regulation. This rule intends to publish Table 2 in its entirety as originally envisioned.

The supplementary information for the proposal also noted at several points that a more detailed discussion of the representativeness of the samples would be placed in the public docket. That information is now available. In order to provide an adequate opportunity to

comment on the complete proposal, the Agency is extending the comment period on the entire proposal until January 7, 1985. The public is given another opportunity to request a hearing.

DATES: EPA will accept public comments on the proposed exclusions noted above, as corrected today, until January 7, 1985. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen, whose address appears below, by December 17, 1984. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Communications should indentify the regulatory docket number "Section 3001—Delisting Petitions."

The public docket for these proposed exclusions is located in Room S–212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Mr. William Sproat or Mr. Myles Morse, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475–8551.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: November 27, 1984.

Lee M. Thomas,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be corrected as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

Appendix XI [Amended]

2. In Appendix XI to Part 261, Table 2, originally published on page 42593, October 23, 1984, is corrected by revising it in its entirety to read as follows:

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Amoco Oil Co.	Wood River, IL	150 million gallons of DAF float from petroleum refining contained in four surge ponds after treatment with Chemfix stabilization process. This exclusion only applies to the 150 million gallons of waste as long as the mixing ratios of reagents with the waste are monitored continuously and do not vary outside of the limits presented in the demonstration samples; one grab sample is taken each hour from each treatment unit, composited daily for each unit, and EP toxicity tests performed on each sample. If the levels of lead or chromium exceed 1.5 ppm in the EP extract, then the waste that was processed during the compositing period is considered hazardous; the treatment residue shall be pumped into removable molds in the holding area to insure that the waste is identifiable in the event that removal or retreatment is necessary.
LCP Chemicals	Orrington, ME	Brine purification muds and wastewater treatment sludges generated from their chlor-alkali manufacturing operations (EPA Hazardous Waste Nos. K071 and K106) so long as they have been batch tested continuously for mercury using the EP toxicity procedures and have been found to contain less than 0.05 ppm mercury in the EP extract. Brine purification muds and wastewater treatment sludges that exceed this level will be considered a hazardous waste.
Stauffer Chemical Co.	Axis, AL	Brine purification muds generated from their chlor-alkali manufacturing operations (EPA Hazardous Waste No. K071) and disposed of in brine mud pond HWTF: BEP–201.
Do	St. Gabriel, LA	Brine purification muds generated from their chlor-alkali manufacturing operations (EPA Hazardous Waste No. K071) as well as that disposed in an on-site surface impoundment, so long as the level of mercury found in the EP extract is less than 0.05 ppm. Brine purification muds that exceed this level will be considered a hazardous waste. Continuous testing for mercury in the EP extract is required for each batch of wastes generated.

[FR Doc. 84–31519 Filed 12–4–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5400

Modification of Federal Timber Contracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would establish procedures for modification of certain Federal Timber Contracts that were awarded by the Bureau of Land Management (BLM). The proposed rulemaking to implement sections of the Federal Timber Contract Payment Modification Act of 1984 (Pub. L. 98–478) is required by that Act to be published as final regulations within 90 days of its enactment.

DATE: Comments should be submitted by January 4, 1985. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240. Comments from the public are available for inspection in Room 5555 of the above address during regular business hours (Monday–Friday 7:45 a.m.–4:15 p.m.).

FOR FURTHER INFORMATION CONTACT: Charles Frost, (202) 653–8864.

SUPPLEMENTARY INFORMATION: The Federal Timber Contract Payment Modification Act (Pub. L. 98–478) was enacted October 16, 1984. The Act directs the Secretary of the Interior and the Secretary of Agriculture to permit a requesting purchaser to return to the government a volume of the purchaser's timber contracts upon payment of a buy-out charge as specified by the Act. The Act establishes conditions which shall be met in order for a timber sales contract to qualify for buy-out.

The Act directs the Secretary of the Interior and the Secretary of Agriculture to publish in the **Federal Register** final regulations implementing the Act within 90 days of its enactment. In order to meet the legislatively mandated 90 days schedule for issuance, the period for public comment has been limited to 30 days. Maximum public input is encouraged and the public's views on specific sections are solicited. For these reasons the preamble will identify specific sections of the regulation for which public comments would be especially useful in developing the final

regulations. The public is asked to comment on these sections as well as on all other aspects of the proposed regulation.

In order to implement the pertinent sections of the Act, this proposed rulemaking would establish a new subpart in 43 CFR Part 5000 titled 43 CFR Subpart 5475. The proposed rulemaking would provide guidance to authorized officers of the Bureau of Land Management and to holders of timber contracts which meet the requirements of the Act. This proposed rulemaking would apply only to contracts for timber sales awarded by the Bureau of Land Management. However, the Act provides for similar rules to be issued by the Secretary of Agriculture for Forest Service timber sale contracts.

The Bureau of Land Management and the Forest Service engaged in extensive consultation and coordination during the development of their respective proposed rules to achieve as much consistency as possible. Because of different legislative direction and operational procedures, complete consistency is not possible. However, considerable uniformity has been achieved, and the public is specifically requested to identify further opportunities for consistency between the regulations of the two agencies.

Specific sections of the proposed regulations are discussed below.

Section 5475.0–5 Definitions.

This section provides definitions of terms that are used in this subpart. Most of the definitions are taken directly from the Act.

The Department of the Interior solicits comments on all definitions developed in this section. While public comment is requested on all definitions offered, three definitions are of particular importance in implementing the Act and the public's views on the definitions provided below would be especially useful in the development of final regulations.

The Department has provided a definition of "Affiliates" which reflects the intent of the Act but requests public input concerning the most appropriate point in time to employ when making the determination of whether affiliation exists for the purposes of the act.

The Department of the Interior also requests public comments concerning the definition of "Net book worth" as developed in this proposed rulemaking.

The public is also specifically requested to comment on the definition of "reasonable rates and terms" as used in this proposed rulemaking.

Section 5475.1 Contract Modification Application.

This section of the proposed rulemaking outlines procedures that would be followed for developing and distributing application packages to each purchaser. Application packages will be developed by the authorized officer of the Bureau of Land Management and would be distributed to firms holding contracts which qualify for modification. This section also describes the timber sale data which will be included in the application package.

This section also provides that in cases where purchasers hold qualifying contracts in more than one State, the authorized officer in the State having the largest volume of the purchaser's timber will prepare the application package for distribution to contract purchasers. This approach will minimize the compliance burden on contract holders by providing a single contact point for all application processing.

Section 5475.2 Qualifications and Volume Entitlement.

Section 5475.2–1 Qualifications.

This section of the proposed rulemaking outlines the criteria specified in the Act for determining whether timber sale contracts are qualified for buy-out. As proposed, the regulations state that only those timber sale contracts bid prior to January 1, 1982, and held as of June 1, 1984, may qualify for buy-out. The only exception would be in cases where a contract was defaulted after January 1, 1981, and settlement of damages has not been reached between the purchaser and the United States, and where the purchaser's loss on all ot its qualifying timber contracts as determined by these regulations is in excess of 50 percent of the net book worth of the purchaser.

Section 5475.2–2 Volume Entitlement.

This section would establish the standards specified in the Act for calculation of a purchaser's volume entitlement. The proposed regulations also would provide that the total remaining volume as of January 1, 1982, of both Bureau of Land Management and Forest Service timber sale contracts held by the purchaser shall be used to establish buy-out entitlement.

Under the proposed regulations those purchasers holding 27.3 million board feet of timber or less that is qualified for buy-out would be entitled to buy out up to 15 million board feet of timber, or one contract, whichever is greater in volume.

The proposed section would also provide for exceeding these limitations under certain conditions.

Section 5475.2–3 Volume Exceptions.

This section provides an exception to the requirements of volume entitlement outlined in section 5475.2–2.

Section 5475.3 Determination of Buy-out Charge.

This section of the proposed regulations would provide guidance to the authorized officer for determining the buy-out charge for returned contacts.

Section 2(a)(3)(A) of the Act requires that the determination of the purchaser's loss be made by subtracting the current delivered log value from the delivered log cost based on current contract return. The section provides guidance to the authorized officer concerning methods to be employed in determining delivered log value and delivered log cost.

The section would also set out how the authorized officer will establish the amount overbid on each contract, including contracts on which timber has been partially removed.

The proposed regulation also outlines proposed requirements for purchasers who elect to submit statements of net book worth in order to qualify for buy-out of timber contracts. Acceptable statements of net worth would include a statement of net worth from an annual or quarterly report, whichever is most recent, together with the opinion of an independent certified public accountant that such a net worth statement is in accordance with generally accepted accounting standards in use in the timber industry.

The section would also provide the authorized officer with the authority to independently verify submissions of net book worth.

The proposed regulations in this section would provide the formula for determining the buy-out cost based on net book worth, purchaser loss and currently held volume as specified by section (2)(a)(3)(A) of the Act.

The proposed regulation would provide formulas for buy-out of contracts in situations where the purchaser elects not to submit a statement of net book worth with his or her application to the authorized officer.

Finally, this section would establish how the authorized officer would credit a road construction allowance against buy-out charges for qualifying contracts and against timber sales that were extended pursuant to BLM Instruction Memorandum No. 83–743.

Section 5475.4 Conditions of Return of Timber Sale Contracts.

This proposed section would implement section (2)(a)(4)(B) of the Act which provides that the Department of the Interior may accept the return of certain timber sale contracts on a conditional basis. Under this proposed section, contracts returned on which work has been initiated shall be reviewed by the authorized officer. In addition, the authorized officer may attach conditions which must be fulfilled by the purchaser prior to final acceptance of the contract by the authorized officer.

The section would also implement section (2)(a)(4)(C) of the Act which permits the Department of the Interior to reject the return of timber sale contracts under certain conditions.

Section 5475.5 Alternative Method of Payment.

The Act provides authority for the Secretary of develop procedures for financing returned contracts in situations where holders of contracts are unable to obtain financing from private institutions. This section describes procedures to be used by the authorized officer in determining whether to grant financing to a contract holder who is unable to obtain financing elsewhere.

As proposed, the section would require contract holders to provide evidence that financing was unavailable and also provides schedules for repayment of any amount of the contract buy-out financed by the government.

Section 5475.6 Protests and Appeals.

This proposed section describes procedures for appealing decisions of the authorized officer. Issues which arise during the preparation of the buy-out agreement may be appealed under the provisions of Part 4 of Title 43 of the Code of Federal Regulations. Issues which arise after a buy-out has been executed may be appealed under the provisions of the Contract Disputes Act. (92 Stat. 2383)

The principal authors of this proposed rulemaking are Charles Frost, Division of Forestry, Bureau of Land Management, Washington Office, and Dave Estola of the Bureau of Land Management, Oregon State Office, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined this document is not a major rule under Executive Order 12291 and, therefore, no Regulatory Impact Analysis is required.

The Department of the Interior has further determined that the rule will not have a negative effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) There will be no significant negative effect on any user group, and any economic effects of the proposed regulation will be positive.

The information collection requirements contained in this proposed rulemaking have been submitted to the Office of Management and Budget for clearance under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 5400

Administrative practice and procedure, Forests and forest products, Public lands, Reporting Requirements.

Under the authority of the Federal Timber Contract Payment Modification Act of October 16, 1984 (Pub. L. 98–498), it is proposed to amend Group 5000, Part 5400, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations by adding Subpart 5475 to read as follows:

Subpart 5475—Federal Timber Contract Payment Modification

Sec.

5475.0–3 Authority.
5475.0–5 Definitions.
5475. Contract modification applications.
5475.2 Qualifications and volume entitlement.
5475.2–1 Qualification.
5475.2–2 Volume entitlement.
5475.2–3 Volume exceptions.
5475.3 Determination of buy-out change.
5475.4 Conditions for return of timber sale contracts.
5475.5 Alternative method of payment.
5475.6 Protests and appeals.

Authority: Federal Timber Contract Payment Modification Act of October 16, 1984 (Pub. L. 98–478).

Subpart 5475—Federal Timber Contract Payment Modification

§ 5475.0–3 Authority.

The Federal Timber Contract Payment Modification Act of October 16, 1984, (Pub. L. 98–478) authorizes and directs the Secretary of the Interior to permit a requesting purchaser to return to the Government a volume of the purchaser's qualifying timber contracts upon payment or arrangement for payment of a buy-out charge.

§ 5475.0–5 Definitions.

As used in this subpart, the term:

(a) "Act" means the Federal Timber Contract Payment Modification Act of October 16, 1984 (Pub. L. 98–478).

(b) "Purchaser" means a holder of a contract to purchase timber from the Secretary of the Interior.

(c) "Authorized officer" means any person authorized by the Secretary to administer regulations in this subpart.

(d) "Purchaser's loss" means current delivered log cost minus current delivered log value, as of October 16, 1984, all as determined by the authorized officer.

(e) "Net book worth" means the excess of the assets of a company over the liabilities as reported in its most recent annual or quarterly financial statement within 15 months of the date of the purchaser buy-out request. Net book worth shall not include the value of any outstanding federal timber sale contracts.

(f) "Independent certified public accountant" means an individual authorized by a government agency (generally a state agency) to render an opinion on the propriety of financial statements. Such an individual may practice as a sole practitioner or as a member of a firm of certified public accountants but shall not be an employee of the applicant.

(g) "Board feet of net merchantable volume" means the amount of merchantable timber remaining on a sale area based on BLM 16-foot timber measurement standards.

(h) "Affiliates". Concerns are affiliates of each other when either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties that controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(i) "Qualifying contracts" means BLM sales contracts bid prior to January 1, 1982, and held as of June 1, 1984.

(j) "Volume entitlement" means the aggregate amount of BLM and Forest Service net merchantable volume of timber which may be returned to the United States subject to a buy-out charge.

(k) "Conditional contract" means an otherwise qualifying contract that is proposed for buy-out on which harvest and/or road construction activities have commenced.

(l) "Reasonable rates and terms" means interest rates that are within 3

percentage points above the average market yield of outstanding treasury obligations with remaining years to maturity of 5 years as reported by the U.S. Treasury; and having terms of 5 years.

§ 5475.1 Contract modification applications.

(a) The authorized officer shall prepare a modification application package for each BLM timber sale purchaser, including affiliates holding contracts that qualify for termination under the Act. Application packages for purchasers holding qualifying contracts in more than one State shall be prepared by the authorized officer having the greatest volume under BLM qualifying contracts for individual purchasers. The authorized officer shall provide timber sale statistics, purchaser loss, and contract overbid information to be included in the modification application. Purchasers who elect to pay less than the maximum buy-out charge as specified in section (3)(A) of the Act, shall submit a net worth determination as part of the completed application package (see § 5475.3(c)). Purchasers that also hold U.S. Forest Service contracts that qualify for termination under the Act shall include a complete copy of each Forest Service modification application when submitting a BLM application to the authorized officer.

(b) The application shall be completed and returned within 90 days of publication in the **Federal Register** of final regulations for this subpart.

§ 5475.2 Qualification and volume entitlement.

§ 5475.2–1 Qualification.

To qualify for buy-out under this subpart, a timber sale contract must have been bid prior to January 1, 1982, and be held as of June 1, 1984. In cases where such a contract was defaulted after January 1, 1981, such a contract may qualify for buy-out under this subpart provided: (a) Settlement for damages has not been reached between the purchaser and the United States; and (b) the purchaser's loss on all of its qualifying timber sales contracts as determined under § 5475.3(a) of this subpart is in excess of 50 per centum of the net book worth of the purchaser.

§ 5475.2–2 Volume entitlement.

Except as provided in § 5475.2–3 of this subpart:

(a) Following the establishment of a purchaser's qualification as set forth in § 5475.2–1, a purchaser holding more than 27.3 million board feet of net merchantable timber shall be entitled to buy out up to 55 per centum of such timber volume up to a maximum of 200 million board feet. The total remaining volume on BLM and Forest Service timber sales contracts as of January 1, 1982, as set forth in the appropriate agency's qualified timber sale contracts, shall be used to establish buy-out entitlement.

(b) A purchaser holding 27.3 million board feet or less of timber qualified under section 5475.2–1 of this subpart is entitled to buy-out up to 15 million board feet or one contract, whichever is greater in volume.

§ 5475.2–3 Volume exceptions.

The percentage limitation of § 5475.2–2(a) or the volume limitation of § 5475.2–2(b) of this section may be exceeded by a volume amount not to exceed the volume of the smallest contract bought out by the purchaser, provided the volume limitation of 200 million board feet is not exceeded. This provision shall apply only in cases where the purchaser could not otherwise attain his/her percentage of volume entitlement.

§ 5475.3 Determination of buy-out charge.

To determine the buy-out charge for qualifying timber contracts the authorized officer shall first establish the purchaser loss, determine the contract overbid, and obtain from the purchaser a statement of net worth if required under section 3(a) of the Act.

(a) Purchaser loss shall be determined by the authorized officer by subtracting current delivered log value from current delivered log cost on a qualifying contract. Current average delivered log value will then be determined from BLM current pond value projections weighted by species and log grade percentages pertinent to each qualifying contract. Current average delivered log cost will then be determined by adding current BLM logging and transportation costs to each qualifying contract's stumpage price.

(b) Contract overbid shall be established by the authorized officer as follows:

(1) On qualifying contracts where timber has not been removed, the authorized officer will determine the contract overbid by subtracting the total advertised contract price of all species from the total bid price of all species.

(2) On contracts where timber has been removed, the contract overbid for the remaining timber will be determined by the authorized officer by establishing an overbid rate. The overbid rate shall be determined by dividing the contract overbid for the total sale by the total advertised volume. The overbid rate will be multipled by the current remaining volume to obtain the contract overbid on the remaining timber.

(c) Purchasers requesting to use net book worth formulas to determine the buy-out charge are required to submit a statement of net book worth. The purchaser shall submit the most recent annual or quarterly financial statement that discloses the net book worth of the purchaser. An audit report by an independent certified public accountant, citing the scope of the audit and an opinion that the financial statements are presented in conformity with generally accepted accounting principles and standards for the timber industry on a consistent basis, shall be included. For purposes of determining the buy-out charge, financial statements shall exclude the value of any outstanding Federal timber sales contracts. Adjusted statements reflecting the exclusions shall be submitted, if necessary. Statements of net book worth shall be subject to verification by the authorized officer. The purchaser is required to maintain all financial records used for determining net book worth for a period of 3 years after submission of the audit report. Statements of net book worth shall be considered proprietary information for the purposes of this subpart.

(d) In order to calculate the buy-out charge, the authorized officer shall use the net book worth of each company as provided under § 5475.3 of this subpart, and calculate the buy-out charge and the total amount to be paid by the purchaser to the government using the following formulas:

(1) When the purchaser loss exceeds 100 per centum of the net book worth of the purchaser, the buy-out cost shall be $10 per one thousand board feet of currently held volume bought out;

(2) When the purchaser loss exceeds 50 per centum up to 100 per centum of the net book worth of the purchaser, the buy-out cost shall be 10 per centum of the contract overbid but at least $10 per one thousand board feet of currently held volume bought out;

(3) When the purchaser loss is 50 per centum or less of the net book worth of the purchaser the buy-out cost shall be:

(i) 15 per centum of the contract overbid for the first 125 million board feet,

(ii) 20 per centum of the contract overbid for the next 25 million board feet,

(iii) 25 per centum of the contract overbid for the next 25 million board feet, and

(iv) 30 per centum of the contract overbid for the next 25 million board feet not to exceed 200 million board feet of qualifying contracts , but at least $10 per thousand board feet of currently held volume bought out.

(4) In lieu of utilizing loss and net book worth determinations, a purchaser may elect to pay the buy-out cost established by this section at the rate of:

(i) 15 per centum of the contract overbid for the first 125 million board feet;

(ii) 20 per centum of the contract overbid for the next 25 million board feet;

(iii) 25 per centum of the contract overbid for the next 25 million board feet;

(iv) 30 per centum of the contract overbid for the next 25 million board feet but at least $10 per thousand board feet of currently held value.

(e) The purchaser shall be billed by the authorized officer and shall make full payment or make arrangement for payments under § 5745.5 of this subpart for buy-outs prior to the acceptance of returned contracts.

(f) Where a purchaser has completed any portion of road construction which may be logically broken out of the timber sale appraisal allowances and where the road construction is acceptable under conditional contracts of this subpart, the authorized officer shall notify the purchaser of the amount of the road allowance which may be credited. In cases where timber has been removed from the sale area, the authorized officer shall reduce the road allowance. The amount of the reduction shall equal the volume of timber removed in thousands of board feet multiplied by the allowance per thousand board feet (Mbf) for road construction in the timber sale appraisal. These road allowances shall be credited against the total buy-out charge. Road allowances in excess of the total buy-out charge shall be credited against timber sales that were extended under Instruction Memorandum No. 83–743 pursuant to the President's program of July 28, 1983. If there is excess road construction allowance remaining after applying the allowance to the purchaser's buy-out charge and to the purchaser's grace period contracts, then the excess allowance may be transferred to other purchasers holding contracts qualifying for buy-out under the program for payment against the total buy-out charge upon approval of the authorized officer.

§ 5475.4 Conditions for return of timber sales contracts.

(a) Contracts returned pursuant to this subpart which have had no harvesting or road construction work shall be returned in full. The purchaser shall not retain any portion of the timber sale contract.

(b) Contracts returned pursuant to this subpart under which harvest or any type of road work has begun may be returned to the authorized officer subject to his or her authority to reject the contract or to accept it upon compliance with conditions to be established by the authorized officer. The authorized officer may reject a contract if he or she determines that the remaining unharvested portion is substantially unrepresentative of the original sale as a whole in terms of species, logging methods, or other appropriate criteria, and that accepting the return of such contract would not be in the public interest. Other reasons for rejection may include, but are not limited to, such considerations as: (1) Amount of value loss due to deterioration in felled timber; (2) impractical remaining harvest unit resulting from purchaser failing to complete an entire logging unit; (3) road construction determined not to be a logical stopping point.

(c) The authorized officer shall include conditions for acceptance of the returned contract and a schedule for its completion as part of the purchaser's modification application package. Conditionally returned contracts shall not be accepted by the authorized officer until the purchaser has fulfilled all the conditions established in the modification application. If the purchaser does not fulfill these conditions in accordance with the schedule for their completion, the sale shall no longer qualify for buy-out under the Act and shall terminate on the date scheduled for their completion or the date provided in the agreement under the grace period extension program, whichever is later.

§ 5475.5 Alternative method of payment.

If unable to obtain sufficient credit elsewhere, a purchaser may finance the buy-out charge by paying 5 per centum of the buy-out charge at a time specified by the buy-out agreement and paying the remainder in equal quarterly payments over a period not to exceed 5 years. These additional requirements shall apply:

(a) The purchaser shall provide documentation to the authorized officer of inability to obtain private financing at reasonable rates and terms as defined in this subpart, from at least two Federal or state chartered financial institutions engaged in providing financing to the timber industry and one from the lending institution with which the purchaser usually transacts business.

(b) The interest rate shall be adjusted with each payment to equal the average market yield of outstanding Treasury obligations with 5 years remaining to maturity. Such information shall be obtained by the authorized officer from the United States Department of the Treasury.

(c) The purchaser shall sign a promissory note agreeing to the terms and conditions of payment.

(b) Payment shall be secured by bond, deposited securities or other forms of security acceptable to the authorized officer in an amount sufficient to cover the entire buy-out payment owing on those BLM contracts. If a bond of corporate surety is used, the payments bond shall provide that, if the purchaser fails to make payments as required by this subpart, the surety shall make payment of the entire balance due including any required interest to the BLM within 60 days of the due date for payment of the installment. As each payment is made, the bond may be adjusted downward to an amount equal to the unpaid balance of the buy-out, including any required interest. As additional security, if the purchaser fails to make payments as required by this subpart, after notice and opportunity for hearing, the authorized officer shall shall accept no bid from the purchaser or purchaser's affiliate on any future BLM timber sales until the payment and interest requirements agreed to in the promissory note are satisfied.

(e) The method of payment shall be the same as called for in the original purchase contract. The place of payment shall be specified in the buy-out agreement.

§ 5475.6 Protests and appeals.

(a) Any appeal filed prior to the execution of a buy-out agreement shall be in accordance with the provisions of 43 CFR Part 4.

(b) Any dispute relating to an executed buy-out agreement shall be subject to the provision of the Contract Disputes Act of 1978 [92 Stat. 2383].

J. Steven Griles,

Acting Assistant Secretary of the Interior.

November 29, 1984.

[FR Doc. 84-31731 Filed 12-4-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 83

[PR Docket No. 83-428; FCC 84-579]

Inspection Interval for Vessels Subject to the Great Lakes Agreement

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws the proposal to amend the rules to expand the inspection interval for vessels subject to the Great Lakes Agreement (GLA). Because the United States and Canada have not yet revised the GLA to permit an expanded inspection interval, it is necessary to postpone rulemaking.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Second Report and Order (Proceeding terminated)

In the matter of amendment of Part 83 of the rules concerning the inspection interval for small passenger vessels subject to Title III, Part III of the Communications Act and vessels subject to the Great Lakes Agreement, 1973 (PR Docket No. 83-428).

Adopted: November 21, 1984.
Released: November 26, 1984.

By the Commission.

1. In the *First Report and Order* in this proceeding the Commission amended Part 83 of the rules to extend the inspection interval for small passenger vessels subject to Title III, Part III of the Communication Act from two years to five years.[1] The proposal to extend the inspection interval for vessels subject to the Great Lakes Agreement (GLA)[2] from 13 months to 25 months was not acted upon in the *First Report and Order*. Action on this issue was postponed pending an agreement between Canada and the United States to revise the GLA to accommodate the expanded U.S. inspection interval. The instant proceeding was left open to permit the prompt amendment of the Commission's rules upon the revision of the GLA.

2. The United States and Canada are preparing to review and update a number of bilateral agreements concerning the radio spectrum including the GLA. However, no date has yet been set for these negotiations and we are unable to forecast when they will be completed. Therefore, we are terminating this proceeding. At such time as the GLA is revised to permit the extension of the inspection interval we will implement the change in a separate proceeding.

3. Accordingly, it is ordered, That this proceeding is terminated.

4. Regarding questions in matters covered in this document contact Nicholas G. Bagnato (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 31736 Filed 12-4-84; 8:45 am]

BILLING CODE 6712-01-M

[1] *First Report and Order*, PR Docket No. 83-428, released December 6, 1983, FCC 83-300, 48 FR 55574.

[2] Agreement between the United States of America and Canada for Promotion of Safety on the Great Lakes by means of Radio. TIAS 7837.

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR Notice No. 5-82]

Competition in Contracting Act of 1984; Implementing Regulations

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR). The proposed change will implement and supplement the Federal Acquisition Regulation (FAR) as revised to implement the Competition in Contracting Act of 1984 (CICA), Title VII of Pub. L. 98-369. The proposal does not include the revisions on bid protest material that will need to be made upon issuance of the final bid protest rules by the General Accounting Office (GAO) and the General Services Board of Contract Appeals (GSBCA). In addition, this revision does not include the changes regarding the acquisition of leasehold interests in real property, which will be made in Part 570 to implement CICA. The changes to Part 570 are being drafted and will also be issued at a later date. Miscellaneous other changes unrelated to the CICA are also proposed based on comments and suggestions from contracting activities and the public.

DATES: Comments are due in writing not later than January 4, 1985.

ADDRESS: Requests for a copy of the proposal and your comments should be addressed to Ms. Carol A. Farrell, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy, 18th and F Streets., NW., Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office Acquisition Policy, (202) 523-4754.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 15, 1983, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 501, 502, 504, 505, 506, 508, 509, 510, 513, 514, 515, 517, 522, 525, 528, 534, 536, 543, 552, and 553

Government procurement.

Dated: November 27, 1984.

Richard H. Hopf,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 84-31683 Filed 12-4-84; 8:45 am]

BILLING CODE 6820-61-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1502, 1503, 1505, 1506, 1513, 1514, 1515, 1517, 1527, 1533, 1536, and 1552

[FRL-2729-3]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) invites written comments on a proposal to issue a new rule to implement revisions to the Federal Acquisition Regulation (FAR) resulting from the Competition in Contracting Act (CICA), Title VII of Public Law 98-369. The rule is necessary to conform the Environmental Protection Agency Acquisition Regulation (EPAAR) to the FAR revisions. The effect of the rule will be to revise EPA procurement policies and procedures impacted by the CICA.

DATE: Written comments should be submitted not later than February 4, 1985.

ADDRESS: Requests for copies of the proposed rule should be addressed to: Environmental Protection Agency, Printing Management (PM-215), 401 M Street SW., Washington, DC 20460. Attn: Tommy Greene.

FOR FURTHER INFORMATION CONTACT: Edward Murphy, Procurement and Contracts Management Division (PM-214), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Tele: (202) 382-5034.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
III. Public Comments

I. Background

The Competition in Contracting Act (CICA) of 1984 substantially changes the basic statutes underlying the Federal procurement system. Agencies will be required to achieve full and open competition by soliciting sealed bids or requesting competitive proposals or by use of other competitive procedures, unless a statutory exception permits other than full and open competition. Among its major provisions, the Act imposes new justification, approval, and synopsis requirements for contracts employing other than full and open competition; requires appointment of a competition advocate; codifies the General Accounting Office bid protest process; and provides statutory authority for the General Services Board of Contract Appeals to resolve protests regarding automatic data processing acquisitions. Solicitations issued after March 31, 1985 must comply with the requirements of the Act.

The Department of Defense (DOD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) issued the proposed changes to the FAR resulting from the CICA for comment on October 1, 1984. The final rule issuing FAR revisions is expected to be published in the Federal Register in December, 1984. This proposed rule implements those proposed changes in the EPAAR.

II. Procedural Requirements

A. Executive Order 12291

The Director, Office of Management and Budget, by Memorandum dated December 15, 1983, exempted Agency Procurement Regulations from Executive Order 12291.

B. Regulatory Flexibility Act.

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

III. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed EPAAR revisions. Comments should be submitted to Edward Murphy, Procurement and Contracts Management Division (PM-214), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. All written comments received not later than 60 days after publication in the Federal Register will be fully considered prior to publication of the proposed regulation as a final rule

The Agency has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, the Agency does not plan to hold a public hearing on this proposed rule. Interested persons are invited to participate in this rulemaking by submitting in writing any data, views, or arguments with respect to the proposals set forth in this notice.

List of Subjects in 48 CFR Parts 1501, 1502, 1503, 1505, 1506, 1513, 1514, 1515, 1517, 1527, 1533, 1536 and 1552

Government Procurement.

Dated: November 19, 1984.

Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c)

Kenneth Dawsey,

Acting Director, Office of Administration.

[FR Doc. 84-31716 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 49, No. 235
Wednesday, December 5, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Charter of the Minority Enterprise Development Advisory Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. (1982)) and General Services Administration Interim Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Minority Enterprise Development Advisory Committee (MEDAC) is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary through the Director, Minority Business Development Agency, on how the Department can best promote the full participation of minority businesses in the free enterprise system. The Committee will evaluate the effectiveness of current Federal programs and provide recommendations on how they could be improved. The Committee will also advise on promising new initiatives to which MBDA resources should be channeled.

The Committee will consist of twelve (12) to be appointed by the Secretary to assure a balanced representation among economists, manufacturers, retailers, urban planners, business counsultants, wholesalers, bankers, and financiers.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, 15 days from the date of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this Committee. Such comments as well as any inquiries, may be addressed to: Willie Williams, Chief of Administration Management, MBDA Room 5089, U.S. Department of Commerce, Washington, D.C. 20230, Phone (202) 377–5741.

Dated: November 27, 1984.

Katherine M. Bulow,

Assistant Secretary for Administration.

[FR Doc. 84-31782 Filed 12-4-84; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 52–84]

Foreign-Trade Zone 44, Morris County, NJ; Application for Subzone International Flavors & Fragrances, Inc.; Hazlet, Union Beach and South Brunswick, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Office of International Trade, State of New Jersey Department of Commerce and Economic Development, grantee of Foreign-Trade Zone 44, requesting special-purpose subzone status for the manufacturing plants of International Flavors & Fragrances, Inc., located in Hazlet, Union Beach and South Brunswick, New Jersey, adjacent to the New York Customs port of entry. The application wa submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 27, 1984. The applicant is authorized to make this proposal under Section 12:13–1 of the New Jersey Statutes Annotated.

IFF is a multinational producer of flavors and fragrances. It is headquartered in New York City and has 36 facilities in 23 countries. Of the top five world producers, it is the only domestic one. Sales for 1983 totaled some $470 million dollars.

The proposed subzone for IFF will involve three of the company's major manufacturing plants: a 97-acre facility at 600 Highway 36 in Hazlet; a 200-acre facility at 800 Rose Lane in Union Beach; and a 75-acre facility at 150 Docks Corner Road in South Brunswick. The facilities employ 1000 persons and are used to produce a variety of flavors and fragrances, blended from numerous natural and synthetic ingredients, which are used in soaps, detergents, cosmetics, toiletries, candles and food products. About 60% of the company's purchased raw materials are imported, including a number of natural compounds not available in the U.S., including: Linalyl-Acetate, TSUS 460.55-duty 18%; Benzyl-Acetate, TSUS 412.80-duty 41.2%; Ethyl-Vanillin, TSUS 412.92-duty 25.5%; and, Phenethyl-Alcohol,TSUS 413.20-duty 25.5%. A portion of the blended products are exported.

Zone procedures will allow IFF to avoid duty payments on imported raw materials used in its exports. On its domestic sales, IFF will be able to take advantage of the same duty rate availalbe to importers of the finished flavors and fragrances. The duty rate on raw materials ranges from 7 to over 40 percent, whereas the rate for most of IFF's finished flavor products is 6 percent, and the rate for its finished perfume oil mixtures is 6 cents per pound plus 5.8 percent. The application indicates that foreign competition is intensifying, and that zone procedures will help the company compete in the U.S. and internationally with production facilities abroad, resulting in increased production in the U.S. and increased exports.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Benjamin C. Jefferson, Area Director, U.S. Customs Service, New York Region, Airport International Plaza, Room 210 A, Newark, NJ 07114; and Colonel F.H. Griffis, District Engineer, U.S. Army Engineer District New York, 26 Federal Plaza, New York, NY 10278.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 5, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Capitol Plaza, 8th Floor, 240 W. State Street, Trenton, NJ 08608

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, NW., Room 1529, Washington, D.C. 20230)

Dated: November 29, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-31780 Filed 12-4-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Amendment to an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an amendment to an export trade certificate of review to Crosby Trading Company. This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this amendment. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the amended certificate as "Export Trade Certificate of Review, application number 84–A0002".

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, Office of General Counsel, 202–377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595–604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–40 (April 13, 1983). Section 304 of the Act provides, "An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate."

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Crosby Trading Company on September 24, 1984. The application was deemed submitted on the same day. A summary of the application was published in the **Federal Register** on October 10, 1984 (49 FR 39709–10 (1984).

Description of Certified Conduct

Based on analysis of the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the proposed amendment meets the four standards of the Act.

Accordingly, the initial Export Trade Certificate of Review, application no. 84–00002, issued on June 18, 1984 (49 FR 25889, June 25, 1984), which protected only Crosby Trading Company for planning activities associated with formulating an export venture is amended to extend Title III protection during the planning stage to firms named as members.

The members named are as follows: Georgia-Pacific Corporation, Atlanta, Georgia; Union Camp Corporation, Wayne, New Jersey; Reichhold Chemicals, Inc., White Plains, New York; Hercules Incorporated, Wilmington, Delaware; Westvaco Corporation, New York, New York; SCM Corporation, New York, New York; Monsanto Company, St. Louis, Missouri; National Distillers and Chemical Corporation, New York, New York; Arizona Chemical Company, Bay Lawn, New Jersey.

Crosby Trading Company intends to submit a new application at a later time to seek certification for the operation of its export joint venture.

Effective Date of the Amendment

In accordance with section 304(a)(2) of the Act and 15 CFR 325.6, this amendment is effective from September 24, 1984, the date on which the application for the amendment was deemed submitted.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part. 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202–377–3031.

Dated: November 29, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc 84-31712 Filed 12-4-84; 8:45 am]

BILLING CODE 3510-DR

Office of the Secretary

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Production Characteristics—Design Check-Off list
Form Number: Agency—ITA—426P; OMB—0625–0035
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,760 respondents; 1,380 reporting hours
Needs and Uses: Allows firms exhibiting products in U.S. exhibitions overseas to indicate physical dimensions, electrical and water requirements, raw materials, compressed air, and other features or requirements which impact upon the design of their displaying space
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: November 20, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84-31701 Filed 12-4-84; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Software; Advisory Committee Meeting

SUMMARY: The Defense Science Board Task Force on Software will meet in open session on 11 January 1985 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on 11 January 1985 the Task Force will conduct a review of the Department's programs to exploit technology in order to minimize software development costs.

Persons interested in attending should contact Major Susan Swift, Task Force Executive Secretary, Telephone: (202) 695–7181. Space will be awarded on a first come first served basis.

Dated: November 21, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-31703 Filed 12-4-84; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 4, 1984, Tuesday, December 11, 1984; and Tuesday, December 18, 1984 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Patrica H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 27, 1984.

[FR Doc. 84-31702 Filed 12-4-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Delection of an Amendments to Notices for Systems of Records.

SUMMARY: The Department of the Army proposes to delete 29 and amend 30 system notices for systems of records subject to the Privacy Act of 1974, as amended. Following identification of changes, amended notices are printed below in their entirety.

DATE: This action shall be effective without further notice unless comments are received which would result in a contrary determination.

ADDRESS: Comments may be submitted to Headquarters, Department of the Army, ATTN: DAAG–AMR–S, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of The Adjutant General, Headquarters, Department of the Army, at the above address; telephone: 703/325–6163.

SUPPLEMENTARY INFORMATION: The Army's systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

FR Doc 83–12048 (48 FR 25502), June 6, 1983
FR Doc 83–18883 (48 FR 32046), July 14, 1983
FR Doc 83–24181 (48 FR 40291), September 6, 1983
FR Doc 83–28792 (48 FR 49086), October 24, 1983
FR Doc 84–1118 (49 FR 2006), January 17, 1984
FR Doc 84–2331 (49 FR 3506), January 27, 1984
FR Doc 84–3683 (49 FR 5170), February 10, 1984
FR Doc 84–6438 (49 FR 8993), March 9, 1984
FR Doc 84–11652 (49 FR 18600), May 1, 1984
FR Doc 84–14035 (49 FR 22122), May 25, 1984
FR Doc 84–15558 (49 FR 24045), June 11, 1984
FR Doc 84–16178 (49 FR 24914), June 18, 1984
FR Doc 84–16520 (49 FR 25499), June 21, 1984
FR Doc 84–17271 (49 FR 26825), June 28, 1984
FR Doc 84–18684 (49 FR 28754), July 16, 1984
FR Doc 84–19506 (49 FR 29812), July 24, 1984
FR Doc 84–38067 (49 FR 28967), October 2, 1984
FR Doc 84–39168 (49 FR 39188), October 4, 1984
FR Doc 84–40637 (49 FR 40637), October 17, 1984
FR Doc 84–28818 (49 FR 43990), November 1, 1984

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 27, 1984.

DELETIONS

AAFES0306.03

System name:

Debriefing Acknowledgement Files (48 FR 25504), June 6, 1983.

Reason:

Records are covered in system notice AAFES0306.12, reprinted in this **Federal Register.**

AAFES0306.04

System name:

Classified Material Access Files (48 FR 25505), June 6, 1983

Reason:

Records are covered in system notice AAFES0306.12, reprinted in this **Federal Register.**

AAFES0306.13

System name:

Personnel Security Status Files (48 FR 25506), June 6, 1983.

Reason:

Records are covered in system notice AAFES0306.12, reprinted in this **Federal Register.**

AAFES0401.05

System name:

Employee Service Record Card Files (48 FR 25508), June 6, 1983.

Reason:

Records are covered in system notice AAFES0401.04, reprinted in this **Federal Register.**

AAFES0401.11

System name:

Personnel Records Maintained at Supervisory Level (48 FR 25508), June 6, 1983.

Reason:

Records are covered in system notice AAFES0401.04, reprinted in this **Federal Register.**

AAFES0403.08

System name:

Reference and Pre-Employment Credit Files (48 FR 25510), June 6, 1983.

Reason:

Records are covered in system notice AAFES0403.01, reprinted in this **Federal Register.**

AAFES0403.12

System name:

Oversea Processing Records (48 FR 25511), June 6, 1983.

Reason:

Records are covered in system notice AAFES0410.01, reprinted in this **Federal Register.**

AAFES0404.03

System name:

Award Control Files (48 FR 25512), June 6, 1983.

Reason:

Records are covered in system notice AAFES0404.01, reprinted in this **Federal Register.**

AAFES0404.04

System name:

Award Ceremony Files (48 FR 25512), June 6, 1983.

Reason:

Records are covered in system notice AAFES0404.01, reprinted in this **Federal Register.**

AAFES0405.07

System name:

Retirement Assistant Files (48 FR 25514), June 6, 1983.

Reason:

Records are covered in system notice AAFES0403.01, reprinted in this **Federal Register.**

AAFES0405.15

System name:

Retirement Extension Files (48 FR 25515), June 6, 1983.

Reason:

Records are covered in system notice AAFES0403.01, reprinted in this **Federal Register.**

AAFES0406.12a

System name:

Skills Bank File (Employee Skills Survey) (48 FR 25515), June 6, 1983.

Reason:

Records are covered in system notice AAFES0406.12b, reidentified and printed in this **Federal Register** as AAFES0406.12.

AAFES0406.06

System name:

Trainee Card Index (48 FR 25517), June 6, 1983.

Reason:

Records are covered in system notice AAFES0408.05, reprinted in this **Federal Register.**

AAFES0408.15

System name:

Correspondence Course Files (48 FR 25518), June 6, 1983.

Reason:

Records are covered in system notice AAFES0401.04, reprinted in this **Federal Register.**

AAFES0410.04

System name:

Passport Files (48 FR 25519), June 6, 1983.

Reason:

Records are covered in system notice AAFES0410.01, reprinted in this **Federal Register.**

AAFES0501.04

System name:

Universal Annual Photograph Files (48 FR 25520), June 6, 1983.

Reason:

Records are covered in system notice AAFES0505.02, in this **Federal Register.**

AAFES0602.01

System name:

Claims v. AAFES (48 FR 25521), June 6, 1983

Reason:

Records are covered in system notice AAFES0602.04b, reprinted in this **Federal Register.**

AAFES0702.23

System name:

Check-Cashing, Privileges Files (48 FR 40295), September 6, 1983.

Reason:

Records are covered in system notice AAFES0702.22, reprinted in this Federal Register.

AAFES0702.44

System name:

Travel Advance—Trial Balance Files (48 FR 25526), June 6, 1983.

Reason:

Records are covered in system notice AAFES0702.43 reprinted in this Federal Register.

AAFES0703.05

System name:

Personnel Action/Discrepancy Notice Files (48 FR 25528), June 6, 1983.

Reason:

Records are covered in system notice AAFES0401.04, reprinted in this Federal Register.

AAFES0803.01

System name:

AAFES Incident Record (48 FR 25538), June 6, 1983

Reason:

Records are covered in system notice AAFES0409.01, reprinted in this Federal Register.

AAFES0903.06a

System name:

Systems Magnetic Tape Files (48 FR 25539), June 6, 1983.

Reason:

Records are covered in system notice AAFES0903.06f, reprinted in this Federal Register.

AAFES0903.06c

System name:

Systems Magnetic Tape Files (48 FR 25540), June 6, 1983.

Reason:

Records are covered in system notice AAFES0903.06f, reprinted in this Federal Register.

AAFES0903.06d

System name:

Personal Property Transfer System (48 FR 25540), June 6, 1983.

Reason:

Records are covered in system notice AAFES1504.03, reprinted in this Federal Register.

AAFES0903.06e

System name:

Personal Profile (48 FR 25541), June 6, 1983.

Reason:

Records are covered in system notice AAFESO401.04, reprinted in this Federal Register.

AAFES1100.31

System name:

Personal Data Card (48 FR 25543), June 6, 1983.

Reason:

Records are covered in system notice AAFES0401.04, reprinted in this Federal Register.

AAFES1204.07

System name:

Customer's Merchandise Returned for Repair or Replacement (48 FR 25544), June 6, 1983.

Reason:

Records are covered in system, notice AAFES1609.02, reprinted in this Federal Register.

AAFES1504.02

System name:

Personal Property Shipment Files (48 FR 25545), June 6, 1983.

Reason:

Records are covered in system notice AAFES1504.03, reprinted in this Federal Register.

AAFES1504.04

System name:

Carrier/Contractor Management Files (48 FR 25547), June 6, 1983.

Reason:

Records are not subject to the Privacy Act of 1974, as amended.

AMENDMENTS

AAFES0207.02

System name:

Customer Comments, Complaints, and Direct Line Files (48 FR 25504), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To aid the Exchange management in determining needs of customers and action required to settle customer complaints."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

AAFES0306.12

System name:

Personnel Security Case Files (48 FR 25505), June 6, 1983.

Changes:

Categories of individuals covered by the system:

Delete entry; substitute therefor: "Persons affiliated with the Army and Air Force Exchange Service by assignment, employment, contractual relationship, or as the result of an interservice support agreement on whom a personnel security clearance determination has been completed, is in process, or may be pending."

Categories of records in the system:

Delete entry; substitute therefor: "File may contain pending and completed personnel security clearance actions on individuals by personal identifying data. It may also contain briefing/debriefing statements for special programs, sensitive positions, and other related information and documents required in connection with personnel security clearance determinations."

After "Authority for maintenance of the system", add:

"Purpose(s):

To assist in the processing of personnel security clearance actions; to record security clearances issued or denied; and to verify eligibility for access to classified information or assignment to a sensitive position."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Change entry to read: "Paper records in folders; cards; computer tapes, punched cards, or discs."

Retention and disposal:

Delete entry; substitute therefor: "Records are permanent. They are retained in active file until the end of the fiscal year in which the individual is no longer employed or associated with the Army and Air Force Exchange Service; held 2 additional years in inactive status and retired to the National Personnel Records Center, St. Louis, MO 63118."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

AAFES0307.01

System name:

Carpooling Program (48 FR 25506), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To assign and administer allocated carpool parking assignments; establish priority of assignments, assist members and applicants in contacting one another and provide printout of individuals in system to other participants who desire to arrange a carpool."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "Information may be disclosed to the City of Dallas, TX for inclusion in its Ridesharing Program. In addition, see 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

AAFES0401.04

System name:

Official Personnel Folders (OPF) (48 FR 25507), June 6, 1983.

Changes:

System name:

Add: "and General Personnel Files".

System location:

Delete the second and thrid paragraphs. Add the following: "Included in this system are the Employee Service Record Card Files and those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administative office or supervisor's work folder)."

Categories of individuals covered by the system:

Delete entries; substitute therefor: "Current and former employees of the Army and Air Force Exchange Service."

Categories of records in the system:

Delete entries; substitute therefor: "Name, SSN, date of birth, home residence, mailing address, telephone number; records reflecting work experience, educational level achieved, letters of commendation; training courses in which enrolled and certificates of completion; security clearance; personnel actions such as appointments, transfers, reassignments, separations, reprimands; salary and benefits documents to include allowances and insurance data; travel orders; and similar relevant information."

After "Autority for maintenance of the system", add:

"Purpose(s):

The Official Personnal Folder and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's service with the Army and Air Force Exchange Service. Records provide the basis source of factual data about a person's employment with the agency and have various uses by AAFES personnel offices, including screening qualifications of employees, determining status, eligibility, and employee's rights and benefits, computing length of service, and other informaiton needed to provide personnel services."

Routine uses of maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "Information may be disclosed to the Department of Labor, Veterans Administration, Social Security Administration, Federal agencies that have special civilian employee retirement programs; or a national, State, county, municipal, or other publicly recognized charitable or income security administration agency (e.g., State unemployment compensation agencies), where necessary to adjudicate a claim under the retirement, insurance or health benefits programs or to an agency to conduct studies or audits of benefits being paid under such programs. Information may also be disclosed pursuant to the 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Change to read: "Paper records in file folders; Kardex files; microfilm or microfiche, and in computer processible storage media."

Safeguards:

Delete entry; substitute therefor: "Paper or microfiche/microfilmed records are located in locked metal cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access."

Retention and disposal:

Delete entries; substitute therefor: "The Official Personnel Folder is permanent. Upon employee's separation, it is transferred to the National Personnel Records Center (Civilian), 111 Winnebagro Street, St Louis, MO 63118. Duplicate records maintained in an administrative office or at supervisory levels are destroyed 90 days after employee's separation. Service Record Card Files are retained for 5 years following employee's separation and retired to a records holding area for 15 additional years before being destroyed, except that those of employees of discontinued AAFES installations are retired to the National Personnel Records Center (Civilian). Automated personnel records are retained indefinitely for managerial and statistical studies; after and employee separates, they are not used in making decisions concerning the employee."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Delete entry; substitute therefor: "From the individual, education institutional institutions, officials and other individuals of the AAFES, third parties responsing to reference checks, previous employers, law emforcement agencies, physicians."

A5FES0403.01

System name:

Application for Employment Files (48 FR 25509), June 6, 1983.

Chages:

After "Authority for maintenance of the system", add:

"Purposes(s):

The records are used in considering individuals who have applied for postions in the Army and Air Force Exchange Service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applications applying for the same or similar positions."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

AAFES0403.05

System name:

Employee Examination Records (48 FR 255509), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

Used for research purposes and as a predictor of one's success under given situations for promotional aptitude to positions at the managerial level."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

AAFESO43.11

System name:

Personal Clearance Records (48 FR 25510), June 6, 1983.

Changes:

System name:

After "Personnel", insert "Departure".

Categories of individuals covered by the system:

Change to read: "All employees of the Army and Air Force Exchange Service".

After "Authority for maintenance of the system", add:

"Purpose(s):

To ensure that departing employees have been properly out-processed."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:.

Safeguards:

Delete entry; substitute therefor: "Information is accessed only by designated individuals having official need therefor in the performance of their duties."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Record source categories:

Change to read: "From the individual; official personnel actions."

AAFES0404.01

System name:

Incentive Awards Case Files (48 FR 25511), June 6, 1983.

Changes:

Categories of individuals covered by the system:

Delete entry; substitute therefor: "All employees of the Army and Air Force Exchange Service nominated for or recipients of awards."

After "Authority for maintenance of the system", add:

"Purpose(s):

To consider and select employees for incentive awards and other honors and to publicize those granted."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983. Information may also be disclosed to public and private organizations, including news media, which grant or publicize employee awards or honors."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

AAFES0405.03

System name:

Personnel Appeals and Grievances (48 FR 25513), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To determine propriety and legal sufficiency of the agency's action in the appeal or grievance matter."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor:

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

AAFESO405.05

System name:

Statement of Employment and Financial Interests (48 FR 25513), June 6, 1983.

Changes:

System name:

At the beginning, insert the word "Confidential".

After "Authority for maintenance of the system", add:

Purpose(s):

These records are maintained to meet requirements of Executive Order 11222 on the filing of employment and financial interest statements. Such statements are required to assure compliance with the standards of conduct for Government employees contained in the Executive order and title 18 of the U.S.C., and to determine if a conflict of interest exists between the employment of individuals by the

Federal Government and their personal employment and financial interests.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor:

"a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulations, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

"b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is party to a judicial proceeding or in order to comply with the issuance of a subpoena.

"c. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

"d. By the National Archives and Records Service, General Services Administration, in record management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

"e. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

"f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Notification procedure:

Delete entry: substitute therefor: "Individuals wishing to inquire whether this system of records contains information about them should contact the General Counsel at the AAFES location where the reports were filed."

Record access procedures:

Delete entry: substitute therefor: "Individuals wishing to request access to their records should contact the General Counsel at the AAFES location where the reports were filed. Individuals must furnish their full name, SSN, period covered by the report filed, and signature."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

AAFES0405.11

System name:

Individual Health Records (84 FR 25514), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To provide health care and medical treatment to employees who become ill or are injured during working hours."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Contesting record procedures'

After "determinations", delete remainder and add: "Are contained in Army Regulation 340–21 (32 CFR Part 505)."

AAFES0406.12b

System name:

Employee Career Developemnt Plan File (48 FR 25516), June 6, 1983.

Changes:

System Identification:

Delete suffix "b".

Categories of records in the system

After "job location", insert: "results of Skills Survey (AAFES Form 1,200–61) specifically covering education/training courses completed, skills/experience acquired, skills used in daily work, and skills needed ;".

After "Authority for maintenance of the system", add:

"Purpose(s):

To assist the servicing personnel office in office in identifying and referring qualified employees for vacant positions."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Notification procedure:

Delete entry; substitute therefor: "Individuals desiring to know whether or not information on them exists in this system of records should write to the System manager, ATTN: Director, Personnel Division, providing full name, SSN, job location, and duty phone."

Record access procedures:

Delete entries: substitute therefor: "Individuals desiring access to records about them in this system should inquire of the System Manager, providing information required in "Notification procedure".

Record source categories:

Delete entry; substitute therefor: "From the individual".

AAFES0408.05

System name:

Individual Trainee Files (48 FR 25516), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To determine employee potential for participation in management development trainee program."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete entry; substitute therefor: "Paper records in file folders; cards."

Retrievability:

Delete the second sentence.

Safeguards:

Add: "Information is accessed only by designated individuals having official need therefor in the performance of assigned duties."

Retention and disposal:

Delete entry; add: "Records concerning employee selected for the program are incorporated into their Official Personnel Folder. Records on

Non-selected individuals are retained 5 years, then destroyed. Statistical and summary data are retained for managerial purposes indefinitely."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Record source categories:

Delete information following "applicant"; add: "official records and reports".

AAFES0408.14

System name:

Tuition Assistance Case Files (48 FR 25517), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To maintain information on participants in the tutition assistance program."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

AAFES0409.01

System name:

AAFES Accident Reports (48 FR 25518), June 6, 1983.

Changes:

System name:

After "Accident", add: "/Incident".

After "Authority for maintenance of the system", add:

Purpose(s):

To record accidents, incidents, mishaps, fines, theft, etc., involving Government property; personal injuries/illnesses in connection therewith; for the purposes of recouping damages, correcting deficiencies, initiating appropriate disciplinary action; filing of insurance and/or workmen's compensation claims therefor; and for managerial and statistical reports."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "Information may be disclosed to:

"Department of Labor, to support workmen's compensation claims. In addition, see 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add: "computer magnetic tapes and printouts; microfiche".

Retention and disposal:

Add: "information on microfiche is retained for 3 years; computer tapes reflecting historical data are permanent."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

AAFES0410.01

System name:

Employee Travel Files (48 FR 25519), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To process official travel requests for military and civilian employees of the Army and Air Force Exchange Service; to determine eligibility of individual's dependents to travel; to obtain necessary clearance where foreign travel is involved, including assisting individual in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "Information may be disclosed to attache' or law enforcement authorities of foreign countries; to US Department of Justice or Department of Defense legal/intelligence/investigative agencies for security, investigative, intelligence, and/or counterintelligence operations."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retrievability:

Delete entry; substitute therefor: "By employee's surname."

Safeguards:

Change to read: "Information is accessed only by designated individuals having official need therefor in the performance of their duties."

System manager(s) and address:

Delete: "Director * * * Division"; substitute therefor: "Commander".

Notification procedure:

Delete entry; substitute therefor: "Information may be obtained by writing to the System Manager, ATTN: Director, Administrative Services Division. Individuals must provide full name, SSN current address and telephone number, details of travel authorization/clearance documents sought, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records about themselves in this system of records should write to the System Manager, providing information specified in "Notification procedure".

AAFES0505.02

System name:

IO Biographical Files (48 FR 25520), June 6, 1983.

Changes:

System name:

Delete "IO".

Categories of records in the system:

Delete entry; substitute therefor: "Individual's name, position title and organizational location, home address, date and place of birth, marital status including names of spouse and children, educational background, military status, awards and decorations, community and civic interest data, photograph, and similar relevant information."

After "Authority for maintenance of the system", add:

"Purpose(s):

To prepare feature articles for hometown newspapers, trade media, community interests, and similar public service groups."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983. Information may also be disclosed to public and private organizations including news media."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Delete entry; substitute therefor: "From the individual; official AAFES records and reports."

AAFES0602.04a

System name:

Litigation Initiated by AAFES (48 FR 40294), September 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To process complaints against individuals; to initiate litigation as necessary."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "To process complaints or pleadings on behalf of the Army and Air Force Exchange Service."

AAFES0602.04b

System name:

Litigation Against AAFES Employees and/or AAFES (48 FR 25522), June 6, 1983.

Changes:

System name:

Change to read: "Claims and/or Litigation Against AAFES".

Categories of individuals covered by the system:

Before "complaint", insert: "claim against AAFES, a complaint * * * defendant."

Categories of records in the system:

Delete entry; substitute therefor: "Claims, pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied materials involved in representing the Army and Air Force Exchange Service in the Federal Court System."

After "Authority for maintenance of the system", add:

"Purpose(s):

To investigate claims and prepare responses; to defend the Army and Air Force Exchange Service in civil suits filed against it in the Federal Court System."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "Information may be disclosed to the Department of Justice and US Attorneys' offices handling a particular case. Most of the information is filed in some manner in the courts in which litigation is pending and therefore is a public record. In addition, some of the information will appear in the written orders, opinions, and decisions of the courts which, in turn, are published in the Federal Reporter System under the name or style of the case and are available to individuals with access to a law library."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

Delete entry; substitute therefor: "Claim records are destroyed after 6 years. Litigation records are permanent; they are retained in the servicing General Counsel's Office until judicial proceedings have been resolved, following which they are retired to the servicing General Service Administration records holding center."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Notification procedure:

Delete entry; substitute therefor: "Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: General Counsel. Individual should provide his/her full name, current address and telephone number, latest correspondence received from the servicing General Counsel's office if available, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records on themselves should write to the System Manager and provide information specified in "Notification procedure."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Delete entry; substitute therefor: "From official records of the Army and Air Force Exchange Service; claimants; litigants."

AAFE0604.02

System name:

Unfair Labor Practice Claims/Charges Files (48 FR 25522), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To review and process change/claims of unfair labor practices through formal/informal negotiations; for managerial and statistical reports."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Notification procedure:

Delete all entries; substitute therefor: "Individuals desiring to know whether or not information on them is contained in this system of records may write to the System Manager, ATTN: General Counsel, furnishing their full name, SSN, last employing station, details sufficient to locate the record, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring to access records about themselves should write to the System Manager, providing information specified in "Notification procedure."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Delete entry; substitute therefor: "From the individual, the union representative, witnesses, official records of the Army and Air Force Exchange Service."

AAFES0702.22

System name:

Check-Cashing Privilege Suspense Files (48 FR 25524), June 6, 1983.

Changes:

Categories of records in the system:

Add "relevant documentation."
After "Authority for maintenance of the system", add:

"Purpose(s):

To determine customer's eligibility to cash checks."

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete the first two sentences.
Immediately following, insert:

"Disclosure to Consumer Reporting Agencies:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3))."

Record source categories:

Delete entry; substitute therefor: "From the individual, his/her checks, and financial institutions."

AAFES0702.23b

System name:

Dishonored Check Files (48 FR 40295), September 6, 1983.

Changes:

System Identification:

Delete suffix "b".
After "Authority for maintenance of the system", add:

"Purpose(s):

To collect dishonored check indebtedness."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the first paragraph and information following "purposes" from the second paragraph.

AAFES0702.43

System name:

Travel Advance Register Files (48 FR 25526), June 6, 1983.

Changes:

System name:

Delete "Register".

After "Authority for maintenance of the system", add:

"Purpose(s):

To monitor travel advances against individual's authorized official travel and to ensure settlement of indebtedness to the Government."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedure:

Change entry to read: "Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Delete entry; substitute therefor: "From the individual, records of the AAFES office issuing travel advance."

AAFES0704.07

System name:

Fidelity Bond Files (48 FR 25534), June 6, 1983.

Changes:

Categories of individuals covered by the system:

Delete entry; substitute therefor: "All employees of the Army and Air Force Exchange Service."
After "Authority for maintenance of the system", add:

"Purpose(s):

To assure that all employees applied for and were accepted by the bonding company for fidelity bond coverage."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

AAFES0903.06f

System name:

Personnel Management Information System (PMIS) (48 FR 25542), June 6, 1983.

Changes:

System location:

Delete entries; substitute therefor: "Centralized at Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222. Segments of the system exist at servicing civilian personnel offices at AAFES-Pacific, AAFES-Europe, Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide."

Categories of individuals covered by the system:

Delete entry; substitute therefor: "All employees of the Army and Air Force Exchange Service."

Categories of records in the system:

Delete entry; substitute the following: "Individual's name, SSN, Exchange location, home address; date of birth; date hired, leave accrual date, retirement participation data, service award base data, citizenship, marital status, sex, security clearance, military status, sponsor affiliation where employee is a dependent of a US Government/military member, job code and title, employment category, pay plan, wage schedule, base hourly rate, scheduled work week, Federal and State tax exemptions, type of insurance coverage, authorized deductions, life insurance coverage, physical examination documents, education and experience, licenses, career plans, Personnel Evaluation Reports, training course certificates, and similar relevant information."

After "Authority for maintenance of the system", add:

"Purpose(s):

To produce reports and statistical analysis of the civilian workforce strength trends and composition in support of established manpower and budgetary programs and procedures; provide employment verification; provide data in support of Equal Employment Opportunity Program requirements; provide locator and emergency notification data; provide information in response to union requests; identify training requirements; provide salary data for current and projected fiscal guidance, personnel data for current and projected staffing requirements; provide suspense data for within grade increases, length of service awards, performance ratings, pay adjustments and tenure group; provide employee data for retirement processing, individual personnel action forms; analyses of leave usage; investigation of complaints, grievances

and appeals; respond to requests from courts and regulatory bodies; provide incentive awards information; provide qualified candidates to fill position vacancies; counsel employees on career development; plan dependent services in overseas areas; to determine validity of individual claims related to pay adjustments; and for other managerial and statistical studies."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete the second sentence.

Retrievability:

Delete the second sentence.

Safeguards:

Delete the second sentence up to the word "Division;".

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Add: "Official Personnel Folder".

AAFES1203.03

System name:

Appointment of Contracting Officers (48 FR 25544), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To ascertain an individual's qualifications to be appointed as contracting officer; to determine if limitations on procurement authority are appropriate; to complete the Certificate of Appointment."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Notification procedure:

Delete entry; substitute therefor: "Individuals desiring to know whether or not information on them is contained in this system of records should write to the System Manager, ATTN: Director, Procurement Management Office, and provide their full name, and sufficient details to permit locating the pertinent records."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records about themselves should direct an inquiry as indicated in 'Notification procedure', providing information required therein."

AAFES1300.01

System name:

Progression Analysis Report (48 FR 25543), June 6, 1983.

Changes:

System name:

Delete name; substitute therefor: "Resource Management and Cost Accounting Files."

Categories of Individuals covered by the system:

Delete entry; substitute therefor: "Military and civilian personnel assigned/attached to an organizational entity of AAFES."

Categories of records in the system:

Change entry to read: "Records by individual of man-hours applied to the accomplishment of assigned tasks or projects. Specific data elements include name, SSN/employee identification number, organizational element, military rank/civilian grade, job title, clearance status, rating data, regular/overtime wage rates, regular/overtime hours worked, hours of leave taken, record of official travel, project code, accounting code and cost data, workload units accomplished, file references and related information, and records control data."

After "Authority for maintenance of the system", add:

"Purpose(s):

To project manpower and monetary requirements; to allocate available resources to specific projects; to schedule workload and assess progress; to project future organizational milestones; to evaluate individual performance and equipment efficiency; to set standards and methods; to record and control personnel and equipment utilization; to document inventories; to interpolate training needed by unit or individual; to monitor use of overtime; to control and monitor obligations and expenditures of Government funds; to provide audit trail; to generate statistical reports of workload and production levels and other trends within the organization; and to provide other accounting and monitoring reports."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete entry; substitute therefor: "Punch cards, magnetic tapes, cards, or discs; microform, microfiche, computer printouts, and paper records."

Retrievability:

Add: "SSN or employee identification number; information may also be accessed by a non-personal data element such as project code, cost accounting code, or organizational element."

Safeguards:

Delete entry; substitute therefor: "Automated systems employ computer hardware/software safeguard features. All records are maintained in controlled areas, within buildings/rooms which are secured during non-duty hours. Personal information is accessed only by individuals who have need therefor in their official duties."

Record source categories:

Delete entry; substitute therefor: "Employee time cards; organization manpower rosters; individual personnel and training records; production records; travel orders; unit inventory records; and similar relevant AAFES documents and reports."

AAFES1504.01

System name:

Personal Property Storage Files (48 FR 25546), June 6, 1983.

Changes:

System name:

Change to read: "Personal Property Movement and Storage Files."

System location:

Delete entries; substitute therefor: "Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ, AAFES-Europe, HQ, AAFES-Pacific."

Categories of individuals covered by the system:

Delete entry; substitute therefor: "Employees of the Army and Air Force Exchange Service whose permanent change of station is authorized by AAFES."

Categories of records in the system:

Delete entry; substitute therefor: "Orders authorizing shipment/storage of personal property to include privately owned vehicles and house trailers/mobile homes; Cash Collection Vouchers; Application for Shipment and/or Storage of Personal Property; Transportation Control and Movement Document; Personal Property Counseling Checklist; Government Bill of Lading; Storage contracts, loss and damage claims, and similar related documents."

After "Authority for maintenance of the system", add:

"Purpose(s):

Used by the Army and Air Force Exchange Service to arrange for the movement, storage and handling of personal property; to identify/trace lost or damaged shipments; to answer inquiries and monitor effectiveness of personal property traffic management functions."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "Information is disclosed to commercial carriers for the purposes of identifying ownership, verifying delivery of shipment, supporting billing for services rendered, and justifying claims for loss, damage, or theft. In addition, see 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add: "microfilm; magnetic tapes, and computer printouts".

Retrievability:

Change to read: "By individual's surname".

Safeguards:

Delete entry; substitute therefor: "Information is maintained in secured areas, accessible only to authorized personnel having an official need-to-know. Automated segments are further protected by code numbers and passwords."

Retention and disposal:

Delete entry; substitute therefor: "Documents relating to packing, shipping and/or storing of household goods within the continental United States are destroyed after 3 years; those relating to oversea areas are destroyed after 6 years. Documents regarding shipment of privately owned vehicles/mobile homes are destroyed after 2 years. Shipment discrepancy reports are destroyed after 2 years or when claim/investigation is settled, whichever is later. Administrative files reflecting queries and responses are retained for 2 years; then destroyed."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas, TX 75222."

Notification procedure:

Delete entry; substitute therefor: "Individuals desiring to know whether or not information on them exists in this system of records shoud write to the System Manager, ATTN: Director, Administrative Services Division, and should provide their full name, SSN, current address and telephone number, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to information about themselves in this system should address their inquiry to the System Manager, providing information required in 'Notification procedure'."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Delete entry; substitute therefor: "Provided by the individual whose personal property is shipped/stored; by the carrier/storage facility."

AAFES1609.02

System name:

AAFES Customer Service (48 FR 40296), September 6, 1983.

Changes:

Categories of records in the system:

After "cash receipt/", insert: "change or credit vouchers,"; after "repair vouchers," insert: "warranty documents; correspondents between AAFES and the customer and/or vendor."

After "Authority for maintenance of the system", add:

"Purpose(s):

To record customer transactions/payments for layaways and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on cancelled layaways or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement and initiate follow-up actions."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Notification procedure:

Delete entry; substitute therefor: "Individuals desiring to know whether or not information on them exists in this system of records should write to the System Manager, providing name and sufficient details of purchase to enable locating pertinent records, current address and telephone number."

Record access procedures:

Delete entry; substitute therefor: "Individuals desiring access to records about themselves should write as indicated in 'Notification procedure', providing information required therein."

Record source categories:

Add: "from the vendor."

AAFES1609.03

System name:

AAFES Catalog System (48 FR 25548), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To locate order information to reply to customer inquiries, complaints; to create labels to effect shipment to proper location; to refund customer remittances or to collect monies due; to provide claim and postal authorities with confirmation/certification of shipment for customer claims for damage or lost shipments."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander, Army and Air Force Exchange Service, Dallas TX 75222."

Notification procedure:

Delete entry; substitute therefor: "Individuals desiring to know whether or not this system of records contains information on them should write to the System Manager, ATTN: Chief, Catalog Sales Center, providing name, current address and telephone number, and sufficient details to permit locating pertinent records."

Record access procedures:

Delete entry; substitute therefor: "Individuals desiring access to records about themselves should write to the System Manager, providing information required in 'Notification procedure'."

Record source categories:

Delete entries; substitute therefor: "From the individual."

Systems AAFES0207.02, AAFES0306.12, AAFES0307.01, AAFES0401.04, AAFES0403.01, AAFES0403.05, AAFES0403.11, AAFES0404.01, AAFES0405.03, AAFES0405.05, AAFES0405.11, AAFES0406.12, AAFES0408.05, AAFES0408.14, AAFES0409.01, AAFES0410.01, AAFES0505.02, AAFES0602.04a, AAFES0602.04b, AAFES0604.02, AAFES0702.22, AAFES0702.23, AAFES0702.43, AAFES0704.07, AAFES0903.06f, AAFES1203.03, AAFES1300.01, AAFES1504.03, AAFES1609.02, and AAFES1609.03 read as follows:

AAF0207.02

SYSTEM NAME:

Customer Comments, Complaints, and Direct Line Files.

SYSTEM LOCATION:

Headquarter, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Europe; HQ AAFES-Pacific; Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of the Army and Air Force Exchange Service who make inquiries, complaints, or comments on its operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer's name, address and telephone number, information pertaining to the subject of inquiry, complaint, or comment and response thereto; customer opinion survey data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To aid the Exchange management in determining needs of customers and action required to settle customer complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, stored in metal cabinets.

RETRIEVABILITY:

By customer's name.

SAFEGUARDS:

Records are accessible only by designated employees having official need therefor. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records are destroyed by shedding after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not this system of records contains information about them should write to the System Manager, ATTN: Director, Personnel Division, Dallas, TX 75222, providing their full name, current address and telephone number, case number that appeared on correspondence received from AAFES, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves in this system should write to the System Manager and furnish information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0306.12

SYSTEM NAME:

Personnel Security Case Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ, AAFES–Pacific; HQ, AAFES–Europe; Exchange Regions, Area Exchanges; Post, Base, and Satellite Exchanges within the Continental United States and overseas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons affiliated with the Army and Air Force Exchange Service by assignment, employment, contractual relationship, or as the result of an interservice support agreement on whom a personnel security clearance determination has been completed, is in process, or may be pending.

CATEGORIES OF RECORDS IN THE SYSTEM:

File may contain pending and completed personnel security clearance actions on individuals by personal identifying data. It may also contain briefing/debriefing statements for special programs, sensitive positions, and other related information and documents required in connection with personnel security clearance determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11652.

PURPOSE(S):

To assist in the processing of personnel security clearance actions; to record security clearances issued or denied; and to verify eligibility for access to classified information or assignment to a sensitive position. Records may be used by AAFES commanders for adverse personnel actions such as removal from sensitive duties, removal from employment, denial to a restricted or sensitive area, and revocation of security clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to Federal agencies based on formal

accreditation as specified in official directives, regulations; to Federal, State, local, and foreign law enforcement, intelligence, or security agencies in connection with a lawful investigation under their jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in folders; cards; computer tapes, punched cards, or discs.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are located in locked safes or cabinets; access is restricted to designated individuals having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Records are permanent. They are retained in active file until the end of the fiscal year in which the individual is no longer employed or associated with the Army and Air Force Exchange Service; held 2 additional years in inactive status and retired to the National Personnel Records Center, St. Louis, MO 63118.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURES:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: AFFES–SS, providing their full name, SSN, present address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should submit their request as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; investigative results furnished by the Defense Investigative Service and other Federal, Department of Defense, State, local, and/or foreign law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0307.01

SYSTEM NAME:

Carpooling Program.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, Dallas, TX 75222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons participating in carpool program who voluntarily provide information for release.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, home address and telephone number, map coordinate of home or nearby reference points, working hours, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To assign and administer allocated carpool parking assignments; establish priority of assignemnts, assist members and applicants in contacting one another and provide printout of individuals in systems to other participants who desire to arrange a carpool.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the City of Dallas, TX for inclusion in its Ridesharing Program. In addition, see "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders: reference cards.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessible only to authorized personnel and those providing identification and purpose for which information is requested: may be accessed by persons seeking members who have provided consent for release of information.

RETENTION AND DISPOSAL:

Retained only on active participants; destroyed upon request/reassignment.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas TX 75222.

NOTIFICATION PROCEDURE:

Information may be obtained from the Administrative Services Division, HO AAFES.

RECORD ACCESS PROCEDURE:

Requests should be addressed to the Administrative Services Division, HQ AFFES and include individual's name, current address, and sufficient information to permit locating the record.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0401.04

SYSTEM NAME:

Official Personnel Folders and General Personnel Files.

SYSTEM LOCATION:

The Official Personnel Folder is located in the Personnel Office at Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Pacific; HQ AFFES-Europe; regional offices and post and base area exchanges. Included in this system are the Employee Service Record Card Files and those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisor's work folder).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date of birth, home residence, mailing address, telephone number; records reflecting work experience, educational level achieved; letters of commendation; training courses in which enrolled and certificates of completion; security clearance; personnel actions such as appointments, transfers, reassignments, separations, reprimands; salary and benefits documents to include allowances and insurance data; travel orders; and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

The Official Personnel Folder and other general personnel records are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's service with the Army and Air Force Exchange Service. Records provide the basic source of factual data about a person's employment with the agency and have various uses by AAFES personnel offices, including screening qualifications of employees, determining status, eligibility, and employee's rights and benefits, computing length of service, and other information needed to provide personnel services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Labor, Veterans Administration, Social Security Administration, Federal agencies that have special civilian employee retirement programs; or a national, State, county, municipal, or other publicly recognized charitable or income security administration agency (e.g., State unemployment compensation agencies), where necessary to adjudicate a claim under the retirement, insurance or health benefits programs or to an agency to conduct studies or audits or benefits being paid under such programs. Information may also be disclosed pursuant to the "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; Kardex files; microfilm or microfiche, and in computer processible storage media.

RETRIEVABILITY:

By employee's name.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

The Official Personnel Folder is permanent. Upon employee's separation, it is transferred to the National Personnel Records Center (Civilian), 111 Winnebago Street, St Louis, MO 63118. Duplicate records maintained in an administrative office or at supervisory levels are destroyed 90 days after employee's separation. Service Record Card Files are retained for 5 years following employee's separation and retired to a records holding area for 15 additional years before being destroyed, except that those of employees of discontinued AAFES installations are retired to the National Personnel Record Center (Civilian). Automated personnel records are retained indefinitely for managerial and statistical studies; after an employee's separation, records are not used in making decisions concerning the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Sevice, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: Director, Personnel Division, Dallas, TX 75222. Individuals must furnish their full names, SSN, current address and telephone number; if terminated, also include date of birth, date of separation, and last employing location.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records concerning themselves should write to the System Manager, providing information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, officials and other individuals of the Army and Air Force Exchange Service, third parties responding to reference checks, previous employers, law enforcement agencies, physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0403.01

SYSTEM NAME:

Application for Employment Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222, for applicants of executive and managerial positions. Records of applicants for all other AAFES positions may be located also at AAFES-Europe, AAFES-Pacific, regional offices, and post, base exchanges and satellites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for employment in the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications generally include individual's name, date of birth, SSN, home address, information on work and educational experience, military service, convictions for offenses against the law, specialized training, awards or honors; documents reflecting results of written examinations and ratings; reference checks and results; evidence of satisfactory physical condition, preemployment investigations and clearances deemed appropriate to the position for which application is made; notification from AAFES concerning selection/non-selection.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

The records are used in considering individuals who have applied for positions in the Army and Air Force Exchange Service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Applicant records may be retained up to 3 years; records for applicants hired become part of the person's Official Personnel Folder. Documents on individuals who are not hired may be held from 3 months to 3 years depending

upon whether or not adverse reference and/or derogatory credit checks are received.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: Director, Personnel Division, furnishing full name, SSN, current address and telephone number, and sufficient details concerning position and location thereof for whch application had been submitted.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves in this system should write to the System Manager and furnish information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her previous employer(s) and personal references, law enforcement agencies, medical authorities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0403.05

SYSTEM NAME:

Employee Examination Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, Dallas, TX 75222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees under Consideration for promotion to managerial positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Test scores and cumulative data for those employees who take the AAFES test battery, consisting of (a) SET tests, (b) Thurstone Test of Mental Alertness, (c) Wesman Personnel Classification Test, (d) Thurston Temperament Schedule, and (e) Personagraph (Allston B. Hobby Associates).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

Used for research purposes and as a predictor of one's success under given situations for promotional aptitude to positions at the managerial level.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked containers.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Information is accessed only by designated individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Information is retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: Director, Personnel Division, Dallas, TX 75222. Individual should furnish his/her full name, SSN, current address and telephone number, and, if separated, date of birth, date of separation, and last employing location in addition to the above.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves in this system of records should write to the System Manager and furnish information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Individual tests taken by the employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0403.11

SYSTEM NAME:

Personnel Departure Clearance Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ, AAFES-Europe; HQ, AAFES-Pacific; regional offices; base and post exchanges and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, job data, reason for departure, and clearing offices' approval.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To ensure that departing employees have been properly out-processed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked filing cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Information is accessed only by designated individuals having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Records are closed at the end of the fiscal year, held 1 year, and destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should write to the System Manager, ATTN: Director, Administrative Services Division, providing full name, SSN, current address and telephone number, and date and place of separation.

RECORD ACCESS PROCEDURE:

Individuals desiring access to information about themselves in the system should write to the System

Manager, providing information required in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; official personnel actions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0404.01

SYSTEM NAME:

Incentive Awards Case Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Pacific; HQ AAFES-Europe.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Army and Air Force Exchange Service nominated for or recipients of awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, grade/step, position title, award for which nominated and justification therefor, accomplishments, requirements of position held, organization in which employed, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To consider and select employees for incentive awards and other honors and to publicize those granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983. Information may also be disclosed to public and private organizations, including news media, which grant or publicize employee awards or honors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in filing cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessible only to designated individuals having official need therefor.

RETENTION AND DISPOSAL:

Records are retained for 2 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: PE, Dallas, TX 75222, providing full name, SSN, current address and telephone number, and sufficient details to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should submit their request as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the nominating official; approving authority; individual's official personnel file.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0405.03

SYSTEM NAME:

Personnel Appeals and Grievances.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service, (AAFES), Dallas, TX 75222; HQ AAFES-Europe; or HQ AAFES-Pacific.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee of the Army and Air Force Exchange Service who has filed an appeal of an adverse action and/or is contesting a personnel action when the appeal/grievance has been referred to the appropriate General Counsel's office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, documentation, and memoranda concerning the appeal/grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To determine propriety and legal sufficiency or the agency's action in the appeal or grievance matter.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Retained in the servicing General Counsel's office for 1 year after final decision is made: subsequently retired to the AAFES warehouse or servicing General Services Administration records holding center where it is held 6 years before being destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Information may be obtained from the servicing General Counsel at the AAFES location where appeal/grievance was filed.

RECORD ACCESS PROCEDURE:

Individual's desiring to access records in this system of records pertaining to themselves should write to the appropriate General Counsel, furnishing full name, current address and telephone number, the latest correspondence received by them from the General Counsel's office, if available, and signature.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From AAFES personnel office responsible for records on the employee; from the AAFES Grievance Examiner; and from the AAFES employee and/or his/her representative.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0405.05

SYSTEM NAME:

Confidential Statement of Employment and Financial Interests.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HO AAFES-Europe; HQ AAFES-Pacific.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All general officers, commissioned officers in the rank of lieutenant colonel or above, and all employees of the Army and Air Force Exchange Service at grade 13 and above whose basic duties and responsibilities require the exercise of judgment in making decisions or taking action in regard in contracting or procurement, auditing, and other matters having a significant economic impact on the interests of any non-Federal enterprises.

CATEGORIES OF RECORDS IN THE SYSTEM:

DD Form 1555, "Confidential Statement of Employment and Financial Interest", and endorsements or documents relevant to information on this form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE(S):

These records are maintained to meet requirements of Executive Order 11222 on the filing of employment and financial interest statements. Such statements are required to assure compliance with the standards of conduct for Government employees contained in the Executive Order and title 18 of the U.S.C., and to determine if a conflict of interest exists between the employment of individuals by the Federal Government and their personal employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These statements and amended statements required by or pursuant to Executive Order 11222, Part IV, are to be held in confidence and no information shall be disclosed except:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

d. By the National Archives and Records Service, General Services Administration, in record management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessible only to designated authorized persons who are properly screened, cleared and trained, having official need therfor in the performance of official duties.

RETENTION AND DISPOSAL:

Retained until individual no longer occupies a position for which DD Form 1555 is required; records are then maintained 2 years and destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the General Counsel at the AAFES location where the reports were filed.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the General Counsel at the AAFES location where the reports were filed. Individuals must furnish their full name, SSN, period covered by the report filed and signature.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0405.11

SYSTEM NAME:

Individual Health Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Europe; HQ AAFES-Pacific.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, organizational location, date of birth, medical data recorded by treating nurse/physician, information provided by individual's personal physician regarding diagnosis, prognosis, and return to duty status, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To provide health care and medical treatment to employees who become ill or are injured during working hours.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in the dispensary, available only to assigned medical personnel.

RETENTION AND DISPOSAL:

Records are maintained for 6 years following termination of individual's employment; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: Director, Administrative Services; individuals must furnish full name, details concerning injury or illness and date and location of such, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should submit written request as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the employee; his/her physician; witnesses to an injury/accident.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0406.12

SYSTEM NAME:

Employee Career Development Plan File.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Europe; HQ AAFES-Pacific; regional offices; area, base and post exchanges world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, current job title, grade, duty phone, job location, results of Skills Survey (AAFES Form 1200-61) specifically covering education/training courses completed, skills/experience acquired, skills used in daily work, and skills needed; career goals as identified on AAFES Form 1200-62 and progress in achieving goals, career appraisals, and employee/supervisor comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To assist the servicing personnel office in identifying and referring qualified employees for vacant positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessible only to designated individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are retained until employee severs his/her employment with the Army and Air Force Exchange Service, at which time they are destroyed. Upon employee's transfer to another AAFES location, record is forwarded to the gaining personnel office.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: Director, Personnel Division, providing full name, SSN, job location, and duty phone.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about them in this system should inquire of the System Manager, providing information required in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0408.05

SYSTEM NAME:

Individual Trainee Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, Dallas, TX 75222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service who have been selected for a college trainee or management development trainee position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's employment application, trainee appointment documents; copy of college transcript and degree awarded; copy of employee qualification record, performance, and career appraisal forms; statement of mobility; supervisor's recommendations; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To determine employee potential for participation in management development trainee program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; cards.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Records are stored in locked containers. Information is accessed only by designated individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records concerning employees selected for the program are incorporated into their Official Personnel Folder. Records on non-selected individuals are retained 5

years, then destroyed. Statistical and summary data are retained for managerial purposes indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: Director, Personnel Divison; individuals must furnish their full name, SSN, current address and telephone number; it separated, date of birth, date of separation, and last employing location must also be furnished.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves in this system of records should write to the System Manager, providing information specified in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the applicant; official records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0406.14

SYSTEM NAME:

Tuition Assistance Case Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, Dallas, TX 75222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service who apply for tuition assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application, academic transcripts, curricula, grade reports, request for disbursement, agency aproval/disapproval, similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 8012.

PURPOSE(S):

To maintain information on participants in the tuition assistance program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Information is accessed only by designated individuals having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Records are destroyed 2 years following individual's completion of course for which tuition assistance was granted.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 7522.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: Director, Personnel Divison; individual must furnish written request containing his/her full name, details concerning application for tuition assistance, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write to the System Manager, providing information required by "Notification procedure."

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:NONE.

AAFES0409.01

SYSTEM NAME:

AAFES Accident/Incident Reports.

SYSTEM LOCATION:

Safety and Security Offices of Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES–Europe; HQ AAFES–Pacific; Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in accidents, incidents, or mishaps resulting in theft or reportable damage to AAFES property or facilities; individuals injured or become ill as a result of such accidents, incidents, or mishaps.

CATEGORIES OF RECORDS IN THE SYSTEM:

AAFES Accident Report, AAFES Incident Report, record of injuries and illnesses; phyicians' reports; witness statements; investigatory reports; similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11807.

PURPOSE(S):

To record accidents, incidents, mishaps, fires, theft, etc., involving Government property; and personal injuries/illnesses in connection therewith, for the purposes of recouping damages, correcting deficiencies, initiating appropriate disciplinary action; filing of insurance and/or workmen's compensation claims therefor; and for managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Labor, to support workmen's compensation claims. In addition, see "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; computer magnetic tapes and printouts; microfiche.

RETRIEVABILITY:

By name of individual involved or injured; by SSN.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefor in the performance of their duties, within buildings protected by security guards.

RETENTION AND DISPOSAL:

Paper records are retained for 2 years following which it is destroyed by shredding; information on microfiche is retained for 3 years; computer tapes reflecting historical data are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not infomation exists on them in this system of records should write to the System Manager, ATTN:

Director, Safety and Security Division, providing their full name, present address and telephone number; sufficient details concerning the accident, mishap, or attendant injury to permit locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should write to the System Manager, as indicated in "Notification procedure", furnishing information required therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulations 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; medical facilities; investigating official; State Bureau of Motor Vehicles, State and local law enforcement authorities; witnesses; victims; official Department of Defense records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0410.01

SYSTEM NAME:

Employee Travel Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Europe; HQ AAFES-Pacific; regional offices; base, post exchanges and satellites of AAFES world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Froce Exchange Service authorized to perform official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents pertaining to travel of persons on official Government business, and/or their dependents, including but not limited to travel assignment orders, authorized leave enroute, availability of quarters and/or shipment of household goods and personal effects, application for passport/visas; security clearance; travel expense vouchers; and similar related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To process official travel request for military and civilian employees of the Army and Air Force Exchange Service; to determine eligibility of individual's dependents to travel; to obtain necessary clearance where foreign travel is involved, including assisting individual in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to attache' or law enforcement authorities of foreign countries; to US Department of Justice or Department of Defense legal/intelligence/investigative agencies for security, investigative, intelligence, and/or counterintelligence operations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked filing cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Information is accessed only by designated individuals having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL: RECORDS ARE DESTROYED AFTER 2 YEARS BY SHREDDING.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: Director, Administrative Services Division. Individuals must provide full name, SSN, current address and telephone number, details of travel authorization/clearance documents sought, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves in this system of records should write to the System Manager, providing information specified in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, official travel orders, travel expense vouchers, receipts and similar relevant documents.

SYSTEMS EXEMPTED FORM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0505.02

SYSTEM NAME:

Biographical Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service at Dallas, TX 75222; HQ AAFES-Pacific; HQ AAFES-Europe.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: MILITARY AND CIVILIAN EMPLOYEES OF THE ARMY AND AIR FORCE EXCHANGE SERVICE WORLD-WIDE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individiual's name, position title and organizational location, home address, date and place of birth, marital status including names of spouse and children, educational background, military status, awards and decorations, community and civic interest data, photograph, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To prepare feature articles for hometown newspapers, trade media, community interests, and similar public service groups.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983. Information may also be disclosed to public and private organization including news media.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only be designated individuals having official

need therefor, in buildings protected by security guards or military police.

RETENTION AND DISPOSAL:

Records are retained for 1 year following termination of individual's assignment or employment; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, providing their full name, current address and telephone number, details surrounding the event or incident, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves in this system should submit their request as indicated in "Notification procedure", furnishing information required therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulations 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; official AAFES records and reports.

SYSTEMS EXEMPTED FORM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0602.04a

SYSTEM NAME:

Litigation Initiated by AAFES.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES–Europe; HQ AAFES–Pacific.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals against whom AAFES has filed a complaint or similar pleading in a court or administrative body.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pleadings and documents filed by parties to the action and documentation, correspondence, and memoranda pertaining thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To process complaints against individuals; to initiate litigation as necessary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To process complaints or pleadings on behalf of the Army and Air Force Exchange Service.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By surname of defendent in the proceeding.

SAFEGUARDS:

Records are maintained in buildings having security guards and are restricted to authorized personnel who are properly screeened, cleared, and trained in Privacy Act matters.

RETENTION AND DISPOSAL:

Records are permanent. They are retained until judicial proceedings have been resolved, after which they are retired to the servicing AAFES warehouse or servicing General Services Administration records holding center.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: General Counsel, providing their full name, current address and telephone number, copy of lastest correspondence from AAFES, if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should write to the System Manager, providing information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From official records of the Army and Air Force Exchange Service; from any individual who can provide information concerning the complaint/proceeding; from similar relevant documentation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFE50602.04b

SYSTEM NAME:

Claims and/or Litigation Against AAFES.

SYSTEM LOCATION:

Office of the General Counsel, Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ, AAFES–Europe; HQ, AAFES/Pacific.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has filed a claim against AAFES, a complaint or similar pleading in a court or administrative body which an AAFES employee or the Army and Air Force Exchange Service is named as a defendant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims, pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied materials involved in representing the Army and Air Force Exchange Service in the Federal Court System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To investigate claims and prepare responses; to defend the Army and Air Force Exchange Service in civil suits filed against it in the Federal Court System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information maybe disclosured to the Department of Justice and US Attorneys' offices handling a particular case. Most of the information is filed in some manner in the courts in which litigation is pending and therefore is a public record. In addition, some of the information will appear in the written orders, opinions, and decisions of the courts which, in turn, are published in the Federal Reporter System under the name or style of the case and are

available to individuals with access to a law library.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By last name of claimant/plaintiff.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who have need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Claim records are destroyed after 6 years. Litigation records are permanent; they are retained in the servicing General Counsel's Office until judicial proceedings have been resolved, following which they are retired to the servicing General Services Administration records holding center.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: General Counsel. Individual should provide his/her full name, current address and telephone number, latest correspondence received from the servicing General Counsel's office if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should write to the System Manager and provide information specified in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From official records of the Army and Air Force Exchange Service; claimants; litigants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0604.02

SYSTEM NAME:

Unfair Labor Practice Claims/Charges Files.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Europe, HQ AAFES-Pacific; personnel offices at Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service who are permitted to file charges/claims pursuant to Executive Order 11491, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written allegations of unfair labor practice; supporting correspondence/documentation/memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C 3012 and 8012; Executive Order 11491, October 31, 1969, as amended.

PURPOSE(S):

To review and process charges/claims of unfair labor practices through formal/informal negotiations; for managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to designated persons having official need therefor in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records are retained 5 years in an active file; then transferred to the servicing AAFES warehouse or General Services Administration records holding center for an additional 5 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them is contained in this system of records may write to the System Manager, ATTN: General Counsel, furnishing their full name, SSN, last employing station, details sufficient to locate the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring to access records about themselves should write to the System Manager, providing information specified in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, the union representative, witnesses, official records of the Army and Air Force Exchange Service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0702.22

SYSTEM NAME:

Check-Cashing Privilege Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, Dallas, TX 75222; HQ, AAFES-Europe; HQ, AAFES-Pacific; Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers of the Army and Air Force Exchange Service: military, dependents, retirees, and Exchange employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer's name, SSN, category of customer (i.e., dependent, retiree, active duty member), amounts of checks not paid by bank, collection efforts, and relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To determine customer's eligibility to cash checks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In overseas areas, information is disclosed to military banking facilities. These facilities are branches of US

based financial institutions which are under contract to the Department of Defense to provide banking services to US military and affiliated civilian personnel overseas. Any financial losses sustained by these activities in support of the Department of Defense program are underwritten by the Department of Defense using appropriated funds. The financial institutions use the check-cashing information only to determine whether to cash checks or similar negotiable instruments for individuals—not to award or deny other banking privileges.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; computer tapes, discs, and printouts.

RETRIEVABILITY:

By customer name and SSN.

SAFEGUARDS:

All information is stored in locked rooms within secured buildings and is accessed only by designated personnel having official need therefor, primarily by individuals authorized to cash checks.

RETENTION AND DISPOSAL:

Information is retained until no longer needed, at which time it is destroyed by shredding or erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not this system contains information concerning them should contact either the local Exchange where check was cashed (or refused) or HQ Army and Air Force Exchange Service, Dallas, TX 75222, furnishing full name, SSN or other acceptable identifying information that will facilitate locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records concerning themselves should write to the System Manager, furnishing information specified in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; his/her checks; financial institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0702.23

SYSTEM NAME:

Dishonored Check Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ, AAFES-Europe; HQ, AAFES-Pacific.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have negotiated dishonored checks at AAFES facilities and whose check cashing privilege is under review by the General Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, indebtedness, collection efforts, and relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To collect dishonored check indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to civil or criminal law enforcement agencies for law enforcement purposes. See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By surname of individual responsible for dishonored check.

SAFEGUARDS:

Records are maintained in buildings having security guard and are accessed only by personnel having official need therefor who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are retained by the General Counsel until indebtedness has been satisfied, determined to be uncollectible, or additional administrative action is required. Upon completion, records are transferred to the Comptroller Division and maintained with appropriate check cashing privilege records.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not this system of records contains information on them may write to the System Manager, ATTN: General Counsel, providing their full name, SSN, current address and telephone number, latest correspondence from AAFES if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring to access information in this system concerning themselves should write as indicated in "Notification procedure", providing the information required therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her employer, law enforcement investigative agencies, banking facilities, consumer reporting agencies, and sources that furnish information regarding individual's credit.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0720.43

SYSTEM NAME:

Travel Advance Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, Dallas TX 75222.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees required to perform official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, organization to which assigned, details of official travel, amount advanced, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To monitor travel advances against individual's authorized official travel and to ensure settlement of indebtedness to the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in metal filing cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Records are accessed only by designated employees having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed 1 year following settlement of an individual's travel advance account.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: Comptroller Division, CM–G, furnishing their full name, sufficient details concerning records sought, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves in this system should submit their request as indicated in "Notification procedure", furnishing information required therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, records of the AAFES office issuing travel advance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0704.07

SYSTEM NAME:

Fidelity Bond Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Europe; HQ, AAFES-Pacific; Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fidelity bond application, transmittal letter to insurance company, and related correspondence.

AUTHORITY FOR MAINTENENCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To assure that all employees applied for and were accepted by the bonding company for fidelity bond coverage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to designated individuals having official need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Destroyed 3 years after bond becomes inactive.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information exists on them in this system of records may write to the System Manager, ATTN: Director, Personnel Division, providing their full name, SSN, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should write to the System Manager, providing information required in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Fidelity bond applications completed by the employee; action by the bonding company; similar relevant correspondence and documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES0903.06f

SYSTEM NAME:

Personnel Management Information System.

SYSTEM LOCATION:

Centralized at Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222. Segments of the system exist at servicing civilian personnel offices at AAFES-Pacific, AAFES-Europe, Exchange Regions and Area Exchanges at posts, bases, and satellites worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, Exchange location, home address; date of birth; date hired, leave accrual data, retirement participation data, service award data, citizenship, marital status, sex, security clearance, military status, sponsor affiliation where employee is a dependent of a U.S. Government/military member, job code and title, employment category, pay plan, wage schedule, base hourly rate, scheduled work week, Federal and State tax exemptions, type of insurance coverage, authorized deductions, life insurance coverage, physical examination documents, education and experience, licenses, career plans, Personnel Evaluation Reports, training course data, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To produce reports and statistical analyses of the civilian workforce strength trends and composition in support of established manpower and budgetary programs and procedures; verify employment; provide data in support of Equal Employment Opportunity Program requirements; provide locator and emergency notification data; respond to union requests; identify training requirements; provide salary data for current and projected fiscal guidance, personnel data for current and projected staffing requirements; provide suspense system for within grade increases, length of service awards, performance ratings, pay adjustments and tenure groups; provide data for retirement processing, individual personnel actions; analyze leave usage; investigate complaints, grievances and appeals; respond to requests from courts and regulatory bodies; provide incentive awards information; provide qualified candidates to fill position vacancies; counsel employees on career development; plan dependent services in overseas areas; determine validity of individual claims related to pay adjustments; and for other managerial and statistical studies, records, and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes/discs; printouts.

RETRIEVABILITY:

By name or SSN.

SAFEGUARDS:

Disc and tape files reside in restricted areas accessible only to authorized personnel who are properly screened, cleared, and trained. Manual records and computer printouts containing personal identifiers are maintained in locked file cabinets and are available only to individuals having official need therefor.

RETENTION AND DISPOSAL:

Disc files are retained for 18 months after employee separates and are destroyed with the exception of employees terminated under disciplinary action (ineligible for rehire), retired employees and all employees under the Universal Annual Salary Plan whose file remains a permanent record. Back-up tapes are retained for 90 days. Computer printouts are maintained as follows: system edit reports are destroyed upon verification that errors have been corrected; printouts produced for managerial reports are maintained for periods varying from 2 to 10 years; source documents and computer printouts which are included as part of the employee's Official Personnel Folder are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: Director, Personnel Division, Dallas, TX 75222. Writer must furnish full name, SSN, current address and telephone number and, if terminated, include date of birth, date of separation, and last employing location.

RECORD ACCESS PROCEDURES:

Individuals desiring access to information about themselves in this system should write to the System Manager, furnishing information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the employee, his/her supervisor, AAFES records and reports, Official Personnel Folder.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES1203.03

SYSTEM NAME:

Appointment of Contracting Officers.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Europe; HQ AAFES-Pacific; all regional offices within the Continental United States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military or civilian personnel assigned to the Army and Air Force Exchange Service who are appointed as contracting officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, job title and grade, qualifications, training and experience, request for appointment as contracting officer, copy of Certificate of Appointment, and other correspondence and documents relating to individual's qualifications therefor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To ascertain an individual's qualifications to be appointed as contracting officer; to determine if limitations on procurement authority are appropriate; to complete Certificate of Appointment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessible only to designated persons having official need therefor in the performance of their duties. Records are maintained in building the entrance to which is limited to persons assigned to AAFES.

RETENTION AND DISPOSAL:

Records are retained only so long as individual's apppointment as contracting officer is valid; upon termination, records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them is contained in this system of records should write to the System Manager, ATTN: Director, Procurement Management Office, and provide their full name, and sufficient details to permit locating the pertinent records.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should direct an inquiry as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, personnel records, former employers, educational institutions, AAFES records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES1300.01

SYSTEM NAME:

Resource Management and Cost Accounting Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ AAFES-Europe; HQ AAFES-Pacific; Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnnel assigned/attached to an organizational entity of AAFES.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records by individual of manhours applied to the accomplishment of assigned tasks or projects. Specific data elements include name, SSN/employee identification number, organizational element, military rank/civilian grade, job title, clearance status, rating data, regular/overtime wage rates, regular/overtime hours worked, hours of leave taken, record of official travel, project code, accounting code and cost data, workload units accomplished, file references and related information, and records control data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To project manpower and monetary requirements; to allocate available resources to specific projects; to schedule workload and assess progress; to project future organizational milestones; to evaluate individual performance and equipment efficiency; to set standards and methods; to record and control personnel and equipment utilization; to document inventories; to interpolate training needed by unit or individual; to monitor use of overtime; to control and monitor obligations and expenditures of Government funds; to provide audit trail; to generate statistical reports of workload and production levels and other trends within the organizations; and to provide other accounting and monitoring reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Punch cards, magnetic tapes, cards, or discs; microform, microfiche, computer printouts, and paper records.

RETRIEVABILITY:

By individual's name, SSN or employee identification number; information may also be accessed by a non-personal data element such as project code, cost accounting code, or organizational element.

SAFEGUARDS:

Automated systems employ computer hardware/software features. All records are maintained in controlled areas, within buildings/rooms which are secured during non-duty hours. Personal information is accessed only by individuals who have need therefor in their official duties.

RETENTION AND DISPOSAL:

Information in magnetic media is erased after 1 year; manual records are destroyed after 1 year by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not this system contains information on them should contract the System Manager, appropriate Director or Division Chief in organization in which employed or assigned, and should furnish full name, SSN, office believed to have the record, and time frame, any other information which will assist in locating the information, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information from this system of records should address an inquiry as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From employee time cards; organization manpower rosters; individual personnel and training records; production records; and similar relevant AAFES documents and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES1504.03

SYSTEM NAME:

Personal Property Movement and Storage Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ, AAFES-Europe; HQ, AAFES-Pacific.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service whose permanent change of station is authorized by AAFES.

CATEGORIES OF RECORDS IN THE SYSTEM:

Orders authorizing shipment/storage of personal property to include privately owned vehicles and house trailers/mobile homes; Cash Collection Vouchers; Application for Shipment and/or Storage of Personal Property; Transporation Control and Movement Document; Personal Property Counseling Checklist; Government Bill of Lading; storage contracts, loss and damage claims, and similar related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

Used by the Army and Air Force Exchange Service to arrange for the movement, storage and handling of personal property; to identify/trace lost or damaged shipments; to answer inquiries and monitor effectiveness of personal property traffic management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is disclosed to commercial carriers for the purposes of identifying ownership, verifying delivery of shipment, supporting billing for

services rendered, and justifying claims for loss, damage, or theft. In addition, see "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm; magnetic tapes, and computer printouts.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is maintained in secured areas, accessible only to authorized personnel having an official need-to-know. Automated segments are further protected by code numbers and passwords.

RETENTION AND DISPOSAL:

Documents relating to packing, shipping, and/or storing of household goods within the Continental United States are destroyed after 3 years; those relating to overseas areas are destroyed after 6 years. Documents regarding shipment of privately owned vehicles/mobile homes are destroyed after 2 years. Shipment discrepancy reports are destroyed after 2 years or when claim/investigation is settled, whichever is later. Administrative files reflecting queries and responses are retained for 2 years; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should write to the System Manager, ATTN: Director, Administrative Services Division, and should provide their full name, SSN, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to information about themselves in this system should address their inquiry to the System Manager, providing information required in "Notification procedure".

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Provided by the individual whose personal property is shipped/stored; by the carrier/storage facility.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES1609.02

SYSTEM NAME:

AAFES Customer Service.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ, AAFES-Pacific; HQ AAFES-Europe; regional, area, post and base Exchanges in the United States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

AAFES customers who purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of layaway tickets, request for refunds, special order forms/procurement request/logs, cash receipt/charge or credit vouchers, repair vouchers, warranty documents, correspondence between AAFES and the customer and/or vendor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To record customer transactions/payments for layaways and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on cancelled layaways or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement and initiate follow-up actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file boxes and cabinets.

RETRIEVABILITY:

By customer's surname, document control number, and/or due date.

SAFEGUARDS:

Records are maintained in secured areas, accessible only to authorized personnel having need for the information in the performance of their duties.

RETENTION AND DISPOSAL:

Cancelled or completed layaway tickets are held for 6 months after cancellation of delivery of merchandise; purchase orders are retained for 2 years; refunded vouchers are retained for 6 years; returned merchandise slips are retained for 6 years; cash receipt vouchers are retained for 3 years; cash receipt vouchers are retained for 3 years; repair/replacement order slips are held 2 years. All records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should write to the System Manager, providing name and sufficient details or purchase to enable locating pertinent records, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individual desiring access to records on themselves should write as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

Rules of access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; vendor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

AAFES1609.03

SYSTEM NAME:

AAFES Catalog System.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service (AAFES), Dallas, TX 75222; HQ, AAFES–Europe; HQ, AAFES–Pacific.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Exhange customers who place a catalog sales order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer name, SSN, mailing address; name and address of recipient of order, description and price of item ordered, method of shipment, amount of order/refund, returned check identifier, claim data for returns/damages to shipments, and similar relevent data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 8012.

PURPOSE(S):

To locate order information to reply to customer inquiries, complaints; to create labels for shipment to proper location; to refund customer remittances or to collect monies due; to provide claim and postal authorities with confirmation/certification of shipment for customer claims for damage or lost shipments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; magnetic tapes and printouts; microfiche, microfilm.

RETRIEVABILITY:

By customer order information, SSN, or insurance number assigned to shipment.

SAFEGUARDS:

Access to information is restricted to persons having official need therefor; computer operations rooms are locked and visitors screened for entry.

RETENTION AND DISPOSAL:

Information is maintained in computer files for 180 days following completion of shipment. Microfilm and microfiche are retained for 2 years for postal claim purposes; destroyed after 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, Dallas, TX 75222.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not this system of records contains information on them should write to the System Manager, ATTN: Chief, Catalog Sales Center, providing name, current address and telephone number, and sufficient details to permit locating pertinent records.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should write to the System Manager, providing information required in "Notification procedure."

CONTESTING RECORD PROCEDURES:

Rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–31707 Filed 12–3–84; 8:45 am]

BILLING CODE 3710–01–M

Department of the Navy

Privacy Act of 1974; Amended Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amendments of systems of records.

SUMMARY: The Department of the Navy proposes to amend two systems of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed actions will be effective without further notice January 4, 1984, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the systems managers identified in the systems notices.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op–09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 697–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc. 83–109 (48 FR 26029) June 6, 1983
FR Doc. 84–2616 (49 FR 3901) January 31, 1984
FR Doc. 84–2828 (49 FR 4124) February 2, 1984
FR Doc. 84–4906 (49 FR 6967) February 24, 1984
FR Doc. 84–8893 (49 FR 13350) April 4, 1984
FR Doc. 84–8901 (49 FR 13399) April 4, 1984
FR Doc. 84–10509 (49 FR 15601) April 19, 1984
FR Doc. 84–10681 (49 FR 16777) April 20, 1984
FR Doc. 84–14818 (49 FR 23170) June 4, 1984
FR Doc. 84–16521 (49 FR 25507) June 21, 1984
FR Doc. 84–23485 (49 FR 35172) September 6, 1984
FR Doc. 84–25459 (49 FR 37825) September 26, 1984
FR Doc. 84–27396 (49 FR 40946) October 18, 1984
FR Doc. 84–27397 (49 FR 40948) October 18, 1984
FR Doc. 84–28271 (49 FR 43090) October 26, 1984

The proposed amendments are not within the purview of the provision of 5 USC 552a(o) which requires the submission of altered systems reports.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 27, 1984.

N05300–2

System name:

Administrative Personnel Management System (49 FR 4124), February 2, 1984

Changes:

System Location:

At the end of the entry, add the following: "Included in this notice are those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area)."

NO5891–1

System name:

Litigation Case File (48 FR 26123) June 6, 1983

Changes:

Categories of individuals covered by the system:

Delete the entire entry and substitute with the following: "All individuals who may institute or have instituted litigation concerning matters under the cognizance of the Department of the Navy excepting those cases arising: (1) In admiralty; (2) under the Federal Tort Claims Act; and (3) from matters under the cognizance of the General Counsel's office."

Categories of records in the system:

Delete the entire entry and substitute with the following: "All records, correspondence, pleadings, documents,

memoranda, and notes relating to the litigation or anticipated litigation."

Purpose(s):

Add the following new paragraph: "To represent the Department of the Navy and cognizant officials in litigation."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute the following:

"To U.S. Attorneys, litigants and other parties in litigation.

To Federal and state courts to whom and which information may be provided.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

Retrievability:

At the end of the entry, add the following: "* * * or anticipated litigant."

Retention and disposal:

Delete the entire entry and substitute with the following: "Generally retained in office files for four years after final action, then destroyed. Specially designated files are retained for longer periods."

Record Source Categories:

Delete the entire entry and substitute with: "From all sources with information which may impact upon actual or anticipated litigation, e.g., other record systems within DON, DOD and other agencies and departments of the Federal government, particularly the Department of Justice; state and local governments and law enforcement agencies; counsel and parties in litigation; third parties who provide information voluntarily or in response to discovery, etc."

NO5300-2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy activities. Official mailing addresses are in the Navy's address directory in the appendix to the Navy Department's systems notices appearing in the **Federal Register**. Included in this notice are those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

* * * * *

NO5891-1

SYSTEM NAME:

Litigation Case File

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who may institute or have instituted litigation concerning matters undere the cognizance of the Department of the Navy excepting those cases arising: (1) In admiralty; (2) under the Federal Tort Claims Act; and (3) from matters under the cognizance of the General Counsel's office.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records, correspondence, pleadings, documents, memoranda, and notes relating to the litigation or anticipated litigation.

* * * * *

PURPOSE(S):

To represent the Department of the Navy and cognizant officials in litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To U.S. Attorneys, litigants and other parties in litigation.

To Federal and state courts to whom and which information may be provided.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

* * * * *

RETRIEVABILITY:

Retrievable by last name of the litigant or anticipated litigant.

RETENTION AND DISPOSAL:

Generally retained in office files for four years after final action, then destroyed. Specially designated files are retained for longer periods.

* * * * *

RECORD SOURCE CATEGORIES:

From all sources with information which may impact upon actual or anticipated litigation, e.g., other record systems within DON, DOD and other agencies and departments of the Federal government, particularly the Department of Justice; state and local governments and law enforcement agencies; counsel and parties in litigation; third parties who provide information voluntarily or in response to discovery, etc.

* * * * *

[FR Doc. 84-31705 Filed 12-4-84; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 3G2869/T474, FRL-2728-3]

American Cyanamid Co.; Renewal of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for residues of the pesticide (+) Cyano (3-phenoxyphenyl)methyl (+)-4-(difluoromethoxy)-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity soybeans.

DATE: This temporary tolerance expires September 7, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 207, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2690).

SUPPLEMENTARY INFORMATION:

American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, has requested in pesticide petition PP 3G2869 the renewal of a temporary tolerance for residues of the pesticide (+) Cyano (3-phenoxyphenyl)methyl (+)-4-(difluoromethoxy)-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

The company has requested a 1-year renewal of the temporary tolerance to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 241-EUP-106, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires September 7, 1985. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable, if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: November 20, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-31394 Filed 12-4-84; 8:45 am]

BILLING CODE 3560-50-M

[PF-396 FRL-2728-4]

Certain Companies; Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-396] and the petition number, attention Product Manager (PM-17), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be availble for public inspection in the Information Services Section Office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy A. Gardner, (PM-17), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 207, CM # 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and feed additive petitions (FAP) relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filing

PP 4F3153, FAP 4H5444. Zoecon Corp., 975 California Ave., Palo Alto, CA 94304. Proposes to amend 40 CFR Part 180 (raw agricultural commodity) and 21 CFR Parts 193 (food commodity), and 561 (feed commodity), by establishing tolerances for residues of the insecticide (alpha *RS, 2R*)-fluvalinate [(*RS*)-alpha-cyano-3-phenoxybenzyl (*R*)-2-[2-chloro-4-(trifluoromethyl)-anilino]-3-methylbutanoate] in or on the commodities as follows:

Petition ID	CFR affected	Commodities	Parts per million (ppm)
PP 4F3153	40 CFR Part 180.	Cottonseed	0.1
		Meat, fat and meat byproducts of cattle, goats, hogs, horses, and sheep	0.01
		Meat, fat and eggs of poultry	0.01
		Milk	0.01
FAP 4H5444	21 CFR Part 193.	Cottonseed oil (crude and refined)	0.75
FAR 4H5444	21 CFR Part 561.	Cottonseed hulls	0.3
		Cottonseed meal and [illegible]	0.01

The proposed analytical method for determining residues is gas chromatography.

II. Amended Petitions

1. *PP 3F2824.* FMC Corp., 2000, Market St., Philadelphia, PA 19103. EPA issued a notice published in the **Federal Register** of April 13, 1983 (48 FR 15951) which announced that FMC Corp., had submitted PP 3F2824 to the Agency proposing to amend 40 CFR 180.418 by establishing a tolerance for residues of the insecticide cypermethrin (+)alpha-cyano-(3-phenoxyphenyl)methyl-(+) *cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] in or on the commodity lettuce at 4.0 ppm.

FMC has amended the petition by revising the tolerance expression to read: "cypermethrin [(+)alpha-cyano-(3-phenoxyphenyl)methyl (+) *cis, trans*-3-(2,2-dichloroethenyl)2,2-dimethylcyclopropanecarboxylate] and its metabolites 3-PB acid and DCVA (sum of cypermethrin plus metabolites) in or on the commodity lettuce at 4.0 ppm". The proposed analytical method for determining residues is gas chromatography.

2. *PP 2F2599.* Shell Oil Co., Suite 200, 1025 Connecticut Ave., N.W., Wash, D.C. 20036. EPA issued a notice published in the **Federal Register** of July 7, 1982 (47 FR 29600) which announced that Shell Oil Co., had submitted PP 2F2599 to the Agency proposing to amend 40 CFR 180.379 by establishing a tolerance for residues of the insecticide cyano (3-phenoxy-phenyl) methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity head lettuce at 15.0 ppm.

Shell has amended the petition by increasing the tolerance level to 25.0 ppm. The proposed analytical method for determining residues is gas chromatography.

3. *PP 2F2647.* Shell Oil Co., suite 200, 1925 Connecticut Ave., N.W., Wash. D.C. 20036. EPA issued a notice published in the **Federal Register** of March 31, 1982 (47 FR 13580) which announced that Shell Oil Co., had submitted PP 2F2647 to the Agency proposing to amend 40 CFR 180.379 by establishing a tolerance for residues of the above insecticide (PP 2F2599) in or on the agricultural commodities bean vines at 30.0 ppm and succulent beans at 1.0 ppm.

Shell has amended the petition by increasing the tolerance on succulent beans from 1.0 ppm to 2.0 ppm and adding bean vine hay at 100.0 ppm. The proposed analytical method for determining residues is gas chromatography.

4. *PP 2F2746.* Shell Oil Co., Suite 200, 1025 Connecticut Ave., N.W. Wash. D.C. 20036. EPA issued a notice published in the **Federal Register** of October 6, 1982 (47 FR 44154) which announced that Shell Oil Co., had submitted PP 2F2746 to the Agency proposing to amend 40 CFR 180.379 by establishing a tolerance for residues of the above insecticide (PP 2F2599) in or on the agricultural commodities peanut forage at 7.0 ppm, peanut hay at 7.0 ppm, soybean forage at 10.0 pp, and soybean straw at 10.0 ppm.

Shell has amended the petition by increasing the tolerance on peanut forage from 7.0 to 10.0 ppm, peanut hay from 7.0 ppm to 40.0 ppm, and soybean straw from 10.0 ppm to 40.0 ppm.

The proposed analytical method for determining residues is gas chromatography.

(Sec. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)), 409(c)d(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))

Dated: November 20, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-31383 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

[PF-393 FRL-2727-8]

Certain Companies; Pesticides Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment, and/or withdrawal of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: By mail submit comments identified by the document control number [PF-393] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Information Services Section (TS-757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street., SW., Washington D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM-15, George LaRocca	Rm. 204, CM#2 (703-557-2400).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202. Do.
PM-16, William Miller.	Rm. 211, CM#2 (703-557-2600).	

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and feed additive petitions relating to the establishment, and/or withdrawal of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

I. Initial Filings

1. *PP 4F3098.* Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804. Proposes amending 40 CFR 180.108 by revising the existing crop indentification for the combined residues of the insecticide acephate and its metabolite methamidophos in or on the commodity peppers (bell) (of which no more that 1 part per million (ppm) is diethyl phosphoramidothioate), at 4.0 ppm, to read peppers (of which no more than 1 ppm is diethyl phosphoramidothioate). The proposed analytical method for determining residues is gas chromatographic procedure utilizing a therminonic detector. (PM-16.)

2. *PP 4F3101.* Chevron Chemical Co. Proposes amending 40 CFR 180.108 by revising the existing crop identification for the combined residues of the insecticide acephate and its metabolite methamidophos in or on the commodity lettuce (head) (of which no more than 1 part per million (ppm) is diethyl phosphoramidothioate), at 10.0 ppm, to read lettuce (of which no more than 1 ppm is diethyl phosphoramidothioate) at 10.0 ppm. The proposed analytical method for determining residues is gas chromatographic procedure utilizing a flame photometric detector. (PM-16.)

II. Petition Withdrawal

FAP 3H5414. Uniroyal Chemical, Division of Uniroyal Inc., Amity Rd., Bethany CT 06525. EPA issued a notice published in the **Federal Register** of December 21, 1983 (48 FR 56436) which announced that Uniroyal Inc. had submitted feed additive petition (FAP) 3H5414 to the Agency proposing to amend 21 CFR 561.330 by establishing a regulation permitting residues of the insecticide propargite in or on the commodity pecan shells at 1.0 ppm.

Uniroyal Inc., has withdrawn this petition without prejudice to future filing. (PM-15.)

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: October 31, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-31397 Filed 12-4-84; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL-2731-4]

Catalytic Converter Testing Procedures, Criteria and Workshops; Public Workshops

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This Notice announces public workshops to exchange information and receive ideas, comments, and suggestions about the need for special procedures and about the testing of used or new aftermarket catalytic converters. Information is solicited from those parties possessing recent data or technical information or affected by the sale, installation, and use of used or aftermarket catalytic converters. Draft procedures and criteria for evaluating catalytic converters to be installed on motor vehicles as replacements for missing or misfueled converters are included. The workships may result in the amendment of part of the Voluntary Aftermarket Parts Self Certification Regulations (40 CFR 85.2112; see 45 FR 78449, November 25, 1980).

DATES: The workshops will be held January 10, 1985 at 9:00 a.m. in Ann Arbor, Michigan and January 24, 1985 at 9:00 a.m. in El Segundo, California.

ADDRESSES: The workshops will be held in the conference room of the Motor Vehicle Emission Laboratory, 2565, Plymouth Road, Ann Arbor, Michigan and the Hacienda International Hotel, 525 N. Sepulveda Blvd., El Segundo, California.

All comments and information should be submitted to Public Docket No. A-84-31, located at the Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, LE-131, 401 M Street, SW., Washington, D.C. 20460 within 30 days following the second workshop. The docket may be inspected weekdays between 8:00 a.m. and 4:00 p.m. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Steve Albrink (202) 382-2669, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: Most light-duty motor vehicles built since 1975 were certified to meet Federal or California emission standards with catalytic converters. Section 203(a)(3) of the Clean Air Act prohibits certain parties from removing or rendering inoperative emission control devices or elements of design of emission control systems and the causing thereof.

The catalytic converter is the major emission control device used by vehicle manufacturers on light-duty vehicles primarily to reduce hydrocarbons and carbon monoxide emissions. Three-way catalytic converters, which have been used widely since 1981, also help control oxides of nitrogen emissions. If a vehicle is properly maintained and not operated on leaded gasoline, the converter should not require replacement for the life of the vehicle.

Many urban areas have air pollution problems which are primarily caused by motor vehicles. Many of these areas have or will be implementing programs to lower the contribution of motor vehicles to the air pollution problems. These programs will involve the inspection and/or testing of individual motor vehicles. Some vehicles in these areas have had portions of their emission systems removed including their catalytic converters, or have used leaded gasoline which reduced the efficiency of their converters without thought for the consequences of these actions. The Environmental Protection Agency (EPA) is actively promoting tampering inspection programs to assist areas in either achieving or maintaining ambient air standards. Oftentimes, replacement of missing or lead-poisoned catalysts will be required in order to pass these inspection and/or testing programs. Thus, these programs have increased to demand for used and aftermarket replacement catalysts. For example, a recent survey by the California Air Resources Board estimated that 80,000 used catalysts are sold annually in California. They have calculated that the recently implemented biennial inspection program will cause used catalyst usage to increase by 150 percent. Not only would replacement with effective catalysts directly benefit air quality by lowering the emissions of the repaired vehicles, requiring catalyst replacement at the owner's expense would also discourage future catalyst system tampering, increasing the benefit of such programs. The Agency believes that its success in implementing these antitampering programs depends in part on the availability and cost of replacement catalysts.

The supply of replacement catalytic converters is presently limited to new original equipment (OEM) converters, used converters, or limited types of aftermarket converters. OEM converters are relatively expensive ($200-$300 minimum installed) especially when compared to the price of used converters ($90-$130 installed). Until recently aftermarket converters were similar to OEM converters in price and design. Several companies are now marketing lower-priced aftermarket converters starting at less than $100. As part of these workshops, the Agency requests information on the current availability of OEM (or OEM equivalent), aftermarket, and used catalysts and their relative prices. The Agency also requests information on the price sensitivity of consumer purchases of replacement catalysts. In particular, we are interested in the degree to which increased availability of inexpensive yet effective replacement catalysts will increase the installation rate of replacement catalysts especially in areas which do not mandate such replacement.

The most significant concern with used or new "universal" aftermarket catalysts is their potentially poor performance which could make them an ineffective emission control device even considering their lower cost. Catalysts with purported universal application may be improperly size to handle the emission conversion of the engine out exhaust stream. Too small a catalyst could result in more rapid deterioration in performance compared to an OEM-equivalent catalyst. Additionally, since "space velocity" through a catalyst affects conversion efficiency, a catalyst that is too small could allow "breakthrough" of large amounts of unburned hydrocarbons, carbon monoxide, and, for three-way catalysts, oxides of nitrogen, resulting in high tailpipe emissions even when new. Used converters could have even worse performance problems due to the past use history of the converter. Operation at excessively high temperatures or poisioning of the catalyst due to use of leaded fuel can cause performance deterioration to the extent that a used converter may not be functioning at all.

With either significantly inferior new or used converters, the potential emission improvements would not be realized. Vehicle owners, however, would typically not be able to tell the difference between a good and bad replacement catalyst and thus could be paying for little or no emission control. Similarly, vehicle inspection programs may not be able to detect the difference between good and bad catalysts, thus not realizing the potential benefits from requiring catalyst replacement to correct tampering or fuel switching.

EPA believes aftermarket catalysts and individual used catalysts should be screened for performance capabilities prior to sale to enable consumers to buy quality catalysts with confidence and to realize the expected emission benefits. This pre-sale performance assessment must be of sufficient stringency to weed out catalysts or catalyst designs of low performance and limited durability. The catalyst evaluation procedures included in the current regulations (Part 85, Subpart V, Appendix Item 0) are sufficient for this purpose for oxidizing catalysts. However, these procedures

may be too expensive and burdensome to be usable in screening used and other low-cost catalysts. EPA invites comments on the need for alternative screening procedures and specific recommendations on the draft procedures and criteria included in the Appendix of this notice.

An essential element in achieving the expected air quality benefits requires ease of identification in use of those catalysts which meet the necessary performance criteria. This suggests some sort of labeling program which would allow consumers to distinguish quality from inferior catalysts when purchasing replacement catalysts. Perhaps also, some permanent indentification on each catalyst would be useful for in-use inspections to assure that only quality catalysts have been installed in response to antitampering programs. Comments are requested on the need for such labeling programs and recommendations for specific labeling programs are also invited.

Specific approval by EPA to sell used or aftermarket catalytic converters is not required. However, section 203(a)(3) of the Act does prohibit parties named in the statute from tampering with emission control systems on motor vehicles and prohibits any person from causing such tampering. Section 203(a)(3) prohibits vehicle manufacturers, dealerships, service and repair facilities, and fleet operators from removing or rendering inoperative any emission control device or element of design installed on or in a motor vehicle.

Tampering with emission controls can include removing, disabling or destroying a part of the emission control system or installing an incorrect or ineffective part in any motor vehicle designed to meet Federal or California emission standards. Obviously, the installation of a new OEM converter identical to that with which the vehicle was originally manufactured would not be a violation of the Act. The determination as to whether the installation of a used or a non-OEM-equivalent aftermarket catalyst is a tampering violation depends on whether the replacement catalyst is functioning properly in a manner similar to or better than an OEM converter.

Mobile Source Enforcement Memorandum No. 1A sets out EPA's present policy in the aftermarket parts context with regard to enforcement of the tampering prohibition. The provisions of Memorandum 1A are applicable to all persons named in section 203(a)(3) of the Act. A used catalytic converter is considered by EPA to be just like a nonoriginal equipment aftermarket part because prior use may have changed the converter's performance parameters such that they are no longer the same as a new original equipment converter. Normal deterioration with mileage accumulation will typically reduce the catalyst's effectiveness of converting emissions. In addition, the use of leaded gasoline or improper vehicle tuning or maintenance can significantly and permanently reduce the converter's operating efficiency.

Under Memorandum 1A, it is EPA's policy that a repair facility operator may use a nonoriginal equipment aftermarket part, such as a used or aftermarket catalytic converter, as a replacement part solely for purposes of maintenance according to the vehicle or enigne manufacturer's instructions, or for repair or replacement of a defective or worn out part, if the repair facility operator has a reasonable basis for knowing that such use will not adversely affect emissions performance. A reasonable basis for knowing this would exist if the repair facility operator believes on the basis of test data that the used or aftermarket converter will perform the same function with respect to emission control as a properly functioning OEM or OEM equivalent catalyst or if the used or aftermarket catalyst is represented in writing by the part manufacturer to perform the same function with respect to emission control as the replaced part. In the absence of knowledge of test data that the used or aftermarket converter does not adversely affect emissions, we do not believe it is reasonable for a facility operator to believe that a used converter with an unknown use history or an aftermarket converter of unproven design will perform the same function with respect to emission control as a new original equipment converter.

On November 25, 1980, EPA published regulations regarding the voluntary certification of aftermarket parts pursuant to section 207(a)(2) of the Act (see 40 CFR Part 85, Subpart V). These regulations contain testing procedures for certifying oxidizing catalytic converters and essentially were designed to require certified aftermarket catalysts to be as good or better than the OEM catalysts they are to replace. (To this date, no one has certified converters under the program). EPA has said that testing used or aftermarket oxidizing catalytic converters by the procedures in those regulations and demonstrating that they conform with all relevant emission-critical parameters of the original equipment converter they are to replace, would provide a reasonable basis for knowing that the installation of the converters on the appropriate vehicles would not adversely affect vehicle emissions performance. If such converters are appropriately installed on the correct vehicles, EPA would not consider it to be a violation of section 203(a)(3) of the Act.

Since used catalysts would be expected to have varying life histories, certification of these parts would be complicated and difficult. First, each catalyst might be performing at a different but unknown performance level. This might suggest that each used catalyst be tested. Second, those catalysts would have to meet the "fresh catalysts" performance criteria of the aftermarket parts regulations recommended test procedures and then some procedure must be used to establish that the remaining durability performance of a used catalyst is similar to a typical new original equipment catalyst.

At the time the regulations were formulated, three-way converters were not widely used. There are no universal test procedures and specific criteria that EPA has recognized which can be used to evaluate both three-way converters and oxidizing converters.

EPA recognizes the demand for and the potential air quality benefits of inexpensive replacement converters being marketed to replace missing or lead-poisoned converters and has been encouraging the testing of used converters intended for resale and the development of new low-priced aftermarket converters. The lack of an EPA-recognized quick, simple, and relatively inexpensive test procedure for all converters and specific attainable standards has likely hindered the availability of aftermarket catalysts of proven quality.

Through these workshops and written comments, EPA hopes to receive specific technical information and suggestions for establishing the need for a more economical test procedure and specific recommendations on the draft procedures in the Appendix and alternative test procedures, standards, and other acceptance criteria for used and aftermarket replacement converters.

EPA anticipates establishing specific test procedures and/or criteria that can be used to evaluate new and used catalytic converters (both oxidizing only and three-way) to be sold in the aftermarket as inexpensive replacements for lead-poisoned or previously removed OEM converters which are not covered by warranty. While it would be preferable for the procedures and/or criteria to provide assurance that the aftermarket converter is as good as the new OEM part, some concessions in test procedure correlation, converter efficiency and durability may be necessary for practical reasons. This is especially true if the alternatives are procedures and criteria too stringent, complicated, expensive, or time consuming to be user for testing converters which are to be marketed at a low price. Lack of routinely implementable procedures may hinder achieving the potential benefits of a larger catalyst replacement program than exists today.

There are a number of issues EPA would like discussed at the workshops and a preliminary list of such issues is listed below. However, participants are not restricted to those issues. In order to facilitate a useful discussion, EPA requests that it be notified of such other issues at least seven days prior to the first workshop.

The workshops will be informal. No transcript shall be made of the proceedings. However, a summary of the views expressed at the workshops will be prepared and placed in the docket. EPA encourages both oral and written statements, views and information, and specifically requests that any suggested procedures and criteria, along with supporting data, be submitted in writing to the docket within 30 days following the second workshop.

EPA requests that all persons planning to attend either workshop contact Mr. Steven Albrink at the above address.

List of Issues and Questions

A. Potential In-Use Emissions Impact

EPA's primary concern with aftermarket catalysts is that their use not result in any loss of in-use emission performance and, ideally, an improvement in emission performance. From this perspective, the following questions are asked.

(1) What is the level of demand for in-use replacement catalysts? Can this demand be characterized by such factors as age of vehicle, ownership history, the existence of state or local inspection and maintenance programs, cost of replacement catalysts, etc.?

(2) OEM or OEM-equivalent catalysts are currently available but perhaps not readily available for all models (e.g. it could take perhaps a week or more to get the proper catalyst to the service facility). To what extent are OEM or OEM-equivalent catalysts readily available and what factors seem to be restricting their availability? What could be done to improve availability?

(3) OEM and OEM-equivalent catalysts are often retail priced at over $300. What are the principal factors (e.g. noble metal loading, manufacturing costs, warehousing/distribution costs) in establishing this price? What could be done which would allow OEM-quality replacement catalysts at a lower cost? Would these involve compromises which might have a measurably significant impact on emission performance? What lower cost seems achievable?

(4) What is the excess demand for replacement catalysts which cannot be filled by OEM-quality catalysts? How is this demand a function of catalyst price?

(5) It is EPA's presumption that both used and new, relatively inexpensive "universal" catalysts will have inferior emission performance compared to OEM catalysts. Is this a correct presumption? What is the typical emission peformance anticipated for used catalysts compared to OEM catalysts or of new, universal catalysts compared to OEM catalysts? Both initial performance and durability should be considered.

(6) If used or new, universal catalysts have inferior emission performance, the extent to which they are installed instead of OEM-quality catalysts will have a detrimental impact on emission performance. If these used or new universal catalytic converters are priced significantly less than OEM-quality catalysts, EPA would expect a significant reduction in the number of OEM-quality catalysts installed in favor of the cheaper but less effective used or new, universal catalysts. How likely is this to occur? Quantitatively, what is the adverse emissions impact?

(7) One potential way to bring down the cost of a new universal aftermarket converter is to allow a useful life period of less than 5 years and 50,000 miles as currently required of OEM converters on light-duty vehicles. Is this a technically reasonable way to reduce cost? How significant is the useful life of the converter in reducing cost? Is this appropriate given that original equipment manufacturers are required to design and warrant converters for the full 5 years or 50,000 miles?

(8) The risk of adverse impact on emissions performance due to the installation of used or new universal aftermarket catalytic converters is minimized if their installation is restricted to cases where the OEM converters have been removed or effectively rendered inoperative due to the repeated use of leaded fuel. Should their installation be allowed under other circumstances? What are these and why?

(9) If a satisfactorily performing converter is replaced with a used or new, universal converter, emission performance may not improve and may even degrade. Further, the purchaser will be spending considerable money for an un-needed replacement catalyst. How can we minimize the chances that a satisfactorily performing converter will be replaced for little or no emissions benefit?

(10) In order to protect the consumer and promote the marketing of only converters with demonstrated acceptable performance, it seems as though these aftermarket catalysts should be warranted for their expected useful life. This warranty should be obvious to the prospective purchaser and clearly and simply describe the condition of the warranty such as warranty period, the circumstances covered by the warranty (e.g. physical failure of the can) and the method for seeking warranty reimbursement. Specifically, what minimum warranty should be required?

(11) Similarly, permanent labeling of the converter is essential in order to further ensure proper installation and post-installation identification. Please recommend specific labeling guidelines.

(12) Should a catalyst (especially a used one) be installed only on vehicles with exactly the same engine family as it was certified for or can other catalysts be used and under what circumstances?

(13) What should be the degree of automobile manufacturer liability with regard to aftermarket catalysts and their effect on warranty and emission recalls?

B. Test Procedure Issues

EPA has included as an appendix to this notice, draft test procedures and possible acceptance criteria for analyzing both new and used aftermarket oxidation and three-way catalytic converters. These procedures and criteria have been included to stimulate discussion at the workshop. They have not been thoroughly reviewed within the Agency and should not be considered draft proposals by the Agency. Indeed, EPA recognizes that the drafts at best are only expanded outlines of possible procedures and would require further details before uniform implementation could be achieved.

EPA would like comments on the design/performance criteria in the Appendix. From the onset, EPA has recognized that two types of catalysts might be used to replace missing or poisoned catalysts on tampered vehicles, and that different evaluation procedures would be appropriate for each. Therefore, different procedures are presented for newly manufactured replacement catalysts and used

catalysts. For newly manufactured replacement catalysts, an alternative combined Design/Performance criterion is presented.

(1) Focusing on the draft test procedures and acceptance criteria, what changes are appropriate? What additional information is necessary before we could expect consistent, uniform implementation across manufacturers?

(2) What is the sensitivity of converter price relative to acceptance criteria? In particular, how would the price of converters be affected by changing the acceptance criteria to 70, 80, 90, 110 and 120 percent of those in the Appendix?

(3) In addition to or in place of the procedures and criteria in the Appendix, what test procedures and standards or criteria should be accepted by EPA for both new and used aftermarket catalytic converters? EPA would like comments to address any proposed procedures with regard to minimizing errors of omission and commission with an emphasis on omission errors. Suggestions on alternative criteria and procedures are requested along with supporting data or other information.

(4) Are there problems in using the same criteria and procedures for testing all converters of the same basic design function (that is, all oxidation converters or all three-way converters) which will be sold as aftermarket converters? How could they be overcome?

(5) What should the minimum durability requirements be and how should they be measured? Should they be different than for OEM converters?

(6) Can one light off time or temperature and efficiency threshold be used all catalysts? Do they have to be different for HC, CO, and/or NOx?

(7) What is the feasibility of using only minimum design criteria as a standard for aftermarket catalysts and what should they be?

(8) How should warranty failures of aftermarket catalysts be determined in the field? Again, EPA is especially interested in comments regarding the minimizing or errors of omission.

(9) How well do in-use lead contamination screening tests correlate with loss in converter performance?

(10) Should the adopted test procedures and criteria and/or design requirements be incorporated in to the voluntary aftermarket parts self-certification regulations or EPA policy?

Dated: November 29, 1984.

Robert A. Weissman,

Acting Director, Office of Mobile Sources.

Appendix

Newly Manufactured Catalysts

There are two alternate procedures proposed for these types of catalysts. Either the Performance Only or the combined Design/Performance Criteria may be used.

The vehicles for which the catalyst is an appropriate installation are defined by the catalyst manufacturer. EPA understands that this permits a great degree of flexibility for the application which will reduce development and inventory costs.

Catalysts produced after the qualification process has been successfully completed have to be identical to the qualified catalysts in all material respects. A listing of these characteristics can be found in EPA's recommended Certification Part #1 Application Format.

Durability testing is proposed because EPA has determined that the most difficult part of demonstrating effective emission control technology is controlling emissions at extended mileage, not at zero mileage. EPA must have some assurance that these catalysts will have adequate durability performance.

A. Catalyst Performance Only

This procedure involves limited vehicle durability testing of worst case vehicles in each application category with exhaust emission control efficiency requirements.

Vehicle durability testing has been selection for this method because this provides greater access to the qualification process since vehicles are easier to obtain than are engine dynamometer facilities. In addition, vehicle testing adds a degree of realism that is appropriate for in-use application.

Two vehicles in each application category are required. The application category is to be defined by the catalyst manufacturer. At a minimum, it must contain at least one of the following identifications: (1) Oxidation catalyst, (2) three-way catalyst, or (3) three-way-plus-oxidation catalyst-

In order to ensure that the catalysts have a reasonable degree of effectiveness, EPA would require that the worst case vehicles in each application category be tested. This allows some assurance that vehicles not tested, but within the application category, will also benefit from the installation of these catalysts.

Absent any information supplies by the catalyst manufacturer, the worst case for each application category will be the highest test weight/largest engine displacement within the application category. This combination is determined by selecting the largest engine displacement within the highest test weight class. Test weight is defined in the regulations discussed later. Information is available from EPA's certification summary data on test vehicle/engine selection.

The durability mileage accumulation will be conducted on the two test vehicles for a minimum of 15,000 miles each. Commercial unleaded fuel may be used. The vehicle shall be equipped with the test catalyst for the entire 15,000 miles, and records of all vehicle and engine maintenance shall be kept. No maintenance of the catalyst is permitted.

At the end of the 15,000 miles, two cold start FTPs described in 40 CFR Part 86 shall be performed on each vehicle. If the date meet consistency requirements (TBD) the result shall be average to obtain the with-catalyst (w/c) 15,000-mile emissions. Next, the catalyst shall be removed and replaces with an exhaust pipe which adequately simulates the exhaust backpressure characteristics of the catalyst. Two more cold start FTPs shall be run on each vechicle with the catalyst removed. The results shall be averaged to obtain the without-catalyst (wo/c) baseline values.

The catalyst efficiency shall be determined using the following formula:

$$\text{efficiency} = 100\ \frac{(\text{emissions (wo/c)} - \text{emission (w/c)})}{\text{emissions (wo/c)}}$$

In order to be an acceptable catalyst, the catalyst efficiency determined above must be greater than or equal to the values shown in the following table.

TABLE 1

Application	Minimum efficiency (%)		
	HC	CO	NO_x
Oxidation catalyst	85	85	(1)
Three-way catalyst	88	88	55
Three-way-plus-oxidation catalyst	88	85	55

[1] No requirement.

B. Catalyst Design/Performance Criteria.

The criteria in Table 2 are offered as possible alternative to the Catalyst Performance Only method of demonstrating effectiveness. The advantage of this method is that FTP vehicle testing is not required. However, to compensate for the lack of an extensive durability demonstration, certain minimum design standards and stringent low milage performance standards must both be met. Specific test procedures have not been specified and suggestions are requested along with appropriate justification.

At least two catalysts shall be tested for this method in order to demonstrate adequate performance. Both catalysts shall be aged at least 5,000 miles before testing and meet the minimum requirements in Table 2.

TABLE 2.—CATALYST DESIGN/PERFORMANCE CRITERIA

Parameter	Oxidation catalysts		Three-way catalysts (plus oxidation)		
	HC	CO	HC	CO	NO_x
Light-off temprature:[1] new catalyst, °F	[2] 550	[2] 525	[2] 550	[2] 525	N/A
Stabilized efficiency:[1] new catalyst, percent	[3] 92	[3] 97	N/A	N/A	N/A
HC/NO_x crossover:[1] new catalyst, percent	N/A		[4]		
Size:[5]					
1. 4-cyl. appli. (CID)	[3] 125		[3] 125		
2. 6-cyl. appli. (CID)	[3] 185		[3] 185		
3. 8-cyl. appli. (CID)	[3] 280		[3] 280		
Loading	(6)		(6)		
Monolith CPSI	[3] 300		[3] 300		

[1] Test procedures not completely specified yet.
[2] Approximately 0.8 times characteristic large displacement engines of the approximate number of cylinders (158, 231, 350).
[3] Or less.
[4] Or greater.
[5] 3Pt:2Pd at 50 gm/ft³ or greater.
[6] 5Pt:1Rh at 50 gm/ft³ or greater.

Used Catalysts

These catalysts are generally collected in quantity at a central location. Unfortunately, at that time the original application and even the generic type may not be known. Therefore, EPA recognizes that a simplified test is needed to accommodate the reuse of these catalysts. EPA must, however, be assured that these catalysts are active and effective.

Used catalysts must be identified with respect to application category. The minimum level of detail of application category is catalyst generic type: oxidation catalyst, three-way catalyst, or three-way-plus-oxidation catalyst. More specific application categories are desirable. Catalysts should be identified by application category prior to testing, and also for eventual application. Catalysts that are designated as three-way-plus-oxidation catalysts should be equipped with all necessary air delivery hardware.

In this qualification procedure, the burden of durability testing is replaced with the requirement for 100 percent testing. Only used OEM catalysts can be used to qualify under this procedure. The types of test are: (1) Container mechanical integrity check, (2) substrate mechanical integrity check, (3) lead check test, and (4) efficiency test.

The catalyst shall be inspected to determine which type of catalyst it is—pellet or monolith. The catalyst should be inspected to see that the catalyst container (the "can") is structurally sound. There should be no leak paths in the can. The can should have acceptable backpressure characteristics, i.e., not be plugged. The catalyst substrate should be sound. The substrate shall not be melted or attrited severely.

If the catalyst passes the structural integrity checks, tests for lead poisoning via X-ray or Plumbtesmo methods shall be performed. Catalysts which fail this lead contamination test cannot be used.

The efficiency test for oxidation catalysts is a straightforward adoption of the GM "Cell 102" test. A similar procedure incorporating Air/Fuel ratio changes is included for three-way catalysts.

EPA is seeking assurance that the efficiencies of the catalysts qualified under these processes will be equivalent to those qualified as new replacement catalysts. Consideration of this has led to the following performance requirements.

A. Used Oxidation Catalyst Performance Criteria

TABLE 3

Constituent	Criteria			
	HC		CO	
	Pellet	Monolith	Pellet	Monolith
Maximum: Light-off time (time to 50% conversion, sec.)	60	40	60	30
Minimum: Stabilized (600 sec.) efficiency (percent)	[1]	[1]	[2]	[2]

B. Used Three-Way Catalytic Converters Conversion Efficiency Testing:

In this test, the system is run at the specified control parameters until the exhaust stream and catalyst reach equilibrium. At that time the exhaust gas constituents (HC, CO, NOx) are read before and after the catalytic converter. The constituents are used to determine the maximum conversion efficiency of the converter.

Each three-way catalyst is tested at two steady-state conditions, 14.9:1 air/fuel ratio (that is, 0.2 air/fuel ratio lean) and 14.5:1 air/fuel ratio (0.2 air/fuel ratio rich).

The control parameters are:

1. Engine speed: 1800 ± 20 RPM
2. Air/Fuel Ratio: 14.9:1 and 14.5:1
3. Exhaust Temperature: 730° ± 30° F (set using load)
4. Exhaust Flow Rate: To be determined
5. Air Injection: Secondary air flow rate =10% of exhaust flow rate at 14.7:1 A/F. Use that flow rate for the rest of test.
   a. Inject between the three-way converter and the oxidation catalyst.
   b. No air injection for three-way converter only.
6. Run at each A/F ratio until the system stabilizes, then read exhaust constituents.
7. Do not vary throttle position during test.
8. Load will change to maintain constant engine speed. Minimum Acceptable Conversion Efficiency (for both A/F ratios):

HC: 80%
CO: 80%
NO_x: 40%

Light-Off Test:

A light-off test can be conducted after the conversion efficiency test. A purge cycle should be performed before each light-off test. It is explained below. The exhaust is set to the control parameters while bypassing the catalyst through a pipe set to a backpressure equal to the test system. At time=zero, the exhaust stream is switched into the catalyst system and a strip chart records exhaust gas constituents (before and after the catalyst) versus time. From this chart the conversion efficiency vs. time curve can be established.

The control parameters for this test cycle are:

1. Purge Cycle: A large volume of air is blown through the catalyst until the exhaust out temperature is not over 100 °F
2. Engine speed: 1800 ± 20 RPM

3. Air/Fuel Ratio: Set to 2% CO at the inlet to the converter by fuel enrichment
4. Exhaust Temperature: 730° ± 30° F (set using load)
5. Exhaust Flow Rate: To be determined
6. Air Injection: To be determined

Maximum Acceptable Light-Off Time to 50% Conversion Efficiency:

HC: 90 Seconds
CO: 80 Seconds

[FR Doc. 84-31709 Filed 12-4-84; 8:45 am]
BILLING CODE 6560-50-M

[PF-395 RL-2730-2]

Certain Companies; Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-395] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Information Services Section (TS-757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM-12, Jay Ellenberger.	Rm. 202, CM#2 (703-557-2386).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM-25, Robert Taylor.	Rm. 251, CM#2 (703-557-1800).	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain commodities.

I. Initial Filing

1. *PP 4F3142.* Union Carbide Agricultural Products Co. Inc., P.O. Box 12014, T.W. Alexander Dr., Research Triangle Park, NC 27709. Proposes amending 40 CFR 180.300 by establishing a tolerance for the plant growth regulator ethephon ((2-chloroethyl) phosphonic acid) in or on the commodity sugarcane at 0.02 part per million (ppm). The proposed analytical method for determing residues is gas chromatography. (PM-25).

2. *PP 4F3127.* E.I. du Pont de Nemours and Co., Wilmington, DE 19898. Proposes amending 40 CFR Part 180 by establishing a tolerance for residues of the herbicide metsulfuronmethyl (methyl-2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]benzoate) in or on the commodities as follows; barley and wheat grain, and milk at 0.05 ppm; green forage of barley and wheat at 5.0 ppm; straw of barley and wheat, and meat, fat and meat byproducts (mbyp) (except liver and kidney) of cattle, goats, hogs, horses, and sheep; and kidney and liver of cattle, goats, hogs, horses, and sheep at 0.1 ppm. The proposed analytical method for determining residues is liquid chromatography using an ultra violet detector and reversed-phase liquid chromatography (RPLC). (PM-25).

II. Amended Petition

PP 4F3132. Dow Chemical U.S.A., Agricultural Products Dept., P.O. Box 1706, Midland, MI 48640. EPA issued a notice published in the **Federal Register** of October 24, 1984 (49 FR 42787) which announced that Dow Chemical U.S.A. had submitted pesticide petition 4F3132 to the Agency proposing to amend 40 CFR 180.342 by establishing tolerances for the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on lettuce at 2 ppm.

Dow Chemical U.S.A. has amended the petition by revising the tolerance expression to read "for the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on lettuce at 2 ppm (of which no more than 1 ppm is chlorpyrifos)". The proposed analytical method for determining residues is gas chromatograhy. (PM-12).

(Sec. 408(d)(2) 68 Stat. 512 (21 U.S.C. 346a(d)(2))

Dated: November 16, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-31722 Filed 12-4-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 28, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

OMB Number: 3060-0207
Title: Section 73.961, Tests of the emergency broadcast system procedures
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 10,000 Recordkeepers; 12,500 Hours

OMB Number: 3060-0219
Title: Section 90.49(b), Communications standby facilities (special eligibility showing)
Action: Extension
Respondents: Businesses
Estimated Annual Burden: 200 Respondents; 150 Hours

OMB Number: 3060-0225
Title: Section 90.131(b), Amendment or dismissal of applications
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions
Estimated Annual Burden: 25 Respondents; 4 Hours

OMB Number: 3060-0258
Title: Section 90.176, Interservice Sharing of Frequencies in the 150-174 and 450-470 MHz Bands
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions
Estimated Annual Burden: 1,000 Respondents; 2,000 Hours

OMB Number: 3060-0263
Title: Section 90.177, Protection of certain radio receiving locations
Action: Extension
Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions
Estimated Annual Burden: 300 Respondents; 150 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-31741 Filed 12-4-84; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket Nos. 84-967, et al.; File Nos. BPH-831202 AD, et al.]

New FM Stations; Caballero Spanish Radio, Inc., et al.; Hearing Designation Order

In re Applications of:

Caballero Spanish Radio, Inc. (hereafter Caballero), Barkersfield, California, Req: 107.1, MHz, Channel 296A, 3 kW, (H&V), 52 meters.	MM Docket No. 84-967. File No. BPH-831202AD.
Glenn L. Orsburn, (hereafter Glenn), Bakersfield, California, Req: 107.1, MHz, Channel 296A, 3 kW (H&V), 8 meters.	MM Docket No. 84-968. File No. BPH-830526AA.
Louis B. Burke, Jr., (hereafter Burke), Bakersfield, California, Req: 107.1, MHz, Channel 296A, 3 kW (H&V), 91 meters.	MM Docket No. 84-969. File No. BPH-830620AA.
Margaret Garza, (hereafter Garza), Bakersfield, California, Req: 107.1 MHz, Channel 296A, 3 kW (H&V), 91 meters.	MM Docket No. 84-970, File No. BPH-831202AG.
Kern Communications Company, (hereafter Kern), Bakersfield, California, Req: 107.1, MHz, Channel 296A, 3 kW (H&V), 67 meters.	MM Docket No. 84-971. File No. BPH-831202AX.

For Construction Permit for a New FM Station.

Order

Adopted: November 19, 1984.
Released: November 21, 1984.

By the Chief, Audio Service Division.

1. The Commission has before it for consideration: (i) Its Hearing Designation Order, adopted September 28 and released October 29, 1984, which designated the above mutually exclusive applications for consolidated hearing and (ii) a petition for reconsideration filed September 28, 1984 by Kern Communications Company directed to our action of August 31, 1984 rejecting that applicant's amendment of February 29, 1984.

2. In order to afford us time within which to consider matters raised in the petition for reconsideration, on our own motion we are rescinding the designation order. We anticipate, however, that a new designation order will be adopted later this month.

3. Accordingly, the aforementioned Hearing Designation Order in MM Docket Nos. 84-967-71 is hereby rescinded.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 31747 Filed 12-4-84; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing; DeBeau Broadcasting, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. DeBeau Broadcasting, Inc., Vero Beach, FL	BPH-831024AJ	84-1238
B. Katherine C. Hughes, Vero Beach, FL	BPH-831026AK	84-1239
C. Robert L. Heald and Thomas H. Wall d/b/a Vero Beach Broadcasters, Vero Beach, FL	BPH-831216AP	84-1240
D. Tam Susan Pollack and Sanford Barry Cohen d/b/a Vero Beach Broadcasting Company, Vero Beach, FL	BPH-840120AK	84-1241
E. Indian River Broadcast Group, a limited partnership, Vero Beach, FL	BPH-840308CC	84-1242
F. Central Communications, Inc., Vero Beach, FL	BPH-840308GE	84-1243
G. Donald L. Wilks et al. d/b/a Vero Beach FM Company, Vero Beach, FL	BPH-840308GF	84-1244
H. S. F. J. Timm, Vero Beach, FL	BPH-840308CI	84-1245
I. Elizabeth W. Greene and Minnie P. Moore d/b/a Vero Beach Broadcasters, Vero Beach, FL	BPH-840308CJ	84-1246
J. Oceanaire Broadcasting of Vero Beach, Florida, Inc., Vero Beach, FL	BPH-840309CA	84-1247
K. Vero Beach Radio, Inc., Vero Beach, FL	BPH-840309CB	84-1248
L. Vero Beach Broadcasting Group, Inc., Vero Beach, FL	BPH-840309CD	84-1249
M. Family Radio South, Inc., Vero Beach, FL	BPH-840309CE	84-1250
N. Gloria Siegel and Elisa Molina, Vero Beach, FL	BPH-840309CG	84-1251
O. Florida Coastal Broadcasting, Inc., Vero Beach, FL	BPH-840309CM	84-1252
P. VHF Associates, a limited partnership, Vero Beach, FL	BPH-840309CN	84-1253
Q. Suzette Berkman and Fintanta Berkman d/b/a Women Broadcasters of Florida, Vero Beach, FL	BPH-840309CR	84-1254
R. Patricia L. Bellens, Vero Beach, FL	BPH-840309CU	84-1255

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), C, K, Q
2. Air Hazard, A, B, C, D, L, M
3. Comparative, A through R
4. Ultimate, A through R

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issues and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919

M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.
W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. If a final environmental impact statement is issued with respect to (G) VBFM, (K) VBRI and (Q) Women which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposals are consistent with the National Environmental Policy Act, as implemented by Sections 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above the applicants are qualified to construct and operate as proposed.

[FR Doc. 84–31748 Filed 12–4–84; 8:45 am]
BILLING CODE 6712–01–M

[MM Docket Nos. 84–1047, et al.; File Nos. BP–820305AU, et al.]

New FM Stations; Francon, Inc., et al.; Hearing Designation Order

In re Applications of:

Francon, Inc., WJIK, Camp Lejeune, North Carolina; Has: 1580 kHz, 10 kW (5 kW–CH), D; Req: 830 kHz, 2.5 kW, 10 kW–LS, DA–2, U.	MM Docket No. 84–1047. File No. BP–820305AU.
SE/USA Broadcasting Company, Bluffton, South Carolina, Req: 830 kHz, 1 kW, 50 kW–LS, DA–2, U.	MM Docket No. 84–1048. File No. BP–821130AF.
Hercules Broadcasting Co., St. Andrews, South Carolina, Req: 830 kHz, 1kW, 10 kW–LS, DA–2, U.	MM Docket No. 84–1049. File No. BP–821130AJ.
Stone Broadcasting Corporation, WCBX, Eden, North Carolina; Has: 1130 kHz, 1kW, ND, D; Req: 830 kHz, 1 kW, DA–N, U.	MM Docket No. 84–1050. File No. BP–821130AL.

For Construction Permit.

Adopted: November 5, 1984.
Released: November 21, 1984.

By the Chief, Mass Media Bureau.

1. The Commission by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Francon, Inc. (Francon), SE/USA Broadcasting Company (SE/USA), Hercules Broadcasting Company (Hercules) and Stone Broadcasting Corporation (Stone). Also before the Commission is an informal objection filed against the SE/USA proposal by the City of New York Municipal Broadcasting System, licensee of WNYC, New York, New York (WNYC).

2. *The WNYC objection.* WNYC has filed an informal objection directed to the SE/USA application, but applicable to the Francon and Stone proposals as well, requesting that the Commission condition any grant upon the acceptance of the nighttime limit caused by the WNYC proposed 50 kW operation on 830 kHz. In *City of New York Municipal Broadcasting System (WNYC),* 91 FCC 2d 635 (1982), reconsideration denied FCC 83–232, released May 19, 1983, the Commission denied WNYC's application to modify its station's facilities. WNYC then appealed the Commission 's action to the United States Court of Appeals for the District of Columbia Circuit, which affirmed the Commission. *City of New York Municipal Broadcasting System (WNYC) et al.* v. *FCC,* Case No. 83–1663, decided September 21, 1984. In the event that this judicial decision is appealed and WNYC's application is ultimately granted, then a grant of any of the above three proposals should be subject to the condition that the applicant will accept nighttime interference from WNYC. Accordingly, WNYC's informal objection is granted.

3. *The Francon application.* Francon seeks a waiver of Section 73.21(a)(2)(ii)(C) of our Rules, which provision limits new Class II–B stations on clear channel frequencies to 1 kW nighttime power. We have, however, adopted a strict standard for waiver requests of this nature. Waivers will be granted only upon a showing that the higher power proposed is necessary to provide principal city coverage and will not impede our allocation objectives.

4. With respect to the first aspect of this test, Francon has established that its proposed 2.5 kW nighttime operation will comply substantially with the coverage requirements of Section 73.24(j) of our Rules. It has not, however, demonstrated that a 1 kW nighttime operation would not qualify for a waiver of this provision. Furthermore, Francon has not submitted the necessary preclusion study. An appropriate issue will be specified.

5. *The SE/USA application.* According to an amendment to the SE/USA application, William E. Garrison, a principal, will resign from his position as a vice president of Multimedia Broadcasting Company should the SE/USA application be granted. Accordingly, an appropriate condition will be specified.

6. SE/USA failed to make certifications required in Form 301, Section II, Questions 9 and 10, relating to agreements affecting present and future rights of ownership and control of the applicant. An appropriate amendment is required, therefore.

7. SE/USA also failed to certify its financial qualifications as required in Form 301, Section III. As a result of that omission, we can make no determination whatsoever as to SE/USA's financial qualifications. Therefore, an issue must be specified.

8. The Commission has not yet received Federal Aviation Administration clearance for the antenna towers proposed by SE/USA. An issue will be specified.

9. *The Hercules application.* Section 73.24(g) of our Rules requires the population within the 1 V/m contour to be less than 300 persons or less than 1.0 percent of the population within the 25 mV/m contour. In its original application, Hercules checked the "yes" box opposite Question 10, Section V–A, Form 301, which asks whether applicants are in compliance with the rule. However, in an amended Form 301, Hercules answered "no" to Question 10. We are uncertain as to whether the applicant has checked this box inadvertently or whether the proposal, as amended, fails to comply with Section 73.24(g). Hence, and appropriate issue will be specified.

10. The Hercules application states that Leigh N. Feldsteen, a principal, will be responsible for the implementation and administration of Hercules' equal employment opportunity program. However, by subsequent amendment, the applicant advised that Mr. Feldsteen was withdrawing from the Hercules partnership. An amendment to the EEO narrative reflecting the change will therefore be required.

11. *The Stone application.* Stone failed to state which of its towers will be used for nondirectional operation, nor did it show antenna parameters on a horizontal standard radiation pattern. In addition, Section V–A, Paragraph eight of FCC Form 301 requires applicants to file a sufficient number of photographs to permit identification of all structures in the vicinity of the antenna site. Stone's application does not contain the required site photographs. As appropriate amendment is necessary.

12. *Environmental narrative statement issue.* Since all of the proposals constitute major environmental actions as defined by Section 1.1305(a) of the Commission's Rules, the applicants are required to submit the environmental narrative information described in Section 1.1311 of the Rules. Stones application refers to an environmental narrative statement that was not found within the file; Francon's, SE/USA's and Hercules' statement fail to include information concerning access roads to the site. SE/USA's application contains no information on the zoning classification of the site (if any) and Hercules' environmental narrative fails to state whether construction of the facilities has been a source of local controversy in the community.

13. Consequently, Francon, SE/USA and Hercules will be required to file within 30 days of the release of this Order, amended environmental narrative statements, and Stone, its missing environmental narrative, with the presiding Administrative Law Judge. In addition, copies shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of Section 1.1313(b). Accordingly, Section 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp,* 71 FCC 2d 229 (1979), *recon. denied sub nom; Old Pueblo Broadcasting Corp.* 83 FCC 2d 337 (1980).

14. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.[1] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

15. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the height and location of the antenna proposed by SE/USA Broadcasting Company.

2. If a final environmental impact statement is issued with respect to Francon, Inc., SE/USA Broadcasting Company, Hercules Broadcasting Company and/or Stone Broadcasting Corporation which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

3. To determine with respect to the application of Francon, Inc., whether circumstances exist which warrant waiver of § 73.21(a)(2)(ii)(C) of the Commission's Rules.

4. To determine with respect to the application of SE/USA Broadcasting Company:

(a) The source and availability of sufficient funds to meet anticipated costs; and

(b) Whether in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

5. To determine with respect to the application of Hercules Broadcasting Company whether the proposal complies with § 73.24(g) of the Commission's Rules, and if not, whether circumstances exist which warrant waiver of that rule.

6. To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient distribution of radio service.

7. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

16. It is further ordered, that the Federal Aviation Administration is made a party to these proceedings.

17. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Francon, Inc., SE/USA Broadcasting Company and Hercules Broadcasting Company shall submit the amended environmental narrative information and Stone Broadcasting Corporation its entire narrative statement, as set out in Paragraph 13, above, and required by Section 1.1311 of the Rules, to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

18. It is further ordered, that the informal objection filed by the City of New York Municipal Broadcasting System is granted.

19. It is further ordered, That SE/USA Broadcasting Company shall file the amendment specified in Paragraph 6 with the presiding Administrative Law Judge herein within 30 days after this Order is released.

20. It is further ordered, that Hercules Broadcasting Company shall file the amendment specified in Paragraph 10 herein with the presiding Administrative Law Judge within 30 days after this order is released.

21. It is further ordered, that Stone Broadcasting Corporation shall file the amendment specified in Paragraph 11 herein with the presiding Administrative Law Judge within 30 days after this Order is released.

22. It is further ordered, that should the SE/USA Broadcasting Company application be granted, the construction permit shall contain the following condition: William E. Garrison will resign as Vice President, Multimedia Broadcasting Company, prior to grant of program test authorization.

23. It is further ordered, that in the event the Francon, Inc. or SE/USA Broadcasting Company proposal is granted, the construction permit shall contain the following condition: The applicant shall amend its application to protect Dominican Republic station HIJB's 2.5 mV/m nighttime interference-free contour if the Dominican Republic has not agreed to apply the terms of the Region 2 agreement in lieu of NARBA.

24. It is further ordered, that should the application of SE/USA Broadcasting Company, Francon, Inc., or Stone Broadcasting Corporation be granted, the construction permit shall be conditioned as follows: In the event that the pending application of the City of New York Municipal Broadcasting System (BP–16148) is granted to modify its existing facilities on 830 kHz, the permittee shall accept such interference as results from or is caused by the grant

25. It is further ordered, that in addition to the copy served on the Chief,

[1] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

Hearing Branch, a copy of each amendment filed in this proceeding shall be served to the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350 1919 M Street, NW., Washington, D.C.

28. It is further ordered, that to avail themselves of an opportunity to be heard, the applicants shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 30 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

27. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-31744 Filed 12-4-84; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Grande Broadcasting, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Grande Broadcasting, Inc., Del Rio, TX.	BPH-830809AH	84-1226
B. Blanca Gonzalez Larson, Del Rio, TX.	BPH-831003AE	84-1225
C. Forum Broadcasting, Inc., Del Rio, TX.	BPH-840105AQ	84-1200

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See appendix), B
2. Air Hazard, B
3. Ultimate, A, B, C
4. Comparative, A, B, C

3. If there is any nonstandardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Additional Issue Paragraph

1. If a final environmental impact statement is issued with respect to Larson which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84-31745 Filed 12-4-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-1226, et al.; File Nos. BP-820305 BZ, et al.]

Laughlin Roughrider Broadcasting, Inc. et al.; Hearing Designation Order

In re Applications of:

Laughlin Roughrider Broadcasting, Inc., Laughlin, Nevada; Req: 870 kHz, 1 kW, 10 kW–LS, DA–2, U.	MM Docket No. 84-1226; File No. BP-820305BZ.
Southern California Broadcasting Company, Kiev, Glendale, California; Has: 870 kHz, 1kW, DA–N 870 kHz, 5kW, D (Two site operation); Req: 870 kHz, 1 kW, 10 kW–LS, DA–2, U (Two site operation).	MM Docket No. 84-1227; File No. BP-831221AF.

For Construction Permit.

Adopted: November 6, 1984.
Released: November 20, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Laughlin Roughrider Broadcasting, Inc. (Laughlin) and Southern California Broadcasting Company (Southern California). Also before the Commission is a petition to dismiss defective application filed by Southern California.

2. *Laughlin.* The Laughlin application was initally filed on March 5, 1982. By letter dated May 20, 1983, Laughlin notified the Commission that its orginally proposed transmitter site was no longer available and that an amendment proposing a new site would be filed at the earliest possible date. On December 21, 1983, Laughlin filed an amendment proposing a new transmitter site. On the same date Southern California filed a petition to dismiss defective application stating that the application was filed on the June, 1977 Form 301 which was revised on January, 1982, and citing various deficiencies in the engineering section of the originally filed application. Southern California alleged that these deficiencies rendered the application substantially incomplete and subject to dismissal pursuant to Section 73.3566 of the Commission's Rules.

3. First, the FCC Form 301 was revised only two months prior to submission of the Laughlin application. The Commission recognized that it would take some time before the revised version of the application form reached the public for use in filing and allowed the "old" form to be utilized in the interim.

4. With respect to Southern California's allegation that the application was incomplete, we note that AM broadcast applications are frequently not totally complete when filed. If, however, the application contains enough legal and technical data to allow the staff to evaluate and process it, the applicant may be permitted to amend its proposal to cure minor deficiencies. Such is the case here, and the amendment filed on the revised Form 301 by Laughlin on December 21, 1983, proposing a new transmitter location and furnishing all exhibits necessary to process the application, corrected all engineering deficiencies contained in the originally filed application. Therefore, the petition to dismiss defective application will be dismissed as moot and the amendment will be accepted.

5. A Class II–B station on a Class I–A clear channel frequency must meet the minimum protection requirements with

respect to engineering standards of allocation[1] and the coverage requirements.[2] While the Laughlin proposal fails to provide the required nighttime coverage, it does comply substantially with this provision. Hence the waiver requested by the applicant is not necessary.

6. Laughlin submitted certification of its financial qualifications under Section III of Form 301. The certification is, however, incomplete. Laughlin failed to certify under Item 2 that it has reasonable assurance of a present firm intention for each agreement to furnish capital, and that it can and will meet all contractual requirements as to collateral, guarantees, and capital investment. The applicant must submit and amended Section III financial certification to cure the omission.

7. *Environmental narrative statement issues.* Since both the Laughlin and Southern California proposals constitute major environmental actions as defined by § 1.1305(a) of the Commission's Rules, the applicants are required to submit the environmental impact information described in § 1.1311 of our Rules. Laughlin's environmental narrative statement fails to state the zoning classification (if any) of the proposed site, and to provide information concerning access roads and power lines to the site; Southern California' environmental statement shows that the proposed site is zoned for "single unit residential dwellings", thereby raising the question of reasonable assurance of site availability, and fails also to provide information concerning surrounding land uses, roads and power lines to the site.

8. Consequently, Laughlin and Southern California will be required to file within 30 days of release of this Order amended environmental narrative statements with the presiding Administrative Law Judge. In addition, copies shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, §1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

9. The Commission has not yet received Federal Aviation Administration clearance for the towers proposed by Southern California. The initial FAA report indicated a problem relative to the tower heights. Accordingly, an appropriate issue will be specified.

10. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed.[3] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

11. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to the held before an Administative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Laughlin Roughrider Broadcasting, Inc. and/or Southern California Broadcasting Company which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by Sections 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the heights and locations of antenna towers proposed by Southern California Broadcasting Company.

3. To determine; (a) the areas and populations which would receive primary aural service from each proposal and the availability of other primary aural services to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

4. To determine, in the event that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, that § 1.1317 of the Commission's Rules IS WAIVED to the extent indicated herein. Within 30 days of the release of this Order, Laughlin Roughrider Broadcasting, Inc., and Southern California Broadcasting Company shall submit the amended environmental narrative statement required by § 1.1311 of the Rules to the presiding Administrative Law Judge with a copy to the Chief, Audio Services Division.

13. It is further ordered, that the Federal Aviation Administration IS MADE A PARTY to these preceedings.

14. It is further ordered, that the petition to dismiss defective application filed by Southern California Broadcasting Company is dismissed as moot.

15. It is further ordered, that Laughlin Roughrider Broadcasting, Inc. shall file the amended financial certification of Section III, Form 301 discussed in paragraph 6 above, or advise the Administrative Law Judge within 30 days of the release of this Order that certification cannot be made.

16. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

17. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed

[1] Section 73.182(a)(2)(iii) provides in pertinent part that Class II–B stations on Class I–A clear channel frequencies are protected at nighttime to their 10mV/m groundwave contour, or higher limit, if any, imposed by previously authorized facilities.

[2] Under § 73.24(j), Class II–B stations on Class I–A clear channel frequencies must cover all residential areas with a signal of 10mV/m (or nighttime interference free contour if greater).

[3] Operation with the facilities specified therein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

for the hearing and to present evidence on the issues specified in this Order.

18. It is further ordered, that the applicant herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 31746 Filed 12-4-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-1212; File No. BRCT-790402LC et al.]

RKO General, Inc. (WHBQ-TV) et al.; Memorandum Opinion and Order

In re Applications of:

RKO General, Inc. (WHBQ-TV); Memphis, Tennessee. For Renewal of License:	MM Docket No. 84-1212; File No. BRCT-790402LC.
South Jersey Radio, Inc., Memphis, Tennessee.	MM Docket No. 84-1213; File No. BPCT-830511KE.
New South Media Corporation, Memphis Tennessee.	MM Docket No. 84-1214 File No. BPCT-830512KE.
Ware Communications, Inc., Memphis, Tennessee.	MM Docket No. 84-1215; File No. BPCT-830512KF.
Professional Broadcasters Group, Inc.,[1] Memphis, Tennessee.	MM Docket No. 84-1216; File No. BPCT-830512KG.
Stephen E. Powell, Memphis, Tennessee.	MM Docket No. 84-1217; File No. BPCT-830512KH.
Greater Memphis Communications, Ltd., Memphis, Tennessee.	MM Docket No. 84-1218; File No. BPCT-830512KI.
River City Communications Corporation, Memphis, Tennessee.	MM Docket No. 84-12119; File No. BPCT-830512KJ.
Shelby Broadcasting, Limited Partnership, Memphis, Tennessee.	MM Docket No. 84-1220; File No. BPCT-830512KL.
Memphis Telecasters, Ltd., Memphis, Tennessee.	MM Docket No. 84-1221; File No. BPCT-830512KM.
Cozzin Communication of Memphis, Inc.,[2] Memphis, Tennessee.	MM Docket No. 84-1222; File No. BPCT-830512KN.
Memphis Television Company, a Limited Partnership, Memphis, Tennessee.	MM Docket No. 84-1223; File No. BPCT-830512KO.
River City Broadcasting, Ltd., a Limited Partnership, Memphis, Tennessee.	MM Docket No. 84-1224; File No. BPCT-830512KP.
Karen Blair Woodward, d/b/a Memphis Minority Television Company, Memphis, Tennessee.	MM Docket No. 84-1225; File No. BPCT-830512KQ.

[1] The application was amended on March 28, 1984, to change name from Jane Clabough.
[2] The application was amended on March 29, 1984, to change name from Cozzin Communication Corporation.

For Construction Permit.

Adopted: November 8, 1984.

Released: November 23, 1984.

By the Commission.

1. The Commission has under consideration the license renewal application of RKO General, Inc. ("RKO" or "WHBQ-TV") for commercial television Station WHBQ-TV, Channel 13, Memphis, Tennessee, and the above-captioned mutually exclusive application for a new commercial station on the channel which is presently licensed to WHBQ-TV; a petition to deny WHBQ-TV's renewal application filed by a group of viewers in WHBQ-TV's service area collectively called "petitioners"; and a joint petition filed by several media consumer groups collectively referred to as "NCCB" after the lead group National Citizens Committee for Broadcasting/Telecommunications Research and Action Center.[3] Petitions to dismiss the applications of South Jersey Radio, Inc., Stephen E. Powell and Cozzin Communication of Memphis, Inc.[4]; motions for leave to amend and accompanying amendments filed by WHBQ-TV[5] and South Jersey Radio, Inc.[6] and related pleadings are also before us.

---

[1] The NCCB petition requests the designation of issues regarding corporate misconduct against RKO and its parent, The General Tire and Rubber Company (General Tire). It should be noted that since NCCB filed its petition, the Commission remanded for hearing the license renewal application for RKO's station KHJ-TV, Los Angeles, California. The renewal was set for hearing for the purpose of inquiring into the impact of RKO's disqualifcation as the purpose of inquiring into the impact of RKO's disqualification as the licensee of WNAC-TV, Boston, Massachusetts [(*RKO General, Inc. (WNAC)*, 78 FCC 2d 1 (1980) *aff'd*, 670 F.2d 215 (1981)] on its qualifications to remain the licensee of KHJ-TV, Los Angeles. *See RKO General, Inc. (KHJ-TV)*, 94 FCC 2d 879 (1983). In the interest of saving time and avoiding relitigation of common issues, the Commission subsequently ordered that the applicants seeking to displace RKO as the licensee of its 13 other broadcast facilities should be made parties to the KHJ-TV proceeding for the "limited purpose of participating in the resolution of questions which are common to RKO's overall basic and comparative qualifications and which arose out of the Boston proceeding." *RKO General, Inc.*, 54 RR 2d 717, 719 (1983), *recon. denied*, 55 RR 2d 403 (1984). The Commission in effect designated the KHJ-TV hearing as the forum for determining RKO's basic qualifications generically, as a result of the Boston disqualification proceeding. Any findings rendered in that proceeding will, of course, be considered in the ultimate resolution of these mutually exclusive applications. See paragraph 19, *infra*. The matters raised here by NCCB are all outgrowths of the Boston proceeding and are, therefore, already under consideration by the Commission. NCCB did not seek reconsideration of the Commission's decision to adjudicate RKO's qualifications in the KHJ-TV proceeding or seek to intervene there. If it wished to proceed on its own behalf, it should have taken either of these actions. In any case, NCCB concedes in its reply pleading that the same issues raised in its petition have already been raised in substance in the KHJ-TV proceeding by others who are parties. Accordingly, NCCB's request that its petition be held in abeyance pending the resolution of the issues in the KHJ-TV case will be denied and we shall dismiss its petition in light of this discussion. Similarly, to the extent that the other petitioners seek to raise questions as to RKO's basic or comparative qualifications generally, they should have sought to intervene in the KHJ-TV proceeding. The other allegations raised by the petitioners relating solely to the operation of WHBQ-TV will be addressed below. Since NCCB should have sought intervention in the KHJ-TV proceeding we will not address the question of standing in this proceeding.

[2] On March 29, 1984, RKO General, Inc. filed a petition to deny against Cozzin Communications Corporation (see footnote [2], above). The petition stated that Cozzin was in violation of the Commission's multiple ownership rules [Section 73.636) since Cozzin had also filed an application for an AM station in Memphis, Tennessee. Cozzin filed a letter dismissing its AM application on April 11, 1984. Accordingly, RKO's petition will be dismissed as moot.

[3] Since the "B" cut-off date (March 29, 1984), WHBQ-TV has filed several petitions for leave to amend and accompanying amendments to its renewal application. The purpose of these amendments is to update information previously submitted to the Commission. We have reviewed the motions and amendments and find that in each case good cause exists for accepting the amendments for 1.65 purposes only.

[4] South Jersey Radio, Inc. (SJR) filed an amendment with a motion for leave to amend on April 16, 1984, after the "B" cut-off date, March 29. A copy of the proffered amendment was filed on the "B" cut-off date, but did not contain the required signature of a corporate officer. Opposition to the motion for leave to amend was filed by both Memphis Television Company, a limited partnership (Memphis Television) and River City Communications Corporation (RCCC). The petitioners oppose SJR receiving any comparative advantage as a result of the amendment. All parties to this proceeding clearly had notice of the proffered amendment on March 29, when the copy was filed. The submission of the signed document constitutes a ministerial function, particularly in the absence of any showing by Memphis Television or RCCC as to how they have been prejudiced by the filing of the signed document. In view of the fact that all parties were put on timely notice concerning the nature of SJR's amendment, we believe that the equities favor our accepting the amendment, and the petition for leave to amend will be granted and the amendment accepted. It should be noted that we do not intend, by acceptance of the amendment, to

Continued

Petitioners' Arguments

2. The petitioners first allege that RKO's[6] employment practices and policies violate the Commission's Equal Employment Opportunity (EEO) guidelines.[6] They maintain that the licensee has a policy of excluding Blacks from positions in the "official and managers" category of its employment profile. They further argue that the only Black listed in that category in the licensee's Annual Employment Reports for 1980-83, was intentionally misclassified.[7] Although that individual has the title of Community Services Director/Public Affairs Director, NCCB claims that this individual has no staff or the authority to hire or fire anyone and was directed by the licensee to vote in a union election, grouping her with the secretarial staff in information given to the National Labor Relations Board (NLRB). Further, it is alleged that RKO hired a white production manager from outside the station rather than promote a qualified Black employee and twice hired White individuals as creative service directors instead of qualified Blacks. The petitioners contend that the licensee has failed to define the responsibilities of each level of management, review procedures to control managerial performance and maintain contact with local Black organizations when seeking prospective employees. They maintain that two complaints filed with the Equal Employment Opportunity Commission (EEOC) allege that the licensee gives preferential treatement to Whites with respect to salary, scheduling and vacations. Thus, the petitioners assert that such employment practices indicate that the licensee has not met its EEO obligations.

3. Our examination of the petitioners' employment discrimination allegations indicates that the specification of an issue is unwarranted. The labor force of the Standard Metropolitan Statistical Area of Memphis includes 40.8 percent women and 32.7 percent non-whites, nearly all of whom are Black. The station's 1980-1983 Annual Employment Reports reveals the following percentages of employment at WHBQ-TV:

	1980	1981	1982	1983
Full-Time Overall:				
Total	115	124	128	131
Women	42 (36.5%)	43 (34.7%)	46 (35.2%)	47 (35.9%)
Minorities	32 (27.8%)	33 (26.6%)	36 (28.1%)	39 (29.8%)
Full-Time Upper-Four:				
Total	96	108	107	108
Women	24 (25.0%)	26 (23.8%)	25 (23.4%)	25 (23.1%)
Minorities	25 (26.0%)	27 (25.7%)	29 (27.1%)	30 (27.8%)

These figures indicate that the licensee's employment statistics have all been above the appropriate processing guidelines during the past license term.[8] The licensee's Annual Employment Reports show that both minority and female representation on the station's full-time staff is reasonably related to their presence in the available labor force. Although the Commission's EEO rules clearly do not require "full equality" between the percentages of minorities and women on a licensee's staff and their availability in the labor force,[9] WHBQ-TV's full-time minority employment has ranged between 81% and 91% of labor force parity and between 78% and 85% of labor force parity in the upper-four job categories. Similarly, the station's full-time female employment has exceeded 85% of labor force parity and 57% of parity for jobs in the upper-four categories. Moreover, our review of the station's EEO program indicates that the licensee has sought to afford all qualified persons equal opportunities in employment. During the twelve-month period between March 1982 and March 1983, the station obtained more than seventy referrals for twenty-five positions as a result of contacts with two employment services, two colleges and the placing of advertising in publications. As a result, the station hired eight minorities, including three professionals, one technician and one sales person, and seven women. Moreover, of ten promotions at the station, three went to women and three went to minorities. Further, the station's EEO program lists an employee cooperative educational program and three internships which provide training to both high school and college students.

4. With respect to the allegations concerning the filling of managerial positions, we note that one of the thirteen managers listed by the station for the years 1980-1983 is a Black female as Director of Public Affairs. While this information is consistent with the petitioners' allegations, there is no evidence before us which indicates that the filling of any managerial position was the result of prohibited discrimination. WHBQ-TV's EEO program shows only one new hire and one promotion in that category during the twelve-month period between March 1982 and March 1983 and the petitioners have provided no information, other than their speculation, concerning the number of such positions filled in prior years. "Absent a showing of a discriminatory basis for the placement of employees in particular positions, such placement remains within the licensee's discretion and will not be questioned by this Commission." *Baltimore Metropolitan Broadcasting Stations*, 89 FCC 2d 1183, 1187 (1982). Similarly, with respect to its charge of misclassification of management positions, the petitioners have submitted no information relative to the duties of personnel in such positions at the station. In fact, the person involved here submitted an affidavit stating that she supervises six employees, participates in management meetings, and recruits and hires employees, all clearly establishing her management position. The allegations raised by the petitioners do not support a conclusion that the

---

condone SJR's failure to exercise due diligence in filing the signed copy within a reasonable time after the "B" cut-off date. We admonish future applicants that timeliness will be taken into consideration in similar situations. The decision in this case, however, rests solely on the grounds that the objectors had prior notice of the contents of the amendment and have not demonstrated how they are prejudiced by the filing of the signed document. *See, Arcatel, Inc.*, FCC 83-131, released April 7, 1983.

[5] These allegations are directed against WHBQ-TV. The petitioners also maintain that RKO discriminates in employment at WHBQ(AM). However, no facts have been alleged in support of that claim. Since the only specific information presently before us indicates that that station is in compliance with our EEO policies, we find that further examination of the licensee's employment practices relative to WHBQ(AM) is unwarranted.

[6] Section 73.2080(b) of the Commission's Rules.

[7] The petitioners charge that another Black individual, one of the EEOC complainants, was disciplined and ultimately fired because he expressed an interest in becoming WHBQ-TV's news director.

[8] By Public Notice No. 14932, dated March 10, 1977, the Commission established processing guidelines for evaluation of license renewal applications whereby an in-depth review would be conducted of the EEO program of any station with more than 10 full-time employees whose minority or female employment did not reflect at least 50 percent of their percentage in the available labor force overall and 25 percent in the upper-four job categories. By Public Notice, FCC 80-61, dated February 13, 1980, this processing criteria was extended to stations with 5 to 10 full-time employees. Further, the Commission revised the processing criteria for the upper-four job categories to 50 percent for stations with 11 or more full-time employees.

[9] *Employment Policies and Practices—Florida*, 44 FCC 2d 733, 736 (1974), citing *Nondiscrimination in Employment Practices of Broadcast Licensees*, 23 FCC 2d 430 (1970).

station's employment reports for 1980–1983 "were prepared with the intent to mislead the Commission or provide it with false information." *CBS, Inc.*, 88 FCC 2d 649, 666 (1981). Therefore, we conclude that further inquiry into the licensee's employment profile or its EEO program is not warranted.

5. Petitioners also set out information that allegedly establishes specific discriminatory practices at WHBQ–TV. These allegations, however, are not supported by affidavits from individuals with personal knowledge of the facts. Further, with two exceptions, none of the allegedly injured employees have joined in the pleading or filed complaints with the EEOC. WHBQ–TV denies that is has engaged in discriminatory practices and, where differences exist, points to other, nonracial factors, such as seniority and different duties, to explain the differences noted by the petitioners. WHBQ–TV also notes specific errors in several of the facts alleged. WHBQ–TV's allegations are supported by the necessary affidavits. Thus, we must reject petitioners' unsupported allegations. Complaints were filed by two employees with the EEOC, which subsequently found that there was no probable cause to support the charges of intentional discrimination. Absent a final determination to the contrary by any court or agency or competent jurisdiction, there is no basis for further inquiry into those charges by this agency. *See KSDK, Inc.*, 85 FCC 2d 797 (1981), *recon. denied*, 88 FCC 2d 1443 (1982).

6. The petitioners next allege that WHBQ–TV has engaged in news suppression and distortion, personal attacks, fairness doctrine violations and mislogging as well as implementing programming that is unresponsive to the minority community within its service area. The petitioners generally maintain that the licensee fails to adequately cover news, sporting events, religious, and public affairs programming of importance to its Black viewers in Memphis and Northern Mississippi. It asserts the WHBQ–TV's public affairs programming is scheduled at "inconvenient times" for viewers and is often repeated. It contends that other shows, such as "AM Memphis," are in actuality program-length commercials promoting the interests of its guests, thus raising questions as to mislogging, sponsor identification and potential fraudulent billing. Further, the petitioner asserts that segments on "AM Memphis" are often cut or interrupted for network feeds, raising further questions of logging improprieties. Moreover, by failing to report news that would offend its advertisers, the petitioners charge that the licensee is suppressing news and violating the fairness doctrine by failing to editorialize and to keep its viewers and listeners informed. Further, the petitioners contend that WHBQ–TV never aired a city council meeting on the slaying of a local man, on the basis that it was biased and too controversial. The petitioners urge that the licensee singles out Black officials in predominately Black areas for personal attacks regarding their official activities. Finally, it is argued that the licensee has deliberately and knowingly misrepresented news and misled viewers in order to increase the station's ratings.

7. In opposition, the licensee denies the petitioners' allegations. It maintains that these petitioners, as well as others, have previously charged WHBQ–TV with failing to meet the needs, interests and problems of the Black community, and that those claims were rejected. *New York Times Broadcasting Service, Inc.*, 63 FCC 2d 695, 703 (1977). The licensee states that it has continued to meet its public interest obligations toward minority residents, which were found adequate "to meet the needs and interests of their community, including the Black and minority community." *Id.* at 705. As to its general programming, the licensee has submitted a detailed list of programs it aired during the past license term that address issues of concern to its viewing audience both in Memphis and the Northern Mississippi area. It is argued that the petitioners' subjective disagreement with the licensee's programming decisions does not constitute sufficient factual information to show that such programming could not reasonably have met the needs and interests of its service area. it asserts that the allegations raised with respect to "AM Memphis" are vague and unsupported. The licensee argues that the Commission rule regarding sponsorship identification, 47 CFR § 73.1212, applies when a broadcast station transmits any matter for which money or other consideration is, either directly or indirectly, received. It states that no consideration was received by the station in exchange for appearances of guests on "AM Memphis." Moreover, it argues that those appearances do not constitute program-length commercials in that there is no evidence that they "exhibit a pattern of subordinating programming in the interest of saleability." *Program-Length Commercials*, 44 FCC 2d 985 (1974). The licensee contents that guests appearing on that program are selected because their activities are deemed of interest to WHBQ–TV viewers. In that regard, the licensee has submitted affidavits of station personnel which state that that no payment or consideration of any kind was received for those broadcasts and, therefore, no logging or commercial practice issues are warranted. With respect to the alleged suppression of news, the licensee argues that the petitioners have failed to submit "substantial extrinsic evidence of intentional and specific incidents of news suppression." *KMAP, Inc.*, 72 FCC 2d 241 (1978). It maintains that in the absence of such allegations, the Commission should not "second guess" the station's news judgment.

8. The Commission has made clear that "[t]o successfully challenge a station's past programming, a petitioner must make specific allegations of fact which, if true, would establish that the licensee's *overall* programming *could not reasonably have met* the needs and interests of its community * * *" (citations omitted; emphasis added), *Newhouse Broadcasting Corp.*, 53 FCC 2d 966, 970 (1975), and stressed that "* * * the Commission will not intervene in this sensitive area of programming absent a clear showing that the licensee has ignored a strongly expressed problem of the community or has otherwise unreasonably exercised its wide discretion * * *." (Citations omitted.) *Id.* at 975. See also, *Columbus Broadcasting Coalition* v. *FCC*, 505, F.2d 320, 30 RR 2d 981 (D.C. Cir. 1974); *Patrick Henry (KJAZ)*, 59 FCC 2d 1204, 1212 (1976); and *Lance Communications, Inc.*, 57 FCC 2d 1235, 1243 (1976).

9. The licensee has demonstrated, by affidavit, that it has two regularly scheduled half-hour weekly programs of particular interest to Blacks within its viewing area. The licensee has also submitted a detailed list of topics of interest to Blacks addressed in its general programming during the past license term. The petitioners' subjective disagreement in the area of program selection, in which it is clear that licensees have broad discretion, does not constitute sufficient factual information to show that this licensee's programming "could not reasonably have met the needs and interest" of the station's service area.[10] With regard to the assertions about WHBQ–TV's news coverage, the petitioners have not set forth specific allegations of fact which indicate that the licensee has failed to meet the problems and needs of the community. The choice of what local

[10] Similarly, there is insufficient factual support for the petitioners' claim to the effect that the licensee received any consideration in exchange for the appearance of guests on "AM Memphis." Therefore, we refect the petitioners' derivative allegations with respect to mislogging, sponsorship identification, program-length commercials and potential fraudulent billing.

news is to be covered by a station is a matter committed to the licensee's good faith discretion. *American Broadcast Companies, Inc.*, 83 FCC 2d 302, 305 (1980). Further, a licensee is under no obligation to cover each and every newsworth event which occurs within a station's service area. *American Broadcasting Companies, Inc., supra; KSD/KSD–TV, Inc.*, 61 FCC 2d 504, 510 (1976). Here, the petitioners dispute the exercise of reasonable news judgment only in specific instances of story selection and treatment. However, the Commission will not question a licensee's judgment merely because some party expresses the opinion that a particular event should have been covered or reported differently. Thus, the petitioners' conclusory allegations, when viewed in light of the licensee's response, fail to indicate that further action in warranted.

10. The Commission has often stated the deliberate falsification or distortion of news in inconsistent with the licensee's obligations. *See, e.g., Mrs. J. R. Paul*, 26 FCC 2d 591 (1969). However, because of the first amendment values involved, our policy is to make inquiry in this area only when we are presented with allegations of extrinsic evidence of *delibrate* falsification or distortion. By extrinsic evidence, we generally mean evidence outside the content of the program. *Id.* The petitioners in this case have alleged only that they believe that particular news stories were inaccurate or false. They allege no extrinsic evidence of deliberate falsification or distortion. Thus, even assuming that the news stories in question were inaccurate, which has not been shown, not action is warranted.

11. In the course of broadcast journalism, a licensee is presented with numerous decisions every day as to which event warrant inclusion in news programs. The decision not to include a story is editing, not news suppression. What is actionable is the suppression of news because of conflicts with the licensee's private interests. Here, too, we require extrinsic evidence. *See, e.g., Michael D. Bramble*, 58 FCC 2d 565 (1976). In support of its allegations, the petitioners generally point to news stories that were not broadcast, but should have been, according to the petitioners. Such editorial judgments will not be reviewed by us. The petitioners do submit an affidavit from a former employee of the stations stating that WHBQ–TV's general manager "has been known to come to the [news] department and tell us not to cover certain stories that might offend a client." The affidavit provides no date or times, and no identification of any particular client or news story. Such an allegation is too broad to afford the licensee any meaningful opportunity to respond with precision, and is too vague to warrant our intrusion into a licensee's news judgment in this sensitive area. In addition, the general manager has submitted an affidavit attesting to the independence of the news department, that he has intervened in only two cases where he felt he had to review the decisions of the news department, that he explained the reasons for his actions, that only one of those stories involved a station advertiser, that at no time was that story discussed with the advertiser, and that the story was broadcast, but not repeated in a subsequent newscast. Accordingly, we conclude on the basis of the information before us that no issue is warranted as to the alleged news suppression.

12. Under the Fairness Doctrine, a licensee is expected to afford a reasonable opportunity in its overall programming for the presentation of contrasting viewpoints on controversial issues of public importance. The precedural burdens placed on those alleging Fairness Doctrine violations is high. *See Allen C. Phelps*, 21 FCC 2d 12 (1969) and *American Security Council Education Foundation* v. *FCC*, 607 F.2d 438 (D.C. Cir. 1979). The petitioners have failed to meet their burden of pleading. For example, they have not identified the specific controversial issue of public importance discussed, the basis for their belief that the issue was controversial and of public importance, and the basis for their allegation that the licensee failed to present contrasting points of veiw in its overall programming. Thus, their allegations as to the Fairness Doctrine warrant no action.

13. The personal attack rule provides that if a licensee broadcasts an attack on the honesty, character, integrity or like personal qualities of an identified person or group during the discussion of a controversial issue of public importance, the licensee is obliged to notify the person or group attacked, to provide a transcript or accurate summary of the material broadcast, and to offer a reasonable opportunity to respond. 47 CFR 73.1920. The petitioners have not alleged that the attacks in question were made during the discussion of a controversial issue of public of public importance, nor have they stated the nature of the personal attack allegedly broadcast. Without this basic information, we can find no violation of the personal attack rule.

RKO'S Petitions to Dismiss

14. SJR and Stephen E. Powell (Powell), both filed applications for AM radio stations in Memphis as well as television applications. Section 73.636 of the Commission's Rules proscribes the licensing of a VHF television station and an AM radio station in the same community. Additionally, § 73.3518 of the Rules states that while an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by or on behalf of the same applicant. SJR and Powell are both, therefore, in violation of our rules. RKO has filed a petition to dismiss both television applications. Powell has not requested a waiver of any of our rules. Although SJR has requested a waiver of Section 73.636, it has offered no public interest reasons justifying relief from the strictures of the multiple ownership rule. An applicant seeking a waiver of our rules faces a high hurdle even at the starting gate. *WAIT Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969). When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action. *Rio Grande Family Radio Fellowship, Inc.* v. *FCC*, 132 U.S. App. D.C. 128, 406 F.2d 664 (1968). SJR has not even attempted to provide the Commission with a justification for its violation of the multiple ownership or inconsistent application rule. Section 73.3518 was promulgated because of a concern that processing and conducting evidentiary hearings on applications which cannot all be granted because of the limits of the multiple ownership rules may waste the Commission's resources, and delay service to the public. *Comark Television, Inc.*, 51 RR 2d 738 (1982). We will, therefore, require both Powell and SJR to make an election with respect to which application each will prosecute.

Other Matters

15. No determination has been reached that the tower height and location proposed by River City Broadcasting, Ltd., a limited partnership, would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

16. Greater Memphis Communications, Ltd. (Greater Memphis) is applying for the existing facilities of WHBQ–TV in Memphis. However, the information submitted regarding the overall height above ground (1073') and the aural maximum effective radiated power (60kW) do not agree with the corresponding information on file for WHBQ–TV. Further, Greater Memphis indicates that it will employ 0.5 degree electrical beam tilt. WHBQ–TV does not use electrical beam tilt. Greater Memphis will be required to submit an amendment

explaining the discrepancies in its technical data, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. Applicants for television stations must complete the program service statement called for by items 2 through 5 in Section IV, FCC Form 301. Stephen E. Powell did not complete these questions. Mr. Powell will be required to submit an amendment with the requested information, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. Section 73.636 of the Commission's Rules prohibits the grant of a license for a television broadcast station to any party if such party directly or indirectly owns, operates or controls one or more television broadcast stations and the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations; or, one or more AM broadcast stations and the grant of such license will result in the Grade A contour of the proposed station encompassing the entire community of license of one of the AM broadcast stations. Henry Frank Lockhart, Jr. and Janet P. Hooks, principals of Cozzin Communication of Memphis, Inc. (Cozzin), are each employed at Memphis, Tennessee television stations. Lockhart is News Director and Instructor at WQOX–TV, and Hooks is an account executive at WPTV–TV. H.A. Gilliam, Jr., President of MetroTel of Memphis, Inc. (MetroTel), a general partner of Memphis Telecasters, Ltd. (MLT), is President and controlling shareholder of Gilliam Communications, Inc. (GCI). Lois Stockton, Vice-President and Secretary of MetroTel, currently serves as General Sales Manager of WLOK(AM). Ms. Stockton serves as a Vice-President of GCI. Cozzin and MTL have each represented to the Commission that its principals who have interests that would conflict with the multiple ownership rules will divest themselves of such interests. Accordingly, if Cozzin or MTL is the successful applicant for Channel 13, the construction permit will be appropriately conditioned.

19. In view of the matters already being considered in the KHJ–TV case, note 3, *supra*, and in view of the fact that those matters may have a bearing upon the ultimate resolution of this case, we believe that it would be premature to commence any consideration of either RKO's qualifications or the comparative elements of the applicants' proposals, pending the outcome of the KHJ–TV case. Accordingly, in the interest of managing and ordering our docket of adjudicatory proceedings so as to permit the most efficient and effective utilization of Commission resources, we direct the parties to deal first within any petitions to enlarge issues and/or basic qualifying issues that involve the mutually exclusive applicants (*i.e.*, applicants other than RKO) who seek construction permits to operate on the channel now held by RKO. Upon completion of all appropriate proceedings, including such evidentiary hearings as may be warranted, relating to these questions concerning the mutually exclusive applicants for construction permits, the presiding Administrative Law Judge should so inform the Commission and await guidance from the Commission before setting the date for filing any proposed findings and conclusions or going forward with any further proceedings.

20. In other cases involving multiple license owners, we have assigned all of the proceedings to a single Administrative Law Judge for the purpose of considering the impact of common qualifications questions on each of the owner's stations, *e.g.*, *Intercontinental Radio, Inc.*, 88 FCC 2d 819 (1981). Here, we have already made provision for consideration of the questions concerning RKO's overall qualifications by a single ALJ in the Los Angeles, California, KHJ–TV proceeding. Thus, the procedures used in cases such as *Intercontinental, supra*, are unnecessary for the instant proceeding. Indeed, the *Intercontinental* approach, if applied here, involving substantial numbers of comparative hearings and competing applicants, presided over by a single judge, will inevitably delay resolution of these matters. Instead, we believe that the interests of administrative efficiency will be better served by providing for assignment of a presiding Administrative Law Judge for this proceeding by the Chief Administrative Law Judge in accordance with his regular and ordinary rotational procedures.

21. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

22. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by River City Broadcasting, Ltd., a limited partnership, would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

23. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

24. It is further ordered, That the petitions for leave to amend filed by RKO General, Inc. are granted and the amendments accompanying those motions are accepted for 1.65 purposes.

25. It is further ordered, That the Motion for Leave to Amend filed by South Jersey Radio Inc. is granted and the accompanying amendment is accepted *nunc pro tunc.*

26. It is further ordered, That the petition to deny filed by the group collectively known as "petitioners" against RKO General, Inc. is denied; and the petition filed by NCCB is dismissed as moot.

27. It is further ordered, That the petition to dismiss submitted by RKO against Cozzin Communication of Memphis, Inc. is dismissed as moot.

28. It is further ordered, That the petition to dismiss filed by RKO General, Inc. against South Jersey Radio Inc. and Stephen E. Powell is granted to the extent noted herein and is otherwise denied.

29. It is further ordered, That South Jersey Radio, Inc.'s request for waiver of Section 73.636 of the Commission's Rules is denied.

30. It is further ordered, That, unless South Jersey Radio, Inc. and Stephen E. Powell each files a statement to the contrary, within 20 days after the Order is released, it will be assumed that each applicant wishes to prosecute its television application and its pending AM application will be dismissed.

31. It is further ordered, That Greater Memphis Communications, Ltd. shall submit an amendment explaining the discrepancies in the technical data, to the presiding Administrative Law Judge, within 20 days after this Order is released.

32. It is further ordered, That Stephen E. Powell shall submit an amendment with the responses to Section IV, items 2 through 5, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

33. It is further ordered, That, in the event of a grant of Cozzin Communication of Memphis, Inc.'s application, the construction permit will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Henry Frank Lockhart, Jr. has severed all connection with Station WQOX–TV, Memphis, Tennessee, and Janet P. Hooks has severed all connection with Station WPTY–TV, Memphis, Tennessee.

34. It is further ordered, That, in the event of grant of Memphis Telecasters, Ltd.'s application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that H.A. Gilliam, Jr. and Lois Stockton have each severed all interest in, and connection with Station WLOK(AM), Memphis, Tennessee.

35. It is further ordered, That the Initial Decision in this proceeding shall consider the findings in Docket No. 16679 (KHJ–TV) as to RKO's basic or comparative qualifications.

36. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

37. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 74.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

38. Finally, copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt Requested to the parties to this proceeding by the Secretary of the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–31738 Filed 12–4–84; 8:45 am]

BILLING CODE 6712–01–M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Main Committee Meeting

November 28, 1984.

The next meeting of the Space WARC Advisory Committee is scheduled for Thursday, December 20, 1984. The principle objective of the meeting will be to review and adopt any reports available from the working groups. Details regarding the time, place and agenda of the meeting are provided below:

Chairman: S. E. Doyle (916) 355–6941.
Vice Chairman: R. F. Stowe (703) 442–5022.
Time: 9:30 a.m.–5:00 p.m.
Location: Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, D.C. 20554.

Agenda:

(1) Adoption of Agenda
(2) Review of Minutes
(3) Developments in Consultations
(4) Working Group Reports
(5) Other Business
(6) Adjournment

The Coordinating Group of the Advisory Committee will meet Wednesday evening, December 19th at 7:00 p.m. for a working dinner at the Cosmos Club, 2121 Massachusetts Avenue, NW. Those intending to participate should contact:

S. E. Doyle (916) 355–6941 or
T. S. Tycz (202) 632–3214

Tentative December Space WARC Advisory Committee Working Group Meetings

December 4: *Planning;* Perry Ackerman, Chairman (213) 648–4134, 9:30 a.m.; Hogan & Hartson, 815 Connecticut Avenue, NW., 7th Floor, Washington, D.C

December 7: *Proposal Evaluation Group;* J. Binckes, Chairman (202) 863–6864; 9:30 a.m., Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Room 6030, Washington, D.C.

December 12: *Technical and Economic;* H. Weiss, Chairman (202) 863–6856; 9:30 a.m.; Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, D.C

December 18: *DBS;* John Clark, Chairman (609) 734–2748; 9:30 a.m., Satellite Television Corporation, 955 L'Enfant Plaza, SW., 5th Floor Conference Room, Washington, D.C.

December 19: *International Regulatory;* D. Jansky, Chairman (202) 467–6400; 1:30 p.m.; Jansky Telecommunications, Inc., 1899 L Street, NW., 10th Floor Conference Room, Washington, D.C.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–31740 Filed 12–4–84; 8:45 am]

BILLING CODE 6712–01–M

Meeting of the International Maritime Organization's Subcommittee on Radio Communications

Commission staff participated as members of the U.S. Delegation to the 28th Session of the International Maritime Organization's (IMO's) Subcommittee on Radiocommunications (SCR) which met in England September 17–21, 1984. The SCR's Operational and Technical Ad Hoc Groups also met September 10–14, 1984, and September 24–28, 1984, respectively.

The Commission has previously issued Notices of Inquiry after meetings of the SCR which served to inform the public and solicit comments to aid in the development of U.S. proposals on matters before the SCR. Prior to the 27th Session IMO expanded its meeting period to include Ad Hoc Group meetings in the week preceding and following the SCR meetings. Additionally, the interval between meetings was reduced from 9 months to 6 months. The practical effect of these changes, applicable to the 1984–1985 biennium, has been to increase the duration and frequency of meetings from 1 week every 9 months to 3 weeks every 6 months. This accelerated schedule was adopted to facilitate the implementation of the Future Global Maritime Distress and Safety System (FGMDSS).

The increased frequency of meetings does not allow adequate time for the inquiry process to be effective. Official meeting documents are not available for 2–3 months following the SCR meeting. U.S. proposals are generally required 2 months prior to the next scheduled meeting. We consider the relatively short period (1–2 months) for comments and reply comments to be filed, evaluated and included in the process which synthesizes the U.S. proposals to these meetings to be inadequate. Consequently, during the 1984–1985

biennium, we will use a public notice to inform the public concerning matters before the SCR. An alternate procedure to accommodate the public's views with regard to the development of U.S. proposals is necessary.

We have pointed out previously [1] that the public could be involved directly in the preparatory process which develops U.S. proposals to the SCR by participating in the public meetings of the U.S. Working Group on the Subcommittee on Radiocommunications. Meeting time, date and location are published in the Federal Register 14 days prior to the meeting date. During this period of accelerated meeting schedules we recommend that interested parties attend or submit comments to the meetings of the U.S. Working Group addressing IMO matters related to shipboard radiocommunications.

The matters addressed at the 28th Session included the following subjects.

1. Actions taken by the Maritime Safety Committee.
2. Maritime distress and safety system:
   a. Carriage requirements for the FGMDSS.
   b. Transition to the FGMDSS.
   c. Operator function in the FGMDSS.
   d. Procedures for routing distress communications.
   e. Satellite emergency position indicating radiobeacons.
   f. Homing in the FGMDSS.
   g. Planning of the revision of Chapter IV of the 1974 SOLAS Convention.
   h. Operational procedures for the FGMDSS.
3. Performance standards for shipborne radio equipment.
4. Promulgation of navigational and meteorological warnings.
5. ITU World Administrative Radio Conference matters.
6. CCIR Study Group 8 matters.
7. INMARSAT services.

The SCR activities are directed primarily toward implementing the FGMDSS. The most significant development at the 28th Session was majority support for a 1990–1996 transition period for the FGMDSS. Prior to this session the plan was to complete implementation by the year 1990. The precise arrangements for implementing the FGMDSS will be considered further at the 29th Session which is scheduled for 15–19, April 1985.

Copies of the Report of the 28th Session of the Subcommittee on Radiocommunications to the Maritime Safety Committee may be obtained from the International Transcription Services, Inc., 2100 M Street, NW., Washington, D.C. 20036.

For further information contact Robert McIntyre at (202) 632–7175.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84–31739 Filed 12–4–84; 8:45 am]
BILLING CODE 6712–01–M

[MM Docket Nos. 84–1065, et al; File Nos. BRIT–790801AJ]

RKO General, Inc., et al.; Memorandum Opinion and Order for Construction Permit and Renewal of License

In the matter of applications of:

RKO General, Inc. (WFYR–FM), Chicago Illinois.	MM Docket No. 84–1065; File No. BRH–790801AJ.
For Renewal of License:	
East Lake Communications, Inc., Chicago, Illinois.	MM Docket No. 84–1066; File No. BPH–830510AA.
Johnson Communications, Inc., Chicago, Illinois.	MM Docket No. 84–1067; File No. BPH–830429AD.
Spanish Radio for Chicago, Inc., Chicago, Illinois.	MM Docket No. 84–1068; File No. BPH–830512AC.
Windy City Broadcasting, Ltd., Chicago, Illinois.	MM Docket No. 84–1069; File No. BPH–830512AG.
Systers Broadcasting Corp., Chicago, Illinois.	MM Docket No. 84–1090; File No. BPH–830512AU.
First City Communications, Inc., Chicago, Illinois.	MM Docket No. 84–1091; File No. BPH–830512AX.
Stephen E. Powell, Chicago, Illinois.	MM Docket No. 84–1092; File No. BPH–830512AZ.
Lakefront FM Radio, Chicago, Illinois.	MM Docket No. 84–1093; File No. BPH–830512BH.
Cozzin Communication Corp., Chicago, Illinois.	MM Docket No. 84–1094; File No. BPH–830512BK.
Donnie Simpson Enterprises, Inc., Chicago, Illinois.	MM Docket No. 84–1095; File No. BPH–830512BM.
South Jersey Radio, Inc., Chicago, Illinois.	MM Docket No. 84–1096; File No. BPH–830512CA.
AJCR Radio, a Partnership, Chicago, Illinois.	MM Docket No. 84–1097; File No. BPH–830512CF.

For construction permit

Adopted: November 21, 1984.
Released: November 29, 1984.

1. The Commission has under consideration the license renewal application of RKO General, Inc. (RKO), for Station WFYR–FM, Chicago, Illinois,[1] and the above-captioned mutually exclusive applications to operate on the same channel with identical facilities. In addition, we have before us motions for leave to amend and accompanying amendments by RKO[2] and South Jersey Radio, Inc. (South Jersey),[3] and related pleadings. In view of the matters already being considered in the KHJ–TV case, note 1 *supra*, and in view of the fact that those matters may have a bearing upon the ultimate resolution of this case, we believe that it would be premature to commence any consideration of either RKO's qualifications or the comparative elements of the applicants' proposals, pending the outcome of the KHJ–TV case. Accordingly, in the interest of managing and ordering our docket of adjudicatory proceedings so as to permit the most efficient and effective utilization of Commission resources, we direct the parties to deal first with any petitions to enlarge issues and/or basic qualifying issues that involve the mutually exclusive applicants (i.e., applicants other than RKO) who seek construction permits to operate on the channel(s) now held by RKO. Upon completion of all appropriate proceedings, including such evidentiary hearings as may be warranted, relating to these questions concerning the mutually exclusive applications for construction permits, the presiding Administrative Law Judge should so inform the Commission and await guidance from the Commission before setting the date for filing any proposed findings and conclusions or going forward with any further proceedings. In other cases involving multiple license owners, we have assigned all of the proceedings to a single Administrative Law Judge for the purpose of considering the impact of common qualifications questions on each of the owner's stations, *e.g., Intercontinental Radio, Inc.*, 88 FCC 2d 819 (1981). Here, we have already made provision for consideration of the questions concerning RKO's overall qualifications by a single ALJ in the Los Angeles,

[1] PR Docket No. 84–691, Notice of Inquiry, adopted July 12, 1984, FCC 84–321, 49 FR 30998.

[1] We have designated the license renewal application for RKO's Station KHJ–TV, Los Angeles, California, as the forum for inquiring into the impact of RKO's disqualification as the licensee of Station WNAC–TV, Boston, Massachusetts on its overall basic and comparative qualifications to remain a licensee elsewhere. See our Memorandum Opinion and Order adopted this same date, *RKO General, Inc. (WHBQ–TV)*, —— FCC 2d —— (1984), for a full discussion of this matter.

[2] Since the "B" cut-off date (March 29, 1984), RKO has filed several petitions for leave to amend and accompanying amendments to its renewal application. The purpose of these amendments is to update information previously submitted to the Commission. We have reviewed the motions and amendments and find that in each case good cause exist for accepting the amendments for § 1.65 purpose only.

[3] For the reasons set forth in *RKO General, Inc., (WHBQ–TV), supra* concerning a similar pleading filed by South Jersey, we will grant the motion and accept the amendment.

California, KHJ–TV proceeding. Thus, the procedures used in cases such as *Intercontinental, supra*, are unnecessary for the instant proceeding. Indeed, the *Intercontinental* approach, if applied here, involving substantial numbers of comparative hearings and competing applicants presided over by a single Judge, will inevitably delay resolution of these matters. Instead, we believe that the interests of administrative efficiency will be better served by providing for assignment of a presiding Administrative Law Judge for this proceeding by the Chief Administrative Law Judge in accordance with his regular and ordinary rotational procedures.

2. *The Johnson Communications, Inc. applications.* The principals of Johnson Communications, Inc. have promised to divest themselves of all ownership interest in and connections with standard broadcast station WJPC, Chicago, Illinois, in the event of a grant here. An appropriate condition will be specified.

3. *The Spanish Radio for Chicago, Inc. (Spanish Radio) Application.* On March 30, 1984 (one day after the "B" cut-off date), the applicant filed an amendment to its application certifying that it had served copies of its March 29, 1984 amendment on all parties to this proceeding. Given the ministerial nature of this filing, the amendment will be accepted.

4. The applicant's principals have agreed to divest all other interests in and connections with media of mass communication, including, but not limited to, Station WSUA, Miami, Florida, in the event of a grant here. An appropriate condition will be specified.

5. The Spanish Radio application indicates that a principal, Herbert M. Levin, is a defendant in a pending antitrust action. As we lack at this time sufficient information to assess the impact of the litigation on the applicant's qualification to be a licensee, we will specify no issues or conditions. Spanish Radio should keep the presiding Administrative Law Judge informed of any changes in the status of the suit, though, and he in turn may take such action as he deems appropriate in light of this information.

6. *The Stephen E. Powell and Donnie Simpson Enterprises, Inc. applications.* The Powell and Simpson applications were not complete when filed in that applications for other facilities now operated by RKO were not listed. Given the public nature of this information, no motive to conceal or misrepresent is apparent. Hence, we will specify no issues in ths regard. Both should amend their applications here to reflect all pending proposals, however.

7. *The Lakefront FM Radio application.* The applicant does not propose to use WFYR's existing facilities of 4.3 kW effective radiated power (ERP) at 472 meters above average terrain (HAAT); rather, it proposes to operate at 4.6 kW ERP at 470 meters HAAT. This proposal exceeds the maximum ERP–HAAT combination for Class B stations under § 73.211(b) of the Commission's Rules; consequently, the 53 km distance to the applicant's proposed 1.0 mV/m contour exceeds the maximum allowable distance for class B stations of 52 km. Accordingly, Lakefront will be given 20 days to amend its application to comply with the Commission's Rules.

8. *The AJCR Radio, a Partnership, application.* This applicant has not established its financial qualifications, in that only one of the two necessary certifications has been made. An appropriate issue will therefore be specified.[4]

9. Except as indicated by the issues specified below, the applicants are qualfied to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether AJCR Radio, a Partnership, is financially qualified to construct and operate as proposed.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, That the petitions for leave to amend filed by RKO General, Inc. are granted for the purpose of § 1.65 of the Commission's Rules.

12. It is further ordered, That the motion for leave to amend filed by South Jersey Radio, Inc. is granted and the accompanying amendment is accepted *nunc pro tunc.*

13. It is further ordered, That in the event of a grant of the Johnson Communications, Inc. application, the construction permit shall be conditioned as follows: Prior to the commencement of the operation of the station authorized herein, permittee shall certify to the Commission that the following have divested themselves of, and severed all connections with, standard broadcast station WJPC, Chicago, Illinois: John H. Johnson, Eunice W. Johnson, Charles Mootry, June Rhinehart.

14. It is further ordered, That in the event of a grant of the Spanish Radio for Chicago, Inc. application, the construction permit shall be conditioned as follows: Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that the following have divested all other interests in and connections with media of mass communications: Julio Rumbaut, Norma Martinez de Arizala Levin, Felix Sanchez, and Herbert M. Levin.

15. It is further ordered, That Stephen E. Powell and Donnie Simpson Enterprises, Inc. shall file the amendments specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

16. It is further ordered, That Lakefront FM Radio shall amend its proposal to comply with § 73.211(b) of the Commission's Rules within 20 days of the release of this Order.

17. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

18. It is further ordered, That the Initial Decision in this proceeding shall consider the findings in Docket No. 16679 (KHJ–TV) as to RKO's basic or comparative qualifications.

19. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written

[4] In the event that the applicant has misunderstood Section III of the application form to provide alternative rather than complementary certifications, it may properly resolve the issue by submitting an amended Section III with both certifications marked "yes."

appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

20. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 74.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

21. Finally, copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt Requested to the parties to this proceeding by the Secretary of the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-31753 Filed 12-4-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review by OMB

November 29, 1984.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for extension without revision

1. Report title: Registration as a Transfer Agent and for Amendment to Registration

Agency form number: TA-1

OMB Docket number 7100-0009

Frequency: On occasion

Reporters: State member banks, bank holding companies, and nondeposit trust company subsidiaries of bank holding companies.

Small businesses are not affected.

General Description of report:

Respondent's obligation to reply is mandatory [12 CFR 208.8(f)(2)]; and is not given confidential treatment.

Uniform form for registration as a transfer agent, and for amendments to the registration form to update certain items when changes occur. Fulfills the statutory registration requirements for entities acting as transfer agent, plus enables certain basic information changes to be brought to the attention of the supervisory agency.

2. Report title: Regulation F Reports

Agency form number F-1, F-1B, F-2, F-3, F-4, F-5, F-6 F-7, F-8, F-9,F-10, F-11, F-11A, F-12, F-13, and F-20

OMB Docket number: 7100-0091

Frequency: Quarterly, annually, or as appropriate

Reporters: State member banks

Small businesses are affected.

General description of report: This information collection is mandatory [15 U.S.C. 78(1)] and is not given confidential treatment.

These reports satisfy the disclosure requirements specified in Federal Reserve Regulation F. They provide: (1) Information on the financial condition of State member banks; (2) disclosure of special events of changes in the information filed previously; (3) information pertaining to proxy solicitations; and (4) financial statements.

Board of Governors of the Federal Reserve System, November 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31694 Filed 12-4-84; 8:45 am]

BILLING CODE 6210-01-M

LNB Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *LNB Bancorp, Inc.*, Lorain, Ohio; to engage *de novo* in securities brokerage activities by providing securities brokerage services, and related securities credit activities pursuant to the Board's Regulation T, and incidental activities such as offering custodial services, individual retirement accounts, and cash management services. The securities brokerage services are to be restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwriting, dealing or investment advice or research services.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Marine Corporation*, Springfield, Illinois; to engage *de novo* in mortgage lending activities. This activity will be conducted in the northern and central portions of Illinois except for Chicago and the surrounding area.

Board of Governors of the Federal Reserve System, November 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31695 Filed 12-4-84; 8:45 am]

BILLING CODE 6210-01-M

SNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 26, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *SNB Corp.*, Greenville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Second National Bank, Greenville, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *American Security Bancshares, Inc.*, Ville Platte, Louisiana; to become a bank holding company by acquiring 67 percent of the voting shares of American Security Bank of Ville Platte, Ville Platte, Louisiana.

2. *M & F Financial Corp.*, Donalsonville, Georgia; to become a bank holding company by acquiring 80.65 percent of the voting shares of Merchants & Farmers Bank, Donalsonville, Georgia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hartland Bancorp, Inc.*, Oconomowoc, Wisconsin; to become a bank holding company by acquiring 80 percent or more of the voting shares of Hartland National Bank, Hartland, Wisconsin.

2. *University Bancorp, Inc.*, University Park, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Heritage Bank of University Park, University Park, Illinois.

3. *US Bancorp*, Carmel, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Union State bank, Carmel, Indiana.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First South Bancorp, Inc.*, Scotts Hill, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Scotts Hill, Tennessee.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *O & F Cattle Company*, Oshkosh, Nebraska; to acquire 20 percent of the voting shares of First Nebraska Bancs, Inc., Sidney, Nebraska, thereby indirectly acquiring First National Bank of Sidney, Sidney, Nebraska.

2. *Union Bankshares, Ltd.*, Denver, Colorado; to become a bank holding company by acquiring 98 percent of the voting shares of Union Bank and Trust, Denver, Colorado. Comments on this application must be received not later than December 24, 1984.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *B-Banc Corp*, Odessa, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Andrews Financial Corporation, Odessa, Texas and its wholly owned subsidiary, Andrews Bancshares, Inc., Odessa, Texas, thereby indirectly acquiring Commercial State Bank, Andrews, and First National Bank of Hamilton, Hamilton, both located in Texas; and De Leon Bancshares, Inc., Odessa (Farmers and Merchants Bank, De Leon); Dublin Bancshares, Inc., Odessa (The Dublin National Bank, Dublin); Glen Rose Bancshares, Inc., Odessa (First National Bank in Glen Rose, Glen Rose); and Ranger Bancshares, Inc., Odessa (First State Bank); all located in Texas.

Board of Governors of the Federal Reserve System, November 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31696 Filed 12-4-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 156; 1-U-RI-496]

Dutch Island Light Station, Jamestown, RI Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated July 3, 1984, the property, consisting of 0.25 acres of unimproved land and a perpetual easement from the protected cove on the easterly side of the island to the light tower known as Portion, Dutch Island Light Station, Jamestown, Rhode Island, was transferred to the State of Rhode Island, Department of Environmental Management.

2. The above described property was conveyed for the purpose of wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: November 26, 1984.

Earl E. Jones,

Acting Commissioner, Federal Property Resources Service.

[FR Doc. 84-31682 Filed 12-4-84; 8:45 am]

BILLING CODE 6820-96-M

Office of Information Resources Management

Federal Telecommunications Standards

AGENCY: Office of Information Resources Management, General Services Administration.

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunication Standard (FED-STD). FED-STD 1015, "Telecommunications: Analog to Digital Conversion of Voice by 2,400 Bit per Second Linear Predictive Coding" is approved by the General Services Administration and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, Office of Technology and Standards, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The

General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of telecommunication standards for NCS interoperability and the computer-communication interface.

2. On October 25, 1983, a notice was published in the **Federal Register** (48 FR 49383) that a proposed draft Federal Telecommunications Standard entitled "Telecommunications: Analog to Digital Conversion of Voice by 2,400 Bit per Second Linear Predictive Coding" was being proposed for Federal use. The proposed draft standard was changed as a result of comments received.

3. The written comments submitted by interested parties and other material relevant to this proposed standard were reviewed by NCS. The resulting detailed justification document, including an analysis of the written comments received, was presented by NCS for technical and policy approval by the Director, Office of Science and Technology Policy (OSTP), Executive Office of the President. The justification package as approved by OSTP was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305–2010.

4. The approved standard contains four sections. Sections 1 and 2 provide information regarding description, objectives, application, definitions and referenced documents. Sections 3 and 4 provide the technical requirements of the standard.

5. A copy of the standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Specifications Unit (WFSIS), Room 6039, 7th and D Streets, SW, Washington, DC 20407; telephone (202) 472–2205.

Dated: November 1, 1984.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 84–31685 Filed 12–4–84; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Social Security Disability Program Demonstration Project; Vocational Rehabilitation Project; Abbott Laboratories Employing Beneficiaries Disabled by Intestinal Disease

SUMMARY: The Secretary of Health and Human Services announces the following Social Security disability program demonstration projects to be conducted under the authority of section 505(a) of Pub. L. 96–265. Abbott Laboratories, which will conduct the project in association with the Social Security Administration, will employ and evaluate the work of certain Social Security disability insurance beneficiaries disabled by severe intestinal disease. Certain statutory provisions of the Social Security Act and the Rehabilitation Act of 1973 (and implementing regulations) that would apply to these hirees must be waived to conduct the project. This project will test whether recent technological advances in treating severe intestinal disease can enable persons suffering from this condition to return to work. We are publishing this notice to comply with 20 CFR 404.1599 which requires publication of a notice in the **Federal Register** before starting certain demonstration projects.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Cohen, Social Security Administration, Office of Disability, 3–A–7 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (301) 597–6041.

Background Information

This is the first of several planned demonstration projects for testing alternative ways to return Social Security disability insurance beneficiaries to work. These demonstration projects are mandated by section 505(a) of Pub. L. 96–265 (the Social Security Disability Amendments of 1980) which directs the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects designed to: (1) Encourage disabled beneficiaries to return to work and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of title II of the Social Security Act. Section 505(a) of Pub. L. 96–265 authorizes the waiver of benefit requirements of titles II and XVIII of the Social Security Act as is necessary to conduct these projects and, also, requires that any project's scale of operations be sufficient to yield results of general applicability. Some of the ideas Congress wants explored are:

(1) Alternative methods of treating work by disability insurance beneficiaries, including the reduction of benefits based on earnings;

(2) Lengthening the number of months beneficiaries can work during the trial work period;

(3) Altering the 24-month waiting period for Medicare;

(4) Altering program administration;

(5) Earlier referral of beneficiaries for rehabilitation; and

(6) Involving employers in and stimulating new forms of rehabilitation.

Project Objectives

This demonstration is to determine the employability of beneficiaries with severe intestinal disorders (such as chronic Crohn's disease) who require total parenteral (intravenous) nutrition (TPN). It tests the hypothesis that TPN patients, who ordinarily do not work, can and will work if:

(1) They receive TPN services at home rather than at a hospital;

(2) Their medical costs are covered by a private plan while they are employed; and

(3) They are eligible for Social Security disability benefits and Medicare coverage *immediately* if their disability forces them to stop working.

Description of the Demonstration Project

Abbott Laboratories proposes to hire 10 to 20 Social Security disability beneficiaries who are permanently disabled by severe intestinal impairment and who are required to receive total parenteral (or intravenous) nutrition (TPN) services. These individuals could be fed entirely for the rest of their lives by an intravenous feeding system and, ordinarily, are unable to work. This project is to test how successfully home TPN services, which enable a person to receive intravenous feedings at night while asleep, will permit a person to lead a normal life and work regularly.

Abbott will hire these persons for job positions that require them to provide home nutrition services to other persons requiring TPN services. Abbott intends to provide a going wage and free TPN services which include mixing and delivery of the TPN solution, 24-hour phone watch, nursing follow-up and on-going education. The hirees' other medical needs during employment will be covered under Abbott's employee group health plan.

The technological developments in TPN treatment that now permit more activity by TPN patients is a comparatively recent development. Previously, TPN patients required frequent and extensive hospitalization for TPN and only recently have patients been able to care for themselves at home. Under home treatment, a permanent catheter is inserted in a major blood vessel and the patient is taught how to prepare the nutrient solutions and infuse them through the catheter with an electronic pump. The "American Society for Parenteral and Enteral Nutrition" has estimated an increase of TPN home patients from 2,000–5,000 in 1982 to about 15,000–20,000 in 1990. In theory, this progress should permit a large proportion of these patients to go to work.

However, few home care TPN patients have returned to work. The major obstacle appears to be that TPN patients cannot afford to go even a month without financial support considering the fact that TPN services alone may cost $6,000 a month. Under the current law and regulations, Social Security disability beneficiaries who return to work eventually lose their disability benefits and Medicare coverage (which is usually 80 percent of TPN costs). Also, if they cannot continue work and re-apply for benefits, they often must serve a 5-month waiting period for disability benefits and a 24-month waiting period for Medicare coverage.

Consequently, Abbott Laboratories' willingness to undertake this project is conditioned on waiving the pertinent law and regulations to permit:

(1) The hirees to regain disability benefits without serving a 5-month waiting period if they cannot continue working and are found disabled;

(2) The hirees to regain medicare coverage without serving a subsequent 24-month waiting period if they cannot continue working and are found disabled; and

(3) Abbott Laboratories to be exempted from the requirement to provide extended disability protection under Abbott's employee benefit plan to these hirees if they should have to leave employment.

Statutory and Regulatory Provisions To Be Waived

The statutory and regulatory provisions which are being waived for the sole purpose of conducting this demonstration project, and which are being waived for the duration of the project, are:

1. The following statutory and regulatory provisions under title II of the Social Security Act that require a person to serve a 5-month waiting period before receiving disability benefits when his or her disability reentitlement follows a 60-month period of non-entitlement to benefits:

Section 223(a)(1)(ii) of the Social Security Act; 20 CFR 404.315(d) and 404.320(b)(4);

2. The following statutory and regulatory provisions requiring a 24-month waiting period before reentitlement to health care coverage under Part A and Part B of the Health Insurance Program of title XVIII of the Social Security Act:

Sections 226(f) and 1811(2) of the Social Security Act, 42 U.S.C. 426(f) and 1395c(2) 42 CFR 408.12(b); and

3. Pursuant to section 503(c) of the Rehabilitation Act of 1973 and 41 CFR 60–741.3(b)(1), the requirement of section 503 of that Act that Abbott Laboratories, as a recipient of Federal contract funds, provide long-term disability protection, otherwise provided to Abbott employees under its employee benefit plan, to the hirees under this demonstration project even if they cease work.

Authority: Sec. 505(a) of the Social Security Disability Amendments of 1980, Pub. L. 96–265, 94 Stat. 473 (1980), 42 U.S.C. 1310 note and 401(k); 20 CFR 404.1599.

(Catalogue of Federal Domestic Assistance Program No. 13.812—Assistance Payment—Research)

Dated: November 30, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84–31725 Filed 12–4–84; 8:45 am]

BILLING CODE 4150–11–M

Centers for Disease Control

Open Meeting; Self-Contained Breathing Apparatus "Use Test" Performance Requirements Project

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: December 14, 1984.

Time: 9:00 a.m.–4:00 p.m.

Place: Room S–120, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: To discuss the research study protocol for determining the feasibility of conducting the proposed Self-Contained Breathing Apparatus "Use Tests" with human subjects. Viewpoints and suggestions from industry, organized labor, academia, other Government agencies, and the public are invited.

Additional information may be obtained from: Donald F. Knowles, Jr., Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, telephones: FTS: 291–4803, Commercial: 304/291–4803.

Dated: November 28, 1984.

Gary R. Noble, M.D.,

Acting Director, Centers for Disease Control.

[FR Doc. 84–31693 Filed 12–4–84; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 77P–0403 et al.]

Availability of Approved Variances for Laser Light Shows

Correction

In FR Doc. 84–25033, beginning on page 37175, in the issue of Friday, September 21, 1984, make the following corrections:

1. On page 37176 in the table, in the entry Docket No. 83V–0385, in the second and third columns, "Parrott" should read "Parrot".

2. And in column three, "Gaberet" should read "Cabaret".

3. In the entry Docket No. 84V–0190, in column two, "Norcrost" should read "Norcross".

BILLING CODE 1505–01–M

[Docket No. 77F–0160]

Cosden Oil & Chemical Co.; Withdrawal of Petition for Food Additive

Correction

In FR Doc. 84–28400 appearing on page 43508 in the issue of Monday, October 29, 1984, make the following correction:

On page 43508, first column, in the "FOR FURTHER INFORMATION CONTACT" paragraph, fourth line, "202–427–5690" should have read "202–472–5690".

BILLING CODE 1505–01–M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 we are proposing to establish a new

system of records: Person-Leval Medicaid Data System, HHS/HCFA/ORD No. 09–07–0033.

We have provided background information about the proposed system in the "Supplementary Information" section below. HCFA invites public comments by January 4, 1985, with respect to routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB) on November 29, 1984. The new system of records, including routine uses, will become effective January 28, 1985, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, G–20, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: David Baugh, Acting Chief, Program Studies Branch, Office of Research and Demonstrations, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301) 597–1428.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records containing data collected under authority of Section 1902 (a) (6) of the Social Security Act (42 U.S.C. 1396 (a) (6)).

This section provides that "A State plan for medical assistance must provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports." We plan to create a records system using Medicaid data which would greatly improve HCFA's ability to conduct program evaluation and strengthen program management.

The Medicaid program pays for a large portion of personal health care expenses for the poor and aged. In 1982, Medicaid spent about $34 billion for health care expenses. These expenditures represented 11 percent of all expenditures for health services and supplies and 26 percent of all public expenditures (Federal and State and local).

Some information has become available from the Medicaid program on the characteristics of persons covered and the use and costs of program benefits. No national data base, however, exists containing individual unit records. The present data bases consist of hard copy reports of aggregate data, which are derived from the Medicaid Management Information Systems (MMIS), submitted by the States on the HCFA 2082 report. The information and analyses that are possible from such aggregate reports are severely limited. Only a person-level, unit record, data base can provide the necessary flexibility for policy and program analysis for the Medicaid program.

Recently a new data source on a person-level basis (commonly referred to as Tape-to-Tape) has become available from State MMISs. The Tape-to-Tape data were gathered under a special project, begun in 1981 and sponsored by the Office Research and Demonstrations, to evaluate the feasibility of a person-level Medicaid data system for program analysis and evaluation. The Tape-to-Tape data base consists of the unit record data files on Medicaid enrollment, providers, and claims for hospital, physician, nursing home, prescription drugs, and other Medicaid covered services. The system is now collecting data for 1980 through 1982 for California, Georgia, Michigan, New York, and Tennessee. Current plans call for the inclusion of two additional years of data, 1983 and 1984, for these States.

The Tape-to-Tape system involves no new data collection; it merely brings together centrally, data that are already collected and maintained by States. An important aspect of the Tape-to-Tape system is that it requires development of uniform definitions of services, providers, eligibles, etec., so that the Medicaid program experience may be analyzed across States. This data base, because of its detail and completeness, will allow analyses which were not possible using the aggregate data. Although individuals cannot at present be identified in the Tape-to-Tape system (because a systems notice is not yet in effect), the system does permit a range of analyses which would assist in analyzing relevant program issues such as:

(1) Policy issues and proposed legislation on such issues as competition, federalization, capitation, programs to delay institutionalization, etc.;

(2) Longitudinal trends in use of services by a cohort of enrollees; and

(3) The distribution of expenditures among enrollees.

The Privacy Act of 1974 allows us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes which are compatible with the purpose for which we collected the data. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicaid program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: November 29, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

09–70–0033

SYSTEM NAME:

Person-Level Medicaid Data System HHS/HCFA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Research, ORD, HCFA 6325 Security Boulevard, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are enrolled in the Medicaid program under either Federal or State provisions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data from 5 State Medicaid agencies (California, Georgia, Michigan, New York, and Tennessee) showing the demographic characteristics of the enrolled population, claims submitted for covered medical services, and provider characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1902(a)(6) of the Social Security Act (42 U.S.C. 1396(a)(6)).

PURPOSE:

To study Medicaid use and expenditures in order to increase HCFA's understanding of the Medicaid and Medicare programs and to improve HCFA's ability to conduct program evaluation, strengthen program management, evaluate policy alternatives, conduct and evaluate demonstration projects, and advise States in the area of Medicaid financing. The proposed system will be used for purposes of research and statistics only.

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made:

(1) To a Congressional office from the records of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(2) To a contractor when the Department of Health and Human Services contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor only for purposes of research and statistics. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(3) To a State Medicaid agency of a State participating in the Person-Level Medicaid Data System project. Disclosure may be made to a State only of data on eligibles in that State and only for purposes of research and statistics.

(4) In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provide such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic tape and computer disk.

RETRIEVABILITY:

Enrollment records are retrieved by Medicaid and Medicare identification numbers. Provider records are retrieved by Medicaid and Medicare provider identification numbers. Claims records contain both enrollee and provider identification numbers.

SAFEGUARDS:

For computerized records, safeguards established in accordance with guidelines in the DHHS *ADP Systems Manual*, Part 6, "ADP Systems Security," (e.g., security codes, use of passwords) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers as long as needed for program research. Records will be disposed 3 years after research is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager at the address shown above and give: (1) Name of system, (2) Medicaid identification number, (3) person's name, (maiden name, if applicable), (4) social security number (provision of social security number is voluntary), (5) address, (6) date of birth, and (7) sex. To ascertain whether the individual had utilization, give date of service and type of Medicaid service (i.e., outpatient, physician, dental, prescription, long-term care, home health, inpatient acute care, etc.).

RECORDS ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents.

CONTESTING RECORDS PROCEDURES:

Contact the System Manager named above, and reasonably identify the record and specify the information being contested. State the reason for contesting the records procedure with supporting justification, (e.g., why it is inaccurate, irrelevant, incomplete or not current).

RECORD SOURCE CATEGORIES:

Medicaid and Medicare enrollment, claims, and provider records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–31713 Filed 12–4–84; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Garrison Diversion Unit Commission; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Commission business meeting:

Name: Garrison Diversion Unit Commission.

Date of Meeting: December 19, 1984, to be reconvened if necessary December 20, 1984.

Time of Meeting: 8:00 a.m.–5:00 p.m. each day, if necessary.

Place of Meeting: Room 7000A&B, Department of the Interior, 18th and C Streets, NW, Washington, D.C.

Contact Person: James C. Wiley, Staff Director, (202) 453–3900.

Purpose: The Commission will discuss, amend and approve or disapprove their Final Report making recommendations to the Secretary and to Congress on the contemporary water needs of North Dakota. This meeting will only be held if the Commission is unable to approve a Final Report at its business meeting December 14–15, 1984, in Minot, North Dakota.

Transcripts: A transcript of the meeting will be available for public review at the Commission offices: Room 603, 300 7th Street, SW, Washington, D.C., between 8:30 a.m. and 4:00 p.m., Monday-Friday. For copies of the transcript, please contact James C. Wiley, (202) 453–3900.

Dated: November 30, 1984.

Jed Christensen,

Acting Federal Representative.

[FR Doc. 84–31800 Filed 12–5–84; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Indian Affairs

[INT FES 84–43]

Availability of the Final Environmental Impact Statement for the Proposed Lease of 500 Acres for Construction of an 80,000-Seat Football Stadium on the Gila River Indian Community Lands in Maricopa and Pinal Counties, AZ

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of a final environmental impact statement (FEIS).

SUMMARY: This Notice advises the public that the Final Environmental Impact Statement for the proposed construction of an 80,000-seat football stadium on the Gila River Indian Reservation land in Maricopa and Pinal Counties, Arizona is available for public review.

FOR FURTHER INFORMATION CONTACT: C. Randall Morrison, Acting Environmental Protection Specialist, Phoenix Area Office, Bureau of Indian Affairs, 3030 North Central Avenue, Phoenix, Arizona 85012. Telephone (602) 241–2275..

Individuals wishing copies of this final environmental impact statement should immediately contact the above individual.

Copies have been sent to all agencies and individuals who participated in the scoping process and all others who have already requested copies. The number of available copies is limited.

Copies of the final environmental impact statement are available for inspection at the following locations:

Bureau of Indian Affairs, Environmental Services Staff, Room 4560, Washington, D.C. 20245. Telephone: (202) 343–6574

Bureau of Indian Affairs, Environmental Quality Services, Phoenix, Arizona 86515. Telephone: (602) 241–2275

U.S. Department of the Interior, Office of the Secretary, Southwest Region, Room 14444, 450 Golden Gate Avenue, San Francisco, California 94102. Telephone: (415) 556–8200

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs (BIA), Department of the Interior (DOI), has prepared a final environmental impact statement for a proposal to lease 500 acres of tribal land to Arizona Pro Football, an entity seeking to construct an 80,000-seat sports stadium for the purpose of attracting an expansion franchise of the National Football League.

The proposed action is primarily for leasing the 500 acres of tribal land and building the 80,000-seat sports stadium thereon with ancillary facilities such as walkways and parking areas on the Gila River Indian Community lands.

Primary impacts of the proposed project would be on the area's economics, land use, Gila River Indian Community socioculture, localized visual resources, noise and air quality. The socioeconomic impacts would be largely positive, resulting in new job opportunities and additional tax and royalty revenues for state, local and Gila River Indian Community governments. Mitigation measures will be taken to minimize adverse impacts. Minor impacts may be expected on terrestrial ecology, and air quality.

The alternatives considered in the FEIS were: No action, alternative site locations, and the proposed action.

Bruce Blanchard,

Director, Office of Environmental Project Review.

November 28, 1984.

[FR Doc. 84–31699 Filed 12–4–84; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Utah; Initial Classification Decision for State Indemnity Selection

1. The following described lands (U–53964) have been examined and found suitable for transfer to the State of Utah.

They are hereby classified for indemnity selection pursuant to Sections 2275 and 2276 of the Revised Statutes as amended (43 U.S.C. Secs. 851, 852) and the regulations thereunder (43 CFR 2621):

Tract No. 1—Carbon County—Moab District Office

T. 13 S., R. 12 E., SLM, Utah
- Secs. 3, 4, 5, 6, all (coal only);
- Sec. 8, E½ (coal only);
- Secs. 9, 10, 11, 14, 15, all (coal only);
- Sec. 17, NE¼, S½ (coal only);
- Sec. 20, NW¼;
- Sec. 20, NE¼ (coal only);
- Sec. 21, NE¼, N½NW¼;
- Sec. 22, N½, N½S½;
- Sec. 23, W½NW¼.

Containing (coal only)..... 5,649.20
Surface and minerals..... 960.00

Grand total..... 6,609.20

Tract No. 2—Carbon County—Moab District Office

T. 13 S., R. 14 E., SLM, Utah
- Sec. 20, NE¼NE¼, S½NE¼, SE¼ (minerals only);
- Sec. 21, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼, W½SE¼;
- Sec. 28, NE¼NE¼, N½NW¼, S½N½, S½;
- Sec. 29, SW¼NE¼;
- Sec. 29, N½NE¼, SE¼NE¼ (minerals only);
- Sec. 33, N½NE¼NE¼, W½SW¼N E¼NE¼, NW¼NE¼, N½NW¼.

Containing (minerals only)..... 400
Surface and Minerals..... 1,185

Grand Total..... 1,585

Tract No. 3—Grand County—Moab District Office

T. 26 S., R. 25 E., SLM, Utah
- Sec. 28, W½W½.

Containing 160 acres.

Due to the disparity of values the following described lands have been dropped by the State from further consideration:

(Carbon County—Moab District Office)

T. 12 S., R. 11 E., SLM, Utah
- Sec. 32, all (coal only);
- Secs. 33, 34, all (minerals only);
- Sec. 35, SE¼SW¼;
- Sec. 35, N½SW¼, SW¼SW¼, SE¼ (minerals only).

T. 13 S., R. 11 E., SLM, Utah
- Sec. 1, all (coal only);
- Sec. 3, lots 1, 2, 3, 6 (minerals only);
- Sec. 3, lot 4 (coal only);
- Sec. 4, all (coal only);
- Sec. 9, E½SW¼, S½SE¼;
- Sec. 9, NW¼NE¼, N½NW¼, SW¼NW¼ (coal only);
- Sec. 10, E½E½, SW¼SW¼ (coal only);
- Secs. 11, 12, all (coal only);
- Sec. 13, W½ (coal only);
- Sec. 13, E½;
- Sec. 14, N½ (coal only);
- Sec. 15, E½NE¼ (coal only).

T. 12 S., R. 12 E., SLM, Utah
- Sec. 31, lot 4, NW¼NE¼, S½NE¼, SE¼NW¼, SE¼ (minerals only);

T. 13 S., R. 12 E., SLM, Utah
- Sec. 18, SW¼NE¼.

(Carbon County—Moab District Office)

T. 13 S., R. 13 E., SLM, Utah
- Sec. 13, E½, E½W½, SW¼NW¼, W½SW¼;
- Sec. 14, N½SE¼, SE¼SE¼;
- Sec. 14, SW¼SE¼ (minerals only);
- Sec. 23, lots 1–3;
- Sec. 23, lot 4 (surface, phosphate, nitrogen, potassium, oil and gas, asphaltic materials only);
- Sec. 24, NW¼NE¼;
- Sec. 24, E½E½, SW¼NE¼, E½NW¼, S½SW¼, NW¼SE¼ (minerals only);
- Sec. 24, lot 3, NE¼SW¼ (coal only);
- Sec 24, lots 1, 2, SW¼SE¼ (surface, phosphate, nitrogen, potassium, oil and gas, asphaltic materials only);
- Sec. 25, SW¼NE¼, N½NW¼, SE¼NW¼, E½SW¼, SE¼ (minerals only);
- Sec. 25, W½SW¼ (coal only);
- Sec. 25, N½NE¼, SE¼NE¼, SW¼NW¼ (surface, coal, phosphate, nitrogen, potassium, oil and gas, asphaltic materials only);
- Sec. 26, SW¼NE¼, SE¼NW¼, SW¼SE¼;
- Sec. 26, N½N½, SW¼NW¼, SW¼, N½SE¼, SE¼SE¼ (minerals only);
- Sec. 26, SE¼NE¼ (surface, coal, phosphate, nitrogen, potassium, oil and gas, asphaltic materials only);
- Sec. 35, NW¼NE¼;
- Sec. 35, SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼ (minerals only);
- Sec. 35, E½NE¼ (coal only);

T. 13 S., R. 14 E., SLM, Utah
- Sec. 1, lot 1–4, S½S½;
- Sec. 3, lots 1, 2, S½S½;
- Sec. 4, SW¼SE¼;
- Sec. 4, lot 4 (minerals only);
- Sec. 5, lot 4, SW¼SW¼;
- Sec. 5, lots 1–3, SE¼SW¼, S½SE¼ (minerals only);
- Sec. 6, lots, 1, 2, 4, SE¼SE¼;
- Sec. 7, NE¼NE¼, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼;
- Sec. 7, SE¼NE¼, SE¼SW¼, NE¼SE¼, S½SE¼ (minerals only);
- Sec. 8, NW¼NW¼, S½N½, S½ (minerals only);
- Sec. 9, N½, NE¼SW¼, NW¼SE¼;
- Sec. 9, NW¼SW¼, SE¼SW¼, NE¼SE¼, S½SE¼ (minerals only);
- Sec. 9, SW¼SW¼ (coal only);
- Sec. 10, N½, SE¼;
- Sec. 10, SW¼ (minerals only);
- Sec. 11, NE¼NE¼, N½NW¼, S½N½, S½;
- Sec. 11, NW¼NE¼ (coal only);
- Sec. 12, N½, N½S½, S½SW¼, SW¼SE¼;
- Sec. 13, SW¼NE¼, S½NW¼, SW¼;

- Sec. 14, S½NE¼, E½SW¼, SW¼SW¼, SE¼;
- Sec. 14, NW¼NW¼ (coal only);
- Sec. 15, N½SW¼, SW¼SW¼, NW¼SE¼, SE¼SE¼;
- Sec. 15, W½NE¼, SE¼NE¼, NW¼ (minerals only);
- Sec. 15, NE¼NE¼, SE¼SW¼ (coal only);
- Sec. 17, SW¼NE¼, NE¼NW¼, S½SW¼, NE¼SE¼;
- Sec. 17, N½NE¼, SE¼NE¼, S½SE¼ (minerals only);
- Sec. 18, lot 4, W½NE¼, NE¼SW¼, SE¼;
- Sec. 18, lot 2, E½NW¼ (minerals only);
- Sec. 18, lot 3, SE¼SW¼ (surface, oil and gas, potassium, phosphate, nitrogen, asphaltic materials only);
- Sec. 19, lots 1–4, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼;
- Sec. 19, E½NE¼, SE¼SW¼, S½SE¼ (minerals only);
- Sec. 19, NE¼SE¼ (surface, oil and gas, potassium, phosphate, nitrogen and asphaltic materials only);
- Sec. 20, NW¼, E½SW¼, SW¼SW¼ (minerals only);
- Sec. 20, NW¼NE¼ (coal only);
- Sec. 20, NW¼SW¼ (surface, oil and gas, potassium, phosphate, nitrogen, asphaltic materials only);
- Sec. 21, E½NE¼, NE¼SE¼;
- Sec. 21, NW¼NE¼, NW¼NW¼, SE¼SE¼ (coal only);
- Sec. 22, all;
- Sec. 23, NE¼, W½, NW¼SE¼;
- Sec. 24, NW¼NW¼;
- Sec. 26, W½, NW¼SE¼;
- Sec. 27, N½NE¼, NW¼, E½SW¼;
- Sec. 27, S½NE¼, SE¼ (minerals only);
- Sec. 27, W½SW¼ (coal only);
- Sec. 28, NW¼NE¼ (coal only);
- Sec. 29, SE¼NW¼, NE¼SW¼, SE¼;
- Sec. 29, SW¼NW¼, NW¼SW¼, SE¼SW¼ (minerals only);
- Sec. 29, NE¼NW¼ (surface, oil and gas, potassium, phosphate, nitrogen, asphaltic materials only);
- Sec. 30, lot 1, N½NE¼, NE¼NW¼, S½SE¼ (minerals only);
- Sec. 30, lots 2, 3, 4, SE¼SW¼ (surface, oil and gas, potassium, phosphate, nitrogen, asphaltic materials only);
- Sec. 31, lots 2, 3, 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
- Sec. 33, E½SW¼NE¼NE¼, SE¼NE¼ NE¼, S½N½, NE¼SW¼, N½SE¼, SE¼SE¼;
- Sec. 33, W½SW¼ (minerals only);
- Sec. 34, W½NW¼, N½SW¼;
- Sec. 34, NE¼, E½NW¼, N½SE¼ (minerals only);

T. 14 S., R. 14 E., SLM, Utah
- Sec. 4, lot 4, SW¼NW¼, W½SW¼ (minerals only);
- Sec. 5, lots 1–4;
- Sec. 5, E½SW¼, E½SE¼, SW¼SE¼ (minerals only);
- Sec. 8, N½NE¼, SE¼NE¼ (minerals only);
- Sec. 9, NW¼NE¼, N½NW¼, S½N½, S½ (minerals only).

The following described lands, included in the proposed classification have been found to be within a producing coal lease and are not open to selection per regulation 43 CFR 2621.0–3(c).

T. 13 S., R. 12 E., SLM, Utah
- Sec. 7, S½SE¼;
- Sec. 7, lots 1–4, NE¼, E½W½, N½SE¼ (coal only);
- Sec. 8, W½;
- Sec. 17, NW¼;
- Sec. 18, lot 1, N½NE¼, SE¼NE¼, NE¼NW¼.

The purpose of the indemnity selection is to allow the State of Utah to secure the benefits they are entitled to under the provisions of Section 6 of the Utah Statehood Act of July 16, 1894 (28 Stat. 109).

If and when selections are approved and certified to the State, the selected lands will be subject to all valid existing rights. Furthermore, any lands encumbered with a mineral lease or permit are subject to a reservation to the United States of all oil and gas, and coal, with the right of the lessee to utilize as much of the surface as if necessary for proper mining operations, until the lease or permit is terminated. Should an entire mineral lease or permit be encompassed by the area of the selection, the State of Utah will succeed to the position of the United States.

Any existing grazing use authorized by license or permit from the Bureau of Land Management will be terminated if the lands are transferred out of Federal ownership. The State shall honor all leases, permits, contracts, and terms and conditions of user agreements on United States' lands.

For a period of 30 days after receipt of this decision and in accordance with 43 CFR 2450.5, this initial decision shall be subject to the exercise of the supervisory authority by the Secretary of the Interior for the purposes of administrative review. If the Secretary exercises his supervisory authority, you will be so notified. If he does not exercise his authority, this decision will become the final order to the Secretary.

All comments, objections or protest to this decision should be sent to the Secretary of the Interior, LLM, W–320, Washington, D.C. 20204.

Dated: November 2, 1984.

Roland G. Robison,

State Director.

[FR Doc. 84–31704 Filed 12–4–84; 8:45 am]

BILLING CODE 4310–DQ–M

[Groups 862 and 854]

California; Filing of Plat of Survey

November 28, 1984.

1. These plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, San Benito County and Mendocino County

T. 18 S., R. 11 E.
T. 21 N., R. 15 W.

2. These plats, representing (1) the dependent resurvey of a portion of the subdivisional lines and Mineral Survey Nos. 29 and 504, in Township 18 South, Range 11 East, Mount Diablo Meridian, and (2) the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 14, Township 21 North, Range 15 West, Mount Diablo Meridian, under Group Nos. 862 and 854, California, were accepted September 28, 1984.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84–31686 Filed 12–4–84; 8:45 am]

BILLING CODE 4310–40–M

[Groups 842 and 680]

California; Filing of Plat of Survey

November 28, 1984.

1. These plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Calaveras County and Mendocino County

T. 5 N., R. 12 E.
T. 22 N., R. 11 W.

2. These plats, representing the (1) dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, a portion of cancelled Mineral Survey No. 5987, the survey of the subdivision of sections 8, 12, 13, and the metes-and-bounds survey of the Jesus Maria road, Township 5 North, Range 12 East, Mount Diablo Meridian, and (2) dependent resurvey of portions of the west boundary and subdivisional lines and the survey of the subdivision of sections 18, 19, and 20, Township 22 North, Range 11 West, Mount Diablo Meridian, under Group Nos. 842 and 680, California, were

accepted September 12 and September 13, 1984, respectively.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

These plats were executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-31687 Filed 12-4-84; 8:45 am]

BILLING CODE 4310-40-M

[C-13-84, C-22-84]

California; Filing of Plat of Survey

November 27, 1984.

1. These supplemental plats of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernadino Meridian, Imperial Cuntry

T. 15 S., R. 12 E

2. These supplemental plats showing a subdivision of Tract 206, located in section 13, Township 15 South, Range 12 East, San Bernardino Meridian, and (2) the SW¼ of section 29, T. 3 N., R. 13 E., Mount Diablo Meridian, was accepted October 2, 1984, and October 9, 1984, respectively.

3. The supplemental plats will immediately become the basic record for describing the land for all authorized purposes. The supplemental plats have been placed in the open files and are available to the public for information only.

4. These supplemental plats were executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-31686 Filed 12-4-84; 8:45 am]

BILLING CODE 4310-40-M

[Group 419]

California; Filing of Plat of Survey

November 19, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Imperial County

T. 13 S., R. 19 E.

2. This plat, representing the corrective dependent resurvey of a portion of the subdivisional lines and the survey of Tract No. 38, T. 13 S., R. 19 E., San Bernardino Meridian, under Group No. 419, California, was accepted September 25, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-31688 Filed 12-4-84; 8:45 am]

BILLING CODE 4310-40-M

[OR 37246]

Oregon; Realty Action; Recreation and Public Purposes Classification and Sale of Public Land in Lane County

The following described public land has been examined and determined to be suitable for sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), and is hereby so classified:

Willamette Meridian, Oregon

T. 18 S., R. 2 W.,
Section 10: Lot 4;
Section 14: Lot 2.
Containing 0.96 acre.

The land will be sold to the oregon State Parks and Recreation Division for management along with adjoining State lands as part of the Willamette River Greenway. The land has been found valuable for public purposes and the sale will serve the important public objective of providing additional land for the State's Greenway program. The land is two small, isolated tracts that are difficult and uneconomical to manage and are not essential to any BLM program. The land is not of national significance and the sale will have no significant impact on the environment. The action is consistent with BLM land use plans and with State and local planning and zoning.

Detailed information concerning the sale, including the environmental assessment/land report, is available for review at the Bureau of Land Management, Eugene District Office, 1255 Pearl Street, Eugene, Oregon.

Petition for classification OR 37246 is approved as to the land described above.

Name of Petitioner: Oregon State Parks and Recreation Division, by its Parks Land Supervisor.

Classification of this land segregates it from all forms of appropriation including location under the mining laws, except as to applications under the mineral leasing laws and applications under the Recreation and Public Purposes Act.

The land will be sold subject to:

1. A reservation to the United States for rights-of-way for ditches and canals under the Act of August 20, 1890 (26 Stat. 391; 43 U.S.C. 945);

2. A reservation to the United States of all minerals; and

3. The reversionary requirements of 43 CFR 2741.8 for:

a. Title transfers by the patentee,

b. Uses other than for which the land was conveyed,

c. Non use,

d. Failure to follow approved development/management plan, and

e. Civil rights violations.

For a period of 30 days from the date of this notice, interested parties may submit comments to the Eugene District Manager, P. O. Box 10226, Eugene, Oregon 97440. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: November 27, 1984.

Melvin D. Clausen,

District Manager.

[FR Doc. 84-31689 Filed 12-4-84; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document; Shell Offshore, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 4703 and 5171, Blocks 681 and 682, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hyrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on November 27, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set in revised § 250.34 of Title 30 of the CFR.

Dated: November 27, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31701 Filed 12-4-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

SUMMARY:

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with investigation No. 332-135 for the annual Synthetic Organic Chemicals report, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of Proposal

(1) Number of forms submitted: one
(2) Title of form: Synthetic Organic Chemicals, United States Production and Sales
(3) Type of request: reinstatement
(4) Frequency of use: annual
(5) Description of respondents: Firms manufacturing synthetic organic chemicals in the United States
(6) Estimated number of respondents: 800
(7) Estimated total number of hours to complete the forms: 8,800
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Mildred C. Higgs, telephone (202) 523-0472. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Francine Picoult, Desk Office for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7231. Copies of any comments should be provided to E. William Fry (U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436).

By order of the Commission.

Issued: November 29, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31775 Filed 12-4-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-209]

Certain Aluminum Frame, Fabric-Covered Luggage and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief and a memorandum in support thereof were filed with the U.S. International Trade Commission on October 26, 1984, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Skyway Luggage Company, 10 Wall Street, Seattle, Washington 98121. The complaint alleges unfair methods of competition and unfair acts in the importation of certain aluminum frame, fabric-covered luggage and components thereof into the United States, or in their sale, by reason of alleged (1) infringement of U.S. Trademark Registration No. 1,202,039 for NYTWEED; (2) infringement of complainant's common law trademark; (3) false representation of source; (4) false designation of geographic origin; and (5) passing off. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and temporary cease and desist orders. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Patricia Ray, Esq., or Scott Fields, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-0440 or 202-724-1056, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 26, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an

investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain aluminum frame, fabric-covered luggage and components thereof into the United States, or in their sale, by reason of alleged (1) infringement of U.S. Trademark Registration No. 1,202,039; (2) infringement of a common law trademark; (3) false designation of geographic origin; and (4) passing off, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) Pursuant to § 210.24(e) of the Commission's Rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on October 26, 1984, shall be forwarded to the presiding officer for an initial determination pursuant to § 210.53(b) of the Rules.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Skyway Luggage Company, 10 Wall Street, Seattle, Washington 98121.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Baltimore Luggage Company, 1919 Annapolis Road, Baltimore, Maryland 21230

Nan Zong Leather Products Co., Ltd., 6th Floor, Tai Feng Building, 71 Nanking East Road, Section 2, Taipei, Taiwan

Meei San Enterprise Company, First Floor, Po Tsou Building, 99 Ning Po West, Taipei, Taiwan.

(c) Patricia Ray, Esq., and Scott Fields,* Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 123, Washington, DC 20436, shall be the Commission investigation attorneys, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. Pursuant to section 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding officer shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's Rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471.

By order of the Commission.

Issued November 28, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–31777 Filed 12–4–84; 8:45 am]

BILLING CODE 7020–02–M

*Pending admission to the bar

[332–193]

Conditions of Competition Between the U.S. and Major Foreign Filbert Industries; Extension of Comment Period

AGENCY: U.S. International Trade Commission.

ACTION: Extension of time for submitting written statements.

SUMMARY: Notice is hereby given that the date for submitting written statements has been extended from December 31, 1984 to February 1, 1985.

Notice of the investigation was published in the **Federal Register** of September 12, 1984 (49 FR 35875).

By order of the Commission.

Issued: November 28, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–31774 Filed 12–4–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–147 (Final)]

Cut-to-Length Carbon Steel Plate From West Germany

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On November 20, 1984, the Commission received a letter from petitioner in the subject investigation which stated "By this letter, petitioner Gilmore Steel Corporation hereby withdraws its petition in this investigation pursuant to 19 U.S.C. 1673c(a) and 19 CFR 353.41(a), and requests the termination of this investigation as being in the public interest." Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)) the subject investigation is terminated.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–253–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.40 of the Commission's rule (19 CFR 207.40).

By order of the Commission.

Issued: November 29, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–31773 Filed 12–4–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–210]

Certain Motor Graders With Adjustable Control Consoles and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 26, 1984, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Catepillar Tractor Co., 100 N.E. Adams Street, Peoria, Illinois 61629. The complaint alleges unfair methods of competition and unfair acts in the importation into the United States of certain motor graders with adjustable control consoles and components thereof, or in their sale, by reason of alleged infringement of claims 1 and 14 of U.S. Letters Patent Re. 31,646. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Denise T. DiPersio, Esq., or Stephen L. Sulzer, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0113 or 202–523–0419, respectively.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 26, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain motor graders with adjustable control consoles and components thereof, or in their sale, by reason of alleged infringement of claims 1 and 14 of U.S. Letters Patent Re. 31,646, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Caterpillar Tractor Co., 100 N.E. Adams Street, Peoria, Illinois 61629.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Komatsu Ltd, 3–6 Akasaka 2-Chome, Minato-Ku, Tokyo 107, Japan

Komatsu America Corp., 1900 Powell Street, P.O. Box 8830, Oakland, California 94662.

(c) Denise T. DiPersio, Esq., and Stephen L. Sulzer, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, D.C. 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

By order of the Commission.

Issued: November 28, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–31776 Filed 12–4–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–185]

Certain Rotary Wheel Printing Systems; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Tokyo Juki Industrial Co., Ltd. and Juki Industries of America (Juki).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 30, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: November 30, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–31771 Filed 12–4–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-193]

Certain Rowing Machines and Components Thereof; Decision Not To Review Initial Determination Terminating Respondents American Sports, Inc. and Shinn Fu Company of America, Inc.

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determinations terminating respondents American Sports, Inc. and Shinn Fu Company of America, Inc., on the basis of settlement agreements.

SUMMARY: On October 29, 1984, the presiding officer issued initial determinations (IDs) (Orders Nos. 8 and 9) terminating respondents American Sports, Inc. and Shinn Fu Company of America, Inc., on the basis of settlement agreements between complainant Precor, Inc. and each of the respondents. The Commission has determined not to review those IDs.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1627.

SUPPLEMENTARY INFORMATION: The Commission received a petition for review of the IDs from the Commission investigative attorney but determined that review was not warranted. No comments were received from Government agencies or from the public.

Authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.51 of the Commission's rules (19 CFR 210.51).

By order of the Commission.

Issued: November 29, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31772 Filed 12-4-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Tops Equipment & Tools Co., Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 30, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no latter than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: November 30, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31770 Filed 12-4-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19; Sub-No. 95X]

The Baltimore and Ohio Railroad Co.; Abandonment in Miami County, OH; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.83-mile line of railroad between stations 1311+98 and 1268+70, in Miami County, OH.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective January 4, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by December 17, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 26, 1984 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Peter J. Shudtz, Chessie System Railroads, P.O. Box 6419, Cleveland, OH 44101

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 23, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-31680 Filed 12-4-84; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC on January 7 and 8, 1985, beginning at 8:30 a.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the November 1984 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: November 30, 1984.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 84-31728 Filed 12-4-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

[Civil Division Directive No. 163–84]

Delegation of Authority of the Assistant Attorney General of the Civil Division to Make Certifications, and to Withdraw Certifications Pursuant to Pub. L. 98–525

1. By virtue of the authority vested in me by Part 15 of Title 28 of the Code of Federal Regulations, particularly § 15.3(c), it is hereby ordered as follows:

2. The authority delegated to the Assistant Attorney General in charge of the Civil Division to make the certifications provided for in section 1631(b) of the Department of Defense Authorization Act of 1985, with respect to civil actions for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States and to certify that any suit against a contractor is within the provisions of section 1631(a) of the Department of Defense Authorization Act of 1985, is hereby delegated to any Deputy Assistant Attorney General of the Civil Division and to any Director of the Torts Branch, any one of whom may individually exercise the authority in any given instance. This delegation also includes the authority to withdraw any certification as set forth in § 15.3(c) of Title 28 of the Code of Federal Regulations.

Dated: November 5, 1984.

Richard K. Willard,

Acting Assistant Attorney General.

[FR Doc. 84-31754 Filed 12-4-84; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Notice of Meeting Change

November 29, 1984.

Changes have been made to the agenda for December 10–12, 1984 meeting published November 28, 1984 (49 FR 46513–46514). The revised agenda includes changes in meeting times and speakers. The revised tentative agenda is as follows:

Monday, December 10, 1094

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

Plenary

9:00 a.m.–9:30 a.m.
- Introductory Remarks

9:30 a.m.–11:30 p.m.
- Guest Speakers:

Philip E. Culbertson, Associate Administrator for Space Station, National Aeronautics and Space Administration
Topic: Space Station
Shelby G. Tilford, Director, Earth Science and Applications Division, National Aeronautics and Space Administration
Topic: Future Satellite Plans (Applications to Meteorology and Oceanography)

11:30 a.m.–12:30 p.m.
- NACOA Panel Structure

12:30 p.m.–1:30 p.m.—Lunch

Military Sealift Command, 4228 Wisconsin Avenue, NW., Washington, DC

Panel Meetings

2:00 p.m.–5:30 p.m.
- Shipbuilding

Chairman: Don Walsh
Closed Session
Discussion by Department of Defense on program plans and policies regarding national sealift and shipbuilding

2001 Wisconsin Avenue, NW. Page Building #1, Rooms 416 & B–100 Washington, DC

1:30 p.m.–5:00 p.m.

Panel Meetings

1:30 p.m.–5:00 p.m.
- Living Resources

Chairman: Charles Black, Room 416
Topic: North Pacific Fur Seal Treaty
Speakers: None

3:00 p.m.–5:00 p.m.
- Exclusive Economic Zone

Chairman: Lee Gerhard, Room B–100.
Topic: Work Session
Speakers:
Athelstan Spilhaus
William G. Gordon, Assistant Administrator for Fisheries National Oceanic and Atmospheric Administration

5:30 p.m.—Recess

Tuesday, December 11, 1984

2001 Wisconsin Avenue, NW., Page Building 1, Room 416 & B–100, Washington, DC

8:30 a.m.–12:00 Noon

Plenary

8:30 a.m.–10:30 a.m.
- Presentation by Panel Chairman, North Pacific Fur Seal Treaty

10:30 a.m.–12:00 Noon
- Panel Reports
- Other Business

12:00 Noon–1:00 p.m.—Lunch

1:00 p.m.–4:30 p.m.

Panel Meetings

1:00 p.m.–3:00 p.m.
- Atmospheric Affairs

Chairman: S. Fred Singer, Room B–100
Topic: Acid Rain
Speakers:
Derek Winstanley, Program Coordinator Office, National Acid Precipitation Assessment Program
Greg Wetstone, Staff, Subcommittee on Health and the Environment, House Committee on Energy and Commerce

1:00 p.m.–4:30 p.m.
- Federal/State Relations

Chairman: John Norton Moore, Room 416
Topic: Coastal Zone Management Consistency
Speakers: TBA

4:30 p.m.—Adjourn Regular Meeting

Wednesday, December 12, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

9:00 a.m.–12:30 p.m.

Panel Meeting

- Shipbuilding

Chairman: Don Walsh
Topic: Work Session
Speakers: None

12:30 p.m.—Adjourn

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235.

Dated: November 29, 1984.

Steven N. Anastasion,

Executive Director.

[FR Doc. 84-31676 Filed 12-4-84; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-91]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB reviewer.

DATE: Comments must be received in writing by December 17, 1984. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546. Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: Space Flight Participants (NASA Teacher in Space Project).
Type of Request: Announcement of Opportunity.
Frequency of Report: As Required.
Type of Respondents: Elementary and secondary teachers.
Annual Reporting Hours: 400,000.

Abstract-Need/Users: The Announcement of Opportunity specifies the eligibility requirements for selection of a teacher in NASA's Space Flight Participation Program.

Richard L. Daniels,
Deputy Director, Logistics Management and Information Programs Division.

[FR Doc. 84-31671 Filed 12-4-84; 8:45 am]
BILLING CODE 7510-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting and Recordkeeping Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before December 31, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies

Copies of the form, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-3785.

Information Collections Submitted for Review:

Title: Application Forms for Participation in 8(a) Program
Form no. SBA 1010 A-E&I
Frequency: On occasion
Description of Respondents: Socially and economically disadvantaged individuals under Pub. L. 95-507, to apply for 8(a) program in areas of professional and non professional services, mfg., construction, regular dealers and concession business.
Annual Responses: 2000
Annual Burden Hours: 40000
Type of Request: Extension

Dated: November 30, 1984.

Elizabeth Zaic,
Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 84-31732 Filed 12-4-84; 8:45 am]
BILLING CODE 8025-01-M

[(Designation of Disaster Loan Area No. 6210) Amdt. 2]

California; Designation of Disaster Loan Area

The above numbered designation of Disaster Loan Area (49 FR 43142) and Amendment # 1 (49 FR 45516) are amended by adding the following Counties within the State of California, as a result of Pub. L. 98-473, El Nino related ocean conditions in the Pacific Ocean beginning December 1982: Contra Costa, Orange, and Santa Barbara. All other information remains the same, i.e., applications for loans for economic injury may be filed until the close of business on July 22, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: November 28, 1984.

James C. Sanders,
Administrator.

[FR Doc. 84-31734 Filed 12-4-84; 8:45 am]
BILLING CODE 8025-01-M

North Carolina District Advisory Council; Public Meeting

The Charlotte District Office of the U.S. Small Business Administration, located in the geographical area of North Carolina, will hold a District Advisory Council Meeting at 9:00 a.m. on Friday, December 14, 1984, at the Charlotte SBA Office, Northwestern Bank Building, Suite 700, 230 South Tryon Street, Charlotte NC 28202, to discuss such matters as presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, Northwestern Bank Building, Suite 700, 230 South Tryon Street, Charlotte, NC 28202, telephone number area code (704) 371-6561.

Jean M. Nowak,
Director, Office of Advisory Councils.
November 29, 1984.

[FR Doc. 84-31733 Filed 12-4-84; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 923]

Extension of the Restrictions on the Use of United States Passports for Travel to, in, or Through Libya

On December 11, 1981, pursuant to the authority of Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), the use of the United States passport for travel to, in, or through Libya was restricted. These restrictions have been subsequently extended on November 29, 1982 (Public Notice published December 6, 1982), and on November 29, 1983 (Public Notice published December 13, 1983). These actions were required by the unsettled relations between the United States and the Government of Libya and the threats of hostile acts against Americans in Libya.

The government of Libya still maintains a decidely anti-American stance and continues to emphasize their willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area ". . . where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless extended sooner or revoked by Public Notice.

Dated: November 29, 1984.

George P. Shultz,
Secretary of State.

[FR Doc. 84-31757 Filed 12-4-84; 8:45 am]
BILLING CODE 4710-08-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 37-84]

Notes; Series G-1990

Washington, November 29, 1984.

The Secretary announced on November 28, 1984, that the interest rate on the notes designated Series G-1990, described in Department Circular—Public Debt Series—No. 37-84 dated November 16, 1984, will be 11 percent. Interest on the notes will be payable at the rate of 11 percent per annum.

Carole Jones Dineen,
Fiscal Assistant Secretary.

[FR Doc. 84-31723 Filed 12-4-84; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series No. 36-84]

Notes; Series H-1990

Washington, November 29, 1984.

The Secretary announced on November 28, 1984, that the interest rate on the notes designated Series H-1990, described in Department Circular—Public Debt Series—No. 37-84 dated November 16, 1984, will be 11 percent. Interest on the notes will be payable at the rate of 11 percent per annum.

Carole Jones Dineen,
Fiscal Assistant Secretary.

[FR Doc. 84-31724 Filed 12-4-84; 8:45 am]
BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 235
Wednesday, December 5, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Home Loan Bank Board	1
International Trade Commission	2
Postal Rate Commission	3

1

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Monday, December 10, 1984, at 9:30 a.m.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

MATTERS TO BE CONSIDERED:

Earnings-Based Accounts
Limitations on Direct Investment by Insured Institutions
Holding Company Indebtedness

J.J. Finn,
Secretary.

No. 104, November 30, 1984.

[FR Doc. 84-31788 Filed 11-30-84; 4:12 pm]

BILLING CODE 6720-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-57]

TIME AND DATE: 2:00 p.m., Tuesday, December 11, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 701–TA–224 [Preliminary] (Swine and Pork Products from Canada)—briefing and vote.
6. Investigation 751–TA–10 (Frozen Concentrated Orange Juice from Brazil)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[FR Doc. 84-31778 Filed 11-30-84; 4:30 am]

BILLING CODE 7020-02-M

3

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 6, 1984.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. MC84–1, Phase II, Mail Classification Schedule, 1984, Special Fourth Class Mail.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, Telephone (202) 254–3880.

Charles L. Clapp,
Secretary

[FR Doc. 84-31814 Filed 12-3-84; 10:58 am]

BILLING CODE 7715-01-M

Reader Aids

Federal Register
Vol. 49, No. 235
Wednesday, December 5, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189–47380.....3
47381–47472.....4
47473–47586.....5

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations
5285.....47473

7 CFR

907.....47475
966.....47189
991.....47190

Proposed Rules:
Ch. IX.....47271
52.....47402
966.....47495
1126.....47495
1150.....47496

9 CFR

301.....47475
325.....47475
381.....47475

Proposed Rules:
92.....47402

10 CFR

110.....47191
430.....47479

12 CFR

Proposed Rules:
205.....47405
226.....47406
500.....47410
561.....47499
563.....47499
563b.....47271, 47410

13 CFR

101.....47381

Proposed Rules:
121.....47412, 47414

14 CFR

39.....47381, 47382
95.....47204

Proposed Rules:
25.....47358
71.....47415

15 CFR

Proposed Rules:
941.....47415

16 CFR

305.....47479

17 CFR

270.....47208
274.....47208

Proposed Rules:
240.....47274

18 CFR

1302.....47383

20 CFR

632.....47384

21 CFR

81.....47226, 47229
175.....47480
184.....47384
193.....47481
436.....47483
442.....47483
510.....47387
546.....47486
558.....47387
561.....47481
1020.....47387

Proposed Rules:
58.....47504
166.....47418
182.....47505
184.....47505
450.....47505

24 CFR

234.....47388

26 CFR

Proposed Rules:
41.....47274
48.....47274

30 CFR

Proposed Rules:
920.....47419

33 CFR

100.....47230
117.....47231

36 CFR

Proposed Rules:
261.....47505
293.....47505
294.....47505

37 CFR

304.....47487

39 CFR

10.....47389
111.....47231, 47232, 47389

Proposed Rules:
10.....47275

40 CFR

52.....47488, 47490
180.....47491, 47493
260.....47390
270.....47390

271.....47391
Proposed Rules:
65.....47507
154.....47508
180.....47420, 47508, 47509
261.....47510

43 CFR

Proposed Rules:
5400.....47516

44 CFR

67.....47240

45 CFR

801.....47392

46 CFR

500.....47393
501.....47393
502.....47393
503.....47393
504.....47393
505.....47393

47 CFR

61.....47265
73.....47395
Proposed Rules:
Ch. I.....47275
83.....47516

48 CFR

Proposed Rules:
Ch. 5.....47516
1501.....47516
1502.....47516
1503.....47516
1505.....47516
1506.....47516
1513.....47516
1514.....47516
1515.....47516
1517.....47516
1527.....47516
1533.....47516
1536.....47516
1552.....47516

49 CFR

395.....47494
571.....47396
1057.....47268
Proposed Rules:
571.....47276
1063.....47277

50 CFR

17.....47397
655.....47269
Proposed Rules:
Ch. II.....47421
80.....47420
652.....47278, 47422

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 16, 1984.

Last List November 16, 1984.

OL
9
SS
35
E
5
084
MI

OL
9

S S
35

E
5

984

MI



Just Released

Code of Federal Regulations

Revised as of October 1, 1984

Quantity	Volume	Price	Amount
_____	Title 43—Public Lands: Interior (Part 4000–End) (Stock No. 022–003–95426–1)	$8.00	$_____
	Title 45—Public Welfare		
_____	Parts 1–199 (Stock No. 022–003–95428–7)	9.50	_____
_____	Parts 500–1199 (Stock No. 022–003–95430–9)	13.00	_____
		Total Order	**$**_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA* MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

12-6-84
Vol. 49 No. 236

federal register

Thursday
December 6, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S.MAIL

Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

375

SECOND CLASS NEWSPAPER

12-6-84
Vol. 49 No. 236
Pages 47587-47818

federal register

Thursday
December 6, 1984

Selected Subjects

Anchorage Grounds
Coast Guard
Arms and Munitions
State Department
Aviation Safety
Federal Aviation Administration
Biologics
Food and Drug Administration
Communications Equipment
Federal Communications Commission
Crop Insurance
Federal Crop Insurance Corporation
Navigation (Water)
Navy Department
Nuclear Materials
Energy Department
Organization and Functions (Government Agencies)
Federal Communications Commission
Radio
Federal Communications Commission
Radio Broadcasting
Federal Communications Commission
Securities
Securities and Exchange Commission
Television Broadcasting
Federal Communications Commission

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Contents

Federal Register
Vol. 49, No. 236
Thursday, December 6, 1984

The President
PROCLAMATIONS
47587 National Pearl Harbor Remembrance Day, 1984 (Proc. 5286)

Executive Agencies

Agriculture Department
See also Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Forest Service.
NOTICES
Committees; establishment, renewals, terminations, etc.:
47643 Agribusiness Promotion Council

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
47643 Trifly eradication in Hawaii

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
47663 New York Great Atlantic & Pacific Tea Co., Inc., et al.

Civil Aeronautics Board
NOTICES
47644 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
47645 Ports of Call Travel Club, Inc.
47645 Transamerica Airlines, Inc.
47646 Unicorn Air, Ltd.
47645 International cargo rate flexibility policy; establishment
47645 Standard foreign fare level; establishment

Coast Guard
RULES
Anchorage regulations:
47602 Utah

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.

Defense Department
See Engineers Corps; Navy Department.

Education Department
NOTICES
Grants; availability, etc.:
47650 Independent living centers program

Energy Department
See also Federal Energy Regulatory Commission.
RULES
47714 Nuclear waste repositories, site recommendations, guidelines
NOTICES
Environmental statements; availability, etc.:
47801 Nuclear waste repository sites, Louisiana, et al.

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
47648 Slidell, LA, and Pearlington, MS; flood control, interim report

Equal Employment Opportunity Commission
NOTICES
47677 Meetings; Sunshine Act

Federal Aviation Administration
RULES
Airworthiness standards:
47594 Rotorcraft, normal and transport category; flight characteristics, systems and equipment; correction
PROPOSED RULES
47621 Jet routes
NOTICES
Advisory circulars; availability, etc.:
47673 Aircraft engines; installation, removal, or change of identification data and identification plates

Federal Communications Commission
RULES
Organization, functions, and authority delegations:
47604 General Counsel Office; interception of phone conversations
Radio and television broadcasting:
47608 Remote control operation of AM, FM, and TV broadcast transmitters
Radio stations; table of assignments:
47604 Alaska
47605 Arkansas
47605 California
47606 Michigan
47606 Minnesota
47607 Texas
PROPOSED RULES
Communications equipment:
47628 Industrial, scientific, and medical equipment; equipment authorization program, etc.
Radio services, special:
47641 Maritime services; portable ship station licenses and frequency assignments on Great Lakes; eligibility
47625 Maritime services; VHF port operations and bridge-to-bridge channels
Television broadcasting:
47625 Horizontal and vertical blanking intervals; waveform standards
NOTICES
Meetings:
47655 Reduced Orbital Spacings Advisory Committee

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
47590 Peppers
47589 Texas citrus; interim
PROPOSED RULES
Crop insurance; various commodities:
47617 Popcorn
47612 Tobacco

Federal Deposit Insurance Corporation
NOTICES
47677, 47678 Meetings; Sunshine Act (3 documents)

Federal Election Commission
NOTICES
47678 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
47651 Beulah Associates
47651 Birch Creek Hydro, Inc.
47651 Cities Service Oil & Gas Corp. et al.
47652 Gulf State Utilities Co.
47655 Hibbing, MN, et al.
47653 Iowa Southern Utilities Co.
47653 Juntura Associates
47653 Northwest Central Pipeline Corp.
47653 Pacific Power & Light Co.
47654 Portland General Electric Co.
47654 Public Service Co. of Indiana, Inc.
47654 Southern Company Services, Inc.
47654 Springfield Associates c3
47654 Union Electric Co.
47655 Woods Creek, Inc.

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
47675 Bergen and Hudson Counties, NJ

Federal Mine Safety and Health Review Commission
NOTICES
47678 Meetings; Sunshine Act

Federal Trade Commission
NOTICES
47678 Meetings; Sunshine Act

Fiscal Service
NOTICES
47675 U.S. Treasury book-entry securities held at Federal Reserve Banks; fee schedule; correction

Food and Drug Administration
PROPOSED RULES
Biological products:
47622 Cell lines used for manufacturing biological products, and additional standards for viral vaccines
NOTICES
Committees; establishment, renewals, terminations, etc.:
47655 Tea Experts Board; rechartering
Meetings:
47655 Advisory committees, panels, etc.; Ophthalmic Devices Panel cancellation

Forest Service
NOTICES
Environmental statements; availability, etc.:
47644 Medicine Bow National Forest, WY, et al.

Health and Human Services Department
See Food and Drug Administration; Social Security Administration.

Housing and Urban Development Department
NOTICES
Mortgage and loan insurance programs:
47657 Maximum mortgage limits for high-cost areas
Organization, function, and authority delegations:
47656 Assistant Secretary for Housing-Federal Housing Commissioner; housing development grant program
47772 Prototype cost determinations
Slum clearance and urban renewal:
47656 Rehabilitation loan program; interest rates

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
47659 Wintu Indians of Central Valley

Interior Department
See also Indian Affairs Bureau; Land Management Bureau; Minerals Management Service.
NOTICES
47658 Agency information collection activities under OMB review (2 documents)

International Trade Administration
NOTICES
Scientific articles; duty free entry:
47646 Environmental Protection Agency

International Trade Commission
NOTICES
Import investigations:
47663 Apparatus for installing electrical lines and components

Interstate Commerce Commission
NOTICES
Rail carriers:
47663 Alaska Railroad Corp.; appointment to board of directors, exemption
Railroad services abandonment:
47663 Burlington Northern Railroad Co.

Justice Department
See Antitrust Division.

Labor Department
See Occupational Safety and Health Administration.

Land Management Bureau
PROPOSED RULES
Mineral leases; single payor designation; advance notice [Editorial Note: For a document on this subject see entry under Minerals Management Service]
NOTICES
Classification of public lands:
47660 Minnesota
Conveyance of public lands:
47660 Arizona
Environmental statements; availability, etc.:
47659 Colorado-Ute Electric Association, Inc.
Exchange of public lands for private land:
47661 California
47661 New Mexico
47659 Oregon
Meetings:
47660 Casper District Advisory Council; cancellation
Research natural areas:
47660 California
Withdrawal and reservation of lands:
47662 Oregon (2 documents)

Management and Budget Office
NOTICES
47804 Budget rescissions and deferrals

Minerals Management Service
PROPOSED RULES
47624 Mineral leases; single payor designation; advance notice

National Bureau of Standards
NOTICES
Information processing standards, Federal:
47647 FIPS Fortran and FIPS Minimal Basic; proposed revision; correction

National Oceanic and Atmospheric Administration
RULES
Financial aid to fisheries:
47611 Fishermen's Protection Act Procedures; claims fee provisions; correction
NOTICES
Fishery conservation and management:
47647 Foreign fishing permit applications

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
47602 USS Vincennes
NOTICES
47649 Decommissioned defueled naval submarine reactor plants; land burial disposal

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
47665 Alabama Power Co.
47666 Indiana & Michigan Electric Co.
Petitions filed:
47667 Audin, Lindsay; spent fuel shipping casks
Reports; availability, etc.:
47665 Pipe breaks; potential evaluation

Occupational Safety and Health Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
47664 Occupational Safety and Health National Advisory Committee

Oceans and Atmosphere, National Advisory Committee
NOTICES
47664 Meetings; date changes

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
47678 Meetings; Sunshine Act

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
47667 West Coxsackie, NY

Securities and Exchange Commission
RULES
Securities and financial statements:
47594 Property-casualty underwriters; reserve disclosures for unpaid losses, etc.
NOTICES
47672 Agency information collection activities under OMB review
Hearings, etc.:
47669 Columbus & Southern Ohio Electric Co.
47669 Forest City Investment Partners III Limited Partnership et al.
47671 Middle South Utilities, Inc.
47671 Pennsylvania Electric Co.
47671 Public Service Co. of Oklahoma et al.
Self-regulatory organizations; proposed rule changes:
47667 New York Stock Exchange, Inc.
47672 Philadelphia Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
47668 Pacific Stock Exchange

Small Business Administration
NOTICES
License surrenders:
47673 Thompson Venture Group, Inc.

Social Security Administration
RULES
Public assistance programs:
47603 Low income home energy assistance; 1985 FY State median income

State Department
RULES
47682 International traffic in arms

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration.

Treasury Department
See Fiscal Service.

United States Information Agency
NOTICES
47675 Agency information collection activities under OMB review
Meetings:
47675 Public Diplomacy, U.S. Advisory Commission

Separate Parts in This Issue

Part II
47682 Department of State

Part III
47714 Department of Energy

Part IV
47772 Department of Housing and Urban Development; Office of the Assistant Secretary for Public and Indian Housing

Part V
47801 Department of Energy

Part VI
47804 Office of Management and Budget

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Proclamations:
5286 47587
7 CFR
413 47589
445 47590
Proposed Rules:
434 47612
447 47617
10 CFR
960 47714
14 CFR
1 47594
27 47594
29 47594
91 47594
Proposed Rules:
75 47621
17 CFR
210 47594
229 47594
231 47594
241 47594
21 CFR
Proposed Rules:
610 47622
630 47622
22 CFR
121 47682
122 47682
123 47682
124 47682
125 47682
126 47682
127 47682
128 47682
129 47682
130 47682
30 CFR
Proposed Rules:
Ch. II 47624
32 CFR
706 47602
33 CFR
110 47602
43 CFR
Proposed Rules:
Ch. II 47624
45 CFR
96 47603
47 CFR
0 47604
73 (7 documents) 47604–47608
Proposed Rules:
2 (2 documents) 47625, 47626
18 47628
73 47638
81 47641
83 (2 documents) 47625, 47641
50 CFR
258 47611

Federal Register
Vol. 49, No. 236
Thursday, December 6, 1984

Presidential Documents

Title 3—
The President

Proclamation 5286 of December 4, 1984

National Pearl Harbor Remembrance Day, 1984

By the President of the United States of America

A Proclamation

On the morning of December 7, 1941, the Imperial Japanese Navy launched an unprovoked surprise attack on units of the Armed Forces of the United States stationed at Pearl Harbor, Hawaii. Over 2,400 United States citizens were killed and almost 1,200 were wounded in the attack. This battle marked our entry into World War II and galvanized the will of the American people to achieve ultimate victory.

Today, Japan is firmly united with us as an ally in defense of the freedom we share. But the lesson of Pearl Harbor is as important today as it was over forty years ago. In an uncertain world, democracies should always seek peace but also be prepared to defeat aggression. Military strength can deter war and give diplomacy time to achieve its beneficial results.

The people of the United States owe a tremendous debt of gratitude to all members of our Armed Forces who served at Pearl Harbor and in the many battles that followed in all other theaters of action of World War II. Their selfless dedication and sacrifice will never be forgotten.

The Congress, by House Joint Resolution 392, has designated December 7, 1984, as "National Pearl Harbor Remembrance Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 7, 1984, as National Pearl Harbor Remembrance Day and call upon the people of the United States to observe this solemn occasion with appropriate ceremonies and activities and to pledge eternal vigilance and strong resolve to defend this Nation and its allies from all future aggression.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of December, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-32073
Filed 12-5-84; 11:21 am]
Billing code 3195-01-M

124.....47682
258.....47611

Rules and Regulations

Federal Register
Vol. 49, No. 236
Thursday, December 6, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 413

[Doc. No. 16795; Amdt. No. 3]

Texas Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.
ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), effective for the 1986 and succeeding crop years, by providing procedures for an insurance offer at a given production guarantee, after inspection, on production potential of less than 3 tons for a crop year following a crop year in which substantial damage has occurred. The intended effect of this action is to remove a restriction affecting policyholders relative to availability of insurance on low production acreage due to previous years severe crop damage.

This action is taken under the authority contained in the Federal Crop Insurance Act, as amended.

DATES:

Effective date: December 6, 1984.

Comment date: Written comments, data, and opinions on this rule must be submitted not later than February 4, 1985, in order to be considered.

ADDRESS: Written comments on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing a period of public comment. During a severe freeze on December 24, 1983, most Texas citrus trees were damaged to the extent that orange and grapefruit production will be below 3 tons per acre for the 1985 crop year. This action is therefore necessary because the extensive damage to citrus groves will place many citrus policyholders in the position of having no insurance protection for the 1986 crop year without this change.

FCIC is therefore changing the provisions found in subsection 2.d.(2) of the policy to provide that, if such acreage is inspected by FCIC and considered acceptable and we agree in writing to insure such acreage, insurance will be available. A change in subsection 7.a. of the policy will also allow FCIC to make an offer to insure the grove at a given production guarantee after inspection of groves that have had severe damage and have not produced 3 tons of oranges or grapefruit the previous crop year.

All Texas citrus policyholders are presently being contacted to advise them of these changes.

FCIC is currently making inspections of the damaged groves, and is accepting such written mutual agreements on the prescribed form (Form FCI-2).

Written comments will be solicited by FCIC for 60 days after publication of this rule in the **Federal Register**. This rule will be scheduled for review so that any amendments made necessary by public comment may be published in the **Federal Register** as quickly as possible.

All comments made pursuant to this action will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 413

Crop insurance, Texas citrus.

Interim Rule

PART 413—[AMENDED]

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Texas Crop Insurance Regulations (7 CFR Part 413), effective for the 1986 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 413 is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

§ 413.7 [Amended]

2. Section 413.7(d)2.d.(2) is revised to read as follows.

* * * * *

2. Crop, acreage, and share insured.

* * * * *

d. * * *

(2) Which does not have the potential of 3 tons per acre of oranges or grapefruit the crop year following a crop year in which substantial damage occurred unless inspected and considered acceptable by us and unless we agree in writing to insure such acreage;

3. Section 413.7(d)7.a. is revised to read as follows:

* * * * *

7. Insurance period.

a. Insurance attaches on December 1 prior to the calendar year of normal bloom, except:

(1) That for the crop year following a crop year in which substantial damage occurred, insurance will not attach until the acreage is inspected by us and considered acceptable, and you agree, in writing to the production guarantee we offer you for such crop year; and

(2) That for the initial crop year, if we accept the application after December 1, insurance will attach on the twentieth day after you sign the application.

Done in Washington, D.C., on October 23, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: November 30, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-31807 Filed 12-5-84; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 445

[Amdt. No. 1; Doc. No. 1331S]

Pepper Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Pepper Crop Insurance Regulations (7 CFR Part 445), effective for the 1985 and succeeding crop years as follows: (1) Specifying named perils as the causes of loss; (2) prohibiting coverage for peppers grown for direct consumer marketing; (3) providing that coverage will not attach to acreage where peppers were planted the previous planting period except under certain conditions; (4) providing that lack of available plants will not be a consideration in requiring replanting; (5) providing that the final planting dates will be in the actuarial tables; (6) increasing the minimum value of unsold, harvested, or appraised production with respect to the allowable cost for harvest and hauling; (7) increasing the replanting payment to $300 per acre; (8) defining maximum bed width; (9) redefining the planting period; and, (10) adding two sections dealing with "notices" and "determinations." The intended effect of this rule is to update the policy for insuring peppers. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Evironmental Impact Statement is needed.

On Wednesday, May 30, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 22487, proposing to amend the Pepper Crop Insurance Regulations (7 CFR Part 445), as set out in the summary above.

The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none was received. Therefore, the proposed rule as published on May 30, 1984, is hereby adopted as final.

List of Subjects in 7 CFR Part 445

Crop insurance, Peppers.

Final Rule

PART 445—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Pepper Crop Insurance Regulations (7 CFR Part 445), effective with the 1985 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 445 is:

Authority: 506, 516, Pub.L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 445.7(d) is revised to read as set forth below:

§ 445.7 The application and policy.

* * * * *

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37; 400.38), and may be amended from time to time for subsequent crop years. The provisions of the Pepper Crop Insurance Policy are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Pepper—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occuring within the insurance period:

(1) Frost;
(2) Freeze;
(3) Hail;
(4) Fire;
(5) Tornado;
(6) Hurricane;
(7) Tropical depression that has been named by the U.S. Weather Service; or
(8) Failure of the irrigation water supply after planting due to unavoidable cause;

Unless those causes are expected, excluded, or limited by the actuarial table or section 9f(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good pepper farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project;

(4) Any cause not specified in section 1a as an insured loss;

(5) The failure to carry out a good pepper irrigation practice; or

(6) The breakdown of irrigation equipment or facilities.

2. Crop, acreage, and Share insured.

a. The crop insured is peppers: (1) Which are planted for harvest as fresh market peppers; (2) in which you have a share as reported by you or as determined by us, whichever we shall elect; (3) which are grown on insured acreage; and (4) for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be irrigated acreage designated as insurable by the actuarial table.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured peppers at the time of each planting period.

d. We will not insure any acreage of peppers grown by any person if:

(1) The person had not grown peppers for commercial sales the previous crop year; or

(2) The person had not participated in the management of the pepper farming operation the previous crop year.

e. We do not insure any acreage:

(1) Of peppers grown for direct consumer marketing;

(2) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is not irrigated;

(4) On which peppers are not grown on plastic mulch;

(5) On which tomatoes, peppers, eggplants or tobacco have been grown and the soil was not fumigated or properly treated before planting peppers;

(6) Which was planted to peppers the preceding planting period, unless the pepper plants of the preceding planting period were destroyed:

(a) Less than 30 days after the date of planting; or

(b) Less than 60 days after the date of direct seeding;

(7) Which is destroyed, it is practical to replant to peppers, and such acreage was not replanted. (The unavailability of plants for replanting is not a valid basis for failing to replant.)

(8) Initially planted after the final planting date contained in the actuarial table;

(9) Of volunteer peppers;

(10) Planted to a type or variety of peppers not established as adapted to the area or excluded by the actuarial table;

(11) Planted for experimental purposes; or

(12) Planted with a crop other than peppers.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter and spring-planted peppers in the county in which you have a share;

b. The practice, including the bed size; and

c. Your share.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any pepper plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. We may determine all indemnities on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit for each planting period the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and amount of insurance before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of each planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1-½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse if you die;

(2) The contract of the person who suceeds you if such person had previously participated in the farming operation: or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the peppers are planted in each planting period and ends at the earliest of:

a. Total destruction of the peppers on the unit;

b. Discontinuance of harvest on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. Final harvest; or

e. Final adjustment of a loss.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant peppers damaged due to any insured cause (To quality for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage sustaining a loss in excess of 50 percent of the plant stand on the unit.);

(b) During the period before harvest, the peppers on any unit are damaged and you decide not to further care for or harvest any part of the peppers;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additonal damage occurs.

Insured acreage may not be put to another use until we have appraised the peppers and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a lost on any unit.

(3) If probable loss is later determined and you are going to claim an indemnity on any unit, notice must be given not later than 48 hours:

(a) After total destruction of the peppers on the unit;

(b) After discontinuance of harvest on the unit; or

(c) Before harvest would normally start if any acreage on the unit is not to be harvested.

b. You may not destory or replant any of the peppers on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destory any of the peppers which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peppers on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received for all peppers on the unit and that any loss of production or value has been directly caused by one or more of the insured casues during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the state of production defined by the actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see section 9f); and

(3) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The indemnity will be reduced by the amount of any replanting payment.

f. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value will include any amount received for peppers on the unit minus the allowable cost as designated by the actuarial table.

(2) The value of appraised production to be counted will include:

(a) The value of unharvested mature green and red peppers and the value of the potential production lost due to uninsured causes or the failure to follow recognized good pepper farming practices;

(b) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without our prior written consent or which is damaged solely by an uninsured cause;

(c) The value of any appraised production of mature green and red peppers on unharvested acreage.

(3) Unharvested peppers injured or with defects due to insurable causes which cannot be marketed will not be counted.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of peppers becomes general in the county for the planting period;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount and value of production of any unharvested peppers on the basis of field appraisals conducted after the end of the insurance period.

(6) The value of unsold harvested or appraised production shall be determined by multiplying such production by the simple average F.O.B. shipping point price per 1⅑ bushel (minus allowable cost as shown by the actuarial table), as reported by the Federal-State Market News Service, for the seven consecutive market days commencing the earlier of:

(a) The date harvest starts; or

(b) The date harvest could have started on any acreage which will not be harvested.

The price for such peppers will not be less than $8.00 per 1⅑ bushel minus allowable cost shown by the actuarial table.

(7) When you have elected to exclude hail and fire as insured causes of loss and the peppers are damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI–78–A, "Request to Exclude Hail and Fire".

(8) The value of commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured peppers replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage sustaining a loss in excess of 50 percent of the plant stand fo unit.

(1) No replanting payment will be mad acreage on which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $300.00 per acre by your share.

h. If the information reported by your results in a lower premium than the actual premium determined to be due, the replanting payment and the indemnity will be reduced proportionately.

i. Any replanting payment will be considered as an indemnity.

j. You must not abandon any acreage to us.

k. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

l. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

m. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the peppers are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

n. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all peppers produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both the payment under such other programs and set off was approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of pepper crop insurance:

a. "Acre" means 43,650 square feet of plastic mulch not more than 6 feet wide (6 foot bed) on which at least 7,260 linear feet row(s) are planted.

b. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding pepper insurance in the county.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period within which the peppers are normally grown beginning August 1 and continuing through the harvesting of the spring-planted peppers and shall be designated by the calendar year in which the spring-planted peppers are normally harvested.

e. "Harvest" means the final picking of marketable peppers on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Mature green pepper" means a pepper which has reached the stage of development that will withstand normal handling and shipping.

i. "Peppers Grown for Direct Consumer Marketing" means peppers grown for the purpose of selling directly to the consumer which are grown on acreage not subject to an agreement between producer and packer to pack the production. (The producer-packer agreement must be made before you report your acreage.)

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. "Planting" means transplanting the pepper plant into the field or direct seeding in the field.

l. "Planting Period" means the peppers planted within the dates specified by the actuarial table, as fall-planted, winter-planted or spring-planted.

m. "Plant Stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

a. "Replanting" means performing the cultural practices necessary to replant insured acreage to peppers.

o. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

p. "Tenant" means a person who rents land from another person for a share of the peppers or a share of the proceeds therefrom.

q. "Unit" means all insurable acreage of peppers for each planting period in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peppers on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units as herein defined will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with FCIC's Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C. on July 31, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: November 30, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-31810 Filed 12-5-84; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 91

[Docket No. 23268; Amdts. 1-32, 27-21, 29-24, and 91-185]

Rotorcraft Regulatory Review Program; Amendment No. 2

Correction

In FR Doc. 84-29088, beginning on page 44422, in the issue of Tuesday, November 6, 1984, make the following corrections:

1. On page 44424, column one, first full paragraph, line nineteen, "man" should read "mean".

2. On page 44433, column three, § 27.672 (b), in the last line, "failure" should read "failed".

3. On page 44437, column two, change No. 49., line three, "words" should read "word".

§ 29.1329(e) [Corrected]

4. On page 44439, third column in § 29.1329(e) on line two "of" should read "or" and on line three "or" should read "of".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 231, and 241

[Release Nos. 33-6559; 34-21521; IC-14253; FR-20; File S-7-9-84]

Rules and Guide for Disclosures Concerning Reserves for Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Underwriters

AGENCY: Securities and Exchange Commission.

ACTION: Final rules and guide.

SUMMARY: The Commission is adopting rules and authorizing an industry guide to improve disclosures concerning the underwriting and claims reserving experience of property-casualty insurance underwriters. The disclosures are intended to assist investors in understanding and evaluating companies' reserving practices and the effect on reported income of adjustments to reserves established in prior periods and in comparing those practices and adjustments among entities.

DATE: This document is effective December 6, 1984. The rules and guide are applicable to filings containing financial statements for fiscal years ending after December 15, 1984, except that Exhibit 29 required by Rule 601 of Regulation S-K (§ 229.601(a)(29)) is applicable to filings containing financial statements for fiscal years ending after December 15, 1985 with earlier application encouraged.

FOR FURTHER INFORMATION CONTACT: Jeremiah Harrington or Dorothy Walker (202-272-2130), Office of the Chief Accountant, or Howard Hodges (202-272-2553), Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 1984 the Commission issued a release proposing to require additional disclosures concerning the underwriting and claims reserving experience of property-casualty ("P/C") underwriters. (49 FR 6911, Release No. 33-6513). The Commission had become concerned that the existing disclosures about loss reserves and the effects of adjustments to loss reserves estimated in prior years were inadequate, thereby impeding the ability of investors to fully evaluate the financial condition and results of operations of enterprises with significant P/C reserve liabilities. Additional disclosures regarding reserving methods and experience were considered necessary to improve the ability of users to evaluate the financial statements of P/C underwriters.

Forty-two comment letters were received in response to the proposal.[1] Virtually all commentors supported the overall objectives of the release with a significant number acknowledging the need for improved disclosures. Most commentors, however, suggested substantial revisions to the proposal which they thought would enhance investor ability to understand or use the disclosures or would otherwise reduce its costs and complexity.

The remainder of this release contains a Summary of the Final Rules and Guide, and the reasons for changes from the proposal in the order listed below:

—Summary of Final Rules and Guide
—Summary of Changes
—Disclosure Threshold Criteria
—Reconciliation of Beginning and Ending Claims Reserves
—Provision for Inflation
—Disclosures Related to Discounting
—Disclosures About Differences Between GAAP and Regulatory Reserves
—Summary Financial Disclosures about P/C Activities
—Information from Reports Furnished to State Insurance Regulatory Authorities

[1] Twenty-three comment letters were received from industry, one from an institution representing actuaries, eight from accounting firms, one from an institution representing accountants, and nine from financial analysts.

Summary of Final Rules and Guide

The final rules and guide, like the proposals, provide for different levels of user interest and different levels of registrant concentration in P/C insurance underwriting operations. The information called for by the Guide [2] will provide investors with information about: (1) Certain significant transactions during the periods being reported on, (2) changes in historical reserve amounts for the latest ten years, (3) a company's reserving practices, including those used in estimating inflation, and significant changes in those practices, (4) the effect, if any, of the discounting of reserves, and (5) any difference between reserves reflected in reports to state regulatory authorities and those appearing in financial statements prepared in accordance with generally accepted accounting principles ("GAAP").

For those investors who want more detailed financial data, an exhibit requires loss reserve information derived from reports to state regulatory authorities, on a consolidated or combined basis, for the most recent year presented. Also, a schedule will provide certain financial statement details of P/C operations and financial condition.

The Commission believes that the disclosure requirements and guidelines set forth herein are necessary to enhance the ability of investors and others to evaluate the financial condition and results of operations of enterprises with significant P/C reserve liabilities.

Summary of Changes

The Commission has carefully reviewed the comments received in response to the proposal and has made a number of changes designed to respond to commentators' concerns while, at the same time, achieving the Commission's objectives of improved disclosures.

The two issues that generated the most comment were disclosures on disaggregated reserves by line of business on a GAAP basis and the disclosure threshold criteria. Therefore, the most significant changes have been made in these areas. First, requirements have been eliminated for disaggregation of reserve amounts computed in accordance with GAAP on the basis of the line of business categories used in reports to state regulators. Second, criteria for determining when the disclosures are called for have generally been conformed throughout the rules and guide; and a new disclosure threshold has been provided to be applied to the separate disclosures of (a) the registrant and its consolidated subsidiaries, (b) unconsolidated subsidiaries, and (c) fifty-percent-or-less-owned equity investees.[3]

The first change is reflected in the revision of one of the proposed schedules to eliminate disclosure by line of business and the elimination of the other schedule.[4] In addition, a proposed Exhibit [5] which required line of business disclosure was replaced by a simplified tabular presentation of aggregate reserve information in a format suggested by several commentators.

The second change responds to a number of commentators' concerns that the proposed disclosures would be triggered by an income test, and that this could result in disclosures being called for one year and not the next, because of the volatility of P/C earnings. Therefore, circumstances under which the disclosures would be given have been revised by eliminating the test of P/C income materiality, but reducing the reserves to common stock ratio test from 1:1 to ½:1. Commentators also pointed out that group (a) or (b) or (c) above might be insignificant in a particular case and that the cost of presenting detailed information for an insignificant group of entities would exceed any related benefits to investors. Therefore, the final rules and guide do not call for information for any group whose P/C reserves are less than 5% of the P/C reserves attributable to the enterprise as a whole.

These changes, as well as certain other changes, are discussed in more detail in the rest of this release.

[2] The Guide applies to the description of business, but allows for presentation of the information in Management's Discussion and Analysis ("MD&A") if in management's opinion such presentation would be more meaningful to investors. The indication by the Guide that an item should be considered for discussion in the description of business does not change management's responsibilities under the MD&A requirements of Regulation S-K [17 CFR 229.303].

[3] It is anticipated that registrants would be either consolidating or not consolidating material insurance subsidiaries and therefore would only need to provide disclosures for a maximum of two categories.

[4] Proposed Rules § 210.12-18 and 12-19, respectively (of Regulation S-X).

[5] Proposed §§ 229.601 (a) 30 and (b) 30 (of Regulation S-K).

Disclosure Threshold Criteria

An issue that generated significant comment was the absence of separate tests for determining the need for presentation of separate information for unconsolidated subsidiaries and 50%-or-less-owned equity investees. Commentators considered it impracticable to provide detailed disclosures for what may be insignificant groups of subsidiaries or investees. Some also stated that many 50%-or-less-owned equity investees are public companies that would be required to include claim reserve disclosures in their own filings with the Commission.

The final rules and guidelines include criteria that are responsive to the concerns of commentators. First, to the extent possible, the criteria have been conformed in each requirement. Disclosure requirements are triggered when P/C reserves exceed one-half of consolidated common stockholders' equity. Second, exemptions have been provided for certain quantitative data of 50%-or-less-owned equity investees if those entities provide disclosures to the Commission as registrants in their own right. Third, if ending reserves of: (a) The registrant and its consolidated subsidiaries, (b) unconsolidated subsidiaries or (c) the proportionate share of the registrant and its other subsidiaries in the reserves of its 50%-or-less-owned equity investees are less than 5% of the total reserves of categories (a), (b) and (c), that category has been omitted from the disclosure requirements.

Reconciliation of Beginning and Ending Claims Reserves and Exhibit of Deficiences (Redundancies)

The proposal called for a reconciliation of beginning and ending GAAP reserves for unpaid claims and claim adjustment expenses in the aggregate, for each of the latest three years. Disclosure of the portion of incurred losses for each year attributable to the current year and to each of the two preceding years separately was also proposed, as well as the amount of discount reflected in the provision for losses for the current year and the amortization of discounts provided in prior years.

The principal opposition to the proposed reconciliation concerned the requirement to disaggregate incurred losses attributable to prior years. Some commentators indicated that the breakdown of losses into specific prior years was difficult. Others were concerned that less sophisticated

investors might simply recalculate net income of prior years, without recognizing that the prior years already include the same type of adjustments for previous years. Other commentators opposed the proposal to disclose the effects of discounting on each year's reconciliation. Many believed it would be difficult, if not impossible, to quantify discount amortization. Supportive commentators indicated that the reconciliations were effective in illustrating the impact of provisions for prior years' losses on current income.

The Commission continues to believe that investors may be able to better evaluate reserves if they can review subsequent adjustments to historical reserve estimates, and that, together with management's comments, a reconciliation of reserves is appropriate. The proposal has been modified to eliminate the provision to show separately in this table the amount of the adjustment to income in the current year applicable to each of the two prior years. However, the reconciliation still calls for the amount of the adjustment to income in the current year applicable to all prior years. The development table discussed below provides information about adjustments to the liability for unpaid claims and claim adjustment expenses, as originally reported, on a year by year basis for the ten prior years.[6]

The proposed rules would also have required disclosure by statutory line of business, of deficiences (redundancies) in GAAP claims reserves in increments of one year, five years and ten years. The disclosure would have been provided separately for the parent and its consolidated subsidiaries, for the unconsolidated subsidiaries and for the 50%-or-less-owned equity investees. The proposal also required disclosure of the amount of discount, if any, amortized during each development period, disclosure whether claims reserves were ceded during any of the years during each development period, and, if so, a statement of the reserves eliminated and the related premiums paid.

Comment letters from all groups suggested that the information was too detailed (particularly with respect to the disclosures by line of business), and that it represented only one of many formats in which someone might want to consider the basic data. A significant number of commentators suggested alternative approaches to reduce the cost and complexity of the proposed disclosure, the principle focus being on providing information on an aggregate basis. In this connection, commentators generally agreed that a discussion by management of the registrant's reserving experience presented in reasonable proximity to the aggregate development information could provide understandable information to most readers.

The Commission continues to believe that disclosure of the development of incurred claims, paid claims and claim reserves is necessary for an evaluation of a P/C underwriter's reserving practices. However, it agrees with commentators that it may not be necessary to provide this information by line of business to meet the Commission's disclosure objectives.

Therefore, the provisions of Item 28 of Guide 6 have been changed to include a table which reflects reserve development information on an aggregate basis. This table is intended to inform investors of the materiality of adjustments required during periods following the dates as of which its original reserves were established by showing the historical pattern of changes in reserve estimates and claim payments. The Commission believes that disclosure of the historical patterns and management's explanation of such changes will provide investors with greater understanding of the factors that may affect future earnings. An example of the table follows.

CONSOLIDATED

[In millions of dollars]

	Year ended								
	1976	1977	1978	1979	1980	1981	1982	1983	1984
Liability for unpaid claims and claim adjustment expense	484	602	775	952	1,154	1,380	1,626	1,703	1,749
Paid (cumulative) as of:									
End of year	241	282	355	343	399	458	504	554	
One year later	358	411	486	518	644	724	805		
Three years later	451	525	612	643	818	915			
Four years later	521	606	727	813	942				
Five years later	588	683	801	891					
Six years later	619	731	839						
Seven years later	650	764							
Eight years later[1]	672								
Liability reestimated as of:									
End of year	484	602	775	952	1,154	1,380	1,626	1,703	1,749
One year later	562	662	793	956	1,025	1,197	1,308	1,475	
Two years later	635	753	865	998	1,182	1,306	1,472		
Three years later	678	806	954	1,058	1,243	1,388			
Four years later	707	846	1,013	1,117	1,286				
Five years later	731	886	1,032	1,144					
Six years later	751	904	1,050						
Seven years later	770	918							
Eight years later	782								
Redundancy (deficiency)	(298)	(316)	(275)	(192)	(132)	(8)	154	228	

[1] The example only covers eight years. See footnote 6 infra. The general format of this table was suggested by several commentators as a cost effective way to meet the Commission's objectives as stated in the proposal.

The table is intended to illustrate the manner in which reserve estimates change as time passes. Each column reflects the underwriter's experience with the reserve it estimated at the end of the stated fiscal year. The first line shows the reserve as originally reported. The middle portion shows the cumulative amounts paid as of the end of successive years with respect to that reserve liability. The lower portion shows retroactive reestimates of the reserve as of the end of successive years resulting from management's awareness of additional facts and circumstances. To examine the pattern of payments or changes with respect to a particular reserve estimates investors would simply read down the column under that estimate.

[6] Only eight years coverage would be expected to be provided for calendar year 1984 and only nine years coverage is required for calendar year 1985. The phased-in requirement is consistent with changes in reporting requirements of state regulatory authorities.

Provision for Inflation

Although inclusion of a provision for inflation in estimated reserves is required by Statement of Financial Accounting Standards No. 60, no specific method is prescribed for calculating that provision. The proposal requested disclosure of the registrant's method of estimating the amount of any explicit provisions for inflation and for the circumstances relied upon by management in accepting the adequacy of implicit provisions for the effects of inflation.

A number of commentators indicated that the provision for inflation is included in overall projections of expected claim costs without being specifically identified. These commentators asserted that many factors are considered when providing for reserves; inflation is just one of those factors; and it is not feasible or meaningful to separate out the inflation factor individually.

The Commission believes that a general description of each registrant's practice in arriving at a provision for inflation may be useful in evaluating currently reported reserves. Provisions for inflation for this purpose may be taken to mean provision for future changes in average claim severities, if this permits more meaningful disclosure.

Under the guide, registrants would disclose whether they make provisions for inflation implicitly or explicitly. Those whose provision is implicit would disclose how they satisfy themselves that the provision is appropriate. Those who make explicit provision would describe their procedures briefly.

Disclosures Related to Discounting

The proposal asked for a statement of the difference (estimated, if necessary) between GAAP basis claims reserves on a discounted basis, in total and by statutory line of business. In general, commentators agreed that disclosure of the effects of discounting is appropriate. They did not believe, however, that disclosure of discounts deducted from reserves by line of business is necessary unless the discount of a particular line is material. Some expressed concerns that "grossing up" reserves to undiscounted amounts would be difficult for registrants who use discounted tables required by regulatory authorities.

Proposed Rule 12-19 of Regulation S-X would have required disaggregation of P/C reserve balances and the discounts deducted for the latest two year-ends by the lines of business used in reports to state regulators. This breakdown was considered a cost effective method to provide investors with an indication of the relative risks of the reserve portfolios of different P/C insurers. Commentators pointed out that foreign subsidiaries have no need to prepare reserve information on the basis of the lines of business used by insurance regulators in the United States. Other commentators mentioned that line of business classification is not strictly uniform from company to company. A number suggested that disaggregation by segment rather than by line of business should be permitted.

The Commission has, therefore, amended the proposal to take into account commentators concerns in several ways. The disclosures by statutory line of business are no longer required. Proposed Rule 12-19 has been eliminated. A column has been added to Rule 12-18 to provide for the disclosure of the aggregate discounts deducted from the reserves for the registrant and consolidated subsidiaries, for unconsolidated subsidiaries, and for 50%-or-less-owned equity investees. A footnote to the schedule requires disclosure of the rate, or range of rates, estimated if necessary, at which the discount was computed for each category. A provision calling for disclosure of the effects of discounting in the aggregate has been retained in Part 2(B)(5) of the Guide.

Disclosures About Differences Between GAAP and Regulatory Reserves

The proposal asked for a statement of the nature and amount of differences, if any, between GAAP basis claim reserves and statutory claim reserves, in total and by applicable statutory lines of business. Most commentators recommended omission of all proposed requirements to present information by statutory line of business, but believed a reconciliation of aggregate reserves would be appropriate. A few suggested a reconciliation by major lines of business. Some objected to the presentation of a reconciliation from statutory to GAAP even on an aggregate basis. They argued that the principal difference was salvage and subrogation and that the amounts were not material. An analyst commented that the proposed requirement would provide useful information that is unavailable elsewhere.

The Commission had been advised that the aggregate amount of the differences between reserves reported in GAAP basis financial statements and those in reports to state regulatory authorities using regulatory accounting principles is usually small and that they usually occur in only one or a few statutory lines of business. In order to permit users to judge when such differences indicate a possible need for further analysis, the Commission has determined to retain the provision for disclosure of the nature and aggregate amount of such differences for the parent and consolidated subsidiaries, for unconsolidated subsidiaries and for 50%-or-less-owned equity investees in the Guide. Disclosure of amounts which may be small in relation to aggregate reserve amounts is believed necessary because of the material effect on reported earnings which may result from a small change in reserve amounts.

Details of reconciliations may differ from one registrant to another depending on such factors as the need to make eliminations related to consolidation with life companies or other P/C companies and currency fluctuations among others. Each reconciling amount should be explained briefly.

Summary Financial Disclosures About P/C Activities

Proposed Rule 12-18 would have required disclosure of certain balance sheet and income statement items related to P/C operations (on a GAAP basis), by statutory line of business, for the parent and consolidated subsidiaries, for unconsolidated subsidiaries, and for 50%-or-less-owned equity investees.

Some commentators suggested elimination of statutory line of business disclosures and use of the same alignment of headings used in Rule 12-16 (which requires certain supplementary insurance information by segment). Others suggested that Rule 12-18 and proposed Rule 12-19 are redundant. These commentators may not have recognized that the schedule required in Rule 12-16 applies only to companies filing under Article 7 (Insurance Companies) of Regulation S-X; commercial and industrial companies that have insurance subsidiaries but file under Article 5 do not file that schedule. Some may not have realized that grouping data by segment could result in inclusion of non-property-casualty information.

The Commission continues to believe that when P/C loss reserves are significant (as defined in the rule), it is appropriate to require more detailed disclosure of certain P/C financial statement amounts in order to permit inter-enterprise comparison of trends and ratios. Therefore, when P/C related amounts are not stated separately in the financial statements of registrants engaged in diverse activities, certain

summary disclosures will be required in new Schedule 12–18. Those disclosures would be presented separately for the registrant and its consolidated subsidiaries, the registrant's unconsolidated subsidiaries, and the registrant's 50%-or-less-owned equity investees. A footnote has been added to the schedule to allow the omission of certain immaterial items as discussed in "Disclosure Threshold Criteria" above, and an exemption has been provided for certain entities which file with the Commission themselves.

Information From Reports Furnished to State Insurance Regulatory Authorities

Proposed Exhibit 29 of Item 601 of Regulation S-K would require registrants to present Schedules O and P[8] on a consolidated or combined basis for (a) the registrant and its consolidated subsidiaries, (b) unconsolidated subsidiaries and (c) 50%-or-less-owned equity basis investees (proportionate share only).

Commentators generally agreed that Schedules O and P could provide useful information to certain investors and analysts and they should be provided as an exhibit. The industry commentators indicated few difficulties in providing the information if certain immaterial entities did not have to be included. Accordingly, exemptions have been provided for immaterial entities and for certain entities which file with the Commission themselves (as discussed in "Disclosure Threshold Criteria" above).

Effective Date

The proposal indicated that the Commission anticipated that the final disclosure provisions would be effective for years ending after December 15, 1984. The Commission believes that it is important to have the new rules and guide in place and effective for 1984 year-end reporting because the disclosures are so important to investors. Furthermore, it believes that the changes made in response to commentators' concerns have significantly eased any reporting burdens, and therefore, that the December 15, 1984 effective date is appropriate.

Concerns about the effective date expressed by commentators concentrated on the difficulty of providing information from reports to state regulatory authorities (the exhibit required by § 229.610(29)) in greater detail or in a different format or basis. The final provisions were specifically changed to allow for providing the information on the same basis and in the same format. Further, the exhibit will not be required until years ending after December 15, 1985.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated to:

1. Add a new § 403.04 entitled "Disclosures Concerning Reserves for Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Underwriters."

2. Include in § 403.04 the Sections of this release entitled "Disclosure Threshold Criteria," "Reconciliation of Beginning and Ending Claims Reserves," "Provision for Inflation," "Disclosures Relating to Discounting," "Disclosures about Differences between GAAP and Regulatory Reserves," "Summary Financial Disclosures about P/C Activities," and "Information from Reports Furnished to State Insurance Regulatory Authorities," numbered as specified below:

a. Disclosure Threshold Criteria

b. Reconciliation of Beginning and Ending Claim Reserves

c. Provision for Inflation

d. Disclosures Relating to Discounting

e. Disclosures about Differences between GAAP and Regulatory Reserves

f. Summary Financial Disclosures about P/C Activities

g. Information from Reports Furnished to State Insurance Regulatory Authorities

This codification is a separate publication issued by the Commission. It will not be published in the Federal Register/Code of Federal Regulations System.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604(a), the Commission has prepared an analysis of the economic impact which the amendments herein will have on small entities. This analysis is attached to this release.

Text of Rules and Guide

List of Subjects in 17 CFR Parts 210, 229, 231 and 241

Accounting, Reporting and recordkeeping requirements, Securities.

The Commission hereby amends 17 CFR Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

Article 5—Commercial and Industrial Companies (17 CFR Part 210)

1. By revising paragraph (a)(3) and adding schedule XIV to paragraph (c) of § 210.5–04 (Rule 5–04 of Regulation S–X) as follows:

§ 210.5–04 What schedules are to be filed.

(a) * * *

(3) Schedules III, and XIV shall be filed as of the date and for the periods specified in the schedule.

* * * * *

(c) * * *

Schedule XIV—Supplemental Information Concerning Property-casualty Insurance Operations.

The schedule prescribed by § 210.12–18 shall be filed when a registrant, its subsidiaries or 50%-or-less-owned equity basis investees, have liabilities for property-casualty ("P/C") insurance claims. The required information shall be presented as of the same dates and for the same periods for which the information is reflected in the audited consolidated financial statements required by §§ 210.3–01 and 3–02. The schedule may be omitted if reserves for unpaid P/C claims and claims adjustment expenses of the registrant and its consolidated subsidiaries, its unconsolidated subsidiaries and its 50%-or-less-owned equity basis investees did not, in the aggregate, exceed one-half of common stockholders' equity of the registrant and its consolidated subsidiaries as of the beginning of the fiscal year. For purposes of this test only the proportionate share of the registrant and its other subsidiaries in the reserves for unpaid claims and claim adjustment expenses of 50%-or-less-owned equity basis investees taken in the aggregate after intercompany eliminations shall be taken into account.

Article 7—Insurance Companies (17 CFR Part 210)

2. By revising paragraph (a)(3) and adding schedule X to paragraph (c) of § 210.7–05 (Rule 7–05 of Regulations S–X) as follows:

§ 210.7–05 What schedules are to be filed.

(a) * * *

(3) Schedules III, V, and X shall be filed as of the dates and for the periods specified in the schedule.

* * * * *

(c) * * *

Schedule X—Supplemental Information Concerning Property-Casualty Insurance Operations.

The information required by § 210.12–18 shall be presented as of the same dates and for the same periods for which the information is reflected in the audited consolidated financial statements required by §§ 210.3–01 and 3–02. The schedule may be omitted if reserves for unpaid property-casualty claims and claim adjustment expenses of the registrant and its consolidated subsidiaries, its unconsolidated subsidiaries and its 50%-or-less-owned equity basis investees did not in the aggregate, exceed one-half of common stockholders' equity of the registrant and its consolidated subsidiaries as of the beginning of the fiscal year. For purposes of this test, only the proportionate share of the registrant and its other subsidiaries in the reserves for unpaid claims and claim adjustment expenses of 50%-or-less-owned equity investees taken in the aggregate after intercompany eliminations shall be taken into account.

Article 12—Form and Content of Schedules (17 CFR 210

3. By adding § 210.12–18 as follows:

§ 210.12–18 Supplemental Information (For Property-Casualty Insurance Underwriters).

Affiliation with registrant	Deferred policy acquisition costs	Reserves for unpaid claims and claim adjustment expenses	Discount, if any, deducted in column C [c]	Unearned premiums	Earned premiums	Net investment income	Claims and claim adjustment expenses incurred related to		Amortization of deferred policy acquisition costs	Paid claims and claim adjustment expenses	Premiums written
							(1) Current year	(2) Prior years			
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H		Column I	Column J	Column K
(a) Consolidated property-casualty entities [1]											
(b) Unconsolidated property-casualty subsidiaries [2] [3]											
(c) Proportionate share of registrant and its subsidiaries' 50%-or-less-owned property-casualty equity investees [2] [3]											

[1] Information included in audited financial statements, including other schedules, need not be repeated in this schedule. Columns B, C, D, and E are as of the balance sheet dates, columns F, G, H, I, J, and K are for the same periods for which income statements are presented in the registrant's audited consolidated financial statements.

[2] Present combined or consolidated amounts, as appropriate for each category, after intercompany eliminations.

[3] Information is not required here for 50%-or-less-owned equity investees that file similar information with th Commission as registrants in their own right, if that fact and the name of the affiliated registrant is stated. If ending reserves in any category (a), (b), or (c) above is less than 5% of the total reserves otherwise required to be reported in the schedule, that category may be omitted and that fact so noted; if the amount of the reserves attributable to 50%-or-less-owned equity investors that file the information as registrants in their own right exceeds 95% of the total category (c) reserves, information for the other 50%-or-less-owned equity investees need not be provided.

[4] Disclose in a footnote to the schedule the rate, or range of rates, estimated if necessary, at which the discount was computed for each category.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. By adding caption (29) to the Exhibit Table in paragraph (a) of § 229.601 (Item 601(a)), as follows:

§ 229.601 Exhibits.

* * * * * * *

EXHIBIT TABLE

	Securities Act forms											Exchange Act forms			
	F–1	F–2	F–3	S–1	S–2	S–3	S–8	S–11	S–14	S–15	S–18	8–K	8–A	10–Q	10–K
* * *															
(29) Information from reports furnished to state insurance regulatory authorities				X	X	X	X		X	X		X			X
* * *															

5. By adding to the description of exhibits in paragraph (b) of § 229.601 a description and instructions as follows:

§ 229.601 Exhibits.

* * * * *

(b) * * *

(29) *Information from reports furnished to state insurance regulatory authorities.* (i) If reserves for unpaid property-casualty ("P/C") claims and claim adjustment expenses of the registrant and its consolidated subsidiaries, its unconsolidated subsidiaries and the proportionate share of the registrant and the other subsidiaries in the unpaid P/C claims and claim adjustment expenses of its 50%-or-less-owned equity investees, taken in the aggregate after intercompany eliminations, exceed one-half of the common stockholders' equity of the registrant and its consolidated subsidiaries as of the beginning of the latest fiscal year the following information should be supplied.

(ii) The information included in Schedules O and P of Annual Statements provided to state regulatory authorities by the registrant and/or its P/C insurance company affiliates for the latest year should be presented in the same format and on the same statutory

[8] Schedules O and P are two of the schedules required in reports to state regulatory authorities by P/C insurance companies.

basis, on a combined or consolidated basis as appropriate, separately for each of the following:

(A) The registrant and its consolidated subsidiaries and

(B) The registrant's unconsolidated subsidiaries and

(C) Fifty-percent-or-less-owned equity investees of the registrant and its subsidiaries

(iii) The combined or consolidated Schedules O and P of 50%-or-less-owned equity investees may be omitted if they file the same information with the Commission as registrants in their own right, if that fact and the name and ownership percentage of such registrants is stated.

(iv) If ending reserves in category (A), (B), or the proportionate share of the registrant and its other subsidiaries in (C) above are less than 5% of the total ending reserves in (A), (B), and the proportionate share of (C), that category may be omitted and that fact so noted. If the amount of the reserves attributable to 50%-or-less-owned equity investees that file this information as registrants in their own right exceeds 95% of the total category (C) reserves, information for the other 50%-or-less-owned equity investees need not be provided.

(v) Schedules O and P information need not be included for entities that are not required to file Schedules O and P with insurance regulatory authorities. However, the nature and extent of any such exclusions should be clearly noted in the Exhibit.

(vi) Registrants whose fiscal year differs from the calendar year should present Schedules O and P as of the end of the calendar year that falls within their fiscal year.

(vii) The nature and amount of the difference between reserves for claims and claim adjustment expenses reflected on Schedules O and P and the aggregate P/C statutory reserves for claims and claim adjustment expenses as of the latest calendar year end should be disclosed in a note to those Schedules.

* * * * *

6. § 229.801 is amended by adding a new paragraph (f) which lists the title of Securities Act Industry Guide 6 as follows:

§ 229.801 Securities Act industry guides.

* * * * *

(f) *Guide 6.* Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty insurance underwriters.

7. § 229.802 is amended by adding paragraph (d) which lists the title of Exchange Act Industry Guide 4 as follows:

§ 229.802 Exchange Act industry guides.

* * * * *

(d) *Guide 4.* Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty underwriters.

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

8. By amending Part 231 by adding this release to the list of interpretive releases set forth thereunder.

9. By adding the Securities Act Industry Guide 6 [Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Insurance Underwriters].

Guide 6—Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Insurance Underwriters

1. *General Instructions:*

The Guide applies to the description of business portions of registration statements of companies with property-casualty ("P/C") insurance reserves for which financial statements are required.

The information should be furnished if reserves for upaid P/C claims and claim adjustment expenses of the registrant and its consolidated subsidiaries, its unconsolidated and its 50%-or-less-owned equity basis investees, taken in the aggregate after intercompany eliminations, exceed one-half of the common stockholders' equity of the registrant and its consolidated subsidiaries as of the beginning of the latest fiscal year. For purposes of this test, only the proportionate share of the registrant and its other subsidiaries in the unpaid claims and claim adjustment expenses of 50%-or-less-owned equity basis investees shall be taken into account.

Information should be presented separately for (a) the registrant and its consolidated subsidiaries, (b) unconsolidated subsidiaries and (c) 50%-or-less-owned equity investees. If ending reserves in category (a), (b), or the proportionate share of the registrant and its other subsidiaries in (c) above are less than 5% of the total ending reserves in (a), (b), and the proportionate share in (c), the information called for by Instruction 2B with respect to that category may be omitted.

Information furnished in accordance with this Guide should generally be presented in the form appearing below. However, an alternative presentation, such as inclusion of the information in Management's Discussion and Analysis, may be used if in management's opinion such presentation would be more meaningful to investors.

Except where noted, the information furnished pursuant to this Guide shall be for the latest annual period for which financial statements are required. However, information for any additional interim periods should be provided to the extent necessary to keep the annual information from being misleading, such as where a material change in the information presented or the trend evidenced thereby has occurred.

2. *Description of the Business.*

A. Discussion Topics.

The following should be among the matters discussed in the description of business.

(1) The nature of current year adjustments to loss reserves recorded in prior years.

(2) Reinsurance transactions (including "swaps" of reserves, portfolio loss transfers, etc.) which have a material effect on earnings or reserves.

(3) Significant reserving assumptions and recent changes therein.

(4) The nature of recent changes in the terms under which reinsurance is ceded to other insurers.

(5) Changes in the mix of business, including not not limited to changes in the location of business, geographic mix, and types of risks assumed.

(6) Changes in payment patterns due to portfolio loss transfers, structured settlements and other transactions and circumstances.

(7) Unusually large losses or gains.

(8) The effect of currency fluctuations.

B. Disclosures.

The following (all presented in accordance with generally accepted accounting principles) should be among the items included in the description of business.

(1) *Reconciliation of claims reserves.*

An analysis of changes in aggregate reserves for property casualty insurance claims and claim adjustment expenses for each of the latest three one-year period in the following tabular format:

(a) Amount of reserves for unpaid claims and claim adjustment expenses at the beginning of each year.

(b) Incurred claims and claim adjustment expenses:

(i) Provision for insured events of the current year

(ii) Increases (decreases) in provision for insured events of prior years

Total incurred claims and claim adjustment expenses

(c) Payments.

(i) Claims and claim adjustment expenses attributable to insured events of the current year

(ii) Claims and claim adjustment expenses attributable to insured events of prior years

(d) Other (provide an explanation of each material item)

(e) Amount of reserves for unpaid claims and claim adjustment expenses at the end of each year.

(2) *Loss reserve development.*

A table that presents

(a) Amounts of reserves for unpaid claims and claim adjustment expenses as of the end of each of the ten years prior to the latest fiscal year.

(b) The cumulative amount paid as of the end of each succeeding year with respect to each of the reserve amounts presented in response to (a) above.

(c) The retroactively reestimated liability for unpaid claims and claim adjustment expenses as of the end of each succeeding year with respect to each of the reserve amounts presented in response to (a) above.

(d) The difference between the latest reestimated liability presented in response to (c) with respect to each of the year-ends reflected in (a) above and the liabilities set forth in (a).

The amounts presented in (b), (c), and (d) above may be in dollars or expressed as a percentage of the amounts in (a).

The registrant should include an explanation of the data which will disclose the effects of unusual circumstances, for example changes in reinsurance agreements, which might distort the data.

(3) If the registrant makes explicit provision for the effects of inflation or for the combined effects of a number of factors (including inflation) that are expected to cause future changes in claims severities, describe briefly registant's method of estimating the amount of that provision. An explicit provision is one in which the reserving system requires the estimation of a separate provision for inflation. The rates may be generated by the system or obtained from other appropriate sources. If the registrant makes implicit provision for the effects of inflation or for the combined effects of a number of factors (including inflation) that are expected to cause future changes in claims severities describe the circumstances on which management relies in concluding that the implicit provision is adequate. Provisions for inflation for this purpose may be taken to mean provision for any change in average claim severities if this permits more meaningful disclosure.

(4) State the amount of the difference, if any, between GAAP basis P/C reserves for claims and claim adjustment expenses for each of the groups mentioned in the next to last paragraph of Item 1 of this Guide and statutory P/C reserves for claims and claim adjustment expenses in total for each of those groups. Explain briefly the nature and amount of principal differences.

(5) State the amount (estimated if necessary) by which GAAP basis claim reserves have been discounted. State also the effect (estimated if necessary) on pre-tax income (loss) of discounts accrued and the effect of discounts amortized. Described briefly the principal types of business for which reserves are discounted.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

10. By amending Part 241 by adding this release to the list of interpretive releases set forth thereunder.

11. By conforming Exchange Act Industry Guide 4 [Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property Casualty Underwriters] to Securities Act Industry Guide 6 as follows:

Guide 4. Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property Casualty Underwriters.

The Guide applies to the description of business portion of registration statements filed on Form 10 (Item 1) [17 CFR 249.210], in proxy and information statements relating to mergers, consolidations, acquisitions, and similar matters (Item 14 of Schedule 14A and Item 1 of Schedule 14C) [17 CFR 240.14a–101 and 240.14c–101], and in reports filed on Form 10–K (Item 1) [17 CFR 249.310].

[The balance of the Guide is identical to Securities Act Industry Guide 6.]

VII. Statutory Authority

The Commission is requiring the additional disclosure concerning property-casualty insurance claims reserves pursuant to the authority in Sections 6, 7, 8, 10, 19(a) and Schedule A (25) and (26) [15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77aa(25) and (26)] of the Securities Act of 1933; Sections 12, 13, 14, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78(a)w] of the Securities Exchange Act of 1934.

Dated: November 27, 1984.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, has been prepared in accordance with 5 U.S.C. 604(a). It relates to requirements for disclosure of information concerning management's historical ability to provide appropriate property-casualty ("P/C") insurance reserves for unpaid claims and claim adjustment expenses. The corresponding initial regulatory flexibility analysis ("IRFA") appears at 49 FR 6911 (Release No. 33–6513).

1. *Need for and Objectives of the Rule.*

The Commission believes that currently required disclosures with respect to the financial position and results of operations of P/C underwriters may not be adequate to permit users to evaluate reserve estimation practices and experience of registrants with significant P/C reserves.

The objective of the required disclosures is to provide investors with information about deficiencies and redundancies in previously estimated reserves and about results of P/C underwriting operations to permit better understanding of reserving practices and experience and a comparison of reserving experience between registrants.

2. *Issues Raised by Public Comments.*

Three industry commentators specifically addressed issues commented upon in the IRFA. One financial analyst expressed his agreement with the IRFA as a whole.

The industry commentators focussed on statements in the proposal to the effect that there would be no new recordkeeping requirements because the necessary data is already generated for use in reports to state regulators. They pointed out that:

—Preparing the proposed exhibits and schedules, in formats different from those used in statutory annual statements, would require a substantial amount of time, talent and expense.

—Foreign subsidiaries, in general, do not now report to anyone on the basis used by U.S. insurers to report to state regulatory authorities. It would be costly to develop new recordkeeping systems to comply with the proposed requirements, and foreign competitors, mutual companies and nonregistered insurers are unlikely to accept such costs.

Other comments indicate that the amount of data generated by requirements to present reserve deficiencies and redundancies by statutory lines of business would be excessive for average investors and too restricted in approach to satisfy the needs of financial analysts.

The Commission has considered the questions raised of cost involved in complying with the proposed disclosure requirements and has concluded that the costs of disaggregating financial statement amounts presented in accordance with generally accepted accounting principles ("GAAP") by the lines of business used in reporting to state regulators exceed the benefits to be derived from that presentation. Therefore disclosure requirements have been revised to eliminate the disaggregation of GAAP amounts by regulatory lines of business. The final rules require filing of information in the same format and on the same statutory basis as that filed with state regulatory authorities. An exemption from the requirement has been provided for those entities that are not required to file with state regulatory authorities.

3. *Significant Alternatives.*

Significant alternatives included exempting small entities from all or parts of the proposal. But, doing so would be inconsistent with the Commission's statutory mandate to ensure full disclosure of material facts concerning reporting companies. Furthermore, the Commission believes that the comparability of financial disclosures of the kind now being adopted is such an essential aspect of

financial reporting that an exemption or an alternate approach designed particularly for small entities would not be appropriate.

In the Commission's view, the fundamental performance standard for financial reporting is the presentation of all information material for rational investment decisions. The Commission has historically acted to require disclosures which appeared necessary for investor analysis of issuers' financial condition and operating performance when such information was not called for by generally accepted accounting principles.

[FR Doc. 84-31856 Filed 12-5-84; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS VINCENNES (CG 49) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 2, 1984.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS VINCENNES (CG 49) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Five of section 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

TABLE 5

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 3(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(g)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship Annex I, sec. 3(a)	Aft masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS VINCENNES	DG 49						X	X	

(Executive Order 11964; 33 U.S.C. 1605)

Dated: October 2, 1984.

John Lehman,

Secretary of the Navy.

[FR Doc. 84-31844 Filed 12-5-84; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 11-84-05]

Special Anchorage Areas; Dangling Rope Canyon and Hite in Lake Powell, UT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation changes the special anchorage area in Forbidding Canyon, Utah, to Dangling Rope Canyon, Utah, and establishes a new special anchorage area in Hite, Utah. This action is being taken to conform the anchorages to existing marinas and protect the safety of persons and property involved.

EFFECTIVE DATE: The amendment is effective January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant Louis S. Stanton, Marine Safety Division, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone Number: (213) 590-2301.

SUPPLEMENTARY INFORMATION: On September 24, 1984 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (49 FR 37472). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Lieutenant L.S. Stanton, project officer, and Lieutenant C.M. McNally, project attorney, Eleventh Coast Guard District Legal Office.

Economic Assessment and Certification

This regulation is considered to be non-major under executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Neither the relocating of the Forbidding Canyon anchorage to Dangling Rope Canyon nor establishing an anchorage at Hite will adversely affect any known commercial enterprise. Each measure is designed to make the location of the anchorage in question conform to the actual location of an existing marina.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

PART 110—[AMENDED]

In consideration of the foregoing, § 110.127a of Title 33, Code of Federal Regulations is amended as follows:

1. By revising paragraph (d) and adding paragraph (f) to read as follows:

§ 110.127a [Amended]

. . . . . .

(d) *Dangling Rope Canyon, Utah.* That portion of Dangling Rope Canyon, Lake Powell, enclosed by the shoreline and a line connecting the following points, excluding a 200-foot-wide fairway, extending southerly from the marina, as established by the Superintendent, Glen Canyon National Recreation Area:

Latitude	Longitude
"a" 37°06'48" N	111°05'00" W.
"b" 37°07'15" N	111°05'03" W.
"c" 37°07'19" N	111°04'49" W.
"d" 37°06'06" N	111°04'00" W.
"e" 37°07'30" N	111°04'30" W.
"f" 37°07'20" N	111°04'15" W.

. . . . . .

(f) *Hite, Utah.* That portion of Lake Powell enclosed by the shore and by lines connecting the following two sets of points, excluding a 200-foot-wide fairway extending westerly from the launching ramp on the far shore, as established by the Superintendent, Glen Canyon National Recreation area:

Latitude	Longitude
East Shore	
"a" 37°51'40" N	110°23'45" W.
"b" 37°51'40" N	110°24'05" W.
"c" 37°52'30" N	110°24'00" W.
"d" 37°52'30" N	110°23'35" W.
North Wash	
"a" 37°52'00" N	110°24'45" W.
"b" 37°52'40" N	110°24'45" W.

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g))

Dated: December 3, 1984.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 84-31855 Filed 12-5-84; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 96

Low Income Home Energy Assistance; Announcement of FY 1985 State Median Income

AGENCY: Social Security Administration, HHS.

ACTION: Rule related notice.

SUMMARY: This notice states the median income of four-person households for each State and the District of Columbia for FY 1985. This listing of median incomes concerns maximum income for the households to which the States may make home energy assistance payments.

FOR FURTHER INFORMATION CONTACT: Barbara Levering (202) 245-2637.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) we are announcing the median income of four-person households in each State, the District of Columbia, and the entire U.S., for the period of October 1, 1984 through September 30, 1985. The purpose of this announcement is to provide information on one of the income criteria for eligibility under the Low Income Home Energy Assistance Program (LIHEAP). Section 2605(b)(2)(B)(ii) of Pub. L. 97-35 provides that 60 percent of the median income for a State, as annually established by the Secretary of Health and Human Services, is one of the income eligibility criteria under LIHEAP.

The Low Income Home Energy Assistance Program is reauthorized through the end of fiscal year 1986 by the provisions of title VI of "The Human Services Reauthorization Act"—Pub. L. 98-558—enacted on October 30, 1984. Under this enacted legislation, the current income eligibility provisions relating to median income remain unchanged.

Estimates of the median income of four-person households for each State and the District of Columbia for fiscal year 1985 are developed by the Bureau of the Census. In developing the median incomes, the Bureau of the Census uses three sources of data: (1) The March 1983 Current Population Survey; (2) the 1980 Census of Population; and (3) estimates of per capita income from the Bureau of Economic Analysis. Our methodology for adjusting median income to households of different sizes is specified in 45 CFR 96.85 (which was published in the **Federal Register** on July 2, 1984 at 49 FR 27145).

The State-by-State listing of median income and the 60 percent of median income requirement for a four-person household in that state for fiscal year 1985 is attached.

Dated: November 27, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

MEDIAN INCOME FOR FOUR-PERSON HOUSEHOLDS: FISCAL YEAR 1985

State	Median income [1]	60 percent of median income [2]
Alabama	$24,181	$14,509
Alaska	31,823	19,094
Arizona	29,835	17,901
Arkansas	20,710	12,426
California	29,985	17,931
Colorado	30,663	18,398
Connecticut	35,361	21,217
Delaware	30,498	18,299
District of Columbia	26,897	16,138
Florida	25,745	15,447
Georgia	26,935	16,161
Hawaii	30,019	18,011
Idaho	23,529	14,117
Illinois	29,758	17,855
Indiana	26,123	15,674
Iowa	26,129	15,677
Kansas	23,956	14,374
Kentucky	23,732	14,239
Louisiana	27,165	16,299
Maine	23,036	13,822
Maryland	32,456	19,474
Massachusetts	30,327	18,196
Michigan	28,125	16,875
Minnesota	28,666	17,200
Mississippi	22,247	13,348
Missouri	26,035	15,621
Montana	24,965	14,979
Nebraska	25,372	15,223
Nevada	28,411	17,047
New Hampshire	28,810	17,286
New Jersey	32,781	19,669

MEDIAN INCOME FOR FOUR-PERSON HOUSEHOLDS: FISCAL YEAR 1985—Continued

State	Median income [1]	60 percent of median income [2]
New Mexico	23,642	14,185
New York	28,730	17,238
North Carolina	24,085	14,451
North Dakota	26,361	15,817
Ohio	27,109	16,265
Oklahoma	27,461	16,477
Oregon	25,968	15,581
Pennsylvania	27,208	16,325
Rhode Island	26,170	15,702
South Carolina	23,490	14,094
South Dakota	22,009	13,205
Tennessee	23,875	14,325
Texas	28,561	17,149
Utah	25,677	15,406
Vermont	23,797	14,278
Virginia	28,528	17,117
Washington	29,972	17,983
West Virginia	22,425	13,455
Wisconsin	27,979	16,774
Wyoming	29,562	17,749

[1] Developed by the bureau of the Census from the March 1983 Current Population Survey, 1980 Census of Population, and per capita income estimates from the Bureau of Economic Analysis.

[2] Prepared by the Social Security Administration, Office of Family Assistance.

Note.—The median income for a four-person household in the 50 States and the District of Columbia applicable to the period October 1, 1984 through September 30, 1985 is $27,619.

[FR Doc. 84-31697 Filed 12-5-84; 8:45 am]

BILLING CODE 4190-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 84-553]

Delegating Authority to the Office of General Counsel To Issue Written Determinations Regarding the Interception of Phone Conversations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an *Order* which delegates authority to the Office of General Counsel to issue written determinations regarding the interception of telephone calls as required by GSA regulations. These new rules will facilitate the issuance of written determinations, and ensure compliance with GSA's regulations.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph M. McBride, Legal Counsel Division, Office of General Counsel (202) 632-6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Organization and functions (government agencies).

Order

In the matter of amendment of Part 0 of the Commission's rules and regulations to delegate authority to the Office of General Counsel to issue written determinations regarding the interception of telephone conversations.

Adopted: November 19, 1984.
Released: November 23, 1984.

By the Commission.

1. The General Services Administration's (GSA's) regulations generally prohibit the consensual listening-in or recording of telephone conversations on the Federal Telecommunications System or any other telephone system approved in accordance with the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 481(a) (1) and (3), except under six enumerated circumstances. For example, GSA's regulations permit the interception of telephone conversations for law enforcement, counter-intelligence, public safety and service monitoring purposes, to aid a handicapped employee whenever certain requirements are met, and whenever the consent of all parties has been obtained for each specific instance of interception. In many of these instances, however, GSA's regulations also require that the agency head or his designee either issue a written determination approving the interception or be informed of any proposed interception on the part of any official or employee. *See* 5 CFR 101-37.311-3 (c), (d), and (f); 5 CFR 101-37.311-4(a).

2. The purpose of this order is to amend Commission rules to delegate authority to the Office of General Counsel to issue written determinations regarding the interception of telephone conversations. The delegation of authority to the Office of General Counsel to issue such written determinations will enable that Office to exercise its expertise in these matters and will facilitate the issuance of written determinations. Moreover, through such oversight the General Counsel's Office can ensure compliance with GSA's regulations, in particular the responsibilities imposed upon the agency by § 101-37.311-4.

3. Authority for this delegation of authority is contained in section 5(c)(1) of the Communications Act of 1934, as amended.

4. Accordingly, it is ordered that the amendments set forth in attached Appendix are effective December 31, 1984.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 0—[AMENDED]

Appendix

Part O of the Commission's Rules and Regulations is hereby amended as follows:

1. Section 0.41 is amended by the addition of the following paragraph (n):

§ 0.41 Functions of the Office.

* * * * *

The Office of the General Counsel has the following duties and responsibilities:

* * * * *

(n) To issue written determinations on behalf of the Chairman, and otherwise act as the Chairman's designee on matters regarding the interception of telephone conversations, as required by the General Services Administration's regulations. 47 CFR 101-37.311 *et seq.*

* * * * *

2. Section 0.251 is amended by the addition of the following paragraph (h):

§ 0.251 Authority delegated.

* * * * *

(h) The General Counsel is delegated authority to issue written determinations on behalf of the Chairman, and otherwise act as the Chairman's designee on matters regarding the interception of telephone conversations, as required by the General Services Administration's regulations. 47 CFR 101-37.311 *et seq.*

[FR Doc. 84-31742 Filed 12-5-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-72; RM-4644]

FM Broadcast Station in Houston, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 232A to Houston, Alaska, in response to a petition filed by Evangelistic Alaskan Missionary Fellowship.

EFFECTIVE DATE: February 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations, (Houston, Alaska) (MM Docket 84-72, RM-4644).

Adopted: November 16, 1984.
Released: November 29, 1984.

By the Chief, Policy and Rules Division.

1. In response to a petition filed by the Evangelistic Alaskan Missionary Fellowship ("petitioner"), the Commission adopted the *Notice of Proposed Rule Making*, 49 FR 5030, published February 14, 1984, which proposed the assignment of Channel 237A to Houston, Alaska. Petitioner filed comments in support of the proposal.

2. The *Notice* proposed Channel 237A for assignment to Houston. However, that assignment would be short-spaced to a recent assignment of Channel 239 at Palmer, Alaska (Docket 84-15). A staff study indicates that Channel 232A can be assigned to Houston in compliance with the minimum distance separation requirements. The petitioner has indicated its willingness to apply for Channel 232A.

3. In view of the interest expressed by the petitioner in providing Houston with its first local FM service, we believe that the assignment would be in the public interest. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 4, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Houston, Alaska	232A

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Montrose H. Tyree.

(Secs. 4, 303, 48 stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-31802 Filed 12-5-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-107; RM-4609]

FM Broadcast Station in Greenwood, and Barling, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 233A to Barling, Arkansas, in response to a petition filed by New Life Broadcasting. The assignment could provide a first broadcast service for Barling.

EFFECTIVE DATE: February 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations.[1] (Greenwood, and Barling, Arkansas) (MM Docket, No. 84-107, RM-4609, RM-4817).

Adopted: November 15, 1984.
Released: November 29, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 5775, published February 15, 1984, issued in response to a petition filed by New Life Broadcasting ("petitioner"), proposing the assignment of 285A to Greenwood, Arkansas, as that community's second FM service. Petitioner filed a counterproposal requesting the assignment of Channel 285A to Barling, Arkansas,[2] and stated that it could locate a transmitter site that meets the spacing requirements. Petitioner also states that Barling is more in need of a channel as it has no local aural service while Greenwood has both an AM and an FM station. No other comments were received.

2. A staff study indicates that Channel 285A could be assigned to Barling with a site restriction 5.4 miles south of the community. This would also meet the spacing requirements to an application filed by KCIZ, Channel 285A, Springdale, Arkansas, to relocate its transmitter. However, it would not provide the 16 kilometer buffer zone for Station KMJX, Channel 289, Conway, Arkansas.[3] Although Channel 285A can be assigned to Barling consistent with the decision in Dkt. 80-90, we have determined that another channel (233A) is available for assignment without a site restriction.

3. In view of the above considerations, we believe the public interest would be served by the assignment of Channel 233A since it could provide for a first FM broadcast facility to Barling.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(C)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective February 4, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Barling, Arkansas	233A

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau (202) 634-6350.

(Secs. 4, 303, 48 stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-31803 Filed Filed-12-5-84; 8:45 am]

BILLING CODE 6712-01-M

[1] This community has been added to the caption.

[2] Petitioner originally requested assignment of Channel 285A to Barling, Arkansas, but by its own admission, at that time, did not have an adequate transmitter site to serve Barling with a 70 dBu signal. Thus it suggested the assignment of Channel 285A to Greenwood or Fort Chaffee, Arkansas, either of which they apply for.

[3] Existing Class C stations with less than a 300 meter antenna height are now permitted a 16 kilometer buffer zone. However, this requirement does not apply to proceedings initiated before March 1, 1984. See BC Docket 80-90, 94 F.C.C. 2d 152 (1983), *recons.* 49 FR 10460, published March 20, 1984.

47 CFR Part 73

[MM Docket No. 84-518; RM-4605]

FM Broadcast Station in Corcoran, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 272A to Corcoran, California, as its first FM allocation, at the request of Leroy Demery.

EFFECTIVE DATE: February 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Corcoran, California) (MM Docket 84–516, RM–4695).

Adopted: November 15, 1984.
Released: November 29, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 24391, published June 13, 1984, proposing the assignment of Channel 272A to Corcoran, California, as its first FM allocation. The *Notice* was issued in response to a petition filed by Leroy Demery ("petitioner"). Supporting comments were filed by the petitioner reaffirming his intention to apply for the channel, if assigned.

2. The Commission believes that the public interest would be served by the assignment of Channel 272A to Corcoran, California, in order to provide that community with its first FM allocation. Channel 272A can be assigned to Corcoran in compliance with the minimum distance separation requirements of § 73.207 of the Rules.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 4, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Corcoran, California	272A

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact Montrose H. Tyree (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–31806 Filed 12–5–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–1134; RM–4527]

FM Broadcast Station in Norway, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 232A to Norway, Michigan, as that community's first FM assignment, in response to an expression of interest filed by James J. McClusky.

EFFECTIVE DATE: February 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) table of assignments, FM broadcast stations. (Norway, Michigan) (MM Docket No. 83–1134, RM–4527).

Adopted: November 16, 1984.
Released: November 29, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 50578, published November 2, 1983, proposing the assignment of Channel 232A to Norway, Michigan, as that community's first FM assignment. The *Notice* was adopted in response to a petition filed by Robert A. Sherman ("petitioner"). Petitioner has filed comments withdrawing his interest in the proposed assignment. However, James J. McClusky has filed comments expressing his intention to apply for the channel, if assigned. No comments in opposition or other expressions of interest in the proposal were received.

2. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements. It is noted that the assignment will infringe upon the 16 kilometer buffer of Station WDOR–FM, Channel 230, Sturgeon Bay, Wisconsin. However, as the petition for rule making was filed prior to March 1, 1984, the date on which the buffer zone was established, it is not required that such protection be afforded. See, *Memorandum Opinion and Order*, BC Docket 80–90, 49 FR 10260, published March 20, 1984, and Public Notice, *Implementation of BC Docket 80–90, The Commission Does Not Contemplate a General Freeze*, Mimeo No. 1306, December 9, 1983.

3. Canadian concurrence in the assignment was requested as Norway, Michigan is located within 320 kilometers (200 miles) of the U.S.-Canadian border. That concurrence has been received.

4. We find that the public interest would be served by the assignment of Channel 232A to Norway, Michigan in order to provide that community with its first FM assignment. Accordingly, pursuant to the authority found in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 4, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Norway, Michigan	232A

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–31801 Filed 12–5–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–277; RM 4630]

FM Broadcast Station in Eveleth, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 250 to Eveleth, Minnesota, and modifies the license of Station WEVE–FM to specify the use of Channel 250 in lieu of Channel 261A, in response to a petition filed by Iron Range Broadcasting, Inc.

EFFECTIVE DATE: February 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) table of assignments, FM broadcast stations. (Eveleth, Minnesota) (MM Docket No. 84–277, RM–4630).

Adopted: November 16, 1984.
Released: November 29, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 12284, published March 29, 1984, proposing the substitution of Class C Channel 250 for Channel 261A at Eveleth, Minnesota, and modification of the license for Station WEVE–FM, Channel 261A, to specify operation on Channel 250. The *Notice* was issued in response to a petition filed by Iron Range Broadcasting, Inc. ("petitioner"), licensee of Station WEVE–FM Channel 261A, Eveleth, Minnesota. Supporting comments were filed by petitioner reaffirming its intention to file for the channel, if assigned. No oppositions to the proposal were received.

2. The substitution on Class C Channel 250 for 261A can be made in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules with a site restriction 10.5 miles southeast of Eveleth, Minnesota. As proposed in the *Notice* and since no other comments have been received expressing an interest in the use of the new channel, we are herein modifying the license of Station WEVE–FM to specify operation on Channel 250 in lieu of Channel 261A. See, *Cheyenne, Wyoming*, 62 FCC 2d 63 (1976).

3. We believe the public interest would be served by the substitution of Class C Channel 250 of Channel 261A at Eveleth, Minnesota, since it could provide service to an expanded coverage area in that region. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 4, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below as follows:

City	Channel No.
Eveleth, Minnesota	250

4. It is further ordered, pursuant to the authority contained in section 316 of the Communications Act of 1934, as amended, that the license of Station WEVE–FM, Eveleth, Minnesota, is modified to specify operation on Channel 250, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

5. It is further ordered, that this proceeding, is terminated.

6. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–31804 Filed 12–5–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–376; RM–4633]

FM Broadcast Stations in Abilene and Tye, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein (1) assigns FM Channel 292A to Abilene, Texas, in response to a petition filed by James F. Sayre; and (2) reassigns FM Channel 257A from Abilene to Tye, Texas, to reflect its actual use in that community.

EFFECTIVE DATE: February 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Abilene and Tye, Texas) (MM Docket No. 84–376 RM–4633).

Adopted: November 15, 1984.
Released: November 29, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 18139, published April 27, 1984, proposing the assignment of FM Channel 292A to Abilene, Texas, and the reassignment of FM Channel 257A from Abilene to Tye, Texas, to reflect its actual use in that community. The *Notice* was adopted in response to a petition filed by James F. Sayre ("petitioner"). Petitioner failed to file timely comments but did file supporting comments reaffirming its intention to apply for the channel, if assigned.[1] No oppositions or other comments expressing an interest in the proposal were received.

2. Petitioner's comments, although untimely, reflect its present intention to apply for the proposed channel. Requiring this intention to be expressed in a new petition for rulemaking, rather than accepting the comments in this proceeding, would serve no useful purpose particularly since ample opportunity to comment has already been afforded and no other party has expressed an interest in or opposition to the proposed assignment. The public interest favors prompt institution of needed services, a goal best achieved here by accepting petitioner's late filed comments as a statement of continuing interest permitting us to make the requested assignment.

3. In view of the above, we believe that the public interest would be served by the assignment of FM Channel 292A to Abilene, Texas, since it could provide that community with its fourth FM broadcast service. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the

[1] The comment deadline was June 15, 1984. Comments were filed on August 5, 1984. Petitioner's consultant states that during the comment period petitioner's original consultant left the "communications field" and it had only recently become aware that supporting comments had not been filed.

Commission's Rules. Further, as stated in the *Notice*, we are also reassigning FM Channel 257A from Abilene, Texas, to Tye, Texas, to reflect its actual usage in that community.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective February 4, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Abilene, Texas	264, 266, 292A, 300
Tye, Texas	[illegible]7A

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530).

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-31805 Filed 12-5-84; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 84–110; RM–3046; FCC 84–543]

Remote Control Operation of AM, FM, and TV Broadcast Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the FCC rules regulating the operation of AM, FM, and TV broadcast transmitters. The existing separate rules for each of the three types of broadcast stations are being removed in their entirety and a new simplified rule with uniform provisions for all stations replaces the removed rules. This action is necessary so that broadcast stations can use new and innovative electronics technology and to remove technical and operating rules that no longer serve regulatory purposes.

EFFECTIVE DATE: December 1, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Reiser, Mass Media Bureau, (202) 632–9660.

Lists of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of Part 73 concerning remote control operation of AM, FM, and TV broadcast transmitters (MM Docket No. 84–110, RM–3046).

Adopted: November 19, 1984.
Released: November 21, 1984.

By the Commission:

Introduction

1. This proceeding was initiated by a *Notice of Proposed Rule Making* adopted February 3, 1984, and published in the **Federal Register** at 49 FR 3221. The *Notice* was in response to a petition filed by George E. Molnar, Jr., supported by eight other parties of interest, seeking amendments that would modify the procedures under which AM, FM, and TV broadcast stations operate their transmitting systems by remote control.

Comments

2. The *Notice* proposed and invited comments on rule amendments which, if adopted, would make substantive changes in both the equipment requirements and operating procedures applicable to broadcast remote control operation. Eleven formal and two informal comments were filed. One reply comment was filed. A list of the parties filing pleadings is contained in Appendix A. All parties except Mr. Alvin C. Saltzman favored the deregulatory objective of the proposed rule amendments. Many, however, objected to one or more of the specific provisions of the proposed rules.

3. Nearly all respondents stated that the primary difficulty with remote control operation under the present rules is the fail-safe requirement. Currently, remote control operation of the transmitter must immediately cease if the control circuit is interrupted. Stations apparently experience occasional loss of service due to short term disruptions in control circuits.

4. While many comments were made suggesting adjustments or clarifications of certain specific provisions in the proposed rules, two significant new issues were raised in the comments. The National Association of Broadcasters (NAB) stated that the current remote control rules are unnecessarily complex and suggested that revised rules need only contain two regulatory provisions: (1) Permit the use of remote control for broadcast facilities, and (2) restrict required control functions to those mandated by law, national security, or public safety. The Association of Federal Communications Consulting Engineers (AFCCE) suggested that termination of operation is not necessary if an AM station fails to switch operating modes and does not cause interference. A nondirectional station that operates at its authorized reduced nighttime power during daytime hours is an example of this type of situation.

Discussion

5. The present remote control rules were derived from the transmitter duty operator rules which are, in turn, based upon section 318 of the Communications Act of 1934, as amended. That statute requires that all broadcast stations be operated under the control of a licensed operator. The Act does not specify the duty location of the operator nor the necessary degree of control of either the transmitter or other station technical functions. However, the Commission's rules now require a licensed operator to be on duty at the transmitter site or at a control point shown on the station license. Also, each remote control point used must: (1) Have equipment permitting the operator to determine the station's operating power and other transmitter conditions, (2) permit certain adjustments, (3) be inaccessible to unauthorized persons, and (4) not permit the transmitter to turn on inadvertently without operator supervision. The existing rules also require stations to have an operator in attendance at the actual transmitter site whenever the control or metering circuits between the transmitter and remote control location are disrupted or do not function correctly.

6. The present rules were written at a time when the available broadcast technology required that the duty operator make frequent observations and transmitter adjustments. Also, the Commission considered it essential to be able to immediately contact the duty operator during all hours of operation. Revision of the remote control rules must address the current validity of these concepts.

7. The Commission shares the concern of the licensees in that short-term losses of control or telemetry should not be cause for immediate termination of operation. Accordingly, the new rules will permit continued operation following a loss of transmitter control, pending repair of the control circuits, as long as the station continues to operate properly. Loss of telemetry, on the other hand, means that the transmitter parameters cannot be monitored remotely. Therefore, the amended rules will require termination of use of remote control within three hours after detection of the telemetry failure. Although CBS recommended six hours, the majority of the commenters on this

subject concurred with the proposed three hour period.

8. The considerable variation in the several classes of broadcast stations leads to difficulty in writing technical rules that would be practical for every licensee. Indeed, a review of the comments clearly indicates that the simplest approach is the best in the interest of both broadcasters and the public. Remote control technology has far outstripped the simplistic "on-off, raise-lower, read meter" concept upon which the original remote control rules were based, and the rules should reflect those advances, as well as permit use of future developments.

Conclusions

9. The Communications Act requires that a licensed operator have supervisory control over the station's transmitter during all periods of operation. However, that operator need only be able to terminate the station's operation should it be the source of harmful interference or be operating inconsistently with law or treaty. Meters, alarms or automatic controls could be used to facilitate this supervisory control. Therefore, the amended rules are devoid of "how to" or methodology provisions. Rather, the rules place responsibility on each licensee to assure compliance with the station authorization. The existing rules already provide tolerances for those operating parameters considered necessary for correct broadcast station operation.

10. The Commission, continues to believe that it must be able to contact stations during operation. Therefore, the use of remote control at sites other than at the main studio or transmitter address must be identified to the Commission if the station cannot be contacted during operation at either the studio or transmitter locations.

11. We agree with AFCCE's comments that a station need not terminate operation in cases where an inability to change operating modes will not cause impermissible interference. The amended rules will permit continued operation in a mode having lesser radiation at all bearings and elevations than that authorized following a temporary failure in mode switching functions.

12. The Commission has consistently held in previous proceedings that licensees should have flexibility in operating their stations.[1] Consequently, we have chosen an approach that meets the basic requirements of the Communications Act while allowing licensees maximum flexibility in meeting those requirements. In general, licensees may operate their stations by remote control using any method that assures that: (1) An operator is on duty, (2) the transmitting system operates properly, and (3) the Commission can contact station personnel during hours of operation.

13. Accordingly, it is ordered that Part 73 of the Commission's rules is amended as set forth in the attached Appendix B effective December 1, 1984.

14. It is further ordered that the Secretary shall cause a copy of this *Report and Order* to be furnished to the Small Business Administration.

15. It is further ordered that this proceeding is terminated.

Regulatory Flexibility Analysis

I. *Need and purpose of the rule.* The amended rules remove separate and diverse rules for AM, FM, educational FM, and TV broadcast stations, and replace the removed rules with a common rule applicable to all classes of broadcast stations. Licensees will have complete freedom to choose remote control equipment that meets their individual needs.

II. *Legal basis.* The Rule amendments made by this *Report and Order* are authorized under sections 303(f) and 303(r) of the Communications Act of 1934, as amended, in order that stations operate in a manner consistent with the terms of their authorizations and without causing harmful interference to other radio communications services.

III. *Description, potential impact, and number of small entities affected.* This action would simplify the technical equipment and operating requirements for all AM, FM, and TV broadcast stations that operate their transmitting facilities by remote control. Nearly 6,000 stations will be affected. Further, approximately twenty manufacturers of broadcast transmitting equipment will be able to market remote control devices using advanced technology that the present rules constrain or prohibit.

IV. *Recording, record keeping, and other compliance requirements.* The amended rules impose no record keeping requirements, nor do they require any additional application or notification procedures.

V. *Federal rules which overlap, duplicate, or conflict with this rule.* None.

VI. *Significant alternatives not adopted.* The rules hereby amended incorporate all significant suggestions submitted in response to the *Notice of Proposed Rule Making* and resolve all issues of concern.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Commenters

Association of Federal Communications Consulting Engineers Broadcast Licensees
CBS, Inc.
John Davis, Broadcast Consulting Engineer
National Association of Broadcasters
National Radio Broadcasters Association
Nebraska Educational Television System
Jim Paffenbarger, Station WUOM
Practical Engineering
Alvin C. Saltzman
Sterling Recreation Organization Co.
Arthur Vrooman, Stations WJAC–AM–FM–TV
Edward Y. Wright, Station WRVO

Reply commenters

National Association of Broadcasters

Appendix B

PART 73—[AMENDED]

The following amendments are made to Title 47, Part 73 of the Code of Federal Regulations:

§ 73.66 [Removed]

1. 47 CFR 73.66 is removed in its entirety.

§ 73.67 [Removed]

2. 47 CFR 73.67 is removed in its entirety.

§ 73.274 [Removed]

3. 47 CFR 73.274 is removed in its entirety.

§ 73.275 [Removed]

4. 47 CFR 73.275 is removed in its entirety.

§ 73.574 [Removed]

5. 47 CFR 73.574 is removed in its entirety.

§ 73.575 [Removed]

6. 47 CFR 73.575 is removed in its entirety.

---

[1] Refer to the deregulation of the licensing requirements for radio operators, (See *Report and Order* in Docket 20617 at 46 FR 35450) and deletion of the technical log keeping requirements (See *Report and Order* in Docket 82–536, at 48 FR 28457).

§ 73.676 [Removed]

7. 47 CFR 73.676 is removed in its entirety.

§ 73.677 [Removed]

8. 47 CFR 73.677 is removed in its entirety.

§ 73.3548 [Removed]

9. 47 CFR 73.3548 is removed in its entirety.

10. In 47 CFR, new § 73.1400 is added to read as follows:

§73.1400 Remote control authorizations.

(a) An AM, FM, or TV station transmission system may be operated by remote control using the procedures described in § 73.1410.

(b) No authorization from the FCC is required to operate the transmission system of an AM station operating with a nondirectional antenna, FM station, or TV station by remote control. Authority to operate an AM station using a directional antenna system by remote control is obtained using the following procedures:

(1) An application for a construction permit to erect a new directional antenna or make modifications in an existing directional antenna, subject to the sampling system requirements of § 73.68, may request remote control authorization on the permit application FCC Form 301 (FCC Form 340 for noncommercial educational stations).

(2) A licensee or permittee having a sampling system in compliance with the provisions of § 73.68(a) must request remote control authorization on FCC Form 301–A, and submit information showing that the directional antenna sampling system has been constructed according to the specifications of § 73.68(a).

(3) A licensee or permittee of a station not having an approved directional sampling system in compliance with the provisions of § 73.68(a) must request remote control authorization on FCC Form 301–A, and submit information showing that the directional antenna is in proper adjustment and further showing the stability of the antenna system during the 1-year period specified in Section II of Form 301–A.

(c) Whenever a remote control point is established at a location other than at the main studio or transmitter, notification of that remote location must be sent to the FCC in Washington, D.C., within 3 days of initial use of that point. This notification is not required if responsible station personnel may be contacted at the transmitter or studio site during hours of operation when the remote control operator is elsewhere.

11. In 47 CFR, new § 73.1410 is added to read as follows:

§ 73.1410 Remote control operation.

(a) Broadcast stations operated by remote control must provide at remote control points sufficient control and operating parameter monitoring capability to allow technical operation in compliance with the Rules applicable to that station and the terms of the station authorization. AM stations that are required to change modes of operation during the broadcast day must provide sufficient redundency to assure that such mode changes actually occur.

(b) The remote control system must be designed, installed, and protected so that the transmitter can be activated or controlled only by licensed transmitter operators authorized by the licensee.

(c) The remote control and monitoring equipment must be calibrated and tested as often as necessary to ensure proper operation.

(d) The remote control system must be designed so that malfunctions in the circuits between the control point and transmitter will not cause the transmitter to be inadvertently activated or to change operating modes or output power.

(e) Whenever a malfunction causes loss of accurate indications of the transmitter operating parameters, use of remote control must be discontinued within 3 hours after the malfunction is first detected. If the station is found to be operating beyond the terms of the station authorization and such malfunction cannot be corrected by remote control, station operation must be immediately terminated.

(f) AM stations may use amplitude or phase modulation of the carrier wave for remote control telemetry and alarm purposes. FM stations may use aural subcarriers and TV stations may use either aural subcarriers or signals within the vertical blanking interval for telemetry and alarm purposes. Use of such remote control signals must be in accordance with the technical standards for the particular class of station.

§ 73.51 [Amended]

12. 47 CFR 73.51 is amended by changing the reference to rule "73.57" in paragraph (d)(5) to read "73.1410."

§ 73.68 [Amended]

13. 47 CFR 73.68 is amended by removing paragraph (b)(4) and redesignating paragraph (b)(5) as (b)(4).

§ 73.1225 [Amended]

14. 47 CFR 73.1225 is amended by removing subparagraph (c)(1)(iv)(A) and redesignating paragraphs (c)(1)(iv) (B) through (D) as (c)(1)(iv) (A) through (C) respectively.

15. 47 CFR 73.1560 is amended by revising the heading, redesignating existing paragraph (a) as paragraph (a)(1), and adding new paragraph (a)(2) to read as follows:

§ 73.1560 Operating power and mode tolerances.

(a) *AM stations.* (1) * * *

(2) Whenever the transmitter of an AM station cannot be placed into the specified operating mode at the time required, transmissions of the station must be immediately terminated. However, if the radiated field at any bearing or elevation does not exceed that permitted for that time of day, operation in the mode with the lesser radiated field may continue under the notification procedures of paragraph (d) of this section.

* * * * *

§ 73.1570 [Amended]

16. 47 CFR 73.1570 is amended by removing the words "§ 73.67(b) or" from paragraph (b)(1)(ii).

§ 73.1690 [Amended]

17. 47 CFR 73.1690 is amended by revising the words "See § 73.3548" in paragraph (d)(2) to read "See § 73.1400."

Index—[Amended]

18. The alphabetical index to 47 CFR Part 73 is amended by removing all references to rule sections numbered 73.66, 73.67, 73.274, 73.275, 73.574, 73.575, 73.676, 73.677, and 73.3548; and the following listings are added in alphabetical sequence:

Authorization, Remote control 73.1400
Mode tolerances, Operating power and 73.1560
Operating power and mode tolerances 73.1560
Power and mode tolerances, Operating 73.1560
Remote control authorization 73.1400
Remote control operation 73.1410

[FR Doc. 84-31743 Filed 12-5-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

[Docket No. 41033–4133]

Fishermen's Protective Act Procedures; Fees

Correction

In FR Doc. 84–29354 beginning on page 44474 in the issue of Wednesday, November 7, 1984, make the following correction: On page 44474, in the third column, in § 258.5(b), in the third line, "September 30, 1984" should read "September 30, 1985".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 49, No. 236
Thursday, December 6, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 434

[Doc. No. 1447S]

Tobacco (Dollar Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the definition of unit to encompass the entire ASCS farm serial number; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512–1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than January 7, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Progam to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the tobacco policy are:

1. *Section 1.a.*—Add the failure of the irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. *Section 9.d.*—Effective for 1986 and succeeding crop years, allow the guarantee only on the acerage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This change is required by the change to mandatory APH.

6. *Section 17.c.*—Change the definition for the term "County" to be consistent with other marketing quota crop policies.

7. *Section 17.h.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

8. *Section 17.o.*—Change the definition of the term "Unit" to conform to a single ASCS farm serial number. No furtner division will be allowed. This change will reduce the problem of transferring production from one unit to another.

9. In addition to the policy changes FCIC also proposes to eliminate the codification of Appendix A. Federal crop insurance for tobacco has been expanded into almost all tobacco production counties. The FCIC service offices will be able to advise a producer if tobacco insurance if offered in any county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 434

Crop Insurance, Tobacco (Dollar Plan).

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective for the 1985 and succeeding crop years, to read as follows:

PART 434—TOBACCO (DOLLAR PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

434.1 Availability of the dollar plan of tobacco crop insurance.
434.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
434.3 OMB control numbers.
434.4 Creditors.
434.5 Good faith reliance on misrepresentation.
434.6 The contract.
434.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 434.1 Availability of the dollar plan of tobacco crop insurance.

Insurance shall be offered under the provisions of this subpart on tobacco in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 434.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tobacco which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 434.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 434) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 434.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 434.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 434.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tobacco crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service offices.

§ 434.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tobacco crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension, However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tobacco contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Dollar Plan) Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Dollar Plan of Tobacco Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE. We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption;
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be tobacco of the type shown as insurable by the actuarial table, which is grown on insured acreage and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be an insurable type of tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage was not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(5) Planted to tobacco of a discount variety under provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table; or

(7) Planted for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tobacco irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tobacco irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

Insurance will not attach on an irrigated basis on acreage otherwise insurable on such basis unless it is designated as irrigated at the time the acreage is reported.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice. You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. In addition to the provisions contained in section 16, if for any crop year the support price per pound is reduced 10 percent or more below the support price per pound for the previous crop year, the dollar amounts of insurance per acre for the current crop year will be adjusted by multiplying the support price per pound (rounded to the nearest cent, less four cents per pound for warehouse charges) for the current crop year by the amount in pounds per acre shown by the actuarial table for this purpose. If a tobacco price support program is not in effect for the kind of tobacco which includes the insured type for any crop year, the amounts in pounds per acre shown in the actuarial table will be multiplied by the market price for that crop year to determine the amounts of insurance per acre for such crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1-½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. The following dates immediately after the normal harvest period:

(1) Type 11 and 12..... November 30;
(2) Type 13..... October 31;
(3) Type 14..... September 30;
(4) Type 36..... January 31;
(5) Type 31 and 35..... February 28;
(6) All other types..... March 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use if given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any tobacco is destroyed or damaged by fire during the insurance period.

(5) Where tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us sufficient time to inspect the cured tobacco prior to its sale or other disposition.

(6) Notice must be given upon completion of harvest of any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed unless notice has already been given under this section.

(7) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Subtracting therefrom the value of the total production of tobacco to be counted (see section 9e); and

(3) Multiplying the remainder by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The value of the total production to be counted for a unit will include the value of all harvested and appraised production.

(1) The value of production to count will include:

(a) The gross returns (less four cents per pound for warehouse charges) from tobacco sold on the warehouse floor;

(b) The fair market value of the tobacco sold other than on the warehouse floor;

(c) The fair market value of the tobacco harvested and not sold;

(d) The fair market value of any unharvested tobacco as if such tobacco were harvested and cured; and

(e) The current year's support price per pound (less four cents per pound for warehouse charges) for appraisals made by us for poor farming practices or uninsured causes of loss. (If a price support program is not in effect, such appraised production will be valued at the market price for the current crop year.)

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of and, if the best offer you receive for any such tobacco is considered by us to be inadequate, to obtain additional offers on your behalf.

(3) The stalks on any insured acreage of tobacco types 11, 12, 13, or 14 must not be destroyed until we give written consent. For any such acreage on which the stalks have been destroyed prior to such consent, we may make an appraisal on such acreage of not less than the amount of insurance per acre.

(4) The value of appraised production to be counted will include:

(a) The value of unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the amount of insurance for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than 35 percent of the amount of insurance for all other unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county;

(b) Harvested; or

(C) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(7) If you have elected to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our

form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set off are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; Surry, Wilkes, Caldwell, Burke and Cleveland Counties, North Carolina and all North Carolina counties west thereof, and South Carolina.	March 31.
All other North Carolina counties and all other States.	April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of dollar tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county even though physically located in another county.

d. "Crop year" means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

e. "Harvest" means:

(1) The completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the amount of tobacco in pounds per acre shown in the actuarial table for such purpose is cut or primed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

i. "Market Price" means the price contained in the actuarial table and for tobacco:

(1) Types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, and 37 is the average auction price for the applicable type (less four cents per pound for warehouse charges) in the belt or area; and

(2) Types 54 and 55 is the average price for the applicable type in the belt or area.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, A State, a political subdivision of a State, or any agency thereof.

k. "Planting" means transplanting the tobacco plant from the bed to the field.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Support price per pound" means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program. For any crop year in which a price support for the insured type is not in effect, the market price for that crop year will be used.

n. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

o. "Unit" means all insurable acreage of an indurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on August 16, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by: Edward Hews.
Dated: November 30, 1984.

Edward Hews,

Acting Manager.

FR Doc. 84-31812 Filed 12-5-84; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 447

[Doc. No. 1442S]

Popcorn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Popcorn Crop Insurance Regulation (7 CFR Part 447), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the method of crediting the replanting payment; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than January 7, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action: (1) Is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 milion or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any signficant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the popcorn policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.c.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 6*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made the replanting payment will be applied to payment of the billed premium. This is a change from the previous practice of applying the replanting payment to the outstanding premium in all cases.

5. *Section 9.d.*—Effective for the 1986 and succeeding crop years allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. *Section 9*—Delete the requirement that a replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

7. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

8. In addition to the policy changes FCIC also proposes to eliminate the codification of Appendix A. The FCIC service offices will be able to advise a producer if insurance is offered in any county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 447

Crops insurance; Popcorn.

Proposed Rule

PART 447—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Popcorn Crop Insurance Regulations (7 CFR Part 447), effective for the 1985 and succeeding crop years, to read as follows:

PART 447—POPCORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.
447.1 Availability of popcorn crop insurance.
447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities will be computed.
447.3 OMB control numbers.
447.4 Creditors.
447.5 Good faith reliance on misrepresentation.
447.6 The contract.
447.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 447.1 Availability of popcorn crop insurance.

Insurance shall be offered under the provisions of this subpart on popcorn in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for popcorn which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 447.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 447) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 447.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 447.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the popcorn insurance contract, whenever: (a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 447.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the popcorn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 447.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the popcorn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a popcorn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Popcorn Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Popcorn Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good popcorn farming practices or the grower provisions of the popcorn contract;

(3) The impoundment of water by any governmental, public or private dam or reservoir project;

(4) Damage resulting from frost or freeze after the date designated by the actuarial table; or

(5) Any cause not specified in subsection 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be popcorn which is planted for harvest, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be popcorn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured popcorn at the time of planting.

d. We no not insure any acreage:

(1) Of popcorn not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);

(2) Which is destroyed, it is practical to replant to popcorn, and such acreage is not replanted;

(3) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(6) Of volunteer popcorn;

(7) Planted to a type or variety of popcorn not established as adapted to the area or excluded by the actuarial table;

(8) Planted with a crop other than popcorn; or

(9) Planted for the development or production of hybrid seed or planted for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good popcorn irrigation practice at time of planting; and

(2) Any loss of production caused by failure to carry out a good popcorn irrigation practice, except failure of the water supply from an unavoidable cause occuring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitations established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a "lease" under which you retain possession of the land on which the popcorn is grown and which provides for delivery of the popcorn under certain conditions and at a stipulated price will, for the purpose of this contract, be treated as a contract under which you have the share in the popcorn.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of popcorn planted in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any popcorn planted in the county. This report must be submitted annually before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year, as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on insuring experience through the 1983 crop year under the terms of the Experience Table contained in the policy for the 1984 crop year, ou will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the popcorn is planted and ends at the earliest of:

a. Total destruction of the popcorn;
b. Harvest;
c. Final adjustment of a loss; or
d. December 10 of the calendar year in which the popcorn is normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant popcorn damaged due to any insured cause (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit);

(b) During the period before harvest, the popcorn on any unit is damaged and you decide not to further care for it or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the popcorn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage has been replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested popcorn (at least 10 feed wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of: (a) Total destruction of the popcorn on the unit; (b) Harvest of the unit; or (c) December 10 of the crop year.

b. You may not destroy or replant any of the popcorn on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the popcorn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the popcorn on the unit;
(2) Harvest of the unit; or
(3) December 10 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of the popcorn on the unit and that any loss of production has been directly caused by one

or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of popcorn to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (pound) to be counted for a unit will include all harvested and appraised production.

(1) Mature popcorn production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.0 percent; or

(b) Which, due to insurable causes, is not of merchantable popcorn quality and is rejected by the processor, will be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

(2) Any production from yellow or white dent corn will be counted as popcorn on a weight basis.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good popcorn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage and given written consent to be put to another use will be considered as production unless such acreage is:

(a) Not put to another use before harvest of popcorn becomes general in the country;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) The amount of production of any unharvested popcorn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you have elected to exclude hail and fire as insured causes of loss and the popcorn is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78 "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. A replanting payment may be made on any insured popcorn replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date determined to be reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed 150 pounds multiplied by the price election, multiplied by you share.

If the information reported by you results in a lower premium than the actual premium determined by us, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

i. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire from the policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due to us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvest, storage, shipment, sale, or other disposition of all of the popcorn produced on each unit including separate records showing the same information for production for any uninsured acreage. Any persons designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice to the other on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date for the policy on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set off are approved.

e. The cancellation and termination date is April 15.

f. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of popcorn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding popcorn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the popcorn is normally grown and will be designated by the calendar year in which the popcorn is normally harvested.

d. "Harvest" means the completion of removing the grain from the stalk either by hand or machine.

e. "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Replanting" means performing the cultural practices necessary to replant insured acreage to popcorn.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the popcorn or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of popcorn in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the popcorn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with appeal regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on August 16, 1984.

Dated: November 30, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84–31809 Filed 12–5–84; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 84–ANM–28]

Proposed Alteration and Establishment of Jet Routes, Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend segments of Jet Routes J–60, J–80 and J–28 and establish Jet Route J–206. This action is proposed due to the commissioning of the Red Table, CO, very high frequency omni-directional radio range distance measuring equipment (VOR/DME).

DATES: Comments must be received on or before January 21, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84–ANM–28, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available

for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to amend segments of Jet Routes J–60, J–80, J–28 and to establish new J–206. The FAA has commissioned the Red Table VOR/DME near Aspen, CO. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Jet routes, aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

J–60 [Amended]

By removing the words "Hanksville, UT; Grand Junction, CO;" and substituting the words "Hanksville, UT; Red Table, CO; Grand Junction, CO;"

J–80 [Amended]

By removing the words "Grand Junction, CO; Denver, CO;" and substituting the words "Grand Junction, CO; Red Table, CO; Denver, CO;"

J–28 [Amended]

By removing the words "From Pueblo, CO, via Garden City, KS," and substituting the words "From Milford, UT, via Hanksville, UT; Gunnison, CO; Pueblo, CO, via Garden City, KS."

J–206 [New]

From Alamosa, CO; via Gunnison, CO; Red Table, CO; to Rock Springs, WY.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 29, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–31842 Filed 12–5–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 610 and 630

[Docket No. 84N–0051]

General Biological Product Standards; Cell Lines Used for Manufacturing Biological Products; Additional Standards for Viral Vaccines

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to establish general requirements for cell lines used for manufacturing any biological product for human use. The proposed regulations will standardize information required to be submitted to FDA in support of license applications regarding cell lines developed using new technologies, such as hybridoma technology or recombinant deoxyribonuclei acid (DNA) technology. FDA also is deleting certain requirements regarding human diploid cell lines used for manufacturing Poliovirus Vaccine, Live, Oral.

DATES: Comments by February 4, 1985. FDA is proposing that any final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton, Center for Drugs and Biologics (HFN–368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: Certain cells that are capable of in vitro growth provide suitable substrates in which viruses intended for production of viral vaccines are cultivated. These cell substrates include: (1) Primary cell cultures of avian and mammalian species that can be subcultivated for only a limited number of population doublings, and (2) human diploid cell lines. Diploid cell lines can be subcultivated for a moderate number of population doublings while retaining their original diploid chromosome number throughout. FDA approved the use of human diploid cell lines for the cultivation of virus on October 16, 1971 (see 36 FR 20160). Human diploid cell lines that are capable of propagation of viruses in vitro are now being used extensively worldwide for producting viral vaccines. Viral vaccines that are produced in human diploid cell lines that are licensed now in the United States include Adenovirus Vaccine, Live, Oral, Type 4; Adenovirus Vaccine, Live, Oral, Type 7; Rubella Virus Vaccine, Live; and Rabies Vaccine. Other viral vaccines produced in cell lines from human and nonhuman primates and other mammalian species are being investigated and developed.

FDA's general biologic regulations in 21 CFR Parts 600, 601, and 610 do not contain general standards that apply to all cell lines used to produce viral vaccines and other biological products. FDA's only regulations concerning cell lines are included in the regulations for one product, Poliovirus Vaccine, Live, Oral (21 CFR 630.12(b) and 630.13(c)), published in the **Federal Register** of October 16, 1971.

To assist manufacturers in developing and investigating biological products produced from cell lines, FDA announced the availability of a document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals" (see 49 FR 23456). The points to consider document may also be used by manufacturers who are preparing to submit to FDA under 21 CFR Part 601 applications for a license for a new biological product produced

from cell lines. Manufacturers submit such applications for new biological products produced in cell lines to the Office of Biologics Research and Review (OBRR), Center for Drugs and Biologics (HFN–800), 8800 Rockville Pike, Bethesda, MD 20205. In the application, the manufacturer would describe its test procedures for identifying the cell lines, test procedures for determining the purity and stability of the cell lines, and acceptance criteria for the cell lines.

To promote uniformity and standardize the information concerning cell lines that each manufacturer is required to submit to FDA to obtain approval for new products or to obtain approval of new procedures to make currently marketed products, the agency is proposing to amend the biologics regulations in 21 CFR Part 610 by adding to § 610.18 new paragraph (c) *Cell lines used for manufacturing biological products.* The new paragraph would apply to all biological products obtained from cell lines. FDA is proposing that all such cell lines be: (1) Identified by history, (2) described with respect to cytogenetic characteristics and tumorigenic potential, (3) characterized with respect to in vitro growth characteristics and life potential, and (4) tested for the presence of detectable microbial agents. FDA advises that requirements or tests for cell lines other than those in proposed paragraph (c) may be required, as necessary, by the Director, OBRR, to ensure the safety, purity, and potency of a product.

The current regulation in § 630.12(b) for a human cell line requires that the cell line be free from oncogenic (tumorigenic) properties. In proposed § 610.18(c)(1)(ii), FDA is proposing that the manufacturer describe in its application the tumorigenic potential of a cell line to provide FDA flexibility to either (1) review and, if appropriate, approve the manufacturer of products produced using tumor cells (e.g., hybridoma technology) or (2) as a requisite for approval, require testing of products for tumorigenicity. As an example, for monoclonal antiobodies produced by hybridoma technology, FDA would not require tests on certain cell lines for tumorigenic potential or chromosomal abnormalities, because hybridomas, as a class, are tumorigenic and are chromosomally abnormal.

FDA also is proposing certain conforming amendments to the biologics regulations to provide consistency with proposed new paragraph (c) in § 610.18. Accordingly, FDA is proposing the following amendments:

FDA is proposing to amend § 610.18 by adding new paragraph (d) to reference the recordkeeping requirements related to cultures, including cell lines.

FDA is proposing to amend § 630.10(a) to revise the phrase "a strain of human cells cultures found by the Director, Office of Biologics Research and Review, to meet the requirements of § 630.12(b)" to read "a cell line found by the Director, Office of Biologics Research and Review, to meet the requirements under § 610.18(c)". The proposed language identifies new § 610.18(c) as the regulation that specifies the general requirements for cell lines.

FDA is proposing to establish a new title for, and revise, § 630.12(b). FDA is proposing to remove § 630.12 (b)(1) and (b)(2) because these current requirements would be replaced by new requirements in proposed § 630.18(c) that would apply to all biological products, including Poliovirus Vaccine, Live, Oral. FDA is proposing that the only current requirement remaining in revised § 630.12(b) would be the field studies requirement for Poliovirus Vaccine, Live, Oral, that now is in § 630.12(b)(3).

FDA is proposing to amend § 630.13(b) to change the term "line cells" to read "cell lines" to be consistent with current terminology.

FDA is proposing to amend § 630.13 by removing paragraph (c) concerning the requirements for virus propagated in human cell cultures for use in the manufacture of poliovirus vaccine. The specific requirements for Poliovirus Vaccine, Live, Oral, under existing § 630.13(c) would no longer be necessary, because proposed § 610.18(c) includes general requirements for characterizing and testing cell lines that would apply to all biological products, including Poliovirus Vaccine, Live, Oral.

These proposed amendments do not affect the specific suitability criteria under Part 630 for primary cell cultures of avian and mammalian species used for the production of viral vaccines.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

Section 610.18 contains information collection requirements already submitted to and approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. The recordkeeping requirements in § 610.18 express the recordkeeping requirements in §§ 211.188 and 211.194 (OMB approval number 0910–0139), as those requirements apply to cultures. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Docket Management Branch (**ADDRESS** above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Rm. 3208, Washington, DC 20503, Attn: Bruce Artim.

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the proposed rule would delete specific requirements for one product and replace these requirements with general suitability criteria that would apply to any biological product derived from cell lines. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects

21 CFR Part 610

Biologics, Labeling.

21 CFR Part 630

Biologics.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 701, 52 Stat. 1040–1042 as amended, 1055–1056 as amended (21 U.S.C. 321, 371)), the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 610 and 630 be amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCT STANDARDS

1. In Part 610 by adding new § 610.18(c) to read as follows:

§ 610.18 Cultures.

* * * * *

(c) *Cell lines used for manufacturing biological products*—(1) *General requirements.* Cell lines used for manufacturing biological products shall be: (i) Identified by history; (ii) described with respect to cytogenetic characteristics and tumorigenicity; (iii)

characterized with respect to in vitro growth characteristics and life potential; and (iv) tested for the presence of detectable microbial agents.

(2) *Tests.* Tests that are necessary to assure the safety, purity, and potency of a product may be required by the Director, Office of Biologics Research and Review.

(d) *Records.* The records appropriate for cultures under this section shall be prepared and maintained as required by the applicable provisions of §§ 211.188 and 211.194 of this chapter.

(Approved by the Office of Management and Budget under control number 0910-0139)

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

2. In Part 630:

a. By revising § 630.10(a) to read as follows:

§ 630.10 Poliovirus Vaccine, Live, Oral.

(a) *Proper name and definition.* The proper name of this product shall be "Poliovirus Vaccine, Live, Oral," followed by a designation of the type. The vaccine shall be a preparation of one or more live, attenuated polioviruses grown in monkey cell cultures or a cell line found by the Director, Office of Biologics Research and Review, to meet the requirements under § 610.18(c). The vaccine shall be prepared in a form suitable for oral administration.

* * * * *

b. By revising § 630.12(b) to read as follows:

§ 630.12 Animal source; quarantine; personnel.

* * * * *

(b) *Field studies.* Cell lines used for the manufacture of Poliovirus Vaccine, Live, Oral, shall be shown to be capable of producing a vaccine which, by experience in at least 10,000 persons, has been found to be safe and antigenic. The field studies shall be conducted so that at least 5,000 of the persons when given vaccine reside in areas where health-related statistics regularly are compiled in accordance with procedures, such as those used by the National Center for Health Statistics. Information that identifies each person receiving vaccine shall be furnished to the Director, Office of Biologics Research and Review.

* * * * *

c. By revising § 630.13(b)(1) to read as follows:

§ 630.13 Manufacture of Poliovirus Vaccine, Live, Oral.

* * * * *

(b) * * *

(1) *Continuous cell lines.* When primary monkey kidney cell cultures are used in the manufacture of poliovirus vaccine, continuous cell lines shall not be introduced or propagated in vaccine-manufacturing areas.

* * * * *

d. In § 630.13 *Manufacture of Poliovirus Vaccine, Live, Oral* by removing paragraph (c).

Interested persons may, on or before February 4, 1985, submit to the Dockets Management Branch (**ADDRESS** above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

Dated: November 19, 1984.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 84-31797 Filed 12-5-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Ch. II

43 CFR Ch. II

Intent To Propose Rulemaking To Require the Designation of a Single Payor for Each Federal and Indian Lease

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of intent to propose rulemaking and request for comments.

SUMMARY: The Department of the Interior is considering the establishment of a single payor requirement for each Federal and Indian lease. This notice of intent to propose rulemaking is to fulfill a specific recommendation by the Secretary's advisory committee on minerals accountability to reconsider the single payor approach. A similar proposal was previously considered in June 1982, but was deferred due to the transitional nature of the Department's Royalty Management Program at that time.

The Department's Royalty Management Program is now stabilized, and the establishment of a single payor requirement is again being considered. Prior to publishing such a proposed rulemaking, however, the Department wishes to receive public comment on the concept. Areas for which specific comments are requested are described in the supplementary information section below.

Designation of a single payor would reduce the number of payors that would be making payments to the MMS therefore reducing the workload.

DATES: Written comments and recommendations must be received on or before January 7, 1985.

ADDRESS: Written comments may be mailed or delivered to: Mr. Orie L. Kelm, Chief, Office of Royalty Regulations, Development and Review, Royalty Management Program, Minerals Management Service, 12203 Sunrise Valley Drive, MS 660, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Orie L. Kelm (703) 860-7511 or (FTS) 928-7511.

SUPPLEMENTARY INFORMATION: On June 22, 1982 (47 FR 26856), a notice of intent to propose rulemaking concerning the establishment of an operator of record and single payor plan requirement for each Federal and Indian lease was published in the **Federal Register**.

Due to the then transitional nature of the Department's Royalty and Lease Management Program, a determination was made not to proceed with a proposed rulemaking at that time.

Changed circumstances now dictate reconsideration of the single payor concept. The changed circumstances include: a specific recommendation by the Secretary's Advisory Committee on Minerals Accountability to reconsider the single payor approach for all Federal and Indian leases; evidence that the single payor approach is utilized effectively by a number of energy-producing states in their minerals management activities; and an increasing emphasis on the part of the Department to reduce reporting burden and information collection activities for royalty payors, operators, and lessees on Federal and Indian leases.

Under the concept now being proposed, a single payor would be established for each Federal onshore, Outer Continental Shelf, or Indian mineral lease from the date of first production in paying quantities of minerals extracted from that lease. The single payor would be responsible for maintaining all lease production and sales records, and for the payment of rentals and royalties to the appropriate agency of the Department of the Interior.

The Department particularly desires to receive comments and suggestions from the minerals industry on the impact of the single payor requirement on each Federal and Indian lease, unit, or communitization agreement. Since the single payor concept could be applied to existing producing leases, or just prospectively to new producing leases, comments on the following two issues would be of special interest.

1. If this lease procedure were to be applied prospectively to all leases that begin production after the effective date of the rulemaking, what impact would it have on: (a) Industry royalty and production accounting practices now in effect either as an increase in workload or a reduction in workload; and (b) any additional cost associated with the procedure either in terms of additional personnel, accounting services, or computer time and service needed to implement the regulation.

2. If the procedure were to be applied to all Federal and Indian leases now in production as well as to those coming into production on or after the date of the rulemaking, what would be the impact on the following areas: (a) Conversion of existing industry royalty and production accounting systems to accommodate the change in procedure; (b) the amount of time necessary to convert to the new system required under the single payor procedure; and (c) the cost expressed in dollars of the conversion process broken down as a one-time cost and continuing cost as the result of the new requirement.

In addition to the foregoing, comments are solicited concerning any legal implications which the implementation of the proposed requirement might have.

The Department also wishes to receive comments on the implementation of the single payor concept from those States that share in Federal mineral revenue and from Indian tribes for whom the Department performs lease management and royalty management functions.

The MMS will assume the responsibility for comprising comments and distributing them to other affected agencies within the Department of the Interior.

Dated: November 28, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84-31675 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-MR-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 83

[PR Docket No. 84-1237; FCC 84-561]

VHF Port Operations and Bridge-to-Bridge Channels

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes to: (1) Allow Government stations to use five VHF port operations channels which are presently allocated to the non-Government Maritime Mobile Service, and (2) require that all VHF marine radios automatically reduce power to one watt when tuned to the bridge-to-bridge channel. The first action was requested by the U.S. Coast Guard to facilitate the handling, movement, and safety of ships in port. The three port operations frequencies already available for Government use are insufficient to meet the operational requirements of Government stations. The second change was requested by the National Transportation Safety Board. It is necessary because the existing rule requiring ship station operators to reduce power when using the bridge-to-bridge channel is frequently violated. The intended effect of these two changes is to improve the safety of ships.

DATES: Comments must be received on or before January 7, 1985, and reply comments must be received on or before January 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 83

Communications equipment, marine safety, radio, ship stations, telephone, bridge-to-bridge.

Notice of Proposed Rule Making

In the matter of amendment of Parts 2 and 83 of the rules to allow Government stations to use five additional port operations channels, and to require VHF marine radio stations to automatically reduce power to one watt when tuned to the bridge-to-bridge channel (PR Docket No. 84-1237).

Adopted: November 21, 1984.

Released: November 29, 1984.

By the Commission.

1. The Commission proposes to amend its rules governing the use of VHF marine radios. The first change would allow U.S. Government stations to use five "port operations" channels which are presently allocated exclusively for non-Government use. Port operations channels are used in the movement, handling and safety of ships in or near ports, locks and waterways. The second change concerns the "navigational" (or "bridge-to-bridge") channel which is used by vessels to communicate with other vessels at close range for navigational purposes.

2. The Government, which includes the U.S. Coast Guard (USCG) is currently authorized to use three non-Government VHF marine channels for port operations communications [1]. In its letter of April 10, 1984, the USCG states that these three VHF marine channels are the highest priority port operations channels and are therefore often occupied. The delays caused to USCG operations when these channels are in use pose a danger to marine safety. The USCG is also hampered in its mission to provide port security and safety.

3. The Vessel Bridge-to-Bridge Radiotelephone Act requires that certain classes of vessels [2] be equipped with a radio station on the bridge so that one vessel can communicate with another vessel at close range concerning pertinent navigational matters. Because the transmission is from the navigational bridge of one vessel to the navigational bridge of the other vessel, these communications are known as bridge-to-bridge. In the southern Louisiana section of the Mississippi River, the bridge-to-bridge channel is VHF marine Channel 67 (156.375 MHz). In the remaining U.S. navigable waters, Channel 13 (156.650 MHz) is used for this purpose.

4. *Port operations channels.* In its request, USCG states that "Adequate and effective port operations communications are necessary for safe and efficient traffic operations in waterways." Because these functions are the responsibility of both Government and non-Government stations, the USCG maintains that the channels used for this purpose should be available to all the participants, not just to the non-Government stations. Under

[1] 47 CFR 2.106, Footnote US77.

[2] Power-driven vessels of 300 gross tons and upwards, vessels of 100 gross tons and upwards carrying passenger(s) for hire, towing vessels of 26 feet or more in length, and dredges or floating plants likely to affect navigation are subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1972, as amended. (85 Stat. 164; 33 U.S.C. 1201-1208).

the current provisions, the USCG reports that it is often necessary to delay port operations communications with Government and non-Government ships because the only channels available are occupied. "Delays such as these and the restrictions caused by an inadequate number of VHF channels present a continuing potential danger to marine safety." [3] The Commission is proposing to amend its rules to allow Government stations to use the following additional VHF port operations channels: Channel 5 (156.250 MHz), Channel 65 (156.275 MHz), Channel 66 (156.325 MHz), Channel 73 (156.675 MHz), and Channel 74 (156.725 MHz).

5. *Bridge-to-bridge communications.* Part 83 of the rules states that bridge-to-bridge communications should not exceed one watt, except under special circumstances [4]. Use of higher power by any one vessel results in a ripple effect as vessels operating on low power cannot "capture" an FM receiver when another transmitter operates on high power on the same frequency. Ironically, because bridge-to-bridge communications are generally at close range, there is no significant improvement in communications.

6. Because of violations of the present rule, the National Transportation Safety Board (NTSB) recommended that a power-limiting device be required on all vessels equipped with a bridge-to-bridge channel [5]. The Commission is proposing that all VHF marine radios type accepted for bridge-to-bridge communications and manufactured 18 months after adoption of the new rules be incapable of violating the one watt power limitation rule when switched to Channel 13. For uses specified in Section 83.251(c) and Subpart BB a manual override switch must be provided which when held by the operator will permit full carrier power operation. Equipment manufactured prior to the cut-off-date may remain in use for up to ten (10) years, even if it is sold or transferred to another vessel. Additionally, violations of the one watt rule will now be subject to a $500 fine, instead of the previous $200 fine.

7. The lower Mississippi River uses VHF Channel 67 instead of 13 because the numerous surrounding rivers and waterways which use Channel 13 would interfere with its use on the lower Mississippi. We believe that, because the lower Mississippi is heavily travelled and has experienced frequent abuse of the one watt power limitation, Channel 67 should also be included in this NPRM. Although this would mean that throughout the U.S. waterways, except in the lower section of the Mississippi, commercial VHF intership Channel 67 would have an automatic one watt reduction with manual override, it should not cause any hardship to commercial communications. Our rules already require vessels to use the minimum power necessary to transmit their signal. Compulsorily fitted vessels, which have the capability to reduce power to one watt or less, will have already discovered that use of the 25 watt maximum is rarely necessary. Because there are twelve other commercial VHF channels available in most navigable U.S. waters, the one watt limitation on Channel 67, if included, should have minimal impact. We are soliciting specific comments on the inclusion of Channel 67. If the comments do not offer sufficient reason to exclude Channel 67, it will be included in the Report and Order.

8. In order to provide marine radio manufacturers with enough time to make design changes, to terminate production, and to dispose of stocked equipment which will not comply with the new rule, we are proposing that the new rule not become effective until 18 montsh after it is adopted. Because the technical change required is so minor, we do not anticipate that it will affect the parts manufactures have on order or in stock. However, we are seeking comments and suggestions on how to build the new equipment to minimize cost and specific comments on the estimated cost of the change.

9. Not all marine radios are capable of conducting bridge-to-bridge operations. VHF marine radios have a life expectancy of seven years. The ten year leeway is being proposed to reduce the impact on pleasure boaters and infrequent radio users. However, the number of grandfathered radios in use will necessarily decline over the ten years and the incidences of high power use on the bridge-to-bridge should decline proportionately. Violators of this existing one watt restriction should be more easily detected.

10. Accordingly, we propose to amend Part 2 of the rules to allow Government stations to communicate on five additional port operations channels, and Part 83 to require that radios manufactured 18 months after release of the Report and Order in this proceeding automatically reduce power on navigational Channel 13 to one watt or less and provide a manual override for full carrier power, and to prohibit use of obsolete marine radios (those which do not automatically reduce power) after ten years. We are also proposing to make several minor editoral amendments to Part 83. This notice is issued under the authority contained in Sections 4(i) and 303(c) and (r) of the Communications Act of 1934, as amended 47 U.S.C. 154(i) and 303(c) and (r).

11. Under procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before January 7, 1985, and reply comments on or before January 22, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

12. In accordance with the provisions of Section 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

13. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of the oral presentations, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

[3] USCG letter of 19 April 1984, 5740/3, Serial 748-3.

[4] 47 CFR 83.251(c).

[5] NTSB's recommendations stemmed from its investigation of the collision of the U.S. tank ship Pisces and the Greek bulk carrier Trademaster on the lower Mississippi River on December 27, 1980.

Regulatory Flexibility Initial Analysis

14. *Reason for Action* The one watt rule is regularly violated when not constantly enforced. Its purpose is to maximize use of the bridge-to-bridge channel to increase the safety of vessels navigating within close range.

15. *The Objective* The Commission proposes to require that all VHF marine radios manufactured after a specific date automatically meet the one watt limitation on the bridge-to-bridge channels. Radios will have a manual override which when held by the operator will permit full carrier power on Channel 13. All radios used after a second date (ten years later) must automatically reduce power to one watt.

16. *Legal basis* Legal action as proposed is a furtherance of Section 303 of the Communications Act of 1934, as amended, which charges the Commission to make such rules as may be necessary to serve public necessity.

17. *Description, potential impact and number of small entities affected* The new rule would apply to all VHF marine radios manufactured and used after certain dates. Radios manufactured prior to the first date would be exempted from the new rule, even if sold or transferred, for up to ten years. The cost increase is one of the questions raised in this NPRM. VHF marine radios have enjoyed a significant price reduction in the last few years. Since some radios already meet the proposed requirement, it is unlikely that conforming the remaining radios would be costly. The number of vessels required to comply with bridge-to-bridge regulations is about 13,000. The life expectancy of a VHF marine radio is 7 years.

18. *Recording, record keeping and other compliance requirements* None.

19. *Federal rules which overlap, duplicate or conflict with this rule* The Safety of Life at Sea (SOLAS) Convention requires ships subject to the SOLAS to have VHF radiotelephone transmitters with a carrier power of at least 8 watts. The SOLAS requirement is contained Section 83.853(c) of the Commission's rules. To sail in foreign waters, a VHF equipped vessel would have to be equipped with a radio which met the 8 watt minimum requirement by use of a manual override which when held by the operator in the activated position would permit operation at the higher carrier power on Channels 13 and 67.

20. *Any significant alternative minimizing impact on small entities and consistent with stated objective* None.

21. Pursuant to Section 605 of the Regulatory Flexibility Act of 1980, U.S.C. 605, the Commission certifies that the proposal concerning port operations channels will not have a significant impact on a substantial number of small businesses.

22. Regarding questions on matters covered in this document contact Maureen Cesaitis (202) 632-7175.

23. It is ordered, that a copy of this Notice of Proposed Rule Making shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(Secs. 4,303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2 and 83 of Chapter I of Title 47 of Code of Federal Regulations are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. Footnote US 77 of section 2.106 is amended by adding paragraph (f) to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

US 77 * * *

(f) In addition to the three frequencies listed in paragraphs (a) and (b) of this section, Government stations may use the following frequencies for port operations to communicate with vessels if the three channels listed above are occupied or otherwise unavailable: 156.25, 156.275, 156.325, 156.675, and 156.725 MHz.

* * * * *

PART 83—STATIONS ON SHIPBORAD IN THE MARITIME SERVICES

§ 83.104 [Amended]

1. Section 83.104 is amended by removing footnote 1 to paragraph (a)(4).

2. Section 83.134 is amended by adding new paragraph (e), revising paragraph (f) and footnotes 1 through 3, and removing footnotes 4 and 5.

§ 83.134 Transmitter power.

* * * * *

(e) Marine utility ship station transmitters and portable ship station transmitters using F3 emission in the band 156–162 MHz must not exceed a carrier power of 10 watts. Portable ship station transmitters type accepted to operate in the band 156–162 MHz manufactured after [18 months after release of the Report and Order in the proceeding] must automatically reduce the carrier power to one watt or less when tuned to the frequency 156.650 MHz.

(f) Ship station transmitters using F3 emission in the band 156.162 MHz must:

(1) have a carrier power of at least 8 watts and not more than 25 watts, which for type acceptance purposes shall be determined at a primary supply voltage of 13.6 volts DC, ± 1% for equipment designed to employ a conventional 12 volt lead acid storage battery as a source of primary power;

(2) be capable of reducing the carrier power to one watt or less.[1 2]

(3) automatically reduce the carrier power to one watt or less when tuned to the frequency 156.650 MHz.[1 2 3] A manual override switch must be provided which when held by the operator will permit full carrier power operation on Channel 13.

3. Section 83.351 is amended by adding a sentence to paragraph (b)(36) to read as follows:

§ 83.351 Frequencies available.

* * * * *

[1] Full duplex transmitters used only on public correspondence duplex channels and only as additional equipment to a VHF ship station in the Great Lakes and equipped with a transmitter which otherwise meets existing rules, statutes, and international agreements, are not required to reduce to one watt.

[2] If a remote control unit is used with a station transmitter manufactured prior to September 1, 1979, or installed prior to March 1, 1980, the remote control unit need not have the capability of reducing its output power to one watt or less. However, this provision does not waive the requirement to limit transmissions on Channels 13 and 67 to an output power of one watt, or the requirement to use minimum output power of one watt whenever possible.

[3] Applicable to transmitters manufactured after [18 months after release of the Report and Order in this proceeding].

(b) * * *

(36) * * * A power not to exceed one watt must be used except under emergency conditions.

* * * * *

§ 83.709 [Amended]

4. Section 83.709 is amended by removing paragraph (a), and redesignating paragraphs (b) and (c) as (a) and (b).

5. Section 83.713 paragraphs (b), (d) and (e) are removed, paragraph (c) is redesignated as (b), and paragraph (a) is revised to read as follows:

§ 83.713 Bridge-to-bridge transmitter.

(a) The transmitter referred to in § 83.709 shall be capable of effective transmission of F3 emission on the navigational frequencies 156.375 MHz and 156.650 MHz.

* * * * *

6. Section 83.715 is amended by removing the note and its designator in paragraph (c)[7][iv] and removing paragraph (d) and revising the introductory text of paragraph (c) to read as follows:

§ 83.715 Bridge-to-bridge receiver.

* * * * *

(c) The recommended technical requirements for the bridge-to-bridge receiver are the following:

* * * * *

[FR Doc. 84-31758 Filed 12-5-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2 and 18

[Gen. Docket No. 20718; FCC 84-578]

Revision of Rules Governing Industrial, Scientific, and Medical Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend Part 2, Subparts I and J, on the marketing rules and equipment authorization procedures, and Part 18 of its Rules (which applies to industrial, scientific, and medical (ISM) equipment) to eliminate any administrative provisions which have become obsolete or an unnecessary burden to the public and to provide technical standards for four new ISM frequency bands. The intended effect is to provide a more efficient equipment authorization program for ISM devices, more comprehensive regulations and additional ISM frequencies.

DATES: Comments must be submitted on/or before January 7, 1985 and reply comments on or before January 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Liliane M. Volcy, Office of Science and Technology, Washington, D.C. 20554, (202) 653-8247.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Reporting requirements, Labeling, Imports.

47 CFR Part 18

Business and industry, Household appliances, Medical devices, Radio, Scientific equipment, Reporting requirements.

The collection of information requirement contained in this proposed rule has been submitted to OMB for review under section 3504(h)f of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Federal Communications Commission.

Third Notice of Proposed Rule Making

In the matter of overall revision of Part 18 governing Industrial, Scientific, and Medical equipment; GEN Docket No. 20718.

Adopted: November 21, 1984.
Released: November 29, 1984.

By the Commission:

Introduction

1. Notice is hereby given of the Commission's intent to amend its Rules concerning the operation of industrial, scientific, and medical (ISM) equipment. The purpose of this proceeding is to eliminate burdensome and obsolete rules governing ISM equipment and to simplify the applicable authorization and administrative requirements under Parts 2 and 18.

2. Under §§ 2.1 and 18.3 of the Rules, ISM equipment is defined as "any device operating above 10 kHz using radio waves for industrial, scientific, and medical or any other purposes including the transfer of energy by radio and which are neither used nor intended for radio communication". This definition includes a diversity of equipment using quite different methods of generating radio frequency (RF) energy at any frequency and power level for scientific, industrial as well as residential applications. Examples are microwave ovens, industrial heaters, glue machines used in factories, X-Ray equipment, ultrasonic room humidifiers, RF stabilized arc welders, induction cooking ranges, electrosurgical units, and particle accelerators.

Background

3. About 35 years ago, the Commission promulgated rules under Part 18, to control the interference potential of ISM equipment to radiocommunication services. Typical ISM equipment, at that time, included large industrial, scientific or medical machines generating high power and operating on any very low frequency, whose operation therefore, was a source of interference to established services. The standards adopted by the Commission were, in essence, suited for classical ISM equipment (relatively high powered industrial, scientific, and medical). These standards were later applied to consumer products, such as microwave ovens, but due to the proliferation of such equipment might not be appropriate in the coming years to protect authorized and licensed services.

4. In an attempt to review the administrative and technical requirements, especially for proliferating consumer devices, in view of technological advancement, the Commission, six years ago, initiated this rulemaking. The major steps in that proceeding were two notices of proposed rule making.[1] The first *Notice* basically proposed revised radiation limits and new administrative provisions whereas the second one recommended more detailed methods of measurements. Respondents favored amendments to the administrative provisions but opposed the proposed emission limits because they were judged to be too severe and unprecedented in view of the low number of interference cases in the United States from the operation of ISM equipment. Major manufacturers and operators of large industrial machinery also commented on the economic impact of implementing such technical standards. They argued that extensive and costly modifications in the design of their products would have to be undertaken to meet the new requirements, thereby increasing not only their selling price but also their maintenance cost.

[1] *Notice of Proposed Rule Making*, 43 FR 46329, October 6, 1978. *Second Notice of Proposed Rule Making*, 44 FR 9771, February 15, 1979.

5. The CISPR and CCIR IWP ¼,[2] two major international organizations concerned with technical standards, have recognized the possible inadequacy of the technical standards for certain ISM equipment in the future and are revising them, as a result of Resolution 63 of the 1979 Geneva World Administrative Radio Conference (WARC). Studies by CCIR are still in progress. International standards are expected to be recommended to member countries of the CCIR when the project is completed. Another consequence of the Final Acts of the 1979 WARC was the addition of four bands in the table of allocations for ISM equipment. These bands have already been recognized in Part 2 of the Commission's Rules through the *Report & Order* in Docket No. 80-739, 49 FR 2357, January 19, 1984.[3] The use of these supplemental frequencies should be consistent with the recommendations of CCIR.

6. In previous actions in this docket, technical standards were adopted to provide for the operation of induction cooking ranges and the burdensome administrative requirement of filing FCC application Form 724 was deleted.[4] Furthermore, on August 5, 1983, the Commission released an *Order Granting Limited Waiver*, FCC 83-361, to exempt RF lighting devices from the recertification requirement of § 18.142(c). This waiver authorizes the limited manufacture and marketing of RF lighting devices provided they meet the same technical standards as computing devices under Subpart J of Part 15. A companion *Notice of Inquiry* in General Docket No. 83-806, 48 FR 37235, August 17, 1983, was released on the same date by the Commission requesting comments on the suitability of the computing devices technical rules for RF lighting devices.

Reasons for further NPRM

7. As a consequence of the proliferation of ISM equipment, particularly for consumer use, in the thirty years since it was adopted, certain deficiencies have developed in Part 18. The text and the equipment authorization requirements have become both intricate and, to some extent, confusing. The rules are lengthy, sometimes contradictory, and difficult for the public to understand. As already mentioned above, the technical standards in Part 18 were originally adopted primarily for large industrial, scientific, and medical machines. These standards may, therefore, not always be suitable for more recent consumer devices which, for the most part, operate under similar conditions to medical diathermy equipment.

8. We are, therefore, issuing a third Notice of Proposed Rule Making to address these problems and, to the extent possible, offer solutions to them. We base this *Notice* on comments received from the public regarding proposed changes to the administrative requirements in the two Notices in this Docket and that simpler equipment authorization procedures, such as verification and notification, have recently been established by the Commission. These procedures were instituted to facilitate the marketing of certain consumer RF devices, such as television receivers and low power transmitters, and were not incorporated in Part 18; they should be implemented into Part 18 to relieve the public of certain burdensome administrative requirements.[5] For further details on the diverse equipment authorization procedures (certification, type approval, etc.) implemented by the Commission, see Part 2, Subpart J of the Rules, 47 CFR 2.901 *et seq.*

Technical Standards

9. The general technical standards for ISM equipment are currently under review by the Commission's staff as well as CCIR IWP ¼ and CISPR in the hope of better understanding the interference potential of ISM equipment and possibly establishing more uniform limits. Because of the complexity and the time involved in reanalyzing the limits for ISM equipment, we propose that the present limits be retained, pending further development in our studies. Action to revise the technical standards at this time is thus held in abeyance. However, there are three technical issues which we feel should be addressed in this proceeding: temporary requirements for RF lighting devices, the addition of four new ISM bands, and the consolidation on the methods of measurements.

10. RF lighting devices may be marketed under a waiver of the three-year re-certification requirement of § 18.142(c), provided they meet the same technical standards as computing devices. Most manufacturers, in their comments in General Docket 83-806, which deals with the revision of the technical standards on RF lighting devices, support the regulations established by the Commission in the *Order Granting Limited Waiver*. We are, in this proceeding, proposing to delete the three-year re-certification requirement wherever it appears at the present time in Part 18. Consequently, we are herein also proposing that RF lighting devices, marketed under the new rules, should temporarily continue to meet the technical standards established for computing devices under Part 15, Subpart J of the Rules, pending further action in Docket 83-806.

11. We propose to implement into Part 18 the four new ISM frequencies adopted in the *Report & Order* in Docket 80-739. Operation on these new ISM frequencies, will be subject to the present technical standards. Comments are requested on the suitability of adopting the current Part 18 technical requirements for these new ISM bands.

12. The current measurement procedures for ISM equipment are specified in Part 18 as well as various bulletins. We propose to consolidate all of the several procedures into a single document and establish a basic method of measurement, to the extent possible. Furthermore, we believe that revising the measurement procedures is necessary in order to reflect the development in measuring techniques and instrumentation in the past decades and better assist the public. The new methods, contained in Appendix B of this document, give basically additional guidelines to the public and are based on the practices of the FCC laboratory. The major change in these methods is the permissible alternate use by the public of an attenuation law factor of 1/d (where d is the distance at which the field strength is being measured) to the extrapolation methods utilized by the Commission. These procedures should be followed, to the extent practicable, by the public when testing is required or requested by the Commission.

Equipment Authorization Program

13. The complexity of the current equipment authorization program for ISM equipment does not allow for the

[2] CISPR is the French acronym for the International Special Committee on Radio Interference (under the International Electrotechnical Commission). CISPR Publication 11 contains the technical standards on ISM equipment. CCIR is the French acronym for the International Radio Consulative Committee. CCIR IWP ¼ is a study group in charge of developing technical standards for ISM equipment.

[3] The four new ISM bands which have been allocated worldwide are the following: 6.78 MHz ±15.0 kHz, 61.25 GHz ±250.0 MHz, 122.5 Ghz ± 5.0 GHz, and 245.00 GHz ±1.0 GHz.

[4] *Docket 20718, First Report & Order*, 44 FR 46178, August 17, 1979 (adopting regulations for induction cooking ranges). *Second Report & Order*, 48 FR 51302, November 8, 1983 (deleting the requirement for filing FCC Form 724).

[5] Verification was implemented through the *Report & Order* in General Docket 80-284, 46 FR 23240, April 24, 1981, (dealing with the methods of measurements for computing devices). Notification was adopted in the *Report & Order* in General Docket 82-242, 48 FR 3614, January 26, 1983, but actually put in effect through the *Report 7 Order* in General Docket 83-10, 49 FR 3991, February 1, 1984.

best possible service to the public. We note that the primary difficulties in comprehending Part 18 are due to (a) inconsistent definitions of terms used to specify an equipment authorization program, and (b) the multiple authorization programs used for the same type of equipment. The following three equipment authorization procedures are currently used to regulate ISM equipment: (1) Type approval, (2) on-site certification, and (3) prototype certification. However, the term "certification" under Part 18 does not represent the same type of procedure as in Part 2, Subpart J of the Rules.

14. Under type approval, a grant of equipment authorization is issued by the Commission based on examination and measurement of one or more sample units at its laboratory. Although this procedure is permitted for the majority of ISM equipment, it is, in practice, applied mostly to consumer products. Type approval is impractical for equipment too large to be shipped to the FCC laboratory or equipment for which operating conditions may not be simulated at the FCC laboratory (this represents the majority of classical ISM equipment). It should be reserved for devices which are difficult to test but which can still be evaluated at an open field test site or equivalent. For the moment, only domestic microwave ovens seem to merit type approval as an equipment authorization procedure because of the difficulty in evaluating such devices. The major problem in testing microwave ovens is the maintenance of, and lack of suppliers for, the aging measuring instrumentation. New methods of measurements for domestic microwave ovens are currently being developed at the FCC laboratory.

15. On-site certification requires that a qualified party test a device at the user's premises, that measurements be made occasionally to assure continued compliance and that records of the test results be kept. No samples of units need to be submitted to the Commission, unless requested. Records are to be presented to the Commission only upon request. On-site certification has the same intent as verification, except that it does not attach to subsequent models and testing must be made at the installation. On-site certification is usually applied to one-of-a-kind equipment. We propose that on-site certification be changed to verification for one-of-a-kind equipment; we also propose to delete the requirement in § 18.117 for industrial heating equipment specifically, to affix or post a copy of the certificate to the equipment or in a location readily available to representatives of the Commission. We also propose to add ultrasonic devices generating less than 500 watts and operating below 90 kHz to the verification category. Ultrasonic equipment generating less than 500 watts and operating at a frequency below 90 kHz is exempt, under the provisions of § 18.71, from type approval or certification. This implies that such ultrasonic equipment is in fact subject to verification and it should thus be stated in the rules. The term verification is not expressed in the rules because such an equipment authorization program was not in effect at the time § 18.71 was promulgated.

16. Prototype certification is similar to certification as defined under Part 2, Subpart J. A grant of equipment authorization is issued by the Commission based on representation and test data submitted by the applicant. The Commission may require the applicant to submit one or more samples of units for further testing. Certification attaches to all subsequently produced units which are identical. However, certification should not be instituted for all ISM equipment, in view of the low number of interference cases from ISM equipment. Such action would be unduly restrictive and should be limited to ISM equipment most capable of causing interference, that is, consumer products. Certification for classical ISM equipment would still require manufacturers to file very extensive and detailed reports of measurements. Notification, which imposes the same conditions as certification except for the requirement to present the Commission with test data, would be more adequate for classical ISM equipment because of their minimal interference potential, as a marketing prerequisite. Notification would still provide the Commission with enough information on a particular system, and would reduce the amount of paperwork and time involved in filing for equipment authorization. Under notification and certification, devices would still have to be tested as a condition for obtaining a grant of equipment authorization from the FCC.

17. In summary, we are proposing the following equipment authorization program for ISM equipment:

(1) Notification for all ISM equipment, unless otherwise specified below:

(2) Certification for consumer ISM equipment;

(3) Verification for ultrasonic equipment generating less than 500 Watts and operating below 90 kHz, and for one-of-a-kind equipment;

(4) Continuation of type approval for domestic microwave ovens.

Other Burdensome and Obsolete Rules

18. This section deals with all other regulations which we believe burdensome and obsolete and which have not been covered above. We shall address basically questions on the marketing rules under Part 2 and the operating conditions under Part 18 concerning licensing, labeling, etc.

A. Part 2

19. Section 2.809 permits the marketing of certain ISM devices before obtaining an equipment authorization from the Commission. However, the equipment may not be operated until authorization from the Commission is received. Since we propose to adopt such procedures as verification and notification for most of the equipment covered under the exemption, § 2.809 can be deleted from the rules without any counteractive effects such as marketing delay. The processing time at the FCC laboratory for an application for notification is currently estimated to be approximately one month. This would not cause any major delay in the marketing of equipment covered under § 2.809. Sections 2.1037 and 2.1039 discuss the procedures for prototype certification and on-site certification, and should be deleted from the rules, in view of the changes proposed above for the equipment authorization program.

B. Part 18

20. When the rules for ISM equipment were first implemented, only licensed services were allowed by the Commission. Section 18.21 of Part 18 assumes that ISM equipment, in order to be operated without a license, should meet the technical standards set forth and that operation under any other terms should be licensed. However, licensing of ISM devices, if necessary, can only be made under Part 5 of the Rules on an experimental basis. Furthermore, the Commission has never issued a license for ISM equipment for non-experiment purposes. From this fact, one can conclude that the contents of Section 18.21 specifying the conditions for licensed operation are obsolete. The provisions of all other sections (§§ 18.22 through 18.29) of Part 18 dealing with the licensed operation of ISM equipment also are considered obsolete.

21. The major burden under Part 18 is the three-year re-certification requirement under § 18.142(c) for equipment operating on non-ISM frequencies. Such a regulation was implemented in order to enforce the rules more intensively and to insure continuing compliance. However, this requirement has had an unnecessarily adverse economic impact on many manufacturers and has impeded application processing by the Commission.

22. Under § 18.125 which specifies the procedures for applying for prototype certification for industrial ISM equipment, paragraph (c) allows the manufacturer to label the equipment. Since most manufacturers choose not to attach this optional label on their devices, it seems that such a regulation is ineffective and can be deleted. However, this does not prohibit a manufacturer/vendor from labeling his equipment if he desires.

Restructure of Part 18

23. The structure of Part 18 has become cumbersome and intricate and should be reviewed. Part 18 is currently divided into 9 Subparts of which two are reserved. Subpart A deals with general conditions of operation and definitions. The remaining subparts are structured in accordance with the different types of ISM equipment and discuss technical standards and measurement techniques. In order to simplify the structure of Part 18, we propose to revise it by taking into consideration, to the extent possible, the key elements involved in establishing rules. Part 18 would, therefore, be divided into only 3 subparts as follows: (1) The general operating conditions and administrative provisions, (2) the applications and authorizations, and (3) the technical standards. The text would thus be shortened considerably, about 40%, by avoiding repetition especially when discussing administrative provisions. This would diminish the cost of publishing the rules by a considerable amount.

24. The methods of measurements would be published separately in the form of a bulletin, entitled MP–5 "Methods of Measurements for Industrial, Scientific, and Medical Equipment." OCE Bulletin 20, dealing with the methods of measurements on microwave ovens is being incorporated in MP–5. See Appendix B of this document.

Enforcement

25. By extending the use of certification, notification, and verification, as defined under Part 2, to ISM equipment we are facilitating the authorization program. Since the Commission will not be testing most pieces of equipment prior to their authorization through the program, we are planning to implement a sampling program to assure continued compliance. The sampling program which was discussed in the *Report & Order* in General Docket No. 83–10, released January 26, 1984, 49 FR 3991, February 1, 1984, will be used to determine continued compliance with the appropriate regulations. When non-compliance is found, the Commission, under authority of the Communications Act of 1934, 47 U.S.C. 501 to 503, may issue monetary forfeiture and prosecute violators of these regulations. We expect to enforce the rules rigorously to deter the entry of non-complying equipment into the marketplace.

Procedural Matters

26. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* the Commission issues the following initial regulatory flexibility analysis:

I. Reason for Action

The administrative rules governing ISM equipment have become complex and too difficult to implement for certain devices.

II. The Objective

The objective is to reduce the amount of time needed for an applicant to obtain an equipment authorization while, at the same time, allowing the Commission some flexibility with its staff resources. A sampling program will also be instituted to strengthen the equipment authorization program.

III. Legal Basis

Action proposed is in accordance with sections 4(i), 302(a), 303(g), and 303(r) of the Communications Act of 1934, as amended.

IV. Entities Affected: Nature of Economic Impact; Significant Alternatives

The proposed changes in the regulations would affect a number of entities both large and small. An estimate of the number of such entities affected is not obtainable. ISM equipment suppliers, importers and manufacturers will not have to file large volumes of paperwork formerly required for certain devices and could begin marketing equipment at an earlier date. Equipment testing laboratories should experience no effect as we shall still require ISM equipment to be tested to show compliance with the regulations, as a marketing prerequisite. It is therefore felt that any impact from this proceeding would be beneficial to those affected.

V. Recording, Record-Keeping and Other Compliance Requirements

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will decrease burden hours imposed on the public.

27. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time that a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules 47 CFR 1.1231.

28. Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 7, 1985, and reply comments on or before January 22, 1985. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should

be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. For further information on this proceeding, contact Liliane M. Volcy, Office of Science & Technology, (202) 653–8247.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 2—[AMENDED]

A. 47 CFR Part 2 of the Rules is amended as follows:

§§ 2.809, 2.1037, and 2.1039 [Removed]

1. Sections 2.809, 2.1037 and 2.1039 are removed.

2. Paragraph (b) of § 2.1033 is revised to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) The application shall be accompanied by the report of measurements, and such other attachments as specified in the rules governing that particular equipment.

* * * * *

B. 47 CFR Part 18 is revised to read as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

Subpart A—General Information

Sec.
18.101 Basis and purpose.
18.103 Organization and applicability of the rules.
18.105 Other applicable rules.
18.107 Definitions.
18.109 General technical requirements.
18.111 General operating conditions.
18.113 Inspection by Commission representatives.
18.115 Elimination and investigation of harmful interference.
18.117 Report of interference investigation.
18.119 Importation.

Subpart B—Application and Authorizations

18.201 Scope.
18.203 Equipment authorization.
18.205 Description of measurement facilities.
18.207 Technical report.
18.209 Identification of authorized equipment.
18.211 Information to the user.

Subpart C—Technical Standards

Sec.
18.301 Operating frequencies.
18.303 Prohibited frequency bands.
18.305 Radiation limits.
18.307 Conduction limits.
18.309 RF lighting devices.
18.311 Methods of measurements.

Authority:Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Subpart A—General Information

§ 18.101 Basis and purpose.

The rules in this part, in accordance with the applicable treaties and agreements to which the United States is a party, are promulgated under section 302 of the Communications Act of 1934, as amended, vesting the Federal Communications Commission with authority to regulate industrial, scientific, and medical equipment that emits electromagnetic energy on frequencies within the radio frequency spectrum in order to prevent any substantial amount of interference to authorized radio communication services. This part sets forth the conditions under which the equipment in question may be operated.

§ 18.103 Organization and applicability of the rules.

The rules in this part are divided into the following subparts:

(a) Subpart A contains general information and definitions for use in this part.

(b) Subpart B describes the procedures and requirements for authorization to market or operate ISM equipment under this part.

(c) Subpart C contains the technical standards for industrial, scientific, and medical equipment.

§ 18.105 Other applicable rules.

Other Commission rules parts of importance that should be referred to with respect to authorizations and operations of industrial, scientific, and medical equipment include the following:

(a) Part 0 describes the Commission's organization and delegations of authority. This part also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission field offices.

(b) Part 1 contains the rules of practice and procedure for adjudicatory proceedings including hearing proceedings; procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and for forfeiture proceedings; and the requirements for environmental impact statements.

(c) Part 2 contains special requirements in international regulations, agreements, treaties, and the table of frequency allocations. This part also contains standards and procedures concerning the marketing, the equipment authorization, and the importation of radio frequency devices into the United States.

§ 18.107 Definitions.

(a) *Radio frequency (RF) energy.* Electromagnetic energy at any frequency in the radio spectrum between 10kHz and 3,000,000MHz.

(b) *Harmful interference.* Any emission, radiation or induction which endangers the functioning of a radionavigation service or other safety services or seriously degrades, obstructs or repeatedly interrupts a radio communication service operating in accordance with this chapter.

(c) *Industrial, scientific, and medical (ISM) equipment.* Devices operating above 10kHz which use radio waves for industrial, scientific, and medical or any other purposes including the transfer of energy by radio and which are neither used nor intended to be used for radio communication.

(d) *ISM frequency.* A frequency assigned by this part for the use of ISM equipment. A specified tolerance is associated with each ISM frequency (See § 18.301).

(e) *Marketing.* As used in this part, marketing shall include sale or lease, offer for sale or lease, advertising for sale or lease, the import or shipment or other distribution for the purpose of sale or lease or offer for sale or lease. (See Subpart I of Part 2 of this Chapter).

Note.—In the foregoing, sale (or lease) shall mean sale (or lease) to the user or a vendor who in turn sells (or leases) to the user. Sale shall not be construed to apply to devices sold to a second party for manufacture or fabrication into a device which is subsequently sold (or leased) to the user.

(f) Industrial heating equipment shall include any apparatus which utilizes a radio frequency oscillator or any other type of radio frequency generator and transmits radio frequency energy used for or in connection with industrial heating operations utilized in a manufacturing or production process.

(g) Medical diathermy equipment shall include any apparatus (other than surgical diathermy apparatus designed for intermittent operation with low power) which utilizes a radio frequency oscillator or any other type of radio frequency energy used for therapeutic purposes.

(h) Ultrasonic equipment shall include any apparatus which generates radio frequency energy and utilizes that energy to excite or drive an electromechanical transducer for the production of sonic or ultrasonic mechanical energy for industrial, scientific, medical or other noncommunication purposes.

(i) General ISM equiment shall include apparatus other than that defined in or excepted by paragraphs (f), (g), and (h) of this section in which radio frequency energy is applied to materials to produce physical, biological, or chemical effects such as heating, ionization of gases, mechanical vibrations, hair removal and acceleration of charged particles which do not involve communications or the use of radio receiving equipment.

(j) Consumer ISM equipment shall include any apparatus used or intended to be used by the general public in a residential environment.

§ 18.109 General technical requirements.

ISM equipment shall be designed and constructed in accordance with good engineering practice with sufficient shielding and filtering to provide adequate suppression of emissions on frequencies outside the frequency bands specified in § 18.301.

§ 18.111 General operating conditions.

(a) Persons operating ISM equipment, for which a grant of equipment authorization is required under this part, shall not be deemed to have any vested or recognizable right to the continued use of any given frequency, by virtue of any prior equipment authorization.

(b) Subject to the exceptions in paragraphs (c) and (d) of this section and irrespective of whether the equipment otherwise complies with the rules in this part, the operator of ISM equipment that causes harmful interference to any authorized radio service shall promptly take whatever steps may be necessary to eliminate the interference.

(c) The provisions of paragraph (b) of this section shall not apply in the case of interference to an authorized radio station or a radiocommunication device operating on an ISM frequency (including tolerance).

(d) The provisions of paragraph (b) of this section shall not apply in the case of interference to a receiver arising from direct intermediate frequency pickup by the receiver of the fundamental frequency emissions of ISM equipment operating on an ISM frequency (including tolerance) and otherwise complying with the requirements of this part.

§ 18.113 Inspection by Commission representatives.

Upon request by a representative of the Commission the manufacturer, owner or operator of any piece of ISM equipment shall make the equipment available for inspection and promptly furnish the Commission with such information as may be required to indicate the capability of the equipment with regard to compliance with this Part.

§ 18.115 Elimination and investigation of harmful interference.

(a) The operator of ISM equipment that causes harmful interference to radio services shall promptly take appropriate measures to correct the problem.

(b) If the operator of ISM equipment is notified by the Commission's Engineer in Charge (EIC) that operation of such equipment is endangering the functioning of a radionavigation or safety service, he or she shall immediately cease operating the equipment. Operation may be resumed on a temporary basis only for the purpose of eliminating the harmful interference. Operation may be resumed on a regular basis only after the harmful interference has been eliminated and approval from the Commission obtained.

(c) When notified by the EIC that a particular installation is causing harmful interference, the operator or manufacturer shall arrange for an engineer skilled in interference measurements and control techniques to make an investigation to ensure that the harmful interference has been eliminated. The Commission may require the engineer making the investigation to furnish proof of his or her qualifications.

(d) The results of the investigation required by paragraph (c) of this section shall be reported to the EIC of the local district office.

§ 18.117 Report of interference investigation.

(a) An interim report on the investigation and of the corrective measures that were taken shall be filed with the Engineer in Charge of the local FCC office within 30 days of notification of harmful interference. The final report shall be filed with the Engineer in Charge within 60 days of notification.

(b) The date for filing the final report may be extended by the Engineer in Charge when additional time is required to put into effect the corrective measures or to complete the investigation. The request for extension of time shall be accompanied by a progress report showing what has been accomplished to date.

§ 18.119 Importation.

ISM equipment shall be refused entry or withdrawal for consumption into the Customs territory of the United States, unless accompanied by a copy of FCC Form 740, in accordance with the provisions of Subpart K, Part 2 of this chapter.

Subpart B—Applications and Authorizations

§ 18.201 Scope.

This subpart contains the procedures and requirements for authorization to market or operate ISM equipment under this part.

§ 18.203 Equipment authorization.

(a) ISM equipment, unless otherwise specified, shall be subject to notification in accordance with the relevant sections in Subpart J, Part 2 of this chapter.

(b) ISM equipment for use by the general public shall be subject to certification prior to use or marketing. An application for certification on FCC Form 731 shall be filed with the Commission, pursuant to the relevant sections in Subpart J, Part 2 of this Chapter and shall also be accompanied by:

(1) A description of measurement facilities pursuant to Section 18.205 or have such information on file with the laboratory of the Commission.

(2) A technical report pursuant to § 18.207.

(3) A report of measurements pursuant to §§ 18.207 and 18.311.

(c) One-of-a-kind ISM equipment and ultrasonic equipment generating less than 500 watts and operating below 90 kHz shall be subject to verification in accordance with the relevant sections in Subpart J, Part 2 of this chapter.

(d) Domestic microwave ovens shall be type approved before use or marketing. An application for type approval on FCC Form 731 shall be filed with the Commission, pursuant to the relevant sections in Subpart J, Part 2 of the Rules.

§ 18.205 Description of measurement facilities.

(a) Any party making measurements to be filed for a device subject to certification under this part, shall submit a description of the measurement facilities to the Commission.

(b) The description shall include the following information:

(1) Location of test site.

(2) Physical description of the test site accompanied by photographs 8" x 10" in size. Photographs smaller than 8" x 10" will be acceptable if mounted on paper 8" x 10" and of sufficient clarity.

(3) Scaled drawing showing the dimensions of the site, the physical layout of supporting structures and all structures within 5 times the distance between the measuring set and the device under test.

(4) Description of structures used to support the device being measured and the test instrumentation.

(5) List of measuring equipment used and information concerning the calibration of the measuring equipment, i.e. when the equipment was last calibrated and frequency of calibration.

(6) A statement indicating whether this facility is available to do measurement work for others on a contract basis.

(c) This information shall be kept current at all times.

Note.—OST Bulletin 55, "Characteristics of Open Field Test Sites", provides further guidance on open field test sites and site attenuation.

§ 18.207 Technical report.

When required by the Commission a technical report shall include as a minimum the following information:

(a) A copy of the installation and operating instructions furnished to the user. A draft copy of such instructions may be submitted with the application, provided a copy of the actual document to be furnished to the user is submitted as soon as it is available, but no longer than 60 days after the grant of the application.

(b) A statement of the rated technical parameters that includes:

(1) A block and schematic diagram of the circuitry.

(2) Nominal operating frequency.

(3) Maximum RF energy generated.

(4) Electrical power requirements of equipment.

(5) Any other pertinent operating characteristics.

(c) A report of measurements, including a list of the measuring equipment used and a statement of the date when the measuring equipment was last calibrated and when the measurements were made. See also § 18.311.

(d) The frequency range that was investigated in obtaining the report of measurements.

§ 18.209 Identification of authorized equipment.

(a) Each device for which a grant of equipment authorization is issued under this part shall be identified and labeled pursuant to the applicable provisions of Subpart J of Part 2 of this chapter.

(b) Changes in the identification of authorized equipment may be made pursuant to § 2.933 of Part 2 of this chapter.

§ 18.211 Information to the user.

Information shall be provided to the user in the instruction manual for any type of ISM equipment about:

(a) The interference potential of the device or system

(b) Maintenance of the system

(c) Simple measures that can be taken by the user to correct the interference.

Subpart C—Technical Standards

§ 18.301 Operating frequencies.

ISM equipment may be operated on any frequency above 10 kHz except as indicated in § 18.303. The following frequency bands, in accordance with § 2.106 of the Rules, are allocated exclusively for use by ISM equipment:

ISM frequency	Tolerance	Notes
6.78 MHz	±15.0 kHz	(1)
13.56 MHz	±7.0 kHz	(1)
27.12 MHz	±160.0 kHz	(2)
40.68 MHz	±20.0 kHz	(2)
915 MHz	±13.0 MHz	(2)
2,450 MHz	±50.0 MHz	(2)
5,800 MHz	±75.0 MHz	(1)
24,125 MHz	±125.0 MHz	(1)
61.25 GHz	±250.0 MHz	(2)
122.50 GHz	±5.0 GHz	(1)
245.00 GHz	±1.0 GHz	(1)

[1] Frequencies allocated worldwide.
[2] Frequencies allocated worldwide except in the United Kingdom and Italy
[3] Frequencies allocated in North and South America only (ITU Region 2).

§ 18.303 Prohibited frequency bands.

Operation of ISM equipment on the following frequency bands, which are allocated for safety, search and rescue operations, is prohibited: 490–510 kHz, 2170–2194 kHz, 8354–8374 kHz, 121.5 MHz, 156.8 MHz and 243 MHz.

§ 18.305 Radiation limits.

(a) ISM equipment operating on a frequency specified in § 18.301 is permitted unlimited radiated energy in the band specified for that frequency.

(b) Radiated emissions from ISM equipment that lie outside the bands specified in § 18.301 shall not exceed the following limits:

Equipment	Operating frequency	Power (watts)	Field strength uV/m	Distance (meters)
General	Any ISM frequency	Below 500	25	300
		On or above 500	$25\sqrt{\frac{\text{power}\ (^1)}{500}}$	300
	Any non-ISM frequency	Below 500	15	300
		On or above 500	$15\sqrt{\frac{\text{power}\ (^1)}{500}}$	300
Industrial heaters and RF stabilized arc welders	Above 5,725 MHz	Any	10	1,600
	Above 5,725 MHz	Any	(*)	(*)
Medical diathermy	Any ISM frequency	Any	25	300
	Any non-ISM frequency	Any	15	300
Ultrasonic	Below 490 kHz	Below 500	$\frac{2,400}{F(kHz)}$	300
		On or above 500	$\frac{2,400}{F(kHz)}\sqrt{\frac{\text{power}\ (^2)}{500}}$	300
	490 to 1,600 kHz	Any	$\frac{24,000}{F\ (kHz)}$	30
	Above 1,600 kHz	Any	15	30
Induction cooking ranges (3)	Below 90 kHz	Any	1,500	30
	On or above 90 KHz	Any	300	30

[1] Field strength may not exceed 10 uV/m at 1600 meters. Equipment used predominantly in residential areas and operating below 1600 MHz are not permitted the increase in field strength.
[2] Field strength may not exceed 10 uV/m at 1600 meters. Equipment used predominantly in residential areas are not permitted the increase in field strength.
[3] Induction cooking ranges manufactured prior to February 1, 1980, shall be subject to the radiation limits for general ISM equipment.

§ 18.307 Conduction limits.

Conduction limits shall be applied to ultrasonic equipment and induction cooking ranges as follows:

(a) *Ultrasonic equipment.*

When measured both grounded and ungrounded, the conducted RF voltage from ultrasonic equipment shall not exceed the following:

Frequency (kHz)	Conducted RF voltage (microvolts)
On or below 490 kHz	1,000
Above 490 kHz	2[illegible]

NOTE: Methods of making conducted interference measurements are described in "Electromagnetic Interference Characteristics, Requirements for Equipment", MIL-STD-461A, "Electromagnetic Interference Characteristics, Measurement of", MIL-STD-462, and "Definitions and Systems of Units, Electromagnetic Interference Technology". These documents are available from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

(b) *Induction cooking ranges.*

Induction cooking ranges manufactured after February 1, 1980, shall limit the conducted RF voltage fed back into the power lines to the following:

Frequency of emissions (kHz)	Conducted RF Voltage Limit (microvolts)
10–100	[1]10–1
100–500	1
500–30,000	[illegible]25

[1] Linear interpolation.

Measurements of conducted RF voltage shall be made using a 5 microhenry 50 ohm LISN (Line Impedance Stabilization Network).

§ 18.309 RF lighting devices.

RF lighting devices, pending further action in General Docket 83–806, shall meet the requirements specified below, as a marketing prerequisite:

(a) RF lighting equipment marketed for use in industrial, commercial, and business environments, shall be subject to the radiation and conduction limits set forth for Class A computing devices under §§ 15.810 and 15.812 of Part 15, Subpart J of this Chapter.

(b) Consumer RF lighting equipment or RF lighting devices marketed for use in residential areas shall be subject to the radiation and conduction limits set forth for Class B computing devices under §§ 15.830 and 15.832 of Part 15, Subpart J of this Chapter.

§ 18.311 Methods of measurements.

(a) ISM equipment measured for compliance with the specifications of this part, unless otherwise specified, shall be tested in accordance with FCC MP–5 "Methods of Measurements for ISM equipment".

(b) RF lighting devices shall be measured for compliance, to the extent possible, in accordance with FCC MP–4 "Methods of Measurements of Radio Noise Emissions from Computing Devices".

Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix B—Methods of Measurements for Industrial, Scientific, and Medical Equipment

Preface

This document sets fourth uniform methods of measurements of radio noise emitted from ISM equipment, as defined in § 18.107 of the FCC Rules. The technical specifications for ISM equipment are contained in Part 18 of the FCC Rules. Methods of measurements of radiated, powerline conducted radio noise, frequency and power output (when applicable) are covered herein. Applicants for both notification and certification should employ these methods. Testing of ISM equipment by the FCC will be conducted in accordance with these methods of measurements, to the extent possible. This document has been spearated in two parts; Part I deals with the methods of measurements for all types of ISM equipment and Part II, notwithstanding the requirements in Part I, discusses the measurement procedure for microwave ovens.

Index

Part I—General Procedure

1.0 Definitions
1.1 Ambient level
1.2 Emission
1.3 Radio noise
1.4 Radiated radio noise
1.5 Conducted radio noise
1.6 Equipment under test (EUT)
1.7 Ground plane
2.0 General test conditions
2.1 Test sites
2.1.1 Open field sites
2.1.2 Testing at user's premises or at factory
2.1.3 Testing in a shielded enclosure
2.2 Measuring instrumentation
2.2.1 Calibration of measuring instrumentation
2.2.2 Detector function selection and bandwidth
2.2.3 Units of measurements
2.2.4 Antennas
2.2.5 Antenna height variation
2.2.6 Antenna-to-test unit distance
2.3 Frequency range to be scanned
2.4 Preliminary testing and monitoring
2.5 Data-reporting format
3.0 Radiation hazard test
4.0 Frequency measurements
5.0 Radiated test procedure

Part II—Microwave Ovens

6.0 Load
6.1 Load for power output measurement
6.2 Load for frequency measurement
6.3 Load for measurement on second and third harmonic
6.4 Load for all other measurements
7.0 Power output measurement
8.0 Frequency measurements
9.0 Measurement of radiated emissions
9.1 Computations to determine compliance

Part I—General Procedure

1.0 Definitions

The definitions in Parts 2 and 18 of the FCC Rules and the following shall apply to use of this standard.

1.1 Ambient level

The magnitude of radiated or conducted signals and noise existing at a specific test location and time.

1.2 Emission

Electromagnetic energy produced by a device which is radiated into space or conducted along wires and is capable of being measured.

1.3 Radio noise

An electromagnetic noise that may be superimposed upon a wanted signal and is within the radio frequency range. Any unwanted disturbance within the radio frequency band, such as undesired electric waves in any transmission channel or device.

1.4 Radiated radio noise

Radio noise radiated into space. Such noise may include both radiation and induction components of the field.

1.5 Conducted radio noise

Radio noise propagated from the device back into the public electrical power network via the supply cord.

1.6 Equipment under test (EUT)

A representative piece of ISM equipment being tested or evaluated.

1.7 Ground plane

A conducting surface used to provide uniform reflection of an impinging electromagnetic wave. Also, the common reference point for electrical potentials.

2.0 General test conditions

2.1 Test sites

An environment which assures valid, repeatable results shall be used. A measurement is valid to the extent that it is a true representation of the characteristic being measured, and when the same measurement of the characteristics procedure yields repeatable results. Measurements should be made on an open field, however, alternatives are permitted (See 2.1.2 and 2.1.3). A description of the test facility used for equipment subject to certification or when required by the Commission, shall be filed, pursuant to § 18.205 of the FCC Rules (47 CFR § 18.205).

2.1.1 Open field sites

Measurements of radiated noise should be made in an open, flat area characteristic of cleared, level terrain. For details on how to set up a suitable site, see FCC Bulletin OST 55: *Characteristics of Open Field Test Sites*, available from the FCC Consumers Assistance Office, Washington, D.C. 20554. Measurements made by the Commission will be performed on an open field site.

2.1.2 Testing at the user's premises, factory, or other facilities

Testing at the user's premises, factory or other facilities is permitted only for ISM

equipment which, due to operating conditions, may not be tested on an open field site.

2.1.3 Testing in a shielded enclosure

Radiation measurements made in a shielded enclosure are suitable only for determining the frequency profile of an EUT; they are not suitable for determining the actual levels of the emissions unless it can be shown that the results of tests made in the enclosure are correlatable to those made at an open field site. Conducted radio measurements made in a shielded enclosure are acceptable and, in fact, preferable.

2.2 Measuring instrumentation

Radiated and conducted measurements shall be made with a radio noise meter that conforms with the American National Standard Specifications for Electromagnetic Interference and Field Strength Instrumentation 10 kHz to 1 GHz. C63.2 (1980). Alternatively, a spectrum analyzer may be used, provided the results obtained can be accurately reproduced with a suitable radio noise meter and that it is used, when necessary, with appropriate accessories to insure sufficient sensitivity and overload protection. Other instruments may be used for certain restricted and specialized measurements when data so measured are correlatable to that achieved with C63.2 instrumentation.

Note.—Accessories needed would depend upon the measurement situation and could include preamplifiers for sensitivity improvement, filters and/or attenuators from overload protection, and additional quasi-peak detection circuitry. Overload is defined as harmonic distortion, intermodulation, or gain compression of spectrum analyzer input signals. Precautions may have to be taken to insure that the spectrum analyzer operates linearly before taking final measurements. Consult user's manual for instructions and guidance. Application notes on the use of spectrum analyzer and other instruments are also available from several manufacturers.

2.2.1 Calibration of measuring instrumentation

The calibration of the measuring instrumentation, including any accessories that may affect such calibration, shall be checked frequently enough to assure its accuracy. Adjustment shall be made and correction factors applied in accordance with instructions contained in the manual for the measuring instrument.

2.2.2 Detector function selection and bandwidth

For radio noise meters or spectrum analyzers which include weighting circuits, the detector function selector shall be set to average. When correlation can be shown between average and some other detector function for a particular piece of equipment, that detector function may be used.

The 6 dB bandwith of the measuring instrument shall not be less than:

—3 kHz for measurements below 450 kHz

—10 kHz for measurements from 450 kHz to 30 MHz

—100 kHz for measurements from 30 to 1000 MHz

—1 MHz for measurements above 1000 MHz

Post detector video filters may be used in the case of peak reading spectrum analyzers if correlation can be shown to an average reading or quasi-peak radio noise meter. Alternatively, field strength meters and spectrum analyzers without weighting circuits may be employed, provided measurements are made on the peak basis and recorded as observed. For pulsed, broadband emissions the measured data shall be corrected for pulse desensitization factor. With this correction applied to peak indications, if the duty cycle is known or can be measured, average values of desensitization correction factor for a given emission, it may be necessary to vary the above specified minimum bandwidth of the measuring instrument.

Notes.—1. The above specified bandwidths have tolerances as prescribed in ANSI standard C63.2—1980.

2. If bandwidths greater than those specified in 2.2.2 are used, higher readings may result for EUT's with broadband emanations.

3. Data taken when measuring instrumentation employing logarithmic amplifiers when using the average function will represent the average of the logarithm of the voltage level. If the emanation observed is pulsed, broadband observed values will be materially lower than the true average of voltage. Instrument overload is likely to occur with linear RF systems if the emission pulse duty cycle is less than that for which the measuring instrumentation is rated.

2.2.3 Units of measurements

Measurements of radiated emissions shall be reported in terms of microvolts per meter at a specified distance. The indicated readings on the spectrum analyzer or the radio noise meter shall be converted to microvolts per meter by use of appropriate conversion factors. Measurements of conducted emissions shall be reported in terms of microvolts.

2.2.4 Antennas

The following antennas shall be used for measuring the field strength:

Frequency range	Type of antenna
Below 30 MHz	Shielded loop.
30 to 1,000 MHz	Calibrated tuned half-wave dipole or other comparable linearly polarized antenna.
Above 1 GHz	Broadband linearly polarized horn antenna.

2.2.5 Antenna height variation

The measurement antenna must be varied in height above ground to obtain the maximum signal strength. In the frequency range:

—Below 30 MHz. The antenna height shall be set at around 2 meters and minor variations in height scans shall be made. Care should be taken to assure that nulls are not created.

—30 to 1000 MHz. For measurement distances up to and including 10 meters, the antenna heights shall be varied from 1 to 4 meters. Beyond 10 meters, the height shall be varied from 2 to 6 meters.

—Above 1000 MHz. No specific height but antenna orientation and variations in height shall be such that nulls are not created.

These height scans apply for both horizontal and vertical polarization, except that for vertical polarization the minimum height should be increased so that the lowest point of the bottom end of the dipole (or other antenna), at any frequency, clears the site ground surface by approximately 25 cm.

2.2.6 Antenna-to-test unit distance

Measurements shall be made at the distance at which the limits are specified, to the extent possible.

A sufficient number of measurements shall be made in the vicinity of the EUT to enable plotting of the polar radiation pattern and to assure the correct determination of the major lobes. Where conditions permit, these measurements shall be made at intervals of no more than 20 degrees in azimuth directions and at distances not exceeding the one at which the emission limit is specified.

The field strength measurements for the maximum field strength at the distance at which the limit is specified, shall be made along the radial corresponding to the lobe of maximum radiation as determined from the polar radiation pattern. Sufficient measurements shall be made along radials extending through all lobes which are within 15 dB of the apparent maximum lobe. Where possible, field strength measurements shall be made along each radial at several intervals and an average curve shall be drawn for measured field strength in uV/m versus distance in meters. Where necessary, the average curve shall be extended to show the extrapolated field strength at the distance at which the emission limit is specified.

The Commission as an alternative shall accept measurements at a closer fixed distance for equipment subject to certification or notification from the public, provided 1/d is used as an attenuation law factor. Where d is the distance at which the field strength is being measured.

2.3 Frequency range to be scanned

Measurements of radiated energy shall be made from the lowest generated frequency to the tenth harmonic or highest generated frequency. For conducted emissions, when required, measurements shall be made from 10 kHz to 30 MHz.

2.4 Preliminary testing and monitoring

Preliminary radiated measurements should be made inside, preferably in an enclosure, at a closer distance than specified for compliance to determine the emission characteristics of the EUT. If a spectrum analyzer is not used, radio noise measurements should be monitored using either a headset or loudspeaker as an aid in detecting ambient signals and selecting problem frequencies. Precautions shall be taken to ascertain that the use of a headset or speaker does not affect the radio noise meter indication during testing.

2.5 Data-reporting format

The measurement results expressed in accordance with 2.2.3, and specific limits where applicable, shall be presented in tabular and/or graphical forms showing level vs. frequency. Instrumentation, instrument and bandwidth settings, detector function, EUT arrangements, sample calculation with all conversion factors and all other pertinent details shall be included along with the measurement results.

3.0 Radiation hazard test

For ISM equipment operating on higher frequencies (above 900 MHz), in particular microwave ovens and medical diathermy equipment, radiation leakage should be measured in accordance with the current Bureau of Radiological Health standard, employing an electromagnetic radiation monitor (the FCC laboratory shall use a Narda Model 8100 or equivalent). This test is made primarily to assure that personnel will not be exposed to radiation hazard in testing the equipment. Equipment submitted to the FCC which have radiation leakage apparently in excess of BRH limit will be reported to BRH for their evaluation.

4.0 Frequency measurements

For ISM equipment designed to operate on one of the ISM frequencies, the maximum frequency deviation due to the load and normal operating conditions shall be measured and reported. These measurements may be performed indoors. The load effect on frequency variation is determined by finding the extreme values of frequency obtainable by adjustment of applicator spacings, external control settings, and varying loads, for each combination of applicators.

After a five-minute no-load warm-up from a cold start at room temperature without any applicators connected), determine the maximum deviations from the ISM frequency (both above and below) by making measurements with different combinations of applicators, applicator spacings, control settings, and load.

Using that combination of applicators and load spacing which produces the maximum observable power output into the load, operate the equipment from a cold start at room temperature for a period of six hours (two hours for portable equipment). Measure the frequency at the beginning of the run and at frequent intervals until its completion.

After making the last measurement, once again adjust the controls of the equipment, vary the load, and change the applicator spacing, to find the combination that yields the worst deviation from the ISM frequency.

For medical diathermy equipment the maximum and minimum frequency measured mst be within 70% of the frequency tolerance listed in Section 18.301 of the Rules.

5.0 Radiated test procedure

On an approved test site, the EUT shall be placed on a rotatable platform, fed with power and control circuits via underground cable. The turntable on which the EUT is to be mounted shall be substantially non-metallic and 50 cm above ground level. If the equipment is designed to be operated on a table, a wooden support shall be placed on the platform such that the EUT sits on a surface 1 meter above ground, with the applicator leads (if any) fully extended in front of the equipment. If for practical reasons, it is not feasible to use a rotatable platform, the EUT may be located in a fixed position, with the measurement installation moved around the equipment to locate and measure the maximum level of radiation.

When the EUT is fitted with a special grounding terminal, this shall be connected to earth ground by a lead as short as possible. When no grounding terminal is provided, the EUT shall be tested as normally connected; that is, any grounding is obtained through the mains supply. When the EUT is supplied with a flexible power cable, as mush of this as possible shall be on the ground.

For the fundamental frequency and all other frequencies having significant strength, that is within 20 dB of the limits, measurements shall be made with and without a load, rotating the platform to determine the orientation giving the maximum observable value. This must be done for both horizontal and vertical polarization of the receiving antenna. All recorded levels within 20 dB of the limits specified shall be reported.

For radiation measurements for medical diathermy equipment operating above 900 MHz, the procedures in Part II shall be followed.

Part II—Microwave Ovens

Microwave ovens shall be type approved by the Commission. Testing at the FCC laboratory shall be done in accordance with the following methods, nothwithstanding the applicable sections in Part I of this document.

6.0 Load

For all measurements the energy developed by the oven is absorbed by a dummy load consisting of a quantity of tap water in a breaker. The "Nalgene" Cat. No. 1201–1000 polypropylene beaker or any other beaker of similar dimensions or other low-loss material shall be used as the container. If the oven is provided with a shelf or other utensil support, test shall be made with this initial normal position. For ovens rated at 1000 watts or less power output, the beaker shall contain quantities of water as listed in the following subparagraphs. For ovens rated at more than 1000 watts output, each quantity shall be increased by 50% for each 500 watts or fraction thereof in excess of 1000 watts. Additional beakers are used if necessary.

6.1 Load for power output measurement

This load consists of 1000 milliliters of water in the beaker, located in the center of the oven.

6.2 Load for frequency measurement

This load consists of 1000 milliliters of water in the beaker, located in the center of the oven.

6.3 Load for measurement of radiation on second and third harmonic

Two loads, one of 700 and the other of 300 milliliters, of water are used. Each load is tested both with the beaker located in the center of the oven and with it in the right front corner.

6.4 Load for all other measurements

This load consist of 700 milliliters of water, with the beaker located in the center of the oven.

7.0 Power output measurement

The power output is measured by the calorimetric method, using the load specified in Section 6.1, computing the power output from the observed temperature rise of the load over a period of time. The measured value of power output is used to determine the allowable out-of-band field strength under the terms specified in Section 18.305 of the Rules. The ac power input to the oven is also measured to determine if the oven is operating in accordance with the manufacturer's specifications.

8.0 Frequency measurements

The maximum and minimum frequency measured must within 70% of the frequency tolerance listed in Section 18.301 of the Rules.

For pulsed ovens, frequency measurements are made by beating a transfer oscillator against the fundamental emission of the oven and measuring the frequency of the oscillator with a suitable frequency counter. Ordinary frequency counters cannot be used to measure the oven frequency directly in a pulsed oven. Continuous-wave ovens are measured either by the transfer oscillator method or by direct measurement with a frequency counter. Measurements are made of:

(a) The variation of frequency with time, using the load specified in Section 6.2, starting with the oven and load at room temperature and continuing until the load quantity has been reduced by evaporation to approximately 20% of the orignial quantity. This test is made with nominal rated ac supply voltage.

(b) The variation of frequency for line voltage variation from 80% to 125% of nominal rated voltage, starting with the oven warm from at least 10 minutes use, with a load as specified in Section 6.2, and with this load at room temperature at the beginning of the test.

9.0 Measurement of radiated emissions

Initial measurements are made near the oven with the measuring antenna 3 meters from the nearest part of the oven. The dummy load specified in Section 6.3 or 6.4 is used, as applicable. The oven is rotated about its vertical axis on the turntable, and the polarization and height of the receiving antenna are varied to obtain the highest field strength on the particular frequency under observation. Measurements at the 3 meter distance are made in a large room or outdoors; with the equipment and antenna located so as to minimize effects due to reflections from the building structure or other items in the field. For measurements above 1GHz and at 3 meters, an antenna of small aperture (i.e., a small horn, without its reflector) is used, because the field over the area of a large antenna would be non-uniform, and such an antenna would not have the gain normally expected.

At each test frequency, the reading of the field strength meter is observed during the heating cycle as the following factors are varied:

(a) Oven orientation

(b) Antenna orientation

(c) Antenna polarization

(d) At the second and third harmonics only, the two load sizes and load locations specified in Section 6.3

(e) For ovens employing mode stirrers, the test should include several cycles of stirrer rotation

At the second and third harmonics, the recorded data should include the highest reading observed for each load size and load location. At other frequencies, the highest reading observed should be recorded.

When measuring sidebands close to the fundamental (near the edges of the ISM band frequency limits) great care must be taken to avoid errors caused by overload from the emission at the fundamental frequency. A tunable filter can be usefully employed to reduce the level of the fundamental relative to that of the particular sideband if overload occurs. Overload can be detected by observing the relative change in indicated signal level for different values of input attenuator, either internal or external to the field intensity meter.

Since most microwave field strength meters have relatively little rejection at the image frequency, care should be taken to assure that apparent spurious emissions in the vicinity of the image frequency are really present. A tunable filter or band-pass filter can be used to attenuate the fundamental frequency as for the sidebands.

9.1 Computations to determine compliance

The measured field strength at 3 meters is converted to the field at 300 meters using the formula:

$$E_{300m} = K \times E_{3m}$$

where K is given by:

Frequency	K
1,830MHz	[illegible]
2,745 MHz	[illegible]
3,660 MHz	[illegible]
4,575 MHz and above	[illegible]

For frequencies between those given in the table, the value of K is determined by linear interpolation.

The values of K given above were determined from measurements at the FCC laboratory test site. Over level terrain and limiting the height of the measuring antenna to 4 meters (12 feet), the measured values of K given above show good agreement with theory.

In the absence of actual measured values of attenuation at another site, the field may be extrapolated to 300 meters using inverse linear variation of field with distance to give conservative results.

While it is very unusual for microwave ovens to have strong radiated fields below 1 GHz, if the field strength values observed at 3 meters are strong enough to warrant concern over their values as extrapolated to 300 meters, it is suggested that additional measurements be made outdoors on an unobstructed level site at 30 meters or greater distance. This would eliminate any questions as to reflections from nearby objects or antenna aperture effects which might occur at these frequencies in measurements at 3 meters.

[FR Doc. 84-31755 Filed 12-5-84; 8:45 am]
BILLING CODE 4712-01-M

---

47 CFR Part 73

[BC Docket No. 79-145; FCC 84-548]

Television Waveform Standards Concerning Horizontal and Vertical Blanking Intervals

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes Rule changes: (1) To remove the maximum horizontal and vertical blanking interval standards from the Rules; and (2) to make these standards available in "Technical Bulletins for Good Engineering Practices."

This action is taken by the Commission in its efforts to relax restrictive regulations and policies.

The proposed Rule changes are intended to provide broadcasters more flexibility in meeting their programming needs.

DATES: Comments due by December 31, 1984, and Reply Comments due by January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202)632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making

In the matter of Television Waveform Standards Concerning Horizontal and Vertical Blanking Intervals (BC Docket No. 79-145).

Adopted: November 19, 1984.
Released: November 23, 1984.

By the Commission.

Introduction

1. On June 7, 1979, the Commission adopted a Notice of Inquiry [1] *(Inquiry)* in the above-entitled matter on its own motion. The purpose of the *Inquiry* was to assist the Commission in identifying how to deal with problems encountered by the broadcast industry in meeting maximum vertical and horizontal blanking interval standards. Vertical and horizontal blanking intervals are those periods during which synchronizing pulses are transmitted to control the vertical and horizontal scanning of the television picture. No picture information is transmitted during this time.

2. The Commission's Rules presently specify minimum and maximum timing values for both the horizontal and vertical blanking intervals. Maximum horizontal blanking is 11.44 microseconds and maximum vertical blanking is 21 lines (approximately 1335 microseconds). For the past few years there has been a continuing problem with television broadcast signal waveforms exceeding the maximum values contained in the Rules. When this occurs, black borders may appear at the top and left hand side of the picture. Blanking intervals width increases are inherent in much equipment used to process video signals. Thus, in today's complex TV environment, where a video signal may be processed a number of times between the camera and the transmitter, it is quite easy for the ultimate waveform to have blanking widths in excess of present standards.

Background/Comments

3. In response to numerous inquiries from station engineers and the Commission's own monitoring observations, a *Public Notice* was issued on June 16, 1978, establishing a temporary policy on enforcement of blanking standards. Under this policy, the Commission's Field Operations Bureau would issue *Advisory Notices* instead of *Notices of Violation* to stations broadcasting signals with horizontal blanking exceeding 11.44 microseconds but less than or equal to 12 microseconds, or for vertical blanking exceeding 21 lines but less than or equal to 23 lines. However, blanking intervals in excess of either of these ranges would be caused for a Notice of Violation.

4. The issuance of this *Public Notice* merely heightened awareness of the blanking standards, and the problem was found to be much more extensive than either the FCC or industry had anticipated. Consequently, the FCC released a *Public Notice* on January 10, 1979, modifying its temporary policy. Based on the magnitude of the problem and the cooperative effort then underway among segments of the industry, violation notices would not be issued for blanking in excess of the values stated in the Rules. The *Public Notice* also stated the Commission's intention to address the problem in a *Notice of Inquiry* in the very near future. The *Notice of Inquiry* was issued on June 25, 1979.

[1] See 44 FR 37520, published June 27, 1979.

5. The *Inquiry* requested interested parties to comment on matters related to the duration of vertical and horizontal blanking, including causes for blanking width increases, and the validity of existing standards in view of present practices and equipment. Parties were also requested to comment on how material not meeting present standards should be treated. Further, the *Inquiry* sought comments on the need for explicit standards and asked if marketplace forces could be relied upon to control excessive horizontal and vertical blanking. Shortly after issuance of the *Notice*, a report discussing horizontal and vertical blanking, reasons for blanking width increases, and recommendations on how best to handle the problem was filed with the Commission. The report was the result of a cooperative effort of the television industry and was sponsored by the National Association of Broadcasters (NAB).[2] Since the material contained in the report dealt with the issues raised in the *Inquiry*, it was made part of the record in the proceeding.

6. The NAB report discussed horizontal and vertical blanking intervals and, in particular, the practical difficulties experienced by the industry in meeting the maximum blanking standards in today's broadcast environment. For example, the report noted that blanking width increases are inherent in certain video processing equipment essential to today's broadcast operations. Intrinsic limitations in the design of certain pieces of equipment, now in widespread use, add to the problem. The report stated that even with good engineering practices and with equipment of modern design, licensees would have difficulty always meeting current Commission standards. To resolve the problem, the report recommended a continuance of the Commission's temporary policy of non-enforcement of blanking width standards for a period of five years. During this time, the report stated, the television industry would take steps to issue "long range recommendations." At the end of this period, a report would be issued by NAB on the blanking width situation along with recommendations for rule changes deemed appropriate. In addition to these steps, the report recommended modifying certain measurement procedures. Specifically, it was recommended that the picture level at which blanking width is specified and measured should be changed from 90 IRE units to 20 IRE units.[3] It was also recommended that vertical blanking interval should be measured on field one only, with the interval beginning 1.5 microseconds before the first equalizing pulse. Finally, it was recommended that horizontal blanking should be divided into two components designated pre-blanking and post-blanking.

7. Most comments in response to the *Inquiry* supported the recommendations advanced in the NAB reports. While most of the commenting parties limited responses to their own areas of interest, they all advanced substantially the same position.

8. The comments were divided with regard to the question of whether marketplace forces could be relied upon to protect the public from the adverse effects of excessive blanking. Those in favor of this concept contended that it was in a station's best interest to transmit a high quality signal, and excessive blanking would cause audiences to turn to other programming sources. However, the Electronics Industries Association (EIA) stated that the public's dissatisfaction with reduced picture size would be vented on the receiver manufacturers, resulting in increased costs and inconvenience.

9. A number of parties addressed the question of the causes of excessive blanking. For example, Trandem Productions and T.A.T. Communications (Trandem) stated that "excessive blanking can be caused by virtually any piece of equipment anywhere in the chain from camera through tape recorders and playback equipment up to and including the television station's broadcast transmitter." The specific pieces of video signal processing equipment, such as videotape recorders, time base correctors, field synchronizers, etc., were discussed, along with their effects on the horizontal and vertical blanking of a video signal as that signal passed through the "system." The majority of those commenting on production practices indicated that closer control over the production cycle and more frequent adjustments of equipment would eliminate many of the problems. The commenters noted that using post-production techniques to correct the problem were very expensive and often introduced significant degradation into the program signal.

10. As noted previously, the comments were unanimous in their opinion that the present maximum blanking standards were not appropriate in light of current operating procedures and practices. The NAB report suggested maximum blanking widths be increased to 12.2 microseconds (horizontal) and 1460 microseconds (vertical), or approximately 23 lines. EIA's comments recommended approximately the same values. EIA stated that blank edges would become visible if horizontal blanking was much greater than 12.6 microseconds or vertical blanking was much greater than 1450 micro-seconds.[4] The EIA noted that expanding blanking intervals along the lines recommended by NAB would not have an adverse impact on the future design of TV receivers.

11. Finally, the comments indicated that there is a large amount of archival material that would not meet either the present or the proposed standards. This category of material includes instructional televison material and news footage of historic events. They asserted that correcting such material would be very expensive. Thus, asserted that correcting such material would be very expensive. Thus, they stated that the Commission should exempt or "grandfather" this material from meeting the blanking standards.

Discussion

12. The NAB recommended a 5 year hiatus in enforcement of the blanking interval standards. Those 5 years have passed and it now appears that a marketplace approach is warranted. Incorrect blanking interval timing affects only the viewers of a particular station. Other co-channel and adjacent channel stations are not affected. So the standard is really one of on-channel quality, not interference.

13. Competition is keen among broadcasters and other video suppliers, and a strong incentive exists for each station to supply the best possible picture. However, market demands may dictate a tradeoff between blanking interval timing and choices of available programming. For example, much of the archival material may not meet the standards, but such programming may be of great interest to a station's viewing audience. Government regulations should not inhibit the airing of such material. We are confident that the broadcasters will exercise good judgment and keep their audiences in

[2] The report also contained a paper entitled "A Survey of Television Blanking Width Problems" by Frank Davidoff published in the March, 1979, edition of the SMPTE Journal.

[3] The IRE standard scale is a linear scale for measuring, in IRE units, the relative amplitude of the components of a television signal from zero reference at blanking level, with picture information falling in the positive, and synchronizing information in the negative. Reference white corresponds to 100 IRE units.

[4] These figures consider both black and white and color sets of both transistor and vacuum tube design.

mind when choosing and supplying programming. Therefore, we propose that it is appropriate to remove the maximum blanking interval standards from the Rules.

14. We would hope that eventually the industry will set its own voluntary guidelines in such quality areas. Until that time, we propose to make available the standards currently contained in the Rules in the form of technical bulletins for good engineering practices. This repository of technical information will provide guidance to broadcasters, production houses, and manufacturers, but will permit judgments consistent with programming needs.

15. Regulatory Flexibility Final Analysis.

I. *Reason for action:* The current Rules proscribe transmission standards that cannot be met by broadcasters for several sources of program material. The proposed action would eliminate that dilemma.

II. *The objective:* The Commission's proposals are designed to provide broadcast licensees more freedom in choosing program material without the fear of violating FCC technical Rules.

III. *Legal basis:* Action is proposed in accordance with Sections 303 (g) and (r) of the Communications Act of 1934, as amended, which charges the Commission to encourage the most effective use of radio in the public interest.

IV. *Description, potential impact, and number of small entities affected:* The proposed Rule changes should favorably affect all television broadcast stations by eliminating technical Rules that now restrict the transmission of certain video material, if the material exceeds the allowed horizontal or vertical blanking interval limits.

V. *Recording, recordkeeping, and other compliance requirements:* None.

VI. *Federal Rules which overlap, duplicate, or conflict with this Rule:* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:* None.

16. The Secretary shall cause a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*)

17. Accordingly, it is proposed to amend Part 73 of the Commission's Rules as set forth in the attached Appendix. Authority for the action taken herein is contained in Sections 4(i), 303 (g) and (r) of the Communications Act of 1934, as amended.

18. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules and Regulations, interested parties may file comments on or before December 31, 1984, and reply comments on or before January 15, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

19. For purposes of this nonrestrictive Notice and comment Rule Making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, and *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits an *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who make an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments on the proceeding must prepare a written summary of that presenttion; and, on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231.

20. Further information on this proceeding may be obtained by contacting Hank Van Deursen, Technical and International Branch, Policy and Rules Division, Mass Media Bureau, (202) 632–9660.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—List of commenting parties

Agency for Instructional Television (AITV)
American Associations of Community and Junior Colleges (AACJC)
Antiope Videotex Systems (Antiope)
CBS, Inc. (CBS)
Coast Community College District (Coast)
Consumer Electronics Groups of the Electronic Industries Association (EIA)
Maryland State Department of Education (Maryland)
National Association of Broadcasters (NAB)
National Broadcasting Company (NBC)
PLT Television Network (PTL)
Public Broadcasting Service (PBS)
Radio Television News Directors Association (RTNDA)
Trandem Productions and T.A.T. Communications (Tandem)
WTVM–TV
KYVE–TV
WJAC-TV

Appendix B

It is proposed to amend Part 73 of the Federal Communications Commission's Rules and Regulations as follows:

§ 73.699 [Amended]

1. Section 73.699 Figure 6 would be amended by adding a new "Note" 19 to read as follows:

Notes

* * * * *

19 Maximum horizontal and vertical blanking intervals are recommended values only.

2. Section 73.699 Figure 7 would be amended by adding a new Note 12 to read as follows:

Notes

* * * * *

12 Maximum horizontal and vertical blanking intervals are recommended values only.

* * * * *

[FR Doc. 84–31781 Filed 12–5–84; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Parts 81 and 83

[PR Docket No. 84–1236; FCC 84–580]

Eligibility for Portable Ship Station Licenses and Frequency Assignments on the Great Lakes

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend four rule sections in the maritime services. The amendments are intended to eliminate interference to the ship movement service on the Great Lakes and prevent inadvertent unlicensed operations by boaters. This action is a result of the Commission's ongoing effort to review and update the rules.

DATES: Comments must be submitted on or before January 4, 1985, and reply comments on or before January 21, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast Stations, Marine safety, Communications equipment, Radio.

47 CFR Part 83

Communications equipment, Ship stations, Canada, Communications equipment, Radio.

Notice of Proposed Rule Making

In the matter of amendment of Parts 81 and 83 concerning eligibility for portable ship station licenses and frequency assignments on the Great Lakes (PR Docket No. 84–1236).
Adopted: November 21, 1984.
Released: November 28, 1984.
By the Commission.

Portable Ship Station License

1. Section 83.50(b) of our rules currently permits a ship station license to be granted solely for testing marine radio equipment incident to installation or servicing. Boat owners frequently assume that after a service company installs and tests a radio it is appropriately licensed and available for use. Inadvertent unlicensed operations result. The Commission has simplified the ship station application procedures to permit an applicant to obtain an "instant" special temporary authority at the time the application is mailed.[1] Therefore, there is little need for a service company to test a newly installed radio under its own portable ship station license when the new ship station can be authorized by concurrently completing FCC Forms 506 and 506–A which are available as a single application form.

2. Accordingly, we are proposing to discontinue granting portable ship station licenses to entities which solely install or service marine radio equipment. Existing licensees in this category would be permitted to continue to operate under their portable ship station license for the remainder of the license term. If the rule is ultimately changed as proposed we will emphasize in a Public Notice the boat owner/operator responsibilities to complete Forms 506 and 506–A prior to installing, testing and operating a new marine radio. Additionally, we are correcting § 83.28(a)(1) to state that FCC Form 506–A provides temporary authority to operate ship station for 90 days rather than 60 days.[2]

Great Lakes Ship Movement Service

3. The Great Lakes Agreement (GLA)[3] designates marine VHF Channels 11, 12, 13 and 14 as ship movement channels. The ship movement service is part of the safety system established on the Great Lakes by the Canadian and U.S. Coast Guards. The Commission has received reports from the Canadian Coast Guard that interference is occurring in some sectors on ship movement channels. The interference results primarily from commercial communications which are also permitted on Channel 11 and port operations communications on Channels 12 and 14.

4. Since the ship movement service is essential for safety of navigation on the Great Lakes, we propose to make Channels 11, 12, 13 and 14 primarily available for ship movement service communications in the Great Lakes. On a secondary basis, Channel 11 will be available for commercial communications and Channels 12 and 14 could be utilized for port operations communications. We note that ten other frequencies are available for commercial communications on a primary basis in the Great Lakes while five additional frequencies are available for port operations communications. No licensee would be without a suitable alternative frequency if secondary status is unsatisfactory in a particular sector. Further, the frequency table in § 83.351 does not reflect the designation of Channel 13 for the ship movement service in the Great Lakes. We propose to amend this table to specify the permitted use of Channel 13 in the Great Lakes.

5. Under procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before January 4, 1985 and reply comments on or before January 21, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that fact of the Commission's reliance on such information is noted in the Report and Order.

6. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other material. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

7. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal arguments) between a person outside the Commission and a Commissioner or a member of the Commission's Staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in

[1] See, *Order,* FCC 78–846, released January 11, 1979, 70 FCC 2d 863.

[2] See, *Order,* FCC 84–323, released July 24, 1984, § 1.925(f).

[3] Agreement between the United States of America and Canada for the Promotion of Safety on the Great Lakes, 1973, TIAS 7837, amended 1978, TIAS 9352.

the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules 47 CFR 1.1231.

8. Pursuant to section 605 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we certify that the proposed rule will not have a significant impact on a substantial number of small entities. The majority of installation or servicing of ship radio stations is performed under the ship station license. The purpose of this rule amendment is to prevent an uninformed boat operator from unlicensed operation in violation of the rules.

9. The proposals continued herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

10. It is ordered, that a copy of this Notice of Proposed Rule Making shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

11. Regarding questions on this matter contact Nicholas G. Bagnato, 202/632–7175.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE

In § 81.356, the tables for port operations, navigational and commercial frequencies are amended and paragraph (4)(b) is added as follows:

§ 81.356 Assignable frequencies in the band 156–162 MHz.

(a) * * *

Channel designator	Frequencies (MHz) Coast	Ship	Points of communications	Conditions of use
*	*	*	*	*
Port Operations				
12	156.600	156.600	do	1, 4
73	156.675	156.675	do	
14	156.700	156.700	do	1, 4
*	*	*	*	*
Navigational				
11	156.550	156.550	Coast to ship	1, 4
*	*	*	*	*
Commercial				
13	156.650	156.650	Coast to ship	4, 10
*	*	*	*	*

(b) * * *

* * * * *

(4) In the Great Lakes available primarily for use for the Ship Movement Service (SMS) appropriate to the area of operation. On a secondary basis, available for use as permitted elsewhere in these rules.

* * * * *

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

§ 83.28 [Amended]

1. In § 83.28 paragraph (a)(1) is amended by changing the number "60" to "90" in the last sentence.

§ 83.50 [Amended]

2. In § 83.50 paragraph (b) is amended by deleting the words "installation or servicing" from the first sentence.

3. In § 83.351(a) the table is amended and § 83.351(b)(55) is added as follows.

§ 83.351 Frequencies available.

(a) * * *

Carrier frequency	Conditions of Use: Section	Limitations
*	*	*
156.550	83.350, 83.361, 83.539	19, 20, 27, 35, 55.
156.575	83.350	19, 20, 28, 32.
156.600	83.350, 83.361, 83.539	19, 20, 23, 35, 55.
156.625	83.350	19, 20, 30, 46.
156.650	83.350	19, 20, 24, 31, 36, 55.
156.675	83.350	19, 29, 23.
156.700	83.350, 83.361, 83.539	19, 20, 23, 35, 55.
*	*	*

(b) * * *

* * * * *

(55) In the Great Lakes available primarily for the Ship Movement Service (SMS) appropriate to the area of operation. On a secondary basis available for use as permitted elsewhere in these rules.

[FR Doc. 84-31730 Filed 12-5-84; 8:45 am]

BILLING CODE 4712-01-M

Notices

Federal Register
Vol. 49, No. 236
Thursday, December 6, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Intent To Reestablish the Agribusiness Promotion Council

Notice is hereby given that the Secretary of Agriculture intends to reestablish the Agribusiness Promotion Council.

The purpose of the Council will be to assist USDA in carrying out the agricultural development aspects of the Caribbean Basin Economic Recovery Act. The objective of the Council will be to increase the level of new U.S. agri-industrial investment in the countries of the Caribbean Basin. This Council will serve an essential function.

Reestablishment of this Council is in the public interest in connection with the performance of the duties and responsibilities of USDA.

Written comments on the proposed reestablishment of the Council may be submitted to Joan S. Wallace, USDA/OICD, Room 3049 South Building, Washington, D.C. 20250 until 15 days after publication in the **Federal Register**.

Dated: November 30, 1984.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 84-31828 Filed 12-5-84; 8:45 am]

BILLING CODE 3410-OP-M

Animal and Plant Health Inspection Service

[Docket No. 84-347]

Availability of Draft Trifly Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice of the availability for public comment of a draft Environmental Impact Statement that has been prepared by the Consortium for International Crop Protection for the Animal and Plant Health Inspection Service, U.S. Department of Agriculture on proposals to eradicate the Mediterranean Fruit Fly, the Oriental Fruit Fly and the Melon Fly in Hawaii (USDA–APHIS–DEIS 85–1). The draft EIS was sent to the Environmental Protection Agency (EPA) on November 19, 1984, by the U.S. Department of Agriculture (USDA) pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. This document also provides notice of public meetings on December 18, 19, and 20, 1984.

To provide an opportunity for public participation in the development of the final EIS, comments on the draft EIS are invited from all interested members of the public, from State and local agencies which administer plant pest control regulatory programs or are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any national program issue or environmental impact that should be discussed in the final EIS.

DATES: Written comments concerning the draft EIS must be received on or before January 16, 1985. Public meetings concerning the draft EIS will be held on December 18, 1984, in Honolulu, Hawaii; December 19, 1984, in Kahului, Hawaii, and December 20, 1984, in Hilo, Hawaii.

ADDRESSES: Written comments concerning the draft EIS should be submitted to Edward J. Stubbs, Senior Staff Officer, Field Operations Support Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Edward J. Stubbs, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295. Copies of the draft Trifly EIS are available upon request at this same address.

SUPPLEMENTARY INFORMATION:

Public Meetings

In compliance with its contractual obligations, the Consortium for International Crop Protection is holding public meetings on December 18, 1984, at the Ala Moana Americana Hotel, Plumeria Room, 410 Atkinson Drive, Honolulu, Hawaii; on December 19, 1984, at the Maui Community College, Community Service Building, 310 Kaahumanu Avenue, Kahului, Hawaii; and on December 20, 1984, at the County Extension Office, CES Meeting Room, 875 Komohana Street, Hilo, Hawaii. Comments will be taken concerning issues raised in the draft EIS and issues that should be discussed in the preparation of the final EIS. A representative of Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), will attend the meeting. Any interested person may appear and be heard in person, by attorney, or by other representative.

The public meeting to be held on December 18, 1984, in Honolulu, Hawaii, will begin at 9 a.m. and end at 10 p.m. The public meeting to be held on December 19, 1984, in Kahului, Hawaii, will begin at 7 p.m. and end at 10 p.m. The public meeting to be held on December 20, 1984, in Hilo, Hawaii, will begin at 7 p.m. and end at 9:30 p.m. The public meetings may be terminated at any time after they begin if all of those persons desiring an opportunity to speak have been heard. Persons who wish to speak are requested to register with the presiding officer prior to the meetings. The premeeting registration will be conducted at the location of the meetings one-half hour before the meeting begins. Those registered persons will be heard in the order of their registration. Any other person who wishes to speak at the meetings will be afforded such opportunity after the registered persons have been heard.

If the number of preregistered persons and other participants in attendance at the meetings warrant it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Background

Three species of exotic fruit flies have become established in the State of Hawaii. These flies, referred to collectively as "Trifly", are the Mediterranean fruit fly, (*Ceratitis capitata*) Wiedeman, the Oriental fruit fly (*Dacus dorsalis*) Hendel, and the Melon fly (*Dacus cucurbitae*) Coquillett.

On December 30, 1983, APHIS published a notice in the **Federal Register** (48 FR 57577–57578) announcing their intent to prepare an environmental impact statement (EIS) in accordance with section 102 of the National Environmental Policy Act (42 U.S.C. 4321) on proposals to eradicate the Trifly in Hawaii. The notice of December 30 also announced that two public meetings would be held in Honolulu, Hawaii, to receive public comment on January 17 and 18, 1984. A second notice was published by APHIS in the **Federal Register** on July 24, 1984 (49 FR 29810) announcing the availability of a document, captioned "Scoping Process Summary—Trifly Eradication Environmental Impact Statement", which summarized the procedures followed by APHIS, and the written comments received during the scoping process.

In the notice of intent to prepare an EIS published in the **Federal Register** on December 30, 1983, the public was requested to submit comments pertaining to any issues, concerns, or questions, that should be discussed in the Trifly EIS. The comments received have been considered in the preparation of the draft EIS.

Copies of this draft EIS are available upon request. (See **"FOR FURTHER INFORMATION CONTACT"**).

Done at Washington, D.C., this 3rd day of December 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-31691 Filed 12-5-84; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Revised Notice of Intent To Prepare the Medicine Bow National Forest and Thunder Basin National Grassland Land and Resource Management Plan and Environmental Impact Statement; Albany, Campbell, Carbon, Converse, Crook, Natrona, Niobrara, Platte, and Weston Counties, WY

A Notice of Intent to prepare an environmental impact statement (EIS) for the Medicine Bow National Forest and Thunder Basin National Grassland Land and Resource Management Plan was published in the **Federal Register** on February 12, 1980, and revised on November 14, 1980.

A second Revised Notice of Intent was published in the **Federal Register** on August 25, 1983. The August 1983 revised notice indicated the analysis in the draft EIS would disclose the environmental consequences of wilderness and nonwilderness management for the areas of the Medicine Bow National Forest which were inventoried in the Roadless Area Review and Evaluation (USDA Forest Service, RARE II FEIS, January 1979).

During the time the proposed Plan and draft EIS were being printed, Congress passed the Wyoming Wilderness Act. The President signed it into law (Pub. L. 98–550) on October 30, 1984. Therefore, the reanalysis of roadless areas is no longer within the scope of the EIS.

There are now three new wildernesses on the Forest—Platte River, Encampment River, and Houston Park. The three new wildernesses were found "suitable" for wilderness in the proposed Plan and DEIS. The Laramie Peak roadless area was also found suitable for wilderness in the planning process, however, the Act released this area to nonwilderness management.

The changes caused by the Wyoming Wilderness act on the alternatives discussed in the draft EIS are not substantial and there are no significant new circumstances relevant to environmental concerns resulting from the Act. Therefore, supplemental information was prepared identifying changes in the proposed Plan and draft EIS and the documents were released to the public and filed with the Environmental Protection Agency on November 21, 1984. The public comment period ends on March 14, 1985.

Following receipt of comments on the proposed Plan and draft EIS the Forest Service will consolidate the reanalysis caused by the Wyoming Wilderness Act with that indicated by public comment. This will be incorporated in the Forest Plan and final EIS which is now scheduled for release in the fall of 1985.

Public meetings are scheduled in January 1985. For further information or to obtain a meeting schedule please contact: Ron Olsen, Medicine Bow National Forest, 605 Skyline Drive, Laramie, Wyoming 82070, Phone: (307) 745–8971.

Dated: November 28, 1984.

S.H. Hanks,

Deputy Regional Forester.

[FR Doc. 84-31849 Filed 12-5-84; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See 14 CFR 302.1701 et seq.); Week Ended November 23, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the applications by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Nov. 20, 1984	42847	Air Micronesia, Inc., c/o R. Tenney Johnson, Zuckert, Scoutt, Rasenberger & Johnson, 888 17th Street, NW., Washington, D.C. 20006. Application of Air Micronesia, Inc, pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for modification of conditions five and six of its certificate of public convenience and necessity for Route 170. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 18, 1984
Do	42848	International Air Management Associates, Inc. d/b/a Explorair International, c/o Harold L. Lexo, P.O. Box 52024, GMF, Miami, Florida 33152. Application of International Air Management Associates, Inc. d/b/a Explorair International pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity to authorize it to engage in foreign charter air transportation and for a fitness determination. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 18, 1984.
Do	42849	International Air Management Associates, Inc. d/b/a Explorair International, c/o Harold L. Lexo, P.O. Box 52024, GMF, Miami, Florida 33152.

Date filed	Docket No.	Description
		Application of International Air Management Associates, Inc. d/b/a Explorair International pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity to authorize it to engage in domestic and overseas charter transportation and for a fitness determination. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 18, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31873 Filed 12-5-84; 8:45 am]

BILLING CODE 6320-01-M

Notice of Order Establishing International Cargo Rate Flexibility Policy

The Board, by Policy Statement PS–109, effective February 27, 1983, adopted a policy of not suspending international cargo rate changes within a specified zone, except in extraordinary circumstances. That policy, implemented by Regulation ER–1322, effective February 27, 1983 (14 CFR Part 221), eliminates the requirement of economic justification for international cargo rates which are within Board established zones of flexibility. As stated in ER–1322, the Board has taken action to allow air carriers to respond more quickly to changing costs and competitive conditions.

In establishing the SFRL for the two-month period starting December 1, 1984, we have projected nonfuel costs based on the year ended June 30, 1984, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Board.

By Order 84–11–116 cargo rates may be increased by the following adjustment factors over the April 1, 1982, level:

Atlantic	1.0226
Western Hemisphere	1.0611
Pacific	3644

Copies of the Board's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: John D. Coakley, (202) 673–5196.

By the Civil Aeronautics Board: November 28, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31875 Filed 12-5-84; 8:45 am]

BILLING CODE 6320-01-M

Notice of Order Establishing Standard Foreign Fare Level

The International Air Transportation Competition Act (IATCA), Pub. L. 98–192, requires that the Board establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. The SFFL thus computed becomes the benchmark for measuring the statutory nonsuspend zone similar to the zone of reasonableness established by the Airline Deregulation Act and set forth in sec. 1002(d) of the Federal Aviation Act of 1958, as amended. Order 80–2–69 established the first interim SFFL and subsequent Order 84–9–87 established the currently effective two-month SFFL applicable through November 30, 1984.

In establishing the SFFL for the two-month period starting December 1, 1984, we have projected nonfuel costs based on the year ended June 30, 1984, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Board.

By Order 84–11–117 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	1.1240
Western Hemisphere	1.2437
Pacific	1.2367
Canada	1.2152

Copies of the Board's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: John D. Coakley, (202) 673–5196.

By the Civil Aeronautics Board: November 28, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31875 Filed 12-5-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42631]

Ports of Call Travel Club, Inc.; Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated Washington, D.C., November 26, 1984.

Elias C. Rodrigues,

Chief Administrative Law Judge.

[FR Doc. 84-31872 Filed 12-5-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84–11–80; Docket 42585]

Petition of Transamerica Airlines, Inc.; Order To Show Cause

Adopted by the Civil Aeronautics Board at its Office in Washington, D.C., on the 26th day of November, 1984.

By a petition filed October 25, 1984, Transamerica Airlines, Inc. (Transamerica) requests that we (1) amend the definition of "all-cargo air service" in Part 291 of our Economic Regulations to include service between points within Alaska and within Hawaii; and (2) amend all outstanding certificates authorizing all-cargo air service under section 418 of the Act by removing the condition expressly prohibiting such service. Such actions, Transamerica contends, are necessary to implement statutory changes made by section 9(a) of the CAB Sunset Act of 1984.[1]

In further support of its request, Transamerica states that both the exclusion of intra-Alaska and intra-Hawaii service from the definition of all-cargo air service in 14 CFR 291.2, and the express prohibition of such service imposed as a condition in all section 418 certificates, derive directly from the terms of the Cargo Deregulation Act of

[1] Pub. L. 98–433, 98 Stat. 1703, October 4, 1984. These amendments to the Federal Aviation Act take effect on January 1, 1985.

1977,[2] particularly section 418(b)(3),[3] and have no independent basis in Board policy or findings of fact. According to the carrier, the explicit repeal of section 418(b)(3) by section 9(a) of the Sunset Act, as well as its restatement of the statutory definition of "all cargo air service"[4] clearly manifest a Congressional intent that the Board extend the same deregulation benefits to Hawaii and Alaska with respect to the provision of air-cargo services that they already enjoy for passenger service under the Airline Deregulation Act of 1978. Finally, the carrier asserts that the Board should act promptly to insure that carriers can implement the statutory changes commencing with their January 1, 1985 effective date. It emphasizes that there is no need to await individual applications or to review service proposals of individual carriers for intra-Hawaii or intra-Alaska service, since section 418 certificates require neither a finding of consistency with the public convenience and necessity nor affirmative findings of fitness.

We agree with Transamerica's analysis and will grant its requests. The explicit repeal of section 418(b)(3) is a strong signal from Congress that both existing and future section 418 certificate holders should be free to provide all-cargo air service within those two States after January 1, 1985. Because the repeal is not mandatory, however, we will provide for a brief comment period. We are therefore directing all interested persons to show cause, within fourteen (14) days of the date of service of this order, why we should not amend all outstanding section 418 certificates to remove, as of January 1, 1985, the condition prohibiting all-cargo air service between points wholly within Alaska or Hawaii. Should such action be made final, we will contemporaneously issue a final rule conforming the definitions of "all-cargo air service" and "all-cargo air carrier" in 14 CFR §291.2 to the revised statutory definition of "all-cargo air service" by removing the referenced exclusion of intra-Hawaii and intra-Alaska service by section 418 permit holders.

In view of the foregoing, we tentatively find and conclude that all outstanding section 418 certificates should be amended to remove the condition prohibiting all-cargo air service within the State of Alaska or the State of Hawaii.

Accordingly,

1. We grant the petition of Transamerica Airlines, Inc. in Docket 42585;

2. We direct all interested persons to show cause why we should not make final our tentative findings and conclusions and amend all outstanding section 418 certificates as indicated above;

3. Properly supported objections may be filed within fourteen (14) days of the date of service of this order, December 12, 1984;

4. If timely and properly supported objections are filed, we will give full consideration to all matters and issues raised by them before taking further action;

5. If no timely objections are filed, all further procedural steps will be deemed to have been waived, and the tentative findings and conclusions contained in this order shall become final;

6. This order shall be served on all certificated air carriers; and

7. This order shall be published in the **Federal Register.**

By the Civil Aeronautics Board. All Members concurred.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31874 Filed 12-5-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41306]

Unicorn Air, Ltd., Fitness Investigation (on Remand); Postponement of Prehearing Conference

Notice is hereby given that the perhearing conference in the above-entitled matter scheduled to be held on December 5, 1984, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before Chief Administrative Law Judge Elias C. Rodriguez is hereby postponed until further notice.

Dated at Washington, D.C. November 29, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-31871 Filed 12-5-84; 8:45 am]

BILLING CODE 6320-01-M

---

[2] Pub. L. 95-163, 91 Stat. 1278, November 9, 1977.

[3] That section has provided that "Notwithstanding any other provision of this section, no certificate issued by the Board under this section should authorize all-cargo air service between any pair of points both of which are within the State of Alaska or the State of Hawaii."

[4] As amended by section 9(a), section 101(11) of the Act now reads " 'All-cargo air service' means the carriage of mail by aircraft in interstate or overseas air transportation of only property or mail or both."

DEPARTMENT OF COMMERCE

International Trade Administration

Applications; University of Illinois, et al

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 85-023. Applicant: U.S. Environmental Protection Agency, 944 E. Harmon Avenue, P.O. Box 15027, Las Vegas NV 15027. Instrument: Mass Spectrometer, Model MM ZABS250 with Accessories. Manufacturer: VG Analytical, United Kingdom. Intended use: The instrument will be used to develop methods for ultra-trace analyses of environmentally hazardous materials in complex matrices where other less sophisticated instrumentation is not capable of providing the required unequivocal answers. Application received by Commissioner of Customs: November 6, 1984.

Docket No.: 85-024. Applicant: University of Illinois at Urbana Champaign, Department of Chemistry, Urbana, IL 61801. Instrument: Photon Counting Spectrometer with Accessories. Manufacturer: Photochemical Research Associates, Canada. Intended use: Studies of luminescent dyes and aromatic chromophores dispersed in polymer matrices. The phenomenon to be studied is the nonexponentiality introduced into the decay of luminescence, after pulsed excitation, by energy transfer into quenching sites. Experiments will be conducted to evaluate energy migration rates in a network of dispersed chromophores and to relate these rates to the molecular properties needed to achieve long ranges of exciton diffusion. The results are related to technologies of energy conversion and information transfer. Application received by Commissioner of Customs: November 5, 1984.

Docket No.: 85-026. Applicant: Rutgers University, Purchasing Department, Administrative Services Building, Busch Campus, Piscataway, NJ 08854. Instrument: Mass Sepectrometer, Model MM7070EQ-HF with Accessories. Manufacturer: VG Analytical, Ltd., United Kingdom. Intended use: Analysis and identification of important food peptides, oligosaccharides, glycopeptides, peroxides, triglycerides, corn syrup hydrolysates and Maillard reaction products using tandem mass spectrometry (MS/MS). In addition MS/MS will be used in the identification and quantification of naturally-occurring toxins and environmental toxins in various foods. The instrument will also be used for detecting and quantifying volatile food constituents and toxins. Application received by Commissioner of Customs: November 5, 1984.

Docket No.: 85-027. Applicant: NIH/HHS, Center for Infectious Disease, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333. Instrument: Electron Microscope, Model EM 109T, with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of whole cells and subcellular fractions from pathogenic microorganisms, cell wall and membrane components and nucleic acids. Experiments will be conducted involving the use of whole cells or cell fractions for the production of antibody to antigens of interest. Such antibodies will then be conjugated to electron dense compounds and then used to identify and localize the original components themselves on the cell surface and to determine their usefulness as diagnostic parameters. Application received by Commissioner of Customs: November 5, 1984.

Docket No.: 85-028. Applicant: Cornell University, Department of Chemistry, G75 Chemistry Research Building, Ithaca, NY 14853. Instrument: Oscillator-Amplifier Excimer Laser, Model EMG 150ES-C, FL 2002E. Manufacturer: Lambda Physik, West Germany. Intended use: The instrument is intended to be used in high-resolution spectroscopy and state-resolved chemistry in the extreme ultraviolet spectral region from 60-200 nm (6-21 eV). This system will dramatically extend the range of tunable radiation making it possible to excite molecules with any wavelength from the near infrared to the extreme ultraviolet. Application received by Commissioner of Customs: November 6, 1984.

Docket No.: 85-029. Applicant: University of Minnesota, St. Anthony Falls Hydraulic Laboratory, Mississippi River at 3rd Avenue, SE., Minneapolis, MN 55414-2196. Instrument: Anemometer, Manufacturer: Opto-Electronische Instrumente, GmbH, West Germany. Intended use: Engineering studies and education in the area of fluid motion. Measurement of velocity, pressure, temperature, and mass which is almost always required to describe a particular flow phenomenon under study. The instrument will be used by graduate students in pursuit of their theses research and in study of related projects. Application received by Commissioner of Customs: November 5, 1984.

Docket No.: 85-032. Applicant: Arizona State University, Tempe, AZ 85287. Instrument: Electron Microscope, Model EM 430 ST with Accessories. Manufacturer: N.V. Philips Gloeilampenfabrieken, The Netherlands. Intended use: Study of various inorganic materials including alloys, semiconductors, minerals and ceramics. Thin specimens prepared by fracture, chemical thinning, ion-beam irradiation or other methods will be examined to determine the arrangements of atoms in the interior or on the surfaces of specimens in order to investigate the structural aspects of various material phenomena. Application received by Commissioner of Customs: November 5, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-31846 Filed 12-5-84; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 41027-4127]

Proposed Revision of FIPS Fortran and FIPS Minimal Basis

Correction

In FR Doc. 84-30350 beginning on page 45774 in the issue of Tuesday, November 20, 1984, make the following correction: On page 45774, in the third column, following the line "Dated: November 14, 1984" insert the signature:

"Ernest Ambler,

Director."

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State for foreign vessels to fish in the fishery conservation zone under the Magnuson Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.).

Send comments on applications to: Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington D.C. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director; New England Fishery Managment Council; Suntaug Office Park; 5 Broadway (Route 1); Saugus MA O1906; 617-231-0422

David H.G. Gould, Executive Director; South Atlantic Fishery Management Council; Southpark Building, Suite 306; 1 SouthPark Circle; Charleston, SC 29407; 803-571-4366

Omar Munoz-Roure, Executive Director; Caribbean Fishery Managment Council; Banco De Ponce Building, Suite 1108; Hato Rey, PR 00918; 809-753-6910

Wayne E. Swingle, Executive Director; Gulf of Mexico Fishery Managment Council; Lincoln Center, Suite 881; 5401 West Kennedy Blvd.; Tampa, FL 33609; 813-228-2815

Joseph C. Greenley, Executive Director; Pacific Fishery Managment Council; 526 S.W. Mill Street, Portland, OR 97201; 503-221-6352

Jim H. Branson, Executive Director; North Pacific Fishery Managment Council; 411 W. Fourth Avenue, Suite 2D; Anchorage, AK 99510; 907-271-4004

Kitty M. Simonds, Executive Director; Western Pacific Fishery Managment Council; 1164 Bishop Street, Room 1608; Honolulu, Hawaii 96813; 808-523-1368.

For further information contact Shirley Whitted or John D. Kelly (Fees, Permits, and Regulations Division), 202-634-7432. The Magnuson Act also requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service under the authority granted in a memorandum of understanding with the Department of

State effective November 29, 1983 issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received between December 4, 1983 and December 4, 1984 from the Government(s) shown below.

Dated: December 4, 1984.

Roland Finch,

Director, Office of Fisheries Managment, National Marine Fisheries service.

Fishery codes and designation of Regional Fishery Management councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management council
ABS	Atlantic billfishes and sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands groundfish.	North Pacific.
GOA	Gulf of Alaska groundfish.	Do.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
SMT	Seamount groundfish (Pacific Ocean).	Western Pacific.
SNA	Snails (Bering Sea).	North Pacific.
WOC	Pacific groundfish (Washington, Oregon, and California).	Pacific.
PBS	Pacific billfishes and sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support, only.
3	Other support only.
4	"Joint venture" in support of U.S. vessels.

Nation, vessel name, vessel type	Application No.	Fishery	Activity
Government of the Federal Republic of Germany			
Friedrich Busse, large stern trawler.	GE-85-0010	BSA	1
Mond, large stern trawler.	GE-85-0015	BSA	1
Government of the U.S.S.R.			
Arkovo, large stern trawler.	UR-85-0012	BSA, GOA	1
Ivan Malyakin, large stern trawler.	UR-85-0737	BSA, GOA	1
Lesogorsk, large stern trawler.	UR-85-0836	BSA, GOA	1
Mys Elagina, large stern trawler.	UR-85-0188	BSA, GOA	1
Mys Senyavina, large stern trawler.	UR-85-0237	BSA, GOA	1
Tymovsk, large stern trawler.	UR-85-0048	BSA, GOA	1
Uranya, large stern trawler.	UR-85-0774	BSA, GOA	1
Valentin Kolesnikov, large stern trawler.	UR-85-0189	BSA, GOA	1

Federal Republic of Germany

Joint Venture—The Government of the Federal Republic of Germany has applied for fishing vessel permits to engage in joint venture activities in Alaska. The application requests that West Germany Vessels receive transshipments of pollock (6,000 mt), Yellowfin sole (10 mt), Other flounder (10 mt), Other groundfish (30 mt), Atka mackerel (20 mt) and Sablefish (1 mt) from domestic vessels. The total is 6,071 mt. The American partner has not been identified.

Poland

Joint Venture—The Government of the Polish People's Republic has submitted a request to amend its Alaskan joint venture application published on December 3, 1984, at 49 FR 47298. The amended application indicates that the proposed joint venture with Alaska Contact, Ltd. is changed to request authorization to receive 30,000 mt of pollock in the BSA fishery and 10,000 mt of pollock in the GOA fishery from U.S. fishing vessels beginning January 15.

[FR Doc. 84-32086 Filed 12-5-84; 11:50 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Slidell, LA, and Pearlington, MS, Interim Report on Flood Control

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action:* The proposed action includes developing various alternative plans to provide flood protection for the urbanized areas in the vicinity of Slidell, Lousiana, and Pearlington, Mississippi.

2. *Alternatives:* Several alternatives are being developed to provide flood protection. The DEIS will include an evaluation of the environmental, social, economic, and engineering impacts associated with each alternative plan. The following alternatives are being considered:

a. *No-Action.* This alternative will be the without-project condition against which impacts will be measured.

b. *Nonstructural Alternatives.* These include floodproofing, flood plain evacuation, and flood plain regulations.

c. *Structural Alternatives.* Various structural measures for providing protection from three different flood events (100-year, 200-year, and SPF) are being investigated. These measures will include various levee alignments and related floodgates and pumping plants.

3. *Scoping Process: Public Involvement.* Numerous informal meetings, one formal public meeting (27 June 1984), and one workshop (25 July 1984) have been held over the course of the study involving the general public and other interested public groups. The DEIS will be sent to state, local, and Federal agencies as well as private groups and individuals for comments.

4. *Significant Issues to Be Analyzed in DEIS:* The DEIS will contain evaluations concerning project impacts on and subject to the Fish and Wildlife Coordination Act, the Historical Preservation Act, the Endangered Species Act, Executive Order 11988 on Flood Plain Management, and Executive Order 11990 on Wetlands. A section 404 evaluation of the Clean Water Act will be prepared.

5. *Environmental Review and Consultation Requirements:* The environmental review will be conducted in accordance with the requirements of the National Environmental Policies Act regulations contained in the 29 November 1978 **Federal Register** and applicable Corps of Engineers regulations and guidance.

6. *DEIS Publication Date:* The DEIS is currently scheduled to be available to the public in February 1985.

ADDRESS: Questions concerning the proposed action and DEIS should be addressed to: Commander, U.S. Army Engineer District, Vicksburg, ATTN: LMKPD-Q (Ms. Maryetta Smith), Post Office Box 60, Vicksburg, Mississippi 39180-0060. Telephone: (FTS 542-5433) (Commercial (601) 634-5433).

Dated: November 30, 1984.

Kenneth L. Brown,

Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 84-31828 Filed 12-5-84; 8:45 am]

BILLING CODE 3710-GX-M

Department of the Navy

National Environmental Policy Act Record of Decision for Disposal of Decommissioned, Defueled Naval Submarine Reactor Plants

SUMMARY: This Record of Decision has been prepared on the proposed disposal of decommissioned, defueled naval submarine reactor plants, pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of the National Environmental Policy Act NEPA). The Navy has decided to dispose of these reactor plants by land burial at Department of Energy (DOE) burial sites.

In accordance with the Council on Environmental Quality regulations (40 CFR Part 1501), the Department of the Navy served as the lead agency for preparation of the Environmental Impact Statement (EIS) on this subject. The Department of Energy (DOE) participated as a cooperating agency with regard to the alternative of land disposal at DOE burial sites. By participating as a cooperating agency, DOE EIS obligations under NEPA are fulfilled and no separate DOE is required

SUPPLEMENTARY INFORMATION: With 10 nuclear-powered submarines having been decommissioned and future decommissioning of additional ships in the offing a permanent means of disposal must be available that is environmentally acceptable. Following decommissioning, the submarines do not contain nuclear fuel, transuranic elements, or high-level radioactive material. They will, however, contain low-level radioactive material resulting from the opertation of the reactors while the submarines were in commission.

The two basic methods for permanent disposal are land disposal and sea disposal. Permanent disposal can be achieved by removal of the submarine compartment that contains the defueled reactor, followed by shipment of the compartment by barge and overland transporter to either of two accessible Federal land burial sites used by the Department of Energy for burial of low-level radio-active waste. These sites are in Washington State (Hanford Site) and in South Carolina (Savannah River Plant). The submarine compartments contain classified design information so only government owned burial grounds may be used. The remainder of the submarine which contains no radioactive material, would either be disposed of by sinking it at sea or by cutting it up for sale as scrap metal. Radiation levels associated with the entire operation would meet applicable requirements of the Department of Transportation, Nuclear Regulatory Commission, and Department of Energy for transportation and disposal of solid low-level radioactive material. Alternatively, permanent disposal of the defueled submarine reactor plants could be achieved by sinking the submarines in a deep ocean location that would be designated by the United States Environmental Protection Agency. Specific sites for sea disposal have not been proposed and a site-specific evaluation would be required prior to disignation of a sea disposal site.

An alternative for temporary storage of these defueled submarine reactor plants would be to place each submarine in protective floating storage in a Navy facility for an extended period. This would allow radioactive material to decay under controlled conditions without release to the environment. However, this altenative would lead to other impacts and only postpone the decision for ultimate disposal, requiring the decision to be made sometime in the future. For this reason, this alternative is regarded as the no-action alternative because it represents the minimum action the Navy must take to ensure that the decommissioned submarines would be maintained without hazard to people or the environment. No other practical alternatives are known to exist for the final disposition of the reactor plants. The Navy published a Draft Environmental Impact Statement which assessed these alternatives on December 22, 1982. This Draft EIS was widely circulated. Over 150 copies of the Draft statement were distributed to individuals, environmental organizations, state and local allowed for interested parties to comment on the draft EIS. More than 500 letters were received providing comments. The Navy held four public hearings in different parts of the country at which over 150 people presented statements.

All substantive comments received by the Navy were analyzed and addressed in the Final EIS which was published on June 4, 1984. Impacts assessed for each disposal alternative included expected commitment of resources, land use, transportation requirements, and environmental consequenes, including occupational radiation exposure due to disposal activities, and possible radiation exposure to the public during and after transporation and disposal. The impact of radioactive material releases due to unexpected occurrences was also assessed. For each alternative considered, an assessment of the impact on the environment in the vicinity of disposal sites has been performed. The EIS also included information on the costs of the disposal alternatives. The Navy considers that permanent disposal would be environmentally safe and feasible using either the land burial or deep ocean option. There are no technical obstacles which would prevent successful disposal or environmental monitoring for either permanent disposal option. The highly conservative estimates used in the analyses of impacts have amply compensated for any uncertaintes that may exist in man's knowledge relative to the impacts for either disposal option. No unacceptable environmental impacts associated with either option have been identified as a result of the analyses or through the public review process.

Since the Navy began its evaluation of disposal options, several developments associated with possible ocean disposal of low-level radioactive waste have occurred. These include Congressional action in December 1982 restricting the issuance of ocean disposal permits and requiring Congressional approval before any such permit may be issued by the EPA. In addition, the EPA has indicated additional regulations may be required before EPA could evaluate a permit request. In view of these and other uncertainites associated with national acceptance of the ocean disposal option, the Navy considers that allocation of additional funds to pursue this option further is not warrented at this time.

Based on a consideration of all current factors bearing on a disposal action of this kind contemplated, the Navy has decided to proceed with disposal of the reactor compartments by land burial. Land burial is the method currently used in the United States for disposal of low-level radioactive waste and this disposal action would comply with existing requirements for use of the government burial grounds. Land burial of the reactor compartments would be enviromentally safe at both of the government burial grounds which were evaluated in the final EIS. However, with all but one of our ten decommissioned nuclear submarines currently in storage on the West Coast, the federal burial ground at Hanford, Washington is the site appropriate for use in the near future. This approach will allow permanent disposal of this

form of low-level radioactive material to proceed with no unacceptable enviromental impacts.

Issued in Arlington, Virginia on November 30, 1984.

Dated: November 30, 1984.

John Lehman,

Secretary of the Navy.

[FR Doc. 84-31845 Filed 12-5-84; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Centers for Independent Living; Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal year 1985.

SUMMARY: The Secretary proposes annual funding priorities for grants for establishing and operating Centers for Independent Living. The Secretary proposes two priorities to direct funds to the areas of greatest need during Fiscal Year 1985 to ensure effective use of program funds. The priorities will extend independent living services to additional groups of disabled persons and will assist severely handicapped persons in making the transition from school or institution to community living or employment. The Secretary proposes to give absolute preference to applications meeting these priorities.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before January 7, 1985.

ADDRESSES: All written comments and suggestions should be sent to Harold F. Shay, Director, Division of Special Projects, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., (MS 2312) Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Harold F. Shay, Telephone: (202) 732-1332.

SUPPLEMENTARY INFORMATION: Grants for Centers for Independent Living are authorized by Title VII, Part B of the Rehabilitation Act of 1973, as amended (29 U.S.C. 796e). Program regulations are established at 34 CFR Part 366. The purpose of the Centers for Independent Living Program is to establish and operate Centers designed to provide a combination of services to severely handicapped individuals to enable them to live more independently in family and community or to secure and maintain appropriate employment. The Act requires each Center established and operated under this authority to have substantial involvement of handicapped individuals in policy direction and management of the Center.

Eligible Applicants:

The designated State unit of the State vocational rehabilitation agency is the principal eligible applicant for grants under this program. However, if in any fiscal year the designated State unit has not applied for a grant within six months after the date on which the Secretary begins to accept applications, then any local public or private nonprofit agency within that State may submit an application.

Available Funds:

The Congress has appropriated $27,000,000 for Independent living in Fiscal Year 1985. The Rehabilitation Amendments of 1984 Pub. L. 98-221), include an authorization of $22,000,000 for the Centers for Independent Living Program; of this amount, approximately $20,100,000 will be required to continue existing projects as mandated by section 711(f) of the Rehabilitation Act of 1973, as amended. It is estimated that the total amount to be reserved for the proposed priorities announced in this notice will be up to $1,900,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant.

Proposed Priorities:

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications submitted in Fiscal Year 1985 in response to priorities to be established. An absolute preference in one which permits the Secretary to reserve all or a part of a program's funds solely for applications that meet an announced priority. The Secretary proposes to reserve part of the funds appropriated for the Centers for Independent Living Program in Fiscal Year 1985 to support projects in which specific project components or activities, i.e., not an entire project, implement announced program priorities. All applications will be evaluated according to selection criteria contained in program regulations at 34 CFR 366.31.

The proposed priorities are as follows:

Priority 1: Expanding Services to Additional Groups of Disabled Persons

This proposed priority is intended to enable those existing Centers for Independent Living that have focused in the past on a limited number of disabilities because of tradition, lack of resources, or lack of specially trained staff to expand services to additional disability populations with service needs which require specialized staff, techniques, equipment or other resources.

Examples of the type of program expansion to which this proposed priority is addressed are programs currently serving mobility impaired persons that wish to expand coverage to persons with mental handicaps; programs currently serving orthopedically or neurologically impaired persons that wish to expand to serve persons with sensory impairments, including the deaf/blind; programs currently serving persons with mental handicaps that wish to expand to serve physically disabled individuals; programs currently serving children that wish to expand to serve youths and adults; or programs currently serving younger populations that wish to expand to serve older persons, especially older blind persons.

Services to be developed under this proposed priority will enable additional numbers of severely handicapped persons to live more independently in family and community or to secure and maintain employment.

Priority 2: Transition from School or Institution to Community Living or Employment

Priority will be given to proposals that will enable existing Centers for Independent Living to provide independent living services cooperatively with services of other community programs so as to enhance the abilities of severely disabled persons leaving school or institution to live more independently in the community or to seek and maintain employment. Examples of other community services which should be effectively integrated into a comprehensive approach are: local housing and transportation authorities; State or county Medicaid agencies that can assist in the provisions of personal care attendant or home based services; State vocational rehabilitation agencies; technical or vocational schools and community colleges; agricultural extension services in rural areas; as well as any other service or income maintenance programs which

individuals need and are eligible to receive.

Projects supported under this proposed priority must include cooperative arrangements with existing community resources which will facilitate the transition of severely handicapped persons from school or institution to community living or employment.

It is not necessary that the cooperating community agencies support the direct costs of the project, but it is expected that they will cooperatively participate to the fullest extent possible to ensure that severely disabled persons leaving school or institution achieve their maximum independence.

(Information collection requirements have been approved by the Office of Management and Budget under control number 1820-0016)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the end of the comment period will be considered before the Secretary issues final priorities. All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3317, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays. (29 U.S.C. 796e)

(Catalog of Federal Domestic Assistance No. 84.132, Centers for Independent Living)

Dated: November 30, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-31823 Filed 12-5-84; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7286-001]

Beulah Associates; Surrender of Preliminary Permit

November 30, 1984.

Take notice that Beulah Associates Permittee for the Beulah Power Project No. 7286 has requested that its preliminary permit be terminated. The Preliminary Permit was issued on December 16, 1983, and would have expired on May 31, 1985. The project would have been located on North Fork Malheur River in Malheur County, Oregon.

The Permittee filed the request on November 1, 1984, and the preliminary permit for Project No. 7286 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31781 Filed 12-5-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 7230-001]

Birch Creek Hydro, Inc.; Surrender of Preliminary Permit

November 30, 1984.

Take notice that Birch Creek Hydro, Inc., Permittee for the proposed Lone Pine Creek Project No. 7230, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 13, 1983, and would have expired on September 30, 1985. The project would have been located on Lone Pine Creek, in Inyo County, California.

The Permittee filed the request on October 11, 1984, and the preliminary permit for Project No. 7230 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31782 Filed 12-5-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-4579-031, et al.]

Cities Service Oil and Gas Corporation, et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

November 28, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-4579-031, D, Oct. 29, 1984	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	Northwest Central Pipeline Corporation, Maysville Plant, Garvin County, Oklahoma	(1)	
G-18748-001, D, Oct. 29, 1984	Arco Oil and Gas Company, Division of Atlantic Richfield Company, P.O Box 2819, Dallas, Texas 75221	El Paso Natural Gas Company, J.H. Jines Well #1, Section 479, Block 43, H&TC Survey, Ochiltree County, Texas	(3)	
C181-101-001, E, Oct. 30, 1984	Phillips Petroleum Company (successor in interest to Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004	Southern Natural Gas Company, St Gabriel Area, Iberville & Ascension, Louisiana	(4)	
C184-459-001, E, Oct. 18, 1984	SRC Production Company (successor in interest to Southland Royalty Company), 801 Cherry Street, Fort Worth, Texas 76102	Arkansas Louisiana Gas Company, Bonanza Field, Sebastian County, Arkansas	(5)	14.73
C185-28-000, A, Oct. 26, 1984	CNG Producing Company, Canal Place One, Suite 3100, New Orleans, Louisiana 70130	Texas Gas Transmission Corporation, High Island Block A-462, Offshore, Texas	(6)	14.73
C184-30-000, F, Oct. 31, 1984	Phillips Petroleum Company (partial successor in interest to Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004	Columbia Gas Transmission Corporation, Block 276, Vermilion Area, Offshore Louisiana	(7)	14.73
C185-31-000, B, Oct. 29, 1984	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102	Transwestern Pipeline Co., Winchester Field, Eddy County, New Mexico	(8)	
C185-32-000, F, Nov. 5, 1984	The Superior Oil Company (partial successor in interest to Texaco, Inc.), Post Office Box 152, Houston, Texas 77001.	Columbia Gas Transmission Corporation, Vermilion Bay Field, Vermilion and Iberia Parishes, Louisiana	(9)	
C185-33-000, A, Nov. 7, 1984	CNG Producing Company, Canal Place One, Suite 3100, New Orleans, Louisiana 70130	Natural Gas Pipeline Company of America, West Cameron Block 564, Offshore, Louisiana	(9)	15.025
C185-34-000, F, Nov. 8, 1984	Sun Exploration and Production Company (successor in interest to Petro-Lewis Funds, Inc.), P.O. Box 2880, Dallas, Texas 75221.	Northwest Central Pipeline Corporation, Newcastle Plant, Grady County, Oklahoma	(10)	14.73
C185-35-000, B, Nov. 5, 1984	Felmont Oil Corporation	Southern Natural Gas Company and United Gas Pipe Line Company, West Cameron Area Block 330, Offshore, Louisiana	(11)	
C185-37-000, B, Nov. 7, 1984	Case-Pomeroy Oil Corporation, Post Office Box 1511, Midland, Texas 79702	do	(12)	
C185-38-000, F, Nov. 9, 1984	Texas Gas Exploration Corporation (partial succession in interest to Forest Oil Corporation), P.O. Box 4326, Houston, Texas 77210-4326.	Columbia Gas Transmission Corporation, Block 268, Vermilion Area, South Addition, Offshore Louisiana	(13)	14.73
C185-39-000, E, Nov. 8, 1984	Exxon Corporation (successor in interest to Petro Lewis Corporation), Post Office Box 2180, Houston, Texas 77252-2180.	Montana-Dakota Utilities Company, Elk Basin Field, Park County, Wyoming.	(14)	
C185-40-000, E, Nov. 8, 1984	do	Colorado Interstate Gas Company, Elk Basin Unit, Park County, Wyoming.	(14)	
C185-42-000, B, Nov. 13, 1984	Wagner & Brown, Suite 1100 The Summit, 300 N. Manenfield, P.O. Box 1714, Midland, Texas 79702.	Arkansas Louisiana Gas Company, Hemphill (Granite Wash) Field, Hemphill County, Texas.	(15)	
C185-43-000, B, Nov. 14, 1984	Union Oil Company of California, Union Oil Center P.O. Box 7600, Los Angeles, California 90051.	Transcontinental Gas Pipe Line Corporation, Willow Woods Field, Terrebonne Parish, Louisiana.	(16)	
C185-44-000, B, Nov. 15, 1984	George R. Brown, San Jacinto Building, Suite 800, Houston, Texas 77002-6286.	Transcontinental Gas Pipe Line Corporation, Thibodaux Field, Lafourche Parish, Louisiana	(16)	
G-18451-000, Oct. 31, 1984	Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77252.	Transwestern Pipeline Company, Kermit and South Kermit Fields, Winkler County, Texas.	(16)	14.73
C181-50-002, E, Nov. 13, 1984	Phillips Petroleum Company (successor in interest to Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Southern Natural Gas Company and United Gas Pipe Line Company, West Cameron Block 552, Offshore Louisiana.	(16)	14.73

[1] To allow Cities to sell the portion of gas under Rate Schedule 42 dedicated to Northwest Central and sold at the tailgate of the Maysville Gas Processing Plant but which, due to Northwest Central's present depressed gas market demand, Northwest is failing to purchase.
[2] The J.H. Jines Well No. 1 is no longer productive in the Mississippi Formation, Sec. 479, Block 43. It has been recompleted as an oil well in the Cleveland Zone.
[3] Effective December 1, 1983, Phillips Oil Company assigned to Applicant, its working interest in the Natalbany Lumber Company, Well No. 1, St. Gabriel Area, Iberville and Ascension Parishes, Louisiana.
[4] Effective December 1, 1983, Applicant acquired an undivided 6% interest before payout and an undivided 30% interest after payout in the leases certified to Southland Royalty Company in Docket No. C184-459-000.
[5] Applicant is filing under Gas Purchase Contract dated September 26, 1984.
[6] Effective December 1, 1983, Phillips Oil Company assigned to Applicant, its working interest in Block 276, Vermilion Area, Offshore Louisiana.
[7] Gas pressure in the Fossil Federal No. 1 well has declined to the point where the production can no longer be delivered into the Transwestern pipe line system, and subsequently no deliveries have been made to Transwestern since October, 1983.
[8] By Sublease dated September 13, 1984, Texaco Inc. sublet certain of its interest in an oil and gas lease located in Vermilion Bay Field, Vermilion and Iberia Parishes, Louisiana, to Superior.
[9] Applicant is filing under Gas Purchase Contract dated September 26, 1984.
[10] Assignment, Bill of Sale and Conveyance from Partnership Properties Co., Petro-Lewis Producing Company II, and Petro-Lewis Funds, Inc., to Sun Exploration and Production Company became effective May 1, 1984.
[11] Ceased production due to depletion.
[12] By instrument titled "Assignment of Interest in Oil and Gas Lease", executed by Applicant on April 11, 1979, but effective June 15, 1978, Forest assigned to Applicant an 8.33% undivided interest in the OCS oil and gas lease covering Block 268, Vermilion Area, South Addition, Offshore Louisiana.
[13] By assignment dated May 1, 1984 Exxon acquired certain acreage covered by Conoco Inc. certificate.
[14] Contract term is 20 years and year to year thereafter. Production terminated on August, 1980, and the well was plugged and abandoned on February 18, 1982.
[15] Gas reserves were depleted. The leases were dropped on December 9, 1982.
[16] All wells are depleted and have been plugged and abandoned. All leases have expired for lack of production. The gas purchase contract has expired.
[17] Applicant is filing to change delivery points.
[18] Effective March 1, 1984, Phillips Oil Company assigned to Applicant its working interest in the West Cameron, Block 552, Offshore, Louisiana.

Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total succession; F—Partial succession.

[FR Doc. 84-31783 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-15-000]

Gulf States Utilities Co.; Application

November 29, 1984.

Take notice that on November 16, 1984, Gulf States Utilities Company (Applicant) filed an application seeking an order under Section 204(a) of the Federal Power Act authorizing the Applicant to issue up to 1,500,000 Additional Shares of Common Stock, without par value, pursuant to its Employee Stock Ownership Plan, and for exemption from competitive bidding requirements.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 16, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31784 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-129-000]

Iowa Southern Utilities Co.; Filing

November 29, 1984.

The filing Company submits the following:

Take notice that on November 16, 1984, Iowa Southern Utilities Company (Iowa) tendered for filing the following documents:

(1) Service Agreement dated July 2, 1984, between Iowa, and Mt. Pleasant Municipal Utilities including the attachments thereto of an Exhibit A and Exhibit B.

(2) Service Agreement dated October 29, 1984, between Iowa and the City of Bloomfield.

(3) Revised Tariff Sheets of Iowa FERC Electric Tariff Original Volume No. 1, all carrying an issue date of November 13, 1984.

Iowa states that the requested effective date for the Tariff Sheets is February 1, 1985, to allow at least 60 days after the date of filing. Requested effective date for the Mt. Pleasant contract is October 5, 1984 to coincide with service beginning on October 5, 1984. Requested effective date of the Bloomfield contract is November 5, 1984 to coincide with service beginning November 5, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31785 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7289-001]

Juntura Associates; Surrender of Preliminary Permit

November 30, 1984.

Take notice that Juntura Associates, Permittee for the Juntura Power Project No. 7289 has requested that its preliminary permit be terminated. The Preliminary Permit was issued December 5, 1983, and would have expired on May 31, 1985. The project would have been located on Malheur River in Malheur County, Oregon.

The Permittee filed the request on November 1, 1984, and the preliminary permit for Project No. 7289 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

FR Doc. 84-31786 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-114-010]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

November 28, 1984.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on November 15, 1984, tendered for filing First Revised Sheet No. 219 of Original Volume No. 2 of its FERC Gas Tariff. According to § 361.103(b)(2)(iii) of the Commission's regulations (18 CFR 361.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 21, 1984. Northwest Central states that this filing is being made to reflect the recent settlement of Docket No. RP82-114.

Northwest Central states that copies of its filing were served on all parties to the proceedings in the above-cited docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 84-31787 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-136-000]

Pacific Power & Light Co., an Assumed Business Name of PacificCorp.; Filing

November 29, 1984

The filing Company submits the following:

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacificCorp, on November 20, 1984, tendered for filing Pacific's Revised Appendix 1 for the state of Washington. The Revised Appendix 1 calculates an average system cost of the state of Washington applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective July 1, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Washington Utilities and Transportation Commission, and Bonneville's Direct Service Industrial Customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31788 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-134-000]

Portland General Electric Co.; Filing

November 29, 1984.

The filing Company submits the following:

Take notice that on November 19, 1984, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during September of 1984, along with a cost justification for the rates charged.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31789 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-393-001]

Public Service Company of Indiana, Inc.; Filing

November 29, 1984.

Take notice that on October 31, 1984, Public Service Company of Indiana (PSI) tendered for filing a First Supplemental Agreement, dated October 1, 1984, to the Short-Term Agreement, dated April 1, 1984, between American Municipal Power—Ohio, Inc. (AMPO) and PSI.

PSI states that said agreement eliminates the contractual restriction on the resale power by AMPO.

Copies of this filing were served upon AMPO, the Public Utilities Commission of Ohio and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., on or before December 15, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31790 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-16-M

[Docket No. ER85-133-000]

Southern Company Services, Inc.; Cancellation

November 29, 1984.

The filing Company submits the following:

Take notice that on November 19, 1984, Southern Company Services, Inc. (SCS) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 56. SCS requests an effective date of December 1, 1982.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31791 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7138-001]

Springfield Associates #3; Surrender of Preliminary Permit

November 30, 1984

Take notice that Springfield Associates #3, Permittee for the Hills Creek Project No. 7138, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7138 was issued on October 18, 1983, and would have expired on March 31, 1985. The project would have been located on Hills Creek in Lane County, Oregon, within the Willamette National Forest near the Town of Oakridge, Oregon.

The Permittee filed the request on November 1, 1985, and the preliminary permit for Project No. 7138 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31792 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-135-000]

Union Electric Co.; Filing

November 29, 1984.

The filing Company submits the following:

Take notice that on November 29, 1984, Union Electric Company (UE) tendered for filing a Standby Electric Service Agreement dated November 5, 1984, between Associated Electric Cooperative, Inc. and UE. Said Agreement provides for a new connection point in the vicinity of Canton, Missouri.

UE requests an effective date of October 1, 1984, and therefore requests waiver of the Commission's notice requirments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31793 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5819-004]

Woods Creek, Inc.; Surrender of Preliminary Permit

November 30, 1984.

Take notice that Woods Creek, Inc., Permittee for the Johnson Creek Hydroelectric Project No. 5819, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5819 was issued on November 1, 1982, and would have expired on October 30, 1985. The project would have been located on Johnson Creek in Snohomish County, Washington, within the Snoqualmie National Forest.

The Permittee filed the request on October 29, 1984, and the preliminary permit for Project No. 5819 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31794 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4306-004]

City of Hibbing, Minnesota and City of Hastings, Minnesota; Application for Transfer of License (Major)

December 3, 1984.

Take notice that the City of Hibbing, Minnesota, (Licensee) for the Mississippi River Locks and Dam No. 2, FERC No. 4306, and the City of Hastings, Minnesota (City) have requested that the project license be transferred from the Licensee to the City.

The license was issued on July 11, 1983. Article 46 of the license requires the Licensee to start construction of the project within 2 years from the effective date of the license and to complete construction within 5 years of that date. The project is located on the Mississippi River in Dakota and Washington Counties, Minnesota. Construction of the project has not started.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before December 25, 1984.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST, or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-31813 Filed 12-5-84; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Reduced Orbital Spacings; Meeting

December 3, 1984.

The first meeting of the FCC Advisory Committee for the Implementation of Reduced Orbital Spacings Between United States Domestic Fixed-Satellites will take place on December 17 as indicated below. The purpose of this advisory committee is to obtain expert technical and operational advice on how to better implement 2 degree spacings in the 4/6 and 12/14 GHz bands.

Date: December 17, 1984.
Time: 9:30 AM.
Place: Room 856, Federal Communications Commission, 1919 M Street, NW., Washington, D.C.

Agenda:

1. Adoption of agenda.
2. Introduction and background of committee purpose.
3. Committee work plan.
4. Organization of subgroups.
5. Method of selection of committee officers.
6. Other business.

This meeting is open to the public. For more information contact Roger Herbstritt at the FCC on (202) 634-1624.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-31666 Filed 12-5-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Board of Tea Experts; Notice of Rechartering

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rechartering of the Board of Tea Experts by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act.

DATE: Authority for this committee will expire on January 3, 1987, unless the Commissioner formally determines that rechartering is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: November 30, 1984.

Ronald T. Ottes,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31796 Filed 12-5-84; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the telephone conference call meeting of the Ophthalmic Devices Panel scheduled for December 13, 1984. The meeting was announced by notice in the **Federal Register** of November 14, 1984 (49 FR 45071).

FOR FURTHER INFORMATION CONTACT: George C. Murray, Center for Devices and Radiological Health (HFZ-460),

Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

Dated: November 30, 1984.

Ronald T. Ottes,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–31795 Filed 12–3–84; 10:38 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–84–779; FR–2050]

Delegation of Authority for the Housing Development Grant Program

AGENCY: Department of Housing and Urban Development (HUD); Office of the Secretary.

ACTION: Notice of delegation of authority.

SUMMARY: The Secretary is delegating to the Assistant Secretary for Housing/FHA Commissioner the responsibility and authority with respect to the Housing Development Grant Program, authorized pursuant to section 17 of the U.S. Housing Act of 1937, 42 U.S.C. 1437o.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Housing Development Grant Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755–6142 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 301 of the Housing and Urban Rural Recovery Act of 1983 amended the U.S. Housing Act of 1937 by adding section 17 which, among other matters, provides the Secretary of Housing and Urban Development with the authority to make development grants for the new construction or substantial rehabilitation of residential rental housing in accordance with the requirements set forth in that section. Grants are to be made to eligible grantees on the basis of applications submitted to and approved by the Secretary in accordance with statutory criteria and regulations prescribed by the Secretary. The Secretary is delegating his authority under section 17 to the Assistant Secretary for Housing/FHA Commissioner as follows:

Section A. Autority Delegated

The Assistant Secretary for Housing-FHA Commissioner shall exercise all the power and authority of the Secretary with respect to the Housing Development Grant Program, pursuant to section 17 of the U.S. Housing Act of 1937.

Section B. Authority to Redelegate

The Assistant Secretary for Housing/FHA Commissioner is authorized to redelegate to the employees of the Department any of the authority delegated by Section A, except the authority to issue rules and regulations.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Sec. 17 U.S Housing Act of 1937, 42 U.S.C. 1437o.

Dated: November 30, 1984.

Samuel R. Pierce, Jr.,

Secretary, Housing and Urban Development.

[FR Doc. 84–31839 Filed 12–5–84; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–84–1469; FR–2041]

Section 312 Rehabilitation Loan Program; Interest Rates

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of section 312 Interest Rates.

SUMMARY: This notice establishes new interest rates for direct loans made by the Department under section 312 of the Housing Act of 1964. The interest rates established under this Notice shall be applicable to any loan (1) where the loan application has been submitted to the approving authority after the date of publication of this Notice, or (2) where the loan application was submitted to the approving authority before the date of publication of this Notice but was not approved before January 1, 1985. In the section 312 Program, a loan is considered approved when an authorized HUD official or the approving official under a local "loan approval agreement" between HUD and a public body, approves the loan application.

FOR FURTHER INFORMATION CONTACT: Michael Ehrmann, Deputy Director, Office of Urban Rehabilitation, Room 7170, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–5685. (This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Department's statutory authority to make direct loans for the purpose of financing the rehabilitation of properties is found at 42 U.S.C. 1452b (section 312 of the Housing Act of 1964). Under 42 U.S.C. 1452(c), for "loans to families with adjusted incomes of not more than 80 per centum of the median income for the area . . .", the interest rate may not exceed three percent per year. For all other loans, including loans to families with adjusted incomes greater than 80 percent of the median income, the interest rate charged may range from above three percent to a rate that does not "exceed the current average market yield on outstanding marketable securities of the United States with remaining periods to maturity comparable to the terms of loans made pursuant to this section, adjusted to the nearest one-eight of one per centum." The 80th percentile of median income for the area, adjusted for family size, is determined by the Department in accordance with the policies and procedures it currently uses in administering Section 8 assistance programs under the United States Housing Act of 1937.

The new intrest rates on section 312 loans shall be as follows:

(1) For an owner-occupant of a one- to four-unit property, whose family income does not exceed 80 percent of the median family income for the area, adjusted for family size, the intrest rate shall be three percent. Two or more unrelated individuals who own and occupy a property as tenants-in-common or joint tenants will have their incomes added together and will be treated as a two or more person family for purposes of this provision.

(2) For all other borrowers (including partnerships, corporations and other legal entities, as well as persons and families with incomes exceeding 80 percent of median income for the area), the interest rate shall be based on the yield of government securities for the term most comparable to the section 312 loan term. This rate can be obtained by reference to the Federal Reserve Statistical Release H.15 (519), which is published each week and lists the yield of U.S. Treasury securities adjusted to a constant maturity. The release publishes daily, weekly, and monthly yields for the preceding period. The applicable rate for section 312 loans shall be the most recently available interest rate value for U.S. Treasury securities of comparable maturity (adjusted to the nearest one-eight of a percent) at the time that a loan application is approved. The interest rate value (rounded to the nearest one-eight of one percent) shall be the contract interest rate, provided that the loan is closed within 60 days from the time it is approved. If the application is not closed within the 60-day period, a new application will be required and the interest rate will be the rate for the appropriate U.S. Treasury security that is most recently available at the time a new application is approved. Thus, for a 20-year loan, the rate would correspond to the interest rate value for U.S. Treasury securities adjusted to constant maturities of 20 years; for a 10-year loan, the rate would correspond to the interest rate value for U.S. Treasury securities adjusted to constant maturities of 10 years, etc. If the term of a loan does not correspond exactly to a constant maturity for U.S. Treasury securities for which an interest rate value is constructed by the U.S. Treasury Department, the loan interest rate would be the same as that for the U.S. Treasury securities having a maturity that most closely approximates the loan term (*e.g.*, a loan with an eight-year term would have an interest rate corresponding to the U.S. Treasury securities adjusted to a constant maturity of seven years).

Finally, if the loan term is a number (of years) that is exactly midway between two constant yield values, the loan interest rate would correspond to the interest rate value for U.S. Treasury securities that is the lower of the two possibilities. For example, if a loan term is six years, the loan interest rate would correspond to the lower interest rate value for U.S. Treasury securities having a constant maturity of five years or seven years.

Notwithstanding the scale of interest rates directed by this notice, localities are to comply with the priority, as required by section 312(a) of the Housing Act of 1964, as amended, for applications from low- and moderate-income persons who will own and occupy the property after rehabilitation. For the rehabilitation of single family properties, the term "low- and moderate-income" means income which does not exceed 95 percent of the median income for the area.

For the rehabilitation of multifamily properties, the property must be located in a low- or moderate-income neighborhood or a majority of the property's initial tenants after rehabilitation must be low- or moderate-income using the 95 percent of median income standard. The property shall also be in an area otherwise qualified for section 312 lending (*e.g.*, necessary or appropriate to the execution of a Community Block Grant program or a section 810 Urban Homesteading program).

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

The section 312 Rehabilitation Loan program is listed in the Catalog of Federal Domestic Assistance as program number 14.220.

Authority: Sec. 312 of the Housing Act of 1964, (42 U.S.C. 145b); sec. 7(b), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: November 30, 1984.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 84–31840 Filed 12–5–84; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. N–84–148; FR–2038]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by adding eight areas and further increasing the limits of a previously designated high-cost area. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

FOR FURTHER INFORMATION CONTACT: For single family: Brian Chappelle, Acting Director, Single Family Development Division, Room 9270, Telephone (202) 755–6720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160, Telephone (202) 755–6880; 451 Seventh Street, SW., Washington, D.C. 20410. (Telephones are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710–1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured home lots, and manufactured homes, combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Act of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

The Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, November 30, 1983) (the 1983 Act) further amended HUD's insuring authority. Of particular interest here are (1) the authorization to insure condominium in high-cost areas at the same levels as the high-cost limits for one-family residence insured under section 203(b) of the National Housing Act; and (2) the authorization to increase maximum loan limits under the Title I loan insurance program for combination manufactured home and lot loans and for individual lot loans in high-cost areas, so long as the percentage increase in the maximum loan limit does not exceed the percentage increase made to a one-family residence in the area authorized under section 203(b) of the NHA.

The Department implemented these provisions of the 1983 Act in related documents published in the **Federal Register** on April 11, 1984 (see 49 FR 14332, 14335, 14336), effective May 22, 1984. These documents also amended the Department's rules to codify the procedure of announcing high-cost mortgage limits for single family residences, condominiums, combination manufactured homes and lots and manufactured home lots by notice in the **Federal Register** (see the April 11, 1984 documents, amending 24 CFR 201.1504, 203.18b, 203.29, 234.27, and 234.49). In addition, the documents codified the procedure whereby a party may request an alternative mortgage limit (see the same sections cited above).

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features. (See 49 FR 21520). First, there was no separate listing for condominium units, since

these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area."

This Document

Today's document adds the following jurisdictions to the listing of high-cost areas: Berkshire County, Massachusetts, Chester County, Pennsylvania, Delaware County, Pennsylvania, Montgomery County, Pennsylvania, Guilford County, North Carolina, Fayette County, Kentucky, Routt County, Colorado and Grand County, Colorado. In addition, the Department is further increasing the limits for Maricopa County, Arizona.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists any changes for single family residences insured under sections 203(b), and 234(c) of the National Housing Act.

Accordingly, the Commissioner hereby amends the list of high-cost mortgage limits by adding eight jurisdictions and further increasing the limits for Maricopa Counter Arizona as set forth in Part II of the following Table:

National Housing Act High-Cost Mortgage Limits

I. Title I: METHOD OF COMPUTING LIMITS

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .80. For example, Bristol County, MA, has a one-family limit of $81,200. The combination home and lot loan limit for Bristol County is $81,200 x .80, or $64,960.

B. *Section 2(b)(1)(E). Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Bristol County, MA, has a one-family limit of $81,200. The lot only loan limit for Bristol County is $81,200 x .20, or $16,240.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1). Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 x 140%).
2. For combination manufactured homes and lots: $75,600. ($54,000 x 140%).
3. For lots only: $18,900. ($13,500 x 140%).

II. Title II: Updating of FHA Sections 203(b) and 234 Areawide Mortgage Limits.

Name of area designation and local jurisdictions	Mortgage limits			
	1-family and condominium unit	2-family	3-family	4-family
Region I				
HUD Field Office: Boston Office				
Berkshire County	72,200	81,300	99,800	114,000
Region III				
HUD Field Office: Philadelphia Office				
Chester County	90,150	101,300	122,650	142,650
Delaware County	78,850	88,800	107,900	124,500
Montgomery County	77,450	87,200	105,950	122,250
Region IV				
HUD Field Office: Greensboro Office				
Guilford County	74,550	83,950	102,050	117,750
Hud Field Office: Louisville Office				
Fayette County	83,800	78,850	95,500	110,250
Region VIII				
HUD Field Office: Denver Office				
Routt County	90,000	101,300	122,650	142,650
Grand County	80,750	90,850	110,500	127,500
Region IX				
HUD Field Office: Phoenix Office				
Maricopa County	86,350	96,500	120,900	139,500

Dated: November 30, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-31838 Filed 12-5-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Office of the Secretary Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Information Collections Related to Specific Procurement Transactions.

Abstract: Respondents supply information and data on progress experienced or performance of individual contract requirements. This information allows the Department to determine if required progress is being made on the contract.

Bureau Form Number: None
Frequency: On occasion
Description of Respondents: Government Contractors
Annual Responses: 14,400
Annual Burden Hours: 43,200
Bureau Clearance Officer: John Strylowski 202-343-6191

November 30, 1984.

Colonel C. Armstrong,

Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management.

[FR Doc. 84-31831 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-10-M

Reduction of Information Collected From Small Businesses

Since 1980, the Department of the Interior has engaged in an ongoing examination of information collections (such as forms, reports, surveys, compliance requirements, etc.) imposed on the public to determine how these collections can be made less burdensome. During fiscal year 1985 the Department is continuing this review process, with special emphasis on information collected from small businesses.

This notice is being published to expand the review by requesting suggestions and comments from small business owners from whom the Department collects information. If you are the owner of a small business who completes forms or supplies information to any bureau or office of the Department of the Interior and feel that the requirement is too burdensome, please contact the Department at the address below. When you contact us, identify the information collection you feel is too burdensome (give the form number, regulation, or submit a copy), and tell us how you think it could be simplified, and include an address or phone number so that we may contact you. Address comments and suggestions to: Division of Directives and Regulatory Management, Office of Information Resources Management, Room 7357, Department of the Interior, Washington, D.C. 20240.

Dated: November 28, 1984.

Joseph E. Doddridge, Jr.,

Deputy Assistant Secretary of the Interior.

FR Doc. 84-31825 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Wintu Indians of Central Valley

November 27, 1984.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.6(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Wintu Indians of Central Valley, c/o Mr. Loren P. Timmons, Toyon Wintu Center, P.O. Box 669, Central Valley, California 96109; has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on October 26, 1984. The petition was forwarded and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.6(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20242.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-31822 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-07-M

Bureau of Land Management

Colorado-Ute Electric Association, Inc., Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of Record of Decision (ROD).

SUMMARY: Pursuant to 40 CFR 1505.2, the Montrose and Grand Junction BLM Districts have jointly issued a ROD to authorize a right-of-way for Colorado-Ute Electric Association, Inc. for construction of a single circuit 345 kV transmission line and associated facilities on public lands in Colorado between Rifle and the New Mexico state line. The ROD was signed on November 1 and 2, 1984.

Copies of the ROD are available for public inspection at the Montrose District Office, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, and the Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501.

FOR FURTHER INFORMATION CONTACT: Gordon Bentley, Chief Planning and Environmental Assistance, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401. Telephone: (303) 249-7791..

Paul W. Arrasmith,

District Manager.

[FR Doc. 84-31830 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-JB-M

[OR 33316]

Realty Action for Exchange of Public Land for Private Land in Harney County, OR

The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Willamette Meridian

T. 25 S., R. 35 E.
Sec. 5, Lots 1, 2, 3, and 4;
Sec. 6, All;
Sec. 8, All;
Sec. 18, Lots 1, 2, 3, and 4, E½NW¼, NE¼, S½SE¼.

The area described aggregates approximately 1907.93(+) acres in Harney County. In exchange for all or some of these lands the United States will acquire the following described private land from Mr. Walt McEwen:

Willamette Meridian

T. 24 S., R. 35 E., W.M.
Sec. 5, All;
Sec. 19, W½E½, E½W½;
Sec. 30, E½W½;
Sec. 31, Lots 1, 2, 3, and 4, E½W½.

The area described aggregates approximately 1435.66(±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management and to enhance the range management potential for the area. This exchange also entails the acquisition of a larger portion of Alder Creek and an increase in riparian habitat for the area. The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged are approximately equal and the acreage will be adjusted and/or money will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720.

For a period of 45 days, interested parties may submit comments to the Burns District Manager at the above address. Any adverse comments will be evaluated by the Oregon State Director, BLM, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

Dated: November 19, 1984.

Thomas R. Thompson,

Associate District Manager.

[FR Doc. 84-31828 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-33-M

Conveyance of Public Land Reconveyed Land Opened to Entry; Arizona

[A 17948]

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridian

T. 4 N., R. 14 W.,
Sec. 20, Lots 2, 3, 6, SW¼NE¼, W½SE¼, SE¼SE¼;
Sec. 21, Lots 2;
Sec. 28, Lots 3, 4, 8, NW¼NW¼, S½NW¼, NW¼SE¼, S½SE¼;
Sec. 32, NE¼SW¼.
T. 4 N., R. 15 W.,
Sec. 14, SE¼.

Comprising 795.10 acres in La Paz County.

Land acquired by the United States is described as:

Gila and Salt River Meridian

T. 3 N., R. 14 W.,
Sec. 32, N½.
T. 5 N., R. 16 W.,
Sec. 9, W½.

Comprising 640.00 acres in La Paz County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will become subject to operation of the public land laws, generally, at 10:00 a.m. on January 8, 1985. The State of Arizona has reserved one sixteenth of all oil, gas, coal and other minerals in the N½ of sec. 32, T. 3 N., R. 14 W.

Don R. Mitchell,

Chief, Branch of Lands and Minerals.

[FR Doc. 84-31799 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-32-M

Casper District Advisory Council; Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Casper District Advisory Council Meeting.

SUMMARY: The Casper District Advisory Council meeting scheduled for December 4–5, 1984, at the Buffalo Federal Savings and Loan Building, Buffalo, Wyoming has been canceled. It will be rescheduled later in the spring.

FOR FURTHER INFORMATION CONTACT: Runore Wycoff, Bureau of Land Management, 951 North Poplar Street, Casper, WY 82601, (307) 261–5557.

Dated: November 28, 1984.

James W. Monroe,

District Manager.

[FR Doc. 84-31798 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-84-M

Designation of Ash Valley Research Natural Area (RNA); Lassen County, CA

SUMMARY: Pursuant to the authority in 43 CFR 8223, the following lands are designated as a Research Natural Area (RNA).

Mt. Diablo Meridian; Lassen County, California

T.37N., R.11E.,
Sec. 5, Lot 4, SW¼NW¼,SW¼NE¼, W½SE¼, and SW¼.
Sec. 8, N½NW¼,W½NE¼,SE¼,E½SW¼.
Sec. 9, SE¼, E/½SW¼, SW¼SW¼.
T.38N., R.11E.,
Sec. 32, SW¼SW¼, and SE¼SE¼.

These lands, designated the Ash Valley RNA, total 1120.58 acres of BLM administered lands.

This designation is being made to provide protection for five sensitive plant species. The area will be preserved for research and education purposes and the continued existence of the sensitive plants and their habitat.

This area and management criteria were developed through the planning process (43 CFR Part 1610) which included three stages of public participation. The resulting document, the Resource Management Plan Record of Decision for the Alturas Resource Area, signed August 28, 1984, published land use decisions and required support needs. These support needs included the development of a Habitat Management Plan (HMP) for the Ash Valley RNA, restriction of off highway vehicle (OHV) use, and acquisition of private land in the Ash Valley RNA area. The HMP will incorporate management objectives and the specific actions needed to meet these objectives.

DATE: The designation of the Ash Valley Research Natural Area (RNA) is effective upon publication of this notice.

ADDRESS: For further information regarding the Resource Management Plan and the Ash Valley RNA contact: Richard J. Drehobl, Area Manager, Alturas Resource Area, P.O. Box 771, Alturas, CA 96101.

Lynda J. Roush,

Acting Alturas Area Manager.

[FR Doc. 84-31808 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-84-M

Realty Action; Recreation and Public Purposes Classification; Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Classification for Recreation and Public Purposes, Itasca and St. Louis Counties, ES–31843 and ES–31845.

SUMMARY: The following public islands have been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869):

Fourth Principal Meridian, Minnesota

1. *ES–31843,* Scenic State Park, Itasca County: T. 60N., R25W., Tract 37, 0.10 acres, island in Sandwich Lake.
2. *ES–31845* Tower Soudan State Park, St. Louis County: T. 62N., R. 15W., Tracts 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, and 75, total of 0.93 acres, 12 islands in Lake Vermilion.

The Minnesota Department of Natural Resources has applied for these islands so that they can be added to Scenic and Tower Soudan State Parks to be used for recreational purposes.

The islands are physically suited to the proposed use and are not of national significance. Since the islands are valuable for a State program they are considered chiefly valuable for public purposes and therefore suitable for classification and sale under the Recreation and Public Purposes Act. This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land revert to the United States.

The classification of these islands will segregate them from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the State Director, this Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53201, or by calling Priscilla McLain at (414) 291–4427.

Chuck Steele,

District Manager.

[FR Doc. 84-31824 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-84-M

[CA 16639]

Realty Action; Exchange of Public Lands; Riverside County, CA

AGENCY: Bureau of Land Management; Interior.

ACTION: Realty action—exchange of public lands in Riverside County (CA–16639).

SUMMARY: The following described lands, including the surface and subsurface estate, have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, U.S.C. 1716:

T. 8 S., 8 E., SBBM.
Sec. 4, NW¼ (unnumbered lots), SW¼, W½ SE¼. (355.41 acres);
Sec. 10, E½ SW¼. (80 acres);
Sec. 14, SW¼ SE¼. (40 acres);
Sec. 22, all (640);
Sec. 26, all (640 acres).

Total acreage 1,735.41.

In exchange for these lands, the Federal Government will acquire the following non-Federal lands in Riverside County from the Nature Conservancy:

T. 3 S., R. 6 E., S.B.B.M.,
Sec. 34, all (640 acres);
Sec. 35, S½ (320 acres).
T. 4 S., R. 6 E., S.B.B.M.,
Sec. 2, lots 1–6, S½ NW¼ (320.31 acres).

Total acreage 1,280.31.

The purpose of this exchange is to acquire a portion of the non-Federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and state listed as endangered. The Bureau of Land Management's goal is to acquire 6,700 acres of the 13,030 acre preserve. Other state or Federal agencies will acquire the remaining portion of the preserve.

The exchange will include the surface and mineral estates for both selected and offered lands.

An appraisal has been completed and the land exchanged will be of equal value or otherwise be equalized by the payment of money to the Federal Government not to exceed 25 per centum of the total value of the land transferred out of Federal ownership.

Lands transferred from the United States will be subject to the following reservations, terms and conditions: The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

Upon publication of this Notice of Realty Action in the **Federal Register**, the public lands will be segregated from all appropriations under the public lands laws, including the mining laws, except exchanges and mineral leasing for a period of two (2) years or upon issuance of patent or other documents of conveyance to such lands, whichever occurs first.

Detailed information concerning the exchange, including the Environmental Assessment Record/Land Report, Cultural Resources Report and Mineral Report are available for review at the California Desert District Office, 1695 Spruce Street, Riverside, CA 92507.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, California Desert District Office of the Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507. Any adverse comments will be evaluated by the District Manager, and forwarded to the California State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Dated: November 30, 1984.

H.W. Ricken,

Associate District Manager.

[FR Doc. 84-31852 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-40-M

[NM-58425]

Realty Action; Exchange; Counties of Eddy and Lea; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—NM–58429, Exchange of Public Lands and New Mexico State Lands in the Counties of Eddy and Lea, State of New Mexico.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the *Federal Land Policy and Management Act of 1976,* 43 U.S.C. 1716:

Township	Range	Meridian	Section	Subdivision	Acres
23 S.	32 E.	N.M.P.M.	32	All	[illegible]
			36	All	[illegible]
22 S.	33 E.	N.M.P.M.	8	All	[illegible]
			17	W½	[illegible]
					[illegible]

Comprising 2,240 acres in Lea County, NM.

In exchange for these lands, the United States will acquire the following described lands from the State of New Mexico:

Township	Range	Meridian	Section	Subdivision	Acres
16 S.	26 E.	N.M.P.M.	36	All	[illegible]
20 S.	26 E.	N.M.P.M.	III	E½E½	[illegible]
					[illegible]

Comprising 800 acres in Eddy County, NM.

This exchange is limited to surface estate only.

The purpose of this exchange is to acquire the State lands which have high public values to accommodate the Bureau of Reclamation Brantley Dam Project in southeastern New Mexico.

The values of the lands to be exchanged are approximately equal.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation thereon for ditches and canals to be constructed by the authority of the US Act of August 30, 1980 (26 State 391, 43 U.S.C. 945).

2. All minerals shall be reserved to the United States together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. The patent will be subject to the terms and conditions of valid existing rights-of-way. The rights-of-way will then be assigned to the New Mexico State Land Office for administration.

Existing Federal grazing lessees, on the affected lands, will be offered up to the legal maximum of 5 years for a State Land Office grazing lease with the preferentail right of renewal.

Existing range improvements, within the interior of the Federal lands, will be transferred to the State Land Office. The value of these improvements was included in the appraisal. Other range improvements, such as fences bordering the Federal lands, will remain under BLM authorization.

Publication of this notice segregates the Federal lands from appropriation under any of the land entry laws, including the mining laws, but not the mineral leasing laws for a period of 2 years from the date of first publication.

For a period of 45 days, from the date of first publication, interested parties may submit comments to BLM, Carlsbad Resource Area Headquarters, P.O. Box 1778, Carlsbad, NM 88220 and BLM, Roswell District Office, P.O. Box 1397, Roswell, NM 88201.

Further information concerning the exchange, including the environmental assessment and land report, is available for review at the Carlsbad Resource Area Office, 101 E. Mermod, Carlsbad, NM.

Dated: November 29, 1984.

Charles W. Luscher,

State Director.

[FR Doc. 84-31853 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-FB-M

[OR-19231]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers proposes that a land withdrawal for the Umpqua River Improvement Project continue for an additional 100 years. The land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUMMARY: The Department of the Army, Corps of Engineers proposes that the existing land withdrawal made by the Executive Order of November 24, 1903, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located just south of the Umpqua River and approximately five miles southwest of Reedsport and contains approximately 71.10 acres within Section(s) 14, T. 22 S., R. 13 W., W.M., Douglas County, Oregon.

The purpose of the withdrawal is to protect the Umpqua River Improvement Project. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 29, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-31847 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-33-M

[OR-21738]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that a land withdrawal for the Tillamook Bay Jetties continue for an additional 100 years. The land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughn, BLM Oregon State Office P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUMMARY: The Department of the Army, Corps of Engineers, proposes that the existing land withdrawal made by the Secretarial Order of January 28, 1901, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located about 2 miles southwest of Garibaldi and contains approximately 145 acres within Section(s) 19, 20, and 30, T. 1 N., R. 10 W., W.M., Tillamook County, Oregon.

The purpose of the withdrawal is to protect the Tillamook Bay Jetties. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the above address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 29, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-31848 Filed 12-5-84; 8:45 am]

BILLING CODE 4310-33-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-196]

Certain Apparatus for Installing Electrical Lines and Components Therefor; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Ontario Ltd., a Canadian corporation trading as Canadian Flexi Drill, ("CFD").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 3, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: December 3, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31854 Filed 12-5-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30580]

State of Alaska; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirements of 49 U.S.C. 11323(b) the appointment of Mr. Frank X. Chapados to the board of directors of Alaska Railroad Corporation.

DATES: This exemption is effective on December 5, 1984. Petitions to reopen must be filed by December 26, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30580 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Honorable Norman C. Gorsuch, Attorney General, State of Alaska, Pouch K—State Capital, Juneau, AK 99811.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

Dated: November 29, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Sommons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-31833 Filed 12-5-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-223)]

Burlington Northern Railroad Co.; Abandonment; in Chelan County, WA; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 1.74-mile rail line between station 10671+99.7 near Leavenworth and station 10764+05 near Old Leavenworth in Chelan County, WA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 84-31832 Filed 12-5-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No 52-139]

Proposed Termination of Final Judgment

Notice is hereby given that The Great Atlantic & Pacific Tea Co., Inc. (A&P) has filed with the United States District Court for the Southern District of New York a motion to terminate the final judgment in *United States* v. *The New York Great Atlantic & Pacific Tea Co., Inc., et al.*, Civil No. 52-139; and the Department of Justice ("Department"), in a stipulationa also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent for at least seventy days after the publication of this notice. The complaint in this case (filed on September 15, 1949) alleged that defendants had attempted to monopolize retail food markets. The

judgment (entered on January 19, 1954), as modified, enjoins A&P (the parent or successor in interest to all other defendants) from: (1) Selling products to the "outside trade" (food brokers, wholesalers, and retailers other than A&P) at prices, terms of sale, or delivery schedules that are *not* at least as favorable as those offered to any of its similarly sited retail stores; (2) coercing suppliers to refrain from dealing with food product brokers or to make products available to the outside trade without premiums or discounts, at increased prices for store door deliver, or at prices or other terms and conditions of sale dictated by A&P; (3) extracting a label or container allowance at a rate in excess of that offered to the outside trade; (4) knowingly attempting to obtain or obtaining any quantity discount or allowance based upon the combined purchases of more than one of its operating units [groups of retail stores under regional headquarters) except for cost justified label and container allowances and shared carload or truckload purchases; (5) merging any of its operating units for the primary purpose of capturing otherwise forbidden quantity discounts; (6) contracting for discounts, cost saving allowances, advertising allowances, floor space or wall space rentals, special newspaper supplements, store sales services, feature payments, mass displays, or other similar programs on forms other than those prepared and submitted by the affected supplier; (7) assigning a gross profit rate to a group of two or more operating units knowing that the assigned gross profit rate will result in the operation thereof at a loss for the purpose or intent of destroying or eliminating competition at the retail level; and (8) accepting payment of any allowance at A&P's headquarters or field buying offices.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, A&P's motion papers, the stipulation containing the Goverment's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 (telephone 202–633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, U.S. Courthouse, 40 Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone 202–724–6327).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 84–31880 Filed 12–5–84; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Appointment of Members and Notice of Meeting

Notice is hereby given that appoinments have been made to fill six (6) vacancies on the National Advisory Committee on Occupation Safety and Health (NACOSH). The vacancies were created by the expiration of terms of six members on June 30, 1984. Four of the vacancies have been filled by members who have been reappointed to serve another term on the Committee, they are:

Mr. Robert B. Taylor, Public Representative
Mr. Tom Baker, Management Representative
Mr. John Donlon, Labor Representative
Mr. Ronald Davis, Safety Representative

The other two vacancies are in the public category and they have been filled by the appointment of new members:

Dr. Ernest M. Dixon
Ms. Anne J. Murphy

Each of these members has been appointed for a term which will end on June 30, 1986.

The Committee will meet on December 20, 1984 in room C2318 at the Frances Perkins Department of Labor Building. The meeting begin at 10:00 a.m. The public is invited to attend.

The agenda will include the swearing in of the members and reports on OSHA and NIOSH activities.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

For additional information contact: Clarence M. Page, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N–3662 3rd Street and Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 523–8024.

Signed at Washington, D.C., this 3rd day of December 1984.

Robert A. Rowland,

Assistant Secretary.

[FR Doc. 84–31880 Filed 12–5–84; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Change in Future Meeting Dates

November 28, 1984.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold meetings on the days listed below in calendar year 1985. All the meetings will be held in Washington, D.C. except for the November meeting which will be held in San Diego, CA. Exact times and locations will be announced at a later date.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local government was established by Congress by Public Law 95–63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative meeting dates are as follows:

January 22, 23 (revised; Tuesday and Wednesday
March 4, 5; Monday and Tuesday
April 17, 18; Wednesday and Thursday
June 3, 4; Monday and Tuesday
July 15, 16; Monday and Tuesday
August 19, 20; Monday and Tuesday
Sept. 30, Oct. 1; Monday and Tuesday
November 14, 15; Thursday and Friday.

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Executive Director, Steven N. Anastasion whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653–7818.

Dated: November 28, 1984.

Steven N. Anastasion,

Executive Director.

[FR Doc. 84–31827 Filed 12–5–84; 8:45 am]

BILLING CODE 3510–12–M

NUCLEAR REGULATORY COMMISSION

Availability of NUREG–1061, Volume 3, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee; Evaluation of Potential for Pipe Breaks"

The Nuclear Regulatory Commission announces the availability of NUREG–1061, Volume 3, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee: Evaluation of Potential for Pipe Breaks" which was prepared by the NRC Piping Review Committee Task Group on Pipe Breaks.

The NRC Piping Review Committee was established by the Executive Director for Operations of the USNRC to make a comprehensive review of the NRC requirements in the area of nuclear power plant piping. The activities of this Review Committee were divided into four tasks handled by appropriate task groups. These are:

- Pipe Crack Task Group;
- Seismic Design Task Group;
- Pipe Break Task Group; and
- Dynamic Load/Load Combination Task Group.

Each task group is preparing a report appropriate to its scope to be published as a volume of NUREG–1061. In addition, the Piping Review Committee will prepare an overview summary report, NUREG–1061, Volume 5, that rationalizes the areas of overlap and summarizes Committee conclusions and recommendations.

NUREG–1061, Volume 3 summarizes a review of regulatory positions relating to the potential for pipe breaks and contains Pipe Break Task Group recommendations for application of the leak before break approach to the NRC licensing process. Issues examined include the large pipe break criteria and the implications of any changes in the criteria as they influence items such as jet loads and pipe whip. The application of appropriate fracture mechanics technology to demonstrate low probability that high energy fluid piping will experience double-ended ruptures is discussed including detailed analytic methods.

Copies of NUREG–1061, Volume 3 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Comments or questions on this document should be addressed to R.W. Klecker, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 492–8007. Comments received within 45 days of the date of this **Federal Register** Notice will be considered in action taken on the implementation of this report.

Dated at Bethesda, Maryland, this 28th day of November 1984.

R.H. Vollmer,

Cochairman, NRC Piping Review Committee.

L.C. Shao,

Cochairman, NRC Piping Review Committee.

[FR Doc. 84–31857 Filed 12–5–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–364]

Alabama Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of two reliefs from the requirements of ASME Code Section XI to Alabama Power Company (the licensees), for the Joseph M. Farley Nuclear Plant, Unit No. 2, located near the city of Dothan, Alabama.

Environmental Assessment

Identification of Proposed Action: The reliefs will permit the licensee to perform: (1) Surface and visual examinations of pressure retaining welds in the charging pump casings not normally accessible for examination as required by IWC–2600, and (2) hydrostatic tests of Class 2 portions of the steam generators and related piping at $1.25P_D$.

The examinations would be done in a manner different from that prescribed in Section XI of the ASME Boiler and Pressure Vessel Code, as required by 10 CFR 50.55a, because of inaccessibility of pump casing welds and steam generator vendor recommendations.

The relief is responsive to the licensee's application for reliefs dated July 27, 1984.

The Need for the Proposed Action: The proposed reliefs are needed because:

(1) The charging pump casing welds pose geometrical limitations not allowing volumetric examinations even when the pump is completely disassembled, and (2) the steam generator vendor, Westinghouse, recommends reduced pressure and times for conducting hydrostatic tests to prevent undue stress on the steam generators. Also, since the Class 2 piping is not isolable from the steam generators, the same test requirements would apply.

The licensee's proposed alternative examinations would ensure that the integrity of the charging pump casings and the steam generators and associated Class 2 piping are in good condition.

Environmental Impacts of the Proposed Action: The proposed reliefs will provide a degree of assurance of operability that is equivalent to that prescribed by the ASME Code. Consequently, the probability of the charging pump and the steam generators and Class 2 piping not operating properly will not be increased and post-accident radiological releases will not be greater than previously determined nor do the proposed reliefs otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed reliefs.

With regard to potential non-radiological impacts, the proposed reliefs involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore,

the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed reliefs.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Joseph M. Farley Nuclear Plant, Unit No. 2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed reliefs.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the reliefs dated July 27, 1984, which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, D.C., and at the George S. Houston Memorial Libary, 212 W. Burdeshaw Street, Dothan, Alabama 36301.

Dated at Bethesda, Maryland this 29th day of November 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-31858 Filed 12-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana and Michigan Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of relief from the requirements of ASME Code Section XI and an exemption from the requirements of 10 CFR 50.55a to the Indiana and Michigan Electric Company (the licensee), for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action: The relief will permit the licensee to examine the reactor coolant pump casing welds in a manner different from that prescribed in Section XI of the ASME Boiler and Pressure Vessel Code, as required by 10 CFR 50.55, because of high occupational radiation exposures. The exemption to 10 CFR 50.55(a)(g)(4) will permit the licensee to utilize a common start date for Unit No. 1 and Unit No. 2 for the inservice inspecting (ISI) and inservice testing (IST) programs. The exemption would extend the Unit 1 first ten-year interval by one year and shorten the Unit 2 first ten-year interval by two years. Relief is also proposed in conjunction with the exemption for the Unit 2 vessel beltline examination for the first ten-year interval to be conducted during the mid-1987 refueling outage using the 1974 edition through summer 1975 addenda as the governing code, for the Unit 2 class 1 and 2 welds remaining from the first interval to be examined at the beginning of the second interval credited to that interval, and for the Unit 2 system pressure tests for the first interval to be conducted during the mid-1987 refueling outage to the 1974 edition through summer 1975 addenda as the governing code.

The relief and exemption with relief is responsive to the licensee's applications dated March 8, 1984 and March 15, 1984 respectively; the latter application supplemented by letter dated May 11, 1984.

The Need for the Proposed Action: The proposed relief is needed because the examinations prescribed by the code, visual inspection of the internal surfaces and volumetric examination of the welds by radiography, necessitate disassembly of the pump with high occupational radiation exposures. The licensee's proposed alternate examinations would ensure that the pump casing welds are in good condition.

The proposed exemption with relief to allow a common start date for the ISI and IST programs for both Units 1 and 2 is needed to allow the use of the same Code Edition and Addenda for both Units, submission of a combined program which significantly decreases preparation and review time, and more efficient implementation of the programs. The licensee's proposed exemption with relief would ensure that the overall plant examination programs for both units are consistent, that the scheduled examinations will proceed during the changeover period as previously planned, and that the Unit 2 beltline and system pressure tests will be done as previously scheduled to the codes currently applicable to this unit.

Environmental Impacts of the Proposed Action: The proposed relief on the reactor coolant pump casing welds combined with our current knowledge as a result of experience gained at other reactors of the integrity of these welds provide a degree of assurance of operability that is equivalent to that prescribed by the ASME Code. The proposed exemption with relief to provide common start dates for the ISI/IST program for Units 1 and 2 will also provide a degree of assurance that all inspections and testing will proceed as previously scheduled with applicable codes being utilized as determined by the interval dates or for Unit 2, reactor vessel and system pressure tests, as currently scheduled with the existing code requirements. Consequently, the probability of the reactor coolant pump or plant systems not operating properly will not be increased and post-accident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents. The relief associated with the reactor coolant pump casing welds will significantly reduce occupational radiation exposures associated with the examinations. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed relief and exemption with relief.

With regard to potential non-radiological impacts, the proposed relief and exemption with relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief and exemption with relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's applications dated March 8, 1984 and March 15, 1984 (as supplemented May 11, 1984), which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Maude Reston Palenski Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Bethesda, Maryland this 26th day of November 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-31859 Filed 12-5-84; 8:45 am]

BILLING CODE 7590-01-M

[Certificate of Compliance Nos. 5957, 6346, 5926, 9044, 5971, 5980, 6003, 9781, 9103, 5607, 9132; Docket Nos. 71-5957, 71-6346, 71-5926, 71-9044, 71-5971, 71-5980, 71-6003, 71-9781, 71-9103, 71-5607, 71-9132]

Spent Fuel Shipping Casks; Request for Action Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, on November 30, 1984 denied the request for action filed by Mr. Lindsay Audin. By letter dated July 30, 1984, the petition requested that certain actions be taken with respect to spent fuel shipping casks. The petitioner requested that limitations to inert casks or "can" failed fuel be placed on research and submarine reactor spent fuel casks and that certain accident scenarios involving spent fuel casks be reanalyzed and appropriate action taken based on the results. For the reasons stated in the Director's Decision, the petitioner's requests have been denied.

A copy of the "Director's Decision under 10 CFR 2.206," DD-84-24, and the petitioner's letter are available in the Commissioner's Public Document Room located at 1717 H Street, NW, Washington, DC 20555.

A copy of the decision is being filed with the Secretary of the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Silver Spring, Maryland this 30th day of November 1984.

Donald B. Mausshardt,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 84-31860 Filed 12-5-84; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 592; Docket No. A85-5]

West Coxsackie, New York 12192 (Doris and Glenn Barber, Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued December 3, 1984.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy.

Docket number: A85-5.

Name of affected Post Office: West Coxsackie, New York 12192.

Name(s) of petitioner(s): Doris and Glenn Barber.

Type of determination: Closing.

Date of filing of appeal papers: November 20, 1984.

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before December 5, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

November 20, 1984—Filing of Petition.
December 3, 1984—Notice and Order of Filing of Appeal.
December 17, 1984—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
December 28, 1984—Petitioners' Participant Statement or Initital Brief [*see* 39 CFR 3001.115(a) and (b)].
January 15, 1985—Postal Service Answering Brief [*see* 3001.115(c)].
January 30, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
February 6, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.16].
March 20, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 31835 Filed 12-5-84; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21526; File No. SR-NYSE-82-20]

Self-Regulatory Organizations; Filing of Amendment No. 2 to Proposed Rule Change by New York Stock Exchange, Inc.

November 28, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 14, 1984, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission Amendment No. 2 to a proposed rule change.

The proposed rule change would amend NYSE Rule 105 to allow NYSE specialists to use options on their specialty stocks for hedging purposes. As submitted through Amendment No. 1,[1] the proposed rule change was intended to limit specialists to options positions that (1) are on the opposite side of the market from the specialty stock position being offset; (2) fall within specified "hedge ratios"; and (3) are entered into solely for the purpose of offsetting the risks of the position in the specialty stock. In addition, as submitted through Amendment No. 1, the proposed rule change would allow certain persons associated with a specialist's firm to use options on the specialist's specialty stocks, subject to compliance with the specified hedge ratios but not subject to the requirement of the entry within specified time periods of orders to liquidate options positions that come to exceed these hedge ratios due to changes in the stock position being offset.

The NYSE states that Amendment No. 2 provides for the following: (1) Deletion of language in paragraph (b) of amended Rule 105 referring to a specialist's hedging a "reasonably anticipated" specialty stock position, *i.e.*, the acquisition of options positions in the

[1] Notice of the proposed rule change and Amendment No. 1 was given by issuance of a Commission release (Securities Exchange Act Release No. 19884, July 19, 1983), and by publication in the **Federal Register** (48 FR 34377, July 28, 1983). Amendment No. 1, among other things, amended the hedge ratios contained in the original proposal.

absence of a stock position or even on the same side of the market as an existing stock position (so-called "anticipatory hedging"); (2) addition of language to paragraph (b) of amended Rule 105 to make clear the NYSE's intention that Rule 105 is not a 'safe harbor' provision, but rather that transactions that do not meet the requirements of the "Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 105" ("Guidelines") and transactions that are not effected to offset market-making risk, shall be deemed rule violations;[2] and (3) addition of language to paragraph (c) of amended Rule 105 to make clear that specified persons associated with a specialist are subject to the Guidelines for both acquisitions and liquidations of options positions.[3] Amendment No. 2 also deletes paragraph (d) of amended Rule 105 as submitted through Amendment No. 1. Paragraph (d) would have excepted so-called "19c–3 stocks", *i.e.*, securities which are not subject to the NYSE's off-board trading restrictions,[4] from the restrictions of amended Rule 105.

The NYSE submitted Amendment No. 2 after a Commission meeting on October 11, 1984, to discuss the proposed rule change through Amendment No. 1. At that meeting, the Commission considered the NYSE proposal and the comments thereon; and discussed whether the NYSE proposal was consistent with the Act. In that meeting, the Commission preliminarily indicated that the NYSE proposal would be consistent with the Act if amended to (1) incorporate the NYSE's interpretation of the proposal as set forth in the NYSE's March 20, 1983, letter and (2) to subject certain associated person's of the specialist to the same restrictions on their use of options on the specialist's specialty stocks as are imposed on the specialist himself.[5]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 within 21 days after the date of publication in the **Federal Register**.[6] Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR–NYSE–82–20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the NYSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–31821 Filed 12–5–84; 8:45 am]

BILLING CODE 8010–01–M

[2] In its March 20, 1983, letter to the Commission, the NYSE stated that it interpreted its proposal as submitted through Amendment No. 1 to contain the prohibitions contained in points one and two. Letter dated March 20, 1983, from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC. These amendments are intended to conform the Rule and Guidelines with this interpretation.

[3] As described above, the proposed rule change as submitted through Amendment No. 1 subjected associated persons' use of options on the specialty stocks of the specialist firm with which they are associated to the same restrictions as are imposed on a specialist's use of such options except for the requirement relating to the time within which to enter orders to liquidate options positions that come to exceed the specified hedge ratios due to changes in the stock positions being offset.

[4] Rule 19c–3 under the Act, 17 CFR 240.19c–3 (1984).

[5] At that meeting the Commission also determined that, should the Commission eventually approve the NYSE proposal, the NYSE would be requested to submit to the Commission a report showing the nature and effect of NYSE specialist options hedging activity that occurs under amended Rule 105 during the first six months of the amended Rule's effectiveness. For a more complete description of the contents of any such monitoring report, *see* letter from Richard T. Chase, Associate Director, Division of Market Regulation, SEC, to Santo Famularo, Assistant Vice President, Market Surveillance Services, NYSE, dated November 27, 1984.

[6] The Commission notes that since its October 11, 1984, meeting, it has received several comments on that meeting. *See* letter from Anne Taylor, Secretary, Chicago Board of Options Exchange Incorporated ("CBOE") to Shirley Hollis, Acting Secretary, SEC, dated November 13, 1984; letter from Morris Propp, Senior Partner, Cygnet V, to John S.R. Shad, Chairman, SEC, dated October 11, 1984; letter from Martin Kraft, to John S.R. Shad, Chairman, SEC, dated October 12, 1984; and letter from John A.M. Rowe to John Shad, Chairman, SEC, dated November 14, 1984. The commission will, of course, consider the comments received since the October 11, 1984 meeting, as well as the comments received prior to that meeting in any order the Commission eventually may issue regarding the NYSE proposal.

Self-Regulatory Organizations; Pacific Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 30, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Best Products Company, Inc.
Common Stock, $1.00 Par Value, File No. 7–8169

Commodore Corporation
Common Stock, $.05 Par Value, File No. 7–8170

Data Point Corporation
Common Stock, $.25 Par Value, File No. 7–8171

First Pennsylvania Corporation
Common Stock, $1.00 Par Value, File No. 7–8172

Galaxy Oil Company
Common Stock, $.10 Par Value, File No. 7–8173

Kellogg Company
Common Stock, $.50 Par Value, File No. 7–8174

Matrix Corporation
Common Stock, $1.00 Par Value, File No. 7–8175

New Process Company
Common Stock, No Par Value, File No. 7–8176

Phibro-Salomon, Inc.
Common Stock, $1.00 Par Value, File No. 7–8177

Pope, Evans & Robbins Inc.
Common Stock, $.10 Par Value, File No. 7–8178

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 21, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley D. Hollis,

Acting Secretary.

[FR Doc. 84–31817 Filed 12–5–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23560; (70–7057)]

Columbus and Southern Ohio Electric Co.; Proposed Sale of Part of Ownership Interest in Zimmer Nuclear Generating Station

November 28, 1984.

Columbus and Southern Ohio Electric Company ("C&SOE"), (215 North Front Street, Columbus, Ohio, 43215), a subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a proposal with this Commission pursuant to section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder.

The proposed transaction involves the adjustment of certain ownership interests in the William H. Zimmer Generating Station ("Zimmer Plant") pursuant to an agreement (the "Settlement Agreement"), dated as of January 20, 1984, by and among C&SOE and two nonassociate companies, The Cincinnati Gas & Electric Company ("CG&E") and The Dayton Power and Light Company ("DP&L"). The Zimmer Plant, located along the Ohio River near the town of Moscow, Ohio, was originally planned as a nuclear generating unit to be constructed by CG&E and to be owned jointly by CG&E, DP&L, and C&SOE (hereinafter sometimes referred to as the "Owners") in the respective percentages of 40%, 31.5%, and 28.5%. After encountering a variety of difficulties and uncertainties in the construction of the Zimmer Plant as a nuclear unit, the Owners entered into the Settlement Agreement pursuant to which they agreed, among other things, to cease construction of the Zimmer Plant as a nuclear facility and to use their best efforts to convert the Zimmer Plant to a coal-fired unit. Two studies for the Owners conclude that conversion to coal is feasible and attractive from both an engineering and an economic standpoint, and the Owners have determined that the conversion alternative to be pursued is a cycle substantially identical to the 1300-MW coal-fired generating series used at the other plants in the AEP System.

The Settlement Agreement provides, among other things, that the ownership interests of CG&E, DP&L, and C&SOE shall be changed from the original shares of 40%, 31.5%, and 28.5%, respectively, to revised shares of 46.5%, 28.1%, and 25.4%, respectively. The Settlement Agreement further provides that, in addition to being responsible for an additional 6.5% ownership interest in the Zimmer Plant, CG&E is obligated to pay to DP&L and C&SOE, in proportion to their original ownership interests, the sum of $110,000,000. Such sum shall be paid, starting in 1985, by CG&E's making payments of DP&L's and C&SOE's share of all ongoing project costs, provided that CG&E shall be obligated to pay no more than $50,000,000 toward the satisfaction of this obligation in any one year. In the event that the Zimmer Plant is not constructed as a coal-fired unit or is cancelled or terminated, CG&E will pay directly to DP&L and C&SOE, in proportion to their original ownership interests, any portion of the $110,000,000 not previously paid. C&SOE proposes upon payment of all or part of its share of the $110,000,000 by CG&E to deliver to CG&E one or more deeds evidencing the reduction of C&SOE's interest, and the corresponding increase in CG&E's interest, in the Zimmer Plant.

The owners are currently engaged in negotiating a Project Management Agreement with American Electric Power Service Corporation ("AEPSC"), a subsidiary service company of AEP, pursuant to which AEPSC would assume the role of project manager responsible for the remaining work (the "Project") necessary to convert the Zimmer Plant into a 1300-megawatt coal-fired generating plant. It is contemplated that all of AEPSC's work (and any work of any AEP affiliated company) would be performed for the Owners at actual cost (*i.e.*, without any profit or return on equity to AEPSC or to any AEP affiliated company) as described in HCAR No. 21922 (February 19, 1981) and allocable to the Project in accordance with the principles described in that Release.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 28, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–31820 Filed 12–5–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14257; (812–5947)]

Forest City Investment Partners III, Limited Partnership, et al.; Application for an Order for Exemption

November 29, 1984.

Notice is hereby given that Forest City Investment Partners III Limited Partnership (10800 Brookpark Road, Cleveland, Ohio) (the "Partnership"), a District of Columbia limited partnership, and its general partner, Forest City Dillon, Inc. (the "General Partner") (collectively with the Partnership, "Applicants"), filed an application on September 28, 1984, and exhibits thereto on November 14, 1984, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting the Partnership from all provisions of the Act and the rules and regulations thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

Applicants state that the Partnership was formed on August 1, 1984, and intends to offer 90 units of limited partnership interest (the "Units") at $79,450 per Unit, subject to adjustment and payable in seven annual installments. The Units will be offered pursuant to an exemption from registration under the Securities Act of 1933, and each limited partner will be furnished a private placement memorandum (the "Memorandum"), subsequently filed as an exhibit to the application. The aggregate offering is $7,150,500. Applicants state that the Partnership will operate as a "two-tier" investment; i.e., the Partnership will acquire a 99% limited partner interest in a maxmum of four limited partnerships that will own and maintain government assisted multiunit housing ("Operating Partnerships"). The General Partner and certain of its affiliates will serve as the general partners of each of the Operating Partnerships. Five employee of the General Partner will serve as Class A limited partners of the

Partnership and Shearson Lehman/American Express Real Estate Corporation will serve as the Class B limited partner of the Partnership.

Applicants state that the net proceeds of the offering will be invested in the Operating Partnerships and that the Partnership will not invest in the securities of other issuers, except as a temporary investment. The Operating Partnerships, Applicants represent, rent primarily to low and moderate income persons and/or elderly persons in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) (the "Release").

Subscription proceeds from the offering will be deposited in trust with the placement agent, Shearson Lehman/American Express, Inc. ("Placement Agent"). Subscription proceeds will not be released until the Partnership purchases an Operating Partnership ("Closing"). If Closing does not occur for one or more of the Operating Partnerships by December 31, 1984, then the subscription proceeds and investor notes allocable to such Operating Partnerships will be returned to investors. Compensation and fees payable to the General Partner and its affiliates will be reduced accordingly.

The application states that investment in low and moderate income housing involving several housing projects is not feasible without the tax and organizational advantages of the limited partnership form. A limited partnership, Applicants state, is the only form of organization that provides investors with both the ability to claim on their individual tax returns the tax benefits arising from the Partnership's investment in the Operating Partnerships and a liability limited to the amount of their investment.

Subscription for Units will be effected through the Placement Agent and other broker-dealers engaged by the Partnership who are members of the National Association of Securities Dealers, Inc. The Placement Agent and any other broker-dealers will be retained on a best efforts basis. According to the application, the General Partner must approve all subscriptions based on representations made by limited partners as to the suitability of an investment in the Partnership. An investor must represent in writing, *inter alia*, that: he is acquiring the Units for investment and not with a view towards resale or distribution, and that they understand the risks and terms of the offering; that he either: (i) Has a net worth per Unit or fraction thereof of at least the greater of (a) twice the subscription price of the Units or (b) $200,000 (exclusive of home, furnishings and automobiles) or (ii) is an "accredited investor" under Regulation D; that he is subject to a marginal tax rate of a least 45% from 1984 through 1990; and, that he has such knowledge and experience in financial and business affairs that he is capable of evaluating the merits and risks of the investment. Applicants believe that the suitability standards are consistent with the terms of the Release and are consistent with the guidelines of states prescribing suitability standards, wherein the Units may be sold.

Applicants also assert that, in accordance with the Release, the requirements of fair dealing by the general partner are codified in the basic organizational documents of the Partnership. The Partnership Agreement and Memorandum contain numerous provisions, Applicants state, that ensure fair dealing by the General Partner with limited partners. Applicants further state that all compensation to be paid the General Partner and its affiliates are disclosed in the Memorandum and Partnership Agreement, and no compensation will be payable to the General Partner or it affiliates not so specified, unless that compensation is fair and on terms no less favorable to the Partnership than would be the case if arrangements had been made with independent third parties and is disclosed to all partners. Further, Applicants believe that the amount of compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states selected by the General Partner which prescribe such guidelines. The Partnership further believes the compensation meets the real estate program statement of policy adopted by the North American Securities Administrators Association, Inc. Applicants also represent that all potential conflicts of interest between the General Partner and investors are disclosed in the Memorandum.

The application states that the Partnership will be controlled by the General Partner and that limited partners will not be entitled to participate in the control of the Partnership's business. Applicants assert however, that a majority in interest of limited partners may, without the concurrence of the General Partner, amend the Partnership Agreement provided that no amendment may in any manner increase the liability of limited partners. A majority in interest of limited partners may remove the General Partner on grounds specified in the Agreement, and may remove the General Partner without cause upon unanimous consent of the limited partners. The Partnership Agreement further provides that the exercise of any voting rights by limited partners are not effective until the Partnership has received an opinion of counsel or a court of competent jurisdiction determines that such rights will not adversely affect the tax status of the Partnership or limited liability status of the limited partners. Under the Partnership Agreement, limited partners are entitled to review all books and records of the Partnership during reasonable business hours upon three days prior written notice to the General Partner. Copies of the list of names and addresses of the limited partners and Units owned will also be available.

Applicants represent that the Partnership, by investing in the Operating Partnerships, will implement the policy pronounced by Congress in Title IX of the Housing and Urban Development Act of 1968 in making available, by private participation, the provision of housing for low or moderate income persons. The government assistance received by two Operating Partnerships include mortgage insurance and rental subsidies administered by the Department of Housing and Urban Development ("HUD") pursuant to sections 236, 221(d)(4), and section 8 programs; the remaining two Operating Partnerships receive below market rate mortgage financing from the the Michigan State Housing Development Authority and rental subsidies from HUD under section 236. Without conceding that the Partnership is an investment company under the Act, Applicants assert that the requested exemption is both necessary and appropriate in the public interest and is consistent with the purposes and policies underlying the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 24, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31615 Filed 12-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23501; (70-7041)]

Middle South Utilities, Inc.; Proposal to Guarantee Sale-Lease Agreement

November 28, 1984.

Middle South Utilities, Inc. ("MSU") (225 Baronne Street, New Orleans, Louisiana, 70112), a registered holding company, has proposed a transaction with this Commission subject to section 12(b) of the Public Utility Holding Company Act of 1935 and Rule 45 thereunder.

Middle South Services, Inc. ("Services"), a subsidiary service company of MSU, intents to enter into a sale-leaseback transaction with either Dean Witter Realty, Inc., or an entity to be formed by Dean Witter ("Lessor"), pursuant to which services will sell, and concurrently lease from the Lessor under a long-term net lease ("Lease"), a parcel or real property situated in Gretna, Louisiana, and all improvements thereon, including an existing office and computer center and an addition ("Addition") to such computer center currently under construction ("Property"). In order to effectuate these transactions, MSU proposes to guarantee the performance by Services of its obligations under the Lease and related documents without recourse to Services first being required.

It is proposed that Services will sell, convey and assign the Property and the related contracts for the construction and completion of the Addition to the Lessor for an amount equal to the fair market value thereof, estimated at approximately $15,151,000, subject to an upward or downward adjustment of up to 10 percent depending on the final cost of the Addition ("Purchase Price"). The Purchase Price will include certain capitalized transactional costs, fees and expenses. After order herein, Services will receive payment of the Purchase Price and will thereafter, as agent of the owner, effect completion of the Addition pursuant to an Agency Agreement.

Concurrently with the sale and purchase of the Property, the Lessor will lease the Property to Services pursuant to the Lease. The Lease will have a primary term ("Primary Term") of approximately 25½ years, commencing on or about January 1, 1985. In addition, subject to the conditions set forth in the Lease, Services will have the option to extend the Lease for up to 6 consecutive renewal terms of 5 years each, for a total of 30 additional years. At the end of the Primary Term and at the end of every renewal term, Services will also have the option to purchase the Property at the then fair market value.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 20, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31616 Filed 12-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23499; (70-7034)]

Pennsylvania Electric Co.; Proposed Sale of Utility Assets

November 28, 1984.

Pennsylvania Electric Company ("Penelec") (100 Broad Street, Johnstown, Pennsylvania 15907), an electric utility subsidiary of General Public Utilities Corporation ("GPU"), a registered holding company, has filed with this Commission, a proposal pursuant to section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44.

Penelec proposes to sell to West Penn Power Company ("West Penn"), facilities ("Facilities") known as the Shingletown Substation, located in Harris Township, Centre County, Pennsylvania, and the Elko Substation, located in Fox Township, Elk County, Pennsylvania. The Elko and Shingletown Substations provide interconnections of electrical facilities between Penelec and West Penn. Penelec states that the sale of the Facilities will more equitably distribute ownership of interconnection facilities between West Penn and Penelec and improve delineation of operating and maintenance responsibilities. The purchase price of the Facilities will be its original cost, less depreciation, adjusted to compensate Penelec for resulting taxes, other than transfer taxes, all as computed as of the date of the closing of the transaction. As of December 31, 1984 the purchase price for Shingletown will be $659,928 and Elko $231,807.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 26, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31618 Filed 12-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23502; (70-7045)]

Public Service Company of Oklahoma and Central and South West Corp.; Proposed Issue and Sale of Notes by Subsidiary and Guaranty by Parent

November 29, 1984.

The Public Service Company of Oklahoma ("Company") (P.O. Box 201, Tulsa, Oklahoma 74102), an electric utility subsidiary of Central and South West Corporation ("CSW") (2121 San Jacinto Street, Dallas, Texas 75266), a registered holding company, and CSW have filed an application with this Commission pursuant to sections 6, 7, and 12(d) of the Public Utility Holding Company Act of 1935 and Rules 45 and 50(a)(4) thereunder.

Certain counties served by the Company in Oklahoma (Tulsa, Creek, Osage, and Okmulgee) have been declared disaster areas, as determined by the President, pursuant to the provisions of Title 42, Chapter 68 of the

U.S. Code, due to flooding and numerous tornadoes in these areas. To pay a portion of the cost of repairing or replacing its damaged property, estimated at $1,176,022, the Company proposes to borrow up to $800,000 under the Small Business Act. Two applications will be made to the Small Business Administration: One to repair or replace damaged property caused by the tornadoes on April 26 and 29, 1984 and one to repair or replace damaged property caused by the flood on May 27, 1984.

The proposed borrowing by the Company will be represented by one or more promissory notes ("Notes") payable to the Small Business Administration in an aggregate principal amount of up to $800,000, maturing in 3 years, bearing interest at 8% annually, and payable semi-annually over the life of the Note. CSW proposes to guarantee payment of the Notes.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 27, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31816 Filed 12-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Form N-23C-1—File No 270-230
Rule 270.17a-8—File No 270-225
Rule 270.22d-4—File No 270-241
Rule 270.17a-7—File No 270-238
Rule 270.30a-1—File No 270-210
Rule 270.30b1-2—File No 270-212
Rule 270.30b2-1—File No 270-213
Rule 270.17g-1(g)—File No 270-200
Rule 270.19a-1—File No 270-240
Rule 270.17f-1—File No 270-236
Form 270.18f-1—File No 270-187
Form N-8F—File No 270-136

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension the following rules/forms:

Form N-23C-1—statement by closed-end investment company with respect to purchases of securities.

Rule 270.17a-8—mergers of certain affiliated investment companies.

Rule 270.22d-4—sale of redeemable securities pursuant to certain mergers with private investment companies.

Rule 270.17a-7—exemption of certain purchase or sale transactions between investment company and certain affiliated persons.

Rule 270.30a-1—annual reports.

Rule 270.30b1-2—quarterly report for totally-held registered investment company subsidiary.

Rule 270.30b2-1—filing copies of reports to stockholders.

Rule 270.18f-1—exemption from certain requirements of section 18(f) (1) for registered open-end investment companies which have the right to redeem in kind.

Rule 270.17g-1(g)—bonding of officers and employees of registered management investment companies.

Rule 270.19a-1—written statement to accompany dividend payment by management companies.

Rule 270.17f-1—custody of securities with members of national securities exchanges.

Form N-8F—deregistering as an investment company.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

December 3, 1984.

[FR Doc. 84-31887 Filed 12-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21528; File No. SR-PHLX 84-25]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Relating to Increased Position Limits for Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1984, Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") proposes to amend Rule 1001 to increase position and exercise limits for individual equity options. The Statement of Purpose in Item II(A) below contains a description and summary of the terms of substance of the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Currently, position and exercise limits [1] are determined in accordance with a two-tiered system which was established in July 1983. If an underlying stock meets specific standards governing trading volume and/or number of outstanding shares, the option qualifies for a higher-tier, 4,000-contract limit. All other options are subject to a 2,500 contract position limit. Specifically, to be eligible for the 4,000-contract limit, an underlying security must have either: (i) Trading volume totalling at least 20,000,000 shares during the last six months, or (ii) trading volume of at least 15,000,000 shares during the last six months and at least 60,000,000 shares outstanding.

The Exchange believes it is now appropriate to file a proposal for increased position limits. In keeping with the tiered system, the PHLX proposes a three-tiered system, with limits of 4,000, 6,000 and 8,000 contracts, as described below:

Highest Tier (8,000 Contract Limit). Options on stocks that have: (i) Trading volume of at least 40,000,000 shares during the preceding six months or (ii) trading volume of at least 30,000,000 shares during the preceding six months and 120,000,000 shares outstanding, would be subject to this highest tier limit.

Middle Tier (6,000 Contract Limit). Options on stocks that have: (i) Trading volume of at least 20,000,000 shares during the preceding six months or (ii) trading volume of at least 15,000,000 shares during the preceding six months *and* 40,000,000 shares outstanding, would be subject to this middle tier limit. It should be noted that the CBOE has proposed to require 60,000,000 shares outstanding as part of the second criteria, rather than 40,000,000 shares as proposed herein (see Item 7). The Exchange is confident that its proposed criteria are appropriate to protect the interest of investors.

Lowest tier (4,000 Contract Limit). Options on stocks which do not meet either of the criteria above would be subject to the 4,000 contract limit. As noted above, this represents an increase from the current lower tier (2,500) limit.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange by increasing position limits to provide investors (particularly market professionals and institutions) with added trading and hedging opportunities, and thus potentially enhancing market depth and liquidity. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

[1] Hereafter, the term "position limits" includes position and exercise limits.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the PHLX comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were solicted or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 30549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31886 Filed 12-5-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Thompson Venture Group, Inc.; License Surrender

[License No. 03/03-0116]

Notice is hereby given that Thompson Venture Group, Inc., 1725 "K" St., NW., Washington, D.C. 20006 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act). Thompson Venture Group, Inc., was licensed by the Small Business Administration on December 29, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on November 28, 1984, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 29, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31880 Filed 12-5-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 45-XX]

Advisory Circular; Installation, Removal, or Change of Identification Data and Identification Plates on Aircraft Engines.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Advisory Circular (AC) and request for comments.

SUMMARY: This proposed AC is to provide information and guidance concerning the installation, removal, or change of identification data and identification plates on aircraft engines.

DATE: Comments must identify AC No. 45-XX and be received on or before January 31, 1985.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Office of Airworthiness,

Attention: Aircraft Manufacturing Division (AWS-200), 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Allen K. Griggs, Aircraft Manufacturing Division (AWS-200), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426-8391.

Comments received on the proposed AC may be inspected in Room 301, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between the hours of 8:30 a.m. and 5:00 p.m., Monday thru Friday.

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments are invited from all interested persons on the action proposed in this AC.

Background

Federal Aviation Regulations (FAR) Part 45 sets forth the requirements for each aircraft engine manufactured under a type or production certificate to be identified by means of a fire proof identification (ID) plate. The ID plate and the information contained thereon provides positive correlation between the engine and the historical/modification records and serves as a baseline to control all activity accomplished, (i.e., configuration, airworthiness directive compliance, overhaul, life limited parts, noise/emission compliance, etc.) throughout the entire service life of the engine.

Since the advent of the turbine engine modular concept the FAA has become aware that some aircraft operators/repair stations do not remove the engine ID plate from the module to which it is affixed when the module is removed for maintenance. Similarly, they install replacement modules on which an ID plate belonging to another engine is installed.

To ensure compliance with the intent of FAR Part 45, the FAA is proposing to issue an AC to set forth procedures that identify when the engine ID plate should be transferred from the module that was removed to the module that has been installed in its place.

Final action on the proposed AC will not be taken until after evaluation of all comments received.

Comments

Comments on the proposed AC are invited from all interested persons, and comments thereon should be submitted to: Allen K. Griggs, Aircraft Manufacturing Division (AWS-200), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426-8361.

Issued in Washington, D.C. on November 21, 1984.

Sandy DeLucia,

Manager, Aircraft Manufacturing Division, Office of Airworthiness.

Advisory Circular

U.S. DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Subject: Installation, Removal, or Change of Identification Data and Identification Plates on Aircraft Engines

Date:

Initiated by: AWS-200.
AC No: 45-XX.

Change:

1. *Purpose.* This advisory circular provides information and guidance concerning the installation, removal, or change of identification data and identification plates on aircraft engines.

2. *Related Federal Aviation Regulations (FAR) Sections.* Sections 43.3, 43.9, 43.11, 45.11, and 45.13.

3. *Background.* FAR Section 45.11 sets forth the requirements for each aircraft engine manufactured under a type or production certificate to be identified by means of a fireproof identification (ID) plate. FAR Section 45.13 requires specific identification information on the ID plate. The identification information includes the name of the builder, the model designation, the builder's serial number, the type certificate number (if any), production certificate number (if any), and the established rating. The Federal Aviation Administration (FAA) requires the use of identification plates and the data contained thereon to identify the specific FAA approved engine configuration and the fact that it was manufactured and approved under the provisions of an FAA production approval. Additionally, the regulations require that the identification plate be affixed to the engine at an accessible location, and in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident.

4. *Discussion.* a. Problems have arisen, since the advent of the turbine engine modular concept, with respect to engine identification. A significant feature of turbine engines is that separate sections (known as modules) are devoted to particular functions. A typical engine consists of a compressor section, combustion section, turbine section, and exhaust section. These modules are not independently approved by the FAA, but are approved as a part of the complete engine type design.

b. Aircraft engine manufacturers in compliance with FAR Sections 45.11 and 45.13 identify each complete engine by affixing an ID plate to one of the modules. That module serves only as a vehicle on which to affix the ID plate. That plate does not identify the module but does serve to identify the assembly of modules that make up the complete engine approved under a type certificate.

c. When the module to which the ID plate is affixed requires replacement, the ID plate would need to be removed and reinstalled on the replacement module in order to maintain the identification of the engine. This is analogous to an aircraft, in that when the member to which the ID plate is affixed is damaged, the ID plate would be removed from the damaged member and reinstalled on the replacement member since that ID plate serves to identify the aircraft, not the member to which it is affixed.

d. Maintenance on modular engines is normally accomplished by replacing entire modules. However, there is a need to maintain a continuous history on the basic engine (notwithstanding that every module may have been replaced any number of times) which is predicated on the engine ID plate, serial number, and historical/modification records. Additionally, modular type engines also contain a number of non-modular components (e.g., fuel lines, accessories, etc.) which are controlled by the engine serial number on the ID plate and corresponding historical/modification records.

e. The FAA is aware that some aircraft operators/repair stations do not remove the engine ID plate from the module to which it is affixed when the particular module is removed for maintenance. Similarly, they install replacement modules on which an ID plate (belonging to another engine) is affixed. This essentially constitutes an exchange of ID plates resulting in a lost of identity (historical/modification data) for both engines, as well as being in noncompliance with FAR section 45.13(c) and/or (e). The changing of engine ID plates and serial numbers from engine to engine, or failure to remove and reinstall engine ID plates when the module to which they are attached is required to be removed for maintenance, inhibits positive control of both modular and non-modular components. This control is needed, since the ID plate and the information contained thereon provides positive correlation between the engine and the required historical/modification records. The ID plate also serves as a baseline to control all activity accomplished on a particular engine (i.e., configuration, AD compliance, overhaul, life limited parts, noise/emission compliance, etc.) throughout the entire service life of the engine.

5. *Procedures.* When the engine module to which the engine ID plate is affixed is removed from an engine, and it is to be replaced with another module that is new, or that has been repaired or overhauled, the ID plate should be transferred from the module that was removed to the module installed in its place. Upon completion of the module and ID plate change, an entry must be made in the maintenance record as required by FAR Sections 43.9 and 43.11.

[FR Doc. 84-31643 Filed 12-5-84; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Bergen and Hudson Counties, NJ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Bergen and Hudson Counties, New Jersey.

FOR FURTHER INFORMATION CONTACT: Lloyd J. Jacobs, Staff Specialist for Environment, Federal Highway Administration, 25 Scotch Road, Second Floor, Trenton, New Jersey 08628, Telephone: (609) 989-2169.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Jersey Department of Transportation (NJDOT), will be preparing an Environmental Impact Statement on a proposal to construct an extension of Route 17 (07NJ810103) in Bergen and Hudson Counties, New Jersey. The proposed project would consist of the construction of a four lane expressway or lesser facility between Route 3 in Lyndhurst, Bergen County to Route I-280 in Kearny, Hudson County, a distance of approximately 5 miles. The proposed extension of Route 17 would be located east of Schuyler Avenue and west of the New Jersey Turnpike.

The purpose of the proposed project is to relieve congestion on the local north-south roads which carry traffic from the end of Route 17 expressway to Route I-280. These local roads include Ridge Road (which is temporarily designated as Route 17) and Schuyler Avenue. Temporary Route 17 operates as a two-lane city arterial through commercial and residential sections of the intervening municipalities, carrying local as well as through traffic. In addition to the commuter and commercial traffic Schuyler Avenue is also burdened with a constant volume of refuse trucks destined for land fills in the adjacent Hackensack Meadowlands District. The extremely high traffic volumes on these roadways causes severe congestion and creates delays to local emergency services and unsafe conditions for motorists and pedestrians alike. Both Ridge Road and Schuyler Avenue operate with two lanes, one in each direction, with on-street parking permitted in the commercial and residential areas. The proposed extension of Route 17, in addition to relieving congestion on local roadways, will facilitate local planning objectives for development in the Hackensack Meadowlands District and provide access to the proposed DeKorte State Park.

Alternatives under consideration include (1) an expressway or lesser facility between Route 3 to Route I-280; (2) a combination of the above facility with mass transit; (3) the no action alternative. The FHWA and NJDOT will consult with other government agencies on their areas of responsibility. A formal scoping meeting is planned, and Federal and State agencies with permit or commenting responsibilities will be invited. Information meetings will also be held for the public in the project area.

Issued on: November 27, 1984.

John J. Kessler, Jr.,

Division Administrator, Trenton, New Jersey.

[FR Doc. 84-31700 Filed 12-5-84; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Intent To Establish a Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

Correction

In FR Doc. 84-31358 beginning on page 47354 in the issue of Monday, December 3, 1984, make the following correction on page 47355: In the middle column, under **"Fee Schedule"**, in the second entry, "transfers received" should read "transfer originated".

BILLING CODE 1505-01-M

UNITED STATES INFORMATION AGENCY

Advisory Committee on Public Diplomacy

The United States Advisory Commission on Public Dipiomacy will conduct a meeting in Room 600, 301 4th Street SW., on December 19 from 1:30 to 4:00 PM.

The meeting will be closed to the public because it will involve a discussion of classified information relating to USIA implementation of the Radio Broadcasting to Cuba Act. (5 U.S.C. 552b(c)(1)). Premature disclosure of this information is unlikely to significantly frustrate implementation of proposed Agency action, because there will be a discussion of future Agency policy and programs. (5 U.S.C. 552b(c)(9)(B))

Please call Gloria Kalamets, (202) 485-2468 for further information.

Determination To Close Advisory Commission Meeting of December 19, 1984

Based on the information provided to the United States Information Agency by the United States Advisory Commission on Public Diplomacy, I hereby determine that the meeting scheduled by the Commission for December 19, 1984 may be closed to the public.

The Commission has requested that its December 19 meeting be closed because it will involve a discussion of classified information relating to USIA's implementation of the Radio Broadcasting to Cuba Act. (5 U.S.C. 552b(c)(1)). Premature disclosure of this information is likely to frustrate significantly the implementation of proposed Agency action, because there will be a discussion of future Agency policy and programs. (5 U.S.C. 552b(c)(9)(B)).

Dated: November 30, 1984.

Charles Z. Wick,

Director.

[FR Doc. 84-31636 Filed 12-5-84; 8:45 am]
BILLING CODE 8230-01-M

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of "Information Collection in Support of USIA Acquisition Process".

DATE: Comments must be received by December 31, 1984.

Copies: Copies of the request for clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N.

Canestro, United States Information Agency, M/M, 301 Fourth Street, SW., Washington, D.C. 20547, telephone (202) 485–8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395–4814.

SUPPLEMENTARY INFORMATION:

Information Collection in Support of USIA Acquisition Process.

Abstract: Information collection from the public is necessary to evaluate bids and responses from potential suppliers for supplies, services and hardware for the purpose of making awards in conformance with rules and regulations governing procurement of federal government departments and agencies.

Dated: November 26, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84–31882 Filed 12–5–84; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 236
Thursday, December 6, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1
Federal Deposit Insurance Corporation	2–4
Federal Election Commission	5
Federal Mine Safety and Health Review Commission	6
Federal Trade Commission	7
Pacific Northwest Electric Power and Conservation Planning Council	8

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern Time), Tuesday, December 11, 1984.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 84–07–FOIA–129–NY, concerning a request for copies of the respondent's EEO–1 reports from 1980 through 1984.
4. Freedom of Information Act Appeal No. 84–10–FOIA–103–DE, concerning a request for the contents of a closed ADEA file.
5. Freedom of Information Act Appeal No. 84–07–FOIA–136–NY, concerning a request for records from two Title VII charge files.
6. Freedom of Information Act Appeal No. 84–10–FOIA–72–NY, concerning a request for documents, memorandum or other materials in a Title VII file.

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Commission Decisions: ORA Decisions and Guidance Decisions
3. Discussion of Subpoenas
4. Discussion of Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register** the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia Matthews, Executive Officer at (202) 634–6748.

Dated: December 4, 1984.

Cynthia Matthews,

Executive Officer, Executive Secretariat.

This notice Issued December 4, 1984.

[FR Doc. 84–31963 Filed 12–04–84; 1:43 p.m.]

BILLING CODE 6570–06–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:55 p.m. on Friday, November 30, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution (A) making funds available for the payment of insured deposits in The Dayton Bank & Trust Company, Dayton, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, November 30, 1984, (B) accepting the bid of First National Bank and Trust Company, Rockwood, Tennessee, for the transfer of the insured, secured, and preferred deposits of the closed bank, (C) appointing First National Bank and Trust Company as the agent for the corporation for the payment of insured, secured, and preferred deposits of the closed bank, and (D) making funds available for an advance payment to uninsured depositors and other general creditors of The Dayton Bank & Trust Company equal to 75 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 3, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–31879 Filed 12–3–84; 5:04 pm]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, December 10, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Report of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Issuance of a Final Rule requiring insured banks to report, under certain circumstances, their brokered deposits and fully insured deposits of financial institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive

Secretary of the Corporation, at (202) 389–4425.

Dated: December 3, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–31878 Filed 12–3–84; 5:04 pm]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, December 10, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of these matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance and for consent to exercise trust powers:

Federated Bank & Trust Company, a proposed new bank to be located at 10 Foster Avenue, Gibbsboro, New Jersey.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requets for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 3, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–31877 Filed 12–3–84; 5:04 pm]

BILLING CODE 6714–01–M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 11, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, December 13, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for Candidates to receive Presidential primary matching funds
Draft Advisory Opinion #1984–57, Patrick G. Golden, Pacific Gas & Electric Company
11 CFR PARTS 2 and 3: Proposed Amendments to Sunshine Regulations
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84–31982 Filed 12–4–84; 9:45 am]

BILLING CODE 6715–01–M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 28, 1984.

TIME AND DATE: 10 a.m., Wednesday, December 5, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Little Sandy Coal Sales, Inc., Docket No. KENT 83–178–R. (Issues include whether the company's operation is a "mine" subject to Mine Act jurisdiction.)

Any person intending to attend this meeting who requires special accessibility features and/or any auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706. 150(a)(3) and § 2706. 160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84–31985 Filed 12–4–84; 2:48 pm]

BILLING CODE 6735–01–M

7

FEDERAL TRADE COMMISSION

TIME AND DATE: 4:00 p.m., Monday, December 3, 1984.

PLACE: Room 526, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW. Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED:

Ceremony for the swearing-in of Mary L. Azcuenaga as Commissioner (reception to follow by invitation only)

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 532–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 84–31989 Filed 12–4–84; 2:00 pm]

BILLING CODE 6750–01–M

8

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: December 11, 1984; 9:00 a.m.

PLACE: Council Office Meeting Room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

The Council will conduct a hearing to take testimony from the region's public utility commissions concerning intertie access policy, out-of-region sales, and the ownership

and size of the intertie. The Council anticipates testimony from the Idaho Public Utilities Commission, the Montana Public Service Commission, the Oregon Public Utility Commission, and the Washington Utilities and Transportation Commission.

Public Comment will be taken at the conclusion of the Commissioners' testimony. The Council anticipates conducting future public sessions to receive testimony from other interested parties on these issues.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–31939 Filed 12–4–84; 11:01 am]

BILLING CODE 0000–00–M

federal register

Thursday
December 6, 1984

Part II

Department of State

22 CFR Parts 121, 122, 123, 124, 125, 126, 127, 128, 129, and 130

Revision of the International Traffic in Arms Regulations; Final Rule

DEPARTMENT OF STATE

22 CFR Parts 121, 122, 123, 124, 125, 126, 127, 128, 129, and 130

[Departmental Reg. 108.840]

Revision of the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On December 19, 1980, the Department of State published a proposed comprehensive revision of the International Traffic in Arms Regulations (the ITAR) (45 FR 83970). The purpose of this proposed revision was to simplify and clarify the regulations and to improve the regulatory scheme established under the Arms Export Control Act. Numerous comments were received from the public and from U.S. Government agencies. This publication publishes the final rule, which shall enter into force on January 1, 1985.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William B. Robinson, (202) 235–9755, Director, Office of Munitions Control; Mr. Mark L. Wiznitzer, (202) 235–9756, Office of Munitions Control; Ms. Jean U. Bailly, (202) 632–0568, Office of the Legal Adviser.

SUPPLEMENTARY INFORMATION:

Background. The International Traffic in Arms Regulations were first published in their current form on August 28, 1955 (20 FR 6250) pursuant to the authority of section 414 of the Mutual Security Act of 1954 (68 Stat. 848). The Mutual Security Act replaced the Neutrality Act of 1939 (54 Stat. 11), which had constituted the authority of the President to control exports of arms, ammunition, and implements of war. The provisions of the Mutual Security Act of 1954 were to a large extent superseded in 1976 by the Arms Export Control Act (22 U.S.C. 2778), referred to in this summary as the Act. Section 38 of the Act continued the President's authority to control the export and import of defense articles and defense services (including exports of technical data related to defense articles). It also continued to authorize the President to promulgate regulations for the import and export of defense articles and defense services and to provide foreign policy guidance to persons involved in such exports and imports. Executive Order 11958 of January 18, 1977 as amended (44 FR 4311) delegated authority to regulate exports of defense articles and defense services to the Secretary of State, in consultation with the Secretaries of Commerce and Defense.

Revision of the ITAR. The ITAR have been amended from time to time to reflect statutory enactments and to implement the foreign policy of the United States. However, the last substantial revision of the regulations occurred in 1969. There was a felt need in recent years to simplify whenever possible the structure and terminology of the regulations. As a result, the Department of State undertook in 1979 to revise the ITAR. A proposed revision was published on December 19, 1980 (45 FR 83970).

Extensive comments were received from the public and U.S. Government agencies. Many of those comments resulted in changes in the proposed regulations.

On August 29, 1984, the Department of State published a notice in the **Federal Register** (49 FR 34240) that the revision was complete. The public was informed that any person who wished to comment further on the regulations could do so by contacting the Office of Munitions Control. The proposed regulations were again modified in view of these latest comments and are published today as a final rule.

Most of the provisions of the ITAR have been modified in some way, generally for editorial purposes. However, the basic regulatory scheme is not changed under the revision. The changes in the revision attempt primarily to: incorporate changes in government policies and licensing procedures; improve its organization; simplify and modernize its terminology; improve its enforceability; and implement recent Congressional notification requirements. The major changes from the prior edition of the ITAR and the proposed revision of December 19, 1980, are as follows.

Part 120. Many of the comments on the proposed revision of the ITAR made it clear that there was considerable confusion on the relation of the ITAR to the export regulations administered by the Department of Commerce; on how defense articles and defense services are placed on the Munitions List; on the standards used to designate defense articles and services; on whether "dual use" items or technical data were controlled under the ITAR; and on whether the proposed foreign end-use of the item to be exported is relevant in determining whether State or Commerce controls a particular export. Part 120 is new, and provides information on these basic matters and a basic conceptual introduction to the regulatory scheme. Part 120 simply codifies the practice and standards of the Office of Munitions Control. No new policy is established by this Part.

The definitions which apply to the ITAR are now located in Part 120. These were previously found at the end of Part 121. A listing of U.S. Government forms referred to in the regulations has been included at the end of Part 120. The interpretations of the Munitions List in Part 121 and the definitions which apply specifically to the reporting requirements of Part 130 remain in those parts. Several definitions have been revised. Perhaps the most important definition is that of "technical data" (§ 120.21). Many of the comments received on the proposed revision of the ITAR were on the proposed definition of technical data of December 19, 1980 (as well as the related exemptions on certain exports of technical data). The final definition, and the related definitions of "public domain" (§ 120.18) and "defense services" (§ 120.8), took into account the public comments and seeks to reflect the actual practice of the Office of Munitions Control of controlling only exports of certain technical data directly related to defense articles and not general, theoretical information.

Some of the public comments received assumed that all activity or data described in the definitions section of Part 120 (e.g., defense services or technical data) required a license. This is not the case. The substantive provisions on when licenses or approvals are required are in Part 123 for unclassified defense articles; and Part 124 for technical assistance and licensing agreements; and Part 125 for technical data and classified articles and data.

Part 121. This part consists of the Munitions List and interpretations. The Munitions List itself has been changed in that certain defense articles (listed below) have been added and deleted from it. The structure of the Munitions List has been modified only in minor respects (e.g., "defense services" and "technical data" are placed in separate categories). Several comments were received regarding whether "software" should be deemed to be a defense article or technical data for purposes of the ITAR. Section 121.8 was consequently changed to address these comments.

Notable changes to the U.S. Munitions List or its interpretations are as follows:

Additions

—Aluminum powder (spherical) (see § 121.12(a)).

—Floating dry docks, class ARDM (see § 121.15(d) (4)).
—Armored coaxial cable capable of RF, optical, or high voltage power transmission, and designed, modified or configured for military application (see Category XI(a) (3).
—Certain structural materials specifically designed or modified for defense articles, such as carbon/carbon and metal matrix composites (see Category XIII(d)).
—Combat shotguns (see § 121.9(a)).
—Cryptographic software (see Category XIII(b)).
—Devices embodying particle beam and electromagnetic pulse technology (see Category XIII(h)).
—Metal embrittling agents (see Category XIII(i)).

Deletions

—Muzzle-loading (black powder) firearms (see § 121.9(a)).
—Bayonets (deleted from Category I).
—Floating dry docks, classes YFDM, YR, YRDH, YRDM, YHL, YSD (see § 121.15(d)(4)).
—Submarine and torpedo nets (deleted from Category VI).
—Parachutes (deleted from Category VIII).
—Certain trainer aircraft (see § 121.3(2)).
—Certain inertial navigation systems (see Category VIII(j)).
—Fixed land-based arresting gear (see Category VIII(e)).
—Instrument flight trainers, except for combat simulation trainers (deleted from category IX(a)).
—Standard military helmets (deleted from Category X(a)).
—Pressurized breathing equipment (deleted from Category X(b)).
—Military oxygen masks (deleted from Category X(b)).
—Protective clothing for handling corrosive fuels (deleted from Category X (b)).

Items which no longer qualify as significant military equipment

—Non-military communication satellites (See Category VIII(b) (2) and Category XI(b) (2)).
—Radios (See Category XI(a) (2)).

Part 122. This Part deals with the registration of manufacturers and exporters. Registration is now required for U.S. persons who furnish defense services. The fees charged for registration have been increased for the first time since 1969.

Part 123. The current system requires that licenses be obtained before the physical export of defense articles outside of U.S. jurisdiction and generally requires that the applicant be a U.S. person (although licenses are granted to foreign diplomatic missions). In the proposed revision of December 19, 1980, the Department proposed that only U.S. persons could obtain licenses for the export of defense articles, and that licenses would be required before articles could be transferred to foreign persons in the U.S. All of the public comments were opposed to these changes. The Department has decided not to make these changes. The Department will continue the traditional policies on these matters.

Most of the changes in Part 123 are technical in nature. They provide more guidance to applicants on how to apply for licenses and clarifications on existing exemptions. Licenses are formally made valid for two years rather than one.

Part 124. This part deals primarily with agreements between U.S. and foreign persons which involve the furnishing of defense services for the production or maintenance of defense articles. It has been the consistent policy of the United States under the ITAR to require that such agreements be submitted to the Office of Munitions Control for approval and that they contain certain clauses. Part 124 continues this policy. The structure of the chapter has been revised for clarity. Some of the standard clauses have been simplified, and some have been modified to ensure that statutory requirements on the transfer of defense articles manufactured under licensing agreements can be fully implemented. The standards and procedures applicable to the export of technical data for purposes of offshore procurement have been revised and clarified.

Part 124 contains one significant revision. The comments indicated that it was not clear whether certain activities involving defense articles, but which did not involve the use or disclosure of technical data, were subject to ITAR controls. It has been the practice of the Department of State in the past to control training in the use of defense articles only if it involved the disclosure of technical data or the use of technical data that was not exempt from the licensing requirements of Part 125. This practice on training services was narrower than what the express terms of the ITAR or the Act would have permitted. It also meant that certain important defense services related to defense articles were not necessarily regulated. For example, the training of pilots to fly military aircraft, or training individuals in combat skills, was not always regulated under the ITAR. § 124.1 provides that the furnishing of any defense service, as defined in § 120.8(a), will henceforth require the approval of the Department of State, regardless of whether technical data will be used or disclosed. This provision does not affect any of the neutrality laws of the U.S.

Part 125. This Part, which deals with the export of technical data, and the definitions of technical data and public domain in Part 120 are closely related. The most significant changes in Part 125 are in § 125.4, which contains a listing of the exemptions from the licensing requirements of the ITAR. This provision was one on which numerous comments were received. Concerns were expressed, for example, on licensing requirements as they relate to the First Amendment to the Constitution. The revision seeks to reflect these concerns, and certain new exemptions are provided. Nontransfer and use assurances are now required for all exports of classified articles or classified technical data.

In recent years, some parts of the academic community have expressed concern about the application of government export regulations to disclosures of information in university classrooms. This concern (for example, that the language of the ITAR was overly broad) did not occur because of any changes in the text of the ITAR, or in the policies and practices of the Department of State in administering the regulations. In order to address the concerns expressed about the regulations, however, the language with regard to what information is subject to ITAR controls has been clarified. The Department's long-standing practice of regulating only information that is directly related to defense articles, as reflected in *U.S.* v. *Edler*, 579 F. 2d 516 (9th cir. 1978), remains unchanged. In the future, the Department will consider incorporating in the ITAR appropriate recommendations regarding scientific communications which are developed by an interagency group currently studying proposals in the context of the Export Administration Regulations of the Department of Commerce.

Part 126. Part 126 contains general policies that are applicable to all exports under the ITAR. Most of the revisions in this part are clarifications or amplifications of existing provisions. Some of the provisions that were in more than one part of the previous ITAR have been consolidated (e.g., provisions on proposals related to significant military equipment and general policies on license denials and approvals).

Section 126.6 provides a significant new exemption for certain exports of

defense articles and defense services sold by the U.S. Department of Defense to foreign governments or international organizations under the Foreign Military Sales (FMS) program. This new section envisions the use of a new form, DSP–XX, as the documentation and authority for such exports. Details of implementation will be incorporated in the instructions to DSP–XX. This exemption will become effective upon publication of the DSP–XX.

Section 126.8 deals with proposals either to sell significant military equipment or to enter into manufacturing license agreements or technical assistance agreements for the production or assembly of such equipment. This requirement will no longer apply with respect to sales of defense articles to members of NATO, Australia, Japan and New Zealand. The monetary threshold for cases that must be submitted to the Department for approval prior to making the proposals described in the provision have been increased (from seven to fourteen million dollars).

Section 126.10 deals with the confidentiality of information provided to the Office of Munitions Control.

Part 130. This part has been changed in one significant aspect. The monetary thresholds on which sales are subject to this Part's requirements have been increased. The structure of the Part has been revised for clarity.

List of Subjects in 22 CFR Parts 120 through 130

Arms and Munitions, Exports.

Subchapter M (consisting of Parts 120 through 130) of Chapter I of Title 22, Code of Federal Regulations, is consequently revised to read as follows:

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

Part

120—Purpose, background and definitions.
121—The United States Munitions List.
122—Registration of manufacturers and exporters.
123—Licenses for the export of defense articles.
124—Manufacturing license agreements, technical assistance agreements, and other defense services.
125—Licenses for the export of technical data and classified defense articles.
126—General policies and provisions.
127—Violations and penalties.
128—Administrative procedures.
129—[Reserved].
130—Political contributions, fees, and commissions.

PART 120—PURPOSE, BACKGROUND AND DEFINITIONS

Sec.

120.1 Purpose.
120.2 Designation of defense articles and defense services.
120.3 Policy on designating defense articles and services.
120.4 Relation to Department of Commerce regulations.
120.5 Commodity jurisdiction procedure.

Definitions

120.6 General.
120.7 Defense articles.
120.8 Defense services.
120.9 District director of customs.
120.10 Export.
120.11 Foreign person.
120.12 Intransit shipment.
120.13 License.
120.14 Manufacturing license agreement.
120.15 Office of Munitions Control.
120.16 Person.
120.17 Presiding official.
120.18 Public domain.
120.19 Significant military equipment.
120.20 Technical assistance agreement.
120.21 Technical data.
120.22 United States.
120.23 U.S. person.

Forms

120.24 Listing of forms referred to in this subchapter.

Authority—Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 120.1 Purpose.

Section 38 of the Arms Export Control Act (22 U.S.C. 2728) authorizes the President to control the export and import of defense articles and defense services. It is the purpose of this subchapter to implement this authority. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended (42 FR 4311). By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Director of the Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State (35 FR 5422).

§ 120.2 Designation of defense articles and defense services.

The Arms Export Control Act also provides (22 U.S.C. 2778(a) and 2794(7)) that the President shall designate which articles shall be deemed to be defense articles and defense services for purposes of this subchapter. The items so designated constitute the United States Munitions List, and are specified in Part 121 of this subchapter. Such designations are made by the Department of State with the concurrence of the Department of Defense.

§ 120.3 Policy on designating defense articles and services.

Designations of defense articles and defense services are based primarily on whether an article or service is deemed to be inherently military in character. Whether it has a predominantly military application is taken into account. The fact that an article or service may be used for both military and civilian purposes does not in and of itself determine whether it is subject to the export controls of this subchapter. (Narrow exceptions to this general policy exist with respect to exports of certain spare parts and components in Categories V(d); VIII (e) and (g); XI(e); XII(c); and XVI(b).) The intended use of the article or service after its export (i.e., for a military or civilian purpose) is also not relevant in determining whether the export is subject to the controls of this subchapter.

§ 120.4 Relation to Department of Commerce regulations.

If an article or service is placed on the United States Munitions List, its export is regulated exclusively by the Department of State. Exports which are not subject to the controls of this subchapter are generally under the regulatory jurisdiction of the Department of Commerce pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) and the implementing Export Administration Regulations (15 CFR Parts 368–399).

§ 120.5 Commodity jurisdiction procedure.

The Office of Munitions Control will provide, upon written request, a determination on whether a particular article is included on the United States Munitions List. Such requests should be accompained by five copies of the letter requesting a determination and any brochures or other documentation or specifications relating to the article. A "commodity jurisdiction" procedure is used if a doubt exists within the U.S. Government on whether an article is on the Munitions List. The procedure entails consultations among the Departments of State, Commerce and Defense.

Definitions

§ 120.6 General.

The definitions contained in this part (listed alphabetically) apply to the use of the defined terms throughout this subchapter unless a different meaning is specified. See also §§ 130.2–130.8 for definitions applicable to Part 130.

§ 120.7 Defense articles.

"Defense article" means any item designated in § 121.1. This term includes models, mockups, and other such items which reveal technical data directly relating to items designated in §121.1.

§ 120.8 Defense services

Defense service means:

(a) the furnishing of assistance, including training, to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad; or

(b) the furnishing to foreign persons of any technical data, whether in the United States or abroad.

§120.9 District director of customs.

"District director of customs" means the district directors of customs at customs headquarters ports (other than the port of New York City, New York); the regional commissioners of customs, the deputy and assistant regional commissioners of customs for customs region II at the port of New York, New York; and port directors at customs ports not designated as headquarters ports.

§ 120.10 Export.

"Export" means, for purposes of this subchapter:

(a) Sending or taking defense articles out of the United States in any manner; or

(b) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the United States Munitions List, whether in the United States or abroad; or

(c) Sending or taking technical data outside of the United States in any manner except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or

(d) Disclosing or transferring technical data to a foreign person, whether in the United States or abroad; or

(e) The performance of a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

As of the effective date of the Commercial Space Launch Act, a launch vehicle or payland shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter.

§ 120.11 Foreign person.

"Foreign person" means any person (§ 120.16) who is not a citizen or national of the United States unless that person has been lawfully admitted for permanent residence in the United States under the Immigration and Naturalization Act (8 U.S.C. 1101, section 101(a)20, 60 Stat. 163) (i.e., individuals referred to as "immigrant aliens" under previous laws and regulations). It includes foreign corporations (i.e., corporations that are not incorporated in the United States), international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions).

§ 120.12 Intransit shipment.

"Intransit shipment" means a temporary import into the United States of a defense articile.

§ 120.13 License.

"License" means a document bearing the word "license" which when issued by the Director, Office of Munitions Control, or his authorized designee, permits the export or intransit shipment of a specific defense article, defense service, or technical data.

§ 120.14 Manufacturing license agreement.

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization or a license to manufacture defense articles abroad and which involves or contemplates (a) the export of technical data (as defined in § 120.21) or defense articles or the performance of defense services, or (b) the use by the foreign person of technical data or defense articles previously exported by the U.S. person.

§ 120.15 Office of Munitions Control.

"Office of Munitions Control" means the Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State, Washington, D.C. 20520.

§ 120.16 Person.

"Person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (§ 120.11) or U.S. person (§ 120.23), then it refers to both.

§ 120.17 Presiding official.

"Presiding official" means a person authorized to conduct hearings in administrative proceedings.

§ 120.18 Public domain.

"Public domain" means information which is published and which is generally accessible or available to the public:

(a) Through sales at newsstands and bookstores;

(b) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(c) through second class mailing privileges granted by the U.S. Government; or,

(d) at libraries open to the public.

§ 120.19 Significant military equipment.

(a) "Significant military equipment" means articles, as identified in paragraph (b) of this section, for which special export controls are warranted because of their capacity for substantial military utility or capability.

(b) Articles designated as significant military equipment under the criterion specified in paragraph (a) of this section include all classified articles and the articles enumerated in § 121.1 in Categories I (a) and (c) (in quantity); II (a) and (b); III(a) (excluding ammunition for firearms in Category (I)) and (d); IV (a), (b), (d), (e), (f) and (g); V (a) (in quantity) and (b); VI (a), (b) (inclusive only of turrets and gun mounts, missile systems, and special weapons systems) and (e); VII (a), (b), (c), (e), (f) and (g); VIII (a), (b)(1), (c) and (d), GEMS as defined in (i), and inertial systems as defined in (j); XI (a)(1), (b)(1), (c); XII (a) and (b); XIV (a), (b), (c) and (d); XVI; XVII; and XX (a) and (b).

(c) Items in § 121.1 which are preceded by an asterisk are "significant military equipment."

(d) Section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note) provides a definition of "major defense equipment" and refers to certain significant combat equipment on the U.S. Munitions List. The terms "significant military equipment" and "significant combat equipment" are considered to be equivalent for purposes of that section of the Arms Export Control Act and this subchapter.

§ 120.20 Technical assistance agreement.

An agreement (e.g., contract) for the performance of defense services or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles.

§ 120.21 Technical data.

"Technical data" means, for purposes of this subchapter:

(a) Classified information relating to defense articles and defense services;

(b) Information covered by an invention secrecy order;

(c) Information which is directly related to the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles. This includes, for example, information in the form of blueprints, drawings, photographs, plans, instructions, computer software and documentation. This also includes information which advances the state of the art of articles on the U.S. Munitions List. This does not include information concerning general scientific, mathematical or engineering principles.

§ 120.22 United States.

"United States", when used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, and any territory over which the United States exercises any powers of administration, legislation, and jurisdiction.

§ 120.23 U.S. Person.

"U.S. Person" means a person (§ 120.16) who is a citizen or national of the United States, or a permanent resident of the United States under the Immigration and Nationality Act (8 U.S.C. 1101, section 101(a)20, 66 Stat. 163).

Forms

§ 120.24 Listing of forms referred to in this subchapter.

The forms referred to in this subchapter are available from the following government agencies:

(a) *Department of State:*

(1) Application/License for permanent export of unclassified defense articles and related technical data (Form DSP–5).

(2) Application for registration (Form DSP–9).

(3) Application/License for temporary import of unclassified defense articles (Form DSP–61).

(4) Application/License for temporary export of unclassified defense articles (Form DSP–73).

(5) Nontransfer and use certificate (Form DSP–83).

(6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP–85).

(b) *Department of Commerce:*

(1) International Import Certificate (Form ITA–645P/ATF–4522/DSP–53).

(2) Shipper's export declaration (Form No. 7525–V).

(c) *Department of Defense:*

Offer and acceptance (DD Form 1513).

PART 121—THE UNITED STATES MUNITIONS LIST

Enumeration of Articles

Sec.

121.1 General. The United States Munitions List.
121.2 Interpretations of the United States Munitions List.
121.3 Aircraft and related articles.
121.4 Amphibious vehicles.
121.5 Apparatus and devices under Category IV(c).
121.6 Cartridge and shell casings.
121.7 Chemical agents.
121.8 End-items, components, accessories, attachments, parts, firmware, software and systems.
121.9 Firearms.
121.10 Forgings, castings and machined bodies.
121.11 Military demolition blocks and blasting caps.
121.12 Military explosives.
121.13 Military fuel thickeners.
121.14 Propellants.
121.15 Vessels of war and special naval equipment.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

Enumeration of Articles

§ 121.1 General. The United States Munitions List.

(a) The following articles, services and related technical data are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)). Changes in designations will be published in the Federal Register. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically in the Munitions Control Newsletter published by the Office of Munitions Control.

(b) *Significant Military Equipment.* An asterisk precedes certain defense articles in the following list. The asterisk means that the article is deemed to be "significant military equipment" to the extent specified in § 120.19. The asterisk is placed as a convenience to help identify such articles.

Category I—Firearms

*(a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive, and all components and parts for such firearms. (See §§ 121.9 and 123.16–123.19.)

(b) Rifle scopes manufactured to military specifications, and specifically designed or modified components therefor; firearm silencers and suppressors, including flash suppressors.

*(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber and all components and parts therefor.

Category II—Artillery Projectors

*(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

*(b) Military flamethrowers and projectors.

(c) Components, parts, accessories and attachments for the articles in paragraphs (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

Category III—Ammunition

*(a) Ammunition for the arms in Categories I and II of this section. (See § 211.6.)

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, power bags, bullets, jackets, cores, shells (excluding shotgun shells); projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition. (See § 121.6.)

(c) Ammunition belting and linking machines.

*(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

*(a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps. (See § 121.11.)

*(b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. (See § 121.5.)

*(d) Missile and space vehicle powerplants.

*(e) Military explosive excavating devices

*(f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

*(g) Non/nuclear warheads for rockets and guided missiles.

(h) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

Category V—Explosives, Propellants, and Incendiary Agents

*(a) Military explosives. (See § 121.12.)

*(b) Military fuel thickeners. (See § 121.13.)

(c) Propellants for the articles in Categories III and IV of this section. (See § 121.14.)

(d) Military pyrotechnics, except pyrotechnic materials having dual military and commercial use.

(e) All compounds specifically formulated for the articles in this category.

Category VI—Vessels of War and Special Naval Equipment

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes. (See § 121.15.)

*(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices, (magnetic, pressure, and acoustic ones) and controls and components therefor.

*(e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.21.)

Category VII—Tanks and Military Vehicles

*(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

*(b) Military tanks, combat engineer vehicles, bridge launching vehicles, half-tracks and gun carriers.

*(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed, modified, or equipped to mount or carry weapons of Categories, I, II and IV or for carrying and handling the articles in paragraphs (a) of Categories III and IV.

*(e) Military recovery vehicles.

*(f) Amphibious vehicles. (See § 121.4.)

*(g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

Category VIII—Aircraft, Spacecraft, and Associated Equipment

*(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training. (See § 121.3.)

(b)*(1) Spacecraft, including manned and unmanned, active and passive satellites (except those listed in Category VIII(b)(2).

(2) Non-military communication satellites (excluding ground stations and associated equipment not enumerated elsewhere in § 121.1).

*(c) Military aircraft engines, except reciprocating engines, and spacecraft engines specifically designed or modified for the aircraft and spacecraft in paragraphs (a) and (b) of this category.

*(d) Cartridge-actuated devices utilized in emergency escape of personnel and airborne equipment (including but not limited to airborne refueling equipment) specifically designed or modified for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this category.

(e) Launching and recovery equipment for the articles in paragraphs (a) and (b) of this category, if the equipment is specifically designed or modified for military use or for use with spacecraft. Fixed land-based arresting gear is not included in this category.

(f) Power supplies and energy sources specifically designed or modified for spacecraft.

(g) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (f) of this category, excluding aircraft tires and propellors used with reciprocating engines.

(h) Developmental aircraft components which have a significant military application, excluding aircraft components concerning which Federal Aviation Agency certification has been granted.

*(i) Ground effect machines (GEMS) specifically designed or modified for military use, including but not limited to surface effect machines and other air cushion vehicles, and all components, parts, and accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

*(j) Inertial navigation systems and components designed specifically for such systems. Systems or components which are standard equipment in civil aircraft, including spare parts and spare units to be used exclusively for the maintenance of inertial navigation equipment incorporated in civil aircraft, and which are certified by the Federal Aviation Administration as being an integral part of such aircraft are subject to export regulation by the Office of Munitions Control only if the export is intended for a controlled country described in section 620(f) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(f)) (except Yugoslavia). The Export Administration Act of 1979, as amended (50 U.S.C. App. section 2416(c)) deals with the export of such items to non-controlled countries. All exports of technical data (regardless of destination) relating to the design, development, production or manufacture of inertial navigation equipment (regardless of accuracies) or its related parts, components, or subsystems are subject to the requirements of the regulations contained in this subchapter. The export of technical data relating to the repair of parts, components, or subsystems of inertial navigation systems (including accelerometers and gyroscopes) which are not certified by the FAA as being an integral part of civil aircraft are subject to the requirements of this subchapter. The provisions of XI(e) and XII(c) are not applicable to such exports of technical data.

Category IX—Military Training Equipment

(a) Military training equipment including but not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, operational flight trainers, air combat training systems, radar trainers, navigation trainers, and simulation devices related to defense articles.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

Category X—Protective Personnel Equipment

(a) Body armor specifically designed, modified or equipped for military use; articles, including but not limited to clothing, designed, modified or equipped to protect against or reduce detection by radar, infrared (IR) or other sensors; military helmets equipped with communications hardware, optical sights, slewing devices or mechanisms to protect against thermal flash or lasers, excluding standard military helmets.

(b) Partial pressure suits and liquid oxygen converters used in aircraft in Category VIII(a).

(c) Protective apparel and equipment specifically designed or modified for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the articles in paragraphs (a), (b), and (c) of this category.

Category XI—Military and Space Electronics

(a) Electronic equipment not included in Category XII of the Munitions List which is assigned a military designation or is specifically designed, modified or configured for military application. This includes but is not limited to the following:

*(1) Underwater sound equipment, including but not limited to towed arrays, electronic beam forming sonar, target classification equipment, and spectrographic displays; search, acquisition, tracking, moving target indication and imaging radar systems; active and passive countermeasures and counter-countermeasures equipment; electronic fuses; identification systems; command, control and communications systems; and, regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system and

(2) Sonic depth finders; underwater telephones; electro-mechanical beam forming sonars and elementary sonobuoys; radios (including transceivers); weather, navigation, and air traffic control radar systems;

navigation, guidance, object-locating equipment; displays; and telemetering equipment.

(3) Armored coaxial cable capable of RF, optical, or high voltage power transmission.

(b) Space electronics:

*(1) Electronic equipment specifically designed or modified for spacecraft and spaceflight, and

(2) Electronic equipment specifically designed or modified for use with non-military communications satellites.

*(c) Electronic systems or equipment specifically designed, modified, configured, used or intended for use in search, reconnaissance, collection, monitoring, direction-finding, display , analysis and production of information from the electromagnetic spectrum for intelligence or security purposes and electronic systems or equipment designed or modified to counteract such surveillance and monitoring.

(d) Very High Speed Integrated Circuit (VHSIC) semiconductor devices that are specifically designed for military applications and which have a high-speed signal and image processing capability with an operational parameter (gate-time-clock-frequency) or greater than 10^{11} gates X hertz for an individual semiconductor device.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use or currently used with the equipment in paragraphs (a) through (c) of this category, except for such items as are in normal commercial use.

Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment

*(a) Fire control systems; gun and missile tracking and guidance systems; military infrared, image intensifier and other night sighting and night viewing equipment; military masers and military lasers; gun laying equipments; range, position and height finders and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, inertial platforms, and periscopes for the articles of this section.

*(b) Inertial and other weapons or space vehicle guidance and control systems; spacecraft guidance, control and stabilization systems; astro compasses; and star trackers.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

Category XIII—Auxiliary Military Equipment

(a) Aerial cameras, space cameras, special purpose military cameras, and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment, and components specifically designed or modified therefore.

(b) Speech scramblers, privacy devices, cryptographic devices and software (encoding and decoding), and components specifically designed or modified therefore, ancillary equipment, and protective appraratus specifically designed or modified for such devices, components, and equipment.

(c) Self-contained diving and underwater breathing apparatus specifically designed or modified for a military purpose and components specifically designed or modified therefore.

(d) Armor plate and structural materials (including but not limited to plate, rolled and extruded shapes, bars and forgings, castings, welding consumables, carbon/carbon and metal matrix composites) specifically designed or modified for defense articles.

(e) Concealment and deception equipment, including but not limited to special paints, decoys, and simulators and components, parts and accessories specifically designed or modified therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction which are specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

(h) Devices embodying particle beam and electromagnetic pulse technology.

(i) Metal embrittling agents.

Category XIV—Toxicological Agents and Equipment and Radiological Equipment

*(a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, tear gases (except tear gas formulations containing 1% or less CN or CS), sternutators and irritant smoke, and nerve gases and incapacitating agents. (See § 121.7.)

*(b) Biological agents.

*(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

*(d) Nuclear radiation detection and measuring devices, manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

Category XV—[Reserved]

Category XVI—Nuclear Weapons Design and Test Equipment

*(a) Any article, material, equipment, or device which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices. (See § 123.21 and Department of Commerce Export Regulations, 15 CFR Part 378).

*(b) Any article, material, equipment, or device which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

Category XVII—Classified Articles Not Otherwise Enumerated

*All articles and technical data (as defined in § 120.21) relating thereto which are classified in the interests of national security and which are not otherwise enumerated in the U.S. Munitions List.

Category XVIII—Technical Data

Technical data (as defined in § 120.21) relating to the defense articles listed in the other categories of the United States Munitions List. (See § 125.4 for exemptions; see also § 123.21.)

Category XIX—Defense Services

Defense services (as defined in § 120.8) related to the defense articles listed in the other categories of the United States Munitions List.

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

*(a) Submersible vessels, manned and unmanned, designed or modified for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet or powered by nuclear propulsion plants.

*(b) Submersible vessels, manned or unmanned, designed or modified in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII, and elsewhere in this subchapter specifically designed or modified for use with submersible vessels, and oceanographic or associated equipment assigned a military designation.

(d) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraphs (a) and (b) of this category.

Category XXI—Miscellaneous Articles

Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director of the Office of Munitions Control.

§ 121.2 Interpretations of the United States Munitions List.

The following interpretations (listed alphabetically) explain and amplify the terms used in § 121.1. These interpretations have the same force as if they were a part of the United States Munitions List category to which they refer.

§ 121.3 Aircraft and related articles.

In Category VIII, "aircraft" means aircraft designed, modified, or equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not included so long as they have not been specifically equipped, re-equipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C–45 through C–118 inclusive, C–121 through C–125 inclusive, and C–131, using reciprocating engines only.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

§ 121.4 Amphibious vehicles.

An "amphibious vehicle" in Category VII(f) is an automotive vehicle or chassis which embodies all-wheel drive, is equipped to meet special military requirements, and which has sealed electrical systems or adaptation features for deep water fording.

§ 121.5 Apparatus and devices under Category IV(c).

Category IV includes but is not limited to the following: Fuzes and components for the items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, guided missile launchers and specialized handling equipment, and hardened missile launching facilities.

§ 121.6 Cartridges and shell casings.

Cartridge and shell casings are included in Category III unless, prior to export, they have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

§ 121.7 Chemical agents.

A chemical agent in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term "chemical agent" includes, but is not limited to, the following chemical compounds:

(a) Lung irritants:

(1) Diphenylcyanoarsine (DC).

(2) Fluorine (but not fluorene).

(3) Trichloronitro methane (chloropicrin PS).

(b) Vesicants:

(1) B-Chlorovinyldichloroarsine (Lewisite, L).

(2) Bis(dichloroethyl)sulphide (Mustard Gas, HD or H).

(3) Ethyldichloroarsine (ED).

(4) Methyldichloroarsine (MD).

(c) Lachrymators and tear gases:

(1) A-Bromobenzyl cyanide (BBC).

(2) Chloroacetophenone (CN).

(3) Dibromodimethyl ether.

(4) Dichlorodimethyl ether (ClCi).

(5) Ethyldibromoarsine.

(6) Phenylcarbylamine chloride.

(7) Tear gas solutions (CNB and CNS).

(8) Tear gas orthochlorobenzalmalononitrile (CS).

(d) Sternutators and irritant smokes:

(1) Diphenylamine chloroarsine (Adamsite, DM).

(2) Diphenylchloroarsine (BA).

(3) Liquid pepper.

(e) Nerve agents, gases and aerosols. These are toxic compounds which affect the nervous system, such as:

(1) Dimethylaminoethoxycyanophosphine oxide (GA).

(2) Methylisopropoxyfluorophosphine oxide (GB).

(3) Methylpinacolyloxyfluoriphosphine oxide (GD).

(f) Antiplant chemicals, such as: Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

§ 121.8 End-items, components, accessories, attachments, parts, firmware, software and systems.

(a) An "end-item" is an assembled article ready for its intended use. Only ammunition, fuel or another energy source is required to place it in an operating state.

(b) A "component" is an item which is useful only when used in conjunction with an end-item. A major component includes any assembled element which forms a portion of an end-item without which the end-item is inoperable. (Example: airframes, tail sections, transmissions, tank treads, hulls, etc.) A minor component includes any assembled element of a major component.

(c) "Accessories" and "attachments" are associated equipment for any component, end-item or system, and which are not necessary for their operation, but which enhance their usefulness or effectiveness. (Examples: riflescopes, special paints, etc.)

(d) A "part" is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. (Examples: rivets, wire, bolts, etc.)

(e) Firmware and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions and system test diagnostics) specifically designed for equipment or systems covered under any category of the United States Munitions List are considered as part of the end-item or component. "Firmware" includes but is not limited to circuits into which software has been programmed.

(f) "Software" includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair. A person who intends to export software only should, unless it is specifically enumerated in § 121.1, apply for a technical data license pursuant to Part 125 of this subchapter.

(g) A "system" is a combination of end-items, components, parts, accessories, attachments, firmware or software, specifically designed, modified or adapted to operate together to perform a specialized military function.

§ 121.9 Firearms.

(a) Category I includes revolvers, pistols, rifles, carbines, fully automatic rifles, submachine guns, machine pistols and machine guns to caliber .50, inclusive. It includes combat shotguns. It excludes other shotguns with barrels 18" or longer, BB, pellet, and muzzle loading (black powder) firearms.

(b) A "firearm" is a weapon not over .50 caliber which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.

(c) A "rifle" is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer.

(d) A "carbine" is a lightweight shoulder firearm with a barrel under 16 inches in length.

(e) A "pistol" is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.

(f) A "revolver" is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

(g) A "submachine gun", "machine pistol" or "machine gun" is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

§ 121.10 Forgings, castings and machined bodies.

Articles on the United States Munitions List include articles in a partially completed state (such as forgings, castings, extrusions and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the United

States Munitions List (including components, accessories, attachments and parts as defined in § 121.8), then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this subchapter, except for such items as are in normal commercial use.

§ 121.11 Military demolition blocks and blasting caps.

Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:

(a) Electric squibs.

(b) No. 6 and No. 8 blasting caps, including electric ones.

(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).

(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).

(e) Oil well perforating devices.

§ 121.12 Military explosives.

Military explosives in Category V include, but are not limited to, the following:

(a) Ammonium picrate.

(b) Black powder made with potassium nitrate or sodium nitrate.

(c) Cyclotetramethylenetetranitramine (HMX).

(d) Cyclotrimethylenetrinitramine (RDX, Cyclonite, Hexogen or T4).

(e) Dinitronaphthalene.

(f) Ethylenedinitramine.

(g) Hexanitrodiphenylamine.

(h) Nitroglycerin.

(i) Nitrostarch.

(j) Pentaerythritol tetranitrate (penthrite, pentrite or PETN).

(k) Tetranitronaphthalene.

(l) Trinitroanisol.

(m) Trinitronaphthalene.

(n) Trinitrophenol (picric acid).

(o) Trinitrophenylmethylnitramine (Tetryl).

(p) Trinitrotoluene (TNT).

(q) Trinitroxylene.

(r) Ammonium perchlorate nitrocellulose (military grade).

(s) Aluminum powder (spherical) with an average particle size of 100 micrometer diameter or less and a purity of 97% or greater.

(t) Any combinations of the above.

§ 121.13. Military fuel thickeners.

Military fuel thickeners in Category V include compounds (*e.g.*, octal) or mixtures of such compounds (*e.g.*, napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a gel-type incendiary material for use in bombs, projectiles, flame throwers, or other defense articles.

§ 121.14 Propellants.

Propellants in Category V include, but are not limited to, the following:

(a) Propellant powders, including smokeless shotgun powder.

(b) Hydrazine (including Monomethyl hydrazine and symmetrical dimethyl hydrazine, but excluding hydrazine hydrate).

(c) Unsymmetrical dimethyl hydrazine.

(d) Hydrogen peroxide of over 85 percent concentration.

(e) Nitroguanidine or picrite.

(f) Nitrocellulose with nitrogen content of over 12.20 percent.

(g) Nitrogen tetroxide (nitrogen dioxide, dinitrogen tetroxide).

(h) Other solid propellant compositions, including but not limited to, the following:

(1) Single base (nitrocellulose).

(2) Double base (nitrocellulose, nitroglycerin).

(3) Triple base (nitrocellulose, nitroglycerin, nitroguanidine).

(4) Composite of nitroglycerin, ammonium perchlorate, potassium perchlorate, nitronium perchlorate, guanidine (guanidinium) perchlorate, nitrogen tetroxide, ammonium nitrite or nitrocellulose with plastics, metal fuels, or rubbers added; and compounds composed only of fluorine and halogens, oxygen, or nitrogen.

(5) Special purpose high energy solid military fuels with a chemical base.

(i) Other liquid propellant compositions, including but not limited to, the following:

(1) Monopropellants (hydrazine, hydrazine nitrate, and water).

(2) Bipropellants (hydrazine, fuming nitric acid HNO_3).

(3) Special purpose chemical base high energy liquid military fuels and oxidizers.

§ 121.15 Vessels of war and special naval equipment.

Vessels of war in Category VI include, but are not limited, to, the following:

(a) Combatant vessels:

(1) Warships (including nuclear-powered versions):

(i) Aircraft carriers (CV, CVN)

(ii) Battleships (BB)

(iii) Cruisers (CA, CG, CGN)

(iv) Destroyers (DD, DDG)

(v) Frigates (FF, FFG)

(iv) Submarines (SS, SSN, SSBN, SSG, SSAG)

(2) Other Combatant Classifications:

(i) Patrol Combatants (PG, PHM)

(ii) Amphibious Helicopter/Landing Craft Carriers (LHA, LPD, LPH)

(iii) Amphibious Landing Craft Carriers (LKA, LPA, LSD, LST)

(iv) Amphibious Command Ships (LCC)

(v) Mine Warfare Ships (MSO)

(b) Auxiliaries:

(1) Mobile Logistics Support:

(i) Under way Replenishment (AD, AF, AFS, AO, AOE, AOR)

(ii) Material Support (AD, AR, AS)

(2) Support Ships:

(i) Fleet Support Ships (ARS, SSR, ATA, ATF, ATS)

(ii) Other Auxiliaries (AG, AGDS, AGF, AGM, AGOR, AGOS, AGS, AH, AK, AKR, AOG, AOT, AP, APB, ARC, ARL, AVM, AVT)

(c) Combatant Craft:

(1) Patrol Craft:

(i) Coastal Patrol Combatants (PB, PCF, PCH, PTF)

(ii) River, Roadstead Craft (ATC, PBR)

(2) Amphibious Warfare Craft:

(i) Landing Craft (AALC, LCAC, LCM, LCPL, LCPR, LCU, LWT, SLWT)

(ii) Special Warfare Craft (LSSC, MSSC, SDV, SWCL, SWCM)

(3) Mine Warfare Craft:

(i) Mine Countermeasures Craft (MSB, MSD, MSI, MSM, MSR)

(d) Support and Service Craft:

(1) Tugs (YTB, YTL, YTM)

(2) Tankers (YO, YOG, YW)

(3) Lighters (YC, YCF, YCV, YF, YFN, YFNB, YFNX, YFR, YFRN, YFU, YG, YGN, YOGN, YON, YOS, YSR, YWN)

(4) Floating Dry Docks (AFDB, AFDL, AFDM, ARD, ARDM, YFD)

(5) Miscellaneous (APL, DSRV, DSV, IX, NR, YAG, YD, YDT, YFB, YFND, YEP, YFRT, YHLC, YM, YNG, YP, YPD, YR, YRB, YRBN, YRDH, YRDM, YRR, YRST, YSD)

(e) Coast Guard Patrol and Service Vessels and Craft:

(1) Coast Guard Cutters (CGC, WHEC, WMEC)

(2) Patrol Craft (WPB)

(3) Icebreakers (WAGB)

(4) Oceanography Vessels (WAGO)

(5) Special Vessels (WIX)

(6) Buoy Tenders (WLB, WLM, WLI, WLR, WLIC)

(7) Tugs (WYTM, WYTL)

(8) Light Ships (WLV)

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Sec.

122.1 Registration requirements.
122.2 Application for registration.
122.3 Refund of fee.
122.4 Notification of changes in information furnished by registrants.
122.5 Maintenance of records by registrants.
122.6 Submission of application.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 122.1 Registration requirements.

(a) *General.* Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Munitions Control. Manufacturers who do not engage in exporting must nevertheless register.

(b) *Exemptions.* Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purposes, including research and development.

§ 122.2 Application for registration.

(a) *Fees.* A person who is required to register may do so for periods of from 1 to 5 years upon submission of a completed Form DSP–9, and payment of a fee as follows:

1 year	$250
2 years	500
3 years	700
4 Years	850
5 years	1,000

(b) *Lapses in registration.* A registrant who fails to renew a registration after its lapse and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

§ 122.3 Refund of fee.

Fees paid in advance for future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in the manufacture or export of defense articles and defense services. A request for a refund must be submitted to the Office of Munitions Control prior to the beginning of any year for which a refund is claimed

§ 122.4 Notification of changes in information furnished by registrants

A registered person must notify the Department of State of material changes in the information contained in the registration. Examples of material changes include the establishment or acquisition of a subsidiary or of a foreign affiliate, a merger, a change of location, or dealing with an additional category of defense articles or defense services. Registrants must also inform the Office of Munitions Control thirty days in advance of any planned transfer of ownership or control of the registered corporation or entity to a foreign person. Such notice does not relieve the registrant from obtaining the approvals required under this subchapter for the export of defense articles and defense services to foreign persons.

§ 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition of defense articles and the provision of defense services by the registrant. All such records must be maintained for a period of 6 years. The Director, Office of Munitions Control, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by the Director, Office of Munitions Control or a person designated by the Director, or the Commissioner of the U.S. Customs Service or a person designated by the Commissioner.

§ 122.6 Submission of application.

Department of State Form DSP–9, Registration Statement, must be submitted to the Cashier, ESC/C, Department of State, Washington, D.C. 20520, together with payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.2(a). The Office of Munitions Control will return to the sender any registration statement which is incomplete or which is not accompanied by payment of a proper registration fee.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

Sec.

123.1 Requirement for export licenses.
123.2 Imports.
123.3 Temporary import (intransit) licenses.
123.4 Temporary export licenses.
123.5 [Reserved]
123.6 Foreign trade zones and U.S. Customs bonded warehouses.
123.7 Exports to warehouses or distribution points outside the United States.
123.8 Special controls on vessels of war, military aircraft and satellites.
123.9 Country of ultimate destination.
123.10 Non-transfer and use assurances and Congressional notification.
123.11 Movements of aircraft and vessels of war outside the United States.
123.12 Shipments between U.S. possessions.
123.13 Domestic aircraft shipments via a foreign country.
123.14 Import certificate/delivery verification procedure.
123.15 [Reserved]

Exemptions

123.16 Obsolete firearms and models.
123.17 Exports of firearms and ammunition for personal use.
123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.
123.19 Minor components.
123.20 Canadian and Mexican border shipments.
123.21 Nuclear materials.

Procedures

123.22 Applications for licenses.
123.23 Renewal and disposition of licenses.
123.24 Port of exit or entry.
123.25 Filing of export and intransit licenses and shipper's export declarations with district directors of customs.
123.26 Shipments by mail.
123.27 Temporary exports.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 123.1 Requirement for export licenses.

(a) Any person who intends to export a defense article must obtain a license from the Office of Munitions Control prior to the export unless the export qualifies for an exemption under the provisions of this subchapter.

(b) As a condition to the issuance of a license or other approval, the Office of Munitions Control may require all pertinent documentary information regarding the proposed transaction. It may also require that the applicant be a U.S. person (as defined in § 120.23).

(c) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchaser order, letter of intent or other appropriate documentation. In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Department of Defense Form 1513 are required, unless the procedures of § 126.4(c) or § 126.6 are followed.

(d) Provisions for the export of classified defense articles and defense services are contained in Part 125 of this subchapter.

§ 123.2 Imports.

No defense article may be imported into the United States unless (a) it was previously exported temporarily under a license issued by the Office of Munitions Control; or (b) it constitutes a temporary import/intransit shipment licensed under § 123.3; or (c) its import is authorized by the Department of the Treasury (see 27 CFR Parts 47, 178 and 179).

§ 123.3 Temporary import (intransit) licenses.

A temporary import license (DSP–61) issued by the Office of Munitions Control is required for the intransit shipment of any unclassified defense article. This requirement applies to any temporary import into the United States of a defense article for overhaul, repair, modification, or other purposes, and the subsequent direct return of the defense article to the country from which it was sent. The Office of Munitions Control may require an appropriate bond. The temporary import license must also be used for other temporary unclassified imports, such as a temporary import of unclassified defense articles intransit to a third country. It may also be used if a defense article is imported into the United States for incorporation into another article and is then to be returned to the country of origin or transshipped to another country. (See § 125.8 for classified imports.)

§ 123.4 Temporary export licenses.

The Office of Munitions Control may issue a license for the temporary export of unclassified defense articles (DSP–73). Such licenses are valid only if (a) the article will be exported for a period of less than twenty-four months and will be returned to the United States and (b) transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Office of Munitions Control if the article is to remain outside the United States beyond the period for which the license is valid.

§ 123.5 [Reserved]

§ 123.6 Foreign trade zones and U.S. Customs bonded warehouses.

Foreign trade zones and U.S. Customs bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a Customs bonded warehouse. However, an export license is required for all shipments of articles on the U.S Munitions List from foreign trade zones and U.S. Customs bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

§ 123.7 Exports to warehouses or distribution points outside the United States.

A license to export defense articles to a warehouse or distribution point outside the United States for subsequent resale will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

§ 123.8 Special controls on vessels of war, military aircraft and satellites.

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the United States Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Office of Munitions Control. This requirement applies whether the aircraft, vessel, or satellite is physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite on the United States Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Office of Munitions Control is therefore required. Such transactions may also require the prior approval of the Maritime Administration, Department of Transportation, or the Federal Aviation Administration, Department of Transportation or other agencies of the U.S. Government.

§ 123.9 Country of ultimate destination.

(a) The country designated as the country of ultimate destination on an application for an export license, or on a shipper's export declaration where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Department of State must be obtained before reselling, diverting, transferring, transshipping, or disposing of a defense article in any country other than the country of ultimate destination as stated on the export license, or on the shipper's export declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-user and end-use prior to submitting an application to the Office of Munitions Control or claiming an exemption under this subchapter. End-use must be confirmed and should not be assumed.

(b) The exporter shall incorporate the following statement as an integral part of the shipper's export declaration, the bill of lading, and the invoice whenever defense articles on the U.S. Munitions List are to be exported:

These commodities are authorized by the U.S. Government for export only to *(country of ultimate destination)*. They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

§ 123.10 Non-transfer and use assurances and Congressional notification.

(a) An application for a license (Form DSP–5) to export significant military equipment defined in § 120.19 must be accompanied by a nontransfer and use certificate (Form DSP–83) at the time of submission to the Office of Munitions Control. This form is to be executed by the foreign consignee and foreign end-user. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-use.

(b) The DSP–83 may be accepted at a time other than that specified in paragraph (a) of this section if there are special reasons for doing so. A statement of such reasons must accompany the application for a license.

(c) The Office of Munitions Control may also require a DSP–83 for the export of any other defense articles or defense services.

(d) When a DSP–83 is required for an export of any defense article or defense service to a non-governmental foreign end-user, the Office of Munitions Control may require as a condition of issuing the license that the appropriate authority of the government of the country of ultimate destination also execute the certificate. This means that the foreign government undertakes not to authorize the reexport, resale, or other disposition of the defense articles or defense service enumerated in the application without ensuring that the prior written consent of the U.S. Government has been obtained.

(e) All exports of significant military equipment sold under a contract in the amount of $14,000,000 or more or of defense articles and defense services sold under a contract in the amount of $50,000,000 or more may take place only after the Office of Munitions Control notifies the exporter that thirty calendar days have elapsed since receipt by the Congress of the certification required by the Arms Export Control Act. The issuance of a license or other written approval shall serve as notification that this period has elapsed. Persons who intend to export defense articles and services pursuant to the exemption in § 126.5 under the circumstances described in the first sentence of this subsection must notify the Office of Munitions Control by letter of the intended export and provide a DSP–83 signed by the foreign consignee and end-user. Such exports may take place after the Office of Munitions Control notifies the exporter by letter that the thirty day period has elapsed.

§ 123.11 Movements of aircraft and vessels of war outside the United States.

(a) *General.* A license issued by the Office of Munitions Control is required whenever a privately-owned aircraft or vessel of war on the United States Munitions List makes a voyage outside the United States.

(b) *Exemption.* An export license is not required when a vessel or aircraft referred to in section (a) departs from the United States and does not enter the territorial waters or airspace of a foreign country if no defense articles are carried as cargo. Such a vessel or aircraft may not enter the territorial waters or airspace of a foreign country before returning to the United States, or carry as cargo any defense article, without a temporary export license (Form DSP–73) from the Department of State. (See § 123.4).

§ 123.12 Shipments between U.S. possessions.

An export license is not required for the shipment of defense articles between the United States, the Commonwealth of Puerto Rico, and U.S. possessions. A license is required, however, for the export of defense articles from these areas to foreign countries.

§ 123.13 Domestic aircraft shipments via a foreign country.

A license is not required for the shipment by air of a defense article from one location in the United States to another location in the United States via a foreign country. The pilot of the aircraft must, however, file a written statement with the district director of customs at the port of exit in the United States. The original statement must be filed at the time of exit with the district director of customs. A duplicate must be filed at the port of reentry with the district director of customs, who will duly endorse it and transmit it to the district director of customs at the port of exit. The statement will be as follows:

Statement

Domestic Shipment Via a Foreign Country of Articles on the U.S. Munitions List

Under penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shipped from *(U.S. port of exit)* via *(foreign county)* to *(U.S. port of entry)*, which is the final destination in the United States.

Description of Equipment

Quantity: _____
Equipment: _____
Value: _____
Signed: _____
Endorsement: Customs Inspector.
Port of Exit: _____
Date: _____
Signed: _____
Endorsement: Customs Inspector.
Port of Entry: _____
Date: _____

§ 123.14 Import certificate/delivery verification procedure.

The United States and a number of foreign countries have agreed on procedures designed to assure that a commodity imported into their territory will not be diverted, transshipped, or reexported to another destination except in accordance with export control regulations of the importing country. This is known as the Import Certificate/Delivery Verification Procedure (IC/DV) and may be invoked with respect to defense articles.

(a) *Exports.* The Department of State may require the IC/DV procedure on proposed exports of defense articles to non-government entities in the following countries: Austria, Belgium, Denmark, France, Federal Republic of Germany, Greece, Hong Kong, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom. In such cases, U.S. exporters must submit both an export license application (the completed Form DSP–5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Department of State may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export license. Both the "Import Certificate" and the "Delivery Verification" must be furnished to the U.S. exporter by the foreign importer.

(b) *Triangular transactions.* When a transaction involves three or more countries which have adopted the IC/DV procedure, the governments of these countries may stamp a triangular symbol on the Import Certificate. This symbol is usually placed on the Import Certificate when the applicant for the Import Certificate (the importer) stated either (1) that there is uncertainty whether the items covered by the Import Certificate will be imported into the country issuing the Import Certificate; (2) that he or she knows that the items will not be imported into the country issuing the Import Certificate; or (3) that, if the items are to be imported into the country issuing the Import Certificate, they will subsequently be reexported to another destination. Thus, it is possible that the ultimate consignee and the country of ultimate destination will not coincide with that of the importer. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

§ 123.15 [Reserved]

Exemptions

§ 123.16 Obsolete firearms and models.

(a) District directors of customs may permit the export without a license of nonautomatic firearms covered by Category I(a) of § 121.1 if they were manufactured in or before 1898, as well as replicas of such firearms.

(b) District directors of customs may permit the export without a license of unclassified models or mock-ups of defense articles provided that they are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b). U.S. persons who avail themselves of this exemption must provide a written certification to the district director of customs that these conditions are met. This exemption does not imply that the Office of Munitions Control will approve the export of any defense articles for which models or mocks-ups have been exported pursuant to this exemption.

§ 123.17 Exports of firearms and ammunition for personal use.

(a) District directors of customs may permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a)

of § 121.1 and not more than 1,000 cartridges therefor, provided that:

(1) A declaration by the U.S. person and an inspection by a customs officer is made;

(2) The firearms and accompanying ammunition must be with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) They must be for that person's exclusive use and not for resale or other transfer of ownership. The foregoing exemption is not applicable to a crew-member of a vessel or aircraft unless the crew-member declares the firearms to a customs officer upon each departure from the United States, and declares that it is his or her intention to return the articles on each return to the United States. It is also not applicable to the personnel referred to in §123.18.

(b) District directors of customs may permit a foreign person to export without a license such firearms in Category I(a) of § 121.1 and ammunition therefor as the foreign person brought into the United States under the provisions of 27 CFR 178.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain foreign persons for specified purposes.)

(c) District directors of customs may permit U.S. persons to export without a license ammunition for nonautomatic firearms referred to in paragraph (a) of this section if the quantity does not exceed 1,000 cartridges (or rounds) in any shipment. The ammunition must also be for personal use and not for resale or other transfer of ownership. The foregoing exemption is also not applicable to the personnel referred to in § 123.18.

§ 123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.

The following exemptions apply to members of the U.S. Armed Forces and civilian employees of the U.S. Government who are U.S. persons (both referred to herein as "personnel"). The exemptions apply only to such personnel if they are assigned abroad for extended duty. These exemptions do not apply to dependents.

(a) *Firearms.* District directors of customs may permit nonautomatic firearms in Category I(a) § 121.1 and parts therefor to leave (but not be mailed from) the United States without a license if:

(1) They are consigned to servicemen's clubs abroad for uniformed members of the U.S. Armed Forces; or,

(2) In the case of a uniformed member of the U.S. Armed Forces or a civilian employee of the Department of Defense, they are consigned to the personnel for personal use and not for resale or other transfer of ownership, and if the firearms are accompanied by a written authorization from the commanding officer concerned; or,

(3) In the case of other U.S. Government employees, they are consigned to such personnel for personal use and not for resale or other transfer of ownership, and the Chief of the U.S. Diplomatic Mission or his designee in the country of destination has approved in writing to Department of State the bringing of the specific types and quantities of firearms into that country.

(b) *Ammunition.* District directors of customs may permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms referred to in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

§ 123.19 Minor components.

Except as provided in § 126.1, district directors of customs are authorized to permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames), or complete breech mechanisms, when the total value does not exceed $500 wholesale in any single transaction.

§ 123.20 Canadian and Mexican border shipments.

A shipment originating in Canada or Mexico which incidentally transits the United States enroute to a delivery point in the same country that originated the shipment is exempt from the requirement for an intransit license.

§ 123.21 Nuclear materials.

(a) The provisions of this subchapter do not apply to equipment in Category VI(e) and Category XVI of § 121.1 to the extent such equipment is under the export control of the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

(b) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) will not be granted unless the proposed export comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the article is to be exported. Licenses may be granted in the absence of such an agreement only (1) if the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear powerplant, (2) if the proposed export has no relationship to naval nuclear propulsion, and (3) if it is not for use in a naval propulsion plant.

Procedures

§ 123.22 Applications for licenses.

Applications for licenses for the export of defense articles and related technical data under this part must be made to the Office of Munitions Control as follows:

(a) Applications for licenses for permanent export must be made on Form DSP–5 (unclassified).

(b) Intransit license applications must be made on Form DSP–61 (unclassified).

(c) Temporary export license applications must be made on Form DSP–73 (unclassified).

(d) All applications involving the export or intransit shipment of classified defense articles or classified technical data must be made on Form DSP–85.

(e) The following specific procedures apply to the preparation and submission of applications:

(1) Applications for Department of State export licenses must be confined to proposed exports of defense articles and related technical data. Applications for licenses to export commodities under the regulatory jurisdiction of the Department of Commerce must be made directly to that Department.

(2) Form DSP–5, DSP–61, DSP–73, and DSP–85 applications must have an entry in each block where space is provided for an entry. Any supporting documentation concerning commodity, end-use, and specific purpose should be submitted in seven copies. Samples of properly executed applications are available from the Office of Munitions Control.

(3) Form DSP–83, duly executed, must accompany all license applications for the permanent export of significant military equipment except in the circumstances described in § 123.10(b).

(4) Applications for permanent export licenses should not be submitted until the applicant has a firm order, letter of intent or other appropriate documentation from the purchaser or consignee except in the circumstances described in § 123.1(c).

(5) A request under the provisions of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) for confidential treatment of information provided to the Department of State must be made by letter to the Office of Munitions Control.

§ 123.23 Renewal and disposition of licenses.

(a) A license is valid for a period of two years. The license expires if the defense articles described in the license are not shipped within the two-year period. Defense articles to be shipped thereafter require a new application and license. The new application should refer to the expired license. It should not include references to any defense articles other than those of the unshipped balance of the expired license.

(b) Unused, expired, expended, suspended, or revoked licenses must be returned immediately to the Department of State.

§ 123.24 Port of exit or entry.

An application for a license must state the proposed port of exit from the United States. If applicable, the port of entry must also be stated. After a license is issued, the person to whom the license was issued must notify the Office of Munitions Control in writing of any proposed change of the port prior to export. A copy of such written notification must be sent to the district director of customs at the new port.

§ 123.25 Filing of export and intransit licenses and shipper's export declarations with district directors of customs.

(a) The recipient of an export license must deposit the license with the district director of customs at the port of exit designated on the license before shipping the defense article in question. (For exports by mail, see § 123.26.) After a license has been so deposited, the export may be made through the designated port. If necessary, the export may be made through another port if the exporter complies with the procedures established by the U.S. Customs Service and § 123.24. Before shipping any defense article, the exporter must also file a shipper's export declaration (Department of Commerce Form 7525–V) with the district director of customs at the port of exit.

(b) Before any export occurs, the district director of customs at the port of exit must authenticate the shipper's export declaration, and endorse the license to show the shipments actually made. The district director of customs will return a copy of each authenticated shipper's export declaration to the Office of Munitions Control. Every license will also be returned upon the completion of the authorized export or upon the expiration date stated on the license, whichever occurs first.

(c) An exporter must also file a shipper's export declaration with district directors of customs or postmasters in those cases in which no export license is required because of an exemption in this subchapter. The exporter must certify that the export is exempt from the licensing requirements of this subchapter. This is done by writing "22 CFR (*identify section*) applicable" on the shipper's export declaration, and by identifying the section under which an exemption is claimed. A copy of each such declaration must be mailed immediately by the exporter to the Office of Munitions Control. This paragraph does not create an obligation to file a shipper's export declaration if (1) the export is exempt from the licensing requirements of this subchapter pursuant to § 126.4 and (2) it is not otherwise required by law or by regulations other than those contained in this subchapter.

(d) District directors of customs are authorized to permit the shipment of defense articles identified on any license when the total value of the export does not exceed the aggregate monetary value (not quantity) stated on the license by more than ten percent.

§123.26 Shipments by mail.

An export license for defense articles being sent abroad by mail must be filed with the postmaster at the post office where the equipment is mailed. A shipper's export declaration (U.S. Department of Commerce Form 7525–V) must be filed with and be authenticated by the postmaster before the article is actually sent. The postmaster will endorse each license to show the shipments made. Every license must be returned by the postmaster to the Office of Munitions Control upon completion of the mailings or the date that the license expires, whichever occurs first.

§123.27 Temporary exports.

(a) If defense articles are to be sent abroad for brief periods and returned to the United States in the same condition, a license for the temporary export of defense articles must be obtained from the Department of State (Form DSP–73).

(b) Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a district director of customs is available. The license for temporary export must be presented to the district director of customs who, upon verification, will endorse the exit column on the reverse side of the license. The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Upon the return to the United States of defense articles covered by a license for temporary export, the license will be endorsed in the entry column by the district director of customs. This procedure shall be followed for all exits and entries made during the period for which the license is valid. The licensee must send the used license to the Office of Munitions Control immediately upon expiration or after the final return in the case of multiple exports under the same license, whichever occurs first.

PART 124—MANUFACTURING LICENSE AGREEMENTS, TECHNICAL ASSISTANCE AGREEMENTS, AND OTHER DEFENSE SERVICES

Sec.

124.1 Manufacturing license agreements and technical assistance agreements.
124.2 Exemptions for training and military service.
124.3 Exports of technical data in furtherance of an agreement.
124.4 Deposit of signed agreements with the Office of Munitions Control.
124.5 Proposed agreements which are not concluded.
124.6 Termination of manufacturing license agreements and technical assistance agreements.

Procedures

124.7 Required information and clauses in proposed agreements.
124.8 Information required in all agreements.
124.9 Clauses required both in manufacturing license agreements and technical assistance agreements.
124.10 Additional clauses required only in manufacturing license agreements.
124.11 Non-transfer and use assurances.
124.12 Required information in letters of transmittal.

Offshore Procurement and Warehousing Agreements

124.13 Procurement by United States persons in foreign countries (offshore procurement).
124.14 Exports to warehouses or distribution points outside the United States.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§124.1 Manufacturing license agreements and technical assistance agreements.

(a) *General.* The approval of the Office of Munitions Control must be obtained before the defense services

described in § 120.8(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement with the foreign person concerned to the Office of Munitions Control. Such agreements are generally characterized as either "Manufacturing license agreements" or "technical assistance agreements" as defined in § 120.14 and § 120.20, and may not enter into force without the prior written approval of the Office of Munitions Control. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with § 124.3 and § 125.4(b)(2). The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in §120.8(a) (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to §125.4). This requirement also applies to the training of foreign military forces, both regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. (In exceptional cases, the Office of Munitions Control, upon written request, will consider approving the provision of defense services described in §120.8(a) by granting a license under Part 125. Also, see §126.8 for the requirements for prior approval of proposals relating to significant military equipment.)

(b) *Amendments.* Proposed amendments, including extensions, to agreements subject to the requirements of this part must also be submitted for approval. The amendments may also not enter into force until approved by the Office of Munitions Control. Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Office of Munitions Control within thirty days after they are concluded.

§ 124.2 Exemptions for training and military service.

(a) Technical assistance agreements are not required for the provision of training only in the basic operation and maintenance of defense articles lawfully exported or authorized for export to the same recipient.

(b) Services performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of § 120.8.

§ 124.3 Exports of technical data in furtherance of an agreement.

(a) *Unclassified technical data.* District directors of customs or postal authorities may permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license- or technical assistance agreement which has been approved in writing by the Office of Munitions Control. The export is not authorized without a license if it exceeds the scope or limitations of the relevant agreement. The U.S. party to the agreement must certify that the export does not exceed the scope of the agreement and any limitations imposed pursuant to this Part. The approval of the Office of Munitions Control must be obtained for the export of any unclassified technical data which may exceed the terms of the agreement.

(b) *Classified technical data.* The export of classified information in furthernance of an approved manufacturing license or technical assistance agreement which provides for the transmittal of classified information does not require further approval from the Office of Munitions Control when:

(1) The United States party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitaitons in the agreement; and

(2) The United States party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of classified information, and any othe requirements of cognizant U.S. departments or agencies.

§ 124.4 Deposit of signed agreements with the Office of Munitions Control.

The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Office of Munitions Control not later than 30 days after it enters into force.

§ 124.5 Proposed agreements which are not concluded.

The United States party to any proposed manufacturing license agreement or technical assistant agreement must inform the Office of Munitions Control if a decision is made not to conclude the agreement. The information must be provided within 60 days of the date of the decision. These requirements apply only if the approval of the Office of Munitions Control was obtained for the agreement to be concluded (with or without any provisos).

§ 124.6 Termination of manufacturing license agreements and technical assistance agreements.

The United States party to a manufacturing license or a technical assistance agreement must inform the Office of Munitions Control in writing of the impending termination of the agreement not less than 30 days prior to the expiration date of such agreement.

Procedures

§ 124.7 Required information and clauses in proposed agreements.

In order to be approved, all proposed manufacturing license agreements and technical assistance agreements must contain certain information and clauses. The information required is specified in § 124.8. The information required should be provided in terms which are as precise as possible. The clauses which must be included in both manufacturing license agreements and technical assistance agreements are stated in § 124.9. The additional clauses which must be stated in manufacturing license agreements only are specified in § 124.10. If the United States party believes that a clause or some required information is not relevant or necessary in a particular agreement, the Office of Munitions Control may authorize the omission of the information or clause. The transmittal letter accompanying the agreement (see § 124.12) must state the reasons for any proposed variation in the required information or statements.

§ 124.8 Information required in all agreements.

The following information must be included in all manufacturing license agreements and technical assistance agreements:

(a) The agreement must describe the equipment and technology involved. They should be described by military nomenclature, contract number, Federal stock number, nameplate data, or other specific information;

(b) The agreement must describe the assistance and information to be furnished and the manufacturing rights to be granted, if any;

(c) The duration of the proposed agreement must be specified; and

(d) The agreement must specifically identify the countries or areas in which manufacturing, production, processing,

sale or other form of transfer is to be licensed.

§ 124.9 Clauses required both in manufacturing license agreements and technical assistance agreements.

The following statements must be included both in manufacturing license agreements and in technical assistance agreements:

(a) "This agreement shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government."

(b) "This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(c) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(d) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(e) "The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained."

(f) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

§ 124.10 Additional clauses required only in manufacturing license agreements.

(a) *Clauses for all manufacturing license agreements.* The following clauses must be included only in manufacturing license agreements:

(1) "No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained."

(2) "It is agreed that sales by licensee or its sublicensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others."

(3) "If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sublicensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly."

(4) "If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sublicensees with funds derived through the U.S. Government contributions, and subject to the provisions of paragraphs (a) (1) and (2) of this section, no other royalties, fees or other charges may be assessed against U.S Government funded purchases of such article. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by *(applicant or licensee)* to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 126.10(b).)

(6) "*(Licensee)* agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to *(country of ultimate destination or approved sales territory)*. They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(b) *Special clause for agreements relating to significant military equipment.* With respect to an agreement for the production of significant military equipment, the following additional provisions must be included in the agreement:

(1) "A completed nontransfer and use certificate (DSP–83) must be submitted by the recipient to the Department of State of the United States before any transfer under this agreement may take place."

(2) "The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory."

§ 124.11 Nontransfer and use assurances.

A nontransfer and use certificate (Form DSP–83) (see § 123.10) signed by the foreign party to a manufacturing license agreement or technical assistance agreement is required as a condition to the approval of any such agreement which relates to significant military equipment, classified articles or classified technical data. The Office of Munitions Control may at its option require that this certificate or a comparable undertaking be provided before approving any agreement that does not relate to significant military equipment. The Office of Munitions Control may also require as a condition to the approval of the agreement that an appropriate authority to the foreign party's government also execute the certificate, or that the foreign government concerned provide undertakings comparable to those contained in the Form DSP–83 (e.g., in a diplomatic note). Agreements involving classified articles or classified technical data must be accompanied by a nontransfer and use certificate signed by an authorized representative of the foreign government concerned. This

requirement may be waived by the Office of Munitions Control if the foreign party is a foreign government with which the United States has a General Security of Information Agreement or other foreign government security assurance.

§ 124.12 Required information in letters of transmittal.

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The original letter and seven copies of the letter and eight copies of the proposed agreement shall be submitted to the Office of Munitions Control. The explanatory letter shall contain:

(1) A statement giving the applicant's Munitions Control registration number.

(2) A statement identifying the licensee and the scope of the agreement.

(3) A statement identifying the U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government.

(4) A statement giving the military security classification of the equipment or technical data.

(5) A statement identifying any patent application which discloses any of the subject matter of the equipment or technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(6) A statement of the actual or estimated value of the agreement. If the value exceeds $250,000, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to Part 130 of this subchapter.

(b) The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by *(the applicant)* as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will *(the applicant)* construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The *(applicant)* will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "The *(applicant)* will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the *applicant* will so inform the Department within 60 days."

Offshore Procurement and Warehousing Agreements

§ 124.13 Procurement by United States persons in foreign countries (offshore procurement).

Notwithstanding the other provisions in Part 124, the Office of Munitions Control may authorize by means of a license (DSP–5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

(a) The contract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to an agency of the U.S. Government; and

(b) The technical data of U.S. origin to be used in the foreign manufacture does not disclose the details of the design, development, production or manufacture of defense articles; and

(c) The contract or purchase order between the person in the United States and the foreign person:

(1) Limits the use of the technical data to the manufacture of the defense articles required by the contract or purchase order only; and

(2) Prohibits the disclosure of the data to any other person except duly qualified subcontractors within the same country; and

(3) Prohibits the acquisition of any rights in the data by any foreign person; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and

(5) Requires the foreign person, including subcontractors, to destroy or return to the person in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of their terms; and

(6) Requires delivery of the defense articles manufactured abroad only to the person in the United States or to an agency of the U.S. Government; and

(d) The person in the United States provides the Office of Munitions Control with a copy of each contract, purchase order or subcontract for offshore procurement at the time it is accepted. Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the license number or exemption under which the technical data was exported; and

(e) Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to extend beyond the period of validity of the license.

If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements pursuant to 126.4 or 126.5, the DSP–5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section.

§ 124.14 Exports to warehouses or distribution points outside the United States

(a) *General.* Agreements (e.g., contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Office of Munitions Control before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end-use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles (see §123.7).

(b) *Required Information.* Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Office of Munitions Control for approval. The following information must be included in all such agreements:

(1) A precise description of the defense articles involved. This shall include when applicable the military nomenclature, the Federal stock number, nameplate data, and any control numbers under which the defense articles were developed or procured by the U.S. Government.

(2) A detailed statement of the terms and conditions under which the defense articles will be exported and distributed;

(3) The duration of the proposed agreement;

(4) Specific identification of the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory. Consequently, any deviation from this condition must be fully explained and justified. A nontransfer and use certificate (DSP–83) will be required to the same extent required in licensing agreements under § 124.10(b).

(c) *Required Statements.* The following statements must be included in all warehousing and distribution agreements:

(1) "This agreement shall not enter into force, and may not be amended or extended, without the prior written approval of the Department of State of U.S. Government."

(2) "This agreement is subject to all United Sates laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations.

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign by reason of the U.S. Goverment's approval of this agreement."

(5) "No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Munitions Control of the U.S. Department of State."

(6) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient shall be provided by *(applicant or licensee)* to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 126.10(b)).

(7) "*(Licensee)* agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred: These commodities are authorized for export by the U.S. Government only to *(country of ultimate destination or approved sales territory).* They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(d) *Transmittal Letters.* Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Office of Munitions Control. The letter shall contain:

(1) A statement giving the applicant's Munitions Control registration number.

(2) A statement identifying the foreign party to the agreement.

(3) A statement identifying the defense articles to be distributed under the agreement.

(4) A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other proposal to the U.S. Government.

(5) A statement that no classified defense articles or classified technical data are involved.

(6) A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(e) *Required Clauses.* The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by *(applicant)* as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will *(the applicant)* construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement.

(2) "The *(applicant)* will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "The *(applicant)* will furnish the Department of State with one copy of the signed agreement (or amendments thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to expiration. If a decision is made not to conclude the proposed agreement, the *(applicant)* will so inform the Department within 60 days."

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

Sec.
125.1 Exports subject to this Part.
125.2 Exports of unclassified technical data.
125.3 Exports of classified technical data and classified defense articles.

Exemptions

125.4 Exemptions of general applicability.
125.5 Exemptions for plant visits.
125.6 Certification requirements.

Procedures

125.7 Exports of unclassified technical data.
125.8 Exports of classified technical data and classified defense articles.
125.9 Filing of licenses for exports of unclassified technical data.
125.10 Filing of licenses for exports of classified technical data and classified defense articles.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 125.1 Exports subject to this Part.

(a) The export controls of this Part apply to the export of technical data and the export of classified defense articles. Information which is in the "public domain" (see § 120.18) is not subject to the controls of this subchapter.

(b) A license for the export of technical data and the exemptions in § 125.4 may not be used for foreign production purposes or for technical assistance unless the approval of the Department of State has been obtained. Such approval is generally provided only pursuant to the procedures specified in Part 124 of this subchapter.

(c) Technical data authorized for export may not be diverted or transferred from the country of ultimate end-use (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Department of State.

(d) The export controls of this Part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Office of Munitions Control to be subject to the controls of this subchapter.

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e) and Category XVI. The export of such data is controlled by the Department of Energy

and the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

§ 125.2 Exports of unclassified technical data.

(a) *General.* A license issued by the Department of State is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter.

(b) *Patents.* A license issued by the Department of State is required for the export of technical data whenever the data exceeds that which is used to support a domestic filing of a patent application or to support a foreign filing of a patent application whenever no domestic application has been filed. The export of technical data to support the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent and Trademark Office pursuant to 35 U.S.C. 184.

(c) *Disclosures.* Unless otherwise expressly exempted in this subchapter, a license is required for the oral, visual or documentary disclosure of technical data to foreign nationals in connection with visits by U.S. persons to foreign countries, visits by foreign persons to the United States, or otherwise. A license is required regardless of the manner in which the technical data is transmitted (e.g., in person, by telephone, correspondence, electronic means, telex, etc.). A license is required for such disclosures in connection with visits by U.S. persons to foreign diplomatic missions and consular offices.

§ 125.3 Exports of classified technical data and classified defense articles.

(a) A request for authority to export defense articles or technical data classified pursuant to Executive Order 12356 or other legal authority must be submitted to the Office of Munitions Control for approval. The application must contain full details of the proposed transaction. A nontransfer and use certificate (Form DSP–83) executed by the foreign consignee, end-user and an authorized representative of the foreign government involved will be required. This requirement may be waived by the Office of Munitions Control if the end-user is a foreign government with which the United States has a General Security of Information Agreement or other foreign government security assurance (e.g., diplomatic note).

(b) Classified technical data which is approved by the Department of State either for export or reexport after a temporary import will be transferred or disclosed only in accordance with the requirements relating to the transmission of classified information in the Department of Defense Industrial Security Manual. Any other requirements imposed by cognizant U.S. departments and agencies must also be satisfied.

(c) The approval of the Department of State must be obtained for the export of technical data by a U.S. person to a foreign person in the U.S. or in a foreign country unless the proposed export is exempt under the provisions of this subchapter.

(d) All communications relating to a patent application covered by an invention secrecy order are to be addressed to the U.S. Patent and Trademark Office (See 37 CFR 5.11).

Exemptions

§ 125.4 Exemptions of general applicability.

(a) The following exemptions apply to exports of technical data for which no license or other approval is needed from the Office of Munitions Control. These exemptions do not apply to exports to proscribed destinations under § 126.1. Unless specifically indicated, these exemptions do not apply to classified information. Transmission of classified information must comply with the requirements of the Department of Defense Industrial Security Manual and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.

(b) The following exports are exempt from the licensing requirements of this subchapter:

(1) Technical data, including classified information, to be disclosed pursuant to an official written request or directive from the U.S. Department of Defense;

(2) Technical data, including classified information, in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State under Part 124 of this subchapter and which meet the requirements of § 124.3;

(3) Technical data, including classified information, in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for the export of the relevant technical data and such data does not disclose the details of design, development, production, or manufacture of any defense article;

(4) Additional copies of technical data, including classified information, previously exported or authorized for export to the same recipient. Revised copies of such technical data are also exempt if they pertain to the identical defense article, and if the revisions are solely editorial and do not add to the content of technology previously exported or authorized for export to the same recipient;

(5) Technical data in the form of operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient. This exemption applies only to exports by the original exporter;

(6) Technical data related to firearms not in excess of caliber .50 and ammunition for such weapons, except detailed design, development, production or manufacturing information;

(7) Technical data being returned to the original source of import;

(8) Technical data directly related to classified information which has been previously exported in accordance with this Part to the same recipient, and which does not disclose the details of the design, development, production, or manufacture of any defense article;

(9) Technical data, including classified information, sent by a U.S. corporation to a U.S. person employed by that corporation overseas or to a U.S. Government agency. This exemption is subject to the limitations of § 125.1(b) and may be used only if (i) the technical data is to be used overseas solely by U.S. persons and (ii) if the U.S. person overseas is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary;

(10) Disclosures of technical data in the U.S. by U.S. institution of higher learning to foreign persons who are their bona fide and full time regular employees. This exemption is available only if (i) the employee's permanent abode throughout the period of employment is in the United States; (ii) the employee is not a national of a country to which exports are prohibited pursuant to § 126.1; and (iii) the institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the Office of Munitions Control;

(11) Technical data, including classified information, for which the exporter, pursuant to an arrangement with the Department of Defense or NASA which requires such exports, has been granted an exemption in writing from the licensing provisions of this Part by the Office of Munitions Control. Such an exemption will normally be granted only if the arrangement directly implements an international agreement to which the United States is a party and if multiple exports are contemplated. The Office of Munitions Control, in consultation with the relevant U.S. Government agencies, will determine whether the interests of the United States Government are best served by expediting exports under an arrangement through an exemption. (See also paragraph (b)(3) of this section for a related exemption.);

(12) Technical data which is specifically exempt under Part 126 of this subchapter; or

(13) Technical data approved for public release (i.e., unlimited distribution) by the U.S. Government department or agency which originated or developed the information. This exemption is applicable to information approved by the cognizant U.S. Government department or agency for public release in any form (e.g., publications, speeches, conference papers, movies, etc.). It does not require that the information be published in order to qualify for the exemption.

§ 125.5 Exemptions for plant visits.

(a) A license is not required for the oral and visual disclosure of unclassified technical data during the course of a classified plant visit by a foreign person, provided (1) the classified visit has itself been authorized pursuant to a license issued by the Office of Munitions Control; or (2) the classified visit was approved in connection with an actual or potential government-to-government program or project by a U.S. Government agency having classification jurisdiction over the classified defense article or classified technical data involved under Executive Order 12356 or other applicable Executive Order; and (3) the unclassified information to be released is directly related to the classified defense article or technical data for which approval was obtained and does not disclose the details of the design, development, production or manufacture of any other defense articles. In the case of U.S. Government approved visits, the requirements of the Defense Industrial Security Manual (Department of Defense Manual 5220.22M) must be met.

(b) The approval of the Office of Munitions Control is not required for the disclosure of oral and visual classified information to a foreign person during the course of a plant visit approved by the appropriate U.S. Government agency if (1) the requirements of the Defense Industrial Security Manual have been met, (2) the classified information is directly related to that which was approved by the U.S. Government agency, (3) it does not exceed that for which approval was obtained, and (4) it does not disclose the details of the design, development, production or manufacture of any other defense articles.

(c) A license is not required for the documentary disclosure to a foreign person of unclassified technical data during the course of a plant visit (either classified or unclassified) approved by the Office of Munitions Control or a U.S. Government agency provided the documents do not contain technical data in excess of that approved for oral and visual disclosure. The documents must not contain technical data which could be used for design, development, production or manufacture of a defense article.

§ 125.6 Certification requirements.

To claim an exemption for the export of technical data under the provisions of § 125.4 and § 125.5, an exporter must certify that the proposed export is covered by a relevant paragraph of that section. This certification is not required if the technical data is only disclosed orally or visually. The certification referred to in this section consists of marking the package or letter containing the technical data: "22 CFR 125. (*identify subsection*) applicable" and identifying the specific paragraph under which the exemption is claimed. In the case of unclassified technical data, district directors of customs may require that the certification be made on a shipper's export declaration.

Procedures

§ 125.7 Exports of unclassified technical data.

(a) *General.* Unless an export is exempt from the licensing requirements of this subchapter, an application for the permanent export of unclassified technical data must be made to the Office of Munitions Control on Form DSP–5. If the technical data is to be returned to the United States, Form DSP–73 should be used instead. In the case of a visit, sufficient details of the proposed discussions must be transmitted for an adequate appraisal of the data. Seven copies of the data or the details of the discussions must be provided. Only one copy must be provided if a renewal of the license is requested.

(b) *Patents.* Requests for the filing of patent applications in a foreign country and requests for the filing of amendments, modifications or supplements to such patents must be directed to the U.S. Patent and Trademark Office in accordance with 37 CFR Part 5. If an applicant complies with the regulations of that office, the approval of the Office of Munitions Control is required only in the circumstance described in § 125.2(b). In such cases, an application must be submitted in accordance with the provisions of paragraph (a) of this section.

§ 125.8 Exports of classified technical data and classified defense articles.

All applications for the export or temporary import of classified technical data or classified defense articles must be submitted to the Office of Munitions Control on Form DSP–85. Applications will be accepted from U.S. nationals only. An application for the export of classified technical data must be accompanied by seven copies of the data and a completed Form DSP–83 (see § 123.10). An application for the export of classified defense articles must be accompanied by seven copies of descriptive information and a completed Form DSP–83. Only one copy of the data or descriptive literature must be provided if a renewal of the license is requested. All classified materials accompanying an application must be transmitted to the Office of Munitions Control in accordance with the requirements of section II of the Defense Industrial Security Manual (Department of Defense Manual Number 5220.22–M).

§ 125.9 Filing of licenses for exports of unclassified technical data.

Licenses for the export of unclassified technical data must be deposited with the appropriate district director of customs or postmaster at the time of shipment or mailing. The district director of customs or postmaster will endorse and transmit the licenses to the Office of Munitions Control in accordance with the instructions contained on the reverse side of the license. If a license for the export of unclassified technical data is used but not endorsed by U.S. Customs or a postmaster for whatever reason, the person exporting the data must self-endorse the license and return it promptly to the Office of Munitions Control.

§ 125.10 Filing of licenses for exports of classified technical data and classified defense articles.

Licenses for the export of classified technical data or classified defense articles will be forwarded by the Office of Munitions Control to the Defense Investigative Service of the Department of Defense in accordance with the provisions of the Department of Defense Industrial Security Manual. The Office of Munitions Control will forward a

copy of the license to the applicant for the applicant's information. The Defense Investigative Service will return the endorsed license to the Office of Munitions Control upon completion of the authorized export or expiration of the license, whichever occurs first.

PART 126—GENERAL POLICIES AND PROVISIONS

Sec.

126.1 Prohibited shipments to or from certain countries.
126.2 Temporary suspension or modification of this subchapter.
126.3 Waiver.
126.4 Shipments by or for United States Government agencies.
126.5 Canadian exemptions.
126.6 Foreign military aircraft and naval vessels, and the Foreign Military Sales program.
126.7 Denial, revocation, suspension or amendment of licenses and agreements.
126.8 Proposals to foreign persons relating to significant military equipment.
126.9 Advisory opinions.
126.10 Disclosure of information to the public.
126.11 Relation to other provisions of law.
126.12 Continuation in force.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 6a86); E.O. 11958 (42 FR 4311, January 18, 1977); E.O. 11322, 32 FR 119, 22 U.S.C. 2658.

§ 126.1 Prohibited shipments to or from certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services destined for or originating in certain countries or areas. This policy also applies to exports to and imports from these countries or areas. This policy applies to Albania, Bulgaria, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Kampuchea, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, the Soviet Union and Vietnam. This policy also applies to countries or areas with respect to which the United States maintains an arms embargo or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. The exemptions provided in the regulations in this subchapter, except § 123.17 of this subchapter, do not apply with respect to exports to or originating in any of such proscribed countries or areas.

(b) *Shipments.* A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

§ 126.2 Temporary suspension or modification of this subchapter.

The Director, Office of Munitions Control, may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

§ 126.3 Waiver.

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Director, Office of Munitions Control may make an exception to the provisions of this subchapter.

§ 126.4 Shipments by or for United States Government agencies.

(a) A license is not required for the export of any defense article or technical data by or for any agency of the U.S. Government (1) for official use by such an agency, or (2) for carrying out any foreign assistance, cooperative or sales program authorized by law and subject to control by the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are effected by a United States Government agency, or when the export is covered by a United States Government Bill of Lading. This exemption, however, does not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements. The approval of the Office of Munitions Control must be obtained before defense articles exported pursuant to this exemption are permanently transferred to a foreign person (e.g., property disposal of surplus defense articles overseas) unless (i) the transfer is pursuant to a sale, lease, or loan under the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, or (ii) the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

(b) This section does not authorize any department or agency of the U.S. Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute.

(c) A license is not required for the export of any defense article or technical data for end-use by a U.S. Government Agency under the following circumstances:

(1) The export is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

(2) The end-user is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person; and

(3) The urgency of the U.S. Government requirement is such that the appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner. A written statement certifying that these requirements have been met will be presented at the time of export to the appropriate district director of customs or Department of Defense transmittal authority, and shall be provided to the Office of Munitions Control.

§ 126.5 Canadian exemptions.

(a) *General.* District directors of customs and postmasters may permit the export without a license of any unclassified defense article or any unclassified technical data to Canada for end-use in Canada or return to the United States, with the exception of the articles or technical data listed in paragraph (b) of this section.

(b) *Exceptions.* The exemptions of this section do not apply to the following articles and technical data:

(1) Fully automatic firearms in Category I(a) which are not for end-use by the Federal Government, or a Provincial or Municipal Government of Canada;

(2) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(3) Nuclear weapon design and test equipment listed in Category XVI;

(4) Naval nuclear propulsion equipment listed in Category VI(e);

(5) Aircraft listed in Category VIII(a);

(6) Submersible and oceanographic vessels and related articles listed in Category XX (a) through (e).

(c) *Related requirements.* The foregoing exemption from obtaining an export license does not exempt an exporter from complying with the requirements set forth in § 123.10(e) or from filing the shipper's export declaration required by § 123.25.

(d) *Part 124 agreements.* The requirements of Part 124 of this subchapter must be complied with in the situations contemplated in that Part. For example, the exemptions of this section may not be used for the manufacture in Canada of defense articles, except under the provisions of § 124.13.

§ 126.6 Foreign military aircraft and naval vessels, and the Foreign Military Sales program.

(a) *General.* A license is not required for the export of any defense article if:

(1) The article was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, and

(2) The article was delivered to representatives of such a country or organization in the United States; and

(3) The article is to be exported from the United States on a military aircraft or naval vessel of that government or organization.

(b) *Foreign military aircraft and naval vessels.* A license is not required for the entry into the United States of military aircraft of any foreign state if no overhaul, repair, or modification of the aircraft is to be performed. Department of State approval for overflight (pursuant to the 49 U.S.C. 1508) and naval visits must, however, be obtained.

(c) *Procedures for the Foreign Military Sales program.*

(1) *General.* District directors of customs are authorized to permit the export of unclassified defense articles, defense services, and technical data without a license if they were sold by the U.S. Department of Defense to foreign governments or international organizations under the Foreign Military Sales (FMS) program of the Arms Export Control Act. This procedure may be used only if a proposed export is:

(i) Pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513); and

(ii) Accompanied by a properly executed DSP–XX; and

(iii) Made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Office of Munitions Control pursuant to Part 122 of this subchapter.

(2) *Filing of documents.*

(i) The original copy of completed Form DSP–XX, together with one copy of the corresponding authenticated DD Form 1513 and a shipper's export declaration, must be filed with the District director of customs at the port of exit prior to actual shipment. An executed DD Form 1513 is one which has been signed by (A) an authorized Department of Defense representative and countersigned by the Comptroller, Defense Security Assistance Agency (DSAA), and (B) by an authorized representative of the foreign government, and which has been stamped:

Implemented *(date)*.

(ii) *SED.* The shipper's export declaration must be annotated as follows:

This shipment is being exported under the authority of Department of State Form DSP–XX. It covers FMS Case *(case identification)*, expiration date——. 22 CFR 126.6 applicable.

(iii) *Notification to the Office of Munitions Control.* Copy number two of the completed Form DSP–XX should be removed by the exporter and sent immediately, together with a copy of the applicable authenticated DD Form 1513 and the Shipper's export declaration, to the Office of Munitions Control. Form DSP–XX shall be valid for two years from the date on which it is executed.

§ 126.7 Denial, revocation, suspension, or amendment of licenses and agreements.

(a) *Policy.* An export license or a manufacturing license agreement or a technical assistance agreement may be disapproved and a previous approval or license or exemption under this subchapter may be revoked, suspended, or amended without prior notice whenever (1) the Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States; or (2) whenever the Department of State believes that 22 U.S.C. 2778 or any regulation contained in this subchapter has been violated; or (3) whenever a party to the agreement has been debarred under § 127.6 of this subchapter; or (4) whenever an order of debarment or suspension has been made applicable to an applicant, licensee, or party to an approved or proposed agreement pursuant to Part 127 of this subchapter or pursuant to 15 CFR Part 388; or (5) whenever a person who has been debarred or suspended has a significant interest in the transaction.

(b) *Notification.* The Office of Munitions Control will notify applicants or licensees or other appropriate United States persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.

(c) *Reconsideration.* If a written request for reconsideration of an adverse decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Office of Munitions Control.

§ 126.8 Proposals to foreign persons relating to significant military equipment.

(a) *General.* The approval of the Office of Munitions Control must be obtained before a proposal or presentation (with the exception of those listed in paragraph (g)) which has the following characteristics is made to any foreign person:

(1) The proposal or presentation is designed to constitute a basis for a decision on the part of the foreign person to either (i) purchase significant military equipment on the United States Munitions List pursuant to a contract for $14,000,000 or more; or (ii) enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment; and

(2) The equipment is intended for use by the armed forces of a foreign country; and

(3) The sale or agreement would involve the export from the United States of any defense article or the furnishing of any defense service, including the furnishing of technical data.

(b) *Definition of "Proposal or Presentation".* The terms "proposal or presentation is designed to constitute a basis for a decision . . . to purchase" and "enter into any agreement" mean the communication of information in sufficient detail that the person communicating that information knows or should know that it would permit an intended purchaser to decide to either acquire the particular equipment in question or to enter into the manufacturing license agreement or technical assistance agreement. For example, a presentation which describes the equipment's performance characteristics, price, and probable availability for delivery would require prior approval in any case where the three criteria specified in paragraph (a) of this section are met. By contrast the following would not require prior approval: advertising or other reporting in a publication of general circulation; preliminary discussions to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular item of significant military equipment.

(c) *Statement to accompany licensing requests.*

(1) Every application for an approval of an export license to implement a sale or agreement which meets the three criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific approval previously granted with respect to the transaction; or

conveyance which is owned or operated

circumstances:

the provisions of § 124.13.

(ii) Certifies that no proposal or presentation requiring prior approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the three criteria specified in paragraph (a) of this section.

(d) *Satisfaction of requirements.* The requirement of this section for prior approval is met by any of the following:

(1) A written statement from the Office of Munitions Control approving the proposed sale or agreement or approving the making of a proposal or presentation.

(2) A license issued under § 125.2 or § 125.3 for the export of technical data relating to the proposed sale or agreement to the country concerned.

(3) A temporary export license issued under § 123.27 relating to the proposed sale or agreement for a demonstration to the armed forces of the country of export.

(4) With respect to manufacturing license agreements or technical assistance agreements, the application for export licenses pursuant to the two preceding subparagraphs must state that they are related to possible agreements of this kind.

(e) *Penalties.* In addition to other remedies and penalties prescribed by law or this subchapter, a failure to obtain the approval required by paragraph (a) of this section may be considered to be a reason for disapproval of a license, agreement or sale under the Foreign Military Sales Program of the Department of Defense.

(f) *Procedures.* A request for an approval to make a proposal or presentation with respect to significant military equipment must be by letter to the Office of Munitions Control, unless a license has been obtained pursuant to § 126.8(d). The letter must outline in detail the intended transaction, including usage of the equipment involved and the country (or countries) involved. Seven copies of the letter should be provided as well as seven copies of suitable descriptive information concerning the equipment.

(g) *Exception.* The approval of the Office of Munitions Control is not required for purposes of paragraph (a) of this section if the proposed sale is to the armed forces of a member of NATO, Australia, Japan, or New Zealand. This exemption is not available with respect to manufacturing license agreements or technical assistance agreements.

§ 126.9 Advisory opinions.

A U.S. person desiring information as to whether the Office of Munitions Control would be likely to grant a license or other approval for the export of particular defense articles or defense services to a particular country may use the Office of Munitions Control's informal "Advisory Opinions" procedure. These opinions are advisory only. They are not binding on the Department of State and are revocable. A request for an advisory opinion must be by letter. It must outline in detail the equipment, its usage, the security classification, if any, of the articles or related technical data, and the country or countries involved. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service. If a request for an advisory opinion involves more than one country, the letter should address only those countries in the same geographic area.

§ 126.10 Disclosure of information to the public.

(a) *General.* Subchapter R of this Title of CFR contains regulations on the availability to the public of information and records of the Department of State. The provisions of Subchapter R apply to such disclosures by the Office of Munitions Control.

(b) *Determinations required by law.* Section 38 of the Arms Export Control Act (22 U.S.C. 2778) provides that certain information required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with the procedures specified by that provision. Any determinations required by section 38(e) shall be made by the Under Secretary for Security Assistance, Science, and Technology.

(c) *Information required under Part 130.* Part 130 of this subchapter contains specific provisions on the disclosure of information described in that Part.

§ 126.11 Relation to other provisions of law.

The provisions in this subchapter are in addition to, and are not in lieu of, any other provisions of law or regulations. The sale of firearms in the United States, for example, remains subject to the provisions of the Gun Control Act of 1968 and regulations administered by the Department of the Treasury. The performance of defense services on behalf of foreign governments by retired military personnel continues to require consent pursuant to Part 3a of this Title. Persons who intend to export defense articles or furnish defense services should consequently not assume that satisfying the requirements of this subchapter relieves one of other requirements of law.

§ 126.12 Continuation in force.

All determinations, authorizations, licenses, approvals of contracts and agreements and other action issued, authorized, undertaken, or entered into by the Department of State pursuant to section 414 of the Mutual Security Act of 1954, as amended, or under the previous provisions of this subchapter, continue in full force and effect until or unless modified, revoked or superseded by the Department of State.

PART 127—VIOLATIONS AND PENALTIES

Sec.

127.1 Violations in general.
127.2 Misrepresentation and omission of facts.
127.3 Penalties for violations.
127.4 Authority of U.S. Customs Service officers.
127.5 Seizure and forfeiture in attempts at illegal exports.
127.6 Debarment.
127.7 Interim suspension.
127.8 Applicability of orders.
127.9 Civil penalty.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22. U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 686); E.O. 11958, 42 FR 4311, 22 U.S.C. 401; 22 U.S.C. 2655.

§ 127.1 Violations in general.

(a) It is unlawful (1) to export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter; (2) to import or attempt to import any defense article whenever a license is required by this subchapter without first obtaining the required license or written approval from the Department of State; or (3) to violate any of the terms or conditions of licenses or approvals granted puruant to this subchapter.

(b) Any person who is granted a license or other approval under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense articles or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense articles or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary

custody of a defense article exported from the United States or produced under an agreement described in Part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner-transferor.

(c) A person with knowledge that another person is then subject to an order of debarment, or interim suspension, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization of, the Office of Munitions Control:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) for such debarred or suspended person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward transport, finance, or otherwise service or participate in any transaction which may involve any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter for export from the United States, where such debarred or suspended person may obtain any benefit therefrom or have any direct or indirect interest therein.

(d) No person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

§ 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use any export or intransit control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter. Any false statement, misrepresentation, or omission of material fact in an export or intransit control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778 and 22 U.S.C. 2779.

(b) For the purpose of this section, "export or intransit control documents" include the following:

(1) An application for a permanent export or an intransit license and supporting documents.

(2) Shipper's export declaration.

(3) Invoice.

(4) Declaration of destination.

(5) Delivery verification.

(6) Application for temporary export.

(7) Application for registration.

(8) Purchase order.

(9) Foreign import certificate.

(10) Bill-of-lading.

(11) Air waybill.

(12) Nontransfer and Use Certificate.

(13) Any other document used in the regulation or control of defense articles, defense services and technical data for which license or approval is required by this subchapter.

§ 127.3 Penalties for violations.

Any person who willfully:

(a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by Part 124 of this subchapter; or

(b) In a registration, license application or report required by section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, be subject to fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

§ 127.4 Authority of U.S. Customs Service officers.

(a) U.S. Customs Service officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) Upon the presentation to a customs officer of a license or written approval authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs Service.

§ 127.5 Seizure and forfeiture in attempts at illegal exports.

(a) An attempt to export from the United States any defense articles in violation of the provisions of this subchapter constitutes an offense punishable under section 401 of Title 22 of the United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of Title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a Temporary Export or Intransit License was issued pursuant to this subchapter or to violate the requirements of § 123.2 also constitutes an offense punishable under section 401 of Title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject to seizure, forfeiture, and disposition as provided in section 401 of Title 22 of the United States Code.

§ 127.6 Debarment.

(a) The Director, Bureau of Politico-Military Affairs, Department of State may debar (i.e., prohibit) any person from participating directly or indirectly in the export of defense articles or technical data or in the furnishing of defense services for which a license or approval is required by this subchapter for any of the causes listed below. The following are causes for debarment:

(1) Conviction of a criminal offense as defined in § 127.3.

(2) Any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such character as to provide a reasonable basis to believe and determine that the violator cannot be relied upon to comply with the statute, rules, or regulations in the future, and when such violation is established in accordance with §§ 128.2–128.16 of this chapter.

(3) A decision by the Office of Export Administration of the International Trade Administration of the Department of Commerce to deny, suspend, or revoke export privileges to the person under 15 CFR Part 388 and the Export Administration Act of 1979, as amended, or to exclude the person from practice before the International Trade Administration under 15 CFR 390.2 and under the Export Administration Act of 1979, as amended, whenever the facts provide a reasonable basis for concluding that the person cannot be relied upon to comply in the future with 22 U.S.C. 2778 or with the rules or regulations issued thereunder.

(b) A person who has been debarred for more than 12 months may petition the Hearing Commissioner to vacate or modify the order of debarment. The petition must be filed with the Hearing Commissioner, and a copy simultaneously filed with the Office of

Munitions Control. At his or her discretion, the Hearing Commissioner may require the submission of evidence and arguments, oral or written or both. The Hearing Commissioner, after considering the petition and any evidence and arguments with respect thereto, shall at the earliest practicable date submit a report and recommendations to the Director, Bureau of Politico-Military Affairs, Department of State. The Director may issue an appropriate order disposing of the petition and the moving party will be informed.

§ 127.7 Interim suspension.

(a) The Director of the Office of Munitions Control is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.6) exist and where and to the extent the Director finds that the interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States, pending the final disposition of debarment proceedings. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article for which a license or approval is required by this subchapter. The suspended person shall be sent a charging letter as provided in § 128.3 of this subchapter. A copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3. The interim suspension order may be made effective immediately, without prior notice or hearing. The order will briefly recite the relevant facts, state the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days unless proceedings under §§ 128.2 through 128.16 of this subchapter or criminal proceedings are initiated before the expiration of that period.

(b) A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Hearing Commissioner. A copy shall be filed with the Office of Munitions Control. An oral hearing, if requested, will be held before the Hearing Commissioner at the earliest practicable date. The Hearing Commissioner, after considering the assembled record, will submit a report and recommendations to the Director, Bureau of Politico-Military Affairs, Department of State. The Director will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

(c) Except for the particular application or license which is itself the basis of any investigation or proceeding, no license application filed by any person may be returned without action, held without action, or rejected, solely because such person is under investigation, or because proceedings against that person are pending, other than in accordance with the terms of an interim suspension order issued under § 127.7(a).

§ 127.8 Applicability of orders.

For the purpose of preventing evasion, orders of the Director, Bureau of Politico-Military Affairs, debarring a person under § 127.6 and orders of the Director, Office of Munitions Control, suspending a person under § 127.7 may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to charges will be given.

§ 127.9 Civil penalty.

(a) The Director, Bureau of Politico-Military Affairs, Department of State is authorized to impose a civil penalty in an amount not to exceed that authorized by 50 U.S.C. Appendix 2410(c) for each violation of 22 U.S.C. 2778, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Office of Munitions Control may make the payment of a civil penalty under this section a prior condition for the issuance, restoration, or continuing validity of any export license.

PART 128—ADMINISTRATIVE PROCEDURES

Sec.

128.1 Exclusion of functions from the Administrative Procedure Act.
128.2 Presiding Official.
128.3 Institution of administrative proceedings.
128.4 Default.
128.5 Answer and demand for oral hearing.
128.6 Discovery.
128.7 Prehearing conference.
128.8 Hearings.
128.9 Proceedings before and report of Presiding Official.
128.10 Disposition of proceedings.
128.11 Consent agreements.
128.12 Rehearings.
128.13 Appeals.
128.14 Confidentiality of proceedings.
128.15 Orders containing probationary periods.
128.16 Extension of time.
128.17 Availability of orders.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 686); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

§ 128.1 Exclusion of functions from the Administrative Procedure Act.

The functions conferred by section 38 of the Arms Export Control Act are excluded from 5 U.S.C. 553 and 554.

§ 128.2 Presiding Official.

The Presiding Official referred to in this Part is the Presiding Official of the International Trade Administration of the Department of Commerce, as provided in 15 CFR 388.2. The Presiding Official is authorized to exercise the powers and perform the duties provided for in §§ 127.6, 127.7 and 128.3 through 128.16.

§ 128.3 Institution of administrative proceedings.

(a) *Charging letters.* The Director, Office of Munitions Control, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate debarment proceedings in accordance with § 127.6 of this subchapter or civil penalties in accordance with 127.9 of this subchapter. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice that if the respondent is found to have committed the alleged violation, he or she may be prohibited from participating in the export of any defense article or technical data or in the furnishing of any defense service, for which a license or approval is required by this subchapter, or that civil penalties may be imposed. The charging letter will require the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within 7 days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

(1) If the respondent is a resident of the United States, when it is mailed postage pre-paid in a wrapper addressed to the respondent at his or her last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an agreement or understanding between the United States Government and the government of the country wherein the respondent resides permitting this action.

§ 128.4 Default.

(a) *Failure to answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Presiding Official for consideration in a manner as the Presiding Official may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted in duplicate to the Director, Bureau of Politico-Military Affairs, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520. The Director will refer the petition to the Presiding Official for consideration and a recommendation. The Presiding Official will consider the application and may order a hearing and require the respondent to submit further evidence in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

§ 128.5 Answer and demand for oral hearing.

(a) *When to answer.* The respondent is required to answer the charging letter within 30 days after service.

(b) *Contents of answer.* An answer must be responsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as a denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If the respondent does not demand an oral hearing, he or she shall transmit, within 7 days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any such materials are in a language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the Office of EAR Administrative Proceedings, United States Department of Commerce, Room 3810, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. A copy shall be simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, D.C. 20520.

§ 128.6 Discovery.

(a) *Discovery by the respondent.* The respondent, through the Presiding Official, may request from the Office of Munitions Control any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Munitions Control may supply summaries in place of original documents and may withhold information from discovery if the interests of national security so require, or if necessary to comply with any statute, executive order or regulation requiring that the information not be disclosed. The respondent may request the Presiding Officer to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Munitions Control.* The Office of Munitions Control or the Presiding Official may request from the respondent admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope, and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Presiding Official may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records, and other documentary or physical evidence determined by the Presiding Official to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) *Enforcement of discovery rights.* If the Office of Munitions Control fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Presiding Official may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Munitions Control or the Presiding Official, on her or his own motion or motion of the Office of Munitions Control, and upon such notice to the respondent as the Presiding Official may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Presiding Official deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Presiding Official shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Presiding Official shall dismiss the charges.

§ 128.7 Prehearing conference.

(a) The Presiding Official may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider (1) simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) such other matter as may expedite the disposition of the proceeding. The Presiding Official will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties. The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Presiding Official.

(b) If a conference is impracticable, the Presiding Official may request the parties to correspond with him or her to

achieve the purposes of a conference. The Presiding Official shall prepare a summary of action taken as in the case of a conference.

§ 128.8 Hearings.

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Presiding Official as provided in § 128.4(a). If an answer is filed, but no oral hearing demanded, the Presiding Official may proceed to consider the case upon the written pleadings and evidence available. The Presiding Official may provide for the making of the record in such manner as the Presiding Official deems appropriate. If respondent answers and demands an oral hearing, the Presiding Official, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) Hearings will be conducted by the Presiding Official in a fair and impartial manner. The rules of evidence prevailing in courts of law do not apply, but all evidentiary material relevant and material to the inquiry will be received and given appropriate weight. Diligent effort shall be made to declassify or to secure unclassified summaries or extracts of classified materials, when not contrary to any statute or security regulation. The Presiding Official will compare an unclassified summary or extract with the related classified materials. If he finds that the summary or extract is supported by the classified materials and omits only so much as remains classified, he may admit the unclassified summary or extract as part of the record, to the extent that such summary or extract is relevant and material. The respondent may submit evidence in explanation or contradiction thereof. The respondent is not entitled to inspect classified materials.

(c) The Presiding Official may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Presiding Official, the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Presiding Official. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

§ 128.9 Proceedings before and report of Presiding Official.

(a) The Presiding Official may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Presiding Official, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Presiding Official's recommendations. It shall be transmitted to the Director, Bureau of Politico-Military Affairs, Department of State.

§ 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Director, Office of Munitions Control or the Presiding Official will dismiss the charges. Where the Presiding Official finds that a violation has been committed, the Presiding Official's recommendation shall be advisory only. The Director, Bureau of Politico-Military Affairs will review the record, consider the report of the Presiding Official, and make an appropriate disposition of the case. The Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.6 of this subchapter, impose a civil penalty as provided in § 127.9 of this chapter or take such other action as the Presiding Official deems appropriate. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Presiding Official's report will be served upon the respondent.

§ 128.11 Consent agreements.

(a) The Office of Munitions Control and the respondent may, by agreement, submit to the Presiding Official a proposal for the issuance of a consent order. The Presiding Official will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Presiding Official does not approve the proposal, the Presiding Official will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Presiding Official will report the facts of the case along with recommendations to the Director, Bureau of Politico-Military Affairs. If the Director does not approve the proposal, the case will proceed as though no consent proposal had been made. If the Director approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for the approval and signature of the Director, Bureau of Politico-Military Affairs, and no action by the Presiding Official shall be required. Cases which are settled may not be reopened or appealed.

§ 128.12 Rehearings.

The Presiding Official may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Presiding Official will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (described in § 128.10).

§ 128.13 Appeals.

(a) *Filing of appeals.* An appeal must be in writing, and be addressed to and filed with the Under Secretary of State for Security Assistance, Science and Technology, Department of State, Washington, D.C. 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

(b) *Grounds and conditions for appeal.* The respondent may appeal from a debarment or from the imposition of a civil penalty (except the imposition of civil penalties pursuant to a consent order pursuant to § 128.11) upon the ground: (1) That the findings of a violation are not supported by any substantial evidence; (2) that a prejudicial error of law was committed; or (3) that the provisions of the order are arbitrary, capricious, or an abuse of discretion. The appeal must specify upon which of these grounds the appeal is based and must indicate from which provisions of the order the appeal is taken. An appeal from an order issued upon default will not be entertained if the respondent has failed to seek relief as provided in § 128.4(b).

(c) *Matters considered on appeal.* An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Presiding Official, the report of the Presiding Official, the order of the Director, Bureau of Politico-Military Affairs, and any other relevant documents involved in the proceedings before the Presiding Official. The Under Secretary for Security Assistance, Science and Technology may direct a rehearing and reopening before the Presiding Official if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearings.

(d) *Effect of appeals.* The taking of an appeal will not stay the operation of any order.

(e) *Preparation of appeals.*

(1) General requirements. An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, D.C. 20520.

(2) Oral presentation. The Under Secretary for Security Assistance, Science and Technology may grant the appellant an opportunity for oral argument and will set the time and place for oral argument, and will notify the parties, ordinarily at least 10 days before the date set.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary for Security Assistance, Science and Technology will be final.

§ 128.14 Confidentiality of proceedings.

Proceedings under this Part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential. Reports of the Presiding Official and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

§ 128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Munitions Control, may apply, without notice to any person to be affected thereby, to the Presiding Official for an order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Presiding Official, who will report thereon and make a recommendation to the Director, Bureau of Politico-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearing.*

(1) Objections upon notice. Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Presiding Official.

(2) Objections to order without notice. Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Presiding Official. The request will not stay the effective date of the order or revocation.

(3) Requirements for filing objections. Objections filed with the Presiding Official must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Office of Munitions Control. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) Determination. The application and objections thereto will be referred to the Presiding Official. An oral hearing, if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Presiding Official will report the facts and make a recommendation to the Director, Bureau of Politico-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Presiding Official's report will be furnished to any person affected thereby.

(c) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

§ 128.16 Extension of time.

The Presiding Official, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by Part 128 of this subchapter.

§ 128.17 Availability of orders.

All charging letters, debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.

PART 129—[RESERVED]

PART 130—POLITICAL CONTRIBUTIONS, FEES, AND COMMISSIONS

Sec.

130.1 Purpose.

Definitions

130.2 Applicant.
130.3 Armed forces.
130.4 Defense articles and defense services.
130.5 Fee or commission.
130.6 Political contribution.
130.7 Supplier.
130.8 Vendor.

Procedures

130.9 Obligation to furnish information to the Office of Munitions Control.
130.10 Information to be furnished by applicant or supplier to the Office of Munitions Control.
130.11 Supplementary reports.
130.12 Information to be furnished by vendor to applicant or supplier.
130.13 Information to be furnished to applicant, supplier or vendor by a recipient of a fee or commission.
130.14 Recordkeeping.
130.15 Confidential business information.
130.16 Other reporting requirements.
130.17 Utilization of and access to reports and records.

Authority: Sec. 39, Arms Export Control Act, 90 Stat. 767 (22 U.S.C. 2779); EO 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 130.1 Purpose.

Section 39(a) of the Arms Export Control Act (22 U.S.C. 2779) provides that the Secretary of State shall prescribe regulations with respect to reporting on certain payments relating to sales of defense articles and defense services. The provisions of this Part implement this requirement. Definitions

which apply to this Part are contained in §§ 130.2 through 130.8.

Definitions

§ 130.2 Applicant.

"Applicant" means any person who applies to the Office of Munitions Control for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of $250,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

§ 130.3 Armed forces.

"Armed forces" means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.4 Defense articles and defense services.

"Defense articles" and "defense services" have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), (7)). When used with reference to commercial sales, the definitions in § 120.7 and 120.8 apply.

§ 130.5 Fee or commission.

(a) "Fee or commission" means, except as provided in paragraph (a)(1) of this section, any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term "fee or commission" does not include:

(1) A political contribution or a payment excluded by § 130.6 from the definition of political contribution;

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(3) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(4) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

§ 130.6 Political contribution.

"Political contribution" means any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(a) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and

(b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

§ 130.7 Supplier.

"Supplier" means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of $250,000 or more under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

§ 130.8 Vendor.

"Vendor" means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of $250,000 or more which are end-items or major components as defined in § 121.8. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of $250,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(a) A sale requiring a license or approval from the Office of Munitions Control under this subchapter; or

(b) A sale pursuant to a contract with the Department of Defense under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

Procedures

§ 130.9 Obligation to furnish information to the Office of Munitions Control.

(a)(1) Each applicant must inform the Office of Munitions Control as to whether applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of $5,000 or more, or

(ii) Fees or commissions in an aggregate amount of $100,000 or more.

If so, applicant must furnish to the Office of Munitions Control the information specified in § 130.10. The furnishing of such information or an explanation satisfactory to the Director of the Office of Munitions Control as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph do not apply in the case of an application with respect to a sale for which all the information specified in § 130.10 which is required by this section to be reported shall already have been furnished.

(b) Each supplier must inform the Office of Munitions Control as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of $5,000 or more, or

(2) Fees or commissions in an aggregate amount of $100,000 or more.

If so, supplier must furnish to the Office of Munitions Control the information specified in § 130.10. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) In determining whether an applicant or its vendors, or a supplier or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of $5,000 or more in respect of any sale so as to require a report under this section, there must be included in the computation of such aggregate amount any political contributions in respect of the sale which are paid by or on behalf of, or at the direction of, any person to whom the applicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions are deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Office of Munitions Control under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in § 130.10 to be furnished, must subsequently furnish such information within 30 days after learning that it or its vendors had paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which, if known to applicant or supplier at the time of its previous communication with the Office of Munitions Control, would have required the furnishing of information under § 130.10 at that time. Any report furnished under this paragraph must, in addition to the information specified in § 130.10 include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section, as applicable.

§ 130.10 Information to be furnished by applicant or supplier to the Office of Munitions Control.

(a) Every person required under § 130.9 to furnish information specified in this section in respect to any sale must furnish to the Office of Munitions Control:

(1) The total contract price of the sale to the foreign purchaser;

(2) The name, nationality, address and principal place of business of the applicant or supplier, as the case may be, and, if applicable, the employer and title;

(3) The name, nationality, address and principal place of business, and if applicable, employer and title of each foreign purchaser, including the ultimate end-user involved in the sale;

(4) Except as provided in paragraph (c) of this section, a statement setting forth with respect to such sale:

(i) The amount of each political contribution paid, or offered or agreed to be paid, or the amount of each fee or commission paid, or offered or agreed to be paid;

(ii) The date or dates on which each reported amount was paid, or offered or agreed to be paid;

(iii) The recipient of each such amount paid, or intended recipient if not yet paid;

(iv) The person who paid, or offered or agreed to pay such amount; and

(v) The aggregate amounts of political contributions and of fees or commission, respectively, which shall have been reported.

(b) In responding to paragraph (a)(4) of this section, the statement must:

(1) With respect to each payment reported, state whether such payment was in cash or in kind. If in kind, it must include a description and valuation thereof. Where precise amounts are not available because a payment has not yet been made, an estimate of the amount offered or agreed to be paid must be provided;

(2) With respect to each recipient, state:

(i) Its name;

(ii) Its nationality;

(iii) Its address and principal place of business;

(iv) Its employer and title; and

(v) Its relationship, if any, to applicant, supplier, or vendor, and to any foreign purchaser or end-user.

(c) In submitting a report required by § 130.9, the detailed information specified in paragraphs (a)(4) and (b) of this section need not be included if the payments do not exceed:

(1) $2,500 in the case of political contributions; and

(2) $50,000 in the case of fees or commissions. In lieu of reporting detailed information with respect to such payments, the aggregate amount thereof must be reported, identified as miscellaneous political contributions or miscellaneous fees or commissions, as the case may be.

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section must respond fully to each subdivision of those paragraphs and, where the correct response is "none" or "not applicable," must so state.

§ 130.11 Supplementary reports.

(a) Every applicant or supplier who is required under § 130.9 to furnish the information specified in § 130.10 must submit a supplementary report in connection with each sale in respect of which applicant or supplier has previously been required to furnish information if:

(1) Any political contributions aggregating $2,500 or more or fees or commissions aggregating $50,000 or more not previously reported or paid, or offered or agreed to be paid by applicant or supplier or any vendor;

(2) Subsequent developments cause the information initially reported to be no longer accurate or complete (as in the case where a payment actually made is substantially different in amount from a previously reported estimate of an amount offered or agreed to be paid); or

(3) Additional details are requested by the Office of Munitions Control with respect to any miscellaneous payments reported under § 130.10(c).

(b) Supplementary reports must be sent to the Office of Munitions Control within 30 days after the payment, offer or agreement reported therein or, when requested by the Office of Munitions Control, within 30 days after such request, and must include:

(1) Any information specified in § 130.10 required or requested to be reported and which was not previously reported; and

(2) The Munitions Control license number, if any, and the Department of Defense contract number, if any, related to the sale.

§ 130.12 Information to be furnished by vendor to applicant or supplier.

(a) In order to determine whether it is obliged under § 130.9 to furnish the information specified in § 130.10 with respect to a sale, every applicant or supplier must obtain from each vendor, from or through whom the applicant acquired defense articles or defense services forming the whole or a part of the sale, a full disclosure by the vendor of all political contributions or fees or commission paid, by vendor with respect to such sale. Such disclosure must include responses to all the information pertaining to vendor required to enable applicant or supplier, as the case may be, to comply fully with §§ 130.9 and 130.10. If so required, they must include the information furnished by each vendor in providing the information specified.

(b) Any vendor which has been requested by an applicant or supplier to furnish an initial statement under paragraph (a) of this section must, except as provided in paragraph (c), furnish such statement in a timely manner and not later than 20 days after receipt of such request.

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only

the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Office of Munitions Control. The vendor must simultaneously report fully to the Office of Munitions Control all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Office of Munitions Control a signed statement attesting to:

(i) The manner and extent of applicant's or supplier's attempt to obtain from the vendor the initial statement required under paragraph (a) of this section;

(ii) Vendor's failure to comply with this section; and

(iii) The amount of time which has elapsed between the date of applicant's or supplier's request and the date of the signed statement;

(2) The failure of a vendor to comply with this section does not relieve any applicant or supplier otherwise required by § 130.9 to submit a report to the Office of Munitions Control from submitting such a report.

§ 130.13 Information to be furnished to applicant, supplier or vendor by a recipient of a fee or commission.

(a) Every applicant or supplier, and each vendor thereof;

(1) In order to determine whether it is obliged under §§ 130.9 or 130.12 to furnish information specified in § 130.10 with respect to a sale; and

(2) Prior to furnishing such information, must obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale, a timely statement containing a full disclosure by such a person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf, or at its direction, in respect of such sale. Such disclosure must include responses to all the information required to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.9, 130.10, and 130.12.

(b) In obtaining information under paragraph (a) of this section, the applicant, supplier or vendor, as the case may be, must also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.9, 130.10, 130.11, and 130.12.

(c) The applicant, supplier or vendor, as the case may be, must include any political contributions paid, or offered or agreed to be paid, by or on behalf of, or at the direction of, any person to whom it has paid, or offered or agreed to pay a fee or commission in determining whether applicant, supplier or vendor is required by §§ 130.9, 130.11, and 130.12 to furnish information specified in § 130.10.

§ 130.14 Recordkeeping.

Each applicant, supplier and vendor must maintain a record of any information it was required to furnish or obtain under this Part and all records upon which its reports are based for a period of not less than six years following the date of the report to which they pertain.

§ 130.15 Confidential business information.

(a) Any person who is required to furnish information under this Part may identify any information furnished hereunder which the person considers to be confidential business information. No person, including any applicant or supplier, shall publish, divulge, disclose, or make known in any manner, any information so identified by a vendor or other person unless authorized by law or regulation.

(b) For purposes of this section, "confidential business information" means commercial or financial information which by law is entitled to protection from disclosure. (See, e.g., 5 U.S.C. 552(b) (3) and (4); 18 U.S.C. 1905; 22 U.S.C. 2778(e); Rule 26(c)(7), Federal Rules of Civil Procedure).

§ 130.16 Other reporting requirements.

The submission of reports under this Part does not relieve any person of any requirements to furnish information to any federal, state, or municipal agency, department or other instrumentality as required by law, regulation or contract.

§ 130.17 Utilization of and access to reports and records

(a) All information reported and records maintained under this Part will be made available, upon request, for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with section 39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)), and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(8) and 36(b)(1) of that Act (22 U.S.C. 2776(a)(8) and (b)(1)).

(b) All confidential business information provided pursuant to this Part shall be protected against disclosure to the extent provided by law.

(c) Nothing in this section shall preclude the furnishing of information to foreign governments for law enforcement or regulatory purposes under international arrangements between the United States and any foreign government.

Dated: November 20, 1984.

George P. Shultz,

The Secretary of State.

[FR Doc. 84-31706 Filed 12-5-84; 8:45 am]

BILLING CODE 4710-25-M

federal register

Thursday
December 6, 1984

Part III

Department of Energy

10 CFR Part 960

Nuclear Waste Policy Act of 1982; General Guidelines for the Recommendation of Sites for the Nuclear Waste Repositories; Final Siting Guidelines

DEPARTMENT OF ENERGY

10 CFR Part 960

Nuclear Waste Policy Act of 1982; General Guidelines for the Recommendation of Sites for the Nuclear Waste Repositories

AGENCY: Department of Energy.

ACTION: Final siting guidelines.

SUMMARY: In accordance with the requirements of the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425) (the Act), the Department of Energy (DOE) is issuing general guidelines for the recommendation of sites for repositories for the disposal of high-level radioactive waste and spent nuclear fuel in geologic formations. These guidelines will be used in the various steps of the site-selection process, as required by the Act. They are compatible with the regulations issued by the Nuclear Regulatory Commission (NRC) in 10 CFR Part 60 and those proposed by the Environmental Protection Agency (EPA) in 40 CFR Part 191. The guidelines establish performance objectives for a geologic repository system, define the basic technical requirements that candidate sites must meet, and specify how the DOE will implement its site-selection process.

These guidelines were developed by the DOE through the consultation process required by the Act (i.e., consultation with affected and interested States, the Council on Environmental Quality, the Administrator of the EPA, and the Director of the U.S. Geological Survey) as well as extensive review and comment by interested members of the public, affected Indian tribes, and interested Federal agencies. They have received the concurrence of the NRC, in accordance with the requirements of the Act. The NRC's concurrence decision was rendered on June 22, 1984, and published on July 10, 1984 (49 FR 28130).

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT:

Carol L. Hanlon, Office of Geologic Repositories, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: (202) 252–1224.

Robert Mussler, Esq., Deputy Assistant General Counsel for Environment, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: (202) 252–6947.

For additional copies of this rule contact: Susan Grodin, c/o Roy F. Weston, Inc., 2301 Research Boulevard, Rockville, MD 20850, Telephone: (301) 963–6870.

SUPPLEMENTARY INFORMATION: This supplementary information, also referred to as the "preamble" and the "statement of basis and purpose," explains the DOE siting process, the development of the guidelines, the general issues raised about the guidelines, and the structure of the guidelines. It also presents a detailed analysis of each guideline. A table of contents is listed below.

Contents

I. Background Information
- A. Requirements Established by the Act
- B. The DOE Siting Process
  - 1. The Screening Phase
  - 2. The Site-Nominating Phase
  - 3. The Site-Recommendation Phase
  - 4. The Site-Characterization Phase
  - 5. The Site-Selection Phase

II. Development of the Guidelines Through Consultation, Public Comment, and NRC Concurrence
- A. Basis for the Proposed Guidelines
- B. Consultation and Public Comment
- C. NRC Concurrence
- D. Major Changes in Guideline Structure and Format Resulting from the Comment, Consultation, Comment, and Concurrence Process

III. General Issues Raised in the Consultation, Comment, and Concurrence Process
- A. General Comments on the Guidelines
  - 1. Use of Proposed EPA and NRC Regulations
  - 2. Vagueness and Lack of Specificity in the Guidelines
  - 3. Lack or Inadequacy of Qualifying and Disqualifying Conditions
  - 4. Lack of Weighting Factors
  - 5. Lack of Definition of the Siting Process
- B. Comments on the Consultation Process
  - 1. Adequacy of the Consultation Process
  - 2. Endorsement of the Alternative Guidelines

IV. Overview of the Guidelines
- A. Structure of the Guidelines
- B. Section-by-Section Analysis
  - 1. General Provisions
  - 2. Implementation Guidelines
  - 3. Postclosure Guidelines
  - 4. Preclosure Guidelines

V. References

VI. Compliance with the National Environmental Policy Act

VII. Regulatory Flexibility Analysis

VIII. Paperwork Reduction Analysis

IX. Executive Order No. 12291

I. Background Information

The Department of Energy (DOE), pursuant to the Atomic Energy Act of 1954 as amended, the Energy Reorganization Act of 1974, the Department of Energy Organization Act of 1977, and the Nuclear Waste Policy Act of 1982 (the Act), has the responsibility to provide for the disposal of high-level radioactive waste and spent nuclear fuel.[1] The DOE selected mined geologic repositories as the preferred means for the disposal of commercially generated high-level radioactive waste and spent fuel (46 FR 26677, May 14, 1981) after evaluating various alternative means for the disposal of these materials and issuing an environmental impact statement (1). To carry out this decision, the DOE has been conducting research and development and performing siting studies.

The Act, signed into law on January 7, 1983, establishes a process and schedule for siting two mined geologic repositories.[2] It also, in Section 112(a), requires that the Secretary of Energy "issue general guidelines for the recommendation of sites for repositories." The guidelines issued under this notice are the general guidelines called for in the Act.

A. Requirements Established by the Act

As described below, the Act requires specific steps in the process of selecting repository sites. The implementation of guidelines in terms of those steps is discussed in the next section.

The initial steps required by the Act have been completed: the Secretary of Energy has identified the States with one or more potentially acceptable sites for the first repository and has so notified the Governors and the State legislatures, and the tribal council of any affected Indian tribe of the potentially acceptable sites within these States.

After issuing the siting guidelines, the Secretary is to nominate at least five sites as suitable for site characterization. The nomination of each site is to be accompanied by an environmental assessment that includes an evaluation of the site in terms of the guidelines.

The Act contains requirements for the DOE to continue its consultation and cooperation with the States and to specifically consult with the Governors of the States that contain potentially acceptable sites.

The Act requires the Secretary of Energy to recommend three of the nominated sites to the President for characterization as candidate sites. Site characterization is defined as activities "undertaken to establish the geologic conditions and the ranges of the parameters . . . relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in-situ testing. . . ."

The President may approve or disapprove the recommendation submitted by the DOE or may permit the characterization to proceed by failing to act within 60 days. He may also delay the decision for 6 months if, in his opinion, insufficient information is available for a decision.

The information to be collected during site characterization will be specified in a site-characterization plan that is to be submitted for review and comment to the Nuclear Regulatory Commission (NRC), the State in which the site is located, and the governing body of any affected Indian tribe. The plan will also be made available for public review and comment.

Before proceeding to sink the exploratory shafts needed for tests and studies at the proposed depth of the repository, the DOE is to hold a public hearing in the vicinity of the site to inform the residents of the site-characterization plan and to receive their comments. When the site characterization itself has been completed, public hearings are to be held in the vicinity of each site being considered for development as a repository to inform the residents of the area that the site is under consideration and to obtain their comments on the possible recommendation of the site.

After completing site characterizations and conducting hearings, the Secretary is to recommend to the President the first site to be developed as a repository. This recommendation is to be accompanied by a final environmental impact statement in accordance with the requirements of the National Environmental Policy Act as modified by Section 114(f) of the Act.

After a site is recommended to Congress for development as a repository, the State in which the site is located or the affected Indian tribe on whose reservation the site is located may submit, within 60 days, a notice of disapproval to Congress. This disapproval prevents the use of the site for a repository unless Congress passes a joint resolution approving the President's recommendation within the next 90 days of continuous session.

If the site designation becomes effective, the DOE is to seek, from the NRC, authorization to construct the repository. The Act requires that the application for this authorization be submitted not later than 90 days after the effective date of the site designation. When a construction authorization has been received from the NRC, the construction of the repository will begin.

The Act requires the promulgation of regulations by two other Federal agencies—the NRC and the Environmental Protection Agency (EPA). The NRC is required to issue technical requirements and criteria to be used in approving or disapproving DOE applications for the construction and operation of repositories; these regulations have been issued as 10 CFR Part 60. The EPA is required to promulgate generally applicable standards for protecting the public from the radioactive material in repositories; these regulations (40 CFR Part 191) have been released in draft form for public comment (47 FR 58196). Both sets of regulations were used in developing the DOE siting guidelines (see also Sections II.A and III.A).

To provide the information base needed for informed decisions in carrying out the repository program, the Act requires the Secretary of Energy to prepare a comprehensive mission plan. The topics covered in the mission plan are to include the information needed for the siting and construction of repositories; the significant results of research and development programs, and their implications for each of the host rocks being considered; the financial, political, legal, or institutional problems that may impede the implementation of the Act; the adverse economic and other impacts that may result from the development of a repository; and the siting guidelines. A draft of the mission plan (2), dated April 1984, was issued for review and comment by the States, affected Indian tribes, the NRC, other Government agencies, and the public. The DOE is now in the process of reviewing the comments that have been received. Once finalized, the mission plan will be submitted to Congress in accordance with the requirements of the Act.

B. The DOE Siting Process

Before the Act was passed, the Federal Government had been carrying out a program for the development of geologic repositories. Directed primarily by the DOE and its predecessor agencies, the program had begun about three decades earlier. The Act established a process for the siting of repositories by integrating the then-existing DOE siting program into its requirements and procedures. To help the reader understand how the guidelines will be used, this section explains an important part of the program—the siting process—as it and the plans for it now stand, after modification by the Act and the consultation process.

In seeking sites for radioactive-waste repositories, the DOE divides the siting process into the following phases: (1) screening, (2) site nomination, (3) site recommendation for characterization, (4) site characterization, and (5) site selection (recommendation for development as a repository).

1. The Screening Phase

During the screening phase, the DOE identifies potential sites for characterization. This phase provides the information needed for judging which of these sites appear to justify the investment in characterizing them.

a. General description. The screening phase may consist of up to four stages, each of which narrows to a land unit of smaller size:

(1) A survey of the Nation or geologic provinces, narrowing to regions.

(2) A survey of the regions, narrowing to areas.

(3) A survey of the areas, narrowing to locations.

(4) A survey of the locations, narrowing to sites.

Screening can begin with one or more of the 17 physiographic provinces identified in the contiguous 48 States. The landforms in a province possess similarities resulting from corresponding similarities in the geologic and hydrologic processes and conditions throughout the province. Regions are normally smaller than provinces, but may also extend across several States. The sizes of areas, locations, and sites are not exact. Areas encompass hundreds to thousands of square miles, and locations are typically tens to hundreds of square miles. While a location may be large enough to contain several sites, only one potential site is usually identified in a single location.

During the early screening stages, it may be necessary to divide a particularly large geographic unit and identify an intermediate set of smaller units before proceeding to the next stage. A geographic stage may be deleted if the early survey reveals that smaller land units are obviously suitable for further study. For example, in a search for suitable salt domes, which are discrete geologic formations, the completion of regional surveys led next to the study of specific individual salt domes and their environs, rather than to some undifferentiated general area of hundreds to thousands of square miles.

[1] For brevity, the terms "radioactive waste" and "waste" are frequently used in this notice and in the siting guidelines to mean "high-level radioactive waste and spent nuclear fuel."

[2] The Act requires the President to evaluate, by January 7, 1985, the use of one or more of these repositories for the disposal of high-level radioactive waste resulting from atomic energy defense activities.

Within each screening stage, the DOE identifies as many potentially suitable land units as judged to be necessary for an adequate sample to be studied in the next stage. Only the regions, areas, and locations believed most likely to contain suitable sites receive further study; all others are deferred. Although the deferred land units may contain suitable sites, studying every possible candidate would not be practicable. Even though some suitable sites may be dropped, this allows more-thorough investigation of the remaining candidates.

Data for comparing regions, areas, and locations become increasingly detailed as progressively smaller land units are considered and as exploration and testing concentrate on them. National, province, and regional surveys are based on information available in the open literature—for example, national maps of faults, earthquake epicenters, land use, recent volcanic activity, and locations of potential host rocks. Areas, locations, and sites require more-thorough investigation, including field exploration, field testing, and increasingly refined laboratory analyses of rock and water characteristics. Finally, after the first three phases (screening, site nomination, and site recommendation for characterization) have been completed, site characterization will be performed to collect the data needed for a rigorous evaluation and comparison of candidate sites.

It is prudent that screening be conducted in a way that will lead to nominations and recommendations of sites in diverse geohydrologic settings and types of rock. Such screening increases the probability that sites suitable for characterization will be available even if studies should reveal a generic deficiency in a type of rock or a geohydrologic setting. The principle of seeking diversity in types of rock is a central theme of the siting provisions in the Act (Sections 112(a) and 113(a)); it has been part of the geologic repository program since its inception.

Before the Act was passed, the site screening conducted by the DOE evaluated and compared progressively smaller land units according to geologic criteria or other factors described in References 3 through 8. This process led to the identification of the potentially acceptable sites considered for the first repository. During the development of the Act, the status of the DOE's siting program, including the screening studies conducted to date, was well documented before Congress. Congress, as evidenced by its structuring of the Act, did not intend the DOE to revisit screening decisions that preceded the Act. Section 116(a) of the act requires that States containing "potentially acceptable sites" be identified within 90 days of the passage of the Act, but allows 180 days for issuing the siting guidelines. Future screening for the second repository will be based on the siting guidelines issued by this notice.

b. *Current status of screening.* At the time the Act was passed, the DOE was studing nine sites for the first repository and had begun regional surveys for the second repository. The nine sites for the first repository are in three different host rocks (basalt, salt, and tuff) and in six States; they are distributed as follows: two sites in the bedded salt of the Palo Duro Basin in Texas; two sites in the bedded salt of the Paradox Basin in Utah; two salt domes in Mississippi and one in Louisiana; a site in basalt in the Pasco Basin in Washington; and a site in tuff in the Southern Great Basin in Nevada. (For the bedded salt in Texas; the DOE identified two potentially acceptable sites of about 190 and 300 square miles each. In March 1984, the DOE issued, for public review and comment, a draft report on a screening study that narrowed the size of the two sites for further consideration to about 9 square miles for each location. The final report. *Identification of Sites Within the Palo Duro Basin,* was issued by the DOE in November 1984.) After the passage of the Act, in accordance with Section 116(a), the DOE, on February 2, 1983, formally identified these nine sites as being potentially acceptable. From these nine sites, in accordance with the Act, the DOE will nominate at least five sites and recommend no fewer than three for characterization.

The bedded-salt sites under consideration in Texas and Utah were found by the general siting process described above, beginning with national surveys and progressively narrowing to locations and sites. The salt domes were selected by a screening that began with more than 200 domes and ended with the three sites under consideration.

The selection of sites in basalt and tuff began on the basis of land use: the DOE began to search for suitable repository sites on some Federal lands where radioactive materials were already present; this approach was recommended by the Comptroller General of the United States (9) and a House resolution (10). Although land use was the beginning basis for this screening of Federal lands, the subsequent progression to smaller land units was based primarily on evaluations of geologic and hydrologic suitability. The studies began at roughly the area stage, and the screening has now progressed to two sites: the site in basalt is on the Hanford Site, and the site in tuff is adjacent to the Nevada Test Site.

The site-screening process for the second repository began with a national survey of crystalline rocks. This survey identified for further study near-surface and exposed crystalline rocks in 17 States divided into three regions: northeastern (Maine, Vermont, New Hampshire, New York, Pennsylvania, Connecticut, Massachusetts, New Jersey, and Rhode Island), north central (Michigan, Minnesota, and Wisconsin), and southeastern (Maryland, Virginia, North Carolina, South Carolina, and Georgia).

The site-screening process for the second repository is now in the regional phase. Being developed in consultation with the 17 States listed above, the screening approach is based on the siting guidelines published in this notice: first the disqualifying conditions in the guidelines are applied to eliminate land units and then the favorable and potentially adverse conditions of the guidelines are applied to identify preferred land units. The objective is to use the existing evidence to evaluate the favorability of each land unit, selecting the most favorable land units for further study.

2. The Site-Nomination Phase

The nomination process begins with the DOE examining the data for each potentially acceptable site to be sure that no site contains an obvious flaw that would disqualify it without further consideration. After this preliminary examination, the DOE begins its more-detailed evaluation by grouping the potentially acceptable sites according to the geohydrologic settings in which they are located. Choices among sites require comparisons that can be made more easily and accurately when the sites are in similar settings than when they are in dissimilar settings: the significance of differences among settings is more difficult to determine than the significance of differences among sites in the same setting. The grouping therefore places the subsequent siting choices on a basis that is technically more defensible.

After a comparative evaluation of all the sites within each setting, the DOE will select a preferred site within each setting. If fewer than five settings are available, the DOE will select additional sites from settings containing more than one site, as needed to obtain the required number of sites for nomination. The sites selected by this process will be the sites considered for nomination; each will be subjected to two separate evaluations. The first evaluation will be based on the siting guidelines that do not require site characterization for their application; it will focus on the suitability of the site for development as a repository, considering activities from the start of site characterization through decommissioning. The second evaluation will be based on the guidelines that do require site characterization for their application; its objective will be to establish that the site is suitable for characterization—that is, suitable for further study.

The Secretary will nominate no fewer than five of these sites. Each site nomination is to be accompanied by an environmental assessment, which must include a number of evaluations and descriptions listed in the Act and differs in procedure, format, and content from an environmental assessment prepared under the National Environmental Policy Act of 1969. For the nine sites identified as potentially acceptable for the first repository, the DOE has held the required public hearings in the vicinity of the sites to inform residents of the proposed nomination and to solicit and receive any recommendations on issues to be addressed in the environmental assessment as well as the site-characterization plan.

The environmental assessments will report the analyses made in the nomination steps described above. They will describe the bases on which the decisions were made, including the results of preliminary performance assessments, with emphasis on the natural barriers, for each site. In addition, each will include a summary of how the potentially acceptable sites were selected. A chapter common to all the assessments will contain a comparative evaluation of the sites considered for nomination.

The environmental assessment for each site being considered for nomination will be made available in draft form for public comment. After the final environmental assessments have been prepared, the Secretary will select at least five sites as suitable for characterization and, before nominating a site, will notify the Governors and the legislators of the States in which the sites are located or the governing body of any affected Indian tribe, as appropriate, of the nominations and the basis for the nomination. The Secretary will publish in the **Federal Register** a notice specifying the sites nominated and announcing the availability of the final environmental assessments for those sites.

3. The Site-Recommendation Phase

The site-recommendation phase will occur subsequent to site nomination, when the Secretary recommends to the President that three of the nominated sites be characterized as candidate sites. The decision to recommend a site will be based on (1) the available geophysical, geologic, geochemical, and hydrologic data (unless the Secretary certifies, pursuant to Section 112(b) (3) of the Act, that such available data will not be adequate to satisfy applicable requirements of the Act in the absence of further preliminary borings or excavations); (2) other information; and (3) the associated evaluations and findings reported in the environmental assessments. The decision will also consider the diversity of geohydrologic settings, the diversity of rock types, and, after the first repository, regionality, as specified by §§ 960.3–1–1, 960.3–1–2, and 960.3–1–3, respectively, of the implementation guidelines (see Section IV.B).

4. The Site-Characterization Phase

Site characterization will occur only at the sites recommended to, and approved by, the President. It will involve studies that are much more detailed than those conducted during the screening phase. As already discussed in Section I.B., the DOE will develop a site-characterization plan for each of the three sites selected for characterization.

During site characterization, the DOE will collect detailed information on the geologic, hydrologic, and other characteristics that determine compliance with the siting guidelines requiring site characterization for their application. Standard geophysical tests and exploratory drilling from the surface will continue throughout site characterization. For subsurface investigations, exploratory shafts will be constructed to the depth at which a repository would be built. Limited subsurface excavations (tunnels and rooms) for testing purposes will be made in the host rock in the immediate vicinity of the shafts. The shafts will be large enough to allow people and test equipment to be transported from the surface to the rooms. The shafts, tunnels, and rooms will allow detailed study of the host rock, including lateral exploratory drilling. A variety of tests will be performed in these underground facilities, including, for example, measurements of in-situ stress and permeability and heat-transfer experiments. Every 6 months, the DOE will report to the NRC and to the affected States and Indian tribes on the nature and the extent of the site-characterization activities and the information obtained from these activities.

In parallel with site characterization, the DOE will collect additional information about other aspects of the site. This activity, informally called site investigation, will be carried out in order to establish compliance with the guidelines that do not require site characterization (e.g., demographic, socioeconomic, and ecological characteristics) and to comply with the National Environmental Policy Act of 1969.

5. The Site-Selection Phase

When site characterization is completed, the site-selection phase will begin. During this phase, the sites that have been characterized will again be evaluated to determine whether they are suitable for the development of a repository. As required by Section 114(a) of the Act, a comparison of these sites will be reported in an environmental impact statement.

An important part of this analysis will be a detailed performance assessment; that is, for each site, the DOE will predict the effects of a repository as an entire system, during the time it is open for the emplacement of waste and after it has been closed. This assessment will evaluate the responses of the repository to the conditions that might affect its performance: natural events and processes, human actions, and the interactions between the waste and the repository. In the entire process of narrowing the number of potentially acceptable sites to one, this phase will be the first time it is possible to conduct such a complete performance assessment. This assessment requires the detailed information that can be obtained only during site characterization.

Before preparing a draft environmental impact statement the DOE will hold a scoping meeting in the vicinity of each site to receive comments on the issues that should be addressed. The draft environmental impact statement will be released for public review and comment. After preparing a final environmental impact statement, the Secretary will recommend that the President approve one of the sites for development as a repository. This environmental impact statement will be submitted to the President and to the public as part of a comprehensive statement of the basis for this recommendation. This statement will

Act, and not intend the DOE to revisit

units was based primarily on

one site, as needed to obtain the

also contain specific technical material and comments by outside parties (Federal agencies, States, and affected Indian tribes), as required by the Act.

If the President approves the recommendation, he will recommend the site to Congress, and the DOE will have completed its part of the site-selection phase. The remainder of the process of obtaining final approval of the site and final authority for constructing a repository was described above in Section I.A. The DOE's schedule and cost estimates for the repository program are presented in the draft mission plan (2), which was released for review and comment in April 1984.

II. Development of the Guidelines Through Consulation, Public Comment, and NRC Concurrence

After explaining the original basis for the guidelines, this section discusses the process of consultation and comment as well as NRC concurrence. It also summarizes the major changes that resulted from these processes.

A. Basis for the Proposed Guidelines

After the Act was passed, the DOE assembled a task force of program experts to prepare proposed guidelines.[3] The task force began by considering the criteria used earlier in the National Waste Terminal Storage (NWTS) Program, including its own program objectives, system performance criteria, and site performance criteria (3,4); other sets of criteria defined for geologic repositories by the National Academy of Sciences (5), the International Atomic Energy Agency (6), and earlier programs in the United States (7,8); advance information made available by the NRC (11); and the requirements of the Act.

Requirements for the content of the guidelines are given in Section 112(a) of the Act. The guidelines are to specify "detailed geologic considerations that shall be primary criteria" for site selection; the Act also requires the guidelines to specify "factors that qualify or disqualify any site from development as a repository" and lists the factors to be included.

In developing the proposed guidelines, great care was taken to make them compatible with existing applicable regulations (12,13) and with the regulations that had been recently proposed by the NRC and the EPA concerning the disposal of high-level radioactive waste and spent nuclear fuel in geologic repositories. The NRC had by then nearly completed the pertinent technical criteria (14), and the EPA had issued, for public comment, proposed environmental standards (15). The proposed guidelines referred frequently to these criteria and standards through direct quotations and paraphrasing.

B. Consultation and Public Comment

Section 112(a) of the Act requires that, before issuing siting guidelines, the DOE (1) consult with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the Geological Survey, and interested Governors and (2) obtain the concurrence of the NRC. To comply more effectively with these requirements, the DOE developed the guidelines through a notice-and-comment procedure that enhanced the opportunity for general public participation. On February 7, 1983, the proposed guidelines were published in the **Federal Register** (48 FR 5670) for public review and comment. The notice that accompanied the publication specified a 45-day public-comment period ending on March 24, 1983. The formal comment period was subsequently extended (48 FR 8289) to April 7, 1983, in response to numerous requests for additional time.[4]

In addition to publishing the proposed guidelines in the **Federal Register** of February 7, 1983, the DOE specifically solicited review and comment by mailing copies of the guidelines to the Governors of the 6 States previously identified as having potentially acceptable sites for the first repository (Louisiana, Mississippi, Texas, Utah, Nevada, and Washington) and the 17 States containing crystalline-rock formations being studied for the second repository; to interested Federal agencies; to more than 4000 individuals who had previously commented on, or inquired about, various aspects of the NWTS Program; and to approximately 200 public-interest and consumer groups.

During the public-comment period, the DOE held a series of regional public hearings to receive comments on the guidelines. These hearings were held in Chicago, Illinois, on March 4, 1983; in New Orleans, Louisiana, on March 7; in Washington, D.C., on March 10; in Salt Lake City, Utah, on March 14; and in Seattle, Washington, on March 21. Record transcripts were prepared for all of the hearings, and the panels that had conducted the hearings prepared summary reports for DOE review.

To explain and discuss the guidelines, the DOE staff met individually with officials from the six States with potentially acceptable sites. These consultations included meetings in Louisiana on February 25, 1983, in Mississippi on March 3 and March 25, in Utah on March 3, in Texas on March 18, in Nevada on March 23, and in Washington State on March 25. Also, on February 10, 1983, a group meeting with representatives of interested crystalline-rock states was held in Chicago to discuss the provisions of the Act as well as the proposed guidelines.

During this period of comment and consultation, the DOE received 119 written replies containing about 2000 separate comments; at the 5 public hearings, 57 persons provided oral comments. Among the commenters were private citizens and representatives of Federal, State, and local governments; Native American groups; and organizations that could be classified as special-interest or public-interest groups.

Near the end of the comment period for the proposed guidelines of February 1983, the DOE reconvened the task force that had developed the proposed guidelines. After categorizing and analyzing the comments, the task force drafted a set of alternative guidelines and a comment-response document (16) that summarized the comments, discussed the issues raised in the comments, and showed how the comments had been addressed in the alternative guidelines.

The interested States (i.e., the States containing potentially acceptable sites and the States containing the crystalline-rock formations under consideration for the second repository) had commented that they needed more than the notice-and-comment procedure if the consultation afforded by the Act were to meet their needs. Therefore, on May 11, 1983, the DOE sponsored a plenary consultation meeting with the interested States to set up a framework for continued consultation. At this meeting, held in Dallas, Texas, the States expressed a strong desire for additional opportunities to comment on the guidelines. To accommodate this request, an expanded consultation program was developed; it was structured around consultation meetings with the individual States and a plenary session when the guidelines neared their final form. The States requested that sufficient time be allowed for the review and that additional opportunity for public involvement be provided. On May 27, 1983, copies of the draft comment-response document and the alternative guidelines were forwarded to the States and Federal agencies.

The DOE also made these documents available to the public for review and comment. A notice of availability, published in the **Federal Register** on June 7, 1983 (48 FR 26441), announced a 30-day comment period, the second such period in the development of the guidelines. The notice made it clear that these alternative guidelines were intended not to supersede the proposal of February 7, 1983, but rather to serve as an alternative to the guidelines originally prepared that would be considered in writing the final guidelines. Copies of the alternative guidelines were mailed to the persons and groups who had been on the mailing list for the proposed guidelines, to anyone who had asked to be added to the list, to those who had submitted comments on the proposed guidelines, to participants in the public hearings on the guidelines, and to the participants in hearings held to scope the environmental assessments. Moreover, copies of both the draft comment-response document and the alternative guidelines were placed in 10 DOE reading rooms across the country as well as in 156 libraries in 23 States.

Individual consultation meetings were then scheduled with the six States containing potentially acceptable sites, and both individual and group meetings were scheduled with the States containing crystalline-rock formations. The purpose of these meetings was to discuss the differences between the proposed guidelines and the alternative guidelines and to identify and discuss outstanding issues. The meetings were held on the following dates: Texas on June 27 and 28, 1983, Nevada on June 29, Mississippi on June 29 and 30, Washington on June 30, Louisiana on July 6, and Utah on July 8. Vermont on June 14, Maine on June 15, New York on June 16, Wisconsin on June 20, Michigan on June 21, and Minnesota on June 27. In addition, a group meeting attended by eleven of the crystalline-rock States was held in Columbus, Ohio, on June 29.

The DOE conducted similar consultation meetings with several Federal agencies: the Council on Environmental Quality (June 21), the U.S. Geological Survey (June 24), the NRC (June 28), the Department of the Interior (June 28), and the Department of Transportation and the EPA (June 29).

After these consultation meetings and the end of the second public-comment period on July 7, 1983, the DOE task force reconvened to analyze and consider the additional comments received. Some 75 written responses arrived during the second comment period; they contained about 900 separate comments. Revised guidelines that reflected the comments on both the proposed and the alternative guidelines were then drafted. In addition, the comment-response document which explains the disposition of comments on the proposed guidelines of February 1983, was prepared for publication in final form (16); it had been released in draft form on May 27, 1983.

On August 1, 1983, the revised guidelines were forwarded to the States for their information, and on August 19 a second plenary consultation meeting was held in Dallas, Texas, to receive comments on the remaining issues that were of general concern to the States. Modified as necessary in response to comments from the States, these revised guidelines of August 1983 were later sent to the States for their information and submitted to DOE management for review and approval. The DOE-approved guidelines were thus developed after two formal public-comment periods and two rounds of consultation with the interested States, including both individual and plenary sessions. Numerous changes were made to the guidelines in response to comments from the public, State consultations, and the NRC concurrence interactions, but, with respect to scope and issues, the guidelines being finalized here do not differ substantially from those that were initially proposed.

C. NRC Concurrence

On November 22, 1983, the DOE submitted the guidelines to the NRC for concurrence. At the same time, the DOE mailed copies to States and to more than 1200 persons and organizations on the guidelines mailing list; copies were also placed in DOE reading rooms and State libraries.

The NRC had earlier found (48 FR 39538) that its concurrence proceeding is not a rulemaking and hence did not require notice and opportunity for public comment. Nevertheless, in order to accommodate requests to structure the concurrence process on a notice-and-comment rulemaking and to crystallize the issues, the NRC decided to accept written comments and to conduct a public meeting on the siting guidelines. On December 15, 1983, the NRC described its decision-making process and set forth the procedural format for a public meeting on the siting guidelines (48 FR 55789). In this notice, the NRC scheduled the public meeting for January 11, 1984, and requested that any written comments on the guidelines be submitted to the NRC by January 9, 1984. At the public meeting on January 11, the period for receiving written comments on the guidelines was extended to February 1, 1984.

The NRC applied the following criteria in making its preliminary concurrence decision:

1. The siting guidelines must not be in conflict with 10 CFR Part 60.
2. The siting guidelines must not contain provisions that might lead the DOE to select sites that would not be reasonable alternatives for an environmental impact statement.
3. The siting guidelines should not contain provisions that are in conflict with the Act.

On March 14, 1984, the NRC announced (49 FR 9650) that, on the basis of these criteria, the NRC would concur in the siting guidelines provided that the DOE met the following conditions:

1. Amended the siting guidelines to recognize NRC's jurisdiction for the resolution of differences between the guidelines and 10 CFR Part 60.
2. Committed to obtain the NRC's concurrence on revisions to the siting guidelines that relate to NRC jurisdiction.
3. Revised the siting guidelines as follows:

a. Modified its use of high effective porosity to limit its use to those situations that could be considered as a favorable siting condition.

b. Committed to revise its siting guidelines on the unsaturated zone so that they are consistent with the final NRC amendments on the unsaturated zone.

c. Moved the favorable condition on ground-water with a high total-dissolved-solids concentration from § 960.4-2-1(b) to Section 960.4-2-8-1, where effects on natural resources are considered.

d. Did not frame its guidelines such that a 1000-year ground-water travel time (10 CFR 60.113) would be adjusted, particularly in the early stages of site selection.

e. Deleted the word "permanently" from its definition of "disturbed zone."

f. Clarified the meaning of "short-term" extreme erosion and revised the guidelines as appropriate.

g. Deleted the word "significant" from § 960.4-2-8-1(c)(2)) of the siting guidelines, where reference is made to "evidence of *significant* subsurface mining."

[3] As described in Section II.B, several draft versions of the siting guidelines have been released: the proposed guidelines of February 1983 and the alternative guidelines of May 1983, both of which were issued for public review and comment; the revised guidelines of August 1983, which served as a basis for additional consultation with States, Indian tribes, and Federal agencies; and the revised guidelines of November 1983, which were sent to the NRC for concurrence. The final guidelines issued herewith reflect the NRC's final concurrence decision.

[4] The DOE was actually able to consider all late comments, some of which were not received until as late as May 20.

h. Modified the guidelines so that they are consistent with the Commission's definition of "anticipated" and "unanticipated" processes and events.

i. Modified the guidelines so that potentially adverse conditions would be considered if they affect isolation within the controlled area even though the condition may occur outside the controlled area.

4. Modified the siting guidelines to make clear that engineered barriers cannot constitute a compensating measure for deficiencies in the geologic media during site screening.

5. Specified in greater detail how the guidelines will be applied at each siting stage, including site nomination and characterization (for example, specified in the implementation guidelines which guidelines would be applied at each stage of site screening).

6. Supplemented the guidelines to indicate the kinds of information necessary for DOE to make decisions on the nomination of at least five repository sites and subsequently recommending three sites to the President for characterization.

7. Added additional disqualifying conditions to the guidelines with sufficient specificity to ensure that unacceptable sites are eliminated as early as practicable. Disqualifying conditions should be provided for those factors specified in Section 112(a) of the Act, including seismic activity, atomic energy defense activities, proximity to water supplies, the effect upon the rights of users of water, the location of valuable natural resources, hydrology, geophysics, proximity to populations, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, and National Forest Lands.

In announcing its preliminary concurrence decision, the NRC invited public comment on the preceding conditions. Copies of all comments submitted to the NRC were provided to the DOE and considered in developing this final rule. The NRC also instructed its staff to meet with DOE representatives to discuss the NRC's conditions and the DOE's proposals for their resolution. Six meetings were subsequently held, beginning on March 14, 1984, and ending on May 3, 1984; these meetings were open to the public, which was invited to comment at the end of each meeting. To accommodate those interested in the transactions of these meetings, the DOE made copies of the transcripts or minutes of the meetings available to the public in the DOE public reading rooms.

The preliminary concurrence conditions and ensuing meetings between the NRC and DOE staffs resulted in a number of changes to the guidelines (see Sections III.A and IV.B). The guidelines, reflecting the DOE's response to the NRC's concurrence conditions, were forwarded to the NRC for its final concurrence on May 14, 1984, with copies mailed to the interested States, affected Indian tribes, and appropriate Federal agencies.

On June 11, 1984, the NRC's Executive Director for Operations submitted to the Commissioners a policy paper (SECY-84-233) proposing a final decision (concurrence) on the guidelines of May 1984. The Commission then scheduled a meeting on this subject on June 22, 1984. At this meeting, the Commissioners heard comments on the guidelines by several interested States and Indian tribes as well as a presentation by the DOE. The Commissioners then reviewed and discussed the issues raised about the guideline revisions made in response to the NRC's preliminary concurrence conditions. As a result of these discussions, the NRC and the DOE agreed to make three changes in the guidelines (see Section IV.B for more detailed discussions):

1. Revise § 960.1 of the guidelines to agree to submit to the NRC for its concurrence all future revisions of the guidelines rather than only the "revisions relating to NRC jurisdiction."

2. Delete from § 960.3-2-3, which specifies the procedure to be followed in recommending sites for characterization, the following sentence: "Such recommendation shall include a preliminary determination by the Secretary, referred to in Section 114(f) of the Act, that such sites are suitable for the development of repositories under the guidelines of Subparts C and D."

3. Revise § 960.3-1-5, "Basis for Site Evaluations," to clarify that, in considering engineered barriers for the purpose of obtaining realistic source terms, it is necessary to establish the sensitivity of the natural barriers to the engineered barriers.

The Commissioners then voted unanimously to grant concurrence on the guidelines submitted by the DOE on May 14, 1984, as revised at the June 22 meeting. In the formal statement of their final decision, dated July 3, 1984, and published on July 10 (49 FR 28130), the Commissioners concluded "on the basis of a review of the public comments, that the preliminary decision need not be modified nor is there a need to add new conditions" and that the DOE had "satisfactorily resolved the conditions set forth in the Commission's preliminary decision."

D. Major Changes in Guideline Structure and Format Resulting From the Comment, Consultation, and Concurrence Process

The consultation, comment, and concurrence process produced changes in the format and structure of the guidelines. These changes are discussed below. (See also Section III for responses to general comments on the guidelines.)

The commenters generally supported the structure of the alternative guidelines. After considering the comments received, the DOE task force decided to retain the structure of the alternative guidelines issued on May 27, 1983. The task force had altered the basic structure of the guidelines in response to many comments requesting an explanation of the relative importance of the various guidelines and the order in which they will be used. The revised organization separates the guidelines into two distinct sets governing the postclosure and the preclosure periods. This separation makes clear the differences in the roles played by the individual guidelines that pertain to the siting, construction, operation, closure, and decommissioning of a repository (preclosure guidelines in Subpart D) and by those that pertain to the long time periods after a repository is closed (postclosure guidelines in Subpart C). The reorganization allows the DOE—in evaluating safety, environmental impacts, socioeconomic effects, and costs—to clearly distinguish the unique concerns about a repository from the more common and more familiar concerns about constructing and operating large-scale mining projects and nuclear facilities. The reorganization thus emphasizes the unique mission of a geologic repository. As explained in Section IV.A, it also makes explicit the priorities that the DOE intends to assign to the guideline groupings in making siting decisions.

Another general change was made in response to comments on the alternative guidelines. As discussed in more detail in Section III, this change was a revision in format, particularly the addition of explicit qualifying conditions.

Other changes, made in response to a number of comments and the NRC's preliminary concurrence conditions, were to define more precisely the way in which the guidelines are to be applied. The directions for their application are given in the implementation guidelines (§ 960.3), which have been revised to satisfy the NRC's concerns and amplified with two new appendices. Section IV.B of this notice explains both the implementation process and how the DOE intends to apply the guidelines.

The changes described above revised the format of the guidelines, refined their structure, and clarified how they will be applied. They did not change the content or the meaning of the individual guidelines. Changes in content stemmed from the comments about individual guidelines or the NRC's preliminary concurrence conditions; they are addressed in the comment-response document (16) and in Section IV.B. However, throughout the guideline-development process, the scope of the guidelines and the issues associated with the guidelines remained substantially the same.

III. General Issues Raised in the Consultation, Comment, and Concurrence Process

Many of the comments on both the proposed and the alternative guidelines were highly specific, dealing with particular guidelines; these are discussed in the comment-response document (16) and in Section IV. Other comments were general, covering many or all of the guidelines, or they were directed at the consultation process itself; these comments are discussed below. Many of the comments, however, were concerned with issues that are not related to the guidelines; among them were issues that pertained to the geologic repository program, such as the need for additional research on waste disposal; questions about the properties of a specific rock type; and statements against the use of nuclear power plants. Since these issues lie outside the scope of the guidelines, they are not addressed in this notice.

A. General Comments on the Guidelines

The general comments on the guidelines were divided into five categories: the use of proposed EPA and NRC regulations, the vagueness and lack of specificity in the guidelines, the lack or inadequacy of qualifying and disqualifying conditions, the lack of weighting factors, and the lack of definition of the site-screening process. The sections that follow contain brief summaries of, and responses to, the comments received on both the proposed and the alternative guidelines as well as the NRC's preliminary concurrence conditions.

1. The Use of Proposed EPA and NRC Regulations

Many comments objected to the DOE's basing its guidelines on proposed NRC and EPA regulations. Some comments expressed concern that guidelines based on those regulations might be defective because the regulations had not yet been issued in final form. Others felt that the DOE should not use standards issued by other agencies but should develop the guidelines independently. The EPA and NRC staffs found the use of their proposed regulations in the DOE guidelines appropriate. Some commenters requested that the guidelines be made more explicitly consistent with the proposed EPA standards and with the NRC criteria and that they be modified in the future when the final EPA standards are issued.

Geologic repositories must be constructed, operated, and closed in accordance with the EPA and NRC regulations. The central fixture of both of these regulations is the chosen site; the NRC, through a licensing action that will permit repository construction, will make the ultimate decision on the technical adequacy of the site proposed by the DOE. A site is therefore the objective of the DOE siting program, and the guidelines could not guide the siting process without reference to every particular of that objective. The NRC criteria (10 CFR Part 60) have now been published in final form (17), and their compatibility with the guidelines has been verified by the NRC, which used absence of conflict with 10 CFR Part 60 as one of the criteria for concurrence. In the event of a conflict between the guidelines and either 10 CFR Part 60 or 40 CFR Part 191, these NRC and EPA regulations will supersede the guidelines and constitute the operative requirement in any application of the guidelines.

2. Vagueness and Lack of Specificity in the Guidelines

A large number of commenters felt that the guidelines were too vague to be useful. A nearly equal number requested more-specific wording and additional quantitative values; among them were numerous general suggestions for changes in the guidelines. Several commenters felt that the guidelines did not cover enough topics. Some, however, expressed satisfaction with the level of detail in the guidelines, feeling that site-specific numerical criteria are inappropriate in general guidelines that are to be used in various stages of the site-selection process and applied to the evaluations of different host rocks. A few suggested that rock-specific guidelines should be developed for each rock type under consideration, especially for the early stages of screening.

Several comments indicated that the alternative guidelines represented a significant improvement over the proposed guidelines in terms of specificity.

In developing the guidelines, there were two possible approaches: (1) to develop, for each guideline, numerical limits that must be met for a site to be acceptable or (2) to develop generic qualitative guidelines to be used as a basis for comparing sites.

The first approach would require setting numerical limits on the characteristics of a site—for example, on its geometrical configuration and the geologic, geochemical, and hydrologic characteristics of the host rock. This approach would disqualify sites with characteristics that fail to meet the limits; only sites that met the numerical limits would remain under consideration. Though appearing to sharply discriminate against unacceptable sites, such an approach would ignore the most important aspect of a repository—that is, the ability of its parts to work together.

For example, the time it would take radionuclides to travel from a repository to the accessible environment, once they were released from a waste package, depends on (1) the length of the path traveled; (2) the retardation of radionuclides, which depends, in a complex way, on the physical and chemical properties of the geologic environment; and (3) the velocity of ground-water flow, which in turn depends on the hydraulic conductivity, the hydraulic gradient, and the porosity of the geohydrologic system. In a host rock with a low retardation potential, a long path or a low velocity can provide long travel times and, hence, confidence that a site is safe. In a host rock with a more rapid flow, a long path or a high retardation potential can provide this confidence. No single numerical value for any one of these three features is either necessary or sufficient for safety; to determine whether a respository site is safe, the three features must be considered in combination.

As this simple example illustrates, the geologic, hydrologic, and geochemical conditions of a site will interact in affecting the performance of a repository. An assessment of the performance of a complete repository must take into account these and other conditions. A detailed assessment of this performance will not be possible until after site characterization, because the performance depends on many complex, interdependent conditions, such as the lengths of time the waste canisters can be expected to remain intact, the rates at which the waste might be leached from the waste form, and the rates of radionuclide transport

discussed earlier. Independently establishing numerical requirements for parts of the site without recognizing that they are interdependent would severely limit the flexibility of the DOE in designing the most effective waste-isolation system and of the NRC in licensing it.

The DOE, therefore, selected the second approach—developing generic qualitative guidelines as a basis for comparing sites. The DOE believes that generic qualitative guidelines are most appropriate for comparing and evaluating sites that are in different geohydrologic settings and host rocks, especially where the features of each site must work together, as a complete system, to prevent the release of radioactive material. Comparative evaluations must therefore consider the interactive elements in coming to a definitive finding with regard to each feature or each guideline. To make the guidelines useful and directly applicable early in the siting process, the DOE identified conditions that qualify and disqualify sites, as well as conditions that are considered to be favorable and conditions that are considered to be potentially adverse. These four conditions are explained in Section IV.A.

Some commenters appeared not to realize that the general guidelines will be the basis for more quantitative analyses in the later phases of siting. The site-characterization plans to be prepared before sinking exploratory shafts at candidate sites will identify site-specific issues, derived from the guidelines, that affect the suitability of each site for development as a repository. Furthermore, an important basis for the final selection of a site for development will be detailed performance assessments (Section I.B.4), which will be fully quantitative evaluations of the ability of the characterized sites to meet the system guidelines.

3. Lack or Inadequacy of Qualifying and Disqualifying Conditions

Many commenters objected to the lack of explicitly labeled qualifying conditions in the proposed guidelines; many felt that the guidelines should contain more disqualifying conditions and that they should be strengthened. Others suggested that qualifying and disqualifying conditions should be stated in qualitative terms. The comments contained numerous suggestions for rewording these conditions and for adding new statements to them. Some comments indicated that each guideline should contain a specific disqualifying condition, and some suggested that the DOE state the inverse of the qualifying condition as a disqualifying condition. The comments revealed an apparent misunderstanding about the purposes of the qualifying and the disqualifying conditions.

In response to these comments, qualifying conditions were added for all guidelines, additional disqualifying conditions were developed, and the format was revised to indicate explicitly which conditions are required for the qualification of a site and which conditions would be disqualifying. To answer the questions raised in the comments and to help clear up the apparent misunderstanding, a discussion of the structure of the guidelines and the meaning of the conditions is presented in Section IV.A of this notice.

A request for additional disqualifying conditions with sufficient specificity to ensure that unacceptable sites are eliminated as early as practicable was one of the seven NRC preliminary concurrence conditions (see Section II.C). Specifically, the NRC asked that disqualifying conditions be provided for all the factors specified in Section 112(a) of the Act. All of the factors specified in the Act had been accounted for in the qualifying conditions, but, as explained in Section IV.A, these conditions cannot be used early in the siting process.

In developing the guidelines, the philosophy of the DOE had been to develop for system and technical guidelines qualifying conditions stating those conditions that a site must meet in order to be considered adequate in terms of that guideline. Failure to meet the qualifying condition of any guideline would disqualify a site. In addition, the DOE identified explicit disqualifying conditions that were considered to be so adverse as to disqualify a site without further investigation if they were present. The number of these very serious disqualifying conditions was limited. However, in view of the NRC's concurrence condition 7 and the continuing requests by the States and the public to include disqualifying conditions for at least each of the factors specified in the Act, the DOE reevaluated the factors in an attempt to develop additional applicable disqualifying conditions. As a result of this reevaluation and discussions with the NRC staff, the DOE added new disqualifying conditions for two postclosure guidelines (§ 960.4–2–7, Tectonics, and § 960.2–4–8–1, Natural Resources) and four preclosure guidelines (§ 960.5–2–4, Offsite Installations and Operations; § 960.5–2–6, Socioeconomic Impacts; § 960.5–2–10, Hydrology; and § 960.5–2–11, Tectonics). In addition, the DOE revised the disqualifying conditions for two postclosure guidelines (§ 960.4–2–1, Geohydrology, and § 960.4–2–6, Dissolution) and one preclosure guideline (§ 960.5–2–5, Environmental Quality). The specific changes are discussed in the section-by-section analysis of Section IV.B. Furthermore, 10 of the 17 disqualifying conditions included in the final guidelines can be applied at the first stage of the site-selection process; they are identified in Appendix III to the guidelines.

4. Lack of Weighting Factors

Among the comments that appeared most frequently were suggestions for a weighting system for using the guidelines. Many commenters felt that a weighting system would make it easier to review and control decisions made in the siting process. Many pointed out that some guidelines will be more important than others in evaluating sites and that to rank them according to priority would make the weighting explicit. Others suggested that the guidelines be grouped qualitatively—for example, into collections of primary and secondary importance. Still others warned against the ranking of general guidelines intended to cover interacting features of complex systems in diverse media.

The DOE agrees that a qualitative grouping may be useful in guiding the application of the guidelines at certain steps in the siting process. The implementation guidelines now specify steps at which particular guidelines are to be grouped according to primary and secondary significance as well as the order of importance to be assigned to the three groups of preclosure guidelines.

5. Lack of Definition of the Siting Process

Many commenters felt that the DOE had not explained its siting process well enough to make the proposed or alternative guidelines understandable. The comments contained a number of questions about the history of the siting process before the Act was passed; they also questioned its relationship to the process outlined in the Act.

Agreeing that further explanation of the siting process would be helpful, the DOE has provided it in two sections of this notice: Section I.B, which explains the process, and Section IV.B, which discusses the application of the guidelines during the siting process.

B. Comments on the Consultation Process

1. Adequacy of the Consultation Process

Many of the comments on the proposal of February 7, 1983, criticized the consultation process for the guidelines. Some said that consultation with the States and Federal agencies had not been adequate and had not begun early enough, and some stated that early consultation would have improved the proposed guidelines. One commenter suggested an additional series of hearings in States with potentially acceptable sites after final guidelines have been prepared. A number of commenters also requested specific details of the process the DOE intends to follow for consultation with the States during the implementation of the guidelines.

Many of the commenters complained that the time allowed for review and comment on the guidelines was too short, that the public had not been adequately notified of public hearings, that the location and the scheduling of the hearinga were inconvenient, and that, before publishing final guidelines, the DOE should release for another round of public comment guideline revisions resulting from public comments on the proposed guidelines. Also raised were questions about the process of obtaining NRC concurrence and future revisions of the guidelines as allowed by the Act, especially revisions made to reflect possible changes in the EPA and the NRC regulations (see Section III.A.1).

The Act prescribed a time period within which the DOE was to issue final guidelines and a process for consulting on guideline development. As explained in Section II, the DOE greatly expanded this process to allow wide opportunity for review and comment on the draft guidelines and to provide for continued consultation with States and Indian tribes (see also the comment-response document (16) for more-detailed responses to the comments on consultation). The process to be followed for consultation with the States during the implementation of the final guidelines will be specified in the consultation-and-cooperation agreements that will be negotiated with the affected States and affected Indian tribes in accordance with the provisions of the Act.

The Act allows the guidelines to be revised as necessary. Such revisions will be made through a process of notice and comment in accordance with the Administrative Procedure Act. In response to the NRC's preliminary concurrence condition 2 (Section II.C) and concerns expressed during the NRC's meeting on June 22, 1984, the DOE has made a commitment in § 960.1, "Applicability," to submit all guideline revisions to the NRC for its review and concurrence before issuance.

2. Endorsement of the Alternative Guidelines

Several comments asked why the alternative guidelines of May 27, 1983, were attributed to the DOE-appointed task force and had not been endorsed by the DOE. Many of the comments stated that the alternative guidelines represented a very significant improvement over the proposed guidelines. Some requested that the DOE formally reissue the alternative guidelines as a DOE proposal and allow another full round of public comment. Many parties stated that the DOE's consultation process on the guidelines had greatly improved and expressed the hope that similar consultations would continue through all phases of the DOE's siting investigations for repositories.

The DOE wished to allow the task force the greatest flexibility in developing alternative guidelines that met the requirements of the Act and responded to the comments on the original proposal of February 7, 1983. Moreover, the DOE wished to involve the States and Act-designated Federal agencies in the development of the guidelines at the earliest possible time. Therefore, the alternative guidelines were provided to States and agencies for review and comment and were made available to the public as well. Because of the generally favorable comments from States, Federal agencies, and the public, the DOE used the alternative guidelines as the basis for preparing the guidelines that were submitted to the NRC for concurrence (see Section II for a more detailed discussion).

IV. Overview of the Guidelines

The process of consultation, comment, and NRC concurrence (Section II) led to revisions in the guidelines. This section explains the final guidelines in detail, giving the reasons for the choices that the DOE made in developing their form and content. In addition to the changes described in this section, many editorial changes were made in response to suggestions for making the guidelines clearer and easier to understand.

A. Structure of the Guidelines

The guidelines are presented in three major categories: implementation guidelines, postclosures guidelines, and preclosure guidelines.

The implementation guidelines govern the application of all other guidelines in the evaluation of sites and establish general rules to be followed during site screening, nomination, recommendation for characterization, and recommendation for repository development.

The postclosure guidelines govern the siting considerations that deal with the long-term behavior of a repository—that is, its behavior after waste emplacement and repository closure. These are the considerations most important for ensuring the long-term protection of the health and safety of the public.

The preclosure guidelines govern the siting considerations that deal with the operation of the repository before its is closed, while waste is being received and emplaced. These are the considerations important in protecting the public and the repository workers from exposures to radiation during repository operations. They are also the most important considerations in protecting the quality of the environment and in mitigating socioeconomic impacts, because most of the environmental and the socioeconomic effects of a repository will occur during its construction and operation.

The purpose of separating the preclosure and the postclosure guidelines is to make clear the differences in the roles played by these guidelines. This separation is consistent with the structure of the proposed EPA standards (40 CFR Part 191), which establish different radiological-safety objectives for the preclosure and the postclosure periods, and the NRC criteria (10 CFR Part 60), which are similarly separated.

Both the postclosure and the preclosure guidelines are divided into system and technical guidelines. The postclosure system guideline states broad requirements that are based generally on the objective of protecting public health and safety and the environment and are based specifically on applicable regulatory standards. The postclosure system guideline states such requirements for the repository system, and each of the corresponding postclosure technical guidelines specifies requirements for one or more elements of the repository system—the physical properties and physical phenomena at the site. The three preclosure system guidelines state broad requirements for three different systems. These systems include, in addition to some characteristics of the site and more engineered components, the people and the environment near the site. Each of the corresponding preclosure technical guidelines specifies requirements on one or more elements

of those systems; these elements are defined in Section III.B.4. Both the postclosure and the preclosure technical guidelines specify conditions that would qualify or disqualify sites, and they specify conditions that would be considered favorable to potentially adverse.

Each technical guideline contains a *qualifying* condition. Taken together, these qualifying conditions are the minimum conditions for site qualification. A site will be qualified only if it meets all of the qualification conditions; no single qualification condition is sufficient to qualify a site. A site will be disqualified if site characterization shows that it fails to meet any one of the qualifying conditions. Failure to meet a qualifying condition can usually be determined only after site characterization and the concurrent investigations of environmental and socioeconomic conditions: qualifying conditions must generally be stated in terms of specifications that require analyses of the repository system, and data for such analyses will be available only after site characterization and investigation. Before site characterization, however, evaluations that compare sites will be able to reveal the relative potential of those sites to meet the qualifying conditions of the technical guidelines. The findings that can be made during various stages of the site-selection process are defined and listed in Appendix III to the guidelines.

Twelve technical guidelines also contain *disqualifying* conditions. Each describes a condition that is considered so adverse as to constitute sufficient evidence to conclude, without further consideration, that a site is disqualified. Almost all of the 17 disqualifying conditions pertain to conditions whose presence or absence may be verifiable at a site without extensive data gathering or complex analysis; ten of them can be applied in the first phase of the site-selection process (see Appendix III to the guidelines). Application of the disqualifying condition on ground-water travel time (§ 960.4–2–1) may, however, require data collected during site characterization. It is because of the intent that the qualifying conditions should be useful early in the siting process that the converse of each qualifying condition was not listed as a disqualifying condition.

The inclusion of the favorable and potentially adverse conditions is based on the NRC's 10 CFR Part 60. These conditions can be used to predict the suitability of a site before detailed studies of the site have been performed. They provide preliminary indications of system performance.

Although favorable conditions need not exist at a given site for that site to meet the qualifying condition, the existence of such conditions leads to an expectation that subsequent evaluations will yield enhanced confidence in a site's suitability. Similarly, the purpose of determining whether any potentially adverse conditions exist at a site is to provide an early indication of conditions that must be examined carefully before judging the acceptability of that site. Such examinations must evaluate the effects of other, possibly compensatory, conditions present at a site. Thus, a site that has most of the favorable conditions may be presumed likely to meet the system guidelines, while a site with many potential adverse conditions may not meet them.

By providing preliminary indications of system performance, favorable and potentially adverse conditions are intended to be used primarily in the screening phase of site selection, during the search for potentially acceptable sites. They will also help determine the most effective use of available resources for site investigation when those resources are limited. Some level of system evaluation may later be required to determine whether a potentially adverse condition so identified is actually adverse and, if so, to what extent it affects site suitability.

At some point, available evidence may be sufficient to conclude that a potentially adverse condition is, in fact, so seriously adverse as to support a conclusion that the related qualifying condition is not, and will not, be satisfied. In such a case, the site will be disqualified. For example, potentially adverse conditions related to the possibility of requirements for engineering measures beyond reasonably available technology may, upon sufficient study, be found to impose with certainty such extraordinary engineering measures and as a result cause disqualification.

In the guidelines of November 1983, the technical guidelines in both the postclosure and the preclosure sections were subdivided into smaller groups. The postclosure guidelines were organized into two groups: (1) guidelines for the conditions and processes that would be expected to affect the performance of a repository and (2) guidelines for potentially disruptive processes and events that, though not expected, might disrupt the repository. The first group was to be assigned greater importance in site evaluations.

This grouping and the hierarchy of importance were objectionable to the NRC because the grouping was not strictly consistent with the NRC's categories of "anticipated" and "unanticipated" processes and events. Furthermore the NRC was concerned that not all of the guidelines assigned to the second group (potentially disruptive processes and events) could be considered to be of secondary importance, and thus in the site-selection process the DOE may overlook "some site characteristics that are important to repository performance." In its preliminary concurrence condition 3(h), the NRC asked the DOE to make the postclosure guidelines consistent with the NRC's categories of "anticipated" and "unanticipated" processes and events. In response, the DOE, after evaluating the hierarchy of the postclosure guidelines, decided to delete the subcategories.

As a consequence, the postclosure guidelines are no longer ranked, but they continue to retain precedence over the preclosure guidelines. The elimination of ranking for the postclosure guidelines was acceptable to the NRC, which had stated in its preliminary concurrence decision that it "sees no explicit requirement for this or any other ranking" in the Act and that "the issue of ranking or ordering the guidelines will not materially affect NRC in carrying out its statutory responsibilities" (49 FR 9659). Furthermore, the NRC considers (49 FR 28135) that arguments for guideline ranking are motivated by the need for some assurance that the DOE's site-selection process will proceed in a "logical and verifiable fashion." The DOE's response to preliminary concurrence condition 5 provides such assurance, by specifying during which phase of the siting process specific guidelines are to be applied and the findings to be made in these applications. (See Section IV.B for a more detailed discussion.)

The preclosure guidelines are grouped into three categories, which separately address concerns about radiological safety; environmental impacts, socioeconomics, and transportation; and the ease and cost of repository siting construction, operation, and closure. These categories of guidelines are evaluated by different techniques, and the separation is intended to facilitate their application.

The organization of the guidelines, therefore, is intended to make clear how they can be used during the siting process. Early in the process, when data are few, the disqualifying conditions are to be applied to eliminate unsuitable land units, and then the favorable and potentially adverse conditions must be applied to the remaining land units to provide the best approximations of suitability. As more data become available, the qualifying conditions of the technical guidelines can be used as standards for approximating suitability. The process will culminate after site characterization and investigation, when enough data are available to reliably establish whether the system guidelines are met.

B. Section-by-Section Analysis

As explained in Section II, the DOE submitted the guidelines to two rounds of public review and comment. The first followed the publication of the proposed guidelines on February 7, 1983; the second followed the publication of the alternative guidelines on May 27, 1983. The comments received on the proposed guidelines were considered in developing the alternative guidelines; the disposition of these comments is discussed in detail in the comment-response document (16). Comments on the alternative guidelines were considered in developing the final guidelines, whose structure and format were adopted from the alternative guidelines. The resolution of these comments is discussed in the sections that follow, which also present the purpose and intent of each final guideline and describe the changes that resulted from the NRC concurrence process. Comments on the proposed guidelines of February 1983 are discussed here only when necessary to elucidate the development of the final guidelines.

1. General Provisions (Subpart A)

This section of the guidelines consists of the statement of applicability of the guidelines and the definitions.

Section 960.1 Applicability. As specified in Section 112(a) of the Act, the Secretary of Energy shall use these guidelines in evaluating the suitability of sites for development as repositories. The guidelines will be used for all suitability determinations made pursuant to Section 112(b) and preliminary suitability determinations required by Section 114(f).

In the November 1983 guidelines, this section stated that, in applying the guidelines, the DOE will resolve any inconsistencies with the Act, 10 CFR Part 60 and 40 CFR Part 191 "in a manner determined by the DOE to most closely agree with the intent of the Act." In its preliminary decision, the NRC pointed out that its interpretation of 10 CFR Part 60 is binding on the DOE and requested, in preliminary concurrence condition 1, the DOE to recognize the NRC's jurisdiction over the resolution of differences between the guidelines and 10 CFR Part 60. The DOE responded by revising Section 960.1 to acknowledge the jurisdiction of the NRC in this matter. Further, because of the necessity for any site selected by the DOE to ultimately comply with 10 CFR Part 60 and 40 CFR Part 191, in the event of a conflict between the guidelines and either 10 CFR Part 60 or 40 CFR Part 191, these NRC and EPA regulations will supersede the guidelines and constitute the operative requirement in any application of the guidelines.

In the guidelines of May 1984, the DOE also made the commitment, in response to the NRC's preliminary concurrence condition 2, to obtain the NRC's concurrence on revisions to the siting guidelines that relate to NRC jurisdiction. The DOE had always intended to submit guideline revisions to the NRC for concurrence but had not explicity stated this intention, assuming that, since it was required by the Act, submittal of revisions for NRC concurrence was understood.

The NRC had explained (49 FR 9650) that it would have jurisdiction to review the guidelines insofar as they might bear on the exercise of NRC responsibility under the Atomic Energy Act, the Energy Reorganization Act, the National Environmental Policy Act, and the Nuclear Waste Policy Act. In view of the broadness of this jurisdiction and comments made by the States at the June 22, 1983, NRC meeting, the Commission requested, and the DOE agreed, that all revisions of the guidelines would be submitted for NRC concurrence.

Section 960.2 Definitions. To clarify the intent of the guidelines, the DOE has included an extensive list of definitions. The sources of the definitions are the Nuclear Waste Policy Act of 1982; the NRC's 10 CFR Part 60 (17), the EPA's proposed 40 CFR Part 191 (15), Water-Supply Paper 1988 of the U.S. Geological Survey (18), and the *Glossary of Geology* of the American Geological Institute (19). Some of the definitions obtained from these sources were slightly modified to enhance clarity or ease of application. Where the NRC and the Act provided differing definitions, an attempt was made to incorporate the intent of both definitions. If a given term was defined differently by the NRC and a source other than the Act, the NRC definition was used for consistency and to facilitate future NRC reviews of siting and licensing documents. For terms that had not been previously defined, new definitions appropriate to the guidelines were formulated.

Many commenters complained that the terms "reasonable expectation" and "beyond the state of the art" were difficult to understand or to demonstrate. "Reasonable expectation" has been eliminated because the DOE has changed the approach to reaching a decision on suitability: instead of demonstrating reasonable expectation, the DOE will make a comprehensive evaluation of the compliance of the site with all guidelines.

"Beyond the state of the art" has been replaced with "reasonably available technology," which is defined to mean "technology which exists and has been demonstrated" or for which the results of any requisite development, demonstration, or confirmatory testing efforts before application will be available within the required time periods.

The term "disturbed zone" elicited a large number of comments, most of which questioned how this three-dimensional "zone" could be considered a part of a two-dimensional "area." Reference to the definition of a "controlled area," which specifically includes the underlying subsurface, should help clarify the issue. "Disturbed zone" had been defined to mean that portion of the controlled area whose physical or chemical properties are projected to change permanently as a result of the construction of the underground facility and the emplacement of heat-producing waste such that the resultant change of properties could have a significant effect on the performance of the repository. Thus the definition includes both mechanical disturbances, which will occur during construction and operation, and heat-induced disturbances, which will occur after closure. The definition of this term is important because the boundary of the disturbed zone (i.e., the boundary between the altered and the unaltered host rock) is the starting point in calculating the time of ground-water and radionuclide travel to the accessible environment. Excluded from the disturbed zone as defined in the guidelines are the shafts from the surface to the underground facility. Although they will be considered as potential flow paths for radionuclide travel, they are explicitly excluded from the definition of "disturbed zone" because they are not realistically the starting point for radionuclide travel. (The shafts will be sealed after closure, and the seals will be part of the engineered-barrier system.)

In its preliminary concurrence condition 3(e), the NRC requested that the word "permanently" be deleted from the definition of "disturbed zone" because the "disturbed zone," as defined in 10 CFR Part 60, is not limited to areas that have changed "permanently." The NRC was therefore concerned that the DOE might neglect transient changes that could have a significant effect on repository performance or that the DOE might make siting decisions on the basis of a disturbed zone that is different from that specified in 10 CFR Part 60. Since the purpose of the DOE's definition is accomplished by the NRC's definition in 10 CFR Part 60 and by the phrase "such that the resultant change of properties could have a significant effect on the performance of the geologic repository," the DOE agreed to delete the word "permanently."

The definitions of "accessible environment" and "controlled area" elicited approximately 20 comments. Because of the relationship between these two terms, they are discussed here in terms of concerns about the controlled area. The comments indicated considerable misunderstanding of the concepts and expressed concern about (1) the releases of radionuclides in the controlled area, both underground and on the surface; (2) the level or levels of control over access and future use; and (3) the extent of the controlled area (i.e., the distance from the underground facility to the accessible environment).

The concept of a controlled area was developed by the NRC in 10 CFR Part 60 to exclude incompatible activities before and after permanent closure: the outer boundary of the controlled area is the accessible environment. Radionuclide releases underground in the controlled area will be controlled by the waste package during its effective lifetime; after the package containment is lost, they are to be limited to the allowable rate of release from the engineered system (1 part in 100,000 per year). Containment by the waste package is required to be essentially complete during the first several hundred years, when most of the radiation and heat in the engineered-barrier system comes from the radioactive decay of fission products. The containment period and the low release rate after containment, combined with the retardation of radionuclide migration through the host rock and the surrounding geologic formations, will drastically limit the concentration of radionuclides that can reach ground-water and thus be transported to the accessible environment.

During operation, surface releases within restricted areas of the controlled area will be governed by 10 CFR Part 20, the NRC's standards for protection against radiation. Surface releases outside the restricted areas will be governed by 10 CFR Part 60, the NRC's criteria for geologic repositories, and 40 CFR Part 191, Subpart A, the EPA's environmental standards for waste management and storage.

Access to the surface facilities will be restricted (the "restricted area"). The controlled area will be subject to lesser controls. Outside the restricted area, activities that could affect the performance of the repository, such as deep drilling, will be prohibited, but surface activities could be permitted by the DOE. Additional information on site ownership and control is found in §§ 960.4–2–8–2 and 960.5–2–2. The size of the controlled area, at a given site, will depend mainly on the rate of radionuclide movement through ground-water and will be established on a site-by-site basis to ensure that releases to the accessible environment will not exceed those permitted by 40 CFR Part 191. It can extend to as much as 10 kilometers in any direction from the underground facility, but it need not be this large if the EPA standards can be met in a shorter distance.

Nearly 20 commenters requested particular definitions of "high-level waste." The definition of "high-level waste" was taken from the Act and is slightly different from the definition used by the NRC in 10 CFR Part 60 in that high-level radioactive waste is not considered to include spent nuclear fuel. The Act always refers to high-level radioactive waste and spent nuclear fuel separately. However, since the spent fuel transferred to the DOE for disposal will have been declared to be waste by its owners, such spent fuel is included in the broader category of "radioactive waste" that will be disposed of at the repository. For brevity, therefore, the terms "radioactive waste" and "waste" are frequently used in the guidelines to denote "high-level radioactive waste and spent nuclear fuel."

More than 20 new terms were defined to clarify the intent of the guidelines; many of these definitions were requested by commenters. Among them are geologic terms (e.g., "active fault" and "lithosphere"); geohydrologic terms (e.g., "confining unit," "ground-water flux," "ground-water travel time," "hydraulic gradient," and "hydraulic conductivity"); terms related to the performance of the repository (e.g., "cumulative releases of radionuclides," "expected repository performance," "geohydrologic system"); and terms related to the development and operation of a repository (e.g., "restricted area," "site characterization," "surface facilities," and "closure").

For consistency with revisions in the postclosure guidelines (Subpart C), the terms "characteristics and processes affecting expected repository performance" and "potentially disruptive process and events" were deleted. To clarify revisions of the implementation guidelines (Subpart B) made in response to the NRC's concurrence conditions 4 and 5, four terms were added: "application," "evaluation," "finding," and "source term." Also deleted from the definitions was the term "capillary fringe" because it is not used in the NRC's proposed modification to 10 CFR Part 60 for disposal in the unsaturated zone; the definition of "unsaturated zone" was modified accordingly.

2. Implementation Guidelines (Subpart B, Section 960.3)

Although the proposed guidelines discussed in general terms their application during siting, many commenters requested a more detailed description of the procedures to be used and a fuller discussion of a number of issues. Because of the numerous requests for a clearer, more specific discussion, the task force developed, for the alternative proposal of May 27, 1983, implementation guidelines that specified the procedures for applying the rest of the guidelines.

The comments on the implementation guidelines in the alternative proposal of May 27, 1983, included several that disagreed with particular provisions, but again many commenters requested additional clarification. The DOE therefore revised the implementation guidelines and prepared a description of the process by which they will be applied. That description is presented in this section, after a discussion of the NRC's preliminary concurrence conditions for the implementation guidelines.

Two of the comments on the implementation guidelines did not address any particular provision. One of these was concerned with the favorable and potentially adverse conditions: one commenter interpreted the implementation guidelines to require that the favorable and potentially adverse conditions be simply counted up to determine site suitability. This is not at all the intent. The mere presence of a potentially adverse condition requires an evaluation of its influence on ability to comply with the qualifying conditions of the pertinent system guideline and a determination that it is mitigated by related favorable conditions or some other site-specific factors. Such evaluations are not restricted to the form of simple counting since the significance of each of these conditions may be amplified or diminished by other site-specific conditions.

The second general comment was a request, from many States, that the guidelines (or later amendments) include a numerical (or equivalent) method for "computing" compliance with the guidelines and for the resulting site-recommendation decisions, thereby ensuring that future findings and decisions are "objective." The DOE has not found support in the technical community, in particular in consultation with the U.S. Geological Survey, for such a method nor has the DOE been able to determine the framework for a predetermined method that would be sufficiently complete to eliminate the exercise of judgment on the part of the Federal officials who will make these decisions after consultation with the States. The DOE does not believe that the performance of a system as complex as a repository site, taking the natural structures and systems alone, can be represented by arithmetic formulas without seriously distorting critical synergies among the component elements. The DOE has, in the guidelines, made an effort to provide guidance by prescribing the relative importance of subsets of the guidelines, with the postclosure guidelines being assigned primary importance.

In its meeting on June 22, 1984, the NRC requested the DOE to delete from § 960.3–2–3, "Recommendation of Sites for Characterization," the statement that the basis for the recommendation decision will include "a preliminary determination, referred to in Section 114(f) of the Act, that such sites are suitable for development of repositories." This statement had been added to the May 1984 guidelines in an effort to clarify the siting process, but several States objected that the provision could not be implemented before site characterization. The DOE agreed that the discussion of the preliminary determination was outside the scope of the guidelines and accordingly revised § 960.3–2–3 by deleting the above-mentioned statement.

Three of the NRC's preliminary concurrence conditions were related to the implementation guidelines: condition 4, which asked the DOE to clarify the role of engineered barriers in site evaluations; condition 5, which asked the DOE to specify in greater detail how the guidelines will be applied; and condition 6, which asked the DOE to indicate the kinds of information needed for decisions about site nomination and recommendation for site characterization. In response to these conditions, the DOE revised and expanded the implementation guidelines. The principal changes are discussed below. This discussion is followed by a detailed explanation of the revised implementation guidelines.

Summary of Revisions Made in Response to the NRC's Concurrence Conditions

Engineered barriers. In its preliminary concurrence condition 4, the NRC asked the DOE to modify the siting guidelines to make clear that "engineered barriers cannot constitute a compensating measure for deficiencies in the geologic media during site screening." Furthermore, during the public meeting held by the NRC on January 11, 1984, the EPA testified that, in making comparative performance assessments for potential sites, the DOE should assume that the performance of engineered barriers (i.e., waste packages and waste forms) is at least 10 times less effective than that required by 10 CFR Part 60 in order to compare the isolation capabilities of the sites.

The DOE had never intended that engineered barriers be used to compensate for site deficiencies. These barriers were mentioned in the guidelines because the EPA's proposed standards in 40 CFR Part 191 specify requirements for the total repository system, which includes engineered barriers. Furthermore, the role of engineered barriers as part of the total system is recognized by the NRC, which has established specific performance requirements for the waste package in 10 CFR 60.113. In response to comments on the alternative guidelines of May 1983 and to comments received during subsequent meetings with the States (see Section II), the DOE had revised § 960.3 in the November 1983 guidelines to clarify the role assigned to engineered barriers. However, the revision was apparently not explicit enough to satisfy the concerns of those who objected to the use of engineered barriers as compensating measures.

Therefore, to satisfy the NRC's condition 4, the DOE revised implementation guideline § 960.3–1–5 (formerly § 960.3–1–4) to state that in comparative site evaluations engineered barriers "shall be considered only to the extent necessary to obtain realistic course terms for site evaluations" and "shall not be used to (1) compensate for an inadequate site; (2) mask the innate deficiencies of a site; (3) disguise the strength and weaknesses of a site and the overall system; and (4) mask differences between sites when they are compared." Furthermore, to accommodate the EPA's proposal, the DOE added to this implementation guideline requirements about the assumptions to be used about engineered barriers in comparative evaluations, specifying that "a range of levels in the performance of engineered barriers" is to be used (the performance varying by at least a factor of 10 above and below the requirements of 10 CFR 60.113).

At the June 22, 1984, meeting of the NRC, the DOE agreed to further clarify the role assigned to engineered barriers in site evaluations (see Section II.C).

Application of guidelines at each siting stage. In its preliminary concurrence condition 5, the NRC asked the DOE "to specify in greater detail how the guidelines will be applied at each siting stage, including site nomination and characterization." The creation of a standard for determining the DOE's level of confidence in data supporting site nomination had also been raised by several commenters. Throughout the guideline-development process, the DOE had intended that each site would be evaluated against all guidelines in the siting stages applicable to the first or the second repository—that is, to apply all guidelines throughout the siting process. However, during the concurrence meetings, the NRC staff suggested that the term "apply" be used to mean "evaluate and make a finding against." After considering this suggestion, the DOE agreed that this definition would be helpful in clarifying the guideline-application process. This suggestion was implemented by preparing a new appendix (Appendix III) for the siting guidelines and revising the implementation guidelines, especially § 960.3–1–5, "Basis for Site Evaluations."

Appendix III specifies how the guidelines are to be applied at the principal decision points of the siting process: site identification as potentially acceptable, nomination as suitable for characterization or recommendation for characterization, and recommendation for development as a repository. In particular, this appendix specifies the types of findings that are to result from the applications of the disqualifying conditions and the qualifying conditions. Two levels of finding, one showing an

increased level of confidence over the other, are specified for both the disqualifying and the qualifying conditions. For the disqualifying conditions, a level 1 finding (i.e., the evidence does *not* (or conversely, does) support a finding that the site is disqualified) must be made at the nomination stage, while a level 2 finding (i.e., the evidence supports a finding that the site is *not* disqualified and is *not* likely to be disqualified, or that the site is disqualified or is likely to be disqualified) must be made and supported at the time of recommendation for repository development (site selection). For the qualifying conditions, a level 3 finding (i.e., the evidence does *not* (or, conversely, does) support a finding that the site is *not* likely to meet the qualifying condition) must be made at the nomination stage, while a level 4 finding (i.e., the site meets the qualifying condition and is likely to continue to meet it or that the site cannot meet the qualifying condition or is unlikely to be able to meet it) must be made and supported at the recommendation for repository development.

Section 960.3–1–5 was revised (1) to delete the grouping of the postclosure guidelines into two categories (see Section III); (2) to clarify the role of engineered barriers in site evaluation, as already explained above; and (3) to make various editorial changes for greater clarity of meaning and intent. In its final concurrence decision, the NRC agreed that the DOE's additions and modifications satisfy the requirements of condition 5 and the revised guidelines describe an implementation process that "provides confidence that alternative sites will be selected in a manner that meets the requirements of the National Environmental Policy Act."

Kinds of information. The NRC's preliminary concurrence condition 6 states that the "DOE should supplement the guidelines to indicate the kinds of information necessary for DOE to make decisions on the nomination of at least five repository sites and subsequently recommending these sites to the President for characterization. . . ." Similar questions on the data to support nomination had been presented to the DOE by several commenters. The DOE agreed that such information would be helpful and in response added a new appendix (Appendix IV) and a new section (§ 960.3–1–4) to the implementation guidelines. The new section, "Evidence for Siting Decisions," is discussed in the subsequent explanation of the implementation guidelines.

Appendix IV specifies the types of information the DOE expects to be included in the evidence used for the guideline applications set forth in Appendix III at the time of site nominations as suitable for characterization. The appendix presents these information elements for each technical guideline; the types of information listed are considered to be the most significant for the evaluation of a site against that particular guideline. For example, for guideline § 960.4–2–5, Erosion, Appendix IV requires "a description of the structure, stratigraphy, and geomorphology of the site, in context with the geologic setting" and states that the types of information that would support this description would include "the depth, thickness, and lateral extent of the host rock and the overlying rock mass; the lithology of the stratigraphic units above the host rock; and nature and rates of geomorphic processes during the Quaternary Period."

Where necessary, Appendix IV allows the use of technically conservative assumptions or extrapolations of regional data to supplement the information collected for the site, since this stage of the site-selection process precedes site characterization. Furthermore, it is recognized that the specific information for the guideline applications set forth in Appendix III is expected to differ from site to site, both with regard to favorable and potentially adverse conditions and with regard to the sources and the reliability of the information.

Explanation of the Implementation Guidelines

The paragraphs that follow discuss the final implementation guidelines, which incorporate the DOE's responses to the NRC's concurrence conditions.

Siting provisions (§ 960.3–1). The implementation guidelines begin with five provisions for the siting process. The first three of these provisions (§§ 960.3–1–1 through 960.3–1–3) govern the efforts to find sites with a diversity of geohydrologic settings, a diversity of types of host rock, and, when siting the second repository, a regional distribution. These provisions are derived from the Act, which specifies that the guidelines are to require the Secretary to consider regionality and various geologic media.

The fourth siting provision (§ 960.3–1–4) resulted from the DOE's efforts to comply with the NRC's preliminary concurrence condition 6 and was developed after discussions with the NRC staff. It discusses the evidence (i.e., information, evaluation, assumptions, etc.) that is to be used to support the decisions that must be made in four of the five phases of the siting process—site identification as potentially acceptable, site nomination for characterization, site recommendation for characterization, and site recommendation for repository development. It is supported by a new appendix (Appendix IV), which, as explained above, gives examples of the types of information that will be used in the nomination phase.

Included in the provision for evidence is a discussion about the use of assumptions. Before site characterization is completed, preliminary assessments of the potential of a site to meet the qualifying conditions must necessarily employ judicious assumptions where definitive data are missing. Many commenters were concerned that consistent optimism in such assumptions would create benefits out of deficiencies in the scope of field testing and research undertaken by the DOE. Accordingly, § 960.3–1–4 only allows the use of assumptions that would tend to underestimate the ability of a site to meet the qualifying conditions. Such assumptions are commonly termed "conservative" because they are chosen in order to minimize the possibility that later findings will prove the assumptions to be wrong. This is a commonly used approach in engineering and in scientific predictions. Where some data exist, a statistical range of uncertainty may constrain the latitude of such assumptions. Even where no direct date exist, it is often possible to establish a sufficiently conservative range of values by examining comparable situations in nature or by inference from related phenomena. Thus, there are techniques for establishing realistically conservative assumptions that allow reasonable decisions to be made in the face of uncertainties. It should be emphasized, however, that one of the primary focuses of this guideline is to ensure, to the extent practicable, that analyses performed in the absence of complete data (as will necessarily often be the case) do not produce erroneous projections about the suitability of a site.

At several steps in the siting process the guidelines will be used in assessing individual sites and in comparing sites with one another. The fifth provision, § 960.3–1–5, describes the basis on which these evaluations will be made. This criterion begins by assigning primary significance to the postclosure guidelines and secondary significance to the preclosure guidelines; this

assignment is to be used in all the evaluations except those made during the screening phase of the siting process. This assignment of significance received general approval, but some commenters argued that equal significance should be assigned to postclosure and preclosure guidelines. The fundamental purpose of a geologic repository is to provide long-term isolation for radioactive waste in a manner that protects the health and safety of the public. That fundamental purpose will be achieved primarily by the site features related to the postclosure guidelines. The postclosure guidelines are accordingly given primary significance. The DOE recognizes that the preclosure guidelines govern highly important aspects of a repository, but during the siting process the postclosure guidelines are collectively to be given primary significance over the preclosure guidelines, taken together, because the long-term concerns about public health and safety must take precedence over concerns about preclosure effects, which will be temporary. Nonetheless, in order to qualify for repository development, a site must meet the qualifying conditions of all the guidelines.

The evaluation-basis provision of § 960.3–1–5 next establishes an order of importance for the technical guidelines in the preclosure categories. Unless it can be demonstrated to the satisfaction of the NRC that the repository will be safe during its preclosure phase, the repository cannot be built. For the preclosure period, the evaluation-basis provision therefore assigns highest importance to radiological safety. A secondary importance is assigned to the guidelines governing environmental quality, socioeconomic impacts, and transportation. The lowest order of importance is assigned to the guidelines governing ease and cost of siting, construction, operation, and closure.

Section 960.3–1–5 next specifies rules for evaluating individual sites. It requires that the evaluation of technical and system guidelines not be entirely separate. Because the repository must work as a system, an evaluation of the features governed by a technical guideline must retain some consideration of the contributions that those features make to the performance of the entire system. Similarly, an evaluation against a system guideline must include consideration of the technical guidelines accompanying the system guideline, and the evidence related to the system guideline. In recommending sites for the development of repositories, this evidence is to include analysis of expected repository performance and the likelihood of compliance with 40 CFR Part 191 and 10 CFR Part 60, in accordance with the postclosure system guideline.

The provision next gives rules for making comparisons among sites. These comparisons are to be based on evaluations against system guidelines to the extent allowed by the data; they are intended to allow comparative evaluations of sites in terms of the capabilities of the natural barriers for waste isolation. When adequate data are not available for an evaluation of the system guideline, the comparison is to use the technical guidelines, assigning primary significance to the postclosure guidelines and following the orders of importance listed above for the preclosure guidelines.

Section 960.3–1–5 specifies that comparative site evaluations are to place primary importance on the natural barriers of the site. This specification responds to many comments that unrestrained assumptions about engineered barriers could make all sites appear adequate and mask inherent differences between the sites. Therefore, in evaluations against the postclosure guidelines, engineered barriers are to be considered only to the extent necessary to obtain realistic estimates of the amounts and kinds of radionuclides that would constitute a release of radioactivity (i.e., the source term). Included in the provision are specifications for the treatment of engineered-barrier performance in comparative evaluations.

The evaluation-basis provision ends with rules for site comparisons performed to support the last phase of the siting process—the recommendation of sites for the development of repositories. It specifies that these comparisons will consist of two evaluations that predict radionuclide releases for 100,000 years after repository closure and explains how they are to be conducted.

Siting process (§ 960.3–2). The guidelines will be used to evaluate sites at several points in the siting process, which is explained in detail in Section I.B. This part of the guidelines prescribes the procedures to be followed at each step and is summarized below.

Screening for potentially acceptable sites (§ 960.3–2–1). The implementation guideline governing this step places requirements on the screening to be conducted during the selection of a site for the second repository; the guideline states that this section is not applicable to the first respository site, for the reasons explained in Section I.B.1.

Nomination of sites as suitable for characterization (§ 960.3–2–2). The guidelines will next be applied in several steps during the nomination of sites as suitable for site characterization; the nomination process itself is explained in Section I.B.2.

In the first of these steps, the DOE will examine each of the potentially acceptable sites to determine whether any should be disqualified without further consideration. The guideline governing this step (§ 960.3–2–2–1) requires that the DOE evaluate each potentially acceptable site against each disqualifying condition in the technical postclosure and preclosure guidelines. Sites at which any disqualifying condition is present will be eliminated from further consideration. This requirement is provided so that the potentially acceptable sites for the first repository, which predate the guidelines, will be given a "fatal flaw" test before further effort is expended in evaluating them.

The next application during the nomination phase will occur after the DOE has grouped (Section I.B.2) the potentially acceptable sites according to their geohydrologic settings. The guideline covering this step (§ 960.3–2–2–2) requires that the DOE select a preferred site in each setting that contains more than one site; the DOE is to use the evaluation-basis provision (§ 960.3–1–5) in making the selections.

To accomplish this selection, the sites within a single setting will be compared with one another by using the postclosure and the preclosure technical guidelines. Because the sites in a single setting will necessarily have many similar features, not all those guidelines will discriminate among the sites. For example, sites in a single setting will probably satisfy equally well the favorable condition calling for hydrologic features that can be modeled. In selecting a preferred site, the DOE, in accordance with this governing guideline, will primarily evaluate the conditions specified in the guidelines that will discriminate among the sites. The discriminating guidelines in one setting will usually be different from the discriminating guidelines in another setting; a necessary part of the selection process will be the identification of discriminating guidelines in each setting where a selection will be made.

The group of preferred sites, along with the sites that are the only sites in their settings, will be the sites considered for nomination. The guideline requires that at least five sites be proposed; if fewer than five geohydrologic settings are available, the

DOE will select additional sites from settings that contain more than one site, as required to obtain the minimum of five sites.

The next two application steps in the nomination process require that the guidelines be separated into two groups: those that, in the language of the Act, "require site characterization as a prerequisite" for their application and those that do not require site characterization for that purpose.

After selecting the sites being considered for nomination, the DOE will evaluate the suitability of each of them for development as a repository. This evaluation will, as required by the Act, use the guidelines that do not require site characterization as a prerequisite for their application.

In the next step in the nomination process, the DOE will evaluate the suitability for characterization of each site being considered for nomination. This evaluation will use the technical and system guidelines identified as requiring characterization and will consider the favorable and potentially adverse conditions (Section IV.A) at each site. The evaluation will examine whether, on balance, the presence of such conditions affects significantly the ability of a site to meet the qualifying conditions and to avoid disqualification.

At this point in the nomination process the DOE will have identified a set of five or more sites for nomination; it will have evaluated the suitability of each of these sites for development as a repository and for characterization. The DOE will bring all of these results together in a summary comparative evaluation of the sites. The guideline governing this collection of results (§ 960.3–2–2–3) requires the DOE to summarize the information supporting the determinations made up to this point in the nomination process.

The actual nomination of a site as suitable for characterization must be accompanied by an environmental assessment (EA). The DOE will prepare an EA to accompany the nomination of each of the five or more sites; implementation guideline § 960.3–2–2–4 requires that this EA describe the decision process that led to the nomination of that site. The EA must also include other evaluations and discussions described in the Act and in the guidelines. The guideline also specifies that the draft EAs will be made available for public comment and that the governments of States and affected Indian tribes will be notified of such availability.

Implementation guideline § 960.3–2–2–5 prescribes procedures for the formal nomination of sites as suitable for characterization. This guideline calls for a determination of suitability for characterization. This determination is to be based on the information and analyses in the environmental assessments.

Recommendation of sites for characterization (§ 960.3–2–3). The next application of the guidelines will occur during the process of recommending sites for characterization. Under the Act, the Secretary of Energy will recommend no fewer than three sites for characterization for the first and the second repository. The recommendation decision is to be based on the available geophysical, geologic, geochemical, and hydrologic data (unless the Secretary certifies, pursuant to Section 112(b)(3) of the Act, that such available data will not be adequate to satisfy applicable requirements of the Act in the absence of further preliminary borings or excavations); (2) other information; and (3) he associated evaluations and findings reported in the environmental assessments. The guideline governing this step specifies a procedure for making the selection. It requires that the sites nominated for characterization first be considered in order of preference for characterization. The guideline requires next an application of the provisions for diversity of geohydrologic settings and rock types, and, for siting the second repository, the provision for regional distribution, as specified by §§ 960.3–1–1, 960.3–1–2, and 960.3–1–3, respectively, of the implementation guidelines. This application will determine a final order of preference for characterization.

Some States felt that the guidelines should not be used beyond the recommendation of sites for characterization of that, after site characterization, the licensing criteria should take effect. The DOE believes that this is not the intent of the Act and would create an illogical discontinuity in the siting process. As discussed earlier, under the "Use of Proposed EPA and NRC Standards," the standards of site suitability to be used by the licensing authority (NRC) are to be reflected in the guidelines so that siting and other program decisions will be consistent with these requirements. Section 114 of the Act provides that the "Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository," where the site referred to is one of at least three candidate sites for which site characterization has been completed under Section 113(b) of the Act. Section 113(b) requires the site-characterization plan for each candidate site to include "criteria to be used to determine the suitability of such site for the location of a repository, developed pursuant to Section 112(a)." Section 112(a) is the section that requires the DOE to develop siting guidelines, and therefore the guidelines are intended to be used in deciding which among the characterized sites is to be recommended to the President, the Congress, and finally to the NRC for appropriate approvals.

Recommendation of sites for the development of repositories (§ 960.3–2–4). The final application of the guidelines to decisions made during the siting process will occur during the site-selection phase. Site characterization will then have been completed, and the DOE will select one site for development as a repository. The implementation guideline governing this selection requires that the DOE compare the characterized sites on the basis of the postclosure and the preclosure guidelines. It also requires the DOE to submit to the President and make available to the public a comprehensive statement of the basis for the selection, including an environmental impact statement.

Consultation (§ 960.3–3). Throughout the siting process the DOE will consult with designated officials of affected States and governing bodies of affected Indian tribes, as defined by the Act. This guideline prescribes that this consultation be carried out, defines procedures for responding to requests for information, and specifies that the DOE enter into binding written agreements in accordance with the Act.

The Department of the Interior commented on the prudence of consulting with Federal land managers as soon as the siting process considers lands in their jurisdiction. This comment was taken to have a wider validity and led to the inclusion of consultation with Federal agencies in the guideline on consultation.

Environmental impacts (§ 960.3–4). This guideline requires the DOE to consider environmental impacts throughout the site-characterization, site-selection, and respository-development process and to mitigate them to the extent practicable.

3. Postclosure Guidelines (Subpart C, Section 960.4)

The postclosure guidelines are designed to establish the performance objectives (system guideline) and technical conditions important to meeting those objectives (technical guidelines) for the repository system over the long term after permanent closure. The length of this postclosure time period has not been rigorously

defined, although the proposed EPA standard (40 CFR Part 191) suggests that the major emphasis for ensuring waste isolation should be placed on the first 10,000 years after closure. The postclosure guidelines are structured to accommodate any time period ultimately adopted by the EPA and the NRC. Naturally, confidence in such predictions will diminish as predictions reach further into the future; however, the radiological toxicity of the wastes to be isolated also diminishes with time.

Section 960.4–1 Postclosure System Guideline. The postclosure system guideline requires compliance with those EPA and NRC regulations that are intended to ensure that the health and safety of the public and the quality of the environment will be protected until the radioactivity in the waste has diminished to safe levels.

Several comments on the alternative guidelines objected to the inclusion of engineered barriers in determining compliance with the system guideline, the objections being based on the concerns that engineered barriers would be used to compensate for inadequacies in natural systems and that the term "state of art" implies untested technology. The intent of including engineered barriers was not to compensate for an inadequate site. Rather, engineered barriers are intended to enhance the natural system's containment and isolation capacities to the extent that is practicable. This approach is consistent with the "multiple-barrier" approach endorsed by both the EPA and the NRC as a method of compensating for uncertainties in performance predictions. The multiple barriers consist of both natural-system components (e.g., the host rock, hydrologic conditions, and geochemical conditions) and engineered components (e.g., long-lived waste packages, relatively insoluble waste forms, repository seals and backfill materials that resist water movement). The inclusion of engineered barriers in system assessments is stipulated in both 10 CFR Part 60 and 40 CFR Part 191. The DOE agrees, however, that engineered barriers are secondary to the natural system with respect to long-term isolation. Consequently, the postclosure guidelines are premised explicitly on a recognition of the primacy of natural barriers and, as discussed above in regard to the implementation guidelines, site evaluations will consider engineered-barrier systems only to the extent necessary to obtain realistic source terms. The term "state of the art" is replaced by "reasonably available technololgy" (see discussion in Section IV.B.1).

Some commenters asserted that the guidelines should specify the manner in which performance assessments, probability estimates, uncertainty analyses, and risk assessments would be performed in complying with the guidelines. The DOE maintains that the development, validation, and implementation of those assessment techniques are outside the scope of these guidelines, whose purpose is to guide and direct the DOE's siting process rather than to prescribe analytical methods and procedures.

Several commenters expressed concern that repository-system failures could damage major ecosystems like the Great Lakes. Since the repository will have to comply with the release limits specified in the NRC criteria and the EPA standards, and the site will have to meet the siting guideline on environmental quality, such consequences cannot be reasonably postulated.

A corollary concern is that, since the proposed EPA limits apply at the accessible environment, significant contamination of subsurface rocks and ground water could occur within the controlled area. Some comments urged the inclusion of all ground water as part of the accessible environment, both inside and outside the controlled area, and suggested that a "zero release" standard be applied. In regard to the first concern, the NRC criterion (10 CFR 60.113) for releases from the underground facility will afford significant protection to subsurface areas outside the underground facility but inside the controlled area. In regard to the second concern, a ground-water system may provide very long times for transport to the accessible environment, and such a system is an important component of a multiple-barrier system. The importance of that barrier system and its components is recognized by both the NRC and the proposed EPA regulations, and hence the concept of the controlled area and the accessible environment was adopted by the NRC and proposed by the EPA. The "zero release" concept is an ideal objective that cannot be adopted as a standard because of the uncertainties in the predictions of postclosure performance and the long time periods that are of concern.

Several comments suggested that the guidelines actually state the requirements of the NRC and EPA regulations instead of merely referencing them. The final guidelines include two appendices (Appendix I and Appendix II) that summarize the central elements of those regulations that bear most directly on the system guidelines.

Some commenters cautioned the DOE on the need for consistency between the guidelines, the proposed EPA standard, and 10 CFR Part 60. Several of the commenters noted that the proposed guidelines did not appear to be consistent with the proposed EPA assurance requirements. Other commenters requested clarification regarding the respective roles of the DOE, the NRC, and the EPA. The DOE intends to ensure consistency between the guidelines and the NRC and EPA regulations for the disposal of high-level radioactive waste and spent fuel (see also Section III.A.1 and the discussion of "Applicability" in Section IV.B.1). Furthermore, should the final EPA standards include assurance requirements that appear to be inconsistent with the guidelines, the DOE will reevaluate the guidelines.

In regard to the roles of the three agencies, the EPA is charged with establishing general environmental standards for the protection of public safety and the environment outside the facility or site boundaries. The NRC is charged with establishing and implementing requirements for licensing the repository, which includes enforcing any applicable standards, including the EPA regulations, and with discharging the NRC's responsibilities under the National Environmental Policy Act of 1969. The DOE is charged with identifying, characterizing, and demonstrating the suitability of sites and developing and operating a repository consistent with these guidelines, the EPA standards, and NRC licensing requirements.

Several commenters requested the adoption of the ALARA (as low as reasonably achievable) concept in the system guidelines. They seem to have been looking for assurance that (1) the waste isolation provided by the geologic setting at the site will be weighted heavily in comparing alternative sites during the selection process and (2) the DOE will take reasonable measures to ensure that radiation exposures will be as low as is reasonably achievable. Both of these concerns will indeed be accommodated through the guideline-implementation process, in which public health and safety will be the primary consideration. However, for postclosure releases, the ALARA concept as such cannot be implemented, because the potentially affected populations are not known: the releases may not occur for tens of thousands of years. Estimates of the integrated population doses that

would be required to implement the ALARA criterion and applying an appropriate cost-benefit (e.g., dollars per man-rem) factor for releases predicted far into the future would be highly speculative. Therefore, the ALARA concept, per se, will not be rigorously applied for the postclosure phase.

A number of comments stressed the importance of using system-analysis techniques in assessing compliance with the guidelines rather than treating each parameter (e.g., geohydrology) independently. Conversely, several commenters believed that too much importance was placed on the system guideline—that each technical factor should be considered separately. The final implementation guidelines specify that comparisons of sites are to be based on the system guidelines. Thus, both the sufficiency of individual technical factors and the system-analysis concept are taken into account.

Some commenters suggested that the system guidelines should require postclosure monitoring. The issue of postclosure monitoring will be addressed by the DOE and the NRC at several points from the time of repository licensing through the time of permanent closure. If the state of technology at those future times is such that useful information could be gained, monitoring may be included for confirmatory or research purposes. However, postclosure monitoring is not considered to be a key factor in site selection.

Finally, in response to the NRC's preliminary concurrence condition 4 regarding the role of engineered barriers (see Section II.C and the discussion of implementation guidelines in Section IV.B.2), the postclosure system guideline was revised to clearly separate the roles assigned to the geologic setting at the site and to the engineered barriers.

Section 960.4–2 Postclosure Technical Guidelines. The postclosure technical guidelines specify qualifying, favorable, potentially adverse, and, in five guidelines, disqualifying conditions on the characteristics, processes, and events that may affect the performance of a repository after closure. Those characteristics, processes, and events have been identified through numerous evaluations by technical experts from several countries and adopted in various forms by agencies and institutions charged with waste-isolation responsibilities, including the Nuclear Regulatory Commission, the National Academy of Sciences, and the International Atomic Energy Agency.

In response to the NRC's condition 3(i), the introductory paragraph for the postclosure technical guidelines was revised by adding the statement that potentially adverse conditions that affect waste isolation within the controlled area will be considered even if they occur outside the controlled area.

Section 960.4–2–1 Geohydrology. The geohydrologic technical guideline is focused on the present and expected characteristics of the geohydrologic setting of a site, which must be compatible with waste containment and isolation. The most likely mechanism for the release of radionuclides from a repository to the accessible environment is transport by ground water. For this reason the geohydrologic conditions at a site must be adequately understood; furthermore, future conditions must be reliably predicted and upon evaluation must be shown to be compatible with waste isolation.

It is obvious from the numerous and thoughtful comments on the geohydrology guidelines that most reviewers believe geohydrology is a critical factor in the siting process. Most of the comments addressed the disqualifying condition and the potentially adverse conditions.

Twenty-four commenters were critical of the disqualifying condition pertaining to the 1000-year travel time from the disturbed zone to the accessible environment. This proposed condition stated that a site would be disqualified if the "expected pre-waste-emplacement ground-water travel time along any path of likely radionuclide travel from the disturbed zone to the accessible environment is less than 1000 years, unless the characteristics and conditions of the geologic setting, such as the capacity for radionuclide retardation and the ground-water flux, would limit potential radionuclide releases to the accessible environment to the extent that the requirements specified in § 960.4–1 could be met." The criticisms of this disqualifying condition can be grouped into four groups: (a) the "fastest" travel time should be specified instead of the "average" travel time, (b) the statement needs an explanation of how travel time will be calculated, (c) the 1000-year period should be increased to 10,000 years, and (d) the "unless" clause providing for the consideration of radionuclide retardation and ground-water flux should be deleted and renders the statement of the disqualifying condition ambiguous.

The question of "fastest" vs. "average" travel time is a complex issue that involves not only travel time but also the amount of water that moves to the accessible environment. Conceivably there could be situations where very minute amounts of water would travel at the fastest rate, whereas the real concern is the travel time of large amounts of water. The DOE has chosen to clarify this question by using the nonspecific words "travel time" in the disqualifying condition and by explaining how travel time will be calculated in the definition of ground-water travel time (§ 960.2). The definition provides for the consideration of the rate at which most of the water moves.

The 1000-year travel time in the disqualifying statement is consistent with the NRC criterion on travel time to the accessible environment. In addition, 1000 years is a sufficient period for most of the fission products to decay to generally innocuous levels of radiotoxicity.

The "unless" clause pertaining to retardation and ground-water flux in the disqualifying statement on travel time to the accessible environment attracted comments arguing that the clause made the rest of the statement ambiguous and violated the intent of having the 1000-year travel time as an absolute condition. It should be noted that the NRC criteria provide an opportunity for exceptions to the 1000-year travel time. The DOE believed it is appropriate to provide for exceptions, particularly in cases where the ground-water flux is small or where processes promoting radionuclide retardation are important in providing for excellent isolation capabilities. However, the NRC, in its preliminary concurrence condition 3(d), stated that the "DOE should not frame its guidelines such that a 1000-year ground-water travel time (10 CFR 60.113) would be adjusted, particularly in the early stages of site selection." The NRC agreed that 10 CFR 60.113 allows adjustments to a 1000-year ground-water travel time, but these adjustments must be approved or specified by the NRC. Condition 3(b) thus stemmed from the NRC's concern that the DOE might assume an adjustment that the NRC would not approve.

In response to the NRC's concerns, the DOE has deleted from the disqualifying condition for geohydrology (§ 960.4–2–1(d)) the provision that would allow the selection of sites with a ground-water travel time of less than 1000 years. Moreover, disqualifying condition § 960.4–2–1(d) was revised to read as follows: "A site shall be disqualified if the pre-waste-emplacement ground-water travel time from the disturbed zone to the accessible environment is expected to be less than 1000 years along any pathway of likely and significant radionuclide travel." This statement differs from the performance

objective of 10 CFR 60.113 by the words "and significant." The DOE maintains that these words must be included because the DOE will not know, until after site characterization, the pathways, rates, and amounts of ground-water travel in sufficient detail to know precisely whether the site complies with the 1000-year travel time. Thus, the words "and significant" were added to avoid disqualifying an adequate site when early predictions (before site characterization and before the extent of the disturbed zone and the boundaries of the accessible environment are accurately known) indicated that small amounts of water incapable of carrying significant amounts of radionuclides might reach the accessible environment in less than 1000 years. In its final decision, the NRC stated that, "in the absence of a substantive concern," the NRC would not object to the difference in phrasing between the DOE's guideline and its counterpart in 10 CFR Part 60. The NRC reiterated the statement made in its preliminary concurrence decision that the guidelines need not be identical with 10 CFR Part 60 because they serve different purposes and concluded that the DOE's final revision is not in conflict with 10 CFR Part 60.

Twenty comments recommended that some or all of the potentially adverse conditions be upgraded to disqualifying conditions. The two potentially adverse conditions receiving by far the most endorsements for upgrading were the one pertaining to the presence of ground water along the travel path to the accessible environment and the one concerning the difficulty of modeling the geohydrologic system.

The rationale given for changing to a disqualifying condition the presence of ground water along the flow path to the accessible environment is that the presence of ground water increases the probability that radionuclides will reach the accessible environment. The DOE agrees with this rationale, but it does not agree that the increased probability in all cases is sufficient to warrant disqualification. Similarly, the potentially adverse condition pertaining to the difficulty of modeling was not changed to a disqualifying condition, because complexity by itself does not necessarily reduce the isolation capabilities of the geohydrologic system of a site. In fact, in some cases complexity may enhance these isolation capabilities. The DOE also reevaluated the other potentially adverse conditions in the geohydrology guideline, but does not believe it is appropriate to change any of these to disqualifying conditions.

Five comments remarked on the favorable condition concerning high effective porosity. Two suggested "low effective porosity" is more favorable than "high effective porosity," one suggested "low hydraulic flux" was a preferred phrase, another asked for an explanation of why a high effective porosity is a favorable condition and another suggested that most rocks with high effective porosity also have high hydraulic conductivity, and vice versa, and so the favorable condition has no basis in reality. Effective porosity is one of three parameters that directly affect ground-water velocity, the others being hydraulic conductivity and hydraulic gradient. The velocity of the ground water is expressed mathematically as the product of the hydraulic conductivity and the hydraulic gradient divided by the effective porosity. If the product remains constant, as porosity increases, the flow velocity will decrease, with an attendant increase in radionuclide travel time. Therefore, a high effective porosity along such flow paths would be a favorable condition and was retained in the guidelines of November 18, 1983, which were sent to the NRC for concurrence. In addition, a high effective porosity provides an increased surface area for radionuclide retardation. In the guidelines, hydraulic conductivity and hydraulic gradient are addressed separately in the favorable conditions.

However, the favorable condition on high effective porosity was revised in the final guidelines to accommodate the NRC's preliminary concurrence condition 3(a), which asked the DOE "to modify its use of high effective porosity to limit its use to those situations that could be considered as a favorable siting condition." The NRC pointed out that, before a high effective porosity could be considered favorable, the product of the hydraulic gradient and conductivity must remain constant. In some instances, this product is not constant because porosity and hydraulic conductivity can be positively correlated, which would be an adverse, rather than favorable, condition. The DOE agrees with the NRC's position and has therefore revised the statement of this favorable condition to reflect the inverse relationship between porosity and conductivity; it says that the DOE will consider a high effective porosity together with a low hydraulic conductivity. Furthermore, the statement was moved from the favorable conditions applicable to both the saturated and the unsaturated zones to the favorable conditions postulated for the saturated zone because it is more pertinent to the saturated zone.

In response to the NRC's preliminary concurrence condition 3(b), the DOE made a commitment to revise its guidelines, if necessary, to ensure consistency with the final NRC amendments to 10 CFR Part 60 for the unsaturated zone.

Moreover, in response to condition 3(c), favorable condition § 960.4–2–1(b)(7), which dealt with the presence of ground water with 10,000 parts per million or more of total dissolved solids along any path of likely radionuclide travel, was moved to § 960.4–2–8–1; this section is more appropriate because it is concerned with effects on natural resources. Regarding the geohydrology guideline, the NRC had indicated concerns that the presence of ground water with a high concentration of total dissolved solids might be a potentially adverse geohydrologic condition, rather than a favorable one, because it could complicate the design of the waste canister and perhaps hamper the DOE's efforts to satisfy the containment and release-rate requirements of 10 CFR Part 60. However, the NRC agreed that the presence of such ground water is a favorable condition in the consideration of natural resources because such ground water is unlikely to be desirable as a natural resource whose recovery could lead to human intrusion into the repository.

Five commenters remarked on the fact that the guideline on geohydrology does not address the interval in the ground-water travel time to the accessible environment between 1000 and 10,000 years and suggested that the interval between 1000 and 10,000 years should be explicitly stated as a potentially adverse condition (1000 years is a disqualifying condition and 10,000 years is a favorable condition). The fact that a condition is identified as favorable does not imply that the absence of such a condition is adverse. In this instance, a ground-water travel time of more than 10,000 years adds to confidence in the isolation capabilities of a site, but travel time is not unacceptable until it falls below 1000 years, which is the stated disqualifier. Therefore the interval between 1000 and 10,000 years can be regarded as a "neutral" zone, and the DOE did not provide a potentially adverse condition to address the condition of a ground-water travel time of less than 10,000 years and more than 1000 years.

Four commenters recommended that the presence of an aquifer above or within the host rock should be a disqualifying condition. The presence of sources of ground water, suitable for irrigation or human consumption

any of these to disqualifying conditions.

pertinent to the saturated zone.

irrigation or human consumption

without treatment, along flow paths to the accessible environment is recognized as a potentially adverse condition. Aquifers near or above a repository will be thoroughly evaluated during site characterization to ensure that radionuclides will not reach the accessible environment in amounts exceeding permissible limits, but the presence of aquifers does not mean that permissible limits will be exceeded.

One commenter argued that the 10,000-year travel time as a favorable condition is too long, as is the 100,000-year time specified in the favorable condition pertaining to hydrologic processes affecting waste isolation. These times may indeed be more conservative than necessary, but the DOE believes that acceptable sites can be identified with the specified conditions, and the DOE prefers to be overly conservative provided acceptable sites are not eliminated in so doing.

Section 960.4–2–2 Geochemistry. The objective of the geochemistry technical guideline is to ensure that present and expected geochemical characteristics of a site are compatible with waste containment and isolation. The guideline therefore addresses two aspects of the geochemical environment: the conditions that affect the release of radionuclides from the engineered-barrier system and the conditions that affect the release of radionuclides into the accessible environment (e.g., the conditions related to radionuclide precipitation or sorption and the formation of complexes or physical states that increase the mobility of radionuclides).

Three commenters recommended that the DOE change to disqualifying conditions some or all of the three potentially adverse conditions: ground-water conditions that could adversely affect the engineered-barrier system, geochemical processes or conditions that could adversely affect repository performance, and ground-water conditions that are oxidizing. However, containment and isolation capabilities depend on the total geologic, geohydrologic, and geochemical environment of a site rather than on any single geochemical condition. The DOE believes that none of the potentially adverse conditions is of such importance to long-term performance that its presence would warrant the disqualification of a site. The DOE has therefore not upgraded to disqualifying any of the potentially adverse conditions in the geochemistry guideline.

One commenter recommended that the DOE upgrade to a qualifying condition the favorable condition pertaining to geochemical conditions that promote radionuclide retardation. The effect of this recommendation would be to eliminate all sites not having geochemical isolation capabilities. The DOE does not accept this recommendation because to do so might eliminate some acceptable sites that would quite adequately meet the requirements of the postclosure system guideline by having very long ground-water travel times or other conditions contributing to the isolation of radionuclides.

Four commenters recommended that the converse of the qualifying condition should be explicitly stated as a disqualifying condition. The guidelines provide that, in order to be acceptable, a site must meet all qualifying conditions. Thus, if a site fails to meet any one qualifying condition after site characterization is completed, it is eliminated from further consideration. As explained in Section IV.A, the DOE chose not to explicitly restate the converses of the qualifying conditions as disqualifying conditions.

Three commenters supported that the qualifying condition pertaining to permissible radionuclide releases to ground water and the accessible environment be reworded to require that no radionuclides be released to ground water. Such a "zero-release" requirement would be more restrictive than the EPA proposed regulation and NRC regulations and would not constitute a realistic objective, as discussed under the "Postclosure System Guideline." Therefore the DOE did not accept the recommendation.

Section 960.4–2–3 Rock Characteristics. Postclosure rock characteristics are important to the long-term isolation capability of the host rock. The mining operations during repository construction and the heat generated by the emplaced wastes must not cause fractures or the thermal alteration of minerals that would significantly diminish the ability of the site to contain the waste. If extensive changes in the host rock occur, new pathways for radionuclide migration from the repository could result, and the isolation capabilities of the rock could be impaired.

The objective of the postclosure guideline on rock characteristics is therefore to ensure that the present and expected characteristics of the host rock and surrounding units can accommodate the thermal, chemical, mechanical, and radiation stresses expected to be induced by repository construction, operation, and closure and by expected interactions among the waste, the host rock, ground water, and the engineered-barrier system.

A number of commenters objected to the use of the term "engineering measures beyond the state of the art" in the first potentially adverse condition given for the rock-characteristics guideline. They were concerned that the DOE intended to employ "unproved" engineering techniques to compensate for adverse rock conditions. There was also concern that the DOE intended to rely on technological breakthroughs, which cannot be presumed to occur. To clarify the DOE position, the potentially adverse condition in the final guideline now reads "engineering measures beyond reasonably available technology." The DOE's position is that a potentially adverse condition would exist if the rock conditions encountered at a site could require more than available engineering measures. If there is a definitive finding that rock conditions would require engineering measures beyond reasonably available technology in order for the repository to fulfill its function, then the site would not satisfy the qualifying condition until and unless suitable technology is developed. The DOE, therefore, retained this potentially adverse condition in the guideline.

Six commenters suggested specific additions to the postclosure guideline on rock characteristics. They questioned whether the Ogallala aquifer overlying salt beds in Texas could cause dissolution, whether the drill-and-blast mining techniques could jeopardize a granite site, whether salt domes should be considered as a unit with possible anomalous zones or shear zones, whether large-diameter shafts in salt can be constructed, whether homogeneity in crystalline rock is required, and whether a salt dome is distinct from the geohydrologic setting. Some of these concerns are also related to the preclosure phase, but all of these site- or media-specific concerns are addressed in the qualifying condition for the postclosure rock-characteristics guideline in the following statement: "Present and expected characteristics of host rock and surrounding units shall be capable of accommodating the thermal, chemical, mechanical, and radiation stresses expected to be induced by repository construction, operation, and closure. . . ." The DOE has consistently stated that these are general guidelines and site-specific considerations are not appropriate at this time. The DOE has therefore decided not to incorporate these site- and rock-specific comments into the general guidelines.

Three commenters requested that the DOE quantify the term "thick enough and laterally extensive enough" as used in the favorable condition for the draft alternative guideline (§ 960.4–2–3(b)(1)). Comments seeking specificity or quantification for the guidelines are addressed in Section III.A.2 of this notice.

Two comments recommended adding a disqualifying condition to the postclosure rock-characteristics guideline. One suggested that the converse of favorable condition § 960.4–2–3(b)(1) of the alternative guideline be used as a disqualifying condition, and the other requested that the DOE reconsider whether a disqualifying condition is needed. The converse of the favorable condition is not a disqualifying condition because significant flexibility is merely reduced, not eliminated, by restrictions on thickness or lateral extent unless the thickness and lateral extent are so severely reduced as to preclude meeting the qualifying condition, which in itself would result in disqualification. Reduced flexibility could possibly constrain the design of the repository but would not disqualify the site. The DOE concludes that a disqualifying condition is not necessary for the final postclosure rock-characteristics guideline.

One commenter requested that porous shear zones be added as a potentially adverse condition, and the DOE agrees that this concern is valid. The primary adverse effect of a porous shear zone would be its potential to act as a conduit for the influx of water during the preclosure construction and operation phase. Hence, the DOE added the presence of shear zones to potentially adverse condition § 960.5–2–9(c)(5) for the final guideline on preclosure rock characteristics.

Three comments dealt individually with thermal effects on in-situ stress, the effects of mining on post emplacement performance, and the concept of a buffer zone around the host rock. The DOE agrees that thermal effects on in-situ stress are important in repository operation and therefore should be considered in the site-selection process. Although several parts of the alternative guideline touch on this issue, the DOE felt that the addition of a potentially adverse condition dealing specifically with the various effects of heat would be beneficial. Therefore, potentially adverse condition § 960.4–2–3(c)(3) of the final guideline was added to address conditions under which the heat generated by the waste could significantly decrease the isolation provided by the host rock. The concern dealing with mining effects on postclosure performance is pivotal in the concept of geologic disposal. To highlight this concern, the qualifying condition for the guideline on rock characteristics was modified by adding the following sentence: "The characteristics of and the processes operating within the geologic setting shall permit compliance with (1) the requirements specified in Section 960.4–1 for radionuclide releases to the accessible environment and (2) the requirements set forth in 10 CFR 60.113 for radionuclide releases from the engineered-barrier system using reasonably available technology." The suggestion that a buffer zone around the host rock could add an extra margin of safety was addressed by expanding the qualifying condition for this guideline to read "present and expected characteristics of the host rock and *surrounding units. . . .*"

Section 960.4–2–4 Climatic Changes. Climatic changes could, over time, alter the geohydrologic system at a site. The guideline for postclosure climatic changes focuses on changes that may favorably or unfavorably affect the ability of a repository to isolate waste after closure.

Four comments stated that favorable condition § 960.4–2–4(b)(2), which specifies climatic conditions that have had little effect on hydrologic systems throughout the Quaternary Period, would eliminate the northern United States from consideration, since multiple glaciations have occurred there in the past 100,000 years. In an extension of this thought, one commenter recommended that any areas previously glaciated should be disqualified.

The DOE believes that the relatively stable hydrologic conditions resulting from a constant climate are important to the prediction of repository performance. It is likely that future glaciations will affect local water systems, but the predominant effect will be on surface-water bodies: lakes and streams will increase in number, volume, and flow rate. To determine whether glaciation would prevent a site from meeting the favorable condition the effect on ground-water systems must be predicted case by case. For example, if the host rock is impermeable and insoluble, it is unlikely that water will gain access to the repository; a host rock overlain by a substantial thickness of porous media can also be examined because it can be adequately modeled to allow prediction of changes in hydrologic behavior and demonstrate the site suitability. Moreover, not meeting the favorable condition would not disqualify any site; the existence of any one favorable condition is not necessary to qualify a site. Each site must be evaluated in the context of its overall characteristics because it is very possible that the existence of a number of other favorable conditions may contribute to a waste-isolation capability that is quite acceptable even if the hydraulic system changes. Past and predicted future climatic changes and their effects must be thoroughly evaluated at all sites being considered. However, the DOE does not agree that the condition of previous glaciation should be disqualifying because it might eliminate sites with superior isolation capabilities.

Several comments suggested that the DOE should specify a 100,000-year period for the favorable conditions and a 10,000-year period for both of the potentially adverse conditions for climatic changes. The DOE agrees that it is appropriate to specify periods of concern for these conditions. The period during which the adverse conditions would be of concern is the 10,000-year period specified by the EPA in proposed 40 CFR Part 191, which specifies limits for releases during such a period; the DOE feels that this time period is appropriate. To reflect a very conservative approach to specifying favorable conditions, the time over which the favorable conditions should be expected to exist was increased tenfold over the EPA time period, to 100,000 years for a surface-water system. Similarly, the DOE will consider changes in hydrologic systems induced by climatic changes throughout the Quaternary Period.

A commenter suggested changing the favorable condition related to climatic behavior in the Quaternary Period, to reflect the expectation of future effects rather than reliance on historical behavior. Another commenter stated that it may be impossible to predict climatic, and related hydrologic, systems on the basis of Quaternary Period records and that the relationship between future climate and hydrologic changes will be complex. The DOE agrees that predicting such future events is difficult; however, the DOE believes that the most appropriate insight into the range of future possibilities can be gained by a review of climatic cycles over the Quaternary Period. Furthermore, it is logical to expect that a relatively constant climate will have little impact on the present hydrologic conditions at the site. This approach minimizes the likelihood that complex changes in hydrologic systems will

occur. Accordingly, the DOE has retained the potentially favorable condition of a geologic setting in which climatic changes have had little effect on the hydrologic system throughout the Quaternary Period. The DOE incorporated several changes in wording suggested by commenters to improve ease in reading this guideline.

In developing the final guideline on climatic changes, the DOE consolidated several smaller considerations of climatic changes that had appeared in various sections of the proposed guidelines.

Section 960.4–2–5 Erosion. The objective of the technical guideline on erosion is to ensure that erosional processes will not degrade the waste-isolation capabilities of a site. In evaluating the potential effects of erosion on waste isolation, the depth of the host rock is most important. The site should allow the underground facility to be placed at a depth sufficient to ensure that the repository will not be uncovered or otherwise adversely affected. The disqualifying condition in the guideline on erosion states that the minimum depth is 200 meters; a depth of at least 300 meters is a favorable condition.

Fifteen commenters pointed out the typographical omission of the word "not" in favorable condition § 960.4.2.5(b)(3) concerning exhumation during the first one million years. This omission caused the statement to mean the opposite of what was intended. The omission has now been corrected.

Four commenters suggested or implied that the minimum acceptable depth for a repository should be more than 200 meters and suggested acceptable depths ranging from 300 to 600 meters, or as deep as possible. One commenter stated the minimum acceptable depth could well be much less than 200 meters. The minimum acceptable depth for a repository should be based on credible erosion rates. For example, erosion at an extremely high rate of 1 millimeter per year, which is five or more times greater than the rate at which the Colorado River cut the Grand Canyon, would require 200,000 years to erode to a depth of 200 meters. For sites with more normal erosion rates, a depth of 200 meters is sufficient to isolate wastes for millions of years. The DOE has therefore retained 200 meters as the minimum depth in the disqualifying condition for erosion.

Four commenters recommended increasing the 10,000-year time period pertaining to the probability of radionuclide release in one of the favorable conditions and pertaining to the adverse effects of erosion in one of the potentially adverse conditions. However, the guidelines is consistent with the proposed EPA criteria on permissible limits for the release of radionuclides to the accessible environment, which are specified for a 10,000-year period. The favorable condition is stated in terms of a probability (1 chance in 10,000) that the DOE believes conservatively appropriate for a 10,000-year period.

Two commenters on the favorable conditions suggested or implied that the depth (300 meters or more) specified there is too shallow and suggested depths as great as 600 meters or as deep as possible. One commenter, however, stated that the 300-meter depth limit should be decreased. The favorable depth of 300 meters or more is based on a similar NRC criterion in 10 CFR Part 60. As mentioned in the preceding paragraph, a burial depth of 200 meters or more is considered to be adequate for even the most extreme erosion rates. Under those conditions where more normal erosion rates are expected to prevail, a minimum depth of at least 300 meters is considered to be more than adequate. Therefore, the DOE retained the 300-meter depth as a favorable condition.

Four commenters suggested that the two potentially adverse conditions should be upgraded to disqualifying conditions. These potentially adverse condition pertain to erosion rates during the Quaternary Period and predicted adverse effects in the future. The intent of the two potentially adverse conditions is to require that erosion during the Quaternary Period be documented and studied to determine whether extreme erosion has occurred and to require the predictions be made of erosion rates and processes occurring in the next 10,000 years to evaluate whether they could adversely affect the isolation capabilities of a site. Obviously, past and predicted future erosion rates and their effects must be thoroughly evaluated. However, the two conditions in question may or may not result in a conclusion that a site is compromised; only a thorough evaluation of the consequences of the conditions and the lack of offsetting mitigating conditions can determine whether a site is disqualified. Therefore, the DOE has kept the two conditions as potentially adverse.

In the final guidelines, the first potentially adverse condition (§ 960.4–2–5(c)(3)) has been revised by deleting the word "sustained." This revision was made in response to the NRC's preliminary concurrence condition 3(c), which asked the DOE "to clarify the meaning of 'short-term' extreme erosion and revise the guidelines as appropriate." The term "short-term extreme erosion" had been used by the DOE in a support document to explain why the guidelines used the term "sustained" extreme erosion. The DOE reasoned that short-term erosion would not affect waste isolation, and the term "sustained" would indicate the type of erosion that could be potentially adverse. However, when the NRC questioned the duration of "short term' and explained its concern about catastrophic erosion episodes that might affect the repository, the DOE deleted the word "sustained" from § 960.4–2–5(c)(1).

Section 960.4–2–6 Dissolution. The objective of the technical guideline on dissolution is to ensure that dissolution processes will not adversely affect the waste-isolation capabilities of the site. The principal concern is that the dissolution of the host rock might create new pathways for radionuclide migration to the surrounding geohydrologic system. The sites with salt as the host rock are the most vulnerable to dissolution, and the effects of salt dissolution on waste isolation will be an important consideration in evaluating a site in salt.

Two comments on the disqualifying condition suggested that the 10,000-year minimum length of time for dissolution to connect the underground facility to the geohydrologic system is too short, especially considering the long-lived radionuclides present in the waste. The identification of the first 10,000-year period in the life of a repository as the period of concern is based on the 10,000-year period the EPA used in proposed 10 CFR Part 191, Subpart B. Therefore, the DOE has retained the 10,000-year limit in the disqualifying condition.

Three commenters suggested rewording the disqualifying condition to make it absolute in the sense that any interconnection of the underground facility to the geohydrologic system would disqualify a site regardless of whether or not radionuclides reach the accessible environment in amounts that exceed permissible limits. A site is not necessarily unsafe simply because a connection between a repository and the geohydrologic system may be established in the future. The important possibility to evaluate is whether 161h a connection can introduce radionuclides into the accessible environmental in amounts that exceed permissible limits; this possibility can be evaluated in a performance assessment. Therefore, in the November 1983 guidelines, the DOE did not modify the disqualifying condition, which read as follows: "The site shall be *disqualified* if, during the first 10,000 years after closure, active dissolution fronts will cause a hydraulic interconnection of the underground facility to the geohydrologic system of the site such that the requirements specified in § 960.4–1 cannot be met." This condition was, however, revised in the final guidelines to delete its connection to the postclosure system guideline (i.e., by deleting the phrase "such that the requirements specified in § 960.4–1 cannot be met").

One commenter recommended upgrading to a disqualifying condition the potentially adverse condition pertaining to the presence at a site of dissolution features, such as breccia pipes and dissolution cavities. Dissolution features are of concern, but of themselves are not necessarily sufficient for disqualification. For example, if past dissolution has ceased, it could conceivably be shown that the dissolution will not resume or that, if it does, it will not adversely affect the isolation capabilities of the site. Therefore, the DOE retained the statement pertaining to the presence of dissolution features as a potentially adverse condition.

In the final guidelines, the above-mentioned potentially adverse condition was revised in response to the NRC's preliminary concurrence condition 3(i), which asked the DOE to modify its guidelines so that potentially adverse conditions (e.g., dissolution) would be considered if they affected isolation within the controlled area even though the condition may occur outside the controlled area. The Commission had objected that § 960.4–2–6(c) was not consistent with 10 CFR 60.122(1)(10) because the former referred to "significant dissolution within the site," whereas 10 CFR 60.122(c)(10) would consider dissolution without reference to its significance or location. In reviewing this NRC concurrence condition, the DOE agreed with the NRC's concerns about consistency and therefore deleted the word "significant," replaced the word "site" with "geologic setting," and revised the phrase "a hydraulic interconnection between the host rock and an immediately surrounding geohydrologic unit could occur" to read "a hydraulic interconnection leading to a loss of waste isolation could occur."

One commenter suggested that caprock be added to the examples of dissolution features that are potentially adverse. Caprock is formed as a result of dissolution and indeed is a dissolution feature. However, to list all possible dissolution features in the potentially adverse condition would produce a long and cumbersome statement. The few examples given are not intended to constitute an exhaustive list. The DOE did not change the potentially adverse condition in question.

Section 960.4–2–7 Tectonics. Meeting the requirements of the postclosure guideline on tectonics will ensure that tectonic processes do not adversely affect the waste-isolation capabilities of the site. Tectonic processes and events during the postclosure period could adversely affect waste containment and isolation by creating new ground-water pathways to the accessible environment. While it is difficult to predict geologic processes, this guideline requires that the tectonic history of a site be carefully examined and the results of this examination be used to predict the likelihood of potentially disruptive tectonic processes or events. Igneous activity, uplift, subsidence, folding, and faulting are all important tectonic processes and are included in this guideline.

Twenty-eight comments recommended adding disqualifying conditions. Some of the commenters suggested a disqualifying condition that is the opposite of the qualifying condition. This approach adds nothing to the guideline since all repository sites must meet all the qualifying conditions (see Section IV.A for a more detailed discussion of this generic concern). Other commenters suggested that the potentially adverse conditions be converted to disqualifying conditions. The DOE believes that this conversion would be inappropriately restrictive and could rule out sites that are potentially adequate for waste isolation. None of the six potentially adverse conditions would necessarily compromise waste isolation. If any of them exist at a site, further investigations to increase the understanding of the condition are appropriate, but not site disqualification. However, in response to the NRC's preliminary concurrence condition 7, disqualifying condition § 960.4–2–7(d) was added to the final guidelines because the DOE agreed that a site should be disqualified if the nature and rates of ground motion are expected to be such that a loss of waste isolation is likely.

Two reviewers raised particular concerns that man-induced seismicity should be addressed in the tectonics guideline. One went on to state that the potential impact of a seismic event is the same regardless of the cause of the event. The DOE agrees, but believes that the combination of the current guidelines on human interference (§ 960.4–2–8) and tectonics (§ 960.4–2–7) adequately addresses the concern. The qualifying condition of the human-interference guideline states that the DOE will evaluate human activities that could alter or cause tectonic processes.

Section 960.4–2–8 Human Interference. The technical guidelines on human interference focus on (1) reducing the incentive for postclosure human interference by avoiding sites containing natural resources that would invite potentially disruptive human activities and (2) obtaining land ownership, in accordance with 10 CFR 60.121, in order to establish appropriate passive controls and thus decrease the likelihood of incompatible human activities. Separate technical guidelines are provided for each of these two objectives.

A number of commenters misinterpreted the purpose of the human-interference guidelines, which is to decrease the likelihood of postclosure human activities that would be detrimental to waste containment or isolation. Some thought the guidelines should specify the passive physical controls to be used, while some thought they should address preclosure security.

The general nature of the passive controls (permanent markers and records) is specified in 10 CFR Part 60. The specifications for such controls will be established through the licensing process to provide the maximum confidence in their adequacy.

The adequacy of preclosure security measures will also be addressed in licensing. Preclosure security is routinely addressed for DOE facilities as well as for industrial facilities and does not appear to pose any difficulties for repositories. Siting decisions have little bearing on preclosure security, which is therefore not an appropriate topic for the guidelines.

One set of comments indicated that too much reliance was placed on passive controls like markers and monuments; that commenter believed active (institutional) controls should also be included to prevent postclosure interference. As pointed out by the EPA in the preamble to proposed 40 CFR Part 191, the usefulness of institutional controls for more than a few hundred years is speculative because of the uncertainties about human behavior and institutional stability in the distant future. Moreover, the usefulness of active controls does not appear to be site dependent. The DOE, therefore, has not included specific provisions for active postclosure institutional controls in the final rule. Such provisions will, however, be evaluated during the licensing process.

The overall human-interference qualifying condition, in alternative guideline § 960.4–2–8, was changed to refer to activities "at or near the site" in order to ensure consideration of indirect as well as direct interference activities. Also, that condition now states that the DOE will show that future human activities will not be likely to affect waste containment and isolation; the proposed guideline required only the "site to be located to reduce the likelihood" of "unacceptable impacts," a more subjective requirement than set forth in the final rule. The final guidelines also have been strengthened to explicitly require the DOE to consider the estimated effectiveness of the passive controls in the human-interference evaluations.

Section 960.4–2–8–1 Natural Resources. The purpose of developing guidelines on natural resources was to reduce or remove the incentives for economically motivated postclosure human-interference activities that could adversely affect the isolation capabilities of a site. A number of comments on both the proposed and the alternative guidelines misinterpreted this purpose as being to protect natural resources from repository-related activities. Although the protection of natural resources is of high concern to the DOE, that issue is addressed through the preclosure guidelines on environmental quality and on socioeconomic impacts. The human-interference guidelines for natural resources address the corollary concern—that the present or projected value of the natural resources not invite unacceptable postclosure intrusion.

Many comments suggested that the potentially adverse conditions in the natural resources guideline be redesignated as disqualifying conditions, several citing the EPA assurance requirements in proposed 40 CFR 191.14 or quoting the Act to substantiate their contentions. The DOE has requested that the EPA eliminate or modify the proposed assurance requirements for several reasons. The reason of importance to this guideline is the need to evaluate the significance of past, present, or potential human activities on a site-specific basis to determine whether such activities could adversely affect a repository rather than to assume adverse effects a priori, as the proposed EPA standard does. Although the EPA approach is conservative, its unqualified application could eliminate otherwise qualified sites for reasons that could be insignificant under site-specific conditions. In response to comments on the alternative guidelines, the DOE added a disqualifying condition (§ 960.4–2–8–1(d)). That condition would eliminate sites where exploration, mining, or extraction activities have created significant pathways between the underground facility and the accessible environment.

In the final guidelines the potentially adverse conditions for natural resources remain potentially adverse rather than disqualifying. This designation allows the DOE to determine, from site-specific evaluations whether the potential for resource-related interference activities is so great that the elimination of a site would be prudent. The key considerations in such evaluations are (1) whether interference is likely and (2) if so, whether these potential interference activities could lead to releases of radionuclides exceeding the standards in 40 CFR Part 191.

Several comments recommended specific wording changes in the natural-resources guidelines to add specificity or to highlight items of particular concern to the commenter. The DOE has considered those comments and has made editorial changes that clarify the DOE's intent, give appropriate examples, or otherwise promote understanding of the guidelines.

A number of changes were made in the factors to be considered in the qualifying condition for example, "reasonable projections of value, scarcity, and technology." In response to several comments, ground water suitable for human consumption or crop irrigation is explicitly included as a resource in the final guidelines.

A number of changes directed at reducing ambiguity were made in the favorable and potentially adverse conditions; the most significant was the elimination of a proposed favorable condition that dealt with the value of resources at a site relative to the average for the geologic setting. That proposed favorable condition was the direct converse of a proposed potentially adverse condition, and its elimination makes the concept set forth consistent with 10 CFR Part 60. A new favorable condition has been added; it requires consideration of the resources on the basis of their present or projected absolute value; the potentially adverse condition concerned with relative value (i.e., in relation to other areas in the same geologic setting) was retained. The new favorable condition responds to criticisms by several commenters regarding the shortcomings of comparisons solely within the same geologic setting or region.

Several comments focused on items of specific concern to a particular State or group but not necessarily of generic importance; an example is the suggestion that a salt dome should be considered unattractive for siting because the dome itself is a resource. The DOE addressed those concerns, where appropriate, through a more generic wording rather than focusing on a specific condition of limited geographical applicability. Considering the previous example of a salt dome, the guidelines include several potentially adverse conditions that would require close evaluation for any dome. For instance, 960.4–2–8–1(c)(1)(ii) considers the presence of minerals to be a potentially adverse condition when they are in configurations such as a dome (i.e., more concentrated than the regional average for similar land areas). Other potentially adverse conditions generically address resources associated with certain dome configurations and previous mining or drilling.

Some comments addressed potential human activities that could change ground-water flow or seismic conditions, such as starting or ceasing fluid-injection or petroleum-withdrawal activities. In response to these concerns, the DOE has modified the potentially adverse conditions dealing with significant subsurface mining or resource extraction (§ 960.4–2–8–1(c)(2)), drilling within the site for purposes other than site characterization (§ 960.4–2–8–1(c)(3)), and the potential for foreseeable human activities, (e.g., ground-water withdrawal, extensive irrigation, subsurface injection of fluids), that could change portions of the ground-water flow system (§ 960.4–2–8–1(c)(5)). Moreover, the final postclosure guideline on tectonics include a potentially adverse condition that incorporates the potential for tectonic deformations to affect the ground-water flow system. That potential would include tectonic deformation induced by starting or ceasing the human activities mentioned previously and is believed to be significant in the evaluations of sites.

The final guideline contains a second disqualifying condition (§ 960.4–2–8–1(d)(2)), which was added in response to the NRC's request, in its preliminary concurrence condition 7, to provide a disqualifying condition that corresponds to the "location of valuable natural resources" in the Act. Guideline § 960.4–2–8–1 already specified that a site will be disqualified if previous exploration, mining, or extraction activities have created significant pathways between the underground facility and the environment. Further consideration of the human-interference issue during the concurrence discussions with the NRC staff led the DOE to develop a disqualifying condition directed at current or future activities outside the controlled area should inadvertently could lead to a loss of waste isolation. As indicated by the word "inadvertently," the activities in question are considered to be unintentional intrusions; they are postulated to occur outside the controlled area because the "controls" to be exercised in the controlled area should preclude intrusion within the area.

Two other changes were made to guideline § 960.4–2–8–1 in response to the NRC's concurrence conditions 3(g) and 3(c). The first change is the deletion of the word "significant" from the phrase "significant subsurface mining or extraction for resources" in the second potentially adverse condition because the DOE agreed with the NRC that all evidence of subsurface mining should be considered adverse until the evidence has been thoroughly evaluated. The other is the addition of the second favorable condition (presence of ground water with 10,000 parts per million or more of total dissolved solids), which was originally in § 960.4–2–1. The NRC gave the DOE two options for resolving condition 3(c): transfer the provision to § 960.4–2–8–1, where effects on natural resources are considered, or delete the provision altogether. The deletion option reflected the NRC's concern that ground water containing a high concentration of dissolved solids might adversely affect the performance of the engineered-barrier system, complicate the design of the waste canister, and possibly hamper the DOE's efforts to satisfy the containment and release-rate requirements of 10 CFR Part 60; such a condition should therefore not be considered a favorable condition for geohydrology. The DOE chose the first option because it clarified the intent to avoid sites with sources of ground water that can be used for domestic or agricultural purposes.

Several comments insisted that the existence of potable ground water at a site should be disqualifying. The DOE does not agree that the presence of potable ground water is a reasonable basis for a disqualifying condition that would be generally applicable to all sites. However, to ensure the protection of ground water, several modifications were made to the guidelines. In addition, a potentially adverse condition was added to recognize the fact that the presence of ground water could create the possibility for drilling activities to recover this water. The NRC and EPA regulations should also ensure that any risk to potable ground-water sources is very low.

Section 960.4–2–8–2 Site Ownership and Control. The NRC requires the DOE to obtain ownership and surface and subsurface rights to land and minerals within the controlled area of the repository (10 CFR 60.121). Such rights are required largely to help ensure continued functioning of the repository far into the future without adverse human interference. This NRC requirement is the basis for the guideline on site ownership and control.

Several comments questioned the adequacy of the protection afforded by the type of control specified by this guideline. While there can be no guarantees that interference will never occur, the DOE believes that the risk from such activities can be decreased to acceptably low levels through the following measures, taken together: (1) The avoidance in site selection of natural resources that could invite deleterious interference activities, (2) ownership of land and mineral rights, (3) long-term markers and widely dispersed records, and (4) natural and engineered systems chosen to make interference activities more difficult or to mitigate their effects. This belief is also expressed by the NRC in the preamble to 10 CFR Part 60.

Another group of comments contended that ownership priorities should be set forth in the final guidelines. A large number of comments on the proposed rule questioned the preferred status given to land already owned by the DOE and suggested that more attention should be given to potential ownership conflicts with other Federal or State lands used or withdrawn for incompatible purposes and the special problems involved in siting on Indian tribal lands. The proposed potentially adverse condition was revised to be more specific about the conditions that should be adverse. An example of such a potentially adverse condition, as indicated by one comment, would be siting on tribal land, not subject to Federal condemnation procedures, if a voluntary purchase-sell agreement could not be negotiated. The single favorable condition now cites ownership and control by the DOE whereas the proposed guidelines considered ownership and control by other Federal agencies to be favorable as well.

Some comments questioned why both postclosure and preclosure guidelines on site ownership and control were included in the alternative guidelines. Land ownership and control are important to safety in both postclosure and the preclosure phases. The final rule continues to state the land ownership and control guidelines for both phases. It should be noted that, though the statements of the guidelines are similar, the necessary land areas and controls in the postclosure and the preclosure phases may differ slightly. The land-area requirements for both the postclosure and the preclosure phases will need to be integrated in establishing the actual site boundaries.

4. Preclosure Guidelines (Subpart D, Section 960.5)

The preclosure guidelines address (1) preclosure radiological safety; (2) the environmental, socioeconomic, and transportation-related impacts associated with repository development and operation; and (3) the ease and cost of repository siting, construction, operation, and closure. The preclosure guidelines provide system and technical guidelines for each of those three categories. The separation of the guidelines into those three categories allows the DOE to be more definitive in establishing the relative significance of categories of guidelines in accordance with § 960.3–1–5.

Section 960.5–1 Preclosure System Guidelines. The purpose of the preclosure system guidelines is to establish the overall objectives to be met by a repository during the preclosure phase (i.e., siting, construction, and operation through closure). The proposed and alternative guidelines both included one preclosure system guideline that was primarily focused on radiological safety. The final guidelines include three preclosure system guidelines, one each of the major categories indicated above, in order to achieve a parallel relationship between the preclosure system guidelines and the technical guidelines throughout the rule. That parallel relationship should be of value in comparing sites.

For preclosure radiological safety (§ 960.5–1(a)(1)), the pertinent system elements are (1) the site characteristics that affect radionuclide transport through the surroundings; (2) the engineered components whose function is to control releases of radioactive materials; and (3) the people who, because of their location and distribution in unrestricted areas, may be affected by radionuclide releases. This guideline is assigned the greatest importance among the preclosure system guidelines because it is directed at protecting both the public and the workers of the repository from radiological exposures.

Ranked next in importance is the preclosure system guideline on the environment, socioeconomics, and transportation (§ 960.5–1(a)(2)). In the final guidelines, the statement of this guideline was editorially revised for simplicity and clarity. The pertinent system elements will in general consist of (1) the people who may be affected, including their lifestyles, sources of income, social and aesthetic values, and community services; (2) the air, land, water, plants, animals, and cultural resources in the areas potentially affected by such activities; (3) the transportation infrastructure; and (4) the potential mitigating measures that can be used to achieve compliance with this guideline.

The third preclosure system guideline is ease and cost of siting, construction, operation, and closure. It is ranked lowest because it does not relate directly to the health, safety, and welfare of the public or the quality of the environment. Here the pertinent elements are (1) the site characteristics that affect siting, construction, operation, and closure; (2) the engineering, materials, and services necessary to conduct these activities; (3) written agreements between the DOE and affected States and affected Indian tribes and the Federal regulations that establish the requirements for these activities; and (4) the repository personnel at the site during siting, construction, operation, or closure.

Some commenters believed that too much reliance was placed on engineered systems to meet the regulations for radiological safety. Unlike the postclosure phase, which relies heavily on natural systems for containment and isolation, the preclosure phase relies on engineered systems, equipment, and controls, examples being high-integrity engineered structures, water- and air-treatment systems, and monitors that can activate automatic control systems. The use of systems, equipment, and controls similar to (in some cases identical with) those that would be employed for repository operations is well established in industrial practice. Therefore the DOE disagrees with the above comment—the issue raised is not analogous to the postclosure issue on engineered barriers.

One commenter objected to the use of the terms "preserve" and "to the extent practicable" in the second preclosure system guideline (environment, socioeconomics, and transportation), preferring to substitute "minimize impacts to" for the former and to delete the latter. As previously stated, this system guideline has now been editorially simplified and clarified, and these terms are no longer used. The DOE disagreed with the second comment, because practicability must govern the application of this guideline. The minimization of impacts is a desirable objective, but in making repository siting decisions it must be balanced against other objectives.

One commenter suggested that the DOE add to the system guidelines a statement to the effect that the DOE will comply with the intent of State environmental laws and regulations. Although the DOE will comply with the requirements of all applicable environmental laws and regulations, it is not necessary or appropriate to include a guideline to this effect.

A commenter asked that the DOE return to the language used in the original preamble regarding the DOE's commitment to environmental protection. The DOE's commitment to environmental protection is clearly expressed in the guidelines, which are based on the premise that the key objectives in site selection are the protection of the health and safety of the public and the quality of the environment. These guidelines encompass all factors potentially important to waste containment and isolation (e.g., geohydrology, geochemistry, tectonics, human intrusion) as well as the factors that determine the environmental and socioeconomic acceptability of a site. In addition, as discussed under the implementation guidelines in Section IV.B.2, a separate implementation guideline for the consideration of environmental impacts (960.3–4) has been developed.

One commenter suggested the inclusion of the ALARA standard in the preclosure system guidelines. The ALARA standard (i.e., reducing releases to "as low as reasonably achievable" levels) is a part of the reference regulations (i.e., proposed 40 CFR Part 191, Subpart A) for the first preclosure system guideline and is therefore incorporated by reference into the DOE's preclosure guidelines.

One commenter asked whether all of the regulations cited in the first preclosure system guideline would need to be met and, conversely, whether the inability to comply with any single regulation but not all of the regulations would lead to disqualification. The answer to both questions is affirmative.

One commenter requested that a criterion of "zero release" to ground water be established for the preclosure phase. Although this is similar to the "zero release" comment for the postclosure phase, the issues are different. Ground water is not a part of the preclosure multiple-barrier system. Furthermore, the comment is primarily directed at shallow potable-water aquifers as opposed to the deeper aquifers of concern during the postclosure phase, which have less potential as potable-water sources. As already discussed, the NRC regulations governing preclosure operations embrace the ALARA standard (i.e., releases must be as low as is reasonably achievable). For preclosure operations, the application of that standard is expected to lead to no planned discharges of liquid radioactive wastes from the repository. In any case, such discharges would not be made to ground water. Beyond that, the system will be designed to prevent, to the extent practicable, contaminated liquid releases during postulated abnormal conditions. Given the relatively small volume of potentially contaminated liquids in preclosure operations, achieving essentially zero levels of liquid releases is a reasonable objective. Therefore, although not specifically incorporated into the guidelines (because the zero-release criterion is not a factor in siting), the desired assurance that no contaminated liquids will be released to aquifers is consistent with the DOE's objectives for preclosure safety.

One commenter requested that accident release limits for preclosure operations be promulgated by the NRC. This matter has been brought to the attention of the NRC. Such limits, if promulgated by the NRC, will be adopted by the DOE.

One commenter noted that the system guidelines were more sparsely worded than the technical guidelines, implying that the lack of detail appeared inconsistent with the high importance attributed to the system guidelines. The reason for the apparent lesser detail in the system guidelines is that they incorporate, by reference, detailed regulations promulgated by other agencies. These regulations are not repeated verbatim in order to readily incorporate (also by reference) any changes that may occur with time.

Deleted from the final preclosure system guidelines were the explanatory statements about pertinent system elements because these statements were considered to be more appropriate in this section-by-section analysis.

In summary, the final guidelines include three preclosure system guidelines, whereas the proposed rule had one preclosure system guideline, specifically addressed to radiological safety. The system guideline for preclosure radiological safety was modified to include 10 CFR Part 60 in accordance with the NRC comments on the proposed rule. Also, the term "state of the art" was replaced by "reasonably available technology" because several commenters felt that the former term would allow the use of untested technology.

Section 960.5–2 Preclosure Technical Guidelines. Like the preclosure system guidelines, the preclosure technical guidelines are divided into three categories. The first category, preclosure radiological safety, contains guidelines on population density and distribution, site ownership and control, meteorology, and offsite installations and operations. The second category covers the environment, socioeconomics, and transportation. The third category, which pertains to the ease and cost of siting, construction, operation, and closure, contains guidelines on surface characteristics, rock characteristics, hydrology, and tectonics.

Preclosure Radiological Safety

Section 960.5–2–1 Population Density and Distribution. The objective of the guidelines on population density and distribution is to ensure the selection of a repository site that will minimize risk to the public and permit compliance with the EPA and NRC regulations. The proposed EPA standard (40 CFR Part 191) limits exposures to members of the public; it also requires that these exposures be further reduced below the limits to the extent reasonably achievable. The proposed EPA standard limits the radiation dose that any individual outside the boundary of the restricted area would receive to a maximum yearly dose of 25 millirem to the whole body, 75 millirem to the thyroid, or 25 millirem to any other organ. (Doses from natural background radiation vary between 70 and 200 millirem per year at different locations in the United States.) The results of studies performed to date indicate that the doses that would result from repository releases are very much lower than the EPA maximum permissible doses.

The final guideline on population density and distribution includes a qualifying condition, two favorable conditions, two potentially adverse conditions, and three disqualifying conditions. The two parts of the qualifying condition stipulate that (1) the expected dose to individuals in any highly populated area will not be likely to exceed a small fraction of the EPA limits, by reference to system guideline § 960.5–1(1), and (2) the expected dose received by any individual in the unrestricted area will not be likely to exceed the EPA limits. Any site must meet this two-part test in order to qualify.

The two favorable conditions will require the DOE to analyze the degree to which a site is remote from highly populated areas and to seek sites with low population densities. The first potentially adverse condition will require examination and analysis of the population density within projected site boundaries. The population to be analyzed will include the people residing there, those who are there on a seasonal or transient basis, and those who may be there only during the daytime. The daytime population consists of persons whose work brings them together into dense concentrations and of visitors to popular recreational areas. The second potentially adverse condition will require the analysis of the proximity of the site to highly populated areas or to areas containing 1000 or more persons in a 1-mile-square area.

The three disqualifying conditions specify that the site shall be disqualified if any of the following conditions exist:

1. The surface facility would be located in a highly populated area (coincidence); or

2. The surface facility would be located adjacent to a 1 mile by 1 mile area having a population of not less than 1000 individuals (adjacency); or

3. The DOE could not develop an emergency preparedness program that meets the requirements of DOE Order 5500.3 and related guides or 10 CFR Part 60, Subpart I, "Emergency Planning Criteria."

The DOE arrived at these disqualifying conditions by an iterative process that began in the proposed rule of February 7, 1983, with disqualifiers that were based on both radiation doses and on the adjacency and coincidence of the surface facility with a highly populated area. Comments requesting that the DOE be more specific led to the alternative guideline of May 27, 1983. This version specified that a site will be disqualifed if a surface facility would be adjacent to (abutting) an area 1 mile by 1 mile having a population of not fewer than 1000 individuals or would be located in a highly populated area. Objections to the use of the word "abutting" to define "adjacent surface facilities" led to attempts, discussed with the States, to restructure the disqualifier with both necessary and sufficient conditions. That is, if a surface facility met either of two necessary conditions (adjacency or coincidence), a site would be disqualified if the restricted area of a repository were (1) in a highly populated area or (2) abutting a 1-mile-square area with 1000 or more individuals. A number of States disliked this structure, saying that it was both awkward and perhaps gave an appearance of evading Congressional intent, even though it followed closely the language of Section 112(a) of the Act.

Clearly, no one would suggest that repository facilities should be located in a highly populated area; the DOE has, therefore, concluded that both the coincidence and adjacency conditions of Section 112(a) of the Act should be sufficient to disqualify sites. The purpose of both conditions, and the entire guideline, is the protection of people from harmful exposure to radiation due to releases from repository surface facilities. The dispersal of any airborne releases would depend on local weather conditions, which may vary greatly from site to site. Furthermore, the magnitude of releases is controllable in large degree by engineering measures in common use at radiological facilities. It follows that the DOE must make a site-specific evaluation of adjacency to populations concentrations in order to decide whether a site meets this guideline. This evaluation will determine the distance at which the outer boundary of the restricted area should be set, measured from potential release points, so as to ensure that populations beyond that fenced boundary will not experience radiation doses in excess of the limits set by the NRC and the EPA regulations discussed above.

A commenter stated that 1000 persons per square mile represents a high population density and that the population-density guideline should be more restrictive. The DOE agrees that a low population density in the vicinity of a site is a favorable condition; however, in accordance with the requirements of the Act, the disqualifying condition should be and is stated in terms of high population density.

Eight commenters expressed concern over radiation exposure and dosage, and how these are to be addressed in the guidelines. Six of them called attention to the potentially adverse condition in the alternative guideline § 960.5–2–1(b)), stating that any site where regulatory limits would be exceeded should be disqualified. In response to these concerns, the DOE added a qualifying condition that limits the allowable doses in both highly populated areas and in unrestricted areas, generally. Other commenters were concerned with the

presence of transient or residential populations. Accordingly, the DOE added potentially adverse condition § 960.5–2–1(c)(1).

One concern expressed by three commenters was that, in performing dose calculations, the DOE should consider future as well as present populations. The DOE agrees and will make population projections through the period of decommissioning for each potential site during site characterization. Because long-range demographic forecasts are inherently speculative, the DOE believes that projections beyond the period of decommissioning would not serve a useful purpose.

One commenter expressed the view that individual, as well as population, dose should be measured, and two reviewers said that dose calculations should include doses from other sources. In calculating dosage, the DOE will follow the procedures outlined in the EPA's final standards (40 CFR Part 191). These calculations estimate individual exposures from other sources as well as from repository operations. The qualifying condition is stated in terms of both individual and population doses.

One commenter expressed the view that increments of distance should be established in the guideline to account for risks associated with increased surface activities and gave an example of converging transportation routes. In order to protect the public, the DOE will identify a restricted area that encloses all repository surface facilities, except the immediately connecting road or rail spurs. The safety of transportation activities is treated in the analysis of the transportation guideline.

Two reviewers commented that the real extent or distance describing the "remoteness" of a site from highly populated areas should be defined. Remoteness varies with land use, terrain, distance, relative accessibility to the public, and the configuration of the potential controlled area. These conditions will be evaluated to determine the degree to which a site may be considered remote from highly populated areas; therefore, the DOE does not believe that it is appropriate to specify a definition for remoteness in the general siting guidelines.

One commenter suggested that "highly populated area" should be left undefined in the guidelines. The DOE thinks that such a definition is necessary, however, in order to identify and avoid highly populated areas early in the site-screening process and to be able to rely upon the potential utility of sites in which much effort will have been expended, should they prove qualified in all other respects. Other commenters felt that a more restrictive definition is necessary. Hence, "highly populated area" is defined in the final guidelines as any incorporated or census-designated place, excluding counties, of 2500 of more persons as long as the population density of the place would equal or exceed the mean population density of the United States (about 64 persons per square mile). This is a more restrictive definition than the one used in the alternative guideline, which stipulated that highly populated areas would include urbanized places within metropolitan statistical areas (MSAs) as defined by the Bureau of the Census. In practice, that criterion would exclude only the most highly populated parts of any given MSA. The new definition does not refer to MSA and is therefore more restrictive. The threshold of 2500 persons was selected for two reasons. First, the Bureau of the Census defines places with 2500 or more inhabitants as urban. Second, the Bureau develops maps to delineate such places, and population-density data are tabulated for these places. The criterion of the mean U.S. population density used in the definition of "highly populated area" will permit the DOE to consider potential sites within extremely large but sparsely settled incorporated communities.

Another commenter felt surface or climatic conditions that might increase the occupational exposure of repository workers to radiation should be considered potentially adverse. The DOE agrees that the exposure of workers at a repository must be limited and will meet the safety requirements for occupational exposure in 10 CFR Part 20. Because any repository will be designed to protect workers from variable climatic conditions, the DOE feels that any site-to-site variations projected in occupational doses would be so small as to make this factor inconsequential in siting.

Another commenter wondered why the DOE would be concerned with population density but not with agricultural productivity in the area of a site and suggested that certain agricultural areas be eliminated from further consideration. In siting any repository, the DOE will comply with the Farmland Protection Policy Act of 1981 (Pub. L. 97–98) and the Department of Agriculture's final rule to implement that Act (49 FR 27716; to be codified as 7 CFR Part 658).

One commenter said that the DOE should ensure that the populations adjacent to a potentially acceptable site will be protected from the effects of a repository at least as well as parks are protected in the environmental quality guideline. The DOE developed the qualifying, disqualifying, favorable, and potentially adverse conditions in both guidelines so that both parks and populations would be protected in a manner commensurate with the type of risk. Industrial facilities are generally precluded from parks, but many industries are commonly located within urban areas. When the industrial operations involve known hazards, then they are usually sited at some distance from the general public, the distance being determined by the degree of hazard. With the park, it is the environment that is at risk; with the population, it is the potential risk to the health and safety of the residents of an area that must be considered. The disqualifiers therefore are based on radiation hazards for the population and either irreconcilable land-use conflicts or unacceptable environmental impacts for the environment.

Section 960.5–2–2 Site Ownership and Control. Although the preclosure and the postclosure guidelines on site ownership and control are stated in similar terms (see § 960.4–2–8–2), they are related to different system guidelines (i.e., the preclosure and the postclosure system guidelines). Moreover, as stated in the preamble for § 960.4–2–8–2, the geographical extent of the land and the controls required also differ for the preclosure and the postclosure periods. However, the comments on these guidelines addressed common issues, which are discussed in § 960.4–2–8–2 of the preamble and are not repeated here.

Section 960.5–2–3 Meteorology. The principal objective of the preclosure guideline on meteorology is to ensure that the weather conditions at the site are favorable for the atmospheric dispersion of any radioactive emissions and to ensure compliance with the system guideline for preclosure radiological safety. Also of concern is the potential for extreme-weather phenomena that could affect the operation and safety of the repository.

A recurrent theme in the comments was the statement that any expected routine radioactive emissions from a repository should disqualify the site because these emissions would pose potential health hazards to local populations and repository workers. Two commenters requested that this disqualification be extended to include emissions to agricultural lands. On the other hand, two commenters pointed out that routine emissions are of significance only if the limits of 40 CFR Parts 190 and 191 are approached for the general population or the limits of 10 CFR Part 20 for the work force.

A site should not be disqualified simply because routine emissions of radioactive material are projected for repository operations. The repository operations will be such that these emissions will be very low, well within the limits prescribed by applicable regulations and standards. Moreover, the DOE does not intend to rely solely on natural meteorological conditions to protect the public from preclosure emissions; it intends to rely on the engineered design of the repository. The safety of this design will be demonstrated in the license application to the NRC. However, to protect the public from the releases that might occur under unlikely accident conditions or during normal operations, the first potentially adverse condition in the guideline covers site-specific meteorological conditions pertinent to the atmospheric transport of radionuclides (i.e., the prevalence of meteorological conditions under which the emissions would be likely to be transported toward localities with higher population densities than the average for the region). To clarify the concern for protecting the population, the meteorology guideline has been reworded.

Some commenters asked the DOE to clarify what it meant by "high potential for extreme-weather phenomena," and several suggested that severe winter storms be included in this category. In evaluating sites, the potential for, and the severity of, extreme-weather phenomena will be estimated on the basis of historical meteorological records. The second potentially adverse condition, which pertains to extreme-weather phenomena, was rewritten to reflect the historical basis for the evaluation; in addition, it was expanded to include severe and frequent winter storms.

Section 960.5–2–4 Offsite Installations and Operations. The preclosure technical guideline on offsite installations and operations (formerly offsite facilities) has two objectives: (1) to ensure that the impacts of any nearby industrial, transportation, and military installations and operations, including atomic-energy defense activities, on repository siting, construction, operation, closure, and decommissioning are adequately considered and (2) to ensure that any radionuclide emissions from such installations, when combined with preclosure emissions from the repository, would not lead to total radiological exposures in any unrestricted area greater than those allowed by the requirements specified in the pertinent system guideline.

Nine comments were directed specifically toward the proximity of a repository to other nuclear facilities with radioactive effluents at or near the limits specified in 40 CFR Parts 190 and 191; all recommended that such a condition be considered disqualifying, rather than potentially adverse. The comments generally appear to be based on the requirements of 40 CFR 191.03(a) that, for any facilities covered by 40 CFR Parts 190 and 191, the combined annual dose equivalent delivered to any member of the public shall not exceed the limits specified by these standards. The guideline recognizes that the presence nearby of industrial, transportation, and military installations and operations, including atomic-energy defense activities, could be detrimental and requires that the combined releases from these sources and the repository meet the requirements specified in Section 960.5–1(1) for unrestricted areas. The pertinent potentially adverse condition recognizes the presence of nuclear installations and operations with actual or projected releases near the maximum value permissible under 40 CFR Parts 190 and 191. Because such releases might be accommodated by engineering measures, the potentially adverse condition was not changed to a disqualifying one in the guidelines of November 1983.

Added to the final guideline for offsite installations and operations was a disqualifying condition related to atomic energy defense activities that are expected to conflict irreconcilably with repository siting, construction, operation, closure, and decommissioning. This addition was made in response to the NRC's preliminary concurrence condition 7, which asked the DOE to develop new disqualifying conditions that (1) would correspond to the factors cited in Section 112(a) of the Act and (2) could be applied early in the siting process. The DOE had concluded that a specific reference to atomic-energy defense activities in the qualifying condition was sufficient to satisfy the requirements of Section 112(a), but, after further consideration, decided that an explicit disqualifying condition could be developed to accommodate the NRC.

Three comments requested that the other potentially adverse condition, which is related to the presence of nearby potentially hazardous installations or operations, be changed to a disqualifying condition. There were also two suggestions that the word "unacceptable" in § 960.5–2–4(b)(1) of the alternative guildelines be changed to "adversely" in order to broaden the consideration.

As mentioned above, the identification of a potentially adverse condition requires a detailed evaluation of the condition. The results of such an evaluation must indicate that the potential for radionuclide releases does not exceed the limits specified in § 960.5–1(1). The DOE therefore does not accept the suggestion to change the potentially adverse conditions to disqualifying conditions; however, the word "unacceptable" was changed to "adversely."

Several comments pointed out inconsistencies in terms, recommending that a more-inclusive term be substituted for "offsite facilities" to express the broader concerns of the public. The question as to why offsite facilities are not of concern for the postclosure period was also raised. The DOE agrees that the use of terms was inconsistent. Accordingly, the term "installations and operations" is used consistently throughout the final guideline. Offsite facilities are not a postclosure issue, because no emissions will be released from the repository after closure. In addition, the words "siting" and "decommissioning" were added to the qualifying condition of the final guideline to make it more encompassing.

Environment, Socioeconomics, and Transportation

Section 960.5–2–5 Environmental Quality. The objective of the environmental quality guidelines is twofold: (1) to ensure that environmental impacts will be considered throughout all stages of the program and that impacts can be mitigated to an acceptable degree, taking into account programmatic, technical, social, economic, and environmental factors, and (2) to ensure that the requirements of system guideline § 960.5–1(a)(2) are met.

Comments on the proposed environmental protection guideline were concentrated in two major areas: proximity of a potential respository site to a protected natural area, such as a park, and mitigation of environmental impacts associated with repository development. To accommodate these concerns, a number of changes were made to clarify the disqualifying conditions and to supplement the potentially adverse conditions in these areas. In addition, minor changes were made for clarification in the favorable conditions and the qualifying conditions.

These changes are discussed individually below.

In the guideline of November 1983, the qualifying condition was expanded by adding "closure and decommissioning" to respository activities requiring environmental protection. The qualifying condition was revised to state specifically that the quality of the environment "in the affected area," as well as the actual repository site, will be protected. The definition of "affected area" was modified to reflect this usage.

In the November 1983 guidelines, the qualifying condition included the statement "and projected significant adverse environmental impacts in the affected area can be mitigated to the extent practicable." The final version says "and projected environmental impacts in the affected area can be mitigated to an acceptable degree." The term "significant adverse" is thought to be redundant in this context, and the phrase "to an acceptable degree" is thought to promise greater protection than "to the extent practicable." The word "programmatic" was added to the list of considerations to be weighed in determining what is meant by "to an acceptable degree," correcting an inadvertent omission in a previous draft. Additionally, the qualifying condition was changed to delete the phrase "the health and welfare of the public" to avoid redundancy with the system guideline (§ 960.5–1(2)). (This change was also made in the first disqualifying condition, as discussed below.) The adverb "adequately" was added to the phrase "environment in the affected area * * * will be *adequately* protected" to clarify the degree to which the DOE will afford protection to the environment and to be consistent with the language of the Act (Section 111(b)) regarding the necessary level of environmental protection.

Several commenters suggested that selection of a repository site and support systems should ensure that potental environmental impacts are minimized to the greatest extent possible. Similiar comments urged the DOE to apply the ALARA (as low as reasonably achievable) principle to both engineered measures and siting decisions. The DOE will evaluate alternative mesures to minimize or avoid significant environmental impacts and will adopt reasonable mitigating measures. What is reasonable in a given situation is influenced by a number of factors, including cost, technology, and other environmental and socioeconomic impacts. The DOE's perspective on what is reasonably achievable in mitigating environmental impacts is explained in the final rule by listing the factors that will be considered in making judgments of this nature. The DOE maintains, however, that one cannot apply the ALARA principle to the site-screening process when limited information is available to make an informed judgment as to what constitutes ALARA.

In response to a comment, the first favorable condition was modified to reflect timely compliance with environmental requirements applicable to the site "and the activities proposed to take place thereon." Also, since environmental impacts will occur in the future and regulatory requirements generally apply in the future, the favorable condition now reflects a "projected ability" to meet such requirements.

The final guideline includes a change in the second favorable condition. The DOE defined "reasonable mitigating measures" by adding the phrase "taking into account programmatic, technical, social, economic, and environmental factors."

In response to comments, the proposed environmental guideline was expanded to include six potentially adverse conditions, and in the final rule certain modifications have been made in response to further comments. In the first potentially adverse condition, the term "major" was added in the phrase "projected major conflict with applicable Federal, State, or local environmental requirements." This change was made to clarify the nature of a conflict that would trigger a potentially adverse condition. It is believed that a minor conflict is more likely to be resolved. One commenter asked whether a State or local government could impose environmental restrictions sufficient to prevent a site from being chosen in the jurisdiction, as they believe the first potentially adverse condition suggests. The DOE will consider all applicable environmental laws in the site-screening process.

Another commenter suggested that the term "probable" be deleted from the first potentially adverse condition. The term "projected" has been substituted.

In the second potentially adverse condition, the term "minimized" was changed to "mitigated," in response to a comment. This change is appropriate since the term "mitigate"is used throughout this guideline. Two commenters suggested that the term "significant" be deleted from the second potentially adverse condition. The DOE disagrees. Not all adverse environmental impacts are automatically serious enough to be included in this category.

A number of commenters suggested that the third potentially adverse condition, regarding protected natural areas, should be a disqualifying condition. Others pointed out that a repository would not necessarily conflict with the designated use of the resources cited in the Act (i.e., components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, and National Forest Land). The DOE's position is that the above-mentioned resources should be given special consideration in repository-siting decisions, and all of them are listed in the third potentially adverse condition.

Several commenters on the third potentially adverse condition suggested that both direct and indirect adverse environmental impacts need to be considered. The DOE agrees. Others suggested that the severity of the impact determines whether a potentially adverse condition exists. To accommodate both concerns, the DOE deleted "direct" to indicate that both direct and indirect environmental impacts would be considered and inserted "significant" to clarify that "significant adverse environmental impacts" on the designated natural resources would trigger the potentially adverse condition.

One commenter requested that the third and fourth potentially adverse conditions be combined. The DOE disagrees. The language as written best distinguishes the treatment of different lands controlled by different government entities. Because the resources in the fourth condition vary from State to State, the specific resources cannot be listed all inclusively. Furthermore, since many different kinds of resources could be at issue, a two-part test is appropriate.

In response to numerous comments, particularly from interested States, the DOE added three potentially adverse conditions to ensure special consideration of a "significant State or regionally protected resource area, such as a State park, wildlife area, or a historical area;" "a significant Native American resource, such as a major Indian religious site;" and "critical habitats for threatened or endangered species." In response to a comment, the DOE added "other sites of unique cultural interests" to the list of resources warranting special consideration.

One commenter suggested adding a potentially adverse condition that would cover the management and disposal of mine spoils. The DOE disagrees. Such

potential adverse environmental impacts as may arise from the management and disposal of mine spoils are covered by the second potentially adverse condition. Another commenter asked that the DOE "recognize local or regional engineered water supply systems as a potentially adverse or a disqualifying condition." The DOE disagrees since impacts on such systems are covered by other potentially adverse and disqualifying conditions, such as potentially adverse condition 2 and disqualifying condition 1. One commenter said that the term "potentially adverse condition" is vague. The term has been defined in the glossary (§ 960.2 of the guidelines).

The greatest number of comments on the environmental guideline, both in the proposed guidelines and in the alternative guidelines, pertained to two disqualifying conditions. Both of these disqualifying conditions were retained in the rule of November 1983, but were modified in response to comments, and, in response to comments, a third was added.

In its November 1983 version, the phrase "cannot be mitigated" was modified by the phrase "by reasonable measures, taking into account technical, social, and economic, and environmental factors." In addition, the term "unsatisfactory" was changed to "unacceptable." "Unsatisfactory" was originally chosen to be consistent with the descriptions of the environmental referral process in Part 1504 of the Council on Environmental Quality regulations implementing the National Environmental Policy Act of 1969. However, this change was made to more clearly reflect the fact that a judgment on the acceptability of environmental impacts is involved here. Upon further consideration, this wording was modified in the final guidelines as discussed below.

The first disqualifying condition is now amended in the final guidelines to include "siting" in the list of activities that the condition covers. This stage was inadvertently omitted from an earlier draft.

The phrase "would result in an unacceptable adverse impact on the health and welfare of the public or the quality of the environment, if such impact cannot be mitigated by reasonable measures" has been replaced by "the quality of the environment in the affected area could not be adequately protected or projected environmental impacts in the affected area could not be mitigated to an acceptable degree." This change was made to delete a redundancy in considering the health and welfare of the public, which is covered by the system guideline (§ 960.5–1(a)(2)), and to clarify the need for protecting the environment both now and in the future. Furthermore, the word "programmatic" was added to the list of factors to be weighed in determining the acceptability of the results of impact mitigation.

A commenter asked whether mitigation in this and other places includes compensation. It does, as indicated in the definition of the term in § 960.2 of the guidelines.

Numerous comments were received on the second disqualifying condition, which referred to the coincidence of the restricted area or repository support facilities with the resources named; some expressed concern that it was too narrow, others suggested that it was appropriate. Several commenters argued that proximity to a protected area should be a disqualifying condition, while others suggested that the word "proximity" should be eliminated from the rule to minimize the opportunity for subjectivity in decision making. Some commenters objected to the two-part test in the disqualifying condition, arguing that location of a repository within the boundaries of a protected area is evidence of an irreconcilable conflict.

In this regard, the proposed guidelines did not automatically disqualify a site located within a protected area, because the DOE contends that it could be possible, in certain situations, to locate a repository within a protected area in such a way that it would not adversely affect the dedicated purpose of the area. However, in response to the concerns expressed, the alternative guideline was made more specific with respect to the potential conflict between a proposed repository site and a significant national protected resource. The gideline of November 1983 was made even more specific in that it enumerated the resources to be protected. The second disqualifying condition was expanded into two conditions, as follows:

(2) Any part of the restricted area or repository support facilities would be located within the boundaries of a component of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, or the National Wild and Scenic Rivers System.

(3) The presence of the restricted area or the repository support facilities would conflict irreconcilably with the previously designated use of a component of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, or the National Wild and Scenic Rivers System, or any comparably significant State protected resource that was dedicated to resource preservation at the time of the enactment of the Act.

The protected areas listed in these two disqualifying conditions did not include National Forests. Because the charters of National Forest Lands call for multiple uses, including mining, the DOE's position was that the appropriateness of including a repository among these multiple uses would have to be evaluated case by case.

The term "disturbed zone" was changed to "restricted area," which can be more reasonably applied to the required assessment (i.e., the disturbed zone is a projected fringe area far below ground that is related to postclosure, not preclosure, requirements). The phrase "any part of" was added to the second disqualifying condition to alleviate concerns that the entire restricted area or repository support facilities would have to lie within the protected area to trigger the disqualifying condition. Another commenter suggested replacing the word "would" with the word "could" in the second disqualifying condition. The DOE disagrees. The elimination of a site on the basis of what amounts to speculation at the screening stage may unnecessarily eliminate a good site.

Although several commenters suggested alternative phrases, the phrase "would conflict irreconcilably with the previously designated use" was used in the new disqualifying condition, though modified (see below) because the DOE maintains that a conflict can be adequately determined to be "irreconcilable."

The third disqualifying condition addresses State concerns about significant State protected resources. The intent is to afford both national and comparably significant State protected resources the same kind of protection.

The third disqualifying condition was further revised during the NRC concurrence process by the addition of two terms. The first, "resource preservation," is the "previously designated use" which the DOE considers the appropriate baseline condition against which to measure "irreconcilable conflicts." Second, in its concurrence condition 7, the NRC requested the addition of National Forest Lands to the list of resources covered by this disqualifier. After considering this request, the DOE agreed that the irreconcilable conflict with a previously designated resource-preservation use of a National Forest should disqualify a site. The

disqualifying condition now reads as follows:

(1) The presence of the restricted area or the repository support facilities would conflict irreconcilably with the previously designated resource-preservation use of a component of the National Park System, the National Wildlife refuge System, the National Wilderness Preservation System, The National Wild and Scenic Rivers System, or National Forest Lands, or any comparably significant State protected resource that was dedicated to resource preservation at the time of the enactment of the Act.

Several commenters raised various miscellaneous points and concerns. One commenter was concerned that the displacement of homes and families is considered to be a favorable condition and that priority is given to wildlife over people. The DOE disagrees that the guidelines either express or imply either situation. The DOE states, in several places in the guidelines, that the first priority of the site-selection process is the health and safety of the public.

Another commenter said that the environmental quality guideline does not ensure the suitability of the geologic conditions of the site. It is implicit in this guideline that, in order to protect the environment, the geologic conditions must be suitable. Moreover, such suitability is ensured by the postclosure system and technical guidelines.

Finally, several commenters suggested that the DOE include the environmental quality guideline in the postclosure guidelines. The DOE disagrees. The object of the environmental quality guideline, as stated at the beginning of this section of the preamble, is to protect the quality of the environment throughout all stages of geologic repository siting. Postclosure protection will be provided by the system guidelines, which mandate compliance with 10 CFR Part 60 and 40 CFR Part 191.

Section 960.5–2–6 Socioeconomic Impacts. The objective of the technical guideline on socioeconomic impacts is to ensure that any significant adverse socioeconomic impacts of repository siting, construction, operation, closure, and decommissioning can be offset by reasonable mitigation or compensation and the requirements of system guideline § 960.5–1(a)(2) can be met.

The DOE is committed to a program of socioeconomic-impact measurement and mitigation. Mitigation, as defined by the Council on Environmental Quality, includes actions that will avoid, minimize, reduce, or compensate for adverse impacts (40 CFR 1508.20).

The potential social and economic impacts of geologic repositories were of concern to a number of commenters. The principal issues were (1) the socioeconomic impacts associated with the labor-force requirements of the repository, (2) adverse effects on primary sectors of local economies (e.g., tourism), (3) adverse effects on water supplies, and (4) the psychological effects of perceived risk.

Some commenters were concerned that the labor-force requirements of a repository would impose undue hardship on the private and public service capabilities of affected localities. The viewpoints expressed were often conflicting; for example, some suggested that socioeconomic impacts could be mitigated through stringent siting requirements, such as requiring that two-thirds of the labor force live within a reasonable commuting distance of the repository, but others felt that the lack of an available labor force should be a favorable condition; one comment said that the potential for increased employment should not be considered a favorable condition. One commenter stated that disruption to primary sectors of the economy of the affected area should be a disqualifying condition. Another felt that irreversible changes in a chosen way of life should be a potentially adverse condition and deplored the possible loss of agricultural land.

The DOE feels it would be inappropriate to specify quantitative labor-force requirements because there are so many variable factors that cannot be controlled. It would be possible, for example, to construct housing at the site for transient labor if sufficient labor were not available within a reasonable commuting distance from the site. The creation of new jobs for locally available labor would be received favorably in most areas; however, an influx of new workers could have significant adverse socioeconomic impacts. For these reasons, the potentially adverse and favorable conditions concerning the supply of labor were retained. In areas where new jobs might not be welcomed, the DOE will work with the State, affected Indian tribes, and the public to identify suitable means of mitigating unwanted impacts and preserving and enhancing the quality of life. Since adverse socioeconomic impacts on affected local economies can generally be mitigated, the DOE does not believe that such impacts are disqualifying. Where agriculture is a primary sector of the affected economy, the loss of agricultural land would be a potentially adverse condition.

A commenter stated that a major disruption of the local economy is almost certain and observed that the guidelines on population density and distribution (§ 960.5–2–1) and socioeconomic impacts (§ 960.5–2–6) are somewhat contradictory. Another asked that socioeconomic and environmental impacts along waste-transportation routes be addressed, and a third suggested that postclosure impacts be included in the socioeconomic guideline.

The DOE agrees that some disruption will be experienced by the local economy, just as it is as in most large-scale industrial developments. However, because most socioeconomic impacts can be anticipated and mitigated, major disruptions can be avoided in most cases. When guidelines §§ 960.5–2–1 and 960.5–2–6 (population density and socioeconomics) are taken together, areas of low population density within a commuting distance of significant labor pools could gain favor in site comparisons if the technical qualifications are equal. Socioeconomic and environmental impacts along local transportation routes will be addressed in the siting process. Postclosure impacts, however difficult to assess, will be the subject of impact-mitigation discussions and agreements between affected States, affected Indian tribes, and the DOE.

Other comments said that (1) the guidelines should emphasize net gains in the overall economy and in employment, (2) the term "affected area" should be changed to "affected region," and (3) the cost of the repository should be taken into account as a socioeconomic impact.

The DOE agrees that net gains in employment and in the local economy should be considered a favorable condition and has revised the guideline accordingly. With respect to the use of "affected area" versus "affected region," repository development may produce socioeconomic impacts in an area of several counties, but it will probably have minimal effect on the economy of an entire region of the country. The costs of the repository need not be treated as a socioeconomic impact because they will be borne by the owners of the radioactive waste. Furthermore, cost ranks below public health and safety, the quality of the environment, and socioeconomic conditions.

Also mentioned were possible adverse impacts on agriculture, tourism, and recreation, but another commenter pointed out that the services and facilities developed for repository

workers and their families could enhance the ability of an area to accommodate tourists and seasonal populations.

The DOE is aware of the concern about adverse effects on agriculture, tourism, and recreation. One potentially adverse condition in the socioeconomics guideline is the potential for major disruptions of primary sectors of the economy of the affected area. The DOE will work with States, affected Indian tribes, and localities to anticipate and mitigate such effects if they arise.

Commenters on the alternative guidelines were also concerned about the potentially adverse condition regarding the acquisition of water rights and the effects thereof. One maintained that a model of water usage should be developed. Two commenters asked that disqualifying conditions be specified for water supplies. One commenter requested that the DOE add water use to acquisition of water rights as a potentially adverse condition. Several commenters asked for a guideline that would protect producing aquifers.

The DOE will evaluate water usage during the engineering design of a repository in a specific rock type. With respect to the requests for disqualifying conditions for water supplies, the qualifying condition for the socioeconomic guideline indicates that a potential site is not qualified unless adverse impacts on water supplies can be mitigated or compensated. This guideline reflects the DOE's position that, if adverse impacts on water supplies can be mitigated, then it is not appropriate to disqualify a site because of potential adverse impacts on water supplies. The issue is the ability to mitigate or compensate for adverse impacts, not the potential for their occurrence. The DOE expects that, where water is scarce, there will be controls on its use. Where water usage is controlled by administrative means other than water rights per se, the DOE will consider the acquisition of water through such other administrative controls to be equivalent to the acquisition of water rights. Producing aquifers are protected through the system guideline on environmental quality and the technical guideline on socioeconomics.

One commenter was concerned that the perceived risk of a repository might induce anxiety and stress, causing some people to leave the area, and complained that the issue was not addressed in the guidelines.

The DOE recognizes that the risk of new technologies involving hazardous materials may be perceived to be greater by the general public than it is by technical experts. However, past experience with other new technologies suggests that the anxieties of the public may be alleviated as the technology is seen to be effective and its benefits become more apparent. The overriding emphasis of the guidelines on public health and safety, as well as the DOE's commitment to open communication and public involvement throughout the siting process, is intended to help alleviate public concerns about the risks of a repository. Perceived risk, however, is not an appropriate topic for general repository-siting guidelines; it is a subjective condition that cannot be fairly compared among sites.

The DOE recognizes that the possible impacts of rapid, large-scale growth in sparsely populated rural areas are legitimate concerns in siting a major facility. Therefore, the socioeconomics guideline has been revised to more clearly indicate that the existing socioeconomic base (population, labor force, infrastructure, services, etc.) will be explicitly considered in site selection. The final guideline on socioeconomics includes a qualifying condition, a set of four favorable conditions, and a set of four potentially adverse conditions. Because of the complexity of socioeconomic interactions, the possibility of mitigation, and the extensive analysis and planning required by the Act, the DOE took the position in the guidelines of November 1983 that socioeconomic impacts do not represent an absolute disqualifying condition.

The qualifying condition in the final guideline will ensure that any significant adverse social or economic impacts will be addressed; it will also ensure that the system guideline, whose objective is to protect the socioeconomic well-being of the population, will be met. The qualifying condition also specifies the range of socioeconomic considerations that will be addressed in the analysis.

The four favorable conditions in the final guideline are (1) the ability of an affected area to absorb project-related population changes; (2) the availability of an adequate labor force; (3) projected net increases in employment and in public and private revenues; and (4) the lack of significant disruption to primary sectors of the economy of the affected area.

The four potentially adverse conditions are (1) potential for significant impacts on community services, housing, and public revenues; (2) the lack of an adequate labor force; (3) water-right acquisition that would have potential adverse impacts on the development of the affected area; and (4) potential for major disruption to primary sectors of the economy of the affected area. Since these potentially adverse conditions could be mitigated in many cases, they would not disqualify a site.

In response to the NRC's preliminary concurrence condition 7, which requested additional disqualifying conditions that are directed at the specific factors listed in Section 112(a) of the Act, disqualifying condition § 960.5–2–6(d) was added to the guideline on socioeconomic impacts. This disqualifying condition is concerned with potential effects on the rights of users of water and proximity to water supplies. It was not included in the November 1983 guidelines because these factors were implicitly or explicitly included in the system guideline on environmental quality and the qualifying condition for socioeconomic impacts ("competition for resources such as land, water, and construction materials"). However, to accommodate the NRC's request, the DOE developed an explicit disqualifier. Although this disqualifying condition could have been included in guideline § 960.4–2–8–1, Natural Resources, it was included here because the DOE believes that the most serious effects of a significant degradation of major water sources would be socioeconomic. In editing the final guidelines, the explanatory paragraph that followed the statement of the qualifying condition was deleted because the parameters to be considered are now listed in Appendix IV.

Section 960.5–2–7 Transportation. The objective of the transportation guideline is to ensure that proper consideration is given to the transportation of waste to a repository site, as it could affect the health and safety of the public, the environment, and the cost of waste disposal. The guideline requires the evaluation of a site's proximity to adequate highways and railroads, the characteristics of access routes from existing highways and railroads to the site, the costs and other impacts of designing and constructing the access routes, and the impacts of transporting waste over the access routes. The guideline indirectly requires the consideration of proximity to the sources of waste because one of the favorable conditions is stated in terms of a comparison of costs and risks among sites.

In the proposed guidelines of February 1983, transportation was treated as a subset of population density and distribution. Many comments on the proposed guidelines emphasized the importance of transportation and the

need for a separate, more comprehensive guideline. Some comments raised generic issues and problems that cannot be solved by the siting of a repository; such issues are not appropriate for guidelines that govern siting. Apparently, the purpose of including transportation in the siting guidelines was not clearly understood.

In response to the many requests, the DOE prepared a separate, more comprehensive guideline on transportation. This guideline is not intended to govern the movement of waste over the national system of highways and railroads; regulations of the NRC (10 CFR Part 71) and the Department of Transportation (49 CFR Parts 171–178) govern that part of waste transportation. The guideline is intended to govern only the transportation issues that are important in choosing sites for characterization and development. The guideline now makes clear that it is concerned primarily with site-specific conditions. It does not address the nationwide transportation of waste, beyond the comparative assessment of costs and risks for the considered sites.

A number of comments stated that there are transportation-related factors that would disqualify a site and called for specific disqualifying conditions in the guideline. The examples cited included transport over rivers, watersheds, reservoirs, high bridges, and through Indian reservations; rail access routes that are too long; concentration of routes through population centers; transport over routes that do not comply with DOT regulations; and the lack of direct rail access. Also cited were increased risk or environmental impact relative to other sites or radiation doses from transportation over local highways in excess of the EPA limit in 40 CFR Part 191.

The DOE does not feel justified in defining explicit disqualification thresholds, because transportation costs, risks, and impacts must be evaluated in relation to the repository system as a whole. None of the suggested disqualifying conditions would make the construction of a satisfactory repository system so difficult that a site should be eliminated simply because the condition is present. Consequently, no disqualifying conditions have been added to the transportation guideline. Furthermore, EPA standards cited above are not applicable to transportation, nor is it appropriate for the DOE to include such standards in its transportation exposure assessments. However, the maximum individual exposure along local access routes is expected to be a very small fraction of that due to natural background radiation.

Some comments cited as adverse conditions (1) transport over bridges whose height above the terrain below exceeds the conditions of the NRC hypothetical accident tests or (2) local highways and railroads that are in poor condition. These considerations are included in the revised guideline under potentially adverse conditions that would require further evaluation or possibly mitigation measures.

Several comments cited transportation-related conditions that should be considered in siting the repository. Examples are access to the site; the feasibility of access route construction, cost and environmental impacts; visual impacts, air pollution, and noise impacts; adverse weather conditions; extremely heavy loads on railroads; and the availability of air and water transportation modes. Extremely heavy loading is not included because the loaded railroad cars serving the repository will meet standard railroad requirements on wheel loading and spacing and gross loadings.

Two commenters discussed the assumptions made by the DOE in previous transportation assessments and pointed out that the current assumption about the fraction of waste transported by rail (90 percent) contradicts the current practices of nuclear-reactor facilities. They also suggested that rail access is a primary qualifying condition and that the DOE should use dedicated trains for transporting waste to the repository.

Various assumptions about the fractions of waste transported by rail and truck have been and will continue to be used by the DOE in assessing the risks, costs, and environmental impacts of transporting waste to a repository. It is neither necessary nor desirable to fix on this set of assumptions now; analyses will be done to cover a range of reasonable values. The actual values that will pertain 15 to 20 years hence, when operations begin, are difficult to predict now. Many logistic, economic, and service factors will be involved in the choice between rail and truck transport. The use of dedicated trains has been studied by the Interstate Commerce Commission. Whether they will be used is still under consideration, but is not an issue for siting guidelines to specify.

One commenter cited the cost of access-route construction as a major factor and suggested that a limit be placed on transportation-related costs in terms of a maximum percentage of the total disposal cost; exceeding this value would disqualify the site. The DOE does not agree that any minimum level of transportation-related cost alone should disqualify a site, because such costs may be offset by other site-specific factors, including the costs of the repository itself. Transportation-related costs, including access-route construction, will be included in the total system cost for comparison with the costs of other siting options.

One commenter stated that the guideline does not offer an adequate method for comparing transportation costs and risks and the DOE must develop such methods for accurately making such comparisons among siting options. The comment goes on to say that specific origin-and-destination pairs, specific routes, and route-specific data on population density, accident rates, travel restrictions, and the site should be considered.

The DOE contends that current methods and analytical tools are adequate, but is nevertheless continuing to make improvements in them. General guidelines for siting purposes are, in any case, not an appropriate place to require the development of improved methods.

A number of comments emphasized the importance of waste-shipment routing and the population density along such routes. This is largely a generic issue, inappropriate for siting guidelines, that the Department of Transportation (DOT) has addressed in its recent final rule (49 CFR 177.825). The DOT has defined preferred routes but given to the States the opportunity to identify and analyze alternative routes, in accordance with DOT guidelines, and designate such routes that they may deem necessary to accommodate local conditions. This may include routes in the vicinity of the repository if considered necessary by State officials. Thus, no specific treatment of this subject appears in the guidelines.

Several comments requested greater emphasis on the proximity of repositories to waste sources for both the first and subsequent repositories. A favorable condition in the transportation guideline requires the evaluation and comparison of total life-cycle waste-transportation costs and risks for each siting option. The guideline on regionality (§ 960.3–1–3) requires consideration of the proximity of the second repository to locations where radioactive waste is generated or temporarily stored.

A number of comments addressed such generic issues as the role of the States in regulating the transportation of nuclear materials, the adequacy of

shipping casks, the applicability of specific EPA standards, and defense-waste shipments to a commercial repository. In the opinion of the DOE, these comments did not address issues that would allow differentiation among proposed sites, since the same conditions exist for the various siting options. In addition, many of these comments raised issues that are either not related to the guidelines or are covered under other applicable Federal regulations that are the responsibility of other Federal agencies. Consequently, these comments are not reflected in the final guidelines.

In editing the final guidelines, the statement of the qualifying condition (§ 960.5–2–7(a)) was revised by simplifying the phrase "radiological or non-radiological risk to the public health and safety" to "risk to the public" and by inserting the phrase "taking into account programmatic, technical, social, economic, and environmental factors."

Ease and Cost of Siting, Construction, Operation, and Closure

Section 960.5–2–6 Surface Characteristics. The preclosure guideline on surface characteristics is concerned with conditions that are important to the ease and cost of siting, constructing, operating, and closing a repository. In sites that are prone to periodic flooding, are located in a rugged terrain, or have other adverse surface features, special measures may be necessary for repository construction, operation, and closure. The cost of repository construction, operation, and closure could rise to prohibitive levels if a large number of special measures were necessary for these phases. However, other features of the site—those that would significantly enhance waste isolation—could be more important than the higher costs associated with adverse surface characteristics.

Four commenters expressed concern about repository flooding through the possible failure of shafts, shaft liners, seals, or other engineered components of the repository; they suggested that such failures be added to the first potentially adverse condition in the alternative guideline, which dealt specifically with flooding (§ 960.5.2.8(b)(1)). The DOE agrees with this suggestion because the flooding of surface or subsurface facilities could endanger the safety of personnel and interrupt repository operations. The phrase "or the failure of engineered components of the repository" was therefore added to the potentially adverse condition in the final guideline. This phrase was selected because it is a general statement that encompasses all of the concerns raised by the commenter.

One commenter requested that the potentially adverse condition concerned with flooding be elevated to a disqualifying condition. The DOE decided against this approach because the existence of surface characteristics with a significant potential for flooding does not necessarily mean that the repository will be flooded. Simple engineering measures, such as dikes or berms, could reduce the risk of flooding to an acceptable level that would meet applicable licensing requirements. Such measures have been used for both nuclear and nonnuclear facilities for many years.

Two commenters pointed out that in some specific instances the favorable condition of "generally flat terrain" would be unfavorable. One felt that slow and uniform drainage in flat areas might affect the hydrologic performance of the repository; the other felt that waste disposal in the side of a mountain (above surrounding floodplains) would not meet the favorable condition. After evaluating these concerns, the DOE still contends that a generally flat terrain is a favorable condition because it facilitates construction, operation, and closure; however, a favorable condition that specifically addresses the drainage question was added to the final guideline. The second commenter is correct in stating that a repository located in rugged terrain or in the side of a mountain may not be able to meet this favorable condition, but not meeting a favorable condition does not disqualify a site. It would, however, indicate the need for special measures, and hence potential increases in costs during construction, operation, and closure.

Three commenters requested that, in the alternative guideline, the statement "compliance with applicable non-radiological regulations" be expanded to include air-quality standards and radiological requirements. The DOE modified the guideline by deleting the reference to applicable non-radiological regulations because they are already generally covered by the final guideline on environmental quality (§ 960.5–2–5). The DOE believes that, for these general guidelines, a general treatment of non-radiological requirements is more appropriate than specific examples of such requirements. Similarly, air quality standards were already covered by the first two potentially adverse conditions and the first disqualifying condition of the alternative guideline on environmental quality. Preclosure radiological requirements are specifically addressed in the first preclosure system guideline (§ 960.5–1(1)) by invoking the requirements of 10 CFR Part 20, 10 CFR Part 60, and proposed 40 CFR Part 191, Subpart A.

Three commenters requested additions to the surface-characteristics guideline that are already covered in other preclosure guidelines—namely, personnel safety, the standards the Occupational Safety and Health Administration (OSHA), and the offsite disposal of salt. Personnel safety and OSHA requirements are covered by the preclosure guideline on rock characteristics (§ 960.5–2–9). The offsite disposal of salt is covered by the constraints imposed under the preclosure guideline on environmental quality (§ 960.5–2–5).

Among the suggestions for the surface-characteristics guideline was the addition of favorable soil characteristics and conditions. Even though favorable soil characteristics and conditions might make construction and site restoration slightly easier, the DOE does not believe that these features should be significant in selecting a repository site. Two issues raised in the comments on the preclosure guideline on rock characteristics are not pertinent to this siting guideline: preclosure monitoring and reliance on engineered barriers (see Section III.A for DOE responses to the engineered-barrier issue).

Section 960.5–2–9 Rock Characteristics. The objective of the preclosure guideline on rock characteristics is to ensure that due consideration is given to those characteristics of the host rock that may affect (1) the ease and cost of repository construction, operation, and closure and (2) the safety of repository workers. Among those characteristics are the thickness and lateral extent of the host rock, geomechanical properties that are favorable for the maintenance of underground openings, and conditions that would allow the construction of shafts and the underground facility with reasonably available technology.

Ten commenters were concerned that the disqualifying condition in the draft revised guideline did not specifically include the safety requirements of the Occupational Safety and Health Administration and the Mine Safety and Health Administration. This concern arose because the proposed disqualifying condition stated that "the site shall be *disqualified* if the applicable nonradiological safety requirements of the DOE could not be met." To eliminate this concern, the DOE rewrote the disqualifying condition

as follows: "The site shall be disqualified if the rock characteristics are such that the activities associated with repository construction, operation, or closure are predicted to cause significant risk to the health and safety of personnel, taking into account mitigating measures that use reasonably available technology."

Five commenters objected to the phrase "engineering measures beyond the state of the art" in the second potentially adverse condition in the alternative guideline. As explained in the discussion of the postclosure guideline on rock characteristics, this phrase was changed to "engineering measures beyond reasonably available technology."

Four comments asked the DOE to reclassify the potentially adverse conditions as disqualifying ones. This was not done because, by itself, none of the potentially adverse conditions are necessarily unacceptable and hence should not disqualify a site. Their designation as potentially adverse ensures that these conditions will be given due consideration. Another comment suggested that the converse of favorable condition 960.5.2.9(a)(1) be used as a disqualifying condition. The converse of this condition would not be disqualifying, because, while the flexibility of designing and locating a repository would be reduced, the ability of the host rock to contain a respository would not be eliminated.

Three commenters expressed concern that retrievability was not adequately addressed in the alternative guidelines and felt that preclosure rock characteristics were important to ensuring retrievability. The DOE agrees that rock characteristics are important to retrievability, but feels that many other guidelines are also important in this regard. However, the retrievability issue is more pertinent to repository design than to site selection, and, if the requirements of the final guidelines taken as a whole are met, retrievability will be ensured. Furthermore, the DOE is required by 10 CFR Part 60 to maintain retrieval as an option for 50 years if unforeseen circumstances would require the removal of emplaced wastes.

Among the issues raised in the comments was that of thermal effects on in-situ stresses. In response to this concern, the DOE added a potentially adverse condition, § 960.4–2–3(c)(3), to specifically address thermal effects.

One commenter was concerned that the available data might not allow a complete analysis of the disqualifier contained in the proposed guidelines. This issue is covered by one of the implementation guidelines, "Basis for Site Evaluations" (§ 960.3–1–5), and Appendix III to the siting guidelines, which specifies what type of finding the DOE is to make at major decision points in the site-selection process.

Section 960.5–2–10 Hydrology. The preclosure technical guideline on hydrology is concerned with (1) the potential effects of ground water on the construction and sealing of shafts and other underground openings, including the repository itself; (2) the potential for flooding of underground workings by surface water; and (3) the availability of water for repository construction and operation. Its objectives are to ensure that the geohydrologic setting will (1) be compatible with repository construction, operation, and closure and (2) not compromise the functions of shaft liners and seals.

Eleven commenters objected to the term "state of the art" in the potentially adverse condition of the alternative guideline. Some argued that the potentially adverse condition, as written with the "state-of-the-art" phrase included, should be disqualifying. Others suggested that the phrase should be replaced by "reasonably available technology" or similar words. The DOE agrees that "state of the art" is inappropriate because it suggests technology that may not have been fully demonstrated and tested and substituted the term "reasonably available technology," which is defined in § 960.2 of the guidelines.

The presence or absence of aquifers within or above the host rock was an issue raised by eight commenters. The absence of aquifers between the host rock and the land surface is recognized as a favorable condition in the preclosure guideline. Some commenters suggested that the presence of aquifers between the host rock and the land surface should be explicitly stated as a potentially adverse condition; others recommended that the absence of aquifers be a qualifying condition or, conversely, that the presence of aquifers be a disqualifying condition. The presence of aquifers between the host rock and the land surface must be carefully considered in repository design and construction. However, many mines and other underground facilities have been successfully constructed below aquifers, and accepted and proved engineering measures are available to allow underground construction and operation under many types of ground-water conditions. That is not to say that some ground-water conditions may not require very costly engineering measures, or that some ground-water conditions may not be so severe as to preclude construction. For these reasons, the DOE did not stipulate the absence or presence of aquifers between the host rock in the qualifying condition of the preclosure hydrology guideline, but a potentially adverse condition deals with aquifers whose presence could raise serious questions about the feasibility of construction.

Four comments recommended that the converse of the favorable condition pertaining to the availability of potable and construction water be explicitly stated as a disqualifying condition; they believe that the unavailability of water for construction and operation should disqualify a site. The issue lies in the meaning of the words "available" and "unavailable." Water might not be available locally at a site, but it might be available from a source some distance away. Water must be available for construction and operation, and locally available water would presumably be less expensive than water obtained from a more distant source. Thus in the preclosure hydrology guideline the DOE assumes that water can be made available and regards ready availability as a favorable condition.

One commenter suggested the addition of a potentially adverse condition pertaining to a geohydrologic system that would not allow predictive modeling before construction. The rationale for this suggestion is related to the potential for adverse effects on the hydrologic system caused by construction activities. The difficulty of modeling is addressed in the postclosure geohydrology guideline as a potentially adverse condition, and the DOE believes it would be redundant to include a similar statement in the preclosure guideline.

In consideration of the NRC's request, in preliminary concurrence condition 7, for additional disqualifying conditions that address the factors specified in Section 112(a) of the Act, the DOE agreed to develop a disqualifier for the final preclosure guideline on hydrology. This condition, § 960.5–2–10(d), is concerned with the need to use engineering measures that are beyond reasonably available technology for exploratory-shaft construction or for repository construction, operation, or closure.

Section 960.5–2–11 Tectonics. The objective of the preclosure guideline on tectonics is to ensure that the selected site is in a geologic setting in which any projected effects of expected tectonic phenomena or igneous activity will be such that the requirements of system guideline § 960.5–1(a)(3) can be met.

Five commenters complained that no disqualifying conditions were proposed for the preclosure tectonics guideline. Some recommended that the opposite of the qualifying condition should be used, while others recommended that some of the potentially adverse conditions be changed to disqualifying ones. The DOE believed that the existence of a potentially adverse condition does not mean that the site is disqualified. The existence of any such condition would require an understanding of the condition to ensure that repository design and operation could adequately accommodate its effects. Using the converse of the qualifying conditions adds nothing to the guidelines since all acceptable sites must meet the requirements of the qualifying conditions. The guideline was therefore not changed to reflect these recommendations.

Two commenters felt that the historical record of earthquakes should be based solely on instrument recordings. This approach would severely limit the amount of historical data that could be considered because seismic recording equipment has been available for a relatively short period of time (20th century). In developing a historical record for seismicity, it is important to look as far back into the recorded past as can be done for a particular area of the country. While the DOE agrees that seismic-instrument recording should be included in the historical record, other historical records must also be used. For this reason the suggestion was not accepted.

One commenter recommended that "man-induced seismicity," a particular tectonic phenomenon, be added to the qualifying condition. The DOE believes that this particular aspect of tectonics is no more important than the other aspects and should not be called out separately. No change was made.

In response to the NRC's preliminary concurrence condition 7, the DOE reevaluated the preclosure guideline on tectonics and added a disqualifying condition. This condition is concerned with the need to use engineering measures beyond reasonably available technology to ensure that tectonic ground motion will not adversely affect exploratory-shaft construction or repository construction, operation, or closure. As shown in Appendix III to the siting guidelines, this disqualifying condition can be used early in the siting process (i.e., in the identification of potentially acceptable sites).

V. References

1. U.S. Department of Energy, Final Environmental Impact Statement—Management of Commercially Generated Radioactive Waste, DOE/EIS–0046F, October 1980.

2. U.S. Department of Energy, Mission Plan for the Civilian Radioactive Waste Management Program, draft, DOE/RW–0005, 1984.

3. U.S. Department of Energy, Program Objectives, Functional Requirements, and System Performance Criteria, NWTS–33(1), National Waste Terminal Storage Program, 1982.

4. U.S. Department of Energy, Site Performance Criteria, NWTS–33(2), National Waste Terminal Storage Program, 1981.

5. National Research Council–National Academy of Sciences, Geological Criteria for Repositories for High-Level Radioactive Waste, August 1978.

6. International Atomic Energy Agency, Site Selection Factors for Repositories of Solid High-Level and Alpha-Bearing Wastes in Geologic Formations, Technical Report No. 177, October 1977.

7. G.D. Brunton and W.C. McClain, Geological Criteria for Radioactive Waste Repositories, Y/OWI/TM–47, Office of Waste Isolation, Union Carbide Corporation, November 28, 1977.

8. U.S. Department of Energy, Final Environmental Impact Statement—Waste Isolation Pilot Plant, DOE/EIS–0026, October 1980.

9. Comptroller General of the United States, The Nation's Nuclear Waste—Proposals for Organization and Siting, EMD–79–77, General Accounting Office, June 21, 10079.

10. Congressional Record—House, October 18, 1979, p. H 9367 to H 9371.

11. U.S. Nuclear Regulatory Commission, "Advance Notice of Rulemaking on Technical Criteria for Regulating Geologic Disposal of High-Level Radioactive Waste," 10 CFR Part 60, May 1980.

12. U.S. Environmental Protection Agency, "Environmental Radiation Protection Standards for Nuclear Power Operations," 40 CFR Part 190.

13. U.S. Nuclear Regulatory Commission, "Standards for Protection Against Radiation," 10 CFR Part 20.

14. U.S. Nuclear Regulatory Commission, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," 10 CFR Part 60, Subpart E (final draft), November 18, 1982.

15. U.S. Environmental Protection Agency, "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes," 40 CFR Part 191, Federal Register, Vol. 47, pp. 58196–58206, December 29, 1982 (proposed rule).

16. U.S. Department of Energy, Record of Responses to Public Comments on Proposed General Guidelines for Recommendation of Sites for Nuclear Waste Repositories, DOE/RW–0001, Washington, D.C., 1983.

17. U.S. Nuclear Regulatory Commission, "Disposal of High-Level Radioactive Wastes in Geologic Repositories—Technical Criteria," 10 CFR Part 60, July 1983.

18. S.W. Lohman et al., Definitions of Selected Ground Water Terms—Revisions and Conceptual Refinements, U.S. Geological Survey Water-Supply Paper 1988, U.S. Geological Survey, 1972, p.21.

19. R.L. Bates and J.A. Jackson, eds., Glossary of Geology, 2nd edition, American Geological Institute, 1980.

VI. Compliance With the National Environmental Policy Act (NEPA)

The issuance of these guidelines is a preliminary decision making activity pursuant to Section 112(e) of the Nuclear Waste Policy Act of 1982 and therefore does not require the preparation of an environmental impact statement pursuant to Section 102(2)(C) of NEPA or any other environmental review under Section 102(2) (E) or (F) of NEPA.

VII. Regulatory Flexibility Analysis

The DOE certifies that these guidelines will not have a significant economic impact on a substantial number of small entities, since they merely articulate the proposed considerations for the Secretary of Energy's recommendations to the President of proposed sites for repositories. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

VIII. Paperwork Reduction Analysis

This rule contains no new or amended recordkeeping, reporting, or application requirement, or any other type of information collection requirement subject to the Paperwork Reduction Act (Pub. L. 96–511).

IX. Executive Order No. 12291

These final guidelines were reviewed under Executive Order 12291 (48 FR 13193). The DOE has concluded that the guidelines are not a "major rule" under the Executive Order, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, and Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to Section 3(c)(3) of the Executive Order, the final guidelines were submitted to the Director of the Office of Management and Budget for a 10-day review The Director has concluded his review and had no comments.

List of Subjects in 10 CFR Part 960

Environmental protection, Geologic repositories, Nuclear energy, Nuclear materials, Radiation protection, Waste disposal.

[The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*); Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*); Nuclear Waste Policy Act of 1982 (Pub. L. 97-425, 96 Stat. 2201)]

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended as follows:

Issued at Washington, D.C., November 30, 1984.

Donald Paul Hodel,

Secretary of Energy.

Part 960 is added to 10 CFR Chapter III to read as follows:

PART 960—GENERAL GUIDELINES FOR THE RECOMMENDATION OF SITES FOR NUCLEAR WASTE REPOSITORIES

Subpart A—General Provisions

Sec.
960.1 Applicability.
960.2 Definitions.

Subpart B—Implementation Guidelines

960.3 Implementation guidelines.
960.3-1 Siting provisions.
960.3-1-1 Diversity of geohydrologic settings.
960.3-1-2 Diversity of rock types.
960.3-1-3 Regionality.
960.3-1-4 Evidence of siting decisions.
960.3-1-4-1 Site identification as potentially acceptable.
960.3-1-4-2 Site nomination for characterization.
960.3-1-4-3 Site recommendation for characterization.
960.3-1-4-4 Site recommendation for repository development.
960.3-1-5 Basis for site evaluations.
960.3-2 Siting process.
960.3-2-1 Site screening for potentially acceptable sites.
960.3-2-2 Nomination of sites as suitable for characterization.
960.3-2-2-1 Evaluation of all potentially acceptable sites.
960.3-2-2-2 Selection of sites within geohydrologic settings.
960.3-2-2-3 Comparative evaluation of all sites proposed for nomination.
960.3-2-2-4 The environmental assessment.
960.3-2-2-5 Formal site nomination.
960.3-2-3 Recommendation of sites for characterization.
960.3-2-4 Recommendation of sites for the development of repositories.
960.3-3 Consultation.
960.3-4 Environmental impacts.

Subpart C—Postclosure guidelines

960.4 Postclosure guidelines.
960.4-1 System guideline.
960.4-2 Technical guidelines.
960.4-2-1 Geohydrology.
960.4-2-2 Geochemistry.
960.4-2-3 Rock characteristics.
960.4-2-4 Climatic changes.
960.4-2-5 Erosion.
960.4-2-6 Dissolution.
960.4-2-7 Tectonics.
960.4-2-8 Human interference.
960.4-2-8-1 Natural resources.
960.4-2-8-2 Site ownership and control.

Subpart D—Preclosure Guidelines

960.5 Preclosure guidelines.
960.5-1 System guidelines.
960.5-2 Technical guidelines.
960.5-2-1 Population density and distribution.
960.5-2-2 Site ownership and control.
960.5-2-3 Meteorology.
960.5-2-4 Offsite installations and operations.

Environment, Socioeconomics, and Transportation

960.5-2-5 Environmental quality.
960.5-2-6 Socioeconomic impacts.
960.5-2-7 Transportation.

Ease and Cost of Siting, Construction, Operation and Closure

960.5-2-8 Surface characteristics.
960.5-2-9 Rock characteristics.
960.5-2-10 Hydrology.
960.5-2-11 Tectonics.

Appendix I—NRC and EPA Requirements for Postclosure Repository Performance
Appendix II—NRC and EPA Requirements for Preclosure Repository Performance
Appendix III—Application of the System and Technical Guidelines During the Siting Process
Appendix IV—Types of Information for the Nomination of Sites as Suitable for Characterization

Authority: The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); Energy Reorganization Act of 1974 (42 U.S.C. *et seq.*); Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*); Nuclear Waste Policy Act of 1982 (Pub. L. 97-425, 96 Stat. 2201).

Subpart A—General Provisions

§ 960.1 Applicability.

These guidelines were developed in accordance with the requirements of Section 112(a) of the Nuclear Waste Policy Act of 1982 for use by the Secretary of Energy in evaluating the suitability of sites for the development of repositories. The guidelines will be used for suitability evaluations and determinations made pursuant to Section 112(b) and any preliminary suitability determinations required by Section 114(f). The guidelines set forth in this Part are intended to complement the requirements set forth in the Act, 10 CFR Part 60, and 40 CFR Part 191. The DOE recognizes NRC jurisdiction for the resolution of differences between the guidelines and 10 CFR Part 60. The guidelines have received the concurrence of the NRC. The DOE contemplates revising the guidelines from time to time, as permitted by the Act, to take into account revisions made to the above regulations and to otherwise update the guidelines as necessary. The DOE will submit the revisions to the NRC and obtain its concurrence before issuance.

§ 960.2 Definitions.

As used in this part:

"Accessible environment" means the atmosphere, the land surface, surface water, oceans, and the portion of the lithosphere that is outside the controlled area.

"Act" means the Nuclear Waste Policy Act of 1982.

"Active fault" means a fault along which there is recurrent movement, which is usually indicated by small, periodic displacements or seismic activity.

"Affected area" means either the area of socioeconomic impact or the area of environmental impact, each of which will vary in size among potential repository sites.

"Affected Indian tribe" means any Indian tribe (1) within whose reservation boundaries a repository for radioactive waste is proposed to be located or (2) whose federally defined possessory or usage rights to other lands outside the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided* That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

"Affected State" means any State that (1) has been notified by the DOE in accordance with Section 116(a) of the Act as containing a potentially acceptable site; (2) contains a candidate site for site characterization or repository development; or (3) contains a site selected for repository development.

"Application" means the act of making a finding of compliance or noncompliance with the qualifying or disqualifying conditions specified in the guidelines of Subparts C and D, in accordance with the types of findings specified in Appendix III.

"Aquifer" means a formation, a group of formations, or a part of a formation that contains sufficient saturated permeable material to yield significant quantities of water to wells and springs.

"Barrier" means any material or structure that prevents or substantially delays the movement of water or radionuclides.

"Candidate site" means an area, within a geohydrologic setting, that is recommended by the Secretary of Energy under Section 112 of the Act for site characterization, approved by the President under Section 112 of the Act for characterization, or undergoing site characterization under Section 113 of the Act.

"Closure" means final backfilling of the remaining open operational areas of the underground facility and boreholes after the termination of waste emplacement, culminating in the sealing of shafts.

"Confining unit" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

"Containment" means the confinement of radioactive waste within a designated boundary.

"Controlled area" means a surface location, to be marked by suitable monuments, extending horizontally no more than 10 kilometers in any direction from the outer boundary of the underground facility, and the underlying subsurface, which area has been committed to use as a geologic repository and from which incompatible activities would be prohibited before and after permanent closure.

"Cumulative releases of radionuclides" means the total number of curies of radionuclides entering the accessible environment in any 10,000-year period, normalized on the basis of radiotoxicity in accordance with 40 CFR Part 191. The peak cumulative release of radionuclides refers to the 10,000-year period during which any such release attains its maximum predicted value.

"Decommissioning" means the permanent removal from service of surface facilities and components neceessary for preclosure operations only, after repository closure, in accordance with regulatory requirements and environmental policies.

"Determination" means a decision by the Secretary that a site is suitable for site characterization for the selection of a repository site or that a site is suitable for the development of a repository, consistent with applications of the guidelines of Subparts C and D in accordance with the provisions set forth in Subpart B.

"Disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste, and the isolation of such waste from the accessible environment.

"Disqualifying condition" means a condition that, if present at a site, would eliminate that site from further consideration.

"Disturbed zone" means that portion of the controlled area, excluding shafts, whose physical or chemical properties are predicted to change as a result of underground facility construction or heat generated by the emplaced radioactive waste such that the resultant change of properties could have a significant effect on the preformance of the geologic repository.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

"Effective porosity" means the amount of interconnected pore space and fracture openings available for the transmission of fluids, expressed as the ratio of the volume of interconnected pores and openings to the volume of rock.

"Engineered-barrier system" means the manmade components of a disposal system designed to prevent the release of radionuclides from the underground facility or into the geohydrologic setting. Such term includes the radioactive-waste form, radioactive-waste canisters, materials placed over and around such canisters, any other components of the waste package, and barriers used to seal penetrations in and into the underground facility.

"Environmental assessment" means the document required by Section 112(b)(1)(E) of the Nuclear Waste Policy Act of 1982.

"Environmental impact statement" means the document required by Section 102(2)(C) of the National Environmental Policy Act of 1969. Sections 114(a) and 114(f) of the Nuclear Waste Policy Act of 1982 include certain limitations on the National Environmental Policy Act requirements as they apply to the preparation of an environmental impact statement for the development of a repository at a characterized site.

"EPA" means the U.S. Environmental Protection Agency or its duly authorized representatives.

"Evaluation" means the act of carefully examining the characteristics of a site in relation to the requirements of the qualifying or disqualifying conditions specified in the guidelines of Subparts C and D. Evaluation includes the consideration of favorable and potentially adverse conditions.

"Excepted" means assumed to be probable or certain on the basis of existing evidence and in the absence of significant evidence to the contrary.

"Expected repository performance" means the manner in which the repository is predicted to function, consideration those conditions, processes, and events that are likely to prevail or may occur during the time period of interest.

"Facility" means any structure, system, or system component, including engineered barriers, created by the DOE to meet repository-performance or functional objectives.

"Fault" means a fracture or a zone of fractures along which there has been displacement of the side relative to one another parallel to the fracture or zone of fractures.

"Faulting" means the process of fracturing and displacement that produces a fault.

"Favorable condition" means a condition that, though not necessary to qualify a site, is presumed, if present, to enhance confidence that the qualifying condition of a particular guideline can be met.

"Finding" means a conclusion that is reached after evaluation.

"Geohydrologic setting" means the system of geohydrologic units that is located within a given geologic setting.

"Geohydrologic system" means the geohydrologic units within a geologic setting, including any recharge, discharge, interconnections between units, and any natural or man-induced processes or events that could affect ground-water flow within or among those units.

"Geohydrologic unit" means an aquifer, a confining unit, or a combination of aquifers and confining units comprising a framework for a reasonably distinct geohydrologic system.

"Geologic repository" means a system, requiring licensing by the NRC, that is intended to be used, or may be used, for the disposal of radioactive waste in excavated geologic media. A geologic repository includes (1) the geologic-repository operations area and (2) the portion of the geologic setting that provides isolation of the radioactiv waste and is located within the controlled area.

"Geologic-repository operations area" means a radioactive-waste facility that is part of the geologic repository, including both surface and subsurface areas and facilities where waste-handling activities are conducted.

"Geologic setting" means the geologi hydrologic, and geochemical systems o the region in which a geologic-repositor operations area is or may be located.

"Geomorphic processes" means geologic processes that are responsible for the general configuration of the Earth's surface, including the development of present landforms and their relationships to underlying structures, and are responsible for the geologic changes recorded by these surface features.

"Ground water" means all subsurface water as distinct from surface water.

"Ground-water flux" means the rate of ground-water flow per unit area of porous or fractured media measured perpendicular to the direction of flow.

"Ground-water sources" means aquifers that have been or could be economically and technologically developed as sources of water in the foreseeable future.

"Ground-water travel time" means the time required for a unit volume of ground water to travel between two locations. The travel time is the length of the flow path divided by the velocity, where velocity is the average ground-water flux passing through the cross-sectional area of the geologic medium through which flow occurs, perpendicular to the flow direction, divided by the effective porosity along the flow path. If discrete segments of the flow path have different hydrologic properties, the total travel time will be the sum of the travel times for each discrete segment.

"Guideline" means a statement of policy or procedure that may include, when appropriate, qualifying, disqualifying, favorable, or potentially adverse conditions as specified in the "guidelines."

"Guidelines" means Part 960 of Title 10 of the Code of Federal Regulations—General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories.

"High-level radioactive waste" means (1) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations and (2) other highly radioactive material that the NRC, consistent with existing law, determines by rule requires permanent isolation.

"Highly populated area" means any incoporated place (recognized by the decennial reports of the U.S. Bureau of the Census) of 2,500 or more persons, or any census designated place (as defined and delineated by the Bureau) of 2,500 or more persons, unless it can be demonstrated that any such place has a lower population density than the mean value for the continental United States. Counties or county equivalents, whether incorporated or not, are specifically excluded form the definition of "place" as used herein.

"Host rock" means the geologic medium in which the waste is emplaced, specifically the geologic materials that directly encompass and are in close proximity to the underground facility.

"Hydraulic conductivity" means the volume of water that will move through a medium in a unit of time under a unit hydraulic gradient through a unit area measured perpendicular to the direction of flow.

"Hydraulic gradient" means a change in the static pressure of ground water, expressed in terms of the height of water above a datum, per unit of distance in a given direction.

"Hydrologic process" means any hydrologic phenomenon that exhibits a continuous change in time, whether slow or rapid.

"Hydrologic properties" means those properties of a rock that govern the entrance of water and the capacity to hold, transmit, and deliver water, such as porosity, effective porosity, specific retention, permeability, and the directions of maximum and minimum permeabilities.

"Igneous activity" means the emplacement (intrusion) of molten rock material (magma) into material in the Earth's crust or the expulsion (extrusion) of such material onto the Earth's surface or into its atmosphere or surface water.

"Isolation" means inhibiting the transport of radioactive material so that the amounts and concentrations of this material entering the accessible environment will be kept within prescribed limits.

"Likely" means processing or displaying the qualities, characteristics, or attributes that provide a reasonable basis for confidence that what is expected indeed exists or will occur.

"Lithosphere" means the solid part of the Earth, including any ground water contained within it.

"Member of the public" means any individual who is not engaged in operations involving the management, storage, and disposal of radioactive waste. A worker so engaged is a member of the public except when on duty at the geologic-repository operations area.

"Mitigation" means (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments.

"Model" means a conceptual description and the associated mathematical representation of a system, subsystem, component, or condition that is used to predict changes from a baseline state as a function of internal and/or external stimuli and as a function of time and space.

"NRC" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Perched ground water" means unconfined ground water separated from an underlying body of ground water by an unsaturated zone. Its water table is a perched water table. Perched ground water is held up by a perching bed whose permeability is so low that water percolating downward through it is not able to bring water in the underlying unsaturated zone above atmospheric pressure.

"Performance assessment" means any analysis that predicts the behavior of a system or system component under a given set of constant and/or transient conditions. Performance assessments will include estimates of the effects of uncertainties in data and modeling.

"Permanent closure" is synonymous with "closure."

"Postclosure" means the period of time after the closure of the geologic repository.

"Potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the DOE undertakes preliminary drilling and geophysical testing for the definition of site location.

"Potentially adverse condition" means a condition that is presumed to detract from expected system performance, but further evaluation, additional data, or the identification of compensating or mitigating factors may indicate that its effect on the expected system performance is acceptable.

"Preclosure" means the period of time before and during the closure of the geologic repository.

"Pre-waste-emplacement" means before the authorization of repository construction by the NRC.

"Qualifying condition" means a condition that must be satisfied for a site to be considered acceptable with respect to a specific guideline.

"Quaternary Period" means the second period of the Cenozoic Era, following the Tertiary, beginning 2 to 3 million years ago and extending to the present.

"Radioactive waste" or "waste" means high-level radioactive waste and other radioactive materials, including spent nuclear fuel, that are received for emplacement in a geologic repository.

"Radioactive-waste facility" means a facility subject to the licensing and related regulatory authority of the NRC pursuant to Sections 202(3) and 202(4) of the Energy Reorganization Act of 1974 (88 Stat. 1244).

"Radionuclide retardation" means the process or processes that cause the time required for a given radionuclide to move between two locations to be greater than the ground-water travel time, because of physical and chemical interactions between the radionuclide and the geohydrologic unit through which the radionuclide travels.

"Reasonably available technology" means technology which exists and has been demonstrated or for which the results of any requisite development, demonstration, or confirmatory testing efforts before application will be available within the required time period.

"Repository"is synonymous with "geologic repository."

"Repository closure" is synonymous with "closure."

"Repository construction" means all excavation and mining activities associated with the construction of shafts, shaft stations, rooms, and necessary openings in the underground facility, preparatory to radioactive-waste emplacement, as well as the construction of necessary surface facilities, but excluding site-characterization activities.

"Repository operation" means all of the functions at the site leading to and involving radioactive-waste emplacement in the underground facility, including receiving, transportation, handling, emplacement, and, if necessary, retrieval.

"Repository support facilities" means all permanent facilities constructed in support of site-characterization activities and repository construction, operation, and closure activities, including surface structures, utility lines, roads, railroads, and similar facilities, but excluding the underground facility.

"Restricted area" means any area access to which is controlled by the DOE for purposes of protecting individuals from exposure to radiation and radioactive materials before repository closure, but not including any areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

"Retrieval" means the act of intentionally removing radioactive waste before repository closure from the underground location at which the waste had been previously emplaced for disposal.

"Saturated zone" means that part of the Earth's crust beneath the water table in which all voids, large and small, are ideally filled with water under pressure greater than atmospheric.

"Secretary" means the Secretary of Energy.

"Site" means a potentially acceptable site or a candidate site, as appropriate, until such time as the controlled area has been established, at which time the site and the controlled area are the same.

"Site characterization" means activities, whether in the laboratory or in the field, undertaken to establish the geologic conditions and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

"Siting" means the collection of exploration, testing, evaluation, and decision-making activities associated with the process of site screening, site nomination, site recommendation, and site approval for characterization or repository development.

"Source term" means the kinds and amounts of radionuclides that make up the source of a potential release of radioactivity.

"Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

"Surface facilities" means repository support facilities within the restricted area.

"Surface water" means any waters on the surface of the Earth, including fresh and salt water, ice, and snow.

"System" means the geologic setting at the site, the waste package, and the repository, all acting together to contain and isolate the waste.

"System performance" means the complete behavior of a repository system in response to the conditions, processes, and events that may affect it.

"Tectonic" means of, or pertaining to, the forces involved in, or the resulting structures or features of, "tectonics."

"Tectonics" means the branch of geology dealing with the broad architecture of the outer part of the Earth, that is, the regional assembling of structural or deformational features and the study of their mutual relations, origin, and historical evolution.

"To the extent practicable" means the degree to which an intended course of action is capable of being effected in a manner that is reasonable and feasible within a framework of constraints.

"Underground facility" means the underground structure and the rock required for support, including mined openings and backfill materials, but excluding shafts, boreholes, and their seals.

"Unsaturated zone" means the zone between the land surface and the water table. Generally, water in this zone is under less than atmospheric pressure, and some of the voids may contain air or other gases at atmospheric pressure. Beneath flooded areas or in perched water bodies, the water pressure locally may be greater than atmospheric.

"Waste form" means the radioactive waste materials and any encapsulating or stabilizing matrix.

"Waste package" means the waste form and any containers, shielding, packing, and other sorbent materials immediately surrounding an individual waste container.

"Water table" means that surface in a body of ground water at which the water pressure is atmospheric.

Subpart B—Implementation Guidelines

§ 960.3 Implementation guidelines.

The guidelines of this Subpart establish the procedure and basis for applying the postclosure and the preclosure guidelines of Subparts C and D, respectively, to evaluations of the suitability of sites for the development of repositories. As may be appropriate during the siting process, this procedure requires consideration of a variety of geohydrologic settings and rock types, regionality, and environmental impacts and consultation with affected States, affected Indian tribes, and Federal agencies.

§ 960.3–1 Siting provisions.

The siting provisions establish the framework for the implementation of the siting process specified in § 960.3–2. Sections 960.3–1–1 and 960.3–1–2 require that consideration be given to sites situated in different geohydrologic settings and different types of host rock, respectively. These diversity guidelines are intended to balance the process of site selection by requiring consideration of a variety of geologic conditions and media, and thereby enhance confidence in the technical suitability of sites selected for the development of repositories. As required by the Act, § 960.3–1–3 specifies consideration of a regional distribution of repositories after recommendation of a site for development of the first repository. Section 960.3–1–4 describes the evidence

that is required to support siting decisions. Section 960.3–1–5 establishes the basis for site evaluations against the postclosure and the preclosure guidelines of Subparts C and D during the various phases of the siting process.

§ 960.3–1–1 Diversity of geohydrologic settings.

Consideration shall be given to a variety of geohydrologic settings in which sites for the development of repositories may be located. To the extent practicable, sites recommended as candidate sites for characterization shall be located in different geohydrologic settings.

§ 960.3–1–2 Diversity of rock types.

Consideration shall be given to a variety of geologic media in which sites for the development of repositories may be located. To the extent practicable, and with due consideration of candidate sites characterized previously or approved for such characterization if the circumstances apply, sites recommended as candidate sites for characterization shall have different types of host rock.

§ 960.3–1–3 Regionality.

In making site recommendations for repository development after the site for the first repository has been recommended, the Secretary shall give due consideration to the need for, and the advantages of, a regional distribution in the siting of subsequent repositories. Such consideration shall take into account the proximity of sites to locations at which waste is generated or temporarily stored and at which other repositories have been or are being developed.

§ 960.3–1–4 Evidence for siting decisions.

The siting process involves a sequence of four decisions: The identification of potentially acceptable sites; the nomination of sites as suitable for characterization; the recommendation of sites as candidate sites for site characterization; and after the completion of site characterization and nongeologic data gathering, the recommendation of a candidate site for the development of a repository. Each of these decisions will be supported by the evidence specified below.

§ 960.3–1–4–1 Site identification as potentially acceptable.

The evidence for the identification of a potentially acceptable site shall be the types of information specified in Appendix IV of this part. Such evidence will be relatively general and less detailed than that required for the nomination of a site as suitable for characterization. Because the gathering of detailed geologic data will not take place until after the recommendation of a site for characterization, the levels of information may be relatively greater for the evaluation of those guidelines in Subparts C and D that pertain to surface-identifiable factors for such site. The sources of information shall include the literature in the public domain and the private sector, when available, and will be supplemented in some instances by surface investigations and conceptual engineering design studies conducted by the DOE. Geologic surface investigations may include the mapping of identifiable rock masses, fracture and joint characteristics, and fault zones. Other surface investigations will consider the aquatic and terrestrial ecology; water rights and uses; topography; potential offsite hazards; natural resource concentrations; national or State protected resources; existing transportation systems; meteorology and climatology; population densities, centers, and distributions; and general socioeconomic characteristics.

§ 960.3–1–4–2 Site nomination for characterization.

The evidence required to support the nomination of a site as suitable for characterization shall include the types of information specified in Appendix IV of this part and shall be contained or referenced in the environmental assessments to be prepared in accordance with the requirements of the Act. The source of this information shall include the literature and related studies in the public domain and the private sector, when available, and various meteorological, environmental, socioeconomic, and transportation studies conducted by the DOE in the affected area; exploratory boreholes in the region of such site, including lithologic logging and hydrologic and geophysical testing of such boreholes, laboratory testing of core samples for the evaluation of geochemical and engineering rock properties, and chemical analyses of water samples from such boreholes; surface investigations, including geologic mapping and geophysical surveys, and compilations of satellite imagery data; in situ or laboratory testing of similar rock types under expected repository conditions; evaluations of natural and man-made analogs of the repository and its subsystems, such as geothermally active areas, underground excavations, and case histories of socioeconomic cycles in areas that have experienced intermittent large-scale construction and industrial activities; and extrapolations of regional data to estimate site-specific characteristics and conditions. The exact types and amounts of information to be collected within the above categories, including such details as the specific types of hydrologic tests, combinations of geophysical tests, or number of exploratory boreholes, are dependent on the site-specific needs for the application of the guidelines of Subparts C and D, in accordance with the provisions of this Subpart and the application requirements set forth in Appendix III of this part. The evidence shall also include those technical evaluations that use the information specified above and that provide additional bases for evaluating the ability of a site to meet the qualifying conditions of the guidelines of Subparts C and D. In developing the above-mentioned bases for evaluation, as may be necessary, assumptions that approximate the characteristics or conditions considered to exist at a site, or expected to exist or occur in the future, may be used. These assumptions will be realistic but conservative enough to underestimate the potential for a site to meet the qualifying condition of a guideline; that is, the use of such assumptions should not lead to an exaggeration of the ability of a site to meet the qualifying condition.

§ 960.3–1–4–3 Site recommendation for characterization.

The evidence required to support the recommendation of a site as a candidate site for characterization shall consist of the evaluations and data contained or referenced in the environmental assessment for such site, unless the Secretary certifies that such information, in the absence of additional preliminary borings or excavations, will not be adequate to satisfy applicable requirements of the Act.

§ 960.3–1–4–4 Site recommendation for repository development.

The evidence required to support the recommendation of a candidate site for the development of a repository, after the completion of characterization activities at such site, shall consist of the information specified in Section 114(a) of the Act for the comprehensive statement of the basis for such recommendation and Section 114(f) of the Act for the environmental impact statement. This evidence shall be obtained by the characterization of such site, according to the requirements specified in Section 113(b) of the Act and in 10 CFR 60.11, and by nongeologic data gathering.

§ 960.3–1–5 Basis for site evaluations.

Evaluations of individual sites and comparisons between and among sites shall be based on the postclosure and preclosure guidelines specified in Subparts C and D, respectively. Except for screening for potentially acceptable sites as specified in § 960.3–2–1, such evaluations shall place *primary significance* on the postclosure guidelines and *secondary significance* on the preclosure guidelines, with each set of guidelines considered collectively for such purposes. Both the postclosure and the preclosure guidelines consist of a system guideline or guidelines and corresponding groups of technical guidelines. The postclosure guidelines of Subpart C contain eight technical guidelines in one group. The preclosure guidelines of Subpart D contain eleven technical guidelines separated into three groups that represent, *in decreasing order of importance*, preclosure radiological safety; environment, socioeconomics, and transportation; and ease and cost of siting, construction, operation, and closure. The relative significance of any technical guideline to its corresponding system guideline is site specific. Therefore, for each technical guideline, an evaluation of compliance with the qualifying condition shall be made in the context of the collection of system elements and the evidence related to that guideline, considering on balance the favorable conditions and the potentially adverse conditions identified at a site. Similarly, for each system guideline, such evaluation shall be made in the context of the group of technical guidelines and the evidence related to that system guideline. For purposes of recommending sites for development as respositories, such evidence shall include analyses of expected respository performance to assess the likelihood of demonstrating compliance with 40 CFR Part 191 and 10 CFR Part 60, in accordance with § 960.4–1. A site shall be disqualified at any time during the siting process if the evidence supports a finding by the DOE that a disqualifying condition exists or the qualifying condition of any system or technical guideline cannot be met. Comparisons between and among sites shall be based on the system guidelines, to the extent practicable and in accordance with the levels of relative significance specified above for the postclosure and the preclosure guidelines. Such comparisons are intended to allow comparative evaluations of sites in terms of the capabilities of the natural barriers for waste isolation and to identify innate deficiencies that could jeopardize compliance with such requirements. If the evidence for the sites is not adequate to substantiate such comparisons, then the comparisons shall be based on the groups of technical guidelines under the postclosure and the preclosure guidelines, considering the levels of relative significance appropriate to the postclosure and the preclosure guidelines and the order of importance appropriate to the subordinate groups within the preclosure guidelines. Comparative site evaluations shall place primary importance on the natural barriers of the site. In such evaluations for the postclosure guidelines of Subpart C, engineered barriers shall be considered only to the extent necessary to obtain realistic source terms for comparative site evaluations based on the sensitivity of the natural barriers to such realistic engineered barriers. For a better understanding of the potential effects of engineered barriers on the overall performance of the repository system, these comparative evaluations shall consider a range of levels in the performance of the engineered barriers. That range of performance levels shall vary by at least a factor of 10 above and below the engineered-barrier performance requirements set forth in 10 CFR 60.113, and the range considered shall be identical for all sites compared. The comparisons shall assume equivalent engineered-barrier performance for all sites compared and shall be structured so that engineered barriers are not relied upon to compensate for deficiencies in the geologic media. Furthermore, engineered barriers shall not be used to compensate for an inadequate site; mask the innate deficiencies of a site; disguise the strengths and weaknesses of a site and the overall system; and mask differences between sites when they are compared. Site comparisons performed to support the recommendation of sites for the development of repositories in § 960.3–2–4 shall evaluate predicted releases of radionuclides to the accessible environment. For the purposes of such comparison, the accessible environment shall consist of the atmosphere, the land surface, any nearby surface water, and those portions of the lithosphere that are situated more than 10 kilometers in a horizontal direction from the outer boundary of the original location of the waste emplacement in the geologic repository. Releases of different radionuclides shall be combined by the methods specified in Appendix A of 40 CFR Part 191. The comparisons specified above shall consist of two comparative evaluations that predict radionuclide releases for 100,000 years after repository closure and shall be conducted as follows. First, the sites shall be compared by means of evaluations that emphasize the performance of the natural barriers at the site. Second, the sites shall be compared by means of evaluations that emphasize the performance of the total repository system. These second evaluations shall consider the expected performance of the repository system; be based on the expected performance of waste packages and waste forms, in compliance with the requirements of 10 CFR 60.113, and on the expected hydrologic and geochemical conditions at each site; and take credit for the expected performance of all other engineered components of the repository system. The comparison of isolation capability shall be one of the significant considerations in the recommendation of sites for the development of repositories. The first of the two comparative evaluations specified in the preceding paragraph shall take precedence unless the second comparative evaluation would lead to substantially different recommendations. In the latter case, the two comparative evaluations shall receive comparable consideration. Sites with predicted isolation capabilities that differ by less than a factor of 10, with similar uncertainties, may be assumed to provide equivalent isolation.

§ 960.3–2 Siting process.

The siting process begins with site screening for the identification of potentially acceptable sites. This process was completed for purposes of the first repository before the enactment of the Act, and the identification of such sites was made after enactment in accordance with the provisions of section 116(a) of the Act. The screening process for the identification of potentially acceptable sites for the second and subsequent repositories shall be conducted in accordance with the requirements specified in § 960.3–2–1 of this Subpart. The nomination of any site as suitable for characterization shall follow the process specified in § 960.3–2–2, and such nomination shall be accompanied by an environmental assessment as specified in section 112(b)(1)(E) of the Act. The recommendation of sites as candidate sites for characterization and the recommendation of a characterized site for the development of a repository shall be accomplished in accordance with the requirements specified in §§ 960.3–2–3 and 960.3–2–4, respectively.

§ 960.3–2–1 Site screening for potentially acceptable sites.

To identify potentially acceptable sites for the development of other than the first repository, the process shall begin with site-screening activities that consider large land masses that contain rock formations of suitable depth, thickness, and lateral extent and have structural, hydrologic, and tectonic features favorable for waste containment and isolation. Within those large land masses, subsequent site-screening activities shall focus on successively smaller and increasingly more suitable land units. This process shall be developed in consultation with the States that contain land units under consideration. It shall be implemented in a sequence of steps that first applies the applicable disqualifying conditions to eliminate land units on the basis of the evidence specified in § 960.3–1–4–1 and in accordance with the application requirements set forth in Appendix III of this Part. After the disqualifying conditions have been applied, the favorable and potentially adverse conditions, as identified for each remaining land unit, shall be evaluated. The presence of favorable conditions shall favor a given land unit, while the presence of potentially adverse conditions shall penalize that land unit. Recognizing that favorable conditions and potentially adverse conditions for different technical guidelines can exist in the same land unit, the DOE shall seek to evaluate the composite favorability of each land unit. Land units that, in the aggregate, exhibit potentially adverse conditions shall be deferred in favor of land units that exhibit favorable conditions. The siting provisions that require diversity of geohydrologic settings and rock types and consideration of regionality, as specified in §§ 960.3–1–1, 960.3–1–2, and 960.3–1–3, respectively, may be used to discriminate between land units and to establish the range of options in site screening. To identify a site as potentially acceptable, the evidence shall support a finding that the site is not disqualified in accordance with the application requirements set forth in Appendix III of this Part and shall support the decision by the DOE to proceed the continued investigation of the site on the basis of the favorable and potentially adverse conditions identified to date. In continuation of the screening process after such identification and before site nomination, the DOE may defer from further consideration land units or potentially acceptable sites or portions thereof on the basis of additional information or by the application of the siting provisions for diversity of geohydrologic settings, diversity of rock types, and regionality (§§ 960.3–1–1, 960.3–1–2, and 960.3–1–3, respectively). The deferral of potentially acceptable sites will be described in the environmental assessments that accompany the nomination of at least five sites as suitable for characterization. In order to identify potentially acceptable sites for the second and subsequent repositories, the Secretary shall *first* identify the State within which the site is located in a decision-basis document that describes the process and the considerations that led to the identification of such site and that has been issued previously in draft for review and comment by such State. *Second,* when such document is final, the Secretary shall notify the Governor and the legislature of that State and the tribal council of any affected Indian tribe of the potentially acceptable site.

§ 960.3–2–2 Nomination of sites as suitable for characterization.

From the sites identified as potentially acceptable, the Secretary shall nominate at least five sites determined suitable for site characterization for the selection of each repository site. For the second repository, at least three of the sites shall not have been nominated previously. Any site nominated as suitable for characterization for the first repository, but not recommended as a candidate site for characterization, may not be nominated as suitable for characterization for the second repository. The nomination of a site as suitable for characterization shall be accompanied by an environmental assessment as specified in section 112(b)(1)(E) of the Act. Such nomination shall be based on evaluations in accordance with the guidelines of this Part, and the bases and relevant details of those evaluations and of the decision processes involved therein shall be contained in the environmental assessment for the site in the manner specified in this Subpart. The evidence required to support such evaluations and siting decisions is specified in § 960.3–1–4–2.

§ 960.3–2–2–1 Evaluation of all potentially acceptable sites.

First, in considering sites for nomination, each of the potentially acceptable sites shall be evaluated on the basis of the disqualifying conditions specified in the technical guidelines of Subparts C and D, in accordance with the application requirements set forth in Appendix III of this part. This evaluation shall support a finding by the DOE that such sites is not disqualified.

§ 960.3–2–2–2 Selection of sites within geohydrologic settings.

Second, the siting provision requiring diversity of geohydrologic settings, as specified in § 960.3–1–1, shall be applied to group all potentially acceptable sites according to their geohydrologic settings. *Third,* for those geohydrologic settings that contain more than one potentially acceptable site, the preferred site shall be selected on the basis of a comparative evaluation of all potentially acceptable sites in that setting. This evaluation shall consider the distinguishing characteristics displayed by the potentially acceptable sites within the setting and the related guidelines from Subparts C and D. That is, the appropriate guidelines shall be selected primarily on the basis of the kinds of evidence among sites for which distinguishing characteristics can be identified. Such comparative evaluation shall be made on the basis of the qualifying conditions for those guidelines, considering, on balance, the favorable conditions and potentially adverse conditions identified at each site. Due consideration shall also be given to the siting provisions specifying the basis for site evaluations in § 960.3–1–5, to the extent practicable, and diversity of rock types in § 960.3–1–2, if the circumstances so apply. If less than five geohydrologic settings are available for consideration, the above process shall be used to select two or more preferred sites from those settings that contain more than one potentially acceptable site, as required to obtain the number of sites to be nominated as suitable for characterization. For purposes of the second and subsequent repositories, due consideration shall also be given to the siting provision for regionality as specified in § 960.3–1–3. *Fourth,* each preferred site within a geohydrologic setting shall be evaluated as to whether such site is suitable for the development of a repository under the qualifying condition of each guideline specified in Subparts C and D that does not require site characterization as a prerequisite for the application of such guideline. The guidelines considered appropriate to this evaluation have been selected on the basis of their exclusion under the definition of site characterization as specified in § 960.2. Although the final application of these guidelines, in accordance with the provisions set forth in Appendix III of this Part, does not require geologic data from site-characterization activities, such application will require additional data beyond those specified in Appendix IV of this part, which will be obtained concurrently with site characterization. Such guidelines include those specified in § 960.4–2–8–2 (Site Ownership and Control) of Subpart C; §§ 960.5–1(a)(1) and 960.5–1(a)(2) of Subpart D (preclosure system guidelines for radiological safety and environmental quality, socioeconomics, and transportation); and §§ 960.5–2–1 through 960.5–2–7 of Subpart D (Population Density and Distribution, Site Ownership and Control, Meteorology, Offsite Installations and Operations, Environmental Quality, Socioeconomic Impacts, and Transportation). This evaluation shall consider on balance those favorable conditions and potentially adverse conditions identified as such at a preferred site in relation to the qualifying condition of each such guideline. For each such guideline, this evaluation shall focus on the suitability of the site for the development of a repository by considering the activities from the start of site characterization through decommissioning and shall support a finding by the DOE in accordance with the application requirements set forth in Appendix III of this part. *Fifth,* each preferred site within a geohydrologic setting shall be evaluated as to whether such site is suitable for site characterization under the qualifying conditions of those guidelines specified in Subparts C and D that require characterization (i.e., subsurface geologic, hydrologic, and geochemical data gathering). Such guidelines include those specified in § 960.4–1(a) (postclosure system guideline); §§ 960.4–2–1 through 960.4–2–8–1 of Subpart C (Geohydrology, Geochemistry, Rock Characteristics, Climatic Changes, Erosion, Dissolution, Tectonics, Human Interference, and Natural Resources); §960.5–1(a)(3) (preclosure system guideline for ease and cost of siting, construction, operation, and closure); and § 960.5–2–8 through 960.5–2–11 of Subpart D (Surface Characteristics, Rock Characteristics, Hydrology, and Tectonics). This evaluation shall consider on balance the favorable conditions and potentially adverse conditions identified as such at a preferred site in relation to the qualifying condition of each such guideline. For each such guideline, this evaluation shall focus on the suitability of the site for characterization and shall support a finding by the DOE in accordance with the application requirements set forth in Appendix III of this part.

§ 960.3–2–2–3 Comparative evaluation of all sites proposed for nomination.

Sixth, for those potentially acceptable sites to be proposed for nomination, as determined by the process specified in § 960.3–2–2–2, a reasonable comparative evaluation of each such site with all other such sites shall be made. For each site and for each guideline specified in Subparts C and D, the DOE shall summarize the evaluations and findings specified under § 960.3–2–2–1 and under the fourth and fifth provisions of § 960.3–2–2–2. Each such summary shall allow comparisons to be made among sites on this basis of each guideline.

§ 960.3–2–2–4 The environmental assessment.

To document the process specified above, and in compliance with section 112(b)(1)(E) of the Act, an environmental assessment shall be prepared for each site proposed for nomination as suitable for characterization. Each such environmental assessment shall describe the decision process by which such site was proposed for nomination as described in the preceding six steps and shall contain or reference the evidence that supports such process according to the requirements of § 960.3–1–4–2 and Appendix IV of this part. As specified in the Act, each environmental assessment shall include an evaluation of the effects of the site-characterization activities at the site on public health and safety and the environment; a discussion of alternative activities related to site characterization that may be taken to avoid such impact; and an assessment of the regional and local impacts of locating a repository at the site. The draft environmental assessment for each site proposed for nomination as suitable for characterization shall be made available by the DOE for public comment after the Secretary has notified the Governor and legislature of the State in which the site is located, and the governing body of the affected Indian tribe where such site is located, of such impending availability.

§ 960.3–2–2–5 Formal site nomination.

After the final environmental assessments have been prepared, the Secretary shall nominate at least five sites that he determines suitable for site characterization for the selection of a repository site, and, in so doing, he shall cause to have published in the **Federal Register** a notice specifying the sites so nominated and announcing the availability of the final environmental assessments for such sites. This determination by the Secretary shall be based on the final environmental assessments for such sites, including, in particular, consideration of the available evidence, evaluations, and the resultant findings for the guidelines of Subparts C and D so specified under the fourth and fifth provisions of § 960.3–2–2–2. Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which the site is located, and the governing body of the affected Indian tribe where such site is located, of such nomination and the basis for such nomination.

§ 960.3–2–3 Recommendation of sites for characterization.

After the nomination of at least five sites as suitable for site characterization for the selection of the first repository, the Secretary shall recommend in writing to the President not less than three candidate sites for such characterization. The recommendation decision shall be based on the available geophysical, geologic, geochemical, and hydrologic data; other information; associated evaluations and findings reported in the environmental assessments accompanying the nominations; and the considerations specified below, unless the Secretary certifies that such available data will not be adequate to satisfy applicable requirements of the Act in the absence of further preliminary borings or excavations. On the basis of the evidence and in accordance with the siting provision specifying the basis for site evaluations in § 960.3–1–5, the sites nominated as suitable for characterization shall be considered as to their order of preference as candidate sites for characterization. Subsequently, the siting provisions specifying diversity of geohydrologic settings, diversity of rock types, and, after the first repository, consideration of regionality in §§ 960.3–1–1, 960.3–1–2, and 960.3–1–3, respectively, shall be considered to determine a final order of preference for the characterization of such sites. Considering this order of preference together with the available siting alternatives specified in the Act, the sites recommended as candidate sites for characterization shall offer, on balance, the most advantageous combination of characteristics and conditions for the successful development of repositories at such sites. The process for the recommendation of sites as candidate sites for characterization for the selection of any subsequent repository shall be the same as that specified above for the first repository.

§ 960.3-2-4 Recommendation of sites for the development of repositories.

After completion of site characterization and nongeologic data gathering activities at the candidate sites for the development of the first repository, or from all of the characterized sites for the development of subsequent repositories, the candidate sites shall be compared with each other on the basis of the guidelines specified in Subparts C and D according to the siting provision specifying the basis for site evaluations in § 960.3-1-5. This comparison shall lead to a recommendation by the Secretary to the President of a site for the development of a repository. Together with any recommendation to the President to approve a site for the development of a repository, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation pursuant to the requirements specified in section 114(a)(1) of the Act, including an environmental impact statement prepared in accordance with the provisions of sections 114(a)(1)(D) and 114(f) of the Act. The environmental impact statement shall include the results of the comparative evaluation specified above and a description of the decision process that resulted in the selection of the candidate site recommended for the development of such repository.

§ 960.3-3 Consultation.

The DOE shall provide to designated officials of the affected States and to the governing bodies of any affected Indian tribe timely and complete information regarding determinations or plans made with respect to the siting, site characterization, design, development, construction, operation, closure, decommissioning, licensing, or regulation of a repository. Written responses to written requests for information from the designated officials of affected States or affected Indian tribes will be provided within 30 days after receipt of the written requests. In performing any study of an area for the purpose of determining the suitability of such area for the development of a repository, the DOE shall consult and cooperate with the Governor and the legislature of an affected State and the governing body of an affected Indian tribe in an effort to resolve concerns regarding public health and safety, environmental impacts, socioeconomic impacts, and technical aspects of the siting process. After notifying affected States and affected Indian tribes that potentially acceptable sites have been identified, or that a site has been approved for characterization, the DOE shall seek to enter into binding written agreements with such affected States or affected Indian tribes in accordance with the requirements of the Act. The DOE shall also consult, as appropriate, with other Federal agencies.

§ 960.3-4 Environmental impacts.

Environmental impacts shall be considered by the DOE throughout the site characterization, site selection, and repository development process. The DOE shall mitigate significant adverse environmental impacts, to the extent practicable, during site characterization and repository construction, operation, closure, and decommissioning.

Subpart C—Postclosure Guidelines

§ 960.4 Postclosure guidelines.

The guidelines in this Subpart specify the factors to be considered in evaluating and comparing sites on the basis of expected repository performance after closure. The postclosure guidelines are separated into a system guideline and eight technical guidelines. The system guideline establishes waste containment and isolation requirements that are based on NRC and EPA regulations. These requirements must be met by the repository system, which contains natural barriers and engineered barriers. The engineered barriers will be designed to complement the natural barriers, which provide the primary means for waste isolation.

§ 960.4-1 System guideline.

(a) *Qualifying Condition.* The geologic setting at the site shall allow for the physical separation of radioactive waste from the accessible environment after closure in accordance with the requirements of 40 CFR Part 191, Subpart B, as implemented by the provisions of 10 CFR Part 60. The geologic setting at the site will allow for the use of engineered barriers to ensure compliance with the requirements of 40 CFR Part 191 and 10 CFR Part 60 (see Appendix I of this Part).

§ 960.4-2 Technical guidelines.

The technical guidelines in this Subpart set forth qualifying, favorable, potentially adverse, and, in five guidelines, disqualifying conditions on the characteristics, processes, and events that may influence the performance of a repository system after closure. The favorable conditions and the potentially adverse conditions under each guideline are *not* listed in any assumed order of importance. Potentially adverse conditions will be considered if they affect waste isolation within the controlled area even though such conditions may occur outside the controlled area. The technical guidelines that follow establish conditions that shall be considered in determining compliance with the qualifying condition of the postclosure system guideline. For each technical guideline, an evaluation of qualification or disqualification shall be made in accordance with the requirements specified in Subpart B.

§ 960.4-2-1 Geohydrology.

(a) *Qualifying Condition.* The present and expected geohydrologic setting of a site shall be compatible with waste containment and isolation. The geohydrologic setting, considering the characteristics of and the processes operating within the geologic setting, shall permit compliance with (1) the requirements specified in § 960.4-1 for radionuclide releases to the accessible environment and (2) the requirements specified in 10 CFR 60.113 for radionuclide releases from the engineered-barrier system using reasonably available technology.

(b) *Favorable Conditions.* (1) Site conditions such that the pre-waste-emplacement ground-water travel time along any path of likely radionuclide travel from the disturbed zone to the accessible environment would be more than 10,000 years.

(2) The nature and rates of hydrologic processes operating within the geologic setting during the Quaternary Period would, if continued into the future, not affect or would favorably affect the ability of the geologic repository to isolate the waste during the next 100,000 years.

(3) Sites that have stratigraphic, structural, and hydrologic features such that the geohydrologic system can be readily characterized and modeled with reasonable certainty.

(4) For disposal in the saturated zone, at least one of the following pre-waste-emplacement conditions exists:

(i) A host rock and immediately surrounding geohydrologic units with low hydraulic conductivities.

(ii) A downward or predominantly horizontal hydraulic gradient in the host rock and in the immediately surrounding geohydrologic units.

(iii) A low hydraulic gradient in and between the host rock and the immediately surrounding geohydrologic units.

(iv) High effective porosity together with low hydraulic conductivity in rock units along paths of likely radionuclide travel between the host rock and the accessible environment.

(5) For disposal in the unsaturated zone, at least one of the following pre-waste-emplacement conditions exists:

(i) A low and nearly constant degree of saturation in the host rock and in the immediately surrounding geohydrologic units.

(ii) A water table sufficiently below the underground facility such that the fully saturated voids continuous with the water table do not encounter the host rock.

(iii) A geohydrologic unit above the host rock that would divert the downward infiltration of water beyond the limits of the emplaced waste.

(iv) A host rock that provides for free drainage.

(v) A climatic regime in which the average annual historical precipitation is a small fraction of the average annual potential evapotranspiration.

Note.—The DOE will, in accordance with the general principles set forth in § 960.1 of these regulations, revise the guidelines as necessary, to ensure consistency with the final NRC regulations on the unsaturated zone, which were published as a proposed rule on February 16, 1984, in 49 FR 5934.

(c) *Potentially Adverse Conditions.* (1) Expected changes in geohydrologic conditions—such as changes in the hydraulic gradient, the hydraulic conductivity, the effective porosity, and the ground-water flux through the host rock and the surrounding geohydrologic units—sufficient to significantly increase the transport of radionuclides to the accessible environment as compared with pre-waste-emplacement conditions.

(2) The presence of ground-water sources, suitable for crop irrigation or human consumption without treatment, along ground-water flow paths from the host rock to the accessible environment.

(3) The presence in the geologic setting of stratigraphic or structural features—such as dikes, sills, faults, shear zones, folds, dissolution effects, or brine pockets—if their presence could significantly contribute to the difficulty of characterizing or modeling the geohydrologic system.

(d) *Disqualifying Condition.* A site shall be disqualified if the pre-waste-emplacement ground-water travel time from the disturbed zone to the accessible environment is expected to be less than 1,000 years along any pathway of likely and significant radionuclide travel.

§ 960.4-2-2 Geochemistry.

(a) *Qualifying Condition.* The present and expected geochemical characteristics of a site shall be compatible with waste containment and isolation. Considering the likely chemical interactions among radionuclides, the host rock, and the ground water, the characteristics of and the processes operating within the geologic setting shall permit compliance with (1) the requirements specified in § 960.4-1 for radionuclide releases to the accessible environment and (2) the requirements specified in 10 CFR 60.113 for radionuclide releases from the engineered-barrier system using reasonably available technology.

(b) *Favorable Conditions.* (1) The nature and rates of the geochemical processes operating within the geologic setting during the Quaternary Period would, if continued into the future, not affect or would favorably affect the ability of the geologic repository to isolate the waste during the next 100,000 years.

(2) Geochemical conditions that promote the precipitation, diffusion into the rock matrix, or sorption of radionuclides; inhibit the formation of particulates, colloids, inorganic complexes, or organic complexes that increase the mobility of radionuclides; or inhibit the transport of radionuclides by particulates, colloids, or complexes.

(3) Mineral assemblages that, when subjected to expected repository conditions, would remain unaltered or would alter to mineral assemblages with equal or increased capability to retard radionuclide transport.

(4) A combination of expected geochemical conditions and a volumetric flow rate of water in the host rock that would allow less than 0.001 percent per year of the total radionuclide inventory in the repository at 1,000 years to be dissolved.

(5) Any combination of geochemical and physical retardation processes that would decrease the predicted peak cumulative releases of radionuclides to the accessible environment by a factor of 10 as compared to those predicted on the basis of ground-water travel time without such retardation.

(c) *Potentially Adverse Conditions.* (1) Ground-water conditions in the host rock that could affect the solubility or the chemical reactivity of the engineered-barrier system to the extent that the expected repository performance could be compromised.

(2) Geochemical processes or conditions that could reduce the sorption of radionuclides or degrade the rock strength.

(3) Pre-waste-emplacement ground-water conditions in the host rock that are chemically oxidizing.

§ 960.4-2-3 Rock characteristics.

(a) *Qualifying condition.* The present and expected characteristics of the host rock and surrounding units shall be capable of accommodating the thermal, chemical, mechanical, and radiation stresses expected to be induced by repository construction, operation, and closure and by expected interactions among the waste, host rock, ground water, and engineered components. The characteristics of and the processes operating within the geologic setting shall permit compliance with (1) the requirements specified in § 960.4-1 for radionuclide releases to the accessible environment and (2) the requirements set forth in 10 CFR 60.113 for radionuclide releases from the engineered-barrier system using reasonably available technology.

(b) *Favorable Conditions.* (1) A host rock that is sufficiently thick and laterally extensive to allow significant flexibility in selecting the depth, configuration, and location of the underground facility to ensure isolation.

(2) A host rock with a high thermal conductivity, a low coefficient of thermal expansion, or sufficient ductility to seal fractures induced by repository construction, operation, or closure or by interactions among the waste, host rock, ground water, and engineered components.

(c) *Potentially Adverse Conditions.* (1) Rock conditions that could require engineering measures beyond reasonably available technology for the construction, operation, and closure of the repository, if such measures are necessary to ensure waste containment or isolation.

(2) Potential for such phenomena as thermally induced fractures, the hydration or dehydration of mineral components, brine migration, or other physical, chemical, or radiation-related phenomena that could be expected to affect waste containment or isolation.

(3) A combination of geologic structure, geochemical and thermal properties, and hydrologic conditions in the host rock and surrounding units such that the heat generated by the waste could significantly decrease the isolation provided by the host rock as compared with pre-waste-emplacement conditions.

§ 960.4-2-4 Climatic changes.

(a) *Qualifying Condition.* The site shall be located where future climatic conditions will not be likely to lead to radionuclide releases greater than those allowable under the requirements specified in § 960.4-1. In predicting the likely future climatic conditions at a site,

the DOE will consider the global, regional, and site climatic patterns during the Quaternary Period, considering the geomorphic evidence of the climatic conditions in the geologic setting.

(b) *Favorable Conditions.* (1) A surface-water system such that expected climatic cycles over the next 100,000 years would not adversely affect waste isolation.

(2) A geologic setting in which climatic changes have had little effect on the hydrologic system throughout the Quaternary Period.

(c) *Potentially Adverse Conditions.* (1) Evidence that the water table could rise sufficiently over the next 10,000 years to saturate the underground facility in a previously unsaturated host rock.

(2) Evidence that climatic changes over the next 10,000 years could cause perturbations in the hydraulic gradient, the hydraulic conductivity, the effective porosity, or the ground-water flux through the host rock and the surrounding geohydrologic units, sufficient to significantly increase the transport of radionuclides to the accessible environment.

§ 960.4-3-5 Erosion.

(a) *Qualifying Condition.* The site shall allow the underground facility to be placed at a depth such that erosional processes acting upon the surface will not be likely to lead to radionuclide releases greater than those allowable under the requirements specified in § 960.4-1. In predicting the likelihood of potentially disruptive erosional processes, the DOE will consider the climatic, tectonic, and geomorphic evidence of rates and patterns of erosion in the geologic setting during the Quaternary Period.

(b) *Favorable Conditions.* (1) Site conditions that permit the emplacement of waste at a depth of at least 300 meters below the directly overlying ground surface.

(2) A geologic setting where the nature and rates of the erosional processes that have been operating during the Quaternary Period are predicted to have less than one chance in 10,000 over the next 10,000 years of leading to releases of radionuclides to the accessible environment.

(3) Site conditions such that waste exhumation would not be expected to occur during the first one million years after repository closure.

(c) *Potentially Adverse Conditions.* (1) A geologic setting that shows evidence of extreme erosion during the Quaternary Period.

(2) A geologic setting where the nature and rates of geomorphic processes that have been operating during the Quaternary Period could, during the first 10,000 years after closure, adversely affect the ability of the geologic repository to isolate the waste.

(d) *Disqualifying Condition.* The site shall be *disqualified* if site conditions do not allow all portions of the underground facility to be situated at least 200 meters below the directly overlying ground surface.

§ 960.4-2-6 Dissolution.

(a) *Qualifying Condition.* The site shall be located such that any subsurface rock dissolution will not be likely to lead to radionuclide releases greater than those allowable under the requirements specified in § 960.4-1. In predicting the likelihood of dissolution within the geologic setting at a site, the DOE will consider the evidence of dissolution within that setting during the Quaternary Period, including the locations and characteristics of dissolution fronts or other dissolution features, if identified.

(b) *Favorable Condition.* No evidence that the host rock within the site was subject to significant dissolution during the Quaternary Period.

(c) *Potentially Adverse Condition.* Evidence of dissolution within the geologic setting—such as breccia pipes, dissolution cavities, significant volumetric reduction of the host rock or surrounding strata, or any structural collapse—such that a hydraulic interconnection leading to a loss of waste isolation could occur.

(d) *Disqualifying Condition.* The site shall be *disqualified* if it is likely that, during the first 10,000 years after closure, active dissolution, as predicted on the basis of the geologic record, would result in a loss of waste isolation.

§ 960.4-2-7 Tectonics.

(a) *Qualifying Condition.* The site shall be located in a geologic setting where future tectonic processes or events will not be likely to lead to radionuclide releases greater than those allowable under the requirements specified in § 960.4-1. In predicting the likelihood of potentially disruptive tectonic processes or events, the DOE will consider the structural, stratigraphic, geophysical, and seismic evidence for the nature and rates of tectonic processes and events in the geologic setting during the Quaternary Period.

(b) *Favorable Condition.* The nature and rates of igneous activity and tectonic processes (such as uplift, subsidence, faulting, or folding), if any, operating within the geologic setting during the Quaternary Period would, if continued into the future, have less than one chance in 10,000 over the first 10,000 years after closure of leading to releases of radionuclides to the accessible environment.

(c) *Potentially Adverse Conditions.* (1) Evidence of active folding, faulting, diapirism, uplift, subsidence, or other tectonic processes or igneous activity within the geologic setting during the Quaternary Period.

(2) Historical earthquakes within the geologic setting of such magnitude and intensity that, if they recurred, could affect waste containment or isolation.

(2) Indications, based on correlations of earthquakes with tectonic processes and features, that either the frequency of occurrence or the magnitude of earthquakes within the geologic setting may increase.

(4) More-frequent occurrences of earthquakes or earthquakes of higher magnitude than are representative of the region in which the geologic setting is located.

(5) Potential for natural phenomena such as landslides, subsidence, or volcanic activity of such magnitudes that they could create large-scale surface-water impoundments that could change the regional ground-water flow system.

(6) Potential for tectonic deformations—such as uplift, subsidence, folding, or faulting—that could adversely affect the regional ground-water flow system.

(d) *Disqualifying Condition.* A site shall be disqualified if, based on the geologic record during the Quaternary Period, the nature and rates of fault movement or other ground motion are expected to be such that a loss of waste isolation is likely to occur.

§ 960.4-2-8 Human interference.

The site shall be located such that activities by future generations at or near the site will not be likely to affect waste containment and isolation. In assessing the likelihood of such activities, the DOE will consider the estimated effectiveness of the permanent markers and records required by 10 CFR Part 60, taking into account site-specific factors, as stated in §§ 960.4-2-8-1 and 960.4-2-8-2, that could compromise their continued effectiveness.

§ 960.4-2-8-1 Natural resource.

(a) *Qualifying Condition.* This site shall be located such that—considering permanent markers and records and reasonable projections of value, scarcity, and technology—the natural resources, including ground water

suitable for crop irrigation or human consumption without treatment, present at or near the site will not be likely to give rise to interference activities that would lead to radionuclide releases greater than those allowable under the requirements specified in § 960.4-1.

(b) *Favorable Conditions.* (1) No known natural resources that have or are projected to have in the foreseeable future a value great enough to be considered a commercially extractable resource.

(2) Ground water with 10,000 parts per million or more of total dissolved solids along any path of likely radionuclide travel from the host rock to the accessible environment.

(c) *Potentially Adverse Conditions.* (1) Indications that the site contains naturally occurring materials, whether or not actually identified in such form that (i) economic extraction is potentially feasible during the foreseeable future or (ii) such materials have a greater gross value, net value, or commercial potential than the average for other areas of similar size that are representative of, and located in, the geologic setting.

(2) Evidence of subsurface mining or extraction for resources within the site if it could affect waste containment or isolation.

(3) Evidence of drilling within the site for any purpose other than repository-site evaluation to a depth sufficient to affect waste containment and isolation.

(4) Evidence of a significant concentration of any naturally occurring material that is not widely available from other sources.

(5) Potential for foreseeable human activities—such as ground-water withdrawal, extensive irrigation, subsurface injection of fluids, underground pumped storage, military activities, or the construction of large-scale surface-water impoundments—that could adversely change portions of the ground-water flow system important to waste isolation.

(d) *Disqualifying Conditions.* A site shall be disqualified if—

(1) Previous exploration, mining, or extraction activities for resources of commercial importance at the site have created significant pathways between the projected underground facility and the accessible environment; or

(2) Ongoing or likely future activities to recover presently valuable natural mineral resources outside the controlled area would be expected to lead to an inadvertent loss of waste isolation.

§ 960.4-2-8-2 Site ownership and control.

(a) *Qualifying Condition.* The site shall be located on land for which the DOE can obtain, in accordance with the requirements of 10 CFR Part 60, ownership, surface and subsurface rights, and control of access that are required in order that potential surface and subsurface activities at the site will not be likely to lead to radionuclide releases greater than those allowable under the requirements specified in § 960.4-1.

(b) *Favorable Condition.* Present ownership and control of land and all surface and subsurface rights by the DOE.

(c) *Potentially Adverse Condition.* Projected land-ownership conflicts that cannot be successfully resolved through voluntary purchase-sell agreements, nondisputed agency-to-agency transfers of title, or Federal condemnation proceedings.

Subpart D—Preclosure Guidelines

§ 960.5 Preclosure guidelines.

The guidelines in this Subpart specify the factors to be considered in evaluating and comparing sites on the basis of expected repository performance before closure. The preclosure guidelines are separated into three system guidelines and eleven technical guidelines.

§ 960.5-1 System guidelines.

(a) *Qualifying Conditions*—(1) *Preclosure Radiological Safety.* Any projected radiological exposures of the general public and any projected releases of radioactive materials to restricted and unrestricted areas during repository operation and closure shall meet the applicable safety requirements set forth in 10 CFR Part 20, 10 CFR Part 60, and 40 CFR 191, Subpart A (see Appendix II of this part).

(2) *Environment, Socioeconomics, and Transportation.* During repository siting, construction, operation, closure, and decommissioning the public and the environment shall be adequately protected from the hazards posed by the disposal of radioactive waste.

(3) *Ease and Cost of Siting, Construction, Operation, and Closure.* Repository siting, construction, operation, and closure shall be demonstrated to be technically feasible on the basis of reasonably available technology, and the associated costs shall be demonstrated to be reasonable relative to other available and comparable siting options.

§ 960.5-2 Technical guidelines.

The technical guidelines in this Subpart set forth qualifying, favorable, potentially adverse, and, in seven guidelines, disqualifying conditions for the characteristics, processes, and events that influence the suitability of a site relative to the preclosure system guidelines. These conditions are separated into three main groups: Preclosure radiological safety; environment, socioeconomics, and transportation; and ease and cost of siting, construction, operation, and closure. The first group includes conditions on population density and distribution, site ownership and control, meteorology, and offsite installations and operations. The second group includes conditions related to environmental quality and socioeconomic impacts in areas potentially affected by a repository and to the transportation of waste to a repository site. The third group includes conditions on the surface characteristics of the site, the characteristics of the host rock and surrounding strata, hydrology, and tectonics. The individual technical guidelines within each group, as well as the favorable conditions and the potentially adverse conditions under each guideline, are not listed in any assumed order of importance. The technical guidelines that follow establish conditions that shall be considered in determining compliance with the qualifying conditions of the preclosure system guidelines. For each technical guideline, an evaluation of qualification or disqualification shall be made in accordance with the requirements specified in Subpart B.

Preclosure Radiological Safety

§ 960.5-2-1 Population Density and Distribution.

(a) *Qualifying Condition.* The site shall be located such that, during repository operation and closure, (1) the expected average radiation dose to members of the public within any highly populated area will not be likely to exceed a small fraction of the limits allowable under the requirements specified in § 960.5-1(a)(1), and (2) the expected radiation dose to any member of the public in an unrestricted area will not be likely to exceed the limit allowable under the requirements specified in § 960.5-1(a)(1).

(b) *Favorable Conditions.* (1) A low population density in the general region of the site.

(2) Remoteness of site from highly populated areas.

(c) *Potentially Adverse Conditions.* (1) High residential, seasonal, or daytime population density within the projected site boundaries.

(2) Proximity of the site to highly populated areas, or to areas having at least 1,000 individuals in an area 1 mile

by 1 mile as defined by the most recent decennial count of the U.S. census.

(d) *Disqualifying Conditions.* A site shall be *disqualified* if—

(1) Any surface facility of a repository would be located in a highly populated area; or

(2) Any surface facility of a repository would be located adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals as enumerated by the most recent U.S. census; or

(3) The DOE could not develop an emergency preparedness program which meets the requirements specified in DOE Order 5500.3 (Reactor and Non-Reactor Facility Emergency Planning, Preparedness, and Response Program for Department of Energy Operations) and related guides or, when issued by the NRC, in 10 CFR Part 60, Subpart I, "Emergency Planning Criteria."

§ 960.5–2–2 Site Ownership and Control.

(a) *Qualifying Condition.* The site shall be located on land for which the DOE can obtain, in accordance with the requirements of 10 CFR 60.121, ownership, surface and subsurface rights, and control of access that are required in order that surface and subsurface activities during repository operation and closure will not be likely to lead to radionuclide releases to an unrestricted area greater than those allowable under the requirements specified in § 960.5–1(a)(1).

(b) *Favorable Condition.* Present ownership and control of land and all surface and subsurface mineral and water rights by the DOE.

(c) *Potentially Adverse Condition.* Projected land-ownership conflicts that cannot be successfully resolved through voluntary purchase-sell agreements, nondisputed agency-to-agency transfers of title, or Federal condemnation proceedings.

§ 960.5–2–3 Meteorology.

(a) *Qualifying Condition.* The site shall be located such that expected meteorological conditions during repository operation and closure will not be likely to lead to radionuclide releases to an unrestricted area greater than those allowable under the requirements specified in § 960.5–1(a)(1).

(b) *Favorable Condition.* Prevailing meteorological conditions such that any radioactive releases to the atmosphere during repository operation and closure would be effectively dispersed, thereby reducing significantly the likelihood of unacceptable exposure to any member of the public in the vicinity of the repository.

(c) *Potentially Adverse Conditions.* (1) Prevailing meteorological conditions such that radioactive emissions from repository operation of closure could be preferentially transported toward localities in the vicinity of the repository with higher population densities than are the average for the region.

(2) History of extreme weather phenomena—such as hurricanes, tornadoes, severe floods, or severe and frequent winter storms—that could significantly affect repository operation or closure.

§ 960.5–2–4 Offsite installations and operations.

(a) *Qualifying Condition.* The site shall be located such that present projected effects from nearby industrial, transportation, and military installations and operations, including atomic energy defense activities, (1) will not significantly affect repository siting, construction, operation, closure, or decommissioning or can be accommodated by engineering measures and (2), when considered together with emissions from repository operation and closure, will not be likely to lead to radionuclide releases to an unrestricted area greater than those allowable under the requirements specified in § 960.5–1(a)(1).

(b) *Favorable Condition.* Absence of contributing radioactive releases from other nuclear installations and operations that must be considered under the requirements of 40 CFR 191, Subpart A.

(c) *Potentially Adverse Conditions.* (1) The presence of nearby potentially hazardous installations or operations that could adversely affect repository operation or closure.

(2) Presence of other nuclear installations and operations, subject to the requirements of 40 CFR Part 190 or 40 CFR 191, Subpart A, with actual or projected releases near the maximum value permissible under those standards.

(d) *Disqualifying Condition.* A site shall be disqualified if atomic energy defense activities in proximity to the site are expected to conflict irreconcilably with repository siting, construction, operation, closure, or decommissioning.

Environment, Socioeconomics, and Transportation

§ 960.5–2–5 Environmental quality.

(a) *Qualifying Condition.* The site shall be located such that (1) the quality of the environment in the affected area during this and future generations will be adequately protected during repository siting, construction, operation, closure, and decommissioning, and projected environmental impacts in the affected area can be mitigated to an acceptable degree, taking into account programmatic, technical, social, economic, and environmental factors; and (2) the requirements specified in § 960.5–1(a)(2) can be met.

(b) *Favorable Conditions.* (1) Projected ability to meet, within time constraints, all Federal, State, and local procedural and substantive environmental requirements applicable to the site and the activities proposed to take place thereon.

(2) Potential significant adverse environmental impacts to present and future generations can be mitigated to an insignificant level through the application of reasonable measures, taking into account programmatic, technical, social, economic, and environmental factors.

(c) *Potentially Adverse Conditions.* (1) Projected major conflict with applicable Federal, State, or local environmental requirements.

(2) Projected significant adverse environmental impacts that cannot be avoided or mitigated.

(3) Proximity to, or projected significant adverse environmental impacts of the repository or its support facilities on, a component of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Land.

(4) Proximity to, and projected significant adverse environmental impacts of the repository or its support facilities on, a significant State or regional protected resource area, such as a State park, a wildlife area, or a historical area.

(5) Proximity to, and projected significant adverse environmental impacts of the repository and its support facilities on, a significant Native American resource, such as a major Indian religious site, or other sites of unique cultural interest.

(6) Presence of critical habitats for threatened or endangered species that may be compromised by the repository or its support facilities.

(d) *Disqualifying Conditions.* Any of the following conditions shall *disqualify* a site:

(1) During repository siting, construction, operation, closure, or decommissioning the quality of the environment in the affected area could not be adequately protected or projected environmental impacts in the affected area could not be mitigated to an acceptable degree, taking into account

programmatic, technical, social, economic, and environmental factors.

(2) Any part of the restricted area or repository support facilities would be located within the boundaries of a component of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, or the National Wild and Scenic Rivers System.

(3) The presence of the restricted area or the repository support facilities would conflict irreconcilably with the previously designated resource-preservation use of a component of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or National Forest Lands, or any comparably significant State protected resource that was dedicated to resource preservation at the time of the enactment of the Act.

§ 960.5–2–6 Socioeconomic Impacts.

(a) *Qualifying Condition.* The site shall be located such that (1) any significant adverse social and/or economic impacts induced in communities and surrounding regions by repository siting, construction, operation, closure, and decommissioning can be offset by reasonable mitigation or compensation, as determined by a process of analysis, planning, and consultation among the DOE, affected State and local government jurisdictions, and affected Indian tribes; and (2) the requirements specified in § 960.5–1(a)(2) can be met.

(b) *Favorable Conditions.* (1) Ability of an affected area to absorb the project-related population changes without significant disruptions of community services and without significant impacts on housing supply and demand.

(2) Availability of an adequate labor force in the affected area.

(3) Projected net increases in employment and business sales, improved community services, and increased government revenues in the affected area.

(4) No projected substantial disruption of primary sectors of the economy of the affected area.

(c) *Potentially Adverse Conditions.* (1) Potential for significant repository-related impacts on community services, housing supply and demand, and the finances of State and local government agencies in the affected area.

(2) Lack of an adequate labor force in the affected area.

(3) Need for repository-related purchase or acquisition of water rights, if such rights could have significant adverse impacts on the present or future development of the affected area.

(4) Potential for major disruptions of primary sectors of the economy of the affected area.

(d) *Disqualifying Condition.* A site shall be disqualified if repository construction, operation, or closure would significantly degrade the quality, or significantly reduce the quantity, of water from major sources of offsite supplies presently suitable for human consumption or crop irrigation and such impacts cannot be compensated for, or mitigated by, reasonable measures.

§ 960.5–2–7 Transportation.

(a) *Qualifying Condition.* The site shall be located such that (1) the access routes constructed from existing local highways and railroads to the site (i) will not conflict irreconcilably with the previously designated use of any resource listed in § 960.5–2–5(d) (2) and (3); (ii) can be designed and constructed using reasonably available technology; (iii) will not require transportation system components to meet performance standards more stringent than those specified in the applicable DOT and NRC regulations, nor require the development of new packaging containment technology; (iv) will allow transportation operations to be conducted without causing an unacceptable risk to the public or unacceptable environmental impacts, taking into account programmatic, technical, social, economic, and environmental factors; and (2) the requirements of § 960.5–1(a)(2) can be met.

(b) *Favorable Conditions.* (1) Availability of access routes from local existing highways and railroads to the site which have any of the following characteristics:

(i) Such routes are relatively short and economical to construct as compared to access routes for other comparable siting options.

(ii) Federal condemnation is not required to acquire rights-of-way for the access routes.

(iii) Cuts, fills, tunnels, or bridges are not required.

(iv) Such routes are free of sharp curves or steep grades and are not likely to be affected by landslides or rock slides.

(v) Such routes bypass local cities and towns.

(2) Proximity to local highways and railroads that provide access to regional highways and railroads and are adequate to serve the repository without significant upgrading or reconstruction.

(3) Proximity to regional highways, mainline railroads, or inland waterways that provide access to the national transportation system.

(4) Availability of a regional railroad system with a minimum number of interchange points at which train crew and equipment changes would be required.

(5) Total projected life-cycle cost and risk for transportation of all wastes designated for the repository site which are significantly lower than those for comparable siting options, considering locations of present and potential sources of waste, interim storage facilities, and other repositories.

(6) Availability of regional and local carriers—truck, rail, and water—which have the capability and are willing to handle waste shipments to the repository.

(7) Absence of legal impediment with regard to compliance with Federal regulations for the transportation of waste in or through the affected State and adjoining States.

(8) Plans, procedures, and capabilities for response to radioactive waste transportation accidents in the affected State that are completed or being developed.

(9) A regional meteorological history indicating that significant transportation disruptions would not be routine seasonal occurrences.

(c) *Potentially Adverse Conditions.* (1) Access routes to existing local highways and railroads that are expensive to construct relative to comparable siting options.

(2) Terrain between the site and existing local highways and railroads such that steep grades, sharp switchbacks, rivers, lakes, landslides, rock slides, or potential sources of hazard to incoming waste shipments will be encountered along access routes to the site.

(3) Existing local highways and railroads that could require significant reconstruction or upgrading to provide adequate routes to the regional and national transportation system.

(4) Any local condition that could cause the transportation-related costs, environmental impacts, or risk to public health and safety from waste transportation operations to be significantly greater than those projected for other comparable siting options.

Ease and Cost of Siting, Construction, Operation, and Closure

§ 960.5–2–8 Surface characteristics.

(a) *Qualifying Condition.* The site shall be located such that, considering the surface characteristics and

conditions of the site and surrounding area, including surface-water systems and the terrain, the requirements specified in § 960.5–1(a)(3) can be met during repository siting, construction, operation, and closure.

(b) *Favorable Conditions.* (1) Generally flat terrain.

(2) Generally well-drained terrain.

(c) *Potentially Adverse Condition.* Surface characteristics that could lead to the flooding of surface or underground facilities by the occupancy and modification of flood plains, the failure of existing or planned man-made surface-water impoundments, or the failure of engineered components of the repository.

§ 960.5–2–9 Rock characteristics.

(a) *Qualifying Condition.* The site shall be located such that (1) the thickness and lateral extent and the characteristics and composition of the host rock will be suitable for accommodation of the underground facility; (2) repository construction, operation, and closure will not cause undue hazard to personnel; and (3) the requirements specified in § 960.5–1(a)(3) can be met.

(b) *Favorable Conditions.* (1) A host rock that is sufficiently thick and laterally extensive to allow significant flexibility in selecting the depth, configuration, and location of the underground facility.

(2) A host rock with characteristics that would require minimal or no artificial support for underground openings to ensure safe repository construction, operation, and closure.

(c) *Potentially Adverse Conditions.* (1) A host rock that is suitable for repository construction, operation, and closure, but is so thin or laterally restricted that little flexibility is available for selecting the depth, configuration, or location of an underground facility.

(2) In situ characteristics and conditions that could require engineering measures beyond reasonably available technology in the construction of the shafts and underground facility.

(3) Geomechanical properties that could necessitate extensive maintenance of the underground openings during repository operation and closure.

(4) Potential for such phenomena as thermally induced fracturing, the hydration and dehydration of mineral components, or other physical, chemical, or radiation-related phenomena that could lead to safety hazards or difficulty in retrieval during repository operation.

(5) Existing faults, shear zones, pressurized brine pockets, dissolution effects, or other stratigraphic or structural features that could compromise the safety of repository personnel because of water inflow or construction problems.

(d) *Disqualifying Condition.* The site shall be *disqualified* if the rock characteristics are such that the activities associated with repository construction, operation, or closure are predicted to cause significant risk to the health and safety of personnel, taking into account mitigating measures that use reasonably available technology.

§ 960.5–2–10 Hydrology.

(a) *Qualifying Condition.* The site shall be located such that the geohydrologic setting of the site will (1) be compatible with the activities required for repository construction, operation, and closure; (2) not compromise the intended functions of the shaft liners and seals; and (3) permit the requirements specified in § 960.5–1(a)(3) to be met.

(b) *Favorable Conditions.* (1) Absence of aquifers between the host rock and the land surface.

(2) Absence of surface-water systems that could potentially cause flooding of the repository.

(3) Availability of the water required for repository construction, operation, and closure.

(c) *Potentially Adverse Condition.* Ground-water conditions that could require complex engineering measures that are beyond reasonably available technology for repository construction, operation, and closure.

(d) *Disqualifying Condition.* A site shall be disqualified if, based on expected ground-water conditions, it is likely that engineering measures that are beyond reasonably available technology will be required for exploratory-shaft construction or for repository construction, operation, or closure.

§ 960.5–2–11 Tectonics.

(a) *Qualifying Conditions.* The site shall be located in a geologic setting in which any projected effects of expected tectonic phenomena or igneous activity on repository construction, operation, or closure will be such that the requirements specified in § 960.5–1(a)(3) can be met.

(b) *Favorable Condition.* The nature and rates of faulting, if any, within the geologic setting are such that the magnitude and intensity of the associated seismicity are significantly less than those generally allowable for the construction and operation of nuclear facilities.

(c) *Potentially Adverse Conditions.* (1) Evidence of active faulting within the geologic setting.

(2) Historical earthquakes or past man-induced seismicity that, if either were to recur, could produce ground motion at the site in excess of reasonable design limits.

(3) Evidence, based on correlations of earthquakes with tectonic processes and features, (e.g., faults) within the geologic setting, that the magnitude of earthquakes at the site during repository construction, operation, and closure may be larger then predicted from historical seismicity.

(d) *Disqualifying Condition.* A site shall be disqualified if, based on the expected nature and rates of fault movement or other ground motion, it is likely that engineering measures that are beyond reasonably available technology will be required for exploratory-shaft construction or for repository construction, operation, or closure.

Appendix I—NRC and EPA Requirements for Postclosure Repository Performance

Under proposed 40 CFR Part 191, Subpart B—*Environmental Standards for Disposal*, § 191.13, "Containment Requirements", specifies that for 10,000 years after disposal (a) releases of radioactive materials to the accessible environment that are estimated to have more than one chance in 100 of occurring over a 10,000 year period ("reasonably foreseeable releases") shall be projected to be less than the quantities permitted by Table 2 of that regulation's Appendix; and (b) for "very unlikely releases" (i.e., those estimated to have between one chance in 100 and one chance in 10,000 of occurring over a 10,000 year period), the limits specified in Table 2 would be multiplied by 10. The basis for Table 2 is an upper limit on long term risks of 1,000 health effects over 10,000 years for a repository containing wastes generated from 100,000 metric tons of heavy metal of reactor fuel. For releases involving more than one radionuclide, the allowed release for each radionuclide is reduced to the fraction of its limit that insures that the overall limit on harm is not exceeded. Additionally, to provide confidence needed for compliance with the containment requirements specified above, § 191.14, "Assurance Requirements", specifies the disposal of radioactive waste in accordance with seven requirements, relating to prompt disposal of waste; selection and design of disposal systems to keep releases to the accessible environment as small as reasonably achievable; engineered and natural barriers; nonreliance on active institutional controls after closure; passive controls after closure; natural resource areas; and design of disposal systems to allow future recovery of wastes.

The guidelines will be revised as necessary after the adoption of final regulations by the EPA.

The implementation of 40 CFR Part 191, Subpart B is required by 10 CFR 60.112. 10 CFR 60.113 establishes minimum conditions to be met for engineered components and ground-water flow; specifically: (1) Containment of radioactive waste within the waste packages will be substantially complete for a period to be determined by the NRC taking into account the factors specified in 10 CFR 60.113(b) provided that such period shall be not less than 300 years nor more than 1,000 years after permanent closure of the geologic repository; (2) the release rate of any radionuclide from the engineered barrier system following the containment period shall not exceed one part in 100,000 per year of the inventory of that radionuclide calculated to be present at 1,000 years following permanent closure, or such other fraction of the inventory as may be approved or specified by the NRC, provided that this requirement does not apply to any radionuclide which is released at a rate less than 0.1% of the calculated total release rate limit. The calculated total release rate limit shall be taken to be one part in 100,000 per year of the inventory of radioactive waste originally emplaced in the underground facility that remains after 1,000 years of radioactive decay; and (3) the geologic repository shall be located so that pre-waste-emplacement ground-water travel time along the fastest path of likely radionuclide travel from the disturbed zone to the accessible environment shall be at least 1,000 years or such other travel time as may be approved or specified by the NRC.

The guidelines will be revised as necessary to ensure consistency with 10 CFR Part 60.

Appendix II—NRC and EPA Requirements for Preclosure Repository Performance

Under proposed 40 CFR Part 191, Subpart A—*Environmental Standards for Management and Storage*, Section 191.03, "Standards for Normal Operations", specifies: (1) That operations should be conducted so as to reduce exposure to members of the public to the extent reasonably achievable, taking into account technical, social, and economic considerations; and (2) that, except for variances permitted for unusual operations under Section 191.04 as an upper limit, normal operations shall be conducted in such a manner as to provide reasonable assurance that the combined annual dose equivalent to any member of the public due to: (i) operations covered by 40 CFR Part 190, (ii) planned discharges of radioactive material to the general environment from operations covered by this Subpart, and (iii) direct radiation from these operations; shall not exceed 25 millirems to the whole body, 75 millirems to the thyroid, or 25 millirems to any other organ.

The guidelines will be revised as necessary after the adoption of final regulations by the EPA.

The implementation of 40 CFR Part 191, Subpart A and 10 CFR Part 20 is required by 10 CFR 60.111. 10 CFR 60.111 also specifies requirements for waste retrieval, if necessary, including considerations of design, backfilling, and schedule. 10 CFR Part 20 establishes (a) exposure limits for operating personnel and (b) permissible concentrations of radionuclides in uncontrolled areas for air and water. The latter are generally less restrictive than 40 CFR 191, Subpart A, but may be limiting under certain conditions (i.e., if used as a maximum for short durations rather than annual averages).

The guidelines will be revised as necessary to ensure consistency with 10 CFR Part 60.

Appendix III—Application of the System and Technical Guidelines During the Siting Process

1. This appendix presents a table that specifies how the guidelines of Subparts C and D are to be applied at the principal decision points of the siting process. The decision points, as referenced in the table, are defined as follows:

"Potentially acceptable" means the decision point at which a site is identified as potentially acceptable.

"Nomination and recommendation" means the decision point at which a site is nominated as suitable for characterization or recommended as a candidate site for characterization.

"Repository site selection" means the decision point at which a site is recommended for the development of a repository.

2. The findings resulting from the application of a disqualifying condition for any particular guideline at a given decision point are denoted in the table by the numeral 1 or 2. The numerals 1 and 2 signify the types of findings that are required and are defined as follows:

"1" means *either* of the following:

(a) The evidence does *not* support a finding that the site is disqualified.

or

(b) The evidence supports a finding that the site is disqualified.

"2" means *either* of the following:

(a) The evidence supports a finding that the site is *not* disqualified on the basis of that evidence and is *not* likely to be disqualified.

or

(b) The evidence supports a finding that the site is disqualified or is likely to be disqualified.

3. The findings resulting from the application of a qualifying condition for any particular guideline at a given decision point are denoted in the table by the numeral 3 or 4. The numerals 3 and 4 signify the types of findings that are required and are defined as follows:

"3" means *either* of the following:

(a) The evidence does *not* support a finding that the site is *not* likely to meet the qualifying condition.

or

(b) The evidence supports a finding that the site is *not* likely to meet the qualifying condition, and therefore the site is disqualified.

"4" means *either* of the following:

(a) The evidence supports a finding that the site meets the qualifying condition and is likely to continue to meet the qualifying condition.

or

(b) The evidence supports a finding that the site cannot meet the qualifying condition or is unlikely to be able to meet the qualifying condition, and therefore the site is disqualified.

4. If performance assessments are used to substantiate any of the above findings, those assessments shall include estimates of the effects of uncertainties in data and modeling.

5. For both the disqualifying and qualifying conditions of any guideline, a higher finding (e.g., a "2" finding rather than "1") shall be made if there is sufficient evidence to support such a finding.

FINDINGS RESULTING FROM THE APPLICATION OF THE QUALIFYING AND DISQUALIFYING CONDITIONS OF THE TECHNICAL GUIDELINES AT MAJOR SITING DECISIONS

Section 960	Guideline	Condition	Siting decision		
			Potentially acceptable	Nomination and recommendation	Repository site selection
4–1(a)	System	Qualifying		3	4
4–2–1(a)	Geohydrology	do		3	4
4–2–1(d)	do	Disqualifying		1	2
4–2–2(a)	Geochemistry	Qualifying		3	4
4–2–3(a)	Rock Characteristics	do		3	4
4–2–4(a)	Climatic Changes	do		3	4
4–2–5(a)	Erosion	do		3	4
4–2–5(d)	do	Disqualifying	1	1	1
4–2–6(a)	Dissolution	Qualifying		3	4
4–2–6(d)	do	Disqualifying	1	1	1
4–2–7(a)	Tectonics	Qualifying		3	4
4–2–7(d)	do	Disqualifying	1	1	1
4–2–8–1(a)	Natural Resources	Qualifying		3	4
4–2–8–1(d)(1)	do	Disqualifying	1	1	1
4–2–8–1(d)(2)	do	do		1	2
4–2–8–2(a)	Site Ownership and Control	Qualifying		3	4
5–1(a)(1)	System	do		3	4
5–1(a)(2)	do	do		3	4
5–1(a)(3)	do	do		3	4
5–2–1(a)	Population Density and Distribution	do		3	4
5–2–1(d)(1)	do	Disqualifying	1	1	1
5–2–1(d)(2)	do	do	1	1	1
5–2–1(d)(3)	do	do		1	1
5–2–2(a)	Site Ownership and Control	Qualifying		3	4
5–2–3(a)	Meteorology	do		3	4
5–2–4(a)	Offsite Installations and Operations	do		3	4

FINDINGS RESULTING FROM THE APPLICATION OF THE QUALIFYING AND DISQUALIFYING CONDITIONS OF THE TECHNICAL GUIDELINES AT MAJOR SITING DECISIONS—Continued

Section 960	Guideline	Condition	Siting decision		
			Potentially acceptable	Nomination and recommendation	Repository site selection
5-2-4(d)	....do	Disqualifying	1	1	2
5-2-5(a)	Environmental Quality	Qualifying		3	4
5-2-5(d)(1)	....do	Disqualifying		1	2
5-2-5(d)(2)	....do	....do	1	1	2
5-2-5(d)(3)	....do	....do	1	1	2
5-2-6(a)	Socioeconomic Impacts	Qualifying		3	4
5-2-6(d)	....do	Disqualifying		1	2
5-2-7(a)	Transportation	Qualifying		3	4
5-2-8(a)	Surface Characteristics	....do		3	4
5-2-9(a)	Rock Characteristics	....do		3	4
5-2-9(d)	....do	Disqualifying		1	2
5-2-10(a)	Hydrology	Qualifying		3	4
5-2-10(d)	....do	Disqualifying		1	2
5-2-11(a)	Tectonics	Qualifying		3	4
5-2-11(d)	....do	Disqualifying	1	1	2

Appendix IV—Types of Information for the Nomination of Sites as Suitable for Characterization

The types of information specified below are those that the DOE expects will be included in the evidence used for evaluations and applications of the guidelines of Subparts C and D at the time of nomination of a site as suitable for characterization. The types of information listed under each guideline are considered to be the most significant for the evaluation of that guideline. However, the types of information listed under any particular guideline will be used, as necessary, for the evaluation of any other guideline. As stated in § 960.3–1–4–2, the DOE will use technically conservative assumptions or extrapolations of regional data, where necessary, to supplement this information. The information specified below will be supplemented with conceptual models, as appropriate, and analyses of uncertainties in the data.

Before site-characterization studies and related nongeologic data gathering activities, the evidence is not expected to provide precise information, but, rather, to provide a reasonable basis for assessing the merits or shortcomings of the site against the guidelines of Subparts C and D. Consequently, the types of information described below should be interpreted so as to accommodate differences among sites and differences in the information acquired before detailed studies.

The specific information required for the guideline applications set forth in Appendix III of this Part is expected to differ from site to site because of site-specific factors, both with regard to favorable and potentially adverse conditions and with regard to the sources and reliability of the information.The types of information specified in this appendix will be used except where the findings set forth in Appendix III of this part can be arrived at by reasonable alternative means or the information is not required for the particular site.

Section 960.4–2–1 Geohydrology.

Description of the geohydrologic setting of the site, in context with its geologic setting, in order to estimate the pre-waste-emplacement ground-water flow conditions. The types of information to support this description should include—

- Location and estimated hydraulic properties of aquifers, confining units, and aquitards.
- Potential areas and modes of recharge and discharge for aquifers.
- Regional potentiometric surfaces of aquifers.
- Likely flow paths from the repository to locations in the expected accessible environment, as based on regional data.
- Preliminary estimates of ground-water travel times along the likely flow paths from the repository to locations in the expected accessible environment.
- Current use of principal aquifers and State or local management plans for such use.

Section 960.4–2–2 Geochemistry.

Description of the geochemical and hydrochemical conditions of the host rock, of the surrounding geohydrologic units, and along likely ground-water paths to locations in the expected accessible environment, in order to estimate the potential for the migration of radionuclides. The types of information to support this description should include—

- Petrology of the rocks.
- Mineralogy of the rocks and general characteristics of fracture fillings.
- Geochemical and mechanical stability of the minerals under expected repository conditions.
- General characteristics of the ground-water chemistry (e.g., reducing/oxidizing conditions and the principal ions that may affect the waste package or radionuclide behavior).
- Geochemical properties of minerals as related to radionuclide transport.

Section 960.4–2–3 Rock characteristics.

Description of the geologic and geomechanical characteristics of the site, in context with the geologic setting, in order to estimate the capability of the host rock and surrounding rock units to accommodate the thermal, mechanical, chemical, and radiation stresses expected to be induced by repository construction, operation, and closure and by expected interactions among the waste, host rock, ground-water, and engineered components of the repository system. The types of information to support this description should include—

- Approximate geology and stratigraphy of the site, including the depth, thickness, and lateral extent of the host rock and surrounding rock units.
- Approximate structrual framework of the rock units and any major discontinuities identified from core samples.
- Approximate thermal, mechanical, and thermomechanical properties of the rocks, with consideration of the effects of time, stress, temperature, dimensional scale, and any major identified structural discontinuities.
- Estimates of the magnitude and direction of in situ stress and of temperature in the host rock and surrounding rock units.

Section 960.4–2–4 Climatic changes.

Description of the climatic conditions of the site region, in context with global and regional patterns of climatic changes during the Quaternary Period, in order to project likely future changes in climate such that potential impacts on the repository can be estimated. The types of information to support this description should include—

- Expected climatic conditions and cycles, based on extrapolation of climates during the Quaternary Period.
- Geomorphology of the site region and evidence of changes due to climatic changes.
- Estimated effects of expected climatic cycles on the surface-water and the ground-water systems.

Section 960.4–2–5 Erosion.

Description of the structure, stratigraphy, and geomorphology of the site, in context with the geologic setting, in order to estimate the depth of waste emplacement and the likelihood for erosional processes to uncover the waste in less than one million years. The types of information to support this description should include—

- Depth, thickness, and lateral extent of the host rock and the overlying rock units.
- Lithology of the stratigraphic units above the host rock.
- Nature and rates of geomorphic processes during the Quaternary Period.

Section 960.4–2–6 Dissolution.

Description of the stratigraphy, structure, hydrology, and geochemistry of the site, in context with the geologic setting, to delineate the approximate limits of subsurface rock dissolution, if any. This description should include such information as the following:

- The stratigraphy of the site, including rock units largely comprised of water-soluble minerals.
- The approximate extent and configuration of features indicative of dissolution within the geologic setting.

Section 960.4–2–7 Tectonics.

Description of the tectonic setting of the site, in context with its geologic setting, in order to project the tectonic stability of the site over the next 10,000 years and to identify tectonic features and processes that could be reasonably expected to have a potentially adverse effect on the performance of the repository. The types of information to support this description should include—

- The tectonic history and framework of the geologic setting and the site.
- Quaternary faults in the geologic setting, including their length, displacement, and any information regarding the age of latest movement.
- Active tectonic processes, such as uplift, diapirism, tilting, subsidence, faulting, and volcanism.
- Estimate of the geothermal gradient.
- Estimate of the regional in situ stress field.
- The historical seismicity of the geologic setting.

Section 960.4–2–8 Human interference.

Section 960.4–2–8–1 Natural resources.

Description of the mineral and energy resources of the site, in order to project whether past or future exploration and recovery could have a potentially adverse effect on the performance of the repository. The types of information to support this description should include—

- Known occurrences of energy and mineral resources, including ground water.
- Estimates of the present and projected value of these resources compared with resources contained in other areas of similar size in the geologic setting.
- Past and present drilling and mining operations in the vicinity of the site.

Section 960.4–2–8–2 Site ownership and control.

Description of the ownership of land for the geologic-repository operations area and the controlled area, in order to evaluate whether the DOE can obtain ownership of, and control access to, the site. The types of information to support this description should include—

- Present land ownership.

Section 960.5–2–1 Population density and distribution.

Description of the population density and distribution of the site region, in order to identify highly populated areas and the nearest 1 mile by 1 mile area having a population greater than 1,000 persons. The types of information to support this description should include—

- The most-recent U.S. census, including population composition, distribution, and density.

Section 960.5–2–2 Site ownership and control.

Description of current ownership of land, including surface and subsurface mineral and water rights, in order to evaluate whether the DOE can obtain control of land within the projected restricted area. The types of information to support this description should include—

- Present land ownership.

Section 960.5–2–3 Meteorology.

The meteorological setting, as determined from the closest recording station, in order to project meteorological conditions during repository operation and closure and their potential effects on the transport of airborne emissions. The types of information to support this description should include—

- Wind and atmospheric-dispersion characteristics.
- Precipitation characteristics.
- Extreme weather phenomena.

Section 960.5–2–4 Offsite installations and operations.

Description of offsite installations and operations in the vicinity of the site in order to estimate their projected effects on repository construction, operation, or closure. The types of information to support this description should include—

- Location and nature of nearby industrial, transportation, and military installations and operations, including atomic energy defense activities.

Section 960.5–2–5 Environmental quality.

Description of environmental conditions in order to estimate potential impacts on public health and welfare and on environmental quality. The types of information to support this description should include—

- Applicable Federal, State, and local procedural and substantive environmental requirements.
- Existing air quality and trends.
- Existing surface-water and ground-water quality and quantity.
- Existing land resources and uses.
- Existing terrestrial and aquatic vegetation and wildlife.
- Location of any identified critical habitats for threatened or endangered species.
- Existing aesthetic characteristics.
- Location of components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Land.
- Location of significant State or regional protected resource areas, such as State parks, wildlife areas, or historical areas.
- Location of significant Native American resources such as major Indian religious sites, or other sites of unique cultural interest.

Section 960.5–2–6 Socioeconomic impacts.

Description of the socioeconomic conditions of the site, including population density and distribution, economics, community services and facilities, social conditions, and fiscal and government structure, in order to estimate the impacts that might result from site characterization and from the development of a repository at that site. The types of information to support this description should include—

- Population composition, density, and distribution.
- Economic base and economic activity, including major sectors of local economy.
- Employment distribution and trends by economic sector.
- Resource usage.
- Community services and infrastructure, including trends in use and current capacity utilization.
- Housing supply and demand.
- Life style and indicators of the quality of life.
- Existing social problems.
- Sources of, and trends in, local government expenditures and revenues.

Section 960.5–2–7 Transportation.

Description of the transportation facilities in the vicinity of the site in order to evaluate existing or required access routes or improvements. The types of information to support this description should include—

- Estimates of the overall cost and risk of transporting waste to the site.
- Description of the road and rail network between the site and the nearest Interstate highways and major rail lines; also, description of the waterway system, if any.
- Analyses of the adequacy of the existing regional transportation network to handle waste shipments; the movement of supplies for repository construction, operation, and closure; removal of nonradioactive waste from the site; and the transportation of the labor force.
- Improvements anticipated to be required in the transportation network and their feasibility, cost, and environmental impacts.
- Compatibility of the required transportation network improvements with the local and regional transportation and land-use plans.
- Analysis of weather impacts on transportation.
- Analysis of emergency response requirements and capabilities related to transportation.

Section 960.5–2–8 Surface characteristics.

Description of the surface characteristics of the site, in order to evaluate whether repository construction, operation, and closure are feasible on the basis of site characteristics that influence those activities. The types of information to support this description should include—

- Topography of the site.
- Existing and planned surface bodies of water.
- Definition of areas of landslides and other potentially unstable slopes, poorly drained material, or materials of low bearing strength or of high liquefaction potential.

Section 960.5–2–9 Rock characteristics.

Description of the geologic and geomechanical characteristics of the site, in context with the geologic setting, in order to project the capability of the host rock and the surrounding rock units to provide the space required for the underground facility and safe underground openings during repository construction, operation, and closure. The types of information to support this description should include—

- Depth, thickness, and lateral extent of the host rock.
- Stratigraphic and structural features within the host rock and adjacent rock units.
- Thermal, mechanical, and thermomechanical properties and constructibility characteristics of the rocks, with consideration of the effects of time, stress, temperature, dimensional scale, and any major identified structural discontinuities.
- Fluid inclusions and gas content in the host rock.

- Estimates of the magnitude and direction of in situ stress and of temperature in the host rock.

Section 960.5–2–10 Hydrology.

Description of the hydrology of the site, in context with its geologic setting, in order to project compatibility with repository construction, operation, and closure. The types of information to support this description should include—

- Surface-water systems, including recharge and runoff characteristics, and potential for flooding of the repository.
- Nature and location of aquifers, confining units, and aquitards.
- Potentiometric surfaces of aquifers.
- Hydraulic properties of geohydrologic units.

Section 960.5–2–11 Tectonics.

Description of the tectonic setting of the site, in context with the regional setting, in order to estimate any expected effects of tectonic activity on repository construction, operation, or closure. The types of information to support this description should include—

- Quaternary faults.
- Active tectonic processes.
- Preliminary estimates of expected ground motion caused by the maximum potential earthquake within the geologic setting.

[FR Doc. 84-31706 Filed 12-5-84; 8:45 am]
BILLING CODE 6450-01-M

federal register

Thursday
December 6, 1984

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Prototype Cost Determinations Issued Under the United States Housing Act of 1937; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-84-1470; FR-2048]

Prototype Cost Determinations Issued Under the United States Housing Act of 1937

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of prototype cost determinations.

SUMMARY: This Notice establishes prototype cost limits for the development of public housing new construction projects under the United States Housing Act of 1937. The prototype cost determinations stated in this Notice supersede the prototype cost schedules published on January 20, 1984 (49 FR 2808) and all amendments and additions to such schedules published before the date of this Notice. The prototype costs for Indian housing are not included in this Notice. These costs will be published separately.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Development Division, Office of Public Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-5282. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 6(b) of the United States Housing Act of 1937 (42 U.S.C. 1437d) requires HUD to determine costs in different areas for construction and equipment (prototype costs) of new dwelling units suitable for occupancy by low-income families. This determination must be made at least once a year and published in the **Federal Register**. The prototype costs constitute a limit on development cost for the construction and equipment of new public housing projects.

The schedules in this Notice represent the annual update of per unit prototype cost limits for development of Public Housing under 24 CFR Part 941 (§ 941.204). The cost determinations are based on actual public housing and insured multifamily project data from HUD Field Offices and construction cost information published by the private sector of the housing industry.

HUD also adopts special prototype costs for the development of Indian housing. While public and Indian prototype costs have been published together in past proceedings, this Notice only establishes prototype costs for public housing. Indian housing prototype costs will be published separately. Until that publication becomes effective, the Indian prototype costs published December 7, 1982 (47 FR 55136) shall remain in effect.

Since section 6(b) of the Act provides that the prototype costs shall become effective upon publication in the **Federal Register**, this Notice is effective today, the day of publication.

The following factors were considered in developing prototype costs:

1. Prototype cost comprise the cost of dwelling structures (Account No. 1460) and dwelling equipment (Account No. 1465), as described in HUD Low-Rent Housing Accounting Handbook 7510.1, Chapter 3, Section 15, and include a pro rata share of the builders' fee and overhead, insurance, social security, sales tax, and bonds.

2. Prototype costs do *not* include the costs of site acquisition, site improvement, nondwelling structures or spaces (and equipment), planning (architectural-engineering fees, permit fees, inspection, and similar costs), relocation, interest or PHA administrative costs, all of which are described in HUD Low-Rent Housing Accounting Handbook 7510.1, Chapter 3, Section 15.

3. Section 6(b) of the Act identifies the factors the Secretary is to consider in determining prototype costs, which include such things as the effectiveness of existing cost limits in the area, advice of local housing producers, maximization of energy conservation for heating, lighting and other purposes, and the extra durability required for safety, security and economical maintenance of the housing. (See 42 U.S.C. 1437d.)

4. Prototype costs are ceiling amounts that may be approved for dwelling construction and equipment costs of a particular project. Public housing developed under Part 941 also requires compliance with applicable HUD Minimum Property Standards and planning and design criteria described in HUD Public Housing Development Handbooks 7417.1 and 7417.1 REV-1.

Written comments will be considered, and additional amendments will be published, if the Department determines that acceptance of the comments is appropriate. Comments with respect to the cost limits for a given location should be sent to the local HUD office having jurisdiction for that location. A list of these offices follows:

Region I

Connecticut: Dept. of HUD, One Hartford Square West, Hartford, CT 06104-2943
Massachusetts: Dept. of HUD, Room 800, John F. Kennedy Building, Boston, MA 02203-0801
New Hampshire: Dept. of HUD, Norris-Cotton Federal Bldg., 275 Chestnut Street, Manchester, NH 03103-2487
Maine: As above
Vermont: As above
Rhode Island: Dept. of HUD, Room 330, John O. Pastore Federal Building and U.S. Post Office, Providence, RI 02903-1745

Region II

New Jersey: Dept. of HUD, Gateway Bldg. No. 1, Raymond Plaza, Newark, NJ 07102-5504
New York: Dept. of HUD, 26 Federal Plaza, New York, NY 10278-0068
Dept. of HUD, Statler Bldg., 107 Delaware Avenue, Buffalo, NY 14202-2986
Caribbean: Dept. of HUD, Federico Degetau Federal Bldg., U.S. Courthouse, Room 428, Carlos E. Chardon Avenue, Hato Rey, PR 00918-2276

Region III

Delaware: Dept. of HUD, 625 Walnut Street, Philadelphia, PA 19106-3392
District of Columbia: Dept. of HUD, Universal North Bldg., 1875 Connecticut Ave., Washington, D.C. 20009-5708
Maryland: Dept. of HUD, Equitable Bldg., 10 North Calvert Street Baltimore, MD 21202-1865
Pennsylvania: Dept. of HUD, 625 Walnut Street, Philadelphia, PA 19106-3392
Dept. of HUD, 445 Fort Pitt Blvd., Pittsburgh, PA 15219-1361
Virginia: Dept. of HUD, 701 East Franklin Street, Richmond, VA 23219-2591
West Virginia: Dept. of HUD, Kanawah Valley Blvd., Capitol and Lee Streets, Charleston, WV 25391-1794

Region IV

Alabama: Dept. of HUD, Daniel Bldg., 15 South 20th Street, Birmingham, AL 35233-2096
Florida: Dept. of HUD, 325 West Adams Street, Jacksonville, FL 32202-4303
Georgia: Dept. of HUD, 75 Spring Street, SW., Atlanta, GA 30303-3109
Kentucky: Dept. of HUD, 539 River City Mall, P.O. Box 1044, Louisville, KY 40201-1044
Mississippi: Dept. of HUD, 100 W. Capital Street, Jackson, MS 39269-1016
North Carolina: Dept. of HUD, 415 North Edgeworth Street, Greensboro, NC 27401-2107

South Carolina: Dept. of HUD, 1835-45 Assembly Street, Columbia, SC 29201-2480
Tennessee: Dept. of HUD, 1 Commerce Place, Suite 1600, Nashville, TN 37239-1600
Dept. of HUD, 1111 Northshore Drive, Knoxville, TN 37919-4090

Region V

Illinois: Dept. of HUD, 300 South Wacker Drive Chicago, ILL. 60606-5680
Indiana: Dept. of HUD, P.O. Box 7047, 151 North Delaware Street, Indianapolis, IN 46204-2526
Michigan: Dept. of HUD, 477 Michigan Ave., Detroit, MI 48226-2592
Dept. of HUD, 2922 Fuller Avenue NE., Grand Rapids, MI 49505-3409
Minnesota: Dept. of HUD, 220 South Second Street, Minneapolis MN 55401-2195
Ohio: Dept. of HUD, 200 North High Street, Columbus, OH 43215-2499
Dept. of HUD, 777 Rockwell Avenue, Cleveland, OH 44114-1670
Wisconsin: Dept. of HUD, 744 North Fourth Street, Milwaukee, WI 53203-2290

Region VI

Arkansas: Dept. of HUD, 300 West Capitol, Suite 700, Little Rock, AR 72201-3523
Louisiana: Dept. of HUD, 1661 Canal Street, New Orleans, LA 70172-0288
New Mexico: Dept. of HUD, 1403 Slocum, P.O. Box 20050 Dallas, TX 75207-0050
Oklahoma: Dept. of HUD, 200 NW. 5th Street, Oklahoma City, OK 73102-3202
Texas: Dept. of HUD, 221 W. Lancaster, P.O. Box 2905, Fort Worth, TX 76113-2005
Dept. of HUD, 800 Dolorosa, P.O. Box 9163 San Antonio, TX 78285-3301

Region VII

Iowa: Dept. of HUD, 210 Walnut Street, Des Moines, IA 50309-2155
Kansas: Dept. of HUD, 1103 Grand Ave., Kansas City, MO 64106-2496
Missouri: Dept. of HUD, 210 North Tucker Blvd., St. Louis, MO 63101-1997
Nebraska: Dept. of HUD, 210 South 16th Street, Omaha, NE 68102-1622

Region VIII

Colorado: Dept. of HUD, 1405 Curtis Street, Denver, CO 80202-2349
Montana: As above
North Dakota: As above
South Dakota: Dept. of HUD, 1405 Curtis Street, Denver, CO 80202-2349
Utah: As above
Wyoming: As above

Region IX

Arizona: Dept. of HUD, Federal Building, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102-3448
California: As above
Dept. of HUD, 2500 Wilshire Boulevard, Los Angeles, CA 90057-4361
Dept. of HUD, 545 Downtown Plaza, P.O. Box 1978, Suite 250, Sacramento, CA 95809-1978
Guam: Dept. of HUD, Federal Building, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102-3448
Hawaii: Dept. of HUD, 300 Ala Moana Boulevard, Suite 3318, Honolulu, HI 96813-4991
Nevada: Dept. of HUD, Federal Building, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102-3448

Region X

Alaska: Dept. of HUD, 701 C Street, Module G, Anchorage, AK 99513-0001
Oregon: Dept. of HUD, 520 SW Sixth Avenue, Portland, OR 97204-1596
Washington: Dept. of HUD, 403 Arcade Plaza Building, 1321 Second Ave., Seattle, WA 98101-2054

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321-4347) is unnecessary since statutorily required prototype costs are categorically excluded under 24 CFR 50.20(1).

The Catalog of Federal Domestic Assistance program number is: 14.146, Low Income Housing-Assistance Program (public housing).

The prototype per unit cost schedules for all prototype cost areas, issued under 24 CFR Part 941, Prototype Cost Limits for Low-Income Public Housing are hereby established as shown on the tables set forth below entitled "Prototype Per Unit Cost Schedule—Regions I through X."

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); sec. 6(b), U.S. Housing Act of 1937, 42 U.S.C. 1437d(b))

Dated: November 30, 1984.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210-33-M

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION I							
CONNECTICUT							
HARTFORD							
DETACHED AND SEMIDETACHED	27,750	33,150	36,400	43,650	52,550	58,500	61,200
ROW DWELLINGS	25,200	30,000	33,600	39,850	47,850	53,300	55,900
WALKUP	23,550	29,150	32,900	39,250	45,250	49,800	52,150
ELEVATOR-STRUCTURE	30,150	35,000	44,400	------	------	------	------
NEW MILFORD							
DETACHED AND SEMIDETACHED	26,500	31,800	35,100	42,050	50,550	56,250	58,900
ROW DWELLINGS	24,150	28,800	32,000	38,150	45,850	51,100	53,200
WALKUP	22,550	27,850	31,550	37,450	42,950	47,750	49,900
ELEVATOR-STRUCTURE	29,900	34,550	43,950	------	------	------	------
NEW HAVEN							
DETACHED AND SEMIDETACHED	26,850	31,900	35,150	42,200	50,900	56,550	59,150
ROW DWELLINGS	24,100	28,800	32,000	38,150	45,850	51,100	53,300
WALKUP	22,550	27,850	31,400	37,600	43,300	47,750	49,900
ELEVATOR-STRUCTURE	29,900	34,550	43,950	------	------	------	------
BRIDGEPORT							
DETACHED AND SEMIDETACHED	27,050	32,400	35,850	42,850	51,600	57,300	60,050
ROW DWELLINGS	24,150	28,800	32,000	38,150	45,850	51,100	53,200
WALKUP	22,500	27,700	31,500	37,200	43,100	47,550	49,750
ELEVATOR-STRUCTURE	30,500	35,350	44,850	------	------	------	------
NEW LONDON							
DETACHED AND SEMIDETACHED	27,050	32,500	35,850	42,700	51,800	57,550	60,100
ROW DWELLINGS	24,450	29,350	32,750	39,100	46,950	52,350	54,800
WALKUP	23,500	27,800	31,500	37,450	43,250	47,800	50,100
ELEVATOR-STRUCTURE	30,500	35,300	44,850	------	------	------	------
WINDHAM							
DETACHED AND SEMIDETACHED	27,050	32,500	35,850	42,700	51,800	57,550	60,100
ROW DWELLINGS	24,450	29,350	32,750	39,100	46,950	52,350	54,800
WALKUP	23,900	28,350	32,200	38,050	44,150	48,700	51,150
ELEVATOR-STRUCTURE	30,500	35,300	44,850	------	------	------	------
RIDGEFIELD							
DETACHED AND SEMIDETACHED	32,450	38,900	43,000	51,400	62,000	68,650	72,100
ROW DWELLINGS	29,800	35,400	39,450	46,900	56,500	63,050	65,850
WALKUP	28,350	35,050	39,650	47,050	54,550	60,000	63,150
ELEVATOR-STRUCTURE	35,150	40,800	51,700	------	------	------	------
NORWICH							
DETACHED AND SEMIDETACHED	26,950	32,450	35,850	42,750	51,550	57,300	59,950
ROW DWELLINGS	24,200	28,950	32,300	38,250	46,000	51,450	53,450
WALKUP	22,650	27,900	31,700	37,650	43,350	47,850	50,050
ELEVATOR-STRUCTURE	30,350	35,150	44,600	------	------	------	------
MAINE							
BANGOR							
DETACHED AND SEMIDETACHED	27,450	32,950	34,750	41,400	49,900	55,350	57,700
ROW DWELLINGS	24,750	29,000	32,100	38,350	46,150	51,250	53,600
WALKUP	21,700	26,800	30,500	36,000	41,850	46,000	48,350
ELEVATOR-STRUCTURE	28,850	33,400	42,150	------	------	------	------
AUGUSTA							
DETACHED AND SEMIDETACHED	28,450	33,750	37,350	44,900	53,850	59,950	62,550
ROW DWELLINGS	24,950	29,650	33,050	39,650	47,550	52,950	55,150
WALKUP	23,200	28,700	32,800	38,450	44,800	49,250	51,750
ELEVATOR-STRUCTURE	30,900	36,000	45,600	------	------	------	------
BRUNSWICK							
DETACHED AND SEMIDETACHED	28,250	33,600	37,000	44,350	53,450	59,300	62,200
ROW DWELLINGS	24,700	29,450	32,850	39,200	47,250	52,300	54,750
WALKUP	22,850	28,200	32,400	38,250	44,350	48,500	51,250
ELEVATOR-STRUCTURE	31,250	36,450	46,000	------	------	------	------
LEWISTON							
DETACHED AND SEMIDETACHED	28,250	33,600	37,000	44,350	53,450	59,300	62,200
ROW DWELLINGS	24,700	29,450	32,850	39,200	47,250	52,300	54,750
WALKUP	22,650	27,950	32,150	37,900	44,000	48,100	50,800
ELEVATOR-STRUCTURE	29,750	34,700	43,750	------	------	------	------
PORTLAND							
DETACHED AND SEMIDETACHED	28,250	33,600	37,000	44,350	53,450	59,300	62,200
ROW DWELLINGS	24,700	29,450	32,850	39,200	47,250	52,300	54,750
WALKUP	23,050	28,400	32,550	38,500	44,750	48,950	51,600
ELEVATOR-STRUCTURE	29,750	34,650	43,750	------	------	------	------
WATERVILLE							
DETACHED AND SEMIDETACHED	27,200	32,500	35,900	43,000	51,800	57,350	60,100
ROW DWELLINGS	24,100	28,650	31,700	37,900	45,800	50,800	53,100
WALKUP	22,000	27,300	31,100	36,650	42,500	46,650	49,150
ELEVATOR-STRUCTURE	29,950	35,100	44,250	------	------	------	------
MASSACHUSETTS							
BOSTON							
DETACHED AND SEMIDETACHED	27,650	32,800	36,300	43,450	52,250	58,050	60,850
ROW DWELLINGS	25,900	30,850	34,350	40,950	49,350	54,850	57,300
WALKUP	25,400	30,350	33,600	40,100	48,350	53,600	56,250
ELEVATOR-STRUCTURE	38,150	44,350	56,150	------	------	------	------
WORCESTER							
DETACHED AND SEMIDETACHED	26,350	31,400	34,850	41,500	50,150	55,650	58,350
ROW DWELLINGS	24,850	29,700	33,050	39,250	47,400	52,650	55,000
WALKUP	24,150	29,100	32,350	38,250	46,150	51,300	53,800
ELEVATOR-STRUCTURE	37,050	43,450	54,700	------	------	------	------
FALL RIVER							
DETACHED AND SEMIDETACHED	26,750	32,000	35,550	42,300	50,950	56,700	59,300
ROW DWELLINGS	25,300	30,050	33,650	40,050	48,100	53,550	56,050
WALKUP	24,900	29,250	32,850	39,100	47,300	52,650	55,050
ELEVATOR-STRUCTURE	35,650	41,450	52,500	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION I--CONTINUED							
NEW HAMPSHIRE							
MANCHESTER							
DETACHED AND SEMIDETACHED	23,550	29,250	32,350	38,750	46,400	51,750	54,350
ROW DWELLINGS	22,550	27,250	30,150	35,750	43,050	48,250	50,150
WALKUP	19,650	24,400	27,750	32,850	38,000	41,650	43,950
ELEVATOR-STRUCTURE	28,050	32,650	41,200	------	------	------	------
CONCORD							
DETACHED AND SEMIDETACHED	25,350	31,450	34,750	41,450	49,750	55,450	58,250
ROW DWELLINGS	24,050	28,950	32,200	38,150	46,150	51,300	53,500
WALKUP	20,550	25,450	28,850	34,200	39,650	43,500	45,800
ELEVATOR-STRUCTURE	27,900	32,650	41,150	------	------	------	------
DOVER							
DETACHED AND SEMIDETACHED	23,050	28,450	31,550	37,650	45,150	50,400	52,900
ROW DWELLINGS	21,850	26,250	29,200	34,650	41,700	46,400	48,400
WALKUP	18,950	23,450	26,800	31,700	39,600	44,100	45,400
ELEVATOR-STRUCTURE	28,750	33,300	42,150	------	------	------	------
KEENE							
DETACHED AND SEMIDETACHED	24,200	30,050	33,100	39,650	47,550	52,900	55,600
ROW DWELLINGS	23,050	27,750	30,850	36,650	44,200	49,400	51,350
WALKUP	20,150	24,900	28,300	33,700	38,950	42,700	44,800
ELEVATOR-STRUCTURE	25,600	30,950	39,100	------	------	------	------
NASHUA							
DETACHED AND SEMIDETACHED	23,550	29,250	32,350	38,750	46,400	51,750	54,350
ROW DWELLINGS	22,550	27,250	30,150	35,750	43,050	48,050	50,150
WALKUP	20,250	25,000	28,550	33,700	39,000	43,000	45,200
ELEVATOR-STRUCTURE	28,150	32,750	41,200	------	------	------	------
PORTSMOUTH							
DETACHED AND SEMIDETACHED	24,800	30,550	33,900	40,550	48,750	54,200	56,900
ROW DWELLINGS	23,700	28,350	31,700	37,600	45,050	50,200	52,600
WALKUP	20,650	25,600	29,200	34,550	39,850	43,750	45,950
ELEVATOR-STRUCTURE	28,650	33,250	42,100	------	------	------	------
RHODE ISLAND							
PROVIDENCE							
DETACHED AND SEMIDETACHED	30,050	35,850	39,450	47,350	57,000	63,400	66,350
ROW DWELLINGS	26,200	31,150	34,900	41,400	49,700	55,450	58,100
WALKUP	24,200	29,900	33,700	40,250	46,350	51,050	53,550
ELEVATOR-STRUCTURE	34,100	39,700	50,350	------	------	------	------
VERMONT							
BURLINGTON							
DETACHED AND SEMIDETACHED	24,200	29,050	32,000	38,300	46,100	51,200	53,600
ROW DWELLINGS	23,900	28,250	31,500	37,500	44,800	50,150	52,500
WALKUP	21,150	26,000	29,800	35,200	40,700	44,900	47,250
ELEVATOR-STRUCTURE	31,400	36,550	46,400	------	------	------	------
BENNINGTON							
DETACHED AND SEMIDETACHED	24,200	29,050	32,000	38,300	46,100	51,200	53,600
ROW DWELLINGS	23,900	28,250	31,500	37,500	44,800	50,150	52,500
WALKUP	21,150	26,000	29,800	35,200	40,700	44,900	47,250
ELEVATOR-STRUCTURE	31,750	37,000	46,900	------	------	------	------
BRATTLEBORO							
DETACHED AND SEMIDETACHED	24,200	29,050	32,000	38,300	46,100	51,200	53,600
ROW DWELLINGS	23,900	28,250	31,500	37,500	44,800	50,150	52,500
WALKUP	21,150	26,000	29,800	35,200	40,700	44,900	47,250
ELEVATOR-STRUCTURE	31,750	37,000	46,900	------	------	------	------
MONTPELIER							
DETACHED AND SEMIDETACHED	23,800	28,350	31,450	37,450	45,050	50,000	52,400
ROW DWELLINGS	23,100	27,500	30,500	36,350	43,500	48,650	50,950
WALKUP	20,550	25,350	28,850	34,200	39,300	43,550	45,700
ELEVATOR-STRUCTURE	31,750	37,000	46,900	------	------	------	------
RUTLAND							
DETACHED AND SEMIDETACHED	23,950	28,450	31,550	37,850	45,350	50,600	52,850
ROW DWELLINGS	23,900	27,850	30,950	36,800	44,100	49,350	51,500
WALKUP	20,850	25,450	29,100	34,650	39,900	44,100	46,450
ELEVATOR-STRUCTURE	31,950	37,200	46,950	------	------	------	------
REGION II							
NEW JERSEY							
CAMDEN							
DETACHED AND SEMIDETACHED	27,650	33,200	36,800	43,800	53,000	58,800	61,750
ROW DWELLINGS	25,000	29,850	33,050	39,500	47,150	52,700	55,150
WALKUP	23,400	28,950	33,000	39,150	45,400	49,800	52,700
ELEVATOR-STRUCTURE	34,750	40,450	51,300	------	------	------	------
ATLANTIC CITY							
DETACHED AND SEMIDETACHED	27,200	32,750	36,200	43,200	52,150	57,800	60,850
ROW DWELLINGS	24,350	29,150	32,400	38,450	46,100	51,650	53,700
WALKUP	22,900	28,450	32,150	38,250	44,500	48,950	51,800
ELEVATOR-STRUCTURE	33,200	38,600	48,850	------	------	------	------
BURLINGTON							
DETACHED AND SEMIDETACHED	27,600	33,050	36,800	43,850	52,750	58,300	61,500
ROW DWELLINGS	24,750	29,600	33,050	39,050	46,850	52,200	54,550
WALKUP	23,600	29,050	33,050	39,100	45,250	49,750	51,800
ELEVATOR-STRUCTURE	34,900	40,750	51,550	------	------	------	------
GLOUCESTER							
DETACHED AND SEMIDETACHED	27,200	32,750	36,200	43,200	52,200	57,950	60,850
ROW DWELLINGS	24,600	29,300	32,400	38,750	46,300	51,750	54,100
WALKUP	23,100	28,650	32,450	38,550	44,550	48,100	51,050
ELEVATOR-STRUCTURE	34,750	40,450	51,300	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION II--CONTINUED							
NEW JERSEY --CONTINUED							
TRENTON							
DETACHED AND SEMIDETACHED	27,750	33,000	36,800	43,750	52,750	58,650	61,500
ROW DWELLINGS	24,800	29,550	33,050	39,200	47,050	52,400	54,950
WALKUP	23,650	29,250	33,000	39,350	45,450	50,000	52,650
ELEVATOR-STRUCTURE	38,150	44,450	56,400	------	------	------	------
VINELAND							
DETACHED AND SEMIDETACHED	27,700	33,150	36,800	43,750	52,900	58,800	61,600
ROW DWELLINGS	24,750	29,750	33,050	39,250	47,050	52,500	54,950
WALKUP	23,800	29,000	33,000	39,050	45,000	49,700	52,450
ELEVATOR-STRUCTURE	35,900	41,700	52,950	------	------	------	------
NEWARK							
DETACHED AND SEMIDETACHED	30,150	35,650	39,800	47,550	57,050	63,250	66,250
ROW DWELLINGS	25,950	30,850	34,250	40,700	49,050	54,700	57,200
WALKUP	22,950	28,600	32,600	38,550	44,750	49,100	51,900
ELEVATOR-STRUCTURE	36,250	42,100	53,150	------	------	------	------
ASBURY PARK							
DETACHED AND SEMIDETACHED	30,150	35,650	39,800	47,550	57,050	63,250	66,250
ROW DWELLINGS	25,950	30,850	34,250	40,700	49,050	54,700	57,200
WALKUP	22,550	28,100	31,900	37,750	43,900	48,200	50,800
ELEVATOR-STRUCTURE	34,150	40,350	50,900	------	------	------	------
NORTH BERGEN							
DETACHED AND SEMIDETACHED	30,150	35,650	39,800	47,550	57,050	63,250	66,250
ROW DWELLINGS	25,950	30,850	34,250	40,700	49,050	54,700	57,200
WALKUP	23,800	29,200	33,250	39,400	45,850	50,350	52,900
ELEVATOR-STRUCTURE	36,300	42,250	53,400	------	------	------	------
FREEHOLD							
DETACHED AND SEMIDETACHED	30,150	35,650	39,800	47,550	57,050	63,250	66,250
ROW DWELLINGS	25,950	30,850	34,250	40,700	49,050	54,700	57,200
WALKUP	22,500	28,100	31,900	37,700	43,700	48,150	50,700
ELEVATOR-STRUCTURE	34,900	40,550	51,200	------	------	------	------
NEW YORK							
ALBANY							
DETACHED AND SEMIDETACHED	24,400	29,150	32,150	38,300	46,400	51,400	53,950
ROW DWELLINGS	21,350	25,800	28,700	34,150	41,050	45,750	47,900
WALKUP	19,100	23,850	27,000	32,100	37,100	40,750	42,900
ELEVATOR-STRUCTURE	29,600	34,200	43,550	------	------	------	------
PLATTSBURGH							
DETACHED AND SEMIDETACHED	23,100	27,650	30,700	36,600	44,150	48,950	51,400
ROW DWELLINGS	20,750	24,650	27,400	32,550	39,100	43,600	45,450
WALKUP	18,400	22,500	25,800	30,500	35,400	38,800	40,900
ELEVATOR-STRUCTURE	26,500	32,750	41,350	------	------	------	------
SYRACUSE							
DETACHED AND SEMIDETACHED	24,500	29,350	32,300	38,700	46,750	51,900	54,350
ROW DWELLINGS	21,800	26,100	28,900	34,400	41,350	46,200	48,350
WALKUP	19,400	23,950	27,200	32,350	37,500	41,000	43,300
ELEVATOR-STRUCTURE	29,600	34,400	43,550	------	------	------	------
POUGHKEEPSIE							
DETACHED AND SEMIDETACHED	25,650	30,650	34,000	40,550	48,950	54,300	56,850
ROW DWELLINGS	24,500	29,300	32,300	38,450	46,200	51,550	53,900
WALKUP	20,600	25,600	29,050	34,550	39,600	43,800	46,100
ELEVATOR-STRUCTURE	29,750	34,550	43,800	------	------	------	------
BINGHAMTON							
DETACHED AND SEMIDETACHED	24,850	29,350	32,650	39,000	47,100	52,250	54,750
ROW DWELLINGS	22,050	26,400	29,250	34,850	41,850	46,800	48,800
WALKUP	19,600	24,350	27,700	32,700	37,950	41,550	43,900
ELEVATOR-STRUCTURE	26,750	31,050	39,350	------	------	------	------
BUFFALO							
DETACHED AND SEMIDETACHED	25,600	30,600	34,000	40,550	48,850	54,400	56,900
ROW DWELLINGS	21,500	25,550	28,350	33,800	40,550	45,350	47,250
WALKUP	19,700	24,150	27,400	32,400	37,500	41,300	43,450
ELEVATOR-STRUCTURE	28,300	33,150	41,650	------	------	------	------
ROCHESTER							
DETACHED AND SEMIDETACHED	25,100	29,950	33,050	39,550	47,800	52,850	55,450
ROW DWELLINGS	20,900	25,000	27,800	32,950	39,500	44,050	46,150
WALKUP	19,000	23,350	26,650	31,500	36,550	40,150	42,350
ELEVATOR-STRUCTURE	27,650	32,300	40,700	------	------	------	------
JAMESTOWN							
DETACHED AND SEMIDETACHED	24,900	29,750	33,000	39,450	47,500	52,750	55,350
ROW DWELLINGS	20,750	24,900	27,500	32,650	39,350	44,000	45,800
WALKUP	19,000	23,350	26,650	31,500	36,550	40,150	42,350
ELEVATOR-STRUCTURE	27,500	32,050	40,550	------	------	------	------
ELMIRA							
DETACHED AND SEMIDETACHED	26,600	31,750	35,400	42,250	50,900	56,450	59,250
ROW DWELLINGS	22,200	26,700	29,550	35,050	42,150	47,100	49,050
WALKUP	20,400	25,100	28,450	33,800	39,000	43,050	45,300
ELEVATOR-STRUCTURE	29,500	34,350	43,350	------	------	------	------
NEW YORK CITY (INNER)							
DETACHED AND SEMIDETACHED	32,400	39,000	43,150	51,500	62,000	68,950	72,250
ROW DWELLINGS	31,950	38,050	42,250	50,250	60,250	67,200	70,450
WALKUP	29,950	37,300	42,200	50,000	57,950	63,650	67,100
ELEVATOR-STRUCTURE	45,750	49,400	56,150	67,350	78,050	83,100	------
NEW YORK CITY (METRO)							
DETACHED AND SEMIDETACHED	27,650	31,700	35,900	42,550	49,250	51,700	54,300
ROW DWELLINGS	26,850	30,700	34,900	41,300	47,800	50,200	52,700
WALKUP	25,450	29,150	33,150	39,200	45,400	47,650	50,050
ELEVATOR-STRUCTURE	44,750	48,350	55,000	65,950	76,450	81,350	------
NASSAU COUNTY							
DETACHED AND SEMIDETACHED	27,650	31,700	35,900	42,550	49,250	51,700	54,300
ROW DWELLINGS	26,850	30,700	34,900	41,300	47,800	50,200	52,700
WALKUP	25,450	29,150	33,150	39,200	45,400	47,650	50,050
ELEVATOR-STRUCTURE	37,950	43,500	49,450	59,400	68,800	73,250	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION II--CONTINUED							
NEW YORK --CONTINUED							
SUFFOLK COUNTY							
DETACHED AND SEMIDETACHED	24,800	27,450	30,500	36,300	43,700	46,000	48,250
ROW DWELLINGS	24,400	26,800	29,800	35,500	42,500	44,600	46,800
WALKUP	22,800	26,050	29,700	35,050	40,500	44,650	47,000
ELEVATOR-STRUCTURE	35,350	40,600	46,150	55,250	64,100	68,250	------
WESTCHESTER COUNTY							
DETACHED AND SEMIDETACHED	26,050	28,850	31,950	38,300	45,200	47,450	49,850
ROW DWELLINGS	25,600	28,150	31,300	37,300	44,700	46,950	49,350
WALKUP	23,400	26,950	30,500	36,100	41,900	43,950	46,150
ELEVATOR-STRUCTURE	37,650	45,750	48,950	58,600	67,950	------	------
ORANGE COUNTY							
DETACHED AND SEMIDETACHED	24,550	27,950	31,050	37,050	44,650	46,900	49,250
ROW DWELLINGS	23,950	27,100	30,150	35,550	43,000	45,100	47,400
WALKUP	21,900	25,900	29,400	34,800	40,250	44,350	46,750
ELEVATOR-STRUCTURE	34,250	39,500	44,850	53,850	62,600	66,650	------
ROCKLAND COUNTY							
DETACHED AND SEMIDETACHED	24,250	26,800	29,800	35,600	42,850	45,000	47,250
ROW DWELLINGS	23,800	26,300	29,250	34,650	41,650	43,650	45,900
WALKUP	22,100	25,350	28,750	34,100	39,500	43,400	45,700
ELEVATOR-STRUCTURE	36,300	38,850	44,100	52,950	61,400	65,300	------
PUERTO RICO							
SAN JUAN							
DETACHED AND SEMIDETACHED	20,150	24,050	26,700	31,850	38,400	42,550	44,750
ROW DWELLINGS	19,900	23,800	26,500	31,150	37,700	41,850	43,900
WALKUP	18,800	20,850	23,650	28,150	32,500	35,800	37,700
ELEVATOR-STRUCTURE	21,900	25,750	32,400	36,050	39,500	------	------
OLD SAN JUAN							
DETACHED AND SEMIDETACHED	24,050	28,900	31,900	38,150	46,050	51,050	53,600
ROW DWELLINGS	23,850	28,550	31,800	37,550	45,300	50,300	52,750
WALKUP	20,250	24,950	28,350	33,750	38,950	42,950	45,300
ELEVATOR-STRUCTURE	26,250	30,700	38,850	43,300	47,450	------	------
PONCE							
DETACHED AND SEMIDETACHED	20,200	24,200	26,750	32,000	38,450	42,650	44,800
ROW DWELLINGS	20,000	23,950	26,600	31,200	37,800	41,950	44,000
WALKUP	17,000	20,900	23,750	28,150	32,650	35,850	37,750
ELEVATOR-STRUCTURE	22,050	25,800	32,550	36,150	39,650	------	------
MAYAGUEZ							
DETACHED AND SEMIDETACHED	20,200	24,200	26,750	32,000	38,450	42,650	44,800
ROW DWELLINGS	20,000	23,950	26,600	31,200	37,800	41,950	44,000
WALKUP	17,000	20,900	23,750	28,150	32,650	35,850	37,750
ELEVATOR-STRUCTURE	22,050	25,800	32,550	36,150	39,650	------	------
ARECIBO							
DETACHED AND SEMIDETACHED	20,200	24,200	26,750	32,000	38,450	42,650	44,800
ROW DWELLINGS	20,000	23,950	26,600	31,200	37,800	41,950	44,000
WALKUP	17,000	20,900	23,750	28,150	32,650	35,850	37,750
ELEVATOR-STRUCTURE	22,050	25,800	32,550	36,150	39,650	------	------
VIRGIN ISLANDS							
ST. THOMAS							
DETACHED AND SEMIDETACHED	29,700	35,600	39,400	47,150	56,750	63,000	66,100
ROW DWELLINGS	29,450	35,000	38,750	46,350	55,650	62,000	65,000
WALKUP	25,300	31,000	35,300	41,800	48,600	53,300	56,150
ELEVATOR-STRUCTURE	30,450	35,400	45,100	50,000	54,950	------	------
ST. CROIX							
DETACHED AND SEMIDETACHED	28,950	34,600	38,450	46,050	55,200	61,450	64,250
ROW DWELLINGS	28,800	34,400	38,200	45,300	54,450	60,650	63,500
WALKUP	24,400	30,050	34,100	40,300	46,900	51,650	54,250
ELEVATOR-STRUCTURE	29,650	34,650	43,800	48,750	53,500	------	------
REGION III							
DELAWARE							
WILMINGTON							
DETACHED AND SEMIDETACHED	27,050	32,450	35,950	42,950	51,600	57,550	60,250
ROW DWELLINGS	22,400	26,700	29,450	35,200	42,550	47,200	49,550
WALKUP	20,800	25,450	28,950	34,650	40,100	43,750	46,150
ELEVATOR-STRUCTURE	30,700	35,650	45,500	------	------	------	------
DOVER							
DETACHED AND SEMIDETACHED	26,700	32,350	35,700	42,550	51,100	57,100	59,650
ROW DWELLINGS	22,000	26,350	29,250	34,750	42,150	46,700	48,850
WALKUP	20,450	25,200	28,700	34,050	39,500	43,300	45,550
ELEVATOR-STRUCTURE	30,600	35,550	45,200	------	------	------	------
WASHINGTON, D.C.							
WASHINGTON, D.C.							
DETACHED AND SEMIDETACHED	32,550	38,000	43,050	51,450	61,950	69,100	72,100
ROW DWELLINGS	25,750	30,800	34,050	40,600	48,900	54,550	56,850
WALKUP	23,650	28,950	33,300	39,100	45,450	50,200	52,650
ELEVATOR-STRUCTURE	34,150	39,400	50,050	------	------	------	------
MARYLAND							
BALTIMORE							
DETACHED AND SEMIDETACHED	23,900	28,750	31,850	38,000	45,600	51,150	53,300
ROW DWELLINGS	19,300	23,300	25,650	30,650	36,800	40,850	42,900
WALKUP	17,900	22,100	25,100	29,750	34,550	37,850	39,900
ELEVATOR-STRUCTURE	28,800	33,450	42,500	------	------	------	------
BALTIMORE CITY							
DETACHED AND SEMIDETACHED	25,750	31,000	34,300	40,850	49,000	54,950	57,300
ROW DWELLINGS	20,900	25,200	27,700	33,150	39,800	44,150	46,300
WALKUP	19,300	23,850	27,100	32,200	37,300	40,900	43,150
ELEVATOR-STRUCTURE	31,200	36,250	45,900	------	------	------	------
HAGERSTOWN							
DETACHED AND SEMIDETACHED	23,850	28,500	31,650	37,850	45,500	50,800	53,000
ROW DWELLINGS	19,150	22,950	25,450	30,400	36,400	40,500	42,450
WALKUP	17,800	22,000	24,900	29,600	34,350	37,700	39,850
ELEVATOR-STRUCTURE	28,700	33,350	42,200	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION III--CONTINUED							
MARYLAND --CONTINUED							
SALISBURY							
DETACHED AND SEMIDETACHED	24,200	29,050	32,150	38,400	46,150	51,400	53,800
ROW DWELLINGS	19,650	23,400	25,850	30,950	37,200	41,350	43,250
WALKUP	18,100	22,400	25,350	30,150	34,950	38,250	40,350
ELEVATOR-STRUCTURE	29,200	33,950	42,900	------	------	------	------
WALDORF							
DETACHED AND SEMIDETACHED	24,950	30,000	33,250	39,550	47,450	53,150	55,450
ROW DWELLINGS	20,050	24,200	26,700	31,950	38,300	42,600	44,650
WALKUP	18,650	23,100	26,150	31,050	36,050	39,600	41,650
ELEVATOR-STRUCTURE	24,300	28,300	35,900	------	------	------	------
PENNSYLVANIA							
PHILADELPHIA							
DETACHED AND SEMIDETACHED	28,150	34,100	36,850	44,900	53,800	60,100	62,600
ROW DWELLINGS	24,350	29,300	32,400	38,500	46,350	51,700	53,650
WALKUP	20,800	25,750	29,300	34,550	40,100	44,250	46,400
ELEVATOR-STRUCTURE	34,050	39,500	50,100	------	------	------	------
ALLENTOWN							
DETACHED AND SEMIDETACHED	26,750	32,050	35,350	42,350	50,850	56,700	59,300
ROW DWELLINGS	22,700	27,250	30,100	35,900	43,100	48,000	50,050
WALKUP	20,750	25,700	29,200	34,550	40,000	44,100	46,250
ELEVATOR-STRUCTURE	30,800	35,700	45,150	------	------	------	------
BELLEFONTE							
DETACHED AND SEMIDETACHED	26,550	32,050	35,550	42,350	50,850	56,750	59,300
ROW DWELLINGS	22,650	27,200	30,150	35,900	43,100	48,100	49,900
WALKUP	20,850	25,750	29,300	34,500	40,100	44,150	46,250
ELEVATOR-STRUCTURE	32,200	37,300	47,550	------	------	------	------
WELLSBORO							
DETACHED AND SEMIDETACHED	27,300	32,600	36,250	43,200	52,000	57,700	60,550
ROW DWELLINGS	22,950	27,650	30,550	36,200	43,550	48,700	50,750
WALKUP	21,300	26,250	29,650	35,300	40,800	45,000	47,250
ELEVATOR-STRUCTURE	39,900	46,100	58,050	------	------	------	------
HARRISBURG							
DETACHED AND SEMIDETACHED	26,400	31,950	35,300	42,000	50,500	56,300	58,800
ROW DWELLINGS	22,500	26,950	29,850	35,450	42,700	47,550	49,550
WALKUP	20,550	25,450	28,950	34,250	39,800	43,750	45,900
ELEVATOR-STRUCTURE	30,900	35,950	45,500	------	------	------	------
LANCASTER							
DETACHED AND SEMIDETACHED	25,850	31,350	34,450	41,100	49,550	55,300	57,700
ROW DWELLINGS	22,000	26,400	29,050	34,700	41,800	46,500	48,400
WALKUP	20,150	24,850	28,350	33,550	38,950	42,900	45,000
ELEVATOR-STRUCTURE	30,500	35,300	44,750	------	------	------	------
YORK							
DETACHED AND SEMIDETACHED	25,850	31,350	34,450	41,100	49,550	55,300	57,700
ROW DWELLINGS	22,000	26,400	29,050	34,650	41,800	46,500	48,400
WALKUP	20,150	24,850	28,350	33,550	38,950	42,900	45,000
ELEVATOR-STRUCTURE	30,500	36,300	44,750	------	------	------	------
READING							
DETACHED AND SEMIDETACHED	26,200	31,800	34,950	41,750	50,200	56,050	58,550
ROW DWELLINGS	22,350	26,850	29,600	35,300	42,450	47,250	49,150
WALKUP	20,350	25,150	28,700	33,850	39,300	43,300	45,300
ELEVATOR-STRUCTURE	30,500	35,300	44,750	------	------	------	------
SCRANTON							
DETACHED AND SEMIDETACHED	27,250	32,900	36,250	43,200	52,000	57,900	60,500
ROW DWELLINGS	24,600	29,450	32,550	38,850	46,550	52,050	54,050
WALKUP	21,200	26,100	29,600	35,050	40,700	44,800	46,950
ELEVATOR-STRUCTURE	32,500	37,700	47,950	------	------	------	------
PITTSBURGH							
DETACHED AND SEMIDETACHED	28,500	34,100	37,800	44,850	53,900	60,100	62,800
ROW DWELLINGS	25,300	30,350	33,550	39,900	48,100	53,450	55,950
WALKUP	24,750	29,600	32,800	39,050	47,000	52,200	54,650
ELEVATOR-STRUCTURE	32,700	38,150	48,300	------	------	------	------
ALTOONA							
DETACHED AND SEMIDETACHED	27,300	32,750	36,350	43,300	51,800	57,900	60,400
ROW DWELLINGS	24,450	29,500	32,400	38,750	46,500	51,850	54,200
WALKUP	22,350	27,500	31,700	37,250	43,100	47,500	49,900
ELEVATOR-STRUCTURE	31,800	36,900	46,550	------	------	------	------
ERIE							
DETACHED AND SEMIDETACHED	27,900	33,400	36,950	44,000	52,950	59,000	61,600
ROW DWELLINGS	25,250	30,350	33,300	39,500	47,800	53,400	55,600
WALKUP	22,650	28,000	32,050	37,850	43,950	48,500	50,900
ELEVATOR-STRUCTURE	32,150	37,300	47,250	------	------	------	------
JOHNSTOWN							
DETACHED AND SEMIDETACHED	27,300	32,750	36,350	43,250	51,850	57,950	60,500
ROW DWELLINGS	24,550	29,400	32,400	38,500	46,600	51,750	54,050
WALKUP	22,350	27,700	31,700	37,300	43,300	47,700	50,100
ELEVATOR-STRUCTURE	31,650	36,800	46,550	------	------	------	------
VIRGINIA							
RICHMOND							
DETACHED AND SEMIDETACHED	18,350	22,100	27,200	32,550	39,200	43,550	45,450
ROW DWELLINGS	16,000	19,350	23,850	28,450	34,300	38,050	39,700
WALKUP	14,600	18,300	23,000	27,200	31,450	34,600	36,500
ELEVATOR-STRUCTURE	29,800	30,400	42,250	------	------	------	------
NORFOLK							
DETACHED AND SEMIDETACHED	17,150	20,700	25,350	30,250	36,450	40,600	42,400
ROW DWELLINGS	14,850	18,050	22,250	26,550	31,950	35,500	37,000
WALKUP	13,000	16,100	20,450	24,100	27,800	30,750	32,200
ELEVATOR-STRUCTURE	24,350	28,450	35,900	------	------	------	------
NEWPORT NEWS							
DETACHED AND SEMIDETACHED	16,400	19,750	24,250	28,950	34,900	38,750	40,400
ROW DWELLINGS	14,200	17,300	21,200	25,300	30,500	33,950	35,400
WALKUP	13,250	16,550	21,000	24,800	28,750	31,800	33,350
ELEVATOR-STRUCTURE	24,600	28,650	36,100	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION III--CONTINUED							
VIRGINIA --CONTINUED							
HARRISONBURG							
DETACHED AND SEMIDETACHED	16,800	19,800	24,400	29,100	35,050	39,050	40,600
ROW DWELLINGS	14,200	17,350	21,250	25,450	30,600	34,150	35,500
WALKUP	13,100	16,300	20,750	24,350	28,350	31,200	32,800
ELEVATOR-STRUCTURE	22,500	26,150	33,100	------	------	------	------
NORTON							
DETACHED AND SEMIDETACHED	21,050	25,400	31,150	37,450	45,050	49,950	52,150
ROW DWELLINGS	18,650	22,550	27,600	33,100	39,850	44,350	46,300
WALKUP	17,450	21,450	27,400	32,100	37,400	41,150	43,100
ELEVATOR-STRUCTURE	31,900	36,500	46,850	------	------	------	------
CHARLOTTESVILLE							
DETACHED AND SEMIDETACHED	19,100	23,000	28,400	33,650	40,750	45,350	47,200
ROW DWELLINGS	16,550	20,100	24,700	29,650	35,700	39,650	41,300
WALKUP	15,350	19,100	25,350	28,650	33,250	36,650	38,600
ELEVATOR-STRUCTURE	26,100	30,350	38,500	------	------	------	------
WEST VIRGINIA							
CHARLESTON							
DETACHED AND SEMIDETACHED	19,850	24,000	29,800	35,400	42,600	47,650	49,550
ROW DWELLINGS	17,700	21,350	26,300	31,450	37,650	41,950	43,800
WALKUP	16,450	20,500	26,100	30,800	36,050	39,400	41,350
ELEVATOR-STRUCTURE	30,400	35,200	44,750	------	------	------	------
BLUEFIELD							
DETACHED AND SEMIDETACHED	19,400	23,500	28,850	34,500	41,500	46,350	48,150
ROW DWELLINGS	17,150	20,850	25,600	30,550	36,650	41,050	42,850
WALKUP	16,050	19,950	25,550	30,000	34,700	38,350	40,250
ELEVATOR-STRUCTURE	29,550	34,400	43,550	------	------	------	------
HUNTINGTON							
DETACHED AND SEMIDETACHED	19,800	23,650	29,100	34,650	41,950	46,750	48,700
ROW DWELLINGS	17,300	20,950	26,000	30,850	36,950	41,350	43,100
WALKUP	16,300	20,150	25,600	30,350	35,150	38,750	40,600
ELEVATOR-STRUCTURE	29,900	34,700	44,150	------	------	------	------
PARKERSBURG							
DETACHED AND SEMIDETACHED	20,000	24,150	29,850	35,550	42,850	47,850	49,900
ROW DWELLINGS	17,800	21,550	26,500	31,650	37,800	42,200	44,000
WALKUP	16,300	20,150	25,600	30,350	35,150	38,750	40,600
ELEVATOR-STRUCTURE	29,900	34,700	44,150	------	------	------	------
WHEELING							
DETACHED AND SEMIDETACHED	19,400	23,500	28,850	34,500	41,500	46,350	48,150
ROW DWELLINGS	17,150	20,850	25,600	30,550	36,650	41,050	42,850
WALKUP	16,050	19,950	25,550	30,000	34,700	38,350	40,250
ELEVATOR-STRUCTURE	29,550	34,400	43,550	------	------	------	------
MARTINSBURG							
DETACHED AND SEMIDETACHED	18,050	21,950	27,050	32,200	38,700	43,150	45,050
ROW DWELLINGS	16,150	19,400	23,800	28,250	34,300	38,050	39,900
WALKUP	14,750	18,400	23,500	27,550	32,050	35,400	37,200
ELEVATOR-STRUCTURE	29,550	34,400	43,550	------	------	------	------
FAIRMONT							
DETACHED AND SEMIDETACHED	19,900	24,000	29,750	35,400	42,600	47,650	49,550
ROW DWELLINGS	17,700	21,350	26,300	31,450	37,650	41,950	43,950
WALKUP	15,850	19,800	25,050	29,700	34,250	37,900	39,850
ELEVATOR-STRUCTURE	29,500	34,400	43,400	------	------	------	------
POINT PLEASANT							
DETACHED AND SEMIDETACHED	18,650	22,600	27,850	33,250	39,950	44,500	46,450
ROW DWELLINGS	16,500	20,050	24,700	29,400	35,300	39,300	41,200
WALKUP	15,550	19,350	24,600	28,850	33,500	37,000	38,750
ELEVATOR-STRUCTURE	29,100	34,550	43,900	------	------	------	------
REGION IV							
ALABAMA							
BIRMINGHAM							
DETACHED AND SEMIDETACHED	15,900	19,400	23,850	28,650	34,500	38,200	40,000
ROW DWELLINGS	14,250	16,950	21,050	25,100	30,200	33,550	35,200
WALKUP	12,400	15,250	19,350	22,800	26,500	29,350	30,700
ELEVATOR-STRUCTURE	25,400	29,800	37,400	------	------	------	------
DOTHAN							
DETACHED AND SEMIDETACHED	15,200	18,500	22,800	27,450	32,850	36,400	38,250
ROW DWELLINGS	13,950	16,900	20,700	24,600	29,750	33,100	34,650
WALKUP	11,650	14,650	18,500	21,950	25,400	27,950	29,450
ELEVATOR-STRUCTURE	24,700	28,850	36,350	------	------	------	------
FLORENCE							
DETACHED AND SEMIDETACHED	15,450	18,700	22,800	27,650	33,150	36,850	38,500
ROW DWELLINGS	13,850	16,750	20,550	24,850	29,800	33,050	34,550
WALKUP	11,700	14,700	18,550	22,100	25,600	28,050	29,550
ELEVATOR-STRUCTURE	25,200	29,550	37,150	------	------	------	------
HUNTSVILLE							
DETACHED AND SEMIDETACHED	15,050	18,250	22,600	26,850	32,400	36,050	37,750
ROW DWELLINGS	13,500	16,100	20,050	23,850	28,700	32,050	33,450
WALKUP	11,600	14,500	18,350	21,600	25,050	27,600	28,950
ELEVATOR-STRUCTURE	24,700	28,850	36,500	------	------	------	------
MOBILE							
DETACHED AND SEMIDETACHED	16,750	20,250	25,000	29,800	35,900	39,900	41,650
ROW DWELLINGS	14,700	17,950	22,050	26,200	31,500	35,050	36,750
WALKUP	12,450	15,500	19,650	23,200	27,050	30,800	31,400
ELEVATOR-STRUCTURE	26,050	30,300	38,150	------	------	------	------
MONTGOMERY							
DETACHED AND SEMIDETACHED	15,150	18,400	22,700	27,400	32,800	36,350	38,150
ROW DWELLINGS	13,500	16,300	20,100	23,850	28,800	32,050	33,550
WALKUP	11,650	14,600	18,450	21,850	26,350	27,750	29,350
ELEVATOR-STRUCTURE	25,000	29,300	36,700	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION IV--CONTINUED							
ALABAMA --CONTINUED							
TUSCALOOSA							
DETACHED AND SEMIDETACHED	15,050	18,250	22,600	26,850	32,400	36,050	37,750
ROW DWELLINGS	13,450	16,000	19,950	23,700	28,650	31,850	33,300
WALKUP	11,600	14,500	18,350	21,600	25,050	27,600	28,950
ELEVATOR-STRUCTURE	24,700	28,650	36,500	------	------	------	------
FLORIDA							
JACKSONVILLE							
DETACHED AND SEMIDETACHED	13,900	17,250	22,100	25,900	30,200	32,800	34,450
ROW DWELLINGS	13,450	16,600	21,200	24,950	28,950	31,700	33,200
WALKUP	12,950	16,050	20,600	24,200	28,150	30,900	32,400
ELEVATOR-STRUCTURE	22,150	25,650	32,700	------	------	------	------
PENSACOLA							
DETACHED AND SEMIDETACHED	13,900	17,150	21,850	25,800	29,900	32,650	34,250
ROW DWELLINGS	13,400	16,500	20,950	24,800	28,700	31,300	32,000
WALKUP	12,950	16,050	20,400	23,900	27,950	30,800	32,100
ELEVATOR-STRUCTURE	21,200	25,650	31,150	------	------	------	------
MIAMI							
DETACHED AND SEMIDETACHED	17,300	20,700	25,500	30,550	36,800	40,900	42,800
ROW DWELLINGS	15,200	18,400	22,750	27,100	32,450	36,100	38,000
WALKUP	14,000	17,650	22,350	26,600	30,700	33,900	35,650
ELEVATOR-STRUCTURE	26,500	30,800	38,000	------	------	------	------
KEY WEST							
DETACHED AND SEMIDETACHED	17,300	20,700	25,500	30,550	36,800	40,900	42,800
ROW DWELLINGS	15,200	18,350	22,750	27,100	32,450	36,050	37,850
WALKUP	14,000	17,650	22,350	26,600	30,700	33,900	35,600
ELEVATOR-STRUCTURE	26,500	30,800	39,000	------	------	------	------
TAMPA							
DETACHED AND SEMIDETACHED	16,950	20,300	25,300	30,250	36,150	40,350	42,200
ROW DWELLINGS	15,150	18,200	22,650	27,000	32,800	36,250	37,950
WALKUP	12,300	16,050	20,350	24,200	28,100	30,850	32,350
ELEVATOR-STRUCTURE	26,650	31,000	39,250	------	------	------	------
ORLANDO							
DETACHED AND SEMIDETACHED	16,500	19,700	24,350	29,150	34,950	39,050	40,750
ROW DWELLINGS	14,850	17,850	22,000	26,300	31,500	35,150	36,750
WALKUP	13,700	17,150	21,650	25,750	29,850	32,950	34,450
ELEVATOR-STRUCTURE	27,700	32,050	40,300	------	------	------	------
GEORGIA							
ATLANTA							
DETACHED AND SEMIDETACHED	15,400	18,700	22,900	27,400	32,850	36,500	38,150
ROW DWELLINGS	14,950	18,050	22,400	26,550	32,000	35,550	37,200
WALKUP	14,100	17,350	22,150	26,900	30,300	33,200	35,000
ELEVATOR-STRUCTURE	25,400	29,350	37,350	------	------	------	------
ALBANY							
DETACHED AND SEMIDETACHED	15,400	18,550	22,750	27,100	32,500	36,150	37,850
ROW DWELLINGS	14,900	18,000	22,150	26,350	31,650	35,350	36,950
WALKUP	13,950	17,300	21,950	25,750	30,150	32,950	34,500
ELEVATOR-STRUCTURE	25,150	29,250	36,950	------	------	------	------
AUGUSTA							
DETACHED AND SEMIDETACHED	15,800	18,950	23,500	28,050	33,750	37,350	39,150
ROW DWELLINGS	15,550	18,600	22,800	27,450	33,000	36,500	38,250
WALKUP	14,150	17,350	22,150	26,900	30,300	33,550	35,650
ELEVATOR-STRUCTURE	23,650	27,350	34,750	------	------	------	------
BRUNSWICK							
DETACHED AND SEMIDETACHED	14,450	17,400	21,400	25,600	30,750	34,300	35,950
ROW DWELLINGS	13,950	16,900	20,900	24,800	29,850	33,250	34,800
WALKUP	12,800	15,900	20,150	23,900	27,700	30,350	31,900
ELEVATOR-STRUCTURE	25,150	29,250	36,950	------	------	------	------
COLUMBUS							
DETACHED AND SEMIDETACHED	14,950	18,050	22,400	26,850	32,300	35,850	37,500
ROW DWELLINGS	14,850	17,850	21,950	26,200	31,450	34,950	36,500
WALKUP	13,850	17,000	21,750	25,550	29,700	32,950	34,250
ELEVATOR-STRUCTURE	25,050	29,050	36,800	------	------	------	------
MACON							
DETACHED AND SEMIDETACHED	15,300	18,150	22,750	27,050	32,700	36,050	37,900
ROW DWELLINGS	14,950	18,000	22,050	26,350	31,750	35,350	36,900
WALKUP	13,500	16,600	21,050	24,900	28,900	31,850	33,250
ELEVATOR-STRUCTURE	25,050	29,050	36,800	------	------	------	------
ROME							
DETACHED AND SEMIDETACHED	14,500	17,450	21,700	25,900	31,100	34,450	36,100
ROW DWELLINGS	14,250	17,150	21,150	25,250	30,150	33,600	35,150
WALKUP	13,000	16,000	20,500	24,100	27,850	30,800	32,400
ELEVATOR-STRUCTURE	24,650	28,750	36,450	------	------	------	------
SAVANNAH							
DETACHED AND SEMIDETACHED	14,450	17,400	21,400	25,800	30,750	34,200	35,850
ROW DWELLINGS	13,950	16,900	20,900	24,800	29,850	33,250	34,900
WALKUP	12,800	15,900	20,150	23,800	27,700	30,350	31,900
ELEVATOR-STRUCTURE	25,150	29,250	36,950	------	------	------	------
VALDOSTA							
DETACHED AND SEMIDETACHED	14,900	17,950	22,300	26,700	32,050	35,900	37,150
ROW DWELLINGS	14,650	17,650	21,800	25,950	31,050	34,850	36,200
WALKUP	13,750	16,850	21,500	25,350	29,300	32,400	33,850
ELEVATOR-STRUCTURE	24,650	28,750	36,450	------	------	------	------
KENTUCKY							
LOUISVILLE							
DETACHED AND SEMIDETACHED	17,750	21,200	26,150	31,400	37,750	41,850	43,900
ROW DWELLINGS	16,850	20,150	24,900	29,900	35,950	39,950	41,900
WALKUP	16,800	20,000	24,750	29,700	35,800	39,650	41,600
ELEVATOR-STRUCTURE	31,700	36,950	46,800	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION IV--CONTINUED							
KENTUCKY --CONTINUED							
ASHLAND							
DETACHED AND SEMIDETACHED	18,300	21,850	27,000	32,300	37,950	43,100	45,200
ROW DWELLINGS	17,350	20,800	25,500	30,850	37,050	41,100	43,150
WALKUP	17,250	20,650	25,500	30,600	36,850	40,800	42,800
ELEVATOR-STRUCTURE	32,700	38,250	48,300	------	------	------	------
COVINGTON							
DETACHED AND SEMIDETACHED	18,300	21,850	27,000	32,300	37,950	43,100	45,200
ROW DWELLINGS	17,350	20,800	25,600	30,850	37,050	41,100	43,150
WALKUP	17,250	20,650	25,500	30,600	36,850	40,800	42,800
ELEVATOR-STRUCTURE	33,500	39,150	49,150	------	------	------	------
MIDDLESBORO							
DETACHED AND SEMIDETACHED	20,350	24,350	30,100	36,100	43,450	48,100	50,500
ROW DWELLINGS	19,400	23,200	28,650	34,450	41,400	45,900	48,200
WALKUP	19,300	23,000	28,500	34,200	41,150	45,600	47,850
ELEVATOR-STRUCTURE	31,700	36,950	46,800	------	------	------	------
OWENSBORO							
DETACHED AND SEMIDETACHED	17,750	21,200	26,150	31,400	37,750	41,850	43,900
ROW DWELLINGS	16,850	20,150	24,900	29,900	35,950	39,950	41,900
WALKUP	16,800	20,000	24,750	29,700	35,800	39,650	41,600
ELEVATOR-STRUCTURE	32,050	37,300	47,200	------	------	------	------
PADUCAH							
DETACHED AND SEMIDETACHED	17,300	21,400	26,450	31,650	38,150	42,250	44,400
ROW DWELLINGS	17,100	20,400	25,100	30,200	36,350	40,300	42,300
WALKUP	16,950	20,250	25,050	30,000	36,150	40,100	42,050
ELEVATOR-STRUCTURE	30,050	35,150	44,350	------	------	------	------
MISSISSIPPI							
JACKSON							
DETACHED AND SEMIDETACHED	15,650	19,000	23,400	27,950	33,700	37,350	39,100
ROW DWELLINGS	14,600	17,600	21,550	25,800	31,000	34,250	36,150
WALKUP	12,350	15,400	19,800	23,300	28,900	29,650	31,150
ELEVATOR-STRUCTURE	21,450	24,800	31,450	------	------	------	------
CORINTH							
DETACHED AND SEMIDETACHED	15,950	19,350	23,900	28,550	34,450	38,200	39,950
ROW DWELLINGS	14,250	17,400	21,550	25,550	30,950	34,200	35,900
WALKUP	12,900	15,950	20,300	23,900	27,900	30,500	32,050
ELEVATOR-STRUCTURE	21,900	25,300	31,950	------	------	------	------
GREENVILLE							
DETACHED AND SEMIDETACHED	15,650	19,000	23,400	27,950	33,700	37,350	39,100
ROW DWELLINGS	14,600	17,600	21,550	25,800	31,000	34,250	36,150
WALKUP	12,350	15,400	19,800	23,300	28,900	29,650	31,150
ELEVATOR-STRUCTURE	21,200	24,750	31,350	------	------	------	------
GREENWOOD							
DETACHED AND SEMIDETACHED	15,650	19,000	23,400	27,950	33,700	37,350	39,100
ROW DWELLINGS	14,600	17,600	21,550	25,800	31,000	34,250	36,150
WALKUP	12,900	16,100	20,400	24,050	27,950	30,750	32,300
ELEVATOR-STRUCTURE	21,450	24,800	31,450	------	------	------	------
GULFPORT							
DETACHED AND SEMIDETACHED	15,700	19,100	23,450	28,000	33,750	37,400	39,300
ROW DWELLINGS	14,650	17,650	21,750	25,850	31,050	34,400	36,200
WALKUP	12,150	15,300	19,350	22,700	26,400	29,000	30,300
ELEVATOR-STRUCTURE	21,800	25,250	31,850	------	------	------	------
HATTIESBURG							
DETACHED AND SEMIDETACHED	15,650	19,000	23,400	27,950	33,700	37,350	39,100
ROW DWELLINGS	14,600	17,600	21,550	25,800	31,000	34,250	36,150
WALKUP	12,350	15,400	19,800	23,300	28,900	29,650	31,150
ELEVATOR-STRUCTURE	21,450	24,800	31,450	------	------	------	------
SOUTHAVEN							
DETACHED AND SEMIDETACHED	15,500	18,600	23,150	27,400	33,100	36,850	38,550
ROW DWELLINGS	14,300	17,350	21,400	25,300	30,500	33,900	35,450
WALKUP	13,100	16,300	20,500	24,400	28,350	31,400	32,750
ELEVATOR-STRUCTURE	20,950	24,500	31,000	------	------	------	------
NORTH CAROLINA							
GREENSBORO							
DETACHED AND SEMIDETACHED	15,900	18,950	23,050	27,600	32,250	36,500	38,100
ROW DWELLINGS	15,250	18,050	22,350	26,350	31,650	35,150	36,750
WALKUP	13,400	16,250	20,550	24,150	28,000	30,600	32,200
ELEVATOR-STRUCTURE	24,250	28,400	35,950	------	------	------	------
ASHEVILLE							
DETACHED AND SEMIDETACHED	16,300	19,450	23,800	28,350	33,900	37,650	39,400
ROW DWELLINGS	16,050	19,150	23,350	27,600	33,150	36,900	38,600
WALKUP	14,100	17,450	21,950	25,750	29,700	32,150	34,250
ELEVATOR-STRUCTURE	25,150	29,000	36,700	------	------	------	------
CHARLOTTE							
DETACHED AND SEMIDETACHED	16,400	19,200	23,400	27,950	33,350	37,050	38,800
ROW DWELLINGS	15,800	18,550	22,750	26,850	32,000	35,550	37,200
WALKUP	14,100	17,350	21,950	25,700	29,600	32,400	34,100
ELEVATOR-STRUCTURE	24,350	28,400	35,950	------	------	------	------
DURHAM							
DETACHED AND SEMIDETACHED	15,550	18,500	22,700	27,050	32,300	36,000	37,650
ROW DWELLINGS	15,300	18,050	22,200	26,200	31,550	34,900	36,550
WALKUP	13,250	15,550	20,550	24,100	27,800	30,300	32,050
ELEVATOR-STRUCTURE	24,200	28,350	35,800	------	------	------	------
ELIZABETH CITY							
DETACHED AND SEMIDETACHED	17,050	20,450	24,650	29,650	35,400	39,450	41,050
ROW DWELLINGS	15,200	18,300	22,350	26,700	32,000	35,500	37,000
WALKUP	14,750	17,450	22,100	25,750	29,750	32,850	34,350
ELEVATOR-STRUCTURE	24,750	28,800	36,400	------	------	------	------
GREENVILLE							
DETACHED AND SEMIDETACHED	15,600	18,650	22,750	27,050	32,500	36,100	37,700
ROW DWELLINGS	15,300	18,100	22,300	26,100	31,450	34,850	36,500
WALKUP	12,900	15,900	20,200	23,550	27,150	29,700	31,350
ELEVATOR-STRUCTURE	23,950	27,200	33,800	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION IV--CONTINUED							
NORTH CAROLINA --CONTINUED							
RALEIGH							
DETACHED AND SEMIDETACHED	15,600	18,750	22,800	27,200	32,600	36,100	37,700
ROW DWELLINGS	15,300	18,250	22,200	26,200	31,550	34,900	36,550
WALKUP	13,050	16,150	20,250	24,050	27,700	30,900	32,050
ELEVATOR-STRUCTURE	24,200	28,350	35,800	------	------	------	------
WILMINGTON							
DETACHED AND SEMIDETACHED	15,200	18,300	22,500	27,050	32,600	36,150	37,750
ROW DWELLINGS	14,050	17,900	21,650	25,450	30,400	33,800	35,400
WALKUP	13,850	17,000	21,400	24,950	28,950	31,650	33,200
ELEVATOR-STRUCTURE	24,350	28,050	34,900	------	------	------	------
WINSTON-SALEM							
DETACHED AND SEMIDETACHED	14,000	19,050	23,300	27,850	33,350	36,750	38,600
ROW DWELLINGS	13,150	16,050	22,000	26,000	31,200	34,650	36,150
WALKUP	13,700	16,800	21,150	24,700	28,550	31,100	32,750
ELEVATOR-STRUCTURE	24,200	28,350	35,800	------	------	------	------
FAYETTEVILLE							
DETACHED AND SEMIDETACHED	15,600	18,750	22,800	27,200	32,600	36,100	37,700
ROW DWELLINGS	15,200	18,050	22,000	26,000	31,200	34,650	36,150
WALKUP	13,700	16,800	21,250	24,800	28,700	31,350	32,900
ELEVATOR-STRUCTURE	23,750	27,200	33,750	------	------	------	------
SOUTH CAROLINA							
COLUMBIA							
DETACHED AND SEMIDETACHED	15,450	18,700	23,000	27,500	33,100	36,700	38,500
ROW DWELLINGS	14,150	16,950	20,850	24,750	29,950	33,250	34,800
WALKUP	12,400	15,400	19,600	23,550	26,750	29,400	31,100
ELEVATOR-STRUCTURE	26,300	30,600	38,500	------	------	------	------
AIKEN							
DETACHED AND SEMIDETACHED	15,450	18,700	23,000	27,500	33,050	36,750	38,550
ROW DWELLINGS	14,100	16,950	20,850	24,750	29,950	33,150	34,800
WALKUP	12,900	16,100	20,350	24,050	27,850	30,750	32,450
ELEVATOR-STRUCTURE	26,750	31,000	39,350	------	------	------	------
ANDERSON							
DETACHED AND SEMIDETACHED	15,250	18,500	22,700	27,200	32,750	36,300	38,250
ROW DWELLINGS	13,950	16,700	20,700	24,600	29,650	32,850	34,300
WALKUP	12,000	14,800	18,950	22,500	25,850	28,600	30,100
ELEVATOR-STRUCTURE	26,600	30,850	38,650	------	------	------	------
BEAUFORT							
DETACHED AND SEMIDETACHED	15,700	19,150	23,500	28,150	33,850	37,550	39,500
ROW DWELLINGS	14,450	17,600	21,350	25,400	30,500	33,950	35,650
WALKUP	12,750	15,850	20,000	23,550	27,450	30,200	31,700
ELEVATOR-STRUCTURE	27,050	31,250	39,300	------	------	------	------
CHARLESTON							
DETACHED AND SEMIDETACHED	16,950	20,550	25,300	30,400	36,500	40,450	42,550
ROW DWELLINGS	15,500	18,550	23,200	27,550	33,100	36,750	38,450
WALKUP	13,300	16,750	21,150	24,950	28,950	31,800	33,450
ELEVATOR-STRUCTURE	27,650	32,000	40,500	------	------	------	------
FLORENCE							
DETACHED AND SEMIDETACHED	14,750	17,950	22,000	26,500	31,800	35,450	37,050
ROW DWELLINGS	13,450	16,150	20,000	23,900	28,800	31,850	33,400
WALKUP	11,850	14,900	18,850	22,150	25,700	28,350	30,050
ELEVATOR-STRUCTURE	26,750	31,000	39,350	------	------	------	------
GREENVILLE							
DETACHED AND SEMIDETACHED	15,500	18,800	23,200	27,550	33,300	37,000	38,750
ROW DWELLINGS	14,200	17,050	20,950	24,950	30,100	33,400	34,950
WALKUP	12,050	15,150	19,050	22,500	26,100	28,900	30,300
ELEVATOR-STRUCTURE	26,750	31,000	39,350	------	------	------	------
GREENWOOD							
DETACHED AND SEMIDETACHED	15,500	18,800	23,300	27,700	33,250	37,000	38,800
ROW DWELLINGS	14,200	17,050	21,050	24,950	30,100	33,550	34,950
WALKUP	12,450	15,450	19,750	23,300	26,850	29,900	31,450
ELEVATOR-STRUCTURE	26,800	30,950	38,650	------	------	------	------
MYRTLE BEACH							
DETACHED AND SEMIDETACHED	15,700	19,150	23,500	28,150	33,850	37,550	39,500
ROW DWELLINGS	14,450	17,600	21,350	25,400	30,500	33,950	35,650
WALKUP	12,750	15,850	20,000	23,550	27,450	30,200	31,700
ELEVATOR-STRUCTURE	27,050	31,250	39,300	------	------	------	------
NORTH AUGUSTA							
DETACHED AND SEMIDETACHED	16,450	19,850	24,400	29,250	35,050	38,850	40,850
ROW DWELLINGS	14,800	17,950	22,150	26,150	31,800	35,150	36,750
WALKUP	13,100	16,350	20,800	24,300	28,250	31,300	32,900
ELEVATOR-STRUCTURE	27,900	32,400	40,900	------	------	------	------
ORANGEBURG							
DETACHED AND SEMIDETACHED	15,450	18,700	23,000	27,500	33,100	36,700	38,500
ROW DWELLINGS	14,150	16,950	20,850	24,750	29,950	33,250	34,800
WALKUP	12,400	15,400	19,600	23,550	26,750	29,400	31,100
ELEVATOR-STRUCTURE	26,300	30,600	38,500	------	------	------	------
ROCKHILL							
DETACHED AND SEMIDETACHED	15,550	18,950	23,300	28,050	33,500	37,350	39,150
ROW DWELLINGS	14,350	17,250	21,150	25,100	30,300	33,750	35,250
WALKUP	12,650	15,850	19,900	23,550	27,250	30,050	31,650
ELEVATOR-STRUCTURE	26,750	31,000	39,350	------	------	------	------
SPARTANBURG							
DETACHED AND SEMIDETACHED	15,950	19,250	23,550	28,300	34,100	37,750	39,550
ROW DWELLINGS	14,450	17,400	21,450	25,500	30,800	34,250	35,700
WALKUP	12,750	15,950	20,050	23,650	27,550	30,300	31,800
ELEVATOR-STRUCTURE	26,750	31,000	39,350	------	------	------	------
TENNESSEE							
KNOXVILLE							
DETACHED AND SEMIDETACHED	16,400	19,700	24,250	29,100	35,150	38,850	40,750
ROW DWELLINGS	14,900	17,900	22,200	26,400	31,800	35,150	36,950
WALKUP	13,000	16,200	20,550	24,350	28,250	31,150	32,700
ELEVATOR-STRUCTURE	24,400	28,350	35,750	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION IV--CONTINUED							
TENNESSEE --CONTINUED							
CHATTANOOGA							
DETACHED AND SEMIDETACHED	16,900	19,100	23,500	28,200	34,000	37,400	38,300
ROW DWELLINGS	15,750	18,850	23,500	27,900	33,500	37,250	39,100
WALKUP	14,000	17,500	22,200	26,250	30,500	33,800	35,300
ELEVATOR-STRUCTURE	26,200	30,350	38,200	------	------	------	------
JOHNSON CITY							
DETACHED AND SEMIDETACHED	15,550	18,750	23,050	27,450	33,250	36,850	38,550
ROW DWELLINGS	14,200	16,950	21,000	25,100	30,100	33,300	35,050
WALKUP	13,000	16,200	20,550	24,350	28,200	31,050	32,700
ELEVATOR-STRUCTURE	24,400	28,350	35,750	------	------	------	------
KINGSPORT							
DETACHED AND SEMIDETACHED	16,100	19,500	23,850	28,550	34,550	38,100	40,100
ROW DWELLINGS	14,700	17,700	21,800	25,900	31,200	34,800	36,300
WALKUP	12,350	15,300	19,250	22,900	26,500	29,350	30,800
ELEVATOR-STRUCTURE	24,400	28,350	35,750	------	------	------	------
OAK RIDGE							
DETACHED AND SEMIDETACHED	15,900	19,100	23,550	28,200	33,950	37,750	39,490
ROW DWELLINGS	14,500	17,500	21,550	25,700	30,950	34,200	36,000
WALKUP	12,950	16,200	20,500	24,300	28,200	31,050	32,600
ELEVATOR-STRUCTURE	24,400	28,350	35,750	------	------	------	------
MEMPHIS							
DETACHED AND SEMIDETACHED	16,400	19,900	24,500	29,250	35,250	39,250	41,000
ROW DWELLINGS	15,550	18,900	23,450	27,800	33,250	37,150	38,950
WALKUP	13,800	17,050	21,850	25,750	29,800	33,800	34,450
ELEVATOR-STRUCTURE	24,450	28,350	35,700	------	------	------	------
JACKSON							
DETACHED AND SEMIDETACHED	17,750	21,450	26,400	31,550	38,100	42,350	44,150
ROW DWELLINGS	16,800	20,500	25,250	29,850	36,000	40,200	42,200
WALKUP	15,350	18,900	24,350	28,700	33,100	36,450	38,350
ELEVATOR-STRUCTURE	24,450	28,350	35,700	------	------	------	------
UNION CITY							
DETACHED AND SEMIDETACHED	17,800	21,600	26,550	31,750	38,400	42,600	44,800
ROW DWELLINGS	16,900	20,500	25,350	30,150	36,400	40,500	42,500
WALKUP	13,550	16,650	21,400	25,250	29,250	32,150	33,850
ELEVATOR-STRUCTURE	26,700	30,850	39,000	------	------	------	------
NASHVILLE							
DETACHED AND SEMIDETACHED	15,800	18,950	23,350	27,900	33,600	37,500	39,100
ROW DWELLINGS	15,100	18,400	22,500	26,850	32,350	36,000	37,800
WALKUP	13,750	17,150	21,800	25,700	29,900	32,900	34,600
ELEVATOR-STRUCTURE	22,700	26,900	33,150	------	------	------	------
CLARKSVILLE							
DETACHED AND SEMIDETACHED	15,100	18,350	22,550	26,900	32,500	36,150	37,850
ROW DWELLINGS	14,700	17,650	21,700	26,000	31,150	34,650	36,400
WALKUP	12,650	15,800	20,200	23,650	27,500	30,300	31,750
ELEVATOR-STRUCTURE	23,750	27,650	35,050	------	------	------	------
COLUMBIA							
DETACHED AND SEMIDETACHED	15,800	19,000	23,500	28,000	33,650	37,550	39,300
ROW DWELLINGS	15,150	18,450	22,550	26,950	32,400	36,050	37,850
WALKUP	13,850	17,250	22,150	25,800	30,200	33,150	34,900
ELEVATOR-STRUCTURE	24,450	28,750	36,400	------	------	------	------
REGION V							
ILLINOIS							
CHICAGO							
DETACHED AND SEMIDETACHED	26,900	32,850	40,200	47,900	57,600	64,250	67,200
ROW DWELLINGS	25,500	30,950	37,900	45,300	54,550	60,850	63,550
WALKUP	22,500	27,900	35,250	41,850	45,200	53,300	56,000
ELEVATOR-STRUCTURE	31,200	36,400	46,000	------	------	------	------
MOLINE							
DETACHED AND SEMIDETACHED	21,200	25,750	31,800	37,800	45,650	50,700	53,050
ROW DWELLINGS	19,550	23,650	29,150	34,700	41,850	46,450	48,750
WALKUP	18,150	22,600	28,550	33,950	36,450	43,100	45,100
ELEVATOR-STRUCTURE	31,200	36,350	46,000	------	------	------	------
SPRINGFIELD							
DETACHED AND SEMIDETACHED	31,750	36,400	32,450	38,850	46,700	51,850	54,350
ROW DWELLINGS	21,000	25,500	31,300	37,550	45,100	50,050	52,450
WALKUP	19,150	23,250	28,500	34,100	41,000	45,500	47,750
ELEVATOR-STRUCTURE	26,400	30,600	38,650	------	------	------	------
BELLEVILLE							
DETACHED AND SEMIDETACHED	22,100	26,600	33,050	39,350	47,300	52,600	55,200
ROW DWELLINGS	20,600	24,650	30,550	36,300	43,550	48,750	50,850
WALKUP	19,050	23,700	30,150	35,550	41,200	45,800	47,850
ELEVATOR-STRUCTURE	27,950	32,400	40,850	------	------	------	------
EAST ST LOUIS							
DETACHED AND SEMIDETACHED	22,000	26,550	33,050	39,400	47,200	52,550	55,000
ROW DWELLINGS	20,450	24,550	30,550	36,200	43,500	48,700	50,800
WALKUP	19,100	23,650	30,150	35,550	41,000	45,350	47,600
ELEVATOR-STRUCTURE	27,900	32,350	40,950	------	------	------	------
INDIANA							
INDIANAPOLIS							
DETACHED AND SEMIDETACHED	18,700	22,600	27,750	33,200	39,850	44,350	46,350
ROW DWELLINGS	15,650	18,900	24,000	27,900	33,350	37,250	38,850
WALKUP	15,850	19,900	25,000	29,800	34,200	37,800	39,900
ELEVATOR-STRUCTURE	28,250	32,950	41,650	------	------	------	------
BLOOMINGTON							
DETACHED AND SEMIDETACHED	18,800	22,650	28,000	33,450	40,100	44,800	46,750
ROW DWELLINGS	17,800	21,400	26,450	31,400	37,800	42,050	43,850
WALKUP	16,700	20,900	26,350	31,200	36,250	40,000	41,800
ELEVATOR-STRUCTURE	28,850	33,350	42,450	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION V--CONTINUED							
INDIANA --CONTINUED							
EVANSVILLE							
DETACHED AND SEMIDETACHED	16,350	22,150	27,300	32,750	39,200	41,900	45,750
ROW DWELLINGS	17,650	21,100	26,050	30,950	37,300	41,650	43,450
WALKUP	16,250	20,400	25,800	30,450	35,300	38,650	40,750
ELEVATOR-STRUCTURE	27,850	32,500	41,200	------	------	------	------
FORT WAYNE							
DETACHED AND SEMIDETACHED	18,100	21,850	26,950	32,050	38,550	43,250	44,850
ROW DWELLINGS	16,950	20,500	25,100	30,000	36,000	40,250	42,050
WALKUP	15,650	19,550	24,950	29,300	33,950	37,450	39,350
ELEVATOR-STRUCTURE	28,200	32,550	41,500	------	------	------	------
GARY							
DETACHED AND SEMIDETACHED	20,750	25,150	31,050	37,000	44,400	49,250	51,650
ROW DWELLINGS	20,400	24,700	30,550	36,250	43,600	48,800	50,750
WALKUP	19,150	23,850	30,050	35,500	38,600	45,200	47,400
ELEVATOR-STRUCTURE	28,300	32,750	41,500	------	------	------	------
HAMMOND							
DETACHED AND SEMIDETACHED	20,300	24,750	30,450	36,200	43,500	48,450	50,650
ROW DWELLINGS	19,700	23,850	29,400	34,850	41,900	46,850	48,850
WALKUP	17,700	22,150	27,950	33,050	38,300	42,100	44,300
ELEVATOR-STRUCTURE	28,800	33,150	42,250	------	------	------	------
LAFAYETTE							
DETACHED AND SEMIDETACHED	19,150	23,900	28,500	34,000	40,650	45,450	47,600
ROW DWELLINGS	17,800	21,450	26,550	31,650	38,050	42,400	44,250
WALKUP	16,350	20,450	26,000	30,700	35,500	39,150	41,050
ELEVATOR-STRUCTURE	29,100	33,750	42,650	------	------	------	------
SOUTH BEND							
DETACHED AND SEMIDETACHED	19,250	23,300	28,650	34,250	41,100	45,800	47,900
ROW DWELLINGS	18,650	22,600	27,750	33,000	39,650	44,350	46,300
WALKUP	17,000	21,200	26,700	31,600	36,500	40,200	42,200
ELEVATOR-STRUCTURE	29,300	34,100	43,100	------	------	------	------
TERRE HAUTE							
DETACHED AND SEMIDETACHED	19,800	23,950	29,600	35,200	42,200	47,000	49,150
ROW DWELLINGS	19,450	23,300	28,850	34,400	41,150	46,000	48,150
WALKUP	18,300	22,600	28,700	34,050	39,350	43,250	45,500
ELEVATOR-STRUCTURE	29,700	34,500	43,850	------	------	------	------
MICHIGAN							
DETROIT							
DETACHED AND SEMIDETACHED	24,050	25,450	31,200	37,300	44,800	50,000	52,200
ROW DWELLINGS	19,400	23,400	28,900	34,400	41,500	46,150	48,300
WALKUP	18,300	22,600	28,750	33,950	39,250	43,350	45,550
ELEVATOR-STRUCTURE	28,900	33,650	42,650	------	------	------	------
ANN ARBOR							
DETACHED AND SEMIDETACHED	25,900	27,350	33,500	40,100	48,300	53,700	56,100
ROW DWELLINGS	20,850	25,200	31,100	37,000	44,700	49,600	52,000
WALKUP	19,050	23,500	29,800	35,300	40,700	45,100	47,200
ELEVATOR-STRUCTURE	28,900	33,650	42,650	------	------	------	------
FLINT							
DETACHED AND SEMIDETACHED	26,850	28,400	34,950	41,750	50,150	55,850	58,750
ROW DWELLINGS	21,800	26,300	32,400	38,550	46,250	51,550	54,150
WALKUP	17,900	22,250	28,050	33,300	38,600	42,550	44,550
ELEVATOR-STRUCTURE	27,750	32,350	41,000	------	------	------	------
SAGINAW							
DETACHED AND SEMIDETACHED	28,850	26,300	32,250	38,350	46,200	51,500	53,950
ROW DWELLINGS	20,050	24,300	29,800	35,600	42,750	47,550	49,900
WALKUP	18,050	22,550	28,450	33,850	39,250	43,100	45,250
ELEVATOR-STRUCTURE	27,750	32,350	41,000	------	------	------	------
YPSILANTI							
DETACHED AND SEMIDETACHED	27,150	28,900	35,500	42,150	50,800	56,800	59,300
ROW DWELLINGS	22,250	26,500	32,900	39,100	47,200	52,300	54,950
WALKUP	18,300	22,700	28,600	33,950	39,250	43,350	45,600
ELEVATOR-STRUCTURE	28,550	33,400	42,200	------	------	------	------
GRAND RAPIDS							
DETACHED AND SEMIDETACHED	22,550	26,750	32,900	39,200	47,150	52,750	55,000
ROW DWELLINGS	18,200	22,000	27,250	32,300	38,750	43,250	45,200
WALKUP	17,000	21,450	27,100	31,900	37,150	40,950	42,850
ELEVATOR-STRUCTURE	27,400	31,950	40,300	------	------	------	------
MT PLEASANT							
DETACHED AND SEMIDETACHED	23,050	27,900	34,300	40,850	49,250	55,000	57,400
ROW DWELLINGS	19,050	22,900	28,400	33,650	40,350	45,100	47,200
WALKUP	17,750	22,350	28,300	33,300	38,700	42,700	44,700
ELEVATOR-STRUCTURE	28,600	33,350	41,950	------	------	------	------
BATTLE CREEK							
DETACHED AND SEMIDETACHED	22,700	27,400	33,650	40,200	48,400	53,900	56,300
ROW DWELLINGS	18,650	22,450	27,750	33,100	39,850	44,400	46,400
WALKUP	17,000	21,150	26,950	31,800	36,800	40,700	42,650
ELEVATOR-STRUCTURE	28,150	32,700	41,150	------	------	------	------
BENTON HARBOR							
DETACHED AND SEMIDETACHED	24,450	29,550	36,300	43,300	52,050	58,250	60,700
ROW DWELLINGS	20,200	24,300	30,000	35,700	42,850	45,650	49,900
WALKUP	18,200	22,650	28,500	34,000	39,100	43,300	45,500
ELEVATOR-STRUCTURE	29,450	34,350	43,300	------	------	------	------
JACKSON							
DETACHED AND SEMIDETACHED	23,500	28,600	35,250	41,800	50,600	56,300	58,850
ROW DWELLINGS	19,550	23,350	28,950	34,500	41,550	46,250	48,400
WALKUP	18,250	22,950	28,950	34,350	39,450	43,850	45,850
ELEVATOR-STRUCTURE	29,300	34,050	43,000	------	------	------	------
LANSING							
DETACHED AND SEMIDETACHED	26,250	31,700	39,100	46,550	55,950	62,500	65,450
ROW DWELLINGS	21,700	30,650	32,300	38,400	46,150	51,200	53,800
WALKUP	17,750	22,150	28,050	33,200	38,500	42,550	44,600
ELEVATOR-STRUCTURE	28,500	33,450	42,150	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION V--CONTINUED							
MICHIGAN --CONTINUED							
MARQUETTE							
DETACHED AND SEMIDETACHED	24,350	29,550	36,250	43,200	52,100	58,150	60,750
ROW DWELLINGS	20,100	24,300	29,900	35,650	42,950	47,900	50,050
WALKUP	19,750	23,800	29,250	34,750	42,000	46,850	49,000
ELEVATOR-STRUCTURE	29,650	34,700	43,600	------	------	------	------
MUSKEGON							
DETACHED AND SEMIDETACHED	22,250	26,850	33,250	39,550	47,600	53,250	55,450
ROW DWELLINGS	18,450	22,150	27,400	32,500	38,950	43,550	45,750
WALKUP	15,150	18,900	23,900	28,350	32,650	36,050	37,800
ELEVATOR-STRUCTURE	27,400	31,950	40,300	------	------	------	------
TRAVERSE CITY							
DETACHED AND SEMIDETACHED	24,350	29,450	36,300	43,300	51,950	58,150	60,600
ROW DWELLINGS	20,200	24,300	30,000	35,600	42,850	47,800	50,000
WALKUP	16,600	20,650	26,150	31,050	35,850	39,800	41,400
ELEVATOR-STRUCTURE	30,100	35,100	44,150	------	------	------	------
MINNESOTA							
MINNEAPOLIS							
DETACHED AND SEMIDETACHED	23,300	28,200	34,850	41,650	49,950	55,600	58,150
ROW DWELLINGS	20,850	25,400	31,150	37,200	44,650	49,650	52,000
WALKUP	19,300	24,200	30,400	35,850	41,400	45,900	48,000
ELEVATOR-STRUCTURE	30,200	34,900	44,350	------	------	------	------
DULUTH							
DETACHED AND SEMIDETACHED	23,700	28,650	35,200	42,200	50,700	56,550	59,050
ROW DWELLINGS	21,300	25,700	31,700	37,750	45,300	50,550	52,850
WALKUP	19,800	24,550	31,250	36,800	42,500	47,050	49,300
ELEVATOR-STRUCTURE	30,650	35,600	44,900	------	------	------	------
MANKATO							
DETACHED AND SEMIDETACHED	22,100	27,100	33,250	39,650	47,800	53,150	55,600
ROW DWELLINGS	20,600	24,800	30,650	36,550	44,050	48,950	51,050
WALKUP	19,300	23,700	30,300	35,800	41,250	45,500	47,950
ELEVATOR-STRUCTURE	28,800	33,400	42,200	------	------	------	------
ROCHESTER							
DETACHED AND SEMIDETACHED	22,800	27,600	34,100	40,600	48,950	54,350	56,850
ROW DWELLINGS	21,200	25,450	31,500	37,550	45,050	50,000	52,500
WALKUP	19,750	24,500	31,000	36,700	42,500	46,900	49,250
ELEVATOR-STRUCTURE	28,100	32,800	41,600	------	------	------	------
ST CLOUD							
DETACHED AND SEMIDETACHED	22,100	26,750	33,250	39,550	47,400	52,750	55,250
ROW DWELLINGS	20,800	25,150	31,000	37,000	44,300	49,550	51,650
WALKUP	19,050	23,700	30,200	35,650	41,200	45,450	47,650
ELEVATOR-STRUCTURE	27,850	32,300	40,800	------	------	------	------
WORTHINGTON							
DETACHED AND SEMIDETACHED	21,200	25,700	31,700	37,850	45,250	50,600	52,850
ROW DWELLINGS	19,800	23,700	29,300	34,850	41,950	46,600	48,850
WALKUP	18,050	22,500	28,550	33,650	38,850	42,800	45,100
ELEVATOR-STRUCTURE	27,600	32,150	40,700	------	------	------	------
OHIO							
CINCINNATI							
DETACHED AND SEMIDETACHED	20,600	24,950	30,850	36,800	44,050	49,150	51,500
ROW DWELLINGS	19,900	24,100	29,700	35,200	42,200	47,100	49,500
WALKUP	18,650	23,000	29,300	34,750	40,050	44,100	46,400
ELEVATOR-STRUCTURE	30,900	35,900	45,350	------	------	------	------
DAYTON							
DETACHED AND SEMIDETACHED	20,600	24,950	30,800	36,800	44,050	49,150	51,500
ROW DWELLINGS	20,300	24,650	30,400	36,150	43,350	48,300	50,650
WALKUP	18,650	23,000	29,300	34,750	40,050	44,100	46,400
ELEVATOR-STRUCTURE	30,900	35,900	45,350	------	------	------	------
CLEVELAND							
DETACHED AND SEMIDETACHED	19,850	24,350	29,700	35,600	42,700	47,550	49,850
ROW DWELLINGS	19,500	23,450	29,050	34,750	41,650	46,600	48,550
WALKUP	18,150	22,400	28,350	33,700	38,950	43,050	45,250
ELEVATOR-STRUCTURE	26,550	31,150	39,350	------	------	------	------
AKRON							
DETACHED AND SEMIDETACHED	19,650	23,850	29,300	35,050	42,100	46,850	49,150
ROW DWELLINGS	19,300	23,100	28,700	34,300	40,850	45,900	47,900
WALKUP	17,950	22,100	27,900	33,250	38,450	42,400	44,600
ELEVATOR-STRUCTURE	26,250	30,800	38,850	------	------	------	------
FINDLAY							
DETACHED AND SEMIDETACHED	18,200	22,150	27,100	32,350	38,900	43,350	45,250
ROW DWELLINGS	17,750	21,450	26,500	31,550	37,900	42,300	44,200
WALKUP	16,500	20,350	25,800	30,750	35,500	39,150	41,150
ELEVATOR-STRUCTURE	24,350	28,300	35,800	------	------	------	------
LORAIN							
DETACHED AND SEMIDETACHED	19,750	24,100	29,500	35,300	42,300	47,200	49,400
ROW DWELLINGS	19,400	23,150	28,600	34,400	41,100	46,050	48,150
WALKUP	18,050	22,200	28,050	33,350	38,600	42,600	44,700
ELEVATOR-STRUCTURE	26,350	30,900	38,000	------	------	------	------
MANSFIELD							
DETACHED AND SEMIDETACHED	16,500	22,650	27,700	33,100	39,750	44,250	46,350
ROW DWELLINGS	16,150	21,850	27,000	32,250	38,700	43,300	45,100
WALKUP	16,900	20,900	26,350	31,400	36,300	40,000	42,050
ELEVATOR-STRUCTURE	24,700	28,900	36,400	------	------	------	------
TOLEDO							
DETACHED AND SEMIDETACHED	19,850	24,350	29,700	35,600	42,700	47,550	49,850
ROW DWELLINGS	19,500	23,450	29,050	34,750	41,650	46,600	48,550
WALKUP	18,150	22,400	28,350	33,700	38,950	43,050	45,250
ELEVATOR-STRUCTURE	26,450	31,150	39,350	------	------	------	------
YOUNGSTOWN							
DETACHED AND SEMIDETACHED	19,200	23,500	28,500	34,150	41,000	45,700	47,900
ROW DWELLINGS	18,800	23,600	27,950	33,300	39,950	44,650	46,650
WALKUP	17,400	21,550	27,200	32,450	37,450	41,350	43,450
ELEVATOR-STRUCTURE	25,800	29,880	37,750	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION V--CONTINUED							
OHIO --CONTINUED							
COLUMBUS							
DETACHED AND SEMIDETACHED	20,000	24,100	29,850	35,600	42,750	47,650	49,900
ROW DWELLINGS	19,000	22,900	28,350	33,600	40,400	45,150	47,150
WALKUP	18,000	22,000	28,150	33,500	38,600	42,550	44,850
ELEVATOR-STRUCTURE	27,700	32,150	40,700	------	------	------	------
ATHENS							
DETACHED AND SEMIDETACHED	20,250	24,000	30,300	35,850	43,400	48,600	50,450
ROW DWELLINGS	18,700	22,350	27,600	33,000	39,550	44,100	46,150
WALKUP	17,350	21,050	27,500	32,550	37,650	41,450	43,750
ELEVATOR-STRUCTURE	28,000	32,850	41,300	------	------	------	------
LIMA							
DETACHED AND SEMIDETACHED	20,000	24,100	29,850	35,600	42,750	47,650	49,900
ROW DWELLINGS	18,000	22,350	27,600	32,950	39,550	44,050	46,150
WALKUP	17,400	21,700	27,500	32,600	37,700	41,500	43,650
ELEVATOR-STRUCTURE	27,700	32,150	40,700	------	------	------	------
NEWARK							
DETACHED AND SEMIDETACHED	19,500	23,600	29,100	34,700	41,700	46,650	48,600
ROW DWELLINGS	18,000	22,000	27,550	32,850	39,450	43,950	46,050
WALKUP	17,350	21,650	27,450	32,550	37,600	41,450	43,400
ELEVATOR-STRUCTURE	27,000	31,400	39,700	------	------	------	------
SPRINGFIELD							
DETACHED AND SEMIDETACHED	20,000	24,100	29,850	35,600	42,750	47,650	49,900
ROW DWELLINGS	18,800	22,800	28,050	33,500	40,200	44,600	46,750
WALKUP	17,800	22,050	27,850	33,200	38,100	42,150	44,300
ELEVATOR-STRUCTURE	27,700	32,150	40,700	------	------	------	------
SIDNEY							
DETACHED AND SEMIDETACHED	20,200	24,750	30,400	36,250	43,450	48,350	50,800
ROW DWELLINGS	18,750	22,850	27,800	33,300	39,750	44,350	46,400
WALKUP	17,450	21,700	27,750	33,100	37,950	41,950	44,000
ELEVATOR-STRUCTURE	28,200	32,800	41,400	------	------	------	------
ZANESVILLE							
DETACHED AND SEMIDETACHED	20,250	24,500	30,300	35,850	43,400	48,600	50,450
ROW DWELLINGS	19,300	23,250	28,700	34,150	41,000	45,900	48,000
WALKUP	17,850	22,250	28,050	33,450	38,600	42,450	44,800
ELEVATOR-STRUCTURE	28,500	32,650	41,300	------	------	------	------
WISCONSIN							
MILWAUKEE							
DETACHED AND SEMIDETACHED	24,800	30,150	37,150	44,300	53,250	59,350	62,200
ROW DWELLINGS	23,350	28,050	34,350	41,050	49,400	54,850	57,550
WALKUP	19,600	24,200	30,800	36,250	42,100	46,450	48,650
ELEVATOR-STRUCTURE	26,350	30,500	38,500	------	------	------	------
EAU CLAIRE							
DETACHED AND SEMIDETACHED	24,100	29,100	35,850	42,950	51,550	57,550	60,050
ROW DWELLINGS	22,800	26,950	33,300	39,600	47,600	52,950	55,500
WALKUP	19,700	24,450	31,050	36,600	42,500	46,600	49,000
ELEVATOR-STRUCTURE	25,600	29,750	37,550	------	------	------	------
GREEN BAY							
DETACHED AND SEMIDETACHED	23,050	27,800	34,250	41,050	49,100	54,950	57,550
ROW DWELLINGS	20,950	25,000	30,800	36,950	44,200	49,300	51,550
WALKUP	18,250	22,700	28,550	33,800	39,200	43,300	45,250
ELEVATOR-STRUCTURE	24,400	28,400	36,000	------	------	------	------
MADISON							
DETACHED AND SEMIDETACHED	24,400	29,700	36,500	43,550	52,500	58,450	61,100
ROW DWELLINGS	22,350	26,600	32,850	39,150	47,050	52,650	54,850
WALKUP	19,400	23,950	30,450	36,000	41,750	46,050	48,100
ELEVATOR-STRUCTURE	26,050	30,300	38,250	------	------	------	------
REEDSVILLE							
DETACHED AND SEMIDETACHED	23,500	28,450	34,950	41,950	50,150	56,150	58,800
ROW DWELLINGS	21,300	25,850	31,600	37,800	45,350	50,450	52,950
WALKUP	18,750	23,300	29,200	34,700	40,250	44,250	46,450
ELEVATOR-STRUCTURE	25,100	29,100	36,800	------	------	------	------
SUPERIOR							
DETACHED AND SEMIDETACHED	25,100	30,250	37,350	44,650	53,600	59,900	62,550
ROW DWELLINGS	23,400	28,050	34,550	41,300	49,800	55,150	57,900
WALKUP	20,400	25,200	31,850	37,750	43,650	48,200	50,550
ELEVATOR-STRUCTURE	26,800	30,950	39,150	------	------	------	------
WAUSAU							
DETACHED AND SEMIDETACHED	23,500	28,450	34,950	41,950	50,150	56,150	58,800
ROW DWELLINGS	21,250	25,750	31,350	37,700	45,050	50,350	52,800
WALKUP	18,750	23,200	29,100	34,550	39,850	44,050	46,200
ELEVATOR-STRUCTURE	24,950	28,950	36,750	------	------	------	------
REGION VI							
ARKANSAS							
LITTLE ROCK							
DETACHED AND SEMIDETACHED	17,450	21,150	26,150	31,150	37,400	41,700	43,350
ROW DWELLINGS	16,200	19,600	24,050	28,700	34,650	38,400	40,300
WALKUP	15,150	18,500	23,900	28,350	32,850	36,350	38,000
ELEVATOR-STRUCTURE	29,350	33,950	43,250	------	------	------	------
FAYETTEVILLE							
DETACHED AND SEMIDETACHED	17,400	20,900	25,950	30,800	37,250	41,250	43,150
ROW DWELLINGS	16,050	19,500	23,950	28,550	34,400	38,100	39,850
WALKUP	13,650	17,100	21,600	25,500	29,700	32,650	34,150
ELEVATOR-STRUCTURE	28,150	33,700	42,450	------	------	------	------
FORT SMITH							
DETACHED AND SEMIDETACHED	18,350	19,900	24,600	29,100	35,050	39,000	40,700
ROW DWELLINGS	15,400	18,650	23,100	27,450	33,950	38,000	39,400
WALKUP	14,450	17,850	22,600	26,700	30,900	34,150	35,750
ELEVATOR-STRUCTURE	29,600	34,450	43,550	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION VI--CONTINUED							
ARKANSAS --CONTINUED							
JONESBORO							
DETACHED AND SEMIDETACHED	16,250	19,550	24,350	28,800	34,700	38,600	40,100
ROW DWELLINGS	15,200	18,300	22,900	26,900	32,450	36,400	37,750
WALKUP	14,100	17,550	22,200	26,250	30,300	33,550	35,200
ELEVATOR-STRUCTURE	28,650	33,200	42,150	------	------	------	------
TEXARKANA							
DETACHED AND SEMIDETACHED	16,800	20,250	25,050	29,850	35,900	39,800	41,550
ROW DWELLINGS	15,400	18,750	23,100	27,500	33,150	36,850	38,500
WALKUP	14,450	18,100	22,800	27,050	31,300	34,450	36,150
ELEVATOR-STRUCTURE	29,150	33,700	42,450	------	------	------	------
LOUISIANA							
NEW ORLEANS							
DETACHED AND SEMIDETACHED	17,300	21,000	25,700	30,550	37,050	41,200	42,800
ROW DWELLINGS	16,300	19,800	24,700	29,300	35,150	39,050	41,100
WALKUP	15,600	19,400	24,350	28,650	33,250	36,800	38,250
ELEVATOR-STRUCTURE	29,800	34,500	43,900	------	------	------	------
BATON ROUGE							
DETACHED AND SEMIDETACHED	18,600	22,350	27,650	32,700	39,400	44,050	45,750
ROW DWELLINGS	17,550	21,200	26,450	31,350	37,500	41,600	43,750
WALKUP	14,850	18,550	23,350	27,650	31,850	35,350	36,850
ELEVATOR-STRUCTURE	29,500	34,100	43,450	------	------	------	------
HOUMA							
DETACHED AND SEMIDETACHED	17,250	20,750	25,550	30,350	36,700	40,700	42,400
ROW DWELLINGS	16,250	19,700	24,450	29,050	34,850	38,750	40,700
WALKUP	15,250	19,100	23,750	28,200	32,750	36,200	37,800
ELEVATOR-STRUCTURE	29,500	34,100	43,450	------	------	------	------
LAFAYETTE							
DETACHED AND SEMIDETACHED	17,250	20,750	25,550	30,350	36,700	40,700	42,400
ROW DWELLINGS	16,250	19,700	24,450	29,050	34,850	38,750	40,700
WALKUP	15,450	19,350	23,950	28,450	33,100	36,400	38,100
ELEVATOR-STRUCTURE	29,500	34,100	43,450	------	------	------	------
LAKE CHARLES							
DETACHED AND SEMIDETACHED	18,550	22,350	27,550	32,700	39,400	43,850	45,750
ROW DWELLINGS	17,500	21,150	26,450	31,350	37,500	41,600	43,750
WALKUP	15,700	19,650	24,700	29,200	33,800	37,500	39,100
ELEVATOR-STRUCTURE	29,800	34,500	43,900	------	------	------	------
SHREVEPORT							
DETACHED AND SEMIDETACHED	16,950	20,300	25,250	29,850	36,100	40,300	41,950
ROW DWELLINGS	15,550	19,050	23,550	28,000	33,800	37,500	39,150
WALKUP	13,350	16,600	21,150	25,000	28,850	32,000	33,550
ELEVATOR-STRUCTURE	29,250	34,000	43,050	------	------	------	------
ALEXANDRIA							
DETACHED AND SEMIDETACHED	15,400	18,400	22,850	27,250	32,650	36,600	38,150
ROW DWELLINGS	15,050	17,350	21,450	25,550	30,600	34,200	35,750
WALKUP	13,000	16,100	20,500	24,200	28,050	30,900	32,550
ELEVATOR-STRUCTURE	28,400	33,000	41,600	------	------	------	------
MARSHALL							
DETACHED AND SEMIDETACHED	15,450	18,450	22,950	27,350	32,800	36,650	38,200
ROW DWELLINGS	14,500	17,700	21,800	26,000	31,200	34,800	36,300
WALKUP	12,950	16,050	20,400	24,000	27,900	30,850	32,150
ELEVATOR-STRUCTURE	27,100	31,500	39,950	------	------	------	------
MONROE							
DETACHED AND SEMIDETACHED	15,300	18,300	22,600	26,900	32,450	36,250	37,650
ROW DWELLINGS	14,300	17,300	21,300	25,450	30,550	34,050	35,500
WALKUP	13,350	16,550	20,950	24,800	28,750	31,650	33,300
ELEVATOR-STRUCTURE	29,000	33,550	42,800	------	------	------	------
NEW MEXICO							
ALBUQUERQUE							
DETACHED AND SEMIDETACHED	18,350	22,000	24,550	29,200	35,100	39,300	40,950
ROW DWELLINGS	17,000	20,300	22,600	27,050	32,300	36,000	37,850
WALKUP	14,700	18,200	20,650	24,400	28,400	31,100	32,700
ELEVATOR-STRUCTURE	25,750	30,050	38,050	------	------	------	------
ALAMOGORDO							
DETACHED AND SEMIDETACHED	19,300	22,950	25,700	30,550	36,800	41,100	42,850
ROW DWELLINGS	17,650	21,150	23,550	28,100	33,550	37,350	39,250
WALKUP	15,250	18,950	21,400	25,300	29,350	32,350	34,000
ELEVATOR-STRUCTURE	24,250	28,200	35,550	------	------	------	------
ARTESIA							
DETACHED AND SEMIDETACHED	19,300	22,950	25,600	30,500	36,800	41,050	42,500
ROW DWELLINGS	17,650	21,150	23,600	28,300	33,700	37,500	39,350
WALKUP	15,350	19,000	21,400	25,700	29,550	32,650	34,100
ELEVATOR-STRUCTURE	24,600	28,600	36,200	------	------	------	------
CARLSBAD							
DETACHED AND SEMIDETACHED	19,500	23,450	26,100	31,100	37,400	41,700	43,350
ROW DWELLINGS	17,900	21,600	24,050	28,800	34,250	38,200	40,100
WALKUP	15,200	19,000	21,400	25,300	29,350	32,400	33,950
ELEVATOR-STRUCTURE	24,600	28,600	36,200	------	------	------	------
CLOVIS							
DETACHED AND SEMIDETACHED	19,300	22,950	25,600	30,500	36,800	41,050	42,500
ROW DWELLINGS	17,650	21,150	23,600	28,300	33,700	37,500	39,350
WALKUP	15,200	18,850	21,200	25,300	29,250	32,250	33,750
ELEVATOR-STRUCTURE	24,350	28,250	35,550	------	------	------	------
FORT SUMNER							
DETACHED AND SEMIDETACHED	19,850	24,000	26,750	31,750	38,300	42,800	44,550
ROW DWELLINGS	18,450	22,150	24,600	29,300	35,150	39,050	41,050
WALKUP	16,000	19,800	22,300	26,550	30,700	33,750	35,550
ELEVATOR-STRUCTURE	25,300	29,550	37,250	------	------	------	------
GALLUP							
DETACHED AND SEMIDETACHED	21,000	25,200	28,200	33,450	40,400	45,100	46,900
ROW DWELLINGS	19,050	22,700	25,450	30,200	36,150	40,250	42,200
WALKUP	16,350	20,400	23,050	27,400	31,750	34,900	36,500
ELEVATOR-STRUCTURE	25,900	30,350	38,150	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION VI--CONTINUED							
NEW MEXICO --CONTINUED							
[illegible]							
DETACHED AND SEMIDETACHED	19,300	22,950	25,600	30,500	36,800	41,050	42,500
ROW DWELLINGS	17,650	21,150	23,600	28,300	33,700	37,500	39,350
WALKUP	15,350	19,000	21,400	25,700	29,550	32,850	34,100
ELEVATOR-STRUCTURE	24,350	28,250	35,550	------	------	------	------
LAS CRUCES							
DETACHED AND SEMIDETACHED	19,300	22,950	25,600	30,500	36,800	41,050	42,500
ROW DWELLINGS	17,650	21,150	23,600	28,300	33,700	37,500	39,350
WALKUP	15,650	19,500	21,800	26,050	30,050	33,150	34,750
ELEVATOR-STRUCTURE	24,350	28,250	35,550	------	------	------	------
LAS VEGAS							
DETACHED AND SEMIDETACHED	19,700	23,750	26,450	31,400	37,900	42,300	44,050
ROW DWELLINGS	18,600	22,200	24,650	29,550	35,250	39,300	41,100
WALKUP	16,000	19,800	22,400	26,800	30,700	33,950	35,650
ELEVATOR-STRUCTURE	25,300	29,350	37,250	------	------	------	------
LOS ALAMOS							
DETACHED AND SEMIDETACHED	20,500	24,600	27,400	32,450	39,300	43,900	45,700
ROW DWELLINGS	19,050	22,700	25,450	30,200	36,000	40,250	42,250
WALKUP	16,450	20,400	23,050	27,350	31,550	34,850	36,500
ELEVATOR-STRUCTURE	25,850	30,200	38,100	------	------	------	------
RATON							
DETACHED AND SEMIDETACHED	19,550	23,500	26,200	31,150	37,550	41,950	43,650
ROW DWELLINGS	18,600	22,200	24,650	29,550	35,250	39,300	41,100
WALKUP	16,000	19,800	22,400	26,600	30,700	33,950	35,650
ELEVATOR-STRUCTURE	25,300	29,350	37,250	------	------	------	------
SANTA FE							
DETACHED AND SEMIDETACHED	19,600	23,500	26,300	31,200	37,600	42,100	43,750
ROW DWELLINGS	18,600	22,200	24,650	29,550	35,250	39,300	41,100
WALKUP	16,000	19,800	22,400	26,600	30,700	33,950	35,650
ELEVATOR-STRUCTURE	25,300	29,350	37,250	------	------	------	------
SILVER CITY							
DETACHED AND SEMIDETACHED	20,250	24,550	27,250	32,300	39,150	43,650	45,350
ROW DWELLINGS	18,800	22,550	25,150	29,950	35,900	39,900	41,950
WALKUP	16,300	20,300	22,950	27,050	31,350	34,600	36,250
ELEVATOR-STRUCTURE	25,750	29,950	37,950	------	------	------	------
TRUTH OR CONSEQUENCES							
DETACHED AND SEMIDETACHED	19,000	22,650	25,500	30,200	36,400	40,600	42,200
ROW DWELLINGS	17,600	20,900	23,500	28,050	33,350	37,250	38,900
WALKUP	15,200	18,850	21,350	25,250	29,300	32,450	33,750
ELEVATOR-STRUCTURE	23,900	27,950	35,300	------	------	------	------
FARMINGTON							
DETACHED AND SEMIDETACHED	20,500	24,600	27,500	32,700	39,400	44,050	45,800
ROW DWELLINGS	19,050	22,700	25,450	30,200	36,150	40,250	42,200
WALKUP	16,350	20,400	23,050	27,400	31,750	34,900	36,500
ELEVATOR-STRUCTURE	25,900	30,350	38,150	------	------	------	------
TERRA AMARILLO							
DETACHED AND SEMIDETACHED	20,500	24,600	27,400	32,450	39,300	43,900	45,700
ROW DWELLINGS	19,050	22,700	25,450	30,200	36,200	40,250	42,250
WALKUP	16,450	20,400	23,050	27,350	31,550	34,850	36,500
ELEVATOR-STRUCTURE	25,850	30,200	38,100	------	------	------	------
TAOS							
DETACHED AND SEMIDETACHED	23,200	27,700	30,950	36,750	44,100	49,550	51,500
ROW DWELLINGS	21,500	25,850	28,750	34,100	41,050	45,550	47,800
WALKUP	18,300	22,550	25,700	30,350	35,100	38,600	40,600
ELEVATOR-STRUCTURE	25,700	30,050	37,900	------	------	------	------
[illegible]							
DETACHED AND SEMIDETACHED	19,000	22,650	25,500	30,200	36,400	40,600	42,200
ROW DWELLINGS	17,600	20,900	23,500	28,050	33,350	37,250	38,900
WALKUP	15,200	18,850	21,350	25,250	29,300	32,250	33,750
ELEVATOR-STRUCTURE	23,900	27,950	35,300	------	------	------	------
RUIDOSO							
DETACHED AND SEMIDETACHED	20,500	24,600	27,400	32,450	39,300	43,900	45,700
ROW DWELLINGS	19,050	22,700	25,450	30,200	36,200	40,250	42,250
WALKUP	16,450	20,400	23,050	27,350	31,550	34,850	36,500
ELEVATOR-STRUCTURE	25,850	30,200	38,100	------	------	------	------
OKLAHOMA							
OKLAHOMA CITY							
DETACHED AND SEMIDETACHED	18,700	22,550	28,000	33,350	40,050	44,700	46,650
ROW DWELLINGS	16,400	19,800	24,300	29,050	34,850	38,950	40,550
WALKUP	14,750	18,350	23,300	27,550	32,100	35,200	37,000
ELEVATOR-STRUCTURE	24,100	30,100	38,050	------	------	------	------
ADA							
DETACHED AND SEMIDETACHED	19,050	22,700	28,300	33,650	40,500	45,250	47,050
ROW DWELLINGS	17,100	20,650	25,500	30,450	36,350	40,550	42,450
WALKUP	15,400	19,350	24,350	28,900	33,650	36,900	38,750
ELEVATOR-STRUCTURE	24,800	31,050	39,250	------	------	------	------
[illegible]							
DETACHED AND SEMIDETACHED	18,950	22,700	28,300	33,650	40,500	45,150	47,100
ROW DWELLINGS	17,650	21,200	26,100	31,100	37,350	41,650	43,450
WALKUP	16,300	20,200	25,500	30,250	35,150	38,750	40,500
ELEVATOR-STRUCTURE	27,250	31,600	39,950	------	------	------	------
ENID							
DETACHED AND SEMIDETACHED	19,500	23,300	28,950	34,650	41,650	46,400	48,300
ROW DWELLINGS	17,400	21,000	25,750	30,850	37,000	41,200	43,050
WALKUP	14,900	18,650	23,350	27,950	32,450	35,700	37,350
ELEVATOR-STRUCTURE	27,700	31,850	40,500	------	------	------	------
GUYMON							
DETACHED AND SEMIDETACHED	19,850	23,800	29,800	35,300	42,450	47,500	49,450
ROW DWELLINGS	17,800	21,300	26,200	31,250	37,600	41,900	43,700
WALKUP	16,050	19,700	25,100	29,700	34,450	38,150	39,950
ELEVATOR-STRUCTURE	28,100	32,700	41,250	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION VI--CONTINUED							
OKLAHOMA --CONTINUED							
LAWTON							
DETACHED AND SEMIDETACHED	18,650	22,650	28,200	33,650	40,550	45,150	47,050
ROW DWELLINGS	16,750	20,150	24,700	29,550	35,500	39,550	41,400
WALKUP	14,900	18,600	23,700	28,000	32,550	35,800	37,750
ELEVATOR-STRUCTURE	26,800	31,100	39,350	------	------	------	------
SHAWNEE							
DETACHED AND SEMIDETACHED	19,300	22,950	28,550	34,000	40,900	45,700	47,600
ROW DWELLINGS	17,100	20,650	25,500	30,450	36,350	40,550	42,450
WALKUP	15,400	19,350	24,350	28,900	33,650	36,900	38,750
ELEVATOR-STRUCTURE	27,100	31,400	39,400	------	------	------	------
STILLWATER							
DETACHED AND SEMIDETACHED	19,300	22,950	28,550	34,000	40,900	45,700	47,600
ROW DWELLINGS	17,100	20,650	25,500	30,450	36,350	40,550	42,450
WALKUP	15,400	19,350	24,350	28,900	33,650	36,900	38,750
ELEVATOR-STRUCTURE	27,100	31,400	39,400	------	------	------	------
WOODWARD							
DETACHED AND SEMIDETACHED	19,650	23,500	29,250	35,000	42,100	46,850	48,750
ROW DWELLINGS	17,800	21,000	26,350	30,850	37,000	41,200	43,050
WALKUP	15,650	19,550	24,650	29,250	34,050	37,400	39,300
ELEVATOR-STRUCTURE	27,950	32,100	40,400	------	------	------	------
TULSA							
DETACHED AND SEMIDETACHED	18,550	22,500	27,950	33,100	39,950	44,350	46,350
ROW DWELLINGS	16,350	19,950	24,450	29,050	34,900	38,900	40,750
WALKUP	15,450	19,300	24,350	28,800	33,500	36,850	38,750
ELEVATOR-STRUCTURE	26,900	31,050	39,300	------	------	------	------
BARTLESVILLE							
DETACHED AND SEMIDETACHED	19,350	23,350	28,900	34,450	41,300	46,050	48,100
ROW DWELLINGS	17,200	20,900	25,600	30,900	36,600	40,800	42,750
WALKUP	15,550	19,500	24,450	29,050	33,850	37,200	38,950
ELEVATOR-STRUCTURE	28,000	32,250	40,900	------	------	------	------
MCALESTER							
DETACHED AND SEMIDETACHED	19,300	23,050	28,600	34,100	40,850	45,600	47,500
ROW DWELLINGS	17,200	20,700	25,600	30,550	36,600	40,800	42,700
WALKUP	15,150	18,950	23,850	28,200	32,750	35,900	37,750
ELEVATOR-STRUCTURE	27,600	32,150	40,700	------	------	------	------
MUSKOGEE							
DETACHED AND SEMIDETACHED	19,250	23,150	28,800	34,100	41,050	45,750	47,750
ROW DWELLINGS	17,750	21,500	26,700	31,700	37,950	42,600	44,350
WALKUP	15,450	19,300	24,250	28,700	33,400	36,750	38,650
ELEVATOR-STRUCTURE	27,650	32,100	40,700	------	------	------	------
SHERMAN							
DETACHED AND SEMIDETACHED	17,650	21,250	26,250	31,300	37,650	41,750	43,800
ROW DWELLINGS	15,250	18,350	22,850	27,100	32,650	36,450	38,150
WALKUP	13,750	17,150	21,600	25,600	29,800	32,550	34,200
ELEVATOR-STRUCTURE	27,100	31,650	39,900	------	------	------	------
TYLER							
DETACHED AND SEMIDETACHED	18,700	20,300	25,000	29,950	36,000	39,900	41,650
ROW DWELLINGS	15,100	18,100	22,450	26,650	32,150	35,750	37,350
WALKUP	12,950	16,100	20,450	24,100	27,900	30,600	32,450
ELEVATOR-STRUCTURE	27,650	32,250	40,850	------	------	------	------
WACO							
DETACHED AND SEMIDETACHED	16,650	20,150	24,950	29,750	35,800	39,750	41,600
ROW DWELLINGS	14,950	17,950	22,250	26,600	31,950	35,550	37,200
WALKUP	12,950	16,200	20,450	24,100	28,200	30,600	32,350
ELEVATOR-STRUCTURE	27,700	31,400	39,700	------	------	------	------
FORT WORTH - DALLAS							
DETACHED AND SEMIDETACHED	17,250	20,600	25,700	30,650	36,700	41,000	42,800
ROW DWELLINGS	15,250	18,250	22,650	27,050	32,400	36,200	37,900
WALKUP	13,650	16,950	21,450	25,400	29,450	32,500	33,850
ELEVATOR-STRUCTURE	29,250	33,900	43,050	------	------	------	------
ABILENE							
DETACHED AND SEMIDETACHED	17,950	21,450	26,650	31,700	38,200	42,700	44,250
ROW DWELLINGS	15,750	18,800	23,400	27,900	33,550	37,550	39,000
WALKUP	12,850	16,100	20,300	23,900	27,700	30,600	32,000
ELEVATOR-STRUCTURE	30,350	35,100	44,500	------	------	------	------
SAN ANGELO							
DETACHED AND SEMIDETACHED	17,650	21,250	26,450	31,550	37,800	42,350	44,250
ROW DWELLINGS	15,900	18,950	23,550	28,000	33,850	37,750	39,450
WALKUP	13,400	16,600	20,950	24,950	29,000	31,800	33,300
ELEVATOR-STRUCTURE	30,550	35,500	44,800	------	------	------	------
WICHITA FALLS							
DETACHED AND SEMIDETACHED	17,950	21,350	26,750	31,700	38,150	42,700	44,450
ROW DWELLINGS	15,900	18,950	23,550	28,000	33,850	37,750	39,450
WALKUP	14,200	17,800	22,450	26,600	31,000	34,050	35,600
ELEVATOR-STRUCTURE	29,500	34,300	43,300	------	------	------	------
HOUSTON							
DETACHED AND SEMIDETACHED	18,150	21,950	26,950	32,100	38,650	43,200	45,000
ROW DWELLINGS	15,950	19,250	23,850	28,300	34,050	37,800	39,600
WALKUP	12,900	16,200	20,400	24,250	27,950	30,950	32,450
ELEVATOR-STRUCTURE	27,950	32,700	41,150	------	------	------	------
BEAUMONT							
DETACHED AND SEMIDETACHED	18,600	22,450	27,800	32,900	39,800	44,350	46,250
ROW DWELLINGS	16,250	19,750	24,350	29,050	34,850	38,800	40,600
WALKUP	13,150	16,550	20,600	24,700	28,500	31,500	32,950
ELEVATOR-STRUCTURE	28,750	33,500	42,300	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION VI--CONTINUED							
TEXAS --CONTINUED							
BRYAN							
DETACHED AND SEMIDETACHED	21,450	25,950	32,050	38,100	45,950	51,300	53,200
ROW DWELLINGS	17,150	20,800	25,700	30,550	36,600	40,750	42,600
WALKUP	11,950	14,900	18,800	22,300	25,850	28,500	29,900
ELEVATOR-STRUCTURE	27,550	32,200	40,550	------	------	------	------
EL CAMPO							
DETACHED AND SEMIDETACHED	19,950	23,900	29,400	34,950	42,300	47,050	49,200
ROW DWELLINGS	15,750	19,200	23,650	28,050	33,850	37,550	39,350
WALKUP	13,450	16,700	21,100	24,950	28,900	31,850	33,550
ELEVATOR-STRUCTURE	27,800	32,350	40,850	------	------	------	------
GUSTINE							
DETACHED AND SEMIDETACHED	19,550	23,600	29,100	34,650	41,700	46,550	48,800
ROW DWELLINGS	17,150	20,800	26,050	30,600	36,700	40,800	42,700
WALKUP	12,800	16,200	20,450	24,350	28,150	31,050	32,550
ELEVATOR-STRUCTURE	27,950	32,700	41,150	------	------	------	------
TEXAS CITY							
DETACHED AND SEMIDETACHED	18,150	21,950	26,950	32,100	38,650	43,200	45,000
ROW DWELLINGS	15,850	19,250	23,850	28,300	34,050	37,800	39,600
WALKUP	13,550	16,900	21,350	25,300	29,300	32,400	33,950
ELEVATOR-STRUCTURE	27,950	32,700	41,150	------	------	------	------
LUBBOCK							
DETACHED AND SEMIDETACHED	17,650	21,100	26,250	31,300	37,650	41,900	43,650
ROW DWELLINGS	15,150	18,150	22,750	26,950	32,300	36,100	37,800
WALKUP	13,800	17,350	21,800	25,800	29,900	32,750	34,400
ELEVATOR-STRUCTURE	24,750	28,750	36,450	------	------	------	------
AMARILLO							
DETACHED AND SEMIDETACHED	17,850	21,150	26,400	31,450	37,950	42,200	43,900
ROW DWELLINGS	16,200	19,400	24,100	28,650	34,450	38,450	40,050
WALKUP	14,550	18,150	22,950	27,100	31,550	34,700	36,400
ELEVATOR-STRUCTURE	25,300	29,400	37,200	------	------	------	------
EL PASO							
DETACHED AND SEMIDETACHED	17,650	21,000	26,150	31,050	37,450	41,750	43,600
ROW DWELLINGS	16,900	20,000	25,050	29,750	35,800	40,150	41,650
WALKUP	14,950	18,500	23,400	27,650	32,050	35,250	36,900
ELEVATOR-STRUCTURE	24,100	28,150	35,650	------	------	------	------
MIDLAND							
DETACHED AND SEMIDETACHED	16,700	20,250	25,050	30,100	36,050	40,150	41,900
ROW DWELLINGS	14,800	17,900	22,050	26,450	31,600	35,400	37,000
WALKUP	13,700	17,250	21,750	25,650	29,850	32,700	34,350
ELEVATOR-STRUCTURE	23,850	27,350	34,750	------	------	------	------
ODESSA							
DETACHED AND SEMIDETACHED	16,750	20,300	25,050	30,150	36,050	40,200	41,950
ROW DWELLINGS	14,900	17,850	22,100	26,350	31,600	35,350	36,900
WALKUP	13,650	17,100	21,750	25,750	29,800	32,700	34,400
ELEVATOR-STRUCTURE	23,650	27,350	34,750	------	------	------	------
SAN ANTONIO							
DETACHED AND SEMIDETACHED	15,850	18,750	23,250	27,800	33,450	37,200	38,800
ROW DWELLINGS	17,550	17,100	20,850	25,000	30,000	33,500	34,700
WALKUP	13,150	16,500	20,800	24,550	28,650	31,450	32,900
ELEVATOR-STRUCTURE	23,800	27,700	35,150	------	------	------	------
AUSTIN							
DETACHED AND SEMIDETACHED	16,250	19,500	24,100	28,750	34,650	38,550	40,150
ROW DWELLINGS	14,350	17,600	21,650	25,800	31,000	34,600	36,050
WALKUP	12,900	16,350	20,400	24,400	28,300	30,950	32,650
ELEVATOR-STRUCTURE	20,850	24,150	30,650	------	------	------	------
CORPUS CHRISTI							
DETACHED AND SEMIDETACHED	16,950	20,350	25,450	30,200	36,250	40,450	42,000
ROW DWELLINGS	15,300	18,600	23,050	27,350	32,850	36,650	38,100
WALKUP	14,200	17,600	22,350	26,250	30,400	33,500	35,250
ELEVATOR-STRUCTURE	19,400	22,500	28,750	------	------	------	------
DEL RIO							
DETACHED AND SEMIDETACHED	15,050	18,400	22,800	27,350	32,750	36,550	37,900
ROW DWELLINGS	14,000	16,850	20,850	24,800	29,750	33,150	34,550
WALKUP	13,150	16,450	20,800	24,550	28,650	31,450	33,000
ELEVATOR-STRUCTURE	21,850	25,350	32,300	------	------	------	------
EAGLE PASS							
DETACHED AND SEMIDETACHED	18,000	21,550	26,700	31,900	38,400	42,700	44,350
ROW DWELLINGS	14,450	17,550	21,600	25,750	30,950	34,500	35,850
WALKUP	13,500	17,150	21,450	25,600	29,650	32,650	34,200
ELEVATOR-STRUCTURE	22,300	26,050	32,950	------	------	------	------
HARLINGEN							
DETACHED AND SEMIDETACHED	16,950	20,350	25,200	30,200	36,200	40,400	42,000
ROW DWELLINGS	14,550	17,550	21,650	25,950	30,950	34,600	36,050
WALKUP	13,500	17,150	21,550	25,600	29,700	32,700	34,350
ELEVATOR-STRUCTURE	20,800	23,950	30,450	------	------	------	------
JUNCTION							
DETACHED AND SEMIDETACHED	16,850	20,300	25,100	29,800	35,950	40,000	41,550
ROW DWELLINGS	14,550	17,700	21,850	26,050	31,400	34,950	36,400
WALKUP	13,750	17,250	21,700	25,950	30,000	33,000	34,650
ELEVATOR-STRUCTURE	22,700	26,450	33,400	------	------	------	------
LAREDO							
DETACHED AND SEMIDETACHED	16,850	20,150	25,050	29,800	35,750	39,900	41,450
ROW DWELLINGS	14,900	18,150	22,400	26,750	32,000	35,750	37,150
WALKUP	13,000	16,350	20,550	24,350	28,400	31,100	32,750
ELEVATOR-STRUCTURE	21,850	25,350	32,300	------	------	------	------
VICTORIA							
DETACHED AND SEMIDETACHED	15,800	19,150	23,600	28,200	33,800	37,650	39,200
ROW DWELLINGS	14,850	18,050	22,300	26,450	31,950	35,650	37,100
WALKUP	14,000	17,600	22,100	26,250	30,550	33,500	35,250
ELEVATOR-STRUCTURE	22,550	26,300	33,300	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION VII							
IOWA							
DES MOINES							
DETACHED AND SEMIDETACHED	18,900	23,550	28,250	33,700	40,600	44,950	47,150
ROW DWELLINGS	18,100	21,800	26,750	31,900	38,400	42,700	44,600
WALKUP	16,050	20,100	25,500	30,200	34,950	38,300	40,350
ELEVATOR-STRUCTURE	26,350	30,450	38,700	------	------	------	------
BETTENDORF							
DETACHED AND SEMIDETACHED	19,750	23,850	29,400	35,150	42,300	47,050	49,200
ROW DWELLINGS	18,800	22,600	27,850	33,100	40,000	44,550	46,450
WALKUP	16,850	20,900	26,600	31,300	36,350	39,950	42,050
ELEVATOR-STRUCTURE	27,200	31,500	39,850	------	------	------	------
CEDAR RAPIDS							
DETACHED AND SEMIDETACHED	19,650	23,650	29,300	34,700	41,800	46,550	48,600
ROW DWELLINGS	18,700	22,550	27,600	32,900	39,650	44,200	46,150
WALKUP	16,100	20,000	25,450	31,200	36,050	39,800	40,100
ELEVATOR-STRUCTURE	27,000	31,300	39,700	------	------	------	------
COUNCIL BLUFFS							
DETACHED AND SEMIDETACHED	19,000	22,950	28,250	33,700	40,700	45,000	47,150
ROW DWELLINGS	18,050	21,750	26,750	32,150	38,450	43,000	44,800
WALKUP	16,000	20,000	25,300	30,100	34,850	38,350	40,250
ELEVATOR-STRUCTURE	26,400	30,700	38,700	------	------	------	------
DAVENPORT							
DETACHED AND SEMIDETACHED	19,650	23,650	29,300	34,700	41,800	46,550	48,600
ROW DWELLINGS	18,650	22,550	27,650	32,950	39,600	44,200	46,100
WALKUP	16,750	20,600	26,400	32,400	37,550	39,800	41,750
ELEVATOR-STRUCTURE	27,200	31,500	39,850	------	------	------	------
DUBUQUE							
DETACHED AND SEMIDETACHED	19,650	23,650	29,300	34,700	41,800	46,550	48,600
ROW DWELLINGS	18,650	22,550	27,650	32,950	39,600	44,200	46,100
WALKUP	16,750	20,600	26,400	32,400	37,550	39,800	41,750
ELEVATOR-STRUCTURE	26,650	31,100	39,350	------	------	------	------
MASON CITY							
DETACHED AND SEMIDETACHED	19,650	23,650	29,300	34,700	41,800	46,550	48,600
ROW DWELLINGS	18,650	22,550	27,650	32,950	39,600	44,200	46,100
WALKUP	16,650	20,750	26,400	32,550	37,600	39,800	41,850
ELEVATOR-STRUCTURE	26,650	31,100	39,350	------	------	------	------
SIOUX CITY							
DETACHED AND SEMIDETACHED	19,650	23,650	29,300	34,700	41,800	46,550	48,600
ROW DWELLINGS	18,550	22,250	27,450	32,750	39,400	43,950	45,850
WALKUP	16,650	20,600	26,200	32,350	37,350	39,550	41,550
ELEVATOR-STRUCTURE	26,650	31,100	39,350	------	------	------	------
WATERLOO							
DETACHED AND SEMIDETACHED	19,650	23,650	29,300	34,700	41,800	46,550	48,600
ROW DWELLINGS	18,650	22,550	27,650	32,950	39,600	44,200	46,100
WALKUP	16,750	20,600	26,400	32,400	37,550	39,800	41,750
ELEVATOR-STRUCTURE	26,650	31,100	39,350	------	------	------	------
KANSAS							
KANSAS CITY							
DETACHED AND SEMIDETACHED	20,200	24,550	30,200	35,900	43,250	48,050	50,350
ROW DWELLINGS	18,150	21,750	26,850	32,000	38,500	42,750	44,700
WALKUP	17,500	21,650	27,650	32,600	37,750	41,650	43,800
ELEVATOR-STRUCTURE	27,900	32,300	40,900	------	------	------	------
TOPEKA							
DETACHED AND SEMIDETACHED	19,200	23,100	28,650	34,050	41,050	45,700	47,750
ROW DWELLINGS	18,550	22,100	27,400	32,550	39,200	43,800	45,800
WALKUP	16,800	21,150	26,900	31,600	35,600	40,600	42,350
ELEVATOR-STRUCTURE	25,500	29,450	37,300	------	------	------	------
GARDEN CITY							
DETACHED AND SEMIDETACHED	17,750	21,400	26,500	31,550	38,050	42,200	44,250
ROW DWELLINGS	17,100	20,550	25,350	30,200	36,350	40,700	42,250
WALKUP	15,500	19,200	24,300	28,850	33,450	36,800	38,600
ELEVATOR-STRUCTURE	23,900	27,600	34,850	------	------	------	------
PITTSBURG							
DETACHED AND SEMIDETACHED	17,450	21,100	26,050	31,050	37,350	41,500	43,450
ROW DWELLINGS	16,850	20,200	24,950	29,550	35,750	39,900	41,600
WALKUP	15,100	18,900	23,900	28,150	32,800	36,200	37,900
ELEVATOR-STRUCTURE	23,300	27,050	34,200	------	------	------	------
SALINA							
DETACHED AND SEMIDETACHED	17,450	21,100	26,050	31,200	37,550	41,550	43,650
ROW DWELLINGS	16,900	20,250	25,150	29,750	35,800	40,000	41,800
WALKUP	15,200	18,900	24,150	28,300	32,950	36,200	37,950
ELEVATOR-STRUCTURE	23,500	27,150	34,250	------	------	------	------
WICHITA							
DETACHED AND SEMIDETACHED	18,350	22,100	27,550	32,600	39,250	43,700	45,850
ROW DWELLINGS	17,550	21,150	26,250	31,050	37,600	41,850	43,650
WALKUP	15,800	19,850	25,200	29,700	34,400	37,950	39,800
ELEVATOR-STRUCTURE	23,300	27,050	34,200	------	------	------	------
MISSOURI							
KANSAS CITY							
DETACHED AND SEMIDETACHED	22,450	27,250	33,550	39,850	48,050	53,350	55,850
ROW DWELLINGS	20,150	24,150	29,900	35,500	42,700	47,600	49,700
WALKUP	18,800	23,300	29,600	34,950	40,450	44,650	47,050
ELEVATOR-STRUCTURE	28,450	32,950	41,700	------	------	------	------
JOPLIN							
DETACHED AND SEMIDETACHED	20,800	25,150	31,250	37,050	44,600	49,750	52,000
ROW DWELLINGS	18,800	22,400	27,800	33,250	39,900	44,400	46,300
WALKUP	17,550	21,650	27,700	32,550	37,800	41,550	43,750
ELEVATOR-STRUCTURE	26,500	30,750	38,900	------	------	------	------
ST. JOSEPH							
DETACHED AND SEMIDETACHED	21,650	25,950	32,000	38,150	45,000	51,300	53,700
ROW DWELLINGS	19,450	23,150	28,650	34,000	41,050	45,750	47,650
WALKUP	18,050	22,500	28,500	33,650	39,150	43,050	45,250
ELEVATOR-STRUCTURE	27,250	31,600	40,050	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION VII--CONTINUED							
MISSOURI --CONTINUED							
SEDALIA							
DETACHED AND SEMIDETACHED	21,650	25,950	32,000	38,150	46,000	51,300	53,700
ROW DWELLINGS	19,450	23,150	28,600	34,000	41,050	45,750	47,650
WALKUP	18,050	22,500	28,500	33,600	39,150	43,050	45,250
ELEVATOR-STRUCTURE	27,250	31,600	40,050	------	------	------	------
SPRINGFIELD							
DETACHED AND SEMIDETACHED	21,800	26,100	32,300	38,500	46,450	51,600	53,950
ROW DWELLINGS	19,500	23,250	28,850	34,350	41,450	46,050	48,000
WALKUP	17,300	21,400	26,900	31,850	37,050	40,850	42,700
ELEVATOR-STRUCTURE	27,000	31,400	39,750	------	------	------	------
ST LOUIS							
DETACHED AND SEMIDETACHED	22,450	27,100	33,350	39,800	47,950	53,300	55,750
ROW DWELLINGS	21,200	25,200	31,400	37,350	45,000	50,300	52,300
WALKUP	18,900	23,850	29,800	35,300	41,000	45,000	47,150
ELEVATOR-STRUCTURE	28,800	33,150	41,850	------	------	------	------
CAPE GIRARDEAU							
DETACHED AND SEMIDETACHED	21,150	25,850	31,800	37,850	45,650	50,950	53,250
ROW DWELLINGS	20,350	24,200	29,900	35,700	42,850	47,600	49,800
WALKUP	18,050	22,450	28,200	33,600	39,100	42,750	45,000
ELEVATOR-STRUCTURE	27,900	31,700	40,000	------	------	------	------
COLUMBIA							
DETACHED AND SEMIDETACHED	22,050	26,550	32,900	39,300	47,300	52,500	55,000
ROW DWELLINGS	20,750	24,900	30,750	36,750	44,050	49,200	51,350
WALKUP	18,750	23,300	29,350	34,900	40,550	44,300	46,400
ELEVATOR-STRUCTURE	27,600	31,700	40,150	------	------	------	------
KIRKSVILLE							
DETACHED AND SEMIDETACHED	22,050	26,550	32,900	39,300	47,300	52,500	55,000
ROW DWELLINGS	20,750	24,900	30,750	36,750	44,050	49,200	51,350
WALKUP	18,850	23,350	29,600	35,050	40,700	44,750	46,900
ELEVATOR-STRUCTURE	27,600	31,700	40,150	------	------	------	------
ROLLA							
DETACHED AND SEMIDETACHED	20,050	24,200	30,090	35,650	42,850	47,600	49,850
ROW DWELLINGS	18,950	22,700	28,150	33,350	40,350	45,000	47,000
WALKUP	17,000	21,050	26,700	31,550	36,700	40,300	42,250
ELEVATOR-STRUCTURE	25,150	29,100	36,750	------	------	------	------
NEBRASKA							
OMAHA							
DETACHED AND SEMIDETACHED	20,500	24,800	30,500	36,500	43,900	48,750	51,000
ROW DWELLINGS	18,550	22,250	27,500	32,800	39,650	43,900	45,850
WALKUP	17,050	21,300	26,950	31,850	36,900	40,650	42,650
ELEVATOR-STRUCTURE	26,750	31,100	39,350	------	------	------	------
GRAND ISLAND							
DETACHED AND SEMIDETACHED	21,600	25,650	31,800	37,850	45,800	50,800	53,300
ROW DWELLINGS	19,500	23,600	29,250	34,800	42,000	46,550	48,650
WALKUP	17,700	22,250	28,200	33,200	38,600	42,350	44,500
ELEVATOR-STRUCTURE	27,850	32,200	40,450	------	------	------	------
LINCOLN							
DETACHED AND SEMIDETACHED	20,450	24,750	30,300	36,300	43,950	48,400	50,800
ROW DWELLINGS	18,700	22,550	27,600	33,000	39,800	44,100	46,100
WALKUP	18,250	22,200	27,550	32,950	38,050	42,750	44,800
ELEVATOR-STRUCTURE	26,500	30,850	38,500	------	------	------	------
NECY							
DETACHED AND SEMIDETACHED	24,800	29,550	35,550	43,600	52,550	58,800	61,350
ROW DWELLINGS	22,150	26,800	33,050	39,500	47,300	52,750	54,900
WALKUP	20,000	24,850	31,500	37,350	43,300	48,000	49,800
ELEVATOR-STRUCTURE	31,750	36,700	46,400	------	------	------	------
NORFOLK							
DETACHED AND SEMIDETACHED	20,850	25,150	31,050	37,000	44,600	49,800	52,000
ROW DWELLINGS	18,850	22,700	28,000	33,400	40,100	44,700	46,550
WALKUP	16,850	20,850	26,450	31,250	36,400	40,250	42,100
ELEVATOR-STRUCTURE	26,050	32,350	41,150	------	------	------	------
NORTH PLATTE							
DETACHED AND SEMIDETACHED	18,900	22,750	28,000	33,550	40,350	45,000	47,100
ROW DWELLINGS	17,800	21,150	26,100	31,200	37,300	41,650	43,500
WALKUP	16,550	20,500	26,200	31,000	35,750	39,650	41,600
ELEVATOR-STRUCTURE	27,050	31,300	39,750	------	------	------	------
SCHIFFSBLUFF							
DETACHED AND SEMIDETACHED	21,300	25,850	31,400	37,500	45,150	50,250	52,450
ROW DWELLINGS	19,050	22,850	28,250	33,750	40,450	45,050	46,950
WALKUP	17,350	21,400	27,300	32,450	37,350	41,300	43,450
ELEVATOR-STRUCTURE	27,250	31,600	37,750	------	------	------	------
REGION VIII							
COLORADO							
DENVER							
DETACHED AND SEMIDETACHED	21,300	25,650	31,400	37,400	45,100	50,300	52,650
ROW DWELLINGS	19,050	22,800	28,300	33,950	40,400	44,950	47,100
WALKUP	18,750	20,900	28,450	31,250	36,000	39,800	41,700
ELEVATOR-STRUCTURE	30,400	35,450	44,700	------	------	------	------
GRAND JUNCTION							
DETACHED AND SEMIDETACHED	21,100	25,450	31,350	37,400	45,000	50,050	52,250
ROW DWELLINGS	19,350	23,100	28,450	34,100	41,150	45,500	47,600
WALKUP	17,000	21,100	26,650	31,600	36,500	40,250	42,250
ELEVATOR-STRUCTURE	30,750	35,700	45,000	------	------	------	------
ASPEN-VAIL							
DETACHED AND SEMIDETACHED	32,300	36,850	43,100	49,350	57,450	62,850	65,300
ROW DWELLINGS	30,500	34,900	40,300	46,200	53,650	58,550	60,900
WALKUP	28,050	32,500	38,500	43,950	49,000	52,900	55,100
ELEVATOR-STRUCTURE	32,350	37,850	48,050	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION VIII--CONTINUED							
MONTANA							
HELENA							
DETACHED AND SEMIDETACHED	22,750	27,400	33,850	40,300	48,700	54,250	56,600
ROW DWELLINGS	19,600	23,300	29,200	34,650	41,750	46,350	48,650
WALKUP	18,200	22,900	29,100	34,250	39,600	43,750	45,650
ELEVATOR-STRUCTURE	28,100	32,650	41,450	------	------	------	------
BILLINGS							
DETACHED AND SEMIDETACHED	21,550	26,050	32,050	38,250	45,950	51,050	53,500
ROW DWELLINGS	18,750	22,200	27,650	32,800	39,550	44,050	46,050
WALKUP	17,100	21,650	27,500	32,400	37,300	41,400	43,300
ELEVATOR-STRUCTURE	26,650	30,750	39,250	------	------	------	------
GREAT FALLS							
DETACHED AND SEMIDETACHED	22,750	27,350	33,850	40,350	48,300	53,950	56,400
ROW DWELLINGS	19,900	23,600	29,200	35,100	42,200	46,800	49,400
WALKUP	18,350	23,050	29,100	34,200	39,650	43,950	45,800
ELEVATOR-STRUCTURE	28,150	32,500	41,450	------	------	------	------
MISSOULA							
DETACHED AND SEMIDETACHED	21,100	25,500	31,300	37,400	44,950	49,900	52,300
ROW DWELLINGS	18,350	21,650	27,050	32,050	38,650	43,100	45,050
WALKUP	16,750	21,200	27,000	31,700	36,600	40,600	42,400
ELEVATOR-STRUCTURE	26,100	30,150	38,400	------	------	------	------
NORTH DAKOTA							
FARGO							
DETACHED AND SEMIDETACHED	23,500	28,100	34,800	41,850	50,300	55,600	58,450
ROW DWELLINGS	19,100	23,150	28,500	33,850	40,950	45,300	47,450
WALKUP	17,600	22,150	27,550	32,650	38,200	42,000	44,200
ELEVATOR-STRUCTURE	27,500	32,050	40,400	------	------	------	------
BISMARCK							
DETACHED AND SEMIDETACHED	25,300	30,450	37,300	44,800	54,000	59,750	62,700
ROW DWELLINGS	20,600	24,900	30,600	36,500	44,200	48,900	51,200
WALKUP	19,150	23,950	29,500	35,200	41,400	45,350	47,750
ELEVATOR-STRUCTURE	29,450	34,250	43,300	------	------	------	------
DICKINSON							
DETACHED AND SEMIDETACHED	24,500	29,600	36,450	43,750	52,500	58,300	61,200
ROW DWELLINGS	19,950	24,300	30,000	35,550	42,900	47,500	49,650
WALKUP	18,550	23,300	28,900	34,150	40,300	44,350	46,400
ELEVATOR-STRUCTURE	28,900	33,650	42,450	------	------	------	------
SOUTH DAKOTA							
SIOUX FALLS							
DETACHED AND SEMIDETACHED	24,100	28,950	35,750	42,650	51,200	57,100	59,800
ROW DWELLINGS	22,000	26,600	33,000	39,250	47,400	52,150	55,050
WALKUP	19,050	23,700	30,050	35,650	41,300	45,600	47,850
ELEVATOR-STRUCTURE	27,500	32,000	40,350	------	------	------	------
PIERRE							
DETACHED AND SEMIDETACHED	25,400	30,850	37,800	45,000	54,500	60,550	63,050
ROW DWELLINGS	23,000	27,850	34,300	40,800	49,350	54,650	57,250
WALKUP	19,200	24,050	30,200	35,900	41,600	45,750	48,200
ELEVATOR-STRUCTURE	28,000	32,450	41,150	------	------	------	------
RAPID CITY							
DETACHED AND SEMIDETACHED	24,300	29,500	36,350	43,050	51,750	57,850	60,350
ROW DWELLINGS	22,250	27,200	33,350	40,100	47,950	52,900	55,850
WALKUP	19,950	25,000	31,600	37,250	43,100	47,650	50,300
ELEVATOR-STRUCTURE	27,850	32,400	40,950	------	------	------	------
UTAH							
SALT LAKE CITY							
DETACHED AND SEMIDETACHED	20,250	24,450	30,150	36,100	43,450	48,150	50,600
ROW DWELLINGS	18,200	21,850	27,050	32,450	38,700	43,000	45,050
WALKUP	16,250	20,350	25,950	30,650	35,500	39,150	41,150
ELEVATOR-STRUCTURE	24,750	29,900	36,550	------	------	------	------
CEDAR CITY							
DETACHED AND SEMIDETACHED	22,350	26,950	33,200	39,500	47,600	53,100	55,600
ROW DWELLINGS	18,050	21,850	26,850	32,200	38,500	43,000	44,750
WALKUP	16,700	21,000	26,600	31,200	36,350	39,990	42,050
ELEVATOR-STRUCTURE	27,250	31,750	40,250	------	------	------	------
VERNAL							
DETACHED AND SEMIDETACHED	21,450	25,900	31,900	38,100	45,900	51,000	53,500
ROW DWELLINGS	17,500	21,100	26,000	31,050	37,350	41,550	43,650
WALKUP	16,100	20,150	25,550	30,000	35,060	38,450	40,500
ELEVATOR-STRUCTURE	26,200	30,600	38,700	------	------	------	------
WYOMING							
CASPER							
DETACHED AND SEMIDETACHED	24,400	29,500	36,350	43,250	52,050	58,000	60,800
ROW DWELLINGS	20,900	25,050	31,150	37,050	44,500	49,800	51,850
WALKUP	19,000	23,850	30,250	35,500	41,350	45,450	47,750
ELEVATOR-STRUCTURE	27,850	32,450	41,250	------	------	------	------
CHEYENNE							
DETACHED AND SEMIDETACHED	23,350	28,350	34,850	41,550	50,050	55,700	58,450
ROW DWELLINGS	19,800	24,050	29,850	37,000	42,650	47,300	49,400
WALKUP	18,200	22,900	29,000	34,150	39,550	43,700	45,600
ELEVATOR-STRUCTURE	26,850	31,200	39,500	------	------	------	------
CODY							
DETACHED AND SEMIDETACHED	24,900	30,400	37,400	44,900	53,900	59,900	62,800
ROW DWELLINGS	21,650	25,800	32,150	38,200	45,800	50,900	53,500
WALKUP	19,550	24,550	31,150	36,650	42,250	46,800	48,800
ELEVATOR-STRUCTURE	28,800	33,550	42,450	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION IX							
ARIZONA							
PHOENIX							
DETACHED AND SEMIDETACHED	18,900	23,700	28,000	33,350	40,200	44,750	46,900
ROW DWELLINGS	16,910	20,500	25,300	30,250	36,150	40,900	42,200
WALKUP	15,500	19,250	24,450	29,000	33,400	36,850	38,750
ELEVATOR-STRUCTURE	27,500	31,900	40,400	------	------	------	------
CASA GRANDE							
DETACHED AND SEMIDETACHED	18,700	23,800	29,250	34,900	42,050	45,850	49,000
ROW DWELLINGS	17,700	20,550	26,300	31,350	37,700	42,100	43,900
WALKUP	16,100	20,150	25,600	30,300	34,950	38,550	40,400
ELEVATOR-STRUCTURE	28,800	33,300	42,150	------	------	------	------
DOUGLAS							
DETACHED AND SEMIDETACHED	19,350	23,250	28,800	34,150	41,050	45,850	48,050
ROW DWELLINGS	17,500	21,100	26,050	31,000	37,300	41,650	43,900
WALKUP	15,950	19,850	25,200	29,750	34,200	37,750	39,700
ELEVATOR-STRUCTURE	28,300	32,800	41,550	------	------	------	------
FLAGSTAFF							
DETACHED AND SEMIDETACHED	19,200	23,150	28,800	34,050	40,950	45,700	47,950
ROW DWELLINGS	17,500	21,100	26,050	31,000	37,300	41,650	43,500
WALKUP	15,900	19,750	25,200	29,650	34,200	37,800	39,600
ELEVATOR-STRUCTURE	29,300	33,850	42,750	------	------	------	------
KINGMAN							
DETACHED AND SEMIDETACHED	19,950	24,050	29,550	35,350	42,550	47,200	49,800
ROW DWELLINGS	18,200	21,100	27,050	32,250	38,700	43,250	45,150
WALKUP	16,500	20,850	26,150	30,950	35,650	39,600	41,300
ELEVATOR-STRUCTURE	28,600	33,300	42,200	------	------	------	------
SAFFORD							
DETACHED AND SEMIDETACHED	20,250	24,200	29,950	35,650	42,800	47,800	50,150
ROW DWELLINGS	18,350	22,300	27,600	32,800	39,350	44,000	45,900
WALKUP	16,650	20,800	26,500	31,360	36,209	39,960	41,800
ELEVATOR-STRUCTURE	29,100	33,900	42,800	------	------	------	------
TUCSON							
DETACHED AND SEMIDETACHED	19,350	23,300	28,750	34,050	41,100	45,850	48,000
ROW DWELLINGS	18,050	21,800	26,950	32,100	38,550	43,150	45,100
WALKUP	16,100	20,100	25,400	30,000	34,650	38,300	40,050
ELEVATOR-STRUCTURE	32,700	37,950	47,900	------	------	------	------
YUMA							
DETACHED AND SEMIDETACHED	19,050	22,950	28,350	33,700	40,600	45,200	47,500
ROW DWELLINGS	17,200	20,800	25,750	30,550	36,850	41,050	42,700
WALKUP	15,950	19,650	25,050	29,750	34,250	37,750	39,550
ELEVATOR-STRUCTURE	27,450	32,050	40,450	------	------	------	------
NOGALES							
DETACHED AND SEMIDETACHED	24,900	29,900	36,900	43,800	53,800	58,950	61,750
ROW DWELLINGS	22,500	27,300	33,900	40,200	48,350	53,850	56,050
WALKUP	20,800	25,750	32,600	38,700	44,750	49,200	51,850
ELEVATOR-STRUCTURE	33,850	39,400	50,000	------	------	------	------
CALIFORNIA							
LOS ANGELES							
DETACHED AND SEMIDETACHED	26,750	31,750	38,550	47,250	56,750	63,450	66,300
ROW DWELLINGS	24,750	29,000	36,900	43,900	52,950	58,900	61,450
WALKUP	22,900	28,750	36,000	42,750	49,200	54,350	57,900
ELEVATOR-STRUCTURE	40,100	47,050	59,350	------	------	------	------
BAKERSFIELD							
DETACHED AND SEMIDETACHED	25,300	31,400	39,100	48,650	56,000	62,550	65,500
ROW DWELLINGS	24,400	28,800	36,400	43,250	52,200	58,100	60,700
WALKUP	22,550	28,450	35,400	42,100	48,450	53,550	56,300
ELEVATOR-STRUCTURE	40,250	46,800	59,100	------	------	------	------
CHINO/ONTARIO							
DETACHED AND SEMIDETACHED	27,600	32,850	40,900	48,600	58,450	65,350	68,550
ROW DWELLINGS	25,750	31,200	38,150	45,600	54,900	61,050	63,800
WALKUP	23,600	29,650	37,200	44,050	50,800	56,900	58,750
ELEVATOR-STRUCTURE	41,700	48,700	61,400	------	------	------	------
LANCASTER							
DETACHED AND SEMIDETACHED	25,800	32,250	39,800	47,450	57,150	63,900	67,000
ROW DWELLINGS	24,800	30,100	37,150	44,300	53,150	58,950	61,800
WALKUP	23,050	28,950	36,150	42,850	49,700	54,650	57,400
ELEVATOR-STRUCTURE	40,500	47,250	59,750	------	------	------	------
MOJAVE							
DETACHED AND SEMIDETACHED	27,450	32,650	40,600	48,300	58,250	65,050	67,850
ROW DWELLINGS	25,500	30,800	37,900	45,400	54,550	60,700	63,350
WALKUP	23,500	29,400	36,900	43,550	50,300	55,550	58,250
ELEVATOR-STRUCTURE	41,400	48,300	60,950	------	------	------	------
OJAI							
DETACHED AND SEMIDETACHED	24,850	29,750	37,150	44,100	53,100	59,300	61,900
ROW DWELLINGS	23,150	28,100	34,650	41,250	49,550	55,250	57,750
WALKUP	21,350	26,850	33,750	40,100	46,350	50,800	53,600
ELEVATOR-STRUCTURE	38,350	44,650	56,250	------	------	------	------
OXNARD							
DETACHED AND SEMIDETACHED	26,250	31,400	39,100	46,450	55,900	62,400	65,550
ROW DWELLINGS	24,350	29,550	36,400	43,250	52,100	58,050	60,500
WALKUP	23,500	28,200	35,400	41,950	48,400	53,300	56,200
ELEVATOR-STRUCTURE	40,250	46,800	59,100	------	------	------	------
PASO ROBLES							
DETACHED AND SEMIDETACHED	30,150	31,300	39,750	46,150	55,400	62,000	65,100
ROW DWELLINGS	24,300	29,550	36,150	43,350	51,750	57,900	60,350
WALKUP	22,450	28,050	35,250	41,550	47,900	53,050	55,550
ELEVATOR-STRUCTURE	46,350	48,200	60,900	------	------	------	------
PISMO							
DETACHED AND SEMIDETACHED	24,850	29,750	37,150	44,100	53,100	59,300	61,900
ROW DWELLINGS	23,150	28,100	34,650	41,250	49,550	55,250	57,750
WALKUP	21,350	26,850	33,750	40,100	46,350	50,800	53,600
ELEVATOR-STRUCTURE	38,350	44,650	56,250	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION IX--CONTINUED							
CALIFORNIA --CONTINUED							
RIDGECREST							
DETACHED AND SEMIDETACHED	25,650	30,550	38,050	45,150	54,700	60,850	63,750
ROW DWELLINGS	23,750	28,800	35,400	42,100	50,650	56,400	58,800
WALKUP	21,850	27,450	34,500	40,850	47,150	51,900	54,500
ELEVATOR-STRUCTURE	41,500	48,500	61,050	------	------	------	------
SAN BERNARDINO							
DETACHED AND SEMIDETACHED	26,250	31,400	39,100	46,450	55,900	62,400	65,550
ROW DWELLINGS	24,350	29,550	36,400	43,250	52,100	58,050	60,500
WALKUP	22,550	28,450	35,400	42,100	48,450	53,550	56,300
ELEVATOR-STRUCTURE	40,250	46,800	59,100	------	------	------	------
VICTORVILLE							
DETACHED AND SEMIDETACHED	26,900	32,150	39,800	47,550	57,100	63,700	66,400
ROW DWELLINGS	25,050	29,900	37,150	44,350	53,200	59,350	62,050
WALKUP	24,350	29,200	36,150	43,300	51,900	57,900	60,500
ELEVATOR-STRUCTURE	40,550	47,100	59,750	------	------	------	------
SANTA BARBARA							
DETACHED AND SEMIDETACHED	26,750	32,200	39,800	47,300	57,100	63,700	66,700
ROW DWELLINGS	24,650	30,200	37,150	44,100	53,150	59,200	61,550
WALKUP	22,950	28,750	36,150	42,600	49,600	54,500	57,300
ELEVATOR-STRUCTURE	40,500	47,250	59,750	------	------	------	------
ARROWHEAD							
DETACHED AND SEMIDETACHED	27,300	33,800	40,600	48,400	58,350	65,050	67,900
ROW DWELLINGS	25,500	30,600	37,900	45,150	54,450	60,600	63,350
WALKUP	24,750	29,800	36,900	44,000	53,050	59,000	61,600
ELEVATOR-STRUCTURE	40,800	48,050	60,950	------	------	------	------
SANTA MARIA							
DETACHED AND SEMIDETACHED	26,900	32,200	39,800	47,400	56,900	63,750	66,850
ROW DWELLINGS	24,850	30,300	37,150	44,550	53,150	59,550	61,950
WALKUP	23,000	28,850	36,150	42,750	49,200	54,500	57,150
ELEVATOR-STRUCTURE	41,350	48,200	60,900	------	------	------	------
BARSTOW							
DETACHED AND SEMIDETACHED	27,000	32,300	40,000	47,900	57,450	64,100	66,950
ROW DWELLINGS	25,150	30,050	37,450	44,650	53,550	59,700	62,450
WALKUP	24,550	29,400	36,450	43,600	52,300	58,300	60,900
ELEVATOR-STRUCTURE	40,800	47,500	60,150	------	------	------	------
TEHACHAPI							
DETACHED AND SEMIDETACHED	26,900	32,200	39,800	47,400	56,900	63,750	66,850
ROW DWELLINGS	24,850	30,300	37,150	44,550	53,150	59,550	61,950
WALKUP	23,000	28,850	36,150	42,750	49,200	54,500	57,150
ELEVATOR-STRUCTURE	41,350	48,200	60,900	------	------	------	------
BIG BEAR							
DETACHED AND SEMIDETACHED	27,300	32,800	40,600	48,400	58,350	65,050	67,900
ROW DWELLINGS	25,500	30,600	37,900	45,150	54,450	60,600	63,350
WALKUP	24,750	29,800	36,900	44,050	53,050	59,050	61,650
ELEVATOR-STRUCTURE	41,250	48,050	60,950	------	------	------	------
VENTURA							
DETACHED AND SEMIDETACHED	26,250	31,400	39,100	46,450	55,900	62,400	65,550
ROW DWELLINGS	24,350	29,550	36,400	43,250	52,100	58,050	60,500
WALKUP	22,550	28,450	35,400	42,100	48,450	53,550	56,300
ELEVATOR-STRUCTURE	40,250	46,800	59,100	------	------	------	------
SANTA ANA							
DETACHED AND SEMIDETACHED	26,800	31,950	39,550	47,200	56,800	63,150	66,400
ROW DWELLINGS	24,850	30,050	36,900	44,100	53,050	59,100	61,950
WALKUP	22,950	28,500	36,000	42,400	49,200	54,150	56,700
ELEVATOR-STRUCTURE	40,550	46,900	59,350	------	------	------	------
DESERT CENTER							
DETACHED AND SEMIDETACHED	29,550	35,900	44,050	52,700	63,400	70,600	74,050
ROW DWELLINGS	27,850	33,100	41,150	49,100	59,000	65,850	69,000
WALKUP	27,000	32,400	40,050	47,850	57,500	64,100	67,350
ELEVATOR-STRUCTURE	44,750	52,350	66,100	------	------	------	------
NEEDLES							
DETACHED AND SEMIDETACHED	30,050	36,000	44,750	53,000	63,850	71,100	74,550
ROW DWELLINGS	28,900	32,200	40,050	47,500	57,150	63,850	66,750
WALKUP	24,100	28,800	35,850	42,450	51,100	57,050	59,700
ELEVATOR-STRUCTURE	38,500	42,850	54,000	------	------	------	------
SACRAMENTO							
DETACHED AND SEMIDETACHED	20,850	24,750	30,850	36,350	43,850	48,800	51,100
ROW DWELLINGS	20,100	24,250	29,900	35,850	42,850	47,900	49,900
WALKUP	17,100	21,400	27,200	31,900	37,050	40,850	42,800
ELEVATOR-STRUCTURE	35,850	41,500	52,350	------	------	------	------
PLACERVILLE							
DETACHED AND SEMIDETACHED	20,800	24,900	31,000	36,800	44,350	49,350	51,600
ROW DWELLINGS	20,250	24,450	30,250	36,150	43,300	48,350	50,400
WALKUP	17,700	22,000	28,050	33,000	38,250	42,100	44,100
ELEVATOR-STRUCTURE	36,000	42,050	53,000	------	------	------	------
REDDING							
DETACHED AND SEMIDETACHED	20,600	24,800	30,850	36,600	44,000	48,850	51,100
ROW DWELLINGS	20,050	24,250	29,900	35,800	42,700	47,650	49,800
WALKUP	17,450	21,700	27,700	32,550	37,700	41,500	43,450
ELEVATOR-STRUCTURE	35,500	41,500	52,350	------	------	------	------
YREKA							
DETACHED AND SEMIDETACHED	20,750	25,000	30,900	36,700	44,200	49,250	51,400
ROW DWELLINGS	20,150	24,350	30,050	35,800	43,150	47,900	50,150
WALKUP	17,900	21,850	27,850	32,750	37,950	41,800	43,850
ELEVATOR-STRUCTURE	35,750	41,650	52,600	------	------	------	------
SOUTH LAKE TAHOE							
DETACHED AND SEMIDETACHED	21,300	25,600	31,700	37,550	45,300	50,550	52,800
ROW DWELLINGS	20,650	24,900	30,900	36,750	44,250	49,250	51,450
WALKUP	18,000	22,550	28,600	33,550	39,000	42,900	45,000
ELEVATOR-STRUCTURE	36,000	44,100	55,550	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION IX--CONTINUED							
CALIFORNIA --CONTINUED							
SAN FRANCISCO							
DETACHED AND SEMIDETACHED	37,650	33,350	41,250	49,100	59,150	65,600	68,700
ROW DWELLINGS	37,200	32,750	40,350	48,150	57,700	64,250	67,200
WALKUP	33,950	30,000	37,800	44,750	51,850	57,400	59,800
ELEVATOR-STRUCTURE	48,700	56,600	71,450	------	------	------	------
EUREKA							
DETACHED AND SEMIDETACHED	27,800	33,350	41,200	49,100	58,200	65,950	68,950
ROW DWELLINGS	31,050	28,500	31,250	37,400	44,800	50,050	52,150
WALKUP	19,300	23,900	30,300	35,750	41,500	45,650	47,600
ELEVATOR-STRUCTURE	36,250	41,950	53,000	------	------	------	------
SANTA ROSA							
DETACHED AND SEMIDETACHED	25,700	30,600	38,100	43,350	54,650	60,950	63,700
ROW DWELLINGS	30,700	25,050	30,750	36,700	43,950	49,150	51,300
WALKUP	19,000	23,500	29,800	35,150	40,800	44,900	47,050
ELEVATOR-STRUCTURE	35,600	41,250	52,000	------	------	------	------
FRESNO							
DETACHED AND SEMIDETACHED	31,200	35,200	31,350	37,300	46,000	49,950	52,400
ROW DWELLINGS	18,750	23,900	29,500	35,150	42,200	47,000	49,150
WALKUP	18,100	22,500	28,500	33,550	38,950	42,800	44,950
ELEVATOR-STRUCTURE	36,200	44,900	56,250	------	------	------	------
MODESTO							
DETACHED AND SEMIDETACHED	21,700	26,200	32,250	38,300	46,200	51,350	53,800
ROW DWELLINGS	21,150	25,550	31,500	37,600	45,100	50,200	52,750
WALKUP	16,300	22,750	28,800	33,850	39,200	43,450	45,150
ELEVATOR-STRUCTURE	34,800	43,300	54,800	------	------	------	------
OAKLAND-ALAMEDA							
DETACHED AND SEMIDETACHED	34,100	35,000	35,700	42,500	51,150	56,950	59,600
ROW DWELLINGS	32,800	27,300	33,700	40,250	48,350	53,950	56,350
WALKUP	30,650	25,450	32,250	38,050	44,300	48,500	51,050
ELEVATOR-STRUCTURE	39,700	48,200	58,200	------	------	------	------
SAN JOSE							
DETACHED AND SEMIDETACHED	23,350	28,050	34,750	41,400	49,850	55,600	58,050
ROW DWELLINGS	22,500	27,300	33,500	40,000	47,900	53,500	55,800
WALKUP	20,500	25,400	31,150	37,950	44,050	48,450	50,750
ELEVATOR-STRUCTURE	37,500	43,500	54,900	------	------	------	------
SANTA CRUZ							
DETACHED AND SEMIDETACHED	28,250	33,850	41,900	49,950	60,200	67,000	70,050
ROW DWELLINGS	27,300	25,900	31,750	38,000	45,550	50,900	53,050
WALKUP	19,650	24,400	30,850	36,400	42,300	46,550	48,700
ELEVATOR-STRUCTURE	37,300	43,200	54,650	------	------	------	------
SAN DIEGO							
DETACHED AND SEMIDETACHED	24,750	29,700	36,800	43,750	52,650	58,700	61,250
ROW DWELLINGS	22,800	27,100	33,500	39,700	47,750	53,350	55,850
WALKUP	19,700	24,650	31,350	36,850	42,650	47,000	49,300
ELEVATOR-STRUCTURE	37,750	43,950	55,650	------	------	------	------
EL CAJON							
DETACHED AND SEMIDETACHED	24,750	29,700	36,800	43,750	52,650	58,700	61,250
ROW DWELLINGS	22,800	27,100	33,500	39,700	47,750	53,350	55,850
WALKUP	20,150	25,300	32,150	37,900	43,950	48,250	50,650
ELEVATOR-STRUCTURE	37,750	43,950	55,650	------	------	------	------
HAWAII							
HONOLULU							
DETACHED AND SEMIDETACHED	32,950	40,100	48,500	58,850	76,800	78,950	82,600
ROW DWELLINGS	31,550	37,800	46,850	55,950	67,100	74,700	78,050
WALKUP	29,050	36,200	45,900	54,350	62,800	69,300	72,650
ELEVATOR-STRUCTURE	53,100	64,850	78,350	------	------	------	------
HILO							
DETACHED AND SEMIDETACHED	36,850	44,100	54,450	64,900	78,050	80,550	91,050
ROW DWELLINGS	34,350	41,700	50,450	61,050	73,650	82,100	85,750
WALKUP	32,100	39,800	50,550	59,850	69,900	76,150	80,000
ELEVATOR-STRUCTURE	58,550	69,150	86,000	------	------	------	------
KAUAI							
DETACHED AND SEMIDETACHED	38,150	46,600	56,950	68,500	82,150	91,100	95,800
ROW DWELLINGS	36,200	43,850	54,150	64,100	77,300	86,400	90,150
WALKUP	32,800	40,650	51,600	61,100	70,750	77,900	81,700
ELEVATOR-STRUCTURE	59,150	69,450	87,900	------	------	------	------
KONA							
DETACHED AND SEMIDETACHED	37,150	45,150	55,500	66,200	79,700	88,550	92,500
ROW DWELLINGS	35,250	42,500	52,800	62,300	75,300	84,050	87,550
WALKUP	32,900	40,850	51,800	61,000	70,750	77,900	81,700
ELEVATOR-STRUCTURE	59,150	69,450	87,900	------	------	------	------
MAUI							
DETACHED AND SEMIDETACHED	38,150	43,850	53,900	64,350	77,450	86,100	90,250
ROW DWELLINGS	34,300	41,450	51,250	60,700	73,250	81,700	85,400
WALKUP	31,900	39,500	50,350	59,200	68,700	75,750	79,400
ELEVATOR-STRUCTURE	56,200	67,500	85,550	------	------	------	------
GUAM							
DETACHED AND SEMIDETACHED	30,450	35,700	46,200	53,800	65,050	72,300	75,750
ROW DWELLINGS	28,900	34,550	42,850	50,850	61,700	68,250	71,450
WALKUP	26,700	33,050	41,900	49,550	57,550	63,050	66,350
ELEVATOR-STRUCTURE	48,550	56,700	71,900	------	------	------	------
NEVADA							
RENO							
DETACHED AND SEMIDETACHED	22,300	26,800	33,050	39,300	47,400	52,900	55,200
ROW DWELLINGS	20,600	25,050	30,950	36,700	44,300	49,300	51,350
WALKUP	18,800	23,200	29,500	35,000	40,500	44,900	46,700
ELEVATOR-STRUCTURE	40,700	47,450	60,000	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION IX--CONTINUED							
NEVADA --CONTINUED							
LAS VEGAS							
DETACHED AND SEMIDETACHED	23,050	27,550	34,450	40,900	49,000	54,750	57,350
ROW DWELLINGS	21,800	26,300	32,300	38,350	46,900	51,900	54,200
WALKUP	19,650	24,300	30,900	36,400	42,350	46,650	48,750
ELEVATOR-STRUCTURE	42,050	48,850	61,550	------	------	------	------
REGION X							
ALASKA							
ANCHORAGE							
DETACHED AND SEMIDETACHED	31,750	38,500	47,450	56,650	67,900	75,600	79,200
ROW DWELLINGS	31,300	37,900	46,600	55,450	67,050	74,500	77,800
WALKUP	27,650	34,450	43,100	51,600	58,750	65,700	68,200
ELEVATOR-STRUCTURE	55,300	64,400	81,450	------	------	------	------
FAIRBANKS							
DETACHED AND SEMIDETACHED	33,950	40,950	50,400	60,350	72,850	80,500	84,450
ROW DWELLINGS	33,400	40,400	49,700	58,950	71,450	78,350	82,000
WALKUP	29,350	36,650	46,350	54,850	63,800	70,100	73,750
ELEVATOR-STRUCTURE	58,450	67,950	85,900	------	------	------	------
JUNEAU							
DETACHED AND SEMIDETACHED	30,750	37,200	46,700	54,800	65,450	73,200	76,600
ROW DWELLINGS	30,300	36,650	46,300	53,950	65,150	72,200	75,600
WALKUP	27,650	34,450	43,750	51,600	59,750	66,900	69,200
ELEVATOR-STRUCTURE	53,350	62,200	78,400	------	------	------	------
KETCHIKAN							
DETACHED AND SEMIDETACHED	30,600	37,050	46,600	54,550	65,250	72,900	76,250
ROW DWELLINGS	30,000	36,400	44,900	53,250	64,400	71,450	74,850
WALKUP	27,700	34,500	43,800	51,800	59,850	66,050	68,500
ELEVATOR-STRUCTURE	54,000	63,800	79,400	------	------	------	------
SITKA							
DETACHED AND SEMIDETACHED	30,750	37,150	45,750	54,800	65,650	73,200	76,550
ROW DWELLINGS	30,300	36,550	45,050	53,450	64,650	71,850	75,200
WALKUP	28,050	35,050	44,300	52,550	60,750	66,800	70,100
ELEVATOR-STRUCTURE	55,700	64,750	81,950	------	------	------	------
KENAI							
DETACHED AND SEMIDETACHED	34,750	42,100	52,000	61,850	74,150	83,050	86,950
ROW DWELLINGS	------	------	------	------	------	------	------
WALKUP	------	------	------	------	------	------	------
ELEVATOR-STRUCTURE	------	------	------	------	------	------	------
IDAHO							
BOISE							
DETACHED AND SEMIDETACHED	22,200	26,750	32,800	39,350	47,250	52,500	55,100
ROW DWELLINGS	20,200	24,350	29,950	35,850	43,200	48,000	50,350
WALKUP	18,800	23,400	29,750	35,150	40,450	44,800	46,850
ELEVATOR-STRUCTURE	29,850	34,800	43,950	------	------	------	------
IDAHO FALLS							
DETACHED AND SEMIDETACHED	22,800	27,900	34,100	40,800	49,050	54,450	57,050
ROW DWELLINGS	20,850	25,400	31,150	37,200	44,850	49,900	53,250
WALKUP	19,650	24,300	30,800	36,500	42,000	46,600	48,800
ELEVATOR-STRUCTURE	31,100	35,950	45,650	------	------	------	------
MCCALL							
DETACHED AND SEMIDETACHED	23,150	28,050	34,300	41,200	49,400	54,950	57,650
ROW DWELLINGS	21,300	25,550	31,300	37,550	45,200	50,350	52,750
WALKUP	19,850	24,600	31,050	36,650	42,450	47,000	49,150
ELEVATOR-STRUCTURE	31,250	36,200	46,050	------	------	------	------
POCATELLO							
DETACHED AND SEMIDETACHED	24,250	29,600	36,300	43,400	52,250	57,950	60,800
ROW DWELLINGS	22,350	27,100	33,150	39,600	47,600	53,100	55,600
WALKUP	20,600	25,950	32,700	38,900	44,800	49,650	52,000
ELEVATOR-STRUCTURE	33,050	38,350	48,500	------	------	------	------
TWIN FALLS							
DETACHED AND SEMIDETACHED	24,150	29,200	35,950	43,050	51,900	57,650	60,450
ROW DWELLINGS	22,050	26,850	32,900	35,850	47,200	52,700	55,250
WALKUP	20,550	25,600	32,550	38,500	44,400	49,150	51,550
ELEVATOR-STRUCTURE	32,800	38,200	48,150	------	------	------	------
LEWISTON							
DETACHED AND SEMIDETACHED	23,600	28,650	35,450	41,950	50,800	56,550	59,150
ROW DWELLINGS	21,700	26,200	32,500	38,450	46,300	51,650	54,050
WALKUP	18,700	23,100	29,500	34,650	40,100	44,250	46,600
ELEVATOR-STRUCTURE	30,700	35,900	45,150	------	------	------	------
COEUR D'ALENE							
DETACHED AND SEMIDETACHED	25,000	30,300	37,350	44,400	53,600	59,600	62,300
ROW DWELLINGS	23,400	28,450	35,000	41,500	50,350	55,750	58,300
WALKUP	20,550	25,450	32,600	38,300	44,200	48,850	51,250
ELEVATOR-STRUCTURE	32,800	38,350	48,350	------	------	------	------
OREGON							
PORTLAND							
DETACHED AND SEMIDETACHED	24,000	28,850	35,650	42,650	51,250	56,900	59,650
ROW DWELLINGS	21,950	26,700	33,000	39,000	47,150	52,350	54,650
WALKUP	20,100	25,200	31,900	37,600	43,750	48,100	50,550
ELEVATOR-STRUCTURE	30,500	35,100	44,500	------	------	------	------
PENDLETON							
DETACHED AND SEMIDETACHED	26,050	31,300	38,650	46,400	55,650	61,750	64,850
ROW DWELLINGS	24,650	30,050	37,050	43,750	53,050	58,850	61,450
WALKUP	21,400	26,900	34,000	40,050	46,700	51,300	53,900
ELEVATOR-STRUCTURE	33,250	38,450	48,750	------	------	------	------
ONTARIO							
DETACHED AND SEMIDETACHED	25,450	30,800	37,750	45,450	54,450	60,550	63,600
ROW DWELLINGS	23,750	28,500	35,050	41,700	50,450	56,250	58,950
WALKUP	21,650	26,950	33,950	40,350	46,400	51,400	53,850
ELEVATOR-STRUCTURE	31,850	37,000	47,100	------	------	------	------

PROTOTYPE PER UNIT COST SCHEDULE

	NUMBER OF BEDROOMS						
	0	1	2	3	4	5	6
REGION X--CONTINUED							
OREGON--CONTINUED							
BEND							
DETACHED AND SEMIDETACHED	23,350	28,150	34,650	41,600	49,000	55,300	60,100
ROW DWELLINGS	21,300	25,950	32,150	37,900	45,800	51,000	53,150
WALKUP	19,350	23,950	30,400	36,950	41,850	45,800	48,200
ELEVATOR-STRUCTURE	30,500	35,100	40,500	------	------	------	------
COOS BAY							
DETACHED AND SEMIDETACHED	23,400	28,400	34,850	42,050	50,250	55,900	58,500
ROW DWELLINGS	22,900	27,150	33,700	39,700	48,100	53,400	55,700
WALKUP	20,750	25,850	32,700	38,700	45,150	49,550	52,050
ELEVATOR-STRUCTURE	31,200	36,150	45,500	------	------	------	------
EUGENE							
DETACHED AND SEMIDETACHED	22,400	27,050	33,350	40,050	47,900	53,200	55,850
ROW DWELLINGS	20,450	24,950	30,850	36,500	44,050	48,950	51,100
WALKUP	18,550	22,000	29,500	34,700	40,500	44,500	46,850
ELEVATOR-STRUCTURE	29,850	34,500	43,750	------	------	------	------
MEDFORD							
DETACHED AND SEMIDETACHED	22,800	27,300	33,650	40,450	45,900	54,000	56,400
ROW DWELLINGS	21,600	26,050	32,250	38,200	44,200	51,350	53,450
WALKUP	19,800	24,500	31,200	36,600	42,650	47,050	49,600
ELEVATOR-STRUCTURE	30,050	34,750	44,150	------	------	------	------
WEST SALEM							
DETACHED AND SEMIDETACHED	22,950	27,900	34,150	41,150	49,350	54,750	57,400
ROW DWELLINGS	21,100	25,700	31,800	37,450	45,400	50,400	52,650
WALKUP	19,350	23,950	30,300	35,800	41,750	45,800	48,200
ELEVATOR-STRUCTURE	30,550	35,650	44,850	------	------	------	------
WASHINGTON							
SEATTLE							
DETACHED AND SEMIDETACHED	22,950	27,750	34,100	40,700	48,850	54,250	56,950
ROW DWELLINGS	20,600	25,050	30,750	36,650	44,050	48,900	51,300
WALKUP	20,050	24,300	29,950	35,700	42,850	47,60	49,950
ELEVATOR-STRUCTURE	32,050	37,250	46,950	------	------	------	------
PORT ANGELES							
DETACHED AND SEMIDETACHED	22,950	27,750	34,100	40,700	48,850	54,250	56,950
ROW DWELLINGS	20,600	25,050	30,750	36,650	44,050	48,900	51,300
WALKUP	20,050	24,300	29,950	35,700	42,850	47,600	49,950
ELEVATOR-STRUCTURE	32,800	38,150	48,300	------	------	------	------
LONGVIEW							
DETACHED AND SEMIDETACHED	22,700	27,550	33,850	40,450	48,550	53,900	56,600
ROW DWELLINGS	20,450	24,750	30,500	36,450	43,750	48,550	50,950
WALKUP	19,750	23,400	29,400	35,050	42,200	46,750	49,100
ELEVATOR-STRUCTURE	32,450	38,550	48,650	------	------	------	------
ABERDEEN							
DETACHED AND SEMIDETACHED	22,700	27,550	33,850	40,450	48,550	53,900	56,600
ROW DWELLINGS	20,450	24,750	30,500	36,450	43,750	48,550	50,950
WALKUP	19,750	23,400	29,400	35,050	42,200	46,750	49,100
ELEVATOR-STRUCTURE	32,300	37,400	47,450	------	------	------	------
BELLINGHAM							
DETACHED AND SEMIDETACHED	22,950	27,750	34,100	40,700	48,850	54,250	56,950
ROW DWELLINGS	20,600	25,050	30,750	36,650	44,050	48,900	51,300
WALKUP	19,850	24,050	29,650	35,300	42,450	47,100	49,450
ELEVATOR-STRUCTURE	32,300	37,400	47,450	------	------	------	------
OLYMPIA							
DETACHED AND SEMIDETACHED	22,950	27,750	34,100	40,700	48,850	54,250	56,950
ROW DWELLINGS	20,600	25,050	30,750	36,650	44,050	48,900	51,300
WALKUP	19,850	24,050	29,650	35,300	42,450	47,100	49,450
ELEVATOR-STRUCTURE	32,300	37,400	47,450	------	------	------	------
YAKIMA							
DETACHED AND SEMIDETACHED	23,800	28,600	35,400	42,300	50,650	56,500	59,350
ROW DWELLINGS	21,450	25,950	31,850	38,100	45,750	50,850	53,450
WALKUP	20,650	25,000	30,750	36,650	44,100	49,050	51,500
ELEVATOR-STRUCTURE	33,600	39,100	49,550	------	------	------	------
SPOKANE							
DETACHED AND SEMIDETACHED	21,900	26,600	32,600	38,950	46,800	52,000	54,550
ROW DWELLINGS	18,700	22,750	27,900	33,350	40,000	44,450	46,650
WALKUP	17,950	21,800	26,750	32,050	38,400	42,600	44,800
ELEVATOR-STRUCTURE	30,550	35,500	45,050	------	------	------	------
CHENEY							
DETACHED AND SEMIDETACHED	22,300	26,600	33,200	39,650	47,600	52,850	55,500
ROW DWELLINGS	19,050	22,750	28,400	33,850	40,700	45,150	47,450
WALKUP	18,300	21,800	27,250	32,550	39,000	43,350	45,500
ELEVATOR-STRUCTURE	30,950	36,150	45,750	------	------	------	------
KENNEWICK							
DETACHED AND SEMIDETACHED	24,600	27,000	36,600	43,700	52,400	58,200	61,100
ROW DWELLINGS	21,000	23,100	31,350	37,350	44,850	49,800	52,250
WALKUP	20,200	22,200	30,050	35,850	43,000	47,750	50,150
ELEVATOR-STRUCTURE	32,050	35,250	44,750	------	------	------	------
PULLMAN							
DETACHED AND SEMIDETACHED	22,850	27,700	34,000	40,600	48,750	54,150	56,850
ROW DWELLINGS	19,550	23,700	29,050	34,700	41,700	46,250	48,600
WALKUP	18,750	22,750	27,850	33,400	40,050	44,500	46,900
ELEVATOR-STRUCTURE	33,650	39,250	49,650	------	------	------	------

[FR Doc. 84-31837 Filed 12-5-84; 8:45 am]

BILLING CODE 4210-33-C

federal register

Thursday
December 6, 1984

Part V

Department of Energy

Office of Civilian Radioactive Waste Management

Intent To Issue Draft Environmental Assessments for Potential Nuclear Waste Repository Sites; Notice

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Intent To Issue Draft Environmental Assessments for Potential Nuclear Waste Repository Sites

AGENCY: Department of Energy DOE.

ACTION: Notice of intent to issue draft environmental assessments.

SUMMARY: DOE intends to publish for 90 days of public comment draft environmental assessments (EAs) for nine (9) potentially acceptable sites at the following locations for a repository for permanent disposal of spent nuclear fuel and high-level radioactive waste:

Louisiana

Vacherie Dome, Webster Parish and Bienville Parish

Mississippi

Cypress Creek Dome, Camp Shelby Military Reservation, Perry County
Richton Dome, Perry County

Nevada

Yucca Mountain, Nye County

Texas

Deaf Smith County
Swisher County

Utah

Davis Canyon, San Juan County
Lavender Canyon, San Juan County

Washington

Hanford, Denton County and Franklin County

After consideration of comments received during the comment period, DOE will publish final EAs. The Secretary of Energy will then formally nominate at least five (5) of the nine (9) sites as suitable for detailed site characterization and recommend not less than three (3) of the nominated sites to the President of the United States for approval to begin site characterization activities

DATES: The draft EAs are expected to be published for public comment on or about December 20, 1984.

ADDRESSES: Advance requests for the draft EAs are now being accepted at the address given below. Requests should include identification of the draft EA of interest from the above list of locations, and requestor's name, address, and ZIP code. A day-time telephone number and area code should also be included, if available, to enable DOE to clarify requests.

Send written requests to: EA, U.S. Department of Energy, ATTN: EA, 1000 Independence Avenue, SW., Washington, D.C. 20585.

DOE will make all nine draft EAs available for review in reading room at DOE headquarters and field offices, at a central location in the capital of each of the six host States listed above, at tribal headquarters of officially designated "affected Indian tribes", and in various public libraries and DOE information offices in the above six states. The **Federal Register** notice published on or about December 20, 1984, announcing the availability of the draft EAs will give the locations where draft EAs may be reviewed.

SUPPLEMENTARY INFORMATION: By the end of this century, the United States plans to begin operation of a geologic repository for the permanent disposal of commercial spent nuclear fuel and high-level radioactive waste. Pub. L. 97–425, the Nuclear Waste Policy Act of 1982 (the Act), specifies the process for selecting a repository site and assigns to DOE the responsibility for locating, constructing, operating, and decommissioning the repository.

The Act requires that DOE nominate at least five (5) sites that it determines are suitable for site characterization. DOE must then recommend not less than three (3) of those sites for characterization as candidate sites for the first repository. The Act also requires that DOE prepare site characterization plans for review by the Nuclear Regulatory Commission. As part of the site characterization program, DOE will sink one or more exploratory shafts at each of the recommended sites to the depth of the proposed repository and will then conduct tests at the depth to determine whether subsurface conditions will allow construction of a repository that will safely isolate radioactive wastes. After site characterization is completed, DOE will recommend one of the characterized sites for construction of a repository.

The Act also requires that DOE prepare EAs to serve as the basis for site nominations. The draft EAs will contain the following kinds of information and evaluations to meet the requirements of the Act:

- A description of the decision process by which the site is being considered for nomination;
- A description of the site and its surroundings;
- An evaluation of the effects of site characterization on the public health and safety and the environment;
- An assessment of the regional and local impacts of locating the proposed repository at the site;
- An evaluation as to whether the site is suitable for site characterization;
- An evaluation as to whether the site is suitable for development as a respository; and
- A reasonable comparative evaluation of the site with other sites and locations that have been considered.

A **Federal Register** notice will be issued on or about December 20, 1984, announcing the availability of the draft EAs, describing the briefing and public hearing process for the draft EAs, and how interested parties may participate in the public review process. DOE will consider public comments on the draft EAs before making any final nomination and recommendation decisions.

Issued at Washington, D.C. on December 3, 1984.

Robert H. Bauer,

Associate Director for Resource Management, Office of Civilian Radioactive Waste Management.

[FR Doc. 84–31870 Filed 12–5–84; 8:45 am]
BILLING CODE 6450–01–M

federal register

Thursday
December 6, 1984

Part VI

Office of Management and Budget

Budget Decisions and Deferrals; Notice

OFFICE OF MANAGMENT AND BUDGET

Budget Decisions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report 14 new deferrals of budget authority for 1985 totaling $5,266,251,741 and three revised deferrals now totaling $6,114,100,232. The deferrals affect International Security Assistance, the Departments of Defense, Energy, Interior and Labor, the General Services Administration, and the Panama Canal Commission.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House,
November 29, 1984.

BILLING CODE 3110-01-M

VOL 49 ISS 236 DE 6 1984 UMI

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL #	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President	
	International Security Assistance	
D85-24	Foreign military sales credit	4,939,500
D85-2A	Economic support fund	4,106,500
D85-3A	Military assistance	801,270
D85-25	International military education and training	55,521
	Department of Defense - Military	
	Military Construction	
D85-6A	Military construction, defense	1,206,330
	Family Housing	
D85-26	Family housing, defense	830,790
	Department of Energy	
	Energy Programs	
D85-27	Fossil energy research and development	4,871
D85-28	Fossil energy construction	2,165
D85-29	Naval petroleum and oil shale reserves	23
D85-30	Energy conservation	3,398
D85-31	Strategic petroleum reserve	481
D85-32	Energy security reserve and alternative fuels production	852
	Department of the Interior	
	Bureau of Indian Affairs	
D85-33	Construction	8,918
	Department of Labor	
	Employment and Training Administration	
D85-34	State unemployment insurance and employment service operations	3,767
	Bureau of Labor Statistics	
D85-35	Salaries and expenses	5,000
	General Services Administration	
	National Archives and Records Service	
D85-36	Operating expenses	8,700
	Other Independent Agencies	
	Panama Canal Commission	
D85-37	Operating expenses	8,346
	Total, deferrals	11,380,352

SUMMARY OF SPECIAL MESSAGES
FOR FY 1985
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Third special message:		
New items	---	5,266,252
Revisions to previous special messages	---	5,515,092
Effects of second special message	---	10,781,344
Amounts from previous special messages that are changed by this message (changes noted above)	---	-599,008
Subtotal, rescissions and deferrals	---	11,380,352
Amounts from previous special messages that are not changed by this message	---	827,436
Total amount proposed to date in all special messages	---	12,207,788

Deferral No: D85-24

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:
Foreign Military Sales Credit 1/
1151082

OMB Identification code:
11-1082-0-1-152

Grant program:
[ ] Yes [X] No

Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority..... $4,939,500,000
(P.L. 98-473)
Other budgetary resources 0
Total budgetary resources 4,939,500,000

Amount to be deferred:
Part of year 4,939,500,000
Entire year _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit or guarantees articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Arms Export Control Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit and guarantee transactions that are based upon national security and financial policies. These funds have been deferred pending approval of specific loans to eligible countries by the Departments of State, Defense and the Treasury. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-30).

D85-2A

SUPPLEMENTARY REPORT

Report pursuant to Section 1014(c) of P.L. 93-344

This report updates Deferral No. D85-2 transmitted to the Congress on October 1, 1984.

This revision to a deferral of Funds Appropriated to the President for Economic support increases the amount previously reported as deferred from $280,500,000 to $4,106,500,000. This net increase of $3,826,000,000 is attributable to amounts appropriated in the Foreign Assistance and Related Programs Appropriations Act, 1985.

Deferral No:*D85-2A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority.....*$3,826,000,000 (P.L. 98-473)
Bureau: International Security Assistance	Other budgetary resources 280,500,000
Appropriation title and symbol: Economic Support Fund 1/ 114/51037 *1151037	Total budgetary resources*$4,106,500,000
OMB identification code: 11-1037-0-1-152	Amount to be deferred: Part of year *$4,106,500,000
Grant program: [X] Yes [ ] No	Entire year 0
Type of account or fund: [*X] Annual [X] Multiple-year March 31, 1985 (expiration date) [ ] No-Year	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

*Coverage

Appropriation	Symbol	Amount Deferred
Economic Support Fund, 1984-85	114/51037	$ 280,500,000
Economic Support Fund, 1985	1151037	3,826,000,000
		$4,106,500,000

Justification: *Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish assistance to promote economic or political stability in foreign countries on such terms and conditions as he may determine. Under Part II, Chapter 4, of the Foreign Assistance Act, the Secretary of State is responsible for policy decisions and justifications for such economic support programs, including the countries and amounts to be provided. Executive Order 12163 of September 29, 1979, further delegates the President's responsibilities under Chapter 4, related to policy decisions and justifications for economic support programs, to the Secretary of State. These functions will be exercised in cooperation with the Administrator of the Agency for International Development. These funds are deferred pending approval of specific loans and grants to eligible countries by the Secretary of State. This will insure that each approved program is consistent with the foreign, national security and financial policies of the U.S. and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

1/ This account was the subject of similar deferrals in 1984 (D84-24A, D84-60, and D84-66).

*Revised from previous report

Estimated Program Effect: None

Outlay Effect: None

D85-3A

Deferral No:*D85-3A

SUPPLEMENTARY REPORT

Report pursuant to Section 1014(c) of P.L. 93-344

This report updates Deferral No. D85-3 transmitted to the Congress on October 1, 1984.

This revision to a deferral of Funds Appropriated to the President for Military assistance increases the amount previously reported as deferred from $18,500,000 to $801,270,000. This net increase of $782,770,000 is attributable to amounts appropriated in the Foreign Assistance and Related Programs Appropriations Act, 1985.

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:

Military Assistance 1/

114/51080
*1151080

OMB Identification code:
11-1080-0-1-152

Grant program:
[X] Yes [ ] No

Type of account or fund:
[*X] Annual
[X] Multiple-year March 31, 1985 (expiration date)
[ ] No-Year

New budget authority..... *$805,100,000 (P.L.)
Other budgetary resources *145,970,000
Total budgetary resources *951,070,000

Amount to be deferred:
Part of year *$801,270,000
Entire year 0

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

*Coverage

Appropriation	Symbol	Amount Deferred
Military Assistance	114/51080	$ 18,500,000
Military Assistance	1151080	782,770,000
		$801,270,000

Justification: *Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred pending approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of similar deferrals in 1984 (D84-31 and D84-67).

*Revised from previous report

Deferral No: D85-25

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority.....$56,221,000 (P.L. 98-473)
Bureau: International Security Assistance	Other budgetary resources 0
Appropriation title and symbol: International Military Education and Training 1151081	Total budgetary resources 56,221,000
OMB identification code: 11-1081-0-1-152	**Amount to be deferred:** Part of year 55,521,000
Grant program: [X] Yes [ ] No	Entire year 0
Type of account or fund: [X] Annual	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
[ ] Multiple-year (expiration date)	[ ] Other
[ ] No-Year	**Type of budget authority:** [X] Appropriation
	[ ] Contract authority
	[ ] Other

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military training to friendly countries or international organizations. These funds are being deferred pending approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D85-6A

SUPPLEMENTARY REPORT

Report pursuant to Section 1014(c) of P.L. 93-344

This report updates Deferral No. D85-6 transmitted to the Congress on October 1, 1984.

This revision to a deferral of Department of Defense funds for Military construction increases the amount previously reported as deferred from $300,008,232 to $1,206,330,232. This net increase of $906,322,000 results from administrative delays in projects funded by the Military Construction Appropriations Act, 1985.

Deferral No: *D85-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military

Bureau:
*Military Construction

Appropriation title and symbol:
See Coverage Section below 1/

OMB identification code:
See Coverage Section below 1/

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual — Sept. 30, 1985 / Sept. 30, 1986 / Sept. 30, 1987
[X] Multiple-year — Sept. 30, 1988 (expiration date)
[ ] No-Year — *Sept. 30, 1989

New budget authority.....*$5,517,491,000
(P.L. 98-473)
Other budgetary resources *3,522,984,000

Total budgetary resources *9,040,475,000

Amount to be deferred:
Part of year *1,206,330,232
Entire year 0

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Army	215/92050	21-2050-0-1-051	$435,510,000*
Military construction, Army	214/82050	21-2050-0-1-051	9,000,000
Military construction, Army	213/72050	21-2050-0-1-051	---
Military construction, Army	212/62050	21-2050-0-1-051	---
Military construction, Army	211/52050	21-2050-0-1-051	---
*Military construction, Navy	175/91205	17-1205-0-1-051	178,334,000*
Military construction, Navy	174/81205	17-1205-0-1-051	---
Military construction, Navy	173/71205	17-1205-0-1-051	50,364,352
Military construction, Navy	172/61205	17-1205-0-1-051	12,679,980
Military construction, Navy	171/51205	17-1205-0-1-051	---
*Military construction, Air Force	575/93300	57-3300-0-1-051	65,081,000*
Military construction, Air Force	574/83300	57-3300-0-1-051	---
Military construction, Air Force	573/73300	57-3300-0-1-051	---
Military construction, Air Force	572/63300	57-3300-0-1-051	---
Military construction, Air Force	571/53300	57-3300-0-1-051	---
*Military construction, Defense Agencies	975/90500	97-0500-0-1-051	$53,427,000*
Military construction, Defense Agencies	974/80500	97-0500-0-1-051	5,000,000
Military construction, Defense Agencies	973/70500	97-0500-0-1-051	5,200,000
Military construction, Defense Agencies	972/60500	97-0500-0-1-051	6,864,000
Military construction, Defense Agencies	971/50500	97-0500-0-1-051	---
*Military construction, Army National Guard	215/92085	21-2085-0-1-051	$41,108,000*
Military construction, Army National Guard	214/82085	21-2085-0-1-051	---
Military construction, Army National Guard	213/72085	21-2085-0-1-051	---
Military construction, Army National Guard	212/62085	21-2085-0-1-051	---
Military construction, Army National Guard	211/52085	21-2085-0-1-051	---
*Military construction, Air National Guard	575/93830	57-3830-0-1-051	24,300,000*
Military construction, Air National Guard	574/83830	57-3830-0-1-051	---
Military construction, Air National Guard	573/73830	57-3830-0-1-051	10,900,000
Military construction, Air National Guard	572/63830	57-3830-0-1-051	---
Military construction, Air National Guard	571/53830	57-3830-0-1-051	---
*Military construction, Army Reserve	215/92086	21-2086-0-1-051	7,847,000*
Military construction, Army Reserve	214/82086	21-2086-0-1-051	---
Military construction, Army Reserve	213/72086	21-2086-0-1-051	---
Military construction, Army Reserve	212/62086	21-2086-0-1-051	---
Military construction, Army Reserve	211/52086	21-2086-0-1-051	---
*Military construction, Naval Reserve	175/91235	17-1235-0-1-051	1,180,000*
Military construction, Naval Reserve	174/81235	17-1235-0-1-051	---
Military construction, Naval Reserve	173/71235	17-1235-0-1-051	---
Military construction, Naval Reserve	172/61235	17-1235-0-1-051	---
Military construction, Naval Reserve	171/51235	17-1235-0-1-051	---

Deferral No: D85-26

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Air Force Reserve	575/93730	57-3730-0-1-051	32,535,000*
Military construction, Air Force Reserve	574/83730	57-3730-0-1-051	---
Military construction, Air Force Reserve	573/73730	57-3730-0-1-051	---
Military construction, Air Force Reserve	572/63730	57-3730-0-1-051	---
Military construction, Air Force Reserve	571/53730	57-3730-0-1-051	---
North Atlantic Treaty Organization Infrastructure	97X0804	97-0804-0-1-051	267,000,000*
Military construction, Reserve Components, Generally	972/80805	21-2086-0-1-051	---
Total			$1,206,330,232*

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None.

1/ These accounts were the subject of a similar deferral in 1984 (D84-5A).

* Revised from previous report.

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military

Bureau:
Family Housing, Defense

Appropriation title and symbol:
See Coverage Section below 1/

OMB identification code:
See Coverage Section below 1/

Grant program:
| | Yes | X | No

Type of account or fund:
| | Annual (Sept. 30, 1986)
| X | Multiple-year (Sept. 30, 1987 / Sept. 30, 1988 / Sept. 30, 1989) (expiration date)
| | No-Year

New budget authority..... $442,072,000
(P.L.)
Other budgetary resources 285,216,939
Total budgetary resources 727,288,939

Amount to be deferred:
Part of year $230,790,000
Entire year 0

Legal authority (in addition to sec. 1013):
| X | Antideficiency Act
| | Other

Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Deferred
Family housing, Army	215/90702	21-0702-0-1-051	$ 73,770,000
Family housing, Army	214/80702	21-0702-0-1-051	---
Family housing, Army	213/70702	21-0702-0-1-051	---
Family housing, Army	212/67072	21-0702-0-1-051	---
Family housing, Navy and Marine Corps	175/90703	17-0703-0-1-051	16,520,000
Family housing, Navy and Marine Corps	174/80703	17-0703-0-1-051	---
Family housing, Navy and Marine Corps	173/70703	17-0703-0-1-051	---
Family housing, Navy and Marine Corps	172/60703	17-0703-0-1-051	---
Family housing, Air Force	375/90704	57-0704-0-1-051	110,500,000
Family housing, Air Force	374/80704	57-0704-0-1-051	---
Family housing, Air Force	373/70704	57-0704-0-1-051	---
Family housing, Air Force	372/60704	57-0704-0-1-051	---

Appropriation	Symbol	Identification Code	Deferred
Family housing, Defense Agencies..	975/90706	97-0706-0-1-051	
Family housing, Defense Agencies..	974/80706	97-0706-0-1-051	---
Family housing, Defense Agencies..	973/70706	97-0706-0-1-051	---
Family housing, Defense Agencies..	972/60706	97-0706-0-1-051	---
			$230,790,000

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in 1984 (D84-6A).

Deferral No: D85-27

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:
Fossil Energy Research and Development 1/
89X0213

OMB identification code:
89-0213-0-1-271

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority.....$ P. L. 98-146 15,000,000 (P.L. 98-473 [illegible])
Other budgetary resources [illegible]
Total budgetary resources 367,369,000

Amount to be deferred:
Part of year $_____
Entire year 4,871,187

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This account funds research and development activities in coal, petroleum, and unconventional natural gas. The deferred funds consist of recoveries of prior year obligations for projects and activities which were completed or terminated during the months of February through July 1984. These funds cannot be effectively used this year and will be used to partially offset the 1986 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-21D).

Deferral No: D85-28

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy
Bureau:
Energy Programs
Appropriation title and symbol:
Fossil Energy Construction 1/
89X0214
OMB identification code:
89-0214-0-1-271
Grant programs: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L. _____)
Other budgetary resources 7,691,000
Total budgetary resources 7,691,000

Amount to be deferred:
Part of year $_____
Entire year 2,164,670

Legal authority (in addition to Sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This account funds major construction projects related to Fossil Energy. The deferred funds consist of recoveries of prior year obligations for projects and activities which were completed or terminated during the months of February through July 1984. These funds cannot be effectively used this year and will be used to partially offset the 1985 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-25A).

Deferral No: D85-29

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy
Bureau:
Energy Programs
Appropriation title and symbol:
Naval Petroleum and Oil Shale Reserves 1/
89X0219
OMB identification code:
89-0219-0-1-271
Grant programs: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 156,874,000
(P.L. 98-473)
Other budgetary resources 123,693,000
Total budgetary resources 280,567,000

Amount to be deferred:
Part of year $_____
Entire year 22,788

Legal authority (in addition to Sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This account primarily funds activities necessary to operate, explore, conserve, develop, and produce the naval petroleum reserves at the maximum efficient rate and to conserve the oil shale reserves. The remainder of this account includes funds from prior years for solar Federal buildings and coal loan guarantee activities. The deferred funds consist of recoveries of prior year obligations for projects and activities which were completed or terminated during the months of February through July 1984. These funds cannot be effectively used this year and will be used to partially offset the 1986 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-40A).

Deferral No: D85-30

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:
Energy Conservation 1/
89X0215

OMB identification code:
89-0215-0-1-272

Grant program: [X] Yes [ ] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $158,610,000
(P.L. 98-473)
Other budgetary resources 30,338,000
Total budgetary resources 188,948,000

Amount to be deferred:
Part of year $_____
Entire year 3,398,271

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This account funds a variety of energy research and development and grant programs providing support for buildings and community systems, industry, transportation, multi-sector research and state and local assistance. The deferred funds consist of recoveries of prior year obligations for projects and activities which were completed or terminated during the months of February through July 1984. These funds cannot be effectively used this year and will be used to partially offset the 1986 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-41).

Deferral No: D85-31

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:
Strategic Petroleum Reserve 1/
89X0218

OMB identification code:
89-0218-0-1-274

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L.)
Other budgetary resources 537,572,000
Total budgetary resources 537,572,000

Amount to be deferred:
Part of year $_____
Entire year 490,340

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: Funds appropriated to this account are for the development of the Strategic Petroleum Reserve (SPR), including facilities construction, planning, and program administration. The deferred funds consist of recoveries of prior year obligations for projects and activities which were completed or terminated during the months of February through July 1984. These funds cannot be effectively used this year and will be used to partially offset the 1986 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-26B).

Deferral No: D85-32

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:
Energy Security Reserve and Alternative Fuels Production 1/

[redacted]

OMB identification code:
89-5180-0-2-271

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L. _____)
Other budgetary resources 1,278,000
Total budgetary resources 1,278,000

Amount to be deferred:
Part of year $_____
Entire year 852,285

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This program funds feasibility studies and cooperative agreements for the development and production of alternative fuels. The deferred funds consist of recoveries of prior year obligations for projects and activities which were completed or terminated during the months of February through July 1984. These funds cannot be effectively used this year and will be used to partially offset the 1986 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-22A).

Deferral No: D85-33

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of the Interior

Bureau:
Bureau of Indian Affairs

Appropriation title and symbol:
Construction
14X2301

OMB identification code:
14-2301-0-1-452

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 109,686,000
(P.L. 98-473)
Other budgetary resources 58,806,000
Total budgetary resources 168,492,000

Amount to be deferred:
Part of year $ 8,918,000
Entire year _____

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This account funds construction and additions to Bureau facilities; construction, extension and rehabilitation of irrigation projects on Indian reservations; and, new and rehabilitated family housing. The Department of the Interior and Related Agencies Appropriations Act, 1985, included $8,918,000 to continue construction of the Navajo Indian Irrigation Project in New Mexico. Funds have not been requested for this project since 1982 because of concerns over the management of the entity farming the project -- Navajo Agricultural Products Industry (NAPI) -- and its continued operating losses, ranging from $3-10 million a year. NAPI is heavily in debt.

Although the Congress provided $8.9 million for construction, the Senate report on the 1985 appropriations bill states: "The Bureau is directed to submit a report to the Committee no later than January 1, 1985, on the Navajo Indian Irrigation Project including, but not necessarily limited to the following: a description of exactly what assistance the Bureau has provided to resolve the financial difficulties of the Navajo Agricultural Product Industries; the outlook for possible default on the $19,000,000 of loans guaranteed by the tribe, and the $18,500,000 of loans guaranteed by BIA; current projections of annual operating losses; the estimated annual subsidy requirements over the next five years and the estimated division of these losses between the BIA and the tribe; the impact of adding additional blocks

Justification: (con.)

on operating expenses and revenue projections; and a clear statement of the position of the Navajo Tribe with respect to the future of the irrigation project and the Navajo Agricultural Product Industries."

Funds for the initiation of construction are deferred until the BIA submits its report to the Congress for review.

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D85-34

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
U. S. Department of Labor

Bureau:
Employment and Training Administration

Appropriation title and symbol:
State Unemployment Insurance and Employment Service Operations
1650179

OMB identification code:
16-0179-0-1-999

Grant program:
[X] Yes [ ] No

Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority..... $1,637,167,000
(P.L. 98-619)
Other budgetary resources _____
Total budgetary resources 1,637,167,000

Amount to be deferred:
Part of year $3,767,000
Entire year _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: The State Unemployment Insurance and Employment Service Operations appropriation provides for State grants for payment of salaries and expenses of State Unemployment Insurance and Employment Service staff and for related operations. The Department of Labor Appropriation Act, 1985, includes $3.8 million for amortization payments to States which had independent retirement plans in their State Employment Service agencies prior to 1980. These amounts are deferred until a study is made as to the exact amount needed by each State involved, at which time a plan can be developed based on the requirements of individual State retirement plans, timing, and such other factors that affect payment. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D85-35

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Labor

Bureau:
Bureau of Labor Statistics

Appropriation title and symbol:
Salaries and Expenses
1650200

OMB identification code:
16-0200-0-1-505

Grant program: [X] Yes [ ] No

Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority..... $ 182,360,000
(P.L. 98-619)
Other budgetary resources 11,229,000
Total budgetary resources 182,388,000

Amount to be deferred:
Part of year $ 5,000,000
Entire year

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This account funds the gathering and publishing of data on employment and unemployment, prices and the cost of living, wages and benefits, productivity and economic growth. The deferred funds would expand to all States a pilot program the Bureau of Labor Statistics started in 1984 in cooperation with some States to gather more statistics on plant closings and permanent layoffs. Because these funds are an addition to the 1985 Budget, the Department of Labor has had inadequate time to plan the expansion of the pilot program into a national program. These funds are deferred under the Antideficiency Act (31 U.S.C. 1512) to provide time to plan for their effective and efficient use and to determine how the funds can be distributed among all the States in a manner that will provide useful information.

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D85-36

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
General Services Administration

Bureau:
National Archives and Records Service

Appropriation title and symbol:
National Archives and Records Service, Operating Expenses
47X0300

OMB identification code:
47-0300-0-1-804

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 9,290,000
(P.L. 98-473)
Other budgetary resources 3,029,000
Total budgetary resources 12,319,000

Amount to be deferred:
Part of year $
Entire year 4,700,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This appropriation provides for basic operations dealing with management of the Government's archives and records, operation of Presidential libraries, and for the review for declassification of security classified information. The 1985 Continuing Resolution (P.L. 98-473) provided $5.2 million for additional archival space, access facilities, and auditorium meeting space at the John F. Kennedy Library in Boston, Massachusetts. There have been no planning studies or justification materials prepared regarding any new construction at the John F. Kennedy Library. Funds will be made available for obligation as plans are prepared and approved. The Office of the Archivist has noted that no more than $500 thousand can be obligated in 1985. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 84-31942 Filed 12-5-84; 8:45 am]
BILLING CODE 3110-01-C

Deferral No: D85-37

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Panama Canal Commission
Bureau:

Appropriation title and symbol:
Operating expenses
9555191

OMB identification code:
95-1203-0-1-403

Grant program: [ ] Yes [X] No

Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority..... $ 406,346,000
(P.L. 98-473)
Other budgetary resources 5,019,000
Total budgetary resources 411,365,000

Amount to be deferred:
Part of year $ 6,346,000
Entire year

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract Authority
[ ] Other _____

Justification: This account funds the operating expenses of the Panama Canal Commission from appropriation of tolls and other revenues. By law, the Panama Canal Commission is required to recover, as nearly as practicable, the total cost of its operation and, if profits are generated, to pay these to the Government of Panama. In 1984, the Commission generated an as-yet undetermined profit. Funds are deferred pending the Commission's determination of the exact amount of the payment due to Panama. Current estimates are that the Commission is able to operate with the funds made available. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Reader Aids

Federal Register

Vol. 49, No. 236

Thursday, December 6, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189–47380.....3
47381–47472.....4
47473–47586.....5
47587–47818.....6

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations
5285.....47473
5286.....47587

7 CFR
413.....47589
445.....47590
907.....47475
966.....47189
991.....47190

Proposed Rules:
Ch. IX.....47271
52.....47402
434.....47612
447.....47617
966.....47495
1126.....47495
1150.....47496

9 CFR
301.....47475
325.....47475
381.....47475

Proposed Rules:
92.....47402

10 CFR
110.....47191
430.....47479
960.....47714

12 CFR

Proposed Rules:
205.....47405
226.....47406
500.....47410
561.....47499
563.....47499
563b.....47271, 47410

13 CFR
101.....47381

Proposed Rules:
121.....47412, 47414

14 CFR
1.....47594
27.....47594
29.....47594
39.....47381, 47382
91.....47594
95.....47204

Proposed Rules:
25.....47358
71.....47415
75.....47621

15 CFR

Proposed Rules:
941.....47415

16 CFR
305.....47479

17 CFR
210.....47594
229.....47594
231.....47594
241.....47594
270.....47208
274.....47208

Proposed Rules:
240.....47274

18 CFR
1302.....47383

20 CFR
632.....47384

21 CFR
81.....47228, 47229
175.....47480
184.....47384
193.....47481
436.....47483
442.....47483
510.....47387
546.....47486
558.....47387
561.....47481
1020.....47387

Proposed Rules:
58.....47504
166.....47418
182.....47505
184.....47505
450.....47505
610.....47622
630.....47622

22 CFR
121.....47682
122.....47682
123.....47682
124.....47682
125.....47682
126.....47682
127.....47682
128.....47682
129.....47682
130.....47682

24 CFR
234.....47388

26 CFR

Proposed Rules:
41.....47274
48.....47274

30 CFR

Proposed Rules:
Ch. II 47624
920 47419

32 CFR

706 47602

33 CFR

100 47230
110 47602
117 47231

36 CFR

Proposed Rules:
261 47505
293 47505
294 47505

37 CFR

304 47487

39 CFR

10 47389
111 ..... 47231, 47232, 47389

Proposed Rules:
10 47275

40 CFR

52 ..... 47488, 47490
180 ..... 47491, 47493
260 47390
270 47390
271 47391

Proposed Rules:
65 47507
154 47508
180 ..... 47420, 47508, 47509
261 47510

43 CFR

Proposed Rules:
Ch. II 47624
5400 47516

44 CFR

67 47240

45 CFR

96 47603
801 47392

46 CFR

500 47393
501 47393
502 47393
503 47393
504 47393
505 47393

47 CFR

0 47604
61 47265
73 ..... 47395, 47604–47608

Proposed Rules:
Ch. I 47275
2 ..... 47625, 47628
18 47628
73 47638
81 47641
83 ..... 47516, 47625, 47641

48 CFR

Proposed Rules:
Ch. 5 47516
1501 47516
1502 47516
1503 47516
1505 47516
1506 47516
1513 47516
1514 47516
1515 47516
1517 47516
1527 47516
1533 47516
1536 47516
1552 47516

49 CFR

395 47494
571 47396
1057 47268

Proposed Rules:
571 47276
1063 47277

50 CFR

17 47397
258 47611
655 47269

Proposed Rules:
Ch. II 47421
80 47420
652 ..... 47278, 47422

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List November 16, 1984.

VOL
49

ISS
236

DE
6

1984

UMI

OL
9

SS
37

E
7

984

MI

12-7-84
Vol. 49 No. 237

federal register

Friday
December 7, 1984

**********5-DIGIT 48106
A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D C 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

U.S.MAIL

Postage and Fees Paid
U S Government Printing Office
375

SECOND CLASS NEWSPAPER

Federal Register
(ISSN 0097-6326)

375
SECOND CLASS NEWSPAPER

12-7-84
Vol. 49 No. 237
Pages 47819-48026

federal register

Friday
December 7, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency
Animal Drugs
Food and Drug Administration
Antibiotics
Food and Drug Administration
Banks, Banking
Federal Reserve System
Bridges
Coast Guard
Chemicals
Environmental Protection Agency
Continental Shelf
Minerals Management Service
Crop Insurance
Federal Crop Insurance Corporation
Customs Duties and Inspection
Customs Service
Employment and Income Taxes
Internal Revenue Service
Fuel Economy
Environmental Protection Agency
Housing
Housing and Urban Development Department

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Marketing Agreements
Agricultural Marketing Service

Motor Carriers
Interstate Commerce Commission

Motor Vehicle Safety
National Highway Traffic Safety Administration

Savings and Loan Associations
Federal Home Loan Bank Board

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television
Federal Communications Commission

Wine
Alcohol, Tobacco and Firearms Bureau

Contents

Federal Register
Vol. 49, No. 237
Friday, December 7, 1984

The President
EXECUTIVE ORDERS
47819 Executive Exchange, President's Commission on (EO 12493)

Executive Agencies

Agency for International Development
NOTICES
47940 Agency information collection activities under OMB review

Agricultural Marketing Service
RULES
47822 Lemons grown in Arizona and California

Agriculture Department
See Farmers Home Administration; Federal Crop Insurance Corporation; Food Safety and Inspection Service; Forest Service; Soil Conservation Service.

Air Force Department
NOTICES
Active military service and discharge determinations; civilian or contractual personnel:
47890 Naval support activity civilians, defense of Hue during Tet Offensive
Patent licenses, exclusive:
47891 Surface Control Quality of Orem, UT

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
47831 Madera, California

Army Department
NOTICES
Environmental statements; availability, etc.:
47891 Eighteenth Active Component Division
47891 Seventeenth Active Component Division

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
47889, 47890 Procurement list, 1985; additions and deletions (2 documents)

Coast Guard
PROPOSED RULES
Drawbridge operations:
47872 Washington

Commerce Department
See International Trade Administration; National Technical Information Service.

Customs Service
RULES
Articles conditionally free, subject to a reduced rate, etc.:
47984 Caribbean Basin Initiative and Generalized System of Preferences; interim and final rules (2 documents)

PROPOSED RULES
Articles conditionally free, subject to a reduced rate, etc.:
48003 Caribbean Basin Initiative and Generalized System of Preferences; foreign government certification requirement removal

Defense Department
See Air Force Department; Army Department; Navy Department.

Employment Standards Administration
NOTICES
47958 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (CA, GA, IA, NY, OH, OR, RI, WA, and WI)

Energy Department
See also Federal Energy Regulatory Commission; Western Area Power Administration.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
47892 International Atomic Energy Agency
Nuclear Waste Policy Act:
47919 Civilian radioactive waste management program; transportation business plan; availability of strategy options document; inquiry
47970 Spent nuclear fuel; Federal interim storage; fees

Environmental Protection Agency
RULES
Air quality implemention plans; approval and promulgation; various States:
47836 Maryland
PROPOSED RULES
Air quality implementation plans:
48018 Preparation, adoption and submittal, etc.; air quality models guideline
Motor vehicle fuel economy:
48024 Test procedures; adjustment factors for corporate average fuel economy
Toxic substances:
47874 Disubstituted diamino anisole; significant new uses
NOTICES
Environmental statements; availability, etc.:
47924 Agency statements; review and comment
47925 Agency statements; weekly receipts
47925 Freshwater wetlands for wastewater management, Alabama, et al.
Meetings:
47927 Science Advisory Board; cancellation
Toxic and hazardous substances control:
47920 Confidential business information security manual; revised procedures
47920 Premanufacture exemption approvals
47921 Premanufacture notices receipts

Water pollution; effluent guidelines for point source categories:
47925 Battery manufacturing, coil coating, etc.; intent to transfer confidential information to contractor

Farmers Home Administration
NOTICES
47888 Natural resource management guide; meeting

Federal Communications Commission
RULES
Television broadcasting:
47837 Low power television and television translator service
NOTICES
47927 Agency information collection activities under OMB review
Hearings, etc.:
47927 RKO General, Inc., et al.

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
47821 Soybeans, etc.; contract changes filing; interim

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
47929 Utah
Meetings:
47929 Advisory Board
Radiological emergency; State plans:
47929 Nebraska

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act; ceiling prices for high cost natural gas produced from tight formations; various States:
47826 New Mexico; correction (2 documents)
NOTICES
Hearings, etc.:
47893 ANR Pipeline Co.
47902 Beaver Power Group I, Ltd.
47893 Birch Creek Hydro, Inc.
47893 Central Vermont Public Service Corp. (2 documents)
47894 Colorado Interstate Gas Co.
47894, 47902, 47903 Columbia Gas Transmission Corp. (4 documents)
47895 Consolidated Gas Transmission Corp.
47903 Consumers Power Co.
47895 Duke Power Co.
47904 Eastern Shore Natural Gas Co.
47895 Exxon Corp.
47895 Fluid Energy Systems, Inc.
47896 Gulf States Utilities Co.
47896 Interstate Power Co.
47905 Kansas Power & Light Co.
47896 Midwestern Gas Transmission Co.
47896 Mississippi Power & Light Co.
47897 Montana-Dakota Utilities Co.
47897 Mountain Fuel Resources, Inc.
47898 New England Power Co.
47905 Northern Natural Gas Co.
47898 Orting Associates
47905 Pacific Power & Light Co.
47906 Panhandle Eastern Pipe Line Co.
47903 Pennsylvania Department of Environmental Resources
47898 Public Service Co. of Indiana
47906 Southern Natural Gas Co.
47907 Tennessee Gas Pipeline Co. (2 documents)
47908 Tenngasco Exchange Corp.
47898 Texas-New Mexico Power Co. et al.
47909 THC Pipeline Co.
47898, 47899, 47910 Transcontinental Gas Pipe Line Corp. (4 documents)
47899 Union Texas Petroleum Corp.
47911 United Gas Pipe Line Co. (2 documents)
47899 Utah Power & Light Co. (2 documents)
47900 Valero Interstate Transmission Co.
47912 Western Wisconsin Municipal Power Group
47912 Hydroelectric applications (Yuba County Water Agency et al.)
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
47900 E. I. du Pont de Nemours & Co.
47901 Hammermill Paper Co.
47901 Johns-Manville Sales Corp.
47901 Joyce Engineering
47919 Solar Energy Technology Systems (Guam) Inc.

Federal Home Loan Bank Board
RULES
Federal associations:
47825 Implementation of new powers; limitation on loans to one borrower; final rule and request for comments; correction
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
47866 Mortgage-backed securities; policy statement
47852 Net-worth requirements of insured institutions

Federal Maritime Commission
NOTICES
47929, 47930 Agreements filed, etc. (2 documents)
47930 Agreements filed, etc.; Trans Pacific Freight Conference; correction
47956 Meetings; Sunshine Act

Federal Reserve System
RULES
Extensions of credit by Federal Reserve banks (Regulation A):
47825 Discount rate changes
NOTICES
47930, 47931 Agency information collection activities under OMB review (2 documents)
Bank holding company applications, etc.:
47931 Bankers Trust New York Corp.
47932 First Jersey National Corp. et al.
47932 Omnibank Corp. et al.
47932 Preferred Equity Investors of Florida, Inc., et al.
47933 Security Banks of Montana
47933 Valley Community Bancorp
47956 Meetings; Sunshine Act

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
47954 Surety Insurance Co. of California; liquidation

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
47830 Morantel tartrate cartridge
47829 Polysulfated glycosaminoglycan
Human drugs:
47826 Antibiotic drugs; cefoxitin sodium injection
47828 Antibiotic drugs; erythromycin ointment
NOTICES
Food additive petitions:
47937 Scott, Glenn M. W.
Grants and cooperative agreements:
47934 Orphan products; clinical studies of effects

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
47822 Pork products, cured; control of added substances and labeling requirements; policy statement

Forest Service
NOTICES
Meetings:
47888 Colville National Forest Grazing Advisory Board

Health and Human Services Department
See also Food and Drug Administration; Health Care Financing Administration; National Institutes of Health.
NOTICES
47934 Agency information collection activities under OMB review

Health Care Financing Administration
NOTICES
Medicaid:
47937 State plan amendments, reconsideration; hearings; Louisiana

Housing and Urban Development Department
PROPOSED RULES
Low income, public and Indian housing:
48006 Shared housing and revised occupancy policies in Section 8 and public housing programs
NOTICES
Environmental statements; availability, etc.:
47938 Rio Grande, PR

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
PROPOSED RULES
Employment and income taxes:
47870 Bearer bonds; sanctions on issuers and holders of registration-required obligations not in registered form, and 30 percent withholding repeal, and information reporting and backup withholding; hearing
Excise taxes:
47871 Heavy vehicle use tax; diesel fuel tax credits and refunds; correction

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Scientific articles; duty free entry:
47889 Food and Drug Administration et al.

Interstate Commerce Commission
RULES
Motor carriers:
47850 Lease and interchange of vehicles; thirty day leasing requirement elimination
NOTICES
Motor carriers:
47941 Compensated intercorporate hauling operations; intent to engage in
Railroad services abandonment:
47940 Baltimore & Ohio Railroad Co.
47941 Burlington Northern Railroad Co.

Justice Department
See Prisons Bureau.

Labor Department
See also Employment Standards Administration.
NOTICES
Committees; establishment, renewals, terminations, etc.:
47942 Business Research Advisory Council
47942 Labor Research Advisory Council

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
47939 Piceance Creek Basin, Colorado
Exchange of public lands for private land:
47939 Nevada

Management and Budget Office
NOTICES
47944 Prompt payment (Circular A–125); payment terms attachment; inquiry

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; geological and geophysical explorations:
47871 Nonenergy minerals; advance notice

National Institutes of Health
NOTICES
Committees; establishment, renewals, terminations, etc.:
47938 Neurology C Study Section

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
47880 Lamps, reflective devices, and associated equipment; semi-sealed headlamp with standardized replacement bulb, etc.; light source system options
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
47954 Kazmierczak, William M.

National Park Service
NOTICES
Concession contract negotiations:
47940 Silva, Charles W.

National Technical Information Service
NOTICES
Patent licenses, exclusive:
47889 American BioMed, Inc.

Navy Department
NOTICES
Environmental statements; availability, etc.:
47891 Stapleton-Fort Wadsworth Complex, NY; surface action group homeport facility; hearings

Nuclear Regulatory Commission
RULES
Organization, functions, and authority delegations:
47823 Region Office addresses, etc.; correcting amendments
NOTICES
Applications, etc.:
47943 Boston Edison Co.
47943 Consumers Power Co.
47943 University of Texas
Environmental statements; availability, etc.:
47943 Virginia Electric & Power Co.

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
47945 State Agency Advisory Committee

Prisons Bureau
NOTICES
Environmental statements; availability, etc.:
47942 Federal Correction Facility, Glynco Jetport, GA; notice of intent

Securities and Exchange Commission
NOTICES
Hearings, etc.:
47945 Columbia Gas System, Inc., et al.
47946 Consolidated Natural Gas Co. et al.
47946 Deutsche Bank AG et al.
47948 Inter-City Gas Corp. et al.
47949 National Fuel Gas Co. et al.
47950 New England Energy Inc.
47951 Southwestern Electric Power Co.
47951 System Fuels, Inc., et al.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
47888 Navesink Watershed, New Jersey

State Department
NOTICES
Senior Executive Service:
47952 Performance Review Board; membership

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
47834 Iowa

Synthetic Fuels Corporation
NOTICES
47956 Meetings; Sunshine Act

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
47889 China

Transportation Department
See also Coast Guard; National Highway Traffic Safety Administration.
NOTICES
47952 Agency information collection activities under OMB review
Meetings:
47953 Reorganization of Metropolitan Washington Airports Advisory Commission

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Customs Service; Fiscal Service; Internal Revenue Service.

Western Area Power Administration
NOTICES
Power rate adjustments:
47974 Pick-Sloan Missouri Basin Program

Separate Parts in This Issue

Part II
47958 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part III
47970 Department of Energy, Office of Civilian Radioactive Waste Management

Part IV
47974 Department of Energy, Western Area Power Administration

Part V
47984 Department of the Treasury, Customs Service

Part VI
48006 Department of Housing and Urban Development, Office of the Secretary

Part VII
48018 Environmental Protection Agency

Part VIII
48024 Environmental Protection Agency

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12493 47819

7 CFR
420 47821
421 47821
425 47821
431 47821
432 47821
910 47822

9 CFR
318 47822
319 47822

10 CFR
1 47823
20 47823
30 47823
40 47823
50 47823
55 47823
70 47823
73 47823

12 CFR
201 47825
523 47825
541 47825
545 47825
549 47825
561 47825
563 47825
584 47825
Proposed Rules:
561 47852
563 47852
570 47852
571 (2 documents) 47852, 47866
584 47852

16 CFR
271 (2 documents) 47826

19 CFR
10 (2 documents) 47986, 47995
Proposed Rules:
10 48003

21 CFR
436 47826
442 47826
452 47828
510 47829
520 47830
522 47829

24 CFR
Proposed Rules:
813 48006
880 48006
881 48006
882 48006
913 48006
960 48006

26 CFR
Proposed Rules:
1 47870
35a 47870
41 47871
48 47871

27 CFR
9 47831

30 CFR
915 47834
Proposed Rules:
251 47871

33 CFR
Proposed Rules:
117 47872

40 CFR
52 47836
Proposed Rules:
51 48018
52 48018
600 48023
721 47874

47 CFR
73 47837
74 47837

49 CFR
1057 47850
Proposed Rules:
571 47880

Federal Register
Vol. 49, No. 237
Friday, December 7, 1984

Presidential Documents

Title 3—

The President

Executive Order 12493 of December 5, 1984

President's Commission on Executive Exchange

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to amend the responsibilities of the President's Commission on Executive Exchange and to continue its work of benefiting both the Government and the private sector by enabling the most outstanding executives to work in the other sector, it is hereby ordered as follows:

Section 1. *Establishment of the Commission.* (a) The President's Commission on Executive Exchange is hereby continued.

(b) The Commission shall be composed of not more than thirty-six members who shall be appointed from time to time by the President from among leaders in the private sector and the Executive branch of the Government. The President shall seek, so far as he deems practicable or advisable, to appoint up to seventy-five percent of the Commission membership from the ranks of Chief Executive Officers, Chief Operating Officers, Chairmen, Senior Partners or other individuals of comparable rank and stature from the private sector. Executive branch members, to the extent the President deems practicable or advisable, may include Cabinet Secretaries, Agency Heads, and such other officials of comparable rank or position as deemed appropriate by the President.

The President shall designate a Chairman from among the members of the Commission. The Chairman and members shall serve at the pleasure of the President. Members of the Commission shall serve two-year terms or until a successor is appointed.

(c) Members of the Commission who are full-time officers or employees of the Federal government shall receive no additional compensation by reason of this Order, and members who are not such officers or employees shall serve without compensation, but each Commissioner shall be provided with travel expenses, including per diem in lieu of subsistence, as authorized by law.

Sec. 2. *Functions of the Commission.* (a) The Commission shall administer an Executive Exchange Program in which: (1) outstanding private sector executives, primarily those who have achieved senior level management positions, and also those exceptional managers who have unique qualifications and extremely high potential for policymaking positions, will be selected as Presidential Exchange Executives and assigned to positions in the Senior Executive Service or positions of comparable rank or stature, reporting, as appropriate, to Cabinet Officers, Ambassadors, Agency Heads, Under Secretaries, Assistant Secretaries or other high-ranking Government officials for not more than one year, with an extension of up to ninety days in extraordinary circumstances; and (2) career Federal Executives who are members of the Senior Executive Service, or equivalent level, will be selected as Presidential Exchange Executives and assigned for one year to positions in the private sector offering significant challenge, responsibility and regular and continuing contact with senior private sector officials.

(b) The Commission shall administer an Executive International Embassy Assignments Program in which exceptionally qualified private sector executives, primarily those who have achieved senior level management positions, and also exceptional managers who have unique qualifications and extremely high potential for policymaking positions, may be selected as Presidential

Exchange Executives and, as appropriate, assigned for one year, with an extension of up to ninety days, to the Senior Foreign Service or other key positions in United States Embassies reporting to Ambassadors or othe high-ranking Government officials.

(c) The Commission shall administer an education program which places the work experience of the Presidential Exchange Executives in the broader context of both Federal government and private sector operations and, to the extent desirable and appropriate, may include exposure to international economic and foreign affairs.

(d) The Commission shall supervise and review the operation of the Program, and may recommend to the President ways to promote and improve the Program.

(e) The Commission shall ensure that the Program operates in compliance with the merit principles set forth in Section 2301 of Title 5 of the United States Code.

Sec. 3. *Responsibilities of Executive Agencies.* Each Executive agency shall, to the extent permitted by law, provide the Commission with such assistance as may be necessary for the effective performance of its functions.

Sec. 4. *Administrative Provisions.* (a) The Office of Personnel Management shall provide the Commission with administrative services, staff support and travel expenses, as authorized by law. The Office of Administration, Executive Office of the President, may provide services to the Commission on a reimbursable basis pursuant to interagency agreement, as may be authorized by the Economy Act of 1932, as amended, 31 U.S.C. 1535 *et seq.*

(b) The Executive Director's responsibilities shall be to carry out the activities of the Commission.

(c) Executive Order No. 12136 of May 15, 1979 is revoked.

Ronald Reagan

THE WHITE HOUSE,
December 5, 1984.

[FR Doc. 84-32239
Filed 12-6-84; 10:55 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 237
Friday, December 7, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 420, 421, 425, 431, and 432

[Doc. No. 1698S]

Crop Insurance Regulations; Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Soybean, Grain Sorghum, Cotton, Peanut, and Corn Crop Insurance Regulations, effective for the 1985 crop year only, by changing the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Effective December 7, 1984. Written comments, data, and opinions on this interim rule must be submitted not later than February 5, 1985, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review dates established for these regulations are April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 16 of the policy for each of the crops listed below provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. In view of the increasing volume of work involved in finalizing the changes on the Actuarial Table for each crop insured in each county where such insurance is offered for the 1985 crop year, it has been determined that in the counties where changes in the contract must be on file by November 30, 1984, the date would be extended to December 17, 1984, effective for the 1985 crop year only.

The crop insurance regulations affected by this rule are:

Citation	Crop
7 CFR Part 420	Grain Sorghum.
7 CFR Part 421	Cotton.
7 CFR Part 425	Peanuts.
7 CFR Part 431	Soybeans.
7 CFR Part 432	Corn.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Program changes required an increased number of changes in the Actuarial Tables for the crop insurance policies affected by this rule for the 1985 crop year. Without these changes, the statutory mandate that the program be actuarially sound could not be met. The workload involved in the large number of actuarial changes will not permit filing of these actuarial tables in the counties by the present contract date of November 30. There is not sufficient time to provide for public comment and implement these changes prior to November 30. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended until December 17, 1984, and made effective for the 1985 crop year only.

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract, and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register.** This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

List of Subjects in 7 CFR Parts 420, 421, 425, 431, and 432

Crop insurance, Grain sorghum, Cotton, Peanuts, Soybeans, Corn.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Grain Sorghum, Cotton, Peanut, Soybean, and Corn Crop

review as to the need, currency, clarity,

The crop insurance regulations

Cotton, Peanut, Soybean, and Corn Crop

Insurance Regulations (7 CFR Parts 420, 421, 425, 431, and 432, respectively), effective for the 1985 crop year only, in the following instances:

PARTS 420, 421, 425, 431, AND 432—[AMENDED]

1. The Authority citation for 7 CFR Parts 420, 421, 425, 431, and 432, is:

Authority: Secs. 508, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

§§ 420.7, 421.7, 425.7, 431.7 and 432.7 [Amended]

2. 7 CFR 420.7(d)16, 421.7(d)16, 425.7(d)16, 431.7(d)16, and 432.7(d)16, are revised to read as follows:

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you shall be deemed to have elected. All contract changes will be available at your service office by December 31, preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties except that, for the 1985 crop year only, the date for all such other counties is December 17. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on November 1, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: November 30, 1984.

[FR Doc. 84–31811 Filed 12–6–84; 8:45 am]
BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 493]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period December 9–15, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period December 9–15, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on December 4, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.793 is added as follows:

§ 910.793 Lemon Regulation 493.

The quantity of lemons grown in California and Arizona which may be handled during the period December 9, 1984, through December 15, 1984, is established at 275,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 5, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–32174 Filed 12–6–84; 8:54 am]
BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 318 and 319

[Docket No. 79–714C–2]

Control of Added Substances and Labeling Requirements for Cured Pork Products; Policy Statement

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: This announces a revision to the Department's policy on the voluntary use of the April 13, 1984, regulations concerning the standards and labeling requirements for cured pork products prior to the effective date of April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3840.

SUPPLEMENTARY INFORMATION: On April 13, 1984, the Department published a final rule in the **Federal Register** (49 FR 14856) establishing standards and labeling requirements for cured pork products, based on the protein fat free (PFF) content of the product, and setting forth the procedures to be used by the Agency in evaluating compliance with these requirements. The effective date of the rule is April 15, 1985.

On August 23, 1984, the Department published a policy statement in the **Federal Register** (49 FR 33434) concerning implementation dates for the PFF regulations. It permitted processors to apply the regulation before the effective date, beginning January 1, 1985, to cured pork products currently covered by standards (9 CFR 319.104 and 319.105). Products covered by the PFF regulation but for which there are no current standards were not to be produced under the new regulations

until April 15, 1985. Furthermore, the Agency has been advising establishments wishing to convert their production to PFF standards prior to April 15 that they must convert *all* their products at one time to facilitate inspection requirements.

Since publication of the August 23 policy statement, the Administrator has received requests to modify the policy concerning the voluntry use of the rule prior to its effective date. Upon reconsideration, the Administrator has determined that the previously stated policy on the voluntary use of the PFF regulation prior to the effective date is unnecessarily restrictive, and is making the following change to the August 23, 1984, policy statement.

The August 23, 1984, policy statement prohibited until April 15, 1985, the production under PFF standards of cured pork products not currently regulated under 9 CFR 319.104 and 319.105. This notice revokes that prohibition and permits preparation of these products beginning December 15, 1984. Therefore, any cured pork products specified in the April 13, 1984, regulations may, at the processors' option, be produced beginning December 15, 1984, provided such products comply with all other provisions of the PFF regulation published April 13, 1984. In addition, processors may convert their products to PFF standards one at a time. Processors should notify Regional Directors of their intentions regarding conversion of their products.

Done at Washington, DC, on December 3, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84–33011 Filed 12–6–84; 8:45 am]
BILLING CODE 3410–DM–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, 30, 40, 50, 55, 70, and 73

Minor Correcting Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to indicate a change in the mailing address for NRC's Region II Office, to correct the zip code for NRC's Region IV Office, and to correct the address of a location where IEEE Std 83–1983 may be inspected. These amendments are necessary to inform the public of these administrative changes to NRC regulations.

EFFECTIVE DATE: December 7, 1984.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7086.

SUPPLEMENTARY INFORMATION: On May 11, 1984, NRC's Region II Office changed its mailing address for the receipt of all non-classified and non-safeguards correspondence. The new mailing address is U.S. Nuclear Regulatory Commission, Suite 2900, 101 Marietta Street, NW, Atlanta, Georgia 30323. The address for classified and unclassified safeguards information remains the same and should read as follows: U.S. Nuclear Regulatory Commission, P.O. Box 2203, Atlanta, Georgia 30301.

In an amendment published on September 28, 1983 (48 FR 44172), an incorrect zip code was printed for NRC's Region IV Office. It should read 76011.

In § 50.73, an incorrect reference has been made with regard to the availability of IEEE Std 83–1983 at the NRC's Public Document Room (PDR), located at 1717 H Street, NW, Washington, DC. This document is not available at the PDR but is available for inspection at the NRC's Technical Library, which is located in the Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

Because these are amendments dealing with agency practice and procedures, the notice provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the Federal Register. Good cause exists to dispense the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing solely with agency procedures.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR 1, 20, 30, 40, 50, 55, 70, and 73.

The authority citation for this document is :

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. In § 1.3, paragraph (b) is revised to read as follows:

§ 1.3 Location of principal offices and regional offices.

* * * * *

(b) The addresses of the NRC Regional Offices (see § 1.64) are:

Region I, USNRC, 631 Park Avenue, King of Prussia, PA 19406.
Region II, USNRC, 101 Marietta Street, NW, Suite 2900, Atlanta, GA 30323.
Region III, USNRC, 799 Roosevelt Road, Glen Ellyn, IL 60137.
Region IV, USNRC, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011.
USNRC, Region IV Uranium Recovery Field Office, 730 Simms Street, P.O. Box 25325, Denver, CO 80225.
Region V, USNRC, 1450 Maria Lane, Suite 210, Walnut Creek, CA 94596.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

2. In Part 20, Appendix D is revised to read as follows:

APPENDIX D.—UNITED STATES NUCLEAR REGULATORY COMMISSION REGIONAL OFFICES

	Addresses	Telephone (24 hours)
Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.	USNRC, 631 Park Avenue, King of Prussia, PA 19406.	(215) 337–5000 (FTS) 488–1000
Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia.	USNRC, 101 Marietta Street, NW, Suite 2900, Atlanta, GA 30323.	(404) 221–4503 (FTS) 242–4503
Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	USNRC, 799 Roosevelt Road, Glen Ellyn, IL 60137.	(312) 790–5500 (FTS) 396–5500
Region IV: Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.	USNRC, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011.	(817) 860–8100 (FTS) 728–8100
Region IV: Field Office	USNRC, Region IV Uranium Recovery Field Office, 730 Simms Street, P.O. Box 25325, Denver, CO 80225.	(303) 234–7232 (FTS) 234–7232
Region V: Alaska, Arizona, California, Hawaii, Nevada, Oregon, Pacific Trust Territories, and Washington.	USNRC, 1450 Maria Lane, Suite 210, Walnut Creek, CA 94596.	(415) 943–3700 (FTS) 463–3700

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

3. In § 30.6, paragraph (b)(2)(ii) is revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) * * *

(2) *Submissions* * * *

(ii) *Region II.* With the exception of Federal facilities, the regional licensing program involves the following Region II non-Agreement States and territories: Virginia, West Virginia, Puerto Rico, and the Virgin Islands. All inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must be sent to U.S. Nuclear Regulatory Commission, Region II, Material Radiation Protection Section, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. § 40.5, paragraph (b)(2)(ii) is revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) *Submissions* * * *

(ii) *Region II.* With the exception of Federal facilities, the regional licensing program involves the following Region II non-Agreement states and territories: Virginia, West Virginia, Puerto Rico, and the Virgin Islands. All inquiries, communications, and applications for a new license or an amendment to an existing license specified in paragraph (b)(1) of this section must be sent to: U.S. Nuclear Regulatory Commission, Region II, Material Radiation Protection Section, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. In § 50.73, paragraph (b)(2)(ii)(F)(*2*) is revised to read as follows:

§ 50.73 Licensee event report system.

* * * * *

(b) *Contents* * * *

(2) * * *

(ii) * * *

(F) * * *

(*2*) IEEE Std 803–1983 has been approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the Federal Register. Copies may be obtained from the Institute of Electrical and Electronics Engineers, 345 East 47th Street, New York, NY 10017. IEEE Std 803–1983 is available for inspection at the NRC's Technical Library, which is located in the Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland; and at the Office of the Federal Register, 1100 L Street, NW, Washington, DC.

* * * * *

PART 55—OPERATORS' LICENSES

6. In § 55.5, paragraph (b)(3) is revised to read as follows:

§ 55.5 Communications.

* * * * *

(b) * * *

(3) Any application filed under the regulations in this part involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region II and any inquiry, communication, information, or report relating to matters subject to the regulations in this part and involving a nuclear reactor licensed under 10 CFR Part 50 and located in Region II must be submitted by mail or in person to the Regional Administrator, Region II, U.S. Nuclear Regulatory Commission, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323. The Regional Administrator of Region II, or his designee, will transmit to the Director of Nuclear Reactor Regulation any matter which is not within the scope of the Regional Administrator's delegated authority.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. In § 70.5, paragraph (b)(2)(ii) is revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) * * *

(2) *Submissions* * * *

(ii) *Region II.* With the exception of Federal facilities, the regional licensing program involves the following Region II non-Agreement States and territories: Virginia, West Virginia, Puerto Rico, and the Virgin Islands. All inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must be sent to: U.S. Nuclear Regulatory Commission, Region II, Material Radiation Protection Section, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

8. In Part 73, Appendix A is revised to read as follows:

APPENDIX A.—UNITED STATES NUCLEAR REGULATORY COMMISSION REGIONAL OFFICES

	Addresses	Telephone (24 hours)
NRC Operations Center (via NRC Operator)	USNRC, Office of Inspection and Enforcement, Washington, DC 20555.	(301) 492–7000 (FTS) 492–7000
Region I: Connecticut, Delaware, District of Columbia, Maine Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.	USNRC, 631 Park Avenue, King of Prussia, PA 19406	(215) 337–5000 (FTS) 488–1000
Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia	USNRC, 101 Marietta Street, NW Suite 2900, Atlanta, GA 30323.	(404) 221–4503 (FTS) 242–4503
Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	USNRC, 799 Roosevelt Road, Glen Ellyn, IL 60137	(312) 790–5500 (FTS) 386–5500
Region IV:[1] Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.	USNRC, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011.	(817) 860–8100 (FTS) 728–8100
Region IV: Field Office	USNRC, Region IV Uranium Recovery Field Office, 730 Simms Street, P. O. Box 25325, Denver, CO 80225	(303) 234–7232 (FTS) 234–7232
Region V: Alaska, Arizona, California, Hawaii, Nevada, Oregon, Pacific Trust Territories, and Washington.	USNRC, 1450 Maria Lane, Suite 210, Walnut Creek, CA 94596	(415) 943–3700 (FTS) 463–3700

[1] For calls related to Material Control and Accounting matters, consult the following Regions: Arkansas—II, Colorado—V, Idaho—V, Kansas—III, Louisiana—II, Montana—V, Nebraska—III, New Mexico—V, North Dakota—III, Oklahoma—III, South Dakota—III, Texas—V, Utah—V, and Wyoming—V.

Dated at Bethesda, Maryland, this 30th day of November 1984.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Deputy Executive Director for Operations.

[FR Doc. 84–32002 Filed 12–6–84; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of reducing discount rates. The reduction was taken against the background of growth in M1 and M2 in the lower part of the desired ranges and in the context of distinct moderation in the pace of business expansion, of relative stability in producer and commodity prices in recent months, of the restrained trend of wages and costs, and of the continued strength of the dollar internationally.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3257).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations required that these amendments must be adopted immediately.

List of Subjects in 12 CFR Part 301

Banks, Banking, Credit, Credit unions, Foreign banks.

Pursuant to section 10(b) and 14(d) of the Federal Reserve Act (12 U.S.C. 347b and 357) Part 201 is amended as set forth below:

PART 201—[AMENDED]

1. Section 201.51 is revised to read as follows:

§ 201.51 Short term adjustment credit for depository institutions.

The rates for short term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	8½	Nov. 23, 1984.
New York	8½	Nov. 21, 1984.
Philadelphia	8½	Do.
Cleveland	8½	Nov. 26, 1984.
Richmond	8½	Nov. 21, 1984.
Atlanta	8½	Nov. 23, 1984.
Chicago	8½	Nov. 21, 1984.
St. Louis	8½	Do.
Minneapolis	8½	Do.
Kansas City	8½	Do.
Dallas	8½	Do.
San Francisco	8½	Do.

2. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit to depository institutions.

(a) The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	8½	Nov. 23, 1984.
New York	8½	Nov. 21, 1984.
Philadelphia	8½	Do.
Cleveland	8½	Nov. 26, 1984.
Richmond	8½	Nov. 21, 1984.
Atlanta	8½	Nov. 23, 1984.
Chicago	8½	Nov. 21, 1984.
St. Louis	8½	Do.
Minneapolis	8½	Do.
Kansas City	8½	Do.
Dallas	8½	Do.
San Francisco	8½	Do.

(b) The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	8½	Nov. 23, 1984.
New York	8½	Nov. 21, 1984.
Philadelphia	8½	Do.
Cleveland	8½	Nov. 26, 1984.
Richmond	8½	Nov. 21, 1984.
Atlanta	8½	Nov. 23, 1984.
Chicago	8½	Nov. 21, 1984.
St. Louis	8½	Do.
Minneapolis	8½	Do.
Kansas City	8½	Do.
Dallas	8½	Do.
San Francisco	8½	Do.

Note.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period, the time period in which each rate under the structure is applied may be shortened, and the rate may be established on a more flexible basis, taking into account rates on market sources of funds.

By order of the Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–31038 Filed 12–6–84; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523, 541, 545, 549, 561, 563, and 584

[No. 84–580]

Implementation of New Powers; Limitation on Loans to One Borrower

Correction

In FR Doc. 84–28276 beginning on page 43040 in the issue of Friday, October 26, 1984, make the following correction:

On page 43041, second column, line thirteen, "§ 545.345(a)" should read "§ 545.35(a)".

BILLING CODE 1505–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-204 (New Mexico-25); Order No. 397]

High-Cost Gas Produced From Tight Formations; New Mexico; Errata to Final Rule

Issued: November 30, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correction to final rule.

SUMMARY: This document corrects Order No. 397, a Final Rule designating portions of the Pictured Cliffs Formation in New Mexico as a tight formation. The Final Rule appeared in the **Federal Register** on September 24, 1984 (49 FR 37375) and contained an incorrect description of the delineation of the Pictured Cliffs Formation.

FOR FURTHER INFORMATION CONTACT: Kevin R. Rees, (202) 357-5420 or Victor H. Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION: The following correction should be made in FR Document 84-25191 appearing on page 37377:

On page 37377, the delineation of the Pictured Cliffs Formation should include all after Township 22 North, Range 2, 3, 4 and 5 and Township 23 North, Range 2 West. Furthermore, Township 25 North, Range 5 West, should include Sections 25 through 36, NMPM. As corrected, § 271.703(d)(179) reads as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(179) *Pictured Cliffs Formation in New Mexico.* RM79-76-204 (New Mexico--25).

(i) *Delineation of formation.* The Pictured Cliffs Formation is located in Rio Arriba and Sandoval Counties, New Mexico, in Township 22 North, Range 2, 3, 4 and 5 West, all; Township 23 North, Range 2 West, Sections 5 through 9, 16 through 21, and 25 through 36; Township 23 North, Ranges 3, 4 and 5 West, all Sections; Township 24 North, Range 3 West, Sections 19, 20, 28 through 35, and S½ of 36; Township 24 North, Range 4 West, Sections 3 through 10 and 13 through 36; Township 24 North, Range 5 West, all Sections; Township 25 North, Range 4 West, Sections S½ of 30, 31 and 32; Township 25 North, Range 5 West, Sections 15 through 23 and S½ of 24, and 25 through 36, NMPM.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31907 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-218 (New Mexico-26); Order No. 398]

High-Cost Gas Produced From Tight Formations; New Mexico; Errata to Final Rule

Issued: November 30, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correction to final rule.

SUMMARY: This document corrects Order No. 398, a Final Rule designating portions of the Dakota Formation in New Mexico as a tight formation. The Final Rule appeared in the **Federal Register** on September 24, 1984 (49 FR 37378) and contained an incorrect description of the delineation of the Dakota Formation.

FOR FURTHER INFORMATION CONTACT: Kevin R. Rees (202) 357-5420 or Victor H. Zabel (202) 357-8616.

SUPPLEMENTARY INFORMATION: The following correction should be made in FR Document 84-25192 appearing on page 37380:

On page 37380, the delineation of the Dakota Formation should not include sections 19 and 20 W/2 after Township 25 North, Range 9 West. As corrected, § 271.703(d) (180) reads as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(180) *Dakota Formation in New Mexico.* RM79-78-218 (New Mexico--26).

(i) Delineation of formation. The Dakota Formation is located in San Juan County, New Mexico, in Township 25 North, Range 9 West, Section 16, 17 E½, 28 W½, 29 E½ and 30 W½ NMPM; Township 25 North, Range 10 West, Section 25 W½, NMPM.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31908 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 84N-0337]

Antibiotic Drugs; Cefoxitin Sodium Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of cefoxitin sodium, cefoxitin sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective December 7, 1984; comments, notice of participation, and request for hearing by January 7, 1985; data, information, and analyses to justify a hearing by February 5, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of cefoxitin sodium, cefoxitin sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436 and 442 (21 CFR Parts 436 and 442) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, Cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 436 and 442 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. Part 436 is amended by adding new § 436.347 to read as follows:

§ 436.347 High-pressure liquid chromatographic assay for cefoxitin.

(a) *Equipment.* A suitable high-pressure liquid chromatograph equipped with:

(1) A low dead volume cell 8 to 20 microliters;

(2) A light path length of 1 centimeter;

(3) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers;

(4) A suitable recorder of at least 25.4 centimeter deflection;

(5) A suitable integrator; and

(6) A 30-centimeter column having an inside diameter of 4.0 millimeters and packed with octadecyl silane chemically bonded to porous silica or ceramic microparticles, 5 micrometers to 10 micrometers in diameter, U.S.P. XX.

(b) *Reagents*—(1) *One percent potassium phosphate buffer, pH 6.0.* Prepare as described in § 436.101(a)(1).

(2) *Mobile phase.* Mix distilled water:glacial acetic acid:acetonitrile (800:10:190). Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(c) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 1.0 milliliter per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is least 50 percent of scale. The minimum between peaks must be no more than 2 millimeters above the baseline.

(d) *Preparation of working standard and sample solutions.* Use the working standard and sample solutions prepared as described in the individual monographs for the drug being tested.

(e) *Procedure.* Using the equipment, reagents, and operating conditions as described in paragraphs (a), (b), and (c) of this section, inject 10 microliters of the working standard solution into the chromatograph. Allow an elution time sufficient to obtain separation of the expected components. After separation of the working standard solution has been completed, inject 10 microliters of the sample solution into the chromatograph and repeat the procedure described for the working standard solution.

(f) *Calculations.* Calculate the cefoxitin content as described in the individual monographs for the drug being tested.

PART 442—CEPHA ANTIBIOTIC DRUGS

2. Part 442 is amended:

a. By adding new § 442.14 to read as follows:

§ 442.14 Cefoxitin sodium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefoxitin sodium is the sodium salt of 3-(hydroxymethyl)-7α-methoxy-8-oxo-7-[2-(2-thienyl)acetamido]-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid carbamate (ester). It is so purified and dried that:

(i) Its cefoxitin content is not less than 850 micrograms and not more than 1,000 micrograms of cefoxitin per milligram.

(ii) Its moisture content is not more than 2.0 percent.

(iii) Its pH in an aqueous solution containing 100 milligrams per milliliter is not less than 4.2 and not more than 7.0.

(iv) It gives a positive identity test.

(v) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cefoxitin content, moisture, pH, identity, and crystallinity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Cefoxitin content.* Proceed as directed in § 436.347 of this chapter, preparing the working standard and sample solutions and calculating the cefoxitin content as follows:

(i) *Working standard solution.* Dissolve an accurately weighed portion of the cefoxitin working standard with water to obtain a solution containing 1 milligram of cefoxitin per milliliter.

(ii) *Sample solution.* Dissolve an accurately weighed portion of the sample with water to obtain a solution containing 1 milligram of cefoxitin per milliliter (estimated).

(iii) *Calculations.* Calculate the micrograms of cefoxitin per milligram of sample as follows:

$$\text{Micrograms of cefoxitin per milligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

A_u = Area of the cefoxitin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefoxitin peak in the chromatogram of the cefoxitin working standard;

P_s = Cefoxitin activity in the cefoxitin working standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter, using the titration procedure described in paragraph (e)(1) of that section, except add about 25 milliliters of methanol in lieu of solvent A to a dry titrating vessel and proceed as directed in titration procedure 1.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams per milliliter.

(4) *Identity.* Proceed as directed in § 436.328 of this chapter.

(5) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

b. By redesignating § 442.214 as § 442.214a and by adding new §§ 442.214 and 442.214b to read as follows:

§ 442.214 Cefoxitin injectable dosage forms.

* * * * *

§ 442.214a Sterile cefoxitin sodium.

* * * * *

§ 442.214b Cefoxitin sodium injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefoxitin sodium injection is a frozen aqueous solution of cefoxitin sodium with one or more suitable and harmless buffer substances in an isotonic diluent. Each milliliter contains cefoxitin sodium equivalent to either 20 or 40 milligrams of cefoxitin. Its cefoxitin content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of cefoxitin that it is

represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 4.5 and not more than 8.0. It passes the identity test. The cefoxitin sodium used conforms to the standards prescribed by § 442.14(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cefoxitin sodium used in making the batch for cefoxitin content, moisture, pH, identity, and crystallinity.

(*b*) The batch for cefoxitin content, sterility, pyrogens, pH, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The cefoxitin sodium used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Cefoxitin content.* Proceed as directed in § 436.347 of this chapter, preparing the working standard and sample solutions and calculating the cefoxitin content as follows:

(i) *Working standard solution.* Dissolve an accurately weighed portion of the cefoxitin working standard with water to obtain a solution containing 200 micrograms of cefoxitin per milliliter.

(ii) *Sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container and dilute with sufficient water to obtain a solution containing 200 micrograms of cefoxitin per milliliter (estimated).

(iii) *Calculations.* Calculate the milligrams of cefoxitin per milliliter of sample as follows:

$$\text{Milligrams of cefoxitin per milliliter} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the cefoxitin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefoxitin peak in the chromatogram of the cefoxitin working standard;

P_s = Cefoxitin activity in the cefoxitin working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, except inject a sufficient volume of the undiluted solution to deliver 50 milligrams of cefoxitin per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(5) *Identity.* The high-pressure liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the cefoxitin working standard.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation, therefore, is effective December 7, 1984. However, interested persons may, on or before January 7, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before January 7, 1985, a written notice of participation and request for hearing, and (2) on or before February 5, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may been seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective December 7, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g)))

Dated: November 30, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-31917 Filed 12-6-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 452

[Docket No. 84N-0351]

Antibiotic Drugs; Erythromycin Ointment

AGENCY: Food and Drug Adminstration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new strength of erythromycin ointment. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective December 7, 1984; comments, notice of participation, and request for hearing by January 7, 1985; data, information, and analyses to justify a hearing by February 5, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new strength (20 milligrams per gram) of erythromycin ointment. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 452

Antibiotics, Macrolide.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 452.510a is amended by revising the third sentence in paragraph (a)(1) to read as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

§ 452.510a Erythromycin ointment.

(a) * * *

(1) * * * Each gram of ointment contains either 10 milligrams or 20 milligrams of erythromycin.

* * * * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation, therefore, is effective December 7, 1984. However, interested persons may, on or before January 7, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before January 7, 1985, a written notice of participation and request for hearing, and (2) on or before February 5, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the persons(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective December 7, 1984.

(Secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: November 30, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-31918 Filed 12-6-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 522

Implantation or Injectable Dosage Form New Animal Drugs not Subject to Certification; Polysulfated Glycosaminoglycan

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Luitpold Pharmaceuticals, Inc., for polysulfated glycosaminoglycan for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint in horses. Also, the firm is being added to the list of sponsors of approved NADA's.

EFFECTIVE DATE: December 7, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Luitpold Pharmaceuticals, Inc., Shirley, NY 11967, has submitted NADA 136–383 for Adequan® (polysulfated glycosaminoglycan). The NADA provides for the intra-articular use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or trumatic joint dysfunction and associated lameness of the carpal joint. The application is approved and the regulations are amended accordingly. Additionally, the list of sponsors of approved NADA's in 21 CFR 510.600(c) is amended to add Luitpold Pharmaceuticals, Inc. The basis for approval is discussed in the freedom of information summary referred to below.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii) (*a*) and (g)) may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 522

Animal drugs, Injectable

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967	010797

(2) * * *

Drug labeler code	Firm name and address
010797	Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In Part 522, by adding new § 522.1850 to read as follows:

§ 522.1850 Polysulfated glycosaminoglycan.

(a) *Specifications.* Each 1-milliliter ampule of sterile aqueous solution contains 250 milligrams of polysulfated glycosaminoglycan.

(b) *Sponsor.* See No. 010797 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Indications for use.* It is used in horses. Polysulfated glycosaminoglycan is recommended for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint.

(2) *Amount.* 250 milligrams once a week for 5 weeks.

(3) *Limitations.* For intra-articular use. The joint area must be shaved, cleaned, and sterilized as in a surgical procedure prior to injection. If the joint reacts with excessive inflammation, after intra-articular treatment, cease therapy. Not for use in horses intended for food. Do not use in horses intended for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. December 7, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 29, 1984.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 84-31919 Filed 12-6-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Morantel Tartrate Cartridge

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc., providing for safe and effective administration to weaned calves and yearling cattle of a morantel-emitting cartridge for control through the summer grazing season of the adult stage of certain gastrointestinal nematodes.

EFFECTIVE DATE: December 7, 1984.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 134-779 which provides for oral administration by balling gun of a morantel tartrate-containing cartridge. The cartridge consists of a stainless steel cylinder having both ends closed with polyethylene, diffusing discs so that there is sustained release of morantel into the stomach fluid of weaned calves and yearling cattle. The drug product is indicated for control of the adult stage of the following gastrointestinal nematodes through the summer grazing season: *Ostertagia* spp., *Trichostrongylus axei, Cooperia* spp., and *Oesophagostomum radiatum.* The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)) may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended by redesignating existing § 520.1450 as § 520.1450a and by adding new §§ 520.1450 and 520.1450b, to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.1450 Morantel tartrate oral dosage forms.

* * * * *

§ 520.1450b Morantel tartrate cartridge.

(a) *Specifications.* The drug product consists of a stainless-steel cylinder having both ends closed with polyethylene diffusing discs and containing a morantel tartrate paste. The paste contains 22.7 grams of morantel tartrate equivalent to 13.5 grams of morantel base.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.425 of this chapter.

(d) *Conditions of use*—(1) *Amount.* Cattle turned out to pasture in spring: 1 cartridge to each animal at turnout. Cattle that remained on pasture during winter: 1 cartridge to each animal between March 1 and April 1.

(2) *Indications for use.* For control of the adult stage of the following gastrointestinal nematode infections in weaned calves and yearling cattle weighing a minimum of 200 pounds through the summer grazing season: *Ostertagia* spp., *Trichostrongylus axei, Cooperia* spp., and *Oesophagostomum radiatum.*

(3) *Limitations.* Administer orally with the balling gun to all cattle that will be grazing the same pasture. Do not administer to cattle within 160 days of slaughter. Consult your veterinarian before administering to severely debilitated animals and for assistance in the diagnosis, treatment, and control of parasitism.

Effective date. December 7, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 29, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-31920 Filed 12-6-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-192; Reference Notice Nos. 405, 443]

Madera Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a viticultural area located in Madera and Fresno Counties, California, named Madera. This final rule is the result of a petition submitted by Mr. David B. Ficklin, Ficklin Vineyards in Madera, California, and of written comments and oral testimony received at a public hearing.

The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Madera as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow wineries to designate their specific grape-growing area and will help consumers identify the wines they purchase.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Under 27 CFR 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area. Approved American viticultural areas are listed in 27 CFR Part 9.

Petition for Madera

In June 1981, David Ficklin, President of Ficklin Vineyards in Madera, California, petitioned ATF to establish a viticultural area known as Madera. This proposed viticultural area was located in central Madera County between the Chowchilla and San Joaquin Rivers, with an adjacent portion of Fresno County included. The proposed area was 230,000 acres in size of which over 30,000 acres were devoted to grapes.

In response to this petition, ATF proposed the Madera viticultural area in Notice No. 405 on January 26, 1982 [47 FR 3564]. In that notice, ATF solicited comments on alternative boundaries, comments about viticultural and geographic characteristics which distinguish the viticultural area from surrounding areas, and comments concerning the name Madera.

ATF received seven written comments, five of which fully supported the proposed name and boundaries. One comment objected to the proposed boundaries, stating that they should encompass all of western Madera County. The Portuguese government objected to the proposed name Madera and requested a public hearing on the matter.

Public Hearing

In Notice No. 443, December 16, 1982, [47 FR 56369], ATF announced a public hearing to be held in Madera on January 18, 1983, to obtain additional information concerning the proposed area.

Fourteen people presented evidence at that hearing. Representatives of Ficklin Vineyards and Papagni Vineyards testified in favor of the proposed name and boundaries. Eight other persons testified in favor of expanding the viticultural area into western Madera County. One person testified on behalf of the Portuguese government stating their objection to the name Madera.

Seven persons filed post-hearing written comments; all of them favored expanding the viticultural area into part or all of western Madera County.

Boundaries

Western Viticultural Area Boundary

As proposed, the Madera viticultural area extended between the Chowchilla and San Joaquin Rivers. The western boundary was formed by a line from the Chowchilla River south along Road 15 to Avenue 17; east along Avenue 17 to Road 19; south along Road 19 to Avenue 12 [Firebaugh Road]; east on Avenue 12 to Road 22; and south along Road 22 and a line extending south to the San Joaquin River.

The petitioner based this western boundary on soil differences. The petition stated that the proposed viticultural area contains well drained, non-alkali soils well suited to the cultivation of grapes while in the western part of the county, the soils

change to a highly alkali type unsuited for grape growing. During the hearing, Steven Ficklin representing the petitioner stated that a period of several years of soil treatment would be needed to leach the alkali (high sodium) content of this soil to below the rootline of grapes, and that if the soils were not leached, the alkali content would damage grape vines.

Several respondents representing grape growers in western Madera County objected to the exclusion of the western part of the county based on soil. Mr. Robert Smith, a Madera vineyard owner and manager of vineyards in western Madera County, testified that sodium could be leached out of alkaline soils through the application of large amounts of water, such as by irrigation during farming. He also stated this process could be hastened by the application of sulfuric acid or gypsum. Smith testified that the soils in the two vineyards which he manages in western Madera County do not have high sodium levels.

Seven other persons testified during the public hearing that they have grown grapes in the western part of Madera County, some for as long as 25 years. Morgan Johnson, a Madera County grapegrower, testified that some of the soil in the western part of the county is neutral and not alkaline. He also testified that drip irrigation could substantially reduce the alkaline content of some soils in one year's time.

In post hearing comments, one additional person commented that he is growing grapes in western Madera County. The Bisceglia Brothers Wine Company in Madera also stated that they purchase grapes from western Madera County and that they favor extending the viticultural area into the western part of the county.

ATF has examined all the evidence presented in written comments, in oral testimony received at the public hearing, and in post-hearing submissions. On the basis of all available evidence, the western boundary of the viticultural area is established as the San Joaquin River, and all of the western portion of Madera County is included.

Evidence shows that grapes are grown throughout central and western Madera County, although plantings in the western portion of the county tend to be newer. Also, soil differences exist throughout western and central Madera County, based on a soil map submitted by Steven Ficklin during the public hearing. This map shows large areas of free (non alkaline) soil within the western portion of Madera County; these areas are centered along the proposed north-south boundary, and to the north along the Chowchilla River. The same map also shows substantial areas of intermittent free and saline soils in the western part of the county along the San Joaquin River.

Because of these soil types found within western Madera County, it is not possible to characterize all of the soil within this area as highly alkaline. By testimony given during the hearing, vineyards exist in free soils in this area which are identical to soils found in the central part of the county. Therefore, in order to use soils as a basis for the western boundary of the Madera viticultural area, ATF would have to draw very exact boundaries based on soil types. This is impossible due to the lack of any distinguishing geographical features appearing on U.S.G.S. maps covering western Madera County. ATF has thus determined that a geographical feature other than soils should be used to define the western boundary of the viticultural area. This geographical feature is the San Joaquin River, which divides Madera County from Fresno County, and distinguishes the viticultural area from the area to the west which is both drier and has a longer growing season.

Fresno County

As proposed, the Madera viticultural area included a small portion of Fresno County east of the San Joaquin River. This was included because Papagni Vineyards grows grapes in this area from which they produce estate bottled wines, and because it is separated from other wine growing areas in Fresno County by urban areas.

ATF is including this area in the Madera viticultural area. This area enjoys a long historical association with the Madera area due to the Papagni Vineyards there, and the fact that Papagni Vineyards makes wine using grapes both from the Madera and these Fresno County Vineyards. All available evidence shows this area of Fresno County has similar geographic criteria to the Madera area.

Name

The name Madera was well documented in the petition, and supported by written and oral testimony as referring to the viticultural area. Madera is the name of the county and largest city within the viticultural area. Moreover, the name Madera has been associated with local wines since as far back as the 1880's when the Madera Winery shipped wines bearing the Madera label to many parts of the world. Madera is currently being used by Ficklin Vineyards and Papagni Vineyards to label wines made from area grapes.

Mr. Felix Dias, Commercial Counselor to the Portuguese Embassy objected to the designation of Madeira. He pointed out possible confusion with the Portuguese island of Madeira which has produced world famous wines for over 500 years and possible confusion with Madeira wine, a class and type of dessert wine. ATF recognizes Madeira as a class and type of wine, and as a semi-generic wine designation with geographical significance. When used as a class and type designation, Madeira must be qualified with an appellation of origin if the wine is not from the island of Madeira. Mr. Dias stated use of the term "Madera" would mislead and confuse consumers, and would be unfair to the Portuguese wine industry. In its place, Mr. Dias suggested use of "San Joaquin River Valley" or other similar American appellation for the viticultural area.

ATF recognizes the similarity in the names "Madera" and "Madeira." However, all evidence shows that the viticultural area is known locally and nationally as "Madera," thus meeting the requirement of 27 CFR 4.25a(e)(2)(i). Moreover, no evidence was presented that the viticultural area is known as the "San Joaquin River Valley." The term "San Joaquin Valley" refers to a geographical area far larger than the proposed Madera viticultural area. ATF does not see any consumer confusion between Madera and Madeira wines when Madera is used as an appellation of origin on domestic wines. Madera has been used on labels of domestic wines for many years to denote wines from Madera County, California and this has not resulted in consumer confusion. Therefore, ATF is adopting the name Madera for the viticultural area.

Geographical Criteria

Elevation of the Madera viticultural area increases from west to east, from 130' along the San Joaquin River on the west, to 400' on the eastern boundary in Fresno County. Rainfall throughout the viticultural area is sparse, from 5 to 20 inches per year, and averaging 11 or 12 inches per year in the Madera-Fresno area. This differentiates the viticultural area from the west where rainfall averages 7 to 8 inches in the Los Banos-Mendota-Firebaugh areas, and from the east where rainfall is higher averaging 13 to 15 inches per year in the Friant-Auberry area.

In terms of degree days, Madera averages 4259 degree days according to records kept by the Madera Irrigation District. This contrasts with warmer areas both to the north where Merced averages 4430 degree days, and to the south where Fresno averages 4680 degree days.

The growing season in the Madera viticultural area averages between 260–270 days, with periodic freezing temperatures during the winter which trigger vine dormancy. To the east in the Friant-Auberry area, the growing season is 220 days, while to the west in the Los Banos-Mendota-Firebaugh area, the growing season averages 285 or more days per year. Thus, the Madera viticultural area is distinguished from surrounding areas by the length of the growing season.

Conclusion

ATF is adopting a viticultural area located in Madera and Fresno Counties, California. The boundaries are Sunnyside Road on the west, the San Joaquin River and Shepherd Avenue on the south, the county boundary and Chowchilla River on the north, and Road 26, the Santa Fe Railroad, and Avenue 15 (extended into Fresno County) on the east and northeast. The name is "Madera."

Overall, the Madera viticultural area contains approximately 700 square miles or 448,000 acres, and over 33,000 acres of wine grapes plus substantial acreages of raisin and table grapes. Primary wine grape varieties include Carignane, Barbera, Chenin Blanc, French Colombard, Grenache, Rubired, and Ruby Cabernet. Six bonded wineries have been established within the viticultural area.

Miscellaneous

ATF does not wish to give the impression that by approving Madera as a viticultural area, it is approving or endorsing the quality of the wine from the area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Madera wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended by adding § 9.92. As amended, the table of sections reads as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

* * * * *

Sec.
9.92 Madera.

* * * * *

Para. 2. Subpart C is amended by adding § 9.92 which reads as follows:

§ 9.92 Madera.

(a) *Name.* The name of the viticultural area described in this section is "Madera."

(b) *Approved maps.* The approved maps for determining the boundary of the Madera viticultural area are eleven U.S.G.S. maps. They are entitled:

(1) "Clovis, Cal.," 7½ minute series, edition of 1964, photorevised 1972;

(2) "Fresno North, Cal.," 7½ minute series, edition of 1965, photorevised 1972;

(3) "Friant, Cal.," 7½ minute series, edition of 1964;

(4) "Lanes Bridge, Cal.," 7½ minute series, edition of 1964, photoinspected 1973;

(5) "Gregg, Cal.," 7½ minute series, edition of 1965;

(6) "Madera, Cal.," 7½ minute series, edition of 1963;

(7) "Kismet, Cal.," 7½ minute series, edition of 1961;

(8) "Raynor Creek, Cal.," 7½ minute series, edition of 1961;

(9) "Fresno, Cal.," scaled 1:250,000, edition of 1962, revised 1971;

(10) "Monterey, Cal.," scaled 1:250,000, edition of 1974; and

(11) "San Jose, Cal.," scaled 1:250,000, edition of 1962, revised 1969.

(c) *Boundaries.* The Madera viticultural area is located in Madera County, California. The beginning point is found on the "Fresno North," 7½ minute series U.S.G.S. map at the point where the San Joaquin River intersects the section line dividing sections 20 and 29, and sections 21 and 28, T. 12 S., R. 20 E.;

(1) Then east approximately 6 miles following the section line and Shepherd Avenue to the intersection with Sunnyside Road;

(2) Then north approximately 7 miles following Sunnyside Road and continuing along the section line to the point of intersection of sections 16, 17, 20, and 21, T. 11 S., R. 20 E.;

(3) Then west approximately 17.6 miles following the section line and continuing along Avenue 15 to the intersection with the Atchison, Topeka and Santa Fe Railroad;

(4) Then northwest following the Atchison, Topeka and Santa Fe Railroad to Road 26;

(5) Then north following Road 26 and continuing north in a straight line to the Chowchilla River in the "Raynor Creek" 7½ minute series U.S.G.S. map, and in the "San Jose" scaled 1:250,000 U.S.G.S. map;

(6) Then west following the Chowchilla River to the point where the Madera County-Merced County boundary diverges from the river;

(7) Then southwest following the Madera County-Merced County boundary to the San Joaquin River;

proposed north-south boundary, and to

by Ficklin Vineyards and Papagni

District. This contrasts with warmer

the Regulatory Flexibility Act (5 U.S.C.

Madera.

boundary to the San Joaquin River.

(8) Then following the San Joaquin River south and east returning to the point of beginning.

Signed: October 24, 1984.

W.T. Drake,

Acting Director.

Approved: November 15, 1984.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 84-32097 Filed 12-6-84; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Permanent Program Amendment From the State of Iowa Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On May 8, 1984, Iowa submitted proposed program amendments pertaining to public notice of subsidence control, the amount and duration of performance bonds including methodology for determining bond amounts, and the deletion of the 10-acre prime farmland exemption which was inadvertently retained when the Iowa program was approved in 1981.

After providing an opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations, with the exception of the provisions discussed below. Accordingly, the Director is approving those amendments which are consistent with SMCRA and no less effective than the Federal regulations there under, and has notified Iowa, pursuant to 30 CFR 732.17, of additional program amendments which are required. Pursuant to 30 CFR 732.17(f), Iowa must respond to this notification within 60 days.

The Federal rules at 30 CFR Part 915 which codify decisions concerning the Iowa program are being amended to implement these actions.

EFFECTIVE DATE: December 7, 1984.

ADDRESSES: Copies of the Iowa program and the Administrative Record on the Iowa program are available for public inspection and copying during business hours at:

Office of Surface Mining, Kansas City Field Office, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-3920.

Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240; Telephone: (202) 343-7896.

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319; Telephone: (515) 281-5851.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Field Office Director, Kansas City Field Office, Office of Surface Mining, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-3920.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general backgound, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 Federal Register.

II. Submission of Amendments

By letters dated May 9, 1984, Iowa submitted proposed program amendments consisting of:

(1) An amendment to Iowa subrule 4.523(63), subsidence control; public notice, to adopt by reference 30 CFR 817.122, as promulgated June 1, 1983. The rule concerns notice to surface owners of underground mining activities and would give underground mine operators some flexibility in providing notice;

(2) An amendment to Iowa subrules 4.41(1), 4.42, 4.322(3), and 4.332(3), to provide revised provisions on the amount and duration of performance bonds including a methodology for determining bond amounts; and

(3) An amendment to Iowa subrule 4.322(14) to delete the 10-acre prime farmland exemption which was inadvertently retained when the Iowa program was approved in 1981.

On June 8, 1984, OSM published a notice in the Federal Register announcing receipt of the Iowa amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 23872-23873). The public comment period ended July 9, 1984. An opportunity to request a public hearing was provided, but none was requested.

During review of the amendments, OSM identified two concerns:

(1) Iowa's proposed methodology for determining bond amounts does not explicity demonstrate that it represents a good approximation of actual reclamation costs; and

(2) Iowa's proposed maximum bond amount of $10,000 per acre might not be sufficient to assure completion of reclamation in the event of bond forfeiture.

OSM notified Iowa about these concerns by letter dated July 24, 1984, and Iowa responded by submitting clarifying information on August 30, 1984. The clarifying information identified the reasons why the specific methodology was chosen for Iowa and explained why the maximum bond amount will be sufficient.

On September 27, 1984, OSM reopened and extended the comment period for 15 days to solicit public comment on Iowa's clarifying information (49 FR 38150). The comment period closed on October 15, 1984, and no comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17, that the amendments submitted by Iowa on May 9, 1984, meet the requirements of SMCRA and the Federal regulations with the exception of the provisions discussed below. Only those provisions of particular concern are discussed in the specific findings which follow. Unless specifically stated, the Director approves the revisions to the Iowa subrules. Discussion of only those provisions for which specific findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed are found to be consistent with SMCRA and no less effective than the Federal regulations. All of the provisions involved in the amendment are cited at the end of this notice in the amendatory language in new sections 30 CFR 915.15 and 30 CFR 915.16.

Subrule 4.523(63), subsidence control; public notice

, Iowa is adopting by reference 30 CFR 817.122 as promulgated June 1, 1983. The rule concerns notice to surface owners

of underground mining activities and would give underground mine operators some flexibility in providing notice. The Director finds this provision is no less effective than the Federal regulations.

Subrule 4.322(14), prime farmland exemption

Subrule 4.322(14) is amended to delete the 10-acre prime farmland exemption which was inadvertently retained when the Iowa program was approved in 1981. The Director finds that this provision is consistent with the Federal regulations at 30 CFR 785.17 which do not allow an exemption from prime farmland standards for areas of less than 10-acres.

Subrules 4.41(1), 4.42, 4.322(3) and 4.332(3) bonding

Subrules 4.41(1), 4.42, 4.322(3) and 4.332(3) are inconsistent with Federal standards. The Iowa amendments proposed a methodology for determination of bond amounts and established minimum and maximum bond amounts for different types of permitted sites.

Iowa's proposed methodology for determining bond amounts may be an innovative and administratively practicable method of calculating bond amounts. However, the Federal rules at 30 CFR 800.14 require that the bond amount be sufficient to assure completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture. Although Iowa subrule 4.42(2) similarly requires the bond to be sufficient to assure completion of reclamation, the proposed methodology, Iowa subrule 4.41(1), does not demonstrate that it represents a good approximation of actual reclamation costs. Iowa's clarifying information was insufficient to answer OSM's concerns.

Iowa's methodology does not consider the cost of several reclamation activities that OSM has found to be major cost generators in reclamation. These activities include final cut backfilling and grading, structure removal, and revegetation activities such as seeding. Iowa's additional information did not provide OSM with actual costs for reclamation compared to the amount of bond on similar sites calculated with Iowa's methodology. OSM is not convinced that this method of determining bond amounts will provide adequate funds in the event of bond forfeiture and third-party reclamation. Because these amendments will not assure adequate bond amounts in the event of bond forfeiture, the Director finds that these amendments are less effective than the Federal regulations at 30 CFR 800.14. Therefore, the Director is requiring a program amendment that will base bond amount determinations on the actual cost of reclamation activities if they had to be carried out by a third-party.

Proposed subrule 4.42(2) provides for a maximum bond amount of $10,000 per acre. The Federal regulations contain no maximum bond amount because the bond must reflect the actual cost of reclamation. At OSM's request, Iowa provided additional rationale for selecting the $10,000 per acre amount. The additional information does not support a maximum per acre bond of $10,000.

Iowa cited Indiana data on abandoned mine land reclamation. On 15 acres of a total of 349 acres, Indiana expended $10,148 per acre. This overrun is covered under the Indiana program's bonding pool scheme. Iowa does not have a similar scheme. The data above indicate that a maximum bond amount of $10,000 per acre will not be adequate to cover the cost of reclamation if a third-party must complete it. Because reclamation costs may exceed the $10,000 per acre maximum bond amount, the Director finds these amendments to be less effective than the Federal regulations. Therefore, the Director is requiring a program amendment to remove the maximum bond amount per acre.

IV. Public Comments

No public comments were received on the proposed subrules.

V. Director's Decision

The Director, based on the above findings, is approving the Iowa subrules on subsidence notification and special permit requirements for prime farmland submitted as amendments to the approved Iowa program. As indicated above, there are a number of provisions which are inconsistent with SMCRA and less effective than the Federal regulations. By separate letter, the Director has notified Iowa, pursuant to 30 CFR 732.17(d), that certain required program amendments will be necessary. The State must reply within 60 days after notification by submitting either the text of a proposed amendment or a description of an amendment to be proposed and a timetable for enactment which is consistent with established administrative procedures in the State. The Federal rules at 30 CFR Part 915 are being amended to implement this decision.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 915 is amended as set forth herein.

Dated: November 28, 1984.

John D. Ward,

Director, Office of Surface Mining.

PART 915—IOWA

30 CFR Part 915 is amended by adding a new § 915.15 as follows:

§ 915.15 Approval of regulatory program amendments.

(a) The following amendments are approved effective December 7, 1984: Iowa subrules 4.523(63) and 4.322(14), pertaining to subsidence control; public notice and prime farmland, respectively submitted May 9, 1984.

(b) [Reserved]

30 CFR Part 915 is amended by adding a new paragraph (b) to § 915.16 as follows:

§ 915.16 Required program amendments.

* * * * *

(b) Pursuant to 30 CFR 732.17(d), Iowa is required to submit either the text for the following program amendment or a description of an amendment to be

proposed and a timetable for enactment which is consistent with established administrative procedures in the State by February 5, 1985.

Amend its program to establish criteria for determining bond amounts that will assure third-party reclamation in the event of bond forfeiture and deleting the existing provisions for a maximum bond amount per acre that may be inadequate to assure third-party reclamation in the event of a forfeiture as required by 30 CFR Part 800.

Authority: Pub. L. 95–87, (30 U.S.C. 1201 *et seq.*).

[FR Doc. 84-31735 Filed 12-6-84; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AM046MD; A-3-FRL-2732-7]

Approval of a Revision to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today EPA is announcing final approval of a revision to the Maryland State Implementation Plan (SIP). This revision, which was originally submitted to EPA on July 12, 1983, consists of a Plan for Compliance (PFC) for the J.L. Clark Manufacturing Company (the Company) in Havre De Grace, Maryland. The PFC ensures that the Company will come into compliance with Maryland's volatile organic compound (VOC) and visible emission (VE) regulations (COMAR 10.18.21.13B and 10.18.06.02.B).

Compliance is to be achieved by replacing coatings which now have a higher than allowable VOC content with compliance coatings. If replacement coatings cannot be developed by May 30, 1985, the Company will submit an alternative compliance plan. This plan, if accepted by the State, will be based on the alternative method of assessing compliance provided by COMAR 10.18.21.02C and will ensure compliance by October 1, 1985. If this plan is unacceptable, the Company must submit by July 1, 1985 a plan for the installation of control equipment, which will ensure compliance by March 1, 1986.

EFFECTIVE DATE: This action is effective December 7, 1984.

ADDRESSES: Copies of the revision and accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Management Division (3AM00), Curtis Building, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: James B. Topsale, P.E.

Maryland Department of Health & Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, Maryland 21201, Attn: George P. Ferreri

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 201 "M" Street, SW., (Waterside Mall), Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NW., Room 804, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Mr. James Topsale, P.E. or Mr. Paul Racette at the Region III address stated above or telephone (215) 597–4553 or (215) 597–2746.

SUPPLEMENTARY INFORMATION: On July 12, 1983 the State of Maryland submitted a revision to the State Implementation Plan (SIP) in the form of a Plan for Compliance (PFC) for the J.L. Clark Manufacturing Company in Havre De Grace, Maryland.

The Company is a manufacturer of decorated metal containers and sheets. The coating operations at the Company are subject to the provisions of Sections 10.18.08.02B and 10.18.21.13B of the State of Maryland's Code of Maryland Regulations (COMAR). These regulations govern miscellaneous coating operations and visible emissions.

EPA proposed approval of this revision in a Notice appearing in the **Federal Register** (FR 25251) on June 20, 1984. No comments were received on the proposed Rulemaking for the subject SIP revision.

The revision assures that the Company is placed on a reasonable schedule for achieving compliance with the State of Maryland's VOC and VE regulations. The Company is located in the Metropolitan Baltimore Intrastate Air Quality Control Region (AQCR), which is a nonattainment area for ozone (O_3). Companies in this O_3 nonattainment area must achieve compliance with Maryland's VOC regulations on or before 1987 in order to assure that the National Ambient Air Quality Standard (NAAQS) for O_3 is met in the AQCR as expeditiously as possible, but no later than the 1987 attainment deadline.

The Company plans to achieve compliance by developing low solvent coating technology. Should this technology fail to achieve compliance, provisions for installing control equipment are included in the PFC. The complete details of this PFC are discussed in the June 20, 1984 **Federal Register** Notice.

EPA Evaluation

Based on our review of the PFC, EPA is today announcing final approval of the PFC as a SIP revision. This approval is based in part on the State's demonstration that Reasonable Further Progress (RFP) in attaining the ozone NAAQS will not be significantly affected by the plan, and on evidence that the plan will achieve compliance as expeditiously as possible. The State has determined that the Company will achieve incremental reductions in VOC emissions over a seven year period. Total VOC emissions of 93.9 tons a year in 1979 will be reduced to 41.0 tons a year by 1986.

Conclusion

This SIP revision meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

Under section 307(b)(1) of the Act petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Cabon monoxide, Hydrocarbons.

(42 U.S.C. 7401–642)

Dated: December 3, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations, is amended as follows:

Subpart V—Maryland

1. In § 52.1070, Identification of Plan, is amended by adding paragraph (c)(73) as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(73) A revision submitted by the State of Maryland on July 12, 1983, consisting of a plan for Compliance for the J.L. Clark Manufacturing Company in Havre De Grace.

[FR Doc. 84-31982 Filed 12-6-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 83-1350; FCC 84-492]

Low Power Television and Television Translator Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to provide for a window period for filing new and major change low power television and television translator applications. The requirement for low power television and television translator applicants to submit a financial showing or certification is eliminated, although such applicants must now certify that they have reasonable assurance of site availability. The action is necessary to simplify and expedite the processing of low power television and television translator applications.

DATES: Rule changes will become effective on December 26, 1984; FCC Form changes will become effective upon approval by the Office of Management and Budget and notice thereof will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Larry A. Miller, Mass Media Bureau (202) 632–3894.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 74

Low power television, Television translators, Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Low Power Television and Television Translator Service (MM Docket No. 83–1350).

Adopted: October 17, 1984.
Released: November 19, 1984.

By the Commission: Commissioner Quello absent; Commissioner Dawson dissenting in part and issuing a statement at a later date; Commissioner Rivera concurring and issuing a statement.

I. Introduction

1. In this proceeding the Commission is adopting further procedures to streamline and expedite the processing of low power television and television translator applications.[1] The *Notice of Proposed Rule Making* (*"Notice"*), 49 Fed. Reg. 908, released December 23, 1983, proposed three changes in the processing procedures for low power television and television translator applications. The proposals included: (1) Modification of the cut-off rules to provide for a "window" or date certain for filing applications; (2) elimination of the requirement of filing financial information or certification with applications; and (3) the designation of television translator or certain types of television translators as a priority or separate class of service for processing purposes.

2. The Commission is adopting the first two proposals; i.e., to use a series of windows for filing applications and to eliminate the requirement to file any financial information or certification. The new window filing procedure will also apply to applications now properly on file but not cut-off or linked to a cut-off application, in the manner discussed in paragraph 5, *infra*. The changes in the financial requirements will apply retroactively to all pending as well as new applicants. However, for reasons that are more fully detailed herein, the Commission will not separate the processing of television translator applications from low power television applications nor will it afford a priority to television translator applications over low power television applications.

3. A wide variety of comments were received in this proceeding from full-service television station licensees, television translator licensees and applicants, trade associations, educational institutions, low power television applicants and individuals. There was general support for the first two proposals. However, comments on the translator priority proposal were more diverse. Full-service television station licensees generally advocated priorities for fill-in translators: [2] educators generally advocated priorities for noncommercial translators; television translator licensees generally advocated priorities for all television translator applications; and low power television applicants opposed any priority for translators. All comments and reply comments were given careful consideration.[3]

II. Modification of Cut-Off Rules

4. Under the current procedure used by the Commission, applications for low power television and television translator stations which have been found acceptable for filing are placed on an A cut-off list. This Public Notice invites competing applications until a specified cut-off date approximately thirty days later. Due to various factors, including the significant reduction and simplification of the information required in applications and the freeze on the filing of new low power television and television translator applications, almost all applications appearing on recent cut-off lists have generated numerous competing applications. The March 6, 1984, cut-off list, which contained approximately 3,400 applications, generated approximately 25,000 competing applications. This processing procedure entails administrative delay which has impeded the implementation of the low power television service and the expansion of the television translator service. Use of the cut-off lists requires double processing of all applications placed on cut-off lists. First, an application must be processed to determine whether it meets the Commission's technical requirements and whether it will cause interference to licensed or pending but cut-off facilities. If an application passes this initial evaluation, it is then placed on a cut-off list. After the cut-off date, the application must be processed again to determine whether any competing applications were filed by the cut-off date, in order to identify all mutually exclusive applications for lottery. This redundant processing is an inefficient use of the Commission's limited resources.

5. The Commission herein is adopting modified rules which eliminate the use of cut-off lists for the processing of low power television and television

[1] The modified rules are contained in Appendix A.

[2] Fill-in translators are used to provide service to areas within the city grade, Grade A or Grade B contours of a full-service television station, that do not receive adequate service due to terrain shielding.

[3] The comments and reply comments are summarized in Appendix B.

translator applications. As proposed in the *Notice*, filing windows will open no less than thirty days after Public Notice of the window is given by the Commission. The Public Notice will specify how long the filing window will remain open, generally five work days.[4] Windows will be opened as frequently as possible in order to provide various opportunities for filing applications, but consistent with the Commission's need to maintain an orderly processing procedure and our desire to use our resources efficiently. Applications filed during a window will be made available for public inspection after they have been entered into the Broadcast Application Processing data base. Applications filed during a window, which are found acceptable, will be either placed on a proposed grant list pursuant to § 73.3572(f)(4) of the Commission's Rules or grouped for a lottery with other mutually exclusive applications filed during that window and placed on a lottery public notice pursuant to §73.3572(f)(2) of the Commission's Rules. In order to expedite the processing of properly filed pending applications that have been cut-off, such applications will be cut-off on the last day of the first national window filing period. Applicants that intend to file competing applications against these properly filed pending applications that have not been cut-off and are not linked to any cut-off applications, may file during the appropriate window filing period. Although a list of these applications will not be issued by the Commission, they may be identified by reference to the Commission's engineering data base.

6. Filing windows will expedite the processing of applications and will help to reduce the processing delays encountered by both television translator and low power television applicants. Use of filing windows for low power television and television translator applications will do much to eliminate the practice of one applicant copying another applicant's information and submitting it as its own. Filing windows should also eliminate the deliberate creation mutually exclusive situations by over-filing on applications as they appear on cut-off lists. Over-filing has been a source of frustration to applicants who have diligently prepared an application and waited years only to have numerous competing applications filed on the cut-off date. Filing windows will provide an equal opportunity to all potential applicants to file new applications and will not disadvantage the first-filed application as sometimes occurred in the past. In addition, because of the contour overlap rules used to determine interference for low power television and television translator applications, unique and complex linkage situations often develop. Hundreds of applications may be linked together because of potential interference as defined by the Commission's Rules. This extensive linkage is extended by the doctrine of *Kitty Hawk Broadcasting*, 7 FCC 2d 153 (1967), which holds that an applicant must file by a cut-off date even though not mutually exclusive with an applicant on the cut-off list or risk being precluded due to the filing of an intervening application that links the applicant to the cut-off list. Thus, extensive linkage coupled with the holding of *Kitty Hawk Broadcasting* dictates that prudent applicants file on virtually every cut-off list in order to avoid being precluded from filing by other adjacent applications to which they are linked.

7. We have found no legal impediment to the use of filing windows either in legislative provisions or in judicial decisions. Neither section 309(b) of the Communications Act of 1934, as amended, nor *Ashbacker* v. *FCC*, 326 U.S. 327 (1945), requires the Commission to use cut-off lists in processing applications. Section 309(b) requires the Commission to give public notice of the acceptance for filing of an application 30 days prior to its grant. This requirement will remain. Moreover, the Supreme Court in *Ashbacker* v. *FCC*, 326 U.S. at 333, n. 9., recognized that the Commission could establish dates for the filing of conflicting applications. *See also Radio Athens, Inc.*, v. *FCC*, 401 F.2d 398 (D.C. Cir. 1968). In *Century Broadcasting Corp.* v. *FCC*, 310 F.2d 864 (D.C. Cir. 1962), the flexibility of the Commission in fashioning procedural "housekeeping" rules was recognized. While the courts have traditionally required the Commission's cut-off dates to "fairly advise prospective applicants of what is being cut-off by the notice," *Ridge Radio Corp.* v. *FCC*, 292 F.2d 770, 773 (D.C. Cir. 1961), the filing windows being adopted herein meet this requirement. Prospective applicants will be notified by a general Public Notice that they must file their application during the specified filing period in order to receive consideration along with any other mutually exclusive applications filed during the same filing period.

8. Certain parties have commented that use of filing windows will engender a land rush mentality and stimulate the filing of applications by parties with no plans to use the channels for which they have applied. However, once the remaining Tier II and III locations are opened for filing, we anticipate massive filings for available channels regardless of whether cut-off procedures or filing windows are used. It has been argued that cut-off lists have been used by some over-filers to target other applicants that might be willing to buy them out. If this is so, without cut-off lists these frequency speculators will be less inclined to file applications since there will be no readily apparent party with whom to negotiate a settlement or to whom a construction permit may later be sold.

9. Comments were requested on appropriate groupings for given window periods. Of the responsive comments, none presented viable plans for dealing with the prejudice to adjacent groups due to daisy chain effects [5] which would result from any given grouping. In certain areas such as Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands, physical distance may allow for separate windows. However, except in isolated situations where it is apparent that no prejudice will occur to adjacent areas, we will open the filing windows for all available channels throughout all of the country. This procedure will allow many applications in rural areas to be processed expeditiously since they may generally be unopposed. Television translator organizations will be able to apply for the channels which they need to provide service without the fear of inviting competing applications when they appear on a cut-off list. In addition, the filing window can be used by existing stations to file major change amendments. We feel that this approach will do much to eliminate the delay and over-filings that television translator and low power television applicants have faced since the implementation of the low power television service. In addition, we will continue our policy of expediting the processing of applications which are not mutually exclusive.

[4] The Commission intends to retain some discretion as to the timing of the windows and the periods they will be open. This discretion is necessary in order to respond to changing circumstances in the processing of low power television and television translator applications.

[5] Because of the contour overlap interference criteria used for low power television and television translator applications, daisy chains of mutually exclusive applications may extend for hundreds of miles. Daisy chains occur when an application is mutually exclusive, i.e., would cause interference, with an application in an adjacent community, which is mutually exclusive with an application in another adjacent community, and so on.

III. Financial Information

10. For the reasons stated in the *Notice* and for the reasons stated herein, the requirement that an applicant for a low power television or television translator authorization file any information or certification concerning its financial qualifications is being eliminated. Thus, completion of Section III, Financial Qualifications, on FCC Form 346 will no longer be required of low power television and television translator applicants. Because a strict one-year construction period is applied to low power television and television translator authorizations, a mechanism for post-lottery enforcement is in place that will provide for termination of authorizations won without appropriate financial backing. Moreover, since compliance will now be monitored post-lottery, it is in the public interest to have the changes apply retroactively to all pending as well as new applicants.

11. We believe that, in compliance with the statutory mandate of the Communications Act of 1934, as amended, the Commission may refrain from soliciting financial information from an applicant. Pursuant to section 308(b) "all applications for station licenses . . . shall set forth such facts as the Commission by regulation *may* prescribe as to citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station . . . ." 47 U.S.C. 308(b) (1981). (Emphasis added.) The United States Court of Appeals for the District of Columbia has confirmed that the Commission's inquiry into the financial qualifications of its applicants is discretionary.

Also, the provisions of 47 U.S.C. 308(b) authorizing consideration of factors of 'citizenship, character and financial, technical and other qualifications' is not violated because it does not require scrutiny of an applicant's financial fitness. That section leaves it within the discretion of the Commission to decide which facts relating to such factors it wishes to have set forth in applications. Since this leaves the Commission free to have no facts set forth on any of these matters, if it finds such action appropriate, it follows necessarily that the Commission is not required to consider financial fitness if it deems it irrelevant to its regulatory scheme. [*National Association of Regulatory Utility Commissioners* v. *FCC*, 525 F.2d 630, 645 (D.C. Cir. 1976).]

12. We further believe that in the case of low power television and television translator service we no longer need information on the financial qualifications of an applicant, or even a financial certification from an applicant, in order to make the public interest determination whether to grant an application as required by Section 309(a) of the Communications Act of 1934, as amended. 47 U.S.C. 309(a) (1981). Thus, we believe that we can discharge our statutory obligation with a simplified low power television and television translator application form which does not elicit information or a certification on the financial qualifications of an applicant.

IV. Separation and Priority for Television Translators

13. The Commission also requested comments on various alternative proposals to designate television translators as a priority or separate class of service for processing purposes with low power television secondary to it. Since television translator and low power television stations share the same frequencies, and since on a technical basis the operation of the stations is nearly equivalent, they are now processed together.

14. Since the establishment of the low power television service the Commission has attempted to balance two principal goals for the provision of television service. One of these goals is to recognize the contribution that the traditional translator has played in providing television service to areas where direct reception of full-service television stations is hindered by distance or intervening terrain barriers. To promote this goal, we have avoided rules that would make translator service more difficult to provide, especially in isolated rural areas where the need for television service is greatest. A second goal is to provide maximum flexibility for new originating services to come into being, easily and at low cost, and to provide for expansion of existing translator service. *Notice of Proposed Rule Making in Docket 78-253*, 82 FCC 2d 47 (1980) at paragraph 6. Such flexibility allows low power television stations to develop programming tailored to the needs and interests of the local community.

15. The Commission's attempts to balance these sometimes competing goals have included various actions. The Commission first attempted to initiate low power television service while at the same time protecting television translator service by accepting television translator applications with waiver requests to originate programming, under interim processing procedures established in 1980. *Interim Processing Procedures*, 48 RR 2d 291 (1980). These interim processing rules were designed to allow the continued processing of television translator applications while at the same time accepting new low power television applications for filing. It was believed that a total freeze on the acceptance and processing of television translator applications would not be in the public interest. At the same time, processing of only television translator applications during the interim period, when the low power television rule making was pending, would have seriously prejudiced the ability of low power television applicants to compete for available channels upon approval of the service.

16. During the interim period, the overwhelming demand for low power television stations was manifested in the thousands of low power television applications received by the Commission. The large number of applications threatened the ability of the staff to provide orderly and expeditious processing. Therefore, a series of partial and eventually total freezes was implemented in order to reduce the flow of applications to manageable levels. The partial freezes were designed to allow low power television and television translator applications to be filed first in the most rural and underserved areas. This design facilitated the two goals by allowing the continued filing of television translator applications in the areas traditionally served by translators and also allowing for the filing of low power television applications. Although the "total" freeze on new and major change applications which has been in effect since September 15, 1983, has been disruptive to the plans of some potential applicants, it has allowed the Commission to implement the lottery mechanism and make strides in processing both television translator and low power television applications.[6]

17. We have determined, based on our experience and the comments received in this rule making, that the public interest will best be served by the expeditious processing of all applications and not by choosing one group of applicants to favor over another. We have not been persuaded that expedited processing of television translator applications must come at the expense of providing maximum flexibility for existing television translator stations that want to switch to low power television status and new low power television stations, that can

[6] Under the current freeze only applications submitted in response to cut-off lists, or for television translator stations bumped from channels 70 through 83 due to land mobile radio use, may be filed. As noted above, the Commission has received more than 30,000 low power television and television translator applications in response to cut-off lists.

provide a local programming outlet beyond the capability of a television translator. Thus, we will continue to balance these two goals by seeking to accommodate both television translator and low power television applicants.

18. Under the Commission's rules a low power television station may operate as a television translator, rebroadcasting the programming of a full-service television station.[7] Thus, any attempt to give a processing priority to television translators should take into consideration all the low power television applicants that propose to operate as television translators. A provision would have to be made for giving the same priority to these low power television applicants. New restrictions on programming changes for low power television and television translator stations would be necessary to maintain the integrity of this television translator priority. Significantly, restrictions on switching from television translator to low power television status would unduly penalize television translators that desire to do small amounts of local origination programming. The low power television service was initially designed to allow existing translators to provide some local origination programming. This flexibility is still a valid goal and should not be restricted. Since low power television licensees may operate as translators and also originate programming, hybrid systems have become a popular method of operation. Low power television stations are operating as translators for a good part of the time, with the institution of some local origination programming as appropriate for a particular area. Despite the fact that low power television stations are commonly thought of as stations that engage in continuous program origination, many communities, particularly the smaller ones, lack the resources to sustain such a station. However, some of these communities may desire local programming on a limited scale. Local news, sports events and public affairs programs are now carried on an occasional basis by low power television stations that were previously strictly limited to rebroadcasting by the Commission's television translator rules. The elimination of this flexibility, which would be required by priority processing, would be destructive to the further development of these hybrid stations. In addition, relaxation of the origination requirements has permitted former exclusively translator operations to convert to low power television and to establish an economic base in a particular community by selling advertising time. The income so generated is used to finance the translator portion of the operation. Thus, the priority now proposed for translators may be short sighted. Low power television as a broadcast service is in its infancy and should be given an opportunity to develop without further restrictions.

19. In any event, the primary complaint of those parties advocating a priority for television translators is that processing in combination with low power television applications has caused delays in the granting of television translator applications. The rule changes being adopted herein, particularly the use of window filing periods, will substantially reduce the processing time for television translator applications without providing a specific priority for such applications. The use of windows will eliminate the practice of over-filing competing applications on television translator applications. With fewer mutually exclusive situations, the applications which are filed may be processed more expeditiously. Therefore, we believe that expeditious action on television translator applications may be provided without the need to designate television translator applications as a priority.

20. For the most part, the commenting parties have focused on programming related arguments. The parties have attempted to show that television translator stations are entitled to a preference because they rebroadcast the signal of a full-service television station, which has more stringent programming requirements than low power television stations. It is argued that full-service television programming guidelines will insure that the signals rebroadcast by television translators will be superior to low power television programming. However, on June 27, 1984, the Commission adopted *Deregulation of Commercial Television*, 56 RR 2d 1005 (1984), eliminating formal programming guidelines for full-service commercial television stations. In addition, the television translator station will not be able to respond to local community needs unless the primary station, which the translator is rebroadcasting, determines that it will respond to the needs of the translator community.[8] Since the primary station is often located a considerable distance from the translator station, and since a primary station may be carried on many translator stations in many diverse communities, it is impossible to determine that the needs and interests in all of the translator communities will be adequately served by the one primary station.

21. Most importantly, since low power television stations are authorized to do local program origination while television translators can only rebroadcast the signal of a full-service television station, there is a much greater probability that low power television stations will establish a local presence, *e.g.*, a local studio, and be more responsive to community needs and interests. In view of the foregoing, we find no basis for determining that television translator applications are entitled to a preference over low power television applications based on claims of superior programming.

22. It has also been suggested that a priority be afforded to television translators carrying various types of primary stations providing network programming, independent programming, and public television or noncommercial programming. Certain parties suggest that each community should be served by the three television networks, two independent stations and public television before low power television applications are accepted. However, support of a priority system based on a preference for certain types of programming runs counter to past Commission decisions. For example, in the reconsideration of the *Low Power Television Report and Order*, 53 RR 2d 1267 (1983) ("*Reconsideration*"), the Commission stated:

> [T]here is no basis for preferring Neighborhood's programming proposals over any others. The *Report and Order* imposed a minimum of program content regulations on low power television stations so that they may be responsive to marketplace conditions. *Report and Order*, at 21490. Since we favor no particular programming, we cannot favor Neighborhood's plan over other proposals. [*Reconsideration*, 53 RR 2d at 1277.]

Just as it was not appropriate to take certain programming proposals into consideration in the *Reconsideration* it would also not be appropriate now to grant priorities to translator applications based on programming proposals. By affording a priority to translators the Commission would, in effect, be stating that the rebroadcast of programming by a translator should be preferred over the local origination outlet of a low power television station. We believe that this decision is more appropriately made in the marketplace and not by the Commission.

23. In addition to the above, there are procedural difficulties in providing for a priority for television translators. If television translator applications were now given a processing priority, applicants for low power television stations might file for television translators in order to secure the priority.[9] This would only exacerbate processing delays. Even if the Commission made the change from television translator to low power television service a major change, it may not be sufficient to deter mass filings of applications for television translator service. Since, as suggested in the comments, speculative filers often have no intention to utilizing the channels for which they apply, a limitation on the use of the channel would not be an effective deterrent. The speculator still would have various options including: (1) Being paid to dismiss its application by a legitimate translator applicant; (2) selling its authorization to a legitimate translator operator; and (3) retaining its authorization on the channel anticipating that the Commission will again change its rules. Proposals such as requiring a television translator applicant to submit written authority to rebroadcast the proposed primary station signal or requiring a television translator station to operate as a translator for a fixed number of years, also would not appear to solve the processing delays.

24. Designating certain classes of television translator applicants as a priority for processing purposes presents even more problems. Various commenters have suggested providing an absolute priority for translator applications to fill in the City Grade, Grade A or Grade B contour of full-service television stations. However, the Commission would be required to develop standards for determining whether certain areas within a specified contour of a full-service station were in fact not served. These technical quantification standards would be difficult, if not impossible, to develop and administer. Such priorities would require manual staff processing of applications and consideration of terrain shielding, which the Commission has previously rejected. No commenters advocating a translator priority addressed these difficult problems. Additionally, no comments were filed as to how to deal with the equally difficult situation where the unserved area is on the edge of the primary station's specified contour, and the priority translator is used to extend coverage rather than fill in unserved areas. Most commenters also advocated use of a full-service station's Grade B contour as the relevant coverage area. Under the proposed procedure a full-service television station would be entitled to an absolute preference for a television translator station that would serve any unserved area within the station's Grade B contour even if the television translator significantly extended the full-service station's signal into areas outside the Grade B contour and even if it extended the coverage of the full-service station into totally new communities. Full-service television stations might find some areas within their Grade B contours that would qualify for a television translator priority, but that would be used primarily to extend coverage into new areas. Grants of such applications would, of course, preclude the filing of conflicting low power television applications in those areas.

25. The arguments of the various educational institutions, and noncommercial broadcasters echo the previous claims of the National Association of Public Television Stations ("NAPTS") in its Petition for Further Reconsideration of the *Low Power Television Report and Order*, 51 RR 2d 476 (1982), and *Reconsideration*, 53 RR 2d 1267 (1983). The Commission, in its *Memorandum Opinion and Order*, FCC 83-486 (released October 27, 1983), considered the argument that elimination of the priority previously accorded television translator rebroadcasts of noncommercial programming seriously impairs the ability of noncommercial television to extend its services to remote areas of the country. Noncommercial broadcasters previously had an absolute priority for television translators on channels reserved for full-service noncommercial applicants in the Commission's table of television assignments. The Commission's rationale for eliminating the former noncommercial translator priority applies with equal vigor to the present proposal to give a priority to noncommercial applicants on all translator channels. We are not persuaded that there is an immediate risk of spectrum shortages which will curtail expansion of public television service to remote and unserved areas of the country. We also would note that numerous low power television applicants have proposed noncommercial service. Moreover, as explained in paragraph 6, the use of filing windows should also reduce processing delays and mutally exclusive situations for noncommericial translator applicants.

26. After giving careful consideration to the various proposals for affording television translator applicants a processing priority over low power television applicants, we have reached the conclusion that the public interest will be served by maintaining our present balance between the goals of maintaining television translator service and encouraging new low power television service. Adoption of television translator priorities would require the formulation of new regulatory restrictions that would severely impair the present flexibility for providing originating services. The ability of licensees, including television translator licensees, to respond to marketplace conditions would be significantly curtailed. Finally, implementation of the low power television service would be substantially delayed.

V. Terrain Shielding and Site Availability

27. The *Notice* invited comments on any other procedures that would effectively expedite consideration of low power television and television translator applications. The most frequently proposed procedural change was for the Commission to take into consideration terrain shielding when calculating anticipated interference. It was contended that consideration of terrain shielding would eliminate many situations of apparent mutual exclusivity. Many commenters argued that the Commission's policy does not fully take into account all terrain factors and has inhibited the development of television translator and low power television service in many mountainous areas of the country. It was contended that processing applications without consideration of terrain shielding causes an inefficient use of radio spectrum since it precludes the use of many channels in locations where the Commission's theoretical analysis indicates interference would occur. Although we are sympathetic to the

[7] The basic distinction between low power television and television translator stations is that television translators are limited to rebroadcasting the signals of full-service television stations and cannot do more than 30 seconds of local origination programming per hour. Low power television stations may carry any type of broadcast programming and do any amount of local origination programming.

[8] Some of the commenting parties are UHF licensees that transmit subscription programming for a significant portion of their broadcast time. Under these licensees' proposal, television translators carrying this subscription programming would be entitled to the same processing priority as any other television translator carrying non-subscription programming.

[9] Currently a television translator station may change to a low power television station by filing a letter of notification with the Commission.

concerns of the commenting parties, we will not make the procedural changes requested. As stated in the *LPTV Report and Order* and *Reconsideration*, there is no universally accepted method of predicting the effects of terrain shielding. Moreover, it is far beyond our staff capacity to evaluate individually thousands of terrain shielding claims. We continue to believe that for Commission to become embroiled in terrain shielding disputes at this time would frustrate our efforts to expedite grants of television translator and low power television applications. However, when the flow of applications diminishes it may be appropriate to reconsider the terrain shielding issue.

28. Another proposal which was made by many commenting parties is to require that some evidence of site availability be submitted with all applications for low power television and television translator service. It was suggested that the requirement to file some evidence of site availability would limit the number of frivolous applications filed with the Commission. Some commenters suggested that applicants be required to submit written authorization from the site owner evidencing a willingness to make the site available. Other commenters suggested that an applicant be required to certify that it has contacted the site owner and has obtained reasonable assurance of the site availability.

29. The Commission has held that although an applicant need not have a binding agreement or absolute assurance of a proposed site, an applicant must show it has obtained reasonable assurance that its proposed site is available. Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary. A mere possibility that the site will be available will not suffice. *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974). The specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. A failure to inquire as to the availability of a site until after the application is filed is inconsistent with such a representation. See *William F. Wallace, supra*. In view of this longstanding Commission requirement we are adding a question to FCC Form 346 which will require an applicant to certify that it has obtained reasonable assurance from the property owner that the site will be available.[10] The certification will include a reference to the name and location of the person contacted.

30. The certification and related information is necessary for applications in the low power television and television translator service for several reasons. It appears that a significant number of applicants may submit that the site will be available. This situation creates processing delays for all applicants because the staff must consider and process many applications that are not compete since they do not have reasonable assurance of a site. To date, approximately 29 percent of the low power television lotteries have drawn petitions to deny against the tentative selectee. Excluding the petitions to deny filed by Neighborhood TV Company based on its court appeal,[11] 65 percent of the petitions to deny raise issues of site availability. In 40 percent of the cases were site availability is raised we have found the tentative selectee's application deficient in this respect and dismissed its application. Another 20 percent of the cases have raised site issues that require the solicitation of further information by the staff. Thus, site availability is the major basis for challenging lottery winners and results in the dismissal of a significant number of lottery winners. Further, when a construction permit is granted to an applicant that does not have a site and thus does not build a station, service to the public is delayed and a qualified applicant may be prevented from obtaining an authorization and providing a needed service.[12] Therefore, in order to maintain the integrity of the applications process and in order to expedite processing of qualified applicants, we are adopting this site certification requirement. We feel this action will not be burdensome on applicants, since our current policy already requires that they obtain reasonable assurance that the proposed site is available. The only new requirement is that the applicant now verify this action on the application form.

VI. Other Matters

31. We are also adopting various "housekeeping" rule changes herein which are necessary to clarify and conform various rule sections and delete inapplicable rules. All of the rule changes adopted herein are reflected in Appendix A.

32. Section 73.3516(c) is being modified to remove a provision which provided for the filing of a television translator application on a channel on which a UHF full-service station had been authorized but not yet placed into operation. This section, which was inadvertently not changed at the time the low power television rules were adopted, eliminates an inconsistency in the Commission's Rules.

33. In § 73.3572(f)(2), certain minor clarifications are being made concerning the 30-day Public Notice announcing lotteries. Minor changes are made in §§ 73.3580(d)(1) and 74.784 distinguishing the local public notice and station identification requirements for low power television licensees that are locally originating programming as defined by § 74.701(h) of the Commission's Rules. Section 73.3584(c) is modified to make it clear that 30 days is allowed for filing petitions to deny applications which appear on a proposed grant list. Section 74.735(c)(4), requesting certain technical information, is being deleted since the information requested is no longer necessary. Section 74.780 is being updated to specify correctly the various broadcast regulations which apply to low power television and television translator stations. Section 74.763(b) is added to conform to the full-service television requirements for reporting discontinuance of operation. A minor clarification is being made in § 73.3564 to reiterate the complete and sufficient standard for acceptance of low power television and television translator applications and conform this section with § 73.3591 and the *Low Power Television Report and Order*, 51 RR 2d 476, 502 (1982). Various other minor

---

[10] The applicant certifies that it has contacted an authorized spokesperson for the owner of the rights to the proposed transmitter site and has obtained reasonable assurance that the site will be available for its use it this application is granted. —— Yes —— No The person is ———— who can be contacted at the following address and telephone number ————.

[11] The *LPTV Report and Order*, which promulgated the low power television rules, was appealed by Neighborhood TV Company, Inc. Neighborhood TV Company, Inc. argued that television translator applications should have been processed separately from low power television applications. Appellant maintained that applications that were on file at the time the low power television service was initiated were prejudiced by the Commission's decision to process low power television and television translator applications together. The Court of Appeals recently denied Neighborhood's appeal. *Neighborhood TV Company, Inc.* v. *FCC*, No. 83–1635 (D.C. Cir. Aug. 17, 1984).

[12] Based upon our experience, applicants without the site specified in the application often request to move to another site after grant of the construction permit. This is usually a major change. Pursuant to § 73.3572 of the Commission's Rules, a major change requires the assignment of a new rule number to an application and reprocessing of that amended application which, as far as the technical proposal is concerned, entails the same processing as a new application.

references and inconsistencies[13] have been corrected in the following: §§ 73.3540(c)(1), 74.765(b), and 74.783.

34. Pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission certifies that the action proposed will not have a significant economic impact on a substantial number of small entities. The rule revisions are designed to simplify and expedite processing procedures.

VII. Conclusion

35. In view of the foregoing and pursuant to sections 1, 3, 4 (i) and (j), 303, 308, 309 and 403 of the Communications Act of 1934, as amended, it is hereby ordered that the action taken herein and the amendment of the Commission's Rules as set forth in Appendix A, are effective December 26, 1984.

36. It is further ordered, that revised FCC Form 346 is amended, effective upon approval by the Office of Management and Budget.

37. It is further ordered that this proceeding is terminated.

38. For further information concerning this proceeding contact Larry A. Miller, Mass Media Bureau, (202) 632–3894.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—RADIO BROADCAST SERVICES

1. 47 CFR 73.3516 is amended by revising paragraph (c) to read as follows:

§ 73.3516 Specification of facilities.

* * * * *

(c) An application for a construction permit for a new broadcast station, the facilities for which are specified in an outstanding construction permit or license, will not be accepted for filing.

* * * * *

§ 73.3540 [Amended]

2. 47 CFR 73.3540 is amended by removing paragraph (c)(1).

3. 47 CFR 73.3564 is amended by revising paragraphs (a) and (c) and adding new paragraph (d) to read as follows:

§ 73.3564 Acceptance of applications.

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination in made to ascertain whether the applications are complete. Except for low power TV and TV translator applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant. In the case of low power TV and TV translator applications, those found to be complete and sufficient are accepted for filing and are given file numbers. Low power TV and TV translator applications that are not complete and sufficient will be returned to the applicant.

* * * * *

(c) At regular intervals the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing. Pursuant to §§ 73.3571(c), 73.3572(c) and 73.3573(d), except in the case of low power TV and TV translator applications, such notice shall establish a cut-off date (no less than 30 days from the date of issuance) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) (Local public notice of filing of broadcast applications) has been made in the tendered application.

(d) Notwithstanding the provisions of the section and § 73.3572, new and major change applications for low power TV and TV translator stations will be accepted only on the date(s) specified by the FCC in a Public Notice.

4. 47 CFR 73.3572 is amended by revising the introductory text of paragraph (a), (a)(1), introductory text of (f), (f)(1), (f)(2) and (f)(4) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, and TV translator station applications.

(a) Applications for TV stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Assignments (§ 73.606). Other requests for change in frequency or community of license for TV stations must first be submitted in the form of a petition for rulemaking to amend the Table of Assignments. In the case of low power TV and TV translator stations authorized under Part 74 of this chapter, a major change is any change in:

(i) Frequency (output channel) assignment;

(ii) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;

(iii) Antenna height;

(iv) Antenna location exceeding 200 meters; or

(v) Authorized operating power.

However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the low power TV or TV translator station in any horizontal direction, the modification will not be considered a major change. Provided further that the FCC may, within 15 days after the acceptance of any other application for modification of facilities advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 pertaining to major changes.

* * * * *

(f) *Processing of applications for low power TV and TV translator stations.* (1) Applications for low power TV and TV translator stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. The FCC will specify, by Public Notice, a period for filing low power TV or TV translator applications. The filing period will open no less than 30 days after release of the Public Notice and remain open for an least five work days.

(2) Subsequently, the FCC will release a Public Notice: (i) Establishing a date, time, and place for a public lottery; (ii) accepting for filing mutually exclusive applications which were timely filed during the filing period previously specified by the FCC; (iii) designating the listed mutually exclusive applications for public lottery pursuant to the procedures set forth in § 1.1601 *et seq.*; and (iv) describing each applicant's certified perferences and selection probabilities and assigning to each applicant a number block. (It will be the applicant's responsibility to notify the FCC, within 30 days of the release of the

---

[13] A further inconsistency in paragraph 47 of the *Reconsideration of the LPTV Report and Order*, 53 RR 2d 1287 (1983), is hereby corrected. Major changes include substantial changes in an applicant's ownership as defined in § 73.3572.

Public Notice, or any omissions of applications or clerical or mathematical errors in preferences or probabilities. The FCC will not entertain appeals involving these matters if timely notification to the FCC has not been made.) If necessary, the FCC will release subsequent Public Notices correcting only clerical or mathematical errors and including any previously omitted mutually exclusive applications. The public lottery pursuant to the procedures set forth in § 1.1601 *et seq.*, will be held no less than 30 days subsequent to the initially released Public Notice announcing the lottery. Subsequent to the lottery, the FCC will release a Public Notice announcing the selection of a tentative selectee resulting from the lottery and providing and opportunity for the filing of Petitions to Deny pursuant to the requirements of § 73.3584(c). If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of a tentative selectee's application, the same will be granted. Those applications which, due to the lottery, are no longer mutually exclusive with other applications will be announced in a Public Notice proposing the grant of those applications and providing an opportunity for the filing of Petitions to Deny pursuant to § 73.3584(c). Groups of mutually exclusive applicants remaining after a lottery will be designated for lottery. Applications which are are not grantable due to mutual exclusivity with the permittee selected by lottery will be dismissed.

* * * * *

(4) The FCC will periodically release a Public Notice accepting for filing and proposing for grant those applications which were timely filed during the filing period specified by the FCC in a Public Notice for filing low power TV or TV translator applications, but which are not mutually exclusive with any other application, and providing an opportunity for the filing of Petitions to Deny pursuant to § 73.3584.

5. 47 CFR 73.3580 is amended by revising the introductory text of (d), (d)(1), introductory text of (g), introductory text of (g)(1), and (g)(1)(i) read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(d) The licensee of an operating broadcast station who files an application or amendment thereto which is subject to the provisions of this section must give notice as follows:

(1) An applicant who files for renewal of a broadcast station license, other than a low power TV station license not locally originating programming as defined by § 74.701(h), FM translator station, FM booster station or a TV translator station license, must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements are below.) Newspaper publication is not required. An applicant who files for renewal of a low power TV station license not locally originating programming as defined by § 74.701(h). FM translator station, FM booster station or a TV translator station licensee will comply with (g) below.

* * * * *

(g) An applicant who files for an authorization, major modification, assignment, transfer or renewal, or a major amendment thereto, for a low power TV, TV translator, FM translator, or FM booster station must give notice of this filing in a daily, weekly or biweekly newspaper of general circulation in the community or area to be served. (An applicant who files for renewal of a low power TV station locally orginating programming as defined by § 74.701(h) must give notice pursuant to (d)(1) of this section.) The filing notice will be given immediately following the tendering for filing of the application or amendment, or immediately following notification to the applicant by the FCC that public notice is required pursuant to §§ 73.3572, 73.3573, or 73.3578.

(1) Notice requirements for these applicants are as follows:

(i) In a newspaper at least one time; or

* * * * *

6. 47 CFR 73.3584 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 73.3584 Petitions to deny.

* * * * *

(c) In the case of applications for new low power TV or TV translator stations, or for major changes in the existing facilities of such stations, any party in interest may file with the FCC a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3572(b)) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed within 30 days of the FCC Public Notice proposing the application for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the FCC selects a tentative permittee pursuant to § 1.1601 *et seq.*, Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within 15 days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in § 1.1623(f)(1) has been applied, an "objection to diversity claim," and opposition thereto, may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and Oppositions. In all pleadings, allegations of fact or denials thereof shall be supported by appropriate certification. However, the FCC may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

* * * * *

7. 47 CFR 73.3591 is amended by revising paragraph (b) to read as follows:

§ 73.3591 Grants without hearing.

* * * * *

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the FCC will not consider any other application, or any application if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other application was substantially complete, or, in the case of low power TV and TV translator stations, complete and sufficient, and tendered for filing by:

(1) The close of business on the day preceding the day designated by Public Notice as the day the listed application is to be available and ready for processing;

(2) The date prescribed in § 73.3516(e) in the case of applications which are mutually exclusive with applications for renewal of license of broadcast stations; or

(3) The close of business on the day designated by the FCC pursuant to § 73.3564(d) as the date(s) for filing low power TV or TV translator applications.

* * * * *

PART 74—[AMENDED]

8. 47 CFR 74.701 is amended by revising paragraph (h) to read as follows:

§ 74.701 Definitions.

* * * * *

(h) *Local origination.* Program origination if the parameters of the program source signal, as it reaches the transmitter site, are under the control of the low power TV station licensee. Transmission of TV program signals generated at the transmitter site constitutes local origination. Local origination also includes transmission of programs reaching the transmitter site via TV STL stations, but does not include transmission of signals obtained from either terrestrial or satellite microwave feeds or low power TV stations.

9. 47 CFR 74.732 is amended by revising paragraph (d) to read as follows:

§ 74.732 Eligibility and licensing requirements.

* * * * *

(d) The FCC will not act on applications for new low power TV or TV translator stations or for changes in facilities of existing stations when such changes will result in a major change until the applicable time for filing a petition to deny has passed pursuant to § 73.3584(c).

* * * * *

§ 74.735 [Amended]

10. 47 CFR 74.735 is amended by removing paragraph (c)(4) and redesignating paragraphs (c)(5) and (c)(6) as (c)(4) and (c)(5).

11. 47 CFR 74.763 is amended by adding paragraph (b) to read as follows:

§ 74.763 Time of operation.

* * * * *

(b) In the event that causes beyond the control of the low power TV or TV translator station licensee make it impossible to continue operating, the station may discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

* * * * *

12. 47 CFR 74.765 is amended by revising paragraph (b) to read as follows:

§ 74.765 Posting of station and operator licenses.

* * * * *

(b) The licenses or permits of operators employed at low power TV stations locally originating programs (as defined by § 74.701(h)) shall be posted in accordance with the provisions of § 73.1230(b).

* * * * *

13. 47 CFR 74.780 is revised to read as follows:

§ 74.780 Broadcast regulations applicable to TV translator and low power TV stations.

The following rules are applicable to TV translator stations and low power TV stations:

Section 73.653—Operation of TV aural and visual transmitters.

Section 73.658—Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

Part 73, Subpart G—Emergency Broadcast System (for low power TV stations locally originating programming as defined by § 74.701(h)).

Section 73.1201—Station identification (for low power TV stations locally originating programming as defined by § 74.701(h)).

Section 73.1205—Fraudulent billing practices.

Section 73.1206—Broadcast of telephone conversations.

Section 73.1207—Rebroadcasts.

Section 73.1208—Broadcast of taped, filmed or recorded material.

Section 73.1211—Broadcast of lottery information.

Section 73.1212—Sponsorship identifications; list retention; related requirements.

Section 73.1216—Licensee conducted contests.

Section 73.1510—Experimental authorizations.

Section 73.1515—Special field test authorizations.

Section 73.1615—Operation during modifications of facilities.

Section 73.1635—Special temporary authorizations (STA).

Section 73.1650—International broadcasting agreements.

Section 73.1680—Emergency antennas.

Section 73.1940—Broadcasts by candidates for public office.

Section 73.2080—Equal employment opportunities (for low power TV stations only).

Section 73.3500—Application and report forms.

Section 73.3511—Applications required.

Section 73.3512—Where to file; number of copies.

Section 73.3513—Signing of applications.

Section 73.3514—Content of applications.

Section 73.3516—Specification of facilities.

Section 73.3517—Contingent applications.

Section 73.3518—Inconsistent or conflicting applications.

Section 73.3519—Repetitious applications.

Section 73.3521—Mutually exclusive applications for low power TV and TV translator stations.

Section 73.3522—Amendment of applications.

Section 73.3525 (a), (b), (d), (f), (g), (h) and (i)—Agreements for removing application conflicts.

Section 73.3533—Application for construction permit or modification of construction permit.

Section 73.3534—Application for extention of construction permit or for construction permit to replace expired construction permit.

Section 73.3536—Application for license to cover construction permit.

Section 73.3538(a) (1) (3) (4), (b)(2)—Application to make changes in existing station.

Section 73.3539—Application for renewal of license.

Section 73.3540—Application for voluntary assignment or transfer of control.

Section 73.3541—Application for involuntary assignment or transfer of control.

Section 73.3542—Application for temporary authorization.

Section 73.3544—Application to obtain a modified station license.

Section 73.3545—Application for permit to deliver programs to foreign stations.

Section 73.3561—Staff consideration of applications requiring Commission action.

Section 73.3562—Staff consideration of applications not requiring action by the Commission.

Section 73.3564—Acceptance of applications.

Section 73.3566—Defective applications.

Section 73.3568—Dismissal of applications.

Section 73.3572—Processing of TV broadcast, low power TV, and TV translator station applications

Section 73.3580—Local public notice of filing of broadcast applications.

Section 73.3584—Petition to deny.
Section 73.3587—Informal objections.
Section 73.3591—Grants without hearing.
Section 73.3593—Designation for hearing.
Section 73.3594—Local public notice of designation for hearing.
Section 73.3597—Procedures on transfer and assignment applications.
Section 73.3598—Period of construction.
Section 73.3599—Forfeiture of construction permit.
Section 73.3601—Simultaneous modification and renewal of license.
Section 73.3603—Special waiver procedure applicable to applications.
Section 73.3612—Annual employment report (for low power TV stations only).
Section 73.3613—Filing of contracts (network affiliation contracts for low power TV stations only).

14. 47 CFR 74.783 is amended by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

§ 74.783 Station identification.

(a) Each TV translator station and low power TV station not originating local programming as defined by § 74.701(h), over 0.001 kw peak visual power (0.002 kw when using circularly polarized antennas) must transmit its station identification as follows:

* * * * *

(c) A low power TV station shall comply with the station identification procedures given in § 73.1201 when locally originating programming, as defined by § 74.701(h). The identification procedures given in paragraphs (a) and (b) are to be used at all other times.

* * * * *

Appendix B

List of Commenters

1. American Christian Television System, Inc. (ACTS)
2. Association of Independent Televison Stations, Inc. (ITS)
3. Association of Maximum Service Telecasters, Inc. (MST)
4. Sandi Barrio (Barrio)
5. Blair Broadcasting of Oklahoma, Inc. (Blair)
6. Blue Mountain Community College (BMCC)
7. Blue Mountain Translator District (BMTD)
8. Civic Light Television (Civic)
9. Cohn and Marks
10. Colby-Bates-Bowdoin Educational Telecasting Corporation (CBB)
11. Daly, Joyce and Borsari (DJ&B)
12. Milt Davis (Davis)
13. Dow, Lohnes and Albertson (DL&A)
14. Frontier Broadcasting Companies (Frontier)
15. Greater Willamette Vision, Ltd. (Willamette)
16. Gunnison County Metropolitan Recreation District (Gunnison)
17. Hubbard Broadcasting, Inc. (Hubbard)
18. International Broadcasting Network (IBN)
19. John S. Jacobson (Jacobson)
20. KNME-Television (KNME)
21. Lake of the Woods County (Lake)
22. Local Power Television, Inc. (Local)
23. May Broadcasting Company (May)
24. National Association of Broadcasters (NAB)
25. National Association of Public Television Stations (NAPTS)
26. National Hispanic Broadcasters Association (NHBA)
27. National Institute of Low Power Television (NILPTV)
28. National Translator/LPTV Association (NTA)
29. North Fork Television Systems (North Fork)
30. OKTV Translator System (OKTV)
31. Oregon Translator Association (Oregon)
32. Pappas Telecasting of the Carolinas (Pappas)
33. Progressive Communications, Inc. (Progressive)
34. Ralph C. Wilson Industries, Inc. (Wilson)
35. Rocky Mountain Corporation for Public Broadcasting (Rocky Mountain)
36. Fred Alan Ross (Ross)
37. Salmon Television Translator District (Salmon)
38. Satech Associates (Satech)
39. Schwartz, Woods and Miller (SW&M)
40. Scripps-Howard Broadcasting Company (Scripps-Howard)
41. Six-County Commissioner's Organization (Six County)
42. State of Alaska Division of Telecommunications Systems (Alaska)
43. Stuart B. Mitchell and Associates (Mitchell)
44. Television Station KOOD (KOOD)
45. Television Technology Corp. (TTC)
46. University of North Carolina (UNC)
47. University of Utah (U of U)
48. Villareal Broadcasting Co., Inc. (Villareal)
49. Honorable Barbara Vucanovich, M.C.
50. WPIX, Inc. (WPIX)
51. WSTE–TV, Inc. (WSTE)
52. Western Slope Communications, Inc. (Western Slope)
53. Winnebago Cooperative Telephone Association (Winnebago)

Reply Comments

1. American Christian Television System, Inc. (ACTS)
2. Association of Independent Television Stations, Inc. (ITS)
3. Blue Ridge Electric Membership Corp. (Blue Ridge)
4. Honorable James T. Broyhill, M.C.
5. Honorable James McClure Clarke, M.C.
6. Frontier Broadcasting Companies (Frontier)
7. Greater Willamette Vision, Ltd. (Williamette)
8. Hubbard Broadcasting, Inc. (Hubbard)
9. May Broadcasting Company (May)
10. National Association of Broadcasters (NAB)
11. National Translator/LPTV Association (NTA)
12. Honorable Stephen L. Neal, M.C.
13. North Platte Television, Inc. (North Platte)
14. Aracelis Ortiz (Ortiz)
15. Ralph C. Wilson Industries, Inc. (Wilson)
16. Schwartz, Woods and Miller (SW&M)
17. State of Alaska Division of Telecommunications Systems (Alaska)
18. Television Technology Corporation (TTC)
19. Western Carolina University (WCU)
20. Western North Carolina Associated Communities (WNCAC)
21. Western North Carolina Tomorrow (WNCT)

1. In this summary, an attempt was made to note all relevant comments on the proposals in the *Notice of Proposed Rule Making* (*"NPRM"*). Except where necessary to the context of the commentary, whether a statement was made in comments or reply comments is not indicated. Neither all the details nor the identity of every proponent of each suggestion are included, both for the sake of brevity and in recognition of the fact that the entire record is available for examination in the Dockets Branch at the Commission. An effort was made to include all relevant details of counter proposals.

2. Virtually all of the commenting parties supported processing procedures which would expedite the processing of applications in the television translator and low power television service. In general, the proposals set forth in the *NPRM* were supported by a majority of the comments. However, there were many variations suggested on the specific procedures to be used in implementing the general proposals. Comments were filed by a diverse group of entities including: television translator licensees and applicants; full-service television stations; low-power television applicants; educational institutions; trade associations; and individuals.

3. *Modification of Cut-Off Procedures.* The majority of comments supported the general concept of filing windows for low power television and television translator applications. Some commenters such as Cohn and Marks supported a window approach only if television translator applications were not given a priority as suggested in the third proposal in the *NPRM*. Commenters supporting the idea of a filing window generally cite the prevention of misappropriation of application materials prepared by others and the reduction of systematic overfiling on applications appearing on cut-off lists; thus, resulting in the expedited processing of applicants as the main benefits of such a system. See DL&A, Civic, Hubbard, Local, NAB, NTA, and Alaska. However some commenters thought that windows would prompt the filing of more

applications (NAPTS, ACTS) because it would encourage a now or never approach (Hubbard) or gold rush attitude (IBN).

4. There was much disagreement about how the windows should be structured. Many commenters suggested that the windows should be open to both low power television and television translator applications on an equal basis. Most commenters that supported a priority for television translator applications and also supported filing windows, proposed separate filing windows for television translator applications (NAB). It was generally indicated that windows should be open on a national basis due to the potential for daisy chains prejudicing applicants in locations adjacent to the open window areas (NTA). In order to avoid a deluge of applications some commenters advocated that the present tiered system be used for opening windows (ACTS). DL&A also supported use of the current tiered system for windows with all translator applications proposing to institute, expand or maintain a first public television service to be treated as Tier I applications. Local advocated the continued use of tiers with the window approach but suggested reducing the existing 55 mile radius around ranked television markets to 35 miles. Alaska proposed splitting the country into less than 10 geographic regions. The initial regions to be opened for filing would be those where there is a high percentage of rural, underserved areas such as the Rocky Mountain regions, the midwest and, of course, Alaska. Hubbard proposed that windows be opened by channel but only after a proposed applicant filed a rudimentary petition, indicating an interest in applying for a specific channel. This approach would be similar to an allocation plan. None of the commenters that proposed the use of tiers or regions suggested procedures for dealing with the resulting prejudice to adjacent window areas. Moreover, as noted by NTA, the use of tiers will merely paint a bulls eye on specific filing areas for mass filers with the resulting large number of applications delaying service to the areas which need service the most.

5. The frequency of windows was proposed as daily (Civic), weekly (Civic), every six months (DL&A), or as needed as determined by the Commission (NTA). Alaska supported the proposal to provide 30 days or less notice of an open window. Likewise, the proposal to open a window for five work days or less was supported (DL&A). The minimum window period suggested was one day (Civic).

6. Commenters opposing a window filing approach generally indicated that this approach would not be sufficient to give translators the priority which the commenters were advocating (ITS, Cohn & Marks and Rocky Mountain). It was also suggested that limited windows would encourage the filing of applications by entities that were not prepared to provide service because of the fear of forever losing a chance at an available channel (IBN and KNME). NAPTS suggested that the use of windows would not reduce the number of applications filed nor diminish the likelihood of competing applications. NHBA opposed windows because it felt that this procedure would restrict the applicant field to big business concerns and would hinder the ability of minorities to compete in the application process.

7. *Elimination of Financial Requirements.* Comments on the proposal to eliminate the requirement that applicants file any financial information or certification were more evenly divided. Commenters supporting the elimination of the financial questions indicated that the questions were relatively useless now since they alleged the financial standards were being virtually ignored by the Commission. Since construction costs for low power television and television translators are minimal and since uncertainty concerning the source of financing at the time of filing is understandable, it would be more realistic to eliminate the financial questions (Civic). Cohn and Marks notes that if financial information is no longer deemed of value to the Commission for either an absolute or comparative analysis, it should no longer be required. Speculation as to the tendency to increase or decrease the number of applicants is irrelevant (Cohn and Marks). IBN notes that letters of financial commitment are generally equivocal and not legally binding and thus do not in fact demonstrate financial ability although they satisfy Commission requirements. Since the present financial questions do little if anything to ensure that an applicant is financially qualified, they should be eliminated and the Commission's resources devoted to other areas (NTA).

8. Most commenters supporting elimination of the financial questions also advocated strict enforcement of the one year period to construct the proposed station (NTA). However, Cohn & Marks stated that a hard and fast one year limit would not be appropriate in all circumstances. With respect to educational or state agencies, there may be valid reasons why construction is not completed in one year. Since governmental agency budgeting processes are generally limited to one year and since applications may languish at the Commission for years, it is difficult to authorize expenditures immediately upon grant of an application. Also weather and delays in equipment delivery may cause construction delays beyond the control of the permittee.

9. Many commenters opposed elimination of the requirement to file financial information or certification with an application. The general consensus was that elimination of this requirement would open the floodgates for fraudulent (BMTD), speculative (Pappas) applications and engender a land rush mentality (DL&A). Elimination of this requirement will also sanction mass filers since they will no longer need to consider their ability to finance any or all of their proposals. The NAB notes that although the Communications Act does not mandate consideration of financial qualifications, it is a sound and well reasoned policy. Consideration of financial qualifications reflects a policy that the allocation of scarce resources under government control should not be done casually and that construction permits should not be given to those not having the financial resources to utilize the assignment (NAB). Moreover, the use of a strict one year construction period to enforce financial requirements is shortsighted and inefficient in terms of administrative costs and delays in the implementation of low power television and television translator service. The public interest in implementing a procedure which will cause delay is questionable (NAB). Rocky Mountain suggested that lowering the financial requirement will result in increased numbers of applications being filed and will cause further delays in processing. Furthermore, Public Telecommunications Facilities Program applicants will be disadvantaged since they must still certify their financial ability. ACTS recommends that rather than eliminating consideration of financial qualifications, the Commission should more strictly enforce its existing financial criteria. Such action, it is contended, would significantly reduce the backlog of applications and do much to prevent speculative filings. This action would be especially effective against mass filers. Financial scrutiny, even on a random basis, would do much to expedite the processing of applications

10. *Separation and Priority for Television Translator Applications.* The proposal to separate the processing of low power television and television translator applications and to give television translators or certain types of television translators a priority drew more comments than any of the other proposals. The majority of the commenters supporting this proposal were television translator licensees and applicants, educational institutions and full-service television licensees. Numerous commenters supported absolute priorities across the board for television translator applications. Commenters indicated that since the percentage of pending applications which are for television translators is small (1000 out of 12,000) it would not be disruptive or burdensome to afford them a priority. Lake states that the primary goal of the television translator service is to bring the signals of full-service televisions stations to rural areas. Low power television stations do not necessarily contribute to this Commission goal. Also low power television stations have no obligations to provide any local programming nor are they required to directly serve the needs and interests of their licensed communities. Lake states that, based on its experience, residents of rural areas generally prefer television translator service over low power television service when given a choice. Many would also give an absolute priority to television translator applications but only after a threshold showing of need for the facility was made. Such a showing would demonstrate that the translator was necessary to fill gaps in existing service areas, to provide service to shadowed areas or to bring programming to rural or underserved markets. NAB would have an absolute priority for all traditional television translators which would exclude stations retransmitting satellite-fed programming outside the State of Alaska. It is argued that full-service television stations, which are rebroadcast by television translator stations, have public interest obligations that are absent for low power television stations. Several commenters suggested that processing priorities be made retroactive to apply to all pending applications (ITS).

11. Many educational and public television licensees supported priorities for educational or public television translators only. SW&M on behalf of numerous public broadcast clients has renewed its request to create a reservation system for public broadcast television translators which the Commission denied in the *Reconsideration* of the *Low Power Television Report and Order*, 53 RR2d 1287 (1983). SW&M further requests a priority for any public broadcast applicant proposing conventional translator operation on any channel. It is contended that such a priority is necessary in order to offset the present priority given to new commercial applicants under the Commission's lottery procedures. SW&M pointed out that an applicant for a new translator which is also the licensee of other translators or a full-service station is at an automatic disadvantage under the Commission's diversity preference scheme for lottery purposes. Separate processing is necessary in order to allow the orderly planning and implementing of state wide noncommercial educational and public television systems. KNME would give noncommercial applicants an absolute priority if only one channel is available for assignment and if the area currently receives no public television translator service. Rocky Mountain would also give an absolute preference to translators forced to change channels because of the commencment of operation of a full-service television station. Cohn & Marks, filing on behalf of a group of educators, would prefer the priority to be limited to noncommercial educational and non-satellite fed applicants.

12. Many licensed full-service stations supported a priority to fill in their coverage contours. ITS would limit the processing preference to television translators seeking to fill in the full-service station's area of dominant influence (ADI) or to extend service to underserved communities (*e.g.*, those with two or fewer full-service television stations). This would require the submission of more detailed engineering and coverage contours. MST would effectuate its proposed priority for fill-in television translators by providing for a separate window for fill-in translator applications followed by a window for all other television translator and low power television applications. Cohn & Marks would also change the present diversification disadvantage that a full-service station has when trying to obtain a translator license within its coverage area. Cohn & Marks would give the same diversity preference to a fill-in translator applicant as to an applicant for new low power television service. CBB recommends a priority for all television translator applications but especially for those located within the primary station's Grade B contour. DL&A on behalf of various licensees of noncommercial educational television stations (PTV) suggested that priority processing should be given to television translator applications which would provide or maintain a first PTV service to an area, or which would fill in a problem reception area within a service area of an existing PTV station. These favored applications would be moved to the head of the processing line. PTV translator applications would also receive a priority in the selection process, but this priority would not apply retroactively. Williamette would afford a retroactive priority to all fill-in translator applications. A licensee which was granted authority due to a fill-in priority could not change programming service without subjecting its license to competing applications. Ross proposed separate priority processing for applications to construct television translators to fill in the Grade B service contour of the primary station, where the intended service area of the proposed translator is within the Grade B contour of no other full power facility. WPIX would designate as a priority all pending and future new or major change television translator applications which seek to provide service to presently underserved areas (two or less full-service stations) or to fill in gaps in the coverage contours of existing full-service stations. WSTE would provide a priority for television translator applications to fill in the Grade B contour of the originating full-service station and for all television translators in Puerto Rico. Western Slope would give a priority to all television translator applications proposing service to communities that are located within the predicted Grade B contour of less than three full-service stations. OKTV would even go so far as to require licensed television translator stations to be notified of all pending applications for low power television service in their area, and be given a priority on that channel. Also all licensed television translators would be grandfathered for new applications on other channels at the same site.

13. Various methods were proposed by advocates of television translator priorities in order to maintain the integrity of the processing priority. Many commenters agreed that a subsequent change to low power television service by a television translator that had been licensed with a processing priority, should be classified as a major change and subject to competing applications (MST and NAB). Others would require the television translator to operate as a translator for a specific period of years; generally a one (Lake) to five year period (May). BMTD suggests that television translators seeking a priority be required to submit written consent of the station to be rebroadcast. Commenters advocating priorities for fill-in translators generally recommended the use of detailed engineering studies or engineering affidavits to support the applicants' claims (DL&A).

14. Commenters opposing separation or a priority for television translator applications generally cited the Commission's own pronouncement in the Low Power Television Rule Making as supporting the need for and public interest in developing the low power television service. Low power television furthers the Commission goal of increased diversity and provides a unique opportunity for increased local television service (ACTS). The public policy objective of promoting diversity is deeply engrained in the infrastructure of electronic media regulation and is grounded on the Constitution itself (DJ&B). The large number of low power television applications which have been filed is further evidence of the tremendous unsatisfied demand for this service (DJ&B). If the Commission designates television translators as a priority service a large number of low power television applicants would merely switch to designate their applications as television translators. This action would occur even if a change from a low power television to television translator was a major change or other limitations applied. Applicants would still apply as television translators in anticipation of a later Commission change in policy or as mere speculators. The net effect would not be a reduction in the number of total applications but merely a change in their designation from low power television to television translator (ACTS). IBN argues that separate priority processing for television translators is merely a way for the large established broadcasters to expand and prevent new low power television applicants from competing in their markets. Local suggests that the proposals designed to speed up the processing of applications will benefit both low power television applicants and television translator applicants. To separate these two services would be an admission by the Commission that its processing procedures are a failure. If any priority is afforded by the Commission, it should be for low power television service which is more flexible and responsive to public needs than is television translator service (Local). NILPTV contends that affording a processing preference for television translators would thwart two major Commission goals: encouraging local origination programming and encouraging minority and female ownership in broadcasting. NTA states that no special priority for television translator applications is necessary if the Commission adopts a national window filing period. Alaska also feels that a window approach will expedite the processing of applications without the need for processing priorities. Alaska suggests that if it is the rebroadcast of the signal of a full-service station which is the key to its priority, then low power television stations that are involved in rebroadcast should be entitled to the same preference. The question then becomes how much rebroadcasting of conventional programming is necessary to entitle an applicant to a preference. Alaska contends that the Commission should not discriminate against one kind of programming over another. Moreover, separation of services would cause an applicant to choose between the expedited processing and absolute priority of a television translator and the flexibility to respond to programming interests of a low power television station. Mitchell urges the Commission to adopt a priority for the processing of low power television applications.

15. The *NPRM* also solicited other possible alternatives to the various proposals. The most frequently requested proposal from translator associations was for the Commission to take terrain shielding into consideration when calculating interference caused by low power television and television translator applications (NTA). It was contended that the Commission's so called "flat earth" policy has contributed greatly to the problems that beset television translator applicants, especially in the mountainous regions of the country. It is claimed that the Commission's refusal to consider terrain shelding prevents the licensing of television translators in many locations where interference in fact will not occur. Some parties would have the Commission individually consider each claim of terrain shielding. Oregon would have regional frequency coordination committees determine when interference would occur. None of the commenting parties submitted objective criteria for determining the effects of terrain shielding.

16. Another frequently suggested proposal was that all applicants be required to submit evidence of site availability. KNME would require that a written agreement with the owner of an existing tower be submitted with the application. Local would require a certification that authority from the site owner has been obtained. It is contended that if evidence of site availability would be required of all applicants, the number of applications filed would be greatly reduced with a resulting increase in the speed of processing.

17. Another suggestion was that all applicants be required to submit an affidavit of publication indicating that notice of the filing of the application has been published in a local newspaper. Although the current form contains a certification that the applicant will comply with § 73.3580 of the Commission's Rules which requires publication, it is apparent from the comments that many parties do not publish as required (BMTD). Some applicants do not publish until after they have been chosen in a lottery. Others may never publish, since the Commission no longer requires proof from the applicant (NTA).

18. Other comments concerning the classification of major and minor changes to low power television and television translator stations were filed in MM Docket No. 83-1377 which dealt with major changes to certain broadcast licenses and applications. The *Report and Order* in MM Docket No. 83-1377 indicated that to the extent these comments addressed issues in MM Docket No. 83-1350, they would be associated with that docket. We have reviewed these comments and they do not persuade us that our previous determination of what constitutes a major change should be reconsidered. Moreover, we find that these comments are outside the scope of this rule making.

19. No comments were received on the *Initial Regulatory Flexibility Analysis* which was attached as Appendix B to the *NPRM*.

Statement of Commissioner Henry M. Rivera Concurring in Part

October 17, 1984.

Re: Low Power Television and Television Translator Service

I reluctantly concur in that part of this decision that does not designate translators as a priority or separate class of service for processing purposes.[1]

Since the Commission authorized the low power television service, it has had several opportunities to provide translator service to areas of the country

[1] *See Report and Order*, paras. 13-26.

that lack television reception.[2] The Commission has taken the position that providing a priority for translators would, among other things, greatly diminish origination flexibility for translators.[3] Such a position reflects a lack of sensitivity to the fact that to the rural citizen with no television service, any service now is much more useful than service later that might be superior because of origination capacity.

In any event, the Commission has now procrastinated to such an extent that anything we could do now will not make up for the years of service to rural areas that was lost. To the contrary, the *Report and Order* states that attempting now to give translators priority will only exacerbate the delay.[4] Given that statement, the commitment I have received from the Mass Media Bureau that it will process single applications which come from rural areas first and the Bureau's assurances that rural translator applicants will be less likely to be subject to mutually exclusive applications under the new processing system, I feel the best course is to concur. If I were writing on a clean slate, I certainly would have done things differently.

[FR Doc. 84-31737 Filed 12-6-84; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-15)]

Elimination of Thirty Day Leasing Requirement

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts final rule modifying Part 1057 of the Commission's vehicle leasing regulations by eliminating the requirement that equipment be leased for a minimum duration of 30 days when operated by its owner. The Motor Carrier Act of 1980 promotes increased competition to meet a number of important goals, among them fair wages and working conditions, productive use of equipment, and meeting the needs of shippers, receivers, and consumers. Permitting lessors to lease equipment for less than 30 days will offer the potential for increased earnings by lessors who now find themselves party to a 30-day lease with no freight to haul. Such lessors could trip-lease to other carriers

EFFECTIVE DATE: This decision is effective on January 7, 1985.

FOR FURTHER INFORMATION CONTACT:
Robert G. Rothstein, (202) 275-7912
or
Mary Kelly, (202) 275-7292.

SUPPLEMENTARY INFORMATION: Proposed rules were published at 48 FR 39251, August 30, 1983; comment period extended for 30 days at 48 FR 44590, September 29, 1983.

Additional information is contained in the full Commission decision which is available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, or may be purchased from TS Infosystems, Inc., Room 2227, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC 20423; or call toll free (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

Environmental and Energy Considerations

We adopt the preliminary finding in the notice that this action will have no significant impact on the quality of the human environment or conservation of energy resources. No specific comments were submitted on any matter indicating that a contrary position is warranted. We reaffirm our earlier position that this rule modification will improve operating efficiency.

Regulatory Flexibility Analysis

The rules modifications adopted here will confer a significant, beneficial economic impact upon lessors of equipment by allowing more efficient equipment utilization during periods when their equipment might not otherwise be used. Authorized carrier lessees will realize a benefit in that they can augment their equipment with that leased for less than 30 days, thus offering improved service to the public. At the same time, they will be responsible for controlling equipment only for the precise time needed. These advantages to the lessee should benefit the public in the form of improved service and lower rates. The rules modification address the congressionally-mandated goal of efficient and productive utilization of equipment and energy resources, and reaffirm the agency's responsibility to encourage safe, adequate, and efficient transportation.

List of Subjects in 49 CFR Part 1057

Motor carriers.

Adoption of Rules

Accordingly, we adopt the revisions to Title 49, Part 1057, of the Code of Federal Regulations as described in Appendix B to this decision.

This action is taken under the authority of 49 U.S.C. 10321 and 11107 and 5 U.S.C. 553.

Decided: November 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,
Secretary

Appendix

PART 1057—[AMENDED]

Part 1057 of the Code of Federal Regulations, Title 49, is amended as follows:

1. Section 1057.2 is amended as follows:

a. Paragraph (d) is revised to read as follows:

§ 1057.2 Definitions.

* * * * *

(d) *Owner*—A person (1) to whom title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment, or (3) who has lawful possession of equipment registered and licensed in any State in the name of that person.

* * * * *

b. Paragraphs (f) and (g) are removed.

c. Paragraphs (h), (i), (j), (k), (l), (m), (n), and (o) are redesignated as paragraphs (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

2. Section 1057.11 is amended as follows:

a. Paragraph (d)(1) is revised to read as follows:

§ 1057.11 General leasing requirements.

* * * * *

(d) * * *

(1) The authorized carrier shall prepare and keep documents covering each trip for which the equipment is used in its service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. Also, the authorized carrier shall carry papers with the leased equipment during its operation containing this information and identifying the lading and clearly

[2] For example, tiered processing could have included evaluation of Tier I (rural) applications without regard to Tier II and Tier III (urban) applications; additionally, at several points, various commenters pled with the Commission to maintain a processing distinction between translator and LPTV applicants.

[3] *See e.g., Report and Order*, paras. 5, 14 and 17-18.

[4] *Report and Order*, para. 23.

indicating that the transportation is under its responsibility. These papers shall be preserved by the authorized carrier as part of its transportation records. Leases which contain the information required by the provisions in this paragraph may be used and retained instead of such documents or papers.

* * * * *

b. Paragraph (d)(2) is removed and reserved for future use.

3. Section 1057.12 is amended as follows:

a. Paragraph (c) is removed.

b. Paragraph (g) is revised to read as follows:

§ 1057.12 Written lease agreements.

* * * * *

(g) *Payment period*—The lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The paperwork required before the lessor can receive payment is limited to log books required by the Department of Transportation and those documents necessary for the authorized carrier to secure payment from the shipper. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment. Payment to the lessor shall not be made contingent upon submission of a bill of lading to which no exceptions have been taken. The authorized carrier shall not set time limits for the submission by the lessor of required delivery documents and other paperwork.

* * * * *

c. Paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n) are redesignated as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

d. The reference to "paragraph (d)(1)" in the newly redesignated paragraph (c)(3) is revised to read "paragraph (c)(1)".

e. The reference to "paragraphs (e)–(l)" in the newly redesignated paragraph (m) is revised to read "paragraphs (d)–(k)".

4. Section 1057.22 is amended as follows:

a. The heading and paragraph (6) are revised to read as follows:

§ 1057.22 Exemption for private carrier leasing and leasing between authorized carriers.

* * * * *

(b) The lessor must own the equipment or hold it under a lease.

* * * * *

§ 1057.23 [Removed]

5. Section 1057.23 is removed.

§ 1057.24 [Removed]

6. Section 1057.24 is removed.

§ 1057.25 [Removed]

7. Section 1057.25 is removed.

[FR Doc. 84-31698 Filed 12-6-84; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 49, No. 237
Friday, December 7, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563, 570, 571, and 584

[No. 84-681]

Net-Worth Requirements of Insured Institutions

Dated: November 30, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to amend its regulations pertaining to the minimum net-worth requirements applicable to all institutions the accounts of which are insured by the FSLIC ("insured institutions"). The proposed rule would result in the elimination, through a straight-line amortization over five years, of the authority to (1) calculate the net worth on a five-year-average basis (except for institutions having $100,000,000 or less in assets and that increase their liabilities at a rate not exceeding 15 percent) and (2) phase in the requirement over a twenty-year period. The determination of the net-worth requirement would be changed from an annual basis calculated at the beginning of the year to a quarterly basis calculated at the end of each calendar quarter. Institutions would be required to have the minimum necessary amount at the end of the quarter rather than at the end of the year. The proposal would also impose a net-worth requirement equal to a percentage of any quarterly increase in liabilities, with the percentage varying with the amount of growth: three percent of any liability growth would be required if an insured institution grew at an annual rate of fifteen percent or less, measured from the correasponding calendar quarter of the preceding year; four percent would be required on quarterly growth if the growth was at an annual rate between fifteen percent and twenty-five percent; and five percent would be required on quarterly growth if the growth was at an annual rate in excess of twenty-five percent. The proposal would permit an institution to reduce the amount of its net-worth requirement to reflect a quarterly decrease in liabilities. Minimum net worth would continue to include two percent of recourse liabilities plus twenty percent of scheduled items. An additional amount equal to ten percent of certain direct investments would also be included in minimum net worth under the proposal. The Board is also proposing to eliminate the requirement to calculate "statutory reserves" as a percentage of insured deposits. Instead, compliance with the net-worth requirement would be considered sufficient. The Board is also proposing to require institutions with assets in excess of $100,000,000 to obtain prior approval before increasing liabilities in any quarter at an annual rate in excess of twenty-five percent. This proposal is in furtherance of the rulemaking pertaining to the Board's net-worth requirements initiated by the proposal issued by the Board on February 15, 1984, Resolution No. 84-81 (49 FR 6501, February 22, 1984) and as such, supersedes that proposal.

The Board is proposing to impose a marginal net-worth requirement on the quarterly growth in liabilities because the Board believes that the ability to leverage new liabilities beyond 33 to 1 is excessive. The Board is also concerned that the excessive growth of thrift institutions' liabilities, unsupported by additional net worth, increases the risk to the FSLIC. The proposed regulation would not necessarily require associations to generate new net worth to support net additions to liabilities. To the extent that institutions have net worth above current regulatory minimums, they can use this net worth to support additions to liabilities. The Board believes that a principal problem faced by the thrift industry is the rapid growth of thrift institutions which do not have adequate levels of capital to support that growth. This problem is seriously exacerbated by current regulations which permit thrifts to use a five-year averaging formula in calculating their minimum net-worth requirements, as well as a twenty-year phase-in of required net worth for new institutions. Further, the Board is concerned that the current lag between the date of calculation and the date upon which the requirement is to be met hampers the Board's supervisory abilities. If the proposed amendments are adopted substantially as proposed, they would become effective for any calendar quarter beginning January 1, 1985, and thereafter calculated and required to be met at the end of such quarter.

DATE: Comments must be received by December 31, 1984.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Public comments received on this proposal and materials referred to in the preamble of this document will be publicly available at this address.

FOR FURTHER INFORMATION CONTACT: Robert S. Monheit, Attorney, Office of General Counsel, (202) 377-6448; Edward Taubert, Deputy Associate Director, Policy Development, Office of Examinations and Supervision, (202) 377-6484; or Robert J. Pomeranz, Policy Analyst, Office of Policy and Economic Research, (202) 377-6209, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: The Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. 97-320, amended section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. 1726(b), by deleting the language that limited the FSLIC's regulatory authority concerning adequate reserves to requiring reserves in an amount no greater than 6 percent nor less than 3 percent of all insured accounts within a reasonable time, not exceeding twenty years. The DIA requires all insured institutions to "provide adequate reserves in a form satisfactory to the Corporation, to be established in accordance with regulations made by the Corporation", 12 U.S.C. 1726(b). Thus, the DIA eliminated (1) the reference to insured accounts as the basis of the calculation, (2) the percentage range that previously limited the Board's discretion to set reserve requirements, and (3) the direction to phase in the requirement over not more than twenty years, and it granted the FSLIC explicit broad authority over reserve requirements for all insured institutions.

Current regulations. Section 563.13 of the Insurance Regulations (12 CFR 563.13 (1984)) sets forth a "statutory reserve" requirement and a "minimum net worth" requirement which the Board has used, in part, to gauge capital adequacy. The minimum net-worth requirement differs from the statutory-reserve requirement in that net worth is calculated as a percentage of total liabilities rather than as a percentage of insured accounts, and the calculation of minimum net worth includes two percent of recourse liabilities and twenty percent of scheduled items. Both the minimum net-worth requirement and the statutory-reserve requirement permit institutions to calculate liabilities and deposits, respectively, by averaging the past fiscal year with the preceding four fiscal years (a procedure known as "five-year averaging"). Also, institutions that have not reached their twentieth anniversary of insurance are permitted to phase in the net-worth and statutory-reserve requirements by multiplying three percent of liabilities and deposits, respectively, by a fraction the numerator of which is the number of consecutive years of insurance and the denominator of which is twenty (a process known as the "twenty-year phase-in").

In the rulemaking proceeding concerning reserve requirements and other policies pertaining to insurance of accounts of de novo institutions (proposed: Board Res. No. 83-606, 48 FR 51,270 (Nov. 10, 1983); final: Board Res. No. 83-653, 48 FR 54,320 (Dec. 2, 1983)), the Board found sufficient cause to require de novo institutions to have statutory reserves and net worth equal to at least seven percent of insured deposits and liabilities, respectively, for the first full fiscal year, with the requirement gradually decreasing to three percent of deposits and liabilities, respectively. The Board noted in the preambles of both the proposed and final rules that it would continue to review the statutory-reserve and net-worth requirements and other areas of concern relating to existing institutions.

February proposal. On February 15, 1984, the Board proposed a revision of the statutory-reserve and net-worth requirements of insured institutions other the *de novo* institutions (Board Res. No. 84-81, 49 FR 6,501 (February 22, 1984), hereafter referred to as the "February proposal"). The Board expressed concern that the recent rapid growth of many insured institutions had markedly reduced the capital coverage in an industry that has experienced chronic capital deficiencies. Further, the Board noted that recent changes in federal and many state laws had significantly widened the investment powers of federal and state-chartered institutions, permitting investment in areas in which insured institutions have little experience. The Board concluded that the ability of insured institutions to increase significantly their liability base without adequate capital, combined with the increased risks as a result of the DIA and changes to a number of state laws, had materially increased the risk exposure of the FSLIC. Therefore, the Board proposed a number of revisions to strengthen the capital adequacy of thrift institutions insured by the FSLIC.

Specifically, the February proposal incorporated three major changes to address there concerns. First, a requirement was proposed to maintain net worth at three percent on any increase in liabilities incurred after December 31, 1983. This action would limit leveraging of new liabilities to 33 to 1. All institutions (other then *de novo* institutions) would multiply increases in liabilities between December 31, 1983, and the date of calculation by three percent. *De novo* institutions that had not reached the three-percent requirement would continue to calculate minimum net worth as required under the existing rule, which does not permit five-year averaging. Institutions experiencing no growth in liabilities would not be adversely affected by the proposal. Institutions experiencing a decrease in liabilities after December 31, 1983, would be treated as if they had experienced no growth.

Second, the February proposal would gradually eliminate five-year averaging and the twenty-year phase-in. Five-year averaging would be eliminated by gradually reducing the number of fiscal years which could be averaged. For example, assuming that an institution chose to use this technique, it would average, in the first fiscal year following September 30, 1984, the liabilities in fiscal years 1983, 1982, 1981, 1980, and 1979. In the next fiscal year, the institution would average fiscal years 1983 through 1980. In the third year, it would average fiscal years 1983 through 1981. Finally, in the fourth year, the institution would average fiscal years 1983 and 1982. Thereafter, averaging would not be permitted. The twenty-year phase-in would be gradually eliminated by permitting qualified institutions to apply this procedure only to pre-December 31, 1983, levels of liabilities. Any increase in liabilities after that date would be multiplied by three percent. An institution having received approval for insurance of accounts prior to November 3, 1983, however, would continue to multiply three percent of pre-December 31, 1983, liabilities by a fraction the numerator of which is the number of consecutive years of insurance and the denominator of which is twenty, unitl the institution reaches the twentieth anniversary of insurance of accounts. Once all institutions insured prior to November 3, 1983 reach the twentieth anniversary of insurance of accounts, the phase-in would be entirely eliminated.

Third, the Board proposed to eliminate the "statutory reserve" test of 12 CFR 563.13(a) The DIA amendment indicates that Congress no longer intends to restrict the Board to imposing a capital adequacy standard based upon insured deposits. The Board believes that the minimum net-worth standard is a more reliable guage of capital adequacy because it is calculated upon total liabilities, not merely insured deposits. This amendment would also alleviate the burden of calculating two measures of capital adequacy that are largely duplicative. Therefore, the Board proposed to make compliance with the minimum net-worth requirement sufficient for compliance with the reserve requirement of 403(b) NHA. State requirements tied to the reserve requirement of 403(b) would be met by compliance with the proposed net-worth requirement.

Comments on Net-Worth Proposal

The Board received 199 public comments in response to its proposal. The majority (143) of the comments were submitted by thrift institutions. Of the remaining comments, seventeen comments were received from trade associations, one each from a state regulator, a member of Congress, a law firm, and a federal financial regulatory agency, two letters were received from other entities, including financial groups, and 33 letters were received from interested individuals. Most (184) of the commenters opposed the Board's proposed rule. However, 158 commenters did express the view that the net worth of insured institutions should be increased, but indicated reservations regarding the timing or approach of the proposal and suggested alternatives. The Board has carefully reviewed these comments on the net-worth proposal, which are discussed more fully below.

Discussion of Issues Raised by Commenters. Many commenters indicated that the net-worth proposal would effectively eliminate a substantial amount of the "excess" net worth of the thrift industry, and adversely affect a substantial number of thrifts. While the

Board is cognizant of these concerns, it has become obvious that the relative laxity of the present net-worth requirements actually encourages tremendous growth supported by inadequate levels of reserves or capital. Several years ago, the Board lowered the regulatory net-worth requirements to encourage and support the restructuring of asset/liability portfolios of thrifts in order to reduce the sensitivity of the industry to interest-rate fluctuations. That approach was appropriate when interest-rate risk was the predominant concern of the industry. However, the recent deregulation of both assets and liabilities of thrift institutions has removed the traditional limitations on risk-taking and has made adjustable-rate mortgages widespread. In this new environment, it has become increasingly obvious that credit risk is at least as serious a concern to the industry as interest-rate risk. Accordingly, insured institutions and the FSLIC must take steps to obtain and retain sufficient capital to offset this exposure.

Growth, Profitability, and Viability. Several commenters argued that the changes in the proposed regulation would limit the growth and profits of a majority of institutions, since all new growth would have to be earned, and most institutions would not be able to generate a sufficient spread to cover the increased net-worth requirement.* Additionally, a few commenters believed that thrifts would lose their customer base if they had to stop growing. While the Board is sensitive to these concerns, it is persuaded that an increase in the capital base, in fact, supports well-planned growth and prosperity of the industry, and that institutions weakened by growth without an adequate reserve cushion present inordinate risks. Numerous economic and financial studies indicate that capital serves five functions for financial institutions: (1) Absorbs losses so that an institution can continue to operate in times of financial difficulty; (2) supports growth, (3) serves as a barrier to imprudent investment decisions, (4) acts as a source of additional protection to depositors during less favorable economic periods, and (5) enhances public confidence. Further, capital serves as additional protection to the FSLIC by offsetting losses which would otherwise have to be borne by the FSLIC. Thus, the establishment and maintenance of an adequate net-worth base for the thrift industry promotes long-term profitability and prudent growth. Only with a sufficient capital base can the thrift industry continue to manage effectively its asset/liability mismatches and simultaneously improve its position in the financial arena.

Several commenters expressed concern that the proposal would present an insurmountable obstacle to growth in a rising interest-rate scenario because an institution with net worth at or below the current regulatory level would be required not only to earn the requisite three percent on "new liabilities" but also to offset any "drag" that the rise in rates would impose upon pre-existing liabilities. The Board believes that inadequacy of the present capital requirements mandates the prudent and gradual increase of regulatory net-worth requirements to mitigate the additional credit risk caused by the exercise of expanding investment authority and any increased interest risk if inflation increases. Moreover, the "marginal net worth" approach is sensitive to the difference between the increased sophistication in the management of interest-rate spread (which should be part of every plan for acquisition of new assets and liabilities being placed on a thrift's books) and the management decisions made prior to deregulation. In sum, the Board recognizes the inflexibility in part of the existing thrift portfolio, but believes that an increase in the net-worth base of the industry is necessary to provide additional protection to the FSLIC insurance fund, to serve as a cushion against losses incurred by institutions, and to maintain public confidence. Taken in conjunction with the Board's recent actions directed at improved asset/liability management, the industry as a whole should be in a better position to exist in a volatile interest-rate environment.

Restructuring Effects. Many commenters, primarily thrift institutions, supported a delay in implementation to accommodate the restructuring taking place in the industry. Proponents of delayed implementation stressed that by limiting growth, the proposal would hinder restructuring which is essential to mitigate thrift maturity mismatch problems. A number of comments emphasized that more time was necessary to utilize the new asset flexibility provided by deregulation, ultimately enabling insured institutions to meet increased net-worth requirements at a later date. Still others suggested that recent regulatory actions, such as the new requirements for *de novo* institutions, may negate the need for the proposed regulation. Finally, commenters indicated that the proposed regulation would shift the emphasis from restructuring to maintaining current earnings to meet net-worth requirements and would require extensive amendment of business plans. In this regard, commenters contended that the proposal would result in increased service fees and an undue emphasis is on maximizing returns on investments in order to generate the net return on assets to meet the proposed net-worth requirements, thereby increasing the level of risk to the institution and ultimately the FSLIC.

While the Board recognizes that institutions in existence prior to 1980 need some growth in order to restructure their interest-rate gap and to build a new asset base, the proposed regulation will allow prudent growth. It is well documented that not all institutions are using growth to restructure in a prudent, safe and sound manner. In fact, some institutions are growing so rapidly that the management of such institutions is unable to make prudent investment decisions or to implement proper underwriting techniques in order to ensure the acquisition of sound assets. An institution that cannot support its growth with an accompanying increase to net worth is not really curing its asset-structure problems, but merely deferring them by front-loading the income associated with growth, to the longterm detriment of the institution. The Board's review indicates that the new asset base of thrift institutions, attained through rapid growth over the past few years, has not necessarily deceased the risk to the insurance fund but, in fact, has often increased that risk.

Moreover, the Board believes that the proposed tightening of net-worth requirements and the linkage of an acceptable level of net worth to growth would not inhibit or delay institutions from using prudent growth to restructure their asset portfolio. The Board's research (described in detail below) indicates that substantial restructuring (from fixed-rate mortgages to adjustable-rate mortgages) can be accomplished within the next five years utilizing a growth rate of 15 percent.

Accordingly, while the Board supports the restructuring efforts of the industry as a whole and recognizes that interest-rate gap management is an effective tool to protect insured institutions and ultimately the FSLIC from interest-rate spread risks, it has preliminarily concluded that such restructuring without adequate capital does not adequately protect the FSLIC from increasing credit risk as a consequence of thrifts operating in a deregulated environment. The restructuring efforts of many rapidly growing institutions have resulted in investments of a highly

speculative nature, greatly increasing the credit risk to the FSLIC. The Board believes that increasing the capital requirement for thrift institutions would provide the FSLIC with necessary additional protection in a deregulated environment. Furthermore, matching the expansion of an institution's asset and liability portfolio, regardless of size, with a marginal contribution to net worth establishes a realistic equity stake by the owners in the institution, and therefore serves as an important form of market discipline.

Effect on Housing Role. Other concerns raised by the comments focused on the likelihood that thrifts would be forced to focus on non-housing-related investments such as real estate, commercial and consumer lending to support the requirement that all growth must be matched by higher capital levels. As discussed more fully below, this contention ignores the fact that (1) the regulation would allow prudent growth, and nondirect investments (e.g., ARMs) can fund growth without undue risk, (2) a significant majority of thrift institutions possess substantial "excess" net worth which can offset increases in liabilities, (3) additional net worth can be obtained through access to the capital markets, and (4) an institution which cannot support its growth with prudent reserves should not grow. The Board believes that a profitable, well-managed, appropriately diversified and sufficiently capitalized thrift institution is better able to provide a substantial and stable source of home financing to the public than an institution that does not have sufficient capital to cushion potential losses.

Disparate Effect on Mutual and Stock Institutions. Some commenters suggested that the proposal would have a particularly significant effect on mutual institutions, presumably because of a lack of access to the capital markets, and thus would encourage more stock conversions. The Board, however, is not persuaded by that argument. First, earning can support prudent growth. Second, for institutions that require substantial capital infusions to support their growth, conversions are appropriate. While the Board continues to take steps to facilitate the mutual-to-stock conversion process, it also realizes that mutual institutions are a significant element of the thrift industry and comprise approximately 65 percent of all insured institutions. Third, mutuals can use the capital markets through the issuance of subordinated debentures and mutual capital certificates. Moreover, while stock institutions have raised substantial amounts of capital during the last few years, the Board's supervisory experience indicates that many stock institutions have employed that capital to grow to or past the levels which can be adequately supported by their net worth. Board studies demonstrate that stock institutions with a net worth greater than three percent grew more than 60 percent between June, 1983, and June, 1984, as compared to a growth rate of approximately 11 percent for mutuals during the same period. Stock institutions with net worth of less than three percent grew approximately 50 percent between June, 1983, and June, 1984, while mutual institutions with similar net-worth levels grew approximately 16 percent. Another study shows that approximately the same percentage of mutual and stock institutions have relatively equivalent levels of net worth up to five percent of liabilities. Accordingly, the Board has concluded that the proposal is not particularly inimicable to the interests of mutual institutions.

Other commenters expressed concern about the effect of higher net-worth requirements on the raising of capital by stock institutions in the public market since the proposal limits a thrift's leveraging possibilities. The leveraging factor was labeled "the most attractive feature of stock thrift institutions to investors." In response, the Board believes that this approach toward investment in thrift institutions leads to the use of institutions to fund speculative and risky ventures in which the FSLIC, rather than individuals contributing risk-capital, is intended to absorb the losses. This is supported by studies which have indicated that capital in financial institutions should serve as a barrier to imprudent investment decisions. Thus, to the extent that the proposal would discourage those investors seeking only highly leveraged investment opportunities, the Board believes that the proposal is appropriate. Adequately capitalized, well-managed thrift institutions should be considered an attractive and sound investment in the public market.

Industry Consolidation. Several commenters expressed the view that more mergers between thrifts with net-worth problems and institutions with excess net worth would occur as the result of the proposal. Although the Board does not anticipate a greater number of voluntary or supervisory mergers as a result of the promulgation of a higher net-worth requirement, it welcomes the submission of any empirical data by commenters on the revised proposal addressing this contention. One commenter requested that the Board provide some type of forbearance for a limited period of time for the resulting institution in a merger involving purchase accounting, since the net worth of the acquired institution disappears. The Board has addressed this point in its revised proposal, which is discussed below.

Competitive Concerns. Other commenters opined that the proposal would interfere with the ability of thrift institutions to compete with commercial banks and other financial institutions. The Board believes that this comment ignores several obvious factors and is, therefore, without merit. At present, commercial banks are subject to a much more stringent capital requirement, so that those institutions have far more limited leveraging possibilities than insured institutions. In fact, the federal bank regulatory agencies have proposed regulations or guidelines which would increase those levels (see later discussion). Further, commercial banks are required to utilize generally accepted accounting principles, rather than the more permissive regulatory accounting principles that insured institutions may use. Finally, it should be noted that the thrift industry aggregate growth rate from June, 1983 to June, 1984 was 19 percent, whereas domestic-chartered commercial banks during this period had an annual growth of approximately 11.3 percent. Given these considerations, the Board does not believe that the relatively modest tightening that would be imposed by either the initial proposal or the reproposal (see later discussion) would adversely affect the ability of thrifts to compete with commercial banks.

With respect to other financial institutions that are not federally insured, thrifts do have some competitive advantages. Thrift institutions are partially insulated from free-market discipline with respect to obtaining funds for investments. For instance, a thrift institution, unlike non-federally-insured institutions, may borrow on a long-term basis for up to 20 years from its Federal Home Loan Bank at market rates and can attract insured deposits at or below market rates, regardless of its financial condition or net-worth level.

The Board agrees with the other federal regulators of financial institutions that the capital base of federally insured financial institutions must be increased in order to maintain public confidence during times of intense competition for financial services, to offset risks resulting from

deregulation and to counter the FSLIC's losses from defaulting financial institutions.

Factual Basis. Several commenters suggested that the proposal inappropriately penalized all thrifts, especially those with a conservative asset/liability management strategy, because of a relatively small number of problem institutions whose troubles resulted from the imprudent investment of brokered funds. The Board, however, disagrees with that contention. For example, the FSLIC reserves-to-deposit ratio, which peaked at 2.12% in 1970, has declined to 0.92 percent by September, 1984. When the shrinking reserves-to-deposit ratio is coupled with the heightened risks to the industry emanating from increased participation, for example, in acquisition, development and construction lending, as well as other high-yield/high-risk ventures, a gradual program to upgrade required levels of net worth is entirely appropriate for all insured institutions.

Some commenters contended that thrift institution failures are the result of maturity mismatches of assets and liabilities and not from asset problems. However, data developed by the Board's staff indicate that there is a disturbing increase in number and correlation of failures due to imprudent credit risks fueled by excessive growth. For example, of 21 assistance cases handled by the FSLIC in 1984, 13 have been categorized as asset-quality problems.

Alternative Solutions

As noted above, several of the comments to the Board's proposal also included approaches to address the capital inadequacy of thrift institutions.

1. *Case-by-Case Supervision.* A few commenters suggested that the problems addressed by the proposed regulation could best be resolved on a case-by-case basis utilizing existing or possibly expanded supervisory authority. These commenters argued that attention should be focused specifically on abusive practices and supervisory cases. The regulation was seen as unfair to those operating in a safe and sound manner. It was generally felt that growth could be controlled by increased supervisory and monitoring programs, including the possible use of monthly reporting. The Board has, in fact, taken several steps to strengthen its ability to supervise and monitor the activities of insured institutions and to modernize the examination process. Additionally, the Board developed legislation to increase its enforcement powers, which was introduced in the last Congressional session. The Board believes, however, that these efforts alone are insufficient to deal with the tremendous growth of the industry as the result of the deregulation of interest rates and broader investment powers and concomitant increased risk to the FSLIC.

2. *Limited Focus on Fast-Growing Institutions.* Some commenters suggested that the scope of the regulation should be restricted to institutions that represent a risk to the industry and, accordingly, increased net-worth requirements should apply only to institutions experiencing rapid growth. Several commenters noted that the rapid growth of the thrift industry has resulted in a decrease in public confidence in the industry and the overpricing of deposits and underpricing of mortgage loans. These practices can unfortunately have the undesirable effect of forcing otherwise conservative thrifts to match those rates or realize a loss of their market share. In response, the Board reiterates its view that all growth should be earned or supported by an adequate net-worth base, but notes that its new proposal would tailor net-worth requirements to levels of prospective liability growth.

3. *Variable-Rate Premiums.* A few commenters recommended that the Board raise the FSLIC insurance premiums or implement a variable-rate insurance premium based on risk-based insurance-premium structure in its recent legislative proposal. In order to address the immediate concerns about the inadequacy of the industry's capital base, however, the Board supports a net-worth requirement linked to growth.

4. *Modifications to Board Proposal.* One state regulator recommended that the Board increase the overall net-worth requirement to four or five percent of total liabilities and eliminate the provisions for five-year averaging and the twenty-year phase-in period. In response, the Board continues to believe at this time that a marginal net-worth requirement tied to future growth in liabilities and the gradual elimination of five-year averaging and the twenty-year phase-in period would (1) provide a sufficient capital base to protect the FSLIC insurance fund from the risks resulting from the currently deregulated environment, (2) enhance public confidence in thrifts, and (3) reduce the inequities in capital requirements between thrifts and commercial banks.

Another commenter, while endorsing the marginal net-worth concept, objected to the proposed timetable set for achieving compliance with the higher net-worth standards, characterizing them as insensitive to the restructuring efforts of the industry, the current economic condition of the industry and the possibility of rising interest rates. This commenter recommended an alternative that would retain the current net-worth requirement on existing liabilities for two years and provide for a four-percent unlimited "credit" to a new five-percent marginal net-worth requirement resulting from qualifying balances (12 CFR 563.13(b)(4)), which would be expanded to encompass additional interest-rate-sensitive assets and liabilities. Several commenters endorsed this approach, and several others suggested that the qualifying-balance deduction be increased from its current three-percent level and the items eligible for inclusion in the deduction be expanded.

Although the Board is sensitive to the concerns of the thrift industry with respect to restructuring, it continues to believe that both the risks arising from undercapitalized thrift institutions coupled with the increase in instances of failures due to credit risk and the decline in the ratio of FSLIC reserves to deposits mandate that a marginal net-worth requirement be imposed on future growth.

Several commenters suggested that the Board should not require additional net worth for growth of liabilities resulting from the crediting of interest and dividends on existing savings. These commenters stated that institutions need growth from savings to restructure their portfolios of fixed-rate loans and that any additional reserves would necessitate lowering the market rate paid on savings or increasing service charges either to prevent growth or to obtain a sufficient profit margin in order to generate the required net worth. The Board, however, maintains that any growth in liabilities regardless of the source, e.g., the crediting of interest on deposits and outstanding Federal Home Loan Bank advances, should be supported by a marginal increase in net worth.

It was also suggested that the Board exclude arbitrage transactions from the proposed minimum net-worth requirement because such transactions are fully collateralized and present an insignificant risk to the FSLIC. The Board believes, however, that a marginal net-worth requirement is necessary to safeguard institutions and the FSLIC from losses resulting from credit risk as well as interest-rate risk.

Finally, it was recommended that the net-worth requirement be based only on deposit liabilities, stating that all liabilities outside the FSLIC insurance category should be considered an enhancement to the system and provide some latitude of protection to the FSLIC. Other suggestions from commenters addressed the calculation of the reserves for scheduled items, the provision for a credit against the net-worth requirement resulting from the reduction in a thrift's losses, and the extension of the appraised-equity-capital program through 1992. The Board considered these and other alternative proposals but has determined at this time that the approach detailed in the revised proposal best serves the needs of the industry and the FSLIC.

According, after review of the comments and consideration of additional data and staff studies, the Board has determined, for the reasons set forth below, to revise the proposed rule and request further public comment.

Reasons for revising the proposal. The Board continues to be concerned that the recent rapid growth of many insured institutions has significantly reduced the capital coverage in an industry that has experienced chronic capital deficiences. Rapidly growing institutions have been able to achieve their high growth rates and still meet required capital levels in part due to the use of five-year averaging and twenty-year phase-in. For example, an institution that became an insured institution just prior to November, 1983, would be required to have net worth and statutory reserves equal to only 0.15 percent of liabilities and 0.15 percent of insured accounts, respectively. This, in effect, places no limit on the rate of growth of institutions since it permits a debt-to-equity ratio as high as 666 to 1. These factors thus enable institutions to increase significalty the risk exposure of the FSLIC without supporting the new liability base with adequate capital.

Data before the Board indicate that insured institutions are growing at a rapid rate. During the period from June 30, 1982, to June 30, 1984, retail deposits have increased 31.2 percent ($475.1 billion to $623.5 billion) and "jumbo" deposits (over $100,000) have increased 104.8 percent (from $51.3 billion to $105 billion). Other borrowings increased 90.8 percent (from $29.3 billion to $55.9 billion). As a result, total liabilities grew 36.4 percent while assets grew 36.6 percent. Since 1981, industry assets have increased from $640 billion to an estimated $947 billion at the end of October, 1984. Data also demonstrate that, at the rate of growth experienced between June, 1983, and June, 1984, the Board can expect 770 institutions, with $353 billion in assets, to double in size within the next four years.

This rapid growth has been accompanied by steady deterioration in the FSLIC reserves-to-total-deposits ratio. The current reserve ratio is approaching the range which in 1962 prompted Congress to impose a costly secondary-reserve assessment on institutions. However, in 1962, the ratio of net worth to liabilities for all insured institutions was 7.6 percent; today, the net-worth ratio is only 4.0 percent. To the extent that insured institutions' net worth provides a cushion to absorb losses prior to resorting to the FSLIC, these trends indicate the imperative need both to foster increased net worth in the thrift industry and slow the rate of growth of insured institutions in order to protect the FSLIC.

As the Board noted in its February proposal, deregulation as a result of the DIA and changes to a number of state laws also increase the FSLIC's risk exposure and increase the need for additional reserves and net worth. In the past, detailed regulation functioned as a substitute for capital. An institution's need for a significant cushion against losses was decreased because risks were limited through regulation. Deregulatory changes in recent years have significantly widened the investment powers of federal and state-chartered institutions, permitting investment in areas in which insured institutions have little experience. In some states, statutory limtis on the percentage of assets that an institution may commit to these new powers may not effectively require a prudent mix of new, riskier investments with traditional, secured investments. The industry has not yet had much experience with broadened investment authority under state law. Many of the investments made under these laws are too recent to have resulted in profit and loss. Many of the losses suffered by the industry and by the FSLIC resulted from investments that took the form of loans, but in economic reality were direct investments, and would be covered by the proposed regulation. Such investments were difficult to study statistically, because they cannot be differentiated in reports to the Board from true loans. Such investments are nonetheless responsible for the failure of a number of institutions and have resulted in significant losses to the FSLIC in recent years.

The possibility of rapid growth of deposits and other liabilities has led some institutions to embark on ill-conceived plans of asset expansion, including high-risk investments. A staff study indicates, in general, that faster-growing institutions have both riskier asset portfolios and less stable funding sources than do more slowly growing institutions. Joseph A. McKenzie, "Recent Deposit Growth and Asset Allocation of FSLIC-Insured Institutions," Federal Home Loan Bank Board, November 28, 1984. The study compares institutions that grew above the industry average of 19 percent (June, 1983, to June, 1984) to those growing more slowly than the industry average. The study demonstrates that, on the average, the faster-growing institutions have an acquisition, development and construction (ADC) loan ratio to total assets over four times that of other institutions; a construction loan ratio to total assets four times larger than other institutions; direct real estate investments as a percentage of assets six times larger; and a ratio of non-mortgage loans to total assets over one and one-half times larger than all other institutions. The study notes that these types of investments have an inherently higher degree of credit risk than residential mortgage loans and are, ultimately, a significant risk to the FSLIC. (*See* later discussion of higher-risk investment activity.)

The study further indicates that, on the average, faster-growing institutions had jumbo certificates of deposit equal to 15.25 percent of their liabilities while all others had only 5.46 percent; brokered deposits of 8.15 percent compared to 0.68 percent; and a ratio of borrowed funds to total liabilities twice that of more slowly growing institutions. These types of funds are frequently volatile and are more likely to be involved in "runs" on institutions. These funds also remove the growth constraint implied by the local retail market and thus enable the rapid acquisition of high-risk assets. Faster-growing institutions are exposed to only slightly less interest-rate risk, having a 32.8 percent six-month maturity-gap-to-total-asset ratio as opposed to 33.7 percent for all other institutions. The data also indicate that faster-growing institutions had less net worth than slow-growth institutions (4.08 percent of assets to 4.42 percent of assets) and are experiencing a faster decline in their net-worth ratio (–0.74 to –0.11).

Given that rapid-growth institutions have riskier asset portfolios, less stable sources of funds, lower net worth and experience faster deterioration of net worth, the increasing risk to the FSLIC becomes apparent. Rapid growth is also a factor in many of the past and current supervisory and problem institutions. The correlation between rapid growth and riskier investment and between rapid growth and FSLIC losses is not coincidental. Supervisory experience has shown that, in order to sustain rapid deposit growth, savings and loan management has repeatedly turned to higher-risk investments. Such investments may, at least on paper

provide higher returns that are needed in some instances to cover the cost of jumbo certificates. Faced with exponential deposit growth, institutions often lack the time or opportunity to locate sound investments, and instead make riskier investments, without proper underwriting. Staff has reviewed such individual cases in which either the institution, or ultimately the FSLIC, has experienced, or will experience, losses due to these practices. Because of these riskier investments, the FSLIC in recent years has experienced many of its largest losses from such rapid-growth institutions over $100,000,000 in size. Staff analysis has shown that the greatest percentage of the losses suffered by the FSLIC from problem institutions in 1983 and 1984 have involved rapid-growth institutions with high-risk assets. Staff studies of the recent FSILC caseload show that institutions that have growth more than 25 percent have been responsible for a disproportionate share of expected FSLIC losses. The actual losses to be suffered may be even greater because the FSLIC's experience often has been that high-risk loans or investments will not show losses on paper until long after the underlying project has gone bad, thus understating the losses incurred by the institution.

The Board is not alone in its concern regarding capital adequacy of federally-insured depositories. Subsequent to the Board's issuance of the February proposal, the federal bank regulatory agencies all issued proposed rules or guidelines to increase the minimum required capital of the entities that they regulate. Federal Deposit Insurance Corporation, 49 FR 29399 (July 20, 1984); the Board of Governors of the Federal Reserve System, 49 FR 30317 (July 30, 1984); and Office of the Comptroller of the Currency, 49 FR 34838 (September 4, 1984). These agencies collectively regulate commercial banks that, as noted above, are growing at a slower rate than thrift institutions regulated by the Board. The effect of these proposals, in summary, would be to require a minimum "primary" capital of 5.5 percent of assets and total capital of 6.0 percent for banks and bank holding companies that are well-managed and have no material weakness. All three agencies recognized the important function of capital in the industries they regulate to absorb fluctuations in income, to bolster public confidence in individual entities and in the system as a whole, to support growth while restraining imprudent expansion, and to provide protection to depositors in the event of a threatened insolvency. These agencies noted that the maintenance of stability of the financial system and protection of depositors are critical to their regulatory mission and acknowledged that capital adequacy plays a key role in their programs.

Description of the Revised Proposal

"Statutory reserve" test. Like the February proposal, the revision also proposes eliminating the "statutory reserve" test of 12 CFR 563.13(a). The Board believes that the minimum net-worth standard is a more reliable gauge of capital adequacy because it is calculated upon total liabilities, not merely insured deposits. The DIA amendment indicates that Congress no longer intends to restrict the Board to imposing a capital adequacy standard based upon insured deposits. Therefore, the Board continues to propose to make compliance with the minimum net-worth requirement sufficient for compliance with the reserve requirement of section 403(b) NHA. State requirements tied to the reserve requirement of section 403(b) would be met by compliance with the proposed net-worth requirement.

Calculation period. The revised proposal would significantly change the time in which insured institutions must calculate and meet the minimum net-worth requirement. The current regulation requires the establishment of the net-worth requirement as of the opening of business of the first day of each fiscal year and allows insured institutions to wait until the end of that fiscal year to meet the requirement, 12 CFR 563.12(b)(1) (1984). The effect of this significant lag has been to permit institutions to operate a full year without sufficient net worth before the Board could take enforcement and supervisory action to correct the deficiency. The current lack of supervisory constraints on growth has permitted small problem institutions to become large problems. When an institution can grow by 300 percent in a year, losses to the FSLIC can grow by the same factor. In addition, growth at that rate not only makes it difficult for an institution to locate prudent investments, it also makes it difficult, if not impossible, to examine and supervise institutions adequately. Examination occurs, by necessity, after the fact. When growth is not controlled, problem assets may grow exponentially between examinations. The damage is done before any supervisory action can be taken.

The February proposal did not address these problems. The Board is revising that proposal to change the calculation period in two ways. First, institutions would be required to calculate their minimum net worth as of the end of each calendar quarter. This would provide management with significantly more current, and therefore more useful, information throughout the year. This change would also bring the net-worth calculation in line with the Board's quarterly reporting program, thus providing the Board with better ability to monitor and, where necessary, take appropriate supervisory action. Secondly, the revision would require insured institutions to meet the minimum net-worth requirement on the date it is required to be calculated. This will eliminate the lag and thereby increase the Board's ability to respond quickly and to take appropriate action before an institution's condition deteriorates further. The Board is proposing to eliminate this lag in recognition of management's responsibility to plan an institution's growth and the technical methodologies that have become available to assist management in such planning.

Computation of the minimum net-worth requirement. The proposed revision would use a combination of "factors" in place of the algebraic expression used in the February proposal to calculate the net-worth requirement. The minimum net-worth requirement would be comprised of a "base factor" (essentially the dollar amount of the minimum net-worth requirement as of the last-calculation); an "amortization factor" (by which five-year averaging and twenty-year phase-in would be eliminated); a "growth factor" (which would vary the marginal increase in the minimum net-worth requirement in a manner dependent upon the amount of liability growth); and a "contingency factor" (including the current requirements of 2 percent of recourse liabilities and 20 percent of scheduled items plus an amount equal to 10 percent of direct investments). The Board is not proposing to alter the calculation or use of the "qualifying balance deduction or "appraised equity capital" currently permitted by 12 CFR 563.12(b)(4) and (c) (1984). The only proposed change in the treatment of *de novo* institutions would be to require them to use the calculation period proposed in the revision and to use all of the "factors" to determine their minimum net-worth requirement after their "phase-down" is completed.

Five-year averaging and twenty-year phase-in. The revised proposal would eliminate five-year averaging and twenty-year phase-in, for the reasons stated earlier, but by a method different than that set forth in the February proposal. The February proposal would

gradually eliminate five-year averaging by reducing the number of fiscal years which could be averaged each year over a five-year period. The twenty-year phase-in would be gradually eliminated by permitting qualified institutions to apply this procedure only to pre-December 31, 1983, levels of liabilities after that date multiplied by three percent. Once all institutions insured prior to November 3, 1983, have reached the twentieth anniversary of insurance of accounts, the phase-in would be entirely eliminated.

"Amortization factor". Under the new proposal, both factors would be eliminated by using a straight-line amortization method over a five-year period. An insured institution would be required to calculate the amount of minimum required net worth as of December 31, 1984, by multiplying its total liabilities by 3 percent. It would then calculate the minimum required net worth as of that date using the five-year averaging and twenty-year phase-in method, if appropriate. The difference between these calculations (referred to as the "amortization factor") would be amortized over five years by adding one-twentieth of that amount to its minimum net-worth requirement each quarter.

The Board believes that this method is operationally easier for institutions to use than the method set forth in the February proposal. The revised method requires an institution to calculate the amortization factor only once, rather than requiring different calculations each year. Board research indicates that the revised method will have either virtually the same impact or will impose a lower requirement than the February proposal for 2,629 institutions in the first year, but impose a higher requirement for 480; equal or lower for 1,947 institutions in the second year, but higher for 1,162; equal or lower for 1,407 institutions in the third year, but higher for 1,702; equal or lower for 1,536 institutions in the fourth year, but higher for 1,573; and equal or lower for 2,554 institutions the last year, but higher for 555. The major impact of the change from the February proposal is that the twenty-year phase-in method would be eliminated in five years, rather than continuing to be applied to the level of pre-December 31, 1983, liabilities by institutions until they reach the twentieth anniversary of insurance of accounts by the FSLIC. To the extent that the twenty-year phase-in method contributes to the ability of institutions to expand rapidly both their liabilities and the potential risks to the FSLIC, the Board believes that this change is an improvement over the February proposal.

Marginal growth. The proposed revision would also change the method by which marginal growth in liabilities is considered when determining the minimum net-worth requirement. The February proposal would require all institutions (other than *de novo* institutions) to multiply increases in liabilities between December 31, 1983, and the date of calculation by 3 percent. Institutions experiencing no growth in liabilities or experiencing a decrease in liabilities after December 31, 1983, would not be affected. Studies prepared for the Board demonstrate, however, a greater need to restrain rapid levels of growth.

Rapid growth is not necessary for an institution to restructure its portfolio. Current information indicates that at a moderate growth rate of 15 percent per year an institution (having an asset composition based upon the June 30, 1984, industry aggregates) can within five years decrease its percentage of fixed-rate mortgage loans from 56 percent of assets to 17 percent, by reinvesting both new funds and cash flows from existing assets in interest-rate sensitive assets. In fact, an institution could reduce its fixed-rate mortgage loans from 56 percent of assets to 33 percent in 5 years without any growth in liabilities, merely by funding new interest-rate sensitive assets with the cash-flows from principal repayments on existing assets. This demonstrates that liability growth is not essential to restructuring.

As described above, Board studies indicate that institutions growing at annual rates in excess of 19 percent have both riskier portfolios and less stable funding sources. The fixed-rate, marginal net-worth requirement in the February proposal does not take into account differences resulting from faster rates of growth. However, a minimum net-worth requirement tied to a variable rate based on an institution's growth rate would better reflect (1) the capital requirements appropriate for such growth, and (2) the risks posed to the FSLIC by excessive growth. This approach would also permit each institution to determine its own level of marginal net worth by controlling its rate of growth.

"Growth factor". Based on the foregoing considerations, the revision proposes to require an institution to add to its "base factor" a "growth factor" corresponding to a varying percentage of the growth in liabilities that occurred during the quarter. The percentage would be determined by the rate of growth from the corresponding quarter of the preceding year. Using this measure for determining the growth rate should make allowances for seasonal variations in growth. An institution growing at an annual rate of 15 percent or less since the corresponding quarter of the preceding year would be required to add a "growth factor" in an amount equal to 3 percent of the increase in liabilities during the quarter for which the minimum net-worth requirement is being calculated; an institution growing from the corresponding quarter of the preceding year at an annual rate between 15 and 25 percent would add 4 percent of that quarter's increase in liabilities; and an institution growing in excess of 25 percent from the corresponding quarter of the preceding year would be required to add to its minimum net-worth requirement an amount equal to 5 percent of the growth during the quarter. However, to avoid the impact of growth made prior to this proposal, growth during calendar year 1985 would be measured from January 1, 1985.

This proposal (as well as the February proposal) does not necessarily require institutions to increase the amount of net worth that they hold. Institutions having net worth in excess of the minimum requirement can use that excess to offset any increased minimum requirement resulting from liability growth. Approximately 73 percent of insured institutions already hold net worth equal to at least 3 percent of their liabilities and 55 percent have net worth in excess of 4 percent of their liabilities. Thus, most institutions already hold enough net worth to enable them to grow at a rate below 15 percent and comply with the proposed revision.

Mutual institutions will not be significantly affected by the change in approach from the February proposal because on the average, mutual institutions have grown less than 15 percent from June, 1983, to June, 1984. (Mutual institutions with less than 3 percent net worth grew at 16 percent and those with more than 3 percent grew at 11 percent.) Stock institutions have grown on the average at excessively greater rates (approximately 50 percent for those with less than 3-percent net worth and 60 percent for those with greater than 3-percent net worth). Thus, most mutual institutions would be required to increase their minimum net-worth requirement at a 3-percent marginal rate similar to that of the February proposal, while most stock institutions would be required to increase their minimum net-worth requirement by 5 percent of the increase

in liabilities. This resulting difference in treatment is not inappropriate given the greater average rate of growth of stock institutions, their easier access to capital markets, and the fact that stock institutions tend to have more net worth in excess of 5 percent of liabilities than do mutual institutions (and can thus absorb increases better without going to the capital markets).

The proposed revision contains two refinements not included in the marginal net-worth requirement of the February proposal. First, an institution that decreases its liabilities during a calendar quarter would be permitted to decrease its required minimum net worth. The decrease would be multiplied by a factor equal to the institution's previous minimum net-worth ratio (i.e. its "base factor" divided by its total liabilities). This amount would be the "growth factor" to be deducted from the base factor when computing the net-worth requirement for the quarter in which the decrease occurred. While the minimum net-worth ratio would stay the same, the dollar amount of required net worth would decrease in a manner corresponding to the decrease in liabilities. The February proposal did not provide for a decrease and thus would have penalized institutions that reduced their liabilities.

Second, the revised proposal addresses the issue of the effect of mergers, acquisitions, purchases of assets and liabilities, and consolidations (collectively referred to as "combinations"). The revised proposal would treat all such combinations as if they were a pooling of interests in which the resulting institution's net worth and liabilities are equal to the combined net worth and liabilities of the two institutions. Combinations accomplished through purchase accounting would be recalculated on a pooling-of-interest basis for the purpose of determining the minimum net-worth requirement. Any increase in liabilities resulting from a combination would not be included as a quarterly increase in the calculation of the "growth factor". This approach would avoid discouraging institutions from undertaking such combinations.

Exception for small institutions. The revised proposal would provide an exception to the net-worth computation, described above, for any institution that, at the end of a calendar quarter, has $100,000,000 or less in total assets and that has grown (from the corresponding calendar quarter of the preceding year) at an annual rate not exceeding 15 percent. These institutions would not be required to compute the "base factor", the "growth factor", and the "amortization factor" that would be computed by institutions not qualifying for the exception. Institutions qualifying for the exception would be permitted to continue using five-year averaging (although calculated on a quarterly basis), but would not be permitted to continue using the twenty-year phase-in. The average of amount of liabilities at the end of the calendar quarter and on the corresponding calendar quarter(s) of one or more of the four immediately preceding fiscal years (provided all such dates were consecutive) would be multiplied by 3 percent. This does not permit twenty-year phase-in and, but for the effect of five-year averaging, requires the same percentage of liabilities on the margin that would be required by an annual rate of growth of 15 percent or less. Since the use of the twenty-year phase-in would be discontinued for both qualifying and non-qualifying institutions, it is appropriate to amortize the effect of this change in the same manner. Thus, an "amortization factor" would be added, equal of 1/20th of the difference between calculating the net-worth requirement as of December 31, 1984, with the use of both five-year averaging and twenty-year phase-in, and calculating the requirement on that date using only five-year averaging. The "contingency factor" would also apply to institutions qualifying for the exception and would be added to compute the minimum net-worth requirement. If an institution grows at an annual rate exceeding 15 percent, it would not qualify for the exception and would use the general computation rule. If in a subsequent quarter the institution's growth rate permitted it to qualify for this exception, it could resume using five-year averaging. Similarly, if an institution decreased its assets to an amount below $100,000,000, it could qualify for this exception (assuming it did not exceed the stated growth rate) even if in any previous quarter it had more than $100,000,000 in assets. The Board requests commenits on the appropriateness of permitting small institutions to leave and then re-enter this exception. Mergers would effectively be treated in the same manner as mergers involving large institutions, by using pooling-of-interest accounting in determining the minimum net-worth requirement.

The Board recognizes that relatively higher rates of growth by small institutions may be necessary to permit them to achieve operational efficiency. Studies show that economies of scale exist over a broad range of asset sizes. The most dramatic improvement in operating efficiencies accrues to growth of smaller institutions. Data indicate a slower improvement in operating efficiency once an institution reaches an asset size between $40,000,000 and $60,000,000. Given this data, and to take into consideration future inflation, the Board believes it is appropriate to except institutions whose assets are $10,000,000 or less. This would exclude 55 percent of all insured institutions. The exception, however, would not exclude institutions having approximately 91.6 percent of the assets in the industry, and would therefore provide an effective mechanism for supervising those institutions presenting the greatest potential risk to the FSLIC.

"Contingency factor". As did the February proposal, the revised proposal would continue the current requirement that the minimum net worth of an insured institution also includes amounts equal to 2 percent of recourse liabilities and 20 percent of scheduled items. This requirement acts, in effect, as a reserve for contingencies (i.e. the possible required repurchase of loans sold with recourse and the possible losses from loans currently categorized as "slow" loans). The revised proposal combines these elements of the net-worth requirement into a "contingency factor" which would be determined quarterly and added along with the other factors. The contingency factor, unlike the growth factor, is not intended as a marginal requirement. Thus, when determining the "base factor" for the next quarter's requirement, the contingency factor of the preceding quarter is excluded and is, instead, recalculated and added to the base factor at the end of the new quarter.

Direct investment "contingency factor". The revised proposal would add a third component to the two existing parts of the contingency factor. This component would be an amount equal to 10 percent of the amount that an institution has invested in certain real estate, service corporation and equity securities, referred to collectively as "direct investments". The Board has proposed to regulate insured institutions' direct investments (Board Res. No. 84–227, 49 FR 20719, (May 10, 1984)), and the Board notes that a number of commenters on that proposal took issue with the connection posited between such investments and increased risk to the FSLIC. While the specific points raised by those comments will be addressed in connection with that rulemaking, research conducted for the Board clearly indicates the risks associated with direct investments.

For several months, the Board has engaged in considerable research to evaluate the nature of the risk of direct investment to the FSLIC and to determine whether an additional net-worth requirement is appropriate. The research suggests that returns from direct investments and service corporations are inherently more variable than most other forms of investment undertaken by thrift institutions, and that allowing such institutions to engage in unlimited amounts of direct investment could result in those institutions taking on unacceptably large levels of risk without adequate reserves and thereby posing a threat of substantially increasing losses to the FSLIC.

Board staff conducted an extensive examination of the economic and financial literature on rates of return and risk levels for various general asset categories (see *Examining Historical Returns and Risk for Debt and Equity Assets*, Office of Policy and Economic Research, 1984). The examined studies measured both rates of return and economic risks for real estate, common stocks, government and corporate bonds, and Treasury bills. These studies clearly show that equity investments such as common stocks are riskier investments than debt securities when variation in return is used as a measure of risk. The risk posed by real estate investment reflected a less solid consensus, with some studies indicating that the returns to real estate are riskier than both common stock and debt securities, others showing real estate is less risky than stocks but riskier than debt, and still others finding real estate to be less risky than either stocks or bonds.

The overall conclusion of Board staff is that the findings of these studies, when applied to actual situations where thrift associations possess different levels of competence and face different investment decisions, suggest that real estate investment will prove generally riskier than straight debt obligations. The studies surveyed implicitly assumed a geographically diversified real estate portfolio, since they used national data. In most cases, however, insured institutions are unlikely to be able to achieve complete geographic diversification. Relatively few institutions have interstate branch and lending networks, and thus the area they know best is relatively compact. Although attempts at geographic diversification can be made through joint ventures, this will often involve dealing with new and unknown partners in areas outside the institution's normal lending territory. Moreover, participations in such joint ventures can expose institutions to huge partnership liability that is totally disproportionate to the potential returns from the joint ventures. Finally, most real estate development occurs in fast-growing areas, and such areas can be prone to speculative over-building and resulting losses to developers.

It is not surprising that most economic and financial studies suggest that equity investments over a long period of time will prove riskier than debt investments. Claims of equity investors on the assets underlying their investments are generally subordinate to those of all other claimants. This implies that equity investors share disproportionately in both the losses and profits realized on the assets underlying investments. In contrast, the investor in debt obligations receives payments of interest on principal even after an equity investor's claim on cash flow has reached the zero level. Not surprisingly, average returns on equity investment are higher than those on debt investment because in a market of risk-averse investors there will be a positive trade-off between return and risk. Generally, economic and financial studies confirm the theoretical premise that investors may only obtain a higher expected rate of return by incurring additional risks. Investors also require a higher expected rate of return to incur additional risk. The staff has reviewed decisions by federal rate-making bodies and found that they consistently provide for substantially greater returns for equity versus debt because they have found that equity investments are substantially riskier than debt.

Another study by Board staff examined rates of return and the variability of savings institution investments in service corporations between 1979 and 1983 (see *Rates of Return from S&L Investments in Service Corporations, 1979–1983*, Donald G. Edwards, Office of Policy and Economic Research, 1984). Because service corporation data are reasonable proxies for the rates of return and the variance of rates of return on direct real estate investment by thrifts and are available to both Board staff and other researchers, the study used data from investments in service corporations to measure returns on direct investment. Data from over 1,000 institutions with investments in service corporations during the period 1979–83 were analyzed to obtain estimates of returns and variability of returns from these investments. Sample institutions were selected on the basis of consistent reporting of service corporation investment and net income in their semiannual reports of condition to the Board.

The rates of return reported by the sample institutions were found to have a mean of 17.4 percent over the period 1979 to 1983. The distribution of returns was extremely wide, with many associations reporting either large losses or large profits on their investments. The estimated median rate of return for the period 1979–83 was only 8.9 percent. The large difference between the mean rate of return and the median, coupled with the wide distribution of returns, demonstrates the general conclusion that savings institutions realized both high average rates of return and high average degrees of risk with investments in service corporations.

The distribution of rates of return reported by the sample of associations indicates that many investments performed very poorly. In the 1979–83 sample, 13 percent reported negative returns, 54 percent reported returns below the industry's average cost of funds (9.71 percent) for the period, and 67 percent reported returns below the industry's average interest rate on conventional single-family mortgage loans closed (13.35 percent). This large dispersion of service corporation returns, coupled with the high mean rate of return, suggest that the Board is correct in proposing to require an additional reserve requirement for institutions engaging in these riskier direct investments.

Another Board staff study analyzed how different hypothetical portfolios—consisting of fixed-rate mortgages, adjustable-rate mortgages, commercial loans, common stocks, and real estate—would have performed under the actual market conditions existing over the period 1978 to mid-1984. (See *Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments*, G. Stacy Sirmans, Office of Policy and Economic Research, 1984). The study concluded that, in general, while savings institutions could have increased their average expected return by increasing direct investments, this would also have entailed a major increase in the level of total portfolio risk for a broad range of portfolios.[1]

[1] The study found that fixed-rate mortgages behaved quite poorly during the same period, but also confirmed that well structured adjustable-rate mortgages would have performed very well. The relevant comparison, of course, is at the *margin;* e.g., would it be riskier for an association to invest its funds in direct investments, adjustable-rate mortgages, or other loans. The studies confirm the

Continue

While these conclusions must be examined with the restraint appropriate to any conclusion drawn from a hypothetical economic study, they clearly suggest that a required reserve for direct investment is a reasonable protection against additional risk.

In order to address the effect that different forms of investment may have on the total risk of an institution's portfolio, a Board survey examined the correlation coefficients between various equity and debt investments. The results generally show that the correlations between different forms of equity and different forms of debt are either positive or only moderately negative.

A further Board study (see *An Analysis of Service Corporation Investment and Direct Real Estate Investment by FSLIC-Insured Savings Institutions*, Joseph A. McKenzie, Office of Policy and Economic Research, 1984), based on June 30, 1984, data indicates that institutions with significant service corporation and/or direct real estate investment are growing far more rapidly, have asset portfolios with significantly more potential credit risk, have liability structures that are potentially less stable, and originate significantly lower proportions of permanent 1- to 4-family home mortgages than the average savings institution

Forty-seven of the 2,953 institutions (all having assets of $10,000,000 or more as of June 30, 1983) in this study had combined direct investment of 10 percent or more of assets. Those 47 institutions had an average 181 percent asset growth for the year ending June 30, 1984, compared with a 21 percent growth rate for institutions with combined direct investment of less than 10 percent. Because it is in general very difficult to evaluate adequately investments that grow at such high annual rates, this dramatic disparity in growth rates between savings institutions with direct investment above and below 10 percent indicates that those heavily involved in direct investment, at least on average, are hardly risk-minimizers. Compared with the group with combined investment of less than 10 percent of assets, the 47 institutions also had, on average, significantly higher ratios to assets of acquisition, development, and construction loans, traditional construction loans, and nonresidential mortgages. The Board's supervisory experience is that these asset categories traditionally have a significantly higher demonstrated credit risk than residential mortgage lending. Institutions with a combined direct investment of 10 percent or more of assets also exhibit significantly greater reliance on jumbo certificates than the group with combined direct investment of less than 10 percent. As recent events have shown, deposits of more than $100,000 can prove extremely unstable when a financial institution confronts problems that are publicly recognized.

The Board's supervisory experience confirms these theoretical and empirical demonstrations of the relatively riskier nature of direct investment. Severe losses have occurred, or will occur, in many institutions that have invested most heavily in direct investments (including investments that are, in economic reality, direct investments even though recorded as purported loans). Moreover, available data may seriously understate losses that have already occurred as a result of direct investments. Losses resulting from poor asset quality do not automatically appear on institutions' books. A loss may not be realized until the examiner has ordered a reappraisal of the asset. Examiners may have difficulty in identifying problem assets, particularly if they are investments such as ADC loans, which may take the form of loans but in economic reality are direct investments that would, under the proposed regulation, require a 10 percent reserve. These "loans" will appear current on an association's books only because the institution has funded reserves for the payment of interest. Often, the "loan" amount also funded high loan fees, further boosting the institution's balance sheet. These factors, however, distinguish direct investments from scheduled items that can be more readily identified as potential losses due to the actual performance of the loans.

A 1982 Board study (that evaluated the asset investment powers of Texas thrifts in connection with the Board's request that Congress broaden the powers of federally chartered thrifts) found that the state chartered thrifts had substantially higher average net returns on investments made through their broadened asset powers than they did on their conventional mortgage portfolios. These broadened asset powers included commercial and personal loans and direct investments. The study also found that the pre-tax return on assets for Texas state-chartered stock institutions was significantly higher than for federally chartered mutual institutions (see *The Contribution of New Asset Powers to S&L Earnings: A Comparison of Federal- and State-Chartered Associations in Texas*, Research Working Paper No. 110, Office of Policy and Economic Research, July 1982).

There have been suggestions that this 1982 study demonstrated that direct investments were no riskier than other investments. In fact, that study did not examine direct investments, but rather included the entire package of new equity *and debt* investment powers granted by Texas. Moreover, the study did not examine the *risk* posed by direct real estate investments. The study confirmed only what is widely known and accepted—that the package of new asset powers can yield higher *average* returns than traditional investments—but did not deal with the issue of the *riskiness* of these investments, and the possible consequences of that riskiness for both institutions themselves and the FSLIC. During 1981, the time period over which the study's data are derived, the average ratio of direct investment to assets in Texas chartered thrifts was 0.56 percent and the maximum was 7.97 percent. Given the context in which the study was conducted—a period in which direct investment accounted for relatively miniscule percentages of most institution assets—it is not surprising that the study did not evaluate this risk.

While the study did note that direct real estate investment had a higher return than the *historical* mortgage portfolio, it also noted that the appropriate comparison would have been between the returns on direct real estate investment and returns associated with new mortgage lending. A comparison was not made in the study itself. Using this more appropriate comparison, the yield advantage of direct real estate would have proven far smaller. The authors of this study understood this limitation, and acknowledged it by pointing out that "because mortgages have longer maturities than other assets, during a period of rising interest rates, the average mortgage yield is likely to be further below market rates that the average yield * * * and yields on new conventional mortgages would probably be closer to the yield on alternative assets."

An argument has been made that direct investments in real estate and equity securities are short-term assets and therefore provide a good "match" with liabilities of thrift institutions. The entire notion of assets/liability matching rests on the principle that a "good match" results when the fluctuations in the rate paid on a liability closely follow the fluctuations in the return on the

rationality of the thrift industry making over 70 percent of new mortgages in the form of adjustable-rate mortgages.

asset that the liability is funding. Adjustable-rate mortgages provide an excellent match for thrift institution deposits since both rates paid and rates received tend to follow closely in tandem Conversely, as the Board's studies cited above have shown, there is no reason to expect a close correlation between the cost of institution deposits and the returns received from any particular form of direct investment. The large distribution of service corporation rates of return demonstrates conclusively that funding direct investments through savings deposits results in an extremely poor asset/liability match. If anything, a need for close asset/liability matching by thrift institutions argues strongly in favor of requiring additional net worth for institutions engaging in greater direct investments.

Given the risk of these investments, a direct investment component of the contingency factor similar to those for recourse liabilities and scheduled items is appropriate. The traditional activities of insured institutions have consisted primarily of secured lending (such as home mortgage loans), in which the security property is appraised and the amount of the loan is limited in accordance with the value of the property, thus providing a cushion in the event of losses from default. Contingency "reserves," however, have been required for scheduled items and recourse liabilities because they provide an additional offset for potential losses. It is thus appropriate to provide an additional cushion for these riskier direct investment activities that often are not secured and that do not provide institutions with a cushion similar to that provided by traditional investments.

The substantially greater risk of loss posed by direct investment supports a greater net-worth requirement. For scheduled items, however, there is specific information that a particular asset is performing badly and may default. No such specific information is available at the *outset* in making a direct investment. Thus, while some reserve is appropriate, the Board believes that the percentage should be less than the percentage required for scheduled items. Therefore, the revised proposal would require the "contingency factor" to include an amount equal to 10 percent of direct investments. The Board requests comments on the appropriateness of this level of reserves.

The direct-investment contingency factor references definitions of three components of direct investment contained in the proposed regulation on direct investments. The Board intends to clarify those definitions for purposes of the revised net-worth proposal.

Proposed § 563.9–8(f)(2) (49 FR 20719) defines an "investment in real estate" to mean the direct or indirect ownership of an equity interest in real property (other than office buildings and foreclosures) as determined in accordance with generally accepted accounting principles ("GAAP"). The Board has since proposed standards reflecting GAAP for classifying real estate investment and for reporting them in financial statements. *See* 49 FR 43557 (October 30, 1984). If these standards are not adopted in final form, it is the Board's intention that for the purposes of the net-worth proposal, each institution should determine whether particular real estate investment constitutes an equity interest in real estate in accordance with GAAP. The Board notes that the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants has published a notice to practitioners that sets forth certain characteristics for an auditor to consider in evaluating the institution's determination. *See Journal of Accountancy* 51 (November 1983).

The Board wishes to clarify that investments of institutions in finance subsidiaries pursuant to § 545.82 of the Board's Federal Regulations are not intended to constitute "direct investment" for purposes of proposed § 563.9–8, and thus would not constitute direct investments for purposes of the revised net-worth proposal. The Board declared the inapplicability of the direct investment threshholds to investments made by institutions in finance subsidiaries in the preamble to its final rule regarding finance subsidiaries of federal associations. Board Resolution No. 84–369, 49 FR 29357 (July 19, 1984).

Proposed § 563.9–8(g)(1) (49 FR 20719) defines "equity security" broadly to include, among other things, any interest or instrument commonly known as an equity security or a certificate of interest or participation in any profit-sharing agreement, as well as any warrant or right to subscribe for or purchase any such security, and any debt security convertible into any such security. Enumerated securities, including equity securities issued by a service corporation, were excluded from the definition. The Board believes that equity securities issued by an institution's own finance subsidiaries, as defined in 49 FR 29357 (July 19, 1984), should be excluded from the definition for purposes of the reproposed net-worth rule. The Board is not persuaded, however, that further narrowing the definition would be productive of the ends sought by the reproposed net-worth regulation. Specifically, concerns regarding the safety and soundness of insured institutions would not be alleviated by excluding from the definition of "equity security" investments in limited partnerships or joint ventures, equity securities acquired in "foreclosure" situations, investments in closed-end investment companies, or Sallie Mae securities. Convertible securities would be deemed to be "equity securities" if accounted for as such under GAAP.

In order to avoid "double reserves" on investments in service corporations when an institution is consolidated with its service corporation, the revised proposal would permit an institution to exclude the amount of its investment in the service corporation from the total amount of direct investments in calculating the contingency factor. However, once consolidated, any direct investment made by the service corporation would be included in the total amount of direct investments made by its parent institution.

Approval for growth in excess of 25 percent. Finally, to address more effectively the Board's concern with excessive growth by insured institutions, discussed above, the Board is proposing to require institutions to obtain prior written approval from the appropriate Principal Supervisory Agent before growing at an annualized rate in excess of 25 percent per quarter. As stated previously, the Board's research demonstrates that institutions that have increased their liabilities by an annual rate of more than 19 percent have significantly riskier asset portfolios and less stable funding sources than institutions growing at a lesser rate. For the reasons set forth in the above discussion of the exception for small institutions, the Board believes that it is appropriate to exempt institutions whose assets are $100,000,000 or less from the prior-approval requirement.

Institutions to which the prior-approval requirement would apply would submit information necessary for the Principal Supervisory Agent to determine the institution's ability to manage the resulting increase in activities, to determine the stability of the funding sources and the risks of potential runs, and the interest-rate and credit risks posed by the planned uses of the funds. This would also ensure that the management of an institution carefully considers the potential impact of various marketing practices such as (1) paying a fee to a third party for marketing, underwriting or soliciting

liabilities; (2) utilizing a listing service to make its rates known in any market for liabilities; (3) engaging in marketing practices including off-site media advertising and direct or indirect solicitation by employees of the institution by mail, telephone, or other means; or (4) utilizing the services of, or marketing deposits through, a deposit broker.

Sunset provision. The Board intends to examine the issues presented by the implementation of this proposal, if adopted as a final rule. The Board is therefore proposing that the revision, if adopted as a final rule, would expire on January 1, 1987, unless further action is taken by the Board prior to that date.

Studies and data cited in the preamble are available for public inspection along with comments received on the proposal.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to institutions whose accounts are insured by the FSLIC, except that institutions whose assets do not exceed $100,000,000 and which increased liabilities by 15 percent or less would not be required to eliminate the use of five-year averaging. Also, the prior-approval requirement for institutions to increase liabilities in excess of 25 percent would not apply to institutions having $100,000,000 or less in assets.

3. *Impact of the proposed rule on small institutions.* The proposed rule would limit the leveraging ability of rapidly growing small institutions by imposing a variable, marginal net-worth requirement on any quarterly increase in liabilities and by gradually eliminating five-year averaging and twenty-year phase-in in the calculation of minimum net-worth requirements. An exception, however, would permit those small institutions that increase their liabilities by 15 percent or less to continue to use five-year averaging.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rules.* There are no alternatives to the elimination of techniques that understate the capital adequacy of small institutions that would be less burdensome than the proposal in addressing the concerns expressed in the supplementary information set forth above.

The Board has determined to provide less than a 60-day comment period (with comments due by December 31, 1984) because (1) this is a reproposal in which a number of issues were addressed, and comments received, in the February proposal, and (2) the need to avoid undue disruption of institutions' financial planning for fiscal year 1985. Further, the Board advises that, should the amendments be adopted in substantially the form proposed herein, it is the Board's intention that they take effect for the calendar quarter beginning January 1, 1985.

Lists of Subjects

12 CFR Parts 561 and 563

Insurance of accounts; Savings and loan associations.

12 CFR Part 570

Savings and loan associations.

12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

12 CFR Part 584

Holding companies, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 561 and 563, Subchapter D, Chapter V of title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

§ 561.13 [Amended]

1. Amend § 561.13(a) by removing the phrase "statutory-reserve or"; and amend § 561.13(c) by changing "§ 563.13(c)" to read "§ 563.13(d)". [If § 561.13 is amended as proposed by Board Resolution No. 84-680, then § 561.13(c) will become § 561.13(d) and will be amended accordingly.]

PART 563—OPERATIONS

§ 563.7-4 [Amended]

2. Amend § 563.7-4(l)(2)(iv) and (v) by removing the phrase "statutory-reserve requirement or".

§ 563.8-1 [Amended]

3. Amend § 563.8-1(d)(1)(iv) by removing the phrase "or Federal insurance reserve".

4. Amend § 563.13 by revising paragraph (a); by redesignating paragraph (b)(4) as paragraph (b)(5); by revising paragraphs (b)(1), (2) and (3), and adding new paragraph (b)(4); by removing paragraph (f); by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e) and (f), respectively; by adding new paragraph (c); by removing the phrase "reserve requirements of paragraphs (a) and (b)" in the first sentence of new paragraph (d)(1) and substituting the phrase "requirement of paragraph (b)"; by removing the phrase "*statutory reserve or*" in the heading of new paragraph (e); by removing the phrase "the statutory reserve requirement set forth in paragraph (a) of this section or" in the first sentence of new paragraph (e), by removing the phrase "paragraph (b)(2) of this section or the statutory reserve requirement set out in paragraph (a)(2) of this section" from the first sentence of new paragraph (f) and substituting the phrase "paragraph (b) of this section"; by revising paragraph (g); and by adding new paragraphs (h) and (i); as follows:

§ 563.13 Regulatory net-worth requirement.

(a) *Scope.* (1) This section sets forth the requirements for the maintenance of regulatory net worth by all insured institutions. Compliance with the requirements of this section shall be considered to be compliance with the reserve requirements of section 403(b) of the National Housing Act (12 U.S.C. 1726(b)).

(2) Items previously credited to the predecessor Federal Insurance Reserve Account shall be designated "restricted retained earnings" in the list of items comprising the net-worth account, and shall be used only for absorption of losses. Items earmarked or otherwise designated but not credited to that Account may be designated as restricted retained earnings.

(b) *Minimum required amount*—(1) *General rule.* Except as provided in paragraphs (b)(2) and (3) of this section, the minimum net-worth requirement for any calendar quarter shall be the sum of the following:

(i) The base factor;

(ii) 1/20 of the amortization factor as defined in paragraph (h)(5)(i) of this section;

(iii) The growth factor; and

(iv) The contingency factor.

(2) *Exception for de novo institutions.* (i) *De novo* institutions shall have a minimum net worth equal to the sum of the contingency factor plus seven percent of all liabilities of the institution, which shall decline by 100 basis points for each year following the beginning of the first full fiscal year until equal to five percent; thereafter, upon the approval of the Principal Supervisory Agent pursuant to paragraph (b)(2)(iii) of this section, the minimum net worth shall be equal to the amount specified by paragraph (b)(1) of this section.

(ii) *De novo* institutions which elect to have their applications for insurance of accounts processed in accordance with the policy set forth in § 571.6(a)(2) of this subchapter but which do not additionally qualify under § 571.6(a)(3), shall have, for the period between the commencement of operations and the beginning of the first full fiscal year and for three years following the beginning of the first full fiscal year, a minimum net worth equal to the sum of the contingency factor plus seven percent of all liabilities; thereafter, upon the approval of the Principal Supervisory Agent pursuant to paragraph (b)(2)(iii) of this section, the minimum net worth shall equal the amount specified by paragraph (b)(1) of this section.

(iii) The Principal Supervisory Agent of the institution's Federal Home Loan Bank district has delegated authority to approve a change in the minimum net-worth requirement for a *de novo* institution from the amount specified by paragraph (b)(2) of this section to the amount specified by paragraph (b)(1) of this section: *Provided,* that the Agent does not take supervisory objection to the probable effect of such reduction on the institution's safe and sound operating condition. If approval is withheld, the institution may seek review and final decision by the Corporation.

(3) *Exception for institutions with not more than $100,000,000 in assets.* Except as provided in paragraph (b)(2) of this section, any institution whose total assets at the end of a calendar quarter do not exceed $100,000,000 and which did not increase its total liabilities measured from the corresponding quarter of the preceding year (or, during calendar year 1985, from January 1, 1985) at an annual rate in excess of 15 percent.

(i) Shall have a minimum net-worth-requirement that shall be the sum of the following:

(*a*) Three percent of the average amount of liabilities at the end of that calendar quarter and on the corresponding quarter(s) of one or more of the four immediately preceding years (provided all such years are consecutive);

(*b*) 1/20 of the amortization factor as defined in paragraph (h)(5)(ii) of this section; and

(*c*) The contingency factor;

(ii) Shall calculate any merger, consolidation, or purchase of assets and assumption of liabilities by using pooling-of-interests accounting without regard to the actual method of accounting used; and

(iii) Shall not include any increase in liabilities resulting from a merger, consolidation, or purchase of assets and assumption of liabilities in determining whether the institution increased its liabilities at an annual rate in excess of 15 percent.

(4) *Maintenance requirement.* Institutions shall maintain until the end of the next calendar quarter net worth at least equal to the dollar amount required at the last calendar quarter.

* * * * *

(c) *Calculation period.* The minimum net-worth requirement shall be calculated as of the end of each calendar quarter and shall be met as of such date.

* * * * *

(g) *Charging of losses to reserves.* Losses charged to reserves shall exhaust all net-worth accounts before constituting a charge against mutual capital certificates.

(h) *Definitions.* For purposes of this section:

(1) "Total liabilities" means the total assets net of loans in process, specific reserves and deferred credits other than deferred taxes, minus net worth as defined in § 561.13 of this subchapter.

(2) "Base factor" means:

(i) The minimum required net worth for the preceding calendar quarter (except that for the calendar quarter ending March 31, 1985, the minimum required net worth for the beginning of the most recent fiscal year), exclusive of the contingency factor and before reduction for qualifying balances; or

(ii) For any institution involved during a calendar quarter in a merger, consolidation, or purchase of assets and assumption of liabilities, the minimum net-worth requirement (net of the contingency factor and before deductions for qualifying balances) at the end of the preceding calendar quarter, calculated as if the merger, consolidation, or purchase of assets and assumption of liabilities had occured at that date using pooling-of-interests accounting without regard to the actual method of accounting used.

(3) "Growth factor" means:

(i) During a calendar quarter when the institution's total liabilities have increased—

(*a*) Three percent of the increase in total liabilities during the calendar quarter for institutions whose growth in total liabilities measured from the corresponding quarter of the preceding year (or, during calendar year 1985, from January 1, 1985) is at an annual rate of 15 percent or less;

(*b*) Four percent of the increase in total liabilities during the calendar quarter for institutions whose growth in total liabilities measured from the corresponding quarter of the preceding year (or, during calendar year 1985, from January 1, 1985) is at an annual rate greater than 15 percent but not more than 25 percent; or

(*c*) Five percent of the increase in total liabilities during the calendar quarter for institutions whose growth in total liabilities measured from the corresponding quarter of the preceding year (or, during calendar year 1985, from January 1, 1985) is at an annual rate in excess of 25 percent.

(ii) During a calendar quarter when the institution's total liabilities have declined—a negative amount determined by multiplying the decrease in total liabilities during that quarter by a fraction of which the numerator is the "base factor" as of the end of the preceding quarter and the denominator is the "total liabilities" as of the end of the preceding quarter.

(iii) Increases in liabilities resulting from a merger, consolidation, or purchase of assets and assumption of liabilities, shall not be included as an increase in liabilities for purposes of determining the growth factor during that quarter.

(4) The "contingency factor" is the sum of:

(i) Two percent of all loans sold with recourse as that term is defined in § 561.8 of this subchapter;

(ii) Ten percent of investments specified in § 563.9-8(a) of this subchapter made after December 1, 1984, except that investments in service corporations may be excluded if an institution elects to calculate its net-worth requirement on a consolidated basis including that service corporation: *Provided,* that any investments specified in § 563.9-8(a) made by the service corporation shall be included in the total of such investments of the parent institution; and

(iii) 20 percent of the institution's scheduled items.

(5)(i) "Amortization factor" means the amount by which three percent of total liabilities as of December 31, 1984, exceeds

(*a*) Three percent of the average amount on that date and on the corresponding date(s) of one or more of the four immediately preceding fiscal years (provided all such dates are consecutive); or

(*b*) For all insured institutions (other than *de novo* institutions) that have not

reached the twentieth anniversary of accounts, the amount specified in paragraph (h)(5)(i)(*a*) of this section multiplied by a fraction of which the numerator is the number of consecutive years of insurance of accounts and the denominator is twenty.

(ii) For any institution whose total assets at the end of a calendar quarter do not exceed $100,000,000 and which did not increase its total liabilities as measured from the corresponding quarter of the preceding year at an annual rate in excess of 15 percent, the "amortization factor" means the amount by which—

(*a*) The amount equal to 3 percent of the average of total liabilities as of December 31, 1984, and on the corresponding date(s) of one or more of the four immediately preceding fiscal years (provided all such dates are consecutive) exceeds

(*b*) The amount specified in paragraph (h)(5)(ii)(*a*) multiplied by a fraction of which the numerator is the number of consecutive years of insurance of accounts and the denominator is twenty.

(6) "*De novo* institution" means any savings and loan association, homestead association, cooperative bank or savings bank which has filed with the appropriate Federal Home Loan bank an application for insurance of accounts, or an application to organize a Federal association, which was not approved prior to November 3, 1983, and the business of which has not been conducted previouly under any charter.

(i) *Expiration date.* This section shall expire on January 1, 1987.

5. Add a new § 563.13-1, as follows:

§ 563.13-1 Liability growth.

(a) No insured institution having total assets in excess of $100,000,000 shall increase its total liabilities within any three-month period at an annual rate greater than 25 percent without prior approval of the institution's Principal Supervisory Agent.

(b) To obtain the prior written approval of the Principal Supervisory Agent, an institution shall submit a written growth plan. A groth plan shall cover a period of time not to exceed one year, and shall include the following information:

(1) The institution's net worth as of the end of the preceding calendar quarter;

(2) The amount of liabilities the institution expects to obtain;

(3) A listing of the proposed sources from whom, and methods by which, the liabilities will be obtained;

(4) The costs, rates, and maturities of liabilities sought to be obtained; and

(5) The planned uses of any liabilities obtained.

(c) No institution shall alter a written growth plan upon which approval has been granted or materially diverge from such a plan without the prior approval of its Principal Supervisory Agent.

(d) A deposit growth plan filed in accordance with paragraph (b) of this section shall be deemed to be approved by the Corporation 30 calendar days after the Principal Supervisory Agent sends written notice to the institution that the plan is complete, unless the Principal Supervisory Agent takes objection to the plan. In determining whether to take objection to a completed growth plan, the Principal Supervisory Agent shall consider the following factors:

(1) The impact of the plan upon the institution's net worth;

(2) The risk of the corresponding investments, the likelihood of obtaining the projected return, and the ability of the institution to underwrite the incremental volume of investments;

(3) The relative maturities of the liabilities and corresponding investments;

(4) The extent to which the liabilities are derived from or through a single source;

(5) Whether the interest to be paid on the liabilities corresponds with generally prevailing rates for similar liabilities;

(6) The financial strength of the institution, including the level of its net worth which shall not be less than 3 percent of total liabilities;

(7) The stability of the institution's earnings over the six preceding calendar quarters; and

(8) The extent to which the institution's policies are consistent with economical home financing.

(e) *Expiration date.* This section shall expire on January 1, 1987.

6. Revise § 563.14 as follows:

§ 563.14 Payment of dividends

No insured institution which has recognized losses of any kind chargeable to its net-worth account may pay dividends to insured members or other account holders, unless (a) its net-worth account, after deduction of such losses, is at least equal to the amount required under § 563.13(b) of this part, or (b) prior written approval is obtained from the Corporation. The Corporation hereby approves for any insured institution which, prior to the charging of such losses, has met the requirement of § 563.13(b), the declaration of dividends to insured members or other account holders, if the insured institution applies not less than 25 percent of its net income (as defined in § 563c.12 of this subchapter) for the affected distribution period to the restoration of its reserve capacity.

PART 570—BOARD RULINGS

§ 570.5 [Removed]

7. Remove § 570.5.

PART 571—STATEMENTS OF POLICY

§ 571.6 [Amended]

8. Amend § 571.6(a)(2) removing the phrase "§ 563.13(a)(2)(ii)(*b*) and (b)(2)(iii)(*b*)" and by substituting the phrase "§ 563.13(b)(2)(ii)".

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

§ 584.4 [Amended]

9. Amend § 584.4(g)(1)(iv) by removing the phrase "statutory reserve and".

(Secs. 401, 402, 403, 405, 48 Stat. 1225, 1256, 1257, as amended; 12 U.S.C. 1724, 1725, 1726, 1728, Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-31936 Filed 12-6-84; 8:45 am]

BILLING CODE 6720-01-M

---

12 CFR Part 571

[No. 84-679]

Mortgage-Backed Securities

November 30, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed statement of policy.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), is proposing to issue a statement of policy concerning the accounting for reverse repurchase agreements, dollar reverse repurchase agreements, dollar reverse repurchase agreements which are rolled forward, and the rollover of forward commitments to acquire mortgage-backed securities for all financial statements submitted to the Board or to the Corporation. The intention of the Board in the proposed statement of policy is to eliminate confusion and inconsistent accounting treatment in this area.

DATES: Comments are due by December 31, 1984. Proposed effective date: December 31, 1984.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Douglas J. McEachern, Professional Accounting Fellow, Office of Examinations and Supervision (202–377–6392), or James H. Underwood, Corporate and Securities Division, Office of the General Counsel (202–377–6649), at the above address.

SUPPLEMENTARY INFORMATION: Institutions whose accounts are insured by the Corporation ("insured institutions") have become increasingly active in transactions involving the sale and repurchase of mortgage-backed securities. Since the accounting standard-setting bodies have not addressed some of the aspects of these transactions, there currently exists considerable confusion and controversy regarding the distinction between the accounting for reverse repurchase agreements, dollar reverse repurchase agreements, dollar reverse repurchase agreements which are subsequently rolled or extended, and the rollover of forward commitments to purchase mortgage-backed securities. As a result, inconsistent accounting treatment is being applied to similar transactions, which is of concern to the Board. The Board has therefore decided to address this issue, taking into consideration the desirability of consistent accounting treatment as well as the need to retain a potentially economically sound financial tool for the thrift industry.

The Board' staff held numerous meetings with representatives of the accounting profession, investment banking firms and other informed persons during the development of the proposed statement of policy. The purpose of these meetings was twofold: (1) To develop criteria that could be used to assess whether dollar reverse repurchase agreement transactions involved securities that were substantially the same; and (2) to discuss objective criteria that could be used to assess speculative rather than investment intent.

The criteria preliminarily decided upon to assess whether the security sold in a dollar reverse repurchase agreement and the one that is reacquired are substantially identical generally emanate from either the proposed statement of position prepared by the AICPA Committee on Savings and Loan Associations entitled *Accounting for Dollar Repurchase—Dollar Reverse Repurchase Agreements by Sellers-Borrowers* dated April 14, 1982, or the Board's OES staff memoranda R–48 ("Securities Transactions") and R–49 ("Reciprocal Sales of Mortgage Loans").

The Board believes that the criteria used in this proposed policy statement reflect the marketplace assessment of the similarity of mortgage-backed securities and criteria generally used as a result of the publication of the AICPA's proposed statement of position. However, commenters are encouraged to point out any perceived inconsistencies with the marketplace realities in order to assist the Board in the establishment of the appropriate criteria.

The assessment of whether an institution consummates a dollar reverse repurchase agreement transaction as an interest-rate speculation or as part of a financing transaction requires consideration of many complex factors. In discussing objective criteria to be used in the assessment of the intent of the management of an insured institution (as to whether a specific transaction was a speculative or a financing transaction), the Board has preliminarily concluded that the requirement for an initial holding period of a security prior to the execution of a dollar reverse repurchase agreement and a periodic holding requirement would serve to demonstrate management's intent to hold a particular security for investment purposes. The Board concluded that a 35-day holding period would be a reasonable requirement that would not place an unnecessarily artificial requirement on an institution's operating flexibility. The Board solicits comments on this proposed requirement and specific examples that would support a different holding period.

In arriving at this proposed policy, the Board has considered existing accounting literature, as noted above, that it believes to be relevant to the transactions at hand and existing practices of the thrift industry and the marketplace in general. The accounting for these transactions is expected to be reviewed in the near future by authoritative accounting bodies. Generally accepted accounting principles ("GAAP") may be affected by those deliberations. The necessity of a Board policy statement in this area will be reassessed at such time.

The mortgage-backed securities most commonly utilized for these transactions are Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation (FHLMC), and Federal National Mortgage Association (FNMA) securities. The reference to these securities is not, however, intended to restrict application to this proposed policy to those specific securities as it also would apply to other similar mortgage-backed security issues.

The Board has determined that a short comment period is appropriate because prompt action is in the public interest. Many insured institutions use a fiscal year that ends on December 31, and thus are required to prepare financial statements for the year ending December 31. Expeditious consideration of this proposed statement of policy is necessary so that the standards, if adopted in final form, can be in place with a minimum of delay where relevant to the preparation of these year-end statements, and can be effective for transactions occurring in the fiscal year beginning January 1, 1985. Therefore, the Board is further advising the public of its intention to use December 31, 1984, as the date of effectiveness of the statement of policy if the statement of policy is adopted in final form substantially as proposed. An exception would, however, be made for open forward-commitment dollar rolls entered into before December 31, 1984, that are not extended beyond their settlement dates, except in the case of settlement dates subsequent to March 31, 1985; dollar rolls in the latter instances would be required to be marked to market after March 31, 1985. The Board believes that a 90-day period would be adequate to enable institutions with such investments to restructure their positions, but requests comments on this issue.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The rules would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the proposal.

4. *Overlapping or conflicting federal rules.* There are no federal rules which

liabilities sought to be obtained; and

account holders, if the insured

treatment in this area.

duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rules.* No other alternative would provide for consistency in accounting treatment of the covered activities.

List of Subjects in 12 CFR Part 571

Savings and loan associations.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 571—STATEMENTS OF POLICY

Accordingly, the Board hereby proposes to amend Part 571, Subchapter D, Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

Add a new § 571.16 as follow:

§ 571.16 Mortgage-backed securities transactions.

(a) *General.* (1) The accounting treatment hereafter described for Reverse repurchase agreements, dollar reverse repurchase agreements, dollar reverse repurchase agreements—with rollovers or extensions, and rollovers or extensions of forward commitments to purchase mortgage-backed securities ("forward commitment dollar rolls"), is to be used by: (i) All insured institutions in connection with all applications submitted to the Board or Corporation; (ii) all federally chartered and/or insured institutions and all savings and loan holding companies and their subsidiaries and affiliates, in connection with all reports submitted to the Board or Corporation; (iii) independent public accountants in determining whether mortgage-backed-securities transactions have been properly recorded and reported; and (iv) Board examiners when preparing reports for the Board.

(2) The proper accounting treatment for mortgage-backed-securities transactions depends on whether the transactions are, in substance, sales and purchases of securities, financing transactions, or the rollover of forward commitments to purchase securities. When the security to be repurchased is *not* either identical or substantially identical to the security sold, the transaction is a sale and purchase and not a financing transaction. This differentiation is critical since a sale and purchase requires recognition of gain or loss upon initiation of the transaction; a financing does not. Mark-to-market accounting shall be followed for the rollover of forward commitments to purchase mortgage-backed securities.

(3) Repurchase agreements to maturity must be accounted for as sales and purchases and are not discussed in this statement of policy.

(b) *Reverse repurchase agreements and rollovers of these agreements.* (1) A reverse repurchase agreement is an agreement (contract) to sell and repurchase ("sell/buy") the *identical* mortgage-backed security within a specified time at a specified price. These transactions are equivalent to borrowing funds in an amount equal to the sales price of the related mortgage-backed security. For example, if an institution wishes to borrow funds with a mortgage-backed security is collateral, it may, in lieu of a direct borrowing, arrange to temporarily sell the security with an agreement to repurchase the *identical* security on a future date at a specified price. A difference in price represents interest cost for the use of the funds. During the term of this agreement, the institution continues to receive principal and interest payments on the security and the security may or may not be registered in the institution's name.

(2) In these transactions, mortgage-backed securities are "owned" and in the institution's investment portfolio prior to the initial sell/buy. For purposes of this statement of policy, "owned" means mortgage-backed securities which are in portfolio and have been held by the institution for investment purposes. Mortgage-backed securities which have been formed by the pooling of mortgage loans held by the institution meet these criteria.

(3) Reverse repurchase agreements involved identical securities, and the substance of the transaction is a borrowing. These agreements shall be accounted for as financing transactions with no current gain or loss recognition at the time of the sell/buy. When funds are borrowed under a reverse repurchase agreement, a liability shall be established for the amount of the proceeds. The investment mortgage-backed security account shall not be relieved of the collateral mortgage-backed security. Interest cost on these agreements shall be reported as an expense and not shown net of interest income.

(4) Rollovers and extensions of reverse repurchase agreements shall be accounted for based on the facts and circumstances at the time of the rollover or extentions. When the rollover involves the *identical* security, the transaction shall continue to be accounted for as a financing.

(c) *Dollar reverse repurchase agreements.* (1) A dollar reverse repurchase agreement is an agreement (contract) to sell a mortgage-backed security from an investment portfolio and subsequently repurchase a mortgage-backed security which is of the same issuer but which is not the original mortgage-backed security within a specified time and at a specified price. Fixed-coupon and yield maintenance dollar agreements are the most common agreements. In a fixed-coupon agreement, the seller and purchaser agree that delivery will be made with a mortgage-backed security having the same stated coupon interest rate as the security sold. In a yield-maintenance agreement, the parties agree that delivery will be made with a security that will provide the seller a yield that is specified in the agreement. During the term of the agreement, the institution transfers the security to the lender and the security is no longer registered in the institution's name. The institution receives no principal and interest payments on the security during the agreement's term. The security to be repurchased is typically on a "to be assigned" basis, meaning the pools of mortgages to secure a reacquired security have been formed but not specifically identified.

(2) For purposes of this statement of policy, under the fixed-coupon dollar reverse repurchase agreement, the mortgage-backed security to be sold must be initially owned by the institution and held in its investment portfolio for a minimum of 35 days prior to the initiation of the sell/buy contract. Securities which have been formed by the pooling of mortgage loans that have been held by the institution for 35 days meet this 35-day holding-period criterion.

(3) Fixed-coupon dollar reverse repurchase agreements represent transactions involving *substantially identical* mortgage-backed securities and should be accounted for as collateralized borrowing arrangements (financings).

(4) Mortgage-backed securities are considered *substantially identical* only when all of the following criteria are met:

(i) The securities are collateralized by similar mortgages (e.g., single-family residential mortgages for single-family residential mortgages);

(ii) They are of the same type of fixed-rate instrument (e.g. GNMA for GNMA, FHLMC for FHLMC, FNMA for FNMA);

(iii) The securities have the same original stated term to maturity (e.g., 30 years);

(vi) The securities have identical coupon interest rates;

(v) The securities have approximately the same market yield; and

(iv) The aggregate principal amounts of mortgage-backed securities given up and mortgage-backed securities

reacquired involved in the transaction are within 2½ percent of one another.

(5) The accounting for fixed-coupon dollar reverse repurchase agreements is the same as that used for reverse repurchase agreements. A liability shall be recorded for the amount of the proceeds. The difference between the sale and repurchase price shall be accounted for as interest cost that is amortized over the term of the agreement; it may not be netted against interest income or expense.
Amortization of the original premium or accretion of the original discount and interest income on the original security shall continue to be recorded even if there is an exchange of fixed-coupon mortgage-backed securities.

(6) In conformance with paragraph (c)(4)(vi) of this section, the aggregate principal amounts of the mortgage-backed securities sold and reacquired must be within 2½ percent of one another to constitute "good delivery." If the principal amount of the securities repurchased in a fixed-coupon dollar reverse repurchase transaction is greater than that of those originally sold, the difference shall be recorded in the investment account as though a separate acquisition of additional securities had occurred. If the principal amount is less, the investment account must be relieved of the proportionate share of mortgage-backed securities that have been sold, and gains or losses adjusted for the *pro rata* share of unamortized premium (or discount).

(7) To qualify as a financing for accounting purposes, the settlement term on the fixed-coupon dollar reverse repurchase agreement shall not exceed twelve months from the initiation date (original "sell" date).

(8) A fixed-coupon agreement that contains a right-of-substitution clause or that provides an option to the lender to deliver mortgage-backed securities priced to result in a significantly different yield shall be accounted for in the same manner as a yield-maintenance agreement (i.e., current recordation of gains and losses).

(9) If the "substantially identical" criterion (set forth in paragraph (c)(4) of this section), the holding-period criterion (set forth in paragraph (c)(2) of this section), or the term-of-agreement criterion (set forth in paragraph (c)(7) of this section) have not all been met, the transaction shall be accounted for as a sale and purchase of mortgage-backed securities rather than as a financing. Thereafter, the position shall be marked to market at each reporting date until the securities are reacquired.

(10) The accounting for fixed-coupon dollar reverse repurchase transactions entered into prior to December 31, 1984, shall be accounted for as specified in Board OES staff memoranda as furnished from time to time. For example, a transaction entered into on November 30, 1984, with a thirteen-month term would not be subject to the holding period criterion (35 days), the "substantially identical" criterion (except that the securities must have identical coupon rates), or the length-of-time criterion for purposes of qualifying for financing accounting (through December 31, 1985), because the transaction was initiated prior to December 31, 1984. Transactions entered into on or after December 31, 1984, shall be accounted for as provided in this statement of policy.

(11) Yield-maintenance dollar reverse repurchase agreements do not represent transactions involving substantially identical mortgage-backed securities and, therefore, must be accounted for as sales and purchases, regardless of when initiated.

(d) *Dollar reverse repurchase agreements with rollovers or extensions.* (1) A rollover or extension of a dollar reverse repurchase agreement occurs when an institution decides not to accept delivery of a fixed-coupon mortgage-backed security at the repurchase date but rather decides to "roll it forward" by means of a sell/buy transaction in which the position is offset and extended for another specified period of time. Typically, to the extent the market value of the fixed-coupon security has increased or decreased in value due to interest-rate fluctuations from the original sale date to the roll date, the institution will pay or receive payment for such price fluctuations. The other characteristics of a dollar reverse repurchase agreement which are present in its initial term (e.g., no receipt of principal and interest payments, securities not registered in the institution's name) also are present in the "roll" periods.

(2) Once the roll period commences, the rolled fixed-coupon dollar reverse repurchase agreement *shall continue to be accounted for as a financing,* when the following conditions exist:

(i) Within twelve months from the date of the initial sell/but transaction (as described in paragraph (c)(1) of this section), the institution shall fund, accept delivery, close out its position, and place in its investment portfolio the fixed-coupon mortgage-backed securities. For future dollar reverse repurchase transactions using these reacquired securities, in order for these transactions to be accounted for as financings, the security shall remain in the institution's portfolio for at least a 35-day time period. This mandatory delivery condition is intended to demonstrate the institution's ability to fund the purchase of the securities and intent to hold the securities for investment purposes.

(ii) At all times during the rollover or extension period(s), the institution must be able to demonstrate its ability to fund the reacquisition of the fixed-coupon mortgage-backed securities and close out its position.

(iii) The institution must be able to demonstrate the ability to fund its aggregate outstanding position of reverse repurchase agreements and dollar reverse repurchase agreements (i.e., the individual reverse repurchase agreements and dollar reverse repurchase agreements must be aggregated to determine if this criterion has been satisfied).

(3) If the conditions of paragraphs (d)(2)(i), (d)(2)(ii) and (d)(2)(iii) of this section are not met, the transaction must be accounted for as a sale and purchase of mortgage-backed securities rather than as a financing starting with the month the ability to fund has not been demonstrated or *at the end of the twelve-month period,* whichever comes first. Thereafter, the position must be marked to market at each reporting date until the mortgage-backed securities are reacquired.

(4) The rollover at maturity of a fixed-coupon dollar reverse repurchase agreement into a yield-maintenance dollar reverse repurchase agreement results in a new contract. The rollover into the new yield-maintenance agreement shall be accounted for as a sale and purchase of securities and the position marked to market at each reporting date thereafter until the mortgage-backed securities are reacquired.

(5) This policy applies as of December 31, 1984, for fixed-coupon dollar reverse repurchase agreements which have been rolled and for rolls which occur after that date in order for them to be accounted for as a financing. (For example, assume a transaction was initiated on August 1, 1984, and had been rolled forward in 30-day rollover increments to January 1, 1985. The institution, beginning on December 31, 1984, would have to demonstrate its ability to fund the delivery of the substantially identical securities. Additionally, the institution would have to take delivery of the securities on or before December 31, 1985.)

(e) *Rollover of forward commitment to purchase mortgage-backed securities ("forward commitment dollar rolls").* (1) A forward-commitment dollar roll is

statement of policy.

mortgage-backed security which is of

and mortgage-backed securities

initiated when an institution enters into a forward commitment to purchase mortgage-backed securities on a "to be announced" basis ("TBA") at a specified price on a specified settlement date. On or before the settlement date, the institution decides to "roll" its position forward rather than accept delivery of the securities. The rollover is accomplished by the institution "offsetting" its position and extending the commitment to purchase a TBA at a specified later date.

(2) Typically, these transactions are *not* initiated with mortgage-backed securities held in portfolio but rather with a forward commitment to purchase. No significant cash is exchanged at the initial settlement date. During the roll period, the securities are not registered in the institution's name and the institution does not receive principal and interest payments on the securities. In many cases the TBA securities have not been identified as the pools to secure them have not been formed but are to be created in the future. At each rollover date, the institutions pays or receives cash (similar to a margin call) from the broker for the change in market value of its position since the previous rollover settlement date. Interest costs due the broker may be nettled against the margin call. This "net margin call" is the amount of cash which is exchanged during the rolling of the forward commitments.

(3) When these transactions are rolled, they are considered to be speculative in nature rather than the short-term financing of a mortgage-backed-securities portfolio. These transactions, in addition to other forward commitments, are subject to the limitations specified in § 563.17–3 of this subchapter. Outstanding forward commitments to purchase securities plus short "put" options, as described in § 563.17–5 of this subchapter, which in the aggregate exceed the limitations, are deemed to be inherently unsafe and unsound activities for insured institutions.

(4) As of December 31, 1984 open forward-commitment dollar rolls entered into on or before that date may be accounted for as forward commitments (i.e., afforded financing treatment) unless modified during the life of the contract, in which case the provisions of § 563.17–3(d) would apply and profit or loss must be recognized by the institution at the time of modification. Any extension of these transactions beyond their settlement date or March 31, 1985, whichever comes first, any forward commitment dollar rolls entered into after December 31, 1984 and any open forward-commitment dollar rolls transactions with a settlement date beyond March 31, 1985 shall be marked to market as of each roll date or the date of filing reports to the Board after March 31, 1985, whichever comes first. Application of mark-to-market accounting to those forward-commitment dollar rolls positions established prior to December 31, 1984 and expiring prior to March 31, 1985, is optional but encouraged.

(f) *Recordkeeping.* (1) An institution engaging in mortgage-backed-securities financing arrangements shall maintain records of such transactions. These records shall include documentation that is adequate to specifically identify and control all outstanding positions. At a minimum, the documentation must cover:

(i) Type of security and the time it has been held in portfolio before being used to enter into the sell/buy.

(ii) Detail of prices, interest costs and cash flows at each rollover;

(iii) Broker or other party to the transaction;

(iv) Expiration date of the contract;

(v) Unrealized income or loss on the position during the roll period;

(vi) A description of the security reacquired.

(2) Management of each insured institution shall submit to its board, on a quarterly basis, a report on the activity in these transactions (including the unrealized gain or loss positions in these transactions). This report should document the ability of the institution to fund delivery of the security throughout the rollover period when the transaction involves a dollar reverse repurchase agreement.

(3) The lack of adequate documentation for these transactions will be considered an unsafe and unsound practice under the general recordkeeping requirements in §§ 563.71–1 and 563.17–3 of this subchapter.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Reorg. Plan No. 3 of 1947, 3 CFR 1843–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J.J. Finn,
Secretary.

[FR Doc. 84–31935 Filed 12–6–84; 8:45 am]
BILLING CODE 6720–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 35a

[LR–151–83, LR–179–84]

Sanctions on Issuers and Holders of Registration-Required Obligations not in Registered Form and Application of the Repeal of 30 Percent Withholding by the Tax Reform Act of 1984 and of Information Reporting and Backup Withholding in Light of Such Repeal; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on two proposed regulations. One of the two proposed regulations (LR–151–83) relates to the definition of the term "registration-required obligation" with respect to obligations issued to certain foreign persons and the imposition of sanctions on issuers issuing registration-required obligations in bearer form, and to the imposition of sanctions on persons holding registration-required obligations in bearer form. The other proposed regulations (LR–179–84) relate to the application of information reporting and backup withholding pursuant to the repeal of 30 percent withholding by the Tax Reform Act of 1984.

DATES: The public hearing will be held on Monday, January 28, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, January 14, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Buidling, 1111 Constitution Avenue NW, Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–151–83, LR–179–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: One of the two subjects of the public hearing is proposed regulations under Treasury Regulations §§ 1.163–5(c), 1.165–12 and

1.1287–1. The proposed regulations appeared in the **Federal Register** for Wednesday, August 22, 1984 (49 FR 33276).

The second subject of the public hearing is proposed regulations under Treasury Regulations § 35a.9999–5. The proposed regulations appeared in the **Federal Register** for Wednesday, August 22, 1984 (49 FR 33275).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Monday, January 14, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,
Director, Legislation and Regulations Division.

[FR Doc. 84–32039 Filed 12–6–84; 8:45 am]
BILLING CODE 4830–01–M

26 CFR Parts 41 and 48

Heavy Vehicle Use Tax; Credits and Refunds of the Tax on Diesel Fuel

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to proposed rule.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 49 FR 44300 of the proposed regulations relating to the imposition of tax on the use of heavy vehicles and relating to credits and refunds of the tax imposed on the sale of diesel fuel.

DATES: The proposed amendments that are the subject of this correction are proposed to be effective after June 30, 1984, except as otherwise provided. This correction is to be effective with respect to the same dates.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1984, the **Federal Register** published proposed amendments to the Excise Tax Regulations (26 CFR Part 41) under sections 4481, 4482, and 4483 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 513 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424, 96 Stat. 2177) and sections 901, 902, and 903 of the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984) (Pub. L. 98–369, 98 Stat. 1003). The document also contained proposed amendments to the Excise Tax regulations (26 CFR Part 48) under section 6427(b)(2) of the Code relating to an exemption from the tax imposed by section 4041 of the Code in the case of fuel used in certain buses, and under section 6427 (g) of the Code relating to a credit or refund to original purchasers of diesel-powered automobiles and light trucks. These last two amendments were proposed to conform the regulations to section 911 (b) and 915 of the Tax Reform Act of 1984, respectively.

Need for Correction

As published, the notice of proposed rulemaking incorrectly states the year "1984" rather than the year "1985" in designated § 41.4481–2(a)(2), in the seventh line under the heading "Example", in the first column of page 44304.

Correction of Publication

§ 41.4481–2 [Corrected]

Accordingly, the publication of the notice of proposed rulemaking which was the subject of FR Doc. 29182, is corrected by removing the language "1984" from the seventh line under the heading "Example", in designated § 41.4481–2(a)(2), in the first column of page 44304 and adding the language "1985" in its place.

George H. Jelly,
Director, Legislation and Regulations Division.

[FR Doc. 84–32040 Filed 12–6–84; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

Exploration for Nonenergy Minerals on the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (Department) is considering the desirability of issuing new regulations to govern exploration on the Outer Continental Shelf (OCS) for minerals other than oil, gas, and sulphur under the authority of the OCS Lands Acts. Comments and recommendations are requested from interested parties. The Minerals Management Service will consider relevant comments in determining the terms and conditions, benefits, costs, and probable consequences of such regulations.

This request is made in response to comments received from industry, environmental groups, interested parties, and other Federal Agencies on the Draft Environmental Impact Statement (EIS) for the Gorda Ridge, and from the Federal-State Task Forces which have been formed to evaluate the environmental, economic, and engineering potential of various areas.

DATE: Comments in response to this request should be postmarked or hand delivered no later than the close of business April 8, 1985.

ADDRESS: Comments may be mailed or delivered to Reid T. Stone, Assistant Associate Director for Strategic International Minerals, Department of the Interior, 11 Golden Shore, Suite 280, Long Beach, California 90802, telephone (213) 548–2901.

FOR FURTHER INFORMATION CONTACT: Andrew Bailey, Office of Strategic and Internal Minerals, Minerals Management Service 12203 Sunrise Valley Drive, Reston, VA 22091, (703) 860–6823.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the OCS Lands Act, the Secretary of the Interior is authorized to grant leases for minerals other than oil, gas, and sulphur on the OCS based on competitive bids and under such terms, conditions, royalties, and rentals as he/she may prescribe.

On March 10, 1983, President Reagan proclaimed an Exclusive Economic Zone (EEZ) for the ocean area within 200 nautical miles of the baseline from which the territorial sea of the United States including its territories is measured. The EEZ includes areas that may be favorable for a variety of strategic and critical materials including phosphates and minerals containing copper, lead, zinc, cobalt, nickel, silver, cadmium, titanium, and manganese. Recognizing the potential for the development of these domestic resources, the President declared in his State of the Union address of January 26, 1984, that the Department will encourage careful, selective exploration and production of our vital resources in the EEZ within the 200-mile limit off our coasts, but with strict adherence to environmental laws and with full State and public participation.

To aid in the evaluation of the environmental and management aspects of exploration for strategic, critical, and other minerals on the OCS the Department is reviewing the desirability of promulgating new regulations to govern these activities.

Although the regulations in 30 CFR Part 251 now govern exploration activities for nonenergy minerals, as well as oil, gas, and sulphur, separate regulations may enable the Department to better evaluate the environmental, economic, and management implications of possible exploration for nonenergy minerals on the OCS. Such action was requested in the public hearings on the Gorda Ridge draft EIS individuals, environmental, organizations, and State and Federal Agencies.

Coments are consequently requested as to whether regulations separate from those in 30 CFR Part 251 should be developed for prelease exploration for strategic, critical, and other minerals on the OCS and, if so, should they differ from 30 CFR Part 251. In particular, comments, suggestions, data, and recommendations are requested with respect to the inclusion and treatment in such regulation of the following:

(a) Area to be covered by a permit;
(b) Term of a permit;
(c) Terms and conditions;
(d) Applications requirements;
(e) Application fees;
(f) Exploration plans;
(g) Availability of data and information to MMS;
(h) Availability of data and information to the public;
(i) Appropriate role of adjacent States;
(j) Public participation;
(k) Limitations on exploration activities;
(l) Environmental considerations;
(m) Drilling, coring, and sampling activities;
(n) Inspection and observation of exploration activities;
(o) Suspension or cancellation of exploration permits;
(p) Violation of permit terms and enforcement of requirements; and
(q) Penalties and appeals.

Permits to conduct preliminary geological and geophysical (G&G) exploration activities for nonenergy minerals and materials on the OCS, using methods similar to those used in the exploration for oil, gas, and sulphur, may be obtained under the regulations at 30 CFR Part 251 *Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf*. Permits obtained under that part authorize G&G exploration including bottom sampling, core and test drilling, and under certain conditions, deep stratigraphic test drilling.

Further information concerning exploration for strategic, critical, and other minerals and permits available under 30 CFR Part 251 may be obtained as follows:

(a) For the OCS off the Atlantic OCS Coast—the Regional Supervisor for Offshore Resource Evaluation, Atlantic Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, telephone (703) 285–2165.

(b) For the OCS in the Gulf of Mexico—the Regional Supervisor for Offshore Resource Evaluation, Gulf of Mexico OCS Region, Minerals Management Service, P.O. Box 7944, Metairie, Louisiana 70010, telephone (504) 837–4720.

(c) For the OCS off the coast of the States of California, Hawaii, Oregon, and Washington—the Regional Supervisor for Offshore Resource Evaluation, Pacific OCS Region, Minerals Management Service, Room 160, 1340 West Sixth Street, Los Angeles, California 90017, telephone (213) 688–6857.

(d) For the OCS off the State of Alaska—the Regional Supervisor for Offshore Resource Evaluation, Alaska OCS Region, Minerals Management Service, P.O. Box 101159, Anchorage, Alaska 99510, telephone (907) 271–4361.

List of Subjects in 30 CFR Part 251

Continental shelf, Freedom of information, Public lands/minerals resources, Reporting and recordkeeping requirements, Science and technology.

(43 U.S.C. 1331 *et seq.*)

William D. Bettenberg,
Director, Minerls Management Service.

Dated: November 28, 1984.

[FR Doc. 84–31834 Filed 12–6–84; 8:45 am]
BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 84–12]

Drawbridge Operation Regulations; Duwamish Waterway, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is considering a change to the regulations governing the operation of the highway drawbridge across the Duwamish West Waterway at Southwest Spokane Street and the highway drawbridge across the Duwamish Waterway at First Avenue South, both in Seattle, Washington, by decreasing the three hour morning and evening closed periods by one hour each and providing exemptions to the closed periods for certain classes of vessels. This change will provide that, subject to certain exceptions, the draws of these bridges need not open for the passage of vessels between the hours of 6:30 a.m. and 8:30 a.m. and between 3:45 p.m. and 5:45 p.m., Monday through Firday, except for federal holidays. The draws of the Southwest Spokane Street bridge will open at any time for a vessel of 1,000 gross tons and over, a vessel towing a vessel of 1,000 gross tons and over, and a vessel proceeding to pick up a vessel of 1,000 gross tons and over for towing. The draws of the First Avenue South bridge will open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over for towing. This proposal is being made because the opening to traffic of all lanes of the new West Seattle Freeway bridge provides an alternate route for uninterrupted vehicular traffic to and from West Seattle and destinations across the Duwamish Waterway to the east. This action should accommodate the needs of vehicular traffic and reduce the burden of lengthy closed periods on marine traffic.

Before publishing this notice of proposed rulemaking, the Coast Guard temporarily changed the regulations governing the operation of the Southwest Sponkane Street and First Avenue South bridges to conform with the proposed action in order to test the proposal. The temporary change was effective on September 19, 1984 and, unless extended, will terminate on November 18, 1984.

DATE: Comments must be received on or before January 22, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington, 98174. The comments and other materials referenced in this notice will be available for inspection and copying in Room 3564 at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information:

The drafters of this notice are John E. Mikesell, project officer, and Lieutenant Aubrey W. Bogle, project attorney.

Discussion of Proposed Regulations

Since 1978 when the northernmost of the two Spokane Street bridges across the Duwamish West Waterway was struck by a vessel and subsequently removed, three hour morning and evening closed periods have been in effect for the remaining Spokane Street bridge and the First Avenue South bridge. Prior to that time two hour closed periods had been in effect. Extending the two hour closed periods to three hours and eliminating closed period exemptions for vessels of 5,000 tons and over was necessary to accommodate the increase in peak hour vehicular flows caused by the elimination of the four travel lanes of the damaged bridge.

A new high level, six-lane, fixed span, highway bridge has been constructed over the Duwamish waterway and was recently opened to traffic. The six lanes of the high level bridge and the four lanes of the existing Spokane Street bridge provide ten lanes for vehicular traffic in the Spokane Street corridor. This is two more than existed before the 1978 accident which resulted in removal of the northernmost Spokane Street bridge. The six lanes of the high level bridge will provide for unobstructed traffic flow between West Seattle and Seattle. The four lanes of the Spokane Street bridge primarily will provide access from the west to the businesses on Harbor Island.

Navigation interests who use the Duwamish Waterway requested that the Coast Guard reduce the length of the closed periods once the high level bridge was fully open to traffic. Therefore, concurrent with the high level bridge opening to traffic, the Commander, Thirteenth Coast Guard District approved a temporary change to the operating regulations which reduced the length of the closed periods and granted exemptions to closed periods for vessels of 5,000 tons or more. This temporary regulation was published in the **Federal Register** (49 FR 30071), and was in effect from July 7, 1984 through September 4, 1984. It provided that the draws of the Southwest Spokane Street bridge and the First Avenue South bridge need not open for the passage of vessels, except for vessels of 5,000 tons or more, from 6:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays. The temporary regulation was used by the Coast Guard to evaluate the effects of the change before proposing a permanent rule change.

Three comments were received by the Coast Guard in response to the temporary regulation. One commercial user of the waterway recommended that closed period restrictions for both the Southwest Spokane Street and First Avenue South bridges be eliminated completely for commercial vessels regardless of size. The local port authority and a group of commercial waterway users requested that the exemption to closed period restrictions for the Southwest Spokane Steet bridge be extended to include vessels of 1,000 gross tons and over. Another user of the waterway indicated that the 5,000 gross ton exemption should be made permanent.

Our review of information supplied by the bridge owner and waterway users, summarized below, indicated that closed period exemptions for the Southwest Spokane Street bridge could be extended to include vessels of 1,000 gross tons and over without significantly disrupting vehicular traffic over the bridge.

The opening of the new high level bridge to traffic has reduced the average daily vehicular traffic volumes on the Southwest Spokane Street bridge by about 60% in the westbound direction and by about 80% in the eastbound direction. However, traffic volumes on the First Avenue South bridge, although slightly reduced, have not undergone a significant change. Our analysis of vessel traffic on the waterway indicates that closed period openings for the Southwest Spokane Street bridge would average about 13 per month for vessels of 1,000 gross tons and over. If the closed period exemption were to include tugs proceeding to pick up a vessel of 1,000 gross tons or over for towing, the number of closed period openings could increase to about 26 per month, or roughly one per day. Closed period openings for the First Avenue South bridge would average about 7 per month for vessels of 1,000 gross tons and over, and about 1 to 2 per month for vessels of 5,000 gross tons and over.

Because of the relatively low traffic volumes on the Southwest Spokane Street bridge and the existence of an alternate route through the Spokane Street corridor, it appears that an operating regulation that exempts vessels of 1,000 gross tons and over, vessels towing vessels of 1,000 gross tons and over, and vessels proceeding to pick up vessels of 1,000 gross tons or over for towing, would provide for the reasonable needs of navigation and not unreasonably affect vehicular traffic movement in the Spokane Street corridor. With the high volume of vehicular traffic on the First Avenue South bridge, a 5,000 gross ton exemption seems more appropriate.

Based upon our analysis of information received during the period of the first temporary regulation, the Commander, Thirteenth Coast Guard District continued and modified the temporary regulations by extending the closed period exemptions to include additional classes of vessels. This modified temporary regulation provides that: the draws of the Southwest Spokane Street bridge open at any time for a vessel of 1,000 gross tons and over, a vessel towing a vessel of 1,000 gross tons and over, and a vessel proceeding to pick up a vessel of 1,000 gross tons

(e) Application fees;
(f) Exploration plans;

Service, P.O. Box 101159, Anchorage, Alaska 99510, telephone (907) 271-4361.

of lengthy closed periods on marine traffic.

and over for towing; and the draws of the First Avenue South bridge open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over for towing. This modified temporary regulation was published in the Federal Register (49 FR 39157), and became effective on September 19, 1984. The temporary regulation terminates on November 16, 1984. It is contemplated that it will be extended beyond its current termination date to allow the affected bridges to continue to operate under its terms during the public comment period for this proposed rule. No comments concerning the current temporary regulation have been received. However, the final rule may be changed based upon comments received to this proposed rule.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the improvement to vehicular traffic flow brought about by the new high level bridge between Seattle and West Seattle, and the fact that the high level bridge provides an alternate, uninterrupted route for vehicular traffic during periods when the other bridges across the waterway may be required to open for the passage of vessels. Based on the foregoing, closed period openings of the Southwest Spokane Street and First Avenue South bridges for the authorized classes of vessels should not have a significant effect on vehicular traffic movement. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, Part 117 of Title 33 Code of Federal Regulations, is amended by revising § 117.1041(a)(1) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.1041 Duwamish Waterway.

(a) * * *

(1) The draws of the Southwest Spokane Street bridge, mile 0.3, and the First Avenue South bridge, mile 2.5, need not be opened for the passage of vessels from 6:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, except as follows:

(i) The draws of the Southwest Spokane Street bridge shall open at any time for a vessel of 1,000 gross tons and over, a vessel towing a vessel of 1,000 gross tons and over, and a vessel proceeding to pick up a vesssel of 1,000 gross tons and over for towing.

(ii) The draws of the First Avenue South bridge shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over for towing.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: November 21, 1984.

Harold W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 18th Coast Guard District.

[FR Doc. 84-31856 Filed 12-6-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50521; FRL-2655-5]

Disubstituted Diamino Anisole; Proposed Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for chemical substance which was the subject of premanufacture notice (PMN) P-83-822 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that this substance may be hazardous and that uncontrolled manufacture, processing, import, distribution in commerce, use, or disposal may result in significant human or environmental exposure.

DATE: Written comments should be submitted by February 5, 1985.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-50521. Nonconfidential versions of comments received on this proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit XV of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB control number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject to the same requirements and procedures as a PMN submitted under section 5(a)(1(A) of TSCA which are interpreted at 40 CFR Part 720 published in the Federal Register of May 13, 1983 (48 CFR 21722). In particular, these include the information submission requirements of section 5 (b) and (d)(1), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and (f). If EPA does not take regulatory action under section 5, 6, or 7 to control certain activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the Federal Register its reasons for not taking action.

Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting

section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs are covered by TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127 and 127.28 published in the Federal Register of August 1, 1983 (48 FR 34734). The EPA policy in support of these requirements appears at 40 CFR 707 published in the Federal Register of December 13, 1983 (48 FR 55462).

II. Applicability of General Provisions

EPA promulgated general provisions applicable to SNURs under 40 CFR part 721, Subpart A, published in the Federal Register of September 5, 1984 (49 FR 35011). EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble. Interested persons should refer to that document for a detailed discussion of the general provisions.

III. Summary of This Proposed Rule

The chemical substance subject to this proposed rule is identified generically as disubstituted diamino anisole. It was the subject of PMN P-83-822. EPA is proposing to designate the following as significant new uses of disubstituted diamino anisole:

1. Manufacture or processing of the substance as an intermediate without establishing a program whereby: (a) Persons employed by or under the control of the manufacturer or processor who may be exposed to P-83-822 (including those persons involved in sampling, transferring, cleanup, maintenance, packaging, and storage operations) wear protective gloves determined to be impervious to disubstituted diamine anisole, and (b) packages containing the substance (including those storing the substance between manufacturing and processing stages) are labeled to indicate that the PMN substance should be handled only while using gloves determined to be impervious to the substance. Gloves must be determined to be impervious to the substance by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves.

2. Use other than as an intermediate. "Intermediate" is defined in the PMN rules which were published in the Federal Register on May 13, 1983 (48 FR 21722).

IV. Background

On June 9, 1983, EPA received a PMN which the Agency designated as P-83-822. EPA announced receipt of the PMN in the Federal Register of June 24, 1983 (48 FR 29048). The notice submitted stated that the substance, disubstituted diamino anisole, will be used as a site-limited dye intermediate.

The notice submitter claimed the following as confidential business information (CBI): The submitter's identity, the specific chemical identity, and the estimated production volume. The PMN submitter originally identified the substance as trisubstituted aniline. Later, the PMN submitter cooperated with the Agency in arriving at the more specific generic chemical name being used for this rulemaking.

Under section 14(a)(4) of TSCA, the Agency may disclose confidential information relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its generic name and PMN number.

In the PMN, the notice submitter provided the following acute toxicity data:

LD_{50}, oral (rat)—>500 mg/kg.
LD_{50}, dermal—>1000 mg/kg.
Eye irritation (rabbits)—none.
Skin irritation—slight.
Skin sensitization potential—none.

EPA's general literature searches provided no additional information on the toxicity of the substance itself; however, on the basis of data on structurally analogous substances which have been found to be animal carcinogens, the Agency believes P-83-822 may be a carcinogen. Due to the substance's lipophilicity and low molecular weight, P-83-822 is expected to be moderately well absorbed via all routes. Extensive metabolism of the substance is expected to occur in the liver. This is expected to result in a metabolite which is analogous to a known carcinogen, the identity of which is not being revealed here because to do so could reveal the confidential identity of P-83-822.

P-83-822 will be used by the PMN submitter as a sitelimited dye intermediae. During manufacturing and processing of P-83-822, workers could be dermally exposed to the substance at levels which may result in adverse health effects. The use of gloves determined to be impervious to the substance will greatly reduce the level of worker exposure to P-83-822. On the basis of information exposure to the substance will be low. Environmental releases would not likely be significant.

The Agency concluded that the uncontrolled manufacture, processing, and distribution in commerce of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that use of appropriate protective equipment will protect persons exposed to the substance from any unreasonable risk during the use of the substance as an intermediate. The Agency negotiated a section 5(e) consent order with the notice submitter which requires the use of impervious gloves, specifies certain packaging and labeling restrictions and limits use other than as an intermediate until data are available to more accurately determine the risks associated with the substance. The order became effective February 29, 1984.

By issuing a section 5(e) consent order which allows controlled commercial production of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substance until additional data are submitted. At the same time, such an approach protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated wtih the substance.

Section 5(e) orders apply to the notice submitter. When the notice submitter commences commercial manufacture of the substance and submits a notice of commencement of manufacture to EPA, the Agency will add the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture or process the substance without controls or for other uses. Therefore, EPA is proposing to designate manufacture or processing of the substance for use as an intermediate without the use of impervious gloves by workers and labeling of packages containing P-83-822 and used other than as an intermediate as significant new uses so that the Agency can review those uses before they occur.

The Agency's evaluation of the risks associated with P-83-822 was conducted on the basis of information available to it at the time of the PMN submission. Therefore, the proposed significant new uses relate directly to the information contained in the PMN, especially the intended use. EPA determined that, without the controls on exposure, packaging, and labeling.

manufacture and processing for use as an intermediate may present an unreasonable risk of injury to human health. The section 5(e) consent order requires the PMN submitter to make use of certain controls. Manufacture and processing for use as an intermediate without using these controls would increase worker exposure to a potentially hazardous substance. EPA has concluded that this change in exposure would be significant in light of the health concerns associated with P–83–822.

The section 5(e) consent order prohibits the PMN submitter from distributing the substance to others, thereby limiting its use to site-limited intermediate applications. Once the substance is added to the Inventory, another person would be able to manufacture, import, or process the substance for non-intermediate uses. An intermediate is a substance which is created as a result of a chemical reaction and which is consumed in a later chemical reaction which creates another substance. Because intermediates are consumed at the site of their use and not distributed in commerce as part of mixtures or articles (except possibly as an impurity), the possibility of potential public and consumer exposure to intermediates is very limited when compared to non-intermediate chemical substances. In addition, intermediates are generally not subjected to numerous downstream processing operations; thus, the potential for worker exposure is relatively low. Non-intermediate uses are likely to change the nature and extent of worker exposure by adding new routes of exposure or by increasing the duration or magnitude of exposure. Given the Agency's concerns about this substance, EPA has concluded that such changes may be significant. The Agency wishes to receive reporting on non-intermediate uses so that it may evaluate the risks which may be presented by those uses before they occur. Therefore, EPA is also proposing to designate use other than as an intermediate as a significant new use of P–83–822.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance; if necessary, action can then be taken to ensure that persons will not be exposed to levels of P–83–822 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute a significant new use of this substance, EPA considered relevant information about the toxicity of the substance and potential exposures associated with possible uses (such as uses other than those allowed under the section 5(e) order) and the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential uses might change the magnitude and duration of exposure of humans to P–83–822. Based on these considerations, EPA proposes to define the significant new uses as set forth in Unit III of this preamble.

EPA has already determined in the section 5(e) order that unrestricted manufacture, processing, and distribution in commerce of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the use of the substance would be significant.

VI. Alternatives

EPA considered regulatory alternatives to a SNUR to ensure protection of human health.

1. One alternative EPA considered would be to promulgate a section 8(a) reporting rule for the substance. Under such a rule, EPA could require any person to report to EPA before manufacturing, importing, or processing the substance. Because the substance is subject to a section 5(e) order, the small business exemption of section 8(a) would not apply. However, the use of section 8(a) rather than section 5(a) SNUR authority has drawbacks in this particular instance. If EPA received a report under section 8(a) indicating that a person intended to manufacture or process the substance without the use of gloves and the required labeling, or for a use other than as an intermediate, the Agency could not take immediate action under section 5(e), as it can under a SNUR, and therefore would not be able to regulate the substance pending development of information. Rather, in a situation such as this, EPA would have to consider regulating the substance under TSCA section 6 which would require a separate rulemaking action. Moreover, in view of the current lack of health effects data on P–83–822, EPA first would likely have to obtain test data on the substance under section 4 of TSCA to support an action under section 6. This approach could allow unnecessary risk to human health during the time need for data development. In addition, the original notice submitter would be at a competitive disadvantage because the section 5(e) order applies only to that company. It is not the intent of EPA in the PMN process to create unfair marketplace conditions.

2. The Agency also has the authority to regulate substances under section 6 of TSCA. However, the Agency may regulate under section 6 only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to health. There is insufficient information to perform a reasoned evaluation of the health effects of P–83–822 at this time. Therefore the Agency cannot state with certainty that the substance "presents or will present" an unreasonable risk. In this instance, because the Agency has issued a section 5(e) order, EPA can state that the substance "may present" an unreasonable risk of injury to health. However, the Agency cannot regulate the substance under section 6 at this time.

3. As an alternative to the second proposed significant new use definition, the Agency is considering defining as a significant new use the failure to establish a program whereby the substance is treated as a hazardous chemical substance under the Occupational Safety and Health Administration (OSHA) Hazard Communication Standards (29 CFR 1900.1200). In all labels, material safety data sheets, and employee training programs, the substance would be required to be identified as a suspect carcinogen and the use of impervious gloves by employees who may be exposed to the substance would be required.

4. The Agency is also considering creating an abbreviated review for persons who propose to employ alternative exposure controls or worker protection equipment which may provide equivalent protection during manufacture and processing for use as an intermediate. Under this approach, the second significant new use would be defined as the failure to establish a program whereby persons who may be exposed to the substance are required to use gloves which are determined to be impervious to the substance or requiring the use of exposure controls or protective equipment which provides the "equivalent" protection. Persons would be required to notify EPA of the alternative controls to receive (in a specified time period which is shorter than 90 days) confirmation from the Agency that the protection provided by the equipment is "equivalent." If EPA determined that the protection was not "equivalent," significant new use reporting would be required.

EPA invites comment on this proposal and the alternatives.

VII. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA, that, in addition to the requirements in § 721.17, the following records be maintained for five years after the date of their creation, by persons who manufacture or process P–83–822:

1. The results of any determination of glove imperviousness.

2. The names of persons required to wear gloves.

As an alternative, the Agency is considering requiring manufacturers and processors of the substance who do not trigger the SNUR reporting requirement to maintain records demonstrating their compliance with the SNUR. Therefore, manufacturers and processors would have the discretion to determine which records are needed to show compliance.

The Agency considered omitting case-specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them.

Although section 5(a)(2) of TSCA does not explicitly provide for recordkeeping of the type in § 721.120(b)(1) of this proposed rule, EPA finds that such recordkeeping is necessary to implement and enforce effectively the requirements of the SNUR. Two TSCA authorities support the recordkeeping in this proposed rule. First, EPA believes there is inherent authority in section 5 to require the keeping of records reasonably necessary to implement the mandate of section 5. EPA has already exercised this authority in the PMN rule recordkeeping requirements in 40 CFR 720.70 and 721.17 of the general SNUR provisions. Clearly, there is no way to determine whether a manufacturer or processor is undertaking a significant new use of the type defined in this proposed rule unless the manufacturer or processor is required to keep records of its activities to show that the significant new use has not occurred. EPA would otherwise be unable to determine whether a violation has occurred, unless the manufacturer or processor was observed in violation.

Second, section 8(a) of TSCA provides broad authority for EPA to require manufacturers and processors of chemical substances to keep records. Generally, a section 8(a) recordkeeping requirement does not apply to small manufacturers and processors, but in this case a section 5(e) order is in effect for the chemical substance in question. Thus, under section 8(a)(3)(A)(ii) of TSCA, EPA can require recordkeeping by small manufacturers and processors as well and is proposing to do so.

VIII. Exemptions to Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis the Agency may modify these provisions in Subpart B. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA published its final premanufacture notification rules in the Federal Register of May 13, 1983, (48 FR 21722) including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule pending further rulemaking to revise the provisions. Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance, EPA lacks the authority under section 12(a) of TSCA to require reporting of such manufacture or processing for a significant new use. EPA does not yet have sufficient information to make the "will present an unreasonable risk" finding necessary to regulate a substance manufactured or processed solely for export. However, persons must notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, the persons would be exempt from reporting under this SNUR if a person manufactures (the term manufacture includes import) or processes the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such manufacture and processing would not be "solely for export" because manufacture or processing would be for use in the U.S.

IX. Applicability of Proposal To Uses Occuring Before Promulgation of Final Rule

To establish a significant new use rules, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has recently undergone premanufacture review. When the notice submitter begins manufacture of the substance, the submitter will send EPA a notice of commencement of manufacture and the substance will be added to the Inventory. The notice submitter is prohibited by the section 5(e) order from undertaking any of the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemcial substance subject to this SNUR is added to the Inventory, it may be manufactured or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "new" at the time the rule is promulgated as final, and therefore not significant new uses. EPA finds that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commerical activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption, and persons who commence a proposed significant new use do so at their own risk.

Because the indentity of P–83–822 is confidential, any person who proposes to manufacture or import P–83–822 is unlikely to know that the substance is on the Inventory and, therefore, is likely to submit a *bona fide* request under either 40 CFR 710.7(e) or 720.85(b) to determine whether the substance is on the Inventory. If EPA determines that the person has a *bona fide* intent to manufacture or import the substance and that the substance the person proposes to manufacture or import is P–83–822, EPA will inform the person that the substance is subject to this proposal. This will give the person adequate notice of this proposal, will give the person an adequate change to comment, and will help prevent potential disruption.

X. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not requiring to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of this substance, a more reasoned evaluation of the risks posed by this substance would require additional data on its potential to cause carcinogenic effects in humans. These data might be generated by a two-year rodent bioassay. These studies may not be the only means of addressing the potential risks.

EPA encourages potential SNUR notices submitters to test the substance for this concern. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e). As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792 published in the **Federal Register** of November 29, 1983 (48 FR 53923). EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

XI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. The only direct costs that will definitely occur as a result of promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. It is estimated the Agency's cost of issuing a SNUR are $42,150. The Agency would also incur enforcement costs, although EPA cannot quantify these costs at this time.

Subsequent to promulgation of the SNUR, the Agency believes there are five possible outcomes for persons who would manufacture, import, or process the substance: (1) A person could manufacture or process the substance for use as an intermediate with the specific protective equipment in place and therefore not trigger the SNUR reporting requirement, (2) a person could submit a SNUR notice with information showing other methods of controlling exposure that will mitigate EPA's concerns, (3) a person could submit a SNUR notice for manufacture, import, or processing the substance for a use other than as an intermediate, (4) a person could submit a SNUR notice with the results of the recommended testing completed or be prepared to respond to a section 5(e) order pending completion of testing, or (5) a person could decide not to manufacture or process the substance because of the restrictions imposed by the SNUR. The costs of these outcomes are summarized below.

If a person decides to manufacture or process P–83–822 for use as an intermediate with the specified protection equipment, that person will not incur the cost of submitting a SNUR notice. The only cost to the person will be the cost of specific protective equipment, labeling, recordkeeping, and glove imperviousness testing. Protective equipment and recordkeeping costs are presented as present value costs over an estimated life of the chemical, since these are recurring expenses. For purposes of this analysis, the Agency assumed that five workers would be exposed to P–83–822 over 38 days a year. Each worker would be required to wear gloves (determined to be impervious to P–83–822). Assuming a 10 percent interest rate, and a ten-year economic life for P–83–822, the present value of protective equipment for five workers is $1,030.75 (assuming the price of gloves is $30.50 per pair, with yearly replacement of gloves based on 38 days per year of production over a ten-year period). The present value of the cost of developing a new label, if necessary, over a ten-year period, could range between $150 and $550. The present value of the cost of maintaining records over a ten-year period is $1,460 (assuming one hour per month of clerical time). Permeation tests, which can be used to determine if the gloves are impervious to the PMN substance, have been estimated to cost $500 per test substrate, and may cost up to $8,000 to $10,000 if different manufacturing conditions are tested. EPA will incur only enforcement cost once the SNUR has been promulgated.

In some circumstances it would be cost effective for a company to submit a SNUR notice for use as an intermediate with data which shows that other means of controlling exposure could mitigate EPA's concerns. Under this outcome, the person would incur the cost of filing the SNUR notice ($1,375 to $7,950) and possibly the costs of some exposure controls which would ordinarily not be used without the existence of a SNUR. The person could also incur up to a 3.2 percent reduction in profits due to delays in manufacture or processing, and the cost of regulatory follow-up, if any. EPA's costs following promulgation of the SNUR under this outcome would include reviewing the SNUR notice ($6,865) and possibly modifying the terms of the SNUR ($8,430) if the information provided showed that EPA's concerns would be adequately addressed by the use of a different type of exposure control. EPA would continue to incur enforcement costs.

A person intending to manufacture, import, or process P–83–822 for a use other than as an intermediate would be required to submit a SNUR notice. That person would incur the cost of filing an notice ($1,375 to $7,950), the costs of delaying manufacture, import, or processing of the substance, if any, while the SNUR notice is prepared and reviewed (up to a 3.2 percent reduction in profits), the costs of changes in production and marketing plans because of the uncertainty impact of a SNUR, and the costs of regulatory follow-up, if any. EPA's costs following promulgation of the SNUR under this outcome would include reviewing the SNUR notice ($6,865) and possibly the cost of modifying the terms of the SNUR ($8,430) if the information provided showed that modification of the SNUR were warranted.

It is possible that a person could file a SNUR notice which would include the results of the recommended testing. A more reasoned evaluation of the risk posed by the substance could be generated as the result of a two-year rodent bioassay. In this case, a person would incur the cost of filing a notice ($1,375 to $7,950), performing the tests (the present value over a three year payment plan for a two-year bioassay is approximately $689,000), the cost of delay (probably a delay in profits of 2.5 to 3.0 years), and the cost of regulatory follow-up, if any. The cost of this option is expected to be prohibitive.

Some persons could find the cost of controlling exposure too expensive to justify manufacture or processing of P–83–822. Under this outcome a person would not incur any direct costs as a result of the SNUR. The person and society could lose the benefits that would have been derived from the manufacture or processing of the substance. However, the fact that the original PMN submitter intends to manufacture P–83–822 with the protective equipment in place indicates that the intended use of the substance will still return an acceptable profit.

EPA has not attempted to quantify the benefits of the proposed SNUR. In general, benefits will accrue if the proposed action leads to the identification and control of an unreasonable risk before significant health effects can occur. The proposal and promulgation of the SNUR provides the benefits of reduced health risks until production or processing of P–83–822 ceases.

XII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the persons seeking review resides or has its principle place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**. The effective date will be calculated from the promulgation date.

XIV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50521). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for this substance.
2. The **Federal Register** notice of receipt of the PMN.
3. A copy of the section 5(e) consent order.
4. The economic analysis of the proposed rule.
5. The toxicity support document for the section 5(e) order.
6. The economic support document for the section 5(e) order.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E–107, 401 M St., SW., Washington, D.C.

XV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it does not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit XIII of the preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance subject to it, EPA believes that there will be a few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: November 15, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that Part 721 of Chapter I of Title 40 be amended by adding § 721.120 to read as follows:

§ 721.120 Disubstituted diamino anisole.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance, referred to by its PMN number and generic chemical name, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: disubstituted diamino anisole, P–83–822.

(2) The significant new uses are:

(i) Use other than as an intermediate.

(ii) Manufacture or processing of P–83–822 for use as an intermediate without establishing a program whereby:

(A) Persons employed by or under the control of the manufacturer or processor who may be exposed to P–83–822 (including those persons involved in sampling, transferring, cleanup, maintenance, packaging, and storage operations) wear protective gloves determined to be impervious to the substance by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves, and

(B) Packages containing the substances (including those storing the substance between manufacturing and processing stages) are labeled to indicate that the substance should be handled only while using gloves determined to be impervious to the substance.

(b) *Specific requirements.* The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers and processors of the chemical substance identified in paragraph (a)(1) of this section who are subject to § 721.120(a)(2) must maintain the following records for five years from their creation:

(i) The results of any determination of glove impervious...

(ii) The names of persons required to wear gloves...

(2) [Reserved]

(Sec. 5.8, P.L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604, 2607))

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 84–31985 Filed 12–6–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–11; Notice 10]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to Safety Standard No. 108 that would allow motor vehicles to be equipped with replaceable bulb headlamp systems consisting of either four lamps with single standardized replaceable light sources, or two lamps with two such light sources. Currently Standard No. 108 only permits replaceable bulb systems comprised of two lamps with single standardized light sources. The proposed amendment would relieve the current design restriction that allows only two lamp single light source systems.

This rulemaking action implements the agency's grant of a petition for rulemaking by General Motors Corporations. It also responds to a petition by Volkswagen of America previously denied. Because of the need of the petitioners to implement product planning, a comment period of 30 days is provided, rather than 45 days.

DATE: Comment closing date for the proposal is January 7, 1985. Any request for an extension of time in which to comment must be received not later than 10 days before that date (49 CFR 553.19). Effective date of the amendment would be within 30 days after publication of the final rule in the Federal Register.

ADDRESS: Comments should refer to the docket number and notice number of the notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2720).

SUPPLEMENTARY INFORMATION: On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, to allow the use of a replaceable bulb headlamp system. (48 FR 24690). This system is comprised of two headlamps, each with a standardized replaceable light source containing both an upper and lower beam filament.

Among the petitions for reconsideration of the rule was one from Volkswagen of America, asking that a four-lamp system be allowed, each with its own light source, which would be the standard dual filament light source which the agency had adopted. NHTSA denied this petition (48 FR 44815), commenting that rulemaking which would allow dual filament light sources in a four lamp configuration, or two dual filament light sources in a single cavity could not be entertained until certain issues could be considered further. As the notice stated, these issues involved whether only two lamps should be illuminated on upper beam (in four lamp systems all four are presently required) and if so whether it is important that the front corner of the vehicle be otherwise indicated. Further issues concerned simultaneous actuation of light filaments in a headlamp system (this could produce excessive illumination) and uncertainties in the ability to insure correct simultaneous upper beam or lower beam aim if the bulb reflector systems were not separate upper and lower beam units. Subsequently, General Motors Corporation petitioned the agency for rulemaking to allow a two lamp system with two standard dual-filament light sources in a single cavity. The agency has granted that petition. As there is a similarity between the system that VW wished the agency to consider, and the one for which a petition has been granted, the two systems proposed by this notice are simply those incorporating quadruple light sources. The agency has reviewed the issues on which the previous denial was based, and they are presented for discussion and comment in this notice.

GM argues that the two source system it has requested will allow it greater freedom in designing aerodynamic front ends than the present standard for replaceable bulb headlamps. Under the present standard, considering the possible out-of-focus relationship of the filament to the focal point of the reflector in a current replaceable bulb headlamp, the headlamp's vertical dimensions may be greater than desirable for aerodynamic purposes. By installing two light sources in the same headlamp, a smaller height is possible if the lower and upper beam filament are placed exactly on the focal point of their respective parabolas. Benefits attributable by GM to this indented system include possible improvements in photometric performance and improved fuel economy through aerodynamic efficiency by lowering the leading edge of the hood, because of the inclusion of headlamps of lesser height.

Another benefit could occur because it is proposed that only one filament would be in use in each dual filament standardized replaceable light source in 4-lamp systems and 2-bulb systems. For example, should a lower beam filament burn out, the light source could be immediately interchanged with the adjacent upper beam light source, whose lower beam filament would not be utilized. After the exchange, the burned out lower filament would become irrelevant as the upper beam filament in that bulb would now be available for use.

Both existing photometrics and improved photometrics similar to those proposed for Types F sealed beam headlamps are proposed. Comments are solicited on each photometric option. GM would aim both bulbs in a single housing by a single adjustment, such as is currently used in the two lamp round and larger rectangular systems. The GM system can utilize the same aimer adapters that are available for single replaceable bulb headlamps.

Four-headlamp systems such as VW contemplates offer distinctive design possibilities which are similar but not identical to those offered by systems with two bulbs per lamp. NHTSA is proposing that four lamp replaceable bulb headlamp systems consist of two lamps providing upper beam photometrics, and two lamps providing lower beam photometrics. The reflectors of these lamps would be designed to optimize the lower beam filament at the focal point of the lower beam lamp reflector and optimize the lens prescriptions for dedicated lower beam use. The upper beam lamp would be optimized in a similar manner. This type of system has been proposed for the new smaller four-lamp sealed beam system (49 FR 18321). The dedicated lens prescription of each lamp would be marked "U" for upper beam, or "L" for lower beam, as appropriate. In conjunction with the option proposing improved photometrics, simultaneous use of the upper and lower beam would be permitted as a manufacturer's option, and new glare limits would be added to the photometric requirements to help minimize potential problems from excessive foreground light during simultaneous use.

Because of the shorter life of filaments producing the upper beam, the agency is proposing that the lower beam photometrics be met by lower beam filaments alone. For the same reason, it is proposed that simultaneous activation of both filaments in a single bulb be prohibited, since the bulb is not designed to be used in this manner, and bulb life would be shortened. As this proposed amendment affects the standardized replaceable bulb, it would be applicable to all lamp configurations using that bulb, including the two-lamp/one bulb per lamp system previously approved.

The agency has revised the wording describing the aiming pad prescription requirements, clarifying them and relieving design restrictions. In effect this means the agency is allowing headlamps which may utilize mechanical aimer adapters with 3 adjustable legs. Accordingly, it is proposed that Figures 9–1 and 9–2 be deleted and appropriate changes made in the text.

In addition to comments of the merits of the system proposed by this notice, the agency is also interested in comments relating to the relationship between headlamp replacement costs and safety. Although GM has told NHTSA that the replacement cost of the glass lens/plastic reflector assembly for its new lamps would be in the neighborhood of $35, the actual cost could be several times higher for low volume designs. If that cost were not subsidized by the manufacturer, it could well be over $100 per lamp. Current retail cost for a replacement light source at Ford dealers is $16.75. Therefore, since the same light source (bulb) would be used in the GM system, the total replacement cost for the GM system, including lens/reflector assembly, two light sources, and labor, is estimated at about $80. It is estimated that about one complete headlamp will need to be replaced over the lifetime of the vechicle due to accident or stone damage. Therefore the agency solicits specific comments on the following issues: The relationship between cost and the probability of replacement of headlamp or bulb, the time lag that may exist between outage and replacement because of costs, and the extent to which cost considerations of non-mandated headlamps should enter into the agency's rulemaking considerations. Finally, the agency asks for comments on whether the lifetime costs of non-mandated headlamp systems should enter into NHTSA deliberations.

Ford Motor Company, whose petition was implemented by the amendment (48 FR 24690), had emphasized to the agency that one of the primary safety benefits of the new type of headlamp was that the light source could be replaced without removal of the headlamp, replacement of the lens-reflector portion of the headlamp, or the necessity to reaim. With respect to the vehicle on which the system has been first installed, the Mark VII, bulb replacement is a simple matter of opening the hood, finding the rear of the headlamp, disengaging the old bulb by a twist of it in its mounting, and replacing it in a similar manner. Recently, the agency was informed by General Motors that it intends to use replaceable bulb headlamps on a number of its 1986 model car lines, but that on two of these lines, the light source cannot be replaced without removing the headlamp itself. Since this situation was not envisioned with replaceable bulb headlamps, the agency would like comment on this issue; that is, is there a relationship between vehicle safety and the ability to replace the bulb without tools. The agency desires a quantitative assessment, to the extent practicable.

NHTSA also seeks comment on the possibility of problems with aligning optical aiming equipment with lamps which have more than one bulb.

In implementation of the considerations discussed above, NHTSA is proposing that the definition in paragraph S3 of "replaceable bulb headlamp" be amended to include headlamps with two standardized replaceable light sources. It should be noted that this light source is the only allowable light source for use in achieving the required upper or lower headlamp beam pattern. Under NHTSA interpretations, however, the standardized replaceable light source is not the only light source which may be included in a replaceable bulb headlamp unit. Other light sources, such as parking lamps, turn signal lamps, and fog lamps are not prohibited, as long as they do not interfere with the required headlighting function.

The agency also wishes to clarify the language in the standard regarding several of the testing requirements. The agency intends that headlamps utilizing the standardized replaceable bulb shall be able to meet the applicable performance requirements of Standard 108 with any standardized replaceable bulb intended for use in that lamp. Thus, for example, lamps must be able to pass the tests referenced in paragraph S4.1.1.36(b) not only with the bulb used as original equipment in that lamp but

(2804, 2807))

(202–426–2720).

installing two light sources in the same

minimize potential problems from

enter into NHTSA deliberations.

as original equipment in that lamp but

also with bulbs from other manufacturers intended for use in that lamp. Since most replaceable bulbs will be sold in the aftermarket and not as original equipment (assuming the same distribution of sales as for sealed sealed beams), this requirement is necessary to ensure the proper functioning of the headlamp so that it meets the need for motor vehicle safety. Specifications on the bulb itself, already promulgated by the agency, ensure that manufacturers have a reasonable design envelope within which to produce their lenses and reflectors. This clarification would result in a minor amendment to paragraph S4.1.1.36(b).

NHTSA is proposing that a headlamp with two light sources or a lamp in the system of four replaceable bulbs meet the upper and lower beam photometrics requirements of Table I of SAE J579c or new photometric requirements in proposed Figures 17 and 18. A final decision will be made between these two choices. The agency is proposing also that the aim of the upper beam of dual light source headlamps cannot be adjusted separately from that of the lower beam light source. This proposal applies only to headlamp systems which are comprised of two headlamps and contain two bulbs in each headlamp. In these instances, there is only one set of aiming pads on each lamp, yet there are two bulb reflector sets in that lamp. If both upper and lower beam lamps are not aimed simultaneously—that is, with a single aiming adjustment—then consumers, or repair facilities, would not be able to aim the lamp using the aiming pads but would be required to disassemble the lamp to separately adjust each reflector. This proposal, which is applicable only to the aforementioned two lamp, four bulb system ensures that proper headlamp aiming, which the agency has traditionally considered necessary for motor vehicle safety, is achievable with current aiming equipment. It is further proposed that the lower beam be produced by a filament with an average life of 320 hours, the equivalent of the current lower beam light source filament. Paragraph S4.1.1.36(d) would be modified under the proposal to check for lens deflection in front of each bulb following the internal heat test.

In adopting replaceable bulb headlamp systems, the agency, in S4.1.1.39 required, for the period July 1, 1983, to July 1, 1984, that each vehicle be equipped with a spare bulb as part of its original equipment. The agency noted that it anticipated that replaceable bulbs should be readily available through normal distribution channels at the end of the one year period. The agency is satisfied that such bulbs are available and is, *pro forma*, proposing the deletion of S4.1.1.39, which has expired.

Similarly, the agency adopted paragraph S8 to require, until July 1, 1984, that each vehicle also be furnished with adapters for mechanical aiming devices. The agency is convinced that sufficient adapters are available and that there should be no problems in inspection and aiming of motor vehicles with replaceable bulb headlamps which are not provided with these adapters. Therefore, NHTSA also proposes, *pro forma*, deletion of paragraph S8, which is no longer in effect.

New paragraphs would be added to S4.5 to guarantee that only appropriate filaments will be energized. For systems which use four standardized replaceable light sources, it is proposed that Tables II and IV be amended to state that the outermost light source (in a two-lamp system) or outermost lamp (in a four-lamp system) be used to produce the lower beam. This serves to mark the width of the vehicle during low beam use, as a cue to oncoming drivers.

Paragraph S6.7, relating to temperature and internal heat tests, would be modified for multiple bulb headlamps. Both upper and lower beam photometrics would have to be met after each test. During the hot cycle, the highest combination of filament wattages capable of being used would be energized simultaneously (*e.g.*, fog lamps, parking lamps, turn signal lamps).

Paragraph S6.8, relating to the humidity test, would be amended to add temperature tolerances to the final phase of the test which have heretofore been inadvertently omitted. Currently 73 °F., the agency proposes a tolerance of +7−0 °F (38+4−0 °C). In addition the agency proposes reducing the excessively large tolerances on the humidity tolerance from ±10% to +5%−0% and the temperature from ±9°F to +9−0°F (+4−0°C). This is being done to increase test result repeatability and make the test requirement more definitive.

On Figure 4–1, one aiming pad was misidentified as a Class II pad; that would be corrected. In addition, this Figure would be amended to illustrate the proposed definition of aiming reference plane. The title of Figure 4–2 would be modified to reflect its use as an example. Figure 7 would be changed to permit a wider test box since some headlamps would not fit into one of 18 inches width; 24 inches is proposed.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a regulatory evaluation has been prepared and placed in the public docket. Since use of the proposed headlamps is optional, the proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in use of headlighting systems.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Because of the necessity of vehicle, headlamp, and bulb manufacturers to plan production and distribution on an orderly basis, it is tentatively found that an effective date earlier than 180 days after issuance of the final rule would be in the public interest.

The engineer and lawyer primarily responsible for this proposal are Jere Medlin and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and Rubber products, Tires.

PART 571—[AMENDED]

§ 571.108 [Amended]

In consideration of the foregoing, it is proposed that 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* be amended as follows:

1. A new definition "Aiming Reference Plane" would be added to Section S3 *Definitions* to read as follows:

"Aiming Reference Plane" means a plane which is perpendicular to the longitudinal axis of the vehicle and tangent to the forwardmost aiming pad on the headlamp.

2. The definition of "Replaceable Bulb Headlamp" in Section S3 *Definitions* would be revised to read:

"Replaceable bulb headlamp" means a headlamp comprising a bonded lens and reflector assembly and one or two standardized replaceable light sources.

3. In paragraph S4.1.1.36 the words "or four" would be added between the word "two" and the phrase "replaceable bulb headlamps".

4. In paragraph S4.1.1.36, the last sentence of subsection (a)(2) would be removed and the following three sentences added:

Except as provided in subparagraph (a)(3), a whole number, which represents the distance in tenths of an inch (i.e., 0.3 inch=3) from the aiming reference plane to the aiming pads which are not in contact with the plane, shall be inscribed adjacent to each respective aiming pad on the exterior of the lens face. In the event that there is interference between the plane and the portion of the lens between the aiming pads, values shall be inscribed on the lens next to each aiming pad which are the dimensions to a secondary plane. The secondary plane shall be parallel to the aiming reference plane and shall be located as close to the lens as possible without interference.

5. A new paragraph (a)(3) would be added to paragraph S4.1.1.36 to read:

S4.1.1.36(a)(3) If the most forward aiming pad is the lower inboard aiming pad, then the dimensions may be placed anywhere on the exterior lens surface. The dimension for the outboard aiming pad (Dimension F in Figure 4) shall be followed by the letter "H" and the dimension for the center aiming pad shall be followed by the letter "V." The dimensions shall be expressed in tenths of an inch.

6. Paragraph (b) of paragraph S4.1.1.36 would be revised to read:

(b) Each replaceable bulb headlamp shall meet the following sections of the specified SAE Standards and Recommended Practices with any standardized replaceable light source intended for use in such headlamp.

7. The following amendments would be made to achieve a headlighting system utilizing existing photometric requirements.

a. Paragraph (b)(2) of paragraph S4.1.1.36 would be revised to read:

(2) Section 3.1—Test Voltage, and Section 3.5—Photometric Design Requirements, excluding Table 2, of SAE J579c "Sealed Beam Headlamp Units for Motor Vehicles" December 1978. The term "aiming plane" in paragraph 3.5 of SAE J579c shall mean "aiming reference plane."

b. A new paragraph (e) would be added to S4.1.1.36 to read:

(e)(1) There shall be no adjustment mechanism that allows individual standardized replaceable light source or reflector aim adjustment on a headlamp with two standardized replaceable light sources.

(2) Lower beam photometrics shall be provided by a filament with an average life of not less than 320 hours.

(3) The lower and upper beams of a headlamp system consisting of two lamps, each containing two standardized replaceable light sources, shall be provided as follows:

(i) The lower beam shall be produced in one of the following ways:

(A) By the outboard light source (or the upper one if arranged vertically) designed to conform to the lower beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978; or

(B) By both light sources designed to conform to the lower beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978; or

(B) By both light sources, designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978.

(4) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single standardized replaceable light source, shall be provided as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirement of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978. The lens of each such headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically) designed to conform to the upper beam requirements of Table I of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978. The lens of each such headlamp shall be permanently marked with the letter "U".

(iii) Each such headlamp manufactured as replacement motor vehicle equipment shall be designed to meet the requirements of paragraphs (e)(4)(i) and (e)(4)(ii) of this section.

c. A new paragraph S4.5.8 would be added to read:

S4.5.8 The lower and upper beams of a headlamp system consisting of four lamps, each containing a single

normal distribution channels at the end

NHTSA has considered this proposal and has determined that it is not major

accompanied by a cover letter setting forth the information specified in the

standardized replaceable light sources.

sources.

lamps, each containing a single

standardized replaceable light source, shall not be activated simultaneously.

8. The following amendments would be made to achieve a headlighting system using modified photometrics in the lower and upper beams.

a. Paragraph (b)(2) of S4.1.1.36 would be revised to read:

(2) Section 3.1—Test Voltage, and Section 3.5—Photometric Design Requirements, excluding Table 2 of SAE J579c *Sealed Beam Headlamp Units for Motor Vehicles*, December 1978, and replacing Table 1 with Figure 17 for two lamp systems with one replaceable light sources per lamp; and by Figure 18 for four lamp systems with one replaceable light source per lamp. The term "aiming plane" in paragraph 3.5 of SAE J579c shall mean "aiming reference plane."

b. In paragraphs (d)((1), (d)(3), (d)(5), (d)(6)(A), (d)(6)(B), and (d)(7) of paragraph S4.1.1.36, the words "of SAE J579c 'Sealed Beam Headlamp Units for Motor Vehicles', December 1978" would be removed and the words "applicable to the headlamp system under test" substituted.

c. A new paragraph (e) would be added to S4.1.1.36 to read:

(e)(1) There shall be no adjustment mechanism that allows individual standardized replaceable light source or reflector aim adjustment on a headlamp with two standardized replaceable light sources.

(2) Lower beam photometrics shall be provided by a filament with an average life of not less than 320 hours.

(3) The lower and upper beams of a headlamp system consisting of two lamps, each containing two standardized replaceable light sources, shall be provided as follows:

(i) The lower beam shall be produced in one of the following ways:

(A) By the outboard light source (or the uppermost if arranged vertically) designed to conform to the lower beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to the upper beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17.

(4) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single standardized replaceable light source, shall be provided as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically) designed to conform to the lower beam requirements of Figure 18. The lens of each such headlamps shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically) designed to conform to the upper beam requirements of Figure 18. The lens of each such headlamp shall be permanently marked with the letter "U".

(iii) Each such headlamp manufactured as replacement motor vehicle equipment shall be designed to meet the requirements of paragraphs (e)(4)(i) and (e)(4)(ii) of this section.

d. A new paragraph S4.5.8 would be added to read:

S4.5.8 On a motor vehicle equipped with a headlighting system comprising four replaceable bulb headlamps, the filaments of the lamps marked "L" may be permanently wired to remain activated when the filaments of the lamps marked "U" are activated.

e. Paragraph S6.1 would be revised to read:

S6.1 Photometry. A headlamp shall be tested according to paragraph S3.5, Photometric Design Requirements, and Table 1 of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles*, Dec. 1978, or by Figure 17 or 18 of Standard 108, as applicable, after the tests specified in S6.2, S6.4, S6.6, S6.7.1., S6.7.2, and S6.8.

9. Paragraph S4.1.1.37 would be revised to read:

S4.1.1.37 Each lens-reflector unit manufactured as replacement equipment for a replaceable bulb headlamp system shall conform to the requirements of S4.1.1.36 when any standardized replaceable light source is inserted in it. [Note: This proposes conformance with S4.1.1.36 under each of the proposed amendments to S4.1.1.36 under paragraphs 7 and 8 above.]

10. Paragraphs (A) and (B) of paragraph S4.1.1.36(d)(6) would be revised by adding the words "of each standardized replaceable light source" between the phrases "mechanical axis" and "with the exterior surface of the lens".

11. Paragraph S4.1.1.39 and paragraph S8 would be removed.

12. New paragraphs S4.5.9. and S4.5.10 would be added to read:

S4.5.9 The wiring harness or connector assembly of a replaceable bulb headlamp with two standardized bulbs or a four-lamp replaceable bulb headlamp system shall be designed so that the filaments not intended to be used with the lens prescription in front of such filament shall not be illuminated.

S4.5.10 The filaments in a dual filament standardized replaceable light source shall not be activated simultaneously except momentarily when switching between beams.

13. Paragraphs S6.7 and S6.8 would be revised to read:

S6.7 *Temperature and internal heat tests*—A headlamp with one replaceable standardized light source shall be tested according to S6.7.1(a) and S6.7.2(a). A headlamp with two standardized replaceable light sources shall be tested according to S6.7.1(b), S6.7.1(c), S6.7.2(b) and S6.7.2(c).

S6.7.1 *Temperature cycle*

S6.7.1(a) *Test for a headlamp with one standardized replaceable light source.* A headlamp, mounted on a headlamp test fixture, shall be exposed to 10 complete consecutive thermal cycles having the thermal cycle profile shown in Figure 6. During the hot cycle, the highest combination of filament wattages that are intended to be used simultaneously in the headlamp, (*e.g.*, simultaneous use of upper beam, fog lamp, parking lamp, turn signal lamp), shall be energized at design voltage commencing at point "A" of Figure 6 and deenergized at point "B". Separate or single test chambers may be used to separate the temperature environment described by the thermal cycle profile. All drain holes, breathing devices or other designed openings of the headlamp shall be in their normal operating positions.

S6.7.1(b) *Test for the lower beam of a headlamp with two standardized replaceable light sources.* A headlamp mounted on a headlamp test fixture, shall be exposed to 10 complete consecutive thermal cycles having the thermal cycle profile shown in Figure 6. During the hot cycle the highest combination of filament wattages that are intended to be used simultaneously in the headlamp when operating on lower beam (*e.g.*, simultaneous use of lower beam, fog lamp, parking lamp, turn signal lamp) shall be energized at design voltage simultaneously commencing at point "A" of Figure 6 and deenergized at point "B". Separate or single test chambers may be used to generate the temperature environment described by the thermal cycle profile. All drain holes, breathing devices or other designed openings of the headlamp shall be in their normal operating positions.

S6.7.1.(c) *Test for the upper beam of a headlamp with two standardized replaceable light sources.* A headlamp mounted on a headlamp test fixture shall be exposed to 10 complete consecutive thermal cycles having the

thermal cycle profile shown in Figure 6. During the hot cycle the highest combination of filament wattages, that are intended to be used simultaneously when the headlamp is operating on upper beam, (*e.g.* simultaneous use of fog lamps, parking lamps, and turn signal lamps) shall at design voltage be energized simultaneously commencing at point "A" of Figure 6 and deenergized at point "B". Separate or single test chambers may be used to generate the temperature environment described by the thermal cycle profile. All drain holes, breathing devices or other designed openings of the headlamp shall be in their normal operating positions.

S6.7.2 *Internal Heat Test*

S6.7.2(a) *Test for a headlamp with one standardized replaceable light source.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric output at the test point H–V of the upper beam to 25±2% of the output originally measured in the upper beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the same conditions under which the original measurement was made.

(2) After the determination has been made that the photometric output of the lamp has been reduced as specified in S6.7.2(a)(1), the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to that indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7–0°F (35+4–0°C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on upper beam shall be energized simultaneously commencing at point "A" of Figure 6 and deenergized at point "B". Separate or single test chambers may be used to generate the temperature environment described by the thermal cycle profile. All drain holes, breathing devices or other designed openings of the headlamp shall be in their normal operating positions.

(3) The lamp shall be returned to a room ambient temperature of 73+7–0°F (23+4–0°C) and relative humidity of 30±10%. The lens shall then be cleaned. Photometric output of the lamp on the upper beam shall be determined according to S6.1.

S6.7.2.(b) *Test of the lower beam of a headlamp with two standardized replaceable light sources.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric output at the test point ½°D–1½°R of the lamp to 25 ± 2% of the output originally measued in the lower beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the same conditions under which the original measurement was made.

(2) After the determination has been made that the photometric output of the lamp has been reduced as specified in S6.7.2(b)(1) the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to that indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7–0°F (35+4–0°C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on lower beam shall be energized simultaneously for one hour in a still air condition, allowing the temperature to rise from 95°F (35°C).

(3) The lamp shall be returned to a room ambient temperature 73+7–0°F (23+4+0°C) and relative humidity of 30±10%. The lens shall then be cleaned. The photometric output of the lamp on lower beam shall be determined according to S6.1.

S6.7.2(c) *Test of the upper beam of a headlamp with two standardized replaceable light sources.*

(1) The lens surface of the headlamp that would normally be exposed to road dirt shall be sprayed uniformly with any appropriate mixture of dust and water or other material to reduce the photometric putput at the test point H–V of the lamp to 25±2% of the output originally measured in the upper beam photometric test under S4.1.1.36(b). Such reduction shall be determined under the same conditions under which the original measurement was made.

(2) After the determination has been made that the photometric output of the lamp has been reduced as specified in S6.7.2(c)(1) the lamp and its mounting hardware shall be mounted in an environmental test chamber in the manner similar to that indicated in Figure 7 "Dirt-Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 95+7–0°F (33+4–0°C) and then the highest combination of filament wattages that are intended to be used simultaneously when operating on upper beam shall be energized simultaneously for one hour in a still air condition, allowing the temperature to rise from 95°F (35°C).

(3) The lamp shall be returned to a room ambient temperature 73+7–0°F (23+4+0°C) and relative humidity of 30±10%. The lens shall then be cleaned. The photometric output of the lamp on the upper beam shall be determined according to S6.1.

S6.8 *Humidity.* The headlamp mounted on a test fixture shall be placed in a controlled environment consisting of a temperature of 100+7–0°F (38+4–0°C) with a relative humidity of 90–0+5%. All drain holes, breathing devices, and other designed openings shall be in their normal operating positions. The headlamp shall be subjected to 20 consecutive 6-hours test cycles. In each cycle, it shall be energized at design voltage with the highest combination of filament wattages that are intended to be used, and then de-energized for 5 hours. After completion of the last cycle, the lamp shall be soaked for 1 hour at 73+7–0°F (20+4+0°C) and relative humidity of 30±10% before it is removed for photometric testing. The headlamp shall be tested for photometrics at 10±1 minutes following completion of the humidity test.

14. In Tables II and IV, Column 2 for the Headlamps would be revised to read:

Headlamps providing the upper beam, at the same height, 1 on each side of the vertical centerline; headlamps providing the lower beam, at the same height, 1 on each side of the vertical centerline, as far apart as practicable. If a single lower beam filament is used in a headlamp with two standardized replaceable light sources, such filament shall be the farthest filament form the vertical centerline.

15. Figure 4–1 would be revised as follows:

by the outboard lamp (or upper one if of such filament shall not be illuminated. consecutive thermal cycles having the

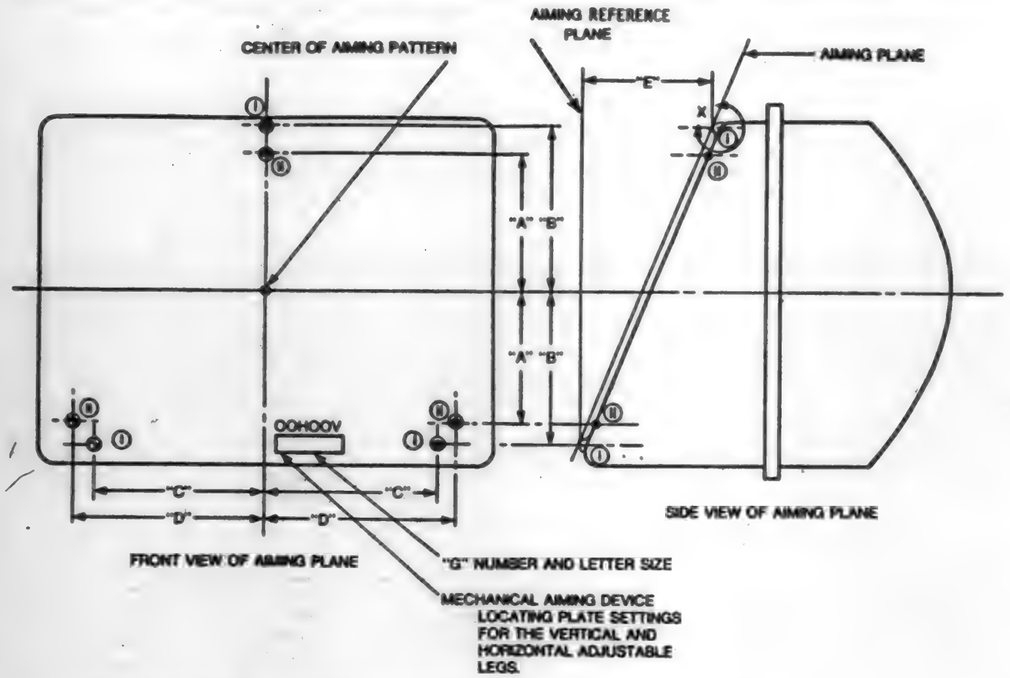


Figure 4-1. Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units

16. The title of Figure 4–2 would be amended by removing the words "Dimensional * * * Units" from the heading.

17. In Figure 7 the width of the Block Box would be changed from "16W" to "24W".

18. Figures 9–1 and 9–2 would be removed.

19. New Figures 17 and 18 would be added as follows:

FIG. 17.—PHOTOMETRIC TEST POINT VALUES

[2-lamp systems]

Test points deg. [1]	cd. max.	cd. min.
Upper beam:		
2U–V		1,500
1U–3R and 3L		5,000
H–V	75,000	40,000
H–3R and 3L		15,000
H–6R and 6L		5,000
H–9R and 9L		3,000
H–12R and 12L		1,500
1½D–V		5,000
1½D–9R and 9L		2,000
2½D–V		2,500
2½D–12R and 12L		1,000
4D–V	12,000	
10U–90U [2]	125	

FIG. 17.—PHOTOMETRIC TEST POINT VALUES—Continued

[2-lamp systems]

Test points deg. [1]	cd. max.	cd. min.
1U–1½L to L	700	
½U–½L to L	1,000	
½D–1½L to L	3,000	
1½U–1R to R	1,400	
½U–1R to 3R	2,700	
½D–1½R	20,000	10,000
1D–6L		1,000
1½D–2R		15,000
1½D–9L and 9R		1,000
2D–15L and 15R		850
4D–4R	12,500	
1D–V		5,000

[1] A tolerance of ±¼ deg in location may be allowed for at any test point.
[2] From the normally exposed surface of the lens face.

FIG. 18.—PHOTOMETRIC TEST POINT VALUES

[4-lamp systems]

Test points deg. [1]	cd. max.	cd. min.
Upper beam:		
2U–V		1,500
1U–3R and 3L		5,000
H–V	70,000	40,000
H–3R and 3L		15,000
H–6R and 6L		5,000

FIG. 18.—PHOTOMETRIC TEST POINT VALUES—Continued

[4-lamp systems]

Test points deg. [1]	cd. max.	cd. min.
H–9R and 9L		3,000
H–12R and 12L		1,500
1½D–V		5,000
1½D–9R and 9L		2,000
2½D–V		2,500
2½D–12R and 12L		1,000
4D–V	5,000	
10U–90U [2]	125	
1U–1½L to L	700	
½U–1½L to L	1,000	
½D–1½L to L	3,000	
1½U–1R to R	1,400	
½U–1R to 3R	2,700	
½D–1½R	20,000	10,000
1D–6L		1,000
1½D–2R		15,000
1½D–9L and 9R		1,000
2D–15L and 15R		850
4D–4R	12,500	
1D–V		5,000
4D–V	7,000	
H–V	5,000	

[1] A tolerance of ±¼ deg in location may be allowed for at any test point.
[2] From the normally exposed surface of the lens face.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on December 4, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84–31940 Filed 12–4–84; 2:07 pm]
BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 49, No. 237
Friday, December 7, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Wenatchee, Washington, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATE: Meeting on January 8, 1985, 1:30 p.m. to 2:30 p.m.

Comments must be received no later than February 7, 1985.

ADDRESSES: Meeting location Mezzanine Conference Room, Federal Building, 301 Yakima Street, Wenatchee, Washington.

Written comments and further information will be addressed to: State Director, FmHA, Post Office Box 2427, Federal Building, Wenatchee, Washington 98801 (509–662–4353).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Washington State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Washington. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if posible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: December 3, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84–32010 Filed 12–6–84; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Colville National Forest Grazing Advisory Board; Meeting

The Colville National Forest Grazing Advisory Board will meet at 1:00 p.m. on December 18, 1984 at the Federal Building conference room, 695 South Main, Colville, Washington. The purpose of this meeting is to discuss range allotment management planning and to review the projects which will receive funding from the Range Betterment Fund monies in 1985.

The meeting is open to the public. Persons who wish to attend should notify Gary Oliverson, Colville National Forest, 695 South Main, Colville, WA 99114. Written statements may be filed with the committee before or after the meeting.

Dated: November 14, 1984.

William D. Shenk,

Forest Supervisor.

[FR Doc. 84–31989 Filed 12–6–84; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Navesink Watershed, Monmouth County, NJ; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Navesink Watershed, Monmouth County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, Telephone (201) 246–1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the enivronment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement includes the installation of conservation practices for erosion control and livestock waste management.

The Notice of a Findings of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: November 29, 1984.

Joseph C. Branco,

State Conservationist.

[FR Doc. 84–31938 Filed 12–6–84; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Material Imporation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have filed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 83–361. Applicant: DHHS/PHS/Food and Drug Administration, Washington, DC 20204. Instrument: Automatic Sampler 1, Dosage Syringe & Sample Capillaries. Date of denial without prejudice to resubmission August 31, 1984.

Docket Number: 84–63. Applicant: Sandia National Laboratories, Albuquerque, NM 87185. Instrument: Gas Analysis Mass Spectrometer, MAT 271/45. Date of denial without prejudice to resubmission: July 9, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Program Staff.

[FR Doc. 84–31972 Filed 12–6–84; 8:45 am]

BILLING CODE 3510–DS–M

National Technical Information Service

Intent To Grant Exclusive Patent License; American BioMed, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to American BioMed, Inc. having an office in Houston, Texas, an exclusive right to practice the inventions embodied in U.S. Patent Application Serial No. 6–647,728, "Improved Toposcopic Catheter and Method of Fabrication." The patent rights in this invention are being assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and agrument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84–31990 Filed 12–6–84; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Man-Made Fiber Textile Products From the People's Republic of China

December 4, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 11, 1984. For further information contact Jane Corwin, International Trade Specialist (202) 377–4212.

Background

A CITA directive establishing import limits for specified categories of cotton and man-made fiber textile products, including Category 635, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1984, was published in the **Federal Register** on December 22, 1983 (48 FR 56826). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, the restraint limit for man-made fiber coats in Category 635 is being increased to 433,013 dozen by the application of flexibility in the form of carryforward for the agreement year which began on January 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** no December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 4, 1984

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain specified categories of cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1984.

Effective on December 11, 1984, the directive of December 19, 1983 is hereby further amended to adjust to previously established restraint limit for Category 635 to 433,013 dozen[1] under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983:[2]

The Committee for the Implementation of Textile Agreements has determined that this actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–31973 Filed 12–6–84; 8:45 am]

BILLING CODE 3510–DT–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

[1] The Agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more that 5 percent of it square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to reflect any imports exported after December 31, 1983.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments Must be Received on or Before: January 9, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 6850

Cleaning compound, Windshield: 6850–00–926–2275

Class 7105

Frame, Picture, Wood: 7105–00–051–1212 (10"×14"), 7105–00–052–6886 (11"×14")

Class 7530

Paper, Looseleaf, Blank: 7530–00–286–6983, 7530–00–335–6964

Index Sheet Set, Looseleaf Binder: 7530–00–160–8474, 7530–00–160–8475, 7530–00–160–8476, 7530–00–959–4441

Class 8340

Line, Tent, Manila: 8340–00–556–9689, 8340–00–252–2291

Class 9310

Paper, Index: 9310–00–955–0217, 9310–00–160–7835, 9310–01–074–4408, 9310–00–926–4541, 9310–00–555–4068

SIC 7349

Janitorial/Custodial, Fort Bliss Exchange, Main Store—Building 1735, Fort Bliss, Texas

SIC 7389

Commissary Shelf Stocking and Custodial, Griffiss Air Force Base, New York

Commissary Shelf Stocking and Custodial, George Air Force Base, California

Deletion

It is proposed to delete the following service from Procurement List 1985, October 19, 1984 (49 FR 41195):

SIC 7389

Commissary Shelf Stocking, Naval Station, Treasure Island, San Francisco, California

C.W. Fletcher,

Executive Director.

[FR Doc. 84–31981 Filed 12–6–84; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1985; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1985 commodities to be produced by and a service to by provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: December 7, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped: Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 29, July 9, July 20 and September 14, 1984 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 26790, 49 FR 27969, 49 FR 29441 and 49 FR 36133) of proposed additions to the deletion from Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small enitities to produce the commodities and to provide the service produced by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1985:

Class 7520

Marker, Tube Type: 7520–00–138–7981

SIC 7349

Janitorial Service, U.S. Courthouse, 1010 Fifth Avenue, Seattle, Washington

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodity is hereby deleted from Procurement List 1985:

Class 8415

Mask, Extreme Cold Weather: 8415–00–243–[illegible]

C.W. Fletcher,

Executive Director.

[FR Doc. 84–31980 Filed 12–6–84; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Determinations of Active Military Service and Discharge; Civilian or Contractual Personnel

In accordance with Pub. L. 95–202, Section 401 (The G.I. Bill Improvement Act of 1977) and under the provisions of DODD 1000.20, "Determinations of Active Military Service and Discharge: Civilian or Contractural Personnel," the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on September 5, 1984, that the service of the members of the group known as the Naval Support Activity Civilians Who Actively Participated in the Defense of Hue During the 1968 Tet Offensive not be considered active military service in the Armed Forces of the United States for all laws administered by the Veterans Administration. For further information contact Lt Col Dandar, telephone 692–4744, Office of the Secretary of the Air Force Personnel Council (SAF/MIPC), The Pentagon, Wasington, DC 20330.

Norita C. Koritko,

Air Force Federal Register, Liaison Officer.

[FR Doc. 84–31983 Filed 12–6–84; 8:45 am]

BILLING CODE 3910–01–M

Surface Quality Control; Intent To Grant Exclusive Patent License

Pursuant to the provisions of Part 101–4 Title 41, Code of Federal Regulations (47 FR 34148, August 6, 1982), the Department of the Air Force announces its intention to grant to Surface Control Quality of Orem, Utah, limited exclusive license under United States Patent No. 4,381.151 entitled "Hand-Holdable Contamination Tester" issued April 26, 1983 to Tennyson Smith.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the Patent may be obtained for one dollar ($1.00) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, S.W. Washington, D.C. 20324–1000, Telephone No. 202–693–5710.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–31982 Filed 12–6–84; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Record of Decision; Stationing of a Seventeenth Active Component Division

AGENCY: Department of the Army, DOD.

ACTION: Availability of record of decision.

SUMMARY: This announces the availability of a Record of Decision regarding the Final Environmental Impact Statement on the Department of the Army's stationing of a seventeenth Active Component division, now designated the 10th Infantry Division.

SUPPLEMENTARY INFORMATION: On November 16, 1984 the Secretary of the Army approved the stationing of a new light infantry division, the Army's seventeenth Active Component division at Fort Drum, NY, with stationing on an interim basis of an infantry brigade with associated support units at Fort Benning, GA until facilities at Fort Drum become available. This new division, now designated the 10th Infantry Division, will be "rounded out" with one of its infantry brigades and associated support units drawn from the Army Reserve Components. Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR 1505.2) direct the preparation of a public Record of Decision concerning decisions reached on actions considered in Environmental Impact Statements. The stationing of a new light infantry division and its potential environmental impact have been discussed in the final environmental documents filed by the Department of the Army with the Environmental Protection Agency, as announced on September 28, 1984 (49 FR 38330, 38355–38356). The Record of Decision summarizes stationing alternatives considered in making the decision, basis for selection of the approved stationing alternative, and measures which will be undertaken to minimize environmental effects.

Interested individuals or organizations may obtain copies of the Record of Decision for this action by contacting: U.S. Army Engineer District, Mobile, ATTN: James B. Hildreth, (SAMPD–EE), P.O. Box 2288, Mobile, AL 36628, Telephone (205) 694–4141.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 84–31851 Filed 12–06–84; 8:45 am]

BILLING CODE 3710–08–M

Record of Decision; Stationing of an Eighteenth Active Component Division

AGENCY: Department of the Army, DOD.

ACTION: Availability of record of decision.

SUMMARY: This announces the availability of a Record of Decision regarding the Final Environmental Impact Statement on the Department of the Army's stationing of an eighteenth Active Component division, now designated the 6th Infantry Division.

SUPPLEMENTARY INFORMATION: On November 16, 1984 the Secretary of the Army approved the stationing of a new light infantry division, the Army's eighteenth Active Component division at Forts Wainwright and Richardson, Alaska. Under this decision, the 172nd Infantry Bridgade and support units currrently stationed at Forts Wainwright and Richardson will be restructured to become the nucleus of the 6th Infantry Division. This new division will also be "rounded out" with one of its infantry brigades and associated support units drawn from the Army Reserve Components. Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR 1505.2) direct the preparation of a public Record of Decision concerning decisions reached on actions considered in Environmental Impact Statements. The stationing of a new light infantry division and its potential environmental impact have been discussed in the final enviornmental documents filed by the Department of the Army with the Environmental Protection Agency, as announced on Septaember 28, 1984 (49 FR 38330–3833–1, 38355–3835–6). The Record of Decision summarizes stationing alternatives considered in making the decision, basis for selection of the approved stationing alternative, and measures which will be undertaken to minimize environmental effects.

Interested individuals or organizations may obtain copies of the Record of Decision for this action by contacting: U.S. Army Engineer District, Mobile, ATTN: James B. Hildreth, (SAMPD-EE), P.O. Box 2288, Mobile, AL 36628, Telephone (205) 694–4141.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 84–31941 Filed 12–6–84; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Proposed U.S. Navy Surface Action Group Homeport Facility, Stapleton-Fort Wadesworth Complex, Stapleton, Staten Island, NY; Additional Public Hearings on Proposed U.S. Navy Surface Action Group Homeport Facility, Stapleton-Fort Wadsworth Complex, Stapleton, Staten Island, NY

The U.S. Navy has prepared and filed with the U.S. Environmental Protection Agency (EPA), a Draft Environmental Impact Statement (DEIS) for the proposed Surface Action Group homeport facility. The DEIS has been distributed to various New York State and local agencies, interest groups, media, and public libraries. Copies of the DEIS may also be viewed during normal business hours (8:00 a.m.–4:30 p.m.) at Naval Station, New York (207 Flushing Avenue, Brooklyn, New York).

A public hearing was held on December 4th and 5th, 1984 at the College of Staten Island (Sunnyside Campus) to inform the public of the study's findings and to solicit comments on the Navy's proposed homeport facility and allow the U.S. Army Corps of Engineers (COE) to obtain the data of concern to the public interest which will provide a basis for their decision making process.

Because of the public interest in this project, the Navy has scheduled additional hearings to solicit public

comment on the proposed U.S. Navy Surface Action Group Homeport Facility. The dates, times, and location for the additional hearings are as follows:

December 18, 1984, 6:30 p.m. to approximately 12:00 a.m., 1 Police Plaza, New York City, NY 10038

December 19, 1984, 6:30 p.m. to approximately 12:00 a.m., Monmouth College, Pollak Auditorium, Building 500, West Long Branch, NJ 07764.

These additional hearings, co-chaired by the U.S. Navy and the U.S. Army Corps of Engineers, will be conducted in accordance with the National Environmental Policy Act, Council of Environmental Quality regulations, and the following regulations:

- ☐ Section 10 of the River and Harbor Act of 1899 (33 U.S. 403)
- ☐ Section 404 of the Clean Water Act (33 U.S.C. 1344)
- ☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413)

Work: Construction of a Surface Action Group (SAG) Homeporting Facility.

Waterway: The Narrows, New York Harbor.

Location: Stapleton and Fort Wadsworth, Staten Island, Richmond County, New York.

The U.S. Navy will apply for the COE construction permits following the decision by Secretary of the Navy on the proposed action.

Refer to the Public Notice for this proposed project distributed on/about November 2, 1984 for a description of the work requiring a COE permit and the associated drawings.

All interested parties are invited and are urged to be present or represented at these hearings including representatives of Federal and non-Federal agencies; commercial, business, industrial, transportation, and utilities agencies; civic, ecological, and environmental groups; fish and wildlife organizations; interested and concerned citizens and other interests. All parties will be afforded full opportunity to express their views, but in order to allow all an opportunity to speak, statements should be limited to 10 minutes. If longer statements are to be presented, they should be delivered in writing either at the hearing or mailed to the office listed below and summarized at the Public Hearings. Full consideration will be given to the views of responsible agencies, groups, and citizens.

To ensure order during the hearing, the following speaker sequence will be followed:

1. Hearing Officer's opening remarks
2. Federal elected officials or their representatives
3. Federal agencies' representatives and appointed federal officials
4. State elected officials or their representatives
5. State agencies' representatives and appointed State officials
6. County elected officials
7. County agencies' representatives and appointed county officials
8. Local government officials
9. Organized environmental groups' representatives
10. Organized citizen groups representatives
11. Private citizens

Oral statements will be heard and transcribed by a stenographer, but for accuracy of record all statements should be submitted in writing. Written statements can be delivered to Navy representatives at the hearing or may be mailed to the following office address: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Attn: Code 202E, Philadelphia Naval Base, Building 77–L, Philadelphia, PA 19112–5094.

All statements, both oral and written, will become part of the official written record. The public hearing will be printed verbatim. Copies of the transcripts may be purchased from the department of the Navy. The cost of the copies will correspond directly to the number of pages enclosed within the transcript. Copies will also be available for public inspection at the COE Library (26 Federal Plaza, New York City), and Naval Station New York (207 Flushing Avenue, Brooklyn).

Written comments will be accepted by the Navy until December 21, 1984. Comments received after that date will not be addressed in the Navy's Final Environmental Impact Statement.

Written comments concerning the issuance of a permit by the COE will be accepted by the Army until January 2, 1985.

The decision to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the activity must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the activity will be considered including the cumulative effects thereof; among those are cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production, and in general, the needs and welfare of the people.

For additional information, please refer to the Public Notice distributed on/about November 2, 1984 or contact Mr. Robert Ostermueller at telephone number 215–897–6257.

Dated: December 5, 1984.

William F. Roos, Jr.,

Lt, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 84–33085 Filed 12–6–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements; Romania

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–IA–133, for the supply of one gram of uranium enriched to 1.532% in U–235, one gram of uranium enriched to 4.949% in U–235, one gram of uranium enriched to 19.811% in U–235, and one gram of uranium enriched to 49.383% in U–235, for use as standard reference material for an IAEA technical assistance program in Bucharest, Romania.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 3, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–31945 Filed 12–6–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. GT85–5–000]

ANR Pipeline Co.; Proposed Changes in F.E.R.C. Gas Tariff

November 29, 1984

Take notice that on November 21, 1984, ANR Pipeline Company ("ANR") tendered for filing Original Sheet Nos. 1 through 115 to its F.E.R.C. Gas Tariff, Original Volume No. 1 to be effective November 1, 1984.

ANR states that the sole purpose of this filing is to reflect its new corporate name in lieu of its former name, Michigan Wisconsin Pipe Line Company, as fully more described by the Federal Energy Regulatory Commission's Notice of Redesignation issued on May 16, 1984.

ANR further states that copies of this filing were served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol, NE., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31909 Filed 12–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7343–001]

Birch Creek Hydro, Inc.; Surrender of Preliminary Permit

December 3, 1984.

Take notice that Birch Creek Hydro, Inc., permittee for the proposed North Fork Oak Creek Project No. 7343, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 27, 1983, and would have expired on September 30, 1985. The project would have been located on North Fork Oak Creek, near Independence, in Inyo County, California.

The Permittee filed the request on October 9, 1984, and the preliminary permit for Project No. 7343 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31885 Filed 12–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–127–000]

Central Vermont Public Service Corp.; Notice of Filing

November 29, 1984.

The filing Company submits the following:

Take notice that on November 16, 1984, Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a System Agreement (the Agreement) between the Boston Edison Company (BE) and CVPS. The Agreement, dated August 18, 1984, provides for the sale of energy (A "Transaction") from the CVPS system to BE and the purchase by BE of energy from the CVPS system.

The Agreement provides that the parties will determine prior to 11:00 a.m. of the day preceding the commencement of a Transaction during the term of the Agreement whether it is economically advantageous to the parties that a sale, pursuant to the Agreement, take place during that day or week.

BE shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by BE for the preceding month by the energy reservation rate in dollars/MWH for each transaction occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in that month. The energy charge shall be based upon the forecasted incremental energy cost adjusted for transmission losses to the delivery point.

In order to permit BE to achieve the mutual benefit of this Agreement, CVPS hereby requests that the Commission, waive the sixty-day notice period and permit the rate schedule filed herewith to become effective on August 27, 1984. The waiver, if granted, will have no effect upon purchasers under any other rate schedule. If said, waiver is not granted, the parties to the Agreement will have to defer receiving the benefits accruing from the Agreement, i.e. their respective systems will be compelled to operate at less than-optimum economic efficiency.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as their respective Public Service Boards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31910 Filed 12–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–138–000]

Central Vermont Public Service Corp.; Notice of Filing

November 30, 1984.

The filing Company submits the following:

Take notice that on November 16, 1984, Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a System Sales & Exchange Agreement (the Agreement) between the Boston Edison Company (BE) and CVPS. The Agreement, dated August 18, 1984, provides for the exchange of a portion of the CVPS system capacity and associated energy for an equal entitlement in capacity from the BE system (an "Exchange").

The Agreement provides that the parties will determine not less than twelve (12) hours prior to such Exchange

whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, take place during that day or week.

BE shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by BE for the preceding month by the energy reservation rate in dollars/MWH for each transaction occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in the month. The energy charge shall be based upon the forecasted incremental system energy cost adjusted for transmission losses to the delivery point.

CVPS shall pay BE for each month an Exchange occurs, an energy charge which shall be the sum of each of the hourly energy charges for each of the hours of exchange in such month. The hourly energy charge shall be the product of (1) the NEPEX Replacement Fuel Price for the Exchange Units; (2) the full load average heat rate of the Exchange Units as recorded to NEPEX on Form NX12 (expressed in BTU/MWH or, for steam fossil fired exchange units, the experienced average monthly heat rate of each such unit expressed in BTU/MHW); (3) the net energy output in MWH from the Exchange Units for each hours; and (4) the CVPS Entitlement Fraction in the Exchange Units for such hour.

In order to permit BE to achieve the mutual benefit of this Agreement, CVPS hereby requests that the Commission, waive the sixty-day notice period and permit the rate schedule filed herewith to become effective on August 18, 1984. The waiver, if granted, will have no effect upon purchasers under any other rate schedule. If said waiver is not granted, the parties to the Agreement will have to defer receiving the benefits accruing from the Agreement, i.e., their respective systems will be compelled to operate at less than optimum economic efficiency.

Copies of this filing were served upon the respective jurisdictional customers of the parties hereto, as well as their respective Public Service Boards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31899 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-86-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

December 3, 1984.

Take notice that on November 5, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-86-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon metering facilities that were formerly used to effectuate the sale and transportation of natural gas to ANR Pipeline Company (ANR) in Beaver County, Oklahoma, under the authorization issued in Docket No. CP85-86-00 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that the need for the facilities has been obviated by new metering facilities constructed at CIG's new Beaver County compressor station. CIG has also indicated that the abandonment would not have an adverse affect on its customers, as the new facilities would in fact function as a replacement for the existing measurement.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31886 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP74-9-003]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 29, 1984.

Take notice that on November 26, 1984, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 2, to be effective June 25, 1984:

First Revised Sheet No. 370
First Revised Sheet No. 374

Columbia states that these tariff sheets are being filed to reflect an amendment to its Rate Schedule X-37, and exchange agreement with Consolidated Gas Supply Corporation, National Fuel Gas Supply Corporation and Texas Eastern Transmission Corporation. This amendment provides for the transportation and exchange of natural gas from additional delivery points, as authorized by the Commission's order issued June 25, 1984 in Docket No. CP74-9-000.

Copies of this filing were served on parties to the agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31911 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-28-000]

Consolidated Gas Transmission Corp.; Petition for Authority To Follow Tariff Refund Procedures

November 30, 1984.

Take notice that on November 21, 1984, Consolidated Gas Transmission Corporation (Consolidated Transmission) tendered for filing a "Petition For Authority To Follow Tariff Refund Procedures". Consolidated Transmission is petitioning the Commission for authority to flow-through the refund received from Consolidated System LNG Company (Consolidated LNG) by crediting such amounts to Account 191 in accordance with Consolidated Transmission's currently effective tariff. Consolidated Transmission states that this refund procedure would be in lieu of the requirements contained in Ordering Paragraph (E) of the Federal Energy Regulatory Commission's (Commission) Opinion No. 202-A, issued April 18, 1984 in Docket Nos. TA80-2-21-008, *et al.*

The reason that Consolidated Transmission believes that this petition should be granted is that on May 18, 1984, the Commission approved a settlement agreement in *Consolidated Gas Supply Corp.*, Docket No. RP84-35-001, which effectuated a change in Consolidated Transmission's tariff from a lump-sum method of flowing-through supplier refunds to a method of crediting these refunds to Account 191. The Commission's May 18, 1984, order made this tariff change effective as of March 1, 1984, prior to the date of issuance of Opinion 202-A.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31900 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-177-004]

Duke Power Co.; Refund Report

December 3, 1984.

Take notice that on November 21, 1984, Duke Power Company (Duke) submitted for filing a refund report pursuant to the Settlement Agreement approved by the Commission in a Letter Order dated October 2, 1984.

Duke states that refunds have been made to Duke's Wholesale Customers in compliance with the Commission's order.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 15, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31907 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-51-000]

Exxon Corp.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

November 30, 1984.

Take notice that on November 21, 1984, Exxon Corporation ("Exxon"), 800 Bell Street, P.O. Box 2180, Houston, Texas 77001, filed an application, pursuant to sections 4 and 7 of the Natural Gas Act and the Commission's Regulations thereunder, for limited partial abandonment authorization and a Blanket Limited-Term Certificate of Public Convenience and Necessity authorizing Exxon to conduct a short-term spot sales marketing program, hereinafter referred to as the Exxon Special Marketing Program ("Exxon SMP"), all as more fully set forth in the Application which is on file with the Federal Energy Regulatory Commission ("Commission") and open to public inspection.

Approval would (i) authorize the sale of natural gas by Exxon of resale in interstate commerce; (ii) permit temporary partial abandonment of certain natural gas sales; (iii) confer pregranted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (iv) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in Exxon SMP; and (v) confer pregranted abandonment authorization for the transportation service allowed under the requested certificate. This authority is necessary for implementing a short-term experimental spot sales marketing program. Under Exxon SMP, Exxon proposes to sell on a spot basis contractually committed natural gas qualifying for the section 102, 103, 107 or 108 rate under the Natural Gas Policy Act of 1978. Exxon will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be given relief from take-or-pay liability for any volumes of gas released and sold under the Exxon SMP.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 12, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Exxon is otherwise advised, it will be unnecessary for Exxon to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31901 Filed 12-06-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7372-001]

Fluid Energy Systems, Inc.; Surrender of Preliminary Permit

December 3, 1984.

Take notice that Fluid Energy Systems, Incorporated, Permittee for the South Fork Kern River Hydroelectric Power Project, FERC No. 7372, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7372 was issued on November 25, 1984, and would have expired on October 31, 1986. The project

would have been located on South Fork Kern River, in Tulare County, California.

The Permittee filed the request on October 11, 1984, and the preliminary permit for Project No. 7372 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31889 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL84-30-001]

Gulf States Utilities Co.; Joint Stipulation

December 3, 1984.

Take notice that on November 16, 1984, Gulf States Utilities Company, Sam Rayburn G&T, Inc., City of College Station, Sam Rayburn Dam Electric Cooperative, Inc., and Sam Rayburn Municipal Power Agency (the Parties) submitted for filing a joint stipulation of the Parties pursuant to the Commission's order of October 16, 1984.

The Parties state that they have met and discussed the issues involved in the refund process and that agreement has been reached on all issues.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 19, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31890 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-569-001]

Interstate Power Co.; Notice of Compliance Filing

November 29, 1984.

Take notice that on November 13, 1984, Interstate Power Company (Interstate) submitted for filing its compliance report pursuant to the Commission's order dated September 28, 1984.

Interstate filed the following Second Substitute cost of service statements and rate schedule:

Rate Schedule No. 499
Statement AP
Second Substitute Statement BG
Statement BK
Statement BL

The Second Substitute data filed reduces Interstate's claimed cost of service an additional $11,260 or 0.1% from the substitute data filed September 20, 1984 and rejected by the September 28, 1984 Commission order.

The substitute data filed September 20, 1984 included proposed reductions in the cost of service to reflect synchronized test year interest expense and the properly computed "make-up" provision relating to deferred taxes. As far as the "make-up" provision issue is concerned, Interstate did confer with the Commission staff and staff has agreed that the data filed September 20 and identically refiled herewith is properly calculated.

The sole reason for the additional reduction in claimed cost of service of 0.1% is due to the Commission ordered summary disposition with respect to inclusion in rate base of deferred losses from the disposition of the Carroll County Nuclear Facility.

The rate schedule submitted herewith, representing an increase of 6.7%, is to become effective March 1, 1985, subject to refund pursuant to the September 28, 1984 Order.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 10, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31912 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-1-5-000 and TA85-1-5-001]

Midwestern Gas Transmission Co.; Revised Rate Filing Pursuant to Tariff Rate Adjustment Provisions

November 29, 1984.

Take notice that on November 26, 1984, Midwestern Gas Transmission Company (Midwestern) tendered for filing Twelfth Revised Sheet No. 6 to Original Volume No. 1 and Tenth Revised Sheet No. 37 to Original Volume No. 2 of its FERC Gas Tariff, to be effective November 1, 1984.

Midwestern states that the purpose of the revised tariff sheet is to reflect in Midwestern's Northern System rates the decrease in the rates charged to Midwestern by its Canadian supplier, TransCanada Pipelines Ltd. (TransCanada) under a revised agreement. The tariff sheets reflect different rates for ANR Pipeline Company, which purchases over 90% of Midwestern's Northern System supplies, and for Midwestern's small town customers, which are primarily low load factor, heat sensitive markets. The tariff sheets also reflect a two-part rate structure for purchases that includes a demand charge based on cost of facilities and a commodity charge that fluctuates according to season and load factor. Midwestern is requesting a November 1, 1984 effective date in order to give its customers the immediate benefit of the rate reduction resulting from its new supply agreement .

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31913 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-276-002]

Mississippi Power and Light Co.; Refund Report

December 3, 1984.

Take notice that on November 26, 1984, Mississippi Power and Light Company (MP&L submitted for filing a refund compliance report pursuant to the Commission's order issued on October 16, 1984.

MP&L states that on October 26, 1984, it refunded to the affected customers the difference between the amounts already collected and the settlement rate, including interest calculated in accordance with the Commission's Regulation.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 19, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31884 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-29-000]

Montana-Dakota Utilities Co.; Notice of Filing

November 30, 1984.

Take notice that on November 21, 1984, Montana-Dakota Utilities Co. (MDU) tendered for filing the following revised tariff sheets to be a part of its FERC Gas Tariff:

Original Volume No. 4:
Substitute Twenty-Ninth Revised Sheet No. 3A

First Revised Volume No. 2:
Substitute Twenty-Second Revised Sheet No. 10
Substitute Second Revised Sheet No. 10.1.

MDU states the revised sheets are in compliance with the Federal Energy Regulatory Commission's (Commission) October 30, 1984, order in Docket No. TA85-1-49-000, and that they set forth MDU's purchased gas costs separately in accordance with the Commission's Order Nos. 380 and 380-A and § 154.111 of the Commission's regulations. MDU requests an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31902 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP85-78-000]

Mountain Fuel Resources, Inc.; Application and Petition for Declaratory Orders

November 29, 1984.

Take notice that on October 31, 1984, Mountain Fuel Resources, Inc. (Applicant), 79 South Street, P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP85-78-000: (1) An application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon one delivery point to Mountain Fuel Supply Company (Mountain Fuel) and a certificate of public convenience and necessity authorizing additional existing points of delivery of natural gas from Applicant to Mountain Fuel as jurisdictional delivery points, and (2) a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for declaratory orders to resolve uncertainties concerning the jurisdictional status of certain of Applicant's facilities associated with deliveries of natural gas to Mountain Fuel at and adjacent to such points, all as more fully set forth in the application/petition which is on file with the Commission and open to public inspection.

Applicant states it has several sets of facilities on its newly acquired Southern System where it believes uncertainties as to their jurisdictional status exist. Applicant explains that the Southern System in Utah was acquired from Mountain Fuel effective July 1, 1984, pursuant to the Commission's Opinion No. 221 in Docket No. CP80-274, *et al.*, and that the Southern System was previously exempt from the Commission's jurisdiction by operation of section 1(c) of the Natural Gas Act.

Applicant states that three sets of facilities, located in the Clear Creek area of Emerson County, Utah, and Red Wash area Uintah County, Utah, are currently classified as gathering facilities. Applicant states that it is making deliveries of gas sold under Rate Schedule CD-1 and transportation Rate Schedule X-33 gas to Mountain Fuel off of all three systems and that the Clear Creek facilities' main function may no longer be primarily gathering. Applicant requests that the Commission issue a declaratory order as to the jurisdictional status of these facilities, and, if the Commission deems either the facilities or services are jurisdictional, that the Commission issue the appropriate abandonment and certificate authorizations to permit Resources to perform the ongoing services to Mountain Fuel.

Applicant also requests a declaratory order as to the jurisdictional status of Applicant's delivery point facilities for Mountain Fuel located off of Mesa Pipeline Company's system in Uintah County, Utah. Applicant proposes that this point be added as a Rate Schedules CD-1 and X-33 delivery point.

Any person desiring to be heard or to make any protest with reference to said application and petition should on or before December 19, 1984, file with the Federal Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdictional conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31914 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-649-001]

New England Power Co.; Refund Report

December 3, 1984.

Take notice that on November 6, 1984, New England Power Company (NEP) submitted for filing a refund report pursuant to the Commission's order issued August 21, 1984.

NEP states that the Commission's order required refunds to be made within thirty days of the date of the order, but the date was extended by initial request of the NEP Customer Rate Committee and NEP. Refunds with interest or additional billings, as appropriate were completed on October 26, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 19, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31886 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7511-001]

Orting Associates; Surrender of Preliminary Permit

December 3, 1984.

Take notice that Orting Associates, Permittee for the Orting Hydropower Project No. 7511 has requested that its preliminary permit be terminated. The preliminary permit was issued on January 25, 1984, and would have expired on June 30, 1985. The project would have been located on Voight Creek in Pierce County, Washington.

The Permittee filed the request on October 4, 1984, and the preliminary permit for Project No. 7511 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31886 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-393-001]

Public Service Company of Indiana; Supplemental Filing

December 3, 1984.

Take notice that on October 31, 1984, Public Service Company of Indiana (PSI) submitted for filing a Supplemental Agreement pursuant to the Commission's letter dated June 27, 1984.

PSI states that its First Supplemental Agreement, dated October 1, 1984, to the Short-Term Agreement, dated April 1, 1984, between American Municipal Power-Ohio, Inc. and PSI, modifies the Agreement to eliminate the restrictive language as directed by the Commission.

PSI further states that a complete copy of this filing is being served on American Municipal Power-Ohio, Inc., the Public Utilities Commission of Ohio and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 19, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 84-31897 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

Texas-New Mexico Power Co., Petitioner-Complainant, v. El Paso Electric Co., Respondent; Complaint and Petition for Declaratory Order

November 29, 1984.

Take notice that on November 8, 1984, Texas-New Mexico Power Company ("TNP") filed a complaint and petition for declaratory order requesting that the Commission issue an order confirming TNP's interpretation of the demand adjustment provision of the El Paso Electric Company/Texas-New Mexico Power Company contract. In the alternative, TNP requests that the Commission institute a section 206 complaint proceeding to ensure that the demand adjustment provision is just and reasonable and not unduly discriminatory.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 84-31915 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-31-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

November 30, 1984.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, tendered for filing on November 20, 1984 the following tariff sheets to its FERC Gas Tariff; Second Revised Volume No. 1:

To Second Revised Volume No. 1:

Original Sheet No. 13-C
Original Sheet No. 182
Original Sheet No. 183
Original Sheet No. 184
Original Sheet No. 185
Original Sheet No. 186
Original Sheet No. 368
Original Sheet No. 369
Original Sheet No. 370

The tariff sheets submitted by Transco constitute Rate Schedule T-III, which is titled "Transportation For End-Users Pursuant to SMP Certificate," and the Form of Service Agreement thereunder.

Transco states that it has filed Rate Schedule T-II in order to have on file with the Commission a "generally applicable transportation rate that reflects fully allocated costs" for transportation service for end-users which is authorized under a certificate of public convenience and necessity issued in connection with pipeline or producer special marketing programs (SMPs), involving the limited-term abandonment and resale of gas supplies covered by the National Gas Act. In that connection, Transco makes reference to the Commission's omnibus SMP order issued September 26, 1984 in *Tenneco Oil Company, et al.*, Docket Nos. CI83-269-000, *et al.*, 28 FERC ¶ 61,234.

Transco requests that its filing be made effective, subject to refund, November 1, 1984 and asks that the Commission grant such waivers of the Commission's Regulations as may be necessary to that end.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 214 and Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31916 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-99-000]

Union Texas Petroleum Corp.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity

November 30, 1984.

Take Notice that on November 28, 1984, Union Texas Petroleum Corporation of P.O. Box 2120, Houston, Texas 77001, filed an Application for Blanket Limited-Term Certificate of Public Convenience and Necessity to authorize a special marketing program (SMP) called "UPET". Applicant proposes to conduct this program in a manner similar to those SMP extensions authorized by the Commission on September 26, 1984 in Docket Nos. CI83-269, *et al.* Under UPET, Applicant would market released gas. The authority sought herein would authorize the limited-term abandonment of the sale of the released gas to existing purchasers, and the resale of that gas to the UPET purchasers, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would authorize intrastate pipelines, distributors and Hinshaw pipelines to transport UPET volumes pursuant to section 7(c) of the Natural Gas Act and would authorize interstate pipelines to transport UPET volumes pursuant to section 311(a)(2) of the Natural Gas Policy Act.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before December 7, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31904 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER83-427-003 and ER83-428-002]

Utah Power and Light Co.; Compliance Filing

December 3, 1984.

The filing Company submits the following:

Take notice that on November 27, 1984, Utah Power & Light Company filed its Compliance Report pursuant to the Letter Order of the Commission issued on November 9, 1984.

Any person desiring to be heard or to protest this filing should file comments with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 19, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31898 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER84-571-001 and ER84-572-001]

Utah Power and Light Co.; Compliance Filing

November 30, 1984.

Take notice that on November 13, 1984, Utah Power and Light Company (UP&L) submitted for filing a compliance report pursuant to a deficiency notice

through the first business day following that day. New applications involving

demand adjustment provision is just and

complaint proceeding to ensure that the

(SMPs), involving the limited-term abandonment and resale of gas supplies

jurisdictional customers and interested State Commissions.

desiring to be heard or to make protest with reference to said application

(UP&L) submitted for filing a compliance report pursuant to a deficiency notice

issued by the Commission on September 28, 1984.

UP&L states that in response to the Commission's deficiency notice, it has submitted additional information for the following:

- CP National's Rate Schedule FPC No. 2
- VP&L Rate Schedule FPC No. 99 and Supplement No. 1 to CPN Rate Schedule FPC No. 2
- Fuel Clause for Replacement Power
- Rate Service Schedule RS—RP
- VP&L's Rate Schedule FPC No. 98 and CPN Rate Schedule FPC No. 2 (Fixed Rate Contracts with the Western Area Power Administration
- Rolled-in Transmission for Allocating Transmission—Related Costs
- Demand Allocation Data for Period I and Period II by Contract and Delivery Point
- Narrative Statement describing and justifying the objectives of the design of the charged rate
- Accounting Procedures Utilized to Insure that AFUDC is not accrued on Investment Amounts Included as CWIP in Rate Base
- Depreciation Rates Based on In-House Study
- D&M Expense Projections and Off-Systems Sales Projections
- 100% Coincidence factor for Partial Requirements Customers

Any person desiring to be heard or to protest this filing should file comments with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 13, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31805 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-56-002]

Valero Interstate Transmission Co.; Change In Rates Pursuant to Purchased Gas Cost Adjustment Provisions

November 30, 1984.

Take notice that on November 20, 1984, Valero Interstate Transmission Company ("Vitco") tendered the following filings containing changes in rates pursuant to purchased gas cost adjustment provisions:

Substitute Supplement No. 46
Schedule A, Substitute Page 3 of 3 to FERC Gas Rate Schedule No. 1, For Sale of Gas by Vitco to Natural Gas Pipeline Company of America;
Substitute Supplement No. 126
Schedule A, Substitute Page 1-56 and Attachment 1, Substitute Page 1 of 5 to FERC Gas Rate Schedule No. 2, For Sale of Gas by Vitco to Transcontinental Gas Pipe Line Corporation; and
Substitute Supplement No. 22
Schedule A, Substitute Page 27 of 27 to FERC Gas Rate Schedule No. 14, For Sale of Gas by Vitco to El Paso Natural Gas Company.
Substitute 6th Revised Sheet No. 14
Schedule A, Substitute Page 1 of 1 of Vitco FERC Gas Rate Schedule T-1.

Vitco states that the rates stated on each of the substitute rate schedule supplements (Exhibit A) and Substitute 6th Revised Sheet No. 14 to Rate Schedule T-1 reflects the change in purchased gas costs based on the six months ended August 31, 1984.

Vitco states that these Substitute Supplements and Substitute 6th Revised Sheet No. 14 to Rate Schedule T-1 implement a tentative agreement settlement of the proposal of Transcontinental Gas Pipe Line Corporation ("Transco") in Docket No. CP84-183-000 to abandon the purchase of gas from Vitco. As a part of the tentative agreement, Transco will purchase a minimum of 10 MMcf per day commencing December 1, 1984 rather than 5 MMcf per day reflected in Vitco's October 31, 1984 filing in this proceeding.

Accordingly, Substitute Supplement No. 126 to FERC Gas Rate Schedule 2 reflects changes resulting from Transco's agreement to purchase 10 MMcf per day rather than the previously estimated 5 MMcf per day. In addition, Substitute Supplement No. 46 to FERC Rate Schedule No. 1, Substitute Supplement No. 22 of FERC Gas Rate Schedule No. 14 and Substitute 6th Revised Sheet No. 14 of FERC Rate Schedule T-1 reflect changes resulting from changes in gas costs charged under Rate Schedule T-1 for lost and unaccounted for gas.

The change in rate provided in Exhibit A to Substitute Supplement No. 46 to Rate Schedule No. 1 includes a decrease in purchased gas costs of 16.03¢ per Mcf and a negative surcharge of 31.60¢ per Mcf. The change in rate provided in Exhibit A to Substitute Supplement No. 126 to Rate Schedule No. 2 includes a decrease in purchase gas costs of 5.10¢ per Mcf and a surcharge of 156.38¢ per Mcf. The change in rate provided in Exhibit A to Substitute Supplement No. 22 to Rate Schedule No. 14 includes an increase in purchased gas costs of 12.45¢ per Mcf and a surcharge of 18.25¢ per Mcf. The change in rate provided on Substitute 6th Revised Sheet No. 14 to Rate Schedule T-1 includes an increase in purchased gas cost of 0.68¢ per Mcf and a negative surcharge of 14.73¢ per Mcf. The surcharge in each instance is designed to eliminate the balance in the deferred purchased gas cost account.

The proposed effective date for the above filings is December 1, 1984. Vitco requests a waiver of any Commission regulations or order which would prohibit implementation by December 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 384.211 and 385.214). All such petitions or protest should be filed on or before December 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31806 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-59-000]

E. I. du Pont de Nemours and Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 3, 1984.

On October 29, 1984, E. I. du Pont De Nemours and Company (Applicant), 1007 Market Street, Wilmington, Delaware 19898, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Natural gas will be the primary energy source of Applicant's proposed topping cycle cogeneration facility. The facility, which will have a power production capacity of approximately 78 megawatts, will be located at the Applicant's Sabine River Works Plant at

Orange, Texas. Heat rejected from the combustion turbine will be recovered in an unfired waste heat boiler. Installation of the facility will begin in 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31807 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-65-000]

Johns-Manville Sales Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 3, 1984.

On November 1, 1984, Johns-Manville Sales Corporation (Applicant) 200 North Main Street, Manville, New Jersey 08835, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, located at Applicant's address is a topping cycle cogeneration facility. Originally constructed in 1912, the facility uses natural gas as the primary energy source and No. 6 Oil is a secondary fuel. The power production capacity is 12.5 megawatts. Three steam turbine generators, two backpressure and one extraction-condensing units make up the facility; however, only one 2.5 megawatt backpressure unit is used except under emergency conditions. Steam from the turbine is used in plant processes and heating applications.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31808 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-78-000]

Hammermill Paper Co.; Application for Commission Certification of Qualifying Status of A Cogeneration Facility

December 3, 1984.

On November 6, 1984, Hammermill Paper Company of 1540 East Lake Road, Erie, Pennsylvania 16533 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Hammermill's Oswego plant in the City of Oswego, Oswego County, New York. The facility is expected to commence operation in 1987. As proposed, the Oswego facility will be combined cycle cogeneration facility, consisting of: One (1) 36 MW combustion turbine-generator; one heat recovery boiler capable of producing steam from the combustion turbine exhaust; and one 12 MW single automatic extracting condensing steam turbine-generator supplying steam to meet the paper mill process requirements. The primary energy source will be natural gas, supplemented and backed-up by No. 2 distillate fuel oil.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31809 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-64-000]

Joyce Engineering; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 3, 1984.

On October 31, 1984, Joyce Engineering (Applicant), Box 258C, Saxton, Pennsylvania 16678, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Saxton, Pennsylvania. The facility will consist of a 7.5 megawatt steam turbine generator unit, from which exhaust steam will be used to dry incoming refuse fuel. The primary energy source to the facility will be low grade coal identified by Applicant as refuse coal. Installation will begin in January 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31810 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

Substitute Supplement No. 46

Mcf. The change in rate provided in Exhibit A to Substitute Supplement No.

megawatts, will be located at the Applicant's Sabine River Works Plant at

or protest with the Federal Energy

the Commission in determining the

[Project No. 7033-001]

Beaver Power Group I, Ltd.; Surrender of Preliminary Permit

December 4, 1984.

Take notice that Beaver Power Group I, Ltd., Permittee for the Rock Hill Dam Project No. 7033 has requested that the preliminary permit be terminated. The preliminary permit for Project No. 7033 was issued on October 7, 1983, and would have expired on March 31, 1985. The project would have been located on the Conestoga River near the Town of Rockhill, in Lancaster County, Pennsylvania.

The Permittee filed the request on October 31, 1984, and the preliminary permit for Project No. 7033 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-32012 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-181-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

December 4, 1984.

Take notice that on November 9, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-181-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of United States Gypsum Company (U.S. Gypsum) under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that by request noticed on January 13, 1984, in Docket No. CP84-181-000, pursuant to the prior notice and protest procedure set forth in § 157.205 of the Regulations, Columbia was authorized to transport up to 2.5 billion Btu equivalent of natural gas per day through September 8, 1984, to U.S. Gypsum's Baltimore, Maryland, plant.

Columbia now proposes to continue the above-described transportation through June 30, 1985, on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-32013 Filed 12-6-84; 8:45am]
BILLING CODE 6717-01-M

[Docket No. CP85-94-000]

Columbia Gas Transmission Corp.; Application

December 4, 1984.

Take notice that on November 7, 1984, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP85-94-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to a new wholesale customer, Eastern Shore Natural Gas Company (Eastern Shore), as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization for (1) initiation of service to Eastern Shore under Rate Schedule CDS providing for a contract demand of up to 3,000 dt equivalent of gas per day, and under Rate Schedule WS providing for a maximum daily quantity of 1,300 dt equivalent of gas per day, and a winter contract quantity of 65,000 dt equivalent of gas, to be effective November 1, 1984 or such later date as the Commission may authorize (2) an increase in contract demand under Rate Schedule CDS of 425 dt equivalent of gas per day to 3,425 dt equivalent of gas per day, and an increase in maximum daily quantity under Rate Schedule WS of 700 dt equivalent of gas per day to 2,000 dt equivalent to gas per day, and an increase in winter contract quantity of 35,000 dt equivalent of gas to 100,000 dt equivalent of gas, all to be effective November 1, 1985, and (3) the use of an existing interconnection with Eastern Shore at Chester County, Pennsylvania, for the delivery point of the proposed sales volumes.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 28, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to juriadiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-32014 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP85-3-000]

Columbia Gas Transmission Corp.; Petition for Partial Waiver of Regulations

Issued: December 3, 1984.

On October 15, 1984, Columbia Gas Transmission Corporation (Columbia) filed a petition pursuant to Rule 207 [1] of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) for a partial waiver of § 271.1104(e)(3).[2] The Commission's regulation found at § 271.1104(e)(3) [3] implements section 110 of the Natural Gas Policy Act of 1978 (NGPA).[4]

Columbia seeks a waiver or modification of the Commission's regulations to permit Columbia to pay retroactive section 110 allowances beginning after verification of the producer description and invoices and ending no later than June 30, 1986.[5] Columbia also requests the Commission to direct all producers to submit the description required by § 271.1104(f)(1) of the Commission's regulations to Columbia by December 31, 1984. Furthermore, Columbia wants the Commission to reiterate that any claim for retroactive section 110 allowances shall be disallowed unless the required description is submitted by December 31, 1984.

Section 271.1104(e)(3) requires that payments of NGPA section 110 allowances for the period from the earlier of July 25, 1980 or the date of the seller's application to March 7, 1983, (the retroactive period) be made over the period beginning March 7, 1983, and ending December 31, 1984, in equal installments to the extent practicable. However, Columbia has been unable to prorate its payments of retroactive section 110 allowances over the above period contemplated by Order No. 94-A.

Columbia states that its experience regarding seciton 110 claims has been similar to that of Transcontinental Gas Pipe Line Corporation (Transco) as described in its Petition for Partial Waiver of Regulations filed in Docket No. GP84-53-000.[6] Columbia states that it, like Transco, has been reviewing data submitted by producers since the spring of 1983, and that it is an overwhelming task. Furthermore, Columbia has found much of the data submitted was deficient or required additional information.

Columbia submits that its review and verification of submitted data is further complicated by Columbia's use of the dry Btu method [7] in its gas purchasing practices during this period.

In light of the decision in *Interstate Natural Gas Association of America* v. *FERC*, 716 F. 2d 1 (D.C. Cir. 1983) and the Commission's recent order establishing Btu refund procedures,[8] Columbia has revised its records to reflect purchased gas quantities on a saturated basis. Additionally, Columbia has received and continues to receive producer descriptions through the period of March 1983 through September, 1984, and Columbia believes it will continue to receive such descriptions throughout 1984.

Any person desiring to be heard or to protest Columbia's filing should file within 15 days after notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20436, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules. All protests filed will be considered but will not make the protestants parties to this proceeding.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-33015 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

[1] 18 CFR 385.207 (1984).
[2] 18 CFR 271.1104(e)(3) (1984).
[3] *See* Order No. 94-A, 22 FERC ¶ 61,055 (1983).
[4] 15 U.S.C. 3301-3422 (1982).
[5] Columbia seeks the authority to extend beyond this date for paying such claims or the right to refuse to make such payment in the event producers fail to cooperate.
[6] Notice issued September 25, 1984.
[7] Order No. 93, FERC Stats. & Regs. ¶ 30,172 (1980).
[8] Order No. 398, Docket No. RM84-6-000, 28 FERC ¶ 61,730.

[Docket No. ES85-17-000]

Consumers Power Co.; Application

December 4, 1984.

Take notice that on November 23, 1984, Consumers Power Company (Applicant) filed its application pursuant to section 204 of the Federal Power Act, seeking authority to issue up to $855,000,000 in short-term debt including, but not limited to, notes, drafts, debentures and commercial paper, and to enter into certain construction financing arrangements with special purpose corporations. The construction financing arrangements would be used to finance various Items of Property intended to be used in the operation of Consumers Power's business. The issuances of the notes, drafts, debentures and commercial paper would be issued from time to time, until and including December 31, 1985, with maturities of 364 days or less. The authority to enter into the construction facility arrangements would commence with the expiration of the authority granted in Federal Energy Regulatory Commission Docket Nos. ES84-56-000 and ES84-71-000 and would terminate 364 days thereafter.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 28, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must

[Project No. 5768-002]

Commonwealth of Pennsylvania, Department of Environmental Resources; Surrender of Exemption

December 4, 1984.

Take notice that the Commonwealth of Pennsylvania Department of Environmental Resources, Exemptee for the Little Pine Creek Project No. 5768, has requested that its exemption be terminated. The order granting exemption for Project No. 5768 was issued on July 20, 1984. The project would have been located on the Little Pine Creek, in Lycoming County, Pennsylvania. Exemptee has not started project construction.

The Exemptee filed the request on October 29, 1984, and the Exemption from Licensing for Project No. 5768 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the Exemption from Licensing shall remain in effect through the first business day following that day. New applications involving this project site may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-33016 Filed 12-6-84; 8:45 am]
BILLING CODE 6717-01-M

file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32017 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-89-000]

Eastern Shore Natural Gas Co.; Application

December 4, 1984.

Take notice that on November 6, 1984, Eastern Shore Natural Gas Company (Applicant), P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP85-89-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to provide additional firm contract demand service to several of its existing customers, initiate firm storage service under two new rate schedules to several of its existing customers, construct and operate certain new pipeline and compressor facilities required to provide the additional firm sales and storage service, reduce its currently authorized firm sales service to Stauffer Chemical Company from 3,600 dt equivalent of gas per day to 2,800 dt equivalent of gas per day, and to increase interruptible service to several of its existing customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to increase the firm contract demand service to several of its existing jurisdictional customers and to one direct sale customer in the following amounts:

Customer	Current contract demand	Additional quantity requested (dt per day)		Total additional quantity
		Nov. 1, 1984	Nov. 1, 1985	
Elkton Gas Service	1,580	100	0	100
Delaware Division	6,230	780	295	1,075
Citizens Division	3,105	250	100	350
Fusion Utilities Commission	1,515	90	90	90
Formosa Plastics Corporation	1,000	2,800	0	2,800
Total (dt per day)		3,800	425	4,225

Applicant further requests authorization to render firm storage service to the following customers which have indicated a desire to enter into service agreements under two proposed initial rate schedules; the Leidy storage service (LSS) and the Columbia winter service (CWS):

RATE SCHEDULE LSS

[Effective Nov. 1, 1984]

Customer	Storage withdrawal demand (dt per day)	Storage capacity (dt)
Elkton Gas Service	110	3,300
Delaware Division	580	29,000
Citizens Division	200	10,000
Cambridge Gas Company	110	5,500
Total	1,000	80,000

RATE SCHEDULE CWS

Customer	Nov. 1, 1984		Nov. 1, 1985	
	Storage incremental demand (dt per day)	Storage incremental capacity (dt)	Storage incremental demand (dt per day)	Storage incremental capacity (dt)
Elkton Gas Service	200	14,500	100	5,000
Delaware Division	810	40,500	390	19,000
Citizens Division	300	10,000	220	11,000
Cambridge Gas Company	0	0	0	0
Total	1,300	65,000	700	35,000

Applicant states that the LSS storage service would be provided pursuant to an underlying storage service provided to Applicant by Transcontinental Gas Pipe Line Corporation under authority granted by the Commission on October 3, 1984, in Docket No. CP84-335-000. The terms and conditions pertaining to this service are set forth in Applicant's *pro forma* Form of Service Agreement and Rate Schedule LSS included as Exhibit P of the application.

It is indicated that the CWS storage service would be provided by Applicant pursuant to an underlying storage service proposed under Columbia Gas Transmission Corporation's (Columbia) Rate Schedule WS pending the Commission's action in Docket No. CP85-94-000. The terms and conditions pertaining to this service are set forth in Applicant's *pro forma* Form of Service Agreement and Rate Schedule CWS included in Exhibit P of the application.

Applicant also requests authorization to construct and operate new pipeline and compressor facilities required to accommodate the increased contract demand and firm storage service requested by its customers to become effective November 1, 1984, and November 1, 1985. Applicant states that it requires the construction and installation of 8.1 miles of 12-inch loop line on its existing 8-inch Parkersburg (Pennsylvania) Line; 9.0 miles of 10-inch loop line on its existing 6-inch line south of Felton, Delaware, and a compressor station 0.6 mile south of Applicant's existing interconnection with Columbia, located at Daleville, Pennsylvania, to serve increased requirements for the coming 1984-1985 winter season. Applicant submits that the compressor station would be tied into the interconnection with 3,200 feet of 12-inch line and would include two 360-horsepower units, one of which would be a back-up unit. Applicant states that the estimated cost of these facilities would be approximately $4,305,436 and would be financed initially by internally generated funds together with short-term notes.

To serve the additional firm contract demand and storage service requirements requested for the 1985-1986 winter season, Applicant requests authorization to construct and operate 1.55 miles of 12-inch loop line on its existing 8-inch Parkersburg Line and 2.55 miles of 10-inch loop line on its existing 6-inch line south of Felton, Delaware. Applicant states that the estimated costs of these facilities would be approximately $624,161 also to be financed initially by internally generated funds together with short-term notes.

Applicant further requests authorization to reduce the contract demand of Stauffer Chemical Company, a direct sales customer, from 3,600 dt equivalent of gas per day to 2,800 dt equivalent of gas per day.

Lastly, Applicant requests authorization to increase the level of interruptible gas service for four of its direct sale customers shown below.

Customer	Current interruptible sales authority (dt per day)	Proposed additional interruptible sales authority (dt per day)	Proposed total interruptible sales authority (dt per day)
City of Dover	15,000	25,000	40,000
Getty Refining and Marketing Company (Getty)	80,000	40,000	80,000
Stauffer Chemical Company	3,050	2,950	6,000
Formosa Plastics Corporation	3,000	3,000	6,000

Applicant states that no additional facilities would be required to render the increased interruptible service at the proposed increased levels, with the exception of an additional meter at the Getty refining complex. Applicant requests authority to install and operate this additional meter as needed at an estimated cost of $10,000.

Applicant indicates that the additional interruptible sales proposed would have no impact upon Applicant's curtailment plan and include no new high-priority or essential agricultural uses, as defined in the Natural Gas Policy Act of 1978.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32018 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-18-000]

The Kansas Power and Light Co.; Application

December 4, 1984.

Take notice that on December 28, 1984, The Kansas Power and Light Company (Applicant) filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $120,000,000 in the aggregate principal amount of short-term unsecured Promissory Notes on or before January 31, 1986, with a final maturity date of not later than January 31, 1987.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32019 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-91-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

December 4, 1984.

Take notice that on November 6, 1984, Northern Natural Gas Company, Division of InterNorth Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-91-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the reduction of firm entitlement of its utility customer, Iowa Gas Company (Iowa Gas), successor to the operations of Iowa Power and Light Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern contends that Iowa Gas does not wish to renew its service agreement for 6,545 Mcf per day of contract demand upon the expiration, which is October 27, 1985. Iowa Gas notified Northern of such intention of April 27, 1984, it is indicated. Northern also states that upon termination of the service agreement, available gas supply is sufficient for Iowa Gas to continue meeting its requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385. 214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiciton conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32020 Filed 12-6-84; 8:45am]

BILLING CODE 6717-01-M

[Docket No. ES85-16-000]

PacifiCorp d.b.a. Pacific Power & Light Co.; Application

December 4, 1984.

Take notice that on November 20, 1984, PcifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order: (1) Authorizing Pacific to enter into interest payment exchanges to reduce its exposure to fluctuations in interest rates rising from a group of taxable and tax-exempt floating rate obligations outstanding or to be outstanding, as previously authorized by

initial rate schedules; the Leidy storage

station 0.6 mile south of Applicant's

curtailment plan and include no new

unsecured Promissory Notes on or

December 26, 1984, file with the Federal

outstanding, as previously authorized by

the Commission in the amount of $791,500,000 and (2) exempting the transactions proposed from the Commission's competitive bidding requirements

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 20, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32021 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-66-000]

Panhandle Eastern Pipe Line Co; Request Under Blanket Authorization

December 4, 1984.

Take notice that on October 26, 1984, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-66-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (148 CFR 157.205) for authority to transport natural gas on behalf of a qualified end-user under the certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant proposes to transport gas on behalf of Sohio Chemical Company (Sohio) pursuant to a transportation agreement dated August 14, 1984, as amended August 31, 1984, and October 12, 1984, between Sohio and Applicant (agreement) which agreement provides for Applicant to receive a transportation quantity of up to 30,000 Mcf of gas per day on an interruptible basis at existing points of interconnection between Applicant and Union Texas Products Corporation in Major and Kingfisher Counties, Oklahoma. Applicant states that it would then transport and redeliver such gas, less a four percent reduction for fuel, to ANR Pipeline Company (ANR) in Defiance County, Ohio, which in turn would make ultimate delivery to Sohio to be used in the manufacture of anhydrous ammonia at Sohio's chemical plant in Lima, Ohio.

It is stated that the term of the authorization would be from the date automatic authorization expires until the earlier of: (1) Eighteen months from the effective date of the agreement, (2) termination of authorization as provided by Subpart F of Part 157 of the Regulations, or (3) termination of the agreement by either of the parties.

It is stated that the Applicant would charge Sohio 39 cents per Mcf of gas transportated pursuant to Applicant's Rate Schedule AIC filed with the Commission in Docket No. RP84-20. Furthermore, Applicant states that an added incentive charge of 2.50 cents per Mcf would also be charged.

Applicant also states that it seeks "flexible authority" to add or delete sources of supply or receipt of points, if such altered service is on behalf of the same end-user, at the same end-user location, within the maximum daily and annual volumes, and under the same terms and conditions authorized for the basic service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32022 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-83-000]

Southern Natural Gas Co.; Application

December 4, 1984.

Take notice that on November 1, 1984, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202 filed in Docket No. CP85-83-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Southern to exchange natural gas with ARCO Oil and Gas Company (ARCO), all as more fully set forth in the application/petition which is on file with the Commission and open to public inspection.

Southern desires to make up to 75 Mcf of natural gas per day available to ARCO for ARCO's use in start-up and other operating procedures on ARCO's Matagorda Island Block 703, offshore Texas, platform (Platform) on an as needed basis. Southern states that it would not charge ARCO for the quantities of gas used by ARCO. ARCO would, instead, pursuant to the terms of a letter agreement regarding the proposed service between Southern and ARCO, exchange a thermally equivalent quantity of gas within 30 days of the receipt of gas at the Platform or other mutually agreeable point.

Southern further states that it would not be required to install any additional facilities to perform the proposed service.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion

believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32023 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-93-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Request Under Blanket Authorization

December 4, 1984.

Take notice that on November 7, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No CP85-93-000 a request pursuant to § 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Phillips Petroleum Company (Phillips) under the certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 30,000 Mcf of natural gas per day for Phillips through June 30, 1985, unless the Commission authorizes an extension of service pursuant to § 157.209(e) in which event Tennessee proposes that this service for Phillips be concurrent with any such extension. Tennessee states that the gas to be transported would be: (1) Produced from reserves owned and developed by Phillips in the West Bastian Bay Field, Plaquemines Parish, Louisiana, and (2) purchased by Phillips from Tee Oil Inc., *et al.* (Tee), in the Bell City Field, Calcasieu Parish, Louisiana. It is further stated that the gas would be used for boiler fuel and process furnaces at Phillips' Sweeny Refinery located in Brazoria County, Texas.

Tennessee states it would transport the Bastian Bay Field volumes from a point of receipt located at Tennessee's existing facilities in the Bastian Bay Field and that it would transport the Bell City Field volumes from a point of receipt located at the tailgate of the Lear Petroleum Plant in Calcasieu Parish, Louisiana. Tennessee proposes to transport volumes from these receipt point and deliver a thermally equivalent quantity of gas, less volumes for system fuel and uses and gas lost and unaccounted for, to Channel Industries Gas Company (Channel), for the account of Phillips, at the existing point of interconnection between the facilities of Tennessee and Channel at Sabine, Newton County, Texas. Channel would then transport and deliver the gas to Phillips' Sweeny Refinery.

For this transportation Tennessee states it would charge Phillips 7.02 cents per Mcf for gas received from the Bell City point and 17.14 cents per Mcf for gas received from the Bastian Bay point. Additionally, it is explained that Phillips would pay Tennessee the Gas Research Institute surcharge of 1.25 cents per Mcf of gas delivered, and Phillips would provide Tennessee a daily volume of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to 1.2 percent of the volume received at the Bell City point and 1.32 percent of the volume received at the Bastian Bay point. Furthermore, Tennessee states it would charge Phillips an added incentive charge of 5.00 cents per million Btu.

Tennessee further requests flexible authority to add and/or delete sources of gas, and add and/or delete receipt and/or delivery points upon mutual agreement of the parties and agrees to comply with certain filing requirements in implementing these changes. Following the addition or deletion of any gas suppliers or receipt or delivery points, Tennessee proposes to file the following information with the Commission within 30 days following the implementation of such charges:

1. A copy of the gas purchase contract;

2. A statement as to whether the supply is attributable to gas under contract to or released by a pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

3. A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

4. A statement that the gas is not committed or dedicated within the meaning of NGPA section 2(18);

5. The location of the Tennessee receipt or delivery points being added or deleted, and the appropriate transportation rate changes resulting from such additon(s) or deletion(s) and the identity of the seller.

6. The information required by § 157.209(c)(1)(ix) of the Commission's Regulations in the event an intermediary participates in the transaction between the seller and Phillips; and

7. The identity of any other pipeline involved in the transportation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33084 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-108-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

December 4, 1984.

Take notice that on November 13, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-108-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new offshore gathering system located in the offshore Texas area, all as more fully set forth in the applicatioin which is on file with the Commission and open to public inspection.

Tennessee proposes to construct and operate the Texas Offshore Pipeline System (TOPS), consisting of the following facilities:

- 65 miles of 24-inch pipeline extending from Tennessee's mainline system in Refugio County, Texas, to Mustang Island Area Block 847, offshore Texas.
- 15.6 miles of 12-inch pipeline from Mustang Island Block 847 to Mustang Island Block A-31.
- 15.0 miles of 10-inch pipeline from Mustang Island Block 847 to Mustang Island 887.
- 14.1 miles of 12-inch pipeline from Mustang Island Block 749 to Mustang Island Block 768.

Tennessee states that the proposed facilities are required to attach reserves in at least 21 offshore blocks in the

North Padre and Mustang Island Areas of offshore Texas in which Tenneco Oil Company (TOC), Amoco Production Company (Amoco), Pennzoil Producing Company (Pennzoil), and Gulf Oil Company have interests. It is stated that Tennessee and TOC have entered into a letter of intent whereby gas produced from TOC's leases would be committed to transportation in TOPS. It is further stated that Tennessee is negotiating with Pennzoil and Amoco for their leasehold interests in the subject blocks.

Tennessee estimates that the 21 blocks contain proven and potential reserves of 654,700,000 Mcf of gas with a maximum deliverability of 291,900 Mcf per day. The proposed facilities, it is indicated, are designed with a maximum capacity of 400,000 Mcf per day. The estimated cost of the system, it is explained, is $86,481,000 and the facilities would be ready for service during the 1985–1986 winter heating season. Tennessee states that it would finance the estimated cost of facilities initially from general funds and/or borrowing under its revolving credit agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32025 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-95-000]

Tenngasco Exchange Corp.; Application for Limited-Term Transportation Authority Under Part 284 of the Commission's Regulations for Transactions Requiring Prior Approval and Request for Expedition

December 3, 1984.

Take notice that on November 21, 1984, Tenngasco Exchange Corporation (TGX) filed an Application pursuant to 18 CFR Sections 284.5, 284.107, 284.127 and Part 284, Subpart G of the Commission Regulations (18 CFR Part 284, Subpart G), requesting issuance of limited-term (1 year) transportation authority for participating interstate pipelines, intrastate pipelines and local distribution companies (participating pipelines) transporting gas on behalf of interstate pipelines, intrastate pipelines and local distribution companies as more fully described in the application which is on file with the Commission and open for public inspection. Applicant also requests expedited consideration of the approval and authorizations sought in the Application.

Applicant states that on October 24, 1984, TGX announced the initiation of a posted price program for spot purchases of natural gas ("the Exchange"). The Exchange has as its general purpose the creation of an additional spot market for natural gas. This new spot market is available to producers with shut-in or curtailed natural gas who have been unable to access existing marketing programs (including special marketing programs (SMPs) authorized by the Commission). The new market will make more natural gas available to existing spot market customers and will allow new gas markets to develop.

TGX will purchase and resell only that natural gas which is not within the Commission's Natural Gas Act jurisdiction by virtue of section 601(a)(1) of the Natural Gas Policy Act (NGPA), without regard to its contractual commitment status. Natural gas purchased and resold by TGX will be transported by interstate pipelines, intrastate pipelines, and local distribution companies, including "Hinshaw" pipelines. Supply availability, demand requirements, and available capacity in transporting pipelines will be continually monitored by the Exchange to assure maximum takes from participating producers on an equitable basis and a stable and secure supply to the purchasers at the lowest possible price.

In order to realize this goal, TGX proposes to enter into blanket transportation agreements satisfying the requirements of Part 284 of the Commission's regulations with participating pipelines. The decision to participate is fully voluntary by both participating pipelines and the interstate pipelines, intrastate pipelines and local distribution companies on whose behalf the gas is to be transported.

In this connection, TGX has the capability of identifying available capacity on numerous pipeline systems on a daily and even hourly basis, matching wellhead volumes to net back prices and tariff charges to provide the lowest redelivered price of natural gas to spot sales customers. Present regulatory authority, and traditional administration of sales, purchase and transportation contracts hamper the operational efficiency of the Exchange. However, if the authority requested herein is granted and TGX is able to enter into blanket agreements with participating pipelines, TGX will be better able to match supply with demand at market clearing prices.

TGX requests that the Commission authorize participating interstate and intrasate pipelines to transport gas on behalf of those interstate pipelines, intrastate pipelines and local distribution companies who will purchase gas from TGX which is intended for use other than as system supply. This authorization will allow the Exchange to operate at its greatest efficiency.

The authorization requested is a very limited one, it is asserted, since full authorization already exists for such transportation for system supply for resale. Tenngasco simply seeks programmatic authority for such transportation in those instances where the Commission's prior approval is required under its section 311 regulations.

The current regulations under 18 CFR Part 284 impose reporting requirements upon transporting pipelines. However, because of the nature of the Exchange, and the dynamic nature of the arrangements required to effect its greatest efficiencies, it would be burdensome for the participating pipelines to monitor all of the transactions. Equally, the monitoring burden imposed upon the Commission and its Staff would be significantly increased. In contrast, the burden upon both the pipeline and the Commission and its Staff would be significantly reduced by allowing TGX to assume the responsibility for and burden of compliance with the reporting requirements otherwise imposed on the transporting pipelines.

TGX therefore requests that the Commission waive the reporting requirements imposed upon those pipelines for whom TGX assumes the reporting obligation imposed under 18 CFR Part 284 for transportation of Exchange gas. This waiver is requested as to transportation of Exchange gas whether authorized by this application or by self-implementing transactions undertaken as to TGX volumes under Part 284.

In addition, TGX requests waiver of the 48-hour reporting requirements upon commencement of transportation by any pipeline of TGX volumes on behalf of an interstate pipeline, intrastate pipeline or local distribution company. TGX would file the initial full report required by the regulations of any transporting pipeline. This report would provide the Commission with all the information required by current rules, allowing it to maintain its regulatory monitoring.

Finally, TGX would emphasize what is not being sought here. No Commission mandated scheme of contract carriage or market access is sought by TGX. A decision by an interstate pipeline, intrastate pipeline or local distribution company to have gas transported on its behalf, or to provide transportation services as a participating pipeline, is purely voluntary. Rather, what TGX here seeks is to remove any unnecessary regulatory impediments in order to provide an opportunity for full implementation of the Exchange as an alternative market ordering program. In this connection, TGX requests that the Commission limit the authority issued to a term of twelve months following the date such authority becomes effective. In this manner, the Commission will be able to monitor the Exchange program for a year in order to determine the full benefits of the program for the public interest.

TGX submits that granting of the requested approvals and authorities is in the public interest. The Exchange benefits all segments of the natural gas marketplace. For producers, it provides:

1. Access to an array of strong gas markets already being served, plus additional markets that are not now being served;

2. Short-term, flexible and simple gas contracts that will permit easy access to and easy exit from the Exchange;

3. Market clearing prices for natural gas;

4. High takes of available deliverability; and

5. Increased cash flow, undoubtedly a substantial portion of which will be used for increased exploration and development efforts.

For purchasers, it provides:

1. Natural gas at market clearing prices, which currently are significantly below NGPA maximum lawful prices and long-term interstate pipeline contract prices;

2. Simple and flexible gas purchase contracts that will permit easy access to and easy exit from the Exchange;

3. Increased and more secure supplies of spot gas; and

4. A broader natural gas supply base.

For transporters, it provides:

1. Increased system throughput;

2. Greater use of existing pipeline facilities;

3. Additional potential sources of revenue; and

4. Additional flexibility in meeting the peak and off-peak demands of its on-system customers.

TGX requests the Commission to grant the following specific authority and approvals:

1. That, for a period of twelve months following the effective date, transportation under section 311 be authorized for those volumes of natural gas qualifying for exemption from Natural Gas Act jurisdiction under section 601(a) of the NGPA and purchased from TGX as a first sale reseller, as defined in 18 CFR 270.202(e), and transported on behalf of interstate pipelines, intrastate pipelines and local distribution companies for other than system supply;

2. That TGX be authorized to file all reports required under 18 CFR Part 284 on behalf of participating pipelines as to all volumes of Exchange gas transported by such pipelines, the filing of such reports by TGX to operate as a waiver of all Part 284 filing requirements otherwise imposed upon participating pipelines as to transactions involving TGX, except that the requirements of 18 CFR 284.4(b) be waived in all respects. TGX will report any substantial modification of its section 311 transportation agreements within thirty days after the end of the calendar month; and

3. That TGX be granted such further regulatory authorizations and waivers as are necessary to effect the terms of the Exchange program as set forth herein.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before December 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All portests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plum,

Secretary.

[FR Doc. 84-32026 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-107-000]

THC Pipeline Co.; Application

December 4, 1984.

Take notice that on November 8, 1984, THC Pipeline Company (THC), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-107-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to transport, sell and assign natural gas in interstate commerce as if THC were an intrastate pipeline as defined in Subparts C, D, and E of Part 284 of the Commission's Regulations, as well as § 284.203 thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

THC states that it is a Hinshaw pipeline within the meaning of section 1(c) of the Natural Gas Act and § 284.222(h)(1) of the Commission's Regulations. THC further states that 6,157,406 Mcf of natural gas from outside the state of Texas were received by THC during the 12-month period ending September 30, 1984, within or at the state boundary which were exempt from

the Commission on its own motion

intrastate pipelines, and local

burdensome for the participating

being served;

herein.

state boundary which were exempt from

Natural Gas Act jurisdiction by reasons of section 1(c) of the Act.

THC asserts that it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations. It is also stated that THC would petition the Commission for rate approval in accordance with § 284.123(b)(2) of the Regulations. THC states that it presently plans to engage only in transactions under the requested authorization that would take the form of exchanges for which there would be no charges for services rendered.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for THC to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32027 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-102-000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

December 3, 1984.

Take notice that on November 9, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85-102-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the Diamond Glass Company (Diamond Glass) under the certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 1,000 dt equivalent of natural gas per day for Diamond Glass for a term ending June 30, 1985. It is stated that the gas would be purchased from Energy Marketing Exchange, Inc. (EME), in Nueces, Jim Wells and Starr Counties, Texas, and would be used as boiler fuel in Diamond Glass' Royersford, Pennsylvania, plant. It is indicated that Transco would receive the gas at existing receipt points in Texas and would redeliver equivalent volumes at existing interconnections with Philadelphia Electric Company, the distributor serving Diamond Glass' plant in Royersford, Pennsylvania.

It is stated that Transco would charge the currently applicable transportation rate in accordance with its Rate Schedule T-II, Second Revised Volume No. 1.

Transco also requests authorization in Docket No. CP85-102-000 to provide flexible authority on behalf of EME, as agent for Diamond Glass, to add and/or delete sources of gas and/or receipt or delivery points. With respect to such flexible authority, Transco states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt or delivery points, to file with the Commission the following information:

(1) A copy of any resulting modifications to the gas purchase contract between EME and Diamond Glass;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement that the gas is not committed or dedicated within the meaning of the NGPA section 2(18);

(5) Location of the receipt/delivery points being added or deleted;

(6) Where an intermediary particpates in the transaction between the seller and end user, the information required by § 157.209(c)(ix) of the Regulations; and

(7) Identity of any other pipeline involved in the transportation.

Transco submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user, Diamond Glass, for use at the same end-use location and would remain within daily and annual volumes level proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedurel Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest if filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32028 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-104-000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

December 3, 1984.

Take notice that on November 9, 1984, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85-104-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport end-user gas on behalf of Anchor Glass Container Corporation (Anchor Glass), with flexible authority to add and/or delete sources of gas and/or receipt/delivery points under the certificate issued in Docket No. CP82-426-000 pursuant to

section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Transco proposes to transport up to 4,300 dt equivalent of natural gas per day for use in Anchor Glass' plant in Salem, New Jersey, for a term expiring June 30, 1985. It is stated that the natural gas to be transported would be purchased from Houston Oil & Minerals Corporation (Houston O&M) and would be used as process fuel for glass melting and forming at the Salem Plant. It is indicated that Transco would receive the gas at existing interconnections with Houston O&M in the North Sabine Lake Field, Cameron Parish, Louisiana, and would redeliver such gas to existing points of delivery between Transco and South Jersey Gas Company, the distribution company serving Anchor Glass.

Transco states that it would charge the currently applicable transportation rate in accordance with its Rate Schedule T-11, FERC Gas Tariff, Second Revised Volume No. 1.

Transco also requests authorization to provide flexible authority on behalf of Anchor Glass to add and/or delete sources of gas and/or receipt or delivery points. With respect to such flexible authority, Transco states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt or delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and Anchor Glass;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) If the supplier is a "producer or other seller in a first sale", a statement that the gas was not "committed or dedicated to interstate commerce on November 8, 1978" as such terms are used in § 157.209(e)(1)(i)(A) of the Regulations;

(5) Location of the receipt/delivery points being added or deleted;

(6) Where an intermediary participates in the transaction between the seller and end user, the information required by § 157.209(c)(ix) of the Regulations; and

(7) Identity of any other pipeline involved in the transportation.

Transco submits that any changes made pursuant to such flexible authority would be on behalf of the same end user, Anchor Glass, for use at the same end-use location and would remain within daily and annual volumes levels proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32029 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-400-001]

United Gas Pipe Line Co; Petition To Amend

December 4, 1984.

Take notice that on November 6, 1984, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP83-400-001 a petition to amend the Commission's order issued October 6, 1983, in Docket No. CP83-400-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize United to render gas transportation service to implement increased interruptible gas sales from 500 Mcf per day to 1,100 Mcf per day to VGS d/b/a Southland Oil Company (Southland), an existing on-system direct customer, under the September 20, 1984, amended agreement, and United's petition to amend which is on file with the Commission and open to public inspection.

United states that under the existing authorization in Docket No. CP83-400-000, United is authorized to transport to Southland up to 500 Mcf of gas per day at Sandersville, Mississippi, and up to 350 Mcf per day at Lumberton, Mississippi, under the May 1, 1983, interruptible gas sales agreement. The instant petition is only for increased use at Sandersville. It is indicated that Southland has a need for additional supplies of gas to operate efficiently its refineries.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but wil not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32030 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-95-000]

United Gas Pipe Line Co.; Application

December 4, 1984.

Take notice that on November 7, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-95-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Grant Chemical Division, Ferro Corporation (Grant Chemical), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport natural gas in interstate commerce in order to implement a direct sale of natural gas in volumes not to exceed 350 Mcf of gas per day, on an interruptible basis, to Grant Chemical under an interruptible gas sales contract dated August 8, 1984

United states that Grant Chemical owns and operates a chemical plant near the City of Barton Rouge in East Baton Rouge Parish, Louisiana, where it produces fertilizer, food containers, and chemical products. It is further stated that the interruptible volumes would be used by Grant Chemical for process heat in its Chemical plant operations.

It is stated that the rate to be paid for this interruptible service would be that provided for in United's Rate Schedule IRS No. 84-4. United further states it would utilize existing facilities to implement the proposed service and the

construction of new facilities would not be required by United. United indicates that although its existing facilities are in proximity to Grant Chemical's plant, Grant Chemical is not an existing customer of United.

It is submitted that United has supplies of natural gas in excess of the current requirements of its firm market and that it is forced to continue to prorate supplies from its producers. United avers that the proposed interruptible sale to Grant Chemical would alleviate to some extent the potential take-or-pay exposure on account of such proration.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicsnt to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32031 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7355-001]

Western Wisconsin Municipal Power Group; Surrender of Preliminary Permit

December 4, 1984.

Take notice that Western Wisconsin Municipal Power Group, Permittee for the proposed Mississippi River Lock and Dam No. 10 Project No. 7355, has requested that its preliminary permit be terminated. The permit was issued on September 7, 1983, and would have expired August 31, 1985. The project would have been located on the Upper Mississippi River near Guttenburg, Clayton County, Iowa. The Permittee cites that the proposed project is not economically feasible as the reason for the surrender request.

The Permittee filed the request on October 19, 1984, and the preliminary permit for Project No. 7355 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32032 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2246-001, et al.]

Hydroelectric Applications (Yuba County Water Agency, et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: Amendment of License.
b. Project No: 2246-001.
c. Date Filed: February 14, 1984.
d. Applicant: Yuba County Water Agency.
e. Name of Project: New Bullards Bar Dam.
f. Location: New Bullards Bar Reservoir on the North Fork Yuba River near Dobbins in Yuba County, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. Contact Person: Mr. Donald R. Frost, Administrator, Yuba County Water Agency, P.O. Box 1569, Marysville, California 95901.
i. Comment Date: January 7, 1985.
j. Description of Project: The proposed project would utilize required minimum fish flow releases at New Bullards Bar Dam and would consist of: (1) A 12-inch-diameter, 80-foot-long steel penstock; (2) a powerhouse, located at the toe of the dam, containing a single 150-kW turbine-generator unit and producing an estimated average annual generation of 1.1 GWh; (3) a 24-inch-diameter, 40-foot-long discharge pipe; and (4) a short tap line to connect to an existing Pacific Gas and Electric Company (PG&E) line. Applicant estimates construction cost at $273,000. Project power would be utilized to operate dam facilities during local outages with surplus power sold to PG&E.
k. This notice also consists of the following standard paragraphs: B, C and D1.

2 a. Type of Application: Major License (over 5MW).
b. Project No.: 5223-001.
c. Date Filed: February 27, 1984.
d. Applicant: International Falls Power Company.
e. Name of Project: International Falls Hydroelectric Power Project.
f. Location: On the Rainey River in Koochiching County, Minnesota.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).
h. Contact Person: John P. Borgwardt, Boise Cascade Corporation, P.O. Box 1414, Portland, Oregon 97207 and Amy Koch, Reid and Priest, 1111—19th Street, NW., Washington, DC. 20036.
i. Comment Date: January 22, 1985.
j. Description of Project: The project is currently being operated by Boise Cascade Corporation Hydro-Operator, an agent of the Applicant, and occupies lands within the borders of Canada and the United States (U.S.). Some of the land the project occupies within the U.S. is administered by the Department of the Interior. The part of the proposed project which lies within the borders of the U.S., and which will be licensed, consists of: (1) A 170-foot overflow section of the existing stone masonry dam. The height of this section varies from 10 feet to 35 feet; (2) an existing powerhouse, which is an integral part of the dam, containing 7 generating units, of which six are rated at 1,490 kW and 1 is rated at 1,860 kW, for a total installed capacity of 10,800 kW. Six of the 7 units are proposed to be rehabilitated; (3) a portion of the existing reservior, which is within the U.S. and has a surface area of 48,296.3 acres at power pool elevation of 1,108 feet m.s.l.; (4) an existing 660-foot-loing, 15-kV transmission line, which extends from the powerhouse to Boise Cascade Corporation's switchgear building; and (5) appurtenant facilities. The estimated average annual energy output for the project is 69,800,000 kWh.
k. Purpose of Project: Power produced at the project would be used to power the Applicant's paper and insulite mills, and any excess power would be sold to Boise Cascade Corporation or the Minnesota Power and Light Company.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Major License (over 5MW).
b. Project No.: 7043-001.
c. Date Filed: March 7, 1984.
d. Applicant: Cities of Minden, Natchitoches, and Ruston, Louisiana.
e. Name of Project: Red River Lock and Dam No. 1.
f. Location: On the Red River at mile 50, in Avoyelles and Catahoula Parishes, Louisiana.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).
h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Vice President Forte & Tablada, Inc. P.O. Box 64844, Baton Rouge, Louisiana 70896.
i. Comment Date: January 28, 1985.
j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Red River Lock and Dam No. 1 constructed in late 1984. The project would consist of: (1) A proposed intake structure with trash racks and stop logs; (2) six proposed 16.5-foot-diameter steel penstocks approximately 500 feet long; (3) a new powerhouse located adjacent to and integral with the Crops' dam structure and containing six turbine-generators with a total installed capacity of 18,000 kW; (4) a proposed tailrace channel, approximately 210 feet wide; (5) a proposed 34.5-kV transmission line, approximately 6.02 miles long; and (6) appurtenant facilities. Applicant estimates that the average annual energy generation would be 53,972 MWh. The license application was filed during the term of the Applicant's preliminary permit for Project No. 7043.
k. Purpose of Project: Energy produced at the project would be utilized in the Applicants' municipal electrical systems for distribution to their customers.
l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

4 a. Type of Application: License (Under 5 MW).
b. Project No: 7888-001.
c. Date Filed: February 7, 1984.
d. Applicant: Comtu Falls Corporation and Comtu Falls Associates.
e. Name of Project: Comtu Falls.
f. Location: On the Black River in Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)—825(r).
h. Contact Person: Jeffrey A. Wallin, President, Comtu Falls Corporation, P.O. Box 466, Cavendish, Vermont 05142.
i. Comment Date: January 28, 1985.
j. Competing Application: Project No. 7998-000 Date Filed: January 28, 1984.
k. Description of Project: The run-of-river project would consist of: (1) The existing 4-foot-high and 128-foot-long Comtu Falls Dam with a crest elevation of 392 feet mean sea level owned by the Applicant; (2) 2-foot-high flashboards; (3) an intake structure at the west side of the dam; (4) a 6-foot by 6-foot and 65-foot-long reinforced concrete penstock; (5) a powerhouse with an existing 250-kW and a new 150-kW turbine-generator units; (6) a 30-foot-long and 4-kV transmission line; and (7) other appurtenances. The Applicants estimate an average annual generation of 2,482,800 kWh.
l. Purpose of Project: Project energy would be sold to a local public utility.
m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

5 a. Type of Application: Major License.
b. Project No: 7895-000.
c. Date Filed: December 5, 1984.
d. Applicant: Independence Electric Corporation.
e. Name of Project: Pearl River Hydroelectric.
f. Location: On Ross R. Barnett Reservior and Pearl River, in Madison, Rankin, Hinds, Scott, and Leake Counties, Mississippi.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).
h. Contact Person: Mr. G. William Miller, Independence Electric Corporation, 919 18th Street, NW., Suite 750, Washington D.C. 20006.
i. Comment Date: January 18, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing earthfill dam about 19,000 feet long and 45 feet high; (2) an existing concrete spillway, about 440 feet long, composed of 10 bays, each containing a 21-foot high by 40-foot wide Taintor gate; (3) an existing emergency spillway; (4) an existing water supply intake structure; (5) a reservoir with a capacity of 341,000 acre-feet at normal water surface elevation of 296.0 feet, m.s.l.; (6) a proposed intake structure, approximately 20-feet wide by 120-feet long, with steel trash racks; (7) a proposed penstock arrangement consisting of four 10 feet diameter steel pipes about 400 feet long; (8) a proposed reinforced concrete powerhouse, about 65-feet by 85-feet, housing two turbine-generators with a total installed capacity of 9,500 kW; (9) a proposed tailrace approximately 450 feet long; (10) a proposed switchyard; (11) a proposed 115-kV transmission line approximately two miles long; and (12) appurtenant facilities. The existing dam and reservoir are owned by the Pearl River Valley Water Supply District.
k. Purpose of Project: The energy produced by the project will be sold to a purchasing utility.
l. This notice also consists of the following standard paragraphs: A4, B, and C.

6 a. Type of Application: Major License (less than 5MW).
b. Project No: 7960-000.
c. Date Filed: January 4, 1984.
d. Applicant: Wyoming Valley Hydro Partners, Ltd.
e. Name of Project: Wyoming Valley.
f. Location: Connecticut River, Town of Northumberland, Coos County, New Hampshire and the Town of Guildhall, Essex County, Vermont.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).
h. Contact Person: Mr. Robert W. Shaw, 4 Parsons Street, Colebrook, New Hampshire 03576.
i. Comment Date: January 25, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 233-foot-long, 15-foot-high timber crib dam; (2) an existing 235-acre reservoir at elevation 845.7 feet M.S.L. with 18-inch-high flashboards installed; (3) an existing powerhouse at the east dam abutment containing a single 700-kW turbine-generator to be rehabilitated; (4) an existing powerhouse at the west dam abutment containing three new or reconditioned turbine-generators with a total rated capacity of 1 600 kW; (5) a transformer pad and a 250-foot-long, 34.5-kV transmission line extending from each powerhouse to an existing 34.5-kV transmission line which crosses the Connecticut River upstream from the project; and (6) appurtenant facilities. The project would generate up to 5,256,000 kWh annually. The existing facilities are owned by the James River Corporation.
k. Purpose of Project: Energy produced at the project would be sold to Public Service Company of New Hampshire.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

7 a. Type of Application: License (Under 5MW).
b. Project No: 7998-000.
c. Date Filed: January 26, 1984.
d. Applicant: The Town of Springfield.
e. Name of Project: Black River.
f. Location: Black River in Windsor County, Vermont.

BILLING CODE 6717-01-M

i. Comment Date: January 7, 1985.

Boise Cascade Corporation's switchgear

Windsor County, Vermont.

generators with a total installed

County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. sections 791(a)—825(r).

h. Contact Person: Michael S. Valuk, Town Manager, 96 Main Street, Springfield, Vermont 05156.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed run-of-river project would consist of 4 independent developments as follows, mentioned from upstream.

A. The existing Fellows Dam Development consisting of: (1) The existing 9.6-foot-high and 200-foot-long concrete gravity Fellows Dam owned by the Applicant, with a crest elevation of 434.8 feet mean sea level (msl); (2) a small reservoir with a surface area of 23 acres; (3) an intake structure and powerhouse at the south abutment of the dam with a 150 kW turbine-generator unit; and (4) other appurtenances.

B. The Gilman/Slack Development would consist of: (1) The reconstruction of the now breached Gilman Dam, about 1,250 feet downstream of the Fellows Dam, to an elevation of 425 feet msl [an increase of 3.4 feet) with dimensions of 10 feet high and about 230 feet long; (2) a reservoir with a surface area of 3 acres; (3) a new intake structure at the west abutment; (4) a new 9-foot-diameter and 900-foot-long penstock, bypassing the existing Comtu Falls Development; (5) a new powerhouse on the west bank just downstream of the Slack Dam, with 2 turbine-generator units with a total installed capacity of 3,690 kW; (6) a new 20-foot-long and 4.16-KV transmission line; and (7) other appurtenances. Existing facilities are owned by the Applicant, Riggs & Lombard, Inc., the Springfield Cooprative Savings & Loan Association, and Sterling Enterprises, Inc.

C. The existing Comtu Falls Development consisting of: (1) The 4-foot-high and 128-foot-long Comtu Falls Dam with a crest elevation of 392 feet msl owned by the Comtu Falls Corporation; (2) a small reservoir with a surface area of 0.3 acres; (3) an intake structure at the west abutment of the dam; (4) a 6-foot by 6-foot and 65-foot-long reinforced concrete penstock; (5) a powerhouse with a 250-kW turbine-generator unit; (6) a 30-foot-long and 4-kV transmission line; and (7) other appurtenances.

D. The existing Lovejoy Dam Development consisting of: (1) The 14.5-foot-high and 150-foot-long concete gravity Lovejoy Dam with a crest elevation of 344.5 feet msl, about 720 feet downstream from the Slack Dam; (2) a reservoir unit with a surface area of 3.6 acres; (3) an intake structure at the east end of the dam; (4) a powerhouse with 2 turbine-generator units with a total capacity 150 kW; and (5) other appurtenances. Existing facilities are owned by Lovejoy Tool Company, Inc.

The total capacity would be 4,150 kW. The Applicant estimates a total average annual generation of 12,638,000 kWh.

k. Purpose of Project: Project energy would be sold to the Applicant's local customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

8 a. Type of Application: License (Minor).

b. Project No.: 8023–000.

c. Date Filed: February 2, 1984.

d. Applicant: West Slope Hydro Partners.

e. Name of Project: Uncompahgre Valley Hydroelectric Project No. 2.

f. Location: U.S. Bureau of Reclamation's South Canal, Montrose County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Douglas A. Spaulding, INDECO of Minnesota, Inc., 1500 South Lilac Drive, 351 Tyrol West Building, Minneapolis, Minnesota 55416.

i. Comment Date: January 7, 1985.

j. Competing Application: Project No: 8037–000. Date Filed: February 2, 1984.

k. Description of Project: The proposed project would utilize the U.S. Bureau of Reclamation's South Canal and would consist of the following: (1) A proposed intake headworks located at an existing canal drop, approximately 1.3 miles downstream of the Gunnison Tunnel West Portal; (2) a proposed 120-inch-diameter penstock, approximately 400 feet long; (3) a proposed powerhouse with a single 1,000-kW capacity generating unit; (4) a proposed short powerhouse discharge channel leading to the adjacent South Canal; (5) a proposed ¾-mile-long 3.45-kV transmission line; and (6) appurtenant facilities.

l. Purpose of Project: The estimated average annual generation of 7,340,000 kWh would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: License (Major less than 5 MW).

b. Project No.: 8024–000.

c. Date Filed: February 2, 1984.

d. Applicant: West Slope Hydro Partners.

e. Name of Project: Uncompahgre Valley Hydroelectric Project No. 3.

f. Location: U.S. Bureau of Reclamation's South Canal, Montrose County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Douglas A. Spaulding, INDECO of Minnesota, Inc., 1500 South Lilac Drive, 351 Tyrol West Building, Minneapolis, Minnesota 55416.

i. Comment Date: January 7, 1985.

j. Competing Application: Project No. 8038–000. Date Filed: February 2, 1984.

k. Description of Project: The proposed project would utilize the U.S. Bureau of Reclamation's South Canal and would consist of the following: (1) A proposed intake headworks located at an existing canal drop, approximately 2.1 miles downstream of the Gunnison Tunnel West Portal; (2) a proposed 120-inch-diameter penstock, approximately 500 feet long; (3) a proposed powerhouse with a single 2,200-kW capacity generating unit; (4) a proposed short powerhouse discharge channel leading to the adjacent South Canal; (5) a proposed ¾-mile-long 34.5-kV transmission line; and (6) appurtenant facilities.

l. Purpose of Project: The estimated average annual generation of 15,282,000 kWh would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10 a. Type of Application: License (Major less than 5 MW).

b. Project No.: 8025–000.

c. Date Filed: February 2, 1984.

d. Applicant: West Slope Hydro Partners.

e. Name of Project: Uncompahgre Valley Hydroelectric Project No. 4.

f. Location: U.S. Bureau of Reclamation's South Canal, Montrose County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Douglas A. Spaulding, INDECO of Minnesota, Inc., 1500 South Lilac Drive, 351 Tyrol West Building, Minneapolis, Minnesota 55416.

i. Comment Date: January 7, 1985.

j. Competing Application: Project No: 8036–000. Date Filed: February 2, 1984.

k. Description of Project: The proposed project would utilize the U.S. Bureau of Reclamation's South Canal and would consist of the following: (1) A proposed intake headworks located at an existing canal drop, approximately 4.5 miles downstream of the Gunnison Tunnel West Portal; (2) a proposed 108-inch-diameter penstock, approximately 2,900 feet long; (3) a proposed powerhouse with a single 4,500-kW capacity generating unit; (4) a proposed short powerhouse discharge channel leading to the adjacent South Canal; (5) a proposed 2½-mile-long 34.5-kV transmission line; and (6) appurtenant facilities.

l. Purpose of Project: The estimated average annual generation of 28,128,000 kWh would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 8386–000.

c. Date Filed: June 25, 1984.

d. Applicant: Colorado Hydro Partners 84–2.

e. Name of Project: Northfield Conduit Hydro Project.

f. Location: Municipal Water Conduit in Teller County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bradley H. Ermel, P.O. Box 1928, Colorado Springs, Colorado 80901.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would utilize the existing City of Colorado Springs, CO, Northfield water supply conduit located in the Pike National Forest and would consist of: (1) A new 30-foot-long penstock connecting to the conduit; (2) a new powerhouse containing 2 turbine-generator units having a total rated capacity of 1,300 kW; (3) a tailrace returning flow to the conduit; (4) a new 150-foot-long, 34.5-kV transmission line connecting to an existing line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7,402,000 kWh. Project energy would be sold to the Public Service Company of Colorado or to the City of Colorado Springs.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project contruction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 8393–000.

c. Date Filed: June 26, 1984.

d. Applicant: F.&T. Energy Corporation.

e. Name of Project: Arkansas River L&D No. 4.

f. Location: On Arkansas River in Jefferson County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., Post Office Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: January 28, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Arkansas River Lock and Dam No. 4 and would consist of: (1) A new 1500-foot-long intake channel at the left river bank; (2) a new powerhouse containing turbine-generator units having a total rated capacity of 18,000 kW; (3) a tailrace channel returning flow to the river about 2,500 feet downstream from the dam; (4) a new 6-mile-long transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 95,000,000 kWh. Project energy would be sold to the Arkansas Power and Light Company or to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 12 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an applications for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 8394–000.

c. Date Filed: June 26, 1984.

d. Applicant: F.&T. Energy Corporation.

e. Name of Project: Arkansas River L&D No. 5.

f. Location: On Arkansas River in Jefferson County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., Post Office Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: January 28, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Arkansas River Lock and Dam No. 5 and would consist of: (1) A new 1500-foot-long intake channel at the right river bank; (2) a new powerhouse containing turbine-generator units having a total rated capacity of 28,000 kW; (3) a tailrace channel returning flow to the river about 2,500 feet downstream from the dam; (4) a new 2.5-mile-long transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 135,000,000 kWh. Project energy would be sold to the Arkansas Power and Light Company or to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 12 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an applications for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

14 a. Type of Application: Conduit Exemption.

b. Project No: 8461–000.

c. Date Filed: July 24, 1984.

d. Applicant: Valley High Ranches, Inc.

e. Name of Project: Valley High Ranch Hydro.

f. Location: Near Valley View Hot Springs, in Saguache County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contract Person: Mr. Gary Wysocki, P.O. Box 256, Lake City, Colorado 81235.

i. Comment Date: January 7, 1985.

j. Description of Project: The proposed project would consist of: (1) A new headgate; (2) a new 12-inch buried plastic pipeline, approximately 2 miles long, which will upgrade an existing 8-inch pipeline; (3) a new wooden powerhouse approximately 14 feet by 12 feet, which will house one turbine-generator unit with an installed capacity of 175 kW; (4) a new tailrace consisting of an 8-inch pipe leading to; (5) a new irrigation control box which will control the discharge of water into existing irrigation ditches; (6) a new underground transmission line approximately 0.25 miles long rated at 14.4-kV; (7) a new transformer; and (8) appurtenant facilities. Applicant estimates that the average annual energy generation would be 1,079,000 kWh.

k. Purpose of Project: The Applicant anticipates that project energy will be

sole to Colorado Ute Electric Association.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

15 a. Type of Application: Exemption from Licensing (5MW or Less).

b. Project No: 8505–000.

c. Date Filed: August 9, 1984.

d. Applicant: J.K. Inc.

e. Name of Project: Abbots Mill.

f. Location: Concord River in Oxford County, Maine.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705, and 2708 *as amended).*

h. Contact Person: Mr. Jenness N. Buck, P.O. Box 98, Hanover, Maine 04237.

i. Comment Date: January 7, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 50-foot-long, 18-foot-high concrete dam owned by the Applicant; (2) an existing 2 acre reservoir to be increased to 2½ acres by the reinstallation of 2-foot-high flashboards to the dam; (3) an existing concrete forebay; (4) two existing 15-foot-long, 30-inch-diameter steel penstocks; (5) a proposed concrete powerhouse containing one turbine/generator unit with an installed capacity of 40 kW, operating under a head of 20 feet; (6) a proposed 480-volt, 2,000-foot-long transmission line; and (8) appurtenant facilities.

k. Purpose of Project: Project energy would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control; development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

16 a. Type of Application: Preliminary Permit.

b. Project No: 8553–000.

c. Date Filed: August 27, 1984.

d. Applicant: Pine Crest Hydro Ltd.

e. Name of Project: Pine Crest Hydroelectric Project.

f. Location: On Beaver Creek in Mendocino County, California, within Mendocino National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Roy McDonald, 1121 L St., Suite 1000, Sacramento, California 95814.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 350-foot-long diversion weir at elevation 3,000 feet; (2) a 72-inch-diameter, 5,000-foot-long pipeline; (3) a 48-inch-diameter, 1,250-foot-long penstock; (4) a powerhouse with a total installed capacity of 4,400 kW; and (5) an 11-mile-long, 12.5-kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

A preliminary permit if issued, does not authorize construction. Applicant has required a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $70,000.

k. Purpose of Project: The estimated 15.5 million kWh produced by the project would be sold to PG&E.

l. This notice also consist of the following standard paragraphs: A6, A7, A9, B, C and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No: 8554–000.

c. Date Filed: August 27, 1984.

d. Applicant: Signal Peak Hydro Ltd.

e. Name of Project: Signal Peak Hydroelectric Project.

f. Location: On Mendenhall Creek in Mendocino County, California; within Mendocino National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Roy McDonald, 1121 L St., Suite 1000, Sacramento, California 98514.

i. Comment Date: January 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 110-foot-long diversion weir at elevation 3,800 feet; (2) a 6000-foot-long, 52-inch-diameter pipeline; (3) a 1,400-foot-long, 36-inch-diameter penstock; (4) a powerhouse with a total installed capacity of 6000 kW; and (5) a 21-mile-long, 12.5-kV transmission line connecting with an existing Pacific Gas and Electric (PG&E) transmision line.

A preliminary permit if issued, does not authorize construction. Applicant has required a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $70,000.

k. Purpose of Project: The estimated 16.1 million kWh produced annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

18 a. Type of Application: Preliminary Permit.

b. Project No: 8587–000.

c. Date Filed: September 10, 1984.

d. Applicant: Silver Wheel Hydro Ltd.

e. Name of Project: Silver Wheel Hydroelectric Project.

f. Location: On Little North Fork Salmon River, near Sawyers Bar, within Klamath National Forest, in Siskiyou County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Roy McDonald, 1121 L St., Suite 1000, Sacramento, California 95814.

i. Comment Date: January 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 220-foot-long diversion dam at elevation 3,060 feet; (2) a 48-inch-diameter, 5,700-foot-long diversion pipeline; (3) a 36-inch-diameter, 1,000-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 3,980 kW operating under a head of 660 feet; and (5) a 2-mile-long, 12.5-kV transmisstion line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 17.5 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

19 a. Type of Application: Preliminary Permit.

b. Project No: 8588–000.

c. Date Filed: September 10, 1984.

d. Applicant: Trinity Empire Hydro Ltd.

e. Name of Project: Trinity Empire Hydroelectric Project.

f. Location: On Dubakella Creek, near Wildwood, within the Shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L St., Suite 1000, Sacramento, California 95814.

i. Comment Date: January 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 18-foot-long diversion dam at elevation 4,450 feet; (2) a 36-inch-diameter, 11,000-foot-long diversion pipeline; (3) a 30-inch-diameter, 3,800-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 2,000 kW operating under a head of 660 feet; and (5) a 2.5-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy

generation at 4.9 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No: 8592–000.

c. Date Filed: September 10, 1984.

d. Applicant: Quartz Valley Hydro Ltd.

e. Name of Project: Quartz Valley Hydroelectric Project.

f. Location: On Canyon Creek, near Quartz Valley, within the Klamath National Forest, in Siskiyou County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: January 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 40-foot-long diversion dam at elevation 3,620 feet, (2) a 36-inch-diameter, 11,620-foot-long diversion pipeline, (3) a 24-inch-diameter, 1,800-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 3,150 kW operating under a head of 1,160 feet; and (5) a 600-foot-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 14.8 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize constuction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No: 8669–000.

c. Date Filed: October 15, 1984.

d. Applicant: Hydro-Energy Consulting Consortium.

e. Name of Project: Rush Creek.

f. Location: On Rush Creek, near Quincy, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Daniel L. Ostrander, 12750 Quail Run Drive, Chico, California 95926.

Mr. Robert J. Balocchi, 1859 Salida Way, Paradise, California 95969

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project run-of-the-river project would consist of: (1) A 10-foot-high, 50-foot-long concrete diversion weir and intake structure located on Rush Creek at elevation 3,680 feet msl; (2) a 48-inch-diameter, 9,200-foot-long steel pipeline; (3) a 42-inch-diameter, 1,800-foot-long steel penstock; (4) a powerhouse located at elevation 2,800 feet msl with an installed capacity of 3,142 kW and producing an estimated average annual energy generation of 11 GWh; and (5) a 500-foot-long, 12-kV transmission line connecting the project to an existing Pacific Gas and Electric Company (PG and E) line. The proposed project would be located on Plumas National Forest lands. Project power would be sold to PG and E.

A preliminary permit, if issued, does not authorize constuction. The Applicant seeks a 24-month permit to study the feasibility of constucting and operating the project and estimates the cost of the studies at $125,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project Under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project Under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit

project would consist of: (1) A 5-foot-high, 350-foot-long diversion weir at

Klamath National Forest, in Siskiyou County, California.

transmission line. The Applicant estimates the average annual energy

Quincy, in Plumas County, California.

in response to this notice.

hydroelectric exemption or conduit

exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to; Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application

may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 4, 1984.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32078 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-76-000]

Solar Energy Technology Systems (Guam) Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 4, 1984.

On November 6, 1984, Solar Energy Technology Systems (GUAM) Inc., (Applicant) of J & R Building, Route 4 P.O. Box 1933, Agana, Guam 96910 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed facility will be located in the Tarzan Falls Area in Yona, Guam and will consist of 130 wind turbine generators each having a rated capacity of 150 kW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32083 Filed 12-6-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Civilian Radioactive Waste Management

Civilian Radioactive Waste Transportation Business Plan; Strategy Options Document

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of availability for comment of the Transportation Business Plan; Strategy options document.

SUMMARY: The Office of Civilian Radioactive Waste Managmeent (OCRWM), U.S. Department of Energy, is developing a Transportation Business Plan related to responsibilities assigned by the Nuclear Waste Policy Act of 1982. The document will provide information on the plans and strategies for the development and operation of the projected system to transport spent fuel or high-level waste as authorized by the Act.

This notice is to announce the availability of a Strategy Options Document, the purpose of which is to provide an opportunity for public reaction and comment. Section I contains background information and defines the purpose, policy basis, and scope of transportation business activities as well as issues related to these activities. Section II discusses the evolving strategy that will direct the Department's business actions and describes various strategy options that are under consideration. Also described is a phased approach for development of the transportation system: systems definition; engineering development and certification; cask fleet procuremetn and carrier negotiations; and transportation operations.

This interim document is specifically intended to be an instrument for interaction to help ensure consensus planning. The Department seeks (1) to identify industry interests in participating with the Department to establish and operate the waste transportation system, and (2) to identify and address State, local and tribal concerns in devlopment of specific strategies and action plans. This is in accord with the principle of consultation and cooperation among affected parties as established by the Waste Policy Act. The Department expects to prepare a Final Transporation Business Plan by the Fall of 1985.

Copies of the Strategy Options Document may be obtained after December 7, 1984, by telephoning (202) 252–5568 and by direct pickup from or writing to the Office of Public Affairs, Transportation Business Plan: Strategy

Options Document (OCRWM), U.S. Department of Energy, Room 1E–218, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

To enable timely consideration, all comments on the Strategy Options Document should be submitted in writing no later than February 5, 1985, to Mr. Robert Philpott, Chief, Transportation Branch, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, RW–33, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Issued in Washington, D.C., December 4, 1984.

Robert H. Bauer,

RW–10, Associate Director for Resource Management, Office of Civilian Radioactive Waste Management.

William H. Mellor,

GC–10, Deputy General Counsel for Legislation and Regulations, Office of General Counsel.

[FR Doc. 84–32178 Filed 12–6–84; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–00059; FRL–2733–3]

Toxic Substances; Confidential Business Information; Revised Security Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Toxic Substances has adopted revised procedures for maintaining the security of Confidential Business Information (CBI) submitted under the Toxic Substances Control Act (TSCA). A manual has been developed to replace the existing TSCA Confidential Business Information Security Manual. This notice announces the availability of the revised manual and summarizes some of the changes from the previous one.

DATE: The requirements of this revised manual are effective December 7, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll-Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator—202–554–1404).

One copy of the manual can be obtained from the TSCA Assistance Office at no cost.

SUPPLEMENTARY INFORMATION: This notice announces the adoption of a revised TSCA Confidential Business Information Security Manual which sets forth procedures to be followed by EPA to maintain the security of CBI submitted under TSCA. This revised security manual replaces the manual for EPA use announced in the **Federal Register** of October 8, 1981 (46 FR 49942). The second manual announced in the October 1981 notice, for EPA contractors and subcontractors, remains in effect and may be revised and amended in the future.

For more than 3 years, EPA has followed the procedures set forth in the present security manual. During that time, program changes have necessitated minor changes to the Agency's security procedures for TSCA data. In addition, EPA's periodic review of existing procedures has led to a number of additions and deletions to the security manual that are designed to clarify and improve the TSCA security system. These changes are reflected in the revised manual announced by this notice. Changes of note include:

1. A more detailed description of access authorization procedures for clearing contractors and subcontractors has been added.

2. The responsibilities of EPA contract project officers has been described in greater detail.

3. Procedures have been added for reconciling document handling records upon the completion of a contract.

4. Procedures have been added for using TSCA CBI on office micro-computers.

5. Procedures for handling internal draft documents containing TSCA CBI have been clarified.

6. Procedures have been added for declassifying computer printouts and tapes from TSCA CBI data systems.

7. The manual's section on remote computer terminals has been expanded.

8. Procedures have been revised for processing of 35 mm film that contains TSCA CBI.

9. Chapter IV of the existing manual has been removed and issued separately as operating procedures for the TSCA CBI Computer Center.

In general, sections on responsibilities and duties have been clarified and updated. Also, procedures for obtaining access to TSCA CBI and for document storage and handling have been clarified and set forth in greater specificity.

Dated: November 30, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84–31975 Filed 12–6–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59174; FRL–2733–4]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–3. The test marketing conditions are described below.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–613C, 401 M St. SW., Washington, DC. 20460, (202–382–3374)

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–85–3. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–3. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME 85–3

Date of Receipt: October 25, 1984.

Notice of Receipt: November 2, 1984 (49 FR 44143).

Applicant: Confidential.

Chemical: (G) Alumina Organic Metallic Compound.

Use: (G) Contained Industrial Use.

Production Volume: 5000 kilograms.

Number of Customers: Confidential.

Workers Exposure: 5–10 workers dermal.

Test Marketing Period: 1 year.

Commencing on: December 3, 1984.

Risk Assessment: No significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 3, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84–31974 Filed 12–6–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51548; FRL–2732–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-seven PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 85–190, 85–191, 85–192, 85–193, 85–194, 85–195, 85–196, and 85–197—February 20, 1985.

PMN 85–198, 85–199, 85–200, 85–201, 85–202, 85–203, 85–213, 85–214, 85–215, and 85–216—February 23, 1985.

PMN 85–217, 85–218, 85–219, 85–220, 85–221, 85–222, 85–223, 85–224, 85–225, 85–226, 85–227, 85–228, 85–229, 85–230, 85–231, 85–232, and 85–233—February 24, 1985.

PMN 85–234 and 85–235—February 26, 1985.

Written comments by:

PMN 85–190, 85–191, 85–192, 85–193, 85–194, 85–195, 85–196, and 85–197—January 21, 1985.

PMN 85–198, 85–199, 85–200, 85–201, 85–202, 85–203, 85–213, 85–214, 85–215, and 85–216—January 24, 1985.

PMN 85–217, 85–218, 85–219, 85–220, 85–221, 85–222, 85–223, 85–224, 85–225, 85–226, 85–227, 85–228, 85–229, 85–230, 85–231, 85–232, and 85–233—January 25, 1985.

PMN 85–234 and 85–235—January 27, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51548]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street SW., Washington, DC 20460 (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington DC 20460 (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNS received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address. (PMNs 85–204 thru 85–212 have been consolidated into PMN 85–203).

PMN 85–190

Manufacture. Confidential.

Chemical. (S) N,N-dimethyl-2-nitrobenzenesulfonamide.

Use/Production. (G) Chemical intermediate. Prod. range: 150–200 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, a total of 8 workers, up to 1.0 hr/da, up to 3 da/yr.

Environmental Release/Disposal. 0 to 0.6 kg/batch released to water. Disposal by navigable waterway with less than 0.05 kg/batch incinerated.

PMN 85–191

Manufacturer. Confidential.

Chemical. (S) Phenyl 4-methoxy-3-nitrobenzenesulfonate.

Use/Production. (G) Chemical intermediate. Prod. range: 250–350 kg/yr.

Toxicity Data. Acute oral: Males and females—3,200 mg/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Low potential.

Exposure. Manufacture and use: Dermal, a total of 6 workers, up to 1.0 hr/da, up to 3 da/yr.

Environmental Release/Disposal. Less than 0.1 kg/batch released to water. Disposal by navigable waterway with less than 0.01 to less than 6 kg/batch incinerated.

PMN 85–192

Manufacturer. Confidential.

Chemical. (S) 2-amino-N,N-dimethylbenzenesulfonamide.

Use/Production. (G) Chemical intermediate. Prod. range: 120–160 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, a total of 8 workers, up to 1.0 hr/da, up to 4 da/yr.

Environmental Release/Disposal. Less than 0.1 to less than 8 kg/batch incinerated.

PMN 85–193

Manufacturer. Confidential.

Chemical. (S) Phenyl 3-amino-4-methoxybenzensulfonate.

Use/Production. (G) Chemical intermediate. Prod. range: 220–300 kg/yr.

Toxicity Data. Irritation: Skin—Slight; Skin sensitization: Low Potential.

Exposure. Manufacture and use: Dermal, a total of 4 workers, up to 1.0 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No data submitted.

PMN 85–194

Manufacturer. Confidential.

Chemical. (G) Acid amide salt.

Use/Production. (S) Industrial cotton softener. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 1 worker.
Environmental Release/Disposal. 25 kg/batch released to sewer. Disposal by publicly owned treatment works (POTW).

PMN 85-195

Manufacturer. Confidential.
Chemical. (G) Substituted silyl epoxide.
Use/Production. (G) Sealant additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-196

Manufacturer. Confidential.
Chemical. (G) Substituted alkyl silyl urea.
Use/Production. (G) Sealant additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-197

Importer. CHEMIE LINZ U.S. Inc.
Chemical. (S) Melamine cyanurate.
Use/Import. (S) Industrial flame retardant for polyamide. Import range: Confidential.
Toxicity Data. Acute oral: 2,500 mg/kg.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 85-198

Manufacturer. Ethyl Corporation.
Chemical. (G) Alkylated aromatic diamine.
Use/Production. (S) Industrial plastics modifier comonomer. Prod. range: Confidential.
Toxicity Data. Acute oral: 366.8 mg/kg; Acute dermal: >5 g/kg; Irritation: Skin—Mild, Eye—Irritant; Ames test: Non-mutagenic; HPC/DNA repair: No genotoxic activity.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 85-199

Manufacturer. Confidential.
Chemical. (G) Hydrocarbon resin.
Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Acute dermal: 3.16 g/kg; Irritation: Eye—Mild.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85-200

Manufacturer. Confidential.
Chemical. (G) Cyanoacrylate ester.
Use/Production. (S) Industrial cyanoacrylate adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-201

Importer. Confidential.
Chemical. (G) Substituted dioxazine.
Use/Import. (G) Paper dye. Import range: 1,600–3,200 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe/corrosive; Ames Test: Negative; TL_m 48 hr (Zebra fish): 0.3 mg/l; TL_{50} 48 hr (Zebra fish): 1.3 mg/l; TL_{100} 3 mg/l; TL_m 96 hr (Zebra fish): 0.3; TL_{50} 96 hr (Zebra fish): 0.8 mg/l; TL_{100} 96 hr (Zebra fish): 3 mg/l; Bacterial Toxicity: 100 mg/l; BOD_5: 100 mg/kO_2; COD: 1185 mg/gO_2.
Exposure. Processing Dermal, a total of 2 workers, up to 0.5 hr/da, up to 2 da/yr, 3 shifts times 12 plants.
Environmental Release/Disposal. Less than 0.2 released to water. Disposal by POTW and biological treatment system.

PMN 85-202

Importer. Confidential.
Chemical. (G) Substituted dioxazine.
Use/Import. (G) Paper dye. Import range: 500–1,000 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Ames Test: Negative; LC_{50} 96 hr (Zebra fish): 1.2 mg/l; Bacterial Toxicity—100 mg/l; BOD_5 O mg/gO_2; COD: 1011 mg/gO_2; COD/TOC: .70.
Exposure. Processing: Dermal, a total of 2 workers, up to 0.5 hr/da, up to 2 da/yr, 3 shifts times 12 plants.
Environmental Release/Disposal. Less than 0.1 released to water: Disposal by POTW and biological treatment system.

PMN 85-203

Manufacturer. Phillips Chemical Company.
Chemical. (G) Sulfur—containing polyalkylene oxides.
Use/Production. (S) Industrial and commercial degreaser additive. Prod. range: Confidential.
Toxicity Data. Acute oral: Males—2,667 mg/kg, Females—1,885 mg/kg; Irritation: Skin—Extremely mild, Eye—Primary irritant; LC_{50} 48 hr (Daphnia magna): 2.4 mg/l; LC_{50} 96 hr (Fathead minnow): 64 mg/l
Exposure. Manufacture: Dermal, a total of 4 workers.
Environmental Release/Disposal. 0.03 kg/batch released to water. Disposal by Phillips Dixon Creek Water Treatment.

PMNs 85-204 thru 85-212

(PMNs 85-204 thru 85-212 have been consolidated into PMN 85-203).

PMN 85-213

Manufacturer. Essex Specialty Products, Inc.
Chemical. (G) Aromatic polyurethane prepolymer containing tertiary amine.
Use/Production. (S) Polymer for use in adhesive manufacture. Prod. range: 9,000–100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85-214

Manufacturer. Essex Speciality Products, Inc.
Chemical. (G) Aromatic polyurethane prepolymer containing polyether.
Use/Production. (S) Polymer for use in adhesive manufacture. Prod. range: 9,000–1000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

PMN 85-215

Manufacturer. Confidential.
Chemical. (G) Polyester polyol.
Use/Production. (S) Coating resin component. Prod. range: 82,000–220,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 9 workers, up to 1–2 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. 1 to 20 kg/batch released to control technology. Disposal by incineration and aqueous waste treatment facility.

PMN 85-218

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. Acute oral: Male and female <250 mg/kg; Acute dermal: >1,000 mg/kg; Irritation: Eye—Readily absorbed; Ames test: Non-mutagenic; LC_{50} 96 hr (Fathead minnows): 0.48 mg/L; Acute ingestion: Serious; Inhalation (3–4 days): 0.08 g/m^3.
Exposure. Confidential.
Environmental Release/Disposal. Release to air and land. Disposal by incineration and navigable waterway after treatment.

PMN 85-217

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymer of diisocyanate with glycol.
Use/Production. (S) Industrial property enhancer for flexible urethane foams. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 16 workers.
Environmental Release/Disposal. 25 to 300 gm analytical sample/batch released to air. Disposal by incineration.

PMN 85-218

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymer of diisocyanate with glycol.
Use/Production. (S) Industrial property enhancer for flexible urethane foams. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 16 workers.
Environmental Release/Disposal. 25 to 300 gm analytical sample/batch released to air. Disposal by incineration.

PMN 85-219

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymer of diisocyanate with glycol.
Use/Production. (S) Industrial property enhancer for flexible urethane foams. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 16 workers.
Environmental Release/Disposal. 25 to 300 gm analytical sample/batch released to air. Disposal by incineration.

PMN 85-220

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymer of diisocyanate with glycol.
Use/Production. (S) Industrial property enhancer for flexible urethane foams. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 16 workers.
Environmental Release/Disposal. 25 to 300 gm analytical sample/batch released to air. Disposal by incineration.

PMN 85-221

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymer of diisocyanate.
Use/Production. (S) Industrial property enhancer for flexible urethane foams. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: Dermal, a total of 16 workers.
Environmental Release/Disposal. 25 to 300 gm analytical sample/batch released to air. Disposal by incineration.

PMN 85-222

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polymer of diisocyanate.
Use/Production. (S) Industrial property enhancer for flexible urethane foams. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: Dermal, a total of 16 workers.
Environmental Release/Disposal. 25 to 300 gm analytical sample/batch released to air. Disposal by incineration.

PMN 85-223

Manufacturer. Confidential.
Chemical. (G) Polyester diol.
Use/Production. (S) Industrial coating resin component. Prod. range: 400,000–800,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 9 workers, up to 1–2 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. 1 to 20 kg/batch released to control technology. Disposal by incineration.

PMN 85-224

Manufacturer. Confidential.
Chemical. (G) Polyester polyol.
Use/Production. (S) Industrial coating resin component. Prod. range: 175,000–200,000.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 9 workers, up to 1–2 hrs/da, up to 14 da/yr.
Environmental Release/Disposal. 1 to 20 kg/batch released to control technology. Disposal by incineration.

PMN 85-225

Importer. Aceto Chemical Company, Inc.
Chemical. (S) 2-n-butoxyethyl 4-(dimethylamino)benzoate.
Use/Import. (S) Industrial photoactivator for the photocuring of U.V. curing compositions. Import range: Confidential.
Toxicity Data. Acute oral: 1 g/kg; Acute dermal: >500 mg/kg Ames test: Non-carcinogenic.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 85-226

Manufacturer. Mazer Chemicals, Inc.
Chemical. (G) Substituted succinic acid.
Use/Production. (G) Metalworking fluid component. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-227

Manufacturer. Confidential.
Chemical. (G) Acrylic acid ester.
Use/Production. (S) Site-limited and industrial monomer used as an intermediate in the synthesis of polymers. Prod. range: 10,000 kg/yr.
Toxicity Data. Acute oral: Males—0.21 g/kg, Females—0.17 g/kg, Combined—0.18 g/kg; Irritation: Skin—Corrosive, Eye—Corrosive; Ames test: Non-mutagenic; Cytotoxicity assay: 3.0 µg/ml, 25% and 150 µg/ml; Transformation assay: 2.5 gµ/ml.
Exposure. Manufacture and processing: Dermal, a total of 7 workers, up to <1 hr/da, up to <75 da/yr.
Environmental Release/Disposal. Less than 1.75 kg released to air with less than 5.0 kg to water. Disposal by POTW and incineration.

PMN 85-228

Manufacturer. Confidential.
Chemical. (G) Disubstituted pyridinium bromide.
Use/Production. (G) Consumer article component-contained use. Prod. range: 15,000–20,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: Dermal, a total of 34 workers, up to <1 hr/da, up to <250 da/yr.
Environmental Release/Disposal. Less than 0.20 kg released to air with less than 5.00 kg to water and less than 2.50 kg land. Disposal by POTW, incineration and licensed landfill.

PMN 85-229

Manufacturer. Confidential.
Chemical. (G) Epoxy polyester.
Use/Production. (S) Binder for car refinishing. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-230

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd resin.
Use/Production. (S) Binder for car refinishing system. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential

release.

total of 4 workers.

after treatment.

Environmental Release/Disposal. Confidential.

PMN 85–231

Manufacturer. Confidential.
Chemical. (G) Polyester base.
Use/Production. (S) Base for epoxy polyester. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–232

Importer. Marubeni America Corporation.
Chemical. (S) Chromate (2-), [2-[[1-(3-chlorophenyl)-4,5-dihydro-3-methyl-5-oxo-1H-pyrazol-4-yl]azo]-5-sulfobenzoato-(2)] [2-[4,5-dihydro-5-oxo-1,3-diphenyl-1H-pyrazol-4-yl]azo]benzoato(2-)]-, sodium hydrogen (9Cl).
Use/Import. (S) Commercial dye for polyamide fibres. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 85–233

Importer. Marubeni America Corporation.
Chemical. (S) Benzenamine, 4-[(dichloro-1,3-benzothiazol-2-yl)azo]-N-methyl-N-(3-phenylpropyl)-.
Use/Import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 85–234

Importer. Confidential.
Chemical. (G) Disubstituted sulfide.
Use/Import. (S) Industrial decomposition promoter in chemical blowing agents. Import range: 15,000–30,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No release.

PMN 85–235

Manufacturer: Confidential.
Chemical. (G) Vegetable oil polymer with alkane diols.
Use/Production. (G) Binder component for an industrially applied coating. Prod. range: 15,000–400,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 24 workers, up to 8 hrs/da, up to 40 da/yr.
Environmental Release/Disposal. 10 to 130 kg/batch released to land. Disposal by incineration and landfill.

Dated: December 3,1984.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 84–31970 Filed 12–6–84; 8:45 am]
BILLING CODE 6560–50–M

[ER-FRL-2732-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 19, 1984 through November 23, 1984 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–507576. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-COE-E34028-FL, Rating EO2, Canaveral Harbor West Basin and Approach Channel Improvement, FL. Summary: EPA believes that the mitigation measures proposed to offset the environmental losses of this project are insufficient. EPA identified significant environmental objections to the proposed mitigation plan and requested additional consultation to resolve this matter. EPA indicated that the DEIS conclusions regarding the insignificance of environmental losses caused by the project were not supported by information or data in the document.

ERP No. DB-COE-K35013-CA, Rating EO2, Sacramento River Bank Protection Project, CA. Summary: EPA believes that the proposed mitigation is inadequate to protect designated beneficial uses of the Sacramento River, such as fish/wildlife habitat and fish spawning and migration.

ERP No. DA-COE-K36013-CA, Rating LO, Walnut Creek Flood Control Plan, CA. Summary: EPA agrees with the conclusion that no significant concerns still exist for this project. However, EPA recommended that mitigation be included in the FEIS, based on close coordination with the US Fish and Wildlife Service.

ERP No. DS-FHW-F40215-OH, Rating LO, OH-241 Relocation, OH-241/US 30 to Oberlin Road Viaduct/OH-21, OH. Summary: EPA agrees that there have been no significant changes in the impacts associated with each alternative since publication of the DEIS.

Final EISs

ERP No. F-CDB-K89054-CA, Oakland Hotel Two/Parking Garage Development, CA. Summary: The FEIS adequately addressed the concerns EPA had raised on the DEIS.

ERP No. F-COE-E03003-SC, South Carolina (Georgetown) Oil Refinery/Underwater Pipeline Installation, Sampit River, SC. Summary: EPA believes that the location of the proposed refinry would lead to unacceptable environmental impacts and that other options for providing petroleum products could satisfy national and regional needs. EPA's main concerns are the risks associated with oil spills in Winyah Bay, the environmental consequences of petrochemical discharges during refinery operation, and the secondary impacts associated with the refinery. EPA recommended that the section 404 permit application for the pipeline crossing be denied and indicated that if a decision is made to issue the permit, the project will be a candidate for referral to CEQ for resolution. EPA also expressed concerns about changes that have been made to the air and water quality sections, which EPA prepared for the DEIS. These changes have not been adequately coordinated with EPA and interagency disagreements were not explained in the body of the EIS. Since these changes are contrary to the interagency Memorandum of Agreement of October 1983 concerning presentation of the DEIS and FEIS for the proposed project, EPA is requesting that a supplemental be prepared that would accurately reflect EPA's input.

ERP No. F-DOE-J08018-WY, Thermopolis-Alcova-Casper Transmission Line Construction, WY. Summary: The change in preferred routing of the Alcova-Casper segment should not result in any significant environmental impacts.

Regulations

ERP No. R-AFS-A86215-00, Notice of Proposed Revision, National Environmental Policy Act, Revised Implementing Procedures. Summary: EPA commended the Forest Service for placing increased emphasis on the use of scoping. EPA suggested, however, that the revisions should clarify the

relationship between environmental analyses, scoping, and subsequent NEPA documentation of actions. In particular we suggested that the revisions clearly set forth how these processes will be used to identify specific projects within categorically excluded classes which require some environmental analysis.

Dated: December 4, 1984.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84–32043 Filed 12–6–84; 8:45 am]
BILLING CODE 6560–50–M

[ER-FRL-2732-6]

Withdrawal of a Notice of Intent and Notice of Preparation of an Environmental Assessment for the Use of Freshwater Wetlands for Wastewater Disposal

AGENCY: U.S. Environmental Protection Agency, Region IV Environmental Assessment Branch.

FOR FURTHER INFORMATION CONTACT: Ronald J. Mikulak, Project Officer, NEPA Compliance Section, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365, Phone No. (404) 881–3776.

On December 18, 1981, EPA published in the **Federal Register** (Vol. 46, No. 243 page 61714) its intention to prepare a generic environmental impact statement on Freshwater Wetlands for Wastewater Management. This study addresses the use of freshwater wetlands in wastewater management for EPA's eight southeastern states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee). Region IV has since determined that an Environmental Assessment (EA) will adequately fulfill the requirements of the National Environmental Policy Act and allow for the development of guidance in evaluating wetland wastewater management alternatives. No changes will be made to the already published EIS Phase I Report (EPA 904/9–83–107, March 1983). The major EA product to be prepared is the Freshwater Wetlands for Wastewater Management Handbook which is anticipated for publication in early 1985. Any comments should be directed to Ronald J. Mikulak at the above address.

Dated: December 4, 1984.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84–32041 Filed 12–6–84; 8:45 am]
BILLING CODE 6560–50–M

[ER-FRL-2732-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed November 26, 1984 through November 30, 1984 Pursuant to 40 CFR 1506.9.

EIS No. 840532, Final, CDB, NY, Norstar Plaza Development Project, UDAG, Albany County, Due: January 7, 1985, Contact: Daniel Hershberg (518) 459–3096

EIS No. 840533, Final, FHW, CA, I–215 Freeway Construction, Van Buren Boulevard to CA–60, Riverside County, Due: January 7, 1985, Contact: Michael Cook (916) 440–2521

EIS No. 840534, Draft, COE, LA, Lower Boeuf River, Big La Fource, Big and Colewa Cceks, Flood Control Plan, Due: January 21, 1985, Contact: Charles Crowther (601) 634–5430

EIS No. 840535, Final, USA, TX, NM, Fort Bliss Ongoing Mission, US Army Air Defense Artillery Center, El Paso County, Texas and Otero and Dona Ana Counties, New Mexico, Due: January 7, 1985, Contact: Col. Kenneth Halleran (202) 694–4269

EIS No. 840536, Final, BLM, Mobil-Pacific Oil Shale Development, Purchase, Exchange or Lease and Right-of-Way, Piceance Creek Basin, Garfield County, Due: January 7, 1985, Contact: Robert Kline (303) 243–6552

EIS No. 840537, Final, BLM, AZ, Firebird Stadium Construction, Gila River Indian Community Land, Leasing, Maricopa County, Due: January 7, 1985, Contact: Randall Morrison (602) 241–2275

EIS No. 840538, Draft, BLM, WY, Medicine Bow National Forest and Thunder Basin National Grassland, Land/Resource Mgmt. Plan, Niobrara, Platte and Weston Counties, Due: March 14, 1985, Contact: Sonny O'Neal (307) 745–8971

EIS No. 840539, Final, COE, LA, Lake Pontchartrain and Vicinity Hurricane Protection Levee, Construction, Due: January 7, 1985, Contact: Larry Hartzog (504) 838–2524

EIS No. 840540, Draft, COE, WA, Elliott Bay Small Craft Harbor and Marine Development, Permit, King County, Due: January 21, 1985, Contact: Richard Makinen (202) 272–0121

EIS No. 840541, Final, BLM, UT, CO, Book Cliffs Resource Area, Resource Management Plan, Duchesne, Grand and Uintah Cos., Utah and Garfield, Mesa, Moffat and Rio Blanco Cos. Colorado, Due: January 7, 1985, Contact: Curtis Tucker (801) 789–1362

EIS No. 840542, Final, IBR/NPS, WY, ID, Jackson Lake Dam, Safe Operation Project, Flood Control, Snake River, Teton National Park, Due: January 7, 1985, Contact: Elaine Van Stelle (208) 334–9581

EIS No. 840543, FSuppl, COE/FHW, NY, I–478 Construction/Westside Highway Replacement, Battery to 42nd Street, Impact of the Westway Landfill on Fisheries in the Hudson River, New York County, Due: January 7, 1985, Contact: Dennis Suszkowski (212) 264–3996

EIS No. 840544, Draft, SCS, DE, Muderkill River Watershed Protection and Flood Prevention, Kent County, Due: January 31, 1985, Contact: Bobbye Jones (302) 678–0750

EIS No. 840545, Draft, USN, NV, Fallon Naval Air Station, Supersonic Operations Area, Designation and Strike Warfare Center, Establishment, Churchill, Eureka, Humboldt, Lander, Pershing and Washoe Cos., Due: January 21, 1985, Contact: Mr. Dana Sakamoto (415) 887–7573

EIS No. 840546, Draft, COE, FL, Kissimmee River Basin Flood Control Plan, Osceola, Okeechobee, Orange, Lake, Polk, Glades, Martin, Highlands and St. Lucie Cos., Due: January 21, 1985, Contact: Mr. Rea Boothby (904) 796–3453

Dated: December 4, 1984.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84–32042 Filed 12–6–84; 8:45 am]
BILLING CODE 6560–50–M

[FRL-2733-1]

Battery Manufacturing, Coil Coating (Phase I and II), Electroplating and Metal Finishing, Iron and Steel Manufacturing, Nonferrous Metals Forming, Nonferrous Metals Manufacturing (Phase I and II), Metal Molding and Casting, Porcelain Enameling; Intent to Transfer Confidential Information to a Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to transfer confidential information to a contractor.

SUMMARY: The Environmental Protection Agency (EPA) intends to provide an Agency contractor with access to confidential information for analysis in connection with the preparation of effluent limitations and standards regulating discharges of process

Toxicity Data: No data submitted.

Wildlife Service.

that the revisions should clarify the

[FR Doc. 84-32041 Filed 12-6-84; 8:45 am]
BILLING CODE 6560-50-M

Mesa, Moffat and Rio Blanco Cos.

regulating discharges of process

pollutants in wastewater for the Nonferrous Metals Manufacturing (Phase II) Point Source Category, Electroplating and Metal Finishing (Phase II) Point Source Category and the Metal Molding and Casting Point Source Category. This information will be needed by EPA's contractor in analyzing, revising and reviewing the technical data base which supports effluent limitations and standards and NPDES permits required by the Clean Water Act.

DATE: Comments on the notice of transfer are due December 24, 1984.

ADDRESS: Ernst P. Hall, Metals Industry Branch, Industrial Technology Division (WH-552), Office of Water Regulations and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, Metals Industry Branch, Industrial Technology Division, (202) 382-7126.

SUPPLEMENTARY INFORMATION: The Clean Water Act of 1977 requires the Environmental Protection Agency to develop, revise, and review effluent limitations and standards for industrial point sources. The Office of Water Regulations and Standards is responsible for regulating dischargers from industrial point source categories.

On November 15, 1982, EPA proposed effluent limitations and standards for the Metal Molding and Casting Point Source Category (47 FR 51512). EPA proposed effluent limitations and standards for Nonferrous Metals Manufacturing Point Source Category (Phase II) on June 28, 1984 (49 FR 26352). EPA also is developing information on segments of the Electroplating and Metal Finishing Point Source Category not regulated in the final regulation issued on July 15, 1983 (48 FR 32462). This information is being gathered to allow consideration of a new regulation for these unregulated segments.

EPA has awarded a contract to Radian Corporation of McLean, Virginia (contract No. 68-01-6999) to provide technical and economic support to the Office of Water Regulations and Standards for preparing final regulations for the three categories listed above.

One of the sources of information which EPA will use to develop final effluent limitations and standards is the data collected from questionnaires sent to the following industry categories under authority of Section 308 of the Clean Water Act: battery manufacturing, coil coating (phases I and II), electroplating and metal finishing, nonferrous metals forming, nonferrous metals manufacturing (phases I and II), iron and steel manufacturing, metal molding and casting and porcelain enameling plants. More specifically, this data is from industry survey questionnaires mailed since 1975, as well as follow-up communications and submissions. Many of the responses to these questionnaires contain fundamental information about plant size and location, wastewater composition, wastewater treatment systems, wastewater volume, production processes, and solid waste disposal practices. Certain of the information provided has been claimed as confidential by the responding company

The Agency also has used the authority of section 308 to conduct numerous conventional, nonconventional and toxic pollutant parameter field sampling and analysis surveys of in-plant and end-of-pipe wastewater sources within these industries. Portions of these data also have been claimed as confidential by the sampled facilities. The data collected by EPA from questionnaires and from field sampling and analysis surveys, including portons that have been claimed as confidential, will be accessed by the EPA contractor identified above.

The industrial point source categories, designated EPA contact person, selected contractor, EPA contract number accessing the data, SIC codes and descriptions of industries whose data is being accessed and remarks are listed below.

- Battery Manufacturing Point Source Category, Coil Coating (Phases I and II) Point Source Category, Electroplating and Metal Finishing Point Source Category, Iron and Steel Manufacturing Point Source Category, Nonferrous Metal Forming Point Source Category, Nonferrous Metals Manufacturing (Phases I and II) Point Source Category, Metal Molding and Casting Point Source Category, and Porcelain Enameling Point Source Category.

a. For further information contact Ernst P. Hall, EPA (WH-552), Washington, D.C. 20460, FTS: 8-382-7126, Comm: 202-382-7126.

b. Contractor: Radian Corporation, McLean, Virginia (Contract No. 68-01-6999).

c. SIC codes and description: The industries covered by the Batteries Manufacturing Category are included in Standard Industrial Classification (SIC) Major Group 36 (electrical machinery, equipment and supplies).

The industries covered by the Coil Coating Category are included in Standard Industrial Classification (SIC) Major Group 34 (fabricated metal products, except ordnance).

The industries covered by the electroplating and Metal Finishing Category are included in Standard Industrial Classification (SIC) Major Groups 34 through 39 as follows:

Major Group 34—Fabricated metal products, except ordnance, machinery, and transportation equipment
Major Group 35—Machinery, except electrical
Major Group 36—Electrical machinery, equipment and supplies
Major Group 37—Transportation equipment
Major Group 38—Professional, scientific, and controlling instruments photographic and optical goods; watches and clocks
Major Group 39—Miscellaneous manufacturing industries.

The industries covered by the Metal Molding and Casting Category are covered in Standard Industrial Classification (SIC) Major Group 33 (primary metal industries).

The industries covered by the Iron and Steel Manufacturing Category are covered in Standard Industrial Classification (SIC) Major Group 33 (primary metal industries).

The industries covered by the Nonferrous Metals Forming Category are covered in Standard Industrial Classification (SIC) Major Groups 33 and 34 as follows:

Major group 33—Primary metal industries
Major Group 34—Fabricated metal products, except ordnance, machinery, and transportation equipment.

The industries covered by the Nonferrous Metals Manufacturing Category are included in Standard Industrial Classification (SIC) Major Group 33 (primary metal industries).

The industries covered by the Porcelain Enameling Category are included in Standard Industrial Classification (SIC) Major Groups 34 and 36 as follows:

Major Group 34—Fabricated metal products, except ordnance
Major Group 36—Electrical machinery, equipment and supplies.

d. Remark: The confidential files will be accessed by Radian Corporation under contract 68-01-6999.

EPA has determined that it is necessary to transfer this information to the designated contractor in order that it may carry out the work required by its contract. The contract contains all confidentiality provisions required by EPA's confidentiality regulations (40 CFR 2.302(h) (2-3)). In accordance with those regulations, sampled facilities and questionnaire respondents who have submitted information claimed confidential have 15 days from the date of this notice to comment on EPA's proposed transfer of this information to these contractors for the purposes outlined above (40) CFR 2.302(h) (2-3).

Dated: November 27, 1984.

Henry Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84-31979 Filed 12-6-84; 8:45 am]
BILLING CODE 6560-50-M

[SAB-FRL-2733-8]

Clean Air Scientific Advisory Committee Science Advisory Board; Subcommittee on the National Ambient Air Quality Standard Setting Process; Cancellation of Open Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that the meeting of the Clean Air Scientific Advisory Committee's Subcommittee on the National Ambient Air Quality Standard Setting Process that was scheduled to be held on December 6-7, 1984 at U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. has been cancelled.

The meeting is cancelled because insufficient time was available to prepare and review background materials. The meeting is being rescheduled for early 1985.

For further information please contact Mr. A. Robert Flaak, Executive Secretary, Science Advisory Board on (202) 382-2552.

Dated: December 4, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84-32090 Filed 12-6-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 29, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Doris R. Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on any information collection should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

OMB No.: 3060-0027
Title: Application for Construction Permit for Commercial Broadcast Station
Form No.: FCC 301
Action: Extension
Estimated Annual Burden: 3,328 Responses; 496,928 Hours.

OMB No.: 3060-0041
Title: Application for Authority to Operate a Broadcast Station by Remote Control or to Make Changes in a Remote Control Authorization
Form No.: FCC 301-A
Action: Extension
Estimated Annual Burden: 52 Responses; 13 Hours.

OMB No.: 3060-0076
Title: Annual Employment Report
Form No.: FCC 395
Action: Extension
Estimated Annual Burden: 9,500 Responses; 9,500 Hours.

OMB No.: 3060-0095
Title: Annual Employment Report—Cable Television
Form No.: FCC 395-A
Action: Extension
Estimated Annual Burden: 7,000 Responses; 3,500 Hours.

OMB No.: 3060-0107
Title: Application for Renewal of Radio Station License and/or Notification of Change to License Information
Form No.: FCC 405-A
Action: Extension
Estimated Annual Burden: 10,700 Responses; 1,787 Hours.

William J. Tricarico,

Secretary,

[FR Doc. 84-31924 Filed 12-6-84; 8:45 am]
BILLING CODE 6712-01-M

[FCC 84-534; 35046 MM Docket Nos. 84-1051 et al, File No. BR-790 402CZ, et al.]

RKO General, Inc. (WHBQ) et al.; Memorandum Opinion and Order; For Renewal of License and Construction Permit

In the matter of application of:

RKO General, Inc. (WHBQ), Memphis, Tennessee.	MM DOCKET NO. 84-1051; File No. BR-790402CZ.
For Renewal of License:	
Donnie Simpson Enterprises, Inc., Memphis, Tennessee.	MM DOCKET NO. 84-1052; File No. BP-830512AH.
First City Communications, Inc., Memphis, Tennessee.	MM DOCKET NO. 84-1053; File No. BP-830512BC.
South Jersey Radio, Inc., Memphis, Tennessee.	MM DOCKET NO. 84-1054; File No. BP-830512BS.
Stephen E. Powell, Memphis, Tennessee.	MM DOCKET NO. 84-1055; File No. BP-830512BL.
River City Radio Limited Partnership, Memphis, Tennessee.	MM DOCKET NO. 84-1056; File No. BP-830512CD.

For Construction Permit.

Adopted: November 8, 1984.
Released: November 30, 1984.

By the Commission.

1. The Commission has under consideration the license renewal application of RKO General, Inc. (RKO), for Station WHBQ, Memphis, Tennessee [1] and the above-captioned mutually exclusive applications to operate on the same channel with identical facilities. In addition, we have before us a petition to dismiss the South Jersey Radio, Inc. (South Jersey) application filed by RKO General, Inc; a request for waiver of our multiple ownership and inconsistant application rules filed by South Jersey; motions for leave to amend and accompany amendments filed by RKO [2] and South Jersey; [3] and related pleadings. In view of the matters already being considered in the KHJ-TV case, note 1 *supra*, and in view of the fact that those matters may have a bearing upon the ultimate resolution of this case, we believe that it would be premature to commence any consideration of either RKO's qualifications or the comparative elements of the applicants' proposals, pending the outcome of the KHJ-TV case. Accordingly, in the interest of managing and ordering our docket of adjudicatory proceedings so as to permit the most efficient and effective utilization of Commission resources, we direct the parties to deal first with any petitions to enlarge issues and/or basic qualifying issues that involve the mutually exclusive applicants (i.e., applicants other than RKO) who seek

[1] We have designated the license renewal application of RKO's Station KHJ-TV, Los Angeles, California, as the forum for inquiring into the impact of RKO's disqualification as the licensee of WNAC-TV, Boston, Massachusetts on its overall basic and comparative qualifications to remain a licensee elsewhere. See our Memorandum Opinion and Order adopted this same date, *RKO General, Inc. (WHBQ-TV)*, —— FCC 2d —— (1984), for a full discussion of this matter.

[2] Since the "B" cut-off date (March 29, 1984), RKO has filed several petitions for leave to amend and accompanying amendments to its renewal application. The purpose of these amendments is to update information previously submitted to the Commission. We have reviewed the motions and amendments and find that in each case good cause exists for accepting the amendments for § 1.65 purposes only.

[3] For the reasons set forth in *RKO General, Inc. (WHBQ-TV), supra*, concerning a similar pleading filed by South Jersey, we will grant the motion and accept the amendment.

nonferrous metals manufacturing products, except ordnance).

CFR 2.302(h) (2–3)). In accordance with

construction permits to operate on the channel(s) now held by RKO. Upon completion of all appropriate proceedings, including such evidentiary hearings as may be warranted, relating to these questions concerning the mutually exclusive applications for construction permits, the presiding Administrative Law Judge should so inform the Commission and await guidance from the Commission before setting the date for filing any proposed findings and conclusions or going forward with any further proceedings. In other cases involving multiple license owners, we have assinged all of the proceedings to a single Administrative Law Judge for the purpose of considering the impact of common qualifications questions on each of the owner's stations, *e. g., Intercontinental Radio, Inc.*, 88 FCC 2d 819 (1981). Here, we have already made provision for consideration of the questions concerning RKO's overall qualifications by a single ALJ in the Los Angeles, California, KHJ-TV, proceeding. Thus, the procedures used in cases such as *Intercontinental, supra*, are unnecessary for the instant proceeding. Indeed, the Intercontinental approach, if applied here, involving substantial numbers of comparative hearings and competing applicants presided over by a single Judge, will inevitably delay resolution of these matters. Instead, we believe that the interests of administrative efficiency will be better served by providing for assignment of a presiding Administrative Law Judge for this proceeding by the Chief Administrative Law Judge in accordance with his regular and ordinary rotational procedures.

2. *The RKO petition and the South Jersey waiver request.* South Jersey and Stephen E. Powell each seek both AM and television stations in Memphis. As such common ownership violates § 73.3555 of our Rules, each combination of proposals includes a conflicting or inconsistent application, subject to dismissal as such pursuant to § 73.3518. Acknowledging this fact, South Jersey seeks waiver of the relevant provisions and RKO seeks dismissal of the South Jersey proposal.[4] With respect first to the waiver request, South Jersey has set forth no public interest considerations justifying the allocation of Commission resources to the processing and comparative evaluation of applications which cannot be granted. See *Comark Television, Inc.*, 51 RR 2d 738 (1982). Hence, waiver is unwarranted. At the same time, we believe that election by the applicants as to which proposal will be prosecuted is a more appropriate remedy than the immediate dismissal which RKO seeks.

3. *The Donnie Simpson Enterprises, Inc. and Stephen E. Powell applications.* The Simpson and Powell applications were not complete when filed in that applications for other facilities now operated by RKO were not listed. Given the public nature of this information, no motive to conceal or misrepresent is apparent. Hence, we will specify no issues in this regard. Both should amend their applications here to reflect all pending proposals, however.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. It is further ordered, That the petitions for leave to amend filed by RKO General, Inc. Are granted and the amendments accompanying those motions ARE ACCEPTED for the purposes of § 1.65 of the Commission's Rules.

7. It is further ordered, That the motion for leave to amend filed by South Jersey Radio Inc. is granted and the accompanying amendment is accepted *nunc pro tunc.*

8. It is further ordered, That the petition to dismiss filed by RKO General, Inc. is granted to the extent noted herein and is otherwise denied.

9. It is further ordered, That South Jersey Radio, Inc.'s request for waiver of the Commission's Rules is denied.

10. It is further ordered, That unless South Jersey Radio, Inc. and Stephen E. Powell each file a statement to the contrary within 20 days after this Order is released, it will be assumed that each applicant wishes to prosecute its television application and its pending AM application will be dismissed.

11. It is further ordered, That Donnie Simpson Enterprises, Inc. and Stephen E. Powell shall file the amendments specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

12. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., NW., Washington, D.C. 20554.

13. It is further ordered, That the Initial Decision in this proceeding shall consider the findings in Docket No. 16679 (KHJ–TV) as to RKO's basic or comparative qualifications.

14. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

15. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 74.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

16. Finally, copies of this Memorandum Opinion and Order shall be sent Certified Mail-Returned Receipt Requested to the parties to this proceeding by the Secretary of the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–31925 Filed 12–6–84; 8:45 am]

BILLING CODE 6712–01–M

[4] There are no comparable requests and pleadings attached to the Powell application.

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA 720–DR]

Amendment to a Major-Disaster Declaration; Utah

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Utah (FEMA–720–DR), dated August 17, 1984, and related determinations.

DATED: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0501.

Notice

The notice of a major disaster for the State of Utah, dated August 17, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 17, 1984: Salt Lake, Weber, and Summit Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–31948 Filed 12–6–84; 8:45 am]

BILLING CODE 6718–02–M

[Docket No. FEMA–REP–7–NE–1]

The Nebraska Radiological Emergency Response Plan for Nuclear Power Plant Incidents Site-Specific to the Fort Calhoun Nuclear Power Station; Certification of FEMA Findings and Determination

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Nebraska submitted its plans relating to the Fort Calhoun Nuclear Power Station to the Director of FEMA Region VII on March 31, 1982, for FEMA review and approval. On June 29, 1984 the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Fort Calhoum facility, and evaluations of the joint exercises conducted on December 6–7, 1983, September 15, 1982, and July 22, 1981, in accordance with § 350.9 of the FEMA rule, and a report of the public meeting held on August 4, 1981, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Fort Calhoun Nuclear Power Station are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission/FEMA criteria of NUREG–0654/FEMA–REP–1, Revision 1.

FEMA will continue to review the status of offsite plans and preparedness associated with the Fort Calhoun Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–7–NE–1 maintained by the Regional Director, FEMA Region VII.

Dated: December 3, 1984.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 84–31950 Filed 12–6–84; 8:45 am]

BILLING CODE 6718–02–M

FEMA Advisory Board Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board

Date of Meeting: December 19, 1984

Time: 9:00 a.m. to 5:00 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street SW., Washington, DC 20472

Purpose: FEMA program office staff will provide status reports on their major activities and present issues to the Board for consideraton and possible follow-on study. Discussions will include issues that involve classified information and official use only information related to proposed and future Presidential budgets.

The Director has determined that the Board meeting should be closed to the public because discussions will involve information that is specifically authorized to be kept Secret in the interest of national defense or foreign policy and is properly classified pursuant to Executive Order.

Bernard A. Maguire,

Associate Director, National Preparedness.

[FR Doc. 84–31949 Filed 12–6–84; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010693.

Title: Florida/Caribbean Liner Association.

Parties:

Bernuth Lines, Ltd.

Calypso Lines

West Indies Shipping Corp.

Tropical Shipping & Construction Co., Ltd.

Seguenay Shipping Ltd.

TEC Lines Ltd.

Synopsis: The proposed agreement would establish a conference in the trade from South Florida ports and inland points in the Continental United States via such ports to ports and points in the Leeward/Windward Islands and Trinidad and Tobago.

Agreement No.: 206–010694.

Title: Trans-Atlantic Conferences.

Parties:

The North Europe-U.S. Atlantic Conference.

The U.S. Atlantic-North Europe Conference.

Synopsis: The proposed agreement would permit the parties to collectively

engage (1) in ratemaking, tariff formulation and service contract activities with or in respect to common two-way shippers; (2) ratemaking and tariff formulation relating to terminal services and inland transport of containers; and (3) space/slot chartering arrangements under their respective conference agreements, and would establish administrative procedures applicable to such operations.

Dated: December 4, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-31999 Filed 12-6-84; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202-002846-057.

Title: The West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference.

Parties:

Atlanttrafik Express Service
C.ia Trasatlantica-Spanish Line
Consteallation Lines, S.A.
Costa Line
Egyptian Navigation Co., Ltd.
Farrell Lines, Inc.
"Italia" Societa' per Azioni di Navigazione
Jugolinija
Nedlloyd Lines
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would delete the interim mandatory provision governing independent action and modify another article of the agreement concerning independent action. It would also add a new article authorizing conference action with respect to service contracts.

Agreement No: 202-007590-038.

Title: United States Atlantic and Gulf/Colombia Conference.

Parties:

Coordinated Caribbean Transport, Inc.
Delta Steamship Lines, Inc.
Flota Mercante Grancolombia, S.A.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would permit the parties to offer intermodal service in the United States and Colombia and would restate the agreement to conform to the Commission's format requirements. The parties have requested a shortened review period.

Agreement No.: 224-010842-001.

Title: Oakland Marine Terminal Agreement.

Parties:

The Port of Oakland (Port)
Stevedoring Service of America (SSA)

Synopsis: Agreement No. 224-010642-001 between the Port and SSA, modifies the basic agreement by amending the performance standards provisions of the agreement to increase SSA's performance standards in each of the five contract years of the term of the agreement, and by 20,000 revenue tons increasing the related minimum annual compensation.

By Order of the Federal Maritime Commission.

Dated: December 4, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32000 Filed 12-6-84; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 202-000014]

Trans Pacific Freight Conference (Hong Kong); Erratum

The notice of filing of Agreement No. 202-000014 appearing on November 16, 1984 (49 FR 45488) incorrectly identified the agreement as Agreement No. 202-000014-056, whereas it should have been identified as Agreement No. 202-000014-054.

By Order of the Federal Maritime Commission.

Dated: December 4, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32001 Filed 12-6-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 3, 1984.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control number to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. except as provided in § 261.5(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Judith McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

Request for Extension With Minor Revisions to Instructions

1. Report title: Ownership of Demand Deposit Accounts of Individuals, Partnerships, and Corporations
Agency form number: FR 2591
OMB Docket number: 7100-0082
Frequency: Quarterly
Reporters: Commercial Banks
Small businesses are affected.
General description of report: This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report, which collects information on demand deposits in five categories, is used by the Federal Reserve to explain the implications of short-run variations in the money supply. The definition of financial businesses is the only revision on this proposal.

Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31931 Filed 12-6-84; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

December 3, 1984.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors, of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Judith McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

Request for Extension With Minor Revisions to Definitions

1. Report title: Monthly Survey of Selected Deposits and Other Accounts
Agency form number: FR 2042
OMB Docket number: 7100-0066
Frequency: Monthly
Reporters: Commercial banks, mutual savings banks and FDIC insured federal savings banks
Small businesses are affected.
General description of report: This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [U.S.C. 552(b)(4)].

These data, which are collected from a sample of commercial banks, mutual savings banks, and FDIC-insured federal savings banks, are used by the Federal Reserve (1) to analyze and interpret movements in the monetary aggregates, (2) to observe competitive developments between banks and thrift institutions, and (3) to help monitor the earnings position of banks and thrifts.

Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 31932 Filed 12-6-84; 8:45 am]

BILLING CODE 6210-01-M

Bankers Trust New York Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation,* New York, New York; to engage *de novo* through its subsidiaries, Bankers Trust Connecticut Corporation, Greenwich, Connecticut and Private Clients Group, in the activities of making or acquiring, for its own account or the account of others, loans and other extensions of credit, secured and unsecured, to individuals and businesses including but not limited to consumer lending, residential and non-residential real estate lending and commercial lending; servicing loans and other extensions of credit; the sale of credit-related life and accident and health insurance by licensed agents or brokers, as required, and the sale of mortgage life and mortgage disability insurance directly related to the extensions of mortgage loans; and to exercise trust powers to the extent permitted to a state bank and trust company or a national banking association.

Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 31927 Filed 12-6-84; 8:45 am]

BILLING CODE 6210-01-M

First Jersey National Corp., et al; Formation of; Acquisition by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Eacn application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 27, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Jersey National Corporation,* Jersey City, New Jersey; to acquire 100 percent of the voting shares or assets of Peoples National Bank of North Jersey, Denville, New Jersey.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Columbia Corporation,* Topeka, Kansas; to become a bank holding company by acquiring at least 84.36 percent of the voting shares of Topeka Bank Shares, Inc., Topeka, Kansas, thereby indirectly acquiring Topeka Bank & Trust, Topeka, Kansas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *RB Bancorp,* San Diego, California; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Rancho Bernardo, San Diego, California.

Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board

[FR Doc. 84-31928 Filed 12-6-84; 8:45 am]

BILLING CODE 6210-01-M

Omnibank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 28, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Omnibank Corp.,* Wyandotte, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Wyandotte Savings Bank, Wyandotte, Michigan.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens Fidelity Corporation,* Louisville, Kentucky; to acquire 100 percent of the voting shares of successor by merger to American Bank and Trust Company, Inc., Lexington, Kentucky.

2. *Columbia Bancshares, Inc,* Columbia, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Columbia, Columbia, Kentucky.

3. *First National Corporation of Wynne,* Wynne, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Wynne, Wynne, Arkansas.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Home State Bancorporation, Inc.,* Hobart, Oklahoma; to acquire 100 percent of the voting shares of Security State Bank, Roosevelt, Oklahoma.

Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board.

[Fr Doc. 84-31933 Filed 12-6-84; 8:45 am]

BILLING CODE 6210-01-M

Preferred Equity Investors of Florida, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 27, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Prefered Equity Investors of Florida, Inc.,* Knoxville, Tennessee and *Landmark Banking Corporation of Florida;* to acquire 100 percent of the voting shares of Landmark Bank of Seminole County, Casselberry, Florida, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Beverly Bancorporation, Inc.,* Chicago, Illinois; to acquire 91 percent of the voting shares of M–R Financial Corporation, Matteson, Illinois, thereby indirectly acquiring Matteson-Richton Bank, Matteson, Illinois.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

Security Banks of Montana, Billings, Montana; to acquire 6.15 percent of the voting shares of Bank of Montana, Great Falls, Montana. Applicant would acquire Bank of Montana System indirectly through Montana Bancsystem, Inc., Billings, Montana. Applicant proposes to acquire Montana System Inc. which owns 6.15 percent of Bank of Montana System.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Moody Bancshares, Inc.,* Galveston, Texas; to acquire 100 percent of the voting shares of The South Shore Harbour National Bank, League City, Texas, a *de novo* bank.

2. *Moody Bancshares, Inc.,* Galveston, Texas; to acquire 51 percent of the voting shares of The Moody National Bank of Galveston, Galveston, Texas.

Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31929 Filed 12-6-84; 8:45 am]

BILLING CODE 6210-01-M

Security Banks of Montana; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Security Banks of Montana,* Billings, Montana; to acquire 100 percent of the voting shares of Montana Bancsystem, Inc., Billings, Montana, thereby indirectly acquiring Montana Bank of Billings, Billings; Montana Bank of Circle, N.A., Circle; Montana Bank of Livingston, Livingston; First National Montana Bank of Missoula, Missoula; Montana Bank of South Missoula, Missoula; Montana Bank of Forsyth, Forsyth; and Baker Bancorporation, Inc., Baker (Montana Bank of Baker, N.A., Baker); Bozeman Bancorporation, Inc., Bozeman (Montana Bank of Bozeman, N.A. Bozeman); Butte Bancorporation, Inc., Butte (Montana Bank of Butte, N.A., Butte); Mineral County Bancorporation, Inc., Superior (Montana Bank of Mineral County, Superior); Red Lodge Bancorporation, Inc., Red Lodge (Montana Bank of Red Lodge, N.A., Red Lodge); Roundup Bancorporation, Inc., Roundup (Montana Bank of Roundup, N.A., Roundup); and Sidney Holding Company, Sidney (Montana Bank of Sidney, N.A., Sidney); all located in Montana. Applicant has also applied to acquire 6.2 percent of Bank of Montana System, Great Falls, Montana.

Security Banks of Montana has also applied to acquire certain nonbank activities conducted by Montana Bancsystem, Inc. These activities are providing data processing services and conducting general insurance agency activities in communities with populations not exceeding 5,000. Applicant's data processing activities would be performed at Applicant's existing data processing center in Billings, Montana, and Montana Bancsystem, Inc's two data processing centers in Missoula, Montana and Billings, Montana. The insurance activities are conducted in the following Montana communities; Baker, Circle, Forsyth, Superior, Red Lodge, and Roundup.

Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31934 Filed 12-6-84; 8:45 am]

BILLING CODE 6210-01-M

Valley Community Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFC

225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.212(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1984.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Valley Community Bancorp*, McMinnville, Oregon; to engage *de novo* through its subsidiary, Valley Community Mortgage Services, McMinnville, Oregon, in making, acquiring and servicing loans or other extensions of credit for company's account or the account of others such as would be made, for example, by a mortgage company; performing appraisals of real estate; arranging commercial real estate equity financing; and acting as investment or financial advisor to the extent of serving as the advisory company for a mortgage or real estate investment trust.

Board of Governors of the Federal Reserve System, December 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31930 Filed 12-6-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published in November 30, 1984.

Social Security Administration

Subject: Quarterly Statement of Expenditures—SSA-41 Extension—No Change—(0960-0294)
Respondents: States
Subject: Report of New Information in Disability Cases—SSA-612EV Extension—No Change—(0960-0071)
Respondents: Disabled Social Security Beneficiares
OMB Desk Officer: Rebert J. Fishman

Health Care Financing Administration

Subject: Third Party Premium billing Request (HCFA-2384) Extension—No Change—(0930-0041)
Respondents: Beneficiaries
Subject: Evaluation of the Arizona Health Care Cost Containment System HCFA-388-New
Respondents: Beneficiaries/Providers
OMB Desk Officer: Fay S. Iudicello

Public Health Service

Office of the Assistant Secretary for Health

Subject: 1986 National Health Interview Survey (First Pretest)—New
Respondents: Individuals

Centers for Disease Control

Subject: CDC Hospital Infection Guideline Evaluation Project—New
Respondents: Hospitals
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

Subject: Self Assessment and Validation Instrument for Program Performance Standards (0980-0037) Reinstatement
Respondents: HHS funded runaway and homeless youth centers
OMB Desk Officer: Robert J. Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503
ATTN: (name of OMB Desk Officer)

Dated: November 30, 1984.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-31983 Filed 12-6-84; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84N-0377]

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of funds for Fiscal Year 1985 for awarding grants to support clinical trials on safety and effectiveness of orphan products. FDA has funds to award approximately 20 to 30 grants ranging from $20,000 to $70,000. The agency will consider grants greater than $70,000 if they extend over a 2- or 3-year period.

DATES: Applications must be received by February 5, 1985. The earliest beginning date for awards is July 1, 1985.

ADDRESS: Applications should be submitted to and applications are available from Kathryn McKnight, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Rm. 15A-17, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

FOR FURTHER INFORMATION CONTACT: Benjamin P. Lewis, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA will support the clinical studies covered by

this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 13.103.

I. Background

FDA has established the Office of Orphan Products Development to identify and facilitate the availability of orphan products. Orphan products are drugs, biologics, medical devices (including in vitro diagnostics), foods for medical purposes, and veterinary products that may be useful in an uncommon or common disease but lack committed commercial sponsorship because they are not considered commercially attractive for marketing. A subcategory of orphan products includes those marketed products for which there is evidence suggesting usefulness in an uncommon, serious disease but which are not labeled for that disease because substantial evidence of safety and effectiveness for that use is lacking.

One way to make orphan products more easily available is to support research to determine whether the products are safe and effective. FDA has allocated funds toi support such research.

II. Research Goals and Objectives

A. Clinical Studies

FDA will consider only clinical studies for determining whether the products are safe and effective for premarket approval under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), including the addition of new uses to marketed drugs. Ordinarily, there should already be available at least some preliminary clinical research suggesting effectiveness and relative safety. However, FDA will consider applications in which persuasive pharmacologic evidence is available that a product has a reasonable possibility of being effective even though no clinical trials have yet been performed. All studies subject to the requirements for clinical investigations imposed by the act and the regulations promulgated thereunder are to be conducted in accordance with those requirements in addition to the requirements of the request for application (RFA).

Because funds are relatively limited, FDA cannot consider large research projects involving many subjects (human, or animal in the case of a veterinary drug) and long-term followup. The typical study that FDA will consider for support may involve up to several dozen subjects, will be well-controlled, and will be directed to providing substantial evidence of the product's safety and effectiveness. The agency will also consider funding pharmacokinetic studies if such studies are necessary to determine safe and effective doses in subjects with serious organ disease that might affect drug disposition. FDA will consider pharmacokinetic studies, however, only if they are part of studies for determining effectiveness of a drug or are proposed as desirable information to obtain for drugs that already have a significant amount of evidence showing effectiveness. In designing a well-controlled study, the investigator should keep in mind that historical controls or use of the subject as his or her own control is generally less desirable and reliable than active cointrol or, when ethical, placebo controls.

Each investigator submitting a grant application for a proposed human or veterinary orphan use in response to this RFA should include a short statement explaining why the proposed product meets the objectives of the orphan products development program as described above. This statement should be in the application under Section 2—"Significance". In the case of veterinary products, research studies should be directed to the following area only: A true orphan animal product for which the animal disease being studied can be transmitted to man.

In addition to FDA's general interest in clinical studies for the safety and effectiveness of orphan products, the agency is also interested in receipt of applications for studies on the use of *gamma*-hydroxybutyrate for the treatment of narcolepsy. These applications will compete with others received in response to this RFA. The agency will award only one application for this purpose.

B. Statistical Support

Statistical expertise is helpful in the planning, design, execution, and analysis of clinical investigation and clinical pharmacology to ensure the validity of estimates of safety and efficacy obtained from human studies. Applicants will be expected to provide a statistical basis for the number of patients chosen for the trial based upon the proposed outcome measures. Applicants should also document the appropriateness of the statistical procedures to be used in analysis of the results.

C. Journal References

Published reports are necessary and often critical for the review process and can help to support the investigator's research intent. Applicants will be expected to include six copies of reprints of the references necessary and critical for the review.

D. Informed Consent of Human Subjects

Consent and/or assent forms and any additional information to be given to a subject must accompany the grant submission (Form PHS 398). Information that is given to the subject or the subject's representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

E. Elements of Informed Consent (45 CFR 46.116) and (21 CFR 50.25)

1. Basic elements of informed consent: In seeking informed consent, the following information shall be provided to each subject:

a. A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

b. A description of any reasonably foreseeable risks or discomforts to the subject.

c. A description of any benefits to the subject or to others which may reasonably be expected from the research.

d. A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

e. A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that FDA may inspect the records.

f. For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.

g. An explanation of whom to contact for answers to pertinent questions about the research and research subjects'

estate investment trust.

Standards (0980–0037) Reinstatement

support the clinical studies covered by

rights, and whom to contact in the event of a research-related injury to the subject.

h. A statement that participation is voluntary, that refusal to participate will involve no penalty of loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional elements of informed consent: When appropriate, one or more of the following elements of information shall also be provided to each subject:

a. A statement that the particular treatment of procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

b. Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

c. Any additional costs to the subject that may result from participation in the research.

d. The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

e. A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

f. The approximate number of subjects involved in the study.

3. The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

4. Nothing here is intended to limit the authority of a physician to provide emergency medical care to the extent the physician is permitted to do so under applicable Federal, State, or local law.

III. Reporting Requirements

Financial status reports will be required at the end of each budget period. The progress reports required under a grant award (45 CFR Part 74) should be submitted by the principal investigator or project manager.

IV. Mechanism of Support

A. Award Instrument

Support will be in the form of grant awards. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service including the provisions of 42 CFR Part 52, 45 CFR Part 74, and requirements for cost sharing.

B. Eligibility

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity.

C. Length of Support

The length of support will depend upon the nature of the study and may extend beyond 1 year. For studies where the expected date of completion is more than 1 year, however continuation of support beyond the first year will be based upon review of performance during the preceding year and availability of funds.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of funds.

V. Review Procedure and Criteria

A. Review Method

Applications will undergo initial review by experts in the field relative to the specific application. The experts will review and evaluate each application based on its scientific merit. The applications will be subject to a second-level review to evaluate them based on their relevance to the aims of the Orphan Products Development program. Application will also be reviewed before issuance of an FDA grant award to ensure to the extent practicable that proposed studies are consistent with requirements for approval under the act.

B. Review Criteria

Applications must be responsive to this request for applications. Applications that are judged to be unresponsive will not be considered for funding under this RFA and will be returned to the applicant. Applications will be reviewed according to the following criteria:

1. Responsiveness to the RFA.

2. The soundness of the rationale for the study.

3. The appropriateness of the study design to answer the question posed.

4. The evidence presented by the applicant that it will be able to recruit the proposed number of subjects and complete the study during the allotted period.

5. The plans for complying with regulations for protection of human and animal subjects as applicable to the proposed study.

6. The research experience, training, and competence of the principal investigator and the support staff.

VI. Submission Requirements

A. Completed Form PHS 398, "Application for Public Health Service Grant." Part of Section 2 "Significance" should include a short statement of why the product is appropriate to the objectives of the orphan products grants program.

B. If human subjects are involved, completed Form HHS 596, "Protection of Human Subjects," Assurance/Certification/Declaration (part of Form PHS 398) and Human Subject Consent Forms and/or Assent Form(s).

C. Six copies of all reprints critical to the review process should accompany the Form PHS 398 grant application.

Note.—The forms and reprints described above are to be mailed to FDA as stated in the address section of this notice. Do not use the NIH mailing label at end of application kit.

VII. Format for Application

Applications must be submitted on Form PHS 398, Public Health Service Grant Application. The face page of the application must reflect the RFA number RFA–FDA–OP–85–1. To ensure confidentiality of individual salary information, applicants may choose to include that information on the original application only. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits. The funding agency will take no action to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA regulations implementing that Act (21 CFR 20.61).

The collection of information requested on the Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925–0001.

Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

The original and six copies of the completed application should be delivered to, and applications kits are available from, Kathryn McKnight (address above).

Note.—Do not mail the application to the National Institutes of Health.

Label the outside of the mailing package and the top of the application face page "Response to RFA–FDA–OP–85–1."

Applications must be received by 5 p.m. on February 5, 1985. A package carrying a legible proof-of-mailing date assigned by the carrier, and which is no later than 1 week prior to the receipt date, is also acceptable. The receipt date will be waived only in extenuating circumstances. To request such a waiver, include an explanatory letter with the signed completed application. No waiver will be granted prior to receipt of application. Unless a waiver is granted, applications received after the deadline date will be returned to the applicant.

Dated: November 29, 1984.

Mark Novitch

Acting Commissioner of Food and Drugs

[FR Doc. 84–31921 Filed 12–4–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84F–0371]

Glenn M. W. Scott; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Glenn M. W. Scott has filed a petition proposing that the food additive regulations be amended to prohibit the use of cinnamyl anthranilate as a food additive.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3831) has been filed by Glenn M. W. Scott, P.O. Box 99, Lexington, KY 40501, proposing that § 172.515 *Synthetic flavoring substances and adjuvants* (21 CFR 172.515) be amended to provide a tolerance level of zero for the amount of cinnamyl anthranilate in food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 29, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–31922 Filed 12–6–84; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of the Disapproval of a Louisiana State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administration hearing on January 30, 1985, in Dallas, Texas, to reconsider our decision to disapprove Louisiana State Plan Amendment 83–27.

CLOSING DATE: Requests to participate in the hearing as a party must be received by December 24, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Louisiana State Plan Amendment 83–27.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issue to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Louisiana's request to provide a State maximum allowable cost (LMAC) for the pharmacy program violates sections 1902(a)(30) and 1903(i)(5) of the Social Security Act and implementing regulations at 42 CFR 447.331, 447.332, and 42 CFR 442.25.

Under section 1902(a)(30) and its implementing regulation at 42 CFR 447.331, reimbursement for prescribed drugs is limited to the lower of the ingredient cost of the drug plus a reasonable dispensing fee or the provider's usual and customary charge to the general public. Under the proposed Louisiana amendment, the State does not provide that reimbursement for drugs is based on this formula. Therefore HCFA has determined that Louisiana's proposed plan amendment is in violation of section 1902(a)(30) and regulations at 42 CFR 447.331. Regulations at 42 CFR 447.332(c)(3) require that the basis for the estimate in the "Estimated Acquisition Cost" must be package size providers buy most frequently. HCFA has determined that Louisiana's approval does not use the most frequently purchased package size in determining pricing limits and therefore is in violation of 42 CFR 447.332.

Lastly, the proposed listing of State MAC drugs erroneously contains drugs that have been determined by the Food and Drug Administration as "less-than-effective" and not subject to reimbursement under section 1903(i)(5) of the Act and 42 CFR 441.25. Such drugs listed are DESI 497 and DESI 2238 which were added to the DESI listing in May and August 1983 respectively. Therefore, HCFA has determined that the proposed State plan amendment is inconsistent with section 1903 (i)(5) of the Act and regulations at 42 CFR 441.25.

The notice to Louisiana announcing an administrative hearing to reconsider our disapproval of the State Plan Amendment reads as follows:

Ms. Marjorie T. Stewart,

Assistant Secretary, Office of Family Security, Department of Health and Human Resources, P.O. Box 44065, Baton Rouge, Louisiana

Dear Ms. Stewart: This is to advise you that your request for reconsideration of the decision to disapprove the Louisiana State Plan Amendment 83-27 was received on November 6, 1984. You have requested a reconsideration of the disapproval of whether this plan amendment, which would provide a State maximum allowable cost for the pharmacy program, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on January 30, 1985, at 10 a.m., in the 23rd Floor Conference Room, 2535 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph. D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: December 3, 1984.

Carolyne K. Davis.

Administrator, Health Care Financing Administration.

[FR Doc. 84-31954 Filed 12-6-84; 8:45 am]
BILLING CODE 4120-03-M

National Institutes of Health

Establishment; Neurology C Study Section

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the National Institutes of Health announces the establishment by the Secretary of Health and Human Services of the Neurology C Study Section.

The Neurology C Study Section shall advise the Secretary; the Assistant Secretary for Health; and the Director, National Institute of Health, regarding applications for grants-in-aid for research and research training activities and proposals relating to the fields of molecular and cellular neurology, neurogenetics, neuroimmunomodulation and neuroimmunopathology with emphasis on linking the basic sciences and clinical substrates of neurological dysfunction.

Authority for this committee shall terminate on September 30, 1986 unless the Secretary, HHS, formally determines that continuance is in the public interest.

Dated: November 30, 1984.

Thomas E. Malone, Ph.D.,

Acting Director, National Institutes of Health.

[FR Doc. 84-31947 Filed 12-6-84; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. I-84-130]

Intent To Issue a Finding of No Significant Impact; Coco Beach Housing Development, Rio Grande, PR

The Department of Housing and Urban Development gives notice concerning the proposed Coco Beach Housing Development, Project #84-529, Rio Grande, Puerto Rico, that it intends to issue a Finding of No Significant Impact (FONSI) based on an Environmental Assessment (EA) for this project. Comments are solicited before the New York Regional Administrator of HUD makes a final determination whether to proceed without preparing and Envrionmental Impact Statement (EIS).

Description

Coco Beach is an 814 Acre tract of land located east of the City of San Juan in Comezon Cove and Espiritu Santo River at Zarzal Ward, Rio Grande, Puerto Rico. The project site, approximatley 200 acres, is defined by a Department of the Army, Corps of Engineers' Dredge and Fill Permit dated May 12, 1980. This permit area was allowed to be filled above the designated flood-plain elevation and contains the necessary conditions and safeguards as defined by FEMA and the Corps of Engineers.

The subject 200 acre development area will contain approximately 1900 mixed housing units. Directly West and Northwest of the subject development area is a 246 acre mangrove and wetland area. This area will not be developed or disturbed and will remain permanent open space. This is in accord with local approvals, the Corps of Engineers Dredge and Fill Permit and the requirements of HUD's conditions of approval. Any plans for future development on the remaining 368 acres will require a new application, will have to go through the local review process and will be subject to required permits and approvals by affected Commonwealth and Federal agencies.

An "Early Start" request for project site was approved July 12, 1984. The request was in accordance with procedures contained in HUD regulations 24 CFR 50.43. The total project area, including Early Start, was reviewed and evaluated in accordance with Executive Order 11988, Floodplain Management and Executive Order 11990, Wetland Protection and all procedural steps were followed. Appropriate mitigation measures have been identified and will be required for project approval. All local approvals and permits have been received for project construction.

Purpose of FONSI Notice

According to Council on Environmental Quality and HUD environmental regulations, an environmental assessment (EA) has been prepared to determine whether or not and Environmental Impact Statement is required. It is the finding of the EA that there would be no significant impact on the human environment, given the existing project site condition and the mitigating measures that are to be required. Therefore, in accordance with the applicable regulations a FONSI has been prepared, and a Notice to that effect is hereby published. Pursuant to 40 CFR 1501.4(e)(2) of the CEQ regulations, there will be a thirty (30) day comment period before HUD makes its final determination on the FONSI. Interested individuals, governmental agencies, and private organizations are invited to comment on the FONSI by the date and to the address set forth below.

Additional Information and Comments

The Environmental Assessment which serves as the basis for the Finding of No Significant Impact (FONSI) and supporting documentation related to the Executive Orders are available for inspection until the close of the comment period at the HUD Caribbean Office, Monday to Friday, 8:30 a.m. to 5:00 p.m. Contact concerning inspections should be made with Mr. Jose E. Febres-Silva, Manager, HUD Caribbean Office, Federico Degetau Federal Building, Room 428, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918-2276, telephone: Commercial/FTS 809-735-4201. (This is not a toll-free number).

Comments on the FONSI and Executive Orders should be submitted to the New York Regional Administrator, Joseph D. Monticciolo, 26 Federal Plaza, New York, NY 10278-0068 (Attention Regional Environmental Officer); telephone: (212) 264-0793 (this is not a toll-free number) within thirty (30) days of the publication of this notice.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

[FR Doc 84-31989 Filed 12-6-84; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[INT 84-40]

Colorado; Final Mobil-Pacific Oil Shale Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared an FEIS for two separate private oil shale developments at the southern edge of the Piceance Creek Basin in Garfield County, Colorado. The two projects are Mobil Oil Corporation's proposed Parachute Shale Oil Project and the Pacific Shale Project proposed by a joint venture of Sohio Shale Oil Company, Superior Oil Company, and Cliffs Oil Shale Corporation.

DATE: Comments on the FEIS will be accepted until January 7, 1985.

ADDRESS: Comments should be sent to: Robert Kline, Bureau of Land Management, 764 Horizon Drive, Grand Junction, CO 81501.

FOR FURTHER INFORMATION CONTACT: Address and name as above or (303) 243-6552.

SUPPLEMENTARY INFORMATION: Mobil Oil Corporation ("Mobil") proposes to develop a 100,000-barrel per calendar day shale oil project north of the town of Parachute. It would involve underground mining, onsite surface retorting and upgrading, surface disposal of processed shale, and delivery of shale oil to a regional pipeline system.

Pacific Shale Project ("Pacific") proposes to develop a 100,000-barrel per stream day shale oil project on a site about 10 miles northwest of the town of DeBeque. The project would involve underground mining, onsite surface retorting, upgrading, surface disposal of retorted shale onsite, and transfer of shale oil to a regional multiproject product pipeline system. The EIS was prepared pursuant to requests from Mobil and from Pacific for rights-of-way, sales, or leases of public land.

Availability

Limited single copies of the FEIS may be obtained at the above address. Public reading copies are also available at the following locations:

Arthur Lakes Library, Colorado School of Mines, Golden, CO 80401
Colorado Mountain College, Glenwood Springs, CO 81601
Colorado State University, Fort Collins, CO 80523
Conservation Library, Denver, CO 80203
Glenwood Springs Public Library, Glenwood Springs, CO 80601
Mesa College Library, Grand Junction, CO 81501
Mesa County Public Library, Grand Junction, CO 81501
Natural Resources Library, U.S.D.I., Washington, DC 20240

Dick Freel,

Associate District Manager, Grand Junction District.

[FR Doc. 84-30880 Filed 12-6-84; 8:45 am]
BILLING CODE 4310-JB-M

[N-41048]

Nevada Realty Action; Exchange of Private and Public Lands in Washoe and Clark Counties

November 21, 1984.

The following described Federal land in Clark County, Nevada, has been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, Clark County, State of Nevada

Township 22 South, Range 61 East,
Sec. 14, W½SW¼NE¼NW¼NE¼, N½NW¼NW¼NE¼, SE¼NW¼NW¼NE¼, E½SW¼NW¼NW¼NE¼, NW¼SW¼NW¼NE¼, W½NE¼SW¼NW¼NE¼, S½SW¼NW¼NE¼, W½SE¼NW¼NE¼, W½NE¼SW¼NE¼, N½NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, E½SW¼NW¼SW¼NE¼, N½SW¼SW¼NE¼, E½SE¼SW¼SW¼NE¼, W½SW¼SW¼SW¼NE¼, SE¼SW¼NE¼, W½NW¼SW¼SE¼NE¼, W½SW¼SW¼SE¼NE¼, N½NE¼NE¼NW, SW¼NE¼NE¼NW¼, W½SE¼NE¼NE¼NW¼, N½SE¼NE¼NW¼, SW¼SE¼NE¼NW¼, W½SE¼SE¼NE¼NW¼, NE¼SE¼NW¼, E½NW¼SE¼NW¼, S½SE¼SE¼NW¼, NE¼SE¼SE¼NW¼.

Comprising 97.5 acres of public land.

In exchange for this land, the United States will acquire the following described private lands in Washoe County, Nevada, from FLEX, Inc.:

Mount Diablo Meridian, Nevada

Township 16 North, Range 18 East,

	Accessor parcel No.
Section 1	126-020-01
Sections 2 & 11	126-020-03
Section 12	126-020-01
Section 13	125-010-36
Section 14	128-270-01
Sections 23 & 24	126-010-04

Comprising 2,265.85 acres of private land.

The purpose of the exchange is to acquire the private land which has high public value as environmentally sensitive land in the Lake Tahoe Basin as well as for wildife and recreation. Acquisition of these lands will help produce a better public ownership pattern and thus improve management efficiency. The public interest will be served by completing this exchange.

The values of the land to be exchanged are approximately equal with the final determination to be made by appraisals of both parcels. Full equalization of value, if not equal, will be achieved by payment to the United States by FLEX, Inc., of funds in an amount not to exceed 25% of the total value of the land to be transferred out of Federal ownership.

Patent, when issued, will contain reservations to the United States, will be subject to valid existing rights, and will be subject to reservations for future streets and public utilities. These reservations will be published, separately, at a later date in the Federal Register.

Upon publication of this Notice of Realty Action in the Federal Register, and subject to all valid existing rights, the above described public land will be segregated from all forms of appropriations under the public land laws, including the mining laws except land exchanges and mineral leasing for a period of two (2) years or upon issuance of patent whichever occurs first.

Detailed information concerning this exchange including the Environmental Assessment Record/Lands Report, Cultural Resource Report, and Mineral Report are available for review at the Bureau of Land Management, Las Vegas District, 4765 Vegas Drive, Las Vegas, Nevada.

For a period of 45 days from the date of publication, interested parties may submit

terminate on September 30, 1986 unless

approximately 200 units located in the

telephone: (212) 264–0793 (this is not a

comments to the District Manager, P.O. Box 26569, Las Vegas, NV 89126.

William C. Calkins,

Acting District Manager, Las Vegas District.

[FR Doc. 84–31987 Filed 12–6–84; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Intention To Negotiate Concession Permit; Cape Cod National Seashore, MA

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Mr. Charles W. Silva authorizing him to continue to provide refreshment stand facilities and services for the public at Cape Cod National Seashore, Massachusetts for a period of five (5) years from January 1, 1985 through December 31, 1989.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109, for information as to the requirements of the proposed permit.

Dated: November 21, 1984.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

[FR Doc. 84–31994 Filed 12–6–84; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than December 17, 1984. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Ms. Melita E. Yearwood, (202) 632–3378, IRM/PE, Room 708B, SA–12, Washington, D.C. 20523.

Date Submitted: November 29, 1984.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0506.

Form Number: AID 1420–50.

Type of Submission: Extension

Title: AID Consultant Registry Information System (ACRIS) — Organization and Individual Profile.

Purpose: This information collection will be used to obtain information on capabilities of firms and individual consultants in order that they may participate in AID-financed procuring activities. It will also provide greater opportunities to small, small disadvantaged and women-owned businesses to participate.

Date Submitted: November 29, 1984.

Submitting Agency: Agency for International Development.

OMB Number: None.

Form Number: None.

•Type of Submission: New.

Title: Guidelines for Development Education Project Grants

Purpose: This information collection specifies the criteria and proposal format for grant applications. Private and voluntary organizations, as defined under Section III of the guidelines are eligible for consideration.

Date Submitted: November 29, 1984.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0019.

Form Number: IAP 66A.

Type of Submission: Extension.

Title: Certificate of Eligibility for Exchange Visitor (J–1) Status.

Purpose: This information collection will allow students to apply for Visas and/or Visa extensions as required by the Immigration and Naturalization Service. The students will then be able to remain legally in the U.S. while being trained.

Reviewer: Francine Picoult (202) 395–7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: November 29, 1984.

Fred D. Allen,

Planning and Evaluation Division.

FR Doc. 84–31991 Filed 12–6–84; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–19; Sub-98X]

The Baltimore & Ohio Railroad Co.; Abandonment Exemption; in Tuscarawas and Carroll Counties, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts The Baltimore and Ohio Railroad Company from the requirements of 49 U.S.C. 10903 *et. seq.*, in connection with the abandonment of 5.68 miles of rail line in Tuscarawas and Carroll Counties, OH subject to employee protective conditions.

DATES: This exemption shall be effective on January 7, 1985. Petitions to stay must be filed by December 17, 1984, and petitions for reconsideration must be filed by December 27, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB–19 (Sub-No. 98X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Rene J. Gunning, Suite 2204, 100 No. Charles Street, Baltimore, OH 21201.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer; (202) 275–7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll-free (800) 424–5023.

Decided: November 30, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

Commissioner Lamboley concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 84–31986 Filed 12–6–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6; Sub-226]

Burlington Northern Railroad Co.; Abandonment in Pierce County, WA; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 11.08-mile rail line between Orting (milepost 28.10) and Cascade Junction (milepost 17.02) in Pierce County, WA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 84–31987 Filed 12–6–84; 8:45 am]

BILLING CODE 7035–01–M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: ARA Services, Inc. ("ARA"), Independence Square West, Philadelphia, PA 19106.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of incorporation:

Name and Jurisdiction Where Incorporated

Aero Carolina, Inc., North Carolina
Aero Enterprises, Inc., D.C.
Aero Kitty Hawk, Inc., Idaho
Aluminum Recycling Co., Pennsylvania
ARA Environmental Services, Inc., Maryland
ARA Healthcare Management, Inc., Delaware
  Meditrans, Inc., Louisiana
  Care Inn, Inc., Indiana
ARA Food Service Co., Pennsylvania
ARA Health/Care, Inc., Delaware
  ARA Child Care Systems, Inc., Pennsylvania
  ARA DevCon, Inc., Florida
  ARA Home Health Care, Inc., Pennsylvania
Geriatrics, Inc., Nevada
  Arbor Manor, Inc., Nebraska
  Crete Nursing Home, Inc., Nebraska
  Nebraska Nursing Homes, Inc., Nebraska
  Retama Manor Nursing Centers, Inc., Texas
  Nationwide Health Services, Inc., Texas
National Living Centers, Inc., Delaware
  Blalock Nursing Home, Inc., Texas
    Blalock Nursing Home-East, Inc., Texas
    Blalock Nursing Home-North, Inc., Texas
    Blalock Nursing Home-Southwest, Inc., Texas
    Blalock Nursing Home-Spring Branch, Inc., Texas
  Development Realty Corporation, Texas
  National G. South, Incorporated, Texas
  National Living Centers, Inc. #3, Texas
  NLC Management Company, Inc., Texas
Western Medical Enterprises, Inc., California
  Balkt Convalescent Hospital, Inc., California
  Driftwood Convalescent Hospital, Inc., California
  Driftwood Pharmacy, Inc., California
  Pasadena Medical Pharmacy, Inc., California
ARA Health Facilities of Florida, Inc., Florida
ARA Healthcare Nutirition Services, Inc., Delaware
ARA Healthcare Textile Services, Inc., Delaware
  K.L.P. Corporation, Florida
  Upton's Laundry, Inc., Florida
ARA Leisure Services, Inc., Delaware
  ARA Leisure Convention Services, Inc., Pennsylvania
  ARA Leisure Services of Texas, Inc., Texas
ARA Leisure Services of Vermont, Inc., Vermont
  Mile High Enterprises, Inc., Colorado
  Pittsburgh Stadium Concessions, Inc., Pennsylvania
ARA Magazine & Book Division, Inc., Delaware
ARA Maintenance Mangement Systems, Inc., D.C.
ARA Managed Logistics Systems, Inc., Delaware
ARA Fleet Maintenance of Boston, Inc., Massachusetts
ARA Medical Rehabilitation Services, Inc., Missouri
  ARA Physical Therapy Services, Inc., Missouri
  Professional Therapy Services, Inc., Missouri
ARA Services of California, Inc., California
ARA Services of Texas, Inc., Texas
ARA Sunset Airport Systems, Inc., California
ARA Trailblazer, Inc., Texas
ARA Transportation Services of Dayton, Inc., Ohio
ARA Transportation Services of Boston, Inc., Massachusetts
ARA Virginia Sky-Line Co., Inc., Virginia
Aramont Risk Management Services, Inc., Virginia
ARASERVE of Lehigh Valley, Inc., Pennsylvania
ARASERVE of Puerto Rico, Inc., Delaware
ARASERVE, Inc., Delaware
  Advertising Services, Ltd., Pennsylvania
  Coffee System, Inc., Delaware
Aratex Services, Inc., Delaware
  AMI Automated Management Information, California
  Araclean Services, Inc., Delaware
  Aratex Textile Rental Services, Inc., Delaware
  Fashion-Tex Services, Inc., California
  Landy Textile Rental Services, Inc., Pennsylvania
  Neway Uniform & Towel Supply of Florida, Inc., Florida
  Rental Uniform Service of Roanoke, Inc., Virginia
  Silco, Inc., Ohio
Cooper Motor Lines, Inc., South Carolina
Davre's, Inc., Delaware
Daybridge Learning Centers, Inc., Delaware
Encore Service Systems, Inc., Florida
Galley Services, Inc., Louisiana
Golden Gate Magazine Company, California
Ground Services, Inc., Delaware
Ground Services, Inc. St. Croix, Virgin Islands
Ground Services, Inc. (St. Thomas), Virgin Islands
H.S.T., Ltd., Hawaii
Kenworthy Air Freight Services, Inc., Indiana
Mack Bros., Ltd., New York
Mack Bros. Sales Corp., New York
Means Services, Inc., Delaware
  Linen Supply Services, Inc., Illinois
  Robinson's Fabric Care Center, Inc., Wisconsin
Medicare Equipment Services, Inc., Illinois
Mesa Verde Company, Colorado
Mid-Continent News Co., Inc., Delaware
National Bus Sales and Leasing Co., Inc., California
Resort Concessions, Inc., New York
Smith's Transfer Corporation, Virginia
  M R & R Trucking Company, Florida
Solon Automated Services, Inc., Delaware
  ABC Electric Motor Service, Inc., Delaware
  Bakst Service, Inc., Delaware
  International Dryer Corporation, Massachusetts
  M&S Coin Laundry Service, Inc., Indiana
  Metro Laundry Service, Inc., Virginia
  Sped Laundry Service, Inc., Maryland
  Sugarbush Valley, Inc., Vermont
    Mountain Water Co., Vermont
  The Laundry Room, Inc., Virginia
Spectrum Emergency Care, Inc., Missouri
  Correctional Medical Systems, Inc., Missouri
  Correctional Medical Systems, Inc., Alabama
  Correctional Medical Systems of Illinois Inc., Illinois
  Correctional Medical Systems of Ohio, Inc., Ohio
  Group Three Advertising, Inc., Missouri
S W V Corporation, West Virginia
Terminal Newsstands, Inc., Florida
Terminal Shops, Inc., Florida
Trebor Truck and Trailer Leasing, Inc., Delaware

Vendors Supply Corp., Delaware

(1) Directly owned subsidiaries appear at the left hand margin, first tier and second tier subsidiaries are indicated by single and double indentation, respectively, and are listed under the names of their respective parent companies.

1. Parent corporation and address of principal office: The Gillette Company, Prudential Tower Building, Boston, Massachusetts 02199.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Oral-B Laboratories, Inc., State of Incorporation—Delaware
(ii) Jafra Cosmetics, Inc., State of Incorporation—California

1. Parent corporation and address of principal office: Spancrete Industries, Inc., 10919 W. Bluemond Road, Wauwatosa, Wisconsin 53226.

2. Wholly-owned subsidaries which will participate in the operations, and State(s) of incorporation:

(i) Spancrete, Inc.—Wisconsin
(ii) Spancrete of Illinois, Inc.—Illinois
(iii) Waukesha Block Co., Inc.—Wisconsin
(iv) WBC Corp.—Wisconsin
(v) Spancrete Machinery Corp.—Wisconsin

James H. Bayne,

Secretary.

[FR Doc. 84-32170 Filed 12-6-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correction Facility, Glynco Jetport, Near Brunswick, Glynn County, GA

AGENCY: U.S. Department of Justice; Federal Bureau of Prisons.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

Summary

1. *Proposed Action:* The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new medium security prison is needed in its system. A 300 acre tract of land at the Glynco Jetport, near Brunswick, GA is being evaluated for the site of the facility. The proposal calls for the construction of a 500 bed facility to house medium security inmates. Approximately 60–70 acres would be required for road access, dormitory and food buildings, laundry and dry cleaning facilities. In addition exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, the following aspects will receive a detailed examination: Wetlands threatened and endangered species, cultural resources, unique and prime farmlands, and socioeconomic impacts.

3. *Alternatives:* In developing the DEIS, the alternatives of no action, fragmentation of the facility, and modifications to the proposed facility will be fully and thoroughly examined.

4. *Scoping Process:* During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. There will be an initial scoping meeting on Thursday, December 13, 1984, at 7:30 P.M. The meeting will be held in Building Number 90 of the Federal Law Enforcement Training Center, Glynco, Georgia. The public and all interested agencies or organizations are invited to attend.

5. *DEIS Preparation:* The DEIS should be available for public scrutiny in June, 1985.

6. *Address:* Questions concerning the proposed action and the DEIS can be answered by:

Charles W. Belin, Jr., Ph.D., Environmental Resources Branch, U.S. Army Engineer District, P.O. Box 889, Savannah, GA 31402, Telephone: (912) 944–5838

or:

Mr. Robert A. Smith, Project Manager, U.S. Army Engineer District, P.O. Box 889, Savannah, GA 31402, Telephone: (912) 944–5724.

Dated: December 4, 1984.

Loy F. Hayes,

Chief, Office of Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 84-32084 Filed 12-6-84; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Under Secretary

Labor Research Advisory Council; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with General Services Administration (GSA), I have determined that renewal of the Labor Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics regarding the statistical and analytical work of the Bureau of Labor Statistics, providing perspectives on these programs in relation to the needs of the labor unions and their members.

Council membership and participation in the Council and its committees are broadly representative of the union organizations in the United States. These include representation from organizations of all sizes of membership, with national coverage which reflects the geographical, industrial, and occupational sectors of the economy.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed on January 5, 1985 with GSA and the appropriate congressional committees.

Further information may be obtained from: Joseph P. Goldberg, Executive Secretary, Bureau of Labor Statistics, Department of Labor, Room 2114, GAO Building, Fourth and G Streets NW., Washington, D.C. 20212, phone: 202–523–0001.

Signed at Washington, D.C., this 4th day of December.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 84-32037 Filed 12-6-84; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council; Renewal

In accordance with the provision of the Federal Advisory Committee Act, and after consultation with GSA, I have determined that the establishment of the Business Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics on technical economic and statistical matters, in the analysis of the Bureau's statistics, and on the broader aspects of its program from an informed business point of view; and provide a realistic and timely two-way communications structure between users and providers of basic economic statistics and a major governmental statistics-producing unit.

Council membership is selected to assure a technically competent group of economists, statisticians and industrial relations experts who represent a cross section of American business and industry. The members serve in their individual capacities, not as representatives of their companies or their organizations.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act by January 5, 1985.

Interested persons are invited to submit comments regarding renewal of the Business Research Advisory Council. Such comments should be addressed to: Janice D. Murphey, Liaison for BRAC, Bureau of Labor Statistics, Department of Labor, Room 2021, GAO Building, Fourth and G Streets NW., Washington, D.C. 20212, phone: 202–523–1347.

Signed at Washington, D.C., this 4th day of December.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 84-32038 Filed 12-6-84; 8:45 am]

BILLING CODE 4510-24-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Company (Pilgrim Station); Request for Action Under 10 CFR 2.206 Regarding Equipment Qualification at the Pilgrim Station

Notice is hereby given that by his Petition/Request for Show Cause Order dated October 20, 1984 (Petition), Mr. John F. Doherty requests that the Director of Nuclear Reactor Regulation institute a proceeding pursuant to 10 CFR 2.202 to suspend or revoke the operating license for the Pilgrim Station of the Boston Edison Company (licensee) by serving the licensee with an order to show cause why the operating license should not be revoked or suspended due to hazardous conditions at the facility based on alleged deficiencies in the area of equipment qualification.

The Petition identifies 24 items where alleged deficiencies in equipment qualification exist. The items were developed after review of a Technical Evaluation Report for the Pilgrim Station performed by the Franklin Research Center and replies to that report by the licensee.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Local Public Document Room for the Pilgrim facility located at the Plymouth Public Library, North Street, Plymouth, Massachusetts.

Dated at Bethesda, Maryland, this 29th day of November 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-32003 Filed 12-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co; Big Rock Point Plant; Issuance of Director's Decision Under 10 CFR 2.206

By a petiton sent in the form of a "Motion for Show-Cause Order Regarding the Financial Qualifications of Consumers Power" dated August 15, 1984 to the Director of the Office of Nuclear Reactor Regulation of the Nuclear Regulatory Commission (the Commission) (NRC), Mr. John O'Neill, II requested that the NRC issue a show-cause order requiring Consumers Power Company (the licensee) to prove that the company is financially qualified to safely operate the Big Rock Point Plant with the expanded-capacity spent fuel storage pool. The petitioner expressed concern over the financial burden the cancellation of the Midland Plant may have placed on the licensee's ability to safely operate the Big Rock Point Plant. On September 28, 1984 a notice was published in the **Federal Register** (49 FR 38426) that the petition was being treated under 10 CFR 2.206.

Upon review of information pertaining to this issue and the information provided in Mr. O'Neill's petition, the Director of Nuclear Reactor Regulations has determined that no basis exists for issuing a show-cause order requiring the Consumers Power Company to prove that the company is financially qualified to safely operate the Big Rock Point Plant. Accordingly, the request of Mr. John O'Neill, II is denied. The reasons for this denial are explained in the "Director's Decison" under 10 CFR 2.206 (DD–84–25), which is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

A copy of the decision will also be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will become the final action of the Commission 25 days after issuance unless the Commission on its own motion institutes review of the decision within that time.

Dated at Bethesda, Maryland, this 3rd day of December 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-32004 Filed 12-6-84; 8:45 am]

BILLING CODE 7590-01-M

University of Texas; Receipt of Application for Construction Permit and Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from the University of Texas dated November 9, 1984, filed pursuant to section 104c of the Atomic Energy Act, as amended, for the necessary licenses to construct and operate a TRIGA nuclear reactor. The reactor is to be constructed for the University of Texas and will be located at the University of Texas Balcones Research Center in Austin, Texas. It is proposed for operation at a power level of 1 megawatt for eduational training and research.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 4th day of December 1984.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Section Leader, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 84-32005 Filed 12-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-281]

Virginia Electric and Power Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a relief from the requirements of ASME Code Section XI to the Virginia Electric and Power Company (the licensee), for the Surry Power Station, Unit No. 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action: This relief will permit the licensee to hydrotest certain weld repairs on main steam piping at a pressure less than that required in the ASME Code Section XI,

as incorporated into Commission regulation in 10 CFR 50.55a(g).

The relief is responsive to the licensee's application dated December 9, 1983 and supplemented by letter dated August 17, 1984.

The Need for the Proposed Action: The proposed relief is needed because hydrotest pressure required by the Code cannot be attained due to system lay-out and pump capabilities. The licensee's proposed hydrotest procedures would ensure that these weld repairs attained sufficient integrity for future service. The licensee supplemented the Code requirements with a surface examination of the area which confirmed the adequacy of the repair.

Environmental Impacts of the Proposed Action: The proposed relief will provide a degree of assurance of operability that is equivalent to that prescribed by the ASME Code. Consequently, the probability of the weld repair not retaining system pressure will not be increased and post-accident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief.

With regard to potential non-radiological impacts, the proposed relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Surry Power Station, Unit No. 2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has determined not to prepare an environmental impact statement for the proposed relief.

For further details with respect to this action, see the application for the relief dated December 9, 1983, and supplement dated August 17, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland, this 30th day of November 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-32008 Filed 12-6-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Amendment to Prompt Payment Circular No. A-125, "Prompt Payment," Opportunity for Comment

AGENCY: Office of Management and Budget.

ACTION: Comment on proposed OMB Circular amendment.

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed amendment to OMB Circular A-125, "Prompt Payment."

OMB Circular A-125 provides that agencies will make payments as close as possible to, but not later than, the due date specified in the contract. Where there is no due date in the contract, payment will be made 30 days after receipt of a proper invoice, or 30 days after the property or service is accepted by the Government. The Federal Acquisition Regulations permit agencies to deviate from this policy by using procedures such as "fast pay" to make payments to vendors based upon vendor assurance that goods have been shipped, rather than waiting for goods to be received. These procedures are necessary in unusual circumstances, such as when deliveries are made to remote locations or where the Government takes advantage of early payment discounts. However, these procedures should not be used for deliveries to depot stocks or in other instances where receipt and acceptance are routine.

Experience has shown that payments made without receiving reports are more subject to error than those made after the goods are received, inspected, and accepted. A recent Inspector General report disclosed that millions of dollars of material purchased and paid for by the Federal Government under "fast pay" procedures was not received. The auditors attributed these discrepancies to inadequate internal control over the award and administration of "fast pay" contracts.

The proposed changes to Circular A-125 permit payment without receiving reports only in limited circumstances.

Interested parties are invited to comment on this proposed change. Comments should be submitted to the Office of Management and Budget, Financial Management Division, Room 10235, Washington, D.C. 20503. All comments should be received within 45 days of this publication.

Issued in Washington, D.C., December 4, 1984.

Candice C. Bryant,

Deputy Associate Director for Administration.

[Circular A-125; Attachment 2]

Payment Standards

1. This attachment establishes standards for payment procedures to be used in certain circumstances where the general provisions in paragraph 6, "Payment Standards," of the basic Circular may be difficult to apply.

2. In limited situations payment may be made without evidence that supplies have been received. Instead, a vendor certification that supplies have been shipped may be used as a basis for authorizing payment.

3. These payment procedures may be employed only when:

a. Individual orders do not exceed $25,000.

b. Deliveries of supplies are to occur at remote locations outside of the ordering organization.

c. The delivery location and the lack of adequate communications facilities make it impractical to match receiving information with invoices in time to take advantage of discounts offered for early payment.

d. Title to the supplies will vest in the Government (1) upon delivery to a post office or common carrier for mailing or shipment to destination, or (2) upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

e. The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

4. Agencies shall promptly inspect and accept supplies acquired under these procedures and shall ensure that receiving reports and payment documents are matched.

5. Agencies shall ensure that specific internal controls are in place to assure that supplies paid for are received.

6. This amendment is effective upon issuance.

[FR Doc. 84-31984 Filed 12-6-84; 8:45 am]

BILLING CODE 3110-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee; Regular Meeting

AGENCY: State Agency Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Review of meeting between Council and Commissioners on Policy for Out-of-Region Sales.
- Discuss the need for additional analysis.
- Review of the DSI Interruptibility Issue Paper.
- Review of Costs of Delaying the Model Conservation Standards Issue Paper.
- Status of Inertie Upgrades.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its State Agency Advisory Committee.

DATE: Tuesday, December 11, 1984. 2:00 p.m.

ADDRESS: The meeting will be held at the Council Conference Room at 859 SW., Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-31988 Filed 12-6-84; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23508; 70-7051]

Columbia Gas System, Inc., et al.; Proposed 1985 Intercompany Financing External Short-Term Financing and Money Pool Programs; Exception From Competitive Bidding

November 30, 1984.

In the matter of the Columbia Gas System, Inc., Columbia Gas System Service Corp., Columbia LNG Corp., Columbia Alaskan Gas Transmission Corp., Wilmington, Delaware, and Columbia Gas Transmission Corp., Big Marsh Oil Co., Columbia Gas of Kentucky, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of New York, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Virginia, Inc., Columbia Gas Brokerage Corp., Charleston, West Virginia, and Columbia Gulf Transmission Co., Columbia Gas Development Corp., Houston, Texas, and Columbia Gas Development of Canada Ltd., Calgary, Alberta, Canada, and Commonwealth Gas Pipeline Corp., Commonwealth Gas Services, Inc., Commonwealth Propane, Inc., Richmond, Virginia, and Columbia Hydrocarbon Corp., the Inland Gas Company, Inc., Columbia Coal Gasification Corp. Ashland, Kentucky.

The Columbia Gas System, Inc. ("Columbia" and "System", when referred to in connection with its subsidiaries), a registered holding company, and its subsidiaries ("Subsidiaries") above, have proposed a transaction to this Commission pursuant to sections 6, 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 43, 45 and 50(a)(5) thereunder.

The proposal involves the System's 1985 Intercompany Financing, External Short-Term Financing and Money Pool Programs. The Intercompany Financing Program is intended to meet the long and short-term financing requirements of the subsidiaries. The System's long-term needs for capital expenditures are estimated to be $349,262,000. Of that amount $249,762,000 has been approved by prior Commission orders, or will be financed with internally generated funds. Authorization is sought to finance up to $99,500,000 to be financed through the sale to Columbia, by December 31, 1985, of unsecured installment promissory notes ("Notes") and/or common stock. Columbia Kentucky will issue $800 of common stock. The Notes will be issued by the Subsidiaries in the following amounts in millions aggregating $98,700,000. Columbia Kentucky—$1,900; Columbia Ohio—$11,200; Columbia Maryland—$800; Columbia New York—$2,000; Columbia Pennsylvania—$5,800; Columbia Virginia—$1,000; Columbia Transmission—$55,000; Development Canada—$18,100; Commonwealth Propane—$800; Commonwealth Services—$1,500; Service—$800. The interest rate will equal Columbia's cost of money on its most recent sale of long-term debt or preferred stock. The Notes are payable in 15 equal annual installments on January 31 from 1987 through 2001, except for interest on Development Canada Notes, which will be paid to the extent that they reduce U.S. consolidated income tax liability.

The Subsidiaries short-term requirements are estimated to be $946,300,000, to be funded first from the Intrasystem Money Pool, and then from borrowings from Columbia funded by Commission approved sales of commercial paper. Advances are limited as follows, in millions: Columbia Kentucky—$40,000; Columbia Ohio—$300,000; Columbia Maryland—$2,800; Columbia New York—$11,500; Columbia Pennsylvania—$74,500; Columbia Virginia—$11,000; Columbia Transmission—$450,000; Development—$10,000; Development Canada—$3,900; Commonwealth Propane—$2,500; Commonwealth Services—$7,600; Commonwealth Pipeline—$14,000; Hydrocarbon—$5,500; Inland —$5,000; Coal Gasification—$5,000; Service—$3,000. The funds will be advanced, repaid and reborrowed as needed for periods not exceeding one year. The cost to the subsidiaries on all advances will be the composite weighted average daily cost or yield to Columbia for its external short-term money market transactions or *The Wall Street Journal's* daily 30-day commercial paper note rate. The Money Pool will be operated through 1985 as last ordered by this Commission. (HCAR No. 23188, December 29, 1983).

Columbia's 1985 External Short-Term Financing Program will involve either commercial paper or bank loans not exceeding $525 million or 27% of secured debt, extending and reducing the exemption from 6(a) of the Act as provided by 6(b). Columbia proposes to issue and sell commercial paper in the form of unsecured notes to one or more commercial paper dealers with a right to repurchase and resell, and continue to do so as long as the effective rate on such commercial paper is less than the effective interest cost on bank borrowings, except that, in order to obtain greater flexibility, commercial paper may be issued with an effective interest cost in excess of the effective interest cost on bank borrowings if the paper has a maturity of not more than 60 days from the date of issue. Commercial paper will be issued in denominations of not less than $50,000 nor more than $5 million, and will be reoffered by the dealer(s) in non-public offerings. The commercial paper will be sold to the dealer(s) at the then prevailing discount rate for similar commercial paper, and will not be prepayable. The dealer(s) may reoffer the paper at a discount rate of up to ⅛ of 1% per annum less than the rate borne by Columbia as issuer.

Columbia currently has $525 million of confirmed bank lines of credit, and intends to maintain that amount (HCAR No. 23188, December 29, 1983). In no event will the proposed commercial

paper and/or short-term bank borrowings exceed an aggregate amount at any one time outstanding of $525 million. Any borrowings under these lines of credit will be repaid within nine months from the date of issuance of the respective notes. Columbia will have the right to prepay bank borrowings, in whole or in part, without penalty. Bank borrowings will result in borrowing costs not more than the prime rate, in effect from time to time at each lending bank, adjusted for the effect of compensating balances or fees in lieu thereof. Assuming a fee of ¼% in lieu of compensating balances, and prime rate of 12%, the effective cost would be 12¼%.

The proposal and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 28, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31965 Filed 12-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23503; 70-7055]

Consolidated Natural Gas Co.; et al.; Proposal for the Temporary Prepayment by Subsidiary Companies of Long-Term Notes Owned by the Parent Company

November 30, 1984.

In the matter of Consolidated Natural Gas Co., 100 Broadway, New York, New York 10005, and Consolidated System LNG Co., Consolidated Gas Transmission Corp., Hope Gas, Inc. 445 West Main Street, Clarksburg, West Virginia 26301, and CNG Producing Co., Suite 3100, One Canal Place, New Orleans, Louisiana 70130, and The East Ohio Gas Co., the River Gas Co. 1717 East Ninth Street, Cleveland, Ohio 44114, and The Peoples Natural Gas Co., Two Gateway Center, Pittsburgh, Pennsylvania 15222, and West Ohio Gas Co., 504 Colonial Building, Lima, Ohio 45802.

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiary companies, Consolidated System LNG Company, CNG Producing Company, Consolidated Gas Transmission Corporation, Hope Gas, Inc., The East Ohio Gas Company, The Peoples Natural Gas Company, The River Gas Company, and West Ohio Gas Company ("Subsidiary Companies"), have proposed a transaction subject to sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 and Rules 42(b)(2), 45, and 50(a)(3) thereunder.

The Subsidiary Companies propose to prepay temporarily, from time to time prior to December 31, 1986, from excess cash funds, an amount not to exceed the aggregate amounts of their outstanding long-term nonnegotiable notes held by Consolidated, or, with respect to state regulated companies, the amount authorized by their respective state regulatory commission having jurisdiction. The long-term notes temporarily prepaid by an individual subsidiary will be those bearing the highest interest rate outstanding at the time of each prepayment. Prepayments will be evidenced by letter, and the notes will not be altered. Interest on such notes will cease upon prepayment and start again upon reinstatement. As funds are thereafter required by such subsidiary for corporate purposes, including construction, it is proposed that advances be made on open account to the subsidiary by Consolidated in an aggregate amount not to exceed the amount of long-term notes previously prepaid, less any current maturities applicable to notes which have matured subsequent to the prepayment dates.

The open account advances will bear interest during 1985 and 1986 at the same rate or rates as borne by the equivalent principal amount of the notes previously prepaid by such subsidiary but in reverse order to that of the prepayments, i.e., from the lowest rate on the notes previously prepaid to the highest rate. Interest on the open account advances will commence on the date of the advance and will become due on June 30 and December 31, of each year, and/or on the date such advances are repaid by the reinstatement of the prepaid notes.

It is proposed that open account advances to a subsidiary be increased or decreased from time to time in accordance with variations in the cash flow of the subsidiary. However, at no time will the advances outstanding be in excess of the notes prepaid.

At such time as the open account advances equal the aggregate amount of the prepaid notes, or in any event not later than December 31, 1986, the notes prepaid by a subsidiary will be reinstated in repayment of the related outstanding open account advances made to the subsidiary by Consolidated. However, if the aggregate of the notes prepaid exceeds such advances at the end of 1986, Consolidated proposes to make cash repayment of the differences in order to effect reinstatement of the prepaid notes in full.

No financing of any subsidiary which may be presently or subsequently authorized by this Commission in connection with the construction or gas storage programs of any such subsidiary will be consummated until such time as advances have been made in amount equal to the amount of notes prepaid.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 26, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31966 Filed 12-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14263; 812—5956]

Deutsche Bank AG, Deutsche Bank Financial Inc; Application for Order Exempting Applicants

November 30, 1984.

Notice is hereby given that Deutsche Bank AG (the "Bank"), a West German bank, and Deutsche Bank Financial Inc. ("DBFI"), a Delaware corporation ("Applicants"), c/o Barry L. Dastin, Esquire, White & Case, 1155 Avenue of the Americas, New York, New York, 10036, filed an application on October 4, 1984, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Bank was formed to conduct banking business of all kinds but especially to promote and facilitate trade relations with other European countries and overseas markets. Applicants state that the Bank is the largest privately owned bank in the Federal Republic of Germany. Applicants state further that, on December 31, 1983, the Bank had total assets of $43,242,734,000. According to the application, the Bank is extensively regulated by the Federal Republic of Germany. Regulatory supervision is exercised by the Federal Banking Supervisory Office in Berlin, which is an independent federal office directly subordinated to the Federal Ministry of Finance given regulatory authority under the Banking Act of 1961, as amended. The Bank proposes to issue commercial paper in the United States directly and/or obtain loans from the issuance of commercial paper by DBFI.

Applicants state that DBFI's sole business will consist of issuing and selling its commercial paper notes and loaning the net proceeds of sale thereof to the Bank (the "Loans"). Applicants state that all of DBFI's outstanding capital stock, when issued, will be owned by the Bank. DBFI represents that there has been and, in the future, there will be, no public offering of DBFI's capital stock or of any other equity security of DBFI. Applicants state further that substantially all of DBFI's assets will consist of DBFI's right to receive repayments from the Bank of indebtedness of the Bank arising by reason of the Loans. Applicants intend to limit the commercial paper program of the Bank and DBFI to a maximum face amount of commercial paper notes (the "Notes") outstanding of $750,000,000. DBFI will issue and sell commercial paper because certain institutional purchasers of commercial paper in the United States may have a policy of limiting their purchases of debt obligations to those of domestic issuers.

The Notes will be issued in minimum denominations of $100,000 and the other terms, including maturity and manner of offering, will be such as to qualify the Notes for the exemption from registration under the Securities Act of 1933 (the "1933 Act") provided by section 3(a)(3) or section 4(2) thereof. Accordingly, neither DBFI nor the Bank will be required to register the Notes under the 1933 Act. Neither DBFI nor the Bank will issue and sell Notes until having received an opinion of special United States counsel that, under the circumstances of the proposed offering, the Notes would be entitled to such exemption. The Bank does not request Commission review or approval of counsel's opinion regarding the availability of an exemption under section 3(a)(3) or section 4(2) of the 1933 Act. It is stated that neither the Bank nor DBFI is subject to the reporting requirements of the Securities Exchange Act of 1934 and neither will become subject to such requirements in connection with the issuance and sale of the Notes.

Applicants represent that, prior to issuance, the Notes will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that their United States counsel will have certified that such rating has been received, provided, however, that no such rating will be required if in the opinion of United States counsel for Applicants, such counsel having considered for the purpose thereof the doctrine of "integration" referred to in Rule 502 under the 1933 Act, and various releases and no-action letters made public by the Commission, and exemption from registration is available respecting such issue under section 4(2) of the 1933 Act.

The Notes will be issued and sold by Applicants either directly or through one or more commercial paper dealers in the United States. The Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold to institutional investors and other entities and individuals who normally purchase commercial paper. Applicants undertake to ensure that there will be provided to each offeree who has indicated an interest in Applicant's securities, prior to any sale of Notes to such offeree, a memorandum which (1) describes the business of the Bank together with, in the case of Notes issued by DBFI, the business of DBFI, (2) contains the most recent publicly available fiscal year-end balance sheet and income statement of the Bank, audited in the manner customary for German banks, and (3) describes the material differences, if any, between the accounting principles applied by the Bank in the preparation of such financial statements and generally accepted accounting principles applied by banks in the United States. The memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States, and such memorandum will be updated periodically to reflect material changes in the Bank's financial status to the extent not previously reflected in the memorandum or financial statements.

If DBFI issues Notes, the Bank will support the Notes by means of an unconditional guarantee or unconditional, irrevocable letter of credit. Applicants state that the Bank's obligations in respect of its direct liability to holders of Notes and its liabilities to DBFI will rank *pari passu* with all deposit liabilities and other unsecured, unsubordinated indebtedness of the Bank and superior to any subordinated indebtedness of the Bank and to claims of holders of the Bank's capital stock.

Applicants state that the Bank will expressly accept the jurisdiction of any State or Federal court in the City of New York, and will authorize any agent in the City of New York to accept service of process, in any action based upon (1) the Notes issued or guaranteed by the Bank or (2) the Bank's obligations to DBFI. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicants.

Applicants may, from time to time, offer debt securities other than the Notes for sale in the United States. The proceeds of any such debt securities would, in the case of debt securities of DBFI, be loaned or advanced to the Bank. Applicants state that the obligations of DBFI in respect of any such debt securities issued by DBFI will be supported by the Bank's unconditional guarantee or unconditional, irrevocable letter of credit. Applicants undertake that, prior to issuance, any future issue of the Bank's or DBFI's debt securities other than the Notes will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that Applicants' United States counsel will have certified that such rating was received. However, no such rating will be required respecting debt securities other than the Notes if, in the opinion of United States counsel to Applicants, such counsel having taken into account for the purpose thereof the doctrine of "integration" referred to in Rule 502 under the 1933 Act and various releases and no-action letters made public by the Commission, an exemption

from registration is available for the issue under section 4(2) of the 1933 Act.

Applicants undertake that neither of them will issue or sell in the future any of their debt securities in the United States without having received an opinion of United States counsel or a "no-action" letter issued by the staff of the Commission to the effect that the proposed offering is in compliance with, or entitled to exemption from, the registration requirements of the 1933 Act. Applicants also undertake that any such future offering will be affected on the basis of disclosure documents appropriate for such registration or exemption. Applicants represent that such disclosure documents will not be less comprehensive than is customary for United States offerings of similar debt securities. Applicants undertake to ensure that such disclosure documents will be provided to each offeree indicating an interest in the Bank's or DBFI's securities then being offered, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act. Applicants consent to any order granting the relief requested being conditioned upon Applicants' compliance with the foregoing undertaking regarding disclosure documents.

Applicants state that the Bank will, in connection with any future offering of its debt securities in the United States and in connection with any future offering of DBFI's debt securities in the United States, appoint an agent to accept service of process in any suit, action or proceeding brought against the Bank on its obligation under its guarantee of DBFI's debt securities. Applicants will expressly consent to the jurisdiction of any State or Federal court located in the City and State of New York respecting any such suit, action or proceeding. Such appointment of an agent for service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due respecting such issuance of debt securities have been paid.

According to the application, Applicants are not the types of entities intended to be regulated by the Act and would be precluded from selling securities in the United States were they required to register as investment companies and comply with the Act. Applicants state that the rationale for exempting the Bank applies equally to DBFI because of Applicants' close relationship and because the obligations of DBFI will in effect be obligations of the Bank, since DBFI's sole business is financing the operations of the Bank.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 26, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant ot delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31957 Filed 12-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23505-70-7062-31-805]

Inter-City Gas Corp., et al., Application To Acquire Public Utility Companies and Request for Exemption

November 30, 1984.

In the matter of Inter-City Gas Corp., Suite 1800, 444 St. Mary Avenue, Winnipeg, Manitoba, Canada, and Northern and Central Gas Corp., Ltd. 246 Yorkland Boulevard, North York, Ontario, Canada, and Greater Winnipeg Gas Co., 265 Notre Dame Avenue, Winnipeg, Manitoba, Canada, and Le Gaz Provincial du Nord de Quebec, Ltee., 245 Yorkland Boulevard, North York, Ontario, Canada.

Inter-City Gas Company ("Inter-City"), an exempt holding company, and Northern and Central Gas Corporation Limited ("N&C") and its subsidiaries Greater Winnipeg Gas Company ("Greater Winnipeg") and Le Gaz Provincial du Nord de Quebec Ltee. ("Le Gaz"), have filed a joint application with this Commission pursuant to section 3(b), 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 10 and 11(a) promulgated thereunder.

Inter-City, a Canadian corporation, is a "gas utility company", as defined in section 2(a)(4) of the Act. It distributes natural gas, at retail, in 39 Northern Minnesota communities and throughout Canada. In addition, it is a "holding company" pursuant to section 2(a)(7) of the Act because it owns wholly and/or in part directly and indirectly subsidiaries engaged in the retail distribution of natural gas in Canada. Inter-City is also engaged in, *inter alia*, the exploration, development and production of crude oil, natural gas and natural gas liquids and the operation of a natural gas processing plant; the distribution of propane, gasoline and related products and the manufacture and distribution of industrial gases; the transmission of natural gas; the distribution of electricity; and the manufacture and distribution of heating and air conditioning equipment and related products and the fabrication of large diameter and corrugated steel pipe. For the year ended December 31, 1983, Inter-City reported consolidated operating revenues of $657,150,00, of which $202,611,000 were derived from its natural gas, electricity and pipeline operations. At that date, Inter-City reported consolidated assets of $814,491,000.

By order dated July 22, 1967 (HCAR No. 16121) the Commission granted an application by Inter-City Gas Utilities Ltd., a wholly-owned public utility subsidiary of Inter-City, for an exemption from all provisions of the Act pursuant to section 3(b). By order dated December 8, 1977 (HCAR No. 20306), the Commission granted a similar Section 3(b) application by Inter-City and six public utility subsidiaries of Canadian Hydrocarbons Limited, which Inter-City acquired between 1976 and 1978.

As of October 30, 1984, Inter-City and its subsidiaries, ICG Resources, Ltd. ("Resources") and Vigas Propane, Ltd. ("Vigas") entered into an agreement ("Acquisition Agreement") under which they will acquire from Norcen Energy Resources Limited ("Norcen") all of the issued and outstanding common shares of N&C. N&C in turn owns all of the outstanding common stock of Le Gaz and 99.8% of the outstanding common stock of Greater Winnipeg. N&C, Le Gaz and Greater Winnipeg are gas utility companies for purposes of the Act. In its current application, Inter-City seeks approval pursuant to section 9(a)(2) and 10 of the Act with respect to its direct and indirect purchase of the securities of N&C, Le Gaz, and Greater Winnipeg, while N&C Le Gaz and Greater Winnipeg seek exemptions from regulation under the Act pursuant to section 3(b). If such approval and exemptions are granted, then Inter-City and all intermediate holding companies will be exempt from the Act pursuant to Rule 10.

N&C, Le Gaz and Greater Winnipeg are all Canadian corporations. N&C is engaged directly, and indirectly, in the distribution of natural gas to residential, commercial, and industrial customers in certain areas of Ontario, Quebec, and Manitoba. In addition to Greater Winnipeg, which distributes natural gas, N&C has two wholly-owned subsidiaries engaged in the transmission and distribution of natural gas: Le Gaz and Champion Pipe Line Corporation. At September 30, 1984, retail gas distribution customers totaled 304,424 and for the twelve months ending that date, 154,218 mmcf of natural gas had been sold with gas revenues in the amount of $724,031,000. At December 31, 1983, their net utility plant and for the twelve months ending December 31, 1983, their gross utility revenues, were as follows:

	Net plant	Gross revenues
N&C (minus Le Gaz & Greater Winnipeg)	$256,732	$496,843
Greater Winnipeg	104,727	210,084
Le Gaz	8,253	13,900
Total	$348,712	$720,827

Le Gaz has no U.S. common shareholders while Greater Winnipeg has 86 such shareholders. N&C has only one common shareholder, which is Norcen. N&C does have outstanding three series of preference shares of which there are 4 U.S. shareholders of the first series and 1 of the second series.

Pursuant to the Acquisition Agreement, Inter-City and Resources will each acquire 48% of N&C while Vigas will acquire the remaining 4%. The purchase price will be $240 million, of which $163 million will be paid in cash and the remaining $77 million will be paid by the issuance of 8% First Preferred Share Series A ("Series A Shares") of Inter-City. The Series A Shares will pay a quarterly 8% dividend, rank on a parity with other First Preferred Shares and be redeemed pursuant to a sinking fund over the 8 year period beginning in 1988. If Inter-City should fail to timely pay a dividend or meet a sinking fund obligation, Norcen will have the right to require Inter-City to redeem all or any part of Series A Shares. N&C will pay its normal $.25 quarterly dividend on November 30, 1984, subject to adjustment upward and downward depending upon whether its retained earnings as of December 31, 1984 are above or below a certain amount calculated in accordance with the Acquisition Agreement. In addition, a demand 7.8% promissory note of Norcen in the amount of $47.3 million payable to N&C will be restructured to call for payment in annual installments between 1988 and 1999. Closing is expected to take place no later than December 31, 1984.

Inter-City states that U.S. shareholder interest in N&C, Le Gaz and Greater Winnipeg is extremely limited, both in terms of number of U.S. holders and the number of shares held and that there is no known trading activity in their shares in the U.S. Also that none of them derive any material part of its income directly or indirectly from sources within the U.S. and none of them are public utility companies operating in the U.S. Based upon the foregoing it is contended that it is not necessary in the public interest or for the protection of investors to subject the applicants to the Act and an order under section 3(b) exempting them from all of the provisions of the Act should be granted.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 24, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31958 Filed 12-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23507; 70-7046]

National Fuel Gas Co. and Seneca Resources Corp.; Proposal To Issue and Sell Common Stock

November 30, 1984.

National Fuel Gas Company ("National"), 30 Rockfeller Plaza, New York, New York, 10112, a registered holding company, and its subsidiary, Seneca Resources Corporation ("Seneca"), 10 Lafayette Square, Buffalo New York, 14203, have proposed a transaction to this Commission pursuant to section 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 thereunder.

National proposes to issue and sell prior to December 31, 1986, in one or more transactions pursuant to Rule 415 under the Securities Act of 1933, at competitive bidding, an aggregate of not to exceed 2,000,000 authorized but unissued shares of its Common Stock, no par value ("Common Stock"). Alternatively, National will attempt to issue and sell all or a portion of the Common Stock through a continuous offering shelf registration program.

In the event that National issues and sells all or a portion of the Common Stock through a continuous offering shelf registration program, National proposes to enter into one or more Sales Agency Agreements with one or more investment bankers ("Agent") under which the Agent will act as National's exclusive agent for the purposes of offering and selling the Common Stock in the usual course of business at market value, or at a fixed price with National's and this Commission's approval.

The proceeds of the issuance will be contributed to the capital of Seneca for the purpose of reducing borrowings from Seneca's credit lines. [HCAR No. 23427, September 20, 1984).

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 26, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case or an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31959 Filed 12-6-84; 8:45 am]

BILLING CODE 8010-01-M

DBFI because of Applicants' close

Minnesota communities and throughout

Rule 10.

[Release No. 23511; 70-7055]

New England Energy Inc.; Proposal To Amend Oil and Gas Exploration and Development Partnership Agreement and To Invest in Oil and Gas Exploration

December 3, 1984.

New England Energy Incorporated ("NEEI"), a fuel supply subsidiary of New England Electric System ("NEES"), a registered holding company, 25 Research Drive, Westborough, Massachusetts, 01581, has filed a proposal with this Commission pursuant to section 9 and 10 of the Public Utility Holding Company Act of 1935 ("Act").

NEEI participates in ventures for exploration, development and production of oil and gas, the conversion of such production, and the sale of fuel oil to its affiliate, New England Power Company ("NEP"). Since 1974, NEEI has participated in most of its oil and gas exploration and development through its partnership ("Partnership") with Samedan Oil Corporation ("Samedan"), a subsidiary of Noble Affiliates, Inc.

NEEI had invested about $625 million in oil and gas exploration and development through September 30, 1984. NEEI's share of the total proved and probable reserves discovered by its oil and gas ventures through that date was 29.5 million equivalent barrels. Costs associated with these reserves including capital costs and costs associated with production, totalled about $897 million. NEEI production and revenue through September 30, 1984 were about 8.6 million equivalent barrels and about $176 million, respectively. This production has resulted in about $9 million of savings in fuel costs for customers of the NEES system. NEEI estimates that its 1985 production will be about 3.1 million equivalent barrels. NEEI currently has before the Commission an application requesting authority to amend the terms upon which it sells fuel to NEP (File No. 70-6958).

Under the terms of the NEEI-Samedan Partnership Agreement ("Partnership Agreement"), each partner owns a 50% interest in Partnership property. Samedan normally places into the Partnership 100% of any and all interests which it or any of its affiliates may acquire in new oil and gas leases. Subject to certain conditions, NEEI may elect to reduce this percentage for any calendar year. NEEI did elect to reduce the percentage to 80% for prospects initiated in 1984, giving NEEI a 40% interest.

The Partnership Agreement provides for capital contributions by the partners to be used to pay the costs and expenses of the Partnership. NEEI pays a disproportionate share of the costs of exploration to compensate Samedan for its accumulated geological and geophysical work in evaluating prospects, as well as for management and expertise in running the Partnership as managing partner. The partners share equally the development and production costs for successful prospects. The Partnership Agreement assigns to Samedan, as managing partner, responsibility for selecting new prospects. The current five-year term of the Partnership Agreement expires on December 31, 1984.

NEEI proposes to enter into an Amended and Restated Partnership Agreement ("New Agreement"). The current agreement provides that, upon termination of the Partnership, each of the partners receives a 50% interest in each of the partnership properties. NEEI would then be an independent participant in each property and would be responsible for looking after its own interest on each of its properties. There are a large number of properties in the Partnership, and NEEI states it lacks in-house expertise in oil and gas operations. Therefore, the New Agreement provides for two phases of the Partnership—Phase I and Phase II. During Phase I, NEEI participates in existing prospects and new prospect initiated by Samedan—essentially the way the Partnership operates now. Phase II would come into effect when NEEI elects not to participate in any further new prospects with Samedan. During Phase II, the New Agreement will provide for Samedan to manage the Partnership's affairs on all existing prospects, but will not add any new prospects to the Partnership. Samedan will be committed to manage existing Partnership properties for at least five years following the termination of Phase I. Thereafter, Samedan may terminate upon one year's notice. As compensation for this management, NEEI will continue to pay a disproportionate share of exploration costs for the first three years of Phase II, and will pay a management fee based upon total Partnership expenditures thereafter. NEEI will have the option to terminate the Partnership in its entirety, including both Phase I (if not previously terminated) and Phase II, upon sixty days' notice at the end of any calendar year. NEEI would than have to take over management of its own interests.

The New Agreement provides that Phase I of the Partnersip, during which Samedan would put new prospects in the Partnership, would be extended to December 31, 1985. Thereafter, NEEI would be able to renew Phase I from year to year upon sixty days' notice at the end of any calendar year (unless Samedan desires to terminate), subject to prior approval of this Commission. Whenever Phase I is terminated, Phase II takes over.

To assure that NEEI may take its full share of tax deductions generated by the Partnership the New Agreement modifies the tax provisions of the Partnership Agreement.

The New Agreement spells out Samedan responsibility as managing partner, giving them responsibility for initiation of prospects, exploration and development of those prospects, and marketing of production. NEEI will retain: (1) The ability to remove certain prospects from the Partnership, to be exercised when, for financial or other reasons, NEEI wishes to take over management from Samedan of its share in any such prospect; (2) the ability to take and market its own share of production; (3) the ability to reduce the Partnership's participation in new prospects initiated by Samedan from the maximum 100% level. NEEI may not reduce the Partnership's participation below the 50% level without terminating Phase I and going into Phase II.

For 1985, NEEI requests authority to elect to have the Partnership participate at a 50% level (thus giving NEEI a 25% interest) in prospects initiated by Samedan in 1985. Based on projected exploration and development activities, NEEI estimates, that assuming a 50% Partnership participation level in 1985 prospects (25% for NEEI), its share of Partnership expenses for exploration purposes will be approximately $45 million in 1985 (of which no more than $25 million relates to prospects to be initiated in 1985). NEEI estimates, on the basis of Samedan projections, that its share of expenses for development of successful prospects will be approximately $85 million. In order to provide for contingencies, such as unanticipated development opportunities, NEEI requests authority to invest up to a total of $150 million in the Partnership in 1985. NEEI's total expenditures for 1984 are estimated to be approximately $125 million.

NEEI proposes to finance its investment in the Partnership through: an increase in authorized bank loans (to be the subject of a future application); deferred taxes; additional investment by NEES of up to $50 million (pending File No. 70-6958); and amortization of its investment through the pricing policy authorized by Commission order dated July 19, 1978 (HCAR No. 20632).

The proposal and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 27, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31960 Filed 12-6-84; 8:45am]

BILLING CODE 8010-01-M

[Release No. 23506, 70-7036]

Southwestern Electric Power Co.; Proposed Sale of Three Gas Turbines

November 30, 1984.

Southwestern Electric Power Company ("SWEPCO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, P.O. Box 1106, Shreveport, Louisiana, 71156; has filed a proposal with this Commission pursuant to Section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder.

SWEPCO is currently the owner of three gas turbines maintained on a standby basis at SWEPCO's Lone Star Plant in Lone Star, Texas. These turbines are Westinghouse Model W191G, with rated generating capacity of 16,470 kilowatts each using natural gas and 16,070 kilowatts each using distillate oil. SWEPCO purchased the three turbines in 1968 for $4,397,121.47, excluding the cost for installation. Depreciated book value of the turbines as of September 30, 1984, was $1,317,570.

SWEPCO has determined that these turbines are not necessary for the operation of the Lone Star Plant, and they are not presently in operation. Nevertheless, these turbines require substantial continuing maintenance expenditures. Therefore, SWEPCO desires to sell these turbines and is seeking interested non-affiliated buyers.

SWEPCO currently plans to sell any or all of the turbines at a price in cash approximating $500,000 each. This sale price, which is relatively close to the current book value of such units, is based on SWEPCO's review of current market valuations for other comparable equipment. At the time of the proposed sale, market conditions may reflect a higher or lower value of such equipment. If such is the case, SWEPCO will sell the turbines at some higher or lower negotiated price. In no case, however, would the sale be made at a materially lower price without further authorization of this Commission. The terms of the sale will be "as is", "where is", and no warranties will be made. The purchaser will be responsible for the removal and shipment of the Turbines.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 26, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-31961 Filed 12-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23512; (70-7052)]

System Fuels, Inc., et al.; Proposal by Fuel Procurement Subsidiary To Make Borrowings From Its Public-Utility Parent Companies for Its Fuel Supply Programs

December 4, 1984.

In the matter of Systems Fuels, Inc., Noro Plaza, 666 Poydras, New Orleans, Louisiana 70130; Arkansas Power & Light Co., First National Building, Little Rock, Arkansas 72203; Louisiana Power & Light Co., 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Co., Electric Building, Jackson, Mississippi 39205; and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

Systems Fuels, Inc. ("SFI"), a fuel procurement subsidiary of Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI") (collectively the "Operating Companies"), each a subsidiary of Middle South Utilities, Inc., a registered holding company, and the Operating Companies have filed a proposal with this Commission pursuant to sections 6(a), 7, 9(a), 10, 12(b), and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50, 90, and 91 promulgated thereunder.

SFI intends to enter into a new loan agreement with the Operating Companies providing for borrowings in 1985 not to exceed $120 million from the Operating Companies to be used to finance, in part, transactions entered into by SFI in the ordinary course of its fuel business during the period January 1, 1985, through December 31, 1985. In accordance therewith, SFI proposes to issue during 1985, to the Operating Companies, its notes maturing on December 31, 2010, in an aggregate amount not to exceed $105,900,000, and the amount outstanding at December 31, 1984 under the 1984 Loan Agreement. Currently this is estimated to be $14,100,000 which will be converted into loans under the 1985 Loan Agreement. Such borrowings would be in addition to the $10 million of outstanding borrowings authorized in File Nos. 70-5415 and 70-5951 and $98 million of outstanding borrowings authorized in File No. 70-6097. The commitment of each Operating Company is as follows: AP&L—$39,459,000, LP&L—$51,741,000, MP&L—$18,000,000, NOPSI—$10,800,000.

Each Operating Company's commitment is equal to the same proportion of the total commitments as its kilowatt-hour sales for the twelve months ended September 30, 1984, bear to the total kilowatt-hour sales of the Operating Companies for that period. Each note will bear interest on the unpaid principal balance thereof, adjustable monthly on the first day of each month, at an annual rate for such month equal to the annual rate of interest borne on the 1st day of the preceding month by the short-term bank borrowings of the Operating Company to which such note shall have been issued. If such Operating Company shall not have any short-term bank borrowings outstanding, the prime commercial rate shall apply. The notes will be prepayable at any time in any amount without premium or penalty. Each prepayment on account of the

unpaid principal balance of the notes will be made by SFI to the Operating Companies pro rata in accordance with their respective percentage shares of the commitments. The rights and obligations of the parties under the loan agreement will be subject to certain restrictions relating principally to the payment or prepayment by SFI of its indebtedness to the Operating Companies during the terms of certain other agreements.

SFI also requests that the following authorization be extended during 1985: (1) That the Operating Companies, in connection with transactions in the ordinary course of SFI's business and not involving the issuance of a security, assure any party contracting with SFI that the Operating Companies will, in accordance their respective shares of ownership of the common stock of SFI, take such actions as may be appropriate from time to time to keep SFI in a sound financial condition so that it may discharge its obligations under the particular contract; and (2) To have personnel employed by the other companies in the system perform services to SFI at cost where it is more economical and efficient to do so.

It is requested that the companies be authorized to file certificaties under Rule 24 with respect to the proposed transactions on a quarterly basis.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 27, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32035 Filed 12-6-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 924]

State Department Performance Review Board Members

In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Executive Resources Board of the Department of State has appointed the following additional persons to the State Department Performance Review Board Register and in so doing amends accordingly Department of State Public Notice No. 703 45 6877-6878 (January 30, 1980), effective December 3, 1984.

Barry J. Kefauver, Executive Director, OES/EX;

Mary Beth West, Assistant Legal Adviser, L/EUR;

C. Thomas Thorne, Deputy Assistant Secretary, INR/AA.

Dated: December 1, 1984.

Alfred L. Atherton, Jr.,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 84-32008 Filed 12-6-84; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB Nov. 8-Nov. 29, 1984

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period Nov. 8-Nov. 29, 1984, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set fort in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **FOR FURTHER INFORMATION CONTACT** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **FOR FURTHER INFORMATION CONTACT** paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from Nov. 8-Nov. 29, 1984:

DOT No: 2517
OMB No: 2115-0504
By: U.S. Coast Guard
Title: Tank Vessel Examination Letter (CG-840s-1 and -2), Certificate of Compliance, Boiler/pv repairs, Cargo Gear Records and Shipping Papers
Forms: CG-840s-1, CG-840s-2
Frequency: On occasion
Respondents: Owners/operators of large merchant vessels and all foreign-flag tankers calling on U.S. ports
Need/Use: This information collection is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under Title 46, United States Code. If these requirements were no longer permitted, many items critical to the safety of personnel, their vessels and out ports, as well as the marine environment, would be jeopardized

DOT No: 2518
OMB No: 2120-0042
By: Federal Aviation Administration
Title: Aircraft Registration
Forms: AC 8050-1, 8050-2, 8050-4, 8050-81, 8050-117
Frequency: On occasion
Respondents: All Aircraft Owners
Need/Use: The registration system provides identification of all civil aircraft in the United States. The registration record also provides evidence of ownership which may be used in court if there is a controversy over ownership. The affected public is any aircraft owner (individual or business). Note: Combines 2120-0042 and 2120-0029

DOT No: 2519
OMB No: 2125-0039
By: Federal Highway Administration
Title: Planning Program Performance Report
Forms: None
Frequency: Quarterly
Respondents: State highway agencies
Need/Use: For the Federal Highway Administration to monitor progress made by States toward achieving the planned goals on highway programs

DOT No: 2520
OMB No: 2137-0047
By: Materials Transportation Bureau
Title: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting (combined 2137-0031 and 0047).
Forms: Liquid Pipeline Accident Report, DOT Form 7000-1
Frequency: On occasion
Respondents: Operators of interstate and certain intrastate pipelines transporting petroleum, anhydrous ammonia, etc.
Need/Use: The form is used to accumulate data on the frequency and cause of accidents and to determine the need for new or amended safety standards. The records are kept to assure compliance with safety standards and are used to investigate accidents involving spills or explosions.

DOT No: 2521
OMB No: 2115-0518
By: U.S. Coast Guard
Title: Requirements for the Installation and Use of Discharge Monitoring Equipment on Tank Vessels and the Retention of Discharge Data (33 CFR Part 157)
Forms: None
Frequency: On occasion
Respondents: Tanker owners and operators
Need/Use: This information collection requirement is needed to determine if a vessel's construction, arrangement and equipment meet the regulatory requirements for oil discharge and monitoring

DOT No: 2522
OMB No: 2115-0012
By: U.S. Coast Guard
Title: Application for Appointment as Cadet, U.S. Coast Guard Academy
Forms: CG-4151, CGAD-618, CGAD-634, CGAD-635
Frequency: On occasion
Respondents: Applicants are men and women between 18 and 22 years of age with university preparatory qualifications.
Need/Use: The Academy application forms permit qualified individuals, from the public at large, an opportunity to compete for a Cadet appointment ot the USCG Academy

DOT No: 2523
OMB No: 2115-0015
By: U.S. Coast Guard
Title: Masters Report of Seamen Shipped or Discharged
Forms: CG-735T
Frequency: On occasion
Respondents: Merchant Vessel operators
Need/Use: This information collection requirement is needed to ensure that the master of a vessel engaged on a foreign or intercoastal voyage comply with the various safety standards. The Coast Guard also uses this information to ensure accuracy of employment records submitted on the Certificates of Discharge

DOT No: 2524
OMB No: New
By: U.S. Coast Guard
Title: Sailing School Vessel Regulations
Forms: None
Frequency: On occasion
Respondents: Owners/operators of sailing school vessels
Need/Use: This requirement allows the Coast Guard to properly administer and enforce the new sailing school inspection program. The Coast Guard needs this information collection to: (1) Determine if a vessel meets the conditions to be classified as a sailing school vessel; (2) ensure that the owner or charterer has adequate financial resources to protect persons on board the vessel; (3) ensure that the respondents meet the tax-exempt law; (4) ensure that individuals understand that they are in a training atmosphere and are expected to assist in the operation of the vessel; and (5) ensure the safety of the vessel and all persons on board

DOT No: 2525
OMB No: 2125-0506
By: Federal Highway Administration
Title: Planning Program Financial Recordkeeping and Status Report
Forms: None
Frequency: Quarterly
Respondents: State Highway Agencies
Need/Use: The status report is necessary in order for the Federal Highway Administration to monitor and evaluate progress and expenditures by State Highway Agencies and Metropolitan Planning Organizations in conducting approved highway planning and research activities

Issued in Washington, D.C. on December 3, 1984.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

[FR Doc. 84-31953 Filed 12-6-84; 8:45 am]

BILLING CODE 4910-62-M

[Notice No. 84-19]

Advisory Commission on the Reorganization of the Metropolitan Washington Airports

Notice is hereby given of the sixth and seventh meetings of the Advisory Commission on the Reorganization of the Metropolitan Washington Airports, an advisory committee reporting to the Secretary of Transportation. The Commission is charged with developing a plan for the transfer of the Metropolitan Washington Airports, Washington National and Dulles International, from the federal government to an appropriate state, local, or interstate governmental body. Its charter was published in the **Federal Register** of June 18, 1984 (49 FR 24967).

The sixth meeting will be held Thursday, December 13 at 10:00 a.m., and the seventh meeting on Tuesday, December 18, both meetings in room 2230 of the Department of Transportation headquarters building (Nassif Building), 400 Seventh Street, SW., Washington, D.C.

Summary agenda for both meetings:

I. Further discussion of alternate structures for a new airport authority; possibility of an interstate authority; and development of a position for the report to the Secretary.

II. Related matters, as raised by the members.

The meetings will be open to the public.

Additional information may be obtained from the Commission's office at: Room 9413, U.S. Department of Transportation, 400 Seventh Street, SW.,

Washington, D.C. 20590, or by calling 202–472–7934.

Issued at Washington, D.C., on December 3, 1984.

Gregory Wolfe,

Executive Director, Advisory Commission on the Reorganization of the Metropolitan Washington Airports.

[FR Doc. 84-31962 Filed 12-6-84; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Denial of Petition to Conduct Defect Proceeding

This notice sets forth the reasons for the denial of a petition to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b).

On May 15, 1984, William M. Kazmierczak of Alexandria, Virginia, petitioned for an investigation to determine whether inherent braking system delay in a panic or spike stop situation in 1981 Dodge Diplomat police vehicles consititues a defect relating to motor vehicle safety. Petitioner alleged that the brake pedal is extremely hard to depress when jabbed suddenly in a panic stop situation, and that the vehicle, as a consequence, will continue to move forward for one or two seconds, unaffected by the operator's attempts to stop the vehicle.

Agency investigation disclosed that an identical brake power booster was used on the Ford E–250 Econoline van. A search of NHTSA's computerized complaint file revealed no other similar complaints for either vehicle. Subjective test rides in a number of police vehicles of the City of Alexandria disclosed no inability to achieve brake lockup or any other aberrant brake behavior. Instrumented brake tests of four police vehicles were also conducted.

NHTSA concluded that there was no reasonable possibility that the order requested would be issued at the conclusion of an investigation, and denied the petition on September 10, 1984.

(Secs. 124, 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410a, 1412); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: November 29, 1984.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 84-31961 Filed 12-6-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Insurance Company of California; Surety Companies Acceptable on Federal Bonds; Liquidation

Surety Insurance Company of California, a California corporation, formerly held a Certificate of Authority as an acceptable surerty on Federal bonds and was last listed as such at 48 FR 30540, July 1, 1983. The company's authority was terminated by the Department of the Treasury effective April 3, 1984. Notice of the termination was published in the **Federal Register** of April 9, 1984, on page 13948.

There is printed below a copy of a notice dated October 4, 1984, issued by the California Insurance Department, indicating the company is now being liquidated. Pleas note the notice stipulates liabilities are fixed as of August 20, 1984 and that all claims against the company must be filed on or before March 5, 1985.

Government agencies involved in Federal surety bonding operations where third parties such a subcontractors, materialmen, and suppliers may have a claim against the company are requested to use their best efforts to notify such third parties of the liquidation, assist them in filing claims, inform them of their priority status based on section 3713 of the United States Code and provide them with copies of the notice of liquidation. If priority status is not being granted, please notify the Department of Treasury at the address indicated below.

Government agencies should be aware that, where reinsurance was obtained on a bond, the reinsuring company may be liable to the United States Government for the full amount of the reinsurance or the full amount of the default, whichever is less.

Questions concerning claims against the company may be directed to the Conservation and Liquidation Officer, California Insurance Department, at the address given in the liquidation notice. Copies of the Proof of Claim form may be obtained from the same office.

Questions concering this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service (formerly Bureau of Government Financial Operations), Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2319. An information notice containing additional information concerning the filing of claims, as well as a copy of the Proof of Claim form, will be distributed by this office to Federal agencies.

Dated: November 27, 1984.

W. E. Douglas,

Commissioner, Financial Management Service.

Notice to All Former Bondholders, Principals, Obligees, Claimants, Creditors and Shareholders of Surety Insurance Company of California, and to All Persons Having a Claim Against Surety Insurance Company of California

[Insurance Code Section 1021]

This is to advise you that on August 20, 1984 the Superior Court, County of Orange, issued its order appointing the Insurance Commissioner of the State of California as Liquidator of Surety Insurance Company of California.

Wherefore, any and all bondholders, principals, obligees, claimants, creditors, shareholders or persons having a claim or demand of any kind against Surety Insurance Company of California are hereby notified to file their claims together with proper proof thereof with Bruce Bunner, Insurance Commissioner of the State of California as Liquidator of said Surety Insurance Company of California, Attention Ronald G. Rosen, Conservation and Liquidation Officer, Room 1401, 600 South Commonwealth Avenue, Los Angeles, CA 90005, on or before March 5, 1985.

Any such claim should be set forth in writing and under oath on a form prescribed by said liquidator, indicating:

(a) The particulars there of and the consideration therefor;

(b) Whether said claim is secured or unsecured und, if secured, the nature and amount of such security;

(c) The payments made thereon, if any;

(d) The sum claimed is justly owing from such person to the claimant;

(e) That there is no offset to the claim;

(f) Such other data or supporting documents as the Commissioner requires;

The rights of bondholders, principals, obligees, claimants, creditors, shareholders and all other persons interested in the assets of said Surety Insurance Company of California, a California corporation, are fixed as of August 20, 1984. No claim arising out of an incident or accident occurring subsequent to said date will be approved.

This notice is published pursuant to the provisions of Sections 1021 and 1022 of the Insurance Code for the purpose of liquidating and winding up the business of Surety Insurance Company of California, a California corporation, and all such persons are hereby warned that unless such a claim is filed in the manner and within the time herein specified, such claim is not entitled to filing or allowing, and no action may be maintained thereon.

Bruce Bunner,

Insurance Commissioner.

Ronald G. Rosen,

Conservation & Liquidation Officer.

Directions for Filing and Proving Claims

Proof of Claim must contain the following facts:

1. Signature of claimant, name and address of claimant, printed or typewritten. All notices regarding claims and all payments on claims, if any, will be sent to the address shown on the claim form unless written instructions are given to the contrary.

2. A concise statement of facts constituting the claim and the total amount claimed, to be written in the space provided or on additional pages which you may attach to this claim form.

3. Nature and value of any security held by claimant for his benefit, including funds, securities, or contracts covering the loss.

The following document sustaining the claim must be submitted before the claim will be given consideration:

1. Any contract on which the claim is based.

2. Certified copy of the judgment if claim is based upon a judgment.

3. Detailed invoices covering claims for services, advertising, supplies, legal or adjusting services, etc. The original contract must be submitted with all claims based upon contracts other than insurance contracts. If such contract is oral, give name of person who acted for the company.

4. Proof of authority must be submitted to support claims filed by Receivers, Administrators, Assignees, Attorney-in-Fact, Agents and Guardians.

Mail the completed Proof of Claim form to: The Insurance Commissioner as Liquidator, 600 South Commonwealth Avenue, Room 1401, Los Angeles, CA 90005.

The Liquidator reserves the right to require such other information as may be deemed necessary.

[FR Doc. 84-31984 Filed 12-6-84; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 237
Friday, December 7, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Maritime Commission	1
Federal Reserve System	2
Synthetic Fuels Corporation	3

1

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—December 12, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Activities of Ariel Maritime Group, Inc.; Interlink Systems Incorporated dba Interlink Lines; Oasis Express Line, a division of Charles Klaus & Co., Ltd.; Javelin Lines, a division of Charles Klaus Co., Ltd.; Consolidated Commodities of America, Inc.; Merritt Enterprises Inc. dba. Cheerio International; Joshua Dean & Co. and Liberty Shipping International dba. Liberty Lines.
2. Agreements Nos. 202–010676, 202–010677, 202–010678 and 202–010679: Establishment of Four Conferences in the United States—Mediterranean Trades.
3. Agreement No. 202–010669: United States/Netherlands Antilles Ocean Carriers Association.
4. Agreement No. 202–008900–025: Modification of the "8900" Lines Rate Agreement with respect to Independent Action and Service Contracts.
5. Agreement No. 203–010633: Flota Mercante Grancolombiana, S.A. and Andino Chemical Shipping Company, Inc., Agreement to Own Shares in a Corporation Transporting Bulk Liquid Cargoes.
6. Docket No. 84–10: The Coca-Cola Export Corporation v. Peruvian Amazon Line—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84–32085 Filed 12–5–84; 12:08 pm]
BILLING CODE 6730–01–M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 12, 1984.

PLACE. Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Appointment of new members to the Consumer Advisory Council. (This item previously announced for a closed meeting on December 10, 1984.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 4, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–32034 Filed 12–4–84; 4:15 p.m.]
BILLING CODE 6210–01–M

3

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors.

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are invited to attend and observe a meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II, section 4 of the Corporations By-laws, section 116(f) of the said Act and sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDERED:

Open Session

1. Chairman's Oppening Remarks
2. Acceptance of Minutes of April 26, 1984 Board Meeting
3. Review of Committees of the Board—Appointment of Members
4. Consideration of Proposed System of Organization
5. Election of Corporate Officers
6. Consideration of Directors' Financial Interests
7. Report on Comprehensive Strategy
8. Overview of Authorized Letters of Intent: Procedures for Review: and Proposed Schedule for Board Consideration of Letters of Intent
9. Overview of Active Solicitations: and Proposed Schedule for Board Consideration of and Decisions on Active Solicitations
   a. Coal-Water Fuels Solicitation
   b. Retrofit Solicitation
   c. Fourth General Solicitation
10. Other Matters That May Properly Come Before the Board
11. Resolution to Close Meeting

Closed Session

12. Review of Negotiation Issues on Letter of Intent Projects
13. Discussion of Draft Comprehensive Strategy

TIME AND DATE: 9:30 a.m., December 13, 1984,

PLACE: U.S. Synthetic Fuels Corporation, 2121 K Street, NW. Room 503, Washington, D.C. 20584.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Assistant Secretary, at (202) 822–6341.

United States Synthetic Fuels Corporation.

Leonard Axelrod,

Group Vice President-Operations.

[FR Doc. 84–32053 Filed 12–5–84; 9:50 am]
BILLING CODE 6820–05–M

federal register

Friday
December 7, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1989). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA84–5022	Oct. 5, 1984.
Iowa:	
IA84–4043	June 15, 1984.
IA84–4011	Feb. 24, 1984.
IA84–4042	June 15, 1984.
Ohio: OH83–5122	Nov. 25, 1983.
Oregon: OR84–5020	June 22, 1984
Rhode Island: RI84–3041	Nov 30, 1984.
Washington: WA84:5040	Nov. 16, 1984
Wisconsin: WI84–5033	Nov. 2, 1984

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Georgia:	
GA81–1307(GA84–3045)	Oct. 30, 1981
GA81–1305(GA84–3046)	Do.
GA81–1306(GA84–3047)	Do.
New York:	
NY81–3023(NY84–3044)	Apr. 3, 1981
NY80–3054 (NY84–3044)	Sept. 5, 1980
NY80–3054 (NY84–3048)	Do

Signed at Washington, D.C. this 30th day of November 1984.

James L. Valin

Assistant Administrator.

BILLING CODE 4510–27–M

DECISION #IA84-4043-MOD.#5 (49 FR 24856-June 15, 1984)

Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn, & Polk Counties, Iowa

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Electricians		
Zone 1	$15.14	$1.25 + 3-3/4%
Zone 7	14.90	2.35 + 3-3/4%
Bricklayers & Stonemasons Zone 1	12.33	2.62
Painters: Zone 4 Structural Steel (over 25 FT.) and Sandblasting	15.00	.50
Plumbers & Pipefitters Zone 4	15.65	3.20

DECISION #IA84-4011-MOD.#6 (49 FR 7068-February 24, 1984)

Scott County, Iowa

CHANGE:

Roofers	$14.40	$2.86

DECISION #IA84-4042-MOD.#1 (49 FR 28455-June 15, 1984)

WOODBURY COUNTY, IOWA

CHANGE:

Electricians	$13.99	$2.07 + 3.75%

DECISION NO. CA84-5022-Mod. #2 (49 FR 39416 - October 5, 1984)

Alameda, Alpine, Amador Counties, etc., California

Change:

	Basic Hourly Rates	Fringe Benefits
Electricians: Area 1	$23.56	$7.29+ 3%

DECISION NO. RI84-3043 - MOD. #1 (48 FR November 30, 1984)

Statewide, Rhode Island

ADD:

IRONWORKERS	15.78	4.70

DECISION NO. WI84-5033-MOD #1 (49 FR 44185-November 2, 1984)

Chippewa, Eau Claire and Pepin Counties, Wisconsin.

Change:

Ironworkers	$17.10	$3.64

DECISION NUMBER OH83-5122 - MOD. #6 (48 FR 53234 - November 25, 1983)

Statewide, Ohio

Change:

	Basic Hourly Rates	Fringe Benefits
Bricklayers & Stonemasons:		
Area 2	$15.05	$2.37
Area 6	15.52	1.47+o
Area 8	17.09	3.27
Area 12	16.00	2.40
Area 17	16.09	2.89
Area 21	17.50	2.30
Area 24	15.71	2.94
Area 28	17.92	4.97
Carpenters & Piledrivermen:		
Area 5:		
Carpenters	14.81	3.14
Piledrivermen	15.46	3.14
Area 7:		
Carpenters	17.00	2.675
Piledrivermen	17.00	2.675
Area 9:		
Piledrivermen	15.15	30%
Area 10:		
Carpenters	15.50	3.70
Piledrivermen	15.50	3.70
Area 16:		
Carpenters	17.40	3.79
Electricians:		
Area 1	17.28	3.36+ 3%
Area 2	17.25	2.37+ 3%+d
Area 5	19.11	1.76+ 9.7%
Area 6:		
Electricians	16.35	4.62+ 3%
Cable Splicers	16.60	4.62+ 3%
Area 7:		
Electricians	15.43	4.33+ 3%
Cable Splicers	15.68	4.33+ 3%
Area 15	18.24	1.55+ 15.5%
Area 16	16.10	1.90+ 3%
Area 23:		
Electricians	18.93	3.75+ 3.2%
Cable Splicers	19.18	3.75+ 3.2%

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Ironworkers:		
Area 1:		
Up to 10 miles from Union Hall in Ashland, Ky.	$17.33	$4.26
10 to 50 miles from Union Hall in Ashland, Ky.	17.66	4.26
50 miles and over from Union Hall in Ashland, Ky.	19.62	4.26
Area 2:		
Reinforcing	15.93	4.27
Area 3:		
Within 15 miles radius of Local Union Office #290	16.16	4.37
Outside 15 miles radius of Local Union Office #290	16.31	4.37
Area 4	13.35	6.76
Area 6	16.30	4.14
Area 10	14.79	5.63+ [illegible]
Plumbers; Steamfitters & Pipefitters:		
Area 2	18.35	3.10
Area 5	16.63	1.25+ 1%
Area 9	17.32	1.81
Area 10	18.14	3.23
Area 18	17.23	6.31
Power Equipment Operators:		
Zone 1: Columbiana, Mahoning & Trumbull Cos.:		
Class 1	17.38	3.56
Class 2	16.59	3.56
Class 3	15.83	3.56
Class 4	15.36	3.56
Class 5	15.26	3.56
Class 6	17.65	3.56
Line Construction:		
Area 3:		
Equipment Operators; Linemen	17.74	2.31+ 3.2%
Line Truck Driver	10.64	2.31+ 3.2%
Groundmen	11.33	2.31+ 3.2%
Area 4:		
Cable Splicers; Equipment Operators; Line Truck Drivers; & Linemen	18.20	3.80+ 3½%
Groundmen	15.20	3.80+ 3½%

MODIFICATIONS P. 3

DECISION NUMBER OH83-5122 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Line Construction (Cont'd):		
Area 5:		
Pole-digging Equipment	$17.55	$.85+ 10½%
Area 6:		
Equipment Operators; Linemen & Technicians	15.43	4.25+ 3½%
Cable Splicers; Welders	15.68	4.25+ 3½%
Groundmen	12.42	4.25+ 3½%
Area 11:		
Cable Splicers; Equipment Operators; Linemen	21.68	.85+ 3½%
Groundmen; Truck Drivers (Winch)	14.09	.85+ 3½%
Traffic Signal Work:		
Linemen; Operator	18.75	.85+ 3½%
[illegible]	15.63	.85+ 3½%
Area 14:		
Cable Splicers; Equipment Operators; Linemen	18.24	.85+ 3½%
[illegible]	10.66	.85+ 3½%
Area 16:		
Cable Splicers; Equipment Operators & Linemen	19.32	.85+ 3½%
[illegible]	10.66	.85+ 3½%
Area 18:		
Cable Splicers; Linemen; Operators: All Mechanized Equipment	17.50	.85+ 3½%
Groundmen - Truck Drivers	13.87	.85+ 3½%
Groundmen	10.70	.85+ 3½%
Area 20:		
Cable Splicers; Linemen	16.83	.85+ 3½%
Equipment Operators	14.67	.85+ 3½%
Groundmen	10.66	.85+ 3½%

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Line Construction (Cont'd):		
Area 21:		
Cable Splicers	$19.18	$3.75+ 3%
Equipment Operators & Linemen	18.93	3.75+ 3%
Truck Drivers (Winch), Groundman; Groundman	12.30	3.75+ 3%
Add:		
Footnote:		
e. 8% of gross earnings		

DECISION NUMBER OH83-5127 - MOD. #7
(48 FR 56903 - December 23, 1983)
Adams, Allen,... Wood and Wyandot Counties, Ohio

Change:

Asbestos Workers:		
Area 3	$18.90	$2.89
Area 4	17.45	3.36
Area 7	19.42	4.455
Boilermakers:		
Area 1	16.45	5.52
Area 2	20.325	3.58
Area 5	17.54	.79+ 12%+x
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:		
Area 2	13.05	2.37
Area 4	15.52	1.47+y
Area 6	17.09	3.27
Area 9	16.00	2.40
Area 14:		
Bricklayers; Caulkers; Cement Blocklayers; Cleaners; Pointers; & [illegible]	16.09	2.89
Rubble Work	15.29	2.89
Area 18	17.50	2.30
Area 21	15.71	2.94
Area 25	17.92	4.97

MODIFICATIONS P. 4

DECISION NUMBER OH83-5127 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Carpenters:		
Area 5	$17.00	$2.725
Area 12	17.40	3.79
Cement Masons:		
Area 6	17.09	3.27
Area 7	16.13	2.50
Area 13	17.50	2.30
Electricians:		
Area 1	17.28	3%+3.36
Area 2	17.25	3%+2.37 +w
Area 4:		
Electricians	15.43	3%+4.33
Cable Splicers	15.68	3%+4.33
Area 12	18.24	15.5%+ 1.55
Area 13	16.10	3%+1.90
Area 20	19.11	9.7%+ 1.76
Area 21:		
Electricians	18.93	3.2%+ 3.75
Cable Splicers	19.18	3.2%+ 3.75
Area 24:		
Electricians	16.35	3%+4.62
Cable Splicers	16.60	3%+4.62
Elevator Constructors:		
Area 7:		
Elevator Constructors	19.155	3.29 +e+f
Helpers	70%JR	3.29 +e+f
Helpers (Prob.)	50%JR	
Area 8:		
Elevator Constructors	17.39	3.00 +e+f
Helpers	70%JR	3.00 +e+f
Helpers (Prob.)	50%JR	
Glaziers:		
Area 5	14.80	1.11+g
Area 8	16.11	2.75
Ironworkers:		
Area 1:		
Up to 10 mi. from Union Hall in Ashland, Ky.	17.33	4.26
10 to 30 mi. from Union Hall in Ashland, Ky.	17.66	4.26
Over 30 mi. from Union Hall in Ashland, Ky.	19.62	4.26
Area 2:		
Reinforcing	15.93	4.27

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Ironworkers (Cont'd):		
Area 3:		
Within 15 mi. radius of Local Union Office #290	$16.16	$4.37
Outside 15 mi. radius of Local Union Office #290	16.31	4.37
Area 4	13.35	6.76
Area 6	14.79	[illegible] 5.63
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 2:		
Tile Setters	15.05	2.37
Area 5:		
Marble Setters	16.17	3.25
Terrazzo Workers	16.09	3.25
Tile Setters	16.00	3.25
Area 7	15.00	1.75
Area 9	16.00	2.40
Area 12	15.25	2.05
Area 15:		
Terrazzo Workers & Tile Setters	16.76	2.60
Area 16:		
Terrazzo Workers & Tile Setters	17.50	2.30
Area 18:		
Tile Setters	16.69	2.94
Marble Setters' Finishers; Terrazzo Workers' Finishers; & Tile Setters' Finishers:		
Area 1:		
Finishers & Grinders	16.33	
Marble Sanders; Polishers; Sawyers; & Waxers	16.495	
Terrazzo Base Grinders (While Operating Base Grinding Machine)	16.75	
Area 2	14.68	1.60
Area 5:		
Terrazzo Workers' Finishers	13.71	3.25
Terrazzo Grinders	15.55	3.25
Tile Setters' Finishers	13.59	3.25
Piledrivermen:		
Area 5	17.00	2.723
Area 7	16.14	[illegible]
Pipefitters; Plumbers; & Steamfitters:		
Area 2	18.35	3.10
Area 4	16.63	19%+ 1.25
Area 7	17.32	1.81
Area 9	18.14	3.23

DECISION NUMBER OR83-5127 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Plasterers:		
Area 5	$17.09	$3.27
Area 9	17.27	2.46
Area 10	17.50	2.30
Roofers:		
Area 5	18.15	1.50
Area 6:		
Composition, Damp, & Waterproof	15.75	2.25+a
Slate, Tile & Asbestos	15.97	2.25+a
Area 7	16.45	3.88
Sheet Metal Workers:		
Area 2	17.46	3.18+1
Area 7	17.505	4.445
Area 9	20.21	4.38
Soft Floor Layers:		
Area 11	16.25	4.50+m
Laborers:		
Area 12:		
Group 1	14.26	3.00
Group 2	14.46	3.00
Group 3	14.66	3.00
Area 14:		
Group 1	11.94	3.00
Group 2	12.24	3.00
Area 17:		
Group 1	11.94	3.00
Group 2	12.24	3.06
Area 18:		
Group 1	15.02	3.06
Group 2	15.17	3.06
Group 3	15.22	3.06
Group 4	15.52	3.06
Line Construction:		
Area 3:		
Equipment Operators; Linemen	17.74	3.2%+ 2.31
Line Truck Driver	10.64	3.2%+ 2.31
Groundmen	11.53	3.2%+ 2.31
Area 4:		
Linemen; Technicians	15.43	3½%+ 4.25
Cable Splicers	15.68	3½%+ 4.25
Groundmen	12.42	3½%+ 4.25
Area 12:		
Pole Digging Equipment	17.55	10½%+ .85
Change (Cont'd):		
Line Construction (Cont'd):		
Area 20:		
Cable Splicers	$19.18	3%+3.75
Equipment Ops. & Linemen	18.93	3%+3.75
Truck Drivers (Winch) Groundmen; Groundmen	12.30	3%+3.75
Add:		
Footnotes:		
x. 2.5% of weekly gross earnings		
y. 8% of gross earnings		
z. .625% of gross earnings		

DECISION NO. WA84-5040 - Mod #1 (49 FR 45532 - Nov. 16, 1984) Statewide Washington	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Area 1:		
Electricians	$18.00	3%+2.46
Cable Splicers	18.88	3%+2.46
Area 2:		
Electricians	18.76	3%+3.61
Cable Splicers	19.70	3%+3.61
Area 3:		
Electricians	20.03	3%+2.56
Cable Splicers	22.03	3%+2.56

DECISION NO. OR84-5020 Mod #7 (49 FR 25821 - June 22, 1984) Statewide Oregon	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Area 2:		
Electricians	18.76	3%+3.61
Cable Splicers	19.70	3%+3.61
ADD:		
CARPENTERS:		
Zone Differential: (Add to base rate)		
Zone 1 - $0.00		
Zone 2 - 0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		
Zone Descriptions:		
See Zone Descriptions for Laborers, Power Equipment Operators, and Truck Drivers on page 8. Add Carpenters to Zone Description heading.		

	Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: GEORGIA
DECISION NUMBER GA84-3045
COUNTY: CHATHAM
DATE: DATE OF PUBLICATION
Supersedes Decision Number GA81-1307, dated October 30, 1981, 46 FR 53926.
DESCRIPTION OR WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, and railroad construction; bascule, supension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	5.87	
CONCRETE FINISHERS/CEMENT MASONS	6.21	
LABORERS:		
Unskilled	4.73	
Asphalt raker	5.64	
TRUCK DRIVERS	5.89	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
POWER EQUIPMENT OPERATORS:		
Asphalt distributor	6.09	
Asphalt paving machine, screed, & spreader	7.09	
Backhoe	7.02	
Bulldozer	6.15	
Crane, derrick, dragline	6.63	
Front end loader	6.85	
Motor grader/Motor Patrol	8.03	
Pavement Striping Operator	5.10	
Roller	6.19	
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

SUPERSEDEAS DECISION

STATE: GEORGIA
DECISION NO.: GA84-3046
DATE: DATE OF PUBLICATION
Supersedes Decision Number GA81-1305, dated October 30, 1981, in 46 FR 53927.
COUNTIES: Appling, Atkinson, Bacon, Baker, Baldwin, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Charlton, Chattahoochee, Clarke, Clay, Clinch, Coffee, Colquitt, Columbia, Cook Coweta, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Effingham, Emanuel, Evans, Fayette, Glascock, Glynn, Grady, Greene, Hancock, Harris, Heard, Henry, Houston, Irwin, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Macon, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Muscogee, Newton, Oconee, Oglethorpe, Peach, Pierce, Pike, Pulaski, Putnam, Quitman, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Troup, Turner, Twiggs, Upson, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, Wilkes, Wilkinson, Worth
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, and railroad construction; bascule, supension, and spandrell arch bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	5.46	
CARPENTERS	6.39	
CEMENT MASONS/CONCRETE FINISHERS	5.51	
DRILL OPERATORS	6.00	
ELECTRICIANS	9.69	
FORM SETTERS	5.04	
IRONWORKERS	7.14	
LABORERS:		
General laborer	4.09	
Air tool operator, chain-saw power saws	6.00	
Asphalt raker	4.69	
Grade Checker	5.20	
Pipelayer	4.22	
POWER EQUIPMENT OPERATORS:		
Asphalt distributor	4.97	
Asphalt paving machine screed & spreader	5.35	
Backhoe	5.84	
Bulldozer	5.77	
Crane, derrick, dragline	6.93	
Front end loader	5.35	
Mechanic	5.68	
Motof grader/motor patrol	5.99	
Roller	4.78	
Pan Scraper	5.99	
Pavement striping Operator	4.90	
Oiler - greaser	5.34	
Stone/aggregate spreader	4.74	
Tractor	4.09	
TRUCK DRIVER	4.22	
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).		

SUPERSEDEAS DECISION

STATE: GEORGIA
DECISION NO.: GA84-3047 DATE: DATE OF PUBLICATION
Supersedes Decision Number GA81-1306, dated October 30, 1981, in 46 FR 53924.
COUNTIES: Banks, Barrow, Bartow, Catoosa, Chattooga, Dade, Dawson, Douglas, Elgert, Fannin, Floyd, Forsyth, Franklin, Gilmer, Gordan, Habersham, Hall, Haralson, Hart, Jackson, Lumpkin, Madison, Murray, Paulding, Pickens, Polk, Rabun, Stephens, Towns, Union, Walker, White and Whitfield
DESCRIPTION OF WORK: HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, and railroad construction; bascule, supension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges).

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
CARPENTERS	6.55		WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		
CARPENTERS' HELPERS	5.89				
CEMENT MASONS/CONCRETE FINISHERS	6.18				
GUARDRAIL ERECTORS	5.36				
GUARDRAIL POST DRIVERS	5.30				
IRONWORKERS:					
Reinforcing	7.55				
Structural & Ornamental	8.10				
LABORERS:					
General Laborer	4.67		Unlisted classifications needed for work not included with the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).		
Air tool operator, chain saw, power saw	4.80				
Asphalt raker	5.66				
POWER EQUIPMENT OPERATORS:					
Asphalt distributor	5.99				
Asphalt paving machine, screed & spreader	6.14				
Backhoe	6.86				
Bulldozer	6.76				
Crane, derrick, dragline	7.59				
Front end loader	5.86				
Mechanic	7.91				
Motor grader (patrol)	7.58				
Oiler - greaser	5.70				
Pan - scraper	6.17				
Roller	5.87				
Stone or aggregate spreader	5.28				
Tractor	4.88				
TRUCK DRIVERS	5.27				

SUPERSEADES DECISION

STATE: NEW YORK COUNTY: JEFFERSON
DECISION NO. NY84-3048 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY80-3054 dated September 5, 1980 in 45 FR 59104
DESCRIPTION OR WORK: BUILDING (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.21	3.16	WELDERS - Receive rate prescribed for craft to which welding is incidental.		
BRICKLAYERS	16.54	2.21			
CARPENTERS	14.78	2.255+			
CEMENT MASONS	16.54	2.21			
DRY WALL FINISHERS	12.83	1.80			
ELECTRICIANS:					
Electricians	16.00	2.38+ 3.8%	Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, (a)(1)(ii)).		
Cable Splicers	16.25	2.38+ 3.8%			
IRONWORKERS, Structural & Ornamental:					
Antwerp, Philadelphia, Leroy, Wilna, Champion	16.18	3.63			
Remainder of County	15.85	5.60			
LABORERS	11.92	2.20			
MASON TENDERS	10.03				
PAINTERS, Brush	12.18	2.55			
PLUMBERS & PIPEFITTERS	15.81	3.45			
ROOFERS	15.25	3.45			
SHEET METAL WORKERS	13.75				
STEAMFITTERS	15.81	3.02			
TILE SETTERS	16.54	2.21			
TRUCK DRIVERS	9.82				
POWER EQUIPMENT OPERATORS:					
Backhoe	16.98	4.25+b			
Bulldozers	16.09	4.25+b			
Crane	17.98				
Forklifts	16.09	4.25+b			
Loaders	16.09	4.25+b			
Rollers	16.09	4.25+b			
Shovel	16.98	4.25+b			

DECISION NO. NY84-3048

FOOTNOTES:

PAID HOLIDAYS: A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. PAID HOLIDAYS: B, D, and E, provided the employee was on the payroll in the calander week preceeding the holiday or any day of the holiday and works the day after the holiday.

b. PAID HOLIDAYS: A through F, provided the employee has worked five consecutive working days before and the working day after the holiday

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTIES: ST. LAWRENCE; LEWIS & JEFFERSON

DECISION NO. NY84-3044 DATE: DATE OF PUBLICATION

Supersedes Decision Nos. NY81-3023 dated April 3, 1981 in 46 FR 20432, and NY80-3054 dated September 5, 1980 in 45 FR 59105.

Description of Work: Building Construction in St. Lawrence and Lewis Counties only (does not include single family homes and apartments up to and including 4 stories), Heavy Construction (except water well drilling), and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.21	3.16
BOILERMAKERS	18.16	3.691
BRICKLAYERS; STONE MASONS; CEMENT MASONS; PLASTERERS; POINTERS; CAULKERS & CLEANERS; MARBLE, TILE & TERRAZZO WORKERS:		
Area 1	15.38	1.82
Area 2:		
Bricklayers, Stone Masons, Cement Masons, Plasterers, Pointers, Caulkers and Cleaners	13.35	3.85
Marble, Tile & Terrazzo Workers	11.75	3.55
Area 3	16.54	2.21
CARPENTERS:		
Area 1:		
Carpenters (Building)	14.02	1.775 +a
Millwrights	14.27	1.775 +a
Piledrivermen	14.17	1.775 +a
Carpenters (Heavy & Highway)	14.97	2.125 +b
Area 2:		
Carpenters (Building)	13.10	1.775
Millwrights	13.35	1.775
Piledrivermen	13.25	1.775
Carpenters (Heavy & Highway)	14.97	2.105 +b
CEMENT MASON (Heavy & Highway)		
Area 1	15.01	1.80+c
Area 2	14.60	2.20+c
Area 3	14.22	2.62+c
ELECTRICIANS:		
Electricians	16.00	2.38+ 3.5%
Cable Splicers	16.25	2.38+ 3.5%
GLAZIERS:		
Area 1	12.43	.81+f
Area 2	12.75	.86
Area 3	13.20	.86

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Area 1:		
Class 1	16.18	3.63
Class 2	16.30	3.63
Class 3	16.43	3.63
Area 2:		
Class 1	14.03	3.62
Class 2	14.155	3.62
Class 3	14.28	3.62
Area 3:		
Class 1	15.85	5.60
Class 2	15.97	5.60
Class 3	16.10	5.60
LABORERS (Building):		
Class 1	11.92	2.20
Class 2	12.12	2.20
Class 3	12.32	2.20
Class 4	12.52	2.20
LABORERS (Heavy & Highway):		
Class 1	12.69	2.20+d
Class 2	12.89	2.20+d
Class 3	13.60	2.20+d
Class 4	13.29	2.20+d
LINE CONSTRUCTION:		
Substations and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+e +6.25%
Cable Splicer	19.525	4.35+e +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+e +6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%

DECISION NO. NY84-3044	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION CONT'D		
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work: Lineman; Technician	16.83	4.35%+e +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35%+e +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35%+e +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35%+e +6.25%
Groundman	10.098	4.35%+e +6.25%
Overhead transmission line work (where other work is or has been involved): Lineman; Technician	19.61	4.35%+e +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35%+e +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35%+e +6.25%
Mobile equipment operator; Groundman truck driver; mechanic	15.688	4.35%+e +6.25%
Groundman	10.098	4.35%+e +6.25%
PAINTERS:		
Area 1:		
Painters	12.43	.81+f
Paperhanging, Spray cup and Taping	12.93	.81+f
Sandblasting, Swing Scaffold, Boatswain Chair, Hanging Scaffold, Structural Steel	13.18	.81+f
Seamless Floor Material	12.93	.81+f
Area 2:		
Brush, Roll, Seamless Floor Application	12.18	2.55
Paperhanging, Paper Removal, Wall Covering, Taping	12.43	2.55
Swing Stage, Window Jacks, Setamcleaning, Hydro-waterblasting	12.53	2.55
Bosun Chair, Sandblasting, Steel Painting	12.88	2.55
Spray	12.68	2.55
Area 3:		
Brush; Roll	12.10	3.25
Taping	12.35	3.25
Spray; Epoxy (brush and roll application)	12.60	3.25
Structural Steel	12.70	3.25
Swing	12.75	3.25
Epoxy (Spray application)	12.80	3.25
Boatswain Chair	12.85	3.25
Sandblasting	12.95	3.25
Bridge	13.30	3.25
PLUMBERS & STEAMFITTERS:		
Area 1	15.81	3.02
Service and repair jobs which do not exceed in the aggregate for all plumbing and HVAC labor and/or materials the sum of $120,000	18.45	3.02
Area 2	15.11	4.35
POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):		
Class 1	16.98	4.25+g
Class 2	16.09	4.25+g
Class 3	14.29	4.25+g
Class 4	17.48	4.25+g
Class 5	18.98	4.25+g
Class 6	17.90	4.25+g
Class 7	18.02	4.25+g
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY):		
Class 1	15.86	4.25+d
Class 2	15.32	4.25+d
Class 3	13.79	4.25+d
Class 4	12.44	4.25+d
ROOFERS	15.25	3.45
SHEET METAL WORKERS	17.12	5.045+3%
SPRINKLER FITTERS	16.92	3.23
TRUCK DRIVERS (Building + Except Ready-mix)		
Area 1:		
Jobs of $5,000,000 or less:		
Class 1	13.58	2.45
Class 2	13.73	2.45
Class 3	13.78	2.45
Class 4	13.98	2.45

DECISION NO. NY84-3044	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (Ready-mix): Highway):		
Area 1:		
Class 1	10.05	2.10+h
Class 2	10.50	2.10+h
TRUCK DRIVERS (Heavy & Highway):		
Area 1:		
Except Ready-mix:		
Class 1	13.74	2.20+d
Class 2	13.79	2.20+d
Class 3	13.84	2.20+d
Class 4	13.99	2.20+d
Class 5	14.14	2.20+d
Area 2:		
Class 1	13.49	2.45+d
Class 2	13.54	2.45+d
Class 3	13.59	2.45+d
Class 4	13.74	2.45+d
Class 5	13.69	2.45+d

WELDERS - Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

DECISION NO. NY84-3044

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independece Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

a. Paid Holidays: B, D and E, provided the employee was on the payroll in thecalendar week preceeding the holiday or any day of the holiday week proceeding the holiday and works the day after the holiday.

b. Paid Holidays: C & D, provided the employee works his scheduled day before and his scheduled day after the holiday and is on the payroll the week in which the holiday falls.

c. Paid Holidays: B, C and D, provided the employee has been on the payroll the week before the holiday and works the day following the holiday.

d. Paid Holidays: A through F, provided the employee has works the working day before the working day after the holiday.

e. Paid Holidays: A through F and Washington's Birthday, Good Friday, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

f. Paid Holidays: B, C, D and F, provided the employee works the last working day prior to and the first working day following the holiday.

g. Paid Holidays: A through F, provided the employee has worked five consecutive working days before and the working day after the holiday.

h. Paid Holidays: A through F, provided the employee has worked any of the 5 working days immediately preceeding or any of the 5 workings days immediately following the holiday.

DECISION NO. NY84-3044

AREA DESCRIPTIONS

BRICKLAYERS; STONE MASONS; CEMENT MASONS; PLASTERERS; POINTERS, CAULKERS & CLEANERS; MARBLE, TILE & TERRAZZO WORKERS:
Area 1: ST. LAWRENCE.
Area 2: LEWIS (Osceola, Lewis, West Turin, Leyden and Turin).
Area 3: JEFFERSON; LEWIS (Remainder of County).

CARPENTERS:
Area 1: ST. LAWRENCE; JEFFERSON; LEWIS.
Area 2: LEWIS.

CEMENT MASONS (HEAVY & HIGHWAY):
See "BRICKLAYERS," etc.

GLAZIERS:
See "PAINTERS & GLAZIERS."

IRONWORKERS:
Area 1: ST. LAWRENCE; LEWIS (North of a line drawn from the southern portion of the Jefferson County line east to the City of Ticonderoga); JEFFERSON (Antwerp, Philadelphia, Leroy, Wilna and Champion).
Area 2: LEWIS (Remainder of County).
Area 3: JEFFERSON (Remainder of County).

PAINTERS:
Area 1: ST. LAWRENCE (Brasher, Lawrence, Hopkintown, Clifton and Pierceville).
Area 2: ST. LAWRENCE (Remainder of County); JEFFERSON; LEWIS (Diana, Croghan, New Bremen, Watson, Greig, Martinsburg, Iowville, Denmark Harrisburg, Montague and Pinkney).
Area 3: LEWIS (Osceola, High Market, Lewis, Turin, West Turin, Leyden and Lybnsville).

PLUMBERS & STEAMFITTERS:
Area 1: LEWIS (Lewis, West Turin, Leyden and Lyonsdale).
Area 2: ST. LAWRENCE; JEFFERSON; LEWIS (Remainder of County).

TRUCK DRIVERS:

Area 1: LEWIS (Pickney, Harrisburg, Montague and Osceola).
Area 2: ST. LAWRENCE; JEFFERSON; LEWIS (Lewis, High Market, Martinsburg, Lowville, Watson, Greig, Turin, West Turin, Lyonsdale and Leyden).

CLASSIFICATION DESCRIPTIONS

IRONWORKERS

Class 1: Structural, Reinforcing, Ornamental, Machinery Movers & Riggers, Rodmen, Fence Erectors and Stone Derrickmen.
Class 2: Sheeter, Bucker-up.
Class 3: Sheeter.

DECISION NO. NY84-3044

LABORERS (BUILDING CONSTRUCTION)

Class 1: General laborerers; Tending of masons, plasterers and cement finishers.
Class 2: Chain saw operators; Payment breakers; Scaffold builders; Mortar mixers, Pipelayers, Gas buggy, Vibrator; Air or electric tool operators; Sandblaster on construction clean-up; Potliners; Acetylene torch operator on demolition work.
Class 3: Rock Drilling.
Class 4: Blasters.

LABORERS (HEAVY & HIGHWAY CONSTRUCTION)

Class 1: Laborers, drill helpers, outboard and hand boats.
Class 2: Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw operator on asphalt paver, water pump operator (1 1/2 inch and single diaphram), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.
Class 3: All rock or drill machine operators (except quarry master and similar type, acetylene torch operators, asphalt raker, powderman.
Class 4: Blasters, form setters, stone or granite curb setters.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

Class 1: Asphalt and blacktop roller; Automated concrete spreader (CMI or equivalent); Automated fine grade machine (CMI); Backhoe; Belt placer; Blacktop spreader (such as Barber Greene and Blaw Knox); Blacktop Plant (automated); Blast or rotary drill (truck or cat mounted); Boom truck; Cableway; Caisson auger; Carry-all scraper (self-loading); Central Mix plant (automated); Cherry picker over five (5) ton capacity; Compressors; Pump; Generator or welding machine (when used in a battery of not more than four (4); Crane, Crusher-rock; Derrick; Diesel power unit; Dragline; Dredge; Dual drum paver; Elevating grader (self-propelled or towed); Elevator hoist - two cage; Excavator - all purpose hydraulically operated; Fork lift (factory rating 15 ft. or more); Front end loader (4 c.y. and over) Gradall; Grader (power); Head tower (Saurman or equal); Hoist (2 or 3 drums); Locomotive; Maintenance engineer; Maintenance welder; Mine hoist; Mucking machine or mole; Overhead crane fixed permanent; Pile driver; Quarry Master or equivalent; Refrigeration equipment - for soil stablization; Shovel; Side boom; Slip form paver; Straddle buggy (Ross carrier, lumber carrier); Tractor drum belt type loader (Euclid loader); Trenching machine (Digging capacity of over 4 ft. depth); Truck crane operator; Tunnel shovel; Vibro or sonic hammer controls (when not mounted in proximity to the rig operator).

DECISION NO. NY84-3044

POWER EQUIPMENT OPERATORS (CONTINUED)

Class 2: "A" Frame truck; Black top plant (non-automatic); Boring machine; Bulldozer; Cage hoist; Carry-all scraper; Central mix plant (non-automated); Cherry picker five (5) tons and under; Compressor (500 c.f. and over); Concrete paver (single drum over 16S); Concrete pump; Core boring machine; Drill rigs-tractor mounted; Elevator - as a material hoist; Fork lift (factory rating less than 15 ft.); Front end loader (under 4 cu. yds.); Gunnite machine; High pressure boiler (15 lbs. and over); Hoist (one drum); Hydraulic breaking hammer (Drop hammer); Kolman plant loader (screening gravel); Maintenance grease man; Mixer for stablized base - self-propelled (seaman mixer); Monorail machine; Parapet concrete or pavement grinder; post hole digger (truck or tractor mounted); Power sweeper (Wayne or similar); Pump 4" and over; Pump-crete or squeeze-crete; Road widener (front end of grader or self-propelled); Shell winder (motorized); Snorkel (overhead arms); Roller; Trenching machine (digging capacity of 4 ft. or less); Tugger hoist; Vibro tamp; Well drill; Well point system (submersible pumps when used in lieu of well-point system); Winch (motor driver); Winch cat; Winch truck.

Class 3: Compressor (under 500 cu. ft.); Concrete paver or mixer (under 16S); Concrete pavement spreader and finishers (not automated); Conveyor (over 12 ft.); Electric submersible pump (4" and over); Farm tractor with or without accessories; Fine grade machine (not automated); Fireman; Form tamper; Generator (2,500 watts and over); Hydraulic pump; Grout pump; Mechanical heaters - more than two (2) mechanical heaters or any mechanical heater or heaters whose combined output exceeds 640,000 BTU per hour (manufacturer's rating); Mulching machine; Oiler; Power driven welding machine - 300 amp. and over (other than all electric); Power heaterman (hay drier), Pump (under 4"); Revinius widner (road widener); Steam cleaner of Jenny; Tractor with or without towed accessories, post driver (truck or tractor mounted).

Class 4: Quad 9 Bulldozer or multibowl scraper.

Class 5: Crane or Derrick with a boom length over 300 ft. including jib.

Class 6: Crane or Derrick with a boom length over 150 ft. including jib, and on a piledriver with leads or boom length over 100 ft.

Class 7: Master mechanic.

[FR Doc. 84-31779 Filed 12-6-84; 8:45 am]
BILLING CODE 4510-27-C

DECISION NO. NY84-3044

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION)

Class 1: Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derrick (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated) (gradall or similar), fork lift (factory rated 15 ft. and over), front end loader (4 c.y. and over), head tower (sauerman or equal), hoist (2 or 3 drum), Holland loader mine hoist, mucking machine or mole, over headcrane (gantry or straddle type), piledriver, power grader, quad 9, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver, tractor drawn belt-type loader, truck crane, truck or trailer mounted log chipper (self feeder), tug operator (except manned rented equipment); tunnel shovel.

Class 2: Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated) and all concrete batching plants, cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity, concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum); Kolman plant loader and similar type loaders, L.C.M. work boat operator, locomotive, maintenance engineer/greaseman/welder, mixer (for stabilized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilazation), road widener, roller (all above subgrade), sea mule tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

Class 3: A-frame truck, ballast regulator (ride-on), compressors (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), dust collectors, generator, pumps, welding machines, light plants (4 of any type of combination), concrete payment spreader and finishers, conveyor, drill-core, electric pump used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), grout pump gunite machine, hammers (hydraulic-self-propelled), hydra-spiker (ride-on), hydro-blaster water, post hole digger and post driver, power sweeper, roller (grade and fill), scarifier (ride-on spansaw (ride-on), submersible electric pump (when used in lieu of well point system), tamper (ride-on), tie extractor (ride-on), tie handler, tie inserter (ride-on), tie spacer (ride-on), track liner, tractor with towed accessories vibratory compactor, vibro tamp, well point.

DECISION NO. NY84-3044

POWER EQUIPMENT OPERATORS HEAVY & HIGHWAY (CONTINUED)

Class 4: Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), dust collectors, generators, pumps, welding machines, light plants (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), light plants, mulching machine, oiler, parapet concrete or pavement grinder, power broom (towed), power heaterman, Revinius widener, shell winder, steam cleaner, tractor.

TRUCK DRIVERS (BUILDING (Except Ready-mix)

Class 1: Truck drivers, parts chasers.

Class 2: Tractor trailer drivers, farm tractor and fuel truck drivers.

Class 3: Material check and receiver.

Class 4: Euclid driver.

TRUCK DRIVER (Ready-mix)

Class 1: Ready-mix driver.

Class 2: Truck driver.

TRUCK DRIVERS (HEAVY & HIGHWAY) (Except Ready-mix in Area 2)

Class 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greases, truck tiremen and parts chaser

Class 2: Tandems, batch trucks, mechanics and dispatcher.

Class 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

Class 4: Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self-loaded, and straddle (ross) carrier.

Class 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self-loaded.

Friday
December 7, 1984

federal register

Part III

Department of Energy

Office of Civilian Radioactive Waste Management

Fees for Federal Interim Storage, Calendar Year 1985; Notices

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Fees for Federal Interim Storage, Calendar Year 1985

AGENCY: Department of Energy.

ACTION: Notice of Fees for Federal Interim Storage of Spent Nuclear Fuel from Civilian Nuclear Power Plants in the United States for Calendar Year 1985. The Fees established for Calendar Year 1984 are hereby rescinded on the effective date of this notice.

SUMMARY: This notice updates the fees to be levied against users of Federal Interim Storage (FIS) services for spent nuclear fuel as required by section 136(a)(2) of the Nuclear Waste Policy Act of 1982, Pub. L. 97–425, 42 U.S.C. 10101 et seq. (Act). The fees, shown in Table 1, have been updated to ensure full recovery of all costs incurred by the Department of Energy (Department) in providing these services. These fees are for calendar year 1985 and replace those in effect for calendar year 1984.

TABLE 1.—Fees for FIS Services Furnished by the Department of Energy, Dollars Per KGU(1) (2)

Capacity of FIS facility (MTU)	Initial fee	Final fee	Total fee
100	310	280	590
300	190	165	355
800	45	138	183
1,500	25	140	165
1,900	20	140	160

(1) The cost of transportation of spent fuel is not included in the above fees. Each user's actual transportation costs will be billed directly after delivery of the fuel is completed.
(2) KGU—the weight of uranium contained in fresh fuel assemblies at the time of insertion into the reactor.

EFFECTIVE DATE. The updated fees will be effective on January 1, 1985, and will remain effective for a period of twelve months from the effective date.

FOR FURTHER INFORMATION CONTACT: J. Roger Hilley, Associate Director, Office of Storage and Transportation Systems (RW–30), Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–8433.

SUPPLEMENTARY INFORMATION: The updated fees shown above in Table 1 were developed by the Department to comply with the requirement of section 136 of the Act which requires each user to pay its pro rata share of costs in order to ensure complete recovery of costs incurred by the Department in supplying FIS services. The Department re-examined alternative methods for structuring fees for FIS services, as reported in 1984 Federal Interim Storage Fee Study: A Technical and Economic Analysis, (PNL–5231) July, 1984 (FIS Fee Study). Based on this reexamination, the Department again concluded that the combined interests of the Department and the users would be best served, and costs would be most appropriately recovered, by a two-part fee payment consisting of an Initial Payment upon execution of a contract for FIS services followed by a Final Payment upon delivery of the spent fuel to the Department. In addition, each user will be invoiced by the Department for the actual costs of transportation of its spent fuel from the reactor site to the FIS facility.

The Initial Payment shall be made within 30 days after execution of the contract for FIS service; it is an advance payment covering the pro rata share of the preoperational costs including:

(1) The capital construction costs of the transfer facilities and storage area required to accommodate the initial storage service commitments, including design and construction costs;

(2) Development costs;

(3) Government administrative costs, including storage fund management;

(4) Impact aid payments made in accordance with section 136(e) of the Act; and

(5) Interest paid on any funds borrowed from the Treasury Department to conduct preliminary work.

The effective Initial Fee will be determined by the quantity of spent fuel committed to FIS by the first contract or contracts entered into by the Department in accordance with the provisions of section 135(b) of the Act. Table 1 exhibits the appropriate fees for discrete quantities of contracted fuel, from 100 MTU to 1900 MTU. If the quantity of fuel covered by the first contracts is less than 100 MTU, the Initial Payment will be the product of the quantity of fuel to be stored and the Initial Fee shown in Table 1 for 100 MTU storage capacity. If the quantity of fuel covered by the first contracts exceeds 100 MTU and is not one of the discrete quantities shown, the Initial Fee will be recalcualted by the Department for the exact quantity of spent fuel committed to storage under these first contracts. The Initial Fee so determined by the first contracts will then be charged to all subsequent contractors of FIS services until the Fee Schedule is next revised.

To ensure that the payments are equitable among the users of FIS services, the Department will annually update both the Initial and Final Fees to reflect changes in the costs for providing FIS Services as the amount of fuel under contract increases or as additional FIS facilities are activated. After all preoperational activities have been completed, the Department will determine the total costs incurred in connection with the preoperational activities (i.e., design, safety reviews, construction, and associated activities) and will determine the difference between the Initial Payments made by each user and the subsequently revised Initial Payments that take into account the increased quantities of spent fuel being committed to FIS. The Department will then credit or debit the Final Payment of each user with the difference between the amounts paid as Initial Payments and its then pro rata share of the revised total preoperational costs (net of its pro rata share of interest earned on advance payments made).

The Final Payment shall be billed to the user within 60 days after delivery of the spent fuel to the Department and shall be payable within 60 days thereafter. It will be calculated to cover the sum of the following;

(1) Any under- or over-estimation in the costs used to calculate the initial Payment of the fee, as described above;

(2) Module costs (i.e., storage casks, drywells, or silos) which will have been accurately determined by that time; and

(3) The total estimated cost of operation and decommissioning of the FIS facilities (including Government administrative costs, storage fund management and impact aid).

In addition, the Department will bill each individual user for the actual costs the Department incurs in the transportation of that user's spent fuel to the FIS facilities including, but not limited to, cask lease, freight charges, and security. Billing and payment will be on the same schedule as the Final Payment.

In addition to the Initial Payment and the Final Payment described above, the Department will make a final adjustment for each user after the decommissioning of the FIS facilities, or December 31, 2001, whichever is earlier. This adjustment will be based on a determination of the total costs incurred in design, construction, operation and decommissioning of the FIS system through December 31, 2001. The Department will make final adjustments to the extent that there is a difference between the total amounts paid by each user in Initial and Final Payments and the user's pro rata share of these total costs (net of its pro rata share of interest earned on advanced payments made). This adjustment may be either a payment to the Department of a refund to the user.

Any payments not made on a timely basis will be subject to interest charged at the quarterly Treasury rate plus 6%.

In order to factor the time value of money into the fee update calculation, the revenue/expenditure projections are based on the following assumptions concerning the schedule of constructing and operating FIS facilities. These assumptions reflect the changes in spent fuel storage requirements which occurred during 1984:

Assumption 1: Design and construction of FIS facilities would commence in 1985 and be completed so that storage operations could commence in mid 1988;

Assumption 2: The FIS facility would receive spent fuel during the three-year period between mid-1988 and mid-1991. It would ship spent fuel to a Monitored Retrievable Storage facility or waste repository during the three-year period commencing at the beginning of 1998 and terminating at the end of 2000. One-third of the storage capacity of the FIS facility would be received each year during the receiving period, and one-third would be shipped each year during the shipping period;

Assumption 3: Decontamination and decommissioning of FIS facilities would be conducted in the year 2001.

In accordance with the constraints imposed by the Act, the Department plans to expend no funds in connection with the FIS program other than the minimal expenses for planning until clear evidence of a need exists. At that time, the Department will commence the design of the FIS facilities on the basis of the contractual commitments that then exist for FIS services. These facilities will have the capacity for only that amount of spent fuel which is committed to storage under the then-existing contracts.

The Department has again assumed that canistered consolidated spent fuel rods would be acceptable for storage at the FIS facilities. However, consolidation would not be a criterion for acceptance, nor would the disassembly and consolidation of spent fuel be included in the capabilities of the FIS facilities. Until the cost effects of storing consolidated fuel has been accurately determined, the Department will collect the same fee for storage of canistered consolidated spent fuel rods as for intact fuel assemblies. At that time, any savings in operational costs which may result from receipt and handling of consolidated fuel rods will be factored into the annual recalculation of the fee, and a separate fee for consolidated fuel will be published.

If the revised initial fees are lower than any previously collected for consolidated fuel, a credit will be assigned to the Final Payment for that consolidated fuel. Any savings in transportation costs that result from shipping consolidated rods would be realized immediately.

Further information as to the Department's FIS services and charges is available in the cited report, PNL–5231.

Issued in Washington, D.C. on December 3, 1984.

Robert H. Bauer,

Associate Director, for Resource Management, Office of Civilian Radioactive Waste Management.

[FR Doc. 84-31944 Filed 12-6-84; 8:45 am]

BILLING CODE 6450-01-M

reported in 1984 Federal Interim Storage contract increases or as additional FIS to the user.

federal register

Friday
December 7, 1984

Part IV

Department of Energy

Western Area Power Administration

Order Confirming, Approving, and Placing in Effect the Rate Adjustment, on an Interim Basis, for the Pick-Sloan Missouri Basin Program; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Order Confirming, Approving, and Placing in Effect the Rate Adjustment, on an Interim Basis, for the Pick-Sloan Missouri Basin Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate adjustment for the Pick-Sloan Missouri Basin Program (P–SMBP).

SUMMARY: Notice is given of Rate Order No. WAPA–24 of the Deputy Secretary placing the rate adjustment for the P–SMBP into effect on the first day of the first full billing period after January 1, 1985, on an interim basis, for power marketed by the Western Area Power Administration (Western).

The FY 1982 P–SMBP power repayment study indicated that the existing rate schedules do not yield sufficient revenue to satisfy the cost recovery criteria through the study period. The revised rate schedules will yield adequate revenue to satisfy these criteria.

FOR FURTHER INFORMATION CONTACT:

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1535.

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664, December 14, 1983), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, to the Deputy Secretary the authority to confirm, approve, and place such rates in effect on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove, rates developed by the Administrator under the delegation.

The rate adjustment for the P–SMBP has been conducted in accordance with the procedural rules applicable to Western.

Proceedings were initiated on June 29, 1984, with publication of a **Federal Register** notice (49 FR 26797) which officially announced the proposed rate adjustment and procedures for public participation. A series of public information forums were held on July 16 through July 19, 1984, in Thornton, Colorado; Sioux Falls, South Dakota; Fargo, North Dakota; and Billings, Montana. A series of comment forums were held August 20 through August 23, 1984, at the same locations. The consultation and comment period extended through September 29, 1984. During this period, interested parties made comments to Western concerning the proposed rate adjustment.

Various comments were received at the meetings and during the consultation and comment period. Several issues were raised. After reviewing and considering the comments received, and the records of the meetings, this rate order was assembled to respond to the comments offered during the public rate adjustment process. Western has concluded that the P–SMBP rate adjustment is needed to meet cost recovery criteria.

Therefore, Rate Order No. WAPA–24 confirming and approving the P–SMBP 1982 rate adjustment on an interim basis is hereby issued, and the new rate schedules will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, D.C. November 28, 1984.

Danny J. Boggs,
Deputy Secretary.

DEPARTMENT OF ENERGY

Deputy Secretary

[Rate Order No. WAPA–24]

Order Confirming, Approving, and Placing in Effect a Rate Adjustment for the Pick-Sloan Missouri Basin Program

November 28, 1984.

In the matter of: Western Area Power Administration—Rate Adjustment for the Pick-Sloan Missouri Basin Program (P–SMBP).

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372 et seq., as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), for the Bureau of Reclamation (USBR), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), the Secretary of Energy delegated: (1) To the Administrator of the Western Area Power Administration (Western) the authority to develop power and transmission rates; (2) to the Deputy Secretary the authority to confirm, approve, and place such rates in effect on an interim basis; and (3) to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or disapprove rates developed by the Administrator under the delegation.

This rate order is issued pursuant to the delegation to the Deputy Secretary and the rate adjustment procedures at 10 CFR Part 903 (45 FR 86975, December 31, 1980, as corrected at 46 FR 6864, January 22, 1981).

Effective Date

The new rates would become effective on the first day of the first full billing period beginning after January 1, 1985, and would remain in effect until superseded.

Description of Rates

The proposed composite Eastern and Western Division wholesale firm power rate for the Pick-Sloan Missouri Basin Program (P–SMBP) will yield 7.44 mills/kWh versus the current 6.10 mills/kWh, which constitutes a 1.34 mill/kWh increase over the current wholesale firm power rate. P–SMBP power is sold in two marketing areas known as the Eastern Division and the Western Division.

When considering the Eastern Division of the P–SMBP alone, the proposed firm rate yields 7.14 mills/kWh versus the current 5.80 mills/kWh yield.

Presently, the Western Division of the P–SMBP by itself has a wholesale firm power rate which yields 7.20 mills/kWh. Under the proposed rate, the Western Division's wholesale firm power yield will increase to 8.54 mills/kWh.

The present and proposed wholesale power rates for the Eastern Division have been structured as follows:

Class of power	Present	Proposed
Firm Capacity (kW).	$1.35/kW-month	$1.65/kW-month.
Firm Energy (kWh) up to and including 60 percent monthly load factor	3.62 mills/kWh	4.41 mills/kWh.
Above 60 percent monthly load factor	7.00 mills/kWh	7.79 mills/kWh.
Peaking Capacity (kW).	$1.35/kW-month	$1.65/kW-month.
Peaking Capacity (kWh).	3.62/mills/kWh	4.41 mills/kWh.

The present and proposed wholesale power rates for the Western Division have been structured as follows:

Class of power	Present	Proposed
Firm Capacity (kW).	$1.43/kW-month	$1.65/kW-month.
Firm Energy (kWh).	4.3 mills/kWh	5.1 mills/kWh.
Peaking Capacity (kW).	$1.43/kW-month	$1.65/kW-month.
Transmission Service.	1.1/mills/kWh or $9.60/kW-year.	1.3 mills/kWh or $11.40/kW-year.

Description of Changes in Rate Structure and Level

As shown above, the structure of the proposed rate schedules has not changed from that of the present rate schedules. However, the level of rates has changed for all of the above classes of power.

In the Eastern Division of P–SMBP, the firm capacity charge has increased under the proposed schedule $0.30/kW-month from $1.35 to $1.65/kW-month. The firm energy charge for energy up to and including 60-percent monthly load factor has increased from 3.62 to 4.41 mills/kWh or .79 mills/kWh. For energy above 60-percent monthly load factor, the energy charge has also increased 0.79 mills/kWh, from 7.00 to 7.79 mills/kWh.

The proposed capacity is $1.65/kW-month versus the current charge of $1.35/kW-month, an increase of $0.30/kW-month. Peaking energy under the proposed rate schedule has increased 0.79 mills/kWh from 3.62 to 4.41 mills/kWh.

In the Western Division of P-SMBP, the firm capacity charge has increased under the proposed rate schedule $0.22/kW-month, from $1.43 to $1.65/kW-month. The firm energy charge has increased from 4.3 mills to 5.1 mills/kWh, or .80 mills/kWh.

The proposed peaking capacity charge is $1.65/kW-month versus the current charge of $1.43/kW-month, an increase of $0.22/kW-month.

Transmission service for the Western Division will increase 0.2 mills/kWh under the proposed rate schedule, raising the current rate of 1.1 mills/kWh to 1.3 mills/kWh.

Expected Changes in Annual Revenue

The rate adjustment would increase average annual firm revenues about $12.7 million, which is necessary to satisfy the cost recovery criteria as set forth in DOE Order No. RA 6120.2.

Statement of Revenue and Related Costs

A breakdown of costs by class of service is not available. The following table provides revenue data for firm power and peaking sales through the proposed rate period. The Western Division is currently finalizing a marketing plan. That plan provides for Western Division peaking sales; however, it is not expected to be implemented until after 1989; thus there is no Western Division peaking revenue shown in the table below.

Year	Eastern division peaking winter	Eastern division peaking summer	Eastern division firm	Western division firm
1985	$3,564,000	$3,604,500	$50,627,250	$16,159,140
1986	3,564,000	3,604,500	50,627,250	16,159,140
1987	3,564,000	3,604,500	50,627,250	16,159,140
1988	3,564,000	3,604,500	50,627,250	16,159,140
1989	3,564,000	3,604,500	50,627,250	16,159,140

The data shown above reflect estimates used in the 1982 Power Repayment Study (PRS) for the proposed rate approval period. It should be noted that the PRS contains only one variable—the composite rate for future firm power (capacity and energy combined) sales on a per kWh basis. Revenues from othe sources are estimated and entered into the study. The study adjusts this composite rate until sufficient revenues are generated to meet cost recovery criteria. The actual rates designed to yield these revenues are determined after the PRS is completed by adjusting both capacity and energy rates, and not just energy rates. Actual revenues collected for each class of service will vary from those estimated in the published 1982 PRS.

Revenues from the Western Division's transmission service rate are not shown separately in the published 1982 PRS, but are included in the "Total Revenue" column of that study. The data shown above for Eastern Division Firm and Western Division Firm are summed on the 1982 PRS and shown as "Firm Commercial."

Explanation of Rate Development Process and Supporting Documents Chronological Discussion

Proceedings on the proposed rate adjustment were initiated on March 19, 1984, when a letter announcing the informal customer meetings was mailed to all firm power customers and other interested persons. The informal customer meetings were also advertised with a March 30, 1984, press release. These meetings were conducted at four different locations from April 16 through April 19, 1984. At these preliminary meetings, Western representatives explained the need for the increase and answered questions from interested persons.

On June 29, 1984, a formal 90-day customer consultation and comment period was initiated with an announcement of the proposed rate adjustment published in the **Federal Register** at 49 FR 26797. This notice also announced four public information forums conducted July 16 through July 19, 1984, and four public comment forums conducted August 20 through August 23, 1984. The information forums were further advertised with a June 29, 1984, press release. On June 27, 1984, a mailing of a final customer brochure was made to all customers and other interested parties. This mailing also included a letter anouncing the public information and comment forums. At the information forums, Western representatives again explained the need for the rate increase and answered questions from interested persons. The comment forums were conducted to give the public an opportunity to comment for the record. Other public comments were received through September 29, 1984, and have been considered in the preparation of this rate order.

Project History

The Missouri River Basin Project was authorized by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 877, Pub. L. 534, 78th Congress, 2nd session), which approved the general comprehensive plan set forth in Senate Document 191 and House Document 475, as revised and coordinated by Senate Document 247, 78th Congress, 2nd session. The comprehensive plan has been funded through numerous appropriaton acts with the intention of development of the water resources in the Missouri River Basin.

The Missouri River Basin Project, later renamed the Pick-Sloan Missouri Basin Program to honor its two principal authors, has been under construction since 1944. The project encompasses a comprehensive program of flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Montana, North Dakota, South Dakota, Wyoming, and Colorado. Electric transmission facilities have also been constructed in those States, as well as in Minnesota, Nebraska, Iowa, and

participation. A series of public

Deputy Secretary the authority to

have been structured as follows:

Missouri. The P–SMBP is divided into an Eastern Division and a Western Division. The two Divisions cannot, at this time, be operated fully integrated because of differing electric characteristics. In addition to the multipurpose water development projects which were authorized by section 9 of the Flood Control Act of 1944, certain older existing projects have been integrated with the P–SMBP for power marketing and operational purposes. Four projects, Colorado-Big Thompson, Kendrick, Shoshone and Riverton were combined with P–SMBP in 1954 for marketing, operation, and repayment purposes and the fifth, North Platte, was combined in 1959. These projects are known as the "Integrated Projects" of the P–SMBP, Western Division. The Riverton Project was reauthorized as a unit of the P–SMBP by Pub. L. 91–409 on September 25, 1970. The Flood Control Act of 1944 also authorized integration of the Fort Peck Project with the P–SMBP for operations and repayment purposes. Largely as a result of these projects, which pre-dated the P–SMBP, the Eastern Division and Western Division have different power rates.

The P–SMBP has been heralded since its authorization as a pioneer in comprehensive basinwide multipurpose development. All functions of the project were maximized within the water resource with some functions assisting others in repayment beyond the ability of the beneficiary. An innovative feature of the program was its basinwide, rather than individual project, financial management mandate which extended the scope of financial assistance to irrigation and established that repayment of all features be based on ultimate development of the program.

Power, flood control, and navigation are the most advanced features and have been providing benefits to the Basin States for many years. Upper basin States have received hydropower since 1943 and downstream States have received flood control and navigation benefits. Yet to be advanced to a comparable status of development are the Federal irrigation projects which were included in the comprehensive plan to replace land lost to project reservoirs in the upper basin States.

The planning, development, and operation of the P–SMBP have been successfully carried out for close to 40 years by the Departments of the Interior and Army, and most recently, the DOE. The success of the program can be attributed to sound financial management, wherein power rates and revenues have been carefully scheduled to meet program and repayment obligations.

Western was established on December 21, 1977, pursuant to section 302 of Pub. L. 95–91, DOE Energy Organizational Act, dated August 4, 1977. Western is responsible for the Federal electric power marketing and transmission functions in 15 Central and Western States encompassing a 1.3-million-square-mile geographic area, which includes the P–SMBP marketing area.

Power Repayment Studies

General History

The PRS's for the P–SMBP are prepared by Western with the cooperation of the USBR and the Corps of Engineers. Basic river basin hydrology, water depletions, power generation, and project development data are among the many items USBR and the Corps of Engineers contribute to the studies.

The PRS's are prepared in accordance with P–SMBP authorizing legislation and with DOE Order No. RA 6120.2 on Power Marketing Administration (PMA) financial reporting. The studies array historic income, expense, and investment to be repaid from power revenues, along with estimates for future years. They also portray the annual repayment of production and transmission costs of the power system, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project. The studies show, among other items, estimated revenues and expenses, the estimated amount of unpaid Federal investment which will be repaid, and the total estimated amount of Federal investment year-by-year over a 100-year period. The studies do not deal with rate design.

Special Study B–5, documented in the "Report on Financial Position MRBP, December 1963," was submitted to Congress and set forth a broad statement of repayment principles. Basic guides and criteria established therein have been incorporated in the annual PRS's. Payout criteria and interest rates beginning in FY 1966 have been endorsed by the Garrison Diversion Unit Act of August 5, 1965. Our current studies reflect resources, marketing, operation and maintenance (O&M) expenses, replacements, payments to the integrated projects, investment, and irrigation development date available as of 1982.

General Description of Power Repayment Study Components

The repayment study consists of four main parts: (1) Annual revenues; (2) annual revenue deductions; (3) repayment of replacement; and (4) repayment of investments.

Capacity and energy are based on the latest hydrology, depletions, and marketing projections for the P–SMBP. They are converted to annual power revenues by the application of appropriate rates. These power revenues are first applied to repayment of annual revenue deductions which are composed of O&M costs, wheeling expense, payments to integrated projects, purchased energy, and interest expense.

Any remaining power revenues are then applied to the repayment of interest-bearing commercial power investment. The study is designed to repay the investment carrying the highest-interest-rate first. However, each power investment is required to be repaid within 50 years of the date on which it was placed in service.

Interest rates of 2½ and 3 percent are used on existing transmission facilities and power generating facilities in accordance with provisions of the Garrison Diversion Unit Act of August 5, 1965 (Pub. L. 89–108, 89th Congress HR 237). New investments beyond the scope of that act will be subject to the current interest rates pursuant to DOE Order No. RA 6120.2

Replacements are investments required to replace original investments as their economic or physical usefulness declines. In the FY 1982 PRS, replacements are subject to the same interest rates as the original investments. In future studies, replacements made after 1981 will be subject to current interest rates.

The FY 1972 PRS and previous studies forecast future replacement costs based on the original installed cost of the facility. Starting with the FY 1973 PRS, estimated future replacement costs have been indexed to current levels, and are treated as capital investments which are repaid over their service lives.

Besides repayment of power investments, revenues must repay a portion of the irrigation investments, including part of the investment for multipurpose reservoirs.

The legislative history of the P–SMBP, principally Senate Document No. 191, recognized that portions of the power-producing capacity of the project would be used for Federal project irrigation and drainage pumping service. It also established that the cost of that portion

of the power system reserved for irrigation pumping would be interest-free. Accordingly, all analyses of the program have assumed that a percentage of the power investment would be reserved for irrigation pumping, and as such, the same percentage of the power investment would be suballocated as interest-free irrigation pumping cost. The percentage for suballocation of the costs have been determined by the relationship of total ultimate project pumping peakload demand at the generators to power system generating capacity (538,622 kW of ultimate pumping requirements divided by 2,522,600 kW of total system capacity). The application of this ratio in the present study results in 21.4 percent of the costs allocated to power being suballocated to pumping purposes. These suballocated costs are scheduled for repayment with the associated irrigated projects.

Pursuant to the Garrison Diversion Unit Act, costs relating to specific irrigation units (including main stem and other reservoir storage and irrigation pumping power cost assignments, if appropriate) constructed or under construction on June 30, 1964, are to be repaid within the earliest practicable time period after completion of repayment of interest-bearing commercial power investment, but prior to irrigation units constructed after that date. Costs relating to new (after June 30, 1964) and future irrigation units, divisions, or irrigation blocks (including main stem and other reservoir storage and irrigation pumping power cost assignments if appropriate) are to be repaid within 50 years following the allowable development period (usually 10 years) after the individual unit, division, or irrigation block becomes benefit-producing.

Costs of the multiple-purpose investments have been allocated by the agency having construction jurisdiction. The "Separable Costs-Remaining Benefits" method of allocation has been used on main stem reservoirs and multipurpose reservoirs. Federally financed alternative costs have been used for determining the annual cost of the single-purpose power alternative in the cost allocation procedures. This is consistent with the statement of "Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources," approved by the President on May 15, 1962, and printed as Senate Document No. 97, 87th Congress, 2nd Session.

Study Inputs

The following items are entered into the repayment study as historical data and/or as short-term future budget estimates. These data are then used in the study to make long-term projections of revenues and expenses. The inputs are generally classified as revenues, expenses, and project investments.

Revenues

The historical power and energy sales are based on accounting records through September 30, 1982. The FY 1983 sales were based on the best estimates available using the most current system hydrology. Thereafter, total annual energy and capacity sales are based on average and adverse water conditions, respectively. Basic data for determining power generated at USBR tributary powerplants and the Corps of Engineers main stem powerplants were obtained from latest available reservior operational studies. The generation data were then reduced to reflect future irrigation depletions.

The "gross revenue data" for this study include revenues from sales of long-term firm commercial power, sales of peaking power, sales of irrigation energy, and other revenues. These other revenues come from sources such as: replacement service, summer firm, maintenance service, wheeling income, joint transmission system charges, the Southwestern Power Administration's share of intertie costs, Canyon Ferry headwater benefits, and a conservative estimate of revenue from above adverse water year peaking capability.

Expenses

O&M Expenses

O&M expenses shown in the PRS reflect the costs associated with the operation of powerplants, substations, and dispatch offices; the maintenance of powerplants, substations, and transmission lines; supplies associated with maintenance; any nonrecurring maintenance; administrative overhead; and wheeling payments for use of transmission capacity in other systems.

Historical O&M expenses are based on accounting records through September 30, 1982. Projected O&M expenses are based on the program documents contained in the FY 1984 budget dated December 1982. Nonrecurring O&M is included as a part of the O&M expense through the budget period, but has been removed from the cost estimate beyond that point. No attempt has been made to forecast changes in the operation or maintenance costs beyond the budget period; therefore, the variance observed in the future data is due solely to declining future wheeling expenses. Wheeling expenses decline proportionately as firm power sales decline.

Purchased Power

Historical purchased power costs are based on accounting records through September 30, 1982. The FY 1983 purchased power cost is based on the FY 1984 budget justification program documents dated December 1982. No future purchased power costs are projected beyond 1983, because the PRS is based on average water year data for the period 1984 through 2082.

Integrated Projects

Four projects, Colorado-Big Thompson, Kendrick, Riverton, and Shoshone, were combined with the P–SMBP in 1954 for power marketing, operation, and repayment purposes and the fifth, North Platte, was combined in 1959. These projects are known as the "Integrated Projects" of the P–SMBP, Western Division. The Riverton Project was reauthorized as a unit of P–SMBP on September 25, 1970, by Pub. L. 91–409. Basically, the integration combined the projects' powerplants and transmission systems for operational, power marketing, and repayment purposes. Irrigation development of the Integrated Projects was completed in accordance with plans contemplated in the authorizing legislation. Long-term contracts established the share of the costs allocated to irrigation that the irrigation districts would repay. The remaining irrigation development costs were assigned to be repaid from power revenues. An annual transfer of funds from the P–SMBP to the Integrated Projects is made in an amount sufficient to cover O&M expenses, repayment of the interest-bearing power investment, and replacements. In addition to these annual costs, payments are made periodically to repay the portion of the irrigation investment assigned to power.

The historical integrated project expenses are based on accounting records through September 30, 1982. Future expenses are based on studies which are conducted jointly by the Lower Missouri Region of the USBR and Western's Loveland-Fort Collins Area Office.

Interest

Rates of interest applicable to the interest-bearing commercial power investments (including interest during construction) were established in accordance with the Garrison Diversion Unit Act, Pub. L. 89–108, 89th Congress, August 5, 1965.

revenues have been carefully scheduled

of 1982.

established that the cost of that portion

All investments in existing power generation facilities constructed by the Corps of Engineers and USBR were charged 3-percent interest from the date of investment to June 30, 1965. Thereafter, the interest rate on the unpaid balance of the investment allocated to commercial power is 2½ percent per annum for Corps of Engineers related investments and 3 percent per annum for USBR related investments. The commercial power investment in the transmission and operating facilities for the P–SMBP is divided between the 2½- and 3-percent interest rates. This division is made in the same ratio as that of the power generating capacity installed by the Corps of Engineers compared to the power generating capacity installed by the USBR.

Future power system investments beyond the scope of the Garrison Diversion Act of 1965 are subject to the current interest rate. That interest rate was 9⅛ percent at the time of the FY 1982 study.

Project Investment

Power Investments

The cumulative power investment and the allowable unpaid balance are increased by the cost of an investment in the year a facility is placed in service, and the allowable unpaid balance is correspondingly reduced by the amount of this investment 50 years later.

The interest-bearing power investments represented in the repayment studies are the total specific power costs plus a share of the multipurpose functions allocated to power, less the suballocation to interest-free irrigation. The historical data are based on accounting records through September 30, 1982. Future investments are projected through the budget period only and are based on cost estimates for FY 1984 budget justification.

Power Replacements

Beginning in FY 1973, future replacement costs were treated as capital investments and identified in repayment studies. Repayment periods associated with replacements are based on the estimated service life of each unit of property included in the total electric plant investment, but do not exceed 50 years. The units of property and service life factors used in this study to estimate future replacements beyond the budget period are based on an August 1961 publication entitled "Replacements-Units, Service Lives, Factors" published by the USBR and Western. The estimated service lives of the units of property reflect the retirements that have been experienced over the years with various facilities. The total P–SMBP electric plant investment (including that suballocated to irrigation for repayment purposes) is used in computing replacement costs.

The FY 1982 study and previous studies forecast future replacement costs based on the original installed cost of the facility. Beginning in FY 1973, the original installed costs are indexed to current cost levels for estimating replacement costs. The costs are not indexed beyond current levels, and do not reflect possible continued escalation of costs or expenses.

Historical replacement costs are based on accounting records through September 30, 1982. Estimated replacement costs for the immediate future are based on the program documents included with the FY 1984 budget justification dated December 1982. The estimated replacement costs beyond the budget period in the program documents are indexed to 1982 cost levels.

Irrigation

Required aid to irrigation reflects the cumulative P–SMBP irrigation investment to be repaid from power revenues after crediting revenues anticipated from irrigation and existing municipal and industrial water agreements. Repayment periods, except for existing units, reflect a development period after the unit becomes benefit-producing plus a 50-year repayment period.

Irrigation investment is comprised of three separate categories of units. The first category, "Existing Units," includes all units that have been constructed and are now in operation. All of the existing units were either constructed or under construction on June 30, 1964. The second category, called "Projects in Construction Phase," consists of individually itemized units which are under construction or for which construction is expected to be completed, all of which would require irrigation aid during the PRS or by the year 2062. The third category, "Other Units" includes those for which future development is anticipated. "Other Units," developed through the year 2022 would requie irrigation aid during the life of the study.

Future irrigation investments are based on 1982 cost levels. Assistance from power revenues is required by law to repay irrigation investment beyond the irrigators' ability to repay.

Order of Repayment

In accordance with repayment criteria, the repayment study first applies all revenues to payment of annual O&M and interest costs. An annual transfer of funds from P–SMBP is made to the Western Division Integrated Projects which is sufficient to cover the operation, maintenance and replacement (OM&R) expenses, repay the interest-bearing power investment, and make the aid to irrigation payments within their established repayment periods. These annual payments are treated as an operating expense by P–SMBP. Remaining revenues are applied to repayment of investment. Costs of each unit, division, or separable feature allocated to commercial power are repaid with interest on the unpaid balance. In no case does the repayment exceed 50 years from the date when the unit, division, or separable feature became revenue-producing. After repayment of these commercial power investments, revenues are utilized to provide aid to irrigation.

Basis for Rate Development

For the Eastern Division, the monthly demand charge was proportioned in accordance with the overall ratio of increase and rounded to an even $1.65/kW. The energy component was assigned the balance of the required increase. This structure yields a desirable split, approximately 50/50 between the demand and energy components of the rate schedule. The wide deversity of types of load in the service area results in customers with widely divergent load factors. An approximate 50/50 split between demand and energy components does not give unfair advantage or penalty to any one customer group.

Based upon the load characteristics of the Western Division's firm power obligation, a monthly capacity charge of $1.65 per kW (the same as the Eastern Division) together with an energy charge of 5.1 mills per kWh, will yield the required 8.54 mills per kWh average return. The proposed rate for peaking power is the same as the proposed firm power rate. The proposed transmission service rate was obtained by increasing the current transmission service rate by the ratio of the proposed firm power rate to the present firm power rate, and is expressed to the nearest one tenth of a mill.

The proposed effective date of the new rate schedules is the first day of the first full billing period beginning after January 1, 1985. This supersedes the language in 49 FR 26798, June 29, 1984, which states "The proposed rates are expected to go into effect on an interim basis with the beginning of the January 1985 billing period."

Discussion of Issues—Public Comments

Questions Regarding P-SMBP O&M Cost

Western received several requests from customers and other interested parties to show in greater detail the components making up O&M cost in the 1982 PRS. There was a mistaken perception by some who read the preliminary Draft Customer Rate Brochure that projected O&M costs had risen 36 percent between 1980 and 1982. Western's preliminary Draft Customer Rate Brochure actually showed an increase of 18 percent between the 100-year projections of O&M in the 1980 PRS versus the 100-year projections in the 1982 PRS. Also, some customers mistakenly assumed that Western had built a 9-percent-per-year inflation factor into its projected O&M expenses. Western responded that the increase in projected O&M costs between the two PRS's was 18 percent in the Draft Customer Rate Brochure, not 36 percent. In addition, Western reexamined some O&M data and assumptions related to O&M which resulted in reductions in projected O&M in the final 1982 PRS. In the final rate analysis, the 100-year projection of O&M expense was 13 percent higher than the 100-year projection of O&M expense in the 1980 PRS. Western also responded that a 9-percent inflation rate was not factored into projected O&M costs. Western's O&M expenses for the first 6 years of the study period are taken directly from budget documents. The O&M estimates for this "budget period" include any expected increases in the cost of materials and supplies, or additional work due to new facilities. Western does index costs and prices for materials and supplies during the budget period based on a targeted level provided by the Office of Management and Budget. Salary increases for General Schedule employees are not projected and union agreements for Wage Board employees are assumed to remain constant. All nonrecurring and extraordinary maintenance is removed from the estimate for the last year of the budget period, and the resulting "routine O&M expense" is held constant from the last budgeted year through the remainder of the 100-year projection period except for some slight variance in wheeling expense. Wheeling expense is adjusted annually up or down in proportion to firm power sales. In addition to these responses, Western sent to two parties a breakdown of O&M expense by major category; i.e., the Corps of Engineers, Western's Billings Area Office, Western's Loveland-Fort Collins Area Office, USBR's Lower Missouri and Upper Missouri Offices, and a breakdown of wheeling expenses. A further breakdown of O&M expense to identify funds spent on transmission lines, substations, communications, power marketing and other expenses was shown for Western's Billings and Loveland-Fort Collins Area Offices.

Questions Regarding Irrigation Aid

Several questions and comments were received concerning the amount of irrigation aid shown in the 1982 PRS and its effect on power rates. One commentor expressed full support for the ultimate development concept, but also expressed the thought that the increase in irrigation aid from $2.2 billion to $3.2 billion betwen the 1980 and 1982 PRS was not justified. Also questioned was the inflation rate used to estimate future irrigation aid. Another interested party also asked for the specific reasons why irrigation aid repaid increased $1 billion between the 1980 and 1982 PRS. In addition, they commented that presently authorized irrigation projects would be constructed by the year 2000 and were curious as to why irrigation aid continued to increase after that date. They also commented that the unpaid balance of irrigation aid continually increased throughout the 1982 PRS even as payments were being made toward that unpaid balance. They asked why this unpaid balance remained at the end of the study. In addition to these comments and questions on total irrigation aid, there were numerous inquiries regarding specific projects and data relating to total irrigation aid.

One party was specifically interested in obtaining information concerning the Norden Dam-O'Neill irrigation project. Their questions concerned the present cost of the project, its portion of irrigation aid, its effect on Western's power rates, the likelihood of increases in its cost estimate in future years, and the effect on power rates of cost overruns and inflation related to irrigation units. Another interested party asked what the effect would be on rural electric customers of any large irrigation project being constructed. Another inquiry was concerned about the content of the rule relating to the irrigators' "ability to pay" for irrigation projects and who determines these rules.

Western responded to these questions by saying that the increase from $2.2 to $3.2 billion in total irrigation aid repayment since the 1980 PRS is due both to an indexing of unit costs to October 1982 levels, and to the rescheduling of units. Approximately 75 percent of the $1 billion increase results from rescheduling of units. The remaining 25 percent results from cost indexing to October 1982; there is no inflation factor (beyond 1982) in this item. Formerly, the USBR scheduled units of the P–SMBP individually. Yearly updates saw many changes in near-term projects, while long-term projects went essentially unreviewed. Over the years, these changes resulted in a discrepancy between scheduled acres and the P–SMBP "Ultimate Development" acreage total.

"Ultimate Development," for purposes of financial management of the P–SMBP, is defined in terms of the total acreage (3,768,000 acres) incorporated in the 1958 study, "Economic Analysis: Missouri River Basin Project." That acreage was validated by congressional review, and corresponds to the Corps of Engineers main stem cost allocations of the same year. Beginning with the 1981 PRS, the USBR changed their unit scheduling approach. Proposed units of the P–SMBP are now individually scheduled only if the unit has been reauthorized, and the USBR is actively seeking construction funds from Congress. Remaining acres of the P–SMBP are scheduled over the remainder of a 100-year development period based on an equal annual schedule resulting in a composite investment over the period.

The reason there is an unpaid balance at the end of the study is that after 1995, irrigation construction continues at about $67.5 million per year through 2082. Through 2082, slightly less than $67.5 million is being paid off per year; thus a net increase in the balance to be repaid results. Each $67.5 million increment of construction has a 60-year repayment period (50-year repayment plus 10-year development).

Therefore, to actually pay the last increment of construction, the study would have to be run to approximately the year 2142 (2082 + 60 years). Since the study is only run to 2082, a 100-year period, an "unpaid" balance is observed.

In regard to the questions concerning the Norden Dam-O'Neill Unit, Western responded that financial aid to irrigation for the O'Neill Project, estimated at approximately $304 million, is included in the base for the current proposed rate increase. This estimate is an increase of approximately $31 million over the estimate used in the FY 1980 PRS. Of the total increase to irrigation aid, 1.6 percent is attributable to the O'Neill Project. (The total increase is from $5.3 billion to $7.2 billion, or $1.9 billion.) The total estimated cost of the O'Neill Project, as of September 1981, is

approximately $368.7 million. Of this amount, approximately $304 million would be repaid by power. As current information becomes available, all project costs are increased (or decreased) to reflect the latest data.

Therefore, the construction cost estimate for the O'Neill Project will be adjusted as the USBR's most current estimates dictate. As the USBR estimates change, whether they increase or decrease, the changes will be reflected in the PRS.

Inflation or deflation has an effect on the rate at such time as one or the other is reflected in the data elements that go into the PRS. Inflationary trends would eventually show up as increased estimated costs and have an upward effect on rates. Deflation would cause decreases in estimated costs and would have a downward effect. Cost overruns will show up as increases in actual costs, and have the effect of raising rates; if projects come in under estimated costs, the effect is to suppress rates. Western runs a PRS every year. These costs, actual or estimated, increasing or decreasing, will impact the study when they are entered into the data base from which the PRS is run.

In answer to the question of the effect on power rates caused by the construction of a large irrigation project, Western responded that repayment of irrigation features of the P–SMBP is conducted under the ultimate development concept. Although the acreage and pumping power requirements are fixed under this concept, the scheduling of the construction of the individual projects in not. PRS's conducted annually by Western utilize the latest construction schedules available from the USBR. If a large irrigation project were constructed according to previously anticipated schedules, and at previously estimated costs, there would be no impact on the PRS's nor on the firm power rates of our customers. Because of the 100-year scope of the PRS's, there is the possibility that an acceleration in scheduling and subsequent project construction could require that a project be repaid within the current PRS's 100-year term, where previously that had not been the case. That increase in payments would be reflected in the firm power rate. The reverse of the above situation could also occur. Scheduling could be delayed to the extent that a project previously requiring repayment within a current PRS could fall outside the scope of a subsequent PRS. This would tend to delay the need for a rate increase. Consideration is given to the ultimate development irrigation pumping requirements during any marketing study. As scheduled irrigation projects come into existence, there are three impacts on the firm power customers: (1) Water is depleted from the hydrosystem so there is less Federal generation available to sell as firm power; (2) more of the available hydrogeneration must be used in the form of pumping power, again, less of the resource is available for firm power users; and (3) there is less revenue available for repayment because more of the resource is being sold at the 2½-mill/kWh pumping rate which is lower than the firm power rate. Any loss in revenue is reflected in higher firm power rates.

Rate Level and Structure

Several comments contained suggestions that the irrigation pumping rate be changed from 2.5 mills to a level that would reflect increasing OM&R power costs. Another suggestion concerning rate structure was that the increase in firm power rates be implemented in two equal annual increases instead of a single application.

Western responded that the project pumping rate of 2.5 mills/kWh was initially recommended in Senate Document 191. The project pumping rate is a responsibility of the USBR, and efforts are underway by the USBR to determine if this rate is still adequate. There is a possibility that a change may require congressional notification. Until such time as the existing rate is changed, Western feels compelled to use it in the PRS's.

The absolute magnitude of the impact on the ultimate consumer caused by this proposed rate increase does not appear to justify a two-step implementation. An increase of 1.34 mills/kWh on only that portion of the energy purchased by the ultimate consumer is very small when compared to the current retail rate, which is estimated to be in excess of $0.05 per kWh.

Replacements

One comment was concerned with how replacement costs were estimated and what rate of inflation was used in making these estimates. In addition, the commentors asked if these replacement facilities were included in the Joint Transmission System (JTS) and were being paid for in the JTS rate. Another questioner asked why projected replacements vary so dramatically from year to year, instead of being paid in equal annual installments.

Western responded that costs for future replacements are indexed to the study year (in this instance 1982 dollars) and the frequency of replacement is projected on the basis of the expected service lives of categories of facilities that make up the total power system investment, except costs of nonreplaceable items (such as lands, dams, and reservoirs) which are allocated to power. The replacement projections are accomplished through the use of a computer program which estimates future annual replacements based on replaceable investment by plant account for the study rather than showing the replacement of individual pieces of equipment.

Replacements are repaid with interest over their useful lives. However, they are not repaid in equal annual installments. Repayment of replacements is done in the same manner as repayment of investments; i.e., they have a specific length of time within which they must be fully repaid, and highest interest-bearing groups are repaid first within those specific periods. All, or only a fraction, of a replacement cost may be paid in the first year of its repayment period, the last year of its repayment period, or any year in between. The only requirement is that the total replacement cost (plus interest) be recovered within the allotted repayment period.

Western's replacements occur in a cyclical manner, with different equipment having different useful lives. The study projects high replacement costs in some years and low replacement costs in others, based on an analysis of historic replaceable investment by plant accounts as published in the August 1981 booklet entitled "Replacements—Units, Service Lives, Factors" published jointly by the USBR and Western.

The cost of the P–SMBP transmission system which serves as Western's share of the JTS is included in PRS. However, this inclusion of costs is negated because Western also includes the revenue received from JTS payments to reduce commensurately the revenue which the firm power rate must yield.

Miscellaneous Issues

An inquiry was made as to Western's method of choosing a test year or critical year for revenue requirements. Western does not target a specific test year. Western is required to generate revenues sufficient to cover annual expenses as well as any required payments during the 100-year study period.

In each year, the study repays costs in the following priority:

(1) Annual expenses (O&M, interest, integrated projects, and purchased power);

(2) Power replacements and investments;

(3) Irrigation aid.

Power investment must be repaid within 50 years from an inservice date, while irrigation aid has 50 years plus a development period, usually totaling 60 years, before required payment. Replacements have various repayment periods ranging from 10 years to 50 years. A rate adjustment is triggered if, for any year of the 100-year projection period of the RPS, there is an amount of required payments combined with annual expenses such that revenues will not offset all of the costs. Whatever year within the 100-year study period that this occurs is, in effect, Western's "test year."

Several parties wanted assurance that the procedures used to conduct the 1982 PRS were not altered from those historically used. Western responded that the procedures used in the 1982 PRS, based upon a cost-based approach, have not deviated from those used in past studies.

These procedures will continue to be used in future power repayment studies, barring congressional or other actions which might alter the overall repayment methodology.

FERC Comments

In its "Order Confirming and Approving Rate Schedules Noting Interventions and Denying Requests for Hearing" issued February 17, 1984, FERC raised two issues that they felt should not continue unchecked indefinitely. The first of these involves the length of time Western allows certain irrigation projects to be repaid. According to FERC.

> . . . an examination of WAPA's PRS indicates that investments made during the years 1950–1980 improperly reflect repayment periods ranging from 61 to 83 years for irrigation projects. The repayment criteria recommended in the December 1983 Special Study B–5 report (which recommendations were considered and endorsed by Congress with the passage of section 4(b) of the Garrison Diversion Act), provide that irrigation projects should be repaid within 50 years plus a maximum permissible development period of 10 years. There is no indication that the Administrator has intentionally deviated from this recommendation here, and WAPA's next PRS should be adjusted accordingly or provide a justification for the deviation.

Western responds that the December 1983 Special Study B–5 report also states on page 42 that:

> Costs relating to specific irrigation units (this includes mainstem reservior storage and irrigation pumping power cost assignments if appropriate) contructed or under construction on June 30, 1964, would be returned within the earliest practicable time period after completion of repayment of interest-bearing commercial power investment. These costs would be fully repaid with net power revenues before any such revenues would be made available for return of costs relating to irrigation units to be placed under construction subsequent to June 30, 1964.

In both the 1980 and the 1982 PRS's, all irrigation projects constructed or under contruction on June 30, 1964, are repaid after completion of repayment of interest-bearing commercial power investment and before repayment from power revenues begins for irrigation units placed under construction subsequent to June 30, 1964. Thus, Western has confirmed that the irrigation repayment criteria set down by Special Study B–5 are being adhered to correctly.

The second issue raised by FERC relates to the application of current interest rates to project additions and replacements. FERC's comments in this regard are as follows:

> . . . we note that WAPA's does not reflect current interest rate on project additions and replacements as indicated in the February 1982 Customer Brochure on the P–SMBP (P.V–3). Instead, WAPA computes interest expenses on project additions and replacements utilizing 2.5% and 3% interest rates for certain facilities. WAPA defends this practice in a letter dated January 13, 1983, stating that 2.5% and 3% interest rates are authorized in section 9(c) of the 1939 Reclamation Act and section 4(b) of the Garrison Diversion Act. However, while those statutes do permit the use of the specified interest rates on existing and authorized facilities, we are unable to find statutory authority for using those interest rates on project additions and replacements. Accordingly, WAPA should compute interest expenses on project additions and replacements utilizing a current interest expense as specifically required by DOE Order No. RA 6121.2.[14]

It therefore appears that the Assistant Secretary has *not* waived this provision under RA 6120.2, and indeed, intends that the current interest rate be applied to project additions and replacements.

Western responds that section 4(d) of the Garrison Diversion Act states that:

> From and after July 1, 1965, the interest rate on the unamortized balance of the investment allocated to commercial power in facilities constructed or under construction on June 30, 1965, by the Department of the Army in the Missouri River Basin, the commercial power from which is marketed by the Department of the Interior, and in transmission and marketing facilities associated therewith, shall be 2½ per centum per annum.

Until 1982, the position of Western, and of the USBR prior to Western, was that a portion of all additions to and replacements of transmission and marketing facilities was associated with the Department of the Army facilities constructed or under construction on June 30, 1965. The remaining portion of additions to and replacements of transmission and marketing facilities was associated with USBR investments bearing interest at 3 percent per year. In 1982, Western reappraised this position was concluded that all the transmission and marketing facilities associated with the Department of the Army facilities constructed or under construction on June 30, 1965, have been constructed, and that beginning with 1982 all additions and replacements would be subject to current interest rates pursuant to DOE Order No. RA 6120.2.

However, an exception was provided for the P–SMBP to allow updating of automatic data processing programs to accommodate these interest rate changes. This updating has been completed, and Western's new additions and replacements in the P–SMBP will be subject to current interest rates beginning with the FY 1983 PRS.

Other Considerations

Environmental Analysis

In accordance with DOE Guidelines for Compliance with the National Environmental Policy Act of 1969 (NEPA) published in the **Federal Register** (45 FR 20694–20701, 48 FR 685–686), Western determined that under section D of these guidelines an environmental assessment (EA) was required for compliance with NEPA. Section D states that for rate adjustments for PMAs, the need for an EA is dependent on the magnitude of the proposed rate adjustment in comparison to the rate of overall inflation over the same time period. In this case, the rate of inflation was exceeded by the proposed rate adjustment, and an EA was prepared.

Other DOE guidelines (Memorandum to the Director, Office of Power Marketing Coordination, April 13, 1979) stipulate other aspects that need to be addressed in the EA. These include:

---

[14] We (FERC continued) note in this regard that the order signed by the AS/CE states: Interest rates of 2½ and 3 percent are used on *existing and authorized transmission facilities* and on *existing generating facilities* in accordance with provisions of the Garrison Diversion Act of August 5, 1965. *New investments* beyond the scope of that act are *subject to the current interest* rate . . . (emphasis added)

1. The percentage of total power requirements in the service area supplied by the PMA.

2. The relative prices of PMA supplied power and other sources.

3. The level of induced fuel switching that might occur as a result of the proposed rate increase.

4. The socioeconomic impact to the consumer.

The EA prepared by Western addressed the potential impact of the proposed rate adjustment on both the physical/natural environment and on socioeconomics. As the adjustment would not involve any new construction, or result in a change from the present pattern of operations, the physical and natural environment will not be impacted by the action. Furthermore, as Federal hydropower will remain far less expensive than alternative sources, no secondary environmental effects resulting from, for example, increased thermal generation or fuel switching will occur.

Socioeconomic effects were measurable. Though the percent increase of Federal hydropower was rather large at the wholesale level, at the consumer level rate blending had reduced the increase to a modest 2.1- to 2.4-percent increase to consumers purchasing their power from municipal utilities, and 0.7- to 0.9-percent increase to consumers purchasing from cooperatives.

The conclusions of the final EA were that no significant impact would occur to the human environment as a result of the proposed action. Consequently, Western has requested that a Finding of No Significant Impact determination be made for this action.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve, and place in effect on an interim basis, effective the first day of the first full billing period after January 1, 1985, Rate Schedules P–SED–F2, P–SED–FP2, P–SWD–F2, P–SWD–FP2, P–SWD–T3, and P–SWD–T4. These rate schedules shall shall remain in effect on an interim basis until the FERC confirms and approves them or substitute rates, on a final basis.

Issued in Washington, D.C., November 28, 1984.

Danny J. Boggs,

Deputy Secretary.

DEPARTMENT OF ENERGY

Western Area Power Administration, Billings Area Office

[Schedule P–SED–F2 (Supersedes Schedule P–SED–F1)]

Pick-Sloan Missouri Basin Program, Eastern Division, Schedule of Rates for Wholesale Firm Power Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable

To wholesale power customers for general power service normally supplied through one meter at one point of delivery, or at the voltage and delivery points designated in the power sales contract.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltage and points established by contract.

Monthly Rate

Capacity Charge

$1.65 per kilowatt of billing demand.

Energy Charge

4.41 mills per kilowatthour for all energy use up to and including that associated with a 60 percent load factor.

7.79 mills per kilowatthour for all additional energy use up to, but not in excess of, the delivery obligations under the power sales contract; provided that any contract provisions regarding minimum energy purchase requirements will be modified at the customer's request to reduce said minimum to an amount associated with a 60 percent load factor.

Billing Demand

The billing demand will be the highest 30-minutes integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Minimum Bill

$1.65 per month per kilowatt of the effective contract rate of delivery.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overruns shall be billed at ten (10) times the above rate.

Adjustments

For Character and Conditions of Service. Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5 percent discount on capacity and energy charges when facilities are provided by the customer which result in a sufficient savings to the United States to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in the United States.

For Transformer Losses. If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased 2 percent to compensate for transformer losses, unless the power customer, the transmission agent (if any), and the auxiliary supplier agree to use calculated or measured transformer losses.

For Power Factor. None. The customer will normally be required to maintain a power factor at the point of delivery between 95 percent lagging and 95 percent leading.

DEPARTMENT OF ENERGY

Western Area Power Administration, Billings Area Office

[Schedule P–SED–FP2 (Supersedes Schedule P–SED–FP1)]

Pick-Sloan Missouri Basin Program, Eastern Division, Schedule of Rates for Wholesale Peaking Power Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

Within and adjacent to the marketing area of the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable

To customers with generating resources enabling them to utilize it.

Character and Conditions of Service

As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltages, and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Monthly Rate

Capacity Charge

$1.65 per kilowatt of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is the greater.

Energy Charge

4.41 mills per kilowatthour for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at ten (10) times the above rate.

Adjustments

For Power Factor

None. The customer will normally be required to maintain a power factor at the point of delivery between 95 percent lagging and 95 percent leading.

DEPARTMENT OF ENERGY

Western Area Power Administration, Loveland-Fort Collins Area Office

[Schedule P–SWD–F2 (Supersedes Schedule P–SWD–F1)

Pick-Sloan Missouri Basin Program, Western Division, Schedule of Rates for Wholesale Firm Power Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Western Division of the Pick-Sloan Missouri Basin Program.

Applicable

To wholesale power customers for general power service normally supplied through one meter at one point of delivery, or at the voltage and delivery points designated in the power sales contracts.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltage and points established by contract.

Monthly Rate

Capacity Charge

$1.65 per kilowatt of billing demand.

Energy Charge

5.1 mills per kilowatt hour for all energy use up to, but not in excess of, the delivery obligation under the power sales contract.

Billing Demand

The billing demand will be the highest 30-minute integrated demand established during the billing period up to, but not in excess of, the delivery obligation under the power sales contract.

Minimum Bill

$1.65 per month per kilowatt of the effective contract rate of delivery.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overruns shall be billed at ten (10) times the above rate.

Adjustments

For Character and Conditions of Service

Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5 percent discount on capacity and energy charges when facilities are provided by the customer which result in a sufficient savings to the United States to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in the United States.

For Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor

None. The customer will normally be required to maintain a power factor at the point of delievery of between 95 percent lagging and 95 percent leading.

DEPARTMENT OF ENERGY

Western Area Power Administration Loveland-Fort Collins Area Office

[Schedule P–SWD–FP2 (Supersedes Schedule P–SWD–FP1)]

Pick-Sloan Missouri Basin Program, Western Division; Schedule of Rates for Wholesale Peaking Power Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Western Division of the Pick-Sloan Missouri Basin Program.

Applicable

To wholesale power customers purchasing such service under long-term contracts. Because of the nature of this class of service, it is applicable only to customers with other resources enabling them to utilize it.

Character and Condition of Service

As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltage and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Monthly Rate

Capacity Charge

$1.65 per kilowatt of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge

5.1 mills per kilowatthour for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overruns shall be billed at ten (10) times the above rate.

Adjustments

For Power Factor

None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

DEPARTMENT OF ENERGY

Western Area Power Administration Loveland-Fort Collins Area Office

[Schedule P–SWD–T3 (Supersedes Schedule P–SWD–T1)]

Pick-Sloan Missouri Basin Program, Western Division Schedule of Rates for Firm Transmission Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Western Division of the Pick-Sloan Missouri Basin Program.

Applicable

To firm transmission service customers where power and energy are supplied to the Western Division system

an interim basis until the FERC confirms

effective contract rate of delivery.

furnished shall normally be required.

energy use up to, but not in excess of,

Basin Program.

supplied to the Western Division system

at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Western Division system specified in the service contract.

Character and Conditions of Service

Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

Transmission Service Charge

1.3 mills per kilowatthour delivered at the point of delivery or $11.40 per year for each kilowatt contracted for at the point of delivery, as specified in the contract; payable monthly at the rate of 1.3 mills per kilowatthour or $0.95 per kilowatt of effective contract rate of delivery.

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their Authorized Representatives.

For Losses

Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

DEPARTMENT OF ENERGY

Western Area Power Administration, Loveland-Fort Collins Area Office

[Schedule P-SWD-T4 (Supersedes Schedule P-SWD-T2)]

Pick-Sloan Missouri Basin Program, Western Division, Schedule of Rates for Nonfirm Transmission Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by Pick-Sloan Missouri Basin Program, Western Division.

Applicable

To nonfirm transmission service customers where power and energy are supplied to the Western Division systems at points of interconnection with other systems and transmitted and delivered subject to the availability of transmission capacity, less losses, to points of delivery on the Western Division systems specified in the service contract.

Character and Conditions of Service

Transmission service on an intermittent basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

Transmission Service Charge

1.3 mills per kilowatthour delivered at the point of delivery for each kilowatthour schedule; payable monthly.

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their Authorized Representatives.

For Losses

Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 84-31943 Filed 12-6-84; 8:45 am]
BILLING CODE 6450-01-M

federal register

Friday
December 7, 1984

Part V

Department of the Treasury

Customs Service

19 CFR Part 10
Caribbean Basin Initiative and Generalized System of Preferences; Final and Proposed Rules

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 84-237]

Customs Regulations Amendments Relating to Caribbean Basin Initiative and Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement the provisions of the Caribbean Basin Economic Recovery Act which created an economic recovery program for nations of the Caribbean and Central America and provided for the waiver of duties until September 1995 on most products imported from any of the designated beneficiary countries. On January 5, 1984, the interim Customs Regulations were published as T.D. 84-14 in the **Federal Register** (49 FR 852). This present document, in part, sets forth the final regulations on the Caribbean Basin Initiative and, consistent with statutory differences, modifies the "imported directly" provisions of the Generalized System of Preferences to conform them to the definition of "imported directly" used in the Caribbean Basin Initiative.

DATE: This rule is effective on January 7, 1985.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: William L. Marchi, Duty Assessment Division (202-566-2957); Legal Aspects: Francis W. Foote, Esq., Classification and Value Division (202-566-2938);
U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Subtitle A, Title II, Pub. L. 98-67, the Caribbean Basin Economic Recovery Act (the "Act"), commonly referred to as the Caribbean Basin Initiative (CBI), implements an economic recovery program for nations of the Caribbean and Central America. The Act provides for the waiver of duties until September 30, 1995, on most products imported from any of the Caribbean and Central American countries designated as beneficiary countries. Beneficiary countries must meet several criteria before the President is authorized to designate them as eligible under the CBI. Further, certain products cannot be declared duty-free. Under other provisions of law, duty-free treatment can be withdrawn for articles imported in such quantities as to cause injury to a competing U.S. industry. A rule of origin specifies under what conditions articles will be considered products of a beneficiary country, and, therefore, entitled to duty-free entry.

Pursuant to Presidential Proclamation 5133 dated November 30, 1983 (48 FR 54453), the President designated the countries and territories or successor political entities set forth in the Annex to the Proclamation as "beneficiary countries", thus conferring duty-free treatment for all eligible articles from those beneficiary countries. This action was effective with respect to all articles that were entered, or withdrawn from warehouse for consumption, on or after January 1, 1984, and on or before September 30, 1995. Presidential Proclamation 5142 of December 29, 1983 (49 FR 341), amended Presidential Proclamation 5133 and the Annex to that document to extend the benefits of the Act to additional Caribbean and Central American countries.

To implement the duty-free aspects of the CBI, Customs published interim regulations as T.D. 84-14 in the **Federal Register** on January 5, 1984 (49 FR 852). The interim regulations provided for a 60-day public comment period which was subsequently extended by a notice published in the **Federal Register** on March 8, 1984 (49 FR 8600), to May 4, 1984.

Numerous comments were received in response to the interim regulations. A particularly large number of comments were received on § 10.198 of the interim regulations which concerns the documentary evidence of country of origin and requires the submission of a declaration of the manufacturer or exporter together with an endorsement thereof by the importer or consignee. In light of the comments received and the changes Customs deemed necessary, it was decided to modify the provisions of § 10.198 and republish them as an interim regulation for further public comment. The document containing the modified § 10.198 is set forth elsewhere in this issue of the **Federal Register**. A complete discussion of the comments received and the analysis of those comments is contained in that document. The discussion of comments received on all other aspects of the interim regulations is set forth below:

Discussion of Comments

A. Foreign Trade Zones

Four comments were received concerning the manner in which foreign trade zones (FTZs) can be used for the purpose of adding value in the U.S. or Puerto Rico. These commenters were of the opinion that the interim regulations prevent or discourage the use of FTZs as production locations in contravention of the aim of the CBI which was both to create jobs in the U.S. and in the Caribbean Basin and to integrate the Caribbean Basin into the U.S. economic framework. One commenter suggested that, in order to embody the basic understanding and intent behind the CBI legislation, the following principles should be accepted by Customs in interpreting the statute: (1) Products which are considered to have originated in a beneficiary country and which meet the value-content requirement at the time of entry will not be disqualified from duty-free treatment under the direct importation rule merely because they pass through an FTZ prior to entry, and (2) subject to the 15 percent maximum limitation, the cost or value of any materials produced in a U.S. FTZ and included in an article may be counted toward the value-added requirement. Two commenters specifically recommended that § 10.195 be amended to provide (1) that U.S. FTZs be considered U.S. customs territory, (2) that temporary residency, handling, or processing of otherwise qualified merchandise in an FTZ not disqualify previously added value or origin attributed to a beneficiary country, and (3) that value added in an FTZ may, to the allowable limit, be included for purposes of determining the total value added in beneficiary countries. One of these commenters further suggested that these stipulations should be subject to appropriate documentary and procedural controls to be established by Customs.

As concerns the direct importation issue, a review has been made of prior rulings issued both under the GSP and in other contexts. The GSP rulings have concluded that merchandise which passes through an FTZ after exportation from a beneficiary developing country, but prior to entry, is considered to have been imported directly for purposes of the GSP. In addition, in another ruling it was held that the 5-year limitation for merchandise to remain in a Customs bonded warehouse commenced not on the date when the merchandise was transferred from an FTZ to the warehouse, but rather on the date when the merchandise originally entered the FTZ, which was the date of importation for Customs purposes. This latter ruling specifically revoked that portion of an earlier ruling which stated that "merchandise is deemed to have been imported into the Customs territory at the time of its constructive transfer from the zone" to the bonded warehouse. Since the clear implication arising from these rulings is that merchandise does not lose its status of having been imported into the customs territory merely from the fact that it subsequently passed through an FTZ prior to entry, Customs agrees that such merchandise would not be disqualified from CBI duty-free treatment by application of the direct importation requirement so long as the merchandise had been imported directly from a beneficiary country prior to its entry into the FTZ. Customs believes that it is not necessary or appropriate to amend § 10.193 of the interim regulations to clarify this point because it was never considered necessary to amend the corresponding GSP regulation in this respect, and an otherwise direct importation involving subsequent use of an FTZ prior to entry is covered by § 10.193(a) of the CBI regulations.

With regard to the other comments and proposals made on the FTZ issue, Customs notes the following:

Section 213(a)(1) of the CBI statute refers to the cost or value of materials "produced in the customs territory of the United States" as being includable in an article (up to 15 percent of the appraised value) for purposes of the value-added requirement. In light of this statutory language, and in consideration of the fact that under the Foreign-Trade Zones Act (19 U.S.C. 81a-81u), and the regulations issued thereunder (19 CFR Part 146), FTZs are treated as being outside the customs territory, Customs is of the opinion that there is no latitude to provide that the cost or value of materials produced in a U.S. FTZ may be counted toward the value-added requirement.

As to FTZs located in Puerto Rico, § 213(a)(1) of the CBI statute defines "beneficiary country" as including "the Commonwealth of Puerto Rico" for purposes of the value-content requirement but without any reference to the customs territory. Thus, the cost or value of a material produced in (and the direct costs of processing operations incurred in) an FTZ located in Puerto Rico may be counted toward that requirement. While this could result in unequal treatment as between U.S. and Puerto Rican FTZs, this appears to be unavoidable based on the special status of Puerto Rico under the statute.

Finally, it would be inappropriate to provide in these regulations that FTZs are to be considered as part of the customs territory since this would create a direct conflict with the FTZ Act and the regulations issued thereunder. Nor can these regulations permit unrestricted processing in an FTZ since a substantial transformation of an article in an FTZ located in the U.S. or Puerto Rico immediately prior to entry would cause the article to lose its status as a product of a beneficiary country.

Therefore, in addition to allowing merchandise entered into an FTZ to be considered directly imported, the only points set forth in the comments to which Customs agrees are (1) that temporary residency, handling, or processing (short of a substantial transformation) of an article would be permissible and would not disqualify previously added value, and (2) that value added to an article in an FTZ, subject to the statutory limitation as concerns U.S materials, may be counted toward the value-added requirement. Because the CBI regulations do not mention FTZs and thus do not on their face preclude these conclusions, there does not appear to be any necessity to amend those regulations to further clarify these points. Finally, it should be noted that the movement of merchandise into and out of FTZs under these circumstances would be subject to the documentary and procedural controls established under the FTZ Act and under § 10.198(c)(3) of the CBI interim regulations. (As discussed earlier, the document containing the modified § 10.198(c)(3) is set forth elsewhere in this issue of the **Federal Register**).

B. Addition of Value in Puerto Rico

Four comments were received concerning the role of Puerto Rico under the CBI, specifically as regards the addition of value to a partially manufactured article in Puerto Rico at the end of the manufacturing process (the "twin-plant" concept). These commenters stated either that the regulations do not address the question of the circumstances under which goods may enter Puerto Rico for the purpose of adding value, or that the regulations do not provide any guidelines concerning what types of controls will be exercised over the goods once they have entered Puerto Rico. The following specific proposals were made:

1. The scope of activities in Puerto Rico should not be limited to the use of foreign trade zones or Customs bonded warehouse facilities. The regulations should provide for the provisional duty-free entry of merchandise for the purpose of adding value anywhere in Puerto Rico either under a bonding procedure (whereby a bond would be taken in an amount to cover the potential duty, with cancellation of the bond upon presentation of documentary evidence to show that the merchandise after processing qualifies for CBI duty-free treatment) or for a period of up to 120 days pending the filing of a CBI entry for the finished goods.

2. Customs should develop guidelines concerning (a) the type of supervision to be exercised over the Puerto Rican operations, (b) whether the article must remain in Customs custody, (c) how long the article may remain in Puerto Rico prior to formal entry, and (d) how Customs will verify that the processing in Puerto Rico has been accomplished as claimed.

3. The regulations should clarify the following points: (a) That the entire 35 percent value requirement need not be satisfied when the article enters Puerto Rico from a beneficiary country in order to meet the imported directly requirement; (b) that value added in Puerto Rico and value added subsequently in a beneficiary country may both be taken into account when the article reenters Puerto Rico for further processing in order to meet the value-content requirement (this commenter also wants Puerto Rico to be specifically mentioned in one of the examples in § 10.196(a) and on the declaration of the manufacturer or exporter); and, (c) that the portion of a process started in Puerto Rico and the portion executed in a beneficiary country may be taken into account together to meet the substantial transformation test.

Under General Headnote 2, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), the customs territory includes the Commonwealth of Puerto Rico. Therefore, the procedures governing the importation and entry of merchandise into the U.S. are also applicable to Puerto Rico. Under present law, merchandise may be imported into the customs territory and may remain there without the filing of a consumption entry (at which time the dutiable status of the merchandise is normally determined) only under the following circumstances:

1. Under 19 U.S.C. 1557 and 1562 and Part 144, Customs Regulations (19 CFR Part 144), merchandise may be sent to a Customs bonded warehouse for storage, cleaning, sorting, or repacking (*i.e.*, for manipulation but not for manufacture). Such merchandise may be subsequently withdrawn from warehouse for consumption and, under 19 U.S.C. 1315, the dutiable status of the merchandise is determined at the time of withdrawal. Inasmuch as no manufacturing operation may be performed in these warehouses, there is a practical limit as to the amount of Puerto Rican value which may be added to the merchandise while in the warehouse.

2. Under 19 U.S.C. 1311 and Part 19, Customs Regulations (19 CFR Part 19), merchandise may be sent to a Customs bonded manufacturing warehouse. Under the statute and § 19.15, Customs Regulations (19 CFR 19.15), imported merchandise subjected to a manufacturing process in such a warehouse may not be withdrawn for consumption but rather must be exported.

3. Under item 864.05, TSUS, and § 10.31, Customs Regulations (19 CFR 10.31), merchandise may be imported under a temporary importation bond (TIB) for repair, alteration, or processing (including manufacture). Although merchandise imported under a TIB does not remain in Customs custody (*e.g.* in a Customs bonded warehouse), the statute and regulations require that the imported merchandise be exported or destroyed under Customs supervision within 1 year (or within up to 3 years if extensions are granted) from the date of importation. Failure to export or destroy the merchandise within the required time period will subject the importer to the payment of liquidated damages. This provision effectively bars the addition of value in Puerto Rico at the tail end of the manufacturing process.

Following passage of the CBI statute, section 213(a) thereof was amended by Pub. L. 98–573 which was signed by the President on October 30, 1984, to provide that, notwithstanding 19 U.S.C. 1311, the products of a beneficiary country which are imported directly from such country into Puerto Rico may be entered into a bonded manufacturing warehouse in Puerto Rico. The Public Law also provides that the finished product may be withdrawn from warehouse for consumption and no duty will be imposed on the withdrawal of the product of such processing or manufacturing so long as the product meets the 35 percent value-content requirement at the time of withdrawal. Customs believes that this amendment was specifically intended to allow processing or manufacturing in Puerto Rico at the tail end of the manufacturing process so as to enable a product to meet the 35 percent value-content requirement. Moreover, since the amending language refers specifically to 19 U.S.C. 1311, it appears that the intent was to allow the addition of such value in a Customs bonded manufacturing warehouse without the requirement for exportation; Customs does not believe that this amendment constitutes authority to establish new bonding procedures in addition to those established under 19 U.S.C. 1311. However, this amendment results in a significant change in the CBI rules of origin since a product could be substantially transformed in the warehouse so as to lose its status as a product of a beneficiary country but would still be entitled to duty-free treatment upon withdrawal provided that (1) the article entered in the warehouse was a product of, and was imported directly from, a beneficiary country, and (2) the article withdrawn from the warehouse meets the 35 percent value-content requirement.

As concerns the proposal to amend the CBI regulations to provide for the provisional duty-free entry of merchandise for the purpose of adding value in Puerto Rico, Customs is of the opinion that there is no statutory authority which would permit such an amendment. Moreover, the need for such provisional duty-free entry would appear to be obviated by the CBI statutory amendment discussed above which was passed after receipt of the comments. Nor does Customs believe that it is necessary to develop new guidelines, in these regulations or otherwise, concerning procedural controls to cover the addition of value in Puerto Rico; the existing statutory and regulatory procedures, *e.g.*, as concerns the entry of merchandise in a Customs bonded warehouse and the withdrawal of merchandise therefrom, will control in these cases. The requirements concerning the documentary evidence of country of origin under the CBI, as set forth elsewhere in this issue of the **Federal Register**, specifically cover a case involving the addition of value in Puerto Rico after final exportation from a beneficiary country.

As concerns the suggestion that the regulations should clarify three specific points, Customs is of the opinion that those points are covered by the basic CBI statutory and regulatory provisions and need not be further addressed. However, the following should serve to clarify those points:

1. The entire 35 percent value requirement does not have to be satisfied when the article enters Puerto Rico from a beneficiary country in order to meet the direct importation requirement. The value requirement and the direct importation requirement are separate, and each must be satisfied for the imported article to receive CBI duty-free treatment. Therefore, netiher requirement directly affects the other even though both requirements affect duty-free eligibility.

2. Value added in Puerto Rico and value added subsequently in a beneficiary country may both be taken into account when the article reenters Puerto Rico for further processing in order to meet the value-content requirement. Neither the CBI statute nor the CBI regulations place any limitations on the extent to which, or the sequence in which, value may be added in different beneficiary countries (including Puerto Rico and the U.S. Virgin Islands). Customs does not agree with the suggestion to amend the regulations by mentioning Puerto Rico in one of the examples under § 10.196(a) and on the declaration. The mention of the Virgin Islands in the fourth example should be sufficient to cover Puerto Rico since both are mentioned together in the statute and regulations in the context of the value-content requirement, and Puerto Rico is clearly covered by the reference to "beneficiary country" on the declaration.

3. As concerns the third contention, *i.e.*, that the portion of a process started in Puerto Rico and the portion executed in a beneficiary country may be taken into account together to meet the substantial transformation test, this is clearly incorrect as concerns the origin of an imported article. Whereas the value of materials which are the product of beneficiary countries may be cumulated between two or more beneficiary countries (for purposes of the value-content requirement), the origin of an imported article can only be attributed to one country. Therefore, an article which originates in Puerto Rico and is subsequently processed in a beneficiary country will be entitled to CBI duty-free treatment only if it is substantially transformed by the processing in the latter country so as to become a product thereof.

C. Direct Importation from the U.S. Virgin Islands

Four comments were received on the question of direct importation from the Virgin Islands which concerns the statement at the end of § 10.195(b) that any value added in the Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the U.S. Each commenter opposed this limitation and made the following specific points:

—The Virgin Islands will be prevented from engaging in tail-end processing operations, and this is contrary to the intent behind the inclusion of Virgin Islands value which was to allow the Virgin Islands to participate fully in the CBI;
—Additional time and expense will be involved if an article must be returned to a beneficiary country from the Virgin Islands for exportation to the U.S.;

—The Virgin Islands will be prevented from establishing a transshipment industry;
—The treatment of the Virgin Islands and Puerto Rico (the latter not being subject to this limitation) should be the same in the regulations since they are treated the same in the statute;
—Section 212(d) of the CBI statute was intended to allow insular possessions of the U.S. to obtain full benefits of the CBI, and this limitation nullifies that effect;
—The Caribbean neighbors of the Virgin Islands have trade advantages under non-U.S. programs which are not available to the Virgin Islands; and
—No witness testifying in respect of the proposed CBI legislation indicated that such a limitation would apply to the Virgin Islands.

One commenter proposed that § 10.195 be amended to state that for purposes of CBI duty-free treatment the Virgin Islands shall be considered to be "U.S. Customs Territory", that temporary residency, handling, or processing of an article shall not disqualify previously added values or origin attributed to a beneficiary country, and that value added in the Virgin Islands may be included for purposes of determining the total value added in beneficiary countries.

This issue arises because section 213(a)(1) of the CBI statute defines the term "beneficiary country" as including the Virgin Islands for purposes of the value-content requirement, and section 213(a)(1)(A) requires that the article be "imported directly from a beneficiary country" but does not make any reference to the Virgin Islands in this context. The statement at the end of § 10.195(b) of the interim regulation was inserted specifically to clarify the legal effect of these provisions as they apply to the Virgin Islands. As concerns the specific points made by the commenters, Customs notes the following:

1. Under the CBI statute the Virgin Islands is not treated as a beneficiary country for the purpose of the direct importation requirement. Consequently, the Virgin Islands will be prevented from engaging in tail-end processing operations unless the article is returned to a beneficiary country prior to final exportation to the U.S. The clear statufory language is the best proof of legislative intent and militates against the argument that the intent was otherwise in this context.

2. The Virgin Islands will not be prevented from establishing a transshipment industry, provided that it is a mere transshipment situation within the meaning of § 10.193 which concerns the direct importation requirement.

3. Customs does not agree that the treatment of the Virgin Islands and Puerto Rico can be the same in all aspects of the regulations because they are treated the same for a particular purpose, that of the value-content requirement. Because Puerto Rico is part of the customs territory and the Virgin Islands are not, each has a different status under the customs laws.

4. Customs is of the opinion that section 212(d) of the CBI statute (which amended General Headnote 3(a), TSUS, to provide that importations from insular possessions under that headnote will not receive duty treatment less favorable than that accorded to CBI importations) is not inconsistent with the treatment of the insular possessions in the interim regulations. Application of the more liberal value requirement under General Headnote 3(a) (whereby items such as profit and indirect processing costs may be counted and which requires only 30 present of the eligible value content to be of insular possessions origins) have been provided by Congress to ensure that this is the case.

The argument that section 212(d) makes all insular possessions of the U.S., in effect, full CBI beneficiary countries does not appear to be correct. If this were true, (a) it would not have been necessary to refer separately to the Virgin Islands as being a beneficiary country in the specific and limited context of the value-content requirement, and (b) this would mean that materials or direct processing costs attributable to Guam, American Samoa, and other entities entitled to General Headnote 3(a) benefits could be counted toward the CBI 35 percent value-content requirement. There is nothing in the CBI legislative history which indicates that Congress intended such a result.

5. The fact that some Caribbean neighbors of the Virgin Islands have trade advantages under non-U.S. programs (*e.g.*, under the ACP–EEC Lomé Convention) is not relevant to the question of the proper interpretation of the CBI statutory provisions. This argument ignores the separate duty-free benefits accorded to the Virgin Islands under General Headnote 3(a), TSUS, which are not available to other Caribbean entities.

6. Customs does not agree with the assertion that no witness testifying on the CBI legislation indicated that the limitation in question would apply to the Virgin Islands. To the contrary, the printed record of the hearings before the Subcommittee on Trade of the House Committee on Ways and Means, Serial 97–52, p. 69, reflects that there was specific testimony on this point on March 23, 1982. Although it was requested at that time that the bill be amended to avoid the limitation, the provisions of the CBI statute reflect that this proposal was not adopted.

For the above reasons, Customs is of the opinion that the limitation at the end of § 10.195(b) is entirely consistent with the CBI statute and therefore must be retained. As concerns the specific proposals to amend § 10.195, Customs believes for the following reasons that such amendments are inappropriate or unnecessary: (a) The regulation cannot be amended to provide that the Virgin Islands shall be considered to be "U.S. Customs Territory" because this could be inconsistent with the terms of the CBI statute and General Headnote 2, TSUS, (b) the regulation cannot authorize unlimited processing in the Virgin Islands because a substantial transformation of the article in the Virgin Islands would cause the article to lose its status as a product of a beneficiary country, and (c) although it is correct that temporary residency, handling, or processing (short of a substantial transformation) of an article in the Virgin Islands will not disqualify value previously added in a beneficiary country and that value added in the Virgin Islands may be included for purposes of determining the total value added in beneficiary countries, it is believed that the regulations are sufficiently clear on these points.

Customs recognizes that § 10.193(a) of the interim regulations could be misinterpreted to appear to allow a direct importation from the Virgin Islands, since this provision refers to direct shipment from any beneficiary country to the U.S. without passing through the "territory of any other country. The word "other" could be taken to refer to the U.S., and because the Virgin Islands are territory of the U.S., a direct importation from the Virgin Islands could be taken to fall within this language. As such an interpretation would conflict with the CBI statutory provisions as discussed above, § 10.193(a) has been amended to refer to the "territory of any non-beneficiary country." Thus, the words "non-beneficiary country" in the amended text would cover the Virgin Islands because, as already pointed out, the Virgin Islands are not a beneficiary country in the context of the imported directly requirement.

D. Assembly Operations

Six comments were received on the issue of assembly operations which concerns both the scope of the term "simple combining" operations and the

However, this amendment results in a

into account when the article reenters

U.S.;

the direct importation requirement.

specific testimony on this point on

"simple combining" operations and the

fact that, although § 10.195(a) of the interim regulations refers to an article which is wholly the growth, product, or manufacture of a beneficiary country or which has been grown, produced, or manufactured in a beneficiary country, there is no reference to goods "assembled" in a beneficiary country. The specific comments were as follows:

1. Several commenters were under the impression that the interim regulations excluded all assembly operations as permissible activities resulting in a product of a beneficiary country. Two commenters alleged that this result was contrary to the CBI statute because (a) the legislative history clearly showed that meaningful assembly operations were to be permitted, (b) the CBI statute and regulations indicated that assembly costs may be counted as direct costs of processing operations, thus showing that assembly operations were allowed, and (c) assembly operations are permitted under the GSP, and as the CBI was modeled on the GSP, it should be administered in the same way. These commenters took the position that "meaningful" or "substantial" assembly operations or assembly operations "using substantial labor and skills" should be allowed.

2. One commenter stated that the language in the interim regulations was confusing, particularly as concerns the meaning of "simple combining" operations.

The following specific proposals to amend the regulations were made:

1. Insert the word "assembly" in § 10.195(a) (presumably after the words "wholly the growth, product, or manufacture" in the first part of the first sentence) so that not all assembly operations would preclude duty-free treatment.

2. Insert the word "assembled" after the words "grown, produced, or manufactured" in the second part of the first sentence of § 10.195(a) so that all doubt is removed concerning permissible assembly operations.

3. Provide a technical yardstick setting forth the departure point from which a processing (*e.g.*, assembly) operation is no longer considered to be a simple combining operation.

4. Clarify whether a product resulting from a simple combining operation would be excluded from duty-free treatment even if it meets the 35 percent value requirement.

It was never assumed in drafting the interim regulations that no assembly operations could result in an article which is a product of a beneficiary country. Because the statute referred to "simple" (rather than "mere") combining operations, anything that was beyond a simple assembly operation would qualify (this interpretation is clearly supported by the legislative history). However, as sections 213(a)(1) and (2) of the CBI statute do not contain the word "assembly" or "assembled" (presumably for the reason that the Congress decided not to use the language found in the GSP regulations so as to avoid a conflict between a positive mention of "assembly" and a negative mention of "simple combining"), it was deemed preferable to use the precise statutory language in the regulation and to merely interpret "product or manufacture" and "produced or manufactured" to include assembly operations which are more than "simple."

Based on the comments received, it appears that there is a considerable amount of confusion of this matter. Therefore, Customs agrees that changes must be made to clarify the points raised. However, before discussing the specific changes which have been made, Customs has the following comments concerning certain specific proposals made by the commenters for regulatory amendments:

1. Insertion of the word "assembly", as proposed, would be inappropriate because the word "wholly" modifies the words which follow. A product created merely by an assembly operation could not be considered to be "wholly" of a beneficiary country as that term is defined in § 10.191(b)(3).

2. Insertion of the word "assembled", as proposed, would be inappropriate because this would make this term coequal with "grown," "produced," and "manufactured," in clear contravention of the statutory limitation concerning simple combining operations. The fact that assembly costs may be counted toward the 35 percent value requirement is irrelevant. The statutory and regulatory provisions in question are entirely separate and thus involve different contexts.

3. It is not beneficial to provide a technical yardstick setting forth a specific departure point from which a processing operation is no longer considered to be a simple combining operation because of the numerous processing and combining possibilities which do not lend themselves to a regulatory yardstick. Such an approach would have a very limited application, would provide minimal guidance, and could be misleading as to certain operations.

Customs is of the opinion that the best approach would be to amend § 10.195(a) in the following manner: (a) By modifying the words "simple combining or packaging operations" in the second sentence to read "simple (as opposed to complex or meaningful) combining or packaging operations" and (b) by adding at the end thereof a new subsection setting forth specific examples of operations which fall both within and outside the limiting statutory language.

As concerns the first amendment, the following points should be noted: (a) Use of the word "assembly" or "assembled" in this context would not be appropriate because "combining" covers other processes such as mixing, (b) consistent with the statutory language and legislative intent, the parenthetical expression would apply equally to packaging operations, (c) the word "complex" is useful because it is the opposite of "simple", and (d) the word "meaningful" was used at page 13 of House Report 98–266 to clarify the intended scope of the statutory language.

With regard to the second amendment, the following should be noted: (a) The first sentence has been inserted in response to one of the comments to clarify that, consistent with the statutory language, an article resulting from a simple combining or packaging operation or from mere dilution would not be entitled to duty-free treatment even though the 35 percent value-content requirement is met, (b) the examples of operations covered by the statutory language are taken from House Report 98–266, (c) the examples of operations which fall outside the statutory language are based on individual cases which have come to the attention of Customs, and (d) the last sentence has been included to clarify that the negative simple combining, etc. language does not necessarily establish the limits concerning application of the substantial transformation rule for purposes of the CBI.

E. Sections 10.193 and 10.194

One commenter stated that the Customs officer is not the appropriate person to determine either compliance with the direct importation requirement or the sufficiency of the documentary evidence to demonstrate compliance because his subjective decision and incomplete knowledge could lead to delays. It was therefore recommended that responsibility for certifying the evidence of direct shipment be delegated to a competent authority in a beneficiary country. This commenter also requested confirmation that only retail sales are excluded as a permissible activity by § 10.193(c)(3) and that a sale by a middleman from a beneficiary country other than the beneficiary country of manufacture would be permissible. Further, the commenter was of the opinion that § 10.194 should clearly state what is implicit therein, *i.e.*, that the district director has the discretion to renounce his right to ask for the documentation immediately upon receipt of the shipment.

Customs does not agree that these amendments are necessary. As concerns the first point, only the Customs officer can make these decisions. Certification by a beneficiary country authority would not be acceptable and might even be impossible for various reasons, *e.g.*, the facts concerning the actual manner of shipment to the U.S. are not ascertainable at the time of exportation. In regard to the second point, the regulation applies only to sales "other than at retail" and thus would apply to sales by such middlemen except for the fact that subsection (c) contemplates only non-retail sales in a non-beneficiary country. As concerns the third point, what this commenter thinks is implicit in the regulation is, in fact, explicit. The regulation specifies a period of 60 days to submit the evidence if required by the district director.

One commenter stated that it is necessary to clarify whether a direct importation within the meaning of § 10.193 includes a product which enters a duty-free area of a non-beneficiary country but which is intended for export to the U.S.

Customs does not agree. It is clear that such a case would be considered to constitute a direct importation provided that the specific terms of subsection (b) or (c) are met.

F. Sections 10.195 and 10.196

One commenter was of the opinion that it is necessary to amend the second sentence of § 10.195(b), to clarify whether an article must be returned to a specific beneficiary country if value is added to the article in the Virgin Islands after exportation from the beneficiary country of production.

No amendment is necessary. It is clear that the article could be sent to any beneficiary country because § 10.193(a) refers to direct shipment from "any" beneficiary country. The significance of the use of the word "any" was fully explained in the section-by-section analysis relating to interim § 10.193(a) in the January 5, 1984, **Federal Register** document (49 FR 853).

Three commenters believe the regulations do not adequately deal with the concept of substantial transformation. One commenter suggested that an example of a substantial transformation be included in § 10.195 and that the best example would be that of integrated circuits or other semiconductor devices produced in a beneficiary country from the assembly (*i.e.*, manufacture) of imported components. Another commenter suggested that the substantial transformation rule which has been used under the GSP should be replaced, for purposes of the CBI, by the Japanese and EEC rule whereby a sufficient transformation is deemed to have taken place when a change in tariff heading results from the processing.

Customs does not agree. The concept of substantial transformation is sufficiently well known or ascertainable through the ruling process under Part 177, Customs Regulations (19 CFR Part 177), and the inclusion of a specific example of a substantial transformation would hardly be illuminating in other cases involving different facts. In addition, given the longstanding administrative and judicial precedent, it would not be possible to adopt the Japanese and EEC rule. Under those rules a change in tariff heading is only one of a number of factors to be considered in determining whether a substantial transformation has taken place.

One commenter suggested that the words "of commerce" be deleted from the double substantial transformation test discussion in §10.196(a) because the intermediate substantially transformed article need not be an article of commerce (*i.e.*, it is sufficient that it be a new or different material). Another commenter was of the opinion that the distinction between a "material" and an "article" should be eliminated and that recognition should be given to the fact that an article may be both an article and a material and vice versa.

Customs does not agree. As concerns deletion of the words "of commerce", this should not be done because the question of whether a particular process results in an ariticle or material which is commercially different is an objective, and thus useful, test, and the words "of commerce" are used in section 213(a)(2) of the CBI statute. The regulations cannot totally eliminate the distinction between an ariticle and a material because section 213(a)(2) of the CBI statute makes this distinction which is essential in order to apply the value-content requirement. While all products imported under the CBI, including raw materials, are "articles" for purposes of duty-free treatment, the value-content requirement mandates that a distinction be made between the imported article and the separately identifiable materials which are incorporated in that article.

G. Section 10.197

One commenter suggested that the word "assists" be added to the list of items includable as direct costs of processing operations.

This proposal should not be adopted because assists are not always included in the appraised value and thus are not always countable as direct costs of processing operations, and an assist would fall within § 10.197(a) only to the extent that in each individual case the assist is, in fact, incurred as a recognized direct processing cost.

Another commenter proposed that the direct costs of processing operations include marketing costs.

This proposal cannot be adopted. Whereas marketing costs are costs of doing business, such costs are incurred separately from the actual production process. Therefore, they are not costs of manufacturing the product but, rather, are in the nature of general expenses of doing business which, under section 213(a)(3) of the CBI statute, are specifically not covered by the phrase "direct costs of processing operations".

H. Other Comments

One commenter noted that, in order to take account of the import sensitivity of the U.S. citrus industry, Customs and the Department of Agriculture must collect and maintain statistics on CBI citrus imports. The commenter suggested that a section be added to the regulations to provide for an exchange of this information between those agencies.

Customs believes it would be inappropriate to include a provision directed to the interests of one segment of U.S. industry. Moreover, such a provision in the Customs Regulations could not be considered binding on the Department of Agriculture. Customs understands that the Department of Agriculture is collecting and maintaining statistics on the importation of all agricultural products in order to monitor such imports for purposes of carrying out the "fast track" procedures for import relief under section 213(f) of the CBI statute.

A commenter stated that the regulations should cite the country of origin marking statute and regulations in order to clarify that those provisions apply to products imported under the CBI.

In view of recent questions raised by segments of the importing community and some foreign manufacturers, we agree. Section 10.195(e) mentions that country of origin marking requirements apply to articles entered under the CBI regulations.

operations, anything that was beyond a

sentence to read "simple (as opposed to

would be permissible. Further, the

would be that of integrated circuits or

which are incorporated in that article.

regulations.

Finally, one commenter stated that clarification is necessary as concerns the continuing status of the GSP and of TSUS items 806.20, 806.30, and 807.00 which appear to be replaced by the CBI.

The GSP and TSUS items 806.20, 806.30, and 807.00 are entirely separate statutory provisions which are neither mentioned in, nor directly affected by, the CBI. Inasmuch as those programs will continue in operation totally independent of the CBI, there does not appear to be any reason to mention them in the CBI regulations.

I. Issues Not Raised in the Comments

In addition to the changes made in response to the comments, Customs is of the opinion that, based on further consideration of the interim text, some additional changes should be incorporated in the final text. These involve the following:

1. The standards to be applied for determining the origin of materials for purposes of the value-content requirement should be consistent under the CBI. Therefore, the following sentence has been added at the end of § 10.195(c) (dealing with the inclusion of material produced in the U.S.): "In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply." Thus, for example, the "simple combining" etc. limitation and the substantial transformation test would apply in this case. It should also be noted that it is not necessary to have a similar provision in § 10.195(b) (dealing with value added in Puerto Rico and the Virgin Islands). They are covered by the term "beneficiary country" in § 10.198.

2. Example 2 under § 10.196(a) may be misleading because the second sentence refers to the cost or value of the "tanned skin" as not being countable toward the value-added requirement. Because only one substantial transformation takes place under this example, and because the costs of the tanning operation are clearly countable, the example has been revised to more properly refer to the cost or value of the "raw skin". In addition, to aid the reader's comprehension, the following sentence has been added at the end of this example: "Thus, the tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article."

3. Paragraph (c) of § 10.193, which concerns the "imported directly" requirement, allows the shipment from any beneficiary country to the U.S. through the territory of any non-beneficiary country under certain circumstances. One circumstance is that the articles must be wholly the growth, product, or manufacture of a beneficiary country. Within the regulatory framework of the GSP, § 10.175(d) contains a similar limitation. Customs sees no justifiable basis for continuing this limitation in either the CBI or GSP context, if the article otherwise meets the country of origin criteria, and accordingly has modified §§ 10.175(d) and 10.193(c) to eliminate the limitation. This change will allow a producer to more liberally use a customs bonded warehouse in an intermediate country as a distribution center for certain sales at wholesale.

Both §§ 10.175(d) and 10.193(c) also contain a reference to the basic rules of origin. Because the origin requirements are contained elsewhere in both the CBI and GSP regulations, Customs can see no reason to restate them in the "imported directly" provisions. Accordingly, these references have also been removed from §§ 10.175(d) and 10.193(c). Further, non substantive changes have been made to the provisions of §§ 10.175(b) and 10.193(b) to remove the need for cross-references in those paragraphs.

Executive Order 12291

These amendments do not constitute a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. With respect to the CBI amendments, any economic impact flows directly from the Caribbean Basin Economic Recovery Act and not from the implementing regulations.

Accordingly, it is hereby certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)), that the regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511. Accordingly, applicable sections of the regulation have been cleared by the Office of Management and Budget and assigned control number 1515–0112.

Drafting Information

The principal author of this document was John Elkins, Esq., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices and the Office of the United States Trade Representatives participated in its development.

List of Subjects in 19 CFR Part 10

Caribbean Basin Initiative, Customs duties and inspection, Generalized System of Preferences, Imports.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

William von Raab,
Commissioner of Customs.

Approved: November 29, 1984.

John M. Walker, Jr.
Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.175(b) is amended by revising it to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(b) If the shipment is from a beneficiary developing country to the U.S. through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the U.S., and the invoice, bills of lading, and other shipping documents show the U.S. as the final destination; or

* * * * *

2. Section 10.175(d) is amended by revising it to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(d) If the shipment is from any beneficiary developing country to the U.S through the territory of any other country and the invoices and other documents do not show the U.S as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

3. Interim §§ 10.191 through 10.197 and the centerheading, as added by T.D. 84–14, are revised to read as follows:

Caribbean Basin Initiative

Sec.

10.191 General.
10.192 Claims for exemption from duty under the CBI.
10.193 Imported directly.
10.194 Evidence of direct shipment.
10.195 Country of origin criteria.
10.196 Cost or value of materials produced in a beneficiary country or countries.
10.197 Direct cost of processing operations performed in a beneficiary country or countries.

Caribbean Basin Initiative

§ 10.191 General.

(a) *Statutory authority.* Subtitle A, Title II, Pub. L. 98–67, entitled the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701–2706) and referred to as the Caribbean Basin Initiative (CBI), authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country.

(b) *Definitions.—(1) Beneficiary country.* For purposes of § 10.191 through § 10.198 and except as otherwise provided in § 10.195(b), the term "beneficiary country" means any country or territory or successor political entity with respect to which there is in effect a proclamation by the President designating such country, territory or successor political entity as a beneficiary country in accordance with section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)).

(2) *Eligible articles.* Except as provided herein, for purposes of § 10.191(a), the term "eligible articles" means any merchandise which is imported directly from a beneficiary country as provided in § 10.193 and which meets the country of origin criteria set forth in § 10.195. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the CBI.

(i) Textile and apparel articles which are subject to textile agreements.

(ii) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

(iii) Tuna, prepared or preserved in any manner, in airtight containers.

(iv) Petroleum, or any product derived from petroleum, provided for in Part 10, Schedule 4, Tariff Schedules of the United States (TSUS).

(v) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which TSUS column 2 rates of duty apply.

(vi) Sugars, sirups, and molasses, provided for in item 155.20 or item 155.30, TSUS, to the extent that importation and duty-free treatment of such articles are limited by Headnote 4, Schedule A, Part 10, Schedule 1, TSUS.

(vii) Articles subject to the provisions of Subpart A, Part 2, Appendix, TSUS, to the extent that such provisions have not been modified or terminated by the President pursuant to section 213(e)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(e)(5)).

(viii) Merchandise for which duty-free treatment under the CBI is suspended or withdrawn by the President pursuant to sections 213 (c)(2), (e)(1), or (f)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 (c)(2), (e)(1), or (f)(3)).

(3) *Wholly the growth, product, or manufacture of a beneficiary country.* For purposes of § 10.191 through § 10.198, the expression "wholly the growth, product, or manufacture of a beneficiary country" refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficary countries, as distinguished from articles or materials imported into a beneficiary country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country.

(4) *Entered.* For purposes of § 10.191 through § 10.198, the term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the U.S.

§ 10.192 Claim for exemption from duty under the CBI.

A claim for an exemption from duty on the ground that the CBI applies shall be allowed by the appropriate district director only if he is satisfied that the requirements set forth in this section and § 10.193 through § 10.198 have been met. Duty-free treatment may be claimed at the time of filing the entry summary by placing the symbol "C" as a prefix to the TSUS item number for each article for which such treatment is claimed on that document. If duty-free treatment is claimed subsequent to the time of filing the entry summary but before liquidation becomes final, the filing of the Certificate of Origin or declaration as required in § 10.198 shall constitute the written claim.

§ 10.193 Imported directly.

To qualify for treatment under the CBI, an article shall be imported directly from a beneficiary country into the customs territory of the U.S. For purposes of § 10.191 through § 10.198 the words "imported directly" mean:

(a) Direct shipment from any beneficiary country to the U.S. without passing through the territory of any non-beneficiary country; or

(b) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country, while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, and the invoices and other documents do not show the U.S. as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commericial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.194 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.193. Any evidence of direct shipment required shall be subject

to such verification as deemed necessary by the district director.

(b) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for treatment under the CBI.

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country.*— (1) *General.* Except as provided herein, any article which is either wholly the growth, product, or manufacture of a beneficiary country or a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country, may qualify for duty-free entry under the CBI. No article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the CBI may be accorded to an article only if the sum of the cost or value of the material produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary country within the meaning of paragraph (a)(1) of this section shall be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph.

(i) For purposes of this section, simple combining or packaging operations and mere dilution include, but are not limited to, the following processes:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering etc.;

(C) Blending foreign and beneficiary country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength.

(ii) For purposes of this section, simple combining or packaging operations and mere dilution shall not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (*e.g.*, a simple assembly of a small number of components, one of which was fabricated in the beneficiary country where the assembly took place). The fact that an article or material has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country or origin of the article or material.

(b) *Commonwealth of Puerto Rico and U.S. Virgin Islands.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the U.S.

(c) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the U.S. (other than the Commonwealth of Puerto Rico). In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply.

(d) *Articles wholly grown, produced, or manufactured in a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country, including articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirements set forth in paragraph (a) of this section.

(e) *Country of origin marking.* The general country of origin marking requirements that apply to all importations are also applicable to articles imported under the CBI.

§ 10.196 Cost or value of materials produced in a beneficiary country or countries.

(a) *"Materials produced in a beneficiary country or countries" defined.* For purposes of § 10.195, the words "materials produced in a beneficiary country or countries" refer to those materials incorporated in an article which are either:

(1) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(2) Subject to the limitations set forth in § 10.195(a), substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the U.S.

Example 1. A raw, perishable skin of an animal grown in one beneficiary country is sent to another beneficiary country where it is tanned to create nonperishable "crust leather". The tanned product is then imported directly into the U.S. Because the material of which the imported article is composed is wholly the growth, product, or manufacture of one of more beneficiary countries, the entire cost or value of that material may be counted toward the 35 percent value requirement set forth in § 10.195.

Example 2. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable "crust leather". The tanned skin is then imported directly into the U.S. Although the tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), the cost or value of the raw skin may not be counted toward the 35 percent value requirement because (1) the tanned material of which the imported article is composed is not wholly the growth, product, or manufacture of a beneficiary country and (2) the tanning operation creates the imported article itself rather than intermediate article which is then used in the beneficiary country in the production or manufacture of an article imported into the U.S. The tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article.

Example 3. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable "crust leather". The tanned material is then cut, sewn and assembled with a metal buckle imported from a non-beneficiary country to create a finished belt which is imported directly into the U.S. Because the operations performed in the beneficiary country involved both the substantial transformation of the raw skin into a new or different article and the use of that intermediate article in the production or manufacture of a new or different article imported into the U.S., the cost or value of the tanned material used to make the imported article may be counted toward the 35 percent value requirement. The cost or value of the metal buckle imported into the beneficiary country may not be counted toward the 35 percent value requirement because the buckle was not substantially transformed in the beneficiary country into a new or different article prior to its incorporation in the finished belt.

Example 4. A raw, perishable skin of an animal grown in U.S. Virgin Islands is sent to a beneficiary country where it is tanned to create nonperishable "crust leather", which is then imported directly into the U.S. The tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), and under § 10.195(b), the raw skin from which the tanned product was made is considered to have been grown in a beneficiary country for the purpose of applying the 35 percent value requirement. The tanned material of which the imported article is composed is considered to be wholly the growth, product, or manufacture of one or more beneficiary countries with the result that the entire cost or value of that material may be counted toward the 35 percent value requirement.

(b) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate district director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country.

(c) *Determination of cost or value of materials produced in a beneficiary country.* (1) The cost or value of materials produced in a beneficiary country or countries includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by any beneficiary country, provided they are not remitted upon exportation.

(2) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

§ 10.197 Direct costs of processing operations performed in a beneficiary country or countries.

(a) *Items included in the direct costs of processing operations.* As used in § 10.195 and § 10.196, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(1) All actual labor costs involved in the growth, production, manufacture or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise and;

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, 211 *et seq.*, Gen. Hdnt. 11, sec. 101, 76 Stat. 72 *et seq.*, sec. 503(b), 68 Stat. 2069, 97 Stat. 384 *et seq.* (19 U.S.C. 66, 1202, 1623, 1624, 2463(b), 2701 *et seq.*))

[FR Doc. 84-31889 Filed 12-6-84; 8:45 am]
BILLING CODE 4820-02-M

19 CFR Part 10

[T.D. 84-238]

Customs Regulations Amendments Relating to Caribbean Basin Initiative and Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations, solicitation of comments.

SUMMARY: The Caribbean Basin Economic Recovery Act implements an economic recovery program for nations of the Caribbean and Central America. The Act provides for the waiver of duties until September 1995 on most products imported from Caribbean and Central American countries designated as beneficiary countries.

On January 5, 1984, interim Customs Regulations were published as T.D. 84-14 in the Federal Register (49 FR 852). Based upon public comments received in response to the solicitation of comments provision of that document, it has been decided to modify the documentation requirements of the interim regulations. In addition, to ensure that the documentary requirements of the Caribbean Basin Initiative (CBI) and the Generalized System of Preferences (GSP) do not detract from one another and to avoid unnecessary confusion among parties using these programs, the GSP documentary requirements are modified by this document to conform them to the CBI documentary requirements except for the requirement of foreign government certification of the GSP Certification of Origin Form A. A notice of proposed rulemaking is published elsewhere in this issue of the Federal Register, which proposes to modify the requirement of foreign government certification.

EFFECTIVE DATE: These interim regulations are effective on January 7, 1985.

Comments: Written comments received on or before February 5, 1985 will be considered in determining whether any further changes to the interim regulations are required before a final rule is published.

components together;

beneficiary country, including articles

appraised value of the imported article.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: William L. Marchi, Duty Assessment Division (202–566–2957);

Legal Aspects: Francis W. Foote, Esq., Classification and Value Division (202–566–2938);

U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Subtitle A, Title II, Pub. L. 98–67, the Caribbean Basin Economic Recovery Act (the "Act"), commonly referred to as the Caribbean Basin Initiative (CBI), implements an economic recovery program for nations of the Caribbean and Central America announced by the President on February 24, 1982, in an address to the Organization of American States.

The Act provides for the waiver of duties until September 30, 1985, on most products imported from Caribbean and Central American countries designated as beneficiary countries. Beneficiary countries must meet several criteria before the President is authorized to designate them as eligible under the CBI. Further, certain products cannot be declared duty-free. Under other provisions of law, duty-free treatment can be withdrawn for articles imported in such quantities as to cause injury to a competing U.S. industry. A rule of origin specifies under what conditions articles will be considered products of a beneficiary country, and, therefore, entitled to duty-free entry.

Pursuant to Presidential Proclamation 5133 dated November 30, 1983 (48 FR 54453), the President designated the countries and territories or successor political entities set forth in the Annex to the Proclamation as "beneficiary countries", thus conferring duty-free treatment for all eligible articles from those beneficiary countries. This action, was effective with respect to all articles that were entered, or withdrawn from warehouse, for consumption, on or after January 1, 1984, and on or before September 30, 1995. Presidential Proclamation 5142 of December 29, 1983 (49 FR 341), amended Presidential Proclamation 5133 and the Annex to the Proclamation to extend the benefits of the Act to certain additional Caribbean and Central American nations.

To implement the duty-free aspects of the CBI, Customs published interim regulations as T.D. 84–14 in the **Federal Register** on January 5, 1984 (49 FR 852). The interim regulations provided for a 60-day public comment period which was subsequently extended by a notice published in the **Federal Register** on March 8, 1984 (49 FR 8600), to May 4, 1984.

Numerous commenters submitted observations and proposals for amendments to the interim CBI regulations. A particularly large number of comments were received on § 10.198 of the interim Customs Regulations amendments (19 CFR 10.198), which concerns the documentary evidence of country of origin and requires the submission of a declaration of the manufacturer or exporter together with an endorsement thereof by the importer or consignee. In light of the comments received, as discussed below, it is apparent that some changes should be made in this regard. However, after consideration of the comments and proposals submitted, Customs is of the opinion that none of the commenters has presented a proposal which would represent a proper solution to the documentary evidence issue. Accordingly, it has been decided to modify the interim regulations and submit the modification, which differs from both the initial interim regulatory provision and the various proposals put forth by the commenters, for further public comment. This document discusses only the comments received on the documentary aspect of the CBI interim regulation and the corresponding changes made to the GSP regulations except for changes to the requirement for foreign government certification of the GSP Certificate of Origin Form A. A notice of proposed rulemaking is published elsewhere in this issue of the **Federal Register** relating to foreign government certification. The changes to the GSP provisions were made to ensure that the documentary requirements of the CBI and the GSP do not detract from one another and to avoid unnecessary confusion among parties using these programs. All other comments received in response to the interim regulations are discussed in the CBI final rule document published elsewhere in this issue of the **Federal Register.**

Summary of Comments Received

Fifteen comments were received on the documentary evidence of country of origin requirements set forth in § 10.198. These comments were largely negative and ranged from total rejection of the declaration/endorsement approach to specific complaints concerning certain aspects of one or both of these documents.

As concerns the declaration, 11 commenters complained that the declaration requires the disclosure of confidential business information concerning costs, profit, and production processes which, if revealed to the importer, could compromise the manufacturer's bargaining position vis-a-vis the importer. Several of these commenters also argued that a manufacturer could similarly lose his competitive position vis-a-vis other competitors exporting the same product under the GSP or other manufacturers in any beneficiary country who further process the article prior to exportation to the U.S. Four commenters further argued that the declaration vests too much discretion in the Customs officer to evaluate compliance with the value-added requirement, including the power to request further documentary or other proof to show compliance. These commenters referred specifically to the Customs officer's lack of knowledge of manufacturing processes and markets, to the possibility that different criteria will be used, and to the fact that the subjective view of the Customs officer will make it impossible to determine the amount of information which must be put on the declaration. Five commenters stated that the format of the declaration is overly detailed. One commenter complained that the inclusion of costs of processing operations and materials will require the exporter or manufacturer to undertake a detailed study which is difficult because these costs either are not normally determined in detail or can vary from shipment to shipment depending on the quantity of the merchandise. Finally, one commenter observed that operational difficulties could arise where costs of processing operations are incurred in a second beneficiary country because it is not clear as to who would be responsible for computing and including those costs on the declaration.

A number of comments also were received in opposition to use of the endorsement by the importer or consignee. Two commenters argued that the endorsement violates the normal commercial relationship between the exporter and the importer. Six commenters alleged that the endorsement imposes an unnecessary and unreasonable burden on the importer because in most cases the importer will not be privy to the facts necessary to verify the information on the declaration. Three commenters were of the opinion that the endorsement is intimidating to the importer, particularly

in a case where retroactive penalties could be imposed if the claim for duty-free treatment is found to be invalid. Three commenters argued against using the procedure under item 807.00, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), for purposes of the CBI since, whereas under item 807.00 the importer has knowledge of the facts which he endorses, this would not always be the case in a CBI transaction. Finally, one commenter argued that the need for an enforcement mechanism, as provided by the endorsement, must be weighed against the foreign policy implications in the event that the CBI should fail due to reluctance on the part of an importer to vouch for the statements made on the declaration.

The following comments were made on the overall declaration/endorsement approach: (1) This approach will complicate and delay the entry process and thus will discourage use of the CBI, (2) the CBI was intended to involve minimal paperwork and the required documentation runs counter to this aim and conflicts with the Regulatory Flexibility Act and the Paperwork Reduction Act of 1980, and (3) the legislative history relating to the CBI indicates that less burdensome documentation paralleling that used for the GSP would be required.

Based on these objections, the following proposals were made by various commenters to modify the documentary requirements:

(1) The declaration/endorsement approach should be abandoned in favor of the GSP Certificate of Origin Form A approach which involves a declaration signed by the exporter (stating that the details set forth on the Form A are correct, that the goods described on the Form A were produced in the GSP country, and that the goods comply with the origin requirements under the GSP) which is then certified as being correct by the appropriate governmental certifying authority of the exporting country. Several commenters specifically endorsed the GSP use of percentages on the Form A to demonstrate compliance with the value-added requirement. One commenter further suggested that product information developed under the GSP could serve as a basis for the CBI since many products eligible for CBI duty-free treatment are also covered by the GSP. The commenter stated that, as concerns products covered by the CBI but not by the GSP, the competent authority in the beneficiary country should send a report to the competent U.S. authority setting forth the existence of producers of the new product category in question, the sources of supply of the raw material, and a statement as to why the product is considered to have been grown, produced, or manufactured in the beneficiary country. This commenter further suggested (a) that the competent beneficiary country authority should prepare an evaluation as to whether each shipment satisfies the CBI country of origin criteria, (b) that the beneficiary country authority should be capable of making the pertinent verifications either on its own initiative or as requested by U.S. authorities, and (c) that Customs should periodically review both the preparation of the proposed preliminary report and the mechanisms for certification by the beneficiary country authority. Another commenter suggested that the beneficiary country certifying authority should be allowed to make an initial certification for a given product and thereafter only periodically, unless the cost data changes either more than 5 percent or in such a way as to affect the qualifying status of the product.

(2) The documentary requirements should be relaxed to avoid the problems set forth above, and the format of the declaration should be modified to protect the manufacturer's interests and avoid discouraging use of the CBI.

(3) A blanket approval of a declaration should be allowed, *e.g.*, on a 6-month or yearly basis, rather than requiring a separate declaration for each shipment.

(4) The endorsement should be replaced by a certification of the declaration signed by a beneficiary country governmental authority.

Finally, one commenter preferring the GSP Form A approach suggested that the following points be clarified: (a) Whether indirect labor and indirect costs of fabrication may be aggregated or whether they must be listed separately for each individual processing operation performed on the article, (b) whether the inclusion of the cost or value of materials produced in the U.S. has the effect of reducing the appraised value of the article or lowering the required beneficiary country input to 20 percent, and (c) in a case where an article is processed in two beneficiary countries, the manner in which the processing costs should be computed if an unexpected failure occurs in the cost structure in the second beneficiary country. Another commenter similarly requested clarification as to the extent to which details must be included on the declaration to show compliance with the value-added requirement.

Analysis of Comments

Based on the large number of negative comments received, particularly as concerns the confidentiality issue and the negative implications believed to arise from the endorsement of the importer, Customs agrees that a solution must be found which would better ensure effective use of the CBI while still ensuring proper administration of this important program. However, before outlining the modification to the interim regulations to handle the documentary evidence of country of origin, the following is noted as concerns those comments with which Customs disagrees:

(1) Whereas Customs is in agreement that any unnecessary disclosure of confidential business information to the importer should be avoided, there does not appear to be any effective means of avoiding the disclosure of details concerning the costs of materials or processing operations as between manufacturers in different beneficiary countries. Given the fact that the CBI statute allows for unlimited cumulation of value among multiple beneficiary countries, in a case involving such cumulation the detailed cost information must be passed forward from one country to another so that the documentary evidence of country of origin may be accurately prepared prior to exportation. Moreover, it is equally clear that disclosure of such information by a manufacturer to a different party (*e.g.*, a subsequent manufacturer or the exporter) in the same beneficiary country would also be unavoidable for essentially the same reason. Furthermore, given the statutory country of origin limitations concerning simple combining or packaging operations and mere dilution with water or other substances, which apply both to the final article and the materials incorporated therein, the disclosure of confidential information concerning production processes similarly cannot be avoided in these cases.

(2) Customs does not agree with the argument against the declaration that it vests too much discretion in the Customs officer, that Customs officers lack the necessary knowledge of manufacturing processes and markets, that different criteria will be used, and that the subjective view of the Customs officer will lead to uncertainty as to the details to be inserted thereon. While the statutory function of Customs in handling import transactions, including CBI transactions, by definition requires the exercise of a certain amount of discretion, there is no basis for assuming

that this discretion will be abused. Customs officers, by virtue of their experience and based on existing administrative procedures, have sufficient means to ensure the proper, uniform application of the CBI provisions.

(3) There does not appear to be any justifiable basis for the complaints that the declaration is overly detailed and that the declaration requires the exporter or manufacturer, to undertake a detailed study which would not normally be performed. In a case involving a statutory value-added requirement it will be necessary to compile very specific information in order to ensure compliance with that requirement. This is true also in the case of the GSP since the percentage placed on the Form A can only be derived from specific, detailed information concerning the cost or value of materials and the direct costs of processing operations. Customs cannot accept the implication from these comments that such cost details or the details concerning manufacturing processes can be ignored. The fact that Congress inserted very specific requirements in the CBI statute clearly indicates that such is not the case.

(4) Customs does not agree with the suggestions that the CBI was intended to involve no more or different documentation from that required under current GSP procedures, nor does Customs agree that the documentary requirements set forth in the interim regulations conflict with the Regulatory Flexibility Act and the Paperwork Reduction Act of 1980. As concerns the first point, in testimony before the Subcommittee on Trade of the House Committee on Ways and Means on March 17, 1982, Customs stated that consideration would be given to both the GSP Form A approach and the more detailed item 807.00, TSUS, approach. No Congressional committee or subcommittee subsequently demonstrated a clear, affirmative preference for the GSP approach. As concerns the second point, the document published in the **Federal Register** setting forth the interim regulations has already addressed this issue.

(5) The proposal of one of the commenters in favor of the GSP Form A approach should not be adopted for the following reasons: (a) The proposed reports to be sent to the U.S. authority by the beneficiary country authority concerning new product categories would be complex and unworkable since there are too many possible variables (*e.g.*, changes in material sources, the possibility of using different ports of entry) which would complicate the work of Customs, (b) the proposal places an undue burden and reliance on beneficiary country authorities, and (c) although the proposed procedures meet the approval of one commenter, because of the complexity, it is doubtful that the proposal would have general acceptance.

(6) The two proposals for a periodic or blanket approval of the country of origin documentation cannot be adopted. Customs is of the opinion that the required documentation should accompany each shipment because each entry, as a legal matter, must stand on its own and because operational problems could arise in the event that the same merchandise is sent to a different port. It also should be noted in this regard that on February 15, 1984, Customs sent an instruction to all ports stating that a blanket waiver of the GSP Form A should not be granted.

Discussion of Amendments to the CBI Regulations

To ensure that confidential information will not be given to the importer and to remove the objections lodged against the endorsement, Customs has, by this document, amended § 10.198(a) of the interim regulations to provide for submission of a GSP Certificate of Origin Form A in place of the declaration and endorsement. Inasmuch as each designated CBI beneficiary country also has been designated as a beneficiary developing country for purposes of the GSP, the GSP Form A should be available for use in CBI transactions. The words "Generalized System of Preferences" appearing in two places on the front of the Form A would simply be deleted and replaced by the words "Caribbean Basin Initiative". The Form A would be completed in the same manner as in the case of the GSP, including the insertion of the letter "P", or the letter "Y, followed by a percentage, or the letter "Z" followed by a percentage, in Box 8. It should be noted that the "Z" designation would be used in all cases of cumulation of value and thus would cover both cases involving multiple beneficiary countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) and cases involving the inclusion of a material produced in the customs territory of the United States.

The new text of § 10.198(a) set forth below is based on § 10.173(a) of the GSP regulations (19 CFR 10.173(a)), subject to minor editorial amendments which were already included in the interim text of § 10.198(a) and are still appropriate under the new text. Thus, the new text involves the following principal amendments to the interim text: (1) A redraft of subsection (a)(1) to provide for submission of the Certificate of Origin Form A, (2) deletion of subsection (a)(2) which concerns the endorsement by the importer or consignee, and (3) deletion of subsection (a)(3) concerning value added to the article in Puerto Rico after final exportation from a beneficiary country. The latter amendment is deemed necessary because an article sent to Puerto Rico for the addition of value in order to meet the 35 percent value-content requirement cannot be covered by a Certificate of Origin Form A which assumes compliance with the country of origin criteria at the time of exportation from the beneficiary country. Based on these changes, subsections (a) (4) to (7) have been renumbered as (2) to (5), and these subsections, as well as subsection (b), have been amended where appropriate to refer to the Certificate of Origin. It should be noted that the Certificate of Origin may be, but need not be, certified by the designated governmental authority. To ensure that the documentary requirements of the CBI and the GSP do not detract from one another and to avoid unnecessary confusion among parties using these programs, the documentary requirements have been conformed.

Customs remains of the opinion, that under certain circumstances it will be necessary to have more specific information than that provided on the Certificate of Origin Form A in order for Customs to carry out its statutory mandate to ensure that there is compliance with the CBI requirements. The legislative history relating to the CBI clearly indicates that Congress was concerned about pass-through operations, and this concern was reflected in section 213(a)(2) of the statute (19 U.S.C. 2703(a)(2)) by the words "new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country" and by the limiting references to "simple combining or packaging operations" and "mere dilution" with water or another substance. Thus, in a case where the article is not wholly the growth, product, or manufacture of a beneficiary country, particular attention must be paid to the nature of the processing operations performed in a beneficiary country, with regard to both the imported article and the material incorporated therein, in order to verify compliance with the origin criteria.

Customs experience under the GSP has shown that the Certificate of Origin Form A is often not sufficient to demonstrate compliance with the GSP country of origin requirements because the Form A does not provide for the inclusion of details concerning the foreign manufacturing operation. Inasmuch as Customs has ultimate responsibility to determine duty-free eligibility, it has in some cases been necessary for the district director to verify the information on the Form A pursuant to § 10.173(a)(4) of the GSP regulations. Such verification has involved both requests for further documentary evidence and the performance of investigations in the GSP exporting country. These efforts at verification have met with limited success in some cases because exporters were not fully aware of the need for maintaining information to support the Form A, nor were they aware of the type of information needed.

In order to clarify and to make explicit the need for documentary evidence to support the Form A, Customs has further amended § 10.198 of the interim CBI regulations by adding a new subsection (c) to require that the exporter be prepared to submit a declaration similar to the declaration set forth in the interim CBI regulations. Under the text of new subsection (c) as set forth below, (1) this declaration would only be required to be prepared when the exported article is not wholly the growth, product, or manufacture of a beneficiary country, (2) the information necessary to complete the declaration would be retained by the exporter in his files, and (3) the declaration would be required to be prepared and submitted directly to U.S Customs within 60 days of the date of the request or such additional period as the district director may allow for good cause shown, but only if a request for the declaration is made. Failure to submit the declaration to Customs within the required time period or authorized extensions would result in a denial of CBI duty-free treatment. Furthermore, as modified, the interim regulation provides for the mandatory submission of the declaration to Customs in lieu of the Form A in a case involving the addition of necessary value in a bonded warehouse or a foreign trade zone in either Puerto Rico or the U.S. after final exportation of the article from a beneficiary country since, as pointed out above, the Form A could not be prepared in a beneficiary country in such a situation. In addition, the modified interim regulation provides both for further verification of the information set forth on the declaration and for denial of duty-free treatment in the discretion of the district director if Customs is prevented from obtaining the necessary verification.

As the declaration would be given directly to Customs rather than to the importer and would, in most cases, be exempt from disclosure to any private party under the Freedom of Information Act (5 U.S.C. 552), Customs believes that this proposal would best ensure confidentiality while at the same time ensuring the proper administration of the CBI. Finally, it should be noted that (1) only the final exporter would be in a position to complete the declaration because he signs the declaration portion of the Form A and thus must have the details required to be included on this separate declaration, (2) both Customs and the exporter will be able to associate the specific Form A with the corresponding declaration because both documents provide for inclusion of the number and date of the invoice covering the shipment, and (3) the district director's decision to request the declaration will be made on a case-by-case basis.

Finally, the following should be noted concerning those points on which various commenters requested clarification:

(1) Under the modified interim regulation set forth in this document, it will be the responsibility of the exporter to prepare both the Form A and the separate declaration when required, except in the case of value added after final exportation where the responsibility for preparing the declaration will lie with the party who carries out the addition of such value in Puerto Rico or the U.S. It will be the responsibility of the party preparing either of these documents to obtain the necessary information from antecedent processors or material suppliers in a case involving cumulation of value.

(2) Indirect labor costs and other indirect costs of fabrication may not be included in determining the value added in a beneficiary country because they are not "direct" costs. Thus they cannot be listed on the declaration. As concerns direct costs of processing operations performed on an article, which are includable, it is permissible to aggregate such costs so long as the processing operations applied to the article are also listed on the declaration. For example, it would be sufficient to include a description of processing operations such as "sawing, shaping, grooving, sanding, painting" and to include one figure covering the total cost incurred in those processing operations. It is not necessary to describe the separate elements (labor, depreciation, testing, etc.) of such processing costs on the declaration, although such details may have to be made available to Customs if further verification is deemed necessary. It also should be noted that the method of production of a constituent material also must be included on the declaration. The declaration has therefore been modified to clarify this point.

(3) The inclusion of the cost or value of materials produced in the customs territory of the United States does not reduce the appraised value of the article but rather has the effect of reducing the required amount of beneficiary country input. Thus, for example, if U.S. materials are included up to the maximum 15 percent, only 20 percent of the required 35 percent must be added in a beneficiary country.

(4) In a case where an article is processed in two beneficiary countries and an unexpected failure occur in the cost structure in the second beneficiary country, the processing costs should be computed in the same manner as in any other case. It is the responsibility of the processor in the second country to ensure that enough value has been added, and the same is true in a case where a failure occurs in the cost structure in the first country.

(5) As concerns the question of the extent to which details must be included on the declaration to show compliance with the value-added requirement, this has been answered in part under point (2). In this regard it also should be noted that although consideration was given to the possibility of providing that the cost information would be required only to the extent necessary to show minimum (*i.e.*, 35 percent) compliance, this was rejected for the reason that any failure in the submitted cost structure could result in the denial of duty-free treatment even though, had other includable costs been listed, compliance with the value requirement would have been clearly demonstrated. Thus, the total value added must be reflected on the Form A and declaration even if it greatly exceeds the 35 percent minimum.

Discussion of Amendment to the GSP Regulations

Based on Customs experience in administering the GSP, there is a need to improve the regulations to clarify the obligation of the exporter to maintain information required to support the Form A and to ensure that pass-through operations will not occur under that program. In this regard, it is noted that although the GSP statute does not contain the limitations concerning simple combining or packaging operations or mere dilution, it is still

sources, the possibility of using different

under the new text. Thus, the new text

has shown that the Certificate of Origin

the discretion of the district director if

etc.) of such processing costs on the

operations or mere dilution, it is still

necessary under the GSP to determine whether a substantial transformation of an article or material has taken place in a case where the imported article is not wholly the growth, product, or manufacture of a beneficiary developing country. Moreover, Customs believes that the documentary requirements under the CBI and the GSP should be essentially the same so that one program does not materially detract from the other except as a result of statutory differences. Accordingly, § 10.173 of the GSP regulations is amended by this document by adding a new subsection (c) to provide for a declaration to be prepared and submitted by the exporter under the same circumstances as provided in the modified CBI provisions. The text of the GSP declaration and the other portions of this new subsection (c), as set forth in this document are identical to the corresponding CBI provision except for (1) amendments to conform to a GSP context and (2) deletion of the provision concerning value added after exportation since this provision does not apply in the case of the GSP.

A separate notice of proposed rulemaking is published elsewhere in this issue of the **Federal Register** which proposes to modify the requirement of foreign government certification of the GSP Certificate of Origin Form A.

Comments

Before adopting the interim regulations as a final rule, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Inapplicability of Notice Requirement

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this regulation because it is within the foreign affairs function of the U.S. Further, because these interim regulations liberalize the declaration procedures set forth in the initial interim regulation, thus benefitting the public, it is believed good cause exists for dispensing with the normal procedures.

Executive Order 12291

This interim regulation is not a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because the regulation will not have a significant economic impact on a substantial number of small entities. Any economic impact flows directly from the Caribbean Basin Economic Recovery Act and not from the implementing regulations.

Accordingly, it is hereby certified under the provisions of § 3, Regulations Flexibility Act (5 U.S.C. 605(b)), that the interim regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The interim regulations are subject to the Paperwork Reduction Act of 1980, Pub. L. 96-511. Accordingly, applicable sections of the interim regulations have been cleared by the Office of Management and Budget and assigned control number 1515-0112.

Drafting Information

The principal author of this document was John Elkins, Esq., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices and the Office of the U.S. Trade Representatives participated in its development.

List of Subjects in 19 CFR Part 10

Caribbean Basin Initiative, Customs duties and inspection, Generalized System of Preferences, Imports.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

George C. Corcoran, Jr.,
Acting Commissioner of Customs.

Approved: November 29, 1984.

John M. Walker, Jr.;
Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.173 is amended by adding a new paragraph (c) to read as follows:

§ 10.173 Evidence of the country of origin.

* * * * *

(c) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country—(1) Declaration of the exporter.* In a case involving merchandise valued in excess of $250 which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the exporter in the country from which the merchandise is directly imported shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the merchandise, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Declaration of Exporter

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and (b) incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

Date _____
Address _____
Signature _____
Title _____

(2) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the exporter's files for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the exporter directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, he may treat the entry as dutiable.

2. Section 10.198 is amended by revising it to read as follows:

§ 10.198 Evidence of country of origin.

(a) *Shipments covered by a formal entry—(1) Certificate of Origin.* Except as provided in paragraphs (a)(4) and (c)(3) of this section, the importer or consignee of a shipment of merchandise covered by a formal entry for which treatment under the CBI is claimed, shall file with the district director with the entry summary, as evidence of the country of origin, the Certificate of Origin Form A adopted for use under the Generalized System of Preferences, as provided for in § 10.173 of this chapter. The references to "Generalized System of Preferences" appearing on the front of the Form A shall be replaced by the reference "Caribbean Basin Initiative", and the Form A shall be properly completed and signed by the exporter of the merchandise in the beneficiary country where the merchandise was produced or last processed. The Form A may be, but need not be, certified by the designated governmental authority in that country.

(2) *Release under bond.* If the required Certificate of Origin properly completed, is not filed with the entry summary, the entry summary shall be accepted, subject to compliance with the requirements set forth in §§ 10.192 through 10.197, only if the importer or consignee gives a bond in such amount as is required by the district director for the production of the Certificate of Origin. Within 60 days after filing the entry summary, or such additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to the district director the Certificate of Origin. If the Certificate of Origin is not delivered to the district director within 60 days of the date of filing the entry summary, or such additional period as the district director, for good cause, may allow, the district director shall treat the entry as dutiable and may cancel the bond or the charge against the bond, as appropriate, in accordance with § 172.22(c) of this chapter.

(3) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director shall accept a duplicate Certificate of Origin endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date.

(4) *Waiver of Certificate of Origin.* The district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the CBI.

(b) *Shipments covered by an informal entry.* Although the filing of a Certificate of Origin is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The filing of a Certificate of Origin may be required in a case involving consolidation of individual shipments under § 143.22 of this chapter.

(c) *Articles not wholly the growth, product, or manufacture of a beneficiary country—(1) Declaration of the exporter.* In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary country, the exporter in the beneficiary country where the article was produced or last processed shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the article, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

Declaration of Exporter

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the United States Virgin Islands) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Title _____

Declaration of Exporter

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the United States Virgin Islands) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of article and quantity	Processing operations performed on article		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(2) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the exporter's files for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the exporter directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Value added after final exportation.* In a case in which value is added to an article in a bonded warehouse or a foreign-trade zone in the Commonwealth of Puerto Rico or in the U.S after final exportation of the article from a beneficiary country, in order to ensure compliance with the value requirement under § 10.195(a), the declaration provided for in paragraph (c)(1) shall be filed by the importer or consignee in lieu of the Certificate of Origin, with the entry summary, as evidence of the country of origin. The declaration shall be properly completed by the party responsible for the addition of such value.

(d) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, the district director may treat the entry as dutiable.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, 211 *et seq.*, Gen. Hdnt. 11. sec. 101, 76 Stat. 72 *et seq.*, 97 Stat. 384 *et seq.* (19 U.S.C. 66, 1202, 1623, 1624, 2701 *et seq.*))

[FR Doc. 84-31884 Filed 12-6-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

Proposed Customs Regulations Amendments Relating to Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Title V of the Trade Act of 1974 authorized the President to establish a Generalized System of Preferences (GSP) which permits the duty-free entry of eligible merchandise arriving directly from designated "beneficiary developing countries".

The Caribbean Basin Economic Recovery Act implements an economic recovery program for nations of the Caribbean and Central America. The Act provides for the waiver of duties until September 1995 on most products imported from Caribbean and Central American countries designated as beneficiary countries.

To ensure that the documentary requirements of the Caribbean Basin Initiative (CBI) and the GSP do not detract from one another and to avoid unnecessary confusion among parties using these programs, the GSP documentary requirements, other than as set forth in this notice, are modified by an interim regulation published elsewhere in this issue of the Federal Register, to conform them to the CBI documentary requirements. This document proposes to modify the GSP documentary requirements to remove the requirement of foreign government certification of the GSP Certificate of Origin Form A.

DATES: Written comments must be received on or before February 5, 1985.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Wiliam L. Marchi, Duty Assessment Division (202–566–2957);

Legal Aspects: Francis W. Foote, Esq., Classification and Value Division (202–566–2938);

U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade Act of 1974 authorized the President to establish a Generalized System of Preferences (GSP) which permits the duty-free entry of eligible merchandise arriving directly from designated "beneficiary developing countries".

Subtitle A, Title II, Pub. L. 98–67, the Caribbean Basin Economic Recovery Act, commonly referred to as the Caribbean Basin Initiative (CBI), implements an economic recovery program for nations of the Caribbean and Central America. The Act provides for the waiver of duties until September 30, 1995, on most products imported from Caribbean and Central American countries designated by the President as beneficiery countries.

To implement the provisions of the GSP, on December 31, 1975, Customs published regulations in the Federal Register (40 FR 60047) as T.D. 76–2.

To implement the duty-free aspects of the CBI, Customs published interim regulations as T.D. 84–14 in the Federal Register on January 5, 1984 (49 FR 852). The interim CBI regulations provided for a 60-day public comment period which was subsequently extended by a notice published in the Federal Register on March 8, 1984 (49 FR 8600), to May 4, 1984.

Numerous commenters submitted observations and proposals for amendments to the interim CBI regulations. A particularly large number of comments were received on § 10.198 of the interim CBI Customs Regulations amendments (19 CFR 10.198), which concerns the documentary evidence of country of origin and requires the submission of a declaration of the manufacturer or exporter together with an endorsement thereof by the importer or consignee. Both the GSP regulations and the CBI interim regulations contain documentary requirements which assist in the determination of eligibility of merchandise for the two programs. In light of the comments received, it was decided to modify the documentary requirements of the interim CBI regulations and submit the modification, which differs from both the initial interim CBI regulatory provision and the various proposals put forth by the commenters, for further public comment. That document, which is published elsewhere in this issue of the Federal Register also contains modifications to the GSP documentary provisions to require, upon request by the district director, the submission of a declaration setting forth pertinent information concerning production or manufacture of the merchandise. This document contains only a proposal to eliminate the requirement of foreign government certification of the GSP Certificate of Origin Form A. The changes to the GSP provisions are proposed to ensure that the documentary requirements of the CBI and the GSP do not detract from one another and to avoid unneccessary confusion among parties using these programs.

Discussion of Proposed Amendments to the GSP Regulations

Customs believes that the documentary requirements under the CBI and the GSP should be essentially the same so that one program does not materially detract from the other except as a result of statutory differences. Accordingly, it is proposed to amend § 10.173 of the GSP Customs Regulations (19 CFR 10.173), to eliminate the requirement for certification of the Form A by the designated governmental authority.

In addition to the documentary and certification requirements contained in § 10.173, there are documentary and certification requirements found in § 10.175, Customs Regulations (19 CFR 10.175), relating to articles shipped from a beneficiary developing country to the U.S. through a free trade zone in a beneficiary developing country. To conform them it is proposed to revise paragraphs (c)(3) and (c)(4) of § 10.175. Paragraph (c)(3) refers to the Certificate of Origin issued by the designated beneficiary developing country and certain information which must be entered on the form. In light of the proposed amendments to § 10.173, it is proposed to remove the words "issued by" from paragraph (c)(3) and substitute appropriate language indicating that the Certificate of Origin must be prepared and signed by the exporter of the merchandise. Further, it is proposed to modify paragraph (c)(4) by removing the reference to a certifying authority and deleting the requirement that the original Certificate of Origin be retained by the designated authority in the country maintaining the free trade zone. As proposed by this document, paragraph (c)(4) will require the person responsible for the articles in the free trade zone, or any other person having knowledge of the facts, to prepare and sign an additional Certificate of Origin which declares what operations, if any, were performed on the articles in the free trade zone. The modified paragraph would further require that this additional Certificate of Origin be provided to the U.S. importer or consignee who will present it to the district director along with the

Avenue, NW., Washington, D.C. 20229.

concerning production or manufacture of the merchandise. This document

consignee who will present it to the district director along with the

Certificate of Origin required by § 10.173(a)(1). Finally, the modified paragraph indicates that the provisions of § 10.173 relating to a duplicate Certificate of Origin, release of merchandise under bond when the Certificate is missing, verification of evidence and waiver of the Certificate of Origin, are applicable to this paragraph.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

This document is issued under the authority of R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, 211 *et seq.*, Gen. Hdnt. 11, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1202, 1623, 1624, 2461 *et seq.*).

Executive Order 12291

This proposed regulation will not result in a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because the regulation will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provision of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed regulations is subject to the Paperwork Reduction Act. Accordingly, the document has been submitted to the Office of Management and Budget for review and comment pursuant to 44 U.S. 3504(h). Public comments relating to the information collection aspects of the proposal should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk officer for U.S. Customs Service, Office of Management and Budget, Washington, D.C. 20503. A copy of the comments to the Office of Management and Budget should also be sent to the Customs Service at the address set forth in the **ADDRESS** portion of this document.

Drafting Information

The principal author of this document was John Elkins, Esq., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices and the Office of the U.S. Trade Representative participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Generalized System of Preferences, Imports.

Proposed Amendments to the Regulations

It is proposed to amend Part 10, Customs Regulations (19 CFR Part 10), as set forth below.

George C. Corcoran, Jr.,
Acting Commissioner of Customs.

Approved: November 29, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. It is proposed to amend § 10.173(a)(1) by revising the last sentence to read as follows:

§ 10.173 Evidence of the country of origin.

(a) *Shipments valued in excess of $250*—(1) *Certificate of Origin.*

* * * The Form A shall be properly completed and signed by the exporter of the merchandise in the country from which it is directly imported. The Form A may be, but need not be, certified by the designated governmental authority in that country.

* * * * *

2. It is proposed to amend § 10.175(c)(3) by removing the words "issued by" in the first sentence and inserting, in their place, the words "prepared and signed by the exporter of the merchandise in".

3. It is proposed to amend § 10.175(c)(4) by revising it to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(c) * * *

(4) The person responsible for the articles in the free trade zone, or any other person having knowledge of the facts, shall prepare and sign an additional Certificate of Origin, Form A, declaring what operations, if any, were performed on the articles within the free trade zone. The additional Certificate of Origin shall be provided to the U.S. importer or consignee who shall present it to the district director along with the Certificate of Origin required by § 10.173(a)(1). The provisions of §10.173 (a)(2), (a)(3), (a)(4) and (a)(5) are applicable to this paragraph.

[FR Doc. 84-31885 Filed 12-6-84; 8:45 am]
BILLING CODE 4820-02-M

federal register

Friday
December 7, 1984

Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 813, 880, 881, 882, 913, and 960

Shared Housing and Revised Occupancy Policies in the Section 8 and Public Housing Programs; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 813, 880, 881, 882, 913, and 960

[Docket No. R-84-1205; FR-1829]

Shared Housing and Revised Occupancy Policies in the Section 8 and Public Housing Programs

AGENCY: Offices of the Assistant Secretary of Housing—Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would provide for full utilization of housing resources by permitting families to live in shared housing arrangements in four components of the Section 8 Housing Payments Program: Existing Housing, Moderate Rehabilitation, New Construction and Substantial Rehabilitation as well as confirming the authority of Public Housing Agencies to permit shared housing arrangements in the Public Housing Program. Standards are included in the rule to require that each family have private space as well as shared common space. The rule would permit each sharing family to have a separate lease with the owner or PHA and to have its rent based on its own income.

The rule would also encourage fuller utilization of space and attempt to remedy existing inequities in projects containing both one-bedroom units and efficiency (usually projects for the elderly) by providing a preference for two-person households over one-person families for occupancy of the one-bedroom units. In addition, this rule would clarify the Department's treatment in the Section 8 and Public Housing programs of the income of a live-in aide when that aide's presence is determined necessary to the care or well-being of an elderly, disabled or handicapped person.

DATE: Comments must be received by February 5, 1985.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For the Section 8 Existing Housing and Moderate Rehabilitation Programs—Madeline Hastings, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-6887; for the Section 8 New Construction and Substantial Rehabilitation Programs—James J. Tahash, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, (202) 426-3944; for Public Housing—Edward Whipple, Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, (202) 426-0744. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION

I. Shared Housing

The major component of this rulemaking is amendments to existing regulations to authorize separate families to combine to share a unit of appropriate size in any of several Federally assisted housing programs.

A. Background

With the growth of single-parent and non-traditional housholds and the expanding population of elderly or hanidcapped people, a corresponding growth of interest in shared housing has occurred in the private housing market. In the past two years, there have been a significant number of inquiries about the possibility of making rental assistance available for eligible families who choose to share a unit. The Department believes shared housing could provide numerous benefits to assisted tenants in the Section 8 Existing Housing Program. Shared housing could help to provide affordable housing, since the shared use of existing homes is a highly cost-effective way to use existing housing stock. It could provide a wider choice of housing types by enabling families who would otherwise be in apartments to share single family homes. By pooling resources, families may be able to upgrade both their choice of home and neighborhood.

In any program, the opportunity for security, companionship, and sharing of household tasks afforded in a shared housing arrangement also could be a significant benefit, as could the opportunity to enjoy savings in shared household expenses other than rent. In addition, for those impaired by health or mobility limitations, shared housing may be necessary in order to live outside an institution.

Section 211 of the Housing and Urban-Rural Recovery Act of 1983 (the 1983 Act), Pub. L. 98-181, approved November 30, 1983, directed HUD to permit assistance in shared housing in the Section 8 Existing and Moderate Rehabilitation Programs by adding a new subsection (p) to Section 8 of the United States Housing Act of 1937 (the 1937 Act), to provide as follows:

> (p) In order to assist elderly families (as defined in section 3(b)(3)) who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meet [sic] their housing needs and thereby reduces their cost of housing, the Secretary shall permit assistance provided under the existing housing and moderate rehabilitation programs to be used by such families in such arrangements. In carrying out this subsection, the Secretary shall issue minimum habitability standards for the purpose of assuring decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

This proposed rule not only would carry out the Congressional mandate to permit shared housing in the Section 8 Existing Housing and Moderate Rehabilitation Programs but also would expand the policy to the section 8 New Construction and Substantial Rehabilitation Programs and provide regulatory recognition of a policy permitted since 1978 in the Public Housing Program, as stated in HUD Handbook 7465.1 REV. In addition, the class of persons eligible to participate has been expanded from the elderly and handicapped, as required by the statute, to all program participants.

This decision to extend the availability of assistance for shared housing arrangements is founded on a belief that the concept is equally workable in these two additional Section 8 programs and that more HUD assisted tenants would then have the option of shared housing. The statutory authority for assisting shared housing arrangements in additional programs and for families not mentioned in section 211 of the 1983 Act lies in the absence of any restriction against shared housing in the basic statutory authority for these programs, the 1937 Act. As noted above, shared housing has been permitted in the Public Housing Program since 1978.

Since the rule would provide that shared housing is strictly a voluntary arrangement, the rule would not infringe on a tenant's rights or an owner or PHA's rights in those programs. No project owner or PHA would be forced to accept a shared housing arrangement. The broadened class of persons eligible to share housing would enable a single head of household with children, for

example, to receive assistance under the Section 8 Existing Housing Program when sharing a single family home owned and occupied by a single elderly person, provided that the family is unrelated to the homeowner. We believe the intergenerational living arrangements possible under this policy would be beneficial to all.

It is the Department's intent to provide for shared housing in the Voucher Program authorized by section 8(o) of the 1937 Act and administered under a Notice of Funding Availability published in the **Federal Register** on Thursday, July 12, 1984 (49 FR 28458). When a final rule is developed as a result of this rulemaking, a corresponding revision to that Notice will be published.

The Department may also consider the extension of the shared housing concept to the Rent Supplement, section 236 and section 221(d)(3) BMIR Programs, as well as to housing for the elderly with mortgage insurance under section 231 of the National Housing Act.

B. Major Features

The major features of this proposal to implement shared housing are as follows:

- —It is a voluntary arrangement.
- —The entire unit including the private space must meet certain standards.
- —Income, tenant payment toward rent (based on income), and the total rent (if different) are determined separately for each family sharing a unit and each family has a separate lease with the owner of PHA.
- —As in established program procedures, the Fair Market Rent and, where applicable, rent reasonableness limits set the maximum total rent that can be paid for the unit. The amount attributable to a Family cannot exceed its prorata share of the total rent or the Fair Market Rent for the size unit for which it qualifies.
- —The departure of one family affects the tenancy of the remaining family, but with some protections for all.
- —In initial occupancy of a unit, no preference may be accorded to families interested in shared housing (except with respect to certain one-bedroom units). In the assignment of large units, large families will be given preference over smaller families wishing to share.

1. Voluntary Arrangements

Shared housing is an arrangement that places the sharing families in close proximity to one another and that has the potential for affecting an owner or PHA's management practices (see section I B 5, below) as well as the tenants' home environment. Therefore, it is necessary that it be entered into on a voluntary basis by all parties.

This rule provides that families enter into a shared housing arrangement voluntarily. See §§ 882.114, 882.517(a), 880.603b(a), 881.613(a) and 960.205a(a). In the case of the Section 8 Existing Housing (Finders-Keepers) Program (hereafter Certificate Program), one or more of the sharing families may be unassisted, such as the owner of a single-family home. Under this rule, no family would be required to share a unit, and no owner or PHA would be required to permit families to share units.

The PHA or owner's role in facilitating shared housing arrangements is detailed in §§ 882.209(c)(9), 882.514(d)(3), 880.603(b)(2), 881.603(b)(2) and 960.205(a). In the Certificate Program and the Moderate Rehabilitation Program, the Public Housing Agency (PHA) that administers the program would be required to inform program participants of the policy permitting shared housing. In these programs and in Public Housing, if a family seeks assistance from the PHA in locating either an appropriate unit for shared housing or a family with whom to share a unit, the PHA may—but is not required to—furnish such assistance. Similarly, in the New Construction and Substantial Rehabilitation Programs, the owner would be permitted, but not required, to assist those who wish to share a unit to find others with whom they might share.

2. Housing Standards

As required by the 1983 Act, standards for shared housing are specified in a new § 882.109(p) for the Certificate Program, and these standards are adopted in the new § 882.517 for the Moderate Rehabilitation Program by cross-reference. Since the sharing of a unit by more than one family could lead to overcrowding or insufficient privacy for separate family units and, in the case of HUD subsidized housing, Federal money being spent for housing that is consequently less than the statutorily required "decent, safe and sanitary" housing, general occupancy standards also have been specified for the New Construction Program (§ 880.613(b)) as well as for the Substantial Rehabilitation Program (§ 881.613(b)) and the Public Housing Program (§ 960.205a(b)). Bedrooms may not be shared by members of different families, except in the case of two single-person Families sharing a one bedroom unit. In the Section 8 Programs, HUD subsidies and tenant utility allowances are based on the number of bedrooms occupied by the family, so sharing bedrooms in units larger than one-bedroom units would create technical difficulties. Another concern is that each family have sufficient privacy. In the case of owner-occupied units in the Certificate Program, there is also a desire to assure that HUD does not subsidize the owner's living space.

3. Separate Rent Determinations and Separate Leases

The sections governing determination of rental payments in the section 8 and Public Housing Programs (§§ 813.106(b) and 913.106(b)) would be revised so that the definition of "Total Tenant Payment" would state that each family sharing a unit has its payment calculated separately, based on its own income. This policy results from the statutory mandate in these programs found in Section 3(a) of the 1937 Act, to charge each "family" a specified percentage of its adjusted income for rent. HUD does not view the decision to share a unit with another family as the creation of a new and larger family. Consequently, in shared housing, each family still would be charged a rent based on its own income.

The decision to have separate leases (expressed in §§ 882.114(a), 882.517(a), 880.606(c), 881.606(c) and 960.205a(d)) derives from the same assumption as the separate rental determination, *i.e.*, that each family unit retains autonomy and should not be held accountable for the other. For example, a joint lease that would permit the rental payment of a remaining tenant family to be based on the income of a family that had vacated the unit conflicts with the statutory directive on the amount of rental payment of each "family". Despite the use of separate leases, the leases would indicate that continued occupancy by one family is dependent on the continued occupancy of the other, so that when one family sharing a unit vacates the unit, the remaining family would be entitled to remain in the unit for only 60 days. (See section I B 5, below.)

A question may arise with respect to whether a particular group of people who wish to live together constitute one family or several families sharing a unit. This question has significance since it determines the number of persons whose income is counted toward family income, which is subject to a maximum for eligibility purposes in these programs under Parts 813 and 913, and which ultimately determines the amount of rent to be paid by the "family".

The question of who constitutes a family arises particularly with respect to

disabled or handicapped persons, since the 1937 Act and Parts 812, 813, 912 and 913 provide that an elderly Family may consist of one or more unrelated elderly, disabled or handicapped persons living together. The significance of the distinction between one or more Elderly Families is that each Elderly Family is entitled, under Parts 813 and 913, to a deduction from income for being Elderly Family and a deduction for medical expenses exceeding three percent of its income. Since rent payments are based on income after deductions, two Elderly Families "sharing" a unit might make a lower rental payment than one Elderly Family with the same total income and expenses. In the Certificate Program, there is a additional difference: two Elderly Families would be entitled to two Certificates, thus committing more of a PHA's resources to that unit than would be committed if the persons were determined to be one Elderly Family.

The determination of whether any particular group of two or more persons sharing a unit constitute one or more Families in shared housing will be made by the owner of PHA, following established procedures, as are other decisions about family qualifications. This determination should be based on such factors as whether the persons involved have previously maintained a single household and whether they share income and expenses. In the case of the Certificate program, the PHA should be mindful of the need to conserve Certificates.

4. Ceiling on Permissable Rents for Section 8 Tenants

In the Certificate Progam and the Moderate Rehabilitation Program, the rent charged the assisted family and the PHA is limited to a level determined by HUD as the Fair Market Rent (FMR) for a particular size unit in a certain area (§§ 882.106 and 882.408). In the Certificate Program, the rent is also limited to a level determined to be reasonable, given the condition and location of the housing (§882.108). This provision would be modified to apply to shared housing by limiting the total rent charged for the unit to the FMR for the size of the entire unit, and by limiting the amount paid on behalf of any family to the lower of the FMR for the size unit for which the family separately qualifies or the family's pro rata share of the rent for the entire unit (a new §882.106(e)). In the Certificate Program, the total rent charged for the unit would still be subject to the rent reasonableness requirement of § 882.106(b).

In the case of an owner-occupied unit in the Certificate Program, the figure used in this calculation for the "total rent charged for the unit" would be an amount based on the total size of the unit determined by the PHA to be both within the FMR for that size unit and reasonable for the unit's size and location. Thus, the PHA would determine the rental value of the entire house, perhaps by reviewing newspaper advertisements for rentals of similar units, estimate the monthly utility cost for the house, and then (under § 882.106(e)) determine the pro rata portion attributable to the assisted family based on the number of bedrooms it occupies.

In the New Construction and Substantial Rehabilitation Programs, the definition of "contract rent" would be revised to provide that contract rent for a family in shared housing would be the pro rata amount attributable to the family, based on the number of bedrooms occupied by the Family.

5. Result of Departure of One Family

The Section 8 Programs currently provide for certain action when a famiy becomes overhoused because of a change in the family's size or composition (§§ 882.213, 882.509, 880.605 and 881.605) if the rent to the owner then exceeds the FMR for the size unit to which the family would be entitled. However, these provisions will not apply to the case when one sharing family vacates a unit, since they would require HUD to pay the full Contract Rent for the departed family, perhaps indefinitely. Instead, a provision dealing with departure of one family is added to the sections in each part dealing with Shared Housing.

In the case of the Certificate Program § 882.114(c) would provide that if one family vacated the unit, the remaining family would have 60 days to take one of the following actions: (1) Accept as a replacement for the departed family from the waiting list that had indicated a willingness to share (or if the waiting list contains no such family, any other replacement family of appropriate size acceptable to the owner); (2) move to a smaller, appropriate size unit available in projects owned by the same owner or in the PHA's public housing projects; (3) arrange with the Owner to continue in occupancy without another family, in return for total rental payments not exceeding the FMR for the size unit for which the family is eligible (but presumably higher than in the family's current Contract Rent); (4) obtain a Certificate (§§ 882.209(m)) and move to another, appropriate size unit; or (5) move to another unit without assistance. The owner would be obligated under § 882.114(b) to offer the tenant any available appropriate size unit in the owner's control. If the departing family had vacated in violation of its lease, the owner would be entitled to vacancy payments under §882.105(b) for up to 60 days in an amount of 80 percent of the contract rent for the vacating family.

In the Moderate Rehabilitation Program, § 882.517(d) would provide options for the remaining tenant family and requirements for owners to those provided in the Certificate Program, except that a Certificate might not be available from the PHA. The owner could receive vacancy payments for the vacating family under § 882.509 regardless of whether the departing family moved in violation of its lease.

In the New Construction and Substantial Rehabilitation Programs, § 880.613(d) and 881.613(d) would have similar provisions to those in the Certificate Program, except that no Certificates would be available. The owner could receive vacancy payments for up to 60 days in an amount of 80 percent of the contract rent for the vacating family § 880.611(c) and 881.611(c), regardless of whether the departing family moved in violation of its lease.

In all the Section 8 programs, the tenant would be required to notify the owner if the sharing family vacates the unit; the owner would be required to notify a tenant if the other family terminates its lease; and the tenancy of the remaining family would terminate 60 days after the unit is vacated by the first family unless a replacement family is admitted or a new lease is executed.

In Public Housing, because of the differences in the way the subsidy is structured, upon the departure of one sharing family, the remaining family would be treated the same way as an overhoused nonsharing family, under a new ¶ 960.208(c).

6. No Preference for Families Who Share a Unit in Admission or in Assignment to Large Units.

Generally, no preferences in admission or for issuance of a Certificate may be provided for families wishing to share a unit. In fact, since units with three bedrooms or more are generally at a premium in the assisted housing programs because of the large number of large, lower income families, this rule would provide that in the project-based programs (Section 8 New Construction, Substantial Rehabilitation, Moderate Rehabilitation and Public Housing) large units be used for large families rather than for small families sharing a unit.

However, to the extent that one-bedroom units in projects containing efficiency units are involved, the preference for two-person households over one-person households may work to the advantage of two one-person families who wish to share a unit. In addition, if a remaining family in Shared Housing wishes to find a family to replace a vacated family instead of moving to a smaller unit, those applicants who have indicated a willingness to share will be considered.

C. Other Related Changes to the Regulations

The definition of Contract Rent (found in §§ 882.102, 880.201, and 881.201), a term used in the provision placing a ceiling on rents charged assisted tenants (§§ 882.106 and 882.408) and in the provision permitting partial rent payments to owners for a vacant unit for the first 60 days after it has been vacated (§§ 882.105, and 882.411, 880.611 and 881.611), would be revised to reflect that the Contract Rent for families in shared housing is allocated separately to each sharing family.

A definition of Shared Housing would be added to §§ 882.102, 813.102, 880.201, 881.201 and 913.102. A definition of Private Space would also be added to §§ 882.102, 880.201 and 881.201. The definition of Unit would be revised in those sections to reflect that in shared housing the unit includes both private space and shared common space. In § 813.102, the definitions of Gross Rent and Tenant Rent (as well as of Total Tenant Payment, as described above) would be revised to reflect the treatment of families sharing a unit, reflecting that utility allowances would be allocated to sharing families based on the number of bedrooms occupied.

References to shared housing would be added to §§ 882.103(b), 882.118(a)(4), and 882.207.

The prohibition against assistance payments for owner-occupied units in §§ 882.105 and 882.401 would be modified to permit assistance on behalf of a family unrelated to the owner sharing the unit with the owner.

Section 882.106, limiting the amount of rent to be paid for an assisted unit, would be reorganized to separate the portions applicable to Independent Group Residences, Congregate Housing and Shared Housing that are different from the rule for other types of units. The material concerning Shared Housing is new.

Section 882.112, Security and utility deposits, would be revised to reflect that a deposit may be collected from each family and that reimbursement from the PHA in the event that the deposit is insufficient to reimburse the owner for an amount owed under the lease after departure of the tenant is limited to two month's Contract Rent *for the vacating family*.

Cross references are proposed to be changed in various sections to reflect other changes.

II. Clarification of Status of Live-In-Aide

Existing policy would be embodied in §§ 813.106 and 913.106, by adding a new paragraph (b) to indicate that the income of a live-in aide who is determined to be necessary to the care or well-being of a member of an Elderly Family (which includes any family with an elderly, disabled or handicapped head of household or spouse) will not be included in the Family's income so long as the aide is not related to or obligated for the support of a Family member.

The presence of a live-in aide would be considered, however, in determining the unit size to be assigned an Elderly Family, as described in new §§ 880.603a, 881.603a and 960.208.

III. Assignment of One-Bedroom Units

A new policy is stated in the proposed new §§ 880.603b, and 881.603b, that would limit the assignment of one-bedroom units in projects containing efficiency units to one-person households only when (1) all efficiencies are occupied, and (2) the waiting list contains no two-person families, and (3) there are no two one-person households anywhere on the waiting list willing to share a one-bedroom unit. Exceptions would be permitted for persons with medical justifications, and units designed for the handicapped. Similarly, in § 960.208, a preference in assignment of one-bedroom units is to be given two-person families.

A one-person family admitted initially after the effective date of a final rule concluding this rulemaking, to a one-bedroom unit because no efficiency unit was then available, shall, when an efficiency unit becomes available and there is a need for a one-bedroom unit to serve a two-person household, either agree to share the one-bedroom unit with another eligible family, or be required to move to the efficiency unit.

IV. Miscellaneous Changes

Paragraphs (b)(2) and (b)(3) of § 882.105 are revised to remove gender-specific references to owners. Paragraph (a) of § 882.105 is revised to remove discussion of the method of paying a utility reimbursement, which is then moved to § 882.116(k).

V. Findings and Certifications

Findings of No Significant Impact with respect to the environment have been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Findings of No Significant Impact are available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it gives more flexibility to living arrangements permitted in existing programs and more economic use of assisted housing units, but imposes no major requirements on tenants, housing owners or public housing agencies.

This rule was listed under the Office of Housing as item number 82 in the HUD Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684, 41708) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Domestic Assistance Number is 14.156, Lower Income Housing Assistance Program (Public Housing and Section 8).

List of Subjects

24 CFR Part 882

Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies.

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Utilities.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing, New Construction.

used in this calculation for the "total

available appropriate size unit in the

bedroom units in projects containing

an amount owed under the lease after

made in accordance with HUD

housing, New Construction.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing, Substantial Rehabilitation.

24 CFR Part 913

Public housing.

24 CFR Part 960

Public housing.

Accordingly, 24 CFR Parts 882, 813, 880, 881, 913 and 960 would be amended as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

1. Section 882.102 would be amended by revising the definitions of Contract Rent, and Unit and by adding, in alphabetical order, definitions of Private Space and Shared Housing, to read as follows:

§ 882.102 Definitions.

* * * * *

Contract Rent. The rent payable to the owner under the Contract with the PHA, including both the portion of the rent payable by the Family and the assistance payment by the PHA. In the case of a cooperative, Contract Rent means charges under the occupancy agreement between members and the cooperative. In the case of Shared Housing, Contract Rent means the amount of the total rent charged by the Owner for the unit attributable to the Family assisted under this Part (see § 882.106(e)).

* * * * *

Private Space. In the case of Shared Housing, that portion of the dwelling unit that is for the exclusive use of the assisted Family.

* * * * *

Shared Housing. Housing consisting of two or more private spaces occupied by two or more Families, and common space shared by the families (some of whom may be unassisted). Shared housing may take the form of a rental unit or an owner-occupied dwelling shared with one or more tenants unrelated to the owner.

* * * * *

Unit. For all housing except Shared Housing, the unit is the residential space available for the private use of a Family (including individuals who comprise a Family in accordance with Part 812 of this chapter), such as an apartment, house, or Independent Group Residence, which contains a living room, kitchen area, bathroom(s) and bedroom(s). However, a congregate housing unit need not contain a kitchen area since central dining facilities are available within the building or housing complex, and a 0-bedroom unit may have a combined living/bedroom area. For Shared Housing, the unit is the residential space available for the use of a Family, which includes both the Private Space and the shared common space. The size of a unit is based on the number of bedrooms contained in the unit.

2. Paragraph (b) of § 882.103 would be revised to read as follows:

§ 882.103 "Finders-Keepers" policy.

* * * * *

(b) Neither in the provision of assistance to any Family in finding a unit nor by any other action shall the PHA directly or indirectly reduce the Family's opportunity to choose among the available units in the housing market. The provisions of this section shall apply to all Certificate holders, including those who are residing in or may wish to reside in Congregate Housing, Independent Group Residences, or Shared Housing.

* * * * *

3. Section 882.105 would be amended by revising paragraph (a), and paragraphs (b) (2) and (3) to read as follows:

§ 882.105 Housing assistance payments to owners.

(a) *General.* Housing Assistance Payments shall be paid to an Owner for the unit under lease by an eligible Family, in accordance with the Contract. Where applicable, the Utility Reimbursement will be paid by the PHA to the Family as an additional Housing Assistance Payment. No Section 8 assistance may be paid for any unit occupied by an Owner, except on behalf of a Family unrelated to the Owner occupying a unit under lease in Shared Housing. Cooperatives are considered rental housing rather than Owner-occupied housing for the purpose of this limitation.

(b) * * *

(2) The Owner shall not be entitled to any payment under this paragraph (b) unless the Owner: (i) Immediately upon learning of the vacancy or prospective vacancy, has notified the PHA of it; (ii) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contacting applicants on the Owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants and advertising the availability of the unit; and (iii) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(3) The Owner shall not be entitled to Housing Assistance Payments with respect to vacant units under this paragraph (b) to the extent the Owner is entitled to payments from other sources (for example, payments or losses of rental income incurred for holding units vacant for relocatees under Title I of the HCD Act or payments under § 882.112).

4. Section 882.106 would be amended by revising and redesignating paragraph (c)(4) as paragraph (b)(4); by redesignating paragraphs (c)(2) and (c)(3) as paragraphs (d)(1) and (d)(2), respectively; by adding a paragraph heading for paragraph (d) to read "*Independent Group Residences*"; by redesignating paragraph (c)(1) as paragraph (c), and revising the heading of paragraph (c) to read "*Congregate Housing*"; and by adding a new paragraph (e), to read as follows:

§ 882.106 Contract rents.

* * * * *

(b) * * *

(4) For Congregate Housing and Independent Group Residences, in determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining and sanitary facilities and the provision of special amenities or of maintenance or management services. The Contract Rent shall not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or serving food.

* * * * *

(e) *Shared Housing.* The Gross Rent for the entire unit is subject to the limits of paragraphs (a) and (b) of this section based on the total number of bedrooms. The Gross Rent for the portion of the unit occupied by an assisted Family is limited to the lesser of (1) the FMR for the size unit for which it qualifies; or (2) its pro rata share of the Gross Rent (or, in the case of an Owner-occupied unit, the pro rata amount of the Gross Rent computed as if the entire unit were rented), based on the number of bedrooms occupied by the Family.

§§ 882.102 and 882.605 [Amended]

5. In the definition of Resident Assistant in § 882.102, the reference to "882.106(c)" would be removed and "882.106(d)" substituted in its place. In § 882.605(a) the words, "and (d)" would be added after "882.106(c)".

6. Section 882.109 would be amended by adding a new paragraph (p), to read as follows:

§ 882.109 Housing quality standards.

* * * * *

(p) *Shared Housing*—(1) *Performance Requirement.* The unit shall satisfy paragraphs (a) through (l). In addition, the private space shall also satisfy paragraph (c)(1). Determination of appropriate unit size will be in accordance with PHA standards under § 882.209(b)(2). A living room that is being shared shall not be used or counted as a sleeping room for purposes of complying with § 882.109(c)(2). Shared spaces must be appropriate for shared use. Bedrooms may not be shared by members of different families. Both the shared spaces and the private space in units accommodating physically handicapped occupants shall be accessible and useable by the occupants.

(2) *Acceptability Criteria.* Spaces that may be shared are living room, kitchen, dining area, bathroom(s), and any recreational space. The Private Space must include a sufficient number of sleeping room(s) for the Family. In units occupied by physically handicapped persons, the areas used by the handicapped occupant shall be sufficiently accessible to permit independent living.

7. Section 882.112, paragraphs (a) and (d), would be revised to read as follows:

§ 882.112 Security and utility deposits.

(a) If at the time of initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount to be collected from each Family shall be the greater of one month's Total Tenant Payment or $50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected before the execution of a Contract that are in excess of this maximum amount do not have to be refunded until the Family vacates the unit subject to the lease terms. The Family is expected to pay security deposits and utility deposits from its resources or from other public or private sources.

* * * * *

(d) If the security deposit is insufficent to reimburse the Owner for the unpaid Tenant Rent or other amount that the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim a reimbursement from the PHA calculated as follows: (1) The amount owed the Owner—not to exceed two month's Contract Rent (in Shared Housing, two month's Contract Rent for the vacating Family); (2) minus the greater of the security deposit actually collected or the amount of security deposit the Owner could have collected under the program (under paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Tenant Rent due under the Lease, and then to any other amounts owed. No reimbursement may be claimed for unpaid rent for the period after the Family vacates.

8. A new § 882.114 would be added, to read as follows:

§ 882.114 Shared Housing.

(a) *Voluntary arrangement.* Holders of Certificates of Family Participation may voluntarily arrange to lease a Shared Housing unit, provided the unit satisfies the applicable Housing Quality Standards (§ 882.109(p)) and the Owner agrees to lease the unit on this basis. (See definition of Shared Housing in § 882.102 and description of determination of total Gross Rent and determination of Gross Rent for each participating Family in § 882.106(e).) In such an arrangement, the income of each assisted Family is calculated separately.

(b) *Leases.* The PHA shall require that the lease in Shared Housing require a tenant to notify the Owner if the other sharing Family vacates the unit; require the Owner to notify a tenant if the other sharing family terminates its lease; and require the tenancy of one sharing family to terminate upon 60 days following vacating of the unit by the other sharing family unless a substitute family is admitted or a new lease is executed for the remaining Family. The PHA may require additional lease terms to deal with the special case of Shared Housing. One lease and Contract will be executed for each assisted Family occupying a unit in Shared Housing. One lease and Contract will be executed where two or more individuals (elderly, handicapped, or disabled persons) share a single unit as one Elderly Family, as defined in Part 812.

(c) *Action when one family vacates the unit.* (1) The remaining tenant must take one of the following actions within 60 days after the other sharing family vacates the unit:

(i) Accept as a replacement for the vacated Family a Family of appropriate size on the PHA's waiting list that has indicated a willingness to share. If no Family on the waiting list has indicated a willingness to share, the remaining Family may find another qualified Family acceptable to the Owner;

(ii) Move to a smaller, appropriate size unit available in projects owned by the same Owner or in the PHA's public housing projects;

(iii) Arrange with the Owner to remain in occupancy without another tenant in return for a Contract Rent not exceeding the FMR for the size unit for which the remaining Family qualifies;

(iv) Obtain a Certificate in accordance with § 882.209(m) and move to another, appropriate size unit; or

(v) Move to another unit without assistance.

(2) The Owner and PHA have the following rights and obligations:

(i) The Owner and PHA must offer the remaining tenant any available appropriate size unit in the Owner or PHA's control and provide any available information about eligible families wiling to share a unit.

(ii) The Owner may receive vacancy payments under § 882.105(b) in an amount equal to 80 percent of the Contract Rent for the vacating Family if the Owner complies with paragraph (c)(2)(i) of this section and with paragraph (b) of § 882.105.

9. Section 882.116(k) would be revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(k) *Payment of housing assistance payments, including any applicable Utility Reimbursement.* If the family and the utility company consent, the PHA may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

* * * * *

§ 882.116 [Amended]

10. Section 882.116 would be amended by adding after the words "dwelling unit" in paragraph (a)(4), the words "(or, in the case of shared Housing, the portion thereof)".

§ 882.207 [Amended]

11. The parenthetical statement in the introductory paragraph of § 882.207 would be amended by adding after the word "families", the words "and assistance for Shared Housing units".

12. Section 882.209 would be amended by adding a new paragraph (c)(9) and by revising paragraph (b)(2), to read as follows:

§ 882.209 Selection and participation.

* * * * *

(b) *Issuance of Certificate of Family Participation and Certificate Holder's Packet.* * * *

(2) The PHA shall enter on the Certificate the smallest number of bedrooms consistent with standards established by the PHA for determining the number of bedrooms for Families of

area, bathroom(s) and bedroom(s). However, a congregate housing unit

availability of the unit, and (iii) has not rejected any eligible applicant except for good cause acceptable to the PHA.

6. Section 882.109 would be amended by adding a new paragraph (p), to read as follows:

the greater of the security deposit actually collected or the amount of

the same Owner or in the PHA's public housing projects;

established by the PHA for determining the number of bedrooms for Families of

different sizes and compositions. The PHA's standards shall provide for the minimum commitment of housing assistance payments while avoiding overcrowding and shall be consistent with the applicable housing quality standards (see § 882.109 (c), (n), and (p)). The PHA shall grant exceptions from the standards if the PHA determines the exceptions are justified by the relationship, age, sex, health or handicap of Family members, or other individual circumstances. For a Family renting a unit with a larger or smaller number of bedrooms than stated on the Certificate, see § 882.209(i).

* * * * *

(c) *Briefing of certificate holders.* * * *

(9) The PHA must inform each Family of the program policy permitting shared Housing. Upon requests by a Family, the PHA may provide assistance in finding Shared Housing or in finding persons with whom a unit might be shared.

13. In § 882.401, paragraph (c)(7) would be revised to read as follows:

§ 882.401 Applicability, scope and purpose.

* * * * *

(c) *Eligible and Ineligible Properties.* * * *

(7) No Section 8 assistance may be paid for any unit occupied by an Owner, except for a Family unrelated to the Owner occupying a unit under lease in Shared Housing. Cooperatives are considered rental housing rather than Owner-occupied housing for the purpose of this limitations.

* * * * *

14. A new paragraph (d)(3) would be added to § 882.514, to read as follows:

§ 882.514 Family participation.

* * * * *

(d) *Briefing of Families.* * * *

(3) The PHA must inform each family of the program policy permitting Shared Housing. Upon request by a Family, the PHA may provide assistance in finding Shared Housing or in finding persons with whom a unit might be shared.

* * * * *

15. a new § 882.517 would be added, to read as follows:

§ 882.517 Shared Housing.

(a) *Voluntary arrangement.* Holders of Certificates of Family Participation may voluntarily arrange to lease a Shared Housing unit, provided the unit satisfies the applicable Housing Quality Standards (§ 882.109(p)) and the Owner agrees to lease the unit on this basis. (See definition of Shared Housing in § 882.102 and description of determination of total Gross Rent and allocation of Gross Rent to participating Families in § 882.102(e).) In such an arrangement, the income of each assisted Familiy is calculated separately.

(b) *Leases.* The PHA shall require that the lease in Shared Housing require a tenant to notify the Owner if the other sharing Family vacates the unit; require the Owner to notify a tenant if the other sharing Family terminates its lease; and require the tenancy of one sharing Family to terminate upon 70 days following vacating of the unit by the other sharing Family unless a substitute family is admitted or a new lease is executed for the remaining Family. The PHA may require additional lease terms to deal with the special case of Shared Housing. A separate lease and Contract will be executed for each assisted Family occupying a unit in Shared Housing. One lease and Contract will be executed where two or more individuals (elderly, handicapped or disabled persons) share a single unit as one Elderly Family, as defined in Part 812.

(c) *Unit size.* In referring Families from the PHA waiting list to units with three or more bedrooms, preference shall be given by the PHA to large Families over two or more small Families wanting to share a unit.

(d) *Action when one family vacates the unit.* (1) The remaining tenant must take one of the following actions within 60 days after the other sharing family vacates the unit:

(i) Accept as a replacement for the vacated Family a Family of appropriate size on the PHA's or Owner's waiting list that has indicated a willingness to share. If no Family on the waiting lists has indicated a willingness to share, the remaining Family may find another qualified Family acceptable to the Owner;

(ii) Move to a smaller, appropriate size unit available in projects owned by the same Owner or in the PHA's public housing projects;

(iii) Arrange with the Owner to remain in occupancy without another tenant in return for a Contract Rent not exceeding the FMR for the size unit for which the remaining Family qualifies;

(iv) Obtain a Certificate and move to another unit; or

(v) Move to another unit without assistance.

(2) The Owner and PHA have the following rights and obligations:

(i) The Owner and PHA must offer the remaining tenant any available appropriate size unit in the Owner's or PHA's control and provide any available information about eligible Families willing to share a unit.

(ii) The Owner may receive vacancy payments under § 882.411(b) in an amount equal to 80 percent of the Contract Rent for the vacating Family if the Owner complies with paragraph (d)(2)(i) of this section and with paragraph (b) of § 882.411.

(ii) The PHA must issue a Certificate to the remaining Family if it has sufficient ACC authority.

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM AND RELATED PROGRAMS

16. Section 813.102 would be amended by adding a definition of Shared Housing and by revising the definitions of Contract Rent, Gross Rent, Tenant Rent and Total Tenant Payment, to read as follows:

§ 813.102 Definitions.

* * * * *

Contract Rent. The total amount of rent specified in the Housing Assistance Payments (HAP) Contract as payable by HUD (or the PHA) and the tenant to the Owner (including a PHA) for an assisted unit. In the case of the rental of only a manufactured home space, Contract Rent is the total rent specified in the HAP Contract as payable by HUD (or the PHA) and the tenant to the Owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home. In the case of Shared Housing, Contract Rent means the pro rata portion of the total rent charged by the owner for the unit attributable to the Family assisted under this Part, based on the number of bedrooms occupied by the assisted Family.

* * * * *

Gross Rent. The total monthly housing cost of housing an eligible Family, which is the sum of the Contract Rent and any Utility Allowance for the assisted unit. In the case of rental of only a manufactured home space, Gross Rent also includes the Family's monthly payment to amortize the purchase price of the manufactured home. In the case of Shared Housing, Gross Rent means the pro rata portion of the total rent changed by the Owner for the unit and the pro rata portion of any applicable utility Allowance, (Based on the number of bedrooms occupied by the assisted Family), which is subject to any Fair Market Rent limitation imposed by individual program regulations.

* * * * *

Shared Housing. Housing consisting of two or more private spaces occupied separately by two or more families and common space shared by the families. Shared housing may take the form of a rental unit or an owner-occupied dwelling shared with one or more assisted tenants unrelated to the owner.

Tenant Rent. The amount payable monthly by the Family as rent to the Owner (including a PHA). Where all utilities (except telephone) and other essential housing services are supplied by the Owner, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the Owner and the cost thereof is not included in the amount paid as rent to the Owner, Tenant Rent equals Total Tenant Payment less the Utility Allowance. In the case of a Family renting only a manufactured home space, Tenant Rent equals the space rental minus the Housing Assistance Payment, as defined in the applicable program regulation. In the case of Shared Housing, the amount of Utility Allowance that is subtracted from Total Tenant Payment to determine Tenant Rent is the eligible Family's pro rata share (based on the total number of bedrooms occupied by the assisted Family) of the Utility Allowance for the entire unit.

Total Tenant Payment. The protion of the Gross Rent payable by an eligible Family participating in a program covered by this Part, determined in accordance with § 813.107. In the case of Shared Housing, each Family sharing a unit has its Total Tenant Payment calculated separately, based on its own Monthly adjusted income.

* * * * *

17. Section 813.106 would be amended by removing the reference in paragraph (a) to paragraphs (c) and (d) and substituting in its place a reference to paragraphs (d) and (e), respectively; by removing the references in paragraph (b) to paragraph (b) and (c) and substituting in there place references to paragraphs (c) and (d), respectively; by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e), and (f); and by adding a new paragraph (b), to read as follows:

§ 813.106 Annual income.

* * * * *

(b) In the case of an Elderly Family, if a person determined to be essential to the care or well-being of a Family member resides with the family, the income of this live-in aide will not be included in the Family's income so long as the aide is not related to or obligated for the support of a family member. In the case of Shared Housing, the income of each Family shall be determined separately.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

18. Section 880.101(a)(3) would be amended to read as follows:

§ 880.101 General.

(a) * * *

(3) This part does not apply to projects developed under other Section 8 program regulations, including Parts 881, 882, 883, and 885, except that sections 880.603b and 880.613 do apply to projects developed under Part 885, and except to the extent otherwise stated in those parts.

* * * * *

19. Section 880.201 would be amended by adding, in alphabetical order, definitions of Private Space, Shared Housing, and Unit; and by revising the definition of Contract Rent, to read as follows:

§ 880.201 Definitions.

* * * * *

Contract Rent. The rent payable by HUD and the tenant to the Owner under the Contract with HUD for an assisted unit. In the case of the rental of only a manufactured home space, Contract rent is the total rent specified in the Contract as payable by HUD and the tenant to the Owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home. In the case of Shared Housing, Contract Rent means the pro rata portion of the total rent charged by the Owner for the unit (which is subject to the Contract Rent limits in §880.204) attributable to the Family under this part, based on the number of bedrooms occupied by the Family.

* * * * *

Private Space. In the case of Shared Housing, that portion of the dwelling unit that is for the exclusive use of the assisted Family.

* * * * *

Shared Housing. Housing consisting of two or more private spaces occupied separately by two or more families and common space shared by the families.

* * * * *

Unit. For all housing except Shared Housing, the unit is the residential space available for the private use of a Family (including individuals who comprise a Family in accordance with Part 812 of this chapter). For Shared Housing, the unit is the residential space available for the use of a Family, which includes both the Private Space and shared common space.

20. Section 880.603(b) would be amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5) respectively, and by adding a new paragraph (2), to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) * * *

(2) The Owner may permit two or more Families (or Single Persons authorized to be admitted in accordance with Part 812 of this chapter) who indicate a desire to share a unit to do so, in accordance with provisions for Shared Housing in this Part [see, *e.g.*, §880.613). The Owner may assist applicants who indicate an interest in Shared Housing to locate others with a similar interest.

* * * * *

21. A new §880.603b would be added, to read as follows:

§ 880.603b Type and size of unit.

(a) The Owner shall assign the type and size of unit based on the number of persons in the household and the relationship and sex of those persons and any special needs of the Family, such as whether the occupants are elderly, handicapped, or require the assistance of a live-in aide. Every Family member, regardless of age, shall be counted as a person. In selecting unit size, the Owner must balance the need to avoid overcrowding with the objectives of maximizing use of space and avoiding unnecessary subsidy costs.

(b) After (insert effective date of this rule), in projects containing efficiency units, a one-bedroom unit shall not be rented to a single-person Family unless all efficiencies are occupied and no two-person Families or two one-person Families willing to share a one-bedroom unit are on the waiting list. However, this policy will not apply to individuals with medical justifications, including a handicap or disability requiring additional space; or to one-bedroom units designed to be accessible to handicapped persons if no two-person Families with handicapped members requiring accessibility features are on the waiting list. When an efficiency unit becomes available in the project and there is a need for a one-bedroom unit to serve a two-person household, a one-person Family admitted initially on or after (insert effective date of this rule) to

allocation of Gross Rent to participating

payments under § 882.411(b) in an

a one-bedroom unit because efficiences were not available will be required either to move to an efficiency unit or to agree to share the unit with another eligible one-person Family interested in sharing. The other eligible one-person Family interested in sharing should be selected first from the waiting list, and if there are none on the waiting list, then from any other source.

22. Section 880.606 would be amended by adding new paragraphs (c) and (d), to read as follows:

§ 880.606 Lease requirements.

* * * * *

(c) *Parties to lease.* One lease will be executed where two or more individuals share a unit as one Elderly Family, as defined in Part 812. A separate lease will be executed for each Family occupying a unit in Shared Housing.

(d) *Shared Housing lease.* The lease in Shared Housing must (1) require a tenant to notify the Owner if the other sharing family vacates the unit; (2) require the Owner to notify a tenant if the other sharing family terminates its lease; and (3) require the tenancy of one sharing family to terminate upon 60 days following vacating of the unit by the other sharing family unless a substitute family is admitted.

23. A new § 880.613 would be added, to read as follows:

§ 880.613 Shared Housing.

(a) *Voluntary arrangement.* Any Family of Single Person eligible for admission in accordance with Parts 812 and 813 of this chapter may choose to share a unit that qualifies as Shared Housing with one or more other such Family or Single Person, if the Owner agrees to such an arrangement.

(b) *Shared Housing standards.* The dwelling unit shall afford the Family adequate space and security. The Private Space must include a sufficient number of bedrooms for the Family, except that a one-bedroom unit may be shared by two single-person Families. In units occupied by physically handicapped persons, the areas used by the handicapped occupant shall be sufficiently accessible to permit independent living.

(c) *Unit size.* In allocating the use of units with three or more bedrooms, the Owner shall give preference to large Families over two or more smaller Families wanting to share.

(d) *Action when one family vacates the uit.* (1) The remaining tenant must take one of the following actions within 60 days after the other sharing family vacates the unit:

(i) Accept as a replacement for the vacated Family a Family of appropriate size on the Owner's waiting list that has indicated a willingness to share. If no Family on the waiting list has indicated a willingness to share, the remaining Family may find another qualified Family acceptable to the Owner;

(ii) Move to a smaller, appropriate size unit available in projects owned by the same Owner;

(iii) Arrange with the Owner to remain in occupancy without another tenant in return for a Contract Rent not exceeding the FMR for the size unit for which the remaining Family qualifies;

(iv) Obtain a Section 8 Certificate, if available, from the local PHA and move to another unit;

(v) Move to another unit without assistance.

(2) The Owner has the following rights and obligations:

(i) The Owner must offer the remaining tenant any available appropriate size unit in the Owner's control and provide any available information about eligible Families willing to share a unit.

(ii) The Owner may receive vacancy payments under § 880.611(c) in an amount equal to 80 percent of the Contract Rent for the vacating Family if the Owner complies with paragraph (d)(2)(i) of this section and with paragraph (c) of § 880.611.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

24. Section 881.102(a)(3) would be revised to read as follows:

§ 881.101 General.

(a) * * *

(3) This part does not apply to projects developed under other Section 8 program regulations including Parts 880, 882, 883 and 885, except that §§ 881.603b and 881.613 do apply to projects developed under Part 885, and except to the extent otherwise stated in those parts.

* * * * *

25. Section 881.201 would be amended by adding, in alphabetical order, definitions of Private Space, Shared Housing, and Unit; and by revising the definition of Contract Rent, to read as follows:

§ 881.201 Definitions.

* * * * *

Contract Rent. The rent payable by HUD and the tenant to the Owner under the Contract with HUD for an assisted unit. In the case of the rental of only a manufactured home space, Contract rent is the total rent specified in the Contract as payable by HUD and the tenant to the Owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home. In the case of Shared Housing, Contract Rent means the pro rata portion of the total rent charged by the Owner for the unit (which is subject to the Contract Rent limits in § 881.204) attributable to the Family under this Part, based on the number of bedrooms occupied by the Family.

* * * * *

Private Space. In the case of Shared Housing, that portion of the dwelling unit that is for the exclusive use of the assisted Family.

* * * * *

Shared Housing. Housing consisting of two or more private spaces occupied separately by two or more families and common space shared by the families.

* * * * *

Unit. For all housing except Shared Housing, the unit is the residential space for the private use of a Family (including individuals who comprise a Family in accordance with Part 812 of this chapter). For Shared Housing, the unit is the residential space available for the use of a Family, which includes both the Private Space and the shared common space.

26. Section 881.603(b) would be amended by redesignating paragraphs (2), (3) and (4) as paragraphs (3), (4) and (5), respectively, and by adding a new paragraph (2), to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) * * *

(2) The Owner may permit two or more Families (or Single Persons authorized to be admitted in accordance with Part 812 of this chapter) who indicate a desire to share a unit to do so, in accordance with provisions for Shared Housing in this Part (see, e.g., § 881.613). The Owner may assist applicants who indicate an interest in Shared Housing to locate others with a similar interest.

* * * * *

27. A new § 881.603b would be added, to read as follows:

§ 881.603b Type and size of unit.

(a) The Owner shall assign the type and size of unit based on the number of persons in the household and the relationship and sex of those persons and any special needs of the Family,

such as whether the occupants are elderly, handicapped or require the assistance of a live-in aide. Every Family member, regardless of age, shall be counted as a person. In selecting unit size, the Owner must balance the need to avoid overcrowding with the objectives of maximizing use of space and avoiding unnecessary subsidy costs.

(b) After (insert effective date of this rule), in projects containing efficiency units, a one-bedroom unit shall not be rented to a single-person household unless all efficiencies are occupied and no two-person families or two one-person families willing to share a one-bedroom unit are on the waiting list. However, this policy will not apply to individuals with medical justifications, including a handicap or disability requiring additional space; or to one-bedroom units designed to be accessible to handicapped persons if no two-person families with handicapped members requiring accessibility features are on the waiting list. When an efficiency unit becomes available in the project and there is a need for a one-bedroom unit to serve a two-person household, a one-person Family admitted initially on or after (insert effective date of this rule) to a one-bedroom unit because efficiencies were not available will be required either to move to an efficiency unit or to agree to share the unit with another eligible one-person Family interested in sharing. The other eligible one-person Family interested in sharing should be selected first from the waiting list, and if there are none on the waiting list, then from any other source.

28. Section 881.606 would be amended by adding new paragraphs (c) and (d) to read as follows:

§ 881.606 Lease requirements.

* * * * *

(c) *Parties to lease.* One lease will be executed where two or more individuals share a unit as one Elderly Family, as defined in Part 812. A separate lease will be executed for each Family occupying a unit in Shared Housing.

(d) *Shared Housing lease.* The lease in Shared Housing must (1) require a tenant to notify the Owner if the other sharing family vacates the unit; (2) require the Owner to notify a tenant if the other sharing family terminates its lease; and (3) require the tenancy of one sharing family to terminate upon 60 days following vacating of the unit by the other sharing family unless a substitute family is admitted.

29. A new § 881.613 would be added, to read as follows:

§ 881.613 Shared Housing.

(a) *Voluntary arrangement.* Any Family or Single Person eligible for admission in accordance with Parts 812 and 813 of this chapter may choose to share a unit that qualifies as Shared Housing with one or more other such Family or Single Person, if the Owner agrees to such an arrangement.

(b) *Shared Housing standards.* The dwelling unit shall afford the Family adequate space and security. The Private Space must include a sufficient number of bedrooms for the Family, except that a one-bedroom unit may be shared by two single-person Families. In units occupied by physically handicapped persons, the areas used by the handicapped occupant shall be sufficiently accessible to permit independent living.

(c) *Unit size.* In allocating the use of units with three or more bedrooms, the Owner shall give preference to large Families over two or more smaller Families wanting to share a unit.

(d) *Action when one family vacates the unit.* (1) The remaining tenant must take one of the following actions within 60 days after the other sharing family vacates the unit:

(i) Accept as a replacement for the vacated Family a Family of appropriate size on the Owner's waiting list that has indicated a willingness to share. If no Family on the waiting list has indicated a willingness to share, the remaining Family may find another qualified Family acceptable to the Owner;

(ii) Move to a smaller, appropriate size unit available in projects owned by the same Owner;

(iii) Arrange with the Owner to remain in occupancy without another tenant in return for a Contract Rent not exceeding the FMR for the size unit for which the remaining Family qualifies;

(iv) Obtain a Section 8 Certificate, if available, from the local PHA and move to another unit;

(v) Move to another unit without assistance.

(2) The Owner has the following rights and obligations:

(i) The Owner must offer the remaining tenant any available appropriate size unit in the Owner's control and provide any available information about eligible Families willing to share a unit;

(ii) The Owner may receive vacancy payments under § 881.611(c) in an amount equal to 80 percent of the Contract Rent for the vacating Family if the Owner complies with paragraph (d)(2)(i) of this section and with paragraph (c) of § 881.611.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

30. Section 913.102 would be amended by adding, in alphabetical order, a definition of Shared Housing, to read as follows:

§ 913.102 Definitions.

* * * * *

Shared Housing. Housing in which two or more Single Persons or Families, eligible for admission in accordance with Part 912 and this Part, share a dwelling unit, each having some private space and sharing other common space.

* * * * *

31. Section 913.106 would be amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f); by removing the reference in paragraph (a) to paragraphs (c) and (d) and substituting in its place a reference to paragraphs (d) and (e), respectively; and by adding a new paragraph (b), to read as follows:

§ 913.106 Annual income.

* * * * *

(b) In the case of an Elderly Family, if a person determined by the PHA to be essential to the care or well-being of a Family member resides with the Family, the income of this live-in aide will not be included in the Family's income so long as the aide is not related to or obligated for the support of a Family member. In the case of Shared Housing, the income of each Family shall be determined separately.

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

32. A new section 960.205a would be added, to read as follows;

§ 960.205a Shared housing.

(a) *Voluntary arrangement.* The PHA may permit a Family or Single Person eligible for admission in accordance with Parts 912 and 913 and this part to share a unit that qualifies as Shared Housing with one or more other such Families or Single Persons, provided the prospective tenants agree to such an arrangement. Upon request by a Family, the PHA may provide assistance in finding persons with whom a unit might be shared.

(b) *Shared housing standards.* The dwelling unit shall afford the Family adequate space and security. Bedrooms may not be shared by members of

to read as follows:

paragraph (c) of § 881.611.

may not be shared by members of

different families, except in the case of two single-person Families sharing a one-bedroom unit. In units occupied by physically handicapped persons, the areas used by the handicapped occupant shall be sufficiently accessible to permit independent living.

(c) *Unit size.* In allocating the use of units with three or more bedrooms, the PHA shall give preference to large Families over smaller Families wanting to share a unit.

(d) *Leases.* One lease will be executed where two or more individuals share a unit as one Elderly Family, as defined in Part 912. A separate lease will be executed for each Family occupying a unit in Shared Housing.

33. A new § 960.208 would be added, to read as follows:

§ 960.208 Type and size of unit.

(a) In the leasing of the following types of units, the PHA shall extend a preference to the type of household indicated:

(1) Units in projects constructed or rehabilitated for use by the elderly—Elderly Families.

(2) Units in projects constructed or rehabilitated to provide accessible housing—Families with physically handicapped members who would benefit from the accessibility features provided.

(3) One bedroom units in projects that contain efficiency units—two-person households (including two one-person families willing to share). However, this policy will not apply to individuals with medical justification, including a handicap or disability requiring additional space; or to one-bedroom units designed to be accessible to handicapped persons if no two-person households with handicapped persons are on the waiting list. When an efficiency unit becomes available in the project and there is a need for a one-bedroom unit to serve a two-person household, a one-person Family assigned to a one-bedroom unit on or after (insert effective date of this rule) will be required either to move to an efficiency unit or to agree to share a unit with another eligible one-person Family.

(b) In determining the appropriate size unit for an Elderly Family, the presence of a person determined by the PHA to be necessary for the care or well-being of an Elderly, Disabled or Handicapped member of the Family will be considered.

(c) The PHA shall have a transfer policy to cover the problem that arises when a Family becomes overcrowded or overhoused because of changes in Family size or composition or because one Family in a shared housing arrangement (see § 960.205a) vacates the unit. In a shared housing arrangement, replacement of the departed Family may be preferable to a transfer of the remaining Family.

Authority: Sec. 211, Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181; sec. 6, United States Housing Act of 1937, 42 U.S.C. 1437f; sec. 3, United States Housing Act of 1937, 42 U.S.C. 1437c; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 20, 1984.

John J. Knapp,

Acting Secretary.

[FR Doc. 84-31841 Filed 12-6-84; 8:45 am]

BILLING CODE 4210-33-M

federal register

Friday
December 7, 1984

Part VII

Environmental Protection Agency

40 CFR Parts 51 and 52

Air Quality Implementation Plans; Requirements for Preparation, Adoption, and Submittal; Approval and Promulgation; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH-FRL-2596-1, Docket No. A-80-46]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA here proposes amendments to its regulations concerning the construction of new stationary sources of air pollution and modifications to existing sources which appear at 40 CFR 51.24 and 52.21. The amendments relate to the air quality models used to assess impact and estimate ambient concentrations. EPA is proposing to review its "Guideline on Air Quality Models" (EPA-450/2-78-027, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards Research, Triangle Park, N.C. 27711, April 1978), and to substitute by reference the revised guideline for the April 1978 version. The purpose of the revision is to update the guidance because substantial new knowledge concerning modeling analyses has developed since the original guidance was issued. The revised guidance should improve the technical basis for the impact assessment of air pollution sources.

DATES: The period for initial comment on the proposed amendments closes on April 1, 1985. A public hearing on the proposed amendments will be held January 29, 30, and 31, 1985, (Tuesday, Wednesday, and Thursday) from 9:00 a.m. to 5:00 p.m. on January 29 and 30; 9:00 a.m. to noon on January 31. EPA will hold the public docket for this rulemaking open for 30 days after the close of the initial comment period for the submission of written rebuttal and supplementary information.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, Attention: Docket No. A-80-46.

Copies of the draft revised guideline may be obtained by writing or calling Joseph A. Tikvart, Source Receptor Analysis Branch, MD-14, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, phone (919) 541-5561.

Public Hearing: Thomas Jefferson Auditorium, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C.

Docket: EPA has established a docket for this rulemaking, Docket A-80-46, in accordance with section 307(d) of the Clean Air Act, 42 U.S.C. 7607(d). The docket is available for public inspection and copying between 8:00 am and 4:00 pm, Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, SW, Washington, D.C., 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Source Receptor Analysis Branch (MD-14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; (919) 541-5561.

SUPPLEMENTARY INFORMATION:

Background

Section 165(e)(3)(D) of the Clean Air Act (CAA) requires the Administrator to adopt regulations specifying with reasonable particularity each model or models to be used in cases subject to the Act's prevention of significant deterioration requirements. Therefore the guideline was incorporated by reference in the regulations promulgated for the prevention of significant deterioration. Because of its incorporation, revisions to the guideline must satisfy the rulemaking requirements of section 307(d) of the Act.

At the time the original Guideline on Air Quality Models was published (April 1978), it was anticipated that improvements in modeling capability would occur rapidly and that revisions to the guidance would be needed at 18 to 36 month intervals. It was stated in the "Preface" to the document that revisions would be synchronized with the Conference on Air Quality Modeling, required by the Clean Air Act to be held every 3 years (section 320). Although EPA has attempted to meet that schedule, the time required to complete several important steps has not made this possible.

In March 1980, EPA issued a Notice soliciting air quality models developed outside the Agency for potential inclusion in the planned revisions to the Guideline on Air Quality Models (see 45 FR 20157, March 27, 1980). EPA received nearly 30 air quality models from private model developers. These were reviewed for technical feasibility and for utility to potential users. In addition, the Notice stated that a revised guideline document would be synchronized with the next (second) Conference on Air Quality Models planned for early 1981, and that public meetings on the proposed revisions would be held in the fall of 1980. In October of that year EPA held three public meetings (in Washington, D.C., Chicago, Illinois, and Seattle, Washington) to discuss a proposed guideline revision that included the new models as well as several changes in model use and in model input requirements. As a result of the comments received, EPA determined that much additional background work was needed before the guideline could be revised in a manner that would respond to the comments and criticisms elicited from the public, private industry and other governmental (Federal, State and local) entities.

In march of 1981, EPA issued a Notice concerning a delay (46 FR 17651, March 19, 1981) and indicated that the (second) Conference on Air Quality Modeling would be held in the summer of that year. The purpose of the Conference would not be to discuss the guideline but to encourage information exchange on the topics of model accuracy and reliability and the use of models in a regulatory framework. The Notice further stated that the Guideline on Air Quality Models, dated April 1978, was the guideline of record and should be used.

An announcement of the Second Conference on Air Quality Modeling was issued June 12, 1981 (46 FR 31048) and stated that the modeling guideline was not to be a topic for discussion at the Conference. A public hearing on the guideline would take place in 1982. EPA was unable to maintain that scheduled date. As a substitute, a report summarizing a series of internal EPA Workshops, held for the purpose of clarifying modeling guidance, was issued to each EPA Regional Office for their use in reviewing and evaluating modeling analyses in support of regulatory programs. This report clarified issues that had arisen in areas where the 1978 guideline was vague or not specific. In 1982 that report entitled "Regional Workshops on Air Quality Modeling: A Summary Report," EPA-450/4-82-015 was sent to the National Technical Information Service (NTIS) where it is available as PB83-150573 together with addenda consecutively dated to October 1983. A copy of this document is also available for review in Docket A-80-46.

In the meantime, EPA has reviewed more than 80 comments submitted during the 1980 public meeting and established the need for several activities to be undertaken before adequate responses to those comments could be made. These activities included

a program for model evaluation, an investigation of technical issues involving important model algorithms such as dispersion parameters, plume rise and terrain adjustment factors, and a review of recommendations resulting from a cooperative agreement between EPA and the American Meteorological Society. Although research continues on a number of technical issues, including complex terrain and dispersion parameters, there was sufficient new information available that EPA began the process of revising the guideline in early 1983.

As a part of that process, EPA has responded to the comments resulting from the draft guideline submitted at the public meetings in 1980. A summary of both the comments and the EPA response is contained in a document entitled "Summary of Comments and Responses on the 1980 Proposed Draft of the Guideline on Air Quality Models," February 1984. A copy of this document is available for review in Docket A-80-46.

EPA has undertaken a multiyear program of model evaluation in order to respond to criticisms concerning the model selection procedures EPA has used in the past. Sufficient results are available from those studies to enable the Agency to make an informed decision regarding models to be included in the guideline. Individual model algorithms were also investigated and changes have been made in some of the preferred models based on that investigation. There is now sufficient new knowledge concerning modeling analyses used in support of EPA regulatory requirements, including the PSD program, that changes in the modeling guidance should now be made even though all of the studies are not completed and research has not yet found all the answers.

EPA is currently studying the type and extent of uncertainty surrounding the air quality concentration estimates made by models. EPA is developing statistical methods to explicitly deal with these uncertainties in regulatory decisions. When these studies are complete, EPA will provide appropriate guidance on how to use the statistical methods when setting emission limits for sources of air pollution.

Proposed amendments

This notice contains a proposal to change the references to the "Guideline on Air Quality Models" in 40 CFR 51.24 and 40 CFR 52.21 from the 1978 edition of that guidance to a revised "Guideline on Air Quality Models" to be completed and dated when these proposed changes become final and are promulgated. A draft of the revised guideline is available for review in each of the ten EPA Regional Office Libraries and at the Central Docket Section at EPA headquarters in Washington, DC. Copies of the draft guideline may be obtained by writing or calling Joseph A. Tikvart whose address and telephone number is listed in the "For Further Information" section above. EPA solicits comments on that draft guideline document and on the proposal to incorporate that document in the regulations covering the prevention of significant deterioration.

EPA also proposes to delete from the regulations the paragraphs in Part 51 and Part 52 relating to the recommended use of the "Workbook for the Comparison of Air Quality Models," EPA-450/2-78-028 (a) and (b) to "determine the comparability of air quality models." EPA no longer considers "comparability" a criterion for selecting or using a model not specifically recommended in the guideline.

The format of the guideline will be changed to a notebook style. Major sections will begin on new pages. This will allow the future revision of this guide on a page by page basis, thus permitting updates and changes as they are needed in specific sections without opening the entire document to review and comment. Such a page by page revision process should permit a shorter processing time for changes. All future changes will be noticed in the Federal Register and public comment will be solicited.

Public Participation

EPA will hold a public hearing on the proposed amendments and the revised guideline on January 29, 30, and 31, 1985, (Tuesday, Wednesday, and Thursday) from 9:00 a.m. to 5:00 p.m. on January 29 and 30; 9:00 a.m. to noon on January 31 in the Thomas Jefferson Auditorium, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C. The hearing will be informal. A panel of EPA staff will hear the oral presentations. There will be no cross-examination and no requirement that any person be under oath. Each member of the panel may seek clarification or amplification of any presentation. The presiding officer of the panel may set a time limit for each presentation and may restrict any presentation that would be repetitious or irrelevant. A transcript of the hearing will be made and placed in the rulemaking docket. This hearing will be held in conjunction with the Third Conference on Air Quality Modeling required by Section 320 of the Clean Air Act.

Any person who wishes to speak at the hearing should, as soon as possible, send written notice of this to EPA, giving name, address, telephone number and length of presentation. If presentations are projected to be longer than 15 minutes, the presenter should also state why it needs to be longer. Notices should be sent to Joseph A. Tikvart, at the address given in the beginning of this notice. EPA will develop a schedule for presentations based on the notices received. Persons failing to submit a written notice but desiring to speak at the hearing should notify the presiding officer immediately before the hearing. The presiding officer will determine the schedule for these presentations. Each speaker should bring extra copies of his or her presentation for the convenience of the hearing panel, the hearing reporter and other participants. The hearing will be open to the public. Additional written statements or comments, not presented at the hearing, should be submitted in duplicate to the Central Docket Section, LE-131, Attention: Docket A-80-46.

EPA previously received comments on a number of technical issues and has responded in the document "Summary of Comments and Responses on the 1980 Proposed Draft of the Guideline on Air Quality Models" which was cited earlier. For the public hearing announced here, EPA is soliciting, in particular, advice and comments on: (1) Specific changes to 40 CFR Parts 51 and 52; (2) the revised format of the modeling guideline; (3) recommendations concerning models for ozone; (4) proposed changes to the preferred models; (5) how performance evaluations can be improved for models, particularly photochemical ozone models (i.e., EKMA for which adequate evaluation data bases are not available); (6) specific quantitative procedures for relating air quality standards and PSD increments to emission limitations through the use of mathematical models that include statistical techniques to deal with uncertainty; (7) the degree to which individual State or local regulatory agencies, within the context of Clean Air Act regulatory requirements, should be provided more (or less) authority to use air quality models which have not been reviewed and approved by EPA; and (8) if regulatory agencies are provided additional authority to use other air quality models, what degree of oversight or approval authority should be retained by EPA. Comments are not being solicited concerning the form of air quality standards and PSD increments.

Auditorium, South Agriculture Building.

Models planned for early 1981, and that

(second) Conference on Air Quality

adequate responses to those comments could be made. These activities included

become final and are promulgated. A

Act.

quality standards and PSD increments.

E.O. 12291

Under Executive Order 12291, EPA must judge whether a proposed action would be a "major rule" and therefore subject to the requirement of a Regulatory Impact Analysis. The revision that EPA is proposing is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation will result in no significant environmental or energy impacts. Thus, no Regulatory Impact Analysis was conducted.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. This rule merely updates existing technical requirements for air quality modeling analyses required by other Clean Air Act programs (prevention of significant deterioration, new source review, SIP-revisions) and imposes no new regulatory burdens.

Economic Impact Assessment

The requirement for performing an economic impact assessment in section 317 of the Act, 42 U.S.C. 7617, does not apply to this action since the revisions included do not constitute a substantial change in the regulatory burden imposed by the regulation. However, since the guidance includes new models, relatively more sophisticated, and addresses the use of site-specific data (required under a different section of the PSD regulations), an analysis of the relative cost of using some of the 1978 models and data bases versus the models and data bases specified in the 1980 updated guidance was prepared. This report, "Cost Analysis of Proposed Changes to the Air Quality Modeling Guideline" is available for inspection in Docket A–80–46 at the Central Docket Section whose address is given above, or from the National Technical Information Service as NTIS No. PB 83–112177.

Paperwork Reduction

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

The proposed amendments have been submitted to the Office of Management and Budget for review under Executive Order 12291. Any comments from that office on the revisions and any EPA responses have been placed in the docket for this proceeding.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particular matter, Hydrocarbons, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

Authority: This Notice of Proposed Rulemaking is issued under the authority granted by sections 165(e) and 320 of the Clean Air Act, 42 U.S.C. §§ 7475(e), 7620.

Dated: December 3, 1984.

William D. Ruckelshaus,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

It is proposed to amend Part 51, Chapter I, Title 40 of the Code of Federal Regulations, as follows:

1. Section 51.24 is amended by revising paragraph (l)(1)(i) to read as follows:

§ 51.24 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(1) * * *

(i) All estimates of ambient concentrations required under paragraph (1) shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1984) which is incorporated by reference. It is EPA publication No. 450/2–78–027R and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. It is also available for inspection at the Office of the **Federal Register** Information Center, Room 8301, 1100 L Street, NW, Washington, D.C. 20408. This incorporation by reference was approved by the Director of the **Federal Register** on [Date of approval]. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

* * * * *

2. Section 51.24 is amended by removing paragraph (l)(1)(v).

3. Section 51.24 is amended by removing paragraph (l)(2).

4. Section 51.24 is amended by redesignating paragraph (l)(3) as paragraph (l)(2) and revising it to read as follows:

§ 51.24 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(2) The document referenced in this paragraph is available for public inspection at the libraries of each of the ten EPA Regional Offices and at the EPA library at 401 M Street, SW, Washington, D.C. 20460. Copies are available, as supplies permit, from the Center for Environmental Information (CERI), ORD Research Information Unit, U.S. Environmental Protection Agency, Cincinnati, Ohio, 45268.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTING PLANS

It is proposed to amend Part 52, Chapter I of Title 40 of the Code of Federal Regulations, as follows:

1. Section 52.21 is amended by revising paragraph (l)(1) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(1) All estimates of ambient concentrations required under paragraph (l) shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1984) which is incorporated by reference. It is EPA publication No. 450/2–78–027R and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. It is also available for inspection at the Office of the **Federal Register** Information Center, Room 8301, 1100 L Street, NW, Washington, D.C. 20408. This incorporation by reference was approved by the Director of the **Federal Register** on [Date of approval]. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

* * * * *

2. Section 52.21 is amended by revising paragraph (l)(2) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment under paragraph (q) of this section. Written approval of the Administrator must be obtained for any modification or substitution.

* * * * *

3. Section 52.21 is amended by revising paragraph (l)(3) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(3) The document referenced in this paragraph is available for public inspection at the libraries of each of the ten EPA Regional Offices and at the EPA library at 401 M Street, SW, Washington, D.C. 20460. Copies are available, as supplies permit, from the Center for Environmental Information (CERI), ORD Research Information Unit, U.S. Environmental Protection Agency, Cincinnati, Ohio, 45268.

* * * * *

[FR Doc. 84–31971 Filed 12–6–84; 8:45 am]

BILLING CODE 6560–50–M

3501 *et seq.*

on the date of approval and a notice of

federal register

Friday
December 7, 1984

Part VIII

Environmental Protection Agency

40 CFR Part 600

Fuel Economy Test Procedures; Additional Proposed Procedures for Adjustment of CAFE Results To Compensate for Changes in Test Procedures; Supplemental Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS—FRL 2696–4]

Fuel Economy Test Procedures; Additional Proposed Procedures for Adjustment of CAFE Results To Compensate for Changes in Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice is a supplement to an EPA notice of proposed rulemaking (NPRM) published on December 21, 1983 (48 FR 56526) in which EPA proposed establishing procedures to adjust corporate average fuel economy (CAFE) test results to account for the effects of test procedure changes. EPA recently received a request for a CAFE adjustment to account for changes in the properties of the test fuel used for gasoline-powered vehicles. EPA did not consider the CAFE impact of the test fuel properties in the December 21, 1983 NPRM. This notice proposes to apply an additional industry-wide CAFE adjustment for the 1980 and later model years to account for the effects of the test fuel properties. Also, NPRM commentors requested additional CAFE credits for the 1980 and 1981 model years due to the availability of fuel efficient oils. This notice proposes an additional 1981 model year industry-wide CAFE adjustment for fuel efficient oil improvements that were not reflected in fuel economy testing for that year.

DATE: Comments on the proposed rule must be received by January 22, 1985.

ADDRESS: Comments in reponse to this notice should be submitted to the U.S. Environmental Protection Agency, Central Docket Section (A—130), Attn: Docket No. A–83–44, Gallery 1, West Tower Lobby, Waterside Mall, 401 M street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joseph P. Whitehead, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105; (313) 668–4403.

SUPPLEMENTARY INFORMATION:

A. Background

In January 1982, the United States Court of Appeals for the Sixth Circuit ordered EPA to initiate rulemaking proceedings concerning procedures for establishing adjustment factors for CAFE test results. EPA responded to this court order by issuing an NPRM which proposed to apply an industry-wide CAFE adjustment of 0.2 miles per gallon (mpg) for 1980 and later model years to account for the effects of past changes in test procedures.

EPA also proposed to determine whether CAFE adjustment is warranted for future changes to the 1975 test procedure by assessing all test changes and their industry-wide impact on CAFE numbers, and to adjust CAFE numbers for any significant CAFE penalty imposed on a representative fleet. EPA proposed to define a "significant CAFE penalty" as any change or group of changes that have at least a tenth of an mpg effect on CAFE numbers.

EPA also proposed that a general CAFE correction factor be calculated for future test changes which exhibit a predictable, quantifiable, and fairly uniform industrywide reduction in test results used for CAFE calculations. To the extent that any change to the 1975 test procedures would reduce the fuel economy of an average vehicle fleet, CAFE stringency would be increased. Since EPA is not authorized to change CAFE stringency through test procedure changes, manufacturers are entitled to a CAFE adjustment if any test procedure change can be determined to have had such an effect.

B. Test Fuel Adjustments

On August 15, 1984, subsequent to the close of the comment period for the CAFE adjustment NPRM, General Motors (GM) submitted a request to EPA for CAFE adjustments to compensate for changes in test fuel properties from the 1975 model year baseline condition. The GM request is available in the public docket, No. A–83–44.

The GM request states that changes have been noted in the properties of the unleaded gasoline used for emissions and fuel economy testing. According to GM, vehicle tests indicate that these changes in test fuel properties have a measurable effect on fuel economy.

EPA regulations specify an equation for calculating fuel economy (40 CFR 600.113–600.78). This equation is based on the carbon balance technique which allows fuel economy to be determined from measurement of exhaust emissions. The fixed numerical coefficients of the EPA equation are based on a fuel with a fixed specific gravity and a fixed carbon weight fraction (grams of carbon per gram of fuel). GM stated that their records indicate that the average specific gravity and carbon weight fraction of test fuel were virtually identical to the values used in the fuel economy equation from 1974 through 1979. However, these test fuel properties gradually shifted in the period between 1979 and June 1984.

GM suggested CAFE corrections by model year for model years 1981 through 1984. GM estimated the fuel change CAFE credits, based on GM CAFE's and fuel data available to GM, as: 0.02 mpg for 1981, 0.19 mpg for 1982, 0.27 mpg for 1983, and 0.32 mpg for 1984. The GM calculation methodology accounted for the test fuel carbon weight fraction, specific gravity, energy content, and the engine combustion efficiency as affected by the energy content of the test fuel.

EPA concurs with GM that test fuel properties which affect measured fuel economy have changed over time. Furthermore, EPA believes that a compensating CAFE adjustment is warranted by these changes in test fuel properties. This notice proposes CAFE adjustments for fuel changes as specified below. However, EPA has not yet determined the actual mpg credits nor the final method for calculating past and future credits.

EPA is studying the GM method of calculations, which corrects for the volumetric "error" caused by using fuel with a different carbon content and fuel energy content. GM's estimate of the energy content effects is determined "experimentally" because of different vehicle-to-vehicle effects. It is not yet clear to EPA whether the GM estimates are appropriate for recent technology vehicles. An EPA memorandum (Subject: Questions and Comments on GM's Calculation of Fuel Change CAFE Credits) is contained in the docket and outlines the Agency's concerns with the GM methodology. EPA requests comments on the GM method and on the Agency's concerns.

EPA proposes the following CAFE adjustments due to test fuel changes.

1. Test Fuel Credits for Past Model Years

For model years 1980 through 1985, EPA is proposing to grant yearly, industry-wide CAFE adjustments for the fuel economy influence of test fuel properties. EPA is considering GM's suggested method for calculating test fuel credit although the EPA memorandum in the docket has identified areas of uncertainty. Fuels used by EPA in its certification and fuel economy confirmatory testing programs will be analyzed to establish the appropriate credit. This CAFE adjustment for test fuel properties will be aggregated with the other CAFE adjustments proposed in the December 21, 1983 NPRM. Both light-duty vehicles and light-duty trucks would be granted these CAFE adjustments since both

categories of vehicles were affected by test fuel properties. Annual average EPA test fuel properties will be used for calculating the CAFE adjustments. The actual numerical credits will be determined in the final rule by use of a calculation method to be adopted in the final rule, in light of public comments.

2. Test Fuel Adjustments for Future Model Years

Beginning prior to the 1986 model year, EPA intends to purchase test fuel within a specified tolerance of 1 percent for the carbon density (242l±20 grams carbon/gallon). This will help reduce the effects of test fuel variability, but may not totally eliminate the possible effects. In particular, it would not be practical to specify energy content to fuel suppliers. Therefore, corrections may still be necessary beyond the 1985 model year.

EPA has considered two options to implement the corrections for future model years. One option is to perform the correction for each test conducted. Thus, energy content and carbon density corrections would be built into the calculation on a fuel batch basis. This option appears to be the most direct and potentially precise approach to establish CAFE corrections. The disadvantage of this option is that the fuel economy calculation for each test would be further complicated by requiring input as to the specific test's fuel properties. This added data input complexity might result in a test void rate increase. Also, it may not be necessary to calculate corrections with this level of precision, considering the precision of the 1975 baseline.

The second option for future fuel change credits is to calculate credits on a model year basis using average EPA test fuel specifications used during the test year. Thus, test data during the year would be processed as it is now, and a CAFE credit or debit (if appropriate) would be issued when the manufacturer's CAFE is calculated. This option would be simpler to implement than the test-by-test correction option, and would require only that EPA perform a single calculation each year. The potential disadvantage of this option is that the CAFE correction would be based on average testing conditions for the year at only EPA's laboratory. This method raises the possibility of less precision, compared to test-by-test correction, both due to batch-to-batch variations in fuel at EPA and possibly wider fuel difference between laboratories.

The EPA proposes to use the second option, which is to perform a single annual CAFE calculation. As EPA tightens its test fuel specifications in the future, very little correction should be necessary. The use of annual average fuel specifications will be of adequate precision, consistent with the precision of other CAFE corrections, if we assume adequate incentives will exist for manufacturers to control their fuel specifications to match EPA's. We request comments on the need for and appropriateness of establishing tighter controls on the fuels used in manufacturers' laboratories. If comments and additional data supplied in response to this NPRM along with EPA's further analyses indicate that a test-by-test correction is more advantageous, that option may be adopted.

EPA also intends to analyze changes in diesel test fuel properties to determine if CAFE corrections are appropriate for the light-duty diesel category. The methodology will be identical to that used in correcting for gasoline fuel changes. If credits are warranted, they will be included in the final rulemaking.

C. Fuel Efficient Oils Adjustments

Beginning with the 1982 model year, EPA approved the use of energy efficient oils in test vehicles which improve fuel economy by 1.8 percent. In comments to the CAFE adjustment NPRM, both GM and Ford Motor Co. (Ford) proposed that CAFE credits be given for the 1980 and 1981 model years, during which fuel efficient crankcase oils were available, but not used in test vehicles. GM and Ford claimed in their comments that such oils were available during the 1980 and 1981 model years when they were prohibited from deriving a CAFE benefit by using fuel-efficient oil in their test vehicles. Furthermore, GM has suggested that a small credit should be due even beyond 1981, given that EPA's existing policy restricts fuel-efficient oils used in test vehicles to the sales-weighted average fuel economy improvement of actual oils in the marketplace. GM has pointed out that EPA limits the use of fuel-efficient oils to those which provide a maxium fuel-economy improvement of 1.8 percent even though the Department of Transportation (DOT) used a projection of 2 percent as part of its analysis of the feasibility of achieving the CAFE standards. GM, therefore, believes it is due credit for the difference of 0.2 percent.

EPA has always, including in the 1975 base year, required the use of engine oils in test vehicles that were representative of what was likely to be used in production and in typical consumer use. This did not become an issue until the late 1970's when oils with claimed fuel savings potential began to be marketed. In 1978, EPA issued guidance indicating it would not permit the use of such oils in test vehicles unless it could be determined that such oils were likely to be used by consumers.[1] Several important criteria were established as a guide in the determination of whether an oil was representative of what was likely to be used. First, a generic name or classification should be available to enable consumers to readily identify which oils they should be using. Without a generic class from which to select, EPA was concerned that manufacturers had the sophistication to screen oils and pick the one most beneficial to them, but consumers would have no means to identify and use comparable oils. Additionally, this generic class of oils had to be generally available, competitively priced, and clearly recommended for use in owner's manuals.

In 1981, EPA concluded that essentially all multi-grade oils bearing the new "SF" service designation contained fuel savings additive packages.[2] Hence, the SF designation, while not originally intended to relate to fuel savings potential of oil, became a reasonable surrogate for the generic name EPA was seeking. It was further determined that SF oils were generally available and competitively priced. Therefore, as long as the manufacturer recommended in its owner's manuals that only an SF oil be used, EPA could conclude consumers were likely to use such oils. Since consumers would have no means to determine which, if any, SF oils were better than others as fuel savings oils, EPA restricted the manufacturers from using oils whose percent improvement in fuel savings was better than the sales-weighted average percent improvement which should be representative of the oil used by the average consumer.

EPA still considers its general requirement (that the oils be representative of what is likely to be used by consumers) to be appropriate policy. The current guidelines automatically will allow manufacturers to upgrade test vehicle oils as oils in the marketplace improve. Furthermore, EPA's stated policies do not preclude alternative means to demonstrate that a given oil will be likely to be representative. EPA considers it

[1] See public docket for EPA letter to Chrysler Corporation (Stork to Heinen) dated January 16, 1978.

[2] See public docket for EPA letter of GM (Walsh to Fisher) dated March 17, 1981.

CAFE test results. EPA responded to this court order by issuing an NPRM

economy equation from 1974 through 1979. However, these test fuel properties

and light-duty trucks would be granted these CAFE adjustments since both

annual CAFE calculation. As EPA tightens its test fuel specifications in the

consumer use. This did not become an issue until the late 1970's when oils with

[3] See public docket for EPA letter of GM (Walsh to Fisher) dated March 17, 1981.

appropriate to maintain its general policy of denying the use of an alleged fuel saving oil (and, hence, denying commensurate CAFE credit) unless such oils can be shown to be representative.

As a result of the GM and Ford comments, and EPA's examination of the historical facts surrounding the fuel-efficient oils issue, EPA has concluded, within the constraints of its general policy, that a CAFE credit is appropriate for the 1981 model year. EPA has reached this conclusion based on the likelihood that fuel-efficient oil was available and used during the 1981 model year.

EPA is not proposing a fuel-efficient oil CAFE credit for the 1980 model year. EPA cannot establish that adequate availability and likely usage had occurred during the 1980 model year. (Note that the API "SF" designation was not established until early 1980, halfway into the 1980 model year. Thus, this designation and the subsequent labeling of oils conforming to the SF designation cannot be used to imply availability of fuel-efficient oils during the 1980 model year.) Therefore, it is not likely that the fuel-efficient oil availability was sufficient to be representative of in-use oils during the 1980 model year. EPA invites commentors to supply data as to the representativeness of fuel-efficient oils in use during the 1980 model year. If data show that such oils were likely in widespread use during the 1980 model year, EPA will consider further CAFE credit for 1980.

Regarding the magnitude of the 1981 model year credit, when EPA approved the use of fuel-efficient oils for the 1982 model year, it specified that the test vehicle oil could not exceed a sales-weighted average fuel economy improvement of SF multigrade. Subsequent manufacturer surveys of the marketplace indicated the average improvement to be 1.8 percent.[3] Therefore, EPA proposes the 1981 model year fuel-efficient oils CAFE credit to be the 1.8 percent maximum improvement allowed for fuel-efficient oils in test vehicles. This amounts to a 0.40 mpg (1.8 percent of the 22 mpg 1981 CAFE standard) credit addition for 1981.

As noted above, GM and Ford claimed the full 2 percent credit based on DOT projections when establishing standards. This would mean that another 0.2 percent credit would also be due to manufacturers for all model years beginning with 1981. EPA disagrees that the additional 0.2 perent credit is due. In setting the 1981–1984 model year standards, DOT projected several technological improvements as options to improve fuel economy. One option, improved lubricants, was estimated to improve fuel economy by 2 percent. In setting the 1981–1984 CAFE standards, the DOT decided not to set the standards so high that all of the technological options would be necessary within the period of 1981–1984. The DOT stated that implementation of all of the technological options would result in average fuel economy levels in excess of 27.5 mpg. Clearly, the standards which DOT promulgated were believed to be achievable without needing the full estimated benefit of improved lubricants. Most importantly, the approval for use of energy-efficient oils which improve fuel economy by 1.8 percent was granted by EPA on the basis of the fuel economy improvement of actual oils, representatively available and, therefore, expected to be used in typical service. The DOT's 2 percent benefit, in contrast, was an estimate of potential improvement. Therefore, EPA is limiting its proposal to a 1.8 percent credit for the 1981 model year. If sufficient data are supplied to show greater than 1.8 percent sales-weighted average improvement for 1981 or subsequent model years, EPA will consider additional credits.

[3] See public docket for GM letter to "File" (from Fisher) dated April 9, 1981.

D. Public Participation

EPA requests written comments on the above proposals to provide additional CAFE adjustments. In particular, EPA requests comment on the test fuel adjustment calculation methodology, and requests data on test fuel properties (e.g., carbon weight fraction and specific gravity) used by manufacturers from the 1975 model year test program through the present. Additionally, EPA is interested in comments regarding future improvements in the fuel economy measurement methodology to account for test fuel properties. These comments should address how such fuel economy measurement improvements could be implemented in laboratory practice. EPA also requests comments and data on the usage of and likely percent improvement of fuel-efficient oils in the 1980 model year.

E. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because if adopted, it will result in an annual effect on the economy of less than $100 million. Also, this regulation should not result in measurable increased costs or prices for consumers, industries or others, nor should it have adverse effects on competition, employment, investment or productivity. In fact, this regulation is expected to benefit the automobile industry by improving its position regarding CAFE compliance. Therefore, EPA has not prepared a regulatory impact analysis.

This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket for this rulemaking: Docket No. A–83–44.

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory analysis. This regulation should not impact small entities because under section 502(c) of the Energy Policy and Conservation Act, manufacturers of fewer than 10,000 vehicles per year may apply for an exemption from the CAFE standards. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Authority: Sec. 503 of the Energy Policy and Conservation Act, 15 U.S.C. 2003.

Dated: December 3, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–31977 Filed 12–6–84; 8:45 am]

BILLING CODE 6560–50–M

Reader Aids

Federal Register

Vol. 49, No. 237

Friday, December 7, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register	
General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408
Code of Federal Regulations	
General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419
Laws	
Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230
United States Government Manual	523-5230
Other Services	
Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189–47380	3
47381–47472	4
47473–47586	5
47587–47818	6
47819–48026	7

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	
Executive Orders:	
12493	47819
Proclamations	
5285	47473
5286	47587
7 CFR	
413	47589
420	47821
421	47821
425	47821
431	47821
432	47821
445	47590
907	47475
966	47189
991	47190
Proposed Rules:	
Ch. IX	47271
52	47402
434	47612
447	47617
966	47495
1126	47495
1150	47496
9 CFR	
301	47475
318	47822
319	47822
325	47475
381	47475
Proposed Rules:	
92	47402
10 CFR	
1	47823
20	47823
30	47823
40	47823
50	47823
55	47823
70	47823
73	47823
110	47191
430	47479
960	47714
12 CFR	
201	47825
523	47825
541	47825
545	47825
549	47825
561	47825
563	47825
584	47825
Proposed Rules:	
205	47405
226	47406
500	47410
561	47499, 47852
563	47499, 47852
563b	47271, 47410
570	47852
571	47852, 47866
584	47852
13 CFR	
101	47381
Proposed Rules:	
121	47412, 47414
14 CFR	
1	47594
27	47594
29	47594
39	47381, 47382
91	47594
95	47204
Proposed Rules:	
25	47358
71	47415
75	47621
15 CFR	
Proposed Rules:	
941	47415
16 CFR	
305	47479
17 CFR	
210	47594
229	47594
231	47594
241	47594
270	47206
274	47206
Proposed Rules:	
240	47274
18 CFR	
1302	47383
271	47826
19 CFR	
10	47986, 47995
Proposed Rules:	
10	48003
20 CFR	
632	47384
21 CFR	
81	47228, 47229
175	47480
184	47384
193	47481
436	47483, 47826
442	47483, 47826

452.....47828
510.....47387, 47829
520.....47830
522.....47829
546.....47486
558.....47387
561.....47481
1020.....47387

Proposed Rules:
58.....47504
166.....47418
182.....47505
184.....47505
450.....47505
610.....47622
630.....47622

22 CFR
121.....47682
122.....47682
123.....47682
124.....47682
125.....47682
126.....47682
127.....47682
128.....47682
129.....47682
130.....47682

24 CFR
234.....47388

Proposed Rules:
813.....48006
880.....48006
881.....48006
882.....48006
913.....48006
960.....48006

26 CFR

Proposed Rules:
1.....47870
35a.....47870
41.....47274, 47871
48.....47274, 47871

27 CFR
9.....47831

30 CFR
915.....47834

Proposed Rules:
Ch. II.....47624
251.....47871
920.....47419

32 CFR
706.....47602

33 CFR
100.....47230
110.....47602
117.....47231

Proposed Rules:
117.....47872

36 CFR

Proposed Rules:
261.....47505
293.....47505
294.....47505

37 CFR
304.....47487

38 CFR
10.....47389
111.....47231, 47232, 47389

Proposed Rules:
10.....47275

40 CFR
52.....47488, 47490, 47836
180.....47491, 47493
260.....47390
270.....47390
271.....47391

Proposed Rules:
51.....48018
52.....48018
65.....47507
154.....47508
180.....47420, 47508, 47509
261.....47510
600.....48023
721.....47874

43 CFR

Proposed Rules:
Ch. II.....47624
5400.....47511

44 CFR
67.....47240

45 CFR
96.....47603
801.....47392

46 CFR
500.....47393
501.....47393
502.....47393
503.....47393
504.....47393
505.....47393

47 CFR
0.....47604
61.....47265
73.....47395, 47604–47608, 47837
74.....47837

Proposed Rules:
Ch. I.....47275
2.....47625, 47628
18.....47628
73.....47638
81.....47641
83.....47516, 47625, 47641

48 CFR

Proposed Rules:
Ch. 5.....47516
1501.....47516
1502.....47516
1503.....47516
1505.....47516
1506.....47516
1513.....47516
1514.....47516
1515.....47516
1517.....47516
1527.....47516
1533.....47516
1536.....47516
1552.....47516

49 CFR
395.....47494
571.....47396
1057.....47268, 47850

Proposed Rules:
571.....47276, 47880
1063.....47277

50 CFR
17.....47397
258.....47611
655.....47269

Proposed Rules:
Ch. II.....47421
80.....47420
652.....47278, 47422

LIST OF PUBLIC LAWS

Note: The President completed his consideration of acts and joint resolutions passed during the second session of the 98th Congress on November 8, 1984.

Last list November 16, 1984.

The list, will be resumed when bills are enacted into public law during the first session of the 99th Congress which convenes on January 3, 1985.

304..... 47487
395..... 47494

OL
9
SS
37
E
7
984
MI

OL
9

SS
37

E
7

984

MI



Just Released

Code of Federal Regulations

Revised as of October 1, 1984

Quantity	Volume	Price	Amount
	Title 46—Shipping		
_____	Parts 90–139 (Stock No. 022–003–95435–0)	$9.00	$_____
_____	Parts 166–199 (Stock No. 022–003–95438–4)	9.00	_____
_____	Title 49—Transportation (Parts 1–99) (Stock No. 022–003–95451–1)	7.50	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form **Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the Code of Federal Regulations publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

VOL
49

ISS
237

DE
7

1984

UMI

OL
9
SS
38
E
O
984
MI

12-10-84
Vol. 49 No. 238

federal register

Monday
December 10, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D.C. 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S.MAIL

Postage and Fees Paid
U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

Penalty for private use $300

Federal Register
(ISSN 0097-6326)

U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

12-10-84
Vol. 49 No. 238
Pages 48027-48174

federal register

Monday
December 10, 1984

Selected Subjects

Advertising
Federal Trade Commission
Air Pollution Control
Environmental Protection Agency
Aliens
Employment and Training Administration
Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Child Welfare
Human Development Services Office
Claims
Commodity Futures Trading Commission
Conflict of Interests
Farm Credit Administration
Fisheries
National Oceanic and Atmospheric Administration
Foreign Trade
Census Bureau
Freedom of Information
Defense Department
Equal Employment Opportunity Commission
Fuel Economy
National Highway Traffic Safety Administration

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Government Contracts
Immigration and Naturalization Service
Marine Safety
Coast Guard
Motor Vehicles
Environmental Protection Agency
Natural Gas
Federal Energy Regulatory Commission
Radio Broadcasting
Federal Communications Commission
Supplemental Security Income
Social Security Administration

Contents

Federal Register
Vol. 49, No. 238
Monday, December 10, 1984

Agricultural Stabilization and Conservation Service
NOTICES
Feed grain donations:
48079 Blackfeet Indian Reservation, MT
48079 Fort Belknap Indian Reservation, MT
48079 Fort Peck Indian Reservation, MT
48079 Rocky Boys Indian Reservation, MT

Agricultural Trade and Export Policy Commission
NOTICES
48116 Meetings

Agriculture Department
See also Agricultural Stabilization and Conservation Service; Federal Grain Inspection Service.
NOTICES
48071 Privacy Act; systems of records
Program payments income tax exclusion; primary purpose determinations:
48078 Maryland Agricultural Cost-Share Program
48077 Pike County Marginal Cropland Conversion Project, AL
Senior Executive Service:
48078 Bonus awards schedule

Census Bureau
PROPOSED RULES
48055 Foreign trade statistics; Shipper's Export Declaration data requirements, etc.

Civil Aeronautics Board
NOTICES
48080, 48081 Agency information collection activities under review (3 documents)
48081 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications

Civil Rights Commission
NOTICES
48081 Agency information collection activities under OMB review
Meetings; State advisory committees:
48082 Wyoming

Coast Guard
RULES
Regattas and marine parades:
48046 5th Annual Stuart Christmas Boat Parade

Commerce Department
See Census Bureau; International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
PROPOSED RULES
48060 Federal claims collection

Customs Service
RULES
Air commerce and vessels in foreign and domestic trades:
48035 Clearance of vessels and aircraft; clarification

Defense Department
RULES
48040 Technical data, unclassified; withholding from public disclosure
NOTICES
Meetings:
48085 DIA Scientific Advisory Committee

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
48110 Schedules I and II, 1984 aggregate

Economic Regulatory Administration
NOTICES
Electricity export and import authorizations, permits, etc.:
48087, 48088 Minnesota Power & Light Co. (2 documents)
Natural gas exportation and importation petitions:
48086 St. Lawrence Gas Co., Inc.
48089 Valero Transmission Co.
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
48090 Texasgulf, Inc.

Employment and Training Administration
PROPOSED RULES
Alien temporary agricultural employment in U.S.; labor certification process:
48061 Adjustment to piece rates

Energy Department
See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
Meetings:
48085, 48086 National Petroleum Council (2 documents)

Energy Research Office
NOTICES
Meetings:
48097 Energy R&D Strategy Panel; cancellation

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines, and motor vehicle fuel economy:
48128 Technical amendments, etc.

Air quality implementation plans:
Clean Air Act; compliance with statutory provisions of Part D (Editorial Note: This document, which appeared on page 47488 of the Federal Register of December 5, 1984, was incorrectly carried in the Table of Contents for that issue.)
48152 Interstate pollution abatement
PROPOSED RULES
Water pollution control:
48064 State and Federal 404 programs; revisions, definitions, and permit exemptions; extension of time
NOTICES
Toxic and hazardous substances control:
48102 Premanufacture notices review period extensions

Equal Employment Opportunity Commission
RULES
48039 Freedom of Information Act; implementation

Farm Credit Administration
PROPOSED RULES
48051 Conflict of interest; personnel administration

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
48030 Temporary flight restrictions
Airworthiness directives:
48029 Cessna; correction
48027 McDonnell Douglas
48029 Societe Nationale Industrielle Aerospatiale
48033 Standard instrument approach procedures
PROPOSED RULES
48053 Control zones
48054 VOR Federal airways
NOTICES
Meetings:
48124 National Airspace Review Advisory Committee

Federal Communications Commission
RULES
Radio broadcasting:
48046 AM stations, daytime only, etc.; hours of operation

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
48035 Incremental pricing; acquisition cost thresholds
NOTICES
Hearings, etc.:
48092 ANR Pipeline Co.
48092 Apache Powder Co.
48092 Aquenergy Systems, Inc.
48093 Distrigas Corp. et al.
48093 East Tennessee Natural Gas Co.
48093 Mid Louisiana Gas Co.
48094 Midwestern Gas Transmission Co.
48094 Panhandle Eastern Pipe Line Co.
48094 Sea Robin Pipeline Co.
48094 South Georgia Natural Gas Co.
48095 Tenngasco Corp. et al.
48096 Tennessee Gas Pipeline Co.
48096 Transcontinental Gas Pipe Line Corp.
48096 Trunkline Gas Co.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
48097 Capco Financial Services, Inc.
48097 Rapidan Redevelopment Limited Partnership

Federal Grain Inspection Service
NOTICES
Agency designation actions:
48080 Arizona, Illinois, and South Carolina

Federal Home Loan Bank Board
NOTICES
48104, 48105 Agency information collection activities under OMB review (2 documents)
Applications, etc.:
48102 Continental Federal Savings & Loan Association
48103 Denton Savings Association
48103 Enterprise Federal Savings & Loan Association
48103 Faribault Federal Savings & Loan Association
48103 First Federal Savings & Loan Association of Brooksville
48103 First Federal Savings & Loan Association of Craig
48103 First Federal Savings & Loan Association of Sanford
48104 Illini Federal Savings & Loan Association
48104 Pensacola Home & Savings Association
48104 Sun Savings Association, F.A.
48104 Union Federal Savings & Loan Association
48104 United Federal Savings & Loan Association

Federal Maritime Commission
NOTICES
Casualty and nonperformance, certificates:
48105 Coastwise Cruise Line & Hyannis Harbor Tours, Inc.
48105 Dominican Ferries (2 documents)
48105 Republic Cruise Line, Inc., et al.
48106 Scandinavian Seaways Ltd. et al. (2 documents)

Federal Mine Safety and Health Review Commission
NOTICES
48125 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
48106 First National Bank Holding Co.
48106 Four Seasons of Wisconsin, Inc., et al.

Federal Trade Commission
PROPOSED RULES
48059 Retail food store advertising and marketing practices; advance notice

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
48038 Guaifenesin sterile powder
48039 Tylosin; correction

Health and Human Services Department
See Food and Drug Administration; Human Development Services Office; Social Security Administration.

Hearings and Appeals Office, Energy Department
NOTICES
48097 Special refund procedures; implementation and inquiry

Human Development Services Office
PROPOSED RULES
Grants; availability, etc.:
48160 Child abuse and neglect prevention and treatment program (Baby Doe safeguard requirements)
NOTICES
48170 Disabled infants, services and treatment (Baby Doe safeguard requirements); infant care review committee establishment by health care providers; interim model guidelines

Immigration and Naturalization Service
RULES
Transportation line contracts:
48027 Island Jetfoil Corp.
NOTICES
48111 Mariel boatlift Cubans; registration requirements; extension of registration period

Interior Department
See Land Management Bureau; Minerals Management Service.

International Trade Administration
NOTICES
Antidumping:
48082 Carbon steel plate from West Germany
Scientific articles; duty free entry:
48082 National Radio Astronomy Observatory et al.

Interstate Commerce Commission
NOTICES
Motor carriers:
48109 Finance applications
Railroad operation, acquisition, construction, etc.:
48110 Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
Railroad services abandonment:
48108 Burlington Northern Railroad Co.
48109 Chicago & North Western Transportation Co.

Justice Department
See Drug Enforcement Administration; Immigration and Naturalization Service.

Labor Department
See Employment and Training Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Exchange of public lands for private land:
48107 Idaho
Motor vehicles; off-road vehicle designations:
48107 California
Withdrawal and reservation of lands:
48107 Wyoming

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
48108 Exxon Co., U.S.A.
48108 Walter Oil & Gas Corp.

National Highway Traffic Safety Administration
PROPOSED RULES
Fuel economy standards:
48064 Passenger automobiles and light trucks

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
48049 Gulf of Alaska groundfish
NOTICES
Marine mammal permit applications, etc.:
48084 Elsner, Dr. Robert
48083 Kolmardens Djurpark
48084 Sea World, Inc.
Meetings:
48083 Mid-Atlantic Fishery Management Council
48083 Western Pacific Fishery Management Council

National Science Foundation
NOTICES
48117 Antarctic Conservation Act of 1978; permit applications, etc.

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
48117 Duquesne Light Co. et al.
Environmental statements; availability, etc.:
48117 Commonwealth Edison Co. et al.
48118–48121 Long Island Lighting Co. (5 documents)
48122 Washington Public Power Supply System

Pension and Welfare Benefit Programs Office
NOTICES
48111 Self-regulatory organizations; participation in prohibited transaction exemption process; inquiry

Pension Benefit Guaranty Corporation
NOTICES
48123 Agency information collection activities under OMB review

Personnel Management Office
NOTICES
48123 Agency information collection activities under OMB review

Social Security Administration
RULES
Social security benefits, etc.:
48036 Expedited appeals process; reopening and revising determinations and decisions; correction
Supplemental security income:
48036 Income, definition

State Department
NOTICES
Meetings:
48124 Secretary's Advisory Panel on Overseas Security

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
48084 Costa Rica
48085 Singapore

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.

Treasury Department
See Customs Service.

United States Information Agency
RULES
48039 Exchange-visitor program:
Application evaluation, etc.; interim; extension of comment period

Separate Parts in This Issue

Part II
48128 Environmental Protection Agency

Part III
48152 Environmental Protection Agency

Part IV
48160 Department of Health and Human Services, Office of Human Development Services

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

8 CFR
238.....48027

12 CFR
Proposed Rules:
612.....48051

14 CFR
39 (3 documents).....48027–48029
91.....48030
97.....48033
Proposed Rules:
71 (2 documents).....48053, 48054

15 CFR
Proposed Rules:
30.....48055

16 CFR
Proposed Rules:
424.....48059

17 CFR
Proposed Rules:
143.....48060

18 CFR
282.....48035

19 CFR
4.....48035
6.....48035

20 CFR
404.....48036
410.....48036
416 (2 documents).....48036
422.....48036
Proposed Rules:
655.....48061

21 CFR
522.....48038
558.....48039

22 CFR
514.....48039

29 CFR
1610.....48039

32 CFR
250.....48040

33 CFR
100.....48046

40 CFR
52.....48152
86.....48128
600.....48128
Proposed Rules:
232.....48064
233.....48064

45 CFR
Proposed Rules:
1340.....48160

47 CFR
73.....48046

49 CFR
Proposed Rules:
531.....48064
533.....48064

50 CFR
672.....48049

Rules and Regulations

Federal Register
Vol. 49, No. 238
Monday, December 10, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Island Jetfoil Corporation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the name of Island Jetfoil Corporation.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into agreement with Island Jetfoil Corporation to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended by adding the name Island Jetfoil Corporation under "At Victoria."

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: December 3, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-32088 Filed 12-7-84; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-100-AD; Amdt. 39-4956]

Airworthiness Directives; McDonnell Douglas Model DC-9-20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and replacement, if necessary, of the slat drive bellcrank on certain McDonnell Douglas DC-9 and C-9 (Military) series airplanes. This AD is prompted by reports of cracks in the slat drive bellcrank. This condition, if not corrected could result in slat asymmetry and potential loss of lift and lateral control of the aircraft at takeoff rotation, as well as the potential for rejected takeoffs from speeds beyond V_1 (the critical engine failure speed.)

DATES: Effective January 10, 1985. Comments must be received by December 31, 1984.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–740 (54–60). This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach California 90808; telephone (213) 548–2824.

SUPPLEMENTARY INFORMATION: Sixteen operators have reported eighteen instances of slat drive bellcrank failures. These failures occurred on aircraft having logged between 4,000 and 22,600 flight hours. Investigation revealed the failures were caused by fatigue cracking emanating from quench cracks adjacent to the bellcrank weld beam area, between the bellcrank arms attaching the bearing link assembly and slat drive actuating cylinder. Another nine operators have reported eighteen instances of slat drive drum bellcrank shaft failure which resulted in slat malfunction. These failures occurred on aircraft which had logged between 8,300 and 34,163 flight hours. One of the failures occurred on a drum bellcrank shaft which had been modified in accordance with McDonnell Douglas DC-9 Service Bulletin 27-179. Investigation revealed that the failures were caused by a fatigue crack that initiated at the forward bellcrank-to-collar attach hole. The failure of either the actuator slat drive shaft or slat drive drum bellcrank shaft, during slat extension in preparation for takeoff, could result in one slat retracting at takeoff rotation. This potential slat asymmetry could go undetected by the cockpit slat asymmetry detection system until takeoff rotation. During rotation, the aerodynamic forces would cause the affected slat to retract. Approximately four seconds after nose wheel liftoff, the stall warning and stall annunciation

system (SSAS) would actuate. This occurs since the wing with the slat retracted is operating at or near the stall angle of attack at the airspeed normally attained during initial climbout. Therefore, in consideration of the hazardous consequences of potential slat asymmetry, potential rejected takeoffs for speeds beyond V_1, and potential loss of lift and lateral control of the aircraft at takeoff rotation, this AD is considered to be necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD is being issued to require repetitive visual and non-destructive inspection (NDI) of the left and right slat drive mechanism and drum bellcrank assemblies for fatigue cracks. Further, since a situation exists that requires immediate adoption of this regulation, it found that notice and public procedure hereon are impracticable.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD within 20 days after its publication. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket No. 84-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. All communications received before this date will be considered by the Administrator, and the AD may be changed in light of the comments received. Operators are urged to submit their comments as early as possible since it may not be possible to evaluate comments received near the effective date in sufficient time to amend the AD before it becomes effective.

The substance of the AD has been informally coordinated with the manufacturer, the McDonnell Douglas Corporation, and the Air Transport Association of America.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-20, -30, -40, -50, and C-9 (Military) series airplanes, certified in all categories which correspond to factor serial numbers listed in McDonnell Douglas Service Bulletins Nos. 27-196, dated September 18, 1984, and 27-250, dated August 29, 1984. These McDonnell Douglas Service Bulletins are hereinafter referred to as S/B 27-196 and S/B 27-250, respectively. Compliance required as indicated, unless previously accomplished.

To detect cracks and prevent failure of the slat drive mechansim and its interrelated structure, accomplish the following:

A. Within 20 days or 135 landings, whichever occurs first after the effective date of this AD, inspect the left and right actuator drive slat mechanism in accordance with S/B 27-196, or later FAA approved revisions.

1. If no cracks are found, no further inspection is required.

2. If a crack is found, and the crack is less than 1 inch in length, inspect the actuator slat drive shaft at intervals not to exceed 1,600 landings or until such time that Condition II of S/B 27-196 is accomplished.

3. If a crack is found, and the crack is one inch or greater in length, replace the actuator slat drive shaft in accordance with Condition II of S/B 27-196, or later FAA approved revisions.

B. Within 20 days or 135 landings, whichever occurs first after the effective date of this AD, inspect the forward slat drive drums' bellcrank shafts that have accumulated 4,000 or more landings since new or last overhaul.

1. If no cracks are detected, inspect the slat drive drum bellcrank shaft for cracks as shown on Figure 1, of S/B 27-250, at intervals not to exceed 1,500 landings or until such time that Condition II of S/B 27-250 is accomplished.

2. If Cracks are found, replace the drum shaft in accordance with Condition II of S/B 27-250, or later FAA approved revisions. Replacement of slat drive drum bellcrank shaft is considered to be terminating action for the repetitive inspection requirements of paragraph B.1., above.

C. If cracks are found in locations in the slat drive shaft(s) other than those identified in S/B 27-196 and S/B 27-250, replace the component(s) before further flight, in accordance with paragraph D., below, or rework in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Terminating Actions. Completion of Condition II of S/B 27-196 and Condition II of S/B 27-250, or later FAA approved revisions, constitutes terminating action for this AD.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspection/replacement required by this AD. This flight must be in day visual meteorological conditions.

F. Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Upon request of operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a) 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, on November 19, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-32047 Filed 12-7-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 72-CE-2-AD; Amdt. 39-4930]

Airworthiness Directives; Cessna Models 150, 172, 177, 182, 205, 206, 207, and 210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 72-03-03 R1, Amendment 39-4930 (49 FR 39291), applicable to certain Cessna Models 150, 172, 177, 182, 205, 206, 207 and 210 Series Airplanes. This correction is necessary because the date of January 1, 1983, set forth in the first sentence of paragraph (d), is erroneous. It should be January 1, 1973. Action is taken herein to correct this discrepancy.

EFFECTIVE DATE: November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, ACE-120W, FAA, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of Revision 1 to AD 72-03-03, Amendment 39-4930 (49 FR 39291), applicable to certain Cessna Models 150, 172, 177, 182, 205, 206, 207 and 210 Series aircraft the FAA found that the date in the first line of revised paragraph (d) of the AD is erroneous. The date of January 1, 1983, should be January 1, 1973. Therefore, action is taken herein to make this correction. Since this action rectifies an error, it imposes no additional burden on any person. Therefore, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

In FR Doc. 84-26432 (49 FR 39291), appearing in the **Federal Register** of October 5, 1984, make the following correction:

In the first line of paragraph (d) of the AD, change the date from January 1, 1983, to "January 1, 1973."

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Issued in Kansas City, Missouri, on November 27, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-32048 Filed 12-7-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-ASW-23; Amdt. 39-4959]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale, Models AS350B, AS350C, AS350D, and AS350D-1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires modification of a wiring harness previously installed as part of Aerospatiale Helicopter Corporation's (AHC) Supplemental Type Certificate (STC) Number SH4032SW on Societe Nationale Industrielle Aerospatiale (SNIAS) Model as350B or STC SH2825SW on SNIAS Models AS350C, AS350D, and AS350D-1. This amendment is needed because the FAA has determined that the existing AD should apply to all part numbers (P/N) of Air Cruisers flotation kits installed under the above STCs.

DATES: Effective December 20, 1984.

Compliance is required prior to any further overwater flight operation of the helicopter after the effective date of this AD (unless already acomplished in accordance with AHC Service Bulletin No. SB 350-18, dated April 4, 1983).

ADDRESSES: The applicable service bulletin may be obtained from Aerospatiale Helicopter corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of the service bulletin is contained in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Texas, 76106.

FOR FURTHER INFORMATION CONTACT: J.R. Bannister, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2590.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-4657 (48 FR 27533), AD 83-11-01, which limits the effectivity of the AD to those helicopters with flotation kit P/N E16636-505. After issuing Amendment 39-4657, the FAA has determined that additional Air Cruisers kits P/Ns E16636-503 and E16636-507 may also be installed in accordance with STCs SH4032SW and SH2825SW. The routing of the harness is the same for all kits, therefore the problem of chafing would exist in all installations pertaining to these STCs. Without adequate chafing protection, the electrical wires to the float actuation squibs could fail and prevent proper inflation of the emergency flotation system.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation only involves approximately 110 helicopters for a total cost of $18,150. Therefore, I certify that this action (1) is not "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-4657 (48 FR 27533), AD 83-11-01, by revising the applicability paragraph to read as follows:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all SNIAS Model AS350B, AS350C, AS350D, and AS350D-1 helicopters, certificated in all categories, that have Air Cruiser flotation kits installed in accordance with STC SH4032SW or SH2825SW, and delivered by AHC prior to April 4, 1983.

* * * * *

This amendment amends Amendment 39-4657 (48 FR 27533), AD 83-11-01.

(Sec. 313(a), 610, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; 14 CFR 11.89)

This amendment becomes effective December 20, 1984.

Issued in Forth Worth, Texas, on November 26, 1984.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84-32052 Filed 12-7-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 91

[Docket No. 22951; Amdt. No 91-186]

Temporary Flight Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to § 91.91 of the Federal Aviation Regulations (FAR) provides for imposition by the Administrator, or his designee, of temporary flight restrictions over an area in which all aircraft activity would be prohibited, except appropriate rescue activity, when an incident or event on the surface poses a hazard to people on the ground or to airborne aircraft. The amendment also narrows the circumstances in which aircraft may be relieved from complying with certain temporary flight restrictions to those operations that are approved by the official in charge of on scene emergency response activities. The flight plan filing and notification requirements have also been relaxed for certain operations.

EFFECTIVE DATE: June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Airspace and Air Traffic Rules Branch, ATO-230, Airspace—Rules and Aeronautical Information Division, Office of the Associate Administrator for Air Traffic, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Background

Currently, under FAR § 91.91, the Administrator may impose a temporary flight restriction (TFR) to prevent congestion of sightseeing aircraft over an event which may generate a high degree of public interest, or to provide a safe operating environment for disaster relief aircraft. An example typical of Notices to Airmen (NOTAM) establishing an area wherein TFR's apply would be:

> Flight restrictions relief aircraft operations, Minner, Iowa, effective immediately and until 2359 GMT, January 6, 1983. Pursuant to FAR § 91.91 temporary flight restrictions are in effect within a 5 statute mile radius of the Minner VOR at and below 3,000 feet AGL. Minner flight service station (FSS) (792) 555-6742. Pleasant County Sheriffs Department (792) 555-8122 is the agency directing relief activities.

The rule allows five major exceptions to the prohibition against flight in those areas: (1) Aircraft participating in disaster relief, and operated under the direction of the agency responsible for relief operations; (2) aircraft operating to or from an airport within the area and operated so as not to hamper or endanger relief activities; (3) operations specifically authorized under an instrument flight rules (IFR) air traffic control (ATC) clearance; (4) en route operations under visual flight rules (VFR), when flight around or above the area is impracticable due to weather, terrain, or other considerations, notice is given to the air traffic facility specified in the Notice to Airmen, and the operation does not hamper or endanger relief activities; and (5) the aircraft is carrying accredited news representatives or persons on official business concerning the incident or event, is operated above the altitudes used by disaster relief aircraft unless specifically authorized to fly lower, and the operator has filed a flight plan to include any information deemed necessary by ATC.

Several incidents have demonstrated the need for control broader than that provided for in current § 91.91 in order to ensure adequate levels of safety of persons and property on the ground. For example, in March 1981, a high-rise condominium under construction in Cocoa Beach, Florida, collapsed. Ground rescue teams, using listening devices, were trying to determine if any survivors were trapped beneath the rubble. A news helicopter operating in the area created noise rendering the listening devices useless.

Another incident occurred near Crestview, Florida, on April 8, 1979. A train derailment caused chlorine gas to be released into the atmosphere. Later, as rescue personnel were staging beneath the gas cloud, rotor wash from a low flying helicopter forced gas into the staging area, causing injury to several rescue team members. The Fort Worth, Texas, Office of Emergency Management, has also advised of an incident that occurred in that city in 1982 involving a chlorine gas tank leak at a water treatment plant. A news media helicopter landing close to the incident created rotor wash which dispersed the toxic gas into an area where people were working. Approximately seven persons were taken to the hospital for treatment. A Fort Worth city official stated that these casualties would not have occurred if the media helicopter had not been operated so close to the incident site.

In all of the above examples, flight restrictions under § 91.91 were implemented by local FAA elements. However, the operations which proved hazardous to ground personnel were specifically excluded from the restrictions under the current rule. A number of other incidents have occurred, with little warning, which have created a hazard to aircraft, but which have not been within the scope of the current § 91.91. Those incidents include persons discharging firearms at aircraft, toxic gas releases, and bomb detonations. A recent coal gas leak from a deep mine that had been "sealed" for several years created a potential hazard to unwary aircraft operators and occupants. Those incidents do not, by definition, qualify for current § 91.91 restrictions. In those types of cases, the FAA needs swift procedures for the issuance of temporary flight prohibitions to provide adequate protection of airborne aircraft and aircraft occupants. It is, therefore, necessary to revise and update § 91.91 to cover such situations.

These amendments are based on a Notice of Proposed Rulemaking (Notice No. 82-7) published in the **Federal Register** on April 29, 1982, (47 FR 18560). All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review by the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and reasons for their adoption are the same as those contained in Notice 82-7.

Discussion of Comments

The National Transportation Safety Board (NTSB) filed comments supporting the proposed rule, and suggests the phrase "on the ground" in proposed § 91.91(a)(1) be replaced with the phrase "on the surface" in order to make it clear that it includes situations over waterways, rivers, and bodies of water. The NTSB also suggests the phrase "agency responsible for relief activities" in proposed § 91.91(b), (d)(1), and (d)(3), be replaced by the phrase "official in charge of on scene emergency response activities." The recommended changes more clearly convey the intent of the proposed rule as well as the current rule, and the rule reflects these changes.

The Aircraft Owners and Pilots Association (AOPA) generally agrees with the proposed rule, and believes that every effort should be made to exclude airports from TFR areas. To the extent this cannot be accomplished, AOPA does not believe operators should be required to notify the FAA for flight to and from an airport within the TFR area. AOPA states that this is not a provision in the current rule because those operations are required to be conducted without hampering or endangering relief activities.

The FAA agrees that there is no reason to require notification for an operation into a TFR when the operation is necessitated by weather, terrain, etc., because the objective of the TFR would not be affected by such infrequent and noninterfering occurrences. However, in situations which require disaster relief aircraft operations, the FAA must provide for the safety of those aircraft as proposed by requiring notification of flight into and within any TFR designated under those conditions. Notification serves to establish a means whereby aircraft operators receive information concerning the nature of relief aircraft activities. Operators, using this information are better equipped to conduct flight so as not to hamper or endanger relief activities. The final rule has been revised to provide that notification will be for the purposes of receiving advisories concerning relief activities.

AOPA and the National Business Aircraft Association (NBAA) recommend that the duration of the TFR be set forth in the implementing NOTAM. This recommendation does not require a rule change and will be coordinated with the apropriate FAA offices and facilities.

The NBAA also suggests that a clear explanation in the NOTAM of the reason the restriction is imposed should result in greater cooperation in avoiding a hazardous area, and that an education program be conducted to inform pilots of the provisions of the new rule. The FAA intends to publish an advisory circular which will be available to interested parties. Additionally, the NBAA suggests an annual review be conducted of all TFR operations under the rule to determine if the provisions of the rule with respect to these operations are warranted. The FAA periodically reviews TFR's that have been issued and will continue to do so.

The State of Oregon Aeronautics Division in support of the rule recommends the inclusion of a procedure for amending NOTAM's if circumstances should develop which required more restrictive requirements. It also suggests that notice of any upgraded condition be accomplished by radio broadcasts. Situations that necessitate upgrading a TFR NOTAM should be very rare. However, if this should become necessary, the NOTAM can be cancelled quickly and easily by the issuance of a more restrictive NOTAM.

The Offshore Racing Commission of the American Power Boat Association (ORC) agrees generally with the proposed rule, but objects to the provisions of the current rule which provides for news media operations in the TFR area. ORC believes that helicopters carrying news representatives to cover boat races operate dangerously close to the high speed racing craft and are having a serious effect on the boats' attitude. ORC recommends that the rule provide for the establishment of a minimum altitude within the TFR area which would apply to all aircraft except those assigned for safety or official business purposes by officials of the event. With respect to events such as boat races, the current rule provides for the establishment of a TFR area to preclude an unsafe congestion of sightseeing aircraft. Since news media aircraft are not sightseeing aircraft, they are not covered by the current rule and no change in these provisions was proposed in Notice 82-7.

The ORC also suggests that an FAA representative be present during race events to monitor the TFR area for FAR violations. The FAA does not believe it is necessary to monitor all events where news media coverage is accomplished by aircraft. The current regulations provide for the safety of persons and property on the surface. For example, while § 91.79 allows helicopters to be operated at altitudes above, and distances from, persons, vessels, vehicles, or structures less than those required of fixed wing aircraft, it also requires such operations to be conducted without hazard to persons and property on the surface. If there is reason to believe that an aircraft is not being operated in compliance with the regulations, or that an operator cannot determine the minimum safe distance from participating racing craft, then the local FAA General Aviation District Office should be contacted for assistance.

The State of Idaho Department of Transportation, in support of the proposed rule, noting several incidents in which rescue aircraft and people being rescued were directly endangered by unauthorized aircraft operations, suggests that speeding the process of imposing TFR's might add strength to the rule, and that the text of implementing NOTAM's should be written in a style that would facilitate ease in plotting. These suggestions are appreciated and will be considered during a review of the ATC procedures concerning TFR's. Further, it recommends that the agency which requested the TFR be the only authority for allowing flight in the TFR. Both Notice 82-7 and this final rule contain this provision with respect to hazards associated with incidents on the surface. However, in the other situations, the FAA believes the current regulations are sufficient.

The Miami, Florida, fire department noted that the city of Miami fire/rescue has experienced disruption of emergency operations through interrupted radio messages due to aircraft noise and through prop wash moving toxic fumes and blowing blankets, bandages, etc. off of victims of the incident. The city of Miami fire department, the International Fire Service Training Association, the Oklahoma State University Fire Service Training Department, the South Carolina State Firemen's Association, the Prattville, Alabama, fire department, and the Fargo, North Dakota, fire department filed comments in support of the amendment to the rule. The comments of the Chemical Manufacturers Association, Military Airlift Command, Air Transport Association, and the Air Line Pilots Association also support the amendment.

Two broadcast news organizations—Columbia Broadcasting System, Inc. and National Broadcasting Company, Inc.—and three associations—the National Association of Broadcasters, the Society of Professional Journalists/Sigma Delta Chi, and the Radio-Television News Directors Associations—submitted joint comments expressing support for the safety objectives served by § 91.91, but strongly opposing the adoption of the proposed amendment insofar as it would prohibit news organizations from flying over the sites of newsworthy events whenever a temporary flight restriction is imposed to protect persons and property on the ground or in the air from hazards associated with an incident on the ground. The joint broadcasting and journalism commenters propose two alternatives to the FAA proposal. First, the commenters propose a less restrictive regulation under which news gathering aircraft would maintain a communications link with FAA and/or rescue personnel at the emergency site, and could receive the recommendations of rescue personnel to avoid unsafe conditions. Alternatively, if the rule, as proposed, is made final, the joint commenters urge the adoption of guidelines to minimize the effect on news aircraft.

The FAA agrees that, consistent with the First Amendment guarantees of the constitution, regulation of aerial newsgathering should be no more

restrictive than is essential to achieve safety. However, we cannot agree that the procedures proposed by the joint commenters for a ground-to-air communications link with newsgathering aircraft, which would permit air traffic control specialists to make flight recommendations, are adequate to assure safety. The FAA appreciates the spirit of responsibility and cooperation of those aerial newsgathering journalists who routinely cooperate with FAA in an effort to assure that their activities pose no safety hazard to others. Nevertheless, incidents involving the news media do occur. Therefore, reliance on recommendations in lieu of airspace restrictions would not be sufficient to assure safety. Furthermore, the establishment of communications links often is not feasible in emergency situations, and any establishment and use of such communications by newsgathering aircraft could divert resources needed for rescue activities.

However, the FAA agrees with the suggestion that guidelines should be prepared to prevent unnecessary restriction on aerial newsgathering. The FAA intends to issue an advisory circular and to revise national ATC procedures to ensure that only in cases where a hazard is present to persons and property on the ground or in the air will a total ban be placed on all aircraft.

Finally, based on a review of the comments received and further FAA consideration, certain paragraphs have been editorially rearranged and several paragraphs have been reworded to use language usually used in NOTAM's designating temporary flight restrictions. The requirements applicable to law enforcement and event personnel have been separated from the requirements applicable to news representatives.

Economic Analysis

This amendment is in accordance with the FAA policy of seeking an acceptable level of air safety for all airspace users. The economic benefits and costs of this amendment to consumers, the public, Federal, State, and local governments have been considered and found to be negligible.

Consequences

There would be three types of operations that are presently permitted under the current regulation that would be prohibited under the proposed rule in certain situations. The types are:

(1) Operations to or from an airport within the designated area.

(2) VFR overflight operations when flight conditions around the designated area prevent another route.

(3) news media operations.

In the case of type (1) operations, the designating FAA facility would, to the maximum extent possible, exclude airports from the designated area. In the event an airport is included in the area, impacted arrival operations would have to use an alternate airport. Aircraft desiring to depart, on the other hand, could not depart until the restrictions were relaxed or cancelled.

In the case of type (2) operations, it would be almost impossible for the ATC facility to recommend other than avoiding the area completely.

News media operations (type (3)) would be, because of a perceived need to fly "low and close," prohibited entirely and without an alternative course of action except to conduct operations from the ground.

There have been approximately 10 incidents over the past 5 years that would have warranted implementing temporary flight restrictions that would have excluded all types of air operations except for relief activities. This represents an average of two relief activities per year. Of this average, it is estimated that there would be no economic impact on type (1) and (2) operations because the areas in which restrictions apply generally encompass a 2 nautical mile radius with the ceiling at 2,000 feet above ground level.

Since all news media would be excluded, some extra expenses may be incurred such as costs for alternate transportation means. In view of the number of occurrences, this impact is considered insignificant. In any event, if any unforeseen economic burden were to be placed on operators, it would be definitely offset by the enhanced safety benefits, afforded by the rule, to ground relief crews and unwary aircraft occupants.

Benefits

This amendment is expected to increase safety and efficiency in the areas where ground crews would be susceptible to life-threatening conditions—conditions which could be compounded by low flying aircraft. Additional safety benefits are expected to be realized by aircraft in flight because of the protection from hazards emanating from the surface.

Determination

Considering the limited number of times this amendment would be invoked, the inherent benefits to the public and the overall economic evaluation, including the effects on small business entities, the economic impact of this rule is judged nonsignificant. There should be no appreciable economic impact to the public, consumers, Federal, State, and local governments.

Because the very small number of incidents per year that would warrant imposition of a temporary flight restriction with the stricter provisions adopted by this amendment and generally small radius and low ceiling of the restricted areas, this document involves a rulemaking action which is not a "major rule" under Executive Order 12291 and is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For these reasons and because the only economic benefits would be those to individuals who receive additional protection from the revised rule, I certify that, under the criteria of the Regulatory Flexibility Act, the amendment will not have a significant impact on a substantial number of small entities. In addition, the FAS has determined that the expected impact of this amendment is so minimal that it does not require a full evaluation.

List of Subjects in 14 CFR Part 91

Airmen, Air safety, Safety, Aviation safety, Air transportation, Aircraft.

The Amendment

PART 91—[AMENDED]

Accordingly, Part 91 of the Federal Aviation Regulations (14 CFR Part 91) is amended by revising § 91.91 to read as follows:

§ 91.91 Temporary flight restrictions.

(a) The Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply and specifying the hazard or condition requiring their imposition, whenever he determines it is necessary in order to—

(1) protect persons and property on the surface or in the air from a hazard associated with an incident on the surface;

(2) provide a safe environment for the operation of disaster relief aircraft; or

(3) prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest.

The Notice to Airmen will specify the hazard or condition that requires the imposition of temporary flight restrictions.

(b) When a NOTAM has been issued under paragraph (a)(1) of this section, no person may operate an aircraft within the designated area unless that aircraft is participating in the hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(c) When a NOTAM has been issued under paragraph (a)(2) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions are met:

(1) The aircraft is participating in hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(2) The aircraft is carrying law enforcement officials.

(3) The aircraft is operating under an ATC approved IFR flight plan.

(4) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather, or terrain; notification is given to the Flight Service Station (FSS) or ATC facility specified in the NOTAM to receive advisories concerning disaster relief aircraft operations; and the operation does not hamper or endanger relief activities and is not conducted for the purpose of observing the disaster.

(5) The aircraft is carrying properly accredited news representatives, and, prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the Notice to Airmen and the operation is conducted above the altitude used by the disaster relief aircraft, unless otherwise authorized by the official in charge of on scene emergency response activities.

(d) When a NOTAM has been issued under paragraph (a)(3) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions is met:

(1) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather or terrain, and the operation is not conducted for the purpose of observing the incident or event.

(2) The aircraft is operating under an ATC approved IFR flight plan.

(3) The aircraft is carrying incident or event personnel, or law enforcement officials.

(4) The aircraft is carrying properly accredited news representatives and, prior to entering that area, a flight plan is filed with the appropriate FSS or ATC facility specified in the NOTAM.

(e) Flight plans filed and notifications made with an FSS or ATC facility under this section shall include the following information:

(1) Aircraft identification, type and color.

(2) Radio communications frequencies to be used.

(3) Proposed times of entry of, and exit from, the designated area.

(4) Name of news media or organization and purpose of flight.

(5) Any other information requested by ATC.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Issued in Washington, D.C., on October 31, 1984.

Donald D. Engen,

Administrator.

(FR Doc. 84-32044 Filed 12-7-84; 8:45 am)

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24348; Amdt. No. 1283]

Air Traffic and General Operating Rules; Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on

related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

* * * *Effective January 17, 1985*

Dixon, IL—Dixon Muni-Charles R. Walgreen Field, VOR–A, Amdt. 8
Forest City, IA—Forest City Muni, VOR/DME–A, Amdt. 2
Pittsburg, KS—Atkinson Muni, VOR/DME RWY 3, Amdt. 1
Wichita, KS—Colonel James Jabara, VOR–A, Amdt. 1
Opelousas, LA—St Landry Parish, VOR/DME–A, Amdt. 2, Cancelled
Opelousas, LA—St Landry Parish, VOR/DME RWY 35, Orig.
Beverly, MA—Beverly Muni, VOR RWY 16, Amdt. 1
Northampton, MA—Northampton, VOR/DME–B, Orig.
Detroit/Grosse Ile, MI—Grosse Ile Muni, VOR–A, Amdt. 4
Holland, MI—Tulip City, VOR–A, Amdt. 8
Houghton Lake, MI—Roscommon County, VOR RWY 9, Amdt. 1
Thief River Falls, MN—Thief River Falls Regional, VOR RWY 13, Amdt. 7
Maryville, MO—Maryville Memorial, VOR/DME RWY 36, Amdt. 2
Broken Bow, NE—Broken Bow Muni, VOR RWY 14, Amdt. 1
Hastings, NE—Hastings Muni, VOR RWY 4, Amdt. 2
Hastings, NE—Hastings Muni, VOR RWY 14, Amdt. 13
Hastings, NE—Hastings Muni, VOR RWY 32, Amdt. 11
Sidney, NE—Sidney Muni, VOR/DME RWY 12, Amdt. 1
Sidney, NE—Sidney Muni, VOR/DME RWY 30, Amdt. 1
Sidney, NE—Sidney Muni, VOR RWY 30, Amdt. 4
Wapakoneta, OH—Neil Armstrong, VOR–A, Amdt. 3
Clinton, OK—Clinton-Sherman, VOR or TACAN 1 RWY 35L, Amdt. 8
Clinton, OK—Clinton-Sherman, VOR/DME 2 RWY 35L, Orig.
Dallas, TX—Addison, VOR–A, Amdt. 2
Highgate, VT—Franklin County State, VOR–A, Amdt. 2
Pullman, WA—Pullman-Moscow Regional, VOR RWY 5, Amdt. 5
Baraboo, WI—Baraboo Wisconsin Dells, VOR–A, Amdt. 10
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 5, Amdt. 6
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 9, Amdt. 1
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 15, Amdt. 10, Cancelled
Rhinelander, WI—Rhinelander-Oneida County, VOR/DME RWY 23, Amdt. 6
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 27, Amdt. 1
Rhinelander, WI—Rhinelander-Oneida County, VOR/DME RWY 27, Orig., Cancelled
Wisconsin Rapids, WI—Alexander Field-South Wood County, VOR/DME–A, Amdt. 3
Cheyenne, WY—Cheyenne, VOR–A, Amdt. 7

By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

* * * *Effective January 17, 1985*

Tampa, FL—Tampa Intl, LOC (BC) RWY 36R, Amdt. 19
Ames, IA—Ames Muni, LOC RWY 31, Amdt. [illegible]
Beverly, MA—Beverly Muni, LOC RWY 16, Amdt. 2
Iron Mountain/Kingsford, MI—Ford, LOC/DME BC RWY 19, Amdt. 7
Dallas, TX—Addison, LOC–B, Orig., Cancelled
Dallas, TX—Addison, LOC RWY 33, Orig.
Green Bay, WI—Austin Straubel Field, LOC BC RWY 24L, Amdt. 14

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

* * * *Effective January 17, 1985*

Tampa, FL—Peter O Knight, NDB RWY 3, Amdt. 10
Tampa, FL—Tampa Intl, NDB RWY 18L, Amdt. 32
Fairfield, IA—Fairfield Muni, NDB RWY 35, Amdt. 6
Perry, IA—Perry Muni, NDB RWY 13, Orig.
Perry, IA—Perry Muni, NDB RWY 31, Amdt. 3
Storm Lake, IA—Storm Lake Muni, NDB RWY 35, Amdt. 3
Pittsburg, KS—Atkinson Muni, NDB RWY 16, Amdt. 2
Natchitoches, LA—Natchitoches Muni, NDB RWY 34, Amdt. 2, Cancelled
Opelousas, LA—St Landry Parish, NDB RWY 17, Orig.
Beverly, MA—Beverly Muni, NDB–A, Amdt. 9
Deckerville, MI—Lamont, NDB RWY 9, Amdt. 3, Cancelled
Deckerville, MI—Lamont, NDB RWY 27, Amdt. 3, Cancelled
Houghton Lake, MI—Roscommon County, NDB RWY 27, Amdt. 6
Lansing, MI—Capital City, NDB RWY 28L, Amdt. 21
Sturgis, MI—Kirsch Muni, NDB RWY 24, Amdt. 8
West Branch, MI—West Branch Community, NDB RWY 27, Amdt. 5
Maryville, MO—Maryville Memorial, NDB RWY 14, Amdt. 1
Broken Bow, NE—Broken Bow Muni, NDB RWY 14, Amdt. 5
Hastings, NE—Hastings Muni, NDB RWY 14, Amdt. 10
Ogallala, NE—Searle Field, NDB RWY 8, Amdt. 5, Cancelled
Ogallala, NE—Searle Field, NDB RWY 26, Amdt. 4, Cancelled
Dallas, TX—Addison, DNB RWY 15, Amdt. 2
Denton, TX—Denton Muni, NDB RWY 17, Amdt. 4
Rockport, TX—Aransas Co, NDB 2 RWY 14, Orig.
Rockport, TX—Aransas Co, NDB 1 RWY 14, Amdt. 4
Neillsville, WI—Neillsville Muni, NDB RWY 27, Amdt. 1
Cheyenne, WY—Cheyenne, NDB RWY 28, Amdt. 12

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective January 17, 1985*

Tampa, FL—Tampa Intl, ILS RWY 18L, Amdt. [illegible]
Tampa, FL—Tampa Intl, ILS RWY 18R, Amdt [illegible]
Lansing, MI—Capital City, ILS RWY 10R, Amdt. 6
Lansing, MI—Capital City, ILS RWY 28L, Amdt. 22
Dallas, TX—Addison, ILS RWY 15, Amdt. 6
Denton, TX—Denton Muni, ILS RWY 17, Amdt. 4
Green Bay, WI—Austin Straubel Field, ILS RWY 6R, Amdt. 16
Rhinelander, WI—Rhinelander-Oneida County, ILS RWY 9, Amdt. 2
Cheyenne, WY—Cheyenne, ILS RWY 26, Amdt. 31

* * * *Effective November 27, 1984*

Monterey, CA—Monterey Peninsula, ILS RWY 10, Amdt. 23

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective January 17, 1985*

Tampa, FL—Peter O Knight, RADAR–1, Amdt. 4
Tampa, FL—Tampa Intl, RADAR–1, Amdt. 11
Lansing, MI—Capital City, RADAR–1, Amdt. 11
Muskegon, MI—Muskegon County, RADAR–1, Amdt. 11
Kingsville, TX—Kleberg Co, RADAR–1, Amdt. 1
Lubbock, TX—Lubbock Intl, RADAR–1, Amdt. 6

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective January 17, 1985*

Fairfield, IA—Fairfield Muni, RNAV RWY 17, Orig.
Fairfield, IA—Fairfield Muni, RNAV RWY 35, Orig.
Forest City, IA—Forest City Muni, RNAV RWY 33, Orig.
Wichita, KS—Colonel James Jabara, RNAV RWY 18, Amdt. 1
Holland, MI—Tulip City, RNAV RWY 8, Orig.
Holland, MI—Tulip City, RNAV RWY 26, Amdt. 3
Hastings, NE—Hastings Muni, RNAV RWY 14, Amdt. 3
Dallas, TX—Addison, RNAV RWY 33, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on November 30, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84–32048 Filed 12–7–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–14]

Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: December 1, 1984.

FOR FURTHER INFORMATION CONTACT:

Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357–8500.

Order of the Director, OPPR

Issued: November 21, 1984.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of December 1984 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1984 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1984]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental Pricing Threshold	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	$2.323	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NGPA Section 102 Threshold	3.586	3.609	3.631	3.656	3.680	3.705	3.730	3.752	3.774	3.797	3.821	3.845
NGPA Section 109 Threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.429	2.436	2.444
130% of No. 2 Fuel Oil in New York City Threshold	7.738	7.570	7.570	8.554	8.590	7.675	7.690	7.748	7.680	7.200	7.040	7.280

[FR Doc. 84–32108 Filed 12–7–84; 8:45 am]

BILLING CODE 4717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 6

[T.D. 84–248]

Clearance of Vessels and Aircraft

AGENCY: Customs Service, Treasury.

ACTION: Notice of clarification.

SUMMARY: This document advises the public that in order to better control the flow of critical United States technology and equipment, vessels and aircraft carrying certain specified cargo, will not be cleared under the navigation laws administered by Customs for any foreign port or place under pro forma clearance procedures until certain information concerning that cargo is submitted to Customs. To simplify the requirement, Customs will accept the information shown on the Shipper's Export Declarations which are provided to exporting carriers by exporters or their agents before exportation of the cargo.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Vic Weeren or Eula Walden, Office of Inspection and Control (202) 566–2140;

Legal Aspects: Edward Gable, Office of Commercial Operations (202) 566–5732;

VOR-A, Amdt. 4

Amdt. 10

RWY 10, Amdt. 23

AGENCY: Customs Service, Treasury.

Customs will accept the information

5732.

U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

In order to better control the flow of critical United States technology and equipment from the U.S., on November 28, 1984, the Commissioner of Customs issued instructions to Regional Commissioners and District Directors of Customs, that effective January 7, 1985, vessels and aircraft carrying certain specified types of cargo will not be cleared under the navigation laws administered by Customs for any foreign port or place under pro forma clearance procedures until certain information on that cargo is submitted to Customs. Clearance procedures for vessels and aircraft are contained in §§ 4.60 through 4.75, Customs Regulations (19 CFR 4.60–4.75) and § 6.8, Customs Regulations (19 CFR 6.8). Pro forma clearance procedures are provided for in §§ 4.75 and 6.8, Customs Regulations (19 CFR 4.75 and 6.8).

The instructions issued on November 28 do not address the presentation of SED's for hand-carried shipments or exporters, carriers, and freight forwarders authorized monthly and electronic reporting.

The cargo designated as subject to this clearance requirement is cargo subject to a Department of Commerce validated export license (see Parts 372 and 373, Department of Commerce Regulations (15 CFR Parts 372 and 373)) or cargo subject to a Department of State export license (see Parts 121 and 123, Department of State Regulations (22 CFR Parts 121 and 123)). A carrier transporting some export cargo, some of which is subject to these license requirements, will be subject to the above procedures in so far as that part of the cargo is concerned.

Once the required documentations on the licensed export cargo is submitted to Customs, however, the carrier may use the pro forma clearance procedure with regard to the export cargo not subject to license requirements. This will not affect the existing requirement that a complete manifest and all required Shipper's Export Declarations (SED's) must be submitted for all export cargo in vessels and aircraft being cleared for certain specified foreign countries (see T.D. 52876, as amended by T.D. 55259, T.D. 55354 and T.D. 70–6).

To simplify the requirement that carriers submit certain information on the specified export cargo before clearance of the vessel or aircraft, Customs will accept the information as shown on SED's rather than establish new forms for the submission of the information at the time of clearance. Under present requirements, both regular clearance procedures (§§ 4.63 and 6.8)), and pro forma clearance procedures (19 CFR 4.75, 6.8), SED's must be submitted to Customs. Further, under § 30.12 of the Foreign Trade Statistics Regulations of the Bureau of Census (15 CFR 30.12), exporting carriers should now be receiving SED's from exporters or their agents prior to exportation of cargo. Under that regulation, exporters or their agents are subject to penalties for failure to deliver the SED's prior to exportation.

These instructions clarify and limit the present discretionary authority of District Directors of Customs to grant pro forma clearance that is provided for in 19 CFR 4.75 and 6.8. Amendment of the existing applicable provisions of the navigation law requirements of the Customs Regulations is not necessary.

Dated: December 6, 1984.

John P. Simpson,

Acting Assistant Commissioner (Commercial Operations).

[FR Doc. 84-32271 Filed 12-7-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, 416, and 422

Federal Old-Age, Survivors, and Disability Insurance Benefits, Black Lung Benefits, Supplemental Security Income for the Aged, Blind and Disabled, and Organization and Procedures; Reopening and Revising Determinations and Decisions Expedited Appeals Process

Correction

In FR Doc. 84–30865, beginning on page 46365, in the issue of Monday, November 26, 1984, make the following corrections:

§ 404.991a [Corrected]

1. On page 46369, second column, in § 404.991a, paragraph (a), fifth line, insert closed quotes (") at the end of the last word.

2. On page 46370, first column, change No. 9, "§ 410.657a" should read "§ 410.675a".

§ 416.1491 [Corrected]

3. On the same page, same column, in § 416.1491(a), last line, "begin" should read "began".

§ 422.210 [Corrected]

4. And on the same page, column three, change No. 14, last line, "416.1224" should read "416.1424".

BILLING CODE 1505-01-M

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: Current regulations for the Supplemental Security Income (SSI) program define income as the receipt of anything in cash or in kind that can be used to meet an individual's needs for food, clothing, or shelter. Current regulations, codified at 20 CFR 416.1103, also provide a list of items which are not income (that is, within the definition of income) because these items cannot be used as food, clothing, or shelter. However, this list does not include certain other items which are not food, clothing, or shelter, even though such items, if retained into the month following the month of receipt, will be considered by us to be excluded nonliquid resources. (Excluded nonliquid resources are, for example, household goods and personal effects or an automobile subject to limitations described in Subpart L of these same regulations.)

This revision expands the list of items that are not income to include items (other than items of food, clothing, or shelter) which, if retained into the month following the month of receipt, will be excluded nonliquid resources. Thus, an individual who receives such an item will not suffer a reduction or loss of SSI benefits due to treatment of the item as income when received.

EFFECTIVE DATE: This regulation is effective January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION: Section 1611(a) of the Social Security Act (the Act) establishes income and resources limits for SSI eligibility. The Act also specifies the types and amounts of income and resources which are to be excluded in determining whether an individual has exceeded the statutory limits (sections 1612 and 1613). The Act does not define the terms "income" and "resources." Therefore, the Secretary of Health and Human Services has defined those terms in regulations 20 CFR 416.1102 and 416.1201, respectively.

Current regulations also set forth a list of items which are not considered income because they cannot be used for food, clothing, or shelter (20 CFR 416.1103). That list does not include items which, if retained into the month following the month of receipt, would be considered by us as excluded nonliquid resources. Thus, even though the Act permits such items to be excluded in determining whether an individual has exceeded the resources limit, regulations require considering those items as income when received by the individual. The result of this is that items which would qualify as excluded nonliquid resources if retained (such as a van specially equipped for a handicapped individual), are income. This can cause either a substantial reduction in SSI benefits or make a person ineligible for benefits in the month of receipt. However, if considered only under the resources rules, then receipt of such items would have no effect on either eligibility or payment amount for the month of receipt, and the items would become excluded nonliquid resources the following month. Counting such items as income may cause an individual to dispose of the items in order to replace the food, clothing, or shelter which would otherwise have been provided through SSI benefits.

Under this policy change, the receipt of any item (other than an item of food, clothing, or shelter) which, if retained, would be an excluded nonliquid resource will be considered solely under the resources rules (Subpart L of 20 CFR Part 416). The receipt of these items will not be considered at all under the income rules. The change will provide more equitable treatment for those who receive such items and will resolve an apparent conflict stemming from the application of income rules to the receipt of items which would be excluded as nonliquid resources if retained beyond the month of receipt.

We considered including in the list of items that are not income, items of food, clothing, or shelter which would meet the definition of excluded nonliquid resources (for example, a home which is a person's principal place of residence). The rationale we proposed in the preamble to the NPRM for defining certain items as not being income is that the recipient cannot use them as food, clothing, or shelter. Since that is not true of items which actually are food, clothing or shelter, we decided not to include them in the list of items that are not income, even if they would become excluded nonliquid resources if retained into the month following the month of receipt. We have reworded examples 1 and 2 in § 416.1103(j) to make the policy rationale clearer.

Comments Received Following Publication of Notice of Proposed Rulemaking on October 20, 1983 (48 FR 48654)

We received comments from a law student and from five organizations concerned with the low-income elderly and handicapped. Two of the comments supported the proposed regulations as written. The other four generally approved the proposal but felt the change in policy should be broader. These comments are discussed below:

Comment: Three commenters suggested that the list of items that are not income should include all items which, if retained, would become excluded nonliquid resources, including items of food, clothing, and shelter (with special emphasis on shelter). Two of these same commenters also questioned the accuracy of the sentence contained in example 2 of the proposed regulation (20 CFR 416.1103(j)), that states that not considering a house as income would cause a duplication of that portion of the supplemental security income (SSI) benefit paid to provide for shelter needs.

Response: We agree with the commenters that the wording of example 2 was misleading and have, therefore, reworded that example (as well as example 1) for greater clarity. We have not, however, adopted the comment that all excluded nonliquid resources (including food, clothing, and shelter) be included in the list of items which are not income. Section 1612(a)(2) of the Act makes it clear that, for SSI purposes, the term "income" includes in-kind support and maintenance (ISM), which we have always defined in regulations as food, clothing, and shelter. Moreover, section 1612(b)(13) of the Act specifically provides that ISM when furnished as assistance by certain entities, is excluded from countable income. This specific exclusion provides further support for our conclusion that we are required by statute to count in-kind income in the form of food, clothing, and shelter unless it is specifically excluded by statute.

Comment: One commenter urged the removal of other "restrictive" rules on in-kind income which were characterized as causing undue hardship to aged and disabled people who receive small assistance from their families or communities since receipt of this assistance "often" causes loss of Medicaid eligibility without adequately compensating for the loss.

Response: As discussed above, the law and legislative history point strongly to the definition of income as the receipt of anything in cash or in kind that meets one's need for food, clothing, or shelter. Congress clearly intended that items of in-kind (noncash) income be considered in determining SSI eligibility and payment amount unless those items are excluded from consideration as income by Federal law. Therefore, except for ISM excluded under section 1612(b) of the Act, we must count ISM as income. In addition, there is a regulatory ceiling on the value which we place on ISM. That ceiling, known as the presumed maximum value (PMV), is described in 20 CFR 416.1140 ff. and, as of January 1, 1984, is $124.66 for an individual and $177.33 for a couple. This amount of in-kind income by itself is not high enough to cause loss of SSI or Medicaid eligibility. Further, the connection between SSI eligibility and Medicaid eligibility is statutory, and any change in the relationship is beyond the scope of these regulations. Consequently, we have not adopted this suggestion.

Comment: With respect to example 2 in the proposed regulation that provided that we would count as income the value of an inherited residence, one commenter suggested that the proposed rule creates a fiction that an "* * * SSI recipient can live in two shelters at one time, and sometimes even twice within the same shelter at the same time." The commenter further stated that, if an individual living in one house inherits another house which will become his or her principal place of residence and so will qualify as an excluded nonliquid resource, under the proposed rule he or she will be required "* * * to sacrifice all of his or her income * * *" in the month of inheritance. As a result, the commenter suggested that we should not treat receipt of a shelter as income in the month of receipt unless the individual liquidates his or her interest in the shelter during the month of receipt. The commenter also recommended that, if an individual already resides in the shelter or moves into the shelter in the month of receipt or in a subsequent month, it should be treated as an excluded resource at that time. The commenter also attributed to us the practice of charging as income to the individual the current market value (CMV) of a house even in situations where the house cannot be liquidated to provide food, clothing, or shelter because the individual's interest is not salable.

Response: As stated above, the wording of example 2 of proposed regulation 20 CFR 416.1103(j) has now been revised to demonstrate more clearly the application of the new rule and to express better its rationale. We hope that this revision will serve to dispel any misconceptions regarding the rule change caused by the previous wording.

As to the comment about an inherited house, it is true that inheritance of a house which is not the new owner's principal place of residence is in-kind income to the individual in the month of receipt and will become a countable resource the following month, unless the SSI recipient moves into it during the month of receipt. Because such an inherited house can be liquidated to meet one's needs for food, clothing, or shelter, it meets the definition of income discussed above. An inherited home which is the individual's principal place of residence is treated as shelter for the whole month because even though it may have been used for only a portion of the month, the home was available for shelter for the entire month. If the home was not used as shelter for any portion of the month, we count as income the in-kind value of the home in the month received since the home was available to be used as shelter even though the individual for whatever reason, did not use it for such.

As to the commenter's other points, they seem to reflect the belief that we charge the PMV for each shelter item an individual receives during a month. This is a misunderstanding of the PMV rule. The PMV is an absolute cap on the total of all items of ISM received during a month. The PMV remains the same regardless of the number of items of ISM a person receives or the number of sources by which it is provided.

Further, the commenter seems to indicate that we charge as income to the claimant the CMV of the claimant's interest in a house even if that interest is not salable. This also is not accurate. If the interest is not salable (e.g., because of legal restrictions), its CMV is zero and, thus, will have no affect on SSI payments.

In general, the changes suggested by the commenter, if adopted, would involve a substantial alteration to the concept of in-kind income and to existing policy regarding treatment of a home as an excluded resource. As such, these changes exceed the scope of this regulation.

Effective Date of Regulation

This regulation is effective on the first day of the month following publication in the **Federal Register**. This is because the regulation establishes a new rule for determining SSI eligibility and benefit amount. Since the eligibility and benefit amount factors are generally determined on the first day of every month, the effective date of the new rule should coincide with the date determinations are made.

Executive Order 12291

This regulation has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. Based on the best available information, costs will be negligible. We estimate program costs of less than $1 million and administrative savings of less than $1 million annually. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This regulation imposes no additional reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income (SSI).

Dated: August 6, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 15, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subpart K of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation of Subpart K of Part 416 reads as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act, as amended; sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended, 86 Stat. 1468, 86 Stat. 1470, 86 Stat. 1471, 86 Stat. 1475, 87 Stat. 154 (42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383.)

2. Section 416.1103 is amended by adding paragraph (j) to read as follows:

§ 416.1103 What is not income.

Some things you receive are not income because you cannot use them as food, clothing, or shelter, or use them to obtain food, clothing, or shelter. In addition, what you receive from the sale or exchange of your own property is not income; it remains a resource. The following are some items that are not income:

* * * * *

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in § 416.1130, food, or clothing) which would be an excluded nonliquid resource (as described in Subpart L of this Part) if you kept it, is not income.

Example 1: A community takes up a collection to buy you a specially equipped van which is your only vehicle. The value of this gift *is not* income because the van does not provide you with food, clothing, or shelter and will become an excluded nonliquid resource under § 416.1218 in the month following the month of receipt.

Example 2: You inherit a house which is your principal place of residence. The value of this inheritance *is* income because the house provides you with shelter and shelter is income. However, we value the house under the rule in § 416.1140.

[FR Doc. 84–32102 Filed 12–7–84; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs not Subject to Certification; Guaifenesin Sterile Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A. H. Robins Co., providing for safe and effective use of guaifenesin sterile powder as a muscle relaxant in horses.

EFFECTIVE DATE: December 10, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., P.O. Box 26609, Richmond, VA 23261, filed NADA 136–651 providing for the use of guaifenesin sterile powder to be reconstituted in water and administered by intravenous injection in horses as a muscle relaxant. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval of this NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 522 is amended by adding new § 522.1085 to read as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.1085 Guaifenesin sterile powder.

(a) *Specifications.* It is a sterile powder containing guaifenesin.

(b) *Sponsor.* See No. 000031 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) It is indicated for intravenous use as a muscle relaxant in horses.

(2) A solution is prepared by dissolving the drug in sterile water for injection to make a solution containing 50 milligrams of guaifenesin per milliliter of solution. It is administered by rapid intravenous infusion at a fixed dosage of 1 milliliter of prepared solution per pound of body weight.

(3) Not to be used in horses intended for food.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. December 10, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 30, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–32054 Filed 12–7–84; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

Correction

In FR Doc. 84–23291, appearing on page 34820 in the issue of Tuesday, September 4, 1984, make the following corrections:

1. The second line of the second column should have read, "CFR 558.625(f)(1) (i) through (vi). The".

2. Also in the second column, in § 558.625, the second line of paragraph (b)(83) should have read "paragraph (f)(1)(vi)(*a*) of this section; 40".

BILLING CODE 1505–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Programs

AGENCY: United States Information Agency.

ACTION: Interim rule; extension of comment period.

SUMMARY: By notice published at 49 FR 43638, October 31, 1984 the United States Information Agency requested comments regarding the interim rule which modified 22 CFR 514.11(a) and 514.15(a) in order to reflect the development of eight points used as standards in evaluating applications for Exchange Visitor Program designation. This notice extends the filing date from November 30, 1984 to December 31, 1984.

EFFECTIVE DATE: The interim rule was effective October 24, 1984 and shall remain in effect until publication of the final rule. Comments are due on or before December 31, 1984.

ADDRESS: Send comments to: Merry Lynn, Attorney-Advisor United States Information Agency, Office of the General Counsel, Room 700, 301 4th Street, SW, Washington D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Attorney-Advisor United States Information Agency, Office of the General Counsel, Room 700, 301 4th Street, SW, Washington D.C. 20547, (202) 485–7976.

SUPPLEMENTARY INFORMATION: By notice published at 49 FR 43638, October 31, 1984, the United States Information Agency requested comments regarding the interim rule which modified 22 CFR 514.11(a) and 514.15(a) in order to reflect the development of eight points used as standards in evaluating applications for Exchange Visitor Program designation. In response to a request by the National Association for Foreign Student Affairs the Agency is extending the comment period for an additional thirty days. This notice extends the filing from November 30, 1984 to December 31, 1984.

Dated: December 4, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84–32101 Filed 12–7–84; 8:45 am]

BILLING CODE 8230–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1610

Production or Disclosure Under 5 U.S.C. 552

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final regulation.

SUMMARY: The Equal Employment Opportunity Commission is revising its Freedom of Information Act (FOIA) regulations to reflect a delegation of authority from the Commission to the Legal Counsel to decide appeals under the Freedom of Information Act.

EFFECTIVE DATE: These regulations are effective December 10, 1984.

FOR FURTHER INFORMATION CONTACT: John Pagano, Assistant Legal Counsel, Legal Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20507, (202) 634–6592.

SUPPLEMENTARY INFORMATION: The Commission's Freedom of Information Act regulation at 29 CFR 1610.11 has been revised to reflect a delegation of authority from the Commission to the Legal Counsel to decide FOIA appeals. Under the current procedures at 29 CFR 1610.11, FOIA appeals are submitted to the Chairman of EEOC and are voted upon by the Commission.

Under the new procedure, the authority to act on all FOIA appeals is delegated from the Commission to the Legal Counsel. The Legal Counsel will now perform the duties previously performed by the Commission and the Chairman under this section.

Reference to the "Chairman" at 29 CFR 1610.11(a) is deleted and replaced with the term "Legal Counsel." A new sentence is added at the end of 29 CFR 1610.11(a). This sentence reads: "Any appeal of a denial in whole or part by a Regional Attorney must include a copy of the Regional Attorney's determination." The remainder of 29 CFR 1610.11(a) is unchanged. References to the "Commission" at 29 CFR 1610.11(b) are deleted and are replaced with the phrase "Legal Counsel." The remainder of 29 CFR 1610.11(b) is unchanged. The first sentence of 29 CFR 1610.11(c) is deleted and is replaced with the following sentence: "The Legal Counsel's decision shall be in writing and signed by the Legal Counsel." The remainder of 29 CFR 1610.11(c) is unchanged. References to the "Commission" at 29 CFR 1610.11 (d) and (e) are deleted and replaced with the term "Legal Counsel." The remaining portions of 29 CFR 1610.11 (d) and (e) are unchanged.

These regulations have been reviewed in accordance with Executive Order 12291 and have been determined not to be a major rule. Under section 605(b) of the Regulatory Flexibility Act, the EEOC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 29 CFR Part 1610

Freedom of information.

Signed at Washington, D.C., this 3rd day of December 1984.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

PART 1610—[AMENDED]

29 CFR Part 1610 is amended by revising § 1610.11 to read as follows:

§ 1610.11 Appeals to the Commission from initial denials.

(a) When the Associate Legal Counsel, Legal Services, or an appropriate regional attorney, has denied a request for records in whole or in part, the person making the request may appeal within 30 days of its receipt. The appeal must be in writing addressed to the Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20507, and clearly labeled as a Freedom of Information Act appeal. Any appeal of a denial in whole or part by a Regional Attorney, must include a copy of the Regional Attorney's determination.

(b) The Legal Counsel shall act upon the appeal within 20 working days of its receipt, and more rapidly if practicable. If the decision is in favor of the person making the request, the decision shall order records promptly made available to the person making the request. The Legal Counsel, may extend the 20 day period in which to render an appeal for that period of time which could have been claimed and consumed by the Associate Legal Counsel, Legal Services, or regional attorney under § 1610.9 but which was either not claimed or consumed in making the initial determination.

(c) The Legal Counsel's decision shall be in writing and signed by the Legal Counsel. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation of how the exemption applied to the records withheld and the reasons for asserting it, if different from that described by the Associate Legal Counsel, Legal Services, or regional attorney under § 1610.10, and that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in the district in which the person resides or has his principal place of business, in the district where the records reside, or in the District of Columbia.

(d) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Legal Counsel.

(e) On appeal, the Legal Counsel may reduce any fees previously assessed.

(Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e–12(a), 5 U.S.C. 552, as amended by Pub. L. 93–502)

[FR Doc. 84-31984 Filed 12-7-84; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 250

[DoD Directive 5230.25]

Withholding of Unclassified Technical Data From Public Disclosure

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This DoD Directive (final rule) is published as the DoD implementation of Title 10, United States Code, Section 140c, as added by Public Law 98–94, "Department of Defense Authorization Act, 1984," Section 1217, September 24, 1983. Under this authority, the Secretary of Defense may withhold from public disclosure, notwithstanding any other provision of law, any technical data with military or space application in the possession of, or under the control of, the Department of Defense, is such data may not be exported lawfully without an approval, authorization, or license under the Export Administration Act or the Arms Export Control Act. However, the application of this Directive is limited only to such technical data that disclose critical technology with military or space application.

EFFECTIVE DATE: November 6, 1984.

ADDRESS: Office of the Deputy Under Secretary of Defense (Research and Advanced Technology), Room 3E114, The Pentagon, Washington, D.C. 20301–3080.

FOR FURTHER INFORMATION CONTACT: Francis Sobieszczyk, (202) 694–0205 or David E. Whitman, (202) 695–2280.

SUPPLEMENTARY INFORMATION: This Directive (formerly DoD Directive 5400.xx, 32 CFR Part 220) was published as FR Doc. 83–33902 in the **Federal Register** dated Tuesday, December 22, 1983 [48 FR 56603] as a proposed rule and was open for public comment through the end of February 1984. Some 80 sets of comments were received as a result of that publication. Analysis of those comments lead to the development of another major draft of the Directive that was sent, on April 4, 1984, to all those who had expressed an interest. Some 25 additional sets of comments were received. The result of this coordination effort, and discussions with the staffs of the Senate and House Armed Services, Appropriations, and Small Business Committees, is a substantially revised Directive that is published at this time. During this process, care was taken to avoid a Directive that would impact adversely on the business community, especially the U.S. small business community. Publication of this "final rule" should not be construed to mean that the Department of Defense will not change the Directive in the event future circumstances dictate. In fact, it is expected that operating experience gained during the next year or two will provide a basis for adjustment of the Directive.

Regulatory Flexibility Act Certification.

In accordance with 5 U.S.C. 605(b), I [the Secretary of Defense] hereby certify that DoD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure" [final rule], will not, in the words of that section, "have a significant economic impact on a substantial number of small entities."

This Directive implements Title 10, United States Code, section 140c, which authorizes the Secretary of Defense to withhold from public disclosure certain technical data that

are export-controlled, which are not subject to a general, unrestricted license or exemption. The Directive provides that in addition to the criteria for withholding in the statute, only technical data containing "critical technology with military or space application" shall be considered for withholding. Further, the Directive provides that such data will continue to be made available to U.S. firms for purposes of performing or bidding on U.S. Government contracts, so long as such firms agree in writing not to redisseminate the data in a manner which is not authorized or approved by the Department of Defense, and to otherwise comply with applicable export control laws and regulations. The Directive also permits the dissemination of such data to U.S. firms for purposes other than performing or bidding on Government contracts (assuming similar commitments are obtained), although DoD Components are authorized to withhold such data under these circumstances, where it is determined that release may jeopardize an important technological or operational military advantage of the United States. The rule also permits the dissemination of data covered by these limitations to so-called "data brokers," who requests such data for purposes of resale, provided, however, such "data brokers" agree in advance to limit such resales to DoD contractors who have already make the written commitments, referred to above, to the Department of Defense.

The Department believes this course of action ensures that such technical data, relating to militarily critical technologies, will remain subject to export control limitations, while at the same time providing a means for U.S. companies, both large and small, to continue to obtain it, without burdensome constraints, for purposes of bidding or performing on Government contracts, and, in appropriate circumstances, for other purposes.

As required by 5 U.S.C. 605(b), a copy of this certification and statement is being [has been] provided to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Caspar W. Weinberger

List of Subjects in 32 CFR Part 250

Unclassified technical data, Control and dissemination of technical data, Export of technical data, Freedom of Information Act.

Accordingly, 32 CFR ia amended by adding a new Part 250 reading as follows:

PART 250—WITHHOLDING OF UNCLASSIFIED TECHNICAL DATA FROM PUBLIC DISCLOSURE

Sec.

250.1 Purpose.
250.2 Applicability and scope.
250.3 Definitions.
250.4 Policy.
250.5 Procedures.
250.6 Responsibilities.
250.7 Pertinent portions of Export Administration Regulations (EAR).
250.8 Pertinent portions of International Traffic in Arms Regulations (ITAR).
250.9 Notice to accompany the Dissemination of export-controlled technical data.

Authority: Sec. 1217, Pub. L. 98–94, [10 U.S.C. 140c].

§ 250.1 Purpose.

This part establishes policy, prescribes procedures, and assigns responsibilities for the dissemination and withholding of technical data.

§ 250.2 Applicability and scope.

(a) This part applies to:

(1) All unclassified technical data with military or space application in the possession of, or under the control of, a DoD Component which may not be exported lawfully without an approval, authorization, or license under E.O. 12470 or the Arms Export Control Act. However, the application of this Part is limited only to such technical data that disclose critical technology with military or space application. The release of other technical data shall be accomplished in accordance with DoD Instruction 5200.21 and DoD 5400.7–R.

(2) The Office of the Secretary of Defense (OSD) and activities support adminstratively by OSD, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to collectively as "DoD Components").

(b) This part does not:

(1) Modify or supplant the regulations promulgated under E.O. 12470 or the Arms Export Control Act governing the export of technical data, that is, 15 CFR Part 379 of the Export Administration Regulations (EAR) and 22 CFR Part 125 of the International Traffic in Arms Regulations (ITAR).

(2) Introduce any additional controls on the dissemination of technical data by private enterprises or individuals beyond those specified by export control laws and regulations or in contracts or other mutual agreements, including certifications made pursuant to § 250.3 (a). Accordingly, the mere fact that the Department of Defense may possess such data does not in itself provide a basis for control of such data pursuant to this Part.

(3) Introduce any controls on the dissemination of scientific, educational, or other data that qualify for General License GTDA under 15 CFR 379.3 of the EAR (see § 250.7) or for general exemptions under 22 CFR 125.11 of the ITAR (see § 250.8).

(4) Alter the responsibilities of DoD Components to protect proprietary data of a private party in which the Department of Defense has "limited rights" or "restricted rights" (as defined in 32 CFR 9–201(c) and 9–601(j) of the DoD Acquisition Regulation, or which are authorized to be withheld from public disclosure under 5 U.S.C. 552(b)(4).

(5) Pertain to, or affect, the release of technical data by DoD Components to foreign governments, international organizations, or their respective representatives or contractors, pursuant to official agreements or formal arrangements with the U.S. Government, or pursuant to U.S. Government-licensed transactions involving such entities or individuals. In the absence of such U.S. Government-sanctioned relationships, however, this Part does apply.

(6) Apply to classified technical data. After declassification, however, dissemination of such data that are within the scope of § 250.2(a)(1) is governed by this Part.

§ 250.3 Definitions.

(a) *Qualified U.S. contractor.*[1] A private individual or enterprise (hereinafter described as a "U.S. contractor") that, in accordance with procedures established by the Under Secretary of Defense for Research and Engineering, certifies, as a condition of obtaining export-controlled technical data subject to this Directive from the Department of Defense, that:

(1) The individual who will act as recipient of the export-controlled technical data on behalf of the U.S. contractor is a U.S. citizen or a person admitted lawfully into the United States for permanent residence and is located in the United States.

(2) Such data are needed to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, or for other legitimate business purposes [2] in which the U.S. contractor is engaged, or plans to engage. The purpose for which the data are needed shall be described sufficiently in such certification to permit an evaluation of whether subsequent requests for data, pursuant to § 250.5(d)(2) are related properly to such business purpose.

(3) The U.S. contractor acknowledges its responsibilities under U.S. export control laws and regulations (including the obligation, under certain circumstances, to obtain an export

[1] Canadian contractors may be qualified in accordance with this Part for technical data that do not require a license for export to Canada under 22 CFR 125.12 of the ITAR and 15 CFR 379.4(d) and 379.5(e) of the EAR submitting an equivalent certification to the U.S. Department of Defense.

[2] This does not require a contract with or a grant from the U.S. Government.

license prior to the release of technical data within the United States) and agrees that it will not disseminate any export-controlled technical data subject to this Part in a manner that would violate applicable export control laws and regulations.

(4) The U.S. contractor also agrees that, unless dissemination is permitted by § 250.5(h), it will not provide access to export-controlled technical data subject to this Part to persons other than its employees or persons acting on its behalf, without the permission of the DoD Component that provided the technical data.

(5) To the best of its knowledge and belief, the U.S. contractor knows of no person employed by it, or acting on its behalf, who will have access to such data, who is debarred, suspended, or otherwise ineligible from performing on U.S. Government contracts; or has violated U.S. export control laws or a certification previously made to the Department of Defense under the provisions of this Part.

(6) The U.S. contractor itself is not debarred, suspended, or otherwise determined ineligible by any agency of the U.S. Government to perform on U.S. Government contracts, has not been convicted of export control law violations, and has not been disqualified under the provisions of this Part. When the certifications required by § 250.3(a) (5) and (6), cannot be made truthfully, the U.S. contractor may request the certification be accepted based on its description of extenuating circumstances.

(b) *Controlling DoD Office.* The DoD activity that sponsored the work that generated the technical data or received the technical data on behalf of the Department of Defense and therefore has the responsibility for determining the distribution of a document containing such technical data. In the case of joint sponsorship, the controlling office is determined by advance agreement and may be either a party, a group, or a committee representing the interested activities or DoD Components. (The controlling DoD office is identified on each export-controlled document in accordance with DoD Directive 5230.24.

(c) *Critical Technology.* Technologies that consist of (1) arrays of design and manufacturing know-how (including technical data); (2) keystone manufacturing, inspection, and test equipment; (3) keystone materials; and (4) goods accompanied by sophisticated operation, application, or maintenance know-how that would make a significant contribution to the military potential of any country or combination of countries and that may prove detrimental to the security of the United States (also referred to as militarily critical technology).

(d) *Other Legitimate Business Purposes.* Include:

(1) Providing or seeking to provide equipment or technology to a foreign government with the approval of the U.S. Government (for example, through a licensed direct foreign military sale).

(2) Bidding, or preparing to bid, on a sale of surplus property.

(3) Selling or producing products for the commercial domestic marketplace or for the commercial foreign marketplace, providing that any required export license is obtained.

(4) Engaging in scientific research in a professional capacity.

(5) Acting as a subcontractor to a concern described in (d) (1) through (4) above; or

(6) Selling technical data subject to this Part in support of DoD contractors or in supporting of the competitive process for DoD contracts, provided such sales are limited solely to DoD contractors or potential DoD contractors who also are qualified U.S. contractors and provided such technical data are related to the purpose for which the qualified U.S. contractor is certified, or selling technical data to foreign contractors or governments overseas after receiving the required export license or approval by the U.S. Government.

(e) *Potential DoD Contractor.* An individual or organization outside the Department of Defense declared eligible for DoD information services by a sponsoring DoD activity on the basis of participation in one of the following programs:

(1) The Department of the Army Qualitative Requirements Information Program.

(2) The Department of the Navy Industry Cooperative Research and Development Program.

(3) The Department of the Air Force Potential Contractor Program.

(4) The DoD Scientific and Technical Program; or

(5) Any similar program in use by other DoD Components.

(f) *Public Disclosure.* Making technical data available without restricting its dissemination or use.

(g) *Technical Data with Military or Space Application, or Technical Data.* Any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used or be adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(h) *United States.* For the purpose of this Part, the 50 States, the District of Columbia, and the territories and possessions of the United States.

§ 250.4 Policy.

(a) In accordance with 10 U.S.C. 140c, the Secretary of Defense may withhold from public disclosure, notwithstanding any other provision of law, any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully without an approval, authorization, or license under E.O. 12470 or the Arms Export Control Act. However, technical data may not be withheld under this section if regulations promulgated under either the Order or Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations. (Pertinent portions of such regulations are set forth in §§ 250.7 and 250.8).

(b) Because public disclosure of technical data subject to this Part is tantamount to providing uncontrolled foreign access, withholding such data from public disclosure, unless approved, authorized, or licensed in accordance with export control laws, is necessary and in the national interest. Unclassified technical data that are not governed by this Part, unless otherwise restricted, shall continue to be made available to the public as well as to state and local governments.

(c) Nothwithstanding the authority provided in § 250.4(a), above, it is DoD policy to provide technical data governed by this Part to individuals and enterprises that are determined to be currently qualified U.S. contractors, when such data relate to a legitimate business purpose for which the contractor is certified. However, when such data are for a purpose other than to permit the requester to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, and the significance of such data for military purposes is such that release for purposes other than direct support of DoD activities may jeopardize an important U.S. technological or operational advantage, those data shall be withheld in such cases.

(d) This Part may not be used by DoD Components as authority to deny access to technical data to the Congress, or to any Federal, State, or local governmental agency that requires such data for regulatory or other official governmental purposes. Any such dissemination will include a statement that the technical data are controlled by the Department of Defense in accordance with this Part.

(e) The authority provided herein may not be used to withhold from public disclosure unclassified information regarding DoD operations, policies, activities, or programs, including the costs and evaluations of performance and reliability of military and space equipment. When such information does contain technical data subject to this Part, the technical data shall be excised from that which is disclosed publicly.

(f) This Part may not be used as a basis for the release of "limited rights" or "restricted rights" data as defined in 32 CFR 9–201(c) and 9–601(j) of the DoD Acquisition Regulation or that are authorized to be withheld from public disclosure under the Freedom of Information Act (FOIA).

(g) This Part may not be used to provide protection for technical data that should be classified in accordance with E.O. 12356 and DoD 5200.1–R.

(h) This Part provides immediate authority to cite 5 U.S.C. 552(b)(3) as the basis for denials under the FOIA of technical data currently determined to be subject to the provisions of this Part.

§ 250.5 Procedures.

All determinations to disseminate or withhold technical data subject to this Part shall be consistent both with the policies set forth in § 250.4 above, and with the following procedures:

(a) Requests for technical data shall be processed in accordance with DoD Directive 5230.24 and DoD Instruction 5200.21. FOIA requests for technical data subject to this Part shall be handled in accordance with the procedures established in DoD 5400.7–R. Such FOIA requests for technical data currently determined to be subject to the withholding authority effected by this Part shall be denied under citing the third exemption to mandatory disclosure, and the requester shall be referred to the provisions of this Part permitting access by qualified U.S. contractors.

(b) Upon receipt of a request for technical data in the possession of, or under the control of, the Department of Defense, the controlling DoD office shall determine whether such data are governed by this Part. The determination shall be based on the following:

(1) The office's finding [2] that such data would require an approval, authorization, or license for export under E.O. 12470 or the Arms Export Control Act and that such data may not be exported pursuant to a general, unrestricted license (15 CFR 379.3, EAR) (see § 250.7) or exemption (22 CFR 125.11, ITAR) (see § 250.8).

(2) The office's judgment that the technical data under consideration disclose critical technology with military or space application. For purposes of making this determination, the Militarily Critical Technologies List (MCTL) shall be used as general guidance. The controlling DoD office may request assistance in making such a determination from the Office of the Under Secretary of Defense for Research and Engineering (OUSDR&E) in accordance with procedures established by that office.

(c) The controlling DoD office shall ensure that technical data determined to be governed by this Part are marked in accordance with DoD Directive 5230.24.

(d) The controlling DoD office shall authorize release of technical data governed by this Part to currently qualified U.S. contractors only, as defined in § 250.3(a) above, unless one of the following apply:

(1) The qualification of the U.S. contractor concerned has been temporarily revoked in accordance with § 250.5(e) below; or

(2) The requested data are judged to be unrelated to the purpose for which the qualified U.S. contractor is certified. When release of technical data is denied in accordance with this section, the controlling DoD office shall request additional information sufficient to explain the intended use of the requested data and, if appropriate, request a new certification (see § 250.3(a) above) describing the intended use of the requested data; or

(3) The technical data are being requested for a purpose other than to permit the requester to bid or perform on a contract with the Department of Defense or other U.S. Government agency, in which case the controlling DoD office shall withhold such data if it has been determined by the DoD Component focal point (see § 250.5(e)(5)) that the significance of such data for military purposes is such that release for purpose other than direct support of DoD-approved activities may jeopardize an important technological or operational military advantage of the United States.

[2] May require consultation with the Department of State or the Department of Commerce, as appropriate.

(e) Upon receipt of credible and sufficient information that a qualified U.S. contractor has (1) violated U.S. export control law, (2) violated its certification, (3) made a certification in bad faith, or (4) made an omission or misstatement of material fact, the DoD Component shall revoke temporarily the U.S. contractor's qualification. Such revocations having the potential for compromising a U.S. Government investigation may be delayed. Immediately upon such revocation, the DoD Component shall notify the contractor and the OUSDR&E. Such contractor shall be given an opportunity to respond in writing to the information upon which the temporary revocation is based before being disqualified. Any U.S. contractor whose qualification has been revoked temporarily may be reinstated upon presentation of sufficient information showing that the basis for such revocation was in error or has been remedied.

(f) When the basis for a contractor's temporary revocation cannot be removed within 20 working days, the DoD Component shall recommend to the OUSDR&E that the contractor be disqualified.

(g) Charges for copying, certifying, and searching records rendered to requesters shall be levied in accordance with DoD Instruction 7230.7. Normally, only one copy of the same record or document will be provided to each requester. Any release to qualified U.S. contractors of technical data controlled by this Part shall be accompanied by a notice to the recipient as set forth in § 250.9.

(h) Qualified U.S. contractors who receive technical data governed by this Part may disseminate such data for purposes consistent with their certification without prior permission of the controlling DoD office or when such dissemination is:

(1) To any foreign recipient for which the data are approved, authorized, or licensed under E.O. 12470 or the Arms Export Control Act.

(2) To another currently qualified U.S. contractor (as defined in § 250.3(a) above, including existing or potential subcontractors, but only within the scope of the certified legitimate business purpose of such recipient.

(3) To the Departments of State and Commerce, for purposes of applying for appropriate approvals, authorizations, or licenses for export under the Arms Export Control Act or E.O. 12470. Any such application shall include a statement that the technical data for which such approval, authorization, or license is sought are controlled by the

potential of any country or combination

overhaul, or reproduce any military or

data for regulatory or other official

appropriate.

license is sought are controlled by the

Department of Defense in accordance with this Part.

(4) To Congress or any Federal, State, or local governmental agency for regulatory purposes, or otherwise as may be required by law or court order. Any such dissemination shall include a statement that the technical data are controlled by the Department of Defense in accordance with this Part.

(i) A qualified U.S. contractor desiring to disseminate technical data subject to this Part in a manner not permitted expressly by the terms of this Part shall seek authority to do so from the controlling DoD office.

(j) Any requester denied technical data, or any qualified U.S. contractor denied permission to redisseminate such data, pursuant to this Part, shall be provided promptly a written statement of reasons for that action, and advised of the right to make a written appeal of such determination to a specifically identified appellate authority within the DoD Component. Appeals of denials made under DoD 5400.7–R (reference (e)) shall be handled in accordance with procedures established therein. Other appeals shall be processed as directed by the OUSDR&E.

(k) Denials shall cite 10 U.S.C. 140c as implemented by this Part, and, in the case of FOIA denials made in reliance on this statutory authority, 5 U.S.C. 552(b)(3). Implementing procedures shall provide for resolution of any appeal within 20 working days.

§ 250.6 Responsibilities.

(a) The Under Secretary of Defense for Research and Engineering (USDR&E) shall have overall responsibility for the implementation of this Directive and shall designate an office to:

(1) Administer and monitor compliance with this Directive.

(2) Receive and disseminate notifications of temporary revocation in accordance with § 250.5(e) above.

(3) Receive recommendations for disqualification made in accordance with § 250.5(f) above, and act as initial disqualification authority.

(4) Provide, when necessary, technical assistance to DoD Components in assessing the significance of the military or space application of technical data that may be withheld from public disclosure under this Directive.

(5) Establish procedures to develop, collect, and disseminate certification statements and ensure their sufficiency, accuracy, and periodic renewal, and to make final determinations of qualification.

(6) Ensure that the requirements of this Directive are incorporated into the DoD Federal Acquisition Regulation Supplement for optional application to contracts involving technical data governed by this Directive.

(7) Develop, in conjunction with the General Counsel, Department of Defense, guidelines for responding to appeals.

(8) Develop procedures to ensure that DoD Components apply consistent criteria in authorizing exceptions under § 250.5(i) above.

(9) Establish procedures and appropriate mechanisms for the certification of qualified U.S. contractors, pursuant to § 250.6(a)(5) above, within 60 days of the effective date of this Directive. During this 60-day period, requests for technical data governed by this Directive shall be processed in accordance with procedures in effect before the promulgation of this Directive.

(10) Take such other actions that may be required to ensure consistent and appropriate implementation of this Directive within the Department of Defense.

(b) The Under Secretary of Defense for Policy shall:

(1) Develop and promulgate, as required, policy guidance to DoD Components for implementing this Directive.

(2) Develop procedures with the Departments of State and Commerce to ensure referral of export cases involving technical data governed by this Directive to the Department of Defense.

(c) The Assistant Secretary of Defense (Public Affairs) shall:

(1) Monitor the implementation of provisions of this Directive that pertain to DoD 5400.7–R.

(2) Provide such other assistance as may be necessary to ensure compliance with this Directive.

(d) The General Counsel, Department of Defense, shall:

(1) Assist in carrying out the provisions of this Directive by advising DoD Components with respect to the statutory and regulatory requirements governing the export of technical data.

(2) Advise the USDR&E regarding consistent and appropriate implementation of this Directive.

(e) The Heads of DoD Components shall:

(1) As the delegated authority, have the option to redelegate the authority to withhold technical data in accordance with this Directive.

(2) Disseminate and withhold from public disclosure technical data subject to this Directive in a manner consistent with the policies and procedures set forth herein.

(3) Designate a focal point to (i) ensure implementation of this Directive; (ii) identify classes of technical data the release of which is governed by § 250.5(d)(3) above; (iii) act on appeals relating to case-by-case denials of technical data; (iv) suspend a contractor's qualification pursuant to § 250.(e) above; (v) receive and evaluate requests for reinstatement of a contractor's qualification; and, when appropriate, (vi) recommend disqualification to the OUSDR&E.

(4) Promulgate and effect regulations to implement this Directive within 180 days.

(5) Disseminate technical data governed by this Directive in the manner prescribed herein, to the extent feasible, during the period after which certification procedures have been established under § 250.6(a)(9) above, but before DoD Components have issued implementing regulations under § 250.6(e)(4) above. However, if such dissemination is not feasible, the DoD Component may process requests for such data in accordance with procedures in effect before the promulgation of this Directive.

§ 250.7 Pertinent portions of Export Administration Regulations (EAR).

The following pertinent section of the EAR is provided for the guidance of DoD personnel in determining the releasability technical data under the authority of this Part.

Export Administration Regulations 15 CFR 379.3

General License GTDA: Technical Data Available to All Destinations

A General License designated GTDA is hereby established authorizing the export to all destinations of technical data described in § 379.3(a), (b), or (c), below:

(a) *Data Generally Available.*

Data that have been made generally available to the public in any form, including

(1) Data released orally or visually at open conferences, lectures, trade show, or other media open to the public; and

(2) Publications that may be purchased without restrictions at a nominal cost, or obtained without costs, or are readily available at libraries open to the public.

The term "nominal cost" as used in § 379.3(a)(2), above, is intended to reflect realistically only the cost of preparing and distributing the publication and not the intrinsic value of the technical data. If the cost is as much as to prevent the technical data from being generally available to the public, General License GTDA would not be applicable.

(b) *Scientific or Educational Data.*

(1) Dissemination of information not directly and significantly related to design, production, or utilization in industrial processes, including such dissemination by correspondence, attendance at, or participation in, meetings; or

(2) Instruction in academic institutions and academic laboratories, excluding information that involves research under contract related directly and significantly to design, production, or utilization in industrial processes.

(c) *Patent Applications.*

Data contained in a patent application, prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office. [No validated export license from the Office of Export Administration is required for data contained in a patent application, or an amendment, modification, supplement, or division thereof for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office 37 CFR Part 5. See § 370.10(j).]

§ 250.8 Pertinent portions of International Traffic in Arms Regulations (ITAR).

The following pertinent section of the ITAR is provided for the guidance of DoD personnel in determining the releasibility of technical data under the authority of this Part.

International Traffic in Arms Regulations 22 CFR 125.11

General Exemptions

(a) Except as provided in § 26.01, district directors of customs and postal authorities are authorized to permit the export without a license of unclassified technical data as follows:

(1) If it is in published [4] form and subject to public dissemination by being:

(i) Sold at newsstands and bookstores;

(ii) Available by subscription or purchase without restrictions to any person or available without cost to any person;

(iii) Granted second class mailing privileges by the U.S. Government; or

(iv) Freely available at public libraries.

(2) If it has been approved for public release by any U.S. Government department or agency having authority to classify information or material under Executive Order [12356], as amended, and other applicable Executive Orders, and does not disclose the details of design, production, or manufacturing of any arms, ammunition, or implements of war on the U.S. Munitions List.

(3) If the export is in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State in accordance with Part 124 of this chapter.

(4) If the export is in furtherance of a contract with an agency of the U.S. Government or a contract between an agency of the U.S. Govenment and foreign persons, provided the contract calls for the export of relevant unclassified technical data, and such data are being exported only by the prime contractor. Such data shall not disclose the details of development, engineering, design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List. (This exemption does not permit the prime contractor to enter into subsidiary technical assistance or manufacturing license agreements, or any arrangement which calls for the exportation of technical data without compliance with Part 124 of this subchapter.)

(5) If it relates to firearms not in excess of caliber .50 and ammunition for such weapons, except technical data containing advanced designs, processes, and munufacturing techniques.

(6) If it consists of technical data, other than design, development, or production information relating to equipment, the export of which has been previously authorized to the same recipient.

(7) If it consists of operations, maintenance and training manuals, and aids relating to equipment, the export of which has been authorized to the same recipient.[5]

(8) If it consists of additional copies of technical data previously approved for export to the same recipient; or if it consists of revised copies of technical data, provided it pertains to the identical Munitions List article, and the revisions are solely editorial and do not add to the content of technology previously approved for export to the same recipient.

(9) If it consists solely of technical data being reexported to the original source of import.

(10) If the export is by the prime contractor in direct support and within the technical and/or product limitations of a "U.S. Government approved project" and the prime contractor so certifies. The Office of Munitions Control, Department of State, will verify, upon request, those projects which are "U.S. Government approved," and accord an exemption to the applicant who applies for such verification and exemption, where appropriate, under this subparagraph.[6]

(11) If the export is solely for the use of American citizen employees of U.S. firms provided the U.S. firm certifies its overseas employee is a U.S. citizen and has a "need to know." [7]

(12) If the export is directly related to classified information, the export of which has been previously authorized to the same recipient, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

(b) *Plant visits.* Except as restricted by the provisions of § 126.01 of this subchapter:

(1) No license shall be required for the oral and visual disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the data [are] disclosed in connection with a classified plant visit or the visit has the approval of a U.S. Government agency having authority for the classification of information or material under Executive Order [12356], as amended, and other applicable Executive Orders, and the requirements of section V, paragraph [41(d)] of the Industrial Security Manual are met.

(2) No license shall be required for the documentary disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the document does not contain technical data as defined in § 125.01 in excess of that released orally or visually during the visit, is within the terms of the approved visit request, and the person in the United States assures that the technical data will not be used, adopted for use, or disclosed to others for the purpose of manufacture or production without the prior approval of the Department of State in accordance with Part 124 of this subchapter.

(3) No Department of State approval is required for the disclosure of oral and visual classified information during the course of a plant visit by foreign nationals provided the visit has been approved by the cognizant U.S. Defense agency and the requirements of section V, paragraph [41(d)] of the Defense Industrial Security Manual are met.

§ 250.9 Notice to accompany the dissemination of export-controlled technical data.

(a) Export of information contained herein, which includes, in some circumstances, release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms Regulations (ITAR), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.

(b) Under 22 U.S.C. 2778 the penalty for unlawful export of items or information controlled under the ITAR is up to 2 years imprisonment, or a fine of $100,000, or both. Under 50 U.S.C., Appendix 2410, the penalty for unlawful export of items or information controlled under the EAR is a fine of up to $1,000,000, or five times the value of the exports, whichever is greater; or for an individual, imprisonment of up to 10 years, or a fine of up to $250,000, or both.

---

[4] The burden for obtaining appropriate U.S. Government approval for the publication of technical data falling within the definition in § 125.01, including such data as may be developed under other than U.S. Government contract, is on the person or company seeking publication.

[5] Not applicable to technical data relating to Category VI(d) and Category XVI.

[6] Classified information may also be transmitted in direct support of and within the technical and/or product limitation of such verified U.S. Government approved projects without prior Department of State approval provided the U.S. party so certifies and complies with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other rquirements of cognizant U.S. Government departments or agencies).

[7] Classified information may also be exported to such certified American citizen employees without prior Department of State approval provided the U.S. party complies with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other requirements of cognizant U.S. Government departments or agencies). Such technical data or information (classified or unclassified) shall not be released by oral, visual, or documentary means to any foreign person.

(c) In accordance with your certification that establishes you as a "qualified U.S. contractor," unauthorized dissemination of this information is prohibited and may result in disqualification as a qualified U.S. contractor, and may be considered in determining your eligibility for future contracts with the Department of Defense.

(d) The U.S. Government assumes no liability for direct patent infringement, or contributory patent infringement or misuse of technical data.

(e) The U.S. Government does not warrant the adequacy, accuracy, currency, or completeness of the technical data.

(f) The U.S. Government assumes no liability for loss, damage, or injury resulting from manufacture or use for any purpose of any product, article, system, or material involving reliance upon any or all technical data furnished in response to the request for technical data.

(g) If the technical data furnished by the Government will be used for commercial manufacturing or other profit potential, a license for such use may be necessary. Any payments made in support of the request for data do not include or involve any license rights.

(h) A copy of this notice shall be provided with any partial or complete reproduction of these data that are provided to qualified U.S. contractors.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-32072 Filed 12-7-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 84-39]

Special Local Regulations; 5th Annual Stuart Christmas Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the 5th Annual Stuart Christmas Boat Parade. This event will be held on 15 December 1984 between 1745 and 1930 local time. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 1745 local time on 15 December 1984 and terminate at 1930 local time 15 December 1984.

FOR FURTHER INFORMATION CONTACT: Ens. T.F. Tabrah, (305) 350-4309.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 15 November 1984, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. Since these regulations are necessary to safeguard persons and property during this event, the Coast Guard has determined that good cause exists under 5 U.S.C. 553 (d)(3) to make these regulations effective in less than thirty days after publications.

Drafting Information

The drafters of this regulation are Ens. T.F. Tabrah, project officer, USCG Group Miami and Lcdr. K. E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The 5th Annual Stuart Christmas Boat Parade will be held in the North Fork and Sandpiper Bay area south to Frazier Creek then reverse course to ¾ mile north of Frazier Creek with approximately 40 to 80 boats displaying decorative lighting expected to participate. Regulations are issued by the Commander, U.S. Coast Guard Group Miami as a public service to facilitate the holding of this event, to promote maritme safety, and to reduce to a minimum interference with other vessel traffic in the area.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-T739 to read as follows:

§ 100.35-T739 15th Annual Stuart Christmas Boat Parade.

(a) *Regulated area:* That portion of the I.C.W. including the North Fork and Sandpiper Bay area south to Frazier Creek then reverse course to ¾ mile north of Frazier Creek and disband.

(b) *Effective times:* These regulations become effective on 1745 local time on 15 December 1984 and terminate at 1930 local time 15 December 1984.

(c) *Special Local Regulations:*

(1) All vessel traffic in the regulated area will be controlled by the Patrol Commander and will proceed at no more than 5 MPH when passing parade participants.

(2) Rule 20 of Navigation Rules, International-Inland of December 1983 will be suspended for registered participants only.

(3) A succession of not less than 5 short whistle or horn blasts from patrol vessel will be signal for any non-participating vessels to stop immediately. The display of a red distress flare from a patrol vessel will be signal for any and all vessels to stop immediately.

(46 U.S.C.A. 454; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: November 29, 1984.

G.E. Walton,

Captain, U.S. Coast Guard, Commander, USCG Group Miami.

[FR Doc. 84-32103 Filed 12-7-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-538; RM-3983; Docket No. 18421; FCC 84-591]

Hours of Operation of Daytime-Only AM Broadcast Stations; and Hours of Operation of Dominant and Secondary Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 73.99 of the Commission's Rules relating to extended hours of operation for AM stations. It adjusts the power which can be used by Class III daytime-only stations during post-sunset operation, thereby enabling them to offer more effective service while limiting the amount of interference to be caused by such operation.

EFFECTIVE DATE: December 10, 1984.

FOR FURTHER INFORMATION CONTACT: Wilson La Follette, Mass Media Bureau, (202) 632-5414 or Jonathan David, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order (Proceeding Terminated)

In the matter of Hours of Operation of Daytime-Only AM Broadcast Stations (BC Docket No. 82-538, RM-3983), amendment of § 73.81 of the Commission's Rules (Hours of Operation of Dominant and Secondary Stations) (Docket No. 18421).

Adopted: November 30, 1984.

Released: December 4, 1984.

By the Commission.

1. The Commission has before it for consideration the petitions for reconsideration of the *Memorandum Opinion and Order* in this proceeding [1] 49 FR 17942, April 26, 1984, revising the rules adopted in the *Report and Order*, 48 FR 42944, September 20, 1983, and responsive pleadings. In addition, the Association for Broadcast Engineering Standards ("ABES") and the Daytime Broadcasters Association ("DBA") have filed a Joint Motion for Final Orders and Termination of Proceeding. If accepted by the Commission, the joint motion offers a basis for resolving all of the outstanding issues in this proceeding.

2. The subject proceeding began with a combined *Notice of Proposed Rule Making and Notice of Inquiry* designed to explore possible steps which could be taken to alleviate the difficulties faced by daytime-only stations which arise as a consequence of their being licensed to operate only between local sunrise and local sunset. The *Inquiry* portion of the proceeding included a wide variety of issues, which have been resolved by the *Report and Order* or are to be considered elsewhere. The main focus of the rule making portion of the proceeding involved the possible authorization of post-sunset operation. [2]

3. Based on the record developed in this proceeding, the Commission adopted a *Report and Order* amending the rules to permit post-sunset operation. Class III daytime-only stations (those on regional channels) were permitted to operate two hours beyond local sunset with a maximum power of 500 watts, reduced as necessary to avoid interference. Most Class II daytime-only stations (those on clear channels) also were permitted to operate past local sunset with a maximum power of 500 watts. However, the specific power and period of operation for Class II stations varied depending on applicable interference protection requirements.

4. Although DBA supported the Commission's decision to authorize post-sunset operation, it nonetheless sought reconsideration of the Commission decision to limit the power Class III stations could use in order to avoid interference. According to DBA, the new rules were excessively technical and imposed excessive restrictions on these stations.[3] Instead of using the "worst-case" approach,[4] DBA suggested making periodic recalculations or using an averaging of the calculations made during the post-sunset period. ABES and others opposed the petition for reconsideration, arguing that the Commission's original decision made generous provision for the needs of daytime-only stations during the post-sunset period.

5. After the cycle of pleadings on the original petition concluded, DBA received leave and filed a supplement to its petition, to which the other parties responded. In this supplement DBA sought authority for all Class III stations to use the full 500 watts power until 6:30 p.m. local time. DBA argued that this would put these Class III stations in the same position as they were during the pre-sunrise period when they are allowed to use 500 watts starting at 6:00 a.m. regardless of interference to co-channel U.S. stations. According to DBA, there was no basis for treating the pre-sunrise and post-sunset periods differently, since their signal propagation conditions are quite similar.

6. The opposition pleadings asserted that the petition, even as supplemented, failed to offer new evidence or even any data whatever to support any modification of the Commission's decision. Moreover, according to these parties, the pre-sunrise experience did not provide a basis for relief in view of the extensive new interference that would result from the proposed post-sunset operations.

7. After review of this additional material, the Commission decided that it would not be possible to provide all of the relief sought by DBA. Even though the Commission agreed that post-sunset operation is important, it found no record evidence on which it could conclude that the substantial interference losses resulting from the post-sunset operations could be ignored, as DBA had urged. Although the Commission concluded that interference considerations did have to be taken into account, it did reexamine the "worst-case" approach under which power for Class III stations had been restricted, based on the potential for interference during the final moment of the two-hour post-sunset period. Although this method did avoid interference, it also meant reducing power more than was necessary during other parts of this two-hour period.

8. Ultimately, the Commission adopted a revision that it believed would lead to substantial increases in power without leading to excessive interference. Under the new method, power for the first hour after sunset was to be calculated at the middle of the hour. Use of the midpoint was intended to balanced the excess of protection afforded during the first half of the period by the partial protection afforded during the second half of the period. In order to respond to the special needs these stations have for increased power during the early evening hours, the Commission decided that this increased power could be used until 6:00 p.m. local time, even if that extended beyond the first hour post-sunset. Finally, for some stations, even the new calculation method did not provide a substantial power level. For these stations, the Commission decided that additional relief was warranted, and it permitted them to use a minimum power of 100 watts during the period until 6:00 p.m.

9. ABES and the other parties listed above filed petitions for reconsideration. The thrust of these petitions was that the Commission had erred in revising its position in regard to the power limits for post-sunset operation by Class III daytime-only stations. According to ABES, the revised rules would permit substantial interference to the continued reception of full-time stations of the sort originally rejected by the Commission. ABES insisted that the only alleged justification for the change was the economic benefit that would accrue to daytime-only stations, but this, it said, ignored the economic loss that would result to full-time stations.[5]

10. The other petitions for reconsideration made similar arguments regarding the expected impact of the revised rules and stressed the impact on their own operations. Various examples of interference were offered, which in one case were alleged to cause the

[1] Petitions for reconsideration have been filed by the Association for Broadcast Engineering Standards; KCPX, Inc.; Summit Radio Corp.; The Henry Radio Company, and Harte-Hanks Radio, Inc.

[2] Pre-sunrise operation had been authorized by the Commission years earlier. Further rule changes enlarging the opportunities of pre-sunrise operation also were proposed and later adopted in this proceeding. However, these matters are no longer at issue.

[3] DBA also sought changes in provisions regarding post-sunset operation by Class II stations. The matter is no longer before us as there have been no objections to modifications made in the Commission in this regard.

[4] The "worst-case" approach involves making the calculations regarding permissible power at the end of the two-hour post-sunset period when the potential for interference is at its maximum.

[5] AABES also sought a stay of the new rules, and this was opposed by DBA. However, this occurred before the joint motion was filed. Subsequently, the rule changes were stayed pending consideration of the joint motion.

affected station to lose more than 40% of its coverage area, including part of its city of license. Finally, because of the concern over the anticipated effect of the new rules, ABES asked for a stay of the new rules pending resolution of the issues raised on reconsideration.

11. DBA sought an extension of time to permit it to explore with ABES and others the possibility of a settlement. After extensive discussions between DBA and ABES, they filed their joint motion proposing a compromise solution regarding post-sunset powers for Class III daytime-only station. The joint motion included a description of the events leading up to the settlement as well as an attachment which gave examples of the kinds of operations that the compromise would permit.

12. The compromise is designed to offer as much benefit to daytime-only stations as possible during the pre-6:00 p.m. period while minimizing both the amount of interference and its duration. As the joint motion described it,

> Paramount of the consideration of the parties was the concern that settlement provide a solution that is mutually acceptable, that will maximize service to the public, minimize interference to fulltime stations, and which can be implemented in time for the shortened days of Winter 1984–85.

According as ABES and DBA, the benefits of the compromise can be seen in th engineering exhibits appended to the motion. These are said to show markedly lessened interference as compared to the revised rules, along with powers substantially improved from those originally established, albeit lower than those on reconsideration. However, as the parties recognize, the series of "stepped power reductions" called for under their agreement would require additional analysis of the Commission. Moreover, reliance would have to be placed on a licensee's ability to follow the new more complicated system of power levels being proposed. Nonetheless, the parties believe that the compromise offers a sound basis for resolving the outstanding issues in this proceeding.

13. In view of the history of this proceeding, it is all the more important to explore all avenues of resolution even though the compromise before us does involve greater complexity for the licensee and increased administrative burden for the Commission. The impact on the Commission is not an obstacle in itself, as most of this effort has already been expended as part of the time-consuming computer programming effort to determine the overall impact of the compromise. As a consequence, only the lesser aspect of issuing new authorizations remains. Likewise, the multiple power levels to be specified do not cause concern. We believe that the system can be set forth with sufficient clarity so licensees will be able to follow the powers and periods of operation specified.

14. Finally, as to the view taken regarding the compromise itself, we think it important to put the vexing issues involved in this proceeding to rest. As our two earlier decisions made clear, there are compelling reasons which can be advanced to support the needs of both daytime-only and full-time stations. Since it is not desirable to follow either position to the exclusion of the other, some middle ground must be found. The problem has arisen because there is no obviously appropriate point at which to draw the line. Several factors are involved, and each must be balanced as part of an overall decision. Although the Commission could attempt to strike such a balance, it is clearly preferable to follow the industry-wide compromise position if it is fully supported by the record. Our review convinces us that both in policy terms and in engineering particulars, the parties have proposed a sound basis for resolving the conflicting considerations here involved.

15. The terms of the compromise involve the following: (1) For the first 30 minutes following sunset, powers are to be calculated at sunset plus 30 minutes (SS+0.5); (2) For the next 30 minutes, the power is to be calculated at SS+1.0; (3) For the next hour, power is to be calculated at SS+2.0., and (4) where the power specified is less than 100 watts, adjustments in power during the period until 6:00 p.m. are to be made as follows:

Calculated power	Adjusted minimum power
From 1 watt to 45 watts	50 watts.
About 45 watts to 70 watts	75 watts.
About 70 watts to 100 watts	100 watts.

As a result, all Class III stations would have a power of at least 50 watts during the pre-6:00 p.m. period, and many would have substantially more. Even after 6:00 p.m., the new calculation method will yield substantial powers during the first hour after sunset.

16. The compromise provides full protection to foreign stations as required by treaty, it offers increased power for daytime-only stations and at the same time provides enhanced interference protection for full-time stations. It gives full recognition to the importance of additional power during the period until 6:00 p.m. while reducing the amount of interference by two means. First, the SS+0.5 calculation is only to be used for the first half hour of post-sunset operation, and the SS+1.0 calculation is to be used for the second half hour. Second, instead of increasing all powers to 100 watts regardless of interference, the increase is on a sliding scale. Overall our extensive study of the compromise convinces us that it offers a sound public interest basis on which to resolve the outstanding issues. Therefore, we shall adopt the compromise and shall issue the necessary authorizations promptly. Post-sunset operation as specified in these authorizations may commence as soon as the applicable rule change go into effect. Under the circumstances of this proceeding, there is no reason to wait 30 days following publication of the new rules in the **Federal Register** before putting them into effect. Delay in the commencement of these operations would serve no useful purpose. All of the parties have joined in supporting this revision of the rules to relieve a current restriction. Accordingly, pursuant to 5 U.S.C. § 553(d), the changes can be effected on publication in the **Federal Register**.

17. Accordingly, It is ordered, that the subject Joint Motion is granted and, pursuant to Section 4(i), 303 and 307(b) of the Communications Act of 1934, as amended, § 73.99 of the Commission's Rules is amended effective December 10, 1984, as set forth in the attached appendix.

18. It is further ordered, that the above-listed petitions for reconsideration are granted to the extent indicated and in all other respects are denied.

9. It is further ordered, that the stay ordered earlier in this proceeding is dissolved.

20. It is further ordered, that this proceeding is terminated.

(Secs. 4, 303, 48 stat. as amended. 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 73—[AMENDED]

47 CFR 73.99 is amended by revising paragraph (e)(5) and adding paragraphs (e)(6) and (e)(7) to read as follows:

§ 73.99 Pre-Sunrise Service Authorization (PSRA) and Post-Sunset Service Authorization (PSSA).

* * * * *

(e) * * *

(5) Class III daytime-only stations operating PSSA beyond 6:00 p.m. local time are required to fully protect domestic full-time Class III stations.

(6) The protection that Class III daytime-only stations are required to provide when operating PSSA until 6:00 p.m. local time is as follows:

(i) For the first half-hour of PSSA operation, protection will be calculated at sunset plus 30 minutes at the site of the Class III daytime-only station;

(ii) For the second half-hour of PSSA operation, protection will be calculated at sunset plus one hour at the site of the Class III daytime-only station;

(iii) For the second hour of PSSA operation, protection will be calculated at sunset plus two hours at the site of the Class III daytime-only station;

(iv) Minimum powers during the period until 6:00 p.m. local time shall be permitted as follows:

Calculated power	Adjusted minimum power
From 1 to 45 watts	50 watts.
Above 45 to 70 watts	75 watts.
Above 70 to 100 watts	100 watts.

(7) For the purposes of determining protection, the existing nighttime RSS limit will be used in the determination of maximum power permissible.

[FR Doc. 84-31923 Filed 12-7-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 41162-4162]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fishery being conducted in the Western and Central Regulatory Areas of the Gulf of Alaska and therefore is increasing the incidental catch limits of Pacific halibut allowed to be taken by U.S. fishermen while trawling for groundfish. He is also exempting from those limits trawling with off-bottom gear. This action is necessary to avoid underutilization and economic wastage of the groundfish resources known to be available and is intended to promote full achievement of the desired harvest level of certain groundfish species.

DATES: In § 672.20, paragraph (e)(1) is suspended from 12:00 noon, Alaska Standard Time (AST), December 10, 1984 until 12:00 noon AST, March 11, 1985. In § 672.20, a new paragraph (e)(3) is added, to be effective in place of paragraph (e)(1) from 12:00 noon AST, December 10, 1984 until March 11, 1985.

ADDRESS: The environmental assessment prepared for this action may be obtained from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fishery in the fishery conservation zone (3–200 miles) of the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed. by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). It was approved by the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) and implemented December 1, 1978 (43 FR 52709, November 14, 1978). It has been amended twelve times.

The original FMP contains restrictions on both foreign and domestic trawling in the Western and Central Regulatory Areas of the Gulf of Alaska that are designed to minimize the taking of Pacific halibut, a species important to domestic halibut longliners. Foreign fishermen are restricted to the use of off-bottom gear when trawling in the Western (159 °W.–170 °W. longitude) and Central (147 °W.–159 °W. longitude) Regulatory Areas from December 1 through May 31, a period when juvenile Pacific halibut are in shallow water and are more subject to capture in trawls. Domestic trawlers may use on-bottom gear during this period, but if the total domestic take of halibut in the Western or Central Regulatory Area reaches 29 or 52 metric tons (mt), respectively, all further fishing by domestic fishermen in that regulatory area is prohibited until June 1.

These limits for the prohibited species catch (PSC) of halibut were implemented in 1978 and approximated one percent of the amount of Pacific cod expected to be taken annually by domestic fishermen in 1979 and the years following. Domestic catches of groundfish have increased annually since 1979 as market opportunities developed. Most of the increase is attributed to large quantities of pollock, taken in joint venture fisheries operating in the Shelikof Strait region of the Central Regulatory Area. Relatively few halibut are taken in this fishery because only off-bottom trawl gear has been employed. For example, in 1984, only about 0.5 mt of halibut was taken incidental to a pollock catch of 174,000 mt by the West German, Japanese, and Republic of Korea joint ventures using off-bottom gear during the January to March roe pollock fishery in Shelikof Strait. However, expanded catches of other groundfish species that are typically taken with bottom trawls, particularly Pacific cod and flounders, have been substantially increasing the bycatch of halibut in domestic groundfish operations.

The abundance of halibut has increased in the Gulf of Alaska since the FMP was first implemented, and the domestic longline fisheries for them have achieved or exceeded available quotas in recent years. The greater prevalence of halibut has caused them to be more subject to incidental capture by trawls. Recognizing that more halibut will be taken incidental to the groundfish harvest and that the domestic groundfish fisheries will probably reach the existing halibut bycatch limits early in 1985, the Council voted unanimously at its September 1984 meeting to request the Secretary to implement an emergency rule to increase the allowable incidental catch limits of halibut to 270 mt and 768 mt in the Western and Central Regulatory Areas, respectively. Because few halibut are taken with off-bottom trawl gear, the Council also voted unanimously to request the Secretary to exempt users of off-bottom trawl gear from the restriction.

Under section 305(e) of the Magnuson Act, the Secretary finds that an emergency exists in the developing domestic groundfish fishery because of the present bycatch limits for halibut and has increased those limits to 270 mt and 768 mt in the Western and Central Regulatory Areas, respectively, for a period of 90 days from December 1, 1984. If, during this period, domestic trawlers reach these limits, the appropriate regulatory areas will be closed to bottom trawling and domestic trawlers will be restricted to the use of off-bottom trawl gear only. NOAA anticipates repromulgating this emergency rule so that it will be effective until June 1, 1985.

Classification

The Assistant Administrator has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This action will avoid the disruption in

lesser aspect of issuing new

SS+0.5 calculation is only to be used for

operating PSSA beyond 6:00 p.m. local

fishing that would otherwise occur in the developing domestic groundfish fishery.

The Assistant Administrator also finds that, because achieving the existing halibut PSCs is likely early in the period December 1984 to May 1985 in the Central Regulatory Area and is expected to occur in the Western Regulatory Area, the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment. Because this is a substantive rule which relieves a restriction, the delayed effectiveness provisions of the Administrative Procedure Act do not apply.

The Regional Director prepared an environmental assessment (EA) for this action and concluded that no significant impact on the human environment will result from its implementation. A copy of the EA is available at the address above.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by Alaska's Office of Management and Budget under section 307 of the Coastal Zone Management Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because the rule is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: December 4, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, a definition for "botton trawl" is added in appropriate alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Botton trawl means a trawl in which the ground rope of the net is equipped with bobbins or roller gear.

* * * * *

3. In § 672.20, paragraph (e)(1) is suspended from 12:00 noon AST, December 10, 1984 until 12:00 noon AST, March 11, 1985. A new paragraph (e)(3) is added, effective 12:00 noon AST, December 10, 1984 until 12:00 noon AST, March 11, 1985, to read as follows:

§ 672.20 Optimum Yield.

* * * * *

(e) * * *

(3) If, during the period between December 1 and May 31, the Regional Director determines that the estimated total trawl catch of halibut in any regulatory area by vessels regulated by this part will reach the amount listed below, the Secretary will issue a field order under § 672.22(a) prohibiting, until June 1, groundfish fishing with bottom trawls in that regulatory area by vessels regulated under this part.

Regulatory area	Catch amount (mt)
Western	370
Central	705
Eastern	31

[FR Doc. 84-32069 Filed 12-7-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 238
Monday, December 10, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 612

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board, publishes for comment proposed amendments to its regulations relating to standards of conduct for directors, officers, and employees of Farm Credit System ("System") institutions. The proposed regulations delete or modify several existing regulatory provisions to enable System institutions to exercise greater discretion in administering matters involving their business relationships with their agents consistent with good business practices. The proposed regulations will provide adequate measures to aid in safeguarding the interests of System institutions and their member/borrowers, without unduly infringing upon the rights of System agents or placing undue administrative burdens on System institutions. Additionally, an amendment has been proposed that would permit System employees to serve on the boards of cooperatives that borrow from a bank for cooperatives.

DATE: Written comments must be received on or before January 10, 1985.

ADDRESS: Comments should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22120–5090. Copies of all written comments received will be available for inspection by interested parties in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Gary L. Norton, Office of General Counsel (703) 883–4020, or Tom Holland, Office of Examination and Supervision, (703) 883–4030, 1501 Farm Credit Drive, McLean, VA 22102–5090

SUPPLEMENTARY INFORMATION: For purposes of this supplementary information, certain terms are designated as follows: Farm Credit Administration ("FCA"); Federal Farm Credit Board ("Federal Board"); and Farm Credit System ("System").

The Federal Board has reviewed the FCA standards of conduct regulations pertaining to agents of System institutions. This review was initiated as the result of inquiries and suggestions received by the FCA from various segments of the System on this topic. The major areas of concern submitted to the FCA have centered on practical obstables to applying and enforcing the agent provisions of the regulations, and possible undue regulatory infringements on the rights of agents.

The standards of conduct regulations contain a broad definition of "agent" that encompass a myriad of different relationships and "agent" organizational structures associated with System operations. The definition of agents includes those persons who represent System institutions to third parties and those persons who provide professional services to System institutions. In some instances, the scope of persons included under FCA regulations as agents may go beyond the scope of persons generally recognized as agents. For instance, some "agents" providing a "professional service" may not necessarily share a position of special trust or be in a position to obtain preferential treatment from System institutions or System borrowers. On the other hand, a litigation attorney may have direct access to beneficial insider information and may be in a position to obtain preferential treatment from the System or its borrowers. Additionally, "agent" could be descriptive of an individual or a corporation with nationwide representatives or some other type of organizational structure.

Some System institutions have expressed difficulties in administering the agent provisions of the regulations. For example, some agents have raised objection to the compliance certifications that are used by System institutions as the means of ensuring that agents are in compliance with the regulations. Some agents have also expressed concerns as to the extent of control existing within the regulations over their activities. For instance, 12 CFR 612.2220, Political activity, requires bank approval before an agent may seek or hold public office.

For these reasons, some System institutions believe that the present regulations on agents could be injurious to their working relationships with some of their agents. This belief is apparently based on concern that some agents, rather than submitting to what they believe is an improper intrusion into their business operations and/or personal activities, will terminate their relationships with System institutions.

After studying the overall agency question, the Federal Board reaffirms that System institutions do need to exercise sound and safe business practices in their relationships with agents, but that in general, the regulations governing agents should not proscribe particular activities. Rather, the Federal Board believes the regulations should focus System attention on the need for System institutions to be attentive to and monitor their agents' compliance with the contractual and fiduciary duties that exist between prinipals and agents. The existing regulations on agents should be streamlined to focus on areas of higher risk not specifically addressed in agency law; specifically, the prohibition against agents participating in the selection of System and Federal Board members. FCA regulations on agents would then, in effect, highlight the existence of the general standards pertaining to the duties of agents and would impose specific requirements only in an area where general laws of agency are believed to be inadequate for the successful operation of System/agent relationships. The Federal Board believes that this approach will provide an acceptable overall framework for System institution/agent relationships.

The proposed changes would not relieve System institutions of their responsibility for monitoring the activities of agents and exercising good business practices in the administration of their relationships with agents. Additionally, the proposed changes do not relieve System banks from the responsibility of overseeing that good business practices are carried out by the associations in this area. When the conduct or activities of an agent are contrary to the best interests of System

borrowers and institutions, System institutions have a responsibility to take corresponding corrective actions.

Following is a brief explanation of each of the proposed amendments.

A technical correction to the definition of "agents" in 12 CFR 1612.2130 is proposed which would delete the reference to "consulting" services. This amendment would clarify that only persons who represent System institutions and providers of "professional" services could be considered "agents" for purposes of the regulations.

An amendment to the definition of "employee" is proposed which would delete the provision that includes "agents" as employees for purposes of 12 CFR 612.2230, the regulation relating to nepotism. This amendment would eliminate the specific prohibition against nepotism involving agents of institutions but, pursuant to other regulations, the institutions remain responsible for exercising diligence and asserting control to avoid nepotistic relationships of particular sensitivity.

12 CFR 612.2200 prohibits System employees from engaging in certain activities relating to the nomination or election of members of the boards of System banks and associations and the Federal Board. The Federal Board has proposed an amendment to this regulation that would impose the same prohibitions with respect to nominations or elections for boards of System service organizations. In addition, there is a technical amendment to this regulation which incorporates the provision that is being deleted from 12 CFR 612.2260 relating to the involvement of agents in the nomination and election process.

The Federal Board has proposed amendments to 12 CFR 612.2220, Political activity, § 612.2240, Gifts or favors, and § 612.2250, Improper use of official property, which would modify these regulations by eliminating their applicability to the conduct of agents of System institutions. All of these are areas of agent activity that the Federal Board believes should not be governed by specific regulatory prohibitions but rather than can be handled on the basis of the guidelines contained in 12 CFR 612.2260.

The final proposed amendment to the agent regulations is with respect to 12 CFR 612.2260, which currently contains specific prohibitions relating to the standards of conduct for agents of System institutions. The Federal Board proposes to amend this regulation by eliminating the specific prohibitions and substituting a general provision which imposes on System institutions the obligation of monitoring the activities or their agents and taking appropriate corrective actions where necessary.

The Federal Board proposes amending 12 CFR 612.2150(b) which itemizes certain prohibited conduct for relationships of employees of System institutions. The proposed amendment to paragraph (b)(5) would permit a System employee who obtains the approval of the board of the employing institution to serve on the board of a cooperative that borrows from the bank for cooperatives in the district. The amendment is proposed in recognition that membership on cooperative boards by System employees can have numerous beneficial impacts and that such activity can be adequately monitored and controlled by the employing institution to minimize the danger of conflicts of interest.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, Banking, Conflict of interest.

As stated in the preamble, it is proposed that Part 612 of Chapter VI, Title 12 of the Code of Federal Regulations, be amended as follows:

PART 612—PERSONNEL ADMINISTRATION

Subpart B—Standards of Conduct for Directors, Officers, and Employees

1. Section 612.2130 is amended by revising paragraphs (a) and (g) to read as follows:

§ 612.2130 Definitions.

* * * * *

(a) "Agent" means any person, other than a director or employee, who represents the System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

* * * * *

(g) "Employee" means any salaried officer or part-time, full-time, or temporary salaried employee.

* * * * *

2. Section 612.2150 is amended by revising paragraph (b)(6) to read as follows:

§ 612.2150 Employees—prohibited acts.

* * * * *

(b) * * *

(6) Shall not serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution, except employee credit unions. For the purposes of this paragraph, "transacts business" does not include loans by a System institution to a family-owned entity, and does not include transactions with nonprofit entities or entities in which the System institution has an ownership interest. With the prior approval of the board of the employing System institution, an employee may serve as a director of a cooperative which borrows from a bank for cooperatives. Prior to granting approval, the board shall evaluate the potential of the employee's proposed directorship for violating any regulations contained in Subpart B of the FCA regulations with particular emphasis on the requirements of section 612.2190, Devotion of time to official duties.

* * * * *

3. Section 612.2200 is amended by revising paragraphs (a) and (c) to read as follows:

§ 612.2200 Soliciting support in election polls for association, district, service organization, or Federal Farm Credit Board membership.

(a) No employee or agent of a System institution shall take any part, directly or indirectly, in the designation of nominees for the Federal Farm Credit Board, or the nomination or election of members of a district, association, or service organization board, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such designations, nominations, or elections. These provisions shall not prohibit employees or agents from providing biographical and other information or engaging in other activities pursuant to the district policies and procedures for nominations and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for directors of an institution of which the employee or agent is a voting member.

* * * * *

(c) No director, employee, or agent shall, for the purpose of furthering the interest of any candidate for nomination or election, furnish or make use of System records that are not made available for use by all declared candidates.

4. Section 612.2220 is amended by revising paragraph (a) as follows:

§ 612.2220 Political activity.

(a) No salaried officer or employee of a System institution shall hold a public office or be a candidate for such office unless the bank by which he is employed or which supervises his employer has, after investigation and consideration of all facts involved, determined in writing that such candidacy or holding of public office would not bring justified criticism on the grounds of political activities or partialities or in any other manner adversely affect the best interests of the borrowers or the operations and public image of the System or any institutions thereof. All determinations made hereunder shall be reported to the board of directors of the bank concerned.

* * * * *

5. Section 612.2240 is revised to read as follows:

§ 612.2240 Gifts or favors.

(a) No director or employee of any System institution shall solicit, give, or receive any gift or present from or to any director or employee of the employing or supervising institution or any supervised institution. This paragraph shall not apply to gifts of a nominal value traditionally exchanged as part of acceptable social amenities.

(b) No director or employee of any System institution shall at any time solicit or receive contributions from the institution's borrowers or loan applicants for a gift or present to any director or employee of a System institution.

6. Section 612.2250 is revised to read as follows:

§ 612.2250 Improper use of official property.

No director or employee of a System institution shall use the space, personal property, communication, transportation, or other facilities of a System institution for activities or business in such person's personal interest or the personal interest of another. This provision does not apply to the use of property, facilities, or resources pursuant to a lease or contract with the institution which is based on an agreement arrived at following arm's-length negotiations, and which is evidenced in writing setting forth the terms and conditions of such use. Official stationery shall be used only in the conduct of official business of the institution, and shall not be used to express opinions which do not represent the official views of the institution.

7. Section 612.2260 is amended by revising paragraphs (b) and (c) to read as follows:

§ 612.2260 Standards of conduct for agents.

* * * * *

(b) System institutions shall utilize safe and sound business practices in the engagement, utilization, and retention of agents. These practices shall provide for the selection of qualified and reputable agents. Employing System institutions shall be responsible for the administration of relationships with their agents, and shall take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out other agent duties as required by contract, FCA regulations, or law. Associations shall report, upon discovery, suspected nonperformance or duties by an agent to the supervisory bank.

(c) System institutions shall be responsible for exercising corresponding special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include the employment of agents who are related to directors or employees of the institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246 and 2252))

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 84–32240 Filed 12–7–84; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84–ANM–32]

Proposed Revised Control Zone; Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to redefine the current geographical boundaries of the Boise, Idaho Control Zone. This action is required due to realignment of the VOR Rwy 10R and VOR/DME Rwy 10R instrument approach procedures for noise abatement. This action provides the revised description.

DATES: Comments must be received on or before January 28, 1985.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & Procedures Branch, ANM–530, Federal Aviation Administration Docket No. 84–ANM–32, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace Technical Specialist, ANM–535, Telephone (206) 431–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–32". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures Branch, 17900 Pacific Highway South, Seattle, WA., 98168, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Procedures Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to redefine the geographical boundaries of the Boise Control Zone. Amendments to the VOR Rwy 10R and VOR/DME Rwy 10R instrument approach procedures for noise abatement require an adjustment in the boundaries of the control zone. This proposed action provides the revised description. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Boise, Idaho Control Zone [Revised]

Within a 5-mile radius of this Boise Air Terminal (43°33'54" N/116°13'27" W); within 4 miles each side of the Boise VORTAC 300° radial extending from the 5-mile radius zone to 12 miles northwest of the VORTAC, within 5 miles each side of the Boise VORTAC 114° radial extending from the 5-mile radius area to 12 miles southeast of the VORTAC; and within 2 miles west and 5 miles east of the Boise VORTAC 179° radial extending from the 5-mile radius area to 7 miles south of the VORTAC.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Seattle, Washington, on November 27, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-32045 Filed 12-7-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-AWA-29]

Proposed Establishment of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish three new Federal Airways, V-549, V-551 and V-553. This proposed action is based on recommendations from airspace users. Under this proposal, the new airways would be established in controlled airspace where there are now frequent requests made to air traffic control for direct routings between navigational aids (NAVAID).

DATE: Comments must be received on or before January 21, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-29, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this RPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish three new VOR Federal Airways, V-549, V-551 and V-553. The proposed action is based on airspace user recommendations. The new airspace would be established where there are now frequent requests for direct routing between NAVAIDs. Under the proposal, new V-549 would be established between the Hays and Mankato, KS, VORTACs; new V-551 between the Salina and Mankato, KS, VORTACs; and new V-553 between the Salina, KS, and Pawnee City, NE, VORTACs. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V-549 [New]

From Hays, KS; to Mankato, KS.

V-551 [New]

From Salina, KS; to Mankato, KS.

V-553 [New]

From Salina, KS; to Pawnee City, NE.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 30, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-32051 Filed 12-7-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[40668-4058]

Foreign Trade Statistics; Amendments

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend the Foreign Trade Statistics Regulations (FTSR) to incorporate additional Shipper's Export Declaration (SED) data requirements and changes resulting from the redesign of the SEDs and their continuation sheets. It is also proposed to amend the FTSR to raise the upper limit of the present exemption from SED filing requirements based on value from $500 to $1000, except for shipments through the U.S. Postal Service.

DATE: Comments should be submitted on or before February 8, 1985.

ADDRESS: Send comments to the Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Barry Cohen, Chief, Foreign Trade Division, Bureau of the Census, (301) 763-5342.

SUPPLEMENTARY INFORMATION: The SEDs, Forms 7525-V and 7525-V-Alternative (Intermodal), have not been revised since 1973. The vertical SED, Form 7525-V, underwent at that time virtually no change in terms of the data and the number of items required to be reported. The horizontal SED, Form 7525-V-Alternative (Intermodal), was introduced in 1971 and revised in 1973 to reflect changes made on the U.S. Standard Format. The Shipper's Summary Export Declaration (SSED), Form 7525-M, has not been revised since its inception in 1969. Because these forms are the source documents from which the Bureau of the Census collects and compiles the official U.S. export statistics, the revisions in this amendment are necessary to accommodate the needs of data users and provide for the proper reporting of data currently required.

Many government agencies use the export statistics to develop the essential export components of the merchandise trade figures for the balance of payments accounts and to evaluate the effect on the value of the U.S. currency; to appraise and analyze major movements and trends in U.S. exports; to plan and evaluate such programs as the export promotion program, agricultural development and assistance programs; to prepare for and assist in trade negotiations under the General Agreement on Tariffs and Trade; and as a statistical base for implementing the strategic commodities controls and short supply aspects of the Export Administration Act. Nongovernmental users are aided in making foreign marketing and investment decisions and conducting share-of-the market analyses and market penetration studies in determining marketing policies and strategies.

The horizontal SED, Form 7525-V-Alternative (Intermodal), was designed primarily for waterborne shipments to simplify export documentation by allowing the simultaneous preparation of commercial and governmental shipping documents via an aligned standard international master. This alignment offers cost savings to those shippers using the standardized export documentation master without significantly affecting the Government's processing costs.

The SSED was instituted for use by large volume exporters who meet certain criteria and are authorized by the Bureau and the Office of Export Administration to report export information on a monthly basis in lieu of filing individual SEDs for each shipment. This monthly summary form along with the collection of data on a monthly basis via electronic means reduces significantly the reporting burden on the public and produces cost savings in both the preparation and processing of export data.

The proposed vertical version of the SED (which would replace the present vertical form) is the result of efforts initiated by the National Committee on International Trade Documentation (NCITD) to bring the document into alignment with the international standard. In further support of the SED revision, the U.S./Canada Trade Facilitation Group was established to investigate streamlining documentation for trade between the two countries in cooperation with respesentatives from NCITD, the Canadian Organization for the Simplification of Trade Procedures, and the U.S. and Canadian Government agencies responsible for trade documentation. The primary goal of the group was to attempt to align the invoice and the export reporting requirements of both countries to a common format whereby the respective documents could be generated in a one-run document preparation system. Although the efforts to align the declaration involved streamlining U.S.-Candadian trade documentation, the declaration is to be used for trade with all countries. The vertical SED will align with the United Nations Layout Key thus providing the exporting community with a second choice for the preparation of the declaration as part of a one-run document set.

The main advantage of using an international standard for the design of the document is the ease in preparing document sets. The document is one of an aligned series of forms using a master document in a one-run system of document preparation. Another advantage is in the consistency of information appearing on the documents in a one-run system, thereby improving

the quality of the data reported for export shipments.

An interagency group, a subcommittee of the Interagency Committee on International Investment Statistics, whose members come from the Council of Economic Advisers, Federal Reserve Board, Office of Management and Budget (OMB), Office of the U.S. Trade Representative, and the Departments of Agriculture, Commerce, Energy, Labor, State, and Treasury and whose mission is to examine the entire Federal program of international investment statistics, proposed that the Bureau require the reporting of information on transactions between related parties on the SED and that it and the exporter's Internal Revenue Service Employer Identification Number (EIN) be processed for use in investment surveys.

The interagency group indicated that commodity detail on trade between parents and affiliates is needed to analyze the relationship between trade and the domestic and foreign production of multinational firms. Currently, the Bureau of Economic Analysis (BEA) collects data on both U.S. direct investment abroad and foreign direct investment in the United States via comprehensive benchmark surveys every 5 years. Summary data from the benchmark surveys are to be updated in nonbenchmark years by means of annual sample surveys. The benchmark and annual surveys collect data on U.S. merchandise trade between U.S. parent companies and their foreign affiliates and between foreign parent companies and their U.S. affiliates. In benchmark years, data are collected for a few broad commodity categories; in the annual survey, no commodity detail is collected. Rather than recommending that BEA collect detailed commodity data, the interagency group felt that the most efficient and cost effective way to obtain such detailed data was to link, on a company-by-company basis, the aggregate enterprise data collected by BEA with the detailed commodity data collected on the SEDs. Such a linking process would obviate the need for BEA to collect the detailed data itself, thus avoiding a costly duplicating of reporting. The linking can be accomplished if statistics on the EIN and related/nonrelated transactions were collected and processed by the Bureau. Therefore the revised SEDs, Forms 7525–V, 7525–V-Alternate (Intermodal), and 7525–M have been designed to require these items of information.

Surveys of U.S. direct investment abroad and of foreign direct investment in the U.S. are mandated by the International Investment Survey Act of 1976 (the Survey Act), Pub. L. 94–472, 22 U.S.C. 3101–3108. The surveys must be approved by OMB under the Paperwork Reduction Act.

To avoid disclosure of individual company transactions through the use of EIN information, a method of linking the investment survey and trade data so as to maintain the confidentiality of both Bureaus data would have to be developed. Section 5(c) of the Survey Act, 22 U.S.C. 3104(c), provides that the information reported may be used for analytical and statistical purposes *only* and will be held confidential.

The added requirement for separate data on transactions between related parties will provide both government and nongovernment users information on the extent and nature of trade between U.S. companies and their foreign affiliates and between foreign companies and their U.S. affiliates. A new Paragraph 30.7(v) is being added to provide for the reporting of this information.

The Bureau of Labor Statistics (BLS) has also expressed a strong interest in EIN data. The BLS proposes to use the EIN data in the construction of samples of exporters for use in the Export Price Index in a way comparable to the sample of importers developed from EIN information reported on Customs Entry Forms for the Import Price Index.

Currently the EIN is required to be reported in the space designated and formerly used for "Authentication." In redesigning and revising the respective SED forms, a specific space is being provided; therefore, the reporting of the EIN is not a new requirement, merely a change in location on the SED. Section 30.7(d)(2) is amended to reflect this change.

There is widespread interest in obtaining information on the state of origin of exports and whether or not a shipment is containerized. These data are necessary in view of the major changes taking place in the domestic and international movements of commodities involving containerization and international door-to-door movements on through bills of lading. These data will be useful to both government and the private sector in areas such as cargo forecasting, market analyses, and facilities planning; analyses of trade patterns for inland areas; and in studying the effect of foreign trade on the domestic transportation system and state and local economies.

These data are also vital to reflect changes and trends that are developing and to benchmark for projections. Origin of export data are important to port planners who must plan facilities and services for commodities most likely to move to and from specific areas. This information is also useful to trade development people who are searching for market information to project needed personnel and advertising resources and thereby produce the maximum tonnage through their port facilities.

The current need for these data is manifested by the public response to the 1956, 1970, and 1976 surveys regarding the domestic and international transportation of exports and imports that included information on U.S. interior origin of exports and destination of imports, domestic mode of transportation between significant points, and the use of containerization. New paragraphs 30.7(t) and 30.7(u) are being added to provide for reporting these data.

Although three additional items of information about the export transaction (parties to transaction, state of origin, containerized) are being required thereby adding to the reporting burden of the exporting community, we believe the overall reporting burden will be reduced through the use of an international standard for the basic format. More specifically, the SED can be prepared in conjunction with the preparation of the commercial invoice and other shipping documents since numerous items required on the SED are in common with these documents. To identify the state of origin of the merchandise, we propose to require the reporting of the U.S. Postal Service's standard two-letter state or territory abbreviation, making it unnecessary to continue to require the reporting of a state abbreviation in conjunction with the EIN when an exporter has operations in more than one location, since the original intent, in part, was to aid in studies on origin of exports. Therefore § 30.7(d)(2) is amended to reflect this change.

The Foreign Trade Zone (FTZ) Number along with the FTZ state location is being required to be reported in the space designated "State of Origin and FTZ No."

Until now it had been required in the space designated "Port of Export." The instruction is being incorporated into the new Paragraph 30.7(t) and deleted from Paragraph 30.7(a).

Our definition of containerized cargo includes both cargo booked as such and that placed in containers at the vessel operator's option. Therefore, it is necessary that the exporting carrier be responsible for the accuracy of this item of information since normally the SEDs are prepared before the cargo arrives at the vessel. Accordingly, § 30.22(b) is amended.

To reduce printing and acquisition costs to private printers and users, we are deleting the requirement that the instructions be printed on the back of the form from § 30.3(b) and § 30.7(1)(2) which references such instructions. However, with the institution of the revised SED forms, an instructional booklet will be available.

The Bureau does not compile statistics on place of ultimate destination; data are compiled on country of ultimate destination only. Therefore, § 30.7(i) is being amended to delete all references to "Place (city) of ultimate destination."

As a result of the redesign and revision of the SED forms, § 30.7(a) is being amended to delete the reference to the District and Port boxes; § 30.7(q) is being amended to delete the reference to the definition of value on the front of the form; and Sections 30.9 and 30.10 are being amended to delete the reference to column numbers. Section 30.7(1)(3) is being deleted as obsolete.

The proposal to raise the minimum value requirement for the filing of SEDs from the present level of $501 to a new level of $1001, if implemented, is expected to reduce the number of required SEDs by more than 1.7 million documents per year. The proposed increase in the value limit is expected to maintain the share of exempted shipments at about 1.5 percent of the overall value of exports in 1984. While there will be some loss of statistical detail at the more detailed levels (i.e., commodity by country, commodity by county by district, etc.), the benefits accruing to both the public and the Bureau by the reduction in the number of SEDs required to be filed and processed outweigh the anticipated loss in statistical detail. Raising the value exemption from SED filing requirements to $1000 is a change which relieves documentation burdens. For export control and enforcement purposes, the Office of Export Enforcement recommends that § 30.54 dealing with mail shipments remain unchanged at $500 and, further include in § 30.55(h) a statement excluding mail shipments. Accordingly, § 30.55(h) is amended.

These proposed amendments do not meet the criteria set forth in section 1(b) of Executive Order 12291; therefore, no Regulatory Impact Analysis is required. Pursuant to the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the General Counsel of the Department of Commerce certified to the Small Business Administration that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because the preparation of SEDs is small compared to the total cost of exporting. These proposed amendments are subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511), however, there will be a decrease in the reporting burden resulting from raising the value exemption for SED filing which more than offsets any increase from the requirement that three additional items of data be reported on the SEDs. The collections are currently approved under OMB control numbers 0607–0001, 0607–0018, 0607–0150, and 0607–10152. The revised information collections under OMB control numbers 0607–0018, 0607–0150, and 0607–0152 are currently pending OMB approval. Form 0607–0001 is not being revised at this time. Comments may be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Census Bureau.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

To effect these changes, it is proposed to amend the Foreign Trade Statistics Regulations (15 CFR Part 30) as set forth below.

PART 30—[AMENDED]

1. Section 30.3 is amended by revising the fourth sentence of Paragraph (b) to read as follows:

§ 30.3 Shipper's Export Declaration forms.

* * * * *

(b) * * * Privately printed Shipper's Export Declaration forms must conform strictly to the respective official form in size, wording, color, quality (weight of paper stock), and arrangement, including the Office of Management and Budget Approval Number printed in the upper-right hand corner of the face of the form.* * *

2. Section 30.7 is amended by revising paragraphs (a), (d)(2), (i)(1), the first sentence of (i)(2), the first sentence of (q)(1) and paragraph (l) and adding paragraphs (t), (u), and (v) to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

The following information shall be furnished in the appropriate spaces provided on the Shipper's Export Declaration and shall conform to the requirements set forth in this section. (See § 30.92 for information as to the statistical classification Schedules B, C–E, and D referred to in this section. Also, see § 30.8 for information required on Form 7513 in addition to these requirements.)

(a) *Port of export.* The name of the U.S. Customs port of exportation shall be entered in terms of Schedule D, *Classification of Customs Districts and Ports.* (See § 30.20(c) for definition of port exportation.) For shipments by mail, the name of the Post Office where the package is mailed shall be inserted in the space for U.S. port of export.

* * * * * *

(d) *Name of exporter and exporter's identification number.*

(1) * * *

(2) *Exporter's Identification Number.* Exporters (or their agents shall report the exporter's Internal Revenue Service Employer Identification Number (EIN). If no Internal Revenue Service EIN has been assigned, the exporter's Social Security Number (SSN), preceded by the symbol "SS" should be reported. The exporter's SSN shall be reported if, and only if, no Internal Revenue Service EIN has been assigned to the exporter. If neither an Internal Revenue Service EIN nor a SSN has been assigned, as for example, in case of a foreign entity as the exporter, the EIN or SSN reporting requirement does not apply.

* * * * * *

(i) *Country of destination.* Country of destination shall be reported on the Shipper's Export Declaration in terms of the names designated in Schedule C–E, *Classification of Country and Territory Designations for U.S. Export Statistics,* as follows:

(1) For shipments under validated export licenses, the country of ultimate destination shown on the export declaration shall conform to the country of ultimate destination as shown on the license.

(2) For shipments not moving under validated export license, the country of ultimate destination as known to the exporter at the time of exportation shall be shown on the export declaration.* * *

* * * * * *

(l) *Description of commodities and Schedule B number.* The correct commodity number as provided in Schedule B, *Statistical Classification of Domestic* and *Foreign Commodities Exported from the United States,* shall be entered in the space provided on the Shipper's Export Declaration form, and a description of the merchandise shall be supplied in the "Description of Commodities" column in sufficient detail to permit the verification of the Schedule B commodity number. The name of the commodity, in terms which can be identified or associated with the

in the U.S. are mandated by the

and to benchmark for projections. Origin

of information since normally the SEDs

language used in Schedule B (usually the commercial name of the commodity), and any and all characteristics of the commodity which distinguish it from commodities of the same name covered by other Schedule B classifications shall be clearly and fully stated. Careful reference to the Schedule B classification scheme for related commodities as well as for the commodity being shipped, is necessary in order to establish which particular characteristics must be stated in the description to permit verification of the correct Schedule B commodity number and to eliminate any question that some other commodity number might apply. A description of commodities in the kind of detail specified above is a separate requirement, and the furnishing of the correct Schedule B commodity number does not relieve the exporter of furnishing, in addition, a complete and accurate commodity description in accordance with this requirement. If the shipment is moving under a validated license, the description shown on the export declaration shall conform with that shown on the validated export license. However, where the description on the license does not state all of the characteristics of the commodity which are needed to completely verify the commodity number, as described above, the missing characteristics, as well as the description shown on the license, shall be stated in the commodity description on the Shipper's Export Declaration.

* * * * *

(q) *Value.* (1) In general, the value to be reported on the Shipper's Export Declaration shall be the value at U.S. port of export (selling price or cost if not sold, including inland freight, insurance and other charges to U.S. port of export) (nearest whole dollar; omit cents figures).* * *

* * * * *

(t) *State of origin and Foreign Trade Zone number.* (Not required for in-transit merchandise documented on Form 7513.) The state in which the merchandise actually begins its movement in international trade; that is, the state in which the merchandise actually starts its journey to the port of export. For example, a Shipper's Export Declaration covering merchandise laden abroad a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show Georgia as the state or origin. This may not be the state where the merchandise was produced, mined, or grown, nor necessarily the state where the exporter is located. For merchandise exported after having been in a U.S. Foreign Trade Zone, the letters "FTZ" followed by the Foreign Trade Zone number shall be inserted after the state location of the zone. The state designation to be shown shall be the U.S. Postal Services's standard designation to be shown shall be the U.S. Postal Service's standard two-letter state abbreviation.

(u) *Containerized.* (Not required for in-transit merchandise documented on Form 7513.) This information is required to be shown for vessel shipments only. A containerized shipment is one transported in any size van-type container such as 8' x 8' x 20', 8' x 8' x 40', and so on. Cargo originally booked as *containerized cargo* as well as that placed in containers at the vessel operator's option shall be included.

(v) *Parties to Transaction.* (Not required for in-transit merchandise documented on Form 7513.) A related party is:

(1) One U.S. person who at any time during the fiscal year owned or controlled, directly or indirectly, ten percent (10%) or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch or

(2) One foreign person who at any time during the fiscal year owned or controlled, directly or indirectly, ten percent (10%) or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

3. Section 30.9 is amended by revising the sixth sentence to read as follows:

§ 30.9 Requirements for separation and alignment of items on Shipper's Export Declaration.

* * * If the exporter desires to record the imported components separately on the export declaration for purposes of identification with a temporary import bond, a notation may be made in the "Description of Commodities" column as to the imported components which have been incorporated in the exported commodity.* * *

4. Section 30.10 is amended by revising the last sentence to read as follows:

§ 30.10 Continuation sheets for Shipper's Export Declaration.

* * * The following statement with the blank filled in as appropriate, shall be inserted on the last line of the description column of the Shipper's Export Declaration itself:

"This declaration consists of this sheet and _ (No.) continuation sheets."

5. Section 30.22 is amended by revising paragraph (b) to read as follows:

§ 30.22 Requirements for the filing of Shipper's Export Declarations by departing carriers.

(a) * * *

(b) The exporting carrier shall be responsible for the accuracy of the following items of information (where required) on the declaration: Name of carrier (including flag, if vessel carrier), foreign port of unloading, bill of lading or air waybill number, and whether or not containerized.

* * * * *

6. Section 30.55(h) is amended by revising Paragraph (h) to read as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(h) Shipments (except shipments requiring a validated export license, and excluding shipments through the U.S. Postal Service) between the United States and Puerto Rico, to the Virgin Islands of the United States, and to all countries except countries prohibited by the Export Administration Regulations of the Office of Export Administration (15 CFR Parts 368–399),[8] where the value of the commodities classified under a single Schedule B number and shipped on the same exporting carrier from one exporter to one importer is $1,000 or under: *Provided, however,* that this exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on $1,000-and-under shipments.

* * * * *

(Title 13, United States Code, sections 301–307; and Title 5, United States Code, Section 301; Reorganization Plan No. 5 of 1950, Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765.)

John G. Keane,

Director, Bureau of the Census

December 4, 1984.

I Concur:

J.M. Walker, Jr.,

Assistant Secretary, Department of the Treasury.

November 27, 1984.

[FR Doc. 84-33088 Filed 12-7-84; 8:45 am]

BILLING CODE 3510-07-M

promulgated, will not have a significant

see § 30.8 for information required on

can be identified or associated with the

FEDERAL TRADE COMMISSION

16 CFR Part 424

Retail Food Store Advertising and Marketing Practices

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (FTC) is seeking public comment on whether the Rule on Retail Food Store Advertising and Marketing Practices should remain in effect without change, or should be amended or rescinded. The basis of this notice is a Commission staff report raising the question whether the Rule's costs may exceed its benefits. Copies of the staff report are available for distribution by the FTC Public Reference Branch, Room 130.

DATE: Comments should be received no later than February 8, 1985.

ADDRESSES: Comments should be sent to: Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lewis Franke, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, [Telephone (202) 376–2863] or Michael Lynch, Economist, Bureau of Economics, Federal Trade Commission, Washington, D.C. 20580 [Telephone (202) 634–7869].

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41 et seq., the provisions of Part I, Subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.7 et seq. and 5 U.S.C. 551 et seq. the FTC Rule on Retail Food Store Advertising and Marketing Practices (16 CFR Part 424) makes it an unfair method of competition and an unfair or deceptive act or practice for a retail food store to offer for sale at a stated price grocery products or other merchandise unless such products are in stock and conspicuously and readily available for sale to customers during the effective period of the advertisement at or below the advertised prices. Food retailers may defend an action by maintaining records showing that the advertised items were ordered in time and delivered in adequate quantities to meet reasonably anticipated demand. The Rule was promulgated on May 13, 1971, 36 FR 8781 (1971), and became effective on July 12, 1971.

In 1980 the Commission released the results of a study of the Rule conducted by Market Fact's Inc., and requested public comment on that study. 45 FR 59634 (1980). More recently, the Senate Commerce Committee, noting the request for comments on the Market Facts study, has twice indicated its desire for the Commission to expeditiously conclude its review of the Rule. S. Rep. No. 97–451, 97th Cong., 2d Sess. 5 (1982), repeated in S. Rep. No. 98–215, 98th Cong., 1st Sess. 4 (1983).

Commission staff has examined several studies on the benefits of the Rule and evaluated figures on costs to comply with it. Staff's conclusions are set forth in a report that has been placed on the public record. The studies indicated that on the average, unavailability levels have been relatively low and food shoppers do not perceive unavailability as a serious problem. Food shoppers appear to be unwilling to sacrifice any price or service benefits for increased levels of availability. However, it is not clear whether these findings are due to the effectiveness of the Rule or to competitive marketing forces.

Staff has also studied the compliance cost figures supplied by industry and has made an independent estimate of one component of these costs.

On the basis of information currently available to staff, it appears the costs of complying with the Rule may outweigh its benefits. However, some of the information currently available, especially with respect to compliance costs, is unsatisfactory. The Commision therefore is seeking additional data regarding the costs and benefits of the Rule.

Part B—Objectives

The objective of the Commission's inquiry is to determine if in fact the Rule in its present form is causing unnecessary costs and, if so, how the Rule could be changed to reduce or eliminate those costs. To assist the Commission in accomplishing this objective the public is invited to comment on whether the Rule should remain in effect as is, be modified or be rescinded.

Part C—Alternative Amendments

There are three possible amendments staff believes might relieve industry of unnecessary compliance costs and in turn help to reduce costs to consumers. One possible alternative amendment would be to amend Note 1 to the Rule by permitting general disclaimers in advertising related to product availability. (Note 1 currently prohibits such disclaimers).

Another alternative would be to reconcile and incorporate into the Rule certain defenses now provided in administrative orders relating to the Rule. For example, the cases of *Kroger*, 90 FTC 459 (1977) and *Fisher Food, Inc*, 90 FTC 473 (1977) set forth, as a defense to charges of Rule violations, specific percentage rates of unavailability and overcharging which create presumptions that such practices were due to circumstances beyond the advertiser's control.

Another alternative would be to permit the advertiser to substitute comparable value products for exhausted supplies of advertised products.

Part D—Request for Comments

The public is invited to comment on these alternatives and to answer the following questions. The Commission requests that factual data upon which comments are based be included with the comments.

(1) Is there a continued need for the Rule or will competitive market forces assure an appropriate balance between availability and costs?

(2) What are the benefits of the Rule to, (i) consumers (ii) businesses?

(3) Has there been an increase or decrease in advertised specials or in sales due to the Rule?

(4) What are the incremental costs to comply with the Rule as distinguished from costs resulting from normal business practices?

(5)(a) If the Rule were repealed, how would business procedures change?

(b) At what cost?

(6)(a) What are the extra inventory costs, if any, required to comply with the Rule?

(b)(i) If employees receive special instructions on special ordering for advertised products covered by the Rule, please submit copies. (ii) If the instructions differ from instructions prior to the Rule, how do they differ?

(c) What proportion does any extra inventory bear to total inventories?

(d) What proportion of average weekly inventories are accounted for by inventories of advertised items?

(e) What proportion of average weekly sales are accounted for by advertised items?

(f) Do any studies show the relationship between larger average inventories and the average stock-out rate? If so, please supply these studies.

(7) Are there any surveys, studies, etc., of the fraction of people who shop

only for advertised items on "special?" If so please supply these studies.

(8)(a) What are the components ordinarily used in estimating the costs of carrying inventories?

(b) What interest rates are normally used in calculating inventory carrying costs? What is the rate or how is that rate determined?

(c) What estimates of shrinkage and spoilage costs are used in calculating inventory carrying costs? Please supply the supporting data and documents.

(9) Have either the number of store deliveries or the average level of warehouse inventories changed as a result of the Rule? If so how could the cost of these changes be estimated?

List of Subjects in 16 CFR Part 424

Advertising, Foods, Trade practices.

By direction of the Commission.

Issued: December 4, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-32247 Filed 12-6-84 8:45]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission is proposing rules to implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and interpreted by the Department of Justice and General Accounting Office in the Federal Claims Collection Standards. These proposed rules state the procedures the Commission will follow to collect claims owed the United States arising from activities under the Commission's jurisdiction. Such procedures include the use of administrative offset and compromise. Absent unusual circumstances, it is unlikely that the Commission would consider a compromise of a claim owed as a result of a settlement agreement entered into with the Commission. The proposed rules also state under what circumstances interest and penalty charges on claims may be assessed or waived by the Commission. These rules are intended to ensure fair and expeditious collection of unpaid claims.

DATE: Comments should be submitted on or before January 9, 1985.

ADDRESS: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Jeri E. Ruscoll, Esq., Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION: The Federal Claims Collection Act of 1966, Pub. L. 89-508, 80 Stat. 308, directs all federal agencies to pursue unsatisfied, overdue claims or debts. In 1982, Congress enacted the Debt Collection Act, Pub. L. 97-365, 96 Stat. 1749, to enhance the capability of federal agencies to collect such claims or debts and to afford notice and other protections to the debtor prior to agency use of certain collection procedures. The Department of Justice and General Accounting Office thereafter revised the Federal Claims Collection Standards, the government-wide debt collection regulations originally authorized by the Federal Claims Collection Act. *See* 4 CFR Parts 101-105, *As amended by* 49 FR 8889 (Mar. 9, 1984). These regulations provide agencies with general guidance on sound debt collection principles and are incorporated by reference in the Commission's proposed rules.

In accordance with the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman certifies that these rules will not have a significant economic impact on a substantial number of small entities. Although there may be increased costs to individuals as a result of these rules, such costs would be imposed only if an individual is delinquent in paying his debt to the Commission.

These rules do not call for collection of information from the general public and are therefore not subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 17 CFR Part 143

Claims, Debts, Penalties, Administrative practice and procedure.

In consideration of the foregoing, and pursuant to the authority contained in sections 6(b), 6(d) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 9, 9a, and 12a(5), the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982, 31 U.S.C. 3701-3719, the Commission hereby proposes to add Part 143 to Title 17 of the Code of Federal Regulations:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

§ 143.1 Purpose.

This part implements the Federal Claims Collection Act, as amended by the Debt Collection Act, 31 U.S.C. 3701-3719, and interpreted by the Department of Justice and General Accounting Office in the Federal Claims Collection Standards. 4 CFR Parts 101-105. This part provides procedures the Commission will use to collect claims owed the United States arising from activites under the Commission's jurisdiction, including amounts due the United States from fees, fines, civil penalties, damages, interest, and other sources. This part further sets forth procedures for the Commission to determine and collect interest, penalties, and administrative costs on unpaid claims and to refer unpaid claims for litigation.

§ 143.2 Notice of claim.

(a) The Commission will send a written notice to any person who owes payment to the United States under this part, stating the basis for the claim, the interest, penalties, and administrative costs that may be imposed for non-payment, and the date full payment is due.

(b) If the claim is disputed, the debtor shall respond to the notice in writing and state the reasons for non-payment. If the claim is not disputed but full payment is not made by the date indicated in the notice, the debtor shall state the reasons for the failure to make full payment.

(c) If no response or an unsatisfactory response is received by the date indicated in the notice, the Commission may take any further action appropriate under the Commodity Exchange Act or regulations therunder, or under 4 CFR Parts 101-105 and the Federal Claims Collection Act, as amended, 31 U.S.C. 3701-3719.

§ 143.3 Interest, penalty charges, and administrative costs.

(a) The Commission will assess interest on unpaid claims. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury. The Commission will charge penalty fees of not more than 6 percent per year on any portion of a claim that is delinquent for more than 90 days. The Commission will also impose actual administrative costs to cover the processing and handling of delinquent claims.

(b) Interest on claims will be charged and will run from the date the notice of claim is mailed if the amount of the claim is not paid within 30 days from that date. Interest will be calculated only on the principal of the claim. The rate of interest charged is the rate in effect on the date from which interest begins to run. The rate will remain fixed for the duration of the indebtedness.

(c) The Commission may waive in whole or in part interest, penalty charges or administrative costs if it finds that:

(1) The debtor is unable to pay any significant sum within a reasonable period of time;

(2) Collection of interest or penalty charges jeopardizes collection of the principal of the claim; or

(3) It is in the best interests of the United States.

§ 143.4 Collection by offset.

(a) Whenever feasible, the Commission will collect claims under this part by means of administrative offset against obligations of the United States to the debtor.

(b) The Commission will notify the debtor in writing of its intent to use offset procedures to collect the debt unless the debtor agrees to repayment. The notice to the debtor shall include the type and amount of the claim and an explanation of the debtor's rights for records and review under 31 U.S.C. 3716(a).

(c) The Commission will seek to coordinate administrative offset with other federal agencies in accordance with 4 CFR Part 102.

§ 143.5 Collection by compromise.

The Commission may settle claims not exceeding $20,000 by compromise at less than the principal of the claim if—

(a) The debtor shows an inability to pay the full amount within a reasonable period of time;

(b) The Government would be unable to enforce collection in full through litigation or administration means within a reasonable period of time;

(c) The cost of collecting the claim in full is not justified by the amount of the claim; or

(d) The Commission's enforcement policy would be served by settlement of the claim for less than the full amount.

§ 143.6 Referral for litigation.

Claims that cannot be collected by the Commission under this part or for which collection action cannot be ended or suspended under 4 CFR Part 104 will be referred to the Department of Justice for litigation.

§ 143.7 Delegation of Authority to the Executive Director.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director or to any Commission employee under the Executive Director's supervision as he or she may designate, authority to take action to carry out this part and the requirements of 4 CFR Parts 101-105.

(b) Delegated waivers or compromise under this part shall be with the concurrence of the General Counsel and the Director of the Division of Enforcement or of their respective designees.

Issued in Washington, D.C., on December 5, 1984.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 84-32869 Filed 12-7-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adjustments to Piece Rates

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rulemaking to repromulgate rule; request for further comments.

SUMMARY: The Department of Labor (DOL) is requesting further comments and is proposing to repromulgate a regulation in its program for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in the United States. The proposed rule would repromulgate the regulation dealing with adjustments to agricultural piece rates.

DATE: Written comments on the proposal must be received on or before January 9, 1985.

ADDRESS: Send written comments to: Assistant Secretary of Labor for Employment and Training, Room 8100, Patrick Henry Bldg., 601 D St., NW., Washington, D.C. 20213, Attention: Mr. Richard C. Gilliland, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Bruening. Telephone: 202-376-6228.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the Federal Register of September 2, 1983 (48 FR 40168), the Department of Labor (DOL) published a final rule revising the regulation at 20 CFR 655.207(c), regarding adjustment of piece rates for United States and nonimmigrant alien workers covered by the temporary alien agricultural labor certification program. The final rule was published after a notice of proposed rulemaking and full consideration of public comments received during a 31-day comment period. See 48 FR 33684 (July 22, 1983); and 48 FR 35667 (August 5, 1983). This document is a notice of proposed rulemaking to repromulgate the September 2, 1983, final rule and to invite further comments on changes in language made between the July 22, 1983, proposed rule and the September 2, 1983, final rule.

II. Temporary Alien Labor Certification Process

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). 8 U.S.C. 1101(a)(15)(H)(ii) and 1184 (a) and (c); 8 CFR Part 2. Pursuant to the requirement that the Attorney General consult with appropriate agencies of the government concerning the importation of nonimmigrant alien (so-called "H-2") workers, INS has determined that prior to granting or denying such petitions it first will request DOL to advise INS on the availability of qualified U.S. workers for the jobs offered to the H-2 aliens, and whether the wages and working conditions attached to such job offers will adversely affect similarly employed U.S. workers. 8 U.S.C. 1184(c); 8 CFR 214.2(h)(3)(i).

Pursuant to the INS regulations, DOL has published regulations at 20 CFR Part 655, Subpart C, for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in the United States. DOL has determined that similarly employed U.S. workers had been adversely affected by the importation and employment of nonimmigrant aliens in agricultural employment. It has been determined further that employment of those aliens in a number of States at wages below specially computed adverse effect wage rates (AEWRs) would adversely affect the wages of similarly employed U.S.

workers. 20 CFR 655.202(b)(9) and 755.207.

III. Piece Rate Regulation

Historically, DOL has determined that workers should not be required to increase their level of productivity in order to earn, at minimum, the hourly AEWR. Conversely, if the employer's piece rate for a particular crop activity allowed the averge worker to receive earnings at or above the AEWR, that piece rate has been acceptable. Thus, if average hourly earnings for the average worker in the preceding year equalled or exeeded the applicable AEWR, the piece rate for that crop activity did not need to be raised. See 20 CFR 655.207(c) (1981).

This interpretation of DOL's regulation on piece rates was reflected in its issuance to Employment and Training Administration (ETA) regional offices and to State job service agencies. See Section A.6.a(3) of Attachment 1 to ETA General Administration Letter (GAL) No. 46–81. In 1976, the U.S. Court of Appeals for the Fifth Circuit had before it the question of whether it is proper for piece rates to be permitted at a level that earns the applicable AEWR. The court considered and approved of DOL's piece rate adjustments, which maintain the AEWR as a floor rather than an earnings escalator, noting that "(n)owhere is there a requirement that piece rates be in *excess* of the adverse effect minimum wage." *Williams* v. *Usery, supra,* 531 F. 2d 305, 308 (5th Cir. 1976), *Cert. denied,* 429 U.S. 1000 (1976); see 20 CFR 655.0(e) (1983); and 20 CFR 602.10b(a)(2)(1976).

Nevertheless, in *NAACP, Jefferson Country Branch* v. *Donovan,* 558 F. Supp. 218, 224–225 (D.D.C. 1982), and 566 F. Supp. 1202, 1208 (D.D.C 1983), the U.S. District Court for the District of Columbia held that DOL's interpretation of 20 CFR 655.207(c) (1981) was invalid and ordered that the piece rates be increased each time the AEWRs increase, based upon the productivity in that crop activity in 1977. The 1977 productivity rate is determined by dividing the 1977 AEWR by the piece rate for the crop activity. Under that court's Orders, the current piece rate would be equal to the current AEWR divided by the 1977 productivity rate.

Subsequently, the proposed rule published on July 22, 1983, stated that piece rates would be adjusted by reference to the "average worker's hourly earnings". 48 FR at 33687. Farmworker advocates commenting on the proposed rule questioned the use of the term "average worker", stating that the statute is designed to protect the wages and working conditions of U.S. workers, and that reference to the productivity of average workers should be limited to average U.S. workers. This had been the intent of DOL in the proposed rule. Nevertheless, for clarification purposes, in the September 2, 1983, final rule the term "average U.S. worker" was substituted for the term "average worker" where the latter term appeared in § 655.207(c). 48 FR at 40175.

DOL found there to be good cause to make the September 2, 1983, final rule effective upon publication in the **Federal Register**. 48 FR at 40174. The U.S. District Court for the Western District of Virginia had ordered DOL to

> immediately, but in no event later than September 1, 1983, promulgate in final form in the **Federal Register**, its clarifying interpretation of the piece rate adjustment requirements * * * proposed in the **Federal Register** on June (*sic*) 22, 1983 and identified therein as proposed section 20 CFR 655.207 (c).

Kent Barley, Inc. v. *Donovan,* Civil Action No. 83–0079 (W.D. Va., Order August 18, 1983). Given the explicit language of that Order, and for other grounds set forth in the preamble to the final rule, DOL found it impracticable, unnecessary, and contrary to the public interest as expressed by that court to delay the effect of the proposed revision.

In a challenge by farmworkers to the promulgation of the Septemer 2 1983, final rule on piece rates, the U.S. District court for the District of Columbia found that the rulemaking had complied with the Administrative Procedure Act, and Upheld the final rule "Amending § 655.207(c) because it provided an adequate explanation for the change, supported by the notice and comment rulemaking record." *NAACP, Jefferson County Branch* v. *Donovan,* Civil Action No. 82–2315 (D.D.C., Order August 15, 1984), Slip opinion at 8; see *NAACP, Jefferson County Branch* v. *Donovan,* 737 F. 2d 67 (D.C. Cir. 1984), *rev'g,* Civil Action No. 82–2315 (D.C.C., Order September 8, 1983); see also 49 FR 26208 (June 27, 1984); and 48 FR 41154 (September 14, 1983).

While the September 2, 1983, addition of the adjective "U.S." to the final rule clarified DOL's intent in the July 22, 1983, proposed rule, and was made in response to public comments on the proposed rule, some agricultural employers in Florida, in a suit against DOL before the U.S. District Court for the Southern District of Florida, challenged the September 2, 1983, final piece rate rule. The court found that the piece-rate rule, as amended, was partially invalid, holding that adequate notice and opportunity to comment was not provided on the addition of the adjective "U.S." in the final regulation. The court ordered that the six references to "U.S." be deleted. *Florida Fruit & Vegetable Association* v. *Donovan,* 583 F. Supp. 268 (S.D. Fla. 1984), *appeal docketed,* No. 84–5467 (11th Cir. 1984). However, it further held that the "Final Rule as modified, which is exactly as it was proposed, is a valid final rule." Only the procedure by which the adjective "U.S." was included in the final rule was questioned by the court, not the substance of the rule itself.

As noted above, DOL has not conceded the correctness of piece rate portion of the decision of the U.S. District Court for the Southern District of Florida, and has appealed it to the U.S. Court of Appeals for the Eleventh Circuit. *Florida Fruit & Vegetable Association* v. *Donovan,* No. 84–5467 (11th Cir.). To the extent that portion of the court's decision on the September 2, 1983, piece rate regulation may be applicable, it would be so only in the Southern District of Florida.

A similar decision was issued by the U.S. District Court for the District of Vermont, in a suit brought by agricultural employers of aliens in that State. *Shoreham Cooperative Apple Producers Association, Inc.* v. *Donovan,* Civil Action File No. 83–326 (D. Vt., Order November 9, 1984). The Vermont federal court's Order differed from that of the Florida federal court by remanding "20 CFR 655.207(c) so that the agency may comply with the notice and comment provisions of the APA." Slip Op. at 15.

DOL does not concede the correctness of piece rate portion of the above-referenced decision of the U.S. District Court for the District of Vermont. To the extent that portion of that court's decision on the September 2, 1983, piece rate regulation may be applicable, it would be so only in the District of Vermont.

Various Virginia agricultural employers also are challenging, in a suit against DOL before the U.S. District Court for the Western District of Virginia, DOL's response to public comments and clarifying addition of the adjective "U.S." in the September 2, 1983, final rule. *Kent Barley, Inc.* v. *Donovan,* Civil Action No. 83–0079 (W.D. Va.). DOL is defending the September 2, 1983, regulation against that challenge.

IV. Proposed Rule

It is necessary to retain in place a regulation protecting covered U.S. farmworkers from adverse effect, informing covered U.S. agricultural employers of their duties under the temporary alien labor certification program, and reflecting DOL's policy on this subject. For this reason, DOL is proposing in this document to repromulgate the rule at 20 CFR 655.207(c), which was published at 48 FR 40175 (September 2, 1983).

Before the U.S. District Courts in *Florida Fruit & Vegetable Association* v. *Donovan, supra,* and in *Shoreham Cooperative Apple Producers Association, Inc.,* v. *Donovan, supra,* the plaintiff agricultural employers questioned the use of United States ("U.S.") workers' earnings, rather than all workers' earnings in determining whether the covered employer's piece rates are appropriate under the regulation. Worker-commenters on the 1983 rulemaking had suggested the addition of that adjective. See 48 FR at 40173. The worker-commenters stated that since the Immigration and Nationality Act is designed to protect the wages and working conditions of U.S. workers, reference to the productivity of average workers should be limited to average U.S. workers.

The workers' comments appear to be in accord with the decision in *Williams* v. *Usery, supra,* where the Fifth Circuit held that DOL could not use foreign workers' wages in determining AEWRs. 531 F. 2d at 307. Thus, the worker-commenters have suggested that foreign workers' earnings (a measure of their productivity at a given piece rate) should not be used to determine the adequacy of piece rates and earnings for U.S. workers.

This is consisent with another provision of the temporary alien agricultural labor certification regulations, at 20 CFR 655.202(b)(9)(ii), requiring that the piece rate yield earnings at least equal to the AEWR, refers to job offers made to U.S. workers.

V. Discretion in Establishing a Piece Rate Adjustment Policy

Section 214(c) of the Immigration and Nationality Act gives the Attorney General (and his designee the Commissioner of INS) broad discretion in the admission of nonimmigrant aliens to the United States. 8 U.S.C. 1184(c). With respect to determinations under the immigration laws on the availability of U.S. workers for jobs offered to nonimmigrant alien workers, and the adverse effect those aliens' employment may have on the wages and working conditions of similarly employed U.S. workers, the Secretary of Labor and DOL have been given broad discretion.

See *e.g.,* 8 CFR 214.2(h)(3)(i). This broad discretion, particularly with respect to methodologies for setting minimum wage rates under the immigration laws, has been recognized in the federal appellate and districts courts. *Rowland* v. *Marshall,* 650 F. 2d 28 (4th Cir. 1981); *Williams* v. *Usery, supra; Florida Sugar Cane League* v. *Usery,* 531 F. 2d 299 (5th Cir. 1976); and *Limoneira Co.* v. *Wirtz,* 327 F. 2d 499 (9th Cir. 1964), *aff'g* 225 F. Supp. 961 (S.D. Cal. 1963); see also *Elton Orchards,* v. *Brennan,* 508 F. 2d 493 (1st Cir. 1974); and *Flecha* v. *Quiros,* 567 F. 2d 1154 (1st Cir. 1974). These decisions acknowledge DOL's discretion in the area of wages involving nonimmigrant alien agricultural workers and form the basis for construction of DOL's temporary alien labor certification regulations. See 20 CFR 655.0(e).

Since this is an area in which DOL has great "discretion to reach a number of different results rather than an area of pure statutory interpretation as to which there is in theory only a single answer", DOL is proposing to re-adopt the rule below. See *Building & Construction Trades' Department, AFL–CIO* v. *Donovan,* 712 F. 2d 611, 619 (D.C. Cir. 1983), *cert. denied,* —— U.S. ——, 104 S. Ct. 975 (1974).

The proposed repromulgation of the piece-rate regulations to protect U.S. workers' wages, at minimum at an adverse effect level, is well within DOL's statutory and regulatory discretion. As the D.C. Circuit stated in *Building & Construction Trades' Department, AFL–CIO* v. *Donovan, supra:*

> prior administrative practice carries much less weight reviewing an action taken in the area of discretion, when little more than a clear statement is needed, than when reviewing an action in the field of interpretation, where it is thought that the agency's contemporaneous and consistent interpretation of one of its enabling statutes is reliable evidence of what Congress intended.
>
> [712 F. 2d at 619.]

Regulatory Impact

The proposed repromulgation of a rule would affect only those employers using nonimmigrant alien workers ("H–2 visaholders") in temporary agricultural jobs in fourteen States. It would not have the financial or other impact to make it a major rule, and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the proposal would not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. It would not necessitate increased labor costs where average U.S. workers earn above the AEWR due to their productivity. Further, it applies only to the small number of employers who employ nonimmigrant aliens in agricultural jobs in fourteen States.

Catalogue or Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment".

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forests and forest products, Guam, labor, Migrant Labor, Wages.

Proposed Rules

Accordingly, it is proposed that Part 655 of Chapter V of Title 20, Code of Federal Regulations, be amended by revising § 655.207(c) to read as promulgated in the Final Rule published September 2, 1983, as follows:

PART 655—[AMENDED]

§ 655.207 Adverse effect rates.

* * * * *

(c) *Piece rate adjustments.* In any year in which the applicable adverse effect rate increases to the point where the employer's previous year's piece rate in a crop activity will not enable the average U.S. worker's hourly earnings to equal or exceed the new applicable adverse effect rate without requiring the average U.S. worker to increase productivity over the previous year, the employer shall increase the piece rate to a level at which the average U.S. worker would earn at least the adverse effect rate. If, at the employer's previous year's piece rate for that crop activity, the average U.S. worker's hourly earnings equalled or exceeded the adverse effect rate, no adjustment to that piece rate would be required. The Regional Administrator shall determine the average U.S. worker's hourly earnings by obtaining from employers in the area of intended employment information as to the piece rates, earnings, hours worked, and productivity of U.S. workers, in a manner to be determined by the Administrator.

* * * * *

(Secs. 101(a)(15)(H)(ii) and 214(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c)); 8 CFR 214.2(h)(3)(i))

Signed at Washington, D.C., this 4th day of December 1984.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 84-32098 Filed 12-7-84; 8:45 am]

BILLING CODE 4510-30-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 232 and 233

[FRL-2734-1]

404 Program Definitions and Permit Exemptions, 404 State Program Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On October 2, 1984 (49 FR 39012), EPA published proposed revisions to its regulations containing procedures and criteria used in approving, revising and withdrawing approval of State 404 programs and containing program definitions and exemptions from permitting under 404(f)(1). The comment period expired on December 3, 1984.

The Interstate Conference on Water Problems (ICWP) requested an extension of the comment period, citing the significant impact of this proposal on the 404 program and the need to comprehensively review the proposal. We have decided to approve a 30-day extension of the comment period to give the ICWP additional time to coordinate a response from its member State agencies.

EFFECTIVE DATE: The original comment period expired on December 3, 1984. The comment period has been extended to January 2, 1985.

ADDRESS: Comments should be addressed to Dr. Allan Hirsch, Office of Federal Activities (A-104), Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Lori Williams, Office of Federal Activities (A-104), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-5043.

Dated: December 4, 1984.

Josephine S. Cooper,

Assistant Administrator for External Affairs.

[FR Doc. 84-32092 Filed 12-7-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 531 and 533

[Docket No. FE 84-02; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Light Truck Average Fuel Economy Standards; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice requests comments to assist the agency in carrying out its rulemaking responsibilities concerning average fuel economy standards for passenger automobiles and light trucks. Section 502(b) of the Motor Vehicle Information and Cost Savings Act requires NHTSA to issue light truck average fuel economy standards at least 18 months before the beginning of each model year. The agency has established standards through model year 1986 and has proposed standards for model year 1987. NHTSA is now in the process of beginning a rulemaking analysis to determine the level of light truck average fuel economy standards for model years after 1987. This notice requests information to assist the agency in developing that analysis. The agency also is seeking information on manufacturers' passenger car product plans through 1990. The Motor Vehicle Information and Cost Savings Act specifies a standard of 27.5 mpg for passenger automobiles for model year 1985 and beyond, but allows the agency to amend that standard and establish a different one if the agency determines that the maximum feasible level of fuel economy is other than 27.5 mpg. In carrying out this responsibility, it is necessary for the agency to monitor the general area of passenger automobile fuel economy. This notice requests information to assist the agency in that task.

DATE: Written comments on this notice must be submitted in time to be received by the agency no later than February 8, 1985.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, D.C. 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION: The appendix to this notice consists of a number of questions directed toward manufacturers, regarding fuel economy data for the 1985 through 1990 model years. The questions are written to cover both passenger cars and light trucks, and the agency requests that manufacturers provide answers to those questions which are appropriate for the type or types of vehicles they manufacture. The agency recognizes that manufacturer product plans may not have been formally approved through model year 1990 and that questions such as those on the cost of fuel economy related actions are difficult ones. The agency would appreciate responsive answers to these questions, however, so that appropriate weight can be given to the many factors whose magnitude at this time can only be roughly estimated.

While the questions in the appendix are directed toward manufacturers, the agency invites comments from all interested persons concerning the questions asked and how information provided in response to the questions should be used by the agency.

NHTSA is providing a 60-day comment period. It is requested that 10 copies be submitted. In view of the number of questions and the detail of information requested, the agency is waiving its usual requirement that comments be limited not to exceed 15 pages in length.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with the comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Parts 531, 533

Energy conservation, Gasoline, Imports, Motor vehicles.

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: December 5, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

Appendix

I. Definitions

As hereinafter used in this appendix:

1. The terms "automobile," "fuel economy," "manufacturer," and "model year," have the meaning given them in Section 501 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001.

2. The term "basic engine" has the meaning given in 40 CFR 600.002-80(a)(21). When identifying a basic engine respondent should provide the following information:

(i) Engine displacement (in cubic inches).

(ii) Number of cylinders or rotors.

(iii) Cylinder configuration (V, in-line, etc.).

(iv) Number of carburetor barrels, if applicable.

(v) Other engine characteristics, abbreviated as follows:

DD—Direct Injection Diesel
ID—Indirect Injection Diesel
R—Rotary
TB—Throttle Body Fuel Injection S.I. (Spark Ignition)
MP—Multiport Fuel Injection S.I.
TD—Turbocharged Diesel
TS—Turbocharged S.I.
FFS—Feedback Fuel System, carbureted

3. "Variants of existing engines" means versions of an existing basic engine that differ from that engine in terms of displacement, method of aspiration, induction system or that weigh at least 25 pounds more or less than that engine.

4. "Vehicle frontal area" is the "basic vehicle frontal area" as defined in 40 CFR 86.082-2, plus the area for mirrors added per 40 CFR 86.129-80.

5. "Light truck" means an automobile of the type described in 49 CFR 523.5.

6. "Percent fuel economy improvement" means that percentage which corresponds to the amount by which respondent could improve the fuel economy of vehicles in a given model or class through the application of a specified technology, averaged over all vehicles of that model or in that class which could feasibly use the technology. Projections of percent fuel economy improvement should be based on the assumption of maximum efforts by respondent to achieve the highest possible fuel economy increase through the application of the technology, and should be adjusted for constant vehicle utility. The baseline for determination of percent fuel economy improvement is the level of technology and vehicle performance with respect to acceleration and gradeability for respondent's 1985 model year light trucks and passenger automobiles in the equivalent class.

7. "Percent production implementation rate" means that percentage which corresponds to the maximum number of passenger automobiles or light trucks of a specified class which could feasibly employ a given type of technology if respondent made maximum efforts to apply the technology by a specified model year.

8. "Possession" means possession, custody or control.

9. "Production percentage" meant the percent of respondent's passenger automobiles or light trucks of a specified model projected to be manufactured in a specified model year.

10. "Project" or "Projection" refers to the best estimates made by respondent, whether or not based on less than certain information.

11. "Relating to" means constituting, defining, containing, explaining, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

12. "Respondent" means each manufacturer (including all its divisions) providing answers to the questions set forth in this appendix, and its officers, employees, agents or servants.

13. "Test weight" is used as defined in 40 CFR 86.082-2.

14. "Transmission class" is used as defined in 40 CFR 600.002-80(22). When identifying a transmission class, respondent must also indicate whether the transmission is equipped with a lockup torque converter (LUTC), a split torque converter (STC), and/or a wide gear ratio range (WR) and specify the number of forward gears.

15. The term "van" is used as defined in 40 CFR 86.082-2.

16. The term "cargo-carrying volume," "curb weight," "gross vehicle weight rating" (GVWR), and "passenger-carrying volume" are used as defined in 49 CFR 523.2.

17. For the purpose of this appendix, the term "utility vehicle" means a form of light truck, either 4 x 2 or 4 x 4, which has a wheelbase of 110 inches or less and is exemplified by a Jeep CJ-5 or Cherokee, a Chevrolet Blazer, a Dodge Ramcharger, Ford Bronco, or a Toyota Land Cruiser.

18. "Redesign" means any change, or combination of changes, to a vehicle that would change its wieght by 50 pounds or more or change its frontal area by 2 percent or more.

19. "Domestically manufactured" is used as defined in Section 503(b)(2)(E) of the Act.

20. For the purposes of this appendix, a "class" of passenger automobiles or light trucks means a group (e.g., domestically produced 4 x 2 light trucks) for which average fuel economy standards are set.

21. For the purposes of this appendix, a "model" of passenger automobile or light truck is a line, such as the Chevrolet Camaro or Caprice, Ford 150 or E100, Jeep CJ-5, etc., which exists within a class. "Model type" is used as defined in 40 CFR 600.002-80.

22. "Truckline" means the name assigned by the Environmental Protection Agency to a different group of vehicles within a make or car division in accordance with that agency's 1985 model year truck, van (cargo vans and passenger vans are considered separate truck lines) and special vehicle criteria.

23. "Carline" is used as defined in 40 CFR 600.002-80.

II. Assumptions

All assumptions concerning emission standards, noise and damageability regulations safety standards, etc., should be listed and described in detail by the respondent.

III. Specifications.

1. For each model year from 1985 through 1990, please provide, separately, the following information for your projected passenger automobile fleet, 4

x 2 light truck fleet, and 4 x 4 light truck fleet:

a. Sales weighted average test weight.

b. Sales weighted average engine displacement.

c. Sales weighted average N/V (engine speed to vehicle speed ratio in top gear, rpm/mph).

d. Sales weighted average horsepower-to-test weight ratio.

e. Sales weighted average fuel economy.

2. Identify all light truck and passenger automobile models currently offered for sale whose production you project discontinuing before or during MY 1990 and identify the last model year in which each will be offered.

3. Identify all basic engines offered by respondent in MY 1985 light trucks and passenger automobiles which respondent projects ceasing to offer for sale in light trucks or passenger automobiles before or during MY 1990, inclusive, and identify the last model year in which each will be offered.

4. Does the respondent currently project offering for sale any new or re-designed passenger automobiles or light trucks, including vehicles smaller than those now produced, during any of model years 1985 through 1990? If so, provide the following information for each model (e.g., Chevrolet C10 and Chevette, Ford E150 and Escort). Model types which are essentially identical except for their nameplates (e.g., Dodge Omni/Plymouth Horizon) may be combined into one item. See Table A for a sample format; 4 x 2 and 4 x 4 light trucks are different models.

a. Body types to be offered for sale (e.g., regular cab, super cab, station wagon, 2-door sedan). Provide passenger-carrying volume and number of seating positions and cargo-carrying volume.

b. Description of basic engines, including optional horsepower and torque ratings, if any, displacement, number and configuration of cylinders and type of carburetor or fuel injection system.

c. Transmission type (manual, automatic, number of forward speeds, overdrive, etc., as applicable), including gear ratios and final drive, alternative ratios offered, and driveline configuration.

d. (i) The range of curb weights offered for each body type.

(ii) For light trucks, the range of GVW ratings to be offered and required optional equipment and their weights for each body type.

(iii) The range of test weights offered for each body type.

e. All wheelbases.

f. All vehicle frontal areas and aerodynamic drag coefficients.

g. All external dimensions (total lenght, width and height).

h. The range of projected fuel economies on the EPA composite driving cycle for each body type in the initial model year of production.

i. Projected introduction date (model year).

j. Projected sales for each model year from the projected year of introduction through MY 1990, expressed both as an absolute number of units sold and as a percentage of all passenger automobiles or light trucks sold by respondent.

k. If other than domestically manufactured, so state.

l. Projections of:

(i) Existing models replaced by new models.

(ii) Reduced sales of respondent's existing models, both passenger automobiles and light trucks as a result of the sale of each of the new models.

(iii) New sales not captured from any of the respondent's existing models.

5. Does respondent project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to Question 4, in its passenger automobile or light truck fleets in model years 1985 through 1990? If so, for each basic engine or variant indicate:

a. The projected year of introduction,

b. Type (e.g., conventional, diesel or stratified charge),

c. Displacement,

d. Type of carburetion or fuel injection,

e. Cylinder configuration (e.g., V–8, V–6, I–4, etc.),

f. Horsepower and torque ratings,

g. Models in which engines are to be used, giving the introduction model year for each model if different from "a," above.

6. For each of the model years 1986 throught 1990, and for each light truck and passenger automobile model projected to be manufactured by respondent (if answers differ for the various models), provide the requested information for each of items "a" through "l" listed below:

(i) A description of the nature of the technological improvement;

(ii) The percent fuel economy improvement averaged over the model, if answers vary within the model;

(iii) The basis for your answer to 6(ii), (e.g., data from dynamometer tests conducted by respondent, engineering analysis, computer simulation, reports of test by others);

(iv) The percent production implementation rate and the reasons limiting the implementation rate;

(v) A description of the 1985 baseline technologies; and

(vi) The reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 6(ii) and 6(iv) a tabular presentation, a sample portion of which is shown in Table B.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include a description of how the benefits are to be obtained.

b. Improved manual transmissions. Projections of percent fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in "a" or "b" above, project the percent fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratios. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcase lubricants of lower viscosity or with additives to improve friction characteristics, accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 1985 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine driven accessories or accessory drives. Typical engine driven accessories include water pump, cooling fan, alternator, power steering pump, air conditioning compressor, and vacuum pump.

f. Reduction of tire rolling loses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (e.g., increased aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 1985 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improved lubricants in the differential and wheel bearings, and optimizing suspension geometry (e.g., to minimize tire scrubbing loss).

h. Turbocharging.

i. Improvements in the efficiency of spark ignition engines including: (a) Increased compression ratio; (b) leaner air-to-fuel ratio; (c) revised combustion chamber configuration; (d) fuel injection; (e) electronic fuel metering; (f) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (g) variable valve timing or valve lift, and (h) other methods (specify).

j. Naturally aspirated diesel engines, with direct or indirect fuel injection.

k. Turbocharged diesel engines with direct or indirect fuel injection.

l. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

7. For each model of respondent's passenger automobile fleet and light truck fleet projected to be manufactured in each of model years 1985 through 1990, describe the methods used to achieve reductions in average test weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used. Separate listings shall be used for passenger automobiles, 4 x 2 light trucks, and 4 x 4 light trucks.

a. Substitution of materials.

b. "Downsizing" of existing vehicle design to reduce exterior size while maintaining interior roominess and comfort for passengers, and utility, i.e., the same, or approximately the same, payload and cargo volume using the same basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts which provide improved weight to interior passenger volume ratio, or approximately the same, payload and cargo volume.

8. For each model year 1985 through 1990, list all projected passenger automobile and light truck model types and provide the information specified in "a" through "k" below for each model type.

The information should be in tabular form, with a separate table for each model year. Light trucks and passenger automobiles are to be listed separately. Domestic and non-domestic model types are to be listed separately (identify any model types with less than 75 percent domestic content included in the domestic fleet through exemption). In the case of light trucks, each of the two groupings is to be subdivided into separate listings for models with 4x2 and 4x4 drive systems. Engines having the same displacement but belonging to different engine families are to be grouped separately. Finally, the model types are to be subdivided into those meeting Federal and California emission standards.

For passenger cars, in each model year, begin with the EPA size class having the least interior volume range and continue size class listings from top to bottom in order of classes with increasing interior volume on the left side of the table. Subdivide each size class into specific model types in order of increasing average test weight. List the categories of information in items "a" through "k" below in the order specified from left to right across the top of the table. Include in the table for each model year the total sales-weighted harmonic average fuel economy and average test weight for domestic and non-domestic passenger cars for each EPA size class and for all of the respondent's passenger automobiles.

For light trucks, the vehicles are to be sorted first by truckline, second by basic engine, and third by transmission type. For these groupings, the average test weights are to be placed in ascending order. List the categories of informaion in terms "a" through "k" below in the order specified from left to right across the top of the table. Include in the table for each model year the total sales-weighted harmonic average fuel economy and average test weight for imported and domestic light trucks for each truckline and for all of the respondent's light trucks.

a. Truckline, e.g., C10, J10, F150, B150. Identify body code designation and representative model name for passenger cars. Model types which are essentially identical except for their nameplates (e.g., Chevrolet S10/GMC S15 and Ford Mustang/Mercury Capri) may be combined into one line item.

b. Light truck vehicle type, e.g., compact pickup, cargo van, passenger van, utility, truck-based station wagon, and chassis cab. Other light truck designations, which are adequately defined, can be used if these are not suitable. Identify EPA size class for passenger cars.

c. Basic engine: Include the engine characteristics used in Definition 2.

d. Transmission class (e.g., A3, A4, A40D, M5, CVT): Include the characteristics used in Definition 14.

e. Average N/V, rounded to one decimal place.

f. Average equivalent test weight.

g. Average PAU setting: Provide the value and show whether the value (or estimated value) is based on coastdown testing (T) or calculated from the vehicle frontal area (C). Round the PAU value to one decimal place.

h. Air conditioning: Y=air conditioning installations are projected to exceed 33 percent of the vehicles described in the line item; N=air conditioning installations are projected to be less than 33 percent of the vehicles described in the line item.

i. Composite fuel economy (sales weighted, harmonically averaged over the specified vehicles, rounded to the nearest 0.1 mpg).

j. Source of fuel economy figure: T=test or E=estimate.

k. Projected sales for the vehicles described in each line item.

9. For each transmission identified in response to 8(d) above, provide a listing showing whether the transmission is manual or automatic, the gear ratio for the transmission and the models which use the transmission.

10. For each new or redesigned vehicle identified in response to question 4 and each new engine or fuel economy improvement identified in your response to questions 4, 5 and 6 provide your best estimate of the following in terms of constant 1984 dollars.

(a) Total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in your response. Subdivide the capital costs into tooling, facilities, launch, and engineering costs.

(b) The maximum production capacity, expressed in units of capacity per year, associated with the capital expenditure in (a) above. Specify the number of production shifts on which your response is based and define "maximum capacity" as used in your answer.

(c) The actual capacity that will be used each year for each new/redesigned model or fuel economy improvement.

(d) The increase in variable costs per affected unit, based on the production volume specified in (b) above.

(e) The equivalent retail price increase per affected vehicle for each new/redesigned model or improvement. Provide an example describing the methodology used to determine the equivalent retail price increase.

(f) Total research and development costs associated with the new/redesigned model or improvement.

(g) Total fixed costs (other than those identified in (a) above) associated with each new/redesigned model or improvement, based on production volumes specified in (b) above.

11. Please provide respondent's actual and projected U.S. light truck sales, 4 x 2 and 4 x 4, 0–8,500 lbs. GVWR and 8,501–10,000 lbs. GVWR for each model year from 1983 through 1990, inclusive. Please sub-divide the data into the following vehicle categories:

i. Standard Pickup Heavy (C–20/30, F–250/350, D–250/350).

ii. Standard Pickup Light (C–10, F–150, D–100).
iii. Compact Pickup (S–10, Ranger).
iv. Standard Cargo Vans Heavy (G–20/30, E–250/350, B–250/350).
v. Standard Cargo Vans Light (G–10, E–150, B–150).
vi. Standard Passenger Vans Heavy (G–20/30, E–250/350, B–250/350).
vii. Standard Passenger Vans Light (G–10, E–150, B–150).
viii. Compact Cargo Vans (Mini Ram Van).
ix. Compact Passenger Vans (Voyager).
x. Standard Utilities (C–10 Blazer, Bronco, Ramcharger).
xi. Compact Utilities (S–10 Blazer, Bronco II).
xii. Other (Suburban, El Camino, Eagle).

Indicate the number of captive imports or vehicles with less than 75 domestic content included in any data item. See Table C for a sample format.

12. Please provide respondent's actual and projected U.S. passenger car sales for each model year from 1983–1990, inclusive. Subdivide these sales into EPA market classes.

13. Please provide (a) historical and (b) your estimates of projected *total industry* U.S. light (0–10,000 lbs. GVWR), medium (10,001–26,000 lbs. GVWR and over) truck sales for each model year from 1983 through 1990, inclusive. Please sub-divide the light truck data into 4 x 2 and 4 x 4 sales and into the vehicle categories listed in the sample format in Table D.

14. Please provide (a) historical and (b) your estimates of projected *total industry* U.S. passenger automobile sales for each model year 1983 through 1990, inclusive. Include your company's projection of total imported car sales during each of these model years. Subdivide these sales into EPA market classes.

15. For domestic manufacturers only: In previous rulemakings, the agency has used manufacturers' estimates of future capital spending to estimate the financial impact of alternative fuel economy standards. To permit similar comparisons in this rulemaking, please provide an estimate of your capital spending in North America for each year from 1984 through 1990. In addition, please provide an estimate of your total corporate capital spending and depreciation and amortization for each year from 1984 through 1990.

16. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 1985–90.

17. Please provide projected production capacity available for the North American market (at standard production rates) for each of your company's body code designations during model years 1985–1990.

BILLING CODE 4910-59-M

Table A

Model: LT-1B Driveline Configuration: Conventional 4x2: front engine/rear drive

a. Body Types	Pass. Volume	No. Seating Pos.	Cargo Vol.	e. Wheel Base	f. Frontal Area/ Drag Coeff.	g. External Dimensions L	W	H
Regular Cab, Short Bed	Xft^3	3	Yft^3	115	$Nft^2/CD1$			
Regular Cab, Long Bed	Xft^3	3	Zft^3	133	$Nft^2/CD2$			
Extended Cab, Long Bed	$X1ft^3$	6	Zft^3	151	$Nft^2/CD3$			
Crew Cab, Long Bed	$X2ft^3$	6	Zft^3	170	$Nft^2/CD4$			

b. Basic Engines

CID	Conf/No. cyl.	Carb	Hp/rpm	Torque/rpm
*235	V6	2V	X/3600	Y/1800
310	V8	2V		
**340	V8	4V		
**340	V8	HP		

*Not available with crew cab
**Available only with HD 4-speed manual transmission or automatic transmission

c. Transmission Types

Manual 3-speed	Manual Overdrive	Automatic	HD Manual 4-speed
1 3.00	1 3.00	1 2.50	1 6.50
2 1.75	2 1.75	2 1.50	2 3.60
3 1.00	3 1.00	3 1.00	3 1.80
R 3.15	4 .80	R 1.90	4 1.00
	R 3.15	TC 2.1	R 6.10
RAR 3.23/3.54/3.73	3.54/3.73	3.23/3.54	3.23/3.54/3.73

*Not available with 340 CID V8 engines

d. Range of GVWR	Body Type	Range of Curb Weights	Range of Test Weights	Required Options and Weights
6050-7000	Reg. Cab, Short Bed	4000-4200	4250-4500	None
6050-7200	Reg. Cab, Long Bed	4000-4250	4250-4500	None
6300-7400	Extended Cab, Long Bed	4200-4500	4500-5000	None
6300-7400	Crew Cab, Long Bed	4300-4600	4500-5000	None

h. Fuel Economy Values

Body	Range of Composite Fuel Economy Ratings for Introduction Year
Reg. Cab, Short Bed	14.0-16.0
Reg. Cab, Long Bed	13.8-15.8
Extended Cab, Long Bed	13.5-15.4
Crew Cab, Long Bed	13.0-15.1

i. and j. Projected Introduction and Sales through MY 1990

1986 (I)*	38,000
1987	78,000
1988	80,000
1989**	88,400
1990	96,000

*Mid-year introduction
**Station wagon introduced

k. To be completed only if domestically manufactured

l. (i) Redesign; replaced LT-1A
(ii) The station wagon introduced in MY 1986 is expected to capture passenger car station wagon sales estimated at 2,000 units in 1986 and 4,000 units in 1987.
(iii) The station wagon in (ii), above, is expected to capture a like amount of sales from competitors in each model year.

TABLE B.—TECHNOLOGICAL IMPROVEMENTS

Technological improvement	Percent fuel economy improvement	Percent production penetration					
		1985	1986	1987	1988	1989	1990
(a) Improved auto transmissions:							
LT–1	10	15	15	12	14	15	15
LT–2	8	10	10	12	14	15	15
LT–3	7.5	0	0	8	8	10	10
LV–1	10	12	14	18	20	20	20
LV–2	9	12	14	18	20	20	20
LV–3	7.5	0	0	10	10	12	12
U–1	10	10	10	12	14	15	15
(b) Improved manual transmissions:							
LT–1	4	30	30	35	35	35	35
LV–1	4	25	25	30	30	30	30
LV–2	4	25	25	30	30	30	30
U–1	4	30	30	35	35	35	35
(c) Overdrive transmission:							
LT–1	6	6	6	6	6	8	8
LV–1	6	4	4	5	5	8	8
LV–2	6	4	4	5	5	8	8
U–1	6	5	5	8	8	10	10

TABLE C.—AJAX 4 x 2 LIGHT TRUCK SALES

	Model year							
	1983	1984	1985	1986	1987	1988	1989	1990
6–8,500 lbs. GVWR			509,379					
Standard Pickup Heavy			43,500					
Standard Pickup Light			120,000					
Compact Pickup			[1] 60,000					
Standard Cargo Van Heavy			10,000					
Standard Cargo Van Light			30,000					
Standard Passenger Van Heavy			29,310					
Standard Passenger Van Light			54,186					
Compact Cargo Van			56,990					
Compact Passenger Van			30,000					
Standard Utilities			53,800					
Compact Utilities			44,000					
Other			5,673					
8,501–10,000 lbs GVWR			5,500					
Standard Pickup Heavy			4,000					
Standard Utilities			1,000					
Other			500					
Grand total			514,879					

[1] 12,000 captive import units.

TABLE D.—TOTAL U.S. TRUCK SALES

	Model year							
	1983	1984	1985	1986	1987	1988	1989	1990
1. Light trucks (4 x 2):								
a. Pickup:								
1. Imported								
2. Compact Domestic								
3. Small Car Based								
4. Large Car Based								
5. Conventional								
b. Passenger vans (bus):								
1. Imported								
2. Compact Domestic								
3. Standard								
c. Cargo vans:								
1. Imported								
2. Compact Domestic								
3. Standard								
d. Utilities:								
1. Imported								
2. Compact Domestic								
3. Standard								
4. Car Based								
e. Truck Based Station Wagons								
f. Other								
2. Light Trucks (4 x 4) [Same breakout as 4 x 2]								
3. Total Light Trucks (4 x 4+4 x 4)								
4. Total Medium Trucks								
5. Total Heavy Trucks								
6. Total Trucks								

[FR Doc. 84–32180 Filed 12–7–84; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 49, No. 238
Monday, December 10, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; System of Record

AGENCY: Office of Personnel, Office of the Secretary, USDA.

ACTION: Amendment of an existing system of records and announcement of two proposed computer matching programs.

SUMMARY: The purpose of this document is to amend USDA/OP–1, Personnel and Payroll System for USDA Employees, by changing some of the addresses where records are maintained and to publish information concerning a proposal to use this system of record in conducting two computer matching programs.

EFFECTIVE DATE: The changes in the addresses where records are maintained are effective immediately. Any interested party may submit written comments concerning the proposed matching programs. To be considered, comments must be received by January 9, 1985. Unless a notice to the contrary is published, the matching programs will begin no earlier than 30 days after the end of the comment period.

ADDRESS: Comments should be addressed to: Chief, Security, Employee Management and Training Staff, Office of Personnel, Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Carolyn Wright, Security, Employee Managment and Traning Staff, Office of Personnel, Department of Agriculture, Washington, D.C. 20250, (202) 447–3083.

SUPPLEMENTARY INFORMATION: The Department of Agriculture, in connection with direction set by the President's Council on Integrity and Efficiency, is proposing to conduct two matching programs aimed at reducing the Department's costs incurred in connection with unemployment compensation and workers' compensation.

The Department is already providing wage and separation information to the States for unemployment compensation purposes. The matching procedure used, however, is a manual one involving, in some cases, more time than a State may allow for response. This has resulted in the Department being billed for compensation for persons who were either not employees of the Department or who for some other reason were ineligible for such benefits. The proposed computer matching system will enable the Department to respond in a timely manner to the States, thereby reducing the compensation outlay.

For this matching program, the Department will be using information provided by the States in either the form of a hard copy request (Form ES–931) or electronic transmission. For selected agencies within the Department, the information will be forwarded from the States to a contractor rather than to a payroll office of the Department. The contractor will conduct the matching program in accordance with the Office of Management and Budget's revised Guidelines which were published in the **Federal Register** on May 19, 1982 (47 FR 21658).

The Department will also be participating with the Department of Labor in a matching program aimed at the rehabilitation and rehire of employees currently receiving workers' compensation.

Under both of these proposals, the Department retains the authority to withhold specific data elements which it believes are not relevant to making a determination of eligibility under either the unemployment programs administered by the States or the workers' compensation program adinistered by the Department of Labor.

The Department believes that its intended uses of USDA/OP–1, Personnel and Payroll System for USDA Employees, are covered by the routine uses published by the Office of Personnel Managment for OPM/GOVT–1, General Personnel Records, specifically item (d), last published on September 20, 1984 (49 FR 36949–73).

The revised text of USDA/OP–1 follows.

USDA/OP–1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees, USDA/OP.

SYSTEM LOCATION:

Office of Personnel, USDA, Washington, D.C.; the National Finance Center, New Orleans, Louisiana; and the personnel offices at the following locations:

ALABAMA—Soil Conservation Service State Office, Soil Conservation Building, 665 Opelika Road, Auburn, Alabama 36830; Farmers Home Administration State Office, Aronov Building, Room 717, 474 S. Court Street, Montgomery, Alabama 36104; Forest Service National Forest, National Forests in Alabama, 1765 Highland Avenue, Montgomery, Alabama 36107.

ALASKA—Forest Service National Forest, Chugach National Forest, Suite 238, 2221 E. Northern Lights Boulevard, Anchorage, Alaska 99508; Soil Conservation Service State Office, 2221 E. Northern Lights Boulevard, Anchorage, Alaska 99504; Forest Service Regional Office, Federal Office Building, P.O. Box 1628, Juneau, Alaska 99802; Forest Service National Forest, Tongass National Forest, Ketchikan area, Federal Building, Ketchikan, Alaska 99901; Farmers Home Administration State Office, P.O. Box 1289, Palmer, Alaska 99645; Forest Service National Forest, Tongass National Forest, Stikine Area, Box 309, Petersburg, Alaska 99833; Forest Service National Forest, Tongass National Forest, Chatham Area, P.O. Box 1980, Sitka, Alaska 99835.

ARIZONA—Forest Service National Forest, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86001; Forest Service, Rocky Mountain Forest and Range Experiment Station, Forestry Sciences Laboratory, Northern Arizona University, Flagstaff, Arizona; 86001; Agricultural Marketing Service Milk Market Office, 1121 E. Missouri Street, Phoenix, Arizona 85014; Farmers Home Administration State Office, Federal Building, Room 3433, 230 North First Avenue, Phoenix, Arizona 85025; Soil Conservation Service State Office, 230 North First Avenue, 3008 Federal Building, Phoenix, Arizona 85025; Forest Service National Forest, Tonto National Forest, 102 S. 28th Street, Phoenix, Arizona 85038, Forest Service National Forest, Prescott National Forest, 344 S.

Cortez, Prescott, Arizona 86301; Forest Service National Forest, Apache-Sitgreaves National Forest, Federal Building, P.O. Box 640, Springerville, Arizona 85938; Forest Service National Forest, Coronado National Forest, Federal Building, 301 W. Congress, Tucson, Arizona 85701; Forest Service National Forest, Kaibab National Forest, 80 S. 6th Street, Williams, Arizona 86046.

ARKANSAS—Forest Service National Forest, Ouachita National Forest, Federal Building, Reserve and Broadway Streets, P.O. Box 1270, Hot Springs National Park, Arkansas 71901; Farmers Home Administration State Office, 5529 Federal Office Building, P.O. Box 2778, 700 W. Capitol, Little Rock, Arkansas 72203; Forest Service National Forest, Ozark-St. Francis National Forest, 605 W. Main, P.O. Box 1008, Russellville, Arkansas 72801; Soil Conservation Service State Office, Federal Office Building, 700 W. Capitol St., Little Rock, Arkansas 72203.

CALIFORNIA—Animal and Plant Health Inspection Service, PPQ Western Region, 620 Central Avenue, Building 2B, Alameda, California, 94501; Forest Service National Forest, Modoc National Forest; 441 N. Main Street, Alturas, California 96101; Forest Service, Pacific Southwest Forest and Range Experiment Station, 1960 Addison Street, P.O. Box 245, Berkeley, California 94701; Forest Service National Forest, Inyo National Forest, 873 N. Main Street, Bishop, California 93514; Soil Conservation Service State Office, 2828 Chiles Road, Davis, California 95616; Forest Service National Forest, Six Rivers National Forest, 507 F Street, Eureka, California 95501; Forest Service National Forest, Sierra National Forest, Federal Building, Room 3017, 1130 O Street, Fresno, California 93721; Forest Service National Forest, Los Padres National Forest, 42 Aero Camino, Goleta, California 93117; Forest Service National Forest, Tahoe National Forest, Highway 49, Nevada City, California 95969; Forest Service National Forest, Angeles National Forest, Room 300, 150 S. Robles Avenue, Pasadena, California 91101; Forest Service National Forest, Eldorado National Forest, 100 Forni Road, Placerville, California 95667; Forest Service National Forest, Sequoia National Forest, 900 W. Grand Avenue, Porterville, California 93257; Forest Service National Forest, Plumas National Forest, 158 Lawrence Street, P.O. Box 1500, Quincy, California 95971; Forest Service National Forest, Shasta-Trinity National Forest, 2400 Washington Avenue, Redding, California 96001; Forest Service National Forest, San Bernardino National Forest, 144 N. Mountain View Avenue, San Bernardino, California 92408; Forest Service National Forest, Cleveland National Forest, 880 Front Street, Room 6–S–5, San Diego, California 92186; Forest Service, Equipment Development Center, 444 E. Bonita Avenue, San Dimas, California 91773; Food and Nutrition Service Western Regional Office, 550 Kearny Street, Room 400, San Francisco, California 94108; Forest Service Regional Office, 630 Sansome Street, San Francisco, California 94111; Forest Service National Forest, Stanislaus National Forest, 19777 Greenley Road, Sonora, California 95370; Forest Service, Lake Tahoe Basin Management Unit, 870 Emeral Bay Road, P.O. Box 8465, South Lake Tahoe, California 95731; Forest Service National Forest, Lassen National Forest, 707 Nevada Street, Susanville, California 96130; Forest Service National Forest, Mendocino National Forest, 420 E. Laurel Street, Willows, California 95988; Farmers Home Administration State Office, 459 Cleveland Street, Woodland, California 95695; Forest Service National Forest, Klamth National Forest, 1312 Fairland Road, Yreka, California 96097.

COLORADO—Forest Service National Forest, Grand Mesa-Uncompahgre-Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416; Agricultural Marketing Service Milk Market Office, 2600 S. Parker Road, P.O. Box 440860, Aurora, Colorado 80044; Farmers Home Administration State Office, 1 Diamond Plaza, Room 231, 2490 W 26th Avenue, Denver, Colorado 80217; Soil Conservation Service State Office, 1 Diamond Plaza, Room 313, 2490 W. 26th Avenue Denver, Colorado 80217; Forest Service National Forest, San Juan National Forest, Federal Building, 701 Camino Del Rio, Durango, Colorado 81301; Animal and Plant Health Inspection Service, Veterinary Services North Central Region, 317 Inverness Way South, Englewood, Colorado 80112; Forest Service, Rocky Mountain Forest and Range Experiment Station, 240 W. Prospect Street, Fort Collins, Colorado 80526; Forest Service National Forest, Arapaho-Roosevelt National Forest, 240 W. Prospect Street, Ft. Collins, Colorado 80526; Forest Service National Forest, White River National Forest, Old Federal Building, Box 948, Glenwood Springs, Colorado 81602; Forest Service Regional Office, 11177 W. 8th Avenue, P.O. Box 25127, Lakewood, Colorado 80225; Forest Service National Forest, Rio Grande National Forest, 1803 W. Highway 160, Monte Vista, Colorado 81144; Forest Service National Forest, Pike-San Isabel National Forests, 1920 Valley Drive, Pueblo, Colorado 81008; Forest Service National Forest, Routt National Forest, Hunt Building, 137 10th Street, P.O. Box 1198, Steamboat Springs, Colorado 80477; Food and Nutrition Service Mountain Plains Regional Office, 2420 W. 25th Avenue, Denver, Colorado 80211.

CONNECTICUT—Forest Service Northeastern Forest Experiment Station, Center for Biological Control of Northern Forest Insects and Disease, 51 Mill Pond Road, Hamden, Connecticut 06514; Soil Conservation Service State Office, Mansfield Professional Park, Route 44A, Storrs, Connecticut 06268.

DELAWARE—Farmers Home Administration State Office, Robscott Building, 151 E. Chestnut Hill Road, Suite 2, Newark, Delaware 19713.

FLORIDA—Farmers Home Administration State Office, Federal Building, Room 214, 401 S.E. First Avenue, P.O. Box 1088, Gainesville, Florida 32602; Soil Conservation Service State Office, Federal Building, 401 SE 1st Avenue, Gainesville, Florida 32602; Forest Service National Forest, National Forests in Florida, 2586 Seagate Drive, P.O. Box 13549, Tallahassee, Florida 32308; Animal and Plant Health Inspection Service, Veterinary Services Southeastern Region, 700 Twiggs Street, Room 620, P.O. Box 560, Tampa, Florida 33601; Agricultural Marketing Service Milk Market Office, 1205 S. Semoran Boulevard, P.O. Box 4709, Winter Park, Florida 32793.

GEORGIA—Agricultural Marketing Service Milk Market Office, 3610 Interstate 85, NE, Suite 109, P.O. Box 49025, Atlanta, Georgia 30359; Forest Service Regional Office, Suite 812, 1720 Peachtree Road, NW, Atlanta, Georgia 30367; Farmers Home Administration State Office, 355 E. Hancock Avenue, Stephens Federal Building, Athens, Georgia 30601; Soil Conservation Service State Office, Federal Building, 355 E. Hancock Avenue, Athens, Georgia 30613; Forest Service National Forest, Chattahoochee-Oconee National Forest, 601 Broad Street, SE, Gainesville, Georgia 30501; Food and Nutrition Service Southeast Regional Office, 1100 Spring Street, NW, Atlanta, Georgia 30367.

HAWAII—Soil Conservation Service State Office, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850; Farmers Home Administration State Office, 345 Kekuanaoa Street, Hilo, Hawaii 96720.

IDAHO—Farmers Home Administration State Office, Federal Building, Room 429, 304 N. 8th Street, Boise, Idaho 83702; Forest Service National Forest, Boise National Forest, 1750 Front Street, Boise, Idaho 83702; Soil Conservation Service State Office, 304 N. 8th Street, Boise, Idaho 83702; Forest Service National Forest, Challis National Forest, Forest Service Building, Highway 93, P.O. Box 404, Challis, Idaho 83226; Forest Service National Forest, Idaho Panhandle National Forests, 1201 Ironwood Drive, Coeur d'Alene, Idaho 83814; Forest Service National Forest, Nezperce National Forest, 319 E. Main Street, Grangeville, Idaho 83530; Forest Service National Forest, Payette National Forest , Forest Service Building, P.O. 1026, McCall, Idaho 83638; Forest Service National Forest, Clearwater National Forest, 12730 Highway 12, Orofino, Idaho 83544; Forest Service National Forest, Caribou National Forest, 250 S 4th Avenue, Pocatello, Idaho 83201; Forest Service National Forest, Targhee National Forest; 420 N. Bridge Street, P.O. Box 208, St. Anthony, Idaho 83445; Forest Service National Forest, Salmon National Forest, Forest Service Building, Salmon, Idaho 83467; Forest Service National Forest, Sawtooth National Forest, 1525 Addison Avenue, E., Twin Falls, Idaho 83301.

ILLINOIS—Farmers Home Administration State Office, 2106 W. Springfield Avenue, Champaign, Illinois 61821; Soil Conservation Service State Office, Springer Federal Building, 301 N. Randolph Street, Champaign, Illinois 61820; Agricultural Marketing Service Milk Market Office, 800 Roosevelt Rd., Building A, Glen Ellyn, Illinois 60137; Food and Nutrition Service Midwest Regional Office, 50 E. Washington Street, Chicago, Illinois 60602; Forest Service National Forest, Shawnee National Forest, 317 E. Poplar Street, Harrisburg, Illinois 62946.

INDIANA—Forest Service National Forest, Wayne-Hoosier National Forest, 1615 J Street, Bedford, Indiana 47421; Farmers Home Administration State Office, Suite 1700 5610 Crawfordsville Road, Indianapolis, Indiana 46224; Soil Conservation Service State Office, Corporate Square-West, 5610 Crawfordsville Road, Indianapolis, Indiana 46224.

IOWA—Farmers Home Administration State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, Iowa 50309; Soil Conservation Service State Office, Federal Building, Room 823, 210 Walnut Street, Des Moines, Iowa 50309.

KANSAS—Agricultural Marketing Service Milk Market Office 7819 Conser Pl., P.O. Box 4606, Overland Park, Kansas 66204; Soil Conservation Service State Office, 760 S. Broadway, Salina, Kansas 67401; Farmers Home Administration State Office, 444 SE. Quincy St., Topeka, Kansas 66683.

KENTUCKY—Forest Service, Northeastern Forest Experiment Station, Forestry Science Laboratory, 204 Center Street, Berea, Kentucky 40403; Farmers Home Administration State Office, 333 Waller Avenue, Lexington, Kentucky 40504; Soil Conservation Service State Office, 333 Waller Avenue, Lexington, Kentucky 40504; Agricultural Marketing Service Milk Market Office, 3920 Bardstown Rd., P.O. Box 18030, Louisville, Kentucky 40218; Forest Service National Forest, Daniel Boone National Forest, 100 Vaught Road, Winchester, Kentucky 40391.

LOUISIANA—Farmers Home Administration State office, 3727 Government Street, Alexandria, Louisiana 71301; Soil Conservation Service State Office, 3737 Government Street, Alexandria, Louisiana 71301; Agricultural Marketing Service Milk Market Office 630 Village Lane, North, P.O. Box 99, Mandeville, Louisiana 70448; Forest Service Southern Forest Experiment Station, T–10210 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, Louisiana 70113; Office of Finance and Management, National Finance Center, Human and Material Resources Branch, P.O. Box 60,000, New Orleans, Louisiana 70160; Forest Service National Forest, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, Louisiana 71360.

MAINE—Farmers Home Administration State Office, USDA Office Building, Orono, Maine 04473; Soil Conservation Service State Office, USDA Building, University of Maine, Orono, Maine 04473.

MARYLAND—Agricultural Research Service, Personnel Division, Room 107, Building 003, BARC–W, Beltsville, Maryland 20705; Soil Conservation Service State Office, Hartwick Building, Room 522, 4321 Hartwick Road, College Park, Maryland 20740; Animal and Plant Health Inspection Service, PPQ Non-Regional Administrative Operations Office, Federal Building, Room 623, Hyattsville, Maryland 20782.

MASSACHUSETTS—Soil Conservation Service State Office, 451 West Street, Amherst, Massachusetts 01002; Agricultural Marketing Service Milk Market Office, 90 Canal Street, P.O. Box 1478, Boston, Massachusetts 02205; Farmers Home Administration State Office, 451 West Street, Amherst, Massachusetts 01002; Food and Nutrition Service, Northeast Regional Office, 33 North Avenue, Burlington, Massachusetts 01803.

MICHIGAN—Agricultural Marketing Service Milk Market Office, 2684 W., 11 Mile Road, Berkley, Michigan 48072; Forest Service National Forest, Huron-Manistee National Forest, 421 S. Mitchell Street, Cadillac, Michigan 49601; Farmers Home Administration State Office, 1405 S. Harrison Road, Room 209, East Lansing, Michigan 48823; Soil Conservation Service State Office, 1405 S. Harrison Road, East Lansing, Michigan 48823; Forest Service National Forest, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, Michigan 49829; Forest Service National Forest, Ottawa National Forest, U.S. 2 East, Ironwood, Michigan 49938.

MINNESOTA—Forest Service National Forest, Chippewa National Forest, Cass Lake, Minnesota 56633; Forest Service National Forest, Superior National Forest, Box 338, Duluth, Minnesota 55801; Agricultural Marketing Service Milk Market Office, 4570 W. 77th Street, Suite 210, Minneapolis, Minnesota 55435; Animal and Plant Health Inspection Service Field Servicing Office, Butler Sq., W., 5th Fl., 100 N. 6th Street, Minneapolis, Minnesota 55403; Farmers Home Administration State Office, 252 Federal Office Building and U.S. Court House, St. Paul, Minnesota 55101; Food Safety and Inspection Service, Personnel Operations Branch, Butler Sq., W., 4th Floor, 100 N. 6th Street, Minneapolis, Minnesota 55403; Forest Service, North Central Forest Experiment Station, 1992 Folwell Avenue, St. Paul, Minnesota 55108; Soil Conservation Service State Office, 200 Federal Building and U.S. Courthouse, 316 N. Robert St., St. Paul, Minnesota 55101; Forest Service, Northeastern Area State and Private Forestry, 1992 Folwell Avenue, St. Paul, Minnesota 55108.

MISSISSIPPI—Animal and Plant Health Inspection Service, PPQ Southeastern Region, 3505 25th Avenue, P.O. Box 3659, Gulfport, Mississippi 39505; Farmers Home Administration State Office, Federal Building, Room 831, Jackson, Mississippi 39269; Soil Conservation Service State Office, Federal Building, 100 W. Capitol St., Jackson, Mississippi 39269; Forest Service National Forest, National Forests in Mississippi, 100 W. Capitol Street, Suite 1141, Jackson, Mississippi 39269.

MISSOURI—Farmers Home Administration State Office, 555 Vandiver Dr., Columbia, Missouri 65202; Soil Conservation Service State Office, 555 Vandiver Dr., Columbia, Missouri 65202; Agricultural Stabilization and Conservation Service, Kansas City Management Office, 8930 Ward Pky., Kansas City, Missouri 64114; Forest Service National Forest, Mark Twain

National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401; Agricultural Marketing Service Milk Market Office, 2550 Schuetz Road, P.O. Box 1485, Maryland Heights, Missouri 63043; Farmers Home Administration Finance Office, 1520 Market St., St. Louis, Missouri 63103.

MONTANA—Forest Service National Forest, Custer National Forest, P.O. Box 2556, Billings, Montana 59103; Farmers Home Administration State Office, Federal Building, P.O. Box 850, Bozeman, Montana 59715; Forest Service National Forest, Gallatin National Forest, Federal Building, P.O. Box 130, Bozeman, Montana 59715; Soil Conservation Service State Office, Federal Building, 10 E. Babcock, Bozeman, Montana 59715; Forest Service National Forest, Deerlodge National Forest, Federal Building, P.O. Box 400, Butte, Montana 59703; Forest Service National Forest, Beaverhead National Forest, 610 N. Montana Street, P.O. Box 1258, Dillion, Montana 59725; Forest Service National Forest, Lewis and Clark National Forest, Casco Building, 1601 Second Avenue, N., P.O. Box 871, Great Falls, Montana 59403; Forest Service National Forest; Bitterroot National Forest, 316 N. Third Street, Hamilton, Montana 59840; Forest Service National Forest, Helena National Forest Federal Office Building, Drawer 10014, Helena, Montana 59626; Forest Service National Forest; Flathead National Forest, 1935 Third Avenue, E., P.O. Box 147, Kalispell, Montana 59901; Forest Service National Forest; Kootenai National Forest, West Highway 2, Libby, Montana 59923; Forest Service Regional Office, Federal Building, P.O. Box 7669, Missoula, Montana 59807; Forest Service National Forest, Lolo National Forest, Building 24, Ft. Missoula, Missoula, Montana 59801; Forest Service, Intermountain Forest and Range Experiment Station, Forestry Sciences and Northern Forest Fire Laboratories, Drawer G, Missoula, Montana 59806; Forest Service, Aerial Fire Depot, Box 6, Airport Terminal, Missoula, Montana 59802.

NEBRASKA—Forest Service National Forest, Nebraska National Forest, 270 Pine Street, Chadron, Nebraska 69337; Farmers Home Administration State Office, Federal Building, Room 308, 100 Centennial Mall North, Lincoln, Nebraska 68508; Soil Conservation Service State Office, Federal Building, 100 Centennial Mall, N., Lincoln Nebraska 68508.

NEVADA—Forest Service National Forest, Humboldt National Forest, 976 Mountain City Highway, Elko, Nevada 89801; Animal and Plant Health Inspection Service, Veterinary Services Western Region, 245 E. Liberty Street, P.O. Box 2730, Reno, Nevada 89505; Forest Service National Forest, Toiyabo National Forest, 111 N. Virginia Street, Reno, Nevada 89501; Soil Conservation Service State Office, U.S. Post Office Building, Room 234, 50 S. Virginia Street, Reno, Nevada 89505.

NEW HAMPSHIRE—Forest Service, Northeastern Forest Experiment Station, Louis C. Wyman Forestry Sciences Laboratory, P.O. Box 640, Durham, New Hampshire 03824; Soil Conservation Service State Office, Federal Building, Durham, New Hampshire 03824; Forest Service National Forest, White Mountain National Forest, 719 Main Street, Federal Building, P.O. Box 638, Laconia, New Hampshire 03246.

NEW JERSEY—Animal and Plant Health Inspection Service, PPQ Northeastern Region, Blason II, 1st Floor, 505 S. Lenola Road, Moorestown, New Jersey 08057; Soil Conservation Service State Office, 1370 Hamilton Street, Somerset, New Jersey 08873; Farmers Home Administration State Office, 1 Vahlasing Center, Robbinsville, New Jersey 08691; Food and Nutrition Service Mid-Atlantic Regional Office, Mercer Corporate Park, Corporate Boulevard, P.O. Box CNO2150, Trenton, New Jersey 08650;

NEW MEXICO—Forest Service National Forest, Lincoln National Forest, Federal Building, 11th and New York Avenue, Alamogordo, New Mexico 88310; Farmers Home Administration State Office, Federal Building, Room 3414, 517 Gold Avenue, S.W., Albuquerque, New Mexico 87102; Forest Service Regional Office, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102 Forest Service National Forest, Cibola National Forest, 10308 Candelaria, NE., Albuquerque, New Mexico 87112; Soil Conservation Service State Office, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102; Forest Service National Forest, Sanata Fe National Forest, 1220 St. Francis Drive, P.O. Box 1689, Santa Fe, New Mexico 87501; Forest Service National Forest, Gila National Forest, 2610 N. Silver Street, Silver City, New Mexico 88061; Forest Service National Forest, Carson National Forest, Forest Service Building, P.O. Box 558 Taos, New Mexico 87571.

NEW YORK—Agricultural Marketing Service Milk Market Office, 708 Third Avenue, New York, New York 10017; Animal and Plant Health Inspection Service, Veterinary Services Northern Region, Building 12, GSA Depot, Scotia, New York 12302; Farmers Home Administration State Office, U.S. Courthouse and Federal Building, Room 871, 100 S. Clinton Street, Syracuse, New York 13202; Soil Conservation Service State Office, James M. Hanley Federal Building, 100 S. Clinton Street, Syracuse, New York 13260.

NORTH CAROLINA—Forest Service, Southeastern Forest Experiment Station, 200 Weaver Boulevard, Asheville, North Carolina 28804; Forest Service National Forest, National Forests in North Carolina, 50 S. French Broad Avenue, P.O. Box 2750, Asheville, North Carolina 28802; Farmers Home Administration State Office, Room 514, 310 New Bern Avenue, Raleigh, North Carolina 27601; Soil Conservation Service State Office, Federal Office Building, 310 New Bern Avenue, Raleigh, North Carolina 27611.

NORTH DAKOTA—Farmers Home Administration State Office, Federal Building, Room 208, 3rd and Rosser Avenue, Bismarck, North Dakota 58501; Soil Conservation Service State Office, Federal Building, Rosser Avenue and Third Street, Bismarck, North Dakota 58502.

OHIO—Agricultural Marketing Service Milk Market Office, 7851 Freeway Circle, Middleburg Heights, P.O. Box 30128, Cleveland, Ohio 44130; Agricultural Marketing Service Milk Market Office, 5950 Sharon Woods Boulevard, P.O. Box 29226, Columbus, Ohio 42339; Farmers Home Administration State Office, Federal Building, Room 507, 200 N. High Street, Columbus, Ohio 43215; Soil Conservation Service State Office, 200 N. High Street, Columbus, Ohio 43215.

OKLAHOMA—Farmers Home Administration State Office, Agricultural Center Office Building, Stillwater, Oklahoma 74074; Soil Conservation Service State Office, Agricultural Center Building, Farm Rd. and Brumley Street, Stillwater, Oklahoma 74074; Agricultural Marketing Service Milk Market Office, 4325 E. 51st Street, P.O. Box 470563, Tulsa, Oklahoma 74147.

OREGON—Forest Service National Forest, Wallowa-Whitman National Forest, Federal Building, Main and Auburn, Box 907, Baker, Oregon 97814; Forest Service National Forest, Deschutes National Forest, 211 NE., Revere Avenue, Bend, Oregon 97701; Forest Service National Forest, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339; Forest Service National Forest, Willamette National Forest, Box 10607, Eugene, Oregon 97440; Forest Service National Forest, Siskiyou National Forest, Box 440, Grants Pass, Oregon 97526; Forest Service National Forest, Mt. Hood National Forest, 2955 NW., Division Street, Gresham, Oregon 97030; Forest Service National Forest, Malheur National Forest, 139 NE. Dayton Street, John Day, Oregon 97845; Forest Service National Forest, Winema National Forest, P.O. Box 1390, Klamath Falls, Oregon 97601; Forest Service National Forest, Fremont National Forest, Box 551 Lakeview, Oregon 97630; Forest Service National Forest, Rogue River National Forest, Federal Building, 333 W. 8th Street, P.O. Box 520, Medford, Oregon 97501; Forest Service National Forest, Umatilla National Forest, 2517 SW Hailey Avenue, Pendleton, Oregon 97801; Farmers Home Administration State Office, Federal Building, Room 1590, 1220 SW 3d Avenue, Portland, Oregon 97204; Forest Service, Pacific Northwest Forest and Range Experiment Station, 319 SW Pine Street, Portland, Oregon 97208; Forest Service Regional Office, 319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208; Soil Conservation Service State Office, Federal Building, 1220 SW Third Avenue, Portland, Oregon 97204; Soil Conservation Service Technical Center, 511 NW., Broadway, Portland, Oregon 97209; Agricultural Marketing Service Milk Market Office, Tarbell Building; 9735 SW., Shady Lane, Tigard, P.O. Box 23606, Portland, Oregon 97223; Forest Service National Forest, Ochoco National Forest, Federal Building, P.O. Box 490, Prineville, Oregon 97754; Forest Service National Forest, Umpqua National Forest, Box 1008, Roseburg, Oregon 97470.

PENNSYLVANIA—Farmers Home Administration State Office, Federal Building, Room 728, 228 Walnut St., P.O. Box 905, Harrisburg, Pennsylvania 17108; Soil Conservation Service State Office, Federal Building and Court House, Harrisburg, Pennsylvania 17108; Forest Service Northeastern Area State and Private Forestry, 370 Reed Road, Broomall, Pennsylvania 19008; Forest Service, Northeastern Forest Experiment Station, 370 Reed Road, Broomall, Pennsylvania 19008; Soil Conservation Service Technical Service Center, 160 E. Street, Chester, Pennsylvania 19013; Forest Service National Forest, Allegheny National Forest, Spridon Building, P.O. Box 847, Warren, Pennsylvania 16365.

SOUTH CAROLINA—Forest Service Forest Manager, Savannah River Forest Station, P.O. Box A, Aiken, South Carolina 29801; Farmers Home Administration State Office, Strom Thurmond Federal Building, Room 1007, 1835 Assembly Street, 2nd Floor, Columbia, South Carolina 29201; Forest Service National Forest, Francis Marion-Sumter National Forests, 1835 Assembly Street, P.O. Box 2227, Columbia 29202; Soil Conservation Service State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201.

SOUTH DAKOTA—Forest Service National Forest, Black Hills National Forest, Forest Service Office Building, P.O. Box 792, Custer, South Dakota 57730; Farmers Home Administration State Office, Huron Federal Building, Room 208, 200 4th Street, SW, Huron, South Dakota 57350; Soil Conservation Service State Office, Federal Building, 200 4th Street, SW, Huron, South Dakota 57350.

TENNESSEE—Forest Service National Forest, Cherokee National Forest, 2800 No. Ocoee Street, NW, Box 2010, Cleveland, Tennessee 37311; Farmers Home Administration State Office, 538 U.S. Courthouse Building, 801 Broadway Street, Nashville, Tennessee 37203; Soil Conservation Service State Office, U.S. Courthouse, 801 Broadway Street, Nashville, Tennessee 37203.

TEXAS—Animal and Plant Health Inspection Service, PPQ South Central Region, 2100 Boca Chica Boulevard, Suite 400, Boca Chica Tower Building, Brownsville, Texas 78521; Argicultural Marketing Service Milk Market Office, 11117 Shady Trail, P.O. Box 29529, Dallas, Texas 75229; Food and Nutrition Service Southwest Regional Office, 1100 Commerce Street, Room 5D 22, Dallas, Texas 75242; Animal and Plant Health Inspection Service, Veterinary Services South Central Region, 221 W. Lancaster Avenue, Suite 310, Fort Worth, Texas 76102; Forest Service National Forests, National Forests in Texas, Homer Garrison Federal Building, 701 N. First Street, Lufkin, Texas 75901; Farmers Home Administration State Office, W.R. Poage Federal Building, 101 S. Main Street, Temple, Texas 76501; Soil Conservation Service State Office, W.R. Poage Federal Building, 101 S. Main Street, P.O. Box 686, Temple, Texas 76503; Soil Conservation Service Technical Service Center, Ft. Worth Federal Center Building 23, Felix and Hemphill Streets, Ft. Worth, Texas 76115.

UTAH—Forest Service National Forest, Dixie National Forest, 82 North 100 East, Cedar City, Utah 84720; Forest Service, Intermountain Forest and Range Experiment Station, Federal Building, 507 25th Street, Ogden, Utah 84401; Forest Service Regional Office, Federal Office Building, 324 25th Street, Ogden, Utah 84401; Forest Service National Forest, Manti-LaSal National Forest, 599 W. Price River Drive, Price, Utah 84501; Forest Service National Forest, Uinta National Forest, 88 W. 100 North, Provo, Utah 84603; Forest Service National Forest, Fishlake National Forest, 115 E. 900 North, Richfield, Utah 84701; Farmers Home Administration State Office, Federal Building, Room 5311, 125 S. State Street, Salt Lake City, Utah 84138; Forest Service National Forest, Wasatch-Cache National Forest, 8226 Federal Building, 125 S. State Street, Salt Lake City, Utah 84138; Forest Service, Geometronics Service Center, 8226 Federal Building, 125 S. State Street, Salt Lake City, Utah 84138; Soil Conservation Service State Office, 4012 Federal Building, 125 S. State Street, Salt Lake City, Utah 84147; Forest Service National Forest, Ashley National Forest, 437 E. Main Street, Vernal, Utah 84078.

VERMONT—Forest Service, Northeastern Forest Experiment Station, George D. Aiken Sugar Maple Laboratory, 705 Spear Street, P.O. Box 968, Winooski, Vermont 05404; Soil Conservation Service State Office, 69 Union St., Burlington Square, Burlington, Vermont 05401; Farmers Home Administration State Office, 141 W. Main Street, P.O. Box 588, Montpelier, Vermont 05602; Forest Service National Forest, Green Mountain National Forest, Federal Building, 151 West Street, Rutland, Vermont 05701.

VIRGINIA—Agricultural Marketing Service Milk Market Office, 300 N. Lee St., Room 320, P.O. 710, Alexandria, Virginia 22313; Forest Service National Forest, George Washington National Forest, 210 Federal Building, Harrisonburg, Virginia 22801; Farmers Home Administration State Office, Federal Building, Room 8213, 400 N. Eighth Street, P.O. Box 10106, Richmond, Virginia 23240; Soil Conservation Service State Office, 400 N. Eighth Street, Richmond, Virginia 23240; Forest Service National Forest, Jefferson National Forest, 210 Franklin Road, SW, Room 954, Caller Service 2900, Roanoke, Virginia 24001.

WASHINGTON—Forest Service National Forest, Colville National Forest, 695 S. Main, Colville, Washington 99114; Forest Service National Forest, Okanogan National Forest, 1240 S. 2nd Avenue, Okanogan, Washington 98840; Forest Service National Forest, Olympic National Forest, Federal Building, P.O. Box 2288, Olympia, Washington 98507; Forest Service National Forest, Mt. Baker-Snoqualmie National Forests, 1022 First Avenue, Seattle, Washington 98104; Soil Conservation Service State Office, 360 U.S. Courthouse, W. 920 Riverside Avenue, Spokane, Washington 99201; Forest Service National Forest, Gifford Pinchot National Forest, 500 W. 12th St., Vancouver, Washington 98660; Farmers Home Administration State Office, Federal Office Building, Room 319, 301

Yakima St., Wenatchee, Washington 98801; Forest Service National Forest, Wenatchee National Forest, Box 811, Wenatchee, Washington 98801.

WEST VIRGINIA—Forest Service National Forest, Monongahela National Forest, USDA Building, Sycamore Street, P.O. Box 1548, Elkins, West Virginia 26241; Farmers Home Administation State Office, Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505; Forest Service, Northeastern Forest Experiment Station, Forestry Sciences Laboratory, 180 Canfield Street, Morgantown, West Virginia 26505; Soil Conservation Service State Office, 75 High St., Morgantown, West Virginia 26505; Forest Service, Northeastern Forest Experiment Station, Timber and Watershed Laboratory, P.O. Box 445, Parsons, West Virginia 26287; Forest Service, Northeastern Forest Experiment Station, Forest Sciences Laboratory, P.O. Box 152, Princeton, West Virginia 24740.

WISCONSIN—Forest Service, Forest Products Laboratory, P.O. Box 5130, Madison, Wisconsin 53705; Soil Conservation Service State Office, 4601 Hammersley Road, Madison, Wisconsin 53711; Forest Service Regional Office, Eastern Region, Henry S. Reuss Federal Plaza, Suite 500, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203; Forest Service National Forest, Chequamegon National Forest, 157 N. 5th Avenue, Park Falls, Wisconsin 54552; Forest Service National Forest, Nicolet National Forest, Federal Building, 68 S. Stevens, Rhinelander, Wisconsin 54501; Farmers Home Administration State Office, 1257 Main Street, Stevens Point, Wisconsin 54481.

WYOMING—Farmers Home Administration State Office, Federal Building, Room 1005, 100 E. B. Street, Casper, Wyoming 82601; Soil Conservation Service State Office, Federal Office Building, 100 E. B. Street, Casper, Wyoming 82601; Forest Service National Forest, Shoshone National Forest, 225 W. Yellowstone Highway, P.O. Box 2140, Cody, Wyoming 82414; Forest Service National Forest, Bridger-Teton National Forest, Forest Service Building, 340 N. Cache, P.O. Box 1888, Jackson, Wyoming 83001; Forest Service National Forest, Medicine Bow National Forest, 605 Skyline Drive, Laramie, Wyoming 82070; Forest Service National Forest, Bighorn National Forest, 1969 S. Sheridan Avenue, Sheridan, Wyoming 82801.

PUERTO RICO—Farmers Home Administration State Office, Federal Building, Carlos Chardon Street, G.P.O. Box 8106G, Hato Rey, San Juan, Puerto Rico 00918; Soil Conservation Service Caribbean Office, Federal Office Building, Chardon Avenue, Hato Rey, Puerto Rico 00918; Forest Service National Forest, Caribbean National Forest and State and Private Forestry Programs, Box AQ, Rio Piedras, Puerto Rico 00928.

HEADQUARTERS—Agricultural Marketing Service, Personnel Division, Room 1709–S, Washington, D.C. 20250; Agricultural Stabilization and Conservation Service, Personnel Division, Room 4752–S, Washington, D.C. 20250; Animal and Plant Health Inspection Service, Human Resources Division, Room 213, Federal Building, Hyattsville, MD 20782; Economics Management Staff, Personnel Division, Room 1443–S, Washington, D.C. 20250; Extension Service, Personnel Division, Room 3552–S, Washington, D.C. 20250; Farmers Home Administration Personnel Division, Room 6900–S, Washington, D.C. 20250; Federal Crop Insurance Corporation, Personnel Division, Room 4616–S, Washington, D.C. 20250; Foreign Agricultural Service, Personnel Division, Room 5627–S, Washington, D.C. 20250; Forest Service, Division of Personnel Management, Room 910, Rosslyn Plaza E. Arlington, VA 22209; Food and Nutrition Service, Personnel Division, Park Office Center, Room 813, 3101 Park Center Drive, Alexandria, Va 22302; Office of Inspector General, Personnel Management Staff, Room 16–E, Washington, D.C. 20250; Office of International Cooperation and Development, Personnel Office, Auditors Building, Room 3118, Washington, D.C. 20250; Office of Personnel, Personnel Operations, Room 31–W, Washington, D.C. 20250; Soil Conservation Service, Personnel Staff, P.O. Box 2890, Washington, D.C. 20013; Soil Conservation Service National Office, Administrative Staff, P.O. Box 2890, Washington, D.C. 20013; Rural Electrification Administration, Personnel Management Division, Room 4031–S, Washington, D.C. 20250; Food Safety and Inspection Service, Personnel Division, Room 3161–S, Washington, D.C. 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and prior employees of USDA and applicants who were not hired, as well as its permittees, cooperators and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of personnel (Official Personnel Folders, Applicant Supply Files, performance files, retention lists, appeals, grievances, complaints, disciplinary, conflict of interest, health, suggestion and incentive awards, accident, training, time and attendance, travel voucher, and classification files) and payroll data needed to conform to all applicable laws, Government regulations and procedures, and the needs of the Department and agencies in carrying out their personnel management responsibilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to: (1) Office of Personnel Management for required action, records and reports; (2) Department of Treasury for issuance of checks and bonds; (3) Department of Labor for Office of Workers Compensation Program and Office of Safety and Health Administration; (4) Department of Commerce for distribution of Federal payrolls; (5) Congress for special reports; (6) White House for special reports; (7) Office of Management and Budget for special reports; (8) General Accounting Office for special reports; (9) Department of Justice; (10) General Services Administration for records retirement and/or destruction; (11) State Department for passport and foreign assignments; (12) Department of Transportation, Environmental Protection Agency and cooperating state and local agencies for accident and safety records; (13) Internal Revenue Service and State and local government for matters in connection with payment of income taxes; (14) Social Security Administration for social security payment information; (15) United Fund for reports and records; (16) Department of Health and Human Services for scheduling physical examinations; (17) all Government agencies and potential employers concerning employment inquiries; (18) Equal Employment Opportunity Commission for handling complaints; (19) appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulatoin or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civli, criminal or regulatory in nature, and whether arising by general statute or othe particular program statute, or by rule, regulation or order issued pursuant thereto; (20) a court, magistrate or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery and (21) any agency of the Federal Government which has identified USDA employees as having defaulted in the repayment of an obligation incurred under any statutory authority except the Internal Revenue Code, the Social Security Act or the U.S. tariff laws.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders at the applicable address listed above, except for the National Finance Center where they are maintained on computer tape and disk storage.

RETRIEVABILITY:

Records are indexed by name of employee and/or identification number.

SAFEGUARDS:

Records are kept in locked files, locked offices and/or in secured computer tape storage rooms.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until employees are separated from the Department and are then retired or transferred to a new employing agency or destroyed in conformance with appropriate General Services Administration retirement and/or destruction Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, USDA, Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

Employees may request information from this system from the appropriate personnel office having custody of his/her records. A request for information should be addressed to the Director, Personnel Division, (name of appropriate Agency) USDA at the address shown under location and should contain:

Name of requestor, employing agency in USAD or agency to which information was furnished, address of agency and particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him/her by submitting a written request to the appropriate offices referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as Record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from the employees applicants, permittees, cooperators, contractors, employee's personnel offices, supervisors, references, investigative personnel, colleges and universities and former employers.

Dated: December 5, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84-32149 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-01-M

State of Alabama, County of Pike; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126(b) of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that District cost-share payments made under the Pike County Marginal Cropland Conversion Project are made primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination is in accordance with Section 126(b) of the Internal Revenue Code of 1954, as amended by Section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Pike County Soil and Water Conservation District, Boshell Office Building, 918 South Brundidge Street, Troy, Alabama 36081, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under conservation programs of states or legal subdivisions thereof may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Pike County, Alabama, Pike County Marginal Cropland Conversion Project is authorized by the Alabama Soil and Water Conservation Districts Law. It is funded by a one-time grant of $500,000 from the Soil Conservation Service, Department of Agriculture, under the Soil and Water Conservation Act of 1977 (Pub. L. 95–192) to provide financial assistance to owners of marginal cropland to help them convert this land to a conserving use.

Under the Pike County Marginal Cropland Conversion Project, the District is authorized to enter into agreements with landowners or operators to place certain eligible cropland into the program. Under such agreements, the landowner or operator agrees to convert this land to a conserving use. In return, the District is authorized by state law to make two distinct types of payments to landowners or operators. One such payment, which is an annual payment, is not the subject of this "primary purpose" determination. The other payment which is the subject of this determination is a cost-share payment which is made by the District to landowners and operators for establishment and maintenance of conservation and development practices on this marginal cropland that is being converted to a conserving use. Cost-share payments accomplish one or more of the following purposes:

(1) Properly conserve and utilize the land resources.,

(2) Reduce surpluses of agricultural commodities.

(3) Test the acceptability of new ways to reduce serious erosion problems.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual

effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Pike County Marginal Cropland Conversion Project "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or the Pike County Soil and Water Conservation District, Boshell Office Building, 918 South Brundidge Street, Troy, Alabama 36081.

Determination

As required by Section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Pike County Marginal Cropland Conversion Project. In accordance with the criteria set out in 7 CFR Part 14, I have determined that cost-share payments made for those conservation practices approved under this program are for soil conservation, protecting or restoring the environment, improving forests, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Pike County Marginal Cropland Conversion Project after June 15, 1983.

Signed at Washington, D.C., on December 5, 1984.

John R. Block,

Secretary.

[FR Doc. 84-32142 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-01-M

State of Maryland Agricultural Cost-Share Program; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all state cost-share payments made under the Maryland Agricultural Cost-Share Program are made primarily for the purpose of soil and water conservation, or protecting or restoring the environment. This determination is in accordance with Section 126(b) of the Internal Revenue Code of 1954, as amended by Section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Wayne A. Cawley, Jr., Secretary, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401, (301) 841-5880, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 328-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Maryland Agricultural Cost-Share Program is authorized by Maryland Annotated Code, Agriculture Article, Section 8-701 to 8-705. It is funded through an amendment to the Maryland Water Quality Loan Act of 1974 (Chapter 306 of 1982) where in $5,000,000 was made available to assist farmers in the installation of various conservation practices for the purposes of conserving soil and water resources and for protecting or restoring the environment for the public benefit.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects of competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Maryland Agricultural Cost-Share Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or the Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401.

Determination

As required by Section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Maryland Agricultural Cost-Share Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are for soil conservation, or protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Maryland Agricultural Cost-Share Program after July 1, 1983.

Signed at Washington, D.C., on December 5, 1984.

John R. Block,

Secretary.

[FR Doc. 32141 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-01-M

Senior Executive Service Bonuses

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture will be paying Senior Executive Service bonuses no earlier than December 20, 1984 and no later than December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, (202-447-6905).

John R. Block,

Secretary of Agriculture.

December 5, 1984.

[FR Doc. 84-32140 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Blackfeet Indian Reservation in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Blackfeet Indian Reservation in Montana has been materially increased and become acute because of severe weather conditions and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designed for Indian use and is utilized by members of the Blackfeet Indian Reservation for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the reservation will not displace or interfere with normal marketing or agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1985, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on December 3, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-32080 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-05-M

Feed Grain Donations for the Fort Belknap Indian Reservation in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Fort Belknap Indian Reservation in Montana has been materially increased and become acute because of severe weather conditions and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Fort Belknap Indian Reservation for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the reservation will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1985, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C., on December 3, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-32079 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-05-M

Feed Grain Donations for the Fort Peck Indian Reservation in Montana

Pursuant to the authority set fort in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Fort Peck Indian Reservation in Montana has been materially increased and become acute because of severe weather conditions and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Fort Peck Indian Reservation for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the reservation will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1985, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C., on December 3, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-32081 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-05-M

Feed Grain Donation for the Rocky Boys Indian Reservation in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Rocky Boys Indian Reservation in Montana has been materially increased and become acute because of severe weather conditions and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Rocky Boys Indian Reservation for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock for such needy members of the reservation will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1985, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C., on December 3, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-32082 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Designation Renewal of Agricultural Seed Laboratories, Inc. (AZ), Decatur Grain Inspection, Inc. (IL), and South Carolina Department of Agriculture (SC)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Agricultural Seed Laboratories, Inc. (Agri Seed), Decatur Grain Inspection, Inc. (Decatur), and South Carolina Department of Agriculture (South Carolina), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Department Regulation 1512-1; therefore, the Executive Order and Department Regulations do not apply to this action.

The July 2, 1984, issue of the **Federal Register** (49 FR 27190) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Agri Seed's, Decatur's, and South Carolina's designations terminate on December 31, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by August 1, 1984.

Agri Seed and South Carolina were the only applicants for each respective designation. Decatur applied and Ronald D. and Ruth E. Eddings, proposing to do business as Eddings Grain Inspection Service, also applied for the Decatur designation; however, the Eddings withdrew their application.

FGIS announced the names of these applicants and requested comments on same in the September 4, 1984, issue of the **Federal Register** (49 FR 34880). Comments were to be postmarked by October 19, 1984.

No comments were received regarding Agri Seed's, Decatur's, and South Carolina's designation renewal.

FGIS has evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act (7 U.S.C. 71 *et seq.*), and in accordance with section 7(f)(1)(B), has determined that Agri Seed, Decatur, and South Carolina are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the July 2 **Federal Register** issue.

Effective January 1, 1985, and terminating December 31, 1987, Agri Seed, Decatur, and South Carolina are responsible to provide official inspection services in their respective specified geographic areas.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Agricultural Seed Laboratories, Inc., 212 S. 25th Avenue, P.O. Box 6363, Phoenix, AZ 85005

Decatur Grain Inspection, Inc., 3434 East Wabash Avenue, Decatur, IL 62521

South Carolina Department of Agriculture, P.O. Box 11280, Columbia, SC 29211

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated December 4, 1984.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 84-32078 Filed 12-7-84; 8:45 am]

BILLING CODE 3410-EN-M

CIVIL AERONAUTICS BOARD

Agency Information Collection Activities Under OMB Review

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval to extend the collection of information in §§ 207.8, 207.10, 207.16, 207.17, 207.24, 207.25, 207.31, 207.45, and 207.46, 207.47 of Part 207. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Chief, Special Authorities Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5088.

SUPPLEMENTARY INFORMATION: Agency Clearance Officer from Whom a copy of the Information Collection and Supporting Documents is available: Robin A. Caldwell (202) 673-5922. How often the Collection of Information Must Be Filed: On occasion Who is Asked or Required to File: Air carriers, travel agents, and charterers. Estimate of Number of Annual Responses: 8,189. Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 4,905.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32137 Filed 12-7-84; 8:45 am]

BILLING CODE 6320-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval to extend the collection of information in §§ 208.3a, 208.5, 208.40, 208.202a, 208.202b, 208.204, 208.215, 208.216, and 208.217.7 Part 208. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Chief, Special Authorities Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5088.

SUPPLEMENTARY INFORMATION: Agency Clearance Officer from Whom a copy of the Information Collection and Supporting Documents is available: Robin A. Caldwell (202) 673-5922. How often the Collection of Information Must Be Filed: On occasion Who is Asked or Required to File: Air carriers, travel agents, and charterers. Estimate of Number of Annual Responses: 5,132. Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 3,077.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32136 Filed 12-7-84; 8:45 am]

BILLING CODE 6320-01-M

Agency Information Collection Requirements Under OMB Review

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of extension of the submission of information by air carriers receiving subsidy pursuant to the reporting requirements contained in §§ 382.21, 382.22 and 382.23 of Part 382 of the Board's Special Regulations.

DATED: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: Agency Clearance Officer from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 6734-5922 How Often the Collection of Information Must be Filed: Occasionally Who is Asked or Required to Report: U.S. Air Carriers receiving subsidy Estimate of Number of Annual Responses: 76. Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 108.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32135 Filed 12-7-84; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations (See 14 CFR 302.1701 et. seq.); Week Ended November 30, 1984

Subpart Q Applications

The due date for answers, comforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Nov. 27, 1984	42658	National Airlines, Inc., c/o Richard J. Kendall, Burger & Kendall, 1726 M Street, NW., Washington, D.C. 20036. Application of National Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for issuance or amendment of a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail between the United States and Korea and the United States and Taiwan. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 28, 1984.
Nov. 30, 1984	42667	Flight International Airlines, Inc., c/o James M. Burger, Burger & Kendall, 1726 M Street, NW., Washington, D.C. 20036. Application of Flight International Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to engage in scheduled interstate and overseas air transportation of persons, property, and mail: Between any point in any state of the United States or the District of Columbia, or any territory or possession of the United States and any point in any State of the United States or the District of Columbia, or any territory or possession of the United States Conforming Applications, Motions to Modify Scope and Answers may be filed by December 28, 1984.
Do	42668	Las Vegas Express, Inc., c/o Mark Pestronk, Bessel & Pestronk, 1825 K Street, NW., Suite 720, WAshington, D.C. 20008. Application of Las Vegas Express, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled air transportation of passengers, property, and mail, between any point in the United States and any other point in the United States. Also requests a determination of fitness under Part 204 of the Board's Regulations. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 28, 1984.

Phyllis T. Kaylor,

Secretary.

[Fr Doc. 84-32138 Filed 12-7-84; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Agency Form Submitted for OMB Review

SUMMARY: The U.S. Commission on Civil Rights has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This entry contains the following information: (1) Type of Submission; (2) Title of information Collection; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Nationwide Directory of Fair Housing Agencies

The questionnaire submitted for review will obtain information to be used in preparing a directory of private fair housing agencies. The directory will be used to inform the public of the nature, variety and extent of fair housing assistance available from these agencies.

Respondents

Private Fair Housing Agency Staff

RESPONSES: 300

BURDEN HOURS: 75

ADDRESSES: Comments are to be forwarded to Mr. Joseph Lackey, Office of Management and Budget, Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503, and Ms. Helen Loukas, U.S. Commission on Civil Rights, Clearance Officer, Room 505, 1121 Vermont Avenue, NW, Washington, D.C. 20425, telephone (202) 376–8345.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Caroline Davis Gleiter, Assistant Staff Director for Research, Room 400, 1121 Vermont Avenue, NW, Washington, D.C. 20425, telephone 376–8388.

Lawrence B. Glick,

Federal Register Liaison Officer, Commission on Civil Rights.

December 4, 1984.

[FR Doc. 84–32161 Filed 12–7–84; 8:45 am]

BILLING CODE 6335–01–M

Wyoming Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:00 noon, on January 19, 1984, at the Knight Hall, Room 314, University of Wyoming, Laramie, Wyoming 82071. The purpose of the meeting will be fourfold: To review selected projects being conducted by the Commission on Civil Rights on a national basis; discuss the possible implications of these projects for future activities of the Wyoming Advisory Committee; update the status of the proposed research on Title IX; and review a memorandum on the Montana jail project.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 5, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–32087 Filed 12–7–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Disposition of Applications for Duty-Free Entry of Reflex Klystrons

Processing of the following applications has been discontinued pursuant to Customs Service ruling that reflex klystrons are components ineligible for duty-free entry under 851.60 TSUS.

Docket Number: 84–158. Applicant: National Radio Astronomy Observatory, Charlottesville, VA 22901.

Docket Numbers: 84–195 and 84–196. Applicant: National Radio Astronomy Observatory, Tucson, AZ 85745–1489.

Docket Number: 84–270. Applicant: State University of New York, Stony Brook, NY 11794.

Docket Number: 84–300. Applicant: The University of Texas at Austin, Austin, TX 78758.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–31710 Filed 12–7–84; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–018]

Carbon Steel Plate From the FRG; Termination of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 16, 1984, counsel for Gilmore Steel Corporation withdrew their antidumping petition, filed on September 29, 1983, on carbon steel plate from the FRG. Based on the withdrawal, we are terminating the antidumping investigation.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–0186.

SUPPLEMENTARY INFORMATION:

Case History

On September 29, 1983, we received a petition filed by Gilmore Steel Corporation, Portland, Oregon, on behalf of both the national and West Coast carbon steel plant products industries. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleges that imports of carbon steel plate from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on October 25, 1983 (48 FR 49322), and notified the ITC of our action.

On November 7, 1983, the ITC found that there is a reasonable indication that imports of carbon steel plate from the FRG are materially injuring a U.S. industry (U.S. ITC Pub. No. 1451 (November 1983)), making no determination as to the alleged regional injury. Subsequently, we publilshed a rescission of our notice of initiation of investigation and dismissal of petition (49 FR 3503, January 27, 1984) on grounds that Gilmore had not properly filed on behalf of a national industry. Gilmore contested this action by filing suit in the Court of International Trade. The court upheld our rescission and dismissal insofar as the petition purported to be on behalf of a national industry, but reversed our action insofar as the petition was on behalf of an alleged regional industry and remanded this matter to us for further proceedings (*Gilmore Steel Corporation* v. *United States,*) Court No. 84–2–00228, slip op. 84–45, April 23, 1984). Accordingly, we re-initiated an antidumping investigation of carbon steel plate from the FRG on May 22, 1984 (49 FR 21556), and notified the ITC of our action. On June 27, 1984, the ITC found that there is a reasonable indication that imports of carbon steel plate from the FRG are materially injuring a regional industry, consisting of producers of carbon steel plate located in California, Oregon and Washington (U.S. ITC Pub. 1550 (July, 1984)).

We presented questionnaires concerning the allegations to counsel for Thyssen and A.G. der Dillinger Huttenwerke (Dillinger), on May 22 and May 28, 1984, respectively. On June 18, 1984 we received a request from counsel for Thyssen not to respond to the Department's antidumping duty questionnaire on grounds that Thyssen accounted for an insignificant percentage of the carbon steel plate sales data provided by the three principal FRG carbon steel plate producers. We decided to investigate only Dillinger, since it produced approximately 88 percent of the exports to the United States. Accordingly, the estimated weighted-average margin for Dillinger applies equally to Thyssen and all other manufacturers, producers and exporters of carbon steel plate from the FRG.

In accordance with our normal practice, we requested a response from Dillinger within 30 days. On June 15, 1984, we received a letter from counsel for Dillinger requesting additional time to respond because of the complexities involved in responding to the cost of production section of the questionnaire. An extension was granted to July 10, 1984. Due to the large number of sales transactions, we instructed Dillinger to report its home market sales transactions both in hard copy (i.e. printed form) and on computer tape in the format outlined in our questionnaire. We received Dillinger's response to our questionnaire on July 9, 1984. However, there were deficiencies in the submitted computer tape and subject matter in the narrative submission for which we requested clarification and additional information. Additional information and a revised computer tape were supplied by respondent at our request between August 6 and August 22, 1984. Difficulties with the original computer tape and the narrative portion of the response were resolved.

On October 9, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 39591). This notice stated that if this investigation proceeded normally we would make our final determination on December 14, 1984.

On October 26, 1984, counsel for respondent A.G., der Dillinger Huttenwerke request that we extend the period for the final determination until 135 days after the date on which we published the preliminary determination.

On November 19, 1984, we postponed the date of our final determination until not later than February 21, 1985 (49 FR 227).

Scope of Investigation

The product covered by this investigation is hot rolled steel plate currently provided for under item numbers 609.6620 and 607.6625 of the *Tariff Schedules of the United States Annotated.*

Withdrawal of Petition

On November 16, 1984, counsel for the petitioner notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 734(a) of the Act, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have notified all parties to the investigation of petitioner's withdrawal and our intention to terminate, and we have consulted with the International Trade Commission. We have determined that termination of this case is in the public interest.

For these reasons, we are terminating our investigation of carbon steel plate from the FRG.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

November 30, 1984.

[FR Doc. 84–32077 Filed 12–7–84; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee will meet on December 19, 1984 at the Best Western, Airport Inn, Philadelphia International Airport, Philadelphia, PA, to discuss the Atlantic mackerel, squid and butterfish stock assessments, as well as other fishery-related matters. The meeting may be lengthened or shortened depending upon progress on the agenda. For further information, contact John C. Bryson, Excutive Director, Mid-Atlantic Fishery Management Council, Room 2115—Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: December 4, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–32097 Filed 12–7–84; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Western Pacific Fishery Management Council will convene a public meeting with a closed session at the Kauai Surf Hotel, 3500 Rice Steet, Kalapaki, HI.

Open Session: December 6–7, 1984, 9 a.m. to 2 p.m.: Election of officers; revision of the Statement of Organization, Practices and Procedures; appointments to the Scientific and Statistical Committee and Advisory Panel; shrimp, bottomfish and pelagics management; status of domestic interests in harvesting precious corals; redefining lobster tail width measurements, removing 15 percent size tolerance of lobster tails, and status of NMFS escape gap experiments; report of the Inspector General, Department of Commerce on operations of regional fishery management councils as well as discuss other Council business.

Closed Session: December 6, 1984, 8 a.m. to 9 a.m.: employment matters.

For further information, contact Kitty Simonds, Executive Director, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: December 4, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 84–32098 Filed 12–7–84; 8:45 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Issuance of Permit; Kolmardens Djurpark

On September 29, 1984, notice was published in the **Federal Register** (43 FR 4995), that an application had been filed with the National Marine Fisheries Service by Kolmardens Djurpark, S–610–23 Kolmarden, Sweden, for a permit to take four (4) Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that on November 30, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Public Display Permit for the above taking to Kolmardens Djurpark, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: November 30, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-32126 Filed 12-7-84; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Issuance of Permit for Marine Mammals; Sea World, Inc.

On October 4, 1984, notice was published in the **Federal Register** (49 FR 39184) that an application had been filed with the National Marine Fisheries Service by Sea World, Incorporated, San Diego, California 93109, for a Permit to import two (2) false killer whales (*Pseudorca crassidens*) for the purpose of public display.

Notice is hereby given that on November 30, 1984 and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above importation to Sea World, Incorporated, subject to certain conditions set forth therein.

This Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731.

Date: November 30, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-32127 Filed 12-7-84; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Modification No. 8 to Permit No. 31; Robert Elsner; University of Alaska

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 31 issued to Dr. Robert Elsner, Institute of Marine Science, University of Alaska, Fairbanks, Alaska, on July 3, 1974, is further modified to extend the period of authorized taking for one year.

Accordingly, Section B–7 is deleted and replaced by: "7. This permit is valid with respect to the taking authorized herein until December 31, 1985."

This modification becomes effective upon publication in the **Federal Register**.

The Permit is modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: November 28, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-32125 Filed 12-7-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 5, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1985. For further information contact Kyle Poole, Trade Reference Assistant (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 7 and 8, 1984 between the Governments of the United States and Costa Rica, establishes a restraint limit of 2,208,512 dozen for man-made fiber brassieres in Category 649 produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1985. The letter to the Commissioner of Customs which follows this notice establishes this limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 5, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 7 and 8, 1984 between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 649, produced or manufactured in Costa Rica and exported on and after January 1, 1985 and extending through December 31, 1985 in excess of 2,208,512 dozen.

In carrying out this directive, entries of textile products in Category 649, produced or manufactured in Costa Rica, which have been exported to the United States on and after January 1, 1984 and extending through December 31, 1984, shall, to the extent of any unfilled balance, be charged against the restraint limit established for such goods during that twelve-month period. In the event the restraint limit established for that period has been exhausted by previous entries, such goods shall be subject to the limit set forth in this letter.

The level set forth above is subject to adjustment in the future according to the provisions of the bilateral agreement of February 7 and 8, 1984, which provide, in part, that: (1) The specific limit may be increased for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and Novermber 9, 1984 (49 FR 44782).

In carrying out the above directions, the Commissioner of Customs should construe

entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32105 Filed 12-7-84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Restraint Limit for Certain Man-Made Fiber Textiles Produced or Manufactured in Singapore

December 5, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 13, 1984. For further information contact Jane Corwin, International Trade Specialist (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, between the Governments of the United States and the Republic of Singapore, carryforward in the amount of 76,403 pounds is being applied to the restraint limit established for man-made fiber yarn in Category 604 increasing it to 1,277,026 pounds for goods produced or manufactured in Singapore and exported during 1984. To the extent used, this carryforward will be deducted from the restraint limit established for Category 604 in 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 5, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption and withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during 1984.

Effective on December 13, 1984, the directive of December 19, 1983 is hereby further amended to include an adjusted restraint limit of 1,277,026 pounds [1] for Category 604.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32104 Filed 12-7-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Meeting; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATES: 8 January 1985, 7 March 1985 and 11 April 1985 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Major Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meetings are devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 5, 1984.

[FR Doc. 84-32071 Filed 12-7-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, U.S. Petroleum Refining, Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on the U.S. Petroleum Refining will meet in December 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on the U.S. Petroleum Refining will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Petroleum Refining Coordinating Subcommittee will hold its second meeting on Friday, December 14, 1984, starting at 9:00 a.m., in the Willon Room of the Hyatt Regency, 1200 Louisiana Street, Houston Texas.

The tentative agenda for the U.S. Petroleum Refining Coordinating Subcommittee meeting is as follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Petroleum Refining Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Petroleum Refining Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2709, prior to the meeting and reasonable provision will

[1] The limit has not been adjusted to account for any imports exported after December 31, 1983.

be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holiday.

Issued at Washington, D.C., on November 26, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84-30258 Filed 12-7-84; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Refinery Survey Task Group; Meeting

Notice is hereby given that the Refinery Survey Task Group will meet in December 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Survey Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Survey Task Group will hold its second meeting on Thursday, December 13, 1984, starting at 9:00 a.m., in the Conference Room of the Crown Central Petroleum Corporation, 111 Red Bluff Road, Pasadena, Texas.

The tentative agenda for the Refinery Survey Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Review development of draft Refinery Survey.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Survey Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Survey Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353/2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 28, 1984.

William A. Vaughan,

Assistant Secretary Fossil Energy.

[FR Doc. 84-32059 Filed 12-7-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 84-13-NG]

Natural Gas Imports; St. Lawrence Gas Company, Inc.; Application To Amend Current Natural Gas Import Authorization to Increase Daily Volumes

AGENCY: Economic Regulatory Administration, Department of Energy .

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on December 3, 1984, the ERA Administrator issued an Opinion and Order amending an existing import authorization held by St. Lawrence Gas Company, Inc. (St. Lawrence). The Order authorizes St. Lawrence to increase its maximum daily import volumes of natural gas from 43,000 Mcf to 50,000 Mcf during its contract year ending October 31, 1985. All other provisions of the current authorization remain unchanged. The approval authorizes St. Lawrence to increase its daily takes of interruptible, best-efforts Canadian natural gas from Niagara Gas Transmission Limited at a price not to exceed $4.40 (U.S.) per MMBtu in accordance with a monthly volume schedule under Canada's Volume Related Incentive Price Program.

A copy of the Opinion and Order is attached.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–7162

Diane J. Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–5667

Issued in Washington, D.C., on December 3, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

St. Lawrence Gas Company, Inc.

[ERA Docket No. 84-13-NG]

Order Authorizing an Increase in the Daily Volumes of Natural Gas Imported From Canada

DOE/ERA Opinion and Order No. 64

December 3, 1984.

I. Background

On October 10, 1984, St. Lawrence Gas Company, Inc. (St. Lawrence) filed an application to amend its existing import authorization to increase its maximum daily volumes of natural gas to be imported from 43,000 Mcf to 50,000 Mcf during its contract year ending October 31, 1985. St. Lawrence is an intrastate distribution system serving residential, commercial, and industrial customers in St. Lawrence County, New York, near the Canadian border. The gas will be imported from Niagara Gas Transmission Limited (Niagara) on an interruptible, best-efforts basis at a price of $4.40 (U.S.) per MMBtu.

Under its current authorization granted in DOE/ERA Opinion and Order No. 33,[1] St. Lawrence may import up to 9.7 Bcf of natural gas on an annual basis and a daily maximum of 43,000 Mcf from an affiliate, Niagara, a Canadian corporation which purchases its gas from TransCanada Pipelines Limited (TransCanada).

In its application, St. Lawrence furnished a copy of an agreement dated August 29, 1984, in which TransCanada agreed to supply Niagara upto 10,000 Mcf per day of additional gas on an interruptible, best-efforts basis for the contract year ending October 31, 1985. The contract provides for a maximum volume of approximately 200,000 Mcf of additional gas, and is designed specifically to accommodate the additional daily volumes requested by St. Lawrence. No other provisions of the existing import authorizaion are changed.

St. Lawrence retains its ability under its existing contract to take any daily volume up to the contract maximum without penalty and continues to have no take-or-pay or minmum annual bill

[1] OE/ERA Opinion and Order No. 33, issued June 22, 1981, in ERA Docket No. 80-11-NG, *St. Lawrence Gas Company Inc.*, (1 ERA 70,532, *Federal Energy Guidelines).*

obligations. Volumes will be purchased from Niagara at $4.40 (U.S.) per MMBtu unless the gas qualifies for the Volume Related Incentive Price (VRIP) at $3.40 (U.S.) per MMBtu.

St. Lawrence asserts that the improved marketability of its gas in relation to alternative fuels, primarily imported fuel oil, has demonstrated a need for increased daily volumes to fully satisfy all its customers' anticipated demands during the coming year. Further, the applicant states that under its current approved method of monthly volume allocation for the Canadian VRIP program, the requested increased daily volumes can be expected to increase the volumes to which the lower $3.40 per MMBtu price can be applied, resulting in greater savings to its customers. The applicant asserts that this could result in an average unit cost of gas lower than $4.40 (U.S.) per MMBtu for those months in which takes exceed the pertinent base quantity.

In support of its application, St. Lawrence states that the requested increase in the authorized daily maximum would enable it to satisfy fully the demands for firm service and for expanded interruptible loan when supplies are available during the forthcoming contract year. The applicant asserts that, due to increased marketability of its gas in its service area, it estimates that, unless the requested increase in daily volumes is authorized, it will be required to curtail service to interruptible customers during possibly 15 to 20 days of the 1984–85 winter heating season. Without the proposed increase, those interruptible customers are likely to shift to imported fuel oil at approximately $5.13 per MMBtu equivalent (compared to about $4.32 per MMBtu for gas) during the curtailment period and possibly beyond.

II. Interventions and Comments

Notice of St. Lawrence's application was issued on October 16, 1984, and published in the **Federal Register** on October 23, 1984,[2] inviting protests, motions to intervene, or notices of intervention and written comments. The notice provided a 30-day public response period ending November 23, 1984. No responses were received.

III. Decision

The St. Lawrence application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." [3] The Administrator is guided by the Secretary of Energy policy relating to the regulation of natural gas imports.[4] Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test. The need for the import and the security of the import supply are other considerations.

No single element of an import arrangement determines its competitiveness. Rather, each arrangement is considered in its entirety. Here, the applicant only increases its authorized daily-take potential and will continue to incur no take-or-pay or minimum bill obligations in connection with this import. The volumes will be imported on a best-efforts, interruptible basis, and only to the extent that St. Lawrence needs such gas. This flexibility will ensure that the gas will only be imported when needed and if the price is competitive. Furthermore, this arrangement will enable St. Lawrence to meet the seasonal needs of all its customers including those with interruptible service. We note finally that the requested increased daily import requires the use of only existing transmission facilities.[5]

Overall, this import arrangement is reasonable, flexible and market competitive when viewed as a whole, and thus complies with the policy guidelines. Furthermore, no member of the public came forward to contend otherwise. St. Lawrence has satisfactorily demonstrated that its imported gas is competitive and that the requested increased in maximum authorized daily volumes will enable it to fully respond to the anticipated needs of its market.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by St. Lawrence is not inconsistent with the public interest and thus should be granted.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is hereby ordered that:

A. Ordering paragraph A of DOE/ERA Opinion and Order No. 33 issued June 22, 1981, is hereby amended to authorize St. Lawrence Gas Company, Inc. (St. Lawrence) to increase the daily volumes of natural gas imported from Canada from 43,000 Mcf to no more than 50,000 Mcf per day during the period November 1, 1984 to October 31, 1985.

B. St. Lawrence is hereby authorized to import the volumes authorized in Ordering Paragraph A above at a unit price not to exceed $4.40 (U.S.) per MMBtu.

Issued in Washington, D.C. on December 3, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 84-32057 Filed 12-7-84; 8:45 am]

BILLING CODE 6450-01-M

[2] 49 FR 42615, October 23, 1984.

[3] 15 U.S.C. 717b.

[4] 49 FR 6684, February 22, 1984.

[5] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application is not a Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

[Docket PP–78EA]

Issuance of Electricity Export Authorization; Minnesota Power & Light Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Issuance of an order authorizing new exports of electricity (Docket PP–78EA) to Canada by Minnesota Power & Light Company.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has issued an order authorizing the Minnesota Power & Light Company (MPL) to export up to 130 megawatts (MW) of electrical power to Ontario Hydro (OH) in Canada. This power will be delivered to OH over MPL's 115 kilovolt (kV) international transmission line. The maintenance and operation of this line has been authorized by Presidential Permit PP–78.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA–033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202)252–5935

Lise Courtney M. Howe, Office of Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Forrestal Building, Mail Stop 6A–141, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202)252–2900.

SUPPLEMENTARY INFORMATION:

Order Authorizing New Exports of Electricity to Canada

On January 27, 1982, the MPL filed an application with the Economic Regulatory Administration in Docket PP–78EA, pursuant to section 202(e) of the Federal Power Act, to transmit electric energy from the United States to Canada.

Under the application filed in Docket PP–78EA, MPL requested authorization to export electrical power to OH in Canada. Electricity exchanges will be made in accordance with the terms and at the rates set forth in the Capacity and Electric Energy Exchange Agreement (the Agreement) between MPL and OH, dated January 15, 1982, a copy of which was filed as Exhibit A of the application. The Agreement provides for the export of electricity being generally limited to emergency situations. Pursuant to the Agreement no exports need be made unless the electrical needs of MPL's customers and other neighboring utilities are met. Any sales of energy on a nonemergency basis would also be limited to times when MPL has excess generating capacity not necessary for service to other area customers or utilities.

Any electrical power exported by MPL will be delivered to OH over MPL's 115 kV transmission line connecting a substation in International Falls, Minnesota, U.S.A., to a substation in Fort Francis, Ontario, Canada.

The above-mentioned transmission line is authorized by and subject to a Presidential permit issued by the Administrator of the ERA on November 29, 1984, in ERA Docket PP–78.

Notice of this application was given on October 7, 1982 (47 FR 44386), stating that any person desiring to be heard or to make any protest with reference to this application should on or before November 7, 1982, file with the ERA a petition to intervene or protest in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.10). No petition or protest or request to be heard in opposition to the granting of the request made in this application was received.

ERA Administrator Finds: (1) The proposed transmission of electric energy from the United States to Canada as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Department of Energy. A staff analysis and recommendation in support of this finding have been made a part of the Docket and are available upon request.

(2) The period of public notice given in this matter was reasonable.

ERA Administrator Orders: (1) MPL hereby is authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the application and the Capacity and Electric Energy Exchange Agreement filed with the ERA on January 27, 1982, subject to the provisions of this Order.

(2) The electric energy which MPL hereby is authorized to transmit from the United States to Canada shall be transmitted over facilities specified in the Presidential permit in ERA Docket PP–78, issued by the Administrator on November 29, 1984.

(3) The authorization herein granted may be modified from time to time or terminated by further order of the ERA Administrator, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permit referred to in paragraph (2) above.

(4) MPL shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders adopted or issued by the Department of Energy.

(5) MPL shall make and preserve full and complete records with respect to the sale, purchase or exchange of electrical capacity and energy with OH. MPL shall furnish a report to ERA annually, on or before February 15, showing the gross amount of electricity delivered and received, the maximum hourly rate of power flow in each direction, and the consideration received and paid therefor during each month of the preceding calendar year.

(6) The following conditions apply to the export of electricity by MPL utilizing the facilities authorized by Presidential Permit PP–78.

(a) The maximum rate of power transfer from MPL to Canada shall be limited to 40 MW until such time as the transfer limit is increased by appropriate actions taken by MPL. At such time as this transfer limit is increased and upon written notice to DOE stating such, MPL's maximum allowable rate of power transfer to Canada shall be this new increased value. However, at no time shall the maximum rate of power transfer between MPL and Canada exceed 130 MW.

(b) The export of power from MPL to the OH shall not cause the spinning reserves on the MPL system to fall below the Mid-Continent Area Power Pool's (MAPP) spinning reserve criteria that is applicable at the time of the export.

(c) If all or part of MPL's spinning reserve is being provided by other MAPP members, sufficient transmission tie line capability must be maintained so that MPL may avail itself of those reserves if needed.

(d) MPL annually will submit to ERA a copy of its resource plan filed with MAPP.

(e) Upon a determination by MPL that an emergency exists in the OH electric system, electricity may be exported for a period of up to 24 hours at a rate in excess of that set forth in subparagraph (a) above, provided that in so doing, the reliability of electric supply in the United States is not jeopardized. If such an emergency situation occurs in the OH system, MPL shall submit to ERA a detailed description of the event which initiated the emergency not later than thirty (30) days after such an occurrence. Further extensions beyond the 24-hour period may be granted by ERA upon request by MPL.

Issued in Washington, D.C., November 29, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 32081 Filed 12–7–84; 8:45 am]

BILLING CODE 64-6450-01-M

[Docket No. PP–78]

Record of Decision and Issuance of Presidential Permit to Minnesota Power & Light Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Publication of the Record of Decision and notice of issuance of Presidential Permit PP–78 to Minnesota Power & Light Company (MPL) for the operation and maintenance of one 115 kilovolt (kV) electric transmission line which crosses the U.S. Canadian international border at International Falls, Minnesota.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has issued Presidential Permit PP–78 to MPL pursuant to Executive Order 10485, as amended, authorizing the operation and maintenance of one 115 kV transmission line at the international border of the United States and Canada. This line will be used to provide emergency electrical supply from Ontario Hydro to the Boise Cascade Corporation as well as the city of International Falls, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA–033, 1000 Independence Avenue, SW., Washington, D.C. 120585, (202) 252–5935

Lise Courtney M. Howe, Office of Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Forrestal Building, Mail Stop 6A–141, 1000 Independence Avenue, SW., Washington, D.C. 120585, (202) 252–2900

SUPPLEMENTARY INFORMATION: On November 29, 1984, pursuant to Executive Order 10485, as amended by Executive Order 12038, the Administrator of ERA issued Presidential Permit PP–78 to MPL for the operation and maintenance of one 115 kV transmission line which will cross the U.S.-Canadian border at International Falls, Minnesota. The Record of Decision for this action is issued pursuant to the Regulations of the Council of Environmental Quality (40 CFR Part 1505 and 1506) and Inplementation Procedures of the U.S. Department of Energy (10 CFR Part 1021).

Decision

DOE has issued a Presidential permit to MPL to operate and maintain electric transmission facilities at the international border between the United States and Canada. This Permit is being issued pursuant to Executive Order 10485, as amended.

Project Description

MPL proposes to operate and maintain at the international border of the United States and Canada one 115 kV transmission line. The line will be used to provide energency electrical supply from Ontario Hydro to the Boise Cascade Corporation as well as the city of International Falls, Minnesota. The facilities authorized by this Permit are more specifically shown and described in the application filed by MPL with the DOE on January 27, 1982, in Docket No. PP–78.

Description of Alternatives

DOE has determined that the action proposed by MPL in its application is the most viable alternative for providing electric service to the region in question.

Basis for Decision

If DOE determines that the issuance of a Permit is consistent with the public interest, DOE is authorized, pursuant to Executive Order 10485 as amended, by Executive Order 12038, to grant a Presidential permit to construct, connect, operate and maintain a transmission circuit crossing an international border.

Considerations in the Implementation of the Decision

DOE has concluded that the project proposed by MPL satisfies the four criteria (environment, reliability, national security and international trade considerations) presently used to determine consistency with the public interest. On March 27, 1984, after a review of the subject application with respect to the requirements of the National Environmental Policy Act of 1969 (NEPA), DOE determined that the issuance of the Permit would not constitute a major Federal action significantly affecting the quality of the human environment, as defined in section 102 of NEPA, 42 U.S.C. *et seq.* Accordingly, neither an environmental assessment nor an environmental impact statement was required and the conditions of the NEPA were satisfied.

On July 18, 1984, DOE concluded that the proposed electric transmission line will not impact adversely the reliability of either the MPL system or any other electric utility system in the region. Finally, in satisfaction of the final two criteria and pursuant to Executive Order 10485, as amended, the Department of State and the Department of Defense must concur on DOE's decision to issue the Permit. The Department of State concurred on September 12, 1984, and the Department of Defense concurred on September 18, 1984.

A copy of the Presidential permit is available for public inspection and copying at the DOE Freedom of Information Library, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 29, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 84–32082 Filed 12–7–84; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 84–04–NG]

Valero Transmission Co.; Order Granting Authorization to Export Natural Gas to Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on November 28, 1984, the ERA Administratror issued on Opinion and Order granting Valero Transmission Company authority to export natural gas to Petroleos Mexicanos (Pemex). The approval authorize Valero to export up to 6,000 Mcf of natural gas per day, commencing on the effective date of the gas sales contract with Pemex and continuing on a year-to-year basis from that date for an indefinite period.

A copy of the Opinion and Order is attached.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, S.W. Washington, D.C., 20585, (202) 252–9022

Diana J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667

Issued in Washington, D.C., on November 28, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

UNITED STATES OF AMERICA

Department of Energy Economic Regulatory Administration

[ERA Docket No. 84–04–NG]

Valero Transmission Co. DOE/ERA Opinion and Order No. 55A; Order Granting Authorization to Export Natural Gas to Mexico

November 28, 1984.

I. Background

On April 24, 1984, Valero Transmission Company (Valero) and Valero Industrial Gas Company (VIGC) filed a joint application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for authorization to export up to 6,000 Mcf per day of natural gas to Petroleos Mexicanos (Pemex). The applicants requested expedited consideration of their filing.

According to the application, floods on the Rio Grande River during 1980 had

A staff analysis and recommendation in support of this finding have been made a

damaged pipeline facilities which had been previously used to export natural gas to Mexico at the international border between Eagle Pass, Texas, And Piedras Negras, Coahuila, Mexico, The International Boundary and Water Commission had agreed, because of agricultural requirements for the water after April 28, 1984, to control the flow of the river only until that date to permit repair of the damaged facilities. If water levels were raised prior to effecting repairs, they would have to be delayed until late 1984. The applicants sought emergency, expedited consideration in light of these time contraints and because Pemex wanted to avoid any recurrence of an earlier supply shortage when Pemex had been unable to serve the town of Piedras Negras during a 10-day period in December 1983.

Based on the above facts, the ERA issued an emergency order on April 27, 1984, granting Valero and VIGC authorization to export natural gas to Mexico in advance of public notice.[1]

An earlier authorization had lapsed in 1981 when filings by Valero regarding loss of pipeline facilities were construed to be notification of the termination of its export operation. The emergency order authorized the applicants to export up to 6,000 Mcf of natural gas per day at a unit price of $4.40 per MMBtu, or such other price as the ERA authorizes for imports from Mexico, for a period not to exceed six months or until a final determination was made on the application, whichever was sooner. No gas has been exported under the emergency authorization.

The applicants were also ordered to file with the ERA their proposed contract with Pemex as soon as it became available. The contract was filed on November 1, 1984, by Valero, which is now the sole applicant since VIGC is not a party to the contract with Pemex. The primary term of the contract between Valero and Pemex will commence on the effective date and end on the first anniversary of the effective date, and then remaining full force and effect from year to year unless terminated by either party as provided in the contract. The effective date will occur when all proper State and Federal approvals have been granted.

Under the contract Valero may export up to 6,000 Mcf of natural gas per day at a price of $4.40 per MMBtu. The contract also has a take-or-pay requirement of 1,000 Mcf per day which determines the minimum monthly payment. Gas previously paid for but not taken is called "credit gas," and gas delivered above the minimum in succeeding months during the remainder of an accounting year, which ends on the anniversary of the effective date, is delivered without further payment until the "credit gas" is exhausted.

During the first year of the contract, Pemex has a transportation option whereby, if necessary regulatory approvals and other third party pipeline capacity can be obtained, Valero will transport on a firm basis, subject to available pipeline capacity, a maximum of 6,000 Mcf per day of Mexican natural gas for Pemex. If Pemex elects this option, it will enter into a transportation agreement with Valero and the gas sales contract will be suspended until such time as the transportation agreement may be terminated. However, Pemex may request deliveries under the gas sales contract in the event of a temporary interruption of the Mexican gas being transported. Under these conditions the minimum take-or-pay requirement will not apply. On or after the first year of the contract, Valero may terminate the transportation option with 30 days's prior written notice to Pemex.

II. Interventions and Comments

The ERA issued a notice of the joint application and the ERA emergency order granting authorization to export natural gas to Mexico on May 4, 1984.[2] The notice invited protests and petitions to intervene, which were to be filed by June 8, 1984. None was received.

III. Decision

The application to export natural gas had been evaluated in accordance with the administrator's authority to determine if the proposed export meets the public interest requirements of Section 3 of the Natural Gas Act. The Administrator is guided by Delegation Order No. 0204–111 under which domestic need for the gas is the primary consideration for meeting the public interest test, although other matters may be appropriate to consider in a particular case.[3]

No protests, complaints or comments alleging need or raising other issues were filed by consumers or other parties. Furthermore, it is noted that Border Gas, Inc., an importer of Mexican gas from Pemex for resale in the same market area from which Valero's volumes will be exported, agreed to a recent suspension of deliveries by Pemex because the imported gas is now not needed.[4] Therefore, it is concluded that there is no reason for concern about U.S. need for this small supply.

Consideration of the place of exit is not an issue in this instance. The place of exit invokes the restoration of facilities at a previously existing point of export.

In view of the lack of domestic need for the gas to be exported and after taking into consideration all other information in the record of this proceeding, I find that the authorization requested by Valero is not inconsistent with the public interest and should be granted.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Valero Transmission Company (Valero) is hereby authorized to export up to 6,000 Mcf of natural gas per day to Petroleos Mexicanos (Pemex) at the international border between Eagle Pass, Texas, and Piedras Negras, Coahuila, Mexico, commencing on the effective date of the gas sales contract with Pemex and continuing on a year-to-year basis from that date for an indefinite period, in accordance with the terms and conditions of said contract with Pemex, dated October 31, 1984.

B. Valero shall notify the ERA in writing of the effective date of the gas sales contract with Pemex within two weeks after that date is known.

C. Valero shall submit to the ERA within two weeks after the annual anniversary of the effective date a report showing the total annual quantities exported and the average unit price charged during that year.

Issued in Washington, D.C., November 28, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 84-32088 Filed 12-7-84; 8:45 am]

BILLING CODE 6450-01-M

[1] 1 ERA ¶ 70,988, *Federal Energy Guidelines*.

[2] 49 FR 19698, May 9, 1984.

[3] 49 FR 6690, February 22, 1984.

[4] Border notified the ERA of its agreement to waive contract notice provisions applicable to the suspension in a letter dated October 24, 1984, from Paul W. Fox, attorney for Border, to Rayburn Hanzlik Administrator, ERA.

[Docket No. ERA–FC–84–024; OFC Case No. 57125–9219–21–24]

Acceptance of Petition for Exemption and Availability of Certification by Texasgulf, Inc. for its Newgulf, TX, Facility

AGENCY: Economic Regulatory Administration, Department of Energy.

SUMMARY: On October 25, 1984, Texasgulf, Inc. (Texasgulf) filed a petition with the Economic Regulatory

Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for a new cogeneration facility to be located near Newgulf in Wharton County, Texas. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed electric power and steam plant facility (hereafter referred to as Newgulf) will consist of a gas turbine generator and a heat recovery boiler. The turbine/generator package includes a gas turbine with an output capacity of 75,260 kw of electric power under normal operating conditions. The unit will be equipped to burn only natural gas. The heat recovery boiler will use exhaust heat from the turbine to produce steam for Texasgulf's sulphur mining operation. The electric power from the generator will be delivered to the Houston Lighting & Power Company (HL&P); HL&P is interconnected with the Electric Reliability Council of Texas regional grid. Accordingly, Newgulf will be selling more than 50 percent of the annual electric power generation of the turbine generator to HL&P making the cogeneration facility an electric powerplant in accordance with the definition of "electric generating unit" contained in 10 CFR 500.2.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63.

ERA hereby accepts the filing of the petition for the permanent cogeneration exemption as adequate for filing. ERA retains the right to request additional relevant information from Texasgulf at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, D.C. 20585, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any such extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATE: Written comments are due on or before January 24, 1985. A request for a public hearing must also be made within this 45 day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–007, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA–FC–84–024 should be printed on the outside of the envelop and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–073, Washington, D.C. 20585. Phone (202) 252–6002

Steven E. Ferguson, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6D–033, Washington, D.C. 20585. Phone (202) 252–6947

SUPPLEMENTARY INFORMATION: This proposed cogeneration facility will be operated by Texasgulf Chemicals Company, a division of Texasgulf Inc., at its sulphur mine near Newgulf in Wharton County, Texas. The facility will produce steam to be used in the sulphur mining process and electricity to be sold to HL&P. Currently, ten gas-fired boilers provide the thermal energy required by the mine.

The facility will consist of a gas turbine generator and a heat recovery boiler. The gas turbine generator will be base-loaded at full output during normal operation. The turbine generator's average output at full load will be 75,200 kw, an equivalent of 256.9 MM BTU/hr. The turbine generator is expected to operate at full capacity 350 days a year, with scheduled maintenance to be performed during HL&P off-peak periods in the Spring or the Fall. The unit will be equipped to burn only natural gas.

The heat recovery boiler burns no fuel as it entirely relies upon the turbine generator's exhaust heat. The heat recovery boiler will be supplemented by one of the ten existing gas-fired boilers. The heat recovery boiler is rated at 391,400 lbs/hr for 135 psi steam and 23,500 lbs/hr for 285 psi steam. The 285 psi steam will be injected into the turbine for NO_x control. The heat recovery boiler will supply approximately 90% of the mine's steam requirements and will operate on the same schedule as the turbine generator. Nine of the ten existing boilers will be in stand-by service when the turbine-generator is operating. The tenth boiler will supplement the heat recovery boiler. The supplemental boiler will operate at an average output rate of 50 MM BTU/hr. Additional existing boilers will be used only during the turbine generator's maintenance shutdowns.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37b provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Texasgulf has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of Newgulf, where the calculation of savings is in accordance with 20 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in Newgulf, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Texasgulf has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.3.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR

20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Texasgulf is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on November 27, 1984

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-32094 Filed 12-7-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-36-000]

ANR Pipeline Co.; Tariff Filing

December 5, 1984.

Take notice that on November 30, 1984, ANR Pipeline Company (ANR) tendered for filing Second Revised Sheet No. 667A under Rate Schedule X-64 of First Revised Volume No. 2 of its FERC Gas Tariff, to become effective January 1, 1984.

ANR states that this filing has been made to reflect the redetermination of the monthly charge to the High Island Offshore System (HIOS) for services rendered by ANR in accordance with a service agreement between ANR and HIOS dated August 4, 1977, and authorized by Commission Order issued July 6, 1978, at Docket No. CP78-134.

Any person desiring to be heard or to protest said filing should file a petition to intervene or to protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,

Acting Secretary.

[FR Doc. 84-32108 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-37-000]

Aquenergy System, Inc.; Petition For Declaratory Order

December 4, 1984.

Take notice that on August 16, 1984, Aquenergy System, Inc. (Petitioner) filed a petition pursuant to 18 CFR 385.207(a)(2) requesting that the Commission issue an order declaring that Petitioner's Apalache Project, FERC No. 6759, is not subject to the Commission's jurisdiction under the Federal Power Act (Act), since it will not involve the construction of a dam on a navigable waterway, will not require any post-1935 construction, and will not affect the interest of interstate or foreign commerce pursuant to section 23(b) of the Act. Therefore, it is not required to be licensed or exempted from licensing before the Petitioner may restore, operate, or maintain the project. The project is located on the South Tyger River, near the Village of Apalache, in Spartanburg County, South Carolina. Correspondence concerning this petition should be addressed to: Mr. Ralph Walker, Jr., President, Aquenergy Systems, Inc., P.O. Box 8991, Greenville, South Carolina 29604 and Mr. Bradford W. Wyche, Esquire, Wyche, Burgess, Freeman & Parham, P.A., P.O. Box 10207, Greenville, South Carolina 29603.

As described in the petition, the project was constructed by Arlington Cotton Mills in 1902 to supply power to its mills along the South Tyger River. The project was sold to J. P. Stevens, who operated the project until the late 1950's. On February 21, 1983, the Petitioner purchased the project from J. P. Stevens & Company, Inc. The original project consisted of a reservoir, a stone masonry dam, approximately 39.5 feet high and 468 feet long, 2 penstocks, and a powerhouse containing 2 generating units rated at 35 kW and 550 kW, respectively. The Petitioner has made the following modifications to the project: removed the original generating units and powerhouse, constructed a new powerhouse on the foundation of the original powerhouse and installed one generating unit rated at 400 kW, and constructed a 12.5-kV, ⅛-mile-long transmission line.

The Petitioner was issued a minor license for the Apalache Project on August 21, 1984, for a period of 40 years. The Petitioner appealed the order issuing the license on September 21, 1984, on the grounds that the Commission lacks jurisdiction over the project under Part I of the Act.

Comments, Protests, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all the protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 11, 1985. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32107 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-4-000]

Apache Powder Company; Application for Temporary and Interim Relief From Incremental Pricing

December 4, 1984.

On November 1, 1984, Apache Powder Company filed with the Federal Energy Regulatory Commission a petition for an adjustment under section 206(d) of the Natural Gas Policy Act (NGPA) and § 385.1104 of the Commission's rules of practice and procedure. The petition is for temporary incremental pricing relief for twelve months for non-exempt natural gas purchased by Apache from El Paso Natural Gas Company and consumed at Apache's industrial chemicals and explosives manufacturing facility near Benson, Arizona.[1] Apache further seeks interim relief pending the Commission's action on its request for temporary relief. It has also petitioned under § 381.106 of the Commission's regulations for waiver of the filing fee prescribed by § 381.401 of such regulations.

Apache is petitioning for relief on the basis of severe hardship. In this connection, it states that it has experieneed deterioration in its markets, rapidly escalating fuel and feedstock costs, difficulties relative to environmental requirements, and design problems associated with its nitric acid plant, all resulting in severe economic and technological pressures. It further states that it has taken all realistic measures short of closure to cope with its difficulties; that the relief it seeks is essential to cost reduction; and that such relief is also very important to the town of Benson, since Apache is one of its principal employers.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Paractice and Procedure.[2] Any person desiring to participate in this proceeding shall file a petition to intervene in accordance with Rule 1105. All petitions to intervene must be filed within fifteen days after the publication of this notice in the Federal Register.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32109 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[1] Title II of the NGPA deals with incremental pricing. Section 206, including section 206(d), provides for exemptions to the application of incremental pricing under sections 201 and 202. 18 CFR 282.206(b), 385.1101(a)(2) and 385.1106 implement section 206(d) exemption relief.

[2] 18 CFR 385.1101-385.1117.

[Docket Nos. TA85-1-12-000 and TA85-1-12-001]

Distrigas Corporation, Distrigas of Massachusetts Corporation; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

December 5, 1984.

Take notice that Distrigas Corporation (Distrigas) on November 29, 1984, tendered for filing Sixteenth Revised Sheet No. 1 to its FERC Gas Tariff and Distrigas of Massachusetts Corporation (DOMAC) on the above date tendered for filing Sixteenth Revised Sheet No. 3A.

Sixteenth Revised Sheet No. 1 and Sixteenth Revised Sheet No. 3A are being filed pursuant to Distrigas' and DOMAC's purchased LNG cost adjustment provision set forth in their respective tariffs. The Distrigas rate change is being filed to reflect in its sales rate to DOMAC a redetermination (increase) of the price paid for the purchase of LNG from its supplier SONATRACH in accordance with the Distrigas-SONATRACH Agreement for Sale and Purchase of Liquefied Natural Gas, together with and amortization over the six-month period, January 1, 1985 through June 30, 1985, of the balance of the unrecovered purchased LNG cost account.

The DOMAC rate change is being filed to reflect the Distrigas rate change in DOMAC's rates for resale to its distribution customer companies and the amortization over the six-month period, January 1, 1985 through June 30, 1985, of the balance in DOMAC's unrecovered purchased LNG cost account and the GRI Surcharge.

Distrigas and DOMAC request that the proposed tariff sheets become effective January 1, 1985, to coincide with the change in LNG costs from SONATRACH.

A copy of this filing is being served on all affected parties and interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32110 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-2-000 and TA85-1-2-001]

East Tennessee Natural Gas Company; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

December 5, 1984.

Take notice that on November 30, 1984, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Tenth Revised Sheet No. 4, Eighth Revised Sheet Nos. 5 and 6 to Original Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1985.

East Tennessee states that the purpose of these tariff sheets is to reflect various rate adjustments pursuant to the General Terms and Conditions of its tariff as follows:

(1) PGA Rate Adjustments pursuant to Sections 22.2 and 22.3;

(2) Estimated Incremental Pricing Surcharges pursuant to Section 28.2.

East Tennessee states that copies of this filing have been mailed to all affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32111 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-15-000 and TA85-1-15-001]

Mid Louisiana Gas Company; Proposed Change in Rates

December 5, 1984.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on Nov. 30, 1984, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Fifty-First Revised Sheet No. 3a and Eleventh Revised Sheet No. 3c to become effective January 1, 1985.

Mid Louisiana states that the purpose of the filing of Fifty-First Revised Sheet No. 3a is to reflect a Purchased Gas Cost Current Adjustment and a Purchased Gas Cost Surcharge resulting in a rate after current adjustment of 393.119. The filing is being made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff, and the Purchased Gas Cost Current Adjustment reflects rates payable to Mid Louisiana's suppliers during the period January 1, 1985 through July 31, 1985.

Mid Louisiana requested a waiver of Section 19.3 of the General Terms and Conditions of Mid Louisiana's FERC Gas Tariff and Section 154.38(d)(4)(iv)(a) of the Commission's Regulations to allow the rates to become effective on January

1, 1985, which is one month early. Mid Louisiana asserts that this would benefit its customers by allowing its reduced rates to go into effect as soon as possible so that its customers will receive the benefit during as must of the winter heating season as possible.

Copies of the filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32112 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-5-000 and TA85-2-5-001]

Midwestern Gas Transmission Company; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

December 5, 1984

Take notice that on November 30, 1984 Midwestern Gas Transmission Company (Midwestern) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective January 1, 1985:

Original Volume No. 1

Twelfth Revised Sheet No. 5
Eight Revised Sheet No. 7

Midwestern states that the purpose of the revised tariff sheets is to reflect adjustments to its rates pursuant to rate adjustment provisions of the General Terms and Conditions of its tariff as follows:

(1) PGA Rate Adjustments for the Southern System pursuant to Section 2 and 3 of Article XVII and

(2) Estimated Incremental Pricing Surcharges for the Southern System pursuant to Section 2 of Article XXII.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32113 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-83-006

Panhandle Eastern Pipe Line Company; Proposed Change in FERC Gas Tariff

December 5, 1984

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on November 30, 1984 tendered for filing Twenty-Fifth Revised Sheet No. 47 to its FERC Gas Tariff, Original Volumn No. 1.

Panhandle states that such change is made to provide for a new service agreement with the City of Gruver dated November 12, 1984. This sale contract replaces the February 1, 1980 contract with Hi-Plains Utility, Inc. (Hi-Plains) which assigned its contract to the City of Gruver. Panhandle proposes that this sheet become effective January 1, 1985 as this is the effective date of the new gas sales contract with the City of Gruver.

A copy of this filing has been sent to Panhandle's jurisdictional customers and to the respective State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32115 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-8-000 and TA85-1-8-001]

South Georgia Natural Gas Company; Proposed Changes FERC Gas Tariff

December 4, 1984.

Take notice that on November 29, 1984, South Georgia Natural Gas Company (South Georgia) tendered for filing Thirtieth Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information is being filed with a proposed effective date of January 1, 1985, pursuant to the Purchased Gas Cost Adjustments provisions set out in Section 14 of South Georgia's tariff.

South Georgia states that its Thirtieth Revised Sheet No. 4 reflects an increase of 4.25¢ per MMBtu in the Current Adjustment and a decrease of 5.47¢ per MMBtu in the Surcharge Adjustment presently in effect. The proposed Surcharge Adjustment is (.14¢) per MMBtu.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before December 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32116 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-84-000]

Tenngasco Corp., et al.; Application for Authorization Under Part 157, Subpart F and Part 284 of the Commission's Regulations With Respect to Reporting Requirements and Request for Expedition

December 4, 1984.

Take notice that on November 26, 1984, Tenngasco Corporation (Tenngasco) and Tenneco Oil Company, Houston Oil and Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., TINCO, Ltd., and Tenneco West, Inc. (Tenneco Producers) filed an Application pursuant to 18 CFR 385.204, 157.206(a) and 284.5 for certain authorities to assume the reporting requirements imposed upon transporting pipelines for Part 157, Subpart F transportation and for Part 284 transportation as more fully described in the Application which is on file with the Commission and open to public inspection. The Applicants also request expedited consideration of their request.

Applicants state that their considerable experience in the spot market to date demonstrates that the Commission's Part 157, Subpart F and Part 284 reporting requirements are not compatible with the spot market and hinder the efficient transportation of natural gas which is vital to successful operation of the spot market.

Tenngasco, as agent on behalf of spot market customers, intends to enter into blanket transportation agreements with pipelines in order to improve effective management of these spot market transportation arrangements, facilitate more efficient transportation, resolve certain contractual difficulties, and hopefully reduce for participating pipelines the overall burden of complying with the Commission's reporting regulations. The authorizations requested, it is asserted, are designed to render the Part 157, Subpart F and Part 284 reporting requirements compatible with consolidating spot market transportation arrangements into single blanket transportation agreements with each pipeline. Absent such authorization, efficient operation of the spot market will not be possible.

Applicants emphasize that the Commission will continue to receive the same data it receives under current regulations if the authorizations requested are granted. Further, it is asserted, full responsibility for compliance with the reporting requirements must lie with Tenngasco in order to encourage pipelines to enter into blanket transportation agreements and permit Tenngasco to file transporting pipeline reports on their behalf. The shifting of such responsibility to Tenngasco by the Commission will assure transporting pipelines that liability, if any, for non-compliance with the reporting requirements will be borne by Tenngasco. Absent such a finding by the Commission, transporting pipelines may be reluctant to shift reporting responsibilities to Tenngasco.

Applicants further assert that granting of the authorizations requested will relieve transporting pipelines of a significant reporting burden, streamline reporting procedures, eliminate bureaucratic, administrative and contractual delay, and, in general, substantially improve the efficient operation of the spot market. Such authorizations should also assist the Commission by reducing the total number of reports it must review in the exercise of its regulatory responsibilities, and by establishing one source, i.e., Tenngasco, for data on Tenneco Producer spot market transactions.

Applicants would emphasize that no Commission mandated scheme of contract carriage or market access is sought by this Application. A decision by an interstate pipeline, intrastate pipeline or local distribution company to have gas transported on its behalf, or to provide transportation services as a participating pipeline, or for pipelines to enter into blanket transportation agreements with Tenngasco, is purely voluntary. Rather, Applicants are seeking to further the efficient operation of the spot market.

Specifically, Applicants request the Commission:

1. to authorize Tenngasco to file:

(a)(1) annual reports (18 CFR 157.207(a)); (2) subsequent reports (18 CFR 157.207(b), 284.106(b) and 284.126(b)); (3) final reports (18 CFR 157.207(c), 284.106(d) and 284.126(d)); (4) other reports (18 CFR 157.207(d)); (5) initial full reports (18 CFR 284.106(a) and 284.126(a)); and (6) extension reports (18 CFR 284.106(c) and 284.126(c)) in lieu of the filing of such reports by interstate and intrastate pipelines who, pursuant to a Part 157, Subpart F blanket certificate, Section 311, or Order No. 60, transport gas sold by Tenneco Producers;

(b) subsequent reports reflecting any new delivery or redelivery points, any additional transporting pipelines, any change in transporting pipeline transportation rates, any change in estimated total and maximum daily quantities of natural gas to be transported, and any other significant changes, within thirty (30) days after the close of the month in which such changes occur for gas sold by Tenneco Producers and transported pursuant to a Part 157, Subpart F blanket certificate, Section 311, or Order No. 60;

2. To impose full responsibility for compliance with the reporting requirements of 18 CFR 157.207, 284.4, 284.106 and 284.126, upon Tenngasco, for gas sold by Tenneco Producers and transported pursuant to a Part 157, Subpart F blanket certificate, Section 311, or Order No. 60;

3. As to transporting pipelines, to the extent of the authorizations sought by Tenngasco and Tenneco Producers herein:

(a) to waive the reporting requirements of 18 CFR 157.207, 284.4, 284.106 and 284.126 for those transporting pipelines who, pursuant to a Part 157, Subpart F blanket certificate, Section 311, or Order No. 60, transport gas sold by Tenneco Producers and who would otherwise be required to comply with such reporting requirements, and

(b) to relieve transporting pipelines who, pursuant to a Part 157,Subpart F blanket certificate, Section 311, or Orde

No. 60, transport gas sold by Tenneco Producers, of any responsibility for compliance with the reporting requirements of 18 CFR 157.207, 284.4, 284.106 and 284.128; and

4. To waive the forty-eight (48) hour filing requirement of 18 CFR 284.4(b) with respect to transactions for which Tenngasco assumes the reporting requirements hereunder.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32117 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-265-008]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Filing

December 5, 1984.

Take notice that on November 30, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following proposed tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 2, to be effective August 15, 1984:

Second Revised Sheet No. 626
Third Revised Sheetd No. 628

Tennessee states that the purpose of these tariff sheets is to amend Rate Schedule X-45 as authorized by the Commission's August 15, 1984 order in this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32118 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-32-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1984.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on November 27, 1984, tendered for filing First and Second Revised Sheet Nos. 2541-A to its FERC Gas Tariff, Original Volume No. 2. The proposed effective dates of the tariff sheets are April 1 and November 1, 1984, respectively.

The tariff sheets provide for changes in the rates and fuel requirements under Transco's Rate Schedule X-248 constituting a transportation agreement dated November 22, 1982 between Transco and Brooklyn Union Gas Company.

The instant filing is being made to bring the charges for the subject rate schedule into conformity with Transco's charges for similar services as approved by Commission order dated August 30, 1984 and letter order dated October 18, 1984 in Docket No. RP83-137. Transco states that it only recently became aware that it did not have on file such approved rate and fuel requirement levels for this rate schedule.

Transco states that copies of the filing are being mailed to each of its jurisdictional customers and interested State Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or portest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32119 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP67-337-000]

Trunkline Gas Company; Change in Tariff

December 5, 1984.

Take notice that Trunkline Gas Company (Trunkline) on November 30, 1984, tendered for filing Third Revised Sheet No. 9-AL to its FERC Gas Tariff, Original Volume No. 1.

Trunkline states that this change is made to cancel Rate Schedule X-6. By Commission order dated November 23, 1979, in Docket No. CP77-18 (CP67-337), Trunkline's authority *inter alia*, to exchange natural gas with South Texas Natural Gas Gathering Company was terminated. Trunkline proposes an effective date of November 23, 1979.

A copy of this filing has been served on South Texas Gas Gathering Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32120 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-107-000]

Capco Financial Services, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 5, 1984.

On November 6, 1984, Capco Financial Services, Inc., 1111 East Tahquitz-McCallum Way, Suite 110, Palm Springs, California 92262 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility, which will consist of 40 wind turbine generators, each having a name plate capacity of 200 kilowatts, will be located in Riverside County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commisison, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32121 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-117-000]

Rapidan Redevelopment Limited Partnership; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 5, 1984.

On December 3, 1984, Rapidan Redevelopment Limited Partnership (Applicant), of 18305 Minnetonka Boulevard, Wayzata, Minnesota 55391, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5,000 kilowatt Rapidan Hydroelectric Project (P. 3071) will be located on the Blue Earth River in Blue Earth County, Minnesota. The facility will consist of an existing dam, reservoir and powerhouse and appurtenant facilities to annually generate an estimated 16,100 megawatt-hours. The primary energy source for the facility is hydro power. No other facilities using the same energy source and owned by the Applicant are located within one mile of the facility. Construction of the facility is expected to be completed on or about December 30, 1984.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32122 Filed 12-7-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board; Supply Subpanel of the Energy R&D Strategy Panel; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Supply Subpanel of the Energy R&D Strategy Panel (December 12, 1984) of the Energy Research Advisory Board as published in the issue of November 20, 1984 (49 FR 45779).

Issued at Washington, D.C., on November 30, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-32080 Filed 12-7-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $14,372.72 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Aztex Energy Company. The funds will be available to customers that purchased motor gasoline from Aztex during the period January 1, 1979 through December 31, 1979.

DATE AND ADDRESS: Applications for refund of a portion of the Aztex consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Aztex Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0032.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Aztex Energy Company which settled possible pricing and allocation violations with respect to the firm's sales of motor gasoline during the period January 1, 1979 through December 31, 1979. Under the terms of the Consent Order, $14,372.72 has been remitted by Aztex Energy Company and is being held in an interest-bearing escrow account pending determination of its proper distribution.

BILLING CODE 6717-01-M

submittal constitutes a complete filing.

Research Advisory Board as published

proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the Aztex Consent Order funds. The Proposed Decision and Order discussing the distribution of the Aztex consent order funds was issued on July 6, 1984. 49 FR 29665 (July 23, 1984).

The Decision and Order published with this Notice reflects an analysis of the comments received from interested parties. As the decision indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Applications will be accepted from customers who purchased motor gasoline from Aztex during the period January 1, 1979 through December 31, 1979. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: November 20, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 20, 1984.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Aztex Energy Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0032.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a Consent Order entered into with Aztex Energy Company (Aztex). The petition requests that the OHA formulate and implement procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations.

I. Background

Aztex is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Knoxville, Tennessee. The firm was subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR Part 211 and Part 212, Subpart F, until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). An ERA audit of Aztex's records revealed possible regulatory violations in the amount of $437,597.05 with respect to the firm's pricing of motor gasoline during the period January 1, 1979 through December 31, 1979 (the audit period). Additionally, the audit revealed that Aztec may have violated the Mandatory Petroleum Allocation Regulations during the same period by failing to supply certain of its base period customers with their adjusted base period allocations of motor gasoline. The alleged pricing violations were set forth in a Notice of Probable Violation (NOPV) issued to the firm by the ERA on May 8, 1980. A second NOPV, issued on May 9, 1980, set forth the alleged allocation violations. In order to settle all claims and disputes between Aztex and the DOE regarding the "specified transactions" which were the subject of the audit, Aztex and the DOE enterd into a Consent Order on October 7, 1981. The Aztex Consent Order refers to the ERA's allegations of pricing and allocation violations, but makes no findings of violation. Additionally, the Aztex Consent Order states that Aztex "does not admit that it committed such violations." Consent Order ¶ 4. In the Consent Order, Aztex agreed to remit $14,372.72 to the DOE. The Consent Order amount took into account a refund of $180,293.84 which Aztex had made to the marketplace prior to decontrol. *See* Consent Order ¶ 5. The Consent Order payment to the DOE was deposited in an interest-bearing escrow account for ultimate distribution by the DOE in accordance with applicable laws and regulations.

On July 6, 1984, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who were injured by Aztex's alleged regulatory violations in its sales of motor gasoline. *See Aztex Energy Co.*, Case No. HEF-0032 (July 6, 1984) (proposed decision), 49 FR 29665 (July 23, 1984). In the PDO, we described a two-stage process for distribution of the funds made available pursuant to the Aztex Consent Order. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by Aztex's alleged violations during the consent order period. (In the present proceeding, the consent order period is the same as the audit period.) We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after completion of the first stage.

Thr purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of the Aztex refund process. This Decision sets forth the information that a purchaser of motor gasoline from Aztex should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the PDO. We will not, however, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). (*Coline*). It would therefore be premature for us to address the issues raised by commenters concerning the proposed disposition of funds remaining after all the meritorious first-stage claims have been paid.

II. Jurisdiction and Authority to Fashion Refund Procedures

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a Remedial Order. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons or firms who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's or firm's injuries. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Coline* and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

III. Determination of Injury and Refund Amounts

According to records in the ERA audit file, Aztex sold motor gasoline to approximately 113 identified customers during the audit period. These customers included independent dealers, jobbers, a refiner, an agicultural cooperative, state and local governments, and other end-users and commercial accounts. Aztex also supplied gasoline to at least one consignee and one subsidiary. According to the audit file, the majority of Aztex's sales of motor gasoline

occurred in Tennessee, although some customers apparently were located in Kentucky and Virginia. Claimants in this proceeding will fall into the following categories: (1) resellers (including retailers and refiners acting in the capacity of resellers) of motor gasoline, and (2) firms, individuals, or organizations that were consumers (end-users) of Aztex motor gasoline. The motor gasoline purchased by claimants will have been purchased either directly from Aztex or from other firms in a chain of distribution leading back to Aztex.

As we have noted, the Aztex Consent Order resolved the DOE enforcement proceeding with respect to the firm's pricing and allocation practices. Since refund claims based upon each type of alleged violation are substantially different, and since the methods of determining refund amounts for each type of claim will also differ, we will address the requirements for pricing and allocation claims separately.

A. Claims Based on Alleged Price Violations

Resellers filing refund claims based upon Aztex's alleged pricing violations were in a position to pass on any overcharges to their customers. We therefore stated in the PDO that such claimants generally would be required to establish that they absorbed the alleged overcharges.(*1*) We stated that to make this showing they would have to demonstrate that, at the time they purchased motor gasoline from Aztex, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, we proposed that resellers be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88, 125 (1982) (*Ada*). We noted that the maintenance of a bank would not, however, automatically establish injury.

Since we did not receive any comments in opposition to our proposed requirements regarding this showing of injury, we will adopt these proposals in this proceeding. However, as indicated in the PDO, we will adopt certain presumptions which have been used in many prior special refund cases. First, we will adopt a presumption that the alleged ovecharges were dispersed equally in all sales of motor gasoline made by Aztex during the consent order. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims based upon Aztex's alleged overcharges.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because of the manner in which the DOE price regulations required a regulated firm to account for increased costs in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). Based on the information available to us, the per gallon volumetric refund amount will be $0.00049 per gallon ($14,372.72 divided by 29,521,434 gallons of motor gasoline sold by Aztex during the consent order period). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE.

The presumption that reseller claimants seeking refunds up to a certain threshold level were injured by the pricing practices settled in the Aztex consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982) (*Uban*). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine claims quickly, and therefore to make efficient use of its limited resources. Finally, these smaller claimants did purchase covered products from Aztex and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on monthly purchases below a threshold level.(*2*) Previous OHA refund decisions have expressed the threshold either in terms of a purchase volume figure from the consent order firm, or as a dollar refund figure, as was the case in the July 6, 1984 PDO issued in this proceeding. In *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 (1984) (*TOGCO*), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* At 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant does not have to submit any further evidence of injury beyond volumes purchased is based on several factors.(*3*) As noted below, we are especially concerned that the cost to the applicant and the Government of compiling and analyzing information sufficient to make a detailed showing of

injury not exceed the amount of the refund to be gained. In this case, where the potential per gallon refund to be gained is fairly low, and the time period of the consent order is relatively distant, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable.(4) *Id.*; *see also Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, other businesses were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also TOGCO*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of Aztex motor gasoline need only document their purchase volumes from Aztex in order to make a sufficient showing that were injured by the firm's alleged overcharges.

B. Claims Based on Alleged Allocation Violations

As we noted in the PDO, claims for refunds based on alleged allocation violations are substantially different from those based on alleged overcharges. Allocation claims are based on the consent order firm's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. We observed in the PDO issued in the present case that, according to the audit record, Aztex allegedly violated the allocation regulations by the use of incorrect allocation fractions. *See* 10 CFR 211.10(b) (5) Because Aztex's base period purchasers would not have access to the information necessary to know Aztex's correct allocation fraction, we tentatively concluded that it was likely that they were not aware of this alleged allocation violation, and thus were not in a position to have filed a timely complaint with the DOE. Hence, we stated our intention to treat allocation claims filed in this proceeding with greater flexibility than in previous refund cases if they were based upon allegedly erroneous allocation fractions. We stated that with respect to this limited type of claim, we would not require that an allocation claimant have contemporaneously complained of Aztex's alleged allocation practices. We proposed instead that such an allocation claimant need only (i) submit information sufficient to document that it did not receive an alternate supply of motor gasoline, and (ii) provide a reasonable demonstration that its claim is well-founded, including the best available evidence of the injury that is sustained.(6)

Since the issuance of the PDO, it has come to our attention that several of Aztex's customers did make contemporaneous complaints to the DOE with respect to possible allocation violations by Aztex. This information will of course be utilized in evaluating any claims submitted by those customers. Nevertheless, we have decided after careful consideration not to require a contemporaneous complaint with respect to claims based upon allegedly erroneous allocation fractions. In the context of the general reduction in motor gasoline supplies that took place during much of 1979, it would have been difficult for a purchaser to distinguish between supply reductions caused by the generally reduced availability of petroleum products and supply reductions caused by allegedly miscalculated allocation fractions. Accordingly, in this proceeding we will adopt a more flexible approach with respect to this specific type of claim than we have in prior refund proceedings in that we will not require evidence of a contemporaneous complaint to the DOE. Of course the burden of demonstrating that economic injury is traceable to Aztex's alleged allocation practices rests with the claimant.

With respect to other types of alleged allocation violations, we stated in the PDO that we would presume that such claimants were aware of Aztec's alleged violations, and would not approve their allocation claims unless a timely complaint was made to the DOE. Since we have received no comments objecting to this proposal, we will adopt it in this proceeding.

Finally, we will adopt a rebuttable presumption that if, during the course of the entire consent order period, any allocation claimant, regardless of the basis of its claim, received aggregate volumes of motor gasoline from all sources at least equal to its adjusted base period allocation for that period, it was not injured by Aztex's alleged failure to supply correct volumes during certain months. In view of the small size of the Aztex consent fund, this presumption is justified in order to limit eligibility for allocation refunds to only those firms that were most adversely affected by Aztex's alleged allocation violations.

In the PDO, we stated that in accordance with our prior decisions, claimants who make a reasonable demonstration of an allocation violation may receive a refund based on the profits lost as a result of their failure to receive the allocated product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982). We noted, however, that if we receive numerous allocation claims, we may depart from the case-by-case method of calculating allocation claim refund amounts as done in prior proceedings and adopt a more general formula. Since we have received no comments challenging these proposals we shall adopt them in this proceeding.

C. Other Matters

Since we have received no comments objecting to it, we shall also adopt our proposal to establish a minimum refund amount of $15.00 for first-stage claims. In prior special refund cases, we have not approved refunds for less than $15.00 because the cost to the public of issuing such small refunds exceeds the restitutionary benefits that may be achieved. *See, e.g., Uban*, 9 DOE at 85,225.

One comment raised the issue of the proper party to receive a refund if a firm which purchased Aztex motor gasoline was sold subsequent to the consent order period. If a refund claimant has sold its business, it will be required to provide the name and address of the new owner so that a determination as to appropriate recipient of any refund may be made. If the claimant has purchased a firm that was an Aztex customer during the consent order period, the name and address of the owner during that period must be provided.

V. Applications for Refund Procedures

After having considered all the comments received concerning the first-stage procedures tentatively adopted in our July 6 proposed decision, we have concluded that applications for refunds should now be accepted from parties who purchased Aztex motor gasoline during the consent order period. Applications must be postmarked within 90 days should publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the Aztex Consent Order Fund, Case No. HEF-0032.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying Aztex enforcement proceeding. Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Aztex Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the Aztex consent order funds, the following subjects should be covered in applications for refund:

I. Applications Based on Alleged Price Violations:

A. Each applicant should report its volume of Aztex motor gasoline purchases by month for the period of time for which it is claiming that it was injured by the alleged overcharges.

B. Each applicant should specify how it used the Aztex motor gasoline—i.e., whether it was a reseller or an end-user. If the applicant is an agricultural cooperative, it should specify the percentage of motor gasoline it purchased from Aztex during the consent order period that was resold to its members, and provide a full explanation of the manner in which refunds will be passed through to its members.

C. If the applicant is a reseller who wishes to claim a refund based upon Aztex's alleged overchages in excess of $5.000 it should also:

(i) state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation until motor gasoline was decontrolled. It should furnish OHA with quarterly bank calculations; (7)

(ii) submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. If the applicant is a reseller who wishes to claim a refund in excess of the per gallon volumetric amount, it must, in addition to providing the information specified in paragraph C, submit evidence which establishes that it was injured by alleged overcharges on a per gallon basis at a level greater than the volumetric amount.

E. Each applicant should state whether it was a spot purchaser or operated as a consignee.

II. Applications Based on Alleged Allocation Violations

Each applicant seeking a refund based upon alleged allocation violations should provide:

A. a description of any complaints made to the DOE, unless the allocation claim is based solely on allegedly miscalculated allocation fractions;

B. its base period allocation of motor gasoline from each of its suppliers for each month of the consent order period;(8)

C. its actual purchases of motor gasoline from each supplier during each month of the consent order period;

D. a description of its efforts to locate alternative supplies of gasoline;

E. computation of lost net profit (per gallon) sustained as the result of alleged allocation violations by Aztex.

III. All Applicants

A. Each applicant should state whether it was in any way affiliated with Aztex. If so, it should specify the nature of that affiliation.

B. Each applicant should state whether there has been any change in ownership of the entity that purchase motor gasoline from Aztex since the end of the audit period. If so, the name and address of the former (or current) owner should be provided.

C. Each applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to the Department of Energy by Aztex Energy Company pursuant to the Consent Order executed on October 7, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: November 30, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) We proposed, however, that agricultural cooperatives that engaged in the marketing of motor gasoline not be required to make a detailed demonstration that they absorbed Aztex's alleged overcharges, but instead be required only to submit information concerning their purchase volumes, and a full explanation of the manner in which refunds will be passed through to their customers, who, for the most part, are their member-owners. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,209 (1982) *(Tennesco)*. While we are adopting this proposal in this final Decision, we wish to make it clear that, with respect to any portion of the motor gasoline purchases from Aztex that was resold to non-members, cooperatives will be treated in the same manner as other resellers, and will be required to make a separate showing that they were injured by the alleged overcharges attributable to those volumes sold to non-members.

(2) In the PDO we specified several groups of purchasers that would be presumed not to have been injured by Aztex's alleged overcharges and that would therefore be ineligible for refunds, including refunds below the threshold level. For example, we proposed that spot purchasers not be eligible for refunds because they would not have made spot market purchases of Aztex's product at increased prices unless they were able to pass through the full amount of the firm's selling price at the time of purchases to their own customers. We stated that in order to overcome the rebuttable presumption that they were not injured, spot purchasers would need to submit additional evidence to establish that they were unable to recover the increased prices they paid to Aztex. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) *(Amoco)*.

We also proposed to establish a rebuttable presumption that claims submitted by consignees should not be approved. We stated that a consignee could rebut this presumption by establishing that its sales volumes, and its corresponding commission revenues, declined due to the alleged uncompetitiveness of Aztex's prices. *See Amoco* at 88,200. We also noted that Weigels, the one firm identified as a consignee in the ERA audit files, apparently also purchased some motor gasoline from Aztex on a non-consignment basis, and stated that the presumption of non-injury would not apply to gasoline sold by the firm on other than a consignment basis.

In the PDO, we also pointed out that Aztex supplied motor gasoline to a subsidiary, Cloud-Southern Fuel Company, 50 percent of which was owned by Aztex during the audit period. However, these sales were not included in the audit which led to the NOPVs issued to Aztex and, thus, are not among the "specified transactions" which are covered by the Consent Order. *See* Consent Order ¶¶ 4 and 5. Accordingly, we tentatively concluded that Cloud-Southern would not be eligible for refunds from the Aztex consent

with greater flexibility than in previous

was not injured by Aztex's alleged

application must be in writing, signed by

overchages in excess of $5,000 it should also:

Register.

eligible for refunds from the Aztex consent

order fund. We further stated that it would not be appropriated to grant a refund to this firm since the refund would inure to Aztex. In addition, we noted that it is unclear from the ERA audit file whether some of the retail outlets listed as customers of Aztex were independent dealers or Aztex company-operated stations. We stated that any of the retail stations supplied by Aztex that were Aztex company-operated retail outlets would not be eligible for refunds, since they were part of Aztex for pricing purposes. *See* 10 C.F.R. Part 212, Subpart F. On the other hand, we concluded that retail stations whose locations were owned and supplied by Aztex, but which were independently operated, would be eligible for refunds since they did not benefit from Aztex's alleged overcharges.

None of the comments we received challenged these general proposals for the determination of injury with respect to Aztex's alleged overcharges. Accordingly, we will adopt them in this proceeding.

(3) We recognize that even the showing of purchase volumes may be difficult for some applicants. One commenter has noted that while its records dating from the audit period indicate its overall purchases of motor gasoline, they do not show volumes of purchases from each supplier. For this reason, that firm would be unable to report its motor gasoline purchases form Aztex during the audit period. It is possible that other firms and organizations may have similar difficulties. Therefore, we will accept certified purchase estimates from claimants provided that (a) they make a showing that it is excessively difficult for them to establish actual purchase figures and that the method used in deriving the estimates is reasonable, and (b) information as to the firm's purchase volumes obtained from Aztex gives us no reason to question the validity of those estimates. Resellers who use such estimates and claim refunds in excess of the threshold will still be required to document the extent of injury sustained. *See TOGCO*, 12 DOE at 85,270.

(4) In the July 6 PDO, we proposed to establish a threshold of $2,500. Although the information available to us does not indicate that any customer purchased sufficient volumes (about 5.1 million gallons) of motor gasoline from Aztex during the consent order period to generate a refund in excess of $2,500 using the volumetric presumption, we have chosen to raise the threshold in keeping with the desire of this Office to establish consistent criteria with respect to the presumption of injury applied to small claimants.

(5) Throughout the audit period, suppliers were required to calculate and allocation fraction pursuant to 10 CFR 211.10(b) prior to supplying covered petroleum products. The allocation fraction for a particular month was calculated by dividing the supplier's allocable supply for that month by its total supply obligation for the month based on the amount it supplied in the corresponding month of the base period.

(6) In discussing the showing required of allocation claimants in prior Subpart V proceedings, we stated that the firm, in addition to providing evidence of a contemporaneous complaint, would have to submit sufficient information to demonstrate that its claim was "not spurious." *See e.g., Amoco*, 10 DOE at 88,220. In practice, we have approved allocation claims when an applicant has made a reasonable demonstration that its claim is well-founded. *See e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982); *compare Tenneco Oil Co./Kern Oil & Refining Co.*, 10 DOE ¶ 85,003 (1982) (refund application denied), *aff'd sub nom. Kern Oil & Refining Co. v. DOE*, 3 Fed. Energy Guidelines ¶ 26,497 (D.C. Cal. 1983) (DOE motion for summary judgment granted). Regardless of how we denominate the standard to be used in allocation refund cases, it must be emphasized that it is an equitable standard and less stringent than the level of proof required to demonstrate an actual violation of the DOE regulations. *See Kern Oil & Refining Co., v. Tenneco Oil Co.*, 3 Fed. Energy Guidelines ¶ 26,469 (Temp. Emer. Ct. App. 1983).

(7) The bank requirement for retailers was eliminated in the amendments to the retailer price rule effective July 15, 1979. 44 Fed. Reg. 42542 (July 19, 1979). Therefore, no showing of cost banks will be required of motor gasoline retailers after that date.

(8) The base period for January and February 1979 was the corresponding month of 1972. For the months of March through December 1979, the base period was the corresponding month of the period November 1977 through October 1978. *See* 10 CFR 211.102 and Standby Petroleum Product Allocation Regulations Activation Order No. 1, 44 FR 11202 (February 28, 1979), Fed. Energy Guidelines, Petroleum Regulations 1974–1981, ¶ 14,992A.

[FR Doc. 84-32086 Filed 12-7-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51514B; FRL-2733-7]

Carboxylated Alkane Diol; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) 84–558, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on March 3, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Matthai, Chemical Control Division (TS–794), Enironmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, D.C. 20460, (202–382–3385).

SUPPLEMENTARY INFORMATION: On April 3, 1984, EPA received PMN 84–558 for a new chemical substance, carboxylated alkane diol. The submitter claimed its identity, chemical identity, and use to be confidential business information. Notice of receipt was published in the **Federal Register** of April 13, 1984 (49 FR 14802). The original 90-day review period, including a voluntary suspension by the submitter, was scheduled to expire on December 3, 1984.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to March 3, 1985.

PMNs are available for public inspection in Rm. E–107, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: November 30, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-32094 Filed 12-7-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC–413]

Continental Federal Savings and Loan Association, Fairfax, VA; Final Action Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 9, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Continental Federal Savings and Loan Association, Fairfax, Virginia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Coastal States Building, 260 Peachtree Street, NW., Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32148 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC–415]

Denton Savings Association, Denton, TX; Final Action, Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 5, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Denton Savings Association, Denton, Texas, for permission to convert to the stock form of organizaion. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Dallas, 500 East John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261–9026.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32149 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC–408]

Enterprise Federal Savings and Loan Association, Marrero, LA; Final Action, Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 13, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Enterprise Federal Savings and Loan Association, Marrero, Louisiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, Post Office Box 619026, Dallas, Texas 75261–9026.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32150 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC–414]

Faribault Federal Savings and Loan Association Faribault, MN; Final Action Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 6, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Fairbault Federal Savings and Loan Association, Fairbault, Minnesota, permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32152 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC–411]

First Federal Savings and Loan Association of Brooksville, Brooksville, FL; Final Action, Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 9, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Brooksville, Brooksville, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32151 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC–410]

First Federal Savings and Loan Association of Craig, Craig, CO; Final Action Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 13, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association, of Craig, Craig, Colorado, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Topeka, Post Office Box 176, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32153 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC–405]

First Federal Savings and Loan Association of Sanford, Sanford, NC; Final Action Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 5, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Sanford, Sanford, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, P. O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32154 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-406]

Illini Federal Savings and Loan Association, Fairview Heights, IL; Final Action Approval of Conversion Application

Date: December 5, 1984.

Notice is hereby given that on November 15, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Illini Federal Savings and Loan Association, Fairview Heights, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32155 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-412]

Pensacola Home and Savings Association, Pensacola, FL; Final Action Approval of Conversion Application

Date: December 5, 1984.

Notice is hereby given that on November 7, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pensacola, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32156 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-404]

Sun Savings Association, F.A., Kansas City, KA; Final Action Approval of Conversion Application

Date: December 5, 1984.

Notice is hereby given that on November 14, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Sun Savings Association, F.A. Kansas City, Kansas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, Post Office Box 176, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32157 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-409]

United Federal Savings and Loan Association, Jonesboro, AR; Final Action Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 15, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of United Federal Savings and Loan Association, Jonesboro, Arkansas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, 500 E. John Carpenter Freeway, P.O. Box 619026, Dallas, Ft. Worth, Texas 75261.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32158 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-407]

Union Federal Savings and Loan Association, Los Angeles, CA; Final Action Approval of Conversion Application

Dated: December 5, 1984.

Notice is hereby given that on November 14, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Union Federal Savings and Loan Association, Los Angeles, California, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of San Francisco, Post Office Box 7948, San Francisco, California 94120.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32159 Filed 12-7-84; 8:45]

BILLING CODE 6720-01-M

[No: 84-699]

Agency Information Collection Activities Under OMB Review; Merger Application

Dated: December 5, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection, "Merger Application" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to:

Office of Management and Budgets, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933

FOR FURTHER INFORMATION CONTACT: Kathy O'Dea, Office of Policy and Economic Research. Phone: 202-377-6770.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32146 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

[No: 84-700]

Agency Information Collection Activities Under OMB Review; Net Worth Certificate Act

Dated: December 5, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request, "Net Worth Certificate Act" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933

FOR FURTHER INFORMATION CONTACT: James A. Kristofek, Office of Examinations and Supervision. Phone: 202-377-6290.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32147 Filed 12-7-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Armatur, S.A. and Tourship Co., S.A. d/b/a Dominican Ferries, c/o Navemar, P.O. Box 6092, San Juan, Puerto Rico 00905.

Dated: December 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32128 Filed 12-7-84; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Amatur, S.A. and Tourship Co.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission Order 20, as amended (46 CFR Part 540): Armatur, S.A. and Tourship Co., S.A. d/b/a Dominican Ferries, c/o Navemar, P.O. Box 6092, San Juan, Puerto Rico 00905.

Dated: December 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32129 Filed 12-7-84; 8:45]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty); Pilgrim Belle Associates

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Pilgrim Belle Associates d/b/a Coastwise Cruise Line and Hyannis Harbor Tours, Inc., Ocean Street Docks, Hyannis, Mass. 02601.

Dated: December 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32132 Filed 12-7-84; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty); Republic Cruise Line Inc. and Clipper Cruise Line, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Republic Cruise Line, Inc. and Clipper Cruise Line, Inc., 7711 Bonhomme Avenue, St. Louis, Missouri 63105.

Dated: December 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32133 Filed 12-7-84; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passenger or Other Persons on Voyages; Issuance of Certification (Casualty); Scandinavian Seaways (Bahamas) Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passenger or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Scandinavian Seaways (Bahamas) Ltd. and Scandinavian World Cruises (Bahamas) Ltd., 1080 Port Boulevard, Port of Miami, Miami, Florida 33132.

Dated: December 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32130 Filed 12-7-84; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Scandinavian Seaways (Bahamas) Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Scandinavian Seaways (Bahamas) Ltd. and Scandinavian World Cruises (Bahamas) Ltd., 1080 Port Boulevard, Port of Miami, Miami, Florida 33132.

Dated: December 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32131 Filed 12-7-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The First National Bank Holding Co.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 2, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *The First National Bank Holding Company*, Jackson, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank, Jackson, Kentucky.

Board of Governors of the Federal Reserve System, December 4, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-32097 Filed 12-7-84; 8:45 am]

BILLING CODE 6210-01-M

Four Seasons of Wisconsin, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Four Seasons of Wisconsin, Inc.*, Manawa, Wisconsin; to engage *de novo* in leasing personal or real property or acting as agent, broker or adviser in the leasing of such property. These activities would be conducted in Waupaca County, Wisconsin.

2. *Steuben Financial Corp.*, Auburn, Indiana; to engage *de novo* in acting as an insurance agent or broker in offices at which its subsidiaries are otherwise engaged in business with respect to any insurance that is directly related to an extension of credit by a financial institution; and the issuance and sales at retail of money orders and similar consumer type payment instruments having a face value of not more than $1,000; the sales of U.S. Savings Bonds; and the issuance and sale of traveler's checks.

3. *Whitley Financial Corp.*, Marion, Indiana; to engage *de novo* in acting as an insurance agent or broker in offices at which its subsidiaries are otherwise engaged in business with respect to any insurance that is directly related to an extension of credit by a financial institution; and the issuance and sales at retail of money orders and similar consumer type payment instruments having a face value of not more than $1,000; the sales of U.S. Savings Bonds; and the issuance and sale of traveler's checks.

Board of Governors of the Federal Reserve System, December 4, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-32098 Filed 12-7-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

California; Bakersfield District; Off-Road Vehicle Use Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Off-Road Vehicle Use Designations.

SUMMARY: Off-road vehicle use on BLM administered public lands in San Benito, Fresno, Monterey, Merced, and Madera counties is designated as limited.

SUPPLEMENTARY INFORMATION: These designations are made in accordance with the authority and requirements of Executive Orders 11644 and 11989 and regulations contained in 43 CFR Part 8340.

The affected public lands include 138,318 acres located in San Benito, Fresno, Monterey, Merced, and Madera counties. These designations are based on land use decisions made in the 1984 Hollister Resource Management Plan (RMP) for the Hollister Resource Area. The RMP and Environmental Impact Statement are available for public review in the Hollister Resource Area office of the Bakersfield District.

Designations

A. Vehicle use limited to four-wheel vehicles on designated routes from the beginning of upland game season to the beginning of fire season (Usually about April 15).

This designation was chosen for 62,873 acres of previously designated public land in the Panoche Hills, Tumey Hills, and Griswold Hills of Fresno and San Benito counties. Seasonal fire hazard is extreme and motorcyle use has caused or would be likely to cause severe environmental impacts in these areas.

B. Vehicle use limited to designated routes.

This designation was chosen for 75,445 acres of public land in Monterey, Merced and Madera counties. It will provide for maximum resource protection while allowing most existing uses to continue. Vehicle use on the Medera County side of the Squaw Leap Management area is further restricted to Bureau authorized administrative use and special project maintenance, in order to protect values associated with the Squaw Leap National Recreation Trail.

FOR FURTHER INFORMATION CONTACT: David E. Howell, Area Manager, Bureau of Land Management, Hollister Resource Area, P.O. Box 365, Hollister, California. 95024–0365; (408) 637–8183.

Dated: November 27, 1984.

David E. Howell,

Area Manager.

[FR Doc. 84-31898 Filed 12-7-84; 8:45 am]

BILLING CODE 4310-40-M

[Serial No. I–19496]

Issuance of Land Conveyance Document; Exchange of Public and Private Land Bonneville and Caribou County; ID

November 30, 1984.

The United States has issued an exchange conveyance document to the J.R. Simplot Company, Boise, Idaho for the following-described lands under Section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian Idaho

T. 5 S., R. 39 E.,
Sec. 27, SE¼SE¼;
Sec. 34, NE¼NE¼.
T. 8 S., R. 46 E.,
Sec. 9, SW¼NE¼;
Sec. 20, NE¼NE¼, W½NE¼, W½SE¼;
Sec. 33, SE¼NW¼;
Sec. 34, W½SW¼.
T. 9 S., R. 46 E.,
Sec. 19, NE¼SE¼.
Comprising 480.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 4 S., R. 43 E.,
Sec. 12, N½NW¼, W½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 13, NE¼, N½SE¼, SE¼SE¼, NE¼SW¼.
T. 4 S., R. 44 E.,
Sec. 18, lot 6;
Sec. 19, lot 1.
Comprising 681.94 acres of private land.

The purpose of this exchange was to acquire the non-Federal land which will allow for better management, grazing, recreation, and wildlife habitat. The public interest was well served through completion of the exchange.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 84-32075 Filed 12-7-84; 8:45 am]

BILLING CODE 4310-GG-M

[W-71393]

Proposed Continuation of Withdrawal; Wyoming

December 3, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to continue the existing withdrawal of 84.16 acres for the Whalen Diversion Dam, North Platte Project, for an additional 100 years. The remaining 48.79 acres will be relinquished. The lands remain closed to surface entry and mining. The lands have been and will remain open to mineral leasing.

DATE: Comments and meeting requests should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307–772–2089.

The Bureau of Reclamation proposed that the existing withdrawal made by the Secretarial Order of September 21, 1906, be continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Sixth Principal Meridian

T. 28 N., R. 65 W.,
Sec. 11, lot 1, and that part of lots 2 and 3 lying east of a line parallel to and 150 feet westerly from the centerline of the Fort Laramie Canal.
The area described contains 84.16 acres in Goshen County.

The purpose of the withdrawal is to protest the Whalen Diversion Dam and facilities. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the

Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

P.D. Leonard,

Associate State Director.

[FR Doc. 84-32078 Filed 12-7-84; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6199, Block 130, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 30, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 30, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-32124 Filed 12-7-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil and Gas Corp.

AGENCY: Minerals Mangement Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4104, Block 72, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 30, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resource Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 30, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-32123 Filed 12-7-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-227)]

Burlington Northern Railroad Co.; Abandonment in Cascade County, MT; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 4.38-mile rail line between Gerber (milepost 0.00) and Lavin Spur (milepost 4.38) in Cascade County, MT. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that:

(1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 84-32172 Filed 12-7-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-163)A]

Chicago and North Western Transportation Co.; Abandonment Between Ames and Kelley, IA; Findings

The Commission has issued a certificate authorizing Chicago and North Western Transportation Company to abandon its 5.5-mile rail line between Ames (milepost 33.9) and Kelley (milepost 28.4) in Story County, IA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 84-32171 Filed 12-7-84; 8:45 am]

BILLING CODE 7035-01-M

[Vol. No. OP1-631]

Motor Carriers; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applicants are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* days of application directly related thereto filed with 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission.

James H. Bayne,

Secretary.

Please direct status inquires to Team 1, (202) 275–7992.

MC–F–17578, BUILDERS TRANSPORT, INCORPORATED (BUILDERS) (U.S. HIGHWAY 1, CAMDEN, SC 29020)—CONTROL—NEWMAN BROS. TRUCKING COMPANY (NEWMAN) (6559 Midway Road, Haltom City, TX 76117). Filed November 6, 1984. Representative: James F. Moriarty, Esq., 1150 Connecticut Ave., NW. Washington, D.C. 20036. Builders, a non-carrier holding company, seeks authority to acquire control of Newman through the purchase of its issued and outstanding stock. Charles C. Gay, Sr., who controls Builders through ownership of a majority of its issued and outstanding capital stock and his management position in the firm, seeks approval to acquire control of Newman through the transaction. Newman holds authority under No. MC–120761 and subs thereunder to transport general commodities with exceptions between points in the U.S. and specified commodities from, to or between various points in the U.S. Builders controls two motor carriers subject to the jurisdiction of the Interstate Commerce Commission: Builders Transport, Inc., a common and contract carrier of property, in No. MC–124839 and No. MC–145219 and various subs thereunder and J&M Transportation

Company, a common carrier of property operating under authority granted, in No. MC–115311 and subs thereunder. Builders own 100 percent of the issued and outstanding stock of each motor carrier.

Note.—This notice does not purport to be a complete description of the operating rights of the carriers involved. An application for temporary authority has been filed.

[FR Doc. 84-32173 Filed 12-7-84; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 28640 (Sub-9), et al.[1]]

Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Reorganization; Acquisition by Grand Trunk Corporation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of oral argument for the purpose of supplementing the record.

SUMMARY: The Commission is setting for oral argument the Chicago and north Western Transportation Company's (CNW) amended application filed under section 5(b) of the Milwaukee Railroad Restructuring Act, 45 U.S.C. 904(b) (MRR), and the reorganization plan filed under section 77 of the Bankruptcy Act, to acquire and operate the core assets of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW).

DATES: Oral argument will be heard at 9:30 a.m. on December 17, 1984. Parties seeking to participate must contact CNW, or the Deputy Director of the Commission's Rail Section, as appropriate, by December 10, 1984. CNW must submit to the Commission, by December 12, 1984, its list of parties who will speak. The Commission will issue a schedule of appearances and contact the parties who have been allotted time.

ADDRESSES: The oral argument will be heard in Hearing Room A at the Interstate Commerce Commission Building, 12th and Constitution Ave., NW., Washington, DC. To request an opportunity to participate, please contact, as appropriate:

CNW c/o Charles A. Miller, Covington & Burling, 1201 Pennsylvania Ave., NW., P.O. Box 7566, Washington, DC 20004, (292) 275–7245;

Louis E. Gitomer, Deputy Director, Rail Section, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423, (202) 275–7245.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: This argument will be conducted in two phases. In the first phase, we will hear argument on whether or not to approve CNW's asset purchase agreement, as modified on October 9, 1984, and filed on November 7, 1984. Parties supporting CNW's application, as amended, will be given 45 minutes for argument, and counsel for CNW will coordinate the appearances and time allocations for these parties. Counsel for CNW must submit to the Commission a list of parties and time allocations by December 12, 1984. Those parties either opposing CNW's amended application or seeking conditions will then be given 45 minutes. These parties should contact Mr. Gitomer to request time, and he will coordinate the appearances and make the time allocations.

Parties are advised that arguments previously made are part of the record and will be considered, and as a result, those seeking time to participate in the first phase of this oral argument should be prepared to address only matters relating to how CNW's application and reorganization plan, as amended, affect their interests.

Because the Court, in referring CNW's amended plan to the Commission, specifically requested that we state our preference between CNW's amended proposal, if approved, and the previously approved Soo plan, the second phase of the oral argument will be devoted to the preference question. Accordingly, the Commission will allot 20 minutes to parties who want to argue that if approved, we should prefer the CNW's amended plan and 20 minutes to parties who want to argue that we should prefer the Soo's plan. CNW and Soo will be responsible for designating the participants in this second phase of the argument and for contacting Mr. Gitomer, by December 12, 1984, to advise him who these participants will be.

It may not be possible for all parties seeking to present argument to be allocated time. Therefore, parties should consolidate their requests where possible. Also, no participant in either phase will be allotted less than 5 minutes. The individuals designated to present oral argument will be contacted as soon as possible, and a schedule of appearances will be issued before the argement.

All participants shall, at the time of argument, submit to the Commission 10 written copies of their prepared argument and any supporting exhibits. Written arguments, which should correspond to the oral presentations, will be made part of the record. Issues raised in the record will be considered even if not raised during the oral presentation.

This notice is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: December 5, 1984.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: December 5, 1984.

James H. Bayne,

Secretary.

[FR Doc. 84-32301 Filed 12-7-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1984 Aggregate Production Quotas.

SUMMARY: This notice establishes 1984 aggregate production quotas for controlled substances in Schedules I and II which will be used as analytical standards.

EFFECTIVE DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code, section 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On August 13, 1984, a notice of the proposed 1984 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (49 FR 32270). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before September 12, 1984. No comments or objections were received.

Pursuant to sections 3(c)(3) and 3(E)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, section 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the aggregate production quotas for 1984 for the following controlled substances, expressed in grams of anhydrous base, be established as follows:

Basic class	1984 aggregate production quotas
Schedule I:	
Dihydromorphine	5
Lysergic acid diethylamide	10
Mescaline	5
Normorphine	5
Schedule II:	
Benzoylecgonine	50
1-pipendinocyclohaltanecarbonitrile	15
Phencyclidine	50
1-phenylcyclohexylamine	15

Dated: November 14, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-32083 Filed 12-7-84; 8:45 am]
BILLING CODE 4410-09-M

Immigration and Naturalization Service

Registration of Mariel Cubans

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of extension of registration period for Mariel Cubans.

SUMMARY: Reference is made to the registation notice concerning Mariel Cubans, which appeared in the **Federal Register** on November 23, 1984, at 49 FR 46212, requiring the registration of all persons born in Cuba or who are Cuban nationals who are not now citizens of the United States and who:

(a) Arrived in the United States between April 15, 1980 and October 10, 1980 (the "Mariel Boatlift"),

(b) Have been given the Immigration designation "Cuban/Haitian Entrant (Status Pending)", and

(c) Have not subsequently become lawfully admitted permanent residents of the United States.

Notice is hereby given that the registration period which was to be conducted December 3, 1984 to December 31, 1984 is extended through January 31, 1985. The period of registration is being extended to maximize the participation and overall effectiveness of the registration program.

DATE: Date of Registration: December 3, 1984 to January 31, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy or F. Gerard Heinauer, Immigration Examiners, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3320.

(Sec. 285, Immigration and Nationality Act (8 U.S.C. 1305))

Dated: December 4, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 84-32100 Filed 12-7-84; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

Participation of Self-Regulatory Organizations in the Prohibited Transaction Exemption Process—Solicitation of Comments

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Solicitation of comments.

SUMMARY: This document requests comments from interested members of the public on the feasibility of participation by self-regulatory organizations in developing exemptions from the prohibited transaction rules of ERISA. The existing prohibited transaction exemption process has been criticized, and the Department anticipates that the public comments received in response to this notice will assist it in studying more efficient ways of handling prohibited transaction exemption requests.

DATE: Comments should be submitted on or before February 8, 1985.

ADDRESS: Comments (preferably 3 copies) should be submitted to the Office of the Administrator, Office of Pension and Welfare Benefit Programs, Room S4516, U.S. Department of Labor, Washington, D.C. 20210, Attention: "SRO Inquiry."

FOR FURTHER INFORMATION CONTACT: Janet Brown (202)523–8952.

SUPPLEMENTARY INFORMATION: The Department of Labor (the Department) is responsible for administering the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974 (ERISA).[1] Section 406 of ERISA prohibits certain transactions between a plan and a "party in interest" and section 4975 of the Internal Revenue Code (the Code) imposes an excise tax with respect to prohibited transactions between a plan and a "disqualified person" (defined, with certain minor exceptions, in the same manner as the term "party in interest").

Section 408(a) of ERISA and Section 4975(c)(2) of the Code provide that the Secretary of Labor and the Secretary of the Treasury, respectively, may grant administrative exemptions from the prohibited transaction provisions of ERISA, provided certain conditions are met. The Secretary of the Treasury's authority to issue such exemptions was transferred to the Secretary of Labor in 1978; since that time prohibited transaction exemptions have been issued solely by the Department of Labor.[2]

The Department is exploring methods of enhancing the prohibited transaction exemption process, particularly as it relates to complex financial transactions. One method under consideration is whether the private sector might be more involved in the exemption process. Thus, the Department is soliciting comments from interested persons with respect to this concept.

Background

A. Statutory Provisions

Under Section 408(a) of ERISA,[3] the Department may (with certain limited exceptions) grant conditional or unconditional exemptions from all or part of the prohibited transaction restrictions of the Act. Before granting such an exemption, however, the Department must find that the exemption is: (1) Administratively feasible, (2) in the interests of the plan and of its participants and beneficiaries.

---

[1] Embraces Finance Docket No. 28640 (Sub-Nos. 9A–E, 9K–N and 9N–CC) and Nos. MC–F–15231 and MC–F–15231 (Sub-Nos. 1 and 2).

[1] 29 U.S.C. 1001, *et seq.*

[2] Reorganization Plan Number 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979).

[3] Except where the context clearly requires otherwise references in this notice to the various provisions of Title I of ERISA should also be read to refer to the corresponding provisions of the Code.

MC-F-15231 (Sub-Nos. 1 and 2).

Written arguments, which should

respect to these proceedings.

1980 (the "Mariel Boatlift").

Room S4516, U.S. Department of Labor,

refer to the corresponding provisions of the Code.

and (3) protective of the rights of participants and beneficiaires.

Section 408(a) also establishes certain procedural requirements for administrative exemptions from the prohibited transaction rules. The Act requires that the Department establish an exemption procedure and that exemptions may only be granted pursuant to that procedure. In addition, the Department must publish notice of a proposed exemption in the Federal Register and must assure that adequate notice of the pendency of the exemption is given to interested persons. The Department must also interested persons to present views. In the case of an exemption from the restrictions of fiduciary self-dealing in Section 406(b) of ERISA, the Department may not grant the exemption unless it affords an opportunity for a hearing and makes a determination on the record with respect to the three findings required by the Act.

B. The Exemption Process

The Department administers the prohibited transaction exemption program pursuant to the ERISA Exemption Procedure [4] (ERISA Procedure 75–1). Under the procedure, any party in interest (or disqualified person) with respect to a plan who is or may be a party to a prohibited transaction may initiate an exemption proceeding by filing an exemption application with the Department. In addition, any party in interest or any association or organization representing parties in interest may initiate a class exemption proceeding by filing an exemption application. The Department may also propose exemptions on its own motion.

An exemption application must include detailed information regarding the plans involved, applicant or applicants, and the transactions for which relief is requested. This information includes a detailed description of the fiduciaries and parties in interest who would be involved in the transactions, a statement whether the transactions are customary in the industry involved and a description of the hardship or economic loss which would result if the exemption application is denied. Further, the application must contain a statement explaining why the exemption would be consistent with three statutory findings that the Department must make in order to grant it.

An exemption application must also disclose information regarding the previous activities of the applicant and the plan or plans involved. For example, the applicant must indicate whether it has ever been found to have engaged in a prohibited transaction or whether it or any other party in interest who would be involved in the transaction is, or in the last five years has been, a defendant in any lawsuit concerning such person's conduct as a fiduciary or party in interest.

Upon receipt, an application for an individual exemption is given an identification number and is assigned to an employee benefits specialist in the Division of Exemptions of the Office of Pension and Welfare Benefit Programs. The analyst reviews the application and, if necessary, requests additional information from the applicant.

After the exemption application and any additional material submitted by the applicant are reviewed, a decision generally is made either to propose the exemption or to issue a tentative denial letter.[5] A tentative denial letter states that the Department has tentatively decided not to propose the exemption and contains a brief statement of the Department's reasons for the determination.

The ERISA exemption procedure also provides that an applicant may request a conference as of right in the event the Department contemplates denying the exemption request. Thus, a tentative denial letter will also contain an offer to hold such a conference. Exemption conferences are held between the applicant (or the applicant's representative) and employees of the Department and consist of an informal exchange of views regarding the issues raised by the exemption application.

If, after consideration of any material submitted by the applicant in response to the tentative denial letter (and any material submitted, or arguments advanced at the conference), the Department determines that the application for exemption should still be denied, it will issue a final denial letter informing the applicant of its action and providing a brief statement of reasons.

If the Department tentatively decides that an exemption application should be granted, it will publish a notice of pendency of the exemption (notice of proposed exemption) in the Federal Register. This notice contains a summary of the representations made by the applicant in the exemption application and a statement of the exemptive relief which the Department proposes to grant. In addition, the proposed exemption requests comments from interested persons within a stated period of time (usually 40 days). In the case of a proposed exemption that would provide relief from any of the restrictions on fiduciary conduct in Section 406(b) of ERISA, the proposed exemption also indicates that any interested person may request a hearing with respect to the proposed exemption.

The applicant for a proposed exemption must also assure the Department that notice of the pendency of the exemption is given to interested persons. The nature and extent of such notice varies depending upon the nature of the proposed exemption and the plan or plans involved.

After the proposed exemption has been published and the comment period has expired, the Department will consider any comments submitted; in the case of a Section 406(b) exemption, it will conduct a hearing if one is requested. On the basis of the record thus developed (including the application, any additional submissions of the applicant, any written comments from interested persons, and the testimony at any hearing on the exemption), the Department will make a final decision with respect to the proposed exemption. If the proposed exemption is granted, a notice to that effect is published in the Federal Register. If the Department determines not to grant the proposed exemption, it publishes a notice withdrawing the proposal and issues a final denial letter to the applicant.

The Department's actual experience has been that it receives no comments on the vast majority of proposed exemptions and that most proposed exemptions are granted as a matter of course after expiration of the comment period. The Department retains the authority, however, to independently decide to deny an exemption that has been proposed.

Applications for class exemptions are treated in a manner similar to applications for individual exemptions, but with some modifications. First, trade groups representing classes of persons who encounter similar prohibited transaction issues are typically actively involved in the class exemption process. Second, since class exemptions by their nature relate to a variety of transactions the specific characteristics of which have not been reviewed by the

[4] 40 FR 18471, April 28, 1975.

[5] If review of the exemption application indicates that the transaction is either not a prohibited transaction under ERISA or is an exempt transaction under an existing statutory or administrative exemption, the Department will issue an "interpretive response" calling attention to the relevant authorities and indicating that, if the Department receives no further submission from the applicant within 30 days (explaining why further relief is necessary), the application file will be closed without further action.

Department, they typically contain detailed conditions that are intended to assure that the exemption will be consistent with the statutory standards. Third, since class exemptions affect a large number of parties in interest, many of whom have a substantial interest in the exemption proceeding but who have not been parties to the application, comments received in response to a notice of proposed exemption often play an important role in the process of developing a final exemption. In this respect, the Department has frequently conducted informal hearings regarding proposed class exemptions in order to assure that the views of all affected persons are taken into account.

Possible Involvement of Private Sector Oranizations in the Exemption Process

A. Involvement of Private Sector Groups Under the Existing Procedures

The legislative history of ERISA indicates that Congress intended that the Department administer the prohibited transaction exemption program so as not to disrupt unnecessarily the established business practices of financial institutions that provide fiduciary services to employee benefit plans.[6] Accordingly, private sector involvement in the prohibited transaction exemption process is both appropriate and necessary in order to carry out Congressional intent. Industry groups now play a relatively significant role in the development of class exemptions from the prohibited transaction rules, but have little, if any, role in the individual exemption process.

Industry group submissions have often served as a valuable resource in identifying areas where relief from the prohibited transaction rules is needed. The utility of trade group submissions to the Department is limited, however, in two main ways. First, such submissions often focus on the affected industry's need for relief from the prohibited transaction rules rather than an analysis of the ways in which the Department can fashion exemptive relief that is consistent with the statutory factors that must be satisfied before an exemption may be granted. Second, industry submissions often involve sophisticated financial transactions, but do not present the factual material in the way that is most useful to the Department's staff in making a decision.[7]

In the Department's view, more effective use of private sector resources in dealing with prohibited transaction exemption applications—those seeking individual relief as well as those seeking class relief—could expedite the exemption process and could result in exemptions that will relieve unnecessary burdens on parties in interest and will be consistent with the Department's statutory obligations. Thus, the Department is exploring ways in which this increased private sector involvement can be achieved, one of which might be the participation of a self-regulatory organization.

B. Self-Regulatory Models in the Securities Industry.

One area in which self-regulatory organizations play a very significant role is in the administration of the federal securities laws. The Securities and Exchange Commission (the Commission) is the agency charged by Congress with administering those laws. In discharging its duties, however, the Commission makes use of a variety of private sector self-regulatory organizations (SRO's). These organizations perform some rulemaking, investigatory and enforcement functions for, and under the direction of, the Commission. The functions of these organizations are not completely analogous to the functions that a self-regulatory organization might perform under ERISA, but the Department beleives their existence illustrates how private entities may play an important role in a federal regulatory program.

1. *Securities Industry Regulation.* Section 15A of the Securities Exchange Act of 1934 provides for the creation and registration of SRO's to establish and promote ethical and standardized principles of trade in the securities business.[8] Registration by SRO's with the Commission is permitted only if the Commission determines that such an association is organzied so as to be able to comply with the Commission's rules and regulations as well as to enforce compliance among its members. Procedurally, the rules of an association must ensure that directors are representative of the differing interests in the financial community; substantively, an association's rules must be designed to "prevent fraudulent and manipulative practices, to promote just and equitable principles of trade * * * [to facilitate] transactions in securities * * * and in general, to protect investors and the public interest."[9]

Section 19 of the 1934 Act outlines the Commission's oversight responsibilities and powers regarding self-regulatory organizations. Registration of an exchange or SRO is subject to public notice and comment procedues and the substantive statutory requirements outlined in Section 15A. The Commission may grant or deny applications for registration; it also may cancel registration of an SRO if it finds that it has ceased to perform in the manner for which it was granted registration.[10]

Rules and regulations proposed by an SRO must be submitted to the Commission for review, with an opportunity for public notice and comment.[11] The Commission retains the authority to amend all rules of an SRO and it may even "summarily abrogate" them if it finds such action necessary in the public interest.[12]

The National Association of Securities Dealers, Inc. (NASD) is the one organization registered with the Commission under Section 15A of the 1934 Act. NASD is principally charged with promulgating, maintaining and enforcing a code of business ethics among over-the-counter brokers and dealers.[13] While membership in NASD is voluntary, almost all brokers and dealers are members and thus subject to its investigatory and disciplinary powers.[14] Members are generally forbidden from conducting business with non-members which both encourages membership and facilitates peer review.

NASD's membership is divided into 13 districts whose members elect some of the members of NASD's Board of Directors; other seats in the Board are reserved for representatives of industry and the professions. As of 1983, there were 296,000 registered representatives of the investment and securities industry, and 4885 member firms. Membership may be defnied to or withdrawn from anyone suspended from a registered exchange or anyone convicted of a misdemeanor or felony involving such offenses as embezzlement, misuse of funds, or abuse of a fiduciary relationship among others.

[6] H.R. Rep. No. 1280, 93d Cong., 2d Sess. 300 (1974).

[7] For example, an industry association's submissions often contain very general statements of fact, but do not discuss differences between its various members' business practices. In addition, the submissions often include voluminous background material, but do not include a sufficient summary of the contents of the background material or a meaningful explanation of its significance.

[8] Securities Exchange Act of 1934, *as amended*. Section 15A: 52 Stat. 1070 (1983); 15 U.S.C. Section 780–3 (1982), hereafter "1934 Act."

[9] 1934 Act, Section 15A(b)(2), (4), (6)

[10] 1934 Act, Section 19 (a) (1).

[11] 1934 Act, Section 19 (b) (1).

[12] 1934 Act, Section 19 (b) (3) (c).

[13] SEC, "The Work of the SEC," 13 (February 1984).

[14] NASD, "An Introduction to NASD," 15 (1984).

NASD's staff is comprised of three divisions: Legal and Compliance; Member and Market Services, and Automation. Within each division are various departments charged with developing and admistering regulations and services for different segments of the securities industry. The Legal and Compliance Division has promulgated a Uniform Practice Code as well as rules of Fair Practice, both of which are submitted for approval to the SEC and which are the standards against which securities transactions conduct is generally judged. occasionally, NASD has adopted rules in lieu of regulation proposed or threatened by the SEC, such as its rules regarding "free riding" and "withholding".[15]

NASD staff at the district level conducts annual examinations of members' books and records; it is from this review that complaints against members typically arise.[16] These audits, conducted on an unannounced basis, examine members' books to check compliance with association rules. At the same time, NASD staff monitors compliance with the SEC's Net Capital Rule and the Federal Reserve Board's Regulation T.[17]

Member firms or individual violators of NASD standards are subject to sanctions imposed by NASD which range from censure, to fines, to expulsion. NASD has internal review procedures in place under which members may challenge a disciplinary decision; appeal is also available to the Commission and ultimately, to the courts. Only very rarely, however, has this external appellate procedure been invoked. Notice of expulsion of a member is released to the press, although lesser penalties may be kept confidential by the SEC.

NASD provides a range of services to its members. In addition to maintaining an over-the-counter quotation service, NASD has an Information Department which publishes newsletters, press releases and various educational booklets. These publications complement enforcement activities and serve as a form of preventive regulation. In addition, the Association conducts seminars and conferences to inform members of current issues as well as to solicit member views on matters affecting them.[18]

[15] See generally, Mark White, *The National Association of Securities Dealers, Inc.*, 28 Geo. Wash. L.Rev 250, 280 (1959).

[16] The public as well as othe NASD members may also initiate a complaint.

[17] *See*, SEC Net Capital Rule at 17 CFR 240.15c-3-1; Federal Reserve Board Regulation T at 12 CFR 220.1–220.8.

[18] *Id.* at 13.

NASD's activities and reputation have allowed the Federal government to limit its involvement and expenditures in monitoring the activities of the securities industry. However, the fact that the Commission may increase its involvement in the regulation of the securities industry at any time, undoubtedly strengthens the industry's commitment to meaningful self-regulation.

2. *Financial Accounting Standards.* Another private sector organization upon which the Commission relies to aid it in discharging its statutory responsibilities is the Financial Accounting Standards Board (FASB). The legislation creating the Commission gave it the authority to develop and promulgate accounting standards to assure proper compliance with the financial disclosure provisions of that Act.[19] The Commission also has authority to prescribe accounting standards and procedures for compliance with the other three major acts which it administers.[20]

Historically, however, the Commission felt that reliance on accounting principles established by practitioners in the private sector was preferable to promulgating standards of its own. Thus, the Commission has chosen to maintain an oversight role toward the accounting profession. The Commission's first chief accountant stated as early as 1937 that the policy of the Commission was "to encourage * * * accountants to develop uniformity of procedure themselves * * * and to step in directly only as a last resort."[21]

More recently, the Commission reaffirmed its commitment to rely generally on private sector initiative in formulating financial accounting standards. A group established by the American Institute of Certified Public Accountants (AICPA) and chaired by former SEC Commissioner Francis M. Wheat conducted a study of the accounting standards area and recommended that a private sector organization would be most capable of setting standards for the accounting profession. As a result of this recommendation, the Financial Accounting Standards Board was established in 1973. In its Accounting Series Release 150, the Commission announced that it intended to look at accounting principles established by FASB in administering the federal securities laws. Recognizing that private sector resources and expertise exceeded its own, the SEC stated that it endorsed the establishment of the Board because it provided "an institutional framework which will permit prompt and responsible actions flowing from research and consideration of varying viewpoints."

FASB's standard-setting process is conducted under formal rules of procedure similar to the Commission's own, which invite and consider broad-based public comment.[22] With regard to research and policy development, FASB also makes public its proposals and solicits suggestions and criticisms. Ultimately, it is the Commission's responsibility to ensure that adequate disclosure is made in the financial statements filed under federal securities laws. In order to fulfill this responsibility, the Commission maintains an active and ongoing oversight role of FASB. As with the NASD, the Commission has reserved the authority to establish its own rules of accounting if private sector initiative is not satisfactory. Thus far, however, the Commission has not seen the need to do so.[23] Of eighty standards promulgated by FASB since its inception, the Commission has expressed formal disagreement only once. The Commission and FASB maintain a close working relationship to alert each other to perceived issues and potential problems in the industry. Their relationship has been described as one of "mutual non-surprise."[24]

FASB performs no major enforcement activities. Rather, compliance is compelled by the Commission as part of its general enforcement program. Where an accountant has seriously departed from professional principles, the Commission may institute disciplinary proceedings under its Rule of Practice 2(e).[25] Accountants may be barred from further practice before the Commission or may be permitted to practice only under certain conditions.

The Board has seven members who are elected by its sponsoring organization, the Financial Accounting Foundation (FAF), for five-year terms. The Board employs a professional staff of approximately 45 people, most of whom are accountants. It also sponsors an advisory committee whose members are recognized experts in the field. The FAF receives contributions from the financial and accounting communities to support FASB, but recently, half of FASB's operating expenses have been met by the sale of publications.[26]

The Commission's reliance on FASB as a standard-setting organization has been subject to some criticism,[27] but a United States District Court upheld the Commission's reliance on FASB when it was challenged as an impermissible delegation.[28]

The use of self-regulatory organizations by the Commission implements a conscious Congressional policy. In passing Sections 15A and 19 of the 1934 Act, Congress decided that it was preferable for industry to have the opportunity to regulate itself rather than to have direct substantive intervention by the Commission. Congress thereby avoided what would have been large increases in the size of the Commission's staff and the attendant increases in public expenditures. At the same time Congress provided for, and the Commission has retained, authority for direct and swift federal intervention if the need arises.[29]

C. Issues Pertaining to the Possible Role of an SRO in the ERISA Exemption Process

In its examination of alternative ways to handle exemption requests, the Department maintains as its primary goal the protection of the interests of participants and beneficiaries who are covered by plans subject to ERISA. Thus, any proposal to enhance the role of private organizations in the prohibited transaction exemption process must assure the Department's ability to diligently fulfill this obligation.

1. *Limitations on the Use of Self-Regulatory Organizations.* ERISA allows the Department to propose and grant exemptions from the prohibited transaction provisions of the Act only after it makes certain substantive findings and adheres to certain stated procedures. In the Department's view, any procedure under which a self-regulatory organization participates in the exemption process must preserve the Department's authority to make an independent determination both with respect to the decision to propose an exemption and with respect to its decision to grant an exemption that has been proposed. In addition, any such procedure must assure that notice of pendency of the exemption be published in the **Federal Register**, that adequate notice be given to interested persons, and that an opportunity for a hearing be provided in appropriate cases.

2. *Fundamental Characteristics of Self-Regulatory Organizations.* In the Department's view, a self-regulatory organization must have certain fundamental characteristics in order to play a meaningful role in the prohibited transaction exemption process:

(i) *Independence.* The existing self-regulatory bodies discussed above have a high degree of independence. In the case of the NASD, specific provisions of the federal securities laws assure this institutional independence; in the case of FASB, the organizing professional and business groups have taken steps to assure institutional as well as financial independence. As to the latter, the Financial Accounting Foundation, a not-for-profit entity, receives contributions from the accounting community to fund FASB, but the Foundation stands between that community and the Board. The Department expects that any self-regulatory organization that might be formed to participate in the ERISA exemptions process would be similarly independent.

(ii) *Expertise.* A self-regulatory organization must possess a high degree of expertise in order to function effectively. Thus, the sponsors of such an organization must be prepared to provide resources adequate for the organization to develop a staff that has sufficient technical expertise for the organization to discharge its responsibilities. The Department believes that such expertise could be extremely valuable to its own exemptions staff in analyzing complex financial matters, and could thereby benefit all parties concerned.

(iii) *Continuity.* A self-regulatory organization should be a permanent body that performs services for its members in addition to having input in the exemptions process.

(iv) *Funding.* The Department anticipates that the treatment of expenses associated with membership in an SRO or the processing of exemption applications by such an organization would be assumed by its membership. In this respect, the costs of funding an SRO would not be dissimilar to the costs associated with applying for a prohibited transaction exemption under the Department's existing procedures.

3. *Potential Functions of an ERISA Self-Regulatory Organization.* There appear to be at least three broad roles that a self-regulatory organization might perform under ERISA.

First, a self-regulatory organization could provide a source of expertise in the exemption process. Although access to such expertise would be helpful with respect to a variety of different kinds of exemption applications, it would be particularly useful in the case of sophisticated financial transactions involving large institutions. The staff of a self-regulatory organization could analyze specific exemption proposals and make recommendations based on their evaluation in the context of the specific statutory factors for granting an exemption. Their analyses and recommendations could be made available to the Department or to an advisory body. The self-regulatory organization and the Department could also cooperate in developing guidelines which would assure that the analyses and evaluations submitted by the self-regulatory organization are of maximum use, in form and content, to assist the Department in making a prompt determination. If the structure of the self-regulatory organization were such that the Department could be assured that the evaluations and analyses were disinterested and of consistently high quality, the Department could find it in the best interest of all parties to process the exemptions on an expedited basis. Ultimately, the goal of this process would be that the Department could make a decision on such exemption applications within a stated period of time.

A second function that an SRO might perform is to serve as an informed source of expertise for aiding the Department in developing class exemptions from the prohibited transaction provisions of ERISA. The concept of an agency negotiating with representatives of constituent groups for the purpose of developing regulations has been tested by other federal agencies and has met with some success.[30] The procedure of "regulatory negotiation," in the words of the Administrative Conference recommendation: [31]

[19] SEA of 1934 section 12(b), 15 U.S.C. section 781(b).

[20] The Securities Act of 1933, section 7, 15 U.S.C. 77g and Schedule A; The Public Utility Holding Act of 1940, section 5(b), 15 U.S.C. 79b, 79d and 79e; The Investment Company Act of 1940, section 8b, 15 U.S.C. 80a-8(b).

[21] Carman G. Blough, Comments in a Round Table on "Developments in Accounting Theory and Practice Since 1929," *American Institute of Accountants, 50th Anniversary Celebration* at 190 (1937).

[22] FASB, "Facts About FASB," Relationships with the Federal Government," at 1–4 (1984).

[23] *See* generally, SEC Report to Congress, "The Accounting Profession and the Commission's Oversight Role," (July 1, 1978).

[24] FASB, "Facts About FASB: 1 (1984).

[25] SEC Rules of Practice are codified at 17 CFR 201.1 *et. seq.*

[26] FASB's operating expenses for calendar year 1983 were $8,440,000.

[27] *The Accounting Establishment, A Staff Study*, S. Doc. 95–34, 95th Cong., 1st Sess. (1977).

[28] *Arthur Anderson & Co.* v. *S.E.C.*, No. 76–C–2382, unpublished op. (N.D. Ill. Sept. 3, 1976).

[29] *See* S. Rep. No. 1455 at 3–4 and H.R. Rep. No. 2307 at 4–5, 7th Cong., 3d Sess. (1936).

[30] *See* FAA and EPA notices of intent to establish regulatory negotiation advisory committees at 48 FR 21339 (1983), 48 FR 7424 (1983), and 49 FR 17578 (1984). *See also* favorable review of FAA negotiations at 31 Fed. Bar News and Journal 371 (Nov. 1984).

[31] A.C.U.S. Rec. 82–4, 1 CFR. 305.82–4 (1984).

enables the interested parties to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

The Department believes that private organizations may be able to perform an important role in developing class exemptions through the use of a "negotiation" technique similar to that described above. Participation by an SRO in such a process would appear to have particular potential because the SRO would, over time, develop a high degree of expertise in dealing with issues arising under the prohibited transactions of ERISA.

A third possible role for a self-regulatory organization might arise if such an organization possessed a very high degree of independence from its supporting membership, if its membership adhered to high standards of conduct developed by the organization and if the self-regulatory organization could compel adherence to those standards by imposing meaningful disciplinary actions. In such circumstances, the Department might be able to fashion a class exemption under which relief would be conditioned (in whole or part) on membership in the self-regulatory organization. A self-regulatory organization would need to be very well-established in order to play such a role, however, and the Department and the public would need to have a high degree of confidence in the organization in order to make the findings required for such an exemption. Accordingly, the Department believes that it is premature to consider whether a self-regulatory organization could ultimately perform this function.

Solicitation of Comments

The Department is conducting an intensive study of the feasibility of making use of self-regulatory organizations in the administrative exemption process and believes that comments from interested members of the public will be of significant assistance in conducting this study. Although the Department invites, and will consider, comments on all aspects of the SRO concept, it specifically invites comments on the following:

1. Whether any existing private groups have the essential characteristics of independence, expertise and continuity to serve as a self-regulatory organization in the context of the ERISA exemption process. Comments addressing this issue should identify the group or groups that might serve a self-regulatory function and describe their structure and operations.

2. Whether there is any interest on the part of one or more groups of fiduciaries or other parties in interest in establishing and supporting self-regulatory organizations. Comments addressing this issue should identify the group or groups involved and describe the purposes of any proposed organization.

3. Whether there are any practical impediments to the use of self-regulatory organizations in the ERISA exemption process. In this respect, the Department is particularly interested in comments addressing the potential consequences of application of the Federal Advisory Committee Act (FACA) to the activities of a self-regulatory organization.[33] FACA applies to any group that is established or utilized by a Federal government agency "in the interest of obtaining advice or recommendations." Among other things, FACA requires that the advisory committee operate under a written charter, that it hold open meetings and that it perform solely advisory functions.

4. Whether some form of "negotiated" procedure could be used by the Department in developing prohibited transaction class exemptions.

5. Whether there are other functions that a self-regulatory organization might perform. For instance, could an SRO compel adherence to high standards of conduct developed by the organization through the imposition of meaningful disciplinary actions?

Three copies of each respondent's comments should be mailed or delivered to the Administrator of the Office of Pension and Welfare Benefit Programs at Room S4516, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, and should be marked "Attention: SRO Inquiry." Comments should be received on or before [insert date 60 days from date of publication in the **Federal Register**].

All comments received by the Department will be available for public inspection and copying in the Public Disclosure Room of the Office of Pension and Welfare Benefit Programs, Room N4677, 200 Constitution Avenue, NW., Washington, D.C.

[33] 5 U.S.C. App. II. The General Services Administration has issued interim regulations under the Federal Advisory Committee Act, 41 CFR 101-6.1001, *et. seq.*

Signed at Washington, D.C., this 4th day of December 1984.

Robert A.G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs, United States Department of Labor.

[FR Doc. 84-32070 Filed 12-7-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Administrative Committee; Notice of Meeting

The Administrative Committee of the National Commission on Agricultural Trade and Export Policy will meet in Washington, D.C. on December 19, 1984. The meeting will be held in Room 1300, Longworth House Office Building, Independence Avenue, Washington, D.C., at 9:00 a.m.

Matters before the Administrative Committee will include the selection of a staff director and the development of the Commission's future agenda. The Commission invites individuals interested in applying for the position of Staff Director of the Commission to make known their intent by sending information relating to their past experience and qualifications to: Dr. Kenneth L. Bader, Chairman, Commission on Agricultural Trade and Export Policy, 777 Craig Road, Post Office Box 27300, St. Louis, Missouri 63141. The deadline for receiving such applications is December 18.

Applicants for the position of staff director will be judged according to the following criteria:

(1) Familiarity with the resources of Government;

(2) Familiarity with trade issues;

(3) Evidence of administrative ability;

(4) Evidence of leadership skills.

The staff director of the Commission will act as the principal coordinator of all staff activities in support of the Commission under the direction of the Commission Chairman.

The National Commission on Agricultural Trade and Export Policy is an independent Commission established pursuant to Pub. L. 98-412.

Kenneth L. Bader,

Chairman.

[FR Doc. 84-321-86 Filed 12-7-84; 8:45 am]

BILLING Code 3410-25-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of a permit issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On October 29, 1984, the National Science Foundation published a notice in the **Federal Register** of a permit application received. On November 30, 1984 a permit was issued to: John A.W. Kirsch.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 84-32076 Filed 12-7-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-454]

Commonwealth Edison Co.; Byron Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting of relief from certain requirements of Section XI of the ASME Boiler and Pressure Vessel Code, as allowed by 10 CFR 50.55a(g)(6)(i) to Commonwealth Edison Company (the licensee) for Byron Station, Unit 1, located at the licensee's site in Rockvale Township, Ogle County, Illinois.

Environmental Assessment

Identification of Proposed Action: The proposed action would provide relief to the licensee, pursuant to 10 CFR 50.55a(g)(6)(i), from meeting certain requirements of the ASME Code for certain pumps and valves primarily in nuclear safety systems. The specific relief requests are identified in a letter dated November 16, 1984, which revises the program submitted by letter dated November 4, 1982 and evaluated in the staff's Safety Evaluation Report, Supplement 5, for Byron Station, Units 1 and 2. Each such request proposes alternative tests and/or test frequencies for identified pumps and valves.

For example, relief has been requested for the accumulator check valves from the ASME code requirement that check valves be exercised for operability every 3 months. (See VR-5 in the November 16, 1984 letter.) The licensee states that these valves cannot be tested during unit operation because of the pressure differential across the valves. Instead, the licensee proposes to partial stroke test the valves during cold shutdown.

The Need for the Proposed Action: The ASME Code requires that the pumps and valves identified by licensees be tested at certain frequencies. However, limitations such as considerations of design, geometry, accessibility and unavailability of equipment make it impractical for licensees to meet certain of these requirements. Some of the required tests cannot be performed without placing the unit in a mode of operation that could lead to equipment damage or to unit shutdown. However, testing of these pumps and valves in accordance with the proposed alternative methods or at the proposed alternative frequencies will adequately ensure the operability of the equipment.

Environmental Impacts of Proposed Action: The proposed relief for testing of certain pumps and valves in accordance with the proposed alternative test frequencies or methods will adequately ensure the operability of the equipment. Imposition of the ASME Code requirements would result in hardships or unusual difficulties without a compensating increase in the level of quality or safety. Because the proposed alternative test frequencies or methods will ensure operability of the equipment, the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief, nor does the proposed relief otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significanty radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: Because we have concluded that there is no measurable environmental impact associated with the proposed relief, any alternatives to the relief will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief. Such action would not reduce environmental impacts of Byron Station, Unit 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Byron Station, Units 1 and 2," dated April 1982.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request that support the proposed relief. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed relief.

For further details with respect to the actions, see the licensee's request for relief dated November 16, 1984 which is available for public inspection at the Commission's Public Document Room, 1717 H Stret, NW., Washington, D.C. and at the Rockford Public Library, Rockford, Illinois.

Dated at Bethesda, Maryland, this 4th day of December 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 84-32183 Filed 12-7-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co.; Ohio Edison Co.; Pennsylvania Power Co. (Beaver Valley Power Station Unit No. 1); Exemption

I

The Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company (the licensees), are the holder of Facility Operating License No. DPR-66 (the license) which authorizes operation of the Beaver Valley Power Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility comprises a pressurized water reactor at the licensee's site located at Beaver County, Pennsylvania.

II

By letter dated June 25, 1984, Duquesne Light Company applied for an amendment to Operating License DPR-66 to change certain provisions of the Technical Specifications. The change would require an exemption from the Commission's regulation, described as follows:

Section III.D.1(a) of Appendix J, 10 CFR Part 50, states that "* * * a set of three Type A tests shall be performed, at approximate equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections." This requires that containment integrated leak rate tests (CILRTs) be performed at approximately 40-month intervals (in practice, 40 ± 10 month intervals, with the third one in each set peformed coincident with performance of the 120-month inservice inspection).

Due to an extended shutdown of eleven months and twenty-one days, the inservice inspection interval has been extended, per the requirements of Section XI of the ASME Boiler and Pressure Vessel Code (See letter, S. A. Varga of NRC to J. J. Carey of Duquesne Light Company, May 21, 1984). It is, therefore, no longer possible to perform the third CILRT within 40 ±10 months after the second one, and during inservice inspection shutdown.

Duquesne Light Company has requested that Technical Specification 4.0.1.2 be changed, and an exemption from Section III.D.1(a) of Appendix J be granted such that the third of each set of three CILRTs need not be performed in conjunction with the inservice inspection shutdown. The staff has reviewed the request and concluded that since the CILRT need not be performed during the inservice inspection shutdown, the licensee's request is acceptable. The license will continue to perform the CILRTs at internals of 40 ± 10 months but will not need to perform them in conjunction with inservice inspections.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants an exemption with respect to the requirements of 10 CFR 50, Appendix J, Section III.D.1(a):

The Beaver Valley Unit 1 Technical Specifications may be amended to require that the CILRTs be performed solely according to the 40 ± 10 month frequency, not in conjunction with the inservice inspection shutdown.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (49 FR 32134, August 10, 1984).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 30th day of November 1984.

For the Nuclear Regulatory Commission.

Frank Miraglia,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-32162 Filed 12-7-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket 50-322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of General Design Criterion (GDC) 2 of Appendix A to 10 CFR Part 50, to the Long Island Lighting Company (the applicant), for the Shoreham Nuclear Power Station, located at the applicant's site in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action: The exemption would relieve the applicant from the requirement to complete the seismic and dynamic qualification of Radiation Monitoring Panels 1D11*PNL-117A and B, and Radiation Monitoring Pumps 1D11*P-128 and 134. The exemption would be effective until the reactor power level exceeded five percent of rated power during the power ascension test program. The exemption is in response to the applicant's request dated November 9, 1984.

The Need for the Proposed Action: The exemption is needed to authorized the testing of the Shoreham Nuclear Power Station at power levels up to five percent of rated power. The NRC Staff reviewed this aspect of Shoreham's design, and concluded, in Supplement 7 to the Shoreham Safety Evaluation Report, that operation at up to five percent power is acceptable without completing the qualification of this equipment. Thus, if the exemption is not granted, the facility must remain shutdown for a significant period of time until the equipment can be qualified.

Environmental Impacts of the Proposed Action: We have evaluated the environmental impacts related to a delay in implementation of the requirements until the completion of low power testing. Our evaluation of the proposed exemption indicates that it will not significantly reduce the integrity of safety systems. The only effect of failure of this equipment as a result of a seismic event could be a delay in monitoring radioactive effluents while grab samples are taken manually. Additionally, the buildup of radioactive inventory during operation at up to five percent power will be comparatively small. Accordingly, post-accident radiological releases will not be greater than previously determined nor will the proposed delay in fully implementing the GDC affect radiological plant effluents during normal plant operation, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts associated with these systems and would result in delay in issuing the Shoreham operating license.

Alternative Use of Resources: This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details, with respect to this action, see the applicant's request dated November 9, 1984 and Supplement 7 to the Shoreham Safety Evaluation Report, dated September, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York.

Dated at Bethesda, Maryland, this 5th day of December 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing

[FR Doc. 84-32164 Filed 12-7-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket 50-322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of Appendix J to 10 CFR Part 50, to the Long Island Lighting Company (the applicant), for the Shoreham Nuclear Power Station, located at the applicant's site in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action: The exemption would relieve the applicant of the requirement to test the Main Steam Isolation Valves (MSIVs) at the peak calculated containment pressure and would exempt the applicant from including those leak rates in the summation of the local leak rate test results. The exemption is in response to the applicant's request dated November 9, 1984.

The Need for the Proposed Action: The exemption is needed to authorize the operation of the Shoreham Nuclear Power Station. The NRC Staff reviewed this aspect of Shorham's design, and concluded, in Section 6.2.5.1. of the Shoreham Safety Evaluation Report (SER), (NUREG-0420) that operation of the facility is acceptable with the present configuration and proposed method of testing these valves. Thus, if the exemption is not granted, the facility must remain shutdown for a significant period of time until the valves could be modified or replaced with a different design.

Environmental Impacts of the Proposed Action: We have evaluated the environmental impacts related to granting this exemption. Our evaluation of the proposed exemption in Section 6.2.5.1 of the SER, indicates that it will not reduce the integrity of the containment system. Accordingly, post-accident radiological releases will not be greater than previously determined, radiological plant effluents during normal plant operation will not be affected, and there will be no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of the integrity of containment systems and would result in delay in issuing the Shoreham operating license.

Alternative Use of Resources: This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details, with respect to this action, see the applicant's request dated November 9, 1984 and the Shoreham Safety Evaluation Report (NUREG-0420), dated April 1981, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York.

Dated at Bethesda, Maryland, this 5th day of December 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 84-32165 Filed 12-7-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No-322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50, to the Long Island Lighting Company (the applicant), for the Shoreham Nuclear Power Station, located at the applicant's site in Suffolk County, New York.

Identification of the Proposed Action: The exemption would leave the applicant of the requirement to install certain additional, redundant, local instruments and upgrade the qualification of other instrumentation in the Remote Shutdown System, until startup after the first refueling outage. The exemption is in response to the applicant's request dated November 9, 1984.

The Need for the Proposed Action: The exemption is needed to authorize the operation of the Shoreham Nuclear Power Station during its first cycle of operation. The NRC Staff reviewed this aspect of Shoreham's design, and concluded, in Supplements 3 and 7 to the Shoreham Safety Evaluation Report (SSER3 and 7), that operation until the first refueling outage is acceptable with the present configuration of the Remote Shutdown System. Thus, if the exemption is not granted, the facility must remain shutdown for a significant period of the time until the modifications can be made.

Environmental Impacts of the Proposed Action: We have evaluated the environmental impacts related to a delay in implementation of the requirements until the first refueling outage (approximately eighteen months). Our evaluation of the proposed exemption in section 7.4.3 of SSERs 3 and 7 indicates that it will not significantly reduce the effectiveness of the Remote Shutdown System, because there is an extremely low probability that an event will cause an evacuation

Appendix J, Section III.D.1(a):

until the equipment can be qualified.

assessment, we conclude that the

design.

of the control room concurrent with a single failure in the primary shutdown path of the Remote Shutdown System during the first cycle of plant operation. In addition, redundant systems will still be operable from remote locations because only the indication for certain parameters will not be available until the first refueling outage. Accordingly, post-accident radiological releases are not expected to be greater than previously determined, the proposed delay in fully implementing the GDC will not affect radiological plant effluents during normal plant operation, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since we have concluded that the environmental affects of the proposed action are negligible, any alternatives with equal or grater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of the Remote Shutdown System and would result in delay in issuing the Shoreham operating license.

Alternative Use of Resources: This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details, with respect to this action, see the applicant's request dated November 9, 1984 and Supplements 3 and 7 to the Shoreham Safety Evaluation Report, dated February 1983 and September, 1984, respectively which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York.

Dated at Bethesda, Maryland, this 5th day of December, 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 84-32160 Filed 12-7-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket 50-322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of General Design Criterion (GDC) 50 of Appendix A to 10 CFR Part 50, to the Long Island Lighting Company (the applicant), for the Shoreham Nuclear Power Station, located at the applicant's site in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action: The exemption would relieve the applicant of the requirement to have two isolation valves installed on certain instrument lines which penetrate containment and are open to the containment atmosphere, until startup after the first refueling outage. The exemption is in response to the applicant's request dated November 9, 1984.

The Need for the Proposed Action: The exemption is needed to authorize the operation of the Shoreham Nuclear Power Station during its first cycle of operation. The NRC Staff reviewed this aspect of Shoreham's design, and concluded, in Supplement 4 to the Shoreham Safety Evaluation Report (SSER 4), that operation until the first refueling outage is acceptable with the present configuration of these instrument lines. Thus, if the exemption is not granted, the facility must remain shutdown for a significant period of time until the modification can be made.

Environmental Impacts of the Proposed Action: We have evaluated the environmental impacts related to a delay in implementation of the requirements until the first refueling outage (approximately eighteen months). Our evaluation of the proposed exemption in Section 6.2.3 of SSER 4 indicates that it will not significantly reduce the integrity of the containment system. Accordingly, post-accident radiological releases will not be greater than previously determined nor will the proposed delay in fully implementing the GDC affect radiological plant effluents during normal plant operation, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of the integrity of containment systems and would result in delay in issuing the Shoreham operating license.

Alternative Use of Resources: This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details, with respect to this action, see the applicant's request dated November 9, 1984 and Supplement 4 to the Shoreham Safety Evaluation Report, dated September, 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York.

Dated at Bethesda, Maryland, this 5th day of December, 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 84-32167 Filed 12-7-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket 50-322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of General Design Criterion 17 of Appendix A to 10 CFR Part 50, to the Long Island Lighting Company (the applicant), for the Shoreham Nuclear Power Station, located at the applicant's site in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action: The exemption would relieve the applicant from meeting certain requirements of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 17 of the Commission's regulations, which requires that a nuclear power plant be provided with both an onsite electric power system and an offsite electric power system, to permit functioning of structures, systems and components important to safety. The onsite electric power supplies are required to have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure. The exemption would allow the applicant to operate the facility at power levels up to five percent of rated power (121.8 megawatts thermal) without providing it with a demonstrated reliable source of onsite electrical power. The proposed exemption is in response to the applicant's "Supplemental Motion for Low-Power Operating License" dated March 20, 1984, as supplemented by the applicant's Application for Exemption dated May 22, 1984.

The Need for the Proposed Action: In its September 21, 1983 Partial Initial Decision, the Atomic Safety and Licensing Board resolved all contentions favorably to the applicant, but refrained from authorizing the issuance of a low power operating license until new contentions concerning the reliability of the onsite Transamerica Delaval Inc. (TDI) emergency diesel generators are resolved. The Board did not, however, preclude the applicant from proposing other ways it could qualify for low-power operation. On March 20, 1984, the applicant submitted its "Supplemental Motion for Low-Power Operating License." Therein, it submitted that the pending diesel generator issues need not be resolved prior to the granting of a low-power license for Shoreham, as these generators were not necessary to assure the public health and safety during low power operations. The applicant supplemented its motion in its Application for Exemption dated May 22, 1984.

The applicant has divided its proposed low-power testing program into four distinct phases, each consisting of a separate set of operations and testing. These phases are:

(a) Phase I: fuel load and precriticality testing,

(b) Phase II: cold criticality testing,

(c) Phase III: heatup and low-power testing to rated pressure/temperature conditions (approximately 1% rated power); and

(d) Phase IV: low-power testing (1–5% rated power).

The applicant's motion stated that during Phases I and II, no AC power whatsoever is necessary to protect public health and safety, and therefore no diesel generators are necessary to satisfy NRC regulations. Furthermore, even assuming the TDI diesels are unavailable, ample alternate sources of AC power are available to provide reasonable assurance of no risk to public health and safety up to 5% rated power.

In addition to the in place, though not fully litigated, TDI diesels and the site's access to offsite power grid, the applicant has added certain additional AC power generating equipment as "enhancements" for emergency backup power. These are:

—Four 2.5 MW EMD (Electro-Motive Division, General Motors) deadline blackstart mobile diesel generators

—A 20 MW gas turbine with deadline blackstart capability.

The necessity for onsite diesel generators derives from General Design Criterion (GDC) 17, which requires that electric power systems assure that, in the absence of either onsite or offsite power systems, (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences, and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents. The applicant stated that a review of the spectrum of transients and accidents postulated in Chapter 15 of Shoreham's Final Safety Analysis Report (FSAR) revealed that there were no requirements for AC power during Phases I and II. Thus there was no need for any emergency power sources to protect public health and safety. During Phase III and IV, the public would be exposed to far less risk than it would be during full power operations, and the applicant would be well able to restore emergency AC power in the ample amount of time available to avert any danger to public health and safety.

The NRC staff reviewed this information, and as reported in Supplements 5 and 6 to the Shoreham Safety Evaluation Report (SSER5 and SSER6) determined that the applicant had provided adequate technical justification to support the granting of an exemption from the requirements of GDC–17. The applicant's Motion and Application for Exemption were the subject of public hearings before an Atomic Safety and Licensing Board in August, 1984. In its Initial Decision (ASLBP No. 77–347–OIC–OL), dated October 29, 1984, the Board agreed with the applicant and the staff, and authorized the grant of an exemption from the requirements of GDC–17.[1]

Environmental Impacts of the Proposed Action: As discussed in SSERs 5 and 6, for transients and accidents, sufficient time exists so that AC power could be made available to those systems required to maintain core cooling prior to release of any radioactive fission products from the fuel. Therefore, there is no fission product release that could be postulated during operation up to five percent of rated power without TDI diesels available. During normal plant operation at up to five percent power, the grant of the exemption will have no affect on plant radiological effluents because the plant will be operating normally and onsite emergency power supplies would not be in use. Therefore, the Commission concludes that these are no significant radiological environmental impacts or any significant occupational exposure associated with the proposed exemption.

With regard to potential nonradiological impacts the proposed exemption would involve the addition of the four EMD diesel generators, the new gas-turbine, and associated cables within the plant boundary. During normal operation and during any postulated transients and accidents, the non-radiological affect of operation of

[1] Additionally, in CLI 84-8, dated June 6, 1984, the Commission determined that no separate environmental impact statement need be prepared for low power operation.

these engines would be essentially the same as operation of the TDI diesel engines. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since we have concluded that the environmental effects of the proposed exemption are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts associated with the onsite emergency power supply system, and would result in delay in the issuance of the Shoreham operating license.

Alternative Use of Resources: The use of the four EMD engines and the new gas-turbine was not considered in the Shoreham Final Environmental Statement (Construction Permit and Operating License). However these machines do not occupy any additional land, and they are standard commercial pieces of equipment, so their use does not constitute a significant increase in the use of any limited resources.

Agencies and Persons Consulted: The Commission's staff reviewed the applicant's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the environmental assessment, we conclude that the proposed action will not have a significant affect on the quality of the human environment.

For further details with respect to this action, see the applicant's Motion dated March 20, 1984, the applicant's Application for Exemption dated May 22, 1984, the NRC Staff's Supplemental Safety Evaluation Reports 5 and 6, dated April 1984 and July 1984, respectively, and the Initial Decision of the Atomic Safety and Licensing Board (ASLBP No. 77-347-OIC-OL) dated October 29, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington D.C., and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York.

Dated at Bethesda, Maryland, this 5th day of December, 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 84-32108 Filed 12-7-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System: Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21, issued to Washington Public Power Supply System (the licensee), for operation of the WPPSS Nuclear Project No. 2, located in Richland, Washington.

Environmental Assessment

Identification of Proposed Action: The amendment would modify the license condition 2.C.(11) of Facility Operating License NPF-21 which states that, "The licensee shall complete construction of deferred shield walls as identified in Attachment 3 to this license within one (1) year after issuance of this operating license or prior to operation of the permanent solid radioactive waste solidification system, whichever occurs first." The amended license condition will read as follows: "The Licensee shall complete construction of the deferred shield walls and window as identified in Attachment 3, as amended by this license amendment." This action also includes editorial corrections in items 3 and 4. Of the nine shield wall locations as described in the August 15, 1984, request and listed on Table 1 below, items 1, 2, and 4 will be completed by December 20, 1984, as required by the license condition 2.C.(11). The amended license condition will allow future deferral of the construction of the remaining shield walls and window (items 3, and 5 through 9).

Table-1

List of Shield Walls

1. *FSAR Figure 12.3-32, Zone H-8*—The partial height wall outside the spent resin tank room.
2. *FSAR Figure 12.3-26, Zone G-12*—The tube access wall to the main condenser.
3. *FSAR Figure 12.3-27, Zone D-11*—Same as above, only other end of condenser.
4. *FSAR Figure 12.3-34, Zone H-8*—The access blockout to the spare demineralizer cubicle.
5. *FSAR Figure 12.3-3/33, Zone G-9*—Same as above for the duplicate centrifuge room.
6. *FSAR Figure 12.3-33, Zone F-9*—Same as above for the duplicate centrifuge.
7. *FSAR Figure 12.3-34, Zone J-5*—The blockout for one of the two decon concentrators.
8. *FSAR Figure 12.3-32, Zone D-8*—The two block walls at the north end of the truck loading bay.
9. *FSAR Figure 12.3-32, Zone E-8*—The leaded glass viewing window in the radwaste area.

The Need for the Proposed Action: The proposed change to the license condition is required in order to continue operation of the WNP-2 facility. Originally, the licensee had anticipated completing the construction of deferred shield walls and leaded glass viewing window within one year after the issuance of WNP-2 operating license. At present, the licensee does not have any plans to construct the permanent radioactive waste solidification system and has proposed to continue use of the portable radioactive waste solidification system.

Environmental Impacts of the Proposed Action: There are no environmental impacts of the proposed action. The original design anticipated radiation sources in the solid radwaste system and condenser tube access areas requiring shielding for protection of personnel in the adjacent areas. At present, there is no schedule for installation of the solid radioactive waste solidification system. As a result, the source originally anticipated is non-existent. The radiation levels in these areas during the Power Ascension Test Program will be monitored in order to establish a base case. These areas will then be routinely monitored during commercial operation with periodic ALARA reviews performed to ensure personnel exposures are minimized. ALARA reviews will also be initiated per approved plant procedures upon significant radiation level increases. These deferred shield walls shall be constructed whenever the dose rate at the shield wall location exceeds 2.5 MR/hr.

The two deferred shield wall locations not associated with the solid radwaste system are described in items 2 and 3. These are on the east and west ends of the condenser access areas. These walls were deferred because the licensee's ALARA review showed the principal radiation sources are not in line of sight with these two locations. A locked gate has been used for each location in place of the shield wall to control entry to the high radiation zone. ALARA reviews were performed on both of these areas during startup to evaluate the need for these shield walls. The dose-rate criteria for construction of these walls is 2.5 mrem/hr at the locked gate location. Based on the results of these ALARA surveys, the shield wall at the east end of the condenser (item 3) will be constructed prior to December 20, 1984 as required by the license condition 2.C.(11). In addition, the dose rate at the gate location at the west end of the condenser will be monitored and shield wall shall be constructed whenever the dose rate exceeds 2.5 mrem/hr.

ALARA reviews performed at these locations show that the proposed change will have no significant effect on personnel exposures, or on any radiological plant effluents. Following a LOCA accident, workers will not be required to enter areas in the vicinity of the deferred shield walls to mitigate the course of the accident. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment. Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on October 11, 1984 (49 FR 39936). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential non-radiological impacts, the proposed change involves a system located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action: Since we have concluded that there is no measurable environmental impact associated with the proposed change to the license condition, any alternatives to this change will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources: This action does not involve the use of resources not previously considerd in connection with the "Final Environmental Statement Relating to Operation of WPPSS Nuclear Project No. 2." dated December 1981 and the "Final Environmental Statement Related to the Proposed Hanford Number Two Nuclear Power Plant," dated December 1972.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. For further details with respect to this action, see the application for amendment dated August 15, 1984 and as supplemented on September 7 and October 10, 1984 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC at the Richland City Library, Swift and Northgate Street, Richland, Washington 00535.

Dated at Bethesda, Maryland, this 4th day of December 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-32109 Filed 12-7-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Proposed Revision of Form for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed revision of form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed revision of a form that collects information from the public. The Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) requires that a financial disclosure report be filed by candidates for nomination or election to the Office of the President or Vice President and Presidential nominees requiring the advice and consent of the Senate. The Standard Form 278, Financial Disclosure Report, solicits the information by law. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202)632-7720.

DATE: Comments on this proposal should be received on or before December 20, 1984.

ADDRESSES: Send or deliver comments to:

John P. Weld,
Agency Clearance Officer,
U.S. Office of Personnel Management,
1900 E Street, N.W., Room 6410,
Washington, D.C. 20415

And

Katie Lewin,
Information Desk Officer,
Office of Information and Regulatory Affairs
Office of Management and Budget,
Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202)632-7720, Office of Personnel Management.

David H. Martin,

Director, Office of Government Ethics.

[FR Doc. 84-32144 Filed 12-7-84; 8:45 am]

BILLING CODE 6325-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of the Information Collection Requirement Contained in 29 CFR Part 2610 and PBGC Form 1

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMP approval of extension.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection requirement (1212-0009) without any change in the substance or in the method of collection. The information collection, which is scheduled to expire on January 31, 1985, is contained in PBGC's regulations on Payment of Premiums, 29 CFR Part 2610, and PBGC Form 1 (formerly "PBGC-1"). The rules in the regulation are simplified and clarified in PBGC Form 1 and its instructions. The effect of this notice is to advise the public of PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer fore the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, D.C. 20503. The request for extension will be available for public inspection at the PBGC

demineralizer cubicle.

of the shield wall to control entry to the

No. 2." dated December 1981 and the

(202)632-7720.

for public inspection at the PBGC

Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202–254–6478 (202–254–8010 for TTY and TDD). These are not toll-free numbers

C.C. Tharp,

Executive Director.

[FR Doc. 84-32085 Filed 12-7-84; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF STATE

[Public Notice 922]

The Secretary's Advisory Panel on Overseas Security; Meeting

The Secretary's Advisory Panel on Overseas Security will hold a meeting on Tuesday, December 18, 1984 and Wednesday, December 19, 1984 from 8:00 a.m. until 5:00 p.m. at the Department of State, 2201 C Street, NW., Washington, D.C. 20510.

Due to the national security information that will be discussed, this meeting will be closed to the public.

For further information, please contact the Advisory Panel staff on 202–673–5544.

November 28, 1984.

Victor H. Dikeos,

Executive Secretary, The Secretary's Advisory Panel on Overseas Security.

[FR Doc. 84-32175 Filed 12-7-84; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; U.S.C. App. 1) notice is hereby given of a meeting of Task Group 4–6 of the Federal Aviation Administration National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A study of airport surface detection equipment systems and their capabilities to aid in determining modification procedures, phraseology, and achieve national standardization.

DATE: Beginning Tuesday, January 8, 1985, at 9 a.m., through Thursday of the first week and resuming at 9 a.m. Monday through Thursday of the following week.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 7A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independent Avenue, SW., Washington, D.C. 20591, 426–3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT–1, 800 Independence Avenue, SW., Washington, D.C. 20591, by December 31. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on December 3, 1984.

Joe Stephens,

Acting Manager, Special Projects Staff, Office of the Associate Administrator for Air Traffic.

[FR Doc. 84-32060 Filed 12-7-84; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 238

Monday, December 10, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Mine Safety and Health Review Commission	1

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 5, 1984

TIME AND DATE: 10:00 a.m., Wednesday, December 12, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument of the following:

1. Freeman United Coal Mining Co., Docket No. LAKE 82–3. (Issues include whether the administrative law judge properly concluded that the operator violated 30 CFR 75.301, a mandatory safety standard dealing with ventilation.)

TIME AND DATE: Immediately following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: Following oral argument the Commission will consider and act upon the above case.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-32255 Filed 12-6-84; 11:47 am]

BILLING CODE 6735-01-M

federal register

Monday
December 10, 1984

Part II

Environmental Protection Agency

40 CFR Parts 86 and 600

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures; and Fuel Economy of Motor Vehicles; Technical Amendments and Corrections; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[AMS-FRL 2654-4; Docket No. A-84-17]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures; and Fuel Economy of Motor Vehicles; Technical Amendments; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule amends 40 CFR Parts 86 and 600, primarily to correct and clarify parts of final rules for motorcycles, heavy-duty test procedures, and fuel economy rules issued on October 28, 1977 (42 FR 56737), November 16, 1983 (48 FR 52170) and April 6, 1984 (49 FR 13832) respectively. These amendments are primarily technical in nature, correcting errors made in the respective final rules, or making minor, nonsubstantive changes to the regulations.

DATE: Except for amendments described in items 4, 7, and 8, this final rule is effective December 10, 1984. Items 4 and 7 will be effective as of January 1, 1985, Item 8 will be effective January 1, 1986.

ADDRESS: Copies of material relevant to this rulemaking are contained in Public Docket No. A-84-17 at the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Clifford D. Tyree, Certification Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4310.

SUPPLEMENTARY INFORMATION: This rulemaking contains the following types of amendments to 40 CFR Part 86 (Control of Air Pollution for New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures) and Part 600 (Fuel Economy of Motor Vehicles): (1) Clerical amendments, such as corrections to citations and restoration of material inadvertently omitted; and (2) technical and other minor amendments that provide additional explanation or detail, without substantially changing the meaning or requirements of the regulation, primarily in order to clarify a current requirement or practice.

By issuing the following amendments directly as a final rule, EPA is foregoing the issuance of a notice of proposed rulemaking (NPRM) and the opportunity for public comment on the proposal provided by the NPRM rulemaking process. Such a curtailed procedure is permitted by 5 U.S.C. 553(b) and section 307(d) of the Clean Air Act when the issuance of a proposal and public comment would be unnecessary and contrary to the public interest. EPA finds good cause to dispense with the notice and public comment proceedings in this case because the technical and other amendments merely correct errors and ambiguities in the regulations and otherwise amend EPA procedures in a manner that does not adversely or significantly affect any interested party. For the same reasons, EPA finds that there is good cause to make these amendments effective upon publication, except for items 4, 7, and 8 (see Appendix).

I. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because the amendments are nonsubstantive technical amendments. Also, this regulation will not result in increased costs or prices for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments are available for public inspection in the docket for this rulemaking, Docket No. A-84-17.

II. Reporting and Recordkeeping Requirements

The information collection requirements contained in the rules which this formal rule amends have been cleared by OMB and assigned control number 2000-0390. The amendments contained in this final rule have an impact of a slight reduction in respondent burden. This reduction will be incorporated in the next extension of the OMB clearance.

III. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory flexibility analysis. The technical amendments of this rulemaking will not increase the burden or cost of compliance for the industry. Therefore, pursuant to 5 U.S.C 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 86

Administrative practice and procedure, Air pollution control, Environmental protection, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedure, Electric power, Energy conservation, Fuel economy, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

Dated: November 16, 1984.

Alvin L. Alm,

Administrator.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES

Section	Change	Reason
1. Part 86, Authority	None	
2. Part 86	Remove 60 sections and 1 Appendix	Sections are obsolete.
3. Part 86	Update the Table of Contents of Part 86	To correctly reflect applicable regulations currently in effect.
4. Part 86	Remove 19 sections from Part 86 on January 1, 1985	These sections are being superseded.
5. Part 600	Remove 13 sections and three Appendices from Part 600	Sections are obsolete.
6. Part 600	Update the Table of Contents of Part 600	To correctly reflect applicable regulations currently in effect.
7. Part 600	Remove 12 sections as of Jan. 1, 1985	These sections will be obsolete.
8. Part 600	Remove 24 sections as of Jan. 1, 1986	These sections will be obsolete.
9. Section 86.082-1	Explicitly state that heavy-duty engine (or vehicle) provisions do not apply	Clarification.
10. Section 86.084-2	Add language describing "measured" idle speed	Provide added flexibility in the test-void criteria.
11. Section 86.085-9: (a)(1)(ii)(B)	The value 0.05 is changed to 0.50	Correction.
12. Section 86.085-10: (a)(2)	Remove reference to Subpart P	Do.
13. Section 86.085-21:		
(b)(1)(ii) (A)	Reference to "preliminary" application is deleted	Preliminary applications no longer routinely required to be submitted.
(b)(1)(ii) (B)	...do	Do.
14. Section 86.085-22: (d)(2)	Delete the mandatory requirement that test procedures must be submitted prior to determining a deterioration factor.	Amend language to reflect Agency's practice.
15. Section 86.084-24: (g)(2)-(4)	Correct language to describe "engine-system combination" instead of "engine family".	When this section was created, 45 FR 63753, language was incorrectly copied from §86.079-24 instead of § 86.080-24.
16. Section 86.085-24:		
(b)(2)(v)	Add language to permit alterations of development engines	To provide expanded usage flexibility comparable to that provided for light-duty vehicles.
(b)(3)(iv)	Add language to permit alterations of other emission-data engines and development engines.	Do.
(g)(2)-(4)	Revise language in paragraphs (g) (2) and (3) and add paragraph (g)(4)	When this section was created at 48 FR 1443, Jan. 12, 1983, the original language had two errors. Paragraph (g)(4) was inadvertently omitted and the language for paragraphs (g) (2) and (3) contained errors.
17. Section 86.085-26:		
(d)(4)	Reference to paragraph (c)(3) is changed to (d)(3)	Correction.
(d)(5)	Reference to paragraph (c)(4) is changed to (d)(4)	Do.
(d)(6)	Reference to paragraph (c)(5) is changed to (d)(5)	Do.
18. Section 86.087-26:		
(b)(4)(ii)	Reference to HD is changed to HC	Do.
(c)(4)(iii)(A)(2)	Add the phrase "for idle CO"	Inadvertently omitted.
(d)(4)	Reference to paragraph (c)(3) is changed to (d)(3)	Do.
(d)(5)	Reference to paragraph (c)(4) is changed to (d)(4)	Do.
(d)(6)	Reference to paragraph (c)(5) is changed to (d)(5)	Do.
19. Section 86.113-82: (a)(2)	Change ". . . 1.0 research octane . . ." to ". . . one octane . . ." In addition this paragraph is divided into four paragraphs.	Allow manufacturers the flexibility of recommending research, motor, or research + motor octane rated fuels. Also to improve readability.
20. Section 86.134-78	Reserved section	Regulatory language obsolete.
21. Section 86.135-82: (h)(i)	Inserted language describing dynamometer procedures for four-wheel drive vehicles.	Language was inadvertently omitted in previous rulemaking action.
22. Section 86.144-78: (c)(3)	Change from "can" substitute to "must" substitute	Clarify requirements.
23. Section 86.402-78	Revise "zero kilometer" definition	Emission limitations.
24. Section 86.410-78	Revise section title by adding, "and later model year"	Clarification.
(a)(1)	Add words, "and later model year"	Do.
25. Section 86.415-78: (b)	Change quarterly to yearly and quarter to year	Make requirements comparable to those for light-duty vehicles.
26. Section 86.416-80: (a)(2)(vii)	Increase 10 km to 100 km and one hour to three hours	Revise requirements to conform to new zero kilometer definition.
27. Section 86.423-78: (a)	Clarify provision for optional zero kilometer testing. Add provision for submission of data with the application. Delete requirement for prior Administrator approval of testing and service accumulation. Divide paragraph into three paragraphs.	Specifically provide for zero kilometer testing. Eliminate unnecessary restriction.
28. Section 86.424-78	Remove section	Improve readability. Eliminate obsolete and superfluous graphical depiction of the certification procedure.
29. Section 86.427-78: (a)	Add provision for optional zero kilometer emission testing	To be consistent with revised language of § 86.423-78.
(e)	Divide paragraph into two paragraphs. Add provision for optional averaging of multiple test data.	Improve readability. Make provision comparable to that for light-duty vehicles.
30. Section 86.430-78: (a)	Delete reference to "Official Test"	Eliminate redundant testing.
31. Section 86.431-78: (a)	Revise requirements to allow submission of test data with the application	Eliminate unnecessary time requirement.
(c)	Revise requirements to allow submission of maintenance data with application	Do.
32. Section 86.432-78: (f)	Add provision for use of optional outlier procedure in calculating deterioration factors.	Make procedure comparable to that for light-duty vehicles.
33. Section 86.434-78	Revise title from "Official Test" to "Testing by the Administrator"	Clarify applicability.
(a)	Delete reference to "Official Test"	Eliminate redundant testing.
(b)	...do	Do.
(c)	...do	Do.
34. Section 86.435-78: (b)	...do	Do.
35. Section 86.436-78: (b)	...do	Do.
(c)	...do	Do.
(d)(1	...do	Do.
(e)(3)	...do	Do.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES—Continued

Section	Change	Reason
Figure E78-3 of paragraph (f).	Delete figure	Eliminate obsolete and superfluous graphical depiction of the certification procedure.
36. Section 86.426-78:		
(a)	Revise alternative procedure for adding vehicles or making changes to vehicles	Make procedure comparable to that for light-duty vehicles.
(b)	[Reserved]	Do.
(c)	Revise alternative procedure for adding vehicles or making changes to vehicles	Do.
(d)	...do	Do.
37. Section 86.440-78:		
(a)(2)(i)	Simplify record maintenance requirements	Make requirements comparable to those for light-duty vehicles.
(a)(2)(i)(A)	...do	Do.
(a)(2)(i)(B)	...do	Do.
(a)(2)(i)(C)	...do	Do.
(a)(2)(i)(D)	Remove	Do.
(a)(2)(i)(E)	Simplify record maintenance requirements	Do.
(a)(2)(i)(F)	...do	Do.
(a)(2)(i)(G)	Remove	Do.
(a)(2)(i)(H)	Simplify record maintenance requirements	Do.
(a)(3)	...do	Do.
38. Section 86.537-78:		
(b)(12)	Revise start of time limit for obtaining analyzer readings	Make requirement comparable to that for light-duty vehicles.
(b)(14)	...do	Do.
(b)(15)	...do	Do.
39. Section 86.884-6: (d)	Reference to § 86.084-24 is changed to § 86.084-25	Correction.
	In addition, this paragraph is divided into two paragraphs	Improve readability.
40. Section 86.884-7: (A)(i)(ii)	Change "... For electric dynamometer ..." to "... For electric motoring dynamometer. . . .".	Correction.
(a) (2) (v)	...do	Do.
41. Section 86.884-8:		
(b)(2)	Change "... and optical unit ..." to "... an optical unit. . . ."	Typographical correction.
	In addition, this paragraph is divided into nine paragraphs	Improve readability.
(b)(3)	Change "inch" to "inches"	Typographical correction
	In addition, this paragraph is divided into six paragraphs	Improve readability.
42. Section 86.884-10	Remove paragraph (c)(4)	Provide added flexibility.
43. Section 86.884-11	do	Do.
44. Section 86.884-12	Change reference from § 86.844-7 to § 86.884-7	Correction.
	In addition, the paragraph is divided into five paragraphs	Improve readability.
45. Section 86.884-13:		
(a)(1)	Change "...speed in 50..." to "...speed is 50...."	Typographical correction.
(b)	Change "Determined" to "Determine"	Do.
(b)(3)(iii)	Change "85" to "85"	Correction.
46. Section 1083-84: (c)(1)	Add "in" in the phrase "...for testing in the event..."	Typographical correction.
	In addition, this paragraph is divided into three paragraphs	Improve readability.
47. Section 86.1308-84(a)	Add a reference to the (f) (3) schedule in Appendix I	Inadvertently omitted.
	In addition, allowance is made for direct engine torque read-out	Provide added flexibility.
(a)(2)(iii)	Add "...greater than..."	Correction.
(b)	Allowance is made for direct engine torque read-out	Provide added flexibility.
(b)(1)	...do	Do.
(b)(2)	...do	Do.
48. Section 86.1310-84(a)(1) Figure N84-3.	Add reference to optional filter, descriptor for background bag, and deleted reference to the nois for span gasses.	Clarification.
(a)(1) Figure N84-4	Add reference to optional filter, and descriptor to background bag	Do.
(b) (3) (iv)	Change "...sample line no further than 4 inches . . ." to "... sample line as close as practical . . .".	Provide added flexibility.
(b) (3) (vi) (B)	Change "... or eddies . . ." to "... or eddies . . ."	Typographical correction.
(b) (3) (vii) (A)	Change "85 percent" to "90 percent"	To be consistent with other calibration procedures.
(b) (3) (vii) (B)	Change "85 percent" to "90 percent"	Do.
(b) (4) (ii) (C)	Allow for a double dilution tunnel	Provide added flexibility.
49. Section 86.1313-84(a)(2)	Change "... 1.0 research octane . . ." to "... one octane . . ."	To allow manufacturers the flexibility of recommending research, motor, or research + motor octane rated fuels.
	In addition, this paragraph is divided into four paragraphs	Improve readability.
(b) (1)	Change "... clean an bright ..." to "... clean and bright ..."	Typographical correction.
50. Section 86.1314-84(d)	Change "... shall a blend ..." to "... shall be a blend ..."	Do.
51. Section 86.1316-84(c)(3)	Allow for alternative methods for checking torque	Provide added flexibility.
	In addition, this paragraph is divided into three paragraphs	Improve readability
52. Section 86.1319-84(c)(7)	Correct subscript designations in the least squares equation	Correction.
(c) (9)	Change "overtime" to "over time"	Typographical correction.
53. Section 86.1321-84(a)(3)(iii)	Add the phrase "... may be used if ..."	Correction.
54. Section 86.1323-84(a)(4)	Change "... system and NO ..." to "... system an NO ..."	Typographical correction.
55. Section 86.1327-84(a)	Change "... A bag sample ..." to "... A bag or continuous sample ..."	Correction.
	In addition, the paragraph is divided into seven paragraphs	Improve readability
(d) (4)	Add the phrase "... or their loading simulated ..."	Provide added flexibility.
(e) (1)	Allow the use of antifreeze mixtures	Do.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES—Continued

Section	Change	Reason
56. Section 86.1332-[illegible](1)(ii)	Add the algebraic sign "–"	Correction.
57. Section 86.1334-84(a)(2)	Add the phrase "... a minimum of ..." and added the equivalent, in degrees Fahrenheit, of 24 °C.	Do.
58. Section 86.1335-84(c)(2)	Allow greater flexibility during forced cool-down	Provide added flexibility.
	In addition, the paragraph is divided into three paragraphs	Improve readability.
59. Section 86.1336-84(d)	Add paragraph (d) to describe procedures to be followed when equipment malfunctions during a test.	Provide added flexibility.
60. Section 86.1340-84(e)(2)	Corrected the spelling of the word "gauge"	Typographical correction.
61. Section 86.1341-84(d)	Change the word "correlation" to "determination"	Correction.
(f)	Add more stringent tolerances	Requested by all of the affected regulated industry.
(h)	Add more stringent tolerances. Also added provisions for cold start enrichment procedures for diesel engines.	Do.
62. Section 86.1342-84(c)(1) through (c)(4).	Change "$\Delta T/T$" to "ΔT" in four equations	Correction.
(d)(1)	Provide HC density values for #1 and #2 diesel fuel which may be used	Provide added flexibility.
(d)(2)	Change "NO" to "NO_x"	Correction.
(d)(3)	Change "(CO_{wa})" to "(CO_{wb})" in the description for CO_2	Do.
	The equation for calculating $CO'_{2,e}$ is corrected by adding the multiplier in the dominator.	Correction.
	The definition of α is added	Inadvertently omitted.
	In the "Note" the phrase "can be substituted" is changed to read "must be substituted" in two places.	Clarification.
(d)(4)	Change 1.843 to 1.830 in the CO_2 density equation	Correction.
(d)(5)	Change CO_2, to $CO'_{2,e}$ in the DF equation	Do.
(d)(6)	Change 43.516 to 43.478 and 6.217 to 6.211 in the humidity equation	Do.
(e)(1)	Change 132.1 to 132.07 in the cold start test calculation HC_{mass} equation. In addition, 126.6 is changed to 126.5 in both the HC_{mass} and HC_{mass} equation.	Do.
(h)(1)	Add the symbol α to the table	Do.
(h)(2)(i)	Change 43.516 to 43.478 and 6.217 to 6.211 in the H' equation	Do.
63. Paragraph (f)(1) of Appendix I in Part 86.	Change: record 35, from 70.00 to 10.00	Do.
Paragraph (f)(1) of Appendix I in Part 86.	Change: record 231, from 100.00 to 100.98; record 496, from 17.93 to 71.93; and record 666, from 96.53 to 99.96	Do.
64. Section 86.1344-84(b)	Clarify that data should not routinely be submitted via electronic data input	Clarification.
65. Section 86.1501-84	Add language to explicitly state that the idle test procedure for heavy-duty engines is effective for the 1987 and later model years.	Do.
66. Section 86.1542-84(b)(7)	Add the phrases "or computer printouts" and "(if applicable)"	Do.
(b)(8)	Add the phrase "Test cell ambient temperature and, if applicable, barometric pressure and humidity".	Provide added flexibility.
(b)(9)	Add the phrase "(if applicable)" in two places	Clarification.
(b)(10)	...Do	Do.
67. Section 86.1544-(b)(4)	Add the division "line" in the DF equation	Correction.
68. Part 600 Authority	None	
69. Section 200.009-85	Change § 200.009-85 to § 600.009-85	Correction (52 FR 12844).
70. Section 600.002-85(a)(13)	The weighting factor should be 0.55 not 0.36. Paragraph is divided into two paragraphs.	Improve readability.
71. Section 600.006-85(c)(2)	Remove paragraph (c)(2)	This paragraph is incorrectly included for the 1985 model year.
72. Section 600.007-80(b)(6)	Add language requiring that the data be representative	Paragraph inadvertently omitted.
73. Section 600.209-85	Add paragraphs (a)(2), (b)(2), and (d)(2)	Regulatory language was inadvertently omitted.
74. Section 600.306-85(a)(3)	Shortened the required label language	Space limitations of new label format.
75. Section 600.306-86(a)(1)	The reference § 600.307(b)(3) should be § 600.307(c)	Correction.
(a)(2) introductory text	The reference § 600.307(b)(4) should be § 600.307(d)	Space limitations of new label format.
(a)(3)	Shortened the required label language	Space limitations of new label format.
76. Section 600.307-85(b)(3)(ii)	The language on the second and third line should read as follows: ". . . supplied by the Administrator to the manufacturer at . . .".	Correction.
	Add optional language "not available"	Space limitations of new label format.
(c)	The next to the last paragraph is identified as "(C)" and should be "(c)"	Correction.
77. Section 600.307-86(a)(3)(iii)(A).	Change ". . . have been issued mileage *estimates*" (emphasis added) to ". . . have been issued mileage ratings".	Do.
	In addition, the reference § 600.511 should be § 600.315	Correction.
(a)(3)(iii)(B)	The required label language is modified	Clarification.
	Add optional language "not available"	Space limitations of new label format.
(a)(3)(vi)(B)	Add the phrase ". . . at least as large as. . ."	Clarification.
(b)(2)	Modified dimensional requirements for the digit "one"	Correction.
(d)(1)	The reference to paragraph "(b)" should be to paragraph "(c)"	Do.
78. Section 600.311-86(g)	The reference § 600.306(b)(7) should be to § 600.306(b)(1)	Do.
79. Section 600.507-86(a):		
(2)(i)	Allow optional recalculation when changes are made that have the potential to improve fuel economy.	Inadvertently omitted.
(2)(ii)	...do	Do.
(2)(iii)	...do	Do.
(c)	The reference to § 600.313(a)(2) should be to § 600.14(b)	Correction.

For the reasons set forth in the preamble, 40 CFR Parts 86 and 600 are amended as follows:

1. The authority for Part 86 reads as follows:

Authority: Secs. 202, 206, and 301(a)(1) of the Clean Air Act as amended, 42 U.S.C. 7521, 7524, and 7601(a)(1).

2. The following 60 sections and Appendix IX are being removed from Part 86:

Sections 86.078–4, 86.081–5, 86.081–8, 86.082–8, 86.081–9, 86.082–9, 86.083–9, 86.080–10, 86.080–11, 86.082–21, 86.082–22, 86.082–23, 86.082–24, 86.082–25, 86.082–26, 86.079–27, 86.082–27, 86.082–28, 86.081–29, 86.082–30, 87.079–34, 86.082–35, 86.079–37, 86.082–38, 86.106–78, 86.109–78, 86.110–78, 86.111–78, 86.116–78, 86.121–78, 86.127–78, 86.132–78, 86.135–79, 86.136–78, 86.137–78, 86.140–78, 86.142–80, 86.877–1, through 86.877–14, 86.879–5 through 86.879–14, and Appendix IX.

3. The table of contents for Subpart A set forth below is added to Part 86 immediately below the existing table of contents in Part 86, Subpart A. This table of contents for Subpart A reflects an order that will be more efficient to use. The sections are arranged in numerical order by the hyphenated numbers. The remainder of the Table of Contents for Part 86 is set out for the convenience of the user.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

* * * * *

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, 1977 and Later Model Year New Light-Duty Trucks, and for 1977 and Later Model Year New Heavy-Duty Engines

Sec.
86.082–1 General applicability.
86.085–1 General applicability.
86.082–2 Definitions.
86.084–2 Definitions.
86.085–2 Definitions.
86.078–3 Abbreviations.
86.084–4 Section numbering; construction.
86.084–5 General standards; increase in emissions; unsafe conditions.
86.078–6 Hearings on certification.
86.078–7 Maintenance of records; submittal of information; right of entry.
86.084–8 Emission standards for 1984 and later model year light-duty vehicles.
86.085–8 Emission standards for 1985 light-duty vehicles.
86.087–8 Emission standards for 1987 light-duty vehicles.
86.084–9 Emission standards for 1984 light-duty trucks.
86.085–9 Emission standards for 1985 and later model year light-duty trucks.
86.087–9 Emission standards for 1987 and later model year light-duty trucks.
86.084–10 Emission standards for 1984 and later model year gasoline-fueled heavy-duty engines.
86.085–10 Emission standards for 1985 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.087–10 Emission standards for 1987 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.084–11 Emission standards for 1984 diesel heavy-duty engines.
86.085–11 Emission standards for 1985 and later model year diesel heavy-duty engines.
86.080–12 Alternatiave certification procedures.
86.081–13 Alternative durability program.
86.085–13 Alternative durability program.
86.082–14 Small-volume manufacturer certification procedures.
86.084–15 Emissions standards for 1984 model year heavy-passenger cars.
86.085–16 through 19 [Reserved].
86.079–20 Incomplete vehicles, classification.
86.085–20 Incomplete vehicles, classification.
86.084–21 Application for certification.
86.085–21 Application for certification.
86.087–21 Application for certification.
86.084–22 Approval of application for certification.
86.085–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and selective enforcement audit, adequacy of limits, and physically adjustable ranges.
86.084–23 Required data.
86.085–23 Required data.
86.087–23 Required data.
86.084–24 Test vehicles and engines.
86.085–24 Test vehicles and engines.
86.084–25 Maintenance.
86.085–25 Maintenance.
86.084–26 Mileage and service accumulation; emission measurements.
86.084–27 Special test procedures.
86.085–27 Special test procedures.
86.084–28 Compliance with emission standards.
86.085–28 Compliance with emission standards.
86.087–28 Compliance with emission standards.
86.084–29 Testing by the Administrator.
86.085–29 Testing by the Administrator.
86.087–29 Testing by the Administrator.
86.084–30 Certification.
86.085–30 Certification.
86.087–30 Certification.
86.079–31 Separate certification.
86.079–32 Addition of a vehicle or engine after certification.
86.079–33 Changes to a vehicle or engine covered by certification.
86.082–34 Alternative procedure for notificaton of additions and changes.
86.084–35 Labeling.
86.085–35 Labeling.
86.087–35 Labeling.
86.079–36 Submission of vehicle identification numbers.
86.082–37 Production vehicles and engines.
86.085–37 Production vehicles and engines.
86.084–38 Maintenance instructions.
86.085–38 Maintenance instructions.
86.079–39 Submission of maintenance instructions.
86.084–40 Automatic expiration of reporting and recordkeeping requirements.

Subpart B—Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks; Test Procedures

86.101 General applicability.
86.102 Definitions.
86.103 Abbreviations.
86.104 Section numbering; construction.
86.105 Introduction; structure of subpart.
86.106–82 Equipment required; overview.
86.107–78 Sampling and analytical system; evaporative emissions.
86.108–79 Dynamometer.
86.109–82 Exhaust gas sampling system; gasoline-fueled vehicles.
86.110–82 Exhaust gas sampling system; diesel vehicles.
86.111–82 Exhaust gas analytical system.
86.112–82 Weighing chamber (or room) and microgram balance specifications.
86.113–82 Fuel specifications.
86.114–79 Analytical gases.
86.115–78 EPA urban dynamometer driving schedule.
86.116–82 Calibrations, frequency and overview.
86.117–78 Evaporative emission enclosure calibrations.
86.118–78 Dynamometer calibration.
86.119–78 CVS calibration.
86.120–82 Gas meter or flow instrumentation calibration, particulate measurement.
86.121–82 Hydrocarbon analyzer calibration.
86.122–78 Carbon monoxide analyzer calibration.
86.123–78 Oxides of nitrogen analyzer calibration.
86.124–78 Carbon dioxide analyzer calibration.
86.128–78 Calibration of other equipment.
86.127–82 Test procedures; overview.
86.128–79 Transmissions.
86.129–80 Road load power test weight and inertia weight class determination.
86.130–78 Test sequence; general requirements.
86.131–78 Vehicle preparation.
86.132–82 Vehicle preconditioning.
86.133–78 Diurnal breathing loss test.
86.134–78 [Reserved.]
86.135–82 Dynamometer procedure.
86.136–82 Engine starting and restarting.
86.137–82 Dynamometer test run, gaseous and particulate emissions.
86.138–78 Hot-soak test.
86.139–82 Diesel particulate filter handling and weighing.
86.140–82 Exhaust sample analysis.
86.141 [Reserved].
86.142–82 Records required.
86.143–78 Calculations; evaporative emissions.

Sec.
86.144–78 Calculations; exhaust emissions.
86.145–82 Calculation; particulate emissions.

Subpart C—[Reserved]

Subpart D—Emission Regulations for New Gasoline-Fueled and Diesel Heavy-Duty Engines; Gaseous Exhaust Test Procedures

86.301–79 Scope; applicability.
86.302–79 Definitions.
86.303–79 Abbreviations.
86.304–79 Section numbering; construction.
86.305–79 Introduction; structure of subpart.
86.306–79 Equipment required and specifications; overview.
86.307–82 Fuel specifications.
86.308–79 Gas specifications.
86.309–79 Sampling and analytical system; schematic drawing.
86.310–79 Sampling and analytical system; component specifications.
86.311–79 Miscellaneous equipment; specifications.
86.312–79 Dynamometer and engine equipment specifications.
86.313–79 Air flow measurement specifications; diesel engines.
86.314–79 Fuel flow measurement specifications.
86.315–79 General analyzer specifications.
86.316–79 Carbon monoxide and carbon dioxide analyzer specifications.
86.317–79 Hydrocarbon analyzer specifications.
86.318–79 Oxides of nitrogen analyzer specifications.
86.319–79 Analyzer checks and calibrations; frequency and overview.
86.320–79 Analyzer bench check.
86.321–79 NDIR water rejection ratio check.
86.322–79 NDIR CO_2 rejection ratio check.
86.323–86.326 [Reserved].
86.327–79 Quench check; NO_x analyzer.
86.328–79 Leak checks.
86.329–79 System response time; check procedure.
86.330–79 NDIR analyzer calibration.
86.331–79 Hydrocarbon analyzer calibration.
86.332–79 Oxides of nitrogen analyzer calibration.
86.333–79 Dynamometer calibration.
86.334–79 Test procedure overview.
86.335–79 Gasoline-fueled engine test cycle.
86.336–79 Diesel engine test cycle.
86.337–79 Information.
86.338–79 Exhaust measurement accuracy.
86.339–79 Pre-test procedures.
86.340–79 Gasoline-fueled engine dynamometer test run.
86.341–79 Diesel engine dynamometer test run.
86.342–79 Post-test procedure.
86.343–79 Chart reading.
86.344–79 Humidity calculations.
86.345–79 Emission calculations.
86.346–79 Alternative NOx measurement technique.
86.347–79 Alternative calculations for diesel engines.
86.348–79 Alternative to fuel H/C analysis.

Subpart E—Emission Regulations for 1978 and Later New Motorcycles, General Provisions

86.401–78 General applicability.
86.402–78 Definitions
86.403–78 Abbreviations.
86.404–78 Section numbering.
86.405–78 Measurement system.
86.406–78 Introduction, structure of subpart, further information.
86.407–78 Certificate of conformity required.
86.408–78 General standards; increase in emissions; unsafe conditions.
86.409–78 Defeat devices, prohibition.
86.410–80 Emission standards for 1980 and later model year motorcycles.
86.411–78 Maintenance instructions, vehicle purchaser.
86.412–78 Maintenance instructions, submission to Administrator.
86.413–78 Labeling.
86.414–78 Submission of vehicle identification numbers.
86.415–78 Production vehicles.
86.416–80 Application for certification.
86.417–78 Approval of application for certification.
86.418–78 Test fleet selection.
86.419–78 Engine displacement, motorcycle classes.
86.420–78 Engine families.
86.421–78 Test fleet.
86.422–78 Administrator's fleet.
86.423–78 Test vehicles.
86.424–78 [Reserved].
86.425–78 Test procedures.
86.426–78 Service accumulation.
86.427–78 Emission tests.
86.428–80 Maintenance, scheduled; test vehicles.
86.429–78 Maintenance, unscheduled; test vehicles.
86.430–78 Vehicle failure.
86.431–78 Data submission.
86.432–78 Deterioration factor.
86.433 [Reserved].
86.434–78 Testing by the Administrator.
86.435–78 Extrapolated emission values.
86.436–78 Additional service accumulation.
86.437–78 Certification.
86.438–78 Amendments to the application.
86.439–78 Alternative procedure for amending certificates of conformity.
86.440–78 Maintenance of records.
86.441–78 Right of entry.
86.442–78 Denial, revocation, or suspension of certification.
86.443–78 Request for hearing.
86.444–78 Hearings on certification.

Subpart F—Emission Regulations for 1978 and Later New Motorcycles, Test Procedures

86.501–78 Applicability.
86.502–78 Definitions.
86.503–78 Abbreviations.
86.504–78 Section numbering.
86.505–78 Introduction; structure of subpart.
86.506–86.507 [Reserved].
86.508–78 Dynamometer.
86.509–78 Exhaust gas sampling system.
86.510 [Reserved].
86.511–78 Exhaust gas analytical system.
86.512 [Reserved].
86.513–82 Fuel and engine lubricant specifications.
86.514–78 Analytical gases.
86.515–78 EPA urban dynamometer driving schedule.
86.516–78 Calibrations, frequency and overview.
86.517 [Reserved].
86.518–78 Dynamometer calibration.
86.519–78 Constant volume sampler calibration.
86.520 [Reserved].
86.521–78 Hydrocarbon analyzer calibration.
86.522–78 Carbon monoxide analyzer calibration.
86.523–78 Oxides of nitrogen analyzer calibration.
86.524–78 Carbon dioxide analyzer calibration.
86.525 [Reserved].
86.526–78 Calibration of other equipment.
86.527–78 Test procedures, overview.
86.528–78 Transmissions.
86.529–78 Road load force and inertia weight determination.
86.530–78 Test sequence, general requirements.
86.531–78 Vehicle preparation.
86.532–78 Vehicle preconditioning.
86.533–86.534 [Reserved].
86.535–78 Dynamometer procedure.
86.536–78 Engine starting and restarting.
86.537–78 Dynamometer test runs.
86.538–86.539 [Reserved].
86.540–78 Exhaust sample analysis.
86.541 [Reserved].
86.542–78 Records required.
86.543 [Reserved].
86.544–78 Calculations; exhaust emissions.

Subpart G—Selective Enforcement Auditing of New Gasoline-Fueled and Diesel Light-Duty Vehicles and New Gasoline-Fueled and Diesel Light-Duty Trucks

86.601 Applicability.
86.602 Definitions.
86.603 Test orders.
86.604 Testing by Administrator.
86.605 Maintenance of records; submittal of information.
86.606 Entry and access.
86.607 Sample selection.
86.608 Test procedures.
86.609 Calculation and reporting of test results.
86.610 Acceptance and rejection of batches.
86.611 Acceptance and rejection of batch sequence.
86.612 Suspension and revocation of certificates of conformity.
86.613 Hearings on suspensions and revocations of certificates of conformity.

Subpart H—[Reserved]

Subpart I—Emission Regulations for New Diesel Heavy-Duty Engines; Smoke Exhaust Test Procedure

86.884–1 General applicability.
86.884–2 Definitions.
86.884–3 Abbreviations.
86.884–4 Section numbering.
86.884–5 Test procedures.
86.884–6 Diesel fuel specifications.
86.884–7 Dynamometer operation cycle for smoke emission tests.
86.884–8 Dynamometer and engine equipment.
86.884–9 Smoke measurement system.
86.884–10 Information.
86.884–11 Instrument checks.
86.884–12 Test run.

Sec.
86.084–13 Data analysis.
86.084–14 Calculations.

Subpart J—[Reserved]

Subpart K—Selective Enforcement Auditing of New Gasoline-Fueled and Diesel Heavy-Duty Engines

86.1001–84 Applicability.
86.1002–84 Definitions.
86.1003–84 Test orders.
86.1004–84 Testing by the Administrator.
86.1005–84 Maintenance of records; submittal of information.
86.1006–84 Entry and access.
86.1007–84 Sample selection.
86.1008–84 Test procedures.
86.1009–84 Calculation and reporting of test results.
86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.
86.1011–84 [Reserved].
86.1012–84 Suspension and revocation of certificate of conformity.
86.1013 [Reserved].
86.1014–84 Hearings on suspension, revocation and voiding of certificate of conformity.

Subpart L—[Reserved]

Subpart M—Evaporative Emission Test Procedures for New Gasoline-Fueled Heavy-Duty Vehicles

86.1201–85 Applicability.
86.1202–85 Definitions.
86.1203–85 Abbreviations.
86.1204 [Reserved].
86.1205–85 Introduction; structure of subpart.
86.1206–85 Equipment required; overview.
86.1207–85 Sampling and analytical systems; evaporative emissions.
86.1208–86.1212 [Reserved].
86.1213–85 Fuel Specifications.
86.1214–85 Analytical gases.
86.1215–85 EPA Heavy-Duty Vehicle (HDV) urban dynamometer driving schedule.
86.1216–85 Calibrations; frequency and overview.
86.1217–85 Evaporative emission enclosure calibrations.
86.1218–85 Dynamometer calibration.
86.1219–86.1220 [Reserved].
86.1221–85 Hydrocarbon analyzer calibration.
86.1222–86.1225 [Reserved].
86.1226–85 Calibration of other equipment.
86.1227–85 Test procedures; overview.
86.1228–85 Transmissions.
86.1229–85 Dynamometer load determination.
86.1230–85 Test sequence; general requirements.
86.1231–85 Vehicle preparation.
86.1232–85 Vehicle preconditioning.
86.1233–85 Diurnal breathing loss test.
86.1234–85 Running loss test.
86.1235–85 Dynamometer procedure.
86.1236–85 Engine starting and restarting.
86.1237–85 Dynamometer runs.
86.1238–85 Hot soak test.
86.1239–86.1241 [Reserved].
86.1242–85 Records required.
86.1243–85 Calculations; evaporative emissions.
86.1244–86.1245 [Reserved].

Subpart N—Emission Regulations for New Gasoline-Fueled and Diesel Heavy-Duty Engines; Gaseous Exhaust Test Procedures

86.1301–84 Scope; applicability.
86.1302–84 Definitions.
86.1303–84 Abbrevations.
86.1304–84 Section numbering; construction.
86.1305–84 Introduction; structure of subpart.
86.1306–84 Equipment required and specifications; overview.
86.1307 [Reserved].
86.1308–84 Dynamometer and engine equipment specifications.
86.1309–84 Exhaust gas sampling system; gasoline-fueled engines
86.1310–84 Exhaust gas sampling and analytical system; diesel engines.
86.1311–84 Exhaust gas analytical system; CVS bag sample.
86.1312–84 [Reserved].
86.1313–84 Fuel specifications.
86.1314–84 Analytical gases.
86.1315 [Reserved].
86.1316–84 Calibrations; frequency and overview.
86.1317–84 [Reserved].
86.1318–84 Engine dynamometer calibrations.
86.1319–84 CVS calibration.
86.1320 [Reserved].
86.1321–84 Hydrocarbon analyzer calibration.
86.1322–84 Carbon monoxide analyzer calibration.
86.1323–84 Oxides of nitrogen analyzer calibration.
86.1324–84 Carbon dioxide analyzer calibration.
86.1325–84 [Reserved].
86.1326–84 Calibration of other equipment.
86.1327–84 Engine dynamometer test procedures; overview.
86.1328–84 [Reserved].
86.1329–84 [Reserved].
86.1330–84 Test sequence; general requirements.
86.1331–84 [Reserved].
86.1332–84 Engine mapping procedures.
86.1333–84 Transient test cycle generation.
86.1334–84 Pre-test engine and dynamometer preparation.
86.1335–84 Optional forced cool-down procedure.
86.1336–84 Engine starting and restarting.
86.1337–84 Engine dynamometer test run.
86.1338–84 Emission measurement accuracy.
86.1339–84. [Reserved].
86.1340–84 Exhaust sample analysis.
86.1341–84 Test cycle validation criteria.
86.1342–84 Calculations; exhaust emissions.
86.1343–84 [Reserved].
86.1344–84 Required information.

Subpart O—[Reserved]

Subpart P—Emission Regulations for New Gasoline-Fueled Heavy-Duty Engines and New Gasoline-Fueled Light-Duty Trucks; Idle Test Procedures

86.1501–84 Scope; applicability.
86.1502–84 Definitions.
86.1503–84 Abbreviations.
86.1504–84 Section numbering; construction.
86.1505–84 Introduction; structure of subpart.
86.1506–84 Equipment required and specifications; overview.
86.1507–86.1508 [Reserved].
86.1509–84 Exhaust gas sampling system.
86.1511–84 Exhaust gas analysis system.
86.1512 [Reserved].
86.1513–84 Fuel specifications.
86.1514–84 Analytical gases.
86.1515 [Reserved].
86.1516–84 Calibration; frequency and overview.
86.1517–86.1518 [Reserved].
86.1519–84 CVS calibration.
86.1520–86.1521 [Reserved].
86.1522–84 Carbon monoxide analyzer calibration.
86.1523 [Reserved].
86.1524–84 Carbon dioxide analyzer calibration.
86.1525 [Reserved].
86.1526–84 Calibration of other equipment.
86.1527–84 Idle test procedure; overview.
86.1528–86.1529 [Reserved].
86.1530–84 Test sequence; general requirements.
86.1531–86.1536 [Reserved].
86.1537–84 Idle test run.
86.1538–86.1539 [Reserved].
86.1540–84 Idle exhaust sample analysis.
86.1541 [Reserved].
86.1542–84 Information required.
86.1543 [Reserved].
86.1544–84 Calculations; idle exhaust emissions.

Subpart Q—Regulations for Altitude Performance Adjustments for New and In-Use Motor Vehicle and Engines

86.1601 General applicability.
86.1602 Definitions.
86.1603 General requirements.
86.1604 Conditions for disapproval.
86.1605 Information to be submitted.
86.1606 Labeling.
Appendix I—Urban Dynamometer Schedules.
Appendix II—Procedure for Dynamometer Road Horsepower Calibration.
Appendix III—Constant Volume Sampler Flow Calibration.
Appendix IV—Durability Driving Schedules.
Appendix V—[Reserved].
Appendix VI—Vehicle and Engine Components.
Appendix VII—[Reserved].
Appendix VIII—Sampling Plans for Selective Enforcement Auditing.
Appendix IX—[Reserved].
Appendix X—Sampling Plans for Selective Enforcement Auditing of Heavy-Duty Engines and Light-Duty Trucks.

4. As of January 1, 1985 the following 19 sections are to be removed:

Sections 86.082–1, 86.084–8, 86.084–9, 86.084–10, 86.084–11, 86.081–13, 86.079–20, 86.084–21, 86.084–22, 86.084–23, 86.084–24, 86.084–25, 86.084–27, 86.084–28, 86.084–29, 86.084–30, 86.084–35, 86.082–37, and 86.084–38.

5. The following 13 sections and Appendices IV, V, VI are being removed from Part 600:

Sections 600.001–77, 600.002–80, 600.005–77, 600.006–77, 600.008–81, 600.007–77, 600.101–78, 600.206–80, 600.207–79, 600.301–77, 600.501–79, 600.502–79, 600.506–79, and Appendices IV, V, VI. In addition, a title for Appendix VIII is being added.

6. The table of contents of Part 600 is revised to read as follows:

PART 600—FUEL ECONOMY OF MOTOR VEHICLES

Subpart A—Fuel Economy Regulations for 1977 and Later Model Year Automobiles—General Provisions

Sec.
600.001–81 General applicability.
600.001–85 General applicability.
600.001–86 General applicability.
600.002–81 Definitions.
600.002–85 Definitions.
600.003–77 Abbreviations.
600.004–77 Section, numbering, construction.
600.005–81 Maintenance of records and right of entry.
600.006–82 Data and information requirements for fuel economy vehicles.
600.006–85 Data and information requirements for fuel economy vehicles.
600.006–86 Data and information requirements for fuel economy vehicles.
600.007–80 Vehicle acceptability.
600.008–77 Review of fuel economy data, testing by Administrator.
600.009–77 Hearings on acceptance of test data.
600.009–85 Hearings on acceptance of test data.
600.010–77 Vehicle test requirements.
600.010–86 Vehicle test requirements

Subpart B—Fuel Economy Regulations for 1978 and Later Model Year Automobiles—Test Procedures

600.101–81 General applicability.
600.101–85 General applicability.
600.101–86 General applicability.
600.102–78 Definitions.
600.103–78 Abbreviations.
600.104–78 Section numbering, construction.
600.105–78 Recordkeeping.
600.106–78 Equipment requirements.
600.107–78 Fuel specifications.
600.108–78 Analytical gases.
600.109–78 EPA driving cycles.
600.110–78 Equipment calibration.
600.111–80 Test procedures.
600.112–78 Exhaust sample analysis.
600.113–78 Fuel economy calculations.

Subpart C—Fuel Economy Regulations for 1977 and Later Model Year Automobiles—Procedures for Calculating Fuel Economy Values

600.201–77 General applicability.
600.201–85 General applicability.
600.201–86 General applicability.
600.202–77 Definitions.
600.203–77 Abbreviations.
600.204–77 Section numbering, construction.
600.205–77 Recordkeeping.
600.206–81 Calculation and use of fuel economy values for gasoline-fueled, diesel and electric vehicle configurations.
600.206–86 Calculation and use of fuel economy values for gasoline-fueled, diesel and electric vehicle configurations.
600.207–80 Calculation and use of fuel economy values for a model type.
600.207–86 Calculation and use of fuel economy values for a model type.
600.208–77 Sample calculation.
600.209–85 Calculation of fuel economy values for labeling.

Subpart D—Fuel Economy Regulations for 1977 and Later Model Year Automobiles—Labeling

600.301–81 General applicability.
600.301–85 General applicability.
600.301–86 General applicability.
600.302–77 Definitions.
600.303–77 Abbreviations.
600.304–77 Section numbering, construction.
600.305–77 Recordkeeping.
600.306–81 Labeling requirements.
600.306–85 Labeling requirements.
600.306–86 Labeling requirements.
600.307–81 Format and contents of labels.
600.307–85 Format and contents of labels.
600.307–86 Format and contents of labels.
600.308–79 General label contents.
600.308–85 General label contents.
600.308–86 [Reserved].
600.309–79 Specific label contents.
600.309–85 Specific label contents.
600.309–86 [Reserved].
600.310–77 Labeling of high altitude vehicles.
600.310–86 Labeling of high altitude vehicles.
600.311–79 Range of fuel economy for comparable automobiles.
600.311–85 Range of fuel economy for comparable automobiles.
600.311–86 Range of fuel economy for comparable automobiles.
600.312–79 Approval of labels.
600.312–86 Labeling, reporting, and recordkeeping; Administrator reviews.
600.313–79 Timetable for data and information submittal and review.
600.313–86 Timetable for data and information submittal and review.
600.314–77 Updating fuel economy, annual fuel costs, and range of fuel economy for comparable automobiles.
600.314–86 Updating fuel economy, annual fuel costs, and range of fuel economy for comparable automobiles.
600.315–82 Classes of comparable automobiles.
600.316–78 Multistage manufacturer.

Subpart E—Fuel Economy Regulations for 1977 and Later Model Year Automobiles—Dealer Availability of Fuel Economy Information

600.401–77 General applicability.
600.402–77 Definitions.
600.403–77 Abbreviations.
600.404–77 Section numbering, construction.
600.405–77 Dealer requirements.
600.406 [Reserved].
600.407–77 Booklets displayed by dealers.

Subpart F—Fuel Economy Regulations for 1978 Passenger Automobiles and for 1979 and Later Model Year Automobiles (Light Trucks and Passenger Automobiles)—Procedures for Determining Manufacturer's Average Fuel Economy

600.501–81 General applicability.
600.501–86 General applicability.
600.502–81 Definitions.
600.503–78 Abbreviations.
600.504–78 Section numbering, construction.
600.505–78 Recordkeeping.
600.506–81 Preliminary determination of manufacturer's average.
600.506–86 [Reserved].
600.507–80 Running change data requirements.
600.507–86 Running change data requirements.
600.508–78 Additions of a base level—data requirements.
600.508–86 [Reserved].
600.509–78 Voluntary submission of additional data.
600.509–78 Voluntary submission of additional data.
600.509–86 Voluntary submission of additional data.
600.510–80 Calculation of average fuel economy.
600.510–86 Calculation of average fuel economy.
600.511–80 Determination of domestic production.
600.512–80 Model year report.
600.512–86 Model year report.
600.513–81 Gas guzzler tax.
Appendix I—Highway Fuel Economy Driving Schedule.
Appendix II—Sample Test Value Calculations.
Appendix III—Sample Fuel Economy Label Calculation (1977 Model Year).
Appendix IV—[Reserved].
Appendix V—[Reserved].
Appendix VI—[Reserved].
Appendix VII—[Reserved].
Appendix VIII—Sample Label Format for 1986 and Later Model Years.

7. As of January 1, 1985 the following 12 sections are to be removed:

Sections 600.001–81, 600.002–81, 600.006–82, 600.009–77, 600.101–81, 600.201–77, 600.301–81, 600.306–81, 600.307–81, 600.308–79, 600.309–79, and 600.311–79.

8. As of January 1, 1986 the following 24 sections are to be removed:

Sections 600.001–85, 600.006–85, 600.010–77, 600.101–85, 600.201–85, 600.206–81, 600.207–80, 600.301–85, 600.306–85, 600.307–85, 600.308–85, 600.309–85, 600.310–77, 600.311–85, 600.312–79, 600.313–79, 600.314–77, 600.501–81, 600.506–81, 600.507–80, 600.508–78, 600.509–78, 600.510–80 and 600.512–80.

PART 86—[AMENDED]

9. Section 86.082–1 is amended by revising paragraph (b) to read as follows:

§ 86.082–1 General applicability.

(a)* * *

(b) *Optional applicability.* A manufacturer may request to certify any heavy-duty vehicle 10,000 pounds GVWR or less to the light-duty truck

exhaust emission standards. Heavy-duty engine or vehicle provisions do not apply to such a vehicle.

* * * * *

10. Section 86.084–2 is amended by revising the definition of curb-idle as follows:

§ 86.084–2 Definitions.

* * * * *

"Curb-idle" means:

(1) For manual transmission code light-duty trucks, the engine speed with the transmission in neutral or with the clutch disengaged and with the air conditioning system, if present, turned off. For automatic transmission code light-duty trucks, curb-idle means the engine speed with the automatic transmission in the Park position (or Neutral position if there is no Park position), and with the air conditioning system, if present, turned off.

(2) For manual transmission code heavy-duty engines, the manufacturer's recommended engine speed with the clutch disengaged. For automatic transmission code heavy-duty engines, curb idle means the manufacturer's recommended engine speed with the automatic transmission in gear and the output shaft stalled. (Measured idle speed may be used in lieu of curb-idle speed for the emission tests when the difference between measured idle speed and curb idle speed is sufficient to cause a void test under either § 86.1341 or § 86.884–7 but not sufficient to permit adjustment in accordance with § 86.085–25.)

* * * * *

11. Section 86.085–9 is amended by revising paragraph (a)(1)(ii)(B) to read as follows:

§ 86.085–9 Emission standards for 1985 and later model year light-duty trucks.

(a) * * *

(1) * * *

(ii) * * *

(B) *Gasoline-fueled vehicles.* 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled vehicles only).

* * * * *

12. Section 86.085–10 is amended by revising paragraph (a)(2) to read as follows:

§ 86.085–10 Emission standards for 1985 and later model year gasoline-fueled heavy-duty engines and vehicles.

(a) * * *

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules set forth in Appendix I to this part, and measured and calculated in accordance with the procedures set forth in Subpart N.

* * * * *

13. Section 86.085–21 is amended by revising the introductory text of paragraph (b)(1)(ii)(A) and paragraph (B) to read as follows:

§ 86.085–21 Application for certification.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) The manufacturer shall provide to the Administrator in the application for certification:

* * * * *

(B) The manufacturer may provide, in the application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

14. Section 86.085–22 is amended by revising paragraph (d)(2) as follows:

§ 86.085–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits and physically adjustable ranges.

* * * * *

(a) * * *

(2) *Light-duty trucks and heavy-duty engines only.* The Administrator does not approve the test procedures for establishing exhaust emission deterioration factors. However, when requested by the Administrator, the manufacturer shall submit these procedures and determinations as required in § 86.085–21 (b)(4)(iii) prior to determining the deterioration factors.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

15. Section 86.084–24 is amended by revising paragraphs (g) (2), (3), and (4) as follows:

§ 86.084–24 Test vehicles and engines.

* * * * *

(g) * * *

(2)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine-system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional items weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably by expected to influence emissions are: air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be

equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission data vehicle or durability data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

16. Section 86.085–24 is amended by revising paragraphs (b)(2)(v) and (g)(2) and (3) and adding paragraphs (b)(3)(iv) and (g)(4) as follows:

§ 86.085–24 Test vehicles and engines.

* * * * *

(b) * * *

(2) * * *

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) * * *

(iv) Within an engine family control system combination, the manufacturer may alter any emission-data engine (or other engine such as including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraphs (b)(3)(ii) and (iii) of this section.

* * * * *

(g) * * *

(2)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment of an option), no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine-system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional items weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission data vehicle or durability data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

17. Section 86.085–28 is amended by revising paragraphs (d)(4), (d)(5), and (d)(6) as follows:

§ 86.085–28 Compliance with emission standards.

* * * * *

(d) * * *

(4) The evaporative emission tests results, if any, shall be adjusted by the addition of the appropriate deterioration factor: *Provided,* that if the deterioration factor as computed in paragraph (d)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (d)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (d)(5) of this section, before any vehicle in that family may be certified.

(Approved by the Office of Management and Budget under control number 2000–0390.)

18. Section 86.087–28 is amended by revising paragraphs (b)(4)(ii), (c)(4)(iii)(A), (d)(4), (d)(5), and (d)(6) to read as follows:

§ 86.087–28 Compliance with emission standards.

* * * * *

(b) * * *

(4) * * *

(ii) Separate exhaust emission deterioration factors, determined from tests of vehicles, engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established for transient HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only).

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(A) * * *

(2) Gasoline-fueled heavy-duty engines utilizing aftertreatment technology (e.g., catalytic converters). For transient HC, CO, NO_x, and for idle CO, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

* * * * *

(d) * * *

(4) The evaporative emission tests results, if any, shall be adjusted by the addition of the appropriate deterioration

vehicle.

(d) * * *

addition of the appropriate deterioration

factor: *Provided,* that if the deterioration factor as computed in paragraph (d)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (d)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTME 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (d)(5) of this section, before any vehicle in that family may be certified.

(Approved by the Office of Management and Budget under control number 2000–0390.)

19. Section 86.113–82 is amended by revising paragraph (a)(2) as follows:

§ 86.113–82 Fuel specifications.

(a) * * *

(2) Gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(i) For leaded fuel, the minimum lead content shall be equal to the average lead content found in regular leaded gasoline in the fuel survey prescribed by the Administrator.

(ii) Where the Administrator determines that vehicles represented by a test vehicle will be operated using gasoline of different lead content than that prescribed in this paragraph, he may consent in writing to use a gasoline with a different lead content.

(iii) The octane rating of the gasoline used shall be no higher than one octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers for unleaded fuel and 7.0 octane numbers for leaded fuel, where sensitivity is defined as the Research octane number minus the Motor octane number.

(iv) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

§ 86.134–78 [Reserved]

20. Section 86.134–78 is removed and reserved.

21. Section 86.135–82 is amended by adding paragraph (h)(i) to read as follows:

§ 86.135–82 Dynamometer procedure.

* * * * *

(h) * * *

(i) Four-wheel drive vehicles will be tested in a two-wheel drive mode of operation. Full time four-wheel drive vehicles will have one set of drive wheels temporarily disengaged by the vehicle manufacturer. Four-wheel drive vehicles which can be manually shifted to a two-wheel drive mode will be tested in the normal on-highway two-wheel drive mode of operation.

(Approved by the Office of Management and Budget under control number 2000–0390.)

22. Section 86.144–78 is amended by revising paragraph (c)(3) to read as follows:

§ 86.144–78 Calculations; exhaust emissions.

* * * * *

(c) * * *

(3) CO_{mass} = Carbon monoxide emissions, in grams per test phase.

$Density_{co}$ = Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

CO_{conc} = Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, in ppm.

$CO_{conc} = CO_e\ CO_d\ (1–1/DF)$

where:

CO_e = Carbon monoxide concentration of the dilute exhaust volume corrected for water vapor and carbon dioxide extraction, in ppm. The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.35.

$CO_d = (1–0.01925\ CO_{2e}\ 0.000323\ R)\ CO_{dm}$

where:

CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in ppm.

Note.—If a CO instrument which meets the criteria specified in § 86.111 is used and the conditioning column has been deleted, CO_{conc} must be substituted directly for CO_e and CO_{dm} must be substituted directly for CO_d.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

23. Section 86.402–78 is amended by revising the definition of "zero kilometer" to read as follows:

§ 86.402–78 Definitions.

(a) * * *

* * * * *

"Zero kilometers" means that point after normal assembly line operations and adjustments, after normal dealer setup and preride inspection operations have been completed, and before 100 kilometers of vehicle operation of three hours of engine operation have been accumulated, including emission testing if performed.

24. Section 86.410–80 is amended by revising the title of the section and the introductory text of paragraph (a)(1) to read as follows:

§ 86.410–80 Emission standards for 1980 and later model year motorcycles.

(a)(1) Exhaust emissions from 1980 and later model year motorcycles shall not exceed:

* * * * *

25. Section 86.415–78 is amended by revising paragraph (b) to read as follows:

§ 86.415–78 Production vehicles.

* * * * *

(b) Any manufacturer obtaining certification shall notify the Administrator, on a yearly basis, of the number of vehicles of each engine family—engine displacement—emission control system—fuel system—transmission type—inertial mass category combination produced for sale in the United States during the preceding year.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

26. Section 86.416–80 is amended by revising paragraph (a)(2)(vii) to read as follows:

§ 86.416–80 Application for certification.

(a) * * *

(2) * * *

(vii) A description of normal assembly line operations and adjustments if such procedures exceed 100 km (62 miles) or three hours of engine operations.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

27. Section 86.423–78 is amended by revising paragraph (a) to read as follows:

§ 86.423–78 Test vehicles.

(a)(1) Before beginning service accumulation on a test vehicle, the manufacturer may perform a zero-kilometer exhaust emission test.

(2) If such a test is performed, the data shall be submitted to the Administrator when the application is submitted.

(3) Zero-kilometer test results shall not be included in the determination of deterioration factors.

(Approved by the Office of Management and Budget under control number 2000–0390.)

* * * * *

§ 86.424–78 [Reserved]

28. Section 86.424–78 is removed and reserved.

29. Section 86.427–78 is amended by revising paragraphs (a) and (e) to read as follows:

§ 86.427–78 Emission tests.

(a)(1) Each test vehicle shall be driven with all emission control systems installed and operating for the following total test distances, or for such lesser distances as the Administrator may agree to as meeting the objectives of this procedure. (See § 86.419 for class explanation.)

Displacement class	Total test distance (kilometers)	Minimum test distance (kilometers)	Minimum number of tests
I	9,000	2,500	4
II	9,000	2,500	4
III	15,000	2,500	4

(2) A zero kilometer emission test may be performed prior to the beginning of service accumulation.

* * * * *

(e)(1) If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed three valid tests unless the manufacturer chooses to average the test results.

(2) If the manufacturer chooses to average the test results at a test point, he may conduct more tests than the minimum number of tests conducted at any other test point.

The results of the multiple tests shall be averaged to create a single value which is the test point value used in the deterioration factor calculation specified in § 86.432–78.

(3) When using this option to generate data for a particular test point, the manufacturer must include in the average all valid test data generated at that test point.

(4) The manufacturer shall follow the same procedure for all exhaust pollutants.

(5) The test results obtained from the emission tests performed before and after maintenance affecting emissions shall not be averaged.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

30. Section 86.430–78 is revised to read as follows:

§ 86.430–78 Vehicle failure.

Any test vehicle which incurs major mechanical failure necessitating disassembly of the engine shall not be used as a test vehicle. This prohibition does not apply to failures occurring after the completion of all required tests at the total test distance.

31. Section 86.431–78 is amended by revising paragraphs (a) and (c) to read as follows:

§ 86.431–78 Data submission.

(a) Data from all tests (including voided tests) performed by a manufacturer with total projected sales in excess of 10,000 vehicles shall be included in the application.

* * * * *

(c) When unscheduled for anticipated maintenance is performed, a complete record of all pertinent maintenance, including the malfunction diagnosis made, the corrective action taken, and the test data obtained shall be included in the application.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

32. Section 86.432–78 is amended by adding paragraph (f) as follows:

§ 86.432–78 Deterioration factor.

* * * * *

(f)(1) The manufacturer has the option of applying an outlier test point procedure to completed durability data within its certification testing program for a given model year.

(2) The outlier procedure will be specified by the Administrator.

(3) For any pollutant, durability-data test points that are identified as outliers shall not be included in the determination of deterioration factors if the manufacturer has elected this option.

(4) The manufacturer shall specify to the Administrator, before the certification of the first engine family for that model year, if it intends to use the outlier procedure.

(5) The manufacturer may not change procedures after the first engine family of the model year is certified.

(6) Where the manufacturer chooses to apply the outlier procedure to a data set containing data which were averaged under § 86.427–78(e), the outlier procedure shall be completed before averaging the data.

(Approved by the Office of Management and Budget under control number 2000–0390.)

33. Section 86.434–78 is revised to read as follows:

§ 86.434–78 Testing by the Administrator.

(a) At the conclusion of service accumulation, and after emission tests for deterioration, the Administrator may require confirmatory testing. The Administrator will designate where such testing shall be performed.

(b) The manufacturer may request a retest. The results of the retest will be used to determine compliance.

(c) If the emission results exceed the standard, certification will be denied.

(Approved by the Office of Management and Budget under control number 2000–0390.)

34. Section 86.435–78 is amended by revising the the introductory paragraph (b) to read as follows:

§ 86.435–78 Extrapolated emission values.

* * * * *

(b) The emission test results of each pollutant obtained from the half life test will be multiplied by the appropriate deterioration factors to determine useful life emissions.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

35. Section 86.436–78 is amended by revising paragraphs (b), (d)(1), and (e)(3), and removing and reserving paragraph (c), and (f) as follows:

§ 86.436–78 Additional service accumulation.

(a) * * *

(b) New deterioration lines will be generated using all applicable test points up to the useful life. The same procedures for determining the original deterioration lines will be used.

(c) [Reserved].

(d) To qualify for certification:

(1) The full life emission test results must be below the standards, and

* * * * *

(e) * * *

(3) The results of the half life emission tests, when adjusted by the new deterioration factors, are below the standards.

(f) [Reserved].

(Approved by the Office of Management and Budget under control number 2000–0390.)

36. Section 86.439–78 is revised to read as follows:

§ 86.439–78 Alternative procedure for notification of additions and changes.

(a)(1) A manufacturer may, in lieu of notifying the Administrator in advance of an addition of a vehicle or a change in a vehicle under § 86.438–78, notify the Administrator concurrently with the addition of a vehicle or the making of a change in a vehicle if the manufacturer determines that following the change all vehicles affected by the addition or change will still meet the applicable emission standards.

(2) Such notification shall include a full description of the addition or change and any supporting documentation the manufacturer may include to support the

follows:

kilometers of vehicle operation of three

manufacturer's determination that the addition or change does not cause noncompliance.

(3) The manufacturer's determination that the addition or change does not cause noncompliance shall be based on an engineering evaluation of the addition or change and/or testing.

(b) [Reserved].

(c)(1) The Administrator may require that additional emission testing be performed to support the manufacturer's original determination submitted in accordance with paragraph (a) of this section.

(2) If additional testing is required, the Administrator shall proceed as in § 86.438–78.

(3) Additional test data, if requested, must be provided within 30 days of the request or the manufacturer must rescind the addition or change immediately.

(4) The Administrator may grant additional time to complete testing.

(5) If based on this additional testing or any other information, the Administrator determines that the vehicles affected by the addition or change do not meet the applicable standards, the Administrator will notify the manufacturer to rescind the addition or change immediately upon receipt of the notification.

(d) Election to produce vehicles under this section will be deemed to be a consent to recall all vehicles which the Administrator determines under § 86.438–78 do not meet applicable standards, and to cause such nonconformity to be remedied at no expense to the owner.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

37. Section 86.440–78 is amended by revising paragraphs (a)(2)(i), and (a)(3), to read as follows:

§ 86.440–78 Maintenance of records.

(a) * * *

(2) *Individual records.* (i) A brief history of each motocycle used for certification under this subpart including:

(A)(*1*) In the case where a current production engine is modified for use in a certification vehicle, a description of the process by which the engine was selected and of the modification made.

(*2*) In the case where the engine for a certification vehicle is not derived from a current production engine, a general description of the build-up of the engine (e.g., experimental heads were cast and machined according to supplied drawings, etc.)

(*3*) In both cases above, a description of the origin and selection process for the carburetor, fuel system, emission control system components, and exhaust after treatment device shall be included.

(*4*) The required description shall specify the steps taken to assure that the certification vehicle with respect to its engine, drive train, fuel system, emission control system components, exhaust after treatment device, vehicle mass, or any other device or component that can reasonably be expected to influence exhaust emissions, will be representative of production vehicles, and that either all components and/or vehicle construction processes, component inspection and selection techniques, and assembly techniques employed in constructing such vehicles are reasonably likely to be implemented for production vehicles, or they are as closely analogous as practicable to planned construction and assembly processes.

(B) A complete record of all emission test performed (except tests performed by EPA directly) including test results, the date and purpose of each test, and the distance accumulated on the vehicle.

(C) The date of each service accumulation run, listing the distance accumulated.

(D) [Reserved].

(E) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(F) A record and description of each test performed to diagnose engine or emissions control system performance, giving the date and time of the test and the reason for it.

(G) [Reserved].

(H) A brief description of any significant events affecting the vehicle during any time in the period covered by the history, not described by an entry under one of the previous headings, including such extraordinary events as vehicle accidents or dynamometer runaway.

* * * * *

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of six (6) years after the issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer: *Provided* that, in every case, all the information contained in the hard copy shall be retained.

(Approved by the Office of Management and Budget under control number 2000–0390.)

38. Section 86.537–78 is amended by revising paragraphs (b)(12), (14), and (19) as follows:

§ 86.537–78 Dynamometer test runs.

* * * * *

(b) * * *

(12) At the end of the deceleration, which is scheduled to occur at 505 seconds, simultaneously switch the sample flows from the "transient" bags to the "stabilized" bags, switch off gas flow measuring device No. 1 and start gas flow measuring device No. 2. Before the acceleration, which begins at 510 seconds, record the roll revolutions. As soon as possible, transfer the "transient" exhaust and dilution air samples to the analytical system and process the samples according to § 86.540, obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

* * * * *

(14) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 2 and position the sample selector valves to the "standby" position. Record the measured roll revolutions. As soon as possible, transfer the stabilized exhaust and dilution air samples to the analytical system and process the samples according to § 86.540 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

* * * * *

(19) As soon as possible, transfer the hot start "transient" exhaust and dilution air samples to the analytical system and process the samples according to § 86.540 obtaining a stabilized reading of the exhaust sample on all analyzers Within 20 minutes of the end of the sample collection phase of the test.

* * * * *

(Approved by the Office of Management and Budget under the control number 2000–0390.)

39. Section 86.884–5 is amended by revising paragraph (d) to read as follows:

§ 86.884–5 Test procedures.

* * * * *

(d)(1) Except in cases of component mulfunction or failure, all emission control systems installed on, or incorporated in, a new motor vehicle engine shall be functioning during all procedures in this subpart.

(2) Maintenance to correct component malfunction or failure shall be authorized in accordance with § 86.084–25.

(Approved by the Office of Management and Budget under the control number 2000–0390.)

40. Section 86.884–7 is amended by revising paragraphs (a)(2)(iii) and (a)(2)(v) to read as follows:

§ 86.884–7 Dynamometer operating cycle for smoke emission tests.

(a) * * *

(2) * * *

(iii) After the engine reaches the speed required in paragraph (a)(2)(ii) of this section the throttle shall be moved rapidly to, and held in, the fully closed position. Immediately after the throttle is closed, the preselected load required to perform the acceleration in paragraph (a)(2)(iv) of this section shall be applied. For electric motoring dynamometer operation in speed mode, the deceleration shall be performed in 2±1.5 seconds.

* * * * *

(v) For electric motoring dynamometer operation in speed mode, motoring assist may be used to offset excessive dynamometer inertia load when necessary. No negative flywheel torque shall occur during any of the three acceleration modes in (a)(2).

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

41. Section 86.884–9 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 86.884–9 Smoke measurement system.

* * * * *

(b) * * *

(2) Smokemeter (light extinction meter)—continuous recording, full-flow light obscuration meter.

(i) It is positioned near the end of the exhaust pipe so that a built-in light beam traverses the exhaust smoke plume which issues from the pipe at right angles to the axis of the plume.

(ii) The light source is an incandescent lamp operating at a constant voltage of not less than 15 percent of the manufacturer's specified voltage.

(iii) The lamp output is collimated to a beam with a nominal diameter of 1.125 inches and an angle of divergence within a 4° included angle.

(iv) A light detector directly opposed to the light source measures the amount of light blocked by the smoke in the exhaust. The detector sensitivity is restricted to the visual range and comparable to that of the human eye.

(v) A collimating tube with apertures equal to the beam diameter is attached to the detector to restrict the viewing angle of the detector to within a 16° included angle.

(vi) An amplified signal corresponding to the amount of light blocked is recorded continuously on a remote recorder.

(vii) An air curtain across the light source and detector window assemblies may be used to minimize deposition of smoke particles on those surfaces provided that it does not measurably affect the opacity of the plume.

(viii) The smokemeter consists of two units; an optical unit and a remote control unit.

(ix) Light extinction meters employing substantially identical measurement principles and producing substantially equivalent results, but which employ other electronic and optical techniques, may be used only after having been approved in advance by the Administrator.

(3) Recorder—a continuous recorder, with variable chart speed over a minimal range of 0.5 to 8.0 inches per minute (or equivalent) and an automatic marker indicating 1-second intervals continuously records the exhaust gas opacity, engine rpm and throttle position.

(i) The recorder is equipped to indicate only when the throttle is in the fully open or fully closed position.

(ii) The recorder scale for opacity is linear and calibrated to read from 0 to 100 percent opacity full scale.

(iii) The opacity trace has a resolution within one percent opacity.

(iv) The recorder scale for engine rpm is linear and has a resolution of 30 rpm.

(v) The throttle position trace clearly indicates when the throttle is in the fully open and fully closed positions.

(vi) Any means other than a strip-chart recorder may be used provided it produces a permanent visual data record of quality equal to or better than that described above (e.g., tabulated data, traces, or plots).

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

§ 86.884–10 [Amended]

42. Section 86.884–10 is amended by removing and reserving paragraph (c)(4).

§ 86.884–11 [Amended]

43. Section 86.884–11 is amended by removing and reserving paragraph (a)(1).

44. Section 86.884–12 is amended by revising paragraph (c)(9) to read as follows:

§ 86.884–12 Test run.

* * * * *

(c) * * *

(9)(i) During the test sequence of § 86.884–7, continuously record smoke measurements, engine rpm, and throttle position.

(ii) If a chart recorder is used for data collection, it shall be run at a minimum chart speed of one inch per minute during the idle mode and transitional periods, and eight inches per minute during the acceleration and lugging modes.

(iii) Automatic data collection equipment, if used, shall sample at least two records per second.

(iv) The smokemeter zero and full-scale response may be rechecked during the idle mode of each test sequence.

(v) If either zero or full-scale drift is in excess of 2 percent opacity, the smokemeter controls must be readjusted and the test must be repeated;

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

45. Section 86.884–13 is amended by revising paragraphs (a)(6), the introductory text of (b) and (b)(3)(iii) to read as follows:

§ 86.884–13 Data analysis.

* * * * *

(a) * * *

(6) The transition period specified in § 86.884–7 (a)(3)(i) starts when the preceding acceleration mode has been completed and ends when the engine speed is 50 rpm below the rated speed and the provisions of § 86.884–7 (a)(3)(i) are met.

* * * * *

(b) Determine if the test requirements of § 86.884–7 are met by applying the following modal criteria:

* * * * *

(3) * * *

(iii) Throttle position: fully open until speed is at least 85 percent of the rated speed.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

46. Section 86.1003–84 is amended by revising paragraph (c) to read as follows:

§ 86.1003–84 Test orders.

* * * * *

(c)(1) The test order will specify the engine or vehicle configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines or vehicles must be selected, the time and location at which engines or

(3) In both cases above, a description of the origin and selection process for

procedures of the manufacturer: *Provided* that, in every case, all the

control systems installed on, or incorporated in, a new motor vehicle

vehicles must be selected, and the procedure by which engines or vehicles of the specified configuration must be selected.

(2) The test order may include alternative configurations to be selected for testing in the event that engines or vehicles of the specified configuration are not available for testing because those engines or vehicles are not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facilities.

(3) If the specified configuration is not being manufactured at a rate of at least four vehicles per day, in the case of light-duty truck manufacturers, two engines per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(1) of § 86.1008–84, or one engine per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(2) of § 86.1008–84, over the expected duration of the audit, the Assistant Administrator or his designated representative may select engines or vehicles of the alternate configuration for testing.

(4) In addition, the test order may include other directions or information essential to the administration of the required testing.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

47. Section 86.1308–84 is amended by revising the introductory text of paragraph (a), paragraphs (a)(2)(iii) and (b) to read as follows:

§ 86.1308–84 Dynamometer and engine equipment specifications.

(a) *Engine dynamometer.* The engine dynamometer system must be capable of controlling engine torque and rpm simultaneously over transient cycles. The transient torque and rpm schedules described in § 86.1333–84 and specified in Appendix I ((f)(i), (2), and (3)) must be followed within the accuracy requirements specified in § 86.1341–84. In addition to these general requirements, the engine or dynamometer readout signals for speed and torque shall meet the following accuracy specifications:

* * * * *

(2) * * *

(iii) ±10 ft.-lbs., of the NBS "true" value if the full scale value is greater than 1050 ft.-lbs.

* * * * *

(b) *Cycle verification equipment.* In order to verify that the test engine has followed the test cycle correctly, the dynamometer or engine readout signals for speed and torque must be collected in a manner that allows a statistical correlation between the actual engine performance and the test cycle (See § 86.1341–84). Normally this collection process would involve conversion of analog dynamometer or engine signals into digital values for storage in a computer. The conversion of dynamometer or engine values (computer or other) that are used to evaluate the validity of engine performance in relation to the test cycle shall be performed in a manner such that:

(1) Speed values used for cycle evaluation are accurate to within 2 percent of the dynamometer or engine flywheel torque readout value.

(2) Engine flywheel torque values used for cycle evaluation are acurate to within 2 percent of the dynamometer or engine flywheel torque readout value.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0390.)

48. Section 86.1310–84 is amended by revising Figure N84–3 and Figure N84–4 of paragraph (a)(1) and by revising paragraphs (b)(3)(iv), (b)(3)(v)(B), (b)(3)(vii)(A), (b)(3)(vii)(B) and (b)(4)(ii)(C) to read as follows:

§ 86.1310–84 Exhaust gas sampling and analytical systems; diesel-fuel engines.

(a) * * *

(1) * * *

BILLING CODE 6560-50-M

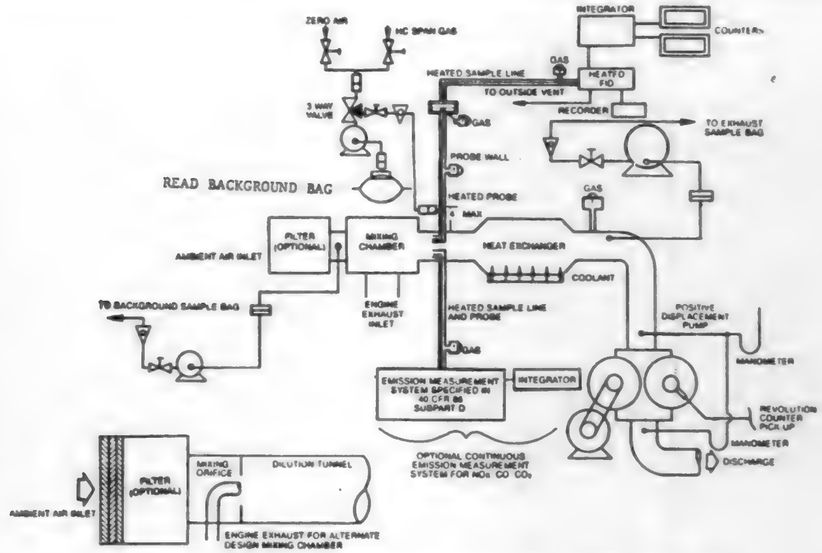


FIGURE N84-3: GASEOUS EMISSIONS SAMPLING SYSTEM (PDP-CVS)

(For diesel engines only)

(see figure N84-5 for symbol legend)

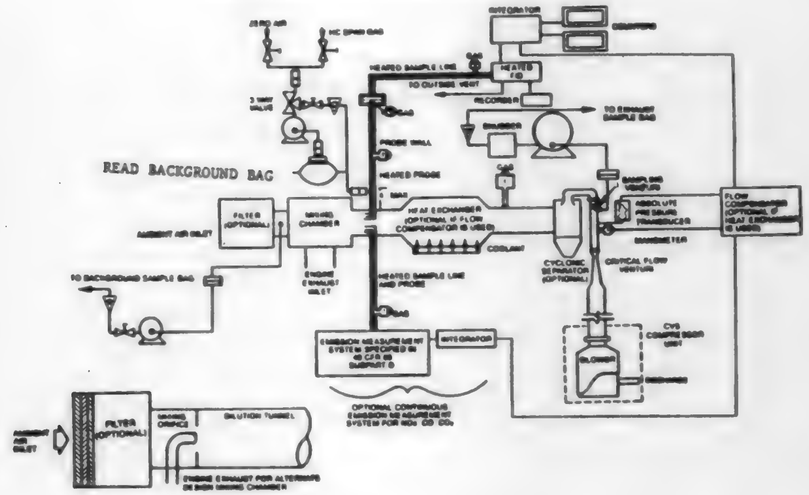


Figure N84-4 GASEOUS EMISSIONS SAMPLING SYSTEM (CFV-CVS)

(For diesel engines only)

(See figure N84-5 for symbol legend)

BILLING CODE 6560-50-C

• • • • • •

(b) • • •

(3) • • •

(iv) The overflow gases shall enter the heated sample line as close as practicable to the outside surface of the CVS duct or dilution tunnel.

(v) • • •

(B) Sufficiently distant (radially) from other probes and the tunnel wall so as to be free from the influence of any wakes or eddies.

• • • • • •

(vii) • • •

(A) 1.5 seconds from an instantaneous step change at the port entrance to the analyzer to within 90 percent of the step change.

(B) 20.0 seconds from an instantaneous step change at the entrance to the sample probe or overflow span gas port to within 90 percent of the step change. Analysis system response time shall be coordinated with CVS flow fluctuations and sampling time/test cycle offsets if necessary.

• • • • • •

(4) • • •

(ii) • • •

(C) The tunnel shall be at least 18.0 inches (45.7 cm) in diameter; unless a double dilution tunnel is used. Good engineering judgment shall be used to retest other tunnel diameters.

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

49. Section 86.1313–84 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 86.1313–84 Fuel Specifications.

(a) • • •

(2) Gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(i) For leaded fuel the minimum lead content shall be equal to the average lead content found in regular leaded gasoline in the fuel survey prescribed by the Administrator.

(ii) Where the Administrator determines that vehicles represented by a test vehicle will be operated using gasoline of different lead content than that prescribed in this paragraph, he may consent in writing to use of a gasoline with a different lead content.

(iii) The octane rating of the gasoline used shall be not higher than one octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers for unleaded fuel and 7.0 octane numbers for leaded fuel, where sensitivity is defined as the research octane number minus the Motor octane number.

(iv) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

• • • • • •

(b) *Diesel fuel.*

(1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, and dispersant.

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

50. Section 86.1314–84 is amended by revising paragraph (d) to read as follows:

§ 86.1314–84 Analytical gases.

• • • • • •

(d) Fuel for the FID shall be a blend of 40±2 percent hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response; 98 to 100 percent hydrogen fuel may be used with advance approval of the Administrator.

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

51. Section 86.1316–84 is amended by revising paragraph (c)(3) to read as follows:

§ 86.1316–84 Calibrations; frequency and overview.

• • • • • •

(c) • • •

(3) Check the shaft torque feedback signal at steady-state conditions by comparing:

(i) Shaft torque feedback to dynamometer beam load, or

(ii) By comparing in-line torque to armature current, or

(iii) By checking the in-line torque meter with a dead weight per § 86.1308–84(e).

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

52. Section 86.1319–84 is amended by revising paragraphs (c)(7)(iv) and (c)(9) to read as follows:

§ 86.1319–84 CVS calibration.

• • • • • •

(c) • • •

(7) • • •

(iv) A linear least square fit is performed to generate the calibration equation which has the form:

$$V'_o = D_o - M(X_o)$$

M and D_o are the slope and intercept constants describing the regression line.

(8) • • •

(9) If the calibration has been performed carefully, the calculated values from the equation will be within ±0.50 percent of the measured value of V_o. Values of M will vary from one pump to another, but values of D_o for pumps of the same make, model and range should agree within ±3 percent of each other. Particulate influx over time will cause the pump slip to decrease, as reflected by lower values for M. Calibrations should be performed at pump start-up and after major maintenance to assure the stability of the pump slip rate. Analysis of mass injection data will also reflect pump slip stability.

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

53. Section 86.1321–84 is amended by revising paragraph (a)(3)(iii) to read as follows:

§ 86.1321–84 Hydrocarbon analyzer calibration.

• • • • • •

(a) • • •

(3) • • •

(iii) Alternative procedures may be used if approved in advance by the Administrator.

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

54. Section 86.1323–84 is amended by revising paragraph (a)(4) to read as follows:

§ 86.1323–84 Oxides of nitrogen analyzer calibration.

• • • • • •

(a) • • •

(4) Introduce into the NO_x generator analyzer-system an NO-in-nitrogen (N_2) mixture with an NO concentration equal to approximately 80 percent of the most common operating range. The NO_2 content of the gas mixture shall be less than 5 percent of the NO concentration.

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

55. Section 86.1327–84 is amended by revising paragraphs (a), (d)(4) and (e) to read as follows:

§ 86.1327–84 Engine dynamometer test procedures; overview.

(a)(1) The engine dynamometer test procedure is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen.

(i) The dynamometer test procedure consists of a "cold" start test following either natural or forced cool-down periods described in § 86.1334–84 and § 86.1335–84, respectively. A "hot" start test follows the "cold" start test after a hot soak period of 20 minutes.

(ii) The idle test of Subpart P may be run after the "hot" start test.

(2) The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during the cold and hot start tests.

(i) The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_x).

(ii) A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen.

• • • • • •

(d) • • •

(4) Additional accessories (e.g., oil cooler, alternators, air compressors, etc.) may be installed or their loading simulated if typical of the in-use application.

• • • • • •

(e)(1) Means of engine cooling which will maintain the engine operating temperatures (e.g., temperatures of intake air, oil, water, etc.) at approximately the same temperature as specified by the manufacturer shall be used.

(2) Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer.

(3) Rust inhibitors and lubrication additives may be used, up to the levels recommended by the additive manufacturer.

(4) Antifreeze mixtures and other coolants typical of those approved for use by the manufacturer may be used.

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

56. Section 86.1332–84 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 86.1332–84 Engine mapping procedures.

• • • • • •

(c) • • •

(1) *Gasoline-fueled engines.* (i) For ungoverned engines the maximum mapping speed shall be calculated from the following equation:

$$\text{Maximum speed} = \text{curb idle rpm} + \frac{115\ (\text{measured rated rpm} - \text{curb idle rpm})}{100}$$

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

57. Section 86.1334–84 is amended by revising paragraph (a)(2) to read as follows:

§ 86.1334–84 Pre-test engine and dynamometer preparation.

(a) • • •

(2) Following any practice runs or calibration procedures, the engine shall be turned off and allowed to either cold soak at 68° to 86°F until the oil temperature reaches 75° (24°C), or until a minimum of 12 hours have elapsed, whichever time is shorter, or be cooled per § 86.1335–84.

(Approved by the Office of Management and Budget under control number 2000–0390.)

58. Section 86.1335–84 is amended by revising paragraphs (c)(2)(i) and (e) as follows:

§ 86.1335–84 Optional forced cool-down procedure.

• • • • • •

(c) • • •

(2) • • •

(i) The air shall be directed essentially uniformly over the exterior surface of the engine at any desired flow rate.

• • • • • •

(e)(1) The cold cycle exhaust emission test may begin after a forced cool down only when the engine oil temperature is stabilized between 20°C and 24°C (68°F and 75°F). This temperature measurement is to be made by a temperature measurement device immersed in the sump oil, the sensor part of which is not in contact with any engine surface. No engine oil change is permitted during the test sequence.

(2) Direct forced cooling of the engine oil through the use of oil coolers or heat exchangers is permitted but the cold cycle emission test may begin only when the circulating water temperature has stabilized to within 2.8°C (5°F) of the stabilized oil temperature.

(3) Any other means for the direct forced cooling of the engine oil must be approved in advance by the Administrator.

• • • • • •

(Approved by the Office of Management and Budget under control number 2000–0390.)

59. Section 86.1336–84 is amended by adding paragraph (d) which reads as follows:

§ 86.1336–84 Engine starting and restarting.

• • • • • •

(d) Test equipment malfunction.

(1) If a malfunction occurs in any of the required test equipment during the cold cycle portion of the test, the test shall be voided.

(2) If a malfunction occurs in any of the required test equipment (computer, gaseous emission analyzer, etc.) during the hot cycle portion of the test, complete the full engine cycle before engine shut-down then resoak for 20 minutes.

(i) If the test equipment malfunction can be corrected before the resoak period has been completed the hot cycle portion of the test may be rerun.

(ii) Only on hot start resoak and restart is permitted per test.

(Approved by the Office of Management and Budget under control number 2000-0390.)

60. Section 86.1340-84 is amended by revising paragraph (e)(2) to read as follows:

§ 86.1340-84 Exhaust sample analysis.

* * * * *

(e) * * *

(2) Leak check portions of the sampling system that operate at negative gauge pressures when sampling, and allow heated sample lines, filters, pumps, etc., to stabilize at operating temperature.

* * * * *

(Approved by the Office of Management and Budget under control number 2000-0390.)

61. Section 86.1341-84 is amended by revising paragraphs (d), (f), and (h) to read as follows:

§ 86.1341-84 Test cycle validation criteria.

* * * * *

(d) The standard error of estimate (SE) of y on x and the coefficient of determination (r^2) shall be calculated for each regression line.

* * * * *

(f) For gasoline engines, the integrated brake horsepower-hour of the feedback cycle shall be within 5 percent of the integrated brake horsepower-hour of the reference cycle for the cold cycle or the test is void. The tolerance for the hot cycle shall be 4 percent.

* * * * *

(h) For diesel engines, all reference torque values specified in Appendix I, f(2) as "closed rack" shall be deleted from the calculation of cycle torque and power validation statistics. Associated reference and feedback brake horsepower points shall be set equal to zero for purposes of calculating integrated power-hour for diesel engines, and also for gasoline engines whenever the reference torque is less than zero percent. (Note the regression deletions specified in Figure N84-11.)

FIGURE N84-11—REGRESSION LINE TOLERANCES

	Diesel engines		
	Speed	Torque	BHP
Standard error of estimate (SE) of Y on X.	100 rpm	13 pct of power map maximum engine torque.	8 pct of power map maximum BHP.
Slope of the regression line, m	0.970 to 1.030	0.83-1.03 hot, 0.77-1.03 cold.	0.89-1.03 (hot), 0.87-1.03 (cold).
Coefficient of determination, r^2	0.9700 [1]	0.8800 (hot) [1] 0.8500 (cold) [1].	0.9100 [1]
Y intercept of the regression line, b	±50 rpm	±15 ft-lb	±5.0 BHP

	Gasoline engines		
	Speed	Torque	BHP
Standard error of estimate (SE) of Y on X.	100	10 pct (hot), 11 pct (cold of power map max. engine torque.	5 pct (hot) 6 pct (cold) of power map max. BHP
Slope of the regression	0.980 to, 1.020	0.92-1.03 (hot), 0.88-1.03 [cold].	0.93-1.03 (hot), 0.89-1.03 [cold].
Coefficient of determination, r^2	0.9700 [1]	0.9300 (hot),[1] 0.9000 (cold) [1].	0.9400 (hot),[1] 0.9300 (cold) [1]
Y intercept of the regression, b	±25 (hot), ±40 (cold)	±4 pct (hot), ±5 pct (cold) of power map max. engine torque.	±2 pct (hot), ±2.5 pct (cold) of power map max. BHP.

[1] Minimum.

PERMITTED POINT DELETIONS FROM REGRESSION ANALYSIS

Condition	Points to be deleted
First 24 seconds (±1) of free idle of hot and cold cycles.	Speed, Torque, BHP.
Wide-open throttle, and speed control, and torque feedback, torque reference.	Torque, BHP.
Wide-open throttle, and torque control, and speed feedback, speed reference.	Speed, BHP.
Speed control, and gasoline-fueled engine, and closed throttle, and torque reference, torque feedback, and:	
A. Manual transmission, and reference torque not equal to zero, or	Torque, BHP.
B. Automatic transmission, and reference torque not equal to curb idle [illegible] torque.	Do.
Speed control, and diesel engine, and reference torque equals "Closed Rack".	Do.
Gasoline-fueled engine, and equipped with automatic choke, and first 150 seconds of cold cycle or first 30 seconds of hot cycle, and closed throttle, and no clutch (or with clutch engaged during idle periods), and:	
A. Manual transmission, and torque feedback is equal to zero (±10 ft. lb), or	Speed, BHP
B. Automatic transmission, and torque feedback is equal to curb idle transmission torque (±10 ft. lb).	Do.
Diesel-fueled engines equipped with cold engine idle speed enrichment: up to the first 180 seconds of cold cycle or up to the first 30 seconds of hot cycle, the sum of the seconds deleted of cold cycle plus the sum of the seconds deleted from the hot cycle may not exceed 180 seconds and closed throttle and no clutch (or with clutch engaged during idle periods), and:	
A. Manual transmission, and torque feedback is equal to zero (±10 ft. lb).	Do.
B. Automatic transmission, and torque feedback is equal to curb idle transmission torque (±10 ft. lb).	Do.
Engine equipped with an operating clutch, and clutch disengaged.	Do.

(Approved by the Office of Management and Budget under control number 2000-0390.)

62. Section 86.1342-84 is amended by revising paragraphs (c), (d), (e)(1), (h)(1), and (h)(2)(i) to read as follows:

§ 86.1342-84 Calculations; exhaust emissions.

* * * * *

(c) The mass of each pollutant for the cold start test and the hot start test for flow compensated sample systems is determined from the following equations:

$$(1)\ HC_{mass} = \sum_{i=1}^{n} \left[\left(\frac{HC_e}{10^6} \right)_i \times (V_{mix})_i \times (Density_{HC}) \times \Delta T \right] - \frac{HC_d}{10^6} \left(1 - \frac{1}{DF}\right) \times V_{mix} \times Density_{HC}$$

$$(2)\ NOx_{mass} = K_H \times \sum_{i=1}^{n} \left[\left(\frac{NOx_e}{10^6} \right)_i \times (V_{mix})_i \times (Density_{NO_2}) \times \Delta T \right] - K_H \times \frac{NOx_d}{10^6} \left(1 - \frac{1}{DF}\right) \times V_{mix} \times Density_{NO_2}$$

$$(3)\ CO_{mass} = \sum_{i=1}^{n} \left[\left(\frac{CO_e}{10^6} \right)_i \times (V_{mix})_i \times (Density_{CO}) \times \Delta T \right] - \frac{CO_d}{10^6} \left(1 - \frac{1}{DF}\right) \times V_{mix} \times Density_{CO}$$

$$(4)\ CO_{2_{mass}} = \sum_{i=1}^{n} \left[\left(\frac{CO_{2_e}}{10^6} \right)_i \times (V_{mix})_i \times (Density_{CO_2}) \times \Delta T \right] - \frac{CO_{2_d}}{10^6} \left(1 - \frac{1}{DF}\right) \times V_{mix} \times Density_{CO_2}$$

(d) Meaning of symbols:

(1) HC_{mass} = Hydrocarbon emissions, in grams per test phase.

$Density_{HC}$ = Density of hydrocarbons is 16.33 g/ft³ (0.5768 kg/m³) for gasoline and may be used for all fuels if desired, 16.42 g/ft³ (0.5800 kg/m³) for #1 diesel, and 16.27 (0.5746 kg/m³) for #2 diesel, assuming an average carbon to hydrogen ratio of 1:1.85 for gasoline, 1:1.93 for #1 diesel, and 1:1.80 for #2 diesel at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

HC_{conc} = Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent (i.e., equivalent propane ×3).

$HC_{conc} = HC_e - HC_d[1-(1/DF)]$

Where:

HC_e = Hydrocarbon concentration of the dilute exhaust bag sample or, for diesel heat exchanger systems, average hydrocarbon concentration of the dilute exhaust sample as calculated from the integrated HC traces, in ppm carbon equivalent. For flow compensated sample systems (HC_e)$_i$ is the instantaneous concentration.

HC_d = Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

(2) NOx_{mass} = Oxides of nitrogen emissions, in grams per test phase.

$Density_{NOx}$ = Density of oxides of nitrogen is 54.16 g/ft³ (1.913 kg/m³), assuming they are in the form of nitrogen dioxide, at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

NOx_{conc} = Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm:

$NOx_{conc} = NOx_e - NOx_d[1-(1/DF)]$

Where:

NOx_e = Oxides of nitrogen concentration of the dilute exhaust bag sample as measured, in ppm. For flow compensated sample systems (NOx_e)$_i$ is the instantaneous concentration.

NOx_d = Oxides of nitrogen concentration of the dilute air as measured, in ppm.

(3) CO_{mass} = Carbon monoxide emissions, in grams per test phase.

$Density_{CO}$ = Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

CO_{conc} = Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, in ppm.

$CO_{conc} = CO_e - CO_d[1-(1/DF)]$.

Where:

CO_e = Carbon monoxide concentration of the dilute exhaust bag sample volume corrected for water vapor and carbon dioxide extraction, in ppm. For flow compensated sample systems (CO_e)$_i$ is the instantaneous concentration. (The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.)

$CO_e = [1-0.01925CO_{2_e} - 0.000323R]CO_{em}$

Where:

CO_{em} = Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

CO_{2_e} = Carbon dioxide concentrations of the dilute exhaust bag sample, in percent if measured. For flow compensated sample systems, (CO_{2_e})$_i$ is the instantaneous concentration. For cases where exhaust sampling of CO_2 is not performed, the following approximation is permitted:

$$CO_{2_e}' = \left(\frac{44.010}{12.011 + (1.008\alpha)}\right)\left(\frac{M'(453.6)}{Density\ CO_2}\right)\frac{100}{V_{mix}}$$

α = Average carbon to hydrogen ratio.

M' = Fuel mass consumed during the test cycle.

R = Relative humidity of the dilution air in percent.

CO_d = Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

$CO_d = (1-0.000323R)\ CO_{dm}$

Where:

CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in ppm.

Note.—If a CO instrument which meets the criteria specified in § 86.1311-84 is used and the conditioning column has been deleted, CO_{em} must be substituted directly for CO_e and CO_{dm} must be substituted directly for CO_d.

(4) $CO_{2_{mass}}$ = Carbon dioxide emissions, in grams per test phase.

Density CO_2 = Density of carbon dioxide is 51.81g/ft³ (1.830 kg/m³), at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

$CO_{2\ conc}$ = Carbon dioxide concentration of the dilute exhaust sample corrected for background, in percent.

$CO_{2\ conc} = CO_{2\ e} - CO_{2\ d}[1-(1/DF)]$

Where:

$CO_{2\ d}$ = Carbon dioxide concentration of the dilution air as measured, in percent.

(5) $DF = 13.4/[CO_{2\ e} + (HC_e + CO_e) \times 10^{-4}]$, or $DF = 13.4/CO_{2\ e}'$.

(6) K_H = Humidity correction factor.

For gasoline engines: $K_H = 1/[1-0.0047\ (H-75)]$ (or for SI units = $1/[1-0.0329\ (H-10.71)]$).

For diesel engines: $K_H = 1/[1-0.0026\ (HU-75)]$ (or for SI units = $1/[1-0.0182\ (H-10.71)]$).

Where:

H = Absolute humidity of the engine intake air in grains (grams) of water per pound (kilogram) or dry air.

$H = [(43.478)\,R_i \times P_d]/[P_B - (P_d \times R_i/100)]$, and
$= [(6.211)\,R_i \times P_d]/[P_B - (P_d \times R_i/100)]$ for SI units.
R_i = Relative humidity of the engine intake air, in percent.
P_d = Saturated vapor pressure, in mm Hg (kPa) at the engine intake air dry bulb temperature.
P_B = Barometric pressure, in mm Hg (kPa).

* * * * *

(e) * * *

(1) Assume the following test results for a gasoline engine:

	Cold start cycle test results	Hot start cycle test results
V_{mix}	6.824 ft^3	6.873 ft^3
R_i	30.2 percent	30.2 percent.
R_a	30.2 percent	30.2 percent.
P_B	735 mm Hg	735 mm Hg.
P_d	22.676 mm Hg	22.676 mm Hg.
HC_e	132.07 ppm C equiv.	86.13 ppm C equiv.
NO_{x_e}	7.86 ppm	10.98 ppm.
CO_{mix}	171.23 ppm	114.28 ppm.
$CO_{2_{mix}}$	.178 percent	.381 percent.
HC_e	3.60 ppm C Equiv.	8.70 ppm C Equiv.
NO_{x_a}	0.0 ppm	0.10 ppm.
CO_{dil}	0.89 ppm	0.99 pp.
CO_{2_a}	0.0 percent	0.036 percent.
PHP-hr	6.254	0.367.

Then:

Cold Start Test

$H = [(43.478)(30.2)(22.676)]/[735 - (22.676)(30.2)/100]$
$= 41$ grains of water per pound of dry air.
$K_w = 1/[1 - 0.0047(41 - 75)] = 0.862$
$CO_e = [1 - 0.01925(.178) - 0.000323(30.2)]171.22 = 169.0$ ppm
$CO_a = [1 - 0.000323(30.2)]0.89 = .881$ ppm
$DF = 13.4/[.178 + (132.07 + 169.0)(10^{-5})] = 64.390$
$HC_{mass} = 132.07 - 3.6[1 - (1/64.390)] = 128.5$ ppm
$HC_{mass} = 6924(16.33)(128.5/1,000,000) = 14.53$ grams
$Npx_{mass} = 7.86 - 0.0[1 - (1/64.390)] = 7.86$ ppm
$NOx_{mass} = 6924(54.16)(.862)(7.86/1,000,000) = 2.54$ grams
$CO_{mass} = 169.0 - .881[1 - (1/64.390)] = 168.0$ ppm
$CO_{mass} = 6924(32.97)(168.0/1,000,000) = 38.35$ grams
$CO_{2_{mix}} = .178 - 0[1 - 1/64.390)] = .178\%$
$CO_{2_{mass}} = 6924(51.81)(.178/100) = 639$ grams

Hot Start Test

Similar calculations result in the following:
$HC_{mass} = 8.72$ grams
$NOx_{mass} = 3.49$ grams
$CO_{mass} = 25.70$ grams
$CO_{2_{mass}} = 1226$ grams

* * * * *

(h) * * *

(1) Assume the following test results:

	Cold start cycle test results	Hot start cycle test results
BHP-hr	6.945	7.078
a	1.85	1.85
HC_{mass} (grams)	[illegible]	[illegible]
CO_{mass} (grams)	[illegible]	350.33
$CO_{2_{mass}}$ (grams)	5,419.62	5,361.32

Then:

G_s for cold start test = [12.011/(12.011 + (1.85)(1.008))](37.08) + 0.429(357.69) + 0.273(5419.62) = 1665.10 grams
G_s for hot start test = [12.011/(12.011 + (1.85)(1.008))](28.62) + 0.429(350.33) + 0.273(5361.32) = 1638.88 grams
$R_a = 12.011/[12.011 + 1.85(1.008)] = .866$
$M_s = (1665.10/.866)(1/453.6) = 4.24$ lbs. (calculated), or
$= 4.24$ lbs. (directly measured).
$M_{ss} = (1638.88/.866)(1/453.6) = 4.17$ lbs. (calculated), or
$= 4.17$ lbs. (directly measured).

$$K_w = 1 - .00925\ CO_{2_a}(') - \left(\frac{1.608 \times H'}{7000 + H'}\right), \text{ or}$$

$$= 1 - .00925 CO_{2_a}(') - \left(\frac{1.608 \times H'}{1000 + H'}\right) \text{ for SI units.}$$

$CO_{2_a}(')$ = either CO_{2_a} or CO_{2_a}', as applicable.
H' = Absolute humidity of the CVS dilution air in grains (grams) of water per pound (kilogram) of dry air.
$H' = [(43.478)R_i' \times P_d']/[P_B - (P_d' \times R_i'/100)]$, and
$= [(6.211)R_i' \times P_d']/[P_B - (P_d' \times R_i'/100)]$ for SI units.
R_i' = Relative humidity of the CVS dilution air, in percent.
P_d' = Saturated vapor pressure, in mm Hg (kPa) at the ambient dry bulb temperature of the CVS dilution air.
P_B = Barometric pressure, in mm Hg (kPa).

(Approved by the Office of Management and Budget under control number 2000-0390.)

63. Paragraphs (f)(1) and (f)(2) of Appendix I of Part 86 are amended by revising record number 35 in (f)(1) and record numbers 231, 496, and 869 in (f)(2) to read as follows:

Appendix I—Urban Dynamometer Schedules.

* * * * *

(f)(1) EPA Engine Dynamometer Schedule for Heavy-Duty Gasoline-Fueled Engines.

PERCENT REVOLUTIONS PER MINUTE AND TORQUE VERSUS TIME SEQUENCE

Record (sec)	Normalized revolutions per minute	Normalized torque
35	70.00	10.00

(f)(2) EPA Engine Dynamometer Schedule for Heavy-Duty Diesel Engines.

Record (sec)	Normalized revolutions per minute	Normalized torque
231	100.00	80.00
496	71.93	93.22
869	[illegible]	[illegible]

(Approved by the Office of Management and Budget under control number 2000-0390.)

64. Section 86.1344-84 is amended by revising paragraph (b) to read as follows:

§ 86.1344-84 Required information.

* * * * *

(b) When requested, data shall be supplied in the format specified by the Administrator.

* * * * *

(Approved by the Office of Management and Budget under control number 2000-0390.)

65. Section 86.1501-84 is revised to read as follows:

§ 86.1501-84 Scope, applicability.

This subpart contains gaseous idle test procedures for 1984 and later model year gasoline-fueled light-duty trucks and 1987 and later model year gasoline-fueled heavy-duty engines utilizing aftertreatment technology.

66. Section 86.1542-84 is amended by revising paragraphs (b)(7), (b)(8), (b)(9), and (b)(10) to read as follows:

§ 86.1542-84 Information required.

* * * * *

(b) * * *

(2) * * *

(i) For dilute sampling systems which require conversion of as-measured dry concentrations to wet concentrations, the following equation shall be used for any combination of bagged, continuous, or fuel mass-approximated sample measurements (except for CO measurements made through conditioning columns, as explained in paragraph (d)(3) of this section):

Wet concentration = $K_w \times$ dry concentration

Where:

(7) Recorder charts or computer printouts: Identify zero, span, exhaust gas and dilution air sample traces or computer readings (if applicable).

(8) Test cell ambient temperature and, if applicable, barometric pressure and humidity.

Note.—A central laboratory barometer may be used: *Provided*, that individual test cell barometric pressures are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(9) Pressure of the mixture of exhaust and dilution air entering the CVS metering device (or pressure drop across the CFV), the pressure increase across the device, and the temperature at the inlet (if applicable). The temperature may be recorded continuously or digitally to determine temperature variations (if applicable).

(10) The number of revolutions of the positive displacement pump accumulated while exhaust samples are being collected (if applicable). The number of standard cubic feet metered by a critical flow venturi would be the equivalent record for a CFV (if applicable).

* * * * *

(Approved by the Office of Management and Budget under control number 2000-0390.)

67. Section 86.1544-84 is amended by revising paragraph (b)(4) to read as follows:

§ 86.1544-84 Calculation; idle exhaust emissions.

* * * * *

(b) * * *

(4) Calculate the CVS dilution factor (DF) by:

$$DF = \frac{\text{Raw wet CO—background CO}}{\text{Dilute wet } CO_2 - \text{background } CO_2}$$

* * * * *

(Approved by the Office of Management and Budget under control number 2000-0390.)

PART 600—[AMENDED]

68. The authority for Part 600 reads as follows:

Authority: Title III of the Energy Policy and Conservation Act of the 1975, Pub. L. 94-163, 89 Stat. 871, Title IV of the National Conservation Policy Act of 1978, Pub. L. 95-619, 92 Stat. 3206.

69. In § 200.009-85, as published at 49 FR 13844, April 6, 1984, the section heading is corrected to read as follows:

§ 600.009-85 Hearing on acceptance of test data.

* * * * *

70. Section § 600.002-85 is amended by revising paragraph (a)(13) to read as follows:

§ 600.002-85 Definitions.

* * * * *

(a) * * *

(13)(i) "Combined Fuel Economy" means the fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively, for gasoline-fueled and diesel vehicles.

(ii) For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

* * * * *

§ 600.006-85 [Amended]

71. Section 600.006-85 is amended by removing and reserving paragraph (c)(2).

72. Section 600.007-80 is amended by adding paragraph (b)(6) to read as follows:

§ 600.007-80 Vehicle acceptability.

* * * * *

(b) * * *

(6) Any vehicle tested for fuel economy purposes must be representative of a vehicle which the manufacturer intends to produce under the provisions of a certificate of conformity.

* * * * *

(Approved by the Office of Management and Budget under control number 2000-0390.)

73. Section 600.209-85 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 600.209-85 Calculation of fuel economy values for labeling.

(a) For the purposes of calculating the city model type fuel economy value for labeling the manufacturer shall:

(1) *For general labels* multiply the city model type fuel economy value determined in § 600.207(b), by 0.90, rounding the product to the nearest whole mpg, or

(2) *For specific labels* multiply the city fuel economy value determined in § 600.206(a)(iii), by 0.90, rounding the product to the nearest whole mpg, and

(b) For the purposes of calculating the highway model type fuel economy value for labeling the manufacturer shall:

(1) *For general labels* multiply the highway model type fuel economy value determined in § 600.207(b) by 0.78, rounding the product to the nearest whole mpg, or

(2) *For specific labels* multiply the highway fuel economy value determined in § 600.206(a)(iii) by 0.78.

* * * * *

(d)(1) The combined fuel economy for a model type, to be used in determining annual fuel costs under § 600.308(c), is determine (except as provided for in paragraph (d)(2) of this section), by harmonically averaging the unrounded city and highway values, determined in § 209 (a) and (b), weighted 0.55 and 0.45 respectively, and rounded to the nearest whole mpg. (An example of this calculation procedure appears in Appendix II of this part).

(2) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the combined fuel economy will be set equal to the highway value, rounded to the nearest whole mpg.

(Approved by the Office of Management and Budget under control number 2000-0390.)

74. Section 600.306-85 is amended by revising paragraph (a)(3) to read as follows:

§ 600.306-85 Labeling requirements.

* * * * *

(a) * * *

(3) For any vehicle for which a specific label is requested which has a fuel economy value at or below the minimum tax-free value, the following statement must appear on the specific label:

"[Manufacturer's name] may have to pay IRS a Gas Guzzler Tax on this vehicle because of the low fuel economy."

* * * * *

75. Section § 600.306-86 is amended by revising the introductory text of (a)(1) and paragraphs (a)(2) and (a)(3) to read as follows:

§ 600.306-86 Labeling requirements.

(a) * * *

(1) A general fuel economy label (initial, or updated as required in § 600.314) as described in § 600.307(c) or:

(2) A specific label, as described in § 600.307(d), for those automobiles manufactured or imported before the date that occurs 15 days after general labels have been determined by the manufacturer.

* * * * *

(3) For any vehicle for which a specific label is requested which has a combined unadjusted fuel economy

• • • • •		
for labeling the manufacturer shall:		combined unadjusted fuel economy

value at or below the minimum tax-free value, the following statement must appear on the specific label:

"[Manufacturer's name] may have to pay IRS a Gas Guzzler Tax on this vehicle because of the low fuel economy."

• • • • •

76. Section § 600.307–85 is amended by revising paragraphs (b)(3)(ii) and correctly designating paragraph (c) to read as follows:

§ 600.307–85 Format and contents of labels.

• • • • •

(b) • • •

(3) • • •

(ii) If the fuel economy ranges for other models have not been supplied by the Administrator to the manufacturer at the time a vehicle is to be labeled or within the time constraints permitted by § 600.306(b), the statement required by paragraph (b)(3) of this section shall be replaced by the statement: "A range of MPG numbers for other models of similar size was not available when this (car/vehicle/truck) was labeled," or by the statement: "Not available."

• • • • •

(c) The fuel economy estimate required by paragraph (b)(2) of this section shall be highlighted by being in type no less than four times the size of the next largest print on the label (excluding the title and logos) or by such other means as may be approved by the Administrator.

• • • • •

77. Section 600.307–86 is amended by revising paragraphs (a)(3)(iii), (a)(3)(vi)(B), (b)(2), and (d)(1) to read as follows:

§ 600.307–86 Fuel economy label format requirements.

• • • • •

(a) • • •

(3) • • •

(iii)(A) A statement: "For comparison shopping, all [vehicles/trucks] classified as [insert category as determined in § 600.315] have been issued mileage ratings ranging from —— to —— mpg city and —— to —— mpg highway." (The range values are those determined in accordance with § 600.311.) Or, when applicable,

(B) A statement: "A range of fuel economy values for other [vehicles/trucks] classified as [insert category as determined in § 600.315] is not available at this time." or by the statement: "Not available."

• • • • •

(vi) • • •

(B) The type size shall be at least as large as the largest type size in the bottom 50 percent of the label.

• • • • •

(b) • • •

(2)(i) Except for the digit "one," each mpg digit shall measure at least 0.35 inches by 0.6 inches (9×15 mm) in width and height respectively.

(ii) For the digit "one," is shall measure at least 0.2 inches by 0.6 inches (0.2×0.15 mm) in width and height respectively.

• • • • •

(d) • • •

(1) The descriptions of paragraph (c) of this section;

• • • • •

78. Section 600.311–86 is amended by revising paragraph (g) to read as follows:

§ 600.311–86 Range of fuel economy for comparable automobiles.

• • • • •

(g) The manufacturer shall include the appropriate range of fuel economy determined by the Administrator in paragraph (c) or (d) of this section, on each label affixed to an automobile within the class, except as provided in § 600.306(b)(1).

79. Section 600.507–86 is amended by revising paragraphs (a)(2) (i), (ii), (iii) and (c) to read a follows:

§ 600.507–86 Running change data requirements.

• • • • •

(a) • • •

(2) • • •

(i) Adding an axle ratio which is at least 10 percent larger (or, optionally, 10 percent smaller) than the largest axle ratio tested.

(ii) Increasing (or, optionally, decreasing) the road-load horsepower for a subconfiguration by 10 percent or more for the individual running change or, when considered cumulatively, since original certification (for each cumulative 10 percent increase using the originally certified road-load horsepower as a base).

(iii) Adding a new subconfiguration by increasing (or, optionally, decreasing) the equivalent test weight for any previously tested subconfiguration in the base level.

• • • • •

(c) The manufacturer shall submit the fuel economy data required by this section to the Administrator in accordance with § 600.314(b).

• • • • •

[FR Doc. 84–31400 Filed 12–7–84; 8:45 am]
BILLING CODE 6560–50–M

federal register

Monday
December 10, 1984

Part III

Environmental Protection Agency

40 CFR Part 52
Interstate Pollution Abatement, Final Determination

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-2724-1]

Interstate Pollution Abatement, Final Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Determination under section 126 of the Clean Air Act (Interstate Pollution Abatement).

SUMMARY: Section 126 of the Clean Air Act provides a means by which any State or political subdivision may petition the EPA for relief from impermissible interstate air pollution. The States of Pennsylvania, New York, and Maine filed section 126 petitions in 1980 and 1981, claiming that air pollution from sources in the midwest prevented the petitioning States from attaining and maintaining national ambient air quality standards (NAAQS), consumed a portion of their prevention of significant deterioration (PSD) increments, interfered with visibility, and caused acid rain.

A public hearing was held on June 18–19, 1981, and the record held open until March 18, 1982, due to the extensive nature of the comments submitted, which included technical information and the petitioner's rebuttal arguments. On September 4, 1984 (49 FR 34851), after reviewing all of the material submitted, the Administrator proposed to deny the petitions, having determined that, while pollution does cross State lines into the petitioning States, the petitioning States' demonstrations did not adequately support their claims of injury. Upon review of the comments received in response to the proposed determination, EPA can find no reason to change its position. Therefore the Administrator is today issuing his final determination to deny those petitions.

DATE: The Administrator's determination is effective December 10, 1984.

ADDRESSES: Background documents, including copies of the petitions, a transcript of the public hearing, and copies of all comments received are available for public inspection at Docket No. A–81–09, Central Docket Section (LE–131), West Tower Lobby, Gallery 1, EPA, 401 M Street, SW., Washington, D.C. 20460, (202) 382–7548. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays; a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Larry Wilson, Standards Implementation Branch (MD–15), Control Programs Development Division, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, (919) 541–5540.

SUPPLEMENTARY INFORMATION:

I. Background

A more extensive discussion of the many statutory, legal, and technical issues involved in this decision may be found in the September 4, 1984, proposed determination (49 FR 34851).

A. Section 126

In 1977, Congress added section 126 to the Clean Air Act in order to provide States with a measure of protection, under certain circumstances, against pollution from sources, located outside their borders, over which they normally have no control. Section 126 provides for the intervention of the Administrator in instances when interstate air pollution can be shown to be preventing the attainment of NAAQS or interfering with those PSD or visibility measures which the Act requires to be included as a part of a State implementation plan (SIP).

Under Section 126, a State or political subdivision may petition the Administrator for a finding that an out-of-State source is emitting air pollution in violation of the prohibitions against interstate air pollution contained in section 110(a)(2)(E)(i) of the Clean Air Act. If the Administrator finds that a clear violation of section 110(a)(2)(E)(i) exists, he may prohibit the construction or continued operation of new or existing sources found to be in violation, or require that existing sources found to be in violation comply with a schedule to meet more stringent emission limits.

B. The Petitions

1. Pennsylvania

On December 19, 1980, Pennsylvania petitioned EPA under section 126 for a finding that 38 named sources in Ohio and West Virginia were preventing attainment and maintenance of the sulfur dioxide (SO_2) NAAQS and consuming a portion of the SO_2 PSD increment in some areas of southwestern Pennsylvania. The petition also requested a finding that particulate matter, including sulfate particulates resulting from the transformation of SO_2 from those named midwestern sources, was preventing the attainment and maintenance of the NAAQS for total suspended particulates (TSP), consuming a portion of the TSP PSD increment, and causing acid deposition. On June 4, 1981, Pennsylvania amended its petition to include all major sources of SO_2 and TSP in Ohio, West Virginia, Illinois, Indiana, and Kentucky.

2. New York

On December 22, 1980, and January 16, 1981, New York filed nine petitions under Section 126 asking EPA for a finding that SO_2 from 19 named sources in Illinois, Indiana, Michigan, Ohio, Tennessee, and West Virginia was being transported and transformed into sulfate particulates which were preventing the attainment and maintenance of TSP NAAQS, consuming a portion of the TSP PSD increment, interfering with visibility, and causing acid rain. New York subsequently amended its petition to include all sources of SO_2 and particulates subject to SIP's in the six States and Kentucky.

3. Maine

On October 7, 1981, Maine filed a petition under Section 126 requesting a finding that sulfates resulting from SO_2 emissions in the seven States named by Pennsylvania and New York were consuming a portion of the TSP PSD increment in southern Maine, interfering with visibility at Acadia National Park, and causing acid deposition. Maine waived its right to a public hearing on the condition that its petition be consolidated with those of Pennsylvania and New York.

C. The Public Hearing

After receiving the Pennsylvania and New York petitions, EPA issued a notice of public hearing on May 1, 1981 (46 FR 24602), and held a 2-day hearing on June 18–19, 1981, to gather testimony relating to the petitioners' allegations. Upon request, EPA twice extended the comment period, finally closing the record on March 18, 1982 (47 FR 1304). During the comment period, EPA received Maine's petition and, at Maine's suggestion, waived a separate hearing and consolidated the petition with those of Pennsylvania and New York (46 FR 55551).

D. The Proposed Determination

The petitions and the comments which were generated as a result of the public hearing created an extensive record and raised a number of legal and technical issues. Those issues elicited considerable comment during the public comment period on the proposed determination. Those issues and comments are discussed in section II, Summary of Response to Comments.

The proposed determination addressed the four basic allegations made in the petitions: (1) That SO_2 from seven midwestern States is transformed in that atmosphere and transported as sulfates into the petitioning States, resulting in acid deposition; (2) that SO_2 from sources in Ohio and West Virginia is causing violations of the SO_2 NAAQS and consuming a portion of the SO_2 PSD increment in southwestern Pennsylvania; (3) that SO_2 from the seven midwestern States is being transformed into sulfate particulates which are transported long distances, causing violations of the TSP NAAQS in Pennsylvania and New York and consuming a portion of the TSP PSD increments in Pennsylvania, New York, and Maine; and (4) that the sulfate particulates are forming a "regional haze" which is interfering with visibility in New York and Maine. The following is a summary of the position taken by EPA on each of these issues in the proposed determination.

1. Acid Deposition

As stated in the May 1, 1981, notice of public hearing (46 FR 24603), EPA believes that section 126 does not provide authority for regulating emissions of pollutants for which there are no NAAQS, PSD increments, or visibility measures. Therefore the proposed determination did not address the issue of acid deposition (49 FR 34856–57). Section 126 is limited to pollutants for which NAAQS or PSD increments have been established, and to measures under Part C for visibility. In particular, complaints about the levels of sulfates *per se* in the ambient air are insufficient to invoke section 126. Sulfate particulates, however, can constitute a portion of TSP and may thus be considered in the context of alleged violations of the standards for that pollutant for the purposes of section 126.

2. SO_2 Violations—Pennsylvania

Due to the lack of any ambient monitoring data showing violations, that portion of Pennsylvania's petition relating to direct SO_2 impacts relied on results from a modeling study performed by a consultant, H.E. Cramer Company, Inc. As noted in the report of the study, the study was conducted for the purpose of assisting in the determination of the attainment/nonattainment status of selected areas in southwestern Pennsylvania. Although adequate for the task intended, the analysis suffered technically when the study area was expanded in an attempt to gauge the background concentration caused by out-of-State sources. The study predicted two areas to be in violation of the SO_2 NAAQS; however, only one was located in the region originally intended for study. That area's SO_2 emissions are dominated by a nearby in-State major source, and Pennsylvania sources make up about 80 percent of the predicted SO_2 air quality levels. The other area predicted to be in violation was not in the portion of southwestern Pennsylvania that was the subject of the original investigation. This second area, a grid located on the Pennsylvania-West Virginia border, was modeled in a preliminary fashion after the main modeling effort was completed. The meteorological conditions used were for the original study areas and therefore not necessarily representative of the border grid. In addition, the emission inventories for areas outside the original study area were not scrutinized as closely as were the inventories for nearby sources, and because of the lack of monitoring data, the models were not adequately validated. Due to these limitations, EPA proposed to deny that portion of Pennsylvania's petition alleging violations of the SO_2 NAAQS. Also, because Pennsylvania did not submit evidence of the existence of any violations of the SO_2 PSD increments, there was no demonstration of interference with PSD measures and EPA therefore proposed to deny that portion of the petition alleging such interference.

3. TSP Violations

All three petitioners claimed that particulate matter, including sulfate particulate, was being transported into the petitioning States in amounts which exceeded the TSP NAAQS and consumed a portion of the PSD increment in violation of section 110(a)(2)(E)(i). The petitions focused on the long-range transport of sulfates resulting from the chemical conversion in the atmosphere of SO_2 emissions alleged to originate in the seven midwestern States named in the petitions. Although, as discussed previously, interstate sulfate pollution *per se* cannot be used as the basis for a section 126 petition, such pollution may be used to invoke that section when the sulfates are considered as particulates which contribute to TSP. Upon reviewing the data submitted by the petitioners, EPA found that: (1) When and where the TSP NAAQS were exceeded, sulfates did not constitute a significant portion of the TSP levels in the petitioning States, (2) sulfates from sources in the Midwest had not been demonstrated to comprise a significant portion of the annual sulfate levels in the petitioning States, and (3) the magnitude of the various geographic components of transported sulfates had not been adequately defined. Analysis of the petitioners' data indicated that the sulfate levels were not corrected for artifact formation caused by the sampling technique, and that in many instances the TSP NAAQS would have been exceeded even if the sulfate component were eliminated entirely from the samples. Finally, even if the petitioners' monitoring and modeling data were acceptable, those data would indicate that the sulfates from the midwestern States contribute only 4–6 percent to exceedances of annual TSP NAAQS in the petitioning States. Therefore, EPA proposed to deny that portion of the petitions alleging prevention of attainment of the TSP NAAQS (49 FR 34864).

The petitioning States also did not claim nor submit evidence of violations of the TSP PSD increments, nor did they demonstrate the extent to which sulfates from midwestern States contribute to increment consumption in the petitioning States. Therefore, EPA proposed to deny that portion of the petitions alleging interference with PSD measures for particulate matter.

4. Visibility Interference

Both New York and Maine claimed that sulfates caused by midwestern sources were transported into their respective areas creating a regional haze which interfered with visibility. Visibility protection measures required by section 169A of the Clean Air Act and contained in EPA regulations are applicable only in mandatory Class I Federal areas and pertain to visibility impairment which can be reasonably traced back to stack emissions through visual techniques. Since New York has no Class I areas, EPA proposed to deny that portion of New York's petition alleging visibility impairment. Furthermore, Maine had not adopted the required visibility measures contained in the Federal regulations; moreover, such visibility measures at this time do not address regional haze. EPA therefore proposed to deny that portion of Maine's petition relating to visibility impairment.

II. Summary of Response to Comments

Eighteen commenters responded to the proposed determination. Comments were responded to in a comment response document which has been placed in the Docket (Docket item IV–D–22). The reader is referred to that document for detailed responses to comments. The comments addressed both legal and technical aspects of the determination. This section provides a summary of responses to major comments.

Larry Wilson, Standards

its petition to include all major sources

seven midwestern States is transformed

dominated by a nearby in-State major

the sulfate levels were not corrected for

comments.

A. Legal Issues

1. Which Pollutants Are Addressed by Section 126?

Several commenters urged EPA to make a finding under section 126 regarding acid deposition. They argued that EPA, by denying the petitions, was ignoring the issue of acid deposition.

EPA is not ignoring the issue. To the contrary, the Administrator has acknowledged on numerous occasions the importance of finding a solution to the problems caused by acid deposition. Although EPA recognizes the problems, the Agency can act under section 126 only on those transboundary problems to which the statute is addressed. Section 126 provides that:

> Any State or political subdivision may petition the Administrator for a finding that any major source emits or would emit any air pollution in violation of the prohibition of section 110 (a)(2)(E)(i).

In turn, section 110(a)(2[E)(i) prohibits:

> * * * any stationary source within the State from emitting any air pollutant in amounts which will: (I) Prevent attainment or maintenance by any other State of any such *national primary or secondary ambient air quality standard* or (II) interfere with measures *required to be included* in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility * * *. (Emphasis added.)

It is clear from the language of the Clean Air Act that section 126 can only apply to those pollutants for which NAAQS exist, i.e., the criteria pollutants TSP, SO_2, carbon monoxide, ozone, oxides of nitrogen, and lead, and to those PSD or visibility measures required to be part of a SIP. Moreover, the only PSD measures that can be interfered with in the context of sections 126 and 110 are required measures such as the ambient air increments established for TSP and SO_2, and the visibility protection measures in Federal visibility regulations (40 CFR 51.300–51.307). The referenced visibility regulations address only that visibility impairment, occurring in mandatory Class I Federal areas, which is considered to be "plume blight"—that is, smoke, dust, colored gas plumes, or layered haze emitted from stacks which obscure the sky or horizon and are relatable to a single source or group of sources (45 FR 80085). Thus the scope of section 126 does not extend to acid deposition, sulfates *per se*, or to the "regional haze" visibility impairment of which the petitioning States complain.

2. Burden of Proof

The petitioning States contended that EPA should bear the burden to ensure that SIP's of upwind States do not violate the interstate pollution prohibition of section 110(a)(2)(E). Once a petitioner comes forward with evidence of impermissible interstate pollution, the States argued, EPA must research the claim and provide a detailed statement of the basis and purpose of its determination. One petitioner noted that a petitioning State has at most the ability to review and model emission limitations in SIP's, and determine if an air quality problem exists. Thus, it should be EPA's responsibility to conduct such further modeling as is necessary for regulatory action. Another petitioner stated that once a petitioning State shows that another State may significantly contribute to impermissible interstate pollution, the burden of disapproving that assertion falls upon the Administrator and the offending State.

The test applied to the judicial review of final agency rulemaking decisions such as this does not depend on burden of proof concepts. The burden of proof is a concept more applicable to the efforts of several parties to pursuade an independent decision maker than to Agency rulemaking. Under section 307(d) of the Clean Air Act, EPA discharges its responsibilities in rulemaking by explaining, as it has done in both its proposed and final determination, that the record contains no clear demonstration that contributions from sources in the named States exist in amounts large enough to be considered significant in the context of a violation of the applicable standards.

Moreover, under the Administrative Procedures Act, 5 U.S.C. 556(d), even in formal proceedings the burden of producing facts needed to support the requested action is generally placed on the proponent of a rule. In this case, the petitioning States are the proponents since they are requesting findings under section 126. Simply because section 307(d) of the Act requires EPA to a make its determination on the merits of a petition does not convert EPA's role into that of a proponent.

In the case of section 126 petitions, however, EPA has not held and will not hold petitioners to a formal trial-type burden of proof. EPA recognizes that it has an obligation independent of the standard of review for this particular decision to investigate and develop information on this area of public policy. EPA has already indicated that it is working to improve its modeling techniques for long-range transport, and has an extensive ongoing program of research and development on acid deposition (see 49 FR 34864). However, where this particular decision is concerned, any such burden must be evaluated against the prima facie strength of the concerns raised by petitioners, and against the relative ability of the various parties to clarify the points in question. EPA, in compiling and reviewing the record, took into account the scientific and technological uncertainties which afflict this area of decision making. Indeed it accepted, for purposes of analysis, the most favorable view of the States' evidence.

This is not a case, moreover, in which shifting the burden of proof to EPA is appropriate because there is unequal access to available knowledge. Rather, the analysis of the interstate pollution problems presented here is one in which the avenues of accuracy are equally obscured for all parties. Thus, EPA has a comparative advantage relative to the States only to the extent that it may command greater resources for furthering technological advance over time. On the current facts of the present situation, however, EPA has no superior vantage point.

Were the balance of this particular record, even given the uncertainties which attend it, more delicately weighted, the burden of proof issue might appear as more decisive. In this case, however, the data already available suggest that the petitioners fall so far short of demonstrating entitlement to a finding under section 126 that the burden of proof is virtually irrelevant. Petitioners demand not so much that EPA supplement the record as that EPA develop a new record, a claim neither justifiable nor feasible.

In recognition of the seriousness of the allegations and the difficulties of proof, EPA has in this instance imposed upon the States no greater proof burdens than the minimum required by the statute. Even so, the available evidence simply fails to establish their claims.

3. What Air Quality Levels Cause Section 126 To Be Invoked?

Numerous comments were received on the interrelated issues of what is meant by the terms "prevent" and "interfere" as used in section 110, and on the extent to which out-of-State sources must contribute to such prevention or interference in order to form the basis of a section 126 petition.

Some commenters agreed with, and some commenters took issue with, EPA's position that in order for a PSD measure to be interfered with in the context of section 110, a PSD increment must be violated. Those who objected did so in part by noting that the term "interfere" is not as stringent as the term "prevent," and thus the term "interfere" carried the implication that a smaller effect is required as a basis of a section 126 petition for PSD than for NAAQS. The commenters also claimed that to require a prerequisite increment violation would impose a no-win or, as one commenter stated, a "catch-22" situation on a petitioning State by virtue of the fact that the SIP would have to be adjusted in the petitioning State to prevent the violation, thus eliminating the basis for a section 126 petition. Commenters also complained that EPA's interpretation meant that out-of-State sources could consume almost all of the petitioning State's increment without causing a violation and could thereby prohibit growth in the petitioning State.

EPA's position is that the provisions of section 110 which refer to SIP requirements prohibiting a source from emitting pollutants which would prevent attainment or maintenance of a NAAQS or interfering with PSD measures must be read consistently, and that minor differences in the meaning of words, taken out of context, can be misleading.

Preventing attainment of a standard requires that the standard has not yet been reached. Likewise, preventing maintenance requires that the standard was reached, but not sustained. In the case of NAAQS, the standard is a numerical value which, when violated, is not being attained. In the case of a NAAQS violation, it is obvious that attainment is being prevented. Air quality may range up to the level of the standard, but unless the standard is violated, or predicted to be violated, its attainment and maintenance have not been prevented. EPA received no adverse comments on this interpretation of the term "prevent" as used in section 110.

The PSD measures required to be included in a SIP by the Clean Air Act take the form of a new source permitting system for areas which are attaining NAAQS or which are unclassifiable. For TSP and SO_2, this permitting system prevents major new construction that would cause a violation of the TSP or SO_2 PSD increments. The PSD increments are the allowable ranges of pollutant increases for particular pollutants. Within a State, EPA enforcement of that State's PSD program is specified by Federal regulations (40 CFR 52.21) which generally require violation of an increment before intervening action can be taken. Section 110(a)(2)(E)(i) cannot be interpreted as giving EPA broader enforcement power to go beyond the increments in cases of out-of-State pollution. To say, as do some commenters, that the term "interfere" implies that a less intrusive effect is required to form the basis of a section 126 petition and that a more rigorous test of partial consumption of increment or elevation of baseline should apply, is in itself inconsistent. Such an interpretation would mean that Congress granted EPA authority over out-of-State sources that it does not possess over in-State sources.

EPA recognizes that an existing violation of a PSD increment would require adjustment of the SIP to correct the problem and, that if those corrections involve control of interstate sources, that a section 126 petition may be appropriate. EPA also recognizes that a violation of a PSD increment would prohibit the construction or operation of any new source or sources which would further contribute to the violation, regardless of whether the impact of the new source occurred in-State or out-of-State. Thus, the comment that growth may be inhibited by increment consumption is valid; such situations may occur and are just as likely to be caused totally by in-State sources. In such instances, EPA cannot intervene absent an increment violation, and the same should be true in the case of consumption by out-of-State sources.

Some commenters noted that the PSD measures required to be included in SIP's also included visibility protection and requested that EPA not limit the scope of the requirements for section 126 action to PSD increments.

The separation of the discussion of PSD increments and visibility was a result of the form chosen to address the claims filed by the petitioners. The Agency agrees with the commenters that PSD measures include provisions for visibility protection, and it was not the intent of EPA to imply otherwise. However, in the proposed determination EPA chose, as did Congress in section 110 and the States of New York and Maine in their petitions, to treat visibility separately. The NAAQS and PSD increments consist of numerical values against which measured or predicted ambient air quality can be compared. Visibility has no such reference point. The discussion of PSD increments in the proposed determination does not preclude the filing by any State of a section 126 petition claiming that a visibility protection measure required by the PSD regulations is being interfered with.

4. On Significant Contribution v. "But for" Test

In its proposed determination EPA found that to be entitled to relief under section 126, a petitioning State must show that an out-of-State source makes a "significant contribution" to the levels of pollution causing a NAAQS or PSD increment violation (49 FR 348958–348959). Both industry and State commenters addressed EPA's articulation and application of this standard. On the one hand, industry commenters complained that EPA should have applied a stricter test since the word "prevent" in the statute connotes something more than significant contribution. Industry commenters argued that EPA should not find a section 126 violation unless it is shown that the petitioning State would attain the NAAQS or PSD requirements "but for" the emissions from identified out-of-State sources. One commenter added that this "but for" test was a necessary but not sufficient condition for a section 126 finding.

On the other hand, the petitioning States criticized EPA not for adopting the significant contribution standard, but rather for applying a stricter standard in its actual determination. The States complained that when EPA referred to out-of-State contributions in terms of "a major" portion, factor, or contribution, or characterized local sources as "predominantly" causing nonattainment, EPA imposed a harsher test than the significant contribution test. Several States also complained of EPA's efforts, in ascertaining whether a given level of pollution significantly contributes to a violation, to strike a balance between the extent of the aggregation of out-of-State sources and the size of the contribution (49 FR 34864).

EPA reviewed in detail the comments relating to this point, which in most respects reiterate the arguments which were made and considered prior to the issuance of EPA's September 4 proposed determination. EPA remains of the view that the so called "but for" test is both ambiguous in meaning and inappropriate for application to section 126. Under one interpretation of this standard, a State would be required to revise its SIP to make as much room as possible for interstate pollution before seeking section 126 relief. Under this interpretation, a State would only be entitled to relief in the few unusual cases where the out-of-State pollution was causing a violation that the petitioning State could not cure by limiting its own sources, see 47 FR 6628 (1982), even if the in-state limits required would be drastically stricter than those applicable to the out-of-State sources. Under another interpretation, a State would be entitled to relief if it had an "adequate" air quality program that would attain and maintain national standards within its borders "but for"

that SIP's of upwind States do not

where this particular decision is

"prevent," and thus the term "interfere"

some commenters, that the term "interfere" implies that a less intrusive

show that an out-of-State source makes a "significant contribution" to the levels

would attain and maintain national standards within its borders "but for"

the contributions of the out-of-State source. The problem here is that the adequacy of the program or the adequacy of a SIP is precisely the issue in question in section 126 petitions. To assume that some standard of adequacy or approval is available that does not deal with significant out-of-State contributions is simply to beg the question.

EPA's application of the significant contribution test to section 126 petitions has been upheld by the Sixth Circuit in the recent case of *Jefferson County, Kentucky,* v. *EPA,* No. 82–3214 (6th Cir. July 10, 1984) at 30–41. Far from slighting the issue of causation, as industry commenters charge, the significant contribution standard confronts this question consistently with statutory purpose and the complexity of the regulatory task.

The State's complaint that EPA applied a standard in the present determination other than the significant contribution test is equally without foundation. The commenting States pluck references to "major" factor or portion out of the context of EPA's overall assessment of whether the evidence supports a finding of "significant" interstate contribution. But it is plain from a reading of EPA's proposed determination that EPA has defined and applied the standard in a manner which most appropriately implements the statutory intent.

Contrary to assertions in some of the comments, EPA has not required that the out-of-State pollution be the sole or the largest single cause of a NAAQS or PSD increment violation in order to support an affirmative finding. Nor has EPA attempted, as some commenters contended, to limit the scope of section 126 to short-range effects caused by a few obvious sources near a petitioning State's borders. EPA has merely enunciated an interpretation of the statutory standard which reflects a sense of proportion in balancing a multiplicity of competing interests and factors. In its proposed determination, EPA enumerated a nonexhaustive list of factors which the Administrator might take into account in determining whether a contribution is significant (49 FR 34859). A particular factual context may require that some of these factors be given more or less weight, while others (e.g., the relative cost of pollution abatement among contributing sources) may be relevant more to the issue of a remedy than to whether an out-of-State contribution has a significant effect on the failure of a petitioning State to meet a NAAQS or PSD increment. As EPA noted in its proposed determination (49 FR 34859), in the case of the instant petitions, a detailed analysis of these factors was not necessary since on this record the sheer amount of emissions from out-of-State sources in the named States even in the aggregate, is not sufficient to make a significant contribution to violations of the applicable standards. Here, therefore, the application of the test is markedly straightforward.

EPA, upon examination of the available evidence determined that, even accepting the petitioners' data sulfates from the named out-of-State sources do not constitute a significant factor in TSP standard exceedances in the petitioning States.

The data showed first that sulfates from all sources—in-State and out-of-State—comprise only 10–15 percent of TSP on an annual basis and 10–50 percent on a 24-hour basis. Moreover, on those days on which the 24-hour secondary TSP NAAQS is exceeded, it appears that the percentage of sulfates averaged only 10–12 percent of the TSP in the samples (49 FR 34863). Next, the record indicated that the portions of sulfates from out-of-State comprised an even smaller fraction of TSP during periods of exceedances. After noting the considerable scientific and technological uncertainty surrounding evaluations of long-range sulfate transport, EPA accepted, for purposes of analysis, available modeling results proffered by petitioners. These results estimated that Ohio, Illinois, Indiana, Michigan, Kentucky, and Tennessee together contributed a mean (based upon all of the modeling analyses) of 36.8 percent of Adirondack ambient sulfate contributions. Since sulfates comprise only 10–15 percent of the annual TSP levels which exceed the NAAQS, and assuming that the six midwestern States contribute almost 37 percent of this amount, the aggregate contribution is approximately 4–6 percent of the TSP levels (49 FR 34864). EPA could not find that this amount, emanating from a six-State region, constituted a significant contribution to TSP violations. This conclusion, moreover, was buttressed by the inherent uncertainties of the modeling results, and the absence of more reliable and more specific data linking the Midwest sources to in-State locations.

B. Technical Issues

1. Short-Range SO_2 Modeling

One commenter argued that the modeling analysis upon which the SO_2 portion of Pennsylvania's petition rested, although flawed, did adequately demonstrate that out-of-State sources contributed significantly to violations of the SO_2 NAAQS in portions of southwestern Pennsylvania. The commenter further argued that EPA cannot reject the study results because the study was in fact conducted for, and funded by, EPA.

Scientific information which suffers from admitted technical weaknesses is of limited usefulness. Such information must be accepted with reservation and with bounds on the purposes to which it is put. Pennsylvania relied on the modeling study performed by H. E. Cramer Company, Inc. as the basis for its allegations of NAAQS violations in extreme western Pennsylvania. As pointed out in the September 4, 1984, proposed determination and earlier in this notice, the study suffered from several technical deficiencies. No commenter suggested that the study was not flawed and, regardless of the study sponsorship and regardless of the acceptability of the dispersion models used, the results of the study cannot be accepted as an adequate demonstration of violations of the SO_2 NAAQS and of the level of out-of-State contributions thereto for purposes of granting regulatory relief under Section 126.

2. Sulfate Contribution to TSP Levels

One commenter noted that EPA had proposed a finding on the out-of-State contribution to the annual TSP standard only and had not included the secondary 24-hour standard in the decision.

EPA agrees that the summation language on this issue in the determination does not appear to address the secondary standard (49 FR 34865); however, it is clear from a reading of the prior discussion on the issue of total sulfates (49 FR 34863) that EPA did analyze the available data for both the annual and 24-hour standards. The lack of a specific conclusion regarding the 24-hour standard is indicative of the greater uncertainties and controversial nature of the 24-hour data. To determine a value for the contribution from the named midwestern States, it is necessary to integrate two factors: (1) The percentage of sulfates in TSP, and (2) the percentage of the midwestern States' sulfate to total sulfate. For the results to be useful, the components used must have the same basis. Of the two modeling studies cited in the petitions, one, done for the U.S./Canadian Memorandum of Intent (MOI), expresses results in terms of annual values and the other, done for the Dunkirk area, expresses its result in terms of a monthly average. Obviously, the MOI

modeling cannot be used for determining contributions to the 24-hour standards and, unfortunately, the result of the modeling done for the Dunkirk area, which consists of only one monthly value, is also of limited usefulness for determining contributions to either the annual or the 24-hour standard. Thus, the only calculation which can be jusitifed is that performed for the annual standard.

One commenter disputed EPA's calculation of the out-of-State contribution to the annual TSP levels, claiming that the value should be higher, as indicated by calculated values provided in the comment.

Commenter's values are calculated by combining annual values and monthly values and thus cannot be used justifiably for the demonstration required. In addition, the monthly value utilized included a contribution from a State not among the named midwestern States.

III. Final Determination

EPA has reviewed all of the comments submitted in response to the September 4, 1984, proposed determination. For reasons discussed above and in the comment response document (Docket Item IV–D–22), EPA can find no compelling evidence which would cause the Agency to change its position on the issues.

Relief under the Clean Air Act must be based on a finding that pollution originating in one State prevents another State from attaining or maintaining a NAAQS or interferes with measures required to be included in the other State's SIP for PSD or protection of visibility. The evidence fails to demonstrate that sources in the named midwestern States are preventing the attainment or maintenance of the SO_2 or TSP NAAQS or interfering with PSD or visibility measures required to be included in petitioning States' SIP's. Therefore, the Administrator is today denying the petitions filed, under section 126 of the Clean Air Act, by Pennsylvania, New York, and Maine.

Under Section 307(b)(1) judicial review of EPA actions is bifurcated, with actions of local or regional applicability prescribed for the United States Court of Appeal "for the appropriate circuit" while actions of "nationwide scope or effect" are limited to review in the United States Court of Appeals for the District of Columbia based on a finding by the Administrator. Based on the multi-regional nature of this determination, and the multiplicity of judicial circuits which might thereby be argued to be "appropriate" the Administrator finds that under section 307(b)(1) judicial review of this action should be limited to the United States Court of Appeals for the District of Columbia. Therefore, such review is available only by filling a petition for review in that circuit within 60 days of today's publication of this determination.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: December 4, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–32091 Filed 12–7–84; 8:45 am]

BILLING CODE 6560–50–M

noted in its proposed determination (49 demonstrate that out-of-State sources monthly average. Obviously, the MOI

federal register

Monday
December 10, 1984

Part IV

Department of Health and Human Services

Office of Human Development Services

45 CFR Part 1340
Child Abuse and Neglect Prevention and Treatment Program; Proposed Rule

Interim Model Guidelines for Health Care Providers To Establish Infant Care Review Committees; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1340

Child Abuse and Neglect Prevention and Treatment Program

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes a new basic State grant requirement to implement the Child Abuse Amendments of 1984 (Pub. L. 98–457). As a condition of receiving State grants under the Child Abuse Prevention and Treatment Act, States must establish programs and/or procedures within the State's child protective service system to respond to reports of medical neglect, including reports of the withholding of medically indicated treatment for disabled infants with life-threatening conditions. Other changes in regulations required by these Amendments will be published as a separate NPRM at a later date.

DATE: To ensure consideration, comments must be submitted on or before February 8, 1985.

ADDRESSES: Please address comments to: National Center on Child Abuse & Neglect, U.S. Children's Bureau, HHS, P.O. Box 1182, Washington, D.C. 20013.

It would be helpful if agencies and organizations submitted comments in duplicate. Comments will be available for public inspection in Room 3758, Donohoe Building, 400 Sixth Street, SW., Washington, D.C. 20201, Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jay Olson, (202) 245–2859, or Mary McKeough, (202) 245–2892.

SUPPLEMENTARY INFORMATION:

Background

The Child Abuse Prevention and Treatment Act (Pub. L. 93–247, 42 U.S.C. 5101, *et seq.*) was signed into law in 1974. It established in the Department the National Center on Child Abuse and Neglect. The National Center is located organizationally within the Children's Bureau of the Administration for Children, Youth and Families in the Office of Human Development Services.

Under this Act, the National Center carries out the following responsibilites:

- Makes grants to States to implement State child abuse and neglect prevention and treatment programs.
- Funds public or nonprofit private organizations to carry out research, demonstration, and service improvement programs and projects designed to prevent, identify and treat child abuse and neglect.
- Collects, analyzes and disseminates information, e.g., compiles and disseminates training materials, prepares an annual summary of recent and on-going research on child abuse and neglect, and maintains an information clearinghouse.
- Assists States and communities in implementing child abuse and neglect programs.
- Coordinates Federal programs and activities, in part through the Advisory Board on Child Abuse and Neglect.

The Act has been extended and amended several times since its passage. Regulations for the State grant and discretionary fund programs are found at 45 CFR Part 1340; the most recent revisions were published on January 26, 1983 (48 FR 3698). The fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands are eligible to apply for State grants. Fifty-one of the fifty-seven eligible jurisdictions meet the requirements of the Act and the regulations and currently receive State grant funds. We will refer to these jurisdictions as "States" in this preamble discussion.

In this Notice of Proposed Rulemaking (NPRM), the Department is proposing to implement a major new requirement of Pub. L. 98–457, the Child Abuse Amendments of 1984. This requirement, found in a new clause (k) in section 4(b)(2), mandates that, as a condition of receiving State grant funds under the Act, States must establish programs and/or procedures within the State's child protective service system to prevent instances of medical neglect, including the witholding of medically indicated treatment (including appropriate nutrition, hydration, and medication) from disabled infants with life-threatening conditions. Other changes required in regulations as a result of these Amendments will be published in a separate NPRM.

The amendments add a new program of grants to assist States to meet the requirements of clause (k). In addition, they authorize the Department to fund training, technical assistance, and clearinghouse activities to improve the provisions of services to these infants and their families.

The Child Abuse Amendments of 1984 represent a substantial consensus among many medical, professional, and advocacy organizations that action was needed to adopt protections for disabled infants with life-threatening conditions. This consensus formed the basis for the extensive and cooperative participation in the development of these new statutory requirements, and the development of the "Joint Explanatory Statement By Principal Sponsors Of Compromise Amendment Regarding Services And Treatment For Disabled Infants". (See H.R. Conference Report No. 98–1038, 98th Congress, 2nd Session, 19, 40–4 (1984); *Congressional Record*, H–9805, September 19, 1984.) (These groups include: American Academy of Pediatrics, American Association of Mental Deficiency, American Coalition of Citizens with Disabilities, American College of Obstetricians and Gynecologists, American College of Physicians, American Hospital Association, American Life Lobby, American Nurses Association, Association for Persons with Severe Handicaps, Association for Retarded Citizens, California Association of Children's Hospitals, Catholic Health Association, Christian Action Council, Disability Rights Center, Down's Syndrome Conference, National Association of Children's Hospitals and Related Institutions, National Child Abuse Coalition, National Right to Life Committee, Nurses Association of the American College of Obstetricians and Gynecologists, Operation Real Rights, People First of Nebraska, and Spina-Bifida Association of America.)

In substantial respect, this consensus is an outgrowth of prior efforts to articulate fair and reasonable guidelines to deal with this complex issue, including the landmark "Principles of Treatment of Disabled Infants", issued in 1983 by a broad coalition of leading medical associations and advocacy organizations for the disabled. (*Pediatrics*, vol. 73, no. 4, April 1984, p. 559.). This document stated:

> When medical care is clearly beneficial, it should always be provided. When appropriate medical care is not available, arrangements should be made to transfer the infant to an appropriate medical facility. Considerations such as anticipated or actual limited potential of an individual and present or future lack of available community resources are irrelevant and must not determine the decisions concerning medical care. The individual's medical condition should be the sole focus of the decision. These are very strict standards.
>
> It is ethically and legally justified to withhold medical or surgical procedures which are clearly futile and will only prolong the act of dying. However, supportive care should be provided, including sustenance as medically indicated and relief of pain and suffering. The needs of the dying person should be respected. The family also should be supported in its grieving.
>
> In cases where it is uncertain whether medical treatment will be beneficial, a person's disability must not be the basis for a decision to withhold treatment. At all times during the process when decisions are being made about the benefit or futility of medical treatment, the person should be cared for in the medically most appropriate ways. When doubt exists at any time about whether to treat, a presumption always should be in favor of treatment.

The Department looks forward to comments on this proposed rule and on the Interim Model Guidelines for Health Care Providers to Establish Infant Care Review Committees being published elsewhere in today's **Federal Register.**

New Statutory Provisions Pertaining to Services and Treatment for Disabled Infants

A new definition of "withholding of medically indicated treatment" is added in section 3 of the Act to mean the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. Exceptions to the requirement to provide treatment (but not the requirement to provide appropriate nutrition, hydration, and medication) may be made only in cases in which:

(1) The infant is irreversibly comatose; or

(2) The provision of such treatment would merely prolong dying or not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(3) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

The new State grant requirement in section 4(b)(2)(K) mandates that, in order to qualify for assistance under the Act, States must, by October 9, 1985 (within one year of enactment), have programs or procedures or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of the withholding of medically indicated treatment (including appropriate nutrition, hydration and medication) from disabled infants with life-threatening conditions. These programs and/or procedures must provide for:

- Coordination and consultation with individuals designated by and within appropriate health care facilities;
- Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and
- The authority, under State law, for the State child protective services system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

The "Joint Explanatory Statement By Principal Sponsors" includes language clarifying the terms "infant", "reasonable medical judgment", and other aspects of the definition of "withholding of medically indicated treatment". It also makes clear that pertinent existing requirements for State child protective service systems, such as reporting mechanisms and provision for the appointment of a guardian *ad litem*, are applicable to the State's programs and/or procedures to respond to reports of medical neglect, including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions. (See 45 CFR 1340.14.)

Although the effective date of section 4(b)(2)(K) is October 9, 1985, the statute further provided that, in the event additional funds under Section 4(c)(1) were not appropriated to help States meet these requirements, the Secretary could grant a waiver of not more than one year to any State not meeting the requirements of Section 4(b)(2)(K) if he or she finds the State is making a good faith effort to comply. Funds have been appropriated under section 4(c); therefore, the waiver provision is not in effect.

This new Section 4(c) authorizes additional grants and assistance for training, technical assistance, and clearinghouse activities. Grants may be made to States for the purpose of developing, establishing, operating or implementing the programs and/or procedures required under Section 4(b)(2)(K); information and education or training programs for professional and paraprofessional personnel (including child protective services and health care personnel) and parents of disabled infants with life-threatening conditions to improve the provision of services to such infants; and programs to help in obtaining or coordinating necessary services, e.g., assisting families to access existing social and health services, financial assistance, and services to facilitate the adoptive placement of such infants who have been relinquished for adoption.

The Department may also provide (either directly or through grants and contracts with public or private non-profit organizations) training and technical assistance programs to assist States in meeting the requirements of Section 4(b)(2)(K) and to establish and operate national and regional clearinghouses. These clearinghouses will provide the most current and complete information regarding medical treatment procedures and resources as well as complete information on community resources available for the provision of services and treatment for disabled infants with life-threatening conditions. The clearinghouses will be responsible for compiling, maintaining, updating, and disseminating regional directories of community services and resources as well as the names and phone numbers of State and local medical organizations. They will also assist in coordinating the availability of appropriate regional education resources for health-care personnel. The primary purpose of these clearinghouse efforts is to assist physicians, other professionals, and parents in providing treatment and services to disabled infants.

A number of hot-lines and clearinghouse activities are currently in operation, e.g., the National Association of Hearing and Speech Action operates a HELP line to provide information on disabilities related to speech and hearing; the John F. Kennedy Institute in Baltimore has developed a nationwide referral network for information about any developmental disability and where resources for services and treatment are available anywhere in the country; and CHAIN (Computerized Handicapped Assistance Information Network), an information retrieval system which will provide data on care and community services nationwide beginning in 1985.

The State Child Protective Service System

The new statutory provisions place responsibility for the protection of disabled infants in existing State child protective service systems. This is not a new responsibility; The protection of children from abuse and neglect, including medical neglect, has always been a State and local responsibility. Protective services are typically the responsibility of the State's designated public child protective service agency

(CPS), usually located in the State's child welfare services agency. Investigations, activities and services may be provided by CPS agency staff, law-enforcement agencies, multi-disciplinary teams, and by utilizing the services available from other public and voluntary agencies in the community.

Although only fifty-one of the fifty-seven States and other eligible jurisdictions have met the requirements of the Act and 45 CFR Part 1340, all States have laws pertaining to child abuse and neglect. In general, these laws define the conditions of abuse or neglect that must be reported, mandate the reporting of both known or suspected abuse and neglect, provide penalties for failure to report, and provide immunity to reporters from legal actions associated with the report.

Over the years, the range of reportable conditions has broadened. Today, most State laws specifically include sexual abuse and emotional or mental injury as well as the traditional definition of child abuse which includes physical abuse and neglect. For specific eligibility requirements under the Act and the regulations, see sections 3 and 4(b)(2) of the Act and 45 CFR 1340.2(d) and 1340.14(b).

All States mandate that physicians must report known or suspected child abuse or neglect. In addition, some States require reporting by other groups, e.g., "associated medical personnel", "any health professional", nurses, dentists, osteopaths. Interns are also required to report in most States, as are those in frequent contact with children such as teachers and other school officials, child care professionals, and social workers.

In addition to mandated reporters, generally, anyone who knows or suspects that a child is being maltreated may report. Some States have statutory authority for permissive as well as mandatory reporting, while other States have no permissive reporting because they mandate reporting by everyone. States use either a 24 hour a day, 7 days a week, toll-free, State-wide telephone number or a local number to receive such reports. *See* section 4(b)(2)(B) and 45 CFR 1340.14(c).

While the identification of maltreated children ultimately depends on the responsiveness of a concerned community, States impose a penalty for failure to report when mandated by law to do so. This may include denial, suspension or revocation of professional licenses or certificates.

All States provide immunity from civil or criminal liability for reporters acting in good faith. This means that an individual cannot be sued for a mistaken or a later unsubstantiated report if such report was made in good faith. *See* section 4(b)(2)(A).

Procedures for investigation (fact-finding) in response to a report, and service provision, also vary from State to State. Most CPS workers have specialized training, and multidisciplinary fact-finding teams typically have some expertise in social work, medicine, law and law enforcement. Staff are usually available to respond on a 24 hour basis as many State laws require that the CPS agency respond to reports at least within 24 hours. Emergency services (e.g., emergency shelter or foster care, emergency homemakers) are also frequently available. After any critical situation has been resolved, appropriate community services and support for the child and family may be utilized as needed. *See* sections 4(b)(2)(C), (D), (F) and (J) and 45 CFR 1340.14 (d), (e), (f) and (h).

The CPS agency generally regards its contact with the family as a demonstration of community concern and evidence of its desire to be of help to both parents and the child. The ultimate aim of the agency is to protect the child, preserve the home, prevent separation of the child from the family if at all possible, prevent further abuse or neglect, and alleviate or correct the factors leading to the report.

For further information about State child abuse and neglect laws, reporting requirements, or other information, we have listed the name and address of the CPS agency in each State at the end of the regulation.

The Department believes that the new requirements expand existing CPS agency responsibilities and can be incorporated into existing agency procedures with appropriate additions and modifications, e.g., the State may need to modify specific procedures as it investigates a report of medical neglect of disabled infants, contacts the hospital or health care facility, the family, the facility's Infant Care Review Committee (if established), and intervenes on behalf of the infant if that action is needed. The CPS agency clearly will need to draw on new resources, including medical consultant(s) appropriate to the diagnosis in question. We believe that the primary focus of concern will be to assist parents during this crucial and emotionally difficult time to consider the reasonable medical judgments of their physicians to ensure that proper decisions are made concerning the treatment for these infants. The CPS agency will be able to draw upon the new resources developed to assist the family and physicians regarding available professional consultation and rehabilitative and supportive services in the community, e.g., individuals and community groups knowledgeable about or experienced in working with specific disabilities or conditions.

The Department also recognizes the seriousness of and, at times, the enormous difficulties in making decisions about treatment for disabled infants. Not only are such circumstances traumatic for parents, but physicians frequently must arrive at a reasonable medical judgment only after the evaluation of multiple factors and conditions and a review of the complex interaction of such factors and conditions. The importance of the physician's exercise of reasonable medical judgment is clearly recognized in the legislative history of the Act and in these regulations.

The amendment also recognize the vital importance of hospital-based activities in behalf of disabled infants and their families. For example, the required State programs and/or procedures must provide for "coordination and consultation with individuals designated by and within appropriate health care facilities." In addition, the amendments require HHS to issue model guidelines to encourage hospitals to establish hospital-based committees to be a forum and focal point for the hospital's activities.

As proposed in the interim model guidelines for Infant Care Review Committees (ICRCs) published today, the ICRCs will develop policies and guidelines for the treatment of such infants; act as a resource to hospital personnel and families of disabled infants to provide current and complete information concerning medical treatment, procedures and resources as well as community resources; and review decisions made in individual cases to assure that appropriate treatment is provided. Where medically indicated treatment is not being provided, the ICRC will report such a case to the CPS agency for immediate legal intervention.

The CPS agency, however, must respond to all reports that allege that medically indicated treatment is not being provided. If the report concerns a child at a hospital with an ICRC, the CPS agency (staff person(s) and/or medical consultant(s)) will coordinate immediately with the ICRC (assuming the ICRC is the hospital's designated contact point) and with the family, as indicated. The agency's first responsibility is to verify, in consultation with designated hospital staff and the parents, that adequate nutrition, hydration, and medication is being provided; whether the infant is in need of an immediate medical and/or surgical procedure(s) for a life-threatening condition; and whether immedate legal intervention is required.

In cases where reports are made concerning infants in hospitals that do not have ICRCs, the CPS agency must consult with designated hospital contact person(s) and with the parents of such infants and take appropriate action to determine whether legal intervention is needed. In all cases, the CPS agency staff will be able to draw upon the multi-disciplinary resources of the agency, the informational clearinghouses, and other appropriate resources to assure that proper action is taken.

The State agency remains ultimately responsible for the protection of the infant, but the knowledge, expertise and assistance of the ICRC in educating staff, establishing policies and guidelines, and serving as an expert review and consultative body is invaluable. The Department's expectation is that the cooperative spirit evidenced in the development of these new amendments will continue and that, with the assistance of health care facilities, knowledgeable individuals, professional, medical, and advocacy organizations, and the Department, States will develop creative and coordinated approaches to implement this specific new requirement for the protection of infants.

Section by Section Discussion of the Proposed Regulations

We are proposing a new § 1340.15 that contains all requirements pertaining to services and treatment for disabled infants. This section includes a purpose statement in paragraph (a), definitions in paragraph (b), State eligibility requirements in paragraph (c), requirements for documenting eligibility in paragraph (d), and a statement regarding the relationship to other rules in paragraph (e). Many of these proposals use the language of the Act and the Joint Explanatory Statement.

In paragraph (b)(1) we have defined "medical neglect" to clarify how medical neglect is related to the definition of child abuse and neglect in § 1340.2 and that withholding of medically indicated treatment from disabled infants with life-threatening conditions is one instance of medical neglect.

In proposed paragraph (b)(2), the definition of "withholding of medically indicated treatment" is re-stated from section 3(3) of the Act. Paragraph (b)(3) adds definitions or clarifications of six terms or phrases used in the definition of "withholding of medically indicated treatment". The definitions of "infant" and "reasonable medical judgment" are taken from the Joint Statement.

Taken together, the definitions in paragraph (b)(2) and (b)(3) make clear that, first, all such disabled infants must under all circumstances receive appropriate nutrition, hydration and medication. Second, all such disabled infants must be given medically indicated treatment. Third, there are three exceptions to the requirement that all disabled infants must receive treatment, or, stated in other terms, three circumstances in which treatment is not considered "medically indicated". These circumstances are:

—If the infant is chronically and irreversibly comatose.
—If the provisions of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant.
—If the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

Fourth, the physician's "reasonable medical judgment" concerning the medically indicated treatment must be one that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved. It is not to be based on subjective "quality of life" or other abstract concepts. The Department assumes that physicians and ICR's will consult with and utilize the specialists, expertise, and resources available through the regional and national clearinghouses. This can include, where appropriate, transfer to facilities specializing in the care of such infants.

Given these requirements and the crucial role of the physician in carrying out these requirements, it must be emphasized that the parents of the disabled infant also play a crucial role in this process, particularly with regard to choices among alternative medical treatments. They, too, must have assistance and supportive services available during this difficult time and access to current and comprehensive information on the treatment, rehabilitation, and supportive services available for the infant.

Although these basic points are quite clear from the terms of the statute, there are several other important matters concerning which there may be ambiguities. Several of the definitions in paragraph (b)(3) are designed to address these possible ambiguities. We invite careful consideration of, and comments on, these clarifications.

First, the term "infant" is defined in paragraph (b)(3)(i) as it is defined in the Joint Statement. Under this definition, the term "infant" does not include children over the age of one year who may acquire disabilities and life-threatening conditions after birth as a result of falls, car accidents, etc. If medically indicated treatment was being improperly withheld in such a case, this would constitute an instance of medical neglect that should be reported to the CPS agency.

Second, paragraph (b)(3)(ii) clarifies the term "life-threatening condition" to include not only a condition that directly threatens the life of an infant, but also a condition that "significantly increases the risk of the onset of complications that may threaten the life of the infant." This clarification is designed to deal with circumstances such as an infant born with an open myelomeningocele (a protrusion of a portion of the spinal cord and its enclosing membranes through a bony defect in the vertebral column). Such a condition may not, strictly speaking, by itself be life-threatening. However, the grave risk associated with an open myelomeningocele is the onset of an infection that may be life-threatening or might increase or add to the disability. Because such cases are clearly within the scope of the circumstances to which Congress intended the analysis embodied in the definition of "withholding of medically indicated treatment" to apply, this clarifying definition is included to eliminate any possible ambiguity on this point.

Third, paragraph (b)(3)(iii) clarifies the term "treatment" in two respects. First, it states that "treatment" includes "further evaluation by a physician whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the condition(s) involved." In the context of determining the medically indicated course of action in response to many congenital anomalies, the initial steps often require specialized evaluation. In this regard it is noteworthy that Congress, in the definition of "reasonable medical judgment" in the Joint Statement, underscored the importance of having decisions based on knowledge of the treatment possibilities with respect to the medical conditions involved. To incorporate this clear expression of Congressional intent, paragraph (b)(3)(iii) states that decisions regarding

the potential need for further specialized evaluation, like decisions regarding specific potential treatments, are subject to the analysis set forth for deciding upon the medically indicated course of action.

Another clarifying definition of "treatment" is also included in paragraph (b)(3)(iii). It makes clear that "treatment" includes "multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions." The purpose of this clarification is to resolve a possible ambiguity relating to cases where the potential effectiveness of a particular medical treatment or surgical procedure can only be adequately evaluated in the context of an extended series of treatments or surgical procedures. In such contexts, to be consistent with the clear Congressional policy framework, the analysis of whether the "treatment" is "most likely to be effective in ameliorating or correcting" life-threatening conditions or whether it will "not be effective" (or "otherwise be futile" or the like) must evaluate the effectiveness of the entire potential treatment plan. In such circumstances, attempting to evaluate the effectiveness, futility, or other prognosis of a single procedure, considered out of context of a complete potential treatment plan, would not be consistent with the carefully structured analytical framework in the statutory definition. Therefore, paragraph (b)(3)(iii) seeks to eliminate this possible ambiguity.

The fourth clarifying definition contained in paragraph (b)(3) is of the term "reasonable medical judgment." It is defined in paragraph (b)(3)(iv) as it is in the Joint Statement.

Fifth, paragraph (b)(3)(v) clarifies the term "merely prolong dying" in order to eliminate a possible ambiguity concerning the meaning of that term. Strictly speaking, it might be said that a treatment that will not totally eliminate a medical condition but will give a patient many years of life "merely prolongs dying". Because Congress included "ameliorating" conditions in its test for analyzing medical effectiveness and because the term "merely prolong dying" is used in conjunction with "otherwise be futile in terms of the survival of the infant," it appears clear that Congress intended the term "merely prolong dying" to apply only where death is imminent and treatment will do no more than postpone the act of dying.

A sixth clarifying definition is in paragraph (b)(3)(vi). It seeks to eliminate potential ambiguities relating to the use of the term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" in two contexts. The use of this term in the statutory definition makes clear that if an infant suffers from two conditions, each of which is imminently life-threatening, but only one of which is correctable, and no treatment is available to prevent imminent death or otherwise ameliorate the infant's overall condition, then treatment for the correctable condition need not be provided. An example of this would be an infant born with anencephaly (congential absence of the brain) and omphalocele (congential protusion of abodominal organs into the umbilical cord).

However, a different case is presented where the noncorrectable condition, although not imminently life-threatening, will become life-threatening in the future. An example would be an infant with duodenal atresia (a closure or lack of a normal opening in the duodenum), an imminently life-threatening condition that is surgically correctable, and a second condition, such as Down's syndrome (which is associated with a shortened life expectancy) or Tay-Sachs disease (which is generally fatal by age 5). Congress adopted the standard "not be effective in ameliorating or correcting all such conditions" in conjunction with "merely prolong dying" and "otherwise futile in terms of the survival of the infant". Therefore, it appears clear that Congress did not intend that the presence of a noncorrectable condition, which although not imminently life-threatening would become life-threatening in the future, would be the basis for a decision to withhold treatment for the correctable condition.

Another different case is presented in the context of potential treatment that would not be designed to correct a condition or provide long-term survival of an infant because no such treatment is possible, but rather would be designed to make a condition more tolerable, such as to relieve severe pain. An example would be an infant with an noncorrectable, life-threatening congenital heart defect and an imperforate anus. Although no treatment is available to correct the heart defect or prevent death of the infant, treatment is available, in this example a colostomy, to ameliorate the infant's overall condition by relieving the severe pain associated with the intestinal obstruction caused by the imperforate anus. By framing the exception in terms of "ameliorating * * * all * * * life-threatening conditions," it appears clear that Congress did not intend to exclude humane treatment that will ameliorate the infant's overall condition, taking *all* conditions into account, even if the treatment would not correct or ameliorate *each* condition. Consistent with this intent, paragraph (b)(3)(vi)(B) states that such treatment is not excluded from the statutory definition.

A seventh clarifying definition is in paragraph (b)(3)(vii). It makes clear that "virtually futile" in the context of the definition means that the treatment is highly unlikely to prevent imminent death.

Finally, the eighth clarifying definition, paragraph (b)(3)(viii), relates to the statutory term, "the treatment itself under such circumstances would be inhumane." It is apparent that Congress formulated this category of instances where treatment would not be "medically indicated" to recognize that, in some cases, the pain and suffering to the infant or other medical contraindications related to "the treatment itself" clearly outweigh the very slight potential benefit of the treatment for an infant highly unlikely to survive. By relating the concept of "inhumane" to "the treatment itself," and by limiting it to situations where the treatment "would be virtually futile in terms of survival of the infant," it is clear that Congress did not intend this provision to sanction consideration of the future "quality of life" of an infant likely to survive if the treatment is provided or consideration of the anxiety of parents in connection with such an infant. Thus, paragraph (b)(3)(viii) clarifies this term consistent with the clear Congressional intent.

In addition, as stated in the Joint Statement, the use of the term "inhumane" is not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context; rather, it is recognized that it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor in selecting among effective treatments.

45 CFR 1340.15(c) proposes the new basic State grant eligibility requirements from Section 4(b)(2)(K) of the Act and how a State can document that it meets these requirements. The Department believes that all or virtually all States now have the authority and capability to respond to reports of medical neglect. It is not uncommon for a State CPS agency to intervene on behalf of, and, through judicial action, provide necessary medical care to a child. Section 4(b)(2)(K), therefore, makes explicit that withholding of medically indicated treatment from disabled infants with life-threatening conditions is an instance of medical neglect, and thus part of a

State's current responsibility for the protection of children.

Paragraph (c)(1) requires a State to have in place within the State's child protective service system programs and/or procedures needed to respond to reports of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

Paragraph (c)(2) states that these programs and procedures must provide for: coordination and consultation with individuals designated by and within appropriate health care facilities; prompt notification (reporting), by individuals designated by and within appropriate health care facilities, to the State or local CPS agency, of cases of medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and the authority under State law for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

Appropriate health care facilities may include, for example, local general hospitals, children's hospitals and other specialized hospitals, including regional or national hospitals and research centers. Persons designated by such facilities may include physicians, nurses, social workers, persons with expertise in specialized areas of medical care and treatment, persons with experience in working with families with disabled infants with life-threatening conditions, and infant care review committees established within the health care facility.

These requirements emphasize the need for coordination between the CPS agency and individuals in health care facilities, including designated individuals and ICRCs. Such coordination and consultation will assist the CPS agency to obtain first hand information regarding the circumstances of any reported instance of suspected medical neglect, including the findings or results of the ICRC's review of the case. In addition, such coordination and consultation will assist the State CPS agency to develop procedures for prompt notification (reporting) of medical neglect by designated individuals (e.g., physicians, nurses, social workers, "all health professionals").

With respect to the requirement that the agency must have authority to pursue legal remedies, the Joint Statement explains:

> The new clause (K) includes specific statutory reference to the authority to institute legal proceedings only because questions have occasionally been raised about the authority of particular child protective service agencies to take such actions in cases involving withholding of medically indicated treatment from disabled infants with life-threatening conditions.

Paragraph (c)(3) specifies that the State's programs and/or procedures must be in writing and must conform with the requirements of section 4(b)(2) of the Act and § 1340.14 of this Part. This requirement is based on the clear legislative history indicating that existing standards applicable to State child abuse and neglect programs are applicable to programs and/or procedures under the new clause (K). As explained in the Joint Statement:

> With respect to the procedures and/or programs to be utilized to comply with the requirements in new clause (K), the Act now requires States which receive funds under section 4(b)(2) to provide certain mechanisms for the reporting of abuse or neglect cases. The same reporting mechanisms and standards set forth in the Act and existing regulations would be applicable to the reporting of cases of medical neglect covered under new clause (K).
>
> Similarly, the Act now requires the appointment of a guardian *ad litem* for children involved in judicial proceedings relating to abuse or neglect. This provision would be applicable in judicial proceedings with respect to cases under new clause (K).

Paragraph (c)(4) states, consistent with the statute, that the program and/or procedures required by the new clause (K) must be in effect by October 9, 1985.

In paragraph (d) we have proposed the specific documentation States must submit in order to permit the Commissioner, Administration for Children, Youth and Families, to verify compliance with the new requirements. In addition to a copy of the programs and/or procedures developed to implement paragraph (c), we have proposed three alternative ways a State may document that it has legal authority to act on behalf of such disabled infants.

States will vary with respect to how they approach these new requirements, the extent to which they will need to modify State statutes and/or administrative procedures, and the kinds of programmatic changes needed. States will need to examine any contemplated changes in the context of other applicable requirements in Section (4)(b)(2) and the regulations at Part 1340, e.g., immunity for persons reporting, prompt investigation, availability of emergency services, confidentiality.

Although the Act and the legislative history do not provide the specific operational steps a State must take to implement these requirements, the Department's technical assistance and training efforts, the development and operation of the clearinghouses, and the additional State grant funds in FY 1985 will provide supplemental resources to States in their implementation efforts. In addition, the interim model guidelines on the development of hospital based infant care review committees published today strengthen the coordinated approach to this task.

Paragraph (e) adopts the rule of statutory construction set forth in section 127(a) of the Amendments. That provision states:

> No provision of this Act or any amendment made by this Act is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973.

Paragraph (e) states that no provisions of this regulation will affect any right, protection, procedure or requirement of the HHS regulations implementing section 504, 45 CFR Part 84.

This reference to Part 84 includes 45 CFR 84.55 (48 FR 1622, January 12, 1984), which establishes certain procedures relating to health care for handicapped infants. This regulation is based on the Department's interpretation that under section 504 of the Rehabilitation Act of 1973, health care providers may not, solely on the basis of present or anticipated physical or mental impairments of an infant, withhold treatment or nourishment from the infant who, in spite of such impairments, will medically benefit from the treatment or nourishment.

This regulation establishes certain procedural requirements and quidelines. First, it encourages hospitals to establish Infant Care Review Committees and provides a model committee. Second, it requires each State child protective services agency that receives Federal financial assistance to establish and maintain procedures to assure that the agency utilizes its full authority pursuant to State law to prevent instances of unlawful medical neglect of handicapped infants. Third, it establishes certain procedures relating to the Department's interpretation of its authority to conduct investigations of complaints of alleged discriminatory withholding of treatment from handicapped infants.

In June of 1984, a Federal court invalidated this regulation and enjoined further investigations of alleged discriminatory withholding of medical treatment from handicapped infants

under section 504. *American Hospital Association* v. *Heckler*, No. 83–2638, and *American Medical Association* v. *Heckler*, No. 84–1724 (S.D.N.Y. June 11, 1984), *appeal pending*, Nos. 84–6211, 84–6213 (2d. Cir.). The Department has appealed this decision.

Consistent with section 127(a) of the Child Abuse Amendments of 1984 and the clear legislative history establishing a Congressional "policy of neutrality" on this legal controversy concerning the applicability of section 504 to health care for handicapped infants, (*see Congressional Record*, Vol. 130, S–12392, daily edition September 28, 1984 (letter from Senators Hatch, Denton, Nickles, Kassebaum, Dodd, and Cranston)), paragraph (e) of this regulation makes clear that this regulation in no way affects the prior regulation under section 504.

The Department is aware that there is some overlap between the prior section 504 regulation and the new activities pursuant to the Child Abuse Amendments of 1984, particularly with respect to responsibilities of State child protective services agencies and the model for Infant Care Review Committees. It is the Department's intention that if the prior regulation and related Departmental authorities are reinstated in subsequent stages of the ongoing litigation, the Department will then consider whether any revisions are needed in the section 504 regulation to facilitate coordinated and effective action under the two statutory authorities.

Impact Analysis

Executive Order 12291

E.O. 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. For the most part, these regulations merely require good medical practice. It is the statute and not these regulations which sets the basic requirements. Therefore, the Department concludes that these regulations are not major rules within the meaning of the Executive Order, because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. Sections 1340.15 (c)(2), (c)(3), and (d)(2) of this proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

List of Subjects in 45 CFR Part 1340

Child welfare, Disabled, Family violence, Grant programs—health, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program No. 13.628, Child Abuse and Neglect Prevention and Treatment)

PART 1340—[AMENDED]

For the reasons set forth in the preamble, 45 CFR Part 1340 is proposed to be amended as follows:

1. The authority citation for Part 1340 is revised to read as follows:

Authority: Child Abuse Prevention and Treatment Act, Pub. L. 93–247, 88 Stat. 4; Pub. L. 95–266, 92 Stat. 205, Sections 609–610; Pub. L. 97–35, 95 Stat. 488 (42 U.S.C. 5101); Pub. L. 98–457, 98 Stat. 1749.

2. A new § 1340.15 is added to Subpart B—Grants to States, to read as follows:

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose.* The regulations in this section implement certain provisions of the Child Abuse Amendments of 1984, including section 4(b)(2)(K) of the Child Abuse Prevention and Treatment Act governing the protection and care of disabled infants.

(b) *Definitions.* (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definition of "child abuse and neglect" in section 3 of the Act and § 1340.2(d) of this part. The term "medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(2) The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

(i) The infant is chronically and irreversibly comatose;

(ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(3) Following are definitions of terms used in paragraph (b)(2):

(i) The term "infant" means:

(A) An infant less than one year of age; and

(B) An infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age.

(ii) The term "life-threatening condition" means a condition that threatens the life of the infant or that significantly increases the risk of the onset of complications that may threaten the life of the infant.

(iii) The term "treatment" includes (but is not limited to):

(A) Further evaluation by a physician or physicians whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the condition(s) involved; and

(B) Multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions.

(iv) The term "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(v) The term "merely prolong dying" refers to situations where death is imminent and treatment will do no more than postpone the act of dying.

(vi) The term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" shall not be interpreted to permit the "withholding of medically indicated treatment" in the following two circumstances:

(A) Treatment for a disabled infant on the grounds that one or more of the infant's nontreatable conditions, although not imminently life-threatening, will become life-threatening in the future; and

(B) Ameliorative treatment to make a condition more tolerable, such as providing palliative treatment to relieve severe pain, even if the overall prognosis, taking all conditions into account, is that the infant will not survive.

(vii) The term "virtually futile" means that the treatment is highly unlikely to prevent imminent death.

(viii) The term "the treatment itself under such circumstances would be inhumane" means that the treatment itself involves significant medical contraindications and/or significant pain and suffering for the infant that clearly outweigh the very slight potential benefit of the treatment for an infant highly unlikely to survive.

(c) *Eligibility Requirements.* (1) In addition to the other eligibility requirements set forth in this Part, to qualify for a grant under this section, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(2) these programs and/or procedures must provide for:

(i) Coordination and consultation with individuals designated by and within appropriate health care facilities;

(ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(3) These programs and/or procedures must be in writing and must conform with the requirements of section 4(b)(2) of the Act and § 1340.14 of this part.

(4) The eligibility requirements contained in this section shall be effective October 9, 1985.

(d) *Documenting eligibility.* (1) In addition to the information and documentation required by and pursuant to § 1340.12(b) and (c), each State must submit with its application for a grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

(2) This information and documentation shall include:

(i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions;

(ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. This documentation shall consist of:

(A) A copy of the applicable provisions of State statute(s); or

(B) A copy of the applicable provisions of State rules or regulations, along with a copy of the State statutory provisions that provide the authority for such rules or regulations; or

(C) A copy of an official, numbered opinion of the Attorney General of the State that so provides, along with a copy of the applicable provisions of the State statute that provides a basis for the opinion, and a certification that the official opinion has been distributed to interested parties within the State, at least including all hospitals; and

(iii) Such other information and documentation as the Commissioner may require.

(e) *Relationship to other rules.* No provision of this section or part shall be construed to affect any right, protection, procedure, or requirement under 45 CFR Part 84, Nondiscrimination in the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

Dated: November 28, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: November 29, 1984.

Margaret M. Heckler,

Secretary.

State Liaison Officers for Child Abuse and Neglect

Region I

Connecticut

Francine Vecchiolla, Child Protective Svcs. Dept., Dept. of Children & Youth Servs., 170 Sigourney Street, Hartford CT 06105, 203–566–8765

Maine

Sandra Hodge, Protective Services, Dept. of Human Services, State House, Augusta, ME 04333, 207–289–2971

Massachusetts

Ann O'Rielly, Mass. Dept. of Social Services, 150 Causeway Street, 11th Fl., Boston, MA 02114, 617–727–0900

New Hampshire

Eric J. Oleson, New Hampshire Div. for Children and Youth, Child and Family Services, Hazen Drive, Concord, NH 03301, 603–271–4403

Rhode Island

Linda D'Mario-Rossi, Administrator, Dept. for Children & Their Families, 610 Mt. Pleasant Avenue, Bldg. 9, Providence, RI 02908, 401–277–2791

Vermont

Ellen Furnari, SRS–Div. of Social Services, 103 South Main Street, Waterbury, VT 05676, 802–241–2134

Region II

New Jersey

Gerald Suozzo, Office of Operations Accountability, 1 South Montgomery St., Trenton, NJ 08625, New Jersey Division of YFS, 709–292–7772

New York

William Phillips, Bureau of Program Development, Div. of Family & Children Svcs., 40 North Pearl Street, Albany, NY 12243, 518–474–9438

Puerto Rico

Teresa Torres, Dept. of Social Services, P.O. Box 11398, Santurce, PR 00910, 809–723–2127

Virgin Island

Dilsa Rohan, P.O. Box 539, St. Thomas, VI 00801, 809–774–0930

Region III

Delaware

Robert Lindecamp, Div. of Child Protective Svcs., 724 Market St., 7th Floor, Wilmington, DE 19801, 302–571–6418

District of Columbia

Regina Bernard, Children & Family Services, 500 First Street, NW., Washington, D.C. 20001, 202–724–2025

Maryland

Beverly Jones, Maryland Social Srvc. Admin., 300 W. Preston St., Baltimore, MD 21201, 301–576–5242

Pennsylvania

Joseph Spear, Office of Children, Youth and Families, 1514 No. 2nd St., Harrisburg, PA. 17102, 717–787–4882

Virginia

Rita Katzman, Child Protective Srvs. Unit, Dept. of Social Services, 8007 Discovery Drive, Richmond, VA 23288, 804–281–9061

West Virginia

Michael O'Farrell, WV Dept. of Human Srvcs., 1900 Washington Street-East, Charleston, WV 25305, 304–348–7980

Region IV

Alabama

Mary Carswell, Dept. of Pensions & Security, Bureau of Family & Children's Srvcs., 64 No. Union St., Montgomery, AL 36130–1801, 205–261–3409

Florida

Patricia Hicks, Children, Youth & Families Office, Dept. of Health & Rehab. Servs., 1317 Winewood Blvd., Tallahassee, FL 32301, 904–488–5881

Georgia

Ruthie Sheppard, Georgia DHR, Div. of Family & Children Srvcs., 878 Peachtree St., NE., Atlanta, GA 30309, 404–894–3859

Kentucky

Margaret Frederick, Cabinet for Human Resources, Dept. of Social Services Div. of GW Field Srvcs., 275 E. Main St. 6W, Frankfort, KY 40621, 502–564–2136

Mississippi

Melzana M. Fuller, Dept. of Social Services, Dept. of Public Welfare, 515 E. Amite St., Jackson, MS 39205, 601–354–0341

North Carolina

Mary Lee Anderson, DHR Div. of Social Srvcs., 325 No. Salisbury St., Raleigh, NC 27611, 919–733–2580

South Carolina

Shirley Fitz-Ritson, Dept. of Social Services, 1535 Confederate Ave., Columbia, SC 29202, 803–756–6500

Tennessee

Mrs. Susan Steppe, Program Manager, Child Protective Services, Tennessee Dept. of Human Srvcs., 111–19 7th Ave. No., Nashville, TN 37203, 615–741–5927

Region V

Illinois

Ton Villiger, Illinois Dept. of Children and Family Services, One No. Old State Capitol Plaza, Springfield, IL 62706, 217–785–2513

Indiana

Steven Vaughn, Child Abuse and Neglect, Div. CWSS/Indiana Dept. of PW, 141 So. Meridian, Indianapolis, IN 46204, 317–232–4431

Michigan

Laura Daniel, Office of Children & Youth Srvcs., Protective Srvcs. Div., Dept. of Social Services, 300 So. Capitol Ave., Lansing, MI 48909, 517–373–3572

Minnesota

Dwaine Linberg, DPW–DSS, Centennial Office Bldg., St. Paul, MN 55155, 612–296–6743

Ohio

Jean Schafer, Ohio DPW–CPS, 30 East Broad St., Columbus, OH 43215, 614–466–2146

Wisconsin

Teresa Bacchi, Office of C.Y. & F., 1 West Wilson St. Rm. 470, Madison, WI 53703, 608–267–7732

Region VI

Arkansas

Jolie Ikard, Div. of Social Services, P.O. Box 1437, Little Rock, AR 72203, 501–371–2170

Louisiana

Pepper Schales Elkins, Office of Human Development, Div. of Children, Youth & Families, 333 Laurel Commerce Bldg., Baton Rouge, LA 70821, 504–342–5122

New Mexico

Judy Mayhon, NM Dept. of Human Srvcs., Rm. 516, PERA Bldg., P.O. 2348, Santa Fe, NM 87503, 505–827–4196

Oklahoma

Ann Bean, Div. of Child Welfare, Sequoyah SOB, 2nd Floor, Oklahoma City, OK 73125, 405–521–3261

Texas

David Brock, TX. Dept. of Human Resources, P.O. Box 2960 MC 537W, Austin, TX 78769, 512–450–3363

Region VII

Iowa

Timothy Barber Lindstrom, Iowa Dept. of Human Srvcs., Hoover State Office Bldg., 5th Floor, Des Moines, IA 50319, 515–281–5583

Kansas

Alene S. Griggs, KS Dept. of SRS, Child Protection/Family Srvcs. Sec., Smith-Wilson Bldg., 2700 W. 6th St., Topeka, KS 660606, 913–296–4659

Missouri

James Woodsmall, Program & Policy Dev. Unit, Broadway State Office Bldg., DFS 5—P.O. Box 88, Jefferson City, MO 65103, 314–751–3823

Nebraska

Mona L. Way, Dept. of Soc. Services, 301 Centennial Mall South, Fifth Floor, Lincoln, NE 68509, 402–471–3121

Region VIII

Colorado

Joann Davies, CO DSS, 1575 Sherman St., Denver, CO 80203, 303–866–5269

Montana

Richard Kerstein, SRS Regional Office, 1211 Grand Ave., Billings, MT 59102, 406–252–5001

North Dakota

Gladys Caima, CFS–Dept. of Human Services, State Capitol Bldg., Bismarck, ND 58505, 701–224–2316

South Dakota

Mike Kelly, SD DSDS/CYFS, Kneip Bldg., 700 N. Illinois St., Pierre, SD 57501, 605–773–3227

Utah

Joan Gooch, DFS/DSS, P.O. Box 2500, Salt Lake City, UT 84110, 801–533–7107

Wyoming

Janet Shriner, Consultant, Dept. of Health & Social Services, Hathaway Bldg., Cheyenne, WY 82002, 307–777–7561

Region IX

American Samoa

Joe Faamuli, Dept. of Health Services, LBJ Tropical Medical Ctr., Pago Pago, American Samoa 96799, 633–5139 or 633–1222, Ext. 281

Arizona

Beth Rosenberg, ACPYF–SS Branch, 1400 W. Washington, Phoenix, AZ 85005, 602–255–3951

California

Bruce Kennedy, Office of Child Abuse Prevention, CA Dept. of Social Services, 744 P Street, Sacramento, CA 95814, 916–323–2880

Guam

Mary Lou Taijeron, Dept. of Public Health & Soc. Srvcs., P.O. Box 2816, Agana, GU 96910, 671–477–8966

Hawaii

Geraldine DeBenedetti, Dept. of Soc. Srvcs. & Housing, Public Welfare Div.—P.D., 1390 Miller St., Honolulu, HI 96813, 808–548–6407

Nevada

Rota Rosaschi, State Welfare Div., 251 Jeanell Dr., Capitol Complex, Carson City, NV 89710, 702–885–4771

Pacific Trust Territories

The Hon. Adrian T. Winkel, High Commissioner, Trust Territories for the Pacific Islands, Saipan, Mariana Islands 96950

Northern Mariana Islands

Isamu Abraham, Public Health Administrator, Dept. of Health & Environmental Srvcs., Commonwealth of the Northern Mariana, Saipan, Mariana Islands 96950

Region X

Alaska

Nina Keeler, Div. of Family & Youth Srvcs., DHSS, Pouch H–05, Juneau, AK 99801, 907–465–3170

Idaho

Edward Van Dusen, Dept. of Health & Welfare, Division of Welfare, Statehouse, Boise, ID 83720, 208–334–4097

Oregon

Alden 'Bud' Powell, Children's Services Div., 198 Commercial St., SE., Salem, OR 97310, 503–378–3016

Washington

Richard Westgard, Dept. of Social & Health Srvcs., OB–41, Olympia, WA 98504, 206–754–1685

[FR Doc. 84–32251 Filed 12–7–84; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Services and Treatment for Disabled Infants; Interim Model Guidelines for Health Care Providers To Establish Infant Care Review Committees

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice of Opportunity to comment on Interim Model Guidelines.

SUMMARY: These are interim model guidelines to encourage the establishment within health care facilities, especially facilities with tertiary level neonatal care units, of committees for the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment (including appropriate nutrition, hydration, and medication) from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions. The publication of these interim model guidelines for public comment is required by section 124(b) of the Child Abuse Amendments of 1984, Pub. L. 98-457.

ADDRESS: Comments on these interm model guidelines must be submitted by February 8, 1985 to: National Center on Child Abuse and Neglect, U.S. Childrens Bureau, Department of Health and Human Services, P.O. Box 1182, Washington, D.C. 20013. Comments will be available for public inspection in room 3758, Donohoe Bldg., 400 6th Street, SW., Washington, DC., Monday through Friday between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jay Olson at (202) 245-2859 or Mary McKeough at (202) 245-2892.

SUPPLEMENTARY INFORMATION: These interim model guidelines are being issued in accordance with section 124(b) of the Child Abuse Amendments of 1984, Pub. L. 98-457. Pursuant to this section, these guidelines encourage hospitals that provide health care to infants to establish Infant Care Review Committees (ICRCs). The Department especially recommends the establishment of ICRCs by hospitals with tertiary level neonatal care units.

The principles, policies and procedures set forth in this model represent a careful analysis of various proposals and ideas regarding the most effective formulation for review committees. The Department invites comments from all interested parties on this model. All comments will be carefully reviewed and considered, after which, final model guidelines will be issued, as required by the statute.

Infant Care Review Committees—Interim Model Guidelines

I. Introduction

In the past several years there has been substantially heightened public attention to issues relating to treatment and services for disabled infants. This increased attention has fueled, and has been fueled by, controversy regarding existing patterns of medical care decision making and various proposals and initiatives to affect those patterns.

Amidst this controversy, one proposal that has gained widespread support is the establishment of hospital-based committees as the forum and focal point for efforts to assure that medical treatment decisions are informed, thoughtful and consistent with proper medical standards. The thrust of this proposal was well articulated in the March 1983 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavorial Research:

> The Commission concludes that hospitals that care for seriously ill newborns should have explicit policies on decisionmaking procedures in cases involving life-sustaining treatment for these infants.* * * Such policies should provide for internal review whenever parents and the attending physician decide that life-sustaining therapy should be foregone.* * *
>
> Such a review could serve several functions and the review mechanism may vary accordingly. First, it can verify that the best information available is being used. Second, it can confirm the propriety of a decision that providers and parents have reached or confirm that the range of discretion accorded to the parents is appropriate. Third, it can resolve disputes among those involved in a decision, if necessary, by siding with one party or another in a dispute. Finally, it can refer cases to public agencies (child protection services, probate courts, or prosecuting attorneys) when appropriate.

Subsequent to this report, a broad range of medical and health associations endorsed the concept of hospital review committees to deal with issues relating to medical care for disabled infants. These associations include the American Academy of Pediatrics, the National Association of Children's Hospitals and Related Institutions, the American Hospital Association, the American Medical Association, the Catholic Health Association, the Federation of American Hospitals, the American College of Hospital Administrators, the American College of Physicians, the American Nurses Association, and others.

Most recently, this proposal was strongly endorsed by the United States Congress in Pub. L. 83-457, the "Child Abuse Amendments of 1984." In addition to provisions in that legislation requiring State child protective services agencies to establish procedures to prevent the "withholding of medically indicated treatment from disabled infants with life-threaten conditions," the law made it a matter of national policy to encourage the establishment of hospital committees. More specifically, this law, which was supported by an extraordinary coalition of medical associations and disability and other advocacy organizations, requires that:

> [T]he Secretary [of Health and Human Services] shall publish interim model guidelines to encourage the establishment within health care facilities of committees which would serve the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment * * * from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions.

The Department of Health and Human Services fully endorses the recommendation of the President's Commission and the adoption by Congress of the policy of encouraging the formation of these committees. What follows are the HHS interim model guidelines for the establishment and operation of Infant Care Review Committees. These guidelines are advisory; the establishment of an ICRC is not required, nor is it a condition of participation in any Federal program. However, the Department strongly recommends the establishment of Infant Care Review Committees, and careful consideration of all elements of this model, by hospitals that provide care for infants, especially hospitals with tertiary level neonatal care units.

II. Establishment and Purpose

The hospital establishes an Infant Care Review Committee (ICRC) or joins with one or more other hospitals to create a joint ICRC. The purposes and functions of the Infant Care Review Committee are:

1. to educate hospital personnel and families of disabled infants with life-threatening conditions;

2. to recommend institutional policies and guidelines concerning the withholding of medically indicated treatment from disabled infants with life-threatening conditions; and

3. to offer counsel and review in cases involving disabled infants with life-threatening conditions.

III. Membership and Administration

A. *Membership of ICRC.* The ICRC will consist of at least 8 members and include all of the following:

1. A practicing physician (e.g., a pediatrician, a neonatologist, or a pediatric surgeon),
2. A practicing nurse,
3. A hospital administrator,
4. A social worker,
5. A representative of the legal profession,
6. A representative of a disability group,
7. A lay community member, and
8. A member of the facility's organized medical staff, who shall serve as chairperson.

Some committees may wish to add (permanently or on an ad hoc basis) an appropriate representative of the clergy.

B. *Administration of the ICRC.* 1. The hospital will provide staff support for the ICRC, including legal counsel. The ICRC will meet on a regular basis or as required below in connection with review of specific cases. It shall adopt or recommend to the appropriate hospital official or body such administrative policies as terms of office and quorum requirements.

2. The ICRC will recommend procedures to ensure that both hospital personnel and patient families are fully informed of the existence and functions of the ICRC and its availability on a 24-hour basis.

3. The ICRC will inform itself of all pertinent legal requirements and procedures, including pertinent provisions of State law requiring a report or notification to the appropriate State child protective services agency of known or suspected instances of medical neglect, including the withholding of medically indicated treatment (including appropriate nutrition, hydration, and medication), from disabled infants with life-threatening conditions and related procedures of the State agency. The ICRC should consult with the applicable State agency in order to facilitate effective coordination and counsultation between the ICRC and agency.

4. The ICRC will maintain records of all of its deliberations and summary descriptions of specific cases considered and the disposition of those cases. Such records will be kept in accordance with institutional policies on confidentiality of medical information. They will be made available to appropriate government agencies, or upon court order, or as otherwise required by law.

IV. Educational Activities

A. *Basic Functions.* The ICRC will act as a resource to hospital personnel and families of disabled infants with life-threatening conditions to provide current and complete information concerning medical treatment procedures and resources in the hospital and in other hospitals with which the hospital has referral agreements or to which patients may otherwise be referred. The ICRC will also act as a resource concerning available community services which may be needed for the provision of services and treatment for disabled infants with life-threatening conditions.

B. *Specific Activities.* In order to carry out these functions, the ICRC should determine and make available to hospital personnel and families of disabled infants information regarding:

1. Available national and regional information and resource clearinghouses that provide pertinent information, such as the Computerized Handicapped Assistance Information Network ("CHAIN");

2. Facilities and agencies in the community and area that provide treatment and services, such as rehabilitative services and ongoing support, to disabled infants and children and their families;

3. Public and private programs and activities in the community and area, including organizations and associations that provide counselling and support for disabled children and their families; and

4. Other informational materials regarding medical treatment and rehabilitation procedures and resources and support activities.

V. Policy Development

A. *Basic Policy.* In developing institutional policies and guidelines, the basic policy is to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. The definitions set forth below establish the substance of this basic policy. The definition of the term "withholding of medically indicated treatment" is that set forth in the Child Abuse Amendments of 1984 and specifically referenced by Congress in the provisions of that law that encourage establishment of hospital committees.

1. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment—

(a) The infant is chronically and irreversibly comatose;

(b) The provision of such treatment would—

(1) Merely prolong dying,

(2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or

(3) Otherwise be futile in terms of the survival of the infant; or

(c) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

2. The following are the definitions of terms used in the definition of "medically indicated treatment." These definitions are set forth in the proposed HHS regulations implementing the Child Abuse Amendments of 1984, 45 CFR 1340.15.

(a) The term "infant" means: (1) An infant less than one year of age, and (2) infants older than one year of age who have been continuously hospitalized, who were born extremely prematurely, or who have long-term disabilities. (The reference to one year of age does not imply that treatment should be changed or discontinued when an infant reaches one year of age or to affect or limit proper standards of medical care for children over one year of age.)

(b) The term "life-threatening condition" means a condition that threatens the life of the infant or that significantly increases the risk of the onset of complications that may threaten the life of the infant.

(c) The term "treatment" includes: (1) Further evaluation by a physician or physicians whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the condition(s) involved; and (2) multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions.

(d) The term "reasonable medical judgment" means medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with

effective formulation for review

Hospitals, the American College of

withholding of medically indicated

respect to the medical conditions involved.

(e) The term "merely prolong dying" means that death is imminent and that treatment would do no more than postpone the act of dying.

(f) The term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" shall not be interpreted to permit the "withholding of medically indicated treatment" under the following two circumstances: (A) Treatment for a disabled infant on the grounds that one or more of the infant's nontreatable conditions, although not imminently life-threatening, will become life-threatening in the future; and (B) ameliorative treatment to make a condition more tolerable, such as providing palliative treatment to relieve severe pain, even if the overall prognosis, taking all conditions into account, is that the infant will not survive.

(g) The term "virtually futile" means that the treatment is highly unlikely to prevent imminent death.

(h) The term "the treatment itself under such circumstances would be inhumane" means that the treatment itself involves significant medical contraindications and/or significant pain and suffering for the infant that clearly outweighs the very slight potential benefit of the treatment for an infant highly unlikely to survive.

B. *Development of Specific Policies and Guidelines.* 1. The ICRC will develop prospectively and recommend for adoption by the hospital institutional policies concerning the withholding or withdrawal of medical treatment for infants with life-threatening conditions. These will include guidelines for management of specific types of cases or diagnoses that are likely to be seen in that facility and might present dilemmas in medical management, and procedures to be followed in such recurring circumstances. The hospital, upon recommendation of the ICRC, may require attending physicians to notify the ICRC of the presence in the facility of an infant with a diagnosis specified by the ICRC.

2. In recommending these policies and guidelines, the ICRC will consult with medical and other authorities on issues involving treatment and services for disabled individuals, e.g., neonatologists, pediatric surgeons, and county and city agencies and disability advocacy organizations which provide services for the disabled. It will also consult with appropriate committees of the medical staff, to ensure that the ICRC policies and guidelines build on existing staff by-laws, rules and regulations concerning consultations and staff membership requirements. The ICRC will also inform and educate hospital staff on the policies and guidelines it develops.

VI. Review and Counsel in Specific Cases

A major function of the Infant Care Review Committee is to review and offer counsel in specific cases involving disabled infants with life-threatening conditions. Set forth below are the procedures for carrying out this function in two contexts. The first context is prospective review of cases regarding infant patients concerning whom treatment decisions are being made or about whom there are otherwise issues of present or future treatment. The second context is retrospective review of cases concerning which there is then no issue of present or future treatment.

A. *Prospective Review and Counsel.* In addition to regularly scheduled meetings, emergency ICRC meetings will take place under specified circumstances to permit review of individual cases. The hospital will, to the extent possible, require in each case that life-sustaining treatment be continued, until the ICRC can review the case and provide advice.

1. Emergency ICRC meetings will be convened within 24 hours (or less if indicated) when there is disagreement between the family of an infant and the infant's physician as to the withholding or withdrawal of treatment, when a preliminary decision to withhold or withdraw life-sustaining treatment has been made in certain categories of cases identified by the ICRC in its specific policies, when there is disagreement between members of the hospital's medical and/or nursing staffs, or when otherwise appropriate.

2. Such emergency ICRC meetings will take place upon the request of any member of the ICRC or hospital staff or parent or guardian of the infant. The ICRC will have procedures to preserve the confidentiality of the identity of persons making such requests, and such persons shall be protected from reprisal. When appropriate, the ICRC or a designated member will inform the requesting individual of the ICRC's recommendation.

3. The ICRC may provide for telephone and other forms of review when the timing and nature of the case, as identified in policies developed by the ICRC, make the convening of an emergency meeting impracticable.

4. Emergency meetings will be open to the affected parties. The ICRC will ensure that the interests of the parents, the physician, and the child are fully considered; that family members have been fully informed of the patient's condition and prognosis; that they have been provided with a listing which describes the services furnished by parent support groups and public and private agencies in the geographic vicinity to infants with conditions such as that before the ICRC; and that the ICRC will facilitate their access to such services and groups.

5. To ensure a comprehensive evaluation of all options and factors pertinent to the committee's deliberations, the chairperson will designate one member of the ICRC to act, in connection with that specific case, as "special advocate" for the infant. The special advocate will seek to ensure that all considerations in favor of the provision of additional treatment are fully evaluated and considered by the ICRC. The chairperson will make clear to all participants and observers that the designation of a "special advocate" is a standard procedural practice to ensure thorough deliberation, and that it does not imply that any other participant is less concerned about the welfare of the infant.

6. In cases in which there is disagreement on treatment between a physician and an infant's family, and the family wishes to continue life-sustaining treatment, the family's wishes will be carried out, for as long as the family wishes, unless such treatment is medically contraindicated. When there is physician/family disagreement and the family refuses consent to life-sustaining treatment, and the ICRC, after due deliberation, in accordance with the policies, principles and procedures set forth above, agrees with the family, the ICRC will recommend that the treatment (other than appropriate nutrition, hydration, and medication) be withheld. When there is physician/family disagreement and the family refuses consent, but the ICRC disagrees with the family, the ICRC will recommend to the hospital board or appropriate official that the case be referred immediately to an appropriate court or child protective services agency in accordance with applicable reporting requirements and related procedures, and every effort shall be made to continue treatment, preserve the status quo, and prevent worsening of the infant's condition until such time as the court or agency renders a decision or takes other appropriate action. The ICRC will also follow this procedure in cases in which the family and physician agree that life-sustaining treatment should be withheld or withdrawn, but the ICRC disagrees.

made available to appropriate

B. *Retrospective Record Review.* The ICRC, at its regularly-scheduled meeting, will review all records involving withholding or termination of medical or surgical treatment to infants consistent with hospital policies developed by the ICRC, unless the case was previously before the ICRC for emergency review. If the ICRC finds that a deviation was made from the institutional policies in a given case, it shall conduct a review and report the findings to appropriate hospital personnel for appropriate action.

Approved:

Dated: November 16, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Dated: November 29, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-32281 Filed 12-7-84; 8:45 am]

BILLING CODE 4130-01-M

regulations concerning consultations

considered, that family members have

the ICRC disagrees.

Reader Aids

Federal Register

Vol. 49, No. 238

Monday, December 10, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189–47380.....3
47381–47472.....4
47473–47586.....5
47587–47818.....6
47819–48026.....7
48027–48174.....10

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12493.....47819

Proclamations
5285.....47473
5286.....47587

7 CFR

413.....47589
420.....47821
421.....47821
425.....47821
431.....47821
432.....47821
445.....47590
907.....47475
966.....47189
991.....47190

Proposed Rules:
Ch. IX.....47271
52.....47402
434.....47612
447.....47617
966.....47495
1126.....47495
1150.....47496

8 CFR

238.....48027

9 CFR

301.....47475
318.....47822
319.....47822
325.....47475
381.....47475

Proposed Rules:
92.....47402

10 CFR

1.....47823
20.....47823
30.....47823
40.....47823
50.....47823
55.....47823
70.....47823
73.....47823
110.....47191
430.....47479
960.....47714

12 CFR

201.....47825
523.....47825
541.....47825
545.....47825
549.....47825
561.....47825
563.....47825
584.....47825

Proposed Rules:
205.....47405
226.....47406
500.....47410
561.....47499, 47852
563.....47499, 47852
563b.....47271, 47410
570.....47852
571.....47852, 47866
584.....47852
612.....48051

13 CFR

101.....47381

Proposed Rules:
121.....47412, 47414

14 CFR

1.....47594
27.....47594
29.....47594
39.....47381, 47382, 48027, 48029
91.....47594, 48030
95.....47204
97.....48033

Proposed Rules:
25.....47358
71.....47415, 48053, 48054
75.....47621

15 CFR

Proposed Rules:
30.....48055
941.....47415

16 CFR

305.....47479

Proposed Rules
424.....48059

17 CFR

210.....47594
229.....47594
231.....47594
241.....47594
270.....47208
274.....47208

Proposed Rules:
143.....48060
240.....47274

18 CFR

271.....47826
282.....48035
1302.....47383

19 CFR

4.....48035
6.....48035
10.....47986, 47995

Proposed Rules:
10 48003

20 CFR
404 48036
410 48036
416 (2 documents) 48036
422 48036
632 47384
Proposed Rules:
655 48061

21 CFR
81 ..... 47228, 47229
175 47480
184 47384
193 47481
436 ..... 47483, 47826
442 ..... 47483, 47826
452 47828
510 ..... 47387, 47829
520 47830
522 ..... 47829, 48038
546 47486
558 ..... 47387, 48039
561 47481
1020 47387
Proposed Rules:
58 47504
166 47418
182 47505
184 47505
450 47505
610 47622
630 47622

22 CFR
121 47682
122 47682
123 47682
124 47682
125 47682
126 47682
127 47682
128 47682
129 47682
130 47682
514 48039

24 CFR
234 47388
Proposed Rules:
813 48006
880 48006
881 48006
882 48006
913 48006
960 48006

26 CFR
Proposed Rules:
1 47870
35a 47870
41 ..... 47274, 47871
48 ..... 47274, 47871

27 CFR
9 47831

29 CFR
1610 48039

30 CFR
915 47824

Proposed Rules:
Ch. II 47624
251 47871
920 47419

32 CFR
250 48040
706 47602

33 CFR
100 ..... 47230, 48046
110 47602
117 47231
Proposed Rules:
117 47872

36 CFR
Proposed Rules:
261 47505
293 47505
294 47505

37 CFR
304 47487

39 CFR
10 47389
111 ..... 47231, 47232, 47389
Proposed Rules:
10 47275

40 CFR
52 ..... 47488, 47490, 47836, 48152
180 ..... 47491, 47493
86 48128
260 47390
270 47390
271 47391
600 48128
Proposed Rules:
51 48018
52 48018
65 47507
154 47508
180 ..... 47420, 47508, 47509
232 48064
233 48064
261 47510
600 48023
721 47874

43 CFR
Proposed Rules:
Ch. II 47624
5400 47511

44 CFR
67 47240

45 CFR
95 47608
801 47392
Proposed Rules:
1340 48160

46 CFR
500 47393
501 47393
502 47393
503 47393
504 47393
505 47393

47 CFR
0 47604
61 47265
73 ..... 47395, 47604–47608, 47837, 48046
74 47837
Proposed Rules:
Ch. I 47275
2 ..... 47625, 47628
18 47628
73 47638
81 47641
83 ..... 47516, 47625, 47641

48 CFR
Proposed Rules:
Ch. 5 47516
1501 47516
1502 47516
1503 47516
1505 47516
1506 47516
1513 47516
1514 47516
1515 47516
1517 47516
1527 47516
1533 47516
1536 47516
1552 47516

49 CFR
395 47494
571 47396
1057 ..... 47268, 47850
Proposed Rules:
531 48064
533 48064
571 ..... 47276, 47880
1063 47277

50 CFR
17 47397
258 47611
655 47269
672 48049
Proposed Rules:
Ch. II 47421
80 47420
652 ..... 47278, 47422

LIST OF PUBLIC LAWS

Note: The President completed his consideration of acts and joint resolutions passed during the second session of the 98th Congress on November 8, 1984.

Last list November 16, 1984.

The list, will be resumed when bills are enacted into public law during the first session of the 99th Congress which convenes on January 3, 1985.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0–45	13.00	Jan. 1, 1984
46–51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53–209	13.00	Jan. 1, 1984
210–299	13.00	Jan. 1, 1984
300–399	7.50	Jan. 1, 1984
400–699	13.00	Jan. 1, 1984
700–899	13.00	Jan. 1, 1984
900–999	14.00	Jan. 1, 1984
1000–1059	12.00	Jan. 1, 1984
1060–1119	9.50	Jan. 1, 1984
1120–1199	7.50	Jan. 1, 1984
1200–1499	13.00	Jan. 1, 1984
1500–1899	6.00	Jan. 1, 1984
1900–1944	14.00	Jan. 1, 1984
1945–End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1–199	13.00	Jan. 1, 1984
200–End	9.50	Jan. 1, 1984
10 Parts:		
0–199	14.00	Jan. 1, 1984
200–399	12.00	Jan. 1, 1984
400–499	12.00	Jan. 1, 1984
500–End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1–199	9.00	Jan. 1, 1984
200–299	14.00	Jan. 1, 1984
300–499	9.50	Jan. 1, 1984
500–End	14 00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1–59	13.00	Jan. 1, 1984
60–139	13.00	Jan. 1, 1984
140–199	7.00	Jan. 1, 1984
200–1199	13.00	Jan. 1, 1984
1200–End	7.50	Jan. 1, 1984
15 Parts:		
0–299	7.00	Jan. 1, 1984
300–399	13.00	Jan. 1, 1984
400–End	12.00	Jan. 1, 1984
16 Parts:		
0–149	9.00	Jan. 1, 1984
150–999	9.50	Jan. 1, 1984
1000–End	13.00	Jan. 1, 1984
17 Parts:		
1–239	14.00	Apr. 1, 1984
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1–399	7.50	Apr. 1, 1984
400–499	13.00	Apr. 1, 1984
500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1984
100–169	12.00	Apr. 1, 1984
170–199	12.00	Apr. 1, 1984
200–299	4.25	Apr. 1, 1984
300–499	14.00	Apr. 1, 1984
500–599	13.00	Apr. 1, 1984
600–799	6.00	Apr. 1, 1984
800–1299	9.50	Apr. 1, 1984
1300–End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0–199	8.00	Apr. 1, 1984
200–499	14.00	Apr. 1, 1984
500–699	6.00	Apr. 1, 1984
700–1699	12.00	Apr. 1, 1984
1700–End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
25 Parts:		
§§ 1.0–1.169	14.50	Apr. 1, 1984
§§ 1.170–1.300	10.00	Apr. 1, 1984
§§ 1.301–1.400	7.50	Apr. 1, 1984
§§ 1.401–1.500	13.00	Apr. 1, 1984
§§ 1.501–1.640	12.00	Apr. 1, 1984
§§ 1.641–1.850	12.00	Apr. 1, 1984
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	13.00	Apr. 1, 1984
30–39	9.00	Apr. 1, 1984
40–299	14.00	Apr. 1, 1984
300–499	9.50	Apr. 1, 1984
500–599	8.00	Apr. 1, 1980
600–End	5.50	Apr. 1, 1984
27 Parts:		
1–199	13.00	Apr. 1, 1984
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0–99	14.00	July 1, 1984
100–499	6.50	July 1, 1984
500–899	14.00	July 1, 1984
900–1899	7.50	July 1, 1984
1900–1910	15.00	July 1, 1984
1911–1919	5.50	July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	7.00	July 1, 1983
200–699	5.50	July 1, 1984
700–End	13.00	Oct. 1, 1984
31 Parts:		
0–199	8.00	July 1, 1984
200–End	9.50	July 1, 1984

Title	Price	Revision Date
300–399	13.00	Jan. 1, 1984
400–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	9.00	July 1, 1983
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
*1–199	14.00	July 1, 1984
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	13.00	July 1, 1983
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984

Title	Price	Revision Date
42 Parts:		
1–60	12.00	Oct. 1, 1983
61–399	7.50	Oct. 1, 1984
400–End	17.00	Oct. 1, 1983
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1983
*4000–End	8.00	Oct. 1, 1984
44	12.00	Oct. 1, 1983
45 Parts:		
*1–199	9.50	Oct. 1, 1984
200–499	6.00	Oct. 1, 1983
*500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
*41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
*90–139	9.00	Oct. 1, 1984
140–155	8.00	Oct. 1, 1983
156–165	9.00	Oct. 1, 1983
*166–199	9.00	Oct. 1, 1984
200–399	12.00	Oct. 1, 1983
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	12.00	Oct. 1, 1983
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48	1.50	[2] Sept. 19, 1983
48 Parts:		
*1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	12.00	Oct. 1, 1983
400–999	13.00	Oct. 1, 1983
1000–1199	12.00	Oct. 1, 1983
1200–1299	12.00	Oct. 1, 1983
1300–End	7.50	Oct. 1, 1983
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1984 CFR set	550.00	1984
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

VOL
49

ISS
238

DE
10

1984

UMI

OL
9
SS
39
E
1
984
MI

12-11-84
Vol. 49 No. 239

federal register

Tuesday
December 11, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D C 20402

OFFICIAL BUSINESS
Penalty for private use $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S.MAIL
Postage and Fees Paid
U S Government Printing Office
375
SECOND CLASS NEWSPAPER

OFFICIAL BUSINESS
Penalty for private use $300

Federal Register
(ISSN 0097-6326)

U.S. Government Printing Office
375

SECOND CLASS NEWSPAPER

12-11-84
Vol. 49 No. 239
Pages 48175-48260

federal register

Tuesday
December 11, 1984

Selected Subjects

Agricultural Commodities
Agricultural Marketing Service
Air Pollution Control
Environmental Protection Agency
Animal Drugs
Food and Drug Administration
Authority Delegations (Government Agencies)
Food and Drug Administration
Communications Equipment
Federal Communications Commission
Health Insurance
Personnel Management Office
Marketing Agreements
Agricultural Marketing Service
Old-Age, Survivors and Disability Insurance
Social Security Administration
Savings and Loan Associations
Federal Home Loan Bank Board
Trade Practices
Federal Trade Commission

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Contents

Federal Register
Vol. 49, No. 239
Tuesday, December 11, 1984

The President
EXECUTIVE ORDERS
48175 Hazardous duty incentive pay (EO 12494)

Executive Agencies

Agency for International Development
NOTICES
Housing guaranty program:
48230 Ecuador; investment opportunity

Agricultural Marketing Service
PROPOSED RULES
48194 Onions, Bermuda-granex-grano; grade standards
48194 Raisins produced from grapes grown in California

Agriculture Department
See Agricultural Marketing Service.

Alcohol, Tobacco and Firearms Bureau
NOTICES
48252 Firearms, granting of relief

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
48203 Alabama

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Consumer Product Safety Commission
NOTICES
48257 Meetings; Sunshine Act

Defense Department
See also Defense Mapping Agency; Engineers Corps.
NOTICES
48207, 48208 Agency information collection activities under OMB review (2 documents)
48208 Medical reimbursement rate (1985) for dependents of military personnel

Defense Mapping Agency
NOTICES
48209, 48210 Agency information collection activities under OMB review (4 documents)

Economic Regulatory Administration
NOTICES
Remedial orders:
48210 Thomas P. Reidy, Inc.

Employment and Training Administration
NOTICES
Adjustment assistance:
48235 Airco Welding Products, Inc., et al.
48235 Alco Power, Inc.
48235 Brown Shoe Co. et al.

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
48210 European Atomic Energy Community and Japan

Engineers Corps
NOTICES
Environmental statements: availability, etc.:
48208 Santa Ana River Flood Control Project; San Bernardino County, CA

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
48185 Kansas
PROPOSED RULES
Air quality implementation plans; preparation, adoption, and submittal:
48202 Stack height (tall stacks); hearing and extension of time
NOTICES
48221 Pesticides; receipts of State registration; correction
Radiation protection:
48221 Radiofrequency radiation, biological effects; health assessment document; availability
Toxic and hazardous substances control:
48221 Premanufacture notices receipts; correction

Federal Aviation Administration
PROPOSED RULES
48201 Airport radar service areas; correction
NOTICES
48248 Exemption petitions; summary and disposition
Meetings:
48248 Air Traffic Procedures Advisory Committee

Federal Communications Commission
RULES
Radio broadcasting:
48186 AM stations; nighttime power limitations
Radio services, special:
48187 Maritime services; radiotelegraph auto alarm receivers, automatic-alarm-signal keying devices and ship radar installations; requirements
NOTICES
48221 Agency information collection activities under OMB review
Hearings, etc.:
48222 RKO General, Inc., et al.

Federal Deposit Insurance Corporation
NOTICES
48257 Meetings; Sunshine Act

Federal Election Commission
PROPOSED RULES
Corporate and labor organization activity:
48210 Federated cooperatives solicitation of indirect members

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
48211 Alabama-Tennessee Natural Gas Co.
48212 ANR Pipeline Co.
48212, 48213 Central Vermont Public Service Corp. (3 documents)
48213 Duke Power Co.
48213 Gas Gathering Corp.
48213 Granite State Gas Transmission, Inc.
48214 High Island Offshore System
48214 Idaho Power Co.
48214 Kansas City Power & Light Co.
48215 New England Power Pool
48215 Pacific Offshore Pipeline Co.
48215, 48216 Pacific Power & Light Co. (2 documents)
48216 Panhandle Eastern Pipe Line Co.
48211 Puget Sound Power & Light Co.
48217 Public Service Co. of New Mexico (3 documents)
48218 San Diego Gas & Electric Co.
48218 Sea Robin Pipeline Co.
48218 Tennessee Gas Pipeline Co.
48218 Transcontinental Gas Pipe Line Corp.
48219 United Gas Pipe Line Co. (2 documents)
48211 U-T Offshore System
48219 Vernon, Calif., et al.
48220 Wyoming Interstate Co., Ltd.
48257 Meetings; Sunshine Act
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
48220 Acurex Corp.
48220 Dow Chemical Co.
48220 E. I. du Pont de Nemours & Co.
48221 Simpson Paper Co.

Federal Home Loan Bank Board
RULES
48177 Eurodollar bonds, printed or engraved form; book entry procedures

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
48224 First State Bancorp of Monticello
48225 Jeff Davis Bancshares, Inc., et al.
48258 Meetings; Sunshine Act

Federal Trade Commission
RULES
Prohibited trade practices:
48180 American Medical International, Inc. et al.
48178 TEAC Corporation of America

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
48184 Chloramphenicol tablets
Human drugs:
48183 Antibiotic drugs; cefazolin sodium injection; correction
Organization and authority delegations:
48183 Food Safety and Applied Nutrition Center, et al.
PROPOSED RULES
Food for human consumption:
48202 Sucrose and corn sugars; scientific literature update
NOTICES
Animal drugs, feeds, and related products:
48225 Furazolidone (NF-180); hearing on proposal to withdraw approval; correction
Sunlamp variance approvals, etc.:
48225 Tan Body Sun Systems, Manufacturing Inc., et al.; correction

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
48203 New York

Health and Human Services Department
See Food and Drug Administration; Social Security Administration.

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
48225 San Luis Rey Band of Mission Indians

Interior Department

International Development Cooperation Agency
See Indian Affairs Bureau; Land Management Bureau; National Park Service.

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Antidumping:
48205 Greige polyester/cotton printcloth from China
48204 Export trade certificates of review

International Trade Commission
NOTICES
48259 Meetings; Sunshine Act (2 documents)

Justice Department
NOTICES
48230 Agency information collection activities under OMB review

Labor Department
See also Employment and Training Administration; Pension and Welfare Benefit Programs Office.
NOTICES
48231 Agency information collection activities under OMB review

Land Management Bureau
NOTICES
48226 Agency information collection activities under OMB review
Exchange of public lands for private land:
48226, 48227 Montana (2 notices)
Meetings:
48227 Cedar City District Grazing Advisory Board

National Highway Traffic Safety Administration
NOTICES
Meetings:
48250 Lighting agency's current, planned and prospective research

National Oceanic and Atmospheric Administration
NOTICES
Deep seabed mining, exploration license applications:
48205 Ocean Management, Inc.

National Park Service
NOTICES
48228 Agency information collection activities under OMB review
Environmental statements; availability, etc.:
48228 Glacier Bay National Park and Preserve, AK
Historic Places National Register; pending nominations:
48228 Arizona et al.

National Technical Information Service
NOTICES
48206 Inventions, Government-owned; availability for licensing

National Transportation Safety Board
NOTICES
48259 Meetings; Sunshine Act

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
48200 Access authorization program; extension of time
NOTICES
Applications, etc.:
48243 Boston Edison Co.
Meetings:
48242 Reactor Safeguards Advisory Committee
Reports; availability, etc.:
48242 Nuclear regulatory legislation; export licensing and nuclear nonproliferation; information availability

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
48259 Meetings; Sunshine Act

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; class exemptions:
48236 Residential mortgage financing arrangements; prohibited transaction exemption amendments

Personnel Management Office
PROPOSED RULES
Health benefits, Federal employees:
48193 Comprehensive medical plan applications deadline

President's Advisory Council on Private Sector Initiatives
NOTICES
48246 Meetings

Research and Special Programs Administration
NOTICES
Hazardous materials:
48250, 48251 Applications; exemptions, renewals, etc. (2 documents)

Small Business Administration
PROPOSED RULES
Small business investment companies:
48201 Portfolio investment diversification policy; extension of comments
NOTICES
Applications, etc.:
48246 BNK Industry Investment Co.
48246 Financial Venture Corp.
48247 Future Money Corp.
48247 Highland Capital Corp.
48247 Mid-State Capital Corp.
Meetings; regional advisory councils:
48247 Rhode Island

Social Security Administration
RULES
Social security benefits:
48181 Nonpayment of benefits to prisoners

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
48206 Romania
48207 Yugoslavia

Transportation Department
See Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration.

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau.
RULES
48184 Foreign portfolio investment survey

Veterans Administration
NOTICES
48256 Agency information collection activities under OMB review

Veterans' Employment and Training, Office of Assistant Secretary
NOTICES
48231 State employment security agency services; veterans service performance standards

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
11157 (Amended by EO 12494)..... 48175
12494..... 48175

5 CFR
Proposed Rules:
890..... 48193

7 CFR
Proposed Rules:
51..... 48194
989..... 48194

10 CFR
Proposed Rules:
50..... 48200
73..... 48200

11 CFR
Proposed Rules:
114..... 48201

12 CFR
506a..... 48177

13 CFR
Proposed Rules:
107..... 48201

14 CFR
Proposed Rules:
71..... 48201

16 CFR
13 (2 documents)..... 48178, 48180

20 CFR
404..... 48181

21 CFR
5..... 48183
436..... 48183
442..... 48183
555..... 48184
Proposed Rules:
182..... 48202
184..... 48202

31 CFR
129..... 48184

40 CFR
52..... 48185
Proposed Rules:
52..... 48202

41 CFR
Proposed Rules:
16–4..... 48193

47 CFR
73..... 48186
83..... 48187

Federal Register
Vol. 49, No. 239
Tuesday, December 11, 1984

Presidential Documents

Title 3—

The President

Executive Order 12494 of December 6, 1984

Amending Executive Order No. 11157 as It Relates to Pay for Hazardous Duty

By the authority vested in me as President of the United States of America by Section 301(a) of Title 37 of the United States Code, and in order to define the scope of one category of hazardous duty, it is hereby ordered as follows:

Section 1. Executive Order No. 11157 of June 22, 1964, as amended, is further amended by striking out subsection (b) of Section 109 of Part I and inserting in lieu thereof the following:

"(b) The term 'duty involving the demolition of explosives' shall be construed to mean duty performed by members who, pursuant to competent orders and as a primary duty assignment (1) demolish by the use of explosives objects, obstacles, or explosives, or recover and render harmless, by disarming or demolition, explosives which have failed to function as intended or which have become a potential hazard; (2) participate as students or instructors in instructional training, including that in the field or fleet, for the duties described in clause (1) hereof, provided that live explosives are used in such training; (3) participate in proficiency training, including that in the field or fleet, for the maintenance of skill in the duties described in clause (1) hereof, provided that live explosives are used in such training; or (4) experiment with or develop tools, equipment, or procedures for the demolition and rendering harmless of explosives, provided that live explosives are used."

Sec. 2. This Order shall be effective immediately.

Ronald Reagan

THE WHITE HOUSE,
December 6, 1984.

[FR Doc. 84–32338
Filed 12–7–84; 12:21 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 49, No. 239
Tuesday, December 11, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 506a

[No. 84-703]

Eurodollar Bonds; Printed or Engraved Form

Dated: December 4, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending 12 CFR 506a.1 to permit the printing or engraving of Federal Home Loan Bank ("Bank") registered securities that are targeted to markets outside the United States. In the absence of these changes, the Board's regulations would require that these securities be issued in book-entry form. The inability of the Banks to issue securities in printed or engraved form could effectively reduce their ability to participate in the Eurodollar market, because participants in that market are accustomed to holding securities in physical form. The Board is also making conforming changes to Part 506a with regard to conversions and delivery of registered foreign-targeted bonds.

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Moira Donohue, Attorney, Office of General Counsel, (202-377-6465), Federal Home Loan Bank Board, Office of General Counsel, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: In the past, participation by quasi-governmental entities in the Eurodollar market, which operates primarily through the trading of physical certificates, was effectively prohibited by a provision of the Internal Revenue Code of 1954 requiring a 30-percent withholding tax on U.S.-source interest payments to foreigners. However, on July 18, 1984, Congress amended the Internal Revenue Code of 1954 to repeal the 30-percent withholding tax in certain circumstances. Deficit Reduction Act of 1984, Pub. L. 98-369, section 127, 98 Stat. 648 ("DRA"). The Department of the Treasury issued temporary regulations regarding the new statutory provision, and the reporting and "backup" withholding required with respect to issuers of obligations held by foreign persons and payors of interest on such obligations. 49 FR 33239 (to be codified at 26 CFR Part 35a) (August 22, 1984). This regulatory change permits, among other things, the issuance by quasi-governmental entities, as well as private corporations, of a registered, foreign-targeted obligation, the beneficial owner of which need not be named, but merely certified to be a foreigner. By virtue of this regulatory provision, quasi-governmental corporations, such as the Banks, may avail themselves of the Eurodollar market by issuing foreign-targeted securities.

Participation in this market, subject to compliance with the Department of the Treasury regulations, may require the issuance of a tangible, printed or engraved security. The Board's current regulations, however, restrict the Banks to the issuance of securities in book-entry form. 12 CFR 506a.1(c) (1984). The book-entry limitation was adopted originally to eliminate losses and reduce costs and paperwork that were more likely to occur with transactions involving printed or engraved securities. 42 FR 56316 (October 25, 1977). At the time the regulation was promulgated, however, the Board did not contemplate the need for an exception concerning issuances targeted to foreign markets because Bank participation in the Eurodollar market was effectively prohibited. In light of the recent change made by the DRA and in Treasury regulations, the Board finds that it is necessary to amend the book-entry restriction in Part 506a to provide for the issuance of Eurodollar obligations in physical form, thereby enabling the Banks to compete in this market as contemplated in the Department of the Treasury regulations. In addition, the amendment revises the conversion provisions of Part 506a to permit conversions between book-entry and definitive form for these registered securities, to the extent permitted by the terms of the bonds. Conforming changes to Part 506a with regard to delivery of registered foreign-targeted securities issued in definitive form have also been made.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13, and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, is unnecessary for the following reasons: (1) The amendments are minor and conforming in nature, and (2) the revisions relate to internal agency procedures regarding securities issuance by the Banks.

List of Subjects in 12 CFR Part 506a

General, Savings and Loan Associations.

Accordingly, the Board hereby amends Part 506a of Subchapter A of Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

Subchapter A—General

PART 506a—BOOK-ENTRY PROCEDURES FOR FEDERAL HOME LOAN BANK SECURITIES

§ 506a.1 [Amended]

1. Amend § 506.1(c) by inserting, before the final period at the end thereof, the following: ", or registered securities targeted to markets outside the United States in accordance with applicable Department of the Treasury regulations".

§ 506a.2 [Amended]

2. Amend § 506a.2(b) by inserting after the phrase "November 25, 1977" the following: ", or registered securities targeted to markets outside the United States, to the extent permitted by the terms of the securities".

§ 506a.4 [Amended]

3. Amend § 506a.4(d) by inserting after the phrase "November 25, 1977" the following: ", or registered securities targeted to markets outside the United States, to the extent permitted by the terms of the securities,".

§ 506a.5 [Amended]

4. Amend § 506a.5(a) by inserting after the phrase "November 25, 1977" the following: ", or registered securities targeted to markets outside the United States," and by inserting at the end thereof the following new sentence: "Nothing in this provision shall be construed to permit withdrawal of registered securities targeted to markets

outside the United States in definitive form if not permitted by the terms of the securities.".

§ 506a.6 [Amended]

5. Amend § 506a.6 by inserting in the second sentence thereof after the words "November 25, 1977," the following: "registered securities issued in definitive form targeted to markets outside the United States,".

(Sec. 11, 47 Stat. 733, as amended; sec. 17, 47 Stat. 736, as amended, 12 U.S.C. 1431, 1437; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1947 Supp.)

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-32280 Filed 12-10-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2752]

TEAC Corporation of America; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This Order grants the request of a Montebello, California supplier of high fidelity audio components to reopen the proceeding and delete entirely from the Commission's October 24, 1975, Consent Order, 40 FR 56658, Paragraph I(11), which had been modified on November 25, 1983, 48 FR 54989, so as to permit the firm to prevent transshipment of its products to dealers who did not meet non-discriminatory standards of promotion, service and display. After considering company's arguments and other relevant information, the Commission concluded that the public interest warranted reopening and modifying the order as requested. The transshipment provision had served its remedial purpose. There was no indication that the firm had engaged in resale price maintenance or breached the transshipment provision. Nor was there anything in the record to suggest a need to retain the provision as a fencing-in mechanism, or as a means of preventing anticompetitive effects from nonprice vertical restraints. Accordingly, the Commission ordered that the matter be reopened and Paragraph I(11) of the order deleted.

DATES: Modified Order issued on November 25, 1983; Modifying Order issued November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Selig Merber, L/301-18, Federal Trade Commission, Washington, D.C. 20580. (202) 634-4642.

SUPPLEMENTARY INFORMATION: In the Matter of TEAC Corporation of America, a corporation. Codification appearing at 40 FR 56658 remains unchanged.

List of Subjects in 16 CFR Part 13

Audio components, High fidelity, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before the Federal Trade Commission

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani.

[Docket No. C-2752]

Order Reopening and Modifying Order Issued on October 24, 1975

In the matter of TEAC Corporation of America, a corporation.

On June 6, 1984, respondent TEAC Corporation of America ("TEAC") filed its "Request to Reopen Proceedings and to Modify Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.5 of the Commission Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. C-2752 and modify the order issued by the Commission in this case on October 24, 1975—as modified by an order issued November 25, 1983—to remove a provision that restricts TEAC's ability to limit transshipment of its products. TEAC's Request was placed on the public record for thirty days and no comments were received.

After reviewing TEAC's request and other available information, the Commission has concluded that the public interest warrants reopening and modifying the order in the manner requested by TEAC. The transshipment provision of the order (Paragraph I(11)) was adopted principally as a "fencing in" restraint ancillary to the order's ban on resale price maintenance ("RPM"). TEAC has shown that it does not fix the prices at which its authorized dealers resell TEAC products, that TEAC product prices vary from dealer to dealer, and that the transshipment provision therefore has encouraged the emergence of intrabrand price competition in TEAC products. Consequently, Paragraph I(11) need not be retained for that purpose.

To the extent that Paragraph I(11) was also intended to remedy alleged anticompetitive effects of vertical practices other than RPM, the Supreme Court decision in *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977)—issued after the original order in this matter—makes further analysis necessary. As the Court explained, non-price vertical restraints may either enhance or impede economic efficiency and consumer welfare, depending upon whether the fundamental purpose or effect of the restraints is on balance to enhance or exploit market power or instead to promote a more efficient form of distribution. It follows that devices that facilitate the imposition of non-price vertical restraints—such as transshipment restrictions—similarly may be beneficial in some situations and harmful in others. These practices are not inherently suspect or so plainly anticompetitive that they can be condemned without more extensive analysis under the rule of reason. The Commission has relied upon *Sylvania* to conclude that it will only prohibit non-price vertical restraints that have "a probable adverse effect on *inter*brand competition" at either the manufacturer or the dealer level.[1]

The foregoing cases establish the need to evaluate the likely consequences of non-price vertical restraints in the recording equipment industry under the rule of reason in considering TEAC's petition. Vertically imposed transshipment restrictions such as those at issue here are most likely to be used in conjunction with a program of other non-price vertical restraints that effectively limits the entities with whom the manufacturer will deal. TEAC apparently seeks authority to use transshipment restrictions to facilitate a distribution program involving only carefully selected dealers. If TEAC's petition is granted, TEAC could use transshipment restrictions to facilitate the imposition and enforcement of other non-price vertical restraints.

I

When market power either does not exist or cannot be sustained, anticipated efficiency gains are the only rational basis for a manufacturer to impose a vertical restraint. Only procompetitive practices will survive the market test when the creation or enhancement of

[1] *Beltone Electronics Corp.*, 100 F.T.C. 68, 208 (1982). The Commission identified two different adverse effects upon interbrand competition that could satisfy this standard. First, the Commission indicated that non-price vertical restraints might in some circumstances support or increase the likelihood of collusion among competing firms. *Id.* at 206-07. Second, the Commission indicated that non-price vertical restraints might in some circumstances create or enhance the market power of one or more competing firms. *Id.* at 207.

market power is unlikely; the market does not reward inefficient distribution practices. Thus, when the exercise of market power in a properly defined relevant market is unlikely,[2] we consider non-price vertical restraints to be efficiency enhancing in purpose and effect, and therefore lawful, without further inquiry.

Market power can be exercised either by a dominant firm or through the action of competitors acting in concert. Because no firm can claim dominance in the recording equipment market (*see* pp. 6-8, *infra*), we will focus our attention on the possibility of collusive activities in this market.[3] In this context, our concerns are: (1) Whether the firms that use the questioned non-price vertical restraints constitute a significant competitive threat; and (2) whether such a threat is effectively constrained by the remainder of the market.

In general, the likelihood of collusion depends on the expected gains from and costs of forming and enforcing a collusive scheme. Collusion is attractive only to the extent that there are potential gains from cooperation, such as when market demand is inelastic at the competitive price. As the elasticity of market demand at the competitive level increases, the potential gains from collusion decline. Collusion becomes less likely as the costs of forming or enforcing a collusive agreement increase. The likelihood of collusion is directly related to, among other things, the overall level of market concentration, the distribution and aggregate value of the market shares of the firms using the challenged practice, and the presence and significance of barriers to entry. The likelihood of collusion is inversely related to, among other things, the number of fringe firms and the diffusion of their market shares.[4]

The factors that affect the feasibility of successful collusion often can be used to conclude that it is probably not a threat to consumer welfare in a given market. For example, collusion is unlikely to be successful in an unconcentrated market.[5] Moreover, even in a somewhat concentrated market, if the firms actually using the vertical restraint at issue do not collectively possess and are not likely to secure market power, then the restraint is unlikely to facilitate the creation or maintenance of market power. In particular, non-price vertical restraints implemented by new entrants or small established firms are unlikely to threaten consumer welfare. The absence of barriers to entry is also likely to prevent successful collusion. On the facts in this case, we need go no further than to determine that successful collusion in the recording equipment market is highly unlikely. We do not confront a market in which non-price vertical restraints may create both market power and consumer benefits, and we therefore do not need to balance positive and negative effects upon competition and consumer welfare.

II

We commence our analysis of the TEAC request by evaluating the threat of the exercise of market power. TEAC competes in the home and professional recording equipment segments of the high fidelity audio components market. The facts pertaining to the recording equipment industry indicate that no firm has a dominant position and that the chance of successful collusion is remote. TEAC's share of the home recording market fell substantially between 1974 and 1983, so that it is now only the sixth largest firm in the industry. Moreover, only one firm has more than 8 percent of the home recording market. The structure of the distribution and retailing segments of the home recording equipment market is even more diffuse. Thus, existing levels of concentration in this market at the manufacturer, distributor, and retailer levels are significantly lower than the threshold level that should trigger concern with the possibility of successful collusion.

In addition, since the original order was entered, at least twenty manufacturers have entered and/or increased their participation in the high fidelity audio components market and its tape recording equipment segment, indicating the absence of significant impediments to entry. There is similarly no evidence of barriers to entry into the distribution or retailing of home recording equipment. For example, the typical TEAC dealer carries as many as seven competing lines of tape recording equipment. The professional recording segment is similarly competitive. There are at least twelve manufacturers of professional recording equipment. Moreover, professional equipment is sold to knowledgeable buyers on a bid basis by geographically dispersed dealers, making successful collusion among manufacturers even more difficult and unlikely.

In summary, the low levels of concentration and the absence of barriers to entry into the manufacture, distribution, and retailing of recording equipment make the creation of market power in this industry an extremely remote possibility.

Conclusion

The transshipment provision in question has served its remedial purpose. There is no indication that TEAC has engaged in RPM (or has breached the transshipment provision) from October 24, 1975 to date, and nothing in the record suggests that there is a need to retain the transshipment provision as a fencing in mechanism to ensure that TEAC does not reinstitute RPM.

The transshipment provision does not appear to be needed to prevent anticompetitive effects from non-price vertical restraints either. Because the recording equipment market and its constituent segments are unconcentrated at the manufacturer, distributor and retailer levels, and because there has been substantial entry, we conclude that neither market dominance nor successful collusion is likely. The record presented by TEAC and other information indicate that transshipment restraints imposed by TEAC would pose no threat to interbrand competition. At the same time, Paragraph I(11) imposes unnecessary costs by requiring TEAC to prospectively specify and apply qualification standards for all dealers who seek to secure TEAC products transshipped by TEAC's authorized dealers, including dealers not served directly by TEAC. We therefore conclude that an effort by TEAC to

[2] The Commission adheres to the principles of relevant market definition it adopted in 1982. *Statement of Federal Trade Commission Concerning Horizontal Mergers ("FTC Merger Statement")*, Trade Reg. Rep. (CCH) No. 546 (June 16, 1982), at 71, 64-65.

[3] The imposition of vertical restraints as a result of collusive activities in the recording equipment market might arise in one of two forms. First, distributors or retailers might act in concert to coerce manufacturers to impose vertical restraints on their competitors in order to limit competition in distribution or retailing. Second, manufacturers might impose vertical restraints in concert in order to facilitate the monitoring of a collusive agreement or otherwise to enhance the exercise of collusive market power.

[4] *E.g.*, R. Posner, *Antitrust Law: An Economic Perspective* 56-59 (1976). The Commission has recognized that other factors, in addition to those enumerated, also affect the likelihood of successful collusion. *FTC Merger Statement, supra* note 2, at 71, 75-80.

[5] In the context of horizontal mergers, the Justice Department has broadly characterized markets with Herfindahl-Hirschman Indexes ("HHIs") below 1000 as "unconcentrated," and markets with HHIs equal to or above 1000 as "moderately concentrated." *Justice Department Merger Guidelines*, 49 FR 26823, 26830-31 (1984). An HHI of 1000 or less certainly indicates an unconcentrated market; however, for the purpose of analyzing non-price vertical restraints, it may also be appropriate to characterize markets with somewhat higher HHIs as unconcentrated.

control transshipment is very unlikely to harm competition.

Accordingly, it is ordered that this matter be, and it hereby is, reopened and that Paragraph I(11) of the order be, and it hereby is, deleted.

By the Commission. Commissioner Bailey voted in the negative.

Dated: November 16, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-32249 Filed 12-10-84; 8:45 am]

BILLING CODE 6750-01-M

---

16 CFR Part 13

[Docket No. 9158]

American Medical International, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modified Order.

SUMMARY: This Modified Order revises the Commission's final order issued on July 2, 1984, 49 FR 29568, which requires a Beverly Hills operator of a chain of proprietary hospitals to divest French Hospital located in San Luis Obispo, California and provide the Commission, for a period of ten years, with advance notification of its intention to acquire any hospital costing $1 million or more in the 13-state area specified in the order. As revised, the modified order retains the advance notification requirement of the original order, but sets forth in detail the manner in which the firm must prepare and submit the notification to the Commission and the supplemental information that should be included.

DATES: Final Order issued on July 2, 1984; Modified Order issued November 9, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/P-852, L. Barry Costilo, Washington, D.C. 20580, (202) 724-1208.

SUPPLEMENTARY INFORMATION: In the Matter of American Medical International, Inc., a corporation, and Amisub (French Hospital), a corporation. Codification appearing at 49 FR 29569 remains unchanged.

List of Subjects in 16 CFR Part 13

Hospitals, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

[1] Copies of the Order and Opinion of the Commission Granting in Part and Denying in Part Complaint Counsel's Petition for Reconsideration filed with the original documents.

Before Federal Trade Commission

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani.

[Docket No. 9158]

Modified Order

In the Matter of American Medical International, Inc., a corporation, and AMISUB (French Hospital), a corporation.

I

Complaint Counsel has filed a Petition for Reconsideration of the Commission's order in this matter issued on July 2, 1984. Respondents have replied in opposition thereto. The Commission has determined upon review of the matter that its order of July 2, 1984 should be modified, for the reasons set forth in the accompanying opinion. Therefore,

It is ordered that for purposes of this Order the following definitions shall apply:

A. "Acquire any hospital" means to directly or indirectly acquire all or any part of the stock or assets of any hospital, or enter into any arrangement by which AMI obtains ownership, management, or contol of any hospital, including the right to lease or manage any hospital.

B. "AMI" means American Medical International, Inc., a corporation organized under the laws of Delaware with its principal executive offices at 414 North Camden Drive, Beverly Hills, California 90210, and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns.

C. "AMISUB (French Hospital)" means the wholly-owned subsidiary corporation of AMI that was established for the purpose of acquiring and operating French Hospital located in San Luis Obispo, California.

D. "County" also means a county equivalent such as a parish in Louisiana.

E. "General acute care hospital," herein referred to as "hospital(s)," means a health facility, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsiblity and an organized professional staff that provides 24-hour inpatient care, and whose primary function is to provide inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

F. "Operate a hospital" also means to own, manage or lease a general acute care hospital.

G. "MSA" and "PMSA" mean, respectively, a Metropolitan Statistical Area and a Primary Metropolitan Statistical Area, as defined as of July 1, 1983 by the Office of Management and Budget, Office of Information and Regulatory Affairs.

II

It is ordered that within twelve (12) months from the date this Order becomes final, AMI shall divest, absolutely and in good faith, all stock, assets, properties, licenses, leases, and other rights and privileges, tangible and intangible, that AMI acquired from Central Coast Hospital Company, French Hospital Corporation and French Medical Clinic Inc., together with any subsequent improvements. The purpose of the divestiture is to reestablish French Hospital as a viable competitor in San Luis Obispo County. The divestiture shall be subject to the prior approval of the Federal Trade Commission.

Pending divestiture, AMI shall take all measures necessary to maintain French Hospital in its present condition and to prevent any deterioration, except for normal wear and tear, of any of the assets to be divested so as not to impair French Hospital's present operating abilities or market value.

III

It is further ordered that for a period of ten (10) years from the date this Order becomes final, AMI shall not, without providing advance notification to the Federal Trade Commission, directly, or indirectly acquire any hospital located in the states of Oregon, California, Texas, Oklahoma, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, or North Carolina, if:

A. The hospital to be acquired is within an MSA or a PSMA in which AMI already operates a hospital and in which AMI, immediately after the acquisition, would operate hospitals that combined have a twenty (20) percent or more share of the licensed general acute care hospital beds within that MSA or PMSA; or

B. The hospital to be acquired is not within an MSA or a PMSA but is within a county in which AMI already operates a hospital and in which AMI, immediately after the acquisition, would operate hospitals that combined have a twenty (20) percent or more share of the licensed hospital beds within that county; or

C. The hospital to be acquired is (1) not within an MSA or a PMSA of a county in which AMI already operates a hospital, but is within thirty (30) miles of a hospital which AMI already operates in another MSA or PMSA or county, and (2) the hospital to be acquired and any hospital(s) that AMI operates combined have a twenty (20) percent or more share of the licensed hospital beds in the area within thirty (30) miles of the midpoint between the hospital to be acquired and any hospital operated by AMI.

Provided, however, that no acquisition shall be subject to this section III: (1) if the consideration to be paid for the purchase of the hospital, including assumption by AMI of liabilities of its present owners, does not exceed one

million dollars ($1,000,000); or (2) if notification of the acquisition is required to be made, and in fact is made, pursuant to section 7A of the Clayton Act, 15 U.S.C. 18a. Such advance notification shall be provided when AMI's Board of Directors or Executive Committee, or any entity that is authorized to act on AMI's behalf in such acquisitions, authorizes issuance of a letter of intent or enters into a purchase agreement to make such an acquisition, whichever is earlier.

IV

The notification required by section III shall be the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended, and shall be prepared and transmitted in accordance with the requirements of that part. The notification required by section III of this Order shall apply to AMI and shall not apply to any party that AMI seeks to acquire. However, AMI shall provide at the same time of the filing of the Notification and Report Form supplemental information, either in AMI's possession or reasonably available to AMI, relating to the hospital to be acquired, the AMI hospital in that geographic area, and identification and assessment of the area hospital market. Such supplemental information should include, where available, patient flow data, annual management and strategic plans, hospital utilization and revenue data, and documents relating to market share, formulation of hospital prices, competitive interaction among area hospitals, implementation of certificate of need standards in the area, planned efficiencies, relations with third-party payers, and physician admitting patterns.

AMI shall comply with reasonable requests by the Commission staff for additional information within fifteen (15) days of service of such requests.

Any acquisition subject to section III of this Order, involving an arrangement to lease, manage, or control a hospital, shall be fully described in the notification regardless of whether the acquisition involves the acquisition of any stock or assets of a hospital.

V

It is further ordered that AMI shall, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with the provisions of section II of this Order, submit a report in writing to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these provisions.

Such compliance reports shall include a summary of all contacts and negotiations with potential purchasers of the stock and assets to be divested under this Order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

AMI also shall submit such further written reports as the staff of the Federal Trade Commission may from time to time request in writing to assure compliance with this Order.

VI

It is further ordered that AMI shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance with the obligations arising out of this Order.

By the Commission. Commissioner Bailey voted in the negative.

Issued: November 9, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-32248 Filed 12-10-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance Benefits; Nonpayment of Benefits to Prisoners

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: Section 339 of the Social Security Amendments of 1983, Pub. L. 98-21, suspends payments of old-age, survivors, and disability insurance benefits to persons in prison for conviction of a felony. Benefits will continue to be paid to family members entitled to benefits as dependents of prisoners. This provision extends to all other title II Social Security benefits the statutory prohibition against payment of benefits to prisoners which already applied to disability insurance benefits and childhood disability benefits.

DATES: These regulations are effective December 11, 1984.

FOR FURTHER INFORMATION CONTACT: W. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: In section 339 of Pub. L. 98-21, enacted April 20, 1983, Congress amended section 202 of the Social Security Act (the Act) to eliminate all monthly benefit payments under section 202 or 223 of the Act to any person for any month during which that person is confined in a jail, prison, or other penal institution or correctional facility pursuant to his or her conviction of a felony. This provision of the law extends to the other title II insurance benefits the basic restriction on payment of benefits to prisoners that already applied to disability insurance benefits and childhood disability benefits under section 5(c) of Pub. L. 96-473, which was effective with monthly benefits payable beginning October 1, 1980. The new nonpayment provision, which applies to title II insurance benefits including disability and childhood disability benefits, is effective for benefits payable for months beginning on or after May 1, 1983.

To conform with this change in the law, we are amending 20 CFR 404.468 to explain that if a person is confined in a jail, prison, or other penal institution or correctional facility for conviction of a felony committed at any time, monthly Social Security benefits to which he or she is otherwise entitled, on his or her own earnings record or on another person's earnings record, will not be paid for any month after April 1983 (or after September 1980 in the case of disability or childhood disability benefits), during all or part of which the person is so confined. The only exception to the nonpayment of a prisoner's benefits will be if the person is entitled to benefits on the basis of a disability and is actively and satisfactorily participating in a vocational rehabilitation program which is specifically approved by a court of law for that person and which the Secretary of Health and Human Services expects will result in the person's being able to do substantial gainful work upon release and within a reasonable time.

Although benefits are not payable to the prisoner during confinement, payment of benefits will be made to other persons entitled to benefit payments on the prisoner's earnings record (who are not themselves subject

to the prisoner provision) as if the prisoner were still receiving benefits.

Benefits will be restored to the prisoner effective with the first full month after release from prison if he or she is otherwise still entitled to these benefits.

These rules implementing section 339 of Pub. L. 98–21 generally follow the rules adopted in the implementation of section 5(c) of Pub. L. 98–473 except that the nonpayment provision will now apply to all monthly Social Security benefits and not just to certain benefits based on disability. Those rules, 20 CFR 404.468, were published in the Federal Register (48 FR 5711) on February 8, 1983.

Thus, a crime will be considered a felony if it is an offense which constitutes a felony under applicable law. In jurisdictions which do not classify any crime as a felony, such as the State of New Jersey, the U.S. military under the Uniform Code of Military Justice, and some foreign countries, an offense punishable by death or imprisonment for a term exceeding one year will be considered a felony for purposes of these regulations. (See 20 CFR 404.468(b).) This latter rule is the same as the definition of a felony in 18 U.S.C. 1(1), the U.S. Criminal Code.

A jail, prison, or other penal institution or correctional facility includes any facility which is under the control and jurisdiction of the agency in charge of the penal system or any facility in which convicted criminals can be incarcerated. This includes, for example, a mental hospital for the criminally insane which is used as a place for incarcerating convicted criminals, regardless of whether that institution is operated by the correctional authority. A person under sentence of confinement to any of these facilities is considered "confined" even though he or she is temporarily hospitalized outside the facility or is temporarily or intermittently outside the facility to work, attend school, or for some other reason. However, a prisoner who is released on parole or because his or her sentence has ended, been suspended or overturned would no longer be considered confined in the penal facility. (See 20 CFR 404.468(c).)

A Notice of Proposed Rulemaking explaining the change in the regulations was published in the Federal Register (49 FR 3672) on January 30, 1984. Interested persons, organizations, and groups were invited to submit data, views or arguments pertaining to the proposed amendments within a period of 60 days from the date of the notice. The comment period ended on March 30, 1984. The two comments we received criticized the changes in the law rather than the regulations.

Comments: One commenter opposed the total elimination of monthly benefit payments to prisoners, but did not object to deducting some percentage of the benefits for support of the inmate while incarcerated. This commenter believed that partial payment of Social Security benefits to an incarcerated individual should be made in order to provide that person with funds for support upon release from prison until employment is obtained. Another commenters believed that consideration should be given to paying all the benefits to the institution in which the individual is incarcerated to defray some of the expenses.

Response: Section 339 of Pub. L. 98–21 precludes payment of monthly benefits under section 202 or 223 of the Act to any person for any month during which the person is incarcerated due to his or her conviction of a felony. The law requires us to withhold payment under these circumstances unless the exception relating to participation in an appropriate court approved rehabilitation program applies. The commenters' suggestions would require a change in the law. We are required to issue regulations which implement the law as enacted and have no discretion concerning the issues raised in these comments.

These regulations amend § 404.468 to apply the prohibition against payment of benefits to prisoners to all monthly Social Security benefits.

Executive Order 12291: These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. The implementation of section 339 of Pub. L. 98–21 produces a negligible reduction in benefit payments each year. Program costs are minimal. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act: We certify that these regulations do not have a significant economic impact on a substantial number of small entities because they only affect a small number of beneficiaries.

Paperwork Reduction Act: These regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.803, Social Security Retirement Insurance; 13.805, Social Security Survivors' Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

Dated: July 19, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 15, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– ——)

For the reasons set out in the preamble, Part 404, Subpart E, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

Subpart E—Deductions; Reductions; and Nonpayments of Benefits

20 CFR Part 404, Subpart E is amended as follows:

1. The authority citation for Subpart E reads as follows:

Authority: Secs. 205, 207, and 1102; 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 405, 407, 1302, unless otherwise noted.

2. Section 404.468 is revised to read as follows:

§ 404.468 Nonpayment of benefits to prisoners.

(a) *General.* No monthly benefits will be paid to any individual for any month any part of which the individual is confined in a jail, prison, or other penal institution or correctional facility for conviction of a felony. This rule applies to disability benefits (§ 404.315) and child's benefits based on disability (§ 404.350) effective with benefits payable for months beginning on or after October 1, 1980. For all other monthly benefits, this rule is effective with benefits payable for months beginning on or after May 1, 1983. However, it applies only to the prisoner; benefit payments to any other person who is entitled on the basis of the prisoner's wages and self-employment income are payable as though the prisoner were receiving benefits.

(b) *Felonious offenses.* An offense will be considered a felony if—

(1) It is a felony under applicable law; or

(2) In a jurisdiction which does not classify any crime as a felony, it is an offense punishable by death or imprisonment for a term exceeding one year.

(c) *Confinement.* In general, a jail, prison, or other penal institution or correctional facility is a facility which is under the control and jurisdiction of the agency in charge of the penal system or in which convicted criminals can be incarcerated. Confinement in such a facility continues as long as the individual is under a sentence of confinement and has not been released due to parole or pardon. An individual is considered confined even though he or she is temporarily or intermittently outside of that facility (e.g., on work release, attending school, or hospitalized).

(d) *Vocational rehabilitation exception.* The nonpayment provision of paragraph (a) of this section does not apply if a prisoner who is entitled to benefits on the basis of disability is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for the individual by court of law. In addition, the Secretary must determine that the program is expected to result in the individual being able to do substantial gainful activity upon release and within a reasonable time. No benefits will be paid to the prisoner for any month prior to the approval of the program.

[FR Doc. 84–32274 Filed 12–10–84; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Director, Center for Food Safety and Applied Nutrition, et al.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority pertaining to food standards, food additives, generally recognized as safe (GRAS) substances, and color additives. The amendment clarifies the authorities delegated and adds new authorities relating to advance notices of proposed rulemaking for Codex Alimentarius food standards and affirmation of GRAS status of food substances.

EFFECTIVE DATE: December 11, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.61 (21 CFR 5.61) by revising paragraph (a) to clarify the authority for issuing notices of filing of petitions for food additives, generally recognized as safe (GRAS) substances, and color additives by including the delegates' authority to issue voluntary withdrawal notices.

The section is further amended by adding a new paragraph (e) which authorizes the Director and Deputy Director of the Center for Food Safety and Applied Nutrition to issue advance notices of proposed rulemaking pertaining to Codex Alimentarius food standards and to terminate those notices when it is concluded that there is neither sufficient interest or need to warrant proposing a U.S. standard for the food product; and adding a new paragraph (f) which authorizes the Director and Deputy Director of the Center for Food Safety and Applied Nutrition and the Director and Deputy Director of the Center for Veterinary Medicine to issue regulations affirming GRAS status of food substances when such affirmations do not involve novel or controversial issues.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such positions in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a) 52 Stat. 1055 (21 U.S.C. 371(a))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended in § 5.61 by revising paragraph (a) and by adding new paragraphs (e) and (f) to read as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, and color additives.

(a) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under sections 401, 409, and 706 of the Federal Food, Drug, and Cosmetic Act (the act) regarding the issuance of notices of proposed rulemaking pertaining to food standards; and notices of filing, and voluntary withdrawal, of petitions on food additives, generally recognized as safe (GRAS) substances, and color additives that relate to the assigned functions of the respective Center:

(1) The Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN).

(2) The Director and Deputy Director, Center for Veterinary Medicine (CVM).

* * * * *

(e) The Director and Deputy Director, CFSAN, are authorized to issue advance notices of proposed rulemaking pertaining to Codex Alimentarius food standards, and notices terminating consideration of such standards when comments fail to support the desirability and need for proposing their adoption, under § 130.6 of this chapter.

(f) The following officials are authorized to issue notices of proposed rulemaking and issue or amend regulations affirming generally recognized as safe (GRAS) status of food substances under §§ 170.35 or 570.35 of this chapter where the affirmations relate to the assigned functions of the respective Center and do not involve novel or controversial issues:

(1) The Director and Deputy Director, CFSAN.

(2) The Director and Deputy Director, CVM.

Effective date. This regulation shall become effective December 11, 1984.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: December 4, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–32231 Filed 12–10–84; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 436 and 442

[Docket No. 83N–0210]

Antibiotic Drugs; Cefazolin Sodium Injection; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, cefazolin sodium injection.

EFFECTIVE DATE: December 11, 1984.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In FR Doc. 83–19535, appearing on page 33478

in the Federal Register of Friday, July 22, 1983, the following correction is made:

§ 442.2116 [Corrected]

On page 33480, in the first column, in § 442.211b *Cefazolin sodium injection*, paragraph (b)(3) is corrected to read as follows: "Proceed as directed in § 436.32(a) of this chapter, except inject a sufficient volume of the undiluted solution to deliver 50 milligrams of cefazolin per kilogram."

Dated: December 4, 1984.

Sammie R. Young,

Acting Director, Office of Compliance.

[FR Doc. 84-32228 Filed 12-10-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 555

Chloramphenicol Drugs for Animal Use; Chloramphenicol Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by International Multifoods providing for safe and effective oral use of 50-milligram and 1-gram chloramphenicol tablets for treating dogs for certain bacterial infections.

EFFECTIVE DATE: December 11, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: International Multifoods, Multifoods Tower, Box 2942, Minneapolis, MN 55402, filed a supplement to NADA 55-059 which provides for use of 50-milligram and 1-gram chloramphenicol tablets in addition to currently approved 100-, 250-, and 500-milligram tablets for treating dogs for bacterial gastroenteritis associated with diarrhea, bacterial pulmonary infections, and bacterial urinary tract infections. The supplemental application is approved and the regulations are amended to reflect the approval.

Approval of the 100-milligram tablet was not previously published. Accordingly, the approval is added to the regulations at this time.

Because this application was originally approved before July 1, 1975 (40 FR 26273; June 23, 1975) and because this supplement does not change the approved use of the drug, the sponsor is not required to submit a summary of the safety and effectiveness data and information under the freedom of information provisions of the animal drug regulations in 21 CFR 514.11(e)(2)(ii). However, a summary of the basis for approval is available upon request in accordance with 21 CFR 514.11(e)(2)(i).

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 555

Animal drugs; Antibiotics, chloramphenicol.

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

§ 555.110a [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350-351 [21 U.S.C. 360b (i) and (n)]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 555.110a *Chloramphenicol tablets* is amended in paragraph (c)(2)(i) by revising the phrase "250 milligrams or 500 milligrams" to read "50, 100, 250, or 500 milligrams, or 1 gram."

Effective date. December 11, 1984.

(Sec. 512 (i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360 (i) and (n)))

Dated: December 4, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-32229 Filed 12-10-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs

31 CFR Part 129

Foreign Portfolio Investment Survey

AGENCY: Treasury.

ACTION: Notice of reporting requirements and availability of forms.

SUMMARY: By this notice the Treasury Department is informing the public that it is conducting a survey of foreign portfolio investment in the United States. All persons who meet the reporting requirements set forth in this Notice must report. Survey data is based on foreign holdings as of December 31, 1984, and reports are due at the Treasury by March 31, 1985. Any United States issuer of securities that meets the benchmark survey asset test for a routine large issuer and any United States holder of record that exceeds the exemption level for aggregate foreign holdings should contact the Treasury Department at the telephone number listed below to obtain a copy of the Forms and Instructions if its Chief Financial Officer has not yet received a copy.

FOR FURTHER INFORMATION CONTACT: Bertram Wolfe, Foreign Portfolio Investment Project, Office of the Assistant Secretary, International Affairs, U.S. Department of the Treasury, Washington, D.C. 20220, Telephone: (202) 566-5507.

SUPPLEMENTARY INFORMATION: The International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101, et seq.) as amended, [the "Act"], and E.O. 11961 of January 19, 1977, [42 FR 4321), as amended, require the Department of the Treasury to conduct periodic comprehensive surveys of foreign portfolio investment in the United States. Regulations governing the current Survey were published in the **Federal Register**, April 9, 1984, on pp. 14054-14057 (31 CFR Part 129 at pp. 339-344). The preamble to those regulations stated that the exemption levels would subsequently be published in the **Federal Register.**

Who Must Report and Exemption Levels

United States Issuers of Securities. The reporting obligations of United States issuers are governed by the following classifications:

Routine Large Issuer Reporters—Asset Test. A report is required on Form FPI-1 (Report for United States Issuers of Securities) from every United States business enterprise issuer (irrespective of whether it has evidence of foreign investment in its securities) which, as of the latest available closing date of its accounting records, had:

(1) Total consolidated assets of more than *$1 billion*, if it is a nonbanking business enterprise;

(2) Total consolidated assets of more than *$2 billion*, if it is a banking business enterprise.

Selective Small Issuer Reporters—Response Required When Contacted. A report on Form FPI-1 is also required from every United States issuer with total consolidated assets of at least $100 million that is informed by the Treasury Department that it must report.

Total Exemption—Asset Test. A report on Form FPI-1 is not required from any United States issuer who, as of the latest available closing date of its books, had total consolidated assets of less than $100 million.

Exempted Holders of Record. A report on Form FPI-2 (Report for United States Holders of Record) is not required from any holder of record who held, for all its foreign customers, combined investments in securities of United States issuers aggregating $10 million or less based on the fair market value as of December 31, 1984. This exemption does not apply to holders of record under common management or control, except where aggregate holdings of all holders of record under a single parent institution total $10 million or less.

Charles Schotta,

Deputy Assistant Secretary for Arabian Peninsula Affairs.

[FR Doc. 84-32419 Filed 12-10-84; 10:07 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-2734-4; EPA No. 1163]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: The State of Kansas submitted amendments to its State Implementation plan (SIP) pertaining to prevention of significant deterioration (PSD) on May 5, 1983. These Kansas regulations are contained in K.A.R. 28-19-17 through K.A.R. 28-19-17l. On October 28, 1983 (48 FR 49874), EPA published a notice in the **Federal Register** proposing to approve these rules except for K.A.R. 28-19-17l. EPA believes the Kansas regulations are approvable with the exception of part of K.A.R. 28-19-17a and K.A.R. 28-19-17l. The purpose of today's action is to approve the Kansas PSD regulation. The EPA received no public comments on the October 28, 1983, proposed rulemaking.

EFFECTIVE DATE: This action is effective January 10, 1985.

ADDRESSES: Copies of the State submission are available during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Room 1415, Kansas City, Missouri 64106;

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460;

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, at 816/374-3791, (FTS 758-3791).

SUPPLEMENTARY INFORMATION: The State of Kansas adopted regulations K.A.R. 28-19-17 through K.A.R. 28-19-17l relating to PSD for new and modified sources on December 13, 1982. These regulations were adopted after a public hearing on November 30, 1982, and a 30-day public notice of the hearing. These regulations were officially submitted by the Secretary of the Kansas Department of Health and Environment as a revision to the Kansas SIP on May 5, 1983. The State provided evidence that the public notification and public hearing requirements of 40 CFR 51.4 have been satisfied.

A detailed discussion of the provisions of the Kansas PSD regulations may be found at 48 FR 49874 (October 28, 1983). That **Federal Register** notice discussed two minor problems with the Kansas regulations. K.A.R. 28-19-17a(d) incorrectly attributes area classifications for PSD purposes (Class I, II and III) to the Administrator. This regulation should be changed to show that current area classifications for PSD purposes were established under section 162 of the Clean Air Act, as amended. K.A.R. 28-19-17(c) must be changed to reflect the fact that netting calculations must not consider decreases previously relied upon by EPA for PSD permits. This change is required by 40 CFR 52.21(b)(3)(iii). The State of Kansas provided written commitments on June 20, 1984, to make the necessary changes to these State regulations as quickly as possible. Newly adopted State regulations become effective on May 1st of each year; thus, EPA expects the State corrections on or shortly after May 1, 1985.

K.A.R. 28-19-17a contains definitions adopted by reference from 40 CFR 52.21(b) as amended by EPA on June 25, 1982 (47 FR 27554). Among other revisions, that rulemaking excluded vessel activities from the definition of "building, structure, facility or installation" at 52.21(b)(6). On January 17, 1984, the Court of Appeals for the D.C. Circuit overturned this revision. For that reason, EPA cannot fully approve the Kansas PSD regulations as they would apply to loading and unloading operations at marine terminals. In today's action, EPA is retaining authority under 52.21 for permitting terminal facilities and deferring action on the exclusion of vessel activities in the "building, structure, facility or installation" definition included in K.A.R. 28-19-17a until such time as EPA and then the State have an opportunity to revise the definition to conform to the Court ruling.

Action: EPA approves Kansas PSD regulations K.A.R. 28-19-17 and K.A.R. 28-19-17b through 28-19-17k. EPA approves the definitions in K.A.R. 28-19-17a, except for the exclusion of vessel activities in the definition of "building, structure, facility or installation." Applications for permits for marine terminal facilities must be submitted to EPA for approval. EPA will make a case-by-case determination of which emissions from vessel activities must be included in the source definition.

Kansas regulation K.A.R. 28-19-17l contains provisions which would approve the use of innovative control technology in lieu of best available control technology. The provisions of this State rule are inconsistent with 40 CFR 51.24(s) in that there is no provision for consent of the governor(s) of the other affected state(s). Inclusion of an allowance for innovative technology under 40 CFR 51.24(s) is optional for PSD SIPs. However, the regulation provides that, if a plan should allow for innovative technology, the consent of governors provision is a requirement.

Action: EPA disapproves K.A.R. 28-19-17l as part of the Kansas PSD SIP. Applications for permits pertaining to the use of innovative control technology must be submitted to EPA for approval.

40 CFR 52.884 authorizes EPA to regulate PSD sources in the State of Kansas. Today's action rescinds the EPA promulgated PSD regulations except for permit applications for new or modified marine terminals, sources wishing to use innovative control technology in lieu of best available control technology (BACT), and sources locating on Indian lands. These three permitting functions are retained by the EPA.

The proposed rulemaking at 48 FR 49874 proposed retention of 40 CFR 52.21(h) good engineering practice (GEP) stack height authority promulgated as part of the Kansas SIP at 40 CFR 52.884 until such time that the State adopts acceptable stack height regulations. The rationale was that the Kansas general stack height regulations at K.A.R. 28-19-

Region VII, Air Branch, 324 East 11th

that reason, EPA cannot fully approve

stack height regulations at K.A.R. 28-19-

18 contain exemptions inconsistent with the EPA stack height requirement in the PSD regulations at 40 CFR 52.21(h). EPA is not taking any action on Rule K.A.R. 28-19-18 in this rulemaking. Action on the Kansas stack height regulations will be delayed until EPA's general stack height regulation is revised as required by *Sierra Club and NRDC* v. *EPA*, 719 F 2d 436 (D.C. Cir., 1983).

On October 11, 1983, the U.S. Court of Appeals for the District of Columbia ordered EPA to reconsider portions of the stack height regulations for stationary sources. These regulations, which implemented Section 123 of the Clean Air Act, were published at 47 FR 5864 (February 8, 1982). In its decision, the Court of Appeals struck down two provisions of those regulations and remanded several other provisions to EPA for reconsideration.

EPA has developed an interim stack height policy. Under this program, Kansas will be issuing permits and establishing emission limitations that may be affected by required revisions to the stack height regulations. For this reason, EPA has requested that the State include the following caveat in all potentially affected permit approvals until the stack height regulations are revised by EPA:

In approving this permit, the Kansas Department of Health and Environment has determined that the application complies with EPA's proposed amended stack height regulations published on November 9, 1984 (49 FR 44878). Once EPA promulgates final amended stack height regulations pursuant to the court remand in *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983), this permit may be subject to modification. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

Kansas made a commitment to include this type of caveat in all affected permits by letter dated June 20, 1984. This letter is part of the SIP EPA is approving today.

Under Executive Order 12291, today's action is not "major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements.

This notice of final rulemaking is issued under authority of Section 110, Section 301 and Part C, Subpart 1 of the Clean Air Act, as amended.

Incorporation by reference of the State Implementation Plan for the State of Kansas was approved by the Director of the **Federal Register** on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Dated: December 5, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. Section 52.870 is amended by adding new paragraph (c)(16) to read as follows. The introductory text of (c) is shown for the convenience of the reader and remains unchanged.

§ 52.870 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(16) New regulations K.A.R. 28-19-17 through K.A.R. 28-19-171 applicable to stationary sources subject to prevention of significant deterioration (PSD) permit requirements were submitted on May 5, 1983. Regulation K.A.R. 28-19-171 pertaining to the use of innovative control technology is not approved. By letter dated June 20, 1984, the State of Kansas agrees to follow the EPA interim stack height policy for each PSD permit issued until such time as EPA revises its general stack height regulations.

2. Section 52.884 is revised to read as follows:

§ 52.884 Significant deterioration of air quality.

(a) The requirements of section 160 through 165 of the Clean Air Act, as amended are met; except that:

(1) EPA retains PSD permit authority for Indian lands in the State of Kansas;

(2) Stationary source owners or operators seeking permits using innovative control technology in lieu of best available control technology (BACT) must obtain PSD permits from EPA; and

(3) Owners or operators of marine terminals seeking to obtain PSD permits to build new or modify existing loading or unloading facilities in the State of Kansas must obtain such permits from EPA.

(b) *Regulations for preventing significant deterioration of air quality.* The provisions of § 52.21(h) *Stack heights* are incorporated and made part of the applicable state plan for the State of Kansas for all permitting activities. The provisions of § 52.21 (b) through (w) are incorporated and made part of the applicable state plan for the State of Kansas for purposes of EPA permitting.

[FR Doc. 84-32288 Filed 12-10-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[EC Docket No. 79-265]

Nighttime Power Limitations for Class IV AM Broadcast Stations; Effective Date

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action specifies the effective date for rule changes increasing the maximum nighttime power for Class IV AM stations, thereby making it possible for these stations to overcome interference problems. (April 13, 1984, 49 FR 14742).

EFFECTIVE DATE: December 15, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Order

In the matter of amendment of Part 73 of the Commission's Rules and Regulations Concerning the Nighttime Power Limitations for Class IV AM Broadcast Stations (BC Docket No. 79-265).

Adopted: November 30, 1984.

Released: December 3, 1984.

By the Chief, Mass Media Bureau.

1. On March 15, 1984, the Commission adopted a *Report and Order* in this proceeding amending the Commission's Rules to permit an increase in nighttime power for Class IV AM stations from the current maximum of 250 watts to 1,000 watts (1 kilowatt).

2. The new rules permit a four-fold nighttime power increase for Class IV stations, most of which now operate with a nighttime power of 250 watts. In addition, the Commission adopted special procedures to simplify the power increase process for most Class IV stations. For most Class IV stations (those that operate non-directionally daytime with 1 kw power) it will not be necessary to file an application to

obtain the power increase. Instead, the Commission issued Show Cause Orders modifying the station licenses to specify the higher nighttime power level. As a result, these stations already are in a position to increase power as soon as the rule change itself goes into effect. For the small group of Class IV stations which operates directionally or with less than 1 kw daytime, it will be necessary to file a minor change application in order to obtain the four-fold increase in nighttime power specified in the new rules. Once the application is granted, these stations will be in a position to increase power when the rules go into effect.

3. In adopting the new rules, the Commission noted that implementation of the power increase had to await completion of ongoing negotiations with Mexico regarding use the higher nighttime power. Once this was accomplished, the Commission needed to coordinate with Canada and Mexico regarding a date when Class IV stations in all three countries could increase power. This was to be announced in a further notice. In the meantime, the rule change was not put into effect.

4. The necessary agreements with Canada and Mexico have now been reached, and arrangements have been made with both countries for the power increase to take effect on December 15, 1984.[1] As a result, we can specify that as the date on which the rule goes into effect.[2] However, it is important to bear in mind that any needed application for power increase must be filed early enough that action on it can be taken before on December 15, 1984.

5. Accordingly, it is ordered, that the amendments to Sections 73.21, 73.27, 73.182 and 73.3571 specified in the *Report and Order* in this proceeding are effective December 15, 1984.

6. For further information on these matters, please call Larry Olson, telephone (202) 632-6955, or Jonathan David, telephone (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303))

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 84-32219 Filed 12-10-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Ten U.S. stations will be briefly delayed in obtaining full power increase. On December 15, 1984, they will be able to double their nighttime power to 500 watts, and no by later than July 15, 1985, they will be able to obtain the full nighttime power increase. This brief delay in the full power increase is necessary in order to provide an opportunity for specified Mexican stations, to which they are linked, to acquire facilities for 1,000 watts of operation.

The stations are as follows:

1240 kHz	KSON	San Diego, California
1240 kHz	KSOX	Raymondville, Texas
1340 kHz	KOLE	Port Arthur, Texas
1400 kHz	KAAP	Santa Paula, California
1400 kHz	KTUC	Tucson, Arizona
1450 kHz	KDAP	Douglas, Arizona
1450 kHz	KFLT	Tucson, Arizona
1490 kHz	KAIR	Tucson, Arizona
1490 kHz	KIBL	Beeville, Texas
1490 kHz	KVOZ	Laredo, Texas

[2] Pursuant to 5 U.S.C. 553(d), it is not necessary to wait 30 days following publication of this *Order* before putting the rule into effect because this rule change relieves a restriction. Moreover, ample notice has been given of the rule change itself by the publication of the *Report and Order* making the change.

47 CFR Part 83

[PR Docket No. 84-29; RM 4559; FCC 84-553]

Update of Commission's Rules Governing Requirements for Radiotelegraph Auto Alarm Receivers, Automatic-Alarm-Signal Keying Devices and Ship Radar Installations in the Maritime Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action responds to a petition for rulemaking filed by SAIT Incorporated. The petitioner requested that the Commission's rules be amended to bring the requirements of radiotelegraph auto alarm receivers into conformance with those of other maritime nations to preclude dual equipment inventories and production lines. In response to the petition, the Commission is adopting new standards for radiotelegraph auto alarm receivers while permitting equipment currently in service to be used for an indefinite period. This item also changes laboratory test requirements applicable to radiotelegraph automatic-alarm-signal keying devices and specifications for ship radar installations. The intended effect of this action is to establish equipment standards which promote efficient use of the spectrum with no adverse impact upon safety considerations, to establish equipment requirements consistent with modern technology, and to provide for more standardized ship radar specifications.

DATE: Effective January 7, 1985.

FOR FURTHER INFORMATION CONTACT: Robert H. McNamara, Private Radio Bureau, (202) 632-7175.

List of Subjects in 47 CFR Part 83

Communication equipment, Marine safety, Radio, Ship stations, Telegraph, Vessels.

Report and Order (Proceeding Terminated)

In the matter of Requirements for radiotelegraph auto alarm receivers, radiotelegraph automatic-alarm-signal keying devices and ship radar installations in the Maritime Mobile Service (PR Docket No. 84-29 RM-4559).

Adopted: November 21, 1984.

Released: November 29, 1984.

By the Commission:

1. In this Report and Order we are amending Part 83 of our rules regarding the requirements for radiotelegraph auto alarm receivers, radiotelegraph automatic-alarm-signal keying devices and ship radar installations in the Maritime Mobile Service.

Auto Alarm Receiver

2. Cargo ships subject to the radiotelegraph provisions of Title III, Part II of the Communications Act of 1934, as amended, which carry only one radio officer, are required by the Act to be fitted with radiotelegraph auto alarm receivers. Such auto alarm receivers are required to be capable of receiving radiotelegraph signals transmitted on 500 kHz, the international distress and calling frequency, and to be in operation when the radio officer is not on watch.

3. The Commission's rules currently mandate that a radiotelegraph auto alarm receiver respond without adjustment and with the same sensitivity to signals on the frequencies from 492 kHz to 508 kHz inclusive. This provision has been in existence for many years and is based upon the Safety of Life at Sea (SOLAS) Convention Regulations. The SOLAS regulations are flexible in that they provide for uniform sensitivity over a band extending not less than 4 kHz and not more than 8 kHz on each side of the frequency 500 kHz. As indicated, the Commission's rules specify the maximum bandwidth allowable.

The World Administrative Radio Conference (WARC), Geneva, 1979 adopted a 10 kHz guardband from 495 kHz to 505 kHz for the frequency 500 kHz.[1] The rationale for this action was that technical progress has led to the production of more stable and reliable equipment and that the radio frequency spectrum should be used in the most efficient way possible. While the date of entry into force for the new guardband arrangement has not been established, plans are being made to establish such a date, not earlier than January 1, 1990, at

[1] See Recommendation 200 of the World Administrative Radio Conference, Geneva, 1979.

State Implementation Plan for the State of Kansas for all permitting activities.

necessary to file an application to

change.

Vessels.

Administrative Radio Conference, Geneva, 1979.

the next competent WARC scheduled for 1987.[2]

4. In response to a petition filed by SAIT Incorporated (RM-4559) the Commission proposed to require auto alarm receivers submitted for type approval in the future to conform with the new 10 kHz guardband arrangement adopted by the 1979 WARC.[3] Such receivers would be less susceptible to interference while continuing to be consistent with SOLAS Regulations. Further, the proposal would eliminate the need for some manufacturers to maintain two inventories and two production lines for equipment to meet the requirements of both United States and foreign flag vessels. The intent was to initiate the implementation of new standards which would promote efficient use of the spectrum with no adverse impact on safety.

5. Although no cut-off date to preclude the installation of existing auto alarm receivers was proposed, comments concerning this issue were requested. Additionally, the NPRM proposed to delete the requirement for manufacturers' tests and the FCC laboratory test procedures. The design specifications previously found in the manufacturers' tests and the FCC laboratory test procedures were incorporated into the auto alarm technical requirements. The FCC laboratory test procedures would be issued in the form of an Office of Science and Technology Bulletin.

6. The Radio Officers Union, District 3 of the National Marine Engineers' Beneficial Association (ROU) filed the only comments addressing the proposed changes in the auto alarm receiver rules. ROU opposes implementing the 10 kHz guardband arrangement at this time. It argues that although establishing requirements consistent with "modern technology" is a worthy goal, many foreign ships and coast stations still operate radiotelegraph equipment built in the 1930's and 1940's. ROU states that because this equipment does not have a high degree of frequency stability, auto alarms must be as broadly tuned as practicable to ensure reception of off-frequency distress signals until the older equipment is completely phased out. ROU feels it would be premature for the Commission to amend the rules until an implementation date for the 10 kHz guardband is fixed by the next competent WARC. Further, ROU sees no merit in considering any production inconvenience the current rules impose on foreign manufacturers such as the petitioner. It argues that it is simple and inexpensive to modify auto alarm receivers to broaden the frequency response range.

7. In view of ROU's comments, we conclude that there is no need to establish a cut-off date after which the installation of currently type approved auto alarm receivers would no longer be authorized. Consideration of any such action will be appropriate after the international implementation date is fixed by the next mobile WARC. However, we believe it is appropriate to require that auto alarm receivers type approved in the future conform to the more spectrum efficient 10 kHz guardband arrangement. This represents a logicial first step in the gradual implementation of a technical standard which will be required by the International Radio Regulations. This action will permit the continued production and installation of currently type approved auto alarm receivers on U.S. ships. It will also allow the production and installation of auto alarm receivers conforming to the new 10 kHz guardband arrangement which will become mandatory sometime after January 1, 1990. Since such auto alarm receivers meet the requirements of SOLAS and are now utilized on foreign vessels safety will not be adversely impacted. Accordingly, we are amending §§ 83.453, 83.554, 83.555, 83.556 and 83.557 of the rules concerning auto-alarm receivers as proposed.

Automatic-Alarm-Signal Keyer

8. The automatic-alarm-signal keyer is required to be fitted on board large oceangoing ships.[4] The function of the automatic-alarm-signal keyer is to generate the radiotelegraph alarm signal and to provide a means to key this alarm signal into the 500 kHz main or reserve transmitter.

9. The output of the automatic-alarm-signal keyer contains a relay, the contacts of which must be capable of carrying the current and voltage used in the keying circuits of shipboard transmitters. Section 83.555 of the Commission's rules provides that such equipment shall be tested for a direct current carrying capacity of two amperes through a noninductive resistance of 115 ohms. The keying circuits of automatic-alarm-signal keyers used on nearly all newly installed shipboard main and reserve transmitters are designed to operate at 12 and/or 24 volts of direct current with a carrying capacity of less than 0.5 amperes (500 milliamperes). Therefore, the two ampere, 115 ohm test required by the rules appeared to be out-dated.

10. In the NPRM in this proceeding the Commission proposed new technical requirements with respect to the current and voltage capacity of the output relay of automatic-alarm-signal keyers while retaining provisions in the rules for those cases involving more demanding shipboard transmitters. Specifically, the standard contained in § 83.555(c)(5)(i) of the rules was proposed to be amended (see new § 83.562(i)) to require the transmitter keying circuit of the device to have a direct current carrying capacity of 2.0 amperes through a noninductive resistance of 115 ohms, or 0.75 amperes through a noninductive resistance of 32 ohms, whichever is appropriate. This standard would ensure that the keying circuit of type approved automatic-alarm-signal keyers would be sufficient to key all type approved shipboard transmitters.

11. In addition the rules applicable to the automatic-alarm-signal keyer were proposed to be amended by removing the requirement for manufacturers' tests and the FCC laboratory test procedures. The design specifications previously found in the manufacturers' tests and the FCC laboratory test procedures were incorporated into the automatic-alarm-signal keyer technical requirements. The FCC laboratory test procedures would be issued by the Commission in the form of an Office of Science and Technology Bulletin.

12. ROU supported the proposed rule changes. No other comments addressed this issue. For the reasons stated above we are amending §§ 83.451, 83.561, 83.562, and 83.564 to update the rules concerning radiotelegraph automatic-alarm-signal keyers as proposed.

Ship Radar

13. Ship radar specifications are incorporated in the rules by reference to the Radio Technical Commission for Marine Services (RTCM) Final Report of Special Committee No. 65—Ship Radar. Change 1 to Volume II of the Final Report amended the performance specifications for new radar installations on board oceangoing ships of at least 1600 gross tons. The net result of the change is that the RCTM radar specifications now meet or exceed the International Maritime Organization's (IMO) performance standards for radar equipment as contained in IMO Resolution A.477 (XII) adopted November 19, 1981. The NPRM proposed to amend §§ 83.405 and 83.465 to consolidate provisions applicable to ship radar stations and to incorporate the RTCM Change 1 into the radar performance specifications.

14. ROU supported the proposed changes in ship radar specifications. The Sperry Corporation also filed comments. Sperry previously filed a petition for rulemaking (RM-4779) relating to radar reliability testing requirements. Sperry's comments are germane to their petition rather than to this proceeding. Therefore, Sperry's comments are beyond the scope of this proceeding. The merits of Sperry's petition for rulemaking will be addressed in a separate proceeding.

15. For the reasons given above we are amending §§ 83.405 and 83.465 to incorporate Change 1 into the radar performance specifications and consolidate provisions applicable to ship radar stations as proposed in the NPRM.

Conclusion

16. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that these rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. These rule amendments concern certain radiotelegraph and radar equipment required by law to be carried on board large oceangoing ships for safety purposes. No equipment now in service will be affected by the new rules and no small entities manufacture the subject types of specialized marine equipment.

17. The amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

18. Accordingly, It is ordered, That under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the Commission's rules are amended as set forth in the attached Appendix, effective January 7, 1985.

19. It is further ordered, That a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

20. It is further ordered, That this proceeding is terminated.

21. For further questions on matters covered in this document, contact Robert McNamara, (202) 632-7175.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

§ 83.141 [Amended]

1. In § 83.141, the reference to "§ 83.557(b)(4)(i), (ii), (v) and (vi)" in paragraph (c) is revised to read "§ 83.568(b)(4)(i), (ii), (v) and (vi)".

2. Section 83.405 is amended by revising paragraphs (b)(1) and (b)(3)(vi), as shown below, and by removing the hyphen between "ship" and "radar" in paragraph (c).

§ 83.405 Special provisions applicable to ship radar stations.

* * * * *

(b) * * *

(1) The station licensee of each ship radar station shall provide and require to be kept at the station a permanent installation and maintenance record. Entries in this record shall be made by or under the personal direction of the responsible installation, service, or maintenance operator concerned in each particular instance, and the station licensee shall have joint responsibility with the responsible operator for the accurate making or required entries.

* * * * *

(3) * * *

(vi) An entry shall be made without undue delay in the ship radar station log whenever:

(A) the radar becomes inoperative or its output becomes in any way suspect;

(B) a radar fault is cleared (including the means by which the clearance was accomplished); or

(C) any maintenance is carried out.

* * * * *

8. Section 83.443 is amended by revising paragraph (a) to read as follows:

§ 83.443 Radio installations.

(a) The main radiotelegraph installation includes a main transmitter, a main receiver, a main power supply, a main antenna system, and a radiotelephone distress frequency watch receiver.

* * * * *

§ 83.444 [Amended]

4. Section 83.444 is amended by removing paragraph (h) and its footnote.

§ 83.445 [Amended]

5. Section 83.445 is amended by removing the Footnote 1 symbol following the section heading and by removing the associated Footnote 1.

§ 83.451 [Amended]

6. In § 83.451, the reference "§ 83.555" is revised to read "§ 83.561".

7. Section 83.453 is amended by revising paragraph (b) to read as follows:

§ 83.453 Radiotelegraph auto alarm.

* * * * *

(b) The following radiotelegraph auto alarms are acceptable for use pursuant to § 83.205:

(1) A radiotelegraph auto alarm that was type approved by the Commission, prior to (effective date of Report and Order associated with this rulemaking item).

(2) A radiotelegraph auto alarm that was type approved by the Commission subsequent to (effective date of Report and Order associated with this rulemaking item), pursuant to § 83.554, to be compatible with a 10 kHz guardband.

* * * * *

§§ 83.463a, 83.464 [Amended]

8. Section 83.464 is removed and § 83.463a is redesignated § 83.464.

9. Section 83.465 and its heading are revised to read as follows:

§ 83.465 Radar installation requirements and specifications.

(a) On ships between 500 and 1,600 gross tons that are constructed on or after September 1, 1984, and are engaged in international voyages all compulsorily installed ship radar must comply with Regulation 12, Chapter V of the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended. Performance standards must not be inferior to recommendations in IMO Resolution A.477(XII).

(b) On ships over 1,600 gross tons all radar installations provided to meet the requirements of SOLAS shall comply with the following requirements in addition to all other applicable requirements of Part 83:

(1) The main display position of the radar station shall be located in the wheelhouse and the radar shall be capable of being switched on and off and operated from that position.

(2) A reflection plotter shall be available and facilities for plotting provided as necessary.

(c) On ships over 1,600 gross tons all compulsorily installed ship radar stations shall, in addition to meeting all

---

[2] See Resolution COM 4/5 of the World Administrative Radio Conference for Mobile Services, Geneva, 1983.

[3] *Notice of Proposed Rule Making* (NPRM), PR Docket No. 84-29, released February 3, 1984, 49 FR [illegible].

[4] The requirement is applicable to ships subject to Title III, Part II of the Communications Act of 1934, as amended, 47 U.S.C. 351-364.

other relevant provisions of this chapter, comply with the applicable radar specifications issued by the Radio Technical Commission for Marine Services under date of July 18, 1978, as given in the Final Report of Special Committee No. 65–Ship Radar, as amended by Change 1 to Volume II. These requirements took effect on April 27, 1981, and were not retroactive. These specifications may be obtained from the commercial duplication firm awarded a contract by the Commission to make copies of Commission records and offer them for sale to the public. The name and address of the current Contractor is contained in Section 0.465 of the Commission rules. The applicable specifications are as follows:

(1) For radar equipment installed after May 25, 1980, the applicable document is entitled "Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Ships of 1600 Tons Gross Tonnage and Upwards, For New Radar Installations." This specification including its Appendix A—Design and Testing Specifications—may be found in Part I of Volume II of the SC–65 Final Report.

(2) For equipment installed before May 25, 1980, the applicable document is entitled "Performance Specification for a General Purpose Navigational Radar Set For Oceangoing Ships of 1600 Tons Gross Tonnage and Upwards For Ships Already Fitted." This specification may be found in Part II of Volume II of the SC–65 Final Report.

(3) Recommendations for tools, test instruments, spares and technical manuals may be found in Appendixes I, II, III and IV of Part IV of Volume III of the SC–65 Final Report.

(4) Specifications for reliability testing may be found in Part V of Volume III of the SC–65 Final Report under the title "Equipment Reliability Specification for Design and Production of Radar, Collision Avoidance, and Marine Radar Interrogator-Transponder Equipment".

§ 83.467 [Amended]

10. In § 83.467, the reference "§ 8.466" is revised to read § 83.466".

§ 83.469 [Amended]

11. In § 83.469, the reference to "§§ 83.556 and 83.558" in paragraph (b) is revised to read "§§ 83.567 and 83.569".

§ 83.472 [Amended]

12. In § 83.472, the reference to "§§ 83.556 and 83.557" in paragraph (a) is revised to read "§§ 83.567 and 83.568", and the reference to "§ 83.557" in paragraph (c) is revised to read "§ 83.568".

§ 83.488 [Amended]

13. In § 83.488, the reference to "§ 83.559" is revised to read "§ 83.570".

14. Section 83.554 is revised to read as follows:

§ 83.554 Requirements for radiotelegraph auto alarm.

(a) To be type approved by the Commission pursuant to section 3(x) of the Communications Act, radiotelegraph auto alarms must comply with the requirements contained in §§ 83.555 through 83.557 of the Commission's rules.

(b) No change may be made in any auto alarm under the type approval authorization issued by the Commission, except as specifically authorized by the Commission. An application with pertinent detailed information must be submitted to the Commission for consideration and action before making any change in an auto alarm.

15. Section 83.555 is revised to read as follows:

§ 83.555 Basic technical requirements for radiotelegraph for auto alarm.

(a) The auto alarm shall be capable of being operated by four consecutive dashes when the dashes vary in length from 5.0 to 3.5 seconds, and the intervening spaces vary in length between 1.5 seconds and 10 milliseconds.[1] It shall not respond to dashes longer than 6.31 seconds or shorter than 3.33 seconds, nor to spaces longer than 1.58 seconds or shorter than 5 milliseconds except as follows:

(1) Auto alarms of the non-digital type employing resistance-capacitance timing covered by type approval granted before October 1, 1969, and placed in service on or before January 1, 1975, need only satisfy the following limits: the auto alarm shall not respond to dashes longer than 7.40 seconds or shorter than 2.80 seconds, nor to spaces longer than 1.80 seconds or shorter than 5 milliseconds.

(2) Auto alarms of the digital type employing a stable clock as the basic timing device covered by type approval granted before May 1, 1968, and placed in service on or before December 1, 1975, may accept dashes whose lower limit extends down to 3.0 seconds.[1]

(b) In the absence of any interference, without manual adjustment during operation, the auto alarm must be capable of positive and reliable operation with a minimum available signal of 100 microvolts RMS applied to an artificial antenna consisting of a 20 microhenry inductance, a 500 picofarad capacitor, and a 5 ohm resistor connected in series. It must be capable under these conditions of operation on signals of the following classes of emission:

(1) A1;

(2) A2 (carrier modulated at any modulation percentage from 30 through 100 percent at any modulation frequency from 300 through 1350 Hertz);

(3) A2H (carrier keyed and emitted at any power level from 3 through 6 decibels below peak envelope power, modulated at any modulation frequency from 300 through 1350 Hertz).

(c) The overload capacity must enable the auto alarm to operate with signal levels up to 1 volt under normal operating conditions.

(d) The auto alarm must respond to the alarm signal through non-continuous interference caused by atmospherics and powerful signals other than the alarm signal. In the presence of atmospherics or interfering signals, the auto alarm must automatically adjust itself within a reasonable time to the condition in which it can most readily distinguish the alarm signal.

(e) The auto alarm receiver must be capable of operating when the received alarm signals have a frequency of 500 kHz with sensitivity as set forth in paragraph (b) of this section and must respond, without adjustment, with practically uniform sensitivity to signals over a band extending no less than 4 kHz on each side of the 500 kHz radiotelegraph frequency and with a minimum attenuation of:

6 db at 495.0 kHz and 505.0 kHz
40 db at 487.0 kHz and 513.0 kHz
80 db at 475.0 kHz and 525.0 kHz

(f) The auto alarm warning device must not be activated by atmospherics or by any signal from the antenna circuit other than the alarm signal.

(g) When the auto alarm is activated by a valid alarm signal, it must cause a continuous audible warning to be given in the radiotelegraph operating room, in the radio operator's cabin and on the bridge. Insofar as may be practicable, the audible alarm must also be given in the event of any failure of the auto alarm system, as a whole, which results in the auto alarm becoming inoperative.

(h) For the purpose of regularly testing the auto alarm without connection to the antenna, the apparatus must include a generator pretuned to the 500 kHz distress frequency and a keying device by means of which an alarm signal of minimum strength as indicated in paragraph (b) of this section is produced solely for actuating the particular auto alarm and is not radiated beyond the immediate area of the vessel.

[1] The acceptability of an auto alarm during field inspection under the limits specified in this exception will be determined in the absence of any interference.

§§ 83.556, 83.557, 83.558, 83.559 [Redesignated as §§ 83.567, 83.568, 83.569 and 83.570]

16. Sections 83.556, 83.557, 83.558 and 83.559 are redesignated as §§ 83.567, 83.568, 83.569 and 83.570, respectively. In the newly designated § 83.567, the reference to "§ 83.557 and 83.558" in the introductory text is revised to read "§§ 83.568 and 83.569".

17. A new § 83.556 is revised to read as follows:

§ 83.556 Requirements for radiotelegraph auto alarm manufacture.

(a) The auto alarm shall consist of:

(1) A radio receiver capable of receiving emissions of classes A1, A2 and A2H over the entire frequency range 496 through 504 kHz.

(i) The receiver must reject signals +106 dB/uv at ±150 kHz from the center frequency and +88 dB/uv at ±40 kHz from the center frequency.

(ii) The receiver must respond to signals from 100 microvolts to 1 volt on the center frequency. There must be less than 6 db variation in sensitivity from 496 kHz through 504 kHz.

(2) A device capable of selecting the alarm signal specified under paragraph (a) and (b) § 83.555.

(3) An audible alarm (minimum of 3 units, to meet the three location installation requirements of § 83.555(g)).

(4) A testing device to determine locally that the auto alarm system is operative.

(b) The auto alarm may be constructed in one or more units, but must be independent of the ship's regular radio receiving apparatus.

(c) A telephone jack must be provided to permit reception by a telephone receiver.

(d) Tuning and timing controls must not be accessible to the exterior of the device and must permit adjustment only by special tools designed solely for this purpose.

(e) Once set into operation the audible alarms must continue to function until switched off in the principal radiotelegraph operating room.

(f) A nonlocking or momentary-throw switch must be provided to permit temporary disconnection of the audible alarm on the bridge and in the operator's quarters when the auto alarm system is being tested.

(g) Failure of the auto alarm power supply must activate the aural warning device.

(h) The auto alarm system must operate within the sensitivity specifications throughout the temperature range 0–50 degrees Celsius at relative humidities as high as 95%.

(i) Condensers, transformers, or other units must not contain compounds which will flow at temperatures below 85 degrees Celsius, which will crack at temperatures above 0° Celsius, which are hygroscopic or which contain any corrosive substance.

(j) Provisions must be made to protect the auto alarm system from excessive currents, power supply reversals and voltage variations which could cause damage to any component.

(k) The auto alarm must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.03 inch in a direction at an angle of 30 to 40 degrees with the base of the auto alarm.

18. A new § 83.557 is revised to read as follows:

§ 83.557 Requirements for testing and approval of radiotelegraph auto alarm.

Auto alarm receivers must be type approved by the Commission. Application for type approval may be made by following the procedure set forth in Subpart J of Part 2 of the Commission's rules. The type approval procedure requires, among other things, that a working unit of the type for which approval is desired must be submitted to the Commission for testing. Such tests will be conducted by the Commission and other cooperating United States Government agencies as may be appropriate.

19. A new § 83.561 is added to read as follows:

§ 83.561 Requirements for automatic-alarm-signal keying device.

(a) To be approved by the Commission for use as specified in §§ 83.451 and 83.452, each type of automatic-alarm-signal keying device must comply with the requirements contained in §§ 83.562 and 83.564.

(b) No change may be made in any automatic-alarm-keying device under the type approval authorization issued by the Commission, except as specifically authorized by the Commission. An application with pertinent detailed information must be submitted to the Commission for consideration and action before making any change in an automatic-alarm-keying device.

20. A new § 83.562 is added to read as follows:

§ 83.562 Technical requirements for automatic-alarm-signal keying device.

(a) The automatic-alarm-signal keying device may consist of one or more units.

(b) The device must be designed to activate the keying circuits of any transmitter approved by the Commission for use as a main or reserve transmitter in compliance with section 355 of the Communications Act of 1934, as amended.

(c) Timing-adjustment controls must not be accessible from the exterior of the device and must be designed and housed so as to prevent adjustment by unauthorized persons.

(d) The keying mechanism must be able to repeatedly transmit the alarm signal. For this purpose the dashes transmitted must have a duration of 3.8 to 4.2 seconds, and spaces between each of the twelve dashes constituting a series must have a duration of 0.8 to 1.2 seconds. Spaces between each series of twelve dashes must have a duration of 0.8 second to one minute. This operation must be sustainable with power supply voltage variations of ±15%.

(e) A single control, protected to avoid accidental manipulation, must be provided for placing the device into full operation within a maximum period of 30 seconds. Once in operation, the device must be capable of continuous operation without attention for a least one hour.

(f) The automatic-alarm-signal keying device must be capable of operation from the ship's reserve source of electrical energy.

(g) Instructions concerning the proper adjustment of the device and the correct indication of any instrument incorporated to reveal improper operation must be inscribed in a durable manner on a plate mounted on the device in a position to be easily read by the operator.

(h) Means must be provided to insure that when the "on-off" control of the device is placed in the "off" position, the keying circuit to the radio transmitter(s) is automatically opened.

(i) The keying circuit must be capable of switching 0.75 amperes DC through a non-inductive resistance of 32 ohms. If the automatic alarm-signal-keying device is also intended to be usable in conjunction with transmitters requiring a keying circuit capability of 2 amperes DC through 115 ohms non-inductive resistance, the keying circuit of the device shall comply with this latter requirement.

(j) The automatic-alarm-signal keying device must operate within specifications throughout the temperature range 0–50 degrees Celsius at relative humidities as high as 95%.

(k) Provisions must be made to protect the automatic alarm-signal-keying device from excessive currents, power supply reversals and voltage variations

which could cause damage to any component.

(l) The automatic alarm-signal-keying device must be capable of operating when subjected to vibrations having a frequency between 20 and 30 Hertz and an amplitude of 0.03 inch in a direction at an angle of 30 to 40 degrees with the base of the automatic alarm-signal-keying device.

21. A new § 83.564 is added to read as follows:

§ 83.564 Requirements for testing and approval of automatic alarm-signal-keying device.

Automatic alarm-signal-keying devices must be type approved by the Commission. Application for type approval may be made by following the procedure set forth in Subpart J of Part 2 of the Commission's rules. The type approval procedure requires, among other things, that a working unit of the type for which approval is desired must be submitted to the Commission for testing. Such tests will be conducted by the Commission and other cooperating United States Government agencies as may be appropriate.

[FR Doc. 84-31758 Filed 12-10-84; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 49, No. 239
Tuesday, December 11, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

41 CFR Part 16–4

Federal Employees Health Benefits Program; Special Types and Methods of Procurement

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management proposes to require the submission of comprehensive medical plan applications and supporting documents 2 months earlier than is now required. This change would enable the Office to make decisions on new applications before the deadline for submitting benefit and rate proposals.

DATE: Comments must be received on or before January 10, 1985.

ADDRESS: Written comments may be sent to Lucretia F. Myers, Office of Pay and Benefits Policy, Compensation Group Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044, or delivered to OPM Room 4351, 1900 E. Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632–9677.

SUPPLEMENTARY INFORMATION: The proposed regulations would change the deadline for new comprehensive medical plans to apply for participation in the Federal Employees Health Benefits (FEHB) Program. Each year, OPM accepts applications from comprehensive medical plans seeking to participate in the FEHB Program. Currently, for a plan to be offered during the next open season, an application has to be submitted by March 31, and all documentation to support approval must be submitted by May 31. May 31 also is the deadline for plans already in the Program to submit benefit and rate proposals.

Thus, the application review process currently overlaps with benefit and rate negotiations. To afford the opportunity to make decisions on new applications, and to provide time for newly-admitted carriers to formalize benefit and rate packages before the deadline for submitting benefit and rate proposals, OPM proposes to amend 5 CFR Part 890 and 41 CFR Part 16–4 to change the dates for submitting new applications and supporting documents to January 31 and March 31, respectively, of the year preceding the contract year. OPM has determined that, in view of the need to commence decision-making for the future of the FEHB program early in calendar year 1985, a thirty-day comment period is necessary and appropriate. It will accord an adequate period for interested parties to comment on this proposed change in application procedures.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations won't have a significant economic impact on a substantial number of small entities because they would only change the submission dates of applications from comprehensive medical plans for participation in the FEHB Program.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

41 CFR Part 16–4

Government employees, Government procurement, Health insurance.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 and 41 CFR 16–4 as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913, unless otherwise noted.

2. In § 890.203, paragraph (a)(1) is revised to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a) (1) Comprehensive medical plans should apply for approval by writing to the Office of Personnel Management, Washington, D.C. 20415. Application letters must be accompanied by any descriptive material, financial data, or other documentation required by OPM. Plans must submit the letter and attachments in the OPM-specified format by January 31 of the year preceding the contract year. They must submit evidence demonstrating they meet all requirements for approval by March 31 of the year preceding the contract year. Plans that miss either deadline cannot be considered for participation in the next contract year. All newly approved plans must submit benefit and rate proposals to OPM by May 31 of the year preceding the contract year to be considered for participation in that contract year. OPM may make counterproposals at any time.

* * * * *

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

PART 16–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

3. The authority for Part 16–4 is revised to read as follows:

Authority: 40 U.S.C. 486(c).

4. § 16–4.152–3 is revised to read as follows:

§ 16–4.152–3 Applications to participate in the FEHB program.

Under 5 CFR 890.203(a)(1), applications from comprehensive medical plans seeking participation in the FEHBP must be submitted by January 31 of the year preceding the contract year. Benefit and rate proposals for new plans must be submitted by May 31 of the year preceding the contract year unless the Director of OPM determines that a later submission date is acceptable. In its solicitation for new plans, OPM will request detailed information from each carrier expressing interest in participating in the FEHBP. The Office of the Assistant

Director for Insurance Programs will evaluate the information received as provided in 5 U.S.C. chapter 89, 5 CFR Part 890, and this Chapter 16. The contracting officer will notify carriers that meet these requirements of their approval to participate in the FEHBP during the following contract year. Since each application is considered on its own merits, there is no competition between offers as is the case in other types of procurements. OPM will seek to complete all benefits and rate negotiations by September 30 of the year preceding the contract year.

[FR Doc. 84-31883 Filed 12-10-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Bermuda-Granex-Grano Type Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would amend the voluntary United States Standards for Grades of Bermuda-Granex-Grano Type Onions. Industry has requested that the size requirements of the standards be revised to bring them in line with current marketing practices.

DATE: Comments must be received on or before January 10, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Hearing Clerk, U.S. Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as "nonmajor". It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because it reflects current marketing practices.

The voluntary United States Standards for Grades of Bermuda-Granex-Grano (BGG) Type Onions became effective in 1960 and were amended in 1962. The South Texas Onion Committee, with the support of the National Onion Association and the Texas Citrus and Vegetable Association, has requested that § 51.3199 paragraph (a) be amended to bring size requirements in line with current commercial marketing practices.

This proposal, which is designed to reflect sizing practices currently utilized by onion shippers and repackers throughout the country, would revise the size requirements as follows:

(a) Unless otherwise specified, BGG onions would be required to have a minimum diameter of 1½ inches, with 60 percent or more 2 inches or larger in diameter. This size would become the basic requirement of all BGG grades and would generally apply to straight-run packs in which the larger sizes have not been removed. It would establish the same minimum diameter required for onions commonly known as "Northern grown" types.

(b) A "Repacker" size classification would be added to the standards. It would require a diameter size range of 1¾ to 3 inches with 60 percent or more 2 inches or larger.

(c) The maximum size for "Medium" classification would be increased from 3¼ to 3½ inches.

(d) The term "Jumbo" would be added as an alternate to the size designation "Large," and the current requirement of "not less than 10 percent over 3½ inches" would be deleted. The minimum diameter required for "Jumbo" or "Large" would be 3 inches. These changes would bring the terminology and requirements for BGG onions generally in line with those applied to Northern grown types.

These above classifications are widely used in trading and for a number of years have been recognized under the Marketing Order for South Texas Onions.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

Accordingly, Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–51.3209) would be amended as follows:

In § 51.3199, paragraph (a) is revised to read:

§ 51.3199 Size.

(a) Size shall be specified in connection with the grade in terms of minimum diameter, range in diameter, minimum diameter with a percentage of a certain size or larger, or in accordance with one of the size classifications listed below; *Provided*, That, unless otherwise specified, onions shall not be less than 1½ inches in diameter, with 60 percent or more 2 inches or larger in diameter.

(1) "Small" shall be from 1 to 2¼ inches in diameter;

(2) "Repacker" shall be from 1¾ to 3 inches in diameter, with 60 percent or more 2 inches or larger in diameter;

(3) "Medium" shall be from 2 to 3½ inches in diameter; and,

(4) "Large" or "Jumbo" shall be 3 inches or larger in diameter.

* * * * *

(Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624)

Done at Washington, D.C. on: December 4, 1984.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 84-32253 Filed 12-10-84; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 989

[Docket No. F&V AO-196-A-12]

Raisins Produced From Grapes Grown in California; Decision and Referendum Order on Proposed Further Amendment of the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes an amendment of the Federal marketing agreement and order for raisins produced from grapes grown in California. The proposed amendment would: (1) Add authority for a Raisin Diversion Program (RDP); (2) increase the desirable carryout for Natural (sun-dried) Seedless (NS) raisins; and (3) make other technical changes necessary because of the proposed diversion program. The diversion program would give the industry a means of reducing raisin production by decreasing the quantity of raisin grapes grown for drying into raisins to bring the raisin supply more closely in line with market needs. The industry is facing severe problems because of two extraordinarily large crops in succession (1983 and 1984) well in excess of market needs, and disruptions in the raisin export and wine sectors of the grape industry. Because of these problems, land values for raisin vineyards have dropped dramatically, many producers may be unable to continue their lines of credit, and some producers may go bankrupt. The increase in the desirable carryout would make more natural seedless raisins from the prior year's production available for early season shipment until new crop raisins are ready for processing and shipment. The increased desirable carryout is intended to assist the industry increase raisin shipments. The proposed changes are expected to improve the effectiveness and operation of the marketing order program. Raisin producers will vote in a referendum to determine whether they favor issuance of the proposed changes.

DATE: The representative period for purposes of the referendum herein ordered is August 1, 1983, to July 31, 1984.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250. Telephone (202) 447-5053.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued September 20, 1984, and published September 24, 1984 (49 FR 37424).

This administrative action is governed by provisions of Section 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291 and Secretary's Memorandum 1512-1.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

Preliminary Statement

A public hearing was held on October 2, 1984, in Fresno, California on a proposed amendment of the marketing agreement, and Order No. 989, both as amended (7 CFR Part 989). The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Notice of this hearing was published in the **Federal Register** on September 24, 1984 (49 FR 37424). The notice contained the proposals submitted by the Raisin Administrative Committee (Committee). The Committee works with the USDA in administering the marketing order program.

Material issues

The material issues of record are as follows:

(1) Increasing the level of desirable carryout for Natural (sun-dried) Seedless raisins.

(2) Adding authority for a voluntary raisin diversion program, including changing the definition of "producer" so that persons participating in a diversion program would still be defined as "producers" under the order, and changing marketing policy provisions so tonnage diverted under a raisin diversion program can be included in seasonal marketing policy computations and be subject to seasonal marketing percentages.

(3) Determining whether an emergency exists to warrant the omission of a recommended decision with respect to this amendatory action.

Findings and Conclusions

(1) The marketing agreement and order regulating the handling of raisins produced from grapes grown in California (order) currently provides in § 989.54(a) that the desirable carryout for NS raisins be increased from 35,000 to 50,000 at a rate of 5,000 tons per year for three crop years, following the effective date of the last order amendment, which was July 20, 1983. Thus, the desirable carryout was 40,000 tons for the 1983–84 crop year and 45,000 tons for the 1984–85 crop year.

The desirable carryout is the free tonnage inventory at the end of a crop year considered desirable by the industry to be carried into the succeeding crop year to maintain continuity of sales until new crop raisins become available, usually in October. The desirable carryout also is used by the Committee in the computation of the "trade demand" and therefore in the computation of volume regulations pursuant to § 989.54. The evidence of record is that the ceiling on the desirable carryout should be increased to 60,000 tons to meet future anticipated increases in early season market needs. Data show that shipments of NS raisins during August, September, and one-half of October in each of the 1982–83 and 1983–84 crop years totalled about 50,000 tons. This, together with expected increases during those months in future seasons as a result of competitive pricing and increased promotion and advertising activities, indicate a need to increase the carryout ceiling to 60,000 tons. However, a sudden increase from 45,000 to 60,000 tons in one season could oversupply the market and disrupt the stability of free tonnage supplies. Therefore, to promote market stability, the adjustment should occur at a rate of 5,000 tons per year for the three crop years following the effective date of any change resulting from this amendatory action.

In view of this, § 989.54(a) should be amended by revising the fifth sentence to provide that the desirable carryout shall be increased from 45,000 to 60,000 tons for NS raisins at a rate of 5,000 tons per year for three crop years following the effective date of this amended subpart.

(2) The raisin order has been in effect since August 1949. It authorizes volume and quality control, both of which have been used to maintain orderly marketing conditions.

Typically, about 10 to 15 percent of the production of raisin variety grapes are utilized in the fresh and canning outlets. The portion of the crop crushed for wine generally varies from a third to a half, while the portion dried for raisins varies from a third to 60 percent. In 1983, 70 percent of the raisin variety grape crop was dried into raisins, 14 percent was crushed for winemaking, and 11 percent canned or shipped fresh. The 1983 experience is an extreme example of what can happen in the raisin industry when excessive supplies of grapes, especially raisin variety grapes, are available for crushing—wineries stopped buying raisin variety grapes and growers of such grapes shifted to making raisins. Testimony at the hearing indicated that this resulted in the production of about 150,000 additional tons of raisins in 1983.

The United States is the world's largest producer of raisins with production normally ranging from 180,000 to 315,000 natural condition tons. California's 1983 production of NS raisins alone totalled 347,943 tons, which is approximately 47 percent over the 4 year average (1979–1982) of 236,982 tons. Carrying on August 1, 1984, from California's 1983 production into the current 1984–85 crop year was about 160,000 tons, mostly NS raisins. With a

agencies or geographic regions. It will

Onions.

make other technical changes necessary

agreement, and Order No. 989, both as

to 60,000 tons to meet future anticipated

160,000 tons, mostly NS raisins. With a

projected crop in excess of 300,000 tons of all varietal types, the total supply of California raisins during the 1984–85 crop year approximates 460,000 tons. Despite increased promotion activity by the industry and reduced retail pricing of raisins, it was estimated at the hearing that the California raisin industry will market only 250,000–260,000 tons during the 1984–85 crop year, leaving a carryout on July 31, 1985, of about 200,000 tons. Considering inventory needs, and to protect against crop disaster next fall, proponents estimated that approximately 60,000 to 115,000 tons of California raisins currently are on hand in excess of 1984–85 market needs. Barring any unforseen circumstances, this is a substantial surplus. The record reflects that this surplus would have little or no economic value unless a proposed RDP is authorized and adopted now.

The evidence of record indicates that at least 10 percent of the raisin grape producers will have difficulty in obtaining loans to produce crops in 1984, that an even larger percentage may experience loan denials during the 1985–86 crop season. Growers of Thompson Seedless grapes are particularly vulnerable financially because many incurred high land debts due to major expansion of production in recent years aggravated by lower commodity prices preventing an adequate return to cover principal and interest payments on the additional land purchased. In fact, 90 percent of the number of delinquent land bank loans in Fresno, California, were made to growers whose major crops are raisin or wine variety grapes.

Since 1975, there has been a substantial increase in California's grape acreage and production. In 1975, the bearing acreage of all grapes in California was 526,190 acres. Of that acreage, 237,900 acres were raisin variety grapes and 225,160 acres were wine variety grapes. By 1983, the total bearing acreage of all grapes was 644,513 acres. Of that, 271,828 acres were raisin variety grapes, and 300,644 acres were wine variety grapes. These gains represent an increase of 22 percent in total grape acreage, and increase of 33 percent in wine variety acreage, and an increase of 14 percent for raisin variety grapes. During these same years when conditions were normal, deliveries of raisins by producers to handlers ranged from a low of 248,942 tons in 1977 to a hight of 387,334 tons in 1983. This represents an increase of 56 percent. Deliveries were considerably less during 1976 and 1978, but these were years when production was adversely affected by rains during the harvest season.

As the production of California raisins increased, problems developed in marketing them, particularly in export markets. The high cost of the dollar relative to other world currencies has made California raisin prices high compared to raisins produced in other countries. Additionally, some countries have subsidized raisin production, while succeeding in keeping consumer prices low. This has been particularly true in the case of Greece in its sales to the European Economic Community (EEC). In 1979, before Greece became a member of the EEC, the evidence of record is that Greek raisins were being sold in Great Britain and other EEC markets for 80 to 90 cents per pound, landed duty paid. After Greece joined the EEC in 1981, subsidies increased and prices in those markets declined to approximately 40 cents per pound and to 27 cents per pound in 1983, thereby breaking the world market price. Consequently, Greece increased its sales of raisins to the EEC from approximately 30 percent of total Greek production in 1979 to almost 60 percent by 1982. While the demand in EEC markets was fairly stable during this period, it was testified that the increase in Greek shipments to those markets displaced shipments from other countries such as the United States, South Africa, and Afghanistan.

A further impact on the supply of California raisins occured from the decline in the use of California raisin variety grapes for wine production and their consequent diversion into production of raisins. From 1970 to 1974, the five-year average for raisin variety grapes crushed by wineries was 947,000 tons. During the next five-year period, 1978 to 1982, the average dropped to 693,000 tons. In 1983, raisin variety grapes crushed at wineries dropped to 330,000 tons. In terms of the total production of raisin variety grapes, only 14 percent of Thompson Seedless grapes were crushed in 1983, against a normal average of 40 percent. Although the Thompson Seedless grape is not a wine varietal, it has been crushed in substantial quantities in the past.

Since 1970, wine imports into the United States have increased from approximately 30 million gallons, to approximately 125 million gallons in 1982, which is a 317 percent increase. Thus, wine imports increased from 11 percent of the domestic wine market in 1970 to approximately 26 percent of that market in 1982. This increase in imported wines has caused California wineries to reduce their purchases of Thompson Seedless grapes.

The California raisin industry has taken several steps recently to address the oversupply condition confronting it, but still faces supply and demand problems. The industry has expended much effort and money to increase consumption in every possible market, both in the United States and overseas. It has implemented a foreign incentive merchandising program, a domestic merchandising program and has increased promotion expenditures to increase the marketing of California raisins.

While the order has aided in the marketing of excess supplies of raisins, the increased supplies now being encountered are so great that bringing the oversupply problem under control is very difficult under current conditions. For this reason, the Committee proposed that authority be included in the order for an RDP. Without this authority, the record indicates that the oversupply situation will continue to devastate the industry by reducing returns to producers, and inhibiting the purchase of raisins by industrial users and consumers from handlers. The RDP would allow producers to defer future year's raisin production and utilize surplus raisins to meet market needs, thereby countering the economic waste of producing surplus on top of surplus and increasing the quantity of free tonnage raisins sold from producers' production. Unless action is taken to address the oversupply situation, the evidence of record is that depressed returns to producers, unstable markets, and inordinate expenditures of storing an essentially valueless commodity will continue.

Under the proposed program, the Committee could establish an RDP when it determines that an excess supply of reserve raisins exists. Under the RDP, a producer could agree to remove his/her vines or not produce a crop in the following season. The Committee would issue a diversion certificate to the producer equal to the quantity of raisins diverted, based on the producer's most recent production from the applicable definable production unit. The producer would submit that certificate to a handler as if the producer had physically produced and delivered raisins. The handler would redeem the certificate to the Committee, together with an amount covering "harvest cost" for the diverted tonnage covered by the certificate. This money would be distributed to equity holders in the reserve pool the same as any other proceeds received from disposition of

the pool. Proponents anticipate that the return to the reserve pool for reserve raisins covered by an RDP should be greater than if the surplus raisins were disposed of in low return outlets such as livestock feed or distillation.

The evidence of record is that the order provisions authorizing the implementation of the RDP should be flexible. These provisions should authorize the Committee to establish the program when appropriate, and should provide for the establishment of specific procedural and operational details of the program through the informal rulemaking process. It is less costly and complicated to change administrative rules and regulations than to amend the order. Moreover, this procedure would allow timely program adjustments based on operational experience, and in response to changing marketing conditions.

Under the proposed program, on or before November 30 of any crop year, the Committee would meet to determine whether sufficient reserve pool raisins exist to warrant establishment of an RDP. By then, the Committee would have sufficient information on such factors as the production of raisins during the then current crop year, existing inventory level, anticipated normal market need, and the desirable carryout inventory. The Committee should have the authority to implement an RDP after it determines that all normal markets can be supplied, a sufficient quantity is available as a hedge against a possible crop failure in the coming season, and a sizeable surplus still remains. If the Committee determines that an RDP is warranted, it should announce establishment of the program to growers, handlers and other interested persons through reasonable means, such as grower/handler bulletins or press releases. The announcements should include the amount of tonnage involved, harvest costs, and the varietal types of raisins eligible under the program. The harvest costs become the value to be assigned to the reserve pool tonnage which will be used under the program. The evidence of record indicates that an industry average harvest cost can be readily determined. It is anticipated that the Committee will utilize information available from the University of California Extension Service and also personal knowledge of Committee members to determine the various items of expense to be used in computing the harvest cost. The items may include such factors as picking grapes, turning and rolling trays, boxing raisins, hauling raisins to the handler, and rain insurance. By announcing the harvest costs early a raisin producer will be better able to determine whether to participate in the RDP.

Therefore, a new § 989.56 should be added to the order authorizing implementation of an RDP by the Committee. This section should prescribe that on or before November 30 of each crop year, the Committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable carryout inventory and other matters relating to the quantity of raisins of all varietal types. When the Committee determines that raisins exist in the reserve pool in excess of projected market needs for any varietal type, it should announce the amount of such tonnage eligible for diversion during the subsequent crop year. At the same time, the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage.

In order to allow each producer the maximum flexibility based on his particular situation, § 989.56 should provide that no producer shall be required to participate in an RDP. Section 989.56 should also provide general guidelines and parameters regarding the issuance of diversion certificates. It should specify that after the Committee announces an RDP, producers may divert grapes of their own production and receive from the Committee diversion certificates in accordance with applicable rules and regulations. Furthermore, the order should provide that such certificates only may be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the Committee shall apply to a specific production unit and shall be equal to the creditable fruit weight of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion. The creditable weight is the weight of raisins meeting the grade and condition standards for natural condition raisins specified pursuant to § 989.56 and acquired by a handler. When a handler acquires natural condition raisins which exceed the tolerance established for maturity under a weight dockage system, the creditable weight of each lot of raisins is the weight obtained by following the procedures specified in § 989.210. Since creditable fruit weight is used in determining equity in the reserve pool for marketing order calculations, that weight should be the basis to be used on the certificate.

The record contains considerable evidence as to how this portion of the order might best be implemented in the administrative regulations. In connection with the issuance of certificates, it was suggested that if a producer decides to participate in the RDP, he/she shold complete an application containing information to: (1) Aid the Committee in reviewing the application, (2) establish the production unit involved in the program, (3) determine the tonnage to be diverted under the program, and (4) enable the Committee to handle the detailed operations of the program.

When an application is submitted by a producer, the Committee should review it for reliability and completeness. If an application is determined to be inadequate, procedures should be established affording the producer a reasonable amount of time to correct it. However, in order for the program to be implemented in a timely manner and enable producers to make decisions concerning their cultural practices, a final decision on the applications by the Committee must be made by early January.

The evidence of record indicates that it would be appropriate to give an applicant priority to participate in the program if the applicant has decided to remove grape vines. Because the RDP is intended to reduce surplus production in the long run, as well as to reduce existing burdensome surplus inventory, removal of vines appears the most direct and the most effective way to achieve both objectives simultaneously. Consequently, such producers should receive priority consideration under the program.

If enough producers are willing to remove vines, then producers which offer merely to divert production through pruning or other cultural practices need not be considered for the program. If only a few producers are willing to remove vines, then the short-term objective will be accomplished by selecting producers willing to divert their production for the upcoming crop year. If more producers are willing to pull vines than the program can accommodate, or if producers offer to divert more than can be accommodated by the program after those willing to pull vines have been selected, the testimony indicated that the most equitable system would be the use of a lottery or lotteries to select program participants. Producers should be grouped according to deliveries to handlers in order to eliminate the possibility that all

were years when production was

imported wines has caused California

reserve pool the same as any other proceeds received from disposition of

and rain insurance. By announcing the

for marketing order calculations, that

eliminate the possibility that all

producers chosen for the program deliver to one handler. Also, grouping according to varietal type should ease administration and operation of the program. Accordingly, it is determined that such grouping should be done when warranted by circumstances. When this is done, several lotteries may be conducted in order to select participants.

Once producers have been selected for the program and notified of their selection, they should take necessary steps to assure that their grape production involved in the program is diverted. It is neither appropriate nor necessary for the Committee to dictate how a producer should divert the crop. The producer should be able to use any means that will assure that the crop is diverted. However, the evidence of record indicates that it would be useful to establish district committees to monitor producer activities in order to assure that producers understand the program and the ground rules. These committees should consist of members from the local community familiar with grape production in their districts. Their function should be to advise the Committee of any problems associated with the program, such as a producer still making raisins, even though registered in the RDP. However, administration of the program should remain with the Committee and should not be transferred to district committees. The methods of applying for and being granted diversion, of diverting the production, and of compliance oversight should be established in administrative rules and regulations in order to allow maximum flexibility in conforming such methods to the evolving experience under the program.

Any producer diverting his/her crop should be entitled to receive a diversion certificate. It was suggested that certificates should be issued by the Committee prior to October 5 of each crop year so that the Committee can properly develop preliminary percentages pursuant to § 989.54 of the order. The quantity made available from the prior year's reserve should be treated as though produced in the then current crop year, included in the Committee's marketing policy computations for the year, and subject to free and reserve precentages for that year. This approach must be taken in order to prevent the marketing policy from becoming ineffective due to an understatement of the tonnage available and to provide for the raisins of program participants and non-participating producers to be treated equally under the mandatory volume control features of the order.

When a producer submits a certificate to a handler, the producer, in essence, is selling his/her crop to the handler. The evidence of record is that the handler would pay the producer directly for the free tonnage represented by the diversion certificate, in accordance with the established free and reserve percentages for the new crop year, after deducting the harvest cost established by the Committee for the entire tonnage represented by the certificate. Such free tonnage would be determined by applying the appropriate free percentage for the crop year to the creditable fruit weight shown on the certificate.

The handler, in turn, would present the certificate to the Committee. Upon presentation of the certificate for cancellation and payment to the Committee of the applicable harvest cost on the entire tonnage by the handler, the Committee would release from the reserve pool as free tonnage the quantity of raisins equal to the multiple of the free percentage and the entire tonnage represented by the certificate. Harvest cost payments received by the Committee would be treated as proceeds of the applicable reserve pool and distributed to producers along with other net proceeds realized from the disposition of that pool. The balance of the tonnage represented by the certificate would be the prior year's reserve tonnage transferred into the reserve pool for that crop year and would be held by the handler for the account of the Committee pursuant to § 989.66. The producer would retain the equity in the reserve pool for this quantity of raisins.

So that the Committee can establish final percentages as provided under the order, diversion certificates should be redeemed by February 15 of the subsequent calendar year.

Therefore, § 989.56 should provide that after having received diversion certificates from the Committee, producers would submit the certificates to the handlers in lieu of raisins. That section should also provide that only handlers may redeem diversion certificates for reserve pool raisins. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the harvest cost it has established for the entire tonnage represented on the diversion certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled. The remaining details should be contained in administrative regulations in case the suggested procedures prove unwieldy and need modification in some particulars.

In view of all the foregoing, § 989.56 should specify that the Committee shall establish, with the approval of the Secretary, such rules and regulations as may be necessary for the implementation and operation of the raisin diversion program.

At the hearing, a suggestion was made that an average of several crop years should be used as a base for determining a producer's tonnage eligible for diversion. However, the evidence of record is that the most recent crop year, or the last crop year eligible for diversion, should serve as a base in order to keep the program current with those producers who are now producing raisins. Moreover, the most recent production information in more readily available for verfication, and there would be less chance for program abuse.

Several witnesses testified against the proposed RDP, indicating that growers cannot afford to finance another temporary solution to the industry's severe problems, and suggested that the industry should do more advertising and promotion to increase raisin consumption in the United States and abroad. They also expressed doubt that the program could benefit growers, especially those already close to bankruptcy. The evidence of record indicates that the industry has increased its promotion and advertising to help move California's abundant raisin supply. The record further reflects that industry leaders believe this action, coupled with a reduction in prices and in the oversupply situation will have a positive effect on raisin sales and on producers in general. Furthermore, as related in more detail below, testimony from the banking community indicated the program would be an incentive for further credit extensions. Thus, this action would tend to stave off foreclosures and resulting bankruptcies.

At the hearing, one person supportive of the RDP recommended that the program should be reviewed at the end of a three-year period. As previously discussed, the evidence of record is clear that the need for an RDP would be reviewed by the Committee each year and that an RDP would be implemented when the Committee determines that the tonnage of reserve raisins of a particular varietal type is in excess of projected market needs. Moreover, pursuant to § 989.91 of the order, the Secretary of Agriculture may, at any time, terminate or suspend the operation of any or all of the provisions of this amended subpart whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

The adoption of this authority for an RDP would necessitate modification of the definition of "producer". Section 989.11 of the order defines a producer as "any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins." If authority for an RDP is approved, a producer diverting his/her entire acreage of raisin grapes would not meet the current definition of a producer. Thus, a producer participating in the RDP would not be considered a "producer" under the order and would not be able to participate in the nomination of producer members of the Committee or serve as a producer member or alternate member. To assure that those persons participating in an RDP would continue to be considered producers under the order, § 989.11 should be amended by adding a proviso thereto to read: "*Provided,* That a "producer" shall include any person whose production unit has qualified for diversion under a diversion program announced by the Committee." For example, a producer of raisins in 1984 would remain a producer in 1985 if a diversion program were implemented and his/her entire grape acreage, which was made into raisins in 1984, was diverted from production in 1985.

Section 989.54(b) currently provides that on or before October 5 of each crop year, the Committee shall estimate the production of raisins by varietal type for which it has computed a trade demand and, where applicable, compute and announce preliminary percentages. The October 5 date may be extended by the Committee not more than five business days if warranted by a late crop.

If an RDP is established by the Committee for a season, the equivalent quantity of diverted raisins would be made available in the new crop year from the reserve raisins previously determined by the Committee to be in excess of projected market needs; that is, that tonnage in excess of traditional market outlets. The quantity made available from the prior year's reserve in the new crop year would be treated as produced in that year. Hence, diverted tonnage must be included in the Committee's marketing policy computations for that year and be subject to the free and reserve percentages for that year. Therefore, in determining the total production for the purposes of computing preliminary percentages, the Committee should estimate the volume of raisins by varietal type likely to be acquired by handlers from producers and add to that the total tonnage diverted under an RDP. In practice, the total diverted tonnage would be obtained by the Committee by totalling the tonnage represented by all diversion certificates issued by the Committee for a specific varietal type.

To accomplish this, § 989.54(b) should be amended by adding a proviso at the end of the first sentence providing that such production estimate shall include by varietal type the total tonnage of raisins handlers are expected to acquire from producers and the total tonnage of raisins diverted under a raisin diversion program.

While most of the producers and handlers under the marketing order are small businesses, there is obviously some variance in size. Testimony at the hearing supported the view that all of the proposed changes would be equally beneficial to all producers and handlers, regardless of size. Furthermore, the record evidence indicates that there would be no adverse regulatory or informational impact on the smaller entities and that no changes in the proposals are desirable to accommodate any needs of the smaller entities.

(3) Section 900.12(d) of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900) authorizes the Secretary to omit issuing a recommended decision and the opportunity to file exceptions thereto when he determines on the basis of the hearing record that due and timely execution of his functions imperatively and unavoidably requires such omission.

The evidence of record is that many producers of raisin variety grapes are facing a serious financial dilemma. As stated previously, land values for vineyards have dropped dramatically in the last few years, many producers may be unable to continue their lines of credit, and some producers may go bankrupt. It was estimated at the hearing that at least 10 percent of the raisin grape producers will have difficulty obtaining loans to produce raisins in 1985, and an even larger percentage of such producers may experience loan denials during the 1985–86 crop year. A member of the banking community testified that the bankruptcy rate at the time of the hearing was one raisin grape producer per week, that the land value of vineyards was impossible to determine, and that the interest rate charged a producer on loans is in an inverse relationship to the financial condition of that producer. That witness also testified that production and harvest costs far exceed the prices received by raisin producers, and that the RDP would offer the possibility of improving producer prices by allowing a higher percentage of the crop to be marketed as free tonnage and a lower percentage in low-return outlets. Thus, the RDP should improve the financial community's ability to continue financing producers in 1985 that otherwise would not receive financing. For these reasons, it is imperative that an RDP, if approved by producers voting in a referendum, be effective for 1985.

Furthermore, an essential feature of diverting production under the RDP would be by pruning vines. Most producers prepare for or begin pruning by January 1. Thus, it is essential that the mechanics of the RDP be in place before January 1, 1985, in order that producers can make their decisions by then, whether to participate in that program.

Finally, implementation of an RDP would necessitate establishment of administrative rules and regulations through informal rulemaking. This could be time-consuming and must be initiated soon if an RDP is to be effective by January 1, 1985.

In view of all of the foregoing, it is hereby determined that on the basis of the hearing record that due and timely execution of the Secretary's functions imperatively and unavoidably requires the omission of a recommended decision and the opportunity to file exceptions thereto. Issuance of a recommended decision, including opportunity to file exceptions thereto, would delay amendment of the order to include authority for an RDP by at least four weeks, thereby making it unlikely that such a program could be implemented for 1985.

Rulings on briefs of interested persons

Briefs were filed by the Committee and by Carl A. Pescosolido, Jr., on behalf of Sequoia Enterprises, Exeter, California. The brief filed by the Committee supported the proposed amendments and requested the amendments be implemented on an emergency basis. The brief filed by Sequoia Enterprises stated primarily that the USDA must comply with all the requirements of the Regulatory Flexibility Act, the Administrative Procedure Act, Secretary Block's Memorandum 1512–1 and President Reagan's Executive Order 12291. Furthermore, a demand was made upon the Department that full details of the RDP, including all of the rules and regulations, be published in the **Federal Register** and a subsequent hearing be

producers to be treated equally under

administrative regulations in case the

the provisions of this amended subpart

percentages, the Committee should estimate the volume of raisins by

also testified that production and

Register and a subsequent hearing be

held to allow affected growers and handlers the opportunity to understand the economic and competitive consequences of the entire program.

Each point included in the briefs was carefully considered, along with evidence in the record, in making the findings and reaching the conclusions contained herein. To the extent that any suggested findings or conclusions contained in any of the briefs or arguments are inconsistent with the findings and conclusions contained herein, the request to make such findings and conclusions or to reach such conclusions is denied on the basis of facts found and stated in connection with this decision.

General Findings

Upon the basis of the record, it is found that: (1) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except the findings as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of raisins produced from grapes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of raisins produced from grapes grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Marketing Agreement and Order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced From Grapes Grown in California", and "Order Amending the Order, as Amended, Regulating the Handling of Raisins Produced From Grapes Grown in California", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with the decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order as amended and as hereby proposed to be further amended, regulating the handling of raisins produced from grapes grown in California is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of the regulated commodity for market.

The representative period for the conduct of such referendum is hereby determined to be August 1, 1983, to July 31, 1984.

The agents of the Secretary to conduct such referendum are hereby designated to be Richard Van Diest and Frank M. Grasberger, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-32284 Filed 12-10-84; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 73

Access Authorization Program; Miscellaneous Amendments Concerning Physical Protection of Nuclear Power Plants; Searches of Individuals at Power Reactor Facilities; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On August 1, 1984 (49 FR 30726; 49 FR 30735; 49 FR 30738), the Nuclear Regulatory Commission (NRC) published for public comment the proposed Insider Safeguards Rules Package, i.e., Access Authorization Program, Miscellaneous Amendments concerning Physical Protection of Nuclear Power Plants, and Searches of Individuals at Power Reactor Facilities. The comment period for this proposed rulemaking package was to expire on December 7, 1984. The Edison Electric Institute, (EEI), and KMC, have requested an extension of the comment period. In view of the importance of the proposed rule, the amount of time that EEI, and KMC, suggested is required in order to provide meaningful comments on behalf of their member utilities, and the desirability of developing a rule as soon as practicable, the NRC has decided to extend the comment period for an additional 90 days.

DATE: The comment period has been extended and now expires on March 7, 1985. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street, NW., Washington, D.C., between 8:15 a.m. and 5:00 p.m. Copies of comments received are available for examining and copying for a fee at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. Single copies of draft guidance material may be obtained from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control.

FOR FURTHER INFORMATION CONTACT: Mr. Henry S. Blumenthal III, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 427-4754.

Dated at Washington, D.C., this 6th day of December 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-32279 Filed 12-10-84; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1984-19]

Solicitation of Indirect Members by Federated Cooperatives

AGENCY: Federal Election Commission.

ACTION: Notice of disposition of rulemaking petition.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on January 3, 1983 by the National Council of Farmer Cooperatives ("NCFC") (48 FR 13285 March 30, 1983). The petition sought revision of the definition of "member" at 11 CFR 114.1(e) to permit federated cooperatives to solicit the individual members of their member cooperatives.

DATE: December 11, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Kim L. Bright, Acting Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.*, ("the Act" or "FECA"), cooperatives are permitted to solicit their members for contributions to a separate segregated fund they have established for political purposes. *See* 2 U.S.C. 441b(b)(4)(C). The Federal Election Commission's regulations define "member" at 11 CFR 114.1(e), in pertinent part, as a person currently satisfying his or her organization's requirements for membership.

On January 3, 1983, the National Council of Farmer Cooperatives filed a petition for rulemaking requesting that § 144.1(e) be amended to provide that "members of a local cooperative are considered to be members of any federated regional or interregional cooperative with which the local cooperative is affiliated." The Commission has attempted to obtain a broad range of comments on NCFC's proposed rulemaking. First, the Commission invited public comment on the Petition and received sixteen written comments from interested organizations. 48 FR 13285 (March 30, 1983). The Commission also published an Advance Notice of Proposed Rulemaking (49 FR 20831 (May 17, 1984)) to obtain additional background information regarding the issues raised by the NCFC petition. A public hearing was held on June 27, 1984 at which testimony from five witnesses was presented. In addition, the Commission has consulted the Internal Revenue Service, the Department of Agriculture and the National Credit Union Administration; however, none of these agencies has taken a position on the Petition.

The Commission formally considered whether to proceed with a rulemaking based on the petition on November 15, 1984 and November 29, 1984. On November 29, 1984, the Commission was unable to decide by four affirmative votes whether to initiate the rulemaking suggested by NCFC. The Act requires that a proposed rulemaking be approved by at least four members of the Commission. 2 U.S.C. 437c(c) and 437d(a)(8).

Accordingly, the Commission has concluded its consideration of the NCFC petition. Copies of the General Counsel's recommendation which the Commission considered are available for public inspection and copying in the Commission's Public Records Office, 1325 K Street, NW., Washington, D.C. 20463, (202) 523-4181 or toll-free (800) 424-9530.

Dated: December 6, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 84-32283 Filed 12-10-84; 8:45 am]

BILLING CODE 4715-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Limitations on Portfolio Investments

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period on proposed rule.

SUMMARY: On November 1, 1984, SBA published in the **Federal Register** a proposed rule regarding limitations on portfolio investments in its Small Business Investment Company program [see 49 FR 44062]. That publication provided that comments on the proposed rule would be accepted through December 3, 1984. This notice extends the comment period pertaining to the proposed rule for an additional 14 days in order to provide more time for public comment.

DATE: Comments on the above-referenced proposed rule must be received by December 17, 1984.

ADDRESS: Written comments, in duplicate, should be submitted to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert G. Lineberry, Deputy Associate Administrator for Investment, (202) 653-6548.

SUPPLEMENTARY INFORMATION: In order to provide more time for public comment on the above-referenced proposed rule, SBA is hereby extending the comment period relative to the proposal for an additional 14 days. The public is encouraged to supply comments in writing to the address indicated above so that a complete record on this proposed rule can be established.

Dated: November 27, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-32294 Filed 12-10-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-31]

Proposed Establishment of Airport Radar Service Areas

Correction

In FR Doc. 84-31389 beginning on page 47178 in the issue of Friday, November 30, 1984, make the following correction: On page 47180, in the third column, the fifteenth and sixteenth lines should read "the airport, excluding the".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 79N-0141]

Scientific Literature Update on Sucrose and Corn Sugars; Opportunity for Public Review

Correction

FR Doc. 84-15096 was published on page 23457 in the issue of Wednesday, June 6, 1984. The document appeared in the Notices section; however, it should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-2735-4]

Stack Height Regulation; Public Hearing and Comment Period Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and comment period extension.

SUMMARY: This notice extends the initial public comment period for proposed revisions to EPA's stack height regulation, scheduled to close on December 10, 1984. Subsequent to the proposal, EPA had received a request for a public hearing and several requests for extensions of the 30-day public comment period. EPA is granting these requests.

DATES: The public comment period will now end on January 9, 1985. A public hearing will be held on January 8, 1985. The hearing record and a rebuttal comment period will be held open until January 24, 1985.

A list of speakers for the public hearing will be compiled on December 28, 1984. Anyone wishing to be included on this list should notify Mr. Eric Ginsburg, the information contact, prior to that date.

ADDRESS: Room 2409, EPA, 401 M Street, SW., Washington, D.C. 20460.

Background material for this action is located in Docket A-83-49, West Tower Lobby Gallery, EPA, 401 M Street, SW., Washington, D.C. 20460. The docket may be examined between 8:00 a.m. and 4:00 p.m. or weekdays. A reasonable fee may be charged for photocopying. All written comments should be submitted (in duplicate, if possible) to: Central Docket Section, Docket A-83-49, EPA, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Eric O. Ginsburg, Office of Air Quality Planning and Standards, Control Programs Development Division (MD-15), EPA, Research Triangle Park, NC 27711, (919) 541-5540.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated regulation governing the extent to which tall stacks and other dispersion techniques may be considered in setting emission limitations for stationary sources. This regulation was challenged by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc. (NRDC), and the Commonwealth of Pennsylvania (*Sierra Club* v. *EPA*, 719 F.2d 436) and, on October 11, 1983, the U.S. Court of Appeals for the D.C. Circuit issued a decision reversing two portions of the regulation, remanding certain other portions to EPA for reconsideration, and imposing a deadline of January 18, 1985, for the promulgation of revised rules. Revisions to the regulation, responding to the court decision, were proposed on November 9, 1984, at 49 FR 44878. That notice describes the court decision and the proposed revisions in greater detail.

Subsequent to the proposal, EPA had received a request for a public hearing and several requests for extension of the 30-day public comment period. EPA is granting these requests. Additionally, EPA has consulted with petitioners from Sierra Club and NRDC and is filing a joint motion requesting the court to extend the deadline for promulgation. If the court does not grant this request, EPA will close the comment period and cancel the hearing as necessary to meet any court-mandated deadline.

A list of speakers for the public hearing will be compiled on December 28, 1984. Anyone wishing to be included on this list should notify Mr. Eric Ginsburg, the information contact, prior to that date. Requests received after that date will be honored only as time permits.

Speakers who intend to present a prepared statement should provide three copies of the statement to the director of the meeting. Oral presentations will be limited to 30 minutes; however, extra time may be allowed at the discretion of the director.

An official recorder will prepare a transcript of the hearing. The transcript will be placed in Docket A-83-49. Supplemental or rebuttal comments may be submitted in writing no later than 4:00 p.m. on January 24, 1985, to: Central Docket Section, Docket No. A-83-49, EPA, 401 M Street, Washington, D.C. 20460.

List of Subjects in 40 CFR Part 52

Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

Dated: December 7, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84-32407 Filed 12-10-84; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register

Vol. 49, No. 239

Tuesday, December 11, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 1:30 p.m., on January 29, 1984, at the Birmingham Hilton Hotel, Centennial I Room, 808 S. 20th Street, Birmingham, Alabama 35205. The purpose of the meeting is to formulate plans for a project on redistricting.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 6, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-32242 Filed 12-10-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 280]

Resolution and Order Approving the Application of the City of New York, New York, for a Foreign-Trade Zone at John F. Kennedy International Airport

Procedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of New York, New York, filed with the Foreign-Trade Zones Board (the Board) on October 17, 1983, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone site at John F. Kennedy International Airport, within the New York Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone at John F. Kennedy International Airport

Whereas, by the Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 USC 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of New York, State of New York (the Grantee) has made application (filed October 17, 1983, Docket No. 39-83, 48 FR 49085) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone site at John F. Kennedy International Airport, County of Queens, New York City, within the New York Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 111 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the constuction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the

protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 30th day of November 1984 pursuant to Order of the Board.

Foreign-Trade Zone Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-32307 Filed 12-10-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Export Trade Certificate of Review; Notice of Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on these applications must be submitted on or before (insert date 20 days after publication in the Federal Register).

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00035."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,
2. not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,
3. not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and
4. not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-40 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Global Operations Co., 465 California Street, Suite 431, Merchants Exchange Building, San Francisco, CA 94104

Telephone: 415-781-7040

Application No.: 84-00035

Date Deemed Submitted: November 26, 1984

Controlling Entities: William F. Bosque, Sr., d.b.a. J.E. Lowden & Company, and Ted L. Rausch Co., both of San Francisco, CA

Members in Addition to Applicant: William F. Bosque, Sr., Ted L. Rausch Co., Ted L. Rausch, Poseidon Freight Forwarders, Inc.

Summary of the Application: Global Operations Co. (Global), a newly established San Francisco, California firm, has submitted an application for an export trade certificate of review.

Export Markets

Global will provide export trade services domestically and abroad for the export of U.S. goods worldwide.

Export Trade Related Services

Global intends to offer its U.S. and foreign shipping customers the following export trade related services: total intermodal transportation, non-vessel operating common carrier services, freight forwarding and customhouse brokerage, market and project research, sales promotion, analysis of transportation equipment requirements, financing of cargoes, packing and crating, issuance of marine insurance, designation of agents abroad on an exclusive and/or non-exclusive basis and warehousing abroad.

Export Trade Activities and Methods of Operation

Global intends to provide services jointly through its two controlling entities and to enter into exclusive and non-exclusive agency agreements with export intermediaries in the U.S. and in export markets. These agreements may contain territorial, customer, price and quantity restrictions for the export market.

The OETCA is issuing this notice in compliance with section 302 (b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register identifying the persons submitting an application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: December 5, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84-32176 Filed 12-10-84; 8:45 am]

BILLING CODE 3510-DR-M

[A-570-101]

Greige Polyester/Cotton Printcloth From the People's Republic of China; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on greige polyester/cotton printcloth from the People's Republic of China. The review covers the one known Chinese exporter of this merchandise to the United States and the period March 9, 1983, through November 30, 1983.

Because the Chinese exporter's response to our questionnaire was inadequate, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 11, 1984.

FOR FURTHER INFORMATION CONTACT: Maureen A. Flannery or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 41614) an antidumping duty order on greige polyester/cotton printcloth from the People's Republic of China and announced its intent to conduct an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of greige polyester/cotton printcloth, other than 80 x 80 type. Greige polyester/cotton printcloth is unbleached and uncolored printcloth fabric in chief value cotton, containing polyester. Such printcloth is currently classifiable under items 328.26 through 326.40 of the Tariff Schedules of the United States Annotated. The appropriate statistical suffix is 32. The term "printcloth" refers to plain-woven fabric, not napped, not fancy or figured, of singles yarn, not combed, of average yarn number 26 to 40, weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, or which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch.

The review covers the one known Chinese exporter of this merchandise to the United States, China National Textiles Import and Export Corporation (Chinatex), and the period March 9, 1983, through November 30, 1983.

The Chinatex response to the Department's questionnaire was inadequate. Therefore, we used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is the rate found in the original fair value investigation.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, for the period March 9, 1983, through November 30, 1983, a margin of 22.4 percent exists.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administative protectve order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entires. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 22.4 percent shall be required on all shipments of Chinese greige polyester/cotton printcloth entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrtive review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a) (1)) and §353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-32270 Filed 12-10-84; 8:45 am]

BILLING 3510-DS-M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Notice of Availability of Information

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of location of Ocean Management, Inc. deep seabed mining license area.

SUMMARY: On August 29, 1984, the National Oceanic and Atmospheric Administration (NOAA) issued a license (designated as USA-2) to Ocean Management, Inc. (OMI) to conduct deep seabed mining exploration activities in an area of 136,000 square kilometers in the Northeastern Equatorial Pacific Ocean within the seabed area generally known as the Clarion-Clipperton Fracture Zone. OMI has now formally withdrawn its request for confidential treatment of the precise location of its license area and requested NOAA to apprise the public of this fact and to publish the coordinates as well.

1982 (Pub. L. 97-290) authorizes the

persons who have information relevant

and warehousing abroad.

International Trade Administration, U.S.

days after the date of publication or the

coordinates as well.

In accordance with this request and pursuant to 15 CFR 970.902(d)(5), NOA hereby is publishing the coordinates of the OMI license area.

The OMI license applies to an area bounded by a line with the following turning points:

Turning points	Latitude	Longitude
1	15°25' N	134°00' W
2	14°00' N	134°00' W
3	14°00' N	133°50' W
4	11°30' N	133°50' W
5	11°30' N	136°00' W
6	10°50' N	136°00' W
7	10°30' N	137°50' W
8	12°30' N	137°50' W
9	12°30' N	139°00' W
10	15°25' N	139°00' W
1	15°25' N	134°00' W

Consistent with the disclosure policy stated in the Environmental Impact Statement (EIS) on the OMI license issuance, NOAA will send copies of this notice to the persons, organizations, and agencies who were EIS recipients.

FOR FURTHER INFORMATION CONTACT: John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653-8257.

Approved:

Dated: December 6, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-32281 Filed 12-10-84; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-308,747 (4,461,167)
Psychrometer for Measuring the Humidity of a Gas Flow

SN 6-423,403 (4,464,392)
Process for Controlling Antimicrobial Activity Using Glycolic Acid Derivatives

SN 6-443,995 (4,464,390)
Control of Parasitic Mites With Alkyl Carbamates

SN 6-524,179 (4,464,295)
Simple and Rapid Method for Extraction of Proteins From Bacteria

SN 6-539,860 (4,464,296)
Solubilization of Dry Protein in Aqueous or Acidic Media After Treatment With Concentrated Hydrogen Peroxide

SN 6-573,748
Roller Chopper Transport Carriage

SN 6-625,266
Cockroach Repellents

SN 6-625,328
Insect Repellents

SN 6-626,329
Cockroach Repellents

SN 6-626,960
New Malonic Ester Derivatives

SN 6-635,945
Process for Stabilizing Whole Cereal Grains

SN 6-636,451
Low Wet Pickup Fabric Finishing Apparatus

Department of Commerce

SN 6-370,772 (4,464,401)
Acoustic Thawing of Frozen Food

Department of the Army

SN-6-611,570
Sludge Dewatering by Freezing

Department of the Interior

SN 6-200,110 (4,464,338)
In Situ Tritium Borehole Probe for Measurement of Tritium

[FR Doc. 84-32243 Filed 12-10-84; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Restraint Levels for Certain Man-Made Fiber Textile Products From Romania

December 6, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 12, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

Background

As a result of recent consultations and pursuant to the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Soicalist Republic of Romania the limit established for Category 645/646 is being increased to 239,856 dozen for the twelve-month period which began on January 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 6, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 19, 1983, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of wool and man-made fiber textile products, produced or manufactured in Romania, and exported during 1984, in excess of designated levels of restraint. The Chairman furter advised you that the restraint limits are subject to adjustment.[1]

[1] The term "adjustment" refers to those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania, which provides, in part, that:

Continued

Effective on December 12, 1984, paragraph 1 of the directive of December 19, 1983 is hereby further amended to include an adjusted limit of 239,856 dozen [2] for man-made fiber textile products in Category 645/646, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1984.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter G. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32189 Filed 12-6-84; 10:35 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Yugoslavia

December 6, 1984.

On May 10, 1984, a notice was published in the **Federal Register** (49 FR 19888) announcing that, on April 30, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of the Socialist Federal Republic of Yugoslavia to enter into consultations concerning exports to the United States of men's and boys' suit-type coats in Category 433, produced or manufactured in Yugoslavia.

Notes have been exchanged between the Governments of the United States and the Socialist Federal Republic of Yugoslavia amending their Bilateral Wool and Man-Made Fiber Textile Agreement of February 21 and 27, 1984, as extended, to establish a new specific limit of 11,500 dozen men's and boy's wool suit-type coats in Category 433, produced or manufactured in Yugoslavia and exported during the eighteen-month period which began on July 1, 1984 and extends through December 31, 1985. The new limit may be adjusted for swing but not for carryover or carryforward. Agreement was also reached between the two governments on a revised limit of 7,300 dozen for women's, girls' and infants' wool suits in Category 444, exported during 1984.

The letter published below directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool textile products in Categories 433 and 444 in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

EFFECTIVE DATE: December 12, 1984.

FOR FURTHER INFORMATION CONTACT: Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/337-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 6, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury Washington, D.C. 20229

Dear Mr. Commissioner: This letter cancels and supercedes the letter of August 28, 1984 which established a level of restraint for wool textile products in Category 433, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on April 30, 1984.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on December 12, 1984, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 433, produced or manufactured in Yugoslavia and exported during the eighteen-month period which began on July 1, 1984 and extends through December 31, 1985, in excess of 11,500 dozen.[1]

Also effective on December 12, 1984, the directive of March 16, 1984 is hereby amended to establish a level of 7,300 dozen [2] for wool textile products in Category 444, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1984.

Textile products in Category 444 which have been exported to the United States prior to January 1, 1984 shall not be subject to this directive.

Textile products in Category 444 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32288 Filed 12-10-84; 8:45 am]

BILLING CODE 3510-DR-M

(1) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (2) consultations may be held to adjust levels of restraint for categories not subject to specific limits; and (3) administrative arrangements or adjustments or may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to reflect any imports exported after December 31, 1983.

[1] The limit has not been adjusted to reflect any imports exported after June 30, 1984.

[2] The limit has not been adjusted to reflect any imports exported after December 31, 1983. Charges for the period January 1 through September 30, 1984 have amounted to 2,252 dozen.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application and Authorization For Access to CONFIDENTIAL Information (DD Form 48–2).

The Defense Investigative Service uses this form by which contractors participating in the Defense Industrial Security Program obtain personal data from a United States citizen being considered for a CONFIDENTIAL personnel security clearance granted by a contractor. The form is prepared jointly by the person being considered for the clearance and by the contractor. Completion of this form is a prerequisite to the granting of a CONFIDENTIAL clearance by a contractor. The form helps save government resources by decreasing the time it takes to grant a personnel security clearance at the CONFIDENTIAL level.

Individual/Contractor
Responses, 200,000
Burden hours, 66,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred A. Schonert, Defense Investigative Service, Administrative Services Division, V0240, 1900 Half Street SW., Washington, DC 20324–1700, telephone (202) 693–0881.

Dated: December 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–32233 Filed 12–10–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point the contact from whom a copy of the information proposal may be obtained.

(1) New.

(2) Export Controlled Technical Data Agreement, DD Form 2345.

(3) The information is required to obtain agreement with and a description of business activity of individuals or enterprises that are to be eligible to receive export-controlled DOD technical data under 10 U.S.C. Section 140c, as implemented by DOD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure."

(4) Individuals or households; business or other for-profit organizations; non-profit institutions; and smal businesses or organizations.

(5) Responses—100,000.

(6) Burden hour—200,000.

(7) Addresses: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the Information collection proposal may be obtained from Mr. David E. Whitman, ODUSD(P), Room 3C260, The Pentagon, Washington, D.C. 20301–2200, telephone (202) 695–2289.

Dated: December 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–32237 Filed 12–10–84; 8:45 am]

BILLING CODE 3810–01–M

1985 Medical Reimbursement Rate for Dependents of Military Personnel

Notice is hereby given that the Assistant Secretary of Defense (Comptroller) on December 4, 1984 issued the following memorandum to the Assistant Secretary of Defense (Health Affairs) and the Assistant Secretaries of the Military Departments (FM):

The charge for medical and dental services rendered to dependents of military personnel as inpatients in federal medical facilities shall be $7.10 per day, effective January 1, 1985.

Dated: December 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–32232 Filed 12–10–84; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) on Proposed Flood Control Alternatives for the Upstream Element of the Santa Ana River Flood Control Project San Bernardino County, CA

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement (DSEIS).

SUMMARY:

a. *Proposed Action.* In 1980 the Phase I General Design Memorandum and Supplemental EIS, Santa Ana River Main Stem, presented the All River Plan as the preferred alternative for flood control on the main stem of the rjver. The Mentone Dam was proposed as the upstream flood control element. In November 1983, the Corps of Engineers was directed by Congress to study alternatives to the Mentone Dam. The potential for water supply, hydropower generation, and recreation are also being considered.

b. *Alternatives.* Preliminary studies investigated several potential damsites. These studies resulted in recommendation of three sites for further study: Lytle Creek, Upper Santa Ana River, and Mill Creek. The EIS would include documentation on the Mentone Dam and the following alternatives: (a) No Action; (b) a dam on the Upper Santa Ana River; (c) dams on both the Upper Santa Ana River and Lytle Creek; (d) a dam on the Upper Santa Ana River and a diversion structure on Mill Creek with a tunnel to the Upper Santa Ana River through Warm Springs Canyon; and (e) dams on both the Upper Santa Ana River and Lytle Creek as well as the Mill Creek diversion structure and tunnel.

c. *Scoping Process.* Public workshop activities were initiated in February 1984 to assist the Corps in developing and investigating alternatives to the Mentone Dam as the upstream element of the Santa Ana River Project. The workshop has provided input to the preliminary study process and has helped to screen alternatives and identify concerns and issues for further study. Many Federal, State, local agencies, local organizations, and members of the public are involved in the workshop process, including U.S. Fish and Wildlife Service, U.S. Forest Service, California Department of Fish and Game, San Bernardino County, and local chapters of the Audubon Society, Sierra Club, Tricounties Conservation League, and The Wildlife Society. The Corps is also coordinating formally with appropriate agencies to identify and resolve potential environmental problems. A broad range of concerns have been identified thus far, and include: (a) impacts to biological resources (including threatened and endangered species); (b) impacts to historical and archeological resources; (c) impacts to existing development and potential relocations; (d) impacts to current and projected recreation use; (e) impacts of operation and management of water storage; and (f) capabilities for mitigation of impacts and losses.

d. *Future Public Meetings.* A scoping meeting will be scheduled in the future to further discuss concerns and identify significant issues for consideration in the DSEIS. In addition, workshop meetings will be held to provide public input throughout the study process.

e. *Availability of DSEIS.* The DSEIS is anticipated to be circulated for public review in September 1985.

f. *Address.* Questions about the proposed action and DSEIS can be answered by: Dennis Majors, Project Manager, U.S. Army Corps of Engineers, P.O. Box 2711, Los Angeles, California 90053.

Dated: November 30, 1984.

Dennis F. Butler,

Colonel, CE, District Engineer.

[FR Doc. 84–32250 Filed 12–10–84; 8:45 am]

BILLING CODE 3710–KF–M

Defense Mapping Agency

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Oceanic Sounding Report, DMAHTC Form 8053–1

The Defense Mapping Agency, under Title 10 U.S.C. 2791, and Title 32 CFR Part 360, is authorized to ensure and improve maritime safety. The DMAHTC Form 8053.1, "Oceanic Sounding Report," is used by the DMA Hydrographic/Topographic Center to obtain significant data from navigators. The information collected is used to construct and improve the accuracy of current navigational charts.

Maritime Industry
Responses 400
Burden Hours 10,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. William Colligan, DMAHTC(SD), Room 270 EH, 6500 Brookes Lane, Washington, DC 20315–0030, telephone (301) 227–2840.

Dated: December 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–32230 Filed 12–10–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Customer Services Inquiry Card, DMAODS–8600–1

The Defense Mapping Agency (DMA) is assigned under U.S.C. Title 10, Chapter 167, Sections 2791, 2792, 2793, and 2794 for providing nautical charts and marine navigation data for the use of all vessels of the United States and of navigators, and responsibilities assigned under U.S.C. Title 44, Chapter 13, Section 1336 for the printing of notices to mariners. The DMAODS Form 8600–1 is used by the Office of Distribution Services to obtain data from its customers regarding delivery date, conditions, quantity, and shipment of products.

Maritime Industry and Customers
Responses 8,000
Burden hours 158

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Larry W. Shank, DMAODS(DO), Room 205–R, Washington, DC 20315–0010, telephone (301) 227–1062.

Dated: December 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–32238 Filed 12–10–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8)

The point of contact from whom a copy of the information proposal may be obtained.

New

Notice to Mariners Information Report and Suggestion Sheet

The Defense Mapping Agency (DMA) under 10 U.S.C. 2791, 44 U.S.C. 1336 and 32 CFR Part 360, is authorized to ensure and improve navigation and maritime safety. The DMA Hydrographic/Topographic Center uses the convenient reporting form provided in the back of Notice to Mariners to obtain data from navigators. Mariners are requested to cooperate in the corrective maintenance of navigational charts and publications by reporting discrepancies between published information and conditions actually observed or encountered, and by recommending appropriate additions, deletions, or improvements.

Maritime Industry and Navigators
Responses 3,000
Burden Hours 750

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Steven C. Hall, DMAHTC (NUT), Room 223EH, 6500 Brookes Lane, Washington, DC 20315–0030, telephone (301) 227–3147.

Dated: December 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-32235 Filed 12-10-84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Port Information Report, DMAHTC Form 8330–1

The Defense Mapping Agency (DMA) under 10 U.S.C. 2791 and 32 C.F.R. Part 360, is authorized to improve maritime safety. The DMA Hydrographic/Topographic Center (HTC) uses DMAHTC Form 8330–1 to obtain significant data from the maritime industry through consultation with appropraite navigators. The form is used to compile data from the navigators regarding conditions of port entry, berthing port services and operating.

Maritime Industry
Responses 400
Burden Hours 400

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Steven C. Hall, DMAHTC(NUT), Room 223EH, 6500 Brookes Lane, Washington, DC. 20315–0030, telephone (301) 227–3147.

Dated: December 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-32234 Filed 12-10-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/JA (EU)–32, from the Federal Republic of Germany to Japan, 15 r - niplates containing 205 grams of uranium, enriched to 19.75 percent in U–235, for irradiation testing in the JMTR reactor, Oarai, Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: December 5, 1984.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-32250 Filed 12-10-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Notice of Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Thomas P. Reidy, Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Thomas P. Reidy, Inc., 1100 Milam, Suite 2170, Houston, Texas 77002. This Proposed Remedial Order alleges violations in the pricing of motor gasoline of 10 CFR 210.92 and 10 CFR 212.93 for the period November 1, 1973 through May 31, 1975. The principal amount of the alleged violations for this period is $1,620,210.35.

A copy of the Proposed Remedial Order, with confidential information deleted may be obtained from: David H. Jackson, Director, Kansas City Office, ERA (816)374–2092. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri on the 2d day of November, 1984.

David H. Jackson,

Director, Kansas City Office, Office of Special Counsel, Economic Regulatory Administration.

[FR Doc. 84-32177 Filed 12-10-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER85–145–000]

Puget Sound Power & Light Co.; Notice of Filing

December 6, 1984.

The filing Company submits the following:

Take notice that Puget Sound Power & Light Company ("Puget") on November 23, 1984 tendered for filing Notices of Termination of Puget's Rate Schedules Nos. 6, 11, and 45, such schedules having terminated by their own terms.

Copies of the filing were served upon the City of Tacoma, the Town of Sumas, the Washington Water Power Company, the Idaho Power Company and Utah Power and Light Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32205 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–38–000]

U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1984.

Take notice that on November 30, 1984, U–T Offshore System (U–TOS) tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1 in Fifth Revised Sheet No. 4. The proposed changes would decrease revenues from jurisdictional transportation services by approximately $57,000 based on the 12-month period ending August 31, 1984, as adjusted, compared with the revenues generated through the presently effective rates.

U–TOS states that the principal reasons for the rate changes filed herein are as follows:

(a) Increases in operating and maintenance expenses,

(b) Increased costs of capital which result in an overall rate of return of 15.44% which is required to afford U–TOS the opportunity to earn a fair and reasonable return,

(c) A reduction in rate base due to increase in reserve for depreciation, and

(d) A decrease in projected transportation quantities to a level equal to 70% use of T–TOS' daily contract demand of 1,036,457 Mcf.

U–TOS requests an effective date of January 1, 1985, for the proposed Revised Sheets. U–TOS states that it served copies of this filing upon all of its shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32206 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85–1–1–000 and TA85–1–1–001]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

December 5, 1984.

Take notice that on November 30, 1984, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 4, and
First Revised Sheet No. 5.

These tariff sheets are proposed to become effective January 1, 1985. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers, Tennessee Gas Pipeline Company (Tennessee), a Division of Tenneco, Inc., and Sun Exploration and Production Company. Alabama-Tennessee states that the changes in its rates have been made in conformity with the PGA and related provisions of its tariff and the conditions contained in the Stipulation and Agreement in Docket No. RP83–24–000.

The tariff sheets submitted herewith provide for the following rates:

[illegible]	Rates after [illegible] adjustment
G–1:	
Demand	D, $7.53 D, [illegible]
Commodity	13.89¢
Gas	349.61¢
SG–1:	
Commodity	[illegible]
Gas	[illegible]
I–1:	
Commodity	17.75¢
Gas	370.15¢

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32208 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

the total number of hours needed to

Agreement for Cooperation Between the

accordance with 10 CFR 205.193.

[Docket No. GT85-5-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1984.

The filing Company submits the following:

Take notice that on November 30, 1984 ANR Pipeline Company ("ANR") tendered for filing Substitute Original Sheet Nos. 111 through 114 to its F.E.R.C. Gas Tariff, Original Volume No. 1.

ANR states that on November 21, 1984 ANR filed with the Federal Energy Regulatory Commission ("Commission") Original Sheet Nos. 1 through 115 to its F.E.R.C. Gas Tariff, Original Volume No. 1 to be effective November 1, 1984. The sole purpose of the said filing was to reflect ANR's new corporate name in lieu of its former name, Michigan Wisconsin Pipe Line Company, as approved by the Commission's Notice of Redesignation issued May 16, 1984 at Docket No. G-669-000 *et al.*

ANR further states that since the November 21, 1984 filing, it discovered that Original Sheet Nos. 111 through 114 which comprise the Index of Purchasers identifying service agreements of ANR's resale customers has for the month of expiration of term August instead of October which is the end of ANR's contract year. Therefore, correction of the typographical error necessitates the filing of Substitute Original Sheet Nos. 111 through 114 to reflect the correct month (October) of the expiration of ANR's service agreements.

ANR further states that copies of the filing were served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32190 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-140-000]

Central Vermont Public Service Corp.; Termination

December 6, 1984.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation ("Central Vermont") on November 23, 1984 filed a Notice of Termination of its Rate Schedule No. 90 and Green Mountain Power Corporation Rate Schedule FPC No. 53 (concurred in above) with respect to Vermont Gas Turbines between the City of Burlington, the Green Mountain Power Corporation, and Central Vermont Public Service Corporation (Sellers) and the Niagara Mohawk Power Corporation (Buyer) and Vermont Electric Power Company, Inc. (Velco), dated as of November 21, 1974. Under the terms of the purchase agreement the sale took place in the period from December 2, 1974 to February 16, 1975.

Certificate of Concurrence by Green Mountain Power Corporation and Burlington Electric Department were also filed by Central Vermont.

Central Vermont states that the Notice of Termination was served on the contracting parties and the regulatory commissions of the states of New York and Vermont where the contracting parties operate. Central Vermont has also requested a waiver of the notice requirement so that the Notice of Termination will be made effective as of the February 16, 1975 termination date provided for in the purchase agreement with Niagara Mohawk Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32191 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-142-000]

Central Vermont Public Service Corp.; Termination

December 6, 1984.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corportion ("Central Vermont") on November 23, 1984, filed a Notice of Termination of its Rate Schedule FPC No. 91 and Green Mountain Power Corporation Rate Schedule FPC No. 54 (concurred in above) with respect to Ascutney, Berlin and Essex, Vermont gas turbines between the Green Mountain Power Corporation and Central Vermont Public Service Corporation (Sellers) and the Public Service Company of New Hampshire (Buyer), dated as of October 1, 1974. Under the terms of the purchase agreement the sale took place in the period from October 31, 1974 to April 30, 1975.

A Certificate of Concurrence by Green Mountain Power Corporation was also filed by Central Vermont.

Central Vermont states that the Notice of Termination was served on the contracting parties and the regulatory commissions of the states of New Hampshire and Vermont where the contracting parties operate. Central Vermont has also requested a waiver of the notice requirement so that the Notice of Termination will be made effective as of the April 30, 1975 termination date provided for in the purchase agreement with Public Service Company of New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32192 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-141-000]

Central Vermont Public Service Corp.; Termination

December 6, 1984.

The filing Company submits the following:

The notice that Central Vermont Public Service Corporation ("Central Vermont") on November 23, 1984, filed a Notice of Termination of its Rate Schedule FPC No. 87 and Green Mountain Power Corporation Rate Schedule FPC No. 50 (Concurred in above) with respect to Burlington and Berlin gas turbines between the City of Burlington, Green Mountain Power Corporation and Central Vermont Public Service Corporation (Sellers) and Public Service Company of New Hampshire (Buyer) dated as of April 1, 1973. Under the terms of the purchase agreement the sale took place in the period from May 1, 1973 to October 31, 1973.

Certificates of Concurrence by Green Mountain Power Corporation and Burlington Electric Department were also filed by Central Vermont.

Central Vermont states that the Notice of Termination was served on the contracting parties and the regulatory commissions of the states of New Hampshire and Vermont where the contracting parties operate. Central Vermont has also requested a waiver of the notice requirements so that the Notice of Termination will be made effective as of the October 31, 1973 termination date provided for in the purchase agreement with Public Service Company of New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32209 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-144-000]

Duke Power Co.; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing November 19, 1984 a supplement to the Company's Electric Power Contract with the City of Easley. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedules FERC No. 241.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following additional delivery: Delivery Point No. 4 with a contract damend of 12,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date.

Duke Power proposes an effective date of October 19, 1984, and therefore requests waiver of the Commission's notice requirements.

According to Duke Power, copies of this filing were mailed to the City of Easley and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32193 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-13-000 and TA85-1-13-001]

Gas Gathering Corp.; Purchased Gas Cost Adjustment Filing

December 6, 1984.

Take notice that on November 30, 1984 Gas Gathering Corporation (GGC) tendered for filing proposed changes in its FERC Gas Tariff providing for decreased charges to Transcontinental Gas Pipe Line Corporation (Transco), its sole jurisdictional sale for resale customer, under GGC's Purchased Gas Cost Adjustment Provision (PGA clause), Section 4 of the Natural Gas Act, and Part 154 of the Commission's Regulations thereunder. The Proposed changes would decrease the rate charged to Transco by 38.17597 cents per MMBtu from those rates presently in effect. The Proposed effective date is January 1, 1985. GGC states that the filing reflects an increase in costs of purchased gas and a decrease in GGC's deferred cost surcharge adjustment.

GGC states that a copy of the filing has been served upon Transco.

Any person desiring to be heard or to protest said filing should file a petition motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32194 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-4-000 and TA85-1-4-001 (PGA85-1; IPR85-1)]

Granite State Gas Transmission, Inc.; Proposed Change in Rates

December 5, 1984

Take notice that on November 30, 1984, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1 containing changes in rates for effectiveness on January 1, 1985:

Ninth Revised Sheet No. 7
Fifth Revised Sheet No. 8
Sixth Revised Sheet No. 9

According to Granite State, the instant rate adjustments reflect changes in the cost of purchased gas at suppliers' rates

BILLING CODE 6717-01-M

1984 Gas Gathering Corporation (GGC) cost of purchased gas at suppliers' rates

that will be effective January 1, 1985 and the amortization of Unrecovered Purchased Gas Costs. Granite State further states that its revised rates: (1) Reflect changes in the cost of gas purchased from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) which Tennessee proposes to make effective January 1, 1985; and (2) changes in the cost of gas purchased from Consolidated Gas Transmission Company (Consolidated) and in the rates for a storage service rendered by Consolidated for Granite State resulting from a settlement of Consolidated's rates in Docket No. RP82-115-004. It is stated that Granite State's filing is made pursuant to the purchased gas cost adjustment provision in Section XIX of the General Terms and Conditions of its tariff and authorization granted in the Commission's order in *Tennessee Gas Pipeline Company, et al.*, 18 FERC ¶ 61,013.

Granite State further states that its rates are applicable to wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities,Inc. and to a storage service rendered for Bay State. According to Granite State, the effect of the proposed rates in its filing is an increase of approximately $803,815 annually in its rates for sales to Bay State and $314,832 annually for sales to Northern Utilities.

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32210 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-37-000]

High Island Offshore System; Proposed Changes in FERC Gas Tariff

December 6, 1984.

Take notice that on November 30, 1984, High Island Offshore System (HIOS) tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1. The proposed changes would increase revenues from jurisdictional transportation services by approximately $11.1 million based on the 12-month period ending August 31, 1984, as adjusted, compared with the revenues generated through the presently effective rates.

(a) Increased levels of operation and maintenance expenses, including increased costs from U-T Offshore System and ANR Pipeline Company for Cameron Meadows and Grand Chenier facilities respectively;

(b) Increased rate of recovery for the negative salvage provision;

(c) Increased costs of capital which result in an overall rate of return of 15.06% which is required to afford HIOS the opportunity to earn a fair and reasonable rate of return; and

(d) Declining levels of transportation volumes.

HIOS requests the instant filing be considered as a "compliance filing" pursuant to the FERC order dated December 6, 1977, in Docket no. CP75-104, *et al.*, well as a rate increase filed pursuant to Section 4 of the Natural Gas Act. In this connection, HIOS requests an effective date of January 1, 1985 for the proposed tariff sheet customers. HIOS states that it has served copies of this filing upon all of its customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the FERC's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the FERC in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the FERC and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32195 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-153-000]

Idaho Power Co.; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that on November 28, 1984, Idaho Power Company submitted for filing Service Agreements between it and Puget Sound Power & Light Company, Montana Power Company and Sierra Pacific Power Company covering the sale of non-firm transmission service in accordance with Idaho Power Company's FERC Electric Tariff Original Volume No. 2.

Idaho requests an effective date of September 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 21, 1984. Protests will be considered, by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32211 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-148-000]

Kansas City Power & Light Co.; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that on November 23, 1984, Kansas City Power & Light Company ("KCPL") tendered for filing an initial rate schedule for System Capacity Power Service provided to the City of Independence, Missouri—service Schedule G-MPA (KCPL Rate Schedule FPC No. 56). KCPL states that the rates for the service covered by the above-mentioned schedule are negotiated rates based upon KCPL's incremental energy cost.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32212 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-154-000]

New England Power Pool; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that on November 28, 1984, the New England Power Pool (NEPOOL) tendered for filing signature pages to the NEPOOL Agreement dated September 1, 1971, as amended, signed by the Exeter & Hampton Electric Company and the Concord Electric Company. The Exeter & Hampton Electric Company has its principal office in Exeter, New Hampshire, and the Concord Electric Company has its principal office in Concord, New Hampshire. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make the Exeter & Hampton Electric Company and the Concord Electric Company participants in the pool.

NEPOOL requests an effective date of February 1, 1985, for commencement of participation in the power pool by the Exeter & Hampton Electric Company and the Concord Electric Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32196 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-34-000]

Pacific Offshore Pipeline Co.; Cost of Service Filing

December 5, 1984.

Take notice that Pacific Offshore Pipeline Company ("POPCO") on November 29, 1984, tendered for filing and acceptance certain cost-of-service studies in compliance with Commission orders and its FERC Gas Tariff, Volume No. 1.

The studies submitted include a cost and revenue study covering the first year of operation of POPCO's facilities and a study of cash working capital requirement (lead/lag study). The studies were submitted in compliance with the Commission's certificate order of June 8, 1981, in Docket No. CP82-194, and with POPCO's FERC Gas Tariff. An analysis of the cost of service impact of a hypothetical date of commencement of operations was submitted at the request of the Commission Staff. POPCO's is requesting a Commission order finding the studies to be in compliance with its orders, approving an amount to be included in POPCO's rate base effective December 28, 1984 which includes the results of the cost of service and revenue report and the study of cash working capital requirement, finding that POPCO's tariff became effective December 28, 1983, and establishing a rate of return on equity at 15% for the first year of operation and prospectively.

Copies of the filing were served upon the Company's sole purchaser under its FERC Gas Tariff, Southern California Gas Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of Rule 214 or Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before *December 12, 1984.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32216 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-137-000]

Pacific Power & Light Co. an Assumed Business Name of PacifiCorp; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that on November 21, 1984, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Fourth Revised Sheet Nos. 5A and 5B, superseding Third Revised Sheet No. 5 (Index of Purchasers) of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff), and Service agreements between Pacific and the following parties:

Arizona Public Service Company
Deseret Generation & Transmission Co-operative
City of Glendale Public Service Department
Idaho Power Company
Montana Power Company
Platte River Power Authority
Portland General Electric
Public Service Company of Colorado
Public Service Company of New Mexico
Puget Sound Power & Light Company
Salt River Project Agricultural Improvement and Power District
San Diego Gas & Electric Company
Sierra Pacific Power Company
The Washington Water Power Company
Tri-State Generation and Transmission Association, Inc.
Tucson Electric Power Company
City of Pasadena, Pasadena Water & Power Department
Northern California Power Agency

Pacific states that the Service Agreements provide for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL-3 under Pacific's Tariff.

Pacific requests waiver of the Commission's prior notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 19, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32197 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-147-000]

Pacific Power & Light Co. an Assumed Business Name of PacifiCorp; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on November 23, 1984 tendered for filing, in accordance with Section 35.13 of the Commission's Regulations, Supplement and Amendment No. 4 (Amendment) to the February 25, 1976 Transmission Agreement between Pacific and Tri-State Generation and Transmission, Inc. (Tri-State).

The Amendment provides for the installation of Tri-State's 230–115 kV transformer in Pacific's Thermopolis substation.

Pacific requests that the Rate Schedule become effective sixty (60) days after date of filing.

Copies of the filing were supplied to the Public Service Commission, the State of Wyoming, and Tri-State Generation and Transmission Association, Inc.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 21, 1984. Protests will be considered, by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32214 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-92-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

December 6, 1984.

Take notice that on November 7, 1984 Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP85-92-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of a qualified end-user under its certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Applicant requests authority to transport gas on behalf of Teepak, Inc. (Shipper), pursuant to a transportation agreement dated September 21, 1984, among Applicant, Shipper and Illinois Power Company (Illinois Power) (Agreement). The Agreement provides for Applicant to receive a transportation quantity of up to 3,800 Mcf of gas per day on an interruptible basis at an existing point of interconnection between Applicant and Consolidated Fuel Supply, Inc., in Dewey and Ellis Counties, Oklahoma. Applicant states it would then transport and redeliver such gas, less a four percent reduction for fuel, to Illinois Power at an existing point in Vermilion County, Illinois, which in turn would make ultimate delivery to Shipper for its end-use at its Danville, Illinois, plant. It is explained that Illinois Power is an existing jurisdictional customer of Applicant and Shipper is an existing end/use customer of Illinois Power.

Applicant states that it would be compensated in accordance with its Rate Schedule OST, currently 42.0 cents plus a $1.24 GRI surcharge for each MMBtu redelivered at the point of redelivery.

Applicant states that the term of the authorization sought herein would be from the date automatic authorization expires (February 2, 1985) until the earlier of (1) eighteen months from the effective date of the Agreement (2) termination of the authorization as provided by Subpart F of Part 157 of the Regulations or (3) termination of the Agreement by either party.

Applicant also seeks flexible authority to add or delete sources of supply or receipt/delivery points, if such altered service is on behalf of the same end-user, at the same end-user location, within the maximum daily and annual volumes authorized in this docket, and under the same terms and conditions authorized for the basic service. Applicant advises that, within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points, it would file the following information:

(1) A copy of the gas purchase contract between the seller and the end-user;

(2) A statement as to whether the supply is attributable to gas under contract to and are released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement that the gas is not committed or dedicated within the meaning of NGPA Section 2(18);

(5) The location of the receipt/delivery points being added or deleted and the appropriate transportation charge resulting from the addition or deletion of receipt or delivery points (for deletions, the name of the producer/supplier would be provided);

(6) Where intermediary participates in the transaction between the seller and the end-user, the information required by Section 157.209(c)(1)(ix) of the Regulations;

(7) Identity of any other pipeline involved in the transport.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32198 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-151-000]

Public Service Company of New Mexico; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that Public Service Company of New Mexico (PNM), on November 28, 1984, tendered for filing as an initial rate schedule, an Interconnection Agreement, including Service Schedules A, B, C, D, E, F, G, and H thereto, between PNM and the Incorporated County of Los Alamos, New Mexico (County).

The Interconnection Agreement provides for the interconnection of the electrical systems of the parties and in service schedules thereto specifically provides for the exchange of emergency and economy energy, the sharing of County's generation hazard, the transmission of County's power and energy associated with County's ownership interest in San Juan Generating Station Unit 4, and area control for the benefit of County. PNM requests an effective date of January 1, 1985, and therefore requests waiver of the Commisison's notice requirements.

PNM is an electric utility incorporated in the State of New Mexico, with its principal office in Albuquerque, New Mexico. The County is a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico.

Copies of the filing were served upon the County and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 21, 1984. Protests will be considered, by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32199 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-152-000]

Public Service Company of New Mexico; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that Public Service Company of New Mexico ("PNM") on November 28, 1984, tendered for filing as a rate schedule change, a Contract for electric Service ("Contract") between PMN and the United States of America acting through the United States Department of Energy ("DOE").

Under the Contract, PNM will provide certain transmission services to DOE for DOE's Colorado River Storage Project capacity and associated energy, and will make available to DOE energy for the return of peaking energy utilized by DOE; and DOE will provide transmission service to PNM's Buckman substation. The Contract, upon its effective date of January 1, 1985, will supersede prior contracts between DOE and PNM, designated as PNM Rate Schedules FPC Nos. 23 and 34. However, the rates for services provided for in the Contract are not changed from those provided for similar services in the superseded rate schedules. PNM requests an effective date of January 1, 1985 and therefore requests waiver of the Commission's notice requirements.

PNM is an electric utility incorporated in the State of New Mexico, with its principal office in Albuquerque, New Mexico.

Copies of the filing have been served upon DOE and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32200 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-143-000]

Public Service Company of New Mexico; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that Public Service Company of New Mexico ("PNM") on November 23, 1984, tendered for filing as a rate schedule change, Service Schedule J to the Master Interconnection Agreement between Plains Electric Generation and Transmission Cooperative, Inc. ("Plains") and PNM (designated as PNM Rate Schedule FPC No. 31).

Service Schedule J provides for the exchange of generation entitlement between PNM and Plains for hazard sharing purposes only. PNM dedicates to Plains 80 MW of capacity and associated energy from PNM's San Juan Generating Station ("San Juan") Unit 4 and 25 MW of capacity from San Juan Unit 3. Plains dedicates to PNM 105 MW of capacity and associated energy from the Plains Escalante Generating Station Unit 1. This hazard sharing arrangement, as established in Service Schedule J, is to become effective on January 1, 1985. PNM therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon Plains and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1984. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32201 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-148-000]

San Diego Gas & Electric Co.; Filing

December 6, 1984.

The filing Company submits the following:

Take notice that on November 26, 1984, San Diego Gas & Electric Company ("SDG&E") tendered for filing a notice of cancellation of the Interchange and Boundary Agreement (the "Agreement") between SDG&E and Imperial Irrigation District ("IID") (SDG&E FPC #29).

SDG&E states that emergency service presently provided to IID under the Ageement is being terminated at the parties' mutual request and that such service, as well as other interconnection and exchange services, will be provided under another agreement and has been filed with the Commission on October 31, 1984.

SDG&E requests an effective date of January 1, 1985.

Copies of this filing were served upon the Public Utilities Commission of the State of California and IID.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 21, 1984. Protests will be considered, by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32215 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-13-M

[Docket Nos. TA85-1-6-000 and TA85-1-6-001]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

December 6, 1984.

Take notice that on November 30, 1984, Sea Robin Pipeline Company (Sea Robin) tendered for filing Thirty-Eight Revised Sheet No. 4, Eighteenth Revised Sheet No. 4-A and Fifth Revised Sheet No. 4-B to its FERC Gas Tariff, Original Volume No. 1. These tariff sheets and supporting information are being filed pursuant to the Purchased Gas Cost Adjustment provision set out in Section 1 and 3 of Sea Robin's Tariff.

Sea Robin states that these revised tariff sheets and supporting data are being mailed to Sea Robin's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32202 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-9-000 and TA85-1-9-001]

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions

December 6, 1984.

Take notice that on November 30, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective January 1, 1985:

Original Volume No.1
Eighth Revised Sheet Nos. 23 through 30
Thirteenth Revised Sheet No. 21

Tennessee states that the purpose of the revised tariff sheets is to adjust Tennessee's rates pursuant to Articles XXIII and XXIX of the General Terms and Conditions of its FERC Gas Tariff, consisting of a PGA rate adjustment and Estimated Incremental Pricing Surcharges.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered y the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32203 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-146-000 and RP84-146-001]

Transcontinental Gas Pipe Line Corp.; Waiver of Tariff Provision

December 4, 1984.

Take notice that on September 27, 1984, as amended November 26, 1984, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a request with the Federal Energy Regulatory Commission (Commission) for a waiver of the requirements under Section 26 of the General Terms and Conditions of its FERC Gas Tariff which requires Transco to track, through Transco's Rate Schedule S-2, cost decreases by Texas Eastern Transmission Corporation (Texas Eastern) under Texas Eastern's Rate Schedule X-28. Transco states that refund of any decreases would be made at such time as Transco tracks changes in Texas Eastern's rates as a result of major rate case filings or other similar events.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32218 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-11-000 and TA85-1-11-001]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 6, 1984.

Take notice that on November 30, 1984, United Gas Pipe Line Company (United) tendered for filing Sixty-Seventh Revised Sheet No. 4, Tenth Revised Sheet Nos. 4-A and 4-B, and Fifteenth Revised Sheet No. 4C to its FERC Gas Tariff, First Revised Volume No. 1. Tariff Sheets 4, 4-A and 4-B and supporting information are being filed pursuant to Sections 19, 21, 23 and 24 of United's Tariff. Tariff Sheet No. 4-C is submitted pursuant to the letter order issued by the Office of Pipeline and Producer Regulations dated January 27, 1982 in Docket No. CP81-387-00. In addition, United tendered for filing, Alternate Sixty-Seventh Revised Sheet No. 4 to be effective if Northern Border Pipeline Company's application filed November 16, 1984 in Docket No. RP85-25, to change its depreciation method, is approved prior to January 1, 1985. United stated that the only difference between Sixty-Seventh Revised Sheet No. 4 and the Alternate is the computation of the Alaskan Natural Gas Transmission System Current Adjustment with the Alternate Sheet reflecting the effect of approval of Northern Border's Filing. The proposed effective date of each Tariff Sheet is January 1, 1985.

United reports that it mailed copies of the proposed tariff sheets and supporting data to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available to public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32204 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-99-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

December 6, 1984.

Take notice that on November 9, 1984, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-99-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 C.F.R. 157.205) for authorization to construct a new sales delivery point to Reserve Public Utilities Corporation (Reserve), an existing customer, under the certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed sales tap would be located in St. John Parish, Louisiana. United states that it would supply up to 400 Mcf of natural gas per day to Reserve for resale to St. John Parish School Board and that such sale would not increase Reserve's aggregate base requirements or contractual maximum daily quantity under United's curtailment plan. United asserts that it would be reimbursed by Reserve for all costs resulting from the installation of the proposed tap.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32216 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-11-000]

City of Vernon and the Cities of Anaheim, Riverside, Banning, Colton, and Azusa, Complainants, v. Southern California Edison, Respondent; Complaint Against Fuel Clause Overcharges

December 6, 1984.

Take notice that on November 14, 1984 the City of Vernon, California and the Cities of Anaheim, Riverside, Banning, Colton, and Azusa, California (collectively "complainants") submitted for filing a complaint against fuel clause overcharges pursuant to Sections 205(f)(3) and 206 of the Federal Power Act.

The Complainants request that Edison be required to refund to its resale customers $3,976,785 fuel clause overcollection for the period through May 31, 1982; and that Edison be directed to supply full information regarding fuel supplier refunds received by Edison and not passed on t6 resale customers.

Further, the Complainants request that interest be computed on all refunds from the date of receipt of the applicable sums from the fuel suppliers until the date of payment of refunds by Edison to resale customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

BILLING CODE 6717-13-M

and Conditions of its FERC Gas Tariff, D.C. 20426, in accordance with Rules 211

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32218 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-39-000]

Wyoming Interstate Company, Ltd.; Proposed Changes in FERC Gas Tariff

December 6, 1984.

Take notice that Wyoming Interstate Company, Ltd. (WIC), on November 30, 1984, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed base rates would increase revenues from transportation by approximately $3.4 million above the rates currently in effect. The proposed increase is based on the 12-month period ended August 31, 1984, adjusted for known and measurable changes in which will become effective within the nine months subsequent to that date, as provided for in the Commission's Regulations.

WIC states that the rates filed herewith are designed to enable WIC to recover its jurisdictional cost of service.

Copies of WIC's filing have been served on WIC's jurisdictional transportation customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32207 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-58-000]

Acurex Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 6, 1984.

On October 29, 1984, Acurex Corporation, 555 Clyde Avenue, P.O. Box 7555, Mountain View, California 94039 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility will be located at a refinery in Santa Barbara County, California. The prime mover will be a 3.8 MW natural gas-fueled combustion turbine/generator set. Exhaust from the turbine will heat crude oil by passing through a crude oil heat exchanger and then through a waste heat boiler where 155 PSIG saturated steam will be produced. The steam will be used in the refinery for tank and line heating, steam stripping and powering pumps. Installation of the facility will begin in May 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32227 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-142-002]

The Dow Chemical Co., Louisiana Division; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 6, 1984.

On November 6, 1984, The Dow Chemical Company, Louisiana Division, P.O. Box 150, Plaquemine, Louisiana 70765-0150 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility to be certified consists of two 100 MW combustion turbine and heat recovery boiler generation units which supply both electricity and steam to adjacent chemical process plants. The primary energy to the facility is natural gas. Installation of the units took place in 1982 and 1983.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32225 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-60-000]

E. I. du Pont de Nemours and Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 6, 1984.

On October 29, 1984, E. I. du Pont de Nemours and Company (Applicant), 1007 Market Street, Wilmington, Delaware 19898, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Natural gas will be the primary energy source of Applicant's proposed topping cycle cogeneration facility. The facility, which will have a power production capacity of approximately 82 megawatts, will be located at the Applicant's Victoria Texas Plant. Steam from the turbine generator will be used in process heating in the petrochemical plant. Installation of the facility will begin in September 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32226 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-93-000]

Simpson Paper Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 6, 1984.

On November 16, 1984, Simpson Paper Company, P.O. Box 2648, Pomona, California 91769, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the premises of Simpson Paper Company's Pomona Paper Mill Processing Plant, 100 North Erie Street, City of Pomona, County of Los Angeles, California. The energy source for the facility will be natural gas with #2 fuel oil backup. The gas-fired combustion turbine/generator cogeneration facility has a rated electric power output of 33.37 megawatts. Turbine exhaust is recovered in a waste heat boiler where steam is produced for use in the existing paper mill. Installation of the facility began in 1984. Electric power will be sold to Southern California Edison Company.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32224 Filed 12-10-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51543; FRL-2708-5]

Premanufacture Notices; Certain Chemicals

Correction

In FR Doc. 84-28909 beginning on page 44139 in the issue of Friday, November 2, 1984, make the following correction: On page 44140, in the middle column, the last line, "mg/kg;" should read "8,000 mg/kg;".

BILLING CODE 1505-01-M

[OPP-240051; FRL-2706-8]

State Registration of Pesticides

Correction

In FR Doc. 84-28669 beginning on page 43766 in the issue of Wednesday, October 31, 1984, make the following correction: On page 43771, in the first column, under "Oklahoma", in the second paragraph, first line, "*OK 84-0003*" should read "*OK 84-0004*".

BILLING CODE 1505-01-M

[RD-FRL-2731-7]

Health Assessment Document on the Biological Effects of Radiofrequency Radiation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency has completed a health assessment document on radiofrequency radiation as part of its analyses to develop Federal radiation protection guides for radiofrequency radiation under authority of 42 U.S.C. 2021(h), transferred to the EPA by Reorganization Plan No. of 1970.

This notice announces the availability to the public of *Biological Effects of Radiofrequency Radiation* (EPA-600/8-83-026F) which will be used by the Agency to determine the health effects that may result from exposure to radiofrequency radiation.

The document is available from EPA at the following address: ORD Publications—CERI-FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone: (513) 684-7562.

Requestors should send their names and addresses to the above address to receive the document. Requestors should be sure to cite the EPA number assigned to the report, EPA-600/8-83-026F.

The document will also be available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. If ordering from the NTIS, the price per copy will be $22.00, and requestors should cite the NTIS accession number, PB-85-120-848.

FOR FURTHER INFORMATION CONTACT: Dr. Joe A. Elder, Health Effects Research Laboratory, MD-74, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711. Telephone: (919) 541-2541.

Dated: November 20, 1984.

Bernard D. Goldstein,

Assistant Administrator for Research and Development.

[FR Doc. 84-32282 Filed 12-10-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 4, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

OMB Number: 3060-0289
Title: Section 76.601, Performance Tests
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 3,200 Recordkeepers; 51,200 Hours

OMB Number: 3060-0271
Title: Section 76.311, Equal Employment Opportunity

Box 7555, Mountain View, California

100 MW combustion turbine and heat

Capitol Street, NE., Washington, D.C.

appropriate action to be taken, but will

Agency to determine the health effects

Opportunity

Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 3,200 Respondents/Recordkeepers; 332,800 Hours

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84-32220 Filed 12-10-84; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket Nos. 84-1057; et al.; File Nos. BR-953, et al.]

RKO General, Inc., et al.; Memorandum Opinion and Order

In re Applications of:

RKO General, Inc. (WRKO), Boston, MA.	MM Docket No. 84-1057, file No. BR-953.
For Renewal of License:	
The Commonwealth Broadcast Group, Boston, MA.	MM Docket No. 84-1058, file No. BP-830510AC
South Jersey Radio, Inc., Malden, MA.	MM Docket No. 84-1059 file No. BP-830511AI.
Dana May-Lynn Duran, Boston, MA.	MM Docket No. 84-1060, file No. BP-830511AM.
Boston Radio Corporation, Boston, MA.	MM Docket No. 84-1061, file No. BP-830512AA
Stephen E. Powell, Boston, MA.	MM Docket No 84-1062 file No. BP-830512BA
Boston Radio Group, Inc., Boston, MA.	MM Docket No. 84-1063, file No. BP-830512AX.
Radio Broadcasters Limited Partnership, Boston, MA.	MM Docket No. 84-1064, file No. BP-[illegible]
Cozzin Communications Corporation, Wellesley, MA.	MM Docket No. 84-1065, file No. BP-830512BM.
Fenway Broadcast Associates Limited Partnership, Boston, MA.	MM Docket No. 84-1066, file No. BP-830512BN.
Rita F. Hurwitz, Boston, MA.	MM Docket No. 84-1067, file No. BP-830512BY.
Donnie Simpson Enterprises, Inc., Boston, MA.	MM Docket No. 84-1068, file No. BP-830512BZ.
First City Communications, Inc., Boston, MA.	MM Docket No 84-1069, file No. BP-830512CA.
RKO General, Inc. (WOR-FM), Boston, MA.	MM Docket No. 84-1070, file No. BRH-617.
The Commonwealth Broadcast Group, Boston, MA.	MM Docket No. 84-1071 file No. BPH-830510AK
South Jersey Radio, Inc., Boston, MA.	MM Docket No. 84-1072, file No. BPH-830511AJ
Rita F. Hurwitz, Boston, MA.	MM Docket No. 84-1073, file No. BPH-830512AF.
Boston Dynamic Radio Limited, Partnership, Boston, MA.	MM Docket No. 84-1074, file No. BPH-830512AY.
First City Communications, Inc., Boston, MA.	MM Docket No. 84-1075, file No. BPH-830512BF.
Fort Hill Radio Associates, Boston, MA.	MM Docket No. 84-1076, file No. BPH-830512BG.
Boston Radio Corporation, Boston, MA.	MM Docket No. 84-1077, file No. BPH-830512CC.
Radio Broadcasters Limited Partnership, Boston, MA.	MM Docket No. 84-1078, file No. BPH-830512CN.
Stephen E. Powell, Boston, MA.	MM Docket No. 84-1079, file No. BPH-830512CS.
Professional Communications Partners, Boston, MA.	MM Docket No. 84-1080, file No. BPH-830512CW.
Nash Communications Corporation, Boston, MA.	MM Docket No. 84-1081, file No. BPH-[illegible]
Donnie Simpson Enterprises, Inc., Boston, MA.	MM Docket No. 84-1082, file No. BPH-830512DE.
Cozzin Communications Corporation, Boston, MA.	MM Docket No. 84-1083, file No. BPH-830512DF.
Boston Radio Group, Inc., Boston, MA.	MM Docket No. 84-1084, file No. BPH-830512DG.

For Construction Permit.

Memorandum Opinion and Order

Adopted: November 8, 1984.
Released: December 4, 1984.
By the Commission.

1. The Commission has under consideration the license renewal applications of RKO General, Inc. (RKO), for Stations WRKO and WROR(FM), Boston, Massachusetts[1] and the above-captioned mutually exclusive applications to operate on the same channels with identical facilities. In addition, we have before us motions for leave to amend and accompanying amendments filed by RKO [2] and South Jersey Radio, Inc. (South Jersey) [3], a petition to dismiss the Nash Communications Corporation application filed by RKO, and related pleadings. In view of the matters already being considered in the KHJ–TV case, note 1 *supra*, and in view of the fact that those matters may have a bearing upon the ultimate resolution of this case, we believe that it would be premature to commence any consideration of either RKO's qualifications or the comparative elements of the applicants' proposals, pending the outcome of the KHJ–TV case. Accordingly, in the interest of managing and ordering our docket of adjudicatory proceedings so as to permit the most efficient and effective utilization of Commission resources, we direct the parties to deal first with any petitions to enlarge issues and/or basic qualifying issues that involve the mutually exclusive applicants (i.e., applicants other than RKO) who seek construction permits to operate on the channel(s) now held by RKO. Upon completion of all appropriate proceedings, including such evidentiary hearings as may be warranted, relating to these questions concerning the mutually exclusive applications for construction permits, the presiding Administrative Law Judge should so inform the Commission and await guidance from the Commission before setting the date for filing any proposed findings and conclusions or going forward with any further proceedings. In other cases involving multiple license owners, we have assigned all of the proceedings to a single Administrative Law Judge for the purpose of considering the impact of common qualifications questions on each of the owner's stations, *e. g., Intercontinental Radio, Inc.*, 88 FCC 2d 819 (1981). Here, we have already made provision for consideration of the questions concerning RKO's overall qualifications by a single ALJ in the Los Angeles, California, KHJ–TV, proceeding. Thus, the procedures used in cases such as *Intercontinental, supra*, are unnecessary for the instant proceeding. Indeed, the *Intercontinental* approach, if applied here, involving substantial numbers of comparative hearings and competing applicants presided over by a single Judge, will inevitably delay resolution of these matters. Instead, we believe that the interests of administrative efficiency will be better served by providing for assignment of a presiding Administrative Law Judge for this proceeding by the Chief Administrative Law Judge in accordance with his regular and ordinary rotational procedures.

2. *The Commonwealth Broadcast Group application.* In the event of a grant here, the applicant's five general partners have agreed to divest all current interests in and connections with any other broadcast stations prior

[1] We have designated the license renewal application of RKO's Station KHJ–TV, Los Angeles, California, as the forum for inquiring into the impact of RKO's disqualification as the licensee of WNAC–TV, Boston, Massachusetts on its overall basic and comparative qualifications to remain a licensee elsewhere. See our Memorandum Opinion and Order adopted this same date, *RKO General, Inc. (WHBQ–TV)*, —— FCC 2d —— (1984), for a full discussion of this matter.

[2] Since the "B" cut-off date (March 29, 1984), RKO has filed several petitions for leave to amend and accompanying amendments to its renewal application. The purpose of these amendments is to update information previously submitted to the Commission. We reviewed the motions and amendments and find that in each case good cause exists for accepting the amendments for 1.65 purposes only.

[3] For the reasons set forth in *RKO General, Inc. (WHBQ–TV, supra*, concerning a similar pleading filed by South Jersey, we will grant the motion and accept the amendment.

to commencement of operation. An appropriate condition will be specified.

3. *The South Jersey application.* South Jersey proposes to serve with its AM station the community of Malden, Massachusetts, using the facilities employed by RKO to serve Boston. While the applicant has established compliance with all coverage requirements for its specified community, it has not proposed a main studio location consistent with the requirements of Section 73.1125 of our Rules. An appropriate amendment is called for under these circumstances.

4. *The Danna May-Lynn Duran (Duran) application.* The Duran application was submitted on our prior Form 301, with a certification of financial qualification substituted for the detailed showing required by the Form. This certification, however, does not conform precisely to the wording contained in our present Form 301. This difference in certifications must be corrected by appropriate amendment.

5. Applicants for new broadcast stations are required to give local notice of the filing of their applications in accordance with Section 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that Duran has done either. If it has not already done so, the applicant will be required to give local public notice and to file a statement that it has complied with the local public notice requirement with the presiding Administrative Law Judge within 20 days.

6. *The Stephen E. Powell and Donnie Simpson Enterprises, Inc. applications.* The Powell and Simpson applications were not complete when filed in that applications for other facilities now operated by RKO were not listed. Given the public nature of this information, no motive to conceal or misrepresent is apparent. Hence, we will specifiy no issues in this regard. Both should amend their applications here to reflect all pending proposals, however.

7. *The Boston Radio Group, Inc. application.* Boston Radio Group indicates that its principal George L. Miles will "shortly resign" from his position as station manager of WBZ-TV, Boston, to accept a position elsewhere. This resignation should be confirmed by appropriate amendment.[4]

8. *The COZZIN Communications Corporation (COZZIN) application.* Like South Jersey Radio, COZZIN proposes to serve a community other than Boston with RKO's AM facility. The applicant, however, has not established compliance with either our coverage [Sections 73.24(j) and 73.182(f)] or main studio location (section 73.1125) requirements for its specified community of license. An appropriate amendment is necessary.

9. *The Rita F. Hurwitz and Boston Dynamic Radio Limited Partnership applications.* While the applicants have answered all questions contained in the model equal employment opportunity program attached to the applications, they have not provided the illustrative examples called for by that form. Appropriate amendments are necessary under the circumstances.

10. *The Fort Hill Radio Associates (Fort Hill) and Professional Communications Partners (Professional) applications.* Professional and Fort Hill have both specified the existing facilities of WROR–FM. Both have specified the same antenna height above average terrain of 363 meters, which is consistent with that presently on file for WROR–FM. However, the radiation centers above ground level (AGI) and above mean sea level (AMSL) proposed by both applicants are lower than the same data presently on file with the Commission for WROR-FM. The respective radiation centers AGL and AMSL for Professional are 3.1 meters and 3.8 meters below the existing antenna, and the respective radiation centers AGL and AMSL for Fort Hill are 13.5 meters and 14.4 meters below the existing antenna. To remedy these inconsistencies Professional and Fort Hill will be required to provide the presiding Administrative Law Judge with amendments within 20 days correcting the inconsistent data.

11. Professional has not established its financial qualifications, in that only one of the two necessary certifications has been made. An appropriate issue will therefore be specified.[5]

12. *The Nash Communications Corporation application.* This applicant has not as yet established its financial qualifications to construct and operate as proposed. Hence, an issue will be specified.

13. RKO General, Inc. has filed a petition to dismiss, alleging that the Nash proposal lacks all technical information called for by the application form. In fact, however, while this claim may have been true of the copy examined by RKO in the Commission's public reference room, it is not true of the original proposal submitted to the staff for study. The latter is all respects a complete proposal, making acceptance for filing the proper course of action. RKO's petition will therefore be denied.

14. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although some of the applications are for different communities, all would serve the same area. Therefore, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will be specified.

15. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Professional Communications Partners is financially qualified to construct and operate as proposed.

2. To determine whether Nash Communications Corporation is financially qualified to construct and operate as proposed.

3. To determine with respect to the AM applicants: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

4. To determine with respect to the AM applicants, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine with respect to the FM applicants which of the proposals

[4] In the event that Mr. Miles does not leave Station WBZ–TV, the presiding Administrative Law Judge may wish to evaluate his Boston broadcast interests under our multiple ownership rule (Section 73.3555).

[5] In the event that the applicant has misunderstood Section III f the application form to provide alternative rather than complimentary certifications, it may properly resolve the issue by submitting an amended Section III with both certifications marked "yes".

would, on comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

16. It is further ordered, that the petitions for leave to amend filed by RKO General, Inc. are granted for the purposes of Section 1.65 of the Commission's Rules.

17. It is further ordered, that the motion for leave to amend filed by South Jersey Radio, Inc. is granted and the accompanying amendment IS ACCEPTED *nunc pro tunc.*

18. It is further ordered, that in the event of a grant of application of the Commonwealth Broadcast Group, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that the following have divested all interests in and connections with any other broadcast station: Marc L. Berman, Scott J. Bacherman, Beth Marie Robinson, Kathleen F. Lynch, Mary Jane Gregory.

19. It is further ordered, that South Jersey Radio, Inc. shall establish compliance with § 73.1125 of the Commission's Rules with the presiding Administrative Law Judge within 20 days after this Order is released.

20. It is further ordered, that Danna May-Lynn Duran shall submit a complete certification of financial qualifications to the presiding Administrative Law Judge within 20 days after this Order is released.

21. It is further ordered, that Danna May-Lynn Duran shall comply with the local notice provision of § 73.3580 of the Commission's Rules and shall advise the presiding Administrative Law Judge of compliance within 20 days after this Order is released.

22. It is further ordered, that Stephen E. Powell and Donnie Simpson Enterprises, Inc. shall file the amendments specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

23. It is further ordered, that Boston Radio Group, Inc. shall clarify the broadcast interests of its principal George L. Miles to the presiding Administrative Law Judge within 20 days after this Order is released.

24. It is further ordered, that COZZIN Communications Corporation shall establish compliance with §§ 73.24(j), 73.182(f) and 73.1125 of the Commission's Rules with the presiding Administrative Law Judge within 20 days after this Order is released.

25. It is further ordered, that Rita F. Hurwitz and Boston Dynamic Radio Limited Partnership shall file the amendments specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

26. It is further ordered, that Fort Hill Radio Associates and Professional Communications Partners shall file amendments with the presiding Administrative Law Judge within 20 days after this Order is released bringing their proposed radiation centers above ground level and above mean sea level in conformity with that on file for the facilities of WROR-FM.

27. It is further ordered, that the petition to dismiss filed by RKO General, Inc., is denied.

28. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., NW., Washington, D.C. 20554.

29. It is further ordered, that the Initial Decision in this proceeding shall consider the findings in Docket No. 16679 (KHJ-TV) as to RKO's basic or comparative qualifications.

30. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

31. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 74.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

32. Finally, copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt Requested to the parties to this proceeding by the Secretary of the Commission.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 84-32221 Filed 12-10-84; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

First State Bancorp of Monticello; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of the Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by the approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *First State Bancorp of Monticello,* Monticello, Illinois; to acquire Eskridge Agency, Inc., Hammond, Illinois, thereby acting as general insurance agent in a community that has population not exceeding 5,000. These activities would be conducted in Hammond and surrounding areas.

Board of Governors of the Federal Reserve System, December 5, 1984.
James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-32186 Filed 12-10-84; 8:45 am]
BILLING CODE 6210-01-M

Jeff Davis Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 2, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jeff Davis Bancshares, Inc.,* Hazlehurst, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Jeff Davis Bank, Hazlehurst, Georgia.

2. *SouthTrust Corporation,* Birmingham, Alabama; to acquire 80 percent of the voting shares of The First National Bancorporation of the South, Opp, Alabama.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation,* Appleton, Wisconsin; to acquire 100 percent of the voting shares of Bancwis Corporation, Janesville, Wisconsin, thereby indirectly acquiring Bank of Wisconsin, Janesville, Wisconsin, and Merchants Bank of Evansville, Evansville, Wisconsin.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bank Corp.,* Fort Smith, Arkansas; to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank of Fort Smith, Fort Smith, Arkansas.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Sooner Southwest Bancshares, Inc.,* Bristow, Oklahoma; to become a bank holding company by acquiring 81 percent of the voting shares of Anadarko Bancshares, Inc., Anadarko, Oklahoma, and 92 percent of the voting shares of Community Bancorporation, Inc., Bristow, Oklahoma, thereby indirectly acquiring Anadarko Bank and Trust Co., Anadarko, Oklahoma, and Community Bank, Bristow, Oklahoma, respectively.

Board of Governors of the Federal Reserve System, December 5, 1984.
James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-32187 Filed 12-10-84; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 84V-0035 et al.]

Availability of Approved Variances for Sunlamp Products

Correction

In FR Doc. 84-23294, beginning on page 34963 in the issue of Tuesday, September 4, 1984, make the following correction:

In the table at the bottom of page 34963, the first entry in the first column, under the heading "Docket No.", should read "84V-0035".

BILLING CODE 1505-01-M

[Docket No. 76N-0172, NADA Nos. 9-073, -393, 11-698, 12-061, and 13-805]

Hess & Clark, et al.; Furazolidone (NF-180); Hearing on a Proposal To Withdraw Approval of Certain New Animal Drug Applications

Correction

In FR Doc. 84-23299, beginning on page 34971 in the issue of Tuesday, September 4, 1984, make the following correction: On page 34971, third column, the authority citation immediately following the paragraph designated "(B)" should read "21 U.S.C. 360b(e)(1)(B)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; San Luis Rey Band of Mission Indians

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a)(formerly 25 CFR 54.8(a)) notice is hereby given that the San Luis Rey Band of Mission Indians, c/o Ms. Carmen Mojado, Mission Indian Bands Paralegal Constortium, 360 North Midway, Suite 301, Escondido, California 92027, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on October 18, 1984. The petition was forwarded and signed by members of the groups's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Undr § 83.8(d)(formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20245.

John W. Fritz,
Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 84-32248 Filed 12-10-84; 8:45 am]
BILLING CODE 4310-02-M

days after this Order is released.

[FR Doc. 84-32221 Filed 12-10-84; 8:45 am]

BILLING CODE 6712-01-M

Wisconsin, and Merchants Bank of

page 34971 in the issue of Tuesday,

BILLING CODE 4310-93-M

Bureau of Land Management

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, D.C. 20503, telephone number (202) 395-7340.

Title: Calculation of net book worth. 43 CFR 5475.

Abstract: Individuals or firms submitting Federal timber sale contracts for buy-out under the Federal Timber Payment Modification Act (Pub. L. 98-478) must submit evidence of their net book worth to enable the Bureau of Land Management to determine their eligibility under the Act. The information will be used to determine whether applicants have calculated their entitlement correctly.

Frequency: Once.

Description of Respondents: Holders of Federal timber sale contracts which qualify for buy-out under Pub. L. 98-478.

Annual Responses: 100.

Annual Burden Hours: 914.

Bureau Clearance Officer: Jesse Felix at (202) 653-8853.

Dated: November 28, 1984.

Arnold E. Petty,

Acting Associate Director.

[FR Doc. 84-32244 Filed 12-10-84; 8:45 am]

BILLING CODE 4310-84-M

[M50157]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Notice of Realty Action M60157, Exchange of Public and Private Lands in Beaverhead and Madison counties.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976; 43 USC 1716:

Parcel and legal description	Acreage
Principal Meridian Montana—Beaverhead County	
1 T.2S., R.9W., Sec. 29, SE¼SW¼; Sec. 32, NE¼NW¼;	80
2 T.5S., R.7W., Sec. 19, SE¼NE¼; Sec. 20, E½NW¼, SW¼NW¼, NW¼SW¼	200
6 T.7S., R.9W., Sec. 10, NE¼SE¼;	40
7 T.7S., R.9W., Sec. 11, SE¼SW¼, SE¼; Sec. 13, NW¼SW¼; Sec. 14, Lots ,1, 2, and 3	351.4
7 A T.7S., R.9W., Sec. 13, N½SW¼SW¼, SW¼SW¼SW¼; Sec. 14, Lot 5	68.17
8 T.7S., R.9W., Sec. 17, NW¼SW¼; Sec. 18, NE¼SE¼	80
10 T.7S., R.9W., Sec. 21, NE¼NE¼; Sec. 22, N½, NE¼SW¼, NW¼SE¼; Sec. 23, NW¼NW¼	480
11 T.7S., R.10W., Sec. 11, NW¼NE¼, SE¼NW¼, NW¼SE¼, SE¼SE¼	160
12 T.7S., R.10W., Sec. 13, N½SW¼	80
13A T.8S., R.7W., Sec. 20, SW¼SW¼	40
13B T.8S., R.7W., Sec. 29, W½NW¼	[illegible]
14 T.8S., R.7W., Sec. 28, SW¼NE¼, SE¼NW¼, NE¼SW¼, N½SE¼	200
15 T.9S., R.8W., Sec. 7, Lot 4, SE¼SW¼; Sec. 18, Lot 4	115.30
17 T.9S., R.9W., Sec. 34, S½N½	160
18 T.9S., R.10W., Sec. 20, NE¼NW¼	40
22 T.9S., R.11W., Sec. 32, NE¼SE¼; Sec. 33, N½SW¼	120
23 T.1N., R.15W., Sec. 28, N½NW¼, SW¼NW¼, NW¼SW¼	160
24 T.1S., R.16W., Sec. 1, Lot 1	41.25
25 T.2S., R.16W., Sec. 3, Lot 3	40.16
26 T.2S., R.16W., Sec. 24, Lot 1	21.67
32 T.6S., R.11W., Sec. 19, Lot 3	38.57
33 T.6S., R.11W., Sec. 30, SE¼SE¼; Sec. 31, NE¼NE¼	[illegible]
34 T.6S., R.12W., Sec. 25, SE¼SE¼	40
[illegible] T.6S., R.15W., Sec. 29, S½SW¼	[illegible]
36 T.6S., R.16W., Sec. 1, Lot 4, W½SW¼	127.25
37 T.7S., R.12W., Sec. 5, SW¼	160
42 T.8S., R.13W., Sec. 14, SE¼NE¼	40
45 T.10S., R.9W., Sec. 2, NW¼SW¼	40
46 T.10S., R.9W., Sec. 3, Lot 1	41.50
47 T.10S., R.9W., Sec. 3, SE¼SE¼	40
48 T.10S., R.11W., Sec. 2, E½NW¼, NE¼SW¼	120
51 T.10S., R.11W., Sec. 10, W½NW¼	80
52 T.10S., R.12W., Sec. 25, SE¼SE¼	40
54 T.10S., R.14W., Sec. 17, Lots 1 and 2, S½NE¼, SE¼NW¼, NE¼SW¼, SW¼SW¼; Sec. 18, E½NE¼, NE¼SE¼	399.5
56 T.10S., R.15W., Sec. 25, SE¼NE¼, NE¼SE¼	[illegible]
58 T.11S., R.8W., Sec. 9, NW¼NW¼	40
62 T.11S., R.9W., Sec. 3, SW¼NW¼	40
63 T.11S., R.9W., Sec. 14, S½SE¼	80
64 T.11S., R.10W., Sec. 35, SE¼SW¼, SW¼SE¼; T.12S., R.10W., Sec. 2, NW¼NE¼, NE¼NW¼	160
65 T.12S., R.10W., Sec. 2, SE¼NW¼	40
71 T.11S., R.12W., Sec. 23, E½NE¼; Sec. 24, SW¼NW¼, NW¼SW¼	160
72 T.11S., R.12W., Sec. 26, SW¼NW¼; Sec. 27, SE¼NE¼, NE¼SE¼	120
73 T.11S., R.14W., Sec. 13, SE¼SW¼	80
74 T.11S., R.14W., Sec. 24, NW¼NE¼	40
81 T.14S., R.8W., Sec. 18, Lot 4	37.72
82A T.14S., R.9W., Sec. 13, SE¼NW¼	40
82B T.14S., R.9W., Sec. 13, NE¼SW¼	40
85 T.14S., R.11W., Sec. 7, NE¼SW¼, NW¼SE¼	[illegible]
86 T.14S., R.11W., Sec. 30, SE¼NE¼	40
87 T.15S., R.11W., Sec. 22, SE¼SE¼; Sec. 23, NE¼NE¼, E½NW¼, N½SW¼, SW¼SW¼; Sec. 26, NW¼NW¼; Sec. 27, N½N½; Sec. 28, N½NE¼	560
88 T.11S., R.6W., Sec. 33, NW¼NE¼	40
91 T.11S., R.7W., Sec. 33, SE¼NW¼	40
93 T.12S., R.7W., Sec. 5, SE¼NE¼	40
94 T.13S., R.2W., Sec. 12, Lot 10	39.73
98 T.13S., R.4W., Sec. 14, NW¼SW¼	40
99 T.13S., R.4W., Sec. 21, SE¼SW¼	40
103 T.14S., R.2W., Sec. 18, SE¼NE¼	40
104 T.14S., R.3W., Sec. 4, NW¼SW¼	40
109 T.14S., R.3W., Sec. 15, NW¼NW¼	40
110 T.14S., R.3W., Sec. 22, SW¼SE¼	40
116 T.15S., R.6W., Sec. 4, SW¼NW¼, NW¼SW¼	80
124 T.6S., R.10W., Sec. 29, Lot 6	20.66
125 T.12S., R.9W., Sec. 28, NE¼	40
126 T.12S., R.9W., Sec. 34, NE¼NE¼	40
127 T.14S., R.4W., Sec. 10, E½NW¼, SW¼NW¼, W½SW¼	200
128 T.5S., R.14W., Sec. 32, SE¼SW¼	40
129 T.14S., R.6W., Sec. 35, NE¼, S½NW¼	240
130 T.14S., R.6W., Sec. 1, Lots 1 and 2	80.67
131 T.14S., R.6W., Sec. 9, NW¼SE¼	40
Madison County	
204 T.1S., R.2W., Sec. 18, Lot 4	20.06
206 T.1S., R.2W., Sec. 22, S½SW¼	80
208 T.1S., R.3W., Sec. 14, NW¼	160
207 T.2S., R.1E., Sec. 32, SE¼NW¼	40
210 T.3S., R.1W., Sec. 3, Lots 1 and 2	80.06
211 T.3S., R.1W., Sec. 19, Lot 7, E½SE¼; partial N½SW¼NE¼	120
212 T.4S., R.1E., Sec. 6, Lot 2	45.29
213 T.4S., R.1W., Sec. 20, E½NE¼, NE¼NW¼	120
214 T.4S., R.1W., Sec. 26, SW¼NE¼, NE¼NW¼	80
215 T.5S., R.1E., Sec. 34, NE¼NW¼	40
216 T.6S., R.1W., Sec. 12, NE¼SW¼	40
217 T.6S., R.2W., Sec. 10, E½NE¼	80
218 T.6S., R.2W., Sec. 10, S½SW¼	80
219 T.6S., R.3W., Sec. 1, Lots 1, 2, 3, and 4, S½N½, N½SW¼, SE¼; Sec. 2, Lots 1, 3, and 4, S½NE¼, S½NW¼, S½	1168.40
220 T.6S., R.3W., Sec. 14, N½NE¼, NW¼, N½SW¼, W½SW¼SW¼, SE¼SW¼, SE¼; Sec. 24, Lot 1, W½NE¼, SE¼NE¼, E½NW¼	806.5
221 T.6S., R.3W., Sec. 18, S½SW¼SW¼, SE¼SE¼SW¼	30
222 T.7S., R.1E., Sec. 8, NW¼	160
223 T.8S., R.1E., Sec. 8, SW¼SE¼	40
224 T.8S., R.1E., Sec. 22, SW¼NE¼	40
225 T.1S., R.6W., Sec. 32, NW¼	160
231 T.4S., R.5W., Sec. 13, NW¼SE¼	80
232 T.4S., R.7W., Sec. 22, W½SW¼, SE¼SW¼	120
233 T.4S., R.7W., Sec. 26, N½NW¼	80
234 T.4S., R.7W., Sec. 28, E½E½	160
235 T.4S., R.7W., Sec. 32, SE¼SW¼, SE¼	200
236 T.5S., R.3W., Sec. 30, S½NE¼	80
237 T.5S., R.4W., Sec. 5, SE¼NW¼	40
238 T.5S., R.4W., Sec. 6, Lot 4	41.87
239 T.6S., R.6W., Sec. 14, SE¼SW¼, N½SE¼, SW¼SE¼	160
240 T.6S., R.6W., Sec. 22, Lot 1	40.64
241 T.7S., R.4W., Sec. 18, Lot 4, SE¼SW¼	75.86
242 T.7S., R.4W., Sec. 18, Lot 1, E½NW¼	115.77
243 T.7S., R.5W., Sec. 26, NW¼NW¼	40
244 T.7S., R.6W., Sec. 34, S½SW¼	80
247 T.5S., R.4W., Sec. 34, S½NW¼	80
248 T.6S., R.6W., Sec. 17, NW¼NE¼, NE¼NW¼	80
249 T.6S., R.7W., Sec. 12, NW¼	160
250 T.9S., R.4W., Sec. 24, SE¼SE¼	40
251 T.9S., R.5W., Sec. 17, E½NE¼	80
252 T.9S., R.5W., Sec. 29, NW¼NE¼	40
253 T.9S., R.6W., Sec. 1, S½SW¼	80
254 T.9S., R.6W., Sec. 12, SW¼NE¼	40
255 T.9S., R.6W., Sec. 12, NE¼SE¼	40
256 T.9S., R.6W., Sec. 12, SW¼SE¼	40
261 T.12S., R.2E., Sec. 35, Lots 6 and 7	81.84
262 T.8S., R.1E., Sec. 28, S½	320
263 T.7S., R.1W., Sec. 18, Lots 3 and 4	76.58

In exchange for an equal value of the above-mentioned public lands, the United States will acquire the following private lands from the First Continental Corporation:

Principal Meridian Montana—Beaverhead County

T.14 S., R.4W.,
Sec. 18: Lot 4, SE¼SW¼;
Sec. 19: Lots 3 and 4, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 20: S½SW¼, SW¼SE¼;
Sec. 28: Lots 1 and 2, NW¼, N½SW¼;

Sec. 29: Lots 1, 2, 3, 4, 5, 6, and 7, SW¼NE¼, S½NW¼, N½SW¼, W½SE¼;
Sec. 30: Lot 1, SE¼NE¼, SE¼;
Sec. 31: Lot 1, E½, E½NW¼;
Sec. 32: All;
Sec. 33: Lot 3, SW¼NW¼, W½SW¼.
T.14 S., R. 5 W.,
Sec. 11: E½SE¼;
Sec. 12: E½SW¼, NW¼SW¼, SW¼SE¼;
Sec. 13: NE¼NE¼, W½NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 14: E½NE¼, SE¼;
Sec. 22: E½NE¼, SE¼, excepting therefrom any portion lying northwesterly of the county road;
Sec. 23: W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 24: N½NE¼, SW¼NE¼, N½SE¼NE¼, W½, NW¼SE¼, S½SE¼;
Sec. 25: SW¼NW¼, NW¼SW¼;
Sec. 26: Lots 1 and 2, S½NE¼, NE¼SE¼;
Sec. 27: Lots 1, 6, and 7, SE¼NE¼, E½SW¼, SE¼;
Sec. 34: N½, E½SW¼, SE¼.
T. 15 S., R. 4 W.,
Sec. 4: NW¼NW¼;
Sec. 5: N½, N½S½.
T. 15 S., R. 5 W.,
Sec. 4: S½SE¼;
Sec. 9: Lot 3, NE¼;
Sec. 10: Lot 1, NW¼.

Totaling 7,532.45 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Butte District Office, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire additional public lands in the Centennial Valley/Price Creek area. These lands contain sensitive and high wildlife and recreational values, and are included within a key grazing allotment. This exchange will consolidate scattered public lands into an intensively managed retention area.

The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

No transfer of any public or private minerals will occur in this exchange.

The proponent for this exchange is Rocky Mountain Ranch Realty of Billings, Montana. The proponent may select only sufficient public lands from those listed above to equalize the fair market value of the offered private lands. The Bureau of Land Management shall convey the selected public lands to those parties which are identified by the proponent and are acceptable under current regulations and BLM policy, generally the current grazing lessees and permittees. No public lands shall be conveyed to the First Continental Corporation.

The selected public lands would be conveyed subject to:

1. A reservation to the United States of a right-of-way for ditches or canals with 43 U.S.C. 945.

2. A reservation to the United States of all mineral values together with the right to explore, prospect for, mine, and remove same under applicable laws and regulations.

3. All valid existing rights which have been properly established under Federal laws and regulations, including rights-of-way, easements, leases, and other rights.

4. The requirements of 43 CFR 4110.4-2(b).

The following additional reservations will be added if the parcels indicated are selected for conveyance:

Parcel 7A—The right to itself (United States), its permittees or licensees, the right to enter upon, occupy and use any part of all of that portion lying within 25 feet of the centerline of the transmission line right-of-way of the Montana Power Company, M022831, for the purpose set forth in and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920, Stat. 1075, as amended, (16 U.S.C. 818).

Parcels 17, 36, 42, 45, 47, and 242—A reservation to the United States for a permanent exclusive easement for public access to other lands.

Parcel 220—If needed, a covenant reserving certain land uses will be attached to the title to protect the municipal water supply for the town of Virginia City, Montana.

The offered private lands will be acquired subject to the following easements for existing facilities:

1. Beaverhead County for the Centennial Valley county road.

2. To Mountain States Telephone and Telegraph Co. for a buried telephone line.

3. To Vigilante Electric Rural Cooperative for an overhead power transmission line.

This exchange is consistent with Bureau of Land Management policies and land use planning, and has been discussed with state and local officials. There have been no requests for public meetings during these discussions. The public interest will be well served by completion of this exchange.

Dated: November 30, 1984.

Jack A. McIntosh,

District Manager Butte District.

[FR Doc. 84-32240 Filed 12-10-84; 8:45 am]

BILLING CODE 4310-DN-M

Land Exchange, Butte District, Montana; Modification of Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Modification of Notice of Realty Action for M57789, Exchange of Public Lands in Madison County.

SUMMARY: This Notice modifies the original Notice of Realty Action for M57789 published on August 30, 1984 (49 FR 34415) to include Lots 6 and 13 in Section 31, T2S, R2W, PMM, 73.98 acres as suitable for exchange under Section 206 of Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

SUPPLEMENTARY INFORMATION: All minerals on the private lands will be exchanged for minerals on the public lands on a comparable value basis.

Item 2 of the Terms and Conditions is changed to read as follows:

2. All minerals owned by the United States which have been determined to be comparable in value will be exchanged. All minerals upon the subject private lands will be exchanged.

Items 2 of the patent reservation section is changed to read as follows:

2. All minerals, except that portion which is exchanged on a comparable value basis, with the right to explore, prospect for, mine and remove under applicable law, and such regulations as the Secretary of the Interior may prescribe (43 U.S.C. 1719).

Dated: November 30, 1984.

Jack A. McIntosh,

District Manager.

[FR Doc. 84-32241 Filed 12-10-84; 8:45 am]

BILLING CODE 4310-DN-M

Cedar City District; Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Wednesday, January 16, 1985. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 1579 North Main Street, Cedar City, Utah.

1716:

	T.12S., R.9W., Sec. 26, NE¼.....		
	T.12S., R.9W., Sec. 34, NE¼NE¼.....		

Sec. 28: Lots 1 and 2, NW¼, N½SW¼;

minerals will occur in this exchange.

discussed with state and local officials.

City, Utah.

The agenda is as follows: (1) Allocation of relinquished grazing allotment; (2) FY 85 wild horse gathering; (3) report on use of FY 84 range improvement funds; (4) report on grazing fee study; (5) Cooperative Resource Management Plan for Beaver County; and (6) general board business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1579 North Main Street, Cedar City, Utah 84720, phone 801–586–2401, by January 10, 1985. Depending on the number of person wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: December 30, 1984.

M.S. Jensen,

District Manager.

[FR Doc. 84-31891 Filed 12-10-84; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, D.C. 20503, telephone 202–395–7340.

Title: State Review Forms for Local Preservation Ordinances and Districts
Abstract: Provide State and Local officials the opportunity to review and comment on applications before certification requests are submitted to the NPS
Bureau Form Number: 10–299A, 10–299B
Frequency: On Occasion
Description of Respondents: State or Local Governments
Annual Responses: 40
Annual Burden Hours: 53
Bureau Clearance Officer: Russell K. Olsen, 523–5133

Dated: November 26, 1984.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 84-32245 Filed 12-10-84; 8:45 am]

BILLING CODE 4310-70-M

Glacier Bay National Park and Preserve; Availability of a Completed General Management Plan, and a Finding of No Significant Impact (FONSI)

SUMMARY: A draft environmental assessment/general management plan was released in April 1983 for public review. Public meetings were conducted. Written and verbal comments were reviewed, and are reflected in the completed general management plan as appropriate.

The completed general management plan is intended to guide the management of Glacier Bay National Park and Preserve for the next five to ten years.

ADDRESSES: Public reading copies of the general management plan will be available for review at the following locations:

Parks and Forests Information Center, 2525 Gambell Street, Anchorage, Alaska 99503
Headquarters, Glacier Bay National Park and Preserve, Federal Building, Juneau, Alaska 99802
Field Headquarters, Glacier Bay National Park and Preserve, Bartlett Cove, Gustavus, Alaska 99826
Department of the Interior, Central Library, Washington, D.C. 20240
Alaska Resources Library, Federal Building, 701 C Street, Anchorage, Alaska 99513.

Copies of the general management plan and FONSI are available upon request from: National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892.

Dated: November 30, 1984.

William C. Welch,

Acting Regional Director, Alaska Region.

[FR Doc. 84-32273 Filed 12-10-84; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 1, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 26, 1984.

Patrick Andrus,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Prescott, *Gardner, James I., Store (Prescott Territorial Buildings MRA)*, 201 N. Cortez.

CALIFORNIA

Butte County

Chico, *U.S. Post Office (Chico Midtown Station) U.S. Post Office in California 1900–1941 TR)*, 141 W. 5th St.
Oroville, *U.S. Post Office (Oroville Main Post Office) U.S. Post Office in California 1900–1941 TR)*, 1735 Robinson St.

Glenn County

Willows, *U.S. Post Office (Willows Main Post Office) U.S. Post Office in California 1900–1941 TR)*, 315 W. Sycamore St.

Imperial County

El Centro, *U.S. Post Office (El Centro Main Post Office) U.S. Post Office in California 1900–1941 TR)*, 230 S. 5th St.

Los Angeles County

Burbank, *U.S. Post Office (Burbank Downtown Station) (U.S. Post Office in California 1900–1941 TR)*, 125 E. Olive Ave.
Long Beach, *U.S. Post Office (Long Beach Main Post Office) (U.S. Post Office in California 1900–1941 TR)*, 300 Long Beach Blvd.
Los Angeles, *U.S. Post Office (Hollywood Station) (U.S. Post Office in California 1900–1941 TR)*, 1615 N. Wilcox Ave.
Los Angeles, *U.S. Post Office (Los Angeles Terminal Annex) (U.S. Post Office in California 1900–1941 TR)*, 900 Alameda St.
San Pedro, *U.S. Post Office (San Pedro Main Post Office) (U.S. Post Office in California 1900–1941 TR)*, 839 S. Beacon St.

Napa County

Napa, *U.S. Post Office (Napa Franklin Station) (U.S. Post Office in California 1900–1941 TR)*, 1352 2nd St.

Orange County

Santa Ana, *U.S. Post Office (Spurgeon Station) (U.S. Post Office in California 1900–1941 TR)*, 605 Bush St.

San Bernardino County

San Bernardino, *U.S. Post Office (Downtown Station) (U.S. Post Office in California 1900–1941 TR)*, 390 W. 5th St.

San Diego County

San Diego, *U.S. Post Office (Downtown Station) (U.S. Post Office in California 1900–1941 TR)*, 815 E. St.

Santa Barbara County

Santa Barbara, *U.S. Post Office (Santa Barbara Main Post Office) (U.S. Post Office in California 1900–1941 TR)*, 836 Anacapa St.

Santa Cruz County

Santa Cruz, *U.S. Post Office (Santa Cruz Main Post Office) (U.S. Post Office in California 1900–1941 TR)*, 850 Front St.

Sonoma County

Petaluma, U.S. Post Office *(U.S. Post Office in California 1900–1941 TR)*, 120 4th St.

Tulare County

Porterville, *U.S. Post Office (Porterville Main Post Office) (U.S. Post Office in California 1900–1941 TR)*, 65 W. Mill Ave.
Visalia, *U.S. Post Office (Visalia Town Center Station) (U.S. Post Office in California 1900–1941 TR)*, 11 W. Acequia St.

Yuba County

Marysville, *U.S. Post Office (Marysville Main Post Office) (U.S. Post Office in California 1900–1941 TR)*, 407 C St.

San Bernardino County

Redlands, *U.S. Post Office (Redlands Main Post Office) (U.S. Post Office in California 1900–1941 TR)*, 201 Brookside Ave.

IDAHO

Bannock County

Pocatello, *Quinn Apartments*, 580 W. Clark St.

Twin Falls County

Buhl, *Buhl IOOF Building*, 1014–16 Main St.

INDIANA

Allen County

Fort Wayne, *St. Mary's Catholic Church*, 1101 S. Lafayette St.

Carroll County

Camden, *Thomas, Andrew, House*, W. Main St.

Delaware County

Muncie, *Hamilton Township Schoolhouse No. 4*, IN 67

Gibson County

Haubstadt, *Haubstadt State Bank*, 101 S. Main St.

Henry County

Middletown, *Hendrick, John W., House*, 506 High St.

Vanderburgh County

Evansville, *Mead Johnson River-Rail-Truck Terminal and Warehouse*, 1830 W. Ohio St.

LOUISIANA

East Baton Rouge Parish

Baton Rouge vicinity, *Lee Site (16 EBR 51)*, W end of Buccaneer Dr.

MAINE

Knox County

Union, *Lermond Mill*, Union Village

MARYLAND

Baltimore (Independent City)

Buildings at 1601–1830 St. Paul Street and 12–20 E Lafayette Street, 1601–1830 St. Paul St., and 12–20 E Lafayette St.

Garrett County

Mountain Lake Park, *Creedmore*, 510 G St.

MICHIGAN

Allegan County

Plainwell, *Sherwood, James Nobles, House*, 768 Riverview Dr. Saugatuck, *All Saints' Episcopal Church*, 252 Grand St.

Chippewa County

Sault Ste. Marie, *Central Methodist Episcopal Church*, 111 E. Spruce St.
Sault Ste. Marie, *First United Presbyterian Church*, 309 Lyon St.
Sault Ste. Marie, *St. Mary's Pro-Cathedral*, 320 E Portage Ave.

Gogebic County

Ironwood, *Chicago and Northwestern Railroad Depot*, Between Suffolk and Lowell Sts.

Ingham County

Lansing, *Moores, J.H., Memorial Natatorium*, 2700 Moores River Dr.

Ionia County

Portland, *Portland First Congregational Church*, 421 E. Bridge St.

Lenawee County

Adrian, *Clark Memorial Hall*, 120–124 S. Winter St.
Adrian, *St. John's Lutheran Church*, 121 S. Locust St.

Oakland County

Pontiac, *Howard, Horatio N., House*, 403 N. Saginaw

Ottawa County

Holland, *Gold, Egbert H., Estate (Marigold Lodge)*, 1116 Hazel Ave.

Washtenaw County

Dexter, *Litchfield, James, House*, 3512 Central St.

MISSISSIPPI

Grenada County

Grenada, *Grenada Post Office*, 178 S Main St.

MONTANA

Cascade County

Fort Shaw, *Fort Shaw Historic District and Cemetery*, One Mile NW of town of Fort Shaw

Lewis and Clark County

Helena, *Young Women's Christian Association (Independent)*, 501 N Park st.

Lincoln County

Eureka, *Eureka Community Hall*, Cliff St.

Missoula County

Missoula, *Forkenbrock Funeral Home*, 234 E Pine St.

Wayne County

Detroit, *Sweet, Ossian H., Home*, 2905 Garland

NEW MEXICO

Curry County

Clovis, *Hotel Clovis*, 210 Main St.
Clovis, *Old Clovis Post Office*, 4th and Mitchell Sts.

Guadalupe County

Santa Rosa, *Moise, J. Julian, House*, 400 Capitan

Roosevelt County

Portales, *Bank of Portales*, 123 Main

NORTH CAROLINA

Chatham County

New Hope Rural Historical Archeological District

Durham County

Little Creek Site (31 Dh 351)

PENNSYLVANIA

Pike County

Dingman Township, *Shanna House*, U.S. 209

TEXAS

Bexar County

San Antonio, *St. Anthony Hotel*, 300 E Travis St.

Tarrant County

Ft. Worth, *St. Patrick Cathedral Complex*, 1206 Throckmorton

WISCONSIN

Sheboygan County

Adell, *Gooseville Mill/Grist Mill (19th Century Grist and Flouring Mills of Sheboygan County TR)*, Silver Creek-Cascade Rd.
Glenbeulah, *Glenbeulah Mill/Grist Mill (19th Century Grist and Flouring Mills of Sheboygan County TR)*, Gardner St.
Greenbush, *Robinson-Herrling Sawmill*, Old Wade House State Park
Sheboygan Falls, *Downtown Historic District*, Roughly bounded by Broadway, Monroe, Pine, and Buffalo Sts., and the Sheboygan River
Waldo, *Onion River Flouring Mill/Grist Mill (19th Century Grist and Flouring Mills of Sheboygan County TR)*, Hwy 57

[FR Doc. 84-32272 Filed 12-10-84; 8:45 am]

BILLING CODE 4310-70-M

Local Governments

the National Park Service before

1900–1941 TR), 390 W. 5th St.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the State of Ecuador (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families residing in the country of the Borrower. The following is the address of the Borrower and the loan amount for projects that will soon be ready to receive financing and for which the Borrower will be requesting proposals from U.S. lenders or investment bankers:

Ecuador

Project: 518–HG–006—$10,000,000
Alfredo Crespo Cordero,
Undersecretary, Ministry of Finance, Quito, Ecuador, Telephone: 541908, 527503
Telex: 2499 MINFIN ED

By this notice of investment opportunity, the Borrower is soliciting expressions of interest from U.S. lenders or investment bankers and counsel on market conditions, loan timing and structure and other features appropriate for the loans or underwritings. Interested investment bankers or lenders should contact the Borrower indicated above. The Borrower intends to conduct an auction in early January 1985. Approximately one week prior to the auction, the Borrower will give notice to lenders who have expressed their interest in responses to this notice. The new notice will specify the details of the proposed auction. Persons interested in receiving notice of the proposed auction are requested to advise promptly the Borrower by telex with a copy of their expression of interest to be provided to A.I.D., addressed to Mr. Michael Kitay c/o PRE/H, AID, Washington, D.C. 20523, Telex No. 892703.

Selection of investment bankers and/or lenders and the terms of the loans are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lenders and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Director, Office of Housing and Urban Programs, Agency for International Development, Room 625, SA/12, Washington, D.C. 20523, Telephone: (202) 632–9637.

Dated: December 5, 1984.

John T. Howley,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 84–32455 Filed 12–10–84; 11:45 am]

BILLING CODE 8116–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

December 6, 1984.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96–511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry *and* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

• *Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection*

(1) Larry E. Miesse, 202/633–4312.

(2) Dangerous Drugs Investigations Section, Operations Division, Drug Enforcement Administration, Department of Justice.

(3) Piperidine Report.

(4) DEA–420.

(5) On occasion.

(6) Businesses or other for-profit, small businesses or organizations, Federal agencies or employees. 21 U.S.C. 830 requires that a report be submitted to the Attorney General by any person who sells, distributes, or imports piperidine. The information requested will provide DEA with a measure of control over the movement of piperidine in order to determine any illicit use being made of piperidine for the manufacture of phencylidine, a schedule II controlled substance.

(7) 50 respondents.

(8) 100 burden hours.

(9) Not applicable under 3504(h).

(10) Robert Veeder—395–4814.

Larry E. Miesse.

Agency Clearance Officer, Department of Justice.

[FR Doc. 84–32256 Filed 12–10–84; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency froms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the follwing information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Development of JTPA Performance Standards Survey
None; No forms
On occasion; Non-recurrent
State or local governments
80 respondents; 23 hours

The surveys will document the extent and range of state and SDA post-program data collection activities. The information will be critical to the design of a strategy to collect the data needed to support new JTPA post-program performance standards. Data will be collected from all 50 States and 30 selected SDAs.

Revision

Employment Standards Administration
Records To Be Kept By Employers Under the Fair Labor Standards Act of 1938, As Amended (FLSA)
1215–0017; WH–1261
Recordkeeping
Individual or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
4.1 million recordkeepers; 706,577 hours
Information is needed by the Wage-Hour Division to determine employer compliance with the labor standards provisions of the FLSA applicable to employees covered by the Act.

Extension

Employment and Training Administration
Interstate Claims Double Bypass Data Exchange
1205–0189; ETA TC–46
Weekly & Monthly
State or local governments
53 respondents; 780 hours; 1 form

The Interstate Claims Double Bypass Data Exchange provides a central point for the exchange of interstate claims counts and characteristics for those States which use a double bypass claims system. No new data is involved. This system allows for a more efficient method of processing interstate claims.

Employment and Training Administration
Claims and Payment Activities
1205–0010; ETA 5159
Monthly
State or local governments
53 respondents; 1,749 hours; 1 form

Measures workload and provides quantitative measurement for budget estimates, administrative planning and program evaluation; main vehicle for accounting to public.

Signed at Washington, D.C. this 6th day of December 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–32287 Filed 12–10–84; 8:45 am]

BILLING CODE 4510–30–M

Office of the Assistant Secretary for Veterans' Employment and Training

Notice of Veterans' Service Performance Standards

Title 38, United States Code, Section 2007(b) requires establishment of definitive performance standards by which State Employment Security Agency (SESA) services for veterans will be measured. The services to which quantitative standards will be applied are placement (in jobs over three days), counseling, enrollment in training and received some reportable service. The standards are the minimum acceptable levels of service provided to the various categories of veterans. The standards measure services provided to veterans (including eligible persons), Vietnam-era veterans, and disabled veterans, as a share of the services provided to all applicants 22 years of age or over during the reporting period. For placement in jobs listed by Federal contractors, standards measure placement of Vietnam-era and special disabled veterans in all Federal contractor jobs.

According to Veterans' Program Letter No. 12–84, Veterans' Performance Standards for Program Year 1984, dated July 16, 1984, the specific numerical value, expressed as a percentage, for each performance standard will be negotiated by the State Director for Veterans' Employment and Training Service and the State Employment Service Administrator. The numerical values for each reporting period for the veterans' performance standards will be published in the **Federal Register** as a public notice. The following performance standards have been established to be in effect through June 1985.

Signed at Washington, D.C. this 5th day of December 1984.

Donald E. Shasteen,

Deputy Assistant Secretary for Veterans' Employment and Training.

BILLING CODE 4510–79–M

VETERANS' SERVICE PERFORMANCE STANDARDS

[PERCENTAGE OF VETERANS VS. TOTAL APPLICANTS 22 AND OVER]

State	PLACEMENT			COUNSELING		
	Veterans and Eligibles	Vietnam Era Veterans	Disabled Veterans	Veterans and Eligibles	Vietnam Era Veterans	Disabled Veterans
Region I						
Connecticut	25	10	1	1[illegible]	7	2
Maine	22	[illegible]	5	50	30	10
Massachusetts	17	6.8	0.8	29.7	12.7	2.5
New Hampshire	[illegible]	11	2.0	[illegible]	13	3.3
Rhode Island	22	10	1.4	25	11	1.7
Vermont	25	10	1.1	30	12	3
Region II						
New Jersey	25	10	1.3	1[illegible]	6.5	[illegible]
New York	17	7	1.2	26.8	10	[illegible]
Puerto Rico	8	3.5	0.6	14	4.5	1.4
Region III						
Delaware	25	10	2.0	25	15	4
Dist. of Col.	15	10	0.7	26	14	3
Maryland	25	10	1.5	35	15	5
Pennsylvania	20	10	1.0	35	15	4
Virginia	27	12	1.0	35	24	5
W. Virginia	19.2	10.1	0.9	32.7	17.6	2
Region IV						
Alabama	21	11	1.0	33	15	3
Florida	21	9.5	1.6	30	14	5
Georgia	21.8	10.5	1.5	27.7	15.1	4.6
Kentucky	21	10	1.0	21.0	10.0	1
Mississippi	17.5	7.5	0.6	23.5	9.5	1.8
N. Carolina	22	10	1.4	22	10.5	2
S. Carolina	[illegible]	9.6	1.2	27.2	11.4	3.8
Tennessee	18	9	0.7	20	10	[illegible]
Region V						
Illinois	26	12	1.0	31	13	3
Indiana	25	12	1.0	50	25	4
Michigan	[illegible]	[illegible]	1.0	30	14	1
Minnesota	22	10	1.0	25	12	[illegible]
Ohio	27	13	3.0	30	[illegible]	[illegible]
Wisconsin	26.[illegible]	13	1.8	35	18	[illegible]

VETERANS' SERVICE PERFORMANCE STANDARDS

[PERCENTAGE OF VETERANS VS. TOTAL APPLICANTS 22 AND OVER]

State	PLACEMENT			COUNSELING		
	Veterans and Eligibles	Vietnam Era Veterans	Disabled Veterans	Veterans and Eligibles	Vietnam Era Veterans	Disabled Veterans
Region VI						
Arkansas	22	10	1.0	50	[illegible]	[illegible]
Louisiana	10.2	7.2	0.5	50	27	3
New Mexico	22	11	1.0	30	15	[illegible]
Oklahoma	25.5	14.1	2.0	50	25	[illegible]
Texas	20	11	1.1	27	15	[illegible]
Region VII						
Iowa	21	[illegible]	0.7	35	16	1.6
Kansas	25	13	1.2	40	19	4.5
Missouri	20	10	.75	25	12	1.5
Nebraska	22.5	10	.8	40	18	2.5
Region VIII						
Colorado	24	12	1.5	20	10	1.5
Montana	23	10	1.1	30	14	1.0
North Dakota	20	10	0.8	30	15	1.5
South Dakota	20	8.5	1.0	20	8.5	1.0
Utah	19	10	1.0	21	12	3.0
Wyoming	23	11	1.3	25	13	1.5
Region IX						
Arizona	27	12.5	1.5	50	25	5
California	22	10	1.2	[illegible]	14	2
Hawaii	24	12	1.5	52.5	[illegible]	[illegible]
Nevada	25	17	1.5	28.5	13	3.2
Region X						
Alaska	25	14	1.5	29	15	2.5
Idaho	26.5	13.5	1.5	55	27	7.0
Oregon	24	12.5	1.0	24	12.5	1.0
Washington	28	14	1.5	40	24	5.0

VETERANS' SERVICE PERFORMANCE STANDARDS

[PERCENTAGE OF VETERANS VS. TOTAL APPLICANTS 22 AND OVER]

State	ENROLLMENT IN TRAINING: Veterans and Eligibles	ENROLLMENT IN TRAINING: Vietnam Era Veterans	ENROLLMENT IN TRAINING: Disabled Veterans	RECEIVED SOME REPORTABLE SERVICE: Veterans and Eligibles	RECEIVED SOME REPORTABLE SERVICE: Vietnam Era Veterans	RECEIVED SOME REPORTABLE SERVICE: Disabled Veterans
Region I						
Connecticut	13	5	1	21	8	1
Maine	4	1.5	0.5	20	8	0.5
Massachusetts	10	5	1	19.5	7.5	0.8
New Hampshire	27	12	2.5	26	11	2.0
Rhode Island	19	8	0.5	18.4	8.3	1.1
Vermont	20	10	1	22	9	1
Region II						
New Jersey	6.5	3	0.3	24	8	1.4
New York	12.1	5.5	0.7	23.1	9.2	1.3
Puerto Rico	13	5.5	1.04	17	5.9	1.5
Region III						
Delaware	8	4	1	20	8.5	1.0
Dist. Col.	9	3	0.3	16	8	0.6
Maryland	15	7	1	25	10	2.0
Pennsylvania	20	10	1	30	14	1.0
Virginia	12	4	1	26	12	1.0
W. Virginia	10.9	5.6	0.5	28.3	13.8	1.3
Region IV						
Alabama	*	*	*	21	10	1.0
Florida	15	6.5	1.4	22.5	9.7	1.7
Georgia	5	8	0.5	22	10.5	1.4
Kentucky	14	8	1	21	10	1
Mississippi	12	5.2	0.4	17.5	7.5	0.7
N. Carolina	13	5.5	1	21	9	1.25
S. Carolina	14.6	6	0.5	22	10.5	1.2
Tennessee	8	4	0.5	18	8	0.5
Region V						
Illinois	19	8	1	30	12	1.5
Indiana	*	*	*	30	13	1
Michigan	17	8	0.4	27	12	1
Minnesota	30	14	1	28	13	2
Ohio	20	10	1	40	20	1.5
Wisconsin	13	7	1	30	14	1.9

* Waived for PY 1984

VETERANS' SERVICE PERFORMANCE STANDARDS

[PERCENTAGE OF VETERANS VS. TOTAL APPLICANTS 22 AND OVER]

State	ENROLLMENT IN TRAINING: Veterans and Eligibles	ENROLLMENT IN TRAINING: Vietnam Era Veterans	ENROLLMENT IN TRAINING: Disabled Veterans	RECEIVED SOME REPORTABLE SERVICE: Veterans and Eligibles	RECEIVED SOME REPORTABLE SERVICE: Vietnam Era Veterans	RECEIVED SOME REPORTABLE SERVICE: Disabled Veterans
Region VI						
Arkansas	*	*	*	25	10	1.0
Louisiana	*	*	*	24.2	12	1.0
N. Mexico	15	9	0.5	25	10	1.0
Oklahoma	20	13.8	1.5	30	16	2.0
Texas	*	*	*	20	11	1.2
Region VII						
Iowa	30	10	1	25	12	0.5
Kansas	30	15	5	25	10	1.0
Missouri	10	5	0.5	30	15	.75
Nebraska	40	10.5	3.5	25	11.5	1.0
Region VIII						
Colorado	18	10	2.0	25	12	1.5
Montana	18	8	1	26	11	1.0
N. Dakota	15	7	0.9	20	10	0.8
S. Dakota	11	3	1	20	8.5	1.0
Utah	7	3	0.5	20	10.5	1.0
Wyoming	21	11	0.7	23	11	1.2
Region IX						
Arizona	5.0	3.0	1.0	30	15	1.5
California	10	8.0	1.0	22	10	1.2
Hawaii	3	1.0	*	24.5	12	1.0
Nevada	17.7	11.5	1.5	25	12	1.3
Region X						
Alaska	10	5	1	30	17	1.5
Idaho	15	9	1	27	13	1.5
Oregon	24	12.5	1.0	24	12.5	1.0
Washington	17	10	2	27	14	1.5

* Waived for PY 1984

VETERANS' SERVICE PERFORMANCE STANDARDS

[PERCENTAGE OF VETERANS VS. TOTAL APPLICANTS 22 AND OVER]

PLACEMENTS IN FEDERAL CONTRACTOR JOBS

State	Vietnam Era Veterans	Special Disabled Veterans
Region I		
Connecticut	12	*
Maine	9.5	0.3
Massachusetts	4.2	0.1
New Hampshire	11	1
Rhode Island	14.5	*
Vermont	10	1
Region II		
New Jersey	11.5	0.4
New York	9.4	0.8
Puerto Rico	10	1.0
Region III		
Delaware	15	1
Dist. Columbia	4	0.2
Maryland	10	1
Pennsylvania	10	1
Virginia	11	1
W. Virginia	*	0.5
Region IV		
Alabama	*	0.2
Florida	15	1.0
Georgia	13	1.3
Kentucky	13	0.4
Mississippi	10	0.5
N. Carolina	10	0.5
S. Carolina	*	0.4
Tennessee	9	0.3
Region V		
Illinois	7	1
Indiana	11	0.1
Michigan	10	0.2
Minnesota	10	1
Ohio	11.5	0.5
Wisconsin	16	1.0
Region VI		
Arkansas	9	0.5
Louisiana	9.4	0.1
N. Mexico	8.0	0.5
Oklahoma	14.1	1.4
Texas	11	0.5
Region VII		
Iowa	9	0.1
Kansas	9	0.5
Missouri	7	1.0
Nebraska	4	0.1
Region VIII		
Colorado	13	0.7
Montana	*	0.4
N. Dakota	13	0.7
S. Dakota	7	1.0
Utah	*	0.4
Wyoming	10	0.7
Region IX		
Arizona	*	1.0
California	15	1.0
Hawaii	12	0.2
Nevada	9	1.5
Region X		
Alaska	17	1.0
Idaho	12	0.4
Oregon	12.5	0.4
Washington	18	1.0

* Waived for PY 1984

[FR Doc. 84-32288 Filed 12-10-84; 8:45 am]
BILLING CODE 4510-79-C

Employment and Training Administration

[TA-W-15,294]

Alco Power, Inc. Auburn, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

According to section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on October 10, 1984 to former workers of Alco Power, Incorporated, Auburn, New York. The Notice of Certification was published in the **Federal Register** on October 23, 1984 (49 FR 42653).

The company informed the Department that workers in administration, engineering, development, design, quality control purchasing and accounting at the Auburn plant were laid off after the March 15, 1984 termination date set in that certification. Because of the consolidation of Alco Power's support services at the parent company headquarters in Canada, further worker layoffs of support staff occurred at the Auburn facility.

The Canadian parent company reduced duplicative support activities such as administration, engineering and development and design in Auburn. It was the Department's intent to include all workers as eligible to apply for adjustment assistance who were laid off from Alco Power, Incorporated, Auburn, New York.

The amended certification for TA-W-15,294 is hereby issued as follows:

All workers of Alco Power, Incorporated, Auburn, New York who became totally or partially separated from employment on or after April 5, 1983 and before March 15, 1984 and all administrative, engineering, development and design and support personnel of Alco Power, Incorporated, Auburn, New York who became totally or partially separated from employment on or after March 15, 1984 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of 1984.

Joyce Kaiser,

Acting Administrator, Office of Employment Security.

[FR Doc. 84-32284 Filed 12-10-84; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 26, 1984–November 30, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,421; Airco Welding Products, Inc., Rural Retreat, VA

TA-W-15,412; Christina Fashions, Rockaway, NJ

Affirmative Determinations

TA-W-15,439; F.M. Weaver, Inc., Lansdale, PA

A certification was issued covering all workers separated on or after June 1, 1984 and before November 1, 1984.

TA-W-15,348; Staneth Corp., Middlesex, NJ

A certification was issued covering all workers separated on or after May 23, 1983.

TA-W-15,470 Trojan Industries, Inc., Batavia, NY

A certification was issued covering all workers separated on or after August 1, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 26, 1984–November 30, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 4, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-32286 Filed 12-10-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 21, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 30th day of November 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Brown Shoe Co., "P" factory (ACTWU)	Union, MO	11/19/84	11/15/84	TA-W-15,563	Heels, shoe, woman, finished.
Dale Garment Co., Inc. (workers)	Lynchburg, VA	11/9/84	11/5/84	TA-W-15,564	Slacks, blouses, shorts and dresses, womens.
E.M. Kelley, d.b.a. Miss Kelley and Miss Kelley II (company).	Fort Bragg, CA	11/26/84	11/21/84	TA-W-15,565	Fish, fresh, catching and selling.
Genesco, Inc. (headquarters) (company)	Nashville, TN	11/27/84	11/21/84	TA-W-15,566	Offices, shipping, production footwear and component parts.
Genesco, Inc., J & M plant (company)	Nashville, TN	11/27/84	11/21/84	TA-W-15,567	Footwear and component parts.
Genesco, Inc., Danville plant (company)	Danville, KY	11/27/84	11/21/84	TA-W-15,568	Footwear and component parts.
Genesco, Inc., Fulton plant (company)	Fulton, MS	11/27/84	11/21/84	TA-W-15,569	Footwear and component parts.
Genesco, Inc., Iuka plant (company)	Iuka, MS	11/27/84	11/21/84	TA-W-15,570	Footwear and component parts.
Genesco, Inc., Ripley, MS (company)	Ripley, MS	11/27/84	11/21/84	TA-W-15,571	Footwear and component parts.
Genesco, Inc., McMinnville plant (company)	McMinnville, TN	11/27/84	11/21/84	TA-W-15,572	Footwear and component parts.
Genesco, Inc., Lewisburg plant (company)	Lewisburg, TN	11/27/84	11/21/84	TA-W-15,573	Footwear and component parts.
Genesco, Inc., Pulaski plant (company)	Pulaski, TN	11/27/84	11/21/84	TA-W-15,574	Footwear and component parts.
Genesco, Inc., Waynesboro plant (company)	Waynesboro, TN	11/27/84	11/21/84	TA-W-15,575	Footwear and component parts.
Genesco, Inc., Hohenwald, plant (company)	Hohenwald TN	11/27/84	11/21/84	TA-W-15,576	Footwear and component parts.
Genesco, Inc., Camden plant (company)	Camden, TN	11/27/84	11/21/84	TA-W-15,577	Footwear and component parts.
Genesco, Inc., Tullahoma Computer Stitch (company).	Tullahoma, TN	11/27/84	11/21/84	TA-W-15,578	Footwear and component parts.
Genesco, Inc., Chapel Hill terminal (company)	Chapel Hill, TN	11/27/84	11/21/84	TA-W-15,579	Footwear and component parts.
Genesco, Inc., Fayetteville terminal (company)	Fayetteville,TN	11/27/84	11/21/84	TA-W-15,580	Footwear and component parts.
Genesco, Inc., Genetar terminal (company)	Nashville,TN	11/27/84	11/21/84	TA-W-15,581	Footwear and component parts.
Genesco, Inc., Huntsville terminal (company)	Huntsville, AL	11/27/84	11/21/84	TA-W-15,582	Footwear and component parts.
Genesco, Inc., 63rd Ave., warehouse (company)	Nashville, TN	11/27/84	11/21/84	TA-W-15,583	Footwear and component parts.
Genesco, Inc., Main Street General Maintenance and Capitol Products (company)	Nashville, TN	11/27/84	11/21/84	TA-W-15,584	Footwear and component parts.
Genesco, Inc., Gencon (company)	Nashville, TN	11/27/84	11/21/84	TA-W-15,585	Footwear and component parts.
Genesco, Inc., Southern Sole (company)	Nashville, TN	11/27/84	11/21/84	TA-W-15,586	Shoe component parts.
Genesco, Inc., Tullahoma Capitol Products (company).	Tullahoma, TN	11/27/84	11/21/84	TA-W-15,587	Shoe component parts.
Genesco, Inc., Chapel Hill Sole Cutting (company)	Chapel Hill, TN	11/27/84	11/21/84	TA-W-15,588	Shoe component parts.
Volunteer Leather Co., division of Genesco, Inc. (company).	Milan, TN	11/27/84	11/21/84	TA-W-15,589	Leather footwear.
Whitehall Leather Co. a division of Genesco, Inc (company).	Whitehall, MI	11/27/84	11/21/84	TA-W-15,590	Leather footwear.
Wood & Hyde Leather Co., a division of Genesco, Inc. (company).	Gloversville, NY	11/27/84	11/21/84	TA-W-15,591	Leather tanners.
Houdaille Industries, hydraulics division (UAW)	Buffalo, NY	11/14/84	11/9/84	TA-W-15,592	Vibration dampers.
LaFemme Mfg. Corp. (ILGWU)	Brooklyn, NY	11/26/84	11/19/84	TA-W-15,593	Blouses, dresses, women's.
McNally Mountain Stasss Steel Co. (company)	Lindon, UT	11/26/84	11/21/84	TA-W-15,594	Fabricated structural steel.
Motion Control Industries, division of Carlise Corp. (International Union of Electronic, Electrical, Technical, Salaried and Machine Workers).	Ridgway, PA	11/19/84	11/15/84	TA-W-15,595	Heavy duty brake blocks.
New Balance Athletic Shoe Co. (workers)	Allston, MA	11/19/84	11/13/84	TA-W-15,596	Shorts and shirts.
New Balance Athletic Shoe Co. (workers)	Norridgewock, ME	11/19/84	11/13/84	TA-W-15,597	Shorts and shirts.
(The) Silinte Corp. (URW)	Chelsea, MA	11/13/84	11/8/84	TA-W-15,598	Footwear components (soiling materials).
Whitney Blake Co. (UER/MWA)	Hamden, CT	11/19/84	11/12/84	TA-W-15,599	Coil cords, retractile cords, microphone cords, cord set, military coil cords, medical cord sets.
MSL Stamping Group, division of MSL Industries, Inc. (workers).	Ellwood City, PA	11/26/84	11/21/84	TA-W-15,600	Standard fastwashers, lockwashers, saddle blades.
Mode O'Day Co. (ACTWU)	Mason City, IA	11/21/84	11/26/84	TA-W-15,601	Lingerie, sleepwear, robes, sportswear, women's.

[FR Doc. 84-322884 Filed 12-10-84; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Exemption Application No. D-5600]

Proposed Amendments to Prohibited Transaction Exemption 82-87 for Transactions Involving Certain Residential Mortgage Financing Arrangements

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Amendments to Prohibited Transaction Exemption (PTE) 82-87.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed amendments to PTE 82-87. PTE 82-87 provides exemptions for certain categories of transactions from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code). These transactions relate to the issuance of commitments for the provision of mortgage financing to purchasers of residential dwelling units, the receipt of fees in exchange for the issuance of such commitments, the making or purchase of loans or participation interests therein pursuant to such commitments, and the direct making, sale, exchange or transfer of mortgage loans or participation interests therein prior to the maturity date of such instrument by employee benefit plans. The proposed amendments would expand the definitions contained in the exemption of "residential dwelling unit" and "recognized mortgage loan". The effect of these proposed changes is to broaden the applicability of PTE 82-87 to include certain mortgage loan transactions relating to multifamily structures and permit the acquisition of those residential mortgage loans that are rated by a national rating service. The proposed amendments, if adopted, would affect participants and beneficiaries of employee benefit plans investing in such mortgage loans, the sponsors and trustees of such plans, and other persons engaging in the described transactions.

DATES: Written comments must be received by the Department on or before February 11, 1985.

EFFECTIVE DATE: It is proposed to make these amendments effective on the date of publication of the final grant of the amended exemption.

ADDRESSES: All written comments (preferably at least three copies) should be sent to: Office of Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Direct Mortgage Financing. The comments received will be available for public inspection in the Public Documents Room of the Office of Pension and Welfare Benefit Programs, U.S. Department of Labor, Frances Perkins Building, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. .

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Office of Regulations and Interpretations, (202) 523-6915. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed amendments to PTE 82-87 (47 FR 21331, May 18, 1982).[1] One of the proposed amendments would expand the types of residential properties which constitute the collateral for a mortgage loan which an employee benefit plan may acquire under the exemption. The other amendment would provide an alternative method of complying with the eligibility for purchase requirements for those mortgage loans which do not satisfy the general standard outlined in the exemption. Both of the proposed amendments were addressed by commentators during the Department's consideration of the record which became PTE 82-87. However, the record developed at that time did not support findings that such expansions could satisfy the statutory criteria for granting relief under section 408(a) of the Act. The Department has continued to study the issues presented and with the help of other government agencies having an interest in expanding the categories of residential mortgage loans available for investment by employee benefit plans has developed the record to support the subject proposed amendments. Accordingly, the Department is proposing to amend PTE 82-87 on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code[2] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), specifically section 3.01 of that procedure. The Department has been informed by the Office of Management and Budget that the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) are not applicable to PTE 82-87 because the exemption does not contain a request or requirement for the collection of information as defined in 5 CFR Part 1320 and therefore is not subject to the requirements of that regulation.

A. General Background

The prohibited transaction provisions of the Act and the Code generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Plan investments in real estate mortgage loans typically involve a continuing relationship between the seller of the mortgage loan and the plan for purposes of servicing the mortgage loan investment. This provision of services by the seller creates a party in interest relationship between such servicer and the investing plan. Accordingly, any subsequent purchase of mortgage loans from such an existing party in interest service provider, absent exemptive relief, results in a prohibited transaction. Additionally, should a plan acquire a mortgage loan from an unrelated financial institution under circumstances where the mortgagor has an existing party in interest relationship to such plan, the resultant debtor/creditor relationship would be a prohibited extension of credit between the parties.

B. Description of Existing Relief

PTE 82-87 provides relief for several different types of transactions with certain general conditions and additional specific conditions for certain of the transactions.[3] Specifically, Part I provides relief from the prohibitions of section 406(a) of the Act for the issuance of commitments for the provision of mortgage financing to purchasers of residential dwelling units; the receipt by the plan of a fee in exchange for the issuance of such commitment; the actual making or purchase of a mortgage loan or participation interest therein pursuant to such commitment; the making or purchase of a mortgage loan or participation interest therein without the precondition of a commitment; and the sale, exchange or transfer of a mortgage loan or participation therein prior to the maturity date of such instrument provided that the interest sold, exchanged or transferred represented the plan's entire interest in such investment. Part II A contains both general conditions applicable to all transactions covered by Part I and certain supplemental conditions where the transactions involve either commitments or participations. Part II B contains prospective conditions which took effect 30 days after the grant of exemption was published in the **Federal Register** (June 18, 1982). The conditions of Part II are designed to assure the protection of investing plans and objectively describe that portion of the residential mortgage loan marketplace which qualifies for the relief available through the exemption. Finally, Part III contains definitions of terms used in the class exemption. Through the interrelationship of these provisions, the Department intended to provide flexible relief to a wide spectrum of entities and types of transactions involved in residential mortgage loan financing.

PTE 82-87 provides an exemption for covered transactions that involve a "recognized mortgage loan" (defined in Part III D). Pursuant to the definition, the exemption applies to any mortgage loan on a "residential dwelling unit" (defined in Part III E) which, at the time of its origination, was eligible, through an established program, for purchase by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) (collectively, the Agencies). Consequently, as new residential financing arrangements are introduced in the marketplace for which the Agencies establish acquisition programs, the exemption will automatically expand to cover such arrangements.

The term "residential dwelling unit" acts to limit the relief available under the exemption by describing the nature of the real estate which collateralizes the subject mortgage loan as non-farm properties comprising 1-4 dwelling units. This limitation was based on the original applicants request which sought only to obtain relief for mortgage loan transactions involving single family residential properties. The term "residential dwelling unit" represented the Department's understanding of the industry's accepted definition of a single

[1] The Department originally proposed class exemptive relief for residential mortgage financing arrangements (46 FR 58773, December 3, 1981) on the basis of applications filed by the National Coordinating Committee for Multiemployer Plans (D-1937) and the National Association of Home Builders (D-2004). These applicants described several situations in the course of an employee benefit plan's investment program involving residential mortgage loans in which prohibited transactions were likely to occur. In response to the December 3, 1981 proposal, the Department received a large number of comments. In addition, another class request was received from the United States League of Savings Associations (D-2875). These comments, and the three class applications are available for public inspection in the Public Documents Room of the Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[2] Pursuant to Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), the authority of the Secretary of the Treasury to grant exemptions of the type herein proposed was transferred to the Secretary of Labor. As a result, PTE 82-87 contains relief from section 406 of the Act and from the parallel provisions of the Internal Revenue Code of 1954. References in this discussion to a section of the Act should be understood to encompass references to the relevant provisions of the Code.

[3] For the sake of convenience, the entire text of PTE 82-87, including the proposed amendments, is reprinted at the end of this notice.

certain categories of transactions from

transactions relating to multifamily

D.C. 20216, Attention: Direct Mortgage

FR 47713, October 17, 1978), the authority of the

PTE 82-87, including the proposed amendments, is reprinted at the end of this notice.

industry's accepted definition of a single

family dwelling. At the request of the commentators to the original proposal, the Department included in the final exemption a variety of types of housing such dwelling unit could take and provided that the structure need not be owner occupied.

C. Discussion of Proposed Amendments

Since the adoption of PTE 82-87, it has come to the Department's attention that certain modifications to the exemption may be appropriate. One such area relates to the inclusion of multifamily residential structures in the definition of a "residential dwelling unit." The other modification would provide an alternative method for satisfaction of the definition of a "recognized mortgage loan."

1. Multifamily Residential Mortgage Loans

Part III E of PTE 82-87 states that for purposes of this exemption, the term "residential dwelling unit" or "unit" means:

(1) Owner occupied non-farm property comprising one to four dwelling units, including detached houses, townhouses, manufactured housing, condominiums, units in a housing cooperative, or a unit in a multi-unit subdivision (planned unit development) restricted by recorded documents which limit the use of the unit to residential purposes and provide for maintenance of common facilities; or

(2) certain non-owner occupied units where such unit complies with the uniform underwriting standards required for investor loans to qualify as a "recognized mortgage loan" under this exemption.[4]

Among the comments received by the Department in response to the proposal were six which urged that the types of properties be expanded to include multifamily housing. The commentators provided little in the way of a factual record to support their contention regarding the appropriateness of expanding the proposal to include multifamily housing units. Accordingly, based on the Department's then existing understanding of multifamily mortgage loans, the preamble to the final class exemption stated that: "Investment in the mortgages of such housing units differ both in magnitude and complexity from the one to four unit structures contemplated by this exemption. After considering the issue, the Department has determined it would not be appropriate to include multiple unit rental housing in this exemption." [5]

[4] 47 FR 21331, 21339 (1982).

[5] 47 FR 21331, 21336 (1982).

Since the publication of PTE 82-87, the Department has continued to consider the question and received additional information regarding investment in multifamily residential mortgage loans. Furthermore, in response to the grant of PTE 82-87 several comments were received requesting the Department to reconsider its position on such mortgage loans. The Mortgage Bankers Association urged that the exemption be expanded to include federally insured multifamily mortgage loans, stating that the existence of federal insurance made these investments appropriate. The United States League of Savings Associations also urged an expansion to include multifamily loans stating that in its experience there is no indication that such loans involve a greater risk to investment assets.

The Department has also consulted with GNMA with respect to the impact of the prohibited transaction provisions of the Act to GNMA's efforts to market its outstanding inventory of "tandem project mortgage loans." [6] As the Department understands the tandem project mortgage program, GNMA would issue a commitment to purchase a mortgage loan, generally with a below-market interest rate, which meets specified eligibility criteria. The mortgage loans are purchased by GNMA at 97.5 percent of par, generally a more favorable price than would be offered by a private investor. All project mortgage loans in the tandem program to be purchased by GNMA are insured by the FHA. GNMA in turn resells these loans at market prices to private investors. The difference between the amount GNMA paid for the loan and the amount recouped by the sale represents the subsidy paid by the federal government.

GNMA has made a determination that the most appropriate method of complying with its charter obligation to sell tandem project mortgage loans at market prices is by offering such loans at auction. In conducting such auctions, GNMA requires that all eligible bidders be HUD-approved mortgagees. Thus, a pension plan could purchase a project loan in one of two ways. A plan could either authorize a HUD-approved mortgage to purchase a loan on its behalf, or it could purchase a loan from such mortgagee that had initially purchased the loan from GNMA for its own account. In either case, the HUD-approved mortgage would service the mortgage loan and pass through the proceeds to the pension plan investor.[7]

GNMA notes that while rental housing investment does differ from single family housing, it does not necessarily result in a risk of greater magnitude. In this regard, GNMA indicated that while the default rate is higher for these types of mortgage loans, the risk is borne by FHA as the insurer—not by the investor. Finally, GNMA noted that the sales terms (including warranties) and mortgage terms are standardized for each FHA insurance program.[8]

Accordingly, the Department has determined to propose an expansion of PTE 82-87 to permit the acquisition of FHA insured tandem project mortgage loans on properties that are designed primarily for residential use.

Because the structure of PTE 82-87 was not limited to government insured mortgage loans the Department also approached FNMA and FHLMC and requested both agencies to outline their respective purchase programs with respect to multifamily mortgage loans. Both FNMA and FHLMC indicated they maintain conventional multifamily programs which operate pursuant to published credit, property appraisal and mortgage documentary standards similar to those in effect for their simgle family programs. While the Department continues to believe that investment in multifamily housing mortgage loans differs both in "magnitude and complexity" from investment in mortgage loans on single family

[6] The term "tandem project mortgage loans" includes a broad range of Federal Housing Administration (FHA) insured financing arrangements in which GNMA has made a commitment to purchase upon completion of the construction. Such "tandem project mortgage loans" extend beyond loans on residential multifamily structures to certain buildings that are not residential in the usual sense e.g., hospitals, nursing homes, land development and group practice facility loans. While the Department acknowledges that such structures do qualify under Title II of the National Housing Act (NHA) for FHA insurance, the purpose of the proposed amendments to PTE 82-87 is to expand the types of eligible housing to multifamily residential properties. Accordingly, the Department is inclined to limit the properties which are the subject of this proposed amendment to those which are designed primarily for residential use.

[7] Where the HUD-approved mortgagee has an existing service provider relationship to the investing plan only the latter option presents a prohibited transaction concern under the Act and Code. In the case of a direct purchase from GNMA, the acquisition transaction doesn't involve a party in interest with respect to the investing plan. An additional servicing contract with the HUD-approved mortgagee would generally be covered under the statutory exemption of section 408(b)(2) of the Act and its implementing regulations 29 CFR 2550.408b-2 (42 FR 42389 June 24, 1984).

[8] The Department understands that the tandem mortgage program (the only remaining GNMA purchase program) will be discontinued once the existing portfolio of mortgage loans (plus outstanding commitments to acquire a small number of additional projects) is sold.

housing,[9] it has determined that the record now supports a proposed modification of the exemption to permit plan investment in multifamily residential mortgage loans as well as single family residential mortgage loans that meet the conditions of the exemption. To accomplish this modification, the Department is proposing to expand the definition of a "residential dwelling unit." Accordingly, based on the record as developed, the Department herein proposes to expand Part III E of PTE 82-87 to include multifamily as well as single family residential dwelling units within the definition of a "residential dwelling unit."

2. Alternative Method of Compliance With "Recognized Mortgage Loan"

The Department noted in the preamble to the grant of PTE 82-87 that the exemption" * * * not only provides certainty to plan fiduciaries as to the application of the Act's prohibited transactions provisions to many transactions which are customary in residential mortgage financing, it is also designed to accommodate changes in the mortgage marketplace as they occur, without the necessity of amendments to the exemption."[10] The Department determined it could best achieve these goals by developing an objective standard for the types of residential mortgage loans that would be entitled to a safe harbor under the exemption. Because GNMA, FNMA and the FHLMC have established programs for the acquisition of certain types of mortgage loans and, in so doing, have established extensive underwriting criteria for such loans, the Department determined it appropriate to adopt these existing guidelines in developing its definition of a "recognized mortgage loan."

Based on the Department's understanding of the government operated secondary market, one of the conditions for eligibility under the purchase programs of FNMA or the FHLMC (the only agencies currently purchasing single family residential mortgage loans) is a requirement that the outstanding principal amount on a mortgage to be acquired may not exceed certain established dollar limits. These dollar limits apply to both government insured or guaranteed and conventional mortgage loans. Loans which exceed this dollar limitation or are not in compliance with other eligibility standards are called "non-comforming loans."

With respect to those mortgage loans having a federal insurance or guarantee feature (FHA or VA), the dollar limits represent the maximum mortgage loan amounts existing under the applicable insurance or guarantee program. In the FHA program, Congress acknowledged the need for a high cost area adjustment factor to accommodate regional variations. Accordingly, in 1980 Congress authorized the Secretary of HUD to designate certain high cost housing areas based on the Federal Home Loan Bank Board (FHLBB) data for mortgage closings during the proceeding year.[11] In those areas the government insured ceiling may be increased by up to 33⅓ percent over the maximum mortgage loan amount or 95 percent of the median home price, whichever is less (the current ceiling is $90,000).

In the area of conventional home financing, the dollar limitation on the size of mortgage loans which could be purchased by FNMA and FHLMC originated with their initial Congressional authorizatin to deal in conventional financing.[12] This legislation established specific dollar limits for the general types of single family residential units (1–4 family residences) and included a provision that such maximum limitations may be adjusted annually based on the percentage increase in the national average one family house price as determined by the FHLBB survey of mortgage closings for the previous year. These purchase limits have been adjusted according to the statutory provision which currently provides that a mortgage loan on a single family residential dwelling unit does not qualify for acquisition by either agency if it exceeds $114,000. The same legislation authorized the acquisition of conventional multifamily mortgage loans with dollar value limits fixed as a percentage of those authorized under the FHA insured acquisition programs.

The commentators, in arguing for the elimination of the dollar limit aspect of the eligibility for purchase standards of the affected agencies, suggested that the restriction unfairly inhibits the operation of the housing marketplace in certain states or metropolitan areas. Other commentators noted that FNMA and FHLMC had been mandated by Congress to provide assistance to low and moderate income households in obtaining mortgage financing, a more restrictive focus than pension plan investment in the housing marketplace which should only be motivated by the economics of any particular investment or investment course of action.

The Department sought out those statistics regarding the operation of the residential housing marketplace in its attempt to evaluate the extent to which its "recognized mortgage loan" standard may have inhibited plan investment opportunities. Based on data available through the FHLBB, the Department learned that in 1983, 92 percent of all mortgage originations nationally were within the dollar limitation ceiling in effect at that time. However, a review of the statistics in certain high cost areas disclosed a different percentage relationship between conforming and non-conforming dollar value loans. Using San Francisco as an example, a FHLBB survey for a specific date within 1983 indicated that 27 percent of all loan originations were not in conformity with the existing loan amount limitations for purchase eligibility by FNMA or the FHLMC.

Conventional loans exceeding the authorized purchase limitations of the government maintained market place are being traded on the secondary market by private entities such as insurance companies and mortgage companies. The market includes both individual whole loans and loans committed to mortgage-backed securities. The resale market for these mortgage loans is expected to expand in the coming years, particularly as mortgage-backed securities become increasingly more accepted as a major housing investment vehicle. Several private organizations have developed standardized purchase programs orientated toward the non-conforming loan marketplace. After acquisition such loans are then packaged and syndicated for sale as mortgage-backed securities. The future with respect to resale activity involving individual whole loans is less certain. Since the government involvement in the secondary market does not extend to non-conforming mortgage loans, the marketplace for these loans is considerably narrower. This limited market has been the basis for the Department's stated concern regarding the liquidity of such loans. Based on the record available to the Department, modification of the existing definition of a "recognized mortgage loan" by removing the dollar limit on a class basis is not supported.

[9] The FHLMC *Sellers Guide for Conventional Mortgages*, (Part IV, section 4, paragraph 4.407) states that in analyzing mortgage loans on multifamily properties as "these mortgage loans are basically business investments which require a subjective as well as an objective underwriting of the potential borrower and the underlying security" to protect the interests of any lender.

[10] 47 FR 21331, 21332 (1982).

[11] Housing and Community Development Act of 1980, Pub. L. No. 96-399, § 336, 94 Stat. 1614 (1980).

[12] Emergency Home Finance Act of 1970, Pub. L. No. 91-351 § 201(a), 84 Stat. 450 (1970).

[48] 47 FR 21331, 21336 (1982).

are the subject of this proposed amendment to those which are designed primarily for residential use.

outstanding commitments to acquire a small number of additional projects) is sold.

[48] 47 FR 21331, 21332 (1982).

No. 91–351 § 201(a), 84 Stat. 450 (1970).

class basis is not supported.

The Department does acknowledge that there may be situations in which purchase of such a non-conforming loan may be an appropriate plan investment. In an effort to develop an alternative method of satisfying the "recognized mortgage loan" definition or both single and multifamily mortgage loans, the Department has become aware of the activities of national rating services to develop standards for rating certain mortgage backed securities. As the Department understands this approach, the component mortgage loans of a mortgage backed security would be individually evaluated and a composite rating developed. A number of characteristics have been developed for evaluating the underlying mortgage loans which constitute the source for the income stream of a mortgage pool. Experience has shown that any investment vehicle which obtains a favorable rating from a national rating service has benefited in terms of increased marketability. If the seller of an individual mortgage loan which exceeds the purchase limitations of the Agencies obtained a rating, the Department's reservations concerning the liquidity of such mortgage would be reduced. Accordingly, the Department proposes to amend the existing definition of a "recognized mortgage loan" by providing an alternative method of compliance where any individual residential mortgage loan, regardless of size, obtains a rating from a national rating service that is at least as good as the third highest rating category for other debt instruments available from one of the national rating services in existence in 1984.

D. Miscellaneous

One of the commentators requested the Department modify the definition of a "recognized mortgage loan" to include those mortgage loans qualifying for purchase by FNMA or the FHLMC under the negotiated purchase process. As explained to the Department, negotiated purchases occur on an ad hoc basis and are intended to permit variations from the otherwise applicable eligible for purchase criteria. FNMA advises the Department that most negotiated purchase agreements cover adjustable rate mortgage loans and permit variations in the amount and frequency of interest rate adjustments, the choice of a governing index or the annual rates of payment increases for graduated payment mortgage loans.

One of the statutory criteria upon which the Department must base its findings in the granting of an exemption under section 408(a) is that the exemption must be administratively feasible. A negotiated purchase occurs through an individual evaluation of a particular mortage loan. As far as can be determined by the Department, there is no standard available to the investor public to evaluate what criteria may be varied or the extent of variance therein in a qualifying negotiated purchase agreement. This nebulous feature of negotiated purchase agreements creates numerous problems of administrative feasibility for purposes of complying with this requisite for the granting of exemptive relief. Under the present structure of PTE 82–87 a plan fiduciary can readily determine whether a mortgage loan it desires to purchase meets the eligible for purchase criteria of FNMA, GNMA or FHLMC. A modification of the present structure to include mortgage loans eligible for purchase through negotiated purchase agreements would leave plan fiduciaries with the dilemma of attempting to determine prior to the plan's actual purchase of a desired mortgage loan, whether that particular mortgage loan would, in fact, be purchased by a FNMA or FHLMC. In addition, FNMA has expressed reservations about being used as a "sounding board" for prospective investments by pension plans. Absent a clear record indicating how the Department would develop conditions and monitor compliance, the Department has determined not to propose any modification to the exemption for such mortgage loans.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of participants and beneficiaries.

2. This exemption does not extend to transactions prohibited under section 406(b) of the Act or section 4975(c)(1) (E) (F) of the Code.

3. This exemption is supplemental to and not in derogation of any other provision of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

4. The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Written Comments

All interested persons are invited to submit written comments on the proposed amendments to the address and within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed amendments. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendments

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1, the Department proposes to amend PTE 82–87 by deleting that portion in brackets and substituting the language as set forth in italics in the republished exemption below.

I. Transactions

Effective January 1, 1975, the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions if the conditions set forth in Part II below are met:

A. The issuance of a commitment by one or more employee benefit plans to provide mortgage financing to purchasers of residential dwelling units, either by making or participating in loans directly to purchasers or by purchasing mortgage loans or participation interests in mortgage loans originated by a third party;

B. The receipt by the plan of a fee in exchange for issuing such commitment;

C. The actual making or purchase of a mortgage loan or participation interest therein pursuant to such commitment;

D. The direct making or purchase by one or more employee benefit plans of a mortgage loan or a participation interest

therein other than where a commitment has been issued; and

E. The sale, exchange or transfer of a mortgage loan or participation interest therein by an employee benefit plan prior to the maturity date of such instrument whether or not acquired pursuant to this exemption, provided that the ownership interest sold, exchanged or transferred represents the plan's entire interest in such investment.

II. Conditions

A. Effective January 1, 1975, the exemption provided for transactions described in Part I is available only if each of the following conditions as applicable, is met:

(1) General Conditions

(a) Any mortgage loan to be acquired must be a "recognized mortgage loan" (as defined in Section D of Part III) or a participation interest in such loan for the purchase of a "residential dwelling unit" (as defined in Section E of Part III).

(b) Any mortgage loan must be originated (either directly for the plan or by the origination-purchase process) by an "established mortgage lender" (as defined in Section B of Part III): (i) Who qualifies the recipient and (ii) as to which neither the plan, nor an employer or group of employers contributing to the plan, nor an employer or group of employers contributing to the plan, nor an employee organization any of whose members are covered by the plan, has the power to exercise a controlling influence over the management or policies of such "established mortgage lender";

(c) The price paid or received by the plan must be at least as favorable to the plan as a similar transaction involving unrelated parties; and

(d) No person who is a developer or a builder involved in the development or construction of the units, or a lender who is associated with the construction financing arrangement for the units, or who, at the time the decision to purchase is made by the plan [whether directly or pursuant to a commitment) is the owner of a mortgage or a participation interest therein which is subsequently sold to the plan, shall have exercised any discretionary authority or control or rendered any investment advice that would make that person a fiduciary with respect to the plan's decision to purchase, or to commit to purchase, a mortgage loan or a participation interest therein or setting the terms thereof.

(2) Specific Conditions Applicable to Commitments

Where the decision by the plan involves a commitment to purchase either a mortgage loan or participation interest therein:

(a) The commitment must be in writing and must be at least as favorable to the plan as a commitment involving unrelated parties and consistent with customary practices in the residential finance industry; and

(b) The commitment must provide for the use of underwriting guidelines and mortgage instruments which will ensure that all mortgage loans originated pursuant to such commitment will result in a "recognized mortgage loan";

(3) Specific Conditions Applicable to Participations

Where the acquisition by the plan involves a participation interest in a mortgage loan(s) (whether directly or pursuant to a commitment):

(a) The participation agreement governing such transaction must provide that: (i) The rights and interests evidenced by such participation interest not be subordinated to the rights and interests of other holders of the same participation agreement, (ii) the majority interest in the participation agreement must be owned by parties independent of and not controlled by the person selling the participation interest and servicing the underlying mortgage(s), and (iii) in the event of an inability to obtain collections on any mortgage loan(s) underlying the participation agreement, decisions regarding foreclosure options must be directed by persons other than the seller/servicer; and

(b) Such participation agreement must be in writing and must be at least as favorable to the plan as a participation agreement involving unrelated parties and consistent with customary practices in the residential finance industry.

B. Effective June 18, 1982, the exemption provided for transactions described in Part I is available only if each of the following conditions is satisfied in addition to each of the applicable conditions described in section A of this Part II:

(1) The decision to purchase or sell the mortgage loan or participation interest therein, or to issue a commitment to do so, must be made on behalf of the plan by a "qualified real estate manager" (as defined in Section C of Part III) as to which neither the plan, nor an employer or group of employers contributing to the plan, nor an employee organization any of whose members are covered by the plan, has the power to exercise a controlling influence over the management or policies of such "qualified real estate manager."

(2)(a) The plan shall maintain for the duration of any loan made pursuant to this exemption records necessary to enable the persons described in paragraph (b) of this sub-section to determine whether the conditions of this exemption have been met, except that: (i) A prohibited transaction will not be deemed to have occurred, if due to circumstances beyond the control of the fiduciaries of the plan, records are lost or destroyed prior to the termination of the loan, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of ERISA, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained or are not available for examination as required by subparagraph (b) below.

(b) Notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (a) of this paragraph must be unconditionally available at their customary location for examination during normal business hours by: Any trustee, investment manager, participant or beneficiary of the plan, or any duly authorized employee or representative of such person or of the Department or the Internal Revenue Service.

III. Definitions

For purposes of this exemption.

A. References to persons described in this exemption includes their affiliates. An affiliate is defined as:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such person; and

(3) Any corporation or partnership of which such person is an officer, director or partner.

B. An "established mortgage lender" means an organized business enterprise which has as one of its principal purposes in the normal course of business the origination of loans secured by real estate mortgages or deeds of trust and which has satisfied the qualification requirements of one of the following categories:

(1) Approval by the Secretary of the Department of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

under section 408(a) is that the exemption must be administratively

408(b) of the Act or section 4975(c)(1) (E) (F) of the Code.

one or more employee benefit plans of a mortgage loan or a participation interest

the terms thereof.

employee organization any of whose members are covered by the plan, has

mortgage insurance program under the National Housing Act;

(2) Approval by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation as a qualified Seller/Servicer; or

(3) A State agency or independent State Authority empowered by State law to raise capital to provide financing residential dwelling units.

C. A "qualified real estate manager" means fiduciary as defined in section 3(21) of the Act who: (1) Is a financial institution or business organization, which in the normal course of business advises institutional investors regarding investments similar to those in which the plan desires to engage and which are described in Part I of this exemption; and (2) acknowledges in writing to the plan that it will make decisions regarding plan investments in mortgage loans or participation interests therein in its capacity as a fiduciary of such plan.

D. A "recognized mortgage loan" is: (1) Any mortgage loan on a "residential dwelling unit" which, at the time of its origination, was eligible, through an established program, for purchase by the Federal National Mortgage Association, the Government National Mortgage Association or the Federal Home Loan Mortgage Corporation; *or (2) any mortgage loan on a "residential dwelling unit" which has received a rating from a national rating service that is at least as good as the third highest rating category for other debt instruments available from one of the national rating services in existence in 1984.*

[E. A "residential dwelling unit" or "unit" means: (1) Owner occupied non-farm property comprising one to four dwelling units, including detached houses, townhouses, manufactured housing, condominiums, units in a housing cooperative, or a unit in a multi-unit subdivision (planned unit development) restricted by recorded documents which limit the use of the unit to residential purposes and provide for maintenance of common facilities; or (2) certain non-owner occupied units where such unit complies with the uniform underwriting standards required for investor loans to qualify as a "recognized mortgage loan" under this exemption.]

E. A "residential dwelling unit" or "unit" means non-farm property comprising one or more dwelling units, including detached houses, townhouses, manufactured housing, condominiums, units in a housing cooperative, a unit in a multi-unit subdivision (planned unit development) restricted by recorded documents which limit the use of the unit to residential purposes and provide for maintenance of common facilities, or apartment buildings.

Signed at Washington, D.C. this 4th day of December 1984.

Robert A.G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-32289 Filed 12-10-84; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on December 19, and 20, 1984, in Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 19, 1984—8:30 a.m. until the conclusion of business

Thursday, December 20, 1984—8:30 a.m. until the conclusion of business

The NRC/NMSS Waste Management Staff will review for the Subcommittee two aspects of their efforts in support of the Department of Energy's high level waste disposal program, which DOE is pursuing in accordance with the Nuclear Waste Policy Act of 1982: (1) Definition of High Level Waste, and (2) Activities in preparation for Site Selection and Characterization. Also, the Environmental Protection Agency, Office of Radiation Programs Staff will review for the Subcommittee their High and Low Level Waste Management Programs.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC and EPA Staffs, their consultants, and other interested persons regarding these reviews.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 5, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-32278 Filed 12-10-84; 8:45 am]

BILLING CODE 7590-01-M

Availability of (October 1984) Revision No. 1 to NUREG-0980; Nuclear Regulatory Legislation; Export Licensing

December 3, 1984.

NRC announces the availability of (Oct. 1984) Revision No. 1 to NUREG-0980: NUCLEAR REGULATORY LEGISLATION (June 1984), which updates information, contained in the section on Export Licensing and Nuclear Non-Proliferation, on countries which have signed treaties and agreements on peaceful nuclear cooperation through October 1984. The U.S. Department of State has provided this current information on signatories to the Nuclear Non-Proliferation Treaty, the Treaty for the Prohibition of Nuclear Weapons in Latin America, and bilateral agreements between the United States and other countries for peaceful nuclear cooperation.

NUREG-0980 is a compilation of nuclear regulatory legislation and other relevant material through the 97th Congress, 2nd Session, which was complied by Anna Fotias, Legislative Specialist, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, for staff use as a resource document. The U.S. NRC intends to update the compilation at the end of every Congress by inserting or deleting material.

Other Federal Government agencies may obtain a free single copy of this

(Oct. 1984) Revision No. 1 to NUREG-0980, to the extent of supply, by writing to the Publication Service Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 or by calling (301) 492-7333.

Copies of the (Oct. 1984) Revision No. 1 to NUREG-0980 may be purchased, to the extent of supply, by calling (301) 492-9530, the NRC/GPO Sales Program Office, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Duplicated copies of this publication may be purchased from the National Technical Information Service (NTIS), Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

The NRC/GPO Sales Program, as part of the Commission's Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, fills orders for NRC publications within 24 hours of receipt. The public may charge the cost of publications to a GPO Deposit Account, to a VISA or Master Card account, or purchase may be made by check or money order.

Anna Fotias,

Legislative Specialist, U.S. Nuclear Regulatory Commission.

[FR Doc. 84-32279 Filed 12-10-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293; License No. DPR-35; EA 84-112]

Boston Edison Co. (Pilgrim Nuclear Power Station); Order Modifying License

I

The Boston Edison Company (the licensee) is the holder of Facility Operating License No. DPR-35 which authorizes the operation of the Pilgrim Nuclear Power Station (the facility) at steady-state power levels not in excess of 1998 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Plymouth County, Massachusetts.

II

In August 1984, the NRC conducted inspections to review the circumstances associated with the unplanned occupational radiation exposure of 1.1 rem to the hand of a contractor employee. The results of the inspections are in NRC Inspection Reports Nos. 50-293/84-25 and 50-293/84-29. The exposure, which was identified by the licensee, occurred on August 18, 1984 while the individual was performing work in the Control Rod Drive (CRD) Repair Room. Although the unplanned exposure was not in excess of regulatory limits, a substantial potential for exposure in excess of regulatory limits did exist.

The individual received the unplanned exposure while disassembling control rod drives in the CRD Repair Room. The exposure occurred when the individual picked up with his right hand a highly radioactive chip exhibiting radiation dose rates on contact of approximately 1100 rem/hour. Adequate radiological controls were not implemented during the performance of the work in the CRD Repair Room. Specifically, adequate surveys of the room were not performed prior to or during work in the room, adequate instructions were not provided to the worker by the health physics technician regarding precautions to be taken to minimize exposure, and the procedures used during the CRD disassemblies by contractor personnel had not been reviewed and approved by the licensee.

Furthermore, notwithstanding the use of the unapproved procedure by contractor personnel, the procedure for CRD disassembly, which had been reviewed and approved, did not include sufficient precautionary statements and radiation survey hold points necessary for implementation of appropriate radiological controls and timely detection of highly radioactive chips. Consequently, it is not apparent that the use of the approved procedure would have precluded this event.

The violations of NRC requirements associated with these events are set forth in the attached Notice of Violation. These recent violations at the facility represent a continuing problem in the effective implementation of radiological controls during the performance of work in the CRD Repair Room at the Pilgrim Station. On April 17, 1984, a Notice of Violation and Proposed Imposition of Civil Penalty (EA 84-29) was issued to the licensee in the amount of $40,000 for similar violations associated with a similar unplanned exposure which occurred in the CRD Repair Room in January 1984, involving improper handling of highly radioactive chips. The licensee paid the civil penalty on May 21, 1984.

Further, similar violations were identified by the NRC in May 1984 involving failure to perform surveys and properly instruct individuals during work performed in the Residual Heat Removal (RHR) quadrant and in the drywell. See NRC Inspection Report No. 50-293/84-14.

III

Collectively, these occurrences at the facility represent inadequate planning, supervision and control of activities involving the potential for personnel exposure to radiation in excess of regulatory limits. These occurrences are indicative of programmatic deficiencies in the radiological controls program and they demonstrate the need for effective corrective measures to prevent similar occurrences in the future. At a management meeting on September 5, 1984 and an enforcement conference on October 16, 1984 with NRC Region I, the licensee acknowledged the need for such corrective action and made certain commitments for improvement, including the retention of a contractor to perform a complete assessment of the Radiological Controls Program. On October 26, 1984 Region I issued a Confirmatory Action Letter documenting these commitments. In view of the importance of establishing, maintaining, and implementing an effective Radiological Controls Program, I have determined that the commitments documented in the Confirmatory Action Letter are required in the interest of public health and safety and, therefore, should be confirmed by Order.

IV

In view of the foregoing, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and Part 50, it is hereby ordered that:

A. By December 30, 1984, the licensee shall complete an independent contractor assessment of the radiological controls program at the Pilgrim Station. The assessment shall include, but not be limited to, the following areas:

(1) Radiological control program organization, including position responsibilities and authorities;

(2) Personnel selection, qualification and training program;

(3) External exposure control program;

(4) Internal exposure control program;

(5) Surveillance program;

(6) ALARA program;

(7) Corrective action system; and

(8) Management oversight.

B. By January 30, 1985, the licensee shall provide to the Regional Administrator, Region I, a copy of any or all contractor reports regarding the assessment required by Section IV.A. of the Order.

C. By February 28, 1985, the licensee shall submit to the Regional Administrator, Region I, for review and

approval, a Radiological Improvement Plan (RIP) for upgrading the radiological controls program. Upon the Regional Administrator's review and approval of the RIP, the RIP shall be implemented. The RIP shall address as a minimum the programmatic improvements necessary to correct the deficiencies identified during the assessment required by Section IV.A of the Order, and shall describe:

(1) Action items to be performed;

(2) The integration of these action items into existing programs as complimentary facets of the overall radiological controls program;

(3) The schedule for completion of the specific action items; and

(4) The system for monitoring and tracking the status and completion of the action items.

All action items shall be completed by December 30, 1985, unless otherwise justified in writing to the Regional Administrator, Region I, and approved by him. Until such time as all action items are completed, quarterly reports regarding the status of the RIP's improvements shall be provided to the Senior Vice President Nuclear with a copy to the Regional Administrator, Region I.

D. By February 28, 1985, the licensee shall submit to the Regional Administrator, Region I, an Interim Plan (IP) for achieving adequate management oversight and maintaining sufficient radiological controls of work in progress until the action items described in the RIP are completed. At a minimum, these interim actions shall include radiological audits of work in progress, transmittal of bi-weekly reports of the audits to the Senior Vice President for review, enhancement of technician training and qualifications for maintaining control of radiologically hazardous activities, and means to assure that personnel are aware of radiological incidents and corrective measures to prevent their recurrence.

E. The Regional Administrator, Region I, may relax or terminate, in writing, any of the preceding conditions for good cause.

V

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Deputy Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

This Order shall become effective upon expiration of the time during which a hearing may be demanded or, in the event that a hearing is demanded, on the date specified in an order issued following further proceedings on this Order.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 29th day of November 1984.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

Notice of Violation

[Docket No. 50-293; License No. DPR-35; EA 84-112]

Boston Edison Co. Pilgrim Nuclear Power Station

On August 24, 1984, an NRC special safety inspection was conducted to review the circumstances associated with an unplanned occupational radiation exposure of about 1.1 rem to the hand of a contractor worker during the disassembly of a control rod drive (CRD) in the CRD Repair Room. The radiation exposure was identified by the licensee on August 18, 1984. Although the unplanned occupational radiation exposure was not in excess of the regulatory limit, a substantial potential for such an exposure did exist.

The radiation exposure occurred when the worker handled a highly radioactive chip of material deposited in the spud end of the CRD Flush Tank tool tray. Prior to the incident, health physics technicians had performed surveys in the area of the tool tray and found the area to be exhibiting abnormally high radiation dose rates (500 mrem/hour to 1000 mrem/hour). This information was transmitted to the on-coming health physics technician. Also, the health physics technician should have been aware that highly radioactive chips had previously been found lodged inside other CRDs. However, disassembly of the spud end of a CRD was allowed to be performed without on-going radiation surveys. When the highly radioactive chip was identified after the disassembly of the spud end, the health physics technician did not adequately communicate the radiological hazards of the chip to a worker. As a result, the worker picked up the chip with his hand, held it for several seconds, and then threw it down. The chip was later determined to have a contact radiation dose rate of about 1100 rem/hour.

During subsequent review of the CRD room, the licensee found that (a) 12 other previously unidentified, highly radioactive chips were present in the CRD Repair Room, demonstrating inadequacies in control of general area radiation levels and in radiation surveys, and (b) the procedure used by the workers for disassembly of the CRDs had not been reviewed and approved and had been in use for approximately two months, demonstrating inadequate licensee supervision of on-going contractor activities.

Further, it is not apparent that use of the approved procedure would have prevented this occurrence. The approved procedure did not provide adequate precautionary statements regarding (1) the survey of components prior to handling, (2) the periodic checking of self-reading personnel dosimetry for inadvertent exposure, (3) criteria for disposal and/or ultrasonic cleaning of CRD outer filters, (4) hold points for removal, disassembly, cleaning, inspection, storage and isolation of CRD parts, and (5) dose rate criteria for CRD parts and tools. Such precautions should have been included in the approved procedure to satisfy procedure development guidance specified in the technical specifications and appropriate ANSI Standards.

In addition, the documented ALARA reviews for the Radiation Work Permit (RWP) associated with the CRD disassembly, and the RWP itself, did not provide guidance relative to allowable general area radiation dose rates in the room, did not provide guidance for allowable radiation dose rates on tools and equipment in the room, and did not provide guidance relative to allowable radioactive contamination of the room. As a result, the general area dose rates in the CRD Repair Room were as high as 400 mrem/hour, although 20 mrem/hour was used for ALARA pre-planning. Further, contamination levels were as high as 650 mrad/hour (removable) and radiation dose rates on tools used by workers for CRD disassembly routinely exhibited contact radiation dose rates as high as 1000 mrem/hour. Although these radiation and contamination levels made identification of chips difficult, work was routinely allowed to be performed in the CRD Repair Room under these conditions.

As a result of these deficiencies, a substantial potential existed for an occupational exposure in excess of the limits specified in 10 CFR Part 20.

In accordance with 10 CFR 2.201 and the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C, 49 FR 8583 (March 6, 1984), the violations are set forth below:

A. 10 CFR 20.201(b) requires that each licensee make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in this part, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. 10 CFR 20.201(a) defines a radiation survey as an evaluation of the radiation hazards incident to the production, use, release, disposal or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above,

1. On August 18, 1984, radiation surveys, necessary and reasonable to ensure compliance with the dosimetry supply provisions of 10 CFR 20.202 and the occupational exposure radiation limits of 10 CFR 20.101, were not made during disassembly of the spud end of a Control Rod Drive (CRD). Specifically, although the area of the tool tray at the spud end was exhibiting abnormally high radiation dose rates between 500 mrem/hour to 1000 mrem/hour and previous experience indicated that highly radioactive chips could become lodged in a CRD, radiation surveys were not performed during initial disassembly of the spud end.

2. Radiation surveys, necessary and reasonable under the circumstances to ensure compliance with the occupational exposure limits of 10 CFR 20.101 and the dosimetry supply provisions of 10 CFR 20.202 were not made in the CRD Repair Room in that on August 18, 1984, and for an undetermined amount of time prior to this date, 12 highly radioactive chips present in the room were not identified, and their associated radiological hazards were not evaluated. The 12 chips, located in various areas of the room, exhibited contact radiation dose rates of between about 600 rem/hour to 1200 rem/hour.

B. 10 CFR 19.12 requires in part that individuals working in or frequenting any portion of a restricted area be kept informed of the storage and use of radioactive materials or of radiation and be instructed in precautions or procedures to minimize exposure.

Contrary to the above, on August 18, 1984, a worker disassembling the spud end of a control rod drive was not adequately instructed by the health physics technician in precautions or procedures to minimize his exposure in that the health physics technician located a highly radioactive chip in a room where work was being performed but did not warn the workers of its presence. As a result, the worker picked up a radioactive chip, measuring about 1100 rem/hour on contact, held it in his hand for several seconds, and then threw it down and thereby received an unplanned extremity exposure of about 1.1 rem.

C. Technical Specification 6.8.1, requires that written procedures be established, implemented and maintained that meet or exceed the requirements and recommendations of Appendix "A" of USNRC Regulatory Guide 1.33 and be reviewed by the Operations Review Committee (ORC) and approved by the ORC Chairman prior to implementation. Appendix "A" of Regulatory Guide 1.33 (1972) recommends that procedures for replacement and repair of Control Rod Drives be established.

Contrary to the above, from about June 24, 1984 through August 18, 1984, Control Rod Drives were disassembled in the CRD Repair Room and the procedures used during the disassembly had not been reviewed by the ORC and had not been approved by the ORC Chairman.

Collectively, these violations have been categorized in the aggregate as a Severity Level III problem (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Boston Edison Company is hereby required to submit to this office, with a copy to the Regional Administrator, Region I, within 30 days of the date of this Notice, a written statement or explanation, including for each alleged violation: (1) Admission or denial of the alleged violation; (2) the reasons for the violation, if admitted; (3) the corrective steps which have been taken and the results achieved; (4) the corrective steps which will be taken to avoid further violations; (5) the date when full compliance will be achieved. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Bethesda, Maryland this 29th day of November 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

[Docket No. 50-293; License No. DPR-35 EA 84-112]

Notice of Deviation

Boston Edison Co. Pilgrim Nuclear Power Station

As a result of the inspection conducted on August 6-10, and 24, 1984, and in accordance with the NRC Enforcement Policy, 10 CFR Part 2, Appendix C, 49 FR 8583 (March 6, 1984), the following deviation was identified:

10 CFR 20.1(c) states in part: "Persons engaged in activities under licenses issued by the Nuclear Regulatory Commission . . . should, in addition to complying with the requirements set forth in this part, make every reasonable effort to maintain radiation exposures . . . as low as reasonably achievable." Regulatory Guide 8.8, "Information Relevant to Ensuring That Occupational Radiation Exposures at Nuclear Power Stations Would Be As Low As Is Reasonably Achievable," dated June 1978, states in part in Section C.3.b.: "During operations in radiation areas, adequate supervision and radiation protection surveillance should be provided to ensure that the appropriate procedures are followed, that planned precautions are observed, and that all potential radiation hazards that might develop or that might be recognized during the operation are addressed in a timely and appropriate manner."

Contrary to the above, on August 18, 1984, and for an undetermined period of the time prior to this date, workers disassembling control rod drives in the CRD Repair Room routinely used tools with recognized contact radiation dose rates of up to 1000 mrem/hour, and no timely and appropriate action was taken by radiation protection personnel to preclude unnecessary exposure of workers using the tools.

Boston Edison Company is hereby requested to submit to the Regional Administrator, Region I, within thirty days of the date of the letter which transmitted this Notice, a written statement or explanation in reply, including: (1) The corrective steps which have been taken and the results achieved; (2) corrective steps which will be taken to avoid further deviations; and (3) the date when corrective actions will be complete. Where good cause is shown, consideration will be given to extending this response time.

[FR Doc. 84-32277 Filed 12-10-84; 8:45 am]

BILLING CODE 7590-01-M

address and to the Regional

worker picked up the chip with his hand.

As a result of these deficiencies, a substantial potential existed for an

physics technician in precautions or

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 84-32277 Filed 12-10-84; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S ADVISORY COUNCIL ON PRIVATE SECTOR INITIATIVES

Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the President's Advisory Council on Private Sector Initiatives which will be held on December 10, 1984 at 2:10 p.m. in Room 474 of the Old Executive Office Building in Washington, D.C.

The Council was established on June 27, 1983 by Executive Order No. 12427 to advise the President with respect to the objectives and conduct of private sector initiative policies, including methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; and strengthening the professional resources of the private social services sector.

The purpose and agenda of the meeting is to discuss the Council's successful programs and outline its work for the future.

The meeting will be open to the public. It is suggested that any member of the public who would like to file an oral or written statement or desires any further information regarding the meeting or the Council, please contact Ms. Patricia Kearney, Director of Communications of the White House Office of Private Sector Initiatives at 202/456-6676, or Old Executive Office Building, Room 134, Washington, D.C. 20500.

Dated: November 23, 1984.

James K. Coyne,

Special Assistant to the President for Private Sector Initiatives.

Editorial Note: This document was delayed in the mail and was received by the Office of the Federal Register on December 10, 1984.

[FR Doc. 84-32428 Filed 12-10-84; 10:49 am]

BILLING CODE 3195-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 09/09-5355]

BNK Industry Investment Co.; Notice of Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR Section 107.102 (1984)), for a license to operate as a small business investment company (SBIC) under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*), and the Rules and Regulations promulgated thereunder.

Applicant: BNK Industry Investment Company.

Address: 3932 Wilshire Boulevard, Suite 303, Los Angeles, California 90010.

The proposed officers, directors and 10 or more percent stockholders of the Applicant are as follows.

Name	Position	Ownership (percent)
Bok-Nan Kim, 3932 Wilshire Boulevard Suite 303, Los Angeles, CA 90010	Director	60
Kyu Han Lee, 1071 South Hoover Street, Los Angeles, CA 90006	President and Director	20
Chul-Ho Kim, 2740 Kensington Drive, Glendale, CA 91206	Secretary and Director	15
Yoshihuo Kuroiu, 317 South Palm Drive, Beverly Hills, CA 90212	Treasurer	5
Paul Raymond Sanders, 14155 Magnolia Boulevard, Apt. 343, Sherman Oaks, CA 91423.	General Manager	

The Applicant, a California Corporation will begin operations with $1,030,000 of private capital and conduct its activities principally in the State of California.

As a small business investment company under Section 301(d) of the Act, the Applicant has organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 3, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-32181 Filed 12-10-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5472]

Financial Venture Corp.; Notice of Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Financial Venture Corporation, Fernandez Jucos Ave., #801 Santurce, Puerto Rico 00907 with the Small Business Administration (SBA), pursuant to Section 107.102 of Revision 6 [48 FR 45014 (9-30-84)].

The officers directors and shareholders of the Applicant are as follows:

Name and address	Title or relationship	Percent of ownership
Jorge L. Fernandez, Montebello DA-11, El Retiro, Guaynabo, Puerto Rico 00625	Chairman, President, and Director	10
Jose E Fernandez, 1893 Narciso Street, Rio Predras, Puerto Rico 00927	Vice President, Treasurer, and Director	90
Jose A. Perez, 1-5 Alhombro St., Tommer, Guaynabo, Puerto Rico 00657	Secretary, CEO, Director, and General Manager	0

The Applicant will begin operations with a capitalization of $1,000,000 which will be a source of equity on long term loans for qualified small business concerns.

The Applicant will conduct its operations principally in the Commonwealth of Puerto Rico.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958 as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the

free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Santurce, Puerto Rico Area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 3, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-32182 Filed 12-10-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0285]

Future Money Corp.; Issuance of a License To Operate as a Small Business Investment Company

On August 14, 1984, a notice was published in the **Federal Register** (49 FR 32482), stating that Future Money Corporation located at Two Energy Square, Suite 500, 4849 Greenville Avenue, Dallas, Texas 75206, had filed an application with the Small Business Administration pursuant to 13 C.F.R. 107.102 (1984), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on September 13, 1984, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06-0285 to Future Money Corporation.

Dated: December 3, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-32183 Filed 12-10-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 06/06-0287]

Mid-State Capital Corp.; Notice of Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661 *et seq.*), has been filed by Mid-State Capital Corporation (Mid-State), 510 North Valley Mills Drive, Waco, Texas 76710 with the Small Business Administration pursuant to 13 C.F.R. 107.102(1984).

Mid-State is incorporated in the State of Texas. The officers, directors and ten or more percent shareholders of the Applicant are as follows:

Smith E. Thomasson, 8104 Woodcreek, Waco, Texas 76710—President and Director
Matthew A. Landry, Jr., 825 Forest Oaks Circle, Waco, Texas—Vice President and Director
Patrick L. Rominger, 3724 Chateau, Waco, Texas 76710—Secretary, Treasurer and Director
First Bank & Trust, P.O. Box 1033, Bryan, Texas 77805—19.64
Westview National Bank, P.O. Box 7554, Waco, Texas 76710—14.28
Sabine Bank, P.O. Box 3317, Port Arthur, Texas 77643—10.72
Travis Bank & Trust, P.O. Box 4218, Austin, Texas 78765—10.72
Woodville Bancshares, P.O. Box 109, Woodville, Texas 75979—10.72
First Financial Corp., 800 Washington, Waco, Texas 76701—10.72

The applicant will begin operations with $1,400,000 paid-in capital and surplus and will conduct its activities in the State of Texas but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice should be published in a newspaper of general circulation in the Waco area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 5, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-32184 Filed 12-10-84; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting at 12:00 noon, on Wednesday, December 19, 1984, at Camilles Roman Garden, 71 Bradford Street, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James A. Hague, District Director, U.S. Small Business Administration, 380 Westminster Mall, Providence, Rhode Island 02903. Telephone number (401) 528-4562.

Dated: December 4, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-32185 Filed 12-10-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5356]

Application for License To Operate as a Small Business Investment Company; Highland Capital Corp.

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of Revision 6 of the Rules and Regulations (13 CFR 107.102 (1984)) by Highland Capital Corporation, 4801 Wilshire Boulevard, Suite 301, Los Angeles, California 90010 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. *et. seq.*)

The proposed officers, directors and shareholders are:

small business investment company

published in a newspaper of general

by persons whose participation in the

Name, address and title or relationship	Percentage of shares owned
Yvonne Kim Woo, 2675 Nottingham Avenue, Los Angeles, CA 90027; president/director	8.5
Terry Lee, 2675 Nottingham Avenue, Los Angeles, CA 90027; secretary, treasurer, director	9.5
Janice Yoon, 2675 Nottingham Avenue, Los Angeles, CA 90027; vice president, director	81.0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Los Angeles, California.

Dated: December 5, 1984

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-32295 Filed 12-10-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from January 15, at 9 a.m., through January 18, 1985, at 4 p.m., at Miami International Airport, 6301 N.W. 20th Street, Miami, Florida.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than January 11, 1985, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Service, ATO-301, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is scheduled to be held from April 22 through April 25, 1985, in Washington, D.C.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on December 4, 1984.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 84-32180 Filed 12-10-84; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-84-24]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 5, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24260	Sky Harbor Air Service, Inc	14 CFR 135.219	To allow petitioner to operate aircraft under Part 135 when weather reports at the destination airport indicate weather conditions below minimum standards. Petitioner states that since weather reports and forecasts are not updated frequently, using the pilot's own observations in determining landing conditions at time of arrival would not compromise safety.
24298	Flying Tiger Line	14 CFR 61.157(e)	To allow petitioner's non-flying Tiger pilot trainees to receive flight training, upgrade training, and proficiency checks on petitioner's approved Phase II simulators.
24304	Omnilight Offshore	14 CFR 43.3	To allow petitioner's pilots to remove, check, reinstall, and safety wire magnetic chip detector plugs on Bell 206 helicopters.
24308	Elwood W. McCray	14 CFR 121.383(c)	To allow petitioner to continue to serve as a pilot in operations conducted under Part 121 after reaching his 60th birthday.
24315	Bell Helicopter	14 CFR 45.29(b)	To allow the operation of an experimental model XV-15 TiltRotor aircraft displaying registration and nationality markings less than 12 inches high.
23386	Mid Pacific Airlines	14 CFR 121.379	To extend exemption No. 3710 to allow petitioner to contract with Toa Domestic Airlines and Nitto Maintenance company for repair, inspection, and overhaul of Nippon YS-11 aircraft.
24316	FMC Corp	14 CFR 21.181	To allow the operation of DA-699 aircraft utilizing the provisions of a minimum equipment list.
23468	Arabian American Oil Co	14 CFR 21.181	To allow the operation of aircraft under Part 91 utilizing the provisions of a minimum equipment list. It would extend the March 31, 1985, termination date of Exemption 3720, as amended.
24312	Kimberly-Clark	14 CFR 21.181	To allow the operation of a Canadair CL-600 aircraft utilizing the provisions of a minimum equipment list.
24313	W.R. Grace & Co	14 CFR 21.181	To allow the operation of B-727 aircraft utilizing the provisions of a minimum equipment list.
24307	Beckair Co., Inc	14 CFR 135.89(b)(3)	To allow the operation of Learjet and other aircraft above flight level 350 without either pilot at the controls being required to wear and use an oxygen mask.
23462	Alitalia	14 CFR 21.181	To allow the operation of DC-9-30 aircraft utilizing the provisions of a minimum equipment list. It would extend the December 31, 1984, termination date of Exemption 3675, as amended.
24251	Type Rating Training	14 CFR 63.37(b)(4) & Part 63 APP. C	To allow petitioner to substitute training in simulators and approved training devices for actual flight hours and allow a reduction in classroom hours.
24330	C.L. Jellinsen	14 CFR 121.383(c)	To allow petitioner to continue to serve as a pilot in operations conducted under Part 121 after reaching his 60th birthday.
24334	Balloon Federation of America	14 CFR 61.3 & 91.27	To allow certain pilots and foreign hot air balloons to practice and participate in the Hot Air Balloon Championships July 5-21, 1985, without complying with the pilot certification and airworthiness requirements to those sections.
17067	Sis-Q Flying Service	14 CFR 91.27	To extend the May 31, 1985, termination date of Exemption 2439c. That Exemption allows petitioner to conduct ferry flights of four-engine DC-6 airplanes with one engine inoperative when the aircraft is operated under contract with the U.S. Forest Service for forest fire control.
24305	British Aerospace	14 CFR 21.181	To allow the operation of one BAe680 and one BA 3100 aircraft utilizing the provisions of minimum equipment lists.
24295	View Top Corp	14 CFR 21.181	To allow the operation of a B-727-76 airplane utilizing the provisions of a minimum equipment list.
24303	SimuFlight Training International	14 CFR 61.183	To allow the use of Phase II simulators for instructor pilot training and checking.
24299	Beech Aircraft Corp	14 CFR 61.31(a)(1)	To allow pilots of the Beech Model 300 airplane, which is certificated at a maximum weight of more than 12,500 pounds, to operate these aircraft without holding an appropriate type rating.
24311	Melvin Simon & Assoc	14 CFR 21.181	To allow the operation of Hawker-Siddeley airplanes utilizing the provisions of a minimum equipment list.
24165	USAF AWR Command	14 CFR 91.73(a)(b)	To allow petitioner to conduct helicopter night vision flight training without lighted external aircraft lights.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought/disposition
24113	Compagnie IMB France	14 CFR 21.181, 91.27, & 91.29	To allow petitioner to operate two Falcon 20 and one Falcon 10 aircraft using an FAA-approved minimum equipment list. *Granted Nov. 23, 1984.*
24182	Age of Enlightenment Aviation	14 CFR 21.181	To allow the operation of a B707-321 aircraft utilizing the provisions of a minimum equipment list. *Granted Nov. 23, 1984.*
24107	Olympic Airways	14 CFR 91.309	To allow petitioner to operate two Stage 1 Boeing 707 aircraft until April 1, 1985, in noncompliance with the operating noise limits. *Denied Nov. 5, 1984.*
24130	Icelandair	14 CFR 91.303	To allow petitioner to operate Stage 1 DC-8 aircraft until January 1, 1986, in noncompliance with the operating noise limits. *Partial grant Nov. 20, 1984.*
23957	National Airlines	14 CFR 91.303	To allow petitioner to operate Stage 1 DC-8 aircraft in noncompliance with the operating noise limits until hushkits are installed. *Denied Oct. 31, 1984.*
23958	Pakistan Int'l Airlines	14 CFR 91.303	To allow petitioner to operate Boeing 707 aircraft until July 1, 1986, in noncompliance with the operating noise limits. *Denied Nov. 2, 1984.*
23780	Capitol Air	14 CFR 121.349(a)	To permit petitioner to substitute an Omega navigation system (OMS) or an inertial navigation system (INS) for one of two required automatic direction finder (ADF) navigation systems during operations between the east coast of the United States and Puerto Rico. *Granted May 30, 1984.*
24147	Norman E. Midthun	14 CFR 121.383(c)	To allow petitioner to serve as pilot in Part 121 operations after reaching his 60th birthday. *Denied Nov. 16, 1984.*

[FR Doc. 84-32179 Filed 12-10-84; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Public Meeting and Announcement of Technical Meeting on the Agency's Current, Planned and Prospective Research on Lighting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs, and at which NHTSA's current, planned and prospective research on lighting will be discussed. The agency seeks papers and oral presentations from industry and the private sector on lighting research and development. The agency has chosen to combine the quarterly public meeting with a technical meeting to reduce the costs which would be incurred if separate meetings were held.

DATES: The public meeting relating to the agency's rulemaking, research and enforcement programs will be held on February 6, 1985, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by January 15, 1985. If sufficient time is available, questions received after the January 15 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by January 15 and the issues to be discussed will be mailed to interested persons on January 31, 1985 and will be available at the meeting.

Requests to make a formal presentation on lighting must be submitted not later than January 15, 1985.

ADDRESSES: Questions for the February 6, meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, D.C. 20590.

Requests to make a formal presentation on lighting should be addressed to Michael Perel, NRD–11, Crash Avoidance Research Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202 755–8753).

The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold a meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on February 6, 1985. The meeting will begin at 10:30 a.m., and will be held at EPA's laboratory facility in Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be availble for public inspection in the NHTSA Technical Reference Section in Washington, D.C. within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW. Washington, D.C. 20590.

At the close of the usual question and answer session a discussion of the agency's lighting research program will be held. Immediately thereafter, (or on the following day, February 7, 1985 depending on the number of participants desiring to make presentations), the agency will conduct a technical meeting at which presentations will be made regarding the agency's lighting research program. Several agency officials involved in the program will make presentations, and industry representatives and other interested individuals are invited to make similar technical presentations.

The complete details on the technical meeting on lighting will be provided in a subsequent notice.

Issued on December 5, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-32283 Filed 12-10-84; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes December 27, 1984.

Address Comments to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

Application number	Applicant	Renewal of exemption
2708-X	Hercules, Incorporated, Wilmington, DE.	2708
2708-X	U.S. Department of Defense, Washington, DC.	2708
3085-X	Dowell Schlumberger Inc., Tulsa, OK [1].	3085
3330-X	Babcock & Wilcox, Lynchburg, VA [2].	3330
4726-X	U.S. Department of Energy, Washington, DC.	4726
4803-X	Dowell Schlumberger Incorporated, Tulsa, OK [3].	4803
5022-X	U.S. Department of Defense, Washington, DC.	5022
5206-X	Kesco, Incorporated, Kittanning, PA	5206
6267-X	Coastal Industries, Incorporated, Carlstadt, NJ.	6267
6267-X	UTICO Corporation, Paterson, NJ	6267
6543-X	Texas Instruments, Inc., Dallas, TX	6543
6583-X	Phillips Petroleum Company, Bartlesville, OK.	6583
6626-X	Airco-BOC Inc., Murray Hill, NJ	6626

Application number	Applicant	Renewal of exemption
6822-X	Halocarbon Products Corporation, Hackensack, NJ.	6822
6961-X	Monsanto Company, St. Louis, MO	6961
7052-X	Moli Energy Limited, Burnaby, B.C., Canada [4].	7052
7486-X	Fenwerich Incorporated, Princeton, NJ.	7486
7625-X	Hydrite Chemical Company, Milwaukee, WI [5].	7625
7641-X	American President Lines, Ltd., Oakland, CA.	7641
7657-X	Welker Engineering Company, Sugar Land, TX [6].	7657
7765-X	Moog, Inc., Tampa, FL	7765
7774-X	Pipe Recovery Systems, Incorporated, Houston, TX.	7774
7835-X	Air Products and Chemicals, Inc., Allentown, PA [7].	7835
8115-X	Acurex Corporation, Mountain View, CA.	8115
8126-X	SLEMI, Paris, France	8126
8126-X	Fauvet-Girel, Paris, France	8126
8127-X	Societe Nationale Des Poudres et Explosifs, Bergerac, France.	8127
8129-X	Monsanto Company, Saint Louis, MO	8129
8141-X	The Boeing Co., Seattle, WA	8141
8144-X	ICI Americas, Incorporated, Wilmington, DE.	8144
8144-X	Atlas Powder Company, Dallas, TX	8144
8167-X	Manostat Corporation, New York, NY	8167
8299-X	HTL Industries, Inc., Duarte, CA [8]	8299
8386-X	J. J. Maugot Co., Burbank, CA [9]	8386
8480-X	The Gillette Company, Boston, MA	8480
8489-X	FMC Corporation, Philadelphia, PA [10]	8489
8494-X	Fruehauf Corporation, Omaha, NE	8494
8509-X	Reagent Chemical & Research, Inc., St. Gabriel, LA.	8509
8516-X	Dow Chemical Co., Freeport, TX	8516
8519-X	Atlantic Container Line, Limited, Elizabeth, NJ.	8519
8520-X	Atlas Powder Company, Dallas, TX	8520
8522-X	Bay Street Packaging, Santa Fe, CA	8522
8554-X	Mesabi Powder Company, Hibbing, MN.	8554
8554-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	8554
8554-X	Wempum Hardware Co., New Galilee, PA.	8554
8558-X	Trojan Corporation, Salt Lake City, UT.	8558
8561-X	HTL Industries, Inc., Duarte, CA	8561
8565-X	Olin Corp., Stamford, CT	8565
8572-X	American Explosives, Inc., Hayden Lake, ID.	8572
8612-X	FIBA Leasing Company, Inc., Westborough, MA.	8612
8646-X	Marshall Hyde Incorporated, Port Huron, MI.	8646
8680-X	Walter Kidde, Wake Forest, NC	8680
8748-X	Battelle Pacific Northwest Laboratories, Richland, WA.	8748
8811-X	American Hoechst Corporation, Somerville, NJ [11].	8811
8877-X	SCM Specialty Chemicals, Gainesville, FL.	8877
8959-X	Greer Hydraulics, City of Commerce, CA.	8959
8967-X	Hercules, Incorporated, Wilmington, DE.	8967
8971-X	NL McCullough/NL Industries, Inc., Houston, TX.	8971
9003-X	General Electric Co., San Jose, CA [12].	9003
9117-X	Flexbin Corporation, Houston, TX [13]	9117
9182-X	Stoneco, Inc., Dacono, CO [14]	9182
9201-X	Cyanamid Canada, Inc., East Willowdale, Canada [15].	9201
9241-X	Stoneco, Inc., Dacono, CA [16]	9241
9244-X	Stoneco, Inc., Dacono, CO [17]	9244
9246-X	Kress Inc., San Fernando, CA [18]	9246
9256-X	U.S. Department of Defense, Washington, DC.	9256

[1] To authorize subject cargo tanks, built prior to August 1, 1983, to be used without mounting pads installed at the attachment point of the overturn protectors.

[2] To renew and authorize a 5 gallon capacity DOT Specification 37A as additional containers.

[3] To renew and authorize subject cargo tanks, built prior to August 1, 1983, to be used without mounting pads installed at the attachment point of the overturn protection.

[4] To authorize lithium molybdenum disulfide and lithium hexafluorometasilicate as additional chemical makeup.

[5] To renew and to authorize shipment of sodium hydrogen sulfite solution 38% and acetic acid 56% as additional commodities.

[6] To authorize cargo vessel and rail as additional modes of transportation.

[7] To authorize common carriers as an alternate source of transportation.

[8] To authorize an additional pressure vessel design.

[9] To authorize rail as an additional mode of transportation.

[10] To authorize shipment of bulk polypropylene bags containing certain hazardous materials in less than truck load lots.

[11] To authorize modified hydrostatic retesting parameters for heating system of cargo tank.

[12] To renew and authorize use of additional non-DOT specification portable tanks built to the ASME Code.

[13] To authorize chromic acid as an additional commodity.

[14] To authorize rail as an additional mode of transportation.

[15] To authorize highway and rail as additional modes of transportation.

[16] To authorize rail as an additional mode of transportation.

[17] To authorize rail as an additional mode of transportation.

[18] To authorize rail as an additional mode of transportation.

Application number	Applicant	Parties to exemption
4453-P	A & M Contracting, Grove City, PA.	4453
5206-P	Douglas Explosives, Inc., Philipsburg, PA.	5206
6325-P	A & M Contracting, Grove City, PA.	6325
7052-P	Motorola, Inc., Schaumburg, IL.	7052
7052-P	Singer Company, American Meter Division, Philadelphia, PA.	7052
8129-P	Weyerhaeuser Company, Tacoma, WA.	8129
8129-P	Syntex (U.S.A.) Inc., Palo Alto, CA.	8129
8129-P	General Motors Corporation, Detroit, MI.	8219
8129-P	CWM Environmental Management Corporation, Buffalo, NY.	8129
8453-P	Viking Explosives & Supply, Inc., Hibbings, MN.	8453
8526-P	Be-Mac Transportation Company, Inc., St. Louis, MO.	8526
8526-P	The Cleveland, Columbus & Cincinnati Highway, Inc., Cleveland, OH.	8526
8554-P	A & M Contracting, Grove City, PA.	8554
8556-P	Union Carbide Corporation, Danbury, CT.	8556
8645-P	A & M Contracting, Grove City, PA.	8645
8645-P	Allegheny Nuclear Surveys, Inc., Weston, WV.	8645
8645-P	Mountaineer Logging & Perforating Corporation, Vienna, WV.	8645
8837-P	Specialite, Inc., Midland, MI.	8837
9069-P	Boeing Aerospace Company, Seattle, WA.	9069
9256-P	National Refrigerants, Inc., Radnor, PA.	9256

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 4, 1984.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-32258 Filed 12-10-84; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applicants for Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes January 15, 1985.

ADDRESS: Comments to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
9347-N	Boondock International, Inc., Houston, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3, 178.42.	To manufacture, mark and sell non-DOT specification stainless steel cylinders not to exceed 1800 psig, for shipment of various flammable and nonflammable gases. (Modes 1, 4.)
9348-N	Duracell, Inc., Bethel, CT	49 CFR Parts 100–199	To authorize lithium batteries comprised of up to four cells, each containing 0.5 grams of lithium, not to exceed a total of 2 grams per battery to be shipped as essentially non-regulated. (Modes 1, 2, 3, 4, 5.)
9349-N	Atlantic Cylinder Corp., Jacksonville, FL	49 CFR 173.34 (1)	To authorize the rebuilding of DOT Specification 4 series cylinders by a method other than as prescribed. (Mode 1.)
9350-N	Square D Co., Florence, KY	49 CFR 173.302	To authorize shipment of sulfur hexafluoride in non-DOT specification containers as an integral part of a circuit breaker. (Modes 1, 3.)
9352-N	Maloney Pipeline Systems, Inc., Houston, TX	49 CFR 173.119, 173.304, 173.315	To manufacture, mark and sell displacement meter proving units, to be affixed to a truck or trailer, for shipment of hydrocarbon products, classed as flammable liquid or flammable gas. (Mode 1.)
9354-N	Companhia Nitro Quimica Brasileira, Sao Paulo, SP Brazil.	49 CFR 173.127, 173.184, 178.244	To authorize shipment of nitrocellulose, wetted with 30% ethyl alcohol in non-DOT specification fiberboard drums. (Modes 1, 2, 3.)
9355-N	Eastman Kodak Co., Rochester, NY	49 CFR Parts 100–199	To authorize lithium batteries comprised of up to 1.5 grams per cell with each battery not exceeding 2 grams as essentially nonregulated. (Modes 1, 2, 3, 4, 5.)
9356-N	Oil Mock Co., Conroe, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT Specification 3E cylinders, for shipment of various flammable and non-flammable gases. (Modes 1, 2, 3.)
9357-N	Dynatrans AB, Sweden, Gothenburg, Sweden	49 CFR 173.315	To authorize shipment of various flammable and nonflammable gases in non-DOT specification IMO 5 portable tanks. (Modes 1, 2, 3.)
9358-N	Ashland Oil, Inc., Dublin, OH	49 CFR Part 173, Subpart D, F	To authorize shipment of various flammable or corrosive liquids in up to one gallon capacity glass or polyethylene containers overpacked in a thermoformed high density polyethylene case. (Mode 1.)
9359-N	BONDICO, Inc., Key Biscayne, FL	49 CFR 173.3(c), Part 173, Subpart D, E, F, H.	To manufacture, mark and sell non-DOT specification polyethylene/fiberglass containers of 90 gallon capacity, for shipment of various flammable, poisons, and corrosives, liquids or solids including use as a salvage drum. (Modes 1, 2.)
9360-N	South Pacific Transportation Co., San Francisco, CA.	49 CFR 172.204, 174.24(a)	To allow the transmission of shipping paper information via an agreed to electronic billing system, without shipper certification, as a substitute for shipping papers prepared by the shipper. (Mode 2.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 3, 1984.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-32287 Filed 12-11-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of Granting of Relief from Disabilities Incurred by Conviction.

SUMMARY: The person named in this notice have been granted relief by the Director, Bureau of Alcohol, Tobacco and Firearms. As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Paul M. Durham Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20026 (202–566–7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to the Director's satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

The following persons have been granted relief:

Adams, Martin Joe, Route 1, Box 59, Blackey, Kentucky, convicted on March 12, 1979, in the United States District Court, Pikeville, Kentucky.

Alm, Robert Dwayne, 1629 10th Avenue South, Fargo, North Dakota, convicted on June 27, 1968, in the Wilkin County District Court Breckenridge, Minnesota.

Ambrose, C. Hyde, 3919 Cypress Street, Moss Point, Mississippi, convicted on December 2, 1981, in the United States District Court of Southern Mississippi.

Anderson, Bruce David, 5915 108th Street, Gig Horbor, Washington, convicted on January 24, 1975, in the Superior Court, Pierce County, Washington.

Arif, Rafat K., 7101 252nd Street, Apt.2, Bellerose, New York convicted on July 17, 1981, in the United States District Court, Eastern District of New York.

Atha, Calvin W., Route 1, Box 72, Cheyenne, Oklahoma, convicted on March 10, 1983, in the United States District Court, Western Judicial District of Oklahoma.

Beardall, John Neil, 1480 West 1700 North, Provo, Utah, convicted on January, 24, 1977, in the United States District Court, Boise, Idaho.

Beck, Robert H., 47 Brookline Dr., Utica, New York, convicted on November 22, 1977, in the Oneida County Court, New York.

Bilski, Richard B., 3611 Colby, SW, Wyoming, Michigan, convicted on October 28, 1980, in the Circuit Court, Kent County, Michigan.

Bloom, Joel Harvey, 4441 South Congree Avenue, Lake Worth, Florida, convicted on January 24, 1980, in the Circuit Court, Palm Beach County, Florida.

Bodda, John Kyle, 1813 Leland Dr., Everett, Washington, convicted on May 11, 1978, in the Snohomish County Superior Court, Washington.

Bowdon, Bob Ray, 102 Phillips Terrace, Dothan, Alabama, convicted on April 24, 1961, in the Faulkner County Circuit Court, Faulkner County, Arkansas; and on August 8, 1963, in the Phillips County Court. Holdreon, Nebraska.

Brown, Ernest Rudolph, Box 656, Lebanon, Virginia, convicted on March 5, 1952, in the Circuit Court, Russell County, Virginia; and on February 18, 1982, in the United States District Court, Abingdon, Virginia.

Brown, Stanley Merton, Box 7707, Route 175, Jessup, Maryland, convicted on March 18, 1966, in the Anne Arundel County People's Court, Anne Arundel, Maryland.

Brown, Timothy Leroy, 5120 Main Street, Bay City, Oregon, convicted on April, 1977, in the Superior Court, Franklin County, Washington.

Broyhill, James Herbert, Route 3, Box 465, Connelly Springs, North Carolina, convicted on April 27, 1977, in the Superior Court of Burke County, Morgantown, North Carolina.

Bryan, Marcus, 2572 Lenox Road, NE, Apt. F9, Atlanta, Georgia, convicted on August 10, 1976, in the Circuit Court, Carroll County, Virginia; and on August 18, 1976, in the Circuit Court, Grayson County, Virginia.

Cermak, Raymond Leroy, 3737 Hubbard, Apt. 202, Robbinsdale, Minnesota, convicted on December 6, 1976, in the Ramsey District Court, St. Paul, Minnesota.

Chambers, Ward Gurney, RFD 3, North, Wilkesboro, North Carolina, convicted on November 21, 1957, in the United States District Court, Wilkesboro, North Carolina.

Champion, Donald David, Route 2, Marion, Kentucky, convicted on December 8, 1980, in the United States District Court, Paducah, Kentucky.

Chevalier, Emile, East Road, Speculator, New York, convicted on September 26, 1960, in the County Court, Chautaugua County, New York.

Childrey, Booker T., 3842 April Street, Montgomery, Alabama, convicted on January 19, 1970, in the United States District Court, Montgomery, Alabama.

Chowning, Billy Clark, 872 Ann Street, Versailles, Kentucky, convicted on May 10, 1978, in the Fayette Circuit Court, Lexington, Kentucky.

Christianson, Lester Victor, 82 Irving Place, New York, New York, convicted on September 30, 1971, in the United States District Court, Southern District of New York.

Ciulla, Vincent, 16 Point Beach Drive, Milford, Connecticut, convicted on November 23, 1953, in Afton, Oklahoma; and on May 21, 1961, in Lynn, Massachussetts.

Cook, Clarence Camp, 708 Patricia Street, Talladega, Alabama, convicted on February 13, 1978, in the United States District Court, Northern District of Alabama.

Cragle, David Eugene, 106 Astonia, Cedar Hill, Texas, convicted on January 15, 1979, in the Criminal District Court #1, Texas.

Crossland, Thomas Mack, 308 Carlton Way, Muskogee, Oklahoma, convicted on December 17, 1979, in the Eastern District Court of Oklahoma, Muskogee, Oklahoma.

Cundiff, James Oscar, Route 2, Box 256, Irvington, Kentucky, convicted on January 12, 1979, in the Breckinridge Circuit Court, Hardinsburg, Kentucky.

Davis, Charles Albert, Jr., RD #1, Tracy Road, Liston, New York, convicted on May 16, 1979, in the St. Lawrence County Court, Canton, New York.

Davis, Reginald, 7057 Niagara, Romulus, Michigan, convicted on May 15, 1969, in the Recorder's Court, City of Detroit, Michigan; and on March 24, 1972, in the Recorder's Court, City of Detroit, Michigan.

Davis, Richard Allen, 1040 Collingswood Drive, Harrisburg, Pennsylvania, convicted on September 7, 1977, in the United States District Court, Middle District of Pennsylvania, Scranton, Pennsylvania.

Davis, William M., 403 West Twilight #811, Longview, Texas, convicted on May 18, 1979, in the District Court, Goodland, Kansas.

Davis, William Randall, 124 Davidson Avenue, Savannah, Georgia, convicted on September 24, 1974, in the Circuit Court, Portsmouth, Virginia.

Dean, Loren Lind, 5835 Bryant Avenue North, Brooklyn Center, Minnesota, convicted on July 11, 1977, in the Hennepin County District Court, Minneapolis, Minnesota.

Delks, Frank, 241 Kenilworth, #3, Detroit, Michigan, convicted on July 12, 1939, in the Wayne County Recorder's Court, Detroit, Michigan.

Dickey, Curtis, Route 1, Box 215, Bedias, Texas, convicted on September 24, 1953, in the District Court, Walker County, Texas.

Dohmeyer, William Elroy, Route 1, Box 24A, Iron Ridge, Wisconsin, convicted on December 3, 1965, in the Ozaukee County Court, Port Washington, Wisconsin.

Doss, Cecil Wray, Sr., Route #1, Box 2, Rocky Mount, Virginia, convicted on September 11, 1979, in the Circuit Court, Franklin County, Virginia.

Draper, James Bristow, Unit D–10, Stonehedge, South Burlington, Vermont, convicted on September 22, 1980, in the District Court of Vermont.

Duncan, Hugh Homer, 5155 Chemin de Vis, Atlanta, Georgia, convicted on June 19, 1981, in the District Court, Brunswick, Georgia.

Dunwoody, Stephen Akin, 1713 Mulberry Road, Martinsville, Virginia, convicted on May 4, 1981, in the Circuit Court, Martinsville, Virginia.

Echols, Joe W., 10405 West Orange Grove, Tucson, Arizona, convicted on May 16, 1974, in the Circuit Court of Fairfax County, Fairfax, Virginia.

Fanus, Irwin Lee, 408 West Street, Carlisle, Pennsylvania, convicted on August 31, 1971, in the Court of Common Pleas, Cumberland County, Pennsylvania.

Ford, Doran Lee, 536 East Lexington Avenue, El Cajon, California, convicted on August 9, 1984, in the United States District Court, Southern District, San Diego, California.

Foy, William Joseph, 1730 Lafayette Boulevard, Norfolk, Virginia, convicted on March 28, 1969, in the Corporate Court, City of Norfolk, Virginia.

Gaffney, Karen Lee Hayes, Dogwood Valley, Stanardsville, Virginia, convicted on August 14, 1980, in the Circuit Court, City of Norfolk, Virginia.

Getzwiller, William Albert, P.O. Box 2422, Paso Robles, California, convicted on August 8, 1978, in the United States District Court, Tucson, Arizona.

Gilbert, Rupert George, 3106 Kenilworth Avenue, Apt. 9, Hyattsville, Maryland, convicted on October 3, 1980, in the Lynchburg Circuit Court, Virginia.

Ginger, Wiley Edward, 1002 West Cook Street, El Dordado, Arkansas, convicted on December 6, 1976, in the Union County Circuit Court, Arkansas.

Graffagnino, Gary Anthony, 829 Minden Avenue, Kenner, Louisiana, convicted on September 15, 1977, in the 24th Judicial District, Parish of Jefferson, Louisiana.

Graveline, George, 68 Center Street, Windsor Locks, Connecticut, convicted on June 6, 1978, in the Springfield District Court, Springfield, Massachussetts.

Gullickson, Kenny O., P.O. Box 345, Fort Yates, North Dakota, convicted on May 11, 1981, in the United States District Court, Bismarck, North Dakota.

Garrett, Byron Roland, 2915 Arunah Avenue, Baltimore, Maryland, convicted on May 13, 1972, District Court of Maryland, Northwestern Police District.

Haase, William T., 8665 East Speedway, #1121, Tucson, Arizona, convicted on May 17, 1979, in the Superior Court, County of Pima, Arizona.

Hair, John Thomas, 6313 Butler Road, Apt. 307, Little Rock, Arkansas, convicted in June 1967, in the Tulsa County Court, Judicial District #14, Oklahoma.

20026 (202–566–7258).

Washington.

Lebanon, Virginia, convicted on

District Court #1, Texas.

Circuit Court, Martinsville, Virginia.

Oklahoma.

Hale, Darrell Lynn, 734 South F Street, Lakeview, Oregon, convicted on June 8, 1977, in the Superior Court, Oregon.

Hanson, Hans Christopher, 2200 North Florida, #134, Alamogordo, New Mexico, convicted on February 9, 1976, in the Superior Court, California.

Harding, Darwin Randy, Route 624, Lottsburg, Virginia, convicted on August 24, 1978, in the Northumberland Circuit Court, Heathsville, Virginia.

Harris, Leroy Alexander, 2132 Wylie Avenue, Pittsburgh, Pennsylvania, convicted in 1940, in Mobile, Alabama; and in 1977, in Philadelphia, Pennsylvania.

Hazel, Letha Helen, 22 1st Avenue, Evanston, Illinois, convicted on April 11, 1979, in the 7th Judicial District Court, Montana.

Heikes, Donald Clarence, 130 West 61st Street, Minneapolis, Minnesota, convicted on February 6, 1978, in the Washington District Court, Stillwater, Minnesota.

Hershel, Henry Poore, Jr., 728 Vernon Drive, Anniston, Alabama, convicted on September 4, 1979, in the United States District Court, Northern District of Alabama, Birmingham, Alabama.

Hill, Charles Wendell, 600 Norma, Keller, Texas, convicted on April 20, 1961, in the State District Court, Tarrant County, Texas.

Hite, Ben Lewis, Route 3, Virgilina, Virginia, convicted on October 22, 1971, in the Circuit Court, Halifax County, Virginia.

Hong, Sung Jao, 345 South Doheny Drive, Beverly Hills, California, convicted on June 29, 1977, in the Superior Court, Los Angeles, California.

Honnick, Edwin Elbert, 601 South Norton Road, Apt. A–2, Corruna, Michigan, convicted on February 21, 1962, in the Isabella County Court, Isabella County, Michigan; and on July 30, 1962, in the Saginaw County Circuit Court, Saginaw, Michigan.

Hudson, George M., 3471 Fernway Drive, Montgomery, Alabama, convicted on September 24, 1980, in the United States District Court, Montgomery, Alabama.

Hughes, Ronald James, 201 Shady Shores, Lake Dallas, Texas, convicted on October 6, 1976, in the Criminal District Court #5, Dallas County, Texas.

Huseby, James Ervin, 1708 North Battery Drive, Richmond, Virginia, convicted on June 2, 1980, in the Circuit Court, King William County, Virginia.

Iskierka, Richard, 6170 Starlight Boulevard, Fridley, Minnesota, convicted on May 1, 1979, in the 10th Judicial District Court, Fridley, Minnesota.

Jaime, Joe Villanueva, 8152 West Aster Drive, Peoria, Arizona, convicted on July 2, 1975, in the District Court of the 5th Judicial District, Idaho.

Jancosek, Richard Andrew, 849 Mulberry Street, Hammond, Indiana, convicted on September 25, 1980, in the Superior Court, Crown Point, Indiana.

Jones, N. Buford, IV, 23 Mooregate Square, Atlanta, Georgia, April 21, 1980, in the Cobb County Superior Court, Georgia.

Kapusta, Peter Philip, 4136 North River Street, Arlington, Virginia, convicted on April 6, 1983, in the District Court, Alexandria, Virginia.

King, Jess Tim, 8729 "B" Pacific Highway, SE, Olympia, Washington, convicted on February 25, 1975, in the Superior Court, Washington.

Kuhlman, Mark Stephen, 15471 NE 95th Street, Elk River, Minnesota, convicted on April 9, 1976, in the Hennepin County Court, Minneapolis, Minnesota.

La Fountain, Irving Paul, P.O. Box 64, Maple Street, Colton, New York, convicted on January 10, 1975, in the St. Lawrence County Court, Colton, New York.

Larsen, George, Jr., 1500 North 1200 West, Layton, Utah, convicted on April 13, 1964, in the Second District Court, Ogden, Utah.

Lawrence, Jerald Richard, 1590 Spring Street, Apt. 1, Hastings, Minnesota, convicted on April 28, 1981, in the Dakota County District Court, Minnesota.

Legg, Harold L., Route 2, Box 381, Hilliard, Florida, convicted on January 21, 1971, in the Circuit Court of Clay County, Clay County, Florida.

Matejek, Lee Ray August, Jr., 2437 Lakeview Drive, Corpus Christi, Texas, convicted on March 15, 1977, in the State District Court, Oklahoma City, Oklahoma.

McCormick, Joseph L., P.O. Box 131, Boley, Oklahoma, convicted on January 25, 1960, in the Southern District Court of California, California.

McGhee, William Frederick, Jr., 3006 West 18th Street, Plainview, Texas, convicted on August 30, 1976, in the 181st Judicial District Court, Amarillo, Texas.

McIntyre, Ruleen, 2173 Zuni Avenue, Chico, California, convicted on August 27, 1979, in the Superior Court, Yakima, Washington.

McVae, George Lee, 214 East Center, Pomona, California, convicted on February 8, 1952, in the United States District Court, El Paso, Texas.

Meece, Travis Merrell, 1309 South Jefferson, Amarillo, Texas, convicted on August 28, 1975, in the 108th District Court, Potter County, Texas.

Meenehan, John Francis III, P.O. Box 341, Lovettsville, Virginia, convicted on October 18, 1977, in the Circuit Court, Fairfax County, Virginia.

Merica, Roy Dale, Route 1, Box 351–A, Elkton, Virginia, convicted on September 21, 1979, in the Circuit Court, Rockingham County, Virginia.

Miller, Franklin Michael, Route 2, Morris, Minnesota, convicted on March 8, 1978, in the United States Court, St. Paul, Minnesota.

Mitchell, David Clifton, 615 North 7th, Walla Walla, Washington, convicted on November 24, 1970, in the Superior Court, Walla Walla, Washington.

Mitchell, Murriel Homer, 3102 Elaine Drive, San Jose, California, convicted on January 16, 1970, in the Superior Court, Santa Clara County, California.

Moore, Joseph Neil, Route 1, Box 618, Cedar Creek, Texas, convicted on July 23, 1980, in the 126th Judicial Court, Travis County, Texas.

Moore, Robert Hinton, 322 Hurt Avenue, Obion, Tennessee, convicted on June 14, 1955, in the Dyer County Circuit Court, Dyersburg, Tennessee; and on November 2, 1967, in the Dyer County Circuit Court, Dyersburg, Tennessee.

Moses, Francis E., Jr., Route 305, Cuba, New York, convicted on February 26, 1981, in the Allegheny County Court, New York.

Mullett, Robert D., 5836 Council Ring Boulevard, Kokomo, Indiana, convicted on March 16, 1962, in the Cass County Circuit Court, Logansport, Indiana.

Mungor, Sean G., 6400 Douglas Drive, Apt. 207, Brooklyn Park, Minnesota, convicted on September 18, 1979, in the Branch 3 Circuit Court, Eau Claire, Wisconsin.

Nippe, Randy Joe, 213 North Green Street, Brownsburg, Indiana, convicted on December 31, 1968, in the Circuit Court of the 6th Judicial District, Douglas County, Illinois.

Norris, Roy Lee, 806 Pacific, Yakima, Washington, convicted on May 31, 1969, in the Spokane County Superior Court, Washington.

Oakley, Terry Allen, 779 Browning Avenue, Salt Lake City, Utah, convicted on October 18, 1976, in the 3rd Judicial District Court, Salt Lake City, Utah.

Palmer, Allen Stuart, 23 Ladue Estattes, Ladue, St. Louis, Missouri, convicted on November 9, 1979, by a Federal Grand Jury, in St. Louis, Missouri.

Parrish, Joseph Atwell, Route #1, Box 5, Dolphin, Virginia, convicted on November 22, 1982, in the United States District Court, Richmond, Virginia.

Payne, Arthur, 106 Highlander Drive, Hendersonville, Tennessee, copvicted on December 10, 1981, in the United States District Court, Middle District, Tennessee.

Peele, James Preston, Box 51, Langwood Trailer Park, Rocky Mount, North Carolina, convicted on June 1, 1970, in the Supreme Court of Nash County, Nash County, North Carolina.

Phillips, John Will, Sr., P.O. Box 307, West Point, Georgia, convicted on March 6, 1968, in the United States District Court, Middle Alabama.

Piele, James Dean, 6949 Collingwood, Apt. 4, Woodbury, Minnesota, convicted on January 10, 1978, in the Ramsey District Court, St. Paul, Minnesota.

Price, Eugene Louis, 4212–A North 28th Street, Phoenix, Arizona, convicted on March 1, 1982, in the United States District Court, Phoenix, Arizona.

Pyles, Gerald E., 3220 Winton Avenue, Indianapolis, Indiana, convicted on September 24, 1974, in the Circuit Court, Hardin County, Kentucky.

Reinhard, Robert John, 42243 Willis, Belleville, Michigan, convicted on October 5, 1961, in the Washtenaw County Circuit Court, Washtenaw County, Michigan.

Richter, Henry John, 227 28th Street, NW, Rochester, Minnesota, convicted on November 22, 1966, in the Criminal Court, Shelby, Indiana.

Rogers, Albert Lee, Route 1, Box 248, Harrisburg, Missouri, convicted on August 13, 1969, in the Mississippi County Circuit Court, Charleston, Missouri.

Rogers, Gary Wayne, 1116 McEvers Street, Memphis, Tennessee, convicted on March 11, 1969, August 18, 1970, and on November 2, 1972, in the Shelby County Criminal Court, Shelby County, Tennessee.

Rose, Carney, 305 Cornelius Avenue, Russelville, Kentucky, convicted on August 28, 1963, in the Montgomery County Criminal Court, Clarksville, Tennessee.

Russell, Donna Marie, 14243 North 50th Street, Scottsdale, Arizona, convicted on December 9, 1980, in the Maricopa County Superior Court, Phoenix, Arizona.

Ryan, Harold Edward, Pole #34, Cherry Farm Road, Harrisonville, Rhode Island, convicted on June 9, 1975, in the Federal District Court, Providence, Rhode Island.

Schubert, Charles William, 3016 Wood Spring Drive, Carmel, Indiana, convicted on May 13, 1977, in the United States District Court, Hammond, Indiana.

Sittig, Arthur Lee, Route 1, Box 706A, Lake Charles, Louisiana, convicted on September 25, 1972, in the 14th Judicial District Court, Louisiana.

Skinner, James H., Jr., 16 Lafayette Avenue, Geneva, New York, convicted on September 22, 1980, by the Seneca Grand Jury, Waterloo, New York.

Skipper, Thomas Franklin, Jr., 2811 West 18th Street, Panama City, Florida, convicted on June 25, 1973, in the Bay County State Court, Panama City, Florida; and on March 8, 1974, in the Bay County State Court, Panama City, Florida.

Smothers, Louis Franklin, 5203 Liberty Heights Avenue, Baltimore, Maryland, convicted on February 7, 1966, in the Municipal Court, Baltimore, Maryland; and in 1944, 1945, and 1946 in the Municipal Court, Baltimore, Maryland.

Speer, Andy James, Route 3, Cedar Bay Drive, Bullard, Texas, convicted on March 11, 1977, in the 114th Judicial District Court, Smith County, Texas.

Stafford, Jarrett Eugene, Route 6, Box 314 A, Taylorsville, North Carolina, convicted on March 7, 1977, in the Alexander Superior Court, Taylorsville, North Carolina.

Stamper, Willie Otto, P.O. Box 692 (Rosefield Road), Olla, Louisiana, convicted on December 5, 1975, in the Middle Judicial District Court, Louisiana.

Staunton, Michael Elliott, 4418 58th, Lubbock, Texas, convicted on August 14, 1981, in the United States District Court, Lubbock, Texas.

Stille, Randy Dale, 719 West Park Avenue, Glencoe, Minnesota, convicted on April 4, 1981, in the McLeod District Court, Glencoe, Minnesota.

Swanson, Doyle Clifford, General Delivery, Redwood, Virginia, convicted on March 30, 1979, in the Circuit Court, Franklin County, Virginia.

Teal, Dennis Arnold, 2225 Waymanville Road, Thomaston, Georgia, convicted on February 11, 1973, in the Superior Court, Spalding County, Georgia; and on April 14, 1976, in the Superior Court, Henry County, Georgia.

Trotman, Danny Robert, Sr., 3902 Primrose Avenue, Baltimore, Maryland, convicted on April 23, 1980, in the District Court, Baltimore, Maryland.

Turner, Robert H., Jr., Route #1, Box 683, Gore, Virginia, convicted on October 26, 1970, in the Circuit Court, Pendleton County, West Virginia.

Urens, William John, 110 Woodbury Drive, Iron River, Michigan, convicted on December 3, 1954, in the Iron County Circuit Court, Crystal Falls, Michigan.

Van Dyke, Donald Eugene, 1407 Selkirk Circle, Gardnerville, Nevada, convicted on December 1, 1981, in the 9th Judicial District Court, Douglas County, Nevada.

Vines, Robert, Egeria Road, Route 4, Box 1, Add, West Virginia, convicted on November 17, 1926, by a Federal Grand Jury, Bluefield, West Virginia; and on April 24, 1934, by a Federal Grand Jury, Bluefield, West Virginia.

Wabberson, William George, Jr., Route 1, Box 208 D, Tarpon Springs, Florida, convicted on March 22, 1979, in the Circuit Court, Franklin County, Florida.

Waddell, Eugene Cabell, Route 3, Box 378, Danville, Virginia, convicted on May 27, 1983, in the United States District Court, Danville, Virginia.

Walker, Ben Thomas, 4112 Loop 306, Apt. 1311, San Angelo, Texas, convicted on December 13, 1976, in the 208th District Court, Harris County, Texas.

Weiner, Robert Allen, 8335 SW 68th Street, Miami, Florida, convicted on June 20, 1969, in the 11th Circuit Court, Dade County, Florida.

White, Charles Lee, 17 1st Avenue West, St. Albans, West Virginia, convicted in January, 1969, in the Grand Jury Circuit Court, Kanawha, West Virginia.

White, Ronald G., 403 A Geneva Street, Opelika, Alabama, convicted on October 31, 1973, in the Lee County Circuit Court, Opelika, Alabama.

White, Tony Keith, Route #1, Box 108AA, Donaldsonville, Georgia, convicted on March 3, 1979, in the Superior Court, Colquitt County, Georgia.

Wiggins, Alphonso Carlos, 6716 Kinchelae Avenue, Baltimore, Maryland, convicted on September 28, 1960, in the Baltimore Criminal Court, Baltimore, Maryland.

Williams, Nicholas Daniel, 403 Wabun Street, Palm Bay, Florida, convicted on June 30, 1983, in the Brevard County Circuit Court, Titusville, Florida.

Williams, William Daniel, 447 Count Street, Melbourne, Florida, convicted on June 30, 1983, in the Brevard County Circuit Court, Titusville, Florida.

Woodruff, Randy Reed, P.O. Box 462, Canyon City, Oregon, convicted on June 25, 1980, in the Circuit Court, Multnomah, Oregon.

Worthington, James G., 1031 Worthington Road, Owensboro, Kentucky, convicted on November 16, 1983, in the Daviess County Circuit Court, Kentucky.

Wright, Stanley Joseph, 1644 Alderson Avenue, Billings, Montana, convicted on February 7, 1984, in the

Minnesota.

District Court, Potter County, Texas.

Virginia.

Lake Charles, Louisiana, convicted on

Circle, Gardnerville, Nevada.

on February 7, 1984, in the

Yellowstone County Supreme Court, Montana.

Yoder, Harold Aldwin, Route 2, Box 55–1, Bellville, Ohio, convicted on July 29, 1964, in the Court of Common Pleas, Wayne County, Ohio.

Compliance With Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: December 3, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-32223 Filed 12-10-84; 8:45 am]

BILLING CODE 8916-31-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 762 Jackson Place NW., Washington, DC 20530, (202) 395–7316.

DATE: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: December 5, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Department of Veterans Benefits
2. Credit Statement of Prospective Purchaser and Contract of Sale
3. VA Form 26–6705
4. On occasion
5. Individuals or households
6. 61,000 responses
7. 30,500 hours
8. Not applicable.

[FR Doc. 84-32252 Filed 12-10-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 239
Tuesday, December 11, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Consumer Product Safety Commission	1
Federal Deposit Insurance Corporation	2
Federal Energy Regulatory Commission	3
Federal Reserve System	4
International Trade Commission	5, 6
National Transportation Safety Board	7
Pacific Northwest Electric Power and Conservation Planning Council	8

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, December 13, 1984, 10:00 a.m.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Partly Open—Partly Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Baby Gates Options Briefing
   The staff will brief the Commission on the current status of staff activities related to baby gates.

Closed to the Public

2. Commission Procedures Review
   The Commission and staff will review internal procedures relating to Commission decisionmaking.

For a Recorded Message Containing the Latest Agenda Information, call:

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-32283 Filed 12-6-84; 4:26 pm]

BILLING CODE 6355-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552(b)), notice is hereby given that at 9:50 a.m. on Thursday, December 6, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of the assumption of the liability to pay deposits made in Golden Spike State Bank, Tremonton, Utah, which was closed by the Commissioner of Financial Institutions for the State of Utah on Tuesday, December 4, 1984; (2) accept the bid for the transaction submitted by Golden Spike State Bank, Tremonton, Utah, a de novo bank; (3) approve the applications of Golden Spike State Bank, Tremonton, Utah, a de novo bank, for Federal deposit insurance and for consent to purchase certain assets of and to assume the liability to pay deposits made in Golden Spike State Bank, Tremonton, Utah (the failed bank); and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 6, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-32290 Filed 12-6-84; 4:49 pm]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

December 5, 1984.

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: December 12, 1984, 9:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda

803rd Meeting—December 12, 1984, Regular Meeting (9:30 a.m.)

CAP–1.
Project No. 8436–000, Schaffner Power Company

CAP–2.
Project No. 8533–000, Rock Creek Water District

CAP–3.
Project No. 8122–001, R&D Power Company

CAP–4.
Project No. 8983–000, Briggs Hydroelectric

CAP–5.
Project No. 7909–001, County of Allegheny, Pennsylvania

CAP–6.
Project Nos. 2628–015, 007, 008 and 009, Alabama Power Company

CAP–7.
Project No. 4472–003, Niagara Mohawk Power Corporation

CAP–8.
Project No. 7512–002, Granite Associates
Project No. 7562–002, Gale Associates
Project Nos. 7643–002, 7644–002, 7834–002 and 7840–002, WP, Inc.

CAP–9.
Project No. 7991–000, STS Consultants, Ltd.

CAP–10.
Project No. 3654–002, Pacific Hydro, Inc. and City of Tenino, Washington
Project No. 4441–003, Pacific Power and Light Company, et al.
Project No. 4702–001, City of Centralia, Washington

CAP–11.
Project No. 8465–000, Warrior Hydro Associates

CAP–12.
Project No. 7913–000, Gilead Power Company
Project No. 8004–000, Robert W. Shaw

CAP–13.

Project No. 7846-000, City of Cascade Locks and Public Utility District No. 1 of Skamania County
CAP-14.
Docket No. ER81-187-006, Public Service Company of New Mexico
CAP-15.
Docket No. ER84-604-002, Southwestern Public Service Company
CAP-16.
Docket Nos. ER84-568-002 and 003, Gulf States Utilities Company
CAP-17.
Docket No. ER82-769-004, Minnesota Power & Light Company
CAP-18.
Docket No. E-8851-004, Alabama Power Company
CAP-19.
Docket Nos. EL84-29-000, ER82-774-000, ER83-209-000, ER83-227-000, ER82-829-000, ER83-219-000 and EL83-6-000, Town of Highlands, North Carolina, Haywood Electric Membership Corporation, and North Carolina Electric Membership Corporation v. Nantahala Power and Light Company
CAP-20.
Docket No. ER84-236-000, El Paso Electric Company
CAP-21.
Docket Nos. ER83-628-003 and ER84-131-003, Kansas Gas and Electric Company
CAP-22.
Docket No. ER84-525-000, Boston Edison Company
CAP-23.
Docket Nos. ER77-277-007 and ER81-779-000, Pennsylvania Power Company
CAP-24.
Docket No. ID-1844-002, Walter F. Torrance, Jr.

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM84-22-000, Collection of Section 110 Allowances after January 1, 1985
CAM-2.
Docket No. RM79-76-234 (New Mexico-27), High-Cost Gas produced from tight formations

Consent Gas Agenda

CAG-1.
Docket Nos. TA85-1-29-000, 002, 003 and 004 (PGA85-1 and IPR85-1), Transcontinental Gas Pipe Line Corporation
CAG-2.
Docket No. RP85-27-000, Northern Border Pipeline Company
CAG-3.
Docket Nos. TA84-1-32-002 (PGA85-1a), TA85-2-32-000 and 001 (PGA85-2), Colorado Interstate Gas Company
CAG-4.
Docket No. RP84-79-002, Gas Gathering Corporation
CAG-5.
Docket Nos. RP84-20-001, 002 and 003, Panhandle Eastern Pipeline Company
CAG-6.
Docket No. RP81-47-013, Northwest Pipeline Corporation
CAG-7.
Docket Nos. TA85-1-42-000 and 002, Transwestern Pipeline Company
CAG-8.
Docket Nos. RP83-68-000, RP84-19-000 and 001, Natural Gas Pipeline Company of America
CAG-9.
Docket No. RP84-137-000, Arkansas Louisiana Gas Company
CAG-10.
Docket No. RP85-17-000, MIGC, Inc.
CAG-11.
Docket No. TA84-2-18-001 (PGA84-2a), Texas Gas Transmission Corporation
CAG-12.
Docket Nos. ST83-7-000 and 001, Chaparral Transmission, Inc. (Operator)
CAG-13.
Docket No. CP84-577-001, Trunkline Gas Company
CAG-14.
Docket Nos. CP80-86-006 and CP82-494-001, Natural Gas Pipeline Company of America
CAG-15.
Docket Nos. CP84-2-002 and RP84-75-003, Columbia Gas Transmission Corporation
CAG-16.
Docket No. G-1657-000, Texas Gas Transmission Corporation
CAG-17.
Docket No. CP76-492-031, National Fuel Gas Supply Corporation and Penn-York Energy Corporation Docket No. CP76-492-032, National Fuel Gas Supply Corporation
CAG-18.
Docket No. CP84-579-001, Northern Border Pipeline Company
CAG-19.
Docket No. CP83-260-001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. and Columbia Gas Transmission Corporation
CAG-20.
Docket No. CP79-345-000, Glacier Gas Company
CAG-21.
Docket No. CP84-30-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Docket No. CP84-65-000, Louisiana Gas System Inc.
CAG-22.
Docket No. CP84-220-000, Transcontinental Gas Pipe Line Corporation
CAG-23.
Docket No. CP84-447-000, Trunkline Gas Company
CAG-24.
Docket No. CP84-730-000, Transcontinental Gas Pipe Line Corporation
CAG-25.
Docket No. CP84-499-000, Southwest Gas Corporation
CAG-26.
Docket No. CP84-612-000, Algonquin Gas Transmission Company
CAG-27.
Docket No. RP80-2-000, Alabama-Tennessee Natural Gas Company
CAG-28.
Docket Nos. TA82-2-24—000, 001, 002 and 003 (PGA82-2 and 82-2a), equitable Gas Company
CAG-29.
Docket No. TA83-1-47-000 (PGA83-1), MIGC, Inc.

I. Licensed Project Matters
P-1. Project No. 2343-001, Potomac Edison Company
P-2. Omitted
P-3. Project No. 7801-001, Southern California Edison Company. Project No. 8343-001, City of Vernon, California
P-4. Project No. 8137—000, Long Lake Energy Corporation. Project No. 8420-000, Essex County, New York

II. Electric Rate Matters
ER-1. Project No. EL84-43-000, Public Service Company of New Mexico

Miscellaneous Agenda

M-1. Reserved
M-2. Reserved

I. Pipeline Rate Matters
RP-1. (A) Docket No. CP78-124-009, Northern Border Pipeline Company
Docket No. CP78-123-022, Northwest Alaskan Pipeline Company (Eastern Leg)
(B) Docket No. RP85-25-000, Northern Border Pipeline Company
(C) Docket No. RP85-5-000 and 001, Northwest Alaskan Pipeline Company
RP-2. Docket Nos. RP80-55-000 and RP80-118-000, Sea Robin Pipeline Company
RP-3. Docket No. RP84-61-000, National Fuel Gas Suply Corporation
RP-4. Omitted
Producer Matters
II. CI-1.
(A) Docket No. CI84-555-000, ANR Production Company
(B) Docket No. CI84-556-000, Cenergy Exploration Company
CI-2. Docket No. CI84-571-000, Champlin Petroleum Company
III. Pipeline Certificate Matters
CP-1. Reserved

Lois D. Cashell,
Acting Secretary.

[FR Doc. 84-32282 Filed 12-6-84; 4:15 pm]
BILLING CODE 6717-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, December 14, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Issues relating to Federal Reserve notes.
2. Proposed budget for renovation projects at the Federal Reserve Bank of New York.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 6, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-32303 Filed 12-7-84; 8:56 am]
BILLING CODE 6210-01-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-58]

TIME AND DATE: 9:30 a.m., Monday, December 17, 1984.

PLACE: Room 331, 701 E Street, N.W., Washington, D.C. 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Investigation 731-TA-207 (Preliminary) (Cellular mobile phones from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-32384 Filed 12-7-84; 4:08 p.m.]
BILLING CODE 7020-02-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-59]

TIME AND DATE: 11:00 a.m., Friday, December 21, 1984.

PLACE: Room 117, 701 E Street, NW., Washington D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigation 731-TA-208, 209, 210 (Preliminary) (Barbed and twisted barbless wire from Argentina, Brazil, and Poland)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-32385 Filed 12-7-84; 4:08 pm]
BILLING CODE 7020-02-M

7

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-38]

TIME AND DATE: 9 a.m., Tuesday, December 18, 1984.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Special Investigation Report:* Railyard Safety—Hazardous Materials and Emergency Preparedness.
2. *Railroad Accident Report:* Collision of Denver and Rio Grande Western Railroad Company Cars During Switching, Involving Puncture of Tank Car, Nitric Acid Vapor Cloud, and Evacuation of 9,000 Residents, Denver, Colorado, April 3, 1983.
3. *Railroad Accident Report:* Vinyl Chloride Monomer Release From a Tank Car and Fire, Formosa Plastics Corporation Plant, Baton Rouge, Louisiana, July 30, 1983.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

H. Ray Smith, Jr.,
Federal Register Liaison Officer.

December 7, 1984

[FR Doc. 84-32341 Filed 12-7-84; 2:01 am]
BILLING CODE 7535-01-M

8

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (NORTHWEST POWER PLANNING COUNCIL)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: December 19-20, 1984; 9:30 a.m.

PLACE: Red Lion Downtowner, 1800 Fairview, Boise, Idaho.

MATTERS TO BE CONSIDERED:

1. Public Comment on Increasing the Interruptibility of the Direct Service Industries.
2. Public Comment on Economic/Demographic Assumptions.
3. Public Comment on Cost of Delaying the Model Conservation Standards.
4. Staff Presentation on Industrial Conservation Survey.
5. Staff Presentation on Environmental Criteria for Resource Acquisition.
6. Council Decision to Enter Rulemaking on Goals-Setting Procedures.
7. Council Business.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 84-32334 Filed 12-7-84; 12:08 pm]
BILLING CODE 0000-00-M

Pipeline Corporation
CAC–7.

Company
CAC–29.

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Reader Aids

Federal Register

Vol. 49, No. 239

Tuesday, December 11, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202–783–3238
Problems with subscriptions	275–3054
Subscriptions (Federal agencies)	523–5240
Single copies, back copies of FR	783–3238
Magnetic tapes of FR, CFR volumes	275–3867
Public laws (Slip laws)	275–3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523–5227
Public inspection desk	523–5215
Corrections	523–5237
Document drafting information	523–5237
Legal staff	523–4534
Machine readable documents, specifications	523–3408

Code of Federal Regulations

General information, index, and finding aids	523–5227
Printing schedules and pricing information	523–3419

Laws

Indexes	523–5282
Law numbers and dates	523–5282
	523–5266

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the President	523–5230
Weekly Compilation of Presidential Documents	523–5230

United States Government Manual 523–5230

Other Services

Library	523–4986
Privacy Act Compilation	523–4534
TDD for the deaf	523–5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189–47380.....3
47381–47472.....4
47473–47586.....5
47587–47818.....6
47819–48026.....7
48027–48174.....10
48175–48260.....11

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11157 (Amended by EO 12494).....48175
12493.....47819
12494.....48175

Proclamations
5285.....47473
5286.....47587

5 CFR

Proposed Rules:
890.....48193

7 CFR

413.....47589
420.....47821
421.....47821
425.....47821
431.....47821
432.....47821
445.....47590
907.....47475
966.....47189
991.....47190

Proposed Rules:
Ch. IX.....47271
51.....48194
52.....47402
434.....47612
447.....47617
966.....47495
989.....48194
1126.....47495
1150.....47496

8 CFR

238.....48027

9 CFR

301.....47475
318.....47822
319.....47822
325.....47475
381.....47475

Proposed Rules:
92.....47402

10 CFR

1.....47823
20.....47823
30.....47823
40.....47823
50.....47823
55.....47823
70.....47823
73.....47823
110.....47191
430.....47479
960.....47714

Proposed Rules:
50.....48200
73.....48200

11 CFR

Proposed Rules:
114.....48201

12 CFR

201.....47825
506a.....48177
523.....47825
541.....47825
545.....47825
549.....47825
561.....47825
563.....47825
584.....47825

Proposed Rules:
205.....47405
226.....47406
500.....47410
561.....47499, 47852
563.....47499, 47852
563b.....47271, 47410
570.....47852
571.....47852, 47866
584.....47852
612.....48051

13 CFR

101.....47381

Proposed Rules:
107.....48201
121.....47412, 47414

14 CFR

1.....47594
27.....47594
29.....47594
39.....47381, 47382, 48027, 48029
91.....47594, 48030
95.....47204
97.....48033

Proposed Rules:
25.....47358
71.....47415, 48053, 48054, 48201
75.....47621

15 CFR

Proposed Rules:
30.....48055
941.....47415

16 CFR

13.....48178, 48180
305.....47479

Proposed Rules
424.....48059

17 CFR
210 47594
229 47594
231 47594
241 47594
270 47208
274 47208
Proposed Rules:
143 48060
240 47274

18 CFR
271 47826
282 48035
1302 47383

19 CFR
4 48035
6 48035
10 ..... 47986, 47995
Proposed Rules:
10 48003

20 CFR
404 ..... 48036, 48181
410 48036
416 (2 documents) 48036
422 48036
632 47384
Proposed Rules:
655 48061

21 CFR
5 48183
81 ..... 47228, 47229
175 47480
184 47384
193 47481
436 ..... 47483, 47826, 48183
442 ..... 47483, 47826, 48183
452 47829
555 48184
510 ..... 47387, 47829
520 47830
522 ..... 47829, 48038
546 47486
558 ..... 47387, 48039
561 47481
1020 47387
Proposed Rules:
58 47504
166 47418
182 ..... 47505, 48202
184 ..... 47505, 48202
450 47505
610 47622
630 47622

22 CFR
121 47682
122 47682
123 47682
124 47682
125 47682
126 47682
127 47682
128 47682
129 47682
130 47682
514 48039

24 CFR
234 47388
Proposed Rules:
813 48006
880 48006
881 48006
882 48006
913 48006
960 48006

26 CFR
Proposed Rules:
1 47870
35a 47870
41 ..... 47274, 47871
48 ..... 47274, 47871

27 CFR
9 47831

29 CFR
1610 48039

30 CFR
915 47834
Proposed Rules:
Ch. II 47624
251 47871
920 47419

31 CFR
129 48184

32 CFR
250 48040
706 47602

33 CFR
100 ..... 47230, 48046
110 47602
117 47231
Proposed Rules:
117 47872

36 CFR
Proposed Rules:
261 47505
293 47505
294 47505

37 CFR
304 47487

39 CFR
10 47389
111 ..... 47231, 47232, 47389
Proposed Rules:
10 47275

40 CFR
52 ..... 47488, 47490, 47836, 48152, 48185
180 ..... 47491, 47493
86 48128
260 47390
270 47390
271 47391
600 48128
Proposed Rules:
51 48018
52 ..... 48018, 48202
65 47507
154 47508
180 ..... 47420, 47508, 47509
232 48064
233 48064
261 47510
600 48023
721 47874

41 CFR
Proposed Rules:
16–4 48193

43 CFR
Proposed Rules:
Ch. II 47624
5400 47511

44 CFR
67 47240

45 CFR
96 47603
801 47392
Proposed Rules:
1340 48160

46 CFR
500 47393
501 47393
502 47393
503 47393
504 47393
505 47393

47 CFR
0 47604
61 47265
73 ..... 47395, 47604–47608, 47837, 48046, 48186
74 47837
83 48187
Proposed Rules:
Ch. I 47275
2 ..... 47625, 47628
18 47628
73 47638
81 47641
83 ..... 47516, 47625, 47641

48 CFR
Proposed Rules:
Ch. 5 47516
1501 47516
1502 47516
1503 47516
1505 47516
1506 47516
1513 47516
1514 47516
1515 47516
1517 47516
1527 47516
1533 47516
1536 47516
1552 47516

49 CFR
395 47494
571 47396
1057 ..... 47268, 47850
Proposed Rules:
531 48064
533 48064
571 ..... 47276, 47880
1063 47277

50 CFR
17 47397
258 47611
655 47269
672 48049
Proposed Rules:
Ch. II 47421
80 47420
652 ..... 47278, 47422

LIST OF PUBLIC LAWS

Note: The President completed his consideration of acts and joint resolutions passed during the second session of the 98th Congress on November 8, 1984.

Last list November 16, 1984.

The list, will be resumed when bills are enacted into public law during the first session of the 99th Congress which convenes on January 3, 1985

513	46006	600	48023	655	47269

Slip Laws

Subscriptions Now Being Accepted

99th Congress, 1st Session, 1985

Separate prints of Public Laws, published immediately after enactment, with marginal annotations, legislative history references, and future Statutes volume page numbers.

Subscription Price: **$104.00 per session**

(Individual laws also may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Prices vary. See Reminder Section of the Federal Register for announcements of newly enacted laws and prices).

SUBSCRIPTION ORDER FORM
ENTER MY SUBSCRIPTION TO: PUBLIC LAWS. [P9801-File Code 1L]

☐ **$104.00 Domestic,** ☐ **$130.00 Foreign.**

MAIL ORDER FORM TO:
Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

COMPANY OR PERSONAL NAME

ADDITIONAL ADDRESS/ATTENTION LINE

☐ REMITTANCE ENCLOSED (MAKE CHECKS PAYABLE TO SUPERINTENDENT OF DOCUMENTS)

STREET ADDRESS

☐ CHARGE TO MY DEPOSIT ACCOUNT NO.

CITY STATE ZIP CODE

(OR) COUNTRY

PLEASE PRINT OR TYPE

Customer's Telephone No.'s
Area Code Home Area Code Office

MasterCard and VISA accepted.

Credit Cards Orders Only
Total charges $_____
Fill in the boxes below.

Credit Card No.

Expiration Date Month/Year

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

VOL
49

ISS
239

DE
11

1984

UMI

OL
9

SS
40

E
2

984

MI

12-12-84
Vol. 49 No. 240

federal register

Wednesday
December 12, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington D C 20402

OFFICIAL BUSINESS
Penalty for private use $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S.MAIL

Postage and Fees Paid
U S Government Printing Office
375

SECOND CLASS NEWSPAPER

OFFICIAL BUSINESS
Penalty for private use $300

Federal Register
(ISSN 0097-6326)

Postage and Fees Paid
U S Government Printing Office
375

SECOND CLASS NEWSPAPER

12-12-84
Vol. 49 No. 240
Pages 48261-48528

federal register

Wednesday
December 12, 1984

Selected Subjects

Administrative Practice and Procedure
Patent and Trademark Office
Animal Drugs
Food and Drug Administration
Communications Common Carriers
Federal Communications Commission
Education of Handicapped
Education Department
Fisheries
National Oceanic and Atmospheric Administration
Foreign Service
United States Information Agency
Hazardous Waste
Environmental Protection Agency
Income Taxes
Internal Revenue Service
Marketing Agreements
Agricultural Marketing Service
Medical Devices
Food and Drug Administration
Mortgages
Internal Revenue Service
Motor Carriers
Interstate Commerce Commission

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Motor Vehicle Pollution
Environmental Protection Agency

Pesticides and Pests
Environmental Protection Agency

Radio and Television
Federal Communications Commission

Reporting and Recordkeeping Requirements
Civil Aeronautics Board

Securities
Securities and Exchange Commission

Student Aid
Education Department

Surface Mining
Surface Mining Reclamation and Enforcement Office

Trade Practices
Federal Trade Commission

Contents

Federal Register
Vol. 49, No. 240
Wednesday, December 12, 1984

The President
ADMINISTRATIVE ORDERS
48263 Turkey and El Salvador, reports to Congress, delegation (Memorandum of December 10, 1984)
PROCLAMATIONS
48261 Bill of Rights Day; Human Rights Day and Week (Proc. 5287)

Executive Agencies

Agricultural Marketing Service
RULES
48255 Oranges (navel) grown in Arizona and California

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation.

Arms Control and Disarmament Agency
NOTICES
48346 Hubert H. Humphrey fellowship competition

Census Bureau
NOTICES
Surveys, determinations, etc.:
48347 Wholesale trade; annual

Civil Aeronautics Board
RULES
Accounts and reports for certificated air carriers; uniform system:
48265 Service segment data; recordkeeping requirements; extension approval
Air taxi operators:
48266 Reporting and recordkeeping requirements; extension approval
NOTICES
48347 Air carrier certificates; revocation
Hearings, etc.:
48346 Hawaii One Corp.

Commerce Department
See Census Bureau; International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office.

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
48344 Peanuts

Commodity Futures Trading Commission
NOTICES
48406 Meetings; Sunshine Act

Education Department
RULES
Special education and rehabilitative services:
48520 Handicapped children education, assistance to States
PROPOSED RULES
Postsecondary education:
48494 Student assistance; general provisions

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
Procurement:
48351 Commercial activities, performance; review schedule (OMB A-76 implementation)

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
48474 Selective enforcement auditing of new gasoline-fueled and diesel light-duty vehicles
Hazardous waste program authorizations:
48300 Texas
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
48299 Benomyl and chlorpyrifos
48298 Flucythrinate
Pesticides; tolerances in foods:
48270 Methoprene
NOTICES
Meetings:
48379 Pesticide Emergency Exemption Negotiated Rulemaking Committee
Pesticide, food, and feed additive petitions:
48375 FMC Corp., et al.
48374 Rhone Poulenc, Inc.
Pesticide programs:
48374 Confidential information and data transfer to contractors (2 documents)
48369 Pentachlorophenol; rebuttable presumptions against registration, etc.
Pesticides; emergency exemption applications:
48376 Triadimefon, etc.
Pesticides; experimental use permit applications:
48367 American Cyanamid Co., et al.
48377 Elanco Products Co., et al.
Pesticides; temporary tolerances:
48378 Brea Agricultural Services, Inc.; plant growth regulator lactic acid
48373 Iprodione
48372 Methoprene
Toxic and hazardous substances control:
48379 Premanufacture exemption approvals

Federal Communications Commission
RULES
Communications equipment and radio and television broadcasting:
48305 Technical regulations; re-examination
Television broadcasting:
48313 Cable television systems; divestiture relative to prohibited cross-ownership; petition denial
PROPOSED RULES
Common carrier services:
48325 MTS and WATS market structure, etc.
NOTICES
Hearings, etc.:
48379 RKO General, Inc., et al.
48381 RKO General, Inc., et al.; correction

Federal Deposit Insurance Corporation
NOTICES
48406 Meetings; Sunshine Act (2 documents)

Federal Emergency Management Agency
NOTICES
48382 Agency information collection activities under OMB review
Disaster and emergency areas:
48382 Colorado

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
48351 Creole Gas Pipeline Corp.
48352 El Paso Natural Gas Co.
48353 High Island Offshore System
48353 Midwestern Gas Transmission Co.
48354 National Fuel Gas Supply Corp.
48354 Northern Natural Gas Co.
48355 Northwest Pipeline Corp.
48355 Phillips Gas Pipeline Co.
Natural gas companies:
48353 Small producer, certificates, applications (Turner, John Lee, et al.)

Federal Maritime Commission
NOTICES
48382– 48384 Agreements filed, etc. (4 documents)
Casualty and nonperformance, certificates:
48383 Ocean Cruise Lines, S.A., et al.
Freight forwarder licenses:
48383 McLendon Forwarding Co., Inc., et al.

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
48384 Fleet Financial Group, Inc., et al.
48385 Grange National Banc. Corp., et al.
48385 Worland Holding Co.
48407 Meetings; Sunshine Act (2 documents)

Federal Trade Commission
RULES
Prohibited trade practices:
48266 Grolier Inc.
48269 Thompson Medical Co., Inc.
NOTICES
48386 Premerger notification waiting periods; early terminations

Fiscal Service
NOTICES
Organization, functions, and authority delegations:
48405 Bureau of the Public Debt; information systems

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
48271 Amoxicillin trihydrate and clavulanate potassium tablets; correction
48271 Hygromycin B
Medical devices:
48272 Defect reporting and recordkeeping requirements; admission of liability clarification, OMB approval, and effective date affirmed
PROPOSED RULES
GRAS or prior-sanctioned ingredients:
48321 Enzyme-modified fats; correction
NOTICES
Human drugs; cough, cold, or allergy prescription drugs:
48387 Ornade Spansules; approval withdrawn
Medical devices; premarket approval:
48388 Intermedics, Inc.
Meetings:
48386 Advisory committees, panels, etc.

Geological Survey
NOTICES
48389 Map prices, increase

Health and Human Services Department
See also Food and Drug Administration; Public Health Service.
NOTICES
48386 Federal financial participation in State assistance expenditures (AFDC, Medicaid, etc.); correction

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
48356– 48359 Decisions and orders (3 documents)
48359– 48364 Special refund procedures; implementation and inquiry (3 documents)

Housing and Urban Development Department
NOTICES
48388 Agency information collection activities under OMB review
Environmental statements; availability, etc.:
48389 Decatur, Ill.

Immigration and Naturalization Service
NOTICES
48395 Guam; wage determination system

Interior Department
See Geological Survey; Land Management Bureau; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
RULES
Income taxes:
48282 DISCs and FSCs transition rules; DISC shareholders, installment treatment of certain deemed distributions; temporary
48273 Foreign sales corporations; foreign management and economic processes requirements; temporary
48283 Foreign sales corporations; general rules, status requirements, definitions, etc.; temporary
48292 Mortgage subsidy bonds; tax-exempt status of interest; reporting and recordkeeping requirements; temporary
PROPOSED RULES
Income taxes:
48321 Foreign sales corporations; foreign management and economic processes requirements; cross-reference
48322 Foreign sales corporations; general rules, status requirements, definitions, etc.; cross reference

48323 Mortgage subsidy bonds; tax-exempt status of interest; reporting and recordkeeping requirements; cross-reference

International Trade Administration
NOTICES
Countervailing duties:
48347 Converted paper-related school and office supplies from Mexico

International Trade Commission
NOTICES
Import investigations:
48392 Ampicillin trihydrate and its salts from Spain
48393 Apparatus for installing electrical lines and components
48393 Cell-site transceivers and subassemblies from Japan
48394 Fluidized supporting apparatus and components
48393 Oleoresins from Spain and India
48394 Valves, nozzles, and connectors of brass from Italy; hearing postponed

Interstate Commerce Commission
RULES
Practice and procedure:
48314 Motor carriers; exemption of transactions
PROPOSED RULES
Practice and procedure:
48342 Motor carriers of property; small carrier transfer regulations for transactions involving; modification

Justice Department
See Immigration and Naturalization Service.

Land Management Bureau
NOTICES
Exhange of public lands for private land:
48390 California
48391 Montana
Meetings:
48392 Craig District Advisory Council
48390 Oil and gas sales; known geologic structures; unleased Federal mineral ownership; Eastern States; call for nominations and availability
Withdrawal and reservation of lands:
48392 Nevada; correction

Legal Services Corporation
NOTICES
48407 Meetings; Sunshine Act (3 documents)

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
48316 Foreign fishing, groundfish of Gulf of Alaska, Bering Sea and Aleutian Islands Area; inseason adjustments
NOTICES
Coastal zone management programs:
48349 Florida
48349 New York
Marine mammal permit applications, etc.:
48348 International Trading & Shipping Agency, Inc.
48349 Zeedierenpark Harderwijk B.V.

National Transportation Safety Board
NOTICES
48395 Marine accident; AMAZING GRACE fishing vessel sinking; hearing

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
48395 Duke Power Co., et al.
48408 Meetings; Sunshine Act

Patent and Trademark Office
RULES
Patent cases:
48416 Patent interference proceedings

Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
48488 National health promotion programs

Securities and Exchange Commission
PROPOSED RULES
Securities:
48318 Confidential treatment filed by institutional investment managers; form instruction
NOTICES
48396 Agency information collection activities under OMB review
Hearings, etc.:
48402 American Electric Power Co., Inc., et al.
48398 Southwestern Apartments Associates Ltd. Partnership, et al.
48406, 48409 Meetings; Sunshine Act (3 documents)
48396 Securities laws uniformity; annual conference and inquiry
Self-regulatory organizations; proposed rule changes:
48400 American Stock Exchange, Inc.
48401 Midwest Stock Exchange, Inc.
48403 New York Stock Exchange, Inc.
48403 Pacific Stock Exchange, Inc.

Small Business Administration
NOTICES
Applications, etc.:
48405 Capital Circulation Corp.

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission; various States:
48324 Ohio

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
48349 Philippines
48350 Poland
48350 Singapore

Trade Representative, Office of United States
NOTICES
Meetings:
48396 Trade Negotiations Advisory Committee

Treasury Department
See Fiscal Service; Internal Revenue Service.

United States Information Agency
RULES
48273 Foreign Service; appointment of members; lateral entry

Separate Parts in This Issue

Part II
48416 Department of Commerce, Patent and Trademark Office

Part III
48474 Environmental Protection Agency

Part IV
48488 Department of Health and Human Services, Public Health Service

Part V
48494 Department of Education

Part VI
48520 Department of Education

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Readers Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
December 10, 1984 48263
Proclamations:
5287 48261

7 CFR
907 48265

14 CFR
241 48265
298 48266

16 CFR
13 (2 documents) 48266, 48269

17 CFR
Proposed Rules:
249 48318

21 CFR
193 48270
540 48271
558 48271
803 48272
Proposed Rules:
184 48321

22 CFR
501 48273

26 CFR
1 (3 documents) 48273–48283
6a 48292
Proposed Rules:
1 (3 documents) 48321–48323

30 CFR
Proposed Rules:
935 48324

34 CFR
300 48520
Proposed Rules:
668 48494

37 CFR
1 48416

40 CFR
86 48474
180 (2 documents) 48298, 48299
271 48300

47 CFR
15 48305
73 48305
74 48305
76 48313
Proposed Rules:
67 48325

49 CFR
1002 48314
1182 48314
1183 48314
1186 48314
Proposed Rules:
1181 48342
1186 48342

50 CFR
611 48316
672 48316
675 48316

Federal Register
Vol. 49, No. 240
Wednesday, December 12, 1984

Presidential Documents

Title 3—

The President

Proclamation 5287 of December 10, 1984

Bill of Rights Day Human Rights Day and Week, 1984

By the President of the United States of America

A Proclamation

On December 15, 1791, our Founding Fathers celebrated the ratification of the first ten amendments to the Constitution of the United States—a Bill of Rights that has helped guarantee the freedoms that all Americans cherish.

For the first time in the history of nations, our Founding Fathers established a written Constitution with enumerated rights based on the principle that the rights to life and liberty come not from the prerogative of government, but inhere in each person as a fundamental human heritage. Americans believe that all persons are equal in their possession of these unalienable rights and are entitled to respect because of the immense dignity and value of each human being. With these great principles in mind, the Founding Fathers designed a system of government limited in its powers, based upon just laws, and resting upon the consent of the governed.

When Americans first proclaimed this noble experiment in self-government and human liberty, it seemed to some to be a utopian, unrealistic ideal. Today, virtually every nation in the world has adopted a written constitution expressing in varying degrees fundamental human rights. One hundred and fifty-seven years after the ratification of our Bill of Rights, on December 10, 1948, the United Nations adopted the Universal Declaration of Human Rights affirming an international consensus on behalf of the human rights and individual liberties that we value so highly.

Thirty-six years after the adoption of the Universal Declaration of Human Rights, however, it is clear that this consensus is often recognized more on paper than in practice. Throughout the world, many governments nominally adhere to the Universal Declaration of Human Rights while suppressing free elections, independent trade unions, due process of law, and freedom of religion and of the press.

The United States recognizes a special responsibility to advance the claims of the oppressed; to reaffirm the rights to life and liberty as fundamental rights upon which all others are based; and to safeguard the rights to freedom of thought, conscience, and religion. As we are free, we must speak up for those who are not.

As Americans, we strongly object to and seek to end such affronts to the human conscience as the incarceration in the Soviet Union of men and women who try to speak out freely or who seek to exercise the basic right to emigrate; the harsh treatment accorded one of the great humanitarians of our time, Andrei Sakharov; the denial of basic human rights and self-determination in Eastern Europe and the Baltic states; the failure of the Polish authorities to establish an effective dialogue with the free trade union movement in that country; the manifest injustices of the apartheid system of racial discrimination in South Africa; the persecution of the Baha'i religious minority in Iran; the lack of progress toward democratic government in Chile and Paraguay; the campaign against the Roman Catholic Church in Nicaragua; the suppression of freedom in Cuba and Vietnam; the brutal war waged by Soviet troops against

campaign against the Roman Catholic Church in Nicaragua, the suppression of freedom in Cuba and Vietnam; the brutal war waged by Soviet troops against

the people of Afghanistan; and the continuing Vietnamese occupation of Kampuchea.

The American people recognize that it is the denial of human rights, not their advocacy, that is a source of world tension. We recall the sacrifices that generations of Americans have made to preserve and protect liberty around the world. In this century alone, tens of thousands of Americans have laid down their lives on distant battlefields to uphold the cause of human rights. We honor and cherish them all. Today, it is with an abiding sense of gratitude and reverence that we remember the great gift of freedom that they bequeathed to us.

As we give special thought to the blessings that we enjoy as a free people, let us not forget the victims of human rights abuses around the world.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 10, 1984, as Human Rights Day and December 15, 1984, as Bill of Rights Day, and call on all Americans to observe the week beginning December 10, 1984, as Human Rights Week.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of Dec., in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-32585
Filed 12-11-84; 10:48 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of Dec. 10, 1984, on signing Proclamation 5287, see the *Weekly Compilation of Presidential Documents* (vol. 20, no. 50).

Presidential Documents

Memorandum of December 10, 1984

Delegation of Authority for Reports to Congress on Turkey and El Salvador

Memorandum for the Secretary of State; the Administrator, Agency for International Development

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby (1) delegate to the Secretary of State the functions vested in me by Title III of the Foreign Assistance and Related Programs Appropriations Act, 1985 (as enacted in P.L. 98-473) (the "Act"), under the unnumbered paragraph entitled "Military Assistance" insofar as they relate to Turkey; and (2) delegate to the Administrator of the Agency for International Development functions vested in me by Section 533 of the Act, to be exercised in consultation with the Secretary of State.

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, December 10, 1984.

[FR Doc. 84-32586
Filed 12-11-84; 10:47 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 240
Wednesday, December 12, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regs. 607, and 605, Amdt. 2]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 607 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 14–20, 1984. Regulation 605, Amendment 2, increases the quantity of such oranges that may be shipped during the period November 30–December 6, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: Amended Regulation 605 (§ 907.905) is effective for the period November 30–December 6, 1984. Regulation 607 (§ 907.907) becomes effective on December 14, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

These actions are consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on September 25, 1984. The committee met again publicly on December 4, 1984 at Lindsay, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is excellent.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information on views on the regulation and amendment at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. § 907.907 is added as follows:

§ 907.907 Navel Orange Regulation 607.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 14, 1984, through December 20, 1984, are established as follows:

(a) *District 1:* 1,100,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

2. § 907.905 Navel Orange Regulation 605 paragraphs (a) through (d) are hereby revised to read:

§ 907.905 Navel Orange Regulation 605.

(a) *District 1:* 1,700,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 6, 1984.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–32327 Filed 12–11–84; 8:45 am]
BILLING CODE 3410–02–M

CIVIL AERONAUTICS BOARD

14 CFR Part 241

Service Segment Data; Approval of Extension of Reporting Requirements by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Approval of Extension of Reporting Requirements by the Office of Management and Budget.

SUMMARY: The Civil Aeronautics Board has extended the reporting requirements in section 241.19–3 of Part 241 of the Board's Economic Regulations governing the accounting and reporting for certificated air carriers. The Office of Management and Budget approved the extension of these requirements through June 30, 1986, under OMB No. 3024–0014. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Clay Moritz, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 241

Air carriers, Accounting and Reporting requirements.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32410 Filed 12-11-84; 8:45 am]

BILLING CODE 4320-01-M

14 CFR Part 298

Exemptions for Air Taxi Operations; Approval of Extension of Reporting Requirements by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Approval of Extension of Reporting Requirements by the Office of Management and Budget.

SUMMARY: The Civil Aeronautics Board has extended the reporting requirements in § 298.61 of Part 298 of the Board's Economic Regulations governing air taxi operations. The Office of Management and Budget approved the extension of these requirements through September 30, 1987, under OMB No. 3024-0009. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 298

Air carriers, Registration, Exemptions, Insurance, Reporting and operating requirements.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32411 Filed 12-11-84; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 8879]

Grolier Incorporated; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This Order reopens the proceeding and modifies the 1978 Commission Order, 43 FR 18652, revised December 10, 1981 and made final March 9, 1982, 47 FR 12613, which required a seller of encyclopedias to cease engaging in certain unfair and deceptive trade practices in connection with the sale of its products and the recruitment of door-to-door sales personnel. Pursuant to the company's petition, the Order has been modified to closely conform with the modification granted Encyclopaedia Britannica in October of 1982, 47 FR 51558. Among other things, the Order no longer requires the firm to include in employment ads information such as the nature of the employment, the location of the company or the basis of compensation so long as they provide such information to potential employees during the initial job interview. The company may provide information concerning income and expenses to prospective employees when an actual job offer is made. The Order no longer requires the company to disclose in advertisements and promotional material that a sales representative will contact consumers who return inquiry cards, provided the firm can demonstrate through surveys that most readers of ads understand this implicitly. Business cards of sales representatives may be reduced from three-by-five to two-by three-and-a-half inches. Further, when making "free" merchandise offers or claims concerning the "regular prices" for encyclopedias, Grolier may follow relevant Commission guidelines, and is no longer required to attach lists of prices and free products to encyclopedia contracts.

DATES: Final Order issued on March 9, 1982; Modified Order issued on November 19, 1984.

FOR FURTHER INFORMATION CONTACT: FTC/B-417-5, Lewis Franke, Washington, D.C. 20580, (202) 376-2863.

SUPPLEMENTARY INFORMATION: In the Matter of Grolier Incorporated, a corporation, et al. Codification appearing at 47 FR 12613 remains unchanged.

Lists of Subjects in 16 CFR Part 13

Encyclopedias, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before the Federal Trade Commission

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani.

[Docket No. 8879]

Order Reopening the Proceeding and Modifying Cease and Desist Order

In the matter of Grolier Incorporated, a corporation, et al.

On October 13, 1983, respondents, Grolier Incorporated, et al., filed a "Request to Reopen Proceedings To Modify Order and Application for Stay of the Order." ("Request") The Order became effective on October 11, 1983. On August 23, and October 4, 1984, Grolier supplemented the "Request" with a revised Appendix B, which sets out the methodology to be used by Grolier to show compliance with Paragraph II.A. of the proposed Order.

Grolier granted the Commission until November 19, 1984 to decide its "Request". The Commission previously granted Grolier's "Request for Extension of Time" for the Commission to act to allow Grolier more time to complete its surveys bearing on the disclosures required by Paragraphs II.A. and B., which are subject paragraphs of the pending "Request".

Grolier seeks Order modifications virtually identical to those the Commission made to a similar Commission Order against Encyclopaedia Britannica (Docket No. 8908) on October 5, 1982.

On November 23, 1983 the Commission granted the stay as to Order Paragraphs IC. (2), (3) and (4); ID.; I E.; II A-E; II G (7); II M (1) and (2); II S; and Paragraph V, pending resolution of the request for Order modification.

On the basis of the information provided by Grolier and in view of the Order modifications granted to Encyclopaedia Britannica the Commission has determined that pursuant to § 2.51 of the Commission's Rules of Practice changed conditions of fact and the public interest require that the proceedings be reopened and the Order modified. *It is therefore ordered* that the proceedings be reopened and the Order modified as follows:

I

* * * * *

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the expenses that may be incurred by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person.

C. Failing to disclose, clearly and conspicuously, in all advertising offering employment in any way involving door-to-door sales that the respondent concerned is recruiting persons for the sole purpose of soliciting or selling.

(2) [Deleted]

(3) [Deleted]

(4) [Deleted]

D. Failing to provide clearly and conspicuously, both orally and in writing, to any prospective sales employee at the initial face-to-face interview, and prior to executing any employment agreement with any such person, the following information:

(1)(a) That respondent is recruiting persons for the sole purpose of soliciting or selling;

(b) That the products or services being sold are encyclopedias or services to be used in connection therewith, or in the event that encyclopedias or such related services are not being sold, the products and services being sold; and

(c) The basis for compensating persons so engaged;

(2) That conditions or limitations upon the receipt of compensation, if any, do in fact exist, together with an example of such a material condition or limitation, and that all such conditions and limitations will be stated in detail in an interview in the event an offer of employment is made to such person;

* * * * *

(4) That expenses will be incurred by such person in performing required duties, together with an example of such a material expense, and that all such expense items will be stated in detail in an interview in the event an offer of employment is made to such person; and

(5) That such soliciting or selling will be on an "in-home" basis, if such is the fact, or will include soliciting or selling on an "in-home" basis, if such is the fact.

E. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at an interview at which an offer of employment is made and prior to executing any employment agreement with any such person, the following information:

(1) A complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;

(2) A complete and detailed description of any expense or expenses any such person may incur in performing the required duties;

(3)(a) The total number of sales employees employed by the office offering the position during the most recent calendar quarter, and (b) the number of sales employees employed by the office who, during the prior calendar quarter, received net earnings equivalent to or greater than the amount represented in the advertisement to which the prospective employee is responding; provided, however, that if the office has been in existence for less than three months or has fewer than five sales employees, respondents shall provide the information described above pertaining to the Division in which the office is located; provided further that such information need not be furnished if the prospective sales employee contacts respondents more than ten days following the dissemination of the most recent advertisement that contains representations of earnings. Respondents shall afford any prospective sales employee an adequate opportunity to review and consider the above information prior to requesting execution of any employment agreement.

F. Failing to furnish to persons at an interview when an offer of employment is made and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II and V of this Order together with a cover letter as set forth in *Appendix A* attached hereto. Respondents shall afford any prospective sales employee an adequate opportunity to review and consider these provisions of the Order prior to requesting execution of any employment agreement.

G. Making, distributing or using any training tapes, sales manuals, or any other document, method or device which contains any representation or instruction inconsistent with any provision of Paragraph I or Paragraph II of the Order.

II

* * * * *

A. Representing, directly or by implication, in any advertisement or promotional material that solicits participation in any contest, drawing, or sweepstakes, or solicits any response to any offer of merchandise, service, or information, and that employs any return card, coupon, or other device to respond to such solicitation, that a person who replies as requested will not be contacted directly by a salesperson for the purpose of selling respondents' products, unless such is the fact. Such advertisements or promotional material shall comply with this Paragraph only if they meet the criteria set forth in *Appendix B.*

B. Failing, upon the written request of the Associate Director for Enforcement or his designee, to (1) submit any advertisement or promotional material or (2) test any such advertisement or promotional material, using the procedure set forth in *Appendix B,* to determine whether it complies with Paragraph II.A.

C. Failing to disclose clearly and conspicuously, during any telephone contact and before commencing any sales presentation to prospective customers, the fact that the individual making the call is either soliciting the sale, rental or lease of publications, merchandise or services for respondents, or is arranging for a sales solicitation to be made, and that if the prospective customer so agrees, the respondent concerned will send a salesperson to visit said prospect for the purpose of soliciting the sale, rental or lease of said publications, merchandise or services.

D. Visiting the home or place of business of any person for the purpose of soliciting the sale, rental or lease of any publications, merchandise or service, unless at the time admission is sought into the home or place of business of such person, a business card of at least 2 inches by 3 inches containing only the following information, is presented to such person:

(1) The name of the corporation;

(2) The name of the salesperson;

(3) The term "sales representative;

(4) An address and telephone number at which the corporation or salesperson may be contacted;

(5) The product of the corporation logo or identifying mark.

* * * * *

G. Representing, directly or by implication, either orally or in writing that:

(1) Any person telephoning or visiting the home of any prospective purchaser is:

* * * * *

(c) Telephoning or visiting the home of said prospect for the primary purpose of delivering or disseminating any vacation gift certificate, prizes, gifts, gift certificates, chances in any contest, or any other merchandise or item of chance;

* * * * *

(7) Any publication, merchandise or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of any of respondents' publications, merchandise or services, pursuant to any agreement to purchase, rent or lease any other publication, merchandise, or service, or combination thereof, from such respondent, unless respondent complies with all of the terms of the Federal Trade Commission's "Guide Concerning Use of the Word 'Free' and Similar Representations," 16 CFR Part 251, which is hereby incorporated into this Order, and with any modifications or changes that are made to this Guide. All of the provisions of the aforesaid Guide shall be construed as mandatory and binding upon the respondents.

* * * * *

M. Representing to any person, directly or by implication, either orally or in writing that:

(1) Any price is the retail, regular, usual or words of similar import or effect, price for any publication in any binding, merchandise or service, unless such price is an actual, bona fide price for which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time;

(2) Any price is the retail, regular, usual or words of similar import or effect, price for any set of publications in any binding and in combination with any other publication, merchandise or service, unless such price is an actual, bona fide price for which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

* * * * *

S. [Deleted]
T. [Deleted]

* * * * *

By the Commission.
Issued: November 19, 1984.

Appendix A

Notice

Attached hereto are the *pertinent provisions* of a cease and desist order entered against Grolier, Incorporated and certain of its subsidiaries, including Grolier Interstate, Inc. by the Federal Trade Commission, an agency of the Federal Government. Violation of any provision of this Order can result in severe monetary penalties to Grolier, Incorporated and Grolier Interstate, Inc. If you are employed by Grolier, Incorporated or any of its subsidiaries, you will be *required* to observe the provisions of this Order. Violation of any provision of this Order by an employee constitutes a violation of a federal law.

You should carefully read this Order before agreeing to any employment arrangement with Grolier, Incorporated or any of its subsidiary companies.

(President).
Grolier, Incorporated.

Appendix B

This Appendix sets forth the methodology respondents shall employ to determine whether advertisements or promotional materials represent that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products, and the criteria for determining whether such advertisements or promotional materials comply with Paragraph II.A.

1. *Format*—Respondents shall test the comprehension level of advertisements or promotional material by conducting a mall-intercept test or an in-home survey using the questionnaires attached hereto as Exhibit 1.

2. *Sample Size*—The sample shall consist of at least 150 subjects.

3. *Demographics*—Test subjects must:

(a) Be between 25 and 49 years of age;

(b) Have at least one child fifteen years of age or younger living at home;

(c) Have household incomes of at least $15,000 per year for 85% of the subjects tested and the remaining 15% must have household incomes of less than $15,000 per year; *provided* that, upon respondents' request, the Division of Enforcement shall increase this figure by increments of $5,000 whenever the percentage of households earning at least the requested amount equals or exceeds the percentage of households that, according to the 1980 United States Census, have household incomes of at least $15,000 per year. The data for future changes shall be based on the most recently published edition of the *Statistical Abstract of the United States.*

4. *Location of Markets*—The interviewing will be conducted in four geographically dispersed markets. In the case of mall-intercept tests, the same central location facilities will be used wherever possible. If it is necessary to change any interviewing facility, the new facility shall have demographic characteristics similar to those of the facility it is replacing.

5. *Criteria for Acceptability of New Coupon Copy*—New promotional material copy shall comply with Paragraph II.A if at least seventy-five percent of the test subjects in both the group surveyed with household incomes in excess of $15,000 and the group with household incomes of less than $15,000 answer "yes" to question 2 of the questionnaires (Exhibit 1).

Modifications to this Appendix, including the questionnaire, may be made upon a request by respondents and the approval of the Associate Director for Enforcement.

Exhibit 1.—Mall Screener

Comprehension Study—Card

Hello, I'm ———— from ————, a national marketing research firm. We're conducting a survey and would like to ask you a few brief questions.

A. Are you the (male/female) head of your household?

(APPLY TO APPROPRIATE QUOTA)

Male head of household.....1
Female head of household.....2

("X" FIRST UNUSED BOX, TERMINATE AND RE-USE.)

Neither.....1/2/3/4/5/6/7/8/9/0

B. Which of the following groups best describes your age? Are you . . . (READ LIST)?

("X" FIRST UNUSED BOX, TERMINATE AND RE-USE.)

Under 25.....1/2/3/4/5/6/7/8/9/0

(CONTINUE)

25–29.....1
30–34.....2
35–39.....3
40–44.....4
45–49.....5

("X" FIRST UNUSED BOX, TERMINATE AND RE-USE.)

50 or over.....1/2/3/4/5/6/7/8/9/0

(DO NOT READ)

("X" FIRST UNUSED BOX, TERMINATE AND RE-USE.)

Refused.....1/2/3/4/5/6/7/8/9/0

C. And, which of the following groups best describes your annual household income before taxes for 1983? Is it . . . (READ LIST)?

(APPLY TO APPROPRIATE QUOTA)

Under $15,000.....1
$15,000–$24,999.....2
$25,000 or more.....3

(DO NOT READ)

("X" FIRST UNUSED BOX, TERMINATE AND RE-USE)

Refused.....1/2/3/4/5/6/7/8/9/0

IF OVER QUOTA—$15,000 OR MORE, "X" FIRST UNUSED BOX, TERMINATE AND RE-USE. 1/2/3/4/5/6/7/8/9/0

D. How many school age children, 15 years of age or younger, live in your household?

* ————————————————

("X" FIRST UNUSED BOX, TERMINATE AND RE-USE.)

None.....1/2/3/4/5/6/7/8/9/0

Mall

Comprehension Study Card, Main Questionnaire

(HAND RESPONDENT DRAWING CARD)

1. Now I'd like to ask you a few questions about this free drawing card.

Based on what you just read, what would you expect to happen if you filled out the card? (PROBE) What else would you expect to happen?

---

2. For the purpose of this research, let's suppose that you filled out the card. That is, you are interested in receiving information about the educational materials described. Would you expect to be contacted by a sales representative?

Yes.....1
No.....2

(TAKE BACK DRAWING CARD)

THANK RESPONDENT AND TERMINATE.

Respondent's Name: ————————
Telephone: ( ) ————————
Address: ————————
City: ————————
State: ————————
Zip: ————————
Interviewer's Name: ————————
Date: ————————

Emily H. Rock,
Secretary.

[FR Doc. 84-32346 Filed 12-11-84; 8:45 am]
BILLING CODE 3510-22

---

16 CFR Part 13

[Docket No. 9149]

Thompson Medical Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: This Final Order requires a New York City pharmaceutical company to cease, in connection with the advertising, sale or distribution of over-the counter (OTC) health care products, using the brand name "Aspercreme" for any product that does not contain a significant amount of aspirin; or misrepresenting by any other means that aspirin is an active ingredient of such product. TV and radio advertising for "Aspercreme" must include an explicit aspirin disclaimer statement and such disclaimer must also be prominently displayed in print advertising and product labelling. The Order further bars the firm from misrepresenting the contents, validity, results or interpretations of tests or studies; and from representing, without prescribed substantiation, the speed or effectiveness of its products in the relief of minor pain and other symptoms of arthritis, bursitis, rheumatism or other musculoskeletal disorders. Additionally, the Order dismisses Paragraph 12(f) of the Complaint.

DATES: Complaint issued on February 5, 1981; Final Order issued on November 23, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/B–411–8, Elizabeth T. Guarino, Washington, D.C. 20580, (202) 376–8648.

SUPPLEMENTARY INFORMATION: In the Matter of Thompson Medical Company, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.20 Comparative data or merits; § 13.45 Content; § 13.95 Identity of product; § 13.135 Nature of product or service; § 13.170 Qualities or properties of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures. Subpart—Misbranding Or Mislabeling: § 13.1200 Content; § 13.1290 Identity; § 13.1290 Qualities or properties; § 13.1310 Results; § 13.1320 Scientific or other relevant facts. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1578 Comparative data or merits; § 13.1605 Content; § 13.1655 Identity; § 13.1685 Nature; § 13.1685–15 By misleading trade or corporate name; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1850 Content; § 13.1855 Identity; § 13.1870 Nature; § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts. Subpart—Packaging or Labeling of Consumer Commodities Unfairly and/or Deceptively: § 13.2100 Packaging or labeling of consumer commodities unfairly and/or deceptively; § 13.2100–5 Labeling. Subpart—Using Misleading Name—Goods: § 13.2300 Identity: § 13.2315 Nature; § 13.2325 Qualities or properties.

List of Subjects in 16 CFR Part 13

Over-the-counter drug products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Before the Federal Trade Commission

Final Order

Commissioners: James C. Miller III, Chairman; Patricia P. Bailey; George W. Douglas; and Terry Calvani.

In the matter of Thompson Medical Company, Inc., a corporation.

[Docket No. 9149]

The matter has been heard by the Commission upon the appeal of counsel for respondent Thompson Medical Company, Inc. and complaint counsel and upon briefs and oral argument in support of and in opposition to the appeals. The Commission, for reasons stated in the accompanying Opinion, has granted a portion of complaint counsel's appeal and denied that of respondent. Therefore

It is ordered that the initial decision of the administrative law judge be adopted as the Findings of Fact Conclusions of Law of the Commission except as is otherwise inconsistent with the attached opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist be entered:

Order

I

It is ordered that respondent, Thompson Medical Company, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, offering for sale, sale or distribution of any over-the-counter "drug" as that term is defined in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Employing the brand name "Aspercreme" for such products or otherwise representing directly or by implication that an active ingredient of such product is aspirin, unless such product contains aspirin in therapeutically significant quantities; *Provided, however,* That the brand name "Aspercreme" may be used for such product if its advertising and labeling clearly and prominently disclose that the product does not contain aspirin.

(1) In television advertisements, an explicit and simple aspirin disclaimer statement (such as "ASPIRIN-FREE") shall be superimposed on the television screen simultaneously with a vocal aspirin disclaimer statement (such as "Aspercreme does not contain aspirin") at the end of each advertisement.

(2) In radio advertisements, an explicit aspirin disclaimer statement (such as "Aspercreme does not contain aspirin") shall be made at the end of each advertisement.

(3) In print advertisements, an explicit aspirin disclaimer statement (such as "ASPERCREME DOES NOT CONTAIN ASPIRIN") shall be displayed prominently and conspicuously in relation to each such advertisement as a whole.

---

[1] Copies of the Complaint, Initial Decision and Opinion of the Commission are filed with the original document.

(4) In labeling, an explicit aspirin disclaimer statement (such as "DOES NOT CONTAIN ASPIRIN") shall be prominently and conspicuously printed in the front package panel (or in the front of the container if no package is used).

B. Representing, directly or by implication, that such product involves a new scientific principle, when such product or one involving such principle has been available for purchase in the United States as an over-the-counter drug for more than one year.

C. Misrepresenting the contents, validity, results, conclusions, or interpretations of any test or study.

D. Misrepresenting the identity of the active ingredient(s) in such product.

II

It is further ordered that Thompson Medical Company, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or in distribution of any OTC analgesic "drug," as that term is defined in the Federal Trade Commission Act, in or effecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing that such product is effective for the relief of minor pain and other symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorders).

B. Representing that such product is as fast as or faster than, or is as effective as, or more effective than any other drug or device in the relief of minor pain and other symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorders);

Unless at the time of the dissemination of any such representation, respondent possesses and relies upon a reasonable basis for such representation consisting of competent and reliable scientific or medical evidence. For analgesic drug products competent and reliable scientific or medical evidence shall include at least two adequate and well-controlled, double blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons, independently of each other. Such persons shall be qualified by training and experience to conduct such studies. Provided however, with respect to any representation covered by this part other than claims of superior or comparative effectiveness or safety, if the Food and Drug Administration promulgates any final standard which establishes conditions under which such product is safe and effective under the Food, Drug and Cosmetic Act, then in lieu of the above, respondent may rely upon scientific evidence which fully conforms to such final standards as a reasonable basis for said representation.

III

It is further ordered that so much of the complaint as relates to Paragraph 12(f) be, and the same hereby is, dismissed.

IV

It is further ordered that respondent Thompson Medical Company, Inc. shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in its corporation which may affect compliance obligations under this Order.

V

It is further ordered that the respondent herein shall within sixty (60) days after service of this Order upon it and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied or intends to comply with the Order.

By the Commission.

Issued: November 23, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-32347 Filed 12-11-84; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 1H5312/R711; FRL-2732-4]

Food for Human Consumption; Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Methoprene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a temorary tolerance for residues of the insecticide methoprene in or on various foods in conjuction with an experimental use permit requested by the Zoecon Corp.

EFFECTIVE DATE: Effective on December 12, 1984.

ADDRESS: Written objections, identified by the document control number [FAP 1H5312/R711], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of July 2, 1982 (47 FR 28994), that Zoecon Corp., 975 California Ave., Palo Alto, CA 94304, had filed a food additive petition (FAP 1H5312), proposing that 21 CFR Part 193 be amended by establishing a regulation permitting tolerances for residues of the insect growth regulator methoprene (Isopropyl (*E,E*)-11-methoxy-3, 7, 11-trimethyl-2,4 dodecadienoate) in or on raisins, wheat flour, macaroni (wheat), rice cereal, rye cereal, barley cereal, wheat cereal, corn cereal, corn meal, grits, hominy, oat cereal, spices, dry dog food, dried apples, dried apricots, dried peaches, and dried prunes at 10.0 parts per million (ppm).

No comments were received by the Agency in response to the notice of filing.

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide can be safely used in accordance with provisions of the experimental use permit (20954-EUP-20) that was issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973; 7 U.S.C. 136 *et seq.*). Therefore, a food additive regulation is established for the commodities as set forth below.

A related document [PP 1G2539/T468] renewing temporary tolerances for methoprene in or on certain raw agricultural commodities appears elsewhere in this issue of the Federal Register.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: November 27, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 193—[AMENDED]

Therefore, Part 193 is amended in § 193.285 by designating the existing text as paragraph (a) and adding new paragraph (b), to read as follows:

§ 193.285 Methoprene.

(a) * * *

(b)(1) A tolerance of 10 parts per million is established for the insect growth regulator methoprene in or on raisins, wheat flour, macaroni (wheat), rice cereal, rye cereal, barley cereal, wheat cereal, corn cereal, corn meal, grits, hominy, oat cereal, spices, dry dog food, dried apples, dried apricots, dried peaches, and dried prunes resulting from applications of methoprene in accordance with the provisions of an experimental use permit that expires September 21, 1986.

(2) The total amount of the active ingredient to be used shall not exceed the quantity authorized by the experimental use permit.

(3) The Company concerned shall immediately notify the Environmental Protection Agency of any findings for the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 84-31080 Filed 12-11-84; 8:45 am]

BILLING CODE 4560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Cavulanate Potassium Tablets

Correction

In FR Doc. 84-30129, beginning on page 45420 in the issue of Friday, November 16, 1984, make the following corrections:

1. On page 45421, in the second column, in § 540.103g, the second line of paragraph (a)(3)(ii)(*a*) (the last line of the column) should read "(*a*) The amoxicillin trihydrate used in making the batch: 12 packages, each".

2. Also on page 45421, in the third column, in § 540.103g, the second line of paragraph (a)(3)(ii)(*b*) (the fourth line of the column) should read "making the batch: 12 packages, each".

BILLING CODE 1505-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Carl S. Akey, Inc., providing for use of a 2.4-gram-per-pound hygromycin B premix for making complete swine feeds for control of large roundworms, nodular worms, and whipworms, and for making complete chicken feeds for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: December 12, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Carl S. Akey, Inc., P.O. Box 607, Lewisburg, OH 45338, is sponsor of supplemental NADA 127-508, providing for use of a 2.4-gram-per-pound hygromycin B premix for making complete swine and chicken feeds. The complete swine feed is used as an aid in the control of large roundworms, nodular worms, and whipworms. The complete chicken feed is used as an aid in the control of large roundworms, cecal worms, and capillary worms. This supplement was filed by Elanco Products Co. for the sponsor. The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch, (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.274 by adding new paragraph (a)(7) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.274 Hygromycin B.

(a) * * *

(7) Premix level of 2.4 grams per pound granted to sponsor 011790 in § 510.600(c) of this chapter for use in chickens as in paragraph (e)(1)(i) of this section and in swine as in paragraph (e)(1)(ii) of this section.

* * * * *

Effective date. December 12, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))

other than claims of superior or

tools in conjunction with an

specify the provisions of the regulation

officer or employee of the

per-pound hygromycin B premix for

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 29, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-32316 Filed 12-11-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 803

[Docket No. 79N-0182]

Medical Device Reporting; OMB Approval and Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Management and Budget (OMB) has approved the information collection requirements in the final rule on medical device reporting. FDA also is announcing a clarification of its views regarding whether a submission under the final rule or the release of a submission by FDA constitutes an admission of liability. In addition, FDA is affirming the effective date of the final rule.

EFFECTIVE DATE: December 13, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 14, 1984 (49 FR 36328) (corrected at 49 FR 36644; September 19, 1984), FDA published a final rule (21 CFR Part 803) that requires manufacturers and importers of medical devices, including diagnostic devices, to report to FDA whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contribute to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contributed to a death or serious injury if the malfunction were to recur. Importers are required to establish and maintain files of reports and records.

The final rule is intended to assure that FDA is informed promptly of all serious or potentially serious problems associated with marketed devices.

OMB Approval

In the preamble to the final rule (49 FR 36348), FDA advised that the collection of information requirements contained in §§ 803.24 and 803.31 of the rule had been submitted to OMB for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and § 1320.13(g) of OMB's regulations (5 CFR 1320.13(g)) implementing that act. The agency also stated that §§ 803.24 and 803.31 would not be effective until FDA obtained OMB approval of these information collection requirements, and that it would publish in the **Federal Register** a notice of OMB's decision to approve, modify, or disapprove them.

On November 9, 1984, OMB sent FDA a notice of action stating that the collection of information requirements are approved for use through January 31, 1986, under OMB control number 0910-0201. In its remarks accompanying its notice of action, OMB stated in pertinent part:

> This information collection is approved through 1/86 to permit OMB to perform a thorough practical utility review. Upon resubmission FDA must provide OMB with a report of the first year's operation of the MDR [medical device reporting] rule. This report should contain an explanation of how FDA uses this system to further the protection of the public health. Specifically, the report must include: 1. An accounting of the number and type of reports (including a breakdown of telephone reports and follow-up reports) filed and an appropriate adjustment of the estimated annual burden. 2. An explanation of how FDA has used MDR reports as a basis for regulatory actions, including but not limited to, enforcement proceedings, consideration of reclassification actions, PMA review, 510(k) review, waiver of 510(k) requirements, and the development of performance standards. 3. An accounting of the number of instances (and explanation thereof) in which FDA notified a manufacturer or importer that a record is no longer necessary pursuant to 21 CFR 803.24(d)(4). 4. Copies of all existing internal and public documents that have been developed to provide FDA officials, or the public, with information stemming from MDR reports. * * * Finally, any regulatory guidelines of general applicability [see 21 CFR 10.90(b)] for the MDR must be submitted for PRA [Paperwork Reduction Act] approval.

Following publication of the final rule and during the time that OMB was conducting its review of the rule, FDA received a request from counsel for Johnson & Johnson that FDA clarify its position, stated in the preamble, that the agency "does not believe that the submission [or release] of information that reasonably suggests that a device may have caused or contributed to a death or serious injury will be treated by the courts as an admission that the device actually caused or contributed to a death or serious injury." (49 FR 36329, 36338.)

FDA believes that its position, which was stated in response to comments on the medical device reporting reproposal (see paragraphs 7 and 49a of the preamble to the final rule (49 FR 36329, 36338)), is correct. In addition, FDA does not believe that the submission or release of information that reasonably suggests that a device has malfunctioned will be treated by the courts as an admission that the device actually malfunctioned. FDA agrees, therefore, that the response does not completely set forth FDA's position. For this reason, FDA is adding new § 803.24(f) to the final rule which states: "A report or information submitted by a manufacturer or importer under this section (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the manufacturer, importer, or FDA that the report or information constitutes an admission that the device caused or contributed to a death or serious injury or malfunctioned. A manufacturer or importer need not admit, and may deny, that the report or information submitted under this section constitutes an admission that the device caused or contributed to a death or serious injury or malfunctioned." FDA advises, however, that although it does not intend for such a report or information to be viewed as an admission of liability, whether a court will treat a submission under the final rule as an admission will depend on, among other factors, the nature of the statements in the submission. None of these factors is within FDA's control. Thus, FDA does not intend that the mere act of submitting a report—an act which is mandated by law—will constitute an admission. As stated, whether the report, or the information therein, constitutes an admission will depend on its contents.

Section 803.24(f) is not a "rule" within the meaning of the Administrative Procedure Act (APA) (5 U.S.C. 551(4)) because it neither creates new rights and obligations, *British Caledonian Airways, Ltd.* v. *CAB*, 584 F.2d 982, 989-991 (D.C. Cir. 1978), nor binds the courts, *Energy Consumers & Producers Assn.* v. *DOE*, 632 F.2d 129, 139 (Temp. Emer. Ct. App.), *cert. denied*, 449 U.S. 832 (1980). Accordingly, § 803.24(f) is not subject to the rulemaking and effective date requirements of the APA (5 U.S.C. 553). At most, § 803.24(f) is a "general statement of policy." A general statement of policy must be published (5 U.S.C. 552(a)(1)(D)) but is exempt from the rulemaking and effective date requirements of section 553 of the APA (5 U.S.C. 553 (b)(A), (d)(2)). For these reasons, FDA is not subjecting § 803.24(f) to notice and public procedure and is making the section effective December 13, 1984, concurrent with the effective date of the final rule.

List of Subjects in 21 CFR Part 803

Medical devices; Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502(t), 510, 519, 701(a), 704 (a) and (e) 52 Stat. 1055, 76 Stat. 792-795 as amended, 90 Stat. 564-565, 578, 581 (21 U.S.C. 352(t), 360, 360i, 371(a), 374 (a) and (e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 803 is amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. In § 803.24 by adding the number "0910-0201" at the end of the parenthetical statement appearing at the end of the section and by adding new paragraph (f), to read as follows:

§ 803.24 Reports by manufacturers and importers.

* * * * *

(f) A report or information submitted by a manufacturer or importer under this section (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the manufacturer, importer, or FDA that the report or information constitutes an admission that the device caused or contributed to a death or serious injury or malfunctioned. A manufacturer or importer need not admit, and may deny, that the report or information submitted under this section constitutes an admission that the device caused or contributed to a death or serious injury or malfunctioned.

* * * * *

§ 803.31 [Amended]

2. In § 803.31 *Complaint files* by adding the number "0910-0201" at the end of the parenthetical statement appearing at the end of the section.

Effective date. December 13, 1984.

(Secs. 502(t), 510, 519, 701(a), 704 (a) and (e), 52 Stat. 1055, 76 Stat. 792-795 as amended, 90 Stat. 564-565, 578, 581 (21 U.S.C. 352(t), 360, 360i, 371(a), 374 (a) and (e)))

Dated: December 4, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-32280 Filed 12-11-84; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 501

Appointment of Foreign Service Information Officers

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: This document amends 22 CFR 501.13 by correcting a typographical error.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Charles N. Canestro, United States Information Agency, Management Plans and Analysis Staff, Room 618, 301 Fourth Street, SW., Washington, D.C. 20547, telephone (202) 485-8676.

SUPPLEMENTARY INFORMATION: The text of this CFR part describes the process leading to lateral entry appointment of Foreign Service Information Officers to the United States Information Agency.

E.O. 12291 Federal Regulation

USIA has determined that this is not a major rule for the purpose of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based industries to compete with foreign-based enterprises in domestic or foreign markets.

List of Subjects in 22 CFR Part 501

Foreign service.

PART 501—[AMENDED]

22 CFR Part 501 is amended by revising § 501.13(f)(5)(vi)(*a*) to read as follows:

§ 501.13 Lateral entry appointment of Foreign Service information officers.

* * * * *

(f) * * *

(5) * * *

(vi) *Oral Examination.* (*a*) Candidates recommended for further consideration after completion of the qualification review and evaluation outlined in paragraphs (f)(1) and (f)(5)(iii) are given oral examinations by a panel of deputy examiners appointed by the Board of Examiners.

* * * * *

(22 U.S.C. 1221 et seq.; E.O. 11434 of Nov. 8, 1968 (33 FR 16485))

Dated: December 3, 1984.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 84-31681 Filed 12-11-84; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7994]

Income Tax; Taxable Years Beginning After December 31, 1953; Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary Regulations.

SUMMARY: This document provides temporary Income Tax Regulations relating to foreign management and foreign economic processes requirements of a foreign sales corporation (FSC) The temporary regulations provide rules for determining whether a FSC will be treated as having foreign trading gross receipts through satisfaction of the requirements of section 924. In addition, the temporary regulations provide rules for determining eligibility to use administrative pricing rules in computing taxable income of a FSC, and rules for grouping transactions for purposes of the foreign economic processes tests. These temporary regulations provide immediate necessary guidance to FSC's and their shareholders with respect to qualification for benefits under Title VIII of the Tax Reform Act of 1984 (Foreign Sales Corporations). The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The temporary regulations apply to taxable years beginning after December 31, 1984, and are effective after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: David J. Dean of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3289, not a toll-free call).

been submitted to OMB for approval

(see paragraphs 7 and 49a of the

procedure and is making the section

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under sections 924, 925, and 927 of the Internal Revenue Code of 1954. The temporary regulations are issued under the authority contained in sections 924(d)(4), 925(b), 927(d)(2)(B), and 7805 of the Internal Revenue Code of 1954 (98 Stat. 989, 26 U.S.C. 924(d)(4); 98 Stat. 990, 26 U.S.C. 925(b); 98 Stat. 993, 26 U.S.C. 927 (d) (2)(B); and 68A Stat. 917, 26 U.S.C. 7805).

Need for Temporary Regulations

Sections 924, 925, and 927 are generally effective for transactions after December 31, 1984, in tax years ending after that date. The proper application of those sections is dependent upon the Service's detailed specification of the manner in which the requirements of the statute will be administered. Because of the need for immediate guidance in this regard, the Internal Revenue Service has found it to be impractical to issue these temporary regulations either with notice and public comment procedure under section 553(b) of title 5 of the United States Code, or under the effective date limitation of section 533(d) of title 5.

Explanation of Provisions

Foreign Management

Section 924(c)(1) provides that a FSC must hold all meetings of shareholders and all meetings of directors outside the United States. In addition, the temporary regulations provide that all such meetings must comply with the local laws of the jurisdiction in which the FSC is created or organized. The local law determines whether a meeting must be held, where it must be held, quorum requirements, use of proxies, and so forth. Therefore, if local law permits a shareholders' or directors' meeting outside its jurisdication, any meeting held outside the United States will satisfy the requirements of section 924(c)(1). Also, if the participants in a meeting are not all present in the same location, the location of the meeting is the place where the persons exercising a majority of the voting power are located. Section 924(c)(2) requires that the principal bank account of a FSC must be maintained outside the United States, and section 924(c)(3) requires that all dividends, legal and accounting fees, and salaries of officers and directors must be disbursed from bank accounts of the FSC maintained outside the United States. The temporary regulations adopt the approach taken in the Conference Report (H.R. Rept. No. 98–861, at 973), and link these two requirements together by defining the account that is to be regarded as the principal bank account of the FSC as the account from which the disbursements of dividends, legal and accounting fees, and salaries of officers and directors are made. The temporary regulations also require the account that is to be treated as the principal bank account of the FSC to be maintained in an eligible possession or a country which meets the exchange of information requirements of section 927(e)(3), that is, a country under the laws of which a FSC may be created or organized.

Foreign Economic Processes

Subsections (d) and (e) of section 924 require that certain activities take place outside the United States in order to treat the proceeds from a transaction as foreign trading gross receipts. These activities include: (1) Certain sales activities, and (2) certain activities relating to the disposition of export property or the performance of export services. The FSC may perform the activities itself, or contract with another person (related or unrelated) to have the activities performed on behalf of the FSC. Under the first part of this two-pronged test, the FSC must participate outside the United States in one of the following sales activities: The solicitation (other than advertising), the negotiation, or the making of the contract relating to the transaction. Under the second part of the test, the foreign direct costs of five categories of disposition activities related to the transaction must comprise at least 50 percent of the total direct costs of the transaction (or the FSC may satisfy an alternate test based on 85 percent of two categories of activities). The temporary regulations explain what activities are included in the economic processes tests, explain how the tests are applied, and provide rules for substantiating performance of the activities by a person other than the FSC.

Participation in the sales portion of the transaction requires performance of one of the sales activities listed previously. For purposes of this rule, transactions may be grouped on the basis of contracts or customers so that, for example, performance of "solicitation" by the FSC with respect to a particular customer will be sufficient to satisfy this requirement for all transactions with that customer during the FSC's taxable year. Alternatively, performance of "solicitation" with respect to a long term contract will satisfy this requirement for all transactions or shipments under that contract, even though the contract applies for more than one taxable year of the FSC. In defining the sales activities, the temporary regulations specifically clarify that performance of two or all three of these sales activities may occur at the same time.

This is intended to facilitate performance of all three activities by the FSC, and is specifically authorized because, under section 925(c), the FSC must participate in all three activities in order to use the administrative pricing rules provided in section 925(a).

The second part of the two-pronged test is satisfaction of either the 50-percent or the 85-percent foreign direct cost test. These tests look to five categories of activities relating to the disposition of export property that are listed in section 924(e). Under the 50-percent foreign direct cost test, for a transaction to produce foreign trading gross receipts, at least 50 percent of the total costs in all of the categories of activities, when aggregated, must be foreign costs. Only categories in which costs are actually incurred are taken into account, and the temporary regulations require that costs must actually be incurred in at least three of the five categories in order to use this test. Under the alternative 85-percent foreign direct cost test, at least 85 percent of the costs in each of two of the five categories of activities must be foreign costs. For this test, the costs are not aggregated, but rather the costs in each category are considered separately.

The categories of activities that apply for these tests are: (1) Advertising and sales promotion, (2) processing of customer orders and arranging for delivery of the export property, (3) transportation, (4) determination and transmittal of a final invoice or statement of account and receipt of payment, and (5) assumption of credit risk. These activities are described in the temporary regulations, and rules are provided for determining what costs are the direct costs used in the tests and what costs are not direct costs. Rules are also provided for determining the location of the activities.

Grouping of transactions is permitted in determining whether the foreign economic process tests are satisfied. A grouping rule that applies for both the sales participation test and the foreign direct cost tests permits groupings based on either recognized industry or trade usage or two-digit major groups (or inferior classifications thereof) of the Standard Industrial Classification (SIC code). In addition, groupings may be based on all transactions with a particular customer during a taxable year, or on all transactions under a particular contract. A FSC may use

different groupings for different activities within the same taxable year. The flexibility offered by these grouping rules is intended to facilitate the establishment of FSC's. However, these grouping rules apply only for purposes of section 924, and do not apply for any other purpose. They particularly do not apply for purposes of determining the FSC's foreign trade income, or for transfer pricing, and are not intended to imply whether grouping may be permitted for those other purposes, or, if grouping is permitted for those purposes, to what extent it may be permitted.

An exception from the foreign economic processes requirements is provided for sales of military property in cases where the tests cannot be satisifed because the activities are required to be performed in the United States or by the United States Government, or are directly related to such activities.

Commission FSC's

A FSC is permitted to act as a commission agent in an export transaction between the FSC's "supplier" and the transferee. In such cases, the FSC is generally required to satisfy the same requirements as a buy-sell FSC. In addition, the same rules apply to permit the commission FSC to have activities performed for the FSC by another contractor.

Requirements for Use of Administrative Pricing Rules

Section 925(c) requires that a FSC (or a person under contract with the FSC) perform all of the "sales" activities described in section 924(d)(1)(A), and all of the "disposition" activities described in section 924(e) that are attributable to the transaction, in order to use the administrative pricing rules of section 925(a) in computing taxable income of a FSC and its related supplier. The temporary regulations explain that those pricing rules may not be used if any of the specified activities with respect to the transaction are performed by a person related to the FSC but not under contract for performance on behalf of the FSC. In addition, any person, whether or not related, that performs the activities (other than services performed as an employee, officer, or director of the FSC) on behalf of the FSC must be paid by the FSC for performing the activities. Also, a special rule is provided for sales of military property, to permit such sales to qualify for use of the administrative pricing rules.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

These regulations were submitted to the Office of Management and Budget for review under the Paperwork Reduction Act and approved under OMB number 1545–0904.

Drafting Information

The principal author of these proposed regulations is David J. Dean of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

PART 1—[AMENDED]

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

New §§ 1.924(c)–1T, 1.924(d)–1T, 1.924(e)–1T, 1.925(b)–1T, 1.925(c)–1T, and 1.927–1T are added in the appropriate places to read as folllows:

§ 1.924(c)–1T Temporary Regulations; Requirement that a FSC be managed outside the United States.

(a) *In general.* Section 924(b)(1)(A) provides that a FSC shall be treated as having foreign trading gross receipts for the taxable year only if the management of the FSC during the year takes place outside the United States, as provided in section 924(c). Section 924(c) and this section set forth the management activities that must take place outside the United States in order to satisfy the requirement of section 924(b)(1)(A). Paragraph (b) of this section provides rules for determining whether the requirements of section 924(c)(1) have been met. Section 924(c)(1) requires that all meetings of the board of directors of the FSC during the taxable year and all meetings of the shareholders of the FSC during the taxable year take place outside the United States. Paragraph (c) of this section provides rules for maintaining the FSC's principal bank account outside the United States as provided in section 924(c)(2). Paragraph (d) of this section provides rules for disbursements required by section 924(c)(3) to be made from bank accounts of the FSC maintained outside the United States.

(b) *Meetings of board of directors and meetings of shareholders must be outside the United States.* All meetings of the board of directors of the FSC and all meetings of the shareholders of the FSC that take place during the taxable year must take place outside the United States to meet the requirements of section 924(c)(1). Only meetings that are formally convened as meetings of the board of directors or as shareholder meetings will be taken into account in determining whether those requirements have been met. In addition, all such meetings must comply with the local laws of the foreign country or possession of the United States in which the FSC was created or organized. The local laws determine whether a meeting must be held, when and where it must be held (if it is held at all), who must be present, quorum requirements, use of proxies, and so on. Where the local law permits action by the board of directors to be taken by written consent without a meeting, use of such procedure will not constitute a meeting for purposes of section 924(c)(1). Section 924(c)(1)and this section impose no other requirements except the requirement that meetings that are actually held take place outside the United States. If the participants in a meeting are not all physically present in the same location, the location of the meeting is determined by the location of the persons exercising a majority of the voting power participating in the meeting. For example, a FSC has five directors, and is organized in country A. Country A's law requires that a majority of the directors of a corporation must participate in a meeting to constitute a quorum (and, thus, a meeting), but there is no requirement that the meeting be held in country A or that the directors must be physically present to participate. One director is in country A, another director is in country B, and a third director is in the United States. These three directors convene a meeting by telephone that constitutes a meeting under the law of country A. Since the persons exercising a majority of the voting power participating in the meeting are located

requirements together by defining the

of the FSC. In defining the sales

particular contract. A FSC may use

rulemaking is not required by 5 U.S.C.

all meetings of the board of directors of

participating in the meeting are located

outside the United States, the meeting occurs outside the United States.

(c) *Maintenance of the principal bank account outside the United States*—(1) *In general.* For purposes of section 924(c), the bank account that shall be regarded as the principal bank account of a FSC is the bank account from which the disbursements described in paragraph (d) of this section are made. The bank account that is regarded as the principal bank account must be maintained in a foreign country which meets the requirements of section 927(e)(3), or in any possession of the United States (as defined in section 927(d)(5)), and it must be ao maintained at all times during the taxable year.

(2) *Maintenance of the account in a bank.* The bank account that is regarded as the principal bank account must be maintained in an institution that is engaged in the conduct of a banking, financing, or similar business, as defined in § 1.954–2(d)(2)(ii) (without regard to whether it is a controlled foreign corporation). The institution may be a U.S. bank, as long as the account is maintained in a branch outside the United States.

(3) *Maintenance of an account outside the United States.* Maintenance of the principal bank account outside the United States means that the account regarded as the principal bank account must be an account maintained on the books of the banking institution at an office outside the United States, but does not require that access to the account can only be made outside the United States. Instructions providing for deposits into or disbursements from the account may originate in the United States without affecting maintenance of the account outside the United States.

(4) *Maintenance of the account at all times during the taxable year.* The term "at all times during the taxable year" generally means for each day of the taxable year. However, an account will be treated as maintained at all times during the taxable year even though there are days during that year when there are no funds in the account. In the case of a newly organized FSC, thirty days may elapse between the time the FSC is created or organized and the time a bank account is opened without causing the FSC to fail the requirement that it maintain its principal bank account outside the United States at all times during the taxable year. Also, a FSC shall be treated as satisfying this requirement if the account that is regarded as its principal bank account is terminated during the taxable year, provided that (i) such termination is the result of circumstances beyond the FSC's control, and (ii) the FSC establishes a new principal bank account within thirty days after such termination. A FSC may close its principal bank account at any time as long as it is replaced with another account that qualifies under this paragraph (c) as a principal bank account without any lapse during which there is no principal bank account of the FSC.

(5) *Other accounts.* The FSC may maintain other bank accounts, in addition to its principal bank account. Such other accounts may be located anywhere, without limitation. The mere existence of such other accounts will not cause the FSC to fail to satisfy the requirements of section 924(c).

(d) *Disbursement of dividends, legal and accounting fees, and salaries of officers and directors out of the principal bank account of the FSC*—(1) *In general.* Section 924(c)(3) requires that all dividends, legal fees, accounting fees, salaries of officers of the FSC, and salaries or fees paid to members of the board of directors of the FSC that are disbursed during the taxable year must be disbursed out of bank accounts of the FSC maintained outside the United States. In addition, paragraph (c) of this section provides that the bank account from which those amounts are disbursed is regarded as the principal bank account of the FSC for purposes of section 924(c). Thus, those amounts must be paid from a single bank account, and that account must meet the requirements of the account that is regarded as the principal bank account of the FSC. Legal or accounting fees, salaries of officers, and salaries or fees of directors that are paid by a related person wholly or partially on behalf of a FSC are not considered disbursed by the FSC until the related person is reimbursed by the FSC. Any reimbusement for amounts paid on behalf of the FSC that is actually paid must be disbursed out of the FSC's principal bank account, as set forth in paragraph (c) of this section.

(2) *Dividends.* For purposes of section 924(c) and this section only, the term "dividends" is limited to cash dividends actually paid pursuant to a declaration or authorization by the FSC. Therefore, a constructive dividend that is deemed to be paid will not be included as a dividend under section 924(c), regardless of the source of such constructive dividend. Likewise, a distribution of property other than money that is a dividend under section 316 will not be included as a dividen under section 924(c).

(3) *Legal and accounting fees.* For purposes of this section, legal and accounting fees do not include salaries paid to legal and accounting employees of the FSC (or a related person). Legal and accounting fees only include fees paid to independent persons performing legal or accounting services for the FSC.

(4) *Salaries of officers and directors.* For purposes of this section, salaries of officers and salaries or fees of directors are only those salaries or fees paid for services as officers or directors of the FSC. If an individual officer, director, or employee of a related person is also an officer or director of a FSC and receives additional compensation for services performed for the FSC, the portion of the compensation paid to that individual that is for services performed for the FSC is required to be disbursed out of the FSC's principal bank account. For purposes of this section, the term "compensation" is defined as set forth in paragraphs (d) (1) and (2) of § 1.415–2.

§ 1.924(d)–1T Temporary regulations; requirement that economic processes take place outside the United States.

(a) *In general.* Section 924(b)(1)(B) provides that a FSC has foreign trading gross receipts from any transaction only if economic processes with respect to such transaction taken place outside the United States as provided in section 924(d). Section 924(d) and this section set forth the rules for determining whether a sufficient amount of the economic processes of a transaction take place outside the United States. Generally, a transaction will qualify if the FSC satisfies two different requirements: Participation outside the United States in the sales portion of the transaction, and satisfaction of either the 50-percent or the 85-percent foreign direct cost test. The activities comprising these economic processes may be performed by the FSC or by any other person acting under contract with the FSC (hereinafter referred to as "FSC (or other person)" or as "FSC"). The FSC (or other person) may act upon standing instructions from another person in the performance of any activity, whether a sales activity under paragraph (c) of this section or an activity relating to the disposition of export property under paragraph (d) of this section and § 1.924(e)–1T. Except as otherwise provided, the location of any activity is determined by the place where the activity is initiated by the FSC (or other person), and not by the location of any person transmitting instructions to the FSC (or other person).

(b) *Activities performed by another person.* Any person, whether domestic or foreign, and whether or not related to the FSC, may perform any activity required to satisfy this section, provided the activity is performed pursuant to a

contract for the performance of that activity on behalf of the FSC. Such a contract may be any oral or written agreement which constitutes a contract at law. The person performing the activity is not required to have a contract directly with the FSC, and, thus, may be a subcontractor of a person under contract with the FSC. If the FSC does not perform the activity itself, it must maintain records adequate to establish, with respect to each transaction or group of transactions, that the activity was performed and that the performance of such activity took place outside the United States. If the person performing the activity on behalf of the FSC is an independent contractor, the FSC may relay on a written declaration from that person stating that the activities are actually performed by that person on behalf of the FSC, and, are performed outside the United States. An invoice or a receipt for payment will be considered as such a written declaration if it specifies that the activities were performed outside the United States or specifies a particular place outside the United States where the activities were performed. If the person performing the activity on behalf of the FSC is a related person, the FSC must maintain other records adequate to establish that the activities were actually performed and where the activities were performed, in the same manner as if the FSC performed the activities itself.

(c) *Participation outside the United States in the sales portion of the transaction)*—(1) *In general.* The requirement of section 924(d)(1)(A) is met with respect to the gross receipts of a FSC derived from any transaction if the FSC (or other person) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction (hereinafter described as "sales activities"), as provided in this paragraph (c). If any sales activity occurs with respect to a single contract for more than one transaction (or for items grouped separately for other purposes), that sales activity will apply to each transaction (or item), regardless of the fact that the transactions (or items), are grouped separately for other purposes (such as satisfying the foreign direct cost tests). Transactions may also be grouped according to transactions with a single customer during the FSC's taxable year for purposes of determining performance of any sales activity. For example a FSC performs one or more sales activities with respect to a contract for several shipments of each of two different products. Each shipment is considered a separate transaction for billing purposes. Each product is grouped separately for purposes of determining foreign direct costs of advertising with respect to sales of that product. The FSC is considered to have performed the sales activities with respect to each transaction, regardless of its groupings of products or transactions for other purposes.

(2) *Solicitation (other than advertising).* For purposes of this paragraph (c), "solicitation (other than advertising)" refers to any communication (by any method, including, but not limited to, telephone, telegraph, mail, or in person) by the FSC (or other person), at any time during the 12 month period immediately preceding the execution of a contract relating to the transaction, to a specific, targeted customer or potential customer, that specifically addresses the customer's attention to the product or service covered by the transaction. Activities that would otherwise constitute advertising (such as sending sales literature to a customer or potential customer) will be considered solicitation (other than advertising) if the activities are directed at a specific, targeted customer, and the costs of the activity are not taken into account as advertising under the foreign direct cost tests. Solicitation (other than advertising) may take place at the same time as, and in conjunction with, another sales activity.

(3) *Negotiation.* For purposes of this paragraph (c), "negotiation" refers to any communication by the FSC (or other person) to a customer or potential customer of one or more of the terms of a transaction, including, but not limited to, price, credit terms, quantity, or time or manner of delivery. Negotiation does not include the mere receipt of a communication from a customer (such as an order) that includes terms of a sale. Negotiation may take place at the same time as, and in conjunction with, another sales activity.

(4) *Making of a contract.* For purposes of this paragraph (c), "making of a contract" refers to performance by the FSC (or other person) of any of the elements necessary to complete a sale, such as making an offer or accepting an offer. Acceptance of an unsolicited bid or order is considered the "making of a contract" even if no solicitation or negotiation occurred with respect to the transaction. The written confirmation by the FSC (or other person) to the customer of an oral or written agreement which confirms variable contract terms or specifies (directly or by cross-reference) additional contract terms will be considered the making of a contract. A written confirmation is any confirmation expressed in writing, including a telegram, telex, or other similar written communication. The making of a contract may take place at the same time as, and in conjunction with, another sales activity.

(d) *Satisfaction of either the 50-percent or the 85-percent foreign direct cost test*—(1) *In general.* Section 924(d)(1)(B) requires, for the gross receipts of a transaction to qualify as foreign trading gross receipts, that the foreign direct costs incurred by the FSC attributable to the transaction equal or exceed 50 percent of the total direct costs incurred by the FSC attributable to the transaction. The direct costs referred to are those costs attributable to activities described in the five categories of section 924(e). Section 924(d)(2) provides that, instead of satisfying the 50-percent foreign direct cost test of section 924(d)(1)(B), the FSC may incur foreign direct costs attributable to activities described in each of two of those categories that equal or exceed 85 percent of the total direct costs attributable to the activity described in that category. If no direct costs are incurred by the FSC in a particular category, that category shall not be taken into account for purposes of determining satisfaction of either the 50-percent or the 85-percent foreign direct cost test. However, if any amount of direct costs, no matter how small, is incurred in a particular category, that category shall be taken into account for purposes of the foreign direct cost tests.

(2) *Direct costs*—(i) *Definition of direct costs.* For purposes of section 924(d), direct costs are those costs which are incident to and necessary for the performance of any activity described in section 924(e). Direct costs include the cost of materials which are consumed in the performance of the activity, and the cost of labor which can be identified or associated directly with the performance of the activity (but only to the extent of wages, salaries, fees for professional services, and other amounts paid for personal services actually rendered, such as bonuses or compensation paid for services on the basis of a percentage of profits). Direct costs also include the cost of equipment or facilities (or the use thereof) that can be specifically identified or associated with the activity, as well as the contract price of an activity performed on behalf of the FSC by a contractor. If costs of services or the use of facilities are only incidentally related to the performance of an activity described in section

924(e), only the incremental cost is considered to be identified directly with the activity. For example, supervisory, administrative, and general overhead expenses, such as telephone service, are not normally identified directly with particular activities described in section 924(e), but the cost of a long distance telephone call made to arrange for delivery of export property is identified directly with the activities described in section 924(e)(2). Direct costs of any activity may be more specifically defined or limited in connection with the definition of the specific activity. Direct costs for purposes of section 924(d) do not necessarily include all of the expenses taken into account for purposes of determining the taxable income of the FSC or the combined taxable income of the FSC and its related supplier.

(ii) *Allocation of direct costs.* For purposes of this section only, if costs are identified with more than one activity (whether or not all of the activities are described in section 924(e)), the portion of the costs attributable to each activity shall be determined by allocating the costs among the activities in any manner that is consistently applied and that reasonably reflects relative costs that would be incurred by performing each activity independently. If costs of an activity are attributable to more than one transaction or group of transactions, the portion of the costs attributable to each transaction or grouping shall be determined by allocation the costs among the transactions or groupings in any manner that is consistently applied and that reasonably reflects relative costs that would be incurred by performing the activity independently with respect to each transaction or grouping.

(3) *Total direct costs.* The term "total direct costs" means all of the direct costs of any transaction attributable to activities described in any paragraph of section 924(e). For purposes of the 50-percent foreign direct cost test of section 924(d)(1)(B), total direct costs are determined based on the direct costs of all activities described in all of the paragraphs of section 924(e). For purposes of the 85-percent foreign direct cost test of section 924(d)(2), however, the total direct costs are determined separately for each paragraph of section 924(e).

(4) *Foreign direct costs.* The term "foreign direct costs" means the portion of the total direct costs of any transaction that is attributable to activities performed outside the United States. For purposes of the 50-percent foreign direct cost test, foreign direct costs are determined based on the direct costs of all activities described in all of the paragraphs of section 924(e). For purposes of the 85-percent foreign direct cost test, however, foreign direct costs are determined separately for each paragraph of section 924(e).

(5) *Fifty percent foreign direct cost test.* To satisfy the requirement of section 924(d)(1)(B), the foreign direct costs incurred by the FSC attributable to the transaction must equal or exceed 50 percent of the total direct costs attributable to the transaction. This test looks to the cost of the activities described in section 924(e) on an aggregate basis; therefore it is not necessary that the foreign direct costs of each activity, or of each paragraph of section 924(e), equal or exceed 50 percent of the total direct costs of that activity or paragraph. However, in order to use this test, the FSC must incur direct costs that are attributable to activities described in each of at least three of the five paragraphs of section 924(e). For example, for a given transaction, the direct costs attributable to activities described in each of two of the paragraphs of section 924(e) are $25, none of which are foreign direct costs. There are no direct costs attributable to activities described in two other paragraphs of section 924(e), and there are $50 of direct costs attributable to activities described in the fifth paragraph, all of which are foreign direct costs. The 50-percent foreign direct cost test is satisfied with respect to that transaction because there are $50 of foreign direct costs out of $100 of total direct costs. However, if no direct costs were incurred with respect to activities described in three paragraphs of section 924(e), the 50-percent foreign direct cost test would not be satisfied, regardless of the portion of the total direct costs of the other two paragraphs that were foreign direct costs. In that case, the transaction must be analyzed under the 85-percent foreign direct cost test if it is to qualify as producing foreign trading gross receipts.

(6) *Eighty-five percent foreign direct cost test.* To satisfy the requirement of section 924(d)(2), the foreign direct costs of a transaction incurred by the FSC attributable to activities described in each of at least two paragraphs of section 924(e) must equal or exceed 85 percent of the total direct costs attributable to activities described in that paragraph. This test looks to costs of the activities on a paragraph-by-paragraph basis (but not on an activity-by-activity basis), so, for example, the foreign direct costs of advertising and sales promotion are aggregated with each other for this purpose, but they are not aggregated with the foreign direct costs of transportation. For example, RS, a related supplier, receives payment for a sale of export property in its United States bank account on behalf of its FSC. The payment is received in foreign currency. RS incurs $10X of direct costs of maintaining a bank account that are attributable to the receipt of payment for the transaction, and these costs are not foreign direct costs. RS also incurs $90X of direct costs in fees for converting the foreign currency into U.S. dollars. The currency conversion costs are foreign direct costs attributable to the transaction under § 1.924(e)–1T(d)(2). RS has a contract with FSC to perform the activities of receiving payment with respect to the transaction on behalf of FSC. Under these circumstances, FSC has satisfied the 85-percent foreign direct cost test for receipt of payment with respect to the transaction. However, if FSC also contracted with RS to perform all activities of the determination and transmittal of a final invoice or statement of account with respect to the transaction, and in performing those activities RS incurred $20X of direct costs, none of which were foreign direct costs, FSC would fail the 85-percent foreign direct cost test for the activities described in paragraph (4) of section 924(e) because the direct costs of all the activities described in that paragraph are aggregated for purposes of this test.

(e) *Special rules for grouping of transactions.* For purposes of section 924 and this section only, the taxpayer may elect, on an annual basis, to apply any rule which, but for this paragraph (e), would be applied on a transaction-by-transaction basis, on the basis of groups as set forth in this paragraph (e). However, any groupings used must be supported by adequate documentation of performance of activities, or costs of activities, relating to the groupings used.

(1) *Standards for groups.* A determination by a taxpayer as to a grouping will be accepted by a district director if such determination conforms to any of the following standards:

(i) *Product or product line groupings.* A product or product line grouping may be based either on a recognized trade or industry usage, or on a two digit major group (or on any inferior classification or combination of inferior classifications within a major group) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President.

(ii) *Customer groupings.* A customer grouping includes all transactions of the FSC with a particular customer during the FSC's taxable year.

(iii) *Contract groupings.* A contract grouping includes all transactions of the FSC under a particular contract. For purposes of the sales activities, satisfaction of the performance requirement for a contract grouping will apply to all transactions under a contract for the entire duration of the contract. For purposes of the foreign direct cost tests, the tests will be applied to all transactions within a contract grouping during each taxable year of the FSC; however, at the choice of the taxpayer, all transactions under a contract that occur in the first or the last year of the contract may be included with, respectively, the next succeeding or the immediately preceding taxable year in applying these tests.

(iv) *Product or product line groupings within customer or contract groupings.* Groupings may be based on product or product line groupings within customer or contract groupings.

(2) *Transactions included in a grouping.* A choice by the taxpayer to group transactions shall generally apply to all transactions within the scope of that grouping. However, the choice of a grouping applies only to transactions covered by the grouping and, as to transactions not encompassed by the grouping, the determinations are made on a transaction-by-transaction basis. For example, the taxpayer may choose a product grouping with respect to one product and use the transaction-by-transaction method for another product within the same taxable year. In addition, if a taxpayer is permitted to apply certain rules on the basis of other types of groupings, such as all sales to a particular customer, transactions included in those other groupings shall be excluded from product groupings.

(3) *Different groupings allowed for different purposes.* A choice by the taxpayer to group transactions may be made separately for each of the sales activities under section 924(d)(1)(A) and for each of the activities relating to the disposition of export property under section 924(d)(1)(B) or section 924(d)(2). Groupings used for purposes of section 924 will have no bearing on the availability (or unavailability) of groupings for other purposes. This paragraph (e) does not apply for purposes of section 925 or for any purposes other than the foreign economic processes requirements of section 924.

(f) *Exception for military property.* The requirements of this section do not apply to any activities performed in connection with the sale of military property if the activities are required by law or regulation to be performed in the United States, by the United States Government, or in conjunction with the United States Government. In addition, activities directed related to activities described in the previous sentence are not subject to the requirements of this section if they cannot reasonably be performed outside the United States. The expenses incurred by the FSC in connection with such activities are not taken into account in determining whether the FSC has satisfied the requirements of section 924(d) and this section.

§ 1.924(e)–1T Temporary Regulations; Activities relating to the disposition of export property.

(a) *Advertising and sales promotion.* For purposes of section 924(e), advertising and sales promotion are defined as follows.

(1) *Advertising*—(i) *Advertising defined.* Advertising means the announcement or description of property or services described in section 924(a), in some medium of mass communication (such as radio, television, mass mailings, or billboards), in order to induce multiple potential customers to buy or rent the property or services. Advertising is not required to be directed to the general public, but may be focused toward any group of potential export customers. Advertising not related to one or more specific products or product lines (or services), such as advertising intended solely to build a favorable image of a company or group of companies, is not included in this definition of advertising. Advertising primarily directed at customers in the United States is not included in this definition of advertising, nor is advertising related to property or services not described in section 924(a).

(ii) *Direct costs of advertising.* Direct costs of advertising include costs of transmitting or distributing the advertising to potential customers, but do not include costs of preparing the announcement or description for potential use as advertising. Direct costs of sending sales literature to customers or potential customers may be taken into account as advertising costs as long as the activity does not constitute solicitation (other than advertising), and is not taken into account for purposes of the sales activity requirements of § 1.924(d)–1T(c).

(iii) *Location of advertising.* The location of advertising activity is the place to which the advertising is transmitted, displayed, distributed, mailed, or otherwise conveyed to the potential customers. The FSC may rely on the distribution statistics of the publisher of print media or the broadcaster of broadcast media through which the advertising is distributed. For example, a television advertisement that is broadcast to a foreign country constitutes advertising activity outside the United States even though the broadcast signal originates in the United States; therefore the cost of that advertising activity is a foreign cost.

(2) *Sales promotion*—(i) *Sales promotion defined.* Sales promotion means an appeal made in person to a potential export customer for the sale or rental of property or services described in section 924(a), made in the context of a trade show or customer meeting. Sales promotion does not include an appeal made in the context of any show or event primarily aimed at U.S. customers or an appeal for the sale or rental of property or services not described in section 924(a). However, a show or event in the United States that is primarily aimed at the export of goods or services described in section 924(a) constitutes sales promotion.

(ii) *Direct costs of sales promotion.* Direct costs of sales promotion include costs such as rental of space at trade shows, payments to organizers or other persons hired for the event, and rental of display equipment and decorations for the event. However, direct costs of sales promotion do not include the cost of salaries and commissions of direct sales people or the cost of printed advertising materials that are used for general advertising as well as sales promotion.

(iii) *Location of sales promotion.* The location of sales promotion activity is the place at which the trade show or customer meeting is held.

(b) *Processing of customer orders and arranging for delivery of the export property.* For purposes of section 924(e), the processing of customer orders and the arranging for delivery of the export property are defined as follows.

(1) *Processing of customer orders*—(i) *Processing of customer orders defined.* The processing of customer orders means notification by the FSC to the related supplier of the order and of the requirements for delivery. The related supplier may have independent knowledge of the order and requirements for delivery. Once the related supplier has been notified of the order and requirements for delivery, subsequent communications about an order (such as changes in quantity or prospective delivery date) are not included in the definition of processing of customer orders.

(ii) *Location of processing of customer orders.* The location of this activity is

foreign direct cost test, foreign direct

sales promotion are aggregated with

grouping includes all transactions of the

the place at which the communication is initiated.

(2) *Arranging for delivery*—(i) *Arranging for delivery defined.* The arranging for delivery of export property means taking necessary steps to have the export property delivered to the customer in accordance with the requirements of the order. Arranging for delivery does not include preparation of the property for shipment (i.e., packaging or crating) or shipment of the property (i.e., transportation). Arranging for delivery does include communications with a carrier or freight forwarder to provide transportation for the export property from the related supplier to the place where the customer takes possession of the property. Arranging for delivery also includes communications with the customer to notify the customer of the time and place of delivery.

(ii) *Direct costs of arranging for delivery.* The direct costs of arranging for delivery include salaries of clerical personnel and costs of telephone, telegraph, mail, and other communications media, but do not include any actual shipping costs.

(iii) *Location of arranging for delivery.* The location of arranging for delivery activity is the place at which the activity is initiated.

(c) *Transportation*—(1) *Transportation defined.* For purposes of section 924(e), transportation means moving or shipping the export property during the period when the FSC owns the property, or during the period after the commission relationship for purposes of transportation begins.

(2) *Direct costs of transportation.* The direct costs of transportation include the expenses of shipping, such as fees paid to carriers and freight forwarders, costs of freight insurance, and documentation fees. With respect to fungible commodities, direct costs include only those costs incurred after the goods have been identified to a contract. Transportation costs do not include any of the costs of arranging for delivery. The FSC is considered to engage in transportation activity whenever it pays the costs of shipping the export property and the property is shipped during the period when the FSC is responsible for the property. If the customer pays the shipping costs directly, the FSC is not considered to engage in transportation activity. However, if the FSC pays the shipping costs, the ultimate transfer of those costs to the customer will not disqualify the FSC from engaging in transportation activity, regardless of whether the costs are included in the sale price of the export property or separately stated.

(3) *Location of transportation.* The location of transportation activity is the area over which the property is transported; thus, the portion of total direct costs of transportation treated as foreign direct costs is the portion attributable to transportation outside the United States, determined on the basis of the ratio of mileage outside the U.S. customs territory to total mileage of transportation. For purposes of determining transportation mileage outside U.S. customs territory, goods are treated as leaving U.S. customs territory when they have been tendered to an international carrier for shipment to a foreign location, as long as they are not removed from the custody of the carrier before they reach a point outside U.S. customs territory.

(d) *Determination and transmittal of a final invoice or statement of account and receipt of payment.* For purposes of section 924(e), the determination and transmittal of a final invoice or statement of account and the receipt of payment are defined as follows:

(1) *Determination and transmittal of a final invoice or statement of account*—(i) *Determination and transmittal of a final invoice or statement of account defined.* The determination and transmittal of a final invoice or statement of account means the assembly of a final invoice or statement of account and the forwarding of that document to the customer. A final invoice is an invoice upon which payment is made by the customer. An invoice forwarded to the customer after payment has been tendered, as a receipt for payment, satisfies this definition. A statement of account is any summary statement forwarded to a customer to inform of, or confirm, the status of transactions occuring within an accounting period that does not exceed one taxable year. A single final invoice or statement of account can cover more than one transaction with one customer.

(ii) *Direct costs of determination and transmittal of a final invoice or statement of account.* Direct costs of this activity include costs of office supplies, office equipment, clerical salaries and mail or other delivery services, if the costs can be identified or associated directly with the assembly and transmittal of a final invoice or statement of account. Costs of establishing a price, or of communicating prices or other billing information between the FSC and a related supplier, are not direct costs of this activity.

(iii) *Location of determination and transmittal of a final invoice or statement of account.* The location of this activity is the place at which the final invoice or statement of account is assembled for forwarding to the customer or the place from which it is forwarded to the customer.

(2) *Receipt of payment*—(i) *Receipt of payment defined.* The receipt of payment means the crediting of the FSC's bank account by the amount of proceeds or commission associated with the transaction.

(ii) *Direct costs of receipt of payment.* Direct costs of receiving payment include the expenses of maintaining a bank account of the FSC in which payment is deposited. If payment is received in foreign currency, any fees or service charges incurred for converting the payment into U.S. currency are considered to be foreign direct costs of receiving payment; however, exchange losses (or gains) are not costs of receiving payment.

(iii) *Location of receipt of payment.* The location of this activity is the office of the banking institution at which the account is maintained. If payment is made by the purchaser directly to the related supplier in the United States, and the related supplier transfers the funds to a bank account of the FSC outside the United States within 5 business days after receipt of good funds by the related supplier's bank, the FSC is considered to have received payment outside the United States.

(e) *Assumption of credit risk*—(1) *Assumption of credit risk defined.* For purposes of section 924(e), the assumption of credit risk means bearing the economic risk of nonpayment with respect to a transaction. If the FSC is acting as a commission agent for the related supplier, this risk is borne by the FSC if the commission contract transfers the economic risk of nonpayment with respect to the transaction from the related supplier to the FSC.

(2) *Direct costs of assumption of credit risk.* Direct costs of the assumption of credit risk include debts that become uncollectible and additions to bad debt reserves of the FSC that are allowed as deductions under section 166. Other direct costs of the assumption of credit risk are:

(i) Costs of obtaining insurance against the risk of nonpayment (such insurance must be obtained from an unrelated insurer and must cover the risk of nonpayment due to default by the purchaser—insurance obtained from a related insurer, or insurance that covers risks of war or political unrest but does not cover ordinary default or bankruptcy, is not sufficient);

(ii) Costs of investigating and approving credit for potential customers.

including costs of membership in a credit association for that purpose;

(iii) Costs of factoring trade receivables; and

(iv) Cost of letters of credit and documentary collection costs.

(3) *Location of assumption of credit risk.* The location of the activity of assumption of credit risk is generally the location of the customer or obligor whose payment is at risk; however, the location of investigating and approving credit is the location of the credit agency or association performing the investigation.

(4) *Special grouping rules.* (i) If the FSC chooses to group transactions, and is actually assuming the risk of loss (either by owning the property sold or contracting to assume the risk of loss for property for which it is a commission agent), it is considered to have performed this activity for all transactions within the group during each of three consecutive years if it incurs an actual loss (or is allowed to deduct an addition to a bad debt reserve under section 166) on any transaction within that group in at least one of those three years. If, however, the FSC does not incur a loss (or add to a bad debt reserve) in either of two consecutive years, and then fails to satisfy the requirement of assumption of credit risk in the third consecutive year because it does not incur a loss (or add to a bad debt reserve) in that third year, the FSC will be deemed to have satisfied the requirement of assumption of credit risk for the first two consecutive years.

(ii) If the FSC chooses to group transactions, and does not actually assume the risk of loss with respect to each transaction within the group, but regularly insures against such loss or regularly factors all trade receivables from transactions within the group, paragraph (e)(4)(i) of this section shall not apply and the FSC must satisfy the requirement of assumption of credit risk by incurring foreign direct costs through insurance, factoring, and so forth, in each year in which that requirement is used for purposes of sections 924 and 925 with respect to the group of transactions. Thus, no actual loss need be incurred by a FSC to satisfy the requirement of assumption of credit risk if the FSC does not actually bear a risk of loss.

§ 1.925(b)-1T Temporary Regulations; Commission FSC.

Except as otherwise provided, a commission FSC is required to satisfy the requirements of section 924(c) (relating to management outside the United States), section 924(d) (relating to economic processes taking place outside the United States), and section 925(c) (relating to activities that must be performed in order to use administrative pricing rules), in the same manner as a buy-sell FSC. However, the requirements of sections 924(d) and 925(c) may be performed either by the FSC or by any person (whether or not related to the FSC) acting under a contract with the FSC for the performance of the required activities on behalf of the FSC. Thus, for example, the commission FSC may satisfy both the requirement of receipt of payment for purposes of section 925(c) and the requirement of receipt of payment outside the United States for purposes of section 924(d) if the FSC receives the payment from a sale of export property in its foreign bank account and remits the proceeds to its related supplier. Alternatively, the FSC may satisfy both of these requirements if the related supplier, acting under a contract with the FSC, receives the payment on behalf of the FSC in a foreign bank account of the related supplier, and later pays the FSC the commission allowable under section 925(b) with respect to the sale less the fee to which the related supplier is entitled for performing the activity of receiving payment on behalf of the FSC. Another alternative is that the related supplier is not acting under contract with the FSC for purposes of receiving payment, and it receives the proceeds of the transaction in its domestic bank account. In this case, the commission FSC may satisfy the receipt of payment requirement by receiving the commission from the related supplier, in accordance with the rules of § 1.924(e)-1T(d)(2)(iii), rather than by receiving the entire proceeds from the transaction.

§ 1.925(c)-1T Temporary Regulations; Requirements for use of administrative pricing rules in computer taxable income of a FSC.

(a) *In general.* Section 925(c) requires that a FSC perform all of the activities described in section 924(d)(1)(A), and all of the activities described in section 924(e) that are attributable to a particular sale (or group of sales transactions), in order to use the pricing rules of section 925(a) (1) and (2) to determine the FSC's taxable income attributable to that sale (or group of sales transactions). This means that all three of the sales activities in section 924(d)(1)(A) must be performed. However, only those activities listed in section 924(e) that occur with respect to a transaction must be performed by the FSC (or another person acting under a contract to perform the activity for the FSC), but the activities do not have to be performed merely to comply with section 925(c). For example, if a FSC sells export property to a related foreign distributor, or if a FSC sells export property to an unrelated foreign purchaser in exchange for payment in cash, there may be no credit risk with respect to the transaction so there can be no assumption of credit risk by the FSC; this will not prevent the FSC from satisfying the requirements of section 925(c) if the FSC (or its contractor or subcontractor) performs all of the specified activities that actually occur with respect to the transaction. If any activities are performed by a person related to the FSC, and would be activities described in section 925(c) except for the fact that the activities were not performed pursuant to a contract for the performance of the activities on behalf of the FSC, the FSC may not use the pricing rules of section 925(a) (1) and (2) to determine the FSC's taxable income attributable to the sale to which the activities relate.

(b) *Compensation of a person related to the FSC for performance of activities specified in section 925(c).* Section 925(c) permits the required activities to be performed by either the FSC or another person acting under a contract with the FSC. If the FSC contracts with a related person (whether or not that person is the related supplier) to perform any activities on behalf of the FSC, that related person must be compensated for the performance of the activities. The amount of the compensation will be determined generally in accordance with the rules under section 482, and in particular in accordance with § 1.482-2(b). Such compensation will be taken into account as expenses in the determination of combined taxable income for the transaction or transactions to which the activity is related if the activity is performed by a person other than the related supplier.

(c) *Activities performed by the FSC in connection with sales of military property.* Any activities that must be performed by the FSC (or by another person acting under a contract with the FSC) to meet the requirements of section 925(c) are taken into account for that purpose, regardless of whether the costs of those activities are not taken into account for purposes of section 924(d) because the activities are required by law or regulation to be performed in the United States or by the United States Government. All such activities that are performed in connection with the transaction are considered to be performed by the FSC or under a contract with the FSC, even if they are performed by the United States

separately stated.

this activity is the place at which the

approving credit for potential customers.

economic processes taking place outside

performed merely to comply with

performed by the United States

Government and are not performed pursuant to a contract for the performance of the activities on behalf of the FSC. All actual costs incurred by the FSC in connection with the performance of such activities must be taken into account in determining the combined taxable income of the FSC and its related supplier.

§ 1.927–1T Temporary Regulations; Definitions and special rules relating to Foreign Sales Corporations.

(a) *Definition of related supplier.* For purposes of sections 921 through 927 and the regulations thereunder, the term "related supplier" means a related party which directly supplies to a FSC any property or services which the FSC disposes of in a transaction producing foreign trading gross receipts, or a related party which uses the FSC as a commission agent in the disposition of any property or services producing foreign trading gross receipts. A FSC may have different related suppliers with respect to different transactions. If, for example, X owns all the stock of Y, a corporation, and of Z, a FSC, and X sells a product to Y which is resold to Z, only Y is the related supplier of Z. If, however, X sells directly to Z and Y also sells directly to Z, then, as to the transactions involving direct sales to Z, each of X and Y is a related supplier of Z.

(b) *Definition of related party.* The term "related party" means a person which is owned or controlled directly or indirectly by the same interests as the FSC within the meaning of section 482 and § 1.482–1(a).

(Approved by the Office of Management and Budget under control number 1545–0904)

This Treasury decision is issued under the authority contained in section 924(d)(4) (98 Stat. 989; 26 U.S.C. 924(d)(4)), section 925(b) (98 Stat. 990; 26 U.S.C. 925(b)), section 927(d)(2)(B) (98 Stat. 993; 26 U.S.C. 927(d)(2)(B), and section 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954. Approved by the Office of Management and Budget under control number 1545–0904.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 6, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–32300 Filed 12–7–84; 9:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[T.D. 7992]

Income Tax; Taxable Years Beginning After December 31, 1953; Installment Treatment of Certain Deemed Distributions to DISC Shareholders

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of Temporary Income Tax Regulations.

SUMMARY: This document contains an amendment to Treasury decision 7983, 49 FR 40011, October 12, 1984, which provided temporary regulations relating to the transitional rules for Domestic International Sales Corporations (DISCs), DISC shareholders, and Foreign Sales Corporations (FSCs), under Title VIII of the Tax Reform Act of 1984. These amendments to the temporary regulations affect the above described persons and provide them with guidance necessary to comply with the Tax Reform Act of 1984.

DATES: This amendment to the temporary regulations is effective on October 12, 1984, and applies to certain computations and an election which can only be made after December 31, 1984, with respect to certain taxable years ending on or after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (202–566–3289, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1984 (49 FR 40011), the **Federal Register** published amendments to the Temporary Income Tax Regulations under the Tax Reform Act of 1984. The amendments were made to conform the regulations to certain provisions of Title VIII, sections 801 through 805 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 494, 985). Section 1.921–1T(a)(10), Question and Answer–12, of those temporary regulations relates to section 805(b)(3) of the Tax Reform Act of 1984.

Section 805(b)(3) of the Tax Reform Act of 1984 provides a special 10-year installment treatment for certain deemed distributions to DISC shareholders applicable only in certain situations where the DISC and the shareholder have non-conforming 1984 taxable years. See section 805(b)(3)(B) of the Tax Reform Act of 1984.

As issued and published in Treasury decision 7983, Question and Answer-12 does not limit the availability of the special 10-year installment treatment to those cses where the DISC and the DISC shareholder have non-conforming 1984 taxable years described in section 805(b)(3)(B)(ii). The failure of Question and Answer-12 to reflect fully the limitation contained in section 805(b)(3)(B)(ii) was not intended.

This Treasury decision amends T.D. 7983, § 1.921–1T(a)(10), Question and Answer-12, by amending Answer-12 to reflect the non-conforming taxable year requirement and to clarify that, for estimated tax purposes, any deemed distribution under the special 10-year installment treatment shall be treated as received by the shareholder on the last day of any taxable year in which the shareholder is required to include such a deemed distribution in income.

This Treasury decision also amends Question and Answer-12 by changing the taxable year for which the DISC shareholder must elect the application of the 10-year installment treatment. Under Question and Answer-12, as issued and published in Treasury decision 7983, the DISC shareholder was required to make the election by attaching a statement to its tax return for the first taxable year for which an installment is treated as received. The amended Question and Answer-12 contained in this Treasury decision requires that the DISC shareholder must make the election for its taxable year which includes December 31, 1984. To make the election, the DISC shareholder must attach a statement to its timely filed tax return (including extensions) for its taxable year which includes December 31, 1984, indicating the total amount of the DISC's deemed distribution for 1984, and the number of equal installments, if less than 10, over which the shareholder wishes to spread the deemed distribution for 1984. If the election is made, it may not be changed or revoked.

The amended Question and Answer-12 contained in this Treasury decision is not intended to address comprehensively all issues raised by section 805(b)(3) of the Tax Reform Act of 1984. Taxpayers may rely for guidance on Question and Answer-12, as amended, which the Internal Revenue Service will follow in resolving issues arising under section 805(b)(3) of the Tax Reform Act of 1984. No inference, however, should be drawn regarding questions not expressly raised and answered.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this amendment to the temporary regulations is not subject to review under Executive Order 12291 or the Treasury and OBM implementation of the Order dated April 20, 1983. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Jacob Feldman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, FSC, Foreign investments in the U.S., Foreign tax credit, Source of income, United States investments abroad.

Amendment to Treasury Decision 7983 and the Temporary Regulations

The Temporary Income Tax Regulations provided by Treasury decision 7983, 49 FR 40011, FR Doc. 84–26886, October 12, 1984, are amended as follows:

PART 1—[AMENDED]

Section 1.921–1T(a)(10) (Question and Answer-12) is revised to read as follows:

§ 1.921–1T Temporary regulations providing transition rules for DISCs and FSCs.

(a) *Termination of a DISC* • • •

(10) *Deemed distribution for 1984.*

Question 12: How is the deemed distribution to a shareholder for the DISC's taxable year ending December 31, 1984, taken into account?

Answer 12 (i) If the taxable year of the DISC ending on December 31, 1984, (A) is the first taxable year of the DISC which begins in 1984, (B) begins after the date in 1984 on which the taxable year of the DISC's shareholder begins, and (C) if the DISC's shareholder makes an election under section 805(b)(3) of the Tax Reform Act of 1984, the deemed distribution under section 995(b) with respect to income derived by the DISC for such taxable year of the DISC shall be treated as received by the shareholder in 10 equal installments (unless the shareholder elects to be treated as receiving the deemed distribution in income over a smaller number of equal installments). The first installment shall be treated as received by the shareholder on the last day of the shareholder's second taxable year beginning in 1984 (if any), or if the shareholder had only one taxable year which began in 1984, on the last day of the shareholder's first taxable year beginning in 1985. One installment shall be treated as received by the shareholder on the last day of each succeeding taxable year of the shareholder until the entire amount of the DISC's 1984 deemed distribution has been included in the shareholder's taxable income. To make the election under section 805(b)(3) of the Tax Reform Act of 1984, the DISC shareholder must attach a statement to its timely filed tax return (including extensions) for its taxable year which includes December 31, 1984, indicating the total amount of the shareholder's pro rata share of the DISC's deemed distribution for 1984 (determined under section 995(b) of the Code without regard to the election under section 805(b)(3) of the Tax Reform Act of 1984), and the number of equal installments, if less than 10, over which the shareholder wishes to spread its pro rata share of the deemed distribution for 1984. If the election under section 805(b)(3) of the Tax Reform Act of 1984 is made, it may not be changed or revoked. In determining estimated tax payments, the portion of the deemed distribution includible in the shareholder's taxable income for any taxable year under this subdivision—

(i) Shall be treated as received by the shareholder on the last day of such taxable year.

(ii) Except as provided in subdivision (i), the deemed distribution under section 995(b) with respect to income derived by the DISC for its taxable year ending on December 31, 1984, shall be included in the shareholder's taxable income for its taxable year which includes December 31, 1984. Thus, if the taxable year of the DISC and the DISC's shareholder both begin on January 1, 1984, and end on December 31, 1984 (or, if the taxable year of the DISC beginning in 1984 begins before the taxable year of the DISC's shareholder), the deemed distribution with respect to the DISC's taxable year ending on December 31, 1984, will be included in the DISC shareholder's taxable year ending on (or including) December 31, 1984, and the election described in subdivision (i) may not be made.

(iii) The provisions of this Question and Answer-12 apply without regard to any existence of the DISC after December 31, 1984, as an interest charge DISC.

• • • • •

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. Publication of this Question and Answer is necessary for DISC shareholders to account properly for the deemed distribution under section 995(b) of the Code for the taxable year of a DISC ending on December 31, 1984. For this reason, it is impractical to issue this Treasury decision with notice and public procedure under section 553(b) of Title 5 of the United States Code, or subject to the effective date limitations of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 805(b)(3) (C) and (D) of the Tax Reform Act of 1984 (98 Stat. 1002), and section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 5, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–32297 Filed 12–6–84; 5:02 pm]

BILLING CODE 4830–01–M

26 CFR Part 1

[T.D. 7993]

FSC General Rules, Requirements, Definitions, and Special Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Tempory Regulations.

SUMMARY: This document provides temporary Income Tax Regulations concerning the general rules regarding the requirements that a corporation must meet to be a foreign sales corporation (FSC) (or a small FSC) and the tax treatment of a FSC (or a small FSC) and the specific rules regarding the requirements for FSC and small FSC status, the methods of electing and terminating FSC status, and the definition of and computation of carrying charges on sales of property by a FSC. This document also provides temporary Income Tax Regulations concerning the amendment of question and answer 6 of § 1.921–1T(a)(6) and question and answer 7 of § 1.921–1T(b)(7). These temporary regulations provide immediate necessary guidance to FSCs and their shareholders with

BILLING CODE 4830-01-M

decision 7983. Question and Answer-12 determined that this amendment to the

be treated as received by the not be made.

to FSCs and their shareholders with

respect to FSC qualification under Title VIII of the Tax Reform Act of 1984 (Foreign Sales Corporations). The text of the temporary regulations set forth in this document in Paragraph 1 also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

DATE: The regulations are effective for taxable years beginning after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: P. Ann Fisher of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3289, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1). These amendments provide regulations under new sections 921, 922, and 927, which were added to the Code by section 801 of the Tax Reform Act of 1984 (Pub. L. 98-69, 98 Stat. 985), under section 805 of the Tax Reform Act of 1984 (Pub. L. 98-69, 98 Stat. 1000), and under section 131 of the Tax Reform Act of 1984 (Pub. L. 98-69, 98 Stat. 662). These amendments are issued under the authority contained in sections 367(a)(3)(B), 367(d), 927(d)(1), 927(f), and 7805 of the Internal Revenue Code of 1954 (98 Stat. 662, 26 U.S.C. 367(a)(3)(b); 98 Stat. 663, 26 U.S.C. 367(d); 98 Stat. 993, 26 U.S.C. 927(d)(1); 98 Stat. 994, 26 U.S.C. 927(f); and 68A Stat. 917, 26 U.S.C. 7805) and under the authority contained in section 805 of the Tax Reform Act of 1984 (Pub. L. 98-69, 98 Stat. 1000).

These temporary regulations are presented in the form of questions and answers. The questions and answers are not intended to address comprehensively the issues raised by sections 801, 805 and 131 of the Tax Reform Act of 1984. Taxpayers may rely for guidance on these questions and answers, which the Internal Revenue Service will follow in resolving issues arising under sections 801, 805 and 131 of the Tax Reform Act of 1984. No inference, however, should be drawn regarding questions not expressly raised and answered.

Need for Temporary Regulations

Sections 921, 922 and 927 are generally effective for transactions after December 31, 1984, in years ending after December 31, 1984. The proper application of these sections is dependent upon the Service's specification of the manner in which the requirements of the statute will be administered. Because of the need for immediate guidance in this regard, the Internal Revenue Service has found it to be impractical to issue these temporary regulations either with notice and public comment procedure under section 553(b) of title 5 of the United States Code or under the effective date limitation of section 553(d) of title 5.

Discussion

Statutory Provisions

The Tax Reform Act of 1984 added sections 921-927 to the Internal Revenue Code to provide for the establishment of Foreign Sales Corporations (FSCs). Section 921 describes the tax treatment of the income of a FSC (or a small FSC). Section 922 states the requirements that a corporation must meet to be considered a FSC (or a small FSC). Section 927 provides other definitions, including the definitions of investment income and carrying charges, and provides special rules, including rules for electing and terminating FSC (or small FSC) status.

Description of Temporary Regulations

This regulation deals with general rules, requirements, definitions, and special rules for Foreign Sales Corporations with amendments to two questions and answers under § 1.921-1T of the regulations. The first paragraph of this regulation concerning general rules, requirements, definitions and special rules is divided into four parts. Section 1.921-2T provides the general rules regarding the requirements that a corporation must meet to be a FSC (or a small FSC) and the tax treatment of a FSC (or a small FSC) including the tax treatment of a FSC's foreign trade income, investment income and carrying charges. Section 1.922-1T provides specific rules with respect to the requirements for FSC (or small FSC) status, including the meaning of the "office" that a FSC must maintain under section 922(a)(1)(D)(i). Section 1.927(d)-1T provides rules for computing carrying charges that are considered to be included in the price of property sold by a FSC. Section 1.927(f)-1T provides rules for electing and terminating FSC status.

Section 922(a)(1)(D)(i) requires that a FSC maintain an office located outside the United States in a qualifying country or eligible possession. The regulations explain the meaning of an office for purposes of meeting this requirement. The regulations define an office as a place for the transaction of the business of the corporation and provide that a place is an office if certain requirements are met. To be an office a place must: (1) Have a fixed location; (2) be a building or a portion of a building consisting of at least one room; (3) be equipped for the performance of the corporation's business; (4) be regularly used for some corporate business; and (5) be operated, and owned or leased, by the corporation or by the corporation's dependent or independent agent. Corporate business includes the solicitation, the negotiation, or the making of contracts with respect to sales of export property by the corporation or a related supplier and the preparatory or ancillary activities of the corporation such as the maintenance of a set of permanent books of account (including invoices).

Under sections 921(d), and 924(f)(2), investment income and carrying charges are not foreign trading gross receipts. They are includable in the taxable income of FSC and are treated as income effectively connected with a trade or business conducted through a permanent establishment within the United States. The source of investment income is determined under sections 861, 862, and 863 of the Code. The regulations define and describe the tax treatment of investment income and carrying charges. Under section 927(d) carrying charges include not only stated carrying charges but also any amount in excess of the price for an immediate cash sale and any other unstated interest. The regulations provide rules for determining whether the price of property or services sold by a FSC or a related supplier includes any amount in excess of the price for an immediate cash sale and explain how such amount will be computed. The regulations provide that carrying charges are not imputed under section 927(d) if the sales price of property or services is fully paid before the end of the normal payment period, which is 60 days from the date of the sale or exchange of property under the contract or from the date services under the contract are completed.

The second paragraph of this regulation amends § 1.921-1T(a)(6), question and answer 6. This question and answer relates to the distribution of accumulated DISC income by a former DISC after December 31, 1984 and provides that such a distribution shall be treated as made first out of current earnings and profits and then out of previously taxed income to the extent thereof. This has been amended to provide that, if amounts are distributed before July 1, 1985, such amounts will be treated as made first out of previously taxed income.

The third paragraph of this regulation amends Section 1.921-1T(b)(7), question and answer 7, to clarify that the transfer applies only to a transfer of qualified assets as defined in section 993(b). In addition, a rule is provided to exempt the transfer of the right to use a corporate name to a FSC from the application of section 367 (a) and (d) provided that the corporate name is used only by the FSC and not licensed or made available to other persons by the FSC.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

These regulations were submitted to the Office of Management and Budget for review under the Paperwork Reduction Act and approved under OMB number 1545-0884.

Drafting Information

The principal author of these proposed regulations is P. Ann Fisher of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.861-1 Through 1.997-1

Income taxes, Aliens, Exports, DISC, FSC, Foreign investments in U.S., Foreign tax credit, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

The Income Tax Regulations (26 CFR Part 1) are amended as follows:

Paragraph 1. New §§ 1.921-2T, 1.922-1T, 1.927(d)-1T, and 1.927(f)-1T are added at the appropriate places to read as follows:

§ 1.921-2T Temporary Regulations; Foreign Sales Corporation—General Rules.

(a) *Definition of a FSC and the Effect of a FSC Election.*

Q-1. What is the definition of a Foreign Sales Corporation (hereinafter referred to as a "FSC")?

A-1. As defined in section 922(a), an FSC must satisfy the following eight requirements.

(i) The FSC must be a corporation organized or created under the laws of a foreign country that meets the requirements of section 927(e)(3) (a "qualifying foreign country") or a U.S. possession other than Puerto Rico (an "eligible possession"). See Q&As 3, 4, and 5 of § 1.922-1T.

(ii) A FSC may not have more than 25 shareholders at any time during the taxable year. See Q&A 6 of § 1.922-1T.

(iii) A FSC may not have any preferred stock outstanding during the taxable year. See Q&As 7 and 8 of § 1.922-1T.

(iv) A FSC must maintain an office outside of the United States in a qualifying foreign country or an eligible possession and maintain a set of permanent books of account (including invoices) at such office. See Q&As 9, 10, 11, 12, 13, 14, and 15 of § 1.922-1T.

(v) A FSC must maintain within the United States the records required under section 6001. See Q&A 16 of § 1.922-1T.

(vi) The FSC must have a board of directors which includes at least one individual who is not a resident of the United States at all times during the taxable year. See Q&As 17, 18, 19 and 20 of § 1.922-1T.

(vii) A FSC may not be a member, at any time during the taxable year, of any controlled group of corporations of which an interest charge DISC is a member. See Q&A 3 of this section and Q&A 13, of § 1.921-1T(b)(13).

(viii) A FSC must have made an election under section 927(f)(1) which is in effect for the taxable year. See Q&A 1 of § 1.921-1T(b)(1) and § 1.927(f)-1T.

In addition, under section 441(h), the taxable year of a FSC must conform to the taxable year of its principal shareholder. See Q&A 4 of § 1.921-1T(b)(4).

Q-2. What is the effect of a FSC election?

A-2. If a corporation qualifies as a FSC and satisfies the foreign management and economic processes tests under section 924, a FSC may earn foreign trading gross receipts and a portion of the FSC's foreign trade income will be exempt from U.S. tax. In addition, a 100 percent dividends-received deduction will be allowed on repatriation of exempt foreign trade income and of certain non-exempt foreign trade income. If a FSC performs all of the activities described in section 924(e) and section 924(d)(1)(A), it will be eligible to use the administrative pricing rules described in section 925(a) (1) and (2) in determining its foreign trading gross receipts.

Q-3. Does the reference to a DISC under section 922(a)(1)(F) which provides that a FSC cannot be a member, at any time during the taxable year, of any controlled group of corporations of which a DISC is a member refer solely to an interest charge DISC?

A-3. Yes.

(b) *Small FSC.*

Q-4. What is a small FSC?

A-4. A small FSC is a Foreign Sales Corporation which meets the requirements of section 922(a)(1) enumerated in Q&A 1 of this section as well as the requirements of section 922(b). Section 922(b) requires that a small FSC make a separate election to be treated as a small FSC. See Q&A 1 of § 1.921-1T(b) and § 1.927(f)-1T. In addition, section 922(b) requires that the small FSC not be a member, at any time during the taxable year, of a controlled group of corporations which includes a FSC unless such FSC is a small FSC.

Q-5. What is the effect of an election as a small FSC?

A-5. Under section 924(b)(2), a small FSC need not meet the foreign management and economic processes tests of section 924(b)(1) in order to have foreign trading gross receipts. However, in determining the exempt foreign trade income of a small FSC, any foreign trading gross receipts for the taxable year in excess of $5 million are not taken into account. If the foreign trading gross receipts of a small FSC for the taxable year exceed the $5 million limitation, the FSC may select the gross receipts to which the limitation is allocated. In order to use the administrative pricing rules under section 925(a), a small FSC must satisfy the activities test under section 925(c). In addition, under section 441(h), the taxable year of a small FSC must conform to the taxable year of its principal shareholder (defined in Q&A 4 of § 1.921-1T(b)(4) as the shareholder with the highest percentage of its voting power).

(c) *Comparison of FSC to DISC.*

Q-6. How does a FSC differ from a DISC?

A-6. A DISC is a domestic corporation which is not itself taxable while a FSC must be created or organized under the laws of a jurisdiction which is outside of the United States (including certain U.S. possessions) and is taxable on its income except for its exempt foreign trade income. The DISC provisions enable a shareholder to obtain a partial deferral of tax on income from export

application of these sections is

of the corporation and provide that a

taxed income.

of a FSC Election.

eligible to use the administrative pricing

deferral of tax on income from export

sales and certain services, if 95 percent of its receipts and assets are export related. The FSC provisions contain no assets test, but a portion of income for export sales and certain services is exempt from U.S. taxes if the FSC satisfies certain foreign presence, foreign management, and foreign economic processes tests.

(d) *Organization of a FSC.*

Q–7. Under the laws of what countries may a FSC be organized?

A–7. A FSC may not be created or organized under the laws of the United States, a state, or other political subdivision. However, a FSC may be created or organized under the laws of a possession of the United States, including Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Virgin Islands of the United States, but not Puerto Rico. These eligible possessions are located outside the U.S. customs territory. In addition, a FSC may incorporate under the laws of a foreign country that is a party to (i) an exchange of information agreement that meets the standards of the Caribbean Basin Economic Recovery Act of 1983 (Code section 274(h)(6)(C)), or (ii) a bilaterial income tax treaty with the United States if the Secretary certifies that the exchange of information program under the treaty carries out the purpose of the exchange of information requirements of the FSC legislation as set forth in section 927(e)(3), if the company is covered under the exchange of information program under subdivision (i) or (ii).

(e) *Foreign Trade Income.*

Q–8. How is foreign trade income defined?

A–8. Foreign trade income, defined in section 923(b), is gross income of a FSC attributable to foreign trading gross receipts. It includes both the profits earned by the FSC itself from exports and commissions earned by the FSC from products and services exported by others.

(f) *Foreign Trading Gross Receipts.*

Q–9. What are foreign trading gross receipts?

A–9. Foreign trading gross receipts, defined in section 924, are receipts of a FSC attributable to the export of goods and the performance of certain services. Specifically, they include gross receipts (i) from the sale, exchange or other disposition of export property, (ii) from the lease or rental of export property for use by the lessee outside of the United States, (iii) for services related and subsidiary to such sales and leases, (iv) for engineering and architectural services for construction projects located outside the United States, and (v) for the performance of managerial services for an unrelated FSC or DISC in furtherance of the production of other foreign trading gross receipts or qualified export receipts of the unrelated FSC or DISC (if at least 50 percent of the FSC's gross receipts for the taxable year are receipts described in (i), (ii) or (iii) above). A FSC (other than a small FSC) will not be treated as having foreign trading gross receipts for a taxable year unless the FSC satisfies the foreign management requirement (defined in section 924(c) for the taxable year and the foreign economic processes requirement (defined in section 924(d)) for the transaction giving rise to the gross receipts. The foreign management and foreign economic processes requirements are the subject of a separate regulations project.

Q–10. What receipts are excluded from foreign trading gross receipts?

A–10. Receipts from a transaction are excluded from foreign trading gross receipts if (i) the property or service is for ultimate use in the United States (See § 1.993–1(j)(2)), (ii) if a sale or lease or export property, or the furnishing of engineering or architectural services, is for use by the United States or an instrumentality thereof and any United States law or regulation requires, with respect to a sale or lease of export property, that the property be manufactured, produced, grown or extracted in the United States or, with respect to the furnishing of engineering or architectural services, that such service be performed by a United States person (See § 1.993–1(j)(4)), (iii) the transaction is accomplished by a United States Government subsidy, (iv) the receipts are from another FSC which is a member of the same controlled group, or (v) the receipts consist of investment income or carrying charges. In addition, certain property is excluded because it is not considered export property. For purposes of determining whether a transaction is accomplished by a United States Government subsidy, a sale pursuant to any of the programs set forth in § 1.993–1(j)(3) is considered accomplished by a United States Government subsidy. For purposes of determining whether receipts are from another FSC which is a member of the same controlled group, receipts are considered received from another FSC if received directly from the FSC or indirectly as described in Rev. Rul. 76–127, 1976–1 C.B. 212. See also § 1.993–1(j)(6).

(g) *Export Property.*

Q–11. What is export property?

A–11. Export property, as defined in section 927(a)(1), has the same meaning for a FSC as it has for a DISC under section 993(c)(1) except that, for FSC purposes, the term "United States" does not include the possessions of the United States (other than Puerto Rico). Property that is excluded from the category of export property under section 993(c) (2) and (3) for a DISC is also excluded from the category of export property for a FSC with one exception. While all products subject to the depletion deduction under section 613 or 613A are excluded from export property of a DISC, only oil or gas (or any primary product of either) is excluded from export property of a FSC.

(h) *Administrative Pricing.*

Q–12. How is foreign trade income of a FSC determined in a transaction in which export property is purchased by a FSC from a related supplier (as defined in § 1.927–1T(a))?

A–12. Foreign trade income may be determined using a transfer price that allows the FSC to derive taxable income attributable to the transaction in an amount which does not exceed the greatest of (i) 1.83 percent of the foreign trading gross receipts derived from the sale of such property by such FSC (the "gross receipts method"); (ii) 23 percent of the combined taxable income of the FSC and its related supplier which is attributable to foreign trading gross receipts derived from the sale of the property by the FSC (the "combined taxable income method"); or (iii) taxable income based upon the sales price actually charged but subject to the rules provided in section 482 (the "section 482 method"). However, foreign trade income determined using the gross receipts method shall not with respect to any transaction exceed twice the amount which would be determined under the combined taxable income method. If either the gross receipts or combined taxable income method is used, then the FSC (or any person acting under a contract with the FSC) must perform all activities described in section 924(e) that are attributable to the transaction (relating to activities with respect to which the direct cost tests are applied) and all the activities relating to the solicitation, negotiation, and making of the contract for such sale, although not all of these activities need be performed outside of the United States. In the case of a small FSC, none of these activities need be performed outside of the United States.

Q–13. What portion of foreign trade income is treated as exempt foreign trade income?

A–13. (i) If either the gross receipts or combined taxable income method of administrative transfer pricing is used in determining the taxable income of a FSC and a related party, then 1⅔s of the foreign trade income derived from the transaction is treated as exempt foreign trade income (1⅔s to the extent that a FSC has non-corporate shareholders). If the amount of income earned by the FSC is based on the section 482 method, then exempt foreign trade income is 30 percent of foreign trade income derived from the transaction (32 percent to the extent that a FSC has noncorporate shareholders). See section 923(a) and section 291(a)(4). Special rules are provided under section 923 for determining the exempt foreign trade income of a cooperative and the exempt foreign trade income of a FSC attributable to the disposition of, or services related to, military property.

(ii) In determining the exempt foreign trade income of a small FSC under section 924(b)(2)(B), foreign trading gross receipts for the taxable year which exceed $5,000,000 are not taken into account. The limitation of $5,000,000 is determined by treating all FSCs in the same controlled group as a single corporation. If the foreign trading gross receipts of a small FSC for the taxable year exceed the $5 million limitation, the FSC may select the gross receipts to which the limitation is allocated. With respect to applying the limitation to a short taxable year, see Q&A 5 of § 1.921–1T(b)(5).

(i) *Exempt Foreign Trade Income.*

Q–14. How is exempt foreign trade income treated?

A–14. Exempt foreign trade income is treated as foreign source income not effectively connected with the conduct of a trade or business in the United States. Exempt foreign trade income is not taxable to the FSC.

Q–15. How are deductions attributed to foreign trade income and exempt foreign trade income?

A–15. Deductions shall be allocated and apportioned under the applicable rules of § 1.861–8, to foreign trade income derived by a FSC from a transaction. The deductions so allocated and apportioned to foreign trade income shall be divided on a proportionate basis between the exempt foreign trade income derived from the transaction and the non-exempt foreign trade income derived from the transaction.

(j) *Non-exempt Foreign Trade Income.*

Q–16. How is non-exempt foreign trade income treated?

A–16. Non-exempt foreign trade income is 9⅔s of foreign trade income if the gross receipts or combined taxable income method of administrative transfer pricing is used (7⅔s to the extent that a FSC has noncorporate shareholders) and 70 percent of foreign trade income if the § 482 method is used (68 percent to the extent that a FSC has noncorporate shareholders). Non-exempt foreign trade income is includable in the taxable income of the FSC. If either the gross receipts or combined taxable income method of adminstrative transfer pricing is used, the non-exempt foreign trade income is treated as income effectively connected with the conduct of a trade or business conducted through a permanent establishment in the United States and as income from sources within the United States. However, if the § 482 method is used to determine the foreign trade income of the FSC, the source and taxation of the non-exempt foreign trade income will be determined in the same manner and to the same extent as a foreign corporation that is not a FSC.

(k) *Investment Income and Carrying Charges.*

Q–17. What do the terms "investment income" and "carrying charges" mean?

A–17. (i) Investment income means:

(A) Dividends,

(B) Interest,

(C) Royalties,

(D) Annuities,

(E) Rents (other than rents from the lease or rental of export property for use by the lessee outside of the United States);

(F) Gains from the sale of stock or securities,

(G) Gains from futures transactions in any commodity on, or subject to the rules of, a board of trade or commodity exchange (other than gains which arise out of a bona fide hedging transaction reasonably necessary to conduct the business of the FSC in the manner in which such business is customarily conducted by others),

(H) Amounts includable in computing the taxable income of the corporation under part I of subchapter J, and

(I) Gains from the sale or other disposition of any interest in an estate or trust.

(ii) Carrying charges means:

(A) Charges that are imposed by a FSC or a related supplier and that are identified as carrying charges, ("stated carrying charges") and

(B) (*1*) Charges that are considered to be included in the price of the property or services sold by a FSC or a related supplier, as provided under Q&As 1 and 2 of § 1.927(d)–1T, and (*2*) any other unstated interest.

Q–18. How are investment income and carrying charges treated?

A–18. Investment income and carrying charges are not foreign trading gross receipts. Investment income and carrying charges are includable in the taxable income of a FSC and are treated as income effectively connected with a trade or business conducted through a permanent establishment withing the United States. The source of investment income and carrying charges is determined under sections 861, 862, and 863 of the Code.

(l) *Foreign Tax Credit.*

Q–19. Is a foreign tax credit or a deduction allowable with respect to foreign taxes paid with respect to foreign trade income?

A–19. Generally a foreign tax credit will not be available to a FSC or to a shareholder of a FSC for foreign taxes paid or accrued with respect to foreign trade income. However, if the § 482 method is used, the creditability of any tax imposed on non-exempt foreign trade income will be determined without regard to the preceding sentence, and taxable income attributable to foreign trade income and distributions out of earnings and profits attributable to such foreign trade income will each be subject to separate foreign tax credit limitations.

(m) *Distributions of a FSC.*

Q–20. How is a distribution from a FSC to its shareholders treated?

A–20. Unlike a DISC, no deemed distributions are required. Actual distributions are treated as made first out of foreign trade income. A FSC's domestic corporate shareholders will be allowed a 100-percent dividends-received deduction under section 245(c) with respect to dividends attributable to exempt foreign trade income. The same rule generally applies to non-exempt foreign trade income. However, the dividends-received deduction under section 245(c) does not apply to a dividend attributable to (i) non-exempt foreign trade income that is determined without reference to the administrative pricing rules ("section 923(a)(2) non-exempt income"), (ii) exempt foreign trade income that would not be treated as exempt but for a special rule applicable to a cooperative, or (iii) investment income including carrying charges. With respect to a dividend to which section 245(c) does not apply, a dividends-received deduction is permitted to the extent that section 245(a) applies. A distribution by a FSC to a foreign shareholder out of foreign trade income is treated as a distribution which is effectively connected with the conduct of a trade or business conducted through a permanent establishment in the United States and as income from United States sources. Therefore, such a distribution is subject to United States tax.

(n) *Subpart F Application.*

Q–21. Is any income of a FSC subject to the Subpart F provisions?

A–21. Subpart F (sections 951 through 964) does not apply to a FSC's foreign trade income other than section 923(a)(2) non-exempt income. Subpart F may apply to other income of a FSC. However, for purposes of subpart F, income described in sections 921(d)(2) (relating to investment income) and 921(d)(3) (relating to carrying charges) is considered U.S. source.

(o) *Small Businesses.*

Q–22. What options are available to small businesses engaged in exporting?

A–22. Small businesses may elect to be treated as either a small FSC or an interest charge DISC. See Q&As 4 & 5 of § 1.921–2T relating to a small FSC. Rules with respect to interest charge DISCs are the subject of another regulations project.

§ 1.922–1T Temporary regulations; Requirements that a corporation must satisfy to be a FSC or a small FSC.

(a) *FSC requirements.*

Q–1. What are the requirements that a corporation must satisfy to be a FSC?

A–1. A corporation must satisfy all of the requirements of section 922(a).

(b) *Small FSC requirements.*

Q–2. What are the requirements that a corporation must satisfy to be a small FSC?

A–2. A corporation must satisfy all of the requirements of sections 922 (a)(1) and (b).

(c) *Definition of corporation.*

Q–3. What type of entity is considered a corporation for purposes of qualifying as a FSC or a small FSC under section 922?

A–3. A foreign entity that is classified as a corporation under section 7701(a)(3) (other than an insurance company) is considered a corporation for purposes of this requirement.

(d) *Eligible possessions.*

Q–4. For purposes of meeting the place of incorporation requirement of section 922(a)(1)(A), what is a possession of the United States?

A–4. For purposes of section 922(a)(1)(A), the possessions of the United States are Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States ("eligible possessions"). Puerto Rico, although a possession for certain tax purposes, does not qualify as a jurisdiction in which a FSC or small FSC may be incorporated.

(e) *Qualifying countries.*

Q–5. For purposes of meeting the place of incorporation requirement of section 922(a)(1)(A), what is a foreign country and which foreign countries meet the requirements of section 927(e)(3)?

A–5. (i) A foreign country is a jurisdiction outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States. (ii) A list of the foreign countries that meet the requirements of section 927(e)(3) ("qualifying countries") will be published from time to time in the Federal Register and the Internal Revenue Bulletin. A company is considered to be created or organized under the laws of a foreign country that meets the requirements of section 927(e)(3) only if the foreign country is a party to (A) an exchange of information agreement under the Caribbean Basin Economic Recovery Act (Code section 274(h)((6)(C)), or (B) a bilateral income tax treaty with the United States if the Secretary certifies that the exchange of information program under the treaty carries out the purposes of the exchange of information requirements of the FSC legislation as set forth in Code section 927(e)(3) and if the company is covered under exchange of information program under subdivision (A) or (B).

(f) *Number of shareholders.*

Q–6. Who is counted as a shareholder of a corporation for purposes of determining whether a corporation meets the limitation on the number of shareholders to no more than 25 under section 922(a)(1)(B)?

A–6. Solely for purposes of the limitation on the number of shareholders, the following rules apply:

(i) In general, an individual who owns an interest in stock of the corporation is counted as a shareholder. In the case of joint owners, each joint owner is counted as a shareholder. A member of a corporation's board of directors who holds qualifying shares that are required to be owned by a resident of the country of incorporation is not counted as a shareholder.

(ii) A corporation that owns an interest in stock of the corporation is counted as a single shareholder.

(iii) An estate that owns an interest in stock of the corporation is counted as a single shareholder. If the limitation on number of shareholders is not satisfied by reason of the closing of an estate, the FSC will continue to qualify for the taxable year of the FSC in which the estate is closed.

(iv) A trust is not counted as a shareholder. In the case of a trust all of which is treated as owned by one or more persons under sections 671–679, those persons are counted as shareholders. In the case of all other trusts, a beneficiary is counted as a shareholder.

(v) A partnership is not counted as a shareholder. A general or limited partner is counted as a shareholder if it is a corporation, an individual, or an estate, under the rules contained in subdivisions (i) through (iii). A general or limited partner is not counted as a shareholder if it is a partnership or a trust; the rules contained subdivision (iv) and this subdivision (v) apply to the determination of who is counted as a shareholder.

(g) *Class of stock.*

Q–7. What is preferred stock for purposes of determining whether a corporation satisfies the requirement under section 922(a)(1)(C) that no preferred stock be outstanding?

A–7. Preferred stock is stock that is limited and preferred as to dividends or distributions in liquidation.

Q–8. Can a corporation have outstanding more than one class of common stock?

A–8. Yes. However, the rights of a class of stock will be disregarded if the right has the effect of avoidance of federal income tax. For instance, dividend rights may not be used to direct dividends from exempt foreign trade income to shareholders that have taxable income and to direct other dividends to shareholders that have net operating loss carryovers.

(h) *Office.*

Q–9. What is an office for purposes of determining whether a corporation satisfies the requirement of section 922(a)(1)(D)(i)?

A–9. An office is a place for the transaction of the business of the corporation. To be an offfice a place must meet all of the following requirements:

(i) *It must have a fixed location.*

A transient location is not a fixed location.

(ii) *It must be a building or a portion of a building consisting of at least one room.*

A room is a partitioned part of the inside of a building. The building or portion thereof used as the corporation's office must be large enough to accommodate the equipment required in subdivision (iii) of this answer 9 and the activity required in subdivision (iv) of this answer 9.

(iii) *It must be equipped for the performance of the corporation's business.*

An office must be equipped for the communication and retention of information and must be supplied with communication services.

(iv) *It must be regularly used for some business activity of the corporation.*

A corporation's business activities include (A) the solicitation, the negotiation, or the making of contracts with respect to sales of export property by the corporation or a related supplier, and (B) the preparatory or ancillary activities of the corporation as, for example, the maintenance of the documentation described in Q&A 12 of this section. Such business activity may be performed by a dependent or independent agent of the corporation as defined in § 1.864–7(d).

(v) *It must be operated, and owned or leased, by the corporation or by the corporation's dependent or independent agent.*

A place that meets the requirements in subdivision (i) through (v) of this answer 9 can also be used for activities that are unrelated to the business activity of the corporation.

Q–10. Can a corporation locate an office in any foreign country if it has at least one office in a U.S. possession or in a foreign country that meets the requirements of section 9237(e)(3) as provided Q&A 5 of this section?

A–10. Yes.

Q–11. Must a corporation locate the office that is required under section 922(a)(1)(D)(i) in the country or possession of its incorporation?

A–11. No.

(i) *Documentation.*

Q–12. What documentation must be maintained at the corporation's office for purposes of section 922(a)(1)(D)(ii)?

A–12. At least the following documentation must be maintained at the corporation's office under section 922(a)(1)(D)(ii):

(i) The quarterly income statements and a year-end balance sheet of the FSC; and

(ii) All final invoices (or a summary of them) or statements of account with respect to (A) sales by the FSC, and (B) sales by a related persoh if the FSC realizes income with respect to such sales. A summary of final invoices may be in any reasonable form provided that the summary contains all substantive information from the invoices.

Q–13. In what form must the documentation required under section 922(a)(1)(D)(ii) be maintained?

A–13. The documentation required to be maintained by the office may be originals or duplicates and may be in any form that qualifies as a record under Rev. Rul. 71–20, 1971–1 C.B.392. Therefore, documentation may be maintained in the form of punch cards, magnetic tapes, disks, and other machine-sensible media used for recording, consolidating, and summarizing accounting transactions and records within a taxpayer's automatic data processing system.

Q–14. How long the documentation required under section 922(a)(1)(D)(ii) be maintained?

A–14. The documentation required under section 922(a)(1)(D)(ii) for a taxable year must be maintained at the FSC's office described in section 922(a)(1)(D)(i) until the period of limitations for assessment of tax for the taxable year has expired under section 6501.

Q–15. Under what circumstances will a.corporation be considered to satisfy the requirement of section 922(a))(1)(D)(iii) that it maintain the records it is required to keep under section 6001 at a location within the United States?

A–15. A corporation will be considered to satisfy this requirement if the records required under section 6001 are kept by any person at any location in the United States provided that the records are retained in accordance with section 6001 and the regulations thereunder.

(j) *Board of directors.*

Q–16. What is a corporation's "board of directors" for purposes of the requirement under section 922(a)(1)(E) that, at all times during the taxable year, the corporation must have a board of directors which includes at least one individual who is not a resident of the United States?

A–16. The "board of directors" is the body that manages and directs the corporation according to the law of the qualifying country or eligible possession under the laws of which the corporation was created or organized.

Q–17. Can the member of the board of directors who is a nonresident of the United States be a citizen of the United States?

A–17. Yes. For purposes of meeting the requirement under section 922(a)(1)(E), the member of the board who cannot be a United States resident can be a United States citizen.

Q–18. If the only member of the board of directors who is not a resident of the United States dies or resigns, will the corporation be considered to fail the requirement under section 922(a)(1)(E)?

A–18. If the corporation appoints a new member who is a nonresident of the United States to the board within 30 days after the death or resignation of the former nonresident member, the corporation will be considered to satisfy the requirement under section 922(a)(1)(E).

Q–19. Is a nonresident alien individual who elects to be treated as a resident of the United States for a taxable year under section 6013(g) considered a nonresident of the United States for purposes of the requirement under section 922(a)(1)(E)?

A–19. Yes.

§ 1.927(d)–1T Temporary Regulations; Other Definitions.

(a) *Carrying Charges.*

Q–1. Under what circumstances is the sales price of property or services sold by a FSC or a related supplier considered to include carrying charges as defined in subdivision (ii)(B)(*1*) of Q&A 17 of § 1.921–2T?

A–1. (i) The price of property or services sold by a FSC or a related supplier (as defined in § 1.927–1T(a)) is considered to include carrying charges if any part of the sales price is paid after the end of the normal payment period unless the FSC makes the election under subdivision (ii) of this answer. The normal payment period is 60 days from the earlier of the date of the sale or exchange of property under the contract or from the date services under the contract are completed. The sales price of property or services is not considered to include any carrying charges if the entire sales price is paid within the normal payment period. If the entire sales price is not paid within the normal payment period, the carrying charges are based on the amount of the sales price that is unpaid at the end of the normal payment period.

(ii) The carrying charges are computed for the period beginning with the first day after the end of the normal payment period and ending with the date on which payment is required. The date on which payment is required is the actual date of payment. However, a FSC may elect to treat the final date of payment stated in the contract as the date on which payment is required if—

(1) the required date of payment is determined by the contract for all sales made during the taxable year of the sale, even if the actual date of payment is earlier, and (2) no more than 20% of transactions for which final payment is received in the taxable year involve payment after the end of the normal payment period.

Q–2. How are carrying charges as defined in subdivision (ii)(B)(*1*) of Q&A 17 of § 1.921–2T computed?

A–2. If carrying charges as defined in subdivision (ii)(B)(*1*) of Q&A 17 of § 1.921–2T are considered to be included in the sales price of property or services, the amount of the carrying charges is equal to the excess of—

(i) The amount of the sales price of property or services that is unpaid on the day after the end of the normal payment period, over

(ii) The present value, as of the day after the end of the normal payment period, of all payments that are required to be made under the contract and that are unpaid on the day after the end of the normal payment period.

The amount of the sales price of property or services is the sales price under the contract determined as of the actual payment date unless a FSC makes the election provided under subdivision (ii) of Q&A 1. If a FSC makes the election provided under subdivision (ii), the amount of the sales price is the sales price under the contract determined as of the final payment date stated in the contract.

All payments that are required to be made under the contract include the stated sales price as well as stated amounts of interest and carrying charges. The discount rate for the present value computation is simple interest at the short-term monthly Federal rate published in the Internal Revenue Bulletin, determined for the period within which the sale occurs.

The present value of a payment is calculated as follows:

$$P = S \frac{1}{(1+(i\times t))}$$

P=present value of a payment that is required and unpaid after the end of the normal payment period
S=amount of a payment that is required and unpaid after the end of the normal payment period
i=the short-term monthly Federal rate
t=the number of days after the end of the normal payment period and before a payment is required divided by 365.

If a sale is made in a taxable year and the required date of payment is in a later taxable year, carrying charges for the taxable year of the sale are computed for the number of days after the end of the normal payment period and before the end of the taxable year. For the following taxable year, carrying charges are computed for the number of days after the beginning of the taxable year and before the date of payment.

The computation of carrying charges under this answer 2 applies only to the determination of carrying charges under subdivision (ii)(B)(*1*) of Q&A 17 of § 1.921–2 and does not apply to the determination of any other unstated interest or for any other purpose.

The following examples illustrate the computation of carrying charges with respect to a sale of property by a FSC:

Example (1). On January 1, 1985, a FSC sells property for $10,000. The terms of the contract require payment within 90 days after sale. The normal payment period is 60 days. The FSC does not make an election under subdivision (ii) of Q&A 1. Therefore, the required payment period is the actual payment period. The contract does not require the payment of any interest or carrying charges. The purchaser pays the entire sales price within 60 days. The sales price is not considered to include any carrying charges because the purchaser paid the entire sales price within the normal payment period.

Example (2). The facts are the same as in example (1) except that the purchaser does not pay the entire sales price within 60 days, the normal payment period. The purchaser pays the entire sales price 96 days after delivery. Therefore, the sales price is considered to include carrying charges computed as follows:

Step 1: Determine the short-term monthly Federal rate as of the date of sale. For purposes of this example, the rate is 10%.

Step 2: Determine the fraction of the year represented by the number of days after 60 days and before payment is required. In this example, the number of days beyond 60 is 96–60=36, which is divided by 365

$$\frac{36 \text{ days}}{365 \text{ days}} = .099 \text{ fraction of the year}$$

Step 3: Using the short-term monthly Federal rate and the fraction of the year, compute the present value of the payment.

$$P = S \frac{1}{(1+(i\times t))}$$

$$P = \$10{,}000 \frac{1}{(1+(.10\times .099))}$$

P=$10,000 (.99)
P=$9,900

Step 4: Using the present value of all payments, compute the carrying charges.

Carrying Charges=Sales Price Less Present Value.

$10,000	Sales Price
−9,900	Present Value
$100	Carrying charges

Q–3. Is a discount from the sales price of property or services for prompt payment considered to be stated carrying charges as defined in subdivision (ii)(A) of Q&A 17 of § 1.921–2T?

A–3. No.

§ 1.927(f)–1T Temporary regulations; Election and termination of status as a Foreign Sales Corporation.

(a) *Election of status as a FSC or a small FSC.*

Q–1. What is the effect of an election by a corporation to be treated as a FSC or small FSC?

A–1. A valid election to be treated as a FSC or a small FSC applies to the taxable year of the corporation for which made and remains in effect for all succeeding taxable years in which the corporation qualifies to be a FSC unless revoked by the corporation or unless the corporation fails for five consecutive years to qualify as a FSC (in case of a FSC election) or as a small FSC (in case of a small FSC election).

Q–2. Can a corporation established prior to January 1, 1984 be treated as a FSC or a small FSC prior to making a FSC or a small FSC election?

A–2. A corporation cannot be treated as a FSC or a small FSC until it has made a FSC or a small FSC election. An election made within the first 90 days of 1985 relates back to January 1, 1985 unless the taxpayer indicates otherwise.

Q–3. If a shareholder who has not consented to a FSC or small FSC election transfers some or all of its shares before or during the first taxable year for which the election is made, may the holder of the transferred shares consent to the election?

A–3. A holder of the transferred shares may consent to a FSC or small FSC election under the circumstances described in § 1.992–2(c)(1). The rules contained in § 1.992–2)(c) shall apply to the consent by a holder of transferred shares.

Q–4. If a shareholder who has consented to a FSC or a small FSC election transfers some or all of its shares before the first taxable year for which the election is made, must the holder of the transferred shares consent to the election?

A–4. Yes. Consent must be made by any recipient of such shares on or before the 90th day after the first day of such first taxable year. If such recipient fails to file his consent on or before such 90th day, an extension of time for filing such consent may be granted in the manner, and subject to the conditions, described in paragraph (b)(3) of § 1.992–2.

Q–5. May an election of a corporation to be a FSC or a small FSC be effective as of a time other than the start of the corporation's taxable year?

A–5. No.

Q–6. What is the effect of an election to be treated as a FSC or as a small FSC if the corporation or any other member of the controlled group has in effect an election to be treated as an interest charge DISC?

A–6. The interest charge DISC election shall be treated as revoked for all purposes under the Code as of the effective date of the election to be treated as a FSC or a small FSC. An affirmative revocation of the DISC election is unnecessary. The FSC election shall take effect. As long as the FSC election remains in effect, neither the corporation nor any other member of the controlled group is permitted to elect to be treated as an interest charge DISC for any taxable year including any part

of a taxable year during which the corporation's FSC election continues to be effective.

Q–7. What is the effect of an election to be treated as a small FSC if the corporation or any other member of the controlled group has in effect an election to be treated as a FSC?

A–7. As long as a FSC election remains in effect, neither the corporation nor any other member of the controlled group is permitted to elect to be treated as a small FSC for any taxable year including any part of a taxable year during which a FSC election continues to be effective. Any FSC within the controlled group must affirmatively revoke its FSC election for a taxable year including any part of a taxable year for which small FSC status is elected.

Q–8. What is the effect of an election to be treated as a FSC if the corporation or any other member of the controlled group has in effect an election to be treated as a small FSC?

A–8. As long as a small FSC election remains in effect, neither the corporation nor any other member of the controlled group is permitted to elect to be treated as a FSC for any taxable year including any part of the taxable year during which a small FSC election continues to be effective. Any small FSC within the controlled group must affirmatively revoke its small FSC election for a taxable year including any part of a taxable year for which FSC status is elected. An election to be treated as a small FSC is permitted if the corporation or any other member of the controlled group has in effect an election to be treated as a small FSC.

(b) *Termination of election of status as a FSC or a small FSC.*

Q–9. How is the status of a corporation as a FSC or as a small FSC terminated?

A–9. The status of a corporation as a FSC or as a small FSC is terminated through revocation or by its continued failure to be a FSC.

Q–10. For what taxable year may a corporation revoke its election to be treated as a FSC or as a small FSC?

A–10. A corporation may revoke its election to be treated as a FSC or as a small FSC for any taxable year of the corporation after the first taxable year for which the election is effective.

Q–11. When must a corporation revoke a FSC or a small FSC election if revocation is to be effective for the taxable year in which revocation takes place?

A–11. If a corporation files a statement revoking its election to be treated as a FSC or as a small FSC during the first 90 days of a taxable year (other than the first taxable year for which such election is effective), such revocation will be effective for such taxable year and all taxable years thereafter. If the corporation files a statement revoking its election to be treated as a FSC or a small FSC after the first 90 days of a taxable year, the revocation will be effective for all taxable years following such taxable year.

Q–12. Can a FSC change its status to a small FSC, or can a small FSC change its status to a FSC as of a date other than the first day of a taxable year?

A–12. No. Since a revocation of an election to be a FSC or a small FSC is effective only for entire taxable year, a corporation's change between FSC and small FSC status is effective as of the first day of a taxable year.

Q–13. How may a corporation revoke an election by a corporation to be treated as a FSC or a small FSC?

A–13. A corporation may revoke its election by filing a statement that the corporation revokes its election under section 922(a) to be treated as a FSC or under section 922(b) to be treated as a small FSC. Such statement shall indicate the corporation's name, address, employer identification number, and the first taxable year of the corporation for which the revocation is to be effective. The statement shall be signed by any person authorized to sign a corporate return under section 6062. Such revocation shall be filed with the Service Center with which the corporation filed its return.

Q–14. What is the effect if a corporation that has elected to be treated as a FSC or a small FSC fails to qualify as a FSC because it does not meet the requirements of § 922 for a taxable year?

A–14. If a corporation that has elected to be treated as a FSC or a small FSC does not qualify as a FSC or a small FSC for a taxable year, the corporation will not be treated as a FSC or a small FSC for the taxable year. However, the failure or a corporation to qualify to be treated as a FSC or a small FSC for a taxable year does not terminate the election of the corporation to be treated as FSC or a small FSC unless the corporation does not qualify under section 922 for each of 5 consecutive taxable years, as provided in Q&A 15 of this section.

Q–15. Under what circumstances is the FSC or small FSC election terminated for continued failure to be a FSC?

A–15. If a corporation that has elected to be treated as a FSC or a small FSC does not qualify under section 922 to be treated as a FSC or small FSC for each of 5 consecutive taxable years, such election terminates and will not be effective for any taxable year after such fifth taxable year. Such termination will be effective automatically without notice to such corporation or to the Internal Revenue Service.

Par. 2. § 1.921–1T(a)(6) is amended by revising question and answer 6 to read as follows:

§ 1.921–1T Temporary regulations providing transition rules for DISCs and FSCs.

(a) *Termination of a DISC.* * * *

(6) *Accumulated DISC income.*

Q–6. Under what circumstances is any remaining accumulated DISC income treated as previously taxed income (and not taxed)?

A–6. The accumulated DISC income of a DISC (but not a DISC described in section 992(a)(3)) as of December 31, 1984, is teated as previously taxed income when actually distributed after December 31, 1984. Any amounts distributed by the former DISC (including a DISC which has elected to be an interest charge DISC) after December 31, 1984, shall be treated as made first out of current earnings and profits and then out of previously taxed income to the extent thereof. For purposes of the preceding sentence, amounts distributed before July 1, 1985 shall be treated as made first out of previously taxed income to the extent thereof. If property other than money is distributed and if such property was a qualified export asset within the meaning of section 993(b) on December 31, 1984, then for purposes of section 311, no gain or loss will be recognized on the distribution and the distributee will have the same basis in the property as the distributor.

Par. 3. Section 1.912–1T(b)(7) is amended by revising question and answer 7 to read as follows:

§ 1.921–1T Temporary regulations providing transition rules for DISCs and FSCs.

* * * * *

(b) *Establishing and electing status as a FSC, small FSC or interest charge DISC* * * *

(7) *Transition transfers.*

Q–7. Under what circumstances may a DISC or former DISC transfer its assets to a FSC or small FSC without incurring any tax liability on the transfer?

A–7. A DISC or former DISC will recognize no income, gain, or loss on a transfer of its qualified assets (as defined in section 993(b)) to a FSC or small FSC if all of the following conditions are met:

(1) The assets transferred were held by the DISC on August 4, 1983, and were transferred by the DISC or former DISC to the FSC or small FSC in a transfer completed before January 1, 1986; and

(2) The assets are transferred in a transaction which would qualify for nonrecognition under subchapter C of Chapter 1 of the Code, or would so qualify but for section 367 of the Code.

In such case, section 367 shall not apply to the transfer.

In addition, other provisions of subchapter C will apply to the transfer, such as section 358 (basis to shareholders), section 362 (basis to corporations), and section 381 (carryovers in corporate acquisitions). In determining whether a transfer by a DISC to a FSC or small FSC qualifies for nonrecognition under subchapter C, a liquidation of the assets of the DISC into a parent corporation followed by a transfer by the parent of those assets to the FSC or small FSC will be treated as a transaction described in section 368(a)(1)(D).

Notwithstanding the foregoing answer, a taxpayer which transfers a right to use its corporate name to a FSC in a transaction described in sections 332, 351, 354, 356 and 361 shall not be treated as having sold that right under section 367(d) or as having transferred that right to an entity that is not a corporation under section 367(a) provided that the corporate name is used only by the FSC and is not licensed or otherwise made available to others by the FSC.

(Approved by the Office Management and Budget under control number 1545–0884)

This Treasury decision is issued under the authority contained in section 367(a)(3)(B), 367(d), 927(d)(1), 927(f), and 7805 of the Internal Revenue Code of 1954 (98 Stat. 862, 26 U.S.C. 367(a)(3)(B); 98 Stat. 863, 26 U.S.C. 367(d); 98 Stat. 993, 26 U.S.C. 927(d)(1); 98 Stat. 994, 26 U.S.C. 927(f); and 68A Stat. 917, 26 U.S.C. 7805) and under the authority contained in section 805 of the Tax Reform Act of 1984 (Pub. L. 98–69, 98 Stat. 1000).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 6, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-32290 Filed 12-7-84; 9:45 am]
BILLING CODE 4830-01-M

26 CFR Part 6a

[T.D. 7995]

Income Tax; Temporary Regulations Under Title II of the Omnibus Reconciliation Act of 1980; Mortgage Subsidy Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the tax exempt status of interest on mortgage subsidy bonds. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. These regulations affect all purchasers and governmental issuers of mortgage subsidy bonds.

DATES: The temporary regulations relating to qualified mortgage bonds are effective for governmental obligations issued after December 31, 1984, except that the amendments to the regulations in § 6a.103A–2(a)(2) are effective for obligations issued after December 31, 1983. The temporary regulations relating to qualified veterans' mortgage bonds (including the requirement that qualified veterans' mortgage bonds satisfy the requirements of section 103A(j)(3)) are effective for obligations issued after July 18, 1984, except that the volume limitation provided in § 6a.103A–3(g) applies to obligations issued after June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3740).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the temporary regulations relating to mortgage subsidy bonds under section 103A of the Internal Revenue Code of 1954 as amended by section 611 of the Tax Reform Act of 1984 ("the Act") (Pub. L. 98–369; 98 Stat. 901). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 103A of the Internal Revenue Code provides that a mortgage subsidy bond shall be treated as an obligation not described in section 103(a). Thus, the interest on a mortgage subsidy bond is not excludable from gross income. However, qualified mortgage bonds and qualified veterans' mortgage bonds are not treated as mortgage subsidy bonds.

Section 611 of the Act amended section 103A in several respects. The amendments made by this document conform the temporary regulations to those amendments and provide guidance to issuers and purchasers of qualified mortgage bonds and qualified veterans' mortgage bonds.

Section 6a.103A–2(a)(2) is amended to provide that the term "qualified mortgage bond" does not include obligations issued after December 31, 1987.

The Act added three new requirements that must be met by any issue in order to be treated as an issue of qualified mortgage bonds. Section 6a.103A–2(k) provides that an obligation is not a qualified mortgage bond unless the issue of which the obligation is a part complies with the information reporting requirement. Generally, this requirement will be met if the issuer submits on Form 8038 the information required therein and files an annual report containing information regarding the extent to which the proceeds of an issue have been made available to low-income individuals. For any issue, the Form 8038 must be filed not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the obligations are issued. The annual report regarding the use of proceeds is to be filed not later than February 15 of each year.

Section 6a.103A–2(l) provides that an issue of obligations will not constitute qualified mortgage bonds unless the applicable elected representative of the governmental unit publishes, after a public hearing following reasonable public notice, an annual policy statement. The policy statement must include a statement of the policies with respect to housing, development, and low-income housing assistance which such governmental unit is to follow in issuing qualified mortgage bonds and mortgage credit certificates and an assessment of the governmental unit's compliance with (i) the statement of the governmental unit's policies as set forth in its previous policy statement (if any) and (ii) the intent of Congress that State and local governments are expected to use their authority under section 103A and section 25, relating to mortgage credit certificates, to the greatest extent feasible to assist lower income families before assisting higher income families. Section 6a.103A–2(l) (4) through (6) provides the requirements with respect to the public hearing that must be held prior to the publication of a policy statement.

Section 6a.103A–2(m) provides that in order for an issue to meet the requirements of § 6a.103A–2 the applicable State official must certify that the issue meets the requirements of § 6a.103A–2(g), relating to the limitation on the aggregate amount of qualified mortgage bonds issued during any calendar year. The temporary regulations provide procedures for certifying officials to follow in making certifications. In order to prevent unreasonable delays in the issuance of qualified mortgage bonds, § 6a.103A–2(m)(3) provides that if the certification is not provided within 30 days of the date that the issuing authority files a request for certification the issuing authority may, instead, submit an affidavit stating that the issue meets the requirements of § 6a.103A–2(g) and that the State did not provide the requested certification. The certification does not ensure that the issue meets the requirements of § 6a.103A–2(g).

Although the requirements of § 6a.103A–2 (k), (l), and (m) also apply to qualified mortgage credit certificate programs under section 25, these regulations do not provide specific rules relating to mortgage credit certificates. Regulations to be issued under section 25 will contain such rules.

Section 6a.103A–3 has been amended to reflect the changes made by the Act to the requirements applicable to qualified veterans' mortgage bonds. Section 6a.103A–3(b) provides that substantially all of the proceeds of a qualified veterans' mortgage bond must be used to provide financing for qualified veterans. The term "qualified veteran" is defined in § 6a.103A–3(c).

Section 103A(c)(3) requires that qualified veterans' mortgage bonds issued after July 18, 1984, satisfy the information reporting requirement of section 103A(j)(3). With respect to obligations issued prior to January 1, 1985, § 6a.103A–2(k)(3)(iv) provides issuers with additional time to file Form 8038; in addition, the annual report concerning use of the proceeds need not be filed with respect to such issues.

Section 6a.103A–3(g) places a limit on the aggregate amount of qualified veterans' mortgage bonds that a State may issue in a calendar year. A State's limit is determined by dividing the aggregate amount of bonds that it issued during the period January 1, 1979, through June 22, 1984 (not including the amount of qualified veterans' mortgage bonds issued during the calendar year or applicable portion of 1984 for which the amount of bonds was the lowest), by the number of years (not to exceed five) that the State issued bonds during that period. The regulations provide that the year in which the amount of bonds was the lowest may be a year in which the State did not issue qualified veterans' mortgage bonds. A State that did not issue qualified veterans' mortgage bonds during the period January 1, 1979, through June 22, 1984, may not issue qualified veterans' mortgage bonds after June 22, 1984.

Finally, § 6a.103A–3(h) provides good faith compliance rules for qualified veterans' mortgage bonds. These rules are similar to those provided in § 6a.103A–2(c).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0720.

Drafting Information

The principal author of these temporary regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans, Foreign investment in United States real property interests.

Amendments to the Regulations

Sections 6a.103A–2 and 6a.103A–3 of Part 6a of Title 26 of the Code of Federal Regulations are amended as follows:

PART 6a—[AMENDED]

Paragraph 1. Section 6a.103–2 is amended by revising paragraph (a)(2) and by adding new paragraphs (k), (l), and (m). These revised and added provisions read as follows:

§ 6a.103A–2 Qualified mortgage bond.

(a) *In general.* * * *

(2) *Termination date.* No obligation issued after December 31, 1987, shall be treated as part of a qualified mortgage bond issue.

* * * * * *

(k) *Information reporting requirement*—(1) *In general.* An issue meets the requirements of this paragraph only if the issuer substantially satisfies the information reporting requirement of this paragraph with respect to the issue. Except as otherwise provided in paragraph (k)(3)(iv), the requirements of this paragraph apply to qualified veterans' mortgage bonds issued after July 18, 1984, and to qualified mortgage bonds issued after December 31, 1984.

(2) *Information required.* (i) The issuer must, based on information and reasonable expectations determined as of the date of issue, submit on Form 8038 the information required therein, including—

(A) The name, address, and employer identification number of the issuer,

(B) The date of issue,

(C) The face amount of each obligation which is part of the issue,

(D) The total purchase price of the issue,

(E) The amount allocated to a reasonably required reserve or replacement fund,

(F) The amount of lendable proceeds,

(G) The stated interest rate of each maturity,

(H) The term of each maturity,

(I) In the case of an issue of qualified mortgage bonds, whether the issuer has elected under § 6a.103A–2(i)(4)(v) to pay arbitrage to the United States,

(J) In the case of an issue of qualified mortgage bonds, the issuer's market limitation (as defined in § 6a.103A–2(g)), the amount of qualified mortgage bonds that the issuer has elected not to issue under section 25(c)(2) and the regulations thereunder, and the aggregate amount of qualified mortgage bonds issued by the issuer during the calendar year and prior to the date of issue of the issue for which the Form 8038 is being submitted, and

(K) In the case of an issue of qualified veterans' mortgage bonds, the issuer's State veterans limit (as defined in section 103A(o)(3)(B) and § 6a.103A–3(g)) and the aggregate amount of qualified veterans' mortgage bonds issued by the issuer during the calendar year and prior to the date of issue of the

period. The regulations provide that the

and by adding new paragraphs (k), (l),

year and prior to the date of issue of the

issue for which the Form 8038 is being submitted.

(ii) The issuer must submit a report compiled on a calendar year basis containing information on the beneficiaries of the proceeds of the issue. The report must be filed for each year in which the proceeds of the issue are used to provide mortgages. The information must be submitted in the format prescribed by the Internal Revenue Service. The information required to be submitted shall be submitted on magnetic media in accordance with applicable revenue procedures. The consent of the Commissioner (or other authorized officer or employee of the Internal Revenue Service) to the magnetic medium on which the issuer intends to submit the information shall be obtained prior to submitting such information on magnetic media. An application for consent shall be in writing and must be filed with the Magnetic Media Coordinator of the Internal Revenue Service Center at which the report is required to be filed at least 90 days before the due date of the first report for which consent is requested. If an issuer reasonably expects to submit information with respect to fewer than 50 beneficiaries for a calendar year, then the issuer may submit such information for that calendar year on machine-readable paper instead of magnetic media if the applicable revenue procedures provide a machine-readable paper form. If no such machine-readable paper form is provided, the issuer may submit such information on paper form that is not machine readable. The Commissioner may waive the requirement that information be submitted on magnetic media if hardship is shown on the issuer's application. The report must include the following information:

(A) For each issue of qualified mortgage bonds and qualified veterans' mortgage bonds—

(*1*) The name, address, and TIN of the issuer,

(*2*) The date of issue, and

(*3*) The face amount of the issue; and

(B) For each beneficiary of the proceeds of the issue (*i.e.*, each recipient of a mortgage provided with the proceeds of the issue)—

(*1*) The name and TIN of the beneficiary,

(*2*) The date, amount, and term of the mortgage,

(*3*) The effective interest rate of the mortgage (as defined in § 6a.103A–2(i)(2)(ii)),

(*4*) Whether the mortgage is a qualified home improvement loan or a qualified rehabilitation loan (as defined in § 6a.103A–2(b) (9) and (10)),

(*5*) Whether the residence being financed is a previously occupied residence,

(*6*) Whether the residence being financed is a targeted area residence (as defined in § 6a.103A–2(b)(3)),

(*7*) Whether the residence being financed is a one-, two-, three-, or four-family residence,

(*8*) The acquisition cost (as defined in § 6a.103A–2(b)(8)) of the residence being financed,

(*9*) The average area purchase price applicable to such residence (as defined in § 6a.103A–2(f)(3) without adjustments for the number of residences),

(*10*) Whether the mortgagor had a present ownership interest in a principal residence at any time during the 3-year period prior to the date on which the mortgage is executed,

(*11*) The number of the mortgagor's family members that occupy the residence being financed,

(*12*) The adjusted income (as defined in § 1.167 (k)–3 (b)(3)) of the mortgagor's family for the previous calendar year, and

(*13*) The adjusted income of the mortgagor's family for the previous calendar year as a percentage of the median income for the area, as determined under section 8 of the United States Housing Act of 1937, as amended, with adjustments for smaller and larger families (or, in the event programs under section 8(f) of the Housing Act of 1937, as amended, are terminated, the applicable method of determining adjusted income and median income in effect immediately prior to the date of such termination).

(3) *Time for filing.* (i) The statement required by subparagraph (2)(i) of this paragraph shall be filed not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the obligation is issued. The statement may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date of issue. The statement need not be amended to report information learned subsequent to the date of issue.

(ii) The report required by subparagraph (2)(ii) of this paragraph (relating to use of proceeds) shall be filed by February 15th of the year following the calendar year to which the report relates.

(iii) The Commissioner may grant an extension of time for the filing of a report required by subparagraph (2) if there is reasonable cause for the failure to file such report in a timely fashion.

(iv) An issue of qualified veterans' mortgage bonds issued after July 18, 1984, and prior to January 1, 1985, will be treated as satisfying the information reporting requirement of this paragraph if a Form 8038 with respect to the issue is properly filed not later than February 15, 1985; the report described in paragraph (k)(2)(ii) need not be filed with respect to such issues.

(4) *Place for filing.* Form 8038 and the report required by paragraph (k)(2)(ii) are to be filed at the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(5) *Definitions.* (i) See the regulations under section 103(l) for the definitions of the terms "date of issue", "maturity", and "term of an issue".

(ii) The term "family" means two or more persons related by blood, marriage, or operation of law.

(l) *Policy statement*—(1) *In general.* (i) For obligations issued after December 31, 1984, an issue meets the requirements of this paragraph only if the applicable elected representative of the governmental unit which is the issuer (or on behalf of which the issuing authority is empowered to issue qualified mortgage bonds) has published (after a public hearing following reasonable public notice) the report described in paragraph (l)(3) by the last day of the year preceding the year in which such issue is issued and a copy of such report has been submitted to the Commissioner on or before such last day. The Commissioner may grant an extension of time for publishing and filing the report if there is reasonable cause for the failure to publish and file such report in a timely fashion. The requirements of this paragraph will be treated as met if the issuer substantially satisfies such requirements.

(ii) With respect to reports required by paragraph (l)(1)(i) to be published and submitted to the Commissioner not later than December 31, 1984, the Commissioner has determined that there is reasonable cause for the failure to publish and file such reports in a timely fashion; such a report will be considered published and filed in a timely fashion if, not later than March 11, 1985, the report is published (after a public hearing following reasonable public notice) and a copy is submitted to the Commissioner.

(2) *Definitions and special rules.* (i) In the case of an issuer that issues qualified mortgage bonds on behalf of two or more governmental units, a single report may be filed provided that such report is signed (A) by the applicable elected representative of each governmental unit on whose behalf

obligations have been issued during any preceding calendar year or (B) by the Governor of the State in which the issuer is located.

(ii) See section 103(k)(2)(E) and the regulations thereunder for the definition of the term "applicable elected representative".

(iii) In the case of qualified mortgage bonds issued by, or on behalf of, a governmental unit that did not—

(A) Issue, or have issued on its behalf, qualified mortgage bonds during the preceding calendar year, and

(B) Reasonably expect during the preceding calendar year to issue (or have issued on its behalf) qualified mortgage bonds during the current calendar year,

the requirements of this paragraph will be treated as met if the applicable governmental unit which is the issuer (or on behalf of which the issuing authority is empowered to issue qualified mortgage bonds) has published (after a public hearing following reasonable public notice) the report described in paragraph (l)(3) prior to the issuance of any qualified mortgage bonds and a copy of such report has been submitted to the Commissioner prior to such issuance.

(iv) For purposes of this paragraph a report will be considered to be "published" when the applicable elected representative of the governmental unit has made copies of the report available for distribution to the public. Reasonable public notice of the manner in which copies of the report may be obtained must be provided; such notice may be included as part of the public notice required by paragraph (l)(4).

(3) *Report.* (i) A report is described in this subparagraph only if it contains the following:

(A) The issuer's name, TIN, and the title "Policy Report Under Section 103A" stated on the cover page of the report;

(B) A specific statement of the policies and goals with respect to housing, development, and low-income housing assistance which the issuer is to follow in issuing qualified mortgage bonds and mortgage credit certificates, including a statement as to—

(*1*) With respect to housing policies and goals, (*i*) whether the proceeds will be used to provide financing for the acquisition of residences, to provide qualified home improvement loans, or to provide qualified rehabilitation loans; (*ii*) whether all or a portion of the proceeds will be targeted to new, existing, or any other particular class or type of housing; (*iii*) how the existence of a need or absence of a need for such targeting has been determined; (*iv*) the method by which the proceeds will be targeted; (*v*) any other pertinent information relating to the issuer's housing policies; and (*vi*) how the housing policies relate to the issuer's development and low-income housing assistance policies;

(*2*) With respect to development policies and goals, (*i*) whether all or a portion of the proceeds will be targeted to specific areas (including targeted areas as described in § 6a.103A–2(b)(3)); (*ii*) a description of the areas to which the proceeds will be targeted; (*iii*) the reasons for selecting such areas; (*iv*) whether proceeds targeted to each area are to be used to finance redevelopment of existing housing or new construction; (*v*) any other pertinent information relating to the issuer's development policies; and (*vi*) how the development policies relate to the issuer's housing and low-income housing assistance policies; and

(*3*) With respect to low-income housing assistance policies and goals, (*i*) whether all or a portion of the proceeds will be targeted to low-income (*i.e.*, 50 percent of median income), moderate-income (*i.e.*, 80 percent of median income), and median income (*i.e.*, 100 percent of median income), families; (*ii*) the method by which the proceeds will be targeted to such families; (*iii*) any other pertinent information relating to the issuer's low-income housing assistance policies; and (*iv*) how the low-income housing assistance policies relate to the issuer's housing and development policies (see § 6a.103A–2(k)(5) for the definition of the term "family" and § 1.167(k)–3(b)(2) for the definition of the term "median income");

(C) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report (as defined in paragraph (l)(3)(ii)) with the statement of housing, development, and low-income housing assistance policies with respect to qualified mortgage bonds and mortgage credit certificates that were set forth in the report, if any, published in the preceding year with respect to such governmental unit, including a statement as to whether the governmental unit or issuing authority successfully implemented its policies and achieved its goals and, if not, an analysis of the reasons for such failure;

(D) An assessment of the compliance of the governmental unit or issuing authority during the twelve-month period ending with the date of the report (as defined in paragraph (l)(3)(ii)) with the intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families, including a description of (*1*) the method used by the governmental unit or issuing authority to distribute proceeds, (*2*) whether and how that method enabled the governmental unit or issuing authority to assist lower income families before higher income families, and (*3*) any income levels that have been defined and used by the governmental unit or issuing authority in connection with distribution of the proceeds (no specific definition of lower income and higher income is imposed on governmental units or issuing authorities); and

(E) A summary of the comments on the proposed report received at the public hearing required by subparagraph (4).

(ii) For purposes of the assessments of compliance required by paragraph (l)(3)(i) (C) and (D) to be included in the report, the "date of the report" means the last day of the twelve-month period for which such assessments of compliance are to be made. The date of the report must be the last day of September, October, or November; an issuer must use the same date of the report each year. The date of the report is not, for this purpose, the date that the report is published or filed.

(4) *Public hearing.* The public hearing required by subparagraph (1) of this paragraph means a forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the report that the applicable representative proposes to publish to satisfy the requirements of this paragraph (l). In general, a governmental unit may select its own procedure for the hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, it may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing so request in writing at least 24 hours before the hearing or that they limit their oral remarks to 10 minutes. For purposes of this public hearing requirement, it is not necessary that the applicable elected representative who will publish the report be present at the hearing, that a report on the hearing be submitted to that official, or that State administrative procedural requirements for public hearings in general be observed.

However, compliance with such State procedural requirements (except those at variance with a specific requirement set forth in this paragraph) will generally assure that the hearing satisfies the requirements of this paragraph. The hearing may be conducted by any individual appointed or employed to perform such function by the governmental unit, its agencies, or by the issuer. Thus, for example, for a report to be issued by an issuing authority that acts on behalf of a county, the hearing may be conducted by the issuing authority, the county, or an appointee or employee of either.

(5) *Reasonable public notice.* (i) The reasonable public notice required by subparagraph (1) of this paragraph means published notice which is reasonably designed to inform residents of the geographical area within the jurisdiction of the governmental unit that will publish the report. The notice must state the time and place for the hearing and contain the information required by paragraph (l)(5)(ii) of this section. Notice is presumed reasonable if published no fewer than 14 days before the hearing. Notice is presumed reasonably designed to inform affected residents only if published in one or more newspapers of general circulation available to residents of that locality or if announced by radio or television broadcast to those residents.

(ii) The notice of hearing described in this subparagraph must state—

(A) The time and place for the hearing,

(B) Any applicable limitations regarding participation in such hearing,

(C) The manner in which affected residents may obtain copies of the proposed report prior to the hearing, and

(D) A description, in brief and summary terms, of the contents of the proposed report.

(6) *Procedure for public hearings of multiple jurisdiction issuers.* In the case of an issuer that issues qualified mortgage bonds on behalf of two or more governmental units, each governmental unit on whose behalf qualified mortgage bonds were issued during the preceding calendar year and each governmental unit on whose behalf the issuer reasonably expects to issue qualified mortgage bonds during the succeeding calendar year must hold a public hearing following reasonable public notice prior to the publication of the report required by this paragraph. A multiple jurisdiction issuer may hold a combined hearing as long as the combined hearing is a joint undertaking that provides all residents of the participating governmental units (*i.e.*, each governmental unit on whose behalf qualified mortgage bonds were issued by the authority and each governmental unit on whose behalf the authority reasonably expects to issue qualified mortgage bonds during the succeeding calendar year) a reasonable opportunity to be heard. The location of any combined hearing is presumed to provide a reasonable opportunity for all affected residents to be heard if it is no farther than 100 miles from the seat of government of each participating governmental unit beyond whose geographic jurisdiction the hearing is conducted.

(7) *Place for filing.* The report is to be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(m) *State certification requirements*—(1) *In general.* An issue meets the requirements of this paragraph only if the certification requirement of this paragraph is substantially satisfied. The requirements of this paragraph apply to obligations issued after December 31, 1984.

(2) *Certification.* (i) An issue satisfies the requirements of section 103A(j)(4) and this subparagraph only if the State official designated by law (or, if there is no State official, the Governor) certifies, following a request for such certification by the issuer, that the issue meets the requirements of section 103A(g) and § 6a.103A–2(g) (relating to volume limitation). In the case of any constitutional home rule city, the certification shall be made by the chief executive officer of the city.

(ii) The certifying official need not perform an independent investigation in order to determine whether the issue meets the requirements of section 103A(g). In determining the aggregate amount of qualified mortgage bonds issued by an issuer during a calendar year, the certifying official may rely on copies of the reports submitted by the issuer pursuant to section 103A(j)(3) for such year and copies of any elections made pursuant to section 25(c)(2) not to issue qualified mortgage bonds, together with an affidavit executed by an officer of the issuer responsible for issuing the bonds stating that the issuer did not issue any other qualified mortgage bonds during the calendar year, the amount, if any, of the issuer's market limitation that it surrendered to other issuing authorities during the calendar year, and that it did not make any other elections not to issue qualified mortgage bonds. If, based on such information, the certifying official determines that the issue will not exceed the issuer's market limitation for the year, the official may certify that the issue meets the requirements of section 103A(g).

(3) *Special rule.* If 30 days elapse after the issuer files a proper request for the certification described in paragraph (m)(2) and the issuer has not received from the State official designated by law (or, if there is no State official, the Governor) certification that the issue meets the requirements of section 103A(g) and § 6a.103A–2(g) or, in the alternative, a statement that the issue does not meet such requirements, the issuer may, instead, submit an affidavit executed by an officer of the issuer responsible for issuing the bonds stating that—

(i) The issue meets the requirements of section 103A(g) and § 6a.103A–2(g),

(ii) At least 30 days before the execution of the affidavit the issuer filed a proper request for the certification described in paragraph (m)(2), and

(iii) The State official designated by law (or, if there is no State official, the Governor) as not provided the certification described in paragraph (m)(2) of this section.

For purposes of this paragraph, a request for certification is proper if the request includes the reports and affidavits described in paragraph (m)(2)(ii) of this section.

(4) *Filing.* The certification (or affidavit) required by this paragraph shall be filed with the Internal Revenue Service Center, Philadelphia, PA 19255. The certification (or affidavit) shall be submitted with the Form 8038 required to be filed by section 103A(j)(3) and paragraph (k) of this § 6a.103A–2. The Commissioner may grant an extension of time for filing the certification (or affidavit) if there is a reasonable cause for the failure to file such statement in a timely fashion.

(5) *Effect of certification.* The fact that an issuer obtains the certification (or affidavit) described in this paragraph does not ensure that the requirements of paragraph (g) of this section are met. Obligations that do not meet the requirements of paragraph (g) of this section are not described in section 103(a).

[Approved by the Office of Management and Budget under OMB Control Number 1545–0720]

Par. 2. Section 6a.103A–3 is amended by revising paragraphs (b) and (c) and by adding new paragraphs (g) and (h). These revised and added provisions read as follows:

§ 6a.103A–3 Qualified veterans' mortgage bonds.

. . . . . .

(b) *Qualified veterans' mortgage bond.* (1) With respect to obligations issued prior to July 19, 1984, the term "qualified veterans' mortgage bond" means any issue of obligations—

(i) Which meets the requirements of § 6a.103A–1, § 6a.103A–2(j) (1) and (2), and this section;

(ii) Substantially all of the proceeds of which are to be used to provide financing for single-family, owner-occupied residences (which meet the requirements of § 6a.103A–1(b)(6) and § 6a.103A–2(d)) for veterans; and

(iii) Payment of the principal and interest on which is secured by a pledge of the full faith and credit of the issuing State.

A qualified veterans' mortgage bond does not include any bond that is an industrial development bond under section 103(b).

(2) With respect to obligations issued after July 18, 1984, the term "qualified veterans' mortgage bond" means any issue of obligations—

(i) Which meets the requirements of § 6.103A–1, § 6a.103A–2(d) (relating to residence requirements), (j) (1) and (2) (relating to new mortgage requirement), and (k) (relating to information reporting requirement), and this section;

(ii) Substantially all of the proceeds of which are to be used to provide financing for qualified veterans; and

(iii) Payment of the principal and interest on which is secured by a pledge of the full faith and credit of the issuing State.

A qualified veterans' mortgage bond does not include any bond that is an industrial development bond under section 103(b).

(c) *Qualified veteran.* (1) An issue meets the requirements of this paragraph only if each of the mortgagors to whom owner financing is provided is a qualified veteran.

(2) With respect to obligations issued prior to July 19, 1984, the term "qualified veteran" means any veteran.

(3) With respect to obligations issued after July 18, 1984, the term "qualified veteran" means any veteran who—

(i) Served on active duty at some time before January 1, 1977, and

(ii) Applied for financing before the later of—

(A) The date 30 years after the date on which such veteran left active service, or

(B) January 1, 1985.

(4) The term "veteran" shall have the same meaning as in 38 U.S.C. 101(2), that is, a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

. . . . . .

(g) *Volume limitation*—(1) *In general.* In the case of obligations issued after June 22, 1984, an issue meets the requirements of this paragraph only if the aggregate amount of obligations issued pursuant thereto, when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the State during the calendar year, does not exceed the State veterans limit for such calendar year. In determining the aggregate amount of qualified veterans' mortgage bonds issued in calendar year 1984, obligations issued prior to June 23, 1984, shall not be taken into account.

(2) *State veterans limit.* (i) The State veterans limit for any State is the amount equal to—

(A) The aggregate amount of qualified veterans' mortgage bonds issued by the State during the period beginning on January 1, 1979, and ending on June 22, 1984 (not including the amount of any qualified veterans' mortgage bonds actually issued during the calendar year, or the applicable portion of 1984, in such period for which the amount of such bonds was the lowest), divided by

(B) The number (not to exceed 5) of calendar years after 1978 and before 1985 during which the State issued qualified veterans' mortgage bonds.

In determining the number of calendar years after 1978 and before 1985 during which the State issued qualified veterans' mortgage bonds, any qualified veterans' mortgage bonds issued after June 22, 1984, shall not be taken into account. A State that did not issue qualified veterans' mortgage bonds during the period beginning on January 1, 1979, and ending on June 22, 1984, may not issue qualified veterans' mortgage bonds after June 22, 1984.

(ii) In the case of any obligation which has a term of 1 year or less and which was issued to provide financing for property taxes, the amount taken into account under this paragraph with respect to such obligation shall be 1/15 of its principal amount.

(3) *Examples.* The following examples illustrate the provisions of this paragraph:

Example (1). State R issued the following issues of qualified veterans' mortgage bonds: a $200 million issue on March 31, 1979, a $150 million issue on May 1, 1980, a $75 million issue on September 1, 1981, a $200 million issue on June 5, 1982, a $125 million issue on March 1, 1983, a $60 million issue on April 1, 1984, and a $100 million issue on September 1, 1984. R issued no other issues of qualified veterans' mortgage bonds during the period beginning January 1, 1979, and ending on December 31, 1984. The aggregate amount of qualified veterans' mortgage bonds issued during the period January 1, 1984, through June 22, 1984 ($60 million), is not taken into account in determining R's State veterans limit because that is the lowest aggregate amount of qualified veterans' mortgage bonds issued during the calendar year or the applicable portion of 1984, in the period beginning on January 1, 1979, and ending on June 22, 1984. Thus, R's State veterans limit is $150 million ($750 million (which is the sum of $200 million, $150 million, $75 million, $200 million, and $125 million) divided by 5). The September 1, 1984, issue is not included in determinig the State veterans limit because that issue was issued after June 22, 1984. The September 1, 1984, issue of qualified veterans' mortgage bonds meets the requirements of § 6a. 103A–3 (g) since the aggregate amount of qualified veterans' mortgage bonds issued in calendar year 1984 (not including obligations issued prior to June 23, 1984), does not exceed the State veterans limit.

Example (2). State S issued a $100 million issue of qualified veterans' mortgage bonds on March 31, 1984. S issued no other issues of qualified veterans' mortgage bonds during the period beginning on January 1, 1979, and ending on June 22, 1984. The aggregate amount of qualified veterans' mortgage bonds issued in the calendar year, or the applicable portion of 1984, in the period January 1, 1979, through June 22, 1984, for which the amount of bonds was the lowest is zero. Thus, the State veterans limit for S is $100 million (($100 million minus $0) divided by 1).

(h) *Good faith compliance efforts*—(1) *Mortgage eligibility requirements.* An issue of qualified veterans' mortgage bonds issued after July 18, 1984, which fails to meet the requirements of section 103A(o)(1), § 6a.103A–2(d) relating to residence requirements), and § 6a.103A–2(j) (1) and (2) (relating to new mortgage requirements) shall be treated as meeting such requirements if each of the following provisions is complied with:

(i) The issuer in good faith attempted to meet all such requirements before the mortgages were executed. Good faith requires that the trust indenture, participation agreements with loan originators, and other relevant instruments contain restrictions that permit the financing of residences only in accordance with such requirements. In addition, the issuer must establish reasonable procedures to ensure compliance with such requirements. Such procedures include reasonable investigations by the issuer to satisfy such requirements.

(ii) Ninety-five percent or more of the lendable proceeds (as defined in § 6a.103A–2(b)(1)) that were devoted to owner-financing were devoted to residences with respect to which, at the time the mortgages were executed, all such requirements were met. In

determining whether a person is a qualified veteran the issuer may rely on copies of the mortgagor's certificate of discharge indicating that the mortgagor served on active duty at some time before January 1, 1977, and stating the date on which the mortgagor left active service provided that neither the issuer nor its agent knows or has reason to believe that such affidavit is false. Where a particular mortgage fails to meet more than one of these requirements, the amount of the mortgage will be taken into account only once in determining whether the 95-percent requirement is met. However, all of the defects in the mortgage must be corrected pursuant to subdivision (iii).

(iii) Any failure to meet such requirements is corrected within a reasonable period after such failure is discovered. For example, failures can be corrected by calling the nonqualifying mortgage or by replacing the nonqualifying mortgage with a qualifying mortgage.

(2) *Nonmortgage eligibility requirements.* An issue of qualified veterans' mortgage bonds issued after July 18, 1984, which fails to meet the requirements of paragraph (g) of this section shall be treated as meeting such requirements if each of the requirements of § 6a.103A–2(c)(2) (i) and (ii) is met.

(Approved by the Office of Management and Budget under OMB Control Number 1545–0720)

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 103A(j) (3) and (4) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 901, 26 U.S.C. 103A(j) (3) and (4); 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commission of Internal Revenue

Approved: December 4, 1984.

Ronald A. Pearlman,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84-32288 Filed 12-7-84; 11:36 am]
BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3F2937/R702; RL-2733-2]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Flucythrinate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide flucythrinate in or on the raw agricultural commodity head lettuce. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested pursuant to a petition by the American Cyanamid Co.

EFFECTIVE DATE: Effective on December 12, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 7, 1983 (48 FR 40432), which announced that the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, had submitted a pesticide petition (PF 3F2937) to EPA proposing to amend 40 CFR 180.400 by establishing tolerances for the residues of the insecticide flucythrinate ((±)cyano(3-phenoxyphenyl)methyl(+)–4–difluoromethoxy)–alpha–(1-methylethyl)benzeneacetate) in or on the raw agricultural commodity head lettuce at 2.0 parts per million (ppm).

There were no comments received in response to the notice of filing. EPA issued a second notice, published in the **Federal Register** of August 4, 1984 (49 FR 30789), announcing that the petition had been amended to propose a tolerance for head lettuce at 1.0 ppm. The petition was subsequently amended again to propose the tolerance at the initial 2.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 81 milligrams (mg)/kilogram (kg) for male rats and 67 mg/kg for female rats; a 21-day delayed hen neurotoxicity study with a no-observed-effect level (NOEL) of 5,000 mg/kg, the highest dose tested (HDT); teratology studies (in rats and rabbits), with a NOEL of 8.0 mg/kg/day (HDT) for rats and a NOEL of 60 mg/kg/day (HDT) for rabbits; a 3-generation rat reproduction study with a NOEL of 30 ppm; 90-day subchronic rat and dog feeding studies with a NOEL of 60 ppm for rats and 150 ppm (HDT) for dogs (HDT); a 24-month rat chronic-feeding/oncogenicity study that resulted in a systemic NOEL of 60 ppm in which no oncogenic effects were noted at dosage levels of 30, 60, and 120 ppm (120 ppm being the highest dosage level tested) under the conditions of the study; and 18-month mouse oncogenic study in which no oncogenic effects were noted at dosage levels of 30, 60, and 120 ppm (120 ppm being the highest dosage level tested) under the conditions of the study; and the following mutagenicity studies: an Ames test at 1,000 micrograms (μg)/Plate (HDT) and a rat dominant-lethal test at 10.0 mg/kg (HDT), both negative.

Data considered desirable but currently lacking are a 1-year or longer dog-feeding study and a second neurotoxicity study in hens at higher dosage levels.

Actions being taken to obtain the lacking information are as follows:

1. The 1-year or longer dog study is in progress and will be submitted to the Agency in the fourth quarter of 1984.

2. Rationale as to why the neurotoxicity study need not be repeated has been submitted and is undergoing review. If the Agency does not accept the rationale as to why the study should not be repeated, the company will be required to repeat the 21-day delayed neurotoxicity study in hens at higher dose levels and submit the results to the Agency.

The acceptable daily intake (ADI) is calculated to be 0.0150 mg/kg/day based on the 3-generation rat reproduction study and its NOEL of 30 ppm (1.50 mg/kg/day) using a 100-fold safety factor. The maximum permissible intake (MPI) is calculated to be 0.900 mg/day for a 60-kg person. Published and pending tolerances result in a theoretical maximum residue contribution (TMRC) of 0.1003 mg/day based on 1.5 kg diet and utilize 11.15 percent of the ADI. The establishment of these tolerances will increase the TMRC to 0.1398 mg/day resulting in a total utilization of 15.51 percent of the ADI.

The nature of the residues is adequately understood for this tolerance. An adequate analytical method, gas chromatography, is available for enforcement purposes. Because lettuce is not a significant feed item, there will be no problem of secondary residues in meat, milk, poultry, and eggs. There are currently no regulatory actions pending against continued registration of this pesticide, and there are no other relevant considerations in establishing this tolerance.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information cited above, the Agency has determined that the establishment of the tolerance for residues of the insecticide flucythrinate in or on the commodity will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 29, 1984.

Steven Schatzow,
Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.400 is amended by adding, and alphabetically inserting, the raw agricultural commodity, to read as follows:

§ 180.400 Flucythrinate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Lettuce, head	2.0
* * * * *	

[FR Doc. 84-31976 Filed 12-11-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 9E2259, 3E2924, 3E2886/R718 PH–FRL 2735–3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Certain Pesticide Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of certain pesticide chemicals in or on various raw agricultural commodities. These regulations to establish maximum permissible levels for residues of the pesticides in or on the commodities were requested in petitions by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: Effective on December 12, 1984.

ADDRESS: Written objections, identified by the document control number [PP 9E2259, 3E2924, 3E2886/R718] may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA issued two proposed rules, published in the **Federal Register** of October 24, 1984, which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted the following pesticide petitions (PP) on behalf of Dr. Robert Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations (AES) of the given states proposing to amend 40 CFR Part 180 by establishing tolerances for residues of certain pesticide chemicals in or on various raw agricultural commodities in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

1. *PP 9E2259, 3E2924.* Proposed (49 FR 42755) amending 40 CFR 180.294 on behalf of the AES of Georgia and North Carolina (PP 9E2259) and AES of Arkansas, California, Michigan, New York, and Oregon (PP 3E2924) by revising the commodity identification "turnip tops" to "turnip greens" and increasing the tolerance from "0.2 ppm" to "6.0 ppm" (PP 9E2259); and increasing the tolerance for Brussels sprouts from "0.2 ppm" to "15.0 ppm" (PP 3E2924) for the combined residues of the fungicide benomyl (methyl 1-(butylcarbamoyl)2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl).

2. *PP 3E2886.* Proposed (49 FR 42753) amending 40 CFR 180.342 on behalf of the AES of Delaware, Maryland, Michigan, and Pennsylvania and the U.S. Department of Agriculture by establishing tolerances for the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity mushrooms at 0.1 ppm.

There were no comments nor requests for referral to an advisory committee received in response to the proposed rules.

The toxicological data and other relevant material have been evaluated and discussed in the proposed rules.

The pesticides are considered useful for the purpose for which the tolerances are sought. The Agency has determined that the establishment of the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should

specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 406(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 5, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. In § 180.294, by increasing the established tolerance for Brussels sprouts, deleting the tolerance for turnip tops, and adding and alphabetically inserting the raw agricultural commodity turnip greens to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Brussels sprouts	15.0
* * * * *	
Turnip greens	[illegible]
Turnip tops	0.2 (Removed)
* * * * *	

2. In § 180.342, by adding and alphabetically inserting the raw agricultural commodity mushrooms to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Mushrooms	0.1
* * * * *	

[FR Doc. 84-32340 Filed 12-11-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR PART 271

[AW-6-FRL-2735-5]

Texas; Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: EPA.

ACTION: Notice of Final Determination on Texas' application for Final Authorization.

SUMMARY: Texas has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Texas' application and has reached a final determination that Texas' Hazardous Waste Program satisfies all of the requirements necessary for Final Authorization. Thus EPA is granting Final Authorization to the State to operate its program in lieu of the Federal program in Texas.

EFFECTIVE DATE: Final Authorization for Texas, for purposes of judicial review, shall be effective December 26, 1984.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, State Programs Section (6AW-HP), Hazardous Materials Branch, U.S. Environmental Protection Agency, Region VI, 1201 Elm St., Dallas, Texas 75270, (214) 767-2645.

SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows the EPA to authorize State hazardous waste management programs to operate in the state in lieu of the Federal program. To qualify for Final Authorization, a State's program must: (1) Be "equivalent" to the Federal program, (2) be consistent with the Federal program and other state programs and (3) provide for adequate enforcement. (Section 3006(b) of RCRA, 42 U.S.C. 6226(b)).

On June 22, 1984, Texas submitted a complete application to obtain Final Authorization to administer a RCRA program. On September 10, 1984, EPA published a tentative decision announcing its intent to grant Texas Final Authorization.

Further background on the tentative decision appears at 49 FR 35608, September 10, 1984.

Along with the tentative determination, EPA announced the availability of the State's application for public review and comment and the date of a public hearing on the application and EPA's tentative determination. The public hearing was held on October 10, 1984, at 7:30 p.m. in Austin, Texas.

The State of Texas received Phase I, Interim Authorization on December 24, 1980, Phase II, Components A and B Interim Authorization on March 23, 1982, and Component C of Phase II Interim Authorization on September 1, 1983. Therefore, there will be no change in the status of permits or permitting authority on the effective date of this Final Determination.

Texas is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Responsiveness summary

In addition to the **Federal Register** notice of tentative determination cited above, EPA publicized the notice of determination, the availability of the State's application for review and comment, and the public hearing by providing for publication of the notice in enough newspapers of general circulation to ensure State wide coverage and by mailing notices to persons on the State and EPA mailing lists. Approximately one (1) week prior to the hearing EPA mailed a follow-up notice to the major media outlets in the State.

By the close of the public hearing, EPA received comments from ten (10) persons on the Tentative Decision to grant Final Authorization to Texas. Comments are summarized and responded to below. The comments are grouped, to the extent possible, according to common areas for ease of response. This grouping is not meant to indicate any special significance or lack of significance of any comment. All comments have been carefully considered in reaching the decision to grant Final Authorization to the State of Texas.

1. *Comment:* Four commenters support, without reservation, authorization of the Texas program. A variety of reasons were given for this support including that the State has a long history of successfully regulating hazardous waste, that the State has the staff, training, and experience to administer the program, and that State administration of the program is more economical than federal administration.

Response: EPA appreciates these comments and has certainly taken these factors into consideration in reaching a decision. The primary standard against which EPA measures the Texas program are those set out in Section 3006(b) of RCRA; namely, that the State program is equivalent to the federal program, that the State program is consistent with the Federal or state programs applicable in other states, and that the State program provides adequate enforcement of compliance with program requirements.

Additionally, the State must provide for the notices and hearing required by Section 7004(b)(2) of RCRA. Implementation of these requirements are found in 40 CFR Parts 271 and 124 of the federal regulations, particularly 40 CFR 271.4, CFR 271.16, 40 CFR 124.10 and 40 CFR 124.12.

2. *Comment:* One commenter opposes the authorization of Texas because of alleged conditions enumerated at a specific facility. The commenter stated that there are unauthorized discharges from the facility, that containment dikes are not sufficient to contain extraordinary rainfall events, that there are strong odors, and that there is groundwater contamination at the site and possibly off-site that have not been properly addressed.The commenter feels that the State has not done an adequate job of regulating this facility, that it is not inspected frequently enough, that it should be shut down or at the very least penalized, and it should not accept further wastes.

Response: EPA appreciates and solicits comments concerning the administration of a State's program either as relating to an individual facility or as to its effectiveness throughout the State. EPA considers these comments both in reaching the decision to grant authorization and in the continuing process of overviewing the authorized State's implementation of its program. Specific complaints regarding an individual facility are investigated and responses are provided directly to the complaintant. EPA feels that the authorization process is not the proper forum for responding to complaints regarding individual facilities except as the complaints may reflect on the State's overall implementation of the authorized program.

EPA is and has been aware of the problems at the facility mentioned by the commenter. The State has been engaged in enforcement actions with the facility since 1980, both before receiving Interim Authorization and under the Interim Authorized program. EPA has investigated the problems that exist at the facility and the State's actions to address these problems. EPA feels that the State has taken and is continuing to take appropriate actions regarding the facility.

In any event, EPA retains authority, under Sections 3008 and 7003 of RCRA, to take enforcement actions independent of an authorized State against this facility, where warranted. Additionally, any person may, under Section 7002 of RCRA, commence a civil action on his own behalf.

EPA, furthermore, is concerned that authorized State programs are operated according to the requirements of RCRA. EPA maintains constant oversight of State programs to ensure that they are properly operated. If EPA finds that a State program is not being properly operated, action is instituted pursuant to 40 CFR 271.22 and 40 CFR 271.23 to withdraw the State's authorization and implement the federal program in the State.

3. *Comment:* One commenter opposes authorization because the State may be involved in political manipulation of its water and waste programs to such a degree that the public has lost confidence in the programs.

Response: EPA appreciates the comment and is aware that a program as complex and critical as the hazardous waste program may be subject to political pressures at all levels. EPA and the States have addressed the issue of impacts by encouraging wide ranging public input into the development and implementation of the program, by basing regulations and standards on technical considerations, and by striving to maintain focus on the ultimate goal of protecting public health and the environment.

While credit must be given to the commenter's observation, EPA does not have evidence that the confidence of the public in the State of Texas' program has been shaken by political manipulations.

4. *Comment:* One commenter supports authorization with the observation that there appears to be confusion among State agencies regarding the exemption of oil and gas waste from being regulated as a hazardous waste. The commenter asserts that the Texas Department of Water Resources often attempts to regulate wastes which should be exempt as hazardous wastes.

Response: EPA has found that the Texas universe of hazardous waste is equivalent to the federal universe. Section 3009 of RCRA allows States to have requirements more stringent than federal requirements. Therefore, so long as the Texas universe of hazardous wastes includes at least those wastes included in the federal universe, EPA considers that aspect of the State program to be equivalent to the federal program. EPA recognizes that guidance is not yet available which would resolve the scope of the oil and gas exemption. When EPA does complete the study mandated by Section 8002(m) of RCRA and clearly defines how oil and gas will be regulated, this information will be provided to the State.

5. One commenter supported authorization with reservations. The commenter raised several concerns which are summarized below and responded to individually. The commenter did not see the concerns as so serious a problem to prevent Final Authorization but does see them as cause for serious doubt that Texas is complying with the spirit of the law.

Comment: The commenter doubts that the agencies have adequate resources to carry out their responsibilities.

Response: EPA and the State are committed to carrying out a quality RCRA program in Texas. EPA does not require a State to have a specific amount of resources in order to be authorized. A State, though, must have sufficient resources to carry out its responsibilities. EPA is concerned that Texas, and all States, have the resources and capabilities to implement the program. Resource needs and requirements are, as the commenter points out, subject to State Legislative constraints.

EPA has found that Texas has met its commitments under Interim Authorization. Changing emphases and increasing pressures, though, may place burdens on the State program not anticipated when the current workload needs were projected. Until the State can adjust its resources to meet additional demands and altered emphases, EPA is prepared, if necessary, to assist the State in meeting its commitments. However, if the State fails to maintain a program in compliance with Section 3006(b) of RCRA, EPA will institute proceedings pursuant to 40 CFR 271.22 and 40 CFR 271.23 to withdraw the authorization and implement the federal program in the State.

Comment: Another concern is that the Texas Department of Water Resources and the Texas Department of Health do not have authority to assess administrative penalties to achieve compliance.

Response: Requirements for authorization found in 40 CFR 271.16(a)(3) requires that a State have the authority "To assess *or* sue to recover in court civil penalties . . ." (Emphasis added). Therefore, authority to assess administrative penalties is not necessary in order to receive Final Authorization as long as the agencies have authority to sue in court for penalties.

EPA however, does feel that the ability to assess administrative penalties is a major tool which can enhance the states' enforcement capabilities. EPA has urged all states to

seek such authority from their Legislatures if they do not have it. EPA, however, cannot deny or delay authorization because of such lack of authority.

Comment: Another concern is that State enforcement efforts are still less than adequate.

Response: EPA has found that nationwide enforcement efforts have been less productive than would be expected. In an effort to improve enforcement, EPA has redoubled efforts to improve capabilities including developing aggressive enforcement procedures and entering into Memoranda of Understanding (MOU) with the states which spell out the explicit responsibilities of the states and EPA with regard to enforcement and oversight.

Both TDWR and TDH have committed to adopting EPA's aggressive enforcement procedures and have entered into MOU's with EPA.

These documents are designed to provide an aggressive response to instances of non-compliance which serve both as a deterrent to future non-compliance and serve to return the violator to compliance at the earliest possible moment. At any rate, should the State fail to provide adequate enforcement, EPA is prepared to take independent enforcement actions and to institute withdrawal procedures and implement the federal program in the State.

Comment: The commenter also expressed a concern that additional personnel may be needed to process permits.

Response: EPA has had serious concerns over TDWR's ability to provide timely processing of permit application, given the large number of permits that must be processed within a short time. EPA feels that it is imperative that RCRA permits be issued as rapidly as possible while maintaining a quality program and issuing quality permits.

TDWR and EPA have been investigating ways to improve the time frames for processing permit applications. As the commenter suggests, additional personnel may be a way in which to provide this timely, quality process. Other avenues are available which also are being pursued. Such possibilities as contractor assistance and direct EPA assistance are examples.

The addition of personnel for permitting is under the ultimate control of the Texas Legislature. EPA, though, intends to ensure that the permitting process in all states, including Texas, proceeds expeditiously and that it will result in quality permits.

6. One Commenter opposes authorization under current conditions. The commenter had several concerns which are presented below along with responses.

Comment: The commenter asserts that small generators are left relatively unsupervised, unadvised, uninspected and at the mercy of the expensive out-of-state disposal corporations.

Response: Under present federal regulations found in 40 CFR 261.5, a person generating less than 1000 kilograms of hazardous waste per month is generally exempt from federal regulations with certain restrictions. The State of Texas has a similar exemption.

While there is no specific requirement that the State provide special programs for small quantity generators, it is usually the State's burden to deal with problems arising from the small quantity generator exemption. EPA has reviewed the Texas small quantity generator exemption and has found that it is equivalent to the federal program.

Recent amendments to RCRA will have an impact on small quantity generators. Essentially, the exemption has been lowered to 100 kilograms of hazardous waste per month. EPA is required to promulgate rules regulating small quantity generators by March 31, 1986. All persons generating 100 kilograms per month or more are required to use the Uniform National Manifest for shipments of hazardous waste after August 8, 1985. EPA will be providing additional guidance to the States and the regulated community.

Comment: Administration of the responsibilities of the Texas statute is fragmented between TDWR and TDH. TDH is further divided into the regulation of radioactive waste and hazardous waste. Such divisions lead to inefficiency and delay in the disposal of these materials. In many instances, two decisions must be made by three separate departments regarding one disposal operation. It is faster and more efficient to send waste out of State than to process if in Texas.

Response: First, under RCRA, the regulation of radioactive hazards in waste is not a subject of concern in Final Authorization because wastes are not classified or defined in terms of radioactivity.

Secondly, the division of responsibility between TDH and TSWR has been addressed many times in the past by the State and EPA. EPA is aware that there has been confusion in the past regarding jurisdiction of the two agencies. However, EPA feels that such confusion has not led to any failure to operate an acceptable program.

Comment: The State agencies have been shirking their responsibilities in providing for adequate disposal capacity. The commenter stated that 22 of 44 applicants gave up pursuit of a permit, most likely because of the prodigious documentation necessary and the endless answering of questions not relevant to the permit.

Response: EPA has reviewed the State procedures, regulations and process for permitting and found that the program is equivalent to the federal program. The federal program, and the equivalent State program, is necessarily time consuming and exact in order to ensure the protection of the public health and the environment. While EPA is concerned that there be adequate capacity to manage hazardous waste, EPA is not prepared to allow for this capacity at the expense of environmental protection. EPA feels that the State of Texas shares this concern and is proceeding as expeditiously as possible to process permits.

Comment: The commenter stated that there are insufficient guidelines for the qualifications of those individuals responsible for issuing permits.

Response: The specific qualifications of individual employees are the concern of the State of Texas. EPA is concerned that the State have a sufficient skills mix and number of personnel to carry out an effective hazardous waste program. In the Program Description submitted with the application for final authorization the State of Texas had demonstrated that there is a sufficient number of skills mix of personnel to carry out the authorized program.

Comment: In many instances the goal of the State is to publicly punish companies with unjust fines or the prospect of lengthy legal procedures which serve only to frighten others away or out of the business altogether.

Response: EPA has reviewed the State's enforcement policy and penalty policy and has determined that the State responds to violations with actions and penalties in the same manner as provided for by EPA regulations. In reviewing specific actions, EPA has found that penalty amounts are generally appropriate to address harm or risk to the public health or environment. Part of the reason for assessing penalties is to provide a deterrent to future violations by the same facility or others.

Comment: The commenter states that there is a lack of communication between the State and business

accounting, banking and insurance industries.

The commenter states that he has found the banking and insurance industries baffled as to the specific requirements needed by the Department. Banking and insurance representatives are reluctant to provide verbatim contracts as required by TDH for a permit application.

Response: EPA agrees that the financial assurance and insurance requirements of the hazardous waste program are complicated. However, they do provide critical assurances for continued protection of the public health and environment. These mechanisms provide security and resources for the abatement and correction of hazardous waste problems. Federal regulations (40 CFR Part 264 and 265) specify the instruments that must be used in providing financial assurance and insurance. These regulations even specify the wording that must be used. Therefore, verbatim contracts are necessary. These regulations and the wording of the instruments contained therein were developed with the advice and cooperation of the banking and insurance industries. The State of Texas has developed and implemented financial assurance and insurance regulations which are equivalent to the federal regulations. EPA has received no indication from the banking and insurance industries in Texas that they are "baffled" by the specific requirement of the Department. As part of the continuing overview process, EPA solicits and would welcome communications from these industries regarding Department requirements.

Comment: The commenter expresses concern over the procedures used by TDH to notify persons of meetings, hearings, etc., regarding regulatory development. As an example, the commenter cited a meeting that was held on proposed regulations that would affect the commenter and the commenter was not provided notice of the meeting.

Response: TDH public participation and notification procedures are found in the Program Description (page TDH–18) submitted with the application for Final Authorization. The agency maintains extensive mailing lists used to provide notice of hearings, meetings, etc. In the particular instance the commenter cites, it is possible that he did not receive a notice of the hearing. However, EPA feels that the State undertakes all appropriate actions possible to provide proper notification.

Comment: The commenter stated that the goals of those in charge of implementing the hazardous waste program at TDH is to decide where there is not to be hazardous waste and postpone the real decision of where to really dispose of this material.

Response: EPA has had past concerns with the amount of time taken by TDH to process permit applications. The Department, however, has improved recently and in order to assure the timely processing of all permit applications, the Department and EPA have developed, as part of the annual grant funding under Section 3011 of RCRA, a permit decision schedule.

This permit decision schedule specifies target dates for the Department to meet for each of the critical activities in the processing of permit applications. The decision schedule calls for all high priority facilities (land disposal facilities) to have draft permits issued and/or final determinations made in fiscal year 1985. Final determinations will be made on all facilities by Fiscal Year 1988.

Comment: The commenter asserts that at present the State program lacks consistency, a necessary part of a State program as dictated by federal law. This inconsistent structure impedes the disposal of waste and toxic chemicals.

Response: Section 3006(b) of RCRA requires that, in order to receive Final Authorization, a State program must be consistent with the Federal program and State programs applicable in other States. EPA has implemented this requirement in 40 CFR Part 271.4. This regulation defines a state program as being inconsistent if: (1) Any aspect of the State program unreasonably restricts, impedes, or operates as a ban on the free movement across the state border of hazardous wastes from or to other states for treatment, storage, or disposal at facilities authorized to operate under the federal or an approved state program; (2) any aspect of state law or of the state program has no basis in human health or environmental protection and which acts as a prohibition on the treatment, storage or disposal of hazardous waste in the state; and (3) the State manifest system does not meet the federal requirements.

EPA has found that the Texas program complies with the requirements of 40 CFR Part 271.4.

Comment: The commenter also states that Texas does not have an effective permit tracking system as required by federal law. This causes the issue of a company's permit status to never be clearly resolved. Thus legal actions are taken as a smoke screen for the deficiencies of this tracking system.

Response: EPA is aware of no federal statutory or regulatory requirement for a permit tracking system. Such a tracking system, though, is important in providing proper management of the program. The states are encouraged and assisted by EPA in developing and implementing such a system. Both TDH and TDWR have these tracking systems in place and, in reviewing the programs, EPA has found that they are used to good advantage.

Comment: The commenter also made several suggestions regarding the consolidation of state agencies and the establishment of a Scientific Advisory Board.

Response: EPA has noted these comments and has forwarded them to the State for consideration.

7. One commenter philosophically supports the Final Authorization of the Texas program but cannot presently support an EPA decision for final delegation of the RCRA program to the State until the present deficiencies and discrepancies in the State program are addressed effectively. The commenter made several specific comments summarized and responded to below.

Comment: EPA should prepare an Environmental Impact Statement (EIS) prior to any Final Authorization of the Texas program. Such approval is a major federal action significantly affecting the quality of the human environment. A properly prepared EIS will identify those issues most crucial to Final Authorization and assist EPA and the State in designing a program that can and should be a model for the nation.

Response: EPA has determined that activities undertaken pursuant to RCRA do not require the preparation of an Environmental Impact Statement (EIS). EPA has made this determination based on the belief that these activities are undertaken in such a manner so as to ensure performance of an analysis which is the functional equivalent to the EIS requirements. The procedures EPA follows in considering a State's application for Final Authorization provide the same analysis of issues and consideration of alternatives as would be contained in an EIS.

Comment: TDWR has failed to require hazardous waste permit applicants to submit evidence of financial assurance for closure/post-closure care, detailed closure plans, and self-inspection standards and schedules with permit applications.

Response: In reviewing early permit applications processed by the State, EPA noted that the State did not always require applicants to submit all necessary documents. EPA pointed out this discrepancy to the State and

process in all states, including Texas.

agencies. However, EPA feels that such

between the State and business

implementing the hazardous waste

statutory or regulatory requirement for a

this discrepancy to the State and

immediate corrections were made. EPA notes that subsequent permit applications have contained proper documents.

Comment: TDWR is far behind in its review and final processing of Part B hazardous waste permit applications. Although EPA may have granted TDWR an extenson for calling in an acceptable number of Part B's, the commenter feels that the agency still lakes sufficient resources and personnel to insure that the large number of outstanding Part B applications can be thoroughly reviewed and permits issued or denied.

Response: TDWR has met all permitting commitments for fiscal years 1983 and 1984. The agency, at EPA's request, has accelerated the call-in of Part B permit applications in FY 84 and has exceeded those commitments. The agency has provided EPA a schedule of accelerating call-ins into FY 86.

Nevertheless, EPA is concerned that permits be called-in and processed in a timely manner and that quality reviews be completed. As discussed earlier in this responsiveness summary, EPA will overview and assist the State to ensure that quality permits are issued in a timely manner.

Comment: The State does not have the authority to assess administrative penalties.

Response: As discussed earlier, authority to assess administrative penalties is not a requirement for Final Authorization.

Comment: The State has failed to use enforcement tools effectively including effectively pursuing litigation and recovering civil penalties.

Response: As discussed earlier, the State and EPA have entered into an Enforcement Memorandum of Understanding in order to provide assurance that all enforcement tools will be used to best effect.

Comment: There are problems of coordination among State agencies in the pursuit of enforcement actions.

Response: As discussed earlier, EPA is aware of past problems of coordination. The State has worked closely with EPA to resolve these problems of coordination and to clarify jurisdictional questions.

Comment: There are questions about discrepancies between generator reports and disposal reports of quantities of waste shipped and received.

Response: EPA, as a matter of routine, frequently reviews reports submitted to the agencies from handlers of hazardous waste. Biennial reports submitted to the State were only recently due to EPA. EPA, in the continual and comprehensive overview role, will be evaluating these reports for inaccuracies and discrepancies.

In the meantime, EPA invites reports of specific instances of inaccuracies and discrepancies. Failure on the part of the State to manage reporting by handlers of hazardous waste in a manner equivalent to the way EPA would manage such reporting would be grounds for withdrawal of the authorized program from the State and the implementation of the federal program in Texas.

Comment: Texas does not have a citizen suit provision in its hazardous waste law.

Response: Citizen suit provisions of RCRA are found in Section 7002(a) (Subtitle G). Section 3006(b) requires that State programs be "equivalent to the Federal program *under this subtitle.*" (Emphasis added.) Section 3006 is in Subtitle C of RCRA.

EPA cannot require a State to provide for citizen suits as is contained in RCRA. However, it is EPA's position that the citizen suit provision of RCRA is available to all citizens whether or not a state is authorized.

Comment: Federal regulations (40 CFR Part 271.16) require that, in order to be authorized, states provide the right to intervene in civil enforcement actions in which citizens have interests that may be adversely affected. If a State does not provide for such intervention, the State must provide adequate assurances that the State will both investigate and provide written response to all citizen complaints; the State will not oppose intervention by any citizen when permissive intervention is authorized; and the State will publish notice of and provide at least 30 days for public comment on all proposed settlements of civil enforcement actions. Texas, since the right of intervention is not provided, has implemented the alternative through a Memorandum of Understanding (MOU) between the Texas Attorney General, the Texas Department of Health and the Texas Department of Water Resources.

The commenter argues that the MOU has no binding effect on the three agencies and asks EPA if this MOU is sufficiently binding to provide the long term assurances required by 40 CFR 271.16.

The commenter also states that the agreement has been ineffective in providing true public participation in the enforcement process. This assertion is made on three points: first, the commenter is unaware of any instances in which proposed settlements of hazardous waste suits have been published for 30 days in order to receive public comment and suggestions; second, the State has indicated that notices will be published only in the *Texas Register*, thus guaranteeing that no significant portion of the general public will be aware of the proposed settlement. The commenters suggests that a better practice would be publication both in the *Texas Register* and in newspapers of general circulation in the area(s) affected by the suit; and, third, the MOU provides neither a program nor enforceable rules and procedures for encouraging and responding to citizen complaints of hazardous waste violations.

Response: There is no requirement in 40 CFR 271.16 that assurances be made in the form of regulations. The Memorandum of Understanding is sufficient for providing the necessary assurances to EPA because failure to implement the provisions of the MOU would be grounds for EPA to withdraw the State's Authorization.

Publication of such notices in the *Texas Register* is legally sufficient because the *Texas Register* is the official publication of the State of Texas where such notices, rules and regulations are published. EPA has urged the State, however, to provide other notice, as suggested by the commenter, on proposed settlements.

Procedures implementing complaint investigation policies are found in the Program Description submitted with the application for Final Authorization. These procedures are found on pages TDWR–30 and TDH–24 and 25.

Further, EPA and the State note that notices of settlement have not been published as specified in the MOU which is referenced in the Attorney General's Statement. The State has reaffirmed the agreements in the MOU and the responsibility to provide notice of settlement. Future failure of the State to comply with the requirements of 40 CFR 271.16 would be grounds for action by EPA to withdraw the State's authorization.

* * * * *

During the public hearing the Hearing Officer extended the comment period because of the interest exhibited in the Tentative Decision to grant Texas Final Authorization. EPA received comments from three persons during the extended comment period which ended October 24, 1984.

1. *Comment:* The commenter cited a lack of financial competency and lack of staffing adequacy in the State's Attorney General's Office and enforcement agencies and requested that the State's request for Final Authorization be denied.

The commenter also stated that Final Authorization should not be granted until: (1) The State passes a law giving citizens the right to sue both state agencies for failure of performance, and parties violating their permit conditions; and (2) EPA retains the right to sue state agencies or other parties for failure to have the required permits and/or perform according to permit conditions or in any other circumstances when the public is endangered by hazardous wastes.

Response: Comments regarding the financial competency of the State Agencies have been responded to earlier in this responsiveness summary. TDWR will grant federal funding to the Attorney General's Office to provide an increase in resources for the pursuit of hazardous waste cases.

EPA cannot delay authorization pending the receipt of those specific authorities mentioned by the commenter: (1) As discussed earlier, there is no requirement that the State have a citizen suit provision. The federal citizen suit provision, however, is available to citizens in an authorized state; and (2) EPA retains the right under Section 3008 of RCRA to take action against any person in violation of any requirements of the hazardous waste program. Additionally, EPA may take action under Section 7003 of RCRA against any activity that may present an imminent and substantial endangerment to health or to the environment. EPA may take this action without regard to the authorization status of the State or the permit status of the facility.

2. *Comment:* A commenter supports the authorization of the State citing the fact that the review of the commenter's permit application by the State has been "extremely diligent, competent, and thorough."

Response: EPA appreciates the comment and recognizes the support for the authorization. EPA notes, though, as discussed earlier, that the decision to grant Final Authorization is based on the standards found in Section 3006(b) of RCRA.

3. *Comment:* The commenter states that, based on his experience with Texas and EPA, and his understanding of the law, it seems clear that the hazardous waste management program of the State of Texas is equivalent to the federal program and that EPA should grant Final Authorization to the State.

The commenter also provides comments on the provision for citizen suits in the state. The commenter writes to support the concept that the citizen suit provisions of Section 7002 of RCRA is in force in authorized states.

Response: EPA has determined that the Texas Hazardous Waste Management program is equivalent to the federal program and is eligible for Final Authorization. EPA appreciates the support of the commenter for the decision. EPA also appreciates the support regarding the citizen suit provisions.

Decision

After reviewing the public comment, re-evaluating the State's submittal in light of those comments, and considering the performance of the State under Interim Authorization, it is my conclusion that Texas' application for Final Authorization meets all of the regulatory and statutory requirements established by RCRA.

Accordingly, Texas is granted Final Authorization to operate its hazardous waste management program in lieu of the federal program in Texas. This means that Texas now has responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program. Texas also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement action under Sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this Final Determination from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Texas' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burden on small entities. This Final Determination therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This Final Determination is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 2912(a), 6926, 6974(b)) and EPA delegation 8–7.

Dated: November 21, 1984.

Dick Whittington,

Regional Administrator.

[FR Doc. 84–32475 Filed 12–11–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 73, and 74

[RM–1709; RM–2894; Gen. Docket No. 83–114; FCC 84–521]

A Re-Examination of Technical Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 17, 1983, the Commission adopted a *Notice of Inquiry* (NOI) *and Proposed Rule Making* (NPRM). The purpose of the NOI was to examine certain of the Commission's technical regulations with the intent of eliminating those that no longer serve useful purposes, replacing those that are overly burdensome with less constraining regulations or retaining those which are found to be acceptable, without undermining the Commission's responsibility under the Communications Act of 1934, as amended. In the NPRM we proposed to eliminate rules that specify minimum quality levels of service. This action adopts those proposed changes pertaining to AM, FM and TV station transmission system requirements and auditory assistance receivers.

DATE: Effective December 7, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Michael J. Marcus, Office of Science and Technology, (202) 632–7040

John A. Reed, Office of Science and Technology, (202) 653–6288.

John A. Karousos, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 15

Communications equipment, Radio, Reporting requirements.

47 CFR Part 73

Radio broadcast, Television.

47 CFR Part 74

Television.

Report and Order (Proceeding Terminated)

In the Matter of: A Re-Examination of Technical Regulations; RM–1709, RM–2894, Gen. Docket No. 83–114.

Adopted: November 8, 1984.
Released: December 7, 1984.

By the Commission: Commissioner Quello concurring and issuing a statement.

Introduction

1. On February 17, 1983, the Commission adopted a *Notice of Inquiry and Proposed Rulemaking ("Notice")* in the above captioned matter requesting comments on the general concepts of technical regulation and proposing certain specific rule deletions in Parts 15 and 73.

2. This *Report and Order* (R&O) sets forth our analyses and conclusions on the general regulatory policies covered in the *Notice*, on the issues raised thereon in the comments and replies, and on the specific rule deletions proposed in the *Notice*. These general policies will help formulate additional deregulatory rulemaking proposals in related proceedings which will focus on particular categories of service and equipment.

3. We wish to emphasize that our principal objective in this and future proceedings of its kind is to eliminate unnecessary technical regulations and thereby create an environment that encourages innovation and avoids unnecessary and costly rulemaking. For several years the Commission has been examining all of its rules and policies and major deregulatory actions have resulted. it is our intention to extend our scrutiny to the area of technical regulation.

Procedural Matters

4. Four general points were expressed by the commenters dealing with nature and scope of this proceeding.[1] First, there were concerns that the *Notice* was either too broad in encompassing too many regulations, too narrow to achieve the Commission's goals, or ill-constructed to encourage commenters to respond to areas outside of their interests. Second, there were concerns that the regulations under consideration are intertwined, interdependent, and require complex assessment. Third, CBS and NAB, among others, believed there was the need for an advisory committee as a prerequisite for further action. Finally, several commenters argued for the retention of many technical regulations maintaining that section 303 of the Communications Act mandates that the Commission regulate technical quality, interoperability and interference.

Discussion

5. In the *Notice* we divided the technical regulations into categories according to their primary purpose. The categories were interference control, spectrum efficiency, interoperability and signal quality. Understanding that a rule can serve more than one purpose, we employed a basic classification scheme that would facilitate the deregulatory efforts. On balance we believe this approach will work. Other approaches to classification were mentioned in the *Notice*. For instance, the rules could be divided functionally, rather than by purpose, into performance, design and conduct regulation.

6. Commenters generally seemed less interested in our methodology than in what rules we proposed to eliminate. Many of the commenters complained that the *Notice* was too broad to allow adequate discussion of all major areas of technical regulation. Indeed, the Notice was very broad. Its purpose was to provide an overview of the Commission's technical standards as well as a reasonable scheme for their examination. It was a vehicle to stimulate thought and acquaint the public with our intentions. Many of the comments concerned only rather narrow issues of particular concern to one area of regulation.

7. Some commenters warned that some technical rules are so intertwined with others that too specific a proceeding will prove useless. In general we observed that within each rule part there can be an often complex relationship between rules. In fact some of the rules we are deleting today can be dispensed with largely because we are keeping others. This seems not to be the case, however, between the rule parts themselves. In a sense, the very organization of the rules suggests a part by part approach.

8. Some commenters claimed the need for an advisory committee as a prerequisite for further action.[2] We feel that we can address the technical needs of specific services on a case-by-case basis using the traditional notice and comment procedure that ensures industry participation. Industry groups need not wait for rulemakings, however. We urge industry to use existing associations and standards organizations to consider and suggest possible changes to regulations in advance of Commission action.

9. With respect to arguments about the Commission's mandate, we note that section 303 of the Act authorizes regulation over the external effects and the purity and sharpness of emissions of stations ". . . from time to time, as public convenience, interest or necessity requires." Clearly there is no requirement that we continue regulation in areas where we find such regulation is no longer in the public interest. We have the authority, if not an obligation, to review all of our technical regulations in light of changes that have occurred in telecommunications markets since these rules were adopted and to determine whether such regulations still serve the public interest.[3]

Interference Control

10. In the *Notice* we stated that "interference control is a valid, even essential, government function" and that existing technical regulations may be the most direct means of achieving interference control. Concern in the comments focused on the necessity to exercise caution in revising the present rule structure and the feasibility of specific types of rule changes.[4] We agree and reaffirm the key nature of our interference prevention role and we intend to use all deliberate caution in reexamining our present rule structure. However, the present structure of narrowly defined emissions has also had a serious impact on technical innovation. We feel that our statutory mandate under sections 1 and 303(g) of the Act requires us to consider new approaches to interference control. Any changes will be proposed in further rulemakings of a narrower scope than the Notice and will give all interested parties an opportunity to evaluate the effectiveness of the changes.

11. In the *Notice* we discussed the equivalent interference factor as an alternative to rigidly specified co-channel and adjacent channel separations and power limits. The concept of equivalent interference provides a mechanism by which a licensee would be able to use its transmitter, employing different forms of modulation, so long as no more interference would be caused than when operating with more conventional forms of transmission. To the extent this concept is employed, we will be able to eliminate the need for many rulemakings. Moreover, a licensee's or manufacturer's developmental plans would not have to be spread on a public record. Our staff is presently studying this approach in detail, and we expect to consider a more detailed proposal in further proceedings. We anticipate that it will be easier for the public to comment on a more detailed proposal limited to a single service category.

12. The *Notice* raised the possibility of relaxing frequency tolerance specifications where emission roll-off regulations were adequate to prevent adjacent channel interference. While one commenter supported this general concept, several others raised concerns of interference and a decrease in spectrum efficiency if more flexibility was allowed in this area. It was also pointed out that in services where AM and similar modulations with a strong carrier signal are used, frequency tolerance is essential to controlling interference from intercarrier beats. We recognize those concerns and will consider them in drafting any specific proposals in this area. We shall be especially careful in modifying stability rules in AM-like services susceptible to intercarrier beat.

Spectrum Efficiency

13. In the *Notice* we reasoned that ensuring technically efficient use of the spectrum justifies regulation in situations in which licensees lack incentives to voluntarily conserve spectrum and employ more spectrally efficient technologies. We also indicated that, where regulation of efficiency is warranted, it is less constraining to specify output or performance type standards, such as bits per second per hertz, rather than particular technologies, such as trunking or ACSB.

14. The comments generally confirmed the Commission's view that spectrum efficiency is a valid regulatory concern. Some also agreed that increasing licensee flexibility strengthens the incentive to use the spectrum efficiently. Some commenters felt that the Commission should take a more aggressive role in promoting and mandating spectrally efficient technologies, rather than relying on what those commenters perceived to be weak or non-existent marketplace incentives. Opinions were divided also on the most appropriate method of regulation. The general concept of regulating system output or performance rather than specifying a particular design or technology drew some support, although the complexities of defining and measuring spectrum efficiency were largely unaddressed.

15. Spectrum efficiency will be a valid reason for technical regulations as long as licensees incentives do not reflect the economic value of the spectrum and the corresponding incentive to be profligate in its use. Also the degree of regulatory control over efficiency will vary according to the particular service category. The same is true of the best method of regulation. We think, for example, that an output efficiency standard has little relevance in the context of the present television broadcasting service where technology is almost totally standardized to ensure interoperability goals. In other services, however, such a constraint may not apply. We are interested both generally and in this proceeding with all approaches to spectrum efficiency that rely on private incentives to use spectrum wisely.

Interoperability

16. In the *Notice* we defined interoperability regulations as technical rules that ensure that equipment owned by different entities are capable of operating together in the transfer of information. We pointed out that, where interoperability standards were desirable, they could be achieved by voluntary standards or mandatory regulations with different costs and benefits associated with each approach. However, in the case of interoperability mandated by law or treaty relating to emergency channels in the aeronautical and maritime mobile services, we clearly stated our intention of maintaining the *status quo*.[5]

17. Many parties argued the need for interoperability regulation in the broadcast services. Several parties raised issues of possible adverse impacts on national security/emergency preparedness (NSEP) if the present level of interoperability were to diminish greatly, but none stated specifically what level of interoperability they felt was essential. A possible NSEP impact would be a serious concern to us and will have to be considered on a case-by-case basis as specific proposals are made in future proceedings. We urge those agencies in the NSEP area to start considering interoperability requirements for specific services so that an overflow is available to guide us in this area in future notices.

18. Parties commenting on potential adverse effects of deleting the present broadcast interoperability requirements ranged from those who said that such regulation was essential for the interoperability of broadcasters and home receivers to those who said such regulation facilitated receiver design and lowered cost. Others argued that discontinuing the detailed regulation of broadcasting emissions would have little immediate effect on today's standards due to the interlocking nature of the system but would facilitate the introduction of evolutionary changes. It was noted also that the impediment to innovation could be alleviated by a liberal special temporary authority and waiver policy.

19. We are aware of the concerns about the cacophony that preceded the formal regulation of radio in the U.S. in 1927. While detailed regulation of broadcast emissions may have been helpful in introducing the services we have today, if is fair to question the continuance of this regulation in all cases. Between 1963 and 1983 there were thirteen R&O's modifying § 73.687, the broadcast transmitter standards for television. This is because the detailed nature of the present rules requires a rulemaking for any minor signal format change even if it is compatible with existing receivers. This rigidity thus tends to delay innovation which may be compatible with existing equipment and to increase the burden on the Commission and the public.

20. As was pointed out above, the interlocking nature of today's system of broadcast transmitters and receivers is likely to discourage radical changes that would obsolete receivers. Nevertheless, we recognize the concern of the commenters. In future proceedings which may explore the possibility of decreasing the detail of present interoperatibility standards, we shall proceed with caution, carefully considering both the power and the limitations of market forces and the use of voluntary standards to achieve the desired balance of interoperability and flexibility.

Technical Quality

21. In the *Notice* we stated that, in general, the existence or nonexistence of adequate competition and diversity in the supply of a service or equipment is the principal, if not the only, significant factor in deciding whether to regulate the technical quality of that service or equipment. The only clear exceptions

[1] See comment and reply comment lists in Appendices A and B.

[2] See Comments of CBS and NAB.

[3] See e.g., *HBO, Inc.* v. *FCC*, 567 F.2nd 9. 36 (D.C. Cir. 1977).

[4] See Comments of ABC, MIS, NAB, CBS, and Vincom.

[5] Several commenters stated a need for interoperability standards in the Private Land Mobile Radio Service (PLMRS). However, the Commission has traditionally allowed PLMRS licensees a choice of a small number of enumerated modulation types; for example, we presently allow AM, FM, and digital modulation for these users (see § 90.207 of our Rules). Our experience has shown that licensees understand their own interoperability requirements and purchase the types of radio equipment necessary to maintain interoperability within their fleets. Those few licensees who require interfleet interoperability have also been able to select equipment to meet their requirements. Thus, we see no need at this time for initiating direct FCC regulation of modulation choices in order to mandate PLMRS interoperability.

discussed were certain services and equipment used by the public primarily for safety of life and property, such as aeronautical and maritime mobile, which we suggested may warrant regulation even if competitively supplied. We also stated the view that most services and equipment under our jurisdiction are sufficiently competitive to warrant deregulation of technical quality.

22. The comments raised several factors other than an absence of competition and diversity as reasons to regulate technical quality. One factor mentioned in several comments is the inability of purchasers to evaluate the quality of technically sophisticated products or to ensure they are getting the quality they want. There was concern that communications products are uniquely difficult for consumers because the devices owned or used by individuals are often only a part of a larger system about which the consumer has little information and over which he has no direct control. (For example, a television viewer experiencing poor quality reception may have difficulty determining whether the cause is the receiver or some other part of the system.) Regulating the quality of the transmitter, it is argued, eliminates one possible source of degradation and simplifies the problem for consumers.

23. This concern over system complexity will have to be considered in specific cases. However, we note that there are a wide variety of technologically complex systems sold today without federal quality regulations except in the safety area and that this nonregulation is generally successful. In some cases though, telecommunications systems do have the unique characteristic of being split ownership systems (*e.g.*, the broadcaster does not own the receiver) and this complicates the feasibility of identifying the source of a quality problem by the end user. However, in services where there is effective competition, there are still ways for the consumer to identify quality and choose the quality consistent with their needs.

24. Existing quality rules serve a useful function as engineering benchmarks for system designers. The regulation status of these standards also imposes a real cost in that it is time consuming and expensive to go through a formal notice and comment procedure to update them. Moving such quality rules to a nonregulatory status (e.g. voluntary standards) would facilitate their updating and in many respects accomplish the same benchmark function as today. Indeed voluntary quality standards already exist in many areas we do not regulate.[6]

25. Several parties expressed concern over the viability of competition in small broadcast markets and the possible need for continued quality regulation in such markets. We have addressed similar concerns in previous proceedings dealing with program deregulation in radio and television [7] and have found no need for a bifurcated approach. There is generally adequate competition between broadcasters and other suppliers of programming and entertainment.

26. Several commenters argued that, since broadcast licensees are trustees or stewards of the public airways, they should be required to maintain a minimum level of technical quality. While we agree that licensees have a responsibility to provide good quality service, we do not agree that such responsibility justifies direct regulation of technical quality. To the contrary, the pressure of competition and consumer choice have brought about a generally higher level of technical quality than required by our Rules.[8] The severe penalties imposed by the competitive marketplace on licensees who provide poor service make such behavior highly unlikely. Responsible conduct by broadcasters need not always be mandated by quantitative regulation.[9]

Guidelines

27. Based on the comments received and on our own long experience in the promulgation of technical regulations, we may reach some conclusions that should provide guidance in this and other proceedings. With respect to the broad categories of technical standards, our findings can be summarized in the following principles.

Interference—The control of harmful interference between users of telecommunications services and equipment is a valid regulatory function of the highest priority. Technical regulations deemed essential to interference control will be retained but will be carefully examined to ensure they are not unnecessarily restrictive in areas unrelated to interference control.

Spectrum Efficiency—Mechanisms to ensure spectrum efficiency are a high regulatory priority. However, explicit regulation of the spectrum efficiency of radio systems is not required where the following two conditions are both met: (1) licensees have an incentive to operate efficiently and (2) licensees are given the flexibility to choose the technical details of their system. Where significant flexibility is not possible and some regulatory control is necessary beyond merely setting the size of the channel assignment, the preferred type of regulation is one that specifies the required spectrum efficiency (*e.g.*, bits/second/Hertz) as opposed to a particular technology.

Interoperability—We attached a high priority to interoperability in many radio services, however, the priority of mandating specific interoperability through regulation varies depending on the service. Direct Commission regulation of interoperability is useful in several cases such as (1) in systems where instant communications between all stations is critical to safety (e.g. the maritime and aeronautical distress frequencies), (2) in systems where interoperability can be shown to be critical to national security/emergency preparedness concerns (e.g. the Emergency Broadcast Service), and (3) in helping the introduction of new services involving large public participation (e.g. cellular radio telephone service). In non-safety cases where we consider mandatory standards we will consider them on a case by case basis, and we will consider whether the benefits of standards outweighs the costs and time delay involved. We will seek to deregulate standards when (1) it can be determined that they are sufficiently well established to be maintained as voluntary standards and (2) enough equipment is installed to give manufacturers and service providers the incentive to make any new changes compatible with the original equipment. In these non-safety cases, we will also consider alternatives to mandatory standards that endorse or give a preference to a specific standard rather than requiring it.[10]

Technical Quality—While the Commission has the discretionary authority, in many cases, to regulate the technical quality of telecommunications services and equipment, we find that it is not generally in the public interest to do so. Exceptions to this are limited to cases where there are explicit statutory or treaty mandates or some other overriding factor such as safety of life and property. The provisions of most telecommunications equipment and services can be considered sufficiently competitive to consider deregulation of technical quality.

28. It must be emphasized that the principles we have just enunciated are intended to be understood not as dogma but as useful tools to help us in the future. It is not our desire to set adrift established industries and communications services. We intend an incremental approach to technical deregulation. We do not expect this deregulation to occur in a void. It can be assumed that responsible industry organizations will continue to develop and promulgate what they perceive to be useful voluntary standards. We anticipate that the Commission will coordinate this process with the appropriate industries and the standards organizations.

Specific Rule Changes

29. The *Notice* stated reasons for undertaking this review of the technical rules and regulations with the hope of modifying burdensome rules to stimulate technological innovation in communications and to create, to the maximum extent possible, an unregulated, competitive marketplace environment for the development of communications. The technical quality regulations are prime examples of rules that were needed at one time to foster the growth of an industry by providing common specifications for everyone. Indeed, especially in the broadcasting field where the transmitting and receiving equipment is designed and owned by different groups, the quality regulations provided standards for the development of compatible transmitting and receiving equipment. Today, the broadcasting industry is mature. We are confident that the quality of broadcast stations will remain high. Never before have so many sources of entertainment been vying in the marketplace to please the consumer. Cable television, digital audio disks, VCR's, satellite programming, computer games, and other alternate sources of entertainment will provide the necessary incentive for broadcasters. Taking these factors into consideration, in the NPRM we proposed the deletion of various broadcast quality regulations as well as certain quality standards in Part 15 of the Rules. We turn now to a discussion of these regulations.

Section 73.40—AM Transmission System Performance Requirements

30. NAB argues that subparagraph 73.40(a)(2) must be retained because of the potential for interference to adjacent channels that would result from its deletion. ABES and Robert Jones, P.E., believe these are minimum standards and should be required of all licensees. NRBA does not favor the deregulation of § 73.40 of the Commission's rules as proposed in the *Notice*. However, NRBA offers an alternative to the proposal, i.e., that a mere certification by the manufacturer that a broadcast transmitter meets the requirements of § 73.40 would be sufficient to protect the broadcast licensees.[11] Cox indicated that this Section covers requirements for the general design of AM broadcast equipment as well as for providing the standard for checking equipment performance and, therefore, should be retained. Jules Cohen and Associates, P.C., object to the deletion of this Section, believing it to be necessary from the interference control and spectrum efficiency viewpoints. Motorola submits that eliminating the quality standards specified in §§ 73.40 and 73.128 of the Commission's rules would cast a pall of uncertainty over AM stereo as broadcasters and receiver manufacturers grapple with revised regulations. This could only degrade the quality of AM stereo. Thus, Motorola requests the above rules be retained. On the other hand, Harris agrees with the Commission that marketplace competition has brought about higher standards and agrees with the proposed deletions. CBS, like Harris, also favors relaxed quality standards believing that the proposed rules are generally surpassed by present transmission equipment and should be deleted.

31. An analysis of those regulations proposed for deletion in § 73.40(a) is as follows: Subparagraph (1) describes the minimum level of modulation of which a transmitter must be capable. A broadcaster operating below this modulation level would experience a decrease in coverage area. Thus, there is an economic incentive for the broadcaster to continue to meet this specification, even without a quantitative requirement, and we feel that operation at a low modulation level is unlikely. Subparagraph (2) specifies the maximum permissible level of harmonic distortion, subparagraph (5) limits noise on the transmitted signal, and subparagraph (4) specifies the degree of carrier amplitude regulation for the transmitter. Some of the commenters argued that deletion of these rules would lead to interference to channels adjacent to the broadcaster whose signal did not comply. We believe that this will not happen because, first, we are retaining the provisions of § 73.44(a) which directly limit emissions on adjacent channels and, second, any transmission which is of such poor quality that it causes interference on adjacent channels will also appear to be of poor quality to the intended listeners and will affect the broadcasters own audience by making his signals virtually unusable.

32. Subparagraph (3) concerns the frequency response characteristics of the broadcast transmitter. This is a quality standard and variance from it has no potential for increasing the level of interference to other stations. It is believed that the marketplace incentives are sufficient for the broadcaster to determine the "flatness" of the frequency response absent regulation. Regardless, audio processing by the broadcaster could be used to change the frequency response under the existing regulations. This rule, therefore, can be deleted.

33. Accordingly, after review of the comments we still believe that the marketplace forces are sufficient to ensure that broadcasters will continue to meet high quality standards without Commission regulation. Therefore, subparagraphs 73.40 (a)(1) through (a)(5) will be deleted, as proposed. These deleted standards apply only to monophonic AM operation. Changes to the specifications relating to stereophonic AM operation were not proposed in the *Notice* but will be considered in a future proceeding.

Section 73.317—FM Transmission System Requirements

34. Except for CBS and Harris, the majority of commenters opposed the Commission's proposal to eliminate subparagraphs (a)(1) through (a)(5) of this Section. They believed that: (a) subparagraph 73.317(a)(1) should be retained because it directly affects interference to adjacent FM channels; (b) subparagraph 73.317(a)(2) deals with preemphasis standards which are required to ensure interoperability among various pieces of equipment and, therefore, should be retained; and (c) subparagraphs 73.317 (a)(3) through (a)(5) must be retained as guidelines in order to determine performance objectives. Harris and CBS believe that

[6] EIA studio transmitter link (STL) and land mobile radio standards.

[7] *Deregulation of Radio*, 84 FCC 2d 968 (1981); *TV Deregulation*, 49 F.R.

[8] The Commission's technical quality rules were adopted some 40 years ago and established the absolute minimum quality standards that broadcasters are required to observe. Since then, state-of-the-art transmission facilities and technological innovations have exceeded, by far, many of the above requirements.

[9] *See Deregulation of Radio, Docket 79–219*, 84 FCC 2d at 97, and *Aural Power* Docket 83–117, ___ F.C.C. 2d ___ (adopted April 19, 1984) at para. 15. In both proceedings, the Commission found that licensees had adequate incentives to provide satisfactory signals and programming to their audiences without quantitative standards.

[10] See Multichannel TV Sound. See Second Report and Order, Docket 21323, (Adopted May 29, 1984), FCC 84–116.

[11] This form of "certification" has already been provided. Broadcast transmitters are now authorized by a grant of notification instead of type acceptance. See Report and Order, Gen. Docket No. 83–10, adopted January 10, 1984, FCC 84–21, 49 FR 3991 published February 1, 1984.

the above subparagraphs are generally surpassed by present transmission equipment and should be deleted. CBS regards as unclear the impact of removing subparagraph 73.317(a)(2) but concludes that its deletion would be preferable to its retention.

35. Under § 73.317(a), subparagraphs (1), (3), (4), and (5) deal with the transmitter characteristics of minimum level of modulation, harmonic distortion, frequency modulated noise, and amplitude modulated noise, respectively. For the same reasons as discussed for § 73.40, the broadcaster has an economic incentive to maintain these specifications without the need for Commission regulation. However, subparagraph (a)(2) deals with the pre-emphasis applied to the modulating signal with a corresponding de-emphasis contained in the receiver. This standard ensures interoperability between the receiver and the transmitter, and that portion related to pre-emphasis will be retained at this time. While the broadcaster can still use audio processing to change the characteristics of the received signal, the retention of this standard will ensure that the recovered signal will be the same as that processed audio supplied by the broadcaster. It is not necessary to retain the minimum frequency response requirement which is also contained within this regulation. Frequency response is clearly a quality standard that need not be mandated by the Commission. Accordingly, it is appropriate to delete subparagraphs (a)(1) and (a)(3) through (a)(5) and revise subparagraph (a)(2) of § 73.317 and defer to the marketplace. We will consider possible further modification of the pre-emphasis standard of subparagraph (a)(2) in a future proceeding which will review the FM service technical standards in depth. However, we are modifying the pre-emphasis requirements as per the attached appendix because we find that it is in the best interest of the broadcaster to adhere to the pre-emphasis characteristics as closely as possible.

Section 73.687—TV Transmission System Requirements

36. NAB argues that television transmission system performance regulations should be retained, and that subparagraphs 73.687 (a)(1) and (a)(2) are essential to the design of television transmission systems with possible interference control implications. NAB argues that subparagraph 73.687(a)(3) governs out-of-band radiation from television stations, and its purpose is to control interference; subparagraph 73.687(a)(4) provides measurement procedures to demonstrate compliance with the provisions of subparagraph 73.687(a)(3); subparagraph 73.687(a)(5), while not specifically related to interference to other stations, must be maintained as a guideline; subparagraphs 73.687(a)(6) indirectly controls interference to adjacent channels; subparagraphs 73.687 (a)(7) through (a)(9) assure compatibility between stations and receivers; subparagraph 73.687(b)(1) indirectly controls interference to upper adjacent televisions channels; and, subparagraph 73.687(b)(2) defines the audio pre-emphasis curve which is used as a design criterion by television transmitter and receiver manufacturers. Lastly, subparagraphs 73.687 (a)(3) through (a)(7) contain aural transmitter performance objectives and measurement procedures. Other commenters hold similar views and urge the Commission to retain these standards. The Association of Maximum Service Telecasters (AMST) holds a different view regarding subparagraphs 73.687(a) (1), (2) and 73.687(b) (1) and (3) through (9). AMST states that although these standards may not serve the goals of interference prevention, spectrum efficiency or interoperability, they are good indicators for judging station performance. CBS supports the proposed deletion of paragraphs 76.687 (a) and (b) as being either too loose to be of any real significance or too well established to be needed any longer.

37. Under § 73.687(a), subparagraphs (1) and (2) specify the shape of the demodulated video signal. While severe deviations from the existing regulations could adversely affect the television reception of the broadcaster involved, these subparagraphs are primarily concerned with signal quality. Any degradation of these signal specifications would affect the picture quality, providing the broadcaster with an economic incentive to maintain these standards without Commission regulation. Subparagraph (9) states that the video input signal and the transmitted video signal should have a linear relationship. Again, this is a matter of quality that need not be addressed by regulation.

38. Section 73.687(b) regulates the characteristics of the transmitted television aural signal. The subparagraphs are identical to those employed for the FM broadcast service under § 73.317(a) with the same interference or quality concerns. Accordingly, we will again defer to the marketplace for subparagraphs (a)(1), (a)(2), (a)(9), (b)(1), part of (b)(2), and (b)(3) through (b)(5) of § 73.687. On the other hand, our review of subparagraphs (a)(3) through (a)(8) and (b)(2) suggests that these rules, to one extent or another, are intended not only to improve quality but to prevent interference and promote interoperability. However, we are modifying the pre-emphasis requirement to be parallel to the change we are making in the FM service which we described in paragraph 35. These subparagraphs will be reviewed again in a future proceeding dealing with television technical regulations and will be retained in the interim.

Miscellaneous Broadcasting Matters

39. NAB and AMST suggested that the technical description of many quality regulations proposed for deletion should at least be maintained in some manner as guidelines or voluntary standards of good engineering practices that can serve as a reference for system designers. It would be preferable if the needed standards were eventually incorporated into existing or new publication by the voluntary standards development organizations (*e.g.*, EIA, IEEE, NAB, etc.). However, it may not be possible to do this at an early date, and the Commission may have to fill the void between the time when the technical standards are removed from the Regulations and the time that they appear in publications of the voluntary standards organizations. The Commission can make the standards available for the guidance of and use by the private sector. These standards would be issued in the form of Office of Science and Technology (OST) Bulletins and would contain the information removed from the rules. It is planned that publication of these Bulletins would continue only so long as the information was found to be needed and was not available from a private sector publication.

40. Consequent to our decision to delete the pertinent subparagraphs of §§ 73.40, 73.317, and 73.687 of the Commission's rules, as outlined above, we are also deleting as moot the licensee proof of performance requirements of § 73.1590(b)(1)(i), (ii), (iii), (iv); (b)(3) (i), (ii), (iii), (iv); (c)(1) and (c)(6). We are revising subparagraph (b)(3) of § 73.1570 of the Commission's rules to define the total modulation of the aural carrier for monophonic TV transmitters which was previously defined in § 73.687. Additionally, we take this opportunity to dismiss as moot two pending petitions for rule making (RM–2894 and RM–1709, filed by the NAB and Christopher Philip Payne respectively), urging the Commission to revise its "audio fidelity rules." These rules are deleted herein.

Sections 15.361, 15.363, and 15.365—Auditory Assistance Devices

41. In addition to the Part 73 matters discussed above, the *Notice* proposed to delete §§ 15.361, 15.363, and 15.365 which specify standards for frequency stability, selectivity and desensitization, and image frequency response, respectively, for auditory assistance receivers. We have classified these regulations under the category of minimum quality standards. Their proposed deletion is consistent with the idea that control of the technical quality of certain competitively supplied equipment can be satisfactorily obtained through marketplace forces and need not be mandated by the Commission.

42. Comments concerning these proposals were filed by NAB, Phonic Ear, Inc., and Williams Sound Corp. Williams Sound Corp. supported our proposal and agreed with our belief that these technical parameters could be controlled through the marketplace forces. The other commenting parties opposed the deletion of these rules stating that these rules are related to interference rather than quality and that, in any case, the special needs of the hearing impaired justify this form of regulation.

43. We agreed that the specified regulations address the matter of the degree of interference experienced by the receiver. However, these rules are concerned with the quality of reception rather than a source of interference to other radio operations. Generally, standards for controlling interference from transmitters address the matter of radio frequency emissions and the effects of those emissions on other users of the spectrum. In this case, these receiver rules address the ability of the receiver to reject an interfering signal and are directly related to the quality of the received signal. Thus, these regulations are correctly classified as minimum quality standards. It should be noted that we are not dealing here with home electronic equipment. Such devices may be regulated with respect to susceptibility to interference pursuant to section 302 of the Communications Act.

44. It is believed that the special needs of the hearing impaired will be more effectively addressed by the deletion of these Part 15 regulations. This will provide the users with the advantage of having a range of cost/performance combinations which may meet their needs better than a single standard design. Under the proposal being implemented by this action, auditory assistance users will be able to purchase the degree of receiver protection required for their particular needs. The retention of mandatory standards would not allow these distinctions to be made and would place the Commission in the position of having to make a single cost/performance trade-off based upon worse case assumptions. Should the potential users of auditory assistance devices be located in an area that is relatively clear of interfering signals or need only one or two channels, a less expensive receiver with relaxed specifications might be more suitable for their needs. Should the users be located in an area with a high level of radio frequency congestion or should they wish to install a multichannel system, a more expensive receiver system with specifications similar to those contained in the concerned regulations may be desired. Therefore, we will defer to the marketplace and are deleting §§ 15.361, 15.363 and 15.365 of the regulations.[12]

Ordering Clauses

45. Accordingly, it is ordered, pursuant to the authority contained in sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, that Parts 15, 73 and 74 of the Commission's Rules are amended, effective December 7, 1984, as shown in Appendix C. It is further ordered that this proceeding is terminated.

46. It is ordered that RM–1709 and RM–2894 are dismissed.

47. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C., *et seq.*).

48. Further information on this matter may be obtained by contacting Michael J. Marcus, (202) 632–7040, or John A. Reed, Office of Science and Technology, (202) 653–8288, or John A. Karousos, Mass Media Bureau, (202) 632–9660.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

[12] The Commission has neither the expertise nor the primary jurisdiction to promulgate health and safety standards for auditory assistance devices. We shall defer to the expertise of the Federal health and safety agencies in the establishment of such standards. If such standard are adopted we would expect equipment submitted for FCC approval to comply with all applicable Federal standards, e.g., performance standards adopted by the appropriate divisions of the U.S. Department of Health and Human Service or safety standards adopted by the Consumer Product Safety Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachments:
Appendices A
Appendices B
Appendices C

Appendix A—List of Commenters

1. National Electrical Manufacturers Association ("NEMA")
2. Robert A. Jones, P.E. ("Jones")
3. Siemens
4. Advanced Technology Laboratories, Inc.
5. Hewlett-Packard Company
6. Bird Electronic Corporation
7. ADR Ultrasound
8. Ekoline
9. Technicare
10. The Schenectady Amateur Radio Association, Inc.
11. William Sound Corp.
12. Aerospace and Flight Test Radio Coordinating Council ("AFTRCC")
13. Hoffrel
14. General Electric ("GE")
15. Picker International
16. John D. Spano
17. Donald Chester
18. National Association of Broadcasters ("NAB")
19. Global Telerad, Inc.
20. Elscint, Inc.
21. Bendix
22. Viacom International, Inc.
23. U.S. Department of Agriculture
24. Phonic Ear, Inc.
25. National Radio Broadcasters Association ("NRBA")
26. National Cable Television Association, Inc. ("NCTA")
27. Association of Federal Communications Consulting Engineers (AFCCE).
28. Land Mobile Section of the Telecommunications Group of Electronic Industries Association (EIA/LM)
29. American Radio Relay League, Inc. ("League")
30. County of Los Angeles
31. American Broadcasting Companies, Inc. ("ABC")
32. Metromedia, Inc.
33. CBS, Inc. ("CBS")
34. Association of American Railroads ("AAR")
35. Millicom
36. Independent Data Communications Manufacturers Association, Inc. ("IDCMA")
37. National Association of Business and Educational Radio, Inc. ("NABER")
38. Special Industrial Radio Service Association, Inc. ("SIRSA")
39. Association of Maximum Service Telecasters ("AMST")
40. American Petroleum Institute ("API")
41. Consumer Electronics Group of the Electronic Industries Association ("CEG/EIA")
42. American Telephone and Telegraph ("AT&T")
43. Communications Satellite Corporation ("COMSAT")
44. Rockwell International Corporation ("Rockwell")

73.667(a)(4) provides measurement

(b)(3) through (b)(5) of § 73.667. On the

Payne respectively), urging the

design. Under the proposal being

Consumer Product Safety Commission.

("Rockwell")

45. Department of Defense ("DOD")
46. Hughes Aircraft Company ("Hughes")
47. Cox Communications, Inc. ("Cox")
48. Jules Cohen & Associates
49. Manufacturers Radio Frequency Advisory Committee
50. GTE Service Corporation ("GTE")
51. J.P. Neil, P.E.
52. Forest Industries Telecommunications ("FIT")
53. Multimedia, Inc. ("Multimedia")
54. Association for Broadcast Engineering Standards, Inc. ("ABES")
55. Hommett and Edison, Inc.
56. Harris Corporation ("Harris")
57. Gordon F. Rogers
58. Sidband Technology, Inc.
59. Sperry Corporation
60. American Satellite Company

Appendix B—List of Reply Comments

1. Siemens
2. Bird Electronic Corporation
3. Independent Data Communications Manufacturers Association, Inc. ("IDCMA")
4. International Business Machines ("IBM")
5. Multimedia, Inc. ("Multimedia")
6. National Association of Broadcasters ("NAB")
7. American Radio Relay League, Incorporated ("League")
8. Cox Communications, Inc. ("Cox")
9. Association of Maximum Service Telecasters, Inc. ("AMST")
10. Society of Broadcast Engineers ("SBE")
11. General Electric ("GE")
12. National Cable Television Association, Inc. ("NCTA")
13. Motorola, Inc. ("Motorola")
14. Group W ("Group W")
15. American Broadcasting Companies, Inc. ("ABC")
16. Harris Corporation ("Harris")
17. Shooshan & Jackson, Inc.
18. E.F. Johnson, Inc. ("Johnson")
19. American Telephone & Telegraph ("AT&T")
20. Gordon F. Rogers
21. Sideband Technology, Inc.
22. Sperry Corporation

Appendix C

PART 15—[AMENDED]

A. Title 47 of the Code of Federal Regulations, Part 15, is amended as follows:

1. Section 15.333 is amended by revising paragraph (b) to read as follows:

§ 15.333 Operation in the band 72–76 MHz.

* * * * *

(b) A receiver may be operated as part of an auditory assistance system provided it meets the technical specifications in § 15.367 and is certified pursuant to § 15.345.

§§ 15.361, 15.363, and 15.365 [Removed]

2. Sections 15.361, 15.363 and 15.365 are removed in their entirety.

PART 73—[AMENDED]

B. Title 47 of the Code of Federal Regulations, Part 73, is amended as follows:

1. Section 73.40 is amended by revising paragraph (a) and subparagraphs (b) (2) and (3), to read as follows:

§ 73.40 AM transmission system performance requirements.

(a) Stations must annually show compliance with § 73.44. These emission limitations must be met under any conditions of modulation expected to be encountered by the station.

(b) * * *

(2) For main channel modulation only, the total audio frequency distortion from terminals to antenna output shall not exceed 5% harmonics (voltage measurements of arithmetical sums or r.s.s) when modulated from 0 to 84% and shall not exceed 7.5% harmonics (voltage measurements of arithmetical sum or r.s.s) when modulating 85% to 95% (distortion shall be measured with modulating frequencies of 50, 100, 1000, 5000 and 7500 Hz up to tenth harmonic or 16,000 Hz, or any intermediate frequency that readings on these frequencies indicate is desirable). Harmonics should be observed to 20,000 Hz. When stereophonic transmission is used, the distortion must be measured in the left and right channels separately using a suitable stereophonic demodulator.

(3) The audio frequency transmitting characteristics for main (L+R), left (L) only and right (R) only modulation shall not depart more than 2 dB from that at 1000 Hz between 100 and 7500 Hz.

* * * * *

2. Section 73.317 is amended by removing subparagraphs (a)(1), (3), (4) and (5), and by revising and redesignating subparagraph (a)(2) as subparagraph (a)(1) and redesignating subparagraphs (a)(6) through (14) as subparagraphs (a)(2) through (10) to read as follows:

§ 73.317 Transmission system requirements.

(a) * * *

(1) Pre-emphasis shall be employed as closely as practicable in accordance with the impedance-frequency characteristic of a series inductance-resistance network having a time constant of 75 microseconds. (See upper curve of Fig. 2 of § 73.333.)

* * * * *

3. Section 73.687 is amended by deleting subparagraphs (a)(1), (2), (9), (b)(1), (3), (4) and (5), by redesignating subparagraphs (a)(3) through (a)(8) as subparagraphs (a)(1) through (a)(6); by revising and redesignating subparagraph (b)(2) as subparagraph (b)(1); and, by redesignating subparagraphs (b)(6) and (b)(7) as subparagraph (b)(2) and (b)(3), respectively, to read as follows:

§ 73.687 Transmission system requirements.

* * * * *

(b) * * *

(1) Pre-emphasis shall be employed as closely as practicable in accordance with the impedance-frequency characteristic of a series inductance-resistance network having a time constant of 75 microseconds. (See upper curve of Figure 12 § 73.699.)

4. Section 73.1570 is amended by revising subparagraph (b)(3) to read as follows:

§ 73.1570 Modulation levels: AM, FM, and TV aural.

* * * * *

(b) * * *

* * * * *

(3) TV station. In no case shall the total modulation of the aural carrier exceed 100% on peaks of frequent recurrence, unless some other peak modulation level is specified in an instrument of authorization. For monophonic transmissions, 100% modulation is defined as ±25 kHz.

* * * * *

5. Section 73.1590 is amended by removing subdivisions (b)(1) (i), (ii), (iii), (iv), and (b)(3) (i), (ii), (iii), (iv), and subparagraphs (c)(1) and (c)(6) and marking them [Reserved]; and, by revising subdivisions (b)(2) (ii) and (iii) to read as follows:

§ 73.1590 Equipment performance measurements.

* * * * *

(b) * * *

(1) * * *

(i)–(iv) [Reserved].

* * * * *

(2) * * *

(i) * * *

(ii) Data and curves showing audio frequency harmonic content for 25%, 50%, 75% and (main channel only) 100% modulation for the audio frequencies 50, 100, 400, 1000, 5000, and when attainable 7,500, 10,000, 12,000 and 15,000 Hz (either arithmetical or RSS (root sum square)) values up to 10th harmonic or 30,000 Hz) for equal left and right (L=R), left (L) only and right (R) only signals. A family of curves must be plotted (one for each percentage above) with percent distoration as ordinate and audio frequencies as abscissa.

(iii) Data showing percentage of carrier amplitude regulation (carrier

shift) for 25, 50, 85 and, if obtainable, 100% modulation with 400 Hz tone for main channel modulation with equal left and right (L=R) signals.

* * * * *

(3) * * *

(i)–(iv) [Reserved]

* * * * *

(c) * * *

(1) [Reserved]

* * * * *

(6) [Reserved]

* * * * *

PART 74—[AMENDED]

C. Title 47 of the Code of Federal Regulations, Part 74, is amended as follows:

Section 74.750 is amended by revising subparagraph (d)(1) to read as follows:

§ 74.750 Transmission system facilities.

* * * * *

(d) * * *

(1) The equipment shall meet the requirements of paragraphs (a)(1) and (b)(3) of § 73.687.

* * * * *

[FR Doc. 84-32287 Filed 12-11-84; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 76

[RM-3810; Docket No. 20423; FCC 84-527]

Amendment of the Commission's Rules To Delete Restrictions on Cable Television Broadcast Television Cross-Ownership; and Divestiture Requirement of § 76.501

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: This action denies a petition for rule making to consider repeal of the cable/local broadcast television station cross-ownership prohibition of § 76.501 of the Commission's Rules. It also amends § 76.501(b)(2) to require divestiture of all egregious cable/broadcast television cross-interests.

This action is taken in response to a Petition for Rule Making filed by Marsh Media, Ltd., and takes action on the matter of egregious cross-ownership situations which the Commission deferred to this proceeding in the *Third Report and Order* in Docket 20423.

This action will promote the availability of independent voices in the local communications marketplace and is consistent with the Cable Communications Policy Act of 1984.

DATE: Effective January 10, 1985.

ADDRESS: Federal Communications Commission Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Memorandum Opinion and Order

In the matter of amendment of the Commission's Rules to Delete Restrictions on Cable Television Broadcast Television Cross-Ownership (RM-3810), divestiture requirement of § 76.501 Relative to Egregious Cable Television Broadcast Television Cross-Ownership in Existence on or before July 1, 1970 (Docket No. 20423).

Adopted: November 8, 1984.
Released: December 4, 1984.

By the Commission.

Introduction

1. Before the Commission is a petition for rule making filed by Marsh Media, Ltd. (Marsh), on November 24, 1980.[1] The petitioner seeks repeal of § 76.501 of the Commission's Rules that restricts the ownership of cable television properties by television broadcasters.[2]

Marsh Media Petition

2. Section 76.501(a)(2) of the Commission's Rules prohibits cross-ownership between a cable television system and a broadcast station whose predicted Grade B contour overlaps the area served by the cable system. The rule was adopted because the Commission believed that it would further its "policy favoring diversity of control over local mass communications media."[3] In its petition, Marsh states that the rule should be repealed on the grounds that it goes beyond the Commission's jurisdiction, is an infringement on the First Amendment rights of broadcasters and that there is no practical evidence that this restriction serves the public interest.[4]

3. On October 30, 1984, the Cable Communications Policy Act of 1984 (Cable Act) was enacted. Section 613(a) of the Cable Act codifies the Commission's present prohibition of cable television system ownership by local television broadcasters. As a result, the Commission does not have the discretion to amend the rule. Accordingly, Marsh's petition for rule making is herein denied.

Divestiture of Egregious Cases

4. Section 76.501(b)(2) of the Commission's Rules grandfathers those cable/broadcast station cross-interests considered non-egregious (i.e., those cases where the broadcast station was not the only commercial broadcast station providing principal community service to the cable community) that were in existence on or before July 1, 1970, the rule's effective date. It also defines the effective date to be applied to cause divestiture of those egregious cable/local television entities which existed prior to the adoption of the cross-ownership restrictions. However, this portion of the rule has been revisited in numerous Commission proceedings, but has never become effective.[5] The most recent action was the *Third Report and Order* in Docket 20423 where the Commission determined that complete divestiture was not necessarily the most appropriate means of achieving the public interest goals of enhanced competition in both the economic and idea marketplaces in all cases. The Commission decided to grandfather the 13 remaining non-egregious cable/broadcast cross-interests, a policy similar to one adopted for broadcast/newspaper cross-ownership.[6] With

---

[1] Marsh is the owner of four television stations and eleven cable television systems.

[2] Section 76.501 prohibits cross-ownership between a cable television system and a national television network or a local broadcast station. Marsh's petition focuses on the portion of the rule relating to cross-ownership by local stations. Network ownership of cable systems is the subject of Docket 82-434, 91 FCC 2d 76 (1982).

[3] *Second Report and Order*, Docket 18397, 23 FCC 820 (1970).

[4] Appendix A is a list of commenters. Public Notice (RM-3810), December 17, 1980. With regard to the cable/local broadcast cross-ownership issue, all five commenting parties reiterate arguments made by Marsh. Several commenters also discuss the rule banning network cable cross-ownership and CBS' request for waiver of that rule, which was pending at that time.

[5] Originally, the rule required divestiture of all existing cross-interests by August 10, 1973. *Second Report and Order*, Docket 18397, 23 FCC 2d 816 (1970). This deadline was subsequently extended until August 10, 1975, and parties were allowed to file waiver petitions for grandfathered status. *Memorandum Opinion and Order*, Docket 18397, 30 FCC 2d 377 (1973). In light of the many waiver petitions filed, the Commission instituted another rule making proceeding, *Notice of Proposed Rule Making*, Docket 20423, 52 FCC 2d 161 (1975). In a *First Report and Order*, Docket 20423, 53 FCC 2d 1102 (1975), the "egregious" only divestiture standard was adopted, effective August 10, 1977. Following a court challenge and a Commission-requested remand, a *Further Notice of Proposed Rule Making* in Docket 20423 was issued to examine the cross-ownership issue again. 61 FCC 2d 150 (1980). The result of this inquiry was the *Third Report and Order*, in Docket 20423, 46 FR 23348.

[6] The Commission adopted a divestiture requirement only for those broadcast station/newspaper cross-interests which were egregious and grandfathered other cross-ownership situations. *Second Report and Order*, Docket 18110, 50 FCC 2d 1046 (1975). Among the cross-interests

Continued

respect to the five remaining cases that appear to be egregious, we temporarily deferred action until consideration of this petition.[7] Given the fundamental issues involved and the potential adverse effects on the public and system and station owners, we believed that additional inquiry and analysis was needed before further action could be taken. Accordingly, the effective date for the divestiture requirement was suspended pending action on the Marsh Media petition and Docket 20423 was terminated.[8]

5. We believe it is necessary to require divestiture in those situations where there would otherwise be a virtual monopoly over local expression.[9] Furthermore, we believe that this action is consistent with the intent of Congress when it adopted the Cable Act. Section 613(f) of the Cable Act grandfathers interests held on July 1, 1984, if such interests were "not consistent with any applicable Federal or State law or regulation in effect on that date." The divestiture requirement for these egregious situations was part of the Commission's rules on July 1, 1984, although the effective date had been temporarily suspended. Accordingly, we will now terminate the stay of the divestiture rule and require divestiture of the five remaining cases that appear to be egregious cable/broadcast station cross-ownership situations within three years of adoption of this item (i.e., by November 8, 1987).[10]

Conclusion

6. The Commission's rule prohibiting common ownership of a cable television system and a co-located television station was codified in the Cable Communications Policy Act of 1984. As such, the Commission cannot repeal its rule. Therefore, Marsh Media's petition is effectively moot and must be denied. With respect to the existing cross-interests that appear to be egregious, divestiture is consistent with the Cable Act.

7. This action is taken pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

8. Accordingly, it is ordered that the request for rule making filed November 24, 1980, by Marsh Media, Ltd. is denied.

9. Accordingly, it is ordered, that effective January 10, 1985, Part 76 of the Commission's Rules and Regulations is amended as set forth in the attached Appendix C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—List of Commenters

American Broadcasting Companies, Inc.
Joint comments of Bahia De San Francisco Television Company
Buford Television, Inc.
Forward Communications Corporation
Futura Communications Corporation
Guaranty Broadcasting Corporation
K-Six Television, Inc.
May Broadcasting Company
John H. Phipps Broadcasting Stations, Inc.
Plains Television Corporation
Retlaw Enterprises, Inc.
Service Broadcasters, Inc.
Shamrock Broadcasting Company, Inc.
Southern Television Corporation
Spanish International Communications Corporation
Studio Broadcasting System
Summit Radio Corporation
Welgel Broadcasting Co.
Ralph C. Wilson Communications, Inc.
Ziff-Davis Broadcasting Company
National Association of Broadcasters
General Electric Broadcasting Company, Inc.
National Broadcasting Company, Inc.

Appendix B—Egregious Cross-Owned Situations

Television station	Cable television system
KLOE–TV, Goodland KS	Goodland, KS.
WKYH–TV, Hazard, KY	Hazard KY
KXGN–TV, Glendive, MT	Glendive, MT
KTEN, Ada, OK	Ada, OK.
KSWO–TV, Lawton OK	Lawton, OK.

Appendix C

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 76.501 is amended by revising paragraph (b)(2) and by removing the note at the end of the section to read as follows:

§ 76.501. Cross-ownership.

* * * * *

(b) * * *

(2) The provisions of paragraph (a)(2) of this section are not effective until November 8, 1987, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970 (e.g., if franchise were in existence on or before July 1970), and will be applied to cause divestiture as to ownership interests proscribed herein only where the cable system is directly or indirectly, owned, operated, controlled by, or has an interest in a non-satellite television broadcast station which places a principal community contour encompassing the entire community and there is no other commercial non-satellite television broadcast station placing a principal community contour encompassing the entire community.

[FR Doc. 84–32222 Filed 12–11–84; 8:45 am]
BILLING CODE 6712–01–M

grandfathered was Marsh's KVII–TV, Amarillo, Texas and Total Television of Amarillo, the cable system in that city in which Marsh has a 50 percent interest.

[7] The five remaining cases that appear to be egregious cross-ownership situations are listed in Appendix B.

[8] Marsh filed for reconsideration in Docket 20423. In that petition Marsh states that the Commission erred in terminating the proceeding without addressing the broader question of the validity of the cable/broadcast television cross-ownership prohibition. That issue is essentially resolved here. The reconsideration petition also requests a clarification as to the extent that Marsh's cross-interest is grandfathered. That issue will be dealt with separately.

[9] The Commission has asserted the importance of the independence of viewpoints in local media markets throughout the many analyses of its ownership rules. Cable television systems are an integral part of these local media markets. They are potentially influential sources of information concerning local issues along with broadcast stations and newspapers. Cable systems are significantly increasing the supply of programming and information available to the public through the carriage of satellite delivered news and other nonentertainment programming. We continue to believe in this context divestiture that is essential to ensure the diversity of editorial voices in these local media markets. We also note that the Commission recently reiterated this belief that local ownership rules must be mantained when it examined the multiple ownership rules for broadcast stations. *Report and Order*, Docket 83–1009, 49 FR 31877 (1984) at paras. 10, 12, 31 and 32. This is the standard adopted in both Docket 18110 and Docket 20423.

[10] With the resolution of this matter which was deferred to this proceeding in Docket 20423, the Commission now amends § 76.501 to reflect this divestiture date. Textual changes to § 76.501 to effectuate this requirement appear in Appendix C.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1182, 1183, and 1186

[Ex Parte No. 55 (Sub-No. 57)]

Exemption of Certain Transactions Under 49 U.S.C. 11343

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: At an open conference held on September 20, 1984, the Commission voted to exempt, on a class basis, motor finance transactions subject to regulation under 49 U.S.C. 11343(a) (1)–(5) involving motor carriers of property, subject to complaints filed by (1)

employees alleging they are or will be adversely affected by a transaction and (2) any party alleging that the transaction will be anticompetitive in effect. New procedural rules for processing the proposed exempt transactions, to be codified at 49 CFR Part 1186, are adopted. In Ex Parte No. 55 (Sub-No. 57A), *Modification of Small Carrier Transfer Regulations for Transactions Involving Motor Carriers of Property* [notice of proposed rulemaking served December 11, 1984.], the Commission has solicited comments on a proposal to adopt the class exemption regulations as the procedural rules for filing and processing transfer of authority involving the small carriers of property subject to 49 U.S.C. 10926. Incidental changes in 49 CFR Parts 1002, 1182, and 1183 have also been made. The procedures are intended to reduce unnecessary regulation and therefore benefit motor carriers and indirectly shippers and the public at large.

EFFECTIVE DATE: The new rules will be effective January 11, 1985.

FOR FURTHER INFORMATION CONTACT:
Warren C. Wood (202) 275–7977;
or
Howell I. Sporn (202) 275–7691.

SUPPLEMENTARY INFORMATION: Notice of proposed rules and exemption was published at 48 FR 28485, June 8, 1983.

Environmental and Energy Considerations

We adopt our preliminary finding that the proposed changes will not have any significant impact on the quality of the human environment or the conservation of energy resources. No comments were submitted on these issues.

Regulatory Flexibility Analysis

The Commission certifies that the regulations adopted here will not have a significant economic impact on a substantial number of small entities. The modified class exemption adopted here will expedite the processing of motor finance applications filed with the Commission. Informational filing requirements have been lessened, and the initial filing fee has been reduced from $400 to $150.

List of Subjects in 49 CFR Parts 1002, 1182, 1183, and 1186

Administrative practice and procedure, Motor carriers.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (D.C. metropolitan area) or toll-free (800) 424–5403.

Adoption and Changes in Regulations

We are adopting with modifications, as described above, the rules previously proposed, to be codified at 49 CFR Part 1186, which are set forth in the appendix. In addition, we are amending the regulations at 49 CFR Parts 1002, 1182, and 1183, to the extent set forth in the appendix. The rule changes will take effect on January 11, 1985.

This decision is issued pursuant to 49 U.S.C. 10321, and 11343(e) and 5 U.S.C. 553.

Decided: November 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49 CFR is amended as follows:

PART 1002—[AMENDED]

1. Revise 49 CFR 1002.2(f)(27) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

(27) A petition for exemption under 49 U.S.C. 11343(e)..... 150

* * * * * *

PARTS 1182 AND 1183—[AMENDED]

2. Parts 1182 and 1183 are amended by adding the words "of passengers" to follow the words "motor carrier" each time they appear in the part headings and paragraphs listed below:

The headings of Parts 1182 and 1183.
§ 1182.1(b).
§ 1182.5 (a) (1) and (2) and (b).
§ 1183.1(a).
§ 1183.3(a).
§ 1183.4(a).
§ 1183.5(a).

3. The following new Part 1186 will be added to the Code of Federal Regulations:

PART 1186—EXEMPTION OF CERTAIN TRANSACTIONS UNDER 49 U.S.C. 11343

Sec.
1186.1 Scope of exemption.
1186.2 Notice of exemption.
1186.3 Attachments.
1186.4 Temporary authority.
1186.5 Filing fees.
1186.6 Publication of summary notice.
1186.7 Effective date of exemption.
1186.8 Complaints.

Authority: 49 U.S.C. 10321 and 11343(e) and 5 U.S.C. 553.

§ 1186.1 Scope of exemption.

Any transaction under 49 U.S.C. 11343(a)(1)–(5) among motor carriers of property or between them and non-carriers is exempt from the requirements of 49 U.S.C. 11343, 11344, and 11345a, subject to the right of employees and others to file complaints as set forth in § 1186.8.

§ 1186.2 Notice of exemption.

To qualify for an exemption under § 1186.1, the participants in the transaction must file a joint Notice of Exemption with the Commission. The Notice of Exemption shall contain the following information:

(a) Names and addresses of the carriers involved;

(b) A brief, but specific description of the nature of the transaction; and

(c) Certification of the accuracy of the contents of the notice by, and signatures of, the persons who control the carriers involved in the transaction.

§ 1186.3 Attachments.

Attachments to the Notice of Exemption filed with the Commission should include:

(a) A short summary of the transaction to be published as a notice to the public; and

(b) If appropriate, draft certificates and permits reflecting the operating rights authorized to be acquired, retained, or issued.

§ 1186.4 Temporary authority.

Parties may simultaneously request temporary authority during the pendency of the exemption proceeding by submitting Form OP–F–46 in accordance with the regulations prescribed at 49 CFR 1183.4. The fee will be the same as that contained at 49 CFR 1002.2(f)(24).

§ 1186.5 Filing fees.

The filing fee required to file a Notice of Exemption is set forth in 49 CFR 1002.2(f)(27).

§ 1186.6 Publication of summary notice.

The Commission will publish the summary of the Notice of Exemption describing the nature and scope of the transaction in the ICC Register.

§ 1186.7 Effective date of exemption.

When a Notice of Exemption is filed, the exemption will be effective 60 days after a summary of the Notice of Exemption is published in the ICC Register except:

(a) Where consummation is contingent upon Commission approval of directly related applications involving the conversion of certificates of registration to certificates of public convenience and necessity; or

(b)(1) In the case of employee complaints, a decision will be served and effective 30 days after receipt of the complaint unless the complaint is filed less than 30 days after publication of the summary of the Notice of Exemption, in which case the decision will be effective 60 days after publication of the summary of the Notice of Exemption, or

(2) In case of a complaint on anticompetitive grounds, a decision will be served and effective 30 days after the due date for complaints.

§ 1186.8 Complaints.

(a) Employees that have been or may be adversely affected by an exempt transaction or transaction proposed for exemption may file a complaint with the Commission any time after the Notice of Exemption is filed. A copy of the complaint must be served on the parties to the transaction. The parties may file an answer with the Commission and upon complainant within 10 days after receipt of the complaint. Employee complaints must contain the following information:

(1) The docket number of the corresponding Notice of Exemption (if available at the time) and the names of the participants in the transaction;

(2) Names of the employees alleged to be affected by the transaction and the nature and scope of harm;

(3) A request for specific relief (requests for relief in the alternative are acceptable);

(4) An explanation as to why the particular relief sought is the appropriate remedy for the particular harm suffered; and

(5) (Optional) A request for suspension or revocation of the exemption, accompanied by information showing why suspension or revocation of exemption is necessary.

(b) Any party may file a complaint with the Commission within 30 days after the Notice of Exemption is published alleging that the transaction is potentially anticompetitive. A copy of the complaint must be served on the parties to the transaction. The parties may respond by filing an answer with the Commission and upon complainant within 10 days after the due date of the complaint. The complaint must contain the following information:

(1) The docket number of the corresponding Notice of Exemption (if available at the time) and the names of the participants in the transaction;

(2) A specific description of the manner in which competition will allegedly be adversely affected;

(3) A request for specific relief (requests for relief in the alternative are acceptable); and

(4) An explanation as to why the particular relief sought is deemed to be appropriate.

[FR Doc. 84-32336 Filed 12-11-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 31230-251]

Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bearing Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the 1984 domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) under provisions of the fishery management plans (FMPs) for Groundfish of the Bering Sea and Aleutian Islands Area and for Groundfish of the Gulf of Alaska. Groundfish are apportioned according to the regulations implementing those FMPs. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

EFFECTIVE DATE: December 7, 1984.

SUPPLEMENTARY INFORMATION:

Background

The total allowable catches (TACs) for various groundfish species are established under the FMP for Groundfish of the Bering Sea and Aleutian Islands Area; optimun yields (OYs) are established by the FMP for Groundfish of the Gulf of Alaska. These FMPs were developed by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act and are implemented by rules appearing at 50 CFR 611.92 and 611.93, and at 50 CFR Parts 672 and 675. The TACs and OYs are apportioned initially among DAH, reserves, and TALFF. Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b). In addition, surplus amounts of both components of DAH [DAP (domestic processed fish) and JVP (joint venture processed fish)] may be apportioned to TALFF during the fishing year under those same regulations.

The initial DAPs and JVPs for 1984 were based on the projected needs of the U.S. industry, as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director) to fishermen and processors in September 1983. To consider changes in the extent to which U.S. industry will harvest and process groundfish, the Regional Director resurveyed the industry (including new participants) in March 1984. The results of the March survey allowed estimation of amounts of DAH of groundfish to be harvested and/or processed during each half of 1984.

Anticipated shortfalls in DAH amounts were earlier alleviated by the release of reserves to DAP and JVP (49 FR 23355, June 6, 1984, corrected at 49 FR 27322, July 3, 1984). That action also apportioned most of the reserves to TALFF.

1. Bering Sea and Aleutian Islands Area (Table 1)

In the June action, 75 percent of the non-specific reserve was apportioned to TALFF. In July, the JVPs of pollock in the Aleutian Islands area and Atka mackerel in the Bering Sea and Aleutian Islands area were raised by apportionment from the non-specific reserve (49 FR 30313, July 30, 1984). A later action (49 FR 33270, August 22, 1984) transferred DAP amounts of Pacific cod, sablefish, and Pacific ocean perch in the Bering Sea to JVP. An amount from the non-specific reserve was also apportioned to the pollock JVP in the Aleutian Islands area.

Apportionments to DAH:

Joint venture activity in the Bering Sea and in the Aleutian Islands area has ceased for the year, as have several operations delivering to domestic processors.

JVP catches of squid have exceeded the currently specified 20 metric tons (mt); therefore 30 mt of the non-specific reserve is transferred to the squid JVP. JVP catches of "other species" have exceeded the currently specified 2,000 mt; therefore 500 mt of the non-specific reserve is transferred to the "other species" JVP.

Apportionments to TALFF:

Because the Bering Sea sablefish DAP is judged excess to the needs of domestic harvesting and processing, 1,000 mt of the sablefish DAP is reapportioned to TALFF. Because the Bering Sea Pacific cod JVP will not all be taken by joint venture fisheries, the remaining 10,000 mt of the Pacific cod JVP is reapportioned to TALFF.

Additional amounts from the non-specific reserve determined excess to the 1984 needs of U.S. fishermen are transferred to TALFF as follows: Bering Sea pollock, 32,190 mt; Pacific cod, 7,875 mt; and Bering Sea sablefish, 50 mt.

2. Gulf of Alaska

In March, by emergency interim rule later made final (49 FR 28853, July 17, 1984), the OY for pollock in the Western and Central Regulatory Areas was increased from 200,000 mt to 400,000 mt. This action also increased the OY, reserve, and TALFF of "other species" in this areas. In June, up to 80 percent of the reserves for certain species/areas were apportioned to TALFF (49 FR 23355, June 6, 1984). In July, amounts of Pacific cod excess to the needs of the U.S. industry in the Central Regulatory Area were transferred from reserve and DAP to TALFF (49 30313, July 30, 1984). Later, reserves of Atka mackerel in the Western and Central Regulatory Areas were apportioned to JVP (49 FR 33270, August 22, 1984). Also, the entire sablefish reserve in the West Yakutat area was apportioned to DAP.

Apportionments to DAH:

Deliveries of sablefish to domestic processors in the Central Regulatory Area have exceeded the DAP of 1,360 mt. Therefore, the entire remaining reserve of sablefish in the Central Regulatory Area (612 mt) is apportioned to DAP. Similarly, the entire 256 mt of the sablefish reserve in the Western Regulatory Area is apportioned to DAP.

U.S. processors have taken deliveries of 90 mt of Pacific ocean perch in the Western Regulatory Area. Therefore, 90 mt of the Pacific ocean perch reserve is transferred to the DAP of the Western Regulatory Area. Guld-wide deliveries of "other species" have exceeded the currently specified 100 mt; an additional 100 mt from the reserve of "other species" is apportioned to DAP.

Apportionments to TALFF:

Reserve amounts of all other species/areas (except Pacific ocean perch) are determined excess to the 1984 needs of U.S. fisheries and are transferred to TALFF.

Comments and Responses

One comment preceded this notice.

Comment: Available reserve and DAH amounts of Pacific cod in the Bering Sea and all reserve and certain DAH amounts of sablefish in the Bering Sea exceed the needs of U.S. fishermen and should be apportioned to TALFF.

Response: In the Bering Sea, the remaining 10,000 mt of the Pacific cod JVP is transferred to TALFF as is 7,875 mt of the non-specific reserve. Also in the Bering Sea, 1,000 mt of the sablefish DAP and 50 mt of the non-specific reserve are apportioned to TALFF.

Classification

This action is taken under 50 CFR 611.92(c), 611.93(b), 672.20(c), and 675.20(b), and complies with Executive Order 12291.

In view of the need to allow the domestic and foreign fisheries to proceed without interruption in order to assure optimum use of these groundfish, the Agency has determined that providing prior comment and delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest. Comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish will be accepted until December 24, 1984. Responses to any comments as well as any necessary modifications to these apportionments will be published in the Federal Register as soon as practicable.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: December 7, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

TABLE 1.—1984 REAPPORTIONMENTS OF TAC IN THE BERING SEA AND ALEUTIAN ISLANDS AREA

	Current	Changes November	Revised
Pollock (Bering Sea Area only: TAC=1,200,000; EY=1,200,000):			
DAP	18,200		18,200
JVP	273,000		273,000
RES	39,100	−32,190	6,915
TALFF	869,690	+32,190	901,885
Pacific cod (TAC=210,000; EY=291,300):			
DAP	84,400		84,400
JVP	47,200	−10,000	37,200
RES	7,875	−7,875	0
TALFF	70,525	+17,875	88,400
Sablefish (Bering Sea Area only: (TAC=3,740, EY=4,430):			
DAP	1,865	−1,000	865
JVP	175		175
RES	50	−50	0
TALFF	1,650	+1,050	2,700
Squid (TAC=8,900; EY=10,000):			
DAP	20		20
JVP	20	+30	50
RES	334	−30	304
TALFF	8,526		8,526
Other species (TAC=40,000; EY=61,400):			
DAP	3,000		3,000
JVP	2,000	+500	2,500
RES	1,500	−500	1,000
TALFF	33,500		33,500

TABLE 2.—GULF OF ALASKA REAPPORTIONMENTS OF OY

	Current	Changes this action	Revised
Pollock (Western/Central: OY=400,000):			
DAP	8,000		8,000
JVP	210,300		210,300
RES	18,000	−16,000	0
TALFF	164,700	+16,000	180,700
Pollock (Eastern: OY=16,600):			
DAP	300		300
JVP	0		0
RES	854	−854	0
TALFF	15,846	+854	16,300
Pacific cod (Eastern: OY=9,900):			
DAP	120		120
JVP	0		0
RES	396	−396	0
TALFF	9,384	+396	9,780
Flounders (Eastern: OY=8,400):			
DAP	300		300
JVP	0		0
RES	1,680	−1,680	0
TALFF	8,420	+1,680	8,100
Pacific ocean perch (Western: OY=2,700):			
DAP	0	+90	90
JVP	1,770		1,770
RES	540	−90	450
TALFF	390		390
Sablefish (Western: OY=1,870):			
DAP	100	+256	356
JVP	200		200
RES	256	−256	0
TALFF	1,114		1,114
Sablefish (Central: OY=3,080):			
DAP	1,360	+612	1,972
JVP	290		290
RES	612	−612	0
TALFF	796		796
Atka mackerel (Eastern: OY=3,186):			
DAP	0		0
JVP	0		0
RES	127	−127	0
TALFF	3,059	+127	3,186
Thornyheads (Gulf-wide: OY=3,750):			
DAP	150		150
JVP	50		50
RES	150	−150	0
TALFF	3,400	+150	3,550
Other species (Gulf-wide: OY=26,780):			
DAP	100	+100	200
JVP	1,400		1,400
RES	4,756	−4,756	0
TALFF	22,524	+4,656	27,180
Squid (Gulf-wide: OY=5,000):			
DAP	100		100
JVP	10		10
RES	200	−200	0
TALFF	4,990	+200	5,190

[FR Doc. 84-32383 Filed 12-7-84; 4:32 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 240
Wednesday, December 12, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-21539; File No. S7-40-84]

Requests for Confidential Treatment Filed by Institutional Investment Managers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Amendments to Instruction to Form.

SUMMARY: The Commission is proposing for public comment amendments to the instructions to the form that prescribes the reporting requirements for institutional investment managers exercising investment discretion over accounts having in the aggregate more than $100,000,000 in exchange-traded or NASDAQ-quoted equity securities. The amendments would simplify the procedures for requesting confidential treatment of certain risk arbitrage positions filed on the form, and place time limitations on confidential treatment requests for securities holdings where the holdings constitute confidential commercial information.

DATE: Comments should be received on or before January 14, 1985.

ADDRESS: Comments should be submitted in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-40-84. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: For questions relating specifically to the subject of this release, contact Susan P. Hart, Esq., Attorney/Adviser, Office of Disclosure Policy and Adviser Regulation, (202) 272-2098, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549; for questions relating generally to reporting requirements for institutional investment managers under section 13(f) of the Securities Exchange Act of 1934 and rules thereunder, contact Alice R. Latimer, Research Assistant, Office of Chief Counsel, (202) 272-2038, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On June 15, 1978, the Securities and Exchange Commission (the "Commission") announced the adoption of rule 13f-1 (17 CFR 240.13f-1) and related Form 13F (17 CFR 249.325), under section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)) (the "Exchange Act").[1] Under Section 13(f) and rule 13f-1, as amended effective February 5, 1979,[2] an institutional investment manager exercising investment discretion (as defined in section 3(a)(35) of the Exchange Act (15 U.S.C. 78(c)(a)(35))) with respect to accounts having $100,000,000 or more in exchange-traded or NASDAQ-quoted equity securities on the last trading day of any of the twelve months of calendar year must file five copies of Form 13F with the Commission and, if a bank, with the appropriate bank regulatory agency. The form must be filed within 45 days after the last day of such calendar year and within 45 days after the last day of the first three calendar quarters of the succeeding year. The form requires the reporting manager to state the name of the issuer and the class of security, CUSIP number, number of shares or principal amount in the case of convertible debt, and aggregate fair market value of each security held. The form also requires information concerning the nature of investment discretion and voting authority possessed by the reporting manager.

Rule 13f-1 and Form 13F were adopted to implement the institutional disclosure program mandated by Congress in section 13(f) of the Exchange Act. In general, section 13(f)(3) of the Exchange Act requires that the Commission make the information in reports on Form 13F promptly available to the public. However, that section also provides for confidential treatment for two categories of information that for convenience are referred to in this release as "commercial" and "personal." If the criteria of section 13(f)(3) are met, the Commission's grant of confidential treatment to personal information is nondiscretionary. Decisions about whether to grant confidential treatment to commercial information must be made in accordance with the Freedom of Information Act ("FOIA") (5 U.S.C. 552).

General Instruction D of Form 13F establishes the procedures to be followed in requesting confidential treatment. As last amended, in 1979, General Instruction D provides that if a request for confidential treatment is based on a claim that the required information is commercial or financial, the reporting manager must, among other things: (1) Describe the investment strategy being followed; (2) demonstrate that disclosure of the investment strategy would be premature; and (3) demonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the manager's competitive position.

The Commission is proposing an amendment to General Instruction D to Form 13F to provide a simplified procedure for requesting confidential treatment of certain arbitrage information filed on the form. Under the revised procedures, confidential treatment would be granted for a period of one year to security holdings which are open risk arbitrage positions if the reporting manager represents in writing at the time Form 13F is filed that: (1) The security holding represents a risk arbitrage position that is open on the last day of the calendar quarter for which the report is filed; and (2) the manager has no present intention to close the position on or before the date on which the report is required to be filed with the Commission. In addition, the Commission is proposing an amendment to require managers requesting confidential treatment requests for commercial information, other than open risk arbitrage information, to limit their requests to a period of one year or less.

[1] Exchange Act Release No. 14852 (June 15, 1978) [43 FR 26700, June 22, 1978].

[2] Exchange Act Release No. 15461 (January 5, 1979) [44 FR 3033, January 15, 1979].

Background

Many of the requests for confidential treatment of commercial information have been from managers who engage in risk arbitrage. Based on its experience with these requests, the Commission believes that it should consider whether decisions relating to confidential treatment of information about open risk arbitrage positions can be made without all of the information currently required by Instruction D. Since the potential harm of public disclosure of such positions is identifiable and similar for all open risk arbitrage positions as a class (for example, if a merger which was the subject of risk arbitrage activity was not consummated, an arbitrageur could be harmed when it attempted to liquidate its position in adverse market conditions, if the extent of its position were known to the public), the Commission is proposing to eliminate the requirement that managers supply full factual support on a holding-by-holding basis, and to grant confidential treatment for such security positions if certain representations are made in writing by the reporting manager. Commercial information may, however, be granted confidential treatment only in accordance with the FOIA, and the Commission requests comment on the extent to which it may grant confidential treatment to a class of holdings such as open risk arbitrage positions.

Amendments

Confidential Treatment for Open Risk Arbitrage Positions

The first of the proposed amendments to General Instructions D, contained in paragraph 2(f) of the revised instruction, would require managers requesting for confidential treatment for certain risk arbitrage positions to provide two good faith representations. The first of these is that the security holding represents a risk arbitrage position that is open on the last day of the calendar quarter for which the report is filed and the second is that the reporting manager has no present intention to close the position on or before the date the report is required to be filed with the Commission. Under the proposed amendment, if such representations are made, confidential treatment will be granted automatically for a period of one year from the calendar quarter end.[3]

a. *Definition of Risk Arbitrage.* For purposes of the revisions to Instruction D, the term "risk arbitrage" refers to the risking of capital in connection with a proposed merger, acquisition, tender offer, or similar transaction involving recapitalization ("risk arbitrage event" or "deal").[4] The term applies only to transactions effected after the public announcement of the deal and before completion or termination of the deal. The term also applies whether the deal involves a proposed exchange of securities or cash tender offer and whether transactions are effected with a view to profiting from the consummation of the deal or from its unsuccessful termination. The new procedures also are available where there is an anticipated program to liquidate a risk arbitrage position before completion or after termination of the deal or within a reasonable period of time thereafter.[5]

Some institutional managers have asserted in connection with confidential treatment requests under section 13(f) that there is a substantial likelihood of competitive harm if open risk arbitrage positions are prematurely disclosed to the public. The following argument is representative of their assertions. A risk arbitrageur who has reason to believe that an announced merger or tender offer may not occur or will occur only after protracted delays, most likely will want to liquidate its position as unobstrusively and rapidly as possible. If the extent of the arbitrageur's position as disclosed on Form 13F is publicly known, the price at which the position can be disposed of could be affected adversely. Thus, the arbitrageur could suffer significant harm if the position held became public knowledge before the holdings were liquidated. This proposed revision to General Instruction D is based on a belief that the potential for harm from disclosure is similar for all open risk arbitrage positions.

b. Duration of Confidential Treatment for Open Risk Arbitrage Positions. Once a manager has met the new criteria for requesting confidential treatment, the information concerning open risk arbitrage positions will be protected from disclosure for a period of one year from the date the report is required to be filed, a period during which all open positions are likely to be closed, or, if still open, to become no longer time-sensitive. Any request for an extension of the period for which confidential treatment has been granted under the new procedures would have to be made in the form of a new request filed with the Commission at least fourteen days before the end of the initial one-year period. Moreover, the new request would have to include the full factual support specified in General Instruction D 2(a)-(d) to Form 13F. Because both section 13(f) of the Exchange Act and the FOIA were intended by Congress to promote public disclosure of information and because there can be significant variations in the amount of time that risk arbitrage positions are held open, the Commission requests comments on the appropriateness of one year as the initial period for which confidential treatment will be granted under the proposed amendment.

c. Applicability. The simplified procedures for requesting confidential treatment set out in paragraph 2(f) of the amended instruction would apply only to open risk arbitrage positions. Managers requesting confidential treatment for other investment strategies such as block positioning and programs of acquisition and/or disposition that cannot appropriately be considered risk arbitrage would still be required to provide full factual support for the requests. Block positions have not been included in the proposal because they involve transactions which are completed during a very short period of time.[6] In the Commission's view, even if a reporting manager held a block position at the calendar quarter end, it is likely that the position would be disposed of by the date on which Form 13F is required to be filed (e.g., 45 days later). Any block position that might be maintained 45 days after the close of a calendar quarter would be presumed to be maintained for investment purposes, rather than as a block position, and would require the full factual support specified in Instruction D. Similarly, confidential treatment requests regarding acquisition or disposition programs, other than risk arbitrage, would have to be supported with facts as specified in paragraph 2(a)-(d) of

[3] In accordance with rule 24b-2 (17 CFR 240.24b-2), this grant of confidential treatment would not preclude reconsideration by the Commission at a later date of the decision concerning confidential treatment. If the Commission were to receive a FOIA request for such information during the one-year period, managers would be required to provide full-factual support to justify the continuation of confidential treatment.

[4] This definition of "risk arbitrage" is the same as that referred to in section 11(a)(1)(D) of the Exchange Act (15 U.S.C. 78(k)(a)(1)(D)). See Exchange Act Release No. 15533 (January 28, 1979), for a more detailed discussion of the definition. "Deal" is the term commonly used in the industry to refer to a risk arbitrage event; therefore, the term "deal" is used in this release to refer to such a transaction.

[5] Risk arbitrage in this context does not include a position assumed by a risk arbitrageur which is maintained for tax or investment purposes after the termination or completion of the deal.

[6] Rule 3b-6(c) of the Exchange Act (17 CFR 240.3b-6(c)) defines a block positioner as a dealer, who, among other things, acting as principal, buys short or sells long a block of stock with a market value of $200,000 or more in a single transaction and sells the stock as rapidly as possible commensurate with the circumstances.

Exchange Commission, 450 Fifth Street, 1979) [44 FR 3033, January 13, 1979].

period of one year or less.

FOIA request for such information during the one-year period, managers would be required to provide

maintained for tax or investment purposes after the termination or completion of the deal.

with the circumstances.

Instruction D, and a showing of a likelihood of competitive harm if the positions are disclosed.

Limitation on Confidential Treatment for Other Commercial Information

The second amendment to General Instruction D, contained in paragraph 2(e) of the revised instruction, would require each institutional manager requesting confidential treatment for commercial information, other than information relating to an open risk arbitrage position, to limit the requested period of confidentiality to a specific time, not to exceed one year. In the Commission's view, this change balances the public disclosure concerns of the statute with the needs of managers to protect certain investment strategies and holdings from public disclosure under the standards of FOIA exemption four. The Commission believes that, in most cases, an investment strategy or holding that was the subject of a confidential treatment request under section 13(f) would within a year following the date that the 13F report is filed become no longer sensitive. Thus, the proposed amendment would require managers to designate a period of time for which confidential treatment of any commercial information, other than that relating to open risk arbitrage positions, is requested. The period requested may not exceed one year from the date the report is required to be filed with the Commission. Requests for extension of the period for which confidential treatment had been granted could be made by submitting a *de novo* request at least fourteen days in advance of the expiration of the original time period for which confidential treatment was granted. The Commission requests specific comment on whether it should limit confidential treatment requests for commercial information, other than open risk arbitrage information, to a specific time period, and if so, whether a one year time period is a reasonable time limit for such requests.

If the proposed amendments to Instruction D are adopted substantially as proposed, the Commission will automatically make public security holdings, for which confidential treatment has been granted, on the specified date without additional notice to managers, unless a new request for confidential treatment is filed at least fourteen days in advance of the expiration of the year specified for open risk arbitrage positions or, for other commercial information, at least fourteen days in advance of the time designated by the manager.

List of Subjects in 17 CFR Part 249

Reporting requirements, Securities.

Text of Proposed Amendment to General Instructions to Form 13F

Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 249—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising paragraph 2 of General Instruction D of the form prescribed in § 249.325 of Title 17 of the Code of Federal Regulations to read as follows:

§ 249.325 Form 13F, report of institutional investment manager pursuant to section 13(f) of the Securities Exchange Act of 1934.

* * * * *

General Instructions

* * * * *

D. * * *

2. If a request for confidential treatment is based upon a claim that the subject information is confidential commercial or financial information, provide information required by paragraphs (a)–(e) except that if the subject information concerns security holdings which represent open risk arbitrage positions and no previous requests for confidential treatment of those holdings have been made, only the information required in paragraph (f) need be provided.

a. Describe the investment strategy being followed with respect to the relevant securities holdings, including the extent of any program of acquisition and disposition (note that the term "investment strategy," as used in this instruction, also includes activities such as block positioning);

b. Explain why public disclosure of the securities holdings would, in fact, be likely to reveal the investment strategy; consider this matter in light of the specific reporting requirements of Form 13F (e.g., securities holdings are reported only quarterly and may be aggregated in many cases);

c. Demonstrate that such revelation of an investment strategy would be premature; indicate whether the manager was engaged in a program of acquisition or disposition of the security both at the end of the quarter and at the time of the filing; address whether the existence of such a program may otherwise be known to the public;

d. Demonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the manager's competitive position; show what use competitors could make of the information and how harm to the manager could ensue.

e. State the period of time period for which confidential treatment of the securities holdings is requested. The time period specified may not exceed of one year from the date the report is required to be filed with the Commission.

f. For security holdings which represent open risk arbitrage positions, the request must include good faith representations that:

(1) The security holding represents a risk arbitrage position open on the last day of calendar quarter for which the report is filed; and

(2) The reporting manager has no present intention to close the position on or before the date the report is required to be filed with the Commission.

If the representations stated above are made in writing at the time Form 13F is filed, the subject security holdings will automatically be accorded confidential treatment for a period of one year from the date the report is required to be filed with the Commission.

g. At the expiration of the period for which confidential treatment has been granted pursuant to item (e) or item (f) of this paragraph ("expiration date"), the Commission, without additional notice to the reporting manager, will make such security holdings public unless a *de novo* request for confidential treatment of the information that meets the requirements of items (a)–(e) of this paragraph, is filed with the Commission at least fourteen (14) days in advance of the expiration date.

Statutory Authority

The Commission hereby proposes this amendment to Form 13F pursuant to the authority set forth in section 3(b), 13(f) and 23 of the Exchange Act (15 U.S.C. 78c(b), 78m(f), and 78(w).

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified that the amendments to General Instruction D of Form 13F proposed herein will not, if promulgated, have a significant impact on a substantial number of small entities. These amendments are being proposed under Section 13(f) of the Exchange Act. The Commission has defined small entities for the purposes of rulemaking under the Exchange Act; however, no specific definition is provided for institutional investment managers, the class of persons required to report pursuant to Section 13(f). Moreover, although a definition is provided for investment advisers. However, the Commission has defined small entities when that term is used in connection with the Investment Advisers Act ("Advisers Act"), in Rule 0–7 under the Act (17 CFR 249.0–7).

The term small entities is defined, under the Exchange Act, in Rule 0–10 (17 CFR 240.0–0). Although this definition does not include investment advisers, Rule 0–10 provides that the Commission may adopt a definition of small entities for purposes of a particular rulemaking proceeding. For purposes of the proposed amendments to Instruction D of Form 13F the Commission has decided to use two definitions of the term small entities that were adopted previously by the Commission. The Commission believes that this action is necessary and appropriate to ensure that all persons or entities that might be institutional investment managers under section 13(f) of the Exchange Act will be included within a category addressed by the definition. The two definitions being used are those in Rule 0–10 under the Exchange Act and in Rule 0–7 under the Advisers Act. Public comment is invited on the Commission's use of this combined definition. Unless significant public comment is received presenting facts that indicate that the definition is not appropriate, the Commission does not propose to issue any further certification under the Regulatory Flexibility Act regarding adoption of the amendments proposed in this release.

The definition under the Advisers Act provides that an investment adviser is a small entity if it manages assets with total value of $50 million or less, in discretionary or nondiscretionary accounts. As relevant to the proposed amendments to Form 13F, the definition under the Exchange Act provides that: a broker or dealer is a small entity if on certain specified dates during the prior fiscal year it had total capital of less than $500,000 and it was not affiliated with any person that was not a small business organization as defined in Rule 0–10 (17 CFR 240.0–10(c)). The Commission is using the definition under the Advisers Act for all institutional investment managers that are not brokers or dealers. In the Commission's view, this is appropriate because functionally the activities of such managers most closely approximate those of investment advisers. The reason for the certification is that there are not a substantial number of institutional investment managers affected by the rule that come within the elements of this combined definition of small entities. First, the amendment would affect institutional investment managers who have at least $100 million under management. Thus, any investment adviser or other entity required to file 13F reports would not be a small entity under the Advisers Act definition of the term. In addition, the Commission does not believe that there are a significant number of brokers or dealers required to file on Form 13F that meet the definition of small entity in rule 0–10(c) under the Exchange Act.

By the Commission.

Dated: December 5, 1984.

Shirley E. Hollis,

Acting Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to General Instruction D to Form 13F (17 CFR 249.325) under section 13(f) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78m(f)) set forth in Securities Exchange Act Release No. 21539, if promulgated, will not have a significant economic impact on a substantial number of small entities. For the purposes of this rulemaking, pursuant to Rule 240.0–10 the Commission is using a definition of small entities which is a combinaiton of two definitions of that term previously adopted by the Commission under the Exchange Act and under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) ("Advisers Act"). As to entities that meet the definition of an investment adviser in section 202(a)(11) of the Investment Advisers Act of 1940, and all institutional investment managers other than brokers and dealers, the definition of small entities used is that in Rule 9–7 under the Advisers Act (17 CFR 275.0–7). As to any broker or dealer required to file Form 13F, the term small entities is defined in Rule 0–10 under the Exchange Act (17 CFR 240.0–10). The Commission is adopting this definition because not all institutional investment managers required to file Form 13F would be included in a category addressed by either of the definitions cited if only one of the definitions were used. However, all institutional managers are included within a category addressed by the combined definition. The reason for this certification is that it does not appear that a substantial number of institutional investment managers affected by the rule that come with the definition of "small entities" as set forth in Rule 240.0–10 and Rule 275.0–7.

Dated: December 5, 1984.

John S.R. Shad,

Chairman.

[FR Doc. 84–32364 Filed 12–11–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 82N–0239]

Enzyme-Modified Fats; Proposed Affirmation of GRAS Status

Correction

In FR Doc. 84–30634, beginning on page 46164 in the issue of Friday, November 23, 1984, make the following correction: On page 46166, in the second column, the eleventh line below the heading "List of Subjects in 21 CFR Part 184" should read "be amended by adding new § 184.1287, to".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–134–84]

Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations relating to foreign management and foreign economic processes requirements of a foreign sales corporation. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before February 11, 1985. The proposed rules are proposed to be effective as final regulations for taxable years beginning after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR–134–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: David J. Dean of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (LR–134–84), (202–566–3289, not a toll-free call).

SUPPLEMENTARY INFORMATION: The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.924(c)–1T, 1.924(d)–1T, 1.924(e)–1T, 1.925(b)–1T, 1.925(c)–1T, and 1.927–1T to 26 CFR Part 1. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1 by adding §§ 1.924(c)–1, 1.924(d)–1, 1.924(e)–1, 1.925(b)–1, 1.925(c)–1, and 1.927–1 to the regulations under sections 924, 925, and 927 of the Internal Revenue Code of 1954. For the text of the temporary regulations, see FR

Doc. 84-32300 [T.D. 7994] published in the Rules and Regulations portion of this issue of the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities because the number of significantly affected small entities is not substantial. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6).

Paperwork Reduction Act

The recordkeeping requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these recordkeeping requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB also send copies of the comments to the Service.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments on these proposed regulations. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David J. Dean of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR §§ 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposal of Regulations

The temporary regulations, FR Doc. 84-32300 [T.D. 7994] published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 924, 925, and 927 of the Internal Revenue Code of 1954.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-32299 Filed 12-7-84; 9:45 am]

BILLING CODE 4830-01-M

---

26 CFR Part 1

[LR-167-84]

FSC General Rules, Requirements, Definitions, and Special Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed Income Tax Regulations concerning general rules regarding the requirements that a corporation must meet to be a foreign sales corporation (FSC) (or small FSC) and tax treatment of a FSC (or a small FSC) and specific rules regarding the requirements for FSC or small FSC status, the methods of electing and terminating FSC status, and the definition of and computation of carrying charges on sales of property by a FSC. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed by February 11, 1985. The amendments would apply to taxable years beginning after December 31, 1984, and is proposed to be effective as final regulations after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-167-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: P. Ann Fisher for the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (LR-167-84), (202-556-3289, not a toll-free call).

SUPPLEMENTARY INFORMATION: The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.921-2T, 1.922-1T, 1.927(d)-1T, and 1.927(f)-1T to 26 CFR Part 1 and amend § 1.921-1T (a)(6) and (b)(7). The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1 by adding §§ 1.921-2T, 1.922-1T, 1.927(d)-1T, and 1.927(f)-1T as final regulations under sections 921, 922, and 927 of the Internal Revenue Code of 1954. For the text of the temporary regulations, see paragraph 1 of the amendments made by FR Doc. 84-32298 [T.D. 7993] published in the Rules and Regulations portion of this issue of the **Federal Register**. Paragraphs 2 and 3 of the temporary regulations, which amend § 1.921-1T (a)(6) and (b)(7) respectively, are not proposed to be adopted as final regulations.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities because the number of significantly affected small entities is not substantial. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these collection of information requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Comissioner by any person who has submitted written comments on these proposed regulations. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is P. Ann Fisher of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR §§ 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, FSC, Foreign investments in U.S., Foreign tax credit, Sources of income, United States investments abroad.

Proposal of Regulations

Paragraph 1 of the amendments made by the temporary regulations, FR. Doc. 84-32298 [T.D. 7993] published in the Rules and Regulations portion of this issue of the **Federal Register**, is hereby also proposed as a final regulation under sections 921, 922, and 927 of the Internal Revenue Code of 1954.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-32298 Filed 12-7-84; 9:45 am]

BILLING CODE 4830-01-M

---

26 CFR Part 1

[LR-240-84]

Information Reporting Requirements for Mortgage Subsidy Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations that relate to the tax exempt status of mortgage subsidy bonds. Changes to the applicable tax law were made by the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 901). These regulations affect all purchasers and governmental issuers of tax exempt mortgage subsidy bonds. In addition, in the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations that relate to the tax exempt status of mortgage subsidy bonds. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 11, 1985. The regulations relating to qualified mortgage bonds are proposed to be effective for obligations issued after December 31, 1984, except that proposed regulations under § 1.103A-2(a)(2) are proposed to be effective for obligations issued after December 31, 1983. The regulations relating to qualified veterans' mortgage bonds are, in general, proposed to be effective for obligations issued after July 18, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-240-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3740).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend § 6a.103A-2 of Title 26 of the Code of Federal Regulations. The final regulations, which this document proposes to be based on those temporary regulations, would be added to Part 1 of Title 26 of the Code of Federal Regulations. For the text of the temporary regulations, see FR Doc. 84-32292 (T.D. 7995) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

The regulations interpret the provisions of section 103A(j) (3), (4), and (5) of the Code, which adds certain information reporting requirements to the other requirements that mortgage subsidy bonds must meet in order to be treated as an obligation described in section 103(a). The regulations also interpret the provisions of section 103A(c)(3)(C), and (o), which adds additional requirements that qualified veterans' mortgage bonds must meet.

These regulations are proposed to be issued under the authority contained in section 103A(j) (3) and (4) and section 7805 of the Internal Revenue Code (98 Stat. 901, 26 U.S.C. 103A(j) (3) and (4); 68A Stat. 917, 26 U.S.C. 7805).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these proposed regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons

substance and style.

Constitution Avenue, NW., Washington.

of 1984 (Pub. L. 98–369; 98 Stat. 901).

veterans' mortgage bonds must meet.

Revenue Service requests persons

submitting comments to OMB also to send copies of the comments to the Service.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-32288 Filed 12-7-84; 11:30 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio as amendments to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Ohio regulations concerning civil penalties for failure to abate a violation, procedures governing review of civil penalties in informal conferences, and formal review of civil penalties.

This notice sets forth the times and locations that the Ohio program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m. January 11, 1985 will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. A public hearing on the proposed amendment has been scheduled for January 7, 1985. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by December 27, 1984. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

Copies of the Ohio program, the proposed modification to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Headquarters Office and the Office of the State regulatory authority office listed below, during normal working hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C.

Ohio Division of Reclamation, Building B, Foundation Square, Columbus, Ohio.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatifield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43237; Telephone: (614) 866–0678.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** [47 FR 34688]. The approval was conditioned on the correction of 28 minor deficiencies in 11 conditions (a), (b), (c), (d), (e), (f)(1)—(f)(10, (g), (h)(1)—(h)(3), (i)(1)—(i)(3), (j) and (k)(1)—(k)(5). Information pertinent to the general background, revisions, modifications and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program found in the August 10, 1982 **Federal Register.**

II. Submission of Revisions

By letter dated November 6, 1984, Ohio submitted a program amendment consisting of a revision to rule 1501:13–14–03 concerning civil penalties. The proposed amendment provides for alternative enforcement actions to be taken if a violation has not been abated for over 30 days. The proposed amendment also sets forth procedures and requirements for an informal conference review of civil penalties before the chief or his authorized representatives. Lastly, the proposed amendment provides for formal review of civil penalties before the Reclamation Board of Review as required by State statute. This amendment corresponds to the Federal regulations at 30 CFR 845.15 *et seq.*

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is consistent with the Federal regulations. If approved, the amendment will become part of the Ohio program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 9 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: December 6, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

[FR Doc. 84-32363 Filed 12-11-84; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 78–72; CC Docket No. 80–286]

MTS and WATS Market Structure; and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Recommendation to the Commission.

SUMMARY: The Federal-State Joint Board recommends that the Commission: (1) Implement limited subscriber line charges for residential and single line business customers; (2) allow local companies flexibility to file optional alternative interstate tariff provisions for the recovery of carrier common line costs in order to combat bypass; (3) modify the provisions for high cost assistance to direct more aid to smaller companies and those with higher cost levels; and (4) provide the equivalent of a waiver of residential subscriber line charges for low-income households. The Joint Board also stated that it would study broader measures to assist low income households in affording telephone service. The Joint Board action was in response to the Commission's April 1984 request, published in the **Federal Register** on April 30, 1984, 49 FR 18318, for preparation of a Joint Board recommendation on these issues. The Joint Board recommendation will assist the Commission in resolving these issues.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or William Kirsch of the Common Carrier Bureau at (202) 632–6363.

SUPPLEMENTARY INFORMATION:

Recommended Decision and Order

In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 78–72, CC Docket No. 80–286).

Adopted: November 15, 1984.
Released November 23, 1984.

By the Federal-State Joint Board.

I. Introduction

A. Summary of Recommended Decision

1. The Federal-State Joint Board hereby presents its recommendations concerning: (1) The use of subscriber line charges as a means of recovering the interstate allocation of non-traffic sensitive (NTS) local exchange costs; (2) modifications to the previously adopted measures for assisting subscribers in areas where the cost of providing telephone service is unusally high; and (3) measures to assist low income households in affording telephone service. The first section of this *Order* summarizes our recommendations and reviews developments in these proceedings to date. The second section deals with subscriber line charges as a means of recovering the NTS local exchange costs allocated to the interstate jurisdiction. The third section concerns provisions for assisting subscribers in high cost areas. Recommendations designed to ensure that implementation of subscriber line charges does not adversely affect the ability of low income households to afford telephone sevice are discussed in the fourth section of the *Order*.

2. In general terms, we recommend that the Commission: (1) Implement limited subscriber line charges for residential and single line business customers; (2) allow local companies flexibility to file optional alternative interstate tariff provisions for the recovery of carrier common line costs in order to combat bypass; (3) modify the provisions for high cost assistance to direct more aid to smaller companies and those with higher cost levels; and (4) provide the equivalent of a waiver of residential subscriber line charges under specific terms and conditions.[1] More specifically, we recommend implementation of a $1.00 per month subscriber line charge for residential and single line business customers effective June 1985. This charge will be increased to $2.00 per month in June 1986. In addition, local telephone companies, with the concurrence of state regulatory officials,[2] should be given flexibility to implement optional alternative interstate tariff provisions for recovery of carrier common line costs [3] in order to combat localized bypass problems. A uniform monthly surcharge up to a maximum of $.35 on the subscriber line charge for all customers would be allowed to fund any revenue shortfall resulting from the optional alternative tariffs.[4] The procedures which we are proposing for implementation of these alternative tariff provisions will ensure that they do not undermine the nationwide averaging of NTS costs for purposes of the carrier common line charge. We also recommend that the basic subscriber line charge for residential and single line business customers be frozen at $2.00 per month.[5] We recommend a further Joint Board proceeding to examine the effect of subscriber line charges and the special anti-bypass tariffs on universal service, bypass, economic efficiency, and interexchange competition. This proceeding should be instituted in late 1986 and completed as soon as possible, consistent with the need for development of an adequate record. The purpose of this proceeding would be to recommend what, if any, further steps should be taken by the FCC.

3. We are also recommending a number of changes in the method of calculating the amount of high cost assistance for local telephone companies. We believe that the high cost assistance should continue to be based on NTS loop costs, rather than

[1] The Joint Board also recommends further study of broader lifeline assistance measures on an expedited basis.

[2] In the absence of state commission concurrence, the local companies would be authorized to go forward with an alternative tariff filing with the FCC only if the Joint Board concurred in the plan. We recommend that the local companies be allowed to seek Joint Board concurrence if the state does not act on the proposal within 60 days of the filing. The state would remain free to act on the company's proposal prior to a Joint Board decision.

[3] Under Part 69 of the Commission's rules, the carrier and subscriber common line elements together cover the cost of customer premises equipment, inside wiring, local loops, the Universal Service Fund and the National Exchange Carrier Association's operating expenses.

[4] For example, some of these optional alternative tariff provisions may take the form of volume discounts. To the extent that these tariff provisions fail to generate the same revenue levels as application of the nationwide averaged carrier common line charge, the revenue shortfall will be recovered through a uniform surcharge of no more than $.35 per month on the suscriber line charge for all customers in the relevent study area. For further discussion of the alternative carrier common line tariff provisions see paragraphs 36 through 41.

[5] This does not include any subscriber line surcharge that would be necessary in conjunction with optional alternative tariff provisions to recover carrier common line costs. To the extent a surcharge is necessary, it would be in addition to the $2.00 basic charge.

- Hatfield by that date to express an

Federal Register.

under 44 U.S.C. 3507.

6363.

expedited basis.

basic charge.

other factors.[6] The changes we recommend are designed to direct more assistance to small telephone companies and those with higher cost levels. Under this approach, companies with more than 50,000 working loops and costs below 150 percent of the national average would receive less assistance than under the provisions previously adopted by the Commission.[7] We recommend that the local exchange companies' authorized rate of return for interstate access service, now 12.75 percent, be used in calculating the level of high cost assistance. We also recommend that existing study area boundaries continue to be used for separation purposes including calculation of the level of high cost assistance. In addition, we conclude that the transition from a SPF based interstate NTS cost allocation to the new 25 percent basic allocation factor (combined with high cost assistance) should be implemented in eight annual steps rather than four as currently provided in Part 67 of the Commission's rules.

4. In addition, we recommend that the Commission adopt a two phase program for assistance to low income households. The first step would offset the effect of subscriber line charges. We recommend an optional program for a 50 percent reduction in the subscriber line charge for customers meeting a state established means test subject to verification. This revenue shortfall would be funded through the interstate carrier common line charge. States taking advantage of this assistance mechanism would be required to make an equal monetary reduction in the local exchange rate for subscribers who qualify for the subscriber line charge reduction. This reduction in local rates would be funded from intrastate sources. Implementation of this assistance measure would be at the option of the state commissions. We also recommend expedited study of broader lifeline assistance measures as the second phase of our plan. It is anticipated that the state developed means tests for the reduced subscriber line charge will assist us in developing broader lifeline measures in the near future.

B. Background

1. MTS and WATS Market Structure Proceeding

5. On December 22, 1982, the Commission adopted the *Third Report and Order* in the *MTS and WATS Market Structure* proceeding, CC Docket No. 78–72.[8] This *Order* established a plan for replacing the interstate division of revenues and settlements process with a system of tariffed access charges. Under this approach, a major portion of the local loop costs allocated to the interstate jurisdiction [9] would have been recovered directly from telephone subscribers.[10] Other NTS costs allocated to the interstate jurisdiction would have been recovered from the interexchange carriers and reflected in their toll rates.[11] These rules were modified in the Commission's *Memorandum Opinion and Order* (*Reconsideration Order*) in the *MTS and WATS Market Structure* proceeding adopted July 27, 1983.[12] The revised rules established a uniform initial subscriber line charge of $2.00 per month for residential customers in 1984. That charge was scheduled to increase to $3.00 in 1985 and $4.00 in 1986. The revised rules also provided for a subscriber line charge for business customers equal to the lesser of $6.00 per month or the full interstate allocation of loop costs for the study area involved. The revised rules also contained provisions for calculating residential subscriber line charges for 1987 and beyond.

6. In a subsequent *Memorandum Opinion and Order (Second Reconsideration Order)*, adopted February 3, 1984, the Commission reaffirmed its conclusion that a system of flat subscriber line charges to recover a portion of the interstate NTS cost allocation would best serve the public interest.[13] In particular, the Commission reiterated that a system of fixed subscriber line charges would:

(1) Eliminate the discrimination or preferences that result from the inconsistent methods that have been used to recover interstate subscriber loop and private line loop costs;

(2) Promote economic efficiency by eliminating the distortions that inevitably result from the recovery of fixed costs through usage charges; . . .

(3) Deter uneconomic bypass by removing the incentive for large users to substitute bypass facilities that may be more costly than the local distribution facilities of the telephone companies; [and]

(4) Preserve universal telephone service by avoiding rate increases for remaining telephone company customers that would result from uneconomic bypass.[14]

The Commission also emphasized that the access charge plan represented an

[6] We recommend that the cost of NTS Category 6 Central Office Equipment (COE), Local Dial Switching Equipment, continue to be allocated to the interstate jurisdiction on the basis of the frozen Subscriber Plant Factor (SPF) pending review of all issues concerning the allocation of COE. In light of the continued use of SPF, NTS category 6 COE costs should not be included in calculating the level of high cost assistance.

[7] Under our proposal, assistance to subscribers in high cost areas would continue to be provided through an interstate allocation of the relevant local loop costs in addition to the basic 25 percent interstate allocation. We recommend that the additional interstate allocation for study areas with less than 50,000 working loops (excluding WATS and private line loops) include: (1) 50 percent of the relevant cost per loop in excess of 115 percent but not greater than 150 percent of the national average for these costs; and (2) 75 percent of the relevant cost per loop in excess of 150 percent of the national average. We recommend that the additional interstate cost allocation for study areas with more than 50,000 working loops (excluding WATS and private line loops) include: (1) 25 percent of the relevant cost per loop in excess of 115 percent but not greater than 150 percent of the national average for these costs; and (2) 75 percent of the relevant cost per loop in excess of 150 percent of the national average. Under this approach all relevant NTS costs in excess of 150 percent of the national average would be allocated to the interstate jurisdiction. (Twenty five percent of these costs would be allocated to interstate through the basic allocation factor. An additional 75 percent would be allocated to interstate through the high cost formula.)

[8] 93 FCC 2d 241 (1983).

[9] A portion of local telephone company plant investment and expenses is allocated to the interstate jurisdiction and recovered through the rates for interstate services. The remainder of these costs are allocated to the state jurisdiction and recovered through the charges for local exchange and other intrastate services. Local telephone company costs are allocated between the two jurisdictions because local facilities are used for the origination and termination of interstate as well as intrastate telephone services. The procedures for allocating these costs between the jurisdictions are set out in Part 67 of the Commission's rules.

[10] The Commission's initial decision provided that, in 1984, the first year of the plan, local telephone companies would have to charge a minimum flat fee of $2.00 per line per month for residential subscribers and $4.00 per line per month for business subscribers. Additional NTS costs could be recovered from subscribers through usage charges, up to a maximum fee equivalent to the local telephone company's rate for a dedicated interstate private line. Aside from the pre-set minimum and maximum charges, local companies were given a great deal of flexibility to experiment with combinations of flat and usage based charges. Two major changes in the plan were scheduled to be phased in over a transition period. First, all of the NTS costs associated with subscriber loop plant and station connections, other than inside wiring, and the universal service fund amount, would gradually be shifted to a subscriber charge. (The costs of CPE, which are being phased out, as well as inside wire and NTS Category 6 Local Dial Switching Equipment would not be shifted to the subscriber charge.) Second, subscriber charges, which would initially be structured as a combination of minimum flat fees and usage sensitive charges, would gradually be converted to exclusively flat fees for most carriers.

[11] In the past, all local exchange telephone company costs allocated to the interstate jurisdiction were paid by the interexchange carriers and reflected in their rates to the public.

[12] FCC 83–356, released August 22, 1983, 48 FR 42984 (September 21, 1983).

[13] FCC 84–36, released February 15, 1984, 49 Fed. Reg. 7810 (March 2, 1984).

[14] *Id.* at para. 6.

effort to preserve the opportunity for fair competition during the transition to a new environment in which all interexchange competitors would be offered equal interconnection options.

7. In the *Second Reconsideration Order*, the Commission proceeded with implementation of a maximum $6.00 monthly charge for multi-line business customers.[15] The Commission deferred implementation of subscriber line charges for residential and single line business customers until June 1985, and capped such charges for these subscribers at $4.00 through the end of 1989. The Commission stated that it would complete the following five additional proceedings before it allowed subscriber line charges to become effective for residential and single line business customers: (1) A further rulemaking to devise exemptions or targeted assistance for subscribers who may not be able to afford subscriber line charges; (2) a further inquiry into the effects upon universal service of subscriber line charges as well as federal decisions in general; (3) a further inquiry to compile more detailed data upon the extent and dangers of bypass; (4) a further rulemaking to adopt more effective mechanisms to meet the needs of small telephone companies for additional assistance; and (5) a further rulemaking to examine how best to implement subscriber line charges for residential and single line business customers.

2. Jurisdictional Separations Proceeding

8. During the period covered by these orders in the *MTS and WATS Market Structure* proceeding, the Joint Board was reexamining the procedures governing the allocation of local exchange plant investment between the state and interstate jurisdictions in *Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80–286.[16] In the *Second Recommended Decision and Order* [17] in this proceeding, adopted on April 15, 1983, we recommended: (1) A basic 25 percent interstate allocation factor for local exchange loops (other than wideband loops and loops subject to direct assignment to one jurisdiction or the other) and inside wiring as well as the associated maintenance and depreciation expenses; (2) and additional interstate cost allocation for study areas with relevant loop costs in excess of 115 percent of the national average; [18] and (3) a number of other changes in the allocation of local exchange plant costs. The joint Board also recommended that implementation of the new basic allocation factor supplemented with high cost assistance take place in four steps beginning in 1986. The Commission adopted the Joint Board's recommendations with a number of changes and clarifications.[19]

9. The Commission subsequently asked the Joint Board to prepare recommendations concerning a number of issues [20] related to the recovery of NIS costs.[21] These issues included: (1) The subscriber line charge for residential and single line business customers; (2) the transition mechanism for implementing subscriber line charges for these customers; (3) an exemption from the subscriber line charge or other assistance for low income households; and (4) additional assistance for small telephone companies.[22]

10. In seeking additional comments on these issues the Commission recognized that subscriber line charges represent a major change in the way the interstate allocation of local exchange telephone company costs are recovered, and stated that "it is important to compile as complete a record as possible concerning end user access charges for residential and single line business subscribers.[23] At the same time, the Commission noted the extensive record already compiled in CC Docket No. 78–72 and added:

> Based on the substantial record in this proceeding, we are convinced that a significant reduction in the level of toll leading is necessary to ensure the long term viability of the telephone network and best serve the four basic goals which we have established in this proceeding, namely: (1) The continued assurance of universal service; (2) the elimination of unjust discrimination or unlawful preferential rates; (3) the encouragement of network efficiency; and (4) the prevention of uneconomic bypass. We have already reached a number of basic conclusions. First, bypass and the economic inefficiency inherent in the present system of toll rates represents a serious long term threat to universal service. Second, the emergence of competition in the telecommunications industry requires that charges more fully reflect the cost of service. Third, a nationwide solution to these problems is necessary in the near future to provide the industry with certainty. Fourth, flat fee end user charges are an equitable and economically sound method for recovering a portion of NIS costs, although assistance is

[15] The maximum $6.00 monthly charge applied to Centrex lines ordered after July 27, 1983. A $2.00 monthly charge was authorized for embedded Centrex lines (those ordered or in place on or before July 27, 1983). The Commission also stated that it would reexamine transitional end user charges for all customers, but did not expect charges for embedded Centrex lines to exceed $3.00 per month in the 1985 and 1986 access period.

[16] This proceeding was instituted in July 1980 pursuant to Section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c). *Notice of Proposed Rulemaking and Order Establishing a Joint Board*, 78 FCC 2d 837 (1980).

[17] CC Docket No. 80–286, 48 FR 48556 (October 13, 1983). The Joint Board had previously recommended that customer premises equipment (CPE) be phased out of the separations process over a five year period in light of the Commission's decision in Docket No. 20828, *Amendment of Section 64.702 of the Commission's Rules*, to detariff CPE. *Recommended Decision and Order*, CC Docket No. 80–286, FCC 81–566, released December 14, 1981, 46 FR 63344 (December 31, 1981). At that time, the Joint Board also recommended that the Commission freeze SPF at the 1981 annual average level for each study area to prevent further growth in the interstate NTS cost allocation pending adoption of new separations procedures. *Recommended Interim Order*, CC Docket No. 80–286, FCC 81–565, released December 14, 1981, 46 FR 63354 (December 31, 1981). The Commission adopted both the CPE phase out plan and the interim SPF freeze with a number of technical modifications. *Decision and Order*, CC Docket No. 80–286, 89 FCC 2d 1 (1982), *reconsideration denied*, 91 FCC 2d 558 (1982), *appeals pending sub nom. MCI Telecommunications Corp. v. FCC*, D.C. Cir. Nos. 82–1237, 82–1456 (filed March 4, 1982 and April 23, 1982).

[18] The Joint Board also recommended provisions designed to cap subscriber line charges [for high cost areas] at twice the national average charge. The Commission endorsed this in concept, but concluded that it should be incorporated in Part 69, the access charge rules rather than Part 67 dealing with jurisdictional separations. As previously mentioned, the Commission subsequently decided to cap subscriber line charges for residential and single line business customers at $4.00 per month through the end of 1989.

[19] *Decision and Order, amendment of Part 67 of the Commission's Rules*, CC Docket No. 80–286, 99 FCC 2d 781 (1984). The most significant of these changes included: (1) inclusion of drop and block wire and Category 8.13, Subscriber Line Circuit Equipment, in the plant categories considered in determining whether a study area qualifies for high cost assistance; (2) advancing the date for the initial high cost data filing with the National Exchange Carrier Association (NECA) from June 1985 to June 1984; and (3) continuation of the existing separations treatment of WATS closed end access lines pending further recommendations by the Joint Board. The Joint Board modified its original recommendation to request the first two changes. *Id.* at para. 5.

[20] Since these issues do not involve the allocation of costs between the jurisdictions, preparation of a Joint Board recommendation is not mandatory. *See* Section 410 of the Communications Act, as amended, 47 U.S.C. 410.

[21] *Further Notice of Proposed Rulemaking, MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78–72 and 80–286, FCC 84–133, released April 11, 1984, 49 FR 18318 (April 30, 1984).

[22] The Commission also instituted studies concerning bypass of the local exchange and the effect of federal decisions on universal service. Public Notice, "Request for Data, Information, and Studies Pertaining to Bypass of the Public Switched Network," Mimeo No. 3206, released March 28, 1984; Public Notice, "Commission Seeks Further Information on the Effects of Federal Decisions on Local Rates and Services, "Mimeo No. 3246, released March 30, 1984; Public Notice, "Request for Comments on Bypass Studies," Mimeo No. 6784, released September 21, 1984; Public Notice, "Request for Comments on Bypass Study by USTA," released October 10, 1984.

[23] *Further Notice of Proposed Rulemaking*, CC Docket Nos. 78–72 and 80–286, FCC 84–133, at para. 4, released April 11, 1984, 49 FR 18316 at para. 4 (April 30, 1984).

needed for low income subscribers and those in high cost areas. In particular, rural telephone companies must be able to continue operations. Fifth, an appropriate transition to the new environment is needed. We seek comments on the residential and single line business end user charges as a means toward these ends.[24]

Despite this, the Commission stated that it would not preclude consideration of alternative plans which would significantly decrease toll loading [25] and achieve the Commission's four basic goals in providing for the recovery of interstate NTS local exchange costs.

11. On April 11, 1984, the Joint Board adopted an *Order Inviting Comments*,[26] which, among other things, requested comments on means of refining the high cost provisions previously recommended by the Joint Board and adopted by the Commission. We sought additional comments concerning the provisions for high cost assistance in order to allow further study of certain matters related to the targeting of high cost assistance which we had expressed concern about in our *Second Recommended Decision and Order*.

12. More than 50 parties filed comments or replies in response to he Commission's *Further Notice of Proposed Rulemaking* in CC Docket Nos. 78–72 and 80–286. Approximately 30 parties filed comments or replies concerning the high cost issues addressed in the Joint Board's *Order Inviting Comments*. The comments are discussed in the following sections concerning the recovery of NTS costs, high cost assistance and protection for low income households.

II. Recovery of NTS Costs

A. Summary

13. As previously stated, we recommend implementation of subscriber line charges for residential and single line business customers with a basic $1.00 monthly charge effective June 1985 increasing to $2.00 per month in June 1986.[27] We believe that subscriber line charges should be frozen at this level pending completion of a further study concerning: (1) The effect of subscriber line charges and other federal decisions on universal service; (2) the extent and potential for bypass of the local exchange; (3) the benefits of subscriber line charges in terms of increased economic efficiency; and (4) the effect of these cost recovery mechanisms on interexchange competition. This study should be initiated in late 1986 and competed as soon as possible consistent with the need to develop an adequate record. We also believe that a certain amount of flexibility must be allowed with regard to the recovery of carrier common line costs. Accordingly, we are recommending provisions designed to allow local telephone companies the option of filing alternative interstate tariff provisions for the recovery of carrier common line costs in order to combat localized bypass problems. Such tariff filings would be authorized under Part 69 of the rules only after concurrence in the company's proposal by the relevant state regulatory commission or the Joint Board. The company would be allowed to request Joint Board action on its proposal if the state commission does not act within 60 days of the filing, although the state commission would remain free to act on the proposal pending a decision by the Joint Board. Upon concurrence, a tariff filing would then be made with the Commission, subject to normal FCC tariff review procedures. While the rate elements and charges under these tariff provisions would differ from those in the National Exchange Carrier Association (NECA) tariff, we are recommending rules for the implementation of these optional alternative interstate tariff provisions that will ensure that they do not undermine the mandatory nationwide averaging of interstate NTS costs for purposes of the NECA carrier common line charge.[28] We believe that this approach will best serve the Commission's goals in the *MTS and WATS Market Structure* proceeding. Our recommendations also incorporate a number of important ideas contained in the major alternatives to subscriber line charges proposed in the comments.[29]

B. Comments

14. American Telephone and Telegraph Company (AT&T) supported the Commission's plan for implementation of residential and single line business subscriber line charges. AT&T argued that the additional time available to evaluate the universal service issue should allow focused consideration of alternative measures designed to meet those needs directly. It opposed further delay or weakening of the plan. United States Transmission Systems, Inc. (USTS) argued that it is imperative that the Commission begin implementation of a system of subscriber line charges at an early date. EMX Telecom stated that fixed monthly charges for residential and single line business subscribers would have an unfair impact on the majority of these subscribers. It suggested that the Commission develop an alternative means of compensating exchange carriers that more fairly reflects actual usage of exchange facilities.

15. Most of the Bell Operating Companies stated that the FCC's current plan for implementing subscriber line charges for single line business and residential subscribers represents the slowest acceptable transition plan. They found no reason to postpone implementation further. Mountain States, Northwestern Bell and Pacific Northwest Bell (U.S. West) states that the initial charge should be equal to each company's multi-line business rate. If the Commissison decided to allow a lower charge for residential and single line business users on an interim basis, they argued that the initial charge should be no less than $4.00 per line in 1985. NYNEX and Southwestern Bell argued that their econometric models demonstrate that implementation of a $4 subscriber line charge on a flash-cut basis in 1985 would have little effect on telephone penetration in their service territories.

16. Most of the large independent companies, including GTE Corporation (GTE), Central Telephone Company, Southern New England Telephone Company (SNET) and United Telephone Company, as well as the United States Telephone Association (USTA) also supported implementation of the Commission's plan. Rochester Telephone Corporation argued that the Commission should adopt a transition plan for subscriber line charges that would impose equal charges for all customers by January 1, 1986 and would require all remaining NTS costs to be recovered through end user charges by January 1, 1989. Rochester took the position that the only possible alternative NTS recovery approach consistent with the Commission's policy objectives is the allocation of all NTS costs to the intrastate jurisdiction. Continental Telecom Inc. (Contel) proposed replacing frozen SPF with an Exchange Network Usage Factor (ENUF), equivalent to SLU, over a five year transition period.

17. The small independent telephone companies generally opposed subscriber line charges for residential and single line business customers or stated that they supported waiver of such charges for customers served by small telephone companies. Mashell Telephone Co. and the Michigan Action Group argued that subscriber line charges for all residential and single line business customers should be capped indefinitely at $4.00 for the period beyond 1989. The Rural Telephone Coalition (RTC) argued that a permanent cap on subscriber line charges would be an attractive modification to the current plan with the permanent cap set at the lesser of a percentage of interstate NTS costs determined as a result of quantitative studies of bypass and other relevant factors, or $4.00 for residential and $6.00 for business subscribers.

18. The large user groups filing comments included the Ad Hoc Telecommunications Users Committee (Ad Hoc), Federal Executive Agencies (FEA) and International Communications Association (ICA). They strongly supported the Commission's plan for implementation of subscriber line charges. Three groups representing residential telephone subscribers, Telecommunications Research and Action Center (TRAC), the National Association of State Utility Consumer Advocates (NASUCA) and the Office of Consumers' Counsel, State of Ohio (OCCO) opposed subscriber line charges. OCCO stated that the transition to these charges would gain greater consumer understanding and acceptance if the initial charge were set at $.25 or $.50, with gradual increases over the rest of the decade. The National Federation of Independent Business stated that subscriber line charges should initially be set at a low level with small incremental increases to permit careful monitoring of developments. The National Association of Homes for Children requested that the Commission either define private orphanages as residential subscribers or exempt private orphanages from the multi-line business subscriber line charge.

19. Most of the state regulatory commissions supported the concept of state flexibility behind the National Association of Regulatory Utility Commissioners (NARUC) proposal for a system of unified state and federal access tariffs to be filed with the state commissions subject to general federal guidelines.[30] These states included: Florida, Iowa, Kansas, Kentucky, Michigan, North Dakota and Vermont. Florida and Michigan also requested that the Joint Board and Commission provide for experiments in their states to implement such an approach. The New York Department of Public Service argued that no drastic restructuring of interstate rates, such as that contained in the Commission's plan, is necessary at this time. It stated that if the interstate rate structure needs to be modified, it prefers a cap on the NTS costs recovered from any one user through usage sensitive pricing. The staff of the Pennsylvania Public Utility Commission opposed subscriber line charges and instead recommended gradual implementation of SLU based charges to the interexchange carriers. The Rural Electrification Administration (REA) argued that a move from SPF to SLU or a flat allocation factor approximating SLU would be a palatable compromise. NTIA urged the Commission to retain its plan while exploring in detail the implications of the proposed alternatives.

20. The Commission also requested comments on a letter which NARUC filed September 16, 1984, responding to a number of questions concerning the meaning and effect of the St. Louis plan.[31] These questions were raised by the Chief, Common Carrier Bureau in a letter to the President of NARUC.[32] Approximately 37 parties filed comments concerning the NARUC letter. AT&T stated that the current Commission plan should be used as the basis for judging any alternatives. It argued that a review of the St. Louis proposal revealed areas requiring further amplification and explanation. These included: (1) The mechanism for a national Universal Service Fund; (2) the clarity and specificity of the guidelines; and (3) the level of the proposed cap on NTS costs to be recovered in interstate charges. The other interexchange carriers, including American Satellite Company, ALTEL, Lexitel, MCI, SBS, Teltec, U.S. Tel. and USTS, uniformly opposed the St. Louis plan and argued that it would create an enormous increase in their administrative burdens.

21. The Bell Operating Companies and GTE supported implementation of the FCC access charge plan, with further study of the feasibility of an approach such as the St. Louis plan which incorporates a degree of state flexibility. Rochester Telephone Compony supported the concept of a unified tariff and aruged that all NTS costs should be allocated to the state jurisdiction. It took the position that this could eliminate or reduce interregional subsidies and assure a uniform NTS cost recovery mechanism for each exchange carrier. United opposed the St. Louis plan, arguing that it would add further confusion and uncertainty to an industry which needs neither.

22. The Rural Telephone Coalition (RTC) also oposed the St. Louis resolution. RTC argued that the St. Louis plan would cause significant problems including additional administrative burdens and increased pressure for toll rate deaveraging. RTC stated that flexible pricing strategies do not address the underlying problems of companies serving high cost areas. It also argued that the FCC can not delegate its authority over interstate ratemaking to the states. The large user groups, such as Ad Hoc, Aeronautical Radio, Inc., FEA and ICA uniformly opposed the St. Louis plan. ABC, CBS, and NBC requested that the Commission ensure that television and audio programming services are expressly excluded from the scope of any unified tariffs.

23. Most of the state commissions endorsed the St. Louis approach. The Michigan, New Jersey, New York, Utah, Vermont and Wisconsin Commissions, the New England Conference of Public Utilities Commissions, as well as the Office of Consumers' Council, State of Ohio supported the St. Louis plan. These parties argued that a single unified access charge tariff administered by the states has three main advantages: greater flexibility in meeting localized bypass and other ratemaking concerns; reduced adminstrative problems; and

---

[24] *Id.*

[25] Toll loading refers to the recovery of NTS or fixed local exchange telephone costs through the usage based rates for toll service.

[26] CC Docket No. 80–286, FCC 84–139, released April 11, 1984, 49 Fed. Reg. 18746 (May 2, 1984).

[27] We also recommend that the $2.00 per line charge for embedded Centrex lines be retained until we complete our study of the impact of subscriber line charges on Centrex service. We expect to consider further staff recommendations concerning Centrex service in February 1985. We are not making a recommendation concerning subscriber line charges for multi-party service. We expect the Commission to institute proceedings shortly to reexamine the rules in this area pursuant to the remand by the Court of Appeals in *National Association of Regulatory Utility Commissioners* v. *FCC*, 737 F.2d 1095 (D.C. Cir. 1984) *petition for cert. pending*, U.S. No. 84–95 (filed July 18, 1984).

[28] A more detailed explanation of the procedures for implementing the alternative carrier common line tariff provisions are discussed in paragraphs 36 through 41.

[29] We propose that this plan be implemented by adopting new §§ 69.203, 69.204, and 69.611 to describe interim, common line charges and associated pooling arrangements. Although subsequent proceedings may produce substantial changes in any post-transition rules for common line charges, we are not proposing changes in those rules at this time. We have not recommended deletion of the post-transition rules because some of the interim rules cross-reference the original post-transition rules.

[30] This approach is frequently referred to as the St. Louis plan since it was adopted by the NARUC Communications Committee at its May meeting in St. Louis, Missouri.

[31] Public Notice, "Commission Seeks Comments on National Association of Regulatory Utility Commissioners (NARUC) Response to Common Carrier Bureau Questions on the St. Louis Resolution," September 19, 1984.

[32] Letter to Junie L. Bradshaw, President, NARUC from Jack D. Smith, Chief, Common Carrier Bureau, dated Autust 24, 1984.

Association of Regulatory Utility Commissioners v.

associated pooling arrangements. Although

the internal rules cross-reference the original post-transition rules.

reduced possibility for arbitrage.[33] The Illinois Commerce Commission also favored the St. Louis plan, but conditioned its support on the simultaneous relaxation of the FCC policy requiring averaging of NTS costs for the purpose of interstate ratemaking. The Alabama Public Service Commission opposed the concept presented in the St. Louis resolution, and any other measures which would create additional pressure for the deaveraging of toll rates. Alabama also argued that it is imperative that the Commission provide adequate benefits to high cost companies. The Washington Utilities and Transportation Commission stated that a unified set of tariffs as suggested by NARUC would not meet the state's needs.

24. On November 1, 1984, most of the major exchange carrier associations[34] filed a Joint Petition with the Commission and Joint Board outlining a plan for implementation of subscriber line charges and high cost assistance.[35] This plan is predicated on recovery of almost all interstate loop costs through subscriber line charges. It begins with the Commission's previously adopted $2.00, $3.00 and $4.00 access charge plan and a maximum $4.00 monthly subscriber line charge for residential and single line business customers through 1989. Section III discusses their proposal for high cost assistance.[36] The parties to this filing state that their recommendations on subscriber line charges and high cost assistance represent a unified proposal and they oppose adoption of any part of the plan by itself.

25. In the post 1989 period, this plan proposes different levels of subscriber line charges for small companies (those with less than 200,000 loops) and large companies. For small companies, subscriber line charges would be set to recover interstate loop costs (defined by the basic 25 percent interstate allocation), up to 110 percent of the nationwide average interstate NTS costs. This would equate to a subscriber line charge of $4.77 (based on 1983 data) for small companies with interstate NTS costs equal to or greater than 110 percent of the nationwide average. For large companies, the basic interstate allocation factor would be 35 percent for NTS costs between 110 percent and 160 percent of the national average and 55 percent for NTS costs between 160 percent and 169 percent of the national average. Under this allocation scale, the subscriber line charge for large companies with loop costs of more than 169 percent of the national average would be capped at twice the national average for these costs or $8.66 (based on 1983 data). The plan also provides for modifying multiline business charges to equal the residential and single line business charges.

C. Discussion

1. Basic Plan for Interstate NTS Cost Recovery

26. The Joint Board believes that implementation of subscriber line charges in the amounts outlined at the beginning of this Section will best serve the Commission's goals of: (1) Eliminating unreasonable discrimination and undue preferences among the rates for interstate services; (2) promoting efficient use of the local network; (3) preventing uneconomic bypass; and (4) preserving universal service. A basic $2.00 subscriber line charge for residential and single line business customers will substantially reduce the extent of the discrimination which the Commission found to exist between the flat rates charged for dedicated private line local loops and the per minute access charges for use of switched local loops. Flat rate recovery of a portion of the interstate costs of switched local loops will also promote economically efficient use of the local telephone network. In addition, it will allow major reductions in the carrier common line charge.[37] This will substantially reduce the incentive for the interexchange carriers and high volume toll users to bypass the local exchange[38] and will allow significant toll rate reductions. The Joint Board recommends that the Commission take all appropriate steps to ensure that the revenues generated by residential and single line business subscriber line charges are flowed through to customers in the form of reduced interstate toll rates. The additional provisions authorizing local companies (with the approval of their state commissions or the Joint Board) to file optional alternative tariff provisions for recover of interstate carrier common line costs pursuant to Part 69 of the FCC rules will also contribute substantially to reducing localized bypass problems which the across-the-board reduction in the carrier common line charge cannot prevent.

27. Limiting the basic subscriber line charge to $2.00 per month pending reevaluation by the Joint Board will also ensure that implementation of subscriber line charges for residential and single line business customers will not undermine universal service. It does not appear that a $1.00 or $2.00 monthly subscriber line charge, by itself, will have an adverse effect on the affordability of telephone service. However, we are concerned that recovery of additional NTS costs through subscriber line charges, in conjunction with other federal actions, such as more rapid depreciation of telephone company plant, and recent separations changes as well as the general upward pressure on local telephone rates,[39] could undermine universal service.[40] Subscriber line charges represent a major change in the way the interstate allocation of NTS local exchange costs have been recovered. We believe that such changes must be implemented gradually, subject to careful reevaluation before increases are allowed. Only a complete reexamination of these issues in light of actual experience will allow a sound determination of whether the basic subscriber line charge for these customers should ever be increased beyond $2.00 per month.

[33] For purposes of this discussion, the term "arbitrage" refers to the ability of the interexchange carriers to take advantage of differences between state and federal access tariffs, for example, by misreporting the use of facilities to obtain favorable rates or terms.

[34] These associations included the National Telephone Cooperative Association, the Organization for the Protection and Advancement of Small Telephone Companies, the National Rural Telecom Association and the United States Telephone Association. They represent over 1,300 of the approximately 1,400 exchange carriers.

[35] The Joint Board's procedures governing *ex parte* presentations generally prohibit written *ex parte* presentation during the 15 day period immediately preceding a Joint Board meeting, although there is an exception for filings in response to a request by the Joint Board or its staff. *Order*, CC Docket No. 80-286, FCC 82-106, released March 5, 1982, 47 Fed. Reg. 23459 (May 28, 1982). The Joint Petition was filed less than 15 days before the Joint Board meeting on November 15, 1984, but it satisfies the Joint Board's *ex parte* procedures since the staff requested a filing by these groups.

[36] *See* paragraph 54.

[37] The carrier common line charge is designed to recover all interstate NTS Local exchange costs for switched access that are not recovered through subscriber line charges with the exception of Category 6 NTS COE costs which are recovered through line termination charges.

[38] The NTS costs recovered through the per minute carrier common line charge are reflected in the interexchange carriers' rates for toll service. As a result, high volume toll users pay much more than the cost of connecting them to the telephone network. This creates an incentive for large users to construct or lease private communications systems which bypass the local exchange. The interexchange carriers also have a significant incentive to bypass the local exchange to avoid the carrier common line charge so they can offer lower rates to high volume users.

[39] This is due primarily to increases in wages and the cost of materials and supplies.

[40] The Joint Board is committed to development of a careful monitoring program to allow timely adjustments if necessary.

28. The weight of the comments supports implementation of subscriber line charges for residential and single line business users. As already indicated, we agree that gradual implementation of a $2.00 flat charge for these subscribers is in the long term public interest. However, we are recommending a number of changes in the Commission's existing plan designed to reflect certain ideas contained in the major alternative NTS cost recovery mechanisms proposed in the comments. These alternatives include: (1) The St. Louis plan for state flexibility through unified state and interstate access charge tariffs filed with the state commissions; (2) reductions in the interstate allocation of NTS local exchange costs; (3) restructuring interstate toll rates to reflect volume discounts for large users; and (4) restructuring access charges to reflect volume discounts or modifying the access charge rate structure to reduce the impetus for bypass. While we do not believe that any of these alternatives, by themselves, represent a workable means of recovering interstate NTS costs in a manner consistent with the Commission's basic goals, each of these alternative approaches reflects important underlying concerns that should be dealth with in any plan for recovering interstate NTS costs. Our recommendations in this regard represent a means of dealing with these concerns within a system of subscriber line charges.

29. In recommending implementation of limited subscriber line charges for residential and single line business subscribers, we recognize the extraordinary efforts of the National Telephone Cooperative Association (NTCA), the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), the National Rural Telecom Association (NRTA) and the United States Telephone Association (USTA) in developing a consensus position among local exchange companies concerning subscriber line charges and assistance for subscribers in high cost areas. The decision by these organizations, representing both large and small local exchange carriers, to recommend subscriber line charges as a means of recovering the interstate NTS cost allocation demonstrates a broad industry-wide agreement concerning the need for flat rate recovery of most interstate NTS costs. Although we agree with these groups in recommending implementation of subscriber line charges for residential and single line business customers, we differ from them in our conclusion that flat rate recovery of interstate NTS costs should be limited to $2.00 per month for these subscribers until completion of further studies to determine whether additional flat rate recovery of interstate NTS costs should ever be authorized.

30. One of the major concerns underlying the St. Louis plan appears to be a desire on the part of state regulatory officials for flexibility to deal with bypass on a highly targeted basis.[41] Many of the comments in response to the NARUC letter persuade us that further study would be necessary before the approach proposed in the St. Louis plan could be implemented. We believe that an immediate solution is necessary to the problems inherent in the present system of interstate NTS cost recovery. Furthermore, the St. Louis plan is not compatible with the present method of recovering interstate NTS costs through nationwide average carrier common line charges. Under an approach with averaged charges, bypass represents a threat to all telephone subscribers, not just those served by the local company whose facilities may be bypassed. For example, a portion of the revenue generated by the per minute carrier common line charge for traffic originating and terminating in major metropolitan areas goes to cover NTS costs in high cost rural and remote areas. As a result, we believe that bypass represents a national problem that cannot be solved exclusively at the state level. The promotion of economic efficiency and the elimination of discrimination in the use of the local switched network for the origination and termination of interstate services also represents a problem with national implications which can best be dealt with through joint federal-state action.

31. On the other hand, the potential for bypass of the local exchange differs from company to company. There are certain areas where the across-the-board reduction in the carrier common line charge resulting from implementation of a maximum $2.00 basic subscriber line charge will not be sufficient to prevent bypass. In light of this, we believe that a system of nationwide subscriber line charges should be supplemented with provisions which authorize the local exchange companies to develop (with the concurrence of their state commission or the Joint Board) optional alternative interstate tariff filings with the FCC to recover carrier common line costs. We believe that this recommendation reflects one of the major concerns underlying the St. Louis plan while allowing immediate steps to alleviate the problems inherent in the existing system.

32. The provision for alternative, highly targeted, interstate access charge tariff provisions designed to combat localized bypass problems also reflects proposals for dealing with the bypass problem through volume discounts in the access charge or interstate toll tariffs. In fact, we expect that many of the alternative tariff provisions for the recovery of carrier common line costs will take the form of volume discounts. Again, volume discounts alone do not appear to represent a satisfactory approach for dealing with the present problems related to the recovery of interstate NTS costs. A system of volume discount tariffs would reduce the pressure for bypass. It would also reduce the extent of discrimination and economic inefficiency which the Commission has found to be inherent in the present system. Despite this, volume discount tariffs, by themselves, will not address the bypass, discrimination and economic efficiency concerns to the same extent as the proposed subscriber line charge supplemented with optional volume discounts or other innovative tariff structures to deal with localized bypass problems. Relying exclusively on volume discounts for large users would also require major toll rate increases for low volume residential and small business subscribers. Using volume discounts in conjunction with subscriber line charges will alleviate this problem.

33. Capping basic subscriber line charge at $2.00 per month pending an evaluation of the need to recover additional NTS costs through flat charges also reflects one of the basic concerns underlying the proposals for a reduced interstate cost allocation. Most of these proposals are based on the idea that the interexchange carriers should continue to pay a major portion of interstate NTS costs, although some of them suggest a reduced interstate allocation in conjunction with subscriber line charges. At present, we do not believe that reducing the interstate NTS cost allocation represents a sound response to the problems produced by the existing NTS cost allocation and recovery mechanisms. Among other things, it would force state regulators to implement solutions to a national problem which can best be remedied through federal measures developed in cooperation with the state commissions A significant reduction in the interstate

[41] The St. Louis plan was also intended to eliminate a number of other problems associated with disparate intrastate and interstate rates for equivalent access service.

NTS cost allocation would require increases in local exchange and other intrastate rates to recover the increased intrastate costs. At the same time, interstate rates would be reduced to reflect a decreased revenue requirement.

34. We believe that the interexchange carriers should continue to pay a major portion of interstate NTS costs, at least through the interim period covered by our recommendations. Specifically, we recommend that subscriber line charges (including any surcharge necessary in conjunction with the optional anti-bypass tariff provisions discussed later in this section) be limited so that the interexchange carriers continue to pay at least a SLU (Subscriber Line Usage)[43] based portion of NTS loop costs on a nationwide average basis[43] during 1985 and 1986. Based on current data, a $2.00 subscriber line charge implemented in June 1986 will satisfy this criterion. During this period, the interstate allocation of CPE, inside wiring and NTS Category 6 COE, (Local Dial Switching Equipment) will also be recovered from the interexchange carriers through usage based charges.[44] While we believe that at least a SLU based portion of local loop costs should continue to be recovered from the interexchange carriers during this interim period, we recognize that full reevaluation of these issues in late 1986 and 1987 will be necessary to allow a determination of whether the portion of NTS costs paid by the interexchange carriers should be adjusted. Only a full reexamination of our experience in implementing the $1.00 and $2.00 subscriber line charges will allow a sound decision on this point.

2. Optional Alternative Carrier Common Line Tariffs

35. We now turn to a more detailed discussion of our proposal for allowing the local exchange companies, working in conjunction with their state regulators, a degree of flexibility in recovering carrier common line costs. Under the Commission's access charge rules, the carrier common line element is designed to recover interstate costs associated with CPE, inside wire, the universal service fund, NECA costs and the loop costs which are not recovered through subscriber line charges. These costs are averaged on a nationwide basis to produce a uniform per minute charge for origination and termination of interstate switched services (other than those provided by the OCCs through line side connections which qualify for a discounted access charge rate). The implementation of $1.00 and $2.00 subscriber line charges for residential and single line business customers will result in significant reductions in the nationwide average carrier common line charge. As previously mentioned, we recommend that the Commission ensure flow through of the new residential and single line business subscriber line charge revenues in the form of interstate toll rate reductions.

36. We also believe that additional measures may be necessary to combat bypass in certain areas. As a result, we are recommending that the Commission allow local exchange companies the option of filing alternatives to the carrier common line element in the NECA tariff. These tariffs would reflect volume discount rates for interstate access or other innovative rate structures designed to encourage use of the local switched network by the interexchange carriers and large volume customers. In order for these alternative rates or tariff structures to be fully effective in preventing bypass of the local network, we believe that the large volume users must realize cost savings. We recommend that the Commission adopt measures to ensure that the alternative tariff provisions benefit high volume toll users in the relevant study area.

37. We recommend structuring the provisions for such optional tariff filings to ensure nationwide averaging of carrier common line costs as required by the Commission's access charge rules.[45] This can be done by requiring the local exchange companies implementing alternative tariffs to pay into the NECA pool as if the alternative tariffs were not in effect. In the first year of the alternative tariff, the company's payment into the NECA pool would be based on a projection of their carrier common line minutes, ignoring the effect of the alternative tariff. In subsequent years, the number of minutes to be used in calculating the company's payments to the NECA pool would be developed by comparing: (1) Projections based on the company's carrier common line minutes in the last year prior to the alternative tariff; and (2) the total of the previous year's carrier common line minutes and the minutes under the alternative tariff minus the number of those minutes estimated to be due to stimulation. The amount of the company's NECA carrier common line pool distribution would remain unchanged. Under this approach, increased revenues due to the stimulation of traffic under the alternative tariffs would reduce the level of the subscriber line surcharge.[46]

38. As previously indicated, we believe that such optional alternative tariff filings should be allowed pursuant to Part 69 of the Commission's rules only when the local exchange company concludes that such tariff changes are necessary and the state regulatory commission concurs in this decision. We also recommend that the local companies be allowed to ask the Joint Board to override a state commission's objection or act on such proposals if the state commission does not do so within 60 days of the filing.[47] This period should be ample for state consideration since concurrence in the proposal for an alternative tariff can be accomplished through a filing with the FCC, and does not require a rate proceeding before the state commission.[48] Under this procedure, the Joint Board could concur in the proposal, allowing a company to go forward with a special tariff filing before the FCC pursuant to Part 69 of the rules if the Joint Board was convinced that such measures were necessary to deal with a localized bypass problem. However, the state commission's grounds for objecting to the alternative tariff filing should be given considerable weight in any such Joint Board proceedings. A local company would not be authorized to go forward with such a tariff filing before the FCC pursuant to Part 69 of the rules in the absence of state commission or Joint Board approval. In order to facilitate state commission, Joint Board and FCC review of local company proposals for alternative tariff filings, we believe that

[43] The Subscriber Line Usage factor is equivalent to the portion of total usage that is interstate. If ten out of every one hundred minutes of use are interstate, SLU would be 10 percent.

[44] A $2.00 subscriber line charge for residential and single line business customers may leave less than a SLU based portion of loop costs to be recovered through carriers' carrier charges in the case of some states and companies. This is due to the fact that subscriber line charges for these customers will be uniform throughout the country, while the SLU based portion of local loop costs varies widely from company to company due to differences in interstate SLU levels and unseparated (total intrastate and interstate) costs per loop.

[45] These costs will continue to be recovered from the interexchange carriers as long as they remain part of the regulated rate base subject to separations.

[46] The averaging of most NTS costs (other than those recovered pursuant to subscriber line charges) through the carrier common line access charge element contributes to maintaining geographically averaged interstate toll rates.

[47] For a discussion of the subscriber line surcharge see paragraphs 39 and 40.

[48] The state commission would remain free to act on the company's proposal pending a Joint Board decision.

[49] Under this procedure, the state commission would be providing input concerning a proposal for a fedral tariff filing. As a result, the provisions concerning state ratemaking or other administrative proceedings would not appear to apply.

the company should be required to serve each of these organizations concurrently with a copy of the proposal. Once the state commission or Joint Board concurrence is obtained, the actual tariff would be filed with the Commission and reviewed pursuant to normal FCC tariff filing procedures.[49]

39. The alternative tariffs are not likely to produce enough revenue to cover the required payments to the NECA pool. We believe that any revenue short fall should be recouped through a uniform surcharge on subscriber line charges for all customers in the study area involved. Although this approach will increase the cost burdens borne by these customers, we do not believe that alternative tariffs will receive state commission or Joint Board concurrence unless all subscribers will, in the long run, benefit from measures encouraging use of the switched local network by the interexchange carriers and high volume users. If the revenue shortfall were funded by a surcharge on the nationwide NECA carrier common line charge, local companies and the state commissions would have a strong incentive to proceed with such alternative tariff filings even when they were not necessary. Such an approach would allow local companies to reduce the NTS costs which they recovered in their service territory while requiring that all other toll users make up the revenue shortfall produced by these tariffs. This approach would also require that telephone subscribers in high cost rural areas pay higher toll rates designed to pick up the NTS costs which were previously paid by large users. We believe that our proposal will ensure that the decisions to proceed with these alternative tariff filings are made in a context where both the benefits and drawbacks of additional NTS deloading are realized within the study area involved.

40. We also recommend that the subscriber line surcharge for all customers in the relevant study area be limited to a maximum of $.35 per month. We believe all subscribers should be subject to the same surcharge since all customers will, in the long run, benefit from these measures to prevent bypass of the local exchange. Even without this limit, we doubt that state regulators would approve alternative carrier common line tariffs requiring surcharges in excess of this amount. Despite this, we believe that the Commission should establish a cap on the level of the surcharge to provide subscribers with a necessary degree of certainty. We also recommend that the Joint Board undertake further study of the level of the surcharge in late 1985 or early 1986 (unless earlier review of this matter is necessary) to determine whether a higher cap on the surcharge would be desirable in conjunction with the $2.00 subscriber line charge to be implemented in June 1986. This determination can best be made on the basis of actual experience with alternative tariff filings.

41. We believe that the optional alternative interstate tariff provisions which we are recommending will serve as an effective means of combatting localized bypass problems. However, we recognize that there are a number of questions concerning implementation of such tariffs that should be examined further. We wish to facilitate the earliest possible implementation of these alternative tariffs, assuming Commission adoption of our recommendations. As a result, we intend to request comments on these implementation issues early in December 1984.

42. We conclude that these provisions for allowing individual local exchange companies to file alternative tariff provisions for recovery of carrier common line costs with state commission or Joint Board concurrence are entirely consistent with the Communications Act.[50] The Act normally provides for a system of carrier initiated tariff filings. *American Telephone and Telegraph Co.* v. *FCC*, 487 F.2d 865 (2d Cir. 1973). The provisions requiring state commission or Joint Board concurrence before a local company is authorized to proceed with an alternative tariff filing pursuant to Part 69 of the Commission's rules does not contravene this basic principle. The pooling of certain interstate NTS costs for purposes of the carrier common line charge has been prescribed in Part 69 of the rules pursuant to Section 205(a) of the Act. As a result, the local carriers are required to participate in the carrier common line pool. The state commission or Joint Board concurrence gives the local company authority to file under other provisions of Part 69 allowing alternative individual company tariff filings to recover carrier common line costs.

43. We also conclude that the alternative tariffs designed to combat localized bypass problems are consistent with the Act's prohibition against "any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service, directly or indirectly, . . ." Section 202(a) of the Act, 47 U.S.C. 202(a). Switched access service is basically the same service regardless of whether the customer involved is a high or low volume user. However, a rate differential or alternative tariff structure designed to prevent the interexchange carriers and large toll customers from bypassing the local exchange appears to be just and reasonable. Such tariffs would, in fact, reduce the degreee of discrimination inherent in recovering NTS costs from high volume users through usage based charges, promote economically efficient use of the local network and, in the long run, contribute to the preservation of universal telephone service. In *Aeronautical Radio, Inc.* v. *FCC*, 642 F.2d 1221, 1230 (D.C. Cir. 1980), *cert den.*, 451 U.S. 920, 451 U.S. 976 (1981) the D.C. Circuit approved provisions for departures from the fully distributed costs methodology when the carrier could justify such departures on the ground of efficiency or other public interest benefits, including competitive necessity. We believe our present recommendation satisfies this criterion.

44. In addition to these specific measures for allowing local exchange companies to file alternative anti-bypass tariffs, we urge the Commission and the Joint Board staff to work closely with interested state commissions to explore more comprehensive alternative tariff mechanisms for recovering the interstate allocation of NTS costs. We believe that carefully designed experiments with different tariff structures for recovering these costs will be valuable to the Commission in refining the present NTS cost recovery structure, and therefore we recommend that they be carefully reviewed through the Joint Board process. Such alternatives might well involve an even greater level of federal-state cooperation, and could be based on separations changes to permit states to substitute intrastate recovery

[49] The Communications Act provides for a maximum of 90 days public notice before a tariff filing becomes effective. Part 61 of the Commission's rules concerning tariff filings provides for a maximum of 45 days notice for tariff filings. However, Part 69 of the rules provides for 90 days notice for the annual access charge tariff filings. We recommend that the alternative tariffs also be filed on 90 days notice. During the public notice period the Commission may suspend the tariff to allow investigation of the filing or reject it if it is unlawful on its face. *See* Sections 203 and 204 of the Communications Act, 47 U.S.C. 203 and 204. Additional provisions concerning review of tariff filings are contained in Part 61 of the Commission's rules.

[50] The Commission can establish a state commission and Joint Board role in authorizing alternative tariff filings based on local conditions pursuant to Part 69 of the rules. See Sections 4(i) and (j) and 410 of the Communications Act, 47 U.S.C. 4(i) and (j) and 410(c).

separations.

averaged interstate toll rates.

proceedings would not appear to apply.

rules.

U.S.C. 4(i) and (j) and 410(c).

to substitute intrastate recovery

mechanisms for the customer line surcharge. For example, the Florida Public Service Commission filed a petition with the FCC on November 8, 1984 for authority to implement a comprehensive unified interstate and intrastate access charge plan (Florida plan) in Florida on an experimental basis. It should be noted that under the Florida plan tariffs for recovery of interstate costs would continue to be filed with the FCC.

45. An additional issue before the Joint Board involves the treatment of orphanages as multi-line business customers for purposes of subscriber line charges. This is due to the fact that the NECA tariff uses the customer's local exchange tariff status as a residential or business subscriber for purposes of applying subscriber line charges. We continue to believe that this approach is appropriate.[51] Classification of customers as residential or business users in the local exchange tariffs is usually subject to state commission review like any other term or condition in the local tariffs. If the state commission is satisfied with treating a particular subscriber as a business customer for purposes of the local tariff, we believe that such treatment should be appropriate for purposes of subscriber line charges as well. Having the FCC second guess the state commissions on this point would require the expenditure of substantial federal resources and would serve no useful purpose. Therefore, we recommend that any change in the user classification of orphanages be dealt with by state regulators.

III. High Cost Assistance

A. Summary

46. The Joint Board recommends that the Commission continue to use NTS local exchange costs as the basis for determining the level of assistance which each company should receive.[52] We are also recommending a number of changes in the separations provisions designed to assist telephone subscribers in areas with unusually high NTS local exchange costs. The most important change involves a revision in the scale for determining high cost assistance to qualifying study areas. Assistance will continue to apply to relevant unseparated (*i.e.*, total intrastate and interstate) NTS local exchange costs in excess of 115 percent of the national average. We recommend revising the high cost assistance for study areas with less than 50,000 working loops to cover the following: (1) 50 percent of the study area's relevant cost per working loop in excess of 115 percent of the national average, but not more than 150 percent of the national average; and (2) 75 percent of the study area's relevant cost per working loop in excess of 150 percent of the national average. We recommend changing the high cost assistance for study areas with more than 50,000 working loops to include: (1) 25 percent of the study area's relevant cost per working loop in excess of 115 percent of the national average, but not more than 150 percent of the national average; and (2) 75 percent of the relevant cost per loop in excess of 150 percent of the national average. This retargeting of high cost assistance will provide increased protection for subscribers served by small high cost companies, while keeping the overall size of the high cost fund at a reasonable level.

47. We are also recommending a number of other changes in the existing plan for high cost assistance. We conclude that the authorized rate of return for interstate access service [53] should be used in calculating the level of high cost assistance. We also recommend freezing study area boundaries as they are on November 15, 1984 for separations purposes, including calculation of the level of high cost assistance. In addition, we believe that the transition from frozen SPF to the 25 percent basic allocation factor combined with high cost assistance should be extended from four to eight annual steps for all companies. We recommend continued use of frozen SPF as the allocation factor for NTS Category 6 Central Office Equipment (COE), Local Dial Switching Equipment, pending a comprehensive review of all COE separations issues. As a result, we do not believe that NTS Category 6 COE should be included in determining the level of high cost assistance. The first two changes involving the rate of return and study area definition will continue long-standing industry practices. They will have a relatively small impact on the size of the total high cost fund. Our recommendations concerning Category 6 NTS COE are also designed to maintain the status quo pending further study. Extending the transition period will ease the burden on companies which will experience significant reductions in their interstate cost allocation as a result of the move from SPF to the new allocation method.[54]

B. Targeting High Cost Assistance

1. Background

48. The high cost assistance originally recommended by the Joint Board and adopted by the Commission [55] covers: (1) 50 percent of the study area's relevant NTS costs [56] between 115 percent and 160 percent of the national average; (2) 60 percent of the costs between 160 and 200 percent of the national average; (3) 70 percent of the costs between 200 percent and 250 percent of the national average; and (4) 75 percent of the costs above 250 percent of the national average.

49. In recommending this formula for high cost assistance, the Joint Board stated that, based on the existing record, the formula appeared to produce an appropriate level of high cost assistance without excessive toll loading. We expressed concern, however, that this approach produced anomalous results in the case of certain high growth areas which would receive a disproportionate share of the total assistance. As a result, we stated that we would continue to study this situation and issue a supplemental recommendation to the Commission if appropriate.

50. In the subsequent *Second Reconsideration Order* in CC Docket No. 78–72 the Commission stated, among other things, that it intended to conduct further proceedings concerning supplemental assistance for subscribers served by small telephone companies. The Commission noted two possible means of accomplishing this goal. The first involved making interstate subscriber line charges optional for companies with fewer than 50,000 loops in a study area. The second option involved increasing the level or

[51] *See Second Reconsideration Order* in CC Docket No. 78–72, FCC 84–38, released February 15, 1984, 49 FR 7810 at footnote 32 (March 2, 1984).

[52] We recommend that the carrier common line pool distribution for average schedule companies utilize a surrogate for the high cost assistance provided in Part 67 of the Commission's rules.

[53] The authorized rate of return for interstate access service is now 12.75 percent.

[54] Local telephone companies will move from their current frozen SPF to the new allocation factor in eight steps unless they qualify for an extended transition period. *See* paragraphs 71 through 73 for a further discussion of the transition provisions.

[55] The high cost assistance involves an additional interstate cost allocation for study areas with high NTS local exchange costs. This is designed to reduce the intrastate cost allocation and keep local rates lower than they would otherwise be. Pursuant to Part 69 of the Commission's rules, this additional interstate cost allocation is recovered from the interexchange carriers through usage based charges.

[56] The high cost assistance covers the costs of non-wideband local loops (excluding those used for WATS and private line service), as well as the associated drop and block wiring and Category 8.13 COE, Circuit Termination Equipment. The related maintenance, depreciation and taxes are also included along with a proportionate share of certain overhead expenses. *See* Appendix A for a list of the accounts involved.

assistance to high cost areas served by telephone companies with less than 50,000 loops in a study area. In its *Further Notice of Proposed Rulemaking*, in CC Docket Nos. 78–72 and 80–286 [57] the Commission requested comments concerning additional assistance for small telephone companies and asked the Joint Board to prepare a recommendation on this issue. On April 10, 1984, the Joint Board adopted an *Order Inviting Comments* in CC Docket No. 80–286 [58] requesting comments on a number of issues including matters related to "fine tuning" the provisions for high cost assistance. Among other things, we requested comments on whether large telephone companies had more flexibility than small companies to recover above average costs without an adverse effect on residential subscribers. In connection with this, we also asked for comments concerning decreasing the level of assistance for large telephone companies and increasing the level of assistance for small companies. In addition, we sought comments on whether the high cost assistance should be based on costs (and possibly the size of the study area) or whether additional factors, such as subscriber density, income levels or the rate of growth in local loops, should also be considered.

2. Comments

51. The comments revealed strong differences of opinion concerning the level of high cost assistance adopted by the Commission. Alaska, the Michigan Action Group and a number of small, rural telephone companies expressed support for the concept of increased assistance to small telephone companies. REA, NTIA, RTC, and the North Dakota Public Service Commission expressed support for the inclusion of a density standard in the high cost formula. AT&T supported measures directing assistance to companies with fewer than 50,000 loops. It also stated that small companies which would experience significant decreases in their interstate cost allocations resulting from the move from frozen SPF to the 25 percent basic allocation factor might need additional assistance. Southwestern Bell proposed limiting high cost assistance to study areas which have less than 50,000 loops and a composite local rate in excess of 75 percent of the national average.

52. Central, Contel and United favored the plan recommended by the Joint Board and approved by the Commission. United stated that it would support additional assistance to small companies if the need could be substantiated. GTE argued that the qualifying threshold for high cost assistance should be increased from 115 to 150 percent of the national average with a higher level of coverage above this threshold. Ad Hoc suggested the use of a multi-year moving cost average as a way to eliminate the effects of high growth or exceptional plant replacement and modernization from consideration in determining the high cost assistance. Kentucky argued that the level of assistance should be based primarily on the extent of residential telephone service penetration. West Virginia stated that assistance should be based on a combination of high NTS costs and the average per capita income of residents in the service territory. Vermont took the position that the states should design and administer any high cost assistance program. Vermont opposed national pooling of any high cost fund. Florida stated that, in the event its unified tariff proposal is adopted, assistance for small telephone companies should be provided within the state, with outside assistance only when the state was unable to generate a sufficient toll contribution.

53. A variety of parties including Ad Hoc, Bell Atlantic, Bell South, ICA, Rochester and U.S. West opposed basing high cost assistance on company size. SBS opposed separations based high cost assistance on the grounds that it provided improper economic signals, incentives for bypass and inefficient operations, as well as windfall profits for certain local companies. Rochester and NTIA proposed a cap on the amount of high cost assistance.

54. As previously mentioned, a number of exchange carrier associations filed a Joint Petition on November 1, 1984, proposing a plan for subscriber line charges as well as high cost assistance. When compared with the high cost plan adopted by the Commission, this plan provides for an increased level of assistance for small companies (those with less than 200,000 loops) and a greatly reduced level of assistance for large companies. Assistance for large companies would generally be limited to cost in excess of 169 percent of the national average. For large companies the high cost assistance would cover: (1) 55 percent of costs between 169 percent and 200 percent of the national average; (2) 85 percent of the costs between 200 percent and 250 percent of the national average; and (3) 90 percent of costs in excess of 250 percent of the national average. For small companies, 90 percent of NTS costs in excess of 110 percent of the national average would be covered. This plan endorses the use of a composite rate of return, such as the current 12.75 percent, in determining interstate NTS costs. These measures would serve to produce a high cost fund of about $427 million based on 1983 data. The plan also results in subscriber line charges for large high cost companies (as high as $8.66 per month based on 1983 data) which are substantially higher than those for smaller companies ($4.77 per month) as well as a greater intrastate NTS cost allocation. For example, 65 percent of NTS costs for large companies would be allocated to intrastate in the band covering costs from 110 percent to 160 percent of the national average, whereas only 10 percent of the costs would be allocated to intrastate in the case of the small companies.

3. Discussion

55. We conclude that high cost assistance should continue to be based primarily on NTS local exchange costs, although somewhat more assistance should be directed to smaller companies. We have examined the possibility of modifying the assistance formula to reflect additional factors such as income, subscriber density and the ration of business to residential loops in each study area. Although inclusion of some of these factors in the high cost formula may be theoretically attractive, the record does not contain sufficient information to allow a determination of which factors significantly affect the affordability of telephone service,[59] and the weight which should be accorded to them. Substantial administrative burdens would also be involved in reflecting factors other than costs and company size in the high cost formula. As a result, we believe that high cost assistance should continue to be based primarily on cost since this is the single most important factor in determining the price of telephone service.

56. Although we conclude that the level of assistance provided to a given company should be based primarily on costs, we also believe that additional assistance is necessary for small companies. We also recommend an increased level of assistance for companies with the highest cost levels. At the same time, it is necessary to keep the overall amount of high cost

[57] 49 FR 18138 (April 30, 1984).

[58] 49 FR 18746 (May 2, 1984).

[59] For example, income levels would appear to have an effect on the affordability of telephone service, but this factor may be offset in many cases by differences in the cost of living.

assistance at a manageable level. We conclude that our objective of ensuring that telephone service remains affordable in high cost areas while avoiding an excessive level of toll loading can best be accomplished by reducing the level of assistance for companies with costs below 150 percent of the national average, except in the case of companies with less than 50,000 working loops. The existing level of assistance would be maintained in the initial cost band for the smaller companies.[60] However, we propose an increased level of assistance for all companies to the extent that their costs exceed 150 percent of the national average. Accordingly, we recommend that the high cost assistance for study areas with fewer than 50,000 working loops include 50 percent of the study area's relevant cost per working loop in excess of 115 percent of the national average, but not more than 150 percent of the national average. For study areas with more than 50,000 working loops we recommend that the high cost assistance include 25 percent of the relevant cost per working loop in excess of 115 percent, but not more than 150 percent, of the national average. The high cost assistance for all companies would also include 75 percent of the relevant cost per working loop in excess of 150 percent of the national average.[61]

57. Our recommendation concerning retargeting of the high cost assistance reflects the conclusion that smaller telephone companies need somewhat more high cost assistance than larger companies. This conclusion is also one of the underpinnings of the high cost assistance plan proposed in the Joint Petition. However, we differ from RTC, OPASTCO, NRTA, and USTA with regards to the appropriate level of the differential in assistance between large and small companies. While we agree with these groups that small telephone companies need more assistance than large companies, we do not believe that the difference in assistance levels should be as great as proposed in the Joint Petition. We agree that large companies have more flexibility than small companies to recover above average costs without an adverse impact on residential subscribers. However, the information available to us does not indicate that the extent of the large companies' flexibility to recover above average costs without an adverse subscriber impact is as great as the proposal on high cost assistance in the Joint Petition would suggest.

58. We find that the formula which we are recommending will direct assistance to the areas where it is most needed to ensure that telephone rates remain affordable for the average subscriber. Increasing the level of high cost coverage in the highest cost band will help to reduce the variation in local exchange rates from company to company. Under this approach all relevant NTS costs in excess of 150 percent of the national average would be allocated to the interstate jurisdiction. (Twenty-five percent of these costs would be allocated to interstate through application of the new basic allocation factor. The remaining seventy-five percent of the costs in this band would be allocated to interstate through the high cost formula.) Smaller companies would receive the same level of assistance in the first cost band as provided under the existing formula. The larger companies would continue to receive a substantial degree of assistance in the first cost band, although the amount of coverage would be lower than that originally adopted. This will keep the overall amount of high cost assistance at a reasonable level. The reduction in the level of assistance for the larger companies should not adversely affect universal service since these companies have some flexibility to recover above average costs without an adverse effect on residential subscribers.[62] For example, they have a larger and more varied base of business subscribers and services, and a greater ability to recover costs through approaches such as local measured service or increased short haul toll charges generated by modifying extended area service (EAS) offerings. Although several parties have suggested freezing the total dollar amount of high cost assistance, we do not believe that this approach is desirable since it would effectively decrease the amount of assistance over time due to inflation. We recognize, however, that rapid growth in the amount of high cost assistance could necessitate reexamination of the high cost formula.

59. We conclude that this level of high cost assistance, combined with the other changes which we are recommending, should ensure the continued viability of small telephone companies. We do not believe that subscriber line charges for residential and single line business customers should be made optional in the case of small companies. Assistance should be directed to those areas with high costs, not just small companies. In fact, many of the smaller companies have average NTS costs. We also wish to reemphasize our conclusion that the high cost assistance should be used exclusively to keep local telephone rates lower than they otherwise would be. Several parties such as the International Communications Association (ICA) have expressed concern that there is no assurance that telephone companies receiving high cost assistance will flow the benefits through to their customers. We strongly urge all of the state commissions to ensure that the benefits of these measures accrue to local ratepayers as intended. We will make supplemental recommendations to the Commission proposing remedial measures if it appears that the high cost assistance is being used for inappropriate purposes.

D. Cost of Capital

60. We recommend use of the relevant authorized rate of return for interstate access service in determining the high cost assistance. The Commission has historically applied a single rate of return for the interstate services at AT&T and the exchange carriers.[63] In our *Second Recommended Decision and Order*, however, we proposed use of each company's actual debt/equity ratio and embedded cost of debt along with AT&T's authorized interstate rate of return on equity of 17.4 percent in calculating the high cost assistance. We

[60] Under our new proposal, the first cost band covers costs between 115 and 150 percent of the national average. The first cost band in the existing formula covers costs between 115 and 160 percent of the national average.

[61] Data showing the effect of alternative measures for high cost assistance were placed in the docket files in CC Docket Nos. 78–72 and 80–286 on November 1, 1984. "Public Notice," "High Cost Fund Data Placed in Docket File," November 1, 1984.

[62] Implementation of other cost recovery mechanisms would, of course, require state commission action.

[63] *AT&T: Modification of Prescribed Rate of Return*, 86 FCC 2d 221 (1981) *aff'd sub nom. United States v. FCC*, 707 F.2d 610 (D.C Cir. 1983); AT&T, Docket No. 20376, 57 FCC 2d 980 (1976); AT&T Docket No. 19129, 38 FCC 2d 213 (1972), *aff'd sub nom. Noder v. FCC*, 520 F.2d 182 (D.C. Cir. 1975); AT&T, Docket Nos. 16258 and 15011, 9 FCC 2d 30 (1967). Under traditional procedures devised within the telephone industry, interstate charges collected by each telephone company originating tariff were merged to form an interstate revenue pool. Telephone companies agreed to distribute pooled revenues to participating carriers on the basis of the total expense and investment which each participant allocated to the interstate jurisdiction. This arrangement was sometimes called a "partnership" because each participant received the same return on its interstate investment. The transfer process among the Bell entities was known as "division of revenues" (DR) and the transfer process involving the independent telephone companies (Independents) was known as "settlements." However, the DR/settlements process was designed to operate as a single system producing the same results for Bell and non-Bell "partners." All local exchange carriers received AT&T's earned rate of return on the plant investment allocated to interstate.

concluded that these measures were appropriate in light of the wide variations in capital structure and cost of debt among local telephone companies and our decision to base assistance on actual costs to the greatest extent possible. In its *Decision and Order*, the Commission adopted the Joint Board's recommendations on this point, but asked that we study this issue further and prepare a supplemental recommendation if appropriate. In our *Order Inviting Comments* in CC Docket No. 80–286 we requested comments on a number of questions concerning the cost of capital issue.

61. The parties filing comments reflect two basic points of view on this issue. REA, RTC, USTA, and the small independent telephone companies supported use of the AT&T authorized interstate rate of return in determining the level of high cost assistance. REA argued that use of the actual cost of debt and the authorized AT&T interstate rate of return on equity would shift high cost assistance away from the small rural systems which need it most, causing substantial hardships for these companies and their subscribers. REA contended that use of the AT&T rate of return on equity in conjunction with the actual cost of debt is totally inadequate for REA borrowers because their operations involve a greater element of risk than AT&T due to the fact that they are very highly leveraged.[64] Alaska argued that the Commission should use an average industry-wide cost of capital unless it is prepared to analyze all elements of each company's cost of capital.

62. AT&T, Contel and Southwestern Bell opposed use of a uniform authorized rate of return for purposes of determining the high cost assistance. AT&T argued that the high cost assistance should, to the extent possible, reflect each company's actual costs, including cost of capital. AT&T recognized that the cost of each company's common equity is not always known, but argued that a state commission determination on the cost of equity could be used. In the absence of such a prescription, AT&T took the position that use of the interstate cost of equity is reasonable. Contel suggested development of a standardized capital structure model to determine the cost of capital for each local exchange telephone company.

63. The Joint Board recommends use of the authorized rate of return for interstate access service [65] in determining the level of high cost assistance. At the present time, this would be AT&T's 12.75 percent authorized interstate rate of return. As previously mentioned, the local exchange companies have historically received a nationwide average return (equal to AT&T's earned rate of return) on their interstate plant allocation through the separations and division of revenues/settlements process. A high cost assistance formula using the actual capital structure and embedded cost of debt could significantly reduce the level of interstate cost recovery for these companies at a time when they are already faced with an unprecedented degree of change. Our recommended approach is necessary in order to limit the degree of change experienced by small telephone companies to a manageable level as the industry moves into a new, more competitive environment.[66] The approach we are proposing also has the advantages of being very simple to administer and eliminating the need for decisions on a number of difficult, technical questions concerning the calculation of actual capital costs. Use of the authorized rate of return for interstate access will not have a major effect on the size of the high cost fund.[67]

E. Study Area Definition

64. In the *Second Recommended Decision and Order* in CC Docket No. 80–286, the Joint Board recommended that the term "study area" be defined as "a telephone holding company's operations within a single state" for separations purposes. The Commission subsequently adopted this definition. In its comments, the Rural Telephone Coalition (RTC) stated that the term "study area" has historically referred to the operations of an individual telephone company within a state, regardless of its affiliation with any other company. RTC argued that the new definition could require a single statewide cost study for companies owned by the same holding company even though the two companies do not have consolidated operations and have previously performed separate cost studies. RTC pointed out that such consolidated cost studies have not been performed in the past by companies owned by the same holding company and argued that implementation of this change would be costly.

65. The study area definition adopted by the Commission requires the averaging of NTS costs for separations purposes, including calculation of the high cost assistance, in the case of all companies, within a state which are owned by a single holding company. This approach would eliminate differences in the overall level of assistance resulting from the number of separate companies a holding company owns within a state. It would also discourage companies from spinning off high cost exchanges as separate companies in order to maximize high cost support. However, the present definition could also discourage the acquisition of high cost exchanges or the expansion of service to cover high cost areas since such undertakings would penalize existing study area customers through the averaging process. Use of the present definition would also involve substantial administrative costs due to the need to reorganize the recordkeeping of existing study areas and perform consolidated cost studies. The present definition would also be inconsistent with state ratemaking mechanisms since most companies are treated separately for local ratemaking purposes even if the same parent owns other companies within the state.

66. The Joint Board recommends that study area boundaries in existence as of November 15, 1984 be frozen for separations purposes with high cost assistance calculated separately for each study area. Under this approach, an existing company study area purchased by a holding company which owned other companies within the same state could continue to be treated separately for separations purposes. Areas in which telephone service was instituted for the first time could also be treated as a separate study area if separately incorporated. In either case, the parent company would also have the option of folding the new service territory into one of its existing companies and using the average NTS costs for the expanded service area in determining the high cost assistance. We expect this to be the case when the benefits of consolidated operations exceed the reduction in high cost support. However, companies would be prohibited from setting up high cost

[64] The degree of business risk faced by a particular company is normally taken into account in prescribing a rate of return on equity. This is done because a business with a greater degree of risk will have to offer a higher return in order to attract investors.

[65] After the release of our *Order Inviting Comments*, in CC Docket No. 80–286, the Commission adopted a *Notice of Proposed Rulemaking*, in CC Docket No. 84–800, *Authorized Rate of Return*, for the purpose of examining the authorized rate of return for interstate services provided by AT&T and the exchange telephone companies, FCC 84–395, released August 13, 1984, 49 FR 32871 (August 17, 1984).

[66] We urge the Commission to consider the concerns underlying our recommendation here in reaching its decision in CC Docket No. 84–800, *Authorized Rate of Return*.

[67] *See* footnote 61, *supra*.

exchanges within their existing service territory as separate companies to maximize high cost support. This definition would facilitate administration of the high cost fund, eliminate recordkeeping burdens, and remove the disincentive for purchase of high cost companies or expansion of service into high cost areas, which would result from the previously adopted definition.

F. NTS Category 6 Central Office Equipment

67. In the *Second Recommended Decision and Order*, the Joint Board recommended that the interstate allocation of NTS Category 6 COE costs continue to be based on frozen percentage SPF pending a comprehensive review of the need for changes in the separations treatment of central office equipment. We also recommended exclusion of NTS Category 6 COE in calculating the high cost assistance. The Commission subsequently adopted these recommendations. In the *Further Notice of Proposed Rulemaking*, CC Docket Nos. 78–72 and 80–286, the Commission asked the Joint Board to undertake a comprehensive review of the separations procedures for all COE and recommend revisions where necessary. We requested preliminary comments concerning COE issues in our *Order Inviting Comments* in CC Docket 80–286. Among other things, we noted that interested parties might wish to discuss the inclusion of certain Category 6 COE costs in calculating the level of high cost assistance.

68. Alaska, the Michigan Action Group, and a number of small telephone companies supported inclusion of NTS Category 6 COE in calculating the high cost assistance. Some of these parties suggested that the exclusion of NTS Category 6 COE will have a significant adverse effect on high cost companies, since many of them have very high levels of investment in this plant. Contel proposed replacing frozen SPF as the allocation factor for NTS Category 6 COE with an exchange network usage factor equivalent to the Subscriber Line Usage (SLU). A number of parties suggested continued use of frozen SPF as the allocation factor for NTS Category 6 COE pending further review. AT&T and Southwestern Bell opposed high cost coverage for NTS Category 6 COE.

69. We recommend that NTS Category 6 COE continue to be allocated between the jurisdictions based on frozen SPF pending an in-depth review of all COE issues.[68] Since these costs will not be covered by the new 25 percent interstate allocation factor, including them in calculating the high cost assistance is not appropriate. Applying the 25 percent interstate basic allocation factor to NTS Category 6 COE would result in consistent treatment of plant traditionally identified as NTS for separations purposes. However, this is outweighed by the fact that application of the new 25 percent allocation factor presumes proper categorization of this plant without study of the major technological and engineering changes which have taken place in central office equipment over the past decade. Furthermore, this approach often fails to benefit high cost companies with a high proportion of NTS Category 6 COE investment since many of these companies also have high frozen SPFs. For these reasons, we believe that it is preferable to maintain the existing separations treatment of this plant until we are able to complete a comprehensive review of all COE issues. This recommendation does not affect the recovery of NTS Category 6 COE costs on a traffic sensitive basis through carrier's carrier charges under the Commission's access charge plan.

G. Account Inclusion

70. The Commission's rules governing the high cost assistance do not specify all of the accounts to be included in calculating the relevant NTS cost per loop. While inclusion of all relevant accounts is generally desirable to ensure that the high cost assistance truly reflects costs, we believe that the following accounts should be excluded from consideration in calculating high cost assistance because they are not normally recognized for state ratemaking purposes: (1) Account 100.2, Telephone Plant Under Construction; (2) Account 100.3, Property Held for Future Telephone Use; (3) Account 100.4, Telephone Plant Acquisition Adjustment; and (4) Account 614, Amortization of Telephone Plant Acquisition. A list of the accounts which should be considered in calculating the high cost assistance is set forth in Attachment A.

H. Extended Transition

71. Currently, nationwide average SPF is frozen at approximately 28 percent, although the SPF factor for each study area varies. The transition from frozen SPF to the 25 percent basic allocation factor is now scheduled to be implemented in four annual steps beginning January 1, 1986. The Joint Board also recommended and the Commission adopted provisions limiting to ten percentage points the total annual decrease in any study area's interstate allocation for relevant NTS costs [69] after the additional interstate high cost allocation is taken into account. The Commission also adopted the Joint Board's recommendation that the high cost assistance be implemented in four steps even if the study area involved qualifies for an extended transition period.

72. A number of the small telephone companies filing comments asked that we reexamine the effect of the basic 25 percent allocation factor on small, rural telephone companies. Nevada Telephone-Telegraph Company suggested measures to ensure that small companies receive from interstate sources, at a minimum, the NTS revenues which they received in 1982. Other small telephone companies asked us to limit the maximum annual decrease in the interstate allocation to five percentage points. AT&T suggested easing the transition for small telephone companies by further limiting the annual decrease in their interstate allocations during the period.

73. We recommend that the Commission extend the basic transition period for implementation of the new allocation methodology from four to eight annual steps. The extended transition period would apply to all companies regardless of whether their present interestate allocation exceeds their allocation based on the new method. We also recommend limiting to five percentage points the total annual decrease for any study area in the interstate allocation of the relevant NTS costs after the high cost assistance is taken into account.[70] The high cost assistance should be implemented in eight steps even if the study area involved qualifies for an extended transition period. Extending the transition period will ease the impact of the new allocation methodology on companies with high SPFs and average costs. Although such companies should have average local exchange rates at the end of the transition period, they will experience significant increases in their intrastate NTS cost allocation. An extended transition will give subscribers served by these companies more time to adjust to the necessary changes. Since both frozen SPF and the new 25 percent allocation factor with high cost assistance produce a similar total interstate cost allocation, extending the transition period will have little effect on the overall division of costs between the jurisdictions.

[68] Including NTS Category 6 COE in calculating the high cost assistance has a negligible effect on the overall level of assistance.

[69] These NTS costs include Category 1.33 Outside Plant (including drop and block wire) inside wire, and Category 8.13 COE.

[70] For example, this would result in a 12 step transition in the case of a local company with a current frozen SPF of 85 percent if it does not qualify for high cost assistance.

IV. Assistance for Low Income Households

A. Background

74. One objective of this proceeding is to maintain universal telephone service as identified in Section 1 of the Communications Act, 47 U.S.C. 151. In the *Third Report and Order* [71] in the *MTS and WATS Market Structure* proceeding, CC Docket No. 78–72, the Commission further defined the universal service objective to mean "avoiding actions that would cause a significant number of local exchange service subscribers to cancel [telephone] service." [72]

75. Consistent with these concerns, in the *Third Report and Order*, the Commission indicated that it would entertain requests for waiver of the mandatory flat subscriber line charges from carriers who wish to provide lifeline options to ameliorate the effects of these charges on low income individuals who would not be able to afford telephone service. Waiver requests were required to specify: (1) The terms and conditions which apply to lifeline service; (2) the interstate revenues which would be lost from lifeline subscribers; and (3) adjustments to other interstate charges which would be required to secure the revenues lost. The Commission also added:

> [o]f course, states continue to have full authority to modify existing life line rates for local exchange telephone service or to institute such rates should they believe it is necessary to ameliorate the effects of interstate access charges.[73]

76. In the *Reconsideration Order*, in CC Docket No. 78–72,[74] the Commission stated that it had not received any petitions for waiver and added that the petitions for reconsideration failed to provide any concrete proposals for complete or partial exemptions from subscriber line charges. The Commission further indicated, that the decision to reaffirm subscriber line charges should not be interpreted as foreclosing petitions for waiver for residential customers who cannot afford these charges.

77. Although the right to file a petition for waiver would normally be limited to the telephone companies whose tariffs are subject to the rule in question, the Commission extended the right to file waiver requests to state public utility commissions because of the public policy implications of lifeline service. The Commission also noted that in many cases states could maintain low residential rates without resort to waiver of subscriber line charges by creating local service lifeline rates that ameliorate the effects of these interstate charges.

78. In the *Second Reconsideration Order* in CC Docket No. 78–72[75] released on February 15, 1984, the Commission reported that it had received only two petitions for lifeline service waivers. Applications were received from the New York Telephone Company and the Pacific Telephone and Telegraph Company on September 28, 1983. Although no state commissions filed applications for waiver, the Commission found after review of state ratemaking proceedings that few state commissions had developed intrastate lifeline programs. The Commission also found that measured service options were not available to residential subscribers in many exchanges. Since the record in CC Docket No. 78–72 did not provide sufficient information to allow development of federal assistance mechanisms, the Commission decided to conduct supplemental proceedings to develop the necessary rules to provide an exemption from subscriber line charges for those who might otherwise be unable to afford telephone service.

79. Accordingly, the Commission requested additional comments concerning a lifeline exemption or other assistance for low income subscribers in the *Further Notice of Proposed Rulemaking*, in CC Docket Nos. 78–72 and 80–286,[76] released April 11, 1984. At the same time, the Commission requested that the Joint Board prepared recommendations concerning this issue. With regard to lifeline or other assistance for needy subscribers, the *Further Notice* requested commenting parties to: (1) explain the type of assistance which they believe is needed, for example a subscriber line charge waiver; (2) define the group to receive assistance; and (3) explain how the assistance would be funded.

B. Comments

80. The commenting parties expressed general support for assistance for low income households. Thirty-five filings were received from state commissions, user groups and telephone companies. The Ameritech Operating Companies, the Cheyenne River Sioux Tribe Telephone Authority, Golden West Telecommunications Cooperative and Bell Communications Research argued that a lifeline program is not needed. They argued that subsidies cannot be maintained in a competitive environment since they increase costs in other areas, thereby distorting the competitive market. These parties also took the position that adoption of lifeline measures by the Commission at this time is premature because the states need more time to develop their own programs. They also argued that lifeline programs are too costly and administratively burdensome for telephone companies to administer.

81. The parties supporting an assistance program vary in their recommendations for: (1) The type of assistance; (2) source of funding (3) eligibility criteria; and (4) program administration. The major reason which these parties gave for supporting such programs is the need to preserve universal service and the possible adverse effect of additional costs on low income residential subscribers.

1. Type of Assistance

82. The parties filing comments propose three types of assistance: (1) A waiver or exemption from residential subscriber line charges; (2) a discount service with unlimited incoming calls and limited outgoing calls (without additional charge) or other form of measured service; and (3) direct subsidies through a public assistance program. The comments also propose a hybrid which includes a waiver of subscriber line charges and a low cost discount service.

83. A number of the commenting parties suggested intrastate plans developed in New York and California as models for other lifeline plans. The New York Telephone Company plan includes the following elements: (1) A requirement that applicants be recipients of public assistance; (2) a 50 percent discount on the charge for standard residential local exchange service; (3) untimed message service or reduced flat rate; and (4) applicant self certification.

84. The Pacific Bell plan in California includes the following elements: (1) A requirement that customers have a gross

[71] 93 FCC 2d 241 (1983).

[72] *Id.* at 266.

[73] *Id.* at 282.

[74] 48 FR 42984 (September 21, 1983).

[75] 49 FR 7810 (March 2, 1984).

[76] 49 FR 18318 (April 30, 1984).

pending an in-depth review of all COE

the high cost assistance has a negligible effect on the overall level of assistance.

current frozen SPF of 85 percent if it does not qualify for high cost assistance.

[74] 48 FR 42984 (September 21, 1983).

[75] 49 FR 7810 (March 2, 1984).

[76] 49 FR 18318 (April 30, 1984).

requirement that customers have a gross

household income of less than $11,000 per year; (2) limitation of assistance to single line telephone service in the subscriber's principal residence; (3) customer self certification; (4) lifeline rates set at 50 percent of the local measured service rate (or flat rate) exclusive of federal end user charges; and (5) funding through a Universal Service Fund generated by a 4 percent tax on intrastate interLATA services. Pacific Bell of California proposes that interstate residential subscriber line charges be reduced by 50 percent for certified lifeline customers. It recommends funding the resulting revenue shortfall through an adjustment in the interstate subscriber line charge for all remaining business and residence customers in the study area. Those proposing some type of lifeline service indicate that customers receiving service should be restricted to receiving the lowest priced local service offering available.

2. Eligibility for Assistance

85. In defining the group eligible to receive lifeline assistance, most of the commenters stress the need to target those truly in need "who would be unable to maintain access to essential local service without some form of assistance." [77] They recommend using household income and resources as the determinant. The commenting parties suggested the following eligibility criteria: (1) qualification for existing public assistance programs including food stamps, welfare and social security; (2) a household income below the poverty line (approximately 10 percent of the population); and (3) a household income below a level set by the welfare department or state regulatory commission. Alaska suggests that the cost of living should be considered in addition to household income. AT&T argues that other financial resources available to the household should also be considered.

3. Funding of Assistance

86. There were substantial differences among the commenting parties regarding the appropriate method for funding assistance. They identified the following possible sources of funding: (1) Universal Service Fund (USF); (2) state of federal taxes; (3) customer line charges; and (4) increased public assistance funds. A number of parties indicated that if the states were given responsibility for establishing a state lifeline program, state funding would be appropriate. However, they took the position that if the Commission set guidelines, national funding either from the USF, federal taxes or a public assistance program would be appropriate. Some of the parties, citing an overall social purpose linked to universal service, indicated that there should be federal assistance through a mechanism other than from charges for other customers, exchange or interexchange carriers.

4. Administration of Lifeline Programs

87. Most of the commenting parties supported state administration of lifeline programs, with or without federal guidelines. Some parties suggested federal administration, but few suggested administration by local telephone companies. Many of the parties suggested that lifeline assistance be coordinated with current public assistance programs to reduce administrative burdens on the telephone companies. The main reason given by the parties for state administration is that state commissioners are better acquainted with the particular needs of low income subscribers within their states and can better tailor programs to meet those needs. A number of parties suggest that the states administer the programs using the model of other government entitlement programs even if federal guidelines are developed. NYNEX suggests eligibility requirements for lifeline plans be established by state officials with joint administration by the state and telephone company.

88. Some of the parties suggest a hybrid system for lifeline assistance, under which the state in conjunction with the local telephone company would have authority for a lifeline program using intrastate funds to recover state revenue shortfalls while a federal program using funds generated from interstate sources would be available for waivers of subscriber line charges.

C. Discussion

89. There is no evidence before us at this time to indicate that implementation of the limited subscriber line charges which we are recommending will harm universal telephone service.[78] However, we recognize that implementation of subscriber line charges in conjunction with the general upward pressure on local rates has generated legitimate concern regarding the protection of universal service.[79] Therefore, we are recommending implementation of a two-phase plan for dealing with these concerns. As the initial step we recommend implementation of a program to offset the subscriber line charge for low income households. In conjunction with this, as the second phase of the plan we recommend further study, on an expedited basis, of broader measures to assist low income households in affording telephone service.

90. We recommend that the Commission provide an optional program for a 50 percent reduction in the subscriber line charge for customers who satisfy a state determined means test which is subject to verification. The shortfall in subscriber line charge revenues resulting from the subscriber line charge reduction would be recovered through an increase in the nationwide average carrier common line charge. The states wishing to take advantage of this assistance mechanism would be required to implement an equal monetary reduction in the local exchange rate for subscribers who qualify for the subscriber line charge reduction. This reduction would be funded from intrastate sources. The decision to implement this joint federal-state assistance mechanism would be left to the individual state commissions.

91. We believe that this approach represents an appropriate joint federal-state response to concerns about the preservation of universal service. We believe that the eligibility criteria for assistance should be established by the individual states since they are in a better position than the federal government to assess the need for assistance and develop means tests suited to local conditions and circumstances. A single nationwide standard would not be able to accomplish this. We also recommend further study or broader assistance measures by the Joint Board as the second phase of our plan. We expect that the means tests developed by the individual states in implementing the reduced subscriber line charge will be valuable in developing broader lifeline assistance measures in the near future. Development of such eligibility criteria by the state commissions will encourage active state involvement in instituting programs for broader lifeline assistance and contribute substantially to the successful implementation of such measures.

[77] Satellite Business Systems Direct Comments at 2.

[78] For purposes of this discussion, the preservation of universal service refers to maintaining at least the existing level of telephone service penetration.

[79] In this regard, we note the Commission's ongoing studies concerning the effect of federal decisions and local rate increases on consumers, and emphasize the need to continue and expand such monitoring efforts.

V. Ordering Clauses

92. Accordingly the Joint Board recommends, that the Commission adopt the attached revisions to Parts 67 and 69 of the Commission's rules.[80]

William J. Tricarico,

Secretary, Federal Communications Commission.

Appendix A

We recommended inclusion of costs [1] in the following accounts in calculating the high cost assistance:

Account 100.1 Telephone Plant In Service
Account 122 Materials & Supplies
Account 171 Depreciation Reserve
Account 172 Amortization Reserve
Account 176 Accumulated Deferred Income Taxes
Account 608 Depreciation
Account 609 Extraordinary Retirements
Account 613 Amortization of Intangible Property
Account 602 Repairs to Outside Plant
Account 603 Test Desk Work
Account 604 Repairs of Central Office Equipment
Account 605 Installations & Repairs of Station Equip.
Account 606 Repairs of Buildings & Grounds
Account 610 Maintaining Transmission Power
Account 611 Employment Stabilization
Account 612 Other Maintenance Expenses
Account 306 Federal Income Taxes—Operating
Account 307 Other Operating Taxes
Account 308 Operating Federal Income Taxes Deferred
Account 309 Income Credits & Charges Fr. Def. Inc. Tax
Account 661 Executive Department Expense
Account 662 Accounting Department Expense
Account 663 Treasury Department Expense
Account 664 Law Department Expense
Account 665 Other General Office Salaries & Expenses
Account 668 Insurance Expense
Account 669 Accidents & Damages Expense
Account 675 Other Expenses
Account 677 Expenses Charged Construction
Account 671 Operating Rents
Account 672 Relief & Pensions
Account 674 General Services & Licenses

Appendix B—Recommended Amendments to Part 67 of the Commission's Rules

§ 67.124 [Amended]

1. Amend § 67.124(d)(6) to read as follows:

(6) The interstate allocations of OSP Category 1.33 plant investment for the years 1986, 1987, 1988, 1989, 1990, 1991 and 1992 will be as follows, subject to the limitation contained in § 64.124(d)(7):

(i) 1986—The § 67.124(d)(4)(i) allocation factor multiplied by .875 plus .03125.

(ii) 1987—The § 67.124(d)(4)(i) allocation factor multiplied by .750 plus .0625.

(iii) 1988—The § 67.124(d)(4)(i) allocation factor multiplied by .625 plus .09375

(iv) 1989—The § 67.124(d)(4)(i) allocation factor multiplied by .5 plus .125

(v) 1990—The § 67.124(d)(4)(i) allocation factor multiplied by .375 plus .15625

(vi) 1991—The § 67.124(d)(4)(i) allocation factor multiplied by .25 plus .1875

(vii) 1992—The § 67.124(d)(4)(i) allocation factor multiplied by .125 plus .21875

2. Amend § 67.124(d)(7)(i), (ii) and (iii) by substituting the phrase "five percentage points" for the phrase "ten percentage points".

§ 67.611 [Amended]

3. Amend § 67.611 by deleting § 67.611 (a)(9).

§ 67.621 [Amended]

4. Amend § 67.621(a)(1) by substituting "is multiplied by the study area's authorized interstate rate of return" for "is multiplied by the study area's cost of capital" and by deleting the final sentence in § 67.621(a)(1).

5. Amend § 67.631 to read as follows:

§ 67.631 Expense adjustment.

(a) For study areas reporting 50,000 or fewer working loops pursuant to § 67.611(a)(8). The expense adjustment (additional interstate expense allocation) is equal to the sum of the following:

(1) Fifty percent of the study area average unseparated loop cost per working loop as calculated pursuant to §67.622(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 67.622(a) multiplied by the number of working loops reported in § 67.611(a)(8) for the study area.

(2) Seventy-five percent of the study area unseparated loop cost per working loop as calculated pursuant to § 67.622(b) in excess of 150 percent of the national average for this cost as calculated pursuant to §67.622(a) multiplied by the number of working loops reported in §67.611(a)(8) for the study area.

(b) For study areas reporting more than 50,000 working loops pursuant to §67.611(a)(8) for the expense adjustment (additional interstate expense allocation) is equal to the sum of the following:

(1) Twenty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to §67.622(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to §67.622(a) multiplied by the number of working loops reported in §67.611(a)(8) for the study area.

(2) The amount calculated pursuant to §67.631(a)(2).

§ 67.641 [Amended]

6. Amend §67.641 by substituting "1993" for "1989".

7. Amend §67.641(c) to read as follows:

(c) The expense adjustments for 1986 through 1992 shall be as follows:

(1) One-eight of the amount computed in accordance with §67.631 in 1986;

(2) One-quarter of the amount computed in accordance with § 67.631 in 1987;

(3) Three-eights of the amount computed in accordance with § 67.631 in 1988;

(4) One-half of the amount computed in accordance with § 67.631 in 1989;

(5) Five-eights of the amount computed in accordance with § 67.631 in 1990;

(6) Three-quarters of the amount computed in accordance with § 67.631 in 1991; and

(7) Seven-eights of the amount computed in accordance with § 67.631 in 1992.

8. Amend the definition of the term "study area" in the Glossary to read as follows:

Study area—Study area boundaries shall be frozen as they are on November 15, 1984.

Appendix C—Recommended Amendments to Part 69 of the Commission's Rules

1. Add the following new Sections 69.203 and 69.204:

§ 69.203. Interim common line charges.

(a) Except as provided in Section 69.204, End User Common Line and Carrier Common Line charges for any period commencing after May 31, 1985, shall be computed as provided in this section.

(b) Charges shall be computed as provided in Sections 69.202 and 69.205

[80] This recommendation is adopted pursuant to Sections 4(i) and (j), 201, 202, 203, 205, 218, 221, 403 and 410 of the Communications Act, as amended, 47 U.S.C. 154 (i) & (j), 201, 202, 203, 205, 218, 221, 403 and 410.

[1] Part 67 of the Commission's rules specifies what portion of these costs is to be included in calculating the level of assistance.

decisions and local rate increases on consumers.

such monitoring efforts.

portion of these costs is to be included in calculating the level of assistance.

study area.

provided in Sections 69.202 and 69.205

except that End User Common Line charges shall be assessed as provided in subsections (c)–(f) of this section.

(c) The End User Common Line charge for single line business subscribers shall be $1 per month per subscriber during the June 1, 1985—May 31, 1986 period and $2 per month per subscriber after May 31, 1986.

(d) Except as provided in subsection (f), the End User Common Line charge for single line and muti-line residential subscribers shall be $1 per month per line during the June 1, 1985—May 31, 1986 period and $2 per month per line after May 31, 1986.

(e) [Reserved for party line charges.]

(f) The End User Common Line charge for a residential subscriber shall be 50% of the charge specified in subsections (d) and (e) if the residential local exchange rate for such subscribes is reduced by an equivalent amount, provided that such local exchange service rate reduction is based upon a means test that is subject to verification.

§ 69.204 Optional alternative carrier common line tariff provisions.

(a) A telephone company that files a concurrence described in paragraph (c) of this section may file Optional Alternative Carrier Common Line tariff provisions for a particular study area to encourage use of telephone compnay access service facilities by interexchange carriers and large volume users. Such tariff provisions shall be designed to ensure that large volume users of interstate or foreign telecommunications services in such study area will receive the benefit of any reduction in Carrier Common Line charges.

(b) A telephone company that files an Optional Alternative Carrier Common charge may file a surcharge upon End User Common Line charge if

(1) a uniform surcharge is imposed upon all monthly End User Common Line charges in such study area;

(2) the monthly surcharge does not exceed 35 cents; and

(3) such surcharge revenues are not likely to exceed the difference between the annual revenues that would have been produced by the association Carrier Common Line charge and the annual revenues that will be produced by the Optional Alternative Carrier Common Line tariff provisions.

(c) A concurrence may be issued by a public utility commission that regulates intrastate telecommunications services in the relevant area or by the CC Docket 80–286 Joint Board. A telephone company may request a concurrence from the CC Docket 80–286 Joint Board if, but only if, the appropriate public utility commission declines to issue a concurrence or fails to act upon a request for a concurrence within 60 days after such request has been filed. A concurrence shall signify that a majority of such commission or Joint Board agree that the Optional Alternative Carrier Common Line tariff provisions are warrented to deter bypass in the affective area and that any End User Common Line surcharge is not likely to impair universal service in the affected area.

2. Add the following new section 69.611:

§ 69.611 Effect of optional alternative carrier common line tariff provisions and end user common line surcharges.

(a) The existence or potential existence of Optional Alternative tariff provisions filed pursuant to § 69.204 shall not affect the computation of association charges for any access element.

(b) End User Common Line surcharge revenues shall not be included in End User Common Line revenues for purposes of computing pool distributions.

(c) The Carrier Common Line residue that is computed pursuant to § 69.605 shall be increased by adding an amount that is computed by subtracting the Carrier Common Line revenues attributable to study areas with Alternative Carrier Common Line tariff provisions from the projected Carrier Common Line revenues for such study areas that would have been received at the association Carrier Common Line rate.

(d) The Carrier Common Line residue distribution that is computed pursuant to § 69.607 shall be reduced for a company that has effective Alternative Carrier Common Line tariff provisions by subtracting an amount that is computed by subtracting the Carrier Common Line revenues attributable to such company's study area of areas with Alternative Carrier Common Line tariff provisions from the projected Carrier Common Line revenues for such study area or areas that would have been received at the association Carrier Common Line rate.

[FR Doc. 84–32375 Filed 12–11–84; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1181 and 1186

[Ex Parte No. 55 (Sub-57A)]

Modification of Small Carrier Transfer Regulations for Transactions Involving Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: At an open conference held on September 20, 1984, the Commission voted in Ex Parte No. 55 (Sub-No. 57), *Exemption of Transactions Under 49 U.S.C. 11343* [notice of proposed rulemaking published at 48 FR 26485, June 8, 1983,] to adopt modified class exemption procedures for all but the smallest carriers engaging in transactions under 49 U.S.C. 11343. This action was taken pursuant to the exemption authority was taken pursuant to the exemption authority of 49 U.S.C. 11343(e). The exemption authority does not, however, specifically empower the Commission to exempt small carrier transaction subject to 49 U.S.C. 10926. Under section 10926, however, these small carrier transactions are governed simply by "regulations" of the Commission. The Commission voted at the September 20th Conference to issue a notice for public comment proposing to modify the so-called "transfer regulations" to make the procedures which are being adopted for section 11343 transactions also applicable for small carrier transactions under section 10926. Because regulations implementing the class exemption for section 11343 transactions will be promulgated shortly, we intend to make any modification of the transfer regulations effective immediately upon the issuance of a decision adopting final rules. In addition to the proposed rules in Part 1181 shown in the appendix, upon adoption of Ex Parte No. 55 (Sub-No. 57), Part 1186 (except for § 1186.6) is proposed to be amended as required to cover transfers of authority involving small motor carriers of property after Ex Parte No. 55 (Sub-No. 57) becomes final.

DATES: Comments must be submitted by December 27, 1984.

ADDRESSES: Send comments (an original and 15 copies, if possible) to: Ex Parte No. 55 (Sub-No. 57A), Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Warren C. Wood, (202) 275–7977;

or

Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (D.C. metropolitan area) or toll-free (800) 424–5403.

Regulatory Flexibility Analysis

The Commission certifies that the proposed rules will not, if adopted, have a significant economic impact on a substantial number or small entities. The proposed modification of the transfer regulations will reduce somewhat the administrative filing burden on small carriers and expedite the processing of applications which they submit for approval. The class exemption procedures will shortly become available to large carriers of property engaging in transactions subject to section 11343. By extending the class exemption regulations as the procedural rules for section 10926 transfers, the Commission is merely eliminating a discriminatory burden on small carriers that would otherwise result. Comments are welcome on this issue.

Energy and Environmental Considerations

Because this rulemaking proposes only changes in the method of processing small carrier transfer applications, we conclude preliminarily that there will be no significant environmental or energy impacts. To the extent that the new rules facilitate transfers of operating authority between small carriers that increase their operating efficiency, the proposed changes may have beneficial impacts on energy consumption and the environment. Comments are also welcome on these issues.

List of Subjects in 49 CFR Parts 1181 and 1186

Administrative practice and procedure, Employee complaints, Motor carriers, Transfers.

Authority: 49 U.S.C. 10321, 10926, and 5 U.S.C. 553.

Proposed Regulations

The proposed changes in 49 CFR Part 1181, Subpart A are set forth in the Appendix.

Decided: November 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

PART 1181—[AMENDED]

Proposed changes in regulations resulting from adoption of class exemption procedures for small carrier transfers of property authority.

49 CFR Part 1181, Subpart A would be amended as follows:

1. The Note preceding 49 CFR 1181.1 would be revised to read as follows:

Note.—These rules spell out the procedures which enable motor carriers of passengers to obtain approval from the Interstate Commerce Commission to merge, transfer or lease their operating rights in financial transactions not subject to section 11343 of the Interstate Commerce Act. These rules do *not* apply to transactions involving motor carriers of property. Parties must comply instead with the regulations set forth at 49 CFR Part 1186 to effectuate transactions involving property carriers. The filing fee for small carrier transactions subject to Part 1186 will be the same as that required for small carrier transactions involving passenger carriers. See 49 CFR 1002.2.(f)(25).

2. The words "of passengers" would be inserted after the words "motor carrier" each time they appear in 49 CFR Part 1181, Subpart A.

[FR Doc. 84–32335 Filed 12–11–84; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 49, No. 240
Wednesday, December 12, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1985-Crop Peanut Program Proposed Determination Regarding National Average Support Levels for Quota and Additional Peanuts and the Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Loan Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Proposed Determination.

SUMMARY: This notice requests comments with respect to the following determinations for the 1985 crop of peanuts: (1) The national average level of price support for quota peanuts, (2) the national average level of support for additional peanuts and (3) the Commodity Credit Corporation (CCC) export edible sales policy for 1985-crop additional peanuts which are pledged as collateral for a price support loan. These determinations are necessary to carry out the peanut price support program provided for in section 108A of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act"). It is proposed that the quota support level for the 1985 crop shall be $560.60 per ton and the additional support level for the 1985 crop shall be $185 per ton. With respect to the minimum export edible sales price for additional peanuts pledged as loan collateral, this notice sets forth the range of prices under consideration.

DATE: Comments must be received on or before January 28, 1985 to be assured of consideration.

ADDRESSES: Send comments to Director, Commodity Analysis Division, 3741-South Building, P.O. Box 2415, Washington, D.C. 20013.

All written submission will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday in Room 3741-South Building, 14th and Independence Avenue, SW., Washington, D.C. 20013

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3732-South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-5953. A Preliminary Regulatory Impact Analysis is available upon request.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major." It has been determined that the actions proposed by the notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competiton, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 13272 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the public comment period with respect to this notice of proposed determination should be 45 days. The determination of the national average support level for the 1985-crop of additional peanuts is required by law to be made by the Secretary of Agriculture no later than February 15, 1985. Limiting the comment period to forty-five days is necessary to assure adequate time for review and consideration of comments and permit a final determination with respect to the loan level for additional peanuts to be made by that date. The determinations with respect to the national average support level for quota peanuts and the minimum CCC export edible sales price for loan collateral additional peanuts are usually made at the same time as the additional support level in order to facilitate producer planning for the crop year.

The determination of the national average support level for the 1985-crop of additional peanuts is required to be made by the Secretary of Agriculture no later than February 15, 1985. The determinations with respect to the national average support level for quota peanuts and the minimum CCC export edible sales price for loan collateral additional peanuts are usually made at the same time to facilitate producer planning for the crop year.

These matters involve the considerations set forth below and comments are requested to aid in the determinations.

A. National Average Support Level for Quota Peanuts

Section 108A (1) of the Agricultural Act of 1949 ("the 1949 Act") provides that the national average support level for the 1985 crop of quota peanuts shall be the national average quota support rate for such peanuts for the preceding crop, adjusted to reflect any increase in the national average cost of peanut production, excluding any increase in the cost of land, during the period January 1 and ending December 31 of the calendar year immediately preceding the marketing year for the crop for which a level of support is being determined. Section 108A provides further that in no event shall the national average quota support rate for any such crop exceed by more than 6 per centum the national average quota support rate for the preceding crop.

Accordingly, the 1985 quota support level is required to be the 1984 quota support of $550 per ton adjusted to reflect any such increase in the national average cost of peanut production in calendar year 1984.

Cash expenses, capital replacement, net land rent and labor are the cost components used in this comparison. Because section 108A excludes any increase in the cost of land, 1983 net land rent was substituted for 1984 net land rent. Based on these production cost components as estimated by the Economic Research Service (ERS), USDA, it is presently estimated that the national average cost of producing 1984-crop peanuts on a planted acre basis increased $21 per acre from the 1983 cost estimate.

Using a trend yield, planted acre costs have been converted to a cents per pound figure. A trend yield is used to reduce year-to-year per unit cost variability caused by abnormal weather and related factors. The national average cost of producing 1984 crop peanuts on a per pound basis is estimated to have increased $0.0053 per pound or $10.60 per ton from the 1983 cost of production. Details of the cost of production estimates are shown in the following table:

APPENDIX TABLE I.—U.S. PEANUT PRODUCTION COSTS, 1983-84

Item	Dollars per planted acre	
	1983P	1984F
Cash receipts:		
Primary crop	$559.58	$581.88
Secondary crop	12.98	13.36
Total	572.56	595.24
Cash expenses:		
Seed	66.43	71.01
Fertilizer	19.09	20.40
Lime and gypsum	14.34	15.32
Chemicals	89.05	91.16
Custom operations	7.20	7.50
Fuel, lube, and electricity	20.37	20.11
Repairs	20.91	19.39
Drying	.06	.06
Miscellaneous	.20	.21
Management fees		
Total, variable expenses	282.61	295.19
General farm overhead	27.84	29.34
Taxes and insurance	10.73	12.32
Interest	107.06	106.36
Total, fixed expenses	145.63	148.02
Total, cash expenses	428.24	443.11
Receipts less cash expenses	146.32	252.13
Capital replacement	80.73	55.07
Receipts less cash expenses and replacement	65.59	197.06
Economic costs:		
Variable expenses	280.61	295.09
General farm overhead	27.84	29.34
Taxes and insurance	10.73	12.32
Capital replacement	50.73	55.07
Allocated returns to owned inputs:		
Return to operating capital	9.49	11.45
Return to other nonland capital	19.17	20.46
Net land rent	83.06	90.95
Labor (paid and unpaid) [1]	30.69	30.95
Total, economic costs	513.32	545.04
Residual returns to management and risk	59.24	150.20
Net returns to owned inputs	202.66	305.42
Cash expenses, capital replacement, and labor ($ per planted acre)	507.86	529.13
Net land rent	83.06	* 83.06
Total	591.72	612.99
Trend yield (pounds per planted acre)	2,656	2,726

[1] Hired labor (a cash expense) and unpaid labor could not be separately identified given available survey data.
[2] 1983 net land rent was substituted for the 1984 net land rent in order to comply with legislative requirement to exclude any increase in the value of land when using production costs to determine the 1985 quota support level for peanuts.
NOTE: P—Preliminary; F—Forecast.
Source: ERS/ASCS/Oct. 1984.

Based on current cost estimates, which could change prior to announcement of the final level, it is the Department's current view that the national average support level for the 1985 crop of quota peanuts will be increased by $10.60 per ton from the 1984 level of $550 per ton to $560.60 per ton.

B. National Average Level of Support for Additional Peanuts.

Section 108A(2) of the 1949 Act provides that the Secretary shall make price support available to producers through loans, purchases, or other operations on 1985-crop additional peanuts at such level as the Secretary determines to be appropriate, taking into consideration certain factors. Those factors are the demand for peanut oil and meal, expected prices of other vegetable oils and meals, and the demand for peanuts in foreign markets. The 1949 Act further provides that the Secretary shall establish the support rate for additional peanuts at a level which the Secretary estimates will ensure that there are no losses to CCC on the sale or disposal of such peanuts. Section 358(p) of the Agricultural Adjustment Act of 1938 defines additional peanuts for any marketing year as: (A) Any peanuts marketed from a farm for which a farm poundage quota has been established that are in excess of the quota markетings from such farm for such year and (B) all peanuts marketed from a farm for which no farm poundage quota has been established. The 1949 Act provides that the level of support for 1985-crop additional peanuts shall be announced no later than February 15, 1985. The statutory factors for determining the additional support level are discussed below for the 1985 crop.

1. Demand for Peanut Oil and Meal

The quantity of peanuts available for crushing for the 1985/86 marketing year (August 1, 1985 to July 31, 1986), a residual of edible use, is projected to range from 303,000 tons to 380,000 tons compared with 358,000 tons for the 1984/85 marketing year. Peanut oil and meal prices are expected to average from 30 to 32 cents per pound and $176 per ton, respectively, for the 1985/86 marketing year.

2. Expected Prices of Other Vegetable Oils and Meals

For the 1984/85 marketing year, the world aggregate production of oilseeds is estimated to be 204 million short tons (185 million metric tons), 11 percent higher than for 1983/84. The recovery in U.S. soybean production is the biggest single factor in the increase. Soybeans account for 50 percent of the total world aggregate oilseed production while peanuts account for 11 percent. Because of soybean dominance of the total supply, soybeans lead the demand-supply price patterns for oilseeds.

It is estimated that U.S. soybean production for 1984-85 will increase about 20 percent to 2 billion bushels. However, low carryover stocks will hold the increase in supply to 12 percent, which is a level below previous highs. Modest gains in total use combined with a more substantial production increase should raise ending stocks to more normal levels. Soybean oil prices will likely remain high relative to recent years because slack demand for meal will probably inhibit the incentive to crush. For the 1984/85 marketing year, soybean oil prices are expected to range from 25 to 31 cents per pound in comparison to an average price of 31 cents per pound for the 1983/84 marketing year. Soybean meal prices are expected to range from $145 to $165 per ton for the 1984/85 marketing year in comparison to a price of $190 per ton for 1983/84.

The 1985 soybean acreage will likely remain about the same as for 1984. The estimated production of soybeans for the 1985/86 marketing year is expected to continue to offset the 1983/84 drawdown in carryout stocks. Soyoil prices are projected to decrease about 7 percent below 1984/85 levels and soybean meal prices are projected to remain about the same as expected 1984/85 levels. Total use of oil and meal is expected to be up 2 to 5 percent.

3. Demand for Peanuts in Foreign Markets

The demand for U.S. peanuts in foreign markets is expected to strengthen as U.S. exports return toward the higher levels that existed prior to the drought-reduced 1980 crop. The U.S. is expected to supply as much as 512,000 short tons of peanuts to the export market in the 1985/86 marketing year

acre)	2,665	2,726

compared with 358,000 tons for the 1984/ 85 marketing year.

Based on the above, the Department is proposing to establish the 1985 crop additional peanuts national poundage quota at 463,000 tons.

B. Minimum Export Edible Sales Price for Additional Peanuts

As indicated, the 1949 Act also provides that the support rate must be established at a level estimated to ensure no loss to CCC from the sale or disposal of additional peanuts pledged as loan collateral. Section 108A(3)(B) of the 1949 Act requires each area marketing association to establish accounting pools for each type and segregation for quota and additional peanuts. Under the pool concept, gains from any pool may be redistributed to producers. A loss in any pool is a net loss to CCC. It is expected that all peanuts in some additional loan pools will be disposed of exclusively through sales for domestic crushing. Based on present data, it is the Department's current view that the level of price support for the 1985 crop of additional peanuts will be established within a range of $185 to $195 per ton. The higher figure of $195 per ton is derived from an expected crushing price for the 1985/ 1986 marketing year of $269 per ton minus expected CCC handling and related costs of $74 per ton. The lower figure of $185 per ton is the level of support for the 1984 crop of additional peanuts. Based upon present expectations, a 1985-crop support level for additional peanuts of less than the $195 per ton figure would provide a cushion against lower than expected crushing prices, higher than expected costs, or other factors which could result in a loss to CCC from the sale or disposal of additional loan collateral peanuts.

C. Minimum CCC Export Edible Sales Price for Additional Peanuts Pledged as Collateral for a Price Support Loan

The determination of a minimum CCC export edible sales price with regard to additional peanuts pledged as loan collateral is discretionary with the Secretary. It is presently intended that the determination of this price will be announced at the same time as the determination of the support levels for quota and additional peanuts in order to give handlers and growers adequate information on which to base export contracts for additional peanuts. If the minimum sales price is established too high, it may discourage export contracting between handlers and growers and encourage the production of additional peanuts for the loan program on the assumption that the minimum CCC sales price would be the price growers actually will receive for the sale of their loan collateral peanuts as the result of supplemental payments made as pool dividends pursuant to section 108A of the 1949 Act. This assumption may be incorrect, however, since a misjudgment of the price of edible peanuts in the export market could result in CCC losing edible sales and having to crush the loan inventory. If the minimum sales price is too low, returns from export sales will not be maximized and grower income will be reduced since export contracts between handlers and growers are generally based on the CCC minimum sales price. It is the Department's current view that the minimum export edible sales price for the 1985 crop of peanuts will be established within a range of $255 to $540 per ton. The lower figure of $255 per ton is equal to the lowest figure estimated for the additional support level (i.e., $185 per ton) plus the estimated costs incurred by CCC for the storage, handling, and inspection of export edible peanuts. If the lower figure of $255 per ton is selected, the actual minimum price would be established after the additional loan rate is determined and an official estimate is made of the 1985 CCC storage and handling charges. The higher figure of $540 per ton was derived by deducting $20.60 per ton from the proposed $560.60 per ton quota support level. The minimum CCC export edible sales price for the 1976 through 1981 crops was established at $20 per ton below the quota support level. However, for the 1982, 1983 and 1984 crops, the minimum CCC export edible sales price was established at $75 per ton, $150 per ton and $125 per ton below the quota support level, respectively. Some growers have suggested in prior years that the minimum CCC sales price for export edible sales of additional peanuts should be established at a price which approximates the quota support level.

Proposed Determinations

Comments are requested on the following issues with respect to 1985-crop peanuts:

(1) The national average price support level for quota peanuts.

(2) The national average price support level for additional peanuts.

(3) The minimum CCC export edible sales price for additional peanuts pledged as price-support loan collateral.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday in Room 3741–South Building, 14th and Independence Avenue, SW., Washington, D.C. 20013.

Signed at Washington, D.C., on December 7, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-32398 Filed 12-11-84; 8:45 am]

BILLING CODE 3410-05-M

ARMS CONTROL AND DISARMAMENT AGENCY

Hubert H. Humphrey Fellowship Competition

The U.S. Arms Control and Disarmament Agency will conduct a competition in 1985 for one-year Hubert H. Humphrey Fellowships in arms control and disarmament. The fellowships will support unclassified doctoral dissertation research in the field. Law candidates for the Juris Doctor or any higher degree are also eligible, if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for Ph.D. candidates will be $5,000, plus applicable tuition and fees up to a maximum of $3,400. Stipends and tuition for law candidates will be prorated according to the credits given for the research paper. Fellows must be citizens or nationals of the United States and degree candidates at a U.S. university. The application deadline for the awards, which are for a 12-month period beginning either September 1985 or January 1986, is March 1, 1985 and announcement of final selection will be on May 31, 1985. For information and application materials write: Hubert H. Humphrey Fellowship Program, Office of Public Affairs, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451.

Dated: December 6, 1984.

Joseph D. Lehman,

Director, Office of Public Affairs.

[FR Doc. 84-32328 Filed 12-11-84; 8:45 am]

BILLING CODE 8220-32-M

CIVIL AERONAUTICS BOARD

[Docket 42321]

Hawaii One Corp. Fitness Investigation; Hearing

Notice is hereby given that the hearing in the above-titled matter will be held on December 14, 1984, at 10:00 a.m. (local time), in Room 5334, Nassif Building, 400 Seventh Street, SW., Washington, D.C., before the undersigned administrative law judge who is now located at Room 9400–A, Nassif Building and may be telephoned at (202) 426–5560. Participants should enter the Nassif Building through the Northeast Lobby.

Dated at Washington, D.C., December 6, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-32408 Filed 12-11-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-11-113]

Proposed Revocation of Air Carrier Certification; Action Air Cargo Corp.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause, Order 84-11-113.

SUMMARY: The Board is proposing to revoke the air carrier certificates of Action Air Cargo Corporation; Air New England, Inc.; American Eagle Airlines, Inc.; Ball Brothers, Inc.; Century Airlines, Inc.; Circle Airfreight Corporation; Flight Transportation Corporation; Great Plains Airlines, Ltd., Holiday Airways, Inc.; Houston Airlines, Inc.; Intercontinental Airways, Inc.; International Air Association, Inc.; Jet Executive International; National Air Commuter, Inc.; Peninsular Air Transport, Inc.; S. S. Airways, Inc: Sun Land Airlines, Inc.; Swift Aire Lines, Inc.; Taino International Airways, Inc.; and U.S. Aircoach, Inc. for noncompliance with the insurance, reporting, and continuing fitness requirements for certificated air carriers.

DATE: All interested persons having objections to the Board issuing an order making final the tentative findings, shall file their objections with the Board and serve them upon the carrier or carriers involved, no later than December 20, 1984.

ADDRESS: Objections should be filed in Docket 42663, and sent to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Special Authorities Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202) 673–5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–11–113 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 84–11–113 to the Distribution Section, Civil Aeronautics Board Washington, D.C. 20428.

By the Civil Aeronautics Board: November 28, 1984

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32409 Filed 12-11-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Wholesale Trade; Determination

In accordance with Title 13, United States Code, Sections 182, 224, and 225, and due Notice of Consideration having been published October 23, 1984 (49 FR 42600), I have determined that the Census Bureau needs data covering year-end inventories and annual sales to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar surveys conducted each year since 1978. It provides, on a comparable classification basis, annual sales for 1984, year-end inventories for 1983 and 1984, and purchases for 1984. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Bureau will require a selected sample of firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1984 Annual Wholesale Trade Survey. The sample will provide, with measurable reliability, statistics on the subjects specified above.

We will furnish report forms to the firms covered by this survey and will require their submission within 20 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: December 6, 1984.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 84-32329 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[C-201-408]

Initiation of a Countervailing Duty Investigation; Converted Paper-Related School and Office Supplies From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of converted paper-related school and office supplies, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. We will make our preliminary determination on or before July 24, 1985. Under section 703(h) of the Tariff Act of 1930, as amended by the Trade and Tariff Act of 1984, we may extend the deadline for a preliminary determination up to 250 days after the filing of a petition whenever there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed and additional time is required to investigate the upstream subsidization. Petitioner has presented information establishing a reasonable basis to believe or suspect that upstream subsidies are bestowed upon the products under investigation, and the Department concludes that additional time is necessary to investigate this allegation.

EFFECTIVE DATE: December 12, 1984.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–0160 or (202) 377–1769.

SUPPLEMENTARY INFORMATION:

Petition

On November 16, 1984, we received a petition from the Stationery International Trade Committee filed on behalf of the U.S. industry producing converted paper-related school and office supplies. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of converted paper-related school and

office supplies receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303 (a)(1) and (b)(1) of the Act apply to this investigation. The merchandise subject to this investigation enters the United States duty-free under the Generalized System of Preferences (GSP). Because there are no "international obligations" within the meaning of the section 303(a)(2) of the Act, (which require an injury determination for nondutiable merchandise from Mexico), petitioner is not required to allege that, and the U.S. International Trade Commission (ITC) is not required to determine whether, imports of the subject merchandise from Mexico materially injure or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on converted paper-related school and office supplies from Mexico, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers, or exporters in Mexico of converted paper-related school and office supplies as described in the "Scope of Investigation" section of this notice, receive bounties or grants. Based on our initiation of an investigation of upstream subsidies, we are extending the period for our preliminary determination up to 165 days.

Scope of Investigation

The products covered by this investigation are converted paper-related school and office supplies, which comprise:

- typing and filler paper
- wirebound notebooks and composition books
- pads

These products are currently classified under item numbers 256.9080, 256.5600, 256.5800, and 256.9040 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

Allegation of Bounties and Grants

The petition alleges that manufacturers, producers, or exporters in Mexico of converted paper-related school and office supplies receive benefits under the following programs which constitute bounties or grants:

- Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX)
- Fund for Industrial Development (FONEI)
- Preferential Federal Tax Credits (CEPROFI)
- Accelerated Depreciation of Capital Equipment and Machinery
- Development Funds Administered by Nacional Financiera, S.A. (NAFINSA)

  Guarantee and Development Fund for Medium and Small Business (FOGAIN)

  Trust Fund for Industrial Parks, Cities and Commercial Centers (FIDEIN)
- Import Duty Reductions and Exemptions
- Preferential State Investment Incentives
- Tax Certificates issued by the Mexican Government (CEDI)
- Upstream Subsidies to Related Suppliers

Petitioner alleges that Mexican producers of converted paper-related school and office supplies receive upstream subsidies, within the meaning of section 771 of the Act. In support of this allegation they have submitted sufficient evidence to give rise to a reasonable basis to believe or suspect that:

—Mexican producers of pulp and paper, which we have reason to believe are wholly-owned subsidiaries of certain producers of the merchandise under investigation, receive bounties or grants described in section 771(5)(B) of the Act;

—The bounties or grants received by the pulp and paper producers have a significant effect on the cost of manufacturing the converted paper products because of the apparent size of the bounties or grants and because paper accounts for a significant proportion of the value of the converted product, and

—The upstream subsidy confers a competitive benefit because the producers of the converted product allegedly obtain paper from their related suppliers at lower prices than they would otherwise pay in an arm's-length transaction.

Based on the foregoing, the petitioner has established reasonable grounds to believe or suspect that upstream subsidies are being bestowed on the manufacturers of converted paper-related school and office supplies that obtain their paper input from related suppliers. Petitioner has not established reasonable grounds to believe or suspect that producers of the product under investigation who are not related to their suppliers receive a competitive benefit from bounties or grants bestowed on pulp and paper manufacturers in Mexico. Therefore we are initiating an upstream subsidy investigation only with respect to converted paper-related school and office supplies produced by Kimberly-Clark and San Cristobal.

In addition, we will include in this investigation the following Mexican government programs which, in prior cases, we found might confer countervialable benefits:

- Article 94 Loans
- Trust Fund for Small- and Medium-Sized Companies (FOMIN)
- Government Financed Technology Development
- Regional Energy Discounts
- BANCOMEXT
- PROFIDE.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

December 6, 1984.

[FR Doc. 84-32342 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Issuance of a General Permit; International Trading and Shipping Agency

On November 2, 1984, a general permit was issued to the International Trading and Shipping Agency, Inc, New York, New York, on behalf of Portuguese fishermen to take marine mammals incidental to commercial fishing operations under Category 1:Towed or Dragged Gear, pursuant to 50 CFR 216.24.

The general permit allows the taking of not more than 40 northern sea lions (*Eumetopias jubatus*), 20 harbor seals (*Phoca vitulina*), and 20 cetaceans (except harbor porpoise) within the U.S. Fishery Conservation Zone during 1985.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

Dated: December 4, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-32317 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-22-M

Coastal Zone Management; Federal Consistency Appeal by the City of Hudson, NY, From Objection of the New York State Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Indefinite Stay of Consideration of Consistency Appeal.

SUMMARY: On August 6, 1984, the Secretary of Commerce (Secretary) received an appeal by the City of Hudson, New York (Appellant), from an objection by the New York State Department of State (Department) to the Appellant's application for a Department of Housing and Urban Development Action Grant to construct an octane petroleum recovery and finishing facility in the South Bay waterfront area of the City of Hudson. The appeal was filed pursuant to section 307(d) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(d), and implementing regulations at 15 CFR Part 930, Subpart H. Notice of the appeal was published in 49 FR 33303 (1984).

The Secretary has granted the Appellant's request of November 5, 1984, to stay consideration of the appeal pending negotiations between the parties to resolve the Department's consistency objection. The stay will remain in effect until lifted at the Secretary's discretion. In such event, notice will be provided setting forth the schedule for further consideration of the appeal and the opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: Tony Giedt, Attorney Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Ave., NW., Washington, D.C. 20235; (202/254-7512).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: December 3, 1984.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 84-32373 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Florida East Coast Railway Company From Consistency Objection of the Florida Department of Environmental Regulation to Proposed Industrial Park Development in Southern Florida

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal and Stay of Consideration.

SUMMARY: On November 8, 1984, Florida East Coast Railway Company (FEC) appealed to the Secretary of Commerce (Secretary) an objection by the Florida Department of Environmental Regulation (DER) to FEC's proposed project requiring a Corps of Engineers section 404 permit to fill 332 acres of wetlands for an access road for a proposed industrial park, Town of Medley, Dade County, Florida. This appeal has been filed pursuant to subparagraph (A) of section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A) and implementing regulations at 15 CFR Part 930, Subpart H.

Concurrent with its consistency appeal, FEC filed a motion requesting the Secretary to stay consideration of the appeal until the State of Florida Adjudicatory Commission resolves a similar matter before it concerning the same parties and addressing a related issue. The Secretary has granted FEC's motion, and the appeal is stayed until dissolved at the Secretary's discretion. Upon dissolution of the stay, public notice will be provided setting forth the schedule for further consideration of the appeal, including the opportunity for public comment.

FOR FURTHER INFORMATION CONTACT David P. Drake, Attorney Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235; (202) 254-7512.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: December 1, 1984.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 84-32372 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammal Permit Applications; Zeedierenpark Harderwijk B.V.

On September 20, 1984, Notice was published in the **Federal Register** (49 FR 36899), that an application had been filed with the National Marine Fisheries Service by Zeedierenpark Harderwijk B.V., Strandboulevard-OOST 1, 8341 AB Harderwijk, Holland, for a permit to take six (6) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on December 5, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Public Display Permit for the above activities to Zeedierenpark Harderwijk B.V. subject to certain conditions set forth therein.

This Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 5, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-32374 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Apparel Products Produced or Manufactured in the Republic of the Philippines

December 7, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 7, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated December 16, 1983 (48 FR 56425), as amended, established limits for certain categories of cotton, wool and man-made fiber textile products, including Categories 336T, 431, 435, 635T, 641NT, 642NT,

646T, 659T and 659NT, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1984. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982 between the Governments of the United States and the Republic of the Philippines, the 1984 limits for Categories 431, 635T, 641NT, and 659NT are being increased, variously, by the application of carryover, carryforward and swing. Carryforward, to the extent used in 1984, will be deducted from the 1985 limits of the affected categories. The limits for Categories 336T, 435, 642NT, and 659T are being reduced to account for the swing applied to Categories 431, 635T, 641NT, 646T and 659NT, as provided in the bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 7, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 16, 1983, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1984.[1]

Effective on December 7, 1984, paragraph 1 of the previously amended directive of December 16, 1983 is hereby further amended to include adjusted restraint limits for the following categories.

Category	Adjusted 12-mo restraint limit[1]
336T	369,345 dozen.
431	65,378 dozen pairs.
435	2,125 dozen.
642T	43,980 dozen.

[1] The agreement, provides in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Adjusted 12-mo restraint limit[1]
641NT	214,000 dozen.
642NT	54,211 dozen.
646T	295,368 dozen.
659T	1,468,059 dozen.
659NT	1,721,220 pounds.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1983.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32381 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Restraint Limit for Certain Man-Made Fiber Textiles Produced or Manufactured in Singapore

December 7, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 13, 1984. For further information contact Jane Corwin, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1981, as amended between the Governments of the United States and the Republic of Singapore, swing in the amount of 127,339 pounds is being applied to the restraint limit established for man-made fiber yarn in Category 604 further increasing it to 1,404,365 pounds for goods produced or manufactured in Singapore and exported during 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 7, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption and withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during 1984.

Effective on December 13, 1984, the directive of December 19, 1983 is hereby amended to include an adjusted restraint limit of 1,404,365 pounds[1] for Category 604

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32380 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limits for Certain Wool and Man-Made Fiber Textile Products From the Polish People's Republic

December 6, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 14, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 15, 1980 and March 20, 1981 between the Governments of the United States and the Polish People's Republic provides, among other things, for designated percentage increases in certain categories (swing), and for the borrowing of yardage from the succeeding year's level with the amount used being deducted from the level in the succeeding year (carryforward). At the request of the Government of the Polish People's Republic, increases for swing are being applied to the restraint limits previously established for wool and man-made fiber textile products in Categories 433, 444, and 443/643/644, produced or manufactured in Poland and exported during the agreement year which began on January 1, 1984. The adjusted limit for Category 433 and 443/643/644 also includes adjustment to restore unused carryforward. The limit for Category 444 has been adjusted to reflect the addition of 31 dozen in carryover from 1983. A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1983.

Walter E. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 6, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 7, 1983 which prohibited entry into the United States for consumption of certain wool and man-made fiber textile products, produced or manufactured in Poland and exported during 1984.

Effective on December 14, 1984, the directive of December 7, 1983 is hereby amended to include adjusted restraint limits for the following categories, as indicated:[1]

Category	Adjusted 12-mo restraint limit[1]
433	7,741 dozen.
444	5,191 dozen.
443/643/644	16,220 dozen of which not more than 13,540 dozen shall be applied to All TSUSA numbers in these categories except 379.8351, 379.8352, 379.8920 and 379.9560.

[1] The restraint limits have not been adjusted to reflect any imports exported after December 31, 1983.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 84-32386 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] According to the terms of the bilateral agreement of September 15, 1980 and March 20, 1981 within the aggregate and applicable group limits of the agreement, specific limits may be exceeded by designated percentages; these same limits may be increased for carryover and carryforward; and andinistrative arrangements of adjustments may be made to resolve minor problems arising in the implementation of the agreement.

DEPARTMENT OF ENERGY

Inventory of Commercial Activities

AGENCY: Department of Energy (DOE).

ACTION: Notice of DOE commercial activities scheduled for review in accordance with the OMB Circular A-76.

SUMMARY: Pursuant to the requirements of the revised OMB Circular A-76 (dated August 1983), the DOE developed and published a partial inventory of its commercial activities in 49 FR 28432, July 12, 1984, of the **Federal Register.** The formation contained in this Notice adds a commercial activity to the Department's inventory.

Organization and commercial activity	Geographic location	Date of review
Assistant Secretary, Management and Administration Payroll services.	MD: Germantown.	January 1985.

FOR FURTHER INFORMATION CONTACT: Ray S. Mayfield, Cheif, Management Systems Development and Evaluation Branch, Department of Energy (MA-213.2), Room 4B-194, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Washington, D.C. December 3, 1984.

William S. Heffelfinger,

Director of Administration.

[FR Doc. 84-32385 Filed 12-11-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP85-106-000]

Creole Gas Pipeline Corp.; Application

December 6, 1984.

Take notice that on November 8, 1984, Creole Gas Pipeline Corporation (Creole), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-106-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission Regulations for a blanket certificate of public convenience and necessity for authorization to transport, and sell natural gas as defined in Subparts C, D, and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Creole states that during the most recent 12-month period, October 1983 through September 1984, it received 26,734,870 Mcf of natural gas from all sources, all of which was received within or at the state boundary, and was exempt from the Commission's jurisdiction under the Natural Gas Act pursuant to section 1(c) of the Natural Gas Act in Docket No. 75-241.

Creole asserts that it would charge a rate of up to 25.772 cents per billion Btu for all transportation services rendered under this blanket certificate, stating such rate is currently in effect for certain contracts approved by the Office of Conservation for the State of Louisiana. Creole further states that such transportation charge represents a fair and equitable rate for all comparable transportation to be conducted under the blanket certificate applied for herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion

believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Creole to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32304 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-123-000]

El Paso Natural Gas Co.; Application

December 6, 1984.

Take notice that on November 20, 1984, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-123-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain existing mainline compressor facilities, with associated appurtenances, to facilitate the reconfiguration and modernization of El Paso's interstate natural gas transmission system, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that El Paso has undertaken a comprehensive mainline transport capacity study involving, *inter alia*, supply, market, engineering design and cost factors which collectively support the conclusions that: (i) The future sales levels on El Paso's interstate transmission pipeline system, together with volumes of natural gas transported by El Paso for others, do not require the full utilization of the system's certificated maximum day design capacity of approximately 4,125,000 Mcf;[1] (ii) the projected available gas supply for sale, supplemented as necessary with withdrawals from storage, would not support (or increase) sales on El Paso's system above approximately 3,600,000 Mcf per day on a peak day basis; and (iii) El Paso's interstate transmission pipeline system should be reconfigured and modernized in order to achieve optimum operational capability. El Paso has concluded through this comprehensive mainline capacity study that the optimum maximum design configuration for its mainline system is approximately 3,661,000 Mcf daily. It is stated that, based on these conclusions, El Paso has determined that: (i) A reduction in its certificated mainline transport capacity is warranted; (ii) certain remaining facilities should be reconfigured; and (iii) the modernization of El Paso's system by way of the installation of automation equipment is necessary and desirable. Towards this end, El Paso is of the opinion that the necessary reduction in transport capacity, together with the reconfiguration and modernization of the system, can be achieved through, generally, the phased idlement and subsequent abandonment of certain mainline compressor facilities, the rewheeling of certain compressor facilities and the installation of automation equipment by year-end 1986.

The application further states that as a part of the ongoing operation of El Paso's interstate transmission pipeline system, El Paso continues to evaluate its system facilities that are required to render service to its customers so that El Paso may continue to provide service at the highest level of efficiency and lowest obtainable cost. El Paso states that its evaluation of its system facilities is based on actual and projected system supply and market factors and the efficient utilization of the existing transport capacity. In this connection, El Paso states that upon review and evaluation of its supply and market factors, it has determined that its system capacity would not, in the future, be fully utilized to transport and deliver gas to its existing customers. Accordingly, El Paso has determined that certain compressor facilities situated on its interstate transmission pipeline system can be abandoned so as to facilitate the necessary reduction in the existing system transport capacity and that certain facility reconfigurations and modernization of the system after the proposed abandonment are necessary and prudent.

As stated in the application, El Paso has determined: (i) That a total of 137,320 horsepower located at six compressor stations situated on El Paso's California mainline system and San Juan mainline system can be abandoned and removed from natural gas service; (ii) that eighteen centrifugal mainline compressor units at ten compressor stations can be rewheeled to obtain a more efficient loading operation thus reconfiguring the operating parameters of El Paso's system; and (iii) that twenty-three mainline compressor stations would be totally semi-automated and six mainline compressor stations would be semi-automated.

El Paso states that the compressor facilities which it proposes to abandon were installed at an orginal cost of approximately $40.8 million. It is asserted that removal of such compressor facilities from natural gas service would reduce the transport capacity of El Paso's transmission system by approximately 464,000 Mcf per day to a level of 3,661,000 Mcf per day. El Paso estimates that the annual cost savings associated with reduced labor, operating expenses and fuel, attributable to the proposed abandonment would approximate $16.4 million when the project is completed. El Paso states that from a rate standpoint, El Paso's project would represent a total savings of some 1.71 cents per Mcf or about ten percent of the mainline transportation costs. It is asserted that such potential decrease in sales rates would be a direct benefit to El Paso's customers at no sacrifice in actual *required* delivery capability based on reasonable supply, market and transportation forecasts.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or it the Commission on its own Motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32305 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-104-044]

High Island Offshore System; Petition to Amend

December 6, 1984.

Take notice that on November 20, 1984, High Island Offshore System (Petitioner), One Woodward Avenue, Detroit, Michigan, 48226, filed in Docket No. CP75-104-044 a petition to amend the order issued June 4, 1976, in Docket No. CP75-104, pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to establish a new delivery point to Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is currently authorized to deliver gas to Texas Gas at one delivery point, the interconnection between Petitioner and ANR Pipeline Company in West Cameron Area Block 167, offshore Louisiana. Petitioner is currently authorized, it is asserted to deliver Texas Gas' currently effective contract demand to 190,500 Mcf per day at that point.

It is stated that Texas Gas has requested Petitioner to establish an additional point of delivery at the interconnection between Petitioner and facilities owned by Stingray Pipeline Company in High Island Area Block A-330, offshore Texas. It is further stated that the purpose in establishing the new delivery point would be to provide additional flexibility to Texas Gas in having its gas transported to shore. Petitioner also notes that its total delivery obligation to Texas Gas would remain unchanged.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32306 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS72-1063, et al.]

John Lee Turner, et al.; Applications for "Small Producer" Certificates [1]

December 6, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before December 26, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS72-1063	Nov. 5, 1984 [1]	John Lee Turner (John Lee Turner Trust), 1800 Diamond Shamrock Tower, Dallas, TX 75201

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS85-7-000	Nov. 8, 1984	BHI Energy Corp., 107 Broadmoor, Borger, TX 79007
CS85-14-000	Nov. 19, 1984	SMK Energy Corp., P.O. Box 4910, Tyler, TX 75712
CS85-15-000	Dec. 27, 1984	[illegible] Co., P.O. Box 960, Bristow, OK 74010
CS85-19-000	Nov. 29, 1984	Pelican Bay Exploration Inc., P.O. Box 270863, Huston, TX 77277

[1] Letter received November 5, 1984, requesting that the small producer certificate issued to the John Lee Turner Trust be redesignated to reflect that John Lee Turner is now the small producer certificate holder.

[FR Doc. 84-32307 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-42-000]

Midwestern Gas Transmission Co.; Filing

December 5, 1984.

Take notice that on November 30, 1984, Midwestern Gas Transmission Company (Midwestern) requested the Federal Energy Regulatory Commission (Commission) to allow it to defer until December 31, 1984, the filing of the Purchased Gas Cost Adjustment (PGA) for its Northern System, which otherwise would be made on or before December 1, 1984. To accomplish the deferral, Midwestern requests any necessary waivers of the Commission's regulations and of Article XVIII of Volume No. 1 of Midwestern's FERC Gas Tariff. Midwestern states that the PGA filing for its Southern System will not be affected by this request.

Midwestern states that Midwestern and ANR Pipeline Company (ANR), Midwestern's largest Northern system customer, have recently negotiated amendments to Midwestern's gas purchase contracts with TransCanada Pipe Lines Ltd. (TransCanada), the sole supplier of gas for Midwestern's Northern System, which substantially reduces the price Midwestern pays for Canadian gas, establishes separate price structures for ANR and Midwestern's other requirements, allows for future market-oriented price adjustments, and eliminates or liberalizes future take-or-pay and minimum purchase obligations. Midwestern also states that it has reached agreement with TransCanada and ANR regarding revisions to an agreement among Midwestern, TransCanada and ANR dated February 3, 1984, pursuant to which ANR agrees to assume certain of Midwestern's obligations to TransCanada under the gas purchase contracts. Midwestern states further that on November 26, 1984, if filed in Docket No. TA85-1-5 an

[1] The stated capacity includes a mainline fuel requirement of 117,000 Mcf daily which results in a peak day sales capacity of 4,008,000 Mcf daily, it is indicated.

indicated.

were installed at an orginal cost of

given.

considered by it in determining the

for hearing of the several matters covered herein.

if filed in Docket No. TA85-1-5 an

interim rate reduction to reflect the reduced gas costs under the amended gas purchase contracts, but explains that the tariff provisions for its Northern System must be significantly revised in order to accurately reflect on a permanent basis the changes brought about by these amendments and the amendments to February 3, 1984 agreement among Midwestern, TransCanada and ANR.

Midwestern anticipates filing the new tariff sheets and conforming Northern System rates on or before December 31, 1984. Midwestern asserts that these revisions would effectively moot the December 1, 1984 PGA filing and render it a nullity. Midwestern further asserts that the need to prepare a PGA filing for the Northern System by December 1, 1984 would delay the completion of these essential revisions to it. FERC Gas Tariff and would serve n useful purpose.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-32308 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-114-000]

National Fuel Gas Supply Corp.; Application

December 6, 1984.

Take notice that on November 15, 1984, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York, 14203 filed in Docket No. CP85-114-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon the existing Henderson Storage compressor station and for a certificate of public convenience and necessity authorizing the construction and operation of a new Henderson Storage compressor station to be constructed on a site adjacent to such existing station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel proposes to replace eight compressor units, totaling a capacity of 1175 horsepower, and related equipment at its Henderson Storage compressor station in the Township of Mineral, Venango County, Pennsylvania. It is explained that the replacement is necessitated due to the deteriorating condition of the present compressor facilities which are dated 1934 through 1949. National Fuel also proposes to modify the configuration of the station piping to enhance the flexibility of its operations to take full advantage of the Henderson storage field and to permit an increase in its ability to take gas into its Line N from Texas Eastern Transmission Corporation at Wind Ridge, Pennsylvania. National Fuel states that the proposed replacement compressors would consist of two 1,300 horsepower reciprocating units which would operate more efficiently while requiring less fuel gas than the existing units.

The application reflects that the existing facilities would be removed and sold for scrap. The total estimated cost of the project, as set forth in the application, is $3,912,500.

National Fuel asserts that such construction would be financed with internally generated funds and/or interim short-term bank loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32309 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-87-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

December 6, 1984.

Take notice that on November 5, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-87-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove one 112 horsepower compressor unit located in Mesa County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the Mesa County No. 2 gathering station originally installed in 1980 to gather the gas produced from the Vega Field has been idled since October 1983 and that since installation of the gathering system, only one well, the Vega #2 well was connected by Northern's Vega System. It is explained that the production from this single well has declined substantially from its initial flow rate of 240 Mcf of gas per day to an average rate of 30 Mcf per day in 1983. Northern maintains that the low production from the Vega Field resulted in extremely high operation costs and that in October the Vega #2 well was shut in and the Mesa County 2 Station was idled. Northern states that it continues to pay the rental fees associated with the 112 horsepower compressor unit and, accordingly, proposes to abandon it.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32310 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32310 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-118-000]

Northwest Pipeline Corp.; Application

December 6, 1984.

Take notice that on November 16, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85-118-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of Reichhold Chemicals, Inc. (Reichhold), all as more fully set forth in the application which is on file and open to public inspection.

Northwest proposes to transport, on a best-efforts basis, up to 10 billion Btu's of natural gas per day for the account of Reichhold pursuant to a gas transportation agreement (agreement) dated October 26, 1984, for a term of up to six months.

Northwest states that Reichhold has arranged to purchase up to 10,000 Mcf of Canadian natural gas per day from Czar Resources Ltd. (Czar) for an initial term of twelve months or until a maximum of 3,400,000 Mcf of gas have been purchased. It is explained that Reichhold would purchase the gas from Czar at the existing interconnection between Westcoast Transmission Company Limited (Westcoast) and Northwest at Sumas, Washington, at a price of $3.15 per million Btu.

Northwest proposed to accept up to 10 billion Btu's per day for Reichhold's account at Sumas and to transport and redeliver thermally equivalent volumes to Northwest Natural Gas Company (Northwest Natural) for Reichhold's account at the existing Deer Island Meter Station in Columbia County, Oregon.

It is stated that Northwest Natural then would utilize its existing distribution facilities to transport Reichhold's gas from the Deer Island meter station to Reichhold's fertilizer plant near St. Helens, Oregon, where Reichhhold would use the subject gas as process fuel and feedstock in the manufacture of anhydrous ammonia at its St. Helens fertilizer plant.

Northwest proposes to charge Reichhold a negotiated transportation rate of five cents per million Btu, plus the Gas Research Institute (G.R.I.) charge which is currently 1.18 cents per million Btu.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32311 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-130-000]

Phillips Gas Pipeline Co.; Application

December 6, 1984.

Take notice that on November 26, 1984, Phillips Gas Pipeline Company (Phillips Gas), 456 Home Savings & Loan Building, Bartlesville, Oklahoma 74004, filed in Docket No. CP85-130-000 an application pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Phillips Gas further requests waiver of that portion of § 157.204(a) of the Commission's Regulations that requires a certificate holder to have transportation rates on file that have been accepted by the Commission in order to apply for blanket certificate under Subpart F of Part 157 of the Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the

to be constructed on a site adjacent to

Commission or its designee on this

December 27, 1984, file with the Federal

public inspection.

the authority contained in and subject to

with the requirements of the

Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is file within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32312 Filed 12-11-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of October 1 Through October 5, 1984

During the week of October 1 through October 5, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Crown Central Petroleum Corp., Oct. 1, 1984; HFA-0242

Crown Central Petroleum Corporation (Crown) filed an Appeal from a determination issued to it by the Acting Disclosure Officer, Office of Special Counsel (Disclosure Officer). In that determination, the Disclosure Officer responded to a request for information submitted by Crown under the Freedom of Information Act. In considering the Appeal, the DOE found that the search performed by the Disclosure Officer was inadequate. Accordingly, the DOE directed the Disclosure Officer to conduct a further search for responsive documents.

John H. Hnatio, Oct. 2, 1984; HFA-0246

John H. Hnatio (Hnatio) filed an Appeal seeking amendment of a Decision and Order issued to him on August 22, 1984 by the Office of Hearings and Appeals (OHA). In that decision, the OHA considered Hnatio's contention that information, other than classification markings, was withheld from three documents released to him. After reviewing the documents, the OHA determined that Hnatio was correct. Accordingly, the Appeal was granted.

John H. Hnatio, Oct. 5, 1984; HFA-0247

John H. Hnatio (Hnatio) filed an Appeal from a determination issued to him by the Freedom of Information and Privacy Act Activities Branch (FOI Branch) of the Department of Energy (DOE). In his Appeal, Hnatio claimed that the FOI Branch had improperly withheld documents responsive to his Freedom of Information Act request for all documents in the custody of the DOE which pertained to him. In support of this Appeal, Hnatio submitted a copy of a document clearly pertaining to him which the FOI Branch had not previously identified or released to him. In considering the Appeal, the DOE noted that the FOI Branch's failure to identify the one additional document cited by Hnatio did not necessarily indicate that its search was inadequate. The DOE also did not find evidence to support Hnatio's contention that the document had been improperly withheld. Nonetheless, the DOE found that the existence of this particular document did raise the possibility that other responsive documents might exist. Accordingly, the DOE directed the FOI Branch to conduct a further search for responsive documents.

The Knoxville Journal, Oct. 5, 1984; HFA-0245

The Knoxville Journal (Journal) filed an Appeal from a denial of a request for a full waiver of search, copying, and computer fees associated with a Request for Information which the Journal had submitted under the Freedom of Information Act. In considering the Appeal, the DOE balanced the significant public interest in the subject matter of the request and the Journal's ability to effectively disseminate the requested information to the public against the commerical interest of the Journal in the requested information and the cost of producing the documents. The DOE determined that a 90 percent reduction of fees was warranted. Accordingly, the Appeal was granted in part.

William F. Lawless, Oct. 2, 1984; HFA-0230

Professor William F. Lawless of Paine College, in Augusta, Georgia, filed an amended Appeal from a decision by the Freedom of Information Officer (Authorizing Official) the Department of Energy's Savannah River Operations Office. The Authorizing Official's decision denied Lawless's request for a waiver of fees in connection with a request which Professor Lawless had submitted under the Freedom of Information Act, seeking disclosure of material pertaining to nuclear waste material management at the Savannah River Plant. In considering the Appeal, the OHA found that there was a significant public interest in the subject matter of the request, that Professor Lawless would effectively communicate the material to the public, and that the requested material would not benefit personal interests of the requester. Accordingly, Professor Lawless's request for a fee waiver was granted on appeal.

Raymond D. Reister, Oct. 5, 1984; HFA-0250

Raymond D. Reister filed an Appeal from a denial by the Assistant Manager for Administration of the DOE San Franscisco Operations Office of a Request for Information which Mr. Reister had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Assistant Manager's search was adequate in scope. Accordingly, Mr. Reister's Appeal was denied.

David D. Yue, Oct. 4, 1984; HFA-0244

David D. Yue filed an Appeal from a denial by the Freedom of Information Officer of the Oak Ridge Operations Office of a request for a waiver of copying fees submitted in connection with the Freedom of Information Act request. In considering the Appeal, the DOE found that approval of Yue's request would not primarily benefit the general public. Accordingly, the Appeal was denied.

Request for Exception

Norge, Division of Magic Chef, Inc., Oct. 3, 1984; HEE-0099

Norge, Division of Magic Chef, Inc. filed an Application for Exception from the provisions of 10 CFR Part 430 in which the firm sought relief from the energy testing requirements with respect to 500 units of Magic Chef model W20DN-4, an automatic clothes washer. In considering the request the DOE found that exception relief was necessary to prevent the firm from experiencing a gross inequity under the DOE testing regulations. Accordingly exception relief was granted.

Interlocutory Order

ERA/Gulf Oil Corp., Oct. 4, 1984; HRZ-0191

The Economic Regulatory Administration (ERA) filed a Motion to Amend a Proposed Remedial Order it has issued to Gulf Oil Corporation (Gulf) of December 21, 1981. In the Motion, the ERA asked that it be allowed to change its audit methodology, and increase the amount of Gulf's alleged violations from $353,445.93 to $1,830,391.36. The ERA also requested that the time covered by the PRO be expanded by seven months to include the period from July 1, 1980 through January 27, 1981. In addition, the ERA stated that it wished to substitute Subpart V proceedings for the remedial measures specified in the PRO.

In considering the ERA Motion, the Department of Energy determined that Gulf would not be unduly prejudiced by the granting of these amendments and also determining that ERA had shown good cause existed for changing the audit methodology to

one which the ERA and Gulf agreed provided a correct basis for calculating any overcharges which may have occurred. However, the DOE found that ERA had failed to show that good cause existed for expanding the time covered by the PRO, since the PRO already requires Gulf to audit itself for the period immediately following the PRO. In addition, the DOE tentatively permitted the change of remedial provisions, pending briefing by all parties.

In addition, the DOE rejected a claim by Gulf that the documents submitted by ERA as exhibits to its Motion to Amend were confidential in their entirety, but permitted the firm to submit a revised claim which provided a full explanation of how release of the exhibits would harm Gulf.

Refund Applications

OKC Corporation/Town and Country Markets, Inc., Oct. 5, 1984; RF13-17

The DOE issued a Decision and Order concerning an Application for Refund filed by Town & Country Markets, Inc. (T&C). T&C sought a portion of the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation. T&C is an independent reseller of petroleum products which purchased motor gasoline from OKC during the period covered by the consent order. T&C requested a refund to compensate it for alleged pricing violations by OKC as well as for alleged OKC violations of the DOE allocation regulations. Upon evaluating T&C's refund request, the DOE concluded that T&C was injured by OKC' pricing practices during the consent order period and was therefore eligible for a refund. In addition, the DOE determined that T&C's claim that it was injured by OKC's alleged allocation violations was meritorious. Accordingly, T&C was also granted a refund to compensate it for OKC's failure to supply it with motor gasoline to which it was entitled. The total refund approved in this proceeding was $1,213,282 plus interest.

Sid Richardson Carbon and Gasoline Co./Gulf Oil Corp., Enterprise Products Co., Oct. 4, 1984; RF 26-6, RF26-3

Gulf Oil Corporation (Gulf) and Enterprise Products Company (Enterprise) filed Applications for Refund in which the firms sought a portion of the fund obtained by the DOE through a consent order entered into by the agency and the Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Sid Richardson) on August 31, 1979. In considering the requests, the DOE found that Gulf and Enterprise made spot purchases of NGLPs from Sid Richardson during the consent order period. Based on the rebuttable presumption that spot purchasers suffer no economic injury, the DOE concluded that Gulf and Enterprise were not entitled to a portion of the consent order funds and, accordingly, denied the firms' Applications for Refund.

Standard Oil Co. (Indiana)/B & J's Standard, Ken's Standard Service, Oct. 5, 1984; RF21-11396; RF21-11857; RF21-11858.

The DOE issued a Decision and Order concerning three Applications for Refund filed by retailers of Amoco motor gasoline. These firms elected to apply for refunds based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). In considering these applications, the DOE concluded that each of the applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total $887.

Standard Oil Co. (Indiana)/Glenway Service Station, Oct. 3, 1984; RF21-12359.

On June 10, 1983 and February 8, 1984, the Office of Hearings and Appeals (OHA) issued Decisions and Orders granting Applications for Refund filed by retailers of Amoco motor gasoline, including Applications filed by Charles J. Villers, the owner and operator of the Glenway Service Station. *Standard Oil Co. (Indiana)/Art's Standard Service*, 11 DOE ¶85,037 (1983); *Standard Oil Co. (Indiana)/Ray's Standard Service*, 11 DOE ¶85,237 (1983). During a computer check for duplicate submissons as part of its continuing efforts to ensure that refund applicants make truthful representations to the agency, the OHA became aware of the multiple filings on Villers' behalf and Villers' receipt of a double refund. After conducting an investigation, the OHA determined that Villers was not responsible for the fraudulent filing of a duplicate application. The OHA therefore determined to permit Villers to retain the initial refund, and to rescind only the second, duplicate refund.

Standard Oil Co. (Indiana)/Nevada; RQ21-78; Standard Oil Co. (Indiana)/New York; RQ21-98; Standard Oil Co. (Indiana)/Florida; RQ21-106; Belridge Oil Co./Florida; RQ8-105; Palo Pinto Oil and Gas/Florida; RQ51-104; Belridge Oil Co./Mississippi; RQ8-109; Standard Oil Co. (Indiana)/Maine; RQ21-112; Belridge Oil Co./Maine; RQ8-111; Palo Pinto Oil and Gas/Maine; RQ5-110; Northeast Petroleum Industries, Inc./Maine, Oct. 4, 1984; RQ25-113

The States of Nevada, New York, Florida, Mississippi and Maine submitted second-stage refund plans to the Office of Hearings and Appeals (OHA) pursuant to special refund proceedings involving consent orders which the DOE entered into with Standard Oil Company (Indiana) (Amoco), Belridge Oil Company (Belridge), Palo Pinto Oil and Gas (Palo Pinto) and Northeast Petroleum Industries, Inc. (Northeast). Nevada proposed to use $12,462 allotted to it in the *Amoco* Decision and Order (11 DOE ¶85,185 (1983)) to further fund an energy emergency program and to supplement funding of the State Boiler Efficiency Mini-Grants Program. New York proposed to spend $1,074,091 of the Amoco funds on a number of energy conservation projects designed to benefit the residential, commercial and industrial sectors of the state. Florida proposed to use $1,029,239 from Amoco, $3,922 from Belridge and $15,854.10 from Palo Pinto, to fund a Traffic Signal Retiming Program and to implement energy conservation techniques in state schools, hospitals and public care buildings. Mississippi planned to add the $1,081 from Belridge to funds approved for its Conservative Driver Training Program. Maine proposed to use $112,618 from Amoco, $481 from Belridge, $2,562 from Palo Pinto and $4,159.12 from Northeast to expand current van, bus line and rideshare services and to conduct energy audits at residential care facilities. The OHA approved these plans because they benefitted consumers who had been injured by the alleged overcharges of Amoco, Belridge, Palo Pinto and Northeast.

Willis Distributing Co./Gartner-Harf Co., Oct. 4, 1984; RF41-0009

The DOE issued a Decision and Order concerning an Application for Refund filed by Gartner-Harf Company, an end-user of motor gasoline sold by Willis Distributing Co. The firm elected to apply for a refund based upon the presumption of injury and the procedures outlined in *Willis Distributing Co.*, 12 DOE ¶ 85,062 (1984). In considering the application, the DOE concluded that Gartner-Harf should receive a refund of $80 based upon the total volume of its motor gasoline purchases.

Dismissals

The following submissions were dismissed:

Name, and Case No.

Charles J. Honsa; RF21-4243
Gartner-Harf Co.; RF41-00100
Kaiser Cement Corp.; RF45-1
Nordstrom Oil Co.; RQ22-23

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: December 3, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-32350 Filed 12-11-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of October 22 Through October 26, 1984

During the week of October 22 through October 26, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Tighe, Curhan & Piliero, Oct. 26, 1984; HFA-0251

Tighe, Curhan & Piliero filed an Appeal from a partial denial by the Manager of the Department of Energy Idaho Operations Office of a Request for Information which the

firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the documents withheld under Exemptions 4 and 5 of the FOIA were not adequately described by the Manager and that the Manager had not adequately justified why each individual document should have been withheld. The withheld documents were therefore remanded for further review and a new determination.

Remedial Orders

San Joaquin Oil Co., & San Joaquin Refining Company, Inc., Oct. 22, 1984; HRO–0071

San Joaquin Oil Co., & San Joaquin Refining Co., Inc., (San Joaquin) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to San Joaquin on June 4, 1982. In the PRO the ERA found that San Joaquin violated the DOE price regulations by overcharging its customers in sales of refined petroleum products. The primary objections raised by San Joaquin were that: (i) The EPA incorrectly allocated the proceeds which the firm received from sales of fee-free import licenses as a component of its cost of crude oil, (ii) the ERA incorrectly applied the new item/new market rule in determining San Joaquin's May 15, 1973 selling prices for three products, and (iii) the equal application rule applicable to refiners is procedurally and substantively invalid. The Office of Hearings and Appeals (OHA) rejected San Joaquin's arguments with respect to the treatment of fee-free import licenses and the equal application rule. It granted, however, San Joaquin's objection with respect to the new item/new market rule, stating that the ERA had failed to determine May 15, 1973 prices for three of San Joaquin's products in accordance with the rule. The OHA further found that appropriate May 15, 1973 prices for these products could not be determined from the record in the proceeding. Accordingly, the OHA remanded the PRO to the ERA for further consideration on this issue.

Texas Pacific Oil Co., Inc., Oct. 22, 1984; DRO–0185

Texas Pacific Oil Company, Inc. objected to a Proposed Remedial Order (PRO) which was issued by the Economic Regulatory Administration (ERA) to the firm on December 15, 1978. In the PRO, the ERA found that the firm had sold crude oil from four producing tracts at prices in excess of those permitted by 10 C.F.R. Part 212, Subpart D. The PRO alleged that each of the tracts constituted a single property. The firm maintained that each of the tracts constituted multiple properties on the basis of differences in the ownership of the working, royalty and overriding royalty interests, and on the basis of separate accountability for state severance taxes.

The DOE found no merit to Texas Pacific's claim that differences in state tax treatment of crude oil and condensate, or that differences in accountability to different working or overriding royalty owners, formed a basis for multiple property treatment. The DOE found, however, that two of the tracts should be treated as multiple properties because the form was required to account for production from the tracts to different royalty owners. With respect to a third tract, the DOE found that multiple property treatment was not appropriate since key differences in royalty ownership only appeared if the royalty components of the mineral interests were not taken into account. The DOE also found that the remedial provisions of the PRO should be modified to require that any refunds be distributed pursuant to the provisions of 10 C.F.R. Part 205, Subpart V. The PRO, as modified, was issued as a final Remedial Order.

Request for Modification and/or Rescission

Osborne Energy Corporation and E. O. White, Oct. 22, 1984; HRR–0094

Osborne Energy Corporation and E. O. White filed a motion requesting that the Office of Hearings and Appeals (OHA) reverse its denial of their requests for discovery regarding unofficial contemporaneous agency construction of 10 CFR 212.186, including the deposing of representatives of the crude oil industry regarding historic industry practices. *See Osborne Energy Corp.*, 12 DOE ¶ 84,007 (1984). OHA reexamined the regulatory history of § 212.186, the anti-layering regulation, and found the regulation unambiguous. Accordingly, OHA concluded that the discovery requests based on the purported ambiguity of the regulation had been properly denied.

Motion for Evidentiary Hearing

Hydrocarbons, Ltd., Oct. 26, 1984; HRH–0022

On November 30, 1983, Hydrocarbons, Ltd. (Hydrocarbons) filed a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order issued to the firm by the Economic Regulatory Administration on May 10, 1983. In its Motion, the firm requested an Evidentiary Hearing to allow it to present testimony concerning alleged anti-trust ramifications of 10 CFR 212.183(c). Upon consideration of Hydrocarbons' Motion, the DOE concluded that Hydrocarbons had failed to specify a disputed factual issue that it would address at such a hearing, that the firm had failed to identify the witnesses whose testimony would be offered, and that Hydrocarbons had not shown that its position regarding any anti-trust ramifications of § 212.183(c) could be established only through an Evidentiary Hearing. Hydrocarbons' Motion for an Evidentiary Hearing was therefore denied.

Refund Applications

Marion Corporation/Callaway Seafoods, et al., Oct. 26, 1984; RF37–1 et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund filed by certain purchasers of petroleum products from the Marion Corporation. The DOE denied two of the Applications on the basis that the Applicants were spot purchasers and had not rebutted the presumption that spot purchasers were not injured by Marion Corporation's pricing practices. *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). The DOE granted the other 15 Applications under the standards and methods specified in *Marion*. The refunds granted in this proceeding total $113,106, plus interest.

Pan American Liquids Service Company and Desertaire Oil & Gas Co./Farmland Industries, Inc., Oct. 24, 1984; RF36–1

The DOE issued a Decision and Order concerning an Application for Refund filed by Farmland Industries, Inc. Farmland sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Pan American Liquids Service Co. and its subsidiary, Desertaire Oil & Gas Co. (Desertaire). Farmland is an agricultural cooperative association owned by over 2,000 local cooperatives which purchased propane from Desertaire during the period covered by the consent order. Farmland requested a refund to compensate it for alleged Desertaire overcharges. Upon evaluating Farmland's refund request, the DOE concluded that Farmland was injured by Desertaire's alleged pricing practices during the consent order period and was therefore eligible for a refund. Because Farmland was the only firm determined to have been injured by Desertaire's alleged pricing practices and because a DOE audit of Desertaire indicated that the alleged overcharges to Farmland exceeded the total settlement, the DOE determined that Farmland should receive as a refund the total Desertaire settlement fund. The refund granted in the proceeding totals $24,000, plus interest.

Windham Gas & Oil Co./Save 4 Stores, Oct. 26, 1984; RF43–0005

The DOE issued a Decision and Order concerning an Application for Refund filed by Save 4 Stores, a retailer of motor gasoline. Save 4 Stores elected to apply for a refund based upon the presumption of injury set forth in *Windham Gas & Oil Co.*, 12 DOE ¶ 85,074 (1984). In considering the application, the DOE concluded that Save 4 Stores should receive a refund of $775 based upon the total volume of its Windham motor gasoline purchases.

Dismissal

The following submission was dismissed:

Company Name, and Case No.

Lucky Stores, Inc.; HEG–0037

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: December 3, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84–32380 Filed 12–11–84; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of October 29 Through November 2, 1984

During the week of October 29 through November 2, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Barrett & Hanna, Nov. 2, 1984; HFA–0252

Barrett & Hanna filed an Appeal from a denial by the Dallas Office of the Economic Regulatory Administration (ERA) of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the search for responsive documents had been inadequate. Accordingly, the Appeal was granted and the ERA was ordered to conduct an additional search.

Motions for Discovery

Gulf Oil Corp. Nov. 2, 1984; HRD–0211

Gulf Oil Corporation filed a Motion for Discovery in connection with the firm's Statement of Objections to a Proposed Remedial Order (PRO) issued to it by the Philadelphia Field Office of the Economic Regulatory Administration on December 28, 1981. Gulf sought administrative record and contemporaneous construction discovery concerning December 1978 amendments to the refiner price rule. In considering the motion, the DOE found that Gulf had failed to show that expanded administrative record discovery was warranted. The DOE also found that Gulf had not demonstrated that the regulation at issue was ambiguous and that it had been interpreted inconsistently. Accordingly, contemporaneous construction discovery was denied. However, the DOE decided that ERA's response to an interrogatory dealing with an Emergency Petition for Rulemaking filed by Texaco Inc. could have a bearing on the resolution of the PRO at issue, and directed the agency to respond to that inquiry.

Mid-Continent Systems, Inc., Nov. 2, 1984; HRD–0202, HRH–0202

Mid-Continent Systems, Inc. filed a Motion for Discovery and a Motion for Evidentiary Hearing pertaining to an issue remanded to the OHA by the United States District Court for the Eastern District of Arkansas. The OHA found that the motions did not satisfy the regulatory requirements for the granting of such motions, as set forth at 10 CFR 205.198 and 205.199 and the applicable case law. Accordingly, Mid-Continent's request for discovery and evidentiary hearing were denied. However, Mid-Continent's alternative request for oral argument on the merits of the underlying issue remanded by the District Court was granted.

Implementation of Special Refund Procedures

A. Johnson & Co., Inc., et al., Oct. 29, 1984; *HEF–0472 et al.*

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the funds obtained as the result of consent orders, remedail orders, and court-approved stipulated settlements which DOE entered into with A. Johnson & Company, Inc. and 193 other firms and individauls who were producers, resellers or refiners of crude oil. The funds will be available to identifiable purchasers of the crude oil, participants in the Entitlements Program, and purchasers of refined petroleum products who were injured by the 194 firms' actual or alleged violations. Applications for refund must be postmarked within 90 days of the publication of the decision in the Federal Register. Specific information to be included in refund applications is discussed in the decision.

Refund Applications

Standard Oil Co. (Indiana)/Anoka-Hennepin Independent School District, Nov. 2, 1984; *RF21–12363*

The DOE issued a Decision and Order concerning an Application for Refund filed by Anoka-Hennepin Independent School District (Anoka). Anoka elected to apply for a refund based upon the presumptions of injury and the formulae outlined in *Offcie of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*). In considering the application, the DOE concluded that Anoka should receive a refund based upon the total volume of its eligible Amoco motor gasoline purchases. The refund granted in this proceeding totals $1,122.

Standard Oil Co. (Indiana)/Robert West, Joslin's Longboat American Service, Nov. 2, 1984; RF21–10515, *RF21–12309*

The DOE issued a Decision and Order concerning two Applications for Refund filed by retailers of Amoco motor gasoline. These firms did not elect to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE found that the applicants had not shown that they were injured to an extent greater than the presumptive levels. Accordingly, the applicants were granted refunds based upon the presumption method. The refunds granted in this proceeding total $3,755.

Dismissals

The following submissions were dismissed:

Name, and Case No.

Commonwealth Propane Co.; RF21–11334

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: December 3, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84–32381 Filed 12–11–84; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Vangas, Inc., in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by March 11, 1985 should conspicuously display a reference to case number HEF–0189, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between Vangas, Inc., a reseller-retailer of propane whose main office is located in Fresno, California, and DOE. The consent order settled all disputes between DOE and Vangas concerning possible violations of DOE price regulations with respect to the firm's sales of propane and charges for storage tank rental to customers of its California retail division during the September 1, 1973 through October 31, 1977 audit period.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by March 11, 1985 and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in

DOE found, however, that two of the tracts should be treated as multiple properties granted the other 15 Applications under the standards and methods specified in *Marion*.

[FR Doc. 84-32260 Filed 12-11-84; 8:45 am]

BILLING CODE 6450-01-M

duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: December 4, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: Vangas, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0189

December 4, 1984.

This proceeding involves a Petition for the the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations of the Department of Energy (DOE), ERA may request that the OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. As we have stated in previous decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See, e.g., Office of Enforcment*, 8 DOE ¶ 82,597 (1981). In this case ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it entered into with Vangas, Inc.

Vangas marketed petroleum products to resellers and end-users during the period of federal price controls, and was therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. Its main office is in Fresno, California. A DOE audit of Vangas's records revealed possible violations of DOE price regulations with respect to the rental of liquid propane gas storage tanks to consumers through its California retail division during the period commencing September 1, 1973 and ending October 31, 1977 (hereinafter referred to as the audit period).

In order to settle all claims and disputes between Vangas and the DOE regarding the firm's sales of propane and charges for storage tank rental during the audit period, Vangas and the DOE entered into a consent order on July 30, 1980. Under the terms of the consent order, Vangas agreed to refund $403,628, plus interest, "to tank rental customers in the California retail division by setting prices for propane two cents ($.02) per gallon below each branch's maximum lawful selling prices or each branch's market prices, whichever are lower, until the total amount has been refunded." The consent order provided that, in the event that the pricing of propane was exempted from the DOE petroleum price regulations before the total amount was refunded, the unrefunded balance would be turned over to the DOE. At the time of decontrol, Vangas had refunded all but $30,362, including interest, which the firm subsequently remitted to the DOE. That sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of October 31, 1984, the Vangas escrow account had earned $13,802.70 in interest.

On September 28, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures for distribution of the $30,362 that was deposited into the escrow account, plus the accured interest. 49 FR 39724 (October 10, 1984). This Decision establishes procedures for the filing of claims by tank rental customers in the firm's California retail division. We will describe the information that this type of claimant should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. We will not, however, propose procedures at this time for the disposition of funds that may remain in the escrow account after all claims have been paid. Our determination concerning the disposition of those funds will necessarily depend on the amount remaining in the account at that time. It is therefore premature for us to address issues regarding the disposition of any remaining funds after all claims have been paid. In response to our September 28, 1984 proposed decision, the state of North Carolina and the Attorneys General of Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia filed comments regarding the disposition of such remaining funds. In light of the above discussion, these comments will not be discussed here.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Vangas consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcment*, 9 DOE ¶ 82,553 at 85,284 (1982); *Office of Enforcement, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Vangas consent order funds.

II. Refunds to Injured Purchasers

The Vangas consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by Vangas's alleged violations. The information available to us at this time regarding Vangas operations does not provide the names and addresses of the firm's customers. However, the consent order limits the universe of potential refund recipients to those who rented propane tanks through the California retail division. Therefore, the pool of eligible claimants will comprise consumers who rented such tanks from a Vangas branch located within the State of California (or in Sparks, Nevada) during the period September 1, 1973 through October 31, 1977.

The ERA audit materials indicate that charges for tank rentals were assessed yearly and increased with the capacity of the tank rented. In order to receive a refund, each claimant will be required to establish the length of time during the consent order period that it rented its tank or tanks from Vangas. In addition, it must establish the total volume capacity of the tank or tanks it rented for the period.

As stated above, the consent order provides that refunds be made to only one class of purchasers: customers of the firm's California retail division. Therefore, these potential claimants, as ultimate consumers of Vangas petroleum products, were injured by the alleged violations because they had no opportunity to pass on the costs associated with the alleged overcharges. Consequently, applicants will not be required to submit any proof of injury other than evidence of storage tank rental, in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes).

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by an estimate of the total storage capacity of Vangas's rental propane tanks during the period covered by the consent order.(*1*) in the present case, based on the information available to us at this time, the volumetric refund amount is $.000539 per gallon of storage capacity rented per year ($30,362 received from Vangas, Inc., divided by 56,249,991 gallons(*2*), the firm's total storage capacity that was rented to California consumers during the audit period), exclusive of interest. Successful claimants' refunds will be calculated by multiplying the capacity of the tanks that they rented by the number of years (or fractions of years) during which they rented from Vangas, then multiplying the result by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. As of October 31, 1984, Accrued interest will increase the per-gallon refund amount of $.000785. Although we have proposed a volumetric method for allocating refunds, a claimant may submit additional evidence if it claims that it bore a disproportionate percentage of the alleged overcharges, resulting in a level of economic injury greater than the volumentric figure.

We recognize that many of the affected customers are individuals who rented very little tank capacity and therefore will be entitled to very small refunds. As the state of North Carolina expressed in its comments in opposition to our proposed $15.00 minimum for claims, this sum would not be insignificant to some potential claimants. However, as in prior special refund cases, we will not grant refunds for less than $15.00 (the approximate cost to the government of issuing refund checks) because the cost to the public of issuing such small refunds exceeds the restitutionary benefits that may be achieved. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b). Therefore, honoring North Carolina's request that we issue checks in amounts less than $15.00 would result in a net financial loss to the general public.

III. Application for Refund

After having considered the comments received concerning application procedures for injured purchasers that were tentatively adopted in our September 28, 1984 proposed decision, we have concluded that applications for refund should now be accepted from parties who rented propane storage tanks from Vangas's California retail division. An application must be in writing, be signed by the applicant, and specify that it pertains to the Vangas Consent Order Fund, Case Number HEF-0189.

An applicant should provide the following information in his or her application: the location of the Vangas branch office through which propane storage tanks were rented during the audit period, the capacity of each such tank and the length of time in months for which each such tank was rented. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is being considered. *See* 10 CFR 205.9(d).

Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205-283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that his or her application contains confidential information must so indicate on the first page of his or her application and submit two additional copies of the application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Vangas Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the Vangas consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205-286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

IV. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all claims by eligible consumers have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the refund procedure described above is completed. We will continue to accept comments containing proposals for alternative distribution of the remaining funds upon proper notice to the parties and the interested public.

It Is Therefore Ordered That:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF-0189 is hereby granted.

(2) Applications for Refund from the funds remitted to the Department of Energy by Vangas, Inc., pursuant to the consent order executed on July 30, 1980, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: December 4, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Notes

(*1*) Volumetric refund amounts are usually calculated by dividing the settlement amount by the total gallonage of products covered by the consent order. In the present case, however, in which the consent order specifies that all alleged overcharges were due to tank rental and not due to the pricing of any product, we have determined that the proposed method will result in the most equitable distribution to injured parties.

(*2*) This figure is equal to 13,500,000 gallons per year multiplied by 4-1/6 years (50 months). We determined that the California retail division rented an estimated average of 13,500,000 gallons of storage capacity in each year of the consent order period by considering the actual storage capacity figures supplied by the firm for the years 1976 and 1977, extrapolating estimates for the earlier years based on those figures, and taking an average of the estimated and actual yearly figures.

[FR Doc. 84-32350 Filed 12-11-84; 8:45 am]

BILLING CODE 6450-01-M

July 30, 1980. Under the terms of the

decision and in other recent decisions.

purchase volumes).

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $70,557.23 in consent order funds to members of the public. This money is being held in four separate escrow accounts following the settlement of enforcement proceedings involving Budget Airport Associates, Inc. ($13,688.26), Consolidated Leasing Corp. ($16,500), Grand Rent-A-Car Corp. ($32,500), and Traveler's Rental, Inc. ($7,868.97).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF–0044 (Budget), HEF–0054 (Consolidated), HEF–0083 (Grand), and HEF–0182 (Traveler's).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to four consent orders entered into by Budget Associates, Inc., Consolidated Leasing Corp., Grand Rent-A-Car Corp., and Traveler's Rental, Inc. Pricing violations allegedly had occurred when each firm charged its motor vehicle rental customers a refueling charge for motor gasoline. The alleged violations in the firms' sales of motor gasoline to vehicle rental customers occurred at the following locations during the following periods:

Budget—L.A. Int'l Airport, Aug. 1, 1979–Aug. 31, 1980
Consolidated—L.A. Int'l Airport, Aug. 1, 1979–Aug. 31, 1980
Grand —L.A. Int'l Airport, Aug. 1, 1979–Jan. 28, 1981
Traveler's—Boston Airport, Aug. 1, 1979–May 31, 1980

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of each escrow account funded by the motor vehicle rental companies pursuant to their respective consent orders. The DOE has tentatively decided that refunds should be granted to claimants who satisfactorily demonstrate that they incurred motor gasoline refueling charges from the rental company at the audited location during the respective consent order period. Motorists who demonstrate that they incurred refueling charges will be presumed to have absorbed the alleged overcharges and will not be required to provide further evidence of injury to qualify for a refund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of the claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: December 4, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: Budget Airport Associates, Inc., Consolidated Leasing Corporation, Grand Rent-A-Car Corporation, Traveler's Rental, Inc.

Date of Filings: October 13, 1983.

Case Numbers: HEF–0044, HEF–0054, HEF–0083, HEF–0182.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received pursuant to a settlement agreement or remedial order. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons or firms who were injured as a result of alleged or adjudicated violations, or to ascertain the amount of each person's injury. *See Office of Enforcement*, 9 DOE ¶ 82,553 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed four Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into with four motor vehicle rental companies: Budget Airport Associates, Inc. d/b/a Budget Rent-A-Car (Budget), Consolidated Leasing Corporation (CLC) Grand Rent-A-Car (Grand), and Traveler's Rental, Inc. d/b/a/ Dollar Rent-A-Car (Dollar).(*1*) Each of these companies is engaged in the business of renting motor vehicles to the public. In the course of these rental transactions, the firms levy a refueling charge when a customer returns a vehicle with less motor gasoline than when the vehicle was rented. According to the ERA, the firms were therefore "retailers" of motor gasoline as that term was defined in 10 CFR 212.31 and were subject to the DOE Mandatory Petroleum Price Regulations. The ERA audited each of these firms, and those audits revealed possible violations of the DOE price regulations set forth in 10 CFR Part 212, Subpart F. The ERA audits encompassed only the Los Angeles airport operations of Budget, CLC, and Grand, and the Boston airport operations of Dollar. In each case, in order to settle all claims and disputes between the company and the DOE regarding the firm's resale of motor gasoline from its audited airport rental location during the audit period, each firm enterd into a consent order with the DOE. Each consent order noted that the firm disputed the ERA's contention that it was a "retailer" subject to the price regulations, and stated that no finding was made on this issue. The audit periods, which are the same as the consent order periods, and consent order amounts are set forth below:

Budget—Aug. 1, 1979–Aug. 31, 1980, $13,688.26
CLC—Aug. 1, 1979–Aug. 31, 1980, $16,500.00
Grand—Aug. 1, 1979–Jan. 28, 1981, $32,500.00
Dollar—Aug. 1, 1979–May 31, 1980, $7,868.97(*2*)

II. Proposed Refund Procedures

We have determined that it is appropriate to establish a special refund proceeding under Subpart V with respect to each of the four rental companies' consent order funds. *See*

The Hertz Corp., 12 DOE ¶ —— (Case No. HEF–0090) (November 14, 1984) (*Hertz*). Based upon our experience with Subpart V cases, the distribution of funds to persons who were adversely affected by the alleged overcharges will take place in two stages. In the first stage of the process, payment will be made to persons and firms who file applications for refund and demonstrate that they are entitled to a portion of the funds received by the DOE. After meritorious claims are paid in the first stage, remaining funds can be distributed through a second stage refund procedure to entities which would indirectly benefit persons and firms who were likely injured but who failed to filed claims or do not meet the minimum refund threshold. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*) (refund procedures established for first stage applicants; second stage refund procedures tentatively proposed); *Standard Oil Co. (Indiana)*, 11 DOE ¶ 85,185 (1983) (second stage refund procedures established).

With respect to the first stage, we propose that the Budget, CLC, Grand, and Dollar consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by the respective firm's pricing practices at the audited location during the respective consent order period. In the absence of a showing of a specific level of an alleged overcharge, we propose that refunds from each settlement fund be allocated to injured customers according to a volumetric method.(*3*) Under this method we generally presume that the alleged overcharges were spread equally among all gallons of product sold which were covered by the consent order. In applying the volumetric method, refunds are computed by multiplying an applicant's purchases from the consent order firm by the per gallon volumetric refund amount, which is calculated by dividing the settlement amount by the total volume of motor gasoline subject to the settlement and sold by the consent order firm during the consent order period. At the present time in this proceeding, we do not know the precise amount of motor gasoline sold by each of the rental companies from its audited location during the consent order period. However, each firm has provided a reasonable estimate of the volume of motor gasoline it sold. Based upon these figures, we have established a tentative volumetric amount for each case. The per gallon volumetric amount for each proceeding is set forth below:

Budget—$0.01239 ($13,688.26 divided by 1,105,000)
CLC—$0.01269 ($16,500 divided by 1,300,000)
Grand—$0.00736 ($32,500 divided by 4,413,200)
Dollar—$0.03319 ($7,868.97 divided by 237,070)

An eligible applicant will also receive a proportionate share of the interest which has accrued on the respective consent order fund since its remittance to the DOE.

In the present case, it is likely that all refund claimants will be consumers (end-users) of the motor gasoline which the rental companies supplied. In previous special refund proceedings, we have found that end-users were unable to pass through increased costs resulting from alleged overcharges and therefore incurred injury by purchasing from a firm which settled DOE enforcement claims. Unlike regulated firms in the petroleum industry, end-users were not subject to price controls during the consent order period. *See generally Office of Enforcement*, 10 DOE ¶ 85,069 (1983); *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984) and cases cited therein. In the case of individuals who purchase motor gasoline for their own motoring use, these ultimate consumers' inability to pass through any overcharges is obvious, since there are no down-stream purchasers from whom such a consumer could recover increased costs. *See generally Hertz; Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*); *Thornton Oil Corp.*, 12 DOE ¶ —— Case No. HEF–0497 (November 14, 1984). Similarly, we now propose that in order to substantiate their claim of injury end-user claimants need not demonstrate cost absorption and that they may demonstrate injury by documenting only the specific quantities of motor gasoline they purchased from the specific rental company outlet (the Los Angeles airport outlets of Budget, CLC, and Grand, and the Boston airport outlet of Dollar) during the applicable consent order period.(*4*)

We recognize that it is likely that many of the affected customers were individual motorists who purchased very small amounts of gasoline in isolated transactions. As a result, the amount of refunds to which most individual customers will be entitled will be very small. As in prior special refund cases, we propose not to grant refunds for less than $15.00 (the approximate cost to the government of issuing refund checks) because the cost to the public of issuing such small refunds exceeds the restitutionary benefits which may be achieved. *See Amoco*, 10 DOE at 88,214.(*5*)

Generally in special refund proceedings, we attempt to identify specific customers who may have been injured by the consent order firm's pricing practices and provide those customers with notice of the refund proceeding. However, in the present case, the audit file material which we have does not contain any names or addresses of customers. As a result, we are unable at this time to identify with certainty any persons or firms who may have been injured by the rental companies' alleged overcharges. Nonetheless, we intend to make additional efforts to identify those persons or firms who may be eligible for a refund. In this regard, we note that it would not be unusual for governmental entities or businesses to patronize regularly a car rental agency, often on a contractual basis. These customers may have purchased sufficient amounts of motor gasoline from the rental companies during the consent order period to qualify for a refund. Although to date none of the rental companies have been able to provide us with any information, we believe that they may be able to assist us in locating these large volume customers. We will therefore continue to seek their cooperation in identifying and apprising such customers of this special refund proceeding. In addition, we are soliciting suggestions from the public on methods of providing adequate notice of this proceeding to potentially affected parties.(*6*)

After all meritorious claimants have received the share of the settlement fund to which they are entitled, the settlement funds provided by Budget, CLC, Grand, and Dollar pursuant to the respective consent orders, while diminished, may not be exhausted. Any remainder of the settlement funds will be distributed during a second stage of the refund process.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Budget Airport Associates, Inc., Consolidated Leasing Corporation, Grand Rent-A-Car, and Travelers Rental, Inc. pursuant to their respective consent orders will be distributed in accordance with the foregoing Decision.

Footnotes

(*1*) The Budget, CLC, Grand, and Dollar consent orders were signed on July 7, 1981, March 16, 1981, March 13, 1981, and December 31, 1980 respectively.

(*2*) In the Dollar consent order, the firm agreed to refund $8,398.97 through a price rollback. Dollar began implementing the price rollback; however, after the decontrol of petroleum prices on January 28, 1981, the

price rollback was no longer a valid method of implementing refunds. Therefore, in accordance with the consent order's provisions, Dollar remitted the $7,868.97 balance of its rollback obligation to the DOE.

(3) The recovery of a specified amount for each gallon of motor gasoline purchased is, like the other presumptions we are employing in this proceeding, subject to challenge by refund claimants who seek to establish that the presumption should not be applied in their cases and are able to demonstrate that the alleged overcharges resolved by the consent order were disproportionately borne by them, resulting in a level of probable injury in excess of the volumetric presumption. *See Amoco*, 10 DOE at 88,199.

(4) Many customer receipts do not indicate the number of gallons purchased from the rental company, but instead merely state the dollar amount of the refueling fee. However, by using an assumed price per gallon, applicants will be able to estimate fairly accurately the gallonage which they purchased from the company. In the case of Dollar, the records indicate that during the period August 1, 1979 through November 20, 1979, the firm charged $1.09 per gallon. From November 21, 1979 through May 31, 1980, Dollar charged $1.30 per gallon. (These amounts were also used for a one gallon "top off" fee charged by Dollar to all customers. Claimants who paid this "top off" charge would also be eligible for a refund.)

In the cases of Budget, CLC, and Grand, we have no records that would indicate the prices charged by the firms. At this point, we propose that customers of these rental companies use the data that we have for Dollar to calculate their refueling gallonage. We believe that the Dollar figure would closely approximate the charges levied by other firms since not only were the business operations similar, but the consent order periods overlap. We propose that for purchases made prior to November 21, 1979 applicants apply the $1.09 per gallon amount and that they utilize the $1.30 per gallon amount on all purchases made after November 21, 1979 through the end of the respective consent order periods.

(5) Using the volumetric amounts determined for each consent order firm, we have calculated the minimum number of gallons a customer would have to have purchased in order to qualify for the $15.00 minimum threshold: Budget—1,211 gallons, CLC—1,182 gallons, Grand—2,037 gallons, Dollar—452 gallons.

(6) No claims have been filed with the ERA or the OHA since the execution of the consent orders in 1980 and 1981.

[FR Doc. 84-32387 Filed 12-11-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Wallace & Wallace Fuel Oil Company in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by March 11, 1985, should conspicuously display a reference to case number HEF-0190, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between Wallace & Wallace Fuel Oil Company and DOE. The consent order settled all disputes between DOE and Wallace & Wallace concerning possible violations of DOE price regulations with respect to the firm's sales of No. 2 fuel oil during the period November 1, 1973 through December 31, 1974.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by March 11, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: November 29, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 29, 1984.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Wallace & Wallace Fuel Oil Company.

Date of Filing: October 3, 1983.

Case Number: HEF-0190.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Department of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Wallace & Wallace Fuel Oil Company (Wallace).

Wallace is a "reseller-retailer" of No. 2 fuel oil as that term was defined in 10 CFR 211.31, and is located in St. Albans, New York. An ERA audit of Wallace's records revealed possible regulatory violations in the amount of $578,555.09 with respect to the firm's pricing of No. 2 fuel oil during the period November 1, 1973, through December 31, 1974 (hereinafter referred to as the audit period).

In order to settle all claims and disputes between Wallace and ERA regarding the firm's sales of No. 2 fuel oil during the audit period, Wallace and ERA entered into a consent order on July 12, 1979. Wallace agreed to pay $77,476.06 directly to eight different classes of purchasers, plus $50,000 to DOE for payment to Wallace's reseller customers and their downstream consumers who were injured by the alleged overcharges. Thus far, Wallace has made only partial payments to the eight classes of purchasers and paid only $20,000 of the $50,000 which it agreed to pay to DOE. The firm is in bankruptcy, and it is unlikely that Wallace will make any further refund payments under the terms of the consent order in the near future. The $20,000 which Wallace has paid DOE was deposited into an interest-bearing escrow account. As of July 31, 1984, the Wallace escrow account had earned $10,767.91 in interest. On April 20, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute the money in the Wallace escrow account to the four customers in Wallace's reseller class of purchasers. 49 Fed. Reg. 19402 (May 7, 1984) Those four customers were identified by ERA as having been allegedly overcharged, and they are listed in the Appendix to this Decision and Order. We proposed that in view of the small amount of money involved in the Wallace proceeding and since the record indicates that the four firms are

the parties most likely to have been injured by Wallace's pricing practices, the money in the Wallace escrow account should be distributed to them. We recognized, however, that other customers not identified by the ERA audit may be entitled to a portion of the consent order fund and if additional meritorious claims are filed, the appropriate amount of refund to each firm would be determined after analyzing those claims.

This decision establishes procedures for filing claims in the Wallace refund proceeding. We will describe the information that a purchaser of Wallace No. 2 fuel oil should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. In establishing these requirements, we will address issues raised by our April 20 proposal.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Wallace consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Wallace consent order funds.

II. First-Stage Refund Procedures

A. Refunds to Injured Purchasers

We have concluded that applications for refund should now be accepted from the four firms listed in the Appendix and other firms in Wallace's reseller class of purchaser. Additionally applications for refund will also be accepted from downstream consumers who believe that they have been injured by Wallace's alleged overcharges in its sales to fuel oil resellers. We find that this distribution of funds would be the most equitable method of accomplishing restitution under the circumstances of this case.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of Wallace No. 2 fuel oil for the period November 1, 1973, through December 31, 1974. If the No. 2 fuel oil was not purchased directly from Wallace, the claimant must include a statement setting forth his reasons for believing the No. 2 fuel oil originated with Wallace. In addition, a reseller or retailer of Wallace No. 2 fuel oil that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶85,029 and 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased the No. 2 fuel from Wallace it was unable to increase its prices to pass through the additional costs associated with the alleged overcharges. *See Office of Special Counsel*, 10 DOE ¶85,048 at 88,215 (1982) (hereinafter cited as *Amoco*). Alternatively, a reseller can show injury by demonstrating that the prices it paid for No. 2 fuel oil purchased from other suppliers were lower than those it paid to Wallace. *See, e.g., Tenneco Oil Co./ Racetrac Petroleum, Inc.*, 10 DOE ¶85,023 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA consider refund applications in the most efficient way possible. *See* 10 CFR 205.282(e). Section 205.282(e) specifically authorizes the use of presumptions in refund cases:

> [I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

Both of the presumptions that we are adopting are desirable from an administrative standpoint, because they allow OHA to process a large number of refund claims quickly and efficiently.

We will first adopt a presumption that the alleged overcharges were spread equally over all gallons of Wallace No. 2 fuel oil marketed by the four firms during the consent order period. This volumetric assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However because the impact on an individual purchaser could have been greater, each purchaser is allowed to file an application based on a claim that the alleged overcharges had an actual impact greater than that of the presumed volumetric amount. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88, 164.

We will also adopt a presumption that reseller or retailer claimants seeking smaller refunds were injured by the pricing practices settled in the Wallace consent order. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). In the case of small claims, the cost to the firm of gathering detailed factual information regarding the impact of alleged overcharges which took place many years ago, and the cost to OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. We believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in this case because the volumetric refund amount is fairly low, and the time period covered by the Wallace consent order is quite distant. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.(1) Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury if its refund claim is below the $5,000 threshold level.(2)

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroleum industry, members of this group were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users need only document the volume of Wallace No. 2 fuel oil that they purchased from the

four firms in order to prove that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases from Wallace, however, it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for Wallace No. 2 fuel oil *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of No. 2 fuel oil covered by the consent order. The refund amount in this case will be $.0018041 per gallon ($20,000 received from Wallace divided by 11,085,914 gallons of No. 2 fuel oil sold by Wallace to its reseller class of purchaser during the audit period), exclusive of interest. Successful claimants' refunds will be calculated by multiplying their eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. Although we are adopting a volumetric method for allocating refunds, and claimant that believes it was injured by an amount greater than the volumetric figure may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 Doe ¶ 82,541 at 85, 225 (1982); *See also* 10 CFR 205.286(b).

B. Application for Refund

An application must be in writing, signed by the applicant, and specify that it pertains to the Wallace Consent Order Fund, Case Number HEF–0190. An applicant should indicate from whom the No. 2 fuel oil was purchased and, if the applicant is not a direct purchaser from Wallace it should also indicate the basis for its belief that the No. 2 fuel oil which it purchased originated from Wallace. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Wallace No. 2 fuel oil, such as whether it was a reseller or ultimate user. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1, 1973, through January 27, 1981. The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). Each application must also include the following statement: "I swear (or affirm) that the information sumbmitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Wallace Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. Applications for refund of a portion of the Wallace consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.** *see* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF–0190 be granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by Wallace & Wallace Fuel Oil Company pursuant to the consent order excuted on July 12, 1979, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Date: November 29, 1984.

George B. Breznay,

Director Office of Hearings and Appeals.

(*1*) In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case.

(*2*) In this case, the presumption of injury for small claims not exceeding the $5,000 threshold figure is equivalent to purchases of approximately 200,000 gallons per month during the Wallace consent order period. Applicants whose refund claims exceed the sum of $5,000 during the consent order period, but who cannot furnish additional evidence showing that they were injured by a greater amount, or who choose to limit their claims to the threshold amount, will be eligible for a refund up to the $5,000 threshold amount, without being required to submit any additional evidence of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981) hereinafter *Vickers*); *See also Ada* at 88,122.

Appendix

Customer

Al Jones Fuel Oil, 110–14 Merrick Blvd., Jamaica, NY 11433
Soho Fuel, 134–04 Farmers Blvd., Jamaica, NY 11434
Vanguard Fuel Oils, Inc., 1255 Atlantic Avenue, Brooklyn, NY 11213
Peoples Fuel, Inc., c/o Ken Pollack, Carib Oil Company, Inc., Brooklyn, NY 11203.

[FR Doc. 84–32358 Filed 12–11–84; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50627; FRL–27342]

Issuance of Experimental Use Permits; American Cyanamid Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241–EUP–106. Renewal. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 400 pounds of the insecticide (±)cyano(3–phenoxyphenyl)methyl(+)-4–(difluoromethoxy)–alpha–(1 methylethyl)benzeneacetate on various crops to evaluate the control of various insects. A total of 5,600 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Louisiana, and Mississippi. The experimental use premit was previously effective from July 18, 1983 to July 18, 1984. The permit is now effective from September 7, 1984 to September 7, 1985. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

1471–EUP–75. Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 429.75 pounds (361 pounds for apples and 68.75 pounds for grapes) of the fungicide fenarimol on apples and grapes to evaluate the control of certain fungus diseases. A total of 950 acres are involved; the program is authorized only in the States of California, Georgia, Illinois, indiana, Maryland, Michigan, North Carolina, New York, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, and West Virginia for apples and in the States of California, Michigan, New York, Ohio, Oregon, and Washington for grapes. The experimental use premit is effective from April 19, 1985 to April 19, 1986. A temporary tolerance for residues of the active ingredient in or on apples and grapes has been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

359–EUP–66. Issuance. Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. This experimetal use permit allows the use of 15,000 pounds of the fungicide iprodione on peanuts to evaluate the control of Sclerotinia blight. A total of 5,000 acres are involved; the program is authorized only in the States of Georgia, North Carolina, Oklahoma, Texas, and Virginia. The experimental use permit is effective from August 20, 1984 to September 30, 1984. A temporary tolerance for residues of the active ingredient in or on peanuts has been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: November 14, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–32099 Filed 12–11–84; 8:45 am]
BILLING CODE 6560–50–M

[OPP–30000/30B; FLR–2732–3]

Pentachlorophenol; Preliminary Notice of Determination Concluding the Rebuttable Presumption Against Registration of Pesticide Products Containing Pentachlorophenol for Non-Wood Preservative Uses; Proposed Notice of Intent To Cancel Such Registrations; Notice of Availability of Position Document 2/3

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the risks and benefits associated with the non-wood preservative uses of pentachlorophenol. On October 18, 1978, EPA issued Notices of Rebuttable Presumption Against Registration (hereafter referred to as Special Review) of pesticide products containing pentachlorophenol for all registered uses. This Notice announces the Agency's proposed decision to cancel registrations of most non-wood uses and modify the terms and conditions of registrations of remaining uses.

DATE: Written comments must be received on or before February 11, 1985.

ADDRESS: Written comments should be sent by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Program, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person bring comments to: Rm 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

In order to facilitate the work of the Agency and of others inspecting the comments, registrants and other interested persons should submit three copies of their comments. The comments should bear the identifying notation OPP–30000/30B. All comments are available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (TS–767C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7452).

Copies of the Position Document are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency issued a notice of rebuttable presumption against registration (hereafter referred to as Special Review) for the uses of pesticide products containing pentachlorophenol which was published in the **Federal Register** of October 18, 1978 (48 FR 48443). Issuance of the Notice initiated the Agency's Special Review of the risks and benefits of these products. The rebuttable presumption was issued on the basis of fetotoxicity. The Position Document 1 (PD 1) issued with the Notice of Rebuttable Presumption describes in detail the studies that form the basis for the presumption. In January, 1981, a Position Document 2/3 (PD 2/3) addressed the risks and benefits of the wood preservative uses of pentachlorophenol. Studies indicating the oncogenicity of chlorinated dibenzo-p-dioxins (HxCDD) and hexachlorobenzene (HCB), contaminants of pentachlorophenol, were also detailed in the PD 2/3. Thus a presumption of oncogenicity was added to the previous presumption of fetotoxicity.

This Notice sets forth EPA's preliminary determination regarding the risks and benefits of the non-wood uses of pentachlorophenol. EPA has also prepared a Position Document 2/3 on these uses which describes in detail the reasons for the regulatory actions being proposed here. Copies of this preliminary Notice of Determination and the Position Document are being transmitted to the Secretary of Agriculture, members of the Scientific Advisory Panel, and the registrants of these products. Other interested persons may obtain a copy of the Position Document from the contact person at the address given above. Comments from these groups, as well as from other interested members of the public, are welcome. The Agency will review any comments received in reaching its final regulatory determination.

In broad summary, the Agency has determined that current non-wood preservative uses of pentachlorophenol meet or exceed the risk criteria outlined in 40 CFR 162.11. The Agency has also analyzed the economic, social, and environmental benefits of these uses. In balancing risks and benefits, the Agency considered whether the risks of each use are outweighed by the benefits of the use, what risk reductions could be achieved, and how risk reduction mearsures would affect the benefits of the use.

The Agency has determined that the risks of the non-wood preservative uses of pentachlorophenol are greater than the social, economic, and environmental benefits of these uses. Accordingly, the Agency is proposing to deny applications for and to cancel the registration of products for the following uses:

1. Herbicidal uses:
   a. Greenhouses.
   b. Ornamental lawns and edging.
   c. Rights-of-way.
   d. Commercial and industrial non-crop areas.
   e. Domestic dwellings.
   f. Public facilities.
   g. Golf courses and sand traps.
   h. Wasteland and aquatic areas.
2. Antimicrobial uses:
   a. Evaporative condensors, air washers, cooling towers.
   b. Adhesives, sealants, and canning cements.
   c. Gaskets.
   d. Photographic solutions.
   e. Other uses including latex paints/rubber, defoaming agants, paper coatings, polyvinyl chloride emulsions, zinc-silicone dioxide coatings, and feathers.
   f. Textiles/cordage.
   g. Leather tannery.
   h. Marine caulking/paints.
3. Disinfectant uses:
   a. Mushroom houses.
   b. Construction materials.
4. Mossicide uses:
   a. Roofs.
   b. Lawns.
5. Defoliants.

The Agency is proposing to continue the registered oil well water and pulp/paper mill uses of products containing pentachlorophenol, but with amended terms and conditions of registration. These terms include the use of protective clothing and a reduction in the level of HxCDD contaminants in pentachlorophenol products.

This Notice is organized into five units. Unit I is this Introduction. Unit II, entitled "Legal Background," provides a general discussion of the regulatory framework within which this action is taken. Unit III sets forth a summary of the bases for the regulatory actions which the Agency proposes to implement concerning the non-wood uses of pentachlorophenol. Unit IV sets forth the Agency's proposed regulatory actions. Unit V, Procedural Matters, describes the procedures which EPA will follow in implementing its final regulatory decision.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment". FIFRA section 3(c)(5). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." FIFRA section 2(bb). This standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with commonly recognized practice and in compliance with the terms and conditions of registration.

The burden of proving that a pesticide satisfies the registration standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever it is determined that the pesticides causes unreasonable adverse effects on the environment. The Agency created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

The regulations governing the Special Review process provide that a rebuttable presumption shall arise if a pesticide meets or exceeds a risk criterion set out in the regulations. 40 CFR 162.11(a) and (b). The Agency announces that a Special Review has arisen by issuing a notice for publication in the **Federal Register.** Registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to rebut the presumption by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant risk to humans or the environment. In addition

to submitting evidence to rebut the risk presumption, commenters may submit evidence as to whether the economic, social, and environmental benefits of the use of the pesticide outweigh the risks of use. Unless all presumptions of risk are rebutted, the Special Review is concluded by issuance of a Notice of Intent to Cancel.

Section 6(b) of FIFRA requires EPA to submit all proposed Notices of Intent to Cancel to the Secretary of Agriculture for comment. Accordingly, the Agency has sent a copy of this Notice and the Position Document to the Secretary and has requested comment within the next 30 days. Section 25(d) of FIFRA requires EPA to solicit the views of the Scientific Advisory Panel, as well. The Agency has provided the same materials to the members of the Panel, asking for their comments within 30 days.

In addition, while not required to do so by statute, EPA has decided to afford all interested persons an opportunity to comment on the basis for the proposed action while the proposed action is under review by the Secretary of Agriculture and members of the Scientific Advisory Panel. Accordingly, appropriate steps are being taken to make copies of the position document available to registrants and other interested persons at the time the decision documents are transmitted for external review. Interested persons will be allowed a 60-day period of time to comment.

After this review period, the Agency will make any changes in the proposed action which are deemed appropriate as a result of the comments received. The Agency will then proceed to implement the desired regulatory action by preparing appropriate documents and issuing them in the manner prescribed by the statute and by the Agency's rules. These procedures are described in Unit IV.

In determining whether the use of a pesticide poses risks which are greater than the benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registrations. Alternatively, the Agency may determine that no change in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose an unreasonable adverse effect. In the latter case, the Agency will issue a Notice of Intent to Cancel the registration. Adversely affected persons may also request a hearing on the cancellation of a specified registration and use, and, if they do so in a legally effective manner, that registration and use will be maintained pending a decision at the close of an administrative hearing.

III. Determinations and Announcement of Regulatory Actions

The Agency has considered information regarding the risks of the non-wood preservative uses of pentachlorophenol as well as the economic and other benefits associated with the use of these chemicals. Detailed information on the risk and benefit information considered by the Agency appears in the PD 2/3, which sets forth the Agency's reasons for concluding this special Review.

A. Determinations of Risk

Pentachlorophenol, commonly called "penta," is a buff colored crystal manufactured by the chlorination of molten phenol with a catalyst. The major commercial forms of penta are as an unmodified phenol, a sodium salt and, to a lesser extent, a potassium salt.

The pentachlorophenol Special Review was based on information indicating that pentachlorophenol poses the risks of fetotoxicity and, due to the HxCDD and HCB contaminants, oncogenicity to humans. The range of Margins of Safety (MOS) for fetotoxic effects for pentachlorophenol is .18—>10,000. The ranges of MOS values for fetotoxic effects for HxCDD are .39—>10,000 and 5.9—>10,000, considering 15 ppm and 1 ppm, respectively. The oncogenic risk estimates using average daily lifetime HxCDD exposure range from 10^{-2}—10^{-6} considering 15 ppm HxCDD, and 10^{-3}—10^{-8} considering 1 ppm HxCDD. In assessing risks associated with these chemicals, the Agency has considered two factors: The toxic effects of the chemical and the anticipated extent of exposure. Each will be discussed below.

Fetotoxicity. The Agency has reviewed studies on the fetotoxic effects of purified and commercial grade penta in rats. Teratogenic effects were reported when rats were exposed to two unspecified isomers of HxCDD and mice were exposed to HCB.

The Agency has evaluated the data regarding the fetotoxic effects of pentachlorophenol and has concluded that it has the potential of fetotoxcity in humans.

Oncogenicity. The Agency has evaluated studies in which oral administration of HxCDD to both rats and mice caused an increased incidence of neoplastic nodules and carcinomas. Dietary administration of HCB to hamsters caused in increased incidence of hepatomas. References to these studies appear in the PD 2/3, along with the Agency's analyses of public comments concerning oncogenicity.

Exposure assessment. Exposure data indicate that applicators are subject to dermal and inhalation exposure to products containing penta. The application of pentachorophenol into oil well flood waters and pulp/paper mill solutions is by injection pump. There is negligible exposure as a result of this use of pentachlorophenol. Quantitative exposure estimates for each use are listed in Table II–6 of the PD 2/3 for the non-wood preservative uses of pentachlorophenol.

B. Determination of Benefits

The risks for all use situations are of sufficient magnitude to require the Agency to determine whether they are offset by their social, economic, or environmental benefits.

The non-wood uses of pentachlorophenol fall into the following categories: Herbicides, antimicrobials, disinfectants, mossicides, and defoliants.

Pentachlorophenol is registered for use on the following sites as a non-specific, non-residual contact herbicide: Greenhouses, ornamental lawns, rights-of-way, commerical and industrial non-crop areas, domestic dwellings, medical facilities, schools, golf courses, sand traps, wasteland areas, aquatic areas and drainage ditch banks.

Uses of pentachlorophenol as an antimicrobial agent to control bacterial and fungal growth include: Working solutions (oil well flood waters, evaporative condenser cooling waters, cooling tower waters, air washers); finished product preservative (adhesives and sealants, latex paints, rubber articles, defoaming agents, paper coatings, polyvinyl chloride emulsions in food-related products, zinc-silicone dioxide matrix coatings in reusable bulk food storage containers, and water-based gasketing compounds for food applications, photographic developing solutions, cements in food can ends and seams, feathers); working fluids and process chemicals in the textile industry; pulp and paper mill solutions and products; leather tannery solutions and products; and, marine anti-fouling agents.

Pentachlorophenol is also used as a disinfectant in mushroom houses and a mildewicide in a variety of construction materials.

As a mossicide, pentachlorophenol is used to control moss on lawns and roofs.

Pentachlorophenol is registered as a defoliant aid in seed crop harvesting of alfalfa, clover, birds foot trefoil, and lespedeza.

A brief summary of the projected economic impact for each use is provided below. A more detailed discussion of the economic impacts is found in the PD 2/3.

1. Herbicidal uses: There are numerous, less costly alternatives whose efficacy is equal to or greater than penta. The Agency does not expect the cancellation of these uses to cause significant economic impact.

2. Antimicrobial Uses:

a. *Oil well water and pulp/paper mill solutions.* Pentachlorophenol is used to control microorganism growth in oil well water and pulp/paper mill solutions. While there are no data to quantitatively estimate the benefits associated with these uses, data indicate that pentachlorophenol is effective against fungi and some of the available alternatives have disadvantages such as foaming and corrosion of surfaces.

b. *Evaporative condensors, air washers, and cooling towers.* The Agency believes the economic impacts of cancellation of these uses to be small, based on low usage and availability of alternatives.

c. *Adhesives, sealants, and canning cements.* Alternatives are available for these uses and the economic impact of cancellation will not be significant.

d. *Gaskets.* While there are no viable alternatives, the economic impact of cancellation will not be significant because of low usage.

(e) *Photographic developing solutions.* While there are no alternatives for this use, aside from improved housekeeping practices, the economic impact is not expected to be significant because of low usage.

f. *Other uses including latex paints/rubber, defoaming agents, paper coatings, polyvinyl chloride emulsions, zinc-silicone dioxide coatings, and feathers.* The Agency believes that cancellation of these uses will not result in significant economic impacts based on the low usage and the cost differences between available alternatives and pentachlorophenol.

g. *Textile/cordage.* There are numerous alternatives for these uses and data indicate that usage has dropped between 1978 and 1981. The Agency does not believe that cancellation will result in a significant economic impact.

h. *Leather tannery.* There are numerous alternatives for these uses and data indicate that usage has dropped over the years. The Agency does not believe that cancellation will result in a significant economic impact.

i. *Marine caulking/paints.* Alternatives exist for these uses and the Agency does not believe that cancellation will result in a significant economic impact.

3. Disinfectant uses:

a. *Mushroom houses.* Alternatives exist for this use and, despite its usage by approximately one third of the mushroom industry, cancellation is expected to have a minor impact, relative to the value of the affected produce.

b. *Construction materials.* The Agency has no data indicating that pentachlorophenol is still used in these materials. The Agency believes that any economic impact will not be significant.

4. Mossicide Uses:

a. *Roofs.* Few alternatives are available for this use. Significant local impacts from cancellation may occur; these impacts will probably be confined to the northwestern States.

b. *Lawns.* Few alternatives are available for this use. Significant local impacts from cancellation may occur and should be confined to the northwestern States.

5. Defoliant uses: Alternatives for these uses are available and the impact of cancellation will not be significant.

C. Determination of Unreasonable Adverse Effects

Based on the determinations summarized above and discussed in greater detail in the PD 2/3, the Agency is proposing to initiate the following regulatory actions and this document shall constitute its notice of intent regarding these actions.

The Agency has determined that the risk arising from all uses, except the oil well water injection and pulp/paper mill uses, are greater than the social, economic, and environmental benefits arising from these uses and that the registrations of these uses should be cancelled and applications for these uses should be denied. The use of pentachlorophenol as mossicide on lawns and roofs may result in a significant economic impact in the northwestern States of Washington and Oregon. However, the estimated oncogenic risks associated with this use range from 10^{-3} to 10^{-4} for 15 ppm and 1 ppm HxCCD, respectively. The MOS values for fetotoxic effects range from .39 to 3.3 for 15 ppm HxCDD and 5.9 to 50 for 1 ppm, respectively.

The Agency has determined that the risks associated with the oil well water and pulp/paper mill uses do not outweigh the social, economic, and environmental benefits provided impermeable gloves are worn during the handling of pentachlorophenol; eating, drinking, and smoking is prohibited during application; and the level of HxCCD is reduced to 1 ppm.

D. Proposed Regulatory Actions

Based on the determinations summarized above and discussed in greater detail in the PD 2/3, the Agency has determined that most uses of pesticide products containing pentachlorophenol do not meet the statutory standard for registration under FIFRA and that there are no modifications of the terms and conditions of registration which could bring these products into compliance with the statute. Accordingly, EPA proposes to take the following regulatory actions necessary to eliminate environmental exposure to pentachlorophenol products.

1. *Federally registered pesticide products.* Unless comment on this Notice convinces the Agency otherwise, EPA proposes to continue the registrations of pentachlorophenol products registered for use in oil well water and pulp/paper mills but amend the terms and conditions of the registration to require that impermeable gloves be worn during the handling of pentachlorophenol and that the HxCDD content be required to be reduced from 15 ppm to 1 ppm. Labels of pentachlorophenol products registered for the two uses mentioned above would be modified to include the following statement:

Applicators must wear gloves impervious to pentachlorophenol (e.g., polyvinyl acetate (PVA), polyvinyl choride (PVC), neoprene, NBR (Buna-N), and nitrile) in all situations where dermal contact is expected.

Additionally, EPA proposes to cancel the registration of each Federally registered pesticide product for non-wood preservative uses of the active ingredient pentachlorophenol whether registered under FIFRA sec. 3 or sec. 24(c).

1. Heribicidal uses:
a. Greenhouses.
b. Ornamental lawns and edging.
c. Rights-of-way.
d. Commercial and industrial non-crop areas.
e. Domestic dwellings.
f. Public facilities.
g. Golf courses and sand traps.
h. Wasteland and aquatic areas.

2. Antimicrobial uses:
a. Evaporative condensors, air washers, cooling towers.
b. Adhesives, sealants, and canning cements.
c. Gaskets.
d. Photographic solutions.
e. Other uses including latex paints/rubber, defoaming agents, paper coatings, polyvinyl chloride emulsions, zinc-silicone dioxide coatings, and feathers.
f. Textiles/cordage.
g. Leather tannery.
h. Marine caulking/paints.
3. Disinfectant uses:
a. Mushroom houses.
b. Construction materials.
4. Mossicide uses:
a. Roofs.
b. Lawns.
5. Defoliants.

2. *"Intrastate" pesticide products.* Using the procedures described in Unit IV.B of this Notice, EPA will require producers of "intrastate" products containing pentachlorophenol to submit applications for Federal registration of their pesticide products. If a timely application is not received, EPA will treat the producer's previously submitted Notice of Intent to Apply as an application. Unless comment on this Notice convinces the Agency otherwise, EPA proposes to deny all such applications.

3. *Existing stocks.* Under the authority of FIFRA section 6(a)(1) and (b), EPA proposes to establish certain limitations on the sale, distribution, and use of existing stocks of pentachlorophenol products subject to any final cancellation Notice. EPA proposes to define the term "existing stocks" to mean any quantity of pentachlorophenol product in the United States on the date of the Agency's final Notice of Intent to Cancel that has been formulated, packaged, and labeled and that either is being held for shipment or release or has been shipped or released into commerce.

EPA proposes to allow the sale and distribution of those existing stocks of pentachlorophenol products for up to 1 year after publication of the Agency's final Notice of Intent to Cancel in the **Federal Register**. Further, EPA proposes to allow use of existing stocks for up to 2 years following the date of publication of the Agency's final Notice of Intent to Cancel in the **Federal Register**. In order to implement this proposed requirement, EPA may also require registrants to relabel existing stocks in their possession to indicate the time limitations on distribution, sale, and use. In addition, EPA may also require registrants to contact commercial distributors of pentachlorophenol products, to inform them of the time limitations on distribution, sale, and use, and to provide supplemental labeling reflecting the time limitations for existing stocks in the possession of the commercial distributors.

Following expiration of the time limitations on distribution, sale, or use of existing stocks, disposal of existing stocks would be in accordance with the requirements of the Resources Conservation and Recovery Act.

IV. Procedural Matters

This Notice announces the Agency's proposal to prohibit use of pentachlorophenol by cancelling all Federally registered uses and by denying all applications for Federally registered use of intrastate products, except the oil well water and the pulp/paper mill uses. This unit of the Notice describes the procedures for referral of this Notice to the Secretary of Agriculture and the Scientific Advisory Panel for review as required by FIFRA sections 6(b) and 25(d). In addition, this unit describes the procedures EPA will follow to implement its regulatory decision for intreatate pesticide products once a final decision is issued.

Finally, under sections 6(b)(1) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected parties would be able to request a hearing on any cancellation and denial actions that the Agency finally initiates. Unless a hearing is properly requested with regard to a particular registration or application, the registration would be cancelled or the application denied. This unit of the Notice also explains how such persons will be able to request a hearing in the event that EPA issues a final cancellation and denial Notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

A. Referral to the Secretary of Agriculture and the Scientific Advisory Panel

As required by FIFRA secs. 6(b) and 25(d), EPA has transmitted copies of this Notice, together with the supporting PD 2/3, to the Secretary of Agriculture and the Scientific Advisory Panel. (See Unit II.)

If either the Secretary or the Panel comments in writing on EPA's proposed action within 30 days of receipt of the proposal, EPA must issue the comments and EPA's responses with the final Notice of Intent to Cancel for publication in the **Federal Register**. Moreover, unless the time constraints are waived or modified, the Agency may not issue the final Notice of Intent to Cancel sooner than 60 days after sending this Notice to the Secretary and the Panel. If neither the Secretary nor the Panel comments within the 30 days, however, EPA could issue its final Notice of Intent to Cancel at the end of the 30-day comment period.

B. Intrastate Products

Historically, the registration requirements imposed on intrastate products have differed from the requirements for products distributed in interstate commerce. As described below, these differences dictate that the Agency use special procedures for bringing intrastate products into conformity with the final regulatory decisions reached in this Special Review.

Prior to 1972, pesticides produced and distributed solely in intrastate commerce were not subject to registration or any other requirements of FIFRA. The 1972 amendment to FIFRA for the first time made it a violation of Federal law to sell or distribute unregistered intrastate pesticide products. EPA issued registration regulations (40 CFR Part 162) implementing the 1972 amendments which, among other things, required immediate registration of all intrastate products unless the products were currently registered by a State and the producer submitted a notice of application for Federal registration to the Agency. 40 CFR 162.17. Under this regulation, notices of application were filed for numerous pentachlorophenol products which are now being considered in this Special Review proceeding. The regulation further provided that, before taking any enforcement action against any unregistered intrastate product complying with 40 CFR 162.17, the agency would notify the producer of the product that he was required to submit a complete application for Federal registration, and the Agency would review and rule on the application.

Accordingly, in order to bring these intrastate products into conformity with the Agency's final regulatory decision, EPA hereby notifies the producers of all potentially affected intrastate pentachlorophenol products that they are required to submit a complete application for Federal registration. The Agency has decided to require that these applications must be submitted within 60 days of the date on which this Notice is published in the **Federal Register** or the date on which the intrastate producer receives a copy of this Notice, whichever is later. If an intrastate producer fails to submit a

economic impact.

50 for 7 ppm, respectively.

h. Wasteland and aquatic areas.

registrants to contact commercial

not issue the final Notice of Intent to

intrastate producer fails to submit a

timely application, EPA will consider his Notice of Intent to Apply as an application for Federal registration for purposes of the review described below.

In addition, for purposes of FIFRA Section 3(c)(6), this Notice also constitutes a Notice of Intent to Deny applications of most non-wood preservative uses of pentachlorophenol, submitted pursuant to 40 CFR 162.17. The statute provides applicants with a 30-day period in which to correct the application to make it acceptable for registration. EPA, however, has proposed a determination that there are no changes in the terms and conditions of most non-wood preservative uses of pentachlorophenol products that would make pentachlorophenol products acceptable for registration. Intrastate producers may, if they choose, submit applications for registration with additional terms and conditions on use that they feel would satisfy the statutory standards for registration. If EPA issues a final notice of intent to cancel registrations for most non-wood uses of pentachlorophenol, it will also issue a final notice denying applications pursuant to 40 CFR 162.17.

EPA will review all applications submitted. If EPA decides, based on comments received on this Notice, to issue a final notice allowing continued use of most non-wood preservative uses of pentachlorophenol under some circumstances, EPA will notify intrastate producers of that decision and allow them at least 30 days in which to make changes that would allow EPA to approve the application. If the application has not been corrected within the period allowed so that EPA would approve it, the application may be denied. On the other hand, if, after reviewing the comments on this Notice, EPA decides that it is still necessary to cancel most registered uses of the non-wood preservative uses of pentachlorophenol, the Agency will issue a final Notice of Denial for all applications for Federally registered non-wood preservative uses of intrastate pesticide products containing pentachlorophenol.

Under FIFRA section 3(c)(6), the issuance of a denial entitles an applicant, or other interested person with the concurrence of the applicant, to request an adjudicatory hearing to challenge the denial decision. The procedures for requesting a hearing and the consequences of not filing a request are discussed below in Unit IV.C.

Concurrent with publication of this Notice, EPA will send a letter, together with a copy of this Notice, to the producers of all potentially affected intrastate pesticides. This letter will announce that EPA has issued its Preliminary Notice of Determination and that the public may comment on the Agency's proposed regulatory position regarding the registrability of various non-wood preservative uses of pentachlorophenol. This letter will also describe the procedures that the Agency will follow in assuring that all sale and distribution of intrastate products will comply with the terms of the final decision on the non-wood preservative uses of pentachlorophenol. Specifically, the letter will inform intrastate producers that they are required to file applications for Federal registration of their products within 60 days of receipt of the Agency's letter or within 60 days of publication of this Notice in the **Federal Register**, whichever is later. Finally, the letter will explain other rights and obligations of intrastate producers under FIFRA, the registration regulations, and the procedures described in this Notice.

C. Procedures for Requesting a Cancellation or Denial Hearing

Registrants, applicants, and other parties who would be adversely affected by any decision to cancel or deny applications for the registration for the non-wood preservative uses of pentachlorophenol would be entitled to request a hearing in which to contest EPA's final decision to cancel registrations and deny applications. Under FIFRA, they must submit their requests for a hearing within 30 days either of receipt of the final Notice of Intent to Cancel or Notice of Denial or of its publication in the **Federal Register**, whichever is later. In addition, a hearing request would have to contain certain information concerning the basis of the request, as EPA will explain in detail in any final Notice of Intent to Cancel or Notice of Denial. If a timely, properly formulated hearing request is submitted, the product registrations which are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product would be cancelled, or in the case of intrastate products, the application would be finally denied by operation of law 30 days after the final Notice of Intent to Cancel or Notice of Denial was issued. A final cancellation or denial would have the effect of prohibiting further sale and distribution, except as specified in the existing stocks provisions of the Notice.

It should be noted that registrants and applicants are not required to request a hearing at this time in order to be allowed to continue to sell and distribute their products.

Dated: November 20, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-31988 Filed 12-11-84; 8:45 am]

BILLING CODE 6560-50-M

[PP1G2539/T468; FRL-2732-5]

Methoprene; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the insect growth regulator methoprene in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire September 21, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of November 17, 1982 (47 FR 51790) stating that temporary tolerances had been established for residues of the insect growth regulator methoprene (isopropyl (*E,E*)-11-methoxy-3, 7,11-trimethyl-2,4 dodecadienoate in or on the raw agricultural commodities almonds, cashews, chestnuts, cocoa beans, coffee beans, hazelnuts, macadamia nuts, pecans, walnuts, dried beans and dried peas at 10.0 parts per million (ppm) and would expire June 21, 1984. These tolerances were renewed in response to pesticide petition PP 1G2539 submitted by Zoecon Corporation, 975 California Ave., Palo Alto, CA 94304. A related food additive regulation [FAP 1H5312/R711] establishing temporary tolerances for the insect growth regulator in or on raisins, wheat flour, macaroni (wheat), rice cereal, rye cereal, barley cereal, wheat cereal, corn cereal, corn meal, grits, hominy, oat cereal, spices, dry dog food, dried apples, dried apricots, dried peaches, and dried prunes at 10.0 ppm appears elsewhere in this issue of the **Federal Register.**

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 20954-EUP-20, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Zoecon Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 21, 1986. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 345a(j)))

Dated: November 27, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-31987 Filed 12-11-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G3037/T472; FRL-2734-3]

Iprodione; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the fungicide iprodione, its isomer, and its metabolite in or on certain raw agricultural commodities. These temporary tolerances were requested by Rhone-Poulenc, Inc.

DATE: There temporary tolerances expired September 30, 1984.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1900).

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., Agrochemical Division, P.O. Box 125 Monmouth Junction, NJ 08852, has requested in pesticide petition PP 4G3037 the establishment of temporary tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethy l)-2,4-dioxo-1-imidazolidine-carboxamide], its isomer [3-(1-methylethy l)-*N*-3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], in or on the raw agricultural commodities peanuts at 0.1 part million (ppm), peanut forage and haw at 150 ppm, and peanut hulls at 7.0 ppm; and for the combined residues of iprodione and its non-hydroxylated metabolites in or on the raw agricultural commodities meat, fat, and meat byproducts (excluding liver and kidney) of cattle, hogs, goats, horses, and sheep at 0.6 ppm, kidney of cattle, hogs, goats, horses, and sheep at 3.0 ppm, liver of cattle, hogs, goats, horses, and sheep at 2.0 ppm, meat, fat, and meat byproducts of poultry at 0.05 ppm, and eggs at 0.01 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 359-EUP-66, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expired September 30, 1984. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocations is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirments of section 3 of Executive Order 12291.

Pursuant to the requireemnts of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: November 14, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-32088 Filed 12-11-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100016; FRL-2733-5]

Battelle Columbus Laboratories; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Battelle Columbus Laboratories, 505 King Avenue, Columbus, OH 43201, under Contract No. 68-03-3229. This contractor shall perform services for the Office of Pesticide Programs (OPP) of EPA. Some of the information that will be made available to the contractor has been claimed to be confidential business information (CBI). Information will be transferred to the contractor consistent with the requirements of 40 CFR 2.301(h). This action will enable the contractor to fulfill the obligations of the contract, and this notice serves to notify affected persons.

DATE: Columbus Battelle Laboratories will be given access to these documents no sooner than December 17, 1984.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

SUPPLEMENTARY INFORMATION: Under this contract, Battlelle Columbus Laboratories shall review and evaluate reports in assessment of hazards posed by chemical pollutants in support of EPA's regulatory programs.

Section 10(e) of FIFRA provides that information that is considered by the submitter to be trade secret or commercial or financial as described by FIFRA section 10(d) may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA sections 3, 6, and 7.

Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the contract with Battelle Columbus Laboratories.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential business information, whether such disclosure is made by an EPA employee or an EPA contractor.

The contract with Battelle Columbus Laboratories, specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and pesonnel of this contractor will be required to sign a nondisclosure agreement before thay are permitted access to such information.

Dated: November 29, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-32086 Filed 12-11-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100015; FRL-2733-6]

Versar, Inc., and Arthur D. Little, Inc.; Transfer of Data to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Versar, Inc., 6850 Versar Center, P.O. Box 1549, Springfield, VA 22151, under Contract No. 68-01-6740 and to Arthur D. Little, Inc., Acorn Park, Cambridge, MA 02140, under Contract No. 68-01-6951. These contractors shall perform services for the Office of Pesticide Programs (OPP) of EPA. Some of the information that will be made available to the contractors has been claimed to be confidential business information (CBI). Information will be transferred to the contractors consistent with the requirements of 40 CFR 2.301(h). These actions will enable the contractors to fulfill the obligations of the contracts, and this notice serves to notify affected persons.

DATE: Versar, Inc., and Arthur D. Little, Inc., will be given access to these documents no sooner than December 17, 1984.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia (703-557-2613).

SUPPLEMENTARY INFORMATION: Under this contract, Versar, Inc., and Arthur D. Little, Inc., shall organize, inventory, and analyze pesticide information in support of EPA's regulatory programs.

Section 10(e) of FIFRA provides that information that is considered by the submitter to be trade secret or commercial or financial as described by FIFRA section 10(d) may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA sections 3, 6, and 7. Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the contracts with Versar, Inc., and Arthur D. Little, Inc.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an EPA employee or an EPA contractor.

The contracts with Versar, Inc., and Arthur C. Little, Inc., specifically prohibit disclosure of confidential business information to any third party in any form without written authorization from EPA, and personnel of these contractors will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: November 29, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-32085 Filed 12-11-84; 8:45 am]

BILLING CODE 6560-50-M

[PF-396; FRL-2731-6]

Pesticide Tolerance Petitions; Certain Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, food and feed additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-396] and the petition number, attention Product Manager (PM-21), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, (PM-21), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and food/feed additive petitions (FAP) relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 4F3150.* Rhone Poulenc Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes to amend 40 CFR 180.399 by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the commodities as follows:

Commodities	Parts per million (ppm)
Beans, dry	2.0
Beans, forage	30.0
Beans, hay	80.0
Beans, succulent	5.0

The proposed analytical method for determining residues is gas liquid chromatography with electron capture detection.

2. *FAP 4H5440.* Rhone Poulenc, Inc. Proposes amending 21 CFR Parts 193 (food commodity), and 561 (feed commodity), by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the commodities as follows:

Petition ID	CFR affected	Commodities	Parts per million (ppm)
FAP 4H5440	21 CFR Part 193	Oil, crude (of peanut fractions)	1.0
FAP 4H5440	21 CFR Part 561	Soapstock (of peanut fractions)	10.0

3. *PP 4F3129.* Rhone Poulenc Inc. Proposes amending 40 CFR 180.399 by establishing tolerances for the combined residues of the fungicide iprodione and its metabolites in or on the commodities as follows:

a. Iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichloro-phenyl)-2,4-dioxo-1-imidazolidinecarboximide], in or on peanuts at 0.5 ppm, peanut forage and hay at 150 ppm, and peanut hulls at 7.0 ppm.

b. Iprodione 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide and its non-hydroxylated metabolites (expressed as Iprodione equivalents) in or on the following:

Commodities	Parts per million (ppm)
Eggs	0.01
Kidney of cattle, goats, hogs, horses and sheep	0.10
Liver of cattle, goats, hogs, horses, and sheep	2.0
Meat, fat, and meat byproducts (mbyp) (excluding liver and kidney) of cattle, goats, hogs, horses, and sheep	0.5
Meat, fat, and mbyp of poultry	0.05

c. Iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide and its non-hydroxylated and hydroxylated metabolites (expressed as iprodione equivalents) in or on milk at 0.4 ppm.

The proposed analytical method for determining residues is gas liquid chromatography with electron capture detection.

4. *FAP 5H5449.* E.I. duPont de Nemours & Co., Wilmington, DE 19898. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the fungicide bis(4-fluorophenyl)methyl(1*H*-1,2,4-triazol-1-ylmethyl)silane in or on apple pomace at 1.5 ppm.

5. *FAP 5H5447.* E.I. duPont de Nemours & Co. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the above fungicide (FAP 5H5449) in or on peanut oil at 1.5 ppm.

(Sec. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)), 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: November 28, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-32284 Filed 12-11-84; 8:45 am]

BILLING CODE 6560-50-M

[PF-397; FRL-2731-8]

Pesticide Tolerance Petitions; Certain Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: By mail, submit comments indentified by the document control number [PF-397] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FIFRA sections 3, 6, and 7.

(TS–757C), Office of Pesticide

certain agricultural commodities.

on the commodities as follows:

establishing a regulation permitting

20460.

In person, bring comments to:
Information Services Section (TS–757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays

FOR FURTHER INFORMATION CONTACT:
By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location and telephone No.	Address
PM-12, Jay Ellenberger	Rm. 202, CM#2 (703–557–2386).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM-15, William Miller	Rm. 211, CM#2 (703–557–2600).	Do.
PM-23, Richard Mountfort	Rm. 247, CM#2 (703–557–1830).	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filing

PP 5F3162 & *PP 5F3163.* FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.254 by establishing tolerances for the combined residues of the insecticide carbofuran (2, 3-dihydro-2,2-dimethyl-7-benzofuranyl-*n*-methylcarbamate);its carbamate cholinesterase-inhibiting metabolites (2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*n*-methyl carbamate; 2,3-dihydro-2,2-dimethyl-3-keto-7-benzofuranyl-*n*-methylcarbamate) and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranol; 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofurandiol and 2,3 dihydro-2,2-dimethyl-3,7-benzofurandiol benzofruandiol) in or on the raw agricultural commodities as follows:

Petition ID	Commodities	Parts per million (ppm)
PP 5F3162	Sorghum fodder (of which no more than 1.0 ppm is carbamates).	[illegible]
PP 5F3162	Sorghum grain (of which no more than 0.1 ppm is carbamates).	[illegible]
PP 5F3163	Alfalfa green (of which no more than 5 ppm are carbamates).	10.0
	Alfalfa hay (of which no more than 20 ppm are carbamates).	40.0
	Kidney and liver of cattle, goats, hogs, horses, and sheep: (of which no more than .02 ppm is carbamates).	.05
	Meat, fat and meat byproducts (mbyp) (except liver and kidney) of cattle, goats, hogs, horses, and sheep (of which no more than .02 ppm is carbamates).	[illegible]
	Milk (of which no more) than .02 ppm is carbamates.	0.1

The proposed analytical method for determining residues is gas chromatography with a nitrogen-phosphorus flame ionization detector. (PM-12).

II. Amended Petitions

1. *PP 3F2958.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419. EPA issued a notice published in the **Federal Register** of September 30, 1983 (48 FR 44903) which announced that Ciba Geigy Corp., had submitted pesticide petition 3F2958 to the Agency proposing to amend 40 CFR 180.368 by establishing tolerances for the combined residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide] and its metabolites determined as 2-[(2-ethyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent metolachlor in or on the commodities almond hulls at 0.3 ppm; almond shells at 0.1 ppm; and nutmeats at 0.1 ppm.

Ciba-Geigy has amended the petition by increasing the tolerance level for almond hulls from 0.3 ppm to 0.5 ppm, deleting almond shells, and changing the commodity expression "nutmeats" to "tree nuts" at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-23).

2. *PP OF2356.* Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120. EPA issued a notice published in the **Federal Register** of July 9, 1980 (45 FR 46201) which announced that: Mobay Chemical Corp., has submitted pesticide petition OF2356 to the Agency proposing to amend 40 CFR 180.320 by establishing a tolerance for the insecticide/bird repellent 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the agricultural commodity grapes at 10 ppm.

The petition was amended in a notice published in the **Federal Register** of December 1, 1982 (47 FR 54159) by increasing the proposed tolerance level on grapes from 10 to 50 ppm, adding the commodities milk at 0.5 ppm, and cattle (fat, meat, and mbyp) at 0.1 ppm.

Mobay Chemical Corp., has further amended the petition by proposing tolerances for fat, meat, and mbyp of poultry, and eggs at .02 ppm; and fat, meat, and mbyp of goats, hogs, horses and sheep at 0.1 ppm.

The proposed analytical method for determining residues is gas chromatographic procedure equipped with a flame photometric detector operating in the sulfur-mode. (PM-16).

(Sec. 408(d)(2) 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: November 20, 1984.

Douglas D. Campt,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–32265 Filed 12–11–84; 8:45 am]
BILLING CODE 6560–50–M

[OPP–180661; FRL–2731–5]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the four States listed below and the U.S. Department of Agriculture during the period of October 18, 1984 to November 6, 1984. Also listed are three crisis exemptions initiated by the U.S. Department of Agriculture. These exemptions are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT:
See each specific and crisis exemption for the name of the contact person. The following information applies to all contact people.

By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of triadimefon on tomatoes to control powdery mildew; October 18, 1984 to January 31, 1985. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of sethoxydim on dry bulb onions to control grassy weeds; October 26, 1984 to March 15, 1985. (Gene Asbury)

3. Connecticut Department of Environmental Protection for the use of methiocarb on wine grapes to control depredating birds; October 18, 1984 to November 30, 1984. (Gene Asbury)

4. Florida Department of Agriculture and Consumer Services for the use of permethrin on watercress to control diamondback moths; October 18, 1984 to September 1, 1985. Florida had initiated a crisis exemption for this use. (Jim Tompkins)

5. Florida Department of Agriculture and Consumer Services for the use of anilazine on watercress to control leaf spot caused by *Cercospora nasturitii;* October 18, 1984 to August 31, 1985. (Libby Welch)

6. Oklahoma Department of Agriculture for the use permethrin on greens (kale, mustard, collards, and turnips) to control cabbage loopers; October 18, 1984 to October 31, 1984. (Jack E. Housenger)

7. U.S. Department of Agriculture for the use of calcium cyanide on bee colonies (domesticated) to eradicate the acarine mite throughout the U.S.; November 6, 1984 November 5, 1985. USDA had initiated a crisis exemption for this use. (Jack E. Housenger)

Crisis exemptions were initiated by the:

1. U.S. Department of Agriculture on October 10, 1984, for the use of sodium hypochlorite on citrus (in packing houses) to eradicate the citrus canker in Florida. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this progarm is expected to last for 1 year. (Jack E. Housenger)

2. U.S. Department of Agriculture on October 16, 1984, for the use of certain quaternary ammonium compounds on equipment and clothing to eradicate the citrus canker in Florida. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected last for 1 year. (Jack E. Housenger)

3. U.S. Department of Agriculture for the use of calcium cyanide on bee colonies to eradicate the acarine mite in Nebraska and South Dakota. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this progam is expected to last for 1 year. (Jack E. Housenger)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: November 28, 1984.

Steven Schatzow,
Director, Office of Pesticide Programs.

[FR Doc. 84–32286 Filed 12–11–84; 8:45 am]
BILLING CODE 6560–50–M

[OPP–50616; PH–FRL 2735–1]

Issuance of Experimental Use Permits; Elanco Products Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:
By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471–EUP–88. Issuance. Elanco Products Company, 740 South Alabama St., Indianapolis IN 46285. This experimental use permit allows the use of 100 pounds of the herbicide alpha-[1-methylethyl)alpha-[4-(trifluoromethoxy)phyenl]-5-pyrimidinemethanol on non-crop areas to evaluate the control of various weedy plants. A total of 67 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from March 14, 1984 to March 14, 1986. (Robert Taylor, PM 25, Rm. 245, CM#2, (557–1800))

8730–EUP–13. Extension. Health-Chem Corporation, 1107 Broadway, New York, NY 10010. This experimental use permit allows the use of 4.4 pounds of the biological insecticide 9-dodecenyl acetate in or on forests and residential areas to evaluate the control of the adult western pineshoot borer. A total of 250 acres are involved; the program is authorized only in the States of Idaho and Montana. The experimental use permit is effective from April 22, 1984 to April 22, 1985. (Timothy Gardner, PM 12, Rm. 207, CM#2 (703–557–2690))

10182–EUP–35. Issuance. ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. This experimental use permit allows the use of 1,305 pounds of the herbicide butyl (*RS*)-2-[4-[[5-trifluoromethyl)-2-pyridinyl]oxy] phenoxy]propanoate on cotton and soybeans to evaluate the postemergence control of annual and perennial grasses. A total of 3,300 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from March 30, 1984 to March 31, 1985. This permit is issued with the limitation that the permittee will oversee the destruction of all treated crops and the date and method of corp destruction will be on each report at the conclusion of each test. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

50534–EUP–22. Extension. SDS Biotech Corporation, 7528 Auburn Road, P.O. Box 348, Painesville, OH 44077. This experimental use permit allows the use of 6,255 pounds of the fungicide chlorothalonil on apples to evaluate the control of apple scab. A total of 700 acres are involved; the program is

authorized only in the States of Illinois, Indiana, Kentucky, Michigan, Maine, Massachusetts, Missouri, New York, North Carolina, Ohio, Pennsylvania, Virginia, Washington, and Wisconsin. The experimental use permit is effective from April 4, 1984 to May 31, 1984. A temporary tolerance for residues of the active ingredient in or on apples has been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900))

7182–EUP–22. Renewal. 3M Company, 3M Center, Building 232–GSE–04, St. Paul, MN 55144. This experimental use permit allows the use of 765 pounds of the plant growth regulator mefluidide on pasturegrasses to evaluate its effect on pasture quality. A total of 3,060 acres are involved; the program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, Ohio, Pennsylvania, Tennessee, and Virginia. The permit was previously effective from August 2, 1982 to August 6, 1983. The permit is now effective from March 14, 1984 to August 31, 1984. Temporary tolerances for residues of the active ingredient in or on pasturegrasses; pasturegrass hay; milk; meat of cattle, sheep, goats, and horses; fat of cattle, goats, and horses; and meat byproducts of cattle, sheep, goats, and horses have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1900))

264–EUP–62. Extension. Union Carbide Agricultural Products Company, Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 4,868 pounds of the plant growth regulator ethephon on wheat and barley to evaluate the control of lodging. A total of 9,724 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. The experimental use permit is affective from April 20, 1984 to April 21, 1985. Temporary tolerances for residues of the active ingredient in or on barley grain, barley straw, wheat grain, and wheat straw have been established. Food and feed additive regulations for residues of the active ingredient in or on barley and wheat milling fractions (except flour) have been established (21 CFR 193.186 and 561.225). (Robert Taylor, PM 25, Rm. 253 CM#2, (703–557–1800))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: November 20, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–32351 Filed 12–11–84; 8:45 am]

BILLING CODE 6560–40–M

[PP 4G3039/T471; FRL–2734–7]

Plant Growth Regulator Lactic Acid; Establishment of Exemptions From the Requirement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established exemptions from the requirement of tolerances for residues of the plant growth regulator lactic acid in or on certain agricultural commodities.

DATE: These temporary exemptions from the requirement of tolerances expire October 11, 1985.

FOR FURTHER INFORMATION CONTACT:
By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.
Office location and telephone number:
Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1800).

SUPPLEMENTARY INFORMATION: Brea Agricultural Services, Inc., Drawer I, Stockton, CA 95201, has requested in pesticide petition PP 4G3039 the establishment of exemptions from the requirement of tolerances for residues of the plant growth regulator lactic acid in or on the raw agricultural commodities grapes, citrus, tomatoes, alfalfa, almonds, cherries, prunes, apples, peaches, nectarines, beans (green and dry), corn (sweet and field), onions, pepper, potatoes, strawberries, sugar beets, cucumbers, squash, melons, barley, and wheat.

These temporary exemptions from the requirement of tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 9018–EUP–1 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemptions from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirement of tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Brea Agricultural Services, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records or production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary exemptions from the requirement of tolerances expire October 11, 1985. Residues remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemptions from the requirement of tolerances. These temporary exemptions from the requirement of tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: December 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–32352 Filed 12–11–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59174B; TSH–FRL 2735–2]

Approval of Test Marketing Exemptions; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–4. The test marketing conditions are described below.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT:
James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–613C, 401 M Street, SW., Washington, DC. 20460 (202–382–3374).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–85–4. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–4. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME–85–4

Date of Receipt: October 25, 1984.

Notice of Receipt: November 2, 1984 (49 FR 44143).

Applicant: Morton Thiokol, Inc.

Chemical: (G) Sodium Salt of Sulfated Linear C_{9-11} Alcohol Ethoxylate.

Use: (G) Surfactant.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: 1–2 dermal.

Test Marketing Period: 120 days.

Commencing on: December 5, 1984.

Risk Assessment: No significant health concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health. EPA identified potential environmental concerns. However, estimated releases of the test market substance will be below levels of concern. Therefore, under these conditions the test market substance will not pose any unreasonable environmental risk.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 5, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84–32350 Filed 12–11–84; 8:45 am]

BILLING CODE 6560–50–M

[FRL No. 2734–8]

Pesticide Emergency Exemption Negotiated; Rulemaking Advisory Committee; Open Meetings

As required by the Federal Advisory Committee Act (Pub. L. 94–463), we are giving notice of two meetings of the Pesticide Emergency Exemption Negotiated Rulemaking Advisory Committee.

The meeting previously scheduled [See Federal Register of 14 November 1984] to be held on 18 December in Arlington, Virginia has been rescheduled to be held on December 17th and 18th in Washington, D.C.

The Committee will convene on the 17th, at 9:00 a.m. and meet until completion. The Committee will reconvene on the 18th, at 8:30 a.m. and meet until 3:30 p.m. This meeting will be held at the National Institute For Dispute Resolution, 1901 L Street NW. (Suite 600), Washington, D.C.

The Committee will meet again on January 15 and 16th. The meeting will start on January 15 at 1:00 p.m. and run until completion. The Committee will reconvene on Wednesday the 16th, at 8:30 a.m. and meet until 2:00 p.m. This meeting will be held in Conference Room 1112, Crystal Mall, Building #2, Arlington, Virginia.

The purpose of the meetings is to reach consensus on language to be used as the section 18 Pesticide Emergency Exemption Notice of Proposed Rulemaking.

If interested in attending, or in receiving more information, please contact Chris Kirtz at (202) 382–7565.

Milton Russell,

Assistant Administrator.

December 6, 1984.

[FR Doc. 84–32354 Filed 12–11–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 84–1112, et al., File Nos. BRH–781002 WR, et al.]

RKO General, Inc. et al.; Hearing Designation Order

In re Applications of:	
RKO General, Inc. (WAXY–FM), Fort Lauderdale, FL.	MM Docket No. 84–1112, file No. 781002WR.
For Renewal of License:	
Adwave Company: Fort Lauderdale, FL.	MM Docket No.84–1113 file No. BPH–830510AL.
South Jersey Radio, Inc., Fort Lauderdale, FL.	MM Docket No. 84–1114 file No. BPH–830511AK.

have been established (21 CFR 193.166

barley, and wheat.

statement to this effect was published in

Spanish Radio for South Florida, Inc., Fort Lauderdale, FL.	MM Docket No. 84–1115, file No. BPH–[illegible]AD.
Cozzin Communication Corporation, Fort Lauderdale, FL.	MM Docket No. 84–1116, file No. BPH–830512AW.
Minority Women in Broadcasting, Inc., Fort Lauderdale, FL.	MM Docket No. 84–1117, file No. BPH–[illegible]CI.
Rosemarie A. Reardon, d/b/a LAUDERSEA BROADCASTING COMPANY, Fort Lauderdale, FL.	MM Docket No. 84–1118, file No. BPH–830512CP.
First City Communications, Inc., Fort Lauderdale, FL.	MM Docket No. 84–1119, file No. BPH–830512CU.
Florida Southern Broadcasters, Limited Partnership, Fort Lauderdale, FL.	MM Docket No. 84–1120, file No. BPH–[illegible]DA.
Stephen E. Powell, Fort Lauderdale, FL.	MM Docket No. 84–1121, file No. BPH–[illegible]DC.

For Construction Permit.

Memorandum Opinion and Order

Adopted: November 8, 1984.
Released: December 6, 1984.

By the Commission.

1. The Commission has under consideration the license renewal application of RKO General, Inc. (RKO) for Station WAXY–FM, Fort Lauderdale, Florida[1] and the above-captioned mutually exclusive applications to operate on the same channel with identical facilities. In addition, we have before us motions for leave to amend and accompanying amendments filed by RKO[2] and South Jersey Radio, Inc. (South Jersey),[3] and related pleadings. In view of the matters already being considered in the KHJ–TV case, note 1 *supra*, and in view of the fact that those matters may have a bearing upon the ultimate resolution of this case, we believe that it would be premature to commence any consideration of either RKO's qualifications or the comparative elements of the applicants' proposals, pending the outcome of the KHJ–TV case. Accordingly, in the interest of managing and ordering our docket of adjudicatory proceedings so as to permit the most efficient and effective utilization of Commission resources, we direct the parties to deal first with any petitions to enlarge issues and/or basic qualifying issues that involve the mutually exclusive applicants (i.e., applicants other than RKO) who seek construction permits to operate on the channel(s) now held by RKO. Upon completion of all appropriate proceedings, including such evidentiary hearings as may be warranted, relating to these questions concerning the mutually exclusive applications for construction permits, the presiding Administrative Law Judge should so inform the Commission and await guidance from the Commission before setting the date for filing any proposed findings and conclusions or going forward with any further proceedings. In other cases involving multiple license owners, we have assigned all of the proceedings to single Administrative Law Judge for the purpose of considering the impact of common qualifications questions on each of the owner's stations, *e. g., Intercontinental Radio, Inc.*, 88 FCC 2d 819 (1981). Here, we have already made provision for consideration of the questions concerning RKO's overall qualifications by a single ALJ in the Los Angeles, California, KHJ–TV proceeding. Thus, the procedures used in cases such as *Intercontinental, supra*, are unnecessary for the instant proceeding. Indeed, the *Intercontinental* approach, if applied here, involving substantial numbers of comparative hearings and competing applicants presided over a single judge, will inevitably delay resolution of these matters. Instead, we believe that the interests of administraive efficiency will be better served by providing for assignment of a presiding Administrative Law Judge for this proceeding by the Chief Administrative Law Judge in accordance with his regular and ordinary rotational procedures.

2. *Adwave Company (Adwave) application.* In the event Adwave is awarded a grant in the instant case, the applicant's principals have agreed to divest themselves of all the stock owned in Raystay Company, TV Cable of Waynesboro, Inc. and West Shore Broadcasting Co. An appropriate condition will be specified.

3. On April 2, 1984 (four days after the "B" cut-off date), the applicant filed an amendment to its application without an accompanying Petition for Leave to Amend. Given the ministerial nature of this filing, the amendment will be accepted.

4. Applicants for new broadcast stations are required to give local notice of the filing of their applications in accordance with Section 73.3580 of the Commission's Rules. Adwave has published the required notice, but the notice is deficient in that: the notice was only published once a week for two weeks, the power is not given, and studio location is said "to be determined", despite the fact that the applicant has certified it will be using the current WAXY facility. To remedy this deficiency, the applicant must republish an amended local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 20 days of the release of this Order.

5. *The Spanish Radio for South Florida, Inc. (Spanish Radio) application.* The applicant's principals have agreed to divest all other interests in and connections with media of mass communication, including, but not limited to, Station WSUA, Miami, Florida, in the event of a grant here. An appropriate condition will be specified.

6. The Spanish Radio application indicates that a principal, Herbert M. Levin, is a defendant in a pending action. As we lack at this time sufficient information to asses the impact of the litigation on the applicant's qualifications to be a licensee, we will specify no issues or conditions. Spanish Radio should keep the presiding Administrative Law Judge informed of any changes in the status of the suit, though, and he in turn may take such action as he deems appropriate in light of this information.

7. *The COZZIN Communications Corporation (COOZIN) application.* For data not supplied in Sections V–B and V–G of Form 301, applicant has stated that such material is "On File in WAXY FCC File". However, there is no direct statement in the application that COZZIN intends to use the WAXY facility *as is*, without modification. An appropriate amendment is thus necessary to render the application complete.

8. *The Stephen E. Powell (Powell) application.* The Powell application was not complete when filed in that Powell's applications for other facilities now operated by RKO were not listed. Given the public nature of this information, no

[1] We have designated the license renewal application of RKO's Station KHJ–TV, Los Angeles, California, as the forum for inquiring into the impact of RKO's disqualification as the licensee of WNAC–TV, Boston, Massachusetts on its overall basic and comparative qualifications to remain a licensee elsewhere. See our Memorandum Opinion and Order adopted this same date, *RKO General, Inc. (WHBQ–TV)*, —— FCC 2d —— (1984), for a full discussion of this matter.

[2] Since "B" cut-off date (March 29, 1984), RKO has filed several petitions for leave to amend and accompanying amendments to its revewal application. The purpose of these amendments is to update information previously submitted to the Commission. We have reviewed the motions and amendments and find that in each case good cause exists for accepting the amendments for § 1.65 purposes only.

[3] For the reasons set forth in *RKO General, Inc. (WHBQ–TV), supra*, concerning a similar pleading filed by South Jersey, we will grant the motion and accept the amendment.

motive to conceal or misrepresent is apparent. Hence, we will specify no issues in this regard. Powell should amend its application here to reflect all pending proposals, however.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

11. It is further ordered, that the petitions for leave to amend filed by RKO General, Inc. are granted and the amendments accompanying those motions are accepted for the purposes of § 1.65 of the Commission's Rules.

12. It is further ordered, that in the event of a grant of the Adwave Company application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that the principals of Adwave have divested all stock ownership in Raystay Company, TV Cable of Waynesboro, Inc., and West Shore Broadcasting Company.

13. It is further ordered, that the late filed amendment submitted by the Adwave Company is accepted for the purposes of § 1.65 of the Commission's Rules.

14. It is further ordered, that Adwave shall comply with the local notice provision of § 73.3580 of the Commission's Rules and shall advise the presiding Administrative Law Judge within 20 days after this Order is released.

15. It is further ordered, that the motion for leave to amend filed by South Jersey Radio Inc. is granted and the accompanying amendment is accepted *nunc pro tunc.*

16. It is further ordered, that in the event of a grant of the Spanish Radio for New York, Inc. application, the construction permit shall be conditioned as follows:

Prior to the Commencement of operation of the station authorized herein, permittee shall certify to the Commission that the following have divested all other interests in and connections with media of mass communications: Julio Rumbaut, Norma Martinez de Arizala Levin, Sergin R. Fuentefria and Herbert Levin.

17. It is further ordered, that COZZIN Communication Corporation shall file the amendment specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

18. It is further ordered, that Stephen E. Powell shall file the amendment specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

19. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

20. It is further ordered, that the Initial Decision in this proceeding shall consider the findings in Docket No. 16679 (KHJ–TV) as to RKO's basic or comparative qualifications.

21. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

22. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 74.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

23. Finally, copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt Requested to the parties to this proceeding by the Secretary of the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–32378 Filed 12–11–84; 8:45 am]

[illegible]

[MM Docket Nos. 84–1085, et al.; File Nos. BRH–790801A3, et al.]

RKO General, et al.; Hearing Designation Order

In re Applications of:

RKO General, Inc. (WFYR–FM), Chicago, IL.	MM Docket No. 84–1085, file No. BRH–790801A3.
For Renewal of License:	
East Lake Communications, Inc., Chicago, IL.	MM Docket No. 84–1086, file No. BPH–830318AA.
Johnson Communications, Inc., Chicago, IL.	MM Docket No. 84–1087, file No. BPH–[illegible]AI.
Spanish Radio for Chicago, Inc., Chicago, IL.	MM Docket No. 84–1088, file No. BPH–830512AC.
Windy City Broadcasting, Ltd., Chicago, IL.	MM Docket No. 84–1089, file No. BPH–830512AG.
Systers Broadcasting Corporation, Chicago, IL.	MM Docket No. 84–1090, file No. BPH–830512AU.
First City Communications, Inc., Chicago, IL.	MM Docket No. 84–1091, file No. BPH–830512AX.
Stephen E. Powell, Chicago, IL.	MM Docket No. 84–1092, file No. BPH–830512AZ.
Lakefront FM Radio, Chicago, IL.	MM Docket No. 84–1093, file No. BPH–830512BH.
Cozzin Communications Corporation, Chicago, IL.	MM Docket No. 84–1094, file No. BPH–830512BK.
Donnie Simpson Enterprises, Inc., Chicago, IL.	MM Docket No. 84–1095, file No. BPH–[illegible]BM.
South Jersey Radio, Inc., Chicago, IL.	MM Docket No. 84–1096, file No. BPH–830512CA.
AJCR Radio, a Partnership, Chicago, IL.	MM Docket No. 84–1097, file No. BPH–830512CF.

For Construction Permit:

Erratum

Released December 4, 1984.

The Memorandum Opinion and Order in the above entitled proceeding (FCC 84–539, mimeo No. 35046) released on November 29, 1984 is corrected to show the adopted date as November 8, 1984. In addition the phrase "By the Commission" is added beneath the Adopted Date: caption.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–32377 Filed 12–11–84; 8:45 am]

[illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0103
Title: FEMA Nuclear Power Plant Alerting and Notification System: Public Telephone Survey
Abstract: FEMA with its technical support contractor, shall randomly telephone survey the residents within the Emergency Planning Zone of 55 nuclear power plants as stipulated in Appendix 3 of NUREG 0654/FEMA–REP–1, Rev. 1. From an approximate sample of 2,500 households, between 250 and 350 residences will be voluntarily surveyed.
Type of respondents: Individual or Households
Number of respondents: 16,775
Burden hours: 805

Copies of the above information collection clearance package can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley (202) 287–9906, Federal Plaza Center, 500 C. Street, SW., Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection package should be sent to Mike Weinstein, Desk Officer, OMB, Reports Management Branch, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: December 6, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84–32339 Filed 12–11–84; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–719–DR]

Colorado; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado (FEMA–719–DR), dated July 27, 1984, and related determinations.

DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0501.

NOTICE: The notice of a major disaster for the State of Colorado, dated July 27, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 27, 1984:

Eagle County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–32340 Filed 12–11–84; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010270–007.
Title: Gulf-European Freight Association.
Parties:
Atlantic Cargo Services, AB
Compagnie Generale Maritime
Hapag Lloyd AG
Intercontinental Transport (ICT) BV
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.

Synopsis: The proposed amendment would expand the geographic scope of the agreement to include the United Kingdom and Republic of Ireland trades. It would also revise the agreement to conform to the format, organization and content requirements of the Commission's rules and would revise the provisions of the agreement to mirror and read substantially identically to those of the North Europe-U.S. Gulf Freight Association Agreement (FMC No. 202–010656) covering the same essential trade in the westbound direction.

By Order of the Federal Maritime Commission.

Dated: December 6, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–32323 Filed 12–11–84; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000161–043.
Title: Gulf-United Kingdom Conference.
Parties:
Atlantic Cargo Service, AB
Compagnie Generale Maritime
Hapag Lloyd AG
Intercontential Transport (ICT) BV
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement sixty days after the Gulf-European Freight Association Agreement, FMC No. 202–010270–007 becomes effective. The parties have requested a shortened review period.

Agreement No.: 224–002813–003.
Title: San Francisco Terminal Agreement.
Parties:
The San Francisco Port Commission (Port)
California Stevedore & Ballast Co. (CS&B)

Synopsis: The purpose of the amendment is to extend the term of the agreement for an additional five years commencing on the effective date of the amendment. The compensation to the terminal operator will be modified by the payment of 10% of the wharfage and dockage generated and collected by the Port for operation of the wharfinger and marine terminal in an area at Pier 80, San Francisco.

Agreement No.: 224–004059–002.
Title: San Francisco Terminal Agreement.
Parties:
The San Francisco Port Commission (Port)
California Stevedore & Ballast Co. (CS&B)

Synopsis: The purpose of this amendment is to extend the term of the basic agreement until June 30, 1986, with all other existing terms and conditions remaining in force. The basic agreement provides for the operation by CS&B of an area within Pier 80, Shed D, in the Port of San Francisco, to be used as a container freight station and freight distribution station.

Agreement No.: 224–004128–001.
Title: San Francisco Terminal Agreement.
Parties:
The San Francisco Port Commission (Port)
Lykes Bros. Steamship Co., Inc. (Lykes)

Synopsis: Agreement No. 224–004128–001 extends the term of the basic agreement from its present expiration date of June 30, 1985 to December 31, 1986. It also increases revenue sharing from the Port to the users from 30% to 50% of all charges from users' dockage, wharfage, storage and demurrage. It also increased the minimum tonnage utilization from 200,000 to 275,000 metric revenue tons.

Agreement No.: 224–004159–001.
Title: San Francisco Terminal Agreement.
Parties:
San Francisco Port Commission (Port)
National Galleon Shipping Corporation (NGSC)
National Shipping Corporation of the Philippines (NSCP)

Synopsis: The purpose of this amendment is to effect an assignment of the basic agreement from NGSC to NSCP, subject to all existing provisions of the basic agreement, and concurred in by the Port. The basic agreement granted NGSC the non-exclusive right to use Piers 94 and 96 in San Francisco, for the handling of its vessels.

Agreement No.: 202–010636–002.
Title: U.S. Atlantic-North Europe Conference
Parties:
Atlantic Container Line (G.I.E.)
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would permit the parties to also exercise their right of independent action with respect to commodities exempted from the tariff filing requirements of section 8(a)(1) of the Shipping Act of 1984. The parties have requested a shortened review period.

Agreement No.: 224–010695.
Title: San Francisco Terminal Agreement.
Parties:
The San Francisco Port Commission (Port)
Nedlloyd Lines (Nedlloyd)

Synopsis: Agreement No. 224–010695 provides for the lease by the Port to Nedlloyd of premises within the Port of San Francisco. Nedlloyd agrees to utilize the Port as its published regularly scheduled Northern California port of call for its liner service. Nedlloyd shall pay to the Port 60% of all revenue from dockage and wharfage generated under the Agreement for Port facilities in lieu of 100%.

Agreement No.: 224–010696.
Title: Gulfport Marine Terminal Agreement.
Parties:
The Mississippi State Port Authority at Gulfport (Authority)
Hub City of Louisiana Terminals Inc. (HUB)

Synopsis: Agreement No. 224–010696 provides that HUB will lease from the Authority at Gulfport certain premises for the conduct of operations related to foreign and domestic trade including inland intermodal transportation between the Port of Gulfport and interior points throughout the United States and Canada. The primary term of the agreement will be for one year with options to extend the term for two renewal periods of one year each.

By Order of the Federal Maritime Commission.

Dated: December 6, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–32325 Filed 12–11–84; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations; McLendon Forwarding Co., Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name and address	Date revoked
1063	McLendon Forwarding Co., Inc., 15955 West Hardy, Suite 222, Houston, TX 77273.	Nov. 28, 1984.
2260	Containers Freight Forwarding Corp., 780 W. 20th Street, Hialeah, FL 33010.	Dec. 1, 1984.
1547	J.B. Fong & Co., Inc., dba J.B. Fong & Co., 838 Grant Avenue, San Francisco, CA 94108.	Dec. 1, 1984.
1236	Imperial Van Lines Inc. of California, 3565 Torrance Blvd., Torrance, CA 90503.	Dec. 1, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–32324 Filed 12–11–84; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Ocean Cruise Lines S.A.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 54): Ocean Cruise Lines, S.A. and OCEANIC ENDEAVOUR S.A. c/o Ocean Cruise Lines, 2 Executive Drive, Fort Lee, New Jersey 07024.

Dated: December 6, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–32326 Filed 12–11–84; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C.

Sewall H.E. Johnson, Disaster

mirror and read substantially identically

commencing on the effective date of the

Atlantic Container Line (G.I.E.)

licenses have been revoked by the

Maritime Commission, Washington, D.C.

20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010636–003.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line (G.I.E.)
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would permit Double Eagle Lines, Inc. to become a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 203–010698.

Title: Atlanttrafik Express Service Ltd/Rederiaktiebolaget Transocean Non-Compete Agreement.

Parties:

Atlanttrafik Express Service Ltd. (AES)
Rederiaktiebolaget Transocean (Transocean)

Synopsis: The proposed agreement would provide that, in connection with the acquisition of assets from Transocean by AES, AES will be protected against competition from the previous owners, Transocean, its subsidiaries, affiliates and associated companies, for a period of three years or until September 18, 1987. The agreement would be restricted to the trade between the U.S. Atlantic Coast and Australia and New Zealand.

Agreement No.: 213–010699.

Title: PAD Line Forest Products/Bulk/Parcel Cooperative Working Agreement.

Parties:

Pacific Australia Direct Line
Transpacific Bulk Marine Limited
Associated Container Transportation (Australia) Ltd.

Synopsis: The proposed agreement would permit the parties to discuss and agree upon scheduling of sailings to meet shipper requirements, and to cooperate to inform shippers of availability of space on vessels of the other parties and to arrange bookings in the trade between United States and Canadian West Coast ports and Australia (including intermediate ports but not in the U.S. domestic trade) and to or between inland points via such ports. It would also permit the parties to employ a common agent.

By Order of the Federal Maritime Commission.

Dated: December 7, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–32393 Filed 12–11–84; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Actof 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010697.

Title: The Japan-U.S. pooling Agreement.

Parties:

Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement would permit the parties to pool revenues from cargoes originating and terminating in the trade between ports on the U.S. Pacific Coast and Alaska and ports in Japan and inland points via such ports with the exception of bulk liquid cargo moving in deep tanks. The amount of revenue to be pooled shall not exceed $300.00 U.S. per TEU.

By Order of the Federal Maritime Commission.

Dated: December 7, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–32394 Filed 12–11–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fleet Financial Group, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact there are in dispute, summarizing the evidence that would be presented at hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to engage *de novo* through its subsidiary in providing data processing services within the limitations set forth in section 225.25(b)(7) of Regulation Y.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Compagnie Financiere de Suez*, Paris, France; to engage *de novo* through its subsidiary, Indosuez Investment Management Services, in acting as an advisory company for mortgage and real estate investment trusts; serving as an investment advisory, as defined in section 2(a)(20) of the Investment

Company Act of 1940, to investment companies registered under such act; providing portfolio investment advice to other persons; furnishing general economic and statistical forecasting services, and industry studies; providing financial advice to state and local governments, such as with respect to the issuance of their securities; and conducting such incidental activities as are necessary to carry out the activities specified above.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to engage *de novo* through its subsidiary, Corporate Funding, Inc., Detroit, Michigan, in leasing personal property or acting as agent, broker or advisor in leasing such property. This application is for expansion of the geographic scope of a previously approved activity to include the entire United States.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Delta Bancshares, Inc.*, Eudora, Arkansas; to engage *de novo* through its subsidiary, Eudora Insurance Agency, Inc., Eudora, Arkansas, in general insurance activities in a town with a population not exceeding 5,000. These activities will be conducted in Eudora and the surrounding areas.

Board of Governors of the Federal Reserve System, December 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–32330 Filed 12–11–84; 8:45 am]

BILLING CODE 6210–01–M

Grange National Banc. Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842)c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 1, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Grange National Banc. Corp.*, Laceyville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Grange National Bank of Wyoming County, Laceyville, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Minooka Bancorp, Inc.*, Minooka, Illinois; to become a bank holding company by acquiring 83.98 percent of the voting shares of Tri-County Bank of Minooka, Minooka, Illinois.

2. *Westbanco, Inc.*, Westville, Illinois; to acquire 45 percent of the voting shares of Minooka Bancorp, Inc., Minooka, Illinois, thereby indirectly acquiring Tri-County Bank of Minooka, Minooka, Illinois.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Tule Bancorp, Inc.*, Tulia, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of the The First National Bank of Tulia, Tulia, Texas.

2. *Red River Bancorp, Inc.*, Gainesville, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First State Bank, Gainesville, Texas.

Board of Governors of the Federal Reserve System, December 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–32331 Filed 12–11–84; 8:45 am]

BILLING CODE 6210–01–M

Worland Holding Co.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under section 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Worland Holding Company*, Worland, Wyoming; to acquire Worland Securities Corporation, Worland, Wyoming, thereby engaging in the sale of credit-related insurance, and making a servicing loans and other extensions of credit. These activities would be conducted within an 80 mile radius of Worland, Wyoming.

Board of Governors of the Federal Reserve System, December 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–32332 Filed 12–11–84; 8:45 am]

BILLING CODE 6210–01–M

By Order of the Federal Maritime Commission.

§ 225.23(a)(1) of the Board's Regulation

section 2(a)(20) of the Investment

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1974, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 84–1017—International Business Machines Corporation's proposed acquisition of voting securities of ROLM Corporation.	Nov. 20, 1984.
(2) 84–1162—United Technologies Corporation's proposed acquisition of voting securities of Alma Plastics Company, (City Investing Company, UPE).	Do.
(3) 84–1169—Federated Holding Company, Incorporated Ltd. a limited partnership of voting securities of Videoland, Incorporated, (Trevor Glanger, UPE).	Do.
(4) 84–1144—Amoskeag Company's proposed acquisition of voting securities of Fieldcrest Mills, Incorporated.	Nov. 21, 1984.
(5) 84–1153—Pt. V. AMEV's proposed acquisition of voting securities of Western Life Insurance Company, (The St. Paul Companies, Incorporated, UPE).	Do.
(6) 84–1161—Hawley Group PLC's proposed acquisition of voting securities of Jackson Communications, Incorporated and the Maintenance Company, Incorporated, (Fred Olsen, UPE operating, through Olsen Industries, Incorporated.	Do.
(7) 84–1174—Gulf & Western Industries, Incorporated's proposed acquisition of Prentice-Hall Incorporated.	Do.
(8) 84–1192—Marshall Field's proposed acquisition of voting securities of Pioneer Press, Incorporated, (Time Incorporated, UPE).	Do.
(9) 84–1194—Steven C. Markoff's proposed acquisition of voting securities of Refinement International Company, (Mendel Sherman, UPE).	Do.
(10) 84–1214—GNA Corporation's proposed acquisition of assets of Divisions of Davis Walker Steel & Wire Corporation, (Davis Walker Corporation, UPE).	Do.
(11) 84–1225—Houston Natural Gas Corporation's proposed acquisition of assets of Tenorne Pipe Line Company.	Do.
(12) 84–1155—AMR Corporation's proposed acquisition of assets of Braniff Inc., (H Group Holding, Inc., UPE).	Nov. 27, 1984
(13) 84–1198—The Philadelphia Saving Fund Society's proposed acquisition of voting securities of Midland-Guardian Investment Company, (The Midland Company, UPE)	Do.
(14) 84–1199—The Philadelphia Saving Fund Society's proposed acquisition of assets of Midland Guardian Company, (The Midland Company, UPE).	Do.
(15) 84–1149—Grand Metropolitan Public Limited Company's proposed acquisition of voting securities of Pepsi-Cookeville, (Pepsi-Cola Bottling Company of Cookeville, Inc., (Gladys Owen, UPE).	Nov. 28, 1984
(16) 84–1145—Tarmac PLC's proposed acquisition of assets of Florida aggregate, ready-mix and block operations, (Lone Star Industries, Inc., UPE).	Do.
(17) 84–1151—Bayer AG's proposed acquisition of voting securities of Matrix Corporation.	Do.
(18) 84–1152—General Defense Corporation's proposed acquisition of voting securities of Hamilton Technology, Inc., (Clabir Corporation, UPE).	Do.
(19) 84–1177—LaFarge Coppee S.A.'s proposed acquisition of assest of Celanese's Ag Products Group, (Celanese Corporation, UPE).	Do.
(20) 84–1195—Imasco Limited's proposed acquisition of voting securities of Rea and Derick, Inc., (American Stores Company, UPE).	Do.
(21) 84–1207—Thomson Investments Limited's, (Kenneth R. Thomson, UPE), proposed acquisition of assets of George N. Gillett, Jr.	Do.
(22) 84–1215—Esterline Corporation's proposed acquisition of assets of Hollis Automation, Inc.	Do.
(23) 84–1069—Honeywell Incorporated's proposed acquisition of voting securities of SSC Industrial Solid State Controls, Incorporated.	Nov. 29, 1984
(24) 84–1216—Sheldon Lubar's proposed acquisition of assets of B. Leather, Inc., (Beatrice Companies, Inc., UPE).	Do.
(25) 84–1172—Sir James Goldsmith's proposed acquisition of voting securities of Colgate-Palmolive Company.	Nov. 30, 1984
(26) 84–1183—The Broken Hill Proprietary Company Limited's proposed acquisition of voting securities of Energy Reserves Group, Inc..	Do.
(27) 84–1184—Houston Natural Gas Corporation's proposed acquisition of voting securities of Transwestern Pipeline Company, (Texas Eastern Corporation, UPE).	Do.
(28) 84–1185—Synergy Group, Incorporated's proposed acquisition of assets of Skelgas, Inc., (Texaco, Inc., UPE).	Do.
(29) 84–1190—First Boston, Incorporated's proposed acquisition of voting securities of Amercan Sterilizer Company.	Do.
(30) 84–1191—First Boston, Incorporated's proposed acquisition of voting securities of Amercan Sterilizer Company.	Do.
(31) 84–1197—Bristol-Meyers' proposed acquisition of voting securities of AMSCO/Hall Surgical Division, (First Boston, Incorporated UPE).	Do.
(32) 84–1201—W. B. Dunavant, Jr.'s proposed acquisition of assets of the McFadden Division and voting securities of 13 related corporations, from Valmac Industries, Inc., (Don Tyson, UPE).	Do.
(33) 84–1213—TDC Development Corporation's proposed acquisition of voting securities of Consolidated Wholesale Company, Incorporated.	Do.
(34) 84–1221—Harbor View Hotels Incorporated's (Lui Che Woo, UPE) proposed acquisition of assets of Holiday Inns, Incorporated.	Do.
(35) 84–1222—Syncom Corporation's proposed acquisition of voting securities of four corporate subsidiaries, (Farm House Foods Corporation, UPE).	Do.
(36) 84–1231—S & P Company's (Paul and Lydie Kalmanoitz, UPE) proposed acquisition of voting securities of Pabst Brewing Company	Do.
(37) 84–1212—Bristol-Myers Corporation's proposed acquisition of assets of AMSCO/Hall Surgical Division, (Kelso Partners, II, UPE).	Dec. 3, 1984.

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580. (202) 523–3894.

By direction of the Commission.

Emily H. Rock,
Secretary.

[FR Doc. 84–32345 Filed 12–10–84; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1985 Through September 30, 1987

Correction

In FR Doc. 84–31256 appearing on page 46957 in the issue of Thursday, November 29, 1984, make the following correction:

On page 46957, third column, in the table, in the entry for "Michigan", last column, "56.76" should have read "56.79".

BILLING CODE 1505–01–M

Food And Drug Administration

Advisory Committee Meeting; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice to revise the agenda and schedule of the Blood Products Advisory Committee meeting announced in the **Federal Register** of November 20, 1984 (49 FR 45810). The announcement of the Blood Products Advisory Committee meeting is revised to read as follows:

Blood Products Advisory Committee

Date, time, and place. December 13 and 14, 8:30 a.m., Auditorium, Lister Hill Center, National Library of Medicine, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 13, 8:30 a.m. to 9:30 a.m.; closed presentation of data and closed committee deliberations, December 13, 9:30 a.m. to 5 p.m., and December 14, 9 a.m. to 12 m.; open committee discussion, December 14, 1 p.m. to 3 p.m.; closed committee deliberations (if necessary), December 14, 3 p.m. to 4 p.m.; Issac F. Roubein, Executive Secretary, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4696.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee executive secretary.

Open committee discussion. The committee will discuss the reclassification of the following Category IIIA products under the provisions of 21 CFR 601.26: (1) Fibrinolysin and Desoxyribonuclease Combined (Bovine), powder for solution and ointment, and (2) Fibrinolysin and Desoxyribonuclease Combined (Bovine) with chloramphenicol ointment. These products are marketed under License Number 1, Parke-Davis, Division of Warner-Lambert Co.

Closed presentation of data. The committee will hear trade secret or confidential commercial information relevant to investigational new drug applications and biologic product license applications for the test for antibody to HTLV–III. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 522b(c)(4)).

Closed committee deliberation. The committee will discuss trade secret or confidential commercial information relevant to investigational new drug applications and biologic product license applications for the test for antibody to HTLV–III. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 522b(c)(4)).

Dated: December 5, 1984.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–32314 Filed 12–11–84; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 82N–0096; DESI 12152]

Drugs for Human use; Drug Efficacy Study Implementation; Prescription Drug for Cough, Cold, or Allergy; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice .

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of pertinent parts of the new drug application (NDA) for Ornade Spansules. This action does not affect the currently marketed product of this name. FDA is withdrawing approval of the product as previously formulated because that combination of ingredients lacks substantial evidence of effectiveness.

EFFECTIVE DATE: January 11, 1985.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with Docket No. 82N–0096 and reference number DESI 12152 and directed to the Division of Drug Labeling Compliance (HFN–310), Rm. 216, Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:
David T. Reed, Center for Drugs and Biologics (HFN–366), Food and Drug Administration 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 17, 1982 (47 FR 35870), the Director of the Center for Drugs and Biologics revoked a temporary exemption for the drug product described below which permitted the product to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. FDA also announced the conditions for marketing this product, as reformulated, and offered an opportunity for a hearing concerning the old formulation and indications reclassified to lacking substantial evidence of effectiveness.

NDA 12–152; as it pertains to Ornade Spansules, a controlled release product that now contains 12 milligrams (mg) chlorpheniramine maleate and 75 mg phenylpropanolamine hydrochloride; SmithKline and French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101. This product formerly contained 8 mg chlorpheniramine maleate, 50 mg phenylpropanolamine hydrochloride, and 2.5 isopropamide.

No party submitted a hearing request for the product containing isopropamide.

Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing. Accordingly, FDA is now withdrawing approval of NDA 12–152 as it pertains to the isopropamide containing product.

Any drug product that is identical, related, or similar to the isopropamide-containing product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above.).

The Director to the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the isopropamide-containing product named above will have the effects it was purported or represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing findings, approval of NDA 12–152 insofar as it pertains to the isopropamide-containing product named above is withdrawn, and marketing of the isopropamide-containig product is hereby declared unlawful. The effective date of this announcement is January 11, 1985. Shipment in interstate commerce of the product or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: December 6, 1984.

Harry M. Meyer, Jr.,
Director, Center for Drugs and Biologics.

[FR Doc. 84–32313 Filed 12–11–84; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 84M-0386]

Intermedics, Inc.; Premarket Approval of Cybertach™ 60 Model 262-01 Pulse Generator and Model 525-01 Programmer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Intermedics, Inc., Freeport, TX, for premarket approval, under the Medical Device Amendments of 1976, of the CyberTach™ 60 Model 262-01 Pulse Generator and Model 525-01 Programmer. After reviewing the recommendation of the Circulatory System Devices Panel, FDA notified the applicant that the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by January 11, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

SUPPLEMENTARY INFORMATION: On June 23, 1982, Intermedics, Inc., Freeport, TX 77541, submitted to FDA an application for premarket approval of the CyberTach™ 60 Model 262-01 Pulse Generator and Model 525-01 Programmer. The device is an implantable pacemaker pulse generator and programmer. The device is indicated for use as a cardiac pacing system with anti-arrhythmic response. The Circulatory Systems Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On November 7, 1984, FDA approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, Center for Devices and Radiological Health. Use of the device in the ventricles, however, continues to be investigational.

A summary of safety and effectiveness data on which FDA based its approval is on file in the Dockets Management Branch (address above) and is available upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at the Center for Devices and Radiological Health—contact Donald F. Dahms (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall idenfity the form or review requesting (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 11, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated December 6, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-32315 Filed 12-11-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1451]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Wasington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will by affected by the proposals; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above.

Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Relocation Reporting Requirements, and Acquisition and Relocation Recordkeeping Requirements in Handbooks 7417.1 and 7417.1 REV-1
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 98
Status: Reinstatement
Contact: Raymond W. Hamilton, HUD, (202) 426-0938 Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 3, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-32400 Filed 12-11-84; 8:45 am]

BILLING CODE 4210-01-M

Office of Environment and Energy

[Docket No. I-84-131]

Intended Environmental Impact Statements; Decatur, IL

The Department of Housing and Urban Development gives notice that an Areawide Environmental Impact Statement (AEIS) is intended to be prepared the Decatur, Illinois, National Register Historic District. This Notice is required by the Council on Environmental Quality Under its rules (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the area to the specific person or address indicated in the appropriate part of the appendices.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the AEIS effort as a "cooperating agency."

Each Notice shall be effective for one year. If one year after the publication of a Notice in the Federal Register a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft AEIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C., December 6, 1984.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

Appendix—A EIS on the Decatur, Illinois National Register Historic District

The Department of Housing and Urban Development (HUD) Region V Office intends to prepare an Areawide EIS for the Decatur, Illinois, National Register Historic District. The Department hereby solicits comments and information for consideration in this AEIS. The Department published a previous AEIS Notice in the **Federal Register** on December 17, 1981. Initial work was undertaken but due to the complexity of the work, a AEIS was delayed. This Notice is meant to update the original one.

Description: The Historic District is irregularly shaped, its approximate boundaries include Eldorado on the North, Union/Church on the east, Hayworth/Crea on the west, and Lincoln Park Dr./Edward St. on the south. Area structures include many and varied architectural styles and building types.

Need: An EIS is being prepared as any new construction activity, or major rehabilitation action, within the District may have an effect on the District. An EIS is seen as the most appropriate method to fulfill the Department's environmental and historic preservation and responsibilities in a historic district that is attractive for housing development.

Alternatives: The EIS will consider the range of site and design alternatives possible for housing within the District. The purpose of the EIS is to develop a set of guidelines to be used by HUD in reviewing projects being considered for Federal participation in the historic district.

Scoping: Comments received from appropriate government agencies and service organizations as a result of this and the previous notice will be taken into consideration in the preparation of the statement. For that reason no scoping meeting is believed necessary. Potential issues include impact on historic resources, sewer capacity, noise, and parking congestion.

Comments: Comments should be sent within 15 days following publication of this notice in the **Federal Register** to: Harry P. Blus, Regional Environmental Officer, Department of Housing and Urban Development, Chicago Regional Office, 547 W. Jackson Blvd., Chicago, Illinois 60606.

[FR Doc. 84-32399 Filed 12-11-84; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Map Prices; Price Change

Notice is hereby given that effective January 1, 1985, the price of maps published by the U.S. Geological Survey will be increased. The increase is needed to recover the costs of reproduction and distribution. The new map prices will be as follows:

Topographic, image, and related maps	Price
Standard Topographic Quadrangles [1] (1:24,000; 1:25,000; 1:50,000; 1:62,500; 1:63,360)	$2.50
Orthophotoquads and Orthophotomaps	3.50
National Atlas Separates	3.10
1:100,000 Maps	4.00
1:250,000 Maps	3.50
Alaska Boundary Series 1:250,000 Maps	3.50
Alaska Federal Conservation Maps	5.00
Major Ecosystems of Alaska	5.00
County Maps (1:50,000; 1:100,000)	4.00
State Maps (No Contours, Black and Blue—1:500,000; Black—1:1,000,000) (per sheet)	3.10
State Maps (No Contours, Multicolor—1:500,000) (per sheet)	4.00
State Maps (Topographic or Shaded Relief—1:500,000) (per sheet)	4.00
North America 1:10 million	3.10
International Maps of the World (1:1,000,000) (per sheet)	4.00
World Map, Relief Edition, 3 scales:	
1:30 million—Single sheet 56 × 42"	4.30
1:22 million—3 sheets 57 × 34"	10.00
1:14 million—6 sheets 56 × 42"	26.00
The World (outline map):	
1:40 million, 48 × 33"	3.10
1:80 million, 25 × 18"	1.70
Political Map of the World	3.10
National Park Maps	3.50
Coastal Ecological Inventory Maps	3.50
Antarctic Topographic Maps	2.40–4.00
Satellite Image Maps	3.50–5.00
Appalachian Region Map	3.10
Maps of the United States (Base, contour, outline, and physical divisions in various scales, colors, sheet sizes, and number of sheets per map)	0.70–6.10
Thematic Maps	
Hydrologic Unit Map of (State)	2.10–7.30
Hydrologic Unit Map of U.S.	6.10
Basement Rock Map of the U.S. (set)	6.10
Basement Rock Map of North America	2.10
Bouguer Gravity Anomaly Map of the U.S.	7.30
Coal Fields of the U.S.	4.30
Coal Fields of Alaska	3.60
Fold and Thrust Belts of U.S. (set)	8.50
Geologic Map of (State)	7.30–16.90
Geologic Map of the U.S. (set)	9.90
Geologic Map of North America (set)	8.90
Geothermal Gradient Map of N.A.	7.90
Preliminary Metallogenic Map of N.A. (set)	12.00
Subsurface Temperature Map of N.A. (set)	7.90
Tectonic Map of North America (set)	8.90
World Seismicity Map	3.10

[1] Includes new maps, revised maps, and reprints.

The Geological Survey also publishes specialized scientific maps, including:

(1) Geologica Quadrangle Maps
(2) Miscellaneous Field Studies Maps
(3) Miscellaneous Investigations Maps
(4) Geophysical Investigations Maps
(5) Hydrologic Investigations Maps
(6) Coal Investigations Maps
(7) Mineral Investigations (Resource) Maps
(8) Oil and Gas Investigations Charts and Maps
(9) Land Use Maps
(10) Antarctic Geologic Maps.

Prices for these maps vary. Specific price information may be obtained from the following Geological Survey maps sales offices:

Alaska:

4230 University Drive, Anchorage, AK 99508–4664
Room E–146, Federal Building, 701 C Street, Anchorage, AK 99513, (907) 271–4307
Room 126, New Federal Building, 101 12th Avenue, Fairbanks, AK 99701, (907) 456–0244

California:

Room 7638, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012, (213) 688–2850
Building 3, MS 533, 345 Middlefield Road, Menlo Park, CA 94025, (415) 323–8111, ext. 2817
Room 504, Customhouse, 555 Battery Street, San Francisco, CA 94111, (415) 556–5627

Colorado:

Building 41, Federal Center, Denver, CO 80225, (303) 236–7477
Room 169, Federal Building, 1961 Stout Street, Denver, CO 80294, (303) 837–4169

District of Columbia:

Room 1028, General Services Administration Building, 19th and F Streets, NW., Washington, D.C. 20244, (202) 343–8073

Mississippi:

Building 3101, National Space Technology Laboratories, NSTL Station, MS 39529, (601) 688–3541

Missouri:

1400 Independence Road, Rolla, MO 65401, (314) 341–0851

Texas:

Room 1C–45, Federal Building, 1100 Commerce Street, Dallas, TX 75242, (214) 767–0198

Utah:

Room 8105, Federal Building, 125 South State Street, Salt Lake City, UT 84138, (801) 524–5652

Virginia:

1200 South Eads Street, Arlington, VA 22202, (703) 557–2781
Room 1C–402, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092, (703) 860–6167

Washington:

Room 678, U.S. Courthouse, West 920 Riverside Avenue, Spokane, WA 99201, (509) 456–2524.

Dated: December 4, 1984.

R.B. Southard,

Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 84–32320 Filed 12–11–84; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

Eastern States; Unleased Federal Mineral Ownership Within Known Geologic Structures

AGENCY: Bureau of Land Management, Interior.

ACTION. Notice of availability of computerized list of unleased Federal tracts within Eastern States Known Geologic Structures (KGS's), call for nominations of listed lands for competitive oil and gas sale.

SUMMARY: The Eastern States Office has recently completed a survey of KGS's in seven States as to determine locations of unleased Federal mineral ownership within those KGS's. The result of that survey is a computerized location list for approximately 38,000 acres of unleased Federal tracts within KGS's in Arkansas, Louisiana, Mississippi, Alabama, Florida, Virginia, and Kentucky. At this time, the Eastern States Office is making single copies of the list available to interested parties at no charge. Requests may be made in writing or by telephone, and should be directed to Mr. Robert Hall, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274–0140.

In addition, in accordance with 43 CFR 3120.3, the Eastern States Office is soliciting nominations of parcels for competitive sale from among those tracts included in the computerized list. Written nominations should specify the State, County, KGS name, and tract description as shown in the printout, and should be submitted by March 12, 1985, to Ms. Lonna McKenna, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert Hall, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274–0145.

Pieter J. VanZanden,

Acting State Director.

[FR Doc. 84–32134 Filed 12–11–84; 8:45 am]

BILLING CODE 4310–GJ–M

[CA 15556]

Indio Resource Area; Realty Action for the Exchange of Public Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public lands (CA 15566).

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701:

San Bernardino Meridian

T. 2 S., R. 4 E.
Sec. 18, lots 1 and 2, SE¼NE¼, E½SE¼, SW¼SE ¼, S½NW¼SE¼.
T. 2 S., R. 3 E
Sec. 11, lot 1.
Containing 387.11 acres.

In exchange, the Federal Government will acquire non-Federal lands in Riverside County from the Ditz-Crane Corp., 2295 De La Cruz Blvd, Santa Clara, CA 95050.

The lands are described as:

T. 2 S., R. 3 E.,
Sec. 13, W½;
Sec. 14, All.
Containing 960.00 acres.

The purpose of this exchange is to obtain non-Federal land for use in Federal programs. It will provide improved and more efficient management of Federal land. The exchange is consistent with the Bureau's land management planning and the public interest will be well served by making the exchange. The value of the lands to be exchanged is approximately equal and money will be used to equalize the values by Ditz-Crane. The exchange will include both mineral and surface estates.

There will be reserved to the United States in the applied for lands a right-of-way for ditches or canals constructed by the authority of the United States (43 U.S.C. 945).

Other terms and conditions of the sale are:

1. A reservation for existing right-of-way for Southern California Edison transmission line (R 0959) and for County of Riverside road under RS 2477.

2. Ditz-Crane, Inc. agrees that it takes the real estate in T. 2 S., R. 3 E., SBM, Section 11, Lot 1 subject to the existing grazing use of Jim Wallace, holder of grazing authorization No. 6813. The rights of Jim Wallace to graze domestic livestock on the subject land shall cease on two years from date of this notice. The Ditz-Crane, Inc. is entitled to receive annual grazing fees from Jim Wallace in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

3. Ditz-Crane, Inc. will obtain a relinquishment or cancellation of the grazing lease on the non-Federal land.

4. The patent will be subject to all valid existing rights and reservation of record.

5. The patent will be subject to right-of-way CA 5412 as it affects land in T. 2 S., R. 3 E., Section 11, Lot 1.

The publication of this notice in the Federal Register shall segregate the applied for public land from all other forms of appropriation under the public land laws and the mining laws for a period of two years.

Information concerning the exchange, including the environmental analysis is available for review at the Bureau of Land Management's Calif ornial Desert Distfict Office, 1695 Spruce Street, Riverside, CA 92507.

The publication date of this notice will commence the 45-day comment period. For a period of 45 days from date of first publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: November 30, 1984.

Gerald E. Hillier,

District Manager.

[FR Doc. 84–32319 Filed 12–11–84; 8:45 am]

BILLING CODE 4310–40–M

[M–59847]

Montana; Realty Action, Exchange of Public Lands

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of realty action, exchange of public lands in Lewis and Clark, Jefferson, Broadwater, Gallatin, Park, and Sweetgrass Counties for private lands in Lewis and Clark County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976; 43 USC 1716:

PRINCIPAL MERIDIAN, MONTANA

Tract No.	County	Acres
	Gallatin	
G–2	T1S, R1E, sec. 14, NW¼NE¼	[illegible]
G–3	T2N, R2E, sec. 12, N½	320
G–4	T2S R7E, sec. 20, NE¼NE¼	40
G–5	T3N, R3E, sec. 34, SE¼SE¼	40
G–6	T2N R5E, sec. 6 SE¼NE¼	40
G–7	T4N, R6E, sec. 30, NE¼NE¼	40
G–9	T2S, R2E, sec. 22, NE¼SE¼	40
G–10	T2S, R2E, sec. 18, NE¼SE¼	40
	Sec. 17, Seg. Survey	17.69
G–11	T2S, R2E, sec. 3, NE¼SW¼	40
G–12	T1S, R2E, sec. 33, E½SW¼, SE¼SE¼	120
G–13	T1S, R1E, sec. 22, SW¼SW¼	40
G–14	T2N, R3E, sec. 28, NW¼, W½SW¼, E½ SE¼.	320
	Park	
P–1	T2N, R11E, sec. 6, Lot 4, SE¼SW¼, SW¼SE¼.	104.27
P–2	T1S, R9E, sec. 2, lots 3, 4	[illegible]
	T1N, R10E, sec. 32, SW¼	160
P–3	T2S, R11E, sec. 14, W½SE¼	80
P–4	T2S, R12E, sec. 10, SE¼NW¼	40
P–6	T8S, R6E, sec. 10, SW¼SE¼	40
P–7	T8S, R6E, sec. 18, lot 1, NE¼NE¼, NE¼ NW¼	115.42
P–8	T2S, R11E, sec. 21, SW¼SW¼	[illegible]
P–9	T3S, R11E, sec. 13, SW¼NW¼	[illegible]
P–10	T1N, R10E, sec. 12, E½NE¼	80
P–11	T1S, R10E, sec. 30, N½SE¼, SE¼SE¼	120
	T1S, R9E, sec. 6, SE¼SE¼, NW¼SW¼	[illegible]
P–12	T2S, R9E, sec. 4, lots 3, 4, NW¼	[illegible]
P–13	T1S, R10E, sec. 18, lot 4	[illegible]
	Sec. 20, S½SE¼	[illegible]
	T1N, R9E, sec. 34, SE¼NE¼	40
P–14	T2S, R11E, sec. 10, NE¼SW¼	40
P–15	T2S, R12E, sec. 27, NE¼NE¼	[illegible]
P–16	T2S, R12E, sec. 18, SE¼SE¼	[illegible]
P–17	T2S, R8E, sec. 4, NW¼NW¼, E½SW¼	120
P–18	T1S, R10E, sec. 20, W½SE¼	[illegible]
P–19	T5N, R9E, sec. 20, E½	320
P–20	T2N, R8E, sec. 6, NW¼NW¼	[illegible]
	Sec. 20, SE¼NW¼	[illegible]
P–21	T1S, R11E, sec. 2, lot 1	47.36
	Sec. 10, W½SW¼	80
	Sec. 22, NW¼NW¼	40
	Sec. 24, E½SE¼	[illegible]
	T1S, R12E, sec. 20, N½N½, SE¼NW¼	[illegible]
P–22	T1N, R10E, sec. 20, N½NE¼	[illegible]
P–23	T3S, R8E, sec. 20, SW¼SW¼	[illegible]
P–24	T3S, R8E, sec. 30, lots 3, 4, E½SW¼	159.05
P–25	T2S, R8E, sec. 34, SE¼	160
P–26	T2S, R8E, sec. 30, NE¼NW¼	40
P–27	T3S, R8E, sec. 22, W½	320
P–28	T4S, R9E, sec. 30, lots 3, 4, SE¼SW¼	118.84
	Sec. 20, W½SE¼, SE¼SE¼	120
P–29	T4S, R9E, sec. 32, NW¼SW¼	40
P–30	T5S, R9E, sec. 32, W½NW¼	[illegible]
P–31	T7S, R7E, sec. 2, Lot 4	53.45
P–32	T4S, R8E, sec. 26, S½NW¼, N½SW¼	[illegible]
P–34	T5N, R9E, sec. 32, E½W½	160
P–35	T2S, R9E, sec. 34, W½SE¼	[illegible]
P–36	T4N, R9E, sec. 6, NE¼NW¼	40
	Lewis and Clark	
L–1	T11N, R5W, sec. 24, lots 15, 16	[illegible]
L–2	T11N, R4W, sec. 22, lot 1	[illegible]
L–3	T11N, R5W, sec. 2, lot 8	39.67
L–4	T11N, R5W, sec. 29, lot 9	12.12
L–5	T10N R5W, sec. 13, lots 21, 22, 23	[illegible]
L–6	T10N, R5W, sec. 13, lots 19, 20, 24	[illegible]
	Sec. 24, lots 15, 16	19.57
L–7	T14N, R3W, sec. 34, lot 17	0.14
L–8	T11N, R5W, sec. 29, lot 11	11.20
L–9	T12N, R6W, sec. 5, SE¼SW¼	40
	T13N, R6W, sec. 17, SE¼SE¼	[illegible]
	Sec. 22, NW¼SW¼	[illegible]
	Sweetgrass	
P–21	T1N, R12E, sec. 22, S½SW¼	[illegible]
	Sec. 32, N½NE¼, SW¼SW¼	120
	Jefferson	
J–2	T6N, R3W, sec. 32, NW¼NW¼NW¼	10
J–3	T2N, R5W, sec. 14, SW¼	160
	sec. 24, NW¼, SE¼NE¼	200
J–5	T6N, R4W, sec. 32, E½SW¼SE¼	20
J–6	T7N, R3W, sec. 17, lot 24	1.07
J–7	T2N, R5W, sec. 26, NW¼NW¼	40
J–8	T8N, R4W, sec. 23, lot 1	23.85
J–9	T9N, R3W, sec. 7, lot 6	[illegible]
	Sec. 5, lots 10, 16, 21, 31, 32	[illegible]
	Sec. 4, lot 7	105.57
J–10	T9N, R3W, sec. 9, SE¼NE¼	[illegible]
	Sec. 10, lots 1, 6, 7, 10, 11, 16	161.93
J–11	T9N, R3W, sec. 21, NE¼SE¼	40
	Broadwater	
B–1	T8N, R3E, sec. 2, N½N½NW¼SE¼, lots 13, 14, 15, 16.	26.84
B–2	T3N, R1E, sec. 27, SW¼NW¼	40
B–3	T3N, R1E, sec. 12, NW¼	160
B–4	T8N, R2E, sec. 20, SW¼NW¼, NW¼ SW¼NE¼, NW½SE¼NW¼, SW¼SE¼ NW¼.	50

In exchange for an equal value of these public lands, the United States will acquire the following described private lands in Lewis and Clark County from Nick and Mary Wirth:

PRINCIPAL MERIDIAN, MONTANA

T14N, R4W, sec. 27, NW¼, NW¼SW¼	[illegible]
Sec. 28, that portion south and east of I-15 excepting certain tracts and roadways	[illegible]
Sec. 29, small parcel in the E½E½SE¼	[illegible]
Sec. 31, all	[illegible]
Sec. 32, N½, SW¼ excepting highway acres	[illegible]
Sec. 33, all excepting the highway, railroad, and a small tract	[illegible]
Total	2,444.22

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Butte District Office, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire additional public land in the Sleeping Giant area near Holter Lake. These lands have high recreational and wildlife values and will provide the first legal public access by land to the

Sleeping Giant area. This is the final step of a two-part exchange. The first step acquired 1,080 acres of the Wirths land. This step will acquire the remaining 2,444.22 acres of private land in exchange for an equal value of the above listed public lands.

The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

This Notice constitutes formal notification under 43 CFR 4110.4–2(b) that the BLM may cancel grazing authorizations on the above described public lands at any time after two years from the receipt of this Notice by existing grazing lessees or permittees.

The Exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 USC 945.

2. The reservation to the United States of any identified mineral values on the Federal lands being transferred.

3. All valid existing rights (e.g., rights-of-way, easements and leases of record).

4. Value equalization by cash payments or acreage adjustments.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

Gerald L. Quinn,

Acting District Manager.

[FR Doc. 84-32318 Filed 12-11-84; 8:45 am]

BILLING CODE 4310-JB-M

Craig District Advisory Council; Meeting

In accordance with Pub. L. 94–579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on January 23, 1985.

The meeting will begin at 10 a.m. at the Little Snake Resource Area Office, 1180 Industrial Avenue, Craig, Colorado.

The Council will discuss the Little Snake Resource Management Plan.

The Meeting will be open to the public and interested persons may make oral statements to the Council beginning at 10:30 a.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council or file a written statement should notify the District Manager, Bureau of Land Management, 455 Emerson, Craig, Colorado 81625, by January 16, 1985.

Summary minutes of the Council meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: November 26, 1984.

Terry L. Plummer,

Associate District Manager.

[FR Doc. 84-32322 Filed 12-11-84; 8:45 am]

BILLING CODE 4301-JB-M

[N-219]

Nevada; Partially Denied Proposed Withdrawal; Desert National Wildlife Range; Correction

In Federal Register issued of September 2, 1983, page 40002, column 2, first line under T. 8 S., R. 62 E., is corrected to read: Sec. 31, lots 3, 4, SE¼SW¼.

Wm. J. Malencik,

Deputy State Director, Operations.

[FR Doc. 84-32371 Filed 12-11-84; 8:45 am]

BILLING CODE 4310-C-M

INTERNATIONAL TRADE COMMISSION

Termination of Countervailing Duty Investigation Concerning Ampicillin Trihydrate and Its Salts From Spain

AGENCY: United States International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to ampicillin trihydrate and its salts from Spain.

EFFECTIVE DATE: November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone number (202) 523–0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the outstanding countervailing duty order on ampicillin trihydrate and its salts from Spain. Notice of the countervailing duty order was published on March 22, 1979 in the **Federal Register** (44 FR 17484).

On September 13, 1984, the Commission was notified by letter that Biocraft Laboratories, Inc., the original petitioner for the countervailing duty order, wished to withdraw its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in case based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On October 15, 1984, (49 FR 40232) the Commission published a notice in the **Federal Register** requesting public comment by November 14, 1984, on the proposed termination of the Commission investigation on ampicillin trihydrate and its salts from Spain. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation on ampicillin trihydrate and its salts from Spain (T.D. 79–90). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this *Federal Register* notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: December 3, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-32386 Filed 12-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-196]

Certain Apparatus for Installing Electrical Lines and Components Therefor

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on January 7, 1985, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th Street and Constitution Avenue NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: December 4, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-32387 Filed 12-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-163 (Final)]

Cell-Site Transceivers and Subassemblies Thereof From Japan; Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of cell-site transceivers and subassemblies thereof, provided for in item 685.29 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission further determines, pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), that the material injury is not by reason of massive imports to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the antidumping duty on imports of cell-site transceivers and subassemblies thereof from Japan retractively.[3]

Background

The Commission instituted this investigation effective June 12, 1984, following a preliminary determination by the Department of Commerce that imports of the subject merchandise from Japan were being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the noitce in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing it in the **Federal Register** on July 5, 1984 (49 FR 27641). Subsequently, the Department of Commerce extended the investigation by 60 days (49 FR 32096, Aug. 10, 1984) and the Commission revised its schedule accordingly (49 FR 33347, Aug. 22, 1984). The hearing was held in Washington, DC, on November 8, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 3, 1984. The views of the Commission are contained in USITIC Publication 1618 (December 1984), entitled "Investigation No. 731–TA–163 (Final), Cell-Site Transceivers and Subassemblies Thereof from Japan."

Issued: December 3, 1984.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-32388 Filed 12-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 104-TAA-24 and 104-TAA-25]

Oleoresins From Spain and India

AGENCY: International Trade Commission.

ACTION: Institution of countervailing duty investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: Pursuant to section 104(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note), the Commission hereby gives notice that it is instituting these investigations to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of oleoresins from Spain and/or oleoresins from India if the outstanding countervailing duty orders regarding such merchandise were to be revoked. Oleoresins are provided for in item 450.20 of the Tariff Schedules of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult Part 207, Subparts A, C, and D (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201) of the Commission's rules.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1979, the Department of the Treasury issued a countervailing duty order under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) on oleoresins imported from Spain (T.D. 79–71, 44 FR 11214), and on April 9, 1979, the Department of the Treasury issued a countervailing duty order on oleoresins from India (T.D. 79–107, 44 FR 21009). On January 1, 1980, the Trade Agreements Act of 1979 (Pub. L. 96–39) became effective. That act provided, in section 104(b), that "In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 . . . which applies to merchandise which is the product of a country under the Agreement, and which is in effect on January 1, 1980, . . ., the Commission, upon the request of the government of such a country . . ., submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 (January 1, 1980) shall . . . commence an investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked."

On June 17, 1982, the Commission received such a request from the Government of Spain, and on December 28, 1982, the Commission received such a request from the Government of India.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will

---

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

[3] Had the Commission made an affirmative determination under this provision of the Act, antidumping duties would have been effective on imports entered on or after March 15, 1984. The negative determination means that antidumping duties will be effective on imports entered on or after June 12, 1984.

determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on January 25, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on February 12, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 29, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on February 4, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 5, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 19, 1985. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before February 19, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

This notice is published pursuant to § 207.30 of the Commission's rules (19 CFR 207.30).

Issued: December 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-32380 Filed 12-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 337-TA-182/188]

Certain Fluidized Supporting Apparatus and Components Thereof; Decision Not To Review An Initial Determination Terminating Investigations

AGENCY: International Trade Commission.

ACTION: Termination of investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of its decision not to review an initial determination (ID) terminating the above-captioned consolidated investigations. The ID terminated the investigations on the basis of a joint motion to terminate which in turn was based on an asset purchase agreement implemented by the parties.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules § 210.53(c) and (h) (19 CFR 210.53(c) and (h)). No petition for review of the ID was filed, nor were any comments received from Government agencies.

Copies of the ID and all other nonconfidential documents filed in connection with these investigations are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Issued: December 6, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-32381 Filed 12-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-165 (Final)]

Certain Valves, Nozzles, and Connectors of Brass From Italy For Use in Fire Protection Systems

AGENCY: International Trade Commission.

ACTION: Postponement of hearing.

SUMMARY: On December 5, 1984, the Commission received notice from the International Trade Administration, U.S. Department of Commerce (Commerce), that the margin of sales at less than fair value in the subject investigation is de minimis, thereby conflicting with Commerce's notice of final determination published in the **Federal Register** on November 30, 1984 (49 FR 47066), which had indicated a positive margin of sales at less than fair value of 3.47 percent. Pending the publication of a revised notice of final determination by Commerce, the Commission's public hearing on this investigation, scheduled for Friday, December 7, 1984, is hereby postponed indefinitely. This postponement is pursuant to § 201.14(b) of the Commission's Rules of Practice and Procedure.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202-523-0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

Authority: This notice is published pursuant to § 201.14 of the Commission's rules (19 CFR 201.14).

Issued: December 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-32389 Filed 12-11-84; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Wage Determination System for Territory of Guam

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of Temporary Workers Wage Rates for Territory of Guam.

SUMMARY: The Governor of Guam is authorized to continue using the 1980 Adverse Effect Wage Rate (AEWR) established by the Secretary of Labor to make temporary alien labor certification determinations until December 31, 1984. Additional time is needed to resolve problems with the proposed wage determination system submitted by the Governor. While appropriate consultations and revisions to the system are being made, the Governor may use the AEWR until December 31, 1984.

(Secs. 103 and 214 of the Immigration & Nationality Act, as amended; 8 U.S.C. 1103 & 1184)

Dated: December 6, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-32379 Filed 12-11-84; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Amazing Grace Marine Accident

In connection with its investigation of the accident involving the sinking of the U.S. Fishing Vessel AMAZING GRACE in the Atlantic Ocean on or about November 14, 1984, the National Transportation Safety Board will convene a public hearing at 10 a.m. (local time) on December 19, 1984, in the Portsmouth City Council Chamber, Portsmouth City Hall, 801 Crawford Street, Portsmouth, Virginia. For more information, contact Mr. Brad Dunbar, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Ave., SW., Washington, D.C. 20594, telephone (202) 382-6600.

Dated: December 6, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84-32302 Filed 12-11-84; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-413]

Duke Power Co., et al., Catawba Nuclear Station, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-31 to Duke Power Company, North Carolina Electric Membership Corporation, and Saluda River Electric Cooperative, Inc., (the licensees) which authorizes operation of the Catawba Nuclear Station, Unit 1, at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, revised Technical Specifications, and the Environmental Protection Plan with a condition limiting operation to five percent of full power (170 megawatts thermal).

On July 18, 1984, the Commission issued Facility Operating License No. NPF-24 to the licensees which authorized loading of fuel into the reactor vessel and the conducting of certain mechanical and electrical tests which must be done before the reactor achieves criticality.

License No. NPF-31 supersedes NPF-24.

The Catawba Nuclear Station, Unit 1, is a pressurized water reactor located in York County, South Carolina, approximately 6 miles north of Rock Hill, South Carolina.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on June 25, 1981 (46 FR 32974). The power level authorized by this license and the conditions contained therein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of relief and the issuance of exemptions included in this license will have no significant impact on the environment (49 FR 48966).

For further details with respect to this action, see (1) Facility Operating License NPF-31; (2) Facility Operating License NPF-24; (3) the Commission's Safety Evaluation Report, dated February 1983 (NUREG-0954), and Supplements 1 through 4; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement, dated January 1983 (NUREG-0921); (7) the Partial Initial Decision of the Atomic Safety and Licensing Board, dated June 22, 1984; (8) the Supplemental Partial Initial Decision on Emergency Planning dated September 18, 1984; and (9) the Partial Initial Decision Resolving Foreman Override Concerns and Authorizing Issuance of Operating Licenses dated November 27, 1984.

These items are available at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of Facility Operating License NPF-31 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG-0954) and the Final Environmental Statement (NUREG-0921) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call (301) 492-9530.

Dated at Bethesda, Maryland, this 6th day of December 1984.

1984)).

above-captioned consolidated

EFFECTIVE DATE: December 5, 1984.

Portsmouth City Council Chamber.

of an operating license was published in

of December 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-32395 Filed 12-11-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Negotiations (the Advisory Committee) to be held Wednesday, January 9, 1985, from 1:00 p.m. to 4:00 p.m. in Washington, D.C., will involve a review and discussion of the current issues involving the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contracting Phyllis O. Bananno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-32397 Filed 12-11-84; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer—Kenneth A. Fogash (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Amendment

Form 13F [17 CFR 249.325]

SEC File No. 270-236

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission has submitted for clearance amendments to Form 13F under the Securities Exchange Act of 1934 which were proposed pursuant to Rule 13f-1 (17 CFR 240.13f-1) and governs the quarterly reporting requirements of institutional investment managers who exercise investment discretion over accounts of exchange-traded or NASDAQ-quoted equity securities having in the aggregate a fair market value of at least $100,000,000.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, telephone number (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

December 5, 1984.

[FR Doc. 84-32344 Filed 12-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 33-6561; File No. S7-41-84]

Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at conference concerning uniformity of securities laws and requesting written comments.

SUMMARY: The Commission and the North Amercian Securities Administrators Association today published a request for comments on effectuating increased uniformity in the state and federal regulation of securities matters. This inquiry is intended to carry out the policies and purposes of Section 19(c) of the Securities Act of 1933, as adopted as part of the Small Business Investment Incentive Act of 1980, to maximize the effectiveness of securities regulation and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The conference will be held in February, 1985. Written comments must be received on or before January 14, 1985, in order to be considered by the conference participants.

ADDRESSES: Written submissions should be submitted in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Comments should refer to File No. S7-41-84. All written submissions will be available for public inspection at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: H. Steven Holtzman or Hugh T. Wilkinson, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549, (202) 272-2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers attempting to raise capital through securities offerings are responsible for complying with federal securities laws as well as with all the appropriate state regulations. In recent years it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and among the various state systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while appropriate investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of Section 19(c) of the Securities Act[2] in the Small Business Investment Incentive Act of 1980[3] (the "Investment Incentive Act"). Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of Section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state regulatory standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is mandated to conduct an annual conference. The first such conference was held in Williamsburg, Virginia, in September 1983.

II. 1985 Conference

The Commission and the North American Securities Administrators Association ("NASAA"),[4] are planning

[1] 15 U.S.C. 77a-77aa (1982).

[2] 15 U.S.C. 77s(c).

[3] Pub. L. 96-77 (October 21, 1980).

[4] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, the Canadian provinces and territories, and Mexico.

the 1985 Conference on Federal-State Securities Regulation (the "Conference") to be held in February 1985. At the Conference, representatives from the Commission and NASAA will meet to discuss methods for improving cooperation in securities matters .n order to improve the efficiency and effectiveness of both federal and state securities registration. Attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion. Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments, which will be considered by the Conference attendees, on the issues set forth below. In addition, comment is requested on other appropriate subjects that commentators wish to be included in the Conference agenda.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following selected topics in the areas of market regulation and oversight, investment management, corporation finance and enforcement.

(1) Corporation Finance Issues

a. *Uniform Limited Offering Exemption.* Congress specifically acknowledged the need for a uniform limited offering exemption in enacting Section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal regulation governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983, NASAA endorsed a revised form of the Uniform Offering Exemption ("ULOE") that is intended to coordinate with Regulation D and to be uniform among the states.

ULOE provides a uniform exemption from state registration for small issuers. A small issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. To date, 29 states have adopted some form of ULOE, although both the Commission and NASAA have made a concerted effort toward universal adoption of ULOE. Adoption of ULOE by all states is a major priority. The Commission and NASAA hope to encourage the 21 remaining states to adopt ULOE in order to achieve the goal of uniformity envisioned by the statute.

In addition to the Commission's attempts to persuade all states to adopt ULOE, the Commission staff currently is working with NASAA to revise Form D. It is expected that the proposed revisions will be published for comment in the near future. The revisions contemplated are intended to make Form D a uniform form which will be suitable for claiming both an exemption pursuant to Regulation D and an exemption from state registration pursuant to ULOE. Of course in order to succeed fully in meeting this goal, it is necessary that ULOE be adopted by all states. Consistent with the Commission's adoption of Regulation D and its cooperation with the states in revising Form D and on ULOE, the Commission staff and a special NASAA committee coordinate on matters of interpretation of Regulation D and ULOE.

Comment is requested on approaches to encourage the states which have not yet adopted ULOE to do so and on other issues of uniformity of exemptions, including the interpretive process.

b. *Electronic Disclosure.* The Commission and NASAA expect to discuss EDGAR (for Electronic Data, Gathering, Analysis and Retrieval), the Commission's electronic disclosure system. The objective of EDGAR is to develop an effective and efficient means of using computer technology to improve the receipt, storage, review and dissemination of filed information. The Commission began receiving and processing filings in EDGAR, on a pilot basis, in September 1984. Also in September, NASAA announced its intent to join the SEC's efforts to implement an electronic disclosure system. Three states—Georgia, Wisconsin and California—have been selected by NASAA to participate in a pilot project whereby EDGAR filings would be made available to the states. Under this pilot, an issuer would be able to submit one electronic filing with EDGAR and have it electronically distributed to the states in which the issuer chooses to register. Comment is requested on possible cooperative efforts between the Commission and the states in the areas of electronic receipt, processing and dissemination systems.

c. *Limited Partnership Disclosure.* The Commission currently is reviewing its disclosure requirements with a view to amending such requirements as they related to the unique aspects of limited partnerships. Commentators are invited to discuss any federal or state disclosure problems which are peculiar to limited partnerships.

d. *Takeover Regulations.* In view of the increase in corporate takeovers in recent years, issues relating to takeovers will be discussed at the Conference. The public is invited to comment on the appropriate role to state and federal regulators in the context of corporate takeovers.

(2) Market Regulation and Oversight

a. *Central Registration Depository.* The National Association of Securities Dealers, Inc. ("NASD") and NASAA have jointly developed the Central Registration Depository, a computerized system for the registration of securities industry personnel with the NASD and the various state securities commissions Phase I of the CRD system, which has been in place for several years, provides for the registration of registered representatives through the filing of Form U-4 with the CRD and the collection of required fees, as well as a means for updating information with respect to those representatives and for facilitating transfer of registration under certain circumstances. Work has begun on the implementation of Phase II of the system, which will enable the CRD to handle the registration of broker-dealers as well as annual renewals of such registrations.

During the sessions, participants will focus on future uses of the CRD by the states, the relationship of the SEC to the CRD and the impact on CRD of the development of the EDGAR System. Commentators are requested to provide input relative to the effectiveness and efficiency of CRD (including any suggestions for improving the system) as well as the future direction of the system.

b. *Forms U-4 and B/D.* In December 1983, the Commission adopted a revised Form B/D for use by the Commission and the states. Adoption of the new form B/D was the culmination of an extensive effort by NASAA, the SEC and the self-regulatory organizations to achieve a uniform form which would provide brokers and dealers with a single form which could be used by all regulatory bodies. During 1984, NASAA has turned its attention to revisions of Forms U-4 and U-5, the uniform forms for registration and termination of registration of registered representatives, and expects to consider such revisions in April 1985. In addition, consideration is being given to some minor fine tuning of Form B/D to

1) and governs the quarterly reporting

Policy, Division of Corporation Finance.

provinces and territories, and Mexico.

toward universal adoption of ULOE.

amending such requirements as they

minor fine tuning of Form B/D to

achieve comparability between the items on that form and those on Form U–4. Any such changes, if recommended, will also be considered by NASAA in April 1985 and, if approved, will be considered by the Commission in mid-1985.

Although the proposed changes may not be finalized by the time of the sessions, commentators are welcome to address Forms U–4, U–5 and B/D generically or to make suggestions as to their content or use.

c. *Exemptions From Registration.* Suggestion have been made that the so-called "blue chip" exemption from state securities registration requirements be expanded to include over-the-counter ("OTC") securities, such as those securities in NASDAQ or designated pursuant to SEC rule as national market system securities. Currently, issuers choosing to list on the New York or American Stock Exchange are exempt, almost universally, from state securities registation provisions. Suggestions also have been made that certain OTC securities be granted exemptions similar to exchange-traded securities. Commentators are asked to comment on the desirability of any such exemptions and whether any such change in the exemptions should be conditioned on changes to NASD rules designed to implement standards of corporate conduct similar to those currently contained in exchange listing standards.

d. *Indeterminate Compensation.* The NASD has proposed amendments to its Rules of Fair Practice that would permit NASD members or associated persons that participate in public distributions of direct participation programs ("DPPs") to receive a limited amount of indeterminate compensation.[5] The NADS's rules currently prohibit members from receiving any form of indeterminate compensation. Under the proposed amendment, a broker-dealer may receive compensation only after investors have received distributions equal to one hundred percent of their cash investment plus a six percent cumulative annual return on their adjusted investment. However, this proposal may conflict with NASAA guidelines on indeterminate compensation.

The Commission published the proposal in the **Federal Register** in early November.[6] Commentators are requested to address the NASD's proposal in light of the NASAA Guidelines with respect to compensation in real estate and oil and gas programs.

(3) Investment Management

a. *Investment Companies.* Recently NASAA adopted a number of resolutions supporting more uniform regulation of mutal funds and unit investment trusts. Specifically, the resolutions encourage states to eliminate expense limitations and adopt uniform, streamlined approaches to investment company registration and renewal procedures, the filing of advertising and sales reports and the treatment of oversales. Comment is requested on specific issues that should be addressed by NASAA and the Commission in the next year with respect to regulation of open and closed end management investment companies and unit investment trusts.

b. *Investment Advisers.* There are a number of areas in which the Commission and NASAA believe increased cooperation among the regulatory authorities can improve the investment adviser regulatory system. Most important, and of greatest priority, is developement of a uniform adviser registration system to be used by the Commission and those states which require advisers to register as such. NASAA, with participation by members of the Commission staff, has undertaken to develop uniform requirements for the filing of adviser forms, amendments and annual reports and a uniform approach to a "brochure" rule governing the kinds of disclosure advisers must make to clients and prospective clients. It is expected that a uniform registration form, based on the Commission's Form ADV, will be presented to the NASAA membership for adoption in April 1985 and that, if adopted, it will be considered by the Commission in mid-1985. Comment is requested on the format and content of the form and the development of a uniform registration system.

c. *Financial Planners.* Dramatic growth in the number of financial planners is causing the Commission and NASAA to examine whether existing regulator schemes under state and federal securities laws are suitably tailored to the financial planning industry. Because many financial planners act as investment advisers and receive commissions on the purchase or sale of securities, they are subject to regulations under the securities laws as investment advisers and as brokers or agents of brokers. Some elements of the existing regulatory structure, for example, Form ADV, may need to be tailored or clarified to take into account the nature of financial planner activities. Comment is requested on the effectiveness of the existing regulatory system, including suggestions on whether a more uniform approach to regulation of financial planners should be developed and, if so, how.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commentators should focus on the agenda but may also discuss or comment on other areas in which the existing scheme of state and federal regulation can be made more uniform while high standards of investor protection are maintained.

IV. Procedures

Interested persons are invited to submit their views on the foregoing no later than January 14, 1985. Written submission should be made in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 — 5th Street, NW., Washington, D.C. 20549. Please refer to File No. S7–41–84.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

December 6, 1984.

[FR Doc. 84-32346 Filed 12-11-84; 8:45 am]

BILLING CODE 8010-01-M

[5] The NASD interprets indeterminate or continuing compensation as compensation whose value cannot be determined at the time the offering is filed for review.

[6] Exchange Act Release No. 21468 (November 5, 1984) 49 FR 44891.

[Release No. 14268; 812–5973]

Southwestern Apartment Associates Limited Partnership and Potomac Real Estate Group, Inc.; Filing of Application for Exemption

December 6, 1984.

Notice is hereby given that Southwestern Apartments Associates Limited Partnership (the "Partnership"), Suite 500, 1150 17th Street, NW., Washington, D.C. 20036, a District of Columbia Limited Partnership, and its general partner, Potomac Real Estate Group, Inc. (the "Managing General Partner") (together with the Partnership, "Applicants"), filed an application on October 30, 1984, and amendment thereto on November 30, 1984, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), to exempt the Partnership from all provisions of the Act. All intereated persons are referred to the application on file with the Commission for a

statement of the representations contained therein, a summary of which is set forth below, and to the Act and rules thereunder for the text of the applicable provisions.

Applicants state that the Partnership was formed as a vehicle for private investment in government-assisted apartment complexes in accordance with the express determination of Title IX of the Housing and Urban Development Act of 1968. Applicants further state that the Partnership will operate as a "two-tier" limited partnership; i.e., the Partnership, as limited partner, wil hold 98.99% interest in each of four Texas limited partnerships (the "Project Partnerships") which, in turn, will each own and operate an apartment complex, in accordance with the criteria of Investment Company Act Release No. 8456 (August 9, 1974). According to the application, three of the Project Partnerships are receiving interest reduction payments and mortgage insurance from the Department of Housing and Urban Development under Section 236 of the National Housing Act and rental assistance under Section 8 of the United States Housing Act, whereas the fourth Project Partnership is receiving mortgage insurance and subsidies under Section 221(d)(3) of the National Housing Act. All of the Project Partnerships will therefore be required to rent units only to persons of low and moderate income.

Applicants represent that the Partnership is organized as a limited partnership because a limited partnership is the only form of organization which provides investors with both the ability to claim on their individual tax returns the tax benefits arising from the Partnership's investment in the Project Partnerships and liability limited to their capital investment. Applicants further represent that the Partnership's objectives are to preserve and protect its capital, provide capital appreciation, provide tax benefits for investors, and provide potential for some future annual cash distributions.

Applicants state that the Partnership is offering 100 units of limited partnership interests ("Units") at $74,400 per unit, pursuant to Section 4(2) of the Securities Act of 1933 and Regulation D thereunder, to investors meeting certain suitability standards. According to the application, each subscriber must represent, among other things, either (a) that he is an "Accredited Investor" within the meaning of Regulation D or (b) that he has a net worth of at least $200,000 exclusive of home, furnishings, automobiles, and the amount to be invested in the Partnership. Each must also represent that he reasonably believes that at least a portion of his 1984 income will be subject to a federal income tax rate of 42%, and that he has knowledge and experience in business and financial matters. The Investment Group Capital Corp., the Partnership's investor services agent, must approve all subscriptions for Units, which approval will be conditioned upon receipt of representations concerning suitability of the investment for each subscriber.

According to the application, the cash submitted by subscribers will be held in a non-interest bearing escrow until December 31, 1984 and will be returned without interest or deduction if the offering is terminated. If the offering is consummated, it will immediately be invested in accordance with the terms of the offering. The application states that purchasers of Units will become limited partners ("Limited Partners") of the Partnership, representing an aggregate 98% interest in the Partnership. Upon admission of the Limited Partners, Equity Resyndication, Inc., a Texas corporation will be admitted as a General Partner and, together with the Managing General Partner, will have a 1.01% interest in the Partnership.

Applicants anticipate that the Partnership will have $6,483,000 available for investment from the proceeds of its offering after the payment of selling commissions and offering expenses. Applicants state that the Partnership will pay $4,136,430 (55.6% of the gross proceeds) as capital contributions to the Project Partnerships.

Applicants maintain that the General Partners will manage the Partnership's business pursuant to the Agreement and First Amended and Restated Certificate of Limited Partnerships of the Partnership (the "Partnership Agreement"), and the Limited Partners will not be entitled to participate in the control of the Partnership's business. The application states, however, that a majority in interest of the Limited Partners will have the right to remove a General Partner, sell or dispose of the Partnership's interest in the Project Partnerships, take action requiring the consent of the Partnership under the Project Partnership Agreements, cause the Partnership to engage in any business other than that specified in the Partnership Agreement, or amend the Partnership Agreement. The application further states that, under the Partnership Agreement, each Limited Partnership is entitled to review all books and records of the Partnership during reasonable business hours.

The application summarizes the compensation and fees to be paid by the Partnership to the General Partners and others. The application states that the Partnership believes such compensation meets all applicable guidelines necessary to permit Units to be offered and sold in the various states that prescribe such guidelines including, without limitation, the Statement of Policy adopted by the North American Securities Administrators Association, Inc., with respect to real estate programs.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request that the Partnership be exempted from all the provisions of the Act. In support of this request, Applicants assert that such exemption is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act. Applicants assert that investment in low and moderate income housing in accordance with the national policy expressed in Title IX is not economically suitable for private investors without the tax and organizational advantages of the limited partnership structure. Applicants state that a limited partnership would be unable to function in the manner contemplated by the Partnership if it is deemed to be an investment company under the Act. In addition, it is maintained that application of the Act would discourage two-tier limited partnership arrangements and thus eliminate the best available means of attracting private equity capital into government-assisted housing and frustrate national policy.

Notice is further given that any interested person wishig to request a hearing on the application may, not later than December 28, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above.

Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

example, Form ADV, may need to be

on file with the Commission for a

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32405 Filed 12-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21544; File No. SR-AMEX-84-34]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Testing and Supervision Requirements Regarding Interest Rate Options Trading

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. (the "AMEX" or "Exchange") proposes to amend Rules 920 and 922 as set forth below. *Italics* indicates material proposed to be added; [brackets] indicate materials proposed to be deleted.

Rule 920. Registration and Examination of Options Personnel.

No change.

. . . Commentary

.01 Any member or associated person of a member organization who became registered and was approved by the Exchange as a Registered Representative or as an Options Principal prior to the date of implementation of trading in options on debt securities on the Exchange shall not be deemed to be qualified with regard to such options unless such Registered Representative or Registered Options Principal has successfully completed an examination prescribed by the Exchange for the purpose of demonstrating adequate knowledge of options on debt securities.

.02 Any sales personnel of a member organization who solicits or accepts customer orders with regard to options on debt securities shall be deemed qualified with regard to such options after such person has successfully completed an examination prescribed by the Exchange for the purpose of demonstrating adequate knowledge of options on debt securities.

* * * * *

Rule 922. Supervision of Accounts.

(a) No change.

(b) No change.

(c) Branch Offices.—The principal supervisor of every branch office of a member organization which transacts options business with the public must be qualified as a Registered Options Principal with regard to options on [both] equity [and debt] securities; provided that if no more than three Registered Representatives in a branch office engage in options transactions, the principal supervisor of such branch office need not qualify as a Registered Options Principal with regard to [either category of] equity options, [or if more than three Registered Representatives in a branch office engage in transactions involving options on equity securities but three or less engage in transactions involving options on debt securities, the principal supervisor of such branch office may qualify as a Registered Options Principal only with regard to options on equity securities], so long as any options activities of such branch office for which the principal supervisor is not qualified as a Registered Options Principal are supervised by an appropriately qualified Registered Options Principal of the member organization. *Debt options trading of a branch office may be supervised by any debt qualified Registered Options Principal of member organization.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Examination of Sales Personnel. Rule 920 currently requires all options sales personnel of a member organization to pass a general securities qualification examination before soliciting or accepting customer orders. The General Securities Registered Representatives Examination (Test Series 7), commonly referred to as the Registered Representatives ("RR") exam, tests a candidate's knowledge of a diverse range of subjects including: stocks, bonds, options, repurchase agreements, warrants, real estate investment trusts, mutual funds, investment companies, variable annuities and direct participation programs.

Currently, sales personnel who handle customer orders involving options on debt securities are required to successfully complete the RR exam. In addition, they are required to complete the Interest Rate Options ("IRO") Qualification Examination (Test Series 5), which comprehensively tests a candidate's knowledge of options of U.S. Treasury Bills, Bonds and Notes. However, sales personnel who conduct a customer business solely in the underlying Government securities are *not* required to take either the RR exam or the IRO exam.

The Exchange believes that sales personnel who conduct a customer business in U.S. Treasury securities are dissuaded from conducting a customer business in options on these Treasury securities, for hedging purposes or otherwise, because they are required to take both the IRO exam and the very comprehensive RR exam. Therefore, to encourage trading in interest rate options, while continuing to maintain appropriate testing standards, it is proposed that Rule 920 be amended to permit sales personnel to conduct a customer business in interest rate options after passing only the IRO exam. It should be noted that if an RR engages in any other SEC regulated business, he or she would be required to successfully complete the full RR exam.

The Philadelphia Stock Exchange ("PHLX") addressing a similar concern was granted Commission approval to permit persons seeking to conduct a customer business in foreign currency options to do so after completing only a foreign currency options exam, thus deleting the requirement that such market participants complete the full RR exam (approval of SR-PHLX-83-20 granted in Rel. No. 20545 on January 16, 1984). Thus, this filing merely proposes to adopt for interest rate options a testing scheme which parallels that of foreign currency options.

Supervision of Accounts. Rule 922 requires that the principal supervisor of every branch office of a member organization, where more than three RRs conduct a public debt options business, become qualified as a Debt Registered Options Principal ("DROP"). (Such qualification is accomplished by successful completion of the IRO exam.) However, the exchange believes that such requirement is unnecessary and burdensome, and has reduced the appeal of debt options trading. Instead, it is proposed that debt options trading be supervised by any qualified DROP within the member organization designated to supervise branch activity, although not necessarily the office manager at that particular branch. This proposal will continue to ensure proper supervision of all accounts.

Therefore, it is proposed that Rule 922 be amended to delete the requirement that all branch office managers who supervise more than three RRs handling debt options accounts must become debt options qualified. It should be noted that this proposal also conforms to the PHLX rule change (SR-PHLX-83-20), which provides for a member firm's foreign currency options accounts to be supervised by any person within the firm who is qualified with respect to foreign currency options.

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange by deleting unnecessary testing requirements. Therefore, the proposed rule changes are consistent with Section 6(b)(5) of the 1934 Act which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule changes will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, endorsed the proposed rule change.

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or institute proceedings to determine whether the Proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before January 3, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32401 Filed 12-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21540; File No. SR-MSE-84-11]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to an Increase in the Maximum Execution Limit Size for Agency Orders Under Midwest's Guaranteed Execution System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1984, the Midwest Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Rule 34 of Article II of the Rules of the Midwest Stock Exchange, Inc. is hereby amended as follows:

Additions italicized—[Deletions Bracketed].

GUARANTEED EXECUTION SYSTEM

Rule 34. The Midwest Stock Exchange Guaranteed Execution System (the BEST System) shall be available to Exchange member firms in all dually traded issues in the specialist system. System orders from 100 up to and including [399] *1099* shall be executed pursuant to the following requirements:

1. Specialists must accept and guarantee execution on all agency orders from 100 up to and including [399] *1099* shares in accordance with this rule.

No change in remainder of Rule 34.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will increase the maximum execution limit size for agency orders under Midwest's Guaranteed Execution System (BEST) from 399 to 1099 shares for all specialists. Some MSE specialists already have voluntarily increased their limits to 1099 shares or higher in some issues. The proposed rule change would increase the mandatory limit to 1099 for all dually traded issues in the specialist system.

The proposed increase is consistent with limits recently adopted by other exchanges for their automatic routing and/or execution systems and will make the Exchange more competitive in providing this service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Inc. does not believe that the proposed rule change will place any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th St., NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th St., NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before January 3, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 5, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32404 Filed 12-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23513 (70-6921)]

American Electric Power Co., Inc., et al.; Proposed Issuance and Sale of Short-Term Notes; Capital Contributions to Subsidiaries; Exception From Competitive Bidding

The American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, and several of its electric utility subsidiaries, hereinafter cited, have filed a proposal with this Commission pursuant to sections 6, 7 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2) and 50(a)(5) under the Act.

During the period January 1, 1985 to December 31, 1986, AEP proposes to issue and sell short-term notes to banks and commercial paper to a dealer in two annual, aggregate amounts not to exceed $50 million outstanding at any one time, and make annual cash capital contributions to its subsidiary Columbus and Southern Ohio Electric Company ("C&SOE") not to exceed $40 million. During the same period, C&SOE requests authorization to issue and sell short-term commercial paper to dealers. C&SOE, Kingsport Power Company ("Kingsport"), Michigan Power Company ("Michigan"), Kentucky Power Company ("Kentucky"), and Wheeling Electric Company ("Wheeling") would also sell notes to banks. The companies propose to sell notes in two aggregate, annual amounts outstanding at any one time of up to: $160 million for C&COE, $40 million for Kentucky, $4 million for Kingsport, $8 million for Michigan, and $3 million for Wheeling.

All notes will mature not more than 270 days after the date of issuance or renewal. None will mature later than June 30, 1987. The notes to banks will be sold under various lines of credit with different terms, including rates at prime, generally, no maintenance of separate or additional compensating balances since the companies maintain deposit balances for operational and financial needs, although under certain conditions balances of up to 10% of the line of credit and 10% of the amount borrowed may be required; and fees in the amount of ⅜% of a line of credit or ¼% on the unused amount of a line of credit. Fees and balances for shared lines of credit are borne by the companies in proportion to their respective projected maximum need for such credit. With such fees and with balances maintained solely to fulfill borrowing requirements, no line of credit would result in an effective cost of borrowing exceeding 125% of the prime commercial rate in effect from time to time, or not more than 15% based on a prime rate of 12%.

The commercial paper notes will not be prepayable, will have varying maturities, and will be sold directly to a dealer at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity of more than 90 days if such notes would have an effective interest cost which exceeds the effective interest cost at which such company could borrow from banks through the issuance of notes in an amount at least equal to the principal amount of such commercial paper at that time.

The proceeds from the borrowings will be used for general corporate purposes including business operations, construction, and retirement of short-term debt.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 27, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32365 Filed 12-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21541; File No. SR-PSE-84-22]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Pacific Stock Exchange, Inc.

December 5, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 15, 1984, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to adopt a new Equity Floor Procedure Advice 2-C, Reporting of Transactions Executed at the Exchange (the "Advice"). PSE Rule I, Section 16 currently requires the seller to ensure that a transaction is properly reported. The Exchange has noted in its filing that this requirement is subject to two exceptions, due to the fact that the PSE maintains two equity trading floors, one in Los Angeles and the other in San Francisco: (1) Pursuant to PSE Rule I, Section 16(b), inter-floor "limit sell" orders are to be reported from the trading floor on which the order was placed and executed, and (2) in transactions in local issues, when the specialist is the buyer and the seller is located on the other trading floor, the specialist, rather than the seller, is responsible for ensuring that trade is reported on the tape. Under these circumstances the seller is required to submit a "goldenrod" ticket for clearing purposes only.

The Exchange has noted in its filing to the Commission that these reporting procedures occasionally result in transactions not being reported by the tape. The proposed Advice describes Rule I, Section 16(a) and the exceptions to the rule discussed above,[1] and in addition, establishes a fine schedule for repeated violations of this reporting requirement. The PSE states in its filing that the rule change is consistent with Section 6(b)(5) of the Act in that it is intended to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to transactions in securities and to protect investors and the public interest.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-84-22.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32342 Filed 12-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21542; (SR-NYSE-84-20)]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change

December 6, 1984.

The New York Stock Exchange, Inc. ("NYSE") 11 Wall Street, New York, New York, 10005, submitted on May 7, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend the NYSE's arbitration rule (NYSE Rules 600 to 634) as follows: (1) "Simplified arbitration" procedures would apply to claims not exceeding $5,000, instead of claims not exceeding $2,500, as under the current rule; (2) the filing fee would be raised from $15 to $25 for claims over $1,000 but below $2,500, with fee increases for claims of higher amounts as provided in proposed Rule 630; (3) the six year limitation on arbitration submissions would be tolled for any arbitration claim that had been under court consideration for the period the court retained juridiction; (4) each party to an arbitration proceeding, including proceedings where multiple parties are involve, would have the right to a peremptory challenge as well as to unlimited challenges for cause; (5) a respondent who presents only a "general denial" as an answer could, at the discretion of the arbitrators, be barred from presenting facts or defenses at a subsequent hearing on the same matter under paragraph (b) of Rule 612; and (6) an NYSE member organization would be required to pay a nonfundable filing fee of $500 under New Rule 634, in addition to all other fees, when filing a claim against a non-member.

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by the issuance of a Commission release (Securities Exchange Act Release No. 20979, May 18, 1984) and by publication in the **Federal Register** (49 FR 25554, June 21, 1984). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C 552) were made available to the public at the Commission's reference room.

The Commission received two comment letters from Alex. Brown & Sons, Inc. objecting to the proposed amendments to Rule 612(b) and proposed Rule 634.[1] With respect to the proposed amendments to Rule 612(b), Alex. Brown contends the amendments are inequitable because, although they provide arbitrators with discretion to bar the respondent's presentation at the hearing of any previously omitted facts or defenses, they do not apply to claimants. In addition, Alex. Brown believes that the provisions may operate to prevent a full presentation of all relevant and necessary facts and defenses, and may result in unnecessary delays and in inequitable and/or erroneous arbitration decisions. Alex.

---

[1] The Exchange will impose a penalty of $25 for a second violation, $50 for a third, $75 for a fourth, and $100 for fifth and subsequent violations, based on the number of violations of a particular security calculated on a monthly basis. The schedule is intended to apply to inadvertent violations of the floor procedure advice which are not attributable to clerical errors by Exchange staff or other mitigating circumstances.

[1] See letters from Joseph R. Hardiman, Managing Director, Alex. Brown & Sons, Inc. and from Clinton P. Stephens, Managing Director, Senior Registered and Options Principal, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, dated, respectively, July 12, 1984 and August 30, 1984.

may be required, and fees in the amount

BILLING CODE 8010-01-M

Brown recommends that Rule 612 be amended to impose an identical obligation upon the claimant to present all relevant facts and legal theories prior to the hearing.

With respect to proposed Rule 634, which requires an NYSE member organization to pay a non-refundable filing fee of $500, in addition to all other fees, when filing a claim against a non-member, Alex. Brown contends that such a fee will discourage member organizations from using the arbitration procedure, particularly in cases where relatively small amounts of money are involved. Moreover, because a non-member may demand that a member's claims against the non-member be arbitrated,[2] such non-member, according to Alex. Brown, can effectively force a member organization to discount a valid claim or to abandon a valid claim for $500 or less. Alex. Brown also notes that the proposed rule does not provide for the arbitrator's assessment of this fee to the non-member party as is the case with forum fees, and believes that the fee should be assessed at the discretion of the arbitrators. In addition, Alex. Brown contends that, because the arbitration rules of the National Association of Securities Dealers ("NASD") have no provision comparable to Rule 634, more claims will be filed with the NASD, resulting in additional delays in their resolution at the NASD.

The NYSE has indicated that Rule 634 is intended to recapture some of the costs of the administration of the Exchange's arbitration facility.[3] The rule is designed so that the more frequent users of the facility pay an equitable share of the arbitration costs without penalizing public customers. The NYSE states that most member organizations will have the option to pursue the non-member in court or in arbitration, and that the $500 fee is one factor such organizations will have to consider in making the decision to arbitrate.

Under section 6(b)(4) of the Act, the rules of an exchange must provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) provides, among other things, that exchange rules be designed to promote just and equitable prinicples of trade, and to protect investors and the public interest. In addition, under section 6(b)(8), exchange rules must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission views the proposed rule changes as consistent with these provisions of the Act for the reasons discussed below.

The Commission notes that the proposed amendments to NYSE Rule 612(b) are consistent with recent amendments to the Uniform Arbitration Code developed by the Securities Industry Conference on Arbitration and already adopted by several self-regulatory organizations.[4] Under the amendments, a responding party must specify in its answer all available facts as well as all relevant defenses that will be relied upon at the hearing. Currently, Rule 612(b) only requires that the respondent specify all available defenses. The amendments would provide that if a responding party pleads only a general denial as an answer, it may be barred from presenting any facts or defenses at the time of the hearing, and, if it fails to specify all available defenses and relevant facts, it may be barred from presenting these additional facts or defenses at the hearing.

The Commission believes the proposed amendments clarify and emphasize the authority that arbitrators currently possess under NYSE Rule 626 to bar amendments to pleadings after receipt of a responsive pleading. With respect to the commentator's assertion that the proposed amendments are inequitable because they do not apply to claimants, the Commission notes that under NYSE Rule 612(a), claimants must specify in their statement of claim the relevant factors and remedies sought. In addition, as noted above, arbitrators currently have the authority under Rule 626 to refuse to permit claimants or respondents to amend their pleadings after receipt of a responsive pleading. Thus, although the proposed amendments to Rule 612(b) only relate to the responsibilities of respondents, the Commission does not view the authority of the arbitration panel, or the NYSE's arbitration procedures as currently practiced, to be balanced in favor of claimants. The Commission therefore finds the proposed amendments to Rule 612(b) to be consistent with sections 6(b)(5) and 6(b)(8) of the Act in that the amendments are designed to promote just and equitable principles of trade without imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that these amendments would encourage parties to respond specifically and completely to claims and would ensure that all parties are fully informed of claims and defenses prior to the hearing.

The Commission views the NYSE's proposed $500 fee imposed on members filing a claim against a non-member as an appropriate method of assessing members who use the NYSE's arbitration facilities for costs incurred by the Exchange with respect to arbitration procedures. According to the NYSE, the proposed fee is intended to assist the NYSE in recouping a portion of its costs in conducting the arbitration hearing. The Commission notes that the fee is to be imposed without regard to the merit of the member's claim, the amount at issue, or to the member claimant's success before the arbitration panel. The fee is therefore user-based, with those members using the Exchange's arbitration facilities more often paying proportionately more than members using such facilities less frequently. The Commission believes it is appropriate that such fee not be imposed at the discretion of the arbitrators upon a non-member party, and that NYSE arbitrators not have discretion to impose no fee at all. Such discretion could transform what is essentially a user-based facilities fee into a sanction upon one party or the other, which is not the Exchange's intention in imposing the fee. The Commission finds the proposed fee to be consistent with section 6(b)(4) of the Act which provides for the equitable allocation of reasonable dues, fees and other charges among an exchange's members and issuers and other persons using its facilities. The proposed fee is equitable in that it is to be imposed upon all NYSE member claimants in connection with arbitration proceedings against non-members. In addition, the proposed fee appears to be reasonable in relation to the expenses incurred by

[2] NYSE Rule 600 provides that disputes, claims, or controversies between a customer or non-member and a member arising in connection with such member's business, be arbitrated under the NYSE Constitution and Rules as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non-member.

[3] See letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated September 28, 1984.

[4] The Commission has approved provisions similar to those contained in proposed Rule 612(b) for the National Association of Securities Dealers (SR-NASD-84-16; Securities Exchange Act Release No. 21295, September 7, 1984; 49 FR 36040, September 13, 1984); the Municipal Securities Rulemaking Board (SR-MSRB-84-8; Securities Exchange Act Release No. 21047, June 14, 1984; 49 FR 25332, June 20, 1984); the American Stock Exchange (SR-Amex-84-24; Securities Exchange Act Release No. 21442, October 31, 1984; 49 FR 44574, November 7, 1984); the Midwest Stock Exchange (SR-MSE-84-6; Securities Exchange Act Release No. 21508, November 20, 1984, 49 FR 46857, November 28, 1984) and the Chicago Board Options Exchange (SR-CBOE-84-26; Securities Exchange Act Release No. 21476, November 9, 1984; 49 FR 45687, November 19, 1984).

the NYSE with respect to arbitration proceedings.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32405 Filed 12-11-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5484]

Capital Circulation Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq*), has been filed by Capital Circulation Corporation, 208 Main Street, Fort Lee, New Jersey 10952, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1984).

The officers, directors and shareholders of the Applicant are as follows:

Name and address	Title of relationship	Percent of ownership
Allen P. Chiu, 66 Bellwood Drive, New Hyde Park, NY 11040.	President, Director	10
Wan Chi Woo, 232 Bellwood Drive, Fort Lee, New Jersey 07024.	Director	40
Judy Mei Kao 280 Forest Road, Fort Lee, New Jersey 07124.	Secretary, Director	20
Lucia L. Chang, 1616 S. 6th Street, Philadelphia, PA 19148.	Treasurer, Director	30

The Applicant will begin operations with a capitalization of $1,000,000 and will conduct its operations principally in the State of New Jersey.

As an SBIC licensed to operate under section 301(d) of the Act, the Applicant will provide financial and management assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitablity and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Fort Lee, New Jersey.

Dated: December 6, 1984.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-32398 Filed 12-11-84 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt; Information Systems Reorganization

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of reorganization.

SUMMARY: The Bureau of the Public Debt combined three information systems management and data processing groups that reported to different office heads into a new Office of Automated Information Systems.

FOR FURTHER INFORMATION CONTACT: Michael Smiley, Management Analysis Officer, Bureau of the Public Debt, 1111 20th Street NW., Washington, D.C. 20239, 202-634-5257.

SUPPLEMENTARY INFORMATION: On October 15, the Commissioner of the Public Debt announced the establishment of a new Office of Automated Information Systems, and appointed Mr. Van Zeck as Assistant Commissioner to head it. The reorganization combined all three of the Bureau's information systems management and data processing groups that were organizationally located in separate offices.

Under the general authority vested in the Secretary of the Treasury in 5 U.S.C. 301 and 31 U.S.C. 321, approval was granted in July by the Fiscal Assistant Secretary. Following approval, the acting Assistant Secretary (Electronic Information Systems and Information Technology) and the Assistant Secretary (Administration) concurred.

Dated: November 30, 1984.

W.M. Gregg,

Commissioner.

[FR Doc. 84-32343 Filed 12-11-84; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 240
Wednesday, December 12, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Commodity Futures Trading Commission	1
Federal Deposit Insurance Corporation	2, 3
Federal Reserve Board	4, 5
Legal Services Corporation	6–8
Nuclear Regulatory Commission	9
Securities and Exchange Commission	10–12

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, December 19, 1984.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial Matter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84-32478 Filed 12-10-84; 1:47 pm]

BILLING CODE 6351-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, December 17, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Rancho Santa Fe Thrift & Loan Associaton, an operating noninsured industrial bank located at 251 North El Camino Real, Encinitas, California.

Metropolitan Thrift and Loan Association, an operating noninsured industrial bank located at 416 Eighth Street, Oakland, California.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Dominion Bank of Denver, Denver, Colorado, AP–362 (Memo dated November 14, 1984).

Summary Audit Report re: First National Bank of Browning, Browning, Montana, NR–448 (Memo dated November 14, 1984).

Summary Audit Report re: Banco Economias, San German, Puerto Rico, CP–259 (Memo dated November 14, 1984).

Summary Audit Report re: Union Trust Company, San Juan, Puerto Rico, AP–366 (Memo dated November 14, 1984).

Summary Audit Report re: Warren County Bank, McMinnville, Tennessee, AP–361 (Memo dated November 14, 1984).

Summary Audit Report re: Farmers Bank and Trust, Winchester, Tennessee, AP–369 (Memo dated November 14, 1984).

Summary Audit Report re: The First National Bank of Midland, Midland, Texas, AP–365 (Memo dated November 20, 1984).

Summary Audit Report re: The Peoples Bank of the Virgin Islands, Charlotte Amalie, Virgin Islands, SR–320 (Memo dated November 14, 1984).

Summary Audit Report re: Decimus Asset Management System, Northeast Regional Office Audit (Memo dated November 28, 1984).

Discussion Agenda:

Memorandum re: Budget of Administrative Expenses for Budget Year 1985.

Memorandum re: Budget Year 1985 Liquidation Expense Budget.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 10, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-32487 Filed 12-10-84; 3:13 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, December 17, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to merge and establish fourteen branches:

Washington Mutual Savings Bank, Seattle, Washington, an insured stock savings bank, for consent to merge, under its charter and title, with Lincoln Mutual Savings Bank, Spokane, Washington, and to establish fourteen of the offices of Lincoln Mutual Savings Bank as branches of the resultant bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver.

liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Abilene National Bank (now known as MBank Abilene, National Association) Abilene, Texas.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C. Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 10, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-32488 Filed 12-10-84; 3:14 pm]

BILLING CODE 6714-10-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 Noon, Monday, December 17, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Studies of (1) futures and options markets, and (2) federal margin regulations (Public Docket No. R–0427). (This item previously announced for a closed meeting on December 5, 1984.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 7, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32402 Filed 12-7-84; 4:56 pm]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:30 p.m., Friday, December 7, 1984. The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Federal Reserve Bank and Branch director appointments. (This matter was previously announced for a closed meeting on December 10, 1984.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 7, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32403 Filed 12-7-84; 4:56 pm]

BILLING CODE 6210-01-M

5

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting.

TIME AND DATE: The meeting will commence at 2:00 p.m. and continue until all official business is completed; Wednesday, December 19, 1984.

PLACE: Capitol Holiday Inn, Apollo Room, 550 C Street, SW., Washington, D.C. 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   September 29, 1984
3. Report from Office of General Counsel
   45 CFR 1601 (By-laws)
   45 CFR 1612 (Lobbying)
   45 CFR 1614 (Private Attorney Involvement)
   45 CFR 1620 (Priorities)
   45 CFR 1622 (Sunshine Act)
   Comments on other Regulations effective since April 27, 1984
4. Report from Office of Field Services
   Monitoring Schedules
   Private Attorney Involvement

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272–4040.

Date Issued: December 10, 1984.

Donald P. Bogard,

President.

[FR Doc. 84-32517 Filed 12-10-84; 4:39 pm]

BILLING CODE 6820-35-M

7

LEGAL SERVICES CORPORATION

Provisions for the delivery of Legal Services.

TIME AND DATE: The meeting will commence at 8:00 a.m. and continue until all official business is completed; Wednesday, December 19, 1984.

PLACE: Capitol Holiday Inn, Apollo Room, 550 C Street, SW., Washington, D.C. 20024

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   November 21, 1983
3. Report from Office of Field Services
   Private Law Firm Project
   Law School Clinic Project
   Urban Judicare
   Alternative Dispute Resolution
   Voucher Project
   Reginald Heber Smith Community Lawyer Fellowship Program
   NORC Report
   Private Attorney Involvement
4. Needs Study Update

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272–4040.

Date Issued: December 10, 1984.

Donald P. Bogard,

President.

[FR Doc. 84-32518 Filed 12-10-84; 4:39 pm]

BILLING CODE 6820-35-M

8

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee meeting.

TIME AND DATE: The meeting will commence at 10:30 a.m. and continue until all official business is completed; Wednesday, December 19, 1984.

PLACE: Capitol Holiday Inn, Apollo Room, 550 C Street, SW., Washington, D.C. 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   June 22, 1984
3. Report from Audit Division
   Audit and Accounting Guide for Recipients and Auditors
4. Report from Assistant to the President
   Funding Formulas
5. Report from the Office of Comptroller
   Presentation of Corporation Audit FY 1984
   Final FY 1984 Consolidated Operating Budget
   Proposed FY 1985 Consolidated Operating Budget with recommendations for allocation of FY 1984 carryover
   FY 1986 Budget Mark

an operating noninsured industrial bank

Dated: December 10, 1984.

Corporation in its capacity as receiver.

BILLING CODE 6210-01-M

BILLING CODE 6820-35-M

PY 1986 Budget Mark

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272–4040.

Date Issued: December 10, 1984.

Donald P. Bogard,

President.

[FR Doc. 84–32519 Filed 12–10–84; 4:39 pm]

BILLING CODE 6820–35–M

9

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 10, 17, 24, and 31, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 10

Monday, December 10

1:30 p.m.
Discussion/Possible Vote on Hydrogen Rule (Public Meeting) (if needed)

3:00 p.m.
Discussion of Adjudication Matters Related to Catawba–1 (Closed—Ex. 10)

Tuesday, December 11

10:00 a.m.
Staff Follow-up to 11/15 DOE Briefing on High Level Waste Program (Public Meeting)

2:00 p.m.
Year End Budget Review (Public Meeting)

Thursday, December 13

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (a) Aamodt Motion for Investigation of Radioactive Releases During the TMI–2 Accident (Tentative)

Friday, December 14

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Catawba–1 (Public Meeting)

2:00 p.m.
Briefing and Discussion on the Hearing Process (Public Meeting)

Week of December 17—Tentative

Monday, December 17

10:00 a.m.
Discussion of Material False Statements—Policy Options (Public Meeting)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, December 18

10:00 a.m.
Discussion of 1985 Policy and Planning Guidance (Public Meeting)

2:00 p.m.
Discussion of Need for and Impact of Further TMI–1 Hearings (Public Meeting) (Tentative)

Wednesday, December 19

10:00 a.m.
Discussion/Affirmation of Indian Point Order (Public Meeting) (if needed)

Thursday, December 20

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 24—Tentative

Friday, December 28

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 31—Tentative

Thursday, January 3

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

George T. Mazuzan,

Office of the Secretary.

December 7, 1984.

[FR Doc. 84–32397 Filed 12–7–84; 4:50 pm]

BILLING CODE 7590–01–M

10

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, November 27, 1984.

CHANGE IN THE MEETING: Additional items.

The Following items were considered at a closed meeting held on Tuesday, December 4, 1984, at 10:00 a.m.

Close investigation.

Administrative proceeding of an enforcement nature.

Consideration of amicus participation.

Chairman Shad and Commissioners Treadway, Marinaccio and Peters determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Molinari at (202) 272–2467.

Shirley E. Hollis,

Acting Secretary.

December 7, 1984.

[FR Doc. 84–32412 Filed 12–7–84; 5:14 pm]

BILLING CODE 8010–01–M

11

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 10, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, December 11, 1984, at 10:00 a.m. An open meeting will be held on Thursday, December 13, 1984, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 11, 1984, at 10:00 a.m., will be:

Formal orders of investigation.

Institution of administrative proceedngs of an enforcement nature.

Institution of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

The subject matter of the open meeting schedules for Thursday, December 13, 1984, at 10:00 a.m., will be:

1. Consideration of whether to adopt Rule 3a-5 (proposed as a revision of Rule 6c-1) under the Investment Company Act of 1940 which would exempt finance subsidiaries of United States and foreign private issuers from the definition of investment company under certain conditions. Consideration will also be given to whether to rescind Rule 6c–1 under that Act. For further information, please contact William C. Gibbs at (202) 272–2048.
2. Consideration of whether to grant an exemption from section 15(b)(8) of the Securities Exchange Act of 1934, which requires that a registered broker-dealer purchasing and selling securities in the over-the-counter market become a member of the National Association of Securities Dealers, Inc. For further information, please contact Katherine A. England at (202) 272–2882.

At times changes in Commission priorities require alterations in the

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Wescoe (202) 272–2092

December 7, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–32413 Filed 12–7–84; 5:14 pm]

BILLING CODE 8010–01–M

12

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 17, 1984, at 450 Fifth Street, NW., Washington, D.C.

An open meeting will be held on Tuesday, December 18, 1984, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, December 18, 1984, at 10:00 a.m., will be.

Consideration of whether to issue a release adopting Securities Exchange Act Rule 11d1–2 to exempt from the credit restrictions of Section 11(d)(1) of the Securities Exchange Act of 1934 any security issued by an open-end management investment company of unit investment trusts registered under Section 8 of the Investment Company Act of 1940 which has been owned for more than thirty days by the person to whom credit would be extended. For further information, please contact Valerie Golden at (202) 272–2040.

The subject matter of the closed meeting scheduled for Tuesday, December 18, 1984, following the 10:00 a.m. open meeting.

Formal orders of investigation.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Regulatory matter regarding financial institutions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Marianne Keler at (202) 272–2648.

Shirley E. Hollis,

Acting Secretary.

December 7, 1984.

[FR Doc. 84–32477 Filed 12–10–84; 1:34 pm]

BILLING CODE 8010–01–M

(Tentative)

BILLING CODE 8010-01-M

priorities require alterations in the

federal register

Wednesday
December 12, 1984

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Patent Interference Proceedings; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 40104-4151]

Patent Interference Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending its rules of practice in patent interference cases. The Patent Law Amendments Act of 1984, Pub. L. 98-622, sections 201-202, abolished the Board of Appeals and Board of Patent Interferences and created in their place a Board of Patent Appeals and Interferences which will decide *ex parte* appeals from adverse decisions of patent examiners and interference cases. The Patent and Trademark Office, through this amendment of its rules, intends to provide guidance on the procedures the Office will be following in conducting interference cases before the Board of Patent Appeals and Interferences.

DATE: The effective date of these rules is: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey by telephone at (703) 557-4025 (if no answer, message may be left at 703-557-4103) or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office (PTO) conducts interference proceedings to determine who as between two or more applicants for patent or one or more applicants and one or more patentees is the first inventor of a patentable invention. Heretofore, the determination was made by a Board of Patent Interferences. The Patent Law Amendments Act of 1984, Pub. L. 98-622, sections 201-202 combines the Board of Appeals and the Board of Patent Interferences into a single Board of Patent Appeals and Interferences (Board) and authorizes the Board to consider priority and patentability in interference cases.

In view of the discretion given the Board under 35 U.S.C. 135(a), as amended by Pub. L. 98-622 ("The Board . . . may determine questions of patentability. . . ."), these new rules will apply to all interferences declared on or after February 11, 1985, except in special circumstances, such as: (1) Interferences which are declared as a result of a motion made in another interference which was pending before the Board before February 11, 1985 (e.g., an interference declared as a result of a motion under 37 CFR 1.231 to declare an additional interference); (2) an interference related to another interference declared prior to February 11, 1985 (e.g., an interference involving a method of using a compound where an interference involving the same parties and the compound was declared prior to February 11, 1985); and (3) an interference reinstituted after having been dissolved under the old rules (37 CFR 1.201-1.288) (e.g., an interference reinstituted after having been dissolved as a result of a motion under 37 CFR 1.231 to dissolve on the grounds of unpatentability where the applicant has obtained allowance of the claims held unpatentable in the decision on motions).

Through these new rules the PTO seeks to improve interference procedure so that the rights of parties in interferences are determined at an early date and the overall process of examining patent applications which become involved in interferences is simplified.

In order to obtain maximum input from the public prior to formally proposing revisions to the rules, on August 1, 1983, the PTO published in the **Federal Register** an advance notice of proposed rulemaking for interference rules. 48 FR 34836-34855. The advance notice was not published in the *Official Gazette*. Twenty-one written comments were received. All comments are available for public inspection in Room 10C01, Crystal Gateway II, 1225 Jefferson Davis Highway, Arlington, Virginia.

On January 30, 1984, the PTO published in the **Federal Register** a notice of proposed rulemaking. 49 FR 3768-3802. The notice was also published in the *Official Gazette* on February 14, 1984. 1039 O.G. 11; 1039 TMOG 11. The notice also appeared in the Bureau of National Affairs' Patent, Trademark & Copyright Journal, Vol. 27, pp. 312-346 (February 2, 1984), hereinafter "BNA." Eighteen written comments were received in response to the notice of proposed rulemaking. The comments are analyzed herein. A hearing was held on May 15, 1984. Three individuals appeared at the hearing. Oral comments made at the hearing are also analyzed herein. The eighteen comments and copy of the transcript of the hearing are available for public inspection in Room 10C01, Crystal Gateway II, 1225 Jefferson Davis Highway, Arlington, Virginia.

The new rules for interferences are set forth herein in §§ 1.601 through 1.688.

The new rules replace entirely the present interference rules (37 CFR 1.201 through 1.288). A "six hundred" number series is used for the new rules. The use of a six hundred number series for the new rules will permit interested individuals to research published decisions (e.g., F.2d, USPQ) or computerized legal research services (e.g., LEXIS) citing the new rules.

An index of the headings of §§ 1.601-1.688 and a table correlating 37 CFR 1.201 through 1.288 (old rules) to §§ 1.601 through 1.688 (new rules) appears below.

Under the new rules, interferences are decided by the Board. The Board has jurisdiction to determine (1) priority of invention, (2) patentability of any claim corresponding to a count both as to applicants and patentees, (3) any issue of interference-in-fact as to any count, and (4) any other issue necessary to resolve the interference. The rules permit an interference to be declared on the basis of a single count defining one patentable invention in interferences involving patents as well as applications. The Board also has jurisdiction to determine whether counts are patentably distinct.

When an interference is declared, an examiner-in-chief is assigned to handle the interlocutory stages of the interference. An examiner having full signatory authority determines when one or more applications and a patent claim the same patentable invention. When the examiner makes such determination, the examiner will forward any involved applications or patents to the Board. The examiner will designate, at the time the involved applications or patents are sent to the Board, the claims of any application and patent which correspond to each count. The examiner-in-chief can subsequently designate additional claims to correspond to a count. The examiner-in-chief assigned to handle the interference will issue a notice to the parties declaring the interference.

The object of the interference will be to resolve all controversies as to all interfering subject matter defined by one or more counts. A final decision in the interference will determine who, if anyone, is entitled to claims which correspond to a count. Any decision adverse to an applicant by the Board will constitute a final refusal by the PTO to that applicant of the claims involved. Any decision adverse to a patentee constitutes cancellation from the patent of the claims involved.

Any decision by the Board on any issue is binding on the examiner and would govern further proceedings in the PTO.

The designation of a single examiner-in-chief to handle the interlocutory phases of an interference will permit better management of, and control over, interference proceedings. The rules provide that times be set and the examiner-in-chief exercise control over proceedings in the interference such that pendency of the interference before the Board from declaration to final decision will not normally exceed 24 months. The examiner-in-chief should be familiar with the history of the interference and will be accessible to counsel for the parties. For example, an examiner-in-chief, where appropriate, may conduct telephone conference calls to obtain agreement of the parties on the setting of schedules. The rules also permit the examiner-in-chief to hold hearings in the PTO or by conference telephone call in order to expedite or settle interlocutory issues in interferences. Any hearing can be transcribed by a court reporter under such conditions as an examiner-in-chief or the Board deems appropriate. The examiner-in-chief, where appropriate, will be available by phone to rule on the admissibility of evidence in the event parties encounter unusual problems during the taking of depositions. The examiner-in-chief will also be available to rule on requests for production of documents which take place during cross-examination. Oral orders given by phone will be followed by written orders.

At the time an interference is declared, the examiner-in-chief will set a time for filing preliminary motions. The preliminary motions can include:

(1) A motion for judgment on the ground that a claim corresponding to the count is not patentable to an opponent under 35 U.S.C. 102, 103, 112, or any other provision of law.

(2) A motion for judgment on the ground that there is no interference-in-fact between the claims of the opponents in the interference.

(3) A motion to add or to substitute new counts, to amend a claim corresponding to a count, to designate an application or patent claim to correspond to a count, to designate an application or patent claim as not corresponding to a count, or to require an applicant to present a claim to be designated to correspond to a count.

(4) A motion to substitute another application for the application involved in the interference or to add an application for reissue to the interference.

(5) A motion to declare another interference.

(6) A motion to be accorded the benefit of an earlier application or to attack the benefit of an earlier application which has been accorded to an opponent.

Other motions are permitted as necessary, such as a motion to amend the count and/or a claim corresponding to the count in response to a preliminary motion for judgment.

Oppositions to motions are permitted if filed within a time set by the examiner-in-chief. Replies are also authorized. Papers which are not authorized by the rules or requested by the examiner-in-chief can be returned unfiled.

A preliminary statement will be filed prior to or concurrently with the preliminary motions outlined above.

Motions will be decided by an examiner-in-chief, who may consult with an examiner on questions of patentability which have not previously been decided by the examiner. The examiner-in-chief may grant a motion, deny a motion, defer consideration on the merits of a motion to final hearing, or take such other action with respect to a motion as may be appropriate, e.g., dismiss an entirely inappropriate motion.

At the time preliminary motions are decided, the preliminary statements will be opened. If a decision on a motion or inspection of the preliminary statement results in entry of an order to show cause why a judgment should not be entered, the party against whom judgment might be entered can request a hearing before the examiner-in-chief and two additional examiners-in-chief. The decision will govern further proceedings. If adverse, the decision will constitute a final agency action. If favorable, the interference will proceed before the examiner-in-chief.

After preliminary motions are decided and assuming judgment does not result, a period may be set for the parties to file motions for additional discovery. The scope of the additional discovery would be the same as under current practice.

When a time period is set for filing discovery motions, or after discovery has closed, the examiner-in-chief will set a period for taking testimony. Any party wishing to take the testimony of a witness can elect to have the testimony of the witness taken by deposition or presented by affidavit. A transcript of an *ex parte* deposition can be used as an affidavit. If an affidavit is presented, the opposing party may then cross-examine on oral deposition. Any redirect will take place at the deposition. The party calling the witness is responsible for securing a court reporter and filing the transcript and record associated with cross-examination of its witness.

In the event a party needs testimony from a third-party who will not appear unless a subpoena is issued, including a hostile witness, direct and cross-examination testimony may be taken on oral deposition. The rules provide that prior authorization of an examiner-in-chief is required before a party can take testimony by issuance of a subpoena under 35 U.S.C. 24. The rule thus adopts the policy of *Sheehan* v. *Doyle*, 513 F.2d 895, 898, 185 USPQ 489, 492 (1st Cir.), *cert. denied*, 423 U.S. 874 (1975), and *Sheehan* v. *Doyle*, 529 F.2d 38, 40, 188 USPQ 545, 546 (1st Cir.), *cert. denied*, 429 U.S. 870 (1976), *rehearing denied*, 429 U.S. 987 (1976), and rejects the policy announced in *Brown* v. *Braddick*, 595 F.2d 961, 967, 203 USPQ 95, 101-102 (5th Cir. 1979). Testimony obtained in other proceedings, e.g., another interference or an infringement action, may be used if otherwise admissible.

Under the rules, the Federal Rules of Evidence are made applicable to interferences, except for those portions which relate to criminal actions, juries, and other matters not relevant to interferences. Those portions include:

(1) Rule 103(c).

(2) Rule 104 (c), (d), and (e).

(3) The language in Rule 105 which reads "and instruct the jury accordingly."

(4) Rule 201(g).

(5) The language in Rule 403 which reads "or misleading the jury."

(6) Rule 404(a) (1) and (2).

(7) The word "charge" in Rule 405(b).

(8) The language "or criminal" and proviso (ii) in Rule 410.

(9) Rule 412.

(10) Rule 606.

(11) The language "whether by an accused" and "other" in the last sentence of Rule 607.

(12) The provisions of the first sentence of Rule 611(c) relating to leading questions on direct examination do not apply to statements made in an affidavit authorized to be filed under the rules.

(13) The language "Except as otherwise provided in criminal proceedings by section 3500 of title 18, United States Code" and "except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial" in Rule 612.

(14) Rule 614.

(15) Rule 706.

(16) The language "excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel" and "and against the Government in criminal cases" in Rule 803(8).

(17) The language "but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the second" in Rule 803(22).

(18) The language "prosecution for homicide or in a" in Rule 804(b)(2).

(19) The language "A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement" in Rule 804(b)(3).

(20) Rule 1101(a), (b), (d)(2), [d](3), and (e).

The examiner-in-chief will set a period for filing the record and briefs. Oral hearings normally will be held before a panel consisting of the examiner-in-chief assigned to the interference and two other examiners-in-chief. The panel will render a final decision in the interference. Requests for reconsideration are permitted.

In rendering its decision, the Board will consider only that evidence which can be made available to the public under § 1.11(a). Accordingly, the Board will not consider evidence which is submitted under a protective order issued by a court if release of that evidence under § 1.11(a) would be inconsistent with the terms of the court's order.

A final decision of the Board is reviewable in the U.S. Court of Appeals for the Federal Circuit or an appropriate U.S. district court. Any reviewing court can review all aspects of the decision including patentability, priority, and all relevant interlocutory orders, such as denials of discovery.

Except as noted above, these new rules are applicable to all interferences declared on or after February 11, 1985. Interferences declared prior to February 11, 1985, continue to be governed by the prior rules (37 CFR 1.201–1.288 (July 1, 1984)) and will be decided by personnel of the Board of Patent Appeals and Interferences. Actions presently taken by a patent interference examiner or examiners of interferences will be taken by an examiner-in-chief.

An anticipated time schedule for a two-party interference follows.

Sections 1.601 through 1.688 would introduce new concepts in interference practice. Some of the more significant aspects of the rules, as well as some of the new concepts, include the following.

Section 1.1 codifies a practice announced in a Commissioner's Notice of November 28, 1983, "Mailing of Papers to the PTO in Patent Interference Proceedings," 1037 *Official Gazette* 25 (December 27, 1983) and authorizes a party in an interference to direct mail to the PTO intended for the interference to a special box in the Mail Room for interference papers. Amendments copying claims which are filed prior to the time an interference is declared would continue to be addressed in accordance with § 1.5(a).

Section 1.5 provides that when a paper filed in the PTO concerns an interference which has been declared, it should state the names of the parties (e.g., Smith v. Jones) and the number of the interference. The name of the examiner-in-chief assigned to the interference (§ 1.610) and the name of the party filing the paper should also appear conspicuously on the first page of the paper. Identification of the examiner-in-chief assigned to the interference and the name of the party filing the paper will greatly assist the Board in its administration of interference cases.

Section 1.8 excludes from the certificate of mailing practice any paper in an interference which an examiner-in-chief orders filed by hand or "Express Mail." Papers filed by "Express Mail" in an interference case would be addressed as set forth in § 1.1(e).

Section 1.11 sets forth when the interference file would become available to the public without a petition for access.

Section 1.48 provides that when a request is filed to correct inventorship of an application involved in an interference, the request shall comply with the requirements of § 1.48 and shall be accompanied by a motion under § 1.634. The request will be placed in the file of the application and the motion will be placed in the file of the interference. The request will be decided as part of the interference.

Section 1.138 permits an attorney or agent to sign and file a paper abandoning an application involved in an interference.

Section 1.196 more clearly sets forth the options open to an applicant when the Board makes a new ground of rejection under § 1.196(b). The last sentence of paragraph (b)(1) is intended to clarify practice in certain situations. One situation involves a case where (1) the Board affirms an examiner's rejection of a "first" claim and makes a new ground of rejection under § 1.196(b) of a "second" claim, (2) the applicant elects to have further proceedings before the examiner on the new ground of rejection on the second claim, and (3) those proceedings do not result in a further appeal (i.e., the second claim is allowed or is cancelled). The last sentence of § 1.196(b)(1) permits the Board to make its decision final on the first claim. By making its decision final on the first claim, the time period under § 1.304 for seeking judicial review begins. Another situation involves a case where (1) the Board affirms an examiner's rejection of a claim over reference A, (2) the Board also enters a new ground of rejection of the claim over reference B, (3) the applicant elects to have further proceedings before the examiner on the new ground of rejection, and (4) those proceedings result in applicant overcoming the new ground of rejection based on reference B. The last sentence of § 1.196(b)(1) permits the Board to make its decision final as to its affirmance of the rejection over reference A. Entry of an order making its decision final would start the period under § 1.304 for seeking judicial review. Thus, an applicant does not forego possible judicial review by electing further prosecution before the examiner when a new ground of rejection is made by the Board. Under paragraph (d), a recommendation by the Board that an allowed claim be rejected is binding on the examiner (rather than being a mere recommendation as was previously the case) in the absence of (1) an amendment, (2) showing of facts by affidavit or other appropriate evidence, or (3) both. The last sentence of paragraph (d) is intended to clarify that the Board may enter a final decision in certain circumstances. When the Board affirms an examiner's rejection of a "first" claim and makes a recommendation under paragraph (d) as to a "second" claim, the application is remanded to the examiner and the Board's decision affirming the rejection of the first claim is not a final decision. If proceedings before the examiner on remand do not result in a further appeal (i.e., the second claim is allowed or is cancelled), the Board may then make its decision final as to the first claim. By making its decision final as to the first claim, the time period under § 1.304 for seeking judicial review starts. Thus, an applicant does not forego judicial review on the first claim merely because of the remand proceedings with respect to the second claim.

Most of the current interference rules (§§1.201 through 1.247 and 1.251 through 1.288) are removed, but will continue to govern interferences declared prior to February 11, 1985. Section 1.248 is retained and governs service of papers in all patent cases except interference proceedings. Section 1.646 governs service of papers in interference proceedings.

Under § 1.292, it is intended to modify public use proceedings only to the extent that public use and on sale issues which arise during an interference shall be raised by a preliminary motion under §1.633(a). There is no fee for filing the motion in the interference, but a fee would continue to be necessary when a petition is filed for institution of a public use proceeding apart from an interference. When a public use proceeding is instituted apart from an interference, the Commissioner will designate an appropriate official to conduct the proceeding including the setting of times for taking testimony under §§1.671 through 1.685. There will continue to be no "additional discovery" (see §§1.687 and 1.688) in public use proceedings.

Section 1.304 makes clear that the provisions of § 1.136 do not apply when judicial review is sought of a decision of the Board of Patent Appeals and Interferences in (1) a reexamination proceeding or (2) an interference. An extension of time to seek judicial review of a decision of the Board in a reexamination proceeding may be obtained under § 1.550(c). An extension of time to seek judicial review of a decision of the Board of an interference proceeding may be obtained under § 1.645. Section 1.304 also establishes an "excusable neglect" standard for seeking judicial review in interference cases when a notice of appeal is untimely filed or a civil action is not timely commenced. The excusable neglect standard is intended to be the same as the standard under Rule 4(a)(5) of the Federal Rule of Appellate Procedure.

Section 1.322 provide that when a request for a certificate of correction under 35 U.S.C. 254 (PTO mistake) is filed to make a correction of a patent involved in an interference, the request shall comply with the requirements of § 1.322 and shall be accompanied by a motion under § 1.635. The request will be placed in the file of the patent and the motion will be placed in the file of the interference. The request will be decided as part of the interference.

Section 1.323 provides that when a request for a certificate of correction under 35 U.S.C. 255 (patentee's mistake) is filed to make a correction of a patent involved in an interference, the request shall comply with the requirements of § 1.323 and shall be accompanied by a motion under §1.635. The request will be placed in the file of the patent and the motion will be placed in the file of the interference. The request will be decided as part of the interference.

Section 1.324 provides that when a request is filed to correct inventorship of a patent involved in an interference, the request shall comply with the requirements of § 1.324 and shall be accompanied by a motion under proposed § 1.634. The request will be placed in the file of the patent and the motion will be placed in the file of the interference. The request will be decided as part of the interference.

Section 1.565 provides that when a patent is involved in an interference proceeding and a reexamination proceeding, both the interference proceeding and the reexamination proceeding *will* continue unless one of the proceedings is stayed. A stay of a reexamination proceeding will be made by the Commissioner. A stay of an interference proceeding will be made by an examiner-in-chief, subject to review by the Commissioner. Section 1.565 continues the present practice of the Commissioner determining in every instance whether to stay a reexamination proceeding when the patent involved in the reexamination proceeding is sought to be reissued or becomes involved in litigation.

Under § 1.601, the rules shall be construed to secure the just, speedy, and inexpensive determination of interferences. Section 1.601 defined various terms used in Subpart E including "additional discovery," "affidavit," "case-in-chief," "case-in-rebuttal," "count," "effective filing date," "filing date," "interference," "interference-in-fact," "junior party," "lead" attorney, "party," "phantom count," "same patentable invention," "separate patentable invention," "senior party," "sworn," and "United States." "Affidavits" include declarations under 35 U.S.C. 25 and 37 CFR 1.68 as well as statutory declarations under 28 U.S.C. 1746. The definition of "United States" is the same as the definition of United States isn 35 U.S.C 100(c).

The definition of "interference" permits an interference between one or more applications and one of more patents. Thus, these new rules follow the policy of *Wilson* v. *Yakel*, 1876 Dec. Comm'r. Pat. 245 (Comm'r. Pat. 1876) and, to the extent inconsistent therewith, do not follow the policy announced in *Touval* v. *Newcombe*, 194 USPQ 509 (Comm'r. Pat. 1976). However, in view of the statutory requirement for the presence of at least one application in an interference, if an applicant were to concede priority or otherwise be terminated from an interference involving only one application and more than one patent, the interference would have to be terminated for lack of subject matter jurisdiction unless one or more of the patentees filed an application for reissue which could be added to the interference under § 1.633(h). A "count" defines interfering subject matter. An interference may have two counts only if the second count defines a "separate patentable invention" from the first count. The reason the second count must define a separate patentable invention is to permit the PTO to lawfully issue separate patents to different parties in an interference when a single party does not prevail as to all counts. A "separate patentable invention" is defined in § 1.601 (n):

Invention (A) is a "separate patentable invention" with respect to invention (B) when invention (A) is new (35 U.S.C. 102) and non-obvious (35 U.S.C. 103) in view of invention (B) assuming invention (B) is prior art with respect to invention (A).

Section 1.602(a) continues the present PTO practice (37 CFR 1.201(c)) of not declaring or continuing an interference between (1) two or more applications owned by the same party or (2) an application and a patent owned by a single party unless good cause is shown. A corporation and its wholly-owned subsidiary are considered a "single party" within the meaning of § 1.602(a). Under prior rules, when a patent and an application involved in an interference became commonly owned, the interference was not "dissolved." Rather, the PTO required that the interference be terminated with a judgment. *Chillas* v. *Weisberg*, 1928 Dec. Comm'r. Pat. 24 (Comm'r. Pat. 1928); *Malone* v. *Toth*, 202 USPQ 397 (Comm'r. Pat. 1978); and *Morehouse* v. *Armbruster*, 209 USPQ 514 (Comm'r. Pat. 1980). Under these new rules, all interferences, including those involving only applications, will be terminated with a judgment. As noted in *Chillas* v. *Weisberg*, *supra* at 25 "the common owner can allow a judgment against the junior party to be rendered by default or it can file a concession of priority from one party to the other." Paragraphs (b) and (c) of § 1.602 continue the present PTO practice (37 CFR 1.201(c)) of requiring a party to notify the PTO of any real party in interest not apparent on the face of the notice declaring the interference (see § 1.611) or of any change in the real party in interest after the interference is declared. The PTO needs to know the identity of any real party in interest to properly enforce § 1.602(a) and to enable an examiner-in-chief to determine whether recusal is necessary or appropriate. A new requirement in paragraphs (b) and (c), not present in 37 CFR 1.201(c), is a 20-day time period for advising the PTO of the identity of, or any change in, the real party in interest.

Under §§ 1.601(f), 1.603, and 1.606, the interfering subject matter would be defined by one or more counts. All the claims in an application or a patent

(December 27, 1983) and authorizes a Board to make its decision final on the extent that public use and on sale issues requirements of § 1.324 and shall be interference may have two counts only claims in an application or a patent

which define the same patentable invention as a count would be designated to correspond to the count. An interference would have two counts only if one count defines a separate patentable invention from another count. Under § 1.606, at the time an interference is declared between a patent and an application, a count would not be narrower in scope than any patent claim which corresponds to the count. Thus, a patent claim would be presumed, subject to a motion under § 1.633(c), not to embrace "separate patentable inventions." Some examples illustrate how the PTO would formulate counts and designate patent and application claims to correspond to counts.

Example 1: Application A contains patentable claim 1 (engine). Application B contains patentable claim 8 (engine). If an interference is declared, there would be one count (engine). Claim 1 of application A and claim 8 of application B would be designated to correspond to the count.

Example 2: Application C contains patentable claims 1 (engine) and 2 (6-cylinder engine). Application D contains patentable claim 8 (engine). An engine and a 6-cylinder engine define the same patentable invention. If an interference is declared, there would be one count (engine). Claims 1 and 2 of application C and claim 8 of application D would be designated to correspond to the count.

Example 3: Application E contains patentable claims 1 (engine), 2 (6-cylinder engine), and 3 (engine with a platinum piston). Application F contains patentable claims 11 (engine) and 12 (8-cylinder engine). Claims 1 and 2 of application E and claims 11 and 12 of application F define the same patentable invention. Claim 3 of application E defines a separate patentable invention from claims 1 and 2 of application E and claims 11 and 12 of application F. If an interference is declared, there would be one count (engine). Claims 1 and 2 of application E and claims 11 and 12 of application F would be designated to correspond to the count. Claim 3 of application E would not be designated to correspond to the count.

Example 4: Application G contains patentable claims 1 (engine), 2 (6-cylinder engine), and 3 (engine with a platinum piston). Application H contains patentable claims 11 (engine) and 15 (engine with a platinum piston). Claims 1 and 2 of application G and claim 11 of application H define the same patentable invention. Claim 3 of application G and claim 15 of application H define a separate patentable invention from claims 1 and 2 of application G and claim 11 of application H. If an interference is declared, there would be two counts: Count 1 (engine) and Count 2 (engine with a platinum piston). Claims 1 and 2 of application G and claim 11 of application H would be designated to correspond to Count 1. Claim 3 of application G and claim 15 of application H would be designated to correspond to Count 2.

Example 5: Application J contains patentable claims 1 (engine), 2 (combination of an engine and a carburetor) and 3 (combination of an engine, a carburetor, and a catalytic converter). Application K contains patentable claims 31 (engine), 32 (combination of an engine and a carburetor), and 33 (combination of an engine, a carburetor, and an air filter). The engine, combination of an engine and carburetor, and combination of an engine, carburetor, and air filter define the same patentable invention. The combination of an engine, carburetor, and catalytic converter define a separate patentable invention from engine. If an interference is declared, there would be one count (engine). Claims 1 and 2 of application J and claims 31, 32, and 33 of application K would be designated to correspond to the count. Claim 3 of application J would not be designated as corresponding to the count.

Example 6: The PTO will continue to follow *Waldeck* v. *Lewis*, 120 USPQ 88 (Comm'r.Pat. 1955). Application L contains patentable claims 1 (Markush group of benzene or toluene), 2 (benzene), and 3 (toluene). Application M contains patentable claim 11 (benzene). Benzene and toluene define the same patentable invention. If an interference is declared, there would be one count (Markush group of benzene or toluene). Claims 1, 2, and 3 of application L and claim 11 of application M would be designated to correspond to the count.

Example 7: Application N contains patentable claim 1 (benzene). Application P contains patentable claim 11 (xylene). Benzene and xylene define the same patentable invention. If an interference is declared, there would be one count (benzene or xylene). Claim 1 of application N and claim 11 of application P would be designated to correspond to the count.

Example 8: Application Q contains patentable claims 1 (Markush group of benzene or chloroform), 2 (benzene), and 3 (chloroform). Application R contains patentable claim 33 (benzene). If benzene and chloroform define the same patentable invention and an interference is declared, there would be one count (Markush group of benzene or chloroform). Claims 1, 2, and 3 of application Q and claim 33 of application R would be designated to correspond to the count. If chloroform defines a separate patentable invention from benzene and an interference is declared, there would be one count (benzene). Claims 1 and 2 of application Q and claim 33 of application R would be designated to correspond to the count. Claim 3 of application Q would not be designated to correspond to the count.

Example 9: Application S contains patentable claims 1 (Markush group of benzene or chloroform), 2 (benzene), and 3 (chloroform). Application T contains patentable claims 11 (Markush group of benzene or chloroform), 12 (benzene), and 13 (chloroform). If benzene and chloroform define the same patentable invention and an interference is declared, there would be one count (Markush group of benzene or chloroform). Claims 1, 2, and 3 of application S and claims 11, 12, and 13 of application T would be designated to correspond to the count. The PTO will continue to adhere to *Becker* v. *Patrick*, 47 USPQ 314 (Comm'r.Pat. 1939). An interference can have two counts only if one count defines a separate patentable invention from another count. If chloroform defines a separate patentable invention from benzene and an interference is declared, there would be two counts: Count 1 (benzene) and Count 2 (chloroform). Claims 1 and 2 of application S and claims 11 and 12 of application T would be designated to correspond to Count 1. Claims 1 and 3 of application S and claims 11 and 13 of application T would be designated to correspond to Count 2.

Example 10: Patent A contains claim 1 (engine). Application U contains patentable claim 11 (engine). If an interference is declared, there would be one count (engine). Claim 1 of patent A and claim 11 of application U would be designated to correspond to the count.

Example 11: Patent B contains claims 1 (engine) and 2 (6-cylinder engine). Application V contains patentable claim 8 (engine). An engine and a 6-cylinder engine define the same patentable invention. If an interference is declared, there would be one count (engine). Claims 1 and 2 of patent B and claim 8 of application V would be designated to correspond to the count.

Example 12: Patent C contains claims 1 (engine), 2 (6-cylinder engine), and 3 (engine with a platinum piston). Application W contains patentable claims 11 (engine) and 12 (8-cylinder engine). Claims 1 and 2 of patent C and claims 11 and 12 of application W define the same patentable invention. Claim 3 of patent C defines a separate patentable invention from claims 1 and 2 of patent C and claims 11 and 12 of application W. If an interference is declared, there would be one count (engine). Claims 1 and 2 of patent C and claims 11 and 12 of application W would be designated to correspond to the count. Claim 3 of patent C would not be designated to correspond to the count.

Example 13: Patent D contains claims 1 (engine), 2 (6-cylinder engine), and 3 (engine with a platinum piston). Application X contains patentable claims 11 (engine) and 15 (engine with a platinum piston). Claims 1 and 2 of patent D and claim 11 of application X define the same patentable invention. Claim 3 of patent D and claim 15 of application X define a separate patentable invention from claims 1 and 2 of patent D and claim 11 of application X. If an interference is declared, there would be two counts: Count 1 (engine) and Count 2 (engine with a platinum piston). Claims 1 and 2 of patent D and claim 11 of application X would be designated to correspond to Count 1. Claim 3 of patent D and claim 15 of application X would be designated to correspond to Count 2.

Example 14: Patent E contains claims 1 (Markush group of benzene or toluene), 2 (benzene), and 3 (toluene). Application Y contains patentable claim 11 (benzene). Benzene and toluene define the same patentable invention. If an interference is declared, there would be one count (Markush group of benzene or toluene). Claims 1, 2, and 3 of patent E and claim 11 of application Y would be designated to correspond to the count.

Example 15: In this example, the claims of patent E and application Y in Example 14 are reversed. Patent E contains claim 1 (benzene). Application Y contains patentable claims 11 (Markush group of benzene or toluene), 12 (benzene), and 13 (toluene). If an interference is declared, the count would be the same as the count in Example 14—(Markush group of benzene or toluene). Claim 1 of patent E and claims 11, 12, and 13 of application Y would be designated to correspond to the count.

Example 16: The PTO will continue to follow cases such as *Case* v. *CPC International, Inc.*, 730 F.2d 745. 221 USPQ 196 (Fed. Cir. 1984); *cert. denied*, 105 S.Ct. 233 (1984); *Aelony* v. *Arni*. 547 F.2d 566, 192 USPQ 486 (CCPA 1977); and *Nitz* v. *Ehrenriech*, 537 F.2d 539, 190 USPQ 413 (CCPA 1976), and declare interferences where interfering patent and application claims are mutually exclusive provided the claims define the same patentable invention. Patent F contains claim 1 (benzene). Application Z contains patentable claim 11 (xylene). Benzene and xylene define the same patentable invention. If an interference is declared, there would be one count (benzene or xylene). Claim 1 of patent F and claim 11 of application Z would be designated to correspond to the count.

Example 17: It will be the practice of the PTO under § 1.606 to initially declare interferences with counts which are identical to or broader than patent claims which correspond to the counts. A single patent claim would be presumed, subject to a motion under § 1.633(c), not to define separate patentable inventions. Patent G contains claims 1 (Markush group of benzene or chloroform), 2 (benzene), and 3 (chloroform). Application AA contains patentable claim 33 (benzene). If an interference is declared, initially it would be presumed by the PTO, subject to a later motion under § 1.633(c), that benzene and chloroform define the same patentable invention. There would be one count (Markush group of benzene or chloroform). Claims 1, 2, and 3 of patent G and claim 33 of application AA would be designated to correspond to the count. If a party believes benzene and chloroform define separate patentable inventions, that party could file a motion under § 1.633(c) to redefine the count and the claims corresponding to the counts.

Example 18: Patent H contains claims 1 (Markush group of benzene or chloroform), 2 (benzene), and 3 (chloroform). Application AB contains patentable claims 11 (Markush group of benzene or chloroform), 12 (benzene), and 13 (chloroform). Benzene and chloroform initially would be presumed, subject to a motion under § 1.633(c), to define the same patentable invention, because they are recited as a Markush group in a single patent claim. If an interference is declared, there would be one count (Markush group of benzene or chloroform). Claims 1, 2, and 3 of patent H and claims 11, 12, and 13 of application AB would be designated to correspond to the count. If a party believes benzene and chloroform define separate patentable inventions, the party could move under § 1.633(c) to substitute a count (benzene) for (Markush group of benzene or chloroform) and to add a count (chloroform). See Example 36.

Example 19: Under § 1.606, the PTO will continue to follow the practice announced in *Ex parte Card and Card*, 1904 Dec.Comm'r.Pat. 383 (Comm'r.Pat. 1904). Patent J contains claim 1 (method of mixing, grinding, and heating). Application AC contains patentable claim 8 (method of mixing and heating) and does not disclose or claim a grinding step. In the context of the inventions disclosed in patent J and application AC, a method of mixing, grinding, and heating is the same patentable invention as a method of mixing and heating. Under current practice, it would be said that "grinding" is an "immaterial" limitation in claim 1 of patent J. Under § 1.606, the fact application AC does not disclose grinding would not preclude an interference. If an interference is declared, there would be one count (method of mixing and heating). Claim 1 of patent J and claim 8 of application AC would be designated to correspond to the count.

Under § 1.605, timely filing of an amendment presenting a claim suggested by the examiner for purposes of an interference would stay *ex parte* proceedings in the application in which the claim is presented pending a determination by the examiner of whether an interference will be declared. Also under § 1.605(a), when an examiner suggests a claim, the applicant will be required to copy verbatim the suggested claim. At the time the suggested claim is copied, however, the applicant may also (1) call the examiner's attention to other claims already in the application or which are presented with the copied claim and (2) explain why the other claims would be more appropriate to be included in any interference which may be declared.

Under § 1.607(b), when an applicant seeks an interference with a patent, e.g., by copying claims from the patent, examination of the application including any appeal would be handled with special dispatch within the PTO. "Special dispatch" would be construed to be the same as special dispatch in a reexamination proceeding. See 35 U.S.C. 305.

Under § 1.608, the PTO will continue current practice (37 CFR 1.204(c)) of requiring an applicant seeking to provoke an interference with a patent to submit evidence which demonstrates that the applicant is *prima facie* entitled to a judgment relative to the patentee. Evidence would be submitted only when the earlier of the filing date or effective filing date of the application is more than three months after the earlier of the filing date or effective filing date under 35 U.S.C. 120 of the patent. The evidence may relate to patentability and need not be restricted to priority. When the evidence (1) consists of prior printed publications and patents and (2) shows that the claims of the application are not

patentable invention from claims 1 and 2 of application G and claim 11 of

interference is declared, there would be one count (Markush group of benzene or

engine). Claims 1 and 2 of patent C and claims 11 and 12 of application W define

and application claims are mutually exclusive provided the claims define the

of mixing, grinding, and heating). Application AC contains patentable

publications and patents and (2) shows that the claims of the application are not

patentable, the claims in the application would be rejected and the applicant could file a request for reexamination of the patent.

Section 1.609 sets forth what an examiner shall forward to the Board when an interference is declared. For the most part, § 1.609 continues current practice. However, under § 1.609(b)(3), the examiner would identify all claims in an application which the examiner believes are patentable over the proposed counts. Thus, a claim in an application would either correspond to a count or would be indicated as being patentable over the count. For instance, in Example 3, *supra*, the examiner would indicate that (1) claims 1 and 2 of application E and claims 11 and 12 of application F correspond to the count and (2) claim 3 of application E defines a separate patentable invention from the count.

Under § 1.610, each interference will be declared by an examiner-in-chief. The examiner-in-chief enters all interlocutory orders in the interference. As necessary, another examiner-in-chief may act in place of the examiner-in-chief assigned to the interference. At the discretion of the examiner-in-chief assigned to the interference, a panel of two or more examiners-in-chief may enter an interlocutory order. The examiner-in-chief will set times and control proceedings such that pendency of the interference normally will not exceed 24 months. Under § 1.610(d), the examiner-in-chief is authorized to hold conferences. Any conference can be by a telephone conference call. Under § 1.610(e), an examiner-in-chief is authorized to determine a proper course of conduct for any situation not specifically covered by the rules.

Under § 1.611(a), the PTO will normally notify each party at its correspondence address (37 CFR 1.33(a)) that an interference is declared. This practice will save the PTO the administrative burden of sending multiple notices as is required by the present rules. Under § 1.611(a), the PTO could, in an appropriate circumstance, also send a notice to a patentee or an assignee. An appropriate circumstance for sending an additional notice would be a situation where a patent was issued on the basis of an application filed under 37 CFR 1.47. The matters to be specified in a notice declaring an interference are set out in § 1.611(c). One item to be set out is the "order of the parties," meaning the order in which the parties will take testimony. If Jones is the junior party and Smith is the senior party, the order of the parties is: Jones v. Smith. The order of the parties may change as a result of the granting of a motion under § 1.633 (d), (f), or (g). Under § 1.611(d), the notice declaring the interference may also set dates for filing preliminary statements, notices that preliminary statements have been filed, motions under § 1.633, oppositions to those motions, and replies to the oppositions. Alternatively, an examiner-in-chief may set those times in a separate order before or after consultation with counsel for the parties. Under § 1.611(e), the PTO may place a notice in the *Official Gazette* each time an interference is declared involving a patent. The notice would make it easier for patent practitioners throughout the country to determine whether a given patent is or has been involved in an interference.

Under § 1.612, except for affidavits under § 1.131 and any evidence and explanation under § 1.608(b) filed separate from an amendment, each party shall have access to the file of every other party after an interference is declared. The files of applications and patents involved in an interference will be maintained in the Service Branch of the Board of Patent Appeals and Interferences for inspection and copying. Any explanation which is filed as part of an amendment or an amendment which discusses details contained in an affidavit under § 1.131 would not be sealed under § 1.612(a). Thus, § 1.612(a) continues the practice discussed in *Moorman* v. *Martin*, 103 USPQ 273 (Comm'r.Pat. 1950) and Calvert, *An Overview of Interference Practice*, 62 J. Pat. Off. Soc'y. 290, 293 (1980). Under § 1.612(b), each party will have access to an opponent's affidavit under § 1.131 or an opponent's evidence and explanation under § 1.608(b) when a decision is rendered on motions under § 1.633. Under § 1.612(c), a party would be required to serve any evidence and explanation under § 1.608(b) if an order to show cause is issued under § 1.617(a) and the party responds to the order under § 1.617(b). Under § 1.612(d), the parties may agree to exchange copies of their respective files.

Under § 1.613(a), when a party has appointed more than one attorney or agent of record, the party may be required to designate a "lead" attorney or agent. A lead attorney or agent would be a registered attorney or agent of record who is primarily responsible for prosecuting an interference on behalf of a party and is the individual whom an examiner-in-chief can contact to set times and take other action in the interference. Section 1.613(b) continues the practice of not permitting the same attorney or agent to represent two or more parties in an interference except as permitted by Chapter 1, see e.g., § 1.344. Under § 1.613(c), an examiner-in-chief can make an appropriate inquiry to determine whether an attorney or agent should be disqualified from representing a party. A final decision to disqualify an attorney or agent is made by the Commissioner under 35 U.S.C. 32.

Section 1.614 specifies when the Board gains jurisdiction over an interference. The section also indicates when an interference becomes a contested case within the meaning of 35 U.S.C. 24. A remand to the examiner is authorized and may be useful in certain situations, such as, when a party moves under § 1.633(c) to add a proposed count which is broader than any count in an interference. Alternatively, an examiner-in-chief would be able to obtain informal opinions from examiners during the course of an interference. Nothing in the rules, however, is intended to authorize informal conferences between an examiner-in-chief and an examiner with respect to the merits of an application before the board in an *ex parte* appeal from an adverse decision of the examiner.

Section 1.616 permits an examiner-in-chief or the Board to impose appropriate sanctions against a party who fails to comply with the rules or with an order entered in the interference. Paragraphs (a) through (e) set forth some of the possible sanctions which can be entered. The particular sanction to be entered would depend on the facts of a given case and ordinarily would not be entered prior to giving the affected party an opportunity to present its views. An individual examiner-in-chief could not impose sanction granting judgment inasmuch as entry of a judgment requires action by the Board. See § 1.610(a). A party desiring sanctions imposed against an opponent could move under § 1.635 for entry of an order imposing sanctions.

Section 1.617 retains summary judgment proceedings in those cases where a junior party applicant is required to file evidence and an explanation under § 1.608(b). To avoid summary judgment, the junior party applicant must establish that it is *prima facie* entitled to judgment relative to the senior party patentee. For the most part, practice under § 1.617 will be the same as the current practice under 37 CFR 1.228. The major changes would be the following: (1) A *prima facie* case could be based on patentability as well as priority. (2) A stricter standard would be imposed for presenting additional evidence after entry of an order to show cause. Under current practice (37 CFR

1.228), additional evidence may be submitted with a response to an order to show cause "when a showing in excuse of . . . [its] omission from the original" showing is made. The "good cause" showing required by § 1.617(b) imposes a stricter standard than was required under the prior rules. The stricter standard is necessary to encourage applicants copying claims from a patent to better prepare their initial showings under proposed § 1.608(b). Under current practice, the Board of Patent Interferences has found that substantial time is lost in issuing orders to show cause based on an inadequate initial showing only to have an adequate showing made with the response to the order to show cause. Under the "good cause" standard, ignorance by a party or counsel of the provisions of the rules or the substantive requirements of the law would not constitute good cause. (3) When an interference involves more than two parties, all opponents would be permitted to participate in summary judgment proceedings. Thus, the new rules overrule *Chan* v. *Akiba* v. *Clayton*, 189 USPQ 621 (Comm'r. Pat. 1975). (4) Currently, and applicant must file two copies of its initial showing under 37 CFR 1.204(c). Under § 1.608(b), a party would file only one copy of the showing. However, any party responding to an order to show cause would be required to serve a copy of its initial showing under § 1.608(b) with any response to the order to show cause. (5) A single examiner-in-chief may order an interference to proceed after issuance of an order to show cause under § 1.608(b) and the filing of a response by an applicant under § 1.617(b). Only the Board, however, may enter a summary judgment. See § 1.617(b).

Under § 1.618, the PTO has authority to return to a party any paper presented in an interference which is not authorized by, or is not in compliance with the requirements of, Subpart E. When an improper paper is filed, a party may be given an opportunity to file a proper paper under such conditions as an examiner-in-chief may deem appropriate: Two examples of improper papers are: (1) Replies to replies which are not authorized by the rules and (2) papers presented which have attached thereto a paper previously filed in the interference.

Sections 1.621 through 1.629 govern preliminary statements which continue to be required in interference cases.

Under § 1.621, a preliminary statement can be signed by any individual having knowledge of the facts (e.g., the inventor) or by an attorney or agent of record. Permitting an attorney or agent of record to sign a preliminary statement eliminates unnecessary mailing of papers between parties and their attorney or agent.

Under § 1.622, the preliminary statement would identify the inventor who made the invention defined by each count. If the inventor identified in the preliminary statement is not an inventor named in the application or patent involved in the interference, a motion under § 1.634 must be diligently filed to correct inventorship.

Sections 1.623, 1.624, and 1.625 respectively set out the allegations which should be made in, and the attachments which should accompany, a preliminary statement when (1) the invention was made in the United States, (2) the invention was made abroad and was introduced into the United States, and (3) derivation by an opponent from a party is to be an issue.

Section 1.626 permits a party to file a preliminary statement which states that the party only intends to rely on the filing date of an earlier United States or foreign application. Ordinarily, a junior party who fails to file a preliminary statement is not entitled to access to any other preliminary statement filed (see § 1.631(b)). Section 1.626 would permit a junior party who only intends to rely on an earlier application to have access to any opponent's preliminary statement.

Section 1.628 sets out how an error in a preliminary statement may be corrected.

Section 1.629 sets out the effect of a preliminary statement. A party who fails to file a preliminary statement will not be permitted to prove (1) that the party made the invention defined by a count prior to the party's filing date or (2) that an opponent derived the invention from the party.

Under § 1.631, preliminary statements normally will be opened for inspection when an examiner-in-chief decides preliminary motions filed under § 1.633. A junior party who does not file a preliminary statement is not entitled to access to a preliminary statement of any other party. When an interference is terminated before preliminary statements are opened, any preliminary statement which has been filed will be returned unopened to the party who submitted the statement.

Under § 1.632, a notice must be filed by a party who intends to argue that an opponent abandoned, suppressed, or concealed an actual reduction to practice. 35 U.S.C. 102(g). A party will not be permitted to brief (§ 1.656) or argue at final hearing (§ 1.654) that an opponent abandoned, suppressed, or concealed an actual reduction to practice unless the notice is timely filed. A notice is timely if filed within ten (10) days of the close of the testimony-in-chief period of an opponent. while a party has the burden of proving that an opponent abandoned, suppressed, or concealed, the burden may be discharged on the basis of the opponent's evidence alone. *Shindelar* v. *Holdeman*, 628 F.2d 1337, 207 USPQ 112 (CCPA 1980). See also *Correge* v. *Murphy*, 705 F.2d 1326, 217 USPQ 753 (Fed. Cir. 1983); *Horwath* v. *Lee*, 564 F.2d 948, 195 USPQ 701 (CCPA 1977); and *Peeler* v. *Miller*, 535 F.2d 647, 190 USPQ 117 (CCPA 1976). Under current practice where notice is not required, it is possible that a party may learn for the first time that abandonment, suppression, or concealment is an issue when the party receives an opponent's brief at final hearing. See *Klug* v. *Wood*, 212 USPQ 767, 771 n. 2 (Bd.Pat.Int. 1981). At that point, it is often too late to reopen proceedings in the interference. The purpose of requiring the notice under § 1.632 is to make the parties and the Board aware during the interlocutory stage of an interference that abandonment, suppression, or concealment may be an issue in the interference. Early notice will permit the parties to ask for and the examiner-in-chief to set appropriate testimony periods for a party to present evidence related to abandonment, suppression, and concealment, particularly in those cases where long unexplained delays tend to prove the allegation of suppression or concealment. Early notice will also eliminate the need for the party moving to reopen the testimony period. *Klug* v. *Wood*, *supra*.

Under § 1.633, a party may file preliminary motions for judgment, to redefine the interference, to substitute a different application in the interference, to declare an additional interference, to be accorded the benefit of an earlier application, to attack benefit previously accorded an opponent, or to add a reissue application to the interference. The motions are called "preliminary motions" in order to distinguish the motions from other motions which might be filed during the course of an interference. The preliminary motions would replace motions currently authorized by 37 CFR 1.231.

Under § 1.633(a), a motion to dissolve would be replaced with a motion for judgment. A party can file a motion for judgment on the ground that an opponent's *claim* corresponding to a count is unpatentable to the opponent. With two exceptions, unpatentability can be based on prior art (35 U.S.C. 102,

Jones v. Smith. The order of the parties

attorney or agent to represent two or

cause. Under current practice (37 CFR

inventor) or by an attorney or agent of record. Permitting an attorney or agent

argue at final hearing (§ 1.654) that an opponent abandoned, suppressed, or

With two exceptions, unpatentability can be based on prior art (35 U.S.C. 102,

103), insufficiency of disclosure (35 U.S.C. 112, first paragraph), indefiniteness of claims (35 U.S.C. 112, second paragraph), double patenting, estoppel, or any other ground which would support a holding that claims corresponding to a count are not patentable. The two exceptions are (1) priority of invention of the subject matter of a count by the moving party as against any opponent and (2) derivation of the subject matter of a count by the opponent from the moving party. The two exceptions are directed to issues which are traditional "priority" issues, e.g., which inventor made the invention defined by a count first or, when derivation is an issue; who made the invention. Resolution of those "priority" issues almost always requires the taking of testimony. A motion for judgment, however, would be proper when a party believed an individual not involved in the interference made the invention defined by the count prior to an opponent in the interference, but subsequent to the moving party. Thus, a patentability issue, such as that raised under 35 U.S.C. 102(g) in *Sutter Products Co.* v. *Pettibone Mulliken Corp.*, 428 F.2d 639, 166 USPQ 100 (7th Cir. 1970). properly could be raised with a motion for judgment under § 1.633(a). Derivation by an opponent from an individual not involved in the interference could also be raised under § 1.633(a).

Under § 1.633(b), a party could move for a judgment when the party believes there is no interference-in-fact. A motion for judgment on the ground of no interference-in-fact is only proper under one of three conditions: (1) When an interference involves designs, (2) when the interference involves plant applications or a plant application and plant patent, or (3) when no claim of a party which corresponds to a count is identical to any claim of an opponent which corresponds to that count. An example illustrates when a motion under § 1.636(b) is proper.

Example 20. Application AD contains patentable claim 1 (6-cylinder engine). Application AE contains patentable claim 3 (8-cylinder engine). An interference is declared with a single count (6 or 8-cylinder engine). Claim 1 of application AD and claim 3 of application AE are designated to correspond to the count. Applicant AD believes that a 6-cylinder engine is a "separate patentable invention" (see § 1.601(n)) from an 8-cylinder engine. Applicant AD would file a motion under § 1.633(b) for a judgment on the ground of no interference-in-fact stating why a 6-cylinder engine is patentably distinct from an 8-cylinder engine. If the Board ultimately agrees with applicant AD, a patent could issue to AD containing claim 1 of application AD and a second patent could issue to AE containing claim 3 of application AE.

Under §1.633(c), a party may move to redefine interfering subject matter. One way to redefine interfering subject matter would be to add or substitute a count. When a party seeks to add a count, the party is required to demonstrate that the proposed count to be added is directed to a "separate patentable invention" from every other count in the interference.

A motion may be filed to amend an application claim which has already been designated to correspond to a count. See § 1.633(c)(2). Such a motion might be filed when a party believes an application claim designated to correspond to a count is unpatentable and the amended claim is believed to be patentable.

An applicant may move to add a claim to the applicant's application and to designate the claim to be added to correspond to a count. See § 1.633(c)(2). Such a motion may be filed when the applicant discloses specific subject matter which is not claimed, would like to claim the subject matter, and wants the subject matter involved in the interference.

Another way to redefine interfering subject matter would be to designate a claim as corresponding or not corresponding to a count. See §1.633 (c)(3) and (c)(4). Examples 21 and 22 illustrate this latter point.

Example 21. Application AF contains patentable claim 1 (engine). Patent K contains claims 3 (engine) and 5 (6-cylinder engine). Claim 1 of application AF and claim 3 of patent K are designated to correspond to the count. Applicant AF believes a 6-cylinder engine is the "same patentable invention" (see § 1.601(n)) as engine. Applicant AF would file a motion under § 1.633(c)(3) to designate claim 5 of patent K as corresponding to the count. If the motion is granted and applicant AF prevails in the interference, judgment would be entered against patentee K and both claims 3 and 5 of patent K would be cancelled under 35 U.S.C. 135(a).

Example 22. Application AG contains patentable claim 1 (engine). Patent L contains claims 3 (engine) and 5 (8-cylinder engine). An interference is declared with one count (engine). Claim 1 of application AG and claims 3 and 5 of patent L are designated to correspond to the count. Patentee L believes that an 8-cylinder engine defines a "separate patentable invention" (see § 1.601(n)) from engine. Patentee L should file a motion under § 1.633(c)(4) to designate claim 5 of patent L as "not corresponding" to the count. If the motion is granted and an adverse judgment is entered against patentee L, only claim 3 would be cancelled from the patent pursuant to 35 U.S.C. 135(a).

A motion to redefine the interfering subject matter may also request that an opponent who is an applicant be required to add a claim to the opponent's application and to designate the claim to correspond to a count. See § 1.633(c)(5). Such a motion might be filed when a party sees that the opponent discloses, but does not claim, subject matter which the party believes should be involved in the interference.

Section 1.633(i) would continue present practice (37 CFR 1.231) of allowing a party to move to redefine the subject matter of the interference or substitute a different application when an opponent moves for judgment (see § 1.633(a) and (b)) or to attack benefit (see § 1.633(g)).

Paragraph (j) of § 1.633 will permit an opponent to move for benefit when a party moves to add or substitute a count. Thus, when a motion to add a count is filed by a party and an opponent wants benefit of an earlier application in the event the motion to add is granted, the opponent should file a motion under § 1.633(j) to be accorded benefit. The mere fact that the opponent had been accorded benefit of an earlier application when the interference was declared does not mean the opponent will be accorded benefit as to some other count which may be added on motion of some other party.

Section 1.634 authorizes a motion to correct inventorship in an application (see § 1.48) or a patent (see § 1.324) involved in an interference.

Section 1.635 authorizes the filing of motions other than those specified in §§ 1.633 or 1.634. Motions filed under § 1.635 would be referred to as "miscellaneous motions" to distinguish from "preliminary motions" under § 1.633. Instances where a miscellaneous motion would be filed include motions to correct an error in a preliminary statement, to extend time for taking action or to seek judicial review, to obtain permission to proceed under 35 U.S.C. 24, or to obtain additional discovery.

Section 1.636 sets out the times within which a motion would be filed.

Section 1.637 sets out the content of motions. In prior interference practice, parties and their counsel have had difficulty meeting all the "unwritten"

requirements for motions under 37 CFR 1.231. Section 1.637 is quite specific in setting out the requirements for each type of motion, particularly the preliminary motions. By setting out with specificity the requirements for each type of motion, it is intended to minimize disposition of motions on technicalities. A vast majority of the comments in response to the advanced notice published in the **Federal Register** on August 1, 1983, commenting on then proposed § 1.637 were in favor of the requirements for motions being specifically set out in the regulations.

Section 1.638 authorizes oppositions to motions. Any opposition would have to identify any material fact in dispute. A reply to an opposition would be authorized for all motions. A reply to a reply is not authorized.

Section 1.639 sets forth the evidence which may accompany a motion, opposition, or reply. Every material fact alleged in a motion, opposition, or a reply would have to be supported by proof. Section 1.639(b) authorizes affidavits to be used as proof for any motion. The affidavit may later be used by a party during the testimony period (see §§ 1.671(e) and 1.672(b)). When a party believes that testimony is necessary to decide a motion under § 1.633 or § 1.634, the party would have to describe the nature of the testimony needed. If an examiner-in-chief agrees that testimony is needed, appropriate interlocutory relief would be granted and testimony would be ordered.

Example 23. An interference is declared with one count between application AH and application AJ. Applicant AH files a preliminary motion under § 1.633(c)(1) to redefine the interference by adding a second count. In order to succeed, applicant AH must show that the proposed count to be added is directed to a "separate patentable invention" (see § 1.601(n)) from the count already in the interference. In the motion, applicant AH sets forth in detail the testimony which would be required to prove that the subject matter of the proposed count is to a separate patentable invention from the subject matter of the count in the interference. Applicant AJ opposes the motion on the ground that the proposed and present counts define the "same patentable invention" (see § 1.601(n)). An examiner-in-chief determines that a material fact is in dispute and that applicant AH has established testimony is needed to properly rule on the motion. Under the circumstances, the motion would be deferred to final hearing and a testimony period would be ordered. The questions of (1) whether the proposed and present counts define the same patentable invention and (2) priority would be decided at final hearing.

Under § 1.640, an examiner-in-chief would decide all motions. A hearing could be held on a motion in the discretion of an examiner-in-chief. Where appropriate, an examiner-in-chief could consult with an examiner on a question of patentability which arises in the first instance in the interference. Consulation would not be necessary where the examiner had already ruled on the patentability question which comes before the examiner-in-chief or the Board. Moreover, nothing in § 1.640 authorizes conferences between examiners-in-chief and examiners in *ex parte* appeals under 35 U.S.C. 134 from an adverse decision of an examiner. A party is entitled to request reconsideration of a decision on a motion by a single examiner-in-chief. An opposition to a request for reconsideration could not be filed unless ordered by an examiner-in-chief or the Board, but the decision by the single examiner-in-chief would not normally be modified unless an opposition has been requested. The request for reconsideration would be acted on by a panel of the Board consisting of at least three examiners-in-chief, one of whom would normally be the examiner-in-chief who decided the motion. Several comments were received in response to the advance notice questioning why the examiner-in-chief who decided the motion would form part of the panel deciding the request for reconsideration. The decision to propose, and now adopt, a regulation which would permit the examiner-in-chief who decided the motion to participate in the decision on reconsideration was made after careful balancing of all the factors involved. It could have been proposed to permit the examiner-in-chief to individually decide the request for reconsideration. However, it is believed that parties in interference cases would feel that their requests for reconsideration are being more fully considered if more than one person considers their request. The two additional examiners-in-chief would be able to consult with the examiner-in-chief most familiar with the case, but would be able to control the decision on reconsideration by a majority vote. Use of the examiner-in-chief who decided the motion and two additional examiners-in-chief would (1) minimize delay which would occur if three new examiners-in-chief were used who were unfamiliar with the record and (2) minimize the possibility that reversible error occurred if only the examiner-in-chief who decided the motion also individually decided the request for reconsideration.

Under § 1.644, petitions to the Commissioner are authorized in interference cases under certain restricted conditions. Petitions in interferences have been the source of substantial delay. Section 1.644 attempts to minimize those delays. Section 1.644 authorizes a petition to the Commissioner from a decision of an examiner-in-chief or a panel when the examiner-in-chief or the panel shall be of the opinion (1) that the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion and (2) that an immediate decision on petition would materially advance the ultimate termination of the interference. The standard is intended to be analogous to that of a district court certifying a question to a court of appeals under 28 U.S.C. 1292(b). A petition could be filed seeking to invoke the supervisory authority of the Commissioner. However, the petition could not be filed prior to entry of judgment and could not relate to the merits of priority or patentability or the admissibility of evidence under the Federal Rules of Evidence. A petition could also be filed seeking waiver of a rule. A fee of $120 would be charged for each petition and for each request for reconsideration of a decision on petition. Any petition would be decided on the record made before the examiner-in-chief or the Board and additional evidence could not be submitted with the petition. An opposition could not be filed unless ordered by the Commissioner. Where reasonably possible, service of a petition would have to be such that delivery is accomplished within one day. Service by hand or "Express Mail" would comply with this requirement.

Section 1.645 permits a party to file a motion to seek an extension of time to take action in an interference or to seek judicial review. The motion would have to be filed within sufficient time to actually reach an examiner-in-chief prior to expiration of the time for taking action. Under § 1.645, a moving party would not be able to assume that a motion for an extension of time would be granted. Under § 1.610(d)(6), a request for an extension of time could be made orally and an appropriate order would then be entered thus eliminating considerable paper work. The order would be the written record of the request and decision. See § 1.2. Extensions of time have caused numerous delays in interference cases.

Under present interference practice, some delays are caused because attorneys and agents on many occasions unexpectedly receive orders setting times. Under the new practice, attorneys and agents can expect times to be set for filing preliminary statements, preliminary motions, motions for additional discovery, testimony, and briefs after a conference call. It is expected that use of conference calls will permit an examiner-in-chief and attorneys or agents for parties to set a time schedule which is mutually satisfactory. A motion to extend time would not be granted unless a party shows good cause. The use of conference calls would allow schedules to be set before orders setting time are entered and therefore the press of other business which arises after the examiner-in-chief and attorneys and agents agree to times would not normally be considered good cause.

Under § 1.647, when a party relies on a document in a foreign language, an English language translation of the document and an affidavit attesting to the accuracy of the translation would be required. The rule would apply to any document, including evidence submitted with motions, foreign applications for which a party seeks benefit, testimony, and exhibits introduced in evidence during testimony.

Under § 1.651, after a decision is entered on preliminary motions, an examiner-in-chief would set times for filing motions for additional discovery and for taking testimony. Any motion for additional discovery would be to obtain answers to interrogatories, requests for admissions, and documents and things necssary for a party to prepare its case-in-chief.

Section 1.653 sets out what shall be in the record to be considered by the Board at final hearing. The record would continue to be printed or typed on paper 8½" by 11" in size. Accordingly, when a party files an affidavit, the party should use 8½" by 11" paper for the affidavit.

Section 1.654 continues the practice of holding a final hearing where oral argument may be presented by all parties. No fee would be charged for appearing at oral argument at final hearing in an interference.

Section 1.655 specfies the matters which can be considered in rendering a final decision. Patentability is an issue which may be raised. The Board can also consider whether any interlocutory order was manifestly erroneous or an abuse of discretion, although any interlocutory order would be presumed to be correct and burden of showing error shall be on the party attacking the order. This last procedural provision permits the Board to correct any manifest error before a party seeks judicial review of an interlocutory order along with judicial review of the Board's final decision.

Section 1.656 sets forth the requirements for briefs for final hearing. In large measure, § 1.656 follows the requirements of Rule 28 of the Federal Rules of Appellate Procedure. An original and three copies of a brief is required. Under § 1.656(h), if a party wants the Board in rendering its final decision to rule that any evidence is inadmissible, the party must file with its opening brief an original and three copies of a motion to suppress the evidence. Any previous objection to the admissibility of evidence is waived unless the motion to suppress is filed. This procedural provision makes clear that an objection to the admissibility of evidence must be renewed at final hearing and will be considered by the Board in rendering its final decision. When a junior party fails to file a brief, an order can be issued requiring the junior party to show cause why failure to file the brief should not be taken as a concession of priority.

Under § 1.658 the Board would enter a final decision. The decision can (1) enter judgment, in whole or in part, (2) remand the interference to an examiner-in-chief, or (3) take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing claims which correspond to the count. When judgment is entered as to all counts, the decision of the Board is considered final for the purpose of judicial review. Section 1.658(c) defines the doctrine of interference estoppel as it is to be applied in the PTO after an interference is terminated. The definition of interference estoppel is designed to encourage parties in interference cases to settle as many issues as possible in one proceeding. Section 1.658(c) creates an estoppel both as to senior and junior parties unlike the present practice (37 CFR 1.257) which limits estoppel in some instances to junior parties. An estoppel would *not* apply with respect to any claims which correspond, or which properly could have corresponded, to a count as to which the party was awarded a favorable judgment. A few examples illustrate how estoppel would be applied.

Example 24. Junior party applicant AL and senior party applicant AK both disclose separate patentable inventions "A" and "B" and claim only invention A in their respective applications. An interference is declared with a single count to invention A. Neither party files a preliminary motion (see § 1.633(c)(1)) to add a count to invention B. Judgment as to all of AL's claims corresponding to the sole count is awarded to junior party applicant AL. Senior party applicant AK would be estopped to thereafter obtain a patent containing claims to invention B, because applicant AK failed to move to add a count to invention B in the interference. Junior party applicant AL would not be estopped to obtain a patent containing claims to invention B.

Example 25. In this example, the facts are the same as in Example 24 except that judgment is awarded as to all AK's claims corresponding to the count to senior party applicant AK. Junior party applicant AL would be estopped to obtain a patent containing claims to invention B in the interference. Senior party applicant AK would not be estopped to obtain a patent containing claims to invention B.

Example 26. Junior party applicant AM and senior party applicant AP both disclose separate patentable inventions "C", "D", and "E" and claim inventions C and D in their respective applications. An interference is declared with two counts. Count 1 is to invention C and Count 2 is to invention D. Neither party files a preliminary motion to add a proposed Count 3 to invention E. Judgment as to all AM's claims corresponding to Counts 1 and 2 is awarded to junior party applicant AM. Senior party applicant AP would be estopped to thereafter obtain a patent containing claims to invention E, because applicant AP failed to move to add a count to invention E in the interference. Junior party applicant AM would not be estopped to obtain a patent containing claim to invention E.

Example 27. In this example, the facts are the same as in Example 26 except that judgment is awarded as to all AP's claims corresponding to Counts 1 and 2 to senior party applicant AP. Junior party applicant AM would be estopped to obtain a patent containing claims to invention E, because applicant AM failed to move to add a count to invention E in the interference. Senior party applicant AP would not be estopped to obtain a patent containing claims to invention E.

Example 28. In this example, the facts are the same as in Example 26 except that judgment is awarded on all of AM's claims corresponding to Count 1 to junior party applicant of AM and judgment is awarded on all AP's claims corresponding to Count 2 to senior party applicant AP. Both parties would be estopped to obtain a patent containing claims to invention E, because neither moved to add a count to invention E during the interference. Assume that junior party AM could have properly moved under § 1.633(f) to be accorded the benefit of an earlier application, but did not do so during the interference. Junior party AM would not be estopped in subsequent *ex parte* prosecution from asking for benefit of the earlier application as to the invention defined by Count 1. Accordingly, if the examiner were to reject junior party AM's claim corresponding to Count 1 on the basis of some newly discovered prior art, junior party AM could properly antedate the prior art by seeking the benefit under 35 U.S.C. 120 of the earlier application. Thus, even though junior party AM was a "losing party" as to Count 2 (an adverse judgment as to junior party AM's claims corresponding to Count 2 having been entered), junior party AM was awarded a favorable judgment (§ 1.658(c)) as to Count 1. Junior party AM would be estopped in subsequent *ex parte* prosecution from attempting to be accorded the benefit of the earlier application as to the invention of Count 2.

Example 29. Applicant AQ discloses and claims invention "F." Applicant AR discloses and claims separate patentable inventions "F" and "G." The assignee of applicant AQ also owns an application AS which discloses and claims invention "G." An interference is declared between applicant AQ and applicant AR. The sole count is directed to invention F. No motion is filed by applicant AQ or its assignee to declare an additional interference between applicant AR and applicant AS with a count to invention G. A judgment as to all of AR's claims corresponding to the sole count is awarded to applicant AR. Applicant AS and the assignee would be estopped to obtain a patent containing claims to invention G, because applicant AR and the assignee failed to move to declare an additional interference with a count to invention G.

Example 30. The facts in this example are the same as the facts in Example 29 except that judgment as to all of AQ's claims corresponding the sole count is awarded to applicant AQ. Applicant AS and the assignee would not be estopped, because applicant AQ was not a "losing party" (§ 1.658(c)).

Example 31. Applicant AT discloses a generic invention to "solvent" and a species to "benzene." Application AT contains a patentable claim 1 (solvent) and no other claims. Applicant AU discloses the generic invention to "solvent" and species to "benzene" and "toluene." Application AU contains patentable claim 3 (solvent) and no other claims. An interference is declared with a single count (solvent). Claims 1 of application AT and claim 3 of application AU are designated to correspond to the count. No preliminary motions are filed. A judgment is entered in favor of applicant AT on the claim corresponding to the sole count. Applicant AU would be estopped to obtain a patent containing a claim to benzene, because applicant AU failed to file a preliminary motion under § 1.633(c)(1) seeking to add a count to benzene and benzene was disclosed in winning party AT's application. Applicant AU would also be estopped to obtain a patent containing a claim to toluene, unless "toluene" defines a "separate patentable invention" from "solvent." A basis for interference estopped (§ 1.658(c)) exists if "toluene" and "solvent" define the "same patentable invention," because a claim to "toluene" could properly have been added and designated to correspond to the count. See § 1.633(c)(2).

Under § 1.659, the Board would be able to make recommendations to examiners and the Commissioner, including recommendations that application claims not involved in the interference be rejected and that a patent be reexamined as to patent claims not involved in the interference.

Under § 1.660, a party would be required to notify the Board when the party's patent or application becomes involved in other PTO proceedings (reexamination, reissue, or protest) or litigation.

Section 1.661 sets forth when an interference is considered terminated after a judgment is entered in the interference. For the purpose of filing copies of settlement agreements, an interference is considered terminated when the time for all appeals has expired. *Tallent* v. *Lemoine*, 204 USPQ 1058 (Comm'r . Pat. 1979). See also *Nelson* v. *Bowler*, 212 USPQ 760 (Comm'r. Pat. 1981).

Section 1.662 provides that a party may request that an adverse judgment be entered. The section also provides that when a written disclaimer (not a statutory disclaimer), concession of priority or unpatentability, abandonment of the invention, abandonment of an application, or abandonment of the contest is filed, the disclaimer, concession, or abandonment would be treated as a request for entry of an adverse judgment. Section 1.662(b) provides that when a patentee files a reissue application and omits all claims of a patent corresponding to the counts of an interference for the purpose of avoiding the interference, judgment would be entered against the patentee. Under § 1.662(c), the filing of a statutory disclaimer would not be treated as a request for entry of an adverse judgment unless all patent claims corresponding to a count are disclaimed. Under § 1.662(d), if after entry of a judgment or after filing of a statutory disclaimer no interference exists, the interference would be terminated as to any party against whom judgment has not been entered and any further prosecution of any application involved in the interference would be *ex parte* before the examiner.

Section 1.666 sets out the procedure for filing settlement agreements in interference cases. The PTO is merely a repository for copies of agreements filed under 35 U.S.C. 135(c) and does not undertake to rule on whether the statute requires that a copy of any particular agreement be filed. *Nelson* v. *Bowler*, 212 USPQ 760 (Comm'r.Pat. 1981).

Section 1.671 sets out what would be considered evidence. The Federal Rules of Evidence, with certain exceptions, are made applicable to interference cases. Under § 1.671(e), a party cannot rely on a previously filed affidavit unless the affidavit is served and notice is given that the party intends to rely on the affidavit. The purpose for the notice is to permit an opponent to determine whether a deposition for cross-examination is necessary (see §§ 1.672(b) and 1.673(e)).

Section 1.671(e) is intended to overrule prior construction of PTO rules in *Holmes* v. *Kelly*, 586 F.2d 234, 237 n. 7, 199 USPQ 778, 782 n. 7 (CCPA 1978) and *Brecker* v. *Jennings*, 204 USPQ 663 (Bd.Pat. Int. 1978), which considered a Rule 132 affidavit in the file of an involved application to be part of the "record" in an interference. Under § 1.671(e), a party intending to rely on such an affidavit must give notice and serve a copy of the affidavit on the opponent.

Under § 1.671(f), the significance of documentary and other exhibits must be discussed with particularity by a witness during oral deposition or in an affidavit. Section 1.671(f) sets out in the regulations an evidentiary requirement imposed by precedent. See *Popoff* v.

Orchin, 144 USPQ 762 (Bd.Pat. Int. 1963) (unexplained experimental data should not be considered); *Chandler* v. *Mock*, 150 F.2d 563, 66 USPQ 209 (CCPA 1945) (records standing alone were held to be meaningless), and *Smith* v. *Bousquet*, 111 F.2d 157, 45 USPQ 347 (CCPA 1940) (unexplained tests in stipulated testimony are entitled to little weight). See also *In re Borkowski*, 505 F.2d 713, 184 USPQ 29 (CCPA 1974) and *Triplett* v. *Steinmayer*, 129 F.2d 869, 54 USPQ 409 (CCPA 1942). Under § 1.671(g), a party is required to obtain permission from an examiner-in-chief prior to proceeding under 35 U.S.C. 24. This requirement insures that a subpoena is necessary (e.g., a subpoena ordinarily should not be necessary where testimony of an opponent is sought) and that testimony sought through a section 24 subpoena is relevant before a subpoena is issued. The motion seeking permission to proceed under section 24, any opposition thereto, and the order of an examiner-in-chief authorizing the moving party to proceed under section 24 will be of assistance to a federal court in the event a party is required to resort to a court to enforce the subpoena or to compel answers to questions propounded at any deposition where a witness is appearing pursuant to a subpoena. See *Sheehan* v. *Doyle*, 529 F.2d 38, 188 USPQ 545 (1st Cir.), *cert. denied*, 429 U.S. 870 (1976), *rehearing denied*, 429 U.S. 987 (1976).

Under § 1.671(h), any evidence which is not taken or sought and filed in accordance with the regulations will not be admissible.

Section 1.672 sets forth the manner in which testimony shall be taken. Testimony can be taken by deposition or affidavit at the election of the party presenting the testimony. A party presenting testimony by affidavit must file and serve the affidavit. If the party presents testimony by affidavit and an opponent elects to cross-examine the affiant, the party is required to notice a deposition for the purpose of cross-examination. Re-direct and re-cross will take place at the deposition. Where the parties agree, testimony can be presented by affidavit without opportunity for cross-examination (see § 1.672(e)) or by an agreed statement of facts (see § 1.672(f)).

Section 1.673 sets out how a deposition must be noticed. A deposition can be noticed for any reasonable place in the United States. The extent to which parties, witnesses, and attorneys or agents have to travel may be considered in determining whether a place is reasonable. Prior to serving a notice for a deposition, a party is required to take two procedural steps. Under § 1.673(b), a party would be required to serve a copy of the documents and a list of the things in its possession, custody, and control upon which it intended to rely. Under § 1.673(g), the party is required to have an oral conference (in person or by telephone) with all opponents to attempt to agree on a mutually acceptable time and place for taking the deposition. An examiner-in-chief may set the time and place if agreement is not reached. A single notice listing all the witnesses and the general nature of their expected testimony is then served. Under § 1.673(c) and except as provided, a party can not rely on any witness not mentioned in the notice, any document not served, or any thing not listed. Under § 1.673(h), a copy of any notice must be attached to the certified transcript of each deposition filed.

Section 1.674 sets out the persons before whom depositions can be taken.

Section 1.675 sets out how a deposition is to be taken.

Section 1.676 sets out how a court reporter should prepare and file a certified transcript of a deposition. Section 1.676(d) sets out how exhibits are to be marked for identification, used at depositions, and filed. Provisions similar to those of Rule 30(f)(1)(A) and (B) of the Federal Rules of Civil Procedure are applicable to interferences.

Section 1.677 sets out the form of a transcript of a deposition.

Under § 1.678, a transcript of a deposition must be filed in the PTO within 45 days of the date of the deposition.

Section 1.682 sets out how a party may introduce in evidence, if otherwise admissible, official records or printed publications. When a notice is served, a party is also required to serve (but not file) copies of the official records and printed publications. Any objection to the notice or to the admissibility of any official record or publication must be filed within 15 days of the date of service of the notice.

Section 1.683 sets out how a party may use testimony from another interference or proceeding.

Section 1.684 sets out how a party may take testimony in a foreign country.

Section 1.685 sets out how objections during the taking of depositions must be raised. Under § 1.685(a), an error in a notice of deposition is waived unless a motion to quash the notice is filed as soon as the error is, or could have been, discovered. Under § 1.685(b), any objection to the qualifications of an officer is waived unless (1) the objection is noted on the record of the deposition before a witness begins to testify or (2) if discovered after the deposition, a motion to suppress is filed as soon as the objection is, or could have been, discovered. Under § 1.685(c), any error in the manner in which testimony is transcribed, the transcript is signed by a witness, or the transcript is prepared or otherwise handled by the court reporter is waived unless a motion to suppress is filed as soon as the error is, or could have been, discovered. Under § 1.685(d), any objection on the merits to the admissibility of evidence (e.g., under the Federal Rules of Evidence) is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Often objections are cured by subsequent testimony. Accordingly, any objection which a party wants the Board to consider at final hearing must also be made the subject of a motion under § 1.656(h).

Section 1.687 sets out how a party could seek and obtain additional discovery. "Additional discovery" is defined in § 1.601(a). Section 1.687 does not change the standard ("interest of justice") for obtaining discovery.

Section 1.688 sets out how a party can introduce into evidence admissions and answers to interrogatories obtained as a result of additional discovery.

Changes in Text

Several changes have been made to the text of the proposed rules published in the **Federal Register** on January 30, 1984. The changes are discussed below. Additional rationale for the changes are further discussed under the heading "Analysis of Comments."

All references to the "Board of Appeals and Interferences" have been changed to "Board of Patent Appeals and Interferences" in view of Pub. L. 98-622.

In § 1.11(a) the language "or after termination of an interference without an award of judgment" has been deleted. This change has been made in view of changes made in paragraphs (c) and (d) of § 1.662.

In response to comment, the fee required for a petition in an interference under § 1.644(e) and a request for reconsideration of a decision on petition in an interference under § 1.644(f) have been set out as separate items.

Section 1.136 was changed to refer to § 1.611 rather than § 1.610(a).

The following sentence was inadvertently omitted as the third sentence of § 1.138 in the notice of proposed rulemaking: "A registered attorney or agent acting under the

provision of § 1.34(a), or of record, may also expressly abandon a prior application as of the filing date granted to a continuing application when filing such a continuing application." This sentence presently appears in § 1.138.

In 1.196(d), second sentence, "thirty days" has been changed to "one month".

In 1.197(b), "thirty days" has been changed to "one month".

In the last sentence of § 1.304, "The Commissioner" has been changed to "An examiner-in-chief" and "of a decision of the Board of Patent Appeals and Interferences in an interference case" has been inserted after "time for seeking judicial review." This change is made to limit the "excusable neglect" standard to interference cases only.

In § 1.601(j), the language "all the claims of a party which correspond" has been changed to read "at least one claim of a party which corresponds". The language "all the claims of an opponent which correspond" has been changed to read "at least one claim of an opponent which corresponds".

Section 1.605(a) has been changed by deleting from the third sentence the language "a claim which is the same or substantially the same as" and by adding the following sentence as the fourth sentence: "At the time the suggested claim is presented, the applicant may also (1) call the examiner's attention to other claims already in the application or which are presented with the suggested claim and (2) explain why the other claims would be more appropriate to be included in any interference which may be declared." In the second sentence, "30 days" has been changed to "one month".

In the last sentence of § 1.606, the language "to define one patentable invention" has been changed to read: "not to contain separate patentable inventions."

The word "and" has been inserted in § 1.607(a) before "(3)". The word "must" in the first sentence of §1.607(c) has been changed to "shall" in response to a suggestion in a comment.

Pursuant to two separate suggestions, the following is being added after the first sentence in § 1.608(b): "Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the earlier of the filing date or effective filing date of the patent. To facilitate preparation of a record (§ 1.653 (g) and (h) for final hearing, an applicant should file affidavits on paper which is 8½ by 11 inches (21.8 by 27.9 cm.)."

In § 1.609(b) (1), the language "count or counts" has been changed to "proposed count or counts". In § 1.609(b) (2), each occurrence of "the count" has been changed to "each count".

In § 1.613(a), "§ 1.344" has been changed to "this Chapter." This change is being made to obviate the need to again amend § 1.613 in the event new rules relating to practice before the PTO are issued. See the notice of proposed rulemaking published in the **Federal Register** on August 24, 1984, 49 FR 33790, proposed §§ 10.62 and 10.66. The language "or members of the same firm of attorneys or agents" has been added after "agent" in § 1.613(b).

In § 1.615(a), second sentence, "which are" has been deleted and "in the interference" has been added after "will not be entered or,considered".

Several changes have been made in § 1.617. In § 1.617(a), the language "the interference shall proceed before the examiner-in-chief" has been changed to read: "the interference shall proceed in the normal manner under the regulations of this part". The second sentence of § 1.617(b) ("A response may include a request by the applicant for a hearing before the Board.") has been changed to read: "Any request by the applicant for a hearing before the Board shall be made in the response." This change was made to clarify when and how a hearing must be requested by the applicant. The second sentence of § 1.617(d) has been changed to read: "The statement may set forth views as to why summary judgment should be granted against the applicant, but the statement shall be limited to discussing why all the evidence presented by the applicant does not overcome the reasons given by the examiner-in-chief for issuing the order to show cause." Section 1.617(e) has been re-written as follows: "Within a time authorized by the examiner-in-chief, an applicant may file a reply to any statement filed by any opponent." The language "examiner-in-chief or the" has been added after "by the applicant is timely filed, the" in the first sentence of § 1.617(g). The language "Board decides that" has been deleted from the second sentence of § 1.617(g). The language "If the Board decides otherwise" has been replaced with "Otherwise" in the third sentence of § 1.617(g). The language "before the examiner-in-chief" in the third sentence of § 1.617(g) has been changed to read: "in the normal manner under the regulations of this part." These changes will authorize either an examiner-in-chief or a Board to authorize an interference to proceed under § 1.617(g). It will continue to be necessary for the Board to enter an order *granting* summary judgment. In the last sentence of § 1.617(h), "patentee" has been changed to "any opponent".

The language "the name of" has been deleted from the first sentence of § 1.622(a). The second sentence of § 1.622(a) in the notice of proposed rulemaking ("When an inventor identified in the preliminary statement is not identical to the inventor named in the party's application or patent, the party shall file a motion. . . .") has been changed to read: "When an inventor identified in the preliminary statement is not an inventor named in the party's application or patent, the party shall file a motion . . . ." This change is being made in view of section 105(a) of Pub. L. 98-622 which amended 35 U.S.C. 116 to permit joint inventors to be named "even though . . . (3) each did not make a contribution to the subject matter of every claim . . . ."

The following changes have been made in § 1.623(c). In the first sentence, "copy of the drawing" has been changed to "copy of the first drawing". In the second sentence, "copy of the written description" has been changed to "copy of the first written description". In the third sentence, "when a drawing or written description" has been changed to "when a copy of the first drawing or first written description".

Several changes have been made to § 1.624. The following has been added as a second sentence in § 1.624(a)(5): "If an actual reduction to practice of the invention was not introduced into the United States, the preliminary statement shall so state." The following changes have been made in § 1.624(c). Each occurrence of "was made" has been changed to "was introduced into the United States." In the first sentence, "copy of the drawing" has been changed to "copy of that drawing". In the second sentence, "copy of the written description" has been changed to "copy of that written description". In the third sentence, "a drawing or written description" has been changed to "a copy of the first drawing or first written description introduced in the United States".

The following changes have been made in § 1.625(c). In the first sentence, "copy of the drawing" has been changed to "copy of the first drawing". In the second sentence, "copy of the written

serving a notice for a deposition, a party

officer is waived unless (1) the objection

proposed rulemaking: "A registered attorney or agent acting under the

collectively would *prima facie* entitle the applicant to judgment on priority

§ 1.617(g). The language "before the examiner-in-chief" in the third sentence

second sentence, "copy of the written

description" has been changed to "copy of the first written description". In the third sentence, "a drawing or written description" has been changed to "a first drawing or first written description".

The language of § 1.628(b) which read: "because the drawing or written description is not in the party's possession, custody, or control, the party may file a motion . . . to amend its preliminary statement promptly after it secures possession, custody, or control of a copy of the drawing or written description" has been changed to read as follows: "the party (1) shall show good cause and explain in the preliminary statement why a copy of the drawing or written description cannot be attached to the preliminary statement and (2) shall attach to the preliminary statement the earliest drawing or written description made in or introduced into the United States which is available. The party shall file a motion . . . to amend its preliminary statement promptly after the first drawing, first written description or drawing or written description first introduced into the United States becomes available."

The first sentence,("A preliminary statement should be carefully prepared.") has been deleted from § 1.629(a).

In § 1.629(b), the language "no earlier than" has been changed to "as early as".

In § 1.629(d), the following has been added after "allegation": "Unless the party complies with § 1.628(b)."

A new § 1.632 has been added to require a party to give timely notice of the party's intent to argue that an opponent has abandoned, suppressed, or concealed an actual reduction to practice. A companion change has been made to § 1.654.

Two changes have been made to § 1.633(c). Paragraph (c)(2) has been changed by adding thereto the following language: "Or adding a claim in the moving party's application to be designated to correspond to a count". In addition, in § 1.633(c), the "or" before "(4)" has been deleted and the following has been added to the end of the first sentence: ", or (5) requiring an opponent who is an applicant to add a claim and to designate the claim to correspond to a count."

Paragraph (j) has been added to § 1.633.

In § 1.636(b), "(i)" has been changed to "(i) or (j)" in view of the addition of paragraph (j) to § 1.633. The language "filed as soon as practical" in § 1.636(c) has been changed to "diligently filed" in order to conform § 1.636 to § 1.48. A party must exercise diligence in correcting inventorship. *Van Otteren* v. *Hafner*, 278 F.2d 738, 126 USPQ 151 (CCPA 1960).

Several changes have been made to § 1.637. The language "Where appropriate," has been deleted from the following paragraphs of § 1.637: (c)(1)(vi); (c)(2)(iv); (c)(3)(iii); (d)(4); (e)(1)(viii); (e)(2)(vii); and (h)(4). The following has been added in § 1.637(c)(2) before "shall": "or adding a claim to be designated to correspond to a count". The language "amended claim" in § 1.637(c)(2)(i) has been changed to read: "amended or added claim". The language "Apply the terms of each proposed claim to the disclosure of the application" in § 1.637(c)(2)(ii) has been changed to read: "Show that the proposed or added claim defines the same patentable invention as the count." The language "proposed amended claim" in § 1.637(c)(2)(iii) has been changed to read "amended or added claim." The language "adding the proposed claim" in § 1.637(c)(2)(iii) has been changed to read: "making the amended or added claim".

The word "interferences" in § 1.637(c)(4)(ii) has been corrected to read: "interference".

Subparagraph (c)(5) has been added to § 1.637.

The following has been added as the last sentence to § 1.637(f)(2): "If the earlier application filed abroad is not in English, the requirements of § 1.647 must also be met."

In paragraph § 1.637(f)(3), the language "discloses an embodiment with the scope" had been changed to read: "constitutes a constructive reduction to practice".

The first sentence, originally proposed in § 1.638(b) ("A reply to an opposition shall not be filed unless authorized by this subpart or an examiner-in-chief or the motion was filed under §§ 1.633 or 1.634"), has been deleted. The language "any authorized reply" in § 1.638(b) has been changed to "a reply".

The language "or a motion to correct inventorship under § 1.634" has been added to the first sentence of § 1.639(c) after "preliminary motion under § 1.633."

The following has been added after the first sentence of § 1.640(b)(1): "Failure or refusal of a party to timely present an amendment required by an examiner-in-chief shall be taken without further action as a disclaimer by that party of the invention involved." The fourth sentence of § 1.640(c) ("A request for reconsideration will ordinarily not be granted unless an opposition has been requested by an examiner-in-chief or the Board") has been changed to read: "A decision of a single examiner-in-chief will not ordinarily be modified unless an opposition has been requested by an examiner-in-chief or the Board." In the last sentence of § 1.640(c), the language "shall be decided by a panel" has been changed to read: "shall be acted on by a panel".

The word "application" in the paragraph heading and text of § 1.642 has been changed to read: "application or patent".

Three changes have been made in § 1.644. The following language has been added after "Commissioner" in § 1.644(a)(2): "and is not filed prior to the decision of the Board awarding judgment and does not relate to (i) the merits of priority of invention or patentability or (ii) the admissibility of evidence under the Federal Rules of Evidence". The following language has been deleted from the second sentence of § 1.644(b): "and shall not relate to (1) the merits of priority of invention or patentability or (2) the admissibility of evidence under the Federal Rules of Evidence". The language "A request for reconsideration will ordinarily not be granted unless" in the second sentence of § 1.644(f) has been changed to read: "The decision will not ordinarily be modified unless such".

Two changes have been made in § 1.645. The word "to" has been added before "file a notice of appeal" and "commence a civil action" in the first sentence of paragraph (a). The language, "accompanied by an affidavit," has been deleted from paragraph (b).

Three changes have been made to § 1.646. The word "service" has been added after "additional" in the third sentence of paragraph (b). The language "or except as otherwise provided by this part," has been added after "otherwise ordered by an examiner-in-chief," in paragraph (c). The language in paragraph (c) "paper may be made" has been changed to "paper shall be made". The word "time" has been changed to "date" in the last sentence of paragraph (e).

A new paragraph (c) has been added to § 1.654 to require that a party give timely notice of the party's intent to argue that an opponent has abandoned, suppressed, or concealed an actual reduction to practice. Section 1.632 specifies the time within which the notice shall be filed.

Three changes have been made in § 1.658. The language "paragraph (a) of the section" in the last sentence of § 1.658(b) has been changed to "paragraph (a) of this section". The "(i)" in the first sentence of § 1.658(c) has been changed to "(j)" in view of the addition of § 1.633(j). In the notice of proposed rulemaking, the second sentence of § 1.658(c) reads: "A party, other than a party awarded a favorable judgment as to all counts, who could have properly moved, but failed to move, under §§ 1.633 or 1.634, shall be estopped to take *ex parte* or *enter partes* action in the Patent and Trademark Office after the interference which is inconsistent with the party's failure to properly move." This sentence has been changed to read: "A losing party who could have properly moved, but failed to move, under § 1.633 or 1.634, shall be estopped to take *ex parte* or *inter partes* action in the Patent and Trademark Office after the interference which is inconsistent with that party's failure to properly move, except that a losing party shall not be estopped with respect to any claims which correspond, or properly could have corresponded, to a count as to which that party was awarded a favorable judgment."

Several changes have been made in § 1.662. In § 1.662(a), the word "construed" has been changed to "treated." The first sentence of § 1.662(c) in the notice of proposed rulemaking read: "The filing of a statutory disclaimer under 35 U.S.C. 253 by a patentee will not be treated as a request for entry of an adverse judgment against the patentee, but will delete any statutorily disclaimed claims from being involved in the interference." That first sentence has been changed to read: "The filing of a statutory disclaimer under 35 U.S.C. 253 by a patentee will delete any statutorily disclaimed claims from being involved in the interference." The second sentence of § 1.662(c) in the notice of proposed rulemaking read: "A statutory disclaimer of any claim involved in an interference shall in subsequent proceedings have the same effect with respect to the patentee as an adverse judgment." That second sentence has been changed to read: "A statutory disclaimer will not be treated as a request for entry of an adverse judgment against the patentee unless it results in the deletion of all patent claims corresponding to a count." In view of this change, proposed § 1.662(d) has been deleted as unnecessary, and a change has also been made in § 1.11(a) to delete any reference to a termination of an interference by any means other than judgment.

The last sentence of § 1.671(g) has been changed from "The motion shall describe the general nature and show the admissibility in the interference of the testimony, document, or thing" to: "The motion shall describe the general nature and the relevance of the testimony, document, or thing."

Three changes have been made to § 1.672(b). In the second sentence after "witness by affidavit shall" the following has been added: ", prior to the close of the party's relevant testimony period." The language "file an affidavit" has been changed to "file and serve an affidavit." The following has been added after the third sentence: "A party shall not be entitled to rely on any document referred to in the affidavit unless a copy of the document is filed with the affidavit. A party shall not be entitled to rely on anything mentioned in the affidavit unless the opponent is given reasonable access to the thing. A thing is something other than a document."

Several changes have been made in § 1.673(b). The introductory sentence of paragraph (b) ("Unless the parties agree otherwise, at least three days prior to the conference required by paragraph (g) of this section, a party shall serve, but not file, the following:") has been changed to read: "Unless the parties agree otherwise, a party shall serve, but not file, at least three days prior to the conference required by paragraph (g) of this section, if service is made by hand or "Express Mail," or at least ten days prior to the conference if service is made by any other means, the following:" In § 1.673(b)(1) the word "copy" has been changed to "list and copy."

In the last sentence of § 1.675(d), the language "signed by the witness in the presence of any notary" has been changed to read "signed by the witness in the form of (1) an affidavit in the presence of any notary or (2) a declaration." This change conforms § 1.675(d) to § 1.68.

In § 1.682(a)(4), ", where appropriate," has been added prior to "be accompanied" and "(§ 1.671(d))" has been added after "printed publication."

The word "admissible" in § 1.684(a)(4) has been changed to "revelant."

The following sentence has been deleted from § 1.687(b): "If the witness refuses to produce a requested document or thing, the party may file a motion (§ 1.635) for additional discovery under paragraph (c) of this section."

Section 1.688 has been revised to more clearly describe how a party may introduce in evidence an answer to a request for admission or an answer to a written interrogatory.

Analysis of Comments

Eighteen written comments were received. Three individuals testified at a hearing held on May 15, 1984. The following is an analysis of the written comments and the oral comments made at the hearing.

One comment suggested that § 1.8 not be amended to exclude from the certificate of mailing practice a paper in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail." The comment argues that "[s]ome parties might not have an attorney in the Washington area or they may live in an area not serviced by Express Mail." The suggestion is not being adopted. Experience has shown that there are situations in interferences where it is desirable to have and the parties need a prompt ruling on a written motion. It is difficult for an examiner-in-chief to render a prompt ruling if the motion and any opposition are not promptly served and filed. In those situations where a party has no Washington, D.C. metropolitan area attorney or where a party resides in an area not served by "Express Mail," it may not be possible to hand-file or use "Express Mail." The examiner-in-chief would then exercise discretion by not invoking the exception of new subparagraph (xii) of § 1.8(a).

One comment suggested that it would be clearer if the fee for a petition in an interference and the fee for a request for reconsideration of a decision on petition in an interference were set out in § 1.17(h) as separate items. This suggestion has been adopted and the two fees have been set out in § 1.17(h) as separate items.

A suggestion was made that a reference be made in § 1.136 to § 1.611 rather than § 1.610(a). The suggestion is being adopted, because a reference to § 1.611 is believed to be more appropriate. Once an interference is declared involving an application, *ex parte* prosecution of the application is suspended and the applicant need not respond to any PTO action outstanding as of the date the interference is declared.

One comment made the following remark concerning § 1.196: "I do not understand the need or desire of the PTO to start the time to appeal to a Court from a PTO *final* decision on one claim, while PTO action is continuing on a second claim." As explained in the notice of proposed rulemaking (49 FR 3770, columns 2–3; 1039 O.G. 20–21; 1039 TMOG 20–21), when there are further proceedings before the examiner following a decision by the Board of Patent Appeals and Interferences, judicial review is not appropriate. Hence, under § 1.196, the PTO will not start a time for seeking judicial review of a PTO decision on one claim while PTO action is continuing on another claim. The last sentences of § 1.196(b)(1) and § 1.196(d) authorize the Board to enter an order making its decision final as to one claim when remand

proceedings as to another claim result in a favorable decision for the applicant. Section 1.196 is intended to eliminate piecemeal appeals.

With respect to § 1.292(c), one commentator said: "[a] party should be able to raise public use and [on] sale issues at any stage [of an interference proceeding] provided the issue is raised in a timely manner after learning of the use of sale." Public use and on sale issues are to be raised in interferences by way of a preliminary motion under § 1.633(a). If a motion under § 1.633(a) cannot be timely filed, a belated motion may be filed provided the moving party complies with the provisions of § 1.645(b). Whether or not a belated motion will be accepted where a public use or sale is discovered after the time for filing § 1.633(a) motions which has passed will manifestly depend on the facts of a given case.

One comment suggested that the language "speedy, and inexpensive" be deleted from the second sentence of the preamble of § 1.601. This suggestion is not being adopted. The second sentence of the preamble of § 1.601 provides that the rules "shall be construed to secure the just, speedy, and inexpensive determination of every interference." The provision is modeled in part after the second sentence of Rule 1 of the Federal Rules of Civil Procedure which states that the Federal Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." The "just, speedy, and inexpensive determination" provision of § 1.601 will prove useful in construing other provisions in the rules.

Two comments received which suggested a change in language in § 1.601(j). One comment correctly noted that "[i]f even one claim of each party defines the same patentable invention, there is an interference-in-fact." The comment went on to correctly note that "[t]he remaining claims can be disposed of by a motion under § 1.633(c)(4)." A second comment noted that under the definition proposed, all the claims of both parties corresponding to a count must define the same patentable invention. The comment went on to correctly note the intent of the PTO is, however, that an interference-in-fact exists if at least one of the claims of a party corresponding to a count defines the same patentable invention as one of the corresponding claims of an opponent. In view of the suggestions made in the two comments, § 1.601(j) has been changed to state that an interference-in-fact exists when at least one claim of a party which corresponds to a count and at least one claim of an opponent which corresponds to the count defines the same patentable invention.

Two comments were received which suggested that the language "earliest filing date" in § 1.601(m) be changd to read "earliest effective filing date." The suggestion is not being adopted. Section 1.601(m) defines "senior party." The definition of "senior party" in § 1.601(m) is consistent with current practice and is intended to codify current practice. In an interference where there are no benefit applications, the "senior party" is the party with the earliest "filing date." There are interferences where a party may be "senior" with respect to a first count based on the filing dates of the applications involved in the interference and "junior" with respect to a second count because the opponent is entitled to benefit of an earlier application as to the second count only. Under these circumstances in the past, the PTO has designated the party who is "senior" based on the filing dates of the applications involved as the "senior party." The designation of the party as "senior party" is for procedural purposes only, i.e., setting who takes testimony first, and does not affect which party has the burden of proof. Section 1.601(m) preserves this past practice.

Comments were received regarding § 1.601(n) which defines "same patentable invention" and "separate patentable invention." One written comment suggested that § 1.601(n) be deleted. The commentator appeared at the hearing and also urged orally that § 1.601(n) be deleted. The suggestion is not being adopted. In view of the nature of the comment and the importance of the definitions in § 1.601(n), the written comment is reproduced in its entirety:

Comment: The paragraph to be deleted contains an explicit definition of both "same patentable invention" and "separate patentable invention". It requires application of a two-prong test for determining "sameness" or "separateness". Two inventions are considered to be the "same patentable invention" when they are the same under 35 U.S.C. 102 or obvious variants under 35 U.S.C. 103 when one is considered as "prior art" with respect to the other. Application of this standard may lead to results which are anomalous or in conflict with statutory requirements if, as the proposed rules apparently assume, the award of priority as to counts embodying "separate patentable inventions" will inherently and finally resolve the question of entitlement to a patent as between the parties on involved claims corresponding to those counts. Three specific problems with the definition of Rule 601(n) have been identified as follows:

(1) If the standard of separate patentability as between two counts is applied on a mutual basis (i.e., Invention A must be separately patentable from Invention B considered as prior art and Invention B must be separately patentable from Invention A considered as prior art), then the conduct of interferences with separate counts directed to both a generic invention and an included specific embodiment thereof (i.e., a species) are frustrated. If, however, such mutuality is not applied (i.e., if Invention A is the existing count, then a count directed to Invention B is proper so long as Invention B would be considered patentable over Invention A as prior art), then a number of irreconcilable anomalies in count modification through preliminary motions practice will be manifest.

(2) "Separate patentability" as a non-obviousness issue is in every context *except* interference practice before the PTO determined with finality only when an *affirmative* determination has been reached or the applicant *elects* to discontinue further prosecution of any applications embodying the invention or to admit obviousness. Because in the ex parte context an applicant may continue to marshal additional evidence supportive of non-obviousness until separate patentability over a prior art invention has been established, "separate patentability" is always a fluid concept where ultimate resolution can neither be predicted nor foreclosed. On certain cases interference proceedings under the proposed rules will be conducted and judgment rendered on the assumption of a lack of "separate patentability", which would ordinarily be subject to change or rebuttal as additional argument, evidence or other supportive activity of non-obviousness were marshalled. Thus, simply determining a proposed count is not yet "separately patentable" for the purposes of count formation ought not to foreclose post-interference reconsideration of separate patentabilty questions when the party proposing the count would not have been foreclosed on priority grounds.

(3) The underlying assumption that "separate patentability" is to be established under the proposed rules for one invention when a second invention is considered as "prior art" does not have any necessary correspondence to the *effect* of an adverse judgment in an interference on the question of priority. While a lost count in interference is not patentable to the loser, the lost count will be considered as "prior art" against the losing party only if the status of prior art for the purposes of 35 U.S.C. 103 is established by the record in the interference, (i.e., by representing a prior invention of another made in the United States, not abandoned, suppressed or concealed under 35 U.S.C. 102). A party entitled to priority for a count under the benefit provisions of 35 U.S.C. 119 creates no "prior art" under 35 U.S.C. 102(g)/103 against his opponent. Separate counts ought not to be created or denied in an interference on the basis of a rule which fails to account for whether the interference record will confirm the assumption in the definition that a lost count will become "prior art".

The following examples are provided as indicative of perceived difficulties in the application of the definition embodied in Rule 601(n):

Example A: Rule 601(n) is applied in a mutuality sense to an interference where the existing count (Invention A) is a broad genus over organic compounds. Both parties disclose a species (Invention B) which one of the parties alleges represents a "selection invention", i.e., is neither anticipated by the genus nor obvious therefrom. The party proposing to add a species count to Invention B must demonstrate that the genus was neither the same as nor obvious in view of the species, an impossibility since *disclosure of the species anticipates the genus under 35 U.S.C. 102.* In effect, no party could ever propose sub-generic or species counts included within broader generic counts. Since all potential patentability and priority questions with respect to possible sub-generic and species claims are intended to be resolved in the unified patentability/priority proceedings, loss of such a broad generic count might be construed as estopping the losing party from arguing entitlement to a patent for species and sub-genera within the lost count. Since proof of a single species is dispositive of the question of priority as to a genus, no matter how large, this is a more severe result than would appear to be proper or intended.

Example B: Under the facts of Example A, if the standard under which the propriety for including a second sub-generic or species count is merely that the *proposed* count must be non-obvious over the *existing* count considered as prior art, then, an interference could conceivably proceed with both the generic and the species count in the interference. The usual criteria for "selection inventions" could be employed. However, when an interference is declared with a species count embodying Invention A, then utilization of a test requiring that a proposed count be non-obvious over the existing count as prior art leads literally to the conclusion that a proposed count to a generic Invention B is *anticipated* by the existing species count and therefore may not be added to the interference. This artificial distinction can certainly not have been intended, and yet the rules provide no clear indication of which result is the "correct" one or whether another test will be employed, e.g., the narrower count need only be non-obvious over the broader count.

Example C: A party moves to substitute two sub-generic counts to allegedly separately patentable inventions, Inventions A and Invention B, in place of a broad generic count to the "Markush" group of Invention A *and* Invention B. The party alleges Invention B has surprising and unexpected properties over Invention A and is separately patentable thereover. Because, however, a consideration of Invention B as "prior art" suggests Invention A would not be non-obvious thereover, the motion is denied. The moving party establishes priority as to Invention B, but loses the sole count of the interference to an opponent who filed a foreign application disclosing a single species from Invention A. The result is that the moving party with clear evidence of priority apparently loses the right to patent an invention on the technicality of "count formation" in interference. The result is substantially more severe than had he been simply faced with a statutory bar!

Example D: The senior party, a foreign applicant, relies on a priority application disclosing Embodiment A. Subsequently the junior party files a United States application directed to an Embodiment B. Thereafter both parties file applications in the United States disclosing a generic invention including both Embodiments A and B. An interference is declared on the generic invention and the junior party moves to substitute two counts, one count to Embodiment A and a second count to Embodiment B on the ground that they represent separate patentable inventions. Since the junior party's invention date for Embodiment B is after the senior party's priority date, the junior party will be obliged to concede priority on the sole count in the interference unless his motion to substitute counts is granted.

Accordingly, the junior party undertakes laboratory tests which indicate that both Embodiments A and B achieve substantially the same result in substantially the same manner without any significant differences in effectiveness. Without evidence of separate patentability to support the motion to substitute, the junior party is unsuccessful and priority is awarded to the senior party.

The junior party abandons his claim to the generic invention of the lost count, but persists in his assertion he is entitled to a patent on Embodiment B since the interference record indicates no actual priority for this embodiment in favor of the senior party. Ultimately, the junior party obtains evidence that Embodiment B is unexpectedly more useful than anticipated in a commercial setting, while Embodiment A is substantially unsuitable for practical use in a commercial setting.

Is the junior party entitled to a patent notwithstanding the disposition of the issue of its separate patentability in an *inter partes* proceeding? If indeed, the junior party would be entitled to such a patent, must a second interference now be declared with the senior party to again litigate the issue of priority? Had the junior party failed to have made the motion to substitute counts in view of his utter lack of supporting evidence of separate patentability, would the estoppel under 37 CFR 1.658(c) have applied? Finally, would the ends of justice be better served by a standard for count formation which could be finally determined contemporaneously with the filing of the preliminary motions themselves? All of these questions suggest that the utilization of a fluid concept such as non-obviousness as the basis for count formation will give unintended and unsupportable results in situations where the lack of separate patentability is prematurely assumed.

Example E: In the scenario of Example D, the non-entitlement to contest Embodiment B as a separate count was premised on a failure to demonstrate that Embodiment B was non-obvious over Embodiment A considered as prior art. However, an award of priority to the senior party based on the disclosure of Embodiment A in a foreign priority application does not render Embodiment A as available prior art (35 U.S.C. 102(g)/103) inasmuch as Embodiment A would not have been a prior invention of another made in the United States which had not been abandoned, suppressed or concealed. The junior party's entitlement to a patent on Embodiment B should depend, therefore, solely on his entitlement to priority with respect to Embodiment B. Priority is a necessary condition for entitlement to a patent since both parties disclose the embodiment and a sufficient condition since regardless of the party entitled to priority on Embodiment A, it should not become obviousness-generating prior art. Therefore, any standard or count formation which fails to reach the result of the junior party is entitled to contest priority and a patent on Embodiment B is contrary to current statutory requirements for entitlement to a patent.

The proposed rules attempt to rationally define counts in an interference so that the judgment in the interference settles all questions of entitlement to a patent. This not only cannot be done *prospectively*, but should not be done at all. Judgment should be made on *claims*, not counts and unpatentability determinations made against a party subject to the normal *ex parte* standard that additional evidence of non-obviousness, or other evidence or patentability wholly independent of priority itself, could compel a reconsideration of the judgment of unpatentability.

With respect to paragraph (1) of the comment, the standard of patentability will *not* be applied "on a mutual basis." Thus, if a species is patentable over a genus, the species is a "separate patentable invention" from the genus. Compare *In re Taub*, 348 F.2d 556, 148 USPQ 384 (CCPA 1965) (fluorine species might be patentable over genus of Markush group of hydrogen and halogen). A first count to a genus and a second count to a species which is patentable over the genus may properly appear in an interference. See e.g., Example 4. The comment suggests that if "such mutuality is not applied * * * then a number of irreconcilable anomalies * * * will be manifest." The urged "irreconcilable anomalies" are not readily apparent to the PTO.

The PTO disagrees with the concept expressed in paragraph (2) of the comment that there should be "post-interference reconsideration of separate patentability." One of the principal objects of Pub. L. 98-622 and these new rules is to encourage complete determination of all rights between parties in an interference and to avoid post-interference reconsideration in an *ex parte* environment of issues which were or could have been raised *inter partes* in an interference.

The commentator remarks in paragraph (3) of the comment that "[a] party entitled to priority for a count under the benefit of 35 U.S.C. 119 creates no 'prior art' under 35 U.S.C. 102(g)/103 against his opponent. *In re*

one claim of a party which corresponds to a count and at least one claim of an

as between two counts is applied on a mutual basis (i.e., Invention A must be separately

application of the definition embodied in Rule 601(n):

substantially more severe than had he been simply faced with a statutory bar!

been a prior invention of another made in the United States which had not been

102(g)/103 against his opponent. *In re*

McKellin, 529 F.2d 1324, 188 USPQ 428 (CCPA 1976), arguable provides support for the commentator's remark. It should be noted, however, that in defining "same patentable invention" and "separate patentable invention" in § 1.601(n), the PTO is not establishing a new definition of "prior art." Rather, the PTO is providing defintions which will determine—both initially and ultimately in an interference—how *claims* in an application or patent will be designated to correspond to counts. See §§ 1.603 and 1.606. Examples 1–19 illustrate how the PTO proposes to initially designate claims to correspond to counts. The designation of claims to correspond (or not correspond) to a count is significant because, as noted by the plurality opinion in *McKellin*, 529 F.2d at 1327, 188 USPQ at 432: "[a]n applicant [or patentee] who has lost an interference is not entitled to claims which correspond to the subject matter of the counts, of the interference." Section 1.658(c) estops a party from obtaining a claim which could have been added and which would have been designated to correspond to the lost count. The definitions of "same patentable invention" and "separate patentable invention" in § 1.601(n), the availability of motions to designate or not designate claims as corresponding to a count under § 1.633(c), and the estoppel provisions of § 1.658(c) provide the basis for accomplishing the PTO's objective of resolving *inter partes* in a single proceeding all issues which are or could have been raised between parties in an interference.

Examples illustrate how §§ 1.601(n), 1.633(c) and 1.658(c) accomplish the PTO's objective.

Example 32. Application AV discloses engines in general and in particular a 6-cylinder engine. Application AV contains only claim 1 (engine). Application AW discloses engines in general, but does not specifically disclose a 6-cylinder engine. Application AW contains only a single claim 3 (engine). The U.S. "filing date" (§ 1.601(h)) of the AV application is prior to the U.S. filing date of the AW application, but the AW application claims a foreign priority date under 35 U.S.C. 119 based on an application filed in a foreign country prior to the filing date of the AV application. An interference is declared. The sole count of the interference is to "an engine." Claim 1 of the AV application and claim 3 of the AW application are designated to correspond to the count. During the interference, applicant AV does not move under § 1.633(c)(2) to add a claim to a 6-cylinder engine and to designate the claim to correspond to the count. Applicant AW is awarded a judgment in the interference based on the earlier filing date of the foreign patent application. After the interference, applicant AV adds claim 2 (6-cylinder engine) to the AV application. Whether AV would be entitled to a patent containing a claim to a 6-cylinder engine will depend solely on whether a 6-cylinder engine is a "separate patentable invention" from "engine"—the subject matter of the count. If a 6-cylinder engine is a "separate patentable invention" within the meaning of § 1.601(n), applicant AV could not have successfully moved under § 1.633(c)(2) to add claim 2 and to designate it to correspond to the count. Therefore applicant AV could obtain a patent containing claim 2. If, on the other hand, a 6-cylinder engine is not a "separate patentable invention," claim 2 of the AV application would be rejected on the basis of interference estoppel because claim 2 could have been added by a motion under § 1.633(c)(2). See § 1.658(c). See also Example 37.

Example 33. This example is basically the same as Example 32, except that application AV initially contains claim 1 (engine) and claim 2 (6-cylinder engine). When the interference is declared, both claims 1 and 2 of application AV are designated to correspond to the count. During the interference, applicant AV does not move under § 1.633(c)(4) to designate claim 2 as not corresponding to the count. A judgment in the interference is entered for applicant AW based on the earlier filing date of the foreign patent application. After the interference, applicant AV would not be able to obtain a patent containing claim 2, because that claim was designated to correspond to a count and entry of the judgment constitutes a final decision by the PTO refusing to grant applicant AV a patent containing claim 2.

In the written comment, Examples A through E were set out to illustrate what the commentator believed were "perceived difficulties." These examples are set out above and are analyzed below.

Analysis of Commentator's Example A. Example A does not describe any practice under these rules, because "same patentable invention" and "separate patentable invention" under § 1.601(n) are not intended to be "applied in a mutuality sense." Where a first count is to a genus and a second count is to a species within the scope of the genus, there may be two counts if the species is separately patentable from the genus. The species is "invention A" referred to in § 1.601(n); the genus is "invention B" referred to in § 1.601(n).

Analysis of Commentator's Example B. Commentator's Example B suggests—incorrectly—that if an interference is declared with a count to a species that no motion under § 1.633(c)(1) to add a count to a genus can ever be granted. If the species ("invention A" referred to in § 1.601(n)) is not anticipated by or obvious in view of the genus ("invention B" referred to in § 1.601(n)), a motion to add a separate count to the genus may be proper. The commentator uses the language "selection inventions" in both Examples A and B. Insofar as the PTO is aware, the language is not a term of art in the patent law. The PTO has not ascribed any particular meaning to the language in analyzing Examples A or B.

Analysis of Commentator's Example C. The result suggested in commentator's Example C can come to pass only if the moving party accepts as final the denial of the motion to substitute two "sub-generic counts" for the "broad generic count." Unlike practice under the rules which have been in effect, under these new rules a decision denying a motion to substitute a count is reviewable by the Board (see § 1.640(c) and § 1.655(a), second sentence). Additionally, the party could seek judicial review (35 U.S.C. 141, 146) of any final decision by the Board. However, if the party accepts as final the PTO's determination that inventions A and B are the "same patentable invention," the party would be precluded from obtaining a patent to invention B. After the interference is terminated, the only conceivable way that the moving party could seek to obtain a patent containing claims to invention B would be to first successfully move to reopen the interference for the purpose of presenting additional evidence. If the motion to reopen is granted (and it would be expected that such a motion will rarely be granted), the moving party would then have to successfully establish that invention A and invention B are not the same patentable invention. The PTO will continue to follow the general guidelines of 4 Rivise & Caesar, *Interference Law and Practice*, section 821 *et seq.* (Michie Co. 1948), in determining motions to reopen an interference after entry of judgment. It should be additionally noted that interferences in which a judgment has been entered by a district court in an action brought under 35 U.S.C. 146 or a mandate has been entered by the U.S. Court of Appeals for the Federal Circuit (35 U.S.C. 141 or 28 U.S.C. 1295(a)(4)(C)) will not be reopened until the district

court vacates its judgment and/or the Federal Circuit withdraws its mandate.

Analysis of Commentator's Example D. Several questions asked in the commentator's Example D can be answered as follows:

Question: Is the junior party entitled to a patent notwithstanding the disposition of the issue of its separate patentability in an *inter partes* proceeding? *Answer:* No. The junior party should have presented the "evidence that Embodiment B is unexpectedly more useful than anticipated in a commercial setting" during the interference. The PTO expects to resolve issues *inter partes* in the interference. If the PTO was to permit the evidence to be presented after the interference is terminated and after *ex parte* prosecution resumes, a principal purpose of the overall change to interference practice would be defeated. It may be unfortunate that the evidence was not known to the junior party. However, it may also be true that the winning party—had the evidence been presented in the interference—could have produced probative counter-evidence. Why should the winning party be put to the expense of a second interference?

Question: If indeed, the junior party would be entitled to such a patent, must a second interference now be declared with the senior party to again litigate the issue of priority? *Answer:* The premise in the question is not correct. The junior party is not entitled to a patent to Embodiment B and therefore there will not be a second interference.

Question: Had the junior party failed to have made the motion to substitute counts in view of his utter lack of supporting evidence of separate patentability, would the estoppel under 37 CFR 1.658(c) have applied? *Answer:* Yes, unless the junior party can successfully move to reopen the interference.

Question: Would the ends of justice be better served by a standard for count formation which could be finally determined contemporaneously with the filing of the preliminary motions themselves? *Answer:* While the question is not fully understood, it should be recognized that counts will initially be formed when an interference is declared and are subject to being changed by a motion (§ 1.633(c)) or by the Board (§ 1.640(c) and § 1.655, second sentence). The correctness of the PTO's ultimate decision on what counts should be is subject to judicial review (35 U.S.C. 141, 146).

Analysis of Commentator's Example E. The PTO, without agreeing or disagreeing with all of the commentator's statements in Example E, disagrees with any ultimate conclusion that the junior party is entitled to a patent on Embodiment B and that such a result "is contrary to current statutory requirements for entitlement to a patent." Interference estoppel precludes granting a patent claiming Embodiment B to the junior party even if Embodiment A is not prior art with respect to Embodiment B.

One comment asked whether "invention A" and "invention B" mentioned in § 1.601(n) "refer to the entire scope of subject matter recited in a claim or to the disclosed embodiment(s) supporting the claim (a la *In re Vogel*, [422 F.2d 438,] 164 USPQ 619 (CCPA 1970))?" The question is somewhat difficult, if not impossible, to answer in the abstract. Whether "invention A" refers to the entire scope or to the embodiments which support a claim is not controlling under these new rules. One fundamental change being made unde the new rules is that judgments will be in the form of whether an applicant or patentee is or is not entitled to a *claim*. In the past, the Board of Patent Interferences has entered an "award of priority." The use of an "award of priority" does not always accurately express the "judgment" entered in many interferences. See e.g., *Applegate* v. *Scherer*, 332 F.2d 571, 573 n. 1, 141 USPQ 796, 798 n. 1 (CCPA 1964). Whether an applicant or patentee is or is not entitled to a particular claim in any given interference will depend on many factors, some of which include the scope of the claim, the scope of the opponent's claim, and the prior art. An example illustrates the point.

Example 34. Applicant AX discloses an apparatus having fastening means. The specific means disclosed are rivets. Applicant AY discloses a similar apparatus having fastening means. The specific means disclosed are a nut and bolt. The prior art reveals that items have been fastened with numerous fastening means including both rivets and nuts and bolts. In determining whether AX's apparatus with rivet fastening means is the "same patentable invention" as AY's apparatus with nut and bolt fastening means, it would be proper to consider the specific apparatus disclosed by AX, the specific apparatus disclosed by AY, the fact that both AX and AY disclose the use of "fastening means" broadly, and the prior art which shows rivets and nuts and bolts to be known fastening means.

One comment suggested that the last sentence of § 1.604(b) and the last sentence of §1.607(c) be deleted in view of a proposed rule (§10.23(c)(7); 49 FR 10028; 49 FR 33809) which defines "misconduct" as including "[k]nowingly withholding from the Office information identifying a patent or application of another from which one or more claims have been copied." The proposed rule is still being considered. In any event, the last sentences of §§ 1.604(b) and 1.607(c) are instructions to examiners whereas proposed 37 CFR 10.23(c)(7) defines misconduct for those registered to practice before the PTO. Another comment suggested deletion of § 1.604(b) because "existing rules [37 CFR 1.56] already provide a duty of disclosure of subject matter *material* to examination." There is no inconsistency between the rule relating to the duty of disclosure and § 1.604. The comment also suggested that by identifying another application, an applicant "might be construed as having *admitted* that the claims" of the other application are directed to the same patentable invention as the claims in the applicant's application. The filing of such a paper is a statement by the applicant that the claims presented are "*known* to the applicant to define the same patentable invention" (emphasis added). If an applicant wishes to call another application to the attention of an examiner and the applicant believes that the other application does *not* claim the same patentable invention, but nevertheless may be relevant within the meaning of 37 CFR 1.56, the applicant may identify the other applications and at the same time state why the invention claimed in the other application is not the same patentable invention as the invention claimed in the applicant's application. For the reasons given, the suggestions made in the two comments are not being adopted.

Three comments relating to § 1.605 were received. One comment suggested that the language "or substantially the same as the suggested claim" be deleted from the third sentence of §1.605. The suggestion is being adopted to the extent that the language "a claim which is the same or substantially the same as" is being deleted. Under § 1.605, when the examiner requests an applicant to copy a suggested claim, the applicant will be required to copy verbatim the claim suggested by the examiner. A second comment suggested that the second and third sentences of § 1.605 be changed to read as follows:

The applicant to whom the claim is suggested shall amend the application by presenting the suggested claim, or shall identify in the application one or more pending claims which the applicant regards as being directed to the same or substantially the same invention as the suggested claim, within a time specified by the Examiner, not

move under § 1.633(c)(2) to add a claim to a 6-cylinder engine and to designate

from the genus. The species is "invention A" referred to in § 1.601(n);

(35 U.S.C. 141 or 28 U.S.C. 1295(a)(4)(C)) will not be reopened until the district

Analysis of Commentator's Example E. The PTO, without agreeing or disagreeing with all of the

of a proposed rule (§10.23(c)(7); 49 FR 10028; 49 FR 33809) which defines

the same invention as the suggested claim, within a time specified by the Examiner, not

less than thirty days. Failure or refusal of an applicant to timely present a claim or to timely identify one or more claims which are directed to the same or substantially the same invention as the suggested claim shall be taken without further action as a disclaimer by the applicant of the invention defined by the suggested claim.

A third comment suggested that the second and third sentences of §1.605 fail to take into account the case where an applicant is already claiming the invention. The third comment suggested addition of the following at the end of the third sentence of § 1.605(a): ", unless the application already contains claims to the same patentable invention." The suggestions made in the second and third comments are not being adopted as such. However, the following sentence is being added as the fourth sentence of §1.605: "At the time the suggested claim is presented, the applicant may also: (1) Call the examiner's attention to other claims already in the application or which are presented with the suggested claim and (2) explain why the other claims would be more appropriate to be included in any interference which may be declared." A major deficiency of the suggestions made in the second and third comments was the inability of the PTO to efficiently and effectively handle situations where the applicant: (1) Presents a claim which is "substantially the same as" the suggested claim or (2) points to a claim already in the application *and* the examiner is of the opinion that the claim is not to the same patentable invention. Under those circumstances, the examiner could not properly declare an interference. Accordingly, the applicant will be required to present verbatim the suggested claim. The applicant may, however, also present any other claim which the applicant believes is more appropriate. Alternatively, the applicant, in addition to presenting verbatim the suggested claim, may also call the examiner's attention to a claim already in the application which the applicant believes is more appropriate for interference purposes. In either case, the applicant must explain to the examiner why a claim other than the suggested claim is more appropriate for inclusion in the interference. Upon consideration of the suggested claim and the applicant's alternative claims and any explanation, the examiner is in a position to forward the application to the Board for declaration of an interference. If the applicant is dissatisfied with the claims of the application designated to correspond to the count, the applicant may file an appropriate motion under §1.633(c).

Two comments were received which suggested that the last sentence of § 1.608 is not entirely clear. One comment suggested that the language in the last sentence which reads: "to define one patentable invention" be changed to read: "not to contain separate patentable invention." This suggestion is being adopted. The use of the language "*one* patentable invention" was unfortunate and rendered the actual intent of the rule unclear. Under § 1.606, at the time an interference is declared a *rebuttable* presumption will exist that any patent claim designated to correspond to a count does not embrace separate patentable inventions. Moreover, at the time the interference is declared, no count will be narrower in scope than the broadest patent claim designated to correspond to that count. The presumption is *rebuttable* and may be challenged and overcome by a motion under § 1.633(c). Examples 17 and 18 illustrate practice under § 1.606.

Two comments were received discussing § 1.607. A first comment suggested that the word "must" in the first sentence of § 1.607(c) be changed to "shall". The suggestion is being adopted. Use of "shall" makes § 1.607(c) consistent with § 1.604(b). A second comment asked the following question:

> If the examiner determines that the applicant's claim is patentable but that there is no interfering subject matter, and the examiner accordingly allows the claim but refuses to declare an interference, is that determination appealable [to the Board of Appeals and Interferences under 35 U.S.C. 1.134]?

The commentator suggests that "such a determination" is appealable and rationale in support of the commentator's position appears in Gholz, *Board of Appeals Jurisdiction Over Appeals from Decisions by Primary Examiners Refusing to Institute Interferences on Modified or Phantom Counts*, 64 J. Pat. Off. Soc'y 651 (1982). At the hearing, the commentator orally urged that the rules be amended to permit an appeal to the Board when an examiner allows a claim, but refuses to declare an interference involving the allowed claim. The suggestion is not being adopted. A decision by an examiner to allow a claim, but not to declare an interference involving the allowed claim, is petitionable and not appealable. See Gholz, *supra*, at 652 n.13. The rule being suggested would enlarge the jurisdiction of the Board. Action by Congress would be necessary to accomplish what is embodied in the suggestion.

Several written comments and one oral presentation at the hearing were made concerning § 1.608. One comment suggested that § 1.608 be expanded to provide for summary judgment in interferences involving applications where the earlier of the filing date or effective filing date of one application was three months earlier than the date of the other application. This suggestion is not being adopted. Ordinarily, interferences are not declared between applications having effective dates more than three months apart. Moreover, expanding summary judgment proceedings to application-application interferences would result in delay in resolving interferences. Currently in application-patent summary judgment proceedings under 37 CFR 1.204(c), very few summary judgments are entered against applicants who are junior to a patentee by more than three months. There is no reason to expect that a significant number of summary judgments would be entered in application-application interferences. As noted in the notice of proposed rulemaking, the PTO has already declined to expand summary judgment proceedings to cases where a patentee is junior to an applicant by more than three months. See 49 FR 3775 (paragraph bridging columns 1 and 2); 1039 O.G. 34; 1039 TMOG 34; 27 BNA 319.

Two written comments were received which suggested that § 1.608(b) should be more specific in indicating the kind of evidence which should be submitted when an applicant attempts to make out a *prima facie* case based on priority of invention. The suggestions in the comments are being adopted. The following sentence has been added to § 1.608(b):

> Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the earlier of the filing date or effective filing date of the patent.

Similar language appears in the current rule: 37 CFR 1.204(c). The PTO agrees entirely with the following discussion made by one commentator:

> The material added to Rule 608(b) currently appears in existing 37 CFR 1.204(c). A comparison of the existing language of 37 CFR 1.204(c) with the proposed rule might be construed as suggesting that the allegations which are now expressly required where priority is an issue will be changed, specifically relaxed in some manner. Since under proposed Rule 617 this clearly is *not*

the case, the proposed addition to Rule 608(b) should assist the practitioner in understanding the intent of the PTO.

The commentator has accurately pointed out that the PTO intends to apply a stricter standard for filing additional evidence in summary judgment proceedings after an order to show cause has been issued. See the notice of proposed rulemaking, 49 FR 3775 (column 1); 1039 O.G. 34; 1039 TMOG 1039; 27 BNA 319 (column 1).

At the hearing, it was suggested that § 1.608 should encourage the use of 8½ by 11 inch paper for affidavits. This suggestion is being adopted and the following sentence has been added to § 1.608(b): "To facilitate preparation of a record (§ 1.653 (g) and (h)) for final hearing, an applicant should file affidavits on paper which is 8½ × 11 inches (21.8 by 27.9 cm.)." The commentator at the hearing suggested that "many people submitting a Rule 608(b) showing are going to want to rely upon that showing under Rule 672(b)" in those cases where an interference is allowed to proceed. Use of 8½ by 11 inch paper will facilitate preparation of the ultimate record.

Two comments were received with respect to § 1.609. The first comment suggested that the language "count or counts" in § 1.609(b)(1) be changed to "proposed count or counts" and that each occurrence of "the count" in § 1.609(b)(2) be changed to "each count". The suggestion is being adopted. These changes are editorial in nature and are designed to enhance the clarity of the rule. A second comment indicated that it was not clear to the commentator why it was necessary under § 1.609(b)(3) for the examiner to identify the claims in an application or patent which are deemed to be patentable over any count. The commentator went on to say that the examiner "could probably readily identify claims which would clearly be unpatentable over a count and perhaps this would be all that is needed. If the examiner simply said all claims are considered unpatentable over the count, what recourse does the applicant have if he disagrees?" The purpose of having the examiner identify all claims which are patentable over the count or counts is to place the parties on notice that those claims are allowable notwithstanding any decision in the interference. Thus, in an interference between Jones and Smith if the examiner indicates that claim 6 of Jones is patentable over the proposed count or counts, Smith will know that Jones may receive a patent containing claim 6 even if Smith wins the interference. This will permit Smith to move under § 1.633(c) to add claim 8 as corresponding to a count if Smith believes claim 8 defines the same patentable invention as one of the counts. Contrary to the suggestion in the comment, an examiner will not indicate that a claim is unpatentable over a count; rather, the examiner will designate the claim to correspond to a count. Each claim in a patent or application which is directed to the same patentable invention as a count will be designated to correspond to the count. Under the new practice, an examiner will no longer have occasion to indicate that a claim will be rejected over a lost count. To fully answer the commentator's question, if a claim is designated to correspond to a count and the applicant believes the claim does not define the same patentable invention as the count, the applicant may move under § 1.633(c) to designate the claim as *not* corresponding to the count. If the motion is granted, the examiner would be authorized to issue the applicant a patent containing the claim even if the applicant loses the interference.

Several comments were received which discuss § 1.611. One comment suggested addition of a paragraph (f) to permit expanded summary judgment proceedings in application-application interferences. Since expanded summary judgment proceedings are not contemplated, the suggestion is not being adopted. See the discussion above under analysis of comments of § 1.608(b). Two comments suggested that § 1.611(c)(8), which provides that a notice declaring the interference shall specify among other things the "order of the parties," fails to take into account the fact one party may be "senior" as to one count and "junior" as to another count. As explained above in connection with the analysis of the comments concerning §1.601(m), the "order of the parties" is a procedural tool. It indicates the "style" of the case—which practitioners are encouraged to use. It there are two counts and one party is "senior" as to one count and "junior" as to another count, the party has the burden of proof as to that count to which the party is "junior." See § 1.657. Appropriate testimony periods will be set (§ 1.651(b)) to accommodate differing burdens of proof in cases where a party is "senior" on one count and "junior" on another count. The suggestions to change the meaning of "order of the parties" are not being adopted. Another comment suggested that §1.611(e) be changed to indicate that notice "shall" (as opposed to "may") be given in the *Official Gazette* when an interference has been declared involving a patent.

No useful purpose would be served by changing "may" to "shall" inasmuch as the rights of parties involved in an interference are not affected by publication or non-publication of the fact that a patent is involved in the interference. By § 1.611 the PTO intends to exercise discretion to publish in the *Official Gazette* an identification of patents which become involved in interferences; however, the PTO does not intend to undertake an absolute obligation to do so. The use of "may" better expresses the PTO's intent behind § 1.611(e).

No written comments were received relating to § 1.612. However, at the hearing two suggestions were made orally. The first suggestion was that where a "party" has obtained a copy of his "opponent's affidavit under § 1.131 or § 1.608(b) (see § 1.612(b)), the party should be required to notify the opponent. According to the suggestion, if the opponent then intends to rely on the affidavit (§ 1.671(e)), the opponent would have to "re-serve" the affidavit on the party. This suggestion is not being adopted. When the party gains access to the affidavit under § 1.612(b), the party may or may not make an accurate copy. On the other hand, the opponent knows exactly those portions of the affidavit upon which the opponent intends to rely. After careful consideration, the PTO believes on balance that it is better for the opponent to serve a copy of the evidence upon which the opponent intends to rely. Service avoids issues as to whether the party obtained under § 1.612(b) a complete and/or accurate copy of the evidence upon which the opponent intends to rely.

The second suggestion concerning § 1.612 made orally at the hearing was that a party should have access to an opponent's "predecessor application, even though the application may not be relied upon for 35 U.S.C. 120 benefit." According to the suggestion, access to a "predecessor application" may be needed to uncover relevant evidence, including violations of 37 CFR 1.56. Specifically, the commentator called attention to *Driscoll* v. *Cebalo*, 731 F.2d 878, 221 USPQ 745 (Fed. Cir. 1984), *rehearing denied mem.* (Fed. Cir. July 25, 1984). The suggestion is not being adopted. The Patent Statute (35 U.S.C. 122) provides that applications for patent will be preserved in secrecy by the PTO unless special circumstances are shown. Section 1.687(c) provides for "additional discovery" when required in the interest of justice. Additional discovery is believed to provide the necessary procedural vehicle for

appropriate motion under §1.633(c).

oral presentation at the hearing were specifically related in some manner. Since under proposed Rule 617 this clearly is *not*

if Smith wins the interference. This will permit Smith to move under § 1.633(c) to

Official Gazette when an interference has been declared involving a patent.

necessary procedural vehicle for

obtaining access to an opponent's "predecessor application."

One comment was received which suggested that the language "or members of the same firm of attorneys and agents" be added after "agent" in §1.613(b). The suggestion is being adopted because it is believed to make the rule clearer.

One comment was received which said the following with respect to § 1.616: "Sanctions should not be left to the Examiner-in-Chief (EIC) or BAI [Board of Patent Appeals and Interferences]—This Rule is *unnecessary* and should be deleted. An alternative would be to give sanction power only to the BAI." The suggestion to delete § 1.616 is not being adopted. There are cases where sanctions are warranted. See e.g., *Woods* v. *Tsuchiya*, 207 USPQ 228 (Comm'r. Pat. 1979) and *Tezel* v. *Bellantoni*, 188 USPQ 688 (Bd.Pat.Int. 1975). The PTO continues to believe that imposition of a sanction (except judgment) by a single examiner-in-chief is appropriate. In any event, a party may ask a 3-member panel of the Board to reconsider any sanction which may be imposed by a single examiner-in-chief. See § 1.640(c).

Several written and oral comments were received regarding § 1.617.

One oral comment made at the hearing suggested that "it should be explicitly stated in Rule 617(a) that the decision of the examiner-in-chief to permit the interference to proceed is without prejudice to the right of any other party to attack the sufficiency of the Rule 608(b) showing when offered as Rule 672 testimony." The suggestion is not being adopted. While no explicit statement to that effect will be placed in § 1.617(a), it necessarily follows that any opponent may attack the sufficiency of an applicant's showing under § 1.608(b) when that showing is presented as evidence under § 1.672. In summary judgment proceedings, all an applicant need do is make out a *prima facie* case. If the interference is allowed to proceed in the normal manner, the applicant must prove priority by a preponderance of evidence (when the application and the patent are copending) or beyond a reasonable doubt (when the application was filed after the patent issued). Manifestly, the burden in summary judgment proceedings is not as strict as the burden in proceedings following summary judgment. *Breuer* v. *DeMarinis*, 558 F.2d 22, 28, 194 USPQ 308, 313 (CCPA 1977) and *Schwab* v. *Pittman*, 451 F.2d 637, 640, 172 USPQ 69, 71 (CCPA 1971).

Several comments suggested that an applicant should be permitted as a matter of right to file a reply to any statement filed by any opponent under § 1.617(d). The suggestion that a reply be permitted is being adopted. Accordingly, § 1.617(e) has been changed to read: "[w]ithin a time authorized by the examiner-in-chief, an applicant may file a reply to any statement filed by any opponent." Some of the comments indicated that the applicant should be able to reply to a statement by a patentee or another opponent. The language "any opponent" in § 1.617(e) is intended to include both the patentee and any other opponent. The change in the last sentence of § 1.617(h) of "patentee" to "any opponent" is intended to make clear that all parties may appear at a hearing if the applicant requests a hearing.

One comment suggested that the patentee (and presumably any other opponent) should be allowed to present "evidence" during summary judgment proceedings. This suggestion is not being adopted. A change in the second sentence of § 1.617(d) is intended to make clear that opponents may file statements in response to an applicant's "response," but the statement "shall be limited to discussing why all the evidence presented by the applicant does not overcome the reasons given by the examiner-in-chief for issuing the order to show cause." The PTO does not intend to expand summary judgment proceedings into a "mini-interference." An applicant presents evidence under § 1.608(b). If the examiner-in-chief finds that evidence insufficient, an order to show cause stating reasons for the insufficiency is issued. An applicant may respond and, if appropriate, file "additional evidence." The PTO intends to be rather strict in permitting the filing of new evidence. After the applicant responds (with or without additional evidence), any opponent may file a statement. In the statement, the opponent should be free to comment on all the evidence (original and additional) which the applicant presents. Compare *In re Plockinger*, 481 F.2d 1327, 179 USPQ 103 (CCPA 1973). Under § 1.617(d) the opponent may not urge a rationale for summary judgment which does not appear in the order to show cause issued by the examiner-in-chief. However, it is not the PTO's intent to interpret § 1.617(d) in the narrow manner the Court of Customs and Patent Appeals interpreted 37 CFR 1.204(c) in *Kahl* v. *Scoville*, 609 F.2d 991, 995–996, 203 USPQ 652, 656 [headnote 6] (CCPA 1979). An example will illustrate how the PTO intends to interpret § 1.617(d).

Example 35. An applicant copies claims from a patent and is required to submit a showing under § 1.608(b). Upon review of the showing under § 1.608(b), the examiner-in-chief concludes that the showing fails to make out a *prima facie* case of priority, because applicant has failed to show an actual reduction to practice. Applicant files a response and includes additional evidence which purports to show an actual reduction to practice. The patentee then files a statement in which two arguments are made. *First*, patentee argues that the additional evidence has not been properly authenticated. *Second*, patentee argues that even if applicant has shown an actual reduction to practice, summary judgment is nevertheless appropriate because applicant suppressed and concealed after the actual reduction to practice. The first argument is proper, but the second argument is not. A patentee may comment on the sufficiency of the applicant's evidence. Fairness, however, dictates that summary judgment be granted only after fair notice in the order to show cause. Accordingly, summary judgment will not be based on a rationale raised by a patentee in a statement which does not correspond to the rationale used by the examiner-in-chief in the order to show cause.

A change has been made in § 1.617(a) and § 1.617(g) to make clear that once summary judgment proceedings have concluded, an interference will proceed "in the normal manner." The change is intended to codify the decisions in *Walsh* v. *Sakai*, 167 USPQ 465 (Comm'r. Pat. 1967) and *Ing* v. *Chiou*, 207 USPQ 321 (Comm'r. Pat. 1979). This change is further discussed in the discussion of the comments received with respect to § 1.635.

One comment was received which indicated that § 1.618:

> needs qualification. It may be appropriate to resubmit certain papers (See also 1.644(d) last sentence).

The precise "qualification" needed was not set forth in the comment. Likewise, no example of "certain papers" was set forth. Under the circumstances, the PTO declines to make any change in § 1.618.

Several comments were received which discussed the rules relating to preliminary statements.

Three comments were received which suggested that § 1.622(a) be amended to "take into account several court decisions holding that joint inventors need not be joint inventors of [the subject matter of] all claims." Changes have been made in § 1.622(a) consistent with the amendment to 35 U.S.C. 116 made by Pub. L. 98–622.

One comment was critical of §§ 1.623(c); 1.624(c); and 1.625(c), because § 1.628(b) does not cover the

possibility that a drawing might not be available, e.g., a drawing destroyed in "a fire." Section 1.628(b) has been amended to permit a party to allege a date when a first drawing or first written description was made in those circumstances where the first drawing or first written description is not available. The party will be required: (1) To show good cause and explain in the preliminary statement why a copy of the drawing or written description cannot be attached to the preliminary statement and (2) attach to the preliminary statement the earliest drawing or written description made in or introduced into the United States which is available. The party would also be required to file a motion to amend its preliminary statement promptly after the drawing or written description becomes available. It is the PTO's intent by the amendment § 1.628(b) to overrule the holding of headnote [1] of *Reddy* v. *Davis*, 187 USPQ 386, 388 (Comm'r.Pat. 1975).

Another comment was critical of the language "conceived" in § 1.623(a)(4). The current rules do not require a party to allege a conception; rather, they require one to allege the date of the certain acts which, if proved, would establish conception. See 37 CFR 1.216(a)(4). According to the commentator, an allegation of conception is "unprovable and meaningless." The use of "conception" in § 1.623(a)(4) is intentional and is designed to permit a party to "plead" the earliest date on which it believes conception occurred. Contrary to the suggestion in the comment, "conception" is not meaningless and may be proved during the testimony period. See *Gould* v. *Schawlow*, 363 F.2d 908, 150 USPQ 634 (CCPA 1966); *Meitzner* v. *Corte*, 410 F.2d 433, 161 USPQ 599 (CCPA 1969); and *Mergenthaler* v. *Scudder*, 11 App.D.C. 264, 1897 C.D. 724 (D.C.Cir. 1897). There is no need to prove "conception" in the preliminary statement.

A preliminary statement serves several useful purposes in an interference: (1) It serves to limit a party's proofs as to time, (2) it serves as a vehicle for permitting the examiner-in-chief or the Board to issue orders to show cause in those cases where it would be futile to take testimony, and (3) it serves as notice to an opponent of the case which is alleged by a party. Under the rules being announced herein, the issues which will be raised and decided by the Board at final hearing are made known during the interlocutory stage through: (a) The preliminary statement, (b) motions under § 1.633 and decisions thereon, and (c) notices under § 1.632 of a party's intent to argue abandonment, suppression, or concealment. Section 1.632(a)(4) requires a party to allege a date of conception—it does not require proof of conception. The allegation puts the opponent on notice that the party intends to prove conception as of a date no earlier than the date alleged in the preliminary statement.

One comment suggested that the rules relating to preliminary statements are deficient because they do not permit one to allege allegations concerning tapes. Specifically, the commentator said: "What about a taped transcript of an invention, a practice being followed in a number of research departments of corporations?" If making a tape is the last act of conception, a party may allege the date the tape was made as the conception date under § 1.623(a)(4).

Several comments were received which suggested that a party should not have to allege derivation in a preliminary statement because the party may not know derivation occurred until the testimony period. Section 1.625 requires a party to file a preliminary statement when derivation is an issue. If derivation is not known or discovered prior to the date the preliminary statement is due, a party may move to amend the preliminary statement and allege derivation promptly after existence of derivation is discovered.

Several comments discussing § 1.624 were received. One comment suggested that § 1.624.(a)(5) should require a party to state, where appropriate, that no actual reduction to practice of an invention made in a foreign country was introduced into the United States. This suggestion is being adopted and a second sentence has been added to § 1.624(a)(5) which provides: "If an actual reduction to practice of the invention was not introduced into the United States, the preliminary statement shall so state." This sentence conforms § 1.624(a)(5) to the allegation required in the second sentence of § 1.623(a)(5). Another comment suggested that the language "in the United States" be inserted after "reasonable diligence" in § 1.624(a)(6) and that all occurrences of the language "was made" in § 1.624(c) be changed to "was introduced into the United States". This suggestion is being adopted. As noted in the comment, "[t]he changes . . . are necessary to clarify that for an invention made abroad the only relevant activities are those which occur in the United States." See 35 U.S.C. 104.

One comment asked "how does one introduce 'an actual reduction to practice of the invention' in the United States?" *Breuer* v. *DeMarinis*, 558 F2d 22, 194 USPQ 308 (CCPA 1971), illustrates a case where an actual reduction to practice abroad was introduced into the United States.

One comment suggested that § 1.627(a) be changed to require preliminary statements "be enclosed in an outer envelope addressed to the Commissioner of Patents and Trademarks and be additionally marked Box Interference—Preliminary Statement." According to the comment, the confidentiality of preliminary statements "envisioned under the proposed rules would be further enhanced. . . . " The suggestion is not being adopted. The PTO believes it is sufficient if preliminary statements are enclosed in a sealed envelope as specified in § 1.627(a). The Board will not permit access to preliminary statements which have not been ordered opened by an examiner-in-chief.

Several comments discussing § 1.629 were received. One comment suggested that the first sentence ("A preliminary statement should be carefully prepared.") should not appear in § 1.629(a). This suggestion is being adopted. The PTO agrees with the commentator that the sentence:

> no longer appears necessary or appropriate in the context of rulemaking. The remainder of the paragraph makes the admonition redundant at best.

Two comments were received which suggested that the word "normally" be deleted from the last sentence of § 1.629(d). The suggestions are not being adopted. A preliminary statement is a pleading. The Board does not evaluate or consider the content of a drawing or written description prior to final hearing. At final hearing, in fact, the Board will only consider the drawing or written description if a party places the drawing or written description in evidence. The word "normally" first appeared in 37 CFR 1.223(c), last sentence, in 1978 (see e.g., 973 TMOG 19 (August 1, 1978)). The last sentence of 37 CFR 1.223(c) was intended to codify headnote [2] of *Reddy* v. *Davis*, 187 USPQ 386 (Comm'r. Pat. 1975). The word "normally" appears in the rule to permit the Board to exercise discretion to evaluate or consider the content of a drawing or written description in some unusual and presently unforeseen circumstance.

One comment suggested that "no earlier than" in § 1.629(b) be changed to "as early as". The suggestion is being adopted inasmuch as it is believed to more clearly state the intent of the rule.

One comment suggested that § 1.629(d) "is improper because it fails to

under § 1.608 and decisions thereon, and practice of the invention' in the United § 1.629(d) "is improper because it fails to

take into account testimony which can show that a drawing and/or written description were actually made even though the drawing and/or written description are not now available." A change to § 1.628(d) and addition of "unless the party complies with § 1.628(b)" to the first sentence of § 1.629(d) eliminates the problem raised by the commentator.

One comment discussing § 1.631(a) was received which expressed the view that a junior party should be required to send a copy of its preliminary statement to the senior party even if the senior party does not file a preliminary statement. According to the commentator, the senior party is *prima facie* the first inventor and at some time it will have to know the earliest dates alleged by the junior party. The rules require all parties to file a preliminary statement. If a junior party does not file a preliminary statement, it will be denied access to any other preliminary statement which is filed. A senior party, however, is always entitled to access to any preliminary statement filed by a junior party. See e.g., § 1.631(b). However, a junior party will only be required to serve a senior party who files a statement.

Numerous comments were received discussing § 1.633.

One commentator asked: "What sort of a judgment is in order if a count is not patentable over the prior art to an opponent?" Section 1.633(a) authorizes a party to bring a motion for judgment on the ground that the opponent's *claim* corresponding to a count is not patentable. It is important to note that the motion raises the patentability of the opponent's *claim* not the count. Accordingly, by a motion under § 1.633(a), a party seeks entry of a judgment that the opponent is not entitled to a patent containing a claim corresponding to a count.

Two comments questioned the nature of the judgment when a motion under § 1.633(b) is granted. Section 1.633(b) authorizes the filing of a motion for judgment on the ground that there is no interference-in-fact. If a motion under § 1.633(b) is granted, the judgment would provide that each party is entitled to a patent containing that party's claims corresponding to the count. Judgments in interferences under these rules will determine a party's entitlement or lack of entitlement to *claims* corresponding to a count.

One comment expressed the hope that "third party inventorship" would not be made an issue in interferences. Contrary to the hope expressed by the commentator, "third party inventorship" can be made the subject of a motion under § 1.633(a). Any ground of unpatentability may be made the subject of a motion under § 1.633(a) except: (1) Priority of invention of the subject matter of a count by the moving party as against any opponent or (2) derivation of the subject matter of a count by an opponent from the moving party. It should be noted that under past practice, third party inventorship has not been considered "ancillary" to priority. *Sheffner* v. *Gallo*, 515 F.2d 1169, 185 USPQ 728 (CCPA 1975). However, under these rules, the question of whether an issue is "ancillary" no longer arises. See 130 Cong. Rec. H10528 (daily ed. Oct. 1, 1984) (statement by Rep. Kastenmeier). Pub. L. 98–622 gives the Board authority to consider priority and *patentability*. Third party inventorship involves a question of patentability. 35 U.S.C. 102(f).

One comment pointed out that § 1.633(e) adopts the estoppel rule approved by the Court of Customs and Patent Appeals in *Avery* v. *Chase*, 101 F.2d 205, 40 USPQ 343 (CCPA 1939), *cert. denied*, 307 U.S. 638 (1939), while rejecting the rule announced by the U.S. Court of Appeals for the District of Columbia Circuit in *International Cellucotton Products Co.* v. *Coe*, 35 F.2d 869, 30 USPQ 366 (D.C. Cir. 1936). See also *American Cyanamid Co.* v. *Coe*, 106 F.2d 851, 42 USPQ 302 (D.C. Cir. 1939). The commentator is correct in noting that the rules adopt the estoppel rule approved in *Avery* v. *Chase*. The following comment by the CCPA in its opinion in *In re Shimer*, 69 F.2d 556, 558, 21 USPQ 161, 163 (CCPA 1934), accurately expresses the intent of the PTO in promulgating §§ 1.633(e) and 1.658(c):

> It may be stated that this rule works no hardship to him who is diligent in pursuit of his rights. When an interference is declared, the files of his contestants are open to him. He has full cognizance of their disclosures and claims. So advised, it becomes his duty to put forward every claim he has. [Rule 1.633(e)] . . . affords him this opportunity. If the rule be not enforced or enforceable, then delays and litigation are greatly increased. It is quite obvious that the doctrine of estoppel, as applied in these cases, results in the better conduct of the business of the Patent [and Trademark] Office and in the public good.

One comment suggested that the following be added to the end of § 1.633(c):

> A motion to add or substitute a count shall be construed as an automatic request for the benefit of any earlier application [filing] dates accorded the existing count, and also as encompassed by a contemporaneous motion under § 1.633 (f) or (g), unless indicated otherwise. Any opposition thereto must be raised in a motion opposition pursuant to § 1.638.

The suggestion is not being adopted. A specific reference to § 1.637(c) appears in § 1.633(c). The provisions of § 1.637(c) spell out in detail the steps which a moving party must take in filing a motion under § 1.633(c). One of those steps requires the moving party to request benefit of any earlier application. The mere fact that benefit has been accorded for a "first" count does not establish that benefit should be accorded for a "second" count. The PTO believes the burden should be on the moving party to point out where an earlier application supports a count rather than placing the burden on an opponent in the first instance to point out where an earlier application fails to support particular subject matter. There is no compelling reason to force the opponent "to prove a negative." It should be noted that the language "Where appropriate," has been deleted in every instance from §1.637 to make clear that the burden lies on the moving party to request benefit when that party files a motion under § 1.633.

At the hearing, one individual commented that § 1.633(a) is not clear as to whether a motion for judgment based on "fraudulent appropriation of the moving party's invention by his opponent" excluded. The "fraudulent appropriation of the moving party's invention by his opponent" is derivation. Section 1.633(a)(2) excludes both "innocent" derivation (e.g., through a third party and unknown to either party in an interference) or "fraudulent" derivation (e.g., where one party knowingly takes the invention from an opponent). In either event if derivation by an opponent of a party's invention is proved, the party will be awarded judgment.

One comment made the following statement:

> An opponent faced with a motion for judgment on the ground that a count is unpatentable may not be able to prove patentability in the short time periods. Provision should be made for extensions of time in such cases.

Provisions for extensions of time are made in § 1.645.

One comment addressed Example 23 which appeared in the notice of proposed rulemaking. Example 23 also appears in a slightly modified form herein and, as modified, takes into account discussion in the comment. The commentator believed that the motion mentioned in Example 23 should be denied and that a testimony period should be set. Accordingly to the commentator, the granting of the motion would shift the burden to the opponent of the motion. The commentator's point

is well taken. Actually, the motion should be deferred to final hearing and a testimony period would be set. In ruling on motions under § 1.633, it will not always be possible for the examiner-in-chief to grant or deny outright a motion. When testimony is needed to rule on a motion, the proper course of action is to defer a decision on the motion to final hearing and permit testimony. See § 1.639(c). The moving party retains the burden. If testimony is taken on patentability, the parties would also have to take testimony on priority. With all testimony at its disposal, the Board would then be in a position to rule on all issues and award a judgment.

One comment asked how the claims of the parties would be designated to correspond to the counts if in Example 18 a motion to substitute Count 2 (benzene) and add Count 3 (chloroform) was granted. The following Example 36 answers the commentator's question.

Example 36. The facts in this example are the same as Example 18. Assume that applicant AB believes that benzene and chloroform define separate patentable inventions. Applicant AB would file a motion under § 1.633(c)(1) to substitute Count 2 (benzene) for Count 1 (Markush group of benzene or chloroform) and add Count 3 (chloroform). If the examiner-in-chief grants the motion, the interference would be redeclared by deleting Count 1 and substituting in its place Counts 2 and 3. Claims 1 and 2 of the patent H and claims 11 and 12 of application AB would be designated to correspond to Count 2. Claims 1 and 3 of patent H and claims 11 and 13 of application AB would be designated to correspond to Count 3. If one party proves priority with respect to both benzene and chloroform, that party would be entitled to all claims in its application or patent corresponding to Counts 2 and 3. The other party would not be entitled to a patent containing any claim corresponding to Counts 2 and 3. If patentee H proves priority with respect to benzene and applicant AB proves priority with respect to chloroform (assuming there was no issue raised at final hearing with respect to the patentable distinctness of benzene and chloroform), the judgment would provide that patentee H is not entitled to a patent with claims 1 and 3, but is entitled to a patent with claim 2 and that applicant AB is not entitled to a patent with claims 11 and 12, but is entitled to a patent with claim 13. If an issue is properly raised at final hearing as to whether benzene and chloroform are the same patentable invention and the Board holds that they are the same patentable invention, the party proving the earliest priority as to either benzene or chloroform would prevail as to all claims. Thus, if patentee H invented benzene before applicant AB invented benzene or chloroform, patentee H would be entitled to a patent containing claims 1 through 3 even if applicant AB invented chloroform before patentee H invented chloroform. Applicant AB would not be entitled to a patent with claims 11 through 13.

An oral comment was received by telephone which raised the question of whether a party is, or could be, required to present in the party's application every claim which the party may ever seek to obtain in a patent based on the party's application. According to the commentator, such a requirement would prevent the party from proceeding *ex parte* after the interference on any claim on which a favorable judgment was not entered. It is not the PTO's intent to require a party who is an applicant to present at the outset all claims which the party may ever seek to obtain in a patent based on his application. Parties in interference cases should recognize, however, that the interference estoppel provisions of § 1.658(c) have been expanded with the view to eliminating much of the *ex parte* maneuvering which has taken place in the past after an interference is terminated. Accordingly, a party who fails to move to place a matter in issue runs a considerable risk that the party will not be able to raise the issue *ex parte* after an interference is terminated. Nevertheless, the PTO has determined that it will not, at this time, adopt the requirement suggested by the commentator. The commentator also suggested, contingent on his earlier suggestion being rejected, that the rules provide that a party be authorized to file a motion to require an opponent who is an applicant to add a claim to the opponent's application and to designate the claim as corresponding to a count. This suggestion is being adopted by addition of § 1.633(c)(5). Paragraph (c)(5) authorizes the filing of a motion to redefine the interfering subject matter by requiring an opponent who is an applicant to add a claim and to designate the claim to correspond to a count. A companion addition of paragraph (c)(5) to § 1.637 sets out the requirements of a motion under § 1.633(c)(5). Those requirements are: the moving party must: (1) Propose a claim to be added to the opponent's application, (2) show the patentability of the claim to the opponent and apply the terms of the claim to the disclosure of the opponent's application, (3) identify the count to which the proposed claim shall be designated to correspond, and (4) show that the proposed claim defines the same patentable invention as the count to which it will be designated to correspond. The following example illustrates how practice under §§ 1.633(c)(5) and 1.637(c)(5) is expected to occur.

Example 37. In this example, some of the facts set out in Example 32 will be used. Application AV discloses engines and in particular a 6-cylinder engine. Application AV contains only claim 1 (engine). Application AW discloses engines in general, but does not specifically disclose a 6-cylinder engine. Application AW contains only a single claim 3 (engine). Seeing that application AV specifically discloses a 6-cylinder engine and believing that a 6-cylinder engine is the same patentable invention as "engine," AW could move under § 1.633(c)(5) to require applicant AV to add a claim (6-cylinder engine) and to have the claim designated to correspond to the count (engine). Applicant AV could oppose on the ground that a 6-cylinder engine is not the "same patentable invention" as "engine." If the motion is granted, applicant AV would be required to add a claim to 6-cylinder engine and the claim would be designated to correspond to the count. If applicant AV loses the interference, the judgment would preclude applicant AV from obtaining a patent with claims to "engine" or "6-cylinder engine." If the motion is denied on the basis that a 6-cylinder engine is not the same patentable invention, applicant AV would not be required to present a claim to 6-cylinder engine and would be able to pursue such a claim *ex parte* even if applicant AV loses the interference.

If an applicant is ordered by an examiner-in-chief to file an amendment to present a claim and the applicant fails or refuses to timely present the amendment, the failure or refusal will be taken without further action as a disclaimer by the applicant of the subject matter of the claim. See the second sentence of § 1.640(b)(1).

At the hearing, one commentator indicated that it is not clear whether § 1.635 "would permit a motion for judgment in a situation where a junior party's case-in-chief fails as a matter of law to overcome a senior party's effective filing date." Under the rules, it is not the intent of the PTO to allow a senior party to test the sufficiency of the case-in-chief of a junior party prior to final hearing. Thus, a "motion for a directed verdict" (see Rule 50(a) of the Federal Rules of Civil Procedure) at the conclusion of the junior party's case-in-chief and prior to a senior party's case-

can be made the subject of a motion must be raised in a motion opposition pursuant to § 1.638.

would shift the burden to the opponent of the motion. The commentator's point

same patentable invention and the Board holds that they are the same

the opponent's application, (3) identify the count to which the proposed claim

conclusion of the junior party's case-in-chief and prior to a senior party's case-

in-chief is not authorized under the rules. If a senior party believes the case-in-chief of the junior party is insufficient as a matter of law, the senior party may *elect* to proceed immediately to final hearing. If the senior party is incorrect, however, the senior party will have waived any right to present any case-in-chief or rebuttal. See e.g., *Comstock* v. *Kroekel*, 200 USPQ 548, 550 n. 4 (Comm'r.Pat. 1978); *Lorenian* v. *Winstead*, 127 USPQ 501, 508 (Bd.Pat.Int. 1959); and, more recently, *Burson* v. *Carmichael*, 731 F.2d 849, 221 USPQ 664 (Fed. Cir. 1984) ("There is no support in law for repeated bites at the apple"). This would be true even if the only evidence relied upon by the junior party is a showing under 1.608(b). In this respect, the rules codify the decision in *Walsh* v. *Sakai*, 167 USPQ 465 (Comm'r.Pat. 1970).

Two comments were received which suggested that the twenty-day period in § 1.636(b) is too short. It was suggested that a longer time period be set and one comment suggested thirty (30) days. The suggestions are not being adopted. The time period set for filing oppositions will normally be set during a telephone conference call between the examiner-in-chief and the attorneys for the parties. The twenty-day period appears in the rule in the event a specific time for filing oppositions is not set by an examiner-in-chief. The twenty-day period is deemed to be sufficient in most cases. Twenty days are currently allowed to respond to a motion. See 37 CFR 1.231(b). It should be noted that the twenty-day period is longer than the minimum period allowed by the Federal Rules of Civil Procedure for responding to motions. See Rule 6 (d) and (e).

Two comments were received which discussed § 1.637. Both comments suggested that a sentence be added to § 1.637(f)(2) to require a translation to be filed when a party moves for benefit of an earlier foreign application which is not in English. The suggestions are being adopted and the following has been added as the last sentence of § 1.637(f)(2): "If the earlier application filed abroad is not in English, the requirements of §1.647 must also be met." Section 1.647 requires a translation whenever a party relies on a document in a language other than English. One comment suggested that the language of § 1.637(f)(3) ("Show that the earlier application discloses an embodiment within the scope of each count.") may be "contrary to past decisions of the CCPA which have held a disclosure can be good without a specific embodiment." The critical issue in each benefit situation is whether the earlier application constitutes a constructive reduction to practice of the invention defined by the count. The issue is necessarily resolved on a case-by-case basis and the presence or absence of an embodiment is only one factor to be considered. Accordingly, the language of § 1.647(f)(2) has been changed to read: "Show that the earlier application constitutes a constructive reduction to practice of each count." The comment also criticized the use of the word "each" in § 1.647(f)(2). The term "each" is used to make clear that when there are two or more counts, the moving party must show that the earlier application constitutes a constructive reduction to practice for each count. There are cases where a disclosure in an earlier application would constitute a constructive reduction to practice for one count but not for another count.

Several changes have been made to § 1.637 which were not made as a result of a comment submitted from the public. Each occurrence of the language "Where appropriate," in § 1.637 has been deleted as being unnecessary and possibly confusing. Whenever a party wants or believes that it is entitled to benefit of an earlier application, the party must file a motion under § 1.633(f) for benefit. The language "Where appropriate" may have given parties the mistaken impression that a motion was not necessary where benefit of the earlier application had been accorded in the papers declaring the interference. See the discussion above of the suggested change to §1.633(c) which was rejected.

The language "or adding a claim to be designated to correspond to a count" has been added to § 1.637(c)(2). The change supplements a change made in § 1.633(c)(2). Section 1.637(c)(2) sets out the requirements for a preliminary motion to redefine the interfering subject matter by adding a claim in the moving party's application and to designate the claim to correspond to a count.

In § 1.637(c)(2)(ii), the language "Apply the terms of each proposed claim to the disclosure of the application" has been changed to "Show that the proposed or added claim defines the same patentable invention as the count". This change was made to add the requirement of showing that the new claim defines the same patentable invention as the count and to eliminate a requirement already contained in §1.637(c)(2)(iii).

Section 1.637(c)(2)(iii) was changed to refer to an "amended or added claim" and thereby conform the language of the section to the language of § 1.633(c)(2).

Paragraph (c)(5) was added to set out the requirements of a motion under § 1.633(c)(5) which permits a party to move to require an opponent who is an applicant to add a claim to the application and to designate the claim to correspond to a count. See Example 37.

Two comments were made concerning § 1.636. One comment suggested that the twenty-day periods of paragraphs (a) and (b) were too short. The PTO has evaluated the time periods of paragraphs (a) and (b) and has decided that no change will be made to those periods. Attention is directed to the discussion above of the comments concerning § 1.636(b) which also contains a twenty-day period.

Another comment made at the hearing suggested that a reply to an opposition to a motion should be permitted as a matter of course. Upon consideration of the comment, it has been decided to authorize the filing of replies to opposition to all motions. Presently, replies are permitting as a matter of course only for oppositions to motions under 37 CFR 1.231. Section 1.638(b), as changed, would permit the reply in every instance. The PTO over the years has received complaints concerning the inability of a party to file replies. The change being made in § 1.638(b) will be reviewed sometime in the future to determine whether authorizing replies is helpful to the Board and/or whether undue delay in resolving interference occurs because replies are filed. Moreover, the PTO will make a judgment on whether "new issues" are being raised as a matter of course in replies. It can thus be seen that the change in authorizing replies may be considered experimental and could be changed in the future if found to be counter-productive or inconsistent with the objective of resolving interferences in a relatively prompt manner.

One comment discussing § 1.639 was received. The comment states:

> The requirement that proofs of alleged material facts *must* be filed may be difficult or impossible to meet in view of the shortened times. [The] rule should make provisions for timely submission of proofs within reasonable times.

To the extent that the comment suggests setting specific times in the rules, the suggestion is not being adopted. It should be noted that if affidavits cannot be timely prepared to be filed with a motion, the moving party may wish to take advantage of paragraph (c) which requires a party to specify any testimony needed to resolve a motion.

One change was made in § 1.639(c) to make clear that a moving party or an opponent may describe any testimony

needed to resolve a motion under either § 1.633 or § 1.634. Often, testimony is needed to resolve inventorship disputes. Accordingly, a party may describe testimony needed to resolve motions to correct inventorship under § 1.634. It should be noted that if a party relies solely on affidavits in support of a motion (under § 1.633 or § 1.634) and the issue raised in the motion is to be considered at final hearing, the party must comply with § 1.671(e).

Several comments were received which discussed § 1.640. One comment asked: "When the final sentence speaks of a panel deciding the request for reconsideration, does this mean that the panel decides whether to reconsider or whether to modify the decision?" It was the PTO's intent that the panel make a decision on whether to modify the decision made by the single examiner-in-chief. Accordingly, the language "shall be decided by a panel" in the last sentence of § 1.640(c) has been changed to read: "shall be acted on by a panel". Another change in language to the fourth sentence of § 1.640(c) has been made to make clear that a decision of a single examiner-in-chief will not ordinarily be modified by a panel without an opportunity to file an opposition.

Another comment suggested that § 1.640(a) be changed to "allow, even encourage, the examiner-in-chief to travel to conferences where more convenient/practical for all concerned." This suggestion is not being adopted. The use of a telephone conference call eliminates the need to adopt the suggestion. The same comment suggested that the "speedy and inexpensive" language of the second sentence of § 1.640(b) be deleted. The suggestion is not being adopted. The comment fails to explain why the language should be deleted. It is obvious that a motion cannot always be granted or denied; other action is often appropriate, e.g., deferring consideration of a motion to final hearing. Section 1.640(b) gives the examiner-in-chief discretion to take appropriate action and the "just, speedy, and inexpensive determination" language provides some standard which an examiner-in-chief may follow in those cases where granting or denying a motion is not appropriate.

One comment was received which suggested that § 1.640 be changed to provide that an examiner-in-chief hold a hearing to determine whether an interference should proceed in those cases where a junior party fails to allege a date prior to the senior party and remains in an interference only because the junior party is alleging "fraud" by the senior party. The suggestion is not being adopted. If a party believes that an opponent has committed "fraud" or has engaged in "inequitable conduct," the party may file a motion under § 1.633(a) for judgment. Obviously, a motion for judgment on the basis of "fraud" or "inequitable conduct" must make out a case by clear and convincing evidence. The examiner-in-chief has sufficient authority under the rules to preclude a party from proceeding in an interference on a baseless charge of "fraud" or "inequitable conduct."

One oral comment was received which suggested that the examiner-in-chief be required to consult with an examiner prior to deciding a preliminary motion for judgment under § 1.633(a) based on patentability. The oral comment suggested alternate proposals:

(1) The examiner-in-chief will normally obtain a patentability report when deciding motions involving a question of patentability.

(2) The examiner-in-chief will consult with a primary examiner prior to deciding a motion raising an issue of patentability.

The suggestion of the oral comment is not being adopted. An examiner-in-chief is a person having "competent legal knowledge and scientific ability." 35 U.S.C. 7. Examiners-in-chief review decisions of examiners on questions of patentability. Accordingly, there is no reason to *require* an examiner-in-chief to consult with an examiner on a question of patentability. The PTO recognizes that many examiners possess special expertise in particular arts. It is for this reason that § 1.640(b) provides that "[a]n examiner-in-chief *may* consult with an examiner in deciding motions involving a question of patentability" (emphasis added). Thus, an examiner-in-chief is authorized to consult with an examiner on a question of patentability where the examiner-in-chief believes consultation will be beneficial.

One comment suggested that § 1.642 be changed to permit an examiner-in-chief to add a newly discovered patent, as well as newly discovered applications, to an interference. Inasmuch as 35 U.S.C. 135(a) authorizes interferences between applications and patents, the suggestion is being adopted. The language "application" in § 1.642 has been changed to read: "application or patent".

Several comments discussing § 1.644 were received. One commentator made four suggestions, none of which are being adopted. First, the commentator suggested that there should be no fee for a petition under § 1.644(a)(1). This suggestion is not being adopted. A decision on a petition is a service performed by the PTO on behalf of a petitioner. The Commissioner is authorized to charge fees for services performed. 35 U.S.C. 41(d). Second, the commentator suggested that the last sentence of § 1.644(d) be deleted. This suggestion is not being adopted. In the past when parties have filed petitions, copies of documents already in the interference file have been attached to the petition. The copies tend to increase unnecessarily the size of the file of an interference. Inasmuch as the document submitted with the petition is already in the interference, there is no need to file a "second" copy of the document. Parties can expect that petitions will be returned (§ 1.618) if the petition is accompanied by documents which are already in the interference file. Third, the commentator argued that the "requirement of service within one (1) day is too onerous and should be deleted" from § 1.644(g). No rationale was given in support of the argument. Petitions have caused considerable delay in interference cases in the past. To avoid unnecessary delay and surprise on the part of the opponent, the PTO has decided to require that service of a petition be such that delivery to the opponent is within one (1) working day. Service within one day should not ordinarily be difficult in view of "Express Mail" and numerous commercial one-day delivery services available. Lastly, the commentator suggested that § 1.644(i) be changed to provide that decision on a petition would not be delegated to the examiner-in-chief handling the interference. The suggestion to change § 1.644(i) is not being adopted. However, when a PTO employee is granted authority to decide a petition in an interference case, the employee would not be the examiner-in-chief handling the interference or an employee on a panel of the Board deciding the petition. It would be expected that an employee deciding a petition by delegation of authority would be one who could exercise independent judgment on the petition bearing in mind that a petition will be decided on the record made before the examiner-in-chief or the panel. In connection with this latter point, findings of fact by an examiner-in-chief or the Board will be presumed to be correct unless shown to be clearly erroneous. Discretionary action by an examiner-in-chief or the Board will not be overturned unless it is shown that an abuse of discretion occurred.

One commentator asked the following: "Is § 1.644(g) intended to

is each benefit situation is whether the

section to the language of § 1.633(c)(2).

opponent may describe any testimony

remains in an interference only because

a petition under § 1.644(a)(1). This

following: "Is § 1.644(g) intended to

apply only to 'oppositions' to § 1.644 petitions, or is it also applicable to § 1.638 oppositions?" The provisions of § 1.644(g) apply only to petitions filed under § 1.644; those provisions do not apply to oppositions under § 1.638.

Two comments suggested that § 1.644(a)(2) be changed to include an express statement that a petition under paragraph (a)(2) could not be filed until after the Board has entered judgment and that the petition could not relate to the merits of priority of invention or patentability or a question of whether evidence is admissible under the Federal Rules of Evidence. The suggestions are being adopted and appropriate language has been added to § 1.644(a)(2) after the word "Commissioner". The change was suggested by the commentators so that no reasonable person could possibly overlook the fact that a petition to exercise supervisory authority can be filed *only after entry of judgment.* It should be noted that the language "and shall not relate to (1) the merits of priority of invention or patentability or (2) the admissibility of evidence under the Federal Rules of Evidence" has been deleted from § 1.644(b) in view of the change to § 1.644(a)(2).

One comment suggested that the last sentence of § 1.644(f) be changed to make clear that a decision would not ordinarily be modified until the Commissioner had requested an opposition to a request for reconsideration. This suggestion has been adopted and an appropriate change has been made to the last sentence of § 1.644(g).

One comment suggested that the word "shall" in the last sentence of § 1.644(b) precludes the filing of an opposition beyond the 15-day period specified in the rules. According to the commentator, the opposition should also be considered timely if filed within "any appropriate extension." A party may move to extend the time for filing an opposition. See § 1.645.

One comment argued that § 1.644(a)(1) cannot "be squared with the statute as interpreted in *Myers* [v. *Feigelman*, 455 F.2d 598, 172 USPQ 580 (CCPA 1972)]." The rationale in support of the comment is the following:

> I presume that the limitation in subparagraph (b) that a petition under subparagraph (a)(2) "shall not relate to . the merits of priority of invention or patentability or . . . the admissibility of evidence" is intended to avoid conflict with *Myers* v. *Feigelman*, 172 USPQ 580 (CCPA 1972), and its progeny. However, I read *Myers* as saying that, if the board has statutory authority to make a decision (including all the myriad of ancillary decisions that the panels and/or the single examiner-in-chief will be making under the new procedure), then the Commissioner does not have authority to review the board's or the single examiner-in-chief's decision. Or, to put it the other way around, if the Commissioner reviews an examiner-in-chief's decision, he is stepping into the shoes of the examiner-in-chief, and the Commissioner's decision is in turn reviewable by the panel (which is, of course, the only entity authorized to exercise the *statutory* jurisdiction of the board—see *Knickerbacker Toy Co.* v. *Faultless Starch Co.*, 175 USPQ 417 n.8 (CCPA 1972)). Thus, I don't see how proposed section 1.644(a)(1) can possibly be squared with the statute as interpreted in *Myers*.

It is true that the CCPA has stated that, "in performing his duties, the Commissioner cannot usurp the functions or impinge upon the jurisdiction of the Board . . . established by 35 U.S.C. 135." *In re Dickinson*, 299 F.2d 954, 958, 133 USPQ 39, 43 (CCPA 1962). See also *Myers* v. *Feigelman, supra*, 455 F.2d at 599 n. 8, 172 USPQ at 583 n. 8. However, it is also true that the Commissioner "shall superintend or perform all duties required by law respecting the granting and issuing of patents . . . ." 35 U.S.C. 6; *Kingsland* v. *Carter Carburetor Corp.*, 83 U.S. App. D.C. 266, 168 F.2d 565, 77 USPQ 499 (D.C.Cir. 1948); *In re Staeger*, 189 USPQ 284, 285 n. 2 (Comm'r.Pat. 1974). The Commissioner, subject to approval of the Secretary of Commerce, establishes the procedure by which the examiners-in-chief and the Board will consider interference cases. 35 U.S.C. 6. See also 35 U.S.C. 23 relating to affidavits and depositions.

Under the rules, the Commissioner will not determine on petition either "priority of invention" or "patentability." See § 1.644(b). Likewise, the Commissioner will not consider whether evidence should have been admitted or excluded under the Federal Rules of Evidence. The PTO believes that the federal courts, which routinely rule on admissibility under the Federal Rules, are in a better position to determine whether the Board properly interpreted the Federal Rules of Evidence.

While the Commissioner will not decide "priority of invention" or "patentability" under 35 U.S.C. 135(a), it does not follow that the Commissioner is precluded from interpreting PTO rules on procedural matters, including procedural matters related to the admissibility of evidence on some basis other than the Federal Rules of Evidence, e.g., whether a party has complied with a PTO rule such as § 1.671(e) (procedure for relying on affidavits) or § 1.671(g) (permission required for obtaining evidence by subpoena).

Full consideration has been given to the comment. The PTO nevertheless believes that § 1.644(a)(1) is not inconsistent with law.

Several comments concerning § 1.645 were received. One comment suggested that "to" be inserted in the first sentence of paragraph (a) before "file a notice of appeal" and "commence a civil action". According to the comment, "[t]he use of parallel infinitive verb forms provides greater clarity to the rule." The suggestion has been adopted.

Another commentator said the following:

> No good reason is seen to require a notarized oath from an attorney merely to explain why a paper was filed late, if there is no claim of substantive prejudice by other parties. Attorneys and examiners-in-chief should not be spending unnecessary time and effort on merely procedural formalities. That is contrary to the intent of the new rules.

The PTO agrees with the commentator and has deleted the language "accompanied by an affidavit" from § 1.645(b).

One comment suggested that a reference to § 1.610(d)(6) which provides for oral requests should be inserted into § 1.645 to reflect intent stated in the comments [of the notice of proposed rulemaking] on proposed § 1.645." This suggestion is not being adopted. As the commentator notes, § 1.610(d) authorizes an examiner-in-chief to hold a conference call to resolve issues and to enter an appropriate order following the conference call. A conference call may be used to obtain an extension of time. If the examiner-in-chief grants the request, an order may be entered—in which case a written motion is not necessary. The order provides the written record required by 37 CFR 1.2. However, it would unduly lengthen the rules to insert a reference to § 1.610(d) in each rule to which it may be applicable. Section 1.645(a) specifies the procedure to be used when a written motion is filed. It should be noted that an examiner-in-chief may require a written motion notwithstanding a conference call.

One comment stated that "[t]he 'other business' may be more pressing than the Interference. In order to serve the ends of justice, the PTO should be considerate in this matter." The PTO intends to evaluate each request for an extension of time on a case-by-case basis. However, extensions of time in interference cases have become "routine." A recent survey of a file in one interference revealed the following. The interference was declared on March

30, 1976. Preliminary statements were filed on May 5, 1979. A decision on motions was entered on June 28, 1982. Testimony was filed on January 3, 1984. During the period between declaration and filing of testimony, sixty-four (64) requests or stipulations for extension of time were filed.

When counsel and an examiner-in-chief agree to a schedule and times are set, the parties will be expected to adhere to the schedule unless there are unusual circumstances. Apart from work that counsel may have in an interference, an examiner-in-chief will have a docket and must manage not only the interference involving counsel, but numerous other interferences. The U.S. Court of Appeals for the Federal Circuit recently said the following in *Rosemount, Inc.* v. *Beckman Instruments, Inc.*, 727 F.2d 1540, 1549–1550, 221 USPQ 1, 10 (Fed. Cir. 1984):

> The conduct of a trial, granting of continuances and the like, is not, however, solely or entirely a matter of balancing conveniences of the parties. The Federal Rules of Civil Procedure recognize another consideration—the need for the exercise of discretion by the trial court in carrying out its duty of managing the judicial process, the business of the court, and the administration of justice.

Likewise, these rules also recognize the need for the exercise of discretion by an examiner-in-chief in carrying out his or her duty of managing the interference (§ 1.610), the business of the PTO (§ 1.610), and the administration of justice (§ 1.601).

Several comments were received which discussed § 1.646. One comment suggested that it would be clearer if "service" was inserted after "additional" in the last sentence of § 1.646(b). This suggestion has been adopted.

Another comment suggested that "or except as otherwise provided in these Rules" be added to § 1.646(c) after "otherwise ordered by an examiner-in-chief". The commentator pointed out that the change was needed because certain rules (§§ 1.644(g) and 1.658(b)) require service by "Express Mail" or by hand. The commentator accurately pointed out that adding the suggested phrase "will call attention to the fact that there are other rules which have their own requirements for service of papers." The suggestion has been adopted, except that "this part" has been used instead of "these Rules."

One comment suggested changing "time" to "date" in the last sentence of § 1.646(e). The suggestion has been adopted. The change is necessary to conform with the language of the rule to actual practice and other language in the rule.

Two comments suggested that § 1.646(d), which authorizes an examiner-in-chief to order service by hand or "Express Mail," be deleted. This suggestion is not being adopted. The use of "Express Mail" or delivery by hand is often desirable to expedite matters or to avoid unnecessary delay. One comment argued that delivery by hand may be prohibitive. Commercial couriers may be used to accomplish delivery by hand. The fee charged by most commercial couriers is not "prohibitive." The other comment argued that "there are circumstances when . . . [delivery by hand] is [not] possible." The use of § 1.646(d) is discretionary on the part of an examiner-in-chief. If delivery by hand, i.e., personal delivery or delivery by commercial courier, or by "Express Mail" is impossible, it would be expected that the examiner-in-chief would exercise discretion and permit service by first class mail.

One comment suggested that the language "present case," which was said to appear in § 1.651(b)(1) and § 1.651(c), be changed to "prepared case." The suggestion is not being adopted because the language "present case" does not appear in § 1.651. In any event, a testimony period is set for a party to present its testimony—either case-in-chief or case-in-rebuttal.

One comment was received which made two suggestions regarding § 1.652. First, the comment suggested that a period longer than 15 days be set for filing a response to a paper answering an order to show cause. This suggestion is not being adopted. The fifteen-day period is believed to be adequate in most cases. If more time is needed, a party may file a motion under § 1.645. Second, the comment suggested that the party placed under an order to show cause should be permitted as a matter of course to file a "reply" brief. This suggestion is not being adopted. In those instances where the Board believes a "reply" brief is desirable it may authorize the filing of a "reply."

One comment argued that § 1.653(i) "fails to make provision for exhibits which are too big to file or are too dangerous to file." If an "exhibit" cannot be filed, it will not be given consideration. A party will have to rely on testimony and/or pictures or sketches for "exhibits" (e.g., a large machine in a factory) which are too large or too dangerous to be filed in the PTO.

While no comments were received concerning § 1.654, it should be noted that a new paragraph (c) has been added and paragraph (c) as set out in the notice of proposed rulemaking has been redesignated as paragraph (d). New paragraph (c) provides that a party shall not be entitled to argue that an opponent abandoned, suppressed, or concealed an actual reduction to practice unless a notice under § 1.632 was timely filed.

Two comments discussing § 1.655 were received. The first comment made the following statement regarding § 1.655(a):

> Last sentence—interlocutory orders are reviewed only for 'manifest error' etc. It is not clear whether this includes show cause orders under § 1.640 resulting from unpatentability determined under § 1.633(a). However, if so, it precludes proper review of the patentability determination.

Patentability will initially be determined by a single examiner-in-chief. See §§ 1.610(a) and 1.640(b). If the examiner-in-chief determines that a claim of a party is unpatentable to that party, an order to show cause why judgment should not be entered as to that claim will be issued to that party. See § 1.640(d). If a response to the order to show cause is filed, a decision will be entered by the Board. See §§1.610(a) and 1.640(e). If the Board determines that the claim is not patentable to the party, a final decision and judgment will be entered holding the claim to be unpatentable. Review of the final decision and judgment is by judicial review under 35 U.S.C. 141 or 146. It should be noted, however, that if there are other claims in the party's application or patent which are deemed to be patentable, an interlocutory order would be entered holding only that certain claims are unpatentable. A final order holding those claims unpatentable would be entered after final hearing on other issues. Such a practice will avoid piecemeal judicial review.

Another comment suggested that § 1.655 be changed to preclude consideration of patentability at final hearing. Pub. L. 98–622 authorizes consideration of patentability assuming patentability is properly raised by a party during the interlocutory phase of an interference.

Two comments discussing § 1.656 were received. One comment suggested that "[b]riefs should be letter size for consistency." The PTO has no preference for the size of briefs. Briefs may be filed on letter or legal-size paper. Inasmuch as the federal courts now require letter-size paper, parties who intend to use a PTO brief as an exhibit in a federal court should use letter-size paper.

Another comment suggested that § 1.656 be amended to preclude a single examiner-in-chief from ruling on admissibility of evidence. The introductory remarks to the notice of proposed rulemaking (and this notice) state that "[t]he examiner-in-chief, *where appropriate*, will be available by phone to rule on the admissibility of evidence in the event parties encounter *unusual* problems during the taking of depositions" (emphasis added). The commentator states:

> If an examiner-in-chief has ruled certain evidence inadmissible, that evidence would presumably not be before the Board at final hearing. Proposed Rule 1.656(h) provides a means for a party to obtain suppression of evidence to which he has made timely objection, but the Rule does not provide for any means for a party whose proffered evidence has been held inadmissible by the examiner-in-chief, to have that holding considered by the Board

The change suggested by the comment will not be adopted. However, a brief explanation of how practice is expected to work is in order. The introductory remarks indicate that a single examiner-in-chief may rule on admissibility of evidence "where appropriate" and in "unusual" circumstances. There are times during interferences where a motion *in limine* can be helpful. For example, a junior party during its case-in-chief may wish to examine a witness on a document which was *not* served as required by § 1.673(b)(1). The senior party objects and realizes that if the junior party is permitted to examine the witness on the document, extensive cross-examination using numerous documents would be necessary. In order to avoid wasting considerable time, the parties could contact the examiner-in-chief by phone for a determination *in limine* whether the junior party should be able to examine the witness on the document. Under the circumstances outlined the examiner-in-chief in his or her discretion could enter an order excluding the document from evidence. The order would be subject to a request for reconsideration. See § 1.640(c). Ordinarily, however, it would be expected that parties would present evidence subject to objection. See § 1.675(c), last sentence. It is not envisioned that single examiner-in-chief will routinely rule on the admissibility of evidence.

Several comments discussing § 1.658 were received. One comment suggested that the 14-day time period in § 1.658(b) is too short. Section 1.658(b) provides that a party may file a request for reconsideration within 14 days of a final decision by the Board. The 14-day time period is the same period authorized for filing requests for reconsideration by the U.S. Court of Appeals for the Federal Circuit. See Rule 40(a) of the Federal Rules of Appellate Procedure.

Several individuals suggested that a less restricted "interference estoppel" be set out in § 1.658(c). While full consideration has been given to the suggestion, it has been decided to retain in these rules the interference estoppel provisions of § 1.658(c) essentially as proposed. "Interference estoppel" under § 1.658(c) is designed to implement the PTO's intent to have as many issues resolved as possible in a single *inter partes* proceeding. Numerous examples in this notice illustrate how practice is expected to take place under § 1.658(c).

The language in the second sentence of § 1.658(c) has been changed to more clearly state the nature of the estoppel and the exception to estoppel. The word "counts" in the second sentence of § 1.658(c) means the counts as they exist at the time a final decision is entered.

One comment was received concerning § 1.658(c) which requires a specific answer. The commentator made the following statement:

> You state that an estoppel would not apply against a party awarded a favorable judgment as to *all* counts. However, it seems to me that there will be occasion when it would not be appropriate to have estoppel where there was a split decision. For instance, consider an interference between applicants A and B in which A was awarded priority as to count 1 and B was awarded priority as to count 2. If I understand you correctly, A would be estopped in post-interference *ex parte* practice to present an additional claim X which was patentably indistinct from his claim corresponding to count 1 if B had support for claim X. I think this result would be unfortunate, and that A should be permitted to further refine his claim structure after the interference—that is, after he has been assured that he is entitled to claims to the basic invention recited in count 1.

Under the circumstances described by the commentator, inventor A would *not* be estopped to present a claim to X because X is "patentably indistinct" (the proper terminology under the rules would be to say X is the "same patentable invention" as the subject matter of count 1) from the subject matter of count 1. Inventor A would be entitled to claim any disclosed invention which is directed to the "same patentable invention" as count 1. The change in the second sentence of § 1.658(c) more clearly reflects the PTO's intent in this regard. Inventor A would *not* be entitled to claim any invention which is the "same patentable invention" as the subject matter of lost count 2. See Examples 26, 27, and 28 for illustrations of interference estoppel practice when a "split" judgment is entered.

Two comments were received discussing § 1.659. One comment suggested that the first sentence of § 1.659(b) should "reflect" that a reexamination may be based only on patents and printed publications. The suggestion is not being adopted. The basis upon which a reexamination may be instituted are set out elsewhere in the statute and rules. 35 U.S.C. 301–306; 37 CFR 1.501–1.570. There is no further need to set that basis out again in § 1.659(b). Another comment suggested that the language "not involved in the judgment of the interference" be deleted from § 1.659(b). The rationale in support of the comment was as follows:

> Besides introducing a potential ambiguity as to what claims were 'involved in the judgment,' there does not appear to be any good reasons to draw this distinction, particularly unless it is made more specific. Why should the Board be prevented from recommending reexamination of some (less relevant) patent claims and not other patent claims which are potentially even more relevant to the public, unless *all* of the *same art* has already been fully evaluated against the *same claims* in the Board's decision? (emphasis in original).

When a patent is involved in an interference, each claim of the patent will be designated to (1) correspond to a count *or* (2) not correspond to a count. All claims which are *ultimately* determined to correspond to a count will be "involved in the judgment of the interference." Inasmuch as they are involved in the judgment of the interference, there is no need to recommend reexamination of those claims. The claims involved in the interference are either patentable or unpatentable based on the final decision of the Board. Section 1.659(b) merely authorizes the Board to recommend reexamination of patent claims which (1) are *not* involved in the judgment and (2) for one reason or another neither party saw fit to move to designate as corresponding to a count.

One comment was received which suggested that the requirements of § 1.660 are unnecessary. The PTO disagrees. The requirements of § 1.660 are designed to keep the PTO and a party's opponent informed of activity which is relevant to an interference. These rules attempt, to the extent possible, to eliminate procedural surprise. Inasmuch as mail delays occur and the PTO cannot react instantaneously to every paper filed in connection with every application or patent, the provisions of § 1.660 are believed helpful in preventing surprise

on the part of opponent's and unnecessary work by examiners-in-chief or the Board due to a lack of knowledge of relevant activity which may be taking place in the PTO.

One comment suggested that at the end of § 1.661 the following be added: "and the time for any such available appeal or review has expired." The suggestion is not being adopted. Section 1.661 already provides for finality when "no appeal . . . can be taken. . . ." The language finds antecedent basis in 35 U.S.C. 135(a).

Several comments discussing § 1.662 were received. Two comments suggested a change be made to provide that when a patentee files a statutory disclaimer under 35 U.S.C. 253 and deletes *all* claims corresponding to a count, the disclaimer will be treated as a request for judgment. As one of the comments pointed out, "[s]ince . . . [the filing of a statutory disclaimer disclaiming all claims corresponding to a count] by the patentee could have no other conceivable effect, the proposed rule should be changed to require judgment when all corresponding claims are disclaimed." The suggestion has been adopted and appropriate changes have been made to §1.662(c). In view of the changes, the following language in § 1.662(c), as proposed, is not necessary: "A statutory disclaimer of any claim involved in an interference shall in subsequent proceedings have the same effect with respect to the patentee as an adverse judgment." When a patentee disclaims less than all claims corresponding to a count, the claims which remain in the patent continue to be involved in the interference and any patentability or priority issues involving those remaining claims will be involved in the judgment on the merits in the interference.

Two comments suggested that the word "dissolved" in § 1.662(d) be changed to "terminated". This suggestion is being adopted, because § 1.662(d) has been deleted. However, all interferences will be terminated with a "judgment." A change has been made in the language of §1.11(a) to delete any reference to terminating an interference other than by judgment.

One comment suggested that the word "construed" in § 1.662(a) be changed to "treated". This suggestion has been adopted and more clearly states the intent of the PTO. The filing of the various papers mentioned paragraphs (a) and (c) of § 1.662 will result in certain action by the PTO. The word "treated" more appropriately describes the consequences of filing such papers.

One comment suggested that § 1.662(a) "is too sweeping." According to the commentator, a patentee may file a disclaimer because it has "become aware of a statutory bar or cannot afford the expense of an interference." If the patentee becomes aware of a statutory bar, the patentee should call the "bar" to the attention of the PTO or file an appropriate motion under §1.633(a) for judgment if the "bar" applies to the opponent. If a junior party patentee decides that an interference is too expensive and for that reason files a disclaimer, there is no reason why judgment should not be entered in favor of the opponent. The comment also suggested that § 1.662(c) "needs revision" because a patentee may disclaim one claim corresponding to a count, but not another. Section 1.662(c), as revised, takes into account the possibility that less than all claims corresponding to a count may be disclaimed. When some of the patent claims corresponding to a count are disclaimed, the interference proceeds on the basis of the remaining claims which correspond to the count. If all patent claims corresponding to a count are disclaimed, judgment will be entered.

One comment made the following statement regarding the third sentence of § 1.662(a):

> What of abandonment in favor of a CIP [continuation-in-part application]? Would this be construed as [a] request to enter [an] adverse judgment? Language should reflect procedural moves of substituting CIP for abandoned application and/or declaring new interference.

The third sentence of § 1662(a) does not apply to an application which is *not* involved in an interference. If an applicant files a continuation-in-part application and successfully moves (§ 1633(d)) to substitute the continuation-in-part for the application involved in the interference, abandonment of the application originally involved in the interference would have no bearing on the interference. Accordingly, no additional language is needed in § 1.662(a).

Two comments discussing § 1.663 were received. One comment suggested that an explanation of the status of patent claims involved in an adverse judgment should be stated in the rule. This suggestion is not being adopted. The status of patent claims involved in an adverse judgment is stated in 35 U.S.C. 135(a). Another comment suggested that the status of "claims which could have been counts . . . should be made of record." Unless a motion (§ 1.633(c)) to add claims to correspond to counts is filed, no reference will be made in a judgment as to claims "which could have been made counts."

One comment suggested that the language "then owned by either party but" be inserted after "application" in § 1.665. This suggestion is not being adopted. The language "same parties" in § 1.665 is intended to cover a party and any assignee. The suggested language "then owned" would narrow the scope of the rule in a manner not intended by the PTO.

An oral comment at the hearing suggested that § 1.671(e) be changed so that a party would not have to serve copies of affidavits relied upon under § 1.608(b) in those cases where an opponent had already obtained copies of the Rule 608(b) affidavits. This suggestion is not being adopted. See the discussion above answering comments related to § 1.612(b). Another comment made at the hearing noted that the PTO is "adopting" the Federal Rules of Evidence. The Federal Rules include a "shop book" rule—Rule 803(b)(6). The commentator expressed the view that adopting of a "shop book" rule might make an important change in evidence which is admissible in interferences and suggested that "it would be helpful if the Patent and Trademark Office would publicly comment on this extremely important evidentiary rule. . . ." The PTO believes that adoption of Rule 803(b)(6) of the Federal Rules of Evidence does not constitute a change in the admissibility of "shop book" evidence in interference cases. Rule 803(b)(6) is very similar to the former Federal Shop Book Rule (28 U.S.C. 1732) which it replaced. The courts have articulated a rule of law which the PTO will continue to apply in determining admissibility of laboratory note books under the "shop book" Rule 803(b)(6) of the Federal Rules of Evidence. See e.g., *Alpert* v. *Slatin*, 305 F.2d 891, 134 USPQ 296 (CCPA 1962) and *Elliott* v. *Barker*, 481 F.2d 1337, 179 USPQ 100 (CCPA 1973).

One comment suggested that § 1.671(f) be eliminated on the ground that a rule should not be used to train attorneys and agents. The suggestion is not being adopted. The problem addressed by § 1.671(f) is significant. By providing in the rules that documentary evidence must be explained, the PTO hopes to save both parties and the Board considerable difficulty in presenting and evaluating evidence.

One comment suggested that § 1.671(g) should be changed to require a party only to show the "relevancy" of expected testimony as opposed to the "admissibility" of the testimony. This suggestion is being adopted and an

period is the same period authorized for

illustrations of interference estoppel

believed helpful in preventing surprise

§ 1.662(a) "is too sweeping." According

reference will be made in a judgment as

suggestion is being adopted and an

appropriate change has been made to § 1.671(g) to require a moving party to "describe the general nature and the relevance of the testimony, document, or thing."

An oral comment was received which asked whether permission to issue a subpoena would be needed in the event a party seeks to call a witness under the control of an opponent. Ordinarily, the examiner-in-chief can order a party to produce an individual for a deposition as long as the individual is a party or is under the control of the party, e.g., an employee of an assignee. Where so-called "third parties" are concerned, however, issuance of a subpoena may be necessary, because the PTO has no authority to compel attendance of third parties.

Several comments concerning § 1.672 were received. One comment at the hearing pointed out that use of 8½ by 11 inch paper for affidavits appears to be optional. The commentator is correct in pointing out that the use is optional. By using 8½ by 11 inch paper, however, a party will save considerable time when filing a record (§ 1.653).

Two comments asked questions concerning § 1.672(b), and in particular, the meaning of the word "party" in the phrase "a party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits. . . . ." Specifically, one commentator stated:

> It is the scope of the words "the party" which leave doubt as to the meaning of the passage. If "the party" refers *only* to the party proffering the affidavit testimony, then the passage is fair since such party had the opportunity to use whatever documents it deemed favorable to its position. But if "the party" also encompasses the opponent, i.e., the cross-examining party not proffering the affidavit testimony, then the passage improperly restricts the scope of cross-examination. Surely, the proponent party cannot, simply by confining the affidavit to favorable documents, insulate the witness from cross-examination on unfavorable documents.

Section 1.672(b) refers to a "party" and an "opponent." The "party" is the party filing the affidavit and not an opponent of that party. Any "opponent" conducting cross-examination of an affiant may properly rely on documents and things not referred to in the affidavit.

One comment suggested that the language "a witness whose testimony will not be compelled under 35 U.S.C. 24" should be deleted or revised. According to the commentator:

> This is often not determinable in advance. Even a "voluntary" witness may develop cold feet and require a subpoena, or demand one for his own protection. Nor will all witnesses agreeable to affidavits be agreeable to depositions.

The suggestion is not being adopted. An affidavit may be used only when a witness agrees to sign the affidavit. If an individual refuses to sign an affidavit or voluntarily appear at a deposition, the party calling the witness will have to compel attendance at a deposition by a subpoena under 35 U.S.C. 24 after receiving permission from an examiner-in-chief.

One comment asked why there is "no express provision * * * [in the rules] for simply taking appropriate testimony of an adverse party by notice * * * rather than requiring a subpoena?" In many cases, notice will be sufficient inasmuch as an examiner-in-chief or the Board may generally order an adverse party to appear and give testimony. Thus, in many cases a subpoena is not needed to require attendance at a deposition of an adverse party.

Two comments suggested that a time be set out in the rules by which an affidavit should be filed. The suggestion is being adopted and the second sentence of § 1.672(b) has been changed to provide that affidavits shall be filed prior to the close of the party's relevant testimony period. The two comments also suggested that the rules specify that documents relied upon in an affidavit be filed with the affidavit. This suggestion is also being adopted by an appropriate change to § 1.672(b) which will provide that a party cannot rely on any document referred to in an affidavit, unless a copy of the document is filed with the affidavit. Any document filed with an affidavit must also be served (§ 1.646). Section 1.672(b) will also provide that a party may not rely on any "thing" mentioned in an affidavit unless the opponent is given reasonable access to the "thing." A "thing" is something other than a document. The comments has suggested that the "things' be limited to those under the possession, custody, or control of the party submitting the affidavit. This suggestion is not being adopted. If a "thing" is not under the possession, custody, or control of a party, the party should resort the use of a deposition and compel production of the "thing" by a subpoena under 35 U.S.C. 24.

Four comments were received discussing § 1.673. It was suggested that the time for service under § 1.673(b) be three days if service is accomplished by hand or "Express Mail" and ten days if service is accomplished by any other means. This suggestion is being adopted. An appropriate change has been made in the introductory sentence of § 1.673(b). It was also suggested that the word "copy" in § 1.673(b) (1) be changed to read "list and copy". In support of the suggestion, one commentator states:

> In connection with the service of documents, the amendment to the proposed rule would require that a listing of documents accompany the documents themselves. This would permit cross-checking between lists and documents to ascertain whether or not discrepancies exists and reduce the possibility for later controversy:

The suggestion is being adopted. Under § 1.673(b) (1) a list of the documents would have to accompany the documents. One comment suggested that documents served should be "Bates numbered." While this suggestion is not being adopted in the sense of changing the language of a rule, it must be remembered that the party serving documents may be required to later prove exactly what was served. Using "Bates" numbers or an equivalent scheme may prove invaluable in later stages of an interference.

One comment discussing § 1.682 suggested that the language "not identified on the record during the taking of testimony of a witness" be deleted. This suggestion is not being adopted. If an official record or printed publication is made an exhibit during a deposition or in an affidavit, it need not be submitted under § 1.682. Section 1.682 permits a party to make an official record or printed publication part of the evidence being considered at final hearing without calling a witness. The official record or printed publication must, however, be self-authenticating. On the other hand, a party may present the official record or printed publication as an exhibit during testimony. When this latter course is followed, there is no need to take advantage of the provisions of § 1.682. The comment also suggested that a change be made in § 1.682(a) (4) because the requirement therein for a "certified" copy appeared to be inconsistent with § 1.671(d) which provides that a record of the PTO need not be certified. The suggestion is being adopted by adding "where appropriate" at the beginning of § 1.682(a) (4) and a reference to § 1.671(d) at the end of § 1.682(a) (4). If the official record is not a record of the PTO, it will be necessary to submit a certified copy of the official record.

Comments were received discussing § 1.684. One comment suggested that language be inserted in § 1.684(a) to make clear that the testimony authorized is for a case-in-chief or a case-in-rebuttal. The suggestion is not being adopted. The testimony authorized by § 1.684(a) is necessarily testimony for a case-in-chief or a case-in-rebuttal. The commentator correctly notes that the use of written interrogatories under § 1.684 "for cross-examination would seem neither appropriate or justified." Section 1.684 does not apply to cross-examination. If a party submits an affidavit under § 1.672(b) or intends to rely on an affidavit under § 1.617(e), the party must make the affiant available for cross-examination at a deposition. See § 1.673(e). A deposition may be noticed only "for a reasonable time and place in the United States." See § 1.673(a). Accordingly it is not expected that § 1.684(a) will be used to cross-examine affiants residing in foreign countries. The party filing the affidavit will be required to make the affiant available for cross-examination in the United States.

One comment suggested that the provisions of § 1.685(d) are "harsher" than the corresponding provisions of 37 CFR 1.285(c). The comment is not fully understood. Section 1.685(d) requires an objection to be stated on the record. An objection to the admissibility of evidence must be stated on the record *and* a motion under § 1.856(h) renewing the objection at final hearing must be filed. No longer will a party be permitted to attend a deposition and fail to enter an objection only to raise the objection at final hearing. The current practice permits a party to delay the objection until it is often too late to permit an opponent to correct the evidentiary basis on which the objection is bottomed.

One comment suggested that the second sentence of § 1.687(b) ("If the witness refuses to produce a requested document or thing, the party may file a motion (§1.635) for additional discovery under paragraph (c) of this section.") be deleted. This suggestion is being adopted. the PTO agrees with the following remark by the commentator: "[o]mission of the sentence is recommended since it is clear from [paragraph] (c) [of § 1.687] that such a motion could be made in an appropriate case."

One comment at the hearing suggested that the PTO's inability to enter protective orders makes discovery unduly complicated. The commentator suggested that under § 1.687(c), as set out in the notice of proposed rulemaking, it is possible to obtain appropriate protective orders. The commentator correctly concedes that the maximum sanction which the PTO can enter upon a proven violation of a PTO entered protective order is judgment. See § 1.616. The commentator suggested, however, that additional discovery may be conditioned on the issuance of a subpoena *duces tecum* under 35 U.S.C. 24. Upon issuance of the subpoena, the commentator stated that the opponent could move the district court for entry of a protective order. If a party violates a protective order entered by a district court, the party would be subject to such sanctions as the district court might deem appropriate as well as a sanction by the PTO, including entry of judgment against the party. The PTO, unlike the district court, would not be able to apply a sanction after an interference is terminated.

The Commentator's suggestion is believed to be sound. No change in the language of §1.687(b) is believed to be necessary inasmuch as paragraph (b) authorizes the PTO to "specify the terms of conditions of such additional discovery." One of those terms could be requiring a party to issue a subpoena under 35 U.S.C. 24. By making a party proceed in the first instance in the PTO, appropriate PTO orders may be entered suggesting the scope of any protective order and stating the underlying basis for requiring a party to produce documents. The order could be of assistance to the district court in subsequent enforcement or contempt proceedings.

Additional discovery obtained under a protective order issued by either the PTO or a district court will not be admitted in evidence in the PTO in determining the interference. All evidence submitted in an interference must be made available to the public under the provisions of § 1.11(a). Accordingly, any protective orders have to be vacated before a document could be admitted in evidence in the PTO which is subject to a protective order.

Example 38 illustrates how the practice would work.

Example 38. An interference involves party X and party Y. During the interference, party X files a motion for additional discovery under § 1.687(c) asking that party Y be required to produce certain documents. Party Y opposes on the sole ground that the documents contain trade secret and confidential information. Party Y indicates that it has no objection to producing the documents for inspection by counsel for party X, but insists that party X not be permitted to inspect the documents. Accordingly, party Y asks the examiner-in-chief to authorize the discovery subject to entry of a protective order. Party Y argues, however, that the sanctions of § 1.616 are not sufficient in the event of a violation of the protective order. An examiner-in-chief concludes that additional discovery should be ordered, that a protective order is appropriate, and that the sanctions of § 1.616 are not sufficient in the event of a violation of the protective order. Under the circumstances, the examiner-in-chief would enter an order directing party Y to produce the documents for inspection by counsel of party X on the condition that party X seek production of the documents by a subpoena *duces tecum* under 35 U.S.C. 24. Upon issuance of any subpoena, party Y could move the district court for entry of a protective order. If the district court enters the protective order, party Y can produce the documents to counsel for party X. If the protective order of the examiner-in-chief is violated, an appropriate sanction up to and including judgment may be entered by the Board. In addition, party Y would be in a position to seek contempt or other sanctions in the district court. The documents produced for inspection by counsel for party X could not be admitted in evidence in the interference (until the protective order is vacated), because those documents are not documents which can be made available to the public under § 1.11(a).

The following is an anticipated time schedule for a two-party interference:

Event in interference	Time from last event in the interference (months)	Total time in interference (month)
Interference declared (1.611)		
Filing of preliminary statements (1.621) and preliminary motions (1.633)	3	3
Filing oppositions to preliminary motions (1.638(a))	½	3½
Filing replies to oppositions (1.638(b))	½	4
Decision on preliminary motions (1.640 (b)(1)), open preliminary statements (1.631), set times for filing motions for discovery (1.687 (c)) and testimony (1.651(a))	1	5
Filing of motions for discovery (1.635, 1.651(a), 1.687(c))	1	6
Filing of opposition to motion for discovery (1.638(a))	½	7
Filing reply to opposition to motion for discovery (1.638(b))	½	7½
Decision on motion for discovery	½	8
Time for compliance with any discovery	½	8
Junior party testimony (case-in-chief, 1.672(b)):		
Testimony	2	11
Senior party cross-examination of affiants if needed	1	12
Senior party testimony (case-in-chief and case-in-rebuttal, 1.672(b)):		
Testimony	2	13½
Junior party cross-examination of affiants if needed	1	14½
Junior party testimony (case-in-rebuttal):		
Testimony	½	15
Senior party cross-examination of affiants if needed	½	15½
Filing of record (1.653(c))	1½	18
Brief for junior party (1.656)	1	18
Brief for senior party (1.656)	1	20
Reply brief for junior party (1.656)	½	20½
Final hearing (1.654)	1	21½
Decision (1.658)	2	23½

for his own protection. Nor will all witnesses

§ 1.673(b). It was also suggested that the

testimony for a case-in-chief or a case-

however, that additional discovery may

examiner-in-chief concludes that

Decision (1.658)	2	23%

The following is an index for §§ 1.601 through 1.688:

Rule Index

Sec.
1.601 Scope of rules, definitions.
1.602 Interest in applications and patents involved in interference.
1.603 Interference between applications; subject matter of the interference.
1.604 Request for interference between applications by an applicant.
1.605 Suggestion of claim to applicant by examiner.
1.606 Interference between an application and a patent; subject matter of the interference.
1.607 Request by applicant for interference with patent.
1.608 Interference between an application and a patent; *prima facie* showing by applicant.
1.609 Preparation of interference papers by examiner.
1.610 Assignment of interference to examiner-in-chief, time period for completing interference.
1.611 Declaration of interference.
1.612 Access to applications.
1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.
1.614 Jurisdiction over interference.
1.615 Suspension of *ex parte* prosecution.
1.616 Sanctions for failure to comply with rules or order.
1.617 Summary judgment against applicant.
1.618 Return of unauthorized papers.
1.621 Preliminary statement, time for filing, notice of filing.
1.622 Preliminary statement, who made invention, where invention made.
1.623 Preliminary statement; invention made in United States.
1.624 Preliminary statement; invention made abroad.
1.625 Preliminary statement; derivation by an opponent.
1.626 Preliminary statement; earlier application.
1.627 Preliminary statement, sealing before filing, opening of statement.
1.628 Preliminary statement, correction of error.
1.629 Effect of preliminary statement.
1.630 Reliance on earlier application.
1.631 Access to preliminary statement, service of preliminary statement.
1.632 Notice of intent to argue abandonment, suppression, or concealment by opponent.
1.633 Preliminary motions.
1.634 Motion to correct inventorship.
1.635 Miscellaneous motions.
1.636 Motions, time for filing.
1.637 Content of motions.
1.638 Opposition and reply, time for filing opposition and reply.
1.639 Evidence in support of motion, opposition, or reply.
1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.
1.641 Unpatentability discovered by examiner-in-chief.
1.642 Addition of application or patent to interference.
1.643 Prosecution of interference by assignee.
1.644 Petitions in interference.
1.645 Extension of time, late papers, stay of proceedings.
1.646 Service of papers, proof of service.
1.647 Translation of document in foreign language.
1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.
1.652 Judgment for failure to take testimony or file record.
1.653 Record and exhibits.
1.654 Final hearing.
1.655 Matters considered in rendering a final decision.
1.656 Briefs for final hearing.
1.657 Burden of proof as to date of invention.
1.658 Final decision.
1.659 Recommendation.
1.660 Notice of reexamination, reissue, protest, or litigation.
1.661 Termination of interference after judgment.
1.662 Request for entry of adverse judgment; reissue filed by patentee.
1.663 Status of claim of defeated applicant after interference.
1.664 Action after interference.
1.665 Second interference.
1.666 Filing of interference settlement agreements.
1.671 Evidence must comply with rules.
1.672 Manner of taking testimony.
1.673 Notice of examination of witness.
1.674 Persons before whom depositions may be taken.
1.675 Examination of witness, reading and signing transcript of deposition.
1.676 Certification and filing by officer, marking exhibits.
1.677 Form of a transcript of deposition.
1.678 Transcript of deposition must be filed.
1.679 Inspection of transcript.
1.682 Official records and printed publications.
1.683 Testimony in another interference, proceeding, or action.
1.684 Testimony in a foreign country
1.685 Errors and irregularities in depositions.
1.687 Additional Discovery.
1.688 Use of discovery.

The following is a table correlating the present rules (37 CFR 1.201 through 1.288) to the rules (37 CFR 1.601 through 1.688).

RULE CORRELATION TABLE

Old	New
1.201(a)	1.601(a)
1.201(b)	1.601 (b), (c)
1.201(c)	1.602
1.202	None.
1.203(a)	1.603 (a), (b)
1.203(b)	1.605(a)
1.203(c)	1.605(b).
New	1.604(a)
1.203(d)	1.604(b)
1.204(a)	None
1.204(b)	1.608(b)
1.204(c)	1.608(c)

RULE CORRELATION TABLE—Continued

Old	New
1.205(a)	1.606 (a), (b)
1.205(b)	1.607 (a), (c)
1.205(c)	1.607(d)
New	1.608(a)
1.206(a)	1.607(b)
1.207(a)	1.609
New	1.610
1.207(b)	1.611.
1.208	1.613
1.211	1.614
1.212	1.615
New	1.616
1.228	1.617
New	1.618
1.215(a)	1.621(a)
1.215(b)	1.621(b)
1.215(c)	1.629(c)
1.216(a)	1.622 (a), (b)
1.216(a) (1)–(6)	1.623(a)
1.216(b)	1.623(b), 1.624(b), 1.625(b)
1.216(c)	1.666
1.217(a)	1.624(a), 1.625(a)
1.217(b)	1.623(a)
1.218	1.621(a)
1.219	1.627
1.222	1.628
1.223	1.629
1.224	1.630
1.225	1.640 (d), (e), and 1.651(c)(4)
1.226	1.612
1.227	1.631
New	1.632
1.231	1.633, 1.634
1.237	1.641
1.238	1.642
1.242	1.643
1.243	1.635, 1.636, 1.637(b), 1.638 through 1.640
1.244	1.644
1.245	1.645
1.246	1.645
1.247	1.646
1.248	1.646
New	1.647
1.251	1.651
1.252	1.652
1.253	1.653
1.254	1.656
1.255	1.656(c)
1.256	1.654
1.257(a)	1.657
1.257(b)	1.658 (c) (d)
1.258	1.655
1.259	1.659
New	1.660
1.262	1.662(a)
1.263	1.662 (a) and (d)
1.264	1.662 (b) and (c)
New	1.662(e)
1.265	1.663
1.266	1.664
1.267	1.665
1.268	1.666
1.271	1.671
New	1.671(g)
1.272(a)	1.672 (a), (b)
1.272(b)	1.672(c)
1.272(c)	1.672 (d), (e)
1.273(a)	1.673 (a), (c), (d)
New	1.673(e)
1.273(b)	1.673(f)
1.274	1.674
1.275	1.675
1.276	1.676
1.277	1.677
1.278	1.678
1.279	1.679
1.281	1.645
1.282	1.682
1.283	1.683
1.285	1.685
1.286	Eliminated
1.287(a)(1)(i), (ii)	1.673(b)
1.287(a)(1)(iii)	1.673(a)
1.287(a)(2), (3)	Eliminated
1.287(b)	Eliminated
1.287(c)	1.687
1.287(d)(1)	1.673(c).
1.287(d)(2)	1.616
1.287(e)	1.687(d)
1.288	1.688

Other Considerations

These rules do not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rules are in conformity with the requirements of the (1) Regulatory Flexibility Act (Pub. L. 96–354), (2) Executive Order 12291, and (3) the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that these rules will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act; Pub. L. 96–354). The rules govern the conduct of interference cases which arise in the Patent and Trademark Office. In fiscal 1983, the Patent and Trademark Office received 105,704 patent applications. During the same period, 160 interferences were declared. It is expected that the overall cost will be reduced for obtaining a patent based on applications which become involved in an interference. See a "section-by-section" analysis submitted for the Record by Representative Kastenmeier during discussion of H.R. 6286 on the floor of the House in which the following statement appears (130 Cong. Rec. H10528, columns 2 and 3):

> It is expected that interferences will become simpler, more expeditious, and less costly. Under the bill, all issues of patentability and priority which arise in an interference can be decided in a single proceeding rather than in a series of complicated *inter parte* and *ex parte* proceedings.

These rules, therefore, will have no significant economic impact on small entities.

The Patent and Trademark Office has determined that this rule is not a major rule under Executive Order 12291. The annual effect on the economy would be less than $100 million. There would be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There would be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These rules do not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations, Conflict of interests, Courts, Inventions and patents, Lawyers.

PART 1—RULES OF PRACTICE IN PATENT CASES

For the reasons set out in the preamble and under the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, 23, 41, and 135, Part 1 of Title 37 CFR is amended as set forth below.

1. Section 1.1 is amended by adding a new paragraph (e) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

(e) Communications relating to interferences and applications or patents involved in an interference should be additionally marked "BOX INTERFERENCE."

2. Section 1.4 is amended by revising paragraph (a)(2) and reprinting the introductory text of paragraph (a) to read as follows:

§ 1.4 Nature of correspondence.

(a) Correspondence with the Patent and Trademark Office comprises:

* * * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in Subpart B, §§ 1.31 to 1.352; of international applications in Subpart C, §§ 1.401 to 1.482; of reexamination of patents in Subpart D, §§ 1.501 to 1.570; of interferences in Subpart E, §§ 1.601 to 1.688; and of trademark applications §§ 2.11 to 2.189.

* * * * *

3. Section 1.5 is amended by adding a new paragraph (e) to read as follows:

§ 1.5 Identification of application, patent or registration.

* * * * *

, (e) When a paper concerns an interference, it should state the names of the parties and the number of the interference. The name of the examiner-in-chief assigned to the interference (§ 1.610) and the name of the party filing the paper should appear conspicuously on the first page of the paper.

4. Section 1.8 is amended by adding paragraph (a)(xii) to read as follows:

§ 1.8 Certificate of mailing.

* * * * *

(xii) The filing of a paper in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail."

* * * * *

5. Section 1.9 is amended by adding a new paragraph (g) to read as follows:

§ 1.9 Definitions.

* * * * *

(g) For definitions in interferences see § 1.601.

6. Section 1.11 is amended by revising paragraph (a) to read as follows:

§ 1.11 Files open to the public.

(a) After a patent has been issued, the specification, drawings and all papers relating to the case in the file of the patent are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. After entry of a judgment in an interference by the Board of Patent Appeals and Interferences as to all parties, the file of any interference which involved a patent, or an application on which a patent has issued, is similarly open to public inspection and procurement of copies. See § 2.27 for trademark files.

* * * * *

§ 1.14 [Amended]

7. Section 1.14 is amended by removing from paragraph (d) the words "Board of Patent Appeals or the Board of Patent Interferences" and inserting, in their place, the words "Board of Patent Appeals and Interferences."

8. Section 1.17 is amended by revising paragraphs (e), (g), (h), and (i) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f))	$57.50
By other than a small entity	115.00

* * * * *

(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f))	$50.00
By other than a small entity	100.00

(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph, $120.00.

§ 1.47—for filing by other than all the inventors or a person not the inventor.
§ 1.48—for correction of inventorship.

1.641 Unpatentability discovered by examiner-in-chief.	
1.204(b)	1.608(b)
1.204(c)	1.608(c)
1.267(e)	1.667(d)
1.288	1.688

requirements within the coverage of the Act are placed upon the public.

§ 1.8 Certificate of mailing.

* * * * *

§ 1.48—for correction of inventorship.

§ 1.182—for decision on questions not specifically provided for.
§ 1.183—to suspend the rules.
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.
§ 1.644(e)—for petition in an interference.
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.
§ 1.666(c)—for late filing of interference settlement agreement.
§§ 5.12, 5.13 & 5.14—for expedited handling of foreign filing license.
§ 5.15—for changing the scope of a license.
§ 5.25—for retroactive license.

(i) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph, $60.00.

§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.55—for entry of late priority papers.
§ 1.102—to make application special.
§ 1.103—to suspend action in application.
§ 1.177—for divisional reissues to issue separately.
§ 1.312—for amendment after payment of issue fee.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
§ 1.334—for patent to issue to assignee, assignment recorded late.
§ 1.666(b)—for access to interference settlement agreement.

* * * * *

9. Section 1.36 is revised as follows:

§ 1.36 Revocation of power of attorney or authorization; withdrawal of attorney or agent.

A power of attorney or authorization of agent may be revoked at any stage in the proceedings of a case, and an attorney or agent may withdraw, upon application to and approval by the Commissioner. An attorney or agent, except an associate attorney or agent whose address is the same as that of the principal attorney or agent, will be notified of the revocation of the power of attorney or authorization, and the applicant or patent owner will be notified of the withdrawal of the attorney or agent. An assignment will not of itself operate as a revocation of a power or authorization previously given, but the assignee of the entire interest may revoke previous powers and be represented by an attorney or agent of the assignee's own selection. See § 1.613(d) for withdrawal of an attorney or agent of record in an interference.

10. Section 1.48 is revised as follows:

§ 1.48 Correction of inventorship.

If the correct inventor or inventors are not named in an application for patent through error without any deceptive intention on the part of the actual inventor or inventors, the application may be amended to name only the actual inventor or inventors. Such amendment must be diligently made and must be accompanied by (a) a petition including a statement of facts verified by the original named inventor or inventors establishing when the error without deceptive intention was discovered and how it occurred; (b) an oath or declaration by each actual inventor or inventors as required by § 1.63; (c) the fee set forth in § 1.17(h); and (d) the written consent of any assignee. When the application is involved in an interference, the petition shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.

§ 1.55 [Amended]

11. Section 1.55 is amended by removing from paragraph (a) "1.224" and inserting, in its place, "1.630".

12. Section 1.59 is revised as follows:

§ 1.59 Papers of application with filing date not to be returned.

Papers in an application which has received a filing date pursuant to § 1.53 will not be returned for any purpose whatever. If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost of any application in which either the requried basic filing fee (§ 1.16) or the processing and retention fee (§ 1.21(1)) has been paid. See § 1.618 for return of unauthorized and improper papers in interferences.

13. Section 1.68 is revised as follows:

§ 1.68 Declaration in lieu of oath.

Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration. Such declaration may be used in lieu of the oath otherwise required, if, and only if, the declarant is on the same document, warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. The declarant must set forth in the body of the declaration that all statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true.

14. Section 1.103 is amended by revising paragraph (d) as follows:

§ 1.103 Suspension of action.

* * * * *

(d) Action on applications in which the Office has accepted a request filed under § 1.139 will be suspended for the entire pendency of these applications except for purposes relating to interference proceedings under §§ 1.601 through 1.688.

15. Section 1.122 is amended by revising paragraph (b) as follows:

§ 1.122 Entry and consideration of amendments.

* * * * *

(b) Ordinarily all amendments presented in a paper filed while the application is open to amendment are entered and considered, subsequent cancellation or correction being required of improper amendments. Untimely amendatory papers may be refused entry and consideration in whole or in part. For amendments presented during an interference see § 1.664.

§ 1.136 [Amended]

16. Section 1.136 is amended by removing "§ 1.207" and inserting, in its place, "§ 1.611" and by removing "§ 1.245" and inserting, in its place, "§ 1.645".

17. Section 1.138 is revised as follows:

§ 1.138 Express Abandonment.

An application may be expressly abandoned by filing in the Patent and Trademark Office a written declaration of abandonment signed by the applicant and the assignee of record, if any, and identifying the application. An application may also be expressly abandoned by filing a written declaration of abandonment signed by the attorney or agent of record. A registered attorney or agent acting under the provision of § 1.34(a), or of record, may also expressly abandon a prior application as of the filing date granted to a continuing application when filing such a continuing application. Express abandonment of the application may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of issue.

18. Section 1.181 is amended by revising paragraph (a) as follows:

§ 1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) From any action or requirement of any examiner in the *ex parte* prosecution of an application which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court; (2) in cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the

Commissioner; and (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

* * * * *

19. The center heading preceding § 1.191 is revised to read:

Appeal to the Board of Patent Appeals and Interferences

20. Section 1.191 is amended by revising the section heading and paragraphs (a) and (c) as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a) Every applicant for a patent or for reissue of a patent, or every owner of a patent under reexamination, any of the claims of which have been twice rejected or who has been given a final rejection (§ 1.113), may, upon the payment of the fee set forth in § 1.17(e), appeal from the decision of the examiner to the Board of Patent Appeals and Interferences within the time allowed for response.

* * * * *

(c) An appeal when taken must be taken from the rejection of all claims under rejection which the applicant or patent owner proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

* * * * *

§ 1.194 [Amended]

21. Section 1.194 is amended by removing the words "Board of Appeals" and inserting, in their place, the words "Board of Patent Appeals and Interferences."

22. Section 1.196 is revised as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

(a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds not involved in the appeal for rejecting any appealed claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a new rejection of the claims. When the Board of Patent Appeals and Interferences make a new rejection of an appealed claim, the appellant may exercise any one of the following three options:

(1) The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the examiner in which event the application will be remanded to the examiner and the decision of the Board of Patent Appeals and Interferences shall not be considered final for the purpose of judicial review. The statement shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground for rejection stated in the decision. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Patent Appeals and Interferences may enter an order otherwise making its decision final.

(2) The appellant may have the case reconsidered under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. Where request for such reconsideration is made the Board of Patent Appeals and Interferences shall, if necessary, render a new decision which shall include all grounds upon which a patent is refused.

(3) The appellant may treat the decision, including the new grounds for rejection given by the Board of Patent Appeals and Interferences, as a final decision in the case.

(c) Should the decision of the Board of Patent Appeals and Interferences include an explicit statement that a claim may be allowed in amended form, appellant shall have the right to amend in conformity with such statement which shall be binding on the examiner in the absence of new references or grounds of rejection.

(d) Although the Board of Patent Appeals and Interferences normally will confine its decision to a review of rejections made by the examiner, should it have knowledge of any grounds for rejecting any allowed claim it may include in its decision a recommended rejection of the claim and remand the case to the examiner. In such event, the Board shall set a period, not less than one month, within which the appellant may submit to the examiner an appropriate amendment, a showing of facts or reasons, or both, in order to avoid the grounds set forth in the recommendation of the Board of Patent Appeals and Interferences. The examiner shall be bound by the recommendation and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection. Should the examiner make the recommended rejection final the applicant may again appeal to the Board of Patent Appeals and Interferences. Whenever a decision of the Board of Patent Appeals and Interferences includes a remand, that decision shall not be considered a final decision. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Patent Appeals and Interferences may enter an order otherwise making its decision final.

23. Section 1.197 is amended by revising paragraphs (a) and (b) as follows:

§ 1.197 Action following decision.

(a) After decision by the Board of Patent Appeals and Interferences, the case shall be returned to the examiner, subject to the appellant's right of appeal or other review, for such further action by the appellant or by the examiner, as the condition of the case may require, to carry into effect the decision.

(b) A single request for reconsideration or modification of the decision may be made if filed within one month from the date of the original decision, unless that decision is so modified as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states.

* * * * *

§ 1.198 [Amended]

24. Section 1.198 is amended by removing the words "Board of Appeals" and inserting, in their place, the words "Board of Patent Appeals and Interferences."

25. The center heading preceding § 1.201 is removed.

§§ 1.201 through 1.212 [Removed]

26. Sections 1.201 through 1.212 are removed.

27. The center heading preceding § 1.215 is removed.

§§ 1.215 through 1.228 [Removed]

28. Sections 1.215 through 1.228 are removed.

29. The center heading preceding § 1.231 is removed.

§§ 1.231 through 1.238 [Removed]

30. Sections 1.231 through 1.238 are removed.

31. The center heading preceding § 1.242 is removed.

When the Board of Patent Appeals and maintain the recommended rejection § 1.242 is removed.

§§ 1.242 through 1.247 [Removed]

32. Sections 1.242 through 1.247 are removed.

33. A center heading preceding § 1.248 is added which reads:

Miscellaneous Provisions

34. Section 1.248 is amended by adding paragraph (c) and revising the section heading as follows:

§ 1.248 Service of Papers; manner of service; proof of service in cases other than interferences.

* * * * *

(c) See § 1.646 for service of papers in interferences.

35. The center heading preceding § 1.251 is removed.

§§ 1.251 through 1.259 [Removed]

36. Sections 1.251 through 1.259 are removed.

37. The center heading preceding § 1.261 is removed.

§§ 1.261 through 1.268 [Removed]

38. Sections 1.261 through 1.268 are removed.

39. The center heading preceding § 1.271 is removed.

§§ 1.271 through 1.288 [Removed]

40. Sections 1.271 through 1.288 are removed.

41. Section 1.292 is amended by revising paragraph (a) and adding paragraph (c) as follows:

§1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits or declarations and the fee set forth in § 1.17(j) is filed by one having information of the pendency of an application and is found, on reference to the examiner, to make a *prima facie* showing that the invention claimed in an application believed to be on file had been in public use or on sale more than one year before the filing of the application, a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, the Commissioner may designate an appropriate official to conduct the public use proceeding, including the setting of times for taking testimony, which shall be taken as provided by §§ 1.671 through 1.685. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

* * * * *

(c) A petition for institution of public use proceedings shall not be filed by a party to an interference as to an application involved in the interference. Public use and on sale issues in an interference shall be raised by a preliminary motion under § 1.633(a).

§ 1.301 [Amended]

42. Section 1.301 is amended by removing the words "Board of Appeals" and the words "Board of Patent Interferences" and inserting, in each of their places, the words "Board of Patent Appeals and Interferences."

§ 1.302 [Amended]

43. Section 1.302 is amended by removing from paragraph (b) "1.248" and inserting, in its place, "1.646" and by removing "and other contested cases".

§ 1.303 [Amended]

44. Section 1.303 is amended by removing from paragraph (a) the words "Board of Appeals" and the words "Board of Patent Interferences" and inserting, in each of their places, the words "Board of Patent Appeals and Interferences" and by removing from paragraph (c) "1.248" and inserting, in its place, "1.646".

45. Section 1.304 is amended by revising paragraph (a) as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice and reasons of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is sixty days from the date of the decision of the Board of Patent Appeals and Interferences. If a request for reconsideration or modification of the decision is filed within the time provided under § 1.197(b) or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire at the end of the sixty-day period or thirty days after action on the request, whichever is later. Except for an appeal from or commencing a civil action after a decision of the Board of Patent Appeals and Interferences in a reexamination proceeding or an interference proceeding, the time periods set forth herein are subject to the provisions of § 1.136. See § 1.550(c) for extensions of time to appeal or commence a civil action in a reexamination proceeding. See § 1.645(a) for extensions of time to appeal or commence a civil action in an interference. An examiner-in-chief, upon a showing of excusable neglect, may extend the time for seeking judicial review of a decision of the Board of Patent Appeals and Interferences in an interference case when a request is untimely filed after expiration of the time prescribed by this section.

* * * * *

46. Section 1.322 is amended by revising paragraph (a) as follows:

§ 1.322 Certificate of correction of Office mistake.

(a) A certificate of correction under 35 U.S.C. 254 may be issued at the request of the patentee or the patentee's assignee. Such certificate will not be issued at the request or suggestion of anyone not owning an interest in the patent, nor on motion of the Office, without first notifying the patentee (including any assignee of record) and affording the patentee an opportunity to be heard. When the request relates to a patent involved in an interference, the request shall comply with the requirements of this section and shall be accompanied by a motion under § 1.635.

* * * * *

47. Section 1.323 is revised as follows:

§ 1.323 Certificate of correction of applicant's mistake.

Whenever a mistake of a clerical or typographical nature or of minor character which was not the fault of the Office, appears in a patent and a showing is made that such mistake occurred in good faith, the Commissioner may, upon payment of the fee set forth in § 1.20(a), issue a certificate, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination. A request for a certificate of correction of a patent involved in an interference shall comply with the requirements of this section and shall be accompanied by a motion under § 1.635.

48. Section 1.324 is revised as follows:

§ 1.324 Correction of inventorship in patent.

Whenever a patent is issued and it appears that the correct inventor or inventors were not named through error without deceptive intention on the part of the actual inventor or inventors, the Commissioner may, on petition of all the parties and the assignees and satisfactory proof of the facts and payment of the fee set forth in § 1.20(b), or on order of a court before which such matter is called in question, issue a certificate naming only the actual inventor or inventors. A request to correct inventorship of patent involved in an interference shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.

§ 1.550 [Amended]

49. Section 1.550 is amended by removing from paragraph (a) "Board of Appeals" and inserting, in its place, "Board of Patent Appeals and Interferences."

50. Section 1.565 is amended by revising paragraph (b) and adding paragraph (e) as follows:

§ 1.565 Concurrent office proceedings.

* * * * *

(b) If a patent in the process of reexamination is or becomes involved in litigation or a reissue application for the patent in filed or pending, the Commissioner shall determine whether or not to stay the reexamination or reissue proceeding.

* * * * *

(e) If a patent in the process of reexamination is or becomes involved in an interference, the Commissioner may stay reexamination or the interference. The Commissioner will not consider a request to stay an interference unless a motion (§ 1.635) to stay the interference has been presented to, and denied by, an examiner-in-chief and the request is filed within ten (10) days of a decision by an examiner-in-chief denying the motion for a stay or such other time as the examiner-in-chief may set.

51. A new subpart entitled "Subpart E—Interferences" is added which reads as follows:

Subpart E—Interferences

Sec.
1.601 Scope of rules, definitions.
1.602 Interest in applications and patents involved in interference.
1.603 Interference between applications; subject matter of the interference.
1.604 Request for interference between applications by an applicant.
1.605 Suggestion of claim to applicant by examiner.
1.606 Interference between an application and a patent; subject matter of the interference.
1.607 Request by applicant for interference with patent.
1.608 Interference between an application and a patent; *prima facie* showing by applicant.
1.609 Preparation of interference papers by examiner.
1.610 Assignment of interference to examiner-in-chief, time period for completing interference.
1.611 Declaration of interference.
1.612 Access to applications.
1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.
1.614 Jurisdiction over interference.
1.615 Suspension of ex parte prosecution.
1.616 Sanctions for failure to comply with rules or order.
1.617 Summary judgment against applicant.
1.618 Return of unauthorized papers.
1.621 Preliminary statement, time for filing, notice of filing.
1.622 Preliminary statement, who made invention, where invention made.
1.623 Preliminary statement; invention made in United States.
1.624 Preliminary statement; invention made abroad.
1.625 Preliminary statement; derivation by an opponent.
1.626 Preliminary statement; earlier application.
1.627 Preliminary statement; sealing before filing, opening of statement.
1.628 Preliminary statement; correction of error.
1.629 Effect of preliminary statement.
1.630 Reliance on earlier application.
1.631 Access to preliminary statement, service of preliminary statement.
1.632 Notice of intent to argue abandonment, suppression, or concealment by opponent.
1.633 Preliminary motions.
1.634 Motion to correct inventorship.
1.635 Miscellaneous motions.
1.636 Motions, time for filing.
1.637 Content of motions.
1.638 Opposition and reply, time for filing opposition and reply.
1.639 Evidence in support of motion, opposition, or reply.
1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.
1.641 Unpatentability discovered by examiner-in-chief.
1.642 Addition of application or patent to interference.
1.643 Prosecution of interference by assignee.
1.644 Petitions in interferences.
1.645 Extension of time, late papers, stay of proceedings.
1.646 Service of papers, proof of service.
1.647 Translation of document in foreign language.
1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.
1.652 Judgment for failure to take testimony or file record.
1.653 Record and exhibits.
1.654 Final hearing.
1.655 Matters considered in rendering a final decision.
1.656 Briefs for final hearing.
1.657 Burden of proof as to date of invention.
1.658 Final decision.
1.659 Recommendation.
1.660 Notice of reexamination, reissue, protest, or litigation.
1.661 Termination of interference after judgment.
1.662 Request for entry of adverse judgment; reissue filed by patentee.
1.663 Status of claim of defeated applicant after interference.
1.664 Action after interference.
1.665 Second interference.
1.666 Filing of interference settlement agreements.
1.671 Evidence must comply with rules.
1.672 Manner of taking testimony.
1.673 Notice of examination of witness.
1.674 Persons before whom depositions may be taken.
1.675 Examination of witness, reading and signing transcipt of deposition.
1.676 Certification and filing by officer, marking exhibits.
1.677 Form of a transcript of deposition.
1.678 Transcript of deposition must be filed.
1.679 Inspection of transcript.
1.682 Official records and printed publications.
1.683 Testimony in another interference, proceeding, or action.
1.684 Testimony in a foreign country.
1.685 Errors and irregularities in depositions.
1.687 Additional Discovery.
1.688 Use of discovery.

Authority: 35 U.S.C. 6, 23, 41, and 135.

Subpart E—Interferences

§ 1.601 Scope of rules, definitions.

This subpart governs the procedure in patent interferences in the Patent and Trademark Office. This subpart shall be construed to secure the just, speedy, and inexpensive determination of every interference. For the meaning of terms in the Federal Rules of Evidence as applied to interferences, see § 1.671(c). Unless otherwise clear from the context, the following definitions apply to this subpart:

(a) "Additional discovery" is discovery to which a party may be entitled under § 1.687 in addition to discovery to which the party is entitled as a matter of right under § 1.673 (a) and (b).

(b) "Affidavit" means affidavit, declaration under § 1.68, or statutory declaration under 28 U.S.C. 1746. A transcript of an *ex parte* deposition may be used as an affidavit.

(c) "Board" means the Board of Patent Appeals and Interferences.

(d) "Case-in-chief" means that portion of a party's case where the party has the burden of going forward with evidence.

(e) "Case-in-rebuttal" means that portion of a party's case where the party presents evidence in rebuttal to the case-in-chief of another party.

(f) A "count" defines the interfering subject matter between (1) two or more applications or (2) one or more applications and one or more patents. When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent which corresponds to a count is a claim involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application which is identical to a count is said to "correspond exactly" to the count. A claim of a patent or application

use proceedings shall not be filed by a

interference case when a request is

accompanied by a motion under § 1.634.

1.615 Suspension of ex parte prosecution.
1.616 Sanctions for failure to comply with rules or order.

agreements.
1.671 Evidence must comply with rules.

is said to "correspond exactly" to the count. A claim of a patent or application

which is not identical to a count, but which defines the same patentable invention as the count, is said to "correspond substantially" to the count. When a count is broader in scope than all claims which correspond to the count, the count is a "phantom count." A phantom count is not patentable to any party.

(g) The "effective filing date" of an application or a patent is the filing date of an earlier application accorded to the application or patent under 35 U.S.C. 119, 120, or 365.

(h) In the case of an application, "filing date" means the filing date assigned to the application. In the case of a patent, "filing date" means the filing date assigned to the application which issued as the patent.

(i) An "interference" is a proceeding instituted in the Patent and Trademark Office before the Board to determine any question of patentability and priority of invention between two or more parties claiming the same patentable invention. An interference may be declared between two or more pending applications naming different inventors when, in the opinion of an examiner, the applications contain claims for the same patentable invention. An interference may be declared between one or more pending applications and one or more unexpired patents naming different inventors when, in the opinion of an examiner, any application and any unexpired patents contain claims for the same patentable invention.

(j) An "interference-in-fact" exists when at least one claim of a party which corresponds to a count and at least one claim of an opponent which corresponds to the count define the same patentable invention.

(k) A "lead" attorney or agent is a registered attorney or agent of record who is primarily responsible for prosecuting and interference on behalf of a party and is the attorney or agent whom an examiner-in-chief may contact to set times and take other action in the interference.

(l) A "party" is (1) an applicant or patentee involved in the interference or (2) a legal representative or an assignee of an applicant or patentee involved in an interference. Where acts of a party are normally performed by an attorney or agent, "party" may be construed to mean the attorney or agent. An "inventor" is the individual named as inventor in an application involved in an interference or the individual named as inventor in a patent involved in an interference.

(m) A "senior party" is the party with earliest effective filing date as to all counts or, if there is no party with the earliest effective filing date as to all counts, the party with the earliest filing date. A "junior party" is any other party.

(n) Invention "A" is the "same patentable invention" as a invention "B" when invention "A" is the same as (35 U.S.C. 102) or is obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A". Invention "A" is a "separate patentable invention" with respect to invention "B" when invention "A" is new (35 U.S.C 102) and non-obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A".

(o) "Sworn" means sworn or affirmed.

(p) "United States" means the United States of America, its territories and possessions.

§ 1.602 Interest in applications and patents involved in an interference.

(a) Unless good cause is shown, an interference shall not be declared or continued between (1) applications owned by a single party or (2) applications and an unexpired patent owned by a single party.

(b) The parties, within 20 days after an interference is declared, shall notify the Board of any and all right, title, and interest in any application or patent involved or relied upon in the interference unless the right, title, and interest is set forth in the notice declaring the interference.

(c) If a change of any right, title, and interest in any application or patent involved or relied upon in the interference occurs after notice is given declaring the interference and before the time expires for seeking judicial review of a final decision of the Board, the parties shall notify the Board of the change within 20 days of the change.

§ 1.603 Interference between applications; subject matter of the interference.

Before an interference is declared between two or more applications, the examiner must be of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. Each count shall define a separate patentable invention. Each application must contain, or be amended to contain, at least one claim which corresponds to each count. All claims in the applications which define the same patentable invention as a count shall be designated to correspond to the count.

§ 1.604 Request for interference between applications by an applicant.

(a) An applicant may seek to have an interference declared with an application of another by (1) suggesting a proposed count and presenting a claim corresponding to the proposed count, (2) identifying the other application and, if known, a claim in the other application which corresponds to the proposed count, and (3) explaining why an interference should be declared.

(b) When an applicant presents a claim known to the applicant to define the same patentable invention claimed in a pending application of another, the applicant shall identify that pending application, unless the claim is presented in response to a suggestion by the examiner. The examiner shall notify the Commissioner of any instance where it appears an applicant may have failed to comply with the provisions of this paragraph.

§ 1.605 Suggestion of claim to applicant by examiner.

(a) The examiner may suggest that an applicant present a claim in an application for the purpose of an interference with another application or a patent. The applicant to whom the claim is suggested shall amend the application by presenting the suggested claim within a time specified by the examiner, not less than one month. Failure or refusal of an applicant to timely present the suggested claim shall be taken without further action as a disclaimer by the applicant of the invention defined by the suggested claim. At the time the suggested claim is presented, the applicant may also (1) call the examiner's attention to other claims already in the application or which are presented with the suggested claim and (2) explain why the other claims would be more appropriate to be included in any interference which may be declared.

(b) The suggestion of a claim by the examiner for the purpose of an interference will not stay the period for response to any outstanding Office action. When a suggested claim is timely presented, *ex parte* proceedings in the application will be stayed pending a determination of whether an interference will be declared.

§ 1.606 Interference between an application and a patent; subject matter of the interference.

Before an interference is declared between an application and an unexpired patent, an examiner must determine that there is interfering subject matter claimed in the

application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. Each count shall define a separate patentable invention. Any application must contain, or be amended to contain, at least one claim which corresponds to each count. All claims in the application and patent which define the same patentable invention as a count shall be designated to correspond to the count. At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than any patent claim which corresponds to the count and any single patent claim will be presumed, subject to a motion under § 1.633(c), not to contain separate patentable inventions.

§ 1.607 Request by applicant for interference with patent.

(a) An applicant may seek to have an interference declared between an application and an unexpired patent by (1) presenting a proposed count and a claim corresponding to the proposed count and, if any claim of the patent or application does not correspond exactly to the proposed count, explaining why an interference should be declared, (2) identifying the patent and indicating which claim in the application and which claim or claims of the patent correspond to the proposed count, and (3) applying the terms of the application claim corresponding to the count to the disclosure of the application.

(b) When an applicant seeks an interference with a patent, examination of the application, including any appeal to the Board, shall be conducted with special dispatch within the Patent and Trademark Office. The examiner shall determine whether there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in an interference. If the examiner determines that there is any interfering subject matter, an interference will be declared. If the examiner determines that there is no interfering subject matter, the examiner shall state the reasons why an interference is not being declared and otherwise act on the application.

(c) When an applicant presents a claim which corresponds exactly or substantially to a claim of a patent, the applicant shall identify the patent and the number of the patent claim, unless the claim is presented in response to a suggestion by the examiner. The examiner shall notify the Commissioner of any instance where an applicant fails to identify the patent.

(d) A notice that an applicant is seeking to provoke an interference with a patent will be placed in the file of the patent and a copy of the notice will be sent to the patentee. The identity of the applicant will not be disclosed unless an interference is declared. If a final decision is made not to declare an interference, a notice to that effect will be placed in the patent file and will be sent to the patentee.

§ 1.608 Interference between an application and a patent; prima facie showing by applicant.

(a) When the earlier of the filing date or effective filing date of an application is three months or less after the earlier of the filing date or effective filing date of a patent, the applicant, before an interference will be declared, shall file an affidavit alleging that there is a basis upon which applicant is entitled to a judgment relative to the patentee.

(b) When the earlier of the filing date or the effective filing date of an application is more than three months after the earlier of the filing date or the effective filing date under 35 U.S.C. 120 of a patent, the applicant, before an interference will be declared, shall file (1) evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and (2) an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the earlier of the filing date or effective filing date of the patent. To facilitate preparation of a record (§ 1.653 (g) and (h)) for final hearing, an applicant should file affidavits on paper which is 8½ x 11 inches (21.8 by 27.9 cm.). The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of sufficient cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the applicant would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

§ 1.609 Preparation of interference papers by examiner.

When the examiner determines that an interference should be declared, the examiner shall forward to the Board:

(a) All relevant application and patent files and

(b) A statement identifying,

(1) The proposed count or counts;

(2) The claims of any application or patent which correspond to each count, stating whether the claims correspond exactly or substantially to each count;

(3) The claims in any application which are deemed by the examiner to be patentable over any count; and

(4) Whether an applicant or patentee is entitled to the benefit of the filing date of an earlier application and, if so, sufficient information to identify the earlier application.

§ 1.610 Assignment of interference to examiner-in-chief, time period for completing interference.

(a) Each interference will be declared by an examiner-in-chief who may enter all interlocutory orders in the interference, except that only a panel consisting of at least three members of the Board shall (1) hear oral argument at final hearing, (2) enter a decision under §§1.617, 1.640(c) or (e), 1.652, 1.656(i) or 1.658 or (3) enter any other order which terminates the interference.

(b) As necessary, another examiner-in-chief may act in place of the one who declared the interference. Unless otherwise provided in this section, at the discretion of the examiner-in-chief assigned to the interference, a panel consisting of two or more members of the Board may enter interlocutory orders.

(c) Unless otherwise provided in this subpart, times for taking action by a party in the interference will be set on a case-by-case basis by the examiner-in-chief assigned to the interference. Times for taking action shall be set and the examiner-in-chief shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.

earliest effective filing date as to all

potentially invention as a count shall be designated to correspond to the count.

determine that there is interfering subject matter claimed in the

of any instance where an applicant fails to identify the patent.

affidavit. Upon a showing of sufficient

years.

(d) An examiner-in-chief may hold a conference with the parties to consider: (1) Simplification of any issues, (2) the necessity or desirability of amendments to counts, (3) the possibility of obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, (4) any limitations on the number of expert witnesses, (5) the time and place for conducting a deposition (§ 1.673(g)), and (6) any other matter as may aid in the disposition of the interference. After a conference, the examiner-in-chief may enter any order which may be appropriate.

(e) The examiner-in-chief may determine a proper course of conduct in an interference for any situation not specifically covered by this part.

§ 1.611 Declaration of interference.

(a) Notice of declaration of an interference will be sent to each party.

(b) When a notice of declaration is returned to the Patent and Trademark Office undelivered, or in any other circumstance where appropriate, an examiner-in-chief may (1) send a copy of the notice to a patentee named in a patent involved in an interference or the patentee's assignee of record in the Patent and Trademark Office or (2) order publication of an appropriate notice in the *Official Gazette*.

(c) The notice of declaration shall specify:

(1) The name and residence of each party involved in the interference;

(2) The name and address of record of any attorney or agent of record in any application or patent involved in the interference;

(3) The name of any assignee of record in the Patent and Trademark Office;

(4) The identity of any application or patent involved in the interference;

(5) Where a party is accorded the benefit of the filing date of an earlier application, the identity of the earlier application;

(6) The count or counts;

(7) The claim or claims of any application or any patent which correspond to each count; and

(8) The order of the parties.

(d) The notice of declaration may also specify the time for: (1) Filing a preliminary statement as provided in § 1.621(a); (2) serving notice that a preliminary statement has been filed as provided § 1.621(b); and (3) filing preliminary motions authorized by § 1.633, oppositions to the motions, and replies to the oppositions.

(e) Notice may be given in the *Official Gazette* that an interference has been declared involving a patent.

§ 1.612 Access to applications.

(a) After an interference is declared, each party shall have access to and may obtain copies of the files of any application set out in the notice declaring the interference, except for affidavits filed under § 1.131 and any evidence and explanation under § 1.608(b) filed separate from an amendment.

(b) After preliminary motions under § 1.633 are decided (§ 1.640(b)), each party shall have access to and may obtain copies of any affidavit filed under § 1.131 and any evidence and explanation filed under § 1.608(b) in any application set out in the notice declaring the interference.

(c) Any evidence and explanation filed under § 1.608(b) in the file of any application identified in the notice declaring the interference shall be served when required by § 1.617(b).

(d) The parties at any time may agree to exchange copies of papers in the files of any application identified in the notice declaring the interference.

§ 1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.

(a) Each party may be required to designate one attorney or agent of record as the lead attorney or agent.

(b) The same attorney or agent or members of the same firm of attorneys or agents may not represent two or more parties in an interference except as may be permitted under this Chapter.

(c) An examiner-in-chief may make necessary inquiry to determine whether an attorney or agent should be disqualified from representing a party in an interference. If an examiner-in-chief is of the opinion that an attorney or agent should be disqualified, the examiner-in-chief shall refer the matter to the Commissioner. The Commissioner will make a final decision as to whether any attorney or agent should be disqualified.

(d) No attorney or agent of record in an interference may withdraw as attorney or agent of record except with the approval of an examiner-in-chief and after reasonable notice to the party on whose behalf the attorney or agent has appeared. A request to withdraw as attorney or agent of record in an interference shall be made by motion (§ 1.635).

§ 1.614 Jurisdiction over interference.

(a) The Board shall assume jurisdiction over an interference when the interference is declared under § 1.611.

(b) When the interference is declared the interference is a contested case within the meaning of 35 U.S.C. 24.

(c) The examiner shall have jurisdiction over any pending application until the interference is declared. An examiner-in-chief, where appropriate, may for a limited purpose restore jurisdiction to the examiner over any application involved in the interference.

§ 1.615 Suspension of ex parte prosecution.

(a) When an interference is declared, ex parte prosecution of an application involved in the interference is suspended. Amendments and other papers related to the application received during pendency of the interference will not be entered or considered in the interference without the consent of an examiner-in-chief.

(b) *Ex parte* prosecution as to specified matters may be continued concurrently with the interference with the consent of the examiner-in-chief.

§ 1.616 Sanctions for failure to comply with rules or order.

An examiner-in-chief or the Board may impose an appropriate sanction against a party who fails to comply with the regulations of this part or any order entered by an examiner-in-chief or the Board. An appropriate sanction may include among others entry of an order:

(a) holding certain facts to have been established in the interference;

(b) precluding a party from filing a motion or a preliminary statement;

(c) precluding a party from presenting or contesting a particular issue;

(d) precluding a party from requesting, obtaining, or opposing discovery; or

(e) granting judgment in the interference.

§ 1.617 Summary judgment against applicant.

(a) An examiner-in-chief shall review any evidence filed by an applicant under § 1.608(b) to determine if the applicant is *prima facie* entitled to a judgment relative to the patentee. If the examiner-in-chief determines that the evidence shows the applicant is *prima facie* entitled to a judgment relative to the patentee, the interference shall proceed in the normal manner under the regulations of this part. If in the opinion of the examiner-in-chief the evidence fails to show that the applicant is *prima facie* entitled to a judgment relative to the patentee, the examiner-in-chief shall, concurrently with the notice declaring the interference, enter an order stating the reasons for the opinion and directing the applicant, within a time set in the

order, to show cause why summary judgment should not be entered against the applicant.

(b) The applicant any file a response to the order and state any reasons why summary judgment should not be entered. Any request by the applicant for a hearing before the Board shall be made in the response. Additional evidence shall not be presented by the applicant or considered by the Board unless the applicant shows good cause why any additional evidence was not initially presented with the evidence filed under § 1.608(b). At the time an applicant files a response, the applicant shall serve a copy of any evidence filed under § 1.608(b) and this paragraph.

(c) If a response is not timely filed by the applicant, the Board shall enter a final decision granting summary judgment against the applicant.

(d) If a response is timely filed by the applicant, all opponents may file a statement within a time set by the examiner-in-chief. The statement may set forth views as to why summary judgment should be granted against the applicant, but the statement shall be limited to discussing why all the evidence presented by the applicant does not overcome the reasons given by the examiner-in-chief for issuing the order to show cause. Evidence shall not be filed by any opponent. An opponent may not request an oral hearing.

(e) Within a time authorized by the examiner-in-chief, an applicant may file a reply to any statement filed by any opponent.

(f) When more than two parties are involved in an interference, all parties may participate in summary judgment proceedings under this section.

(g) If a response by the applicant is timely filed, the examiner-in-chief or the Board shall decide whether the evidence submitted under § 1.608(b) and any additional evidence properly submitted under paragraph (b) of this section shows that the applicant is *prima facie* entitled to a judgment relative to the patentee. If the applicant is not *prima facie* entitled to a judgment relative to the patentee, the Board shall enter a final decision granting summary judgment against the applicant. Otherwise, an interlocutory order shall be entered authorizing the interference to proceed in the normal manner under the regulations of this part.

(h) Only an applicant who filed evidence under § 1.608(b) may request a hearing. If that applicant requests a hearing, the Board may hold a hearing prior to entry of a decision under paragraph (g) of this section. The examiner-in-chief shall set a date and time for the hearing. Unless otherwise ordered by the examiner-in-chief or the Board, the applicant and any opponent will each be entitled to no more than 30 minutes of oral argument at the hearing.

§ 1.618 Return of unauthorized papers.

(a) The Patent and Trademark Office shall return to a party any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements of, this subpart. Any paper returned will not thereafter be considered by the Patent and Trademark Office in the interference. A party may be permitted to file a corrected paper under such conditions as may be deemed appropriate by an examiner-in-chief.

(b) When presenting a paper in an interference, a party shall not submit with the paper a copy of a paper previously filed in the interference.

§ 1.621 Preliminary statement, time for filing, notice of filing.

(a) Within the time set for filing preliminary motions under § 1.633, each party may file a preliminary statement. The preliminary statement may be signed by any individual having knowledge of the facts recited therein or an attorney or agent of record.

(b) When a party files a preliminary statement the party shall also simultaneously file and serve on all opponents in the interference a notice stating that a preliminary statement has been filed. A copy of the preliminary statement need not be served until ordered by an examiner-in-chief.

§ 1.622 Preliminary statement, who made invention, where invention made.

(a) A party's preliminary statement must identify the inventor who made the invention defined by each count and must state on behalf of the inventor the facts required by paragraph (a) of §§ 1.623, 1.624, and 1.625 as may be appropriate. When an inventor identified in the preliminary statement is not an inventor named in the party's application or patent, the party shall file a motion under § 1.634 to correct inventorship.

(b) The preliminary statement shall state whether the invention was made in the United States or abroad. If made abroad, the preliminary statement shall state whether the party is entitled to the benefit of the second sentence of 35 U.S.C. 104.

§ 1.623 Preliminary statement; invention made in United States.

(a) When the invention was made in the United States or a party is entitled to the benefit of the second sentence of 35 U.S.C. 104, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which the first drawing of the invention was made.

(2) The date on which the first written description of the invention was made.

(3) The date on which the invention was first disclosed by the inventor to another person.

(4) The date on which the invention was first conceived by the inventor.

(5) The date on which the invention was first actually reduced to practice. If the invention was not actually reduced to practice by or on behalf of the inventor prior to the party's filing date, the preliminary statement shall so state.

(6) The date after the inventor's conception of the invention when active exercise of reasonable diligence toward reducing the invention to practice began.

(b) If a party intends to prove derivation, the preliminary statement must also comply with § 1.625.

(c) When a party alleges under paragraph (a)(1) of this section that a drawing was made, a copy of the first drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was made, a copy of the first written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a copy of the first drawing or written description cannot be filed with the preliminary statement.

§ 1.624 Preliminary statement; invention made abroad.

(a) When the invention was made abroad and a party intends to rely on introduction of the invention into the United States, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which a drawing of the invention was first introduced into the United States.

(2) The date on which a written description of the invention was first introduced into the United States.

(3) The date on which the invention was first disclosed to another person in the United States.

(4) The date on which the inventor's conception of the invention was first introduced into the United States.

(5) The date on which an actual reduction to practice of the invention was first introduced into the United States. If an actual reduction to practice of the invention was not introduced into the United States, the preliminary statement shall so state.

(6) The date after introduction of the inventor's conception into the United

declared involving a patent.

the interference is declared under § 1.611.

the reasons for the opinion and directing the applicant, within a time set in the

time for the hearing. Unless otherwise

U.S.C. 104, the preliminary statement

inventor's conception into the United

States when active exercise of reasonable diligence in the United States toward reducing the invention to practice began.

(b) If a party intends to prove derivation, the preliminary statement must also comply with § 1.625.

(c) When a party alleges under paragraph (a)(1) of this section that a drawing was introduced into the United States a copy of that drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was introduced into the United States a copy of that written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a copy of the first drawing or first written description introduced in the United States cannot be filed with the preliminary statement.

§ 1.625 Preliminary statement; derivation by an opponent.

(a) When the invention was made in the United States or abroad and a party intends to prove derivation by an opponent from the party, the preliminary statement must state the following as to the invention defined by each count:

(1) The name of the opponent.

(2) The date on which the first drawing of the invention was made.

(3) The date on which the first written description of the invention was made.

(4) The date on which the invention was first disclosed by the inventor to another person.

(5) The date on which the invention was first conceived by the inventor.

(6) The date on which the invention was first communicated to the opponent.

(b) If a party intends to prove priority, the preliminary statement must also comply with § 1.623 or § 1.624.

(c) When a party alleges under paragraph (a)(2) of this section that a drawing was made, a copy of the first drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(3) of this section that a written description of the invention was made, a copy of the first written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a first drawing or first written description cannot be filed with the preliminary statement.

§ 1.626 Preliminary statement; earlier application.

When a party does not intend to present evidence to prove a conception or an actual reduction to practice and the party intends to rely solely on the filing date of an earlier application filed in the United States or abroad to prove a constructive reduction to practice, the preliminary statement may so state and identify the earlier application with particularity.

§ 1.627 Preliminary statement, sealing before filing, opening of statement.

(a) The preliminary statement and copies of any drawing or written description shall be filed in a sealed envelope bearing only the name of the party filing the statement and the style (e.g., Jones v. Smith) and number of the interference. The sealed envelope should contain only the preliminary statement and copies of any drawing or written description. If the preliminary statement is filed through the mail, the sealed envelope should be enclosed in an outer envelope addressed to the Commission of Patents and Trademarks in accordance with § 1.1(e).

(b) A preliminary statement may be opened only at the direction of an examiner-in-chief.

§ 1.628 Preliminary statement, correction of error.

(a) A material error arising through inadvertence or mistake in connection with (1) a preliminary statement or (2) drawings or a written description submitted therewith or omitted therefrom, may be corrected by a motion (§ 1.635) for leave to file a corrected statement. The motion shall be supported by an affidavit and shall show that the correction is essential to the ends of justice and shall be accompanied by the corrected statement. The motion shall be filed as soon as practical after discovery of the error.

(b) When a party cannot attach a copy of a drawing or a written description to the party's preliminary statement as required by § 1.623(c), 1.624(c), or 1.625(c), the party (1) shall show good cause and explain in the preliminary statement why a copy of the drawing or written description cannot be attached to the preliminary statement and (2) shall attach to the preliminary statement the earliest drawing or written description made in or introduced into the United States which is available. The party shall file a motion (§ 1.635) to amend its preliminary statement promptly after the first drawing, first written description, or drawing or written description first introduced into the United States becomes available. A copy of the drawing or written description may be obtained, where appropriate, by a motion (§ 1.635) for additional discovery under §1.687 or during a testimony period.

§ 1.629 Effect of preliminary statement.

(a) A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to (1) definiteness or sufficiency of any allegation in a preliminary statement or (2) compliance with formal requirements will be resolved against the party filing the statement by restricting the party to the earlier of its filing date or effective filing date or to the latest date of a period alleged in the preliminary statement as may be appropriate. A party may not correct a preliminary statement except as provided by § 1.628.

(b) Evidence which shows that an act alleged in the preliminary statement occurred prior to the date alleged in the statement shall establish only that the act occurred as early as the date alleged in the statement.

(c) If a party does not file a preliminary statement, the party:

(1) Shall be restricted to the earlier of the party's filing date or effective filing date and

(2) Will not be permitted to prove that:

(i) The party made the invention prior to the party's filing date or

(ii) Any opponent derived the invention from the party.

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with the preliminary statement as required by § 1.623(c), § 1.624(c), or § 1.625(c), the party will be restricted to the earlier of the party's filing date or effective filing date as to that allegation unless the party complies with § 1.628(b). The content of any drawing or written description submitted with a preliminary statement will not normally be evaluated or considered by the Board.

(e) A preliminary statement shall not be used as evidence on behalf of the party filing the statement.

§ 1.630 Reliance on earlier application.

A party shall not be entitled to rely on the filing date of an earlier application filed in the United States or abroad unless (a) the earlier application is identified (§ 1.611(c)(5)) in the notice declaring the interference or (b) the party files a preliminary motion under § 1.633 seeking the benefit of the filing date of the earlier application.

§ 1.631 Access to preliminary statement, service of preliminary statement.

(a) Unless otherwise ordered by an examiner-in-chief, concurrently with entry of a decision by the examiner-in-chief on preliminary motions filed under

§ 1.633, any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement. Within a time set by the examiner-in-chief, a party shall serve copies of its preliminary statement on every opponent who served a notice under § 1.621(b).

(b) A junior party who does not file a preliminary statement shall not have access to the preliminary statement of any other party.

(c) If an interference is terminated before the preliminary statements have been opened, the preliminary statements will remain sealed and will be returned to the respective parties who submitted the statements.

§ 1.632 Notice of intent to argue abandonment, suppression or concealment by opponent.

A notice shall be filed by a party who intends to argue that an opponent has abandoned, suppressed or concealed an actual reduction to practice (35 U.S.C. 102(g)). A party will not be permitted to argue abandonment, suppression, or concealment by an opponent unless the notice is timely filed. Unless authorized otherwise by an examiner-in-chief, a notice is timely when filed within ten (10) days of the close of the testimony-in-chief of the opponent.

§ 1.633 Preliminary Motions.

A party may file the following preliminary motions:

(a) A motion for judgment on the ground that an opponent's claim corresponding to a count is not patentable to the opponent. In determining a motion filed under this paragraph, a claim may be construed by reference to the prior art of record. A motion under this paragraph shall not be based on: (1) Priority of invention of the subject matter of a count by the moving party as against any opponent or (2) derivation of the subject matter of a count by an opponent from the moving party. See § 1.637(a).

(b) A motion for judgment on the ground that there is no interference-in-fact. A motion under this paragraph is proper only if: (1) The interference involves a design application or patent or a plant application or patent or (2) no claim of a party which corresponds to a count is identical to any claim of an opponent which corresponds to that count. See § 1.637(a).

(c) A motion to redefine the interfering subject matter by (1) adding or substituting a count, (2) amending an application claim corresponding to a count or adding a claim in the moving party's application to be designated to correspond to a count, (3) designating an application or patent claim to correspond to a count, (4) designating an application or patent claim as not corresponding to a count, or (5) requiring an opponent who is an applicant to add a claim and to designate the claim to correspond to a count. See § 1.637 (a) and (c).

(d) A motion to substitute a different application owned by a party for an application involved in the interference. See § 1.637 (a) and (d).

(e) A motion to declare an additional interference (1) between an additional application not involved in the interference and owned by a party and an opponent's application or patent involved in the interference or (2) when an interference involves three or more parties, between less than all applications and any patent involved in the interference. See § 1.637 (a) and (e).

(f) A motion to be accorded the benefit of the filing date of an earlier application filed in the United States or abroad. See § 1.637 (a) and (f).

(g) A motion to attack the benefit accorded an opponent in the notice declaring the interference of the filing date of an earlier application filed in the United States or abroad. See § 1.637 (a) and (g).

(h) When a patent is involved in an interference and the patentee has on file or files an application for reissue under § 1.171, a motion to add the application for reissue to the interference. See § 1.637 (a) and (h).

(i) When a motion is filed under paragraph (a), (b), or (g) of this section, an opponent, in addition to opposing the motion, may file a motion to redefine the interfering subject matter under paragraph (c) of this section or a motion to substitute a different application under paragraph (d) of this section.

(j) When a motion is filed under paragraph (c)(1) of this section an opponent, in addition to opposing the motion, may file a motion for benefit under paragraph (f) of this section as to the count to be added or substituted.

§ 1.634 Motion to correct inventorship.

A party may file a motion to (a) amend its application involved in an interference to correct inventorship as provided by § 1.48 or (b) correct inventorship of its patent involved in an interference as provided in § 1.324. See § 1.637(a).

§ 1.635 Miscellaneous motions.

A party seeking entry of an order relating to any matter other than a matter which may be raised under §§ 1.633 or 1.634 may file a motion requesting entry of the order. See § 1.637 (a) and (b).

§ 1.636 Motions, time for filing.

(a) A preliminary motion under § 1.633 (a) through (h) shall be filed within a time period set by an examiner-in-chief.

(b) A preliminary motion under § 1.633 (i) or (j) shall be filed within 20 days of the service of the preliminary motion under § 1.633 (a), (b), or (g) unless otherwise ordered by an examiner-in-chief.

(c) A motion under § 1.634 shall be diligently filed after an error is discovered in the inventorship of an application or patent involved in an interference unless otherwise ordered by an examiner-in-chief.

(d) A motion under § 1.635 shall be filed as specified in this subpart or when appropriate unless otherwise ordered by an examiner-in-chief.

§ 1.637 Content of motions.

(a) Every motion shall include (1) a statement of the precise relief requested, (2) a statement of the material facts in support of the motion, and (3) a full statement of the reasons why the relief requested should be granted.

(b) A motion under § 1.635 shall contain a certificate by the moving party stating that the moving party has conferred with all opposing parties in an effort in good faith to resolve by agreement the issues raised by the motion. A moving party shall indicate in the motion whether any other party plans to oppose the motion. The provisions of this paragraph do not apply to a motion to suppress evidence (§ 1.656(h)).

(c) A preliminary motion under § 1.633(c) shall explain why the interfering subject matter should be redefined.

(1) A preliminary motion seeking to add or substitute a count shall:

(i) Propose each count to be added or substituted.

(ii) When the moving party is an applicant, show the patentability to the applicant of all claims in, or proposed to be added to, the party's application which correspond to each proposed count and apply the terms of the claims to the disclosure of the party's application; when necessary a moving party applicant shall file with the motion an amendment adding any proposed claim to the application.

(iii) Identify all claims in an opponent's application which should be designated to correspond to each proposed count; if an opponent's application does not contain such a claim, the moving party shall propose a

filing date of an earlier application filed during a testimony period.

party's application to be designated to chief on preliminary motions filed under §§ 1.633 or 1.634 may file a motion claim, the moving party shall propose a

claim to be added to the opponent's application. The moving party shall show the patentability of any proposed claims to the opponent and apply the terms of the claims to the disclosure of the opponent's application.

(iv) Designate the claims of any patent involved in the interference which define the same patentable invention as each proposed count.

(v) Show that each proposed count defines a separate patentable invention from every other count in the interference.

(vi) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.

(2) A preliminary motion seeking to amend an application claim corresponding to a count or adding a claim to be designated to correspond to a count shall:

(i) Propose an amended or added claim.

(ii) Show that the proposed or added claim defines the same patentable invention as the count.

(iii) Show the patentability to the applicant of each amended or added claim and apply the terms of the amended or added claim to the disclosure of the application; when necessary a moving party applicant shall file with the motion an amendment making the amended or added claim to the application.

(iv) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.

(3) A preliminary motion seeking to designate an application or patent claim to correspond to a count shall:

(i) Identify the claim and the count.

(ii) Show the claim defines the same patentable invention as the count.

(iii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.

(4) A preliminary motion seeking to designate an application or patent claim as not corresponding to a count shall:

(i) Identify the claim and the count.

(ii) Show the claim does not define the same patentable invention as any other claim designated in the notice declaring the interference as corresponding to the count.

(5) A preliminary motion seeking to require an opponent who is an applicant to add a claim and designate the claim as corresponding to a count shall:

(i) Propose a claim to be added by the opponent.

(ii) Show the patentability to the opponent of the claim and apply the terms of the claim to the disclosure of the opponent's application.

(iii) Identify the count to which the claim shall be designated to correspond.

(iv) Show the claim defines the same patentable invention as the count to which it will be designated to correspond.

(d) A preliminary motion under § 1.633(d) to substitute a different application shall:

(1) Identify the different application.

(2) Certify that a complete copy of the file of the different application, except for documents filed under § 1.131 or § 1.608(b), has been served on all opponents.

(3) Show the patentability to the applicant of all claims in, or proposed to be added to, the different application which correspond to each count and apply the terms of the claims to the disclosure of the different application; when necessary the applicant shall file with the motion an amendment adding a claim to the different application.

(4) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad.

(e) A preliminary motion to declare an additional interference under § 1.633(e) shall explain why an additional interference is necessary.

(1) When the preliminary motion seeks an additional interference under § 1.633(e)(1), the motion shall:

(i) Identify the additional application.

(ii) Certify that a complete copy of the file of the additional application, except for documents filed under §§ 1.131 or 1.608(b), has been served on all opponents.

(iii) Propose a count for the additional interference.

(iv) Show the patentability to the applicant of all claims in, or proposed to be added to, the additional application which correspond to each proposed count for the additional interference and apply the terms of the claims to the disclosure of the additional application; when necessary the applicant shall file with the motion an amendment adding a claim to the additional application.

(v) When the opponent is an applicant, show the patentability to the opponent of any claims in, or proposed to be added to, the opponent's application which correspond to the proposed count and apply the terms of the claims to the disclosure of the opponent's application.

(vi) When the opponent is a patentee, designate the claims of the patent which define the same patentable invention defined by the proposed count.

(vii) Show that each proposed count for the additional interference defines a separate patentable invention from all counts of the interference in which the motion is filed.

(viii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad.

(2) When the preliminary motion seeks an additional interference under § 1.633(e)(2), the motion shall:

(i) Identify any application or patent to be involved in the additional interference.

(ii) Propose a count for the additional interference.

(iii) When the moving party's is an applicant, show the patentability to the applicant of all claims in, or proposed to be added to, the party's application which correspond to each proposed count and apply the terms of the claims to the disclosure of the party's application; when necessary a moving party applicant shall file with the motion an amendment adding any proposed claim to the application.

(iv) Identify all claims in any opponent's application which should be designated to correspond to each proposed count; if an opponent's application does not contain such a claim, the moving party shall propose a claim to be added to the opponent's application. The moving party shall show the patentability of any proposed claims to the opponent and apply the terms of the claims to the disclosure of the opponent's application.

(v) Designate the claims of any patent involved in the interference which define the same patentable invention as each proposed count.

(vi) Show that each proposed count for the additional interference defines a separate patentable invention from all counts in the interference in which the motion is filed.

(vii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad.

(f) A preliminary motion for benefit under § 1.633(f) shall:

(1) Identify the earlier application.

(2) When the earlier application is an application filed in the United States, certify that a complete copy of the file of the earlier application, except for documents filed under § 1.131 or § 1.608(b), has been served on all opponents. When the earlier application is an application filed abroad, certify that a copy of the application filed abroad has been served on all opponents. If the earlier application filed abroad is not in English, the requirements of § 1.647 must also be met.

(3) Show that the earlier application constitutes a constructive reduction to practice of each count.

(g) A preliminary motion to attack benefit under § 1.633(g) shall explain, as to each count, why an opponent should not be accorded the benefit of the filing date of the earlier application.

(h) A preliminary motion to add an application for reissue under § 1.633(h) shall:

(1) Identify the application for reissue.

(2) Certify that a complete copy of the file of the application for reissue has been served on all opponents.

(3) Show the patentability of all claims in, or proposed to be added to, the application for reissue which correspond to each count and apply the terms of the claims to the disclosure of the application for reissue; when necessary a moving applicant for reissue shall file with the motion an amendment adding a claim to the application for reissue.

(4) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad.

§ 1.638 Opposition and reply, time for filing opposition and reply.

(a) Unless otherwise ordered by an examiner-in-chief, any opposition to any motion shall be filed within 20 days after service of the motion. An opposition shall (1) identify any material fact set forth in the motion which is in dispute and (2) include an argument why the relief requested in the motion should be denied.

(b) Unless otherwise ordered by an examiner-in-chief, a reply shall be filed within 15 days after service of the opposition. A reply shall be directed only to new points raised in the opposition.

§ 1.639 Evidence in support of motion, opposition, or reply.

(a) Proof of any material fact alleged in a motion, opposition, or reply must be filed and served with the motion, oppposition, or reply unless the proof relied upon is part of the interference file or the file of any patent or application involved in the interference or any earlier application filed in the United States of which a party has been accorded or seeks to be accorded benefit.

(b) Proof may be in the form of patents, printed publications, and affidavits.

(c) When a party believes that testimony is necessary to support or oppose a preliminary motion under § 1.633 or a motion to correct inventorship under § 1.634, the party shall describe the nature of the testimony needed. If the examiner-in-chief finds that testimony is needed to decide the motion, the examiner-in-chief may grant appropriate interlocutory relief and enter an order authorizing the taking of testimony and deferring a decision on the motion to final hearing.

§ 1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.

(a) A hearing on a motion may be held in the discretion of the examiner-in-chief. The examiner-in-chief shall set the date and time for any hearing. The length of oral argument at a hearing on a motion is a matter within the discretion of the examiner-in-chief. An examiner-in-chief may direct that a hearing take place by telephone.

(b) Motions will be decided by an examiner-in-chief. An examiner-in-chief may consult with an examiner in deciding motions involving a question of patentability. An examiner-in-chief may grant or deny any motion or take such other action which will secure the just, speedy, and inexpensive determination of the interference.

(1) When preliminary motions under § 1.633 are decided, the examiner-in-chief will, when necessary, set a time for filing any amendment to an application involved in the interference and for filing a supplemental preliminary statement as to any new counts involved in the interference. Failure or refusal of a party to timely present an amendment required by an examiner-in-chief shall be taken without further action as a disclaimer by that party of the invention involved. A supplemental preliminary statement shall meet the requirements specified in §§ 1.623, 1.624, 1.625, or 1.626, but need not be filed if a party states that it intends to rely on a preliminary statement previously filed under § 1.621(a). After the time expires for filing any amendment and supplemental preliminary statement, the examiner-in-chief will, if necessary, redeclare the interference.

(2) After a decision is entered or preliminary motions filed under § 1.633, a further motion under § 1.633 will not be considered except as provided by § 1.655(b).

(c) When a decision on any motion under §§ 1.633, 1.634, or 1.635 is entered which does not result in the issuance of an order to show cause under paragraph (d) of this section, a party may file a request for reconsideration within 14 days after the date of the decision. The filing of a request for reconsideration will not stay any time period set by the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. No opposition to a request for reconsideration shall be filed unless requested by an examiner-in-chief or the Board. A decision of single examiner-in-chief will not ordinarily be modified unless an opposition has been requested by an examiner-in-chief or the Board. The request for reconsideration shall be acted on by a panel of the Board consisting of at least three examiners-in-chief, one of whom will normally be the examiner-in-chief who decided the motion.

(d) An examiner-in-chief may issue an order to show cause why judgment should not be entered against a party when:

(1) A decision on a motion is entered which is dispositive of the interference against the party as to all counts;

(2) The party is a junior party who fails to file a preliminary statement; or

(3) The party is a junior party whose preliminary statement fails to overcome the earlier of the filing date or effective filing date of another party.

(e) When an order to show cause is issued under paragraph (d) of this section, the Board shall enter a judgment in accordance with the order unless, within 20 days after the date of the order, the party against whom the order issued filed a paper which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 20 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party. If a party wishes to take testimony in response to an order to show cause, the party's response should be accompanied by a motion (§ 1.635) requesting the testimony period. See § 1.651(c)(4).

§ 1.641 Unpatentability discovered by examiner-in-chief.

During the pendency of an interference, if the examiner-in-chief becomes aware of a reason why a claim corresponding to a count may not be patentable, the examiner-in-chief may notify the parties of the reason and set a time within which each party may present its views. After considering any timely filed views, the examiner-in-chief shall decide how the interference shall proceed.

§ 1.642 Addition of application or patent to interference.

During the pendency of an interference, if the examiner-in-chief

(ii) Show the patentability to the opponent of the claim and apply the

(vii) Show that each proposed count for the additional interference defines a

requirements of § 1.647 must also be met.

inventorship under § 1.634, the party

decision. The request for reconsideration shall specify with

interference, if the examiner-in-chief

becomes aware of an application or a patent not involved in the interference which claims the same patentable invention as a count in the interference, the examiner-in-chief may add the application or patent to the interference on such terms as may be fair to all parties.

§ 1.643 Prosecution of interference by assignee.

(a) An assignee of record in the Patent and Trademark Office of the entire interest in an application or patent involved in an interference is entitled to conduct prosecution of the interference to the exclusion of the inventor.

(b) An assignee of a part interest in an application or patent involved in a interference may file a motion (§ 1.635) for entry of an order authorizing it to prosecute the interference. The motion shall show (1) the inability or refusal of the inventor to prosecute the interference or (2) other cause why the ends of justice require that the assignee of a part interest be permitted to prosecute the interference. The examiner-in-chief may allow the assignee of a part interest to prosecute the interference upon such terms as may be appropriate.

§ 1.644 Petitions in interferences.

(a) There is no appeal to the Commissioner in an interference from a decision of an examiner-in-chief or a panel consisting of more than one examiner-in-chief. The Commissioner will not consider a petition in an interference unless:

(1) The petition is from a decision of an examiner-in-chief or a panel and the examiner-in-chief or the panel shall be of the opinion (i) that the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion and (ii) that an immediate decision on petition by the Commissioner may materially advance the ultimate termination of the interference;

(2) The petition seeks to invoke the supervisory authority of the Commissioner and is not filed prior to the decision of the Board awarding judgment and does not relate to (i) the merits of priority of invention or patentability or (ii) the admissibility of evidence under the Federal Rules of Evidence; or

(3) The petition seeks relief under § 1.183.

(b) A petition under paragraph (a)(1) of this section filed more than 15 days after the date of the decision of the examiner-in-chief or the panel may be dismissed as untimely. A petition under paragraph (a)(2) of this section shall not be filed prior to decision by the Board awarding judgment. Any petition under paragraph (a)(3) of this section shall be timely if it is made as part of, or simultaneously with, a proper motion under §§ 1.633, 1.634, or 1.635. Any opposition to a petition shall be filed within 15 days of the date of service of the petition.

(c) The filing of a petition shall not stay the proceeding unless a stay is granted in the discretion of the examiner-in-chief, the panel, or the Commissioner.

(d) Any petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support of the petition or opposition shall accompany or be embodied therein. The petition will be decided on the basis of the record made before the examiner-in-chief or the panel and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record in the interference shall not be submitted with the petition or opposition.

(e) Any petition under paragraph (a) of this section shall be accompanied by the petition fee set forth in § 1.17(h).

(f) Any request for reconsideration of a decision by the Commissioner shall be filed within 15 days of the decision of the Commissioner and must be accompanied by the fee set forth in § 1.17(h). No opposition to a request for reconsideration shall be filed unless requested by the Commissioner. The decision will not ordinarily be modified unless such an opposition has been requested by the Commissioner.

(g) Where reasonably possible, service of any petition, opposition, or request for reconsideration shall be such that delivery is accomplished within one working day. Service by hand or "Express Mail" complies with this paragraph.

(h) An oral hearing on the petition will not be granted except when considered necessary by the Commissioner.

(i) The Commissioner may delegate to appropriate Patent and Trademark Offfice employees the determination of petition under this section.

§ 1.645 Extension of time, late papers, stay of proceedings.

(a) A party may file a motion (§ 1.635) seeking an extension of time to take action in an interference, to file a notice of appeal (§§ 1.302, 1.304), or to commence a civil action (§§ 1.303, 1.304). The motion shall be filed within sufficient time to actually reach the examiner-in-chief before expiration of the time for taking action, filing the notice, or commencing the civil action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an examiner-in-chief sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall set forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proved through the witness.

(b) Any paper belatedly filed will not be considered except upon motion (§1.635) which shows sufficient cause why the paper was not timely filed.

(c) The provisions of § 1.136 do not apply to time periods in interferences.

(d) In an appropriate circumstance, an examiner-in-chief may stay proceedings in an interference.

§ 1.646 Service of papers, proof of service.

(a) A copy of evey paper filed in the Patent and Trademark Office in an interference or an application or patent involved in the interference shall be served upon all other parties except:

(1) Preliminary statements when filed under § 1.621; preliminary statements shall be served when service is ordered by an examiner-in-chief.

(2) Certified transcripts and exhibits which accompany the transcripts filed under §§ 1.676 or 1.684; copies of transcripts shall be served as part of a party's record under § 1.653(c).

(b) Service shall be on an attorney or agent for a party. If there is no attorney or agent for the party, service shall be on the party. An examiner-in-chief may order additional service or waive service where appropriate.

(c) Unless otherwise ordered by an examiner-in-chief, or except as otherwise provided by this part, service of a paper shall be made as follows:

(1) By handing a copy of the paper to the person served.

(2) By leaving a copy of the paper with someone employed by the person at the person's usual place of business.

(3) When the person served has no usual place of business, by leaving a copy of the paper at the person's residence with someone of suitable age and discretion then residing therein.

(4) By mailing a copy of the paper by first class mail; when service is by mail

the date of mailing is regarded as the date of service.

(5) When it is shown to the satisfaction of an examiner-in-chief that none of the above methods of obtaining or serving the copy of the paper was successful, the examiner-in-chief may order service by publication of an appropriate notice in the *Official Gazette*.

(d) An examiner-in-chief may order that a paper be served by hand or "Express Mail".

(e) Proof of service must be made before a paper will be considered in an interference. Proof of service may appear on or be affixed to the paper. Proof of service shall include the date and manner of service. In the case of personal service under paragraphs (c)(1) through (c)(3) of this section, proof of service shall include the names of any person served and the person who made the service. Proof of service may be made by an acknowledgment of service by or on behalf of the person served or a statement signed by the party or the party's attorney or agent containing the information required by this section. A statement of an attorney or agent attached to, or appearing in, the paper stating the date and manner of service will be accepted as *prima facie* proof of service.

§ 1.647 Translation of document in foreign language.

When a party relies on a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation shall be filed with the document.

§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.

(a) At an appropriate stage in an interference, an examiner-in-chief shall set (1) a time for filing motions (§ 1.635) for additional discovery under § 1.687(c) and (2) testimony periods for taking any necessary testimony.

(b) Where appropriate, testimony periods will be set to permit a party to:

(1) Present its case-in-chief and/or case-in-rebuttal and/or

(2) Cross-examine an opponent's case-in-chief and/or a case-in-rebuttal.

(c) A party is not entitled to take testimony to present a case-in-chief unless:

(1) The examiner-in-chief orders the taking of testimony under § 1.639(c);

(2) The party alleges in its preliminary statement a date of invention prior to the ealier of the filing date or effective filing date of the senior party;

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the earlier of the filing date or effective filing date of the party and the party has filed a preliminary statement alleging a date of invention prior to that date; or

(4) A motion (§ 1.635) is filed showing good cause why a testimony period should be set.

(d) Testimony shall be taken during the testimony periods set under paragraph (a) of this section.

§ 1.652 Judgment for failure to take testimony or file record.

If a junior party fails to timely take testimony authorized under § 1.651, or file a record under § 1.653(c), an examiner-in-chief, with or without a motion (§ 1.635) by another party, may issue an order to show cause why judgment should not be entered against the junior party. When an order is issued under this section, the Board shall enter judgment in accordance with the order unless, within 15 days after the date of the order, the junior party files a paper which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 15 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party.

§ 1.653 Record and exhibits.

(a) Testimony shall consist of affidavits under § 1.672 (b) and (e), transcripts of depositions under §§ 1.672 (b) and (c), agreed statements of fact under § 1.672(f), and transcripts of interrogatories, cross-interrogatories, and recorded answers under § 1.684(c).

(b) An affidavit shall be filed as set forth in § 1.672 (b) or (e). A certified transcript of a deposition including a deposition cross-examining an affiant, shall be filed as set forth in § 1.676. An original agreed statement shall be filed as set forth in § 1.672(f). A transcript of interrogatories, cross-interrogatories, and recorded answers shall be filed as set forth under § 1.684(c).

(c) In addition to the items specified in paragraph (b) of this section and within a time set by an examiner-in-chief each party shall file three copies and serve one copy of a record consisting of:

(1) An index of the names of each witness giving the pages of the record where the direct testimony and cross-examination of each witness begins.

(2) An index of exhibits briefly describing the nature of each exhibit and giving the page of the record where each exhibit is first identified and offered into evidence.

(3) The count or counts.

(4) Each (i) affidavit, (ii) transcript, including transcripts of cross-examination of any affiant, (iii) agreed statement relied upon by the party, and (iv) transcript of interrogatories, cross-interrogatories, and recorded answers filed under paragraph (b) of this section.

(5) Each notice, official record, and publication relied upon by the party an filed under § 1.682(a).

(6) Any evidence from another interference, proceeding, or action relied upon by the party under § 1.683.

(7) Each request for an admission and the admission and each written interrogatory and the answer upon which a party intends to rely under § 1.688.

(d) The pages of the record shall be consecutively numbered.

(e) The name of each witness shall appear at the top of each page of each affidavit or transcript.

(f) The record may be typewritten or printed.

(g) When the record is printed, it may be produced by standard typographical printing or by any process capable of producing a clear black permanent image. All printed matter except on covers must appear in at least 11 point type on opaque, unglazed paper. Margins must be justified. Footnotes may not be printed in type smaller than 9 point. The pages size shall be 8½ by 11 inches (21.8 by 27.9 cm.) with type matter 6½ by 9⅛ inches (16.5 by 24.1 cm.). The record shall be found to lie flat when open.

(h) When the record is typewritten, it must be clearly legible on opaque, unglazed, durable paper approximately 8½ by 11 inches (21.8 by 27.9 cm.) in size (letter size). Typing shall be double-spaced on one side of the paper in not smaller than pica-type with a margin of 1½ (3.8 cm.) on the left-hand side of the page. The pages of the record shall be bound with covers at their left edges in such manner to lie flat when open in one or more volumes of convenient size (approximately 100 pages per volume is suggested). Multigraphed or otherwise reproduced copies conforming to the standards specified in this paragraph may be accepted.

(i) Each party shall file its exhibits with the record specified in paragraph (c) of this section. One copy of each documentary exhibit shall be served. Documentary exhibits shall be filed in an envelope or folder and shall not be bound as part of the record. Physical exhibits, if not filed by an officer under § 1.676(d), shall be filed with the record.

dismissed as untimely. A petition under

examiner-in-chief before expiration of

first class mail; when service is by mail

filing date of the senior party;

and giving the page of the record where

§ 1.670(d), shall be filed with the record.

Each exhibit shall contain a label which identifies the party submitting the exhibit and an exhibit number, the style of the interference (e.g., Jones v. Smith), and the interference number. Where possible, the label should appear at the bottom right-hand corner of each documentary exhibit. Upon termination of an interference, an examiner-in-chief may return and exhibit to the party filing the exhibit. When any exhibit is returned, the examiner-in-chief shall enter an appropriate order indicating that the exhibit has been returned.

(j) Any testimony, record, or exhibit which does not comply with this section may be returned under § 1.618(a).

§ 1.654 Final hearing.

(a) At an appropriate stage of the interference, the parties will be given an opportunity to appear before the Board to present oral argument at a final hearing. An examiner-in-chief shall set a date and time for final hearing. Unless otherwise ordered by an examiner-in-chief or the Board, each party will be entitled to no more than 60 minutes of oral argument at final hearing.

(b) The opening argument of a junior party shall include a fair statement of the junior party's case and the junior party's position with respect to the case presented on behalf of any other party. A junior party may reserve a portion of its time for rebuttal.

(c) A party shall not be entitled to argue that an opponent abandoned, suppressed, or concealed an actual reduction to practice unless a notice under §1.632 was timely filed.

(d) After final hearing, the interference shall be taken under advisement by the Board. No further paper shall be filed except under § 1.658(b) or as authorized by an examiner-in-chief or the Board. No additional oral argument shall be had unless ordered by the Board.

§ 1.655 Matters considered in rendering a final decision.

(a) In rendering a final decision, the Board may consider any properly raised issue including (1) priority of invention, (2) derivation by an opponent from a party who filed a preliminary statement under §1.625, (3) patentability of the invention, (4) admissibility of evidence, (5) any interlocutory matter deferred to final hearing, and (6) any other matter necessary to resolve the interference. The Board may also consider whether any interlocutory order was manifestly erroneous or an abuse of discretion. All interlocutory orders shall be presumed to have been correct and the burden of showing manifest error or an abuse of discretion shall be on the party attacking the order.

(b) A party shall not be entitled to raise for consideration at final hearing a matter which properly could have been raised by a motion under §§ 1.633 or 1.634 unless (1) the motion was properly filed, (2) the matter was properly raised by a party in an opposition to a motion under §§1.633 or 1.634 and the motion was granted over the opposition, or (3) the party shows good cause why the issue was not timely raised by motion or opposition.

(c) To prevent manifest injustice, the Board may consider an issue even though it would not otherwise be entitled to consideration under this section.

§ 1.656 Briefs for final hearing.

(a) Each party shall be entitled to file briefs for final hearing. The examiner-in-chief shall determine the briefs needed and shall set the time and order for filing briefs.

(b) The opening brief of a junior party shall contain under appropriate headings and in the order indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for decision in the interference.

(3) A statement of the facts relevant to the issues presented for decision with appropriate references to the record.

(4) An argument, which may be preceded by a summary, which shall contain the contentions of the party with respect to the issues to be decided, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on.

(5) A short conclusion stating the precise relief requested.

(6) An appendix containing a copy of the counts.

(c) The opening brief of the senior party shall conform to the requirements of paragraph (b) of this section except:

(1) a statement of the issues and of the facts need not be made unless the party is dissatisfied with the statement in the opening brief of the junior party and

(2) an appendix containing a copy of the counts need not be included if the copy of the counts in the opening brief of the junior party is correct.

(d) Briefs may be printed or typewritten. If typewritten, legal-size paper may be used. The opening brief of each party in excess of 50 legal-size double-spaced typewritten pages or any other brief in excess of 25 legal-size double-spaced typewritten pages shall be printed unless a satisfactory reason be given why the brief should not be printed. Any printed brief shall comply with the requirements of § 1.653(g). Any typewritten brief shall comply with the requirements of § 1.653(h), except legal-size paper may be used and the binding and covers specified are not required.

(e) An original and three copies of each brief must be filed.

(f) Any brief which does not comply with the requirements of this section may be returned under § 1.618(a).

(g) Any party, separate from its opening brief, but filed concurrently therewith, may file an original and three copies of concise proposed findings of fact and conclusions of law. Any proposed findings of fact shall be supported by specific references to the record. Any proposed conclusions of law shall be supported by citation of cases, statutes, or other authority. Any opposing party, separate from its opening or reply brief, but filed concurrently therewith, may file a paper accepting or objecting to any proposed findings of fact or conclusions of law; when objecting, a reason must be given. The Board may adopt the proposed findings of fact and conclusions of law in whole or in part.

(h) If a party wants the Board in rendering its final decision to rule on the admissibility of any evidence, the party shall file with its opening brief an original and three copies of a motion (§ 1.635) to suppress the evidence. The provisions of § 1.637(b) do not apply to a motion to suppress under this paragraph. Any objection previously made to the admissibility of an opponent's evidence is waived unless the motion required by this paragraph is filed. An original and three copies of an opposition to the motion may be filed with an opponent's opening brief or reply brief as may be appropriate.

(i) When a junior party fails to timely file an opening brief, an order may issue requiring the junior party to show cause why the Board should not treat failure to file the brief as a concession of priority. If the junior party fails to respond within a time period set in the order, judgment may be entered against the junior party.

§ 1.657 Burden of proof as to date of invention.

A rebuttable presumption shall exist that, as to each count, the inventors made their invention in the chronological order of the earlier of their filing dates or effective filing dates. The burden of proof shall be upon a party who contends otherwise.

§ 1.658 Final decision.

(a) After final hearing, the Board shall enter a decision resolving the issues raised at final hearing. The decision may (1) enter judgment, in whole or in part, (2) remand the interference to an examiner-in-chief for further proceedings, or (3) take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing the claims in the party's patent or application which correspond to the count. When the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision.

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within 14 days after the date of the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. Any reply to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. Where reasonably possible, service of the request for reconsideration shall be such that delivery is accomplished by hand or "Express Mail." The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of this section, the Board may designate the decision on the request for reconsideration as a new decision.

(c) A judgment in an interference settles all issues which (1) were raised and decided in the interference, (2) could have been properly raised and decided in the interference by a motion under § 1.633 (a) through (d) and (f) through (j) or § 1.634 and (3) could have been properly raised and decided in an additional interference with a motion under § 1.633(e). A losing party who could have properly moved, but failed to move, under §§ 1.633 or 1.634, shall be estopped to take *ex parte* or *inter partes* action in the Patent and Trademark Office after the interference which is inconsistent with that party's failure to properly move, except that a losing party shall not be estopped with respect to any claims which correspond, or properly could have corresponded, to a count as to which that party was awarded a favorable judgment.

§ 1.659 Recommendation.

(a) Should the Board have knowledge of any ground for rejecting any application claim not involved in the judgment of the interference, it may include in its decision a recommended rejection of the claim. Upon resumption of *ex parte* prosecution of the application, the examiner shall be bound by the recommendation and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection.

(b) Should the Board have knowledge of any ground for reexamination of a patent involved in the interference as to a patent claim not involved in the judgment of the interference, it may include in its decision a recommendation to the Commissioner that the patent be reexamined. The Commissioner will determine whether reexamination will be ordered.

(c) The Board may make any other recommendation to the examiner or the Commissioner as may be appropriate.

§ 1.660 Notice of reexamination, reissue, protest, or litigation.

(a) When a request for reexamination of a patent involved in an interference is filed, the patent owner shall notify the Board within 10 days of receiving notice that the request was filed.

(b) When an application for reissue is filed by a patentee involved in an interference, the patentee shall notify the Board within 10 days of the day the application for reissue is filed.

(c) When a protest under § 1.291 is filed against an application involved in an interference, the applicant shall notify the Board within 10 days of receiving notice that the protest was filed.

(d) A party in an interference shall notify the Board promptly of any litigation related to any patent or application involved in an interference, including any civil action commenced under 35 U.S.C. 146.

§ 1.661 Termination of interference after judgment.

After a final decision is entered by the Board, an interference is considered terminated when no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had.

§ 1.662 Request for entry of adverse judgment; reissue filed by patentee.

(a) A party may, at any time during an interference, request and agree to entry of an adverse judgment. The filing by an applicant or patentee of a written disclaimer of the invention defined by a count, concession of priority or unpatentability of the subject matter of a count, abandonment of the invention defined by a count, or abandonment of the contest as to a count will be treated as a request for entry of an adverse judgment against the applicant or patentee as to all claims which correspond to the count. Abandonment of an application by an applicant, other than an applicant for reissue having a claim of the patent sought to be reissued involved in the interference, will be treated as a request for entry of an adverse judgment against the applicant as to all claims corresponding to all counts. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

(b) If a patentee involved in an interference files an application for reissue during the interference and omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference, judgment may be entered against the patentee. A patentee who files an application for reissue other than for the purpose of avoiding the interference shall timely file a preliminary motion under § 1.633(h) or show good cause why the motion could not have been timely filed.

(c) The filing of a statutory disclaimer under 35 U.S.C. 253 by a patentee will delete any statutorily disclaimed claims from being involved in the interference. A statutory disclaimer will not be treated as a request for entry of an adverse judgment against the patentee unless it results in the deletion of all patent claims corresponding to a count.

§ 1.663 Status of claim of defeated applicant after interference.

Whenever an adverse judgment is entered as to a count against an applicant from which no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had, the claims of the application corresponding to the count stand finally disposed of without further action by the examiner. Such claims are not open to further *ex parte* prosecution.

§ 1.664 Action after interference.

(a) After termination of an interference, the examiner will promptly take such action in any application previously involved in the interference as may be necessary. Unless entered by order of an examiner-in-chief, amendments presented during the interference shall not be entered, but may be subsequently presented by the applicant subject to the provisions of this part provided prosecution of the application is not otherwise closed.

showing manifest error or an abuse of

other brief in excess of 25 legal-size

who contends otherwise.

(b) After judgment, the application of any party may be held subject to further examination, including an interference with another application.

§ 1.665 Second interference.

A second interference between the same parties will not be declared upon an application not involved in an earlier interference for an invention defined by a count of the earlier interference. See § 1.658(c).

§ 1.666 Filing of interference settlement agreements.

(a) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, must be in writing and a true copy thereof must be filed before the termination of the interference (§ 1.661) as between the parties to the agreement or understanding.

(b) If any party filing the agreement or understanding under paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(i) and on a showing of good cause.

(c) Failure to file the copy of the agreement or understanding under paragraph (a) of this section will render permanently unenforceable such agreement or understanding and any patent of the parties involved in the interference or any patent subsequently issued on any application of the parties so involved. The Commission may, however, upon petition accompanied by the fee set forth in § 1.17(h) and on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

§ 1.671 Evidence must comply with rules.

(a) Evidence consists of testimony and exhibits, official records and publications filed under § 1.682, evidence from another interference, proceeding, or action filed under § 1.683, and discovery relied upon under § 1.688, and the specification (including claims) and drawings of any application or patent:

(1) Involved in the interference.

(2) To which a party has been accorded benefit in the notice declaring the interference or by a preliminary motion granted under § 1.633.

(3) For which a party has sought, but has been denied, benefit by a preliminary motion under § 1.633.

(4) For which benefit was rescinded by a preliminary motion granted under § 1.633.

(b) Except as otherwise provided in this part, the Federal Rules of Evidence shall apply to interference proceedings. Those portions of the Federal Rules of Evidence relating to criminal actions, juries, and other matters not relevant to interferences shall not apply.

(c) Unless the context is otherwise clear, the following terms of the Federal Rules of Evidence shall be construed as follows:

(1) "Courts of the United States," "U.S. Magistrate," "court," "trial court," or "trier of fact" means examiner-in-chief or Board as may be appropriate.

(2) "Judge" means examiner-in-chief.

(3) "Judicial notice" means official notice.

(4) "Civil action," "civil proceeding," "action," or "trial," mean interference.

(5) "Appellate court" means United States Court of Appeals for the Federal Circuit or a United States district court when judicial review is under 35 U.S.C. 146.

(6) "Before the hearing" in Rule 703 means before giving testimony by oral deposition or affidavit.

(7) "The trial or hearing" in Rules 803(24) and 804(5) means the taking of testimony by oral deposition.

(d) Certification is not necessary as a condition to admissibility when the record is a record of the Patent and Trademark Office to which all parties have access.

(e) A party may not rely on an affidavit filed by that party during *ex parte* prosecution of an application, an affidavit under § 1.608(b), or an affidavit under § 1.639(b) unless: (1) A copy of the affidavit is or has been served and (2) a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit. When proper notice is given under this paragraph, the affidavit shall be deemed filed under § 1.672(b). A copy of the affidavit shall be included in the record (§ 1.653).

(f) The significance of documentary and other exhibits shall be discussed with particularity by a witness during oral deposition or in an affidavit.

(g) A party must file a motion (§ 1.635) seeking permission from an examiner-in-chief prior to taking testimony or seeking documents or things under 35 U.S.C. 24. The motion shall describe the general nature and the relevance of the testimony, document, or thing.

(h) Evidence which is not taken or sought and filed in accordance with this subpart shall not be admissible.

§ 1.672 Manner of taking testimony.

(a) Testimony of a witness may be taken by oral deposition or affidavit in accordance with this subpart.

(b) A party wishing to take the testimony of a witness whose testimony will not be compelled under 35 U.S.C. 24 may elect to present the testimony of the witness by affidavit or deposition. A party electing to present testimony of a witness by affidavit shall, prior to the close of the party's relevant testimony period, file and serve an affidavit of the witness or, where appropriate, a notice under § 1.671(e). To facilitate preparation of the record (§ 1.653 (g) and (h)), a party shall file an affidavit on paper which is 8½ by 11 inches (21.6 by 27.9 cm). A party shall not be entitled to rely on any document referred to in the affidavit unless a copy of the document is filed with the affidavit. A party shall not be entitled to rely on any thing mentioned in the affidavit unless the opponent is given reasonable access to the thing. A thing is something other than a document. After the affidavit is filed and within a time set by an examiner-in-chief, any opponent may file a request to cross-examine the witness on oral deposition. If any opponent requests cross-examination of an affiant, the party shall notice a deposition under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness whose testimony is presented by affidavit, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. A party electing to present testimony of a witness by deposition shall notice a deposition of the witness under § 1.673(a). The party who gives notice of a deposition shall be responsible for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676.

(c) A party wishing to take the testimony of a witness whose testimony will be compelled under 35 U.S.C. 24 must first obtain permission from an examiner-in-chief under § 1.671(g). If permission is granted, the party shall notice a deposition of the witness under § 1.673 and may proceed under 35 U.S.C. 24. The testimony of the witness shall be taken on oral deposition.

(d) Notwithstanding the provisions of this subpart, if the parties agree in writing, a deposition may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions.

(e) If the parties agree in writing, the testimony of any witness may be submitted in the form of an affidavit without opportunity for cross-examination. The affidavit of the witness shall be filed in the Patent and Trademark Office.

(f) If the parties agree in writing, testimony may be submitted in the form of an agreed statement setting forth: (1) How a particular witness would testify if called or (2) the facts in the case of one or more of the parties. The agreed statement shall be filed in the Patent and Trademark Office. See § 1.653(a).

§ 1.673 Notice of examination of witness.

(a) A party electing to take testimony of a witness by deposition shall, after complying with paragraphs (b) and (g) of this section, file and serve a single notice of deposition stating the time and place of each deposition to be taken. Depositions may be noticed for a reasonable time and place in the United States. Unless the parties agree in writing, a deposition may not be noticed for any other place without approval of an examiner-in-chief (see § 1.684). The notice shall specify the name and address of each witness and the general nature of the testimony to be given by the witness. If the name of a witness is not known, a general description sufficient to identify the witness or a particular class or group to which the witness belongs may be given instead.

(b) Unless the parties agree otherwise, a party shall serve, but not file, at least three days prior to the conference required by paragraph (g) of this section, if service is made by hand or "Express Mail," or at least ten days prior to the conference if service is made by any other means, the following:

(1) A list and copy of each document in the party's possession, custody, or control and upon which the party intends to rely at any deposition and

(2) A list of and a proffer of reasonable access to things in the party's possession, custody, or control and upon which the party intends to rely at any deposition.

(c) A party shall not be permitted to rely at any deposition on any witness not listed in the notice, or any document not served or any thing not listed as required by paragraph (b) of this section: (1) Unless all opponents agree in writing or on the record to permit the party to rely on the witness, document, or thing or (2) except upon a motion (§ 1.635) promptly filed which is accompanied by any proposed notice, additional documents, or lists and which shows sufficient cause why the notice, documents, or lists were not served in accordance with this section.

(d) Each opposing party shall have a full opportunity to attend a deposition and cross-examine. If an opposing party attends a deposition of a witness not named in a notice and cross-examines the witness or fails to object to the taking of the deposition, the opposing party shall be deemed to have waived any right to object to the taking of the deposition for lack of proper notice.

(e) A party electing to present testimony by affidavit and who is required to notice depositions for the purpose of cross-examination under § 1.672(b), shall, after complying with paragraph (g) of this section, file and serve a single notice of deposition stating the time and place of each cross-examination deposition to be taken.

(f) The parties shall not take depositions in more than one place at the same time or so nearly at the same time that reasonable opportunity to travel from one place of deposition to another cannot be had.

(g) Before serving a notice of deposition and after complying with paragraph (b) of this section, a party shall have an oral conference with all opponents to attempt to agree on a mutually acceptable time and place for conducting the deposition. A certificate shall appear in the notice stating that the oral conference took place or explaining why the conference could not be had. If the parties cannot agree to a mutually acceptable place and time for conducting the deposition at the conference, the parties shall contact an examiner-in-chief who shall then designate the time and place for conducting the deposition.

(h) A copy of the notice of deposition shall be attached to the certified transcript of the deposition filed under § 1.676(a).

§ 1.674 Persons before whom depositions may be taken.

(a) Within the United States or a territory or insular possession of the United States a deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) Unless the parties agree in writing, the following persons shall not be competent to serve as an officer: (1) A relative or employee of a party, (2) a relative or employee of an attorney or agent of a party, or (3) a person interested, directly or indirectly, in the interference either as counsel, attorney, agent, or otherwise.

§ 1.675 Examination of witness, reading and signing transcript of deposition.

(a) Each witness before giving an oral deposition shall be duly sworn according to law by the officer before whom the deposition is to be taken.

(b) The testimony shall be taken in answer to interrogatories with any questions and answers recorded in their regular order by the officer or by some other person, who shall be subject to the provisions of § 1.674(b), in the presence of the officer unless the presence of the officer is waived on the record by agreement of all parties.

(c) All objections made at the time of the deposition to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, or any other objection to the proceeding shall be noted on the record by the officer. Evidence objected to shall be taken subject to any objection.

(d) Unless the parties agree in writing or waive reading and signature by the witness on the record at the deposition, when the testimony has been transcribed a transcript of the deposition shall be read by the witness and then signed by the witness in the form of: (1) An affidavit in the presence of any notary or (2) a declaration.

§ 1.676 Certification and filing by officer, marking exhibits.

(a) The officer shall prepare a certified transcript of the deposition by attaching to a transcript of the deposition a copy of the notice of deposition, any exhibits to be annexed to the certified transcrip, and a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before commencement of testimony by the witness.

(2) The transcript is a true record of the testimony given by the witness.

(3) The name of the person by whom the testimony was recorded and, if not recorded by the officer, whether the testimony was recorded in the presence of the officer.

(4) The presence or absence of any opposing party.

(5) The place where the deposition was taken and the day and hour when the deposition began and ended.

(6) The officer is not disqualified under § 1.674.

(b) If the parties waived any of the requirements of paragraph (a) of this section, the certificate shall so state.

accorded benefit in the notice declaring

testimony, document, or thing.

taken on oral deposition.

in writing or on the record to permit the

relative or employee of an attorney or

section, the certificate shall so state.

(c) The officer shall note on the certificate the circumstances under which a witness refuses to sign a transcript.

(d) Unless the parties agree otherwise in writing or on the record at the deposition, the officer shall securely seal the certified transcript in an envelope endorsed with the style of the interference (e.g., Smith v. Jones), the interference number, the name of the witness, and the date of sealing and shall promptly forward the envelope to BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, D.C. 20231. Documents and things produced for inspection during the examination of a witness, shall, upon request of a party, be marked for identification and annexed to the certified transcript, and may be inspected and copied by any party, except that if the person producing the documents and things desires to retain them, the person may: (1) Offer copies to be marked for identification and annexed to the certified transcript and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals or (2) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the documents and things may be used in the same manner as if annexed to the certified transcript. The exhibits shall then be filed as specified in § 1.653(i). If the weight or bulk of a document or thing shall reasonably prevent the document or thing from being annexed to the certified transcript, it shall, unless waived on the record at the deposition by all parties, be authenticated by the officer and fowarded to the Commissioner in a separate package marked and addressed as provided in this paragraph.

§ 1.677 Form of a transcript of deposition.

(a) A transcript of a deposition must be typewritten on opaque, unglazed, durable paper approximately 8½ by 11 inches (21.8 by 27.9 cm.) in size (letter size). Typing shall be double-spaced on one side of the paper in not smaller than pica-type with a margin of 1½ inches (3.8 cm.) on the left-hand side of the page. The pages must be consecutively numbered throughout the entire record of each party (§ 1.653(d)) and the name of the witness must be typed at the top of each page (§ 1.653(e)). The questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used and each question must be followed by its answer.

(b) Exhibits must be numbered consecutively and each must be marked as required by § 1.653(i).

§ 1.678 Transcript of deposition must be filed.

Unless otherwise ordered by an examiner-in-chief, a certified transcript of a deposition must be filed in the Patent and Trademark Office within 45 days from the date of the deposition. If a party refuses to file a certified transcript, the examiner-in-chief or the Board may take appropriate action under § 1.616. If a party refuses to file a certified transcript, any opponent may move for leave to file the certified transcript and include a copy of the transcript as part of the opponent's record.

§ 1.679 Inspection of transcript.

A certified transcript filed in the Patent and Trademark Office may be inspected by any party. The certified transcript may not be removed from the Patent and Trademark Office for printing (§ 1.653(g)) unless authorized by an examiner-in-chief upon such terms as may be appropriate.

§ 1.682 Official records and printed publications.

(a) A party may introduce into evidence, if otherwise admissible, any official record or printed publication not identified on the record during the taking of testimony of a witness, by filing a notice offering the official record or publication into evidence. If the evidence relates to the party's case-in-chief, the notice shall be filed prior to close of testimony of the party's case-in-chief. If the evidence relates to rebuttal, the notice shall be filed prior to the close of testimony of the party's case-in-rebuttal. The notice shall: (1) Identify the official record or printed publication, (2) identify the portion thereof to be introduced in evidence, (3) indicate generally the relevance of the portion sought to be introduced in evidence, and (4) where appropriate, be accompanied by a certified copy of the official record or a copy of the printed publication (§ 1.671(d)).

(b) A copy of the notice, official record, and publication shall be served.

(c) Unless otherwise ordered by an examiner-in-chief, any written objection to the notice or to the admissibility of the official record or printed publication shall be filed within 15 days of service of the notice. See also § 1.656(h).

§ 1.683 Testimony in another interference, proceeding, or action.

(a) Prior to close of a party's appropriate testimony period or within such time as may be set by an examiner-in-chief, a party may file a motion (§ 1.635) for leave to use in an interference testimony of a witness from another interference, proceeding, or action involving the same parties, subject to such conditions as may be deemed appropriate by an examiner-in-chief. The motion shall specify with particularity the exact testimony to be used and shall demonstrate its relevance.

(b) Any objection to the admissibility of the testimony of the witness shall be made in an opposition to the motion. See also § 1.656(h).

§ 1.684 Testimony in a foreign country.

(a) An examiner-in-chief may authorize testimony of a witness to be taken in a foreign country. A party seeking to take testimony in a foreign country shall, prior to the close of the party's appropriate testimony period or within such time as may be set by an examiner-in-chief, file a motion (§ 1.635):

(1) Naming the witness.

(2) Describing the particular facts to which it is expected that the witness will testify.

(3) Stating the grounds on which the moving party believes that the witness will so testify.

(4) Demonstrating that the expected testimony is relevant.

(5) Demonstrating that the testimony cannot be taken in this country at all or cannot be taken in this country without hardship to the moving party greatly exceeding the hardship to which all opposing parties will be exposed by the taking of the testimony in a foreign country.

(6) Accompanied by an affidavit stating that the motion is made in good faith and not for the purpose of delay or harassing any party.

(7) Accompanied by written interrogatories to be asked of the witness.

(b) Any opposition under § 1.638(a) shall state any objection to the written interrogatories and shall include any cross-interrogatories to be asked of the witness. A reply under § 1.638(b) may be filed and shall be limited to stating any objection to any cross-interrogatories proposed in the opposition.

(c) If the motion is granted, the moving party shall be responsible for obtaining answers to the interrogatories and cross-interrogatories before an officer qualified to administer oaths in the foreign country under the laws of the United States or the foreign country. The officer shall prepare a transcript of the interrogatories, cross-interrogatories, and recorded answers to the interrogatories and cross-interrogatories

and shall transmit the transcript to BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, D.C. 20231, with a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before answering the interrogatories and cross-interrogatories.

(2) The recorded answers are a true record of the answers given by the witness to the interrogatories and cross-interrogatories.

(3) The name of the person by whom the answers were recorded and, if not recorded by the officer, whether the answers were recorded in the presence of the officer.

(4) The presence or absence of any party.

(5) The place, day, and hour that the answers were recorded.

(6) A copy of the recorded answers was read by or to the witness before the witness signed the recorded answers and that the witness signed the recorded answers in the presence of the officer. The officer shall state the circumstances under which a witness refused to read or sign recorded answers.

(7) The officer is not disqualified under § 1.674.

(d) If the parties agree in writing, the testimony may be taken before the officer on oral deposition.

(e) A party taking testimony in a foreign country shall have the burden of proving that false swearing in the giving of testimony is punishable as perjury under the laws of the foreign country. Unless false swearing in the giving of testimony before the officer shall be punishable as perjury under the laws of the foreign country where testimony is taken, the testimony shall not be entitled to the same weight as testimony taken in the United States. The weight of the testimony shall be determined in each case.

§ 1.685 Errors and irregularities in depositions.

(a) An error in a notice for taking a deposition is waived unless a motion (§ 1.635) to quash the notice is filed as soon as the error is, or could have been, discovered.

(b) An objection to a qualification of an officer taking a deposition is waived unless:

(1) The objection is made on the record of the deposition before a witness begins to testify.

(2) If discovered after the deposition, a motion (§ 1.635) to suppress the deposition is filed as soon as the objection is, or could have been, discovered.

(c) An error irregularity in the manner in which testimony is transcribed, a certified transcript is signed by a witness, or a certified transcript is prepared, signed, certified, sealed, indorsed, forwarded, filed, or otherwise handled by the officer is waived unless a motion (§ 1.635) to suppress the deposition is filed as soon as the error or irregularity is, or could have been, discovered.

(d) An objection to the competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Any objection which a party wishes considered by the Board at final hearing shall be included in a motion to suppress under § 1.656(h).

(e) Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an examiner-in-chief or the Board.

§ 1.687 Additional discovery.

(a) A party is not entitled to discovery except as authorized in this subpart.

(b) Where appropriate, a party may obtain production of documents and things during cross-examination of an opponent's witness or during the testimony period of the party's case-in-rebuttal.

(c) Upon a motion (§ 1.635) brought by a party within the time set by an examiner-in-chief under § 1.651 or thereafter as authorized by § 1.645 and upon a showing that the interest of justice so requires, an examiner-in-chief may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery.

(d) The parties may agree to discovery among themselves at any time. In the absence of an agreement, a motion for additional discovery shall not be filed except as authorized by this subpart.

§ 1.688 Use of discovery.

(a) If otherwise admissible a party may introduce into evidence, an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer. If the answer relates to a party's case-in-chief, the answer shall be filed prior to the close of testimony of the party's case-in-chief. If the answer relates to the party's rebuttal, the admission or answer shall be filed prior to the close of testimony of the party's case-in-rebuttal. Unless otherwise ordered by an examiner-in-chief, any written objection to the admissibility of an answer shall be filed within 15 days of service of the answer.

(b) A party may not rely upon any other matter obtained by discovery unless it is introduced into evidence under this subpart.

Dated: November 8, 1984.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 84-32145 Filed 12-11-84; 8:45 am]

BILLING CODE 3510-16-M

answer.

such time as may be set by an examiner-

interrogatories and cross-interrogatories

federal register

Wednesday
December 12, 1984

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Selective Enforcement Auditing of New Gasoline-Fueled and Diesel Light-Duty Vehicles; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-2695-6]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Selective Enforcement Auditing of New Gasoline-Fueled and Diesel Light-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the regulations governing Selective Enforcement Auditing (SEA) of new gasoline and diesel-fueled light-duty vehicles (LDVs). Regulations which will be affected by this rulemaking are codified in Subparts A and G of 40 CFR Part 86. The main purpose of these amendments is to replace the "batch" sampling plans used in current SEAs with "sequential" sampling plans. The sequential sampling plan is already in effect for SEA testing of light-duty trucks (LDTs) under Subpart K. *See* 45 FR 1406 (January 12, 1983). In addition, these amendments are intended to clarify specific aspects of the existing regulations and to improve the efficiency of the LDV SEA program. Each amendment and the reason for its implementation are described in the accompanying chart. The more significant amendments are described in detail in the **SUPPLEMENTARY INFORMATION** section.

EFFECTIVE DATE: This final rule is effective January 11, 1985.

ADDRESS: Copies of materials relevant to this rulemaking are contained in Public Docket EN–80–6 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby/Gallery 1, 401 M Street SW., Washington, D.C. 20460, and are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Sinkez, Manufacturers Operations Division [EN–340], U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Telephone number: (202) 382–4104.

SUPPLEMENTARY INFORMATION:

I. Background

A notice of proposed rulemaking (NPRM) was published on March 9, 1984. The public comment period closed May 8, 1984. Eight LDV manufacturers submitted written comments. The comments have been analyzed, and this final rulemaking action is based on the analysis. The EPA staff has summarized and responded to the comments in a document called "Summary and Analysis of Comments" that is available in the Public Docket (see ADDRESS above).

II. More Significant Amendments

The following is a description of the more significant amendments and an abbreviated discussion of the respective comments. The changes include paragraph citations adjacent to each of the headings. These citations refer to the amendment discussed under that heading.

A. Sampling Plans (§ 86.610, Appendix XI (Appendix XIII in NPRM Is Redesignated as Appendix XI), Miscellaneous Paragraphs)

The objective of an SEA is to determine, on a probabilistic basis, whether a certain minimum percentage of the manufacturer's production of a specific LDV configuration is meeting the appropriate emission standards over the designated useful life. Because of the statistical nature of this decision, there is some chance that a manufacturer who is actually in compliance will fail an audit, and likewise it is possible that a manufacturer who is largely out of compliance will pass. The SEA sampling plan has been designed to control these risks at the following levels: a manufacturer with no more than 40 percent of its vehicles exceeding a standard will have no more than a 5 percent chance of failing with respect to the standard (5 percent "producer's risk" at a 40 percent noncompliance rate); a manufacturer with 65 percent or more of its vehicles exceeding a standard will have no more than a 10 percent chance of passing (10 percent "consumer's risk" at a 65 percent noncompliance rate).

EPA is implementing new sampling plans for SEA testing under Subpart G that may significantly decrease a manufacturer's emission testing burden while maintaining the statistical confidence in the decision reached. Attendant costs both to the Agency and the manufacturers should be lowered. An EPA analysis of 1982 and 1983 model year SEA emission tests indicates that approximately 27 percent fewer tests would have been conducted under the sequential sampling technique. This analysis, entitled "Potential Test Savings Using a Sequential Sampling Plan for Conducting Selective Enforcement Audits," is available in the Public Docket for this rulemaking.

Presently, the sampling plan requires that the population of test vehicles be subdivided into "batches." Under the sequential sampling plan, the test vehicles may be selected all at once or a few at a time, resulting in a more efficient use of manufacturer and EPA resources.

Under the sequential sampling plan, it is possible to make a "pass/fail" decision regarding the outcome of the audit after testing each vehicle in the test sample, although a minimum number of vehicles must be tested. The sequential sampling plans thus employ "sequential" decision rules. These plans are identical to those presently in effect for testing heavy-duty engines (HDEs) and LDTs under Subpart K.

The sequential sampling plans have several advantages over the fixed size ("batch") plans currently specified in Appendix VIII and used in the current Subpart G program. An audit decision can often be made after conducting fewer tests than would be required for a fixed-size sampling plan of comparable statistical validity. The need to have large sample populations of the desired configuration available in order to select the requisite number of batches is eliminated. The possibility of holding large numbers of test vehicles for the duration of the audit, most of which will not normally require testing, will be diminished. The sequential sampling plans also have simpler decision rules than do the fixed-size plans, thereby easing administration.

Tables for determining the audit outcome are given in Appendix XI and are used in the following manner. First, the appropriate sampling plan code letter will be selected on the basis of the projected annual sales of the configuration to be tested. Vehicles are then selected from the production line or storage facility and tested in this same sequence at the laboratory. After each test, the number of vehicles with emission test results (with deterioration factor applied) exceeding the standard are compared to the pass and fail number appropriate to the number of vehicles tested. On the basis of this comparison, a decision will be made to pass, fail, or to select another vehicle for testing. A minimum number of vehicles, however, must be tested before a pass or fail audit decision can be reached. All the decision rules have a maximum test sample size and will usually terminate before that point.

A support document entitled "An Analytical Development of Sampling Plans for Selective Enforcement Auditing of Light-Duty Vehicles and Light-Trucks" is available in the Public Docket for this rulemaking.

All of the manufacturers that commented on the proposed sequential sampling plans overwhelmingly supported their implementation. They cited the decreased testing burden as the principal reason.

B. Entry and Access (§§ 86.084–30(d)(1)(v), 86.606)

The entry and access requirements related to SEA are amended to allow EPA Enforcement Officers to enter a facility through the voluntary consent of the party controlling the facility or under the authority of a warrant or court order. This warrant or court order may be sought *ex parte*, without first requesting permission to enter a plant. Neither suspension nor revocation of a certicate of conformity nor assessment of a civil penalty may be imposed if permission to enter or have access is refused, unless authority to conduct these activities is specifically provided for in a warrant or court order.

These amendments are intended to implement that portion of the Supreme Court decision in *Marshall* v. *Barlow's Inc.*, 436 U.S. 307 (1978); which requires, in many cases, that a Federal agency obtain a valid warrant or court order to conduct inspection activities if entry has been denied.

The revision of § 86.606 also deletes old paragraph § 86.606(e)(5), which provided that a test order issued without 24 hours prior notice to the manufacturer must be authorized by the EPA Assistant Administrator for Enforcement, even though other test orders could be signed by ". . . the Assistant Administrator . . . or his designee . . ." under § 86.603(b). (Paragraph § 86.603(b) has been changed to designate the Assistant Administrator for Air and Radiation because of an Agency reorganization.) Regardless of which EPA official signs short notice test orders under the amended rule, manufacturers are protected against unreasonable entry by the warrant or court order requirements of the revised § 86.606. In addition, this deletion makes § 86.606 consistent with the Subpart K version of this section (§ 86.1006–84, 45 FR 63774 (September 25, 1980)) and may ease some paperwork burdens for EPA.

One manufacturer commented that the proposed wording of the regulations was not consistent with the decision in *Marshall* v. *Barlow's Inc.* General Motors Corporation (GM) stated that EPA must seek voluntary permission to enter a facility before obtaining a warrant. Also, GM stated that EPA does not have authority to enter an emission-related component facility, as was proposed.

EPA has carefully considered GM's comments. With regard to the *Barlow's* decision, subsequent cases make clear that there is no requirement that EPA seek voluntary access before seeking a warrant *ex parte*. In response to GM's comment that EPA does not have authority to enter an emission-related component facility, EPA has authority to enter such facilities owned or operated by manufacturers under, and for the purposes stated in, section 206(c) of the Clean Air Act (Act). For non-manufactures, EPA has the authority to conduct such inspections under, and for the purposes stated in, section 114 of the Act. Therefore, EPA retains this amendment in the final rule.

C. Entry and Access in Foreign Jurisdictions (§§ 86.084–30(d)(1)(v), 86.606)

Foreign testing and manufacturing facilities should be located in jurisdictions that will permit entry and access of Agency personnel for SEA purposes. The amendment clarifies that the Administrator may suspend a certificate of conformity when EPA is unable to have entry and access, or to obtain "reasonable assistance" in inspecting premises because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits entry and access to EPA Enforcement Officers. In this situation, EPA cannot be assured that testing is being performed properly and that test results are being reported accurately, and thus cannot be assured that production vehicles are being manufactured in conformance to regulations with respect to the issued certificate of conformity. No attempt to enter such permises need be made before the Administrator may suspend the relevant certificate for this reason.

Two manufacturers were opposed to this proposal. GM stated that the Clean Air Act does not authorize EPA to require that manufacturers locate plants in accessible jurisdictions. Ford Motor Company (Ford) stated that it has no power over foreign governments and pointed out that the vehicles are available to EPA at the port of entry in the U.S.

Section 206(b)(1) of the Clean Air Act authorizes the Administrator to determine by testing whether new motor vehicle or new motor vehicle engines conform to regulations with respect to the issued certificate of conformity. Such tests must be conducted by the manufacturer in accordance with conditions specified by the Administrator. To ensure that manufacturers are conducting tests in the required manner, EPA believes that it is necessary that the manufacturers' foreign plants be accessible to EPA inspectors and that sections 206(b) and 301 of the Act authorize EPA to provide for suspension of a certificate where a manufacturer locates a plant in a jurisdiction where access is impossible. This provision is a logical extension of the current regulation (§ 86.084–30(d)(1)) which authorizes suspension whenever EPA is denied access or reasonable assistance.

EPA understands that an unforeseeable situation may arise in a foreign country which would prevent EPA from gaining access and entry to a manufacturer's plant. The SEA regulations state that no suspension would be issued until after the manufacturer has been offered an opportunity for a hearing. EPA retains this provision in the final rulemaking.

D. Manufacturer's Test Data (§ 86.605(c), Appendix XIV)

In the NPRM, EPA proposed to mandate the submission of manufacturers' internal quality audit data from their emission testing programs on production vehicles. In addition, EPA proposed that the submissions be in a standard format on an Automatic Data Processing (ADP) storage device. Manufacturers currently conducting such a program are voluntarily submitting their data to EPA in paper form. The data from these programs, when submitted to EPA, assist in providing the Agency with the assurance that manufacturers are producing engines and vehicles in compliance with applicable emission regulations.

Several manufacturers were strongly opposed to EPA's proposal to require the submission of data. GM strongly objected to mandatory submissions because it is concerned that the data will be used for enforcement activities, despite the fact that their audit emission testing of new production vehicles is not performed in a manner which necessarily correlates with either certification or SEA procedures. Toyota Motor Corporation (Toyota) believes that it is not equitable to place the burden of mandatory submission on manufacturers that voluntarily conduct assembly line testing, and that any additional burden may prompt manufacturers to discontinue assembly line testing programs. Volkswagen of America (VW) stated that the submission of test data should be the manufacturer's option.

The Office of Management and Budget (OMB), in its review of EPA's Information Collection Request (ICR)

associated with the NPRM, commented that mandating the reporting of voluntary audits may create negative incentives for the manufacturers, which would not improve EPA's program implementation.

Consequently, based on the comments received, EPA is deleting this requirement in the final rule. While the submission of emissions test data is critical to EPA's SEA program implementation, EPA has no reason to believe that the current SEA program would be improved by mandating that manufacturers submit their emissions test data, given that the data generally is voluntarily submitted. Also, it appears that EPA may be able to exercise the authority of section 208(a) of the Clean Air Act to require submission of certain data, when necessary, should a manufacturer discontinue submitting data voluntarily.

EPA will attempt to work with interested manufacturers in setting up a voluntary ADP program with the hope that in the long term this system of submitting data will be efficient and cost effective for both EPA and the manufacturers. This program will be coordinated by EPA outside of this rulemaking.

E. Production Changes During SEA (§§ 86.607(b), 86.609(d)(6))

To determine emission compliance during SEA, a representative sample of LDVs of a particular configuration is selected during the audit from the total population of that configuration which is manufactured during the model year. The selected units are then tested for emissions, according to the procedures specified in § 86.608. The design of the sequential sampling plans allows EPA to deduce the overall emissions compliance of the population from the few units that are sampled and tested.

To ensure that vehicles tested during an audit are representative of normal production, EPA has placed certain restrictions on the selection of the test sample. These restrictions are specified in paragraphs (b) and (c) of § 86.607: "The manufacturer shall have assembled the test vehicles of the configuration selected for testing using its normal production processes for vehicles to be distributed into commerce;" and "No quality control, testing, or assembly procedures will be used on the completed test vehicles or any portion thereof that has not been or will not be used during the production and assembly of all other vehicles of that configuration." The intent of these paragraphs is to assure that a manufacturer does not institute special assembly line procedures, such as increased quality control inspections, solely for the purpose of checking SEA test vehicles and thereby artificially increasing the chances of passing the audit.

Test sample data would provide little confidence in the emission compliance of the entire configuration if the test sample is unrepresentative of the procedures by which the test configuration is normally assembled. To provide EPA with a high degree of confidence that this situation will not occur, these amendments require that a manufacturer notify the Agency if it makes any changes to production processes involving the test configuration, at any time between the receipt of the test order and the completion of test sample selection. In addition, the manufacturer must affirm in writing, as part of its SEA report endorsement statement, that no such changes have been made.

Several manufacturers interpreted this proposal as a requirement to report *any* changes made on the assembly line between receipt of the test order and completion of test sample selection. They commented that this requirement created excessive reporting burdens due to the complexity of the production processes. In the NPRM, a comma was inadvertently omitted and this may have caused some confusion. This oversight has been corrected by inserting a comma between "control" and "which" in § 86.607(b) of the final rule. EPA retains this proposal in the final rule and intends that manufacturers notify the Agency of any changes implemented in its production processes which may reasonably be expected to affect the emissions of the vehicles selected.

F. Testing of Alternate Configurations (§ 86.603(c)(1))

The present SEA program under Subpart G allows for the selection and testing of the alternate configuration, if any, specified in the test order only when the primary configuration is clearly not available. However, even under the more flexible sequential sampling plans, testing of the primary configuration may still cause delays in completing an audit if production of this configuration is lower than the minimum daily SEA testing requirement of four LDVs. In the interest of conserving both EPA and manufacturer resources, these amendments allow the selection and testing of the alternate configuration if production of the primary configuration is below this minimum requirement. Ford supported this proposal. No other comments were submitted.

G. Sales Projections (§§ 86.603(e), 86.610(c))

Sales projections are used in the SEA program (1) to determine a manufacturer's annual quota of audits and (2) to select the appropriate sampling plan (tables 2–5 in Appendix XI). For LDVs, sales projections previously were obtained from the manufacturer's Application for Certification submitted under 40 CFR Part 86, Subpart A. Subsequent revisions to the certification program have deleted the requirement that manufacturers provide sales projections in the Applications for Certification. However, manufacturers are currently required to submit sales projections under the Automobile Fuel Economy Regulations (40 CFR Part 600) and, therefore, EPA will utilize the sales projections required in the Fuel Economy Regulations to obtain the desired sales projections, a practice which is now informally conducted.

These amendments also allow manufacturers to submit updated sales projections during the model year. This provision will permit audit quotas and sampling plan code letter selections to be based on the most up-to-date sales information available.

One manufacturer commented that a recent revision to the Fuel Economy Regulations deleted the requirement to submit sales projections, and recommended that manufacturers be required to submit sales projections separately. EPA recently revised the Corporate Average Fuel Economy (CAFE) reporting requirements to delete the requirement that manufacturers submit a preliminary CAFE report. However, the requirement for submitting sales projections is unchanged and is contained in 40 CFR § 600.207–80 of the Fuel Economy Regulations.

H. Predelivery Preparations (§ 86.608(b)(1))

This amendment deletes the provision allowing manufacturers to automatically perform dealer or predelivery center preparation procedures. Dealer surveys conducted by EPA indicate that in several cases dealer preparations were not performed or were not performed correctly. A document entitled "Analysis of Dealer Surveys" is available in the Public Docket for this rulemaking.

Through this amendment, EPA endeavors to ensure that test vehicles represent production vehicles at the point they are introduced into commerce. However, a dealer preparation procedure may be performed if it is approved in advance by the EPA Administrator. EPA approval will be facilitated if the manufacturer provides sufficient dealer survey data or other documented evidence to allow EPA to conclude that the procedures are actually being correctly performed at dealerships.

Four manufacturers were opposed to this proposal to restrict predelivery preparations on SEA test vehicles. GM stated that the results of EPA's dealer surveys were an inadequate justification for restricting predelivery procedures. Ford recommended that fluid level checks and break-in mileage be allowed. Chrysler stated that it requires dealers to perform predelivery preparations. American Motors Corporation (AMC) stated that EPA has provided no guidance for the manufacturer to demonstrate that predelivery procedures are being performed.

EPA believes that the results of its dealership surveys are a valid representation of what is taking place under "real world" conditions. SEA vehicles that have undergone dealer preparation procedures will represent "real world" conditions to the extent that these procedures are actually and correctly performed by dealers. The amended regulation allows the manufacturer to perform predelivery preparations based upon evidence sufficient to allow EPA to conclude that the procedures are being performed. EPA will consider a manufacturer's own survey data or other satisfactory documentation when making such a determination. A manufacturer's statement that the dealers are required to perform predelivery procedures is insufficient for EPA to determine that the procedures are being performed.

EPA intends to allow safety-related checks of the test vehicles, such as checks of fluid levels, brake lines and lights, as is currently allowed for SEAs of LDTs under Subpart K. This amendment does not change any provisions regarding mileage accumulation and, therefore, break-in mileage is allowed.

I. Retesting (§§ 86.608(i), 86.612(b))

The present paragraph (i) of § 86.608 allows a manufacturer to retest any test vehicle. Permitting a manufacturer to retest a test vehicle before an actual audit failure has occurred can delay the audit, increasing attendant costs to both the Agency and the manufacturer. However, in a few other cases, it may be expeditious to allow retesting before a fail decision is reached, particularly when using sequential sampling plans. The revision of paragraph (i) allows for the latter situation. The Administrator may approve retesting at certain times during the audit based upon a request by the manufacturer accompanied by a satisfactory justification.

EPA is revising paragraph (b) of § 86.612 to allow EPA, at its discretion, to suspend or revoke a certificate based on a failure of a single test on each vehicle in the test sequence, i.e., before any retesting has begun. This revision is intended to avoid unnecessary delays in the audit when the initial test results indicate that retesting will have little effect on the ultimate audit decision. For example, if the emission results after one test on each vehicle in the sequence exceed the applicable emission standard by a large magnitude, such as two or three times the standard, then retesting and averaging the two tests on each vehicle could not lower the final emission result enough to "pass" the audit.

In all cases, the certificate of conformity may not be suspended before ten days after the audit failure. If the manufacturer needs additional time (beyond ten days) to rectify the nonconformity which produced the SEA failure, it is encouraged to notify the Agency.

Two manufacturers commented on this proposal. GM stated that manufacturers should have the option of retesting on a vehicle-by-vehicle basis. Chrysler suggested that retesting be allowed after a failure but before suspension or revocation of a certificate of conformity unless the results are so high that it would be statistically impossible to pass a retest.

To permit a manufacturer to retest at any time may unnecessarily delay the audit. To allow some vehicles to be tested more times than others will bias the test results from a statistical viewpoint because of inherent test-to-test variability.

However, EPA will allow retesting before suspension or revocation of a certificate of conformity in those situations where it appears that retesting may reverse an initial audit failure.

III. Less Significant Amendments

In addition to the more significant amendments discussed in the previous section, EPA is implementing several less significant technical and procedural amendments. These amendments are intended to clarify specific aspects of the existing regulations and to improve the efficiency with which the LDV SEA program will be conducted in the future. Some minor comments on the less significant amendments were received and are addressed in the Summary and Analysis of Comments.

Each amendment contained in this final rule and the reason for its implementation are described in the chart at the end of this preamble.

Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that this regulation is not "Major" for the following reasons:

(1) The SEA amendments will not result in an annual effect on the economy of $100 million or more. The majority of these amendments are administrative and will have no measurable cost impact. Some amendments, such as those discussed in the SUPPLEMENTARY INFORMATION section under the headings of "sampling plans," "retesting", and "testing of alternate configurations," are intended to expedite the completion of audits through a reduced testing burden and should therefore save manufacturer and EPA resources.

(2) Because of the limited cost impact and expected cost savings of these amendments due to the reduced testing burden, this rulemaking will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local governments, or geographic regions.

(3) Due to its limited cost impact and its applicability to all LDV manufacturers, both domestic and foreign, EPA does not expect this rulemaking to have any significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. manufacturers to compete with foreign manufacturers in domestic or export markets.

Compliance With Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, EPA is required to perform a regulatory flexibility analysis of any regulation unless the Administrator certifies that the regulation will not have a significant impact on a substantial number of small entities. Most of the manufacturers affected by these amendments are not small entities and the amendments will not increase compliance costs for those few manufacturers that might be considered small.

Therefore, I hereby certify, pursuant to 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Agency has not

assembly line procedures, such as

comments were submitted.

preparation procedure may be

the latter situation. The Administrator

Analysis of Comments.

Accordingly, the Agency has not

prepared a regulatory flexibility analysis to accompany this rule.

Office of Management and Budget Review

As required by Executive Order 12291, this regulation has been reviewed by the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any OMB comments and EPA's response to those comments are available for inspection in the Public Docket for this rulemaking.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0064. The modifications contained in this rule result in a slight reduction of respondent burden.

List of Subjects in 40 CFR Part 86

Intergovernmental relations, Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Secs. 206(b), 208(a), 301(a), Clean Air Act, as amended (42 U.S.C. 7525(b), 7542(a), 7601(a)).

Dated: November 30, 1984.

William D. Ruckelshaus,

Administrator.

SEA LDV AMENDMENTS EXPLANATION OF AMENDMENTS AND REVISIONS

Section	Paragraph	Changes	Reason
§ 86.078–6	(a)(1), (a)(3), (b)(1)	Reference to 86.084–30 becomes 86.084–30 (b) or (c)	Paragraph 86.084–30(d) refers to SEA, which has separate hearing procedures
§ 86.084–30	(d)(1)(v)	Added requirement for warrant or court order for entry and access (E&A) activities.	Requirements of Supreme Court decision in *Marshall* v *Barlow's, Inc*
	(d)(1)(vi)	Added suspension provision for facilities in foreign jurisdiction where SEA activities are prohibited	Clarifies foreign location requirements.
		Deleted specific entry and access activities in old (d)(1)(vi)	All E&A activities covered under new (d)(1)(v)
	(d)(1)(vii)	Deleted old (d)(1)(vii)	All E&A activities covered under new (d)(1)(v)
		Revised section references in old (d)(1)(viii)	Section numbers changed because of new sampling plans.
	(d) (2), (3)	Revised paragraph (d)(1) references	Restructured sub-paragraphs under (d)(1)
	(d)(5)(i)	Deleted references to paragraphs (d)(1)(vi), (vii)	Restructured sub-paragraphs under (d)(1)
	(d)(6)(ii)	§ 86.613 becomes § 86.614	Change in section designations
	(d)(7)	New provision to allow manufacturer opportunity for hearing before voiding a certificate.	Provides manufacturer with opportunity for a hearing before a sanction may be imposed.
§ 86.602	(a), (b)	Deleted definitions related to batch type sampling plans. Clarified definitions of "Test Sample", "Inspection Criteria", and "Vehicle". Added definitions of "Axle Ratio" and "Configuration"	New sampling plans being proposed. Axle Ratios within ±3% are expected to have similar emission characteristics. Define "Configuration" for purpose of SEA Test Order.
§ 86.603	(b)	Revised Assistant Administrator (AA) who can sign test orders "Enforcement" becomes "Air and Radiation". Revised old paragraph (e) and added to the end of paragraph (b) to require compliance with test order instructions.	Environmental Protection Agency reorganization. CAA obligates manufacturers to comply with instructions in the test order
	(b)	Added statement to allow for delivery of test order to assembly plants.	Formalizes procedure EPA currently employs in practice
	(c)(1)	Deleted references to batch selection. Added Assistant Administrator for Air and Radiation discretion in selecting alternate configuration if production of primary configuration is less than four vehicles per day.	Not applicable to new sampling plans. Expedites audits by ensuring that at least four vehicles per day are available for testing.
	(c)(2)	Previously standardized test order instructions and information are being placed in the regulations.	EPA requirements for each audit are being formalized to greatest extent practical
	(e)	Revision of old paragraph (f). Sales projections in the Fuel Economy Report will be used to determine annual limit on SEA test orders. New provision allowing manufacturers to update their annual sales projections.	To provide a source of this information due to a change in the content of the manufacturer's Application for Certification. The manufacturer's annual limit would be based on most current production trends.
	(e)(1)	Revision of old paragraphs (f) and (g)	Clarified intent of this provision.
	(e)(2)	Additional test orders issued on basis of noncompliance will include explanatory statement.	Provide explanation when issuing a test order beyond annual limit.
§86.604	(a)	Selection procedure for testing by the Administrator conforms to § 86.607	Clarification of EPA intent when selecting vehicles for its own testing purposes.
§ 86.605	(a)(1), (a)(3)	"General Records" section only requires description of equipment used for SEA testing. The existing paragraph (a)(1)(iii)(E) moved to paragraph (a)(3).	Description of vehicles, emission control systems, and test procedures are already contained in Applications for Certification and regulations.
	(a)(2)	Reorganized paragraph for clarity. Deleted reference to batch sample selection.	New sampling plans.
	(a)(4)	Clarify requirement for description of each test cell used for SEA testing.	EPA must be able to verify that equipment used for SEA testing conforms with Subpart B
	(f)	New provision allowing manufacturer to claim confidentiality on information submitted for SEA purposes.	The Agency makes submitted information available for public review, except for "confidential" information
§ 86.606		Section amended to require warrants or court orders for entry and access where voluntary consent is refused.	Ensures that regulations comply with requirements of Supreme Court decision in *Marshall* v. *Barlow's, Inc.*
		Deleted old § 86.606(a)(5) requirement that AA shall authorize any entry without 24-hour prior notification to manufacturer.	Makes consistent with new 86.603(b) which says AA or designee may sign test orders.
§ 86.607	(a)	Deleted requirements of old paragraphs (a)–(d) and (g) relating to batches and random sampling.	Not required by new sampling plans.
		Manufacturer allowed to request alternate selection procedure	May be required by new sampling plans or unusual situations.
	(b)	Manufacturer must inform EPA of any emissions related changes in production processes from issuance of test order until end of selection.	Expansion of old paragraph (e). Enables EPA to ensure that appropriate vehicles are being selected for testing.
	(c)	Revision of old paragraph (f)	Clarified intent of this provision.
	(d)	*Redesignation of old paragraph (h)	Restructured section.
	(e)	New provision: order of selection determines order of test results for making audit decision.	To provide an objective basis for applying test results to the sequential decision criteria. This provision is currently in the test orders
	(f)	Revision of old paragraph (i); references to "batches" deleted	New sampling plans.
§ 86.608	(a)(2)(ii)	New provision allowing manufacturers to use diesel emission test fuel for mileage accumulation.	Formalizes procedure that is currently in effect for diesel vehicles.
	(b)(1)	Revised provision to allow manufacturer's predelivery inspection procedures only after EPA approval.	Ensure that vehicles tested are representative of vehicles introduced into commerce
	(d), (f)	Deleted references to batch sample, vehicle substitution, or vehicle replacement.	New sampling plans. Malfunctioning vehicles are deleted from test sequences.

SEA LDV AMENDMENTS EXPLANATION OF AMENDMENTS AND REVISIONS—Continued

Section	Paragraph	Changes	Reason
	(g)	Clarify requirements for EPA notification of manufacturer's test facility.	EPA test order issued under § 86.604(a) is not applicable.
	(i)	Reserts permitted only after fail decision is reached on first test, unless otherwise allowed by EPA.	Prevents unreasonable delays in reaching initial audit decisions and beginning retest except in unusual circumstances.
§ 86.609	(d)	Deleted reference to batch sequence	New sampling plans.
	(d)(1)	Deleted reference to Subparts	Confusing and out of date.
	(d)(2)(ii)	Deleted old paragraph (d)(2). Substituted new requirement to list applicable standards in audit report.	Old paragraph (d)(2) inapplicable to new testing procedures. Standards may change in future model years; possible waivers.
	(d)(4)	Revision of old paragraph (d)(2); description of selection process required.	New sampling plans.
	(d)(5)	Same as old paragraph (d)(4), except for sub-paragraphs (v), (vi), and (vii).	Reorganization of paragraph (ii) by adding (5)(2).
	(d)(5)(v)	Added requirement for submission of CO2 values in audit report	Move requirement from test order to regulations.
	(d)(5)(vi)	Revised "replacement vehicle" provision to require reporting reason for elimination of any test vehicle.	Under sequential sampling plans, vehicles may be deleted from test sequence.
	(d)(6)	Added statement to audit report endorsement that no emission-related changes were made on the assembly line during the audit.	To verify that SEA test vehicles selected are representative of vehicles that are introduced into commerce.
§ 86.610		Replaces old § 86.610 and § 86.611. Deleted all references to batch-type sampling plans and decision rules. Explains how to use new sampling plans and decision rules.	Reorganized sections due to new sampling plans and decision rules.
	(c)	The sampling plan to be used for SEA testing is based on sales projections from the manufacturer's Fuel Economy report.	Projected sales will no longer be provided in the manufacturer's Application for Certification.
§ 86.611		Removed and reserved	Reorganized sections due to new sampling plans and decision rules.
§ 86.612		Amendment of old § 86.612	Reorganized sections due to new sampling plans and decision rules.
	(b)	Deleted references to batch sequence and batch sample. Allows for suspension based on first test results.	Not required by new sampling plans. Avoids possible delays in imposing sanction when failure is imminent.
	(e)	Added statement that the proposed remedy for nonconformity shall be reported by manufacturer to EPA.	Clarification of existing paragraph.
	(f)(2)	Added 30-day time period for submitting failed vehicle report (changed from 5-day time period in NPRM).	Establishes a definite schedule for reporting remedies for vehicle nonconformities.
		Deleted reference to batch selection	New sampling plans. New decision criteria for re-audits.
	(h)	Clarified language to correspond with intent of regulations	Cannot re-issue a certificate for a revoked configuration (must be modified, producing a new configuration).
	(h) (1), (2)	Added statements that fuel economy testing may also be required in conjunction with approving a design change.	For consistency with amendments to vehicle Fuel Economy program.
	(j)	*Revised section references	Consistency with most current section. Revised section numbering in Subpart G.
§ 86.613		*Reserved	Reorganized sections due to hearings on voidings of certificates.
§ 86.614 (former § 86.613).		*Allows hearing to be held for voidings of certificates as well as suspensions and revocations.	Provides manufacturer with opportunity for a hearing before a sanction may be imposed
	(a)	*Added paragraph reference to voided certificates as additional criteria for hearings.	Hearings can also be requested for voided certificates.
	(c)(1)	*Added reference to voided certificate as basis for hearing	Same as paragraph (a) above.
	(c)(2)(ii)(C)	*Changed sampling plan Appendix reference	New Appendix proposed for sampling plans.
	(c)(2)(ii)(D)	*The word "tested" is changed to "selected"	Incorrect word printed in original promulgation.
	(d)(1)	*Revised section reference	§ 86.613 becomes 86.614.
	(d)(2)	*Revised section reference	Provides consistency with most current Subpart A.
	(f)(3)(ii)	*§ 85.612(i) becomes 86.612(i)	Incorrect section reference in original promulgation.
Appendix VIII		*Reserved	New sampling plans of Appendix XI to be used.
Appendix XI		*Added new sampling plans to replace Appendix VIII (Appendix XIII in NPRM redesignated as Appendix XI in Final Rule).	Allows for more expeditious audit, less manufacturer burden and costs.

* In the NPRM these amendments were omitted from the change chart but were included in the regulatory language.

PART 86—[AMENDED]

For the reasons set forth in this preamble, Part 86, Subparts A and G, Chapter I of Title 40, Code of Federal Regulations is amended as follows:

1. Section 86.078–6 is amended by revising paragraphs (a)(1), (a)(3) and (b)(1) as follows:

§ 86.078–6 Hearings on certification.

(a)(1) After granting a request for a hearing under §§ 86.084–22, 86.084–30(b), or 86.084–30(c), the Administrator shall designate a Presiding Officer for the hearing.

* * * * *

(3) If a time and place for the hearing have not been fixed by the Administrator under §§ 86.084.22, 86.084–30(b), or 86.084–30(c), the hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

* * * * *

(b)(1) Upon his appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator under §§ 86.084–22, 86.084–30(b), or 86.084–30(c) together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

2. Section 86.084–30 is amended by revising paragraphs (d)(1)(v) through (d)(1)(vii), the first sentence in (d)(2), (d)(3), (d)(5), (d)(6)(i), by removing paragraph (d)(1)(viii), and by adding a new paragraph (d)(7), as follows:

§ 86.084–30 Certification.

* * * * *

(d) * * *

(1) * * *

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.606 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access or to obtain "reasonable assistance" as authorized in § 86.606 of this part because a manufacturer has located its facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with §§ 86.604(a), 86.605, 86.607, 86.608, or 86.610.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraph (d)(1) (i), (ii), or (vii) of this section where the refusal is caused by conditions and circumstances outside the control of the manufacturer which render it impossible to comply with those requirements. * * *

(3) The sanction of suspending a certificate may be imposed for the reasons in paragraph (d)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

* * * * *

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, if the manufacturer wishes to content that, although the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (d)(1)(v) of this section, the manufacturer shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) * * *

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614; and

* * * * *

(7) Any voiding of a certificate of conformity under paragraph (d)(4) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614.

* * * * *

3. Section 86.602 is revised to read as follows:

§ 86.602 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

(1) "Acceptable Quality Level" (AQL) means the maximum percentage of failing vehicles that, for purposes of sampling inspection, can be considered satisfactory as a process average.

(2) "Axle Ratio" means all ratios within ±3% of the axle ratio specified in the configuration in the test order.

(3) "Configuration" means a subclassification of an engine-system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, axle ratio, and other parameters which may be designated by the Administrator.

(4) "Test Sample" means the collection of vehicles of the same configuration which have been drawn from the population of vehicles of that configuration and which will receive exhaust emission testing.

(5) "Inspection Criteria" means the pass and fail numbers associated with a particular sampling plan.

(6) "Vehicle" means any new production light-duty vehicle as defined in Subpart A of this part.

(7) "Test Vehicle" means a vehicle in a test sample.

(8) "In the Hands of the Manufacturer" means that vehicles are still in the possession of the manufacturer and have not had their bills of lading transferred to another person for the purpose of transporting.

4. Section 86.603 is amended by revising paragraphs (b), (c) and (e), removing paragraphs (f) and (g), and adding the OMB control number to the end of the section as follows:

§ 86.603 Test orders.

* * * * *

(b) The test order will be signed by the Assistant Administrator for Air and Radiation or his designee. The test order will be delivered in person by an EPA Enforcement Officer to a company representative or sent by registered mail, return receipt requested, to the manufacturer's representative who signs the Application for Certification submitted by the manufacturer pursuant to the requirements of the applicable sections of Subpart A of this part. Upon receipt of a test order, the manufacturer shall comply with all of the provisions of this subpart and instructions in the test order.

(c)(1) The test order will specify the vehicle configuration selected for testing, the time and location at which vehicles must be selected, and the procedure by which vehicles of the specified configuration must be selected. The test order may include alternative configurations (primary, secondary, etc.) to be selected for testing in the event that vehicles of the first specified configuration are not available for testing because those vehicles are not being manufactured at the specified assembly plant, not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facility. If the first specified configuration is not being manufactured at a rate of at least four vehicles per day over the expected duration of the audit, the Assistant Administrator for Air and Radiation or his designated representative may select vehicles of a primary alternate configuration for testing in lieu of the first specified configuration. Likewise, vehicles may be selected of a secondary alternate configuration in lieu of the first specified configuration or primary alternate configuration. In addition, the test order may include other directions or information essential to the administration of the required testing.

(2) The following instructions are applicable to each test order issued under this subpart:

(i) The manufacturer shall make the following documents available to an EPA Enforcement Officer upon request:

(A) A properly filed and current Application for Certification following the format prescribed by the EPA for the appropriate model year; and

(B) A copy of the shop manual, dealer service bulletins, and pre-delivery inspection procedures for the configuration being tested.

(ii) Only one mechanic at a time per vehicle shall make authorized checks, adjustments, or repairs, unless a particular check, adjustment, or repair requires a second mechanic as indicated in the shop manual or dealer service bulletins.

(iii) A mechanic shall not perform any check, adjustment, or repair without an Enforcement Officer present unless otherwise authorized.

(iv) The manufacturer shall utilize only those tools and test equipment utilized by its dealers when performing authorized checks, adjustments, or repairs.

* * * * *

(e) During a given model year, the Administrator shall not issue to a manufacturer more SEA test orders than an annual limit determined by dividing the projected sales bound for the U.S. market for that model year, as made by the manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations, by 300,000 and rounding to the nearest whole number, unless the projected sales are less than 150,000, in which case the annual limit is one. However, the annual limit for SEA test orders will be recalculated if a manufacturer submits to EPA in writing prior to or during the model year a sales projection update.

(1) Any SEA test order for which the configuration fails in accordance with § 86.610 or for which testing is not completed does not count against the annual limit.

(2) When the annual limit has been met, the Administrator may issue additional test orders for those configurations for which evidence exists indicating noncompliance. An SEA test order issued on this basis will include a statement as to the reason for its issuance.

(Approved by the Office of Management and Budget under the control number 2060–0064)

5. Section 86.604 is amended by revising paragraph (a) as follows:

§ 86.604 Testing by the Administrator.

(a) The Administrator may require by test order that vehicles of a specified configuration be selected in a manner consistent with the requirements of § 86.607 and submitted to him at such place as he may designate for the purpose of conducting emission tests. These tests shall be conducted in accordance with § 86.608 of these regulations to determine whether vehicles manufactured by the manufacturer conform with the regulations with respect to which the certificate of conformity was issued.

* * * * *

6. Section 86.605 is amended by revising paragraphs (a)(1) and (a)(2), adding paragraphs (a)(3), (a)(4) and (f), and adding the OMB control number to the end of the section as follows:

§ 86.605 Maintenance of records; submittal of information.

(a) * * *

(1) *General records.* (i) A description of all equipment used to test vehicles in accordance with § 86.608 pursuant to a test order issued under this subpart, including the following information:

(A) Dynamometer.

(*1*) Inertia loading.

(*2*) Road load power absorption at 50 m.p.h.

(*3*) Manufacturer, model and serial number.

(B) Constant Volume Sampler.

(*1*) Pressure of the mixture of exhaust and dilution air entering the positive displacement pump, pressure increase across the pump, and the temperature set point of the temperature control system.

(*2*) Number of revolutions of the positive displacement pump accumulated while test is in progress and exhaust samples are being collected.

(*3*) Humidity of dilution air.

(*4*) Manufacturer, model, type and serial number.

(C) Instrumentation.

(*1*) Manufacturer, model and serial number for each analyzer.

(*2*) Pertinent information such as tuning, gain, ranges and calibration data.

(*3*) Identification of zero, span, exhaust gas and dilution air sample traces.

(*4*) Temperature set point of heated sample line and heated hydrocarbon detector temperature control system (for diesel vehicles only).

(D) Test cell.

(*1*) Barometric pressure, ambient temperature and humidity.

(*2*) Data and time of day.

(ii) In lieu of recording test equipment information, reference to a vehicle test cell number may be used, with the advance approval of the Administrator: Provided, the test cell records show the pertinent information.

(2) *Individual records.* These records pertain to each audit conducted pursuant to this subpart.

(i) The location where audit testing was performed, and the date and time for each emissions test.

(ii) The number of miles on the test vehicle when the test began and ended.

(iii) The names of supervisory personnel responsible for the conduct of the audit.

(iv) A record and description of any repairs performed prior to and/or subsequent to approval by the Administrator, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the repair.

(v) The dates when the test vehicles were shipped from the assembly plant or the storage facility and when they were received at the testing facility.

(vi) The drive wheel tire pressure and the inertia weight class for each test vehicle, and the actual curb weight for each test vehicle required to be weighed pursuant to a test order.

(vii) A complete record of all emission tests performed pursuant to this subpart (except tests performed by EPA directly) including all individual worksheets and/or other documentation relating to each test, or exact copies thereof.

(viii) A brief description of all significant audit events, commencing with the test vehicle selection process, but not described by any other subparagraph under paragraph (a)(2) of this section, including such extraordinary events as vehicle accident.

(3) Additional required records for diesel vehicles.

(4) The manufacturer shall record test equipment description, pursuant to paragraph (a)(1) of this section, for each test cell that is used to perform emission testing under this subpart.

* * * * *

(f) A manufacturer may assert a business confidentiality claim covering all or part of the information submitted pursuant to this subpart. To assert a business confidentiality claim, the manufacturer should do so in a manner consistent with the requirements of 40 CFR § 2.203(b). If no claim accompanies business information when it is received by EPA, it may be made available to the public by EPA without further notice to the manufacturer. If a claim is received, the information covered by the claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2.

(Approved by the Office of Management and Budget under the control number 2060–0064)

7. Section 86.606 is amended by redesignating paragraph (e) as paragraph (h), revising the introductory text of paragraph (a), paragraphs (a)(1), (b) through (d), and (h), by adding new paragraphs (e), (f) and (g), and adding to the OMB control number to the end of the section as follows:

§ 86.606 Entry and access.

(a) In order to allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart and a test order issued thereunder, EPA Enforcement Officers may enter during normal operating hours upon presentation of credentials any of the following:

(1) Any facility where any vehicle to be introduced into commerce or any emission-related component is or has been manufactured, assembled, or stored;

* * * * *

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA Enforcement Officers may:

(1) Inspect and monitor any part or aspect of vehicle manufacturer, assembly, storage, testing and other procedures, and the facilities in which these procedures are conducted;

(2) Inspect and monitor any part or aspect of vehicle test procedures or activities, including, but not limited to, vehicle selection, preparation, mileage accumulation, preconditioning, emission tests, and maintenance; and verify calibration of test equipment;

(3) Inspect and make copies of any records or documents related to the assembly, storage, selection and testing of a vehicle in compliance with a test order; and

(4) Inspect and photograph any part or aspect of any vehicle and any

combination on the basis of engine code.

vehicles per day over the expected

annual limit.

number for each analyzer.

paragraph (a)(1) of this section, for each

aspect of any vehicle and any

component used in its assembly that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers may obtain reasonable assistance without cost from those in charge of a facility to help them perform any function listed in this subpart and may request the recipient of a test order to arrange with those in charge of a facility operated for its benefit to furnish reasonable assistance without cost to EPA whether or not the recipient controls the facility.

(d) EPA Enforcement Officers may seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section. EPA Enforcement Officers may proceed *ex parte* to obtain a warrant whether or not the Enforcement Officers first sought permission from the recipient of the test order or the party in charge of the facilities in question to conduct those activities related to entry and access.

(e) A recipient of a test order shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. A recipient of a test order shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct these activities related to entry and access pursuant to a warrant or court order whether or not the recipient controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct those activities related to entry and access only upon the consent of either the recipient of the test order or the party in charge of the facilities in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section:

(1) "Presentation of Credentials" means display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle storage areas or facilities are concerned, "operating hours" means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, "operating hours" means all times during which an assembly line is in operation, vehicle assembly is occurring, or testing, repair, mileage accumulation, production or compilation of records, or any other procedure or activity related to testing, or to vehicle manufacture or assembly, is being conducted in a facility.

(4) "Reasonable assistance" includes, but is not limited to, providing clerical, copying, interpreting and translating services and, at the request of an EPA Enforcement Officer, making available personnel of the facility being inspected during their working hours to provide information relevant to the Enforcement Officer's activities authorized in this section. Any employee whom a manufacturer has instructed to appear at the request of an Enforcement Officer may be accompanied, represented, and advised by counsel.

(Approved by the Office of Management and Budget under the control number 2060-0064)

8. Section 86.607 is revised to read as follows:

§ 86.607 Sample selection.

(a) Vehicles comprising a test sample which are required to be tested, pursuant to a test order issued in accordance with this subpart, will be selected at the location and in the manner specified in the test order. If a manufacturer determines that the test vehicles cannot be selected in the manner specified in the test order, an alternative selection procedure may be employed: *Provided,* That the manufacturer requests approval of the alternative procedure in advance of the start of test sample selection and that the Administrator approves the procedure. Special order vehicles are exempt from sample selection unless a test sample cannot be completed otherwise.

(b) The manufacturer shall have assembled the test vehicles of the configuration selected for testing using its normal mass production processes for vehicles to be distributed into commerce. During the audit, the manufacturer shall inform the Administrator of any change(s) implemented in its production processes, including quality control, which may be reasonably expected to affect the emissions of the vehicles selected, between the time the manufacturer received the test order and the time the manufacturer finished selecting test vehicles.

(c) No quality control, testing, or assembly procedures will be used on the completed test vehicles or any portion thereof, including parts and subassemblies, that has not been or will not be used during the production and assembly of all other vehicles of that configuration.

(d) The test order may specify that EPA Enforcement Officers, rather than the manufacturer, will select the test vehicles according to the method described in paragraph (a) of this section.

(e) The order in which test vehicles are selected determines the order in which test results are to be used in applying the sampling plan in accordance with § 86.610.

(f) The manufacturer shall keep on hand all untested vehicles, if any, comprising the test sample until a pass or fail decision is reached in accordance with paragraph (d) of § 86.610. The manufacturer may ship any tested vehicle which has not failed in accordance with paragraph (a) of § 86.610. However, once a manufacturer ships any vehicle from the test sample, it relinquishes the prerogative to conduct retests provided in paragraph (i) of § 86.608.

(Approved by the Office of Management and Budget under the control number 2060-0064)

9. Section 86.608 is amended by revising paragraphs (a)(2)(i), (b)(1), (d), and (f), the first sentence of paragraph (g) and paragraph (i), and adding the OMB control number to the end of the section as follows:

§ 86.608 Test procedures.

(a) * * *

(2) * * *

(i) The manufacturer may use test fuel meeting the specifications of paragraph (a)(1) or (b)(2) of § 86.113-82 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

* * * * *

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the vehicles selected for testing and shall not perform any emission tests on vehicles selected for testing pursuant to the test order unless this adjustment, repair, preparation, modification, and/or tests are documented in the manufacturer's vehicle assembly and inspection procedures and are actually performed or unless these adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator.

* * * * *

(d) The manufacturer shall not perform any maintenance on test vehicles after selection for testing nor shall the Administrator allow deletion of any test vehicle from the test sequence, unless requested by the manufacturer and approved by the Administrator before any test vehicle maintenance or deletion.

* * * * *

(f) If a vehicle cannot complete the mileage accumulation or emission tests because of vehicle malfunction, the manufacturer may request the Administrator to authorize the repair of that vehicle or its deletion from the test sequence.

(g) Whenever the manufacturer conducts testing pursuant to a test order issued under this subpart, the manufacturer shall notify the Administrator within one working day of receipt of the test order, which test facility will be used to comply with the test order and the number of available test cells at that facility. * * *

* * * * *

(i) The manufacturer may retest any test vehicle after a fail decision has been reached in accordance with paragraph (d) of § 86.610 based on the first test on each vehicle; *except,* that the Administrator may approve retesting at other times during the audit based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each vehicle a total of three times. The manufacturer shall test each vehicle the same number of times. The manufacturer may accumulate additional mileage on test vehicles before conducting retests, subject to the provisions of paragraph (c) of this section.

(Approved by the Office of Management and Budget under the control number 2060-0064)

10. Section 86.609 is amended by redesignating paragraphs (d)(2) as (d)(4), (d)(4) as (d)(5), and (d)(5) as (d)(6), adding a new paragraph (d)(2), revising paragraphs (d) introductory text, (d)(1), and (d)(4) through (d)(6), and adding the OMB control number to the end of the section as follows:

§ 86.609 Calculation and reporting of test results.

* * * * *

(d) Within five working days after completion of testing of all vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's exhaust emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) The applicable standards against which the vehicles were tested;

* * * * *

(4) A description of the vehicle selection method used;

(5) For each test conducted,

(i) Test vehicle description including:

(A) Configuration and engine family identification.

(B) Year, make, build date, and model of vehicle.

(C) Vehicle Identification Number.

(D) Miles accumulated on vehicle.

(ii) Location where mileage accumulation was conducted and description of accumulation schedule.

(iii) Test number, date, initial test results, final results and final deteriorated test results for all valid and invalid exhaust emission tests, and the reason for invalidation.

(iv) A complete description of any modification, repair, preparation, maintenance and/or testing which was performed on the test vehicle and (A) has not been reported pursuant to any other paragraph of this subpart and (B) will not be performed on all other production vehicles.

(v) Carbon dioxide emission values for all valid and invalid exhaust emission tests;

(vi) Where a vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion;

(vii) Any other information the Administrator may request relevant to the determination as to whether the new motor vehicles being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued.

(6) The following statement and endorsement:

This report is submitted pursuant to sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 et seq. and the conditions of the test order. No emission related change(s) to production processes or quality control procedures for the vehicle configuration tested have been made between receipt of this test order and conclusion of the audit. All data and information reported herein is, to the best of

_____

(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

(Approved by the Office of Management and Budget under the control number 2060-0064)

11. Section 86.610 is revised to read as follows:

§ 86.610 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

(a) The prescribed acceptable quality level is 40 percent.

(b) A failed vehicle is one whose final deteriorated test results pursuant to paragraph (c) of § 86.609, for one or more of the applicable exhaust pollutants, exceed the applicable emission standard.

(c) The manufacturer shall test vehicles comprising the test sample until a pass decision is reached for all pollutants or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of vehicles tested. A fail decision is reached when the cumulative number of failed vehicles for one pollutant is greater than or equal to the fail decision number appropriate to the cumulative number of vehicles tested. The pass and fail decision numbers associated with the cumulative number of vehicles tested are determined by use of the Tables in Appendix XI of this part appropriate for the annual projected sales as made by the manufacturer in its report submitted under paragraph (a)(2) of § 600.207-80 of the Automobile Fuel Economy Regulations. In the Tables in Appendix XI, sampling plan "stage" refers to the cumulative number of vehicles tested. Once a pass decision has been made for a particular pollutant, the number of vehicles whose final deteriorated test results exceed the emission standard for that pollutant shall not be considered any further for purposes of the audit.

(d) Passing or failing of an SEA audit occurs when the decision is made on the last vehicle required to make a decision under paragraph (c) of this section.

(e) The Administrator may terminate testing earlier than required in paragraph (c) of this section.

§ 86.611 [Reserved]

12. Section 86.611 is removed and reserved.

13. Section 86.612 is amended by revising paragraphs (a), (b), (e), (f)(2), (g)(2), (h), (j), and (k), and by adding the OMB control number to the end of the section as follows:

Enforcement Officer.

affect the emissions of the vehicles

and/or tests are required or permitted

the following information:

(Authorized Company Representative)

section as follows:

§ 86.612 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any vehicle failing pursuant to paragraph (b) of § 86.610 effective from the time that testing of that vehicle is completed.

(b) The Administrator may suspend the certificate of conformity for a configuration which does not pass a Selective Enforcement Audit pursuant to paragraph § 86.610(c) based on the first test, or all tests, conducted on each vehicle. This suspension will not occur before ten days after failure to pass the audit.

* * * * *

(e) The Administrator may revoke a certificate of conformity for a configuration when the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected configuration.

(f) * * *

(2) Submit a written report to the Administrator within thirty days after successful completion of testing on the failed vehicle, which contains a description of the remedy and test results for the vehicle in addition to other information that may be required by this regulation.

(g) * * *

(2) Demonstrate that the vehicle configuration for which the certificate of conformity has been suspended does in fact comply with these regulations by testing vehicles selected from normal production runs of that vehicle configuration, at the plant(s) or the facilities specified by the Administrator, in accordance with the conditions specified in the initial test order; *except*, that if the Administrator has not revoked the certificate pursuant to paragraph (e) of this section and if the manufacturer elects to continue testing individual vehicles after suspension of a certificate, the certificate is reinstated for any vehicle actually determined to have its final deteriorated test results in conformance with the applicable standards through testing in accordance with the applicable test procedures.

(h) Once a certificate for a failed configuration has been revoked under paragraph (e) of this section and the manufacturer desires to introduce into commerce a modified version of that configuration, the following actions will be taken before the Administrator may issue a certificate for the new configuration:

(1) If the Administrator determines that the proposed change(s) in vehicle design may have an effect on emission performance deterioration and/or fuel economy, he shall notify the manufacturer within 5 working days after receipt of the report in paragraph (g) of this section whether subsequent testing under this subpart will be sufficient to evaluate the proposed change(s) or whether additional testing will be required; and

(2) After implementing the change(s) intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified vehicle configuration does in fact conform with these regulations by testing vehicles selected from normal production runs of that modified vehicle configuration in accordance with the conditions specified in the initial test order. The Administrator shall consider this testing to satisfy the testing requirements of § 86.079–32 or § 86.079–33 if the Administrator had so notified the manufacturer. If the subsequent testing results in passing of the audit, the Administrator shall reissue or amend the certificate, if necessary, to include that configuration: *Provided*, That the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent audit is failed, the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of the configuration specified by the test order.

* * * * *

(j) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph (d) of § 86.084–30, and prior to the commencement of a hearing under § 86.614, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(k) To permit a manufacturer to avoid storing non-test vehicles when conducting an audit of a configuration subsequent to suspension or revocation of the certificate of conformity for that configuration, resulting from failure of the initial audit of that configuration, he may request that the Administrator conditionally reinstate the certificate for that configuration. The Administrator may reinstate the certificate subject to the condition that the manufacturer consents to recall all vehicles of that configuration produced from the time the certificate is conditionally reinstated if the configuration fails the subsequent audit and to remedy any nonconformity at no expense to the owner.

(Approved by the Office of Management and Budget under the control number 2060–0064)

14. Section 86.613 is reserved, the title and text are redesignated as § 86.614, and the text is amended by revising paragraph (a), the first sentence of paragraph (c)(1), and paragraphs (c)(2)(ii) introductory text, (c)(2)(ii) (C) and (D), (d)(1), (d)(2), and (t)(3)(ii) as follows:

§ 86.613 [Reserved]

§ 86.614 Hearings on suspension, revocation, and voiding of certificates of conformity.

(a) *Applicability.* The procedures prescribed by this section apply whenever a manufacturer requests a hearing under § 86.084–30(d)(6)(i), 86.084–30(d)(7), or 86.612(i).

* * * * *

(c) *Request for public hearing.* (1) If the manufacturer disagrees with the Administrator's decision to suspend, revoke, or void a certificate or disputes the basis for an automatic suspension under § 86.612(a), it may request a public hearing as described in this section. * * *

* * * * *

(2) * * *

(ii) A concise statement of the issues to be raised by the manufacturer at the hearing for each vehicle configuration or engine family or vehicle for which the manufacturer has requested the hearing: Provided, however, that in the case of a hearing request under paragraph § 86.612(i), the hearing is restricted to the following issues:

* * * * *

(C) Whether sampling procedures specified in Appendix XI of this part were followed; and

(D) Whether there exists a basis for distinguishing vehicles produced at plants other than the one from which vehicles were selected which would invalidate the Administrator's decision under § 86.612(c);

* * * * *

(d) *Summary decision.* (1) In the case of a hearing requested under § 86.612(i), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issues specified in § 86.614(c)(2)(ii), the Administrator shall enter an order denying the request for a hearing. In addition, if the original

decision to suspend or revoke a certificate of conformity was made under § 86.612(d) prior to the decision to deny the request for a hearing, the order denying the request will reaffirm the suspension or revocation.

(2) In the case of a hearing requested under § 86.084–30(d)(6)(i), to challenge a proposed suspension of a certificate of conformity for the reasons specified in § 86.084–30(d)(1) (i) or (ii), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of § 86.603 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator will enter an order denying the request for a hearing, and suspending the certificate of conformity.

* * * * *

(t) * * *

(3) * * *

(ii) A specification of the issues intended to be urged: *Provided, however,* That in the case of a hearing requested under § 86.612(i), the brief shall be restricted to the issues specified in paragraph (c)(2)(ii) of this section:

* * * * *

15. Part 86 is amended by removing and reserving Appendix VIII and by adding Appendix XI as follows:

Appendix XI—Sampling Plans for Selective Enforcement Auditing of Light-Duty Vehicles

40% AQL

TABLE 1.—SAMPLING PLAN CODE LETTER

Annual sales of configuration	Code letter
50–99	A
100–299	B
300–499	C
500 or greater	D

TABLE 2.—SAMPLING PLAN FOR CODE LETTER "A" 40% AQL

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	0	(2)
5	0	(2)
6	1	6
7	1	7
8	2	7
9	2	8
10	3	8
11	3	9
12	4	9
13	5	10
14	5	10
15	6	11
16	6	11
17	7	12
18	7	12
19	8	13
20	8	13
21	9	14
22	10	14
23	10	15
24	11	15
25	11	16
26	12	16
27	12	17
28	13	17
29	14	17
30	16	17

[illegible] Test sample passing not permitted at this stage.
[illegible] Test sample failure not permitted at this stage.

TABLE 3.—SAMPLING PLAN FOR CODE LETTER "B" 40% AQL

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	(1)	(2)
5	[illegible]	(2)
6	1	[illegible]
7	1	7
8	2	[illegible]
9	2	8
10	3	[illegible]
11	3	[illegible]
12	[illegible]	[illegible]
13	[illegible]	10
14	5	10
15	[illegible]	11
16	[illegible]	12
17	[illegible]	12
18	7	13
19	[illegible]	13
20	8	14
21	9	14
22	[illegible]	15
23	10	15
24	10	16
25	11	16
26	11	17
27	12	17
28	12	18
29	13	18
30	13	19
31	14	19
32	14	20
33	15	20
34	16	21
35	16	21
36	17	22
37	17	22
38	18	22
39	18	22
40	21	22

[illegible] Test sample passing not permitted at this stage
[illegible] Test sample failure not permitted at this stage

TABLE 4.—SAMPLING PLAN FOR CODE LETTER "C" 40% AQL

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	(1)	(2)
5	[illegible]	(2)
6	[illegible]	6
7	1	[illegible]
8	2	[illegible]
9	2	8
10	3	[illegible]
11	3	[illegible]
12	4	[illegible]
13	4	[illegible]
14	5	11
15	[illegible]	11
16	[illegible]	12
17	[illegible]	12
18	7	13
19	7	13
20	8	[illegible]
21	[illegible]	14
22	[illegible]	15
23	[illegible]	15
24	10	16
25	11	16
26	11	17
27	12	[illegible]
28	12	[illegible]
29	[illegible]	18
30	13	[illegible]
31	14	[illegible]
32	14	20
33	15	20
34	15	21
35	[illegible]	[illegible]
36	16	[illegible]
37	17	[illegible]
38	[illegible]	23
39	18	[illegible]
40	19	[illegible]
41	[illegible]	24
42	[illegible]	[illegible]
43	[illegible]	[illegible]
44	21	26
45	21	27
46	22	27
47	22	27
48	23	27
49	23	27
50	[illegible]	27

[illegible] Test sample passing not permitted at this stage
[illegible] Test sample failure not permitted at this stage

TABLE 5.—SAMPLING PLAN FOR CODE LETTER "D" 40% AQL

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1	(1)	(2)
2	(1)	(2)
3	(1)	(2)
4	(1)	(2)
5	[illegible]	(2)
6	[illegible]	6
7	1	[illegible]
8	2	[illegible]
9	2	8
10	3	[illegible]
11	3	[illegible]
12	4	[illegible]
13	4	10
14	5	11
15	[illegible]	11
16	[illegible]	12
17	[illegible]	12
18	7	13
19	7	13
20	8	14
21	[illegible]	14
22	[illegible]	15
23	[illegible]	15
24	10	16
25	11	16
26	11	17
27	12	17
28	12	[illegible]
29	13	19
30	13	[illegible]
31	14	20
32	14	[illegible]
33	15	21
34	15	21
35	16	22
36	16	22
37	17	[illegible]

[illegible] Test sample passing not permitted at this stage
[illegible] Test sample failure not permitted at this stage

be taken before the Administrator may

the condition that the manufacturer

hearing. In addition, if the original

TABLE 5.—SAMPLING PLAN FOR CODE LETTER "D" 40% AQL—Continued

[Sample inspection criteria]

Stage	Pass No.	Fail No.
38	17	23
39	18	[illegible]
40	18	24
41	19	[illegible]
42	19	[illegible]
43	20	26
44	21	27
45	21	27
46	22	[illegible]
47	22	[illegible]
48	[illegible]	[illegible]
49	[illegible]	29
50	24	[illegible]
51	24	[illegible]
52	25	31
53	25	31
54	[illegible]	32
55	26	[illegible]
56	27	[illegible]
57	27	[illegible]
58	[illegible]	[illegible]
59	[illegible]	[illegible]
60	[illegible]	33

[1] Test sample passing not permitted at this stage.
[2] Test sample failure not permitted at this stage.

[FR Doc. 84-31978 Filed 12-11-84; 8:45 am]
BILLING CODE 4560-50-M

federal register

Wednesday
December 12, 1984

Part IV

Department of Health and Human Services

Public Health Service

Cooperative Agreements To Support National Health Promotion Programs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Cooperative Agreements To Support National Health Promotion Programs

The Office of Disease Prevention and Health Promotion (ODPHP) announces its Cooperative Agreement Program for Fiscal Year 1985 and solicits preapplication concept papers for projects under this program.

Background

As mandated by Title XVII of the Public Health Service Act, as amended, the Office of Disease Prevention and Health Promotion coordinates Federal and private sector activities for health promotion and disease prevention. ODPHP works with a variety of Federal agencies on projects aimed at promulgating health promotion and disease prevention programming in schools, worksites, health care settings, and communities. In addition, ODPHP works with various non-Federal organizations to strengthen private sector involvement in health promotion and disease prevention in these settings.

Due to significant changes during the past century in the leading causes of death as well as an increase in knowledge about specific risk factors associated with morbidity and mortality, fundamental changes are occurring in the manner in which the nation's health problems are addressed. As a result, important new preventive measures are being added to traditional approaches like sanitation and immunization. Among the more significant developments of the 1970's was the growth in knowledge and awareness of how important health promotion and disease prevention could be in realizing further reductions in unnecessary death and disability. For example, specific behavioral risk factors are identifiable for the major health problems confronting Americans, including those for heart disease, stroke, and cancer.

As our understanding deepens about the influence that personal behavior can have on health status, a significant effort is developing to help Americans achieve greater gains in the maintenance and improvement of their health. It is clear that more emphasis on strategies for prevention of disease are required by both private and the public sector when behavior choice is a factor in each of the ten leading causes of death.

In 1979, the Surgeon General issued a report on health promotion and disease prevention entitled *Health People*, which highlighted the principal preventable health problems facing Americans and outlined strategies that might be used to address those problems. In the report, prominent health challenges that people face at five different life stages were discussed, and specific goals for health improvement to be attained by 1990 were established for each life stage.

The Department of Health and Human Services published the document *Promoting Health/Preventing Disease: Objectives for the Nation* in 1980. It detailed specific objectives for the nation to reach the goals outlined in *Healthy People*—227 objectives in all, distributed across 15 areas which fell into the three broad categories of health promotion, health protection, and personal preventive services. For example, the five areas identified as targets for health promotion efforts were: Smoking and health; misuse of alcohol and drugs; nutrition; physical fitness and exercise; and control of stress and violent behavior. In order to meet the 1990 health objectives for the nation, it is necessary to enlist the support and commitment of groups representing information sciences, worksites, primary health care providers, nutritionists, community organizations, and schools. By working with national organizations that have local chapters, affiliates, or members, ODPHP will be better able to facilitate this process. ODPHP seeks to extend the reach of health promotion/disease prevention programs by working through cooperative agreements with national organizations that are in a position to influence programming in these settings.

The purpose of the National Health Promotion Program is to educate the public about environmental, occupational, societal and behavioral factors which affect health in order that individuals may make informed decisions about health-related behavior. It also serves as a Federal focal point for the development, implementation, and coordination of programs that promote good health habits designed to prevent disease and disability. These objectives are consistent with the General Authorities set forth in Section 1701(1) and 301 of the Public Health Service Act. Cooperative agreements are granted as part of the National Health Promotion Program number 13.990, as described in the *Catalog of Federal Domestic Assistance*. To date, ODPHP has funded a total of seven separate cooperative agreements with the American Red Cross, the National Board of YMCA's, the National Coalition of Hispanic Mental Health and Human Services Organizations, the National Urban League, the Washington Business Group on Health, the Workplace Health Fund, and the American Association of School Administrators.

FY 1985 Priorities

In support of ODPHP's mandate to help promote health and prevent disease among Americans through the oversight and support of the Department of Health and Human Service's programs in prevention, ODPHP works to foster partnerships with the private sector that will further the reach of health promotion and disease prevention activities and programs. To this end, ODPHP intends to establish cooperative agreements in FY 1985 with national organizations that have constituencies whose concerns address the following ODPHP initiative areas:

- *Nutrition Initiative*: The Nutrition Initiative works to strengthen the Department's capabilities and national leadership in nutrition research, nutrition monitoring, nutrition services and training, nutrition education, food safety and quality, and international nutrition. The effort is overseen by the DHHS Nutrition Policy Board, chaired by the ODPHP Director, and includes activities such as the Interagency Committee on Human Nutrition Research, the Joint DHHS/USDA Nutrition Monitoring Evaluation Committee and the development of the first Surgeon General's Report on Nutrition and Health.
- *Preventive Services Initiative:* The ODPHP fosters the delivery of personal preventive services in clinical settings through its Preventive Services Initiative, which works with major academic institutions, professional organizations, reimbursement agencies, and scientific groups to identify preventive services for hospitals and physicians' offices and to assess the clinical and economic issues in their delivery. Specific examples include the 1982 National Conference on the Role of Prevention in Medical Education and the ongoing U.S./Canadian Task Force on Preventive Services.
- *School Health Initiative*: ODPHP has cosponsored with the Department of Education and Interagency Committee on Health Promotion Through the Schools. It also has undertaken the first comprehensive health-oriented effort to assess the fitness level of school children, fostered the development of a special review on the use of computers for health education, and supported with CDC a major evaluation of curricula developed for school health education.
- *Worksite Health Promotion Initiative*: Given the rising costs of health care as a business expense, employers have both a special opportunity and a special incentive to enhance the health of employees and their families. The National Worksite Health Promotion Initiative has sponsored the following projects: the first National Conference on Health Promotion in Occupational Settings (1979); materials to assist in the development of programs; case studies of the health promotion activities of business coalitions and the needs of small businesses; collaborative efforts to improve the quality of evaluation of worksite health promotion; a national survey of worksite health promotion activities; and a project to explore the future of work and health. The two existing worksite cooperative agreements focus on expanding activities through media and union involvement.
- *Community Health Promotion Initiative*: The National Health Promotion Program has used media-based efforts to mobilize community resources for health promotion. Activities were addressed first to the general public through the HealthStyle campaign, then to mothers and children through the Healthy Mothers/Healthy Babies program. Now attention is directed to older Americans with the Initiative on Health Promotion for the Elderly. This initiative is designed to use the fundamental principles of both media marketing and community organization to enhance the health practices of older people with respect to diet, exercise, smoking, and alcohol use, and appropriate use of medications and preventive services.
- *Health Information Initiative*: Through the National Health Information Clearinghouse (NHIC), ODPHP is able to respond directly to requests for health information. Serving both the general public and health professionals, NHIC receives more than 2,000 requests a month. It answers these in two ways: by retrieving information from the NHIC's onsite library and database or by forwarding requests to other organizations for direct response. In addition, the NHIC serves as a resource for disseminating information in support of the various ODPHP initiatives. NHIC also prepares the monthly DHHS Prevention Abstracts, which summarizes prevention-oriented findings in the scientific literature, and the DHHS Prevention Activities Calendar, which highlights major prevention events for the month.

In FY 1985, ODPHP intends to award at least one cooperative agreement in each of the designated initiative areas.

As further guidance, a list of suggested project ideas for each initiative area has been included in Appendix A. This list is intended to be suggestive, not prescriptive, and applicants are encouraged to develop innovative proposals within the specified initiative areas that are appropriate for their constituencies.

ODPHP has identified 15 priority issue areas, that are the focus for the Office's work in health promotion and disease prevention. The priority issue areas are:

- High blood pressure control
- Family planning
- Pregnancy and infant health
- Immunization
- Sexually transmitted diseases
- Toxic agent control
- Occupational safety and health
- Accident prevention and injury control
- Fluoridation and dental health
- Surveillance and control of infectious diseases
- Smoking and health
- Misuse of alcohol and drugs
- Nutrition
- Physical fitness and exercise
- Control of stress and violent behavior

Organizations submitting proposals are strongly urged to focus their projects on priority issues and target populations which are most congruent with their own organizational missions and constituencies.

Objectives

Under the cooperative agreement program, participating organizations should advance the concepts of health promotion and disease prevention. In addition, organizations should work to stimulate the adoption of health promotion programs among their members and/or constituents. Specific objectives for the cooperative agreement program are as follows:

1. To stimulate and develop support for health promotion/disease prevention programming in national organizations by:
   - Providing support for nationally coordinated efforts to develop and implement health promotion programs,
   - Influencing their membership and the individuals they serve about aspects of lifestyle that are related to health status, and
   - Enhancing organizational support for and involvement in the 1990 Health Objectives for the Nation.
2. To expand the reach of health promotion/disease prevention activity and improve the knowledge of how programs work by:
   - Stimulating the development of health promotion/disease prevention programs/activities for populations not now served by health promotion programs,
   - Stimulating the development of health promotion/disease prevention programs designed to meet the special health needs for an organization's members,
   - Increasing the number, improving the quality, and expanding the scope of health promotion/disease prevention programs conducted by national organizations, and
   - Conducting an assessment of the project's outcomes during the period of support.

Anticipated outcomes of the Cooperative Agreement Program are an increase in the number, kind, and quality of health promotion programs initiated and supported by national organizations, especially for those populations not previously reached. Activities should, where possible, be tied to the achievement of the Objectives for the Nation set forth in *Promoting Health/Preventing Disease: Objectives for the Nation.*

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet *all* of the following requirements:

- Be a national, private nonprofit, organization;
- Have a national membership, state/local chapters, and/or affiliates;
- Demonstrate an understanding of the current and potential role of the membership in health promotion efforts;
- Have in place a variety of communication mechanisms that are appropriate for influencing members and other constituents to become involved in health promotion/and disease prevention;
- Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership; and

Activities undertaken by each organization will depend on the goals of the organization, its programming and communication mechansims, and the potential its membership has for promoting health and preventing disease.

ODPHP will be involved in all activities undertaken as part of the cooperative agreement program and will:

- Provide up to 20 percent of one professional staff person per year to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and ODPHP;

which highlighted the principal

Urban League, the Washington Business

health care as a business expense.

suggested project ideas for each

programs/activities for populations not

between the organization and ODPHP;

• Make available informational and technical assistance from government sources, within resources available and as determined appropriate by the project officer;

• Provide liaison with other government and private agencies as appropriate; and

• Stimulate the exchange of ideas and problems among cooperative agreement recipients through regularly scheduled meetings.

Project Narrative

To be considered for a cooperative agreement, organizations must submit preapplication concept papers using the attached form 5161–1. Preapplications are not to exceed ten double-spaced pages (five single-spaced) for a competitive review by a panel of non-Federal and Federal experts and by ODPHP staff. Applicants, in writing their narrative, are required to describe the proposed project, provide an outline of a budget, describe how the project information relates to the budget information, and set forth brief job description(s) for proposed project staff. Applicants are strongly urged to organize the narrative of their proposals following the outline provided by the review criteria.

Review Criteria

Concept papers must demonstrate that the applicant meets all the eligibility requirements listed and must concisely address the following review criteria.

I. Description of what the organization proposes to accomplish and demonstrate the potential of the proposed project to make an innovative and/or significant contribution to national efforts to achieve the 1990 disease prevention and health promotion Objectives for the Nation. (Review points—20)

II. Description of the extent to which the project addresses the needs of populations that have been underserved by past efforts, the priority issues of the ODPHP and the appropriateness of the project for the identified constituency. (Review points—15)

III. Description of the overall track record, capability and commitment of the organization to reaching and influencing its membership or constituents on programmatic issues and topics, and its commitment to maintaining the health promotion/disease prevention effort after the funding period. (Review points—20)

IV. Outline briefly a specific, sound, feasible, and appropriate workplan, including a plan to assess program outcomes. (Review points—15)

V. Description of how the organization will provide the administrative capability and staff expertise required to successfully complete the proposed project. (Review points—15)

IV. Outline briefly the project's budget, with a clear financial or in-kind commitment of resources by the applicant organization to the support of the proposed project, equivalent to a minimum of 20 percent of the project costs (Review points—5)

Review Process and Requests for Full Application

Upon receipt of preapplications by ODPHP, they will be screened to assure that all eligibility requirements have been met. Preapplications meeting these requirements will be reviewed by non-Federal experts and Federal staff using the criteria outlined above. Based on the results of this review and the priorities of ODPHP, the Director of ODPHP will select projects for preparation by applicants of detailed work plans and budgets. Those applicants whose preapplication concept papers are selected for further development will be notified in writing and a date for submitting full applications will be set. Those whose preapplications are not selected also will be informed in writing.

Upon receipt of full applications by ODPHP, they will be reviewed by the same non-Federal experts and Federal staff who reviewed the concept papers. The result of their final review will be recommendations to the Director of ODPHP for FY 1985 cooperative agreement awards. ODPHP intends to make awards in April 1985.

Period of Support

Contingent on the availability of funds and satisfactory performance, cooperative agreements will be awarded to national organizations for project periods of up to three years. To obtain funding after the initial 12-month award, a continuation application and approval will be required for each subsequent year. Continuation applications will not be subjected to competitive review. Anticipated funding levels for FY 1985 will be approximately $50,000. Subsequent years will be funded at a similar level. It is expected that eight separate cooperative agreements with national organizations will be awarded in FY 1985.

Terms and Conditions of the Award

The HHS Appropriations Act requires that recipients of funds share in the cost of activities supported by cooperative agreements. Federal funds should be viewed as seed money to assist organizations in the development of health promotion initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to the support of proposed projects equivalent to a minimum of 20 percent of their total costs.

Organizations participating in the cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project, the development or purchase of direct program materials, direct program-related activities, or for travel related to the cooperative agreement.

All award recipients will be required to submit quarterly progress statements in a format and on a schedule to be determined after the award. In addition, recipients will be required to submit a detailed summary report describing the project and its outcomes no later than 90 days after termination of the period of support.

Preapplication Procedures

1. All preapplications must be covered by a signed copy of PHS Form *5161–1*, with the required information filled in appropriately. See Appendix B for Copy of PHS Form *5161–1*.

2. All preapplications must be *received* at the following address no later than 45 days after publication of this notice. Hand delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. Applications hand delivered or postmarked later than 45 days after publication will be ineligible.

3. Preapplication packages should be sent to: National Health Promotion Program, Office of Disease Prevention and Health Promotion, 330 "C" Street, SW., Room 2132, Washington, D.C. 20201.

4. Preapplications must be typed on one side of the page only. They should not exceed 10 pages double-spaced (5 pages single-spaced) plus, title/cover page and material describing the applicant organization.

5. The original and two copies of each preapplication must be submitted to: Office of Disease Prevention and Health Promotion, 2132 Switzer Building, 330 C Street, S.W., Washington, D.C. 20201, Attention Cheryl Damberg. Submitted of 4 additional copies will expedite processing. There is no penalty for not submitting additional copies.

6. One copy of the preapplication must be sent to the applicant's State Single Point of Contact (SSPOC) for review, as required by Executive Order 12372. The SSPOC will have 60 days starting from the application deadline date to comment on preapplications for funding covered by PHS programs.

Further Information

To request a copy of PHS Form 5161–1 or for further clarification, contact: Cheryl Damberg, (202) 472–5660 or James Harrell, (202) 245–7611, Room 2132 Switzer Building, 330 C Street, SW., Washington, D.C. 20201

(National Health Promotion Program, Catalog of Domestic Assistance Number 13.990)

Dated: December 4, 1984.

J.M. McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Assistant Surgeon General.

Appendix A—Suggested Project Ideas

The following ideas for cooperative agreement projects are meant to be suggestive, not prescriptive.

For cooperative agreements dealing with the *worksite health promotion* initiative:

Mechanisms to expand the reach of worksite health promotion activities to dependents.

Mechanisms that focus on improving mental health and reducing unproductive and harmful reactions to stress by helping individuals adapt to changes in work environments.

Mechanisms to meet the needs of underserved employee groups, such as migrant farmworkers, new immigrants, veterans and disabled persons.

For cooperative agreements dealing with the *school health* initiative:

Mechanisms that focus on extending and evaluating the use of new educational technologies in health instruction and services.

Mechanisms for the development of standarized school health records for students.

Mechanisms for emphasizing that "back to basics in education" requires a healthy school-age population.

Programs to help constituencies understand and lend support to comprehensive school health education.

Mechanisms for maintaining surveillance of school health education and physical education mandates by state and local area.

For cooperative agreements dealing with the *health information* initiative:

Programs to supplement DHHS's Health Promotion for the Elderly campaign.

Prototypes of a health promotion/disease prevention resource center.

Continuing education for librarians and information scientists in health promotion/disease prevention subjects.

For cooperative agreements dealing with the *nutrition* initiative:

Improvement of nutrition awareness and availability of nutritionally healthy meals in away-from-home eating establishments.

For cooperative agreements dealing with the *community health promotion* initiative:

Programs focused on leisure time of adolescents.

Mechanisms to collect, analyze and disseminate exemplary community approaches to health promotion for the elderly.

Programs that target health promotion/disease prevention efforts to racial and ethnic minority populations vulnerable to particular kinds of health risks.

Programs that address the health promotion/disease prevention aspects of city environments.

Programs that engage news and entertainment media to expose women to relevant health promotion/disease prevention messages.

For cooperative agreements dealing with the *preventive services* initiative:

Educational and training programs and materials directed at health care professionals focusing on recommended preventive services and their delivery (e.g., smoking cessation, nutrition counseling, stress reduction counseling, accident prevention, exercise and fitness counseling).

Educational programs on sexually transmitted diseases targeted at adolescents for use by medical offices and outpatient facilities.

Educational programs targeted to low income-inner city expectant mothers to improve prenatal care.

Programs to collect, evaluate, analyze and disseminate information on issues in delivery of preventive services, including current knowledge base, barriers to effective preventive services delivery, innovative educational approaches, cost effectiveness/cost benefits of varied services.

For cooperative agreements dealing with *cross-cutting* issues:

Worksite health promotion programs for school employees.

Community-based media programs which emphasize the importance of healthy children as part of "back-to-basics" education changes.

Nutrition programs at the worksite, with special attention to worksites not served by company cafeteries.

Development and implementation of a standard school and medical office health record for recording preventive services and other health information for school-age children.

Information systems for collecting, storing and disseminating preventive service evaluations and recommendations for easy access, referral and cross-reference by practitioners in clinical settings.

BILLING CODE 4160-17-M

outcomes. [Review points—15)

organizations in the development of

required by Executive Order 12372. The

-21- APPENDIX B

DEPARTMENT OF HEALTH, EDUCATIO AND WELFARE
PUBLIC HEALTH SERVICE

APPLICATION FOR FEDERAL ASSISTANCE *(NONCONSTRUCTION PROGRAMS)* — OMB Approval No. 29-R0218

PART I

1. TYPE OF ACTION (Mark appropriate box) ☐ PREAPPLICATION ☐ APPLICATION ☐ NOTIFICATION OF INTENT (Opt.) ☐ REPORT OF FEDERAL ACTION

2. APPLICANT'S APPLICATION — a. [redacted] b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER — a. NUMBER b. DATE ASSIGNED Year month day 19

Leave Blank

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name :
b. Organization Unit :
c. Street/P.O. Box :
d. City : e. County :
f. State : g. ZIP Code:
h. Contact Person (Name & telephone No.) :

5. FEDERAL EMPLOYER IDENTIFICATION NO.

6. PROGRAM (From Federal Catalog) a. NUMBER b. TITLE

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

8. TYPE OF APPLICANT/RECIPIENT
A-State H-Community Action Agency
B-Interstate I- Higher Educational Institution
C-Substate District J- Indian Tribe
D-County K-Other (Specify):
E-City
F-School District
G-Special Purpose District
Enter appropriate letter ☐

9. TYPE OF ASSISTANCE
A-Basic Grant B-Insurance
B-Supplemental Grant E-Other Enter appropriate letter(s) ☐☐
C-Loan

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)

11. ESTIMATED NUMBER OF PERSONS BENEFITTING

12. TYPE OF APPLICATION
A-New C-Revision E-Augmentation
B-Renewal D-Continuation
Enter appropriate letter ☐

13. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

14. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT b. PROJECT

15. TYPE OF CHANGE (For 15a or 15e):
A-Increase Dollars F-Other (Specify):
B-Decrease Dollars
C-Increase Duration
D-Decrease Duration
E-Cancellation
Enter appropriate letter(s) ☐☐☐

16. PROJECT START DATE Year month day 19

17. PROJECT DURATION Months

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ Year month day 19

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶ a. To the best of my knowledge and belief, data in the preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions thereon, to appropriate clearinghouses and all responses are attached.

	No response	Response attached
(1)	☐	☐
(2)	☐	☐
(3)	☐	☐

23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE c. DATE SIGNED Year month day 19

SECTION III—FEDERAL AGENCY ACTION

24. AGENCY NAME

25. APPLICATION RECEIVED Year month day 19

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. DEFERRED
☐ e. WITHDRAWN

32. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

33. ACTION DATE ▶ Year month day 19

34. STARTING DATE Year month day 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE Year month day 19

37. REMARKS ADDED ☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part I, OMB Circular A-95, it has been or is being made.

b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

PHS 5161 1 (PAGE 1) (Rev 3 79) Form Approved OMB No 68 R1379

STANDARD FORM 424 PAGE 1 (10-75) Prescribed by OMB Circular No A 102

[FR Doc. 84-32130 Filed 12-11-84; 8:45 am]

BILLING CODE 4190-17-C

federal register

Wednesday
December 12, 1984

Part V

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Proposed Rulemaking

BILLING CODE 4160-17-C

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations for postsecondary institutions participating in the student financial assistance programs authorized by Title IV of the Higher Education Act (Title IV, HEA programs). These regulations are being amended to clarify requirements, to reduce institutional administrative burden, and to consolidate definitions and provisions common to all the Title IV, HEA programs that were previously contained in individual program regulations.

DATES: Comments must be received on or before February 11, 1985.

ADDRESSES: Comments should be addressed to Mr. Brian Kerrigan, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4318, Regional Office Building No. 3), Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Kerrigan or Ms. Gail L. Cornish, Telephone (202) 472-4300.

SUPPLEMENTARY INFORMATION: On December 31, 1980, the Student Assistance General Provisions regulations governing the participation of postsecondary institutions in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs) were published in the **Federal Register**. The Title IV, HEA programs include the Pell Grant, Supplemental Educational Opportunity Grant (SEOG), College Work-Study (CWS), National Direct Student Loan (NDSL), State Student Incentive Grant (SSIG), Guaranteed Student Loan (GSL), and PLUS Programs. Although these regulations were final regulations implementing statutory amendments to Title IV of the Higher Education Act by the Education Amendments of 1980 (Pub. L. 96-374), comments were also requested.

These proposed regulations are being issued in accordance with the Department's deregulation initiative. They also reflect comments received from the postsecondary education community in response to the regulations published on December 31, 1980, as well as subsequent amendments to the Student Assistance General Provisions regulations published in the **Federal Register** on April 11, August 30 and October 6, 1983. These proposed amendments clarify requirements, reduce institutional administrative burden and consolidate common Title IV, HEA program definitions and provisions.

The following is a discussion of the proposed amendments to the Student Assistance General Provisions regulations.

I. Subpart A—General

Section 668.2—General definitions. A "general definitions" section is proposed in Subpart A to consolidate definitions common to all the Title IV, HEA programs from the individual program regulations in an effort to ease confusion. This consolidation eliminates redundancy in the definition sections of the program regulations and clarifies which terms are common to all the programs. Those definitions which are peculiar to each program remain in the individual program regulations.

Section 668.3—Public or private nonprofit institution of higher education. In the current definition, a public or private nonprofit institution of higher education which seeks to participate solely in the GSL or PLUS Program but cannot be accredited or approved because there is no nationally recognized accrediting agency or association qualified to accredit or approve that type of institution, may be approved by a committee appointed by the Secretary. Although still contained in Section 435 of the Higher Education Act, this provision is deleted in these proposed regulations. It has been the experience of the Department that the need for such a procedure no longer exists because of the growth in number and type of nationally recognized accrediting agencies and associations.

Section 668.8—Vocational school. For purposes of the Student Assistance General Provisions regulations, an "institution" includes a public or private nonprofit institution of higher education, a proprietary institution of higher education, a postsecondary vocational institution and, in connection with eligibility to participate in the GSL and PLUS Programs, a vocational school.

Therefore, in order to consolidate the four institutional definitions in one set of regulations, the definition of a "vocational school" is included with the other three definitions in these proposed regulations and will be deleted from the GSL (34 CFR 682-200) and PLUS (34 CFR 683.10) Program regulations when they are published. Two substantive changes to the definition are proposed in these regulations:

(1) The current definition requires that a vocational school provide a program (other than by correspondence) of no less then 300 clock hours of instruction or its equivalent. These proposed regulations specify a minimum equivalent of 300 clock hours in terms of semester, trimester and quarter hours. They propose that a program be no less than eight semester or trimester hours or 12 quarter hours at institutions using credit hours to measure academic progress. The 300 clock hour program length required to be provided by a vocational school is one-third as long as a "one year training program" which is defined to be at least 900 clock hours, 24 semester or trimester hours or 36 quarter hours. Therefore, it is proposed that the credit hour equivalent of 300 clock hours in the definition of a vocational school also be one-third that of the one year training program requirement which is eight semester or trimester hours or 12 quarter hours.

(2) In the current definition, a vocational school that cannot be accredited or approved because there is no nationally recognized accrediting agency or association qualified to approve that type of institution, may be approved by a State approval agency recognized by the Secretary or by a committee appointed by the Secretary. Although still contained in Section 435 of the Higher Education Act, this provision is deleted in these proposed regulations. It has been the experience of the Department that the need for such a procedure no longer exists because of the growth in number and type of nationally recognized accrediting agencies and associations.

Ability to benefit requirements. The institutional eligibility requirements in § 668.6 entitled "Ability to benefit" of the existing Student Assistance General Provisions regulations are included as paragraph (c) in the institutional definitions of a public or private nonprofit institution of higher education, a proprietary institution of higher education, a postsecondary vocational institution, and a vocational school (§§ 668.3 through 668.6) in the proposed regulations.

The Secretary is aware that there has been some confusion concerning the meaning of the ability to benefit requirements. This confusion resulted from the discussion in the preamble when the existing regulations were published in the **Federal Register** on December 31, 1980 (45 FR 86854). The preamble stated that:

> * * * Institutions no longer need to document and keep records for each student. An institution may now satisfy this requirement if it can demonstrate that it had developed and consistently applies criteria for determining that its students have the ability to benefit from the education or training it offers. Of course, however, the institution must be able to justify, upon request, that the students it admits have that ability.

Unless an institution chooses to participate solely in the GSL and PLUS Programs, the Higher Education Act permits an institution to qualify as an eligible institution of higher education if it, *inter alia*, admits as regular students, "persons who are beyond the age of compulsory school attendance in the State in which the institution is located and *who have the ability to benefit from the training offered by the institution.*" (emphasis added) 20 U.S.C. 1088(b), 1088(c) and 1141(a).

In order to satisfy the statutory and regulatory requirements, an institution must develop and consistently apply criteria for determining whether students without a high school diploma or its equivalent have the ability to benefit from the education or training offered. An institution may, but is not required to, keep documentation that each such student was determined to meet the ability to benefit criteria in his or her student financial aid or admissions file. It was this point that the preamble to the existing regulations published on December 31, 1980 did not fully explain.

Therefore, the requirement has been modified in these proposed regulations to clarify that an institution must be able to demonstrate, upon request of the Secretary, that is has developed criteria for determining ability to benefit and consistently applies that criteria. For example, if an institution's ability to benefit determination is based on student's admission test scores, it may demonstrate by means of a centrally maintained printout or listing of students' test scores that it applies its criteria.

Section 668.7—Definition of an independent student. The definition of an "independent student" for purposes of all the Title IV, HEA programs (except the SSIG Program) is codified as § 668.1a of the Student Assistance General Provisions regulations. The definition has been redesignated as § 668.7 in these proposed regulations but with no substantive changes.

Civil rights requirements and criminal penalties. Section 668.9 of the current regulations includes h table of the civil rights statutes and regulations that apply to institutions participating in the Title IV, HEA programs. This table and section is deleted in the proposed regulations because the Secretary believes that institutions are otherwise aware of the civil rights statutes and regulations to which they are subject. The Secretary is also deleting § 668.10 of the current regulations which merely repeat the statutory provisions of section 490 of the HEA concerning criminal penalties.

II. Subpart B—Standards for Participation in Title IV, HEA Programs

This subpart has been revised to provide a more logical organization for ease of location and consistent groupings of subjects.

Section 668.12—Institutional participation agreement. Section 668.12 (redesignated § 668.11(d) of the current regulations) concerning the written agreement which institutions must enter into with the Secretary to participate in the Title IV, HEA programs (except the SSIG Program) is modified in these proposed regulations for clarity.

Section 668.14—Standards of administrative capability. Section 668.16 of the current regulations is redesignated as § 668.14 in these proposed regulations with two substantive amendments.

(1) Section 668.16(e) was published as a final rule in the **Federal Register** on October 6, 1983, to provide parameters for institutions to use in establishing their specific standards of satisfactory progress for the purposes of the receipt of Title IV, HEA program assistance.

As discussed in the preamble to the regulations published on October 6, 1983, the concept of a time frame in which the student must complete his or her educational objective, degree or certificate was expanded in an effort to more adequately measure quantitative progress. Thus, § 668.16(e)(3)(ii) of those regulations requires an institution to establish a maximum time frame in which the student must complete his or her educational objective, degree, or certificate, and then divide that time frame into increments. At the end of each increment, § 668.16(e) requires the institution to determine whether the student has successfully completed a minimum percentage of work. The length of the maximum time frame and the length of the increment (not to exceed one academic year) is determined by the institution.

That section then sets out a specific method of determining the minimum percentage of work to be completed. It requires that the minimum percentage of work be the number of increments completed by the student compared to the maximum time frame set by the institution. For example, a baccalaureate degree granting institution with a maximum time frame of six academic years might choose one academic year as the length of its increment for determining work completed. A full-time student would then have to successfully complete at least one-sixth of the work required for his or her degree by the end of the first academic year, and so on to be maintaining satisfactory progress. This specific method of determining the minimum percentage of work completed was developed as a reasonable one for measuring a student's consistent quantitative progress toward his or her goal.

Since publication of the final regulations, a large number of requests have been received to reevaluate this method for determining the minimum percentage of work completed. These commenters pointed out that although the institution has discretion in establishing the maximum time frame and, to a lesser extent, the length of the increment, flexibility in establishing the minimum percentage of work completed is also critical. They feel that this flexibility is especially critical for institutions that deal with greatly diverse students and programs. The commenters particularly objected to the fact that the lack of discretion in the final regulations prohibits an institution from establishing a quantitative satisfactory progress standard under which work could be successfully completed at a lower rate during a student's early years in postsecondary school since that time serves as a crucial period of adjustment for many students.

In response to these commenters, § 668.16(e)(3)(ii) of the regulations has been reevaluated. The Secretary agrees with the commenters that an institution should have the discretion to establish the minimum percentage of work completed when establishing its standards of satisfactory progress in order to best take into account its student body and programs offered.

Therefore, the Secretary is proposing, in § 668.14(e)(3) of these regulations, revisions to § 668.16(e)(3). The Secretary is revising that section so that the institution will be required to establish a schedule designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree or certification within the established maximum time frame. At the end of each increment, the institution would then be required to determine that the student had successfully completed at least the appropriate percentage or amount of work according

to the Student Assistance General

regulations:

An institution may now satisfy this

regulations because the Secretary

institution with a maximum time frame

percentage or amount of work according

to the schedule. For example, an institution with a maximum time frame of six academic years and an increment length of one academic year might choose to establish the following full-time schedule for its baccalaureate degree program which requires 120 credits for completion:

Academic years completed	1	2	3	4	5	6
Numbers of credits successfully completed	15	30	51	72	96	120

Such a schedule would permit a student to complete less work during the early adjustment increments than would be required in the later academic years and still maintain satisfactory progress. Of course, an institution may require a student to complete an equal amount of work in each increment.

It should be noted that these revisions were discussed in a "Dear Colleague" letter sent to all institutions participating in the Title IV, HEA programs in December 1983.

(2) The Secretary is concerned with preventing fraud and abuse in the Title IV, HEA program. To that end, he has instituted the verification procedures in the Pell Grant Program and has included, in the current Student Assistance General Provisions regulations, the requirement that an institution develop an adequate system to verify the consistency of all the information it receives about a student's application for Title IV, HEA program funds. In furtherance of this concern, the Secretary is proposing to add a provision to the factors used in determining whether an institution has administrative capability. Section § 668.14(g) in these regulations requires an institution to refer any instance in which the institution has reason to believe that an applicant has applied for Title IV, HEA program funds under false pretenses to State or local law enforcement agencies for investigation. That section also requires the reporting of such referrals to the Secretary.

Section 668.15—Additional factors for evaluating administrative capability and financial responsibility. Currently, the Secretary considers that an institution's default rate on loans made under the GSL, PLUS and NDSL Programs may be an indication of the institution's impaired capability of properly administering the Title IV, HEA programs. The reference to the default rates on GSL and PLUS loans in connection with an institution's administrative capability is deleted from § 668.16 (redesignated § 668.17) of these proposed regulations. Unlike the loans it makes under the NDSL Program, an institution does not (unless it is also the lender) have the responsibility for servicing GSL and PLUS loans received for attendance at the institution. Because of this lack of direct responsibility and control, the default rate on GSL and PLUS loans is proposed to be deleted as a possible indication of an institution's impaired administrative capability.

Section 668.18—Written agreements between an eligible institution and an ineligible entity. This section (redesignated § 668.19—Contracting for educational programs or courses) is modified in these proposed regulations to clarify existing policy. That is, the eligible institution must take into account all courses taken by the student at both the eligible institution and the ineligible entity (that are covered under the written agreement) when determining the student's enrollment status and cost of attendance and must maintain all records regarding the student's eligibility for and receipt of Title IV, HEA program assistance.

Section 668.19—Financial aid transcript. The provisions concerning the financial aid transcript requirement (redesignated § 668.14) are reorganized and modified for clarity in § 668.19 of these proposed regulations.

Several amendments to the financial aid transcript requirement are included in these proposed regulations:

(1) Currently, an institution may disburse Title IV, HEA program funds (other than GSL checks where the institution is not the lender) for only one payment period unless it receives a financial aid transcript or a written notice that the transcript will not be sent from the institution(s) that the student previously attended. One amendment in these proposed regulations prohibits an institution which participates in the Pell Grant Program under the Alternate Disbursement System (ADS) from certifying the institutional portion of the transfer student's Pell Grant Request for Payment (ED Form 304) before receiving the transcript or notice. This amendment reflects current policy that has not previously appeared in regulations. Because ADS institutions are not directly involved in the disbursement of Pell Grant awards, the option to disburse Pell Grant funds for one payment period before receiving the transcript or notice is not applicable to these institutions.

(2) A new provision in these proposed regulations prohibits an institution from certifying the institutional portion of the loan application under the GSL and PLUS Programs before receiving the transcript or notice. A related amendment requires information as to the amount of and period covered by each GSL and PLUS Loan received by the student or from which the student benefited to be included on the transcript. When originally published in the **Federal Register** on September 28, 1979 (44 FR 56282), the financial aid transcript requirement prohibited the disbursement of a GSL before receipt of the transcript or notice and also called for the inclusion of GSL information on the transcript. Both of these provisions were revoked when the financial aid transcript requirements was amended in the **Federal Register** on June 24, 1980 (45 FR 42576). They were revoked because of the administrative problems affecting the lender and guarantee agency when a check was issued but never released for lack of a transcript or notice and because it was hoped that attempted borrowing in excess of statutory GSL Loan limits and previous borrower defaults would be discovered during guarantee agency processing.

However, in recent years, a serious abuse has been discovered in the GSL Program concerning the receipt by students of loan amounts in excess of the statutory maximums. This greatly increases program costs. This problem occurs because each guarantee agency maintains its own individual records and no national data base exists to monitor statutory annual and aggregate GSL and PLUS Loan limits. Excessive indebtedness on the part of students also contributes to a high default rate which adds additional program costs to the Federal government. The proposed reporting of GSL and PLUS Loan information on the transcript and the prohibition against institutional certification of the application until receipt of the transcript or notice will help alleviate the excessive loan problem and reduce program costs by providing an institution with the transfer student's GSL and PLUS Loan history *before* he or she receives additional loans. By prohibiting the *certification* of the GSL and PLUS application prior to receipt of the transcript or notice rather than the release of a check already issued (as in the original requirement published in 1979), any administrative problems for the lender and guarantee agency are eliminated.

Under current regulations, since a student may receive a GSL and PLUS Loan in a single disbursement covering an entire academic period, a student can receive the full amount of his or her GSL and PLUS Loan regardless of whether the institution subsequently receives a notice that the student is in default or overpayment status and is ineligible to receive other Title IV, HEA program

funds. The provisions proposed in these regulations provide greater consistency among the Title IV, HEA programs in packaging aid for transfer students. Also, in light of the current emphasis on the collection of debts to the Federal government, the financial aid transcript can help to prevent further indebtedness by students already in default and gives such students an impetus to repay defaulted loans and overpayments at previous institutions.

(3) Two new provisions are proposed in § 668.19 to reduce institutional administrative burden as the result of comments from the postsecondary education community. These provisions allow the institution to disburse Title IV, HEA program funds to a student for more than one payment period, and to certify the institutional portion of the Pell Grant Request for Payment (ED Form 304) and loan application under the GSL and PLUS Programs, without the receipt of a financial aid transcript or written notice that it will not be sent if—(A) The institution that the student previously attended is not located in a State; or (B) The institution that the student previously attended is closed and the information concerning the receipt of Title IV, HEA program assistance at that institution is not available.

(4) Under these regulations, it is proposed that institutions need only report on the finacial aid transcript the total amount of NKSL funds advanced to the student for attendance at the institution rather than the amount advanced for each award year as currently required. As noted in comments by the postsecondary education community, this change reflects the delection of statutory NDSL award year limits in the Education Amendments of 1980 and reduces institutional adminstrative burden.

Section 668.20—Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance. A new section (§668.20) is proposed in these regulations limiting the amount of remedial coursework that may be included when an institution is determining a student's enrollement status and cost of attendance under the Title IV, HEA programs. The Secretary believes that a student who has been admitted to a postsecondary institution should be sufficiently prepared for postsecondary coursework after completing remedial coursework that equals one academic year of study. Therefore, it is proposed that students will be limited to one academic year of non-credit or reduced credit remedial work except for courses that are a part of a program of English as a Second Language Program.

In a strictly literal sense, every program offered by an institution of higher education, no matter how basic, elementary or far removed from the educational level of an eligible postsecondary course of study, can be viewed as remedial program which is "designed to increase the ability of the student to pursue an undergraduate course of study leading to that certificate or degree." Theoretically, a student enrolled in any type of "remedial" program of whatever length could be viewed as eligible to receive assistance under the Title IV, HEA programs. However, the Secretary does not believe that the statutory scheme of the Title IV, HEA programs permits such an interpretaion.

The Title IV, HEA programs were designed to provide financial assistance to students pursuing postsecondary education. Thus, to receive such aid, a student must attend an eligible institution of higher education. One of the criteria defining such an institution is the type of student it admits as a regular student. Such a student must be a high school graduate, a GED recipient or recipient of a similar degree, or must be above the age of compulsory school attendace and with the exception of GSL or PLUS Programs, have the ability to benefit from the education or training offered by the institution in its degree or certificate programs. A remedial program that becomes part of an eligible program must be viewed in this context.

A remedial program, by design, offers instruction on less than a postsecondary level. However, the purpose of the remedial program is to provided a student, who is a high schoool graduate or who has the ability to benefit from the postsecondary education program provided by the institution, with the background and skills to successfully complete that postsecondary program. Presumably because the student is a high school graduate or has the ability to benefit from the postsecondary program, the remedial program, if it is to be considered part of an eligible postsecondary program, must have a reasonale relationship to the eligible postsecondary program both in terms of the level or instruction provided and the length of the program. Therefore, the Secretary is proposing to limit eligiblity for remedial work to one academic year.

An exception to the one year limitation is being proposed for courses in English as a second language (ESL) because ESL students often have complete mastery of logical thinking, communication, and reading, as well as math skills in their own language. However, these students do not have the ability to express this knowledge in English. The difficulty of ESL courses is often comparable to the courses taken by students who enroll in French or German language courses. ESL courses are not designed to develop or improve elementary and secondary educational skills, but instead are designed to permit a student who already has those skills to pursue a postsecondary education through a second language. These students would still be subject to the one-year limitation for any other courses that are remedial in nature.

The cost of attendance under the Pell Grant Program always represents full-time costs for a full academic year as described in program regulations (34 CFR Part 690, Subpart E). For example, a student who has already completed remedial coursework equal to one academic year of study enrolls in two courses for credit (six credits) and two non-credit remedial courses (equivalent to six credits). The institution may only consider such a student's enrollment status to be half-time. The six equivalent credits of the non-credit remedial courses which are beyond one academic year of study for this student may not be included in his or her enrollment status. In addition, the costs for those courses may not be included in determining this student's cost of attendance under the Campus-Based, GSL and PLUS Programs. Under the Pell Grant Program, the institution would determine the student's cost of attendance according to the program regulations and then calculate the student's expected disbursement from the Half-time Disbursement Schedule.

This section also proposes to codify existing policy under the Title IV, HEA programs for determining the equivalency of non-credit or reduced credit remedial coursework in credit or clock hours and for treating non-credit or reduced credit remedial courses for which a student is receiving credit toward a high school diploma or the recognized equivalent of a high school diploma.

Section 668.21—Treatment of Pell Grant, SEOG and NDSL Program funds if recipient withdraws, drops out or is expelled before his or her first day of class. Under the Pell Grant, SEOG and NDSL Programs, an institution has the option of disbursing funds to students who have registered but have not yet begun attending classes. A new section is proposed in these regulations which represents the existing policy for the treatment of such funds if the student never begins attending classes. If a

student officially withdraws, drops out or is expelled before his or her first day of class of a payment period, this section requires that all funds disbursed to the student by check or by credit to his or her account under the Pell Grant, SEOG and NDSL Programs for that payment period be considered an overpayment. The institution must return the overpayment to the appropriate programs since the student who withdraws, drops out or is expelled prior to attending classes never actually becomes eligible for those funds. A student is considered to have dropped out before the first day of class if the institution is unable to document the student's attendance at any class during the payment period regardless of whether the student was registered. The new section will replace § 690.78(c) of the Pell Grant Program regulations (34 CFR Part 690) and codify a policy under the SEOG and NDSL Programs which has not previously appeared in regulations.

Section 668.22—Distribution formula for institutional refunds and for repayments of disbursements made to the student for non-institutional costs. The provisions concerning the distribution of refunds and repayments (redesignated § 668.21) are reorganized and modified for clarify in these proposed regulations.

As a result of comments and inquiries from the postsecondary education community, five new provisions are included in this section for greater clarity. A sixth proposed provision is intended to reduce costs and potential abuse of the Title IV, HEA programs. Although the first five of the following provisions have not previously appeared in regulations, they do represent existing policy.

(1) Proposed paragraph (a)(2) of § 668.22 set out a definition of "institutional refund" for purposes of this section. This provision is included in response to inquiries for the postsecondary education community to clarify that the term "refund" as used in this section does not differ from its common everyday usage. An institutional refund means the amount paid for institutional charges by financial aid and/or cash payments minus the amount retained by the institution for the student's actual period of enrollment upon which the refund is based. The amount retained by the institution for the student's actual period of enrollment is, of course, calculated according to the institution's refund policy.

For example, $1,000 has been paid for institutional charges ($250 by financial aid and $750 by a cash payment from the student) and, according to the institution's refund policy, $500 is the amount to be retained by the institution for the student's actual period of enrollment. The refund amount to which the distribution formula in § 668.22 would be applied is $500 ($1,000 paid—$500 retained). However, if only the $250 of financial aid had been paid for institutional charges and, according to the institution's refund policy, $500 is the amount to be retained by the institution for the student's actual period of enrollment, there is *no* refund amount since the student still owes $250 to the institution. Section § 668.22 would not be applicable in this situation.

(2) Proposed paragraphs (a)(3), (a)(4) and (b)(3) are included in § 668.22 of these proposed regulations to clarify that the portion of the institutional refund or overpayment repaid by the student that the institution must return to the Title IV, HEA programs is the *lesser* of either the amount of assistance received under the Title IV, HEA program(s) for the payment period or the amount obtained by multiplying the refund or the repayment by the appropriate fraction in the regulations. This provision ensures that the total amount of the institutional refund or the repayment returned to the Title IV, HEA programs is never more than the student received from those programs.

(3) For purposes of this section only, a definition of a "payment period" under the GSL and PLUS Programs is included in § 668.22(c) of these proposed regulations. Generally, the term "payment period" is not used in connection with the GSL and PLUS Programs since most loans are made and disbursed for an entire academic period to be covered by the loan. However, for simplicity and consistency in determining the amount of the GSL or PLUS loan to be used in the numerator and denominator of the refund distribution fraction, the same definition of a payment period used under the Campus-Based Programs (34 CFR Parts 674, 675 and 676) is proposed, as under existing policy, for use under the GSL and PLUS Programs. That is, a payment period under the GSL and PLUS Programs is defined in these proposed regulations to be a semester, trimester or quarter or at institutions not using such academic periods, the period between the beginning and the mid-point or between the midpoint and the end of the academic year. For purposes of the refund distribution fraction then, the amount of the GSL or PLUS loan considered to be awarded for the payment period and used in the fraction is that proportionate amount of the loan corresponding to the number of payment periods. For example, if the academic period for which a GSL or PLUS Loan is received by a student is three quarters, one-third of the total loan amount is considered to have been awarded for each payment period and should be used in the numerator and denominator of the refund distribution fraction.

(4) Proposed paragraph (d)(1) of § 668.22 clarified that no amount of the Title IV, HEA program portion of the refund or the overpayment may be allocated to the CWS Program.

(5) Proposed paragraph (d)(2) of § 668.22 clarifies that no amount of the Title IV, HEA program portion of the overpayment may be allocated to the GSL or PLUS Program.

(6) Currently, under GSL and PLUS Program regulations (34 CFR Parts 682 and 683), the institution must return the amount of the Title IV, HEA program portion of the refund allocated to those programs to the borrower's lender within 40 days of the date that the student withdraws, drops out or is expelled. It it proposed in paragraph (d)(5) of § 668.22 that the institution must return the amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the CWS, GSL and PLUS Programs to the appropriate program account(s) within 30 days of the date that the student withdraws, drops out or is expelled. It is also proposed in paragraph (d)(6) of this section that the institution must return the amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the CWS, GSL and PLUS Programs to the appropriate program account(s) within 30 days of the date that the student repays the overpayment. These two proposed provisions are intended to reduce potential abuse of Title IV, HEA program funds, allow for the prompt reawarding of returned SEOG and NDSL funds to other eligible students and provide consistent treatment of such funds among all the Title IV, HEA programs. The time in which funds allocable to the GSL and PLUS Programs must be returned to the borrower's lender with be reduced from 40 days to 30 days when the GSL and PLUS Program regulations are republished.

Section 668.23—Audits, records and examination. Several amendments are made in § 668.23 (redesignated § 668.12) of these proposed regulations for the purposes of consolidation and clarification. Parallel requirements concerning access to records for Federal audits, biennial non-Federal audits, and the submission of audit reports are currently in the individual Title IV, HEA program regulations. These requirements are consolidated in § 668.23 of these proposed regulations. These requirements will be deleted from the individual program regulations when they are republished.

Section 668.24—Audit exceptions and repayments. The time in which an institution must repay improperly spent funds changed in § 668.24 (redesignated § 668.13) of these proposed regulations from 60 days to 30 days to conform to the instructions in the revised Office of Management and Budget (OMB) Circular A–50 issued on September 29, 1982. Paragraph (c) of this section is a reiteration of the recently published Notice of Proposed Rulemaking implementing the interest assessment provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) and the revised OMB Circular A–50.

Section 668.25—Loss of institutional eligibility. The provisions concerning the loss of institutional eligibility (redesignated § 668.20) are modified in § 668.25 of these proposed regulations to clarify their applicability to an institution's loss of eligibility for any reason. In addition, the definition of the term "commitment" in reference to an institution's loss of eligibility has been transferred from Subpart G to this section to clarify its use when an institution loses its eligibility for any reason, including termination under Subpart G.

III. Subpart C—Statement of Educational Purpose and Selective Service Registration Requirements

Because of their specific applicability to student eligibility for all the Title IV, HEA programs, a separate subpart was established in these proposed regulations for the provisions under which a student must file a Statement of Educational Purpose and a Statement of Registration Compliance, as well as verify his registration with Selective Service, if required. The provisions relating to student consumer information requirements are included in these proposed regulations as Subpart D.

Section 668.32—Statement of Educational purpose. To eliminate redundancy in the program regulations, the provision that a student must file a Statement of Educational Purpose to be eligible for any Title IV, HEA program assistance was published in the **Federal Register** as § 668.23 of the Student Assistance General Provisions regulations on April 11, 1983. This provision has been redesignated as § 668.32 in these proposed regulations with a clarification that, under the GSL or PLUS Program, the statement must be filed with the student's lender. This provision will be deleted from the individual program regulations when they are republished.

Section 668.33—Statement of registration compliance, through § 668.37—Record retention requirements. An amendment to the Military Selective Service Act mandates that any student who is required to be registered with Selective Service and fails to register is ineligible for Title IV, HEA program assistance. Provisions implementing this requirement were published in the **Federal Register** as §§ 668.23 through 668.28 of the Student Assistance General Provisions regulations on April 11, 1983. These provisions have been redesignated as §§ 668.33 through 668.37 in these proposed regulations with minor clarifications but without substantive changes.

In the preamble to the Student Assistance General Provisions regulations published in the **Federal Register** of April 11, 1983, 48 FR 15578, the Secretary postponed to award year 1985–86, the requirement that an institution verify a student's statement that he registered with the Selective Service. Moreover, the Secretary indicated that the education Department would, through site visits at institutions, verify a student's registration status. The Secretary further stated:

> The Secretary plans to evaluate the results of this method of verification of registration during the 1984–85 academic year. Should the Secretary and the Director find that college students are in compliance with the registration requirements of the Military Selective Service Act, the Secretary and the Director will review the compliance process set forth in § 668.26. If the Secretary and the Director determine that the requirements are not necessary, the Secretary, with the concurrence of the Director, may amend or revoke § 668.26.

As a result of this evaluation, the Secretary found an extremely high degree of compliance with the registration requirement. Therefore, the Secretary seeks comments on the following proposal that is not included in the text of the proposed regulation:

Eliminate the requirement that students who state that they have registered with Selective Service on their Statement of Registration Compliance, document and verify that registration.

After the publication of the Student Assistance General Provisions regulation in the **Federal Register** of April 11, 1983, the Secretary received comments from student financial assistance administrators at various institutions questioning the need for a student to sign a Statement of Registration Compliance if the administrator can determine that the student is not required to register, e.g., the student is a woman. The administrators also questioned whether it is necessary for a student to sign a Statement of Registration Compliance each year at an institution if the institution already had that student's Statement on file from a previous year. In response to these comments, the Secretary seeks comments on the following two proposals that are not included in the text of the proposed regulations:

1. Modify the requirement that all students must sign the Statement of Registration Compliance to permit an institution the option of not requiring a student to sign that Statement if the institution can determine that the student is exempt from registration (for example, if the student is female or out of the age range for registration). However, if the institution does not require a student to sign the Statement because it determined that the student was exempt from the registration requirement and the institution is incorrect in its determination, the institution will become liable for any Title IV, HEA program funds paid to the student.

2. Modify the requirement that a registered student file a Statement of Registration Compliance each award year to permit an institution the option of collecting the Statement once from that student when he first receives Title IV, HEA program funds at that institution.

IV. Subpart D—Student Consumer Information Services

The provisions relating to student consumer information requirements are included in these proposed regulations as Subpart D, which is currently reserved. Section numbers of these provisions have been redesignated to accommodate their transfer to Subpart D from Subpart C.

Section 668.44—Institutional information. There is no requirement in Section 485 of the Higher Education Act that an institution's consumer information provide a discussion of whether instructional or other physical facilities are readily accessible for handicapped students. Therefore, the requirement to provide such information has been deleted from this section (redesignated § 668.35) as recommended by the postsecondary education community in comments.

institutional charges ($250 by financial aid and $750 by a cash payment from

is that proportionate amount of the loan corresponding to the number of payment

the submission of audit reports are currently in the individual Title IV, HEA

filed with the student's lender. This

student to sign a Statement of

community in comments.

V. Subpart F—Misrepresentation

Subpart F in these proposed regulations concerning institutional misrepresentation is reorganized for greater clarity but without substantive revisions. In addition, some section numbers are redesignated to accommodate this reorganization.

VI. Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Final Student Assistance General Provisions regulations were published in the **Federal Register** on October 6, 1983, which corrected procedural deficiencies and emphasized fairness, efficiency, and participant satisfaction in actions to fine, limit, suspend and terminate postsecondary institutions. Although some section numbers have been redesignated, there are no substantive changes in these proposed regulations from the regulations published on October 6, 1983.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

These proposed regulations are being issued as a result of a review by the Department to anlayze regulatory burdens and identify opportunities for deregulation. They clarify or delete provisions in the previous Student Assistance General Provisions regulations which created excessive administrative burden for participating postsecondary institutions. To ease confusion, these proposed regulations also consolidate certain definitions and provisions common to all the Title IV, HEA programs that were previously contained in individual program regulations. Some additional provisions are included in response to comments from the postsecondary education community and program experience. Although small entities participating in the Title IV, HEA programs will be affected by the revised regulations, the revisions will not have a significant economic impact on the small entities affected.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before February 11, 1985 will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, ROB–3, 7th and D Streets SW., Washington, D.C. 20202, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act, and their overall requirements of reducing regulatory burden, public comment is especially invited on further opportunity to reduce regulatory burden in these proposed regulations.

Paperwork Reduction Act

The information collection requirements contained in these proposed regulations in Section 34 CFR 668.6, 668.11, 668.14, 668.15 will be sent to OMB for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Comments concerning information collection requirements only should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: December 6, 1984.

T.H. Bell,

Secretary of Education.

(Catalogue of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

The Secretary proposes to revise Part 668 of Title 34 of the Code of Federal Regulations to read as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart A—General

Sec.
668.1 Scope.
668.2 General definitions.
668.3 Public or private nonprofit institution of higher education.
668.4 Proprietary institution of higher education.
668.5 Postsecondary vocational institution.
668.6 Vocational school.
668.7 Definition of an independent student.

Subpart B—Standards for Participation in Title IV, HEA Programs

668.11 Scope.
668.12 Institutional participation agreement.
668.13 Factors of financial responsibility.
668.14 Standards of administrative capability.
668.15 Additional factors for evaluating administrative capability and financial responsibility.
668.16 Federal interest in Title IV, HEA program funds.
668.17 Change in ownership resulting in a change in control.
668.18 Written agreements between an eligible institution and an ineligible entity.
668.19 Financial aid transcript.
668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.
668.21 Treatment of Pell Grant, SEOG and NDSL Program funds if the recipient withdraws, drops out or is expelled before his or her first day of class.
668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for non-institutional costs.
668.23 Audits, records and examination.
668.24 Audit exceptions and repayments.
668.25 Loss of institutional eligibility.

Subpart C—Statement of Educational Purpose and Selective Service Registration Requirements

668.31 Scope.
668.32 Statement of educational purpose.

Sec.
668.33 Statement of registration compliance.
668.34 Model statement of educational purpose and registration compliance.
668.35 Verification of registration compliance for academic years beginning on or after July 1, 1985.
668.36 Notification and administrative review.
668.37 Record retention requirements.

Subpart D—Student Consumer Information Services

668.41 Scope and special definition.
668.42 Preparation and dissemination of materials.
668.43 Financial assistance information.
668.44 Institutional information.
668.45 Availability of employees for information dissemination purposes.

Subpart E—[Reserved]

Subpart F—Misrepresentation

668.61 Scope and special definitions.
668.62 Nature of educational program.
668.63 Nature of financial charges.
668.64 Employability of graduates.
668.65 Procedures.

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

668.71 Scope and special definitions.
668.72 Standard of conduct.
668.73 Emergency action.
668.74 Fine proceedings.
668.75 Suspension proceedings.
668.76 Limitation or termination proceedings.
668.77 Pre-hearing conference.
668.78 Hearing on the record.
668.79 Authority and responsibilities of the administrative law judge.
668.80 Initial and final decisions—Appeals.
668.81 Verification of mailing and receipt dates.
668.82 Fines.
668.83 Limitation.
668.84 Termination.
668.85 Reimbursements, refunds and offsets.
668.86 Reinstatement after termination.
668.87 Removal of limitation.

Authority: Sections 435, 481, 485, 487 and 1201 of the Higher Education Act of 1965, as amended; 20 U.S.C. 1085, 1088, 1091, 1092, 1094 and 1141.

Subpart A—General

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program).

(b) As used in this part, an "institution" includes—

(1) A public or private nonprofit institution of higher education as defined in § 668.3;

(2) A proprietary institution of higher education as defined in § 668.4;

(3) A postsecondary vocational institution as defined in § 668.5; and

(4) A vocational school as defined in § 668.6.

(c) The Title IV, HEA programs include—

(1) The Pell Grant Program (20 U.S.C. 1070a; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant Program (SEOG) (20 U.S.C. 1070b; *et seq.;* 34 CFR Part 676);

(3) The State Student Incentive Grant Program (SSIG) (20 U.S.C. 1070c *et seq.;* 34 CFR Part 692);

(4) The Guaranteed Student Loan Program (GSL) (20 U.S.C. 1071 *et seq.;* 34 CFR Part 682);

(5) The PLUS Program (20 U.S.C. 1078–2; 34 CFR Part 683);

(6) The College Work-Study Program (CWS) (42 U.S.C. 2751 *et seq.;* 34 CFR Part 675); and

(7) The National Direct Student Loan Program (NDSL) (20 U.S.C. 1087aa *et seq.;* 34 CFR Part 674).

(20 U.S.C. 1070 *et seq.*)

§ 668.2 General definitions.

The following definitions apply to all Title IV, HEA programs:

Academic year: (a) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at an institution which measures academic progress in credit hours and uses a semester, trimester or quarter system;

(b) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(c) At least 900 clock hours at an institution which measures academic progress in clock hours.

(20 U.S.C. 1088)

Act: Title IV of the Higher Education Act (HEA) of 1965, as amended.

Award year: The period of time from July 1 of one year through June 30 of the following year.

Campus-Based Programs: (a) The National Direct Student Loan Program (NDSL) (34 CFR Part 674);

(b) The College Work-Study Program (CWS) 34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant Program (SEOG) (34 CFR Part 676).

Clock hour: The equivalent of—

(a) A 50 to 60 minute class, lecture or recitation;

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship; or

(c) 60 minutes of preparation in a program of study by correspondence.

College Work-Study Program (CWS): The part-time employment program for students authorized by Title IV–C of the HEA.

(42 U.S.C. 2751–2756b)

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act.

(20 U.S.C. 421–429)

Dependent student: Any student who does not qualify as an independent student as defined in § 668.7

Direct loan: A loan made after June 30, 1972, under Title IV–E of the Act.

(20 U.S.C. 1087aa *et seq.*)

Enrolled: The status of a student who—

(a) Has completed the registration requirements at the institution he or she is attending and has begun attending classes; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Guaranteed Student Loan Program (GSL): The student loan program authorized by Title IV–B of the HEA.

(20 U.S.C. 1071 *et seq.*)

National Defense Student Loan Program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(20 U.S.C. 421–429)

National Direct Student Loan Program (NDSL): The student loan program authorized by Title IV–E of the HEA.

(20 U.S.C. 1087aa–1087ii)

National of the United States: (a) A citizen of the United States; or

(b) As defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(8 U.S.C. 1101)

One year training program: A program which is at least—

(a) 24 semester or trimester hours or units, or 36 quarter hours or units at an institution using credit hours or units to measure academic progress;

(b) 900 clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) 900 clock hours in a correspondence program.

(20 U.S.C. 1141(a))

Parent: A student's natural or adoptive mother or father. A parent also

includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Pell Grant Program: The grant program authorized by Title IV–A–1 of the HEA.

(20 U.S.C. 1070a)

PLUS Program: The loan program authorized by Title IV–B of the HEA.

(20 U.S.C. 1078–2)

Recognized equivalent of a high school diploma: (a) A General Education Development (GED) Certificate; or

(b) A State certificate received by a student after the student has passed a State authorized examination which the State recognizes as the equivalent of a high school diploma.

(20 U.S.C. 1141(a))

Regular student: A person who is enrolled or accepted for enrollment in an eligible program at an institution for the purpose of obtaining a degree or certificate.

Secretary: The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Six month training program: (a) A program which is at least—

(1) 16 semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(2) 600 clock hours of supervised training at an institution using clock hours to measure academic progress; or

(3) 600 clock hours in a correspondence program.

(b) A program which the Secretary determines is at least a six month training program on the basis of—

(1) A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a)(1) through (a)(3) of this definition; and

(2) The Secretary's ratification of that accrediting agency's determination.

(20 U.S.C. 1088)

State: The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

State Student Incentive Grant Program (SSIG): The grant program authorized by Title IV–A–3 of the HEA.

(20 U.S.C. 1070c *et seq.*)

Supplemental Educational Opportunity Grant Program (SEOG): The grant program authorized by Title IV–A–2 of the HEA.

(20 U.S.C. 1070b *et seq.*)

(20 U.S.C. 1070 *et seq.* unless otherwise noted)

§ 668.3 Public or private nonprofit institution of higher education.

(a) A public or private nonprofit institution of higher education is a public or private nonprofit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and, if the institution seeks to participate in a Title IV, HEA program other than the GSL or PLUS Program, have the ability to benefit from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, baccalaureate, graduate, or professional degree;

(ii) At least a two year program which is acceptable for full credit toward a baccalaureate degree; or

(iii) At least a one year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association;

(ii) Approved by a State agency recognized by the Secretary as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution;

(iii) An institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards; or

(iv) An institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.

(b) For the purposes of this section, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(c)(1) An institution that admits as regular students, persons who do not have a high school diploma or the recognized equivalent of a high school diploma and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall develop and consistently apply criteria for determining whether these students have the ability to benefit from the education or training offered.

(2) An institution must be able to demonstrate, upon request of the Secretary, that it has developed and consistently applied its criteria for determining such persons admitted as regular students have the ability to benefit.

(20 U.S.C. 1085, 1094(b)(3) and 1141(a))

§ 668.4 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution which—

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered;

(4) Is legally authorized to provide postsecondary education in the State in which it is physically located;

(5) Provides at least a six month program of training to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by a nationally recognized accrediting agency or association; and

(7) Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b) For the purposes of this section, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(c)(1) An institution that admits as regular students, persons who do not have a high school diploma or the recognized equivalent of a high school diploma and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall develop and consistently apply criteria for determining whether these students have the ability to benefit from the education or training offered.

(2) An institution must be able to demonstrate, upon request of the Secretary, that it has developed and consistently applied its criteria for determining such persons admitted as regular students have the ability to benefit.

(20 U.S.C. 1088(b), 1094(b)(3) and 1141(a))

§ 668.5 Postsecondary vocational institution.

(a) A postsecondary vocational institution is a public or private non-profit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered.

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides at least a six month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association;

(ii) Approved by a State agency recognized by the Secretary as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution;

(iii) An institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards; or

(iv) An institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years if it has been legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b) For the purposes of this section, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(c)(1) An institution that admits as regular students, persons who do not have a high school diploma or the recognized equivalent of a high school diploma and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall develop and consistently apply criteria for determining whether these students have the ability to benefit from the education or training offered.

(2) An institution must be able to demonstrate, upon request of the Secretary, that it has developed and consistently applied its criteria for determining such persons admitted as regular students have the ability to benefit.

(20 U.S.C. 1088, 1094(b)(3) and 1141(a))

§ 668.6 Vocational school.

(a) A vocational school is a business or trade school, or technical institution, or other technical or vocational school which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have completed or left elementary or secondary school; and

(ii) Have the ability to benefit from the training offered.

(3) Is legally authorized in the State in which it is physically located to provide, and provides within that State, a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations;

(ii) Is no less than—

(A) 300 clock hours of supervised training at institutions using clock hours to measure academic progress; or

(B) Eight semester or trimester hours or units or 12 quarter hours or units at institutions using credit hours or units to measure academic progress;

(iii) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than six months; and

(iv) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration;

(4) Has been in existence for two years or has been specially determined by the Secretary to be a school meeting the other requirements of this section and to be eligible to participate in the GSL or PLUS programs; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary for this purpose; or

(ii) In the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Secretary for this purpose.

(b) For the purposes of this section, the Secretary published a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(c)(1) An institution that admits as regular students, persons who do not have a high school diploma or the recognized equivalent of a high school diploma and who have completed or left elementary or secondary school, shall develop and consistently apply criteria for determining whether these students have the ability to benefit from the education or training offered.

(2) An institution must be able to demonstrate, upon request of the Secretary, that it has developed and consistently applied its criteria for determining such persons admitted as regular students have the ability to benefit.

§ 668.7 Definition of an independent student.

(a) An independent student is a student whom the Secretary considers to be independent of his or her parent(s) for purposes of the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan, Guaranteed Student Loan, and PLUS Programs. The determination of whether the student is independent is based on the criteria set forth in paragraphs (b) through (d) of this section.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, a student qualifies as an independent student for an award year if the student—

(1) Does not, during any of the relevant years described in paragraph (c) of this section, live for more than six weeks in the home of his or her parent(s) for whom income must be reported;

(2) Is not, for any of the relevant years described in paragraph (c) of the section, claimed as a dependent for Federal income tax purposes by such parent(s); and

(3) Does not, during any of the relevant years described in paragraph (c) of this section, receive financial assistance of more than $750 from such parent(s).

(c) Except as provided in paragraph (d) of this section, to qualify as an independent student for any award year—

(1) An unmarried student must satisfy the criteria set forth in paragraph (b) of this section for the first calendar year of an award year and the preceding calendar year; and

(2) A married student must satisfy the criteria set forth in paragraph (b) of this section for the first calendar year of the award year.

(d) The Secretary considers any student to be an independent student if, before the end of the award year—

(1) The student's parents die; or

(2) The student is declared a ward of a court.

(e) The following definition applies to this section:

Parent(s) for whom income must be reported: A parent for whom income must be reported under § 690.33 of the Pell Grant Program regulations, 34 CFR 690.33. For this purpose, the references in § 690.33(d) to the date of the student's application shall be considered to be references to the date the student applies for a loan under the Guaranteed Student Loan or PLUS Program or applies to have his expected family contribution determined under the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, or National Direct Student Loan Program.

(20 U.S.C. 1089(c)(2) and section 5 of Pub. L. 97-301 as amended by section 4 of Pub. L. 98-79)

Subpart B—Standards for Participation in Title IV, HEA Programs

§ 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program may subject the institution to proceedings under Subpart G. These proceedings may lead to a fine, or a limitation, suspension, or termination of the institution's eligibility to participate in any or all of the Title IV, HEA programs.

(20 U.S.C. 1094)

§ 668.12 Institutional participation agreement.

(a) If the Secretary determines that an institution meets the standards established in this subpart, the institution may enter into a written participation agreement with the Secretary, on a form approved by the Secretary, in order to participate in any of the Title IV, HEA programs other than the State Student Incentive Grant Program.

(b) A participation agreement conditions the initial and continued eligibility of the institution to participate in any Title IV, HEA program upon compliance with the provisions of this part and the individual program regulations.

(c)(1) A participation agreement becomes effective on the date executed by the Secretary.

(2) A participation agreement supersedes any prior participation agreement between the Secretary and the institution.

(d)(1) Except as provided in paragraph (e) of this section, the Secretary may terminate a participation agreement through procedures set forth in Subpart G.

(2) An institution may also terminate a participation agreement under an applicable individual program regulation.

(3) If the Secretary or the institution terminates a participation agreement under this paragraph, the Secretary establishes the termination date.

(e) An institution's participation agreement automatically terminates on the date the institution changes ownership that results in a change in control.

(20 U.S.C. 1094)

§ 668.13 Factors of financial responsibility.

(a) To participate in a Title IV, HEA program, an institution must be financially responsible. The Secretary may consider an institution to be financially responsible if it is able to—

(1) Provide the educational services described in its official publications and statements;

(2) Provide the administrative resources necessary to comply with the requirements of this subpart; and

(3) Meet all its financial obligations including—

(i) Refunds of institutional charges; and

(ii) Repayments to the Secretary for liabilities incurred administering programs authorized by the Higher Education Act of 1965, as amended.

(b) The Secretary considers that an institution is not financially responsible if—

(1) Under a cash or accrual system of accounting, it—

(i) Has a history of operating losses; or

(ii) Had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets;

(2) Under an accrual system of accounting, it had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1; or

(3) Under a fund accounting system, its unrestricted current or operating fund reflects a history of sustained material deficits.

(c) The Secretary determines whether an institution is financially responsible in accordance with paragraphs (a) and (b) of this section by evaluating documents submitted by the institution. Upon request of the Secretary, the institution must submit for its *latest* complete fiscal year—

(1) A profit and loss statement and a balance sheet for an institution on a cash or accrual accounting system, or a fund statement for an institution on a fund accounting system; or

(2) A financial audit report of the institution. The audit shall be conducted by an independent auditor in accordance with the general standards for auditors in the U.S. General Accounting Office publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.*

(d) The Secretary may determine that an institution is financially responsible even though it does not appear to be so under paragraphs (a), (b) and (c) of this section. To enable the Secretary to make this determination, the Secretary may request the institution to submit for its *current* fiscal year—

(1)(i) A profit and loss statement and a balance sheet for in institution on a cash or accrual accounting system, or a fund statement for an institution on a fund accounting system; or

(ii) A financial audit report of the institution. The audit shall be conducted by an independent auditor in accordance with the general standards for auditors in the U.S. General Accounting Office publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.*

(2) Other appropriate documents that will demonstrate to the Secretary that it has sufficient financial responsibility and capability to begin or to continue to participate in a Title IV, HEA program in spite of its inability to meet the requirements of paragraphs (a), (b) and (c) of this section.

(e)(1) The Secretary may require that the profit and loss statement, balance sheet and fund statement referred to in paragraphs (c)(1) and (d)(1) of this section be audited and certified by a certified public accountant.

(2) If the Secretary requires an institution to submit a profit and loss statement, a balance sheet, a fund statement or an audit report under paragraphs (c) and (d) of this section, the Secretary may also require the institution to submit the accountant's work papers.

(f)(1) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the Title IV, HEA program funds it receives as a trustee. A fidelity bond indemnifies the holder against losses resulting from fraud or lack of integrity, honesty, or fidelity of one or more of its employees or officers.

(2) However, a public institution that is bonded by the State against the type of losses described in paragraph (f)(1) of this section does not have to obtain additional fidelity bond coverage.

(3) Any bond required under this paragraph shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

(20 U.S.C. 1094 and Section 4 of Pub.L. 95-452)

§ 668.14 Standards of administrative capability.

To participate in a Title IV, HEA program, an institution must be able to adequately administer that program. The Secretary considers an institution to have that capability if it establishes and maintains required student and financial records and if it—

(a) Designates a capable individual to be responsible for—

(1) Administering all the Title IV, HEA programs in which it participates; and

(2) Coordinating the Title IV, HEA programs with the institution's other Federal and non-Federal programs of student financial assistance;

(b) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance;

(c) Uses an adequate number of qualified persons to administer the Title IV, HEA programs. In determining whether an institution uses an adequate number of qualified persons, the Secretary considers the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(d)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(e) Establishes, publishes, and applies reasonable standards for measuring whether a student, who is otherwise eligible for aid under any Title IV, HEA program, is maintaining satisfactory progress in his or her course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has such standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under a Title IV, HEA program; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors which are measurable against a norm;

(ii) A maximum time frame in which the student must complete his or her educational objective, degree, or certificate. The time frame shall be—

(A) Determined by the institution;

(B) Based on the student's enrollment status; and

(C) Divided into increments, not to exceed one academic year.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree or certificate within the maximum time frame;

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule;

(v) Consistent application of standards to all student within categories of students, e.g., full-time, part-time, and undergraduates, graduate students, and programs established by the institution;

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress;

(vii) Specific appeal procedures of a determination that a student is not making satisfactory progress; and

(viii) Specific procedures for reinstatement of aid;

(f) Develops and applies an adequate system to verify the consistency of the information it receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. If any discrepancies are discovered, the institution shall take appropriate action to correct the information. In determining whether the institution has an adequate verification system, the Secretary considers whether the institution reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purpose, Statements of Registration Compliance, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from other sources; and

(3) Any other information normally available to the institution regarding a

contribution determined under the Pell Grant, Supplemental Educational

agreement automatically terminates on the date the institution changes

(d) The Secretary may determine that an institution is financially responsible

(20 U.S.C. 1094 and Section 4 of Pub.L. 95–452)

who is not receiving assistance under a Title IV, HEA program; and

(3) Any other information normally available to the institution regarding a

student's citizenship, previous educational experience or other factors relating to the student's eligibility for Title IV, HEA program funds; and

(g)(1) Refers any instance in which the institution has reason to believe that an applicant has applied for Title IV, HEA program funds under false pretenses to State or local law enforcement agencies for investigation; and

(2) Reports the referral of that instance to the Secretary; and

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package.

(20 U.S.C. 1094)

§ 668.15 Additional factors for evaluating administrative capability and financial responsibility.

(a) The Secretary considers that the institutional default rate on National Direct Student Loans and the institution's student withdrawal rate may be an indication of an institutions impaired capability of properly administering Title IV, HEA programs if—

(1) The default rate on National Direct Student Loans made to students for attendance at that institution exceed 20 percent of the principal of all those loans that have reached the repayment period; or

(2) For an institution that has a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled at the beginning of an academic year withdraw from enrollment at that institution during the academic year; or

(3) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled at the beginning of any eight month period withdraw during that period.

(b)(1) If the default or withdrawal rate for an institution is as high or higher than the rates set forth in paragraph (a) of this section and the Secretary believes that these rates are an indication of the institution's impaired administrative capability, the Secretary may require the institution to submit for its *latest complete* fiscal year a profit and loss statement, a balance sheet, or a financial audit report of the institution. The audit shall be conducted by an independent auditor in accordance with the general standards for auditors in the U.S. General Accounting Office publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.*

(2) The date of the statement's preparation shall be within 12 months of the date of the Secretary's request.

(c) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (b)(1) of this section be audited and certified by a certified public accountant.

(d)(1) If the Secretary determines that the default or withdrawal rate for an institution indicate its impaired capability to administer any Title IV, HEA program, the Secretary requires the institution to take reasonable and appropriate measures to alleviate those conditions as a requirement for its continued participation in those programs.

(2) Before initiating that action, the Secretary informs the institution of the findings and provides it at least 35 days to respond.

(3) The institution may respond by—

(i) Demonstrating that the conditions do not have an adverse effect on the administration of the program; or

(ii) Submitting a plan of the action it will take to alleviate those conditions.

(20 U.S.C. 1094 and section 4 of Pub.L. 94–452)

§ 668.16 Federal interest in Title IV, HEA program funds.

Funds received under the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan Programs, except those funds received for the administrative cost allowance, are held in trust for the intended student beneficiaries. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) Title IV, HEA program funds for any other purpose.

(20 U.S.C. 1070 *et seq.*)

§ 668.17 Change in ownership resulting in a change in control.

(a) An eligible institution, or a previously eligible institution that participated in any Title IV, HEA program, that changes ownership resulting in a change in control is not considered by the Secretary to be the same institution unless—

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all improperly spent Title IV, HEA program funds provided to the institution before the effective date of the change;

(2) The new owner agrees—

(i) To abide by the institution's refund policy in effect before the effective date of the change for students who are enrolled before the effective date; and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change;

(3) The institution submits individual statements for both new and former owners listing their assets, liabilities, and new worth, and either—

(i) A profit and loss statement and balance sheet for the institution's *latest complete* fiscal year; or

(ii) An audit report for the institution's *latest complete* fiscal year prepared by a certified or licensed public accountant; and

(4) The institution submits additional financial documents if requested by the Secretary because the financial information provided in paragraph (a)(3) of this section is insufficient.

(b) The Secretary may require that the statements provided in paragraph (a)(3) of this section be audited and certified by a certified public accountant.

(c) If the Secretary considers the institution to be the same institution, the new owner must enter into a new participation agreement with the Secretary, to participate in the Title IV, HEA programs.

(d) For purposes of this part, a change in ownership of an institution that results in a change in control means any action by which a person or corporation obtains authority to control the actions of that institution. These actions may include, but are not limited to—

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of an institution to its parent corporation;

(3) The merger of two or more institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the assets of an institution to its parent corporation.

(20 U.S.C. 1088(b) and 1094)

§ 668.18 Written agreements between an eligible institution and an ineligible entity.

(a) An institution may, without losing its eligibility to participate in any Title IV, HEA program, enter into a written agreement to have a portion of its educational program(s) provided for some or all of its students by an institution, school, or organization that is not eligible to participate in Title IV, HEA programs.

(b)(1) An eligible student may receive Title IV, HEA program assistance under such an agreement if the eligible institution gives credit to students in the portion of the program provided by the ineligible institution(s), school(s), or organization(s) on the same basis as if it provided the portion of the program itself; and

(2)(i) The portion of the program provided by the ineligible institution(s), school(s), or organization(s) does not exceed 25 percent of the student's total program of study; or

(ii) The eligible institution's nationally recognized accrediting agency, or State agency for the approval of public postsecondary vocational education, determines that its agreement meets the agency's standards for contracting for educational services.

(c) The eligible institution shall take into account all courses taken by the student at the eligible institution and ineligible institution(s), school(s), or organization(s) that are covered by the written agreement when determining the student's enrollment status and cost of attendance.

(d) The eligible institution shall maintain all records regarding the student's eligibility for and receipt of the Title IV, HEA program assistance.

(20 U.S.C. 1094)

§ 668.19 Financial aid transcript.

(a)(1) If an institution is aware that a student who is applying for assistance under any Title IV, HEA program attended another eligible institution on at least a half-time basis, the institution or the transfer student shall request the institution that the student previously attended to provide a financial aid transcript.

(2) An institution may not disburse Title IV, HEA program funds to the student for more than one payment period, certify the institutional portion of the borrower's application under the Guaranteed Student Loan or PLUS Program, or certify the institutional portion of the student's Pell Grant Request for Payment (ED Form 304) unless or until:

(i) The institution receives a financial aid transcript from the institution(s) that the student previously attended;

(ii) The institution receives a written notice from the institution(s) that the student previously attended indicating that a financial aid transcript is not required to be sent under paragraphs (b)(2)(iii) through (b)(2)(v) of this section;

(iii) The institution that the student previously attended is not located in a State; or

(iv) The institution that the student previously attended is closed and the information concerning the student's receipt of Title IV, HEA program assistance at that institution is not available.

(b)(1) Except as provided in paragraph (b)(2) of this section, upon request, an eligible institution shall provide to another eligible institution a financial aid transcript for any student who, for attendance at that institution, received or benefited from—

(i) A Pell Grant during the award year in which the financial aid transcript is requested;

(ii) A Supplemental Educational Opportunity Grant;

(iii) A National Direct Student Loan;

(iv) A Guaranteed Student Loan; or

(v) A PLUS Loan.

(2) An eligible institution is not required to provide a financial aid transcript for a student if—

(i) The student is in default on a loan made or received for attendance at that institution under the National Direct Student Loan, Guaranteed Student Loan, or PLUS Program;

(ii) The student owes a refund on a grant received for attendance at that institution under the Pell Grant, Supplemental Educational Oppportunity Grant, or State Student Incentive Grant Program;

(iii) The student did *not*, for attendance at that institution, receive or benefit from—

(A) A Pell Grant during the award year in which the financial aid transcript is requested;

(B) A Supplemental Educational Opportunity Grant;

(C) A National Direct Student Loan;

(D) A Guaranteed Student Loan; or

(E) A PLUS Loan.

(iv) The student never received or benefited from a Supplemental Educational Opportunity Grant, a National Direct Student Loan, a Guaranteed Student Loan or a PLUS Loan for attendance at that institution and the institution participates in the Pell Grant Program under the Alternate Disbursement System; or

(v) The financial aid transcript would only include information from records that the institution is no longer required to keep.

(3)(i) If the institution is required to provide a financial aid transcript under paragraph (b)(1) of this section, it shall forward the transcript to the institution that the student attends or plans to attend in a timely manner.

(ii) If the institution is not required to provide a financial aid transcript under paragraph (b)(2) of this section, it shall notify the institution that the student attends or plans to attend in writing that the transcript will not be sent. The institution shall forward the notification in a timely manner and specify the reason that the transcript will not be sent.

(c) A transcript shall be signed by an official authorized by the institution to disclose information in connection with Title IV, HEA programs and shall include, for any year that the institution is required to keep the student's records, at least the following:

(1) The student's name and social security number;

(2) The student's Selective Service registration number, if known;

(3) Whether the student received a Supplemental Educational Opportunity Grant in any award year;

(4) For the award year in which the financial aid transcript is requested—

(i) The amount of Supplemental Educational Opportunity Grant funds disbursed to the student; and

(ii) The student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student;

(5) The total amount of National Direct Student Loans advanced to the student;

(6) The amount of and period covered by each Guaranteed Student Loan or PLUS Loan received by the student;

(7) The amount of and period covered by each PLUS Loan from which the student benefited;

(8) Whether the student is in default on—

(i) A National Direct Student Loan made by the institution; or

(ii) A Guaranteed Student Loan or PLUS Loan received by the student for attendance at the institution, if the institution is aware of the default status; and

(9) Whether the student owes a repayment on—

(i) A Pell Grant or Supplemental Educational Opportunity Grant received for attendance at the institution; or

(ii) A State Student Incentive grant received for attendance at the institution, if the institution is aware that the student owes a refund.

(20 U.S.C. 1091 and 1094)

§ 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

(a) A non-credit or reduced credit remedial course is a course of study designed to increase the ability of a

of this section and the Secretary

same institution unless—

some or all of its students by an

section;

attend in a timely manner.

designed to increase the ability of a

student to pursue a course of study leading to a certificate or degree.

(1) A non-credit remedial course is one for which no credit is given toward a certificte or degree; and

(2) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(b) Except as provided in paragraphs (c) and (d) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any non-credit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a non-credit or reduced credit remedial course by:

(1) Calculating the number of classroom and homework hours required for that course;

(2) Comparing those hours with the hours required for non-remedial courses in a similar subject; and

(3) Giving the remedial course the same number of credit or clock hours it gives the non-remedial course with the most comparable classroom and homework requirements.

(c) An institution may not take into account any non-credit or reduced credit remedial course in a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course if necessary to enact the student to complete a degree or certificate program, when determining—

(1) A student's enrollment status under the Title IV, HEA programs; and

(2) A student's cost of attendance under the Campus-Based, Guaranteed Student Loan and PLUS Programs.

(d) Except as set forth in paragraph (f) of this section, an institution may not take into account more than one academic year's worth of non-credit or reduced credit remedial coursework when determining—

(1) A student's enrollment status under the Title IV, HEA programs; and

(2) A student's cost of attendance under the Campus-Based, Guaranteed Student Loan and PLUS Programs.

(e) One academic year's worth of non-credit or reduced credit remedial coursework is equivalent to—

(1) 30 semester or 45 quarter hours, or

(2) 900 clock hours.

(f) Courses in English as a second language do not count against the one year academic limitation contained in paragraph (d) of this section.

(20 U.S.C. 1094)

§ 668.21 Treatment of Pell Grant, SEOG and NDSL Program funds if the recipient withdraws, drops out or is expelled before his or her first day of class.

(a)(1) If a student officially withdraws, drops out or is expelled before his or her first day of class of a payment period, all funds paid to the student for that payment period for institutional or non-institutional costs under the Pell Grant, Supplemental Educational Opportunity Grant and National Direct Student Loan Programs are an overpayment.

(2) The institution shall return that overpayment to the respective Title IV, HEA programs in the amount that the student received from each program.

(b) For purposes of this section, the Secretary considers that a student drops out before his or her first day of class of a payment period if the institution is unable to document the student's attendance at any class during the payment period.

(20 U.S.C. 1094)

§ 668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for non-institutional costs.

(a) *Institutional refunds returned to Title IV, HEA programs.* (1) An institution shall return a portion of a refund owed to a student to the Title IV, HEA programs if—

(i) The student officially withdraws, drops out or is expelled from the institution on or after his or her first day of class of a payment period; and

(ii) The student received assistance under any Title IV, HEA program other than the College Work-Study Program.

(2) For purposes of this section, an institutional refund means the amount paid for institutional charges by financial aid and/or cash payments minus the amount retained by the institution for the period that the student was actually enrolled at the institution The amount retained by the institution for the student's actual period of enrollment is calculated according to the institution's refund policy.

(3) If the student has not received Pell Grant funds at an institution participating in the Pell Grant Program under the Alternate Disbursement System, the portion of the refund that the institution shall return to the Title IV, HEA program(s) shall be the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than under the College Work-Study Program for the payment period; or

(ii) The amount obtained by multiplying the institutional refund by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of College Work-Study earnings) awarded for the payment period

---

Total amount of assistance (exclusive of all work earnings) awarded for the payment period.

(4)(i) If a student has received Pell Grant funds at an institution participating in the Pell Grant Program under the Alternate Disbursement System, the portion of the refund that the institution shall return to the Title IV, HEA program(s) other than the Pell Grant Program shall be the lesser of—

(A) The amount of assistance received under the Title IV, HEA programs other than the Pell Grant or College Work-Study Program for the payment period; or

(B) The amount obtained by multiplying the institutional rfund by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of College Work-Study earnings and Pell Grant funds) awarded for the payment period

---

Total amount of assistance (exclusive of all work earnings and Pell Grant funds) awarded for the payment period.

(ii) The institution shall notify the Secretary of the amount that it is returning to the Title IV, HEA program(s) according to paragraph (a)(4)(i) of this section.

(b) *Repayments of disbursements made to the student for non-institutional costs to the Title IV, HEA program.* (1) If a student officially withdraws, drops out or is expelled on or after his or her first day of class of the payment period, the institution shall determine what portion, if any, of the Title IV, HEA program assistance (other than from the College Work-Study, Guaranteed Student Loan or PLUS Program) received for that payment period by the student for non-institutional costs is an overpayment that must be repaid by the student. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR Parts 674, 675, 676, and 690).

(2)(i) To determine any of the Title IV, HEA, program assistance received by the student for non-institutional costs constitutes an overpayment, the institution shall subtract the non-institutional costs incurred by the student for that portion of the payment period during which the students was enrolled from the amount of assistance disbursed to the student.

(ii) Non-institutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(3) The portion of the overpayment as determined according to paragraph (b)(2) of this section that the institution shall return to the Title IV, HEA program(s) shall be the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than the College Work-Study, Guaranteed Student Loan or PLUS Program for the payment period; or

(ii) The amount obtained by multiplying the overpayment by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of College Work-Study and GSL and PLUS Loans) awarded for the payment period.

Total amount of assistance (exclusive of all work earnings and GSL and PLUS Loans) awarded for the payment period.

(c) *Payment period.* For purposes of this section—

(1) A payment period under the Guaranteed Student Loan and PLUS Programs is a semester, trimester or quarter. At an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of the academic year; and

(2) The amount of a loan made under the Guaranteed Student Loan or PLUS Program is considered to be awarded in proportionate amounts corresponding to the number of payment periods calculated according to paragraph (c)(1) of this section.

(d) *Drop out date.* For purposes of this section, a student is considered to have dropped out on the last recorded date of class attendance by the student as documents by the institution.

(e) *Distribution among the Title IV, HEA programs.* An institution shall develop a written policy allocating the Title IV, HEA program portion of the refund determined under paragraph (a) of this section and the Title IV, HEA program portion of the overpayment determined under paragraph (b) of this section among the Title IV, HEA program(s) from which the student received aid. This allocation policy shall be applied consistently to all students who have received Title IV, HEA program assistance and shall conform to the following:

(1) No amount of the Title IV, HEA program portion of the refund or of the overpayment may be allocated to the College Work-Study Program;

(2) No amount of the Title IV, HEA program portion of the overpayment may be allocated to the Guaranteed Student Loan or PLUS Program;

(3) The amount of the Title IV, HEA program portion of the refund or of the overpayment allocated to a specific Title IV, HEA program may not exceed the amount that the student received from that program;

(4) The amount of the Title IV, HEA program portion of the refund allocated to the Guaranteed Student Loan and PLUS Programs shall be returned to the borrower's lender by the institution in accordance with program regulations (34 CFR Parts 682 and 683);

(5) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the College Work-Study, Guaranteed Student Loan and PLUS Programs shall be returned to the appropriate program account(s) by the Institution within 30 days of the date that the student withdraws, drops out or is expelled; and

(6) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the College Work-Study, Guaranteed Student Loan and PLUS Programs shall be returned to the appropiate program account(s) within 30 days of the date of that the student makes the repayment.

(20 U.S.C. 1094)

§ 668.23 Audits, records and examination.

(a) An institution which participates in the National Direct Student Loan (34 CFR Part 674), College Work-Study (34 CFR Part 675), Supplemental Educational Opportunity Grant (34 CFR Part 676), Guaranteed Student Loan (34 CFR Part 682), PLUS (34 CFR Part 683), or Pell Grant (34 CFR Part 690) Program shall comply with the regulations for those programs concerning—

(1) Fiscal and accounting systems;

(2) Program and fiscal recordkeeping; and

(3) Record retention.

(b) For purposes of audit and examination, an institution which participates in any Title IV, HEA program shall give the Secretary, the Comptroller General of the United States or their duly authorized representatives access to the records required by the program regulations and this part and to any other pertinent books, documents, papers and records.

(c)(1) An institution which participates in the National Direct Student Loan, College Work-Study Supplemental Education Opportunity Grant, Guaranteed Student Loan, or PLUS Program or the Pell Grant Program under the Regular Disbursement System shall have a financial and compliance audit of its Title IV, HEA programs. The audit shall be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.*

(2) Procedures for audits are contained in audit guides developed by, and available from, the Education Department's Office of the Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards.*

(3) The institution shall have an audit performed at least once every two years. Each audit must cover the institution's activities for the entire period of time since the preceding audit.

(4) The institution shall submit audit reports within nine months of the end of the audit period to its local regional office of the Education Department's Office of the Inspector General Audit Agency.

(5) The institution shall—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to the audit's review; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to the audit's review.

(d) Upon written request, an institution shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any Title IV, HEA program funds.

(e)(1) In addition to the records required under appropriate program regulations and this part for each recipient of Title IV, HEA program assistance, and institution shall establish and maintain on a current basis, records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her course of study;

(iv) Any refunds due or paid to the student, the Title IV, HEA program account(s) and the student's lender under the Guaranteed Student Loan and PLUS programs;

(20 U.S.C. 1094)

the following fraction:

disbursed to the student.

College Work-Study Program;

under the Regular Disbursement System

PLUS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service, and

(vi) The student's prior receipt of financial aid (see § 668.19).

(vii) The verification of student aid application data.

(2)(i) An institution shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA assistance, which are relevant to the institution's admission standards.

(ii) An institution at which only certain programs have been determined eligible shall establish and maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s), whether or not the student received Title IV, HEA assistance.

(3) Records shall be—

(i) Systematically organized; and

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion.

(20 U.S.C. 1088, 1094, 1141 and section 4 of Pub. L. 95–452)

§ 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of the institution, the Education Department's Inspector General questions an expenditure or the institution's compliance with an applicable requirement (including the lack of proper documentation), the Inspector General notifies the Secretary and the institution of the questioned expenditure or procedure.

(2) If the institution believes that the questioned expenditure or procedure was proper, it shall notify the Secretary in writing of its position and the reasons for its position.

(3) The institution's response must be received by the Secretary within 35 days of the date of the Inspector's General's notification to the institution.

(b)(1) Based on the audit finding and the institution's response, the Secretary determines the amount of funds improperly spent, if any, and instructs the institution as to the manner of repayment.

(2) The institution shall repay those funds within 30 days of the date of the Secretary's notification, unless the Secretary permits a longer repayment period.

(c) The Secretary charges interest on outstanding debts resulting from audits or other reviews in accordance with 34 CFR 75.909.

(20 U.S.C. 1094)

§ 668.25 Loss of institutional eligibility.

(a) When an institution loses its eligibility or ceases to provide educational instruction, it shall—

(1) Immediately notify the Secretary of that fact;

(2) Refund to the Federal government, or otherwise dispose of by instructions from the Secretary, any unobligated Title IV, HEA program funds and any Guaranteed Student Loan or PLUS Loan checks it has received, except—

(i) Those funds for which it has made a commitment but not yet paid to students in that payment period; and

(ii) Its administrative allowance, if applicable;

(3) Submit to the Secretary within 45 days after the effective date of closing or loss of eligibility—

(i) All financial, performance and other reports required by each appropriate Title IV, HEA program regulation; and

(ii) A letter of engagement for an audit or an audit report of all Title IV, HEA program funds it received;

(4) Inform the Secretary of the arrangements it has made for the proper retention and storage for a minimum of five years of all records concerning the administration of the Title IV, HEA programs;

(5) Inform the Secretary of how it will provide for the collection of any outstanding Title IV, HEA loans; and

(6) Distribute refunds of unearned tuition and fees according to § 668.21.

(b) For the purposes of this section—

(1) A commitment under the Pell Grant Program occurs after a student is enrolled and attending the institution and has submitted a valid student aid report to the institution, or to the Secretary if the student is attending an institution which participates under the Alternate Disbursement System;

(2) A commitment under the Campus-Based Programs occurs when the student is enrolled and attending the institution and has received an award letter from the institution.

(20 U.S.C. 1094)

Subpart C—Statement of Educational Purpose and Selective Service Registration Requirements

§ 668.31 Scope.

This subpart establishes rules by which an otherwise eligible student files a Statement of Educational Purpose, files a Statement of Registration Compliance and, if required, verifies his registration with Selective Service in order to receive assistance under any Title IV, HEA program.

(20 U.S.C. 1091 and 50 U.S.C. App. 462)

§ 668.32 Statement of educational purpose.

Before receiving any funds under any Title IV, HEA program, a student shall file a Statement of Educational Purpose with the institution or, under the Guaranteed Student Loan or PLUS Program, with the lender. In this statement, the student certifies that he or she will use any funds received under these programs solely for educational expenses connected with attendance at the institution at which the student is enrolled or accepted for enrollment.

(20 U.S.C. 1091)

§ 668.33 Statement of registration compliance.

(a)(1) Except as provided in paragraph (c) of this section, until a student who is applying for Title IV, HEA program assistance, or under the PLUS Program, who will benefit from the loan, files a Statement of Registration Compliance with the institution, an institution may not, for any period of instruction—

(i) Disburse funds to the student under any Title IV, HEA program;

(ii) Certify the institution portion of the application under the Guaranteed Student Loan or PLUS Program; or

(iii) Certify the institutional portion of the Pell Grant Request for Payment (ED Form 304).

(2) In the Statement of Registration Compliance, the student must certify either that he is registered with Selective Service or that, for a specified reason, he or she is not required to be registered.

(b) A student shall file a Statement of Registration Compliance once for each award year. If the student's status under registration law changes during the award year after he has completed the Statement of Registration Compliance, the student is not required to file a new statement for that award year.

(c) The requirements set forth in paragraph (a) of this section and § 668.35 do not apply to students who are—

(1) Enrolled in an officer procurement program, the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(i) The Citadel, Charleston, South Carolina;

(ii) North Georgia College, Dahlonega, Georgia;

(iii) Norwich University, Northfield, Vermont; or

(iv) Virginia Military Institute, Lexington, Virginia; or

(2) Unable to present themselves for registration for reasons beyond their control such as being hospitalized, incarcerated, or institutionalized.

(50 U.S.C. App. 462)

§ 668.34 Model statement of educational purpose and registration compliance.

The Secretary considers the following statement as satisfying the requirements of §§ 668.32 and 668.33(a) and the notification requirement of § 668.35(a):

Statement of Educational Purpose/ Registration Compliance

I certify that I will use any money I receive under any Title IV, HEA program only for expenses related to attendance at (insert name of school) _____; and (check as appropriate)

_____ I am a female.

_____ I am in the armed services on active duty. (Note: Members of the Reserves and National Guard are not considered on active duty.)

_____ I have not reached my 18th birthday.

_____ I was born before 1960.

_____ I am a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

_____ I certify that I am registered with Selective Service.

Signature _____

Date: _____

Notice: You will not receive Title IV, HEA program assistance unless you complete this statement and, if required, give proof to your school of your registration compliance. If you purposely state falsely that you are registered or that you are within one of the categories of persons not required to register, you may be subject to fine or imprisonment, or both. The Title IV, HEA programs includes the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grant, College Work-Study, National Direct Student Loan, Guaranteed Student Loan and PLUS Programs.

(20 U.S.C. 1091 and 50 U.S.C. App. 462)

§ 668.35 Verification of registration compliance for academic years beginning on or after July 1, 1985.

(a) Except as provided in paragraph (a)(2) of this section, for each academic year or period of instruction beginning on or after July 1, 1985—

(1) A student who has certified that he is registered with Selective Service on the Statement of Registration Compliance according to the requirement of § 668.33 shall verify that registration by submitting to the institution appropriate documentation described in paragraph (b) of this section.

(2) A student is not required to submit verification documentation if—

(i) The student has previously received Title IV, HEA program assistance for attendance at that institution; or

(ii) The student has verified his registration compliance in a previous academic year or period of instruction.

(b)(1) The following documents may be used to verify a student's registration compliance:

(i) A copy of the student's Registration Acknowledgement Letter (SSS Form 3A or 3A–S);

(ii) A financial aid transcript received by the institution bearing the student's Selective Service number;

(iii) Other documentation from the Selective Service, if approved by the Secretary and the Director of the Selective Service System; or

(iv) A notarized affidavit in which the student affirms that he—

(A) Has registered with the Selective Service; and

(B) Does not have his Registration Acknowledgement Letter.

(2) The Secretary considers the following affidavit as satisfying the requirment of paragraph (b)(1)(iv) of this section:

Affidavit of Registration Compliance

I affirm under penalty of perjury that I am registered with Selective Service and that I do not have my Registration Acknowledgement Letter from Selective Service. I understand that if this information is false, I could be subject to either a fine or imprisonment, or both. I also understand that I must provide proof from the Selective Service or my registration to my school within 120 days of the date of this affidavit, and that if I do not provide such proof I must repay any Title IV, HEA program assistance I have received for this school period and that I forfeit the right to receive the benefits of any loan made under the Guaranteed Student Loan or PLUS Program as well as the right to payment of interest benefits on the loan.

Signature: _____

Date: _____

Notary Public: _____

(c)(1) If the student must verify his registration compliance and the institution has not received appropriate documentation verifying that registration, it may not—

(i) Disburse funds to the student under any Title IV, HEA assistance programs;

(ii) Certify the institutional portion of his application under the Guaranteed Student Loan or PLUS Program; or

(iii) Certify the institutional portion of his Pell Grant Request for Payment (ED Form 304).

(2) If a student temporarily verifies his registration by submitting to the institution the notarized affidavit described in paragraph (b)(2) of this section, an institution shall—

(i) Disburse the student's Title IV, HEA program funds for not more than one payment period;

(ii) Certify the institutional portion of his application under the Guaranteed Student Loan or PLUS Program; and

(iii) Certify the institutional portion of his Pell Grant Request for Payment (ED Form 304).

(3) A student who has filed an affidavit under paragraph (b)(2) of this section shall submit to the institution the documentation described in paragraph (b)(1) of this section to verify his registration within one hundred and twenty (120) days from the date of the affidavit.

(4) If the student who submits an affidavit does not submit the required documentation within one hundred and twenty (120) days from the date of the affidavit—

(i) Title IV, HEA program funds received by the student for the payment period in question constitute an unauthorized payment which the student must repay;

(ii) The institution shall make no further disbursements of Title IV, HEA program funds; and

(iii) The institution shall provide the Secretary with the student's name, amount of unauthorized payment, Social Security number, and other relevant information.

(iv) The Secretary takes necessary steps to recover this unauthorized payment, including litigation, as necessary.

(5) If the institution certifies the institutional portion of an application under the Guaranteed Student Loan or PLUS Program for a student who fails to submit the required documentation within one hundred and twenty (120) days from the date of the affidavit, the institution shall notify the lender and the Secretary.

(6) A student who fails to submit the required documentation within one hundred and twenty (120) days forfeits the right to receive the benefits of the loan made to or for the student under the Guaranteed Student Loan or PLUS Program, as well as the right to payment of interest benfits on the loan. The borrower shall, if demanded by the lender, immediately repay the disbursement.

(20 U.S.C. 1097 and 50 U.S.C. App. 462)

period.

a Statement of Educational Purpose,

Georgia;

section.

Form 304).

(20 U.S.C. 1097 and 50 U.S.C. App. 462)

§ 668.36 Notification and administrative review.

(a) (1) An institution shall provide general written notice to any student seeking aid under any Title IV, HEA program that he or she must submit a Statement of Registration Compliance to the institution as a condition for receipt of such aid. Further, the institution shall provide a notice to male students that they may be required to verify their registration with the Selective Service.

(2) Before denying aid to any student under any Title IV, HEA program for failure to register with the Selective Service, for failure to file the Statement of Registration Compliance in accordance with § 668.33 or for failure to verify his registration with Selective Service in accordance with § 668.35, the institution shall inform that student in writing that he or she will be denied Title IV, HEA program assistance.

(b) (1) A student who was notified under paragraph (a)(2) of this section and has not registered although required to do so may establish his eligibility for Title IV, HEA program assistance for the payment period in which he was notified under paragraph (a)(2) of this section by registering, filing a Statement of Registration Compliance, and, if required, verifying that he is registered with Selective Service in accordance with §668.35 within 30 days of the receipt of the notice or before the end of the same payment period, whichever is later.

(2) A student, who was notified under paragraph (a)(2) of this section and who has registered with Selective Service or is not required to register with Selective Service but failed to file a Statement of Registration Compliance, or to verify that he is registered with Selective Service, may establish his or her eligibility for Title IV, HEA program assistance for the payment period in which he was notified under paragraph (a)(2) of this section by filing a Statement of Registration Compliance and, if required, verifying that he is registered with Selective Service in accordance with § 668.35 within 30 days of the receipt of the notice or the end of the same payment period, whichever is later.

(3) If a student does not file a Statement of Registration Compliance, or verify that he is registered with Selective Service in accordance with § 668.35, within thirty days of the receipt of the notification under paragraph (a)(2) of this section or before the end of that payment period, whichever is later, he or she may not receive Title IV, HEA program assistance retroactively for that payment period or prior payment periods for which the student had not filed a Statement of Registration Compliance or verified that he is registered with Selective Service.

(c) (1) A student who has been denied Title IV, HEA program assistance because he has not verified his registration with the Selective Service, may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to verify that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (c)(1) of this section within the award year for which he was denied Title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (c)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(d) Any determination of compliance made under this section shall be final unless reopened by the Secretary and revised on the basis of additional evidence.

(e) Any determination of compliance made under this section shall be binding only for purposes of determining eligibility for Title IV, HEA program assistance.

(50 U.S.C. App. 462)

§ 668.37 Record retention requirements.

An institution shall include in each student's record, in accordance with the record retention provisions in each of the Title IV, HEA program regulations, the following:

(a) The signed Statement of Educational Purpose/Registration Compliance; and

(b) The documentation described in § 668.34 verifying the student's registration compliance.

(20 U.S.C. 1097 and 50 U.S.C. App. 462)

Subpart D—Student Consumer Information Services

§ 668.41 Scope and special definition.

(a) Each institution participating in any Title IV, HEA program shall disseminate to all enrolled students, and to prospective students upon request, through appropriate publications and mailing, information concerning—

(1) The institution (see § 668.44); and

(2) Any student financial assistance available to students enrolled in the institution (see § 668.43).

(b) The following definition applies to this subpart: *Prospective student:* An individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning admission to the institution.

(20 U.S.C. 1092)

§ 668.42 Preparation and dissemination of materials.

For each award year in which it participates in any Title IV, HEA program, an institution shall—

(a) If necessary, prepare and publish materials covering the topics set forth in § 668.43 and §668.44; and

(b) Make such material available through appropriate publications and mailings to—

(1) All currently enrolled students; and

(2) Any prospective student, upon request of that student.

(20 U.S.C. 1092)

§ 668.43 Financial assistance information.

(a) (1) Information on financial assistance that the institution must publish and make readily available to current and prospective students under this subpart shall include, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program discussed in paragraph (a) of this section, the information provided by the institution shall describe—

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student's award.

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and specifically, assistance under the Title IV, HEA programs. This description shall include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2) (i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of such disbursements;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans; and

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package.

(20 U.S.C. 1092)

§ 668.44 Institutional information.

(a) Institutional information that the institution must publish and make readily available to current and prospective students under this subpart shall include, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus; and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding the distribution of any refund due to the Title IV, HEA programs as required by § 668.21;

(4) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(6) A description of any special facilities and services available to handicapped students; and

(7) The titles of persons designated under § 668.45 and information regarding how and where such persons may be contacted.

(b) The institution shall make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(20 U.S.C. 1092)

§ 668.45 Availability of employees for information dissemination purposes.

(a) *Availability.* (1) Except as provided in paragraph (b) of this section, each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information specified in §§ 668.43 and 668.44.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that institution.

(3) If more than one person is designated, their combined work schedules shall be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver.* (1) The Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in the Title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of Title IV, HEA program recipients is too small, the Secretary will consider whether there will be an insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To recieve a waiver, the institution must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(20 U.S.C. 1092)

Subpart E—[Reserved]

Subpart F—Misrepresentation

§ 668.61 Scope and special definitions.

(a) This subpart establishes the standards and rules by which the secretary may initiate any proceeding under Subpart G against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges or the employability of its graduates.

(b) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary. Misrepresentation includes the dissemination of endorsements and testimonials that are given under duress.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(20 U.S.C. 1094)

§ 668.62 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false,

periods for which the student had not

the Title IV, HEA program regulations, the following:

information provided by the institution shall describe—

policies regarding the distribution of any

available on a full-time basis.

includes, but is not limited to, false,

erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for—

(1) Acceptance into a labor union or similar organization; or

(2) Receipt of a local, State or Federal license or a non-governmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended by—

(1) Vocational counselors, high schools or employment agencies; or

(2) Governmental official for governmental employment;

(e) Its size, location, facilities or equipment;

(f) The availability, frequency and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

(j) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course; or

(k) The nature or extent of any prerequisites established for enrollment in any course.

(20 U.S.C. 1094)

§ 668.83 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

(20 U.S.C. 1094)

§ 668.84 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment;

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning government job market statistics in relation to the potential placement of its graduates.

(20 U.S.C. 1094)

§ 668.85 Procedures.

(a) On receipt of a written allegation or complaint from a student enrolled at the institution, a prospective student, the family of a student or prospective student, or a governmental official, the designated department official as defined in §668.71 reviews the allegation or complaint to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated department official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated department official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution or the employability of its graduates, the official—

(1) Initiates action to fine or to limit, suspend or terminate the institution's eligibility to participate in the Title IV, HEA programs according to the procedures set forth in Subpart G, or

(2) Takes other appropriate action.

(20 U.S.C. 1094)

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

§ 668.71 Scope and special definitions.

(a) This subpart establishes rules for the imposition of a fine upon, or for the suspension, limitation or termination of an otherwise eligible institution's participation in any or all of the Title IV, HEA programs.

(b) These rules apply to an institution which violates any Title IV, HEA program statute, regulation, special arrangement, agreement or limitation prescribed under authority of Title IV of the Higher Education Act of 1965 (HEA), as amended.

(c) This subpart does not apply to a determination that—

(1) An institution of higher education fails to meet the statutory definition set forth in section 435, 481 or 1201 of the HEA;

(2) A vocational school fails to meet the statutory definition set forth in section 435(c) of the HEA; or

(3) An institution fails to qualify for initial certification to participate in any Title IV, HEA program because it does not meet the fiscal and administrative standards set forth in Subpart B of this part.

(d) This subpart does not apply to administrative action by the Department of Education based on any alleged violation of—

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4)	34 CFR Part 100
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683)	34 CFR Part 106
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR Part 104
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	45 CFR Part 90

(e) The following definitions apply to this subpart:

Designated department official: An official of the Education Department to whom the Secretary has delegated responsibilities indicated in this subpart.

Funds: Any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all Title IV, HEA programs to an institution or to or on behalf of students enrolled and attending an institution.

(20 U.S.C. 1094)

§ 668.72 Standard of conduct.

(a) A participating institution acts in the nature of a fiduciary in its administration of the Title IV, HEA programs.

(b) In the capacity of a fiduciary, the institution is subject to the highest standard of care and diligence in administering the programs and in

accounting to the Government for the funds received under those programs.

(c) An institution's failure to administer the Title IV, HEA programs, or to account for the funds it receives under those programs, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for the termination of the eligibility of the institution to participate in those programs.

(d) If the owner of an institution is convicted of a crime involving the unlawful acquisition, use, or expenditure of Title IV, HEA program funds, the Secretary considers that conviction as a violation of the institution's fiduciary duty and as an automatic ground for terminating the institution's eligibility to participate in any Title IV, HEA program.

(20 U.S.C. 1070 *et seq.*)

§ 668.73 Emergency action.

(a) The Secretary through a designated department official may take an emergency action to withhold funds from an institution or its students and to withdraw the authority of an institution to obligate funds under any or all Title IV, HEA programs if the designated department official—

(1) Receives information, determined by the official to be reliable, that the institution is violating applicable laws, regulations, special arrangements, agreements or limitations.

(2) Determines that immediate action is necessary to prevent misuse of Federal funds; and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures set forth in this subpart for suspension, limitation or termination.

(b) The designated department official begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the action and the basis on which it is taken. The effective date of the action is the date on which the notice is received by the institution.

(c) An emergency action shall not exceed 30 days unless a suspension, limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(d) If a suspension, limitation or termination proceeding is begun, the Secretary will provide the institution, if it so requests, an opportunity to show cause that the emergency action is unwarranted, pending the outcome of the proceeding.

(20 U.S.C. 1094)

§ 668.74 Fine proceedings.

(a) *Scope and consequences.* The Secretary may impose a fine of up to $25,000 per violation on an institution that—

(1) Violates any provision of Title IV of the Higher Education Act or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its financial charges or the employability of its graduates.

(b) *Procedures.* (1) The designated department official begins a fine proceeding, whether or not a suspension, limitation or termination proceeding has begun under § 668.75 or § 668.76, by sending the institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the Secretary's intent to fine the institution and the amount of the fine and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the fine, which shall be at least 20 days from mailing of the notice of intent;

(iii) Inform the institution that the fine will not be effective on the date specified in the notice if the designated department official receives, at least five days before that date, a written request for a hearing or written material indicating why the fine should not be imposed.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.78.

(c) *Expedited hearings.* With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(20 U.S.C. 1094)

§ 668.75 Suspension proceedings.

(a) *Scope and consequences.* From its effective date, a suspension removes an institution's eligibility to participate in any or all of the Title IV, HEA programs for a period of time not exceeding 60 days unless—

(1) The institution and the designated department official agree to an extension where the institution has not requested a hearing; or

(2) The designated department official begins a limitation or termination proceeding under § 668.76.

(b) Procedures. (1) The designated department official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Secretary to suspend the institution's eligibility to participate, cite the consequences of that action and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated department official receives, at least five days before that date, a request for a hearing or written material indicating why the suspension should not take place.

(2) If the institution does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets a date and place for it. The date will be at least 15 days after the designated department official receives the request. No suspension takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.78. (20 U.S.C. 1094)

§ 668.76 Limitation or termination proceedings.

(a) *Scope and consequences.* From its effective date, a limitation or termination shall either—

(1) Result in limitations on an institution's eligibility to participate; or

(2) End the eligibility of an institution to participate in any or all Title IV, HEA programs.

(b) *Procedures.* (1) The designated department official begins a limitation

or termination proceeding whether or not a fine or suspension proceeding has begun under §§ 668.75, by sending an institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Secretary to limit or terminate the institution's eligibility to participate, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives, at least five days before that date, a request for a hearing or written material indicating why the limitation or termination should not take place.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets a date and a place for it. The date will be at least 15 days after the designated department official receives the request. No limitation or termination takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.78.

(c) *Expedited hearing.* With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(20 U.S.C. 1094)

§ 668.77 Pre-hearing conference.

(a) (1) A pre-hearing conference shall be convened by the administrative law judge if he or she thinks that such a conferecne would be useful, or if requested by—

(i) The designated department official; or

(ii) The institution.

(2) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.

(b) If agreed to by the administrative law judge, the designated department official and the institution, a pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(20 U.S.C. 1094)

§ 668.78 Hearing on the record.

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an administrative law judge.

(b) The hearing process may be expedited as agreed by the administrative law judge, the designated department official and the institution. Procedures to expedite may include, but are not limited to, the following—

(1) A restriction on the number of length of submissions;

(2) The conduct of the hearing by telephone conference call;

(3) A review limited to the written record; or

(4) A certification by the parties to facts and legal authorities not in dispute.

(c) (1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) The designated department official shall have the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

(3) There shall be no discovery required as provided for under the Federal Rules of Civil Procedure.

(4) The administrative law judge accepts only evidence that is relevant and material to the proceeding. Parties may object to the admission of evidence that they consider to be irrelevant, immaterial or unduly repetitious.

(d) The designated department official shall make a transcribed record of the proceeding and shall make the record available to the institution upon its request and upon its payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(20 U.S.C. 1094)

§ 668.79 Authority and responsibilities of the administrative law judge.

(a) The administrative law judge regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b) (1) The administrative law judge is not authorized to issue subpoenas.

(2) If requested by the administrative law judge, the Secretary and the institution shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to the following—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(20 U.S.C. 1094)

§ 668.80 Initial and final decisions—Appeals.

(a) (1) The administrative law judge shall issue a written initial decision to the institution and the designated department official within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing, if the administrative law judge does not request the parties to submit briefs; or

(iii) The date on which the administrative law judge terminates the hearing in accordance with § 668.79(c).

(2) The administrative law judge's decision shall state whether the imposition of the fine, limitation, suspension or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution, the administrative law judge may, if appropriate, issue a decision to impose one or more limitations on the institution rather than terminating its eligibility to participate.

(3) The administrative law judge shall base findings of fact only on evidence considered at the hearing and on matters given official notice. If a hearing is conducted by written submissions, findings of fact shall be based on the facts stipulated by the parties.

(b) (1) In a suspension proceeding, the Secretary reviews the administrative law judge's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) A suspension takes effect upon either the date on which notice of the suspension is received by the institution or the original proposed effective date stated in the designated department official's notice of intent to suspend, whichever is later.

(3) A suspension shall not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(c) In a fine, limitation or termination proceeding, the administrative law judge's initial decision automatically becomes the Secretary's final decision 20 days after it is issued unless, within that 20 day period, the institution or the designated department official appeals the decision to the Secretary.

(d) (1) Within a period specified by the Secretary, the party that appeals shall submit a brief or written materials to the Secretary explaining why the initial decision of the administrative law judge should be overturned or modified.

(2) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(i) The evidence introduced into the record at hearing;

(ii) Stipulations of the parties if the hearing consisted of written submissions; or

(iii) Matters that may be judicially noticed.

(3) The opposing party shall respond within the time period specified by the Secretary.

(4) Neither party may introduce new evidence on appeal.

(5) Each party shall provide a copy of its brief to the other party.

(e) The initial decision of the administrative law judge imposing a fine or limiting or terminating the eligibility of the institution to participate does not take effect pending the appeal unless the Secretary determines that a stay would provide a serious and adverse effect upon the programs involved.

(f) (1) The Secretary renders a final decision.

(2) In rendering that decision, the Secretary shall consider only evidence introduced into the record at the hearing, stipulations of facts if the hearing consisted of only written submissions and matters that may be judicially noticed.

(3) The Secretary's decision may affirm, modify or reverse the administrative law judge's initial decision and shall include a statement of the reasons for the decision.

(20 U.S.C. 1094)

§ 668.81 Verification of mailing and receipt dates.

(a) Verification of the Department of Education's mailing dates and receipt dates referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.

(b) If an institution refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution refuses to accept the notice.

(20 U.S.C. 1094)

§ 668.82 Fines.

(a) In determining the amount of a fine, the designated department official, administrative law judge and Secretary shall take into account—

(1) (i) The gravity of the institution's violation or failure to carry out the relevant statute, regulation or agreement; or

(ii) The gravity of its misrepresentation; and

(2) The size of the institution.

(b) Upon the request of the institution, the Secretary may compromise the fine.

(20 U.S.C. 1094)

§ 668.83 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds; or

(d) Such other conditions as may be determined to be reasonable and appropriate.

(20 U.S.C. 1094)

§ 668.84 Termination.

(a) A termination—

(1) Ends an institution's eligibility to participate in any or all of the Title IV, HEA programs;

(2) Prohibits an institution or the Secretary from making or increasing Title IV, HEA program awards;

(3) Prohibits an institution from making any other new obligations against Title IV, HEA program funds; and

(4) Prohibits further guarantee commitments by the Secretary under the Guaranteed Student Loan or PLUS Program for loans to students to attend that institution, and prohibits further disbursements by an institution which is a lender under the Guaranteed Student Loan or PLUS Program (whether or not guarantee commitments have been issued by the Secretary or a guarantee agency for such disbursements).

(b) If an institution is terminated during a payment period, any student at the institution who has received an award or to whom a commitment has been made before the effective date of the termination may receive a payment for that payment period.

(c) For purposes of this section, a commitment—

(1) Under the Pell Grant and Campus-based Programs, is defined in § 668.24; and

(2) Under the Guaranteed Student Loan and PLUS Programs, occurs when the Secretary or a guarantee agency advises the lender that the loan will be guaranteed.

(20 U.S.C. 1094)

§ 668.85 Reimbursements, refunds and offsets.

(a) The designated department official, administrative law judge or Secretary may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations

(b) The corrective action may include payment of any funds to the Secretary or to designated recipients, which the institution improperly received, withheld, disbursed or cause to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Guaranteed Student Loan or PLUS Program—

(i) Ineligible interest benefits, special allowances or other claims paid by the Secretary; and

(ii) Discounts, premiums or excess interest paid in violations of Part 682 or 683 of Title 34 of the Code of Federal Regulations; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds due to students under program regulations; and

(ii) Any grants, work-study assistance or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution.

(20 U.S.C. 1094)

§ 668.86 Reinstatement after termination.

(a) (1) An institution whose eligibility to participate in any or all of the Title IV, HEA programs has been terminated may file a request for reinstatement as a participating eligible institution.

(2) Except for an institution that has been terminated for engaging in substantial misrepresentation

settle or narrow the dispute.

law judge, the Secretary and the

days unless a limitation or termination

evidenced by the original receipt from the U.S. Postal Service.

issued by the Secretary or a guarantee agency for such disbursements).

substantial misrepresentation

concerning the nature of its educational program, the nature of its financial charges or the employability of its graduates, a request for reinstatement may not be made before the expiration of 18 months after the effective date of the termination.

(3) An institution whose eligibility to participate was terminated because the institution engaged in substantial misrepresentation may not request reinstatement before the expiration of three months after the effective date of the termination.

(b) (1) The reinstatement request must be in writing and must show that the institution has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to designated recipients of funds that the institution improperly received, withheld, disbursed or caused to be disbursed.

(2) The institution must meet all the qualifications for participation in Title IV, HEA programs, as provided in Subpart B of this part and enter into a new participation agreement with the Secretary.

(c) The Secretary will not grant reinstatement to an institution if it—

(1) Is owned, in whole or in part, by a person who has been convicted of a crime related to the abuse of Title IV, HEA programs; or

(2) Continues to employ an individual in capacity that involves the administration of Title IV, HEA programs or receipt of funds under Title IV, HEA programs who was shown to be an incompetent administrator during the termination proceedings or who was convicted of a crime related to the abuse of Title IV, HEA programs.

(d) The Secretary, within 60 days of receiving the reinstatement request, shall—

(1) Grant the request;

(2) Deny the request; or

(3) Grant the request subject to limitation(s).

(20 U.S.C. 1094)

§ 668.87 Removal of limitation.

(a) An institution whose eligibility to participate in any or all Title IV, HEA programs has been limited may not apply for removal of the limitation of its eligibility to participate before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Secretary shall respond to the institution—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation(s).

(d) If the Secretary denies the request or establishes other limitation(s), the institution, upon request, will be granted an opportunity to show cause why its eligibility to participate should be fully reinstated.

(e) The institution's request for a show cause meeting shall not be deemed to waive its right to participate in any or all Title IV, HEA programs if it complies with such continuing limitation(s) pending the outcome of the meeting.

(20 U.S.C. 1094)

[FR Doc. 84-32366 Filed 12-11-84; 8:45 am]
BILLING CODE 4000-01-M

federal register

Wednesday
December 12, 1984

Part VI

Department of Education

34 CFR Part 300
Assistance to States for Education of Handicapped Children; Final Rules

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 300

Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary issues final regulations under Part B of the Education of the Handicapped Act (EHA–B), as amended. These regulations implement certain provisions of the EHA–B added by the Education of the Handicapped Act Amendments of 1983 relating to: (1) The annual report of children served in programs assisted under this part; and (2) new authority for the Secretary to by-pass the State educational agency to provide services to private school handicapped children, in accordance with the requirements of Section 613(a)(4)(A) of the EHA–B, if the State educational agency is prohibited by law from doing so.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. William Tyrrell, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3528), Washington, D.C. 20202. Telephone: (202) 732–1025.

SUPPLEMENTARY INFORMATION: Pub. L. 98–199, enacted on December 2, 1983, substantially revised certain provisions of Part B of the Education of the Handicapped Act (20 U.S.C. 1401, 1411 *et seq.*). Part B authorizes formula grants to States and, through States, to local educational agencies and intermediate educational units to assist them in the education of handicapped children. The purposes of the Act, according to Section 601(c), are to ensure that a free appropriate public education is made available to all handicapped children; to ensure that the rights of handicapped children and their parents are protected; to assist States and localities to provide for the education of handicapped children; and to assess and ensure the effectiveness of efforts to educate those children. Part B of the Act provides, as well, for services to handicapped children voluntarily enrolled in private schools by their parents.

A notice of proposed rulemaking was published in the **Federal Register** on April 30, 1984 (49 FR 18432). The comments received in response to this notice and the Secretary's response are summarized below:

Procedures for By-Pass

Comment. One commenter felt that the regulations should clarify certain issues. First, the commenter criticized the regulations for not distinguishing between the provision of special education and related services to private school handicapped children. The commenter stated that many States make available related services, including diagnostic services and instructional support services, to private school handicapped children. In these same States, according to the commenter, local educational agencies are prohibited from making available special education (as defined in 34 CFR 300.140 or related services (as defined in 34 CFR 300.13) to handicapped children voluntarily enrolled by their parents in private schools because those public agencies may not: (a) Assign staff to private schools for those purposes; (b) reimburse private schools to employ staff for those purposes; or (c) transfer portions of their Part B allocations to private schools for those purposes. The commenter recommended that the regulations include language that clearly defines the eligibility of private schools to qualify for funding under a by-pass if any of those three conditions exists. The commenter added that the proposed regulations, as well as the recommended modification, would allow certain private school handicapped children to be counted twice for Part B funding—once by the local education agency providing diagnostic and other related services, and again by the private school providing special education classroom instruction and receiving payments from Part B funds.

The commenter also requested that the regulations clearly identify the public agency responsible for counting and paying for services to private school handicapped children who attend schools outside the district or State of residence. The commenter disagreed with the Department's current interpretation that the statute and regulations place that responsibility on the district or State of residence. The commenter recommended that payments be made directly to the private school where a handicapped child is enrolled, based on the count of children in that school rather than the student's district of residence.

Finally, the commenter recommended that the regulations clearly specify: (a) The responsibility of private schools receiving direct funds under a by-pass to comply with the Part B regulations; and (b) provisions for monitoring compliance by the private schools.

Response: No change has been made. The Secretary believes that the following discussion may provide clarification of the issues raised by the commenter.

(1) Each State that receives funds under Part B of the Act is responsible for ensuring that all handicapped children in the State are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. *See* 34 CFR 300.128. This requirement also applies to any State in which the Secretary implements a by-pass arrangement under this part. A State may only count, for purposes of receiving part B funds, those children for whom it is making available special education and related services in conformance with an individualized education program. Children who receive only diagnostic services may not, therefore, be included in a State's child count. In the absence of a handicap that requires special education, a child is not entitled to "related services," as that term is defined under 34 CFR 300.13; however, the term "special education," as defined under 34 CFR 300.14(a)(2), includes speech pathology, or any other related service, if the service meets the definition of "special education" and is considered "special education" rather than a "related service" under State standards. If a by-pass is implemented in a State, then the local educational agencies would not be providing special education and related services to private school handicapped children and, therefore, double-counting would not occur.

(2) Under a by-pass, the funds derived from counting private school handicapped children would be withheld from an affected State's allocation and the Secretary would enter into a service agreement with an appropriate agency, organization, or institution that would provide special education and related services to those children. No payments would be made directly to any private school serving those children.

(3) Section 613(d)(1) of the Act provides that a by-pass may be implemented only in a State where the State educational agency is prohibited by law from providing for the participation of private school handicapped children in public agency special education programs as of the date of enactment of Pub. L. 98–199. No

one way of delivering services to private school handicapped children is required under the EHA–B, either in States subject to a by-pass or States that are not.

Services to private school handicapped children may be provided through the same variety of arrangements as services may be provided under Chapter 1 of the Education Consolidation and Improvement Act of 1981.

Where a private school handicapped child is enrolled in a school outside the district or State of residence, the responsible public agency, or the Secretary, in the case of a by-pass, may choose to provide services under an arrangement with the local educational agency in whose district the school is located.

(4) It is unnecessary to include provisions in these regulations concerning the responsibilities of private schools and the monitoring of these schools since the statute imposes no obligations on private schools where children are voluntarily enrolled by their parents.

Comment. One commenter stated that the regulations should make it clear that the by-pass is used only when a State prohibits *any* participation by private school handicapped children in the Part B program, and that the Secretary is not authorized to use a by-pass solely because of disagreement over the method or site for providing those services.

Response. No change has been made. Section 613(a)(4)(A) of the Act requires that, to the extent consistent with the number and location of handicapped private school children in a State, provision is made for their participation in the Part B program. A by-pass arrangement is allowed, under Section 613(d)(1) of the Act, if a State educational agency is prohibited by State law from meeting the requirement under Section 613(a)(4)(A). The legislative history of Section 613(d) indicates that where State law restrictions allow the provision of services to only a small number of identified private school handicapped children under extremely limited conditions, a by-pass arrangement is appropriate. The Secretary interprets Sections 613(a)(4)(A) and 613(d) as providing specific authority for a determination as to whether private school handicapped children have been afforded a genuine opportunity for equitable participation in accordance with the requirements of Section 613(a)(4)(A) and 34 CFR 300.451–300.452. A State can challenge the Secretary's decision to implement a by-pass through the due process procedures contained in the final regulations.

Comment. One commenter recommended that the regulations state explicitly that the Secretary has no authority to direct the use of State or local funds for private school handicapped children.

Response. No change has been made. The Secretary believes that it is unnecessary to add the language recommended by the commenter, since § 300.481(d) provides that the maximum amount to be spent for services under a by-pass is deducted from the State's allocation of Part B funds. In other words, the by-pass is paid for solely with Federal funds.

Comment. One commenter suggested that the Secretary be required to consult with State educational agency officials as well as with "appropriate public and private school officials."

Response. A change has been made. The Secretary agrees that consultation with State educational agency officials is necessary to determine whether a by-pass is required in a State, and to ensure its effective implementation if that arrangement is needed. Section 300.481(a) has been revised by inserting "State educational agency officials" to make it clear that they will be consulted before a by-pass is implemented.

Comment. One commenter requested that § 300.481(b) be revised to define, or give examples of, "appropriate parties" with whom the Secretary may make service agreements.

Response. No change has been made. The statute does not specify or limit eligible applicants or offerors for consideration as service providers. The Secretary intends to invite proposals by announcing a closing date for transmittal of proposals for awards to provide services under a by-pass.

Comment. One commenter requested that § 300.481(d) include criteria for the Secretary's determination of the amount "necessary to implement a by-pass" as a means of justifying the deduction of money from allotments to local educational agencies.

Response. A change has been made. Criteria for determining the amount necessary to provide benefits to private school handicapped children under the Department's State-administered programs are found in EDGAR, 34 CFR 76.655 (*Level of expenditures for students enrolled in private schools.*). Section 300.481(a)(3) has been revised to make it clear that the EDGAR standards at 34 CFR 76.651–76.662 apply to services provided under a by-pass.

Comment. One commenter recommended that § 300.482(b) (1) and (2) be revised to require the Secretary to document the basis for, and allow the State educational agency to object to, the amount the Secretary intends to include in the by-pass, as well as the rationale for the by-pass itself.

Response. No change has been made. Section 613(d)(1)(B) of the Act authorizes the Secretary to withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of services under a by-pass, thereby making it unnecessary to withhold the State's total allocation until the exact amount to be paid to the service provider can be ascertained. The State educational agency is not precluded, under the statute or these regulations, from requesting a show cause hearing to challenge the Secretary's determination of the amount of funds to be withheld for implementation of a by-pass. *See* § 300.484(b). Under Section 613(d)(3)(A) of the Act, the State educational agency has the burden of showing why the action proposed by the Secretary should not be taken, including the withholding of a specified amont of the State's Part B allocation.

Comment. Two commenters objected to the statement in the preamble that the EHA–B does not create an individual entitlement to services for each private school handicapped child. One commenter felt that State and local educational agencies have "full service responsiblity" for those children and the Federal government should assume the entire duty under a by-pass. The other commenter recommended that the by-pass be implemented in only those localities in a State where a local educational agency has not offered services in a manner that accommodates the scheduling needs of private school handicapped children. This commenter believed that a State-wide by-pass would be inappropriate in a State where the restrictions on services to private school handicapped children do not result in uniform compliance or non-compliance with Federal requirements, but instead encourage a balkanized response in which compliance varies from district to district, thereby necessitating a flexible by-pass approach and criteria for determining when a by-pass is required. The second commenter also recommended that private school handicapped children residing in a by-pass area who are unable to receive services due to the limited amount of funds under the Act continue to receive services from the local educational agency.

Response. No change has been made. The Secretary has the authority to serve

schools by their parents.

that the regulations clearly specify: (a) date of enactment of Pub. L. 98–199. No

decision to implement a by-pass through (2) be revised to require the Secretary to The Secretary has the authority to serve

less than the entire population of private school handicapped children. These regulatory provisions are justified on the basis of a comparison of the language of Section 613(a)(4)(A) to other provisions in the EHA–B. Section 612(1) of the EHA–B provides that, in order to qualify for assistance under the Act, a State must demonstrate that it has in effect a policy that assures all handicapped children the right to a free appropriate public education. Section 612(2) of the EHB–B requires States to assure that a free appropriate public education is available to all children in certain age ranges within the State. Unlike Section 612(1) and 612(2), Section 613(a)(4)(A) only imposes an obligation on States to provide for the participation of handicapped private school children in the program carried out pursuant to the EHA–B and does not require that services be provided to each and every private school handicapped child. Moreover, Section 613(a)(4)(A) allows for consideration of the number and location of private school handicapped children in the State in providing services to those children. The Secretary views Section 613(a)(4)(A) as providing States and the Secretary with the discretion to devise, in consultation with private school representatives, the most efficient scheme possible for providing adequate special education and related services to a number of, but not necessarily all, private school handicapped children. This interpretation has been consistently followed by the Department, and applied to States, under the original regulations for the EHA–B (45 CFR 121a.451–121a.460 (1977)) and under the EDGAR provisions which replaced them in 1980.

In a State where a by-pass is implemented, the Secretary is required by Section 613(d)(1) of the EHA–B to waive that State's obligation to provide special education and related services to private school handicapped children. Therefore, the Secretary does not have the authority to require local educational agencies to serve private school handicapped children that could not be provided for under the by-pass.

The by-pass authority contained in Section 613(d) of the Act requires operation on a State-wide basis. Section 613(d) of the Act, in contrast to Chapter 1 of the Education Consolidation and Improvement Act of 1981, makes no provision for the implementation of a by-pass for only those local educational agencies that have substantially failed to provide for the participation on an equitable basis of private school handicapped children.

Comment. One commenter interpreted § 300.450 to mean that handicapped children unilaterally placed by their parents in private facilities that provide services solely to handicapped children are not eligible for services provided under a by-pass.

Response. No change has been made. Handicapped children in those facilities in States subject to a by-pass are eligible for participation in the EHA–B program to the same extent that they are eligible in States not subject to a by-pass.

Comment. One commenter recommended that §§ 300.705(a) and 300.481(c)(2) be modified to allow the Secretary to determine the maximum amount to be paid to the provider of services, in the first year of a by-pass, based on an estimated count of private school handicapped children, and to hold the estimated allocation in escrow pending the award to the provider of services. The commenter also recommended the addition of provisions for reallocating and distributing the excess funds to States in the event the Secretary should not implement the by-pass.

Response. A change has been made. The procedures recommended by the commenter describe the method by which funds for a by-pass most likely would be allocated and reserved for use in a State subject to a by-pass arrangement. Language has been added to §§ 300.705(a) and 300.481(c)(2) to make it clear that it may be necessary for the Secretary to base the initial year's by-pass allocation on an estimate of the number of eligible handicapped children. The Secretary believes it is necessary to have the authority to use such an estimate in administering the by-pass because there may be an absence of a verified accurate count of children eligible to receive services. A provision for reallocation of excess funds that become available as a result of adjustments in a State's child count is included in the current regulations under 34 CFR 300.703(a), and would apply if a by-pass arrangement is not implemented.

Comment. One commenter suggested that § 300.481 be revised to indicate that the scope and nature of the services required by private school handicapped children, as well as the number to be served, must be determined in compliance with 34 CFR 300.531 and 300.532. The commenter stated that children should not receive services before they have been identified and evaluated by the local educational agency.

Response. No change has been made. The Secretary agrees that the commenter accurately states the requirements of the EHA–B, but these requirements have already been incorporated in the regulations. A "handicapped child," whether enrolled in a public or private school, is defined under § 300.5(a). *See* § 300.481(c)(2). Section 300.5(a) defines the term "handicapped children" to mean those children evaluated in accordance with §§ 300.530–300.534 as having one of the impairments described in § 300.5(b) and who, because of those impairments, need special education and related services.

Comment. One commenter suggested that the Secretary consider a phased-in by-pass in any particular State since it may not be possible to obtain an accurate count of the private school students who would be eligible for services, but who have not yet been identified, located, evaluated, and provided services.

Response. No change has been made. The Secretary agrees that a phased-in implementation of a by-pass arrangement could be the most orderly way to ensure the participation of the maximum number of private school handicapped children in service arrangements. That kind of approach would, however, also result in uncertainty among other States as to the amount of their allocations from year to year, since those allocations could not be determined precisely until an accurate count of private school handicapped children receiving services is available. The Secretary can defer the implementation of a by-pass until information is available on the probable number of children to be served, their locations, and the scope and nature of the services they require. *See* § 300.481(a) (2) and (3).

Comment. On commenter objected to the proposed regulations in their entirety, believing that these regulations would usurp a State's responsibility for the administration of EHA–B requirements, compromise the role of multidisciplinary evaluation and placement teams, undermine existing dual enrollment provisions for private school placement, and require substantial modifications of due process procedures for placing handicapped children in private programs. The commenter expressed concern that the probable effect of the regulations would be to increase paperwork and financial burden upon responsible agencies with minimal benefit to children, and to delay or deny services to children as a result

of the hearing procedures outlined for a State's redress of grievances.

Response. No change has been made. In general, most commenters considered the regulations to be reasonable; several commenters offered specific suggestions that were adopted. For the most part, concerns about the NPRM were based on misconceptions of the EHA–B provisions and current EDGAR regulations that apply to the participation of private school handicapped children in programs assisted under the EHA–B. This commenter's remarks appear to be based on the assumption that these provisions and procedures relating to a by-pass apply to the provision of services to handicapped children who are referred to or placed in private schools or facilities by public agencies in order to provide those children with a free appropriate public education. This assumption is not correct. The by-pass procedures are used only in a State where the State educational agency is prohibited by State law from fulfilling its duty to provide for the participation in EHA–B programs of children for whom a free appropriate public education is available, but whose parents have *voluntarily* enrolled them in private schools at the parents' expense. *See* Sections 613(a)(4)(A) and 613(d)(1) of the Act and 34 CFR 300.450 and 300.480. The due process procedures described in §§ 300.482–300.486 are consistent with the provisions of Section (d)(3) of the Act, procedures used by the Secretary for show cause hearings under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and procedural rules for Department hearings relating to other grant programs. The due process provisions do not impose paperwork or administrative burdens on State or local educational agencies beyond those minimal requirements imposed by the Act which are necessary to ensure a fair hearing and resolve their grievances.

Comment. One commenter recommended that the regulations: (a) Include provision for local educational agencies to recover the costs of conducting after-hours evaluations of private school children; and (b) be strengthened to absolutely limit the costs of providing comparable services to private school children to the level of expenditures in public agency programs. In support of this recommendation, the commenter cited examples of per pupil and administrative costs under by-pass arrangements implemented under other programs.

Response. No change has been made. The Secretary appreciates the concerns expressed by the commenter relative to the restrictions that may be imposed by State law on the manner of meeting a State's responsibility, under Section 612(2)(C) of the Act, to identify, locate, and evaluate *all* handicapped children residing in the State. Unlike the by-pass provisions under other programs, section 613(d)(2)(A) of the EHA–B limits payment to the provider of by-pass services to an amount per child which may not exceed the Federal amount provided per child to all handicapped children enrolled in the State for services for the fiscal year preceding the fiscal year in which the by-pass is implemented. The legislative history of Pub. L. 98–199 makes it clear that the service provider's administrative costs must be deducted from the *pro rata* share of the affected State's allocation that is reserved for the by-pass. *See* H.R. Rep. No. 410, 98th Cong., 1st Sess. 22 (1983). Because of these fiscal limitations, it is unlikely that service costs or administrative costs under a by-pass will greatly exceed the costs of providing comparable services in public agency programs. A State in which a by-pass is implemented will still receive and allocation based on the number of children reported to be receiving services in the preceding fiscal year. These funds can be used to assist the State and local educational agencies in conducting the evaluations required for all children suspected of having a handicapping condition.

Comment. One commenter recommended that, in accordance with the flexibility provided under §300.481(c)(2), the Secretary use by-pass funds to support child identification and evaluation activities by a by-pass service provider to supplement State and local efforts to determine the number of private school handicapped children.

Response. No change has been made. The Secretary will determine, following consultations with State educational agency officials and public and private school officials, if the service provider will need to conduct child identification and evaluation activities during the initial year of implementation.

Comment. One commenter requested that § 300.484 be revised to require that the hearing be held at a time and place convenient to the State educational agency.

Response. No change has been made. The Secretary believes that the responsibility for designating an appropriate time and place will be exercised in a manner that is equitable to all parties to a show cause hearing and that this requirement is unnecessary.

Comment. One commenter requested that § 300.485 be revised to allow the State educational agency to (a) receive a copy of the designee's written decision when it is sent to the Secretary; and (b) file written arguments with the Secretary for consideration before the Secretary takes final action to adopt, reverse, or modify the designee's decision.

Response. A change has been made. The Secretary agrees that providing parties with the opportunity to comment on the designee's decision may aid in the equitable resolution of the matters considered at the show cause hearing. Section 300.485 (a)(2) and (b) has been revised to require the designee to send copies of the hearing decision to all parties in interest and to give them the opportunity to submit comments on the decision to the Secretary.

Counting and Reporting of Handicapped Children

Section 611(a) of Part B of the Act provides for an annual count of the number of handicapped children ages three through twenty-one in each State who are receiving special education and related services. This information is used to determine each State's allocation of funds under this program and the Incentive Grants program authorized by Section 619. As amended by Pub. L. 98–199, Section 618(b)(1) requires the Secretary to obtain data concerning the number of handicapped children and youth in those States receiving special education and related services by disability category and by four specific age groups (3–5, 6–11, 12–17, and 18–21). A notice of proposed rulemaking was published in the Federal Register on April 30, 1984 (49 FR 18432). On May 24, 1984, a notice of intent to collect data was published in the Federal Register (49 FR 21979). In the notice of intent to collect data, the Secretary specifically invited comments on an alternative method of reporting ages of handicapped children and youth served under the EHA–B. This alternative method would involve the reporting of individual ages (i.e., three, four, five, six, etc.) of children and youth served. Based on the comments received in response to the proposed regulations and the notice of intent to collect data, the Secretary has decided that reporting the count of handicapped children and youth served by individual ages will be no more burdensome, and will result in more reliable data, than reporting by the age groupings originally proposed in § 300.751(a)(3). Approximately one-half

handicapped children.

agency.

or deny services to children as a result

The Secretary appreciates the concerns

to all parties to a show cause hearing

§ 300.751(a)(3). Approximately one-half

of the States presently collect child count data by birth date from local educational agencies and intermediate educational units. In those States, the administrative burden associated with this information collection and reporting task will not change significantly, given their use of automated data processing systems. In other States, data collection forms and procedures must be altered, but this is a one-time effort that will not recur. Some of these States had been considering a change to reporting child counts by individual ages prior to the enactment of Pub. L. 98–199.

The information collection forms used for reporting purposes will be designed to allow a State to report the number of handicapped children and youth served within the age groups three through five, six through eleven, twelve through seventeen, and eighteen through twenty-one for fiscal year 1985, if the State does not currently collect this information by individual ages. The final regulations have been revised to be consistent with this information collection method.

The legislative history accompanying Pub. L. 98–199 cites Congressional concerns about the unmet needs of secondary age students, and the inability of current reporting methods to accurately reflect the number of secondary school handicapped students served. These changes in data collection and reporting could result in improved and better-targeted special education programs and services for secondary school students. More precise information about the numbers of secondary age students, as obtained from this regulatory change, may lead to greater coordination between the educational system and other social service agencies to ensure that appropriate services are available to handicapped persons when they leave school. *See* S. Rep. No. 191, 98th Cong., 1st Sess. 12 (1983). In addition, reporting by individual ages is expected to be beneficial by allowing States and local educational agencies to study trends in handicapped children's program entry and exit patterns and thus facilitate long-range program planning.

Services to Private School Handicapped Children

Section 613(d) of Part B, as added by Section 7 of the Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, requires the Secretary to arrange for the provision of services to handicapped children who are voluntarily enrolled in private schools by their parents, in accordance with Section 613(a)(4)(A) of the Act, if the State educational agency was prohibited by law from doing so on December 2, 1983, the date of enactment of Pub. L. 98–199. These regulations implement the by-pass provisions, including provisions to clarify the due process procedures by which the affected State educational agency may challenge the Secretary's determination that a by-pass must be implemented. Current regulations governing services to private school handicapped children are set out at 34 CFR 300.450–300.452. The Education Department General Administrative Regulations (EDGAR) which govern services to students enrolled in private schools (34 CFR 76.651–76.662) also apply to this program.

A discussion of the regulations follows:

A. Technical Amendment

The regulations include a technical amendment to the language in 34 CFR 300.450 which extends the definition of the term "private school handicapped children" to apply to the by-pass procedures set out at §§ 300.480–300.486 and the child count provision at § 300.705. This definition serves to distinguish the population of children served under a by-pass arrangement from those handicapped children who are referred to or placed in private schools or facilities by a public agency to ensure that they have available a free appropriate public education. *See* 20 U.S.C. 1413(a)(4)(B) and 34 CFR 300.400–300.403.

B. Procedures for By-Pass

The regulations establish provisions which include procedures for the Secretary to implement and operate a by-pass in order to provide services to private school handicapped children. The Secretary interprets Section 613(a)(4)(A) and (d) of the Act as allowing the Secretary to decide, after consultation with the State educational agency and appropriate public and private school officials, which private school handicapped children will receive special education and related services under a by-pass. This determination will be based on the needs of the handicapped private school students in the State. The Secretary does not read Section 613(a)(4)(A) as creating an individual entitlement to services for each private school handicapped child, nor is it likely that the limited amount of funds available under the Act for a by-pass will make it possible to serve all private school handicapped children under a by-pass.

- Section 300.705(a) provides that, for the purpose of determining a State's allocation (from which the by-pass amount is deducted) for the first year of a by-pass, the Secretary includes in the State's child count either the actual number of private school handicapped children who, as of the previous year, had been identified and evaluated in accordance with Part B requirements, or an estimated number of private school handicapped children who have been identified and evaluated, whether or not they received special education and related services. This provision ensures that after the by-pass amount is deducted from the State's allocation, the amount of money remaining for the State to spend on children served by public agencies is approximately the same as it would be in the absence of a by-pass. For succeeding years of a by-pass, the Secretary would, under § 300.705(b), include in the State's child count only those private school handicapped children who had been served in the previous year.
- Section 300.480, consistent with Section 613(d)(1) of the Act, authorizes the Secretary to implement a by-pass where a State is prohibited by law from meeting the requirements under Section 613(a)(4)(A) of the Act.
- Section 300.481(a) implements the requirement of Section 613(d)(2)(A) of the Act that the Secretary consult with appropriate public and private school officials, including officials of the State educational agency, prior to arranging for a bypass. Examples are given of the matters subject to such consultation, including the establishment of policies and procedures to ensure that the State is fulfilling its obligation to identify, locate, and evaluate handicapped children in nonpublic schools and facilities and to ensure that other procedural safeguards for such children are implemented. Discussion of the scope and nature of the services to be provided under the by-pass will assist the Secretary in determining an adequate funding level.
- Section 300.481(b) includes the statutory requirements for implementing services under a by-pass.
- Section 300.481(c) sets out the approach for determining the amount of the by-pass.

Under Section 611(a)(1)(A) and 611(a)(3) of the Act, a State's grant for any fiscal year is based on the number of handicapped children in the State receiving special education and related services as of December 1 of the preceding fiscal year. In a State subject to a by-pass, Section 613(d)(2)(A) directs the Secretary to pay to the service provider an amount per child which may not exceed the amount per child provided by the Secretary under Part B of the Act for the preceding fiscal year. The reason for the by-pass is that the

State cannot serve (and, thus, cannot include in its count) handicapped private school children who are eligible to receive services under Part B. For example, the legislative history for Pub. L. 98–199 states that, as a result of State law restrictions in Missouri, "only 275 of an estimated 3,500 handicapped children enrolled in private schools [are] receiving needed special education and related services." H.R. Rep. No. 410, 98th Cong., 1st Sess. 22 (1983). If the amount of the by-pass is based only on the number of private school handicapped children who actually received special education and related services in the preceding fiscal year, it is unlikely that an adequate amount of money will be available, especially for the first year of a by-pass. The Secretary therefore will base the amount of the by-pass on the number of private school handicapped children who have been identified and evaluated, as determined by the Secretary on the basis of the most satisfactory data available to the Department, and following consultations with State educational agency officials, and public and private school officials, on the scope of services to be provided (including the number of children to be served).

- Section 300.481(d) provides that the Secretary pays the by-pass service providers by deducting the amount of the by-pass from the State's allocation. It also implements the statutory authority that permits the Secretary to withhold the amount needed to implement a by-pass from the State's allocation pending final resolution of any investigation or complaint that may result in a determination to implement a by-pass.
- The statute provides the State with due process protections (written notice, opportunity for a show cause hearing, judicial appeal of an administrative decision) when the Secretary proposes that a by-pass be implemented. Sections 300.482–300.486 describe these protections and provide the following additional requirements:

1. Section 300.482 (*Notice of intent to implement a by-pass*) describes the content of the written notice and the procedures for sending the notice to the State educational agency.

2. Section 300.484 (*Show cause hearing*) states the qualifications of the hearing official, gives examples of the matters to be considered at such a hearing, and describes the scope of authority and the responsibilities of the hearing official.

3. Section 300.485 (*Decision*) provides procedures for reaching and issuing a decision after the show cause hearing. These provisions are consistent with the due process provisions of the Department's by-pass regulations under Chapter 1 of the Education Consolidation and Improvement Act of 1981. *See* 34 CFR 200.81–200.84. Additional procedures not included in the Chapter 1 regulations are consistent with the Education Appeal Board rules governing show cause hearings (34 CFR 78.27–78.28) and the scope of authority and responsibilities of the official conducting the hearing (34 CFR 76.61(a)). These specific provisions clarify the procedures to be followed, the rights of the parties, and the duties of the hearing official. The Secretary believes that these provisions will help to ensure that show cause hearings under these by-pass provisions are conducted in a manner consistent with the procedures followed by the Department in similar proceedings.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. To the exent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered small entities affected under the Regulatory Flexibility Act. The small entities affected would be small local educational agencies. The change in reporting the child count affects small entities, which will need to adhere to State procedures for collecting and reporting these data. The economic impact will not be significant since local educational agencies already collect information on the number of handicapped children served. These regulations change the manner in which this information is reported. These provisions would not impose any requirements on small entities if a by-pass is implemented.

Paperwork Reduction Act of 1980

The information collection requirements contained in these regulations (§ 300.751 (a)(3) and (b)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned an OMB control number. The control number appears as a citation at the end of this section.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Department requested comments on whether the proposed regulations required information that is already being gathered by or is available from any other agency or authority of the United States.

Based on the absence of comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 300

Administrative practice and procedures, Education, Education of handicapped, Grant program—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children)

Dated: December 6, 1984.

T.H. Bell,

Secretary of Education.

The Secretary amends Part 300 of Title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. Section 300.751 is amended by revising paragraphs (a)(3) and (b) to read as follows:

by law from doing so on December 2,

a by-pass, the Secretary includes in the

The reason for the by-pass is that the

decision after the show cause hearing.

been assigned an OMB control number.

read as follows:

§ 300.751 Annual report of children served—information required in the report.

(a) • • •

(3) The number of those handicapped children aged three through twenty-one for each year of age (three, four, five, etc.). For fiscal year 1985, a State educational agency that does not currently collect information in this manner may report the number of those handicapped children within each of the following age groups:

(i) Three through five.

(ii) Six through eleven.

(iii) Twelve through seventeen.

(iv) Eighteen through twenty-one.

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1.

(Approved by the Office of Management and Budget under control number 1820-0043)

2. Section 300.450 is revised to read as follows:

§ 300.450 Definition of "private school handicapped children."

As used in this part, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 300.400–300.402.

(20 U.S.C. 1413(a)(4)(A))

3. Section 300.705 is revised to read as follows:

§ 300.705 Allocation for State in which bypass is implemented for private school handicapped children.

In determining the allocation under §§ 300.700–300.703 of a State in which the Secretary will implement a by-pass for private school handicapped children under §§ 300.451–300.486, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school handicapped children (as defined in §§ 300.5(a) and 300.450 in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school handicapped children who received special education and related services under the by-pass in the preceding year.

(20 U.S.C. 1411(a)(1)(A), 1411(a)(3), 1413(d))

4. New §§ 300.480–300.486 and two new center headings are added to Subpart D to read as follows:

Procedures for By-Pass

§ 300.480 By-pass—general.

(a) The Secretary implements a by-pass if a State educational agency is, and was on December 2, 1983, prohibited by law from providing for the participation of private school handicapped children in the program assisted or carried out under this part, as required by Section 613(a)(4)(A) of the Act and by §§ 300.451–300.452.

(b) The Secretary waives the requirement of Section 613(a)(4)(A) of the Act and of §§ 300.451–300.452 if the Secretary implements a by-pass.

(20 U.S.C. 1413(d)(1))

§ 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including State educational agency officials, in the affected State to consider matters such as—

(1) The prohibition imposed by State law which results in the need for a by-pass;

(2) The scope and nature of the services required by private school handicapped children in the State, and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school handicapped children receive services consistent with the requirements of Section 613(a)(4)(A) of the Act, §§ 300.451–300.452, and 34 CFR 76.651–76.662.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school handicapped children in the State in a manner consistent with the requirements of Section 613(a)(4)(A) of the Act and §§ 300.451–300.452 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year in which a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount, which may not exceed the amount per child provided by the Secretary under this part for all handicapped children in the State for the preceding fiscal year; by

(2) The number of private school handicapped children (as defined by §§ 300.5(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those handicapped children.

(d) The Secretary deducts from the State's allocation under this part the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(20 U.S.C. 1413(d)(2))

Due Process Procedures

§ 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected State educational agency with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the State educational agency to respond;

(2) Advises the State educational agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the State educational agency by certified mail with return receipt requested.

(20 U.S.C. 1413(d)(3)(A))

§ 300.483 Request to show cause.

A State educational agency seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(20 U.S.C. 1413(d)(3)(A))

§ 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the State educational agency and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including procedures such as those established in

34 CFR 78.61(a), *Authority and responsibilities of Panels.*

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(20 U.S.C. 1413(d)(3)(A))

§ 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision which includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the State educational agency of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(20 U.S.C. 1413(d)(3)(A))

§ 300.486 Judicial review.

If dissatisfied with the Secretary's final action, the State educational agency may, within 60 days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. The procedures for judicial review are described in Section 613(d)(3)(B)–(D) of the Act.

(20 U.S.C. 1413(d)(3)(B)–(D))

[FR Doc. 84-32389 Filed 12-11-84; 8:45 am]

BILLING CODE 4000-01-M

prohibited by law from providing for the participation of private school

pending final resolution of any investigation or complaint that could

and to maintain order, including procedures such as those established in

Reader Aids

Federal Register

Vol. 49, No. 240

Wednesday, December 12, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189–47380.....3
47381–47472.....4
47473–47586.....5
47587–47818.....6
47819–48026.....7
48027–48174.....10
48175–48260.....11
48261–48528.....12

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
December 10, 1984.....48263
Executive Orders:
11157 (Amended by EO 12494).....48175
12493.....47819
12494.....48175
Proclamations
5285.....47473
5286.....47587
5287.....48261

5 CFR

Proposed Rules:
890.....48193

7 CFR

413.....47589
420.....47821
421.....47821
425.....47821
431.....47821
432.....47821
445.....47590
907.....47475, 48265
966.....47189
991.....47190
Proposed Rules:
Ch. IX.....47271
51.....48194
52.....47402
434.....47612
447.....47617
966.....47496
989.....48194
1126.....47495
1150.....47496

8 CFR

238.....48027

9 CFR

301.....47475
318.....47822
319.....47822
325.....47475
381.....47475
Proposed Rules:
92.....47402

10 CFR

1.....47823
20.....47823
30.....47823
40.....47823
50.....47823
55.....47823
70.....47823
73.....47823
110.....47191
430.....47479
960.....47714
Proposed Rules:
50.....48200
73.....48200

11 CFR

Proposed Rules:
114.....48201

12 CFR

201.....47825
506a.....48177
523.....47825
541.....47825
545.....47825
549.....47825
561.....47825
563.....47825
584.....47825
Proposed Rules:
205.....47405
226.....47406
500.....47410
561.....47499, 47852
563.....47499, 47852
563b.....47271, 47410
570.....47852
571.....47852, 47866
584.....47852
612.....48051

13 CFR

101.....47381
Proposed Rules:
107.....48201
121.....47412, 47414

14 CFR

1.....47594
27.....47594
29.....47594
39.....47381, 47382, 48027, 48029
91.....47594, 48030
95.....47204
97.....48033
241.....48265
298.....48266
Proposed Rules:
25.....47358
71.....47415, 48053, 48054, 48201
75.....47621

15 CFR

Proposed Rules:
30.....48055
941.....47415

16 CFR
13 ..... 48178, 48180, 48266, 48269
305 47479
Proposed Rules
424 48059

17 CFR
210 47594
229 47594
231 47594
241 47594
270 47208
274 47208
Proposed Rules:
143 48060
240 47274
249 48318

18 CFR
271 47826
282 48035
1302 47383

19 CFR
4 48035
6 48035
10 ..... 47986, 47995
Proposed Rules:
10 48003

20 CFR
404 ..... 48036, 48181
410 48036
416 (2 documents) 48036
422 48036
632 47384
Proposed Rules:
655 48061

21 CFR
5 48183
81 ..... 47228, 47229
175 47480
184 47384
193 ..... 47481, 48270
436 ..... 47483, 47826, 48183
442 ..... 47483, 47826, 48183
452 47828
510 ..... 47387, 47829
520 47830
522 ..... 47829, 48038
540 48271
546 47486
555 48184
558 ..... 47387, 48039, 48271
561 47481
803 48272
1020 47387
Proposed Rules:
58 47504
166 47418
182 ..... 47505, 48202
184 ..... 47505, 48202, 48321
450 47505
610 47622
630 47622

22 CFR
120 47682
121 47682
122 47682
123 47682
124 47682
125 47682
126 47682
127 47682
128 47682
129 47682
130 47682
501 48273
514 48039

24 CFR
234 47388
Proposed Rules:
813 48006
880 48006
881 48006
882 48006
913 48006
960 48006

25 CFR
1 48273-48283
6a 48292
Proposed Rules:
1 ..... 47870, 48321-48323
35a 47870
41 ..... 47274, 47871
48 ..... 47274, 47871

27 CFR
9 47831

29 CFR
1610 48039

30 CFR
915 47834
Proposed Rules:
Ch. II 47624
251 47871
920 47419
935 48324

31 CFR
129 48184

32 CFR
250 48040
706 47602

33 CFR
100 ..... 47230, 48046
110 47602
117 47231
Proposed Rules:
117 47872

34 CFR
300 48520
Proposed Rules:
668 48494

36 CFR
Proposed Rules:
261 47505
293 47505
294 47505

37 CFR
1 48416
304 47487

39 CFR
10 47389
111 ..... 47231, 47232, 47389
Proposed Rules:
10 47275

40 CFR
52 ..... 47488, 47490, 47836, 48152, 48185
86 ..... 48128, 48474
180 ..... 47491, 47493, 48298, 48299
260 47390
270 47390
271 ..... 47391, 48300
600 48128
Proposed Rules:
51 48018
52 ..... 48018, 48202
65 47507
154 47508
180 ..... 47420, 47508, 47509
232 48064
233 48064
261 47510
600 48023
721 47874

41 CFR
Proposed Rules:
16–4 48193

43 CFR
Proposed Rules:
Ch. II 47624
5400 47511

44 CFR
67 47240

45 CFR
96 47603
801 47392
Proposed Rules:
1340 48160

46 CFR
500 47393
501 47393
502 47393
503 47393
504 47393
505 47393

47 CFR
0 47604
15 48305
61 47265
73 ..... 47395, 47604–47608, 47837, 48046, 48186, 48305
74 ..... 47837, 48305
76 48313
83 48187
Proposed Rules:
Ch. I 47275
2 ..... 47625, 47628
18 47628
67 48325
73 47638
81 47641
83 ..... 47516, 47625, 47641

48 CFR
Proposed Rules:
Ch. 5 47516
1501 47516
1502 47516
1503 47516
1505 47516
1506 47516
1513 47516
1514 47516
1515 47516
1517 47516
1527 47516
1533 47516
1536 47516
1552 47516

49 CFR
395 47494
571 47396
1002 48314
1057 ..... 47268, 47850
1182 48314
1183 48314
1186 48314
Proposed Rules:
531 48064
533 48064
571 ..... 47276, 47880
1063 47277
1181 48342
1186 48342

50 CFR
17 47397
258 47611
611 48316
655 47269
672 ..... 48049, 48316
675 48316
Proposed Rules:
Ch. II 47421
80 47420
652 ..... 47278, 47422

LIST OF PUBLIC LAWS

Note: The President completed his consideration of acts and joint resolutions passed during the second session of the 98th Congress on November 8, 1984.

Last list November 16, 1984.

The list will be resumed when bills are enacted into public law during the first session of the 99th Congress which convenes on January 3, 1985.

OL
9

SS
41

E
3

984

MI

12-13-84
Vol. 49 No. 241

federal register

Thursday
December 13, 1984

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, D C 20402

OFFICIAL BUSINESS
Penalty for private use, $300

Federal Register
(ISSN 0097-6326)

**********5-DIGIT 48106

A FR SERIA300S NOV 85 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S.MAIL

Postage and Fees Paid
U S Government Printing Office
375

SECOND CLASS NEWSPAPER

OFFICIAL BUSINESS
Penalty for private use $300

Federal Register
(ISSN 0097-6326)

Postage and Fees Paid
U S Government Printing Office
375

SECOND CLASS NEWSPAPER

12-13-84
Vol. 49 No. 241
Pages 48529–48666

federal register

Thursday
December 13, 1984

Selected Subjects

Administrative Practice and Procedure
Internal Revenue Service
Aid to Families with Dependent Children
Social Security Administration
Air Pollution Control
Environmental Protection Agency
Aliens
Immigration and Naturalization Service
Anchorage Grounds
Coast Guard
Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Banks, Banking
Federal Deposit Insurance Corporation
Bridges
Coast Guard
Flood Insurance
Federal Emergency Management Agency
Generally Recognized as Safe (GRAS) Food Ingredients
Food and Drug Administration
Government Property Management
General Services Administration

CONTINUED INSIDE



CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Marine Safety
Coast Guard
Marketing Agreements
Agricultural Marketing Service
Motor Carriers'
Interstate Commerce Commission
Natural Gas
Federal Energy Regulatory Commission
Navigation (Water)
Navy Department
Savings and Loan Associations
Federal Home Loan Bank Board

Contents

Federal Register
Vol. 49, No. 241
Thursday, December 13, 1984

Agricultural Marketing Service
RULES
48529 Lettuce grown in Texas

Agriculture Department
See also Agricultural Marketing Service; Farmers Home Administration; Forest Service; Soil Conservation Service.
NOTICES
48578 Agency information collection activities under OMB review

Air Force Department
NOTICES
Committees; establishment, renewals, terminations, etc.:
48596 Religious Matters Joint Study Group

Centers for Disease Control
NOTICES
48615 Industrial hygiene characterization of 1, 3-butadiene exposed workers; NIOSH meeting
48615 Lower extremity disorders of occupational origin; NIOSH meeting

Civil Aeronautics Board
PROPOSED RULES
48569 Foreign civil aircraft; navigation within U.S.; extension of time
NOTICES
Hearings, etc.:
48581 Metro Express II, Inc.

Coast Guard
RULES
Anchorage regulations:
48539 Puerto Rico
Drawbridge operations:
48540 Washington
PROPOSED RULES
Regattas and marine parades:
48574 Empire State Regatta

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Commodity Futures Trading Commission
PROPOSED RULES
Contract market enforcement:
48570 Floor broker registration requirements; extension of time
NOTICES
Contract market proposals:
48595 Chicago Board of Trade; commodity index futures
48596 New York Mercantile Exchange; gasoline

Defense Department
See Air Force Department; Engineers Corps; Navy Department.

Education Department
NOTICES
48598 Agency information collection activities under OMB review
48599 Civil Rights Office; annual operating plan
Grants; availability, etc.:
48605 National direct student loan, college work-study, and supplemental educational opportunity grant programs
48606 Strengthening program
Meetings:
48608 Women's Educational Programs Advisory Council

Energy Department
See also Federal Energy Regulatory Commission.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
48609 European Atomic Energy Community and Japan
Meetings:
48608 International Energy Agency Industry Advisory Board

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
48598 East Molokai, HI
48597 Potomac River; hydrilla control
48597 San Joaquin River and Tributaries, CA

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
48542 Ohio
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
48575 Indiana; extension of time
NOTICES
Environmental statements, availability, etc.:
48612 Pinellas County, FL; marine sampling and measurement program

Equal Employment Opportunity Commission
NOTICES
48647 Meetings; Sunshine Act

Farmers Home Administration
NOTICES
48576, 48579 Natural resources management guide; meeting (4 documents)
48578 Natural resources management guide; meeting; correction

Federal Aviation Administration
RULES
Airworthiness directives:
48531 Allison
48532 VOR Federal airways

PROPOSED RULES
Airworthiness directives:
48566 DORNIER GmbH
48569 Restricted areas
48568 VOR Federal airways

Federal Communications Commission
RULES
Radio services, special:
48551 Amateur service; editorial amendments

Federal Deposit Insurance Corporation
PROPOSED RULES
48552 Powers inconsistent with Federal deposit insurance law (insurance underwriting, real estate underwriting or development, etc.)
NOTICES
48647 Meetings; Sunshine Act (3 documents)

Federal Election Commission
NOTICES
48648 Meetings; Sunshine Act

Federal Emergency Management Agency
PROPOSED RULES
Flood insurance program:
48652 Financial assistance/subsidy arrangements; private sector property insurers
NOTICES
48612 Privacy Act; systems of records

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act; ceiling prices for high cost natural gas produced from tight formations; various States:
48571, 48572 Colorado (2 documents)
NOTICES
Hearings, etc.:
48609 Gulf States Utilities Co.
48609 Lone Star Gas Co.
48609 Northwest Pipeline Corp.
48610 Pennzoil Co.
48610 Trailblazer Pipeline Co.
48610 Valero Interstate Transmission Co.
48611 Wisconsin Electric Power Co.
48648 Meetings; Sunshine Act
48611 Oil pipelines, interstate; tentative valuations
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
48611 Borden Chemical
48611 Shawmut Energy Engineering Co.

Federal Home Loan Bank Board
PROPOSED RULES
Savings and loan holding companies:
48564 Holding company indebtedness

Federal Home Loan Mortgage Corporation
NOTICES
48648 Meetings; Sunshine Act

Federal Maritime Commission
RULES
48550 Agreements by ocean common carriers, etc.; environmental determinations
NOTICES
48613 Agreements filed, etc.
Energy and environmental statements; availability, etc.:
48613 U.S./Argentina and Brazil Trade
48648 Meetings; Sunshine Act

Federal Mine Safety and Health Review Commission
NOTICES
48648 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
48614 Commonwealth Trust Bancorp, Inc., et al.
48614 Lincoln Bancshares, Inc., et al.; correction
48649 Meetings; Sunshine Act (2 documents)

Fish and Wildlife Service
NOTICES
Pipeline rights-of-way applications:
48622 Louisiana

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
48535 Corticosteroid-containing drugs
GRAS or prior-sanctioned ingredients:
48533 Linoleic acid
NOTICES
Food for human consumption:
48615 Trans fatty acids; inquiry

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
48581 Kentucky
48582 New York
48581 North Carolina

Forest Service
RULES
48541 Land uses; permits for electric power transmission; correction
NOTICES
Environmental statements; availability, etc.:
48580 SMUD–SPPCo Intertie Transmission Project; CA and NV

General Services Administration
RULES
Property management:
48544 Contract airline service between selected city-pairs; temporary
48546 Office furniture; use standards
48547 Travel regulations; use of travel agents

Health and Human Service Department
See also Centers for Disease Control; Food and Drug Administration; Social Security Administration.
NOTICES
Organization, functions, and authority delegations:
48614 Office of Procurement, Assistance and Logistics et al.

Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
48616 Boston, Mass.

Immigration and Naturalization Service
RULES
Nonimmigration; documentary requirements; waivers, etc.:
48530 Aliens who are mentally ill, etc.; follow-up medical reports requirement eliminated

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
48619 Crow Irrigation Project, Montana

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service.
NOTICES
48617 Privacy Act; systems of records

Internal Revenue Service
RULES
Procedure and administration:
48536 Refund claims treated as special enforcement areas under rules for consolidated partnership proceedings; temporary
PROPOSED RULES
Income taxes:
48573 Luxury automobiles and other listed property; limitation on amount of cost recovery deductions and investment tax credit; hearing
Procedure and administration:
48573 Refund claims treated as special enforcement areas under rules for consolidated partnership proceedings; cross reference

International Trade Administration
NOTICES
Antidumping:
48582 Carbon steel products from Spain
48588 Cold-rolled carbon steel flat-rolled products from Argentina
Export privileges, actions affecting:
48591 Fife, Denis J.

Interstate Commerce Commission
PROPOSED RULES
Motor carriers:
48576 Lease and interchange of vehicles; identification devices
NOTICES
Rail carriers; State intrastate rail rate authority:
48623 Alabama
48623 Oregon

Justice Department
See Immigration and Naturalization Service.

Land Management Bureau
PROPOSED RULES
Oil and gas leasing:
48576 Hydrogen sulfide operations; extension of time
NOTICES
Coal leases, exploration licenses, etc.:
48618 Alabama
Disclaimer of interest to lands:
48619 Arizona
Environmental statements; availability, etc.:
48621 McCullough-Victorville/Adelanto transmission line; CA and NV
Exchange of public lands for private lands:
48620 Montana; correction
Geothermal resource areas:
48620 New Mexico
Opening of public lands:
48620 Montana
Withdrawal and reservation of lands:
48622 Oregon
48620, 48621 Washington (2 documents)

Legal Services Corporation
NOTICES
48649 Meetings; Sunshine Act

Merit Systems Protection Board
NOTICES
48623 Agency actions review; opportunity to file amicus briefs

Mineral Management Service
NOTICES
Outer continental shelf; development operations coordination:
48622 Samedan Oil Corp.

National Credit Union Administration
NOTICES
48649 Meetings; Sunshine Act

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
48576 Rearview mirror system; petition denied

National Oceanic and Atmospheric Administration
NOTICES
Environmental statements; availability, etc.:
48592 Virginia coastal resources management program
Meetings:
48593 Pacific Fishery Management Council

National Science Foundation
NOTICES
Committees; establishment, renewals, terminations, etc.:
48624 Biological, Behavioral, and Social Sciences Advisory Committee
Meetings:
48624 Ecology Advisory Panel
48624 Geography and Regional Science Advisory Panel
48624 Population Biology and Physiological Ecology Advisory Panel
48624 Systematic Biology Advisory Panel

National Technical Information Service
NOTICES
48593 Inventions, Government-owned; availability for licensing

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
48539 USS Ford

48613 Agreements filed, etc.

48616 Boston, Mass.

48619 Arizona

48539 USS Ford

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
48626 Long Island Lighting Co.
Environmental statements; availability, etc.:
48625 Duke Power Co.
48625 Pennsylvania Power & Light Co.

Occupational Safety and Health Review Commission
NOTICES
48649 Meetings; Sunshine Act

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
48627 Economic Forecasting Advisory Committee

Postal Service
RULES
Domestic Mail Manual:
48541 Business Reply Mail; correction

Social Security Administration
RULES
Public assistance programs:
48547 Aid to families with dependent children; disregard of Job Training Partnership Act income of dependent children

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
48580 Kinkaid Lake Watershed, IL

State Department
RULES
48536 International traffic in arms; correction
NOTICES
48627 Foreign Missions Act; determinations

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
48594 Macau
Textile consultation; review of trade:
48594 Korea

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.

Treasury Department
See also Internal Revenue Service.
NOTICES
48627 Agency information collection activities under OMB review
48628 Privacy Act; systems of records; annual publication

United States Information Agency
NOTICES
Meetings:
48646 Radio Engineering Advisory Committee

Veterans Administration
NOTICES
Meetings:
48646 Educational Allowances Station Committee

Separate Parts in This Issue

Part II
48652 Federal Emergency Management Agency

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
971 48529

8 CFR
212 48530

12 CFR
Proposed Rules:
332 48552
584 48564

14 CFR
39 48531
71 48532
Proposed Rules:
39 48566
71 48568
73 48569
375 48569

17 CFR
Proposed Rules:
1 48570

18 CFR
Proposed Rules:
271 (2 documents) 48571, 48572

21 CFR
182 48533
184 48533
510 48535

22 CFR
120 48536
121 48536
124 48536
130 48536

26 CFR
301 48536
Proposed Rules:
1 48573
301 48573

32 CFR
706 48539

33 CFR
110 48539
117 48540
Proposed Rules:
100 48574

36 CFR
251 48541

39 CFR
111 48541

40 CFR
52 48542
Proposed Rules:
52 48575

41 CFR
Ch. 101 48544
101-25 48546
101-41 48547

43 CFR
Proposed Rules:
3160 48576

44 CFR
Proposed Rules:
61 48652
62 48652

45 CFR
233 48547

46 CFR
572 48550

47 CFR
97 48551

49 CFR
Proposed Rules:
571 48576
1057 48576

572.....48550

Rules and Regulations

Federal Register
Vol. 49, No. 241
Thursday, December 13, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 971

Lettuce Grown in South Texas; Amendment No. 1 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the continuing handling regulation § 971.322 to require city destinations on inspection certificates and release forms. It would help the committee identify markets that would respond most favorably to market development projects. The amendment will promote orderly marketing of lettuce by providing marketing information.

EFFECTIVE DATE: December 13, 1984.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2036.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice was published in the November 19, 1984, **Federal Register** (49 FR 45592) regarding the proposal. It afforded interested persons an opportunity to file written comments by December 4, 1984. None was filed.

Marketing Agreement No. 144 and Order No. 971 regulate the handling of lettuce grown in designated counties in South Texas. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Lettuce Committee, established under the order, is responsible for its local administration.

Because requirements under this program have been changed infrequently, in October 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting in McAllen, Texas, on October 10, 1984, the committee recommended that the regulation be revised to require that city destinations be shown on inspection certificates and release forms.

In an effort to increase trade awareness of South Texas lettuce in various markets, funds have been allocated to continue promotional and marketing research. The committee believes that requiring city destinations on inspection certificates and release forms should help it to identify markets that would respond favorably to future market development projects.

Although the regulation being amended is effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division. The Department will evaluate committee recommendations and information submitted by the committee and other available information and determine whether modification, suspension or termination of the regulations on shipments of South Texas lettuce would tend to effectuate the declared policy of the act.

Findings

After consideration of all relevant matters, including the proposal set forth in the notice, it is hereby found that the following amendment, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of lettuce grown in the production area have begun; (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season; and (3) compliance with this regulation, which is similar to that in effect during previous marketing seasons, will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective date.

List of Subjects in 7 CFR Part 971

Marketing agreements and orders, Lettuce, Texas.

PART 971—LETTUCE GROWN IN SOUTH TEXAS

Section 971.322 (46 FR 57024) is hereby amended by revising paragraph (c)(1) to read as follows:

§ 971.322 Handling regulation.

* * * * *

(c) *Inspection.* (1) No handler shall handle lettuce unless such lettuce is inspected by the Texas-Federal Inspection Service and an appropriate inspection certificate or release form with city destinations listed has been issued for it, except when relieved of such requirement by paragraph (d) or (e) of this section.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated December 7, 1984.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–32454 Filed 12–12–84; 8:45 am]
BILLING CODE 3410–02–M

opportunity to file written comments by December 4, 1984. None was filed.

Texas lettuce would tend to effectuate the declared policy of the act.

[FR Doc. 84-32454 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole; Waiver of Certain Grounds of Excludability

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration and Naturalization Service is amending the regulations relating to requirements and guarantees of post-arrival care for immigrant family members who are mentally retarded or aliens who have had one or more attacks of mental illness by eliminating current requirements for annual follow-up medical reports over a five-year period. The new rule also provides that the alien or alien's sponsor may be referred to the mental retardation or mental health agency for the State of proposed residence for guidance in selection of a post-arrival medical authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control (CDC).

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: R. Michael Miller, Deputy Asst. Commissioner, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3320.

SUPPLEMENTARY INFORMATION: On July 24, 1984 at 49 FR 29803, the Service published proposed regulations relating to waivers and subsequent admission of certain inadmissible aliens. During the thirty-day comment period ending August 23, 1984, nine comments were received. Eight of the commenters were in complete accord with the proposed changes and wrote only to support the proposal in its entirety.

The objections of the one commenter along with the Service reply are stated below:

(1) The proposed rule would shift responsibility for mental health care provided to immigrants and family members by the Federal Government to State governments.

Under the existing regulations, the Federal Government (CDC) has never assumed responsibility for the care of aliens admitted after being granted waivers under the provisions of the regulations. There will be no change under the new rule. Any responsibility assumed by the Federal Government for such persons would be under a program or programs other than the CDC/INS five-year rule, and should not be affected by elimination of that rule.

(2) County Medical Health agencies would assume the economic burden for necessary diagnostic studies and medical supervision from Federally specified facilities or specialists to State designated examining facilities.

Economic responsibility for evaluation and care of mentally retarded and mentally ill aliens who immigrate to the United States with a waiver under this regulation is vested in the aliens' sponsors, who will be required to establish sufficient financial resources to provide for the needs of these aliens after arrival. This includes evaluation costs as well as any follow-up or continuing treatment or care required as a result of the condition of the mentally retarded or mentally ill aliens.

(3) If the five-year reporting requirement and the need for approval from CDC before transfer from one facility or specialist to another are dropped, the Federal monitoring of care and treatment is eliminated and local programs are potentially liable for the ongoing care and treatment of mentally retarded and mentally ill aliens admitted under waiver.

Federal monitoring of aliens admitted with waivers issued under the existing rule consisted simply of periodic reports from the facilities or specialist who had contracted in advance to furnish follow-up care and/or treatment of these aliens. The CDC never assumed direct responsibility for either the care or treatment of these immigrants; thus, the changed rule will result in no change so far as direct Federal Government liability is concerned.

The regulation is published in final form exactly as it was proposed. Facilities or specialists currently reporting on aliens who are in the five-year track under the present 8 CFR 212.7(b)(4)(ii)(C)(2) through 8 CFR 212.7(b)(5) may cease to furnish such reports upon the effective date of this rule. Processing of current applications for waivers of grounds of excludability under section 212(a)(1) and section 212(a)(3), 8 U.S.C. 1182(a)(1) and 1182(a)(3), of the Immigration and Nationality Act shall be completed under the new rule if completed on or after the effective date of this rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This order is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Bonds, Health, Travel restrictions.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended to read as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS: PAROLE

In § 212.7, paragraphs (b)(4)(ii) and (b)(5) are revised to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(b) * * *

(4) * * *

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or Service office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(*1*) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(*2*) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physcian or specialist during the initial evaluation.

(5) *Assurances: Bonds.* In all cases under paragraph (b) of this section the alien or his or her sponsoring family member shall also submit an assurance that the alien will comply with any special travel requirements as may be specified by the U.S. Public Health Service and that, upon the admission of the alien into the United States, he or she will proceed directly to the facility or specialist specified for the initial evaluation, and will submit to such further examinations or treatment as may be required, whether in an outpatient, inpatient, or other status. The alien, his or her sponsoring family member, or other responsible person shall provide such assurances or bond as may be required to assure that the necessary expenses of the alien will be met and that he or she will not become a public charge. For procedures relating to cancellation or breaching of bonds, see Part 103 of this chapter.

* * * * *

(Secs. 103 and 212 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1103 and 1182))

Dated: November 7, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-32482 Filed 12-12-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ANE-21; Amendment No. 39-4957]

Airworthiness Directives; Allison Gas Turbine Division, General Motors Corporation, Allison Model 250-C30/C30S Engines Installed in Sikorsky Aircraft Model S-76A. Sikorsky Aircraft Model S-76A Equipped With Allison Gas Turbine Division, General Motors Corporation, Allison Model 250-C30/C30S Engines, Certificated in Any Category

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes currently effective Telegraphic Airworthiness Directive (TAD) T84-16-51 applicable to Sikorsky Model S-76A helicopters certificated in any category and equipped with Allison Model 250-C30/250-C30S turboshaft engines. This amendment is needed to reduce the probability of, and to provide additional protection against, uncontained gas producer turbine wheel bursts.

DATE: Compliance schedule—As prescribed in the body of the AD. Incorporation by Reference—Approved by the Director of the Federal Register on December 10, 1984.

ADDRESSES: The applicable service information may be obtained from Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206-0420; and Sikorsky Aircraft, Division of United Technologies Corporation, North Main Street, Stratford, Connecticut 06601.

A copy of this information is contained in the Rules Docket at the Office of Regional Counsel, FAA, ATTN.: Rules Docket No. 84-ANE-21, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Royace H. Prather, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; (312) 694-7132.

SUPPLEMENTARY INFORMATION: TAD T84-16-51 is the currently effective AD being superseded. The supersedure is necessary since the existing compartment shields, currently required by the TAD, were made available by the airframe manufacturer as an interim safety measure until engine type design changes could be qualified and made available by the engine manufacturer. The first of these changes are now available. Accordingly, this supersedure requires: Incorporation of engine-furnished full circumferential protection against a first stage turbine wheel burst, with either an external or an internal energy absorbing ring dependent on logistics capability; installation of temporary airframe-furnished engine compartment shields for protection against a second stage turbine wheel burst; and repetitive inspections of the shields until they are removed. This supersedure also mandates update of the affected engines by a remedial program of assembly, operation, and inspection as identified by the engine manufacturer. The airframe-furnished shields are a second-generation design required until the engine manufacturer makes available a new second stage turbine wheel designed to preclude failure during overspeed events. The engine manufacturer estimates new second stage turbine wheels will be initially available in the first quarter of calendar year 1985. The FAA anticipates mandating installation of these new wheels by amendment of this AD in that time frame.

When this AD is accomplished, the electrical bus modification required by TAD T84-16-51 is no longer necessary, but may remain or be incorporated in the helicopter, as an optional installation.

Since a situtation exists affecting continued airworthiness of these engines that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed,

may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects 14 CFR Part 39

Air transportation, Engines, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by superseding TAD T84–16–51 with the following new AD:

Allison Gas Turbine Division, General Motors Corp. (Allison, Detroit Diesel Allison): Applies to Allison Model 250–C30 and 250–C30S engines installed in Sikorsky Model S–76A helicopters. SIKORSKY AIRCRAFT: Applies to Sikorsky Aircraft Model S–76A helicopters, certificated in any category, and equipped with Allison Model 250–C30/C30S Engines.

Compliance is required as indicated unless already accomplished.

To prevent critical secondary damage in the event of a gas producer turbine rotor burst, accomplish the following:

(a) Within the next 30 days after the effective date of this AD for aircraft in compliance with TAD T84–16–51, and prior to further flight for aircraft not in compliance with TAD T84–16–51, perform the following:

(1) Install the Sikorsky Model S–76A helicopter engine compartment protective shields, P/N 76070–20077–013 or P/N 76070–20077–014, in accordance with Sikorsky Alert Service Bulletin 76–71–7 dated November 9, 1984, or FAA-approved equivalent; and concurrently,

(2) Install Allison first stage turbine wheel external energy absorbing rings, P/N 23031910, L.H. and 23031920, R.H. around the Allison Model 250–C30 and –C30S engines in accordance with Allison Commercial Engine Alert Bulletin CEB–A–72–3124 dated November 15, 1984, and prerequisite CEB–A–72–3125 date November 15, 1984, and Sikorsky Alert Service Bulletin 76–71–7, dated November 9, 1984, or FAA-approved equivalents; or, install an Allison first stage turbine wheel internal energy absorbing ring P/N 23031909, in accordance with Allison Commercial Engine Alert Bulletin CEB–A–72–3128 dated November 15, 1984, and Sikorsky Alert Service Bulletin 76–71–7 dated November 9, 1984, or FAA-approved equivalents.

(b) Within the next 25 hours time in service after compliance with (a), above, and thereafter at intervals not to exceed 25 hours time in service, inspect the Sikorsky Model S–76A helicopter engine compartment protective shields in accordance with Chapter 5 of Sikorsky Airworthiness and Inspection Requirements Manual, Publication No. SA 4047–76–2–1, dated November 12, 1984, or FAA-approved equivalent.

(c) Update the engine to the "Allison Assured Engine" configuration at the next repair/overhaul shop visit, but not later than March 30, 1988, in accordance with Allison Commercial Service Letter, CSL–3068, dated October 1, 1984, or FAA approved equivalent.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate helicopters to a base for accomplishment of this AD.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

(f) Upon request, an FAA maintenance inspector may adjust the compliance schedule in this AD if the request contains data to justify the increase and it is approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206–0420; and Sikorsky Aircraft, Division of United Technologies Corporation, North Main Street, Stratford, Connecticut 06601. These documents also may be examined at the Office of the Regional Counsel, FAA, ATTN: Rules Docket No. 84–ANE–21, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

This AD supersedes TAD T84–16–51 issued August 16, 1984.

This amendment becomes effective December 10, 1984.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, and 1423); 40 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on November 21, 1984.

Robert E. Whittington,

Director, New England Region.

Issued in Fort Worth, Texas, on November 28, 1984.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84–32046 Filed 12–10–84; 10:41 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 84–AWA–1]

Alteration of VOR Federal Airways; Montgomery, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of Montgomery, AL, by revoking some airway segments and renumbering other airway segments. This action supports the FAA's agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway designations from the National Airspace System.

EFFECTIVE DATE: 0901 GMT, February 14, 1985.

FOR FURTHER INFORMATION CONTACT:

Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On August 22, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of several airway segments located in the vicinity of Montgomery, AL (49 FR 33274). This amendment deletes several alternate airways and revokes segments of several airways. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of several VOR Federal Airways located in the vicinity of Montgomery, AL, by revoking some airway segments and renumbering other segments. This action supports the FAA's agreement with ICAO to eliminate all alternate airway designations from the National Airspace System.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (49 FR 6706), is further amended, as follows:

V–1 [Amended]

By removing the words "Kinston, including an east alternate from Grand Strand to Kinston via Wilmington, NC;" and substituting the words "Kinston;"

V–70 [Amended]

By removing all the words after "to Allendale, SC." and substituting the words "From Grand Strand, SC; Wilmington, NC; to Kinston, NC. The airspace within Mexico is excluded."

V–3 [Amended]

By removing the words "including a W alternate via INT Melbourne 322° and Ormond Beach 211° radials" and the words "The portion outside the United States has no upper limit except that portion of the E alternate between Jacksonville and Savannah extends up to but not including 18,000 feet MSL."

V–437 [Amended]

By removing the words "From Ormond Beach, FL," and substituting the words "From Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach;"

V–7 [Amended]

By removing all the words before "Central City, KY" and substituting the words "From Biscayne Bay, FL, via Fort Myers, FL; Lakeland, FL; Cross City, FL; Tallahassee, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN;"

V–521 [New]

From Miami, FL, via INT Miami 337° and Fort Myers, FL, 101° radials; Fort Myers; INT Fort Myers 022° and Lakeland, FL, 154° radials; Lakeland; Cross City, FL; INT Cross City 287° and Marianna, FL, 141° radials; Marianna; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; INT Montgomery 357° and Vulcan, AL, 139° radials; Vulcan.

V–16 [Amended]

By removing the words "Nashville, TN, including a north alternate from Jacks Creek to Nashville via INT Jacks Creek 049° and Nashville 286° radials; INT Nashville 102° and Hinch Mountain, TN, 285° radials; Hinch Mountain; including a north alternate via INT Nashville 085° and Hinch Mountain 306° radials; Knoxville, TN, including a S alternate via INT Hinch Mountain 100° and Knoxville 243° radials; Holston Mountain, TN, including a S alternate from Knoxville to Holston Mountain via Snowbird, TN, Pulaski, VA, including a N alternate from Knoxville to Pulaski via INT Knoxville 050° and Glade Spring, VA, 246° radials and Glade Spring;" and substituting the words "Nashville, TN; INT Nashville 102° and Hinch Mountain, TN, 285° radials; Hinch Mountain; Knoxville, TN; Holston Mountain, TN; Pulaski, VA;"

V–136 [Amended]

By removing the words "From Pulaski, VA," and substituting the words "From Nashville, TN, INT Nashville 085° and Hinch Mountain, TN, 306° radials; Hinch Mountain, INT Hinch Mountain 100° and Knoxville 243° radials; Knoxville, TN; Snowbird, TN; Holston Mountain, TN; Pulaski, VA;"

V–466 [New]

From Knoxville, TN, via INT Knoxville 050° and Glade Spring, VA, 246° radials; Glade Spring; to Pulaski, VA.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on December 5, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–32425 Filed 12–12–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 83N–0153]

GRAS Status of Linoleic Acid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that linoleic acid is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT:

John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 3, 1983 (48 FR 45121), FDA published a proposal to affirm that linoleic acid is GRAS for use as a direct human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on linoleic acid are available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of linoleic acid, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended use in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of these sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of linoleic acid recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate. FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for linoleic acid were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of linoleic acid under conditions different from those set forth in this final rule has been waived.

One comment from a chemical firm was received in response to the proposal. The comment raised several issues. A summary of the issues and the agency's response follows:

1. The comment alleges that the proposed rule is confusing as to its intent.

The agency has reviewed this allegation and disagrees that any confusion exists as to the intent of the proposal. FDA published the proposal to announce the results of the agency's safety evaluation and its tentative

conclusions about the GRAS status of the use of linoleic acid.

2. The comment criticized the preamble to the proposed rule for listing coconut oil as a source of linoleic acid. The comment points out that the linoleic acid content of coconut oil is only about 2 percent.

The agency agrees with the comment's concern about mentioning coconut oil as a source of linoleic acid. Coconut oil contains only low levels of linoleic acid and is not known as a commercial source of linoleic acid. FDA mentioned coconut oil in the preamble to the proposal solely as an example of a potential source of linoleic acid. The regulation does not mention any specific source of linoleic acid. Because the objection raised concerns regarding statements in the preamble and not in the regulation, the agency has not modified the regulation in response to this comment.

3. Additionally, the comment alleges that the preamble to the proposal appears to endorse the acceptability of one fat over another. The comment alleged that, as a result, the preamble has the effect of endorsing only a select group of triglycerides for use in food.

The agency disagrees with the comment's interpretation of the preamble. The preamble merely listed as examples some of the sources of oils that are known to have high linoleic acid content and that are potential sources of linoleic acid.

4. The comment states further that free fatty acids including linoleic acid are commercially prepared by treating the triglycerides of edible fats or oils with water under high temperature and pressure. The comment criticizes the low temperature, low pressure method described in the proposal as not being commercially viable. The comment asserts that the method of manufacture included in the proposal is too restrictive and has the potential to limit large volume fatty acid producers as suppliers of edible linoleic acid.

The agency agrees that there are other commercial methods for production of fatty acids than that described in the proposal. The agency did not cite these other methods in the proposal, but they include low pressure splitting with catalyst, medium pressure splitting with catalyst, continuous high pressure counter current splitting, and the Twitchell process. The agency also agrees with the comment that low pressure, low temperature methods of production of fatty acids may not be commercially viable. Therefore, FDA has modified the final rule to include the various processes known to be commercially viable.

Because no food-grade specifications exist for linoleic acid at the present time, the agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for this ingredient. If acceptable specifications are developed, the agency will incorporate them into this regulation at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial linoleic acid complies with the description in the regulation, meets the purity specifications listed in § 172.860(b) (21 CFR 172.860(b)), and otherwise is of a purity suitable for its intended use in accordance with § 182.1(b)(3) (21 CFR 182.1(b)(3)).

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.8065 [Removed]

1. Part 182 is amended by removing § 182.8065 *Linoleic acid.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended by adding new § 184.1065 to read as follows:

§ 184.1065 Linoleic acid.

(a) Linoleic acid ((Z, Z)–9, 12-octadecadienoic acid ($C_{17}H_{31}COOH$) (CAS Reg. No. 60–33–3)), a straight chain unsaturated fatty acid with a molecular weight of 280.5, is a colorless oil at room temperature. Linoleic acid may be prepared from edible fats and oils by various methods including hydrolysis and saponification, the Twitchell method, low pressure splitting with catalyst, continuous high pressure counter current splitting, and medium pressure autoclave splitting with catalyst.

(b) FDA is developing food-grade specifications for linoleic acid in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use. The ingredient must also meet the specifications in § 172.860(b) of this chapter.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter and as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice. The ingredient may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective January 14, 1985.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: December 6, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-32421 Filed 12-12-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 510

[Docket No. 83N-0340]

New Animal Drugs; Corticosteroid-Containing Animal Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulation concerning labeling requirements for use of corticosteroid-containing animal drugs to delete intramammary products, add ophthalmic products, and add an additional warning concerning certain congenital anomalies. This action is taken because the agency has received reports of adverse reactions associated with the use of corticosteroids in animals. This action follows publication of a proposed rule and opportunity for comment.

DATE: Effective June 11, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce.

ADDRESS: Supplemental NADA's should be submitted to the Division of Surveillance, Center for Veterinary Medicine (HFV-210), Food and Drug Administration, Rm. 7B–31, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 18, 1970 (35 FR 11556), FDA published a regulation providing for certain labeling requirements concerning oral and parenteral use of corticosteroid-containing animal drugs (21 CFR 135.101 recodified as 21 CFR 510.410). In the **Federal Register** of November 16, 1972 (37 FR 24343), FDA amended that regulation to include intramammary products.

FDA has received additional information consisting of published literature and adverse reaction reports concerning congenital anomalies associated with the animal use of corticosteroids. In addition, the results of a published study indicated the need for warning statements relating to use of ophthalmic preparations containing corticosteroids. FDA has also determined that intramammary products no longer include steroids in their formulations. Therefore, a warning for that use is no longer needed.

FDA published a proposed rule in the **Federal Register** of May 23, 1984 (49 FR 21767) to amend the regulation by adding a warning concerning congenital anomalies, removing intramammary products, and adding ophthalmic products. Comments were requested by July 23, 1984. No comments have been received.

Therefore, the agency is amending the regulation based upon this proposal, effective June 11, 1985. Any oral, parenteral, or ophthalmic corticosteroid-containing animal drug initially introduced or initially delivered for introduction into interstate commerce after that date must comply with the amended regulation. Supplements to NADA's should be submitted to the Division of Surveillance, Center for Veterinary Medicine (HFV-210), Food and Drug Administration, Rm. 7B–31, 5600 Fishers Lane, Rockville, MD 20857, no later than June 11, 1985. Revised labeling that complies with this regulation may be placed into effect prior to approval.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(b)(13) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has determined that this action is not a major rule as defined in Executive Order 12291 and certifies in accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1168) that the regulation will not have a significant economic impact on a substantial number of small entities. FDA estimates that approximately 22 firms manufacture or distribute approximately 50 to 70 corticosteroid-containing animal drug products. These firms will be required to revise their labeling. These revisions will cost approximately $120,000. A copy of the economic and regulatory assessment supporting these statements is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

Copies of information supporting this action are on file with the Dockets Management Branch (address above). The file is available for public inspection under Docket No. 83N–0340.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 510 is amended by revising § 510.410 to read as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.410 Corticosteroids for oral, injectable, and ophthalmic use in animals; warnings and labeling requirements.

(a) The Food and Drug Administration has received reports of side effects associated with the oral, injectable, and ophthalmic use of corticosteroid animal drugs. The use of these drugs administered orally or by injection has resulted in premature parturition when administered during the last trimester of pregnancy. Premature parturition may be followed by dystocia, fetal death, retained placenta, and metritis. Additionally, corticosteroids used in dogs, rabbits, and rodents during pregnancy have produced cleft palate in offspring. Use in dogs has resulted in other congenital anomalies, including deformed forelegs, phocomelia, and anasarca. Drugs subject to this section are required to carry the veterinary prescription legend and are subject to the labeling requirements of § 201.105 of this chapter.

(b) In view of these potentially serious side effects, the Food and Drug Administration has concluded that the labeling on or within packaged corticosteroid-containing preparations intended for animal use shall bear conspicuously the following warning statement:

Warning: Clinical and experimental data have demonstrated that corticosteroids administered orally or by injection to animals may induce the first stage of parturition if used during the last trimester of pregnancy

various processes known to be commercially viable.

food ingredients, Spices and flavorings.

manufacturing practice. The ingredient may be used in infant formula in

parenteral use of corticosteroid-containing animal drugs (21 CFR 135.101 recodified as 21 CFR 510.410). In the

products. These firms will be required to revise their labeling. These revisions will cost approximately $120,000. A copy

used during the last trimester of pregnancy

and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis.

Additionally, corticosteroids administered to dogs, rabbits, and rodents during pregnancy have resulted in cleft palate in offspring. Corticosteroids administered to dogs during pregnancy have also resulted in other congenital anomalies, including deformed forelegs, phocomelia, and anasarca.

Effective date. This rule is effective June 11, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce.

(Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C.) 360b, 371(a)))

Dated: November 27, 1984.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 84-33482 Filed 12-12-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 124, and 130

[Departmental Reg. 108.840]

Revision of the International Traffic in Arms Regulations

Correction

In FR Doc. 84-31708 beginning on page 47682 in the issue of Thursday, December 6, 1984, make the following corrections:

§ 120.10 [Corrected]

1. On page 47685, in the first column, in § 120.10, four lines from the bottom of the page, "payland" should read "payload".

§ 120.12 [Corrected]

2. On the same page, in the middle column, in § 120.12, the last line, "articile" should read "article".

§ 121.1 [Corrected]

3. On page 47686, in the third column, in § 121.1, under **Category III—Ammunition**, in paragraph (a), the last line, "211.6" should read "121.6".

4. On page 47688, in the first column, under **Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment**, in paragraph (a), the sixth line, "equipments" should read "equipment".

§ 121.15 [Corrected]

5. On page 47690, in the third column, in § 121.15(b)(2)(i), the first line, "SSR" should read "ASR".

§ 124.3 [Corrected]

6. On page 47696, in the middle column, in § 124.3(b)(1), the last line, "limitaitions" should read "limitations".

7. In the same section, in paragraph (b)(2), the fifth line, "othe" should read "other".

§ 124.10 [Corrected]

8. On page 47697, in the third column, in § 124.10(a)(6), the paragraph in small print should have quotation marks at the end of the paragraph.

§ 124.14 [Corrected]

9. On page 47699, in the middle column, in § 124.14(c)(7), the paragraph in small print should have quotation marks at the end of the paragraph.

§ 130.10 [Corrected]

10. On page 47711, in the middle column, in § 130.10(c)(2), the sentence beginning "In lieu of reporting" should have appeared flush to the left margin.

BILLING CODE 4710-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 7996]

Procedure and Administration; Special Rules for Certain Refund Claims Treated as Special Enforcement Areas Under Rules for Consolidated Partnership Proceedings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations on procedure and administration relating to special enforcement areas under the rules for consolidated partnership proceedings. The Tax Equity and Fiscal Responsibility Act of 1982 amended the tax law to allow for consolidated administrative and judicial proceedings to determine the tax treatment of partnership items at the partnership level rather than at the partner level. That Act also authorized special rules for areas that present special enforcement considerations. The regulations provide guidance to Internal Revenue Service personnel and partners with respect to these new provisions.

DATES: Effective date: December 10, 1984. These temporary regulations are applicable with respect to certain applications for tentative carryback and refund adjustments ("quick refunds") and claims for credit or refund filed after December 10, 1984.

FOR FURTHER INFORMATION CONTACT: Nerman Dobynes Hubbard of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 6231(c) of the Internal Revenue Code of 1954. The amendments are issued under the authority contained in section 6231(c) (1) and (3) of the Internal Revenue Code of 1954 (96 Stat. 665, 26 U.S.C. 6231(c) (1) and (3)). These temporary regulations will remain in effect until superseded by later regulations on the same subject.

Explanation of Provisions

Ordinarily under the partnership audit rules (Code sections 6221 through 6233), the Internal Revenue Service may adjust the treatment of partnership items by a partner who reported those items consistently with the treatment of those items on the partnership return only through partnership-level proceedings. No matter how expeditiously the Service conducts a partnership proceeding, however, in most cases the Service will not be in a position for at least a year to make any assessments as a result of adjustments to partnership items through partnership proceedings.

The Service is concerned about the increase in abusive tax shelters that generate refunds for taxpayers based on losses, deduction, or credits of a partnership. Paying out refunds attributable to partnership losses, deductions, or credits when the available relevant information indicates that those losses, deductions, or credits are attributable to an abusive tax shelter and consequently highly likely to be excessive will impose a heavy burden on the collection resources of the Service. In some cases, the amounts refunded will be uncollectible because the taxpayers who received the refunds will have no assets at the time that the final determination of liability and the demand for payment are made; in other cases, the Service will have to levy on the property of taxpayers who do not have enough cash to pay the tax due.

Because of these concerns, the Commissioner has determined that "special enforcement considerations," within the meaning of section 6231(c)(1), are present in the case of certain applications under section 6411 (relating to tentative carryback and refund adjustments) and claims for credit or refund based on losses, deductions, or credits of a partnership. Special enforcement considerations exist in these cases if the Commissioner or his delegate determines, after review of the available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership from which the losses, deductions, or credits arise, (1) a gross valuation overstatement, or (2) a false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership, that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). These regulations apply only with respect to an application or claim based upon the original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, the regulations do not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment).

Section 6231(c)(3) authorizes regulations to prescribe special rules to achieve the objectives of the partnership audit legislation in any special enforcement area. Because one of the principal purposes of the legislation is to provide for more efficient use of the Service's resources by reducing multiple proceedings with respect to partnership items, the temporary regulations permit the Service to avoid later collection problems by offsetting or suspending any refund attributable to items from a partnership described above without removing the partner from partnership-level proceedings. The partnership items of the partner remain subject to adjustment through partnership-level proceedings unless the partner exercises a limited right to treat those items as nonpartnership items.

In the case of applications under section 6411, the regulations override the restriction on assessments under section 6225. The regulations permit the Service to make an assessment that would, but for the restriction set out in section 6225, be permitted under section 6213(b)(3) (relating to assessments arising out of tentative carryback or refund adjustments) with respect to any amount applied, credited, or refunded as a result of an application under section 6411 that is subject to these regulations. Thus, the regulations provide that, notwithstanding section 6225, an assessment under section 6213(b)(3) with respect to any amount applied, credited, or refunded as a result of an application under section 6411 may be made before there is a final partnership-level determination with respect to the losses, deductions, or credits on which the application is based.

The regulations also permit the Service to suspend certain refunds attributable to abusive tax shelter partnerships. Thus, the regulations provide that the Service may mail to the partner filing a claim for a credit or refund which presents special enforcement considerations a notice stating that no action will be taken on the partner's claim until the completion of partnership-level proceedings.

Under the regulations, a partner to whom the Service mails a notice of assessment or of suspension generally remains subject to the partnership audit rules. To insure that the partner is not denied access to a court with respect to the items in dispute for an unreasonable period of time, however, the regulations provide that the partner may in certain circumstances elect to have all partnership items for the partnership taxable year in which the items at issue arose treated as nonpartnership items. A partner making this election will enjoy the same rights with respect to items arising from the partnership as the partner enjoys with respect to other nonpartnership items. The partner may, for example, file a refund suit if the Service fails to grant a claim for refund with respect to those items within 6 months. The election is made by filing a statement with the Internal Revenue Service office that mailed the notice. The statement may be filed at any time (1) after the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose, and (2) before the date on which the Service mails to the tax matters partner the notice of final partnership administrative adjustment for that partnership taxable year.

Under the temporary regulations, the Service is able to avoid the risk that amounts refunded might later be uncollectible. If, as a result of either partnership-level or separate proceedings, the partnership losses, deductions, or credits giving rise to the refund are determined to be allowable, the refund will be made with interest.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this temporary regulation is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Nerman Dobynes Hubbard of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, the Regulations on Procedure and Administration (26 CFR Part 301) are amended as follows:

PART 301—[AMENDED]

Paragraph 1. A new § 301.6231(c)–1T is added in the appropriate place to read as follows:

§ 301.6231(c)–1T Special rules for certain applications for tentative carryback and refund adjustments based on partnership losses, deductions, or credits (temporary).

(a) *Applications subject to this section.* This section applies in the case of an application under section 6411 (relating to tentative carryback and refund adjustments) based on losses, deductions, or credits of a partnership if the Commissioner or his delegate determines, after review of the available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement, or

(2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership, that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to an application based upon the original reporting on the partner's income tax return of

6. On page 47696, in the middle column, in § 124.3(b)(1), the last line, "limitaitions" should read "limitations".

FOR FURTHER INFORMATION CONTACT: Nerman Dobynes Hubbard of the Legislation and Regulations Division,

to tentative carryback and refund adjustments) and claims for credit or refund based on losses, deductions, or

with respect to any amount applied, credited, or refunded as a result of an

regulatory impact analysis is therefore not required.

upon the original reporting on the partner's income tax return of

partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment).

(b) *Determination of special enforcement area.* In the case of an application under section 6411 described in paragraph (a) of this section, precluding an assessment under section 6225 that would be permitted under section 6213(b)(3) (relating to assessments arising out of tentative carry back or refund adjustments) with respect to any amount applied, credited, or refunded as a result of the application may encourage the proliferation of abusive tax shelter partnerships and make the eventual collection of taxes due more difficult. Consequently, the Commissioner hereby determines that such applications present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Assessment permitted under section 6213(b)(3).* Notwithstanding section 6225 (relating to restrictions on assessment with respect to partnership items), an assessment that would be permitted under section 6213(b)(3) with respect to any amount applied, credited, or refunded as a result of an application described in paragraph (a) of this section may be made before there is a final partnership-level determination with respect to the losses, deductions, or credits on which the application is based. As provided in section 6213(b)(1), the Service shall mail notice of any such assessment to the partner filing the application. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items*—(1) *In general.* A partner to whom the Service mails notice of an assessment under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of assessment. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose, and

(ii) Before the date on which the Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose.

For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on that last day.

(3) *Contents of the statement.* The statement shall—

(i) Be clearly identified as an election to have partnership items treated as nonpartnership items because of notification of an assessment under section 6213(b)(3),

(ii) Identify the partnership by name, address, and taxpayer identification number,

(iii) Identify the partner making the election by name, address, and taxpayer identification number,

(iv) Specify and partnership taxable year to which the election applies, and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section applies with respect to any application described in paragraph (a) of this section that is filed after December 10, 1984.

Par. 2. A new § 301.6231(c)–2 T is added in the appropriate place to read as follows:

§ 301.6231(c)–2 T Special rules for certain refund claims based on losses, deductions, or credits from abusive tax shelter partnerships (Temporary).

(a) *Claims subject to this section.* This section applies in the case of a claim for credit or refund based on losses, deductions or credits of a partnership if the Commissioner or his delegate determines, after review of available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement, or

(2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership, that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to a claim that is based upon the partner's original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment). For purposes of this section, any income tax return requesting a credit or refund shall be treated as a claim for a credit or refund.

(b) *Determination of special enforcement area.* Granting a claim for credit or refund described in paragraph (a) of this section may encourage the proliferation of abusive tax shelter partnerships and make the eventual collection of taxes due more difficult. Consequently, the Commissioner hereby determines that such claims present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Action on refund claims suspended.* In the case of a claim described in paragraph (a) of this section, the Service may mail to the partner filing the claim a notice stating that no action will be taken on the partner's claim until the completion of partnership-level proceedings. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items*—(1) *In general.* A partner to whom the Service mails a notice of suspension of action on a refund claim under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of suspension. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose, and

(ii) Before the date on which the Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose.

For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on that last day.

(3) *Contents of the statement.* The statement shall—

(i) Be clearly identified as an election to have partnership items treated as nonpartnership items because of notification of suspension of action on a refund claim,

(ii) Identify the partnership by name, address, and taxpayer identification number,

(iii) Identify the partner making the election by name, address, and taxpayer identification number,

(iv) Specify the partnership taxable year to which the election applies, and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section applies with respect to any claim described in paragraph (a) of this section that is filed after December 10, 1984.

There is need for immediate guidance with respect to the subject matter of this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 6231(c) (1) and (3) of the Internal Revenue Code of 1954 (98 Stat. 665, 26 U.S.C. 6231(c) (1) and (3)).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: December 7, 1984.

Ronald A. Pearlman,
Acting Assistant Secretary of Treasury.

[FR Doc. 84-32473 Filed 12-10-84; 1:30 pm]
BILLING CODE 4830-01-M

provisions of the 72 COLREGS without interfering with its special function as a naval frigate. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 20, 1984.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS FORD (FFG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a) regarding the arc of visibility of its forward masthead light; Annex I, section 2[a](i), regarding the height above the hull of its forward masthead light; and Annex I, section 3(b), regarding the horizontal relationship of its sidelights to its forward masthead light, without interfering with its special function as a Navy frigate. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements. Notice is also provided to the effect that USS FORD (FFG 54) is a member of the FFG 7 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to this ship.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following entry as follows to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), annex 1
USS FORD	FFG 54	1.8

2. Table Four of § 706.2 is amended by adding to the existing paragraph 8 the following vessel for which navigational light certification is herewith issued by the Secretary of the Navy:

USS FORD ..... FFG 54

3. Table Four of § 706.2 is amended by adding to the existing paragraph 9 the following vessel for which navigational light certification is herewith issued by the Secretary of the Navy:

Vessel	Number	Distance of side lights forward of masthead lights in meters
USS FORD	FFG 54	2.75

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: November 20, 1984.

Approved:

John Lehman,
Secretary of the Navy.

[FR Doc. 84-32453 Filed 12-12-84; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS FORD (FFG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 7–83–29]

Special Anchorage Area; Bahia de San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is reclassifying Anchorage D in Bahia de San Juan as a Special Anchorage Area, for use by vessels less than 65 feet long. The anchorage area is currently being used by small pleasure craft. This change in classification relieves vessel

after the date on which the partnership return was filed for the partnership

partnership losses, deductions, or credits. Thus, this section does not apply

extensions) shall be treated as filed on that last day.

operators of the requirement to show anchor lights when anchored within this area.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant (J.G.) Harry D. Craig (305) 350–5651.

SUPPLEMENTARY INFORMATION: On February 8, 1984 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (49 FR 4386). Interested persons were requested to submit comments and no comments were received.

Drafting Information: The drafters of this notice are Lieutenant (J.G.) Harry D. Craig, project officer, Seventh Coast Guard District Port Safety Branch, and Lieutenant Commander Kenneth E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments: No comments were received on the Notice of Proposed Rule Making.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that full regulatory evaluation is unnecessary. The only change this regulation makes is to delete a requirement that vessels at anchor display the appropriate lights.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, § 110.240 is amended by removing paragraph (a)(1) [Yacht, schooner, and small craft Anchorage D], redesignating paragraph (a)(2) and (a)(3) as paragraph (a)(1) and (a)(2), and adding a new § 110.74c to read as follows:

§ 110.74c Bahia de San Juan, PR.

The waters of San Antonio Channel, Bahia de San Juan, eastward of longitude 66°05'45" W.

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46; and 33 CFR 1.05–1(g))

Dated: November 28, 1984.

A.R. Larzelere,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 84–32482 Filed 12–12–84; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD13 84–12]

Drawbridge Operation Regulations; Duwamish Waterway, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation from rule.

SUMMARY: The Coast Guard is continuing the temporary regulations published in the **Federal Register** on October 4, 1984 (49 FR 39157) governing the operation of the highway drawbridge across the Duwamish West Waterway at Southwest Spokane Street and the highway drawbridge across the Duwamish Waterway at First Avenue South, both in Seattle, Washington. This action will allow the bridges to continue operating as they have over the course of the previous temporary regulations while an identical permanent rule change is being processed. Since this action will not change the operation of the bridge as provided by the previous temporary regulations, its impact is expected to be minimal.

EFFECTIVE DATE: This rule becomes effective November 19, 1984, and will terminate on January 17, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington, 98174. The comments and other materials referenced in this notice will be available for inspection and copying in Room 3564 at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to comment on this temporary regulation by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the temporary deviations. Person desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

A proposed rule having identical provisions is being processed concurrent with this temporary and proposed regulations and determine a course of final action. Any future temporary regulations or final rulemaking may be changed in light of the comments received.

Drafting Information: The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Aubrey W. Bogle, project attorney.

Discussion of Temporary Rule: Since 1978 when the northermost of the two Spokane Street bridges across the Duwamish West Waterway was struck by a vessel and subsequently removed, three hour morning and evening closed periods have been in effect for the remaining Spokane Street bridge and the First Avenue South bridge. Prior to that time two hour closed periods had been in effect. Extending the two hour closed periods to three hours and eliminating closed period exemptions for vessels of 5,000 tons and over was necessary to accommodate the increase in peak hour vehicular flows caused by the elimination of the four travel lanes of the damaged bridge.

The opening to vehicular traffic of the high level bridge across the Duwamish West Waterway resulted in improvements to vehicular traffic flow in the Spokane Street corridor. In order to take advantage of these improvements for navigation, the Commander, Thirteenth Coast Guard District approved a temporary regulation change which restored the operating regulations to their 1978 pre-accident form. The temporary change was published in the **Federal Register** (49 FR 30071) on July 26, 1984. After evaluating the effects of the change, the District Commander approved a further change which granted closed period exemptions to additional classes of vessels. This further change was published in the **Federal Register** (49 FR 39157) on October 4, 1984.

No comments have been received to the latest temporary regulations and no complaints have been received concerning operation of the bridges. By separate action the Coast Guard is proposing a permanent rule change for the Spokane Street and First Avenue South bridges. The proposed permanent rule change will be identical to this current temporary regulation. It is intended that this temporary regulation will be extended and continued through finalization of the permanent rule.

change in classification relieves vessel

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evalutation is unnecessary. This is based on the improvement to vehicular traffic flow brought about by the new high level bridge between Seattle and West Seattle, and the fact that the high level bridge provides an alternate, uninterrupted route for vehicular traffic during periods when the other bridges across the waterway may be required to open for the passage of vessels. Based on the foregoing, closed period openings of the Southwest Spokane Street and First Avenue South bridges for the authorized classes of vessels should not have a significant effect on vehicular traffic movement. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33 Code of Federal Regulations is amended by revising § 117.1041(a)(1) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.1041 Duwamish Waterway.

(a) * * *

(1) The draws of the Southwest Spokane Street bridge, mile 0.3, and the First Avenue South bridge, mile 2.5, need not be opened for the passage of vessels from 6:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, except as follows: (i) The draws of the Southwest Spokane Street bridge shall open at any time for a vessel of 1,000 gross tons and over, a vessel towing a vessel of 1,000 gross tons and over, and a vessel proceeding to pick up a vessel of 1,000 gross tons and over for towing.

(ii) The draws of the First Avenue South bridge shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over for towing.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: November 30, 1984.

H.R. Garrett,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 84–32491 Filed 12–12–84; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses; Special Uses

Correction

In FR Doc. 84–31318, beginning on page 46893 in the issue of Thursday, November 29, 1984, the signature which appeared in the original document was omitted through a technical error. It should have appeared in the third column of page 46895, immediately before the file line, and should have read:

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

BILLING CODE 1505–01–M

POSTAL SERVICE

39 CFR Part 111

Business Reply Mail; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

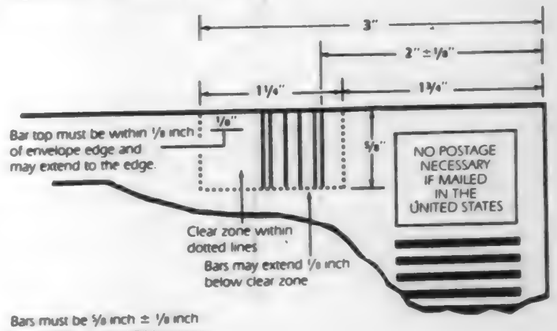
SUMMARY: On December 3, 1984 (49 FR 47232) the Postal Service published its final rule making various changes to business reply mail (BRM) and prescribing format requirements to accommodate mail processing optical character reader specifications. Exhibit 917.52 shows several format requirements, one of which, Figure 2, dealing with FIM location, was incorrectly drawn in one respect. Consistent with preexisting regulations (see DMM 917.52b(2)(d)), the figure should have been drawn to show that the FIM printing location is determined by measuring 2 inches, plus or minus ⅛ inch, from the right edge of the mail piece to the *nearest* FIM bar. Figure 2, showed this measurement from the right edge of the mail piece to the *second* FIM bar. Figure 2, as corrected, is published here.

EFFECTIVE DATE: January 2, 1985.

FOR FURTHER INFORMATION CONTACT: Dick Greene, (202) 245–4530.

SUPPLEMENTARY INFORMATION: The following correction is made in FR Doc. 84–31556 appearing on 47232, in the issue of December 3, 1984: On page 47238, at the top of the page, Figure 2 is removed and replaced by Figure 2 as shown below.

Figure 2. FIM LOCATION



Bars must be ⅛ inch ± ⅛ inch long. USPS supplied FIM patterns (A-B-C) are ⅛ inch long and should not be reduced or enlarged in size

(39 U.S.C. 401(2), (10), 404(a)(2), (4))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84–32505 Filed 12–12–84; 8:45 am]

BILLING CODE 7710–12–M

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46; and 33 CFR 1.05-1(g))

acknowledgement that their comments have been received should enclose a

will be extended and continued through finalization of the permanent rule.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2734-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Final Rulemaking.

SUMMARY: On September 2, 1982, the State of Ohio submitted a revision to the total suspended particulate (TSP) portion of its State Implementation Plan (SIP). This revision is in the form of individual variance permits for two coal-fired boilers and three polyvinyl chloride (PVC) resin storage silos at the B.F. Goodrich Chemical Plant located in Avon Lake (Lorain County) Ohio. The State is requesting an alternative emission strategy "bubble" which would involve trading emissions between the boilers and the silos. This notice announces EPA's decision to disapprove Ohio's SIP revision.

DATE: This final rulemaking becomes effective January 14, 1985.

ADDRESSES: Copies of this revision are available at the following addresses:

Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604;

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6038.

SUPPLEMENTARY INFORMATION: On April 7, 1982 (47 FR 15076), the Environmental Protection Agency issued a proposed Emissions Trading Policy Statement, entitled "Emission Trading Policy Statement: General Principles for Creation, Banking, and Use of Emission Reduction Credits." This statement indicated that it is the policy of USEPA to encourage use of emissions trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards. This policy statement described emissions trading, set out the general principles that USEPA will use to evaluate emissions trades under the Clean Air Act, and expanded opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice indicated that, until USEPA takes final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed policy statement.

In accordance with the provisions contained in the proposed Emissions Trading Policy Statement, the State of Ohio, on September 2, 1982, submitted to USEPA a revision to the total suspended particulate (TSP) portion of its State Implementation Plan (SIP). This revision is in the form of variance permits for two coal-fired boilers (B006–#4 and B007–#3) and three PVC resin storage silos (P013, P014 and P015) located at the B.F. Goodrich Chemical Plant in Avon Lake, Lorain County, Ohio. The State is requesting an alternative emission strategy "bubble" which would involve trading emissions between the boilers and the silos. Specifically, the trade consists of (1) an increase in allowable emissions for Boiler #3 (from 0.17 to 0.24 lbs/MMBTU @ 52.7 MMBTU/hr) and Boiler #4 (from 0.17 to 0.22 lbs/MMBTU @ 105.4 MMBTU/hr), and (2) a decrease in allowable emissions from PVC silos 3–5 (from 8.6 lbs/hr to 0.25 lbs/hr per silo). B.F. Goodrich is located in the portion of Lorain County that is designated a secondary nonattainment area for particulates (40 CFR 81.336).

USEPA reviewed the variance permits and preliminarily determined that the bubble concept was consistent with USEPA's proposed Emissions Trading Policy Statement (ETPS) and on February 18, 1983 (48 FR 7211) proposed to approve the bubble. USEPA had made the determination that the limitation in Ohio Rule AP 3–11 represented an appropriate reasonably available control technology (RACT) emissions baseline against which surplus reductions could be calculated, and that the bubble provided sufficient surplus credits beyond this level to comply with the ETPS. The ETPS specifies that the baseline for emission trading be RACT in a nonattainment area such as Lorain County where there is no USEPA approved demonstration of attainment. During the public comment period USEPA received comments from the Natural Resources Defense Council, Inc., and the State of New Jersey. A comment made by both commentors was that USEPA's baseline for the PVC silos (an allowable emission limit of 8.6 lbs/hr per silo) does not represent RACT. More specifically, they commented that the process weight rate curve contained in Rule 11, which established this limit, is not representative of RACT for the B.F. Goodrich PVC silos since the pollution control equipment, baghouses, which control actual emissions to as low as 0.05 lb/hr have been in place on the B.F. Goodrich–Lorain silos since 1980.

Based upon these comments, USEPA re-evaluated the baseline used for this bubble. USEPA agrees that, although the general process weight rate curve in Rule 11 appears to represent RACT for a wide range of industrial processes, it does not represent RACT *for the B.F. Goodrich PVC silos.* It is not RACT because baghouses reducing actual emissions to about 0.05 lb/hr have been in place at the B.F. Goodrich—Lorain facilities since 1980. These baghouses conform to the definition of RACT [1] in that they are "reasonably available" and "economically and technologically feasible." Therefore, USEPA believes that the baghouse control technology in place at B.F. Goodrich's PVC silos represents RACT for those facilities. Because the bubble baseline should be based on emission levels associated with baghouse control technology, Ohio's proposed bubble does not contain sufficient emission reductions to offset the 8.8 lbs/hr combined increases in allowable emission from the two boilers. USEPA, therefore, on April 10, 1984 (49 FR 14145), proposed to disapprove the B.F. Goodrich bubble. Interested parties were given until May 10, 1984, to submit comments on the proposed action. USEPA received comments from B.F. Goodrich Company and Natural Resources Defense Council, Inc., (NRDC). At this time, USEPA will respond to these comments.

Comment: B.F. Goodrich believes the bubble should be approved because the facility is located in an area which has attained the primary and secondary NAAQS for TSP even though it is officially designated secondary nonattainment. Consequently, B.F. Goodrich asserts that a RACT baseline is not required. B.F. Goodrich believes that the attainment status of Lorain County is supported by: (1) Two years of Ohio EPA ambient air quality data, (2) dispersion modeling submitted with the proposed bubble, and (3) dispersion modeling submitted in 1981 with a Prevention of Significant Deterioration (PSD) permit application for a new B.F. Goodrich fluidized bed combustion boiler.

[1] "Environmental Protection Agency Memorandum on Acceptability of Implementation Plan Regulations in Nonattainment Areas," December 9, 1976.

Response: In response to B.F. Goodrich's comment that RACT is not required in secondary nonattainment areas USEPA believes that this is an incorrect reading of the Clean Air Act. Section 172(b)(2) clearly requires the implementation of RACT "as expeditiously as practicable" in all nonattainment areas. Because USEPA believes the 0.05 lbs/hr emission limit represents RACT and because the PVC silos are already meeting this limit there are no surplus emission reductions available for trading purposes.

USEPA has reviewed all the monitoring and modeling data provided by B.F. Goodrich and has concluded that the data do not justify an attainment designation or justify the emission limitations contained in the bubble. These data are discussed below:

1. *Monitoring.* B.F. Goodrich submitted data which show that the monitor located closest to the facility (3 kilometers) indicates attainment of the TSP NAAQS. Although this monitor does not show any violations it is not representative of the air quality in the area of the plant because it is located too far from the plant and does not provide adequate spatial resolution of potential air quality violations. For this reason data from the monitor cannot be used as a basis of a redesignation. In addition, B.F. Goodrich did not submit any evidence of permanent, enforceable emission reductions in the applicable area, (i.e., provide a creditable explanation for the air quality improvement) which is a necessary requirement for any redesignation to attainment.

2. *Modeling.* B.F. Goodrich could submit a modeled attainment demonstration to show that the increased boiler emission limitation would result in attainment and maintenance of the TSP standard. A modeled attainment demonstration would be approvable if it meets all the applicable modeling guideline requirements (see "Guideline on Air Quality Models", April 1978 and Regional Workshops on Air Quality Modeling: A Summary Report", April 1981) and ensures that the primary and secondary TSP standards will be attained and maintained. As stated above, B.F. Goodrich submitted modeling data with their bubble and a recent PSD application. Although neither the bubble or PSD modeling were originally submitted by B.F. Goodrich for the purpose of a modeled attainment demonstration, USEPA evaluated these analyses for this purpose in light of B.F. Goodrich's comment. Based on its review, USEPA determined that the modeled attainment demonstrations are not acceptable because they fail to meet USEPA's modeling guidelines. USEPA concerns are that the modeled attainment demonstrations: (1) Do not include a complete emissions inventory, (2) do not use the correct model, and (3) do not evaluate building downwash.

Comment: B.F. Goodrich believes that the emission reduction credits used in the proposed bubble meet the letter and spirit of the April 7, 1982, proposed Emission Trading Policy Statement (ETPS). Specifically, the company believes that the bubble strategy contains valid approvable emission reductions because they are surplus, enforceable, permanent and quantifiable.

B.F. Goodrich also believes that the 8.6 lbs/hr limit in Ohio Rule 11 represents RACT for PVC silos, and that baghouse pollution control equipment, with a removal efficiency of 99.88%, is necessary to achieve this limit. In support of their bubble, the company submits that with the installation of its new baghouses in 1980, it has gone beyond the efficiency of RACT baghouse technology and has attained a higher degree of removal efficiency with 99.995% reduction. The company contends that this increased removal efficiency accounts for the difference between the 8.6 lbs/hr limit and the actual emissions of 0.05 lbs/hr.

Response: The ETPS specifies that each bubble must contain surplus emission reductions to offset any emissions increases and that the bubble must not interfere with attainment and maintenance of the NAAQS. USEPA does not believe the B.F. Goodrich bubble meets these criteria.

The first step in qualifying a reduction as "surplus" is to establish a level of baseline emissions. The baseline identifies the level of required emissions beyond which reductions must be achieved for a source to receive credit.

The ETPS specifies that if RACT has not been defined in the SIP, as is the situation in Lorain County, the source may agree with the State and USEPA to an acceptable RACT limit for the sources involved in the trade. Surplus emission credits must be available from this RACT baseline for the bubble to be approvable. No RACT limit was negotiated with USEPA and B.F. Goodrich has assumed that the only enforceable emission limitation currently applicable to the PVC silos, the 8.6 lbs/hr per silo limit taken from Ohio Rule 11, is RACT. Because new baghouse dust collectors were installed on the PVC silos in 1980 that reduced particulate emissions below the 8.6 lbs/hr limit, B.F. Goodrich believes there are surplus emission reduction credits available that can be used for this bubble. USEPA agrees that the emission credits would be surplus and the bubble would be approvable if the 8.6 lbs/hr limit were the correct RACT baseline. USEPA does not believe the 8.6 lbs/hr emission limitation is an appropriate RACT baseline for the PVC silos at the B.F. Goodrich-Lorain facilities because baghouses have been in place since 1980 which have reduced actual emissions to about 0.05 lbs/hr. As stated earlier, USEPA believes that control technology capable of meeting an emission level of 0.05 lbs/hr is reasonably available and economically and technologically feasible and therefore represents the appropriate RACT baseline for PVC silos.

USEPA also disputes B.F. Goodrich's contention that the company has attained a removal efficiency of 99.995%. B.F. Goodrich's calculations are an expression of the total amount of product retained in the silos as a percentage of the total product throughput of the silos. Removal efficiency should be expressed as the amount of particulates removed by the baghouse as a percentage of the amount of particulate entering the baghouse. A correct calculation of removal efficiency would result in a significantly lower removal efficiency that the 99.995% that B.F. Goodrich contends the baghouses achieve. In any case, regardless of the control efficiency, USEPA believes that the level of control achieved by the baghouse installed by B.F. Goodrich represents RACT because it is reasonably available and economically and technologically feasible, and that therefore there can be no surplus credit available.

Comment: B.F. Goodrich believes USEPA's regulations support adopting RACT technology only for general categories of sources because there is nothing in the Clean Air Act, its legislative history, or USEPA's own regulation to justify the application of RACT to an individual piece of equipment at a particular company. In light of this absence of justification, they feel that there is no legal basis for the Agency to redefine RACT for the B.F. Goodrich silos to other than the requirements of Ohio Rule 11.

Response: USEPA disagrees that the Agency regulations only define RACT in general terms for broad categories of sources. The definition and explanation of RACT that USEPA regularly utilizes is found in the December 9, 1976 Environmental Protection Agency

memorandum on Acceptability of Implementation Plan Regulations in Nonattainment Areas. This memorandum is available for public review in the rulemaking docket for this action. In this memorandum RACT is defined as "the lowest emission limit that a *particular* source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." (Emphasis Added) Additionally, the memorandum states "the determination of RACT and the corresponding emission rate, insuring the proper application and operation of RACT, may vary from source to source due to source configuration, retrofit feasibility, operation procedures, raw materials, and other technical or economic characteristics of an individual source or group of sources."

Comment: As support for their bubble, B.F. Goodrich contends that the emissions from the PVC silos and boilers are reasonably equivalent and meet the requirements of the proposed ETPS. This comment was made in response to an earlier comment from the State of New Jersey, following USEPA's February 18, 1983, (48 FR 7211), proposed approval of this bubble. The State of New Jersey questioned USEPA's assumption that the resin dust from silos and the coal fly ash from the boilers were reasonably equivalent in terms of the toxicity of the emissions. New Jersey contends the resin may be less toxic than the coal ash which contains heavy metals and, therefore, the trade may not be equivalent. The NRDC also questioned the equivalency of the emissions included in the trade.

Response: The ETPS specifies that emission trades must involve the same criteria pollutant. Resin dust and coal fly ash are both forms of the criteria pollutant total suspended particulates (TSP). USEPA agrees with B.F. Goodrich that the particulate emissions from the boiler stacks are reasonably equivalent to those from the PVC silos to the extent that both types of emissions to the atmosphere would be measured as TSP matter by an ambient air quality sampler. Although USEPA agrees with the equivalency of the trade this does not change USEPA's overall position of disapproval of the bubble because using an acceptable RACT baseline would result in insufficient emission credits.

Comment: NRDC supports USEPA's April 10, 1984, proposal to disapprove the B.F. Goodrich bubble and requests that USEPA proceed promptly to final disapproval of the SIP revision.

Response: In this notice USEPA is taking final action to disapprove the bubble.

Final Action on B.F. Goodrich Bubble

After review of the public comments USEPA takes final action today to disapprove the bubble strategy because the bubble, as presented by the State of Ohio for USEPA approval, does not include an acceptable RACT emissions baseline for the PVC silos. If an acceptable RACT baseline is utilized, the bubble does not contain sufficient surplus emission reductions to offset the increase in allowable emissions from the two boilers.

Under Executive Order 12291, today's action is "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the Region V office listed at the beginning of this notice.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court for Appeals of the appropriate circuit by (60 days from today). This action may not be challenged in later proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Incorporation by reference, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director in the Federal Register on July 1, 1982.

This notice is issued under the authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: December 5, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended.

1. Section 52.1670(c) is amended by adding new paragraph (64) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

(64) On September 2, 1982, the State of Ohio submitted a revision to the total suspended particulate State Implementation Plan for the B.F. Goodrich Chemical Plant in Avon Lake, Lorain County, Ohio. This revision is being disapproved. (See § 52.1880(g))

* * * * *

2. Section 52.1880 is amended by adding new paragraph (g) as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(g) The B.F. Goodrich Chemical Plant State Implementation Plan revision is being disapproved because it is not supported by an adequate attainment demonstration and therefore does not meet the requirements of § 51.13(e).

* * * * *

[FR Doc. 84-32584 Filed 12-12-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chap. 101

[FPMR Temp. Reg. A-22, Supp. 3]

Use of Contract Airline Service Between Selected City-Pairs

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement amends FPMR Temp. Reg. A-22 by incorporating the provisions of the new airline city-pair contracts effective October 1, 1984. Accordingly, this supplement: (a) Expands the scope of the regulation to include international city-pair routes and to refer to use of rail and bus service; (b) provides for the use of a new designator, "MCA," to identify restricted contract fares; and (c) allows cost-reimbursable Government contractors to obtain services through the use of GTR's, cash, or charge cards. Supplements 2 and 3 contain all changes to FPMR Temp. Reg. A-22.

DATES: Effective date: October 1, 1984.

Expiration date: September 30, 1985, unless otherwise canceled or extended.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Travel and Transportation Services Division (FTE), FTS 557-1261/(703) 557-1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-40

Freight, Government property management, Moving of household goods, Office relocations, Transportation.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations

[Temporary Regulation A-22; Supplement 3]

November 26, 1984.

To: Heads of Federal Agencies

Subject: Use of contract airline service between selected city-pairs

1. *Purpose.* This supplement amends FPMR Temp. Reg. A-22 by incorporating provisions of the new airline city-pair contracts effective October 1, 1984. Paragraph 5 is revised to include reference to international routes and the use of rail or bus service. Paragraph 7 is revised to add reference to contract provisions for restricted fares under the new designator, "MCA." Subparagraphs 8b, 8d, 8f, and 10a are also revised to refer to the MCA designator. Subparagraph 8g is revised to allow cost-reimbursable Government contractors to obtain services through the use of GTR's, cash, or charge cards. Paragraph 9 is revised to add reference to travelers checks and FPMR Temp. Reg. A-25. Subparagraph 11b(3) is revised for clarity. Paragraph 18 is removed and the paragraph is reserved since all references to FPMR Temp. Reg. A-19 have been deleted from the Federal Travel Regulations (41 CFR 101-7). Supplements 2 and 3 contain all changes to FPMR Temp. Reg. A-22.

2. *Effective date.* This regulation is effective October 1, 1984.

3. *Expiration date.* This regulation expires September 30, 1985, unless otherwise canceled or extended.

4. *Explanation of changes.*

a. Par. 5 is revised to read as follows:

"5. *Scope.* This regulation prescribes policies and procedures governing the use of specified commercial airlines (hereinafter referred to as the contractor) under contractual arrangements with the General Services Administration (GSA) to furnish Government employees with scheduled air-passenger transportation service between certain domestic and international routes. The term "employees" includes all members of an employee's immediate family traveling at Government expense as authorized by law or regulation.

"a. Mandatory use of this regulation is required of all Executive agencies (except the Department of Defense) and other Federal agencies subject to the authority of the Administrator of General Services pursuant to the Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 5701 and 5721, et seq. (Uniformed personnel and civilian employees of the Department of Defense shall follow the procedures established in the Military Traffic Management Regulation 55-355/NAVSUPINST 4600.70/MCO P4600.14A/DLAR 4500.3.)

"b. The following personnel are exempt from the mandatory use of the airline contracts; however, exempt personnel are authorized to obtain services under this regulation at the option of the contractor when seating space is available:

"(1) Uniformed members of the Public Health Service, the National Oceanic and Atmospheric Administration, and the U.S. Coast Guard;

"(2) Members and employees of the U.S. Congress;

"(3) Employees of the Judicial Branch of the Government;

"(4) Employees of the U.S. Postal Service;

"(5) Foreign service officers;

"(6) Cost reimbursable contractors working for the Government; and

"(7) Employees of any agency having independent statutory authority to prescribe travel allowances and who are not subject to the provisions of 5 U.S.C. 5701 through 5709.

"c. Rail or bus service may be used when determined by the agency to be advantageous to the Government, cost, energy, and other factors considered and when compatible with the requirements of the official travel. (Ch. 1-2.2c(b)(iii), Federal Travel Regulations.)"

b. Par. 7 is amended to read as follows:

"a. The contractor is not required to furnish services if, at the time of the request for service, the scheduled aircraft is fully loaded; nor shall the contractor be required to furnish any additional aircraft to satisfy the transportation requirement. However, the contractor will provide the official Government traveler with services that are the same as those provided to its commerical passengers in scheduled jet coach service, subject to the rules and procedures published in the air carrier's tariff(s) on file with the Airline Tariff Publishing Company or contained in the contractor's contract of carriage."

"b. The contractor is to use the designators 'YCA' (unrestricted contract fare) or 'MCA' (restricted contract fare) in describing fares under this regulation."

c. Par. 8 is amended by revising subpars. b, d, f, and g to read as follows:

"b. Agencies and departments participating in GSA's travel and transportation expense payment system (see GSA FPMR Temp. Reg. A-25) are authorized to use GSA Contractor-issued charge cards described in GSA FPMR Temp. Reg. A-25 to obtain YCA or MCA contract airlines fares. Charge cards may be presented to the contractor, SATO's, travel agents (see par. 9), or agency travel officers, as appropriate."

"d. When a reservation for contract air service is requested, the fare basis shall be identified as 'YCA' or 'MCA,' as appropriate, and the contractor's ticket agent shall be instructed to apply the appropriate fare basis and contract fare. Agencies using teletype ticketing equipment shall examine airline tickets to determine if the tickets contain the correct fare or whether they should be canceled and new tickets issued. Tickets picked up at the airline ticket office shall be verified to ensure that the proper fare basis is shown on the ticket."

"f. When a city-pair published in the Federal Travel Directory indicates that only one contract is awarded and the contractor subsequently offers a fare lower than its contract fare, the ordering agency may elect to use the lower fare if qualifications for obtaining the lower fare are compatible with the agency's travel requirements."

"g. Cost-reimbursable contractors on official Government travel and with proper identification supplied by authorized Government agencies may obtain the contract fares provided in this regulation by use of a GTR, cash, or a charge card (not a GSA Contractor-issued charge card)."

d. Par. 9 is revised to read as follows:

"9. *Use of travel agents and Scheduled Airline Traffic Offices (SATO's).* GSA has entered into contracts with various commercial travel agents and into agreements with SATO's to provide travel management services for Federal agencies. These travel agents and SATO's are responsible for providing and arranging all travel services of participating agencies.

a. When GTR's are used, the travel agents and SATO's are assigned GTR numbers by each participating Federal

bubble.

being disapproved. (See § 52.1880(g))

benefits to society from this rule outweigh the potential costs and has

between certain domestic and international routes. The term

procedures published in the air carrier's tariff(s) on file with the Airline Tariff

numbers by each participating Federal

agency, and the assigned GTR number shall be shown on all transportation tickets issued.

b. When GSA Contractor-issued charge cards or Government Travel System (GTS) Accounts are used, travel management services will be furnished as provided in FPMR Temporary Regulation A–25. (See the Federal Travel Directory for the location of travel agents and SATO's.)"

e. Par. 10 is revised to read as follows:

"10. *Progressive awards between the same city-pair.*

a. When progressive contracts are awarded for a city-pair published in the Federal Travel Directory (FTD), the contractors are listed in the FTD in priority order from the carrier (primary) offering a lower unrestricted YCA fare to the carrier (secondary) offering the next higher unrestricted YCA fare. Except as otherwise provided in a(1) and a(2) of this paragraph, agencies shall obtain contract service in the order of carrier priority specified in the FTD. Where a carrier offers both an unrestricted YCA fare and a restricted MCA fare, the FTD contains both fares and describes the restrictions that apply to the MCA fare. The availability of a lower, restricted MCA fare offered by a secondary carrier does not remove the Government's obligation to request service from the primary carrier. Agencies may use the restricted MCA fare only after the exceptions in a(1) and a(2) of this paragraph, as applied to the primary carrier, indicate that the use of the secondary carrier is justified. For example, if the primary carrier listed in the FTD offers a YCA fare of $90 and the secondary carrier offers both a YCA fare of $100 and an MCA fare of $80, the MCA fare of $80 may be used only if the primary carrier with the lower YCA fare of $90 is displaced for reasons enumerated in a(1) and a(2) of this paragraph.

"(1) If service by the carrier contractors is provided at different airports but still between the same city-pair listed in the FTD, the lowest overall cost, including the contract YCA fare, lost productive time, and ground transportation, will determine which carrier will be used.

"(2) The secondary carrier shall be used when the primary carrier cannot provide the service required by the ordering agency or when official travel falls within one of the following exceptions:

"(a) The primary carrier's flight schedule—

"(i) Does not meet the agency's mission requirements,

"(ii) Would result in excessive local travel time and cost at the origin or termination points,

"(iii) Would require additional overnight lodging, or

"(iv) Is inconsistent with the Government's policy of scheduling travel to the maximum extent practicable during normal working hours (for further information, see the Federal Personnel Manual, Supplement 990–2);or

"(b) Space aboard the primary carrier's scheduled flight is not available to accomplish the mission requirements.

"b. When a contractor offers the general public a fare that is lower than its contract fare, the ordering agency may elect to use the lower non-contract fare provided that the qualifications for obtaining the lower fare are compatible with the agency's travel requirements and provided that a comparison of total costs as prescribed in subpar. 11b(3) justifies a change in the order of carrier succession. By offering the general public a fare lower than its contract fare, the contractor assumes the status of a noncontract carrier."

f. Par. 11 is amended by revising subpar. b(3) to read as follows:

"(3) On the basis of a comparision of total cost for each trip, the use of a standard jet coach fare ('Y,' 'S,' or equivalent class of service) is less than the YCA fare at the time the reservation is made considering such cost factors as actual transportation costs, subsistence, allowable overtime, or lost productive time. Specifically excluded from the cost comparison are such fare bases as "Super-Saver," 'Excursion,' 'Q,' 'M,' 'BX.' or another carrier's 'YDG' fare."

g. Par. 18 is reserved as follows:

"18. Reserved."

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–32433 Filed 12–13–84; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–25

[FPMR Amdt. E–257]

Use Standards for Office Furniture

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the policy concerning use standards for office furniture, furnishings, and equipment by removing specific requirements for the use of executive type office furniture and furnishings and contemporary steel office furniture. Removal of these requirements will enable agencies to establish individualized furniture use standards as required by § 101–25.302 to realize more effective property management and acquisition controls for furniture.

EFFECTIVE DATE: December 13, 1984.

FOR FURTHER INFORMATION CONTACT: Dan Rowan, Engineering Division, Furniture Commodity Center, Office of Federal Supply and Services (703–557–8473).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–25

Government property management.

PART 101–25—GENERAL

1. The authority citation for Part 101–25 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. The table of contents for Part 101–25 is amended by reserving two entries as follows:

• • • • •

Sec.

101–25.302–1 [Reserved]

101–25.302–8 [Reserved]

• • • • •

Subpart 101–25.3—Use Standards

3. Section 101–25.302–1 is removed and reserved as follows:

§ 101–25.302–1 [Reserved]

4. Section 101–25.302–5 is amended by revising paragraph (a) to read as follows:

§ 101–25.302–5 Carpeting.

(a) Carpeting is authorized for use where it can be justified over other types of floor covering on the basis of cost, safety, insulation, acoustical control, the degree of interior decoration required, or the need to maintain an

environment commensurate with the purpose for which the space is allocated.

• • • • •

5. Section 101–25.302–7 is revised to read as follows:

§ 101–25.302–7 Draperies.

Draperies are authorized for use where justified over other types of window coverings on the basis of cost, insulation, acoustical control, or maintenance of an environment commensurate with the purpose for which the space is allocated. Determining whether the use of draperies is justified is a responsibility of the agency occupying the building or space involved after consultation with the agency operating or managing the building. Authorized draperies shall be of noncombustible or flame-retardant material as required in §101–20.109–7.

6. Section 101–25.302–8 is removed and reserved as follows:

§ 101–25.302–8 [Reserved]

Dated: November 26, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–32432 Filed 12–12–84; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–41

[FPMR Amdt. G–69]

Use of Travel Agencies

AGENCY: Office of the Comptroller, GSA.

ACTION: Final rule.

SUMMARY: This rule amends transportation, documentation and audit regulations to provide guidance concerning the use of travel agents to secure official Government travel which formerly was prohibited by the regulations of the General Accounting Office (GAO) (4 CFR 52.3). A study conducted by the GAO has shown that the use of travel agents by Government agencies is feasible and that travel agents offer an acceptable alternative for making official travel arrangements. The study has shown that travel agents can comply with the Government's travel regulations and that the use of agents has not proven disruptive. Use of agents has not proved excessively burdensome from an administrative point of view and the audit trail is the same as it was before their use.

EFFECTIVE DATE: December 13, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief Regulations, Procedures, and Review Branch, Office of Transportation Audits (202–786–3014).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this final rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The GSA has based all administrative decisions underlying this final rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this final rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net costs to society.

Background

The General Accounting Office (GAO) published a final rulemaking in the **Federal Register** of April 25, 1984 (49 FR 17721), amending 4 CFR Part 52, Uniform Standards and Procedures for Transportation Transactions; Use of Travel Agencies, to remove the prohibition on the use of travel agencies to secure official Government travel. The effective date of lifting the prohibition was May 25, 1984. GAO took this action without permitting a formal comment period since solicitation of the viewpoints of interested parties was made during the testing phase conducted by GAO, GSA, and the Department Defense. Comments and viewpoints were received and considered by GAO in reaching their conclusions (GAO Memorandum Report B–103315, March 26, 1984). GAO felt that because their efforts involved all interested parties, further opportunity to comment would be unnecessary and only further delay a decision. GSA was directed to provide guidance governing future use of travel agents by the Government to ensure that the most economical and efficient travel services are obtained. GSA's Office of Transportation (FT) published Federal Property Management Regulations Temporary Regulation A–24, May 24, 1984, establishing Government-wide guidelines. That Temporary regulation also contained information regarding a prohibition on the general use of travel agents without GSA's approval. In view of these previous actions, we have decided to eliminate the comment period of this amendment.

List of Subjects in 41 CFR Part 101–41

Accounting, Air carriers, Claims, Passenger services, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

Authority: 31 U.S.C. 3726, 40 U.S.C. 486(c).

Subpart 101–41.2—Passenger Transportation Services Furnished for the Account of the United States

Section 101–41.203–1 is amended by revising paragraph (a) to read as follows:

§ 101–41.203–1 Procurement from carriers.

(a) All passenger transportation services must be procured with GTRs unless otherwise provided herein or exempted in writing by the Administrator of General Services (or his designee). Such services, whether procured by the use of cash, the GTR, GSA contractor issued charge card, Government travel system accounts (GTS), or contractor travelers checks must be procured directly from carriers, travel agents or Scheduled Airline Traffic Office (SATO's). Travel agencies may be used only as proscribed by GSA's Federal Travel Regulations (FTR), 41 CFR 101–7, Federal Property Management Regulations Temporary Regulation A–24 (May 25, 1984, 49 FR 22085) or applicable regulations of the Department of Defense.

• • • • •

Dated: November 26, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–32434 Filed 12–13–84; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 233

Aid to Families With Dependent Children; Disregard of Income of Dependent Children Derived From Participation in Programs Carried Out Under the Job Training Partnership Act of 1982

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations implement section 503 of Pub. L. 97–300, the Job Training Partnership Act of 1982 (JTPA), which became effective on October 13, 1982. The JTPA added a new optional

(f) Does not meet the agency's mission requirements.

enable agencies to establish individualized furniture use standards

control, the degree of interior decoration required, or the need to maintain an

of Transportation Audits (202–766–3014).

Transportation.

1982. The JTPA added a new optional

disregard to the Social Security Act for the Aid to Families with Dependent Children program (AFDC) which is applied before the existing $30 and one-third earned income disregard is applied. The new disregard section specifies that, at State option, the income of any dependent child applying for or receiving AFDC may be disregarded for purposes of eligibility determination and benefit calculation when the income is derived from participation in a program carried out under the JTPA, but only in such amounts, and for such periods (not to exceed six months per year for earned income) as the Secretary provides in regulations. In addition, the JTPA amended section 402(a)(18) of the Social Security Act to require that the same amounts that the State disregards under section 402(a)(8)(A)(v), be disregarded in determining whether the family's gross income exceeds 185 percent of the State's standard of need.

The regulations provide that, for purposes of determining eligibility, including whether the family has income in excess of 185 percent of the State standard of need, and in determining the amount of AFDC benefits, a State may, at its option, disregard all or a portion of the monthly earned income of each dependent child applying for or receiving AFDC when the income is derived from participation in a program carried out under the JTPA. This disregard of earned income can be for a maximum of six months per calendar year. Also, a State may disregard all or a portion of the monthly unearned income, i.e., need-based payments, cash assistance, compensation in lieu of wages, and allowances, that a dependent child may receive from participating in any such program. This disregard of unearned income can be for any length of time specified by the State.

EFFECTIVE DATE: These final regulations are effective December 13, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Levering, Room B–442, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, tel. (202) 245–2637.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulations

On July 15, 1983, we published in the **Federal Register** interim final regulations for the Aid to Families With Dependent Children Program (48 FR 32346–32350) governing the disregard of JTPA income.

Discussion of Regulatory Provisions

The final rules specify that, at State option, the income of any dependent child applying for or receiving AFDC may be disregarded in determining eligibility, including whether the family's gross income exceeds 185 percent of the State's standard of need, and the amount of AFDC benefits when the income is derived from participation in a program carried out under the JTPA.

States are allowed maximum flexibility in determining what portion of a dependent child's earned and unearned income will be disregarded and the length of time the disregard will be applied (up to six months per calendar year for earned income).

Thus, States may disregard the total amount, set a flat amount, or choose to disregard, on a case-by-case basis, only that part of a payment which is directly related to expenses from participation in a JTPA program. In regard to unearned income, States may continue the disregard indefinitely, or set a maximum number of months per calendar year during which the disregard is available. For earned income, States may set a maximum number of months per year during which the disregard is available not to exceed six months per calendar year.

Apart from the amount and length of time that States may apply these disregards, the regulations also permit States to determine for which programs under the JTPA the disregards will be applied.

However, to the extent that disregarded income is retained in the month following its receipt, it must be counted against the State resource limit.

Discussion of State Practices

In reviewing how States have implemented the disregards under the interim regulations, it was determined that some States are disregarding the income of students but are not disregarding the income of non-students derived from participation in the same JTPA program. The preamble to the interim regulations stated in the discussion of non-selected options (48 FR 32349) that there is no indication in the JTPA that Congress intended the disregards to apply only to children in school.

Section 402(a)(8)(A)(v) of the Social Security Act provides that States:

> may disregard the income of *any dependent child* applying for or receiving aid to families with dependent children which is derived from a program carried out under the Job Training Partnership Act . . . (Emphasis added).

We have interpreted the language "any dependent child" in the same way as we have interpreted that language in other income disregard provisions of section 402(a)(8)—to require that the disregards be provided to all dependent children.

There is nothing in the legislative history to indicate that Congress intended the disregard to be limited to students.

Where Congress has so intended, it has specifically limited the disregard in that manner. For example, the disregard authorized by section 402(a)(8)(A)(vii) of the Social Security Act is specifically limited to full-time students. Therefore, States may not limit the disregards set forth in these regulations to students. Although States have the option to limit the amount of income disregarded and the programs for which income is disregarded, they cannot disregard JTPA income under these options for some children but not others.

Some States are also disregarding JTPA income under the former AFDC disregard provisions that pertained to the Comprehensive Employment and Training Act (CETA), e.g., the disregard of the $30 per week incentive payment. Since CETA was replaced by the JTPA, the CETA disregards are no longer in effect. All such provisions were removed from the AFDC regulations under the interim final rules concerning the disregard of JTPA income received by dependent children. Therefore, States can disregard payments derived from participation in JTPA programs only to the extent permitted under these regulations or other current AFDC regulatory provisions.

Discussion of Comments

Comments on the regulations were received from nine interested parties. The responses in this preamble are limited to comments pertaining to the disregard of JTPA income received by a dependent child.

These comments are discussed below:

Comment: One commenter felt that States should be permitted to disregard the income of any child participating in a JTPA program, including a child who is a minor mother.

Response: The disregards in these regulations are limited by statute to the JTPA income of "dependent children". To be eligible for these disregards, a minor mother must be included in an assistance unit as a dependent child as defined in section 406(a) of the Social Security Act. Section 406(a) of the Social Security Act defines a dependent child as a needy child who is deprived of parental support or care, and is living with one of the relatives specified in the Act.

Comment: Several commenters asked whether the income of adults derived from participation in JTPA programs can be disregarded in the AFDC program.

Response: Income of adults derived from participation in JTPA programs cannot be disregarded under this regulation. Section 503 of Pub. L. 97–300 only adds a new optional disregard for JTPA income received by dependent children.

Comment: One commenter expressed concern that two of the options provided in the regulations are not in keeping with the spirit or letter of the statute. The commenter does not believe the statute allows States not to apply any disregards or to apply disregards only for participation in certain JTPA programs.

Response: The disregards provided in section 503 of Pub. L. 97–300 are available only if a State elects to implement them. Therefore, the option to allow no income disregards under this section is in keeping with the statute. In addition, providing States with an option to disregard the income derived from participation in some programs but not others allows maximum flexibility in administering the AFDC program, and permits States to use their limited resources in the most practical manner. Some States might reject the disregard option altogether if they were required to disregard income from all JTPA programs.

Comment: One commenter suggested that the regulations should be revised to more clearly state that the child's disregarded JTPA income is not to be counted in the 185 percent of need test.

Response: We do not agree that a revision is necessary. Current regulations are explicit that the disregarded JTPA income is not considered in determining the family's eligibility under the 185 percent of need test. 45 CFR 233.20(a)(3)(xiii) specifies that ". . . no assistance unit is eligible for aid in any month in which the unit's income (other than the assistance payment) exceeds 185 percent of the State's need standard (including special needs) . . . without application of the disregards in paragraph (a)(11) (i) and (ii) of this section . . ." Accordingly, the JTPA disregards at 45 CFR 233.20 (a)(3)(xvii) and (a)(11)(v) plus all other AFDC disregard provisions except those in § 233.20(a)(11) (i) and (ii) (i.e., the student earned income disregard, the work-related expense deduction, the work-related dependent care deduction, and the $30 and one-third earned income deduction), are applied in determining whether a family has income in excess of 185 percent of the State's standard of need.

Comment: One commenter recommended that the language in § 233.20(a)(11)(v) be revised to state, "At State option, disregard all or part of the monthly income of any dependent child applying for or receiving AFDC *when the income is* derived from . . ." Otherwise, without the underlined words, the paragraph may be read so that the AFDC is derived from JTPA.

Response: Section 233.20(a)(11)(v) has been revised consistent with this recommendation.

Comment: One commenter felt that, while the preamble to the regulation is clear that the JTPA income exemptions are applicable only to dependent children, the regulation in § 233.20(a)(3)(xii) does not preclude the exemption of JTPA income for adults.

Response: 45 CFR 233.20(a)(3)(xvii) has been revised to clarify that the disregard pertains only to dependent children.

Comment: One commenter wrote that the new paragraph to be added as 45 CFR 233.20(a)(3)(xvii) is incorrectly numbered. The commenter's review of the existing regulations revealed that there is no citation at 45 CFR 233.20(a)(3)(xvi) for the new paragraph to follow.

Response: The comment is not correct. 45 CFR 233–20(a)(3)(xvi) pertains to the Disregard of Home Energy Assistance in AFDC (see interim rules published in the July 21, 1983 issue of the **Federal Register** (48 FR 33320–33305).

Comment: One commenter requested clarification regarding the option to allow the JTPA earnings of a dependent child to be disregarded for a period of up to six months per year. The commenter asked whether the six months disregard must be continuous or can it be allowed at intervals not to exceed six months per year. The commenter also asked whether calendar year is to be used, or whether any twelve month period will be acceptable.

Reponse: The earned income disregard may be allowed at intervals not to exceed six months per calendar year. We believe the calendar year approach is consistent with the intent of Congress, and is the least error prone. Therefore, the regulations have been revised to clarify that the earned income disregard is applicable for a maximum of six months per calendar year.

Comment: One commenter felt that the provision which allows full or partial disregard of the earnings of a non-student JTPA participant but only for a time period not to exceed six months is difficult to administer and is likely to cause errors in eligibility determination unless a State has an automated eligibility system to monitor the applicable months. The commenter suggested that States be allowed to disregard a fixed portion of such earnings, but for an unlimited time period.

Response: The six month limitation on the disregard of earned income derived from participation in a JTPA program is specified in the statute. Therefore, it cannot be changed in these regulations.

Regulatory Analysis

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. The regulations will not have an annual effect on the economy of more than $100 million. Further, they will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a regulatory impact analysis is not required.

Specifically, the disregards in these regulations are optional, and States can change their policy regarding them at any time. The estimate provided below is the maximum possible effect if all States elect to disregard all income derived by AFDC dependent children participating in the Summer Youth Employment and Training Program an average of three months. In such cases, the estimated additional program expenditures would be $16.5 million in Federal funds and $14 million in State and local funds, or approximately $30.5 million total. This estimate is based on the level of participation and earnings of AFDC children in the FY 1982 CETA Summer Youth Employment and Training Program. It does not consider any additional costs which may result from the disregard of unearned income that may be provided to some AFDC dependent children participating in Job Corps and the Summer Youth Employment and Training Program.

AFDC recipients' participation levels in Job Corps are much lower than the Summer Youth Employment and Training Program (approximately a tenth). In addition, the unearned income received from participation in Job Corps and the Summer Youth Employment and Training Program are subject to wide variation in the amounts received, although the amount are significantly less than the earned income amounts. The effect of the regulations on

The final rules specify that, at State option, the income of any dependent

have interpreted that language in other income disregard provisions of section

Comment: Several commenters asked whether the income of adults derived

Comment: One commenter recommended that the language in

applicable months. The commenter suggested that States be allowed to

less than the earned income amounts. The effect of the regulations on

administrative costs is expected to be negligible.

Regulatory Flexibility Analysis

The regulations will not have a significant impact on a substantial number of small entities because they primarily affect State governments and individuals. Therefore, a regulatory flexibility analysis, as provided in Pub. L 96–354, the Regulatory Flexibility Act, is not required.

Recordkeeping/Reporting Burden

Information collection requirements contained in these final regulations have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507): The State plan requirements have been assigned OMB No. 0960–0252.

The regulations are issued under the authority of section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302, section 402(a)(8)(A) (iv) and (v) and 402(a)(18) as amended by section 503 of Pub. L. 97–300.

(Catalog of Federal Domestic Assistance Program No. 13.808, Public Assistance, Maintenance Assistance (State Aid))

List of Subjects in 45 CFR Part 233

Aid to families with dependent children, Aliens, Family assistance, Grant programs—Social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: August 22, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Dated: November 15, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 233—[AMENDED]

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

Section 233.20 is amended by revising paragraphs (a)(11)(i)(A), (a)(11)(i)(D), (a)(11)(ii)(A), (a)(11)(ii)(B), by deleting and reserving paragraph (a)(4)(ii)(j), and by adding two new paragraphs, (a)(3)(xvii) and (a)(11)(v) to read as follows:

§ 233.20 Need and amount of assistance.

(a) *Requirements for State plans.*

* * *

(3) *Income and resources.** * *

(xvii) In the case of AFDC, if the State chooses to disregard monthly income of any dependent child when the income is derived from participation in a program under the JTPA, provide that the State plan shall:

(A) Identify from which programs under the JTPA, income will be disregarded;

(B) In the case of earned income, specify what amount will be disregarded, and the length of time the disregard will be applicable (up to six months per calendar year); and (C) In the case of unearned income, specify what amount will be disregarded, and the length of time per calendar year the disregard will be applicable if any such limit is chosen.

(4) Disregard of income in OAA, AFDC, AB, APTD, or AABD.* * *

(ii) * * *

(j) [Reserved]

* * * * *

(11) Disregard of income and resources applicable only to AFDC.

* * *

(i) * * *

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Job Training Partnership Act (JTPA).

* * * * *

(D) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded under paragraphs (a)(11)(i) and (a)(11)(v) of this section of an individual who received assistance in one of the four prior months.

(ii) * * *

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Job Training Partnership Act (JTPA).

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i) (B) and (C) of this section, and $30 plus one-third of his earned income not already disregarded under paragraphs (a)(11)(ii) and (a)(11)(v) of this section. However, the State may not provide the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to his earned income until after an additional twelve consecutive months during which he is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 and one-third disregard, nor does it count as one of the consecutive months.

* * * * *

(v) At State option, disregard all or part of the monthly income of any dependent child applying for or receiving AFDC when the income is derived from a program carried out under the Job Training Partnership Act of 1982, except that in respect to earned income such disregard may not exceed six months per calendar year.

* * * * *

[FR Doc. 84-32275 Filed 12-12-84; 8:45 am]

BILLING CODE 4150-11-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Dockets Nos. 84-26 and 84-32]

Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of Final Rules in Dockets Nos. 84–26 and 84–32 and found that its final resolution of these proceedings will not have a significant impact on the quality of the human environment.

DATE: Petitions for review due December 24, 1984.

ADDRESS: Petitions for review (Original and 15 copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Director, Office of Energy and Environmental Impact, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5725

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined

that the Commission's issuance of final Rules in Dockets Nos. 84–26 and 84–32 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

Dockets Nos. 84–26 and 84–32 consider rules governing agreements by ocean common carriers and other persons subject to the Shipping Act of 1984. As a result of these proceedings, the Commission has issued a final rule (See 49 FR 45320 of November 15, 1984) revising the Interim Rule governing agreements by or among ocean common carriers as well as certain marine terminal operator agreements. None of the revisions and changes will have environmental impacts.

This finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32440 Filed 12-12-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

Amateur Radio Service Rules, To Delete Obsolete Terms, Correct Omissions and Provide Uniformity

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action removes obsolete terms, corrects for omissions and provides better editorial uniformity in the Amateur Radio Service Rules. This action is necessary in order to make the rules consistent. The effect of this action is to provide the user with updated rules which are more comprehensible.

DATES: Effective December 6, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554, (202) 632–4964.

FOR FURTHER INFORMATION CONTACT: John Small, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Order

In the matter of editorial amendment of part 97, amateur radio service rules.

Adopted: December 4, 1984.
Released: December 6, 1984.

1. Part 97 contains the rules which govern the Amateur Radio Service. This Order editorially amends those rules by deleting obsolete terms, correcting omissions and providing better editorial uniformity.

2. Since these amendments are editorial in nature, the notice and comment provisions of section 553(b) and the effective date requirements of Section 553(d) of the Administrative Procedure Act are not applicable.

3. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules.

4. Accordingly, it is ordered, That Part 97 is amended as set forth in the attached Appendix.

5. The effective date of these rule amendments is December 6, 1984.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I to Title 47 of the Code of Federal Regulations is amended, as follows:

1. In Subpart B of the Table of Contents and the regulatory text remove the center headings: CALL SIGNS and DUPLICATE LICENSES AND LICENSE TERM.

2. In the Table of Contents, change the entry for § 97.114, to read: Limitations on third-party traffic.

§ 97.3 [Amended]

3. In § 97.3(d), remove the definition entitled *Interim Amateur Permit.*

4. Section 97.5 is revised to read as follows:

§ 97.5 Classes of operator licenses.

Amateur Extra.
Advanced.
General.
Technician.
Novice.

§ 97.7 [Amended]

5. In § 97.7, remove paragraph (c), redesignate paragraph (d) as paragraph (c) and redesignate paragraph (e) as paragraph (d).

§ 97.114 [Amended]

6. Section 97.114 is amended by changing the heading of this section to read "Limitations on third-party traffic." and by adding a hyphen between the words third and party in paragraph (a), where they first appear in paragraph (b), and in paragraph (c).

7. Section 97.185(c)(6) is amended to add paragraph (ix) and (x) as follows:

§ 97.185 Frequencies available.

* * * * *

(c) * * *

(6) * * *

(ix) In the States of Alabama, Florida, Georgia, and South Carolina within a 200 kilometer (124 mile) radius of Warner Robins Air Force Base, Georgia (latitude 32°38' North, longitude 83°35' West).

(x) In the State of Texas within a 200 kilometer (124 mile) radius of Goodfellow Air Force Base, Texas (latitude 31°25' North, longitude 100°24' West).

8. In Appendix 1, the heading "Examination Points" and text are removed and marked [Reserved].

9. In Appendix 2 add at the end thereof the following:

Appendix 2—Extracts From Radio Regulations Annexed to the International Telecommunication Convention (Geneva, 1959), as Revised by the World Administration Radio Conference for Space Telecommunications, Geneva, 1971

* * * * * *

Resolution No. 641—Relating to the Use of Frequency Band 7000–7100 kHz

The World Administrative Radio Conference, Geneva, 1979

Considering

(a) That the sharing of frequency bands by amateur and broadcasting services is undesirable and should be avoided:

(b) That it is desirable to have worldwide exclusive allocations for these services in Band 7:

(c) That the band 7000–7100 kHz is allocated on a worldwide basis exclusively to the amateur service:

Resolves

That the broadcasting service shall be prohibited from the band 7000–7100 kHz and that the broadcasting stations operating on frequencies in this band shall cease such operation.

[FR Doc. 84-32370 Filed 12-12-84; 8:45 am]

BILLING CODE 6712-01-M

under the JTPA, provide that the State plan shall:

disregard because of a provision in paragraph (a)(11)(iii) of this section,

Commission Office of Energy and Environmental Impact has determined

(202) 632-4964.

Technician.

BILLING CODE 4713-01-M

Proposed Rules

Federal Register
Vol. 49, No. 241
Thursday, December 13, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

Powers Inconsistent With the Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend Part 332 of its regulations to: (1) Prohibit any insured bank (including national banks, state banks that are members of the Federal Reserve System and Federally chartered savings banks insured by FDIC) from directly engaging in the following: Underwriting of insurance; underwriting or developing real estate; reinsurance; insuring, guaranteeing, or certifying title to real estate; guaranteeing or becoming surety upon the obligations of others; insuring the fidelity of others; or engaging in a surety business, (2) require any subsidiary of an insured bank that conducts any of these activities to meet the criteria for a bona fide subsidiary set out in the regulation, (3) require notice to the FDIC of intent to invest in any such subsidiary, (4) place certain restrictions on the affiliation of an insured bank with a company that engages in any of the subject activities, (5) place certain restrictions on extensions of credit and other transactions between insured banks and their subsidiaries or affiliates that engage in any of the subject activities, (6) require all insured banks that established or acquired a subsidiary or became affiliated with a company that engages in the subject activities prior to the effective date of the regulation to conform thereto within one year, (7) require any insured bank that as of the effective date of the regulation is directly engaging in any of the subject activities to conform to the regulation within two years, and (8) place certain restrictions on insured banks that provide electronic data processing ("EDP") services to persons or companies other than banks, or act as agent or broker for insurance, real estate, securities, or travel services.

DATE: Comments must be received by February 11, 1984.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. Comments may be hand delivered to Room 6108 between the hours of 8:30 am and 5:00 pm.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202-389-4171), Room 4126E, 550 17th Street NW., Washington, D.C. 20429, or Ken A. Quincy, Examination Specialist, Planning and Program Development Branch, Division of Bank Supervision, (202-389-4141) Room NY-760F, 550 17th Street NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On August 30, 1983 the Board of Directors of the FDIC adopted an Advance Notice of Proposed Rulemaking soliciting comment on the need for rulemaking to govern the direct or indirect involvement of insured banks in real estate brokerage and underwriting, insurance brokerage and underwriting, data processing for third parties, travel agency activities, and other financially related services. (48 FR 40900, September 12, 1983.) The notice set forth sixteen specific questions designed to solicit responses directed to whether or not such activities on the part of insured banks pose safety and soundness problems, present any conflicts of interest, or are inconsistent with the purposes of Federal deposit insurance. The notice was also designed to solicit information on how each of the subject industries functions and what regulatory requirements, if any, currently govern these industries. In addition, comment was also directed to whether or not limitations should be imposed on the ability of a company engaged in any of the above activities to acquire an insured bank.

As the FDIC stated in the supplementary information to the Advance Notice of Proposed Rulemaking, the clear separation which existed in the past between the product lines of banks, thrifts, and other types of financial companies and commercial firms is becoming blurred. The environment in which banks function today is rapidly changing, *i.e.* the traditional boundaries distinguishing "banking" from other "financial services" and from "commerce" are beginning to erode with the ever-increasing number of cross-industry acquisitions, expansion by banks into new product markets, and changes in state law authorizing banks to engage directly, or indirectly through subsidiaries, in activities heretofore open to banks only in limited instances. In addition, a wide array of commercial enterprises are affiliated with banks as a result of the so-called loophole in the Bank Holding Company Act that permits the phenomenon of the nonbank bank. As banking powers are expanded by state legislatures, or powers previously conferred but not exercised are activated, the FDIC has both the responsibility and authority to carefully weigh these developments in its capacity as a supervisor of insured nonmember banks and the insurer of much of the nation's banking system.

As the FDIC indicated in that notice, the FDIC is firmly committed to a dual banking system and is mindful of the issues raised by any effort by a federal agency to review the propriety of banks engaging in activities authorized by their state chartering authorities or their primary federal regulatory agencies. At the same time, the FDIC must fulfill its obligation to monitor market place developments and changes in state law in order to assess the potential impact of such changes on bank safety and soundness and on the nation's deposit insurance system. While the FDIC strongly supports expansion of bank powers that would allow banks to develop new sources of income to offset the costs of liability deregulation, the FDIC cannot ignore the possibility that such expansion may increase the risk to the deposit insurance system.

The Advance Notice of Proposed Rulemaking was published for a 60-day comment period which closed on November 14, 1983. A total of 155 comments (including comments received after November 14, 1983) were received and considered by the FDIC. The comments were distributed among the following: 86 comments from banks and/or banking trade associations; 6 comments from savings and loans and/or savings and loan trade associations; 24 comments from insurance agents

and/or insurance trade associations; 4 comments from travel agencies or travel agency trade associations; 1 comment from an EDP association; 12 comments from realtors or real estate trade associations; 10 comments from state officials and/or state bank supervisory agencies; 6 comments from "others", including the Antitrust Division of the United States Department of Justice. In addition to reviewing the above comments, FDIC considered the testimony of various individuals and organizations that was given in March, 1984 before the Senate Committee on Banking, Housing, and Urban Affairs on S. 2181, "The Financial Services Competitive Equity Act" and S. 2134, "The Depository Institutions Holding Company Act Amendments of 1983".

Overall Summary of Comments

The majority of the comments briefly responded to some or all of the sixteen specific questions posed in the Advance Notice of Proposed Rulemaking. Most, however, did not elaborate as to any one particular activity referenced in the notice. The following is a capsule summary of the comments which responded on a per question basis:

Question 1—If insured banks enter into expanded activities, existing safeguards against conflicts of interest that could arise are adequate (27); existing safeguards are not adequate (4).

Question 2—FDIC should impose a disclosure requirement as to conflicts of interest (29); should not do so (5).

Question 3—FDIC should permit dual employment relationships (29); should not permit dual employment relationships (7).

Question 4—There will be problems of overlapping regulation if banks enter into expanded activities (5); these problems would be aggravated if the activity is conducted in-house (3); regulatory differences will lead to competitive inequalities (2).

Question 5—The subject activities should be conducted in separate subsidiaries (11); the activities are not necessarily safer if conducted in a subsidiary (8); whether or not the activities should be placed in-house or in a subsidiary depends upon the activity in question (6); insurance underwriting activities should be conducted in a subsidiary (4); real estate underwriting should be conducted in a subsidiary (4); there is no necessity for the activities to be conducted in a subsidiary *i.e.*, banks should be able to conduct any of the activities in-house (6); banks should be able to do real estate brokerage in-house (9); banks should be able do real estate underwriting in-house (4); banks shold be able to do insurance brokerage in-house (11); banks should be able to do insurance underwriting in-house (3).

Question 6—There are fundamental differences between banks and companies that engage in the subject activities (4); there are no such fundamental diffferences that require the subject activities to be conducted in a subsidiary (13); there is no significant difference between banking and data processing and banking and travel agency services that would warrant precluding these activities to banks (11); there are significant differences between banking and insurance (4); no such differences exist (1); there are significant differences between banking and real estate (2); there are no such significant differences (1).

Question 7—Section 23A type restrictions should be imposed on bank subsidiaries (9); any such restriction should be left to the states and not be imposed by the FDIC (3); no such restrictions should be imposed (15); such restrictions are appropriate in some cases (3).

Question 8—A bank's investment in a subsidiary conducting such activities should be limited (14); should be limited in accordance with the activity (2); should not be limited (13); any such limitation should be left to the states (1).

Question 9—A bank's investment in a subsidiary that conducts such activities should be considered a part of the bank's regulatory capital (15); should not be included in the bank's regulatory capital (9); the decision to include or exclude the investment from the bank's capital should depend upon the activity involved (2).

Question 10—If the FDIC requires that an activity be conducted by a separate, adequately capitalized subsidiary, the FDIC should define what constitutes adequate capital (11); FDIC should not define adequate capital (16); should leave the definition to the states (1); should define adequate capital if the industry in question does not itself establish capital requirements (1).

Question 11—FDIC should impose a prior approval requirement before an insured bank can directly engage in any such activity or establish a subsidiary to do so (8); should not impose a prior approval requirement (22).

Question 12—Rather than an approval requirement, the FDIC should simply require notice (29); should not require prior notice (1).

Question 13—There should be no limitation on bank entry based upon bank size, camel rating, etc. (16); such a limitation is appropriate depending upon the bank's size and rating (5); depending upon size only (1); depending upon rating only (8).

Question 14—Entry into the activities in question should be considered a change in character of the bank (2); should not be considered a change in character of the bank (16).

Question 15—FDIC should consider the initiation of such activities as inconsistent with Federal deposit insurance (1); consistent with Federal deposit insurance (18).

Question 16—The existing antitrust laws are adequate to address any concerns arising from bank entry into such activities (17); are not adequate (2); bank entry into these areas should be limited to de novo entry (1); should not be limited to de novo entry (11).

In addition to the above, the FDIC received comments generally as follows: 20 comments against FDIC adopting any guidelines or regulations; 8 comments for action of FDIC's part; 7 comments indicating that the states rather than the FDIC should act; 9 comments urging the FDIC not to place any limitation on the ownership of an insured bank by a company engaged in any of the listed activities; 5 comments indicating that such a limitation should be imposed; 1 comment indicating that any such restriction should come from Congress and not FDIC. 25 comments urging FDIC to adopt a liberal stance that would permit banks to compete with nonbank firms and give banks added earning sources; and 10 comments totally opposed to bank entry into nonbanking activities. The Antitrust Division of the Department of Justice commented at length that there is little baisis for concern that bank entry into any of the areas under consideration will cause excessive concentration or increased anti-competitive tying. The comment further opined the existing antitrust laws are sufficient to prevent any particular entry from lessening competition.

Virtually none of the comments responded to the request for assistance in distinguishing between banking and commerce. Several comments urged, however, that FDIC act to maintain the separation between the two. Courier, leasing, and management consultant services were identified in the notice as examples of "other financially related" services." No other services were identified by the comments as additional examples of financially related services. Courier services were favored by 3 comments; leasing by 2; management consulting by 3 comments, one of which indicated that guidelines might be advisable; and 1 comment opposed bank entry into management consulting. No comments were received

restrictions on insured banks that

financial companies and commercial firms is becoming blurred. The

of savings and loan trade associations, 24 comments from insurance agents

underwriting in-house (4); banks should

the bank's size and rating (3), depending

consulting. No comments were received

in response to the request for assistance in defining what constitutes the financial services industry, *i.e.*, "what standards should be used to differentiate between commercial banking, other financial services, and commerce in today's changing environment."

Comments Addressing Insurance Activities

The FDIC received a total of 29 comments that solely addressed whether insured banks should be permitted to directly or indirectly engage in insurance activities. The majority of those addressing this issue were insurance agents, insurance trade associations, or insurance companies. The comments in this group were overwhelmingly opposed to bank entry into insurance activities for the following reasons: Bank entry will lead to express and implicit tying arrangements, will give banks an unfair competitive advantage, will lead to economic concentration, will present regulatory conflicts, and will adversely affect banks as insurance activities are inherently risky. Although most of the comments in the overall group came from the insurance industry, some banks did express the same concerns. Other comments, however, supported bank participation in insurance activities. For example, several banks stated that they have engaged in insurance activities for a number of years and that these activities do not pose safety and soundness problems.

Comments Addressing Real Estate Activities

Relatively few comments were received that specifically addressed bank entry into real estate activities. The comments were for the most part opposed to bank entry into real estate underwriting or brokerage for the following reasons: Banks will have an unfair competitive advantage, bank entry will lead to economic concentration, banks will engage in unlawful tying arrangements, real estate activities can require sizable investments and profits are speculative, and bank entry into real estate underwriting or brokerage will necessarily lead to conflicts of interest that will harm consumers. Several comments indicated a concern that if banks are permitted to enter the real estate brokerage area they might use their mortgage portfolios as soliciting tools. The FDIC received several comments from banks indicating that they have engaged in real estate brokerage for a number of years without evidence of any tying abuse or safety and soundness problems.

Comments Addressing Electronic Data Processing Services

FDIC received one lengthy comment addressing banks providing electronic data processing service. The comment indicated that certain abuses might arise if a bank, its subsidiary, a bank holding company, or any of its subsidiaries offers EDP services. The following restrictions were suggested to address those potential abuses: (1) Prohibit banks from advising borrowers of the availability of EDP services from the bank or from an affiliate or subsidiary of the bank unless specific inquiry is made; (2) prohibit bank employees from receiving additional compensation if a customer utilizes the EDP services of the bank, its affiliate, or its subsidiary; (3) prohibit the bank from making its customer list available to the EDP subsidiary or affiliate; and (4) require the bank to price its EDP services on an explicit fee basis as well as structure the EDP department as an individual profit center.

Comments Addressing Travel Agency Activities

Very few comments were received that specifically addressed bank entry into the travel agency business. One comment did indicate that as of 1974, 24 states permitted banks to offer travel agency services. One comment opposed to bank entry into the travel agency business indicated that bank entry is not proper, will give banks an unfair competitive advantage, that existing antitrust laws are insufficient safeguards, and that regulatory conflicts could arise.

Discussion of Proposed Regulation

After fully considering the above, the FDIC has determined to propose a regulation that: (1) Prohibits any insured bank from directly engaging in the following: underwriting insurance (excluding credit life insurance); underwriting or developing real estate; engaging in reinsurance; insuring, guaranteeing or certifying title to real estate; guaranteeing or becoming surety upon the obligations of others; insuring the fidelity of others; or engaging in a surety business, (2) requires that any subsidiary of an insured bank that conducts any of the above activities be a bona fide subsidiary, (3) requires notice to FDIC of intent to invest in any such subsidiary, (4) places certain restrictions on the affiliation of an insured bank with a company that engages in any of the above activities, (5) places certain restrictions on extensions of credit and other transactions between insured banks and their subsidiaries or affiliates that engage in any of the above activities, (6) requires any insured bank that established or acquired a subsidiary or became affiliated with a company that engages in these activities prior to the effective date of the regulation to conform to the regulation within one year, (7) requires any insured bank that as of the effective date of the regulation is directly engaging in any of these activities to conform to the regulation within two years, (8) places certain restrictions on insured banks that provide EDP services to persons or companies other than banks, or act as agent or broker for insurance, real estate, securities, or travel services.

The requirements and restrictions of the proposed regulation are discussed more fully below. Specific comments are summarized where relevant to an explanation of the proposed regulation. In developing the proposal, the FDIC identified certain alternative approaches to several issues. Where this is the case, the alternatives are set forth along with a specific request for comment in regard thereto.

1. Activities Required To Be in Subsidiary

Section 332.3(a) of the proposed regulation prohibits an insured bank from conducting certain activities other than through a bona fide subsidiary. (The definition of bona fide subsidiary is discussed in paragraph #2 below.) The restricted activities are: (1) Underwriting casualty insurance, property insurance, life insurance (other than credit life insurance), annuity contracts, mortgage guarantee insurance, or any other type of insurance, (2) reinsurance, (3) real estate development, real estate syndication, real estate equity participation, or any other form of real estate underwriting, (4) insuring, guaranteeing, or certifying title to real estate, (5) with certain limited exceptions, guaranteeing or becoming surety upon the obligations of others, (6) insuring the fidelity of others, and (7) conducting a surety business. Insured banks are also specifically prohibited under § 332.3(b) of the proposed regulation from establishing or acquiring a subsidiary that engages in any of the above activities if to do so would contravene an outstanding order of the FDIC, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Federal Home Loan Bank Board or any agreement entered into between the insured bank and any such agency.

Insured nonmember banks are presently prohibited, with certain limited exceptions continued in the proposal, from directly exercising the last four powers listed above. See Part 332 of the FDIC's current regulations. The proposal would therefore extend to national and state member banks a regulatory provision to which insured nonmember banks are already subject. This aspect of the proposal would not substantively affect insured nonmember banks insofar as the restriction on directly engaging in such activities is concerned.

Section 332.3(b) of the proposal contains an exception from the bona fide subsidiary requirements of the regulation with respect to the conduct of any activity which has been specifically authorized for national banks under federal law. This exception would apply in situations where Congress has specifically authorized national banks to engage in certain activities by statute, as well as in situations where the Comptroller of the Currency, acting by regulation or interpretation under federal law, has specifically authorized national banks to conduct those activities.

For example, if Congress specifically authorizes national banks to conduct insurance underwriting (or any other activity described in §332.3(a) of the proposed regulation) either directly or in an operating subsidiary, an insured bank would not be prohibited under the regulation from conducting insurance underwriting in-house or in a subsidiary. Furthermore, any insurance underwriting subsidiary of an insured bank would not need to meet the criteria for a bona fide subsidiary. Additionally, as provided by § 332.9 of the proposal, an insured bank could acquire or establish an insurance underwriting subsidiary without giving the FDIC prior notice and the subsidiary would not be subject to the lending and other restrictions found in § 332.7. Finally, the insured bank's investment in the insurance underwriting subsidiary would not be excluded from the bank's capital.

State chartered insured banks and federal savings banks insured by the FDIC would still of course need to be authorized by their chartering authority to engage in the activity in order to take advantage of the exceptions in § 332.3(b) and §332.9. The FDIC has tentatively determined that these exceptions are appropriate inasmuch as Congress, or the Comptroller of the Currency acting by means of a lawful regulation or interpretation of federal law, must determine that the conduct of the activity in question is appropriate for national banks.

The proposed regulation does not prohibit an insured bank from guaranteeing or becoming surety upon the obligations of others as provided for in §347.3(c)(1) of FDIC's regulations pertaining to foreign banks nor does the prohibition extend to acceptances, endorsements, or letters of credit made or issued in the usual course of the banking business. Also exempted from the prohibition is guaranteeing or becoming surety as permitted by §§ 7.7010, 7.7012, 7.7015, and 7.7016 of the Comptroller of the Currency's regulations (12 CFR 7.7010, 7.7012, 7.7015, 7.7016). (On August 24, 1984 the FDIC proposed for comment an amendment to Part 332 of FDIC's regulations that would exempt check guaranty card programs from the prohibition on guaranteeing or becoming surety on the obligations of others (49 *FR* 33690). It is FDIC's intent to incorporate that exception in Part 332 as revised by this rulemaking should FDIC determine to go forward with that exception.)

Placement of insurance underwriting, real estate development, and reinsurance activities in a subsidiary or affiliate will: (1) Help to avoid regulatory overlap with existing law governing the insurance and real estate industries, (2) help insulate the insured bank from any potential risk, and (3) make examination of these activities easier inasmuch as the activities will be operationally separate from the insured bank (FDIC has the authority under section 10 of the Federal Deposit Insurance Act, 12 U.S.C. 1820(b), to examine the affairs of any affiliate or subsidiary of an insured bank to disclose fully the relations between the bank and its affiliate and subsidiary and the effect on such relations upon the insured bank).

In regard to protecting insured banks from risk, FDIC received comments from representatives of the insurance and real estate industries that, among other things, argued that insurance and real estate underwriting pose inherent risks to which banks should not be exposed. The FDIC also received comments, however, opining that the activities under review by the FDIC are not more risky than any traditional banking activity nor beyond the expertise of bankers, *i.e.*, banks that do commercial lending possess most of the skills necessary to engage in real estate equity investment and the risk assessment one undertakes in doing commercial lending is much the same as the risk assessment undertaken in the property and casualty insurance industries. In particular, the comment of the Antitrust Division of the United States Department of Justice stated that the activities are not substantially riskier than traditional banking activities. The comment went on to point out, however, that real estate and insurance underwriting are probably the riskiest of the activities dealt with by the notice. Nonetheless, indicated the Justice Department, bank safety and soundness could be protected by two methods: (1) Structural restrictions, and (2) limiting a bank's investment.

The FDIC is preliminarily of the opinion, after studying the available information, that insurance underwriting is not inherently unsafe and unsound in all instances. If the operation is properly managed by experienced personnel, underwriting can round out a bank's income producing services. The FDIC acknowledges that insurance underwriting is a capital and skill intensive industry that could pose substantive risks to safety and soundness and that certain types of insurance may require skills less likely to be currently possessed by bankers. The FDIC does not feel, however, that the presence of some risk warrants precluding insured banks from indirectly entering this area and taking advantage of expanded income sources. In sum, the agency believes that the risks can be adequately addressed by proper regulation and supervision.

The FDIC has preliminarily reached the same conclusion with respect to real estate underwriting and real estate development (the two terms are intended to be interchangeable). Real estate underwriting and development do present certain risks (real estate is not a liquid asset and the market is cyclical in nature). The activity would seem, however, to involve many of the same skills needed by banks for the successful conduct of real estate development financing. What is more, real estate activities can provide banks the opportunity for added income. Again, the risks can be adequately controlled or offset.

The FDIC invites comments on whether or not the terms real estate underwriting, real estate development, real estate equity participation, and real estate syndication should be defined and if so how. The FDIC is also interested in receiving comments addressing whether or not the list of activities required to be in a bona fide subsidiary should be expanded or, in the alternative, whether certain enumerated activities should be deleted entirely or deleted under certain circumstances.

brokerage for a number of years without

(5) places certain restrictions on

agreement entered into between the insured bank and any such agency.

determine that the conduct of the

undertaken in the property and casualty

deleted under certain circumstances.

2. Bona Fide Subsidiary

The proposed regulation defines the term "bona fide subsidiary" to mean a subsidiary of an insured bank that at a minimum: (1) Is adequately capitalized; (2) is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the subsidiary, access to which is through a separate entrance from that used for the insured bank except that the bank's and subsidiary's offices may be accessed through a common outer lobby or common corridor; (3) does not share a common name or logo with the bank; (4) maintains separate accounting and other corporate records; (5) observes separate formalities such as separate board of directors' meetings; (6) maintains separate employees who are compensated by the subsidiary; (7) shares no common officers with the bank; (8) a majority of its board of directors is composed of persons who are neither directors nor officers of the bank; and (9) conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertakings on the part of the subsidiary otherwise undertakings or obligations of the bank.

It is FDIC's intent by so defining bona fide subsidiary to assure that any subsidiary of an insured bank that engages in underwriting, or other activities subject to the restrictions of § 332.3(a), is an independent, well-managed, financially viable corporate entity whose operation will not pose a threat to the bank and whose obligations and liabilities, as well as whose products or services offered to the public, will be perceived by the public to be its own and not those of the bank. The criteria necessary for a bona fide subsidiary are discussed more fully below.

(a) Adequate Capital

The presence of adequate capital is typically viewed as a central issue by a court when assessing whether or not a parent will be held liable for the obligations and acts of its subsidiary. Adequate capital is also very important from a safety and soundness point of view in the FDIC's perspective, as a parent bank is less likely to be harmed if the subsidiary has adequate capital. Adequate capital will enable the subsidiary to itself absorb losses as well as liabilities arising from its operation without having to look to its parent.

The FDIC has not proposed a definition of adequate capital but will look rather to industry standards. The insurance industry, for example, is highly regulated and has established capital requirements usually set by state statute. Although the real estate industry is for the most part unregulated in comparison with the insurance industry, industry standards should be identifiable. The FDIC still intends, however, to reserve the option of requiring that the subsidiary have capital over and above any such industry standard if the FDIC at any time finds such requirement to be warranted. It is the FDIC's intention to make this determination during the "notice" period (see § 332.5 of the proposal) and to inform the bank whether, in FDIC's opinion, the capital position of the subsidiary is adequate. It is the FDIC's belief that such a flexible approach will better serve the FDIC's supervisory interest of ensuring the safety and soundness of insured banks and that it will also avoid undue conflict with existing regulatory and supervisory systems governing the insurance and real estate industries. The adequacy of a subsidiary's capital will thereafter be reviewed on an ongoing basis as a part of the regulatory process.

(b) Physical Separation

The proposed regulation would permit an underwriting subsidiary of an insured bank to operate out of an office within a branch of an insured bank so long as the office is clearly demarcated as belonging to the subsidiary, and the subsidiary's office has a separate entrance from that used by the insured bank. The bank's and subsidiary's offices may be accessed, however, through a common outer lobby or common corridor. The FDIC will require that insured banks, when formulating plans to establish or acquire underwriting subsidiaries, to plan to locate their offices so as to allow for separate entrances. Any insured bank that presently has an underwriting subsidiary located within a branch of the bank would be required to establish a separate, clearly identified office for the subsidiary and make whatever changes are necessary to allow for a separate entrance from the bank except for a common outer lobby of common corridor.

(c) Common Name or Logo

The regulation as proposed would prohibit an insured bank and its underwriting or other subsidiary subject to the restrictions of the regulation from using a common name or logo. The FDIC is proposing this restriction as name identification is a factor used by the courts in deciding whether to pierce the corporate veil, is a factor in public identification of the subsidiary's operation with the parent bank, plays a role in any public misconception as to the insured status of investments made through the subsidiary, and plays a role in engendering an expectation that the bank is liable for the obligations of the subsidiary. Additionally, an insured bank may be reluctant to allow its subsidiary to fail if that subsidiary carries the bank's name.

The proposed regulation specifically indicates that the above restriction does not preclude a bank from advertising and/or otherwise disclosing the relationship between its subsidiary and itself. For example, bank X may advertise the real estate services of its real estate development subsidiary, Y company, and denote Y company as a subsidiary of bank X. In this way, a bank may still obtain some benefits of name recognition but the public confusion that may arise if the subsidiary uses a common name (especially if that subsidiary operates out of the bank's branch) is lessened.

(d) Separate Employee Requirement

The proposed regulation requires that the subsidiary maintain separate employees who are compensated by the subsidiary. The restriction does not, however, extend to the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing, and recordkeeping, so long as the bank and the subsidiary contract for such services on an arms-length basis. Although the FDIC acknowledges that a separate employee requirement can produce some additional costs to insured banks, the FDIC anticipates that the exception contained in the proposed regulation allowing bank employees to perform administrative, noncustomer contact type activities will reduce any inefficiency and added cost that might otherwise be produced by such a requirement. FDIC is proposing the separate employee requirement as it is felt that the use of separate employees in customer contact positions is an extremely important factor in maintaining the separate corporate identity of the subsidiary and the bank. The requirement is also expected to have the added benefit of encouraging banks to hire experienced personnel to operate the subsidiary.

(e) Common Officer/Director Restriction

The proposed regulation requires that the subsidiary and insured bank share no common officers and that a majority of the board of directors of the subsidiary be composed of persons who are neither directors nor officers of the bank. These restrictions are being proposed in order to: (1) Ensure that the subsidiary operates independently from the parent bank, and (2) reduce the likelihood that the parent bank may be held accountable for the obligations and actions of its subsidiary. The FDIC anticipates that these restrictions will help to ensure that the subsidiary employs experienced managers, something essential to a well-managed insurance and/or real estate underwriting operation.

3. Investment in Subsidiary

The proposed regulation provides that no insured bank may establish or acquire a subsidiary that underwrites insurance (excluding credit life insurance), insures, guarantees, or certifies title to real estate, or engages in any form of real estate underwriting or development unless the bank's capital (exclusive of its direct investment in such subsidiary or subsidiaries) is adequate as defined by the FDIC for capital adequacy purposes and, furthermore, that an insured bank's direct investment in any such subsidiary will not be counted toward the bank's regulatory capital. The exclusion does not apply, however, in the case of a subsidiary that exclusively conducts activities specifically authorized to national banks by statute, regulation or interpretation either directly or in an operating subsidiary.

This provision also provides the FDIC with an enforcement tool to help safeguard the safety and soundness of the insured banks that enter into these activities through their subsidiaries. If, for example, the FDIC should determine after receiving notice under § 332.5 that an insured bank's capital is not adequate after making the necessary adjustments entailed by this paragraph, the bank could be subject to enforcement action if it were to proceed with the acquisition or establishment of the subsidiary. This restriction will serve to prevent institutions with marginal capital from taking on activities that could pose risks. It is FDIC's opinion that the automatic exclusion of the bank's investment in its subsidiary from the bank's capital will provide greater assurance that the bank and the subsidiary are independent, financially viable entities.

4. Filing of Notice

The proposal requires that an insured bank that intends to acquire or establish a subsidiary that engages in insurance underwriting (excluding credit life insurance), real estate underwriting, reinsurance, or insures, guarantees, or certifies title to real estate file notice of intent with the appropriate FDIC regional office at least 60 days prior to the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The bank must also notify the FDIC regional office in writing within 10 days after the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The 60-day notice requirement may be waived in FDIC's discretion where such notice is impracticable, for example, in the case of a purchase and assumption transaction or an emergency merger. The notice requirement does not apply in the case of a subsidiary that exclusively conducts activities specifically authorized to national banks by statute, regulation, or interpretation either directly or in an operating subsidiary.

The proposal does not specify the content of the written notice of intent. By not specifying the content of the notice, the FDIC is permitting a bank to satisfy the notice requirement in any way it finds most convenient. It is the FDIC's intent to use the notice as a point of reference and for the regional office to contact the insured bank seeking further information if the bank's condition or other facts warrant a closer review. The proposal thus requires that the notice be received in the regional office at least 60 days prior to the acquisition or commencement of operation, whichever is earlier. Although the notice requirement is not an approval process, the FDIC would not be precluded from intervening in the intended acquisition or establishment of the subsidiary if such intervention was warranted, for example, if the subsidiary would not appear to meet the requirements for a bona fide subsidiary or any details of the planned transaction (such as the source of funding for the establishment or acquisition of the subsidiary) present any supervisory concerns.

The proposed regulation does not require a written notice when a bank becomes affiliated with a company that engages in any of the activities identified in § 332.3(a). (Insured bank affiliation with such companies is covered by § 332.6 of the proposal and is discussed in paragraph #5 below.) For the most part, affiliation with a company engaging in the activities here under consideration will arise out of a change in bank control or come to FDIC's attention when a bank seeks deposit insurance. As the FDIC will become aware of the affiliation prior to consummation in both instances, there is no need to create an additional notice requirement.

5. Affiliation With Insurance Underwriter, Real Estate Underwriter, or Title Company

The proposed regulation prohibits an insured bank from becoming affiliated with any company that: (1) Underwrites casualty insurance, property insurance, life insurance (excluding credit life insurance), annuity contracts, mortgage guarantee insurance, or any other type of insurance, (2) engages in reinsurance, (3) engages in real estate development, real estate syndication, real estate equity participation, or any other form of real estate underwriting, or (4) insures, guarantees, or certifies title to real estate unless: (A) The affiliate is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the affiliate, access to which is through a separate entrance from that used for the insured bank except that the bank's and affiliate's offices may be accessed through a common outer lobby or common corridor; (B) the bank and affiliate share no common officers; (C) a majority of the board of directors of the bank is composed of persons who are neither officers nor directors of the affiliate; (D) any employee of the affiliate who is also an employee of the bank does not conduct activities on behalf of the affiliate on the premises of the bank that involve customer contract; (E) the bank and affiliate do not share a common name or logo: and (F) the affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered, or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertakings on the part of the affiliate otherwise undertakings or obligations of the bank.

The restrictions of this provision of the proposal are substantially the same as those that pertain to the qualifications for a bona fide subsidiary.

the subsidiary has adequate capital.

prohibit an insured bank and its

have the added benefit of encouraging

provide greater assurance that the bank

covered by § 332.6 of the proposal and is

qualifications for a bona fide subsidiary.

Again, the purpose of the FDIC in proposing these restrictions is: (1) To protect the safety and soundness of insured banks by requiring that the bank be operated independently and in a manner consistent with safe and sound banking practice, and (2) to protect the deposit insurance fund by avoiding claims against the bank arising out of the public's misconception as to the entity with which it is dealing. In view of the FDIC's overall goal to protect the deposit insurance system, the FDIC does not feel that the proposed restrictions are overly burdensome. The FDIC also does not feel that the restrictions will: (1) Interfere with the internal operations of bank affiliates, (2) disadvantage insured banks affiliated with insurance and real estate companies, or (3) deprive such banks of the good will of their affiliate's name. In the latter regard, the proposed regulation specifically indicates that the insured bank is not prohibited from advertising or otherwise disclosing its relationship to the affiliate. (For a detailed discussion of these restrictions see paragraph No. 2 above discussing the definition of bona fide subsidiary.)

6. Lending Restrictions

Section 332.7 of the proposed regulation sets forth several restrictions on the extent to which, and the manner in which, an insured bank may deal with its subsidiary or affiliate that engages in insurance underwriting (excluding credit life insurance), real estate underwriting, reinsurance, or insures, guarantees, or certifies title to real estate. If the subsidiary exclusively conducts activities that are specifically authorized to national banks by statute, regulation, or interpretation either directly or in an operating subsidiary, the restrictions of § 332.7 are inapplicable. Those restrictions are: (1) Any extension of credit by an insured bank to such subsidiary or affiliate may not exceed the amount limitations, and must be in accordance with the restrictions as to collateral, etc., imposed on "covered transactions" by section 23A of the Federal Reserve Act (12 U.S.C. 371c), (2) any extention of credit by an insured bank where the purpose of the extension of credit is to acquire any interest in any real estate underwritten by the bank's subsidiary or affiliate must be on terms and conditions consistent with safe and sound banking practice, (3) the aggregate of any such purpose loans shall not exceed 10 percent of the insured bank's capital, and (4) any extension of credit by an insured bank to any real estate development in which the bank's subsidiary or affiliate has an equity interest shall not exceed the limits to any one borrower established by 12 U.S.C. 84.

The above proposed restrictions are designed to address concerns that the FDIC has with respect to abuse of an insured bank's credit facilities. The requirement that an insured bank may not make loans for the purpose of acquiring any interest in real estate underwritten by the bank's subsidiary or affiliate unless the loans are on terms and conditions consistent with safe and sound banking practice is designed to prevent a bank from making imprudent loans so as to enable the bank's subsidiary or affiliate to sell real estate it has been unable to market. This prudential restriction on purpose lending is supplemented under the proposal with a companion restriction that the bank's aggregate extensions of credit for the purpose of acquiring an interest in real estate underwritten by the bank's subsidiary or affiliate may not exceed 10 percent of the bank's capital. Lastly, the requirement that extensions of credit by the bank to any real estate development in which the bank's subsidiary or affiliate has an equity interest may not exceed the limit on loans to any one borrower established by 12 U.S.C. 84 (basically, with certain exceptions, 15 percent of a bank's unimpaired capital and surplus) is designed to prevent a bank from making excessive and/or imprudent loans to a real estate venture in which its subsidiary or affiliate has an equity interest in an effort to protect the subsidiary's or affiliate's investment position. Taken together, these restrictions are designed to prevent abuses while at the same time allowing purpose lending and other direct and indirect financing of real estate activities.

The FDIC considered entirely prohibiting purpose lending on the part of insured banks that have real estate underwriting subsidiaries or affiliates. That approach was preliminarily rejected, however, out of concern that a flat prohibition on such lending could unduly restrict mortgage and other real estate financing. While the Federal regulatory authorities have the ability to correct unsafe and unsound banking practices through use of administrative actions and insured banks are expected to observe safe and sound lending practices, the proposed restrictions will make supervision of lending practices and enforcement of safe and sound banking practices easier from FDIC's standpoint.

The proposal makes extensions of credit from insured banks to their subsidiaries and affiliates that underwrite insurance or real estate, engage in reinsurance, or insure, guarantee, or certify title to real estate subject to the same amount limitations and other restrictions applicable to "covered transactions" under section 23A of the Federal Reserve Act, *e.g.*, extensions of credit to any one subsidiary may not exceed 10 percent of the bank's capital stock and surplus. As section 23A of the Federal Reserve Act does not treat subsidiaries of banks as affiliates, transactions between banks and their subsidiaries are not subject to the restrictions contained therein. The FDIC is proposing to extend those restrictions to such transactions where the subsidiary engages in the listed activities inasmuch as the FDIC feels that the potential risk to bank safety and soundness warrants such action. As section 23A of the Federal Reserve Act already covers extensions of credit to affiliates, the reference to affiliates in § 332.7(a) will not create any additional requirements with reference to affiliates.

Inasmuch as section 23A of the Federal Reserve Act treats extensions of credit by a bank's subsidiary to an affiliate of the bank (*e.g.*, an extension of credit by an insurance underwriting subsidiary of a bank to a real estate development subsidiary of the bank's parent) as covered transactions, the FDIC has not proposed any prudential restrictions on transactions between a bank's subsidiary and its sister affiliates. Section 23A does not appear, however, to cover transactions between two or more subsidiaries of an insured bank. FDIC is therefore specifically requesting comment on the need, if any, to impose restrictions on transactions between insurance and real estate and perhaps other types of subsidiaries of insured banks in order to protect bank safety and soundness, prevent conflicts of interest, and/or address other concerns. The FDIC is also specifically requesting comment on whether or not, in view of any state and/or federal statutes on loans to any one borrower, there is a need to limit extensions of credit, as proposed, to any real estate development in which the bank's subsidiary or affiliate has an equity interest.

The FDIC received several comments describing the mortgage insurance industry and the title insurance industry which set forth concerns regarding potential adverse consequences that can result from bank entry into these areas through subsidiaries or affiliates. With regard to the mortgage insurance industry it was stated that there is a risk that (1) a bank may purchase or refinance problem loans insured by its mortgage insurance subsidiary or affiliate in order to help its subsidiary or affiliate over financial difficulties, and (2) if the subsidiary or affiliate is the principal insurer of the bank's mortgage portfolio and that of the bank's correspondents, the failure of the subsidiary or affiliate could have an extremely adverse affect on the bank. (The losses against which a mortgage insurer insures typically occur when lenders are incurring their greatest losses on loans.) A comment addressing title insurance raised the same issues characterizing the concerns as follows. If a bank places its title insurance business with a "captive" insurer, the financial risk of title related problems has not been shifted to a third party outside of the financial family. If the insurer fails, the bank could suffer extremely adverse affects.

In view of the above comments, the FDIC is requesting comment on whether or not it should entertain adopting one or more of the following restrictions: (1) A prohibition on a bank purchasing or refinancing loans insured by its mortgage insurance subsidiary or affiliate, (2) allow such transactions but only if the transactions are consistent with safe and sound banking practices, (3) place a limit on the amount of a bank's mortgage portfolio that may be insured by the bank's mortgage insurance or title insurance subsidiary or affiliate, and/or (4) prohibit a bank from insuring *any* of its mortgage portfolio with its mortgage insurance subsidiary or affiliate.

In the same vein, FDIC invites comments on whether or not the agency should adopt a prohibition on a bank utilizing the insurance coverage of its subsidiary or affiliate to assure repayment of an outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral. In the alternative, should FDIC limit the percentage of the bank's overall extensions of credit that may have collateral insured by the bank's subsidiary or affiliate? Lastly, FDIC is interested in receiving comments on to what extent, if any, certain potential lending abuses of the sort discussed above may arise when an insured bank has an insurance underwriting subsidiary.

7. Trust Department Restrictions

Proposed § 332.7(e) prohibits an insured bank that has a subsidiary or affiliate that underwrites any type of insurance (excluding credit life insurance), engages in reinsurance, engages in real estate underwriting or development, or insures, guarantees, or certifies title to real estate from purchasing as fiduciary co-fiduciary, or managing agent on behalf of any account for which the bank has investment discretion any product, service, or property underwritten, sold, marketed, or provided by the bank's subsidiary or affiliate unless one of three conditions is satisfied. Those conditions are: (1) The purchase is expressly authorized by the managing agency agreement, the trust instrument, court order or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure: (2) the purchase, although not expressly authorized under item (1), is otherwise consistent with the bank's common law fiduciary obligation; or (3) the purchase is permissible under applicable state and federal law or regulation. Again, these restrictions do not apply in the case of a subsidiary conducting activities specifically authorized to national banks.

The FDIC intends by this provision to ensure against abuses that can arise in the administration of trust and other accounts over which the bank has investment discretion. The provision is for the most part simply a restatement of a bank's common law fiduciary obligation to refrain from dealing with itself in the administration of a trust. The provision has been styled as proposed (in the alternative) in order to take into account, for example, federal law governing employee benefit and pension plans that would permit, in certain instances, transactions involving such funds and affiliates of their trustees. An insured bank would still be subject to any applicable stricter federal or state statutory or regulatory requirement. For example, if a particular transaction is specifically prohibited under state law, a bank could not rely on § 332.7(e) as authority to enter into the transaction.

8. Tying

A common thread to many of the comments addressing bank entry into real estate and insurance is that such entry will lead to implicit and explicit tie-ins. In response to that concern, the proposal prohibits a bank that has a subsidiary or affiliate that engages in insurance underwriting (excluding credit life insurance), real estate underwriting, reinsurance, or insures guarantees, or certifies title to real estate from directly or indirectly conditioning any extension of credit on the requirement that the borrower purchase any property, product, or service underwritten, sold, marketed, or provided by the bank's subsidiary or affiliate. A bank that is part of a holding company system is currently subject to antitying prohibitions under the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972). As to these banks, the prohibition found in § 332.7(d) of the proposal does not represent a substantive change. Banks that are not in holding company systems and nonbank banks are not covered by 12 U.S.C. 1972. Subsection 332.7(d) will, therefore, make such a provision applicable as to these banks. This restriction does not apply in the case of a subsidiary conducting activities authorized to national banks.

In addition to soliciting comment on the above antitying provision, FDIC is seeking comment on whether or not it should adopt a specific disclosure requirement that affirmatively requires that banks provide written disclosures to their customers indicating that (1) bank customers are not obligated to utilize the services of, or purchase any product or real estate sold by, the bank's susidiary or affiliate in order to obtain credit, and (2) that whether or not the customer does or does not deal with the bank's subsidiary or affiliate will not affect the bank's decision to extend credit.

9. Insured Bank, Bank Subsidiary or Affiliate—Provider of EDP Services, Agent or Broker for Insurance, Real Estate, Securities, or Travel Services

Section §332.8 focuses on instances in which a bank is authorized by state or federal statute or regulation to directly or indirectly: (1) Provide EDP services to persons or companies other than banks, (2) provide travel agency services, or (3) act as agent or broker in connection with the purchase or sale of securities, insurance (including credit life insurance) or real estate. Paragraph (a) of § 332.8 indicates that where a bank, or any of its directors, officers, or employees, is so authorized to provide any of these services, the bank shall not exercise such authority unless certain restrictions are observed. Those restrictions are as follows: (1) Any bank director, officer, or employee who acts as agent or broker in connection with the purchase or sale of securities, insurance (including credit life insurance) or real estate, or who acts as agent to provide travel services, is licensed in accordance with applicable state or federal law or regulation and has met any applicable state or federal training, education, or other requirement; (2) the bank, its directors, officers, and employees, when providing any of these services, conduct business so as to make bank customers fully aware (i) of the capacity in which the bank, its directors, officers and emplyees are acting and (ii) that the

equity interest shall not exceed the

underwrite insurance or real estate.

mortgage insurance subsidiary or

purchasing as fiduciary co-fiduciary, or

prohibitions under the Bank Holding

employees are acting and (ii) that the

customers are not required, or otherwise obligated, to purchase any product, policy, property, security, or service provided by the bank in order to obtain credit; and (3) and director, officer, or employee who acts as agent or broker in connection with the purchase or sale of insurance, real estate, or securities, who acts as agent to provide travel services, or who solicits EDP customers and who is compensated on a commission basis remits the commission to the bank. A fourth restriction requires that any loans made by the bank for the purpose of acquiring real estate or securities where the bank or any of its directors, officers, or employees acted as agent or broker in connection with the purchase or sale be on terms and conditions that are consistent with safe and sound banking practice.

The FDIC has not proposed a requirement that the above activities be placed in a subsidiary of the bank inasmuch as it is FDIC's opinion that such selling activities do not pose safety and soundness problems of the types present with insurance underwriting and real estate development. The FDIC is, however, proposing the above restrictions in order to: (1) Address the antitying concerns which were raised by a number of comments, (2) prevent imprudent loans from being made in connection with a bank's real estate or securities brokerage operations, (3) ensure that bank directors, officers, or employees that conduct any of the referenced activities are properly trained and meet all applicable education requirements, and (4) protect against conflicts of interest and tying abuses that can arise when individuals who provide these services are compensated on a commission basis. The FDIC specifically invites comments on the appropriateness of the proposed restrictions and is also interested in receiving comment on whether or not additional requirements should be imposed. For example, should the regulation address leasing arrangements whereby insurance companies, etc. lease space in bank branches?

Paragraph (b) of § 332.8 pertains to instances where an affiliate or subsidiary of an insured bank provides travel services, EDP services, acts as agent in connection with the purchase or sale or real estate or securities, or acts as agent for the sale of insurance. The provision provides that an insured bank having such an affiliate or subsidiary shall not: (1) Directly or indirectly condition any extension of credit upon the requirement that the borrower utilize any service provided by, or purchase any policy, product, security, or real estate sold by, the bank's subsidiary or affiliate, and (2) make any extension of credit for the purpose of acquiring any intereat in any real estate or for the purpose of acquiring any security where the bank's subsidiary or affiliate acted as agent or broker in connection with the transaction unless the terms and conditions of the extension of credit are consistent with safe and sound banking practice. As in the case of paragraph (a) of § 332.8, these restrictions are designed to prevent tying abuses and prevent imprudent loans from being made in connection with the subsidiary's or affiliate's real estate or securities brokerage operation.

10. Definition of "Affiliate", "Subsidiary", "Extension of Credit" and "Company"

The proposed regulation defines the term "affiliate" to mean a company that directly or indirectly controls an insured bank or is under common control with an insured bank. "Control" is defined as the power to directly or indirectly vote 25% of a bank's or company's stock, the ability to control the election of a majority of a bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company. At a minimum, the proposed regulation treats as affiliates of an insured bank the bank's parent company, a company that control 25% or more of the bank's stock, and companies controlled by either of the above.

The term "subsidiary" is defined in the proposed regulation to mean a company directly or indirectly controlled by a bank. As "company" is defined in the proposed regulation to include corporations other than banks, partnerships, business trusts, associations, joint ventures, pool syndicates or other similar business organizations, a business entity operated by several insured banks in a co-operative effort may be considered a subsidiary of each of the banks.

The term "extension of credit" as defined in the proposed regulation has generally the same meaning as found in Federal Reserve Board Regulation O (12 CFR 215.3) which concerns insider transactions. The term as defined herein, however, covers purchases "whether or not under repurchase agreement" of securities, other assets, or operations. The "whether or not" language is included in the proposed regulation in an attempt to control the extent to which a bank may indirectly direct funds into a subsidiary by means of purchasing securities and other assets from the subsidiary. The term also differs from that used in Regulation O in that a "draw" upon a line of credit is an extension of credit whereas a "grant" of a line of credit is not.

11. Scope of Regulation

If adopted, the proposed regulation would apply to all insured banks including national banks, state banks that are members of the Federal Reserve System, insured branches of foreign banks, and federal savings banks that are insured by the FDIC. FDIC is specifically interested in receiving comment from all insured banks regarding the extent to which, if any, the proposed regulation will conflict with, or duplicate, statutory or regulatory restrictions to which insured banks are already subject.

12. Compliance

The proposed regulation establishes a one-year time period in which insured banks that, prior to the effective date of the regulation, established or acquired a subsidiary or became affiliated with a company that engages in insurance underwriting (excluding credit life insurance), real estate underwriting, reinsurance, or insuring, guaranteeing, or certifying title to real estate must bring themselves into compliance with Part 332. Such banks must, however, comply with § 332.6 with respect to affiliations within 180 days of the effective date of the regulation and § 332.7 with respect to lending and other restrictions within 90 days. In addition, any such subsidiary must conform to the requirements for a bona fide subsidiary as set out in § 332.2(b) with 180 days from the effective date of the regulation.

Any insured bank that as of the effective date of the regulation is directly engaging in any of the activities required by § 332.3 to be placed in a subsidiary is given a two-year period in which to comply with Part 332 (*i.e.*, move the restricted operation into a bona fide subsidiary). Such banks, however, must comply with the lending and other restrictions of § 332.7 within 90 days.

Any insured bank (including its officers, directors, or employees) that as of the effective date of the regulation was (1) providing EDP services, (2) acting, or whose officers, directors, or employees were acting, as agent to provide travel services, real estate brokerage services, or insurance brokage services, or (3) affiliated with, or had a subsidiary that, provided such services, shall have 90 days from the effective date of the regulation to come into compliance with the regulation.

The proposed regulation also establishes a requirement that insured

banks that, prior to the effective date of the regulation, established or acquired or became affiliated with any company that underwrites insurance or real estate, engages in reinsurance, or insures, guarantees, or certifies title to real estate, notify the regional director of the appropriate FDIC regional office not later than 30 days from the effective date of the regulation that the bank is so affiliated or has a subsidiary that engages in the referenced activities. The FDIC has not proposed a similar requirement that insured banks which as of the effective date of the regulation are directly engaging in any of the restricted activities notify the FDIC within 30 days that the bank is so engaging and that it will comply with the regulation within the directed time period. The FDIC invites comments on whether or not such a notice requirement should be adopted.

The FDIC also specifically directs comment to the propriety of the phase-out provision as proposed. Is immediate compliance more appropriate than a phase-out provision in view of the FDIC's stance that the restricted activities may pose a safety or soundness problem? If a phase-out provision is adopted, should the time periods as proposed be longer or shorter? Is it proper to draw a distinction in the phase-out period between banks that were directly engaging in an activity as of the effective date of the regulation and banks which established or acquired subsidiaries or became affiliated with companies that engaged in the relevant activities prior to the effective date of the regulation?

Lastly, the proposed regulation indicates that any insured bank that as of the effective date of the regulation was acting as, or whose directors, officers, or employees were acting as, broker or agent in connection with the purchase or sale of securities, insurance (including credit line insurance), or real estate, or as of that date had a subsidiary or affiliate that was acting as agent or broker in connection with the sale or purchase of securities, insurance (including credit life insurance), or real estate, shall comply with Part 332 within 90 days. Additionally, insured banks that as of the effective date of the regulation were providing EDP services to persons or companies other than banks or that had a subsidiary or affiliate that was so providing EDP services, and any insured bank that as of that date was acting, or whose directors, officers, or employees were acting, as agent to provide travel services, shall comply with Part 332 within 90 days. FDIC is interested in receiving comments on what burdens, if any, would be associated with these requirements.

13. Paperwork Reduction Act

The notice requirements contained in the proposed regulation do not constitute "collections of information" for purposes of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and therefore are not subject to the Office of Management and Budget ("OMB") clearance provisions of that Act. This is because the notice requirements fall within the exception to the definition of "information" set out in § 1320.7(k)(1) of OMB regulations implementing the "collection of information clearance" provisions of the Act (5 CFR 1320). It is recognized, however, that the notice requirements do place an affirmative obligation on an insured bank to notify the FDIC of its intended action, to confirm whether or not the subsidiary was acquired or established, and to notify FDIC if the bank has a subsidiary that engages in restricted activities or is affiliated with a company that engages in restricted activities. Any costs associated with these notices would appear, however, to be minimal. The proposed regulation does not specify the content of the written notices nor does it require insured banks to provide FDIC with any specific information.

14. Regulatory Flexibility Act Analysis

In accordance with the FDIC's policy statement entitled "Development and Review of FDIC Rules and Regulations" and the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FDIC conducted an analysis of the proposed regulation. The results of that analysis follow.

The proposed regulation would prohibit, with certain exceptions, an insured bank from conducting insurance or real estate underwriting activities unless such activities were conducted in a bona fide subsidiary of the bank. There are several benefits to such a restriction. By separating these activities from the bank, there will be less regulatory overlap and it will be easier for the various regulatory agencies to monitor the conditions of the institutions for which they are responsible. Moreover, by providing some insulation between the bank and its real estate and insurance underwriting activities, the safety of the bank is less likely to be threatened should its real estate or insurance subsidiaries encounter financial difficulty.

The provisions which require independent capitalization, limit intercompany dealing, and prohibit insured banks from becoming affiliated with companies engaging in insurance or real estate underwriting activities unless the affiliate is physically separate from the bank and has a separate name and logo are consistent with the desire to limit the overall exposure of the banking organization by maintaining some separation between an insured institution's banking and nonbanking activities. These restrictions will not impose substantial costs on insured banks and will make it less likely that financial problems encountered by an affiliate will result in problems for the bank itself. The absence of an investment cap in the insured bank's subsidaries will enable even relatively small insured banks to compete in these markets. The exclusion of the bank's investment in its subsidiary does not eliminate any of the potential benefits that will result from increased competition in these markets. It does, however, encourage asset diversification by ensuring that insured banks do not become overexposed to cyclical declines in any of these types of activities. Based on the above, the Board of Directors hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 332

Banks, Banking, Federal Deposit Insurance Corporation, Foreign banks, Banking, State nonmember bank.

In consideration of the foregoing, the FDIC is proposing to revise Part 332 of title 12 *Code of Federal Regulations* as follows:

PART 332—POWERS INCONSISTENT WITH PURPOSES OF FEDERAL DEPOSIT INSURANCE LAW

Sec.

332.1 Purpose and scope.
332.2 Definitions.
332.3 Activities required to be in subsidiary.
332.4 Investment in subsidiary.
332.5 Filing notice of intent.
332.6 Affiliation with insurance underwriter, real estate underwriter, or title company.
332.7 Restrictions: Subsidiary or affiliate underwriters insurance, underwrites real estate, or insures guarantees or certifies title to real estate.
332.8 Restrictions: Insured bank, its subsidiary or affiliate-provider of EDP services, broker or agent for insurance, real estate, securities, or travel services.
332.9 Exemption for certain subsidiaries.
332.10 Compliance.

Authority: Sec. 6, 64 Stat. 876, 12 U.S.C. 1816; sec. 8(a), sec. 2[8(a)] of the Act of September 21, 1950 (Pub. L. 797; 64 Stat 879), effective September 21, 1950, as amended by sec. 204 of title II of the Act of October 16,

any policy, product, security, or real

differs from that used in Regulation O in

establishes a requirement that insured

services, shall comply with Part 332

intercompany dealing, and prohibit

sec. 2[a] of title II of the Act of October 16,

1966 (Pub. L. 89-695; 80 Stat. 1054), effective October 16, 1966; sec. 6(c)(14) of the Act of September 17, 1978 (Pub. L. 95-369; 92 Stat. 618), effective September 17, 1978; and sec. 113(g) of title I of the Act of October 15, 1982 (Pub. L. 97-320; Stat. 1473 and 1474), effective October 15, 1982; 12 U.S.C. 1818(a); sec. 8(b), sec. 2[6(b)] of the Act of September 21, 1950 (Pub. L. 797), as added by sec. 202 of title II of the Act of October 16, 1966 (Pub. L. 89-695; 80 Stat. 1046), as amended by sec. 110 of title I of the Act of October 28, 1974 (Pub. L. 93-395; 88 Stat. 1506); sec. 11 of the Act of September 17, 1978 (Pub. L. 95-369; 92 Stat. 624); secs. 107(a)(1) and 107(b) of title I of the Act of November 10, 1978 (Pub. L. 95-630; 92 Stat. 3649 and 3653); and secs. 404(c), 425(b), and 425(c) of title IV of the Act of October 15, 1982 (Pub. L. 97-320; 96 Stat. 1512 and 1524); 12 U.S.C. 1818(b); sec. 9, 64 Stat. 881-882, 12 U.S.C. 1819; sec. 11(a), sec. 2[11(a)] of the Act of September 21, 1950 (Pub. L. 797; 64 Stat. 884), effective September 21, 1950, as amended by sec. 301(c) of title III of the Act of October 16, 1966 (Pub. L. 89-695; 80 Stat. 1055), effective October 16, 1966; sec. 7(a)(3) of title I of the Act of December 23, 1969 (Pub. L. 91-151; 83 Stat. 375), effective December 23, 1969; secs. 101(a)(3) and 102(a)(3) of title I of the Act of October 28, 1974 (Pub. L. 93-495; 88 Stat. 1500 and 1502), effective November 27, 1974; sec. 1401(a) of title XIV of the Act of November 10, 1978 (Pub. L. 95-630; 92 Stat. 3712), effective March 10, 1979; sec. 323 of title III of the Act of December 21, 1979 (Pub. L. 96-153; 93 Stat. 1120); sec. 308 of title III of the Act of March 31, 1980 (Pub. L. 96-221; 94 Stat. 147), effective March 31, 1980; and sec. 103 of title I of the Act of December 28, 1981 (Pub. L. 97-110; 95 Stat. 1514), effective December 28, 1981; sec. 11(f), sec. 2[11(f)] of the Act of September 21, 1950 (Pub. L. 797; 64 Stat. 885), effective September 21, 1950, as amended by sec. 6(c)(20) of the Act of September 17, 1978 (Pub. L. 95-369; 92 Stat. 619), effective September 17, 1978, 12 U.S.C. 1821(f); sec. 18(j)(2); 92 Stat. 3664, 12 U.S.C. 1828(j)(2), sec. 422, 96 Stat. 1469, (Pub. L. 97-320).

§ 332.1 Purpose and scope.

The provisions of this part apply to all insured banks including state chartered banks that are members of the Federal Reserve System, national banks, insured branches of foreign banks, and Federal savings banks that are insured by FDIC. The purpose of this part is to assure the safe and sound operation of insured banks, prohibit activities that are inconsistent with the purposes of Federal deposit insurance, and prevent conflicts of interests.

§ 332.2 Definitions.

For the purposes of this part, the following definitions apply.

(a) "Affiliate" shall mean any company that directly or indirectly controls or is under common control with an insured bank.

(b) "Bona fide subsidiary" means a subsidiary of an insured bank that at a minimum: (1) Is adequately capitalized; (2) is physically separate and distinct in its operation from the operation of the bank such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the subsidiary, access to which is through a separate entrance from that used for the insured bank, except that the bank's and subsidiary's offices may be accessed through a common outer lobby or common corridor; (3) does not share a common name or logo with the bank; [1] (4) maintains separate accounting and other corporate records; (5) observes separate formalities such as separate board of directors' meetings; (6) maintains separate employees who are compensated by the subsidiary; [2] (7) shares no common officers with the bank; (8) a majority of its board of directors is composed of persons who are neither directors nor officers of the bank; and (9) conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertakings on the part of the subsidiary otherwise undertakings or obligations of the bank.

(c) "Company" shall mean any corporation (other than a bank), any partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.

(d) "Control" shall mean the power to directly or indirectly vote 25 per centum or more of the voting stock of a bank or company, the ability to control in any manner the election of a majority of a bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.

(e) "Extension of credit" shall mean the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes, but is not limited to:

(1) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(2) An advance by means of an overdraft, cash item or otherwise;

(3) Issuance of a standby letter of credit (or other similar arrangement regardless of same or description);

(4) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(5) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(6) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (A) accrued interest or (B) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(7) Any other transaction as a result of which a natural person or company becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(f) "Subsidiary" shall mean any company directly or indirectly controlled by an insured bank.

§ 332.3 Activities required to be in subsidiary.

(a) No insured bank may conduct any of the following activities other than through a bona fide subsidiary of the bank: (1) Underwriting casualty insurance, property insurance, life insurance (excluding credit life insurance), annuity contracts, mortgage guarantee insurance, or any other type of insurance; (2) reinsurance; (3) real estate development, real estate syndication, real estate equity participation, or any other form of real estate underwriting; (4) insuring, guaranteeing or certifying title to real estate; (5) guaranteeing or becoming surety upon the obligations of others, [3] or insuring the fidelity of others; or (6) a surety business.

(b) Notwithstanding the foregoing, (1) no insured bank may establish or acquire a subsidiary that engages to any extent in the above activities if to do so would contravene any outstanding order of the FDIC, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Federal Home Loan Bank Board or any agreement entered into by the insured bank and any such agency; and (2) § 332.3(a) shall not require any insured bank to establish or acquire a bona fide subsidiary in order to conduct any activity described therein that national banks are specifically authorized by statute, regulation, or interpretation to conduct either directly or in an operating subsidiary.

§ 332.4 Investment in subsidiary.

(a) No insured bank may establish or acquire a subsidiary that underwrites insurance (excluding credit life insurance), insures, guarantees, or certifies title to real estate, engages in any form of real estate underwriting, or engages in reinsurance unless the bank's capital (exclusive of its direct investment in such subsidiary) is adequate as defined by FDIC for capital adequacy purposes.

(b) An insured bank's direct investment in such subsidiary will not be counted toward the bank's capital.

§ 332.5 Filing notice of intent.

Any insured bank that intends to acquire or establish a subsidiary that (a) underwrites casualty insurance, life insurance (excluding credit life insurance), annuity contracts, mortgage guarantee insurance, or any other type of insurance; (b) engages in reinsurance; (c) engages in real estate development, real estate syndication, real estate equity participation, or any other form of real estate underwriting; or (d) insures, guarantees, or certifies title to real estate, shall notify the regional director of the FDIC region in which the bank is located of such intent. Notice shall be in writing and must be received in the regional office at least 60 days prior to the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The bank shall also notify the FDIC regional office in writing within 10 days after the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The 60-day notice requirement may be waived in FDIC's discretion where such notice is impracticable, *e.g.*, in the case of a purchase and assumption transaction or an emergency merger.

§ 332.6 Affiliation with insurance underwriter, real estate underwriter, or title company.

An insured bank is prohibited from becoming affiliated with any company that (a) underwrites casualty insurance, property insurance, life insurance (excluding credit life insurance), annuity contracts, mortgage guarantee insurance, or any other type of insurance, (b) engages in reinsurance, (c) engages in real estate development, real estate syndication, real estate equity participation, or any other form of real estate underwriting, or (d) insures, guarantees, or certifies title to real estate, unless: (1) The affiliate is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate officials clearly demarcated as belonging to the affiliate, access to which is through a separate entrance from that used for the insured bank, except that the bank's and affiliate's offices may be accessed through a common outer lobby or a common corridor; (2) the bank and affiliate share no common officers; (3) a majority of the board of directors of the bank is composed of persons who are neither officers nor directors of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct activities on behalf of the affiliate on the premises of the bank that involve customer contact: (5) the bank and affiliate do not share a common name or logo; [4] and (6) the affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered, or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertakings on the part of the affiliate otherwise undertakings or obligations of the bank.

§ 332.7 Restrictions: Subsidiary or affiliate underwrites insurance, underwrites real estate, or insures, guarantees or certifies title to real estate.

An insured bank that has a subsidiary or affiliate that underwrites any type of insurance (excluding credit life insurance), engages in reinsurance, engages in real estate development or any other type of real estate underwriting, or insures, guarantees, or certifies title to real estate shall not:

(a) Make any extension of credit to such subsidiary or affiliate that would be in excess of the limits as to amount, and not in accordance with the restrictions imposed on "covered transactions" by section 23A of the Federal Reserve Act (12 U.S.C. 371c) and that are not within any exemption established thereby.

(b) Make any extension of credit where the purpose of the extension of credit is to acquire any interest in any real estate underwritten by the bank's subsidiary or affiliate unless the terms and conditions of the extension of credit are consistent with safe and sound banking practice.

(c) Extend credit in the aggregate in excess of 10 per centum of the bank's capital where the purpose of the extensions of credit is to acquire any interest in any real estate underwritten by the bank's subsidiary or affiliate.

(d) Directly or indirectly condition any extension of credit on the requirement that the borrower purchase any property, product, or service underwritten, sold, marketed, or provided by the bank's subsidiary or affiliate.

(e) Purchase as fiduciary, co-fiduciary, or managing agent on behalf of any account for which the bank has investment discretion any product, service, or property underwritten, sold, marketed, or provided by the bank's subsidiary or affiliate unless (1) the purchase is expressly authorized by the managing agency agreement, trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure, (2) the purchase, although not expressly authorized under (1), is otherwise consistent with the bank's common law fiduciary obligation, or (3) the purchase is permissible under applicable state and federal law or regulation.

(f) Exceed the limits on loans to any one borrower established by 12 U.S.C. 84 when making extensions of credit to any real estate development in which the bank's subsidiary or affiliate has an equity interest.

§ 332.8 Restrictions: Insured bank, its subsidiary, or affiliate—provider of EDP services, broker or agent for insurance, real estate, securities, or travel services.

(a) Where an insured bank (including any of its directors, officers, or employees) is authorized by state or federal statute or regulation to provide electronic data processing services to

[1] This requirement shall not prohibit the subsidiary from advertising or otherwise disclosing its relationship to the insured bank.

[2] This requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and recordkeeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities.

[3] An insured bank is not proscribed from guaranteeing or becoming surety upon the obligations of others as provided in § 347.3(c)(1) nor does this proscription extend to acceptances, endorsements, or letters of credit made or issued in the usual course of the banking business nor to guaranteeing or becoming surety as permitted by §§ 7.7010, 7.7012, 7.7015, 7.7016 of the Comptroller of the Currency's regulations (12 CFR 7.7010, 7.7012, 7.7015, 7.7016).

[4] This requirement shall not be construed to prohibit the bank from advertising or otherwise disclosing its relationship to the affiliate.

minimum: (1) Is adequately capitalized;

such services on terms and conditions comparable to those agreed to by independent entities.

the Currency's regulations (12 CFR 7.7010, 7.7012, 7.7015, 7.7016).

where such notice is impracticable, *e.g.*, in the case of a purchase and

prohibit the bank from advertising or otherwise disclosing its relationship to the affiliate.

federal statute or regulation to provide electronic data processing services to

persons or companies other than banks, to provide travel agency services, or to act as agent or broker in connection with the purchase or sale of securities, insurance (*including* credit life insurance), or real estate, the bank shall not exercise such authority unless:

(1) Any bank director, officer, or employee who is acting as agent or broker to provide any such service is licensed in accordance with any applicable state or federal statute or regulation and has met any applicable state or federal training, education, or other requirement.

(2) The bank (including its directors, officers, and employees) when providing any such service conducts business pursuant to policies and procedures designed to make bank customers fully aware: (i) Of the capacity in which the bank (including its directors, officers, and employees) is acting, and (ii) that the customer is not required, or otherwise obligated, to purchase any insurance product or policy sold by the bank, its directors, officers, or employees or utilize any such service of the bank, its directors, officers, or employees in order to obtain any extension of credit or other financial service from the bank.

(3) Any bank director, officer, or employee who is acting as agent or broker in connection with the provision of any such service and who is compensated on a commission basis remits the commission to the bank.

(4) The terms and conditions of any extension of credit made by the bank for the purpose of acquiring any interest in any real estate or for the purpose of acquiring securities where the bank (including its directors, officers, and employees) acted as agent or broker in connection with the transaction are consistent with safe and sound banking practice.

(b) An insured bank that has a subsidiary or affiliate that provides travel services, electronic data processing services, acts as agent or broker in connection with the purchase or sale of real estate or securities, or acts as agent in the sale of insurance (including credit life insurance) shall not:

(1) Directly or indirectly condition any extension of credit union the requirement that the borrower utilize any service provided by, or purchase any policy, product, real estate, or security sold by, the bank's subsidiary or affiliate.

(2) Make any extension of credit for the purpose of acquiring any interest in any real estate or securities where the bank's subsidiary or affiliate acted as agent or broker in connection with the transaction unless the terms and conditions of the extension of credit are consistent with safe and sound banking practice.

§ 332.9 Exemption for certain subsidiaries.

Nothing in §§ 332.4, 332.5, or 332.7 shall apply in the case of a subsidiary of an insured bank that exclusively conducts any activity described in § 332.3(a) that national banks are specifically authorized by statute, regulation, or interpretation to conduct either directly or in an operating subsidiary.

§ 332.10 Compliance.

(a) Any insured bank that, prior to the effective date of this regulation, established or acquired a subsidiary that underwrites insurance (excluding credit life insurance), underwrites real estate, engages in reinsurance, or insures, guarantees, or certifies title to real estate or which prior to that date became affiliated with a company that engages in the above activities shall have one year from the effective date of this regulation to bring itself into compliance with this part, *provided,* however, that such bank must comply with § 332.6 within 180 days of the effective date of the regulation, § 332.7 within 90 days of the effective date of the regulation, and any such subsidiary must meet the definition of "bona fide subsidiary" within 180 days of the effective date of the regulation. Any insured bank subject to this paragraph shall inform the regional director of the FDIC region in which the bank is located not later than 30 days from the effective date of the regulation that the bank has a subsidiary that underwrites insurance or real estate, engages in reinsurance, or insures, guarantees, or certifies title to real estate, or that it is affiliated with a company that underwrites insurance or real estate, engages in reinsurance, or insures, guarantees or certifies title to real estate.

(b) Any insured bank that as of the effective date of this regulation was directly engaging in any activity required by § 332.3 to be in a bona fide subsidiary shall have two years from the effective date of this regulation to comply with this part, *provided,* however, that such bank must comply with § 332.7 within 90 days from the effective date of the regulation.

(c) Any insured bank that as of the effective date of the regulation was providing electronic data processing services to persons or companies other than banks or was acting as, or whose directors, officers, or employees were acting as, agent to provide travel services or broker or agent in connection with the purchase or sale of securities, insurance (including credit life insurance), or real estate, or that as of that date had a subsidiary or affiliate that was acting in such a capacity shall have 90 days from the effective date of the regulation to comply with this part.

By Order of the Board of Directors this 26th day of November 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-32438 Filed 12-12-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 584

[No. 84-716]

Holding Company Indebtedness

Dated: December 10, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to amend its regulations on holding company indebtedness by clarifying the provisions that preapprove debt incurred by nondiversified savings and loan holding company bank subsidiaries and service corporation subsidiaries of insured institution subsidiaries of savings and loan holding companies. The effect of the amendments would be to require prior Board approval for any debt incurred by a subsidiary bank unless the debt, together with the aggregate indebtedness of the holding company and all of its affiliates, is within the limitations of 12 CFR 584.6(a)(2) or unless the subsidiary meets the definition of a bank or a savings bank in either the Bank Holding Company Act or the Federal Deposit Insurance Act, respectively. The amendments would further provide that a subsidiary bank (other than one that met the applicable definitions) of an insured institution would be excluded from the Board's preapproval for debt incurred by a service corporation of an insured institution subsidiary of a nondiversified holding company. The Board is proposing these amendments in order to address its concerns that debt incurred by various interstate entities not subject to the Bank Holding Company Act and the jurisdiction of the Federal Reserve Board may pose different risks from

those of "full service" commercial banks. Moreover, in the case of "nonbank banks," the Board is concerned that the possibility of the forced divestiture of any such entities acquired by a nondiversified savings and loan holding company could ultimately prove injurious to its subsidiary insured institution.

DATE: Comments are due by January 11, 1985.

ADDRESS: Send comments to Director, Information Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Neil Crowley, Attorney, Corporate and Securities Division, Office of General Counsel, (202-377-6451), Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Board is proposing to amend its regulations on holding company indebtedness by clarifying the circumstances in which a debt application would be required of a subsidiary bank of a nondiversified savings and loan holding company or of its subsidiary insured institution. Section 408(g)(1) of the NHA provides that no savings and loan holding company or any subsidiary thereof, other than an insured institution, may incur debt without the prior written approval of the FSLIC. 12 U.S.C. 1730a(g)(1). The statute further provides, however, that prior approval is not required for debt incurred by a diversified savings and loan holding company or any subsidiary thereof, nor, with respect to any other holding company, for debt which, together with all other debt of the group, aggregates less than 15 percent of the consolidated net worth of the holding company. 12 U.S.C. 1730a(g)(2). Pursuant to its statutory authority, the Board approved, by means of an "interim" regulation and without requiring submission of an application, the issuance, sale, renewal, guaranty, or assumption of any debt incurred "[b]y a savings and loan holding company's subsidiary bank which is an insured bank of the Federal Deposit Insurance Corporation." 12 CFR 584.6(b)(4). In a similar manner, the Board, by regulation, has approved, without application, and exempted from the computation of the 15-percent limitation, any debt incurred "[b]y a service corporation subsidiary of an insured institution subsidiary of a savings and loan holding company." 12 CFR 584.6(c)(1).

The Board is proposing to amend each of those provisions by excluding, from the preapprovals granted therein, debt incurred by a bank subsidiary of either a nondiversified holding company or of its subsidiary insured institution if that bank does not fall within the definitions noted in the regulation. The proposal would amend 12 CFR 584.6(b)(4) to make clear that the approval for debt incurred by a nondiversified savings and loan holding company's subsidiary bank would extend only to a bank that fell within either the definition of a bank in section 2(c) of the Bank Holding Company Act, 12 U.S.C. 1841(c), or the definition of a savings bank in section 3(g) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g). The proposal would also amend 12 CFR 584.6(c)(1) to provide that the prior approval and the exemption from the 15-percent limitation granted by that paragraph for debt incurred by a service corporation of an insured institution subsidiary of a nondiversified holding company would not extend to any FDIC-insured bank, other than one that met the above definitions, that was operated as a subsidiary of the insured institution. The effect of the proposed amendments would be to require a bank subsidiary that did not meet the requirements specified in the regulations to apply to the Board for permission to incur debt, rather than to incur such debt on the basis of the preapprovals in the current regulations. To the extent that any proposed debt plus the aggregate outstanding debt of the holding company and its non-insured institution subsidiaries would be less than 15 percent of the consolidated net worth of the holding company, a subsidiary bank would not need to obtain prior Board approval. *See* 12 U.S.C. 1730a(g)(2)(B) and 12 CFR 584.6(a)(2).

Section408(g) (1) and (2) of the NHA requires that the Board approve in advance all debt incurred by a nondiversified savings and loan holding company or its subsidiaries that are not insured institutions, to the extent that the debt exceeds 15 percent of the consolidated net worth of the holding company. The statute further provides that the Board may approve a debt transaction if it finds that the transaction "would not be injurious to the operation of any subsidiary insured institution in light of its financial condition and prospects." 12 U.S.C. 1730a(g)(3). In accordance with the statute, the Board has previously determined that certain debt transactions in which a nondiversified holding company or its subsidiaries may engage would not be injurious to the operation of the insured institution and, for that reason, has preapproved those transactions in 12 CFR 584.6 (b) and (c).

At the time that the Board granted the regulatory preapprovals, however, it assumed that commercial bank subsidiaries would be regulated pursuant to the provisions of the Bank Holding Company Act. It did not consider how and to what extent an insured institution could be affected by debt incurred by a bank subsidiary not subject to the Bank Holding Company Act. Similarly, the Board has not yet had an opportunity to consider whether the operations of an insured institution subsidiary of a nondiversified holding company may be adversely affected by any transactions in which a subsidiary of the institution that is not so regulated incurs debt. In light of the statutorily mandated requirement that Board approval of debt transactions be preceded by a determination that the transaction would not be injurious to the institution, the Board believes that it should exclude debt transactions of subsidiary banks that do not qualify as banks under section 2(c) of the Bank Holding Company Act or section 3(g) of the Federal Deposit Insurance Act from the regulatory preapprovals. Thus, under the proposed amendments, for example, debt transactions of a "nonbank bank" subsidiary of a nondiversified holding company or its insured institution would be submitted to the Board for its approval. In this manner the Board would be able to monitor the effects that such debt transactions may have on the subsidiary insured institutions. The Board specifically requests comments on whether the category of banks that would be excluded from the debt approval requirements should be expanded or narrowed.

The proposed amendments would apply only to a subsidiary bank, as defined in the proposal, of either a nondiversified holding company or its insured institution subsidiary. Diversified savings and loan holding companies and their subsidiaries would not be affected. The Board believes that such a regulatory distinction is warranted at this time in light of the differing composition and earnings base of the two types of companies. A diversified holding company, by definition, engages in substantial business activities that are unrelated to the operation of a savings and loan association and that may be less likely to be affected by conditions that adversely affect depository institutions. By comparison, a nondiversified holding company does not have access to such independent sources of revenue. Moreover, separate debt standards for diversified and nondiversified holding companies are consistent with the

agent or broker in connection with the

services or broker or agent in

the jurisdiction of the Federal Reserve Board may pose different risks from

of those provisions by excluding, from

transactions in 12 CFR 584.6 (b) and (c).

companies are consistent with the

separate debt provisions in section 408(g) of the NHA.

The Board also is concerned with the unresolved questions pertaining to the status and continued existence of "nonbank banks" under existing law, and the likelihood that entities acquiring "nonbank banks" will suffer adverse financial consequences if Congress amends the banking statutes to force the divestiture of all nonbank banks. During 1984 Congress considered, but did not enact, several bills that were intended to treat "nonbank banks" substantially the same as other banks for purposes of the Bank Holding Company Act. Notwithstanding the inability of Congress to enact such legislation during its last session, the Chairmen of both the House and Senate Banking Committees have stated, in response to the increasing numbers of charters that have been issued for "nonbank banks," that legislative action to close the so-called "nonbank-bank loophole" under the Bank Holding Company Act would be a matter of high priority for the 99th Congress. Moreover, the Chairmen have stated that it is the clear intention of Congress to require the divestiture of all "nonbank banks" established after July 1, 1983, regardless of the costs of divestiture to entities that have acquired such banks after that date. *Joint Statement on Banking Legislation by Chairman St Germain and Chairman Garn,* October 4, 1984.

In view of the uncertainties surrounding the status of "nonbank banks", the Board is concerned that the forced divestiture of a "nonbank bank" could cause a savings and loan holding company to incur financial losses which could impair its ability to support its subsidiary insured institution. The Board believes that until such time that the uncertainties surrounding "nonbank banks" are resolved, it can best minimize the likelihood of financial injury to the insured institution by actively reviewing the debt to be incurred by a "nonbank bank" subsidiary of the holding company. For that reason, the Board is also proposing to amend its delegation of authority in 12 CFR 584.6(*f*)(2) by excluding from the delegation applications of subsidiary banks, other than those described in proposed § 584.6(b)(4), to incur debt.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to all subsidiary banks, as described herein, of nondiversified savings and loan holding companies.

3. *Impact of the proposed rules on small institutions.* To the extent that the rules would affect small institutions, this has been discussed elsewhere in the proposal.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rule.* Other alternatives, such as allowing "nonbank bank" subsidiaries to incur debt on a preapproved basis, may pose certain risks to the insured institutions and may be inconsistent with the Board's obligation to determine that such transactions are not injurious to the insured institutions.

List of Subjects in 12 CFR Part 584

Holding companies, Savings and loan associations, Savings and loan holding companies.

The proposed rules are essentially interpretive in nature and would clarify the debt preapproval provisions in the present regulations. Moreover, it is necessary for the Board to clarify the regulations expeditiously in order that savings and loan holding companies and insured institution subsidiaries have clear guidance on the Board's position regarding debt transactions before such institutions expend funds and management resources in seeking to establish "nonbank banks." For those reasons, the Board has limited the comment period to 30 days.

Accordingly, the Board hereby proposes to amend Part 584, Subchapter F, Chapter V of Title 12, *Code of Federal Regulations,* as set forth below.

Subchapter F—Regulations for Savings and Loan Holding Companies

PART 584—REGULATED ACTIVITIES

Amend § 584.6 by revising paragraphs (b)(4) and (c)(1) and adding a sentence at the end of paragraph (f)(2), as follows:

§ 584.6 Holding company indebtedness.

* * * * *

(b) *Interim Approval by the Corporation.* * * *

(4) By a savings and loan holding company's subsidiary bank which is a bank as defined in section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), or which is a savings bank as defined in section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. 1813(g)).

* * * * *

(c) *Exemptions from computation of 15-percent limitation.* * * *

(1) By a service corporation subsidiary of an insured institution subsidiary of a savings and loan holding company, including any wholly owned subsidiary of such service corporation: *Provided,* that this paragraph (c)(1) does not apply to any service corporation subsidiary or subsidiary of such service corporation that is a bank other than a bank described in paragraph (b)(4) of this section.

* * * * *

(f) *Approval by Supervisory Agent.*

* * * * *

(2) * * * The delegation of authority conferred by this paragraph (f)(2) shall not apply to any application for a subsidiary bank of a holding company or of its insured institution subsidiary to incur debt, unless the subsidiary bank is a bank described in paragraph (b)(4) of this section.

(Sec. 108, 82 Stat. 5 (12 U.S.C. 1730a *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR 1943-1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-32540 Filed 12-12-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 17012]

Airworthiness Directives; Dornier GmbH, Models Do 27 and Do 28 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to revise Airworthiness Directive (AD) 77-14-17, Amendment 39-2966, applicable to DORNIER GmbH, Models Do 27 and Do 28 airplanes by eliminating the repetitive inspections of the fuel and oil hoses on these airplanes if Technical Standard Order (TSO) hoses are installed. The FAA has determined that the unairworthy condition on which this AD is based, exists only on certain DORNIER non-TSO hoses. This revision will relieve the operators of

unnecessarily inspecting installed DORNIER and TSO assemblies.

DATE: Comments must be received on or before January 19, 1985.

ADDRESSES: Information applicable to this AD may be obtained from the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 17012, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimerine, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. H. Belderok, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 54106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting in duplicate such written data, views or arguments as they may desire. Communication should identify the regulatory docket or notice number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above, will be considered by the Director before taking action in the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and emergency aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report, summarizing each FAA public contact concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 17012, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 77-14-17, Amendment 39-2966 (42 FR 36244, July 14, 1977) applicable to DORNIER GmbH Models Do 27 and Do 28 airplanes requires repetitive visual and dimensional 25-hour time-in-service (TIS) inspection of all the DORNIER fuel and oil hoses manufactured to specification LN9226. Subsequent to the issuance of this AD, the FAA has reexamined the available information related to the issuance of DORNIER Service Bulletin (SB) No. 1059-0000, Service Difficulty reports and operator information.

Based upon the foregoing, the FAA has determined that the condition addressed by SB 1059-0000 is an unairworthy condition, limited to certain DORNIER fuel and oil hoses manufactured to specification LN9226 produced as of the first quarter of 1970. Therefore, the FAA is proposing a revision to AD 7-14-17 permitting discontinuance of the presently required 25 hours TIS repetitive inspections of the LN9226 hoses after two such sequential satisfactory inspections and immediate discontinuance of these inspections if Technical Standard Order (TSO) -C53a Type C hoses are installed. Also, since the proposed AD revision would apply to all models of the Do 27 and Do 28 series, the airplane applicability statement is being simplified by deleting the individual listing of all model designations and stating that the AD applies to all Do 27 and Do 28 models.

The FAA has determined there are approximately 14 Model Do 27 and 9 Model Do 28 airplanes affected by the proposed revision. The cost of changing the type of hoses as permitted by the revised AD is estimated to be $142.50 per airplane for Model Do 27 airplanes and $267.50 per airplane for Model Do 28 airplanes. The total cost of modifying all airplanes as permitted by the revised AD is estimated to be $4,402.50 to the private sector.

The reduction in maintenance cost which will result if the hoses are changed and the presently required repetitive inspections are discontinued, as permitted by the revised Ad, is estimated to be approximately $2.80 per hour operation for Model Do 27 airplanes and $4.20 per hour for Model Do 28 airplanes. On the basis of an estimated usage of 500 hours per year operation of the affected airplanes, the reduction in yearly maintenance cost will be $1400 for Model Do 27 airplanes and $2100 for Do 28 airplanes. The estimated saving for an average operator who elects to modify its airplanes and discontinues the inspections, as permitted by the AD, will be $1257.50 for Model Do 27 airplanes and $1862.50 for Model Do 28 airplanes.

Because the potential cost reduction made available by the proposal is small, and the limited number of affected airplanes are distributed among a small number of owners, few if any small entities are expected to experience a significant economic impact as the result of this proposal.

Therefore I certify that this action: (1) Is not a major rule under the provision of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation (14 FR 39.13) by revising Airworthiness Directive 77-14-17, Amendment 39-2966, 14 CFR 39.13 in its entirety and reissue it as follows:

DORNIER GmbH: Applies to all Model Do 27 and Do 28 series airplanes, all serial numbers certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To detect defective DORNIER fuel and oil hoses manufactured to specification LN9226 and to prevent possible engine failure or sudden seizure of an engine, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this Airworthiness Directive (AD), or within the next 25 hours TIS since the last inspection in accordance with AD 77-14-17, and every 25 hours thereafter until attaining more than 50 hours time-in-service on each hose visually inspect each of DORNIER fuel and oil hoses, manufactured to specification LN9226 in the first quarter of 1970 and thereafter, for defects in accordance with paragraph 1 of DORNIER Service Bulletin No. 1059-0000, dated September 25, 1975, or an FAA equivalent method. If the specification of a particular hose or its date of manufacture is unknown, the inspections required by this paragraph must be accomplished for that hose.

(b) If a defective hose is found during an inspection required by paragraph (a) of this AD, before further flight, replace the defective hose with a serviceable DORNIER or TSO-C53a, Type C hose.

These elements have been discussed

bank as defined in section 3(g) of the

will relieve the operators of

FR 36244, July 14, 1977) applicable to

and $1862.50 for Model Do 28 airplanes.

or TSO–C53a, Type C hose.

(c) The repetitive inspections required on each individual fuel and oil hose by paragraph (a) are not required.

(1) On any installed serviceable TSO–C53a, Type C hose, or

(2) On any DORNIER Hose which is found serviceable after the second sequential 25 hour time-in-service inspection, or

(3) On any DORNIER hose which has more than 50 hours TIS and remains serviceable in accordance with the inspection required by paragraph (a) of this AD.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) Equivalent means of compliance may be used, if approved, by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); § 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on December 3, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-32420 Filed 12-12-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ANM-31]

Proposed Alteration of VOR Federal Airway, V-254—MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend VOR Federal Airway V–254 by extending it from Miles City, MT, to Glasgow, MT. This is the result of a request by the flying public. It will reduce operating costs involving flight time and fuel.

DATES: Comments must be received on or before January 28, 1985.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84–ANM–31, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:
Burton Chandler, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airway V–254 by extending it from Miles City, MT, to Glasgow, MT. The proposed airway segment will reduce operating costs by providing a more direct route between these points. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–254 [Amended]

By removing the words "to Miles City, MT." and substituting the words "via Miles City, MT; INT Miles City 346°T (331°M) and Glasgow, MT, 166°T(149°M) radials; to Glasgow, MT."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on December 4, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-33424 Filed 12-12-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 84-AWA-33]

Proposed Amendment of Hours of Operation for Restricted Areas; Fort Lewis, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the time of designation from Continuous to Intermittent by NOTAM of Restricted Areas R–6703A, B, C and D. This amendment is at the request of the user and will provide more efficiency on the use of the areas. These restricted areas were designated to contain aerial gunnery, cannon fire, rockets, mortars, howitzers and missiles.

DATE: Comments must be received on or before January 28, 1985.

ADDRESS: Send comments on the proposal in triplicate to:

Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84–AWA–33, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:
Burton Chandler, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace dockets and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AWA–33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering amendment to § 73.68 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to amend the time of designation from Continuous to Intermittent by NOTAM of Restricted Areas R–6703A, B, C, and D. This amendment is proposed at the request of the user. It is anticipated that the proposed designation will increase the availability of the affected airspace for general traffic. R–6703A, B, C and D were designated to contain aerial helicopter gunnery, 20mm cannon fire, 2.75 inch inert rockets, 4.2 inch mortars, 8 inch howitzers and anti-tank missiles. Section 73.67 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Restricted areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.67 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

R–6703A Fort Lewis, WA [Amended]

By removing the word "Continuous." and substituting the words "Intermittent by NOTAM."

R–6703B Fort Lewis, WA [Amended]

By removing the word "Continuous." and substituting the words "Intermittent by NOTAM."

R–6703C Fort Lewis, WA [Amended]

By removing the word "Continuous." and substituting the words "Intermittent by NOTAM."

R–6703D Fort Lewis, WA [Amended]

By removing the word "Continuous." and substituting the words "Intermittent by NOTAM."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on December 4, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-32623 Filed 12-12-84; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 375

[Special Regulations Docket 42547; SPDR-91A]

Navigation of Foreign Civil Aircraft Within the United States

Dated: December 10, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rulemaking; Extension of comment period.

examined during normal business hours

Advisory Circular No. 11-2 which describes the application procedure.

BILLING CODE 4910-13-M

of comment period.

regulatory, economic, environmental, and energy aspects of the proposal.

keep them operationally current. It, therefore: (1) Is not a "major rule" under

SUMMARY: The CAB is extending the comment period for one week and the reply comment period for 2 days in its rulemaking concerning the navigation in the United States of foreign civil aircraft that are not engaged in foreign air transportation. The request for extension was made by Geometrics, Inc. and supported by several other interested persons.

DATES: Comments by: December 17, 1984. Reply comments by: December 28, 1984.

Comments and relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 42547, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, as soon as they are received. After that date, they may be examined in Room 4107, Office of Documentary Services U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; (202) 673-5442 or (202) 472-5577.

SUPPLEMENTARY INFORMATION: In SPDR-91, 49 FR 42948, October 25, 1984, the Board proposed to revise its rules concerning the navigation in the United States of foreign civil aircraft that are not engaged in foreign air transportation. The proposed revision would delete outdated provisions and conform the language of the rule to FAA regulations. The proposed rule would also expand the definition of a foreign civil aircraft to include U.S.-registered aircraft owned by non-U.S. citizens and would revise the application procedures for foreign aircraft permits to expedite their processing by the Board.

On December 4, 1984, Geometrics, Incorporated, requested a 1-week extension of the comment period from December 10, 1984, to December 17, 1984. Geometrics stated that the President of the company, who is the only person in its company who would be able to give specific instances of how the existing rule has been misused in the past by certain parties, is out of the country and will not return until after December 10th. It requested an extension in the comment period in order to prepare a response.

Mr. Gary Garofolo supported the request for a 1-week extension of both the initial and reply comments on behalf of Aero Service Division, Keystone Aerial Surveys, Inc. and Airmag Surveys, Inc.

In order to accommodate these commenters, and because it does not appear that a brief extension will prejudice any other person or delay action in this proceeding, the request for an extension of the time to file comments is granted.

Comments will be due on December 17, 1984, and should be filed with the Civil Aeronautics Board. Because the Dockets Section will be closed on January 2 through 4, 1984, in order to move to the Department of Transportation, the date for filing reply comments will only be extended to December 28, 1984, so that the comments in this proceeding do not have to be filed in two separate locations. Provision will be made to forward any late-filed comments or other documents from CAB to DOT.

Accordingly, under authority delegated by the Board in 14 CFR 385.20(d), the time for filing comments and reply comments in this proceeding is extended.

(Secs. 204, 401, 402, 403, 407, 416, 1001, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 757, 758, 766, 771, 788; 49 U.S.C. 1324, 1371, 1372, 1377, 1386, 1481; 5 U.S.C. 558, 559)

By the Civil Aeronautics Board.

Richard B. Dyson,

Associate General Counsel, Rules and Legislation.

[FR Doc. 84-32532 Filed 12-12-84; 8:45 am]

BILLING CODE 6320-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contract Market Enforcement of Floor Broker Registration Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of Comment Period.

SUMMARY: On August 7, 1984, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a notice of proposed rulemaking in which the Commission proposed to adopt § 1.62. 49 FR 31442. Specifically, § 1.62 would require each contract market to adopt a rule to the effect that before a person may execute orders for others on the floor of that contract market, that person must first register with the Commission as a floor broker. The Commission is also seeking public comment on whether, in the alternative, the Commission should exercise its authority under section 8a(7) of the Commodity Exchange Act, 7 U.S.C. 12a(7) (1982), which authorizes the Commission to alter or supplement exchange rules as necessary or appropriate. The comment period on the notice of proposed rulemaking expired on October 9, 1984. The Commission subsequently extended that comment period to and including November 16, 1984.

On November 16, 1984, counsel for the Chicago Board of Trade requested a sixty-day extension of the comment period. The Chicago Mercantile Exchange has joined in that request. These exchanges have advised the Commission that, in response to the proposed rulemaking, they have undertaken to determine whether it would be practicable for them to seek Commission authorization to register floor brokers on behalf of the Commission pursuant to section 8a(10) of the Act. In this connection, they have requested an extension of the comment period for an additional sixty days to permit further consideration at the exchange level of this alternative. In order to ensure that all interested parties have an opportunity to submit comments and, in particular, to provide the Commission an opportunity to address the exchange proposal, if any, at the same time, the Commission has determined to grant the request for a further extension of the comment period.

DATES: Accordingly, notice is hereby given that all comments on the Commission's notice of proposed rulemaking on contract market enforcement of floor broker registration requirements (40 FR 31442, August 7, 1984) must be submitted by January 16, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Dolins, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

Issued in Washington, D.C. on December 7, 1984, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84-32465 Filed 12-12-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-240; Colorado-40]

High-Cost Gas Produced From Tight Formations; Colorado

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Niobrara Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on January 24, 1985.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 26, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Edward Gingold, (202) 357-5491, or Victor Zabel, (202) 357-8516.

Issued: December 10, 1984.

I. Background

On November 15, 1984, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Niobrara Formation located in Adams, Boulder, and Weld Counties, Colorado, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Colorado's recommendation that the Niobrara Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Niobrara Formation is located in Adams County, Colorado, in Township 1 South, Range 68 West, Sections 1 through 24; in Boulder County, Colorado, in Township 1 South, Range 69 West, Sections 1 through 24; Township 1 North, Range 69 West, Sections 1 through 36; and in Weld County, Colorado, in Township 1 North, Range 68 West, Sections 1 through 36, 6th P.M. No federal acreage is included in the recommended area and the area contains approximately 120 square miles.

The Niobrara Formation underlies the Pierre Shale and overlies the Codell Sandstone. Shales, mudstones, limestones, and dolomites comprise the Niobrara Formation. The top of the Niobrara Formation averages 7,600 feet in depth. The Niobrara Formation varies in thickness from 250 to 450 feet and the formation is of Cretaceous age.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-45 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97 [Reg. Preambles 1977-1981) FERC Stats. and Regs. ¶30,180 (1980), the Director gives notice of the proposal submitted by Colorado that the Niobrara Formation as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 24, 1985. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-240 (Colorado-40), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than December 26, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, will be amended as set forth below, in the event the Commission adopts Colorado's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

December 10th. It requested an

may execute orders for others on the

BILLING CODE 6351-01-M

2. Section 271.703 is amended by adding paragraph (d)(206) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(183)—(205) [Reserved]

(206) *Niobrara Formation in Colorado.* RM79–76–240 (Colorado–40).

(i) *Delineation of formation.* The Niobrara Formation is located in Adams County, Colorado, in Township 1 South, Range 68 West, Sections 1 through 24; in Boulder County, Colorado, in Township 1 South, Range 69 West, Sections 1 through 24; Township 1 North, Range 69 West, Sections 1 through 36; and in Weld County, Colorado, in Township 1 North, Range 66 West, Sections 1 through 36, 6th p.m.

(ii) *Depth.* The average depth to the top of the Niobrara Formation is 7,600 feet. The Niobrara Formation varies in thickness from 250 to 450 feet.

[FR Doc. 84-32527 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79–76–239; Colorado–39 Addition]

High-Cost Gas Produced From Tight Formations; Colorado

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 217.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Niobrara Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on January 24, 1985.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 26, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Edward Gingold, (202) 357–5491, or Victor Zabel, (202) 357–8616.

Issued December 10, 1984.

I. Background

On November 15, 1984, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Niobrara Formation located in Weld County, Colorado, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Colorado's recommendation that the Niobrara Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended acreage is located within the Denver-Julesberg basin and borders the city of Greeley, Colorado, to the south and east. The recommended formation underlies approximately 79,360 acres in Weld County, Colorado, and has an average gross thickness of 350 feet in this area. The average depth to the top of the Niobrara Formation is 7,000 feet. The Niobrara in this area is found between the botton of the Sharon Springs Shale and the top of the Codell Sandstone.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–44, Order No. NG–44–2 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Colorado that the Niobrara Formation as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before January 24, 1985. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–239 (Colorado-39 Addition), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than December 26, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, will be amended as set forth below, in the event

the Commission adopts Colorado's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(207) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(183)—(206) [Reserved]

(207) *Niobrara Formation in Colorado.* RM79–76–239 (Colorado-39 Addition).

(i) *Delineation of formation.* The Niobrara Formation is located in Weld County, Colorado, in Township 4 North, Range 64 West, 6th P.M., all Sections; Township 4 North, Range 65 West, 6th P.M., all Sections; Township 5 North, Range 64 West, 6th P.M., Sections 25 through 36; Townships 5 North, Range 65 West, 6th P.M., Sections 2 through 36; Township 5 North, Range 66 West, 6th P.M., Sections 1, 12, 13, and 36; and Township 6 North, Range 65 West, 6th P.M., Sections 31 and 32.

(ii) *Depth.* The Niobrara Formation is defined as that interval which begins at a depth of approximately 7,000 feet and varies in thickness from 250 feet to 350 feet. The Niobrara in this area is found between the bottom of the Sharon Springs Shale and the top of the Codell Sandstone.

[FR Doc. 84-32528 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–145–84]

Income Taxes; Limitation on Amount of Depreciation and Investment Tax Credit for Luxury Automobiles; Limitation When Certain Property Is Used for Personal Purposes; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the limitation on amount of depreciation and investment tax credit for luxury automobiles; limitation when certain property is used for personal purposes.

DATES: The public hearing will be held on February 5, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by January 22, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines or oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR–145–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 274(d) and 280F of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, October 24, 1984 (49 FR 42743).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than January 22, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-32476 Filed 12-12-84; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[LR–242–84]

Special Rules for Certain Refund Claims Treated as Special Enforcement Areas Under Rules for Consolidated Partnership Proceedings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations on procedure and administration relating to special enforcement areas under the rules for consolidated partnership proceedings. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES:

Proposed Effective Date

The regulations are proposed to be effective with respect to certain applications for tentative carryback and refund adjustments ("quick refunds") and claims for credit or refund filed after the 30th day after the day on which final regulations on this subject are published in the **Federal Register**.

Date for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by February 11, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–242–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Nerman Dobynes Hubbard of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this

DATES: Comments on the proposed rule are due on January 24, 1985.

the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

Code of Federal Regulations, will be amended as set forth below, in the event

AGENCY: Internal Revenue Service, Treasury.

of the agenda will be available free of charge at the hearing.

Rules and Regulations portion of this

issue of the **Federal Register** amend the Regulations on Procedure and Administration (26 CFR Part 301) under section 6231(c) of the Internal Revenue Code of 1954. The temporary regulations are designated by a "T" following their section citation. This document proposes that the rules prescribed in those temporary regulations be adopted as final regulations.

The regulations provide rules relating to special enforcement areas under the rules consolidated partnership proceedings. Specifically, they identify certain applications for tentative adjustments ("quick refunds") and refund claims attributable to abusive tax shelters as areas that have been determined to present special enforcement considerations. These regulations are to be issued under the authority contained in section 6231(c) (1) and (3) of the Internal Revenue Code of 1954 (96 Stat. 665, 26 U.S.C. 6231 (c) (1) and (3)). For the text of the temporary regulations, see FR Doc. 84-32473 (T.D. 7996) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

The Secretary of the Treasury has certified that this rule will not have a significant economic impact on a substantial number of small entities because the effect of the regulations will be merely to postpone payment on certain refund claims where it is highly likely that the refund is attributable to an abusive tax shelter. Any refund ultimately determined to be allowable will be paid with interest. A Regulatory Flexibility Analysis is therefore not required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Nerman Dobynes Hubbard of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of Information, Filing requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-32474 Filed 12-10-84; 1:31 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3-84-74]

Regatta; Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: Special Local Regulations are being proposed for the Empire State Regatta being sponsored by the Capital Rowing Club, Inc. of New Scotland, New York. This event will be held on June 8–9, 1985 between the hours of 9:00 a.m. and 6:00 p.m. daily. The Coast Guard is considering the issuance of this regulation to provide for the safety of participants and spectators on navigable waters during the event.

DATE: Comments must be received on or before January 28, 1985.

ADDRESS: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3-84-74) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelop is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lt. D.R. Cilley, Project Officer, Boating Safety Office, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Empire State Regatta is sponsored by the Capital Rowing Club, Inc. of New Scotland, New York on behalf of the United States Rowing Association. This special crew racing event will serve as the 1985 Northeast Regional Championships. The races will be held on a 2000 meter course on the Hudson River in Albany, New York. Approximately 250 crew shells, ranging in size from 26 to 68 feet in length will race in heats throughout the day from 9:00 a.m. to 6:00 p.m. on both days. The race course will consist of 6 lanes marked by 7 rows of buoys anchored to the botton of the river. Small fluorescent orange and yellow buoys will be set in the river on June 7, 1985 and will be removed during the evening of June 9, 1985. The sponsor shall provide several vessels which will assist the Coast Guard Patrol Commander in controlling the event and spectator craft. The Coast Guard intends to restrict vessel movement within this section of the Hudson River during this event to provide for the safety of the participants and spectators on navigable waters. Vessels less than 20 meters in length will be allowed to transit the regulated area at no wake speeds at specified intervals (approximately every 2 hours) throughout each race day as directed by

the Coast Guard Patrol Commander. Larger vessels will not be allowed to pass through the regulated area at any time during the effective period unless in an emergency and authorized by the Coast Guard Patrol Commander. The Coast Guard Captain of the Port of New York has contacted numerous commercial/oil facilities along the Hudson River, north of the regulated area, asking their cooperation in scheduling any vessel transits so as not to interfere with this event. Mariners are urged to use extreme caution when transiting the regulated area. The Coast Guard will issue a safety voice broadcast and this regulation will be published in the Local Notice to Mariners to advise the general public and commercial users on the Hudson River of the event.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large spectator crowd along the shores of the Hudson River which should compensate certain area merchants for the inconvenience of having navigation restricted. Smaller craft will be allowed to transit the regulated area at specified times during each race day and during the evening of June 8, 1985 after the races until they start again on June 9, 1985 at 9:00 a.m. A recent phone survey of commercial facilities who rely on the river to move their product indicates that there is not a lot of traffic which would be inconvenienced by this closure of the river. Only 7 commercial vessels passed through this portion of the river during a 7 day period in early June, 1984. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations by adding a temporary section 100.35–313 to read as follows:

§ 100.35–313 Empire State Regatta, Albany, New York

(a) *Effective Dates:* This regulation will be effective from 6:00 a.m. on June 7, 1985 to 6:00 a.m. on June 10, 1985.

(b) *Regulated Area:* That Section of the Hudson River between the Route I–90 Interchange Bridge on the north and the northern end of Culver Dike on the south.

(c) *Special Local Regulations:* (1) The regulated area shall be intermittently closed to all vessel traffic from 6:00 a.m. June 7, 1985 to 6:00 a.m. June 10, 1985 except as specified below or as directed by the Coast Guard Patrol Commander.

(2) Vessels greater than 20 meters in length shall not transit the regulated area at any time during the effective period unless directed by the Coast Guard Patrol Commander.

(3) Vessels less than 20 meters in length may transit the regulated area as specified in paragraphs (c) (4) and (5) of the section. Unless otherwise directed by the Coast Guard Patrol Commander transiting vessels shall at all times: Proceed at no wake speeds, remain clear of the race course area as marked by the sponsor-provided buoys, not interfere with races or any shells in the area, make no stops and keep to the eastern edge of the Hudson River.

(4) From 9:00 a.m. to 6:00 p.m. on both June 8 and 9, 1985 vessels permitted to transit shall be escorted by an official patrol vessel at specified intervals (approximately every 2 hours) as directed by the Coast Guard Patrol Commander. During this period vessels approaching the Albany Yacht Club from the south and those vessels departing the yacht club heading south may do so without escort.

(5) From 6:00 a.m. on June 7, 1985 to 9:00 a.m. on June 8, 1985 and from 6:00 p.m. on June 8, 1985 to 9:00 a.m. on June 9, 1985 and from 6:00 p.m. on June 9, 1985 to 6:00 a.m on June 10, 1985 vessels permitted to transit may do so without escort.

(6) No person or vessel shall anchor or remain in the regulated area during the effective period unless participating in the event or authorized by Coast Guard patrol personnel.

(7) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(8) For any violation of this regulation, the following maximum penalities are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108(b); 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: December 5, 1984.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84-32483 Filed 12-12-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2736-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking; extension of the public comment period.

SUMMARY: On August 3, 1984 (49 FR 31094), USEPA proposed rulemaking denying the State of Indiana's request to redesignate St. Joseph and Elkhart Counties to attainment for ozone. This Indiana request was based on ambient ozone data from the years 1981–1983. The State requested an extension to the public comment period in order to submit ozone data for the year 1984. USEPA is extending the public comment period to February 8, 1985 based upon this request.

DATE: Comments must be postmarked on or before February 8, 1985.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604.

Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V

comments. If a public hearing is held, also be hand-delivered to this address. throughout each race day as directed by

(5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604.
Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT:
Anne E. Tenner, (312) 886–6036.

Authority: 42 U.S.C. 7410, 7502, and 7601.

Dated: December 5, 1984.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 84–32472 Filed 12–12–84; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Extension of Comment Period on Onshore Oil and Gas Order No. 2—Hydrogen Sulfide Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: A proposed rulemaking that would issue Onshore Oil and Gas Order No. 2 relating to Hydrogen Sulfide Operations was published in the **Federal Register** on October 15, 1984 (49 FR 40354) with a 60-day comment period. The Department of the Interior has been requested to extend the comment period to allow the public to develop an appropriate response. In response to this request, the comment period is hereby extended for a period of 30 days.

DATE: Comments should be submitted by January 14, 1985. Comments received or postmarked after that date may not be considered as part of the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to:
Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
Eddie R. Wyatt (202) 653–2133
or
Robert C. Bruce (202) 343–8735

December 7, 1984.

Leona A. Power,
Acting Assistant Secretary of the Interior.

[FR Doc. 84–32467 Filed 12–12–84; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Rulemaking Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of rulemaking petition.

SUMMARY: This notice denies a petition filed by Mr. Carl Seashore to amend Federal Motor Vehicle Safety Standard No. 111, *Rearview mirrors*, to require the use of an automated rearview mirror system on passenger cars. This rearview mirror system was designed by Mr. Seashore and would involve the use of exterior convex mirrors on the front fenders of a passenger car to improve the driver's field of view. This petition is the same as the one filed by Mr. Seashore on August 3, 1982, except that the earlier petition would have permitted, instead of required, the use of this automated rearview mirror system. On May 2, 1983, the agency denied the first petition (48 FR 19761), because the agency lacked, and the petitioner was unable to provide, information on the safety performance of this rearview mirror system. No new information was submitted with Mr. Seashore's latest petition. Therefore, this petition is denied for the same reasons as the first petition.

FOR FURTHER INFORMATION CONTACT:
Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202) 426–2153.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 111, *Rearview mirrors*, specifies requirements for the performance and location of rearview mirrors on passenger cars, multipurpose passenger vehicles, trucks, buses, schoolbuses, and motorcycles. Mr. Carl Seashore first petitioned the agency in 1982 to permit the use of an automated rearview mirror system on passenger cars. The system which he designed would involve the use of convex mirrors located on the front fenders of passenger cars. These mirrors would automatically change alignment and position during driving maneuvers. However, Mr. Seashore was unable to provide any information on the safety performance of his rearview mirror system and the agency has none. Therefore, on May 2, 1983, the agency denied this petition (48 FR 19761). Mr. Seashore has submitted a second petition for the same automated rearview mirror system. The only change in the second petition is that Mr. Seashore requests that his rearview mirror system be required, instead of permitted, on passenger cars. Again, no safety performance data is available.

In the May 2, 1983 **Federal Register** notice, the agency discussed its ongoing research in improved rearview mirror systems and expressed its concerns with the safety aspects of Mr. Seashore's system. For the reasons discussed in that notice, the agency denies Mr. Seashore's second petition to amend Standard No. 111 to require the use of his automated rearview mirror system on passenger cars.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: December 7, 1984.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 84–32466 Filed 12–12–84; 8:45 am]
BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC–43 (Sub. No. 16)]

Lease and Interchange of Vehicles (Identification Devices)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition filed by the Common Carrier Conference—Irregular Route, the Commission is proposing to revise (1) 49 CFR 1057.12(g) to permit an authorized carrier-lessee, upon termination of a lease agreement owner-lessor upon the return by the owner-lessor of the carrier's identification devices, and (2) 49 CFR 1057.11(c)(1) to provide that, alternatively, the parties to an equipment lease may provide in their lease that the owner-lessor of the equipment, rather than the carrier, shall be responsible for removal and return of the identification devices. The intended purpose of these revisions is to avoid carrier liability for the acts of others upon termination of the lease if, for any reason, the equipment continues to display the carrier's identification.

DATE: Comments are due January 14, 1985.

ADDRESS: Send an original and, if possible, 15 copies of comments to: Ex Parte No. MC–43 (Sub-16), Room 2203, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Paul W. Schach, (202) 275–7885
or
Mary Kelly, (202) 275–7292.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the full Commission decision which is available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, or which may be obtained from Room 2215, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC. 20423; or by calling (202) 275–7428.

Energy and Environmental Considerations.

This action does not appear to affect significantly the quality of the human environment or conservation of energy resources. However, we invite interested parties to comment on these issues.

Initial Regulatory Flexibility Analysis

Under 5 U.S.C. 601 *et seq.*, we are required to analyze the potential impact of the proposed rules on small entities. The proposed rule at 49 CFR 1057.12(g) would permit an authorized carrier-lessee to condition payment to an equipment owner-lessor, upon termination of a lease agreement, on the return by the latter of the carrier's identification devices. We conclude that while this proposed rule would affect a substantial number of small entities, i.e., independent owner-operators, the economic impact of the rule would not be substantial. The purpose of this proposed rule is to assist carriers to obtain removal and return of their indentification devices once the lease contract has terminated, and ultimately to protect them from liability for any subsequent tortious acts of the equipment owners. Equipment owners would incur some additional burden and expense by having to remove, package, and return identification devices to the carrier, but such additional costs could ultimately be the subject of negotiations between the equipment owner and the carrier entering into a lease contract. The purpose of the proposed rule at 49 CFR 1057.11(c)(1) is the make our regulations clearer regarding an option already available to the contracting parties. A carrier-lessee and owner-lessor are not restricted against contractually establishing responsibility for removal and return of the devices under the terms of the lease. The proposed rule simply clarifies our regulations on this point. For these reasons, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1057

Motor carriers.

This notice of proposed rulemaking and accompanying decision are issued pursuant to 49 U.S.C. 11107 and 10321 and 5 U.S.C. 553.

Decided: November 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,
Secretary.

Appendix

PART 1057—[AMENDED]

Part 1057 of the Code of Federal Regulations, Title 49, would be amended as follows to reflect the modifications proposed here:

§ 1057.12 [Amended]

1. An additional sentence would be added to 49 CFR 1057.12(g) between the existing second and third sentences as follows:

(g) * * * In addition, the lease may provide that, upon termination of the lease agreement, the lessor shall return all identification devices of the authorized carrier to the carrier as a condition precedent to payment. * * *

§ 1057.11 [Amended]

2. An additional sentence would be added to 49 CFR 1057.11(c)(1) after the last existing sentence as follows:

(c) * * *

(1) * * * Alternatively, the parties to an equipment lease may, in their lease, provide that the owner-lessor of the equipment, rather than the carrier, shall be responsible for removal and return of the identification devices.

[FR Doc. 84–32458 Filed 12–12–84; 8:45 am]
BILLING CODE 7035–01–M

Robert C. Bruce (202) 343-8735

use of convex mirrors located on the front fenders of passenger cars. These

purpose of these revisions is to avoid carrier liability for the acts of others

Notices

Federal Register
Vol. 49, No. 241
Thursday, December 13, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 7, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118

Comments on any of the items listed should be submitted directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Food and Nutrition Service
  School Lunch Recipe Field Test
  Single time
  State or local governments; 1,411 responses; 706 hours; not applicable under 3504(h)
  Patti Brodeur (703) 756-3556

Revision

- Agricultural Marketing Service
  Dairy Research and Promotion Order
  On occasion
  State or local governments; Farms; Businesses or other for-profit;
  Small businesses or organizations; 106,717 responses; 20,639 hours; not applicable under 3504(h)
  Richard M. McKee (202) 447-6909
- Agricultural Marketing Service
  Marketing Order 989—Raisins Produced From Grapes Grown in California
  On occasion, Weekly, Monthly, Annually
  Farms; Businesses or other for-profit; 21,325 responses; 2,116 hours; not applicable under 3504(h)
  Charles Villalonga (202) 447-4140
- Agricultural Stabilization and Conservation Service
  Farm Storage and Drying Equipment Loan Program—Loan Application and Approval
  CCC-185
  Farms; Businesses or other for-profit; Small businesses or organizations; 6,000 responses; 1,600 hours; not applicable under 3504(h)
  Beverly Pritts (202) 447-8374

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 84-32452 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-01-M

Farmers Home Administration

Natural Resource Management Guide Meeting; Hilo, HI

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Hilo, Hawaii, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 20, 1984, 1:00 p.m. to 3:00 p.m. Comments must be received no later than January 19, 1985.

ADDRESS: Meeting location at Room 5311, 300 Ala Moana Boulevard, Honolulu, Hawaii.

Written comments and further information will be addressed to: State Director, FmHA, Waianuenue Avenue, Hilo, Hawaii 96720 (808) 961-4781.

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Hawaii State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Hawaii. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contract.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: December 6, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-32528 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting; Lexington, KY

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Lexington, Kentucky, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 19, 1984; 1:00 p.m. to 3:00 p.m. Comments must be received no later than January 18, 1985.

ADDRESSES: Meeting location at Second Floor Meeting Room, FmHA, 333 Waller Avenue, Lexington, Kentucky.

Written comments and further information will be addressed to: State Director, FmHA, 333 Waller Avenue, Lexington, Kentucky 40504 (606) 233-2733.

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Kentucky State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Kentucky. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: December 6, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-32514 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting; Portland, OR

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Portland, Oregon, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on January 21, 1985, 10:00 a.m. to 11:00 a.m. Comments must be received no later than February 20, 1985.

ADDRESSES: Meeting location at Room 1578, Federal Building, 1220 SW. Third Avenue, Portland, Oregon

Written comments and further information will be addressed to: State Director, FmHA, 1220 SW. Third Avenue, Portland, Oregon 97204 (503) 221-2731.

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Oregon State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Oregon. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Natural Resource Management Guide Meeting; Albuquerque, NM

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting; correction.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Albuquerque, New Mexico, inadvertently published in the **Federal Register** of December 4, 1984, (49 FR 47423) an incorrect date of a public information meeting to discuss its draft Natural Resource Management Guide. The corrected date of the meeting is December 21, 1984, rather than December 23, 1984. Comments must be received no later than January 20, 1985, rather than January 22, 1985.

Dated: December 6, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-32530 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-07-M

Natural Resource Management Guide Meeting; Morgantown, WV

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Morgantown, West Virginia, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on December 19, 1984, 1:00 p.m. to 2:30 p.m. Comments must be received no later than January 18, 1985.

ADDRESSES: Meeting location at Miller Building, 614 Virginia Street East, Charleston, West Virginia.

WRITTEN COMMENTS AND FURTHER INFORMATION WILL BE ADDRESSED TO: State Director, FmHA, 75 High Street, Morgantown, West Virginia 26505 (304) 291-4796.

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Virginia State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Virginia. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: December 6, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-32515 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-07-M

Dated: December 6, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-32516 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

SMUD-SPPCo Intertie Transmission Project in the Toiyabe, Tahoe and Eldorado National Forests and the Lake Tahoe Basin Management Unit; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, U.S. Forest Service, and the Sacramento Municipal Utility District (SMUD) will participate a joint lead agencies in the preparation of a joint environmental impact statement/environmental impact report (EIS/EIR) for the construction of the SMUD-SPPCo Intertie Project. The Department of the Interior, Bureau of Land Management (BLM), will be a cooperating agency. The proposed project consists of an extra high voltage transmission line connecting the electrical transmission facilities of SMUD and Sierra Pacific Power Company (SPPCo), facilitating power exchanges for mutual benefit. Project implementation would involve acquiring rights-of-way for a powerline corridor roughly 75 to 100 miles in length by 100 to 200 feet wide, and construction operation and maintenance of a 345,000 volt transmission line connecting eastern Sacramento County, California with Reno or Minden, Nevada. The study area being evaluated for a transmission alignment includes portions of Toiyabe, Tahoe and Eldorado National Forests and the Lake Tahoe Basin Management Unit, as lands administered by the BLM in California and Nevada. The study area encompasses portions of Alpine, Amador, Eldorado, Nevada, Placer, Sacramento and Sierra Counties in California, and portions of Douglas and Washoe Counties in Nevada.

Preparation of the environmental document and procedures for its review will be conducted in compliance with the Forest Service and the Council on Environmental Quality regulations for implementation of the National Environmental Policy Act (NEPA), and the State of California guidelines for implementation of the California Environmental Quality Act (CEQA). Possible alternatives which have been identified at this stage for analysis in the EIS/EIR include variations in the alignment, design and construction of the line, as well as various levels and types of mitigation. A no-action alternative will also be evaluated.

Construction, operation and maintenance of a transmission line has impacts which affect certain environmental parameters more than others. For instance, visual resources, vegetation and wildlife may be affected more by the project than would air quality, water resources and fisheries. Public scoping meetings will be conducted to gain public and agency input to the issues and alternatives which will be addressed in the EIS/EIR. The location, date and time of these meetings are as follows:

Scoping Meeting Schedule

January 14, 1985—6:30 p.m., Moose Lodge, 203 Scott Street, Folsom, CA
January 15, 1985—6:30 p.m., Nevada City Veterans Building, 415 North Pine Street, Nevada City, CA
January 16, 1985—6:30 p.m., Tahoe-Truckee School District Board Room, Donner Pass Road between Truckee High School and Elementary School, Truckee, CA
January 17, 1985—6:30 p.m., City Hall Council Chambers, 490 South Center Street, Reno, Nevada
January 21, 1985—6:30 p.m., Civic Hall, 1600 Esmeralda, Minden, Nevada
January 22, 1985—6:30 p.m., City Council Chambers, 1900 Lake Tahoe Blvd., South Lake Tahoe, CA
January 23, 1985—6:30 p.m., The Forum—El Dorado High School, 561 Canal Street, Placerville, CA

It is anticipated that the draft EIS/EIR will be available in early 1986 and the final EIS/EIR near the end of 1986.

Members of the public, State and local agencies and organizations are welcome and encouraged to participate. Zane G. Smith, Jr., Regional Forester of the Pacific Southwest Region, will be the responsible federal official for the study. Written comments about the project and the environmental analysis process should be directed to:

Tom Schmidt, Project Liaison Officer, U.S. Forest Service, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667, (916) 622-5061
Brian Jobson, Environmental Specialist, Sacramento Municipal Utility District, 6701 4th Avenue, Sacramento, CA 95852-1830, (916) 732-6225

Dated: December 7, 1984.

Warren G. Davies,

Acting Regional Forester.

[FR Doc. 84-32440 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Kinkaid Lake Watershed, IL; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conversation Service, U.S. Department of Agriculture, gives notice that an environmental statement is not being prepared for the Kinkaid Lake Watershed, Jackson County, Illinois.

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationist, Soil Conservation Service, 301 North Randolph Street, Champaign, Illinois, 61820, Telephone (217) 398-5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John J. Eckes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns are erosion, sedimentation, water quality, water quantity, and resource base degradation. The planned works of improvement include conservation tillage systems, terraces, grassed waterways, grade stabilization structures, and land use change to hayland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John J. Eckes.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and Local clearinghouse review of Federal and federally assisted programs and projects is applicable)

John J. Eckes,

State Conservationist.

December 5, 1984.

[FR Doc. 84-32456 Filed 12-12-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 84-12-13]

Fitness Determination of Metro Express II, Inc. d/b/a/ American Eagle; Order to Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-12-13, Order to Show Cause.

SUMMARY: The Board is proposing to find that Metro Express II, Inc. d/b/a American Eagle is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 26, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin J. McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673-5920.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-12-13 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-12-13 to that address.

By the Civil Aeronautics Board: December 5, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32531 Filed 12-12-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 54-84]

Foreign-Trade Zone 29—Louisville, KY; Application for Subzone, General Electric Appliance Park Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, requesting special-purpose subzone status for the home appliance manufacturing plant of General Electric Corporation in Jefferson County, Kentucky, adjacent to the Louisville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 7, 1984. The applicant is authorized to make this proposal under § 65.530(b) of the Kentucky Revised Statutes.

The proposed subzone will be at General Electric's Appliance Park plant, which covers 942 acres on Fegenbush Lane in Jefferson County. The facility employs 14,000 persons and is used to produce household appliances such as refrigerators, dishwashers, dryers, electric ranges and room air conditioners. Of the thousands of parts used in the production process, some 370 are purchased from foreign sources, including drive tubes, shafts, brake bands, solenoids, and springs. Raw steel is sourced domestically. Most of the products are sold domestically, though GE plans to increase its export activity.

Zone procedures will allow GE to avoid duty payments on the foreign components used in its exports. On its domestic sales, the company would be able to take advantage of the same duty rates available to importers of the finished products, who have doubled their share of the U.S. market in the past 4 years to 12 percent. The duty rates on the components mentioned above range from 6.2 to 7.1 percent whereas the duty rates for washing machines, dishwashers and electric ranges are 4.4, 4.3 and 1.5 percent. These savings will help GE improve its cost competitiveness in relation to production facilities abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Dept. of Commerce, Washington, D.C. 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Dwayne G. Lee, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed below and postmarked on or before January 21, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, U.S. Post Office and Courthouse Bldg., Rm. 636, Louisville, KY 40202.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm. 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: November 10, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-32523 Filed 12-12-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 49-84]

Foreign-Trade Zone 66—Wilmington, NC; Application for Subzone at Honda Power Equipment Company Plant, Alamance County, NC

The period for comments on the above case, involving a special-purpose subzone for the lawnmower manufacturing plant of Honda Power Equipment Company, in Alamance County, North Carolina (49 FR 44779, November 9, 1984 is extended to January 9, 1985, to allow interested parties additional time in which to comment on the proposal.

Comments are invited in writing during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania, NW., Rm. 1529, Washington, D.C. 20230.

Dated: November 10, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-32503 Filed 12-12-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 53-84]

Proposed Foreign-Trade Zone—Albany, NY, Customs Port of Entry Area; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital District Regional Planning Commission, a New York public corporation associated with Albany, Rensselaer, Saratoga and Schenectady Counties, requesting authority to establish a general-purpose foreign-trade zone in the Albany Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 6, 1984. The applicant is authorized to make this proposal under Chapter 138 of the Laws of the State of New York, 1984.

The proposed foreign-trade zone will involve 3 sites totalling 45 acres. Site 1 covers 8 acres and includes 148,000 square feet of warehousing space within the 551-acre Northeastern Industrial Park on County Route 201 in Guilderland, Albany County. Site 2 involves a 44,800 square foot warehouse within the 235-acre Rotterdam Industrial Park on Route 7 in Rotterdam, Schenectady County. Site 3 covers 36 acres, including 43,000 square feet of warehouse space within the 236-acre Port of Albany, on the Rensselaer side. Sites 1 and 2 will be operated by Distribution Unlimited, Inc. of the Galesi Group.

The application contains evidence for the need for zone services in the Albany area. A number of firms have expressed an interest in using zone procedures for the storage, processing and manufacture of items such as specialty trucks, marine containers, control valves, fabricated metal products, textiles, leather, and gloves.

The application contains only a single manufacturing proposal. Walter Equipment U.S.A., Inc. is proposing to use zone procedures to assemble specialty trucks such as tow trucks, snow removal trucks and off-the-road trucks. The company purchases engines, bodies, axles, tires and other parts, and assembles the vehicles on its frames, using a variety of its parts such as gear drives and differentials. Some 2 percent of its components are purchased from foreign sources, including fiberglass watertanks, shock absorbers, machined forgings, spring assemblies, cabs, and alloy-steel brake castings. It also sends metal parts to Canada for machining. Some 5 percent of the completed trucks are exported. Any other manufacturing requests would be reviewed by the Board separately on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; John Martuge, Area Director, U.S. Customs Service, New York Region, Room 423, 6 World Trade Center, New York, NY 10048; and Colonel F.H. Griffis, Jr., District Engineer, U.S. Army Engineer District New York, 26 Federal Plaza, New York, NY 10278.

As part of its investigation, the examiners committee will hold a public hearing on January 15, 1985, beginning at 9:00 a.m., in Hearing Room B of the State Legislative Office Building, State Capitol, Albany. Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by January 9. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through February 15, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 445 Broadway, P.O. Bldg., Rm. 215, Albany, NY 12207

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: November 10, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-32522 Filed 12-12-84; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

Final Determinations of Sales at Less Than Fair Value; Certain Carbon Steel Products From Spain

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final determinations of sales at less than fair value: Certain carbon steel products from Spain.

SUMMARY: We have determined that certain carbon steel products from Spain are being sold, or are likely to be sold, in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determinations. The ITC will determine, within 45 days of publication of this notice, whether U.S. industries are being materially injured, or threatened with material injury, by imports of this merchandise. For two of the three firms investigated, we have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have determined that one producer should be excluded from this determination, as indicated in the "Suspension of Liquidation" section.

EFFECTIVE DATE: December 13, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–1776.

Final Determinations

We have determined that certain carbon steel products from Spain are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) ("the Act").

We have found margins for Empresa Nacional Siderurgica, S.A. (Ensidesa) and Altos Hornos de Vizcaya, S.A. (AHV) as listed for each product in the "Suspension of Liquidation" section of this notice. The margins for Ensidesa and AHV are based on the best information available as explained in the section of this notice which describes our fair value comparisons. Jose Maria Aristrain, S.A. and Jose Maria Aristrain-Madrid, S.A. (Aristrain), both of which sold only carbon steel structural shapes to the U.S. during the period under investigation, had no margins on these sales. Aristrain, accordingly, is excluded from the affirmative determination on carbon steel structural shapes.

Case History

On February 10, 1984, we received a petition from the United States Steel Corporation, filed on behalf of the U.S. industries producing certain carbon steel structural shapes, carbon steel plate, hot-rolled carbon steel sheet, cold-rolled carbon steel flat-rolled products and galvanized carbon steel sheet. The petitioner alleged that these steel products from Spain are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such sales are materially injuring, or are threatening material injury to, U.S. industries. The petitioner also alleged sales in the home market at prices below the cost of production.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping investigations. We initiated such investigations and notified the ITC of our actions on March 8, 1984 (49 FR 8655–8, 8645–6). The ITC subsequently found, on March 26, 1984, that there is a reasonable indication that imports of carbon steel structural shapes, carbon steel plate, hot-rolled carbon steel sheet, cold-rolled carbon steel flat-rolled products, and galvanized carbon steel sheet are materially injuring, or are threatening material injury to, U.S. industries.

On March 13, 1984, questionnaires were presented to counsel for Aristrain and to counsel for Ensidesa, AHV, Altos Hornos Del Mediterraneo, S.A. (AHM), and Hierros Madrid, S.A. On April 26, 1984, we received a letter from the Spanish government filed on behalf of the producers and exporters of certain carbon steel products, requesting additional time in which to respond to the questionnaires. We subsequently granted an extension and extended the due date for responses to May 7, 1984. On May 7, 1984, we received Aristrain's response. On May 8, 1984, we received partial responses to our questionnaire from Ensidesa and AHV. We received the cost of production portions of the responses of Ensidesa and AHV on May 21, 1984. Hierros Madrid and AHM did not repond to our questionnaire since they had no sales of the subject merchandise to the United States during the period of investigation.

Our review of the responses of Ensidesa and AHV revealed numerous deficiencies. By hand-delivered letters to counsel representing these two respondents dated May 17 and June 8, 1984, we requested additional information on these companies' financial statements, various aspects of home market and U.S. sales, English translations of various parts of their submissions, additional cost of production information, and non-confidential summaries of all confidential information.

Some of the additional information requested was filed on May 21, 1984. Counsel for respondents agreed to the release of certain confidential information under administrative protective order (APO), but refused to release the incomplete confidential cost of production information.

On June 22, 1984, we returned Ensidesa's computer tape as well as the cost of production data for Ensidesa and AHV. We requested a readable tape and adequate cost of production responses. On June 28, 1984, counsel for Ensidesa and AHV requested that Commerce postpone making its preliminary determinations until September 7, 1984. This request was not granted because it was determined that the requirements for such an extension, as set forth in section 733(c)(1) of the Act, were not met.

The responses of Ensidesa and AHV received on July 13, 1984, were still incomplete. On July 19, 1984, we made our preliminary determinations in these investigations (49 FR 29987). In making our preliminary determinations with respect to Ensidesa and AHV we used the petition as the source of the best information available regarding foreign market value.

On July 12, 1984, Ensidesa and AHV requested an extension of the final determinations. We granted this request and extended the due date for the final determination to December 7, 1984 (49 FR 42270). Counsel for Ensidesa and AHV was advised during the disclosure meeting on July 24, 1984, of the missing and incomplete information remaining after the July 13 submissions and was told that failure to submit adequate responses by August 6, 1984, would force the Department to make its final determinations based on the best information available. Additional information was received on August 6, 1984, but we determined that the responses of Ensidesa and AHV remained insufficient. We returned the cost of production and home market sales portions of these responses on August 23, 1984, with a letter outlining the deficiences. The U.S. sales portions of these responses were also inadequate but were accepted, subject to satisfactory verification, for use as the best information available.

On September 11, 1984, the petition was amended to allege the existence of critical circumstances for each of the products under investigation. On October 11, 1984, the Department preliminarily determined that critical circumstances exist for carbon steel plate and for all carbon steel structural shapes except for steel structural shapes produced by Aristrain. The Department preliminarily determined that critical circumstances do not exist for structural shapes produced by Aristrain, hot-rolled sheet, cold-rolled flat-rolled products, and galvanized sheet (49 FR 40631).

We held a hearing on September 20, 1984, to allow interested parties an opportunity to address the issues arising in these investigations. At the hearing and subsequent to it, the returned portions of the responses of Ensidesa and AHV were resubmitted for the record.

Scope of Investigations

The products covered by these investigations are:

- Carbon steel structural shapes;
- Carbon steel plate;
- Hot-rolled carbon steel sheet;
- Cold-rolled carbon steel flat-rolled products; and
- Galvanized carbon steel sheet.

The products are fully described in Appendix I which follows this notice. These investigations cover the period from September 1, 1983, through February 29, 1984.

Fair Value Comparison

To determine whether sales in the United States by Aristrain were made at less than fair value, we compared the United States price with the foreign market value as determined by sales in the Spanish home market.

To determine whether sales of the subject merchandise in the United States by Ensidesa and AHV were made at less than fair value, we compared the United States price with the foreign market value. We based foreign market value on constructed value derived from the best information available, which was the alleged cost of production information for these producers contained in the petition, as revised by including information from the 1983 financial statements of these producers. We used the best information available to determine foreign market value for these two manufacturers as required by section 776(b) of the Act; because adequate responses were not submitted in an acceptable form. These two respondents also failed to provide in a timely manner adequate non-confidential summaries of the confidential portions of questionnaire responses as required by section 777(b)(1) of the Act or to grant

information on these companies'

critical circumstances for each of the

777(b)(1) of the Act or to grant

permission for the release of the cost of production portion of the responses under administrative protective order. A full discussion of the attempts to obtain adequate responses from Ensidesa and AHV is contained in the "Case History" section of this notice.

United States Price

For Ensidesa, AHV, and Aristrain, we used the purchase price of the subject merchandise to represent the United States price, as provided in section 772(b) of the Act, because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price for each product based on the CIF or FOB packed prices to unrelated customers in the United States. We made deductions where appropriate, for foreign inland freight, brokerage, insurance, and ocean freight. Pursuant to section 772(d)(1)(B) of the Act, we added taxes which are imposed directly on this merchandise when sold in Spain, but are not collected by reason of the exportation of the merchandise. For Aristrain, we adjusted for the amount of indirect tax rebated upon exportation. This addition was not made for Ensidesa or AHV for the reasons stated in our response to petitioner's comment 10.

Foreign Market Value

The petitioner alleged that sales in the home market occurred at prices below the cost of production for carbon steel structural shapes, carbon steel plate, hot-rolled carbon steel sheet, cold-rolled carbon steel flat-rolled products, and galvanized carbon steel sheet.

We were unable to examine the production costs and home market sales prices of Ensidesa and AHV for the reasons stated above. Thus, we were unable to compare home market prices of Ensidesa and AHV with their cost of production to determine whether the home market sales were made at prices below cost. Therefore, for Ensidesa and AHV, we used constructed value, as defined in section 773(e) of the Act, to determine the foreign market value of each steel product. In accordance with the best available information requirements of section 776(b) of the Act, we calculated constructed value on the basis of the producers' 1983 financial statements of these producers and the methodology used by the petitioner. We did not use data from the 1982 annual reports contained in the petition. We calculated profit on the basis of the statutory minimum of 8 percent of the cost of materials, fabrication and general expenses.

In the case of Aristrain, we found sufficient sales in the home market above the cost of production to allow us to use home market price, as provided in section 773(a)(1)(A) of the Act, to determine foreign market value. We have determined that less than 10 percent of Aristrain's total home market sales were made at prices that were less than its cost of production. Accordingly, we have included all home market sales in our calculation of weighted average home market prices. We calculated foreign market value on the basis of delivered packed prices to unrelated home market customers. Where appropriate, we deducted shipping charges and discounts. We also adjusted for differences in payment terms between home market and U.S. sales in accordance with § 353.15 of our regulations (19 CFR 353.15). We disallowed an adjustment to the price claimed by Aristrain for level of trade differences between the United States and the home market because the company was unable to provide data justifying such an adjustment.

Petitioner's Comments

The following written comments were submitted by petitioner in response to our preliminary determinations.

Comment 1—Petitioner argued that the cost of production information submitted by Aristrain applies to its full year operations for 1983 rather than to its quarterly operations as requested.

Aristrain's cost of production during the period of investigation cannot be calculated from the information submitted.

DOC Position—Aristrain submitted the aggregate cost of production information in the form used in its internal accounting, for which cost statements are only prepared on a yearly basis. Examination of Aristrain's more detailed records during verification allowed identification of the cost of production information applicable specifically to the period of investigation.

Comment 2—Petitioner contends that, although requested to provide complete financial statements for the last five years, Aristrain did not provide a complete set of financial statements for the years 1979 and 1980 or notes to the financial statements for the years 1981 through 1983. In addition, Aristrain did not respond to the Department's request for a full description of its accounting system.

DOC Position—Aristrain is a privately-owned company and therefore does not publish public financial statements. The company submitted copies of its official income statement and balance sheet. There are no explanatory notes required or made in connection with these statements. The description of Aristrain's accounting system provided in its submissions was sufficient to allow analysis of its cost of production information.

Additional clarification provided at verification was sufficient to enable the Department to satisfactorily verify the cost of production information originally submitted.

Comment 3—Petitioner contends that Aristrain understated selling, general and administrative (SGA) expenses by allocating these expenses to production rather than shipments, thus attributing a portion of these expenses to inventory valuation rather than period costs.

DOC Position—We verified Aristrain's total SGA expenses. We adjusted Aristrain's allocation method to reasonably reflect the costs per metric ton of the products sold. Petitioner's suggested methodology of using shipping weight would result in lower SGA expenses per unit, since Aristrain's inventory declined during the period of investigation, and more units were shipped than were produced. Aristrain's initial calculation was conservative.

Comment 4—Petitioner contends that it is not valid to include "financial income" in Aristrain's cost of production calculation.

DOC Position—Inherent in the cost of production are all costs and expenses required to produce the product under investigation and an assignment of general expenses, including finance expenses. By their very nature, these expenses are incurred in the overall operation of the business. Since the company produces only steel products, financial income and expense items of such general nature are properly charged or credited to the full cost of production.

Comment 5—Petitioner argues that Aristrain's cost of production information must reflect the actual use of purchased versus produced semi-finished products.

DOC Position—Aristrain's response to the questionnaire stated that its billet was "* * * acquired from other companies." We verified that the term referred to intra-company transfers from one plant to another, not the purchase of billets or "lingots" on the open market. No semi-finished steel material was purchased from outside the two producing plants.

Comment 6—Petitioner contends that, for each product produced by Aristrain, the Department should compare the home market price of that product to the

product's cost of production on each production line "train."

DOC Position—Aristrain submitted its cost of production for each of the three "trains." We found that the sizes produced on each train overlap and that the cost difference between trains is generally small. Therefore, we determined that a weighted-average cost comparison to the home market sales prices is sufficient.

Comment 7—Petitioner argues that the DFE export tax rebate should not be included in any account totals when calculating the cost of producing merchandise sold in the home market.

DOC Position—The Department verified that Aristrain did not include the DFE rebate in computing the cost of production.

Comment 8—Petitioner contends that Aristrain's questionnaire response did not provide the information necessary to allow proper comparison of the products sold in the export and home markets. Specifically, Aristrain did not provide sufficient detail regarding inputs, construction, specifications, standards, and production processes and facilities.

DOC Position—Aristrain stated in its original response and clarified in later submissions that the merchandise sold in the United States and in the home market is standard material and differs only in terms of units of measurement for dimensional specifications. We verified that the merchandise exported to the United States and that sold in the home market are essentially identical.

Comment 9—Petitioner argues that any attempt by Aristrain to correct the deficiencies in its response by submitting new information during the verification should be rejected. Acceptance of new information at this stage excludes other interested parties from full participation in these investigations by denying them the opportunity to provide comments on such information.

DOC Position—Most of the information provided by Aristrain during verification consisted of materials needed to verify the original submission and correct inadvertent errors in this submission. To the extent possible, revised information was provided in a format and using methodology consistent with the original questionnaire response, on which petitioner was given the opportunity to comment.

Comment 10—Petitioner contends that the rebate received upon exportation under the Desgravacion Fiscal a la Exportacion (DFE) should not be added to the U.S. sales price because respondents have not shown that this payment is a non-excessive rebate of indirect taxes imposed on the merchandise that would have been included in the price of such or similar merchandise sold in the home market.

Each of the respondents requested that the entire DFE be added to United States price.

DOC Position—As stated in our recent final determination in the antidumping investigation of Carbon Steel Wire Rod from Argentina (49 FR 38170), we have determined that the Congress intended generally to provide for comparable treatment of indirect tax rebates in antidumping and countervailing duty investigations. Therefore, we agree with petitioner that only that portion of the DFE which rebates final stage taxes and indirect taxes on components physically incorporated in the exported product should be added to United States price. In this investigation, we were able to verify Aristrain's full cost of production and its tax payments on purchases from suppliers. Most of Aristrain's material input cost consists of steel scrap. In determining the indirect tax incidence on steel scrap, we relied on a 1982 submission by the Government of Spain in the countervailing duty investigation of structural shapes. This submission provided the rate of indirect tax incidence for blooms. We used this information as the best information available, reasoning that the tax incidence on scrap would be at least as great as that on blooms because the scrap purchased by Aristrain was either industrial scrap or old scrap and hence, would have gone through more turnovers than blooms. Using this methodology we were able to verify that the indirect tax incidence on the structurals produced by Aristrain exceeds the DFE payment upon export. Ensidesa and AHV did not provide cost information sufficient to determine the purchased inputs into the exported product. Invoices for certain inputs were submitted but the full cost information requested was not. Because we could not identify these firms' purchased inputs and were not provided with the indirect tax incidence on these inputs, we did not make any addition to the U.S. prices for Ensidesa and AHV.

Comment 11—Petitioner contends that the 1983 financial statements of Ensidesa and AHV were not submitted in a timely fashion and therefore should not be used for purposes of the final determinations.

DOC Position—In choosing best information available, the Department is not constrained by considerations of timely information. The 1983 financial statements constituted the best information available for purposes of the constructed value calculations for Ensidesa and AHV. Data from these statements produce a more accurate representation of costs during the period of investigation than do data from the 1982 financial statements of these companies.

Respondents' Comments—The following written comments were submitted by respondents in response to our preliminary determinations.

Comment 1—Respondents Ensidesa and AHV argue that the Department's refusal to use the cost of production and home market sales information submitted by Ensidesa and AHV in making its preliminary determinations was inappropriate and was not in accord with the requirements of section 776(b) of the Act.

DOC Position—Despite numerous attempts by the Department to obtain this information, the responses of Ensidesa and AHV remained deficient in several respects. Specific deficiencies are listed in our letters to counsel for Ensidesa and AHB, dated June 8, 1984 and August 6, 1984. Because of these deficiencies, the Department was unable to use the cost of production and home market sales portions of these responses in making its determinations.

Comments 2—Respondents Ensidesa and AHV argue that the Department failed to develop information necessary to establish the foreign market value for Ensidesa and AHV and erroneously based its determination of foreign market value upon constructed value.

DOC Position—The Department attempted throughout the course of this investigation to work with respondents and assist them in developing the requested information on foreign market value. As stated previously, the Department repeatedly informed respondents of deficiencies in their responses and asked that further information be provided. Despite these efforts, the cost of production and home market sales information submitted by Ensidesa and AHV remained insufficient. Faced with a reluctance or refusal on the part of a respondent to provide information which that respondent alone possesses, the Department has no obligation to use that respondent's incomplete, unsatisfactory information, or to seek to develop information in equivalent detail elsewhere. Rather, if such reluctance results an inadequate response, the Department must base its determination on the best information otherwise available.

Comment 3—Respondents Ensidesa and AHV argue that it would be inappropriate to use the cost of

general expenses.

copies of its official income statement

home market price of that product to the

payment is a non-excessive rebate of

information available for purposes of

inappropriate to use the cost of

production calculations contained in the petition as best information available because they contain analytical errors, erroneously identify accounts as non-steel revenue, and are based on 1982 financial statements rather than the 1983 financial statements now available.

DOC Position—The Department used the 1983 financial statements of Ensidesa and AHV to calculate constructed values, as a more accurate source of information. In addition, petitioner's method of adjusting for inflation was modified to better reflect actual inflationary effects. We adopted petitioner's methodology of deducting financial income from total revenues as a non-steel revenue, but corrected for petitioner's inadvertent mislabeling of certain accounts.

Comment 4—Counsel for Ensidesa has contested the failure of the Department to use the home market data submitted by respondents both textually and on computer tape.

DOC Position—As stated previously, the home market sales information submitted by Ensidesa and AHV was determined to be inadequate. With respect to Ensidesa's computer tapes, the instructions and descriptions provided by this company were inadequate to allow the Department and its time sharing contractor to read the submitted tapes initially. After encountering considerable difficulties, a resubmitted tape was read successfully, but beyond the deadline to be considered for the preliminary determinations. Thereafter, the continuing unsatisfactory responses of Ensidesa and AHV on their costs of production, in the face of a satisfactory allegation of home market sales below cost, prevented us from using their information on actual home market sales since we could not ascertain whether such sales were above their costs of production.

Comment 5—Respondents Ensidesa and AHV argue that the Department should have found these investigations to be extraordinarily complicated or otherwise provided the time necessary for the conduct of these investigations, because five products are covered.

DOC Position—On June 28, 1984, the Department received a request from counsel for Ensidesa and AHV for an extension of the preliminary determinations in these investigations. This request was denied on the grounds that the requirements of section 733(c)(1) of the Act were not satisfied in these investigations.

The July 12, 1984, request of counsel for Ensidesa and AHV for a postponement of the final determinations was granted.

Comment 6—Respondents Ensidesa and AHV contend that the Department failed to conduct these investigations in accord with even minimal standards of due process.

DOC Position—As the record shows, the Department made every effort to accommodate the needs of each of the interested parties to these investigations to the extent possible within the time frame mandated by the statute.

Verification—In accordance with section 776(a) of the Act, we verified all data used in making the determinations in these investigations by using standard verification procedures, including on-site inspection of Aristrain's operations and examination of its accounting records and selected sample documents. With regard to the U.S. sales data of Ensidesa and AHV, we verified selected sample documents containing relevent information. Because the home market price and cost responses of Ensidesa and AHV were inadequate, as described above, we did not verify or use such information, and relied instead upon the best information otherwise available.

Final Affirmative Determinations of Critical Circumstances

Petitioner alleged that imports of carbon steel structural shapes, carbon steel plate, cold-rolled carbon steel flat-rolled products, hot-rolled carbon steel sheet, and galvanized carbon steel sheet from Spain present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances are determined to exist when the Department finds that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2)(a) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In determining whether there have been massive imports over a relatively short period, we considered the following factors: recent import penetration levels; whether imports have surged recently; whether the value/volume of imports has surged significantly above the average calculated over the last three years (1981–1983); and whether the patterns of imports over that three-year period may be explained by seasonal swings. Based upon our analysis of the information, we determine that there have been massive imports of carbon steel plate, cold-rolled products and structural shapes over a relatively short period.

In analyzing import trends, we compared the monthly average of imports from Spain during the period February through May 1984, the four months following the filing of the petition, with the monthly average of imports during October 1983 through January 1984, the four months preceding the filing of the petition.

In comparing average monthly imports for these periods, we found significant increases with respect to plate, cold-rolled products, and structural shapes from Spain and decreases with respect to hot-rolled sheet and galvanized sheet. There were no apparent seasonal factors to account for recent import surges.

We then considered trends in the import penetration levels for cold-rolled products, plate, and structural shapes from Spain. The import penetration of plate from Spain increased by 23 percent, that of cold-rolled products increased 77 percent, and that of structurals increased 12 percent. The import penetration levels for hot-rolled sheet and galvanized sheet decreased.

Based on our comparison of the data for the periods set forth above, we find that there have been massive imports of structural shapes, plate and cold-rolled products over a relatively short period of time. We find that there have not been massive imports of hot-rolled sheet and galvanized sheet over a short period of time.

We therefore proceeded to consider whether there is a history of dumping of plate, cold-rolled products, and structural shapes from Spain in the United States or elsewhere. We reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We found no order on any of these products from Spain. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. On December 7, 1983, in the finding of the Antidumping Tribunal in Inquiry No. ADT 10–83, Canada imposed antidumping duties on plate from Spain. This constitutes a history of dumping of plate.

We also considered whether the person by whom, or for whose account, these products were imported knew or should have known that the exporters were selling these products at less than fair value. It is the Department's position

that where the margins calculated in an investigation are sufficiently large, it is appropriate to conclude that the importer knew or should have known that a product was being sold at less than its fair value. In our final determinations in these investigations we found weighted average margins of 22.15 percent with respect to cold-rolled products from Ensidesa, 17.37 percent with respect to cold-rolled products from AHV, and 27.44 percent with respect to structural shapes from Ensidesa. We found no weighted average margins with respect to structural shapes from Aristrain. Based on the margins found in the final determinations in these investigations, we determine that the importers knew or should have known that structural shapes, with the exception of structural shapes produced by Aristrain, were being sold in the United States at less than fair value.

For the reasons described above, we determine that "critical circumstances" do not exist with respect to hot-rolled carbon steel sheet, galvanized carbon steel sheet, carbon steel structural shapes produced by Aristrain and cold-rolled carbon steel flat-rolled products. We determine critical circumstances exist on structural shapes from all producers/exporters except Aristrain and on carbon steel plate.

Therefore, we are directing the U.S. Customs Service to continue the suspension of liquidation ordered in the Preliminary Determinations of Critical Circumstances published October 17, 1984 (49 FR 40631), for all unliquidated entries of structural shapes from all producers/exporters except Aristrain and for carbon steel plate which were entered, or withdrawn from warehouse, for consumption, on or after April 27, 1984, which is 90 days before the Preliminary Determination of Sales at Less than Fair Value in these investigations on July 25, 1984 (49 FR 29987).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of carbon steel structural shapes, carbon steel plate hot-rolled carbon steel sheet, cold-rolled carbon steel flat-rolled products, and galvanized carbon steel sheet from Spain subject to these investigations which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin by which the foreign market value of the merchandise subject to these investigations exceeds the United States price. This suspension of liquidation will remain in effect until further notice. Imports of carbon steel structural shapes produced and sold by Aristrain are excluded from this suspension of liquidation, since there were no margins on the sales of this product. The estimated margins are as follows:

	Margins (percent)
Carbon steel structural shapes:	
Ensidesa	27.44
Aristrain	[illegible]
Other manufacturers producers/exporters	16.17
Carbon steel plate:	[illegible]
Ensidesa	[illegible]
Other manufacturers /producers/exporters	[illegible]
Hot-rolled carbon steel sheet:	
Ensidesa	22.13
Other Manufacturers/producers/exporters	22.13
Cold-rolled carbon steel flat-rolled Products:	
Ensidesa	22.15
AHV	17.37
Other manufacturers/producers/exporters	21.24
Galvanized carbon steel sheet:	
Ensidesa	19.52
AHV	24.38
Other manufacturers/producers/exporters	21.48

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies (as determined in the final affirmative countervailing duty determinations on certain steel products from Spain (47 FR 51438)) will be subtracted from the dumping margins for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and condidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary of Import Administration.

The ITC will make its determination of whether these imports are materially injuring, or threatening material injury to, U.S. industries within 45 days of the publication of this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess antidumping duties on the subject products entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

William T. Archey,

Acting Assistant Secretary. for Trade Administration.

December 7, 1984.

Appendix I—Description of Products

For purposes of these investigations:

1. The term "*carbon steel structural shapes*" covers hot-rolled, forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2, Subpart B of the Tariff Schedules of the *Tariff Schedules of the United States Annotated ("TSUSA")*, for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the *TSUSA*, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the *TSUSA*. Such products are generally referred to as structural shapes.

2. The term "*carbon steel plate*" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6620, and 607.6625 of the *TSUSA*. Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

3. The term "*hot-rolled carbon steel sheet*" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; in coils; as currently provided for in item 607.6610 of the *TSUSA*.

4. The term "*cold-rolled carbon steel flat rolled products*" covers the following cold-rolled carbon steel products. Cold-rolled carbon steel flat rolled products are flat-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not

determinations was granted.

imports of carbon steel plate, cold-rolled

fair value. It is the Department's position

estimated weighted-average margin by

to, U.S. industries within 45 days of the

pickled; not cut, not pressed, and not

stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width, and 0.1875 or more in thickness; as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

5. The term "*galvanized carbon steel sheet*" covers hot- or cold-rolled carbon steel sheet which have been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0730, 608.1310, 608.1320, or 608.1330, of the *TSUSA*.

[FR Doc. 84-32489 Filed 12-12-84; 8:45 am]
BILLING CODE 3510-DS-M

[A-357-401]

Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration; Commerce.

ACTION: Notice.

SUMMARY: We determine that cold-rolled carbon steel flat-rolled products from Argentina are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise, and to require a cash deposit or posting of a bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 13, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1756.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that cold-rolled carbon steel flat-rolled products from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). For SOMISA we found that the foreign market value of the merchandise under consideration exceeded the United States price on 100 percent of sales compared. These margins ranged from 195.8 to 261.2 percent. The weighted-average margin on all sales compared is 242.5 percent. For Propulsora we found that the foreign market value exceeded the United States price on 100 percent of sales compared. These margins ranged from 18.7 to 44.3 percent. The weighted-average margin on all sales compared is 30.3 percent.

Case History

On February 10, 1984, we received a petition from United States Steel Corporation of Pittsburgh, Pennsylvania, filed on behalf of the U.S. industry producing cold-rolled carbon steel flat-rolled products. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of cold-rolled carbon steel flat-rolled products from Argentina are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated the investigation on March 1, 1984 (49 FR 8656). On March 26, 1984 (49 FR 13442), the ITC found that there is a reasonable indication that imports of cold-rolled carbon steel flat-rolled products from Argentina materially injure, or threaten material injury to, a United States industry.

We presented a questionnaire to counsel for Propulsora and to an official at the Embassy of Argentina as representative for Sociedad Mixta Siderurgia Argentina (SOMISA) on March 12, 1984. Propulsora and SOMISA are the only known producers that exported the subject merchandise to the United States during the period of investigation. Due to the large number of sales transactions, we instructed each company to report its home market and U.S. sales transactions in hard copy and on computer tape in the format outlined in our questionnaire. An extension of the time to respond to our questionnaire was requested by both firms and was granted. On April 30, 1984, we received a partial response from Propulsora. We received Propulsora's complete response to the questionnaire on May 1, 1984. We received SOMISA's response to our questionnaire on May 29, 1984. June 11-22, 1984, we conducted a verification in Argentina of Propulsora and SOMISA's responses. After verification, in response to our request, Propulsora submitted, on July 12, 1984, a revised computer tape to provide month-by-month cost information. On July 19, 1984, we made a preliminary determination that cold-rolled carbon steel flat-rolled products from Argentina were being, or were likely to be, sold in the United States at less than fair value (49 FR 29991). As required by the Act, we afforded interested parties an opportunity to submit oral and written views.

On August 14, 1984, counsel for Propulsora requested an extension of our final determination date of October 2, 1984. We granted an extension until not later than December 7, 1984 (49 FR 43732).

A hearing was held on August 23, 1984, to allow parties an opportunity to address the issues arising in these investigations.

Scope of Investigation

The merchandise covered by this investigation is cold-rolled carbon steel flat-rolled products from Argentina. The term "cold-rolled carbon steel flat-rolled products" covers flat-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width, and 0.1875 inch or more in thickness; as currently provided for in item 607.8320 of the *Tariff Schedules of the United States Annotated* (TSUSA); or over 12 inches in width and under 0.1875 inch in thickness whether or not in coils; as currently provided for in items 607.8350, 607.8355 and 607.8360 of the TSUSA.

Propulsora and SOMISA account for virtually all of the exports of this merchandise to the United States from Argentina. We investigated all sales of this merchandise by Propulsora to the United States during the period September 1, 1983, through February 29, 1984. We investigated all sales by SOMISA during the period May 1, 1983, through October 31, 1983. There were no sales by SOMISA to the United States during the period used for Propulsora.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

Comparisons were made on the basis of quality and product dimensional groupings selected by a Department of Commerce industry expert.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the Untied States price for sales by Propulsora and SOMISA because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. We calculated the purchase price for each United States sale based on the F.O.B. packed price to unrelated customers in the United States. For Propulsora we deducted brokerage cost. There were no deductions for SOMISA. For each company we adjusted for taxes rebated and taxes uncollected by reason of exportation, which were included in the home market prices. Additions to United States price were made in accordance with section 772(d)(1) of the Act (19 USC 1677a(d)(1)).

Foreign Market Value

Petitioner alleged that sales in the home market were at prices below the cost of producing cold-rolled carbon steel flat-rolled products. We examined production costs, which included all appropriate costs for materials, fabrication, and general expenses. We found virtually all sales were at prices below the cost of production for both SOMISA and Propulsora. Accordingly, we disregarded all home market sales in making our fair value comparisons.

In accordance with section 773(e)(1)(A) of the Act, we calculated the constructed value for SOMISA and Propulsora on the basis of their cost of materials and fabrication. Since their general expenses exceeded the 10 percent minimum required under section 773(e)(1)(B)(i) of the Act, we used their actual general expenses. Since their profit was less than the statutory minimum, we added 8 percent in accordance with section 773(e)(1)(B)(ii). We added their costs of U.S. packing.

Since the high rate of inflation in Argentina caused a rapid increase in home market prices, we compared the United States price for each U.S. sale to a foreign market value based on the constructed value in the month of the sale to the United States.

In calculating foreign market value we made currency conversions from Argentine pesos to United States dollars in accordance with § 353.56(a)(1) of our regulations.

Petitioner's Comments

Comment 1—The petitioner alleges that the costs of production for SOMISA and Propulsora are understated due to capitalization of exchange losses, the effect of which is to defer the recognition of such expenses in determining the company's profits. The petitioner states that such expenses should be considered an expense at the time they occur.

Response—The Department accepted Argentine accounting principles for treating exchange losses. For exchange losses which were realized during the period of investigation, such losses were considered to be an expense. For unrealized exchange losses resulting from foreign-denominated debt incurred to purchase fixed assets, the exchange losses were captured by the increased depreciation expenses. We consider this appropriate in a hyperinflationary economy. The increase in the peso value of fixed assets resulting from hyperinflation will approximate the increase in debt resulting from exchange losses over a period of time. Therefore, since the value of the fixed assets increases, the depreciation expense correspondingly increases.

Comment 2—The petitioner alleges that SOMISA's costs are understated by including an unrealized inventory holding gain in the selling, general and administrative expenses.

Response—The Department agrees. The unrealized gain was not included in inventory.

Comment 3—The petitioner states that Propulsora's costs were understated for January–Ferbuary 1984, the months when the company was performing its annual maintenance, because the company averaged the costs for these months.

Response—We disagree. Since the annual maintenance is a cost incurred for all production, the cost for January–February 1984 was adjusted by using the average monthly production.

Comment 4—The petitioner alleges that the fully absorbed cost of production of the merchandise manufactured by Propulsora should not be offset by revenues accruing from other business activities of the company. (See response to respondent's comment 1.)

Response—The Department agrees. We considered that the revenues claimed were derived from other lines of business, and therefore were not considered for purposes of determining cost of production. Moreover, these claimed revenues were unrealized gains on assets which, because they were unrealized, would not have been included in the cost of production in any event.

Comment 5—The petitioner claims that the costs of production for Propulsora and for SOMISA are understated if historic costs are used rather than the inflation-adjusted costs.

Response—The Department agrees that historic cost information, unadjusted for inflation, would not adequately reflect the costs of production. We used the modified historic method which reflects costs on a monthly basis corresponding to the month of the U.S. sale. This method accounts for the effects of inflation.

Argentine companies also use "inflation-adjusted" accounting principles as another basis for the presentation of the financial statements. The "inflation-adjusted" financial statements index all sales and all costs to an end-of-the-fiscal year value. To use this method, the U.S. sales prices would also have to be indexed to year end values. If the U.S. sales were indexed to a year-end value, the relationship between U.S. sales and the home market prices as well as corresponding home market costs should remain the same.

Comment 6—The petitioner alleges that Propulsora's depreciation expense is understated because the company only adjusts the value of its production assets for inflation once a year.

Response—In its internal records, the company estimates on a quarterly basis the depreciation expense for its annual revaluation. Additionally, any differences between these estimates and the actual revaluation were included in an adjustment at the end of the quarter. Therefore, the actual inflation adjustment was accounted for in the calculation of the cost of production on a monthly basis.

Comment 7—The petitioner claims that Propulsora's financial expense is misstated due to the inclusion of exchange gains.

Response—As stated in response to petitioner's comment 4, we have not included unrealized exchange gains, which are the exchange gains accruing from other business activities of the company, in calculating the cost of production. Realized exchange gains resulting from steel operations were included in the calculation of production costs.

Comment 8—The petitioner requests that the Department ensure that the respondents properly account for the variances from standard costs.

Response—The variances were verified and appropriately included in the costs of production.

U.S.C. 1673d) (the Act). For SOMISA we questionnaire on May 29, 1984. June 11– with the foreign market value.

regulations. unrealized, would not have been the costs of production.

Interested Party's Comments

Comment 1—Bethlehem alleges that in a hyperinflationary economy costs based on a quarterly average would not present the correct cost of production.

Response—We agree. Monthly cost data were used for the cost of production computation.

Comment 2—Bethlehem claims that Propulsora's production costs for January-February 1984 did not include the costs of raw material inventory used for production during this period of time.

Response—The Department used the replacement cost of raw materials in the month for which we are measuring cost. Because of the high inflation, replacement cost properly reflects the cost of production.

Comment 3—Bethlehem alleges that the increase in Propulsora's labor costs from the fourth quarter 1983 to the first quarter 1984 did not reflect the increase in the cost of living.

Response—We used the verified labor costs for purposes of determining the cost of production for each month under consideration. These costs were based on accounting records and represent Propulsora's actual costs. We recognize that individual cost increases may not be the same as selected cost indices, particularly in a hyperinflationary economy.

Comment 4—Bethlehem suggests that for the purpose of determining that the home market sales were below the cost of production, the cost of production should be calculated by converting the respondent's costs to a dollar value at the time such costs were incurred and converting home market sales prices converted to dollars at the time such sales were shipped.

Response—The Department based its cost of production on current monthly costs. Other costs for which current monthly costs were not available were adjusted for inflation in accordance with accounting principles used in Argentina. We determine that this method adequately reflected costs and see no need to convert costs and home market sales prices to dollars.

Comment 5—Bethlehem argues that the home market prices should not be used for the calculation of foreign market value because they are subject to government imposed price controls and are therefore fictitious prices.

Response—Since the foreign market value was based on the constructed value, the point is moot.

Comment 6—Bethlehem asserts that use of home market sales which were made during the three-month period surrounding the sales to the United States is distortive in a hyperinflationary economy.

Response—Since the foreign market value was based on the constructed value, the point is moot. We calculated the constructed value in the month of the sale to the United States.

Respondents' Comments

Comment 1—Propulsora asserts that because of the hyperinflationary nature of the economy all investments owned by Propulsora are necessary for cash management related to the steel operations.

Response—The Department does not include income or losses from other lines of business to offset the cost of production for the product under investigation. After review of the financial statements, income from investments in excess of that needed for ordinary steel business activities was considered to be from another line of business and not included in the cost of production.

As discussed above in our response to petitioner comment 4, we found that these gains were unrealized income and, therefore, were not part of the cost of production of the merchandise under investigation.

Comment 2—Propulsora claims that although the petitioner proposed several methods for developing the costs of production, the cost information provided by the company reflected the actual costs incurred within a narrow time period appropriately matched to the home market sales.

Response—The Department based its calculation of the cost of production on the month of the sale which was provided by Propulsora.

Comment 3—Propulsora claims the "general, selling and administrative" (SG&A) expenses are properly allocated by the production for the period under investigation.

Response—We disagree. The respondent allocated SG&A expenses to specific products based on the same ratio as the total SG&A expenses to the costs incurred for production during that period. This methodology, however, does not properly allocate SG&A expenses to the products under investigation. Using its methodology, a portion of SG&A would be allocated to inventory. We consider SG&A expenses to be period costs and have reallocated the expenses to specific products based on the same ratio as total SG&A to cost of goods sold for that product during the period.

Comment 4—Propulsora claims that exchange gains attributable to extended credit terms on U.S. sales should be used to offset credit expenses in the calculation of the differences in circumstances of sale for credit terms.

Response—We disagree. In the final determination on potassium permanganate from Spain (48 FR 53589), we disallowed an adjustment for exchange gains related to late payment by U.S. customers as being speculative and not directly shown to be reflected in the prices of the sales under consideration. Our view of this claim is the same. The respondent has not demonstrated a relationship between the price to the United States and the increased number of pesos received at the time of collection. We recognize that although a producer may realize more pesos from dollar denominated sales at the date of collection than would be realized on the date of sale, the purchasing power in Argentina has remained approximately the same.

We note that dollar denominated receivables are being used as a hedge for dollar denominated payables and therefore the effect from this financing method was taken into account in calculating the cost of production.

Comment 5—SOMISA argues that the date of sale for one U.S. transaction was improperly determined because subsequent revisions in the terms were not taken into account.

Response—We determined that the revisions agreed to after the date of the original confirmation did not relate to the price or total quantity to be shipped. The amendment merely refined the specifications. Therefore, we determined that the date of sale was the date of confirmation.

Verification

In accordance with section 776(a) of the Act, we verified all data used in making this final determination by using verification procedures which included on-site inspection of the manufacturer's facilities and examination of company records and selected original source documentation containing relevant information.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on July 25, 1984, we directed the United States Customs Service to suspend liquidation of all entries of cold-rolled carbon steel flat-rolled products from Argentina as described in the "Scope of Investigation" section of this notice. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption, of this merchandise shall continue to be suspended. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturers/producers/exporters	Weighted average margin (percent)
Propulsora	[redacted]
SOMISA	242.5
All other manufacturers/producers/exporters	122.3

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subisidies (as determined in the final affirmative countervailing duty determination on cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006)) will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry, within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits paid or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess antidumping duties on cold-rolled carbon steel flat-rolled products from Argentina, as appropriate.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-32500 Filed 12-12-84; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 657]

Dimension Systems LTD., United Kingdom; Order Temporarily Denying Export Privileges

In the matter of: Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., with addresses at both 13 Elm Grove Road, Ealing, London, W5 England, and the Counting House, 352 Pinner Road, North Harrow, Middlesex, England; Anthony Chan a/k/a Chan Sum-Tai Anthony c/o Shuttle Long Co., Ltd., Ka Wah Bank Center Building, 19th Floor, 232 Des Voeux Road, Central Hong Kong, and Wysh Data Systems, Ltd., 135 Connaught Road W., Hong Kong a/k/a Shuttle Long Co., Ltd., Ka Wah Bank Center Building, 19th Floor, 232 Des Voeux Road, Central Hong Kong.

The Department of Commerce (the Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations (15 CFR Parts 368–399 (1984)) (the Regulations), has petitioned the Hearing Commissioner for an order temporarily denying all export privileges to Denis J. Fife, individually and doing business as Dimension System Ltd., U.K., Anthony Chan (a/k/a Chan Sum-Tai Anthony), and Wysh Data Systems, Ltd. (a/k/a Shuttle Long Co., Ltd.) (hereinafter collectively referred to as respondents).

The Department states that, as a result of an investigation, in May 1984, a federal grand jury, in a five count indictment: (1) Charged Fife, Chan, and Wysh Data Systems, Ltd. (hereinafter referred to as Wysh Data) with conspiring to export a VAX 11/780 central processing unit and other computer equipment to Hong Kong without obtaining the required validated export license; (2) charged Fife, aided and abetted by Chan and Wysh Data, with exporting a VAX 11/780 central processing unit and other computer equipment to Hong Kong without obtaining the required validated export license; (3) charged Fife, aided and abetted by Chan and Wysh Data, with submitting false export control documents to U.S. authorities; (4) charged Fife, aided and abetted by Chan and Wysh Data, with attempting to export computer equipment to Hong Kong without the required validated export license; and (5) charged Fife with knowingly and willfully attempting to export U.S.-origin computer equipment to Hong Kong without the required validated export license.

Based on representations made by the Department, I find that an order temporarily denying all export privileges to Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., Anthony Chan (a/k/a Chan Sum-Tai Anthony), and Wysh Data Systems, Ltd. (a/k/a Shuttle Long Co., Ltd.) is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982)), and the Regulations,[1] and to permit completion of the judicial proceeding and of any subsequent administrative proceeding that might result from the investigation which led to the indictment.

Anyone who is now or may in the future be dealing with any of the above-named respondents, or with anyone who is now or may be subsequently named as a related party, in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in the preparation or filing of any export license application or reexport authorization, or of any document to be submitted therewith, (c) in the obtaining of using of any validated or general export license or other export control

[1] The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

made during the three-month period surrounding the sales to the United

used to offset credit expenses in the

suspended. The Customs Service shall require a cash deposit or the posting of a

order directing Customs officers to assess antidumping duties on cold-rolled

knowingly and willfully attempting to export U.S.-origin computer equipment

International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

document, (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extend not only to the respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(b) of the Regulations, any respondent or any related party may move at any time to vacate or modify this temporary denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room 6716, 14th Street and Constitution Avenue, NW., Washington DC 20230, an appropriate motion for relief and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This Order is effective immediately. It remains in effect until the final disposition of the judicial proceeding referred to above and until the final disposition of any administrative proceeding that might be initiated against the respondents based on the Department's representations above. A copy of this Order and Parts 387 and 388 of the Regulations shall be served upon each respondent.

Dated: December 6, 1984.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84-32521 Filed 12-12-84; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Intent To Prepare a Draft Environmental Impact Statement on the Proposed Virginia Coastal Resources Management Program (VCRMP)

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to prepare a draft environmental impact statement as required under the National Environmental Policy Act 42 U.S.C. 4321, *et seq.* (NEPA).

SUMMARY: Notice is hereby given of the intent to prepare a Draft Environmental Impact Statement (DEIS) on the proposed approval of the Virginia Coastal Resources Management Program (VCRMP) under the provisions of section 306 of the Federal Coastal Zone Management Act of 1972 (Pub. L. 92–583, as amended), and distribute it in March 1985.

Federal approval of the VCRMP would make the Commonwealth eligible for program administration grant funds and require that Federal actions be consistent with the Program.

The Program consists of numerous policies on diverse management issues which will be prescribed by executive order and enforced by the laws of the Commonwealth and is the culmination of several years of development. The Virginia Program will condition, restrict or prohibit some uses in parts of the management area, while encouraging development and other uses in other parts. The Program should improve the decisionmaking process for determining appropriate coastal land and water uses in light of resource considerations and increase public awareness of coastal resources. The Program will possibly result in some short-term economic impacts on coastal users but should lead to increased long-term protection of the Commonwealth's coastal resources. Federal alternatives will include delaying or denying approval if certain requirements of the Coastal Zone Management Act have not been met. Commonwealth alternatives include the possibility of modifying parts of the Program or withdrawal of the request for Federal approval.

In order to determine the scope and significance of issues to be addressed in the DEIS, the Office of Ocean and Coastal Resource Management (OCRM) would like to solicit comments on the proposed action, particularly with respect to the following issues:

(1) The adequacy of the scope and geographic coverage of the program's laws and regulations to manage impacts on wetlands and other vulnerable natural resources;

(2) The adequacy of the mechanisms for administrative review and enforcement of compliance of agency decisions;

(3) The adequacy of the mechanisms for State agency coordination and consultation in order to effectively implement the VCRMP;

(4) The extent to which the Program addresses the economic impact of fisheries, tourist/resort related and major facilities development;

(5) The means by which the Program will provide for the continued designation of additional areas of particular concern.

The Commonwealth's proposed means to address the above are presented in the VCRMP state public hearings' document of September 1984. Copies of this document can be obtained from the OCRM.

A scoping meeting will be held on January 9, 1985, in the Navy Conference Room B–100, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C., at 10 a.m. All interested parties are invited to attend.

Persons or organizations wishing to submit comments on these or other issues should do so by January 15, 1985. Any comments received after that time will be considered in the response to comments received on the DEIS.

Requests for the above described documents and all comments should be made to:

Joseph A. Uravitch, Manager, Great Lakes and South Atlantic Regions, Office of Ocean and Coastal Resource Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, 202/634–4124

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 7, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-32448 Filed 12-12-84; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service; NOAA, Commerce.

The Council's Committee on the Function of Council Entities will convene a public meeting in Portland, OR, December 18, 1984, to continue review of the composition, role, procedures, interactions, and effectiveness of Council advisory committees, staff, and the procedures of the Council itself. They will prepare a report of findings and recommendations for the January Council meeting. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW., Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: December 10, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-32498 Filed 12-12-84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–236,084 (4,447,384)
Preparation of a-Substituted Acrylic Acids
SN 6–311,702 (4,479,286)
Apparatus To Extract Fine Trash and Dust During High-Velocity Discharging of Cotton from Opener Cleaner
SN 6–327,296 (4,480,040)
Sensitive and Rapid Diagnosis of Viroid Disease and Viruses
SN 6–333,945 (4,478,328)
Automatic Hide Processing Apparatus
SN 6–370,020 (4,482,728)
Polybutylbenzylphenols and Benzyl-3,4-Methylenedioxbenzenes in Insect Population Control
SN 6–382,903 (4,478,859)
Method of Making Stable Emulsified Meat Products
SN 6–436,542 (4,477,389)
Polyhalogenated Phenyl Isocyanate Synthesis with Excess Phosgene and Either Triethylamine or Tetramethylurea
SN 6–509,091 (4,478,096)
Shielded Sniffing Device
SN 6–543,730 (4,478,728)
Process and Compositions for Preserving Fresh Hides and Skins
SN 6–650,737
Method and Apparatus to Control Soil Moisture Matric Potential

Department of Commerce

SN 6–665,875
Shale Oil Dearsenation Process
SN 6–666,594
Phased Antenna Array for Wind Profiling Applications

Department of Health and Human Services

SN 6–396,055 (4,476,870)
Fiber Optic Po2 Probe
SN 6–571,911
Deoxyribonucleic Acid Molecules Useful As Probes for Detecting Deleterious Genes Incorporated Into Chromosomal DNA
SN 6–574,173
Pseudomonas Exotoxin Conjugate Immunotoxins
SN 6–664,972
Production of Human T-Cell Leukemia (Lymphotropic) Retrovirus (HTLV-I) Envelope Protein Fragments in Baceteria and Use In Seroepidemiological Survey of Human Lymphoid Malignancies
SN 6–665,400
Screening Test for Reverse Transcriptase Containing Virus

Department of the Air Force

SN 6–171,913 (4,468,624)
Programmable Synchronous Digital Delay Line
SN 6–260,878 (4,472,726)
Two Carrier Dual Injector Apparatus
SN 6–272,861 (4,465,392)
Thermally Isolated Structural Support Link
SN 6–289,660 (4,472,807)
RF Laser Array Driver Apparatus
SN 6–320,893 (4,466,682)
Powered Articulated Headrest System
SN 6–324,907 (4,472,679)
Diagnostic Apparatus for Radar Pulse Repetition Frequency Control Circuit Card
SN 6–339,204 (4,467,429)
Aircraft Thrust Control Scheme For Terrain Following System
SN 6–343,041 (4,467,186)
Mirror Actuator Control System
SN 6–343,136 (4,472,356)
Gas Contamination Detection Device
SN 6–353,981 (4,477,909)
Unstable Optical Resonator with Cancelling Edge Waves
SN 6–353,983 (4,465,985)
Hardware Missile Receiver Coupler
SN 6–368,787 (4,465,940)
Electro-Optical Target Detection
SN 6–372,364 (4,479,222)
Diffusion Barrier for Long Wavelength Laser Diodes
SN 6–375,622 (4,465,332)
Holographic Directional Coupler for Fiber Optic Systems
SN 6–382,068 (4,477,152)
Reduction of Signal Modulation Caused by Polarization in Visible Optical-Scanning Systems
SN 6–382,324 (4,466,100)
Delta Wing Nozzle Assembly for Chemical Lasers
SN 6–394,945 (4,465,068)
Metallic Aid and Technique in Fitting Voice Prosthesis
SN 6–403,214 (4,469,961)
Fast Switching Driver for Inductive Load, Such as a Phase Shifter
SN 6–404,096 (4,477,814)
Dual Mode Radio Frequency-Infrared Frequency System
SN 6–411,948 (4,471,683)
Voice Command Weapons Launching System
SN 6–413,297 (4,476,806)
Wet Film Applicator
SN 6–418,867 (4,465,953)
Rippled-Field Magnetron Apparatus
SN 6–422,429 (4,465,372)
Turbulence Measurement

Interferometer Apparatus
SN 6-431,435 (4,477,222)
Mounting Construction For Turbine Vane Assembly
SN 6-434,647 (4,471,623)
Combustion Chamber Floatwall Panel Attachment Arrangement
SN 6-441,814 (4,465,347)
Helmet Mounted Telescope
SN 6-441,816 (4,465,988)
Slow Wave Circuit with Shaped Dielectric Substrate
SN 6-449,922 (4,477,043)
Biodynamic Resistant Control Stick
SN 6-459,159 (4,477,787)
Dual Mode Directionally Coupled Band Reject Filter Apparatus
SN 6-465,230 (4,465,250)
Windblast Leg Protector Assembly
SN 6-469,369 (4,476,710)
Detonation Transfer Evaluation Technique
SN 6-475,665 (4,464,972)
Lateral Support System for Canister-Launched Missile
SN 6-482,375 (4,477,024)
Carbon/Carbon Rocket Motor Exit Cone Reinforcement
SN 6-482,754 (4,476,718)
Rain Rate Meter
SN 6-486,598 (4,465,253)
Flexible Line Support Assembly
SN 6-504,183 (4,464,702)
EMI Filter Capacitor Unit
SN 6-518,590 (4,476,161)
Method of Producing a Buried Long Period Grating
SN 6-533,276 (4,467,474)
Halogen Mass Flow Rate Detection System
SN 6-534,030 (4,476,337)
Method for Introducing Fluorine Into an Aromatic Ring
SN 6-629,865
Battery Control and Fault Detection Method
SN 6-640,624
Matrix Display Simulation
SN 6-640,902
Tracking Servo Compensator with Rate Aiding
SN 6-640,904
Parallel Processor Configuration for Adaptive Antenna Arrays
SN 6-640,916
Method for Making Alloy Additions to Base Metals Having Higher Melting Points
SN 6-643,139
Buried Junction Enhanced Schottky Barrier Device
SN 6-643,140
Erosion-Resistant Nosetip Construction
SN 6-645,389
Cryogenic Glass-to-Metal Seal
SN 6-645,390
Random Pattern Tracking Acceleration Tolerance Tester
SN 6-645,468
Low Noise Multiple Crystal-Controlled Oscillator
SN 6-647,781
Electromechanical Switch
SN 6-647,782
Dynamic Polymer Pressure Transducer with Temperature Compensation
SN 6-649,565
Bomb and Bomb Liner

Department of the Army

SN 6-248,622 (4,434,168)
Narcotic Antagonists in the Therapy of Shock
SN 6-284,279 (4,368,194)
Pharmacologically Active Amine Boranes
SN 6-328,638 (4,431,807)
4-Methyl-5-(Unsubstituted and Substituted Phenoxy)-6-(Aminoalkylamino)Quinolines
SN 6-546,076 (4,473,496)
Intramolecularly Crosslinked Hemoglobin
SN 6-637,250
Vehicle-to-Vehicle Connection Mechanism
SN 6-647,324
Torque Sensor
SN 6-653,116
High Capacity Inorganic Oxyhalide Electrochemical Cell
SN 6-655,114
Rechargeable Lithium Cell
SN 6-664,267
Microwave Resonator Using Lateral Excitation

Department of the Interior

SN 6-574,499
Formation of Tungsten Monocarbide from a Molten Tungstate Halide Phase By Gas Sparging

Environmental Protection Agency

SN 6-518,172 (4,479,877)
Removal of Nitrate From Water Supplies Using a Tributyl Amine Strong Banse Anion Exchange Resin

[FR Doc. 84-32442 Filed 12-12-84; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Withdrawal of Call on Category 352 (Cotton Underwear) Produced or Manufactured in the Republic of Korea

December 10, 1984.

On June 28, 1984 a notice was published in the **Federal Register** (49 FR 26623) announcing that, on June 5, 1984, the Government of the United States had requested the Government of the Republic of Korea to enter into consultations concerning exports to the United States of cotton textile products in Category 352, produced or manufactured in the Republic of Korea. The purpose of this notice is to announce that the United States Government has concluded that there is no need to maintain this limit at this time. Should it become necessary to discuss this category with the Government of the Republic of Korea at a later date, further notice may be published in the **Federal Register**.

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

December 10, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This letter cancels and supersedes the directive of October 1, 1984 concerning cotton textile products in Category 352, produced or manufactured in Korea, effective on December 17, 1984.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32501 Filed 12-12-84; 8:45 am]
BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Macau Effective January 1, 1985

December 10, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1985. For further information contact Ross Arnold, International Trade Specialist (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984 between the Governments of the United States and Macau provides import limits for, among other categories, Categories 331, 333/334/335, 337, 338, 339, 340, 341, 342, 345, 347/348, 350, 351, 359, 438, 445/446, 631, 633/634/635, 638/639, 640, 641, 645/646 and 647/648 during the agreement year which begins on January 1, 1985 and extends through December 31, 1985. The agreement also contains a consultation mechanism for categories not already subject to limits for which levels may be established during the agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

December 10, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984, between the Governments of the United States and Macau, and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Macau and exported during 1985, in excess of the indicated restraint limits:

Category	12-mo. restraint limit
331	200,000 dozen pairs.
333/334/335	118,436 dozen of which not more than 60,933 dozen shall be in category 333/335.
337	26,000 dozen.
338	155,387 dozen.
339	861,136 dozen.
340	148,948 dozen.
341	96,069 dozen.
342	39,326 dozen.
345	19,022 dozen.
347/348	354,768 dozen.
350	13,725 dozen.
351	13,462 dozen.
359	152,174 pounds

Category	12-mo. restraint limit
438	8,667 dozen.
445/446	71,378 dozen.
631	200,000 dozen pairs.
633/634/635	248,416 dozen.
638/639	12,765,443 square yards equivalent.
640	53,951 dozen.
641	86,298 dozen.
645/646	134,347 dozen.
647/648	271,022 dozen.

In carrying out this directive, entries of cotton, wool and man-made fiber textiles and textile products in the foregoing categories, except Categories 331, 337, 342, 350, 351, 359, 438, and 631, produced or manufactured in Macau, which have been exported to the United States on and after January 1, 1984 and extending through December 31, 1984, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the restraint limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 331, 337, 342, 350, 351, 359, 438 and 631 which have been exported before January 1, 1985 shall not be subject to this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 29, 1983 and January 9, 1984, which provide, in part, that: (1) Within the aggregate and applicable group limits. Specific limits may be exceeded by designated percentages; (2) these same limits may be increased for carryforward and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories on terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 84-32502 Filed 12-12-84; 8:45 am]
BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Commodity Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBOT") has applied for designation as a contract market in the CBOT Commodity Index. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interests, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before February 11, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CBOT Commodity Index.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7303.

A copy of the terms and conditions of the proposed CBOT Commodity Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBOT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 GFR Part 145 (1983), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's

Acceleration Tolerance Tester	had requested the Government of the

351	13,462 dozen.
359	152,174 pounds

[FR Doc. 84-32502 Filed 12-12-84; 8:45 am]
BILLING CODE 3510-DR-M

446, 631, 633/634/635, 638/639, 640, 641,

the Secretariat at the Commission's

headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBOT in support of its application should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by February 11, 1985.

Issued in Washington, D.C. on December 7, 1984.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 84-32463 Filed 12-12-84; 8:45 am]
BILLING CODE 6351-01-M

New York Mercantile Exchange; Proposed Amendment Relating to the New York Harbor Leaded Regular Gasoline Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has submitted a proposal to amend Rule 190.03(B), Grade and Quality Specifications, of its New York Harbor leaded regular gasoline futures contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of that proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comment should be received on or before January 14, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the New York Mercantile Exchange, Rule 190.03(B).

SUPPLEMENTARY INFORMATION: Currently, Rule 190.03(B) permits Colonial Pipeline Company Grades 35, 37 and 38 to be delivered on the New York Harbor leaded regular gasoline futures contract. The NYMEX is proposing to delete reference to Grade 37 in the rule so that this grade of gasoline would no longer be a deliverable grade on the leaded regular contract.

The NYMEX states that Colonial Grade 37 may contain the blending component tertiary butyl alcohol ("TBA"). The Exchange submits that because gasoline containing TBA is not acceptable to many firms within the oil industry, cash market participants have indicated that they are reluctant to take delivery of Grade 37 through the futures market because they cannot readily resell gasoline containing TBA in the cash market. Based on interviews with industry representatives, the NYMEX maintains that many oil companies do not particpate in the futures market because of the possibility of receiving delivery of gasoline containing TBA.

The Exchange believes that the deletion of Grade 37 from the New York Harbor gasoline contract would not have a significant impact on deliverable supplies of leaded regular gasoline. The Exchange states that Grade 37 makes up less than 5% of total gas shipments on the Colonial system and that Colonial shipments of gasoline make up less that 20% of total deviverable supplies in New York Harbor.

The Exchange intends to implement the proposed amendment to Rule 190.03(B) immediately after Commission approval for existing contract months as well as all contract months subsequently listed by the Exchange.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. (202) 254-7303.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the NYMEX concerning its New York Harbor leaded regular gasoline futures contract is of major economic significance because of the Exchange's intention to apply the amendment to existing contracts. Accordingly, the NYMEX's proposal will be available for inspection at the Office of the Secretariat, Commodity Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone (202) 254-6314.

Other materials submitted by the NYMEX in support of the proposed rule may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulation thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendment should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 25081, by January 14, 1984.

Issued in Washington, D.C. on December 7, 1984.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 84-32464 Filed 12-12-84; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Department of Defense Joint Study Group on Religious Matters

Pursuant to section 554 of the Department of Defense Authorization Act, 1985, Pub. L. No. 98525, the Secretary of Defense has formed a study group "to examine ways to minimize the potential conflict between the interests of members of the Armed Forces in abiding by their religious tenets and the military interest in maintaining discipline." The study group, called the Department of Defense Joint Study Group on Religious Matters," has been directed to "address the issues of compliance with and modifications of uniform regulations, dietary restrictions, sabbath observance, and facial and body hair length practices." The Joint Study Group will consider the views of a broad spectrum of religious organizations and specialists outside the government pertaining to the subject of its study. Interested organizations or persons wishing to have their views considered by the Joint Study Group should submit them in writing to the Group by January 15, 1985, so they can be incorporated in the study.

For further information, contact Lt Colonel David P. Rogers, Office of the Deputy Chief of Staff for Personnel, Department of the Air Force, Washington, DC, 20330, telephone (202) 697-9012.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-32451 Filed 12-12-84; 8:45 am]
BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Control of Hydrilla in the Potomac River

AGENCY: U.S. Army Corps of Engineers, DOD, Baltimore District.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: 1. *Proposed Action:* The U.S. Army Corps of Engineers is authorized by the continuing authority of section 302 of the Rivers and Harbors Act of 1965 to provide for control of obnoxious aquatic plant growths from the navigable waters, tributaries, streams, connecting channels, and other allied waters of the United States. One aquatic plant which has been found in the Potomac River and has started to become a problem in some areas is hydrilla (*Hydrilla Verticillata*).

Hydrilla was first discovered in Florida in 1960 and was apparently introduced from the Middle East with the aquarium trade. Since 1960, it has spread rapidly across North America and has reached problem levels in most water bodies where it has become established. It has broad ecological variability and can withstand wide variations in pH, alkalinity, and nutrient levels. Its salinity limit is about 12 to 15 parts per thousand. Hydrilla has a very efficient means of propagation and reproduces in several different ways. The Potomac variety of hydrilla is monoecious which means it has the ability to produce seeds from a single plant. This characteristic makes it particularly viable and productive.

The proposed action is to provide, where justifiable, access to navigable waters of the Potomac River from publicly available areas heavily infested with hydrilla and/or other aquatic plant growths. ALthough hydrilla infestations have been noted in areas outside of the Potomac River (i.e., lakes, other rivers, and the Chesapeake Bay), the study will concentrate on the Potomac River between Chain Bridge in Washington, D.C., to the Route 301 Bridge in Maryland.

2. *Alternatives:* The alternatives to be analyzed include various methods to control excessive aquatic plant growths as well as no action. This will include biological, mechanical, and chemical control methods.

3. *Scoping Process:*

a. A reconnaissance study was initiated as a result of a request by the State of Maryland, Department of Natural Resources, in June 1984. Both the State of Maryland and the Commonwealth of Virginia made formal application to the Corps for assistance in developing a hydrilla management and control program. Local public meetings have been held at various locations during the summer and fall of 1984 and presentations will continue to be given at local requests. In addition, local interests will continue to be solicited for their input during the course of the study.

b. The significant issues to be addressed in the DEIS are (1) the environmental analysis of all potential control methods and (2) the selection of the plan which is the most acceptable based on environmental, economic, and social considerations.

c. A Research and Development (R&D) Program headed by the Corps of Engineers' Waterways Experiment Station is currently underway to provide technical data needed to support preparation of the DEIS. Several agencies are assisting in the R&D effort including but not limited to the following. The U.S. Geological Survey and the Northern Virginia Community College are conducting studies of the extent of infestations in the Potomac and some limited competition between plant species. The U.S. Department of Agriculture is conducting studies on growth, susceptability to chemicals, and competition. Other environmental studies may be identified during the study.

d. Coordination among appropriate Federal, state, and local agencies, as well as the public, will continue as part of the public involvement process to insure compliance with applicable Federal and state environmental statutes.

4. *Scoping Meeting:* In view of the broad exposure the project has received and the familiarity with the project by local and Federal agencies, and coordination that has taken place to date, no additional scoping meetings are planned. Any additional comments concerning this project are welcomed and should be provided to the Baltimore District, Corps of Engineers.

5. The DEIS is scheduled for filing with the U.S. Environmental Protection Agency and issuance to the public in November 1985.

ADDRESS: Questions or comments concerning the proposed action and/or the DEIS should be directed to Mr. Robert Pace, U.S. Army Corps of Engineers, NABPL-U, P.O. Box 1715, Baltimore, Maryland 21203-1715. Telephone FTS 922-4710, commercial (301) 962-4710.

Dated: November 30, 1984.

Martin W. Walsh, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-32431 Filed 12-12-84; 8:45 am]
BILLING CODE 3710-41-M

Environmental Impact; Lower San Joaquin River and Tributaries, CA; Intent

The notice published as 49 FR 20052, Friday May 11, 1984 is modified as follows.

Construction of one segment of the overall project will be initiated in the fall of 1984. Due to the emergency nature of this work, the requirements of the National Environmental Policy Act have been waived pursuant to 40 CFR 1506.11 and 33 CFR 230.8.

Emergency action is being taken to remove 700,000 cubic yards of sediment from the Eastside Bypass. The bypass is an existing feature of the Lower San Joaquin River and Tributaries, California, project. The bypass is located in Merced County. Removal of the sediment is needed to restore channel capacity and avoid potential levee failure which would cause widespread damage during the coming flood season. Mitigation to avoid losses to fish and wildlife resources has been included in the work. An environmental analysis has been prepared to assist in the emergency work. This has been coordinated with state and Federal fish and wildlife agencies, and copies are available to others interested in the work.

All other provisions of the earlier notice describing intent to prepare a draft environmental impact statement (DEIS) remain unchanged. The DEIS prepared will describe the remaining work to be accomplished and its impacts. Further information may be obtained by writing Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814 or calling Mr. Mike Welsh, Environmental Planning Section (916) 440-2456, (FTS) 448-2456.

Dated: October 2, 1984.

John O. Roach II,

Department of the Army, Liaison Officer with the Federal Register.

[FR Doc. 84-32451 Filed 12-12-84; 8:45 am]
BILLING CODE 3710-GH-M

contract.

Privacy and Sunshine Acts Compliance

BILLING CODE 3810-01-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the East Molokai Navigation Improvements Study

AGENCY: Honolulu District, US Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare draft environmental impact statement.

SUMMARY: 1. The US Army Engineer District, Honolulu, is studying the feasibility of constructing a protected launch ramp on the South East coast of the island of Molokai.

2. The study is investigating the possibility of siting the protected ramp at one of five locations along the East Molokai Coastline.

3. The Corps held a workshop in March 1984 and has scheduled another public meeting in January 1985. Local interest groups, private organizations and parties, and Federal, State and County of Maui agencies will again be contacted during the course of the study. At this time, the DEIS will address the effects of the harbor on fish and wildlife resources, historic sites, water resources, parks and social considerations identified by local residents at the public workshops. The US Fish and Wildlife Service will provide their opinion of the project effects on fish and wildlife resources for inclusion in the DEIS. Consultation with the US Advisory Council on Historic Preservation, National Park Service, State Historic Preservation Officer, State Department of Health, US Environmental Protection Agency, National Marine Fisheries Service, will be completed during the study as appropriate.

4. A scoping meeting is not planned at this time.

5. The DEIS will be made available for public review about March 1985.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Kevin Cook, Project Manager, US Army Engineer District, Honolulu, Building T-1, Fort Shafter, HI 96858-5440, Telephone: (808) 438-1307.

Dated: December 10, 1984.

John O. Roach, II,

Department of the Army Liaison Officer with the Federal Register.

[FR Doc. 84-32884 Filed 12-12-84; 8:45 am]

BILLING CODE 3710-AA-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 14, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: December 10, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Fast Response Survey System Survey of School Discipline Policies and Practices
Agency Form Number: ED 2379-21
Frequency: Non-Recurring
Affected Public: State or Local Governments; Non-Profit Institutions
Reporting Burden: Responses: 900; Burden Hours: 450
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Requested by the National Institute of Education, this survey seeks to obtain nationally representative information on discipline policies and practices in the public school, and on the obstacles to discipline faced by school administrators. The findings of the survey will be used to inform policy makers on how school administrators perceive their disciplinary procedures to actually help or hinder educational order and discipline in schools.

Type of Review Requested: New
Title: National Assessment of Educational Progress 1985—Field Test of the Special Probe of the Educational Progress of Language Minority Students
Agency Form Number: ED 2371
Frequency: Non-Recurring
Affected Public: Individual or Households; State or Local Governments
Reporting Burden: Responses: 660; Burden Hours: 335
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Congress mandated the NAEP survey. This field test survey concerns collection of data for the NAEP 1985-86 Special Probe of the Educational Progress of language minority students. Information will be collected from children (Age 9/Grade 3; Age 13/Grade 7 and Age 17/Grade 11) from homes where a language other than English is spoken; their teachers; and their principals.

Office of Intergovernmental and Interagency Affairs

Type of Review Requested: New
Title: Application for Waiver of the Two-Year Foreign Residence Requirement of the Exchange Visitor Program
Agency Form Number: L60-2P
Frequency: On Occasion
Affected Public: Non-Profit Institutions; Educational Institutions; Corporations
Reporting Burden: Responses: 35; Burden Hours: 17.5
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Applications for waiver of the requirement of two year foreign residence are submitted by the institution or organization employing the exchange visitor. The requested information on the application is essential for the Exchange Visitor Waiver Review Board to reach its decision on whether to recommend the requested waiver.

Office of Intergovernmental and Interagency Affairs

Type of Review Requested: New
Title: Presidential Academic Fitness Award (PAFA) School Participation Order Form
Agency Form Number: L60-1P
Frequency: Annually
Affected Public: State or Local Governments; Non-Profit Institutions
Reporting Burden: Responses: 50,000; Burden Hours: 25,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This form will be sent to all schools, public and private, grades K-12. Schools that wish to participate in the Presidential Academic Fitness Award (PAFA) will return the form, confirming their address and other preprinted data from the NCES school universe tape, and indicate on the form the number of awards needed by exit grade at the school.

[FR Doc. 84-32483 Filed 12-12-84; 8:45 am]

BILLING CODE 4000-01-M

Office for Civil Rights

Final Annual Operating Plan for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Notice of Final Annual Operating Plan for Fiscal Year 1985.

SUMMARY: The Secretary issues the Fiscal Year 1985 Annual Operating Plan (AOP) for the Office for Civil Rights (OCR). The AOP describes the activities that OCR plans to conduct in FY 1985 with respect to compliance and enforcement, technical assistance, and program management.

FOR FURTHER INFORMATION CONTACT: Fred Tate, Director of the Operations Support Service, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5074, Switzer Building), Washington, D.C. 20202. Telephone: (202) 732-1479.

SUPPLEMENTARY INFORMATION: The proposed FY 1985 Annual Operating Plan for the Office for Civil Rights was published in the **Federal Register** on July 27, 1984 (49 FR 30224-30227), with an invitation to comment. A summary of the comments received and the Secretary's responses to those comments is included below.

Summary of Comments and Responses

Comment: The proposed plan is missing information on such things as staffing and budget levels, numerical projections on the allocation of resources to specific activities and criteria used to evaluate regional and national performance.

Response: A change is made. The Plan now indicates that the proposed activities are consistent with the appropriations authorized by the Congress and approved by the President.

However, no specific projections of resources to be allocated to particular activities have been added. In the Plans prior to FY 1983, OCR included projections of investigative staff time that proved inaccurate in forecasting the actual use of resources. It was concluded that unpredictable factors, such as court decisions and public awareness, have such an impact on the size and nature of OCR's workload that national projections of staff time to accomplish specific activities did not prove to be useful. For example, a revised order was issued on March 11, 1983 in *Adams* v. *Bell*, Civil Action No. 3095-70 (D.D.C. March 11, 1983). The terms of the revised order had a significant impact on OCR's activities during FY 1983 and FY 1984. On September 14, 1984, that order was vacated by the Court of Appeals for the District of Columbia and remanded to the District Court to determine whether any of the plaintiffs has standing and whether there continues to be a case or controversy between the particular plaintiffs and the government. *Adams* v. *Bell*, Civil Action No. 83-1590 (D.C. Circuit, September 14, 1984). The outcome of this litigation may have a significant impact on OCR's activities.

With respect to evaluation of regional and national performance, a number of mechanisms exist. Included in these mechanisms are OCR's Management-by-Objectives system, which is based on goals set forth by the Assistant Secretary and the Secretary, OCR's Quality Assurance process, and regular management evaluations of workloads and case processing efficiency. To articulate the specific components of any one or all of these program and management evaluation mechanisms would be inappropriate for the content of an annual operating plan.

Comment: The AOP states that there are 4 million handicapped students; the commenter believes that the correct number is higher.

Response: A change is made. OCR requested updated figures from the Department's National Center for Education Statistics on the approximately number of institutions covered and persons protected by the civil rights authorities for which OCR is responsible. These figures, which are based on 1980 data (the most recent available), show that while the number of handicapped students remains approximately 4 million, the approximate numbers of minority group members and women, as well as local education agencies and colleges and universities, have changed. These changes are reflected in the final AOP.

Comment: In the absence of underlying regional annual operating plans, the regional focus in the proposed plan indicates that no national policy choices are being made with respect to selection of compliance reviews or problems requiring training and/or technical assistance.

Response: No change is made. While the regional offices participate in planning for OCR's compliance, enforcement and technical assistance activities, and are the focal point for implementation of these activities, the Assistant Secretary establishes national policy and program goals, direction, consistency and control.

Comment: The final AOP should note and specify the pending court decisions, legislation and regulatory policy that could result in major program changes.

Response: A change is made. The AOP does not describe activities that are entirely beyond OCR's control. Therefore, the AOP excludes consideration of possible judicial decisions or legislative changes. However, OCR has listed pending regulatory changes planned for FY 1985 under the Program Management Activities section of the AOP.

Comment: The propdsed AOP contains the announcement of a technique that was not described in the 1984 AOP, and appears to be a new practice: the pre-letter of findings (pre-LOG) settlement. This appears to differ from the pre-determination settlement described in last year's AOP in that the pre-LOF letter is added to the document package created by the investigation of a complaint or compliance review. The pre-LOF letter could significantly interfere with the ability of advocacy organizations to monitor enforcement unless the pre-LOF is also made available to members of the public pursuant to the Freedom of Information Act. It is also unclear from the proposed AOP whether a pre-LOF letter will be

AGENCY: Department of Education.

Type of Review Requested: New Improvement

Abstract: Applications for waiver of the requirement of two year foreign

invitation to comment. A summary of the comments received and the

number is higher.

AOP whether a pre-LOF letter will be

issued in all or only a subset of all complaints and compliance reviews.

Response: No change is made. The pre-LOF settlement technique described in the proposed FY 1985 AOP is the same as the pre-determination settlement initiative described in the FY 1984 AOP. The terminology for this technique was changed because it could have been confused with pre-determination administrative closures, which are cases that are closed for such reasons as a complainant's refusal to cooperate with OCR in the investigation, inability to locate the complainant or death of the complainant. There is no separate pre-LOF letter. In an effort to encourage voluntary compliance, OCR reviews with recipients its findings on each issue raised by a complaint or compliance review and, if areas of noncompliance are resolved, the resulting LOF cites the basis for the violation finding and the remedy adopted by the recipient. The LOF is available under the Freedom of Information Act.

Comment: With respect to early complaint resolution (ECR) and pre-LOF settlement techniques, complainants should be involved in the process of selecting the resolution strategy. Detailed remedial plans should accompany both ECR and pre-LOF settlement activities.

Response: No change is made. The ECR process, in which OCR staff facilities prompt resolution of a complaint before conducting a formal investigation, is offered in approximately 12 percent of complaints as a strictly voluntary process between the parties to the complaint. If resolution between the complainant and the recipient is not achieved within the prescribed time frames, OCR conducts an investigation. OCR complaints that are resolved through the ECR process are closed only when the complainant and the recipient have agreed to the resolution.

In those cases where pre-LOF negotiations are successful, the LOF that is subsequently issued details the violation and the necessary corrective action. If the corrective action requires future action on the part of the recipient, a remedial action plan is part of the LOF. The implementation of the remedial plan is monitored by OCR.

Comment: The AOP should indicate current and expected trends in complaint receipts and closures and ECR settlements, general expectations for the complaint workload, and comparative data from previous fiscal years.

Response: No change is made. OCR expects no significant change in the rate of complaint receipts or closures, which have been consistent over the past three years. A review of OCR's Annual Operating Plans published over the last three years show receipts and closures as follows.

	Complaint receipts	Complaint closures
Fiscal year 1982	1,840	2,267
Fiscal year 1983	1,953	2,276
Fiscal year 1984	1,928	1,946

OCR cannot anticipate the nature of complaint receipts and whether they will be amenable to ECR.

Comment: The AOP should indicate current and expected trends in the number and focus of compliance reviews, including comparative data from previous fiscal years and expectations for FY 1985. The published data in the proposed AOP suggest a marked shift in emphasis from postsecondary to elementary and secondary education reviews.

Response: No change is made. A review of OCR's Annual Operating Plans published over the last three years shows the number of compliance reviews started as follows.

COMPLIANCE REVIEW STARTS

	Elementary and secondary	Postsecondary	Total
Fiscal year 1982	127	81	208
Fiscal year 1983	168	124	292
Fiscal year 1984	144	68	212

The Annual Operating Plans also indicate the compliance review issues that were covered.

Comment: The AOP should clarify the "random site selection program" and indicate FY 1985 plans for it.

Response: A change is made. The discussion of the random site selection program has been clarified to indicate that it is an experiment designed to determine the relative effectiveness of a random compliance review site selection compared with the traditional form of site selection in which regions nominate sites based on criteria set forth by the Assistant Secretary.

Comment: The postsecondary vocational education area merits far more than the two compliance reviews started in 1983–1984.

Response: No change is made. The proposed AOP only provided data on compliance review starts for the first three quarters of FY 1984. During the fourth quarter, an additional 5 postsecondary vocational education reviews were started. Discrimination in vocational education programs is addressed by a number of OCR compliance activities, including complaints, compliance reviews and monitoring States' Methods of Administration. In addition, as indicated in the proposed AOP, OCR is conducting a survey of vocational education insitutions during FY 1985.

Comment: The postsecondary education compliance review definition of the issue of "Employment" should be revised to be consistent with the elementary and secondary education definition of "Employment," and both definitions should include discriminatory terms of employment, awards of tenure and pension plans.

Response: A change is made. The postsecondary education compliance review definition of "Employment" is revised to be consistent with the elementary and secondary edcuation definition of "Employment," and both definitions include discriminatory terms of employment, awards of tenure and pension plans.

Comment: The elementary and secondary education compliance review issue of "Disciplinary Policies and Practices" and the postsecondary education compliance review issue of "Admissions" should be revised to include handicapped students.

Response: No change is made. The issue of disciplinary policies and practices as they relate to handicapped students is covered in the description of the elementary and secondary education compliance review issue of "Free Appropriate Public Education," under the "Procedural Safeguards" sub-issue. With respect to the postsecondary education compliance review issue of "Admissions," the Section 504 regulation prohibits recipients from making preadmission inquiries regarding handicap. While OCR believes this regulatory provision may prevent discrimination, it also prevents OCR from collecting statistics that could be used to show potential discrimination against handicapped persons in admissions procedures. However, handicap complaints alleging discrimination in admission are investigated by OCR.

Comment: OCR fails to examine the special problems of girls and women who experience double or triple discrimination.

Response: No change is made. In recent years, OCR has received an increasing number of multijurisdictional complaints, where violations are alleged under more than one statutory authority. OCR is required to conduct a full investigation of all allegations contained

in discrimination complaints. Additionally, in order to permit OCR to investigate whether beneficiaries or potential beneficiaries are accorded nondiscriminatory treatment pursuant to all OCR statutory authorities, the majority of the FY 1985 compliance review issues, as described in Tables 2 and 3, address discrimination based on more than one non-discrimination provision of law. OCR conducts multijurisdictional compliance reviews to the extent resources are available.

Comment: The Department must be willing to withhold funds on those cases that linger beyond resolution time frames.

Response: No change is made. When discrimination is found as a result of a complaint investigation or a compliance review, OCR attempts to achieve voluntary compliance on the part of the recipient. Negotiations are initiated and recipients are offered an opportunity to take corrective action both prior to and following the issuance of findings. OCR also offers assistance to the recipient in developing an appropriate remedial plan. When efforts to achieve voluntary compliance fail, OCR initiates enforcement action against recipients. Such enforcement action may include commencement of administrative proceedings before and Administrative Law Judge (ALJ) to terminate Department of Education financial assistance to the recipient or it may include referral of the case to the Department of Justice (DOJ) for appropriate action in Federal court. During FY 1984, OCR initiated administrative enforcement action against 22 recipients (19 elementary and secondary, and 3 postsecondary recipients) by issuing Notices of Opportunity for Hearing before an ALJ, and referred two cases to DOJ.

Comment: OCR stated in response to comments accompanying the final FY 1984 AOP that the regional offices have responsibility for evaluating the States' performance under the vocational education Methods of Administration (MOAs) and that headquarters was conducting a complete review of regional offices' assessments of the latest MOA reports. The proposed FY 1985 AOP makes no mention of this review, nor does it detail any follow-up actions being planned or already implemented.

Response: No change is made. As stated in the proposed AOP, OCR continues to monitor the activities of the States to ensure that they fulfill their MOA responsibilities. As a result of the headquarters review of the regions' assessments of last year's MOA reports, OCR has developed and implemented specific procedures for the timely review and substantive evaluation of the States' MOA reports. During FY 1984, OCR also conducted training on the vocational education MOAs for OCR staff.

Comment: A detailed plan of action should accompany OCR monitoring of remedial action plans.

Response: No change is made. OCR is required to conduct complaint investigations and compliance reviews. As discretionary resources permit, OCR also conducts technical assistance and monitoring activities.

Comment: The plan does not identify a consistent strategy for making educational agencies aware of the fundamental entitlements to a free appropriate public education for school-aged handicapped youngsters via technical assistance activities. A pro-active technical assistance strategy would lessen the number of complaints received as opposed to a reactive plan. Technical assistance must be provided to and required of those individuals that are found to be in noncompliance with section 504.

Response: No change is made. OCR provides technical assistance to recipients to inform them of their responsibilities under the civil rights statutes and of means to meet these responsibilities. Technical assistance may be provided to recipients at any time after the initiation of a compliance review or complaint investigation, or following its conclusion. Technical assistance may be provided in response to a request from a recipient or after an inquiry by OCR investigative staff as to whether a recipient would be interested in such assistance. During FY 1985, OCR will be conducting a technical assistance needs assessment of recipients and beneficiaries that is designed to identify their technical assistance needs. The results of this assessment will be used to develop technical assistance activities and materials that directly respond to recipient and beneficiary needs.

Comment: The proposed plan states that regional offices will be encouraged to increase technical assistance outreach efforts. Instead, resources should be used to increase the volume and scope of compliance reviews.

Response: No change is made. The AOP indicates that technical assistance activities complement compliance and enforcement responsibilities by encouraging compliance on the part of recipients. Outreach activities will be undertaken as resources are available.

Comment: The technical assistance program activity suggested by the Department should match up to the type of complaints that are on record.

Response: No change is made. At present the majority of OCR's technical assistance activities are in response to requests for information and services from recipients and beneficiaries. However, as noted above, OCR is conducting a technical assistance needs assessment in FY 1985 to identify recipient and beneficiary needs for technical assistance activities and materials.

Comment: Regional offices should be encouraged to maintain contact with consumer groups that have been actively involved with section 504.

Response: No change is made. As stated in the OP, OCR provides technical assistance to beneficiaries to inform them of their rights under the civil rights statutes and to explore voluntary methods of securing those rights. In addition, during FY 1985, OCR will be requesting recipient and beneficiary organizations to comment on technical assistance information and services needed from OCR.

Comment: The AOP should make clear whether Memoranda of Understanding (MOUs) with States will lead to transference of enforcement responsibilities to the States.

Response: No change is made. OCR believes MOUs with State education and human rights agencies facilitate meeting mutual civil rights compliance goals and objectives and promote the sharing of information.

Comment: The status of the MOU with the Office of Special Education and Rehabilitative Services (OSERS) should be discussed and updated.

Response: No change is made. During FY 1984, an OCR–OSERS Task Force was established to make recommendations on collaboration between the two offices. These recommendations will be forwarded to both the Assistant Secretary for Civil Rights and the Assistant Secretary for Special Education and Rehabilitative Services in early FY 1985.

Comment: Field investigators must be given the necessary technical assistance to make appropriate findings of fact.

Response: No change is made. The AOP reflects the fact that OCR has an in-house programmatic training program to enhance the existing skills of investigative and legal staff engaged in civil rights compliance activities.

Comment: It is not clear if OCR is planning for this year any national or regional surveys, other than those listed in the proposed AOP, whether or not they require OMB approval.

Response: No change is made. OCR initiated the Elementary and Secondary School Civil Rights Survey and the

Vocational Education Civil Rights Survey in the fall of 1984. Both of these surveys required and received OMB approval. OCR also will jointly sponsor with the National Center for Education Statistics the 1984 Fall Enrollment Survey of Institutions of Higher Education and will continue to collect annually the data necessary to determine progress in desegregating statewide higher education systems. In addition, OCR has in place for FY 1985 a research contract to explore the options for data collection in the area of student services issues in institutions of higher education.

I. Introduction

The Office for Civil Rights (OCR) was established to ensure that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, handicap, or age, in the delivery of services or the provision of benefits, in programs or activities receiving financial assistance from the Department of Education (ED). The jurisdictional authorities under which OCR operates are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

These authorities cover ED funded programs and activities carried out by 50 State education and rehabilitation agencies and those of their subrecipients, as well as those of the District of Columbia and the territories and possessions of the United States; 15,840 local education agencies; and 3,300 institutions of higher education. OCR is responsible for protecting the civil rights of, among others approximately 13 million minority group members, 4 million handicapped persons and 28.6 million women who attend these institutions. In addition, OCR's civil rights authorities cover programs and activities in other institutions that receive ED funds, such as libraries and museums.

The strategy of OCR for ensuring compliance with Federal civil rights statutes by the recipients of ED financial assistance involves two basic types of activities: compliance activities and technical assistance activities. Nearly all of OCR's compliance activities (including complaint investigations, compliance reviews, and monitoring the implementation of voluntary compliance plans) are required by various statutes, regulations and court orders. However, OCR has some discretion over where it will conduct its compliance review activities and what issues the reviews will cover. For the most part, OCR concentrates its investigative activities on those recipients that have been identified as having possible compliance problems. OCR also provides technical assistance, including the transfer of information, material and skills, to facilitate ED recipients' voluntary compliance with civil rights laws and to inform beneficiaries of their rights.

Compliance activities and technical assistance activities also may be combined. OCR may provide technical assistance to recipients at any time after the initiation of a compliance review or complaint investigation, or following its conclusion, either in response to a request from a recipient or after an inquiry by investigative staff as to whether a recipient would be interested in such assistance. As a result, compliance issues may be resolved in a nonconfrontational manner that facilitates closer cooperation at the recipient level while assuring that the rights of beneficiaries are protected.

During FY 1985, OCR will continue to promote the use of two operational techniques designed to improve the efficiency of the case handling process. The first, Early Complaint Resolution (ECR), is a process in which OCR acts as a mediator for the complainant and the recipient to negotiate a settlement between them. If the mediation is successful, OCR closes the complaint without an investigation. If the parties cannot reach an agreement, OCR investigates the complaint. During FY 1984, ECR was offered in 248 complaints and accepted in 175 complaints (71 percent). Of those cases in which ECR was offered and accepted, 104 (59 percent) were resolved through mediation. Six of the 175 cases where ECR was accepted were still being mediated at the end of the fiscal year.

The second technique is pre-letter of findings (LOF) settlement. With this process OCR reviews with the recipient OCR findings on each of the issues raised in the complaint or covered by the compliance review in an attempt to reach a settlement prior to the issuance of an LOF addressing areas of noncompliance. When settlement is reached, OCR sets forth the terms of the settlement, along with the applicable statutory requirements, in an LOF sent to the recipient. Where the settlement results from a complaint, the complainant is also sent an LOF. If an area of noncompliance has been resolved, the LOF cites the basis for the violation finding and the remedy adopted by the recipient. OCR then monitors the implementation of these agreements.

It should be noted that the activities planned by OCR in FY 1985, and outlined below, are consistent with the appropriations authorized by the Congress and approved by the President.

The following narrative and tables describe the activities that OCR plans for FY 1985.

II. Compliance and Enforcement Activities

OCR's compliance and enforcement responsibilities are divided into three general categories: Complaint investigations, compliance reviews, and monitoring activities.

A. Complaint Investigations

OCR's primary compliance activity is the investigation and resolution of complaints alleging discrimination. Each timely, written complaint must be resolved in accordance with established procedures and time frames.

OCR received 1,928 and closed 1,946 complaints during FY 1984, some of which had been filed prior to the beginning of the fiscal year. OCR had 861 complaints pending as of September 30, 1984. Alleged discrimination against handicapped persons was the basis of approximately 47 percent of complaint receipts; race, multiple bases, sex, national origin, and age complaints followed in descending order of frequency. The largest number of complaints involved elementary and secondary schools. In FY 1984, 69 percent of the complaints received involved issues of service delivery to students, 23 percent involved various employment issues, 4 percent involved both, and 4 percent involved other issues.

B. Compliance Reviews

OCR's compliance review program complements its complaint investigation activities. Compliance reviews differ from complaint investigations in that OCR has some discretion in selecting the issues and institutions for review. This permits OCR to target resources on compliance problems that appear to be serious or national in scope and that may not have been raised by complaints.

During FY 1984, OCR initiated compliance reviews of 212 recipients; Table 1 gives information on the number of reviews initiated for each issue. During this same period, OCR closed 221 reviews, some of which had been initiated prior to the beginning of FY 1984. OCR had 139 compliance reviews open as of September 30, 1984.

Tables 2 and 3 describe the elementary and secondary education and postsecondary education issues, respectively, to be included in the FY 1985 compliance review program. OCR has modified some of the issues and issue descriptions that appeared in the FY 1984 Annual Operating Plan. For example, the elementary and secondary education issue of Free Appropriate Public Education has been modified to achieve more appropriate grouping of sub-issues under the main issue category. The new grouping includes all areas covered last year under this issue, with the addition of reviewing the extent to which transition services are available for handicapped students mainstreamed into regular classes. Under the elementary and secondary and postsecondary education issues of Employment, OCR modified the issue descriptions to include race, national origin, sex and/or handicap discrimination in policies and practices related to recruitment, selection, assignment, promotion, terms of employment and termination, and in benefits such as medical insurance, leave, award of tenure and pension plans. Other changes in the compliance review issues and issue descriptions include: modification of the elementary and secondary education issue description of Segregated Schools to expand the focus to include small as well as large school districts; inclusion of recruitment in the postsecondary education issue description for Admissions; and expansion of the postsecondary education issue description for Vocational Education.

While some review activities are required by court order, most compliance reviews are discretionary and represent the only area in which OCR has flexibility to choose the institutions to be investigated, the issues to be examined, and the dates on which the reviews will commence. Selection of review sites has, in the past, been based on various sources of information, including survey data indicating potential compliance problems and information provided by complainants, interest groups, the media and the general public. In selecting sites for compliance reviews, OCR attempts to achieve a geographically balanced and jurisdictionally comprehensive compliance program. In order to provide greater flexibility in the targeting of institutions and to help validate OCR's current targeting methods, during FY 1984, OCR initiated a random site selection program for compliance reviews in some regional offices. This experiment is designed to determine the relative effectiveness of a statistically random compliance review site selection compared with the traditional form of site selection in which regions nominate sites based on criteria set forth by the Assistant Secretary and the issues contained in the AOP. The experiment calls for five regions to select randomly compliance review sites. Three of the five regions (Regions II, III and IX) will employ random site selection exclusively, and two (Regions VI and VII) will employ random site selection for 50 percent of their selections, and traditional methods for the remainder. The remaining five regions will employ traditional compliance review site selection techniques for all reviews. At the end of the fiscal year, or as soon as an appropriate number of reviews have been conducted, comparisons will be made in order to determine the relative effectiveness of the alternative site selection procedures.

C. Monitoring Activities

OCR closes many of the complaints and compliance reviews in which it has identified a violation of civil rights statutes on the basis of a commitment by the recipient institution to complete remedial action at a future date. OCR has a responsibility to ensure that recipients that agree to carry out such remedial actions honor their agreements. To fulfill that responsibility, OCR may require a recipient to submit one or more progress reports detailing efforts to come into compliance with applicable laws. In some cases, OCR may go on-site to monitor a recipient's compliance with a negotiated remedial action plan. Other types of OCR monitoring activities include monitoring of *Adams* higher education desegregation plans, implementation of *Lau* plans, and vocational education Methods of Administration.

In FY 1985, OCR will monitor the following:

- Implementation by recipient institutions of remedial action plans resulting from OCR complaint investigations and compliance reviews;
- Implementation of *Adams* higher education desegregation plans of approximately 416 institutions of higher education in 13 States;
- Implementation of a minimum of 50 Title VI *Lau* plans; and
- Activities of 50 States, four territories, and the District of Columbia, to ensure that they fulfill their Methods of Administration responsibilities under the Vocational Education Guidelines and the July 1979 Memorandum of Procedures regarding the civil rights compliance of their vocational education subrecipients.

III. Technical Assistance Activities

Programs and activities of over 20,000 education institutions that receive Federal financial assistance must comply with civil rights requirements. Because of this large number of institutions, OCR is unable to review the activities of each.

Technical assistance complements OCR's compliance activities because it encourages voluntary compliance. Through technical assistance, OCR is able to reach a far greater number of recipients than could be reached solely through complaint investigations or compliance reviews. OCR provides technical assistance to recipients to inform them of their responsibilities under the civil rights statutes and the ED implementing regulations and of means to meet these responsibilities. OCR also provides technical assistance to beneficiaries to inform them of their rights under the civil rights statutes and to explore voluntary methods of securing those rights. In FY 1984, OCR began to place greater responsibility for the provision of technical assistance on the OCR regional offices. During FY 1985, in addition to responding to requests for technical assistance, OCR regional offices will be encouraged to increase technical assistance outreach activities, which will be based on ongoing assessments of recipient and beneficiary needs.

To carry out its technical assistance programs effectively, during FY 1985 OCR will—

- Continue development of Memoranda of Understanding with State education and human rights agencies to facilitate meeting mutual civil rights compliance goals and objectives and to promote the sharing of information;
- Coordinate with other ED program offices on the provision of civil rights related technical assistance;
- Facilitate the exchange of information, materials, technical assistance strategies, techniques and successful compliance practices and procedures among OCR staff providing technical assistance;
- Provide materials and courses to OCR regional investigators and legal staff to facilitate the provision of technical assistance training to education institutions and State and local governments;
- Provide training to State and local education agencies to increase their capabilities to carry out civil rights activities; and
- Prepare materials for dissemination to recipients and beneficiaries.

will cover. For the most part, OCR concentrates its investigative activities

It should be noted that the activities planned by OCR in FY 1985, and

elementary and secondary education and postsecondary education issues.

summarizing and explaining OCR policies and regulations.

IV. Program Management Activities

In conducting its compliance, enforcement and technical assistance activities, OCR continues to implement a comprehensive program that includes—

- formulating or updating regulations, policies, and investigative manuals, including:

—Promulgating ED regulations to implement the Age Discrimination Act of 1975;

—Amending the Title IX and Section 504 regulations to provide for vocational education Methods of Administration;

—Revising the employment benefits section of the Title IX regulation to reflect the Supreme Court's decision in *Arizona Governing Committee v. Norris*, 103 S.Ct. 3492 (1983);

- Providing technical guidance on complaints and compliance reviews referred from regional offices;
- Conducting hearings before Administrative Law Judges on the compliance of Federal financial recipients with civil rights requirements;
- Meeting with congressional staffs, school district representatives, college and university officials, complainants and civil rights groups to discuss OCR activities;
- Conducting and evaluating OCR surveys and data collection projects to obtain information on recipients and beneficiary populations;
- Providing in-house programmatic training to investigators and legal staff engaged in civil rights compliance activities;
- Conducting a quality assurance program to systematically review, evaluate and recommend improvements in OCR operations; and
- Operating a Management-By-Objectives program designed to enhance management planning and to track performance in meeting organizational goals.

V. Summary

While regional programs will vary due to considerations such as the number and type of complaints received, compliance reviews conducted, and requests for technical assistance, all OCR activities will be guided by national policies, priorities, and direction. As in previous years, each Regional Director will be responsible for timely fulfillment of OCR's obligations in handling complaint investigations and compliance reviews. A large part of each region's compliance program will involve the investigation of complaints of discrimination. Compliance reviews initiated in FY 1985 will include, as appropriate, each of OCR's civil rights jurisdictions in the geographic area served by each regional office. Monitoring activities will focus on ensuring that recipients comply with voluntary compliance plans and fulfill their vocational education Methods of Administration responsibilities. OCR will design technical assistance activities to respond to recipient and beneficiary needs.

Paperwork Reduction Act of 1980

Information collection activities undertaken pursuant to this plan have been approved by the Office of Management and Budget (OMB). The Fall 1984 Elementary and Secondary School Civil Rights Survey has been approved under OMB control number 1870–0500 and the Fall 1984 Vocational Education Civil Rights Survey has been approved under OMB control number 1870–0501.

TABLE 1.—COMPLIANCE REVIEW STARTS BY ISSUE

[Oct. 1, 1983–Sept. 30, 1984]

	Review starts
Elementary and secondary education issues:	
Within-school discrimination	[illegible]
Vocational education	16
Special purpose schools	1
Free appropriate public education	[illegible]
Employment	1
Segregated schools	[illegible]
Within district comparability	0
Joint issue: Within-school discrimination and free appropriate public education	[illegible]
Other elementary and secondary reviews	[illegible]
Postsecondary issues:	
Program accessibility	32
Admissions	14
Intercollegiate athletics	[illegible]
Vocational education	7
Student services	5
Vocational rehabilitation services	0
Employment	3
Other postsecondary reviews	1
Total	212

TABLE 2.—FISCAL YEAR 1985 ELEMENTARY AND SECONDARY EDUCATION COMPLIANCE REVIEW ISSUES

Issue	Issue description
1. Within-school discrimination	This issue includes one or more of the following areas: Student assignment to courses, programs, classes, ability groups and tracks; disciplinary policies and practices; counseling policies and practices; interscholastic athletics; and provisions for effective participation of national origin minority students with limited proficiency in English in the education program.
a. Student assignment to courses, programs, classes, ability groups and tracks.	This sub-issue covers: Whether assignments to programs for the educable mentally retarded or handicapped, gifted and talented, learning disable, speech-impaired, and emotionally disturbed are free from discrimination on the basis of race, national origin, and/or sex; whether assignments to ability groups and tracks are free from discrimination on the basis of race, national origin, and/or sex; whether assignments to or exclusion from pre-vocational classes in home economics or industrial arts are on the basis of sex; whether assignment to or exclusion from physical education classes is on the basis of sex; whether assignment to or exclusion from other classes is on the basis of race, national origin, and/or sex; and exclusion of pregnant students from the regular instructional program, including requirements for attendance in special courses or programs.
b. Disciplinary policies and practices	This sub-issue covers the extent to which disciplinary criteria and the application of disciplinary sanctions, including suspensions, expulsions and other punitive measures, are free from discrimination on the basis of race, national origin, and/or sex.
c. Counseling policies and practices	This sub-issue covers whether counseling practices and materials, including course information and appraisal instruments, are free of discrimination on the basis of race, national origin, and/or sex.
d. Interscholastic athletics	This sub-issue covers provisions for pupils of each sex to participate in interscholastic athletics, including, but not limited to, sports offerings, scheduling, coaching, equipment, uniforms and supplies, and facilities.
e. Provisions of effective participation of national origin minority students of limited-English proficiency in the education program.	This issue covers the extent to which national origin minority pupils of limited-English proficiency are identified and provided with the services necessary for their effective participation in classes, courses, programs and activities.
2. Vocational education: Access, recruitment, admissions, counseling and assignment.	This issue includes review of policies and practices related to access, recruitment, counseling, admissions and assignment to vocational education institutions, programs, courses and classes, including apprentice training, work-study, and cooperative education, to determine the extent to which they are free of discrimination on the basis of race, national origin, sex, and/or handicap. It also includes the extent to which handicapped pupils and national origin minority pupils of limited-English proficiency receive the services they need to participate effectively in the vocational education program offered.
3. Special purpose schools: Placement, admissions, referral, program availability and pupil services and activities.	This issue covers the policies and practices of State-administered special purpose schools to determine whether referral, placement or admission to them is without discrimination on the basis of race or national origin, and the extent to which equivalent programs and opportunities are available to pupils of each sex. Major considerations will be the extent to which handicapped pupils could be placed in an alternative program with a less restrictive environment and the extent to which opportunities are provided for the integration of handicapped and nonhandicapped pupils. In addition, reviews will examine the extent to which reasonable accommodations are provided for, and programs are accessible to, mobility-impaired and sensory-impaired pupils; the extent to which provision of services such as work-study and job training and placement are free of discrimination on the basis of race, national origin, sex, and/or handicap; the extent to which housing assignments are without discrimination on the basis of race or national origin; and the extent to which policies and practices related to student treatment, including disciplinary sanctions and provisions for participation in athletics and other extracurricular activities, are free of discrimination on the basis of race, national origin, sex, and/or handicap
4. Free appropriate public education	This issue includes one or more of the following issues: Location and identification of persons needing services; evaluation and placement; post-placement treatment; procedural safeguards; and program accessibility.
a. Location and identification of persons needing services.	This sub-issue covers policies and practices for location and identification of handicapped persons needing services and policies and practices for identifying the special needs of pupils within the school system.
b. Evaluation and placement	This sub-issue covers policies and practices related to placement or change of placement, including provisions for evaluation, use of tests, and the range of information considered; consideration of integration objectives in making placement and educational decisions; and the range of services considered in making educational and placement decisions.
c. Post-placement treatment	This sub-issue covers provisions for free education and related services; availability of room and board; transportation and other non-medical services for beneficiaries in residential placements; and the extent to which transition services are available for handicapped students mainstreamed into regular classes.
d. Procedural safeguards	This sub-issue covers policies and procedures for notifying handicapped persons and their parents or guardians of their rights under Section 504 and of the services available to them; the extent to which disciplinary sanctions are applied without denying beneficiaries necessary services; the extent to which handicapping conditions are considered in applying disciplinary sanctions; and other procedural safeguards.
e. Program accessibility	This sub-issue covers the extent to which education programs are accessible to, and usable by, physically handicapped beneficiaries.
5. Employment	This issue covers whether employment practices and policies relating to recruitment, selection, assignment, promotion, terms of employment, termination and provisions for compensation and such other benefits as medical insurance, leave, awards of tenure and pension plans are discriminatory on the basis of race, national origin, sex and/or handicap.
6. Segregated schools: School attendance zones; pupil transfer policies and practices; assignment of teachers and administrative staff	This issue covers whether schools are intentionally segregated or resegregated on the basis of race or national origin as a result of attendance zone boundaries, student transfer policies and practices, employment and assignment of teachers and administrative staff that indicate a school is intended to serve pupils of a particular race or national origin, or by providing school district assistance to any other school which is segregated in order to support and maintain a segregated school option in the geographic area at the time the school district is desegregating.
7. Within district comparability—discriminatory delivery of services.	This issue covers discrimination on the basis of race and national origin in the provision of educational services and benefits among schools (e.g., limited course offerings, less qualified staff) in districts having schools that are disproportionately minority. There will be an initial inquiry to determine if a district's disproportionately minority schools are the product of unlawful segregation. If no illegal segregation exists, then the issue of equal educational opportunity will be investigated.

TABLE 2.—FISCAL YEAR 1985 ELEMENTARY AND SECONDARY EDUCATION COMPLIANCE REVIEW ISSUES—Continued

Issue	Issue description
4. Free appropriate public education	This issue includes one or more of the following issues: Location and identification of persons needing services; evaluation and placement; post-placement treatment; procedural safeguards; and program accessibility.
a. Location and identification of persons needing services.	This sub-issue covers policies and practices for location and identification of handicapped persons needing services and policies and practices for identifying the special needs of pupils within the school system.
b. Evaluation and placement	This sub-issue covers policies and practices related to placement or change of placement, including provisions for evaluation, use of tests, and the range of information considered; consideration of integration objectives in making placement and educational decisions; and the range of services considered in making educational and placement decisions.
c. Post-placement treatment	This sub-issue covers provisions for free education and related services; availability of room and board; transportation and other non-medical services for beneficiaries in residential placements; and the extent to which transition services are available for handicapped students mainstreamed into regular classes.
d. Procedural safeguards	This sub-issue covers policies and procedures for notifying handicapped persons and their parents or guardians of their rights under Section 504 and of the services available to them; the extent to which disciplinary sanctions are applied without denying beneficiaries necessary services; the extent to which handicapping conditions are considered in applying disciplinary sanctions; and other procedural safeguards.
e. Program accessibility	This sub-issue covers the extent to which education programs are accessible to, and usable by, physically handicapped beneficiaries.
5. Employment	This issue covers whether employment practices and policies relating to recruitment, selection, assignment, promotion, terms of employment, termination and provisions for compensation and such other benefits as medical insurance, leave, awards of tenure and pension plans are discriminatory on the basis of race, national origin, sex and/or handicap.
6. Segregated schools: School attendance zones; pupil transfer policies and practices; assignment of teachers and administrative staff	This issue covers whether schools are intentionally segregated or resegregated on the basis of race or national origin as a result of attendance zone boundaries, student transfer policies and practices, employment and assignment of teachers and administrative staff that indicate a school is intended to serve pupils of a particular race or national origin, or by providing school district assistance to any other school which is segregated in order to support and maintain a segregated school option in the geographic area at the time the school district is desegregating.
7. Within district comparability—discriminatory delivery of services.	This issue covers discrimination on the basis of race and national origin in the provision of educational services and benefits among schools (e.g., limited course offerings, less qualified staff) in districts having schools that are disproportionately minority. There will be an initial inquiry to determine if a district's disproportionately minority schools are the product of unlawful segregation. If no illegal segregation exists, then the issue of equal educational opportunity will be investigated.

TABLE 3.—FISCAL YEAR 1985 POSTSECONDARY EDUCATION COMPLIANCE REVIEW ISSUES

Issue	Issue description
1. Program accessibility for the handicapped	This issue covers the extent to which education programs are accessible to and usable by physically handicapped beneficiaries.
2. Admissions	This issue covers discrimination on the basis of sex, race, and/or national origin in admissions and recruitment to undergraduate, graduate and professional schools.
3. Intercollegiate athletics	This issue covers discrimination on the basis of sex in athletic financial assistance, or in overall program comparability and athletic financial assistance.
4. Vocational education: Access, recruitment, admissions, counseling, financial aid and job placement.	This issue includes review of policies and practices related to access, recruitment, financial aid, job placement, counseling and admissions to vocational education institutions, programs, courses and classes, including apprentice training, work-study, and cooperative education, to determine the extent to which they are free of discrimination on the basis of race, national origin, sex, and/or handicap.
5. Student services	This issue covers discrimination on the basis of race, national origin, sex, and/or handicap as applicable in the provision of services such as financial aid, housing, special programs for minorities, counseling and tutorial services, academic adjustments, auxiliary aids, student employment, placement services and similar services.
6. Vocational rehabilitation services	This issue covers discrimination on the provision of vocational rehabilitation services and benefits to individuals on the basis of handicap, sex, race and/or national origin.
7. Employment	This issue covers whether employment practices and policies relating to recruitment, selection, assignment, promotion, terms of employment, termination and provisions for compensation and such other benefits as medical insurance, leave, awards of tenure and pension plans are discriminatory on the basis of race, national origin, sex and/or handicap.

Dated: December 6, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-32486 Filed 12-12-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of closing date for institutions requesting eligibility to participate in the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs for the 1985–86 award year.

SUMMARY: The Secretary invites currently ineligible institutions of postsecondary education that wish to participate in the 1985–86 award year in the "campus-based programs," authorized by Title IV of the Higher Education Act of 1965, to submit to the Secretary an institutional eligibility application form.

The campus-based programs are the National Direct Student Loan Program, the College Work-Study Program, and the Supplemental Educational Opportunity Grant Program.

(20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

Closing Date for Transmittal of Applications: The closing date for transmittal of the institutional eligibility application form, "Request for Institutional Eligibility for Programs," with regard to participation in the campus-based programs in award year 1985–86, is January 18, 1985.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of postsecondary education.

To participate in these programs, an institution of postsecondary education must first qualify as an eligible institution. To qualify, an institution must file with the Secretary a completed "Request of Institutional Eligibility for Programs" (ED Form 1059).

The Secretary will not allocate funds under the campus-based programs in award year 1985–86 to any currently ineligible institution unless the institution submits its eligibility application by the January 18, 1985 deadline date, and the Secretary determines that the institution met the eligibility requirements by that date.

However, if the institution submits its institutional eligibility application after the closing date, the Secretary will use this application in determining the institution's eligibility to participate (1) in the campus-based programs beginning with the 1986–87 award year, and (2) in other student assistance programs under Title IV of the Higher Education Act.

to which policies and practices related to student treatment, including disciplinary sanctions and provisions for participation in athletics and other extracurricular activities, are free of discrimination on the basis of race, national origin, sex, and/or handicap

participate in the 1985–86 award year in institutions of postsecondary education.

Education Act.

The Secretary wishes to advise institutions that the institutional eligibility form "Request for Institutional Eligibility for Programs" (ED Form 1059) should not be confused with the Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) that institutions were required to submit by October 5, 1984, in order to receive funds under the campus-based programs for the 1985–86 award year.

Ineligible institutions include:

(1) An institution that has not been designated as an eligible institution by the Secretary;

(2) A location of an eligible institution that was not included in the Department's eligibility certification but has been included on the institution's FISAP; and

(3) A branch campus that is currently part of an eligible institution but has filed its own FISAP and is seeking eligibility as a separate institution of higher education.

(OMB Approval 1840–0077 Expiration date 6/86, OMB Approval 1840–0098 Expiration date 7/85)

Applications Delivered by Mail

An institutional eligibility application delivered by mail must be addressed to the U.S. Department of Education, Attention: DEAE/OHEP/OPE, 400 Maryland Avenue SW. (Mail Stop 3329, ROB–3), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutional eligibility applications received after the closing date will not be considered for funds under the campus-based programs for award year 1985–86.

Applications Delivered by Hand

An institutional eligibility application that is hand delivered must be taken to the U.S. Department of Education, Division of Eligibility an Agency Evaluation (DEAE), Room 3030, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. DEAE will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668;

(2) National Direct Student Loan Program, 34 CFR Part 674;

(3) College Work-Study Program, 34 CFR Part 675;

(4) Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

FOR FURTHER INFORMATION CONTACT:

Dr. Morris L. Brown, Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Mail Stop 3329, ROB–3), Washington, D.C. 20202. Telephone: (202) 245–9873.

(20 U.S.C. 1087 *et. seq.*; 42 U.S.C. 2751 *et. seq.*; and 20 U.S.C. 1070b *et. seq.*)

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loans; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grants)

Dated: December 7, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–32485 Filed 12–12–84; 8:45 am]

BILLING CODE 4000–01–M

Strengthening Program; Application Notice for New Planning Grants and Renewable Development Grants in Fiscal Year 1985

Applications are invited for new planning grants and new renewable development grants under the Strengthening Program.

Authority for this program is contained in sections 311–313 and 341–347 of Title III of the Higher Education Act of 1965, as amended (HEA). [20 U.S.C. 1057–1059, and 1066–1069c].

The Strengthening Program assists eligible institutions of higher education to become self-sufficient by providing funds to improve their academic quality and student services, and to strengthen their planning, management, and fiscal capabilities. To this end, the Secretary awards planning grants and renewable development grants to eligible two- and four-year, public and private institutions of higher education. Planning grants may be used by institutions to develop an institutional long-range plan and/or an application for a development grant. Development grants may be used by institutions to implement portions of their long-range plans to enable them to move toward or achieve self-sufficiency.

Closing Date for Transmittal of Applications

An application for a planning or a renewable development grant must be mailed or hand-delivered by February 15, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.031A, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except

Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds

The Department of Education Appropriation Act of 1985, (Pub. L. 98–619) appropriated $141,208,000 for the Institutional Aid Programs in Fiscal Year 1985. It is estimated that $65,804,000 of that amount will be allocated to the Strengthening Program. Of the funds allocated to the Strengthening Program, approximately $12,104,000 shall be available for new awards.

The Secretary anticipates awarding approximately 12 to 14 planning grants and approximately 60 to 70 renewable development grants.

A minimum of $300,000 will be set aside for planning grants. If an insufficient number of qualifying applications are submitted for planning grants, the remainder of that money will be used for renewable development grants. [34 CFR 625.31(b)].

In order to ensure a reasonable number of grants for new projects and in accordance with 34 CFR 625.31(b)(2) of the Strengthening Program regulations, the Secretary is limiting the maximum award for planning grants to $25,000 and limiting the maximum annual award for renewable grants to $200,000. Accordingly, applicants should not submit budget requests in excess of these amounts. *THE SECRETARY WILL NOT ACCEPT ANY APPLICATION CONTAINING A REQUEST IN EXCESS OF THESE MAXIMUM AMOUNTS. SUCH APPLICATIONS WILL BE RETURNED TO THE APPLICANT.*

The Department of Education Appropriations Act of 1985 requires that at least $45,741,000 of the funds appropriated for Institutional Aid Programs be awarded to historically black colleges and universities. Such institutions are listed in the 1978 publication of the National Center for Education Statistics entitled *Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics. [34 CFR 626.31(b)]*

The Title III statute requires that at least 24 percent of the Strengthening Program funds be awarded to two-year community and junior colleges.

In accordance with Congressional directives accompanying the Department of Education Appropriations Act, 1985, the Secretary may establish a priority to award Title III funds to institutions of higher education located in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. If such a priority is established, a separate announcement will be published in the **Federal Register** at a later date.

Program Information

General: The Secretary will accept an application for a planning grant or a one-to-three year renewable development grant from any institution designated as an eligible institution under the Strengthening Program for Fiscal Year 1985. Because of the anticipated limited amount of Fiscal Year 1985 funds available for new projects, the Secretary will not accept applications for four-to-seven year non-renewable development grants.

The Secretary calls attention to § 625.20(b)(2) of the Strengthening Program regulations which prohibits an institution which has received a nonrenewable development grant under the Special Needs Program or the Challenge Grant Program from applying, either individually or as part of a cooperative arrangement, for a renewable grant under the Strengthening Program. [34 CFR 625.20(b)] The Secretary will not accept any such application, and the application will be returned to the applicant.

Planning Grants

The Secretary will not accept an application for a planning grant solely to develop an application for a development grant unless the applicant submits, as part of its application, its long-range plan containing all the elements required in § 624.22 of the Institutional Aid Programs regulations [34 CFR 624.22].

The Secretary will not accept an application for a planning grant to develop a long-range plan from institutions applying under a cooperative arrangement, unless the purpose of the grant is to develop a separate long-range plan for each participating institution.

The Secretary will not approve the purchase of equipment in a planning grant.

Approval of a planning grant does not commit the Secretary to fund a subsequent application for a development grant.

Development Grants

The Secretary will accept applications for renewable development grants for Fiscal Year 1985. In accordance with § 625.10 of the Strengthening Program regulations [34 CFR 625.10], renewable development grants are awarded for a period of one to three years.

In general, administration costs for renewable development grants should not exceed 20 percent of the total amount of funds requested. Applications containing requests in excess of this amount must include a thorough justification of the need for additional administrative funds.

Institutions should note that budget requests for the second and/or third years of multi-year renewable development grants will be limited to the amounts *projected* for these years in the original application for funds, minus any amounts which have been projected for *disallowed* activities. In order to plan accurate funding requests for future years of the grant, institutions receiving awards under this competition will be notified of any disallowed activities at the time their award is negotiated.

Designation as an Eligible Institution

Applicants for new awards, even if they currently have a grant under one or more of the Institutional Aid Programs, must be designated as eligible to apply for a Fiscal Year 1985 grant under the Strengthening Program.

Application Preparation Workshops

The Department of Education will conduct application preparation workshops to assist prospective applicants to develop applications for Strengthening Program grants, as well as for Endowment grants, authorized under the Institutional Aid Programs.

The dates and locations of the application preparation workshops will be published in the **Federal Register** at a later date.

Application Forms

Application forms and program information packages are expected to be ready for mailing by December 21, 1984. The Department of Education will mail the application material to the Office of the President of all institutions designated eligible to apply for a Strengthening Program grant in Fiscal Year 1985.

Other interested parties may obtain the materials by writing to the Division of Institutional Development, Office of Higher Education Programs, Office of Postsecondary Education, [Room 3042, ROB–3), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. However, the program information materials are only intended

campus-based programs for award year 1985–86.

to become self-sufficient by providing funds to improve their academic quality

between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except

III funds to institutions of higher education located in Guam, the Virgin

§ 625.10 of the Strengthening Program regulations [34 CFR 625.10], renewable

package. However, the program information materials are only intended

to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the individual parts of the application not exceed the page limitations identified in the application materials and that applicants not submit information that is not requested.

(Approved Under Office of Management and Budget Control Number 1840-0114)

Applicable Regulations

Regulations applicable to the Strengthening Program include the following:

(1) The regulations in 34 CFR Part 624;

(2) The regulations in 34 CFR Part 625; and

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, except that 34 CFR 75.128(a)(2) and 34 CFR 75.129(a) do not apply to cooperative arrangements.

Further information: For further information, contact Dr. Caroline J. Gillin, Director, Division of Institutional Development, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone (202) 245–2429.

(20 U.S.C. 1057–1059, and 1066–1069c)

(Catalog of Federal Domestic Assistance No. 84.031A—Strengthening Program)

Dated: December 7, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-32484 Filed 12-12-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of meetings of the Executive and Women's Educational Equity Act Committees of the National Advisory Council on Women's Educational Programs, its. The agenda will include discussion on recommendations for the Women's Educational Equity Act (WEEA) Program to the Secretary of Education and personnel matters. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend and that a portion of the meeting will be closed.

DATE: December 17, 1984, 10:30 a.m. to 12:00 p.m. and 1:30 p.m. to 2:30 p.m. open session; closed from 2:30 p.m. until business is completed.

ADDRESS: The meeting will be held at the National Advisory Council on Women's Educational Programs office, 425 13th Street, NW., Suite 416, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Sally Todd, Deputy Director, National Advisory Council on Women's Educational Programs, 425 13th Street, NW., Suite 416, Washington, D.C., 20004, (202) 376–1038.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Women's Educational Equity Act Committee will take place on December 17, 1984, from 10:30 a.m. to 12:00 p.m. The Executive Committee meeting will take place from 1:30 p.m. to 2:30 p.m. in open session. The closed session of the Executive Committee will take place from 2:30 p.m. until business is completed. The Women's Educational Equity Act Committee agenda will include discussion on recommendations to the Secretary of Education with respect to the selection of funding priorities for the Women's Educational Equity Act (WEEA) Program as well as the amount of funds to be allocated to the priorities. The Executive Committee will meet in closed session at 2:30 p.m. to discuss personnel matters, to interview candidates for the Executive Director's position and continue until business is completed. These discussions would disclose information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

The public is being given less than fifteen days notice of this closed session due to the early deadline date for recommendations for the Women's Educational Equity Act (WEEA) Programs to the Secretary of Education and the sudden resignation of the Executive Director. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs. A summary of the activities of the closed sessions and related matters which would be informative to the public consistent with the policy of section 552b(c) of Title 5 U.S.C. will be available to the public within 14 days of the meeting at the Council's office, 425 13th Street NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C. on December 7, 1984.

Patricia A. Jensen,

Executive Director.

[FR Doc. 84-32539 Filed 12-12-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided.

A meeting of Subcommittee C of the Industry Advisory Board to the International Energy Agency will be held on December 18 and 19, 1984, at the Department of Energy, Room 7B–198, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., beginning at 9:00 a.m. on December 18. The agenda for the meeting is as follows:

1. Opening remarks.
2. U.S. Plan of Action.
3. Future Work Program.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the Industry Advisory Board, their counsel, employees of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, employees of the International Energy Agency, and representatives of the Commission of the European Communities, invitees of the Industry Advisory Board or the International Energy Agency.

Issued in Washington, D.C., December 7, 1984

Theodore J. Garrish,

General Counsel.

[FR Doc. 84-32482 Filed 12-13-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/JA(EU)–32, from the Federal Republic of Germany to Japan, 15 miniplates containing 205 grams of uranium, enriched to 19.75% in U–235, for irradiation testing in the JMTR reactor, Oarai, Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 7, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-32461 Filed 12-12-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ES85–19–000]

Gulf States Utilities Co.; Application

December 10, 1984.

Take notice that on November 30, 1984, Gulf States Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to 6,500,000 shares of Common Stock, without par value, and for exemption from competitive bidding requirements.

Any person desiring to be heard or to make protest with reference to said applications should on or before December 31, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385. 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32563 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85–127–000]

Lone Star Gas Co., a Division of ENSERCH Corp., Request Under Blanket Authorization

December 10, 1984.

Take notice that on November 26, 1984, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85–127–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Lone Star proposes to construct and operate sales taps and appurtenant facilities under the certificate issued in Docket No. CP83–59–000, as amended in Docket No. CP83–59–002, all as more fully set forth in request on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate three sales tap facilities in order to sell up to 300 Mcf of natural gas on an annual basis to residential customers located in McClain and Cleveland Counties, Oklahoma, and Grayson County, Texas. Lone Star states that it would utilize its residential rates, which have been approved by the Oklahoma Corporation Commission and the Texas Railroad Commission, respectively.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32564 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79–127–001]

Northwest Pipeline Corp.; Petition To Amend

December 10, 1984.

Take notice that on November 14, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP79–127–001 pursuant to section 7 of the Natural Gas Act a petition to amend the order issued April 4, 1979, in Docket No. CP79–127 so as to delete the authorization to construct and operate the Paul Faircloe farm tap, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northwest states that the order issued April 4, 1979, authorized Northwest to construct and operate four farm taps for the sale of natural gas to three existing distribution customer companies for resale. It is stated. Northwest constructed and placed in service three of the four authorized taps, with the additional delivery point for CP National Corporation (CPN) the Paul Faircloe tap, remaining unconstructed pending final approval by Mr. Faircloe.

BILLING CODE 6450-01-M

open to public inspection.

pending final approval by Mr. Fairclee.

By letter dated October 25, 1984, CPN formally notified Northwest that the proposed Patil Faircloe Tap would no longer be necessary, it is stated.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 31, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32545 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-030]

Pennzoil Co.; Sixteenth Amendment to Application for Immediate Clarification or Abandonment Authorization

December 7, 1984.

Take notice that on December 6, 1984, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston TX 77001, filed in Docket No. G-7004-030 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas as is required to allow sales of gas to eight new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's orignal application filed on October 25, 1982. In filing this Sixteenth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it should not be found to be in violation of its duty * * * to provide adequate gas service to all applicants * * * and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, December 14, 1984, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G-7004-006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G-7004-030.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32546 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-94-001]

Trailblazer Pipeline Co.; Motion To Make Suspended Tariff Sheets Effective

December 7, 1984.

Take notice that on November 30, 1984, Trailblazer Pipeline Company (Trailblazer) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Motion To Make Suspended Tariff Sheets Effective (Motion). Included were the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Second Revised Sheet No. 4;
Substitute First Revised Sheet No. 128;
Substitute First Revised Sheet No. 129.

Trailblazer states that the rates and changes on the tariff sheets reflect the revisions required to comply with conditions set out in the Commission's order issued July 31, 1984. Trailblazer requests an effective date of January 1, 1985. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate fee, which in the instant case was not until December 3, 1984.

Trailblazer states that copies of the Motion, together with the tariff sheets and workpapers, have been served on all of Trailblazer's jurisdictional customers and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32548 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-56-003]

Valero Interstate Transmission Co.; Change in Rates In Purchased Gas Cost Adjustment Provisions

December 6, 1984.

Take notice that on November 30, 1984, Valero Interstate Transmission Company ("Vitco") tendered the following filing containing changes in rates to its purchases gas cost adjustment provisions:

Supplement No. 127;
Schedule A to FERC Rate Schedule No. 2;

For Sale of Gas by Vitco to Transcontinental Gas Pipe Line Corporation.

Vitco states that this filing implements an agreement between Vitco and Transcontinental Gas Pipe Line Corporation ("Transco") to settle both the proposal of Transco in *Transcontinental Gas Pipe Line Corporation*, Docket No. CP84-183-000, to abandon the Vitco sale to Transco and Transco's protests in Vitco's last three PGA proceedings in Docket Nos. TA83-2-56, TA84-1-56, and TA84-2-56. The filing eliminates the surcharge and provides for a lump sum payment by Transco of the balances in the deferred account No. 191 as of December 31, 1984, and payment by Transco after date of FERC abandonment or May 1, 1985 of the difference between Vitco's estimated gas cost and actual gas costs up to $2.7865 ($3.00-$.2135).

The proposed effective date for the above filings is January 1, 1985. Vitco requests a waiver of any Commission regulations or order which would prohibit implementation by December 31, 1984.

Any person desiring to be heared or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 384.211 and 385.214). All such petitions or protests should be filed on or before December 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32549 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-2-004]

Wisconsin Electric Power Co.; Refund Report

December 7, 1984.

Take notice that on October 22, 1984, Wisconsin Electric Power Company (Wisconsin) submitted for filing a refund compliance report pursuant to the Commission's letter of September 17, 1984.

Wisconsin states that on October 5, 1984, it refunded to the customer all revenue amounts collected under the suspended rates in excess of the settlement rates, including interest calculated in accordance with the Commission's Regulations.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 14, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32550 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-67-000]

Borden Chemical, a Division of Borden, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 10, 1984

On November 1, 1984, Borden Chemical, a Division of Borden, Inc. (Applicant) of P.O. Box 427, Geismar, Louisiana 70734 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Borden Chemical Plant in Geismar, Louisiana. The electric power production capacity will be 21,050 kilowatts. The primary energy source will be natural gas. The facility will consist of a combustion gas turbine generator discharging into a waste heat recovery boiler and a Chemico reformer. The useful thermal energy output, part of which will be process steam and the balance as heat energy, will be utilized in the production of chemicals. Construction of this facility began in September 1984.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32542 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF 85-95-000]

Shawmut Energy Engineering Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 10, 1984.

On November 20, 1984, The Shawmut Energy Engineering Company, located at 5000 Wabash Avenue, Baltimore, Maryland 21215, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a solid waste recovery and electric generating facility that will contain a turbine generator capable of producing approximately 13 MW, exclusive of station use. It will be located in Erie, Pennsylvania. The processing and/or incineration of municipal waste, shredded tires, wood chips, and no more than 5% coal, will produce steam which will be used by the facility for the generation of electricity. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

supply needs. Pennzoil also states that

(Commission) a Motion To Make

2:

1984, it refunded to the customer all

the Commission in determining the

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32547 Filed 12-12-84; 8:45am]

BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation

December 11, 1984.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1983 Annual Report

Valuation Docket, No. PV-1473-000; Algonquin Pipe Line Company, 1000 Ashland Drive, Russell, Kentucky 41160

On or before January 12, 1985, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an approprite certificate of service be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 84-32524 Filed 12-12-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OMP-4-FRL 2736-4]

Marine Sampling and Measurement Program Off Northern Pinellas County, FL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Document availability notice.

SUMMARY: US EPA announces the availability of a three volume technical report titled: *Marine Sampling and Measurement Program Off Northern Pinellas County, Florida.* Data obtained in this study were used to support environmental and engineering evaluations of an outfall to dispose of treated domestic wastewater to the Gulf of Mexico for an environmental impact statement. The scope of effort was geared to investigations of areas possessing valuable, sensitive nearshore marine environments including hard bottom habitats. The report would be of interest to state agencies and communities along the Gulf of Mexico considering discharges to the Gulf.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Bisterfeld, Environmental Assessment Branch, Office of Policy and Management, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 881-3776 FTS 257-3776.

Dated: December 4, 1984.

Howard D. Zeller,

Acting Regional Administrator, Region IV.

[FR Doc. 84-32467 Filed 12-12-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Proposed New Routine Use to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed routine use to existing systems of records.

SUMMARY: The purpose of this notice is to add a new routine use to two existing systems of records entitled, "FEMA/GC-1, Claims (litigation)" and "FEMA/GC-2, FEMA Enforcement (Compliance)." The new routine use will permit disclosure to the Department of Justice and/or the Court in the event of litigation where the plaintiff or defendant is: (a) The Federal Emergency Management Agency (FEMA), any component of FEMA or any employee of FEMA in his or her official capacity; (b) The United States where FEMA determines that the claim, if successful, is likely to directly affect the operations of FEMA or any of its components; (c) Any FEMA employee in his or her individual capacity where the Department of Justice has agreed to represent such employee. FEMA may disclose such records as it deems relevant or necessary to the Department of Justice and/or the Court as evidence in litigation to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

EFFECTIVE DATE: The new routine use will become effective, without further notice, on January 14, 1985, unless comments dictate otherwise.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 298-0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97-375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular No. A-108, Transmittal Memorandum No. 1 and 3. Thus, a change to a system notice that does not require such a report need only be described in a **Federal Register** notice, without the necessity of publishing the complete text of the notice.

On October 7, 1981, (46 FR 49741), the Federal Emergency Management Agency published the complete text of the system of records, "FEMA/GC-1, Claims (litigation)." Revisions to this system of records were published on October 25, 1983, (48 FR 49376). The complete text of the system of records, FEMA/GC-2, FEMA Enforcement (Compliance)" was published on October 7, 1981, (46 FR 49742) and revisions were published on October 25, 1983 (48 FR 49376).

Dated: December 6, 1984.

Russell B. Clanahan,

Acting Director, Office of Public Affairs, Federal Emergency Management Agency.

BILLING CODE 6718-01

FEMA/GC-1

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To those FEMA employees responsible for processing claims, investigating claims, making recommendations concerning the validity of the claim, and making decisions regarding the claims; to other investigative or similar authorities responsible for investigating or making recommendations on complaints or claims, whether or not a part of FEMA or some other agency; to decisionmaking

authorities outside of FEMA when required by law, regulation or order; to the Department of Justice and/or the Court in the event of litigation where the plaintiff or defendant is: (a) The Federal Emergency Management Agency (FEMA), any component of FEMA or any employee of FEMA in his or her official capacity; (b) the United States where FEMA determines that the claim, if successful, is likely to directly affect the operations of FEMA or any of its components; (c) any FEMA employee in his or her individual capacity where the Department of Justice has agreed to represent such employee. FEMA may disclose such records as it deems relevant or necessary to the Department of Justice and/or the Court as evidence in litigation to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

Additional routine uses may include Nos. 2, 3, 5, 6, and 8 of Appendix A.

* * * * *

FEMA/GC-2

SYSTEM NAME:

FEMA Enforcement (Compliance).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To FEMA employees responsible for processing allegations, investigating the allegations, making recommendations concerning the validity of the allegation and making decisions as to what action, if any, should be taken against the individual; to other agencies charged with investigative responsibilities and enforcement actions of any nature including prosecution for violations of criminal laws; to employers, whether Federal, State or local agencies, whose employee is involved; and to State and local investigative authorities; to the Department of Justice and/or the Court in the event of litigation where the plaintiff or defendant is: (a) The Federal Emergency Management Agency (FEMA), any component of FEMA or any employee of FEMA in his or her official capacity; (b) the United States where FEMA determines that the claim, if successful, is likely to directly affect the operations of FEMA or any of its components; (c) Any FEMA employee in his or her individual capacity where the Department of Justice has agreed to represent such employee. FEMA may disclose such records as it deems relevant or necessary to the Department of Justice and/or the Court as evidence in litigation to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

Additional routine uses may include Nos. 1, 2, 3, 4, 5, 6, and 8 of Appendix A.

* * * * *

[FR Doc. 84-32439 Filed 12-12-84; 8:45am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 84-33]

Section-19 Inquiry—United States/Argentina and United States/Brazil Trade; Availability of Finding of no Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's investigation in Docket No. 84-33 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

The Commission has instituted this proceeding to determine whether certain conditions unfavorable to shipping exist in the foreign trade of the United States with Argentina and Brazil.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request for the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32417 Filed 12-12-84; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010700.

Title: Baltimore Terminal Agreement.

Parties:

The Maryland Port Administration (MPA)

The Terminal Company (TC)

Synopsis: Agreement No. 224-010700 provides that the MPA shall lease to TC 5.30 acres for use as a warehouse facility at Dundalk Marine Terminal, Baltimore Harbor. The premises will be used for the handling of water borne commerce having access to ship berths at the terminal. The term of the agreement is for five years commencing on January 1, 1985, or on the first day of the month following the determination of the effective date by the Commission.

Agreement No.: 224-010701.

Title: Miami Marine Terminal Agreement.

Parties:

Island Terminal Company (Island)

Cantaclaro Container Line, C.C. (Cantaclaro)

Synopsis: Agreement No. 224-010701 provides for the furnishing of terminal facilities and services by Island to Cantaclaro at Island's facility in Miami Beach, Forida, on an exclusive basis. The term of the agreement is for one year with options for further periods of one year each. The parties requested a shortened review period for the agreement.

Agreement No.: 224-010702.

Title: Oakland Marine Terminal Agreement.

Parties:

The Port of Oakland

Hoegh Line (U.S.) (Hoegh)

Synopsis: Agreement No. 224-010702 provides that Hoegh shall have the nonexclusive right to assigned premises at the Port's Charles P. Howard Terminal, for the handling of its vessels and related operations in its Middle East and Pacific services. Hoegh agrees that the assigned premises shall be the published, regularly scheduled Northern California port of call for its vessel operations. As a consideration for its regular use of the Port, Hoegh will pay less than 100% of the dockage and wharfage revenue to the Port. The term of the agreement commences upon the first of the month followng effectiveness and terminates November 30, 1989.

By Order of the Federal Maritime Commission.

ACTION: Document availability notice.

of Justice and/or the Court as evidence in litigation to present an effective

claims, whether or not a part of FEMA or some other agency; to decisionmaking

in litigation to present an effective defense, provided such disclosure is

20573, within 10 days after the date of the Federal Register in which this notice

Commission.

Dated: December 10, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32341 Filed 12-12-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Lincoln Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

Correction

In FR Doc. 84-30658, appearing on page 46492 in the issue of Monday, November 26, 1984, make the following correction: In the third column of page 46492, the fifth line should have read "1. *Merchants Bancorporation,*".

BILLING CODE 1505-01-M

Commonwealth Trust Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 4, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Commonwealth Trust Bancorp, Inc.*, Covington, Kentucky; to acquire 52.53 percent of the voting shares of The Farmers Bank, Butler, Kentucky.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *County Bancorporation, Inc.*, Jackson, Missouri; to acquire 100 percent of the voting shares of Cape County Bank of Cape Girardeau, Cape Girardeau, Missouri.

2. *Oran Bancshares, Inc.*, Oran, Missouri; to become a bank holding company by acquiring 80.56 percent of the voting shares of Oran State Bank, Oran, Missouri.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Parker Bankshares, Incorporated*, Parker, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Parker, Parker, Colorado.

Board of Governors of the Federal Reserve System, December 7, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32457 Filed 12-12-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Chapter AMH, Office of Procurement, Assistance and Logistics and Chapter AMM, Office of Management Analysis and Systems, of the Statement of Organization, Functions and Delegation of Authority of the Department of Health and Human Services are amended. Chapter AMH was last amended at 46 FR 49644 (October 7, 1981) and Chapter AMM was last amended at 49 FR 3542 (September 7, 1984). The changes in the Office of Procurement, Assistance and Logistics reflects the consolidation of organizational units within the Office of Procurement, Assistance and Logistics in order to reduce overlapping activities and improve the effectiveness of the Office in carrying out its assigned responsibilities. The change in the Office of Management Analysis and Systems makes a correction to the previously published change. The changes are as follows.

1. Delete Section AMH.10 Organization in its entirety and replace with the following:

AMH.10 Organization

The Office of Procurement, Assistance and Logistics reports through the Deputy Assistance Secretary for Procurement, Assistance and Logistics to the Assistant Secretary for Management and Budget (ASMB). The Office consists of the following:

Immediate Office
Office of Procurement and Logistics Policy
Office of Assistance and Cost Policy
Office of Procurement and Assistance
  Financial Management
  Division of Audit Resolution
  Division of ADP Review
  Division of Operations
Office of Small and Disadvantaged Business Utilization

2. Amend Chapter AMH, Section AMH.20 Functions as Follows:

(a) Delete Subsections A, B and C in their entirety and replace them with the following:

A. *Immediate Office of the Deputy Assistant Secretary.*

Manages, directs supervises and administers the Office of Procurement, Assistance and Logistics.

B. *Office of Procurement and Logistics Policy.*

1. Formulates Departmentwide procurement policies governing the award and administration of procurement and logistics activities. Formulate Departmentwide logistics management policies affecting equipment, materials and supplies. Publishes these in regulations and manuals. Recommends and participates in development of governmentwide policies in these areas.

2. Provides advice and technical assistance on procurement and logistics activities and policy matters to the Department's Operating and Staff Divisions.

3. Develops, participates in, and evaluates training programs in procurement and logistics for Department staff; develops and participates in training activities for recipients of Department procurement awards.

4. Monitors the adaptation of procurement and logistics policies by the Department's Operating and Staff Divisions to ensure consistent policy interpretation and application.

5. Makes studies of problems requiring adoption of new policies or revision of current policies, including the application of Departmental management controls and reports related to the Department's procurement and logistics activities.

6. Serves as the Department's liaison and maintains working relationships with OMB, GSA, OPM, Treasury and other Federal agencies to coordinate and assist in development of policies and resolve issues arising from implementation of those policies; maintains similar relationships with associations of public and private contractor organizations.

C. *Office of Assistance and Cost Policy.*

1. Formulates Departmentwide policies governing the award and administration of grants and other forms of Federal assistance; formulates Departmentwide cost and audit resolution policies and procedures governing the administration of procurement and assistance activities; publishes these in regulations, manuals and brochures.

2. Provides general advice and assistance to recipients and the Department's Operating and Staff Divisions on matters relating to the administration of grants, other forms of Federal assistance and costing.

3. Develops, participates in, and evaluates training programs for Department staff, develops and participates in training activities for recipients of Department assistance awards.

4. Monitors the adaptation of assistance and cost policies by the Department's Operating and Staff Divisions to ensure consistent policy interpretation and application, reviews proposed regulations for policy implications, and recommends concurrence or nonconcurrence.

5. Makes studies of problems requiring adoption of new policies or revision of current policies, including the application of Department management controls and reports.

6. Serves as the Department's liaison and maintains working relationships with OMB and other Federal agencies to coordinate and assist in development of assistance and cost policies and resolve issues arising from implementation of those policies, maintains similar relationships with associations of public and private grantees and other recipient organizations.

(b) Delete Subsection E in its entirety and reletter Subsection F as Subsection E.

3. Amend Chapter AMM, Section AMM.20 by relettering subsection F as subsection E and subsection G as F.

Dated: December 4, 1984.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 84-32427 Filed 12-12-84; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Open Meeting on Lower Extremity Disorders of Occupational Origin

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

January 18, 1985.
Time: 9:00 a.m.–3:30 p.m.
Place: Room B-38, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review and discuss a project intended to evaluate the biochemical basis for lower extremity musculoskeletal disorders among worker groups and identify risk factors in their occurrence. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Mr. Dan Habes, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8286, Commercial: 513/684–8286.

Dated: December 6, 1984.

James O. Mason, M.D., Dr.P.H.,

Director, Centers for Disease Control.

[FR Doc. 84-32496 Filed 12-12-84; 8:45 am]

BILLING CODE 4160-19-M

Open Meeting on Industrial Hygiene Characterization of 1,3-Butadiene Exposed Workers

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: January 10, 1985.
Time: 9:00 a.m.–4:00 p.m.
Place: Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Purpose: To discuss the protocol for an industrial hygiene characterization of 1,3-butadiene exposed workers. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: John M. Fajen, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–4363, Commercial: 513/684–4363.

Dated: December 7, 1984.

James O. Mason, M.D., Dr.P.H.,

Director, Centers for Disease Control.

[FR Doc. 84-32457 Filed 12-12-84; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 84N-0378]

Trans Fatty Acids; Announcement of Study and Request for Data and Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB) is undertaking a study on *trans* fatty acids by the means of an ad hoc Review Panel on *Trans* Fatty Acids. FASEB is inviting submission of scientific data, information, and reports on *trans* fatty acids for consideration by the ad hoc Review Panel. The ad hoc Review Panel will provide an opportunity for presentation of written and oral views, information, and data on *trans* fatty acids at an open meeting on February 21, 1985. The Panel will meet in executive session on the morning of February 21, 1985, after the open meeting, and on February 22, 1985.

DATES: Written comments, data, and information on *trans* fatty acids may be submitted until January 25, 1985. The open meeting of the ad hoc Review Panel is scheduled for February 21, 1985, 1:30 p.m. Requests to make oral presentations at the open meeting must be made in writing, be postmarked before February 8, 1985, and received by February 13, 1985.

ADDRESSES: Data and information may be submitted as follows: two copies to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and five copies to F. R. Senti, Life Sciences Research Office of the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Written requests to make oral presentations should be directed to both addresses above. The meeting will be held at the Milton O. Lee Bldg., FASEB, 9650 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: F. R. Senti, Life Sciences Research Office (address above), 301–530–7030.

Locust Street, St. Louis, Missouri 63166:

Assistance Secretary for Procurement, and Logistics reports through the Deputy

other Federal agencies to coordinate and assist in development of policies

BILLING CODE 4150-04-M

Columbia Parkway, Cincinnati, Ohio

Office (address above), 301-530-7030.

SUPPLEMENTARY INFORMATION: FDA is announcing that FASEB, under its contract with FDA (No. 223-83-2020), will study the available information on *trans* fatty acids. In response to the agency's request, the Scientific Steering Group that FASEB established under the contract recommended that the Life Sciences Research Office appoint an ad hoc study panel. To accomplish this task, the Life Sciences Research Office has established an ad hoc Review Panel on *Trans* Fatty Acids.

The ad hoc Review Panel will examine available information on *trans* fatty acids including: (1) The levels in the current U.S. food supply, the levels of the past 10 to 20 years, and the levels predicted over the next 5 to 10 years; (2) estimates of U.S. dietary intake; (3) the toxicological, physiological, and nutritional effects; and (4) available methods for measuring *trans* fatty acids and positional isomers in fats, oils, and foods.

The ad hoc Review Panel will be composed of members of the Scientific Steering Group and other experts in the several aspects of the study that are outlined above. A list of the members of the Panel may be obtained by writing to the contact person (address above). In accordance with 21 CFR 14.15(b)(1), notice is given that the ad hoc Review Panel will hold an open meeting at which opportunity will be provided for the public to present written and oral views, information, and data on *trans* fatty acids. The meeting will be held on February 21, 1985, 1:30 p.m., at the Milton O. Lee Bldg., FASEB, 9650 Rockville Pike, Bethesda, MD. The Panel will meet in executive session on the morning on February 21, 1985, for organizational purposes. The Panel will meet after the conclusion of the public meeting on February 21 and again on February 22, 1985, to consider all the information and views received at the open meeting, written submissions, and all other published data and information obtained by the Panel in the course of its study.

This notice invites submission of scientific information, data, and reports on *trans* fatty acids for consideration by the ad hoc Review Panel. Two copies of any information and data should be submitted to the Dockets Management Branch (address above) and should be identified with the docket number found in the heading of this document. Five copies of any information and data should be submitted to the Life Sciences Research Office (address above). The deadline for receipt of such information is January 25, 1985. Written requests to make oral presentations should be sent to the addresses above, must be postmarked before February 8, 1985, and received by February 13, 1985.

Dated: December 6, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-32420 Filed 12-12-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. I-84-132]

Intent To Issue a Finding of No Significant Impact; Columbia Point Redevelopment Project; Boston, MA

The Department of Housing and Urban Development gives notice that it intends to issue a Finding of No Significant Impact (FONSI) for the proposed Columbia Point Redevelopment Project, located in the City of Boston, Massachusetts. The proposed finding is based on an Environmental Assessment (EA) for the project and an Environmental Impact Report, prepared under State environmental law. Comments are solicited before the HUD Boston Regional Administrator makes a final determination whether to proceed without preparing an Environmental Impact Statement (EIS).

The previous Notice of Intent to File an EIS, published in the **Federal Register** on June 22, 1984 is hereby cancelled.

Description

The proposed project provides for the rehabilitation and new construction of 1400 residential apartment units on the site of the existing Columbia Point Housing Project. The existing project consists of 1504 dwelling units in 27 residential structures and 3 service buildings. At present, most of the buildings are vacant and boarded-up and contain a resident population of 300-400 people. Nineteen of the residential buildings will be demolished and the remainder will be rehabilitated. New construction will include townhouses, 4-5 story lowrises, 6-11 story stepped midrises, 8 story midrises and 6-16 story stepped towers. All on-site tenants will be rehoused within the project. The completed project will include amenities such as a community building, swimming pools, tennis courts, softball diamonds, tot lots and playgrounds will be provided. A 400-vehicle garage is proposed to supplement 950 other off-street parking spaces. The proposal is being reviewed for acceptance under section 223(d)(4) which provides for Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects (24 CFR Part 251).

Purpose of FONSI Notice

Pursuant to HUD environmental regulations at 24 CFR Part 50, an EA has been prepared by HUD's Boston Office to determine whether or not an EIS is required. It is the finding of the EA that there would be no significant impact on the human environment and that the project is in compliance with the National Environmental Policy Act and related environmental laws and authorities cited at 24 CFR 50.4. Therefore, in accordance with the applicable regulations a FONSI has been prepared, and a Notice to that effect is hereby published. Pursuant to 40 CFR 1501.4(e)(2) of the Council on Environmental Quality regulations, there will be a thirty (30) day comment period before HUD makes its final determination on the FONSI. Interested individuals, governmental agencies, and private organizations are invited to comment on the FONSI by the date and to the address set forth below.

Additional Information and Comments

The EA and supporting documentation which serves as the basis for the FONSI are available for inspection until the close of the comment period at the HUD Boston Regional Office during regular business hours. Contact concerning inspections should be made with Sheldon Gilbert, Regional Environmental Officer, Room 609, Bulfinch Building, 15 New Chardon Street, Boston, MA 02114, telephone 617-223-1620 (this is not a toll free number).

Written comments on the FONSI should be submitted to John C. Mongan, Regional Administrator-Regional Housing Commissioner, Department of Housing and Urban Development, Room 800, John F. Kennedy Building, Boston, MA 02203 (Attention: Regional Environmental Officer) within thirty (30) days of the publication of this Notice.

Dated: December 7, 1984.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

[FR Doc. 84-32418 Filed 12-12-84; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Establishment of New Systems of Records Notices

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to publish two new systems of records notices describing records maintained by the Minerals Management Service, and the Geological Survey. The notices are titled "Employee Counseling Services Program" (MMS-9 and EGS-4) and describe records which pertain to Minerals Management Service and Geological Survey employees, former employees, and their families who seek help with their personal or medical problems. The new notices do not constitute the establishment of new records, per se, but reflect existing records currently described under a Departmentwide notice (OS-100) published in the **Federal Register** on September 10, 1980 (45 FR 59642). The Minerals Management Service and Geological Survey records are being removed from coverage under the Departmentwide notice, and are now described in the separate notices published below. The Departmentwide notice for such records (OS-100) is being deleted from the inventory of systems notices describing records maintained by the Department.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on this proposed change can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before January 14, 1985, will be considered. The notices shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: December 5, 1984.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/MMS-9

SYSTEM NAME:

Employee Counseling Services Program—Interior, MMS-9

SYSTEM LOCATION:

This system is located: (1) Department of the Interior (DOI), Minerals Management Service, Office of Administration, Personnel Division, Mail Stop 634, 12203 Sunrise Valley Drive, Reston, Virginia 22091, and (2) Contractor providing counseling services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Minerals Management Service employees, former employees, and their family members who seek, are referred, and/or receive assistance through the Employee Counseling Services Program. The records contained in this system which pertain to individuals contain principally personal and/or medical information. These records are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselor (Employee Counseling Services Program Counselor) and the problem assessment, recommended plan of action to correct the major issue, referral to community or private resource for assistance with personal problems, referral to community or private resource for rehabilitation or treatment, results of referral, and other notes or records of discussions held with the employee made by the Employee Counseling Services Program Counselor. Additionally, records in this system may include documentation of treatment by a therapist or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 42 U.S.C. 290dd-1; (2) 42 U.S.C. 290ee-1

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records are to counsel and refer employees and/or their family members with personal or medical problems. These records and information may be used to disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by DOI, all patient identifying information will be removed).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in folders in file cabinets.

RETRIEVABILITY:

Indexed by name of individual on whom they are maintained.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 manual records.

RETENTION AND DISPOSAL:

Records are maintained for three years after the employee's or the family member's last contact with the Employee Counseling Services Program. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 634, Reston, Virginia 22091.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of a record should be addressed to the System Manager. A written signed request stating that the individual seeks information concerning his/her records is required. (43 CFR 2.60).

RECORDS ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, the Employee Relations and Training Branch who records the counseling session, and therapists or institutions used as referrals or who provide treatment.

INTERIOR/EGS-4

SYSTEM NAME:

Employee Counseling Services Program Records—Interior, GS-4

SYSTEM LOCATION:

This system of records is located with the contractor providing counseling services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Geological Survey employees and their families who seek, are referred,

and/or receive assistance through the Employee Counseling Services Program (ECSP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors [Federal, State, local government, or private] and the problem assessment, recommended plan of action to correct the major issue, referral to community or private resource for assistance with personal problems, referral to community or private resource for rehabilitation or treatment, results of referral, and other notes or records of discussions held with the employee made by the ECSP counselor. Additionally, records in this system may include documentation of treatment by a therapist or at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1; 42 U.S.C. 290ee–1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by the Employee Counseling Services Program Counselor to document the nature of an individual's work performance problem and progress made to correct the problem. The primary uses of these records are: (1) For the ECSP counselor to document the nature of an individual's work performance problem and progress made to correct the problem, and, (2) record an individual's participation in, and the results of, community or private referrals for solution of personal problems, rehabilitation, or treatment programs.

These records and information may be used:

(1) To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by DOL, all patient identifying information will be removed).

Note.—Disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restrictions of the confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2. Disclosure of records pertaining to the physical and mental fitness of employees are, as a matter of Department policy, afforded the same degree of confidentiality.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets with access strictly limited to those persons employed by the contractor(s) who are directly involved in the Geological Survey's Employee Counseling Services Program alcohol and drug abuse prevention function as that term is defined in 42 CFR Part 2.

RETENTION DISPOSAL:

Records are maintained for three to five years after the employee of family member's last contract with the ECSP prevention function or until the employee's separation or transfer, whichever comes first. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Program Coordinator, Employee Counseling Services Program, Branch of Personnel, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Geological Survey employees wishing to inquire whether this system of records contains information about them should contact the U.S. Geological Survey Employee Counseling Services Program Coordinator. Individuals must furnish their name and date of birth for their records to be located and identified.

RECORD ACCESS PROCEDURES:

Same as notification above. Any individual must also follow the Department Privacy Act Regulations regarding verification of identity and access to records (See 43 CFR 2.62).

CONTESTING RECORDS PROCEDURES:

Geological Survey employees wishing to request amendment to these records should contact the U.S. Geological Survey Employee Counseling Services Program Coordinator. An individual must follow the Department's Privacy Act Regulations regarding verification of identity and amendment of records (See 43 CFR 2.70).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, the Employer Counseling Services Program staff who records the counseling session, and therapists or institutions used as referrals or providing treatment.

[FR Doc. 84–32430 Filed 12–12–84; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

Competitive Coal Lease Offering by Sealed Bid; Tuscaloosa County, AL

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that as a result of applications filed by Mitchell and Neely, Inc. (ES 28564) Nickle Plate Mining Company (ES 30862), and North River Energy Company (ES 32949) for coal resources in the Carter Brookwood Group (Tuscaloosa County, Alabama), The Milldale (Carter "split") and Carter Seams (Tuscaloosa County, Alabama), the Utley Group—First and Second Seams (Tuscaloosa County, Alabama), respectively, these coal resources will be offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1947 (61 Stat. 913, 30 U.S.C. 351–359), as amended. The applicants have satisfactorily demonstrated under the emergency leasing regulation 43 CFR 3425.1–4 that is the coal desposits are not leased, they will be bypassed in the reasonably foreseeable future.

The applications have been listed as three parcels as described below:

Parcel One

Application ES 28564 (Long Creek Tract)

T. 18 S., R. 9 W.,
Sec. 31 and 32.

Tuscaloosa County, Alabama

Containing approximately 200 acres.

Parcel Two

Applications ES 30862 (Modified Jock Creek Tract)

T. 18 S., R. 9 W.,
Sec. 26 and 35.
T. 19 S., R. 9 W.,
Sec. 1.

Tuscaloosa County, Alabama

Containing approximately 890 acres.

Parcel Three

Application ES 32949 (Sottera Tract)

T. 18 S., R. 10 W.,
Sec. 11.

Tuscaloosa County, Alabama

Containing approximately 50 acres.

The tracts will be leased to the qualified bidder of the highest cash amount provided that the high bid for the tracts equals or exceeds the fair market value (FMV) of the tracts as determined by the authorized officer after the sale. The Department has established a minimum bid of $100.00 per acre for all tracts. The minimum bid is not to be considered as representing the amount for which the tracts may actually be leased, since FMV will be determined in a separate postsale analysis. If identical high sealed bids are received for a particular parcel, the tying high bidders will be asked to submit follow up sealed bids until a high bid is received. All tie-breaking bids must be submitted within 5 minutes following the authorized officer's announcement at the sale that identical high bids have been received.

DATE: The sale will be held at 10:00 a.m., Wednesday, January 16, 1985, in the Hyatt Birmingham, Birmingham, Alabama 35203. All bids must be submitted to the Bureau of Land Management, Jackson District Office, P.O. Box 11348, Delta Station, Jackson, Mississippi 39213. The bids should be sent by certified mail, return receipt; or be hand-delivered on or before 4:00 p.m., January 14, 1985. Any bids received after 4:00 p.m., Monday, January 14, 1985, will not be considered.

SUPPLEMENTARY INFORMATION: The coal resources being offererd are to be surface mined from the Carter Brookwoood Group, the Milldale and Carter Seams and the Utley Group—First and Second Seams in Tuscaloosa County, Alabama. The complete legal descriptions are available at the Eastern States Office at 350 South Pickett Street, Alexandria, Virginia 22304.

The proximate analysis of the tracts are as follows:

LONG CREEK TRACT

1. Moisture (percent)	1.1–4.3
2. Ash (percent)	5.4–11.1
3. Sulfur (percent)	0.9–1.46
4. Btu per lb.	13,030–14,174
5. Approximate tons in place	126,000

JOCK CREEK TRACT

	Milldale seam	Carter seam
1. Moisture (percent)	2.8–5.6	2.8–5.0
2. Ash (percent)	11.8–23.0	4.1–8.1
3. Sulfur (percent)	1.2–1.5	0.9–1.3
4. Btu per lb.	10,657–13,000	14,000–14,500

JOCK CREEK TRACT—Continued

	Milldale seam	Carter seam
5. Approximate tons in place	800,000	325,000

SOTTERA TRACT

1. Moisture (percent)	1.4–2.4
2. Ash (percent)	6.6–11.7
3. Sulfur (percent)	1.6–3.9
4. Btu per lb.	13,109–14,000
5. Approximate tons in place	19,000

Other detailed chemical analysis are available upon request from the Bureau of Land Management, Eastern States Office, Branch of Fluid and Solid Minerals at 350 South Pickett Street, Alexandria, Virginia 22304.

Rental and Royalty

Any lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12½ percent of the value of the coal produced by surface mining methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Notice of Availability

Bidding instructions and bidder qualifications are included in the Detailed Statement of the Lease Sale. Copies of the Statement and of the proposed coal leases are available at the Bureau of Land Management, Eastern States Office and the Jackson District Office. Case file documents are available for public inspection at the Eastern States Office.

FOR FURTHER INFORMATION CONTACT:

Ms. Barabara Coalgate, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274–0149.

Pieter J. VanZander,

Acting State Director.

[FR Doc. 84–32333 Filed 12–12–84; 8:45 am]

BILLING CODE 4310–GJ–M

Bureau of Indian Affairs

Irrigation Operation and Maintenance Charges; Water Charges and Related Information on the Crow Irrigation Project, Montana

This notice of operation and maintenance rates and related information is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in 209 DMB and redelegated by the Assistant Secretary—Indian Affairs to the Area Directors in 10 BIAM 3, and by authority delegated to the Project Engineer and to the Superintendents by the Area Director in 10 BIAM 7.0, Section 2.70–2.75. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statues (25 U.S.C. 2 and 9), and also under 25 CFR 171.1(e).

Pursuant to the final rule published on June 14, 1977, in 42 FR 30361, this notice sets forth changes to the operation and maintenance charges and related information applicable to the Crow Irrigation Project, Crow Agency, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1914, and March 7, 1928, (38 Stat. 583, 25 U.S.C. 385; 45 Stat. 210, 25 U.S.C. 387).

Interested persons were given 30 days in which to submit written comments, views or arguments regarding the proposed rates and related provisions. No written comments were received during the 30-day comment period.

Therefore, in compliance with the above, the operation and maintenance charges for the lands under the Crow Irrigation Project, Montana, for the season of 1985 and subsequent years or until further notice, are hereby fixed as follows:

Item	Rate/acre
Two Leggins	[1] $5.20
Bozeman Trail	2.20
All regular units	10.50
All units under Willow Creek storage	0.30
Two Leggins drainage	1.25

[1] Or minimum of $20 per landowner.

Walter R. Egged,

Acting Superintendent, Crow Indian Agency

[FR Doc. 84–32508 Filed 12–12–84; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[A–19360]

Application for Issuance of Disclaimer of Interest to Lands in Arizona

December 6, 1984.

Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), Section 315, 43 U.S.C. 1745 (1982), does hereby give notice of its intention to disclaim all interest in the mineral estate in the following described land, to wit:

Gila and Salt River Meridian, Arizona

T. 19 S., R. 28 E.,
Section 16, S½.

as a matter of Department policy, afforded the same degree of confidentiality.

identity and amendment of records (See 43 CFR 2.70).

Tuscaloosa County, Alabama

Containing approximately 890 acres.

3. Sulfur (percent)	1-2-1.5	0.9-1.3
4. Btu per lb.	10,657-13,000	14,000-14,500

Directors in 10 BIAM 3, and by authority

Section 16, S½.

Containing 320.00 acres.

After review of the official records, it has been determined by the Bureau of Land Management that the land described above was a surveyed school section granted to the State of Arizona on February 14, 1912. On July 8, 1948, the State conveyed the surface estate to the United States in a land exchange; all minerals were reserved by the State. On May 20, 1954, the Bureau of Land Management patented the surface estate to the State of Arizona pursuant to the Federal Airport Act. The Airport patent contained a clause whereby the land reverted to the United States if the land ceased to be used for airport purposes. The State quitclaimed the land back to the United States on December 23, 1960. There were no specific reservations in the quitclaim deed. The Bureau of Land Management, therefore, noted the records as to United States ownership of both the surface and mineral estates. However, it is reasonable to conclude that the State's intention was to reconvey only the surface estate that had been specifically acquired under the Airport patent. The quitclaim deed did not affect the mineral estate which the State of Arizona owned under a different authority.

Any person wishing to submit a protest or comment to the above disclaimer should do so in writing before the expiration of 90 days from the date of publication of this notice. If no protest is received, the disclaimer will become effective on or after March 11, 1985.

Information concerning this land and the proposed disclaimer may be obtained from and any protest may be filed with the State Director, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-32443 Filed 12-12-84; 8:45 am]

BILLING CODE 4310-32-M

[(31) New Mexico]

Correction of Lands Deleted from Socorro Peak Known Geothermal Resources Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of Lands Deleted from Socorro Peak Known Geothermal Resources Area.

SUMMARY: The notice of lands deleted from the Socorro Peak Known Geothermal Resources Area printed in the **Federal Register** Vol. 48, No. 51, March 15, 1983, Notice 10627, should read in part:

New Mexico Principal Meridian, New Mexico

T. 3 S., R. 1 W.,
Secs. 16 and 17.

This correction does not change the amount of deleted acres.

Richard W. Bastin,

Associate District Manager.

[FR Doc. 84-32436 Filed 12-12-84; 8:45 am]

BILLING CODE 4310-FB-M

[M-59763]

Montana; Realty Action; Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Correction.

SUMMARY: In **Federal Register** Document, Vol. 49, No. 230 appearing at page 46811 in the issue for Wednesday, November 28, 1984, make the following correction in column two, lines 60 and 61 for the lands being acquired:

Sec. 6, lot 7, SE¼NE¼SW¼, SE¼SW¼ and SE¼

Date: December 7, 1984.

Roy H. Oliver,

Acting District Manager.

[FR Doc. 84-32446 Filed 12-12-84; 8:45 am]

BILLING CODE 4310-DK-M

[M-59923]

Montana; Order Opening Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: This document corrects the legal description for the notice that appeared at page 17598 in the **Federal Register** of Tuesday, April 24, 1984, as Document 84-10900.

DETAILS: The description for section 33 in M-59923—Part 1 should be SW¼, N½SE¼ and SW¼SE¼; instead of the description shown in the April 24, 1984, publication.

Dated: December 7, 1984.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 84-32445 Filed 12-12-84; 8:45 am]

BILLING CODE 4310-DR-M

[WASH-04258]

Washington; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a land withdrawal for the Columbia basin Reclamation Project continue for an indefinite period. The land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

The Bureau of Reclamation proposes that the existing land withdrawal made by Public Land Order No. 3034 of April 15, 1963, be continued for an indefinite period pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located east of the Columbia River approximately seven miles northwest of George and contains 10 acres within Section(s) 18, T. 19 N., R. 23 E., W.M. Grant County, Washington.

The purpose of the withdrawal is to protect a portion of the Columbia Basin Reclamation Project. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: December 6, 1984.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-32438 Filed 12-12-84; 8:45 pm]

BILLING CODE 4310-33-M

[WASH-03357, WASH-05363]

Washington; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that two land withdrawals for the Ice Harbor Lock and Dam Project continue for an additional 78 years. The land(s) would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

The Department of the Army, Corps of Engineers, proposed that the existing land withdrawals made by Public Land Orders No. 3014 of April 8, 1963, and No. 3644 of April 15, 1965, be continued for a period of 78 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved are located adjacent to the Snake River and aggregate approximately 823 acres within Flanklin and Walla Walla Counties, Washington.

The purpose of the withdrawals is to protect the Ice Harbor Lock and Dam Project. The withdrawals segregate the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: December 6, 1984.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Mineral Operations.

[FR Doc. 84-32437 Filed 12-12-84; 8:45 am]

BILLING CODE 4310-33-M

McCullough-Victorville/Adelanto 500-kV Transmission Line; Intent To Prepare an Environmental Impact Statement; Los Angeles, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice is hereby given that the Bureau of Land Management of the Department of the Interior and the Department of Water and Power of the City of Los Angeles (DWP) intend to prepare a joint Draft Environmental Impact Statement/Draft Environmental Impact Report, hereinafter referred to as a Draft Environmental Report (DER), to assess the environmental implications of constructing and operating a 500-kV transmission line from the Boulder City, Nevada area to the Victorville/Adelanto area in California.

SUMMARY: DWP seeks the authority to construct, operate and maintain a 500-kV transmission line from the Mead or McCullough Switching Station near Boulder City, Nevada to the Victorville or Adelanto Switching Station in California. DWP, a member of the Southern California Public Power Authority (SCPPA), would jointly own the project transmission line with Modesto-Santa Clara-Redding (M-S-R); U.S. Department of Energy, Western Area Power Administration; the Salt River Project (SRP); and the other members of SCPPA.

Interested agencies, organizations and the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of this DER are invited to do so. Upon completion of the DER, its availability will be announced in the **Federal Register**, at which time comments will be solicited.

Written comments on this activity should be addressed to: Mr. Gerald E. Hillier, District Manager, California Desert District, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507.

Written comments are due: January 18, 1985.

Background Information

The primary purpose of proposing to establish this 500-kV transmission line from the Boulder City area in Nevada to the Victorville/Adelanto, California area is to enable the project proponents to purchase and sell electrical energy and capacity. The project will have station facilities capable of transmitting alternating-current (ac) or direct-current (dc) power. Its capacity will be from a nominal 1,000 MW to a nominal 2,000 MW, depending on whether the transmission line is ac or dc, respectively.

The proposed project is needed to: (1) Help meet the forecast need for power of SCPPA and M-S-R members by providing firm, long-term transmission capacity for future resources; (2) furnish access for all project sponsors to the economy energy market; (3) provide a path for sale of SRP's off-peak surplus capacity to California markets; (4) help reduce dependence on oil and natural gas for electricity consumed in the SCPPA and M-S-R service areas; (5) provide out-of-basin support during Los Angeles' air quality Stage III episodes; and (6) enhance system reliability.

The proposed project will have associated cost and risk which will be weighed against potential benefits. DWP estimates the proposed transmission line will cost from $80 to $100 million depending on the alternate route chosen, plus additional costs for necessary station equipment.

Preliminary Definition of Environmental Issues

The purpose of this notice is to solicit comments and suggestions for consideration in preparing the DER.

Public meetings held on July 23, 24, 25, and 26, 1984 along the project route indicated issues which needed further evaluation. After consideration it was determined that an EIS would be the appropriate document for the proposed action.

Probable environmental effects of the project include the allocation of approximately 4,850 acres of land for right-of-way, with some permanent removal of vegetation and wildlife habitat due to construction of access roads and tower footings; possible increase in the potential for soil erosion in certain areas; possible accidental damage to archaeological sites; impaired radio and television reception and increased audible noise in areas adjacent to the line; and the visible presence of tower structures and associated conductors.

Preliminary Definitions of Alternatives

Significant consideration will be given to alternatives to the proposed action, and the assessment of the environmental impacts to be expected from each alternative.

the Federal Register Vol. 48, No. 51.

AGENCY: Bureau of Land Management, Interior.

[FR Doc. 84-32436 Filed 12-12-84; 8:45 pm]
BILLING CODE 4310-33-M

Comments: Comments should be submitted in writing by January 18, 1985.

Draft Environmental Report Schedule and Availability: The DER is expected to be completed by July, 1985, at which time its availability will be announced in the Federal Register and public comments will again be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the DER for review and comments when it is issued should notify Mr. Gerald E. Hillier, at the address given in the Summary section above.

Dated: December 7, 1984.

H.W. Rieckan,

Acting District Manager.

[FR Doc. 84-32530 Filed 12-12-84; 8:45 am]
BILLING CODE 4310-40-M

[ORE-03318, ORE-05261, ORE-22063]

Oregon; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that three land withdrawals for protection of the Umatilla Army Depot continue for an additional 75 years. The land(s) would remain closed to surface entry and mining would be open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503–231–6905).

The Department of the Army, Corps of Engineers proposes that the existing land withdrawals made by Executive Orders No. 8794 of June 14, 1941, and No. 8999 of December 26, 1941, and Public Land Order No. 1789 of February 10, 1959, be continued for a period of 75 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved are located approximately 6 miles west of Hermiston and aggregate approximately 8,279.86 acres within Tps. 4 and 5 N., Rgs. 26 and 27 E., W.M., Morrow and Umatilla Counties, Oregon.

The purpose of the withdrawals is to protect the Umatilla Army Depot. The withdrawals segregate the land(s) from operation of the public land laws generally, including the mining laws and 1,120 acres under the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals, except to open 1,120 acres to operation of the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: December 5, 1984.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-32507 Filed 12-12-84; 8:45 am]
BILLING CODE 4310-33-M

Fish and Wildlife Service

Louisiana; Application; Natural Gas Pipeline Right-of-Way

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185), as amended by Pub. L. 93–153, Exxon Corporation, U.S.A., has applied for a right-of-way for two 1¼ inch pipelines that will cross lands of the Catahoula National Wildlife Refuge in La Salle Parish, Louisiana, described as follows:

Louisana meridian

T. 6 N., R. 4 E.

Section 8—Beginning at a point on the north line of an existing tank battery site, said point being located North 2923.4 feet and West 33.8 feet from the southeast corner of Section 8;
Thence with the centerline as follows:
N 18°31' W 429.5 feet;
N 40°23' W 741.5 feet to the end of this right-of-way at the shoreline of Catahoula Lake.

The above described right-of-way contains 1.88 acre, more of less.

The pipelines will cross 2,343 feet of the Catahoula National Wildlife Refuge.

The purpose of the notice is to inform the public that the United States Fish and Wildlife Service is currently considering the merits of approving this application.

DATE: Interested persons desiring to comment on this application should do so within thirty (30) days following the date of publication of this notice.

ADDRESS: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 84-32450 Filed 12-12-84; 8:45 am]
BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6085, Block A–52, Brazos Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on December 3, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 3, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-32300 Filed 12-12-84; 8:45 am]
BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-1)]

Intrastate Rail Rate Authority; Alabama

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision.

SUMMARY: The Commission grants final certification to the Alabama Public Service Commission under 49 U.S.C. 11501(b) to regulate intrastate rail transportation.

DATE: Certification will begin on December 13, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4375 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 5, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-32459 Filed 12-12-84; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-27)]

Intrastate Rail Rate Authority; Oregon

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission has extended the provisional certification of Oregon under 49 U.S.C. 11501(b) to regulate Oregon intrastate rail transportation, pending submission of revised standards and procedures as noted in the full decision.

DATE: Oregon's provisional certification will expire February 11, 1985, unless prior to that date Oregon files the required standards and procedures.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Chairman Taylor, joined by Commissioner Simmons, commented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 84-32460 Filed 12-12-84; 8:45 am]
BILLING CODE 7035-01-M

MERIT SYSTEMS PROTECTION BOARD

Federal Employees; Review of Agency Adverse Actions Taken Under 5 U.S.C. 7511 et seq. and Based Upon the Revocation or Denial of a Security Clearance

AGENCY: Merit Systems Protection Board.

ACTION: Notice of opportunity to file amicus briefs in certain appeals of agency adverse actions taken under 5 U.S.C. 7511 *et seq.* and based upon the revocation or denial of a security clearance.

SUMMARY: The Merit Systems Protection Board provides an opportunity to file amicus briefs on significant issues of law common to a number of cases pending before the Board involving appeals of agency adverse actions taken under 5 U.S.C. 7511 *et seq.* and based upon the agency's revocation or denial of the employee's security clearance.

DATE: Amicus briefs submitted in response to this notice shall be filed with the Acting Clerk of the Board on or before January 14, 1985.

ADDRESS: All briefs shall be captioned "Security Clearance Appeals," "Amicus Brief." All briefs shall also contain separate, numbered headings for each issue discussed. The original and twelve (12) copies of each amicus brief submitted in response to this notice shall be filed with the Office of the Clerk of the Board and addressed to Stephen E. Manrose, Acting Clerk, Merit Systems Protection Board, Attn: Security Clearance Appeals, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Stephen E. Manrose, Acting Clerk, Merit Systems Protection Board, (202) 653–7200. For copies of the Initial Decisions in the referenced cases, contact Research Services Division, Merit Systems Protection Board, (202) 653–7132.

SUPPLEMENTARY INFORMATION: The Systems Protection Board currently has before it numerous petitions for review of initial decisions issued by the Board's regional offices in security clearance appeals. The Board has identified several cases, listed below, which address significant issues of law common to a large number of these appeals and finds it appropriate to provide an opportunity for the filing of amicus briefs addressing these issues.

These cases include the following:

Bogdanowicz v. *Department of the Navy*; MSPB Docket No. PH07528110587 (January 18, 1984);

Egan v. *Department of the Navy*, MSPB Docket No. SE07528310257 (December 22, 1983);

Griffin v. *Defense Mapping Agency*, MSPB Docket No. SL07528410150 (July 6, 1984;

Peterson v. *Department of the Army*, MSPB Docket No. BN07528410010 (February 14, 1984).

Irving v. *Department of the Navy*, MSPB Docket No. BN07528410005 (September 21, 1984). (A petition for review is not pending in this appeal, in which a final order was issued by the Board. However, because this case concerns the issues identified in this notice, the Board is reopening this case to address these issues).

This notice represents the Board's offer to receive and consider amicus briefs from interested parties on the issues relevant to these appeals including:

I. Scope of the Board's Authority in Security Clearance Cases

A. Whether, in an adverse action case over which the Board has jurisdiction, and which is based substantially on the agency's revocation or denial of a security clearance, the Board has the authority to review the agency's stated reasons for revoking or denying the security clearance. Specifically address whether any law, rule or regulation concerning national security expressly or impliedly restricts the Board from from reviewing the agency's stated reasons for revoking or denying the security clearance.

purpose or segregative effect of the

and Wildlife Service is currently

affected states, executives of affected

will expire February 11, 1985, unless

Protection Board, Attn: Security

security clearance.

B. Whether, if the Board has such authority, the Board's scope of authority extends to ordering the agency to reinstate the security clearance.

II. Alternative Remedies

A. If the Board's authority does not extend to ordering reinstatement of the security clearance, what alternative remedies may the Board order?

For the Board.

Dated: December 7, 1984.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 84-32282 Filed 12-12-84; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management, Advisory Committee for Biological, Behavioral, and Social Sciences; Renewal

As required by the Federal Advisory Committee Act, Pub. L. 92-463, I have determined that the renewal of the Advisory Committee for Biological, Behavioral, and Social Sciences is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for the Advisory Committee for Biological, Behavioral, and Social Sciences shall expire on December 21, 1986, unless the Director of the National Science Foundation formally determines that continuance is in the public interest.

December 10, 1984.

Erich Bloch,

Director, National Science Foundation.

[FR Doc. 84-32530 Filed 12-12-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and time: January 10 and 11, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Patrick W. Flanagan, Program Director, Ecology (202) 357-9734, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

December 10, 1984.

[FR Doc. 84-32534 Filed 12-12-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Geography and Regional Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Geography & Regional Science.

Date and time: January 14-16, 1984; 9:00 a.m. to 5:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW, Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Ronald F. Abler, Program Director, Geography & Regional Science, Room 312, National Science Foundation, Washington, D.C. 20550; telephone (202) 357-7328.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in Geography and Regional Science.

Agenda: Closed portion: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietry or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-32537 Filed 12-12-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and time: January 10 & 11, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. John L. Brooks, Acting Program Director, Population Biology and Physiological Ecology (202) 357-9728, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

December 10, 1984.

[FR Doc. 84-32535 Filed 12-12-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and time: January 14 & 15, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. James E. Rodman, Program Director, Systematic Biology (202) 357-9588, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

December 10, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-32533 Filed 12-12-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Environmental Assessment and Final Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix R to 10 CFR Part 50 to Duke Power Company (the licensee), for the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action: The exemption would relax the requirement of Appendix R to 10 CFR Part 50 that there be emergency lighting units with at least an eight-hour battery power supply in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

The exemption is in response to the licensee's October 24, 1983 application as supplemented on August 8, 1984.

The Need for the Proposed Action: The proposed exemption is needed because the features described in the licensee's request regarding the existing fire protection (and with certain additional modifications) at their plant for these items are the most practical methods for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemption will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at these facilities. Consequently, the probability of fires is not increased and the post-fire radiological risk is not greater than determined previously, and the proposed exemption does not otherwise affect plant radiological effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the propposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the propbsed exemption.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Oconee Nuclear Station, Units Nos. 1, 2 and 3.

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated October 24, 1983 as supplemented on August 8, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland, this 6th day of December 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 84-32512 Filed 12-12-84; 8:45 am]

BILLING CODE 7555-01-M

[Docket No. 50-388]

Pennsylvania Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF-22, issued to Pennsylvania Power and Light Company (the licensee), for operation of the Susquehanna Steam Electric Station Unit 2, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: This exemption would allow suspension of containment inerting during the Power Ascension Test Program (PATP) until either the required 100% of rated thermal power trip tests have been completed or the reactor has operated for 120 effective full power days, whichever occurs earlier and would also allow exemption from the requirement stated in 10 CFR 50.44, paragraph (c)(3)(i) which states: "Effective May 4, 1982 or 6 months after initial criticality, whichever is later, an inerted atmosphere shall be provided for each boiling light-water nuclear power reactor with a Mark I or Mark II type containment."

The Need for the Proposed Action: The proposed exemption from the regulation is required in order to complete the balance of the power ascension test program (PATP) in accordance with the approved test plan. The approved test plan is based on maintaining the containment in a non-inerted condition until after completing the 100% rated thermal trip test, a condition which normally would be expected to occur within about 120 effective full power days of core burn-up. On October 27, 1984, SSES-2 was shut-down for a pre-commercial outage, expected to last thru the end of December 1984. Also, the licensee's PATP schedule for SSES-2 has not been maintained as originally planned. This has resulted in a simple stretch out of the time required to complete all post criticality PATP tests. These two factors combined, have created the need to extend the period of non-inerted PATP

operations beyond the calendar time of six months provided by 10 CFR 50.44.

Environmental Impacts of the Proposed Action: There are no environmental impacts of the proposed action. No changes are being made in the maximum full power days of core burn-up normally expected before inerting is required. In fact to assure this, the maximum expected value of 120 effective full power days is made part of the proposed action. The purpose of allowing an initial period of non-inerted operations has been and continues to be, to permit ready access to systems and components inside containment during the period of the initial plant power ascension test program. When these tests have been completed, which occurs essentially at the point where the full rated thermal power trip tests of the PATP have been completed, the exemption from 10 CFR 50.44 is no longer applicable. Thus, should a release occur during the extended PATP it would not be greater than any release contemplated during the originally scheduled PATP. Also, there is nothing in the proposed change that would suggest that the probability of release would be increased. Further, the proposed change does not otherwise affect radiological plant effluents, nor any significant occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

Alternative to the Proposed Action: Since we have concluded that there is no measurable environmental impact associated with the granting of the proposed exemption, any alternative to this exemption will have the same or greater environmental impact.

The principal alternative would be to deny the exemption which would reduce operational flexibility.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement" related to the operation of Susquehanna Steam Electric Station Units 1 and 2 dated June 1981.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's position and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

Dated at Bethesda, Maryland, this 10th day of December 1984.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-32513 Filed 12-12-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co., Shoreham Nuclear Power Station; Issuance of Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF-19 to the Long Island Lighting Company, (the license) for the Shoreham Nuclear Power Station (the facility). The license authorizes loading of fuel into the reactor vessel and conducting cold criticality testing at power levels less than 24.36 kilowatts thermal.

The Shoreham Nuclear Power Station, is a boiling water reactor located in the town of Brookhaven, Suffolk County, New York. The license is effective as of its date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. Issuance of this license has been authorized by an Atomic Safety and Licensing Board by its Partial Initial Decision dated September 21, 1983, its Order Reconsidering Summary Disposition of Phase I and Phase II Low-Power Testing dated September 5, 1984 and its Initial Decision dated October 29, 1984, by an Atomic Safety and Licensing Appeal Board in its Appeal Board Decision dated October 31, 1984, by the Commission in Memorandum and Order CLI-84-21, dated November 21, 1984, and by an Atomic Safety and Licensing Board in its Memorandum and Order Ruling on Remanded Issues dated November 30, 1984, the Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on March 18, 1976 (41 FR 11367).

The commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluation in the Final Environmental Statement.

For further details in respect to this action, see: (1) Facility Operating License NPF-19 complete with Technical Specifications and the Environmental Protection Plan; (2) the report of the advisory committee on Reactor Safeguards; dated October 14, 1981; (3) the Commission's Safety Evaluation Report, dated April 1981 (NUREG-0420), and Supplements 1 through 8 thereto; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Final Environmental Statement, dated October 1977 (NUREG-0285); the Environmental Report and supplements thereto; and (7) the Licensing Board Orders, the Appeal Board Order, and the Commission's Memorandum and Order.

These items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and the Shoreham Wading River Public Library, Route 25A, Shoreham, New York 11786. A copy of Facility Operating License NPF-19 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG-0420) and the Final Environmental Statement (NUREG-0285) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call (301) 492-9530.

Dated at Bethesda, Maryland, this 7th day of December 1984.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing

[FR Doc. 84-32511 Filed 12-12-84; 8:45 am]

BILLING CODE 75-80-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Economic Forecasting Advisory Committee; Regular Meeting Notice

AGENCY: Economic Forecasting Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Approval of minutes;
- Discussion of Wharton model sensitivity tests and scenarios;
- Discussion of Proposed Draft Economic, Demographic and Fuel Price Assumptions;
- Public comment, followed by adjournment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Economic Forecasting Advisory Committee.

DATE: Tuesday, December 18, 1984, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Debbie Kitchin, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-32508 Filed 12-12-84; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF STATE

Office of the Under Secretary for Management

[Public Notice 925]

Determinations Under the Foreign Missions Act; Determinations

By virtue of the authority vested in me by Delegation of Authority No. 147, September 13, 1983 (47 FR 41677), I give public notice of certain determinations under the Foreign Missions Act (22 U.S.C. 4301-4313) (hereafter "the Act"). The determinations are as follows:

(1) Determination by the Acting Secretary of State on December 7, 1982 to apply section 205 of the Act (22 U.S.C. 4305) to the permanent mission and offices of the permanent observers to the United Nations; so as to require those missions and offices to notify the United Nations Mission of any proposed acquisition, sale or other disposition, by or on behalf of the mission or office, of any real property which is located in the United States, its territories or possessions.

(2) Determination by the Secretary of State on June 6, 1983, to apply section 204 and the enforcement provisions of the Act, including but not limited to sections 208 and 211, to the Permanent Missions and permanent Observer Missions to the United Nations as being necessary to carry out and further the policy objectives specified in sections 201(b) and 204(b) of the Act.

(3) Determination by the Under Secretary of State for Management on June 10, 1983, that it was reasonably necessary to achieve the purposes set forth in section 204(b) of the Act to require the Permanent Mission of the Socialist People's Libyan Arab Jamahiriya to the United Nations to comply with certain conditions respecting the use of property at 440 East Palisade Avenue, Englewood, New Jersey.

(4) Determination by Under Secretary of State for Management of June 24, 1983, that it was reasonably necessary in order to achieve the purposes set forth in section 204(b) of the Act to require the Permanent Mission of the Socialist People's Libyan Arab Jamahiriya to the United Nations to comply with the conditions of sections 204(b) (A) and (B) and 204(c) of the Act concerning obtaining of certain benefits through the Director of the Office of Foreign Missions, requiring compliance with conditions imposed on obtaining of benefits, and authorizing imposition of surcharges.

(5) Determination by the Under Secretary of State for Management on July 11, 1983, that it was reasonably necessary to achieve the purposes set forth in section 204(b) of the Act to require the Permanent or Observer Missions to the United Nations of Afghanistan, Byelorussia, Cuba, Iran, North Korea, Libya, Mongolia, Palestine Liberation Organization, Ukraine, Union of Soviet Socialist Republics, and Vietnam to comply with certain conditions respecting travel and related services.

Dated: December 3, 1984.

Ronald I. Spiers,

Under Secretary of State for Management.

[FR Doc. 84-32441 Filed 12-12-84; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 7, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8210
Type of Review: New
Title: Self-Assessed Penalties Return

OMB Number: 1545-0122
Form Number: IRS Form 1118 and Schedule F
Type of Review: Revision
Title: Computation of Foreign Tax Credit-Corporations, Schedule F (Form 118), Reduction of Oil and Gas Extraction Taxes
Clearance Officer: Garrick Shear (202) 566-6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Financial Management Service

OMB Number: 1510-0022
Form Number: TFS 1022
Type of Review: Extension
Title: First Letter to Payee Requesting a Collection Refund When a Double Payment Exists

OMB Number: 1510-0015
Form Number: None
Type of Review: Extension
Title: Memo Concerning Operations, Classes of Business, Underwriting, or Management Agreements, Etc.
Clearance Officer: Doug Lewis (202) 287-4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street, NW., Washington, D.C. 20228
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB Number: 1515-0079
Form Number: CF 4790
Type of Review: Extension

Title: Report of International Transportation of Currency or Monetary Instruments
Clearance Officer: Vince Olive (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, D.C. 20229
OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,
Departmental Reports, Management Office.

[FR Doc. 84-32615 Filed 12-12-84; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

Privacy Act of 1974: Periodic Publication of all Privacy Act Systems of Records

The Department of the Treasury is systematically republishing all of its systems of records notices. This notice updates the information for the systems of records maintained by the Office of the Secretary. The notices for these systems of records were last published by the Federal Register in the Privacy Act Issuances 1982/83 Compilation, pages 1335–1511.

The Department has eliminated Appendix AA which listed blanket-type routine uses. The applicable routine uses now appear in each system of records. All other changes are editorial in nature and consist principally of address changes, revision of organizational titles and transfer of functions. None of the changes require an altered system report as required by 5 U.S.C. 552a(o).

The Office of the Secretary has deleted 21 systems, consolidated 9 systems, and added 1 new system. Treasury Payroll Personnel Information System—Treasury/OS.002 is not included in this compilation. This system is being published separately to include the provisions of the Debt Collection Act, since the necessary changes in the routine uses are subject to the 30-day public comment period.

Dated: December 5, 1984.

Joseph E. Bishop,
Deputy Assistant Secretary (Administration) for Operations.

Deletions

OS.006—Building Passes (covered under Treasury/USS.007—Protection Information System)
OS.011—Office of Domestic Finance, General Correspondence (obsolete)
OS.040—Confidential Statements of Employment and Financial Interests, Personnel Division (covered under OPM/GOVT–6)
OS.061—Centralized Automated System for Reporting Employment Statistics in the Department of the Treasury (REST) (covered under Treasury Personnel Management Information Telecommunications system (PERMITS) which is a component of the Treasury Payroll Information System, Treasury/OS.002)
OS.063—Spanish Speaking Informal Application File (obsolete)
OS.116—Foreign Assets Control Litigation Files (Duplicative of Treasury OS.149—Foreign Assets Control Legal Files)
OS.145—Claimants, Disbursing (obsolete)
OS.146—Employee Inventions (Not a Privacy Act system of records)
OS.240—Contracts and Research Proposals (obsolete)
OS.244—Personnel Files (obsolete)

The following systems of records were transferred from the Office of the Secretary to the Internal Revenue Service:

OS.160—Abandoned Enrollment Applications (Treasury/IRS37.001)
OS.161—Applicant Appeal Files (Treasury/IRS37.002)
OS.162—Closed Files Containing Derogatory Information about Individual's Practice before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice (Treasury/IRS37.003)
OS.163—Derogatory Information, No Action (Treasury/IRS37.004)
OS.164—Present Suspensions and Disbarments Resulting from Administrative Proceedings (Treasury-IRS37.005)
OS.165—General Correspondence Files (Treasury/IRS37.006
OS.166—Inventory (Treasury/IRS37.007)
OS.167—Register of Docketed Cases and Applicants Appeals (Treasury/IRS37.008)
OS.168—Resigned Enrolled Agents (Action pursuant to 31 CFR 10.55(b)) (Treasury/IRS37.009)
OS.169—Roster of Former Enrollees (Treasury/IRS37.010)
OS.170—Present Suspensions from Practice before the Internal Revenue Service (Treasury/IRS37.011)

Consolidations

OS.032—OASIA Correspondence Files
OS.115—Foreign Assets Control General Correspondence Files
OS.117—Foreign Assets Control Mailing List (The above three systems are covered under one system renamed Treasury/OS.007—Correspondence File)
OS.090—EOTA FOI Request/Appeals Files (covered under Treasury/OS.150—Disclosure Records)
OS.111—FAC 1950 Census of Blocked Chinese Assets
OS.112—FAC 1970 Census of Blocked Chinese Assets
OS.113—FAC 1984 Census of Blocked Cuban Assets (The above three systems are covered under one system renamed Treasury/OS.111—Office of Foreign Assets Control Census)
OS.148—Employment Applications
OS.182—Special Personnel Working Files, Office of the Assistant Secretary for Tax Policy (covered under OS.003)

Addition

OS.007—Correspondence Files

Table of Contents

Office of the Secretary (OS)

OS.003—Personnel Working Files
OS.004—Personnel Security System
OS.005—Grievance Records
OS.007—Correspondence Files
OS.010—Office of Domestic Finance, Actuarial Valuation System
OS.052—Travel Records
OS.053—Treasury Emergency Preparedness Information Program
OS.060—Correspondence Files and Records on Employee Complaints and/or Dissatisfaction
OS.061—Employee Grade Complaint File
OS.062—Executive Inventory File
OS.065—Appointment at Above the Minimum Rate of the Grade File
OS.066—Combined Applicant/Applicant Correspondence File
OS.067—Detailed Employee Files
OS.068—Time in Grade Exception Files
OS.070—Office of Computer Science, Work Assignment and Control Form
OS.111—Office of Foreign Assets Control Census
OS.114—Foreign Assets Control Enforcement Records
OS.118—Foreign Assets Control Licensing Records
OS.123—ORS Contractor File
OS.144—Treasury Interagency Automated Litigation System (TRIALS)
OS.149—Foreign Assets Control Legal Files
OS.150—Disclosure Records
OS.151—Gifts to the United States
OS.154—Private Relief Bill System
OS.156—TAx Court Judge Applicants
OS.183—Private Relief Tax Bill Files—Office of the Assistant Secretary for Tax Policy
OS.190—General Allegations and Investigative Records System
OS.193—Employee Locator and Automated Directory System
OS.194—Document Delivery Control Systems
OS.196—Physical Security Information System

Treasury/OS.003

SYSTEM NAME:

OS Personnel Working Files—Treasury/OS.

SYSTEM LOCATION:

Office of Management and Organization, Office of Revenue Sharing, Office of General Counsel, Office of Data Management, OASIA, Office of the Assistant Secretary for Policy, Planning and Communications, Office of Foreign Assets Control, Office of Facilities Maintenance Branch, and Office of the Assistant Secretary for Tax Policy. For addresses, see Systems Managers below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past, present, and prospective employees for the above-named offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel-type records such as the following: SF 50 and 52 (personnel action); 171 (Employment Qualifications); Resumes; 1012 (Travel Voucher); 1038 (Travel Advance); 3015 (Travel Authorization); Personnel Data Summary Sheet; employee training information; position descriptions; letters of appreciation, counseling, or reference; corrective actions; recommendations for promotions; suspensions; performance appraisals; evaluations; awards; certification and appointment; and worker's compensation forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains, (2) to provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings, (3) to provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and (4) to provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Secured file cabinet or locked safe with a limited number of authorized employees permitted access.

RETENTION AND DISPOSAL:

In some offices, files on present and former employees are kept for duration of employment and thereafter for reference purposes. In other offices, files are given to employees upon resignation or are destroyed. For prospective employees, files may be kept three to five years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Management and Organization, Department of the Treasury, Room 7225–ICC Bldg., 1201 Constitution Ave., NW, Washington, DC 20220;
Deputy Director, Office of Revenue Sharing, Department of the Treasury, 15th Floor, 2401 E Street, NW, Washington, DC 20226;
Administrative Officer, Office of the General Counsel, Department of the Treasury, Room 3006–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220;
Director, Office of Data Management, OASIA, Department of the Treasury, Room 5127–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220;
Deputy Assistant Secretary for Policy, Planning and Communications, Department of the Treasury, Room 2325–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220;
Director, Office of Foreign Assets Control, Department of the Treasury, Room 504, 1331 G Street, NW, Washington, DC 20226;
Chief, Facilities Maintenance Branch, Department of the Treasury, Room B–50, MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220;
Administrative Officer, Office of Tax Policy, Department of the Treasury, Room 1104–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in the system must submit a written request containing the following elements: (1) Identify the record system; (2) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Chief, Disclosure Branch (see "Record access procedures" below). In some offices, individuals may review their own record by verbal request to the system manager.

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system may have been provided by: (1) The individual, (2) Personnel Office, (3) the employee's supervisors, (4) an interview, and (5) prior employers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.004

SYSTEM NAME:

Personnel Security System—Treasury/OS.

SYSTEM LOCATION:

For individuals in category (a)—Room 7425–ICC Bldg., 1201 Constitution Ave., NW., Washington, DC 20220. For individuals in category (b)—Room 1306, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Current and former senior officials of the Department and Treasury bureaus, and those within the Department who are involved in Personnel Security matters.

(b) Current and former government employees or applicants occupying or applying for sensitive positions in the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background or limited background investigations and FBI and other agency name checks; investigative information relating to personnel investigations conducted by the Department of the Treasury and other Federal agencies and departments on preplacement and postplacement basis to make suitability and employability determinations and for granting security clearances. Card records comprised of Notice of Personnel Security Investigation (TD F 67–32.2) or similar, previously used card indexes, reflecting identification data on incumbents and former employees, and record type of E.O. 10450 investigations and degree and date of security clearance, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, sections 2 and 3, and E.O. 12356, Part 4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information to departmental officials or other Federal agencies relevant to, or necessary for, making suitability or employability retention or security clearance determinations.

Employment and Financial Interests.

Control Census)

Managers below.

or are destroyed. For prospective

been provided by: (1) The individual, (2)

clearance determinations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and index cards.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are stored in locked metal containers and in locked rooms. They are limited to officials who have a need to know in the performance of their official duties and are required to sign an access form.

RETENTION AND DISPOSAL:

Active files are retained during incumbent tenure and are subject to update personnel investigation. Files of employees who effect intra-agency transfers (between Treasury bureaus) are automatically transferred to the gaining bureaus. When an employee transfers to another government agency or leaves the Federal government, files are retained, separate from the active files, for five years, except for background investigations completed by OPM which may be returned to that agency or destroyed. Card indexes are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

For individuals in category (a)—Assistant Director of Personnel (Personnel Security), Room 7425–ICC Bldg., 1201 Constitution Ave., NW, Washington, DC 20220. For individuals in category (b)—Personnel Officer (Director, Office of Personnel Resources), Room 1306, Main Treasury Building, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be informed if they are named in this system or gain access to records maintained in the system must submit a written, signed request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Chief, Disclosure Branch (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423–MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized by those concerned, information obtained from current and former employers, co-workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), through (e)(4(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5).

Treasury/OS.005

SYSTEM NAME:

Grievance Records—Treasury/OS.

SYSTEM LOCATION:

These records are located in personnel or designated offices in the bureaus in which the grievances were filed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with their bureaus in accordance with Part 771 of the Office of Personnel Management's (OPM) regulations (5 CFR Part 771), the Treasury Employee Grievance System (TPM Chapter 771), or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by Treasury employees under Part 771 of the OPM's regulations. These case files contain all documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that bureaus and/or the Department may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302; E.O 10577; 3 CFR 1954–1958 Comp., p 218; E.O. 10987; 3 CFR 1959–1963 Comp., p. 519; agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) To disclose information to any source from which additional information is requested in the course of processing in a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

(3) To disclose information to a Federal agency, in reponse to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(5) To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

(6) By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908.

(7) By the bureau maintaining the records of the Department in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

(8) To disclose information to officials of the Merit System Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity

Commission, or the Office of Personnel Management when requested in performance of their authorized duties.

(9) To dislose in reponse to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

(10) To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By the names of the individuals on whom they are maintained.

SAFEGUARDS:

Lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

ATF: Chief, Personnel Division, 1200 Pennsylvania Avenue, NW, Room 1211, Washington, DC 20226.
BGFO (see: FMS)
CUSTOMS: Director, Office of Human Resources, 1301 Constitution Avenue, NW, Room 3417, Washington, DC 20229.
E&P: Chief, Office of Industrial Relations, 14th and C Streets SW. Room 202–13A, E&P Annex, Washington, DC 20228.
FLETC: Personnel Officer, Building 94, Room 1F–14, Glynco, GA 31524.
FMS (Financial Management Service—formerly BGFO) Director, Personnel Management Division, Pennsylvania Avenue and Madison Place, NW, Room 112–Annex, Washington, DC 20226
IRS: Director, Personnel Division, 1111 Constitution Avenue, NW, Room 3219, Washington, DC 20224.
OS: Director, Office of Personnel Resources, 1500 Pennsylvania Avenue, NW, Room 1306, Main Treasury Building, Washington, DC 20220.
PD: Personnel Officer, 1300 C Street, SW, Room 446–4, E&P Annex, Washington, DC 20239.
SB: Personnel Officer, 1111 20th Street, NW, Room 225, Vanguard Building, Washington, DC 20226
SS: Chief, Personnel Division, 1800 G Street, NW, Room 941, Washington DC 20223.
Mint: Assistant Director for Personnel, 501 13th Street, NW, Room 921, Warner Building, Washington, DC 20004.
OCC: Director, Human Resources, 490 L'Enfant Plaza East, SW, 2nd Floor, Washington, DC 20219.

Records pertaining to administrative grievances filed at the Departmental level: Director of Personnel, Room 7115, ICC Building, 1201 Constitution Ave., NW, Washington DC 20220.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD ACCESS PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the bureau personnel or designated office where the action was processed. Individuals must provide the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment to their records to correct factual errors should contact the bureau personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.007

SYSTEM NAME:

General Correspondence Files—Treasury/OS.

SYSTEM LOCATION:

Office of the Secretary, Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220. Components of this record system are in the following offices within the Office of the Secretary:

Office of Foreign Assets Control
Office of Tax Policy
Office of the Assistant Secretary for International Affairs

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress, U.S. Foreign Service Officials, Officials of Municipalities and State governments, and the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence and replies pertaining to the mission, function, and operation of the Department. This system of records also contains a list of individuals who have asked to be advised of amendments, announcements, etc., pertaining to regulations administered by the Office of Foreign Assets Control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used; (1) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

Equal Employment Opportunity

Washington, DC 20239.

grievance was processed. Individuals

the record pertains.

(2) To provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

(3) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

(4) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic media.

RETRIEVABILITY:

By name of individual or letter number.

SAFEGUARDS:

Some folders are stored in locked file cabinets in areas of limited accessibility except to employees. Others are stored in electronically secured areas and vaults. Access to electronic storage is by password.

RETENTION AND DISPOSAL:

Some records are maintained for three years, then destroyed by burning. Other records are updated periodically and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Foreign Assets Control, U.S. Treasury Department, Room 504, 1331 G Street, NW., Washington, DC 20220

Freedom of Information Act Officer, or Director, Correspondence Unit, Office of Tax Policy, U.S. Treasury Department, Room 1124–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220

Director, OASIA Secretariat, U.S. Treasury Department, Room 5422–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individuals who have corresponded with the Office of the Secretary, other governmental agencies (Federal, state and local), foreign individuals and official sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.010

SYSTEM NAME:

Office of Domestic Finance, Actuarial Valuation System—Treasury/OS.

SYSTEM LOCATION:

Office of the Secretary of the Treasury, Office of Government Financing, Office of the Government Actuary, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries of the Foreign Service Retirement and Disability System. Covered employees are located in the following agencies: Department of State, Department of Agriculture, United States Information Agency, Agency for International Development, Peace Corps, and the Department of Commerce.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system is a follows: Active Records: Name; social security number; salary; category-grade; year of entry into system; service computation date; year of birth; year of resignation or year of death, and refund if any; indication of LWOP status (if any); Retired Records: Same as actives; annuity; year of separation; cause of separation (optional, disability, deferred, etc.); years and months of service by type of service; single or married; spouse's year of birth; principal's year of death; number and ages of children on annuity roll; year of termination of survivors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 1101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data regarding specific individuals is released only to the contributing agency for purposes of verification.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data are on punched cards, computer tapes, and computer printouts.

RETRIEVABILITY:

Alphabetically.

SAFEGUARDS:

Records are stored in the Actuary's office. Access is restricted to employees of the Office of the Government Actuary.

RETENTION AND DISPOSAL:

Records are retained on a year-to-year basis. When agencies whose pension funds are valued forward new records for valuation, older records are discarded.

SYSTEM MANAGER(S) AND ADDRESS:

The Government Actuary, Office of the Secretary of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information) address inquiries to Chief, Disclosure Branch (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Data for actuarial valuation are provided by organizations responsible for pension funds listed under "catgegory of individual," namely the Department of State, Department of Agriculture, United States Information

Agency, Agency for International Development, Peace Corps, and the Department of Commerce.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.052

SYSTEM NAME:

Travel Records—Treasury/OS.

SYSTEM LOCATION:

Financial Management Division, Room B–36–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals authorized to perform travel for the Office of the Secretary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form OS–3015, Authorization to Perform Travel, with the SF 1012, Travel Voucher, which details travel performed and expenses incurred with necessary receipts to support the claim for reimbursement to the traveler. SF 1038, Request for Advance of Funds, and similar records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 5701–5709.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose pertinent information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(3) To provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

(4) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

(5) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(6) To furnish another federal agency information to effect inter-agency salary offset; to furnish another federal agency information to effect inter-agency administrative offset, except that no IRS address information will be disclosed to another agency from this system; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection contractor information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service and which become a part of this system are routinely released to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services as necessary.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 552a(b)(12). Disclosures of debt information concerning a government claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original document forms in file cabinet.

RETRIEVABILITY:

Filed by name on a fiscal year basis.

SAFEGUARDS:

Non-sensitive material handled routinely in regular file cabinet.

RETENTION AND DISPOSAL:

Presently retained for three years and then forwarded to the National Records Center for an additional seven years, then burned or shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Financial Management, Room B–36–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Facts and figures are presented by the individual who performed the authorized travel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.053

SYSTEM NAME:

Treasury Emergency Preparedness Information Program—Treasury/OS.

SYSTEM LOCATION:

Emegency Preparedness Division (EPD), Room 700, 1331 G Street, NW., c/o Main Treasury, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Treasury Emergency Management Team Members (Teams Alpha, Bravo, and Charlie). (2) Key Treasury Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Emergency Management Team Member Lists (by Office of the Secretary and by Treasury Bureau listing); Name, Position Title, Office/Agency.

(2) Key Treasury Personnel Alert Notification Lists; Name, Telephone Numbers (Office and Home), Office/Agency.

(3) Information by individual application for Permanent Badge for FEMA Special Facility; Name, Date of Birth, Physical Identification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Treasury Directive (TD) 10–05.C, Emergency Assignment of Personnel at the National Level, August 6, 1982; Office of Emergency Preparedness (OEP) Circular 9100.2, April 12, 1972; Executive Order 11490; FEMA ORDER SF 1210.1, Procedures for access to Areas A and B of the Federal Emergency Maintenance Agency Special Facility, April 15, 1983; FEMA Form SF–86–12, April 1983, Request for Continual Access to the FEMA Facility.

employment or similar information).

22 U.S.C. 1101.

Department of State, Department of Agriculture, United States Information

investigation.

Address inquiries to Chief, Disclosure

Access to the FEMA Facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be disclosed to the Federal Emergency Management Agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Magnetic tapes, punch cards and reports. Emergency Management Team Lists and Alert Notification Lists: Master copies maintained in EPD office. Copies are prepositoned within the Office of the Secretary, Telecommunications Center, Treasury Emergency Operating Facilities (TEOF and FEMA/SF). (2) Request for permanent badge for FEMA Special Facility: original filed within Federal Emergency Management Agency (FEMA). Copy filed in EPD office.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Treasury Master Records are stored in lockable cabinets or secure rooms; access is limited to officials who have a need for the information; employees are trained to make only authorized disclosures.

RETENTION AND DISPOSAL:

(1) Emergency Management Team Member List, and (2) Key Treasury Personnel Alert Notification Lists are updated upon resignation, retirement or transfer of assigned employee. Obsolete lists are destroyed by shredding or erasure. (3) Badges are retrieved and returned to FEMA for accountability and destruction when employee no longer has official need for pass.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Emegency Prepardness Division, Room 700, 1331 G Street, NW., c/o Main Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or gain access to records maintained in this system must submit a request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Depatment of the Treasury, Room 5423, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The information in these records was provided by or verified by the subject of the record, employers, and co-workers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.060

SYSTEM NAME:

Correspondence files and records on employee complaints and/or dissatisfaction—Treasury/OS.

SYSTEM LOCATION:

Office of Personnel, Room 7115, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYETEM:

Former and current Department employees who have submitted complaints to the Office of Personnel or whose correspondence concerning a matter of dissatisfaction has been referred to the Office of Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence dealing with former and current employee complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose pertinent information to appropriate Federal, state, and local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential civil or criminal law or regulation. (2) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. (3) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114. (4) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, file cabinets.

RETRIEVABILITY:

By bureau and employee name.

SAFEGUARDS:

Maintained in filing cabinet and released only to Office of Personnel staff or other Treasury officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Treasury Directive 80-05.B, Records Disposition, Office of the Secretary, and the General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

The Director of Personnel, Department of the Treasury, Room 7115, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Persons inquiring as to the existence of a record on themselves may contact: Assistant Director of Personnel, (Employee Relations and Special Programs), Department of the Treasury, Room 7119, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

RECORD ACCESS PROCEDURE:

Persons seeking access to records concerning themselves may contact: The Director of Personnel, Department of the Treasury, Room 7115, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records to correct factual error should contact the Director, of Personnel at the address shown in Access, above. They must furnish the following information: (a) Name; (b) employing bureau; (c) the information being contested; (d) the reason why they believe information is untimely inaccurate, incomplete, irrelevant, or unnecessary.

RECORD SOURCE CATEGORIES:

Current and former employees, and/or representatives, employees' relatives, Congressmen, the White House, management officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.062

SYSTEM NAME:

Executive Inventory Files—Treasury/OS.

SYSTEM LOCATION:

Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All SES, GS and GC-16, 17, 18 employees of the Department of the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

A brief description of identifying biographical data, work experience, education, professional activities, honors, special qualifications and references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Executive Order 11315.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system may be disclosed to a Congressional office in order to compile statistical information on SES participants. Information in the records may also be shared with the Office of Personnel Management and other Federal agencies in compiling reports or to correct information maintained by OPM on Treasury Executives.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need-to-know basis.

RETENTION AND DISPOSAL:

The records are kept as long as the employee is assigned to an SES, GS or GG-16, 17, or 18 position, except for employees who retire. The records on retirees are kept for approximately one year from their date of retirement. The records are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220. The individual needs to provide his/her name, present organizational assignment, position title and grade.

RECORD ACCESS PROCEDURES:

See notification above.

CONTESTING RECORD PROCEDURES:

See notification above.

Treasury/OS.065

SYSTEM NAME:

Appointment at Above the Minimum Rate of the Grade Files—Treasury/OS.

SYSTEM LOCATION:

Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons proposed for employment by the Department of the Treasury at a salary rate above the minimum rate of the grade.

CATEGORIES OF RECORDS IN THE SYSTEM:

A collection of documents required for requesting approval of appointments at a salary rate above the minimum rate of the grade, including: Personal Qualifications Statement (SF-171); Position Description (OF-8); letters of justification; and general correspondence requesting approval of the action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5333.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information may be used for review/audit purposes by the Office of Personnel Management.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

Indexed by name in log and filed chronologically.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are retained for two years and are destroyed by standard destruction methods including burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201, Constitution Ave., NW, Washington, DC 20220. The individual is required to provide his/her name and the Treasury organizational assignment, position title, grade/salary, and date of most recent appointment above the minimum rate of the grade requested.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The documents which constitute this system, and which are listed under Categories of Records, came from the individual applicant, his/her servicing personnel office, the Office of Personnel Management, and other concerned management officials within the Department of the Treasury.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.066

SYSTEM NAME:

Combined Applicant/Applicant Correspondence File—Treasury/OS.

SYSTEM LOCATION:

Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have sent applications, or have asked questions about employment in the Department of the Treasury, or whose applications or

Branch (See "Record access procedures" below).

under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114. (4) To

inaccurate, incomplete, irrelevant, or unnecessary.

employees who retire. The records on retirees are kept for approximately one

STORAGE:

File cabinets.

employment in the Department of the Treasury, or whose applications or

questions have been referred to the Department of the Treasury by others for reply.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Applications for Federal Employment (SF–171). Resumes providing a reflection of such personal or job related experience as the writer elected to furnish. Correspondence from applicants and responses thereto, ranging from general inquiries to specific complaints about alleged practices, treatment, or requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

Alphabetically by name of applicant.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Files are maintained for two years, then burned.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220. Since the system is filed alphabetically, only the applicant's name is required.

RECORD ACCESS PROCEDURES:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Applications (SF–171, resumes) from the general public, including correspondence initially addressed to the President, Congressmen, or Senators are transmitted to this office because they deal with Treasury matters, issues, or employment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.067

SYSTEM NAME:

Detailed Employee Files—Treasury/OS.

SYSTEM LOCATION:

Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Treasury employees whose detail to other positions, or other Government employees whose details to the Department of Treasury require approval at the Departmental level.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence requesting approval of details and Request for Personnel Action (SF–52) which documents the detail and reflects approval of it. In some instances there may also be a Personal Qualifications Statement (SF–171), and attachments, Position Description (OF–8), and Request for Approval of Non-Competitive Action (SF–59).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3341–3349.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

Indexed by name in log and filed chronologically.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are retained for 2 years and are destroyed by standard destruction methods including burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220. The individual is required to provide his/her name and the Treasury organizational assignment, position title, grade/salary, and approximate date of the detail requested requiring approval at the Departmental level.

RECORD ACCESS PROCEDURES:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The documents which constitute this system, and which are listed under Categories of Records, came from the employee's servicing personnel office, and other concerned management officials within the Department of the Treasury.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.068

SYSTEM NAME:

Time-In-Grade Exception Files—Treasury/OS.

SYSTEM LOCATION:

Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons employed by, or proposed for employment by, the Department of the Treasury and for whom an exception to Time-In-Grade Restrictions is sought.

CATEGORIES OF RECORDS IN THE SYSTEM:

A collection of documents required for approval of exceptions to Time-In-Grade Requirements including: Request for Approval of Non-Competitive Action (SF–59); Personal Qualifications Statement (SF–171); Position Description (OF–8); and, in some instances, Request

for Personnel Action (SF–52); and memoranda of justification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, and 5 U.S.C. 1104.

ROUTINE USES OF RECORDS MAINTENANCE OF THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed to (1) the Office of Personnel Management for audit of exceptions granted, and (2) a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinet.

RETRIEVABILITY:

Indexed by name in log and filed chronologically.

SAFEGUARDS:

Access is limited to authorized Treasury personnel and management officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are retained for 2 years and are destroyed by standard destruction methods including burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20220. The individual is required to provide his/her name and the Treasury organizational assignment, position title, grade/salary, and approximate date of the Time-In-Grade exception requested.

RECORD ACCESS PROCEDURES:

Assistant Director of Personnel (Executive Manpower and Employment), Room 7102, ICC Building, 1201 Constitution Ave., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The documents which constitute this system, and which are listed under Categories of Records, came from the individual employee or applicant, his servicing personnel office, and other concerned management officials within the Department of the Treasury.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.070

SYSTEM NAME:

Office of Information Systems, Work Assignment and Control Form—Treasury/OS.

SYSTEM LOCATION:

Room B–91, Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel in Applications Development Division of the Office of Information Systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of projects and time spent on each project. List of proposed project milestone dates and actual dates completed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, magnetic media.

RETRIEVABILITY:

Indexed by name.

RETENTION AND DISPOSAL:

Retained one year, then erased or discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, (Application Development) Office of Information Systems, Room B–91, Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Assistant Director, (Application Development) Office of Information Systems, Room B–91, Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220. Identifying information—name.

RECORD ACCESS PROCEDURES:

Written request to: Director, Office of Information Systems, Room B–91, Main Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Forms filled out by staff members.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.111

SYSTEM NAME:

Office of Foreign Assets Control Census Records—Treasury/OS.

SYSTEM LOCATION:

Office of Foreign Assets Control, 1331 G Street, NW Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Although most reporters in the Census in this system of records are not individuals, such censuses reflect some small number of U.S. individuals as owners or reporters of U.S.-based assets which are blocked under the various Treasury Department regulations involved.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of several censuses of U.S.-based, foreign-owned assets which have been blocked at any time since 1950 under any of the following Treasury Department regulations: Foreign Assets Control Regulations; Foreign Funds Control Regulations; Cuban Assets Control Regulations; or Iranian Assets Control Regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 22 U.S.C. 2370(a); 50 U.S.C. 1701 *et seq.*; and 31 CFR Chapter V.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) To disclose information to appropriate state agencies which are concerned with or responsible for abandoned property; (2) to disclosure information to foreign governments in accordance with formal or informal international agreements; (3) to provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (4) to provide information to third parties during the

course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

1950 Census of Blocked Chinese Assets are stored in folders in file cabinets in the offices of Foreign Assets Control, and at the Federal Record Center; 1964 Census of Blocked Cuban Assets are stored in Treasury computers and in folders in file cabinets; 1970 Census of Blocked Chinese Assets are stored in folders and on computer printout in file cabinets; 1980 censuses of Iranian Assets and Iranian Claims are stored in folders and on magnetic tape in file cabinets; 1983 comprehensive update of blocked assets under Foreign Assets Control Regulations, Foreign Funds Control Regulations, and Cuban Assets Control Regulations are stored in Treasury computers and in folders in file cabinets.

RETRIEVABILITY:

By name of holder or custodian or owner of blocked property.

SAFEGUARDS:

Locked room, or in locked file cabinets located in areas in which access is limited to Foreign Assets Control employees.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Foreign Assets Control, Department of the Treasury, Room 504, 1331 G Street, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in the system, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of record sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (See "Record access Procedures" below.)

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Custodians or other holders of blocked assets.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.114

SYSTEM NAME:

Foreign Assets Control Enforcement Records—Treasury/OS.

SYSTEM LOCATION:

1331 G Street, NW, Washington, D.C. 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have engaged (or who have been investigated because suspected of having engaged) in transactions and activities prohibited by any of the following Treasury Department regulations: Foreign Assets Control Regulations; Transaction Control Regulations; Cuban Assets Control Regulations; Rhodesian Sanctions Regulations; or the Iranian Assets Control Regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigations of suspected or actual violations by an individual of relevant statutes and regulations administered by the Office of Foreign Assets Control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 50 U.S.C. 1701 *et. seq.*; 22 U.S.C. 287(c): 22 U.S.C. 2370(a); and 31, CFR, Chapter V.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To disclose information to appropriate Federal agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license; (2) to disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions; (3) to disclose information to a court, magistrate, administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings; (4) to disclose information to foreign governments in accordance with formal or informal international agreements; (5) to provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) to provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Folders in locked file cabinets are located in areas of limited accessibility except to Foreign Assets Control employees.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as necessary. Some of the records are stored at the Federal Record Center, Suitland, Maryland.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purpose of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

From the individual, from the Office of Foreign Assets Control investigations, and from other federal, state or local agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 522a (c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/OS.118

SYSTEM NAME:

Foreign Assets Control Licensing Records—Treasury/OS.

SYSTEM LOCATION:

Office of Foreign Assets Control, 1331 G Street, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for permissive and authorizing Treasury Department licenses under the Foreign Assets Control Regulations, Transaction Control Regulations, Foreign Funds Control Regulations, Rhodesian Sanctions Regulations, and the Iranian Assets Control Regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for Treasury licenses—together with related and supporting documentary material and copies of licenses issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 22 U.S.C. 2370(a): 22 U.S.C. 287(c); 50 U.S.C. 1701 *et seq.*; 31 CFR, Chapter V.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To disclose information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license; (2) to disclose information to the Department of State, Commerce, Defense or other federal agencies, in connection with Treasury licensing policy or other matters of mutual interest or concern; (3) to disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions; (4) to disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses, in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings; (5) to disclose information to foreign governments in accordance with formal or informal international agreement; (6) to provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

The records are retrieved by license or letter number.

SAFEGUARDS:

Locked filed cabinets located in areas in which access is limited to Foreign Assets Control employees.

RETENTION AND DISPOSAL:

Records are periodically undated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Foreign Assets Control, Department of the Treasury, Room 504, 1331 G Street, NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in the system of records, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Applicants for Treasury Department licenses under regulations administered by the Office of Foreign Assets Control.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.123

SYSTEM NAME:

ORS Vendors File—Treasury/OS.

SYSTEM LOCATION:

2401 E Street, NW, Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vendors offering services.

CATEGORIES OF RECORDS IN THE SYSTEM:

File containing individual contracts. Contents include: Contract request, justification, source recommended, sole source when applicable, experience, references, bid for services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Locked file cabinet with limited authorized employee access.

RETENTION AND DISPOSAL:

Retained for two years, then purged.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, ORS, 2401 E Street, NW, Washington, DC 20226.

NOTIFICATION PROCEDURE:

Office of Revenue Sharing, 2401 E Street, NW, Washington, DC 20226.

RECORD ACCESS PROCEDURES:

Written request mailed to: Deputy Director, ORS 2401 E Street, NW, Room 1564, Washington, DC 20226.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information came from vendors giving services, contract officer for agreement, budget analysis for approval of funds and payment upon approved completion of the contract.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.144

SYSTEM NAME

Treasury Intraagency Automated Litigation System (TRIALS)—TREASURY/OS.

DC 20220.

witnesses in the course of civil discovery, litigation, or settlement

and (l) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

request of the individual to whom the record pertains.

2401 E Street, NW, Washington, DC 20226.

Litigation System (TRIALS)—TREASURY/OS.

SYSTEM LOCATION:

U.S. Treasury Department, Office of the General Counsel, 1500 Pennsylvania Avenue NW, Washington, DC 20220, and through computer terminals at various national and regional Treasury bureau locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties, plaintiff or defendant, in civil litigation or administrative proceedings with the Treasury Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents related to litigation or administrative proceedings involving or concerning the Treasury Department or its officials. The hard-copy records consist of pleadings, investigative reports, legal memoranda, and related correspondence. The computerized index consists of information describing and categorizing litigation and administrative proceedings, including type of case, docket number, action dates, legal issues, and the names of parties, attorneys, witnesses, judges and/or hearing officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose pertinent information to appropriate Federal, State, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation. (2) To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit. (3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings. (4) To disclose information to foreign governments in accordance with formal or informal international agreements. (5) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. (6) To provide information to the news media in accordance with guidelines contained in 18 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings. (7) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These hard copy records are maintained in file folders with index cards. The computerized records are maintained in computer data banks, tapes and printouts.

RETRIEVABILITY:

All records are indexed on a variety of data fields including case name and location, type of case, relief sought, responsible attorney, and date.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel. Only employees with proper user identification have access to the computer banks.

RETENTION AND DISPOSAL:

Records are maintained during the pending litigation. Approximately two years thereafter, the hard-copy records are transferred to the Federal Records Center, Suitland, Maryland, and destroyed when seven years old. The computer index will be maintained for five years thereafter, retired to magnetic tape, and maintained an additional five years.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Room 3008–MT, Office of the General Counsel, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) at least two types of secondary information (date of birth, employee identification number, dates of employment or similar information). This system contains records which are exempt under 31 CFR 1.36; 5 U.S.C. 552a (j)(2) and (k)(2). Address inquiries to: Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Treasury Department Legal Division, Department of Justice Legal Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C 552a (d), (e)(1), (e)(3), (e)(4) (G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Treasury/OS.149

SYSTEM NAME:

Foreign Assets Control Legal Files—Treasury/OS

SYSTEM LOCATION:

1331 G Street NW, Room 400, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or who have been parties in litigation involving the Office of Foreign Assets Control or statutes and regulations administered by the agency. Currently, those regulations are as follows: Foreign Assets Control Regulations, Foreign Funds Control Regulations; Transactions Control Regulations; Cuban Assets Control Regulations; and the Iranian Assets Control Regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information and documents relating to litigation involving the Office of Foreign Assets Control or statutes and regulations administered by the agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 301; 50 U.S.C. App. 5(b); 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2370(a). Routine uses of records maintained in the system, including categories of users and the purposes of such uses: These records and information in these records

may be used: (1) To prosecute, defend, or intervene in litigation related to the Office of Foreign Assets Control and statutes and regulations administered by the agency; (2) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license; (3) To disclose information to a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions; (4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings; (5) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Folders in file cabinets.

RETRIEVABILITY:

By name of private plaintiff or defendant.

SAFEGUARDS:

File cabinets in areas of limited access except to employees.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Room 3006–MT, U.S. Treasury Department, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individual wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Address inquiries to Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Pleadings and other materials filed during course of a legal proceeding, discovery obtained pursuant to applicable court rules; materials obtained by Office of Foreign Assets Control investigation; material obtained pursuant to requests made to other Federal agencies; orders, opinions, and decisions of courts.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.150

SYSTEM NAME:

Disclosure Records—Treasury/OS.

SYSTEM LOCATION:

Office of the Secretary, Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests for information to the Office of the Secretary or who have appealed initial denials to the requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for records or information pursuant to the Freedom of Information Act, 5 U.S.C. 552, internal processing documents, memoranda, and referrals are kept by the Disclosure Office. Copies of requested records are kept by the program office responsible for fulfilling the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 31 CFR Part 1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose information to other agencies when required for coordination of response or referral. (2) to disclose information to the Department of Justice for defending law suits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name and case number.

SAFEGUARDS:

Stored in filing cabinets access limited to individuals with need to know or legitimate right to review.

RETENTION AND DISPOSAL:

Retained in accordance with the provisions of the Act and Departmental records management procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW., Washington, DC 20220

Deputy to the Assistance Secretary, Enforcement Operations, Department of the Treasury, Room 4314, 1500 Pennsylvania Ave., NW. Washington, DC 20220

Freedom of Information Act Officer or Director, Correspondence Unit, Office of Tax Policy, Department of the Treasury, Room 1124, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch at the above address.

RECORD ACCESS PROCEDURES:

See "System Manager" above.

CONTESTING RECORD PROCEDURES:

See "System Manager" above.

RECORD SOURCE CATEGORIES:

Individuals who make Freedom of Information Act requests, federal officials responding to Freedom of Information Act requests, and documents from official records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

criminal law proceedings. (4) To disclose information to foreign

(2) identify the category and type of records sought; and (3) at least two

the system, including categories of users and the purposes of such uses: These records and information in these records

number, dates of employment or similar information).

for defending law suits.

None.

Treasury/OS.151

SYSTEM NAME:

Gifts to the United States—Treasury/OS.

SYSTEM LOCATION:

U.S. Treasury Department, Office of the General Counsel, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of intervivos and testamentary gifts to the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, copies of wills and court proceedings, and other material related to gifts to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 1151–1156. Department Circular No. 865 (revised).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Boxes in Federal Records Centers.

RETRIEVABILITY:

Name of donor.

SAFEGUARDS:

Files are in Records Center; access is limited to persons on official business.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of the General Counsel, U.S. Treasury Department, 1500 Pennsylvania Ave., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of seondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individuals, executors, administrators and other involved persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.154

SYSTEM NAME:

Private relief bill system—Treasury/OS.

SYSTEM LOCATION:

Office of the General Counsel, Room 1417, Treasury Department, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have had private relief bills introduced in Congress on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Congressional committee or OMB request for Treasury views on proposed legislation plus comments on proposal from offices or bureaus of Treasury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301. A function of the Office of the General Counsel is to handle and coordinate legislation work that concerns Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this System may be used to furnish reports on proposed legislation to Congress or OMB.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Indexed on 5 by 8 card by bill number and cross-indexed by individual's name. Complete file is kept by bill number and Congress.

RETRIEVABILITY:

By name and bill number.

SAFEGUARD:

Limited number of authorized employees permitted access.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Administration Officer, Room 3006, Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request obtaining the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Sources of the request are usually Congressional committees or OMB. Other information comes from Treasury bureau or office concerned in matter and from the individual concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.156

SYSTEM NAME:

Tax Court Judge Applicants—Treasury/OS.

SYSTEM LOCATION:

Room 3000–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting consideration for appointment to Tax Court judgeships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning the qualification of individuals for appointment to the Tax Court.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7443.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to the White House with recommendations to the President on appointments to the Tax Court.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

The files are kept in locked cabinets with a limited number of employees permitted access.

RETENTION AND DISPOSAL:

The records relating to individuals date from 1981 and are destroyed at the end of each administration.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of the General Counsel, Room 3006–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of records sought; (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individual concerned and letters of recommendation from other individuals submitted at the request of the individual and/or the Department.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.183

SYSTEM NAME:

Private Relief Tax Bill Files—Office of the Assistant Secretary for Tax Policy—Treasury/OS.

SYSTEM LOCATION:

Room 4028–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have had private relief tax bills introduced in Congress on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Congressional Committee or OMB request for Treasury views on proposed legislation, plus comments on proposal from offices or bureaus of Treasury, plus the Internal Revenue Service data concerning the issues involved and that unit's recommendation, and the report of the Treasury on the Bill.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to OMB and Congress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders.

RETRIEVABILITY:

By bill numbers or name of person for whom relief is sought.

SAFEGUARDS:

Access limited to Tax Policy personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed until shipped to National Archives and Record Service.

SYSTEM MANAGER(S) AND ADDRESS:

Tax Legislative Counsel, Room 4028–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Chief, Disclosure Branch (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See Access above.

RECORD SOURCE CATEGORIES:

Principally the Congress and the Internal Revenue Service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.190

SYSTEM NAME:

General Allegations and Investigative Records—Treasury/OS.

SYSTEM LOCATION:

Office of the Inspector General, ICC Building, 1201 Constitution Ave., NW, Washington, DC 20423.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of Treasury and persons whose association with current and former employees relate to the alleged violations of the Department's rules of conduct, the Office of Personnel Management merit system, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) initiated at the discretion of the Office of the Inspector General in the conduct of assigned duties. (B) Individuals who are: Witnesses; complainants; confidential or nonconfidential informants; suspects; defendants; parties who have been identified by the Office of the Inspector General or by other agencies; constituent units of the Department of Treasury and members of the general public in connection with the authorized functions of the Inspector General. (C) Current and former senior Treasury and bureau officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

Disclosure Branch (See "Record access procedures" below).

Limited number of authorized employees permitted access.

qualification of individuals for appointment to the Tax Court.

submitted at the request of the individual and/or the Department.

maintained in this system must submit a written request containing the following

and conducted by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct. Investigative files which include: Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigations; transcripts and documentation concerning requests and approval for consensual (telephone and consensual non-telephone) monitoring; reports from or to other law enforcement bodies; prior criminal or noncriminal records of individuals as they relate to the investigations; reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation; (2) to disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential of civil or criminal law or regulation; (3) to disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit; (4) to disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings; (5) to provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) to provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) to provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file jackets and magnetic media maintained in locked safes.

RETRIEVABILITY:

Alphabetically by name and by case number.

SAFEGUARDS:

Records and word processing discs are maintained in locked safes and all access doors are locked when office is vacant. The records are available to Office of the Inspector General personnel who have an appropriate security clearance on a need-to-know basis.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for three years and indices to those files are stored on site for five years. The word processing discs will be retained indefinitely, however, they will periodically be updated to reflect changes and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices are transferred to the Federal Records Center for and in most instances destroyed by burning, maceration or pulping when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Room 2412–MT, 1201 Constitution Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a (j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

See "Categories of Individuals" above. This system contains investigatory material whose sources need not be reported.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552(a) (c)(3)(4), (d)(1)(2)(3)(4), (e)(1)(2)(3), (4) (G), (H), and (I), (e) (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Treasury/OS.193

SYSTEM NAME:

Treasury Employee Locator System—Treasury/OS.

SYSTEM LOCATION:

Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on all employees of the Department is maintained in the system if the proper locator card is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, bureau, office symbol, building, room number, home address and phone number, and person to be notified in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and magnetic media.

RETRIEVABILITY:

Indexed by name and/or block code numbers.

SAFEGUARDS:

All records, including computer system and all terminals are located within secure space. Only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are kept as long as needed, updated periodically and destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Operations Branch, Room 2049–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

See "System Manager" above.

RECORD ACCESS PROCEDURES:

See "System Manager" above.

CONTESTING RECORD PROCEDURES:

See "System Manager" above.

RECORD SOURCE CATEGORIES:

Information is provided by individual employees. Necessary changes made if requested.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Treasury/OS.194

SYSTEM NAME:

Office of the Secretary Document Delivery Control System—Treasury.

SYSTEM LOCATION:

Department of the Treasury, Office of Administrative Programs, Information Services Division, Room 5030–MT, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department employees who are library users.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employees who borrow library materials or receive current news publications or library material on distribution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records of items borrowed from the Treasury Library collection, distribution lists for publications and subscription control lists are maintained in computer disc and tape files. Hard copy printouts of data are used for working copies to update computer data bases. Computer files are maintained by name of subscriber or borrower, office locator information, office billing code (for subscription control module) and title of publication.

RETRIEVABILITY:

Data can be retrieved from the system by borrower or subscriber name, office or organization, and publication title.

SAFEGUARDS:

Access to the computerized systems online requires knowledge of identification codes and protocols for calling up the date files; printed lists of borrower names are kept in a locked file. Access to the necessary protocols and identification codes is limited to staff of the Readers Services Branch and Acquisitions Unit responsible for maintenance and oversight of the circulation, subscription control, and distribution functions.

RETENTION AND DISPOSAL:

Only current data are maintained on line; hard copy of computer data for the circulation and distribution functions is kept on a current basis only; hard copy of the subscription control data is kept for current and preceding fiscal years only.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Information Services Division, Department of the Treasury, Room 5030–MT, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to Chief, Disclosure Branch, Department of the Treasury, Room 5423–MT, 1500 Pennsylvania Ave., NW, Washington DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Charge-out records completed by borrowers. Requests for subscriptions or distribution submitted by Treasury officials and employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT: NONE.

Treasury/OS.196

SYSTEM NAME:

Physical Security Information System—Treasury/OS.

SYSTEM LOCATION:

Room 800, 1331 G Street, NW c/o Main Treasury Mailroom, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Treasury officials who classify documents with a national security classification, i.e., Top Secret, Secret, or Confidential.

Each Department of the Treasury official, by name and position title, who has been delegated the authority to downgrade and declassify national security information and who is not otherwise authorized to classify a document at its present classification level. The authority is delegated only by the Secretary or the Assistant Secretary (Administration).

Each Department of the Treasury official, by name and position title, who has been delegated the authority for original classification of national security information, exclusive of officials specifically authorized original classification authority by 31 CFR Part 2. Delegations of Top secret original classification authority require that the authorizing official be the Secretary or the Assistant Secretary (Administration).

Each Department of the Treasury official who does not have original classification authority for national security information and who is not authorized to downgrade and declassify national security information, but who may control and/or decontrol officially limited information.

An alphabetical listing of Department of the Treasury employees who have valid security violations as a result of the improper handling, safeguarding, or storage of classified national security and officially limited information.

Department of the Treasury personnel concerned with classified national security and officially limited information who have participated in a security orientation program regarding the significant features of the security requirements and procedures for the handling and safeguarding of classified national security and officially limited information.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Report of Authorized Downgrading and Declassification Officials, (2) Report of Authorized Classifiers, (3) Designation of Controlling/Decontrolling Officials, (4) Record of Security Violation, and (5) Physical Security Orientation Acknowledgement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 12356, dated April 2, 1982, Title 31 Subtitle A Part 2, and Treasury Directives 71–05.A, dated September 11, 1981, and 71–21.A, dated February 26, 1982.

the record pertains; (6) to provide information to the news media in

See "Categories of Individuals" above. This system contains

Pennsylvania Ave., NW, Washington, DC 20220.

subscription control module) and title of publication.

Department of the Treasury officials who classify documents with a national

February 26, 1982.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to disclose information (1) to appropriate Federal agencies e.g., the Information Security Oversight Office, General Services Administration, responsible for enforcing or implementing a statute, rule, regulation or order; and (2) to provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relates to an agency's functions relating to civil and criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard Copy paper files.

RETRIEVABILITY:

Manually filed and indexed by office or bureau, name of official and position title, where appropriate.

SAFEGUARDS:

Secured in security equipment to which access is limited to personnel with the need to know.

RETENTION AND DISPOSAL:

With the exception of the Record of Security Violation, which is maintained for a period of two years, and the Physical Security Orientation Acknowledgement, the remaining records are destroyed and/or updated on an annual basis. Destruction is effected by shredding or other comparable means.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Physical Security and Safety Division, Office of Administrative Programs, Room 800, 1331 G Street, NW, c/o Main Treasury Mailroom, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and types of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information) to the Chief, Disclosure Branch. (See "Record access procedures" below).

RECORD ACCESS PROCEDURE:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The sources of the information are office and bureau employees of the Department of the Treasury. The information concerning any security violation is reported by Department of the Treasury security officials and the U.S. Department of State security officials as concerns Department of the Treasury personnel attached to U.S. diplomatic posts or missions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-32589 Filed 12-12-84; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Washington, DC, on Thursday, January 10, 1985, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Patrick Henry Building of the USIA, 601 D Street NW, Room 10017. The meeting will begin at 9:00 AM. Point of contact for the meeting is Terry Balazs, tel: 202-485-8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the proposed systems architecture for the VOA global communications network, development of direct broadcast satellite concepts, technical standards for broadcast signals, and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to future site negotiations for Voice of America relay stations will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) in fact is properly classified pursuant to such Executive Order (5 U.S.C. 552b(c)(1)).

Dated: December 5, 1984.

Charles Z. Wick,

Director.

Determination To Close Radio Engineering Advisory Committee Meeting

January 10, 1985

I hereby determine that the meeting scheduled by the Radio Engineering Advisory Committee on January 10, 1985, to discuss current operations and future plans of the Voice of America (VOA) may be closed to the public.

This meeting will concern issues relating to future site negotiations for VOA relay stations. The information relating to site negotiations is specifically authorized under criteria established by Executive Order to be kept secret in the interests of foreign policy and is properly classified pursuant to such Executive Order.

I hereby determine, therefore, that the meeting scheduled by the Committee on January 10, 1985, may be closed to the public (5 U.S.C. 552b(c)(1)).

Dated: December 5, 1984.

Charles Z. Wick,

Director.

[FR Doc. 84-32416 Filed 12-12-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on January 15, 1985, at 10:00 a.m., the Winston-Salem Regional Office Station Committee on Educational Allowances shall at Room 742, Federal Building, 251 North Main Street, Winston-Salem, North Carolina, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Shaw University, Raleigh, North Carolina, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

C.E. Williams, Jr.,

Acting Director, Veterans Administration Regional Office, 251 North Main Street, Winston-Salem, North Carolina 27155.

December 7, 1984.

[FR Doc. 84-32446 Filed 12-12-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 241

Thursday, December 13, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1
Federal Deposit Insurance Corporation	2-4
Federal Election Commission	5
Federal Energy Regulatory Commission	6
Federal Home Loan Mortgage Corporation	7
Federal Maritime Commission	8
Federal Mine Safety and Health Review Commission	9
Federal Reserve System	10, 11
Legal Services Corporation	12
National Credit Union Administration	13
Occupational Safety and Health Review Commission	14

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, December 18, 1984, 9:30 AM (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (Optional).
3. Proposed Contract for Services In Connection With a Court Case.
4. Final Regulations Implementing section 4(g) of the ADEA, 29 U.S.C. 623(g).
5. Amendment of the Commission's Interpretation of section 12(c) of the ADEA as a Result of Legislative Changes.
6. Opinion Letter: Texas Youth Commission.
7. Proposed Contract for 1985 Employer Information Report (EEO-1).

Closed

1. Litigation Authorization: General Counsel Recommendations.
2. Proposed Commission Decisions: ORA Decisions and Guidance Decisions.
3. Discussion of Subponeas.
4. Discussion of Commissioner's Charges.
5. Options for Enforcement of a Decision Against a Federal Agency.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: December 11, 1984.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice was Issued December 11, 1984.

[FR Doc. 84-32656 Filed 12-12-84; 4:06 am]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, December 10, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Notice of acquisition of control (name and location of bank and name of acquiring party authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii))).

Memorandum and Resolution re: Delegations of authority relating to liquidation activities.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 11, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-32629 Filed 12-11-84; 3:24 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, December 10, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required, on less than seven days' notice to the public, the addition to the agenda for consideration at the meeting and the withdrawal from the agenda for consideration at the Board's closed meeting to be held at 2:30 p.m. that same day, of the application of Federated Bank & Trust Company, a proposed new bank to be located at 10 Foster Avenue, Gibbsboro, New Jersey, for Federal depost insurance and for consent to exercise trust powers.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: December 11, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-32630 Filed 12-11-84; 3:24 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:25 p.m. on Friday, December 7, 1984,

of the Treasury, Room 5423, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220, (202) 566-6548.

Dated: December 11, 1984.

Peter K. Nunez,

Director, Disclosure Branch, Department of the Treasury.

[FR Doc. 84-32484 Filed 12-12-84; 8:45 am]

BILLING CODE 8320-01-M

48648 Federal Register / Vol. 49, No. 241 / Thursday, December 13, 1984 / Sunshine Act Meetings

the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers State Bank of Holyoke, Holyoke, Colorado, which was closed by the State Bank Commissioner for the State of Colorado on Friday, December 7, 1984; (2) accept the bid for the transaction submitted by Security National Bank, Holyoke, Colorado, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12.U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 10, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-32831 Filed 12-11-84; 3:24 pm]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 18, 1984, at the conclusion of the open meeting.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Tuesday, December 18, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Election of officers: Election of chairman, election of vice chairman
Eligibility for candidates to receive Presidential primary matching funds
Draft Advisory Opinion No. 1984-58; Philip Johnson, Mayor, the City of Cupertino, California
Draft Advisory Opinion No. 1984-59; Marty Russon, Member of Congress
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-32881 Filed 12-11-84; 10:32 am]

BILLING CODE 6715-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTEN" CITATION OF PREVIOUS ANNOUNCEMENT: December 11, 1984, 49 FR 48257.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: December 12, 1984, 9:00 a.m.

CHANGE IN THE MEETING: The following docket number and company has been added:

Item No. and Docket No. and Company

RP-1(D)—CP78-123-023, Northwest Alaskan Pipeline Company (Western Leg)

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32835 Filed 12-11-84; 2:37 pm]

BILLING CODE 6717-01-M

7

FEDERAL HOME LOAN MORTGAGE CORPORATION

Previously Held Emergency Meeting

TIME AND DATE: 6:50 P.M., Thursday, December 6, 1984.

PLACE: Atlanta, Georgia.

STATUS: Closed.

MATTER CONSIDERED:

1. Approval of a resolution for the creation, issuance and distribution of participating preferred stock to the Federal Home Loan Banks.

The Board unanimously voted that Federal Home Loan Mortgage Corporation business required that the meeting be held with less than seven days advance notice.

The Board voted to close the meeting pursuant to 5 U.S.C. 552b(c)(9)(B). The General Counsel certified that the meeting could be closed under this exemption.

FOR MORE INFORMATION CONTACT: Alan Hausman, Associate General Counsel, 1776 G Street, NW., 8th Floor, Washington, D.C. 20013, 202-789-4763.

Dated: December 6, 1984.

Maud Mater.

[FR Doc. 84-32551 Filed 12-10-84; 8:08 pm]

BILLING CODE 6720-02-M

8

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 7, 1984, 49 FR 47956.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: December 12, 1984, 9:00 a.m.

CHANGE IN THE MEETING:

Addition of the following item to the closed session:

7. Agreement No. 202-010889: Establishment of the Transpacific Westbound Rate Agreement.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32817 Filed 12-11-84; 2:21 pm]

BILLING CODE 6730-01-M

9

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 7, 1984.

TIME AND DATE: 10:00 a.m. Wednesday, December 12, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

CHANGES IN THE MEETING:

The following case has been cancelled:

1. Freeman United Coal Mining Co., Docket No. LAKE 82-3.

Instead the Commission will consider and act upon the following:

1. Southwestern Illinois Coal Corporation, Docket No. LAKE 82-38 (Issues include whether the administrative law judge erred in vacating a citation issued to the operator under 30 CFR 77.1710(g), a mandatory safety standard dealing with the wearing of safety belts.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that the previously announced item be cancelled. No earlier announcement of the change was possible. 5 U.S.C. 552b(e)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-32584 Filed 12-11-84; 11:32 am]

BILLING CODE 6735-01-M

10

FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Wednesday, December 19, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Federal Reserve Bank budgets for 1985.
2. Proposed enhancements to the Federal Reserve's Planning and Control System (PACS).
3. Any items carried forward from a previously announced meeting.

NOTE.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32849 Filed 12-11-84; 3:56 pm]

BILLING CODE 6210-01-M

11

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, December 19, 1984, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32848 Filed 12-11-84; 3:56 pm]

BILLING CODE 6210-01-M

12

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The meeting will commence at 9:00 A.M. and continue until all official business is completed; Thursday, December 20, 1984.

PLACE: Capitol Holiday Inn, Columbia Room, 550 C Street SW., Washington, D.C. 20024.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, criminal, litigation, and investigatory matters under 45 CFR 1622.5 (a), (d), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—December 5, 1984
3. Report from Corporation President
4. Report from Audit and Appropriations Committee
   —Acceptance of Corporation Audit FY 1984
   —Final FY 1984 Consolidated Operating Budget
   —Proposed FY 1985 Consolidated Operating Budget with recommendations for allocation of FY 1984 carryover
   —FY 1986 Budget Mark
5. Report from Operations and Regulations Committee
   —45 CFR Part 1601 (By-laws)
   —45 CFR Part 1612 (Lobbying)
   —45 CFR Part 1614 (Private Attorney Involvement)
   —45 CFR Part 1620 (Priorities)
   —45 CFR Part 1622 (Sunshine Act)
6. Report from provisions for Delivery of Legal Services Committee

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272-4040.

DATE ISSUED: December 10, 1984.

Donald P. Bogard,

President.

[FR Doc. 84-32530 Filed 12-10-84; 4:31 pm]

BILLING CODE 6820-35-M

13

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, December 19, 1984.

PLACE: 1776 G Street, NW., Washington, D.C., Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Final Rule: Corporate Central Federal Credit Unions, Part 704, NCUA Rules and Regulations.
4. Final Rule: Federal Credit Union Ownership of Fixed Asets, § 701.36, NCUA Rules and Regulations.
5. NCUA Board Policy regarding Delinquencies in Funding of NCUSIF Deposit.

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Wednesday, December 19, 1984.

PLACE: 1776 G Street, NW., Washington, D.C., 6th Floor Conference Room.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Special Assistance to Prevent Liquidation Under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84-32581 Filed 12-11-84; 11:32 am]

BILLING CODE 7535-01-M

14

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 17, 1985.

PLACE: Suite 316, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634-4015.

Dated: December 11, 1984.

Earl R. Ohman, Jr.,

Acting General Counsel.

[FR Doc. 84-32572 Filed 12-11-84; 11:07 am]

BILLING CODE 7600-01-M

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth floor.)

General Counsel certified that the meeting could be closed under this exemption.

handicapped person who gives reasonable advance notice.

federal register

Thursday
December 13, 1984

Part II

Federal Emergency Management Agency

44 CFR Parts 61 and 62
National Flood Insurance Program; Assistance to Private Sector Property Insurers; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 61 and 62

[Docket No. FEMA-FIA]

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations dealing with the issuance of flood insurance policies and the adjustment of claims arising under such contracts of insurance to set forth pertinent detail relative to the underwriting, claims adjustment and financial control operational procedures established by the Federal Insurance Administrator in connection with the Financial Assistance/Subsidy Arrangements which may be entered into by and between the Administrator and private sector insurers under the "Write-Your-Own" (WYO) program authorized pursuant to Subpart C, Part 62 of these regulations and section 1310 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, 42 U.S.C. 4001).

Under the WYO Program, the Standard Flood Insurance Policy (the form and substance of which is approved by the Administrator) may be issued by insurers signatory to the Arragement in their own names. Insurers then are responsible for all aspects of service, including policy issuance to new policyholders and to their policyholders insured by them under other lines of property insurance; endorsement and renewals of policies; and the adjustment of claims brought under the policies. The insurers pay losses and loss adjustment expenses, as well as the commissions of agents, out of written premiums. Under the financial assistance arrangement, the Government backs the policies. Thus, insurers are able to offer flood insurance in the private insurance market, the NFIP will increase its policy-in-force base by reason of WYO Companies' marketing efforts, and policyholders will benefit from an infusion into the NFIP of considerable private sector insurance expertise and service.

DATES: All comments received on or before February 15, 1985 will be considered before final action is taken on the proposed rule. The proposed effective date is June 1, 1985.

ADDRESS: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, D.C. 20472; telephone number (202) 287-0740 or 646-3419.

SUPPLEMENTARY INFORMATION: These proposed amendments are intended to more fully effectuate the purpose of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, 42 U.S.C. 4001), while providing a direct and tangible benefit to persons insured against property insurance perils, other than flood, by setting forth the general parameters of the procedural approach being taken in respect to the WYO program by the Administrator and the WYO Companies engaged in this program of assistance to private sector property insurance companies in the provision of NFIP flood insurance coverage to policyholders insured by these companies for other lines of property insurance business.

Regarding the purposes of the 1968 Act, the NFIP enabling legislation establishes the direction of having the program "carried out to the maximum extent practicable by the private insurance industry" (42 U.S.C. 4001) and authorizes the Director, FEMA, to "encourage and arrange for . . . appropriate financial participation and risk sharing in the program by insurance companies" (42 U.S.C. 4011). Clearly, the rationale for the enabling legislation recognizes the benefits to be derived from the operation of a national program of flood insurance by private sector property insurers, who are the traditional providers of insurance to the public. In this connection, the Act declares, as its purpose, that there be "a flood insurance program by means of which flood insurance, over a period of time, can be made available on a nationwide basis through the cooperative efforts of the Federal Government and the private insurance industry" (42 U.S.C. 4001).

Against this backround, FEMA published a final rule, on October 14, 1983 entitled "National Flood Insurance Program; Assistaance to Private Sector Property Insurers" (48 FR 46789), which established the WYO program authorized under Pub. L. 90-448 under the rulemaking procedures of the Administrative Procedure Act, following notice of proposed rulemaking (48 FR 34482, July 29, 1983) and receipt of public comment. During the first year of operation, forty-eight private sector insurers were signatory to WYO arrangements with the Administrator and twelve of these commenced the underwriting of over 131,000 flood insurance policies. On May 29, 1984, the Administrator published an "Offer to Assist Insurers in (49 FR 22438), inviting private sector property insurers to enter into similar arrangements for WYO program year October 1, 1984-September 30, 1985. As of this writing, over two-hundred and fifteen (215) insurance companies have become signatory to the Arragement for the current year.

Given the success of the program and the widespread acceptance of the WYO Program among insurers, insurance agents and brokers and claims adjustment organizations, as well as the general public, it is felt that it would be further informative to the public, at this time, to publish for additional public consideration and comment, pertinent procedural details of the WYO program regarding its operations in the areas of underwriting, claims adjustment, and the financial controls which have been and will continue to be exercised with respect to the program. At the same time, these proposed rules will make further, important, headway toward normalizing the business of issuing flood insurance policies by WYO Companies along the lines of the customary business practices engaged in by these insurers in their other lines of property insurance business. In this way, persons insured by WYO Companies against the peril of flood under the WYO program and against the usual property insurance perils under their traditional policies of insurance with the companies (e.g., Homeowners Insurance) will not be discriminated against as to the effective date of their coverage, for example, by the flood insurance policy issued under the arrangement. It is also proposed that Subpart C, be augmented by the inclusion, as Appendices, of both the Arrangement and the financial control plan which, together, contain the basic operational and procedural framework of the WYO Program. Comments are being solicited on these documents as well. The Arrangement is proposed to be amended from that which was published on May 29, 1984 to set forth a constant formula for the provision of reimbursement of operating and administrative expenses (at Article III [B.]) and to recognize as a "Loss Cost"

or expense of doing business under the Arrangement, an award or judgment of punitive damages arising out of the scope of the Arrangement, assuming notice of any claim for such damage being given to FEMA, (at Article III [D]).

FEMA has determined, based upon an Environmental Assessment, that this rule does not have significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 "C" Street, SW., Washington, D.C. 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

The proposed rule is not a "major rule" as defined in Executive Order 12281, dated February 17, 1981 and, hence, no regulatory analysis has been prepared.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Federal Emergency Management Agency, New Executive Office Building, Washington, D.C. 20503. The Federal Emergency Management Agency (FEMA) requests that persons submitting comments on these requirements to OMB also send copies of those comments to FEMA.

List of Subjects in 44 CFR Parts 61 and 62

Flood insurance.

Accordingly, Parts 61 and 62 of Subchapter B of Chapter 1 of Title 44 are proposed to be amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. Section 61.11 (e) is amended by removing the last sentence.

2. Section 61.11 is amended by the addition of a new subparagraph (f), as follows:

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

* * * * *

(f) With respect to the submission of an application in connection with new business, a renewal of a policy in effect and an endorsement to a policy in effect, the paytment by an insured to an agent or the issuance of premium payment to a Write-Your-Own (WYO) Company by the agent, accompanied by a properly completed application, renewal or endorsement form, as appropriate, shall commence the calculation of any applicable waiting period under this section, provided that the agent is acting in the capacity of an agent of a Write-Your-Own (WYO) Company authorized by 44 CFR 62.63, is under written contract to or is an employee of such Company, and such WYO Company is, at the time of such submission of an application in connection with new business or a renewal of or endorsement to flood insurance coverage, engaged in WYO business under an arrangement entered into by the Administrator and the WYO Company pursuant to § 62.63.

It is further provided that:

(1) With respect to any submission of an application with the proper premium in connection with new flood insurance business to a WYO Company and a renewal of a flood insurance policy in effect by a WYO Company, which flood insurance policy is to be issued with an effective date indentical to the effective date of a Homeowners, Farmowners, or Standard Fire Insurance Policy ("companion policy") to be issued to the same named insured and insuring the same property, the flood insurance policy may be issued in accordance with the WYO Company's customary business practices, as are used in the case of the companion policy, and may have the same effective date as the companion policy, anything to the contrary in this section notwithstanding; provided, the flood insurance policy may not be cancelled by the named insured with a return of premium during its term unless the companion policy is also cancelled by the named insured, effective the same date of cancellation as the flood insurance policy; provided, further, for purposes of this section, the term "new flood insurance business" does not include the issuance of flood insurance insuring a property in respect to which the National Flood Insurance Program (NFIP) has previously insured the property unless ninety (90) days has elapsed since the date that the NFIP last insured the property.

(2) With respect to any renewal of an NFIP policy in effect by a WYO Company, or any renewal of or endorsement to a flood insurance policy issued by a WYO Company, where payment of premium is not tendered to an agent under written contract to the WYO Company or to an employee of such WYO Company but, instead, is mailed directly to the WYO Company, the WYO Company is authorized to calculate the effective date of the policy or coverage, applying the appropriate applicable waiting period under this section, from the postmark date on the envelope (which should be retained for three (3) years from date of receipt by the WYO Company) in which the correct premium is received by the WYO Company at its normal place of business, or, if ther is no postmark date on the envelope, from 12:01 A.M. on the day prior to the date of actual receipt of the correct premium by the WYO Company, provided the receipt is "Date-stamped" as to when it is received by the WYO Company and duly recorded by the WYO Company.

* * * * * *

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

* * * * * *

Subpart C— Write-Your-Own (WYO) Companies

3. Section 62.63 is renumbered as § 62.23.

4. Section 62.23 (a) is amended by the addition of the following sentence at the end thereof:

§ 62.23 WYO Companies Authorized.

(a) * * *

Arrangements entered into by WYO Companies under this Subpart shall be in the form and substance of the standard arrangement, entitled "Financial Assistance/Subsidy Arrangement", a copy of which is included in Appendix "D" to these regulations and made a part of these regulations.

* * * * * *

5. Section 62.23 (f) is amended by the addition of the following sentence at the end thereof:

§ 62.23 WYO Companies authorized.

* * * * *

(f) * * *

In furtherance of this end, the Administrator has established "A Plan to Maintain Financial Control for Business Written Under the Write-Your-Own Program", a copy of which is included in Appendix "E" to these regulations and made a part of these regulations.

* * * * * *

6. Section 62.23 is amended by the addition of new paragraphs (h), (i), (j), and (k), as follows:

§ 62.23 WYO Companies authorized.

* * * * *

VOL 49 ISS 241 DEC 13 1984 UMI

(h) To facilitate the underwriting of flood insurance coverage by WYO Companies, the following procedures will be utilized by WYO Companies:

(1) To expedite business growth, the WYO Company will encourage its present property insurance policyholders to purchase flood insurance and to transfer to the WYO Company, at the time of policy renewal, business placed by its producers with the NFIP Servicing Agent.

(2) To conform its underwriting practices to the underwriting rules and rates in effect as to the NFIP, the WYO Company will establish procedures to carry out the NFIP rating system and to provide its policyholders with the same coverage as is afforded under the NFIP.

(3) The WYO Company may follow its customary billing practices to meet the Federal rules on the presentment of premium and net premium deposits to a Letter of Credit bank account authorized by the Administrator and reduction of coverage when an underpayment is discovered.

(4) The WYO Company is expected to meet the recording and reporting requirements of the WYO Statistical Plan. Transactions reported by the WYO Company under the WYO Statistical Plan will by analyzed by the NFIP Servicing Agent. A monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of WYO Company submissions, the disposition of transactions which have not passed systems edits and the reconciliation of the totals generated from transactions reports with those submitted on the WYO Company's reconciliation reports.

(5) If a WYO Company rejects an application from a producer, the producer should be notified so that the business can be placed through the NFIP Servicing Agent, or another WYO Company.

(6) Flood insurance coverage will be issued by the WYO Company on a separate policy form and will not be added, by endorsement, to the Company's other property insurance forms.

(7) Premium payment plans can be offered by the WYO Company so long as the net premium depository requirements specified under the NFIP/WYO Program accounting procedures are met. A cancellation by the WYO Company for non-payment of premium, will not produce a pro-rata return of the net premium deposit to the WYO Company.

(8) NFIP business will not be assumed by the WYO Companies at any time other than at renewal time, at which time the insurance producer may submit the business to the WYO Company as new business. However, it is permissible to cancel and rewrite flood policies to obtain concurrency of expiration dates with other policies covering the property.

(i) To facilitate the adjustment of flood insurance claims by WYO Companies, the following procedures will be utilized by WYO Companies.

(1) Under the terms of the Arrangement set forth at Appendix D, WYO Companies will adjust claims in accordance with general Company standards, guided by NFIP Claims manuals. The Arrangement also provides that claims adjustment shall be binding upon the FIA. For example, the entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims is the responsibility of the WYO Company.

(2) The WYO Company may use its staff adjusters and/or independent adjusters. It is important that the Company's Claims Department verifies the correctness of the coverage interpretations and reasonableness of the payments recommended by the adjusters.

(3) An established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year. This is the expense allowance to cover costs of independent or WYO Company adjusters.

(4) The normal catastrophe claims procedure that a WYO Company now has should be implemented in the event of a claim catastrophe situation. Flood claims will be handled along with other catastrophe claims.

(5) It will be the WYO Company's responsibility to try to detect fraud (as it does in the case of property insurance) and coordinate its findings with FIA.

(6) Pursuant to the Arrangement, the responsibility of defending claims will be upon the Write-Your-Own Company and defense costs will be part of the unallocated or allocated claim expense allowance, depending on whether a staff councel or an outside attorney handles the defense of the matter.

(7) The claim reserving procedures of the individual WYO Company can be utilized.

(8) Regarding the handling of subrogation, if a WYO Company prefers to forego pursuit to subrogation recovery, it may do so by referring the matter, with a complete copy of the claim file, to FIA. Subrogation initiatives may be truncated at any time before suit is commenced (after commencing an action, special arrangement must be made). FIA, after consultation with FEMA's Office of General Counsel (OGC), will forward the cause of action to OGC or to the NFIP Servicing Agent for prosecution. Any funds received will be deposited, less expenses, in the National Flood Insurance Fund.

(9) Special allocated loss adjustment expenses will include such items as nonstaff attorney fees, engineering fees and special investigation fees over and above normal adjustment practices.

(10) The customary content of claims files will include coverage verification, normal adjuster investigations, including statements where necessary, policy reports, building reports and investigations, damage verification and other documentation relevant to the adjustment of claims under the NFIP's and the WYO Company's traditional claim adjustment practices and procedures. The WYO Company's claim examiners and managers will supervise the adjustment of flood insurance claims by staff and independent claims adjusters.

(j) To facilitate establishment of financial controls under the WYO Program, the WYO Company will:

(1) Conduct an annual self-audit of flood insurance business in respect to which the audit standards, level and frequency of financial, claims and underwriting audits are set forth at Appendix E of these regulations.

(2) Submit an annual report of the WYO Company self-audit activities to the Standards Committee established pursuant to Appendix E.

(3) Participate in an evaluation of the WYO Company self-audit plan on at least a triennial basis. The evaluation will be conducted by FIA and the WYO Company internal audit manager. A report of the evaluation will be filed with the Standards Committee and the Administrator.

(4) Participate in WYO Company/FIA Operational Reviews. The FIA Claims Director and the FIA Underwriting Director will conduct a review of the WYO Company flood insurance activities at least once every three (3) years. These reviews, like the internal audit evaluation, will be conducted at the offices of the WYO Company. As a part of these reviews, actual files (up to fifty (50)) will be reconciled with a listing of transactions submitted by the Company under the WYO Statistical Plan. A report of the Operational Review will be filed with the Standards Committee.

(5) Meet the recording and reporting requirements of the WYO Statistical Plan. Transactions reported to the National Flood Insurance Program's (NFIP's) Servicing Agent by the WYO Company under the WYO Statistical Plan will be analyzed by the Servicing Agent and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company submissions, the disposition of transactions which do not pass systems edits and the reconciliation of the total generated from transaction reports with those submitted on WYO Company reports.

(6) Cooperate with FEMA's Office of the Comptroller on Letter of Credit matters.

(7) Cooperate with FIA's Claims Director in the implementation of a claims reinspection program.

(8) Cooperate with FIA's Underwriting Director in the verification of risk rating information.

(9) Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

(k) To facilitate the operation of the WYO Program and in order that a WYO Company can utilize its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act, the Administrator, for good cause shown, may grant exceptions to and waivers of the regulations contained in this Title relative to the administration of the NFIP.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 4193), E.O. 12127, dated March 31, 1979 (44 FR 19367), E.O. 11988, dated May 24, 1977 and 44 CFR Part 8, Delegation of Authority to Federal Insurance Administrator)

Issued at: Washington D.C. December 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator.

Appendix D—Federal Emergency Management Agency; Federal Insurance Administration

Financial Assistance/Subsidy Arrangement

Purpose: To assist the Company in underwriting Flood Insurance using the Standard Flood Insurance Policy.

Accounting Data: Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1985.

Issued by: Federal Emergency Management Agency; Federal Insurance Administration, Washington, D.C. 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the Federal Insurance Administration; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertaking of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including:
1.1 Community Eligiblity/Rating Criteria;
1.2 Policyholder Eligibility Determination;
1.3 Policy Issuance;
1.4 Policy Endorsements;
1.5 Policy Cancellations;
1.6 Policy Correspondence; and
1.7 Payment of Agents Commissions.

The receipt, recording, control, deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above.

2.0 Claims processing in accordance with general Company standards.

The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Company, along with FIA's WYO Claims Questions and Answers, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports.

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written under the WYO Program. This date shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Applications Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;
1.2 Endorsement Processing—7 days;
1.3 Cancellation Processing—15 days;
1.4 Correspondence, Simple and/or Status Inquiries—7 days;
1.5 Correspondence, Complex Inquiries—20 days;
1.6 Supply, Materials, and Manual Requests—7 days;
1.7 Claims Draft Processing—7 days from completion of file examination;
1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.
1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, *not* calendar days.

In addition to the standards for timely performance set forth above all functions performed by the Company shall be in accordance with the highest reasonbly attainable quality standards generally utilized in the insurance and data processig industries.

These standards are for guidance, and, therefore, there is no remedy for failure tro meet them under this Arrangement. Nevertheless, performance under these standards can be a factor considered by FIA in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to FIA or its designee on thodw occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance.

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the FIA Administrator in accordance with the Act;

other than at renewal time, at which time the insurance producer may submit

made). FIA, after consultation with FEMA's Office of General Counsel

(NFIP's) Servicing Agent by the WYO Company under the WYO Statistical

Act") recognized the benefit of having the National Flood Insurance Program (the

with FIA's WYO Claims Questions and Answers, the Flood Insurance Claims Office

under the regulations prescribed by the FIA Administrator in accordance with the Act;

3.0 All such policies of insurance shall comform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by FIA and only where the Company is licensed by State law to engage in the property isurance business;

5.0 The FIA may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement; less the Company's expenses as set forth in Article III, and the operation of Letter of Credit established pursuant to Article IV. (Reference: Article IV, Section A). The Company shall invest all funds held in the accounts established pursuant hereto, which funds are not necessary to meet current expenditures, in obligations of the United States Government. Such income as is derived from these investments shall be utilized to meet the obligations of the Company pursuant to flood insurance policies issued hereunder.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurnace policies in any manner consistent with its customary method of operation.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and agent expenses, including any taxes, dividends, commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's operating and administrative expenses, except for allocated and unallocated loss adjustments expense described in C. below, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's Aggregates and Averages Property Casualty, Industry Underwriting—by Lines (1982) for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Federal Insurance Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II (E)).

The Company shall be entitled to withhold 15.0% of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other marketing expense.

With the agreement of the Federal Insurance Administrator, the Company may pay 3% of the company's written premium on the policies covered by this Arrangement for the right to obtain a reimbursement of state or municipal tax paid on the policies covered by this Arrangement.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Federal Insurance Administrator to incur.

D. Loss payments under policies of flood insurance shall be made by the Company and may include payments as a result of awards or judgments for punitive damages arising under the scope of this Arrangement and policies of flood insurance issued pursuant to this Arrangement provided that prompt notice of any claim for punitive damages is received by the Assistant Administrator of FIA's Office of Insurance Policy Analysis and Technical Service, along with a copy of any material pertinent to the claim for punitive damages.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the NFIP "Flood Insurance Manual" shall be made by the Company.

Article IV—Undertakings of the Government

A. A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III(C), (D), and (E). Request for funds shall be only when net premium income and income derived from investments and disinvestments have been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit costs.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn against the Company for any of the following reasons:

1. Payment of claim described in Article III, Section D; and

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and FIA, this Arrangement shall be effective for the period October 1 through September 30. FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may (i) require the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (ii) require the transfer to FIA of:

1. All data received, produced, and maintained through the life of the Company's participation in the Program; and

2. A plan for the orderly transfer to FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

3. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by FIA in its entirely upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company

subsequent to the inception of the contract, or (2) nonpayment to FIA of any amount due FIA. Under these very specific conditions, FIA may require the transfer of data as shown in Section C. above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, repealed, expires or FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all Write-Your-Own policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1963, as amended, in such form as FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V(C.) the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums and interest income collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. At the end of each fiscal year, the Company shall remit to FIA any funds in excess of those required to meet expenses for loss and loss adjustment. Such liabilities shall be defined as liabilities established for case reserves and reserves established for losses incurred but not reported, plus $5,000.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional statement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and FIA with reference to any fiscal issue under any provisions of this Arrangement or with respect to FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by FIA. The Company and FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by FIA.

The Company and FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section shall, upon objection by FIA or the Company, be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

Article X—Officials Not To Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts of credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry or any order of conservation, receivership, or liquidation shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement the Compnay agrees that in any area in which FEMA authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company during the term of this Arrangement, of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

FIA and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of investigation, audit, and examination of any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Compnay shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records relating to premiums shall be retained and available for three (3)

using [illegible] premiums earned as weights) calculated and promulgated by the Federal

shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so

Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company

case reserves and reserves established for losses incurred but not reported, plus $5,000.

this Arrangement if made with a corporation for its general benefit.

Arrangement. Records relating to premiums shall be retained and available for three (3)

years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance With Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the Act and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant to the Act, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this —— day of ————, 1984.

Company

The United States of America
Federal Emergency Management Agency.
by ————

(Title)
by ————

(Title)

Exhibit A—Fee Schedule

Range (by covered loss)	Fee
Erroneous assignment	$40.00
CWP	70.00
$.01 to $200.00	70.00
$200.01 to $400.00	80.00
$400.01 to $600.00	110.00
$600.01 to $800.00	130.00
$800.01 to $1,000.00	150.00
$1,000.01 to $1,500.00	180.00
$1,500.01 to $2,000.00	250.00
$2,000.01 to $2,500.00	320.00
$2,500.01 to $3,000.00	340.00
$3,000.01 to $3,500.00	260.00
$3,500.01 to $4,000.00	280.00
$4,000.01 to $4,500.00	300.00
$4,500.01 to $5,000.00	320.00
$5,000.01 to $6,000.00	350.00
$6,000.01 to $7,000.00	370.00
$7,000.01 to $8,000.00	390.00
$8,000.01 to $9,000.00	400.00
$9,000.01 to $10,000.00	420.00
$10,000.01 to $15,000.00	460.00
$15,000.01 to $20,000.00	490.00
$20,000.01 to $25,000.00	520.00
$25,000.01 to $30,000.00	550.00
$30,000.01 to $35,000.00	580.00
$35,000.01 to $40,000.00	610.00
$40,000.01 to $45,000.00	640.00
$45,000.01 to $50,000.00	670.00
$50,000.01 to $75,000.00	800.00
$75,000.01 to $100,000.00	900.00
$100,000.01 to $125,000.00	1,100.00
$125,000.01 to $150,000.00	1,250.00
$150,000.01 to $175,000.00	1,400.00
$175,000.01 to $200,000.00	1,550.00
$200,000.01 to limits	1,700.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $50) and limited to the amounts of insurance purchased.

Appendix E—National Flood Insurance Program

A Plan To Maintain Financial Control for Business Written Under the Write-Your-Own Program

Under the Write-Your-Own (WYO) Program, the Federal Insurance Administrator (Administrator) may enter into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance, whereby these companies may offer flood insurance coverage to eligible property owners utilizing their customary business practices. To facilitate the marketing of flood insurance coverage, the Federal Government will be a guarantor of flood insurance coverage for WYO Company policies issued under the WYO Arrangement. To ensure that any taxpayer funds are accounted for and appropriately expended, the Federal Insurance Administration (FIA) and WYO Companies will implement this Financial Control Plan. Any departures from the requirements of this Plan must be approved by the Administrator. The authority for the WYO Program is contained in 44 CFR Parts 61 and 62, §§ 61.13 and 62.63. The WYO Financial Assistance/Subsidy Arrangement (Arrangement) is hereby made a part of this Plan, and a copy is contained in Part 8 of this Plan.

WYO Companies are subject to audit, examination, and regulatory controls of the various states. Additionally, insurance company operating departments are customarily subject to examinations and audits performed by Company internal audit (and/or quality control) departments and independent CPA firms. It is intended that this Plan utilize to the extent possible, the findings of these examinations and audits as they pertain to business written under the WYO Program (Parts 6 and 7).

The WYO Financial Control Plan contains several checks and balances which can, if properly implemented by the WYO Company, significantly reduce the need for extensive on-site reviews of Company files by the FIA staff or their designee. Furthermore, we believe that this process is consistent with customary reinsurance practices and avoids duplication of examinations performed under the auspices of individual State Insurance Departments, NAIC Zone examinations, and independent CPA firms.

The WYO Financial Control Plan requires the WYO Company to meet the minimum requirements established by the Standards Committee. The Standards Committee consists of two (2) members from FIA, one (1) member from either the Federal Emergency Management Agency's (FEMA's) Office of the Inspector General or Office of the Comptroller, and one (1) member from each of three (3) designated WYO Companies, pools or other entities.

The WYO Financial Control Plan must require the WYO Company to:

1. Conduct self-audit programs to meet the minimum requirements established by the Standards Committee and the AICPA Insurance Industry Audit Guide.
2. Submit an annual report of the WYO Company self-audit activities to the Standards Committee.
3. Participate in an evaluation of the WYO Company self-audit plan on at least a triennial basis. The evaluation will be conducted by the FIA Examination Division and the WYO Company's internal audit manager. A report of the evaluation will be filed with the Standards Committee and the Administrator.
4. Participate in a WYO Company/FIA Operation Review. The FIA Claims Director or designee and the FIA Underwriting Director or designee will conduct a review of the WYO Company's flood insurance activities at least once every three (3) years. These reviews, like the internal audit evaluation, will be conducted at the offices of the WYO Company. As a part of these reviews, actual files (up to fifty [50]) will be reconciled with a listing of transactions submitted by the Company under the WYO Statistical Plan. A report of the Operation Review will be filed with the Standards Committee (Parts 3 and 4).
5. Meet the recording and reporting requirements of the WYO Statistical Plan. Transactions reported to the National Flood Insurance Program's (NFIP's) Servicing Facility by the WYO Company under the WYO Statistical Plan will be analyzed by the Servicing Facility and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company's submissions, the disposition of transactions which do not pass systems edits, and the reconciliation of the total generated from transaction reports with those submitted on the WYO Company's reports (Part 2).
6. Cooperate with FEMA's Office of the Comptroller on Letter of Credit matters.
7. Cooperate with FIA's Claims Director or designee in the implementation of a claims reinspection program (Part 5).
8. Cooperate with FIA's Underwriting Director or designee in the verification of risk rating information.
9. Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

The Standards Committee will review and make a recommendation to the Administrator concerning any adverse action arising from the implementation of the Financial Control Plan. Adverse actions include, but are not limited to:

1. FIA Examination Division's recommendation to perform extensive on-site audits of WYO Company files. On-site audits will be conducted by third-party, independent firms as selected by FEMA.

2. FIA Examination Division's recommendation to not renew a particular Company's WYO arrangement.
3. Complaints by the WYO Company of unprofessional and/or uncooperative actions of FIA staff and/or the NFIP Servicing Facility.

This Plan includes the following guidelines:

Part 1—Model Self-Audit Program's Minimum Standards
Part 2—Statistical Plan Reconciliation Procedures
Part 3—Underwriting Operation Review Procedures
Part 4—Claims Operation Review Procedures
Part 5—Claims Reinspection Program
Part 6—Financial Audits and State Insurance Department Examinations
Part 7—Reports Certifications
Part 8—WYO Financial Assistance/Subsidy Arrangement (Incorporated by Reference)
Part 9—Statistical Plan (Incorporated by Reference)

Part 1—Model Self-Audit Program's Minimum Standards

Self-Audit Program Objectives

The objectives are to establish minimum requirements by which all WYO Companies will conduct annual self-audits in the areas of underwriting, claims, financial control and statistical reporting. These requirements are consistent with guidelines established by the Standards Committee and the AICPA Insurance Industry Audit Guide.

These self-audits should:

1. Evaluate individual risk underwriting and claims handling based on the underwriting and claims examination process.
2. Ensure that standard underwriting and claims programs, systems and procedures are being utilized in an effective and proper manner.
3. Ensure that all financial and statistical reporting is reconcilable and conforms with established government procedures.
4. Review the quality of service and identify reasons for problems where applicable.
5. Provide recommendations to correct deficiencies and follow progress until deficiencies have been corrected.
6. Departures from these minimum standards require the written approval of the Federal Insurance Administrator.

Types of Samples

The use of any of the following samples is suitable in meeting the minimum standards of this self-audit program:

1. Judgment Sample—a sample based upon the judgment of the auditor.
2. Block Sample—a sample selected on the basis of consecutive time, with 100% verification of all items in the "block".
3. Random Sample—a sample based on the concept that each item in the population has an equal change of being in the sample.
4. Stratified random sample—a sample based on a specific portion of the population (i.e., A Zones, structures with basements, etc.) and random within that portion.

The sample size is adequate if it contains a sufficient number of items to show the same results as would be found in another sample of the same size from the same population. The sample should be a systematic representation of files selected based on a profile amount of premium represented in policy size groups. By using this method, a more meaningful file review could be made approaching 90% accuracy. The following sample sizes are suggested with the random sample or stratified random sample:

Population size	Sample size
[illegible]	27
100–149	36
150–249	40
250–399	44
400–599	48
600–1499	50
1500–3499	52
3500–up	54

Any other reviews which are conducted such as special ratings, large losses, repetitive losses should be specified and labeled as "special reviews".

Underwriting Audit Outline

1. Review of the Underwriting Department's responsibilities, authorities and composition.
2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.
3. Administrative review to verify compliance with company procedures.
4. Thorough examination of a random sample of underwriting files to measure the quality of work. At a minium, files should be reviewed to verify the following:

Application Processing

a. Policies are issued for eligible risks.
b. Rates are correct and consistent with the amount of insurance requested on the application.
c. Waiting period for new business is consistent with government regulations.
d. Elevation certification or difference is correctly shown on application.
e. The coverage does not include more than one principal building and/or its contents per policy.
f. No binder is effective unless issued with the authorization of FIA
g. The FIRM zone shown on the application is applicable to the community in which the property is located.
h. Community shown on application is eligible to purchase insurance under the NFIP.
i. Information on type of building, etc. is fully completed.
j. Applicable deductibles are recorded.
k. A new, fully completed application or a photocopy of the most recent application with appropriate updates to reflect current information is on file for each risk, including those formerly written by the NFIP Servicing Facility.
l. If any files to be audited are unavailable, determine the reason for their absence.

Endorsement Processing

a. Complete tasks above as applicable.
b. Review requests for additional coverage to ensure that they are subject to the waiting period rule.
c. Review controls established to ensure that no risk is insured under endorsement provisions that is not acceptable as a new business risk (i.e., a property located in a suspended community).

Cancellation Processing

Verify controls to ensure that one of the necessary reasons for cancellation exists and that the transaction is accompanied by proper documentation.

Renewal Processing

Determine controls to ensure that all necessary information needed to complete the transaction is provided.

Expired Policies

Determine controls to ensure that each step is carried out at the proper time.

Claims Audit Outline

1. Review of the Claims Department's responsibilities, authorities and composition.
2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.
3. Administrative review to verify compliance with company procedures.
4. Through examination of a random sample of claims files to measure the quality of work. At a minimum, the files should be reviewed to verify the following:

a. Verify controls to ensure that a file is set up for each Notice of Loss received.
b. Review adjuster reports to determine whether they contain adequate evidence to substantiate the payment or denial of claims, including amount of losses claimed, any salvage proceeds, depreciation and potential subrogation.
c. Ascertain that building and contents allocations are correct.
d. Determine whether file contains evidence identifying subrogation possibilities.
e. Verify that partial payments were properly considered in processing the final draft or check.
f. Verify that loss payees are listed correctly (consider insured and mortgagee).
g. Verify that the total amount of the drafts or checks is within the policy limits.
h. Ascertain the relevance and validity of the criteria used by the carrier to judge effectiveness of its claim servicing operation.
i. Confirm that when information is received from an independent adjuster, the examiner either acts promptly to give proper feedback with instructions or takes action to pay or deny the loss.
j. Determine whether the Claims Department is using an "impression of risk" program in reporting misrated policies, etc.
k. Where attempts at fraud occur, verify that these instances are being reported to FIA's Assistant Administrator for Insurance Policy Analysis and Technical Services for referral to FEMA's Inspector General.
l. If any files to be audited are unavailable, determine the reason for their absence.

$45,000.01 to $50,000.00	670.00
$50,000.01 to $75,000.00	800.00

Committee. The Standards Committee consists of two (2) members from FIA, one (1) will be conducted by third-party, independent firms as selected by FEMA.

The sample size is adequate if it contains a sufficient number of items to show the same

e. Complete tasks above as applicable.

determine the reason for their absence.

Statistical Plan Audit Outline

1. Review of the Accounting and Statistical/Data Processing Departments' responsibilities, authorities and composition.
2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.
3. Administrative review to verify compliance with company procedures.
4. Review general controls in data processing system to determine whether (1) the controls have been designed according to management direction and known requirements of the Arrangement, (2) the controls are operating effectively to provide reliability of and security over the data being processed, (3) the reporting is made timely and (4) error resubmissions received appropriate priorities.

Financial Audit Outline

1. Review of the Accounting Department's responsibilities, authorities and composition.
2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.
3. Administrative review to verify compliance with company procedures.
4. The reviewer shall test the transactions and operations of the WYO Company to determine whether the program is in conformity with compliance requirements that have a material effect upon the NFIP financial position. Specifically, the auditor shall establish whether the carrier has incurred any unrecorded liabilities—contingent or actual—through failure to comply with, or through violation of, pertinent laws and regulations.
5. The reviewer shall determine whether the carrier is: (1) Maintaining an effective control on revenues, expenditures, assets and liabilities; (2) properly accounting for resources, liabilities and operations; (3) submitting external financial reports that contain accurate, reliable, and useful financial data and that they are fairly presented including proper statistical reconciliation procedures; and (4) expending federal funds for authorized purposes.
6. The review of the financial system will be used to determine whether:

a. Accounting is fully responsive to the reporting requirements of FEMA.

b. Financial transactions are executed as authorized and properly recorded.

c. Effective cash management is exercised. The management of cash includes the areas of accounts' receivable and payable and the custodial responsibilities and control systems over cash and the use of letters of Credit cash advances.

d. Retention of various allowances and/or reimbursements are in conformity with the "Financial Assistance/Subsidy Arrangement".

Part 2—Statistical Plan Reconciliation Procedures

Statistical Plan Reconciliation Objectives

The objectives are: to reconcile transaction detail with monthly financial statements submitted by the WYO Companies; to assess the quality and timeliness of submitted data; and to provide for the identification and resolution of discrepancies in the data. The reliance on computer processing to perform the review of submitted data will help minimize the necessity for on-site audits of WYO Companies. Reconciliation of the statistical reports submitted will be performed by the WYO Companies and independently by CSC (Computer Sciences Corporation), the NFIP servicing contractor.

The review of monthly financial statements and transaction level detail will involve five areas:

1. Financial control
2. Quality control (audit trails)
3. Quality review of submitted data
4. Policy rating
5. Timeliness of reporting

Financial Control

1. WYO Companies are required to submit a reconciliation report (Exhibit "A") with the submission of transaction level detail. This report will reconcile the transaction records data to the financial report, explaining any discrepancies.
2. The NFIP will review, at a minimum, the categories on the attached format and produce a similar report reconciling the transaction data to the monthly financial statement submitted by each WYO Company.
3. To facilitate financial reconciliation, transaction records which do not pass various edits employed by the NFIP to review the quality of submitted data will be so identified, but still maintained until the error is corrected by the company in order to reconcile all financial data submitted to the NFIP.

Quality Control

Transaction level detail will be maintained in policy and claim history files for recordkeeping and audit purposes.

Quality Review of Submitted Data

1. Transaction records will be edited for correct format and values.
2. Relational edits will be performed on individual transactions as well as between policy and claim transactions submitted against those policies.
3. Record validation will be performed to check that the transaction type is allowable for the type of policy or claim indicated.
4. Errors will be categorized as critical or non-critical. The rate of critical errors in the submission of statistical data will be the basis by which company performance is reported to the Standards Committee. Critical errors include those made in required data elements (Type A record transactions). Non-critical errors are those made in data elements reported by the WYO Companies at their option (Type B record transactions).

Policy Rating

The rating will be validated by the NFIP for all policies for which the following transactions have been submitted:

1. New Business.
2. Renewals.
3. Endorsements involving type A transaction records.
4. Corrections of type A transaction records previously submitted for premium transactions.

Incorrect rating will be considered a critical error.

Timeliness of Reporting

WYO Companies will be expected to submit monthly statistical and financial reports within thirty days of the end of the month of record.

The NFIP will produce reports based on review of submitted data within thirty days after the due date or receipt date of WYO Company submissions, whichever is later.

Monthly Reports

Reports for each WYO Company's data submission will be sent to the respective WYO Company and the FIA explaining any discrepancies found by the NFIP review.

Report to WYO Companies:

1. Transaction records that fail to pass the quality review or policy rating edits will be reported to the appropriate Company in transaction detail with error codes, classification of errors as either critical or non-critical and any codes used by the Company to identify the source of the transaction data.

Reports to WYO Companies and the FIA:

2. Summary statistics will be generated for each monthly submission of transaction data, separately for initial and correction transactions. These will include:

a. Absolute numbers of transactions read, transactions accepted and transactions in error, separately for Type A and Type B transactions.

b. Relative values for the number of Type A transactions containing errors stated as percentages of total Type A transactions read.

c. Absolute numbers of critical and non-critical errors.

3. Summary statistics for all policy and claim records submitted to date (which may each be the result of multiple transactions) will be generated, separately for critical and non-critical errors. These will include:

a. Absolute number of policy and claim records on file and those containing errors.

b. Relative values for the number of records containing critical errors.

4. Control totals will be generated for tapes submitted to and processed by the NFIP. These will include:

a. Number of records submitted according to the WYO Company.

b. Number of records actually submitted according to NFIP.

5. In cases where the NFIP reconciliation of transaction level detail with the financial statements does not agree with the reconciliation report submitted by the WYO Company, a separate report will be generated and transmitted to the Company for resolution and to the FIA.

Reporting of Company Rating to the Standards Committee and the Administrator

Satisfactory Rating

An annual end of the year report will be submitted to convey the satisfactory rating of WYO Companies' submission of transaction data and the reconciliation of this data with financial reports.

Unsatisfactory Rating

The report of an unsatisfactory rating will be submitted as soon as errors and problems reach critical threshold levels. This rating will be based on: continuing problems in reconciling transaction data with financial reports; statistics on the percentage of transactions submitted with critical errors; the percentage of policy and claim records on file that contain critical errors; and, late submission of statistical and financial reports.

Exhibit "A"

Monthly Reconciliation—Net Written Premiums

Company name _____
Month/year ending _____
Preparer's name _____
Company No. _____
Date submitted _____
Telephone No. _____

	Monthly financial report	Monthly statistical transaction report
Net written premiums	(Income Statement-Line 100)	Total of Pre-Paid premium transactions (11, 17, 20, 23, 26, 29)
Unprocessed [redacted]		
+ Prior month		
Current month		
Other—Explain		
(1)		
(2)		
Total above		

Comments:

Monthly Reconciliation—Net Paid Losses

Company name _____
Month/year ending _____
Company No. _____
Date submitted _____

	Monthly financial report	Monthly statistical transaction report
100 Net paid losses	(Income Statement-Line 115)	Total of loss paid transactions (31, 34, 40, 43, 49, 64) (Extract from transactions 31 and 34 only claim payments)
110 Net salvage recovery		Transactions 52, 67 (Salvage only)
120 Net subrogation recovery		Transactions 52, 67 (Subrogation only)
130 Claim payment [redacted]		Transactions 52, 67 (Extract claim payment recoveries only)
Unprocessed [redacted]		
140 + Prior month		
150 Current month		
160 Salvage not to be reported by transaction (explain)		
170 Other—explain (1)		
180 Total Above	(Sum of lines 100, 140, 160, 170 minus line 150)	(Line 100 minus sum of lines 110, 120, 130)

Comments

Monthly Reconciliation—Special Allocated LAE

Company name _____
Month/year ending _____
Company No. _____
Date submitted _____

	Monthly financial report	Monthly statistical transaction report
Special allocated loss adjustment [redacted]	(Other Loss & LAE Calculation—Line 655)	Transactions 71, 74
Unprocessed [redacted]		
+ Prior month		
Current month		
Other—explain		
(1)		
(2)		
Total above		

Comments

Monthly Loss Documentation

Company Name _____
Month/year ending _____
Company No. _____
Date submitted _____
Number of open claim cases with reserves _____
Total amount of reserves _____

Quarterly Loss Reserve Documentation

Company Name _____
Month year ending _____
Company No. _____
Date submitted _____

Every quarter provide a listing (or a computer tape) of all open reserves on a case basis which support the "loss reserves" amount reported on the financial statement using the following format:

Policy No	Amount of reserve	Loss date
Total number of policies	Total amount of [redacted] reserve	

Part 3—Underwriting/Policy Administration Operation Review Procedures

The objectives are to establish procedures by which the FIA underwriter or designee will conduct at least a triennial review of a WYO Company's flood insurance policy administration/underwriting activities.

Notice

The WYO Company's representative would be notified in writing of the FIA underwriter's plan to conduct an Operation Review. This notice would provide the WYO Company at least 30 days to prepare for the Operation Review.

These Operation Reviews should:

1. Evaluate with the WYO Company's representative the underwriting/policy administration processes used to write flood insurance, furnishing financial and statistical data to the NFIP and ensuring accuracy and service in the issuance of policies.
2. Evaluate the timeliness and accuracy of actual transactions submitted in accordance with the Statistical Plan instructions. Up to 50 policy files should be matched with printed transaction data extracted from NFIP statistical records. FIA may select policies which would be beneficial to the WYO Company's understanding of the underwriting and rating procedures.
3. Provide the WYO Company's representative a briefing on the results of the evaluation under (1) and (2) to facilitate improvements in the underwriting/policy administration process.
4. Provide the WYO Company's representative an opportunity to respond to the evaluation and resolve outstanding matters.
5. Establish a schedule under which the FIA and/or the WYO Company's representative should provide additional information on matters still outstanding at the conclusion of the on-site visit.
6. Provide the WYO Company's representative with a copy of the draft report. The WYO Company's underwriter should be provided with a reasonable amount of time to respond in writing. The WYO Company's written response is to be made part of the Operation Review Report.
7. Provide the standards Committee with a report on the results of the Operation Review.

Note.—The following information is presented solely as a suggested Underwriting/Policy Administration Operation Review outline. The precise review format and the techniques employed to fulfill review objectives for a specific WYO Company would be based on that Company's processing environment and organizational configuration. In addition, the following information could be used as a guideline for a WYO Company's annual self-audit Program.

Underwriting/Policy Administration Operation Review Outline

1. WYO Company Summary Report

An overview would be provided by the WYO Company to the FIA underwriter prior to the on-site review. See Exhibit "A".

the quality and timeliness of submitted data;

transactions.

financial reports.

2. Administrative Review

The review provides for the identification of and compliance with existent administrative, technical and functional policies or procedures. See Exhibit "B".

3. Operational Activity (Applications, Policy and Endorsement Issuance, Cancellations)

The review provides for a three-year analysis of operational activities as follows:

a. Analysis of policies in force, applications entered, declinations and cancellations.

b. Analysis of type of business (Dwelling, General Property business).

c. Renewal processing systems.

d. Endorsement processing.

4. File Review

The review provides for a sampling of policy files. The general details to be covered in the individual files are in the "Specific Risk Review Checklist" (Exhibit "C"). Also, an "Underwriting Review Summary" (Exhibit "D") would be compiled for the Risk Review portion of the report.

5. Rating

A review of rating activity would cover the following areas:

a. Internal review of rating accuracy.

b. Use of specific rates.

c. Correction procedure.

d. Timeliness of service.

e. Training procedures for staff and/or agents.

6. Rating Data Verification

A sampling of risks would be reviewed. A check would be made to determine:

a. Type of occupancy.

b. Type of structure.

c. Number of floors.

d. Basement type.

e. Elevated with enclosures.

f. Contents location.

g. Program.

h. Community.

i. Zone.

j. Elevation from elevation certificate.

k. Floodproofing.

l. Mortgagee.

m. Deductible.

n. Condominium.

Phone calls or on-site physical inspections of selected risks may be undertaken at the discretion of the WYO Company and the FIA Underwriting Division.

7. Review of Appeals and/or Complaints (Those to the Insurance Department and those filed directly with the WYO Company)

The review would include the following:

a. Analysis of actions.

b. Analysis of average time frame required to resolve these cases.

8. Reports

The FIA underwriter or designee would file a report of the Operation Review with the WYO Company representative, the Standards Committee and the Administrator. The minimum level of detain in the report would be as follows:

a. Satisfactory Rating. The report would contain the time, place, and a list of participants in the review process. It would also contain the number of files examined along with any comments on their accuracy and condition that would be appropriate.

b. Unsatisfactory Rating. The report would be written as specifically as possible. Each unsatisfactory condition would be described and documented. Recommendations to the WYO Company's representative on steps to be taken to rectify any delay, error, or omission would be clearly stated with a time frame in which the corrective action would be accomplished. Follow up procedures would be worked out with the WYO Company's representative which would indicate the dates any progress reports would be filed with the Standards Committee and the Administrator.

Note.—A suggested rating criteria would be the use of an overall error percentage. The overall error percentage would be applied to a standard and a rating would be developed. For instance, an overall error percentage of 20% or higher would be a basis for an unsatisfactory rating until a baseline developed from actual experience is determined. The overall percentage would be developed from the results of the file review. The errors on a file would be categorized as either critical or non-critical. One or more critical errors or three or more non-critical errors identified in a file would be considered as only one error when developing the overall error percentage.

The determination of what constitutes a critical or non-critical error would be based on established significant conditions. For example, critical error conditions would be as follows:

(1) Any error which impacted the correct rating of the policy (coverage amount, zone).

(2) The insuring of an ineligible risk.

Exhibit "A"—WYO Company Summary Report

The WYO Company would prepare a report summarizing the flood insurance operation within the Company including the following items:

1. A general statement describing the nature of the operational setup, whether in-house or through a vendor.

2. If in-house, the number of processing locations, person in charge of operations, staffing arrangement as appropriate, and operating relationships to other insurance activities.

3. If through a vendor, name and address, number of states involved, WYO Company representative responsible for dealing with vendor.

4. Optionally, exhibits and flow charts as appropriate.

Exhibit "B"—Administrative Review Report

A report would be prepared covering the following points, summarizing the activity in each area, giving examples and identifying those areas in need of attention.

1. *Policywriting, Rating and Endorsements:*

a. Prompt within service guidelines?

b. Is policy-writing audited?

c. Are policy writing errors held to a minimum?

d. Is satisfactory action normally taken to ensure established eligibility standards are met?

e. Are there adequate procedures for handling specifically rated property?

2. *Bulletins, Guidelines and Manuals:*

a. Does each underwriter, policywriter, rater and coder have proper manuals available for their use?

b. Is there a procedure for maintaining manuals?

3. *Correspondence Files:*

a. In good order?

b. Procedures for destruction?

4. *Cancellation and Declination:*

a. Are procedures understood and requirements knowledgeably attended to?

5. *New Business:*

a. Are applications being properly checked?

6. *Specific Risk Review:*

Review areas that need attention from "Specific Risk Review Checklist" giving examples and recommendations for improvement.

7. *Renewal Procedures:*

a. Are they satisfactory?

b. Are non-renewal procedures satisfactory?

8. *Mortgagee Procedures:*

a. Are they satisfactory?

Exhibit "C".—Specific Risk Review Checklist

Date:———

Audit for:

( ) Single Family Dwelling
( ) 2–4 Family Dwelling
( ) Other Residential
( ) Non Residential

File No. ———
Amount of Ins. ———
Bldg. ———
Cts. ———
Occupancy: ———

	Yes	No	Comment if checked "No"
Application: Property Completed?			
Met Eligibility—Location Requirements?			
Policy: Properly issued?			
Required Premium Received?			
Limits of insurance: Are limits within the NFIP statutory allowances?			

Comment of conditions below that are unsatisfactory:	
(a) Obstruction below elevated floor of an elevated building.	
(b) Property in violation of building codes.	
(c) Other	

	Yes	No	Comment if checked "No"
Timeliness of service satisfactory within established time standards:			
(a) Application?			
(b) Policy Issuance?			
(c) Notice of Declination?			
(d) Renewal or Cancellation?			
(e) Premium Notices?			
(f) Waiting Period Observed?			
File satisfactory for:			
(a) Documentation?			
(b) Rate Verification?			
(c) Other/			

WYO Company Underwriter Comments.

Answered by ———
Date ———

Resolution.

Exhibit "D".—Underwriting Review Summary

Type of file or item	Total No. Reviewed	Total No. Held for Manager
1 General property (commercial) files.		
2 Single-family and 2–4 family dwelling files.		
3 Multi-family dwelling and other general property files.		
4 Quote files		
5 Declination files		
● Community not eligible.		
● Incomplete application (unable to rate).		
● Risk not eligible		
● Premium not submitted.		
● Premium not sufficient.		
6 Other (designate type)		
7		
8		
9		

Part 4—Claims Operation Review Procedures

Claims Operation Review Objectives

The objectives are to establish procedures by which the FIA examiner or designee will conduct at least a triennial review of a WYO Company's flood insurance claims administration activities.

These Claims Operation Reviews should:

1. Evaluate with the WYO Company's claims manager or designee the claims administration processes used to: settle flood insurance claims; provide financial and statistical data to the NFIP; and ensure accuracy and service in the handling of claims.

2. Evaluate the timeliness and accuracy of actual transactions submitted in accordance with the Statistical Plan instructions. Up to 50 policy files should be matched with printed transaction data extracted from NFIP statistical records.

3. Provide the WYO Company's claims manager a briefing on the results of evaluation under (1) and (2) to facilitate improvements in the claims administration processes.

4. Provide the WYO Company's claims manager an opportunity to respond to the evaluation and resolve outstanding matters.

5. Establish a schedule under which the FIA examiner and/or the WYO Company's claims manager should provide additional information on matters still outstanding at the conclusion of the on-site visit.

6. Provide the WYO Company's claims manager with a copy of the draft report. The WYO Company's claims manager should be provided with a reasonable amount of time to respond in writing. The WYO Company's written response is to be made part of the Operation Review Report.

7. Provide the Standards Committee with a report on the Operation Review.

Notice

The WYO Company's claims manager would be notified in writing of the FIA examiner's plans to conduct an Operation Review. This notice would provide the WYO Company at least 30 days to prepare for the Operation Review.

Note.—The following information is presented solely as a suggested Claims Operation Review Outline. The precise review format and the techniques employed to fulfill review objectives for a specific WYO Company would be based upon that Company's processing environment and organizational configuration. In addition, the following information could be used as a guideline for a WYO Company's annual self-audit Program.

WYO–FIA Claims Operation Review Outline

1. *Claims Department's Responsibilities, Authorities, and Composition.*

An overview of the Department's responsibilities, authorities and staffing composition (managerial, technical and clerical) would be provided by the WYO Company to the FIA examiner (Exhibit "A") prior to the on-site review. The overview would contain the following information:

a. Statement of Primary Function(s).

b. Relationship:

(1) WYO Company Management;

(2) Claim Division (FIA).

C. Responsibilities and Authorities.

d. Staffing Composition.

2. *Administrative Review.*

The review provides for the identification of and compliance with existent administrative, technical and functional policies or procedures. It examines relationships with other WYO Company Departments (Executive, Accounting, Underwriting and Data Processing) and inquires as to the adequacy of controls and security.

a. Administrative Policies and/or Procedures.

b. Technical Procedures.

c. Functional (Clerical) Procedures.

In undertaking this portion of the examination, the "Administrative Review Checklist" (Exhibit "B") would be utilized.

3. *Claim Volumes—Payment (Loss and Expense) Review.*

It provides for a three-year analyses of claim frequency and payment (loss and allocated expense) figures. Also, it would inquire into distribution of losses by size of loss and examine unallocated expenses. The analyses would be as follows:

a. Analysis of Claim Volumes and Payments (Exhibit "C").

b. Analysis of Specail Allocated Claims Expenses (Exhibit "C").

c. Analysis of Salvage and Subrogation Recoveries (Exhibit "C").

d. Analysis of Recovery Results (Exhibit "C").

e. Analysis of Losses by Size of Loss (Exhibit "D").

4. *Review of Appeals and/or Complaints (Those to the Insurance Department and those filed directly with the WYO Company).*

The review would include the following:

a. Analysis of actions.

b. Analysis of average time frame required to resolve these cases.

5. *File Review.*

It provides for a thorough examination of a random sampling of claim files (open and closed) to measure the quality of investigations, adjustments and supervision. Claim Review Summary Worksheets (Exhibit "E") will be completed on each file examined. Specific comments on the file would be indicated on the worksheet. Further audit letters (Exhibits "F" and "G") would be sent on a representative number of closed cases.

Any circumstances indicating a substantive variance from existing Underwriting Rules would be communicated to the Underwriting Review Team (if present) and to the WYO Company's Underwriting Department.

6. *Worksheet Files.*

The FIA claims examiner or designee would maintain separate operation review files for each Company. These files and any draft report written that relies on these files would include the WYO Company's responses. At the WYO Company's request, the FIA claims examiner would provide a copy of these files to the WYO Company's claims manager.

7. *Reports.*

The FIA claims examiner or designee would file a report of the Operation Review with the WYO Company (Claims Manager and Internal Audit Manager), the Standards Committee and the Administrator. The minimum level of detail in the report would be as follows:

a. *Satisfactory Rating:*

The report would contain the time, place, and a list of participants in the review process. It would contain the number of files examined with any comments on their accuracy and condition that would be appropriate.

b. *Unsatisfactory Rating:*

The report would be written as specifically as possible. Each unsatisfactory condition would be described and supported by documentation. Recommendations to the WYO Company's claims manager on steps to be taken to rectify any delay, error, or omission would be clearly stated with a time frame in which the corrective action would be accomplished. Follow up procedures would be worked out with the WYO Company's claims manager which would

indicate the dates progress reports would be filed with the Standards Committee and the Administrator.

Note: A suggested rating criteria would be the use of an overall error percentage. The overall error percentage would be applied to a standard and a rating would be developed. For instance, an overall error percentage of 20% or higher would be a basis for an unsatisfactory rating until a baseline developed from actual experience is determined. The overall percentage would be developed from the results of the file review. The errors on a file would be categorized as: either critical or non-critical. One or more critical errors or three or more non-critical errors identified in a file would be considered as only one error when developing the overall error percentage.

The determination of what constitutes a critical or non-critical error would be based on established significant conditions. For example, critical error conditions would be as follows:

(1) An error which resulted in a claim payment where no coverage was present.

(2) An error which resulted in an incorrect payment amount.

(3) Failure to process a claim in accordance with established procedures which caused significant delay in closing.

Exhibit "A".—Claim Department Responsibilities, Authorities, and Composition

The WYO Company would prepare a report summarizing the flood insurance Claim Department's organizational position within the Company and the resources available to perform the claims settlement function.

1. *Attach Organization Chart:*

a. Indicate lines of authority and functional dependencies for only those departments involved in the WYO Company's flood insurance activities.

b. Show the names of key personnel involved in the WYO Company's flood insurance activities.

2. Attach exhibits and the written description of the information required under Item 1. of the WYO-FIA Claims Operation Review Outline.

Exhibit "B".—Administrative Review Checklist

	Yes	No	N/A
1. Investigation and Adjustments			
a. Application of coverage:			
(1) Insurable interest?	( )	( )	( )
(2) Is loss from the flood peril?	( )	( )	( )
(3) Did loss occur within policy term?	( )	( )	( )
(4) Does location and description of risk coincide with policy information?	( )	( )	( )
(5) Were proper deductibles applied?	( )	( )	( )
(6) Other insurance considered?	( )	( )	( )
(7) Other losses?	( )	( )	( )
b. Application of sound adjusting practices:			
(1) Was adjuster's report accurate/complete?	( )	( )	( )
(2) Was an attorney used in the settlement?	( )	( )	( )
(3) Was a technical expert used in the settlement?	( )	( )	( )
c. Documentation:			
(1) Are damages clearly identified?	( )	( )	( )
(2) Are damages flood related?	( )	( )	( )
(3) Are damages clearly and completely itemized and documented by the adjuster?	( )	( )	( )
(4) Was depreciation considered?	( )	( )	( )
(5) Has subrogation been considered?	( )	( )	( )
(6) Has salvage been properly handled?	( )	( )	( )
(7) Was salvage timely?	( )	( )	( )
2. Supervision			
a. Assignments:			
(1) Are assignments made promptly?	( )	( )	( )
(2) Is insured contacted promptly?	( )	( )	( )
b. Reserves:			
(1) Are initial reserves indicated on the first report?	( )	( )	( )
(2) Are they adequate?	( )	( )	( )
(3) Does final settlement compare favorably with last reserve established?	( )	( )	( )
c. Diary control:			
(1) Automatic?	( )	( )	( )
(2) Timely?	( )	( )	( )
(3) Is file reviewed at diary date with examiner's comments?	( )	( )	( )
d. Examiner evaluation and settlement performance:			
(1) Is examiner directing adjuster when needed?	( )	( )	( )
(2) Are files documented?	( )	( )	( )
(3) Is adequate control maintained over in-house adjuster?	( )	( )	( )
(4) Is adequate control maintained over outside adjuster?	( )	( )	( )
e. Salvage and subrogation:			
(1) Is salvage evaluated by salvors?	( )	( )	( )
(2) Is salvage disposed of promptly?	( )	( )	( )
(3) Are salvage returns adequate?	( )	( )	( )
(4) Is potential subrogation being promptly and properly investigated?	( )	( )	( )
(5) Are proper subrogation forms used?	( )	( )	( )
(6) Are subrogation and salvage files properly opened, cleared, and referred (if appropriate)?	( )	( )	( )
(7) Are recovery funds for subrogation and salvage being properly handled?	( )	( )	( )
f. Suits:			
(1) Are suits properly identified?	( )	( )	( )
(2) Are suits being properly evaluated?	( )	( )	( )
(3) Are suits being referred to attorneys promptly?	( )	( )	( )
(4) Are attorneys being advised as to handling settlement or compromise?	( )	( )	( )
(5) Are suits being properly controlled?	( )	( )	( )
(6) Are suit files properly closed?	( )	( )	( )
g. Other:			
(1) Was there other coverage by the WYO Company?	( )	( )	( )
(2) Were damages correctly apportioned?	( )	( )	( )
(3) Was a solo adjuster used?	( )	( )	( )
(4) Were there prior flood claims?	( )	( )	( )
(5) Were prior damages repaired?	( )	( )	( )
(6) Were prior claim files reviewed?	( )	( )	( )
(7) Was a congressional complaint letter in file?	( )	( )	( )
(8) Was it responded to promptly?	( )	( )	( )

Exhibit "C".—Analysis of Claim Volumes and Payments

CLAIM VOLUME

Line	Number of claims CAT I	Number of claims CAT II	Number of claims CAT III	Number of claims CAT II	Total Number of claims item-CAT I
Dwelling form					
General prop.					
Total					

Line	Payments	Payments	Payments	Payments	Payments
Loss Payments					
Dwelling form					
General prop.					
Total					
Special Allocated Expense Payments					
Dwelling form					
General prop.					
Total					

Line	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected	Total Number of claims affected
Salvage Recovery					
Dwelling form					
General prop.					
Total					
Subrogation Cases					
Dwelling form					
General prop.					
Total					

RECOVERY RESULTS ANALYSIS

	19—Recoveries				Percent to payments			
	Subrogation		Salvage		Subrogation		Salvage	
	Gross	Net	Gross	Net	Gross	Net	Gross	Net
1st Quarter								
2nd Quarter								
3rd Quarter								
4th Quarter								
Year Total								

Note:—Gross means the total amount recovered. Net means the "gross" less expenses of recovery.

Exhibit "D"

Size	Building Coverage		Contents Coverage	
	WYO Company Number of claims	Total NFIP Number of claims	WYO Company Number of claims	Total NFIP Number of claims
Analysis of Losses by Size of Loss				
$1 to $2,000				
$2,001 to $5,000				
$5,001 to $10,000				
$10,001 to $15,000				
$15,001 to $20,000				
$20,001 to $50,000				
$50,001 and up				
Total				
Average claim cost	$	$	$	$
Analysis of Loss Reserves				
$1 to $2,000				
$2,001 to $5,000				
$5,001 to $10,000				
$10,001 to $15,000				
$15,001 to $20,000				
$20,001 to $50,000				
$50,001 and up				
Total				
Average claim cost	$	$	$	$
		$		

Note.—These exhibits will be developed by the NFIP for review with the WYO Company's claims manager.

Exhibit "E" (Exhibit "E" appears on p. 48666.)

Exhibit "F"

NCPI

Suggested Letter Where Photocopy of Claim Payment Draft Is Available

Dear ———
Claim No. ———
Date of loss: ———

Our auditors are conducting a routine examination of our operations, one phase of which is a review of claim payments. Will you be good enough to confirm a payment made to you? To provide you with what we believe is sufficient information, a copy of the claim payment draft is enclosed.

Is the information shown on draft No.——— (as enclosed) correct? (Yes or No)

Your Signature ———

If you find the enclosed information to be accurate, please sign in the space provided above. If the information is incorrect in any way, please indicate the discrepancy on the reverse side of this letter. In either event, we would appreciate your returning this letter in the enclosed business reply envelope.

Thank you for your cooperation.

Very truly yours,

Exhibit "G"

NCPI

Suggested Letter Where Photocopy of Claim Payment Draft Is Not Available

Dear ———

Our auditors are conducting a routine examination of our operations, one phase of which is a review of claim payments.

If you find the following record to be accurate, please sign in the space provided. If this information is incorrect in any way, please indicate the discrepancy on the reverse side. In either event, we would appreciate your returning this letter to our auditors in the enclosed business reply envelope.

Thank you for your cooperation.

Very truly yours,

Claim No.——Date of loss———
Policy No.———
Date Claim paid———
Amount paid———
Name of insured———
Payment made to———
The information is correct? (yes or no) ———
Your signature ———

Part 5—Claims Reinspection Program

WYO—NFIP Claims Reinspection Program

To keep WYO-NFIP Claims Management informed, to assist in the overall claims operation, and to provide necessary assurances and documentation for dealing with GAO, Congressional Oversight Committees, and the public, the FIA and WYO Companies have established a Claims Reinspection Program. The Program is comprised of the following major elements:

1. All files are subject to reinspection.

2. Files for reinspection may be randomly selected by flood event, or size of loss, class of business, as determined by WYO-NFIP Claims Management.

3. Ten percent of open files will be reinspected prior to payment unless WYO-NFIP Claims Management determines that a larger or smaller sample is in order (e.g., due to the size of the catastrophe).

4. An agreed upon sample of closed files, by event, will be subjected to reinspection as well.

5. A WYO representative will conduct the reinspection, accompanied by an NFIP General Adjuster.

6. A joint, single report will be issued by the WYO Company representative and the NFIP General Adjuster.

7. Copies of reinspection reports will be forwarded to the Claims Management of both the WYO Company and the NFIP.

8. The reinspection report, adapted for flood insurance business, may be in the format of the "Property Reinspection Report" developed by the Functional Audit Task Force of the National Committee on Property Insurance (EXHIBIT "A").

Exhibit "A"

NCPI

Property Reinspection Report

Insured's name———File No.——
Telephone No.——
Insured's address ———
Adjuster's name———
Office or Address———
Type of loss———
Date of loss———
Amount paid———
Date paid———
Date assigned———
Date insured contacted———Date of inspection———
Reference in scope of damage: —Yes —No
If Yes—explain ———

Adjuster used correct amounts for labor/materials? —Yes —No.
Combined wind and flood loss?
—Yes —No
If No—explain———

Adjuster applied policy provisions?
—Yes—No
If no—explain ———

Insured's comments on handling:

Did adjuster visit insured loss personally?
—Yes —No
Did adjuster suggest any repairers, etc.?
—Yes —No
Insured's comments ———

General comments

Date of reinspection ———
Reinspector signature———

Part 6—Financial Audits and State Insurance Department Examinations

It is expected that audits of WYO Companies by independent accountants and/or state insurance departments, aside from those conducted by the FIA or its designee, will include flood insurance activity. When such audits occur, a financial officer for the WYO Company will notify the FIA, identifying the auditing entity and a brief statement of the overall conclusions that relate to flood insurance and the insurer's financial condition when available. In the case of an audit in progress, a brief statement on the scope of the audit should be provided the FIA. A checklist will be utilized for this reporting and will be provided to WYO Companies by the FIA.

The WYO Companies will maintain on file the reports resulting from audits, subject to on-site inspection by the FIA or its designee. At the FIA's request, the WYO Company will submit a copy of the auditor's opinion, should one be available, summarizing the audit conclusions.

Part 7—Reports Certifications

A. Certification Statement for Monthly Financial and Statistical Reconciliation Reports

I have reviewed the accompanying financial and statistical reconciliation reports of XYZ Company as of ———. All information included in these statements is the representation of the XYZ Company.

Based on my review (with the exception of the matter(s) described in the following paragraphs, if applicable), I certify that I am not aware of any material modifications that should be made to the accompanying reports.

Signed ———
(Responsible Financial Officer)
Date ———

B. Certification Statement for Monthly Statistical Transaction Report

I have reviewed the accompanying statistical transaction report control totals in conjunction with appropriate statistical reconciliation reports. All information included in these reports is the representation of the XYZ Company.

Signed ———
(Responsible Reporting Officer)
Date ———

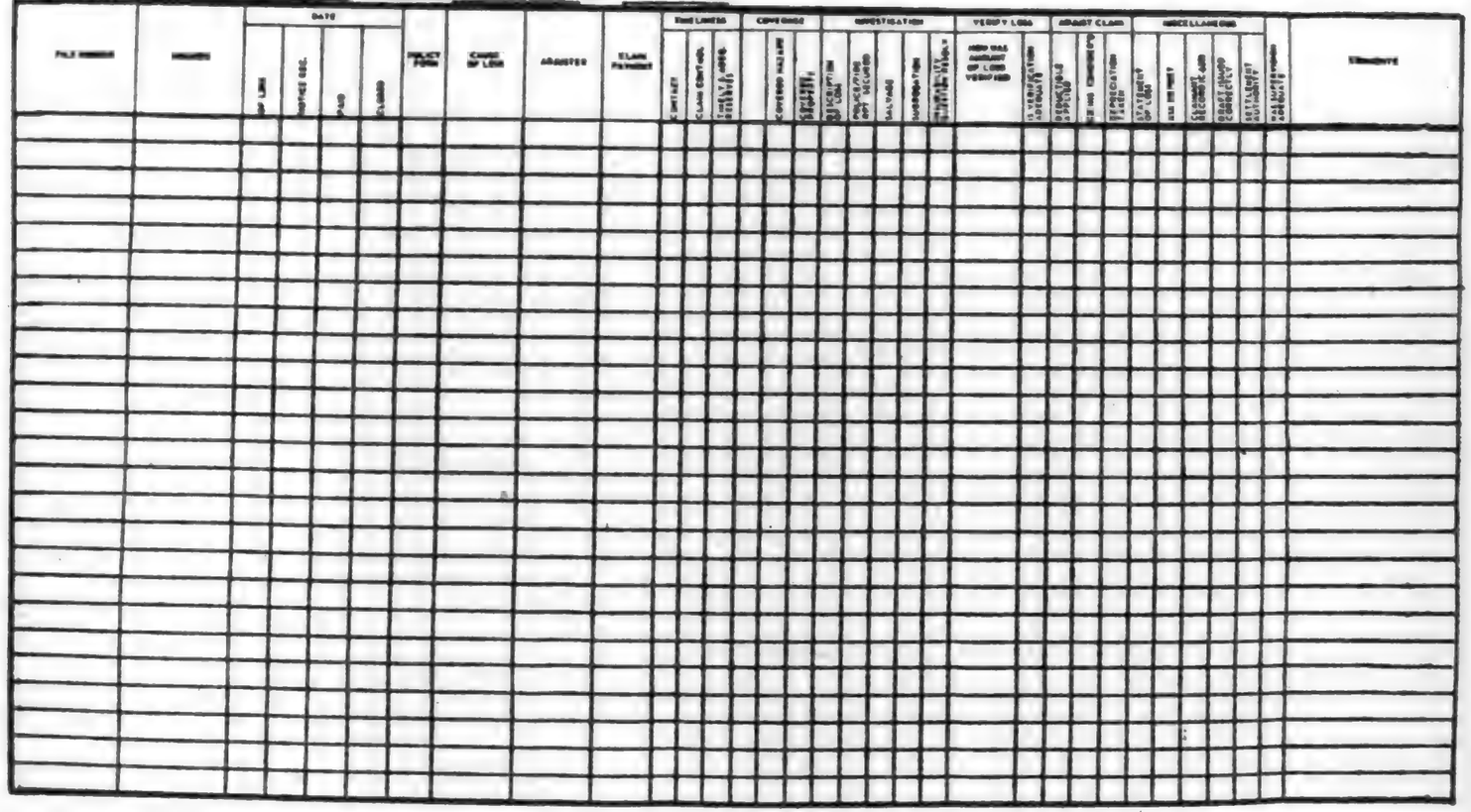
BILLING CODE 6718-03-M

EXHIBIT "E"

CLAIM REVIEW SUMMARY WORKSHEET

NCPI

Company _____ Examiner _____ Date _____



FIA-WYO Program

[FR Doc. 84-32337 Filed 12-12-84; 8:45 am]

BILLING CODE 6718-03-C

[FR Doc. 84-32237 Filed 12-12-84; 8:45 am]

BILLING CODE 6716-03-C

Reader Aids

Federal Register

Vol. 49, No. 241

Thursday, December 13, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

47189-47380	3
47381-47472	4
47473-47586	5
47587-47818	6
47819-48026	7
48027-48174	10
48175-48260	11
48261-48528	12
48529-48666	13

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
December 10, 1984 48263

Executive Orders:
11157 (Amended by EO 12494) 48175
12493 47819
12494 48175

Proclamations
5285 47473
5286 47587
5287 48261

5 CFR

Proposed Rules:
890 48193

7 CFR
413 47589
420 47821
421 47821
425 47821
431 47821
432 47821
445 47590
907 ..... 47475, 48265
966 47189
971 48529
991 47190

Proposed Rules:
Ch. IX 47271
51 48194
52 47402
434 47612
447 47617
966 47495
989 48194
1126 47495
1150 47496

8 CFR
212 48530
238 48027

9 CFR
301 47475
318 47822
319 47822
325 47475
381 47475

Proposed Rules:
92 47402

10 CFR
1 47823
20 47823
30 47823
40 47823
50 47823
55 47823
70 47823
73 47823
110 47191
430 47479
960 47714

Proposed Rules:
50 48200
73 48200

11 CFR

Proposed Rules:
114 48201

12 CFR
201 47825
506a 48177
523 47825
541 47825
545 47825
549 47825
561 47825
563 47825
584 47825

Proposed Rules:
205 47405
226 47406
332 48552
500 47410
561 ..... 47499, 47852
563 ..... 47499, 47852
563b 47271, 47410
570 47852
571 ..... 47852, 47866
584 ..... 47852, 48564
612 48051

13 CFR
101 47381

Proposed Rules:
107 48201
121 ..... 47412, 47414

14 CFR
1 47594
27 47594
29 47594
39 ..... 47381, 47382, 48027, 48029, 48531
71 48532
91 ..... 47594, 48030
95 47204
97 48033
241 48265
298 48266

Proposed Rules:
25 47358
39 48566
71 ..... 47415, 48053, 48054, 48201, 48568
73 48569
75 47621

375.....48569

15 CFR

Proposed Rules:
30.....48055
941.....47415

16 CFR

13.....48178, 48180, 48266, 48269
305.....47479

Proposed Rules
424.....48059

17 CFR

210.....47594
229.....47594
231.....47594
241.....47594
270.....47208
274.....47208

Proposed Rules:
1.....48570
143.....48060
240.....47274
249.....48318

18 CFR

271.....47826
282.....48035
1302.....47383

Proposed Rules:
271.....48571, 48572

19 CFR

4.....48035
6.....48035
10.....47986, 47995

Proposed Rules:
10.....48003

20 CFR

404.....48036, 48181
410.....48036
416 (2 documents).....48036
422.....48036
632.....47384

Proposed Rules:
655.....48061

21 CFR

5.....48183
81.....47228, 47229
175.....47480
182.....48533
184.....47384, 48533
193.....47481, 48270
436.....47483, 47826, 48183
442.....47483, 47826, 48183
452.....47828
510.....47387, 47829, 48535
520.....47830
522.....47829, 48038
540.....48271
546.....47486
555.....48184
558.....47387, 48039, 48271
561.....47481
803.....48272
1020.....47387

Proposed Rules:
58.....47504
166.....47418
182.....47505, 48202
184.....47505, 48202, 48321
450.....47505
610.....47622
630.....47622

22 CFR

120.....47682, 48536
121.....47682, 48536
122.....47682
123.....47682
124.....47682, 48536
125.....47682
126.....47682
127.....47682
128.....47682
129.....47682
130.....47682, 48536
501.....48273
514.....48039

24 CFR

234.....47388

Proposed Rules:
813.....48006
880.....48006
881.....48006
882.....48006
913.....48006
960.....48006

26 CFR

1.....48273-48283
6a.....48292
301.....48536

Proposed Rules:
1.....47870, 48321-48323, 48573
35a.....47870
41.....47274, 47871
48.....47274, 47871
301.....48573

27 CFR

9.....47831

29 CFR

1610.....48039

30 CFR

915.....47834

Proposed Rules:
Ch. II.....47624
251.....47871
920.....47419
935.....48324

31 CFR

129.....48184

32 CFR

250.....48040
706.....47602, 48539

33 CFR

100.....47230, 48046
110.....47602, 48539
117.....47231, 48540

Proposed Rules:
100.....48574
117.....47872

34 CFR

300.....48520

Proposed Rules:
668.....48494

36 CFR

251.....48541

Proposed Rules:
261.....47505
293.....47505
294.....47505

37 CFR

1.....48416
304.....47487

39 CFR

10.....47389
111.....47231, 47232, 47389, 48541

Proposed Rules:
10.....47275

40 CFR

52.....47488, 47490, 47836, 48152, 48185, 48542
86.....48128, 48474
180.....47491, 47493, 48298, 48299
260.....47390
270.....47390
271.....47391, 48300
600.....48128

Proposed Rules:
51.....48018
52.....48018, 48202, 48575
65.....47507
154.....47508
180.....47420, 47508, 47509
232.....48064
233.....48064
261.....47510
600.....48023
721.....47874

41 CFR

Ch. 101.....48544
101-25.....48546
101-41.....48547

Proposed Rules:
16-4.....48193

43 CFR

Proposed Rules:
Ch. II.....47624
3160.....48576
5400.....47511

44 CFR

67.....47240

Proposed Rules:
61.....48652
62.....48652

45 CFR

96.....47603
233.....48547
801.....47392

Proposed Rules:
1340.....48160

46 CFR

500.....47393
501.....47393
502.....47393
503.....47393
504.....47393
505.....47393
572.....48550

47 CFR

0.....47604
15.....48305
61.....47265
73.....47395, 47604-47608, 47837, 48046, 48186, 48305
74.....47837, 48305
76.....48313
83.....48187
97.....48551

Proposed Rules:
Ch. I.....47275
2.....47625, 47628
18.....47628
67.....48325
73.....47638
81.....47641
83.....47516, 47625, 47641

48 CFR

Proposed Rules:
Ch. 5.....47516
1501.....47516
1502.....47516
1503.....47516
1505.....47516
1506.....47516
1513.....47516
1514.....47516
1515.....47516
1517.....47516
1527.....47516
1533.....47516
1536.....47516
1552.....47516

49 CFR

395.....47494
571.....47396
1002.....48314
1057.....47268, 47850
1182.....48314
1183.....48314
1186.....48314

Proposed Rules:
531.....48064
533.....48064
571.....47276, 47880, 48576
1057.....48576
1063.....47277
1181.....48342
1186.....48342

50 CFR

17.....47397
258.....47611
611.....48316
655.....47269
672.....48049, 48316
675.....48316

Proposed Rules:
Ch. II.....47421
80.....47420
652.....47278, 47422

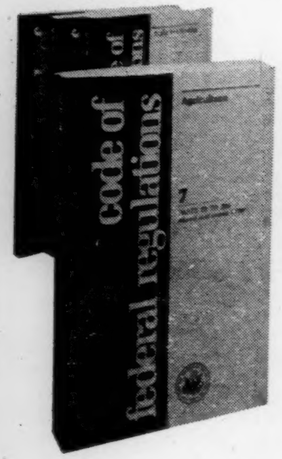
LIST OF PUBLIC LAWS

Note: The President completed his consideration of acts and joint resolutions passed during the second session of the 98th Congress on November 8, 1984.

Last list November 16, 1984.

The list will be resumed when bills are enacted into public law during the first session of the 99th Congress which convenes on January 3, 1985.

Proposed Rules:
58 47504
100 48574
117 47872
46 CFR
500 47393
80 47420
652 ..... 47278, 47422



Just Released

Code of Federal Regulations

Revised as of July 1, 1984

Quantity	Volume	Price	Amount
_____	Title 32—National Defense Volume I, Parts 1–39 (Contains DAR sections I–VI) (Stock No. 022–003–95376–1)	$15.00	$_____
_____	Volume II, Parts 1–39 (Contains DAR sections VII–XV) (Stock No. 022–003–95377–9)	19.00	_____
_____	Volume III, Parts 1–39 (Contains DAR sections XVI–XXVI and App. A–T) (Stock No. 022–003–95378–7)	18.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form **Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____ Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

VISA* MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the Code of Federal Regulations publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		

OL
9
SS
41
E
3
984
MI